



Staff Report

To: Summit County Council
Report Date: Thursday, August 2, 2012
Meeting Date: Wednesday, August 8, 2012
From: Ashley Koehler, Sustainability Coordinator
Project Name: County Property and Open Space Management Review
Type of Item: Update

EXECUTIVE SUMMARY: The County holds fee title to just over 2,400 acres of land, including land for facilities. Since the first open space bond passed in 2004, the amount of acreage has increased by 35%. County Code authorizes the County Manager to oversee these properties and their respective management needs. However, considering the increasing amount of land the County is responsible for, several policies have been suggested to the County Manager and Staff is now requesting confirmation from the Council on how to best move forward in managing, disposing of, and acquiring new property. This report also provides an overview on the inventory, management, and budget needs of these properties.

BACKGROUND:

Summit County Code §1-11 and 1-14-10(F)(6) authorizes the County Manager to ultimately oversee County property, including its disposition, leasing, and management. Due to the Manager's role, a staff team was created to categorize the inventory of the property and then identify the management needs. During this effort, Staff identified several challenging properties and subsequently recommended policies for the Manager and now Council to consider.

Additionally in support of this effort, is the Summit County Sustainability Plan that was adopted by Resolution in November 2011. This Plan identifies a series of goals with specific actions to be implemented by the end of 2013. The actions listed for Goal #6, which is to “*maintain and preserve natural resources significant to Summit County's identify and quality of life*” are listed below with status updates:

Action 1: Complete an inventory of all protected open space in the County, including private conservation easements and open space as part of subdivisions plats.

Sustainability Staff has completed an inventory of all public and private open space. This inventory is updated regularly and includes documentation of the warranty deed, conservation easement, water rights, leases, and other easements as it relates to County ownership and management. These lands have also been mapped and shared with state agencies, neighboring cities, and local districts for their use in regional planning efforts.

Action 2: Develop preservation and long-term management plans for the County owned open space, using best practices and models from other communities.

A staff team has been assembled to oversee the inventory of all County owned property, including open space, facilities, and parks. This team is chaired by the Sustainability Coordinator and includes the Facilities Director, Public Works Director, and Weed Supervisor. Current and long term management of the County's open spaces are discussed as a team to determine priorities and departments or outside resources that can best address the needs. This team also matches needs to the funds allocated in the Open Space Management budget, included in this report. In 2012, the County contracted to have a long-term management plan prepared for the Miss Billie's open space. This property has high public visibility and use and is known for its noxious weed problem. The management plan will include a full noxious weed mapping and management plan specific to weed control with an emphasis on organic methods. Staff anticipates a similar study and plan be initiated for restoration efforts on the PRI property.

Action 3: Include open space maintenance funding in annual budget.

Since 2010, the Council has approved a \$50,000 budget to manage open space properties. The Staff team mentioned above oversees the Open Space Management budget, which is included in this report. These funds have been used for baseline studies, conservation easements, fence repairs, and arbor care. Funds for noxious weed control have been expended from the Public Works budget. Moving forward, Staff recommends that funds for weed control be called out in the budget as specific to open space management.

PROPERTY INVENTORY:

An inventory has been completed that identifies that Summit County owns a total of 2,409 acres. Staff categorized these properties to identify its location, purpose, and management needs and therefore maintenance costs, a summary of the categories is shown in Table 1. Based on their category, either the Facilities, Public Works/Engineering, or Sustainability Departments' staff oversee the property and coordinate the fulfillment of their respective needs.

CATEGORY	ACRES
County Facilities	202
County Parks/Preserves	20
Open Space	359
Open Space (Jointly Owned)	791
Open Space (TDR)	11
Misc/Vacant Land	855
Snow Storage Parcels	3
Radio Tower	2
Right of Ways	162
Right of Ways- Abandoned	4
TOTAL	2409

OPEN SPACE PROPERTY

The Open Space Management Budget has been included in Exhibit B to demonstrate some of the management costs and needs of the properties. Sustainability Staff with support from the staff team, other partners in ownership, and lessees oversee the management of the properties in this category. Specific projects on the larger open space properties are shown in Table 2 below.

TABLE 1. County property categories and acreages as of January 2012, with the inclusion of Gillmor open space (292 acres) in June 2012.

OPEN SPACE PROPERTIES				
	ROBERTS	PRI	MISS BILLIE'S	GILLMOR
2010		-Conservation easement drafting -Baseline study -Grazing lease	-Conservation easement drafting -Baseline study	

	ROBERTS	PRI	MISS BILLIE'S	GILLMOR
2011	-Bike trail construction	-Fencing construction -XC trail construction -Millennium trail construction and underpass	-Community Garden lease	
2012	-Trail monitoring	-“No hunting” signs posted -XC trail inspection for Aspen tree regeneration -Trail race event clean up <i>-Fencing removal</i> <i>-Single track trail construction</i> <i>-Sign plaque</i>	-Conservation easement recording Community Garden lease -Management Plan -Weed inventory/mapping -Vegetative communities inventory <i>-Sign plaque</i>	-Baseline study/conservation easement recording -Fence lock -Limit illegal dumping <i>-Create trail plan</i> <i>-Fence removal at bike park</i>
2013+	<i>-Sign plaque</i>	<i>-Management plan</i> <i>-Interpretive signs</i> <i>-Relocate water trough</i> <i>-Aspen planting</i> <i>-Grazing lease</i>	<i>-Implement priority recommendations in management plan and weed control plan</i>	<i>-Sign plaque</i>

TABLE 2. Open Space property management tasks identified per year. Tasks in *red italics* are to be completed.

SUGGESTED POLICIES

In completing the inventory and the mapping, Staff was unable to identify a clear purpose for some of the properties and further questions the priority of management needs on all classes of properties. Therefore, in an effort to establish protocol for the management of current properties, accepting or purchasing new properties, and the disposing of existing properties Staff has suggested these policies for the Manager, Auditor, and Council to consider.

1. Criteria for the leasing of County property

- i. Need baseline prior to lease commencing
 - a) Weed supervisor walks site with lessee
- ii. Lessee responsible for weed and fence maintenance- include in the lease agreement
- iii. Consider a fair and reasonable rental/lease fee

2. Maintenance priority

- i. Criteria:
 - a) Clear and important purpose
 - b) Public visibility (ex. ROW land near Taco Bell)
 - c) Significant noxious weeds present
 - d) Large acreage
- ii. Level of expectation
 - a) Landscaping must meet local land use landscaping ordinances
 - b) Native vegetation and xeriscaping, unless a field is part of an active park
 1. Examples are Marion Park and Taco Bell landscape area

3. Shared maintenance

- i. Share costs, monitoring, and identification of needs with partners that generate impacts and those that have an interest in ownership, lease, or easement on the property.
 - a) Trails- SBSRD's trails generate impacts by encouraging people and dogs to access the property.
 1. Current SBSRD trail weed maintenance is 6" on each side of the trail.
 2. Weed Supervisor suggests an increased maintenance width and associated bond. The project is then monitored for 5 years, similar to a pipeline construction.
 - a. These requirements are currently part of Summit County Noxious Weed Act, Ordinance No. 484, if the trail disturbs ¼ acre or more and can be enforced through a grading permit.
 3. Trails vary and some get more use than others. If maintained well, minimal influence on weed growth.
- ii. Complete a cooperative agreement with SBSRD for weed maintenance responsibility at a wider width in regards to trails.

4. Access

- i. Don't allow public access until a trail plan is decided and installed. This is in an effort to avoid rogue trails, roads, parking, and illegal dumping.
- ii. Limit Liabilities by placing "No trespassing" signs on properties without public access.
 - a) Examples are kite skiing and hot air balloons.
- iii. Support enforcement

5. Disposal of property:

- i. Remnant parcels.
- ii. If the land only benefits a single development managed by an active HOA, then ownership be transferred to HOA.
 - a) For open space parcels, ensure that a deed restriction/conservation easement is placed on property at time of transfer.
 - b) Examples include:
 1. Jeremy Ranch open space
 2. Powderwood condo complex open space
 3. Mutcher TDR open space

6. Properties to avoid acquiring

- i. Criteria:
 - a) No defined purpose
 - b) Steep hillsides, unless a clear purpose is defined, such as wildlife, scenic view corridor, etc.
 1. example is Promontory open space on I-80
 - c) Open space that does not meet the Basin's General Plan's policies for meaningful open space.
- ii. Address this through the Basin Development Code and General Plan by updating the definition of "meaningful open space" and criteria that determines the public dedication or private preservation of lands that developers are required to set aside as open space.

ANALYSIS

After incorporation of Council's comments, Staff will pursue the implementation of policies.

Development Code amendments will be needed to ensure that the properties preserved through the development process, are appropriately dedicated to a public entity or privately preserved. The Eastern Summit County and Snyderville Basin Development Codes and General Plans both address the significance of open space and preservation of natural resources. Chapter 5 of the Basin's General Plan includes policies for the preservation of "meaningful open space" and identifies types of lands that are considered "meaningful". These policies should further be considered and reviewed by the County before new open space properties are acquired, whether purchased, or dedicated as part of a development project.

In regards to the disposal of properties, the County Auditor is vested with the authority over the disposal of surplus, obsolete, or unusable property, however final approval is still required from the County Manager. Where property has public access, a public hearing with the Planning Commission is also required.

Moving forward in management needs, Staff will need to arrange shared maintenance agreements with partnering owners, such as Park City Municipal and the Snyderville Basin Special Recreation District (SBSRD). Additionally, Staff will be requesting increased funding for the adequate maintenance of these properties and request that a line item in the budget for weed maintenance is delineated specific to open space and vacant property.

RECOMMENDATION

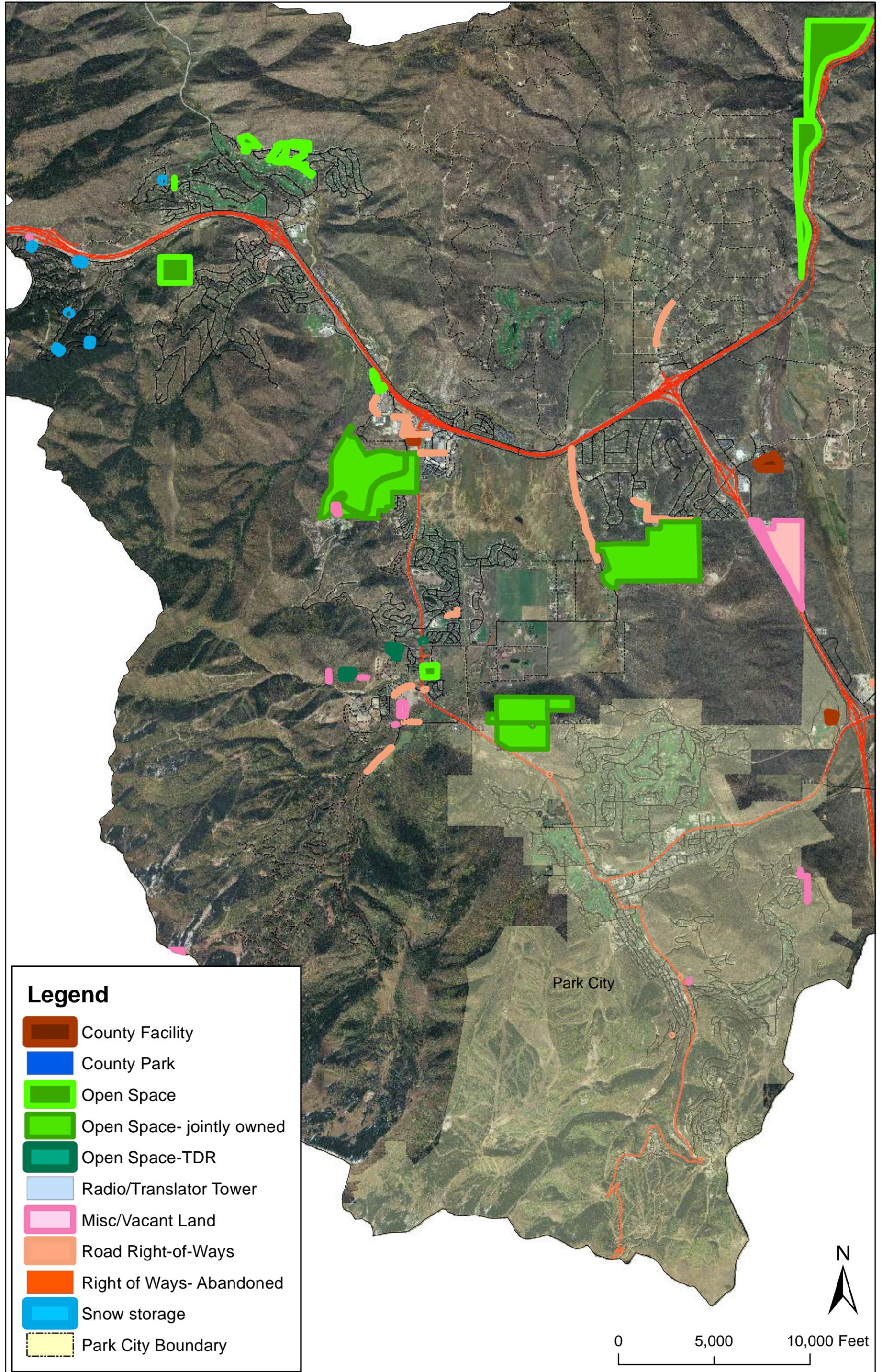
Due to the fact that the disposition of County property is a responsibility of the County Manager, Staff recommends that the Council consider the information in this report and forward comment as it relates to policy direction.

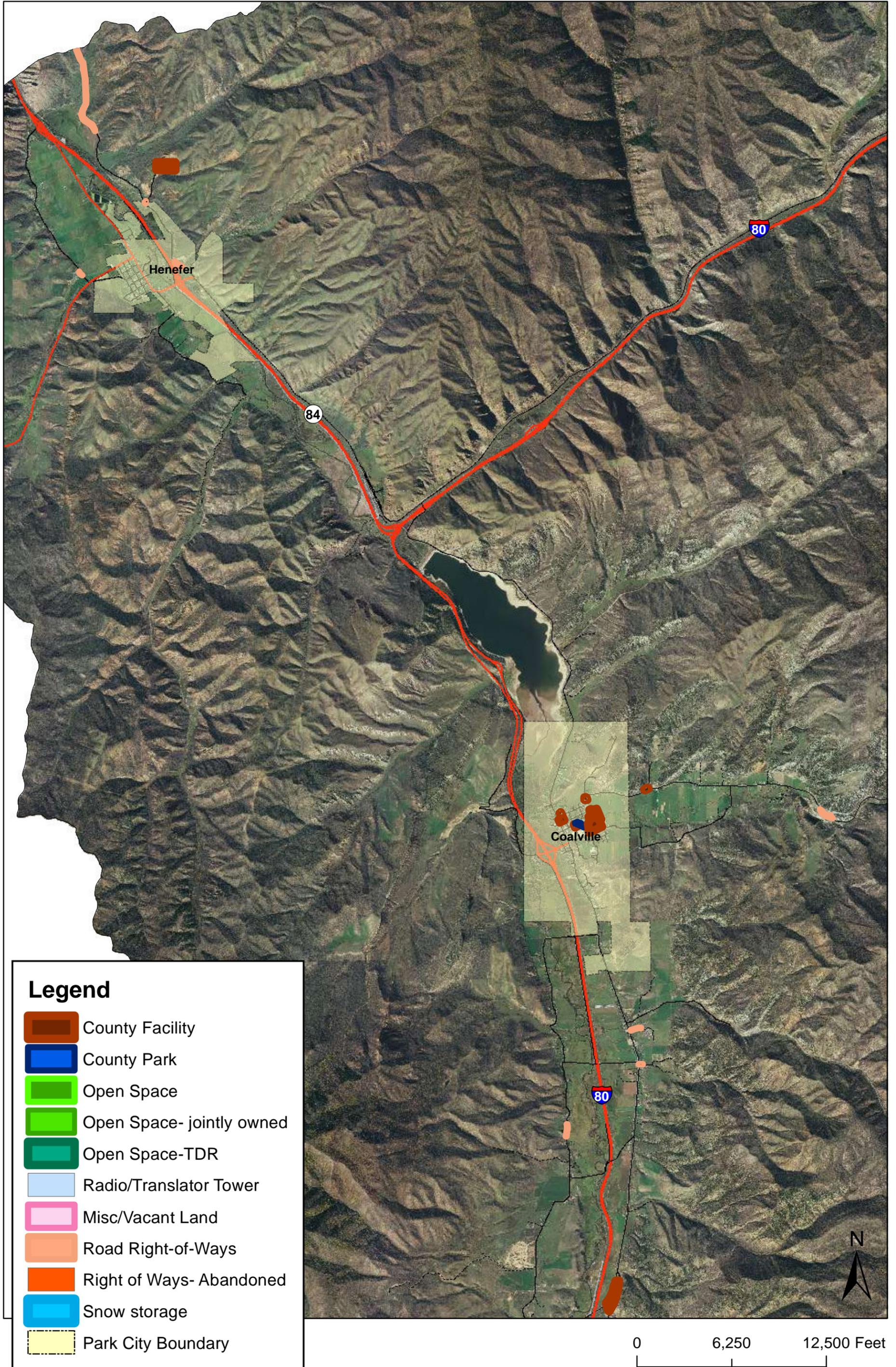
In regards to funding the maintenance efforts on these properties, Staff recommends that the Council consider increasing funding to meet these needs and include a line item in the 2013 budget for weed maintenance specific to open space and vacant property.

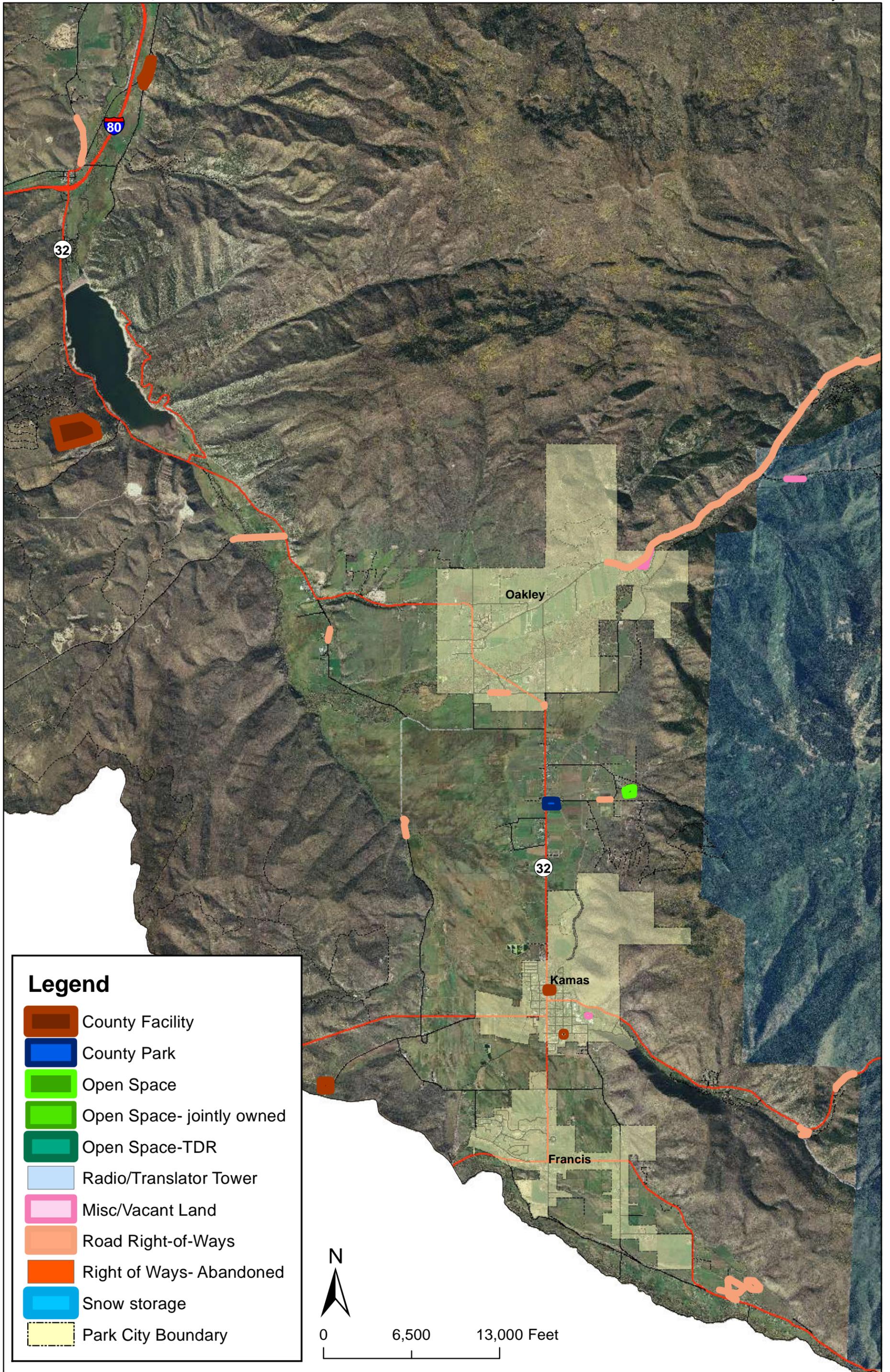
Attachment(s):

Exhibit A: County owned property maps (4)

Exhibit B: 2009-2013 Open Space Management Budget

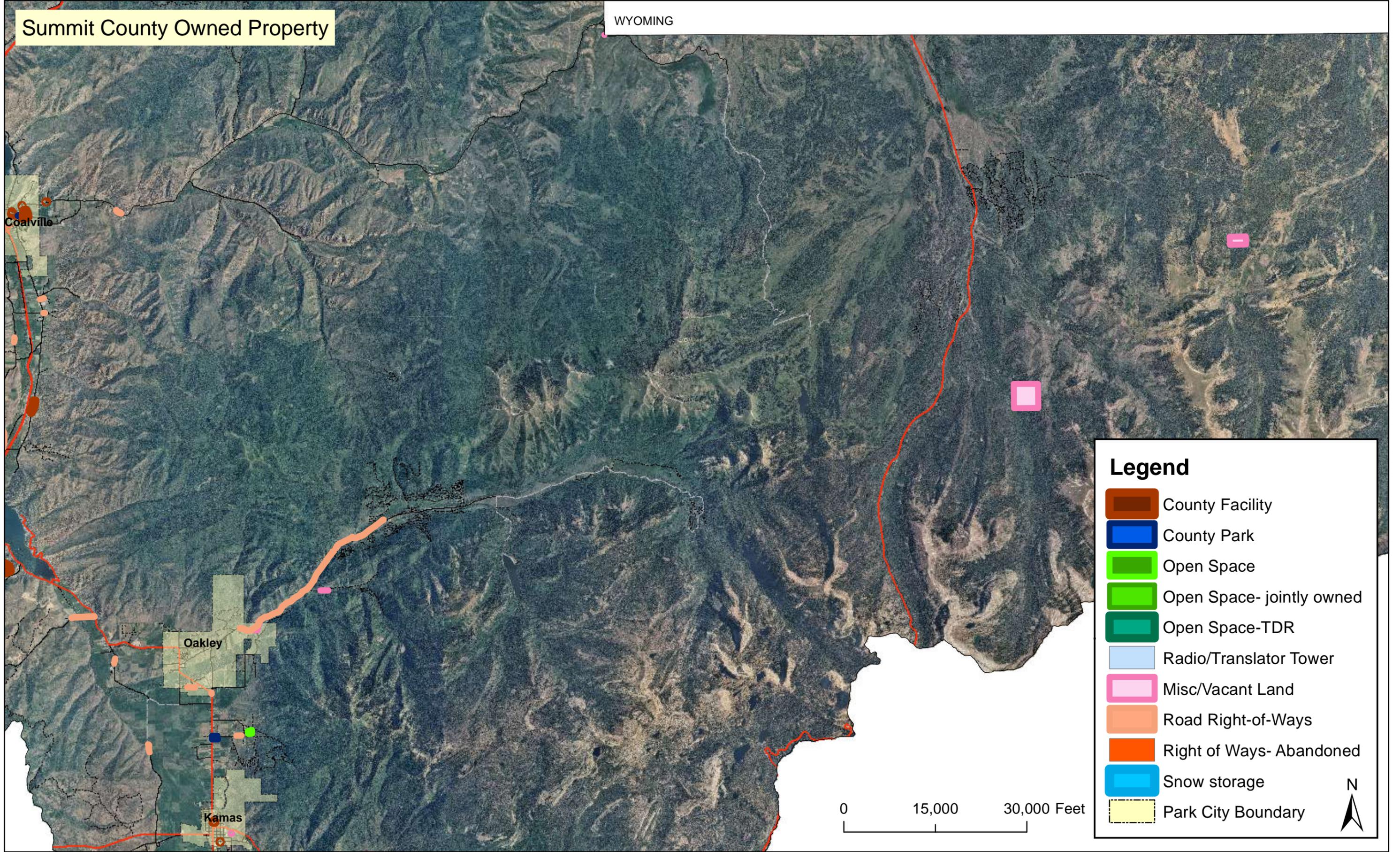






Summit County Owned Property

WYOMING



Legend

- County Facility
- County Park
- Open Space
- Open Space- jointly owned
- Open Space-TDR
- Radio/Translator Tower
- Misc/Vacant Land
- Road Right-of-Ways
- Right of Ways- Abandoned
- Snow storage
- Park City Boundary

0 15,000 30,000 Feet



Open Space Management Budget

July 2012

	Actual	Actual	Actual Y-T-D	Budget	Budget	
2009	2010	2011	2012	2012	2013	
						Acquisition Costs
						Appraisal
			\$1,200	\$8,000	X	Properties under consideration and future properties
						Baseline Study /Conservation Easement/Stewardship
	\$31,400					PRI
	\$18,600					Miss Billie's
				\$28,500	X	Gillmor (staff estimate)
					X	Future Properties
						Management Plan
			\$8,490	\$8,490		Miss Billie's
					X	PRI
						Maintenance
		\$71				Miss Billie's (water line supplies)
		\$1,985	\$1,675	\$2,000		Arbor care (2011-'12- Mutcher)
						Restoration
		\$2,000		\$1,000	X	PRI (fencing)
X					X	Miss Billie's (2009 home demolition- Public Works budget)
						Sign/Plaque
				\$800		PRI
				\$800		Miss Billie's
					X	Gillmor
					X	Roberts
						Misc.
		\$224		\$410	X	Mntnc supplies
		\$627				Mtn Regional Water (Miss Billie's back payment)
	\$1,660	\$1,199	\$503			Mtn Regional Water (summit Park parcels)
						Weed Control
X					X	PRI
X					X	Roberts
					X	Gillmor
X					X	Miss Billie's
					X	Future Properties
	\$51,660	\$6,106	\$11,868	\$50,000		TOTAL

Memo

Date: August 8, 2012
To: County Council
From: Kevin Callahan, Public Works Director
Subject: County/City Owned Triangle Parcel Planning Process

Background:

In December 2008, Summit County and Park City concluded a number of land acquisitions including the purchase of a 107 acre "Triangle Parcel" from Property Reserve Inc. (PRI) along the US 40 frontage road. The County and City purchased the land jointly with the intention of preparing a master plan for the site to include the following potential uses:

- The siting and development of necessary public facilities to serve the needs of local government and the residents of the Snyderville Basin and Park City;
- The reservation of an undefined 5 acre parcel for a future church meeting house site within the original 112 acre parcel;
- The construction of roads, utilities, water drainage and storm water detention facilities to serve the developed parcels;
- The preservation of portions of the property for open space, a wildlife migration corridor and view shed protection.

The master planning of this property essentially involves three parties, Summit County, Park City and the Boyer Company as a representative of PRI and the LDS Church. In addition to planning for the future use of the site, these parties along with PRI are responsible for the preparation and implementation of a clean-up plan to remove contaminated soils from portions of the property.

Facility Needs

Summit County and Park City acquired the "Triangle parcel" for multiple purposes and among those was the need to plan for the development of needed public facilities. County Public Works staff has identified the need for an adjunct public works yard for many years. The majority of our roads and most of our county's population are located in the Snyderville Basin. The operational costs of serving the Basin's residents from our yard in Wanship are becoming increasingly significant.

In addition, many of our sister regional agencies (Basin Recreation, Summit Water and Snyderville Sewer District) have expressed the strong need for both a publicly controlled regional fueling facility and a maintenance facility for their fleets. Park City has also identified the need for both Public Works equipment storage and snow storage. These uses would only need a small portion of the 107 publicly owned acres. County staff has contacted the Park City School District regarding their potential interest in a vehicle maintenance facility but we have not heard back from them as of July 30.

Proposed Planning Process

City and County staffs have just begun the initial stages of the cooperative planning process. Currently we have formed an interagency committee with the following staff participants:

Summit County Staff

Kevin Callahan, Public Works Director
Derrick Radke, County Engineer
Adryan Slaght, Principal Planner
Kimber Gabryszak, Planner III
Ashley Koehler, Sustainability Director

Park City Staff

Diane Foster, Deputy City Manager
Thomas Eddington, Planning Director
Kent Cashel, Transportation Manager
Pace Erickson, Street Superintendent
Heinrich Deter, Trails/Open Space Manager

The purchase and planning agreements along with the adopted County/City Letter of Intent outline the following steps that need to be addressed in a comprehensive planning process:

- The identification of all unmet local public facility needs and an evaluation of the appropriateness of siting facilities that meet those needs on the Triangle parcel;
- The siting of a church meeting house location within the property that is acceptable to the Boyer Company/ PRI and/or the LDS Church;
- The mapping of contaminated sites and the adoption and implementation of a clean-up plan for the remediation of contaminated soils on the site;
- The identification of environmental constraints and opportunities that need to be considered in the master plan for the site;
- The preparation of a master plan for the site that takes into account the proposed parcels along with areas that would remain undeveloped.

We have begun a cooperative planning process to prepare a common master plan for the site. The group will be meeting regularly to prepare a master plan for the site. Concurrent with this effort are work programs by County Community Development staff develop an overall land use plan along the Highway 40 frontage road corridor. As a part of that, staff will look at proposed wildlife migration corridors.

Current Issues

In late June, the Director of Region 2 for the Utah Department of Transportation announced a funding opportunity (see attached letter) for the construction of a pedestrian/wildlife tunnel and a supporting trailhead parking lot. It appears that UDOT has approximately \$700,000 in federal enhancement funds that need to be committed to a project by October 1st of this year. While there are significant issues with the development of an effective wildlife tunnel, Basin Recreation has expressed strong interest in the concept of partnering with UDOT on the development a pedestrian tunnel under SR 40. At their most recent meeting the Basin Recreation Board indicated a willingness to commit \$400,000 in local trail funds to the construction of pedestrian/cyclist tunnel. That Board commitment was informal in that it

occurred during Director comments and was conditioned on the siting of the tunnel in the vicinity of the entrance to the state road shed on the Highway 40 frontage road.

This initial direction from the Basin Recreation Board raises several key concerns for both Park City Municipal and the County:

- While this commitment would help to fund a \$1.1 million project, UDOT estimates the cost of the tunnel at between \$1.5-2 million. Without additional funding commitments from Basin Recreation or other public agencies the project likely would not be built. Staff knows of no available source of County matching funds and would not recommend the County's participation in the project. If UDOT decides not to pursue the tunnel project, the enhancement funds would likely be used for another project within the region.
- UDOT's request to develop a "park and ride lot" in conjunction with the tunnel has the potential to significantly complicate the planning for the triangle parcel. There is a 3 acre portion of the triangle parcel directly in front of the state road shed which might be considered for such a facility. However none of us can commit to a use on the triangle site until the County, Park City and Boyer cooperatively plan for the entire triangle parcel. It would be unwise to support a tunnel project which would pre-commit to any use on the triangle parcel.
- City and County staff feel that the wildlife corridor issue needs to be more completely studied to determine the best location for an undercrossing. Several group members have expressed concern about the advisability of mixing wildlife and cyclists within the same tunnel facility.

As regards the proposal for a regional pedestrian tunnel, staff understands that representatives from Basin Recreation have already brought this issue to the Council's attention. Essentially if this were to go forward it would be a UDOT project in partnership with Basin Recreation. No County department would be involved in the approval of the facility. However, UDOT would likely not pursue the project if the County indicated that the development of an independent pedestrian tunnel could prove problematic to our cooperative regional planning efforts.

Alternatives

To staff's knowledge, Basin Recreation staff have not formally requested that the County participate in the funding of this facility. However, in order to resolve this current issue and proceed with the cooperative planning process, staff would offer the following alternatives for the Council's consideration:

- A. Discuss the pedestrian tunnel concept but take no formal action of support or opposition. Under this option Basin Recreation could pursue a partnership with UDOT for the development of a pedestrian only tunnel day lighting at the northern end of the triangle parcel. Given the potential for the tunnel to complicate the cooperative planning of the triangle parcel, staff would not recommend this alternative.
- B. Discuss the pedestrian tunnel concept but indicate that the Council does not support the development of a pedestrian tunnel adjacent to the triangle parcel at this time. Staff would

recommend this alternative as it preserves our ability to develop a master plan unimpeded by prior commitments.

- C. Continue the discussion past the August 8th Council meeting. Given the time sensitive nature of the proposal, this may mean that the Council's opportunity to influence the decision will become moot.
- D. Do nothing. This alternative would likely have the same potential impact as continuance.

Park City will be holding a similar work session with their Council tomorrow evening and which the County Public Works Director will attend as a county representative. The result of those two meetings has the potential to set the course for both the tunnel proposal and the overall planning of the triangle parcel.

Significant Impacts

The opportunity for the preparation of a common master plan for the triangle parcel is an important milestone for both Summit County and Park City. While staff appreciates the opportunity to pursue the development of a pedestrian tunnel connecting the east and west sides of Highway 40, we believe that this proposal is premature. Currently, Basin Recreation has no current plans for extending pedestrian facilities either across to the regional rail trail or along the Highway 40 frontage. The placement of a tunnel adjacent to the triangle parcel would significantly compromise our ability to master plan the parcel since it would create an instant demand for a trailhead parking facility. The development of a wildlife tunnel would severely compromise our ability to develop needed public facilities on the site.

Staff Recommendation

Staff would recommend that the Council indicates that it is not supportive of the development of a pedestrian or wildlife tunnel at the north end of the triangle parcel at this time. That decision would not preclude the opportunity for planning of either type of facility in the future when further study of both needs have been completed.

Attachments:

Summit County and Park City Letter of Intent
Triangle Location Map
US 40 Wildlife Study Map
June 28 Letter from UDOT

Summit County and Park City Municipal Corporation Letter Of Intent: PRI/Boyer Joint Property Acquisition

This Letter of Intent is made and entered into this 19th day of November 2008, by and between Summit County ("County") and Park City Municipal Corporation ("City") (jointly referred to herein as the "Parties").

Purpose: The purpose of this Letter Of Intent (hereinafter referred to as the "LOI") is to clarify the understanding of Summit County and PCMC regarding cooperation on the joint acquisition of approximately 107 of the estimated 112 acres of parcel number SS-57-1, property owned by The Boyer Company located to the south east of the UDOT facility.

Whereas, the Parties wish to pool resources to maximize their respective ability to acquire land for public uses; and

Whereas, the Parties do not individually possess the funding sources to acquire this property unilaterally; and

Therefore, the Parties intend to work cooperatively, and in good faith, on the following:

1. The Parties agree to use best efforts to approve and execute jointly an acceptable Purchase Agreement and all necessary closing documents in a timely manner. The purchase agreement shall be for the triangle parcel.
2. The deed to the parcel shall reflect the following ownership breakdown and corresponding purchase amount due from each party.
 - a. County Amount: \$2,250,000; and
 - b. City Amount: \$2,250,000.
 - c. Total Amount: \$4,500,000.

Accordingly, the triangle parcel will be owned by the County and City as Tenants in Common.

Parcel number SS-57-1 is estimated to be 112 acres in size. The County and City will purchase approximately 107 acres and The Church of Jesus Christ of Latter-day Saints, or its affiliates, will reserve approximately five acres for a future church site.

3. Closing costs attributed to buyers at closing shall be split equally.
4. The Parties agree that the Purchase Agreement will require a survey and an ALTA title report payment of which will be split equally between the County and City.
5. The Parties agree that the deed may be executed directly by PRI and held in escrow

pursuant to a Boyer purchase agreement and mutually acceptable closing instructions.

6. Joint contribution to mutual goals: The City and County will work cooperatively to determine the future utilization of the property. The City and County will jointly develop a master plan. The City and County agree not to sell or transfer ownership of any portion of the parcel prior to completion of the master plan.
7. Any party may cancel the Purchase Agreement prior to closing for any reason.
8. Either party will give advanced notice to the other if a different course of action or decision contrary to the terms herein is contemplated.

IN WITNESS WHEREOF, the parties have duly executed this LOI the day and year written above.

SUMMIT COUNTY

K.E. Woolstenhulme

Ken Woolstenhulme, Chair
Summit County Board of Commissioners

Attest:

Kent Jones

Kent Jones
Summit County Clerk



Approved as to form:

David L. Thomas

David L. Thomas
Chief Civil Deputy
Summit County Attorney

PARK CITY MUNICIPAL CORPORATION

Dana Williams, Mayor

Attest:

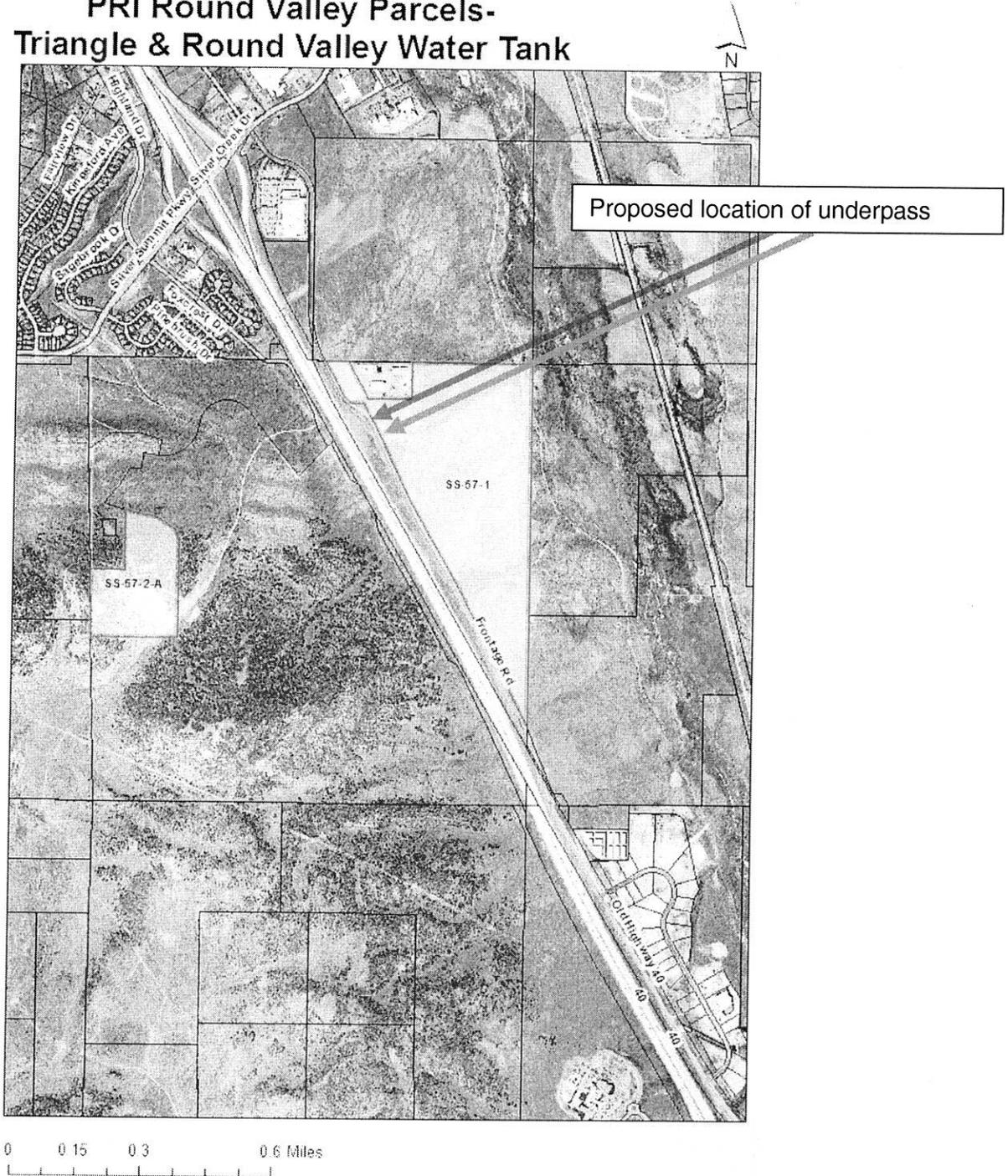
Janet M. Scott, City Recorder

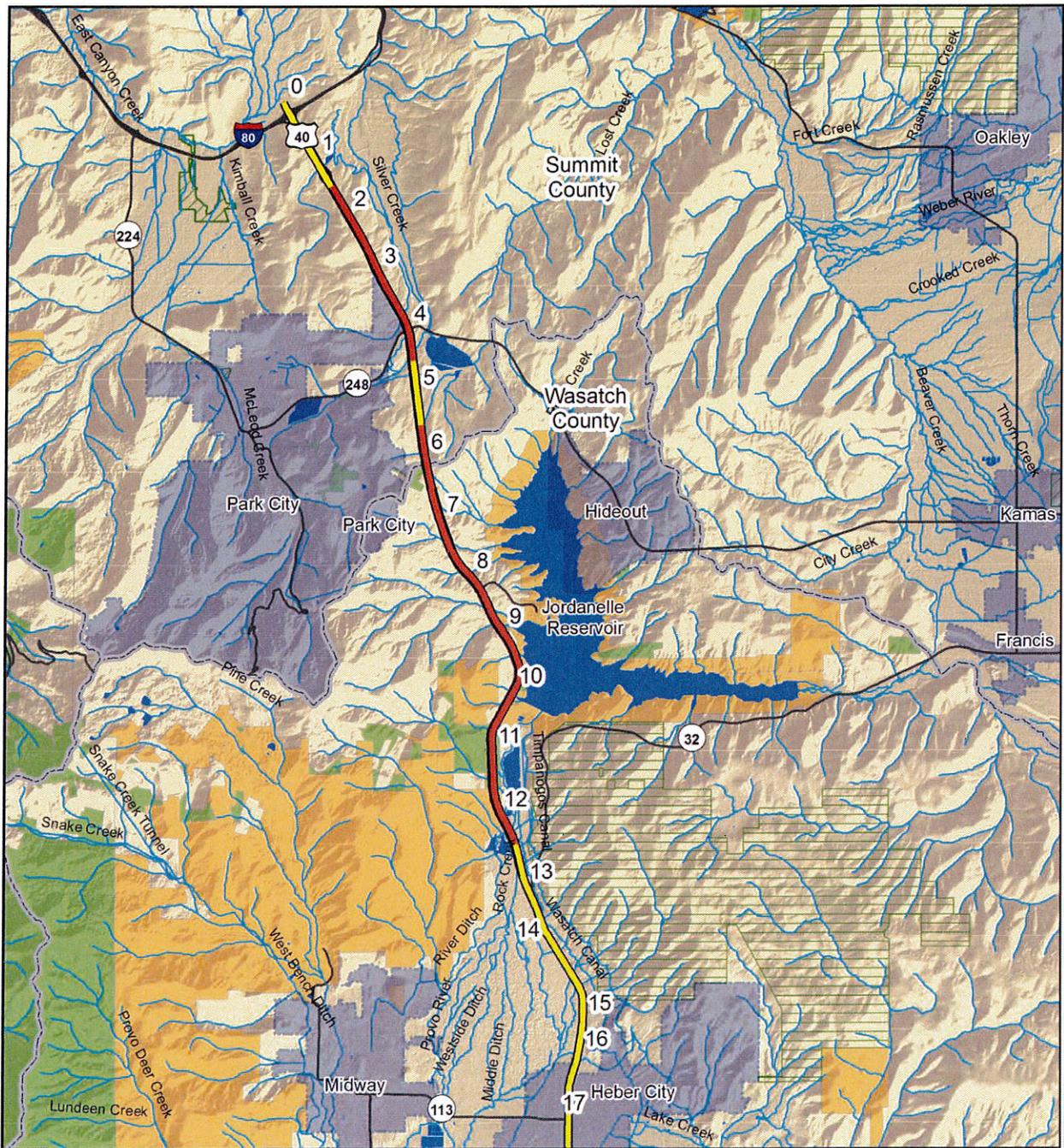
Approved as to form:

Mark Harrington, City Attorney

Exhibit A- Triangle Map

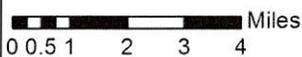
PRI Round Valley Parcels-
Triangle & Round Valley Water Tank





U.S. 40 Wildlife Study

Silver Creek/Jordanelle Reservoir Focus Area



Data Sources: Wildlife Vehicle Collision data obtained from the Utah Division of Wildlife Resources in April 2011. All other data layers obtained from the Utah Automated Geographic Reference Center.

Legend

- | | |
|---------------------|------------------------|
| High kill locations | Conservation Easements |
| Low kill locations | CWMUs 2011 |
| Federal | State Routes |
| Private | Counties |
| State | Municipalities |
| Tribal | Lakes |
| | Streams |



Figure 3. Map of Silver Creek/Jordanelle Reservoir focus area.



State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

DEPARTMENT OF TRANSPORTATION

JOHN R. NJORD, P.E.
Executive Director

CARLOS M. BRACERAS, P.E.
Deputy Director

June 28, 2012

Summit County
Kevin Callahan, Public Works Administrator
PO Box 128
Coalville UT 84017

Dear Kevin:

Recently, I've had the opportunity to meet with representatives from Basin Recreation and Park City about the possibility of partnering on a pedestrian/wildlife tunnel under Hwy 40. Partnering, for this project, would require both funding and help in the locating of a park and ride lot adjacent to the tunnel location.

This is a great opportunity to utilize a very limited funding source for UDOT (federal enhancement dollars). There is a restriction on these funds that require they be obligated by October 1, 2012. Therefore, it requires a commitment from our partners in a very short time frame. The estimate and preliminary design for this structure is currently underway so UDOT can provide a more defined cost for this project. Preliminary costs are approximately \$2.0 million but it is the goal of the department to identify cost savings and get the costs down to approximately \$1.5 million. The funds available from UDOT are, approximately, \$700,000. The Department's request of our partners is to provide the balance of the funding for the rest of the project.

I appreciate your help to build this project that, I believe, enhances our transportation facilities for a multitude of users and the wildlife. It would also help increase the safety for both road users, wildlife, and all users of the Round Valley trail system.

Thank you for consideration of the request.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason E. Davis".

Jason E. Davis, P.E.
UDOT R2 Director

BEFORE THE
BOARD OF EQUALIZATION OF SUMMIT COUNTY, UTAH

<p>SUMMIT WATER DISTRIBUTION COMPANY, Petitioner,</p> <p>v.</p> <p>SUMMIT COUNTY OFFICE OF ASSESSOR, Respondent.</p>	<p>ORDER</p>
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I. HISTORY OF THE CASE

A. General Background. This matter comes before us with a long and tortuous history, wending its way over almost 11 years from a 2000 Utah Tax Commission (“Tax Commission”) audit, to this Board, to the Tax Commission on appeal, to a trial *de novo* in Utah Second District Court, to the Utah Supreme Court, and now back to this Board. Before us is the task of applying the results delivered by those bodies and resolving the residual issues.

The original dispute arose when the Property Tax Division of the Tax Commission performed an audit (“2000 Audit”) on the properties of the taxpayer in this matter, Summit Water Distribution Company (“Summit Water”), and found that certain of its water distribution facilities had not been included in the personal property tax assessments rendered to Summit Water by the Summit County Assessor (the “County”) for the tax years 1996 through 2000 (the “Facilities”).¹

As a result, the County assessed Summit Water for unpaid taxes on the amounts identified in the 2000 Audit. Summit Water took exception on a number of grounds and brought an appeal to the Board of Equalization, which rejected Summit Water’s claims for exemption and adopted the findings of the 2000 Audit.

Summit Water appealed the matter to the Tax Commission, first in an informal proceeding under the Utah Administrative Procedures Act and then in a formal proceeding under the Act, culminating in a decision by the Tax Commission issued August 14, 2001, in Appeal No. 01-0725. Aspects of that decision were appealed by Summit Water to the Utah district court, and an opinion was issued by Second District Judge John R. Morris on August 31, 2009, in *Summit Water Distribution Co. v. Utah State Tax Comm’n*, Civil No. 030923183. Summit Water took an appeal

¹For any given tax year, the Facilities include the properties identified in the Audit as theretofore not included on the Summit County tax rolls, as well as similarly characterized water distribution facilities subsequently added to Summit Water’s distribution operation.

of Judge Morris' decision to the Utah Supreme Court, which issued an opinion on July 29, 2011, in *Summit Water Distribution Co. v. Utah State Tax Comm'n*, 2011 UT 43.

Subsequent to this last ruling, the County assessed Summit Water for unpaid taxes for the period 1996-2010 on the basis of its understanding of the results from the three bodies that had addressed the various issues in the dispute. Summit Water disagrees with the County's assessment and has appealed to this Board pursuant to Utah Code Ann. § 59-2-1004 or -1005.²

B. Judicial Resolution. The previous proceedings have produced final judicial resolution of three issues.

1. *Irrigation exemption.* The Utah Supreme Court upheld the Second District Court's conclusion that the portion of Summit Water's water service that was used by consumers for any artificial watering of land, including on residential and commercial properties, was entitled to property tax exemption under Article III, Section 2 of the Utah Constitution. It appears that the percentage of Summit Water's water service used for such irrigation purposes is not contested. Judge Morris found that, on average, 51% of water provided to Summit Water's users was for outdoor irrigation of various types.

2. *Double-taxation issue.* The Supreme Court also upheld the previous conclusions of this Board, the Tax Commission and Judge Morris that taxation of the Facilities did not constitute a double taxation.³

3. *Real or personal property for 1996-2003.* The 2000 Audit considered the Facilities as personal property, and the County accordingly rendered a tax assessment on Summit Water based on the depreciated value of \$5,178,588 found by the Audit. Subsequently, when the matter was brought before it by Summit Water, the Tax Commission concluded that the "vast majority" of the Facilities were, indeed, personal property.

However, in his August 31, 2009, decision, Judge Morris concluded that, with the exception of about .50 to .75 miles of piping under roadways, the Facilities were, as a matter of law, real property. However, Judge Morris' decision considered the issue of classification only through the tax year 2003 and did not address the period beyond 2003. The Utah Supreme Court was not presented with the issue of the classification of the Facilities for any period.

²Depending on whether the subject property is real or personal.

³Summit Water argued that the value of the Facilities had already been incorporated in the fair market value of the properties of consumers who were water users on Summit Water's system.

Thus, the last judicial determination on the classification for 1996-2003 was Judge Morris' decision, and, accordingly, we find that the Facilities should be treated as real property for the period from 1996 through 2003.⁴

C. General Approach to the Resolution of Issues. This case has drawn out over 11 years, affects 15 years of potential tax liability for Summit Water and the corresponding revenues for the County, and has involved several complex issues that could not be resolved until some of the constituent parts were decided. The case now before us presents the ingredients necessary to resolve the primary issues for the 15 tax years 1996-2010.

We determine below that, during the pendency of matters before the various tribunals over these 15 years, the two parties have consistently taken actions (or failed to act) in a manner that is in accord with an agreement to have a final "true up" for the entire period when the contested issues were resolved and the matter returned to the County Assessor and then to this Board for a final accounting.

Therefore, this Order will be based on a 15-year look-back, applying the various results that have been considered in the courts as well as our findings and conclusions concerning the remaining issues. In effect, we gather the results from the previously involved tribunals and apply them to the 15-year period in a *nunc pro tunc* fashion—that is, taking what we know now and applying it to 15 years of "then."

II. DISCUSSION

A. Are Facilities real or personal property?

1. *1996-2003.* As discussed in § I.B.3 above, we will treat the Facilities as real property for this period.

2. *2004-2010.* Under 2004 changes to the Utah Tax Code, the Tax Commission promulgated rules that resulted in the classification of the certain properties, including the Facilities in this case, as personal property. Utah Code Ann. §§ 59-2-102(19)(c) and 59-2-107. The County's position is that the Tax Commission had statutory authority to reclassify certain property, including the Facilities, that it did so, and that the Facilities should be treated as personal property beginning in 2004, with assessed values subject to the depreciation tables published by the Tax Commission.

⁴Summit Water argues that Judge Morris' decision was effectively vacated in its entirety when Summit Water took an appeal to the Utah Supreme Court and that, accordingly, his conclusion on the classification of the Facilities is of no effect. Neither party appealed this issue before the Supreme Court, and we believe the Second District Court's decision would stand as the law of the case. In any event, we have no reason to take a view contrary to the latest pronouncement from the Utah judiciary on this issue—namely, Judge Morris' conclusion that the Facilities were real property for 1996-2003.

Summit Water claims that the properties continued to be real property after 2003, with their value incorporated in the annual assessments to Summit Water's other real property. We agree with the County and find that, pursuant to legislative authority and Tax Commission action, the Facilities are to be treated as personal property for the tax years 2004 through 2010.⁵

B. Are the Facilities “Escaped Property?”

1. *1996-2000.* The core issue that initiated the odyssey of this case through a variety of tribunals was the finding by the Property Tax Division of the Tax Commission that certain of Summit Water's Facilities—then deemed as personal property—had not been reported by Summit Water and were not included on the County tax rolls.

On appeal by Summit Water, the Tax Commission concluded in its January 29, 2003, decision that the Facilities, as identified in the Audit, “constitute[d] escaped property under Utah Code Ann. Sec. 59-2-102(11).”⁶ As indicated in note 3, *supra*, Summit Water contends that the Tax Commission's decision was vacated in its entirety when Summit Water took an appeal to the district court (and then to the Utah Supreme Court) and that the Tax Commission's conclusion regarding escaped property had no residual force and effect. We disagree and believe that, on the escaped-property issue, the Tax Commission's conclusion provides the law of the case. Even if, for the sake of argument, Summit Water were technically correct on this point, we have no reason to reach a conclusion opposite from that of the appellate body that would have jurisdiction to reconsider the issue were it to appear before that body again.

Because the Facilities were then regarded by both parties as personal property, Summit Water had an obligation to self-report the facilities to the County; as the Audit demonstrated, Summit Water had not done so. Notwithstanding that subsequent events classified the Facilities as real property, we conclude that the properties are “escaped property” under Utah Code Ann. § 59-2-102(11) during 1996-2000, as they had been “undervalued because of errors made by the assessing authority based on incomplete or erroneous information furnished by the taxpayer.”

⁵By an amendment to the Utah Constitution passed in November 2010, the Utah Legislature enacted Utah Code Ann. § 59-2-1111(2)(b) to create a property tax exemption for all water infrastructure facilities owned by non-profit entities, effective January 1, 2011, thus eliminating the dispute between the parties beginning with the 2011 tax year.

⁶We also note that the Tax Commission's January 29, 2003, finding of escaped property was independent of the classification of the Facilities: “[E]ven if the pipes and mains should have been assessed as real property, they would qualify as escaped property during the years in issue.” Under Judge Morris' decision, the final classification was, indeed, as real property. Perhaps the Tax Commission foresaw this as a possible outcome on appeal.

2. *2001-2005.* Additional water distribution facilities were acquired or installed by Summit Water beginning in 2001, after the Audit. Summit Water continued to take the position that these properties were not taxable and did not, in fact, pay property tax on the additional Facilities. Accordingly, the Facilities, as augmented by post-2000 additions, are also within the statutory definition of “escaped property” and are subject to taxation unless the five-year look-back limitation would be applicable. We take that issue up in § II.C below.

3. *2006-2010.* The reasoning and conclusion that the Facilities are escaped properties for 2001-2005 applies equally as well to the 2006-2010 period.

C. Was There a Tolling Agreement Applicable to 1996-2005?

Utah Code Ann. § 59-2-217(1) permits the County to tax escaped property as far back as five years prior to the time of discovery that the property had not been included on the tax rolls. Summit Water argues that the County issued its final assessment after the Supreme Court’s 2011 ruling, and that the applicable five-year “look-back” period, therefore, covers only the tax years 1996-2010.

The County claims that the parties, by written documents and course of dealing, agreed to toll the look-back statute until the pending issues had been resolved in the chain of appeals.⁷ Summit Water claims that there was not a tolling arrangement of any kind, and that the County is limited to collect taxes to the five-year period 2006-2010. We reject Summit Water’s argument and find that the parties did agree to toll the statutory five-year look-back period.

The parties did not enter into a classical tolling agreement that is typical when a limitation period might terminate or truncate a party’s claims. However, there is extensive evidence that the parties intended to hold all the issues in abeyance and to “settle up” at the conclusion of what turned out to be an extended journey through various forums to resolve the litigated issues. That is, the common thread of communications during the period of pendency of issues was that Summit Water wasn’t going to pay any assessments on the Facilities while issues were pending, and the County was not going to require payment until the matter was fully resolved.

The County noted the following to establish that there would be a final accounting for any of the Facilities that ultimately would be found to be taxable for the years beginning in 1996 and ending in 2000:

- ▶ A July 21, 2001, letter from the County to Summit Water agreeing to

⁷The County also argues that there was an “equitable” tolling of the five-year look-back statute under the “discovery rule.” Because we conclude that there was an explicit agreement between the parties that served to toll the five-year limitation, we need not address the County’s discovery-rule argument.

an extension for payment of the assessed taxes for the years 1996-2001, “pending the outcome of a[n] appeal to the Utah Tax Commission of an audit” on the Summit Water properties.

- ▶ An October 23, 2002, letter from the County to Summit Water reaffirming the July 21, 2001, arrangement and adding the 2002 tax year.
- ▶ A January 25, 2006, letter from Summit Water to the County, indicating that Summit Water had “crossed out all items that are in question due to our stance concerning taxation of distribution system elements” and stating that, “the taxing [of] these items, as you recall, will be resolved by the courts.”
- ▶ A similar letter dated March 23, 2007.
- ▶ A May 13, 2008, letter from Summit Water: “Hopefully, we will have a court decision soon that finally resolves the personal property tax dispute.”⁸
- ▶ A May 15, 2009, letter from Summit Water: “As per our long-standing agreement[,] the disputed portions of the tax assessment . . . have not been included.”
- ▶ A September 23, 2011, affidavit of the former Summit County Assessor indicating that a “verbal agreement”⁹ with Summit Water that the “taxation of the disputed water distribution facilities would be settled up at the conclusion” of the appeal process and that she understood “the parties had agreed that the five year look back would not apply because this was an ongoing dispute.”
- ▶ A December 12, 2011, affidavit of the Chief Deputy Summit County Assessor, testifying to a meeting held with the County and Summit Water personnel at which the two parties agreed “that Summit County would not pursue property taxes on the Summit Water pipeline system, purification equipment or pumps while the tax appeal was pending.”

Summit Water offered no evidence to counter the County’s affidavits, but contends that there was no mutual agreement that had the effect of tolling the five-year look-back limitation—that Summit Water was simply seeking an “extension of time to pay already-assessed taxes.”¹⁰

⁸Although later found by Judge Morris to be real property, the treatment of the Facilities at that time had been as personalty under the Audit.

⁹We understand this to mean an oral agreement.

¹⁰There appears to be no dispute that the five-year look-back provision of Utah Code Ann. § 59-2-217(1) applies to the Facilities for the final five-year period, 2006-2010.

Summit Water's position is not credible and not supported by record evidence. Although we note that the County might well have drafted a formal tolling agreement that more completely described the intent of the parties, the evidence is clear that, at every juncture in the process prior to the Supreme Court decision, the parties contemplated that there would be a final settling-up of the taxes for the tax years beginning in 1996. It is inconceivable to us that, at the same time that Summit Water was discussing the unresolved issues with the County and exchanging meetings and letters referring to the "long-standing agreement," it intended to pay back taxes only for the most recent five-year period after the appeals process finally ended.

We, therefore, find that the various documents between the parties over the years concerning the status of Summit Water's taxes on the Facilities established an agreement between the parties with respect to the application of the five-year limitation of Utah Code Ann. § 59-2-217(1), the effect of which was to toll the statute until the issues appealed were resolved. As a result, Summit Water has an unpaid tax liability for the Facilities for the 15 tax years 1996-2010.¹¹

D. What is the Fair Market Value of the Facilities?

1. *1996-2000.* The 2000 Audit categorized the Facilities as personal property, with a depreciated value of \$5,178,588.¹² The undepreciated value of the properties was found to be \$10,637,792. However, the Facilities were ultimately determined to be real property for 1996-2000. There is no explicit evidence of a determination of the fair market value for the Facilities as real property for this period. Moreover, real property is not subject to the depreciation tables that were likely used in the 2000 Audit to arrive at \$5,178,588. Recognizing that the Facilities were considered personal property after 2003, we find that the best evidence of the fair market value of the Facilities as real property in 2000 was the depreciated value found by the 2000 Audit: \$5,178,588. Accordingly, we find that the assessed value of the escaped Facilities was \$5,178,588 for the years 1996-2000.

2. *2001-2003.* Summit Water installed water purification facilities in 2001, which were not included in the 2000 Audit. The County has claimed that the fair market value of this installation is \$10,000,000. It arrives at this figure by

¹¹Summit Water has noted that certain funds deposited with the Third District Court during the pendency of Summit Water's appeal of the Tax Commission's January 29, 2003, decision were later released by the court. To the extent that Summit Water intended this to support its argument that the five-year look-back limitation had not been tolled, there is inadequate explanation in Summit Water's pleadings to establish the significance of these events. Indeed, there is no mention of the court-deposited funds in Summit Water's post-hearing brief.

¹²The 2000 Audit put the total value at \$5,205,148, of which \$46,825 had been captured in the County's original assessments.

citing a \$9,000,000 value for the Mountain Regional Water District¹³ and adding \$1,000,000 to account for a larger number of Summit Water's users. Conversely, Summit Water claims that these facilities should be valued at the \$4,906,585 original cost of installation if they are to be treated as escaped property.

We reject the County's number as being too highly speculative, having no supporting evidence as to why the Mountain Regional Water plant is comparable to Summit Water's—particularly when Summit Water has provided more detailed evidence of the installation costs. Where the County's claim is little more than an unsupported one-sentence declaration of a value that is more than twice the cost of recent installation, we conclude that the installation cost is a better measure of the fair market value of those facilities in 2001. Although original cost is not *ipso facto* the fair market value, it may be the best measure until the property has been in place and some type of comparable test can be performed.

The Facilities' legal status during 2001-2003 is to be considered real property. In the absence of any evidence of a change of value during these three years, we conclude that the best evidence of the fair market value of the purification facilities is \$4,906,585 for the full three-year period.

The escaped properties identified by the 2000 Audit would continue to be assessed on the basis of the 2000 value of \$5,178,588. This results in a total assessed value of \$10,085,173 for each of the years 2001-2003.

3. *2004-2010*. By the Tax Commission's application of Utah Code Ann. § 59-2-107, the Facilities that had been classified as real property through 2003 under Judge Morris' decision became personal property. Although the actual use and intrinsic value of the property did not change, the general process for determining the taxable value did change. With the property now lawfully designated as personalty, the taxable value is generally governed by the applicable depreciation ("percent good of acquisition cost") tables maintained by the Tax Commission.

Accordingly, we conclude that the taxable values of the Facilities are, in the absence of adequate evidence to the contrary, to be determined by application of those tables, with beginning values as follows:

- ▶ Facilities in existence on January 1, 2000 \$5,178,588
- ▶ Purification facilities installed in 2001 \$4,906,585
- ▶ Post-2003 facilities Original cost, depreciated by Tax Comm'n tables

¹³This is another water company located in Summit County.

III. CONCLUSION

Having set forth our conclusions concerning the key issues that the parties have raised, we would ordinarily turn to a determination of the total tax and interest liabilities. However, we find that the record, as voluminous as it is, does not permit us to provide bottom-line numbers at this stage.

Given the complexity of the multiple issues that have been litigated by the parties over the 11-year period and the number of issues that have been submitted to the Board during this proceeding, it is not surprising that the record does not contain all the evidence sufficient for us to render a single numerical conclusion on the total tax and interest to be paid by Summit Water.

Following the oral argument by the parties on November 30, 2011, the Board had optimistically urged the parties to reach and present to us a consensus on the values of the various elements of the Facilities. Apparently, the parties were not able to reach agreement on this score. As a result, we are left with a record of hard-to-read, difficult-to-decipher tables submitted by the parties with their post-hearing briefs that are incompletely explained and inadequate for us to be able to decide Summit Water's final tax and interest liabilities.

Accordingly, having rendered our conclusions on the principle issues in this long-running dispute, it still remains for the County to implement the results of our decision by determining the tax for each of the 15 years 1996-2010, along with applicable interest, including a detailed explanation and appropriate tables that will allow Summit Water to determine if it agrees that the tax and interest assessments are proper applications of our decision to the Facilities.

Because we have insufficient information to determine the taxes payable for each year, we will reserve a final decision in this case until we have the evidence before us. We anticipate that this will either be as a stipulated result between the parties or as an appeal to the Board of the County's final assessment to Summit Water.¹⁴ Thus, we do not consider this decision as final and, therefore, not subject to appeal to the Tax Commission, as we have yet to make a final finding on the total tax liability, interest and penalties.

IV. ORDER

NOW, THEREFORE, the County shall implement the conclusions set forth in this decision and submit to Summit Water a complete schedule of taxes and interest due for each year 1996-2010, including schedules of its assessment of the fair mar-

¹⁴Although we cannot *require* the parties to agree to anything, we would far prefer that they and their accountants meet, confer and agree on as much of the appropriate calculations as possible for submission to the Board so that we may issue a final decision.

ket value of the Facilities as personal property for 2004-2010.

Summit Water may appeal to the Board any disagreement it has with the County's billing and schedules within 30 days of their service on Summit Water.

BY ORDER OF THE SUMMIT COUNTY BOARD OF EQUALIZATION:

David Ure, Chair

Sally Elliott, Board Member

John Hanrahan, Board Member

Claudia McMullin, Board Member

Chris Robinson, Board Member

August ____ , 2012



STAFF REPORT

To: Summit County Council
Report Date: Tuesday, July 31, 2012
Meeting Date: Wednesday, August 8, 2012
Author: Amir Caus, County Planner
Project Name & Type: Promontory Ranches Specially Planned Area (SPA) Development Improvement Agreement Bond Release - Special Exception Request
Type of Item: Public Hearing, Legislative
Final Authority: Summit County Council

EXECUTIVE SUMMARY: The applicants, Meagan Ferrin and Rich Sonntag, representing Promontory Development, LLC, are requesting a special exception (Exhibit F) to allow the bond release of Promontory Ranches SPA Development Improvement Agreement (DIA) (Exhibit H) for which the completion period expired on December 20, 2008.

Staff recommends that the Summit County Council (SCC) conduct a public hearing, review Staff's analysis, and vote to deny the special exception based on the non-guarantee of the road being paved within the Promontory Ranches SPA without the required bond of the DIA. Alternatively, the SCC may choose from one of the other options outlined in Section G of the Staff Report.

A. Project Description

- Project: Promontory Ranches DIA Bond Release - Special Exception Request
- Applicant(s): Meagan Ferrin and Rich Sonntag
- Owner(s): Promontory Development, LLC
- Location: Three Mile Canyon Road, Promontory Ranches, Promontory, Summit County, Utah (Exhibits A-E)
- Zoning & Setbacks: Promontory Ranches SPA / Agriculture Grazing 100 (AG-100) – 30/12/12
- Adjacent Use: Residential and Agricultural Open Space
- Parcel # & Size: Promontory Ranches Subdivision (376.85 acres)

B. Community Review

A public hearing notice was published in the *Summit County News*, and notice was sent to all property owners within 1000 feet of the property. As of the date of this report, no public comment has been received.

C. Background

Promontory Ranches was originally approved and recorded as part of the Promontory Ranches SPA Development Agreement (D.A.) in March and June of 2006. Although the Promontory Ranches SPA was approved separately from the Promontory SPA, it is a part of

the Promontory Master Association. The Promontory Ranches D.A. expired on March 15, 2011, however all of the requirements, including the DIA remain.

As part of the Promontory Ranches D.A., a DIA was recorded against the property as part of the D.A. on December 20, 2006 to ensure that all improvements would be installed in a timely manner.

On August 25, 2005, Ames Construction, Inc., the holder of the DIA bond signed a Bond Agreement with Travelers Casualty and Surety Company of America to ensure the installation of the required improvements for the Promontory Ranches Development. The agreement is due to expire on August 25, 2012 and Travelers Casualty and Surety Company of America have opted not to extend the aforementioned bond.

Because Promontory Ranches is a platted subdivision and the lots can be sold at any time, if the bond was released there would be no guarantee for the required improvements to be installed., The Summit County Engineering Department is obligated to request the completion of the improvements within the Promontory Ranches development, including the connecting road. Staff has reviewed alternatives to guarantee the improvements; however, no such document would guarantee the improvements, including the proposed solution by the applicants.

On June 12, 2012, the Community Development Department received a Special Exception application to release the DIA for the Promontory Ranches Development.

D. Identification and Analysis of Issues

Guarantee

Because there is no other way to fully guarantee the completion of the improvements for Promontory Ranches other than a DIA and the bond associated with it, Summit County Engineering, Planning, and Attorney's offices are concerned with the requested release of the DIA.

The applicants have proposed that if approved, the Special Exception be recorded against the subdivision to put future buyers on notice, however this does not guarantee the improvements would be completed

E. General Plan Consistency

One of the major goals of the Eastern Summit County General Plan (General Plan) is to protect public health, safety, and welfare.

The requested Special Exception would remove the guarantee for the completion of the improvements of the Promontory Ranches Development; therefore the aforementioned goal would not being met.

F. Findings/Code Criteria and Discussion

Section 1 of the DIA (Exhibit H) specifically addresses the guarantee of improvements and specifically states that; *Developer has entered into formal commitments, including the approved D.A. and this DIA with an appropriate bonding and installation schedule to*

guarantee the installation, as hereafter provided and as necessary to serve the Property, and payment therefore, of all private roads and private road improvements, all utility lines, storm drainage improvements and storm sewers, and any other improvements described in the Site Improvements Plan. Developer hereby warrants all road improvements and utility improvements constructed or installed by Developer against defects in materials and workmanship for a period of two full year's normal operation after acceptance by the County Engineer or the applicable utility companies of such improvements. The County shall either retain ten percent (10%) of the bond, letter of credit or escrow total for such items, or require a bond, letter of credit or escrow equal to ten percent (10%) of the required total improvements and acceptance thereof by the County, as a guarantee should the improvements prove to be defective during said 24-month period. Developer agrees to promptly correct any deficiencies in installation in order to meet the requirements of the plans and specifications applicable to such installation. In the event such installation is not completed substantially within the applicable schedules attached hereto and according to the specific plans set forth in the Site Improvements Plan, the County shall have the right to cause such work to be done as is necessary to complete the installation in such manner and Developer shall be liable for the cost of such additional work.

Section 11-4-11 of the Eastern Summit County Development Code (Code) states that the SCC shall not approve a special exception unless the applicant demonstrates that:

1. The special exception is not detrimental to the public health, safety, and welfare.
By eliminating the guarantee of improvements for Promontory Ranches, a special exception would jeopardize the general health, safety, and/or welfare of the public.
2. The intent of the Code and General Plan will be met.
Staff has reviewed the Code, the Promontory Ranches SPA, and the proposed application and has not identified any instances that would make the request conform. Compliance with the Promontory Ranches SPA, D.A., and DIA is required.
3. The applicant does not qualify for any other equitable processes provided through the provisions of the Code.
The Promontory Ranches D.A. has expired. Staff has found that the Special Exception process is the only equitable process for this request.
4. There are equitable claims or unique circumstances warranting the special exception.
All developments such as Promontory Ranches are required to have a DIA in place to ensure the installation of infrastructure. Staff finds that there are no equitable claims or circumstances associated with the Promontory Ranch Development that is unique compared to other developments of this nature.

G. Recommendation(s)/Alternatives

Staff recommends that the SCC conduct a public hearing to gather any public comment, review Staff's analysis, and choose from one of the following options:

OPTION 1:

Vote to deny the request for the Promontory Ranches DIA Bond release based upon the following finding(s):

Findings:

1. The special exception is detrimental to the public health, safety, and welfare.
2. The intent of the Promontory Ranches SPA, Development Agreement and the Eastern Summit County Development Code and the General Plan is not being met.
3. There are no equitable claims or unique circumstances warranting the special exception.

OPTION 2

Vote to continue the item to another meeting, with specific direction to Staff and the applicants on information needed to aid the Council in making a decision.

OPTION 3

Vote to approve the request for the Promontory Ranches DIA Bond release based upon the finding(s) and condition(s):

Findings:

1. The special exception is not detrimental to the public health, safety, and welfare.
2. The intent of the Promontory Ranches SPA, the Code and the General Plan is being met.
3. The applicant does not qualify for any other equitable processes provided through the provisions of the Code.
4. There are equitable claims or unique circumstances warranting the special exception.

Conditions:

1. All service provider requirements shall be met prior to issuance of any Building Permit.

Attachment(s):

Exhibit A: Vicinity Map

Exhibit B: Zoning Map

Exhibit C: Aerial Photo

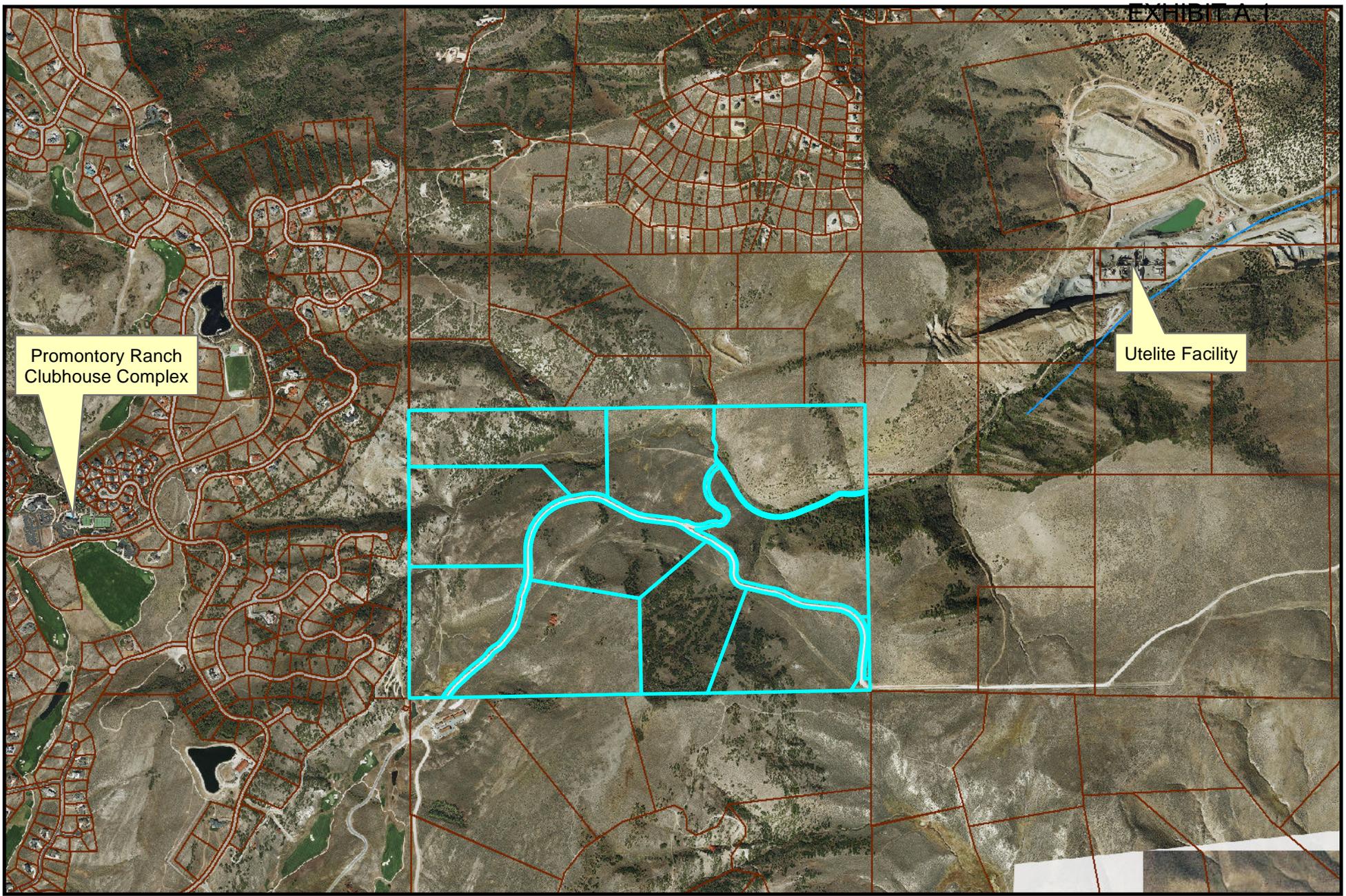
Exhibit D: Promontory Ranches SPA Map and Plat

Exhibit E: Promontory Development Layout Map

Exhibit F: Promontory Development, LLC Request Information

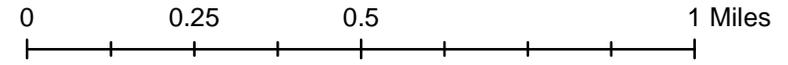
Exhibit G: Engineering Department Review

Exhibit H: Promontory Ranches DIA

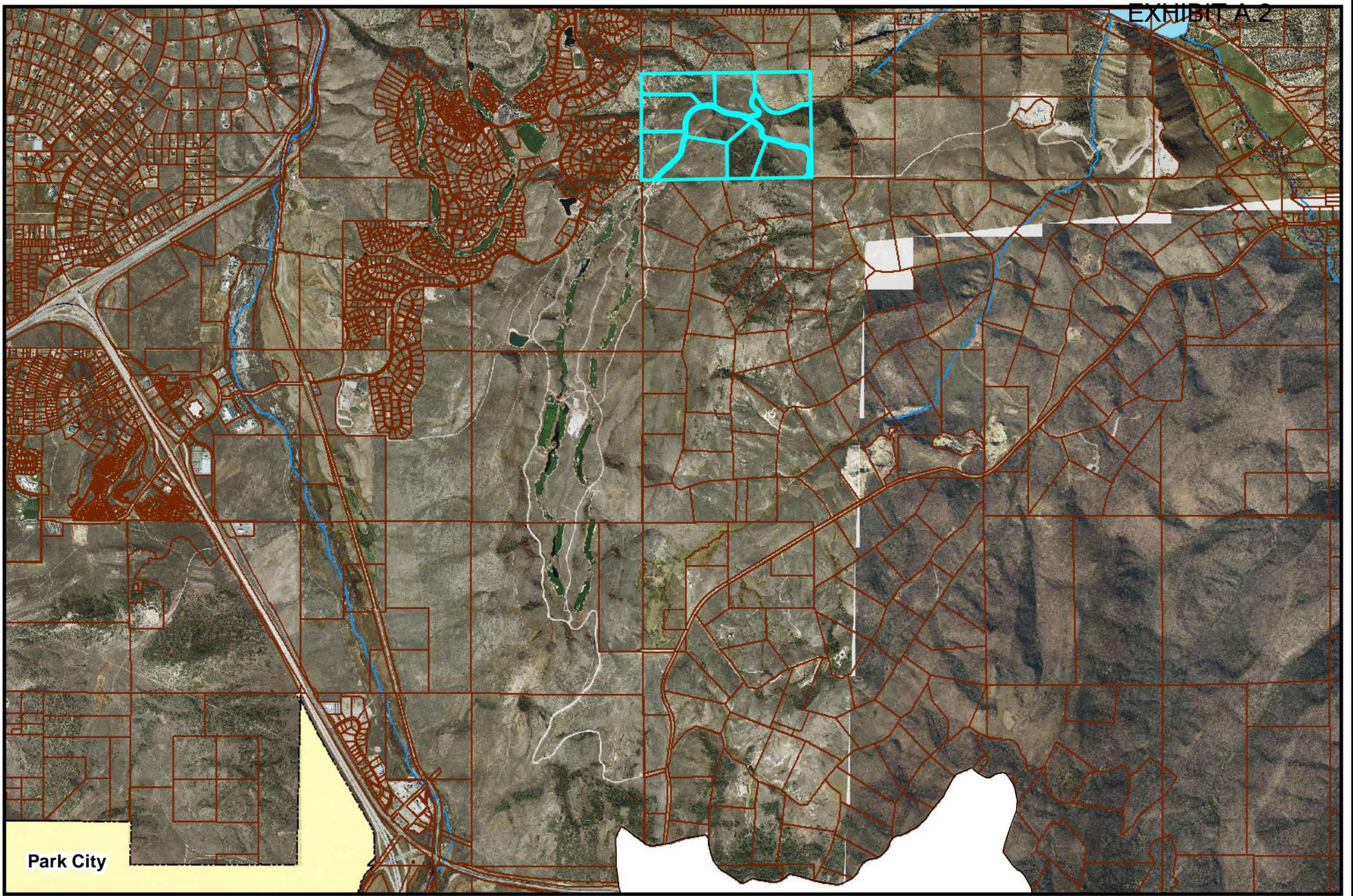


Promontory Ranches Vicinity Map

Prepared by Summit County
Community Development Department



This drawing is neither a legally recorded map, nor a survey, and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources including Summit County. Summit County is not responsible for the timeliness or accuracy of information shown.



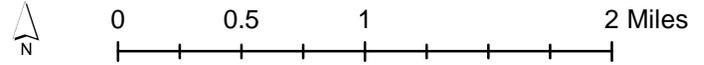
Park City



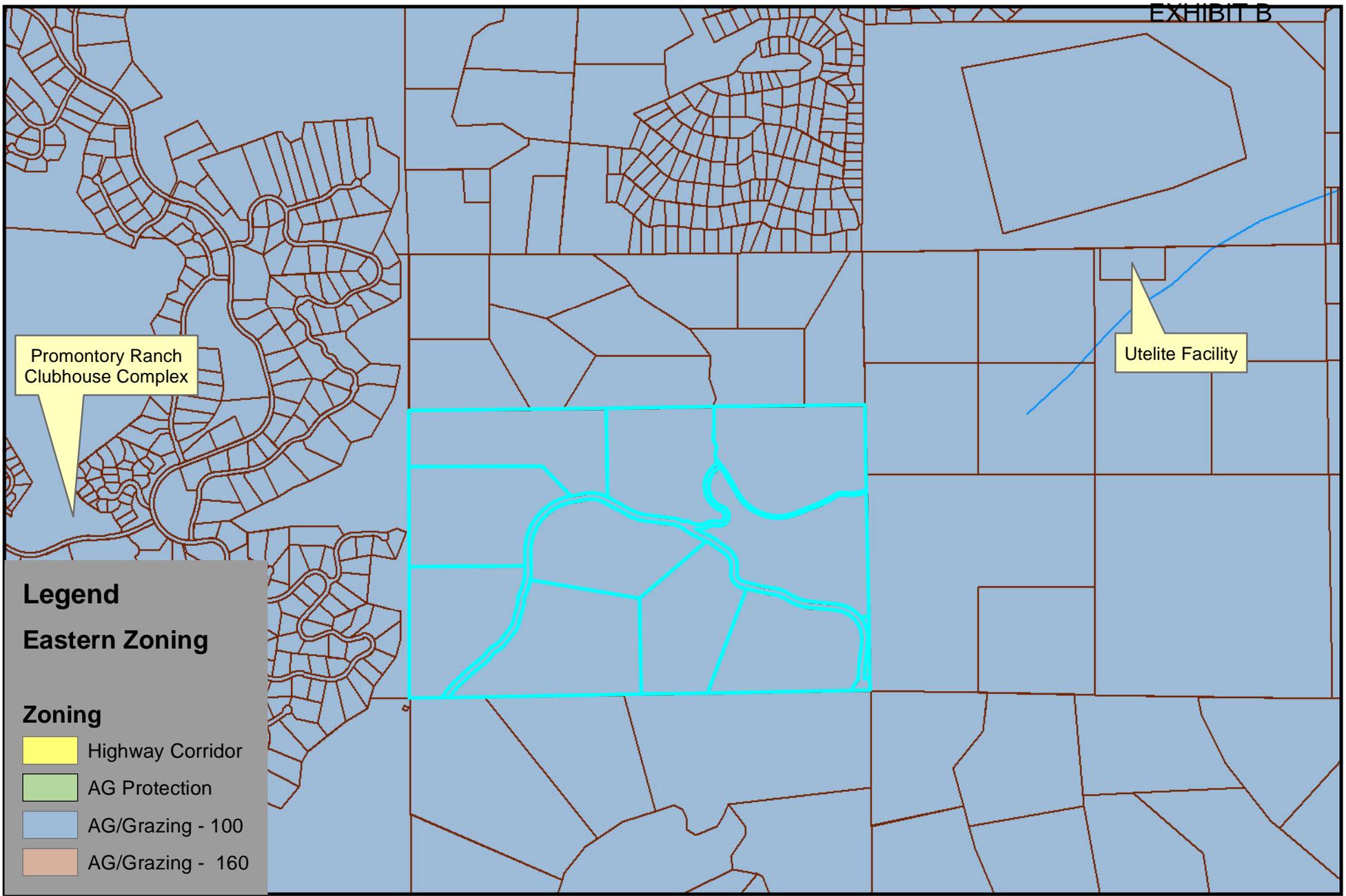
Promontory Ranches Vicinity Map 2

Prepared by Summit County
Community Development Department

-  Cities
-  Reservoirs
-  Rivers



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Legend

Eastern Zoning

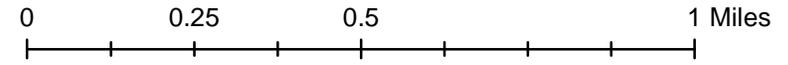
Zoning

- Highway Corridor
- AG Protection
- AG/Grazing - 100
- AG/Grazing - 160

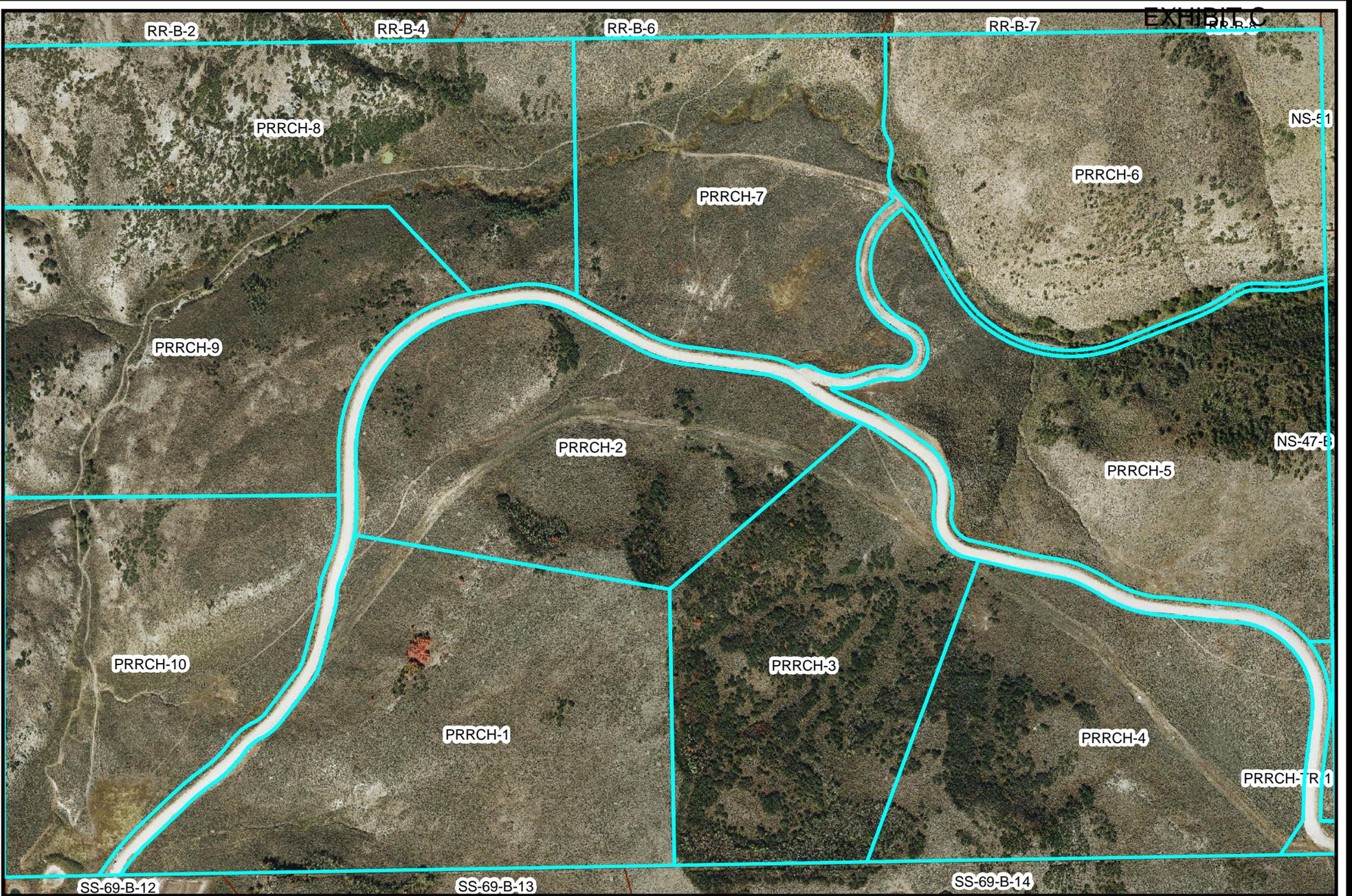


**Promontory Ranches
Zoning Map**

Prepared by Summit County
Community Development Department



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Promontory Ranches Aerial

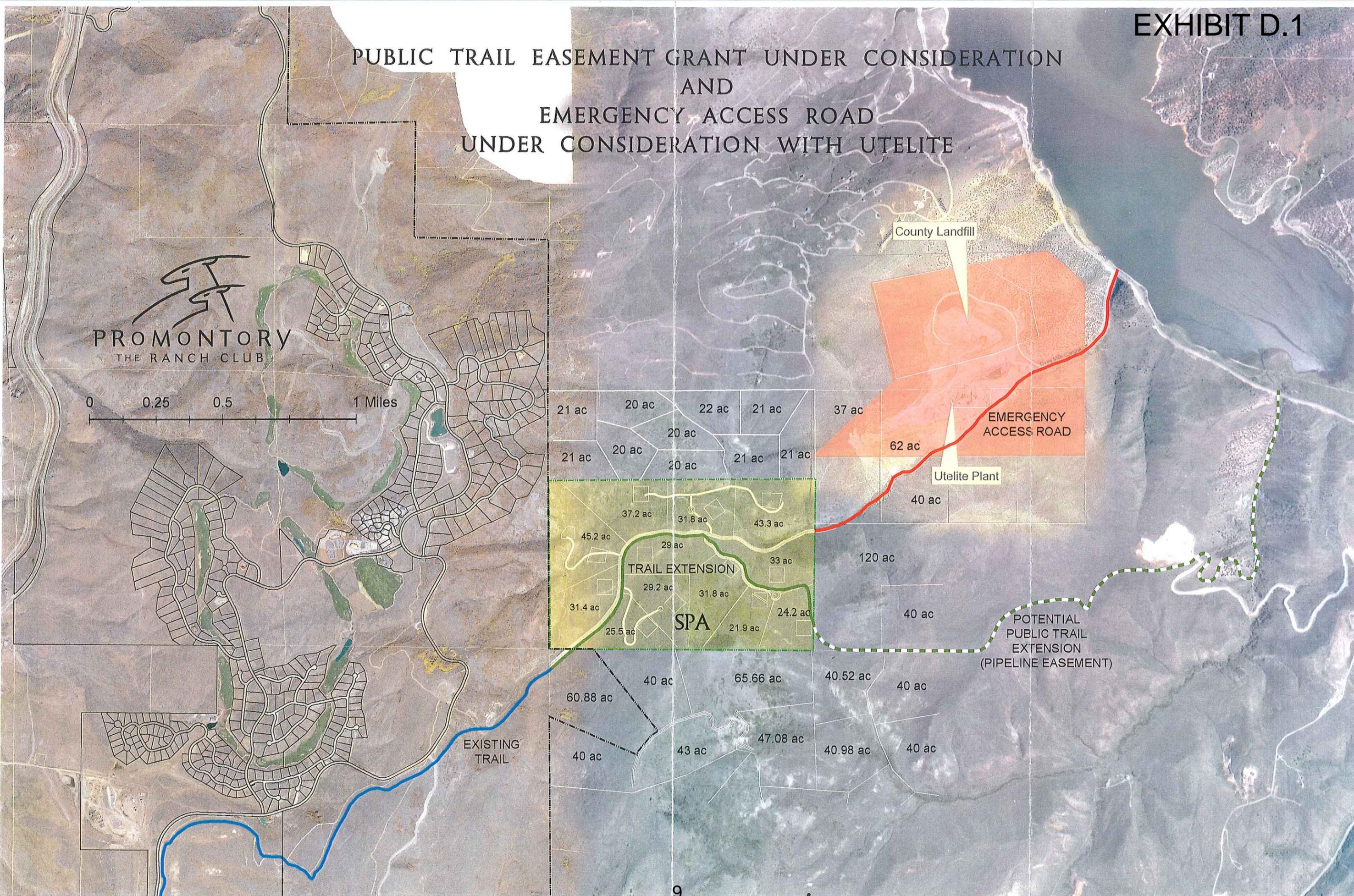
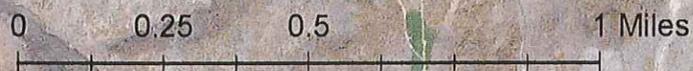
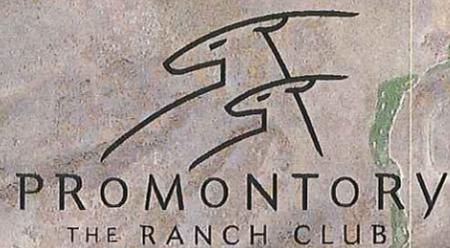
Prepared by Summit County
Community Development Department

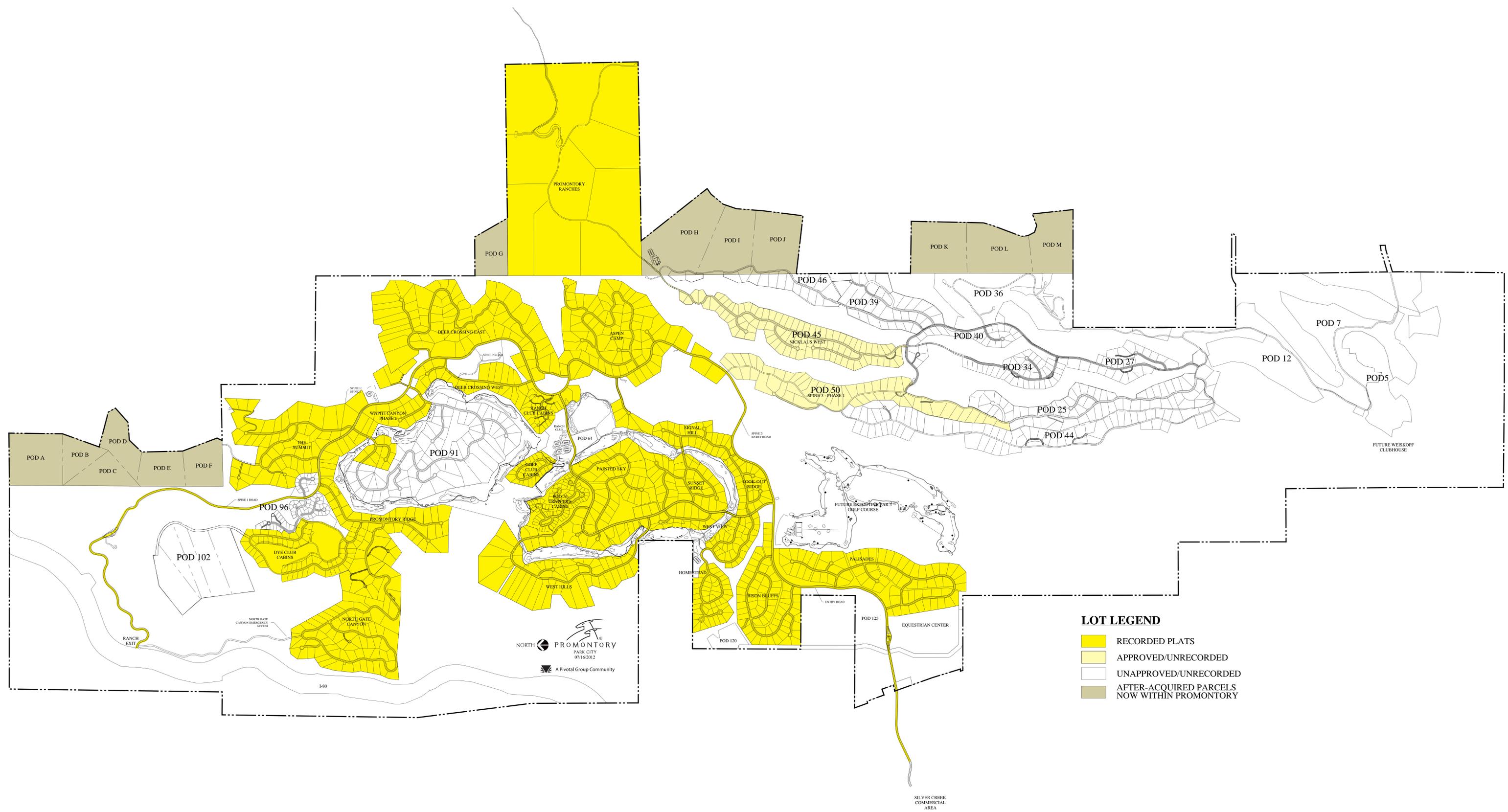
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PUBLIC TRAIL EASEMENT GRANT UNDER CONSIDERATION
AND
EMERGENCY ACCESS ROAD
UNDER CONSIDERATION WITH UTELITE

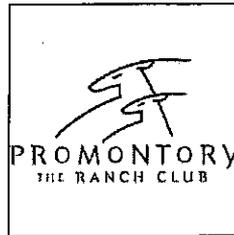




LOT LEGEND

- RECORDED PLATS
- APPROVED/UNRECORDED
- UNAPPROVED/UNRECORDED
- AFTER-ACQUIRED PARCELS NOW WITHIN PROMONTORY


 NORTH PROMONTORY
 PARK CITY
 07/16/2012
 A Pivotal Group Community



Mr. Don Sargent
Summit County Planning Director
60 N. Main
Coalville, Utah

Request for Special Exception – Promontory Ranches SPA and Development Agreement

Points of Discussion:

Promontory has, since its reorganization in 2009, made a Herculean effort to finish pending development work (initiated at the top of the market) in order to satisfy outstanding DIAs and release bonds throughout Promontory's nearly 11 square mile community. This has required significant capital in a down market when development financing and sales revenues are not readily available. The County has benefitted from this effort in the form of increased tax base for improved lots. Despite financial challenges, and despite the fact that many of the improvements completed were to finish real estate subdivisions that will not be marketable for years in the future, Promontory has now secured the release of all but one remaining DIA for completion of paving improvements in the Promontory Ranches SPA and subdivision. The anticipated marketing of this last unfinished "ranch lot" subdivision is so far in the future that it is not even included in Promontory's federal and state Property Report.

The remaining outstanding bond for these paving improvements is for \$451,749 (see Exhibit A to attached draft Special Exception Agreement for a detailed breakdown). Promontory hereby requests a temporary waiver of the DIA and bonding requirements for the remaining paving work in Promontory Ranches until such time as it is ready to resume development in this remote area of Promontory and is willing to commit to not sell lots in this subdivision until a replacement DIA and appropriate security have again been posted with the County. Because Promontory Ranches is a recorded subdivision, the DIA requirements and bond requirements for these remaining road improvements can only be temporarily waived via a "Special Exception" from the County Council. A draft of such a Special Exception is attached hereto for your consideration. Bonding for this and other Promontory subdivisions was previously supplied by Ames Construction but, because of the limited prospect of additional subdivision development work at Promontory in the future, Ames is no longer willing to extend this bonding. Promontory has, in good faith, exhausted our other options to secure bonding (which is simply not available to us as a land developer in this market) and it is impractical for us to post cash or LOC security for future development of an area that is now likely years away from sale.

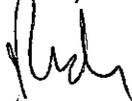
Please consider the following:

- Promontory successfully navigated its 2009 reorganization in a manner which kept all local staff employed and left no contractor, vendor or other unsecured creditor unpaid. County Development agreement and tax obligations have also all been satisfied. I am unaware of any other reorganization that has so successfully insulated the local community from financial impacts.
- Since reorganization, Promontory has diligently, and in good faith worked to complete outstanding improvement obligations and release bonds, even in neighborhoods that are years from marketability, all the while holding its own lot inventory off the market in order to support resale values –all of which has helped to reinforce County tax base.
- Promontory has utilized its available cash resources to bolster community values and the resale market by building the new Shed Clubhouse – this strategic allocation of entrepreneurial capital stimulated employment in Summit County and is far better for the community than if the same capital were tied up to fund security for unneeded subdivision improvements.
- It makes sense for the County to allow Promontory to keep the Promontory Ranches subdivision entitlements in place because this supports taxable value.
- The County is secure that Promontory will eventually complete the required development improvements in the area because Promontory is willing to forego its right to make retail sales in that subdivision until either, the remaining work indicated in Exhibit A to the attached Agreement is completed or Promontory has executed a new DIA and provided the required security.

All of the above, as well as other extraordinary efforts Promontory has made to complete improvements at Promontory, well in advance of need, in order to avoid an default under our Development Agreement, support our equitable request that the County give us the requested temporary relief from the Promontory Ranches DIA and bonding requirements.

I understand from Dave Thomas that Planning Department support is necessary to bring this matter directly before the County Council and that a next step would be a public hearing before that body at which they could take any public input and consider approval. Because the existing bond for the Promontory Ranches DIA is set to expire in August (and Ames has refused to extend same), time is of the essence in this request.

Thank you for your consideration.



Rich Sonntag
Promontory Managing Director

SPECIAL EXCEPTION AGREEMENT FOR PROMONTORY RANCHES

This SPECIAL EXCEPTION AGREEMENT FOR PROMONTORY RANCHES ("Agreement") is entered into as of this ____ day of _____, 2012 by and between Promontory Investments, LLC, an Arizona limited liability company, and Promontory Development, LLC, an Arizona limited liability company, (hereinafter, collectively referred to as "Promontory") and Summit County, a political subdivision of the State of Utah ("County"), sometimes referred to herein individually as "party" or collectively as "parties".

RECITALS

- A. The County approved Summit County Ordinance No. 557 on June 15, 2005 (the "Ordinance"), which ordinance approved the Promontory Ranches SPA rezone and SPA Plan and which ordinance was recorded as Entry No. 00739874, in Book 1709 at Pages 111-112. Pursuant to the Ordinance, Promontory and the County entered into a Development Agreement for the Promontory Ranches Specially Planned Area, Summit County Utah dated March 15, 2006 by and between Promontory and the County (the "Development Agreement"), which Development Agreement was recorded on March 15, 2007 as Entry No. 00807237, in Book 1853 at Page 811.
- B. Pursuant to the Development Agreement, Promontory recorded the Plat of the Promontory Ranches Subdivision on March 15, 2007 as Entry No. 807235, in the Office of the Summit County Recorder, which reflected ten lots having tax identification numbers PRRCH-1 through PRRCH-10 (the "Promontory Ranches Lots").
- C. Pursuant to the Development Agreement, Promontory and the County entered into a Development Improvements Agreement for Initial Plat Infrastructure dated December 20, 2006 pertaining to the Promontory Ranches Subdivision (the "Promontory Ranches DIA"), the County issued a grading permit (No. 05-G-35) on September 12, 2005 pertaining to Parcel NS-46 (together with any other applicable permits which may have been issued by the County, the "Brown Stembridge Permit(s)"), and Promontory provided the County with the security required by the Promontory Ranches DIA for work to be conducted thereunder by causing its contractor to establish a Performance Bond No. 104582543 (the "Brown Stembridge Bond"), which has an outstanding amount of \$451,749 to secure the remaining work under such Promontory Ranches DIA (the "Brown Stembridge Outstanding Work"). The Brown Stembridge Bond and a spreadsheet detailing the Brown Stembridge Outstanding Work are attached hereto as Exhibit A.
- D. To date, Promontory has completed all outstanding subdivision improvements related to ~~any and all other active and/or marketable subdivisions within its development, and the roadway improvements covered by the Brown Stembridge Bond (the "Road")~~ have the following characteristics:
 - a. The Road is a private, dirt roadway which has been completely graded, constructed with appropriate roadbase and erosion control, with roadbeds having been restored and shoulders and side slopes stabilized with fully grown native vegetation.
 - b. The Road, which is, in its current condition, a passable and drivable thoroughfare, is intended to provide access to the Promontory Ranches

subdivision, which is, due to present market conditions, now several years out in Promontory's development planning (due to the infeasibility and inability to complete improvements thereon within the time constraints set forth in the Promontory Ranches DIA or obtain bonding related thereto).

- c. The Road has little or no traffic and does not have a negative visual impact on property outside of Promontory.
- E. Promontory desires to avoid default under and secure the release of the Promontory Ranches DIA, and the County desires to accommodate such request upon Promontory's commitment to future bonding and work when market conditions improve and prior to any sale of individual lots within Promontory Ranches, and to set forth their mutual obligations, covenants and agreements in this Agreement

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and Promontory hereby agree to the following:

1. Temporary Waiver with respect to Promontory Ranches Lots: The parties hereby agree that the County will grant a temporary waiver from the completion obligations set forth in the the Development Improvement Agreement and the pledging of security requirements required in accordance therewith, provided Promontory agrees that it will not convey any Promontory Ranches Lots to retail lot purchasers until the earlier of the following occurs: (1) Promontory enters into a new Development Improvements Agreement (which agreement shall set forth the then-applicable outstanding improvements completion and the related completion timeframe), applies for and receives new grading and/or low impact permits where applicable with the County pertaining to the Promontory Ranches Subdivision and pledges the County-required security for improvements associated therewith (i.e. escrow account, completion bond, letter of credit or other collateral acceptable to the County) pursuant to such agreement; or (2) Promontory completes the improvement obligations required by the County for the Road to the County's satisfaction. The parties hereby agree that this non-conveyance condition specifically excludes any bulk assignment or sale conveyance or transaction which may be caused by changes in composition of the ownership of Promontory or Promontory Ranches and/or which conveyance or transaction is directly related to the financing of Promontory Ranches or the larger Promontory project (which project includes Promontory Ranches and other areas subject to the Development Agreement for the Promontory Specially Planned Area dated January 2, 2001 including all amendments thereto (the "Promontory Development Agreement"))).

2. Entire Agreement / No Third Party Beneficiaries. This Agreement is the entire agreement between the parties with respect to the subject matter hereof. It supersedes all prior and contemporaneous oral and written agreements and discussions. The parties agree that there are no third party beneficiaries under this Agreement.

3. Binding Agreement. This Agreement is binding upon, and shall inure to the benefit of, the parties hereto and their respective parent, subsidiary and sister companies and entities, predecessors, successors, agents, affiliates, attorneys, officers, employees, representatives, directors, partners, and assigns.

4. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nonetheless be severable, and continue in full force and effect without being impaired or invalidated in any way.

5. Counterparts. This Agreement may be executed in counterpart, each of which when so executed and delivered shall be deemed to be an original. The executed page(s) from each such original may be joined together and attached to one such original and shall thereupon constitute one and the same instrument. Signatures by facsimile or those transmitted electronically shall have the same force and effect as original signatures.

IN WITNESS WHEREOF, this Waiver has been executed by Summit County, acting by and through its County Council, and by a duly authorized representative of Promontory, as of the date and year first written above.

SUMMIT COUNTY, STATE OF UTAH

By:
Its: Chairman

By:

PROMONTORY

Promontory Investments, LLC an Arizona limited liability company

By: Rich Sonntag
Its: Managing Director

By: Rich Sonntag

Promontory Development, LLC an Arizona limited liability company

By: Rich Sonntag
Its: Managing Director

By: Rich Sonntag

STATE OF)
)
) :ss.
COUNTY OF)

On the day of _____, 2012, before me personally appeared Rich Sonntag, who swore and acknowledged that he executed and was authorized to execute the foregoing instrument in the capacity indicated.

Notary Public

STATE OF _____)
 :ss.
COUNTY OF _____)

On the day of _____, 2012, before me personally appeared _____,
who swore and acknowledged that he executed and was authorized to execute the foregoing instrument in the
capacity indicated.

Notary Public

EXHIBIT A

See attached Brown Stembridge Bond and spreadsheet for Brown Stembridge Outstanding Work.

BROWN/STEMBRIDGE ROAD											
Description	Contract Totals				120%	Percent Complete	Value Complete	10%		Remaining Bond Amount	
	Quantity	Unit	Unit Price	Scheduled Value	Bond Value			Value Remaining	Contingency		Warranty
Earthwork											
Clearing and Grubbing	8.7	ac	\$ 1,027.00	\$ 8,934.90	\$10,721.88	100%	\$ 8,935	\$ -	\$ -	\$ 893	\$ 893
Erosion Control	7,250	lf	\$ 2.89	\$ 19,502.50	\$23,403.00	100%	\$ 19,503	\$ -	\$ -	\$ 1,950	\$ 1,950
Strip and Stockpile Topsoil -	13,970	cy	\$ 1.76	\$ 24,587.20	\$29,504.64	100%	\$ 24,587	\$ -	\$ -	\$ 2,459	\$ 2,459
Site Exc. - Common - 2200 ft Ave. Haul	11,316	cy	\$ 2.12	\$ 23,989.92	\$28,787.90	100%	\$ 23,990	\$ -	\$ -	\$ 2,399	\$ 2,399
Stock Pile Existing Gravel Placed on Roadway	1	ls	\$ 20,000.00	\$ 20,000.00	\$24,000.00	0%	\$ -	\$ -	\$ -	\$ 2,000	\$ 2,000
6" Aggregate Base Course	7,451	tn	\$ 12.50	\$ 93,137.50	\$111,765.00	100%	\$ 93,138	\$ -	\$ -	\$ 9,314	\$ 9,314
10" Select Sub-Base	12,369	tn	\$ 10.00	\$ 123,690.00	\$148,428.00	100%	\$ 123,690	\$ -	\$ -	\$ 12,369	\$ 12,369
GPS Road Finish	1	ls	\$ 12,375.00	\$ 12,375.00	\$14,850.00	0%	\$ -	\$ 12,375	\$ 1,238	\$ 1,238	\$ 14,850
4" Bituminous Surface Course	170,000	sf	\$ 0.95	\$ 161,500.00	\$193,800.00	0%	\$ -	\$ 161,500	\$ 16,150	\$ 16,150	\$ 193,800
High Survivability geotextile	25,000	sy	\$ 1.57	\$ 39,250.00	\$47,100.00	100%	\$ 39,250	\$ -	\$ -	\$ 3,925	\$ 3,925
Topsoil spreading	3,500	cy	\$ 3.33	\$ 11,655.00	\$13,986.00	100%	\$ 11,655	\$ -	\$ -	\$ 1,166	\$ 1,166
Revegetation	4.4	ac	\$ 2,210.00	\$ 9,724.00	\$11,668.80	0%	\$ -	\$ -	\$ -	\$ 972	\$ 972
Storm Drain											
18" RCP Storm Drain	350	lf	\$ 24.87	\$ 8,704.50	\$10,445.40	87%	\$ 7,573	\$ 1,132	\$ 870	\$ 870	\$ 2,872
48" Storm Drain Manhole	4	ea	\$ 2,250.00	\$ 9,000.00	\$10,800.00	87%	\$ 7,830	\$ 1,170	\$ 900	\$ 900	\$ 2,970
Rip-rap	396	tn	\$ 9.91	\$ 3,924.36	\$4,709.23	100%	\$ 3,924	\$ -	\$ -	\$ 392	\$ 392
EMERGENCY ACCESS ROAD											
Earthwork											
Clearing and Grubbing	6.2	ac	\$ 1,027.00	\$ 6,367.40	\$7,640.88	100%	\$ 6,367	\$ -	\$ -	\$ 637	\$ 637
Erosion Control	5,000	lf	\$ 2.89	\$ 13,450.00	\$16,140.00	100%	\$ 13,450	\$ -	\$ -	\$ 1,345	\$ 1,345
Strip and Stockpile Topsoil -	5,001	cy	\$ 1.76	\$ 8,801.76	\$10,562.11	100%	\$ 8,802	\$ -	\$ -	\$ 880	\$ 880
Site Exc. - Common - 2200 ft Ave. Haul	5,000	cy	\$ 2.12	\$ 10,600.00	\$12,720.00	100%	\$ 10,600	\$ -	\$ -	\$ 1,060	\$ 1,060
6" Aggregate Base Course	1,326	tn	\$ 12.50	\$ 16,575.00	\$19,890.00	0%	\$ -	\$ 16,575	\$ 1,658	\$ 1,658	\$ 19,890
10" Select Sub-Base	2,201	tn	\$ 10.00	\$ 22,010.00	\$26,412.00	0%	\$ -	\$ 22,010	\$ 2,201	\$ 2,201	\$ 26,412
4" Bituminous Surface Course	29,600	sf	\$ 0.95	\$ 28,120.00	\$33,744.00	0%	\$ -	\$ 28,120	\$ 2,812	\$ 2,812	\$ 33,744
6" Aggregate Base-Fire Emergency Access Rd	4,269	tn	\$ 12.50	\$ 53,362.50	\$64,035.00	0%	\$ -	\$ 53,363	\$ 5,336	\$ 5,336	\$ 64,035
6" Aggregate Base-Trail Parallel to Rd	2,569	tn	\$ 12.50	\$ 32,112.50	\$38,535.00	0%	\$ -	\$ 32,113	\$ 3,211	\$ 3,211	\$ 38,535
GPS Road Finish	1	ls	\$ 2,145.00	\$ 2,145.00	\$2,574.00	0%	\$ -	\$ 2,145	\$ 215	\$ 215	\$ 2,574
High Survivability geotextile	4,444	sy	\$ 1.57	\$ 6,977.08	\$8,372.50	0%	\$ -	\$ 6,977	\$ 698	\$ 698	\$ 8,372
Topsoil spreading	3,150	cy	\$ 3.33	\$ 10,489.50	\$12,587.40	0%	\$ -	\$ -	\$ -	\$ 1,049	\$ 1,049
Revegetation	4.0	ac	\$ 2,210.00	\$ 8,840.00	\$10,608.00	0%	\$ -	\$ -	\$ -	\$ 884	\$ 884
TOTAL REMAINING CONTRACT VALUE								\$ 337,479			
10% CONTINGENCY OF REMAINING ITEMS								\$ 35,288			
10% WARRANTY								\$ 78,983			
TOTAL BOND VALUE								\$ 451,749			

PERFORMANCE BOND

Travelers Casualty and Surety Company of America Bond No. 104582543

KNOW ALL MEN BY THESE PRESENTS, THAT WE,

Ames Construction, Inc., 2000 Ames Drive, Burnsville, Minnesota 55306 as Principal, and the Travelers Casualty and Surety Company, (hereinafter called Surety), a corporation organized and existing under the laws of the State of Connecticut and duly authorized to transact business in the state of Utah as Surety, are held and firmly bound unto

Summit County, Utah

as the Obligee, in the sum of Two Hundred Seventy-Nine Thousand Six Hundred Thirty-Nine and 60/100*(\$279,639.60) DOLLARS, for the payment whereof well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

SIGNED, sealed, and dated this 25th day of August, 2005.

WHEREAS the Principal has agreed to perform:

Grading, excavation and other civil improvements for
Brown/Stembridge Road
Park City, Summit County, Utah

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall construct, or have constructed, the improvements herein described and shall save the Obligee harmless from any loss, cost or damage by reason of its failure to complete said work, then this obligation shall be null and void.

This bond shall expire on August 25, 2006.

AMES CONSTRUCTION, INC.

By: Raymond G. Ames
Raymond G. Ames, Vice President

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

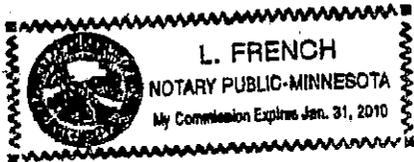
By: Bruce N. Telander
Bruce N. Telander, Attorney-in-Fact

ACKNOWLEDGMENT OF CORPORATION

State of MINNESOTA)
) ss. On this 25th day of August 2005
County of HENNEPIN) before me appeared Richard J. Ames
to me personally known, who, being by me duly sworn, did say that he
is the President
of AMES CONSTRUCTION, INC., a
corporation, that the seal affixed to the foregoing instrument is the
corporate seal of said corporation,

(If no seal, so state, and strike out above as to corporate seal)

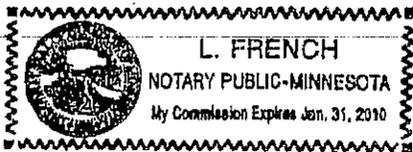
and that said instrument was executed in behalf of said corporation by
authority of its Board of Directors; and that said Richard J. Ames
acknowledged said instrument to be the free act and deed of said
corporation.



L. French
Notary Public _____ County, _____
My commission expires _____

ACKNOWLEDGMENT OF CORPORATE SURETY

State of MINNESOTA)
) ss. On this 25th day of August 20 05
County of HENNEPIN) before me appeared Bruce N. Telander
to me personally known, who, being by me duly sworn, did say that he
is the Attorney-in-Fact
of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a
corporation, that the seal affixed to the foregoing instrument is the
corporate seal of said corporation and that said instrument was executed
in behalf of said corporation by authority of its Board of Directors; and
that said Bruce N. Telander acknowledged said instrument
to be the free act and deed of said corporation.



L. French
Notary Public _____ County, _____
My commission expires _____

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
 TRAVELERS CASUALTY AND SURETY COMPANY
 FARMINGTON CASUALTY COMPANY
 Hartford, Connecticut 06183-9062

POWER OF ATTORNEY AND CERTIFICATE OF AUTHORITY OF ATTORNEY(S)-IN-FACT

KNOW ALL PERSONS BY THESE PRESENTS, THAT TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, corporations duly organized under the laws of the State of Connecticut, and having their principal offices in the City of Hartford, County of Hartford, State of Connecticut, (hereinafter the "Companies") hath made, constituted and appointed, and do by these presents make, constitute and appoint: Bruce N. Telander, Donald R. Olson, Gary S. Soderberg, John E. Tauer, John P. Martinsen, Linda K. French, Mary L. Charles, R. Scott Egginton, R. W. Frank, Craig Remick, Rachel Thomas, Nicole Olson, Joshua R. Loftis, Jennifer L. Lowe, of Minneapolis, Minnesota, their true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge, at any place within the United States, the following instrument(s): by his/her sole signature and act, any and all bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking and any and all consents incident thereto and to bind the Companies, thereby as fully and to the same extent as if the same were signed by the duly authorized officers of the Companies, and all the acts of said Attorney(s)-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following Standing Resolutions of said Companies, which Resolutions are now in full force and effect:

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her.

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary.

VOTED: That any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary, or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority.

This Power of Attorney and Certificate of Authority is signed and sealed by facsimile (mechanical or printed) under and by authority of the following Standing Resolution voted by the Boards of Directors of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, which Resolution is now in full force and effect:

VOTED: That the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

The logo for Travelers, featuring the word "Travelers" in a bold, serif font, with a stylized swoosh underneath.

IMPORTANT DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE

On November 26, 2002, President Bush signed into law the Terrorism Risk Insurance Act of 2002 (the "Act"). The Act establishes a short-term program under which the Federal Government will share in the payment of covered losses caused by certain acts of international terrorism. We are providing you with this notice to inform you of the key features of the Act, and to let you know what effect, if any, the Act will have on your premium.

Under the Act, insurers are required to provide coverage for certain losses caused by international acts of terrorism as defined in the Act. The Act further provides that the Federal Government will pay a share of such losses. Specifically, the Federal Government will pay 90% of the amount of covered losses caused by certain acts of terrorism which is in excess of Travelers' statutorily established deductible for that year. The Act also caps the amount of terrorism-related losses for which the Federal Government or an insurer can be responsible at \$100,000,000,000.00, provided that the insurer has met its deductible.

Please note that passage of the Act does not result in any change in coverage under the attached policy or bond (or the policy or bond being quoted). Please also note that no separate additional premium charge has been made for the terrorism coverage required by the Act. The premium charge that is allocable to such coverage is inseparable from and imbedded in your overall premium, and is no more than one percent of your premium.

SURETY RIDER

To be attached to and form a part of Bond No. 104582543
executed by AMES CONSTRUCTION, INC., as
principal and by TRAVELERS CASUALTY AND SURETY COMAPNY OF AMERICA as Surety,
in favor of SUMMIT COUNTY, and effective
as of August 25, 2005

In consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to changing
the penalty of the bond

From: Two Hundred Seventy-Nine Thousand Six Hundred Thirty-Nine and 60/100*
(\$279,639.60)

To: Nine Hundred Forty-Seven Thousand Eight Hundred and no/100*****
(\$947,802.00)

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein
expressly stated. This rider is effective on the 27th day of February 20 06.

AMES CONSTRUCTION, INC. Principal

By [Signature] Raymond G. Ames, Vice President Title

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA Surety

Accepted: [Signature] Obligee

By [Signature] Bruce N. Telander, Attorney-in-Fact

By [Signature] Obligee

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
 TRAVELERS CASUALTY AND SURETY COMPANY
 FARMINGTON CASUALTY COMPANY
 Hartford, Connecticut 06183-9062

POWER OF ATTORNEY AND CERTIFICATE OF AUTHORITY OF ATTORNEY(S)-IN-FACT

KNOW ALL PERSONS BY THESE PRESENTS, THAT TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, corporations duly organized under the laws of the State of Connecticut, and having their principal offices in the City of Hartford, County of Hartford, State of Connecticut, (hereinafter the "Companies") hath made, constituted and appointed, and do by these presents make, constitute and appoint: Bruce N. Telander, Donald R. Olson, John E. Tauer, John P. Martinsen, Linda K. French, Mary L. Charles, R. Scott Egginton, R. W. Frank, Rachel Thomas, Nicole Olson, Joshua R. Loftis, of Minneapolis, Minnesota, their true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge, at any place within the United States, the following instrument(s): by his/her sole signature and act, any and all bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking and any and all consents incident thereto and to bind the Companies, thereby as fully and to the same extent as if the same were signed by the duly authorized officers of the Companies, and all the acts of said Attorney(s)-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following Standing Resolutions of said Companies, which Resolutions are now in full force and effect:

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her.

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary.

VOTED: That any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary, or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority.

This Power of Attorney and Certificate of Authority is signed and sealed by facsimile (mechanical or printed) under and by authority of the following Standing Resolution voted by the Boards of Directors of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, which Resolution is now in full force and effect:

VOTED: That the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

Special Exception Application

Promontory's request for temporary equitable relief from the Development Improvements Agreement for the Promontory Ranches Subdivision within Promontory and the bonding/security requirements required thereby is further detailed in the attached letter from Rich Sonntag to Don Sargent and in the attached, proposed Special Exception Agreement for Promontory Ranches to be executed by and between Promontory and Summit County.

The specific factors outlined below are addressed below to further support of Promontory's request for a special exception from Summit County for these requirements.

- 1. The requested special exception is not detrimental to the public health, safety and welfare.**
 - a. In contrast, and as further explained in the letter from Rich Sonntag to Don Sargent attached hereto, Promontory's use of its available cash resources over the past few years to complete all subdivision improvement obligations (and cause bond releases associated therewith), even in neighborhoods which are years away from marketability (all the while holding its own lot inventory off the market in order to support resale values) and to build the new Shed Clubhouse at Promontory (which opened for business on July 4, 2012) has all helped reinforce the Summit County tax base and stimulate employment in the County in a period of economic downturn. This has all enhanced the public welfare, rather than simply tying up cash to fund security for this remote subdivision's improvements, which are unneeded in the present market and in the present stage of Promontory's development phasing.
 - b. In addition, the bonding for the Promontory Ranches Subdivision, which was previously supplied by Ames Construction (and is no longer available to Promontory due to the limited prospect of additional subdivision development work at Promontory in the future), will expire next month. Rather than be in default of the ordinance, agreements, and plat detailed below (which would directly contradict public policy), and after exhausting its other options to secure bonding (which is simply not available to us as a land developer in the present market), Promontory hereby requests this Special Exception in relation to the Promontory Ranches Subdivision within Promontory, under the terms and conditions further detailed below and in the attached proposed agreement.
- 2. The intent of the Eastern Summit County Development Code and General Plan, along with the requirements of Summit County Ordinance No. 557 (approved by Summit County on June 15, 2005), recorded as Entry No. 00739874, in Book 1709 at Pages 111-112 and the Development Agreement for the Promontory Ranches Specially Planned Area, Summit County Utah dated March 15, 2006 by and between Promontory and the County, recorded on March 15, 2007 as Entry No. 00807237 in Book 1853 at Page 811, along with the Development Improvements Agreement for Initial Plat Infrastructure dated December 20, 2006 pertaining to the Promontory Ranches Subdivision (the "Promontory Ranches DIA"), will all be met.**
 - a. As further evidenced by Promontory's proposed Special Exception Agreement (attached hereto), the following characteristics apply to the roadway improvements covered by the Brown Stembridge Bond (the "Road"):

- i. The Road is a private, dirt roadway which has been completely graded, constructed with appropriate roadbase and erosion control, with roadbeds having been restored and shoulders and side slopes stabilized with fully grown native vegetation.
 - ii. The Road, which is, in its current condition, a passable and drivable thoroughfare, is intended to provide access to the Promontory Ranches subdivision, which is, due to present market conditions, now several years out in Promontory's development planning (due to the infeasibility and inability to complete improvements thereon within the time constraints set forth in the Promontory Ranches DIA or obtain bonding related thereto)
 - iii. The Road has little or no traffic and does not have a negative visual impact on property outside of Promontory.
 - b. As further evidenced by Promontory's proposed Special Exception Agreement (attached hereto), Promontory will forego its right to make retail sales in the Promontory Ranches Subdivision until it has either completed the remaining work required for the Road to meet the County's required standards (reference Exhibit A to the attached Agreement) or until Promontory has executed a new DIA for the Promontory Ranches subdivision and provided the security required by the County thereunder. As an aside, the anticipated marketing of this last unfinished "ranch lot" subdivision is so far in the future that it is not presently included in Promontory's federal Property Report filed and approved by the Consumer Financial Protection Bureau as required by the Interstate Land Sales Registration Program.
- 3. Promontory does not qualify for any other equitable processes provided through the provisions of the Code.**
- a. Due to the obligations set forth in the ordinance and agreements referenced above, and to the recorded Plat of the Promontory Ranches Subdivision (recorded on March 15, 2007 as Entry No. 807235, in the Office of the Summit County Recorder), Promontory is obligated to complete the improvements associated with the Road and/or post security for the same until completion.
 - b. The temporary equitable relief requested by Promontory requires specific Summit County Council approval due to the prior ordinance, agreements and recorded Plat in place pertaining to the same.
- 4. All of the above factors evidence the equitable claims and unique circumstances warranting the requested special exception.** In addition and as further detailed in the attached letter from Rich Sonntag, Promontory successfully navigated its 2008-2009 reorganization in a manner which kept all local staff employed and left no contractor, vendor or other unsecured creditor unpaid. County Development Agreement and tax obligations have also all been satisfied by Promontory. Further, Promontory's owner/developer fully intends to satisfy obligations and complete improvements related to Promontory's entitlements granted in the overarching Development Agreement for the Promontory SPA in upcoming years and as market conditions dictate.



July 19, 2012

Attn: A.C. Caus
Summit County Community Development Department
60 N. Main
P.O. Box 128
Coalville, Utah 84017

Re: Promontory's Request for Special Exception – Promontory Ranches SPA and Development Agreement

Dear AC,

This letter serves as a confirmation on behalf of the Promontory Conservancy Board of Directors (the "Board"), that the Board supports Promontory's request for the County's granting of a Special Exception pertaining to the Promontory Ranches Subdivision Development Improvements Agreement and bonding requirements, pursuant to its application submitted to you on July 12, 2012. The Board specifically supports this exception request for the following reasons (in addition to those outlined in the developer's July 12th application and exhibits thereto):

1. This road is a private dirt road, which has been completely graded, constructed with roadbase and erosion control and the roadbeds have been restored and shoulders and side slopes have been stabilized with fully grown native vegetation. The road, therefore, does not present a substantial maintenance issue for the Promontory Conservancy.
2. The road, in its current condition, is a passable and drivable thoroughfare and is intended to provide access to the Promontory Ranches subdivision, which is, due to present market conditions, now several years out in Promontory's development planning. Should the road be paved and all roadway improvements completed at this point in time by the developer, the Conservancy would have the responsibility of maintaining such road to the standards set forth in the CCR's by completing re-slurrying, careful snow removal, etc. long before there were buyers on the lots accessed from such road. This would clearly cause the Conservancy an undue hardship.
3. The road has little or no traffic and does not have a negative visual impact on property outside of Promontory or on any residential properties within Promontory.
4. As the developer is proposing to forego its right to make retail sales until it has completed the required roadway improvements or provided security for the same, there is no inherent risk for the Conservancy in extending the time for improvements completion, in

**The Promontory Conservancy
8758 N. Promontory Ranch Road
Park City, UT 84098
(435) 333-4000**

regards to its potential duty to future third party Promontory owners/residents who will, upon purchase, use the road for access to their properties.

5. The developer's use of its available cash resources over the past few years to complete all subdivision improvement obligations (and cause bond releases associated therewith) in all of the Phase 1 platted neighborhoods (even though some of those neighborhoods still contain developer inventory which is years away from marketability) has enabled the Promontory Conservancy to uphold its private road maintenance obligations set forth in Promontory's *Declaration of Covenants, Conditions and Restrictions* (as amended and supplemented), which maintenance directly affects the third party owners who presently own real property in those neighborhoods. In addition, the developer's willingness to hold its own inventory off the market while making these improvements, has bolstered resale values, and in turn, the amount of resales occurring within Promontory, which sales continue to provide the Conservancy with enhancement fee income.

For all of the reasons stated above, The Conservancy not only supports this request for Special Exception, but believes it will benefit greatly from the same.

Please feel free to call me at (435) 333-4023 with further questions regarding this.

Sincerely,



Meagan Ferrin

Vice-President, Promontory Conservancy, on behalf of the Conservancy Board of Directors

County Engineer



Derrick A. Radke, P.E.

MEMORANDUM

Date: August 2, 2012

To: AC Caus, County Planner

From: Derrick A. Radke, County Engineer

Re: Promontory Ranches Development Improvement Agreement Bond Release - Special Exception

Per your request, below are my comments related to the above referenced application:

1. My office's concern is that as a recorded sub-division, these lots are sellable at any time and the improvements guaranteed by the Development Improvement Agreement (DIA) are not fully complete. If a release of the security is approved, there is no way to guarantee completion.
2. The Agreement, Section 1 states that Promontory agrees not to sell lots to retail purchasers until such time as a new DIA and security has been submitted to the County. Later in the paragraph it specifically explains "Bulk" purchasers.
3. Except in the case of possibly refinancing the project, I am not sure why any purchaser of this project would not expect that the project would not be fully completed or there be an ability for the County to complete the project if the developer were to cease to exist or otherwise defaults.
4. If the County agrees to this agreement, will this document, or some other document be recorded against these properties prohibiting the sale (probably not possible) or giving notice that the subdivision improvements are not complete and no Building Permits can be issued to any party until a new DIA has been accepted by the County and there is security in place to complete the improvements.

Let me know if there are any questions or if there is anything else I can do to assist with this request.

cc: file (S:\Escrow\promontory\prom-ranches-stembridge\special exception1.dar.wpd)

**DEVELOPMENT IMPROVEMENTS AGREEMENT
FOR
PROMONTORY INITIAL PLAT INFRASTRUCTURE
NEIGHBORHOOD OF
PROMONTORY RANCHES**

THIS AGREEMENT is made this 20th day of DEC, 2006, by and between SUMMIT COUNTY, a political subdivision of the State of Utah (the "County"), and Pivotal Promontory Development, LLC, an Arizona limited liability company (the "Developer").

RECITALS

1. Developer is the owner of certain platted properties more particularly described in Exhibit A, situated in the County of Summit, State of Utah, sometimes referred to as Promontory Ranches and referred to herein as the "Property."
2. Developer has submitted to the County the site improvements plan, more particularly described in Exhibit B attached hereto (the "Site Improvements Plan"), and has submitted construction drawings, more particularly described in Exhibit C attached hereto ("Construction Drawings") for those improvements and related landscaping being constructed by the Developer in connection with the road and utility infrastructure on the Property, pursuant to that certain Development Agreement dated as of MARCH 15, 2006 (the "Development Agreement").
3. Construction of the roads and infrastructure covered by this Development Improvements Agreement will be subject to the requirements and conditions related to the installation and construction of utilities and the improvements shown on the attached Site Improvements Plan. These requirements and conditions conform to those which are set forth in the Development Agreement.

NOW, THEREFORE, in consideration of the premises and the terms and conditions herein stated and for other valuable consideration, the adequacy of which is acknowledged by the parties hereto, it is agreed as follows:

1. Developer's Guarantee and Warranty.

Developer has entered into formal commitments, including the approved Development Agreement and this Development Improvements Agreement with an appropriate bonding and installation schedule to guarantee the installation, as hereafter provided and as necessary to serve the Property, and payment therefore, of all private roads and private road improvements, all utility lines, storm drainage improvements and storm sewers, and any other improvements described in the Site Improvements Plan. Developer hereby warrants all road improvements and utility improvements constructed or installed by Developer against defects in materials and workmanship for a period of two full year's normal operation after acceptance by the County Engineer or the applicable utility companies of such improvements. The County

shall either retain ten percent (10%) of the bond, letter of credit or escrow total for such items, or require a bond, letter of credit or escrow equal to ten percent (10%) of the required total improvement costs for such items until twenty-four months from the date of completion of the improvements and acceptance thereof by the County, as a guarantee should the improvements prove to be defective during said 24-month period. Developer agrees to promptly correct any deficiencies in installation in order to meet the requirements of the plans and specifications applicable to such installation. In the event such installation is not completed substantially within the applicable schedules attached hereto and according to the specific plans set forth in the Site Improvements Plan, the County shall have the right to cause such work to be done as is necessary to complete the installation in such manner and Developer shall be liable for the cost of such additional work.

2. Water Facilities and Sanitary Sewer Collection Lines.

- (1) The Developer will enter into a Water Service Agreement with Mountain Regional Water Service District to provide for the installation of all wells, tanks, waterlines and service laterals for the Property thereby creating a complete system in accordance with the standard specifications of the Mountain Regional Water Service District ("Mountain Regional").
- (2) It is anticipated that the installation of said waterlines will be completed within two years from the date hereof for the initial phase of construction and within two years from the date of approval of Construction Drawings for each subsequent phase of construction.
- (3) The Developer has agreed to construct and pay for culinary and fire protection waterlines to serve the Property, and to transfer maintenance and ownership of said waterlines and other water improvements to Mountain Regional after acceptance and approval of the improvements by Mountain Regional. The cost of all said waterlines and water improvements shall be borne as determined by Developer's Water Service Agreement with Mountain Regional and construction is guaranteed by the Developer pursuant to this Development Improvements Agreement.

3. Electric, Gas, Telephone and Cable TV Facilities.

- (1) At the request of the Developer, Utah Power shall engineer and provide for the installation of all electric distribution lines and facilities required for the Property, and Developer shall pay for such work in accordance with the established charges of Utah Power.
- (2) At the request of Developer, Questar Gas Company shall engineer and provide for the installation of all required gas lines and facilities required, and Developer shall pay for such work in accordance with the established charges of Questar Gas Company. Alternatively, Developer may choose

to allow each home site owner to install an individual propane storage tank and lines to serve their home.

- (3) At the request of Developer, Allwest shall engineer and provide for the installation of all required telephone lines and facilities and broadband and cable television lines and facilities, utilizing conduit installed by Developer, and Developer shall make any required payment for such work in accordance with the terms of its agreement with such service provider.
- (4) The installation of the electric, gas, telephone and cable television facilities is anticipated to be completed within two years from the date hereof for the initial phase of construction and within two years from the date of approval of Construction Drawings for each subsequent phase of construction.

4. **Storm Drainage Improvements.**

- (1) The Developer shall install any storm sewer lines and drainage facilities described in the Site Improvement Plan.
- (2) Developer anticipates completing the installation of said lines and facilities within two years from the date hereof for the initial phase of construction and within two years from the date of approval of Construction Drawings for each subsequent phase of construction.

5. **Trails.**

Initial improvement of the public multi-purpose trail through the Property (as designated in the Site Improvement Plan) will be made by the Developer who shall construct a graded gravel base trail suitable for equestrian use in accordance with the Development Agreement for the Project. Any further, future improvement and/or extension of the trail shall be made by the County at its sole discretion and expense. The trail shall be maintained by the Promontory Conservancy with an initial graded gravel base until such time the County elects to further improve or extend the trail to Highway 32 through parcels of adjacent land presently owned by third-parties, whereupon the County or applicable service district may accept maintenance thereof.

6. **Roads.**

Developer agrees to construct, at Developer's cost, all private roads and private road improvements listed on the Site Improvements Plan, in accordance with the Construction Drawings and the Site Improvements Plan. Developer anticipates completing the roads and road improvements and associated utilities within two years from the date Construction Drawings are approved for the phase. Developer agrees to install any traffic control signs and street name signs as required by the County (in either standard form or to specific standards approved by the County for Promontory prior to any installation) and to re-vegetate all cuts and fills resulting

from construction in a manner which will prevent erosion. The construction of such roads shall be subject to inspection and approval by the County Engineer and the cost of such inspection shall be paid by the Developer.

7. Landscaping and Weed Control.

Developer shall install roadway landscaping in accordance with the Site Improvements Plan, at Developer's expense within two years from the date hereof. The Developer agrees to comply with respect Summit County Ordinance 484 relative to control and elimination of all noxious species of plants as identified within the project boundaries. The Developer further agrees to coordinate with the Summit County weed department, prior to commencement of work, relative to inspections and importations of weed free project materials.

8. Road Cuts.

Developer acknowledges that the County has adopted a road cut ordinance, the provisions of which shall apply to the alteration of any County road necessitated by the installation of any utilities described in this Agreement.

9. Traffic Control.

During the construction of any utilities or improvements described herein, Developer shall be responsible for controlling and expediting the movement of vehicular and pedestrian traffic through and around all construction sites and activity. Such control shall be according to the latest version of the Manual on Uniform Traffic Control Devices.

10. Maintenance and Repair.

- (1) Developer shall repair or pay for any damage to any existing public improvements damaged during the construction of new improvements. The County shall notify Developer within a reasonable time after discovery of any claim hereunder, and Developer shall have a reasonable period of time within which to repair said damage.
- (2) Pursuant to the Declaration of Covenants, Conditions and Restrictions for the Promontory Conservancy, as amended and supplemented, as recorded in the office of the Recorder of Summit County, Utah, the Promontory Conservancy shall provide for the maintenance of any private roads and trails within the Property and the Developer shall be released from any obligation and liability to maintain such private roads or to be responsible for the cost of such maintenance upon acceptance of such roads and trails by the Conservancy and expiration of any applicable warranty period.

11. Financial Assurances.

To insure Developer's performance under this Agreement (except for the installation of the water lines and dry utilities described in Paragraph 2 above which are to be directly guaranteed, where applicable, with separate financial assurances from Developer), the Developer shall, prior to the commencement of construction of any improvements, provide the County with sufficient security, to ensure completion of the required improvements, in the amount of 120% of the cost of construction, determined in accordance with the contract unit prices reflected in the schedule in Exhibit B. The security shall be in the form of either: A) a Letter of Credit drawn upon a state or national bank. Said Letter of Credit shall: (1) be irrevocable, (2) be of a term sufficient to cover the completion and warranty periods according to the values required herein, and (3) require only that the County present the issuer with a signed draft and a certificate signed by an authorized representative of the County certifying to the County's right to draw funds under the Letter of Credit; or B) Establishment of an Escrow Account or Completion Bond with the guarantee that all improvements shall be installed within two years of the effective date of the account or bond or the account or bond will be called by the County to complete the improvements. Acceptable escrow agents shall be the Summit County Treasurer's Office, or banks or savings institutions which are federally insured. This two-year deadline may be extended by the County upon showing of sufficient cause, but no additional phase of the development shall be permitted during such an extension. As portions of the improvements are completed in accordance with this Development Improvements Agreement, County regulations, and the approved Site Improvements Plan, the Developer may make application to the County Engineer to reduce the amount of the original letter of credit, cash escrow or completion bond. If the Board of County Commissioners is satisfied that such portion of the improvements has been completed in accordance with County standards, they may cause the amount of the letter of credit, cash escrow or completion bond to be reduced by such amount that they deem appropriate, so that the remaining amount of the letter of credit, cash escrow or completion bond adequately insures the completion of the remaining improvements. Developer may, from time to time, substitute one form of security for another, or substitute sureties or letter of credit issuers, provided the same shall be reasonably acceptable to the County according to the standards set forth above.

12. Conditions of Approval.

Developer pledges to remain in compliance with all of the Conditions of Approval imposed by the Board of County Commissioners and included in the Development Agreement.

13. Default.

If Developer shall default in the performance of Developer's obligation hereunder and shall fail to cure such default within thirty (30) days after receipt of written notice from the County specifying the nature of such default (or if such default cannot be cured within the aforesaid period of time, if the Developer shall fail to promptly commence to cure the same and to thereafter diligently proceed with such cure), then the County shall be entitled to undertake such work as may be necessary and appropriate to cure such default and the County shall be reimbursed for the reasonable costs thereof either by payment of such costs to cure the default within 30 days of delivery of an invoice to Developer or by obtaining funds under the security.

14. Limitation of Liability.

No recourse shall be had for any obligation of or default by Developer under this Agreement or for any claim with respect to this Agreement against any partner or joint venturer of Developer or purchaser of lots within the Property or any other creditor or lender of Developer under any rule of law (including, without limitation, the rule of law that general partners and joint venturers are jointly and severally liable for the indebtedness of a partnership or joint venture, as applicable), contractual provision, statute or constitution or otherwise, it being understood that all such liabilities of the partners or joint ventures of Developer are to be, by the execution of this Agreement by the County, expressly waived and released as a condition of, and in consideration for, the execution and delivery of this Agreement. Nothing contained herein shall constitute a waiver of any obligation of Developer to the County under this Agreement or shall be taken to prevent recourse to or of the enforcement of any rights of the County as against the security posted by the Developer pursuant to this Development Improvements Agreement.

15. Amendment.

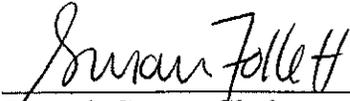
This Agreement, Exhibit A, Exhibit B, and Exhibit C hereto, and any County-approved Construction Drawings referred to herein, may only be amended by written instrument signed by the County and the Developer.

16. Binding Effect.

This Agreement and the covenants contained herein shall run with the land and shall be binding upon and shall inure to the benefit of the parties hereto and their successors, heirs and assigns of the property owners; provided that, except as provided in Paragraph 9(b) above, purchasers of residential lots within the Property or any homeowner's association that receives title to any portion of the Property shall not incur any liability hereunder and no person or entity, including any homeowner's association that receives title to any portion of the Property, may claim to be a third party beneficiary of the terms, conditions, or covenants of this Agreement. This Agreement shall be recorded in the Office of the Summit County Recorder and on file with the Department of Community Development. All existing lien holders shall be required to subordinate their liens to the covenants contained in this Development Improvements Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed the date and first year written above.

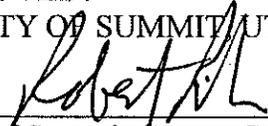
ATTEST:



Susan Follett
Summit County Clerk

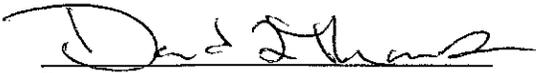
APPROVED:

COUNTY OF SUMMIT UTAH

By: 

Board of Summit County Commissioners
County Commission Chairman

APPROVED AS TO FORM:



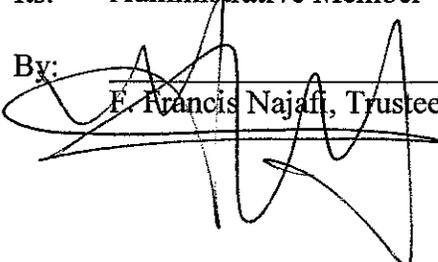
Dave Thomas,
Deputy County Attorney

ACCEPTED:

Pivotal Promontory Development, LLC, an Arizona limited liability company

By: Pivotal Group X, LLC, an Arizona limited liability company
Its: Administrative Member

By: F. Francis Najafi as Trustee of the F. Francis Najafi Family Trust
Its: Administrative Member

By: 

F. Francis Najafi, Trustee

Exhibit A**Promontory Ranches
Legal Description**

A parcel of land located in Section 7, Township 1 South, Range 5 East, Salt Lake Base and Meridian; and being more particularly described as follows:

AS SURVEYED LEGAL DESCRIPTION

Beginning at the southeast corner of Section 7, Township 1 South, Range 5 East, Salt Lake Base & Meridian, a found 5/8" rebar in a rock pile (accepted as the section corner by B & W Land Surveying certified survey file no. S-2200 on file and of record in the office of the Summit County Recorder), said point being the POINT OF BEGINNING; thence along the south line of said Section 7, S.89°00'11"W., a distance of 5,291.05 feet to the southwest corner of said Section 7, a found aluminum monument set by the Jack Johnson Company, certified survey file no. S-3682 on file and of record in the Office of the Summit County Recorder (basis of bearing being said south line of Section 7); thence along the west line of said section 7, N.00°05'47"W., a distance of 3,298.18 feet to the southerly line of the Rockport Ranches Subdivision "Section B", File no. 139313, on file and of record in the Office of the Summit County Recorder; thence along said south line, N.89°15'32"E., a distance of 5,235.27 feet to the east line of said Section 7; thence leaving the south line of said Rockport Ranches Subdivision and along the said east line of Section 7, S.01°04'01"E., a distance of 3,274.40 feet to the POINT OF BEGINNING.

Containing 397.05 acres, more or less.

Exhibit B

**Promontory Ranches
Site Improvements Plan**

PROMONTORY RANCHES BOND CALC SHEET					
Cost Code	Description	Contract Totals			
		Quantity	Unit Measure	Unit Price	Scheduled Value
PROMONTORY RANCHES - ROADWAY "A"					
DEDUCT ORIGINAL SCHEDULE OF VALUES					
Earthwork					
	Clearing and Grubbing	12.0	ac	\$ 1,027.00	\$ 12,324.00
	Erosion Control	7,600	lf	\$ 2.69	\$ 20,444.00
	Strip and Stockpile Topsoil - 12" depth	19,700	cy	\$ 1.76	\$ 34,672.00
	Site Excavation - Common, 1600 ft. average haul	27,350	cy	\$ 2.12	\$ 57,982.00
	6" Aggregate Base Course	6,100	tn	\$ 12.50	\$ 76,250.00
	Topsoil spreading	2,825	cy	\$ 3.33	\$ 9,407.25
	Revegetation	3.5	ac	\$ 2,210.00	\$ 7,735.00
Storm Drain					
	18" RCP Storm Drain	500		\$ 24.87	\$ 12,435.00
	Rip-rap, Machine placed	180		\$ 9.91	\$ 1,783.80
ORIGINAL CONSTRUCTION ESTIMATE					\$ 233,033.00
ORIGINAL BOND VALUE @ 120%					\$ 279,640.00
ADD REVISED CONSTRUCTION SCHEDULE OF VALUES					
Earthwork					
	Clearing and Grubbing	8.7	ac	\$ 1,027.00	\$ 8,934.90
	Erosion Control	7,250	lf	\$ 2.69	\$ 19,502.50
	Strip and Stockpile Topsoil - (6" avg.) w/ scrapers	13,970	cy	\$ 1.76	\$ 24,587.20
	Site Excavation w/ Scrapers - Common, 2200 ft. average haul	11,316	cy	\$ 2.12	\$ 23,989.92
	Stockpile Existing Gravel Placed on Roadway - Allowance	1	ls	\$ 20,000.00	\$ 20,000.00
	6" Aggregate Base Course	7,451	tn	\$ 12.50	\$ 93,142.36
	10" Select Sub-Base	12,369	tn	\$ 10.00	\$ 123,693.06
	GPS Road Finishing	1	ls	\$ 12,375.00	\$ 12,375.00
	4" Bituminous Surface Course	170,000	sf	\$ 0.95	\$ 161,500.00
	High survivability geotextile	25,000	sy	\$ 1.57	\$ 39,250.00
	Topsoil spreading - 6" depth	3,500	cy	\$ 3.33	\$ 11,655.00
	Revegetation	4.4	ac	\$ 2,210.00	\$ 9,724.00
Storm Drain					
	18" RCP Storm Drain	350	lf	\$ 24.87	\$ 8,704.50
	48" Storm Drain Manhole	4	ea	\$ 2,250.00	\$ 9,000.00
	Rip-rap, Machine placed	396	tn	\$ 9.91	\$ 3,924.36
EMERGENCY ACCESS ROAD					
Earthwork					
	Clearing and Grubbing	6.2	ac	\$ 1,027.00	\$ 6,367.40
	Erosion Control	5,000	lf	\$ 2.69	\$ 13,450.00
	Strip and Stockpile Topsoil - (6" avg.) w/ scrapers	5,001	cy	\$ 1.76	\$ 8,802.35
	Site Excavation w/ Scrapers - Common, 2200 ft. average haul	5,000	cy	\$ 2.12	\$ 10,600.00
	6" Aggregate Base Course	1,326	tn	\$ 12.50	\$ 16,575.00
	10" Select Sub-Base Course	2,201	tn	\$ 10.00	\$ 22,010.00
	4" Bituminous Surface Course	29,600	tn	\$ 0.95	\$ 28,120.00
	8" Aggregate Base - Fire Emergency Access Road (14' width)	4,269	tn	\$ 12.50	\$ 53,362.50
	6" Aggregate Base - Trail Parallel to Road "A" (8' wide)	2,569	tn	\$ 12.50	\$ 32,112.50
	GPS Road Finishing	1	ls	\$ 2,145.00	\$ 2,145.00
	High survivability geotextile	4,444	sy	\$ 1.57	\$ 6,977.78
	Topsoil spreading	3,150	cy	\$ 3.33	\$ 10,489.50
	Revegetation	4.0	ac	\$ 2,210.00	\$ 8,840.00
REVISED CONSTRUCTION ESTIMATE					\$ 789,835.00
REVISED BOND VALUE @ 120%					\$ 947,802.00
LESS PREVIOUS BOND VALUE					\$ (279,640.00)
BOND ENDORSEMENT VALUE DUE					\$ 668,162.00

Exhibit C

**Promontory Ranches
Construction Drawings**

Construction Drawings entitled Promontory, Promontory Ranches, submitted the 13th day of February, 2006 prepared for Pivotal Promontory Development L.L.C., 8758 N. Promontory Ranch Road, Park City, Utah, 84098, by Jack Johnson Company, 1777 Sun Peak Drive, Park City, Utah, 84098.

SURETY RIDER

To be attached to and form a part of Bond No. 104582543
executed by AMES CONSTRUCTION, INC., as
principal and by TRAVELERS CASUALTY AND SURETY COMAPNY OF AMERICA as Surety,
in favor of SUMMIT COUNTY, and effective
as of August 25, 2005

In consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to changing
the penalty of the bond

From: Two Hundred Seventy-Nine Thousand Six Hundred Thirty-Nine and 60/100*
(\$279,639.60)

To: Nine Hundred Forty-Seven Thousand Eight Hundred and no/100*****
(\$947,802.00)

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein
expressly stated. This rider is effective on the 27th day of February 2006.

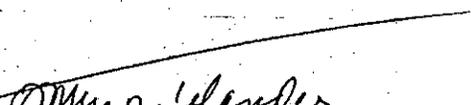
AMES CONSTRUCTION, INC.

Principal

By 
Raymond G. Ames, Vice President Title

TRAVELERS CASUALTY AND SURETY COMPANY
OF AMERICA

Surety

By 
Bruce N. Telander, Attorney-in-Fact

Accepted:


Obligee

By Dennis Proke

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
 TRAVELERS CASUALTY AND SURETY COMPANY
 FARMINGTON CASUALTY COMPANY
 Hartford, Connecticut 06183-9062

POWER OF ATTORNEY AND CERTIFICATE OF AUTHORITY OF ATTORNEY(S)-IN-FACT

KNOW ALL PERSONS BY THESE PRESENTS, THAT TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, corporations duly organized under the laws of the State of Connecticut, and having their principal offices in the City of Hartford, County of Hartford, State of Connecticut, (hereinafter the "Companies") hath made, constituted and appointed, and do by these presents make, constitute and appoint: Bruce N. Telander, Donald R. Olson, John E. Tauer, John P. Martinsen, Linda K. French, Mary L. Charles, R. Scott Egginton, R. W. Frank, Rachel Thomas, Nicole Olson, Joshua R. Loftis, of Minneapolis, Minnesota, their true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge, at any place within the United States, the following instrument(s): by his/her sole signature and act, any and all bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking and any and all consents incident thereto and to bind the Companies, thereby as fully and to the same extent as if the same were signed by the duly authorized officers of the Companies; and all the acts of said Attorney(s)-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following Standing Resolutions of said Companies, which Resolutions are now in full force and effect:

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her.

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary.

VOTED: That any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary, or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority.

This Power of Attorney and Certificate of Authority is signed and sealed by facsimile (mechanical or printed) under and by authority of the following Standing Resolution voted by the Boards of Directors of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, which Resolution is now in full force and effect:

VOTED: That the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.