Interviews for Summit County Recreation Arts and Parks Advisory Committee (RAP Tax Recreation Committee)

Council Conference Room #2, Coalville Courthouse

(3 vacancies; 3 applicants)

Wednesday, 3/27/13

4:10 PM Peter Tomai (phone interview 435-602-2737)

4:20 PM Alex Natt

4:30 PM Shana Overton

Interviews for North Summit Recreation Special Service District

Council Conference Room #2, Coalville Courthouse

(2 vacancies; 2 applicants)

Wednesday, 3/27/13

4:40 PM Virginia Richins

4:50 PM Marci Hansen

Vacancies are due to Jim Brooks and Riley Siddoway resigning

For Manager's Comments on March 27, 2013
Submitted by Don Sargent, Community Development Director:

Snyderville Basin

- The Planning Commission forwarded a recommendation that the General Plan should be advisory to the County Council on March 14th. Chapters 1-8 of Phase I of the General Plan is scheduled for continued review and a possible recommendation on March 26th.
- The Neighborhood Plans and regulatory language amendments to the Development Code is scheduled for continued review and discussion on April 9th.

Eastern Summit County

- The Code re-write sub-committee will be presenting an update discussion to the Planning Commission on call-up provisions and possible re-zone alternatives as well as other code amendments.
- The Planning Commission will also be discussing an update process for the General Plan to provide the policy direction for the Code re-write effort.

Department Administrative Items

- The department received 10 new building applications and 4 new planning applications this past week as follows:

New Building Applications
Submitted Mar 13, - Mar 20, 2013

Snyderville Basin

Project #	Project Name	Submittal Date
13-874	**Utah 7000 Cabins** Single Family Dwelling 8204 Western Sky, Promontory, UT	Mar 14, 13
13-875	**Clive Bridgwater** Single Family Dwelling 8459 N. Ranch Garden Rd, Park City, UT	Mar 14, 13
13-836	**Teeger Development** Townhomes - Units 1-6 8077 Courtyard Loop #1	Mar 14, 13
13-878	**Neering Engineering** Replace Boiler 3125 W Daybreaker Dr., Park City, UT	Mar 15, 13
13-879	**Bryan Baggaley** Single Family Dwelling 710 Aspen Dr., Park City, UT	Mar 18, 13
13-880	**R. Karz** Photovoltaic 143 W Mountain Top Dr., Park City, UT	Mar 18, 13

Eastern Summit County

13-877	**Douglas Jones** Accesslor Dwelling / Barn 3498 S. Echo Frontage Rd., Echo, UT	Mar 15, 13
13-881	**Peoa Pine Water** Photovoltaic 5350 N. Woodenshoe Ln., Peoa, UT	Mar 18, 13
13-882	**Blue Sky Ranch, LLC** Distillery 27649 Old Lincoln Hwy., Wanship, UT	Mar 20, 13
13-883	**Blue Sky Ranch, LLC** Resturant 27649 Old Lincoln Hwy., Wanship, UT	Mar 20, 13

New Planning Applications
Submitted Mar 13-Mar 20, 2013

Snyderville Basin

Project #	Project Name	Submittal Date	Planner
13-526	**Anderson Variance** Robert Anderson BOA 4643 Balsam Drive Tl-1-6	Mar 13, 13	Kimber
13-527	**Park City Fire / Canyons** Brainne Kelsey Plat Amendment 4000 W. Canyons Resort Drive	Mar 13, 13	Tiffanie
13	**Round Valley Annexation**	Mar 15, 13	Kimber
13-528	**Glenwild Plat Amendment** Robert J McMahon Plat Amendment	Mar 18, 13	Sean

Don B Sargent, AICP | Director | Community Development

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MINUTES

SUMMIT COUNTY

BOARD OF COUNTY COUNCIL
WEDNESDAY, FEBRUARY 20, 2013
COUNCIL CHAMBERS
COALVILLE, UTAH

PRESENT:

Claudia McMullin, *Council Chair*
Chris Robinson, *Council Vice Chair*
Roger Armstrong, *Council Member*
Kim Carson, *Council Member*
David Ure, *Council Member*

Robert Jasper, *Manager*
Anita Lewis, *Assistant Manager*
Dave Thomas, *Deputy Attorney*
Kent Jones, *Clerk*
Karen McLaws, *Secretary*

WORK SESSION

Chair McMullin called the work session to order at 2:55 p.m.

- **Update from Rocky Mountain Power; Chad Ambrose, Customer & Community Manager**

Chad Ambrose with Rocky Mountain Power provided an update of what Rocky Mountain Power did in Summit County in 2012. He explained that their goal is to provide reliable, safe electricity to the customers in Summit County and to be involved in the community. He reviewed the sponsorships provided by Rocky Mountain Power to communities and the County and noted that they also support Arbor Day activities in the community. He explained that the Rocky Mountain Power Foundation provides grant support to non-profit organizations in the County. He stated that Blue Sky will issue a grant of up to $217,000 toward the 40 kilowatt photovoltaic solar facility at the Summit County Health Building, with the goal of completing that project by December 31. He explained that the project is funded by people who pay a little more on their power bill each month to support clean energy. Mr. Ambrose explained that any time there is a significant power outage, he will be in touch with the Council Members by text message. He explained that Rocky Mountain Power provides financial incentives for customers to be energy efficient, and the County has done a number of projects that have allowed it to take advantage of those incentives through wattsmart.com.

- **Presentation by Utah Division of Wildlife Resources of a payment in lieu of taxes; Justin Dolling, Northern Region Wildlife Supervisor**

Justin Dolling with the Utah Division of Wildlife Resources presented a payment in lieu of taxes on the 12,000 acres of resources it owns and manages in Summit County in the amount of $6,184.97. He explained that the revenue for this payment comes from the sale of hunting and fishing licenses. He reviewed a wildlife fact sheet for Summit County.

- **Discussion regarding Interlocal Cooperation Agreement between Uinta County, Wyoming, and Summit County, Utah; Dave Thomas, Chief Civil Attorney**

Deputy County Attorney Dave Thomas reviewed the difference between the agreement presented to the Council and the one provided by Uinta County, Wyoming. Carl Larson with the Uinta County Citizens Coalition stated that their County Attorney does not want the indemnification clause and the reference to mutual defense. He also noted that in the third recital, Uinta County referred to the National Forest located in Summit County, Utah, and Uinta County, Wyoming. That was changed by Summit County to read the Uinta-Wasatch-Cache National Forest. Uinta County has changed that wording to say within the part of the Uinta-Wasatch-Cache National Forest located in Summit County, Utah, and Uinta County, Wyoming. He explained that they want to make it clear that the money from the State of Wyoming and the Forest Service will be spent only in those specific areas of the forest.

After further discussion about the items which had been added to the agreement, the Council Members agreed to accept the agreement as proposed by Uinta County.

- **Update regarding legislative issues**

Chair McMullin reported that she is supportive of the change to SB 66 regarding petitions to require 30% from each precinct. Mr. Jasper stated that Representative Mel Brown has shown some willingness to compromise a little on his bill to make it more difficult to obtain signatures. He explained that a bill to address the timing of petitions has not come out yet. Council Member Armstrong explained that, even if they move the timing up, there would not be sufficient time to put it on the ballot in the same year the petition is circulated. County Clerk Kent Jones confirmed that is true, and because of the State-mandated date that tax valuation notices must be mailed, making the amount of time to circulate a petition shorter would still not allow sufficient time to get the issue on the November ballot that same year. The Council Members discussed changes in legislation that would have to occur in order to get a referendum on the ballot in the same year. Council Member Robinson suggested that they focus on the bigger issue and be sure a high enough percentage of voters must sign the petition and that they must be impacted both in order to sign the petition and to vote on the referendum that results from the petition.

Council Member Carson explained that they will meet tomorrow to discuss the local option gas tax proposal. She stated that when she learns what is proposed, she will e-mail it to the Council Members. She noted that the prison relocation and development amendment is being fast tracked and provides for a property tax increment to be paid to the prison land management authority that would be created by the bill, but she does not have details about the tax increment yet. She reported that HB 207 changes the noticing requirements for the Open Public Meetings Act to not less than 72 hours. Another bill that has just come out regarding the availability of government information would require the posting of both pending and approved minutes.

- **Interview applicants for vacancies on the Snyderville Basin Planning Commission**

The Council Members interviewed Bruce Taylor and Beatrice Peck for one vacancy on the Snyderville Basin Planning Commission. Questions included the importance of continuity on the Planning Commission, hurdles to getting the General Plan approved, reconciling their views

on growth to the Council's goal of promoting economic development, whether they agree with the two-phase approach to the General Plan, whether they are more likely to consider the use or the impact of an application, the strengths they would bring to the Planning Commission, challenges facing the Planning Commission, and any conflicts of interest.

CLOSED SESSION

Council Member Robinson made a motion to convene in closed session for the purpose of discussing personnel. The motion was seconded by Council Member Ure and passed unanimously, 5 to 0.

The Summit County Council met in closed session from 4:20 p.m. to 5:05 p.m. for the purpose of discussing personnel. Those in attendance were:

Claudia McMullin, *Council Chair*
Chris Robinson, *Council Vice Chair*
Roger Armstrong, *Council Member*
Kim Carson, *Council Member*
David Ure, *Council Member*

Council Member Ure made a motion to dismiss from closed session and to convene in regular session. The motion was seconded by Council Member Armstrong and passed unanimously, 5 to 0.

REGULAR MEETING

Chair McMullin called the regular meeting to order at 5:05 p.m.

- **Pledge of Allegiance**

POSSIBLE APPROVAL OF INTERLOCAL COOPERATION AGREEMENT BETWEEN UINTA COUNTY, WYOMING, AND SUMMIT COUNTY, UTAH; DAVE THOMAS, CHIEF CIVIL ATTORNEY

Council Member Robinson made a motion to approve the Interlocal Cooperation Agreement between Uinta County, Wyoming, and Summit County, Utah, and to authorize the Chair to sign. The motion was seconded by Council Member Carson and passed unanimously, 3 to 0. Council Members Armstrong and Ure were not present for the vote.

APPOINT MEMBER TO THE TIMBERLINE SPECIAL SERVICE DISTRICT

Council Member Carson made a motion to reappoint Peter Ingle to the Timberline Special Service District Board, with his term to expire December 31, 2016. The motion was seconded by Council Member Armstrong and passed unanimously, 5 to 0.

APPOINT MEMBERS TO THE NORTH SUMMIT FIRE SERVICE DISTRICT

Council Member Armstrong made a motion to reappoint Melvin Richins and Gale Pace to the North Summit Fire District, with their terms to expire December 31, 2016. The motion was seconded by Council Member Robinson and passed unanimously, 5 to 0.

Council Member Robinson made a motion to appoint Marci Hansen to the North Summit Fire District, with her term to expire December 31, 2016. The motion was seconded by Council Member Carson and passed unanimously, 5 to 0.

APPOINT MEMBER TO THE BOARD OF TRUSTEES OF THE SUMMIT COUNTY SERVICE AREA NO. 5 (LAKE ROCKPORT ESTATES)

Council Member Robinson made motion to reappoint Alan Lindsley to the Service Area No. 5 Board of Trustees, with his term to expire December 31, 2016. The motion was seconded by Council Member Armstrong and passed unanimously, 5 to 0.

ADVICE AND CONSENT OF COUNTY MANAGER'S RECOMMENDATION TO APPOINT MEMBERS TO FILL VACANCIES ON THE BOARD OF HEALTH

Council Member Ure made a motion to consent to the County Manager's recommendation to appoint Liza Simpson and Jonelle Fitzgerald to the Summit County Board of Health, with their terms to expire December 31, 2015. The motion was seconded by Council Member Carson and passed unanimously.

POSSIBLE APPROVAL OF ORDINANCE #794, AMENDING TITLE 3, CHAPTER 3C, OF THE SUMMIT COUNTY CODE, SALES AND USE TAX; DAVE THOMAS, CHIEF CIVIL ATTORNEY

Mr. Thomas explained that the purpose of the amendment is to bring County Code into conformance with State statute. This applies only to the County's sales and use tax only in unincorporated Summit County, not in the municipalities.

Council Member Ure made a motion to approve Ordinance #794 amending Title 3, Chapter 3C, of the Summit County Code, Sales and Use Tax, with the correction of a typographical error pointed out by Council Member Armstrong. The motion was seconded by Council Member Carson and passed unanimously, 5 to 0.

POSSIBLE APPROVAL OF ORDINANCE #795, AMENDING TITLE 3, CHAPTER 3C, OF THE SUMMIT COUNTY CODE, FUNDING RECREATIONAL AND ZOOLOGICAL FACILITIES TAX; DAVE THOMAS, CHIEF CIVIL ATTORNEY

Council Member Robinson made a motion to approve Ordinance #795 amending Title 3, Chapter 3C, of the Summit County Code, Funding Recreational and Zoological Facilities Tax. The motion was seconded by Council Member Carson and passed unanimously, 5 to 0.

POSSIBLE APPROVAL OF ORDINANCE #796, AMENDING TITLE 3, CHAPTER 3D, OF THE SUMMIT COUNTY CODE, OPTIONAL COUNTY SALES AND USE TAX; DAVE THOMAS, CHIEF CIVIL ATTORNEY

Council Member Robinson made a motion to approve Ordinance #796 amending Title 3, Chapter 3D, of the Summit County Code, Optional County Sales and Use Tax. The motion was seconded by Council Member Carson and passed unanimously, 5 to 0.

POSSIBLE APPROVAL OF ORDINANCE #797, AMENDING TITLE 3, CHAPTER 3E, OF THE SUMMIT COUNTY CODE, SNYDERVILLE BASIN PUBLIC TRANSIT DISTRICT TAX; DAVE THOMAS, CHIEF CIVIL ATTORNEY

Mr. Thomas recalled that this tax increased based on State statute from .25% to .3% five or six years ago, but a corresponding change was not made in the County Code. This amendment will correct that and put in the Code the amount of tax the County currently collects.

Council Member Carson made a motion to approve Ordinance #797 amending Title 3, Chapter 3E, of the Summit County Code, Snyderville Basin Public Transit District Tax. The motion was seconded by Council Member Ure and passed unanimously, 5 to 0.

POSSIBLE APPROVAL OF UTAH RETIREMENT SYSTEMS (URS) RATES; BRIAN BELLAMY, PERSONNEL DIRECTOR

Personnel Director Brian Bellamy provided the rates for 2011-2012, 2012-2013, and proposed rates for 2013-2014.

Council Member Robinson asked if any of the contributions are discretionary on the part of the County. Mr. Bellamy replied that Public Safety Post Retired is being paid at 11.19%, but for those hired prior to July 1, 2011, the County is not required to contribute anything. For those hired after July 1, 2011, the County is mandated to contribute 8.15%. In 2010 the Council chose to pay the post-retirees 11.19%. The other discretionary item is Tier 1Public Safety Contributory. The County could actually charge the employees 12.29%, which would make the County's portion 19.08%. He explained that the County has nine employees left in the Public Safety Contributory system, and there were about 18 in that system when it first came up. Council Member Robinson asked if the County should continue to do what it is doing and what the rationale would be for doing so. Mr. Bellamy recalled that the rationale was that this is about what the other employees were getting, and they felt that, in order to be fair to public safety retirement employees, they should get the same. However, that was before the State changed the retirement system. He recommended that they stay with what they have been doing until they see what the legislature decides and then address it with some of the officers who are involved for the 2013-2014 year.

Council Member Robinson made a motion to approve the Utah Retirement System (URS) rates as proposed. The motion was seconded by Council Member Armstrong and passed unanimously, 5 to 0.

APPROVAL OF COUNCIL MINUTES
DECEMBER 12, 2012
DECEMBER 19, 2012
JANUARY 7, 2013
JANUARY 9, 2013

Council Member Ure made a motion to approve the minutes of the January 9, 2013, County Council meeting as written. The motion was seconded by Council Member Carson and passed unanimously, 5 to 0.

Council Member Ure made a motion to approve the minutes of the January 7, 2013, County Council meeting as written. The motion was seconded by Council Member Carson and passed unanimously, 5 to 0.

Council Member Robinson referred to page 8 of the December 19, 2012, County Council minutes, fifth line under the public hearing regarding the open space purchase and exchange agreement. He clarified that the promissory note was $4.1 million, and if it is paid timely, there will be a 10% discount that will bring the amount down to $3.49 million. He requested that the wording be changed to read "$3.49 million net."

Council Member Robinson made a motion to approve the minutes of the December 19, 2012, County Council meeting as amended showing a net amount of $3.49 million. The motion was seconded by Council Member Ure and passed unanimously, 3 to 0. Council Members Armstrong and Carson abstained from the vote, as they were not on the Council on December 19.

Council Member Robinson made a motion to approve the minutes of the December 12, 2012, County Council meeting as written. The motion was seconded by Council Member Ure and passed unanimously, 3 to 0. Council Members Armstrong and Carson abstained from the vote, as they were not on the Council on December 12.

WORK SESSION – (Continued)

- **Discussion regarding Silver Creek Unit I, rezone to Community Commercial, eastern portion of plat; Kimber Gabryszak, County Planner**

County Planner Kimber Gabryszak presented the staff report and explained that this item relates to a potential rezone of Unit I in Silver Creek. She confirmed for Council Member Robinson that the unused portion of the UDOT right-of-way is not part of the rezone proposal. She provide a map showing the current zoning in Plat I, with the majority being zoned Rural Residential (RR) and one small area being zoned Neighborhood Commercial (NC). She explained that when Plat I was recorded, it included a list of uses, with various blocks in the plat being identified for particular uses. Those uses were further clarified through recorded CC&Rs, and for many years, the County used those CC&Rs to determine zoning in Plat I. The plat was recorded in 1965, prior to County zoning, which began in 1977. In 2011, a property owner applied for an opinion from the Utah Property Rights Ombudsman to clarify what the County could implement and control on the plat. It was the Ombudsman's opinion that the County could not implement the CC&Rs and could only implement County zoning. The County then sent a

letter to the property owners explaining that from this point forward, the County would apply only the RR Zone in Unit I. Since then, there have been several vested rights determination requests for Plat I, and it was determined that, if someone had moved forward with development on their property under the previous interpretations, they could move forward with their commercial development. However, that has resulted in the potential for leapfrog development. A property owner applied for a rezone of two parcels in the middle of Plat I to Community Commercial (CC). When the Planning Department received that application, they felt that for long-range planning purposes and consistency, it would make sense to move forward with a comprehensive rezone. Staff took a proposed potential rezone to the Snyderville Basin Planning Commission looking at Plat I comprehensively. Planner Gabryszak indicated the development currently on the ground in Plat I and explained that, based on a number of concerns, the Planning Commission recommended that the Plat I rezone be isolated to the area east of Silver Creek Road. Staff looked at what zoning would be most compatible with the existing commercial uses on the east side of Silver Creek Road and determined that it would be the CC Zone. She reviewed floodplain and high water table issues on the property west of Silver Creek Road and explained that most of those parcels are under common ownership. The Planning Commission suggested that they get the property owners on the west side of Plat I look at a separate master plan for the area. The Planning Commission also questioned whether CC is the appropriate zone or whether it should be changed to NC. Staff found that several of the existing commercial uses in Unit I would be nonconforming if the zoning were changed to NC, and they still recommend a rezone to CC to bring existing uses into conformity. Planning Commission concerns had to do with some of the larger uses allowed in the CC Zone. That issue played a part in the Planning Commission's tie vote on a recommendation to the County Council, which means no recommendation has been forwarded to the County Council.

Council Member Robinson asked about the legal effect of a pre-1977 plat, prior to County zoning, with uses on the plat that are expanded in the CC&Rs. He asked if that creates a contract between owners in the plat and the County to uphold that zoning. Mr. Thomas replied that the County has adopted the Ombudsman's position. Council Member Robinson asked if the letter the County sent to the property owners had the force of notice in the event the parties want to challenge the determination. Mr. Thomas explained that it was not a final decision under the County Code. The property owner would be required to file for a vested rights determination on their property. Council Member Robinson verified with Mr. Thomas that several vested rights determinations were filed after the Ombudsman's opinion and asked who would make the final determination on the vested rights application. Mr. Thomas replied that they would ultimately come to the County Council. He believed in most cases people have taken estoppel arguments to the Ombudsman's Office. Council Member Robinson encouraged Staff to have property owners in Plat I come through the vested rights process so the Council can make a determination and stated that he did not believe the County is governed by the Ombudsman's decisions. He requested that Staff provide copies of any Ombudsman opinion letters and other applications that came after the date of the original Ombudsman's opinion. He believed people could make an estoppel argument if they actually relied on a past practice of the County, but he did not believe the County should just accept that opinion. He agreed with the Ombudsman's opinion that the County should no longer accept plat notes for zoning purposes. He stated that he would prefer to zone Plat I NC, regardless of whether some uses might be nonconforming.

Council Member Carson asked if there would be a way for uses that are nonconforming under the NC zone to be approved without any issues going forward. Planner Gabryszak explained that nonconforming businesses would be allowed to continue, but in the Snyderville Basin there is no possibility of expanding a nonconforming use. Council Member Carson expressed concern that, if the zoning were CC, more intense uses might come in.

Council Member Robinson expressed concern about creating a precedent when they do not know what the whole area will look like. While it may be a hardship on some existing uses, he did not believe the impact would be so significant that he would want to risk zoning the area CC.

Chair McMullin stated that she is less troubled by CC zoning and does not like to create legal nonconforming uses that cannot be expanded under the Code.

Council Member Carson agreed with the idea of splitting the east and west sides of Plat I when it comes to zoning. Chair McMullin agreed and noted that on the east side they can zone for what actually exists, but on the west side, nothing currently exists, and there is not a need to zone it right now. She did not believe zoning the east side of Plat I would set a precedent for the west side, which is currently zoned RR. She asked if they could zone the area CC and exclude certain uses. Mr. Thomas replied that could be done with a development agreement, but not for the zone district.

Council Member Robinson stated that he would prefer that owners go through a vested rights determination or special exception if they want to expand their business and leave Plat I status quo until they can determine what to do with the entire area.

Mr. Jasper asked what Staff thinks about sewer or septic systems in Plat I. Planner Gabryszak replied that, if it turns out that a septic system or alternative system would not work, anyone who might want to develop in that portion of the plat would have to find a way to connect to the sewer system. However, there are alternative systems that could make it possible for each lot to have its own alternative system. The Health Department is concerned about the effect on the water system of multiple septic failures, because a number of septic systems in the area have failed. Mr. Jasper stated that he would not want to see Plat I master planned until they can find solutions to the sewage concerns.

PUBLIC INPUT

Chair McMullin opened the public input.

Jim Conway stated that he has lived in Silver Creek since 1976. He recalled that in the fall of 2010 they held an election, because they were having trouble working with the County to find out what they could do with building in Unit I. More than 80% of the owners in Unit I showed up and organized an architectural committee to try to determine what is allowed and what is not in Unit I. They also included two propositions, one of which asked that they be treated the same as the five other off ramps in the Snyderville Basin. He stated that Silver Creek was the first commercial development in the Snyderville Basin, but now they have nothing. He would not mind having a big box store or other large commercial development, because it would enhance things and take some of the pressure off of Kimball Junction. He stated that they are the last one on the totem pole, yet they were the first commercial area. He believed 90% of Unit I is in

estoppel. He believed they should be CC, not NC, because half of what currently exists is nonconforming, and they should be given what they have deserved since 1965. He believed the zoning should be CC for everyone. He stated that the one large parcel was originally intended to be a big anchor store, and he asked why they cannot have what all the other off ramps have.

Jamie Carey stated that he owns one of the two residential homes in Unit I, and both owners are interested in changing them to commercial uses. He believed everyone who purchased property in Unit I depended on what was in the CC&Rs. He expressed concern that the home he owns and wants to use as his office would not be allowed if Unit I were zoned NC. He did not believe there should be any concerns about big box uses, because the lots are .75 to 1 acre. He believed CC would be more appropriate than NC zoning.

MANAGER COMMENTS

Mr. Jasper reported that he has hired a new landfill supervisor, and they are working on cash controls. Chair McMullin requested that the new landfill supervisor attend Recycle Utah meetings.

Mr. Jasper stated that he will request a transfer from the contingency fund to the justice court, as someone left who had 700 hours of accrued sick leave. Chair McMullin requested that they have a work session to discuss whether sick leave should accrue. She did not believe someone should accrue a massive number of hours and get paid just because they are not sick.

Mr. Jasper reported that they will use the animal control officers to provide education at the trailheads. He also noted that Public Works did not fill the emergency manager position, and Director Kevin Callahan has a lot of work to do to pick up those responsibilities.

COUNCIL COMMENTS

Chair McMullin requested that the Council Members let Administration Office Manager Annette Singleton know when they will be unable to attend meetings so they can adjust agendas accordingly.

Chair McMullin recalled that in the fall of 2012, the Council created a subcommittee of Council Member Ure and herself to work with the Boyer representatives to review the development agreement and see if they could make it easier to apply. Today they discussed being more interested in the impact the use creates than the actual type of use. After today's discussion, she believes they will see a revision of the development agreement uses to establish the impact of the use. She stated that the subcommittee would look at it one more time, and then it will be processed through the Planning Commission after the Council has had a chance to look at it.

Council Member Armstrong commented that his understanding of the approval was that the research park development was intended to attract high-tech jobs, high paying jobs with lower intensity impacts. Chair McMullin explained that it was patterned after the research park at the University of Utah, but the difference is that Salt Lake City has no jurisdiction over who goes into the research park. It governs itself. Because of the development agreement, Summit County finds itself in the position of being the tenant police when the intent was to regulate the impact on the community by the types of uses in the research park. She explained that this a policy

decision for the Council to discuss. Council Member Ure explained that the uses in the research park in Salt Lake have changed quite a bit in the last few years. The issue is how to develop for a 20-year period with economics changing the way they are. Chair McMullin noted that the County is in a 20-year relationship with The Boyer Company, and they cannot police each use as applications come in. She explained that the subcommittee was tasked with making the process smoother and not haggling over every application for the next 20 years. This development agreement does not have the flexibility to adjust to conditions over the next 20 years, and they can change that by amending the development agreement now.

Council Member Carson verified with Chair McMullin that the goal would still be to attract high-paying jobs with low impact. Council Member Armstrong stated that he could think of a number of low-impact businesses that do not fit within what the research park was intended to be. He noted that this is already a controversial facility, and if they look at impacts only, they would be moving away from the research park that was originally proposed. He expressed concern that The Boyer Company came in and sold the community on the idea of a tech park, and he believed they should use caution in allowing that to be recharacterized as something else. It was designed for a specific purpose, which is how they got in the door, and if they do not do that, it opens the door for people to come in with all kinds of promises about developments they want to build and later say it is not working well for them and asking to do something else. Chair McMullin explained that happens all the time with development. They can be the police and fight every building for the next 20 years, or they can work with a partner to attract the types of jobs they want to attract.

Council Member Robinson agreed that they need to be careful about how they change the development agreement and go through a rigorous public process so the people who thought they were sold one thing can let the Council know if it makes a big difference to them. Council Member Ure agreed that it needs to be a very open public process and a teaching process.

The Council Members agreed to cancel the April 24 County Council meeting.

The Council Members discussed the strategic plan and their objectives. Mr. Jasper stated that he would put that item on an upcoming agenda for discussion in work session.

Council Member Ure asked if a Conditional Use Permit (CUP) runs with the land and whether there is a time limit on CUPs. He clarified that he is specifically referring to the Beehive Home. Mr. Thomas replied that a CUP runs with the land.

Council Member Ure commented that Comcast and Beehive Wireless do not fit under the utilities requirements to bury their wires to a certain depth. He stated that in some places they are skimming by, and when someone tills up their soil, it digs up the lines. He believed the County should set a standard for how deep to bury the lines. Mr. Thomas explained that he will be talking to the Council about franchising in the next week or two, because over time, the County has franchised its right-of-way but does not have a detailed ordinance to address franchises. There are specific requirements in Federal law for cable TV, but there are other things the County can do, such as specify the depth of the cable, and make them applicable every time they enter into a franchise agreement.

Chair McMullin explained that they have decided that the Planning Commissioners in the Snyderville Basin who live in the municipality do not have to sit in the back of the room. They can sit at the table and converse on legislative matters, but they cannot vote until the Code is changed on March 13.

Council Member Ure reported that he attended the COG meeting on February 19, and they extended the deadline for the Corridor Preservation Fund requests for 30 days. He explained that they want a discussion in the next 60 days about whether to keep the tax in place since the State of Utah did not fulfill its end of the bargain by providing matching funds. He also requested a closed session to discuss personnel regarding some items that came up today.

The County Council meeting adjourned at 7:15 p.m.

Council Chair, Claudia McMullin	***County Clerk,*** Kent Jones

To the Council: March 13, 2013

Response to: Hayden Williams request for abatement 2012 taxes due (IC-40)

Gentlepersons:

In 1997 Charles Williams applied for and received the primary exemption which remained in force until a transfer of title to a Hayden Williams as of 9/9/2011.

As is standard procedure, this office sent out a renewal notice to the new owner of record to the new address on the recorded deed (2456 Iron Mountain Road PC, 84060, upper left corner of the deed)

No response to any of the three letters typically sent and the primary residency exemption was removed.

No appeal at the 2012 Board of Equalization, nor mention when the tax bill was sent in November.

Through no fault of the County, the address that was on the deed was the street address and not the mailing address.

The property was returned to primary (for 2013) after Ms. Williams filed a new application and corrected the address on file in March of 2013.

Since it is in a prior year it is an abatement not a revaluation and is submitted to the Council as such.

The abatement requested amounts to $4984.57 in tax, 276.92 in penalty and 156.74 +/- in interest on the unpaid amount, a grand total of $5,418.23 + accrued interest.

Conclusion and recommendation:

Understanding that the title companies often put the property address on the deeds and not the mailing address and that the new owners cannot be notified of changes until the owners correct the addressing, it would be this offices recommendation to continue to deny requests when the error is not the fault of the County.

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WWW.JONESWALDO.COM

AFFILIATED FIRM
LEAR & LEAR LLP

March 12, 2013

Via Email and Letter

Annette Singleton
60 North Main
PO Box 128
Coalville, UT 84017

Dear Annette,

Thank you for taking the time to speak with us. Per your request I attach a statement of events incident to this matter.

As you might be aware this email In regards to the abatement of taxes for the year 2012 requested by our client Hayden Williams. The relevant events are as follows:

1. Hayden and Charles P. Williams resided in the home located at 2456 Iron Mountain Drive, Park City, Utah as a married couple since approximately 1996. The parties started designing the house in 1993 and it took 3 years to build.
2. They were married January 30, 1982 and resided in Tulsa, Oklahoma until 1992 when they moved to Park City.
3. Between 1992 and the occupancy of the Iron Mountain Drive home, they rented.
4. The parties commenced a divorce proceeding about 3-16-07 and the divorce was final 9-25-08.
5. In the divorce Hayden was awarded the home on Iron Mountain Drive.
6. However, a deed was not prepared conveying the home until August of 2011. A copy of the deed is attached.
7. The address noted for return when recorded is: Hayden H. Williams at 2456 Iron Mountain Drive.
8. Prior to that time the parties received all mail at PO Box 682408, Park City, UT 84068.
9. Apparently the Primary Residence Statement requiring Hayden to declare the Iron Mountain home her primary residence was sent to the home address and not received.
10. Hayden does not receive mail at the address but continued to receive mail at the PO Box. Presumably the notice was returned to the assessor.
11. When Hayden became aware that the taxes had not been paid and that the Primary Residence Statement had not been completed or filed she contacted us.
12. I spoke with the County Assessor who was very understanding but recommended that we bring this matter to the Council.

13. I understand that the Primary Home Statement has been made and accepted for the year 2013 and forward.
14. The tax year for which we request consideration is 2012.

We understand the circumstances that the Assessor finds himself in. I believe he and the county understand the predicament Hayden finds herself in. The fact is that the Iron Mountain residence has been the primary residence of the Williams family before the divorce and, after the divorce and was awarded to Hayden, her primary residence. She has no other residence and continues to live in the home she designed and built in the early 1990s.

We would ask for consideration of an abatement in view of these facts. We ask for an abatement because the purpose of the filings is to declare the home to be primary residence. The failure to file the form does not change the fact that the home was and continues to be the primary residence and therefore, in substance, the home continues to be her primary residence.

Yours Truly,

Ken Okazaki

Enclosures
cc: Hayden Williams

00930018 B: 2095 P: 0066
Page 1 of 1
Alan Spriggs, Summit County Utah Recorder
09/09/2011 02:21:09 PM Fee $10.00
By Coalition Title Agency, Inc.
Electronically Recorded

When Recorded, Return to:

Hayden H. Williams
2456 Iron Mountain Drive
Park City, UT 84060

QUIT CLAIM DEED

FOR VALUE RECEIVED, Charles P. Williams Jr., Trustee of the Charles P. Williams Jr. Revocable Trust dated March 27, 1996, Grantor, does hereby Quit Claim to Hayden H. Williams, an individual, whose current address is 2456 Iron Mountain Drive, Park City, Utah 84060, Grantee, all of Grantor's right, title and interest in and to that certain real property situated in Summit County, State of Utah, and more particularly described as follows:

Lot 40, Iron Canyon Subdivision, according to the official plat thereof on file and of record in Summit County, State of Utah.

Tax ID No. IC-40

IN WITNESS WHEREOF, Grantor has caused his name to be hereunder subscribed as of this 30th day of August, ~~2010.~~ 2011

Charles P. Williams Jr. TTE
Charles P. Williams Jr., Trustee of the Charles P. Williams Revocable Trust dated March 27, 1996

STATE OF UTAH)
: ss.
COUNTY OF ~~SALT LAKE~~ Summit)

The foregoing instrument was acknowledged before me this 30th day of August, 2011 ~~2010,~~ by Charles P. Williams Jr., Trustee of the Charles P. Williams Revocable Trust dated March 27, 1996.

TIFFANY RETTIE
Notary Public
State of Utah
My Commission Expires Mar. 18, 2013
Commission #578221

NOTARY PUBLIC
Residing at: PARK CITY, UTAH

My Commission Expires: MAR 18 2013

THIS IS AN ACCOMMODATION RECORDING ONLY

SUMMIT COUNTY TREASURER
CORRIE KIRKLEN
P.O. Box 128
Coalville, UT 84017-0128
www.summitcounty.org/treasurer
(435) 336-3267 * (435) 615-3267 * (435) 783-4351 x3267

2011 TAX NOTICE DUE NOV. 30TH

The penalty for 2011 delinquent taxes is the greater of 2.5% or $10 for each parcel. The penalty will be reduced to the greater of 1% or $10 if all 2011 delinquent taxes and the 1% penalty are paid on or before January 31, 2012. Interest will be charged after January 31, 2012, effective January 1, 2012. Payment must be postmarked by November 30, 2011.

YOUR TAXES MAY BE PAID BY THE FOLLOWING MORTGAGE COMPANY

ACCOUNT NUMBER	PARCEL NUMBER	ACRES	DISTRICT
0229348	IC-40	0.72	07

PARTIAL LEGAL DESCRIPTION FOR TAX IDENTIFICATION ONLY

LOT 40 IRON CANYON SUBDIVISION; ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE SUMMIT COUNTY RECORDER CONT 0.7247 AC (COMMON AREA IS NOW BEING ASSESSED UNDER IC-MISC) 541-362 656-44 760-373 190-683-685 1091-146 1487-1233-125

2456 IRON MOUNTAIN DR

MAIL TO

0229348 IC-40 PDF
WILLIAMS HAYDEN H
2456 IRON MOUNTAIN DR
PARK CITY, UT 84060-

PROPERTY CLASSIFICATION	MARKET VALUE	TAXABLE VALUE
PrimaryLand	$445,500	$245,025
PrimaryBuilding	$721,998	$397,099
TOTALS	$1,167,498	$642,124

TAX LEVIED BY	TAX RATE	AMOUNT
PARK CITY A,J,K,U	0.002236	$1,435.79
SUMMIT COUNTY	0.000924	$593.31
MULTI COUNTY A & C	0.000172	$110.45
LOCAL ASSESS/COLLECT	0.000069	$44.31
WEBER BASIN	0.000217	$139.34
PC FIRE	0.001161	$745.51
MOSQUITO ABATEMENT	0.000040	$25.68
PC SCH DIST	0.002814	$1,806.94
UNIFORM SCHOOL FUND	0.001591	$1,021.62
District Tax Rate: 0.009224		
CURRENT YEAR TAXES LEVIED		$5,922.95
SPECIAL / ATTACHED		
ABATEMENTS		
BALANCE DUE FOR 2011		
PREPAID AMOUNT		
PAYMENT DUE		$5,922.95
PENALTY		
TOTAL		

PAYMENT OPTIONS / MESSAGES

TAX PAYMENT OPTIONS

(See reverse for complete instructions.)

1. Free E-Check online at www.summitcounty.org/treasurer
2. Mail to Summit County Treasurer at PO Box 128, Coalville, UT 84017
3. In person at Treasurer's Office, 60 N. Main St., Coalville, UT
4. Credit Card online at www.summitcounty.org/treasurer

**If mailing, POSTMARK BY NOVEMBER 30 to avoid penalty.

ADDRESS CHANGE

To change your mailing address, please contact the Summit County Recorder at (435) 336-3264 or email treasurer@summitcounty.org.

OFFICE HOURS

The Treasurer's Office will be closed Thanksgiving Day and the following Friday, November 24-25. Otherwise the office is open Monday through Friday, 8:00a.m. to 5:00p.m.

MORTGAGE COMPANY PAYMENTS

If a mortgage company name appears on this notice, your property taxes should be paid by that company. If taxes are double-paid, refunds will be sent to the most recent payer.

2012 TAX PREPAYMENTS

Choose EasyPay Monthly Automatic Debit, or mail in check payments with payment coupons. Check one box below, or download your own payment coupons at www.summitcounty.org/treasurer.

RETURN THIS PORTION WITH PAYMENT - DETACH AT PERFORATION

PAY ONLINE WITH FREE E-CHECK
AT WWW.SUMMITCOUNTY.ORG/TREASURER
OR MAKE CHECK PAYABLE TO:
"SUMMIT COUNTY TREASURER"

0229348 IC-40
WILLIAMS HAYDEN H
2456 IRON MOUNTAIN DR
PARK CITY, UT 84060-

2011 PROPERTY TAXES ARE DUE NOVEMBER 30, 2011

CHANGE OF ADDRESS

DUE NOV. 30TH

ACCOUNT	PARCEL NUMBER
0229348	IC-40
DISTRICT	PAYMENT
07	$5,922.95
PENALTY	
TOTAL DUE	

2012 TAX PREPAYMENTS:

☐ Mark box to request EasyPay Enrollment Form

☐ Mark box to request printed payment coupons

2011 TAX NOTICE

0229348000000592295

SUMMIT COUNTY TREASURER
CORRIE FORSLING
P.O. Box 128
Coalville, UT 84017-0128
www.summitcounty.org/treasurer
(435) 336-3267

2012 TAX NOTICE DUE NOV. 30TH

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ACCOUNT NUMBER	PARCEL NUMBER	ACRES	DISTRICT
0229348	IC-40	0.72	07

LOT 40 IRON CANYON SUBDIVISION; ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE SUMMIT COUNTY RECORDER CONT 0.7247 AC (COMMON AREA IS NOW BEING ASSESSED UNDER IC-MISC) 541-362 656-44 760-373 190-683-685 1091-146 1487-1233-125

2456 IRON MOUNTAIN DR

YOUR TAXES MAY BE PAID BY THE FOLLOWING MORTGAGE COMPANY

MAIL TO:

0229348 IC-40 PDF
WILLIAMS HAYDEN H
2456 IRON MOUNTAIN DR
PARK CITY, UT 84060-

PROPERTY CLASSIFICATION	MARKET VALUE	TAXABLE VALUE
Non-PrimaryBuilding	$721,998	$721,998
Non-PrimaryLand	$445,500	$445,500
TOTALS	$1,167,498	$1,167,498

TAX LEVIED BY	TAX RATE	AMOUNT
PARK CITY A,J,K,U	0.002197	$2,564.99
SUMMIT COUNTY	0.000943	$1,100.96
MULTI COUNTY A & C	0.000168	$196.14
LOCAL ASSESS/COLLECT	0.000071	$82.89
WEBER BASIN	0.000215	$251.01
PC FIRE	0.000987	$1,152.32
MOSQUITO ABATEMENT	0.000041	$47.87
PC SCH DIST	0.003273	$3,821.22
UNIFORM SCHOOL FUND	0.001651	$1,927.54

District Tax Rate: 0.009546

CURRENT YEAR TAXES LEVIED	$11,144.94
SPECIAL ASSESSED	
ABATEMENT	
BALANCE DUE FOR 2012	
LESS PREPAID AMOUNT	($68.06)
TOTAL DUE FOR 2012	**$11,076.88**

PAYMENT OPTIONS / MESSAGES

TAX PAYMENT OPTIONS
(See reverse for complete instructions.)
1.Pay Online at www.summitcounty.org/treasurer:
- Free E-Check: enter your bank account info
- Credit Card (2.5% fee)

2.Mail to Summit County Treasurer at PO Box 128, Coalville, UT 84017**
3.In person at Treasurer's Office, 60 N. Main St., Coalville, UT

If mailing, **POSTMARK BY NOVEMBER 30 to avoid penalty.

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If a mortgage company name appears on this notice, your property taxes should be paid by that company. If taxes are double-paid, refunds will be sent to the most recent payer.

2013 TAX PRE-PAYMENTS
Enroll in EasyPay Monthly Automatic Debit, or mail in check payments with payment coupons. Check one box below, or download your own payment coupons at www.summitcounty.org/treasurer.

PAY ONLINE WITH FREE E-CHECK
AT WWW.SUMMITCOUNTY.ORG/TREASURER
OR MAKE CHECK PAYABLE TO:
"SUMMIT COUNTY TREASURER"

0229348 IC-40
WILLIAMS HAYDEN H
2456 IRON MOUNTAIN DR
PARK CITY, UT 84060-

CHANGE OF ADDRESS

DUE NOV. 30TH

ACCOUNT	PARCEL NUMBER
0229348	IC-40
DISTRICT	AMOUNT
07	**$11,076.88**
PENALTY	
TOTAL PAID	

2013 TAX PREPAYMENTS:

☐ **Mark box to request EasyPay Enrollment Form**

☐ **Mark box to request printed payment coupons**

2012 TAX NOTICE

0229348000001107688

Summit County Treasurer
Corrie Forsling
STATEMENT OF TAXES DUE

Account Number 0229348 Parcel IC-40

Acres 0.72

Legal Description	Situs Address
LOT 40 IRON CANYON SUBDIVISION; ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE SUMMIT COUNTY RECORDER CONT 0.7247 AC (COMMON AREA IS NOW BEING ASSESSED UNDER IC-MISC) 541-362 656-44 760-373 190-683-685 1091-146 1487-1233-1250 (1184-769-771 & 1646-1129) (SEE WD-1184-769 IRON MOUN... Additional Legal on File	2456 IRON MOUNTAIN DR

Account: 0229348
WILLIAMS HAYDEN H
2456 IRON MOUNTAIN DR
PARK CITY, UT 84060

Year	Tax	Interest	Fees	Payments	Balance
Tax Charge					
2012	$11,144.94	$130.26	$276.92	($68.06)	$11,484.06
Total Tax Charge					$11,484.06
Grand Total Due as of 02/28/2013					$11,484.06

Tax Billed at 2012 Rates for Tax Area 07 - 07 - PARK CITY A,J,K,U (D-D)

Authority	Tax Rate	Amount
PARK CITY A,J,K,U	0.0021970000	$2,564.99
SUMMIT COUNTY	0.0009430000	$1,100.96
MULTI COUNTY A & C	0.0001680000	$196.14
LOCAL ASSESS/COLLECT	0.0000710000	$82.89
WEBER BASIN	0.0002150000	$251.01
PC FIRE	0.0009870000	$1,152.32
MOSQUITO ABATEMENT	0.0000410000	$47.87
PC SCH DIST	0.0049240000	$5,748.76
Taxes Billed 2012	0.0095460000	$11,144.94

Values	Actual	Assessed
RESIDENTIAL IMPROVED	$445,500	$445,500
RESIDENTIAL	$721,998	$721,998
Total	$1,167,498	$1,167,498

PLEASE REMIT PAYMENT TO:
SUMMIT COUNTY TREASURER
P.O. BOX 128
COALVILLE, UT 84017

Interest on unpaid taxes accrues daily. Please find full payoff amount on the Treasurer's page at www.summitcounty.org.

Summit County Treasurer
Corrie Kirklen

Account	Parcel Number	Receipt Date	Receipt Number
0229348	IC-40	Nov 3, 2011	2011-010150

WILLIAMS HAYDEN H
2456 IRON MOUNTAIN DR
PARK CITY, UT 84060

Situs Address	Payor
2456 IRON MOUNTAIN DR	FIRST AMERICAN TITLE INSURANCE COMPANY 6 CAMPUS CIRCLE, BLDG 6 FLOOR 3 WESTLAKE, TX 76262 877-286-6993

Legal Description

LOT 40 IRON CANYON SUBDIVISION; ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE SUMMIT COUNTY RECORDER CONT 0.7247 AC (COMMON AREA IS NOW BEING ASSESSED UNDER IC-MISC) 541-362 656-44 760-373 190-683-685 1091-146 1487-1233-1250 (1184-769-771 & 1646-1129) (SEE WD-1184-769 IRON MOUNTAIN HOLDING GROUP LC TO IRON MOUNTAIN ASSOCIATES LLC) (NOTE: SEE QCD-1184-771 IRON MOUNTAIN ALLIANCE INC TO IRON MOUNTAIN ASSOCIATES LLC) 1487-1233-1250
CHARLES P WILLIAMS JR TRUSTEE OF THE CHARLES P WILLIAMS JR REVOCABLE TRUST;

Property Code	Actual	Assessed	Year	Area	Tax Rate
RESIDENTIAL IMPROVED - 01A	445,500	245,025	2011	07	0.009
RESIDENTIAL - 11A	721,998	397,099	2011	07	0.009

Payments Received

Check $5,922.95
Check # 424209535
Paid By FIRST AMERICAN TITLE FILE 7109304N

Payments Applied

Year	Charges	Billed	Prior Payments	New Payments	Balance
2011	Tax Charge	$5,922.95	$0.00	$5,922.95	$0.00
				$5,922.95	$0.00
			Balance Due as of Nov 3, 2011		**$0.00**

PO Box 128
Coalville, UT 84017
(435) 336-3268

Thank You!

CLARK W. SESSIONS (#2914)
CLYDE SNOW SESSIONS & SWENSON
One Utah Center, Thirteenth Floor
201 South Main Street
Salt Lake City, Utah 84111-2216
Telephone: (801) 322-2516

Attorneys for Petitioner

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SUMMIT COUNTY, STATE OF UTAH

CHARLES P. WILLIAMS, JR.,	**DECREE OF DIVORCE**
Petitioner,	Civil No. 074500041
vs.	Judge Bruce Lubeck
HAYDEN H. WILLIAMS,	
Respondent.	

This case came before the Court pursuant to Petitioner's motion for entry of decree of divorce and request to submit for decision. Based upon the parties' Stipulation and Settlement Agreement, the Court's Findings of Fact and Conclusions of Law, and the other documents and pleadings on file in this case, and the Court being fully advised in the premises, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. Petitioner be, and hereby is, awarded a Decree of Divorce from Respondent and the marriage between Petitioner and Respondent be and hereby is dissolved, and the parties are hereby free and absolutely released from the bonds of matrimony and all obligations thereof, with said Decree to become final and effective as of August 29, 2008.

2. All other issues regarding this case are hereby resolved on the terms set forth in the parties' Stipulation and Settlement Agreement, a copy of which is part of the record in this matter. The Stipulation is a valid and binding contract. Its terms shall be enforced as and for the Court's final Judgment and Order as if fully restated in this Decree.

DATED this ___ day of September, 2008.

BY THE COURT:

_____
DISTRICT COURT JUDGE

Approved:

JONES WALDO HOLBROOK & McDONOUGH

_____
Stephen C. Clark
Attorneys for Respondent

Community Development Department
60 North Main Coalville, UT 84017
(435) 336-3124 Fax (435) 336-3046

STAFF REPORT

To:	Summit County Council (SCC)
Report Date:	Tuesday, February 7, 2013
Meeting Date:	Wednesday, February 13, 2013
Author:	Amir Caus, County Planner
Project Name & Type:	Appeal of Snyderville Basin Planning Commission (SBPC) decision to deny the Silver Moose Ranch Conditional Use Permit (CUP)
Type of Item:	Appeal

EXECUTIVE SUMMARY: The applicants, Brian and Tamara Mooring, operators of the Silver Moose Bed and Breakfast, are appealing the SBPC decision to deny a CUP to operate a Bed and Breakfast, located at 320 Snows Lane, Park City, UT (Exhibit A).

Staff recommends that the SCC consider Staff's analysis, and choose from one of the options in Section G of the Staff Report.

A. Project Description

- Project: Silver Moose Bed and Breakfast appeal of the SBPC decision
- Applicant(s): Brian and Tamara Mooring
- Owner(s): William Kelley Jr.
- Location: 320 Snows Lane, Park City, UT (Exhibit A)
- Zoning & Setbacks: Mountain Remote (MR) - front Setback: 55' from centerline of road, side and rear setback: 12'
- Adjacent Use: Residential, Commercial Recreation, and Open Space
- Parcel # & Size: PP-25-D (12.72 acres)

B. Background

The subject single family residence located on parcel PP-25-D was built in 1974. In 2011, the Summit County Clerk's Office issued a business license for nightly lodging for this single family residence. In the fall of 2011, when requesting a renewal of the business license, applicants requested that the license be changed to a Bed and Breakfast. Upon review of the business license, Staff determined that a Bed and Breakfast required a Conditional Use Permit approval, before the business license could be renewed or re-issued.

In February 2012, Summit County Code Enforcement received a complaint about a Bed and Breakfast operating in a single family dwelling. The Summit County Code Enforcement Officer sent a "Cease and Desist" letter and in March 2012, the applicants applied for a Conditional Use Permit. As the Bed and Breakfast had been operating in 2011 under a

County business license for nightly lodging, the Community Development Director determined that as long as the Conditional Use Permit application was moving forward, the business may continue operating while the permit was being pursued.

During the review process of the Conditional Use Permit, Staff discovered that there was not a clear record of a right-of-way being granted to access a commercial operation (Exhibit F). Because there was no legal access, staff determined that the application did not conform to the requirements of the Code and in May 2012, Staff returned the CUP application and fees to the applicants along with a second "Cease and Desist" letter. In June of 2012, the applicants requested a 30 day extension while seeking legal counsel. In July the applicants sued the County seeking a temporary restraining order preventing any enforcement and in August 2012, a court order was issued enjoining the County from taking zoning enforcement action until a Conditional Use Permit decision was made. The law suit is still pending..

On November 13, 2012, the SBPC voted 5-1 to deny the subject CUP. The minutes from the November 13, 2012 SBPC can be found in Exhibit L with the SBPC's findings.

C. Community Review

Under the Snyderville Basin Development Code, appeals are not required to be publically noticed; however the item was published in the Park Record as part of the regular SCC agenda.

D. Identification and Analysis of Issues

According to the Summit County Attorney's Office, the legal standard of review for appeals of this nature is to determine whether or not the SBPC erred when it denied the Conditional Use Permit. Pursuant to Utah Code Ann. §17-27a-705, the appellant (Silver Moose) has the burden of proving that the Planning Commission erred. Generally, conditional uses are allowed uses with conditions imposed upon them to mitigate any of the impacts. As an allowed use, denial of a conditional use permit is unusual. Denials must be based upon substantial evidence in the record which indicate that there are no conditions which can be imposed on the project to mitigate the impacts of the project. **Uintah Mountain RTC, L.L.C. v. Duchesne County,** 2005 UT App 565, 127 P.3d 1270.

With this application, the issue of traffic impacts and mitigation was of concern to the Planning Commission and was, in part, a basis for the denial. The evidence presented at the public hearing was that a Bed and Breakfast use created an increase in traffic, particularly on weekends when there would be weddings and other events which are vital to a Bed and Breakfast business.

Evidence was also presented by representatives of Park City Municipal Corporation, that under their code, the road (Snows Lane) would need to be improved to a paved surface for a commercial use to occur. Although this is a County application, the majority of Snows Lane is inside the city limits and would be subject to their laws. As for the portion of Snows Lane which lies within the County, the Snyderville Basin Development Code requires that the road meet certain standards for surface and width (*See Engineering e-mail* – Exhibit K).

The Fire District requires that the road be improved to an all-season, all-weather surface. This evidence taken with other evidence presented regarding dust and other traffic impacts

would indicate that any conditional use permit approval would of necessity require a condition that the road be improved according to the County, City and Fire District standards. However, in this case those improvements may be impossible. Evidence was presented by Utah Open Lands that they hold a conservation easement over and across the road (Snows Lane) as well as much of the surrounding property. As part of that open space easement, there is a provision which prohibits any improvement on the road. The testimony from Utah Open Lands also indicated that they could not and would not grant an amendment to the conservation easement because it affects the value of their easement.

Without the ability to make improvements to the road because of the conservation easement, a condition cannot be imposed requiring such improvement. To do so would render any permit moot. Thus, based upon this substantial evidence presented, the Planning Commission denied the Permit application because there was no way to mitigate the traffic impacts by road improvements.

Although Bed and Breakfasts operate as quasi commercial uses, they are only allowed and considered appropriate in residential zones.

E. General Plan Consistency

The proposed Bed and Breakfast is located in the West Mountain Neighborhood Area.

The following are Economic Objectives for the West Mountain Neighborhood Area.

a) *All resort development has been and must continue to be oriented to resort and guest accommodations that support the recreational nature of the area, enhance County and Special Service District tax bases, create jobs, provide only a reasonable level of impact on the Park City School District.*

b) *The character and quality of development shall be appropriate for and help to maintain a sustainable mountain resort community.*

c) *Promote recreation uses and resort related facilities and amenities that complement the Park City and Deer Valley resort areas.*

d) *Require the provision of employee housing to meet the seasonal housing needs that are generated because of the specific operational characteristics of the Resort Center.*

e) *Promote an appropriate supply of affordable housing.*

All of the aforementioned objectives are being promoted by the proposed application.

The General Plan makes numerous mentions of support for resort and tourism oriented operations within the Snyderville Basin.

F. Findings/Code Criteria and Discussion

Before an application for a conditional use is approved by the Planning Commission, it shall conform to the following criteria (10-3-5-B):

1. The use is in accordance with the General Plan;

2. The use conforms to all applicable provisions of this Title, including, but not limited to, any applicable provisions of this Section and Chapter 4 of this Title, the General Plan, and State and Federal regulations;

3. The use is not detrimental to public health, safety and welfare;

4. The use is appropriately located with respect to public facilities; and

5. The use is compatible with the existing neighborhood character and with the character and purpose provision of the applicable zoning district, and will not adversely affect surrounding land uses.

The SBPC did not find that all five of these criteria were being met and voted to deny the CUP.

Because the SBPC is the decision making body on the CUP, the appellate body is the SCC. If the appeal is for a decision regarding a CUP, the CUP is to be stayed until action is taken on the appeal.

G. Recommendation(s)/Alternatives

Staff recommends that the SCC evaluate Staff's analysis, review the information provided in the Staff Report, and choose from one of the following options:

OPTION 1:

Vote to uphold the appeal as articulated by the SCC.

OPTION 2

Vote to continue the item to another meeting, with specific direction to Staff and/or the appellants on information needed to aid the SCC in making a decision.

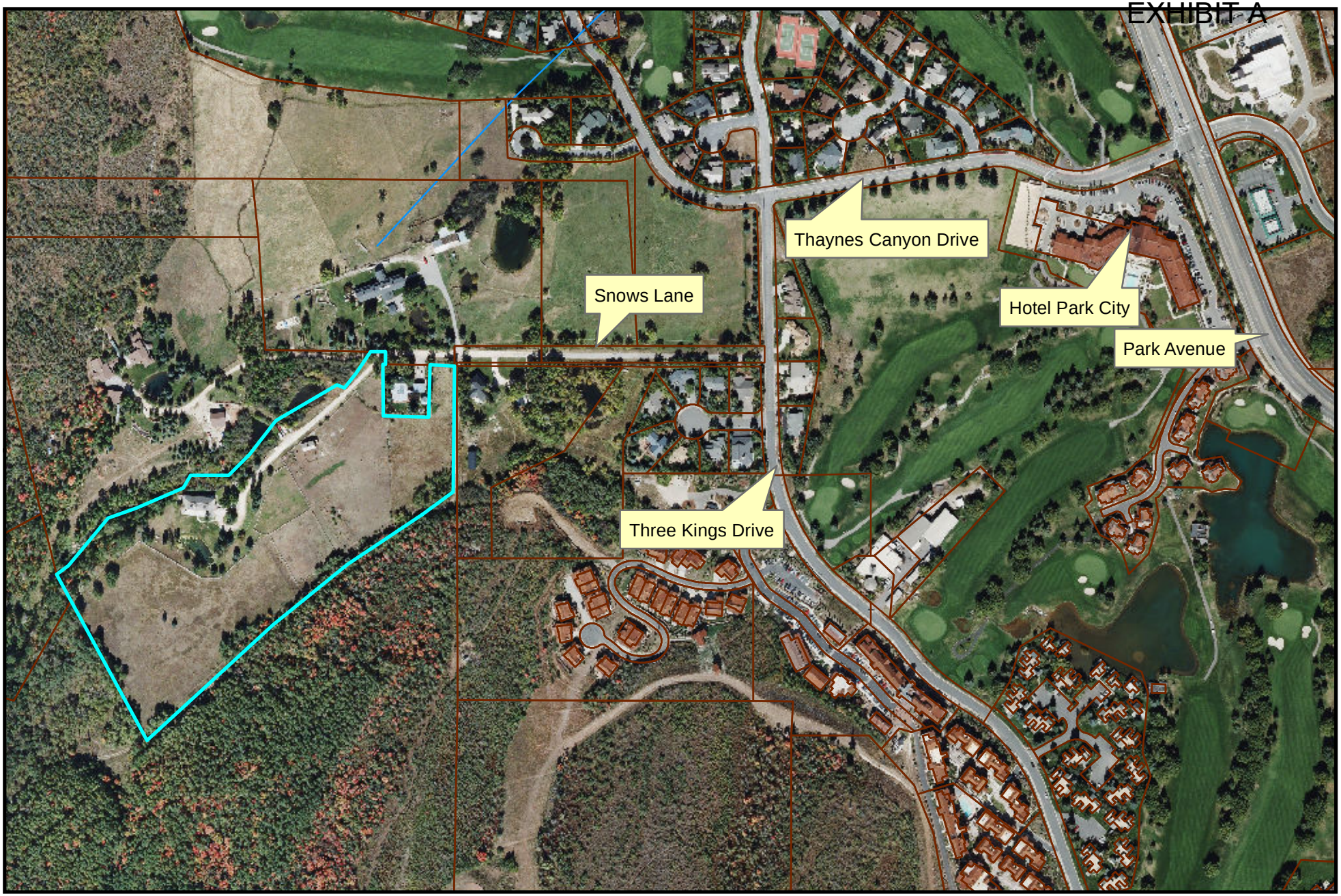
OPTION 3

Vote to deny the appeal as articulated by the SCC.

Attachment(s):

Exhibit A: Vicinity Map
Exhibit B: Zoning Map
Exhibit C: Aerial Photo
Exhibit D: Silver Moose Operation Description by the Applicants
Exhibit E: Silver Moose Attorney Letter
Exhibit F: Easement Documentation
Exhibit G: Armstrong Letters
Exhibit H: Park City Attorney's Office Letter
Exhibit I: Utah Open Lands Letter
Exhibit J: Applicant Appeal Information
Exhibit K: Engineering Department E-Mail (January 17, 2013, after SBPC decision)
Exhibit L: November 13, 2012 SBPC Minutes
HIGHLIGHTED IS THE NEWEST INFORMATION SUBMITED (AFTER THE CUP DENIAL)

EXHIBIT A



PP-25-D
Vicinity Map

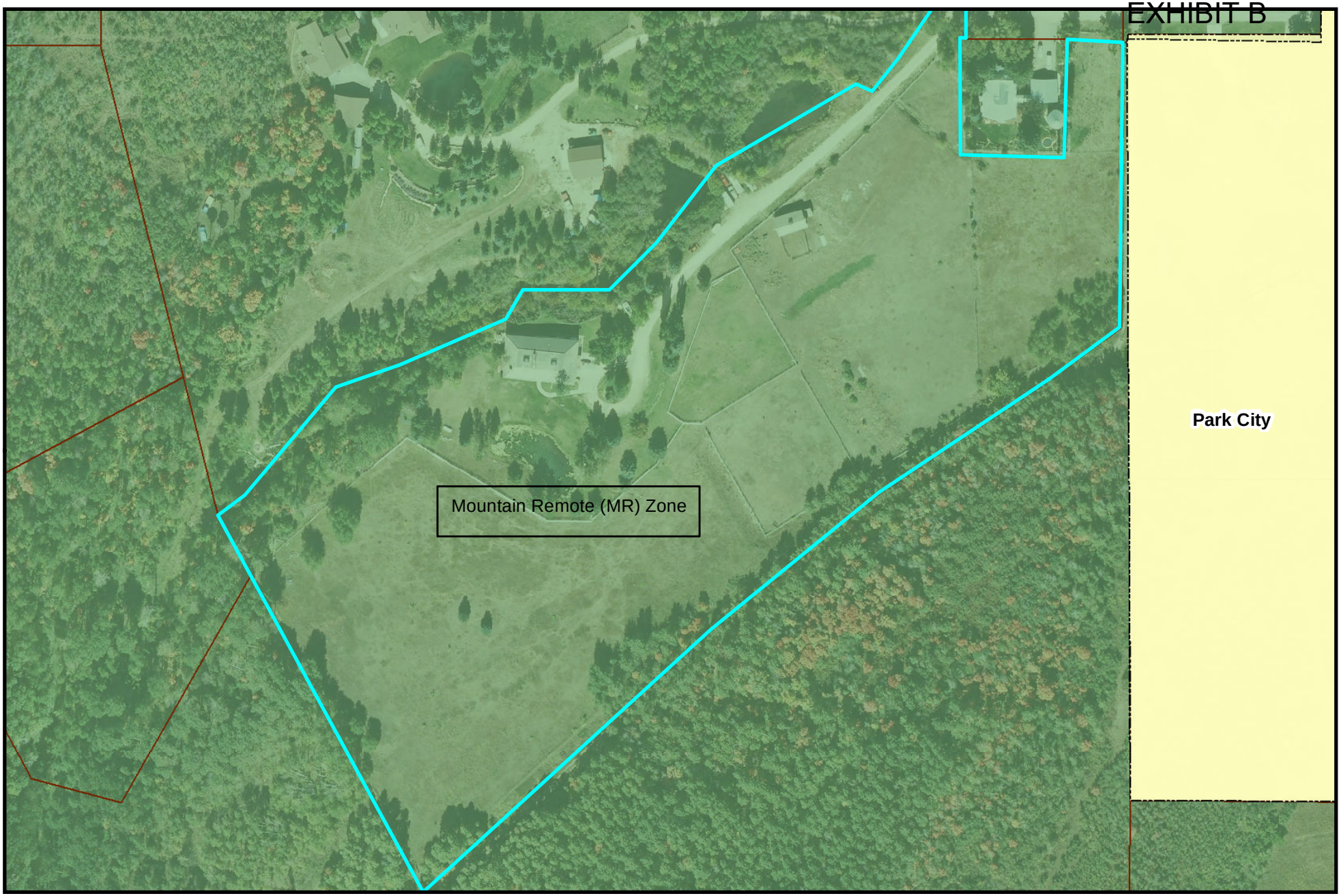
Prepared by Summit County
Community Development Department

N

0 250 500 1,000 Feet

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.

EXHIBIT B



Silver Moose Ranch

PP-25-D

Prepared by Summit County
Community Development Department

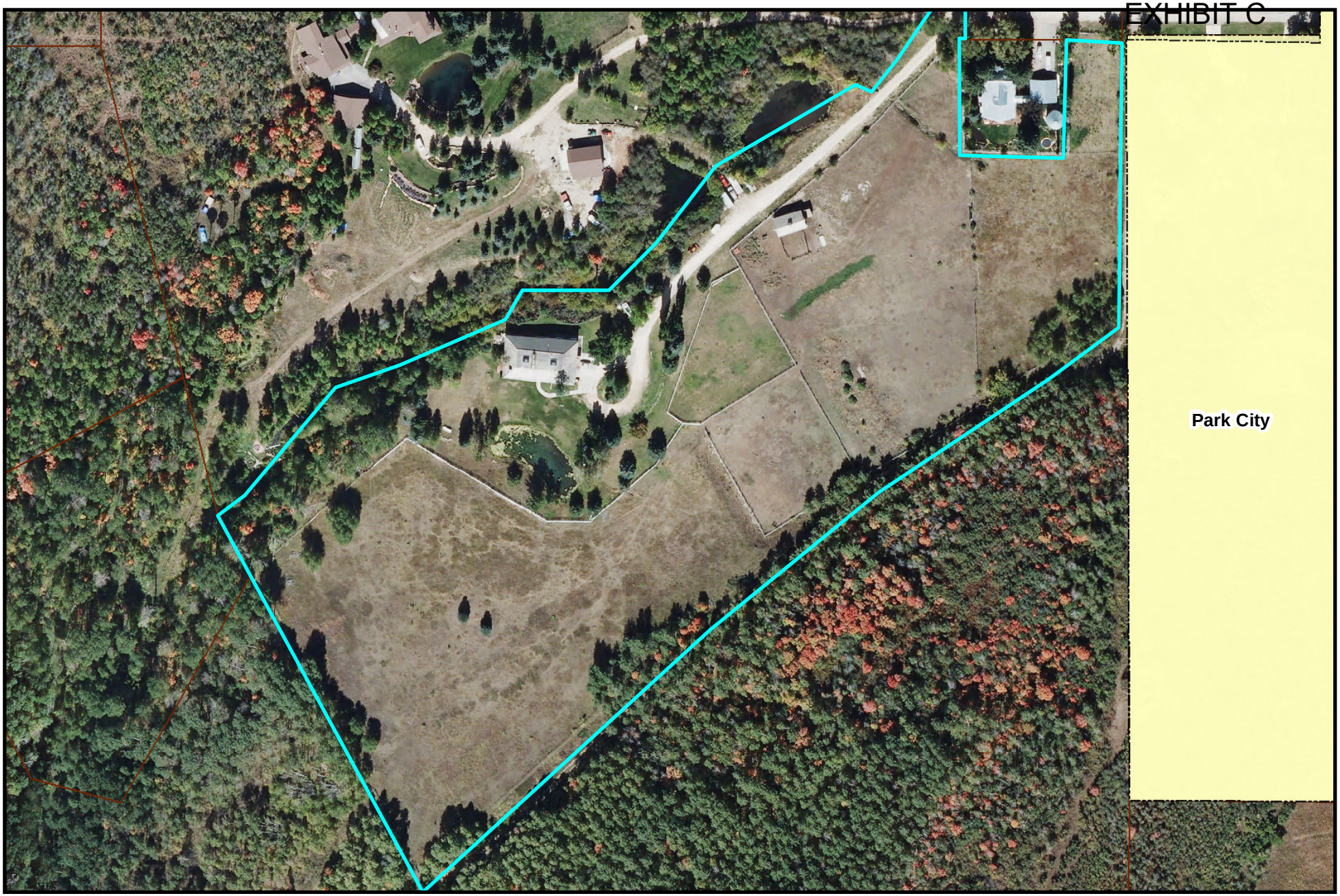
Cities
Reservoirs
Rivers

N

0 125 250 500 Feet

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.

EXHIBIT C



Silver Moose Ranch

PP-25-D

Prepared by Summit County
Community Development Department

Cities
Reservoirs
Rivers

N

0 125 250 500 Feet

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.

March 29, 2012

To: Summit County Planning Commission
Attention of: A.C. Caus and Dan Childs
Re: Conditional Use Permit Application, Silver Moose Ranch Bed & Breakfast
Submitted by Brian & Tamara Mooring; 320 Snows Lane, Park City, UT 84060, 435-729-0002

Property Description, according to Summit County Utah Assessor / Recorder Property Record Card (William R, Kelley, Jr, Account # 0060883, Parcel PP-25-D):

Acres: 12.720
House, built in 1974: Living Area: 7542 square feet

Silver Moose Ranch, 320 Snows Lane, is a proposed bed-and-breakfast style lodging focused on high level customer service in a scenic, tranquil setting.

Lodging Capacity:
In addition to several large meeting rooms, the house has 4 bedrooms, plus a Master Suite, each with a private bath, for a typical lodging capacity of 10 adult guests. Two rooms are suites which could accommodate an additional child or two.

Parking: There is a two car garage and a concrete parking pad which can accommodate 5 vehicles, with up to 50 more parallel parking spaces available along the driveway.

Interior floor plan:
The Ranch house has a good interior floor plan for the proposed business. There are four bedrooms with private baths in the upper wing. Additionally, there is a large private master suite with luxury bath, sitting room and fireplace. The centrally located open kitchen and living room with fireplace makes a convenient meeting area for small groups. The kitchen is ideal for a cooking class and as a location to serve home-style breakfasts and après ski snacks. The larger dining room/ living meeting room can be arranged several ways to accommodate dinner parties, receptions, business meetings, and even small wedding ceremonies. See attached, rough drawing (not to scale)

Site Map:
The location of the facility, privacy and breath-taking views are without match in Park City. The Ranch is located at the base of Thaynes Canyon, and has easy access to mountain bike and hiking trails. The 13 acres contains ponds, a bubbling stream, and enough open area for larger gatherings. See attached satellite /map imagery.

Septic System and Water Rights:
In a letter drafted by Jeffrey Salberg, attorney, regarding questions about the use of the property at 320 Snows Lane for a bed and breakfast business, the following statements were made about the septic system and water rights. The date on the septic system remodel permit, through Summit County Public Health Department, was August, 10, 2011.

Septic System: The septic system, which was operating adequately for a six bedroom home, was expanded and improved beyond normal specifications in

SUMMIT COUNTY COMMUNITY DEVELOPMENT MAR 30 2012 RECEIVED

2011. Information from the contractor that performed the work will be presented with the application for conditional use permit so it can be reviewed by the appropriate department.

Water Rights: The use of the property as a bed and breakfast would not require any increase in rights that currently exist for a six bedroom home, irrigation of acreage and watering of horses and livestock on the property. (Water Right No. 35-8439). By judicial determination, Kelley also has an existing easement on Herbert Armstrong's abutting property for the operation and maintenance of a water pipeline to his home, including care for the pump, etc. The Armstrongs were permanently enjoined from interfering with the delivery of Kelley's water under his water rights.

Right of Way and Road Usage:
The Salberg letter, presented separately in its entirety, thoroughly addresses right of way and road usage issues. It should be noted that emergency vehicles use Snow's Lane frequently in order to evacuate the injured from Park City Mountain Resort.

Business Description:
Business web site www.silvermooseranch.com description:

Southern Comfort meets Western charm. Rustic comfort awaits you at Silver Moose Ranch. Situated on 13 acres of very private, natural beauty, the ranch features cascading springs, several ponds, lush lawns, 360 degree mountain views. Newly renovated for the 2011 – 2012 winter season, the Ranch house features stone pillars, thick wood beams, vaulted ceilings and rustic accents. All bedrooms include wireless Internet access; an in-suite full bathroom and new, luxury linens. Common spaces, featuring multiple sitting areas, inside and out, are available for your lounging comfort. Snuggle next to one of the fireplaces, or sip your coffee on the deck by the bubbling spring-fed creek. A privately situated hot-tub is available for your après ski relaxation and star-gazing. The gorgeous professional kitchen (with almost 18 feet of windows), dining room, living room and large meeting room can also be reserved for your group meeting, dinner, reception, party, wine tasting, cooking class or entertainment events.

The Ranch is so private, even the locals don't know we're here. But, yet, so close to everything! Just two blocks from ski lift and restaurants, and steps away from hiking and biking trails. The Ranch is adjacent to Park City Municipal Conservation Land, which will remain undeveloped – there's not a condo within view. The Silver Star Lift at Park City Mountain Resort is a mere 700 yards away, and Canyons Resort and Deer Valley Resort are within 3.5 miles.

Description of a "busy" week during "high season":
Beginning on January 11, 2012, we had an extended family/friend group visit for a ski vacation. There were 6 adults and 4 children renting 4 bedrooms for 4 nights. They had two rental cars. They arose early every morning, skied all day until the lifts closed, returned to the Ranch to relax in the hot tub, ordered dinner in, relaxed by the fire, and went to bed early. Their two rental cars went up and down Snows Lane once each day. After they checked out, we had two separate couples check in, one for 3 nights, and the other for 8 nights. The 8-night couple did not have a car, but used the Park City Transit System to get to and from various local attractions. The other

couple was here for a romantic retreat and rarely left their bedroom. So for that week of January 11 – 17 (Wednesday through Tuesday), we had an occupancy rate of 68% (which was higher than average, thus this was a "busy" week), with approximately one car for every 5 guests. For the entire "high season", our occupancy rate was 48% (approximately 2-3 bedrooms in use by 5 guests). In our observations, approximately a third of our guests do not have a car, but instead walk or use the public transportation system.

A "typical" guest experience consists of a married couple who stay for 2 to 3 nights. We have an equal blend of first time visitors, and Utah residents looking for a convenient getaway. Our guests are looking for seclusion and tranquility and appreciate the scenery, peace and quiet found at Silver Moose Ranch. During ski season, about half our guests are active sports enthusiasts. The rest are here to enjoy the history and beauty of the area, and to experience the entertainment, shopping and dining of the Park City / Snyderville / Kimball Junction area.

Business management:
The Silver Moose Ranch Bed & Breakfast is managed by live-in residents Brian & Tamara Mooring, who relocated to Utah from Alabama in 2011. In Alabama, they ran Woods Ferry Farm, www.woodsferryfarm.com, (still being operated by family members), a 98 acre estate on the Coosa River in St. Clair County. The farm consists of forest and open lands to support and promote the native wildlife population; a 3 acre muscadine vineyard, and an organic herb farm. From this setting, Tamara ran a Health-Department licensed catering company for 10 years.

Guest Reviews from our First season:
My husband and I just got back from 3 days at Silver Moose Ranch and had the best time! What a wonderful place to stay! Thank you Brian (Tamara was away)! The Moorings are wonderful people and terrific innkeepers -- they really have a knack for making you feel comfortable and happy, from the attractive rooms-with-bath, to the cozy fireside overstuffed chairs and sofas, to the yummy breakfasts (the Moorings are great cooks - former caterers), to all the little details they have paid attention to. As other reviewers have pointed out, it's more like a lodge, with plenty of "common area" space, than the typical B&B (we too were glad to find a place that wasn't the usual frilly Victorian.) It was lovely to come back to the ranch after a day on the slopes and hit the hot tub, munch some freshly-baked cookies and collapse in front of a blazing fire or take a nap. As others have noted, the ranch is nestled in among pastures with pretty views and a bubbling brook and pond – a magical and tranquil spot and yet just a couple minutes from downtown Park City and all the ski areas. This was our first trip to Park City, and we'll be back – hopefully with friends in tow! – Melissa

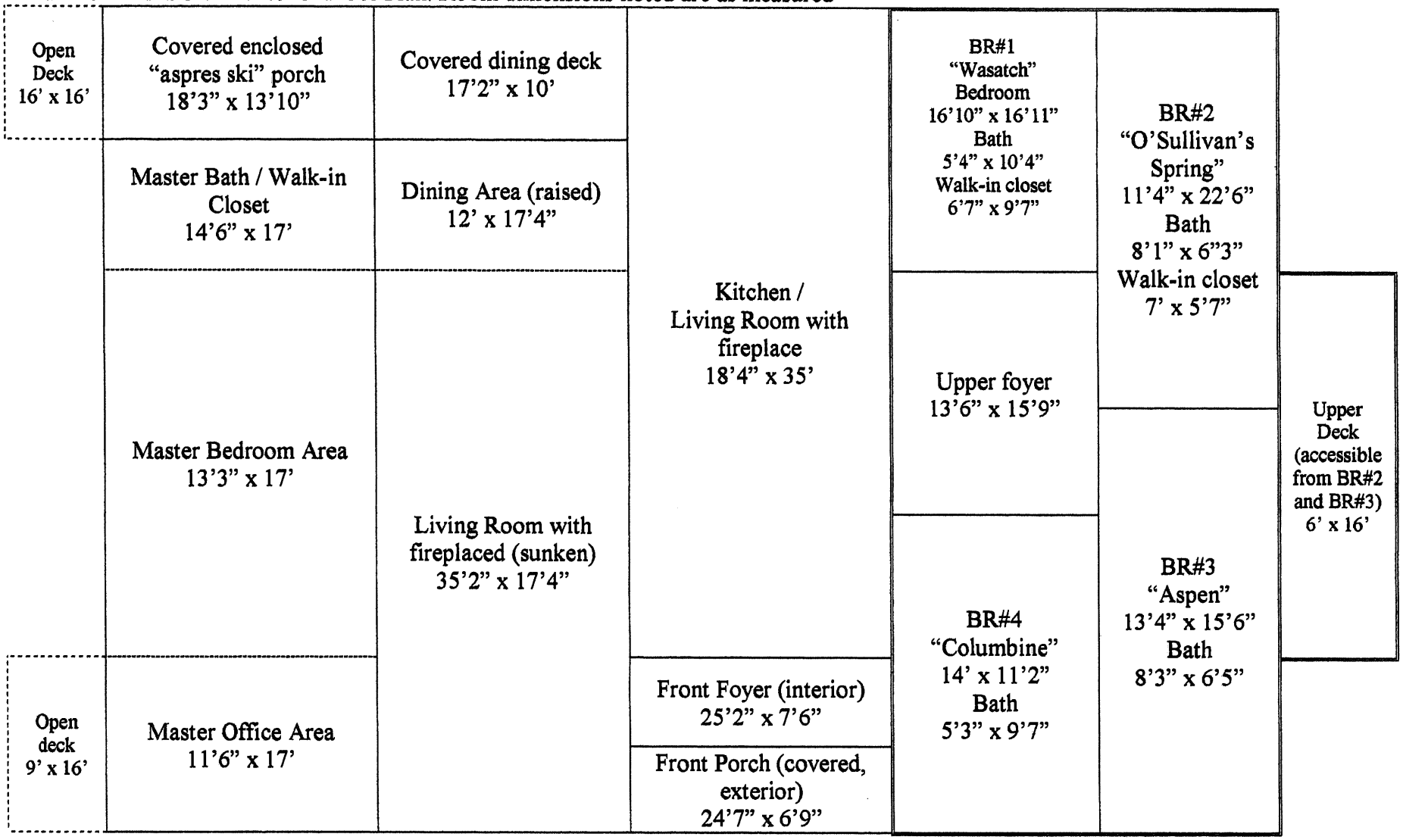
The house and ranch are gorgeous. The views of the mountains and the pasture, the creeks and ponds, and open spaces are peaceful and relaxing. I enjoyed being surrounded by nature and animals and feeling like you're way out in the country, but you're actually just a quick drive, walk, or free bus ride to town, the resorts, or anywhere else in Park City. The location really was the best of both worlds, and the setting made for a magical retreat.
Tamara is a great cook. Breakfast was served every morning. She made a variety of delicious breakfasts -- from waffles with apple compote to eggs made to order to pancakes with fresh berry sauce -- as well as treats in the afternoon and evening (brownies, cakes, caramel popcorn, cookies, and more). It seemed like there was always some wonderful smell wafting up from the

kitchen. The guest area has its own coffee/tea maker with individual servings so you can make coffee in the morning before you come down for breakfast, or have an evening tea in your room. As for the rooms, I stayed in two: O'Sullivan's Spring and Columbine. Both were charming and each were thoughtfully decorated and designed with comfort and ease in mind. O'Sullivan's felt like a separate cabin with its sloped ceiling and wood beams, door to a little deck, and fishing theme. The rustic country furnishings and the mix of new pieces and interesting antiques were great touches. I was staying with a friend so it was wonderful to have such a spacious room; it had an ample walk-in closet with a fridge, a full-sized couch and coffee table where we could both set up our laptops and work, or watch a movie together, and a huge, comfy king-sized bed in which we hardly knew the other one was there.
The Columbine room was light and airy with a high ceiling, spring-themed decor, and a lovely view of the pond. The custom desk hadn't arrived yet, but I'm sure the addition will make the room an ideal retreat for a writer or anyone else who wants a quiet, serene room to work in.
In short: better than a luxury resort/hotel for amenities, provides a unique experience... truly exceptional place to stay. – Luis

It took me almost a month of reading reviews checking websites until I decided on somewhere to stay on my honeymoon. Silver moose was incredible so nice to stay in a home like environment. Even tho the house was full I would have never known. The property was beautiful. We stayed in wasatch which I think is the best room there. Breakfast was so yummy. Tamara and Brian where wonderful even when I got stuck. Can't wait to come back in summer with kids. Thank you silver moose for such a great stay. – Natasha

My husband and I had such an amazing getaway at this B&B. Brian and Tamara have a gorgeous home that is so warm and inviting. The views are just beautiful. You feel like you are miles away from anything when it's just minutes to outdoor activities and park city's main street. Our room was cozy and comfortable. All the rooms have a private bath and ours had access to a balcony. After going out to dinner, we were cold to the bones. We got back, grabbed a glass of wine and sat in front of one of their fireplaces. Breakfast was delicious! The only reason for 4 stars is that the room we stayed in had pretty thin walls. Luckily everyone was very quiet. The other thing is there is a small quirk with our room in which there is a window by the ceiling in the bathroom (no one would be able to see in, it's like 9 ft up) and it connected to another bathroom. So, once dark, every time we or the other room turned on our light we would see a faint light from each others bathroom. It wasn't very bright and not really a big deal we just closed the bathroom door. Overall, we loved staying here and plan on coming back later in the year! -- Lisa

Silver Moose Ranch, 320 Snows Lane, Park City, UT 84060 435-729-0002
General NOT-TO-SCALE Interior Floor Plan. Room dimensions noted are as measured



Four bedrooms are in an "upper wing", denoted by double border line ^
Half flight stairs from Living Room into upper foyer

Drawing by Tamara Mooring; Dimensions by Brian & Tamara Mooring; Not-to-Scale; Room dimensions have been "squared off"

EXHIBIT D.5

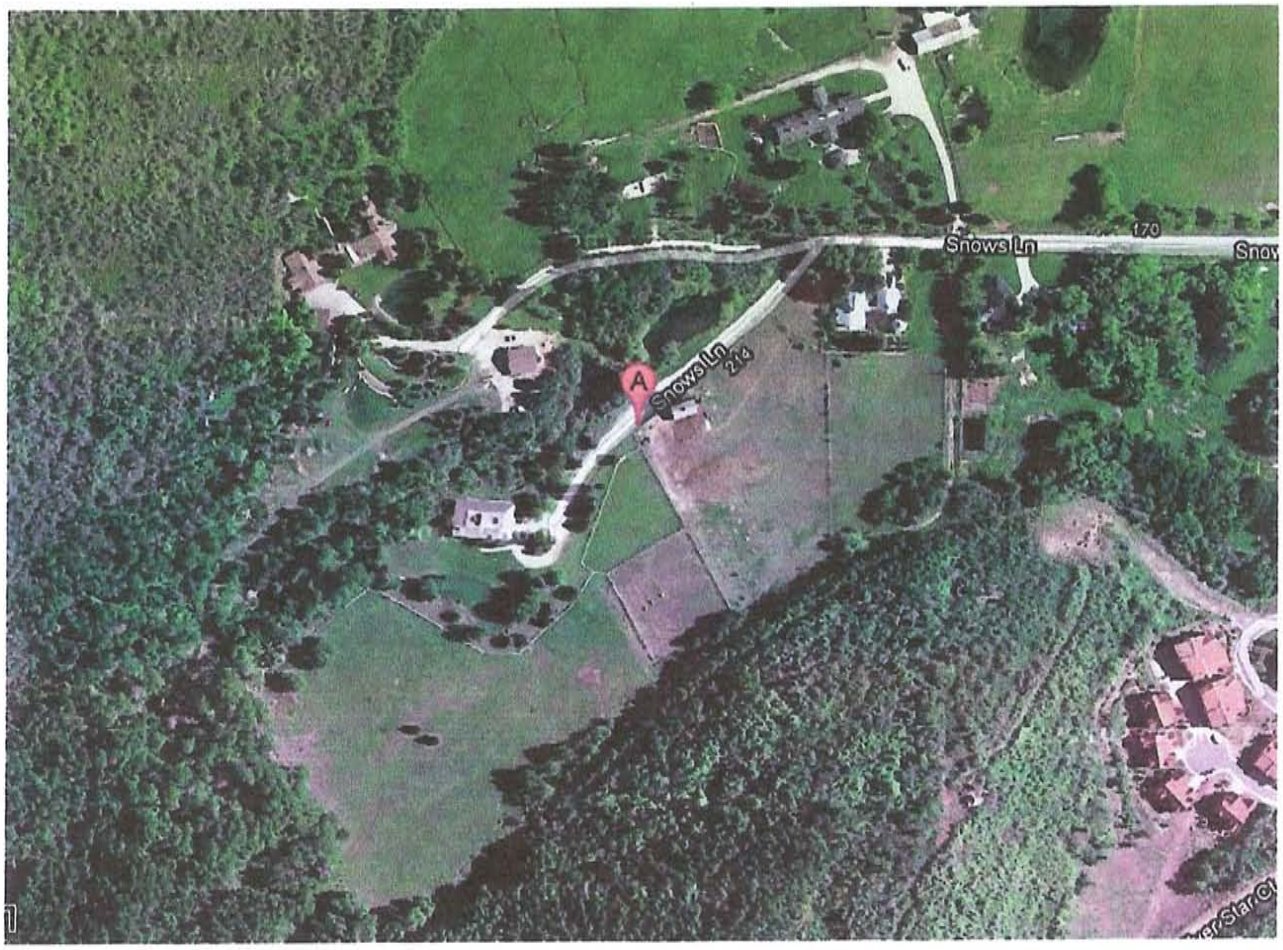

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EXHIBIT D.7

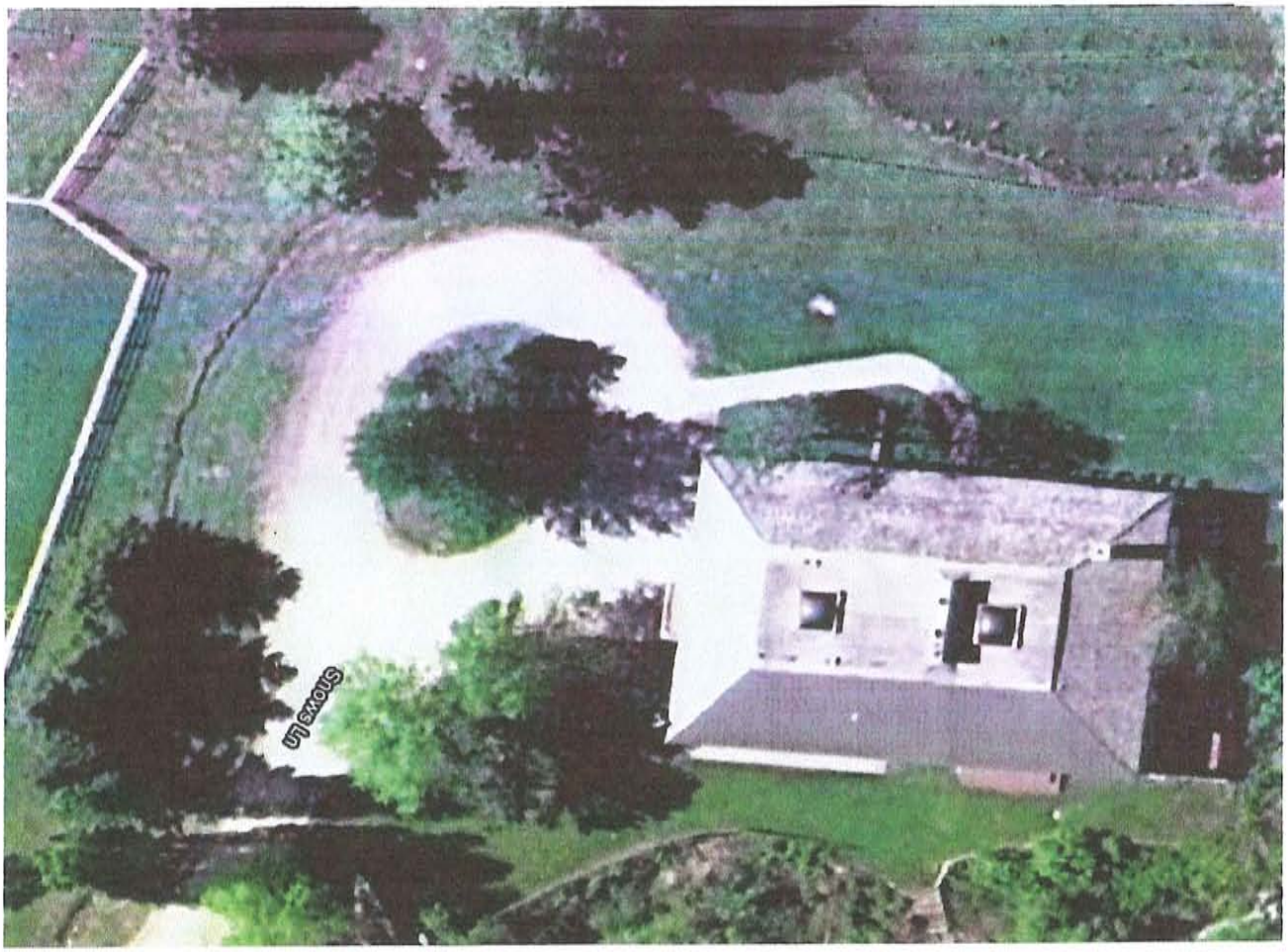


EXHIBIT D.8

From: brianmooring <brianmooring@aol.com>
To: tmooring <tmooring@aol.com>
Subject: Fwd: Septic field repair
Date: Fri, Mar 30, 2012 11:33 am

—Original Message—
From: Corey Hardman <coreyhardman71@yahoo.com>
To: brianmooring <brianmooring@aol.com>
Sent: Wed, Feb 29, 2012 5:23 pm
Subject: Septic field repair

To whom it may concern,

In August of 2011 Bill Kelly placed a call to me Corey Hardman on a request to have a septic system inspected. When i inspected the system which required digging up the system to find the problem, there were repairs needed. I contacted Summit County Health Dept. and with there help were able to redesign the system with a new designed product which is more efficiant and enviormently friendly. All inspections were preformed and approved by Summit County Health Dept.

Regards,
Corey Hardman

Corey Hardman
Corey Hardman Const. Inc.
435 671 0706

SUMMIT COUNTY PUBLIC HEALTH DEPARTMENT
SMALL WASTEWATER FACILITY PERMIT
(435)-336-3222

Permit #: _____ **Application #:** _____ **Date:** 8-10-2011

Name of Applicant: Bill Kelly **Tax ID#** PP-25-D

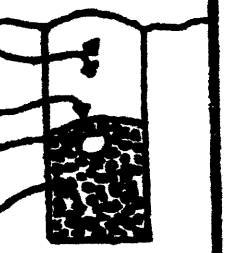
Property Address: 320 Snowslane **City:** _____

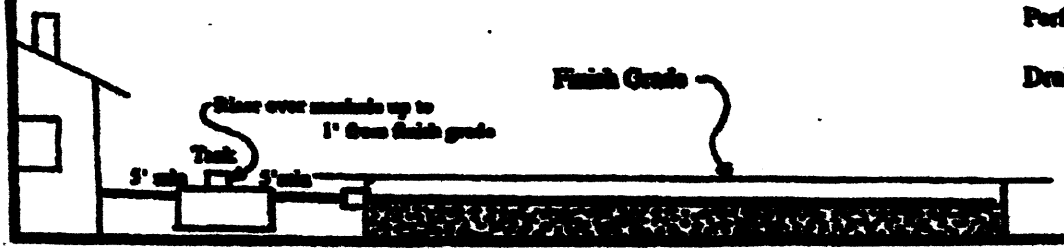
Subdivision: _____ **Lot #:** _____ **Lot size:** _____

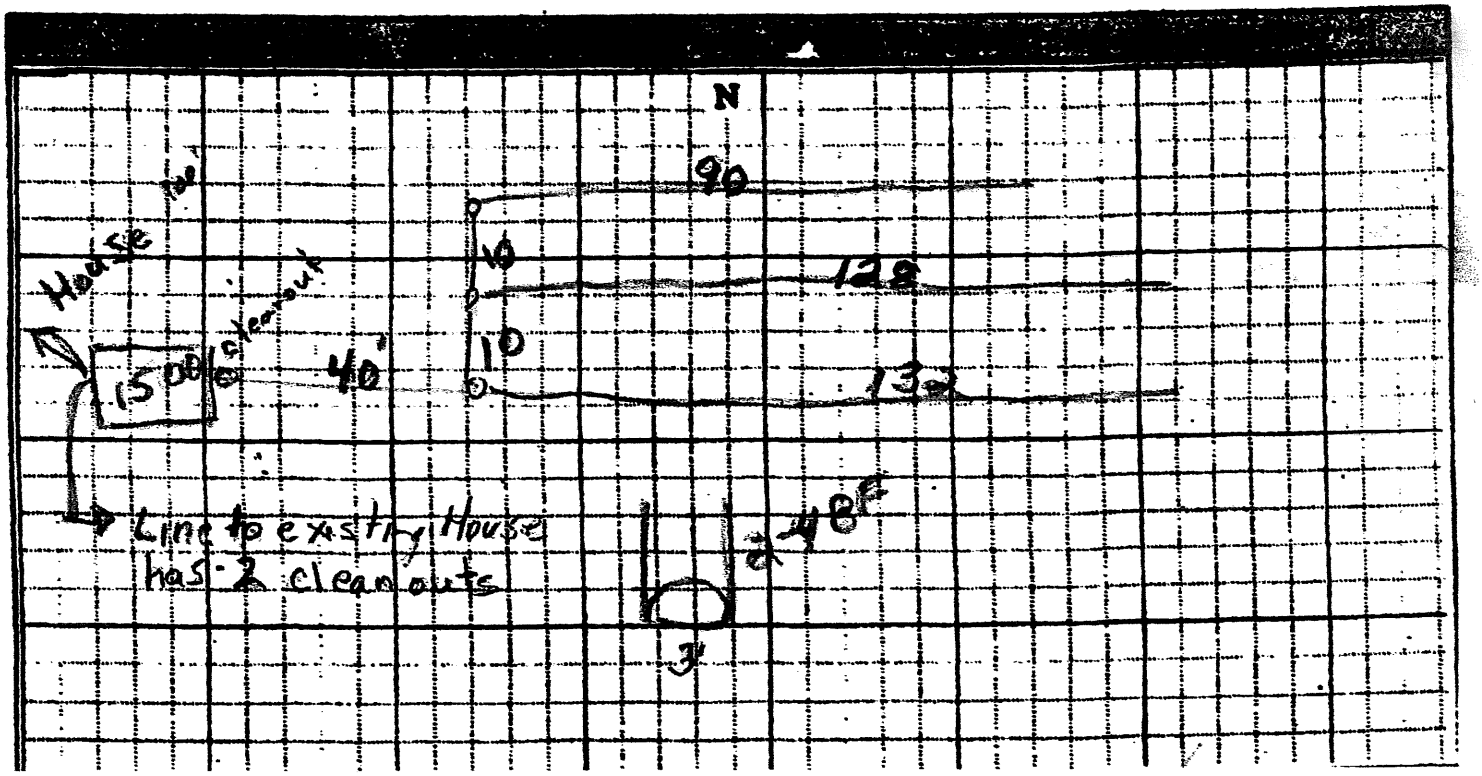
Lat: _____ **Long:** _____ **Water Supply:** _____

Remodel Drain Field

A: Tank Volume _____ Gal.
B: Length of Drain Field _____ LF — Not to exceed 100' per run
C: Width of Drain Field _____ LF
D: Drain Rock under pipe _____ FT







JEFFREY D. SALBERG
Counselor at Law

345 West 600 South, Suite 109
Heber City, Utah 84032
Tel. (435) 657-3691 Fax. (888) 251-3609
Licensed in Utah, Indiana and Florida

March 24. 2012

A C Caus
Summit County Plan Commission
P.O. Box 128
Coalville, UT 84017

Re: 320 West Snow's Lane – Conditional Use Permit

Dear Mr. Caus,

When we last spoke you shared some of the concerns that might exist in obtaining a conditional use permit for a bed and breakfast in the existing structure located at 320 W. Snow's Lane in Summit County. You specifically mentioned legal issues that might relate to the right-of-way easement for ingress and egress that serves the property. I will also briefly comment on a couple of other issues that were also mentioned during our conversation.

Right of Way: The easement for a right of way for ingress and egress from Parcel No. 1 and Parcel No. 2 over a roadway which is approximately three rods wide (and the center line being particularly described) was created by deed. It is an easement appurtenant to the dominant estate. The current owner, William R. Kelley, Jr. first acquired the property from First Security Mortgage Company by Special Warranty Deed dated May 6, 1988, a copy of which is attached hereto as Exhibit "A". The validity of the foreclosure sale to Kelley was confirmed by the Utah Supreme Court after extensive litigation initiated by W. Melvin Armstrong and Herbert Armstrong and Joseph and Raye Ringholz. (As a side note, easement appurtenant are transferred upon a mortgage foreclosure sale. Kratovik & Werner, *Modern Mortgage Law and Practice*, Section 8.03 (2nd ed.))

Snow's Lane begins at Three Kings Drive and provides access to Herbert Armstrong's residence, William Kelley's residence and one or two other residences. Kelley's large six bedroom home, including care taker quarters, sits on approximately 12 acres of land including a pond, out-buildings for horses and extensive pasture. The land was originally part of the Armstrong farms.

The deeded grant of right-of-way for ingress and egress did not contain any limiting language regarding the use of the right of way. A six bedroom home could easily house a

sizeable family or, considering its location, also be used to entertain regularly and provide a year round destination for friends and family to visit and enjoy all of the activities Summit County has to offer. Either use would create similar or greater use then the existing use as a bed and breakfast.

Use of the property is ideally suited for a bed and breakfast considering its geographic location, acreage and surrounding open space. The intended use did not require an addition to the premises, so the use remains limited to its existing size and number of bedrooms. Further, Kelley's house sits far off of Snow's Lane and there is never a need to have cars parked on the right-of-way. Use as a bed and breakfast does not create any viable legal issue related to use of Snow's Lane.

Generally, servitudes created by the owner of land, which are plainly visible or notorious, and from the character of which it may fairly be presumed were intended to be preserved as necessary to the convenient enjoyment of his property, become, when the lands are divided and pass into other hands, permanent appurtenances thereto, and the owner of neither the dominant nor serviant portions of the land has power to adversely interfere with their proper use and enjoyment. *Rollo v. Nelson*, 96 P. 263, 265 (Utah 1908)

Further, the holder of an easement is entitled to use the serviant estate in a manner that is reasonably necessary for the convenient enjoyment of the servitude. The manner frequency and intensity of the use may change over time to take advantage of developments in technology and to accommodate normal development of the dominant estate or enterprise benefitted by the servitude as long as the holder does not cause unreasonable damage to the serviant estate or interfere unreasonably with its enjoyment. *McClellan v. United States*, 2011 WL 78113 (D. Utah 2011)

The Armstrong property is the serviant estate and the Kelley property is the dominant estate. It is well established that an owner of the serviant estate cannot unreasonably restrict or interfere with the proper use of an easement. *Wykoff v. Barton*, 684 P.2d 756, 759 (Utah 1982) (holding same for private easement over private property) As long as the use of the right of way is neither excessive or unreasonable, the serviant estate owner cannot prevent the dominant estate owner's use. See, *McClellan v. United States*, 2011 WL 78113 (D. Utah 2011) The owner of the dominant estate may enjoy to fullest extent rights conferred by his easement as long as he does not alter its character so as to further burden or increase restrictions upon the serviant estate. *McBride v. McBride*, 581 P. 2d 996, 997 (Utah 1978) (holding that placing of locks on gates located at both ends of right-of-way placed burden on right of way of dominant estate that was previously nonexistent, thus an unreasonable interference by serviant estate)

The issue is whether the use of a residence as a bed and breakfast, without expansion of the residence to increase occupancy, will alter the character of the right of way so as to further unreasonably burden or increase restrictions upon the serviant estate. First, the Armstrongs, as grantors, did not expressly place any limits on the grant of right-of-way for ingress and egress when the easement was conveyed by deed.

Second, the use of five of the six bedrooms of the Kelley residence for bed and breakfast purposes will not create any greater use of the right of way than a large family or a family that often entertains out of town guests. Use of the right-of-way by any guests that stay at the Kelley residence will place no greater burden on the right-of-way then if the residence was occupied by a large family or a family that regularly entertains visiting friends and family. The existing homes use as a bed and breakfast does not, and will not, interfere with the use of the easement by the serviant estate. In fact, since the occupancy of the bed and breakfast rarely exceeds use of one to three bedrooms, there will be less traffic on the right-of-way then if there were adults living in each bedroom full time.

Third, the use will not require alterations or improvements to the existing easement. Whatever maintenance and care Snow's Lane has benefited from over the years is and will remain adequate.

In 2009, the Armstrongs sold a conservation easement to the City, which by its language attempts to place restrictions on the use, care and maintenance of Snow's Lane, part of which is in the county. While there is restrictive language regarding improvements to Snow's Lane, the grant cannot adversely affect the pre-existing dominant tenants utilizing Snow's Lane. While Kelley has no plans to pave Snow's Lane, I do not believe the serviant tenant or its successors can prevent Kelley from doing so if paving the right of way would make it more serviceable and lower maintenance costs.

In conclusion, there is no increase in the existing potential use of Snow's Lane. Even if there were, the use would not cause any unreasonable damage to the serviant estate or interfere unreasonably with its enjoyment.

Septic System: The septic system, which was operating adequately for a six bedroom home, was expanded and improved beyond normal specifications in 2011. Information from the contractor that performed the work will be presented with the application for conditional use permit so it can be reviewed by the appropriate department.

Water Rights: The use of the property as a bed and breakfast would not require any increase in rights that currently exist for a six bedroom home, irrigation of acreage and watering of horses and livestock on the property. (Water Right No. 35-8439). By judicial determination, Kelley also has an existing easement on Herbert Armstrong's abutting property for the operation and maintenance of a water pipeline to his home, including care for the pump, etc. The Armstrongs were permanently enjoined from interfering with the delivery of Kelley's water under his water rights.

As I was completing this letter, it came to my attention that a cease and desist letter has been sent to the residence by Officer Childs. Mr. Kelley and Mr. Mooring are proceeding in good faith to obtain the appropriate permit even though they were given incorrect information during their due diligence when planning the bed and breakfast, which led them to believe only a business license was required.

Please do not require them to cease and desist from operating while they go through the necessary administrative function to obtain the Conditional Use Permit. I believe that their application will have every likelihood of being approved. Allowing the bed and breakfast to continue so that it may honor its commitments to current reservations will not cause any significant harm to the public. However, Kelley and Mooring would be irreparably harmed if they had to cancel existing reservations. I'm sure your favorable consideration on this point will be much appreciated.

I have requested that Mr. Mooring proceed to prepare the appropriate application and pay the required fee. If I can assist in expediting this matter or there becomes a need to further discuss any legal issues that may be of concern, please do not hesitate to call.

Respectfully,

Jeffrey D. Salberg

Exhibit "A"

EXHIBIT E.5

7553

REC NOTE ___ AB _____

290223

SUMMIT COUNTY TITLE
88 MAY 13 PM 3:10

SUMMIT COUNTY RECORDER

RECD BY NP 11.50

WHEN RECORDED, MAIL TO:

David R. Olsen, Esq.

P. O. Box 1168

Salt Lake City, UT 84110

Space Above for Recorder's Use

SPECIAL WARRANTY DEED

FIRST SECURITY MORTGAGE COMPANY, a corporation organized and existing under the laws of the State of Utah, with its principal office at Salt Lake City, of County of Salt Lake, State of Utah, grantor, hereby CONVEYS AND WARRANTS against all claiming by, through or under it to WILLIAM R. KELLEY, JR., grantee, of P. O. Box 257, Hull, Massachusetts 02045, for the sum of TEN AND NO/100 DOLLARS and other consideration, the following described tracts of land in Summmit County, State of Utah:

See Exhibit "A" attached hereto and by this reference incorporated herein and made a part hereof.

Grantor makes no warranty as to the effect of any of the following:

1. An action pending in the District Court of the Third Judicial District in and for the County of Summit, State of Utah, entitled First Security Mortgage Company, a Utah corporation (successor in interest to R E H, Incorporated), Plaintiff, vs. Hebert S. Armstrong, William Melbourne Armstrong, Jr., Joseph F. Ringholz and Raye C. Ringholz, Defendants, and filed as Civil No. 9447, records of Summit County, Utah.

   Lis Pendens in said action was recorded on July 10, 1987, as Entry No. 273994, in Book 438, at Page 20, records of Summit County, Utah.

2. An action pending in the District Court of the Third Judicial District, in and for the County of Summit, State of Utah, entitled William R. Kelley, Jr., Plaintiff, vs. First Security Mortgage Company, a Utah corporation, et al., Defendant, filed as Civil No. 9532, records of Summit County, Utah. (See copy of complaint for purpose of action.)

BOOK 477 PAGE 253

(1)

Lis Pendens in said action was recorded September 22, 1987, as Entry No. 277037, in Book 445, at page 193, records of Summit County, Utah.

3. A Special Warranty Deed executed in favor of Leucadia Financial Corporation, dated November 25, 1987, recorded November 30, 1987, as Entry No. 280465, in Book 454, at Page 217, records of Summit County, Utah.

4. A Quit-Claim Deed executed in favor of Leucadia Financial Corporation, dated November 25, 1987, recorded November 30, 1987, as Entry No. 280466, in Book 454, at Page 220, records of Summit County, Utah.

The officer who signs this deed hereby certifies that this deed and the transfer represented thereby was duly authorized by the grantor.

In witness whereof, the grantor has executed this deed as of this 6th day of May, 1988.

FIRST SECURITY MORTGAGE CORPORATION

By: Wayne L. Lantz

Its: Asst V.P.

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On the 6th day of May, 1988, personally appeared before me Wayne L. Lantz, who being by me duly sworn, did say, that he is the Asst. V.P. of First Security Mortgage Company, and that said instrument was signed in behalf of said corporation by authority of its bylaws or a resolution of its board of directors, and said Wayne L. Lantz acknowledged to me that said corporation executed the same.

Deborah L. Barker
Notary Public
Residing at Salt Lake City, Utah

My Commission Expires:
33408

DEBORAH L. BARKER
NOTARY PUBLIC
Commission Expires
May 18, 1991
STATE OF UTAH

(2)

WHEN RECORDED TO:

Thomas L. M , Esq.
Van Cott, Bagley, Cornwall & McCarthy
P.O. Box 45340, Salt Lake City, Utah 84145

EXHIBIT
SUMMIT COUNTY TITLE

Space Above for Recorder's Use

87 NOV 25 PM 3:19

ALAN SPRIGGS
SUMMIT COUNTY RECORDER

Special Warranty Deed

(Corporate Form)

FEE $ MP 10.50

FIRST SECURITY MORTGAGE COMPANY, a corporation organized and existing under the laws of the State of Utah, with its principal office at Salt Lake City, of County of Salt Lake City, State of Utah, grantor, hereby CONVEYS AND WARRANTS against all claiming by, through or under it to

LEUCADIA FINANCIAL CORPORATION, a Utah Corporation

of 529 East South Temple, Salt Lake City, Utah 84102 grantee, for the sum of TEN AND NO/100 DOLLARS, the following described tracts of land in Summit County, State of Utah:

See Exhibit "A" attached hereto and by this reference incorporated herein and made a part hereof.

(This document is being re-recorded to show correct notarial acknowledgement)

SUMMIT COUNTY TITLE
RED NOTE ___ RD
280495

ALAN SPRIGGS
SUMMIT COUNTY RECORDER
87 NOV 30 PM 3:15
REC'D FEE $ 10.

The officers who sign this deed hereby certify that this deed and the transfer represented thereby was duly authorized under a resolution duly adopted by the board of directors of the grantor at a lawful meeting duly held and attended by a quorum.

In witness whereof, the grantor has caused its corporate name and seal to be hereunto affixed by its duly authorized officers this 25th day of November, A.D. 1987.

Attest:

Secretary.

(Corporate Seal)

FIRST SECURITY MORTGAGE COMPANY
By
President.

STATE OF UTAH
COUNTY OF SALT LAKE } ss.

BOOK 454 PAGE 217

BOOK 453 PAGE 451

On the 25th day of November 1987, A.D., personally appeared before me Wayne L. Lantz and Wayne L. Lantz, who being by me duly sworn, did say, each for himself, that he, the said Wayne L. Lantz is the Ass't Vice president, and he, the said is the secretary of First Security Mortgage Company, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors, and said Wayne L. Lantz and each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of the said corporation.

Notary Public

My Commission Expires: April 1, 1989 Residing at: Park City, Utah

FORM 104C.1 — WARRANTY DEED, SPECIAL, CORP. FORM — Kelly Co., 55 W. Ninth South, S.L.C., Utah

EXHIBIT "A" TO SPECIAL WARRANTY DEED

Attached to that certain Special Warranty Deed
dated November 25, 1987 and incorporated
therein and made a part thereof by reference.

The real property subject to said Special Warranty Deed is located in Summit County, State of Utah and is more particulary described as follows:

Said real property is also described as follows:

Parcel No. 1: Beginning at a point South 2630.74 feet and West 2776.80 feet from the northeast corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, and running thence South 4 degrees 03' East 421.40 feet; thence South 56 degrees 22' West 261.80 feet; thence South 50 degrees 52' West 278.0 feet; thence South 47 degrees 34' West 500.0 feet; thence North 28 degrees 34' West 538.0 feet to the center line of a ditch; thence North 53 degrees 10' East 36.0 feet along said ditch to an old spring; thence North 40 degrees East 181.0 feet; thence North 71 degrees East 87.0 feet; thence North 66 degrees 38' East 147.61 feet; thence North 30 degrees 35' East 43.50 feet; thence East 111.0 feet; thence North 45 degrees East 86.0 feet; thence North 37 degrees 38' East 125.0 feet; thence North 59 degrees 50' East 207.0 feet; thence South 67 degrees 05' East 23.0 feet; thence North 37 degrees 55' East 55.0 feet; thence North 34 degrees 15' East 75.0 feet; thence East 43.82 feet; thence South 37.0 feet; thence South 88 degrees 25' East 77.0 feet to the point of beginning.

PARCEL NO. 2: Beginning at a point South 2630.74 feet and West 2776.80 feet from the Northeast corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, and running thence South 4 degrees 03' East 421.40 feet; thence North 53 degrees 40' East 112.67 feet; thence North 0 degrees 53' East 354.74 feet; thence South 89 degrees 30' West 126.00 feet to the point of beginning.

TOGETHER WITH a right-of-way for ingress to and egress from Parcel No. 1 and Parcel No. 2 over a roadway which is approximately three rods wide, the centerline of which is more particularly described as follows:

BEGINNING AT a point South 2607.61 feet and West 2853.77 feet from the Northeast corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, and running thence South

89 degrees 36' East, 2597.86 feet, more or less, to the center of the state highway.

LESS AND EXCEPTING from Parcel No. 1 and Parcel No. 2, the following:

BEGINNING AT a point South 2615.05 feet and West 2724.10 feet from the Northeast corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being on a fence line and running thence South 1 degree 24'14" West along said fence line 151.84 feet; thence North 88 degrees 25' West 132.89 feet; thence North 0 degrees 16' West 150.00 feet; thence South 88 degrees 25' East 84.595 feet; thence North 89 degrees 30' East 52.69 feet to the point of beginning.

SUBJECT TO easements, restrictions, and rights of way appearing of record.

ALSO SUBJECT TO the lien of general property taxes after January 1, 1987.

ALSO SUBJECT TO that certain Lis Pendens recorded September 22, 1987 as Entry No. 277037, in Book 445 at Page 193, records of Summit County, Utah, which Lis Pendens relates to an action pending in the District Court of the Third Judicial District in and for the County of Summit, State of Utah, entitled, William R. Kelley, Jr., Plaintiff, vs. First Security Mortgage Company, a Utah corporation, et al., Defendants, filed as Civil No. 9532 of the records of Summit County, Utah.

BOOK 453 PAGE 453

BOOK 454 PAGE 219

5822m
112487

When recorded, return to:
Utah Open Lands
2188 S. Highland Dr., 203
Salt Lake City, UT 84106

EXHIBIT F.4

ENTRY NO. 00883436
09/30/2009 02:21:21 PM B: 2003 P: 1870
Easements PAGE 1/70
ALAN SPRIGGS, SUMMIT COUNTY RECORDER
FEE 151.00 BY HIGH COUNTRY TITLE

The Armstrong Family Thaynes Canyon Nature and Wildlife Preserve
DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement"), made as of this 29th day of September, 2009, by HERBERT S. ARMSTRONG, TRUSTEE OF THE HERBERT ARMSTRONG FAMILY TRUST DATED MARCH 15, 2006, as to an undivided one-half (1/2) in Parcel 1 of the "Property" defined below, having a mailing address of P.O. Box 1510, Park City, Utah 84060, and WILLIAM M. ARMSTRONG, as to an undivided one-half (1/2) interest in Parcel 1 of the Property, and as the sole owner of Parcel 2 of the Property, having a mailing address of P.O. Box 683452, Park City, Utah 84068 (collectively, each as to their respective interests, "Grantor")

And

UTAH OPEN LANDS Conservation Association ("Grantee") whose address is 2188 S Highland Dr, suite 203, Salt Lake City, Utah 84106.

EXHIBITS AS FOLLOWS:

Exhibit A: Property Description
Exhibit B: Property Map
Exhibit C: Baseline Documentation
Exhibit D: Allowed Trail

WITNESSETH:

WHEREAS, Grantor is the owner of certain real property, located in Thaynes Canyon, Park City, Summit County, State of Utah, known as the Armstrong Family Thaynes Canyon Nature and Wildlife Preserve, more particularly described in the attached Exhibit A ("Property") and located on the parcel map attached as Exhibit B, including Snow's Lane, which together constitute the Property; and

WHEREAS, the purpose of this Conservation Easement is to protect forever the natural, riparian, wildlife habitat, historic, open space and scenic qualities of the real property described in Exhibit A; and

WHEREAS, the Property has significant, wildlife habitat, ecological, scenic, riparian, watershed, and open space values as recognized in the Utah Land Conservation Easement Act, (Utah Code Ann. §§ 57-18-1 to 57-18-7); and Grantor intends to convey this Easement under the statutory provisions of that Act and other

applicable provisions of Utah statutory and common law; and

WHEREAS, the Property's natural habitat and watershed value serve as an important part of the East Canyon Creek watershed and its ecosystem and the ecosystem's ecological, scenic, aesthetic and open space values, including flora, fauna, and soils, the riparian systems and wetland seeps and springs. All these natural habitat, ecological, scenic, wildlife, riparian and open space values constitute the Property's Conservation Values ("Conservation Values"), and are worthy of conservation and of great importance to Grantor, Grantee, the citizens of Park City, and the State of Utah; and

WHEREAS, Grantee has documented and established through this documentation an inventory of the Conservation Values and the current condition of the land in the Baseline Documentation which is attached hereto as Exhibit C and by this reference made a part hereof; and

WHEREAS, the natural values of the property could provide significant public educational value provided the use is passive in nature; and

WHEREAS, Thaynes Canyon Creek and tributaries flow through the property providing critical undeveloped water sources for a diversity of wildlife species, these water sources also provide watershed value and the preservation of this property maintains the protection of this watershed; and

WHEREAS, the property is appropriate habitat for sensitive wildlife species, notably including northern goshawks (*Accipiter gentilis)*, western toads (*Bufo boreas)* and Lewis' woodpecker (*Melanerpes lewis)*; and

WHEREAS, the Rocky Mountain aspen forest community on the property provides a unique habitat type that provides wildlife values and aesthetic values; and

WHEREAS, the Property's riparian areas support desirable biodiversity on the property by providing access to soil and surface water, providing relatively rich soils, providing a variety of plant species and providing diverse and complex habitat for fauna, notably including birds such as neotropical migrant song birds; and

WHEREAS, the upland hillsides on the property provide Gambel's oak (*Quercus gambelii)* and mountain shrub communities that provide unique habitat values and include ecological connections to adjacent aspen forest and riparian habitats; and

WHEREAS, the Utah Division of Wildlife Resources has identified riparian habitat, flowing water (streams), and aspen forests as priority habitats for conservation in Utah and this ecological type of habitat is abundant on the Property; and

WHEREAS, views of the property can be seen from several vantage points throughout Park City including from State Road 224 which serves as the entry corridor for Park City and therefore the preservation of this property protects a unique scenic quality for residents and visitors which the Park City Chamber Bureau estimates to be over 1 million national and international tourists per year; and

WHEREAS, it is the Grantor's intention to preserve the wetland values associated with the Property in perpetuity in accordance with the section 404 of the Clean Water Act; and

WHEREAS, Grantor desires and intends that the Conservation Values of the Property be conserved and maintained by the continuation, initiation, or introduction of activities on the Property that will not compromise the Conservation Values; and

WHEREAS, the property serves as habitat for moose (*Alces alces*), deer (*Odocoileus hemionus)*, elk (*Cervus Canadensis)*, black bears (*Ursus Americana)*, mountain lions (*Felis concolor)*, raptors and other birds, small mammals, amphibians, reptiles, and aquatic and terrestrial invertebrates, in part, by supporting the aquatic and terrestrial plant communities that provide shelter and food resources for animals; and

WHEREAS, Grantor, as the fee owner of the Property, holds the right to identify, conserve, enhance, and protect in perpetuity the Conservation Values of the Property; and

WHEREAS, Grantor values the undeveloped nature of the property; and

WHEREAS, the State of Utah has recognized the importance of both public and private efforts to conserve and protect the state's natural resources by the enactment of Utah Code Ann. §§ 57-18-1 to 57-18-7; and

WHEREAS, Grantee's mission is to conserve and protect open space and natural areas for ecological, scientific, historic, recreational, and educational purposes; and Utah Open Lands is a non-profit, tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, and a qualified conservation easement holder under Utah Code Ann. § 57-18-3; and Grantee is a qualified organization under Section 170(h)(3) of the Internal Revenue Code to receive and hold conservation easements; and

WHEREAS, the parties desire that any interpretation of this Easement be construed to further the conservation, protection, and enhancement of the Property's Conservation Values.

NOW, THEREFORE, in consideration of the recitals as set forth above and the covenants, terms and conditions and restrictions contained herein, which the Parties hereby agree constitute adequate consideration for this agreement and pursuant to the laws of the State of Utah and in particular Utah Code Ann. 57-18-1 et seq (1985), Grantor hereby irrevocably grants and conveys to Grantee and its successors in interest a PERPETUAL CONSERVATION EASEMENT. This Easement is made over and across all of the Property to preserve and protect the natural, ecological, habitat, public access, open space, scenic and other values present on the Property. This easement shall forever bind Grantor and Grantor's successors in ownership and use of the Property as well as Grantee and any qualified successor of Grantee as identified in Section IX below. This easement is granted in perpetuity and any mortgage lien or other encumbrance other than encumbrances of sight or record existing at the time of this instrument's signing, shall be subordinate to the rights and intentions of this Easement and Grantee's ability to enforce the protection of the Conservation Values

described herein. The scope of this Easement is set forth in this deed. EXHIBIT F.7

SECTION I - PURPOSE

The purpose of this Easement is to enable the Property to remain forever as a natural ecological preserve, protecting in perpetuity its wildlife habitat, riparian, ecological character, native biodiversity and its scenic, open and undisturbed, use and utility, preventing any use of the Property that may materially impair or interfere with its Conservation Values.

SECTION II - RIGHTS OF GRANTEE

Affirmative Rights of Grantee. Grantor hereby grants the following rights to GRANTEE, which rights shall be in addition to and not in limitation of, all other rights and remedies available to Grantee:

(a) to prevent Grantor or third persons (whether or not claiming by, through, or under Grantor) from conducting any activity on or use of the Property that is inconsistent with the purpose of this Easement, and to require of Grantor or third persons the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use;

(b) upon two (2) business days prior notice to Grantor, and without unreasonably interfering with Grantor's use and quiet enjoyment of the Property as restricted by this Easement, to enter upon the Property at reasonable times and in a reasonable manner in order to monitor GRANTOR's compliance with, and otherwise enforce the terms of, this Easement, provided that in the absence of evidence which gives Grantee a reasonable basis to believe there has been a violation of the provisions of this Easement (which evidence shall be made available to Grantor), such entry shall not occur more often than twice annually;

(c) to enter onto the Property in the case of an emergency as determined by Grantee, in which event Grantee shall notify Grantor prior to entering onto the Property, if possible, or as soon thereafter as is reasonably practical;

(d) to obtain injunctive and other equitable relief against any violations, including restoration of the Property to the condition that existed prior to any such violation (it being agreed that Grantee will have no adequate remedy at law);

(e) to enforce this Easement in the case of breaches by Grantor or by third persons (whether or not claiming by, through, or under Grantor) by appropriate legal proceedings, after providing Grantor with reasonable notice and a reasonable opportunity to cure.

SECTION III - PERMITTED USES AND PRACTICES

The following uses and practices, while not an exhaustive recital of permitted uses and practices, are consistent with this Easement. The uses and practices described in this Section may not be precluded or prevented by this Easement, except under the following circumstances. The uses and practices may be precluded when this Easement requires Grantee's prior approval of an activity as provided in Section IV of this Easement or when such uses or practices are conducted or allowed to take place in

a manner which violates the terms of this Easement, poses a serious threat of material damage to the Conservation Values protected by this Easement, or constitutes a prohibited use or practice as set forth in Section V of this Easement.

A. Maintenance and Restoration of the Native Ecosystem. Grantor may use techniques and methods recognized as effective in restoring and maintaining the native biological diversity of the Property including but not limited to invasive weed suppression, successional forest restoration and passive restoration, provided competent restorational ecologists area utilized in creating any restoration plan.

B. Trail. The right to construct a new trail for general public access and maintain said trail as identified in Exhibit D, provided that:

a. The trail is single track in nature with a constructed width no larger than 8'.
b. That the surface materials used on the trail are natural such as woodchip or dirt and remain pervious to water.
c. Any proposed modifications to the trail are noticed to Grantee as provided for in Section IV.
d. Any trail relocation shall be approved by Grantee in accordance with Section IV of this Easement.
e. All efforts to enforce designated trail use and prevent informal trail development shall be sought.
f. Any trail development shall ensure sensitivity to the ecological integrity of the Property and in particular avoid sensitive riparian areas.
g. Grantee and Grantor may mutually determine that inappropriate trail use, or trail use at certain times of the year, conflict with the preservation of the Conservation Values, and may temporarily close the property to general trail use.

Provided in this Subsection B of Section III is the recognized intent of the Grantor to minimize trail development on the property ensuring that trail use and trail activity does not occur in a manner that materially interferes with the critical wildlife and ecological functions.

C. Trail Related Improvements. The right to construct minimal trail related improvements provided that the improvements are necessary to prevent the impairment of other Conservation Values.

D. Signs. The right to place signs on the property for the following purposes:

a. To state the purpose of the Conservation Easement and the terms of this agreement.
b. To identify the trail or interpretive sites on the property.
c. To post the property with no trespass and no hunting signs.
d. To state rules and regulations, safety, or hazardous conditions found on the property.

Provided in this Subsection D of Section III, is the intent of the Grantor to post the

property and the regulations of its use while simultaneously minimizing the affect signs may have on the scenic character.

E. Riparian Resources. The right to enhance water quality and wetland features on the Property recognized as necessary or beneficial to wildlife, in particular the protection of the water resources, springs and streams appurtenant to the property and the enhancement of ecological or habitat values on the Property, provided such enhancements are consistent with the terms of this Easement and the Conservation Values protected herein, and comply with all applicable laws and regulations.

F. Noxious Weed Control. Chemicals considered necessary to control noxious weeds shall be used in a diminimous way to ensure protection of the riparian value of the Property and to minimize possible harm to the native biological diversity of the Property. Grantor may use agrichemicals as necessary to control noxious weeds or insects. Pesticide application is prohibited within a minimum of 25 feet of all wetland edges. Chemical controls may only be used in accordance with all applicable laws, and in those amounts and with that frequency of application constituting the minimum necessary to accomplish reasonable noxious weed objectives. The use of such agents shall be conducted in a manner to minimize any adverse effect on the natural values of the Property and to avoid any impairment of the natural ecosystems and their processes.

G. Problem or Diseased Animals. Grantor may use legal methods to control diseased and problem animals as permitted by state and federal laws.

H. Fire Suppression. Grantor may remove brush and vegetation necessary to minimize the risk of wildfire on the Property. Potential means to reduce or remove high risk fuel loads should include requiring removal of deadfall and slash created during the maintenance of trails or the clearing of the existing emergency road. Removal methods shall limit the affect on the native biological diversity and may include, but would not be limited to: hand removal, mechanized methods, and biological methods such as short-duration grazing.

I. Utilities. Existing Utilities may be maintained or relocated provided any utility relocation is first approved by Grantee, the utility is buried and any disturbance to the property is restored, as much as is practical to the original undisturbed nature of the Property.

J. Water Tank Replacement and Maintenance of Sullivan Springs. In accordance with existing uses, the water tank may be accessed, used, repaired and/or replaced if needed to accommodate its current function, and Sullivan Springs may be accessed and maintained, and its current water supply use may be maintained.

K. Residual Rights. Except as expressly limited by this Easement, Grantor may exercise and enjoy all rights as owner of the Property, identified in

this easement and the right to use the Property for any purpose not inconsistent with this Easement.

SECTION IV - PRIOR APPROVAL

If any provision of this Easement requires Grantor to obtain Grantee's approval prior to performing any act or undertaking any enterprise, Grantor shall not perform that act or undertake that enterprise until the notice and approval provisions of this Section have been fully satisfied. Nothing in this Section shall in any way prohibit or limit the Grantee's ability to obtain writs or injunctive relief relating to any violation of this Easement.

A. Grantor's Written Notice. Prior to the commencement of any activity, use, or enterprise which requires Grantee's approval, Grantor will first notify Grantee in writing of the proposed activity, use, or enterprise. The notice must fully inform Grantee of all material aspects of the proposed activity, use or enterprise. Grantor will send such notices to Grantee by registered or certified mail, return receipt requested, addressed to Utah Open Lands 2188 South Highland Drive, Suite 203 Salt Lake City, Utah 84106, Attention: Board of Trustees, or to such other address as Utah Open Lands may designate in writing.

B. Grantee's Response. Grantee shall have forty five (45) days from the date such notice is received (as indicated by the registered or certified return receipt) to review the proposed activity, use, or enterprise and to notify Grantor of any objections it may have to the activity, use, or enterprise. The objections, if any, shall be based upon Grantee's opinion that the proposed activity, use or enterprise is likely to cause material damage to the Property's Conservation Values or is otherwise inconsistent with the purpose and/or provisions of this Easement. If, in the Grantee's judgment, the proposal presented by Grantor can be modified to avoid material damage to the Conservation Values and otherwise comply with the purpose and provisions of this Easement, then the response shall inform Grantor how the proposed activity, use or enterprise may be modified to conform with this Easement. Except as provided in Subsection C of this Section IV, Grantor may commence the proposed activity, use, or enterprise only after it receives Grantee's express written approval, and only in the manner explicitly proposed by the Grantor and approved by Grantee. The Grantee will send such response to Grantor by registered or certified mail, return receipt requested, addressed to Grantor at Grantor's address as set forth on page one, or to such other address as Grantor may designate in writing.

C. Grantee's Failure to Respond. If Grantee fails to post its response to a proposal presented by Grantor within forty five (45) days after it receives the proposal by registered or certified mail, or within forty five (45) days after Grantee has received adequate information to evaluate the proposed activity, whichever is later, then the proposed activity, use or enterprise shall be deemed consistent with the terms of this Easement, and Grantee will have no further right to object to the activity, use or enterprise described in the proposal. The forty five (45) day period shall not begin to run for purposes of this paragraph until such time Grantee has received adequate information from Grantor to effectively evaluate the proposed activity. In the event the Grantee requires additional information to evaluate the proposed activity, Grantee shall

request the information from Grantor as soon as practicable as and in any case not later than 45 days after the receipt of the notice of the proposed activity.

D. Force Majeure. Grantor will not be obligated to send a notice to Grantee, and Grantee will not be entitled to bring an action against Grantor for undertaking any prudent activity in a bona fide emergency situation to prevent, abate, or mitigate the immediate threat of significant damage to the Property resulting from causes beyond Grantor's control, including fire, flood, storm, and earth movement. Grantor will promptly notify Grantee of any injury to the Property caused by such events or the efforts to prevent, abate, or mitigate any damage caused by such events.

SECTION V - PROHIBITED USES AND PRACTICES

Any activity on or use of the Property inconsistent with the purpose of this Conservation Easement and which is likely to cause material damage to the Conservation Values is expressly prohibited. Grantor agrees that the following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are explicitly deemed inconsistent with the purposes of this Easement, and shall be prohibited.

A. Subdivision. Grantor does not have the right nor will any attempt be made to divide, subdivide, or take any action which creates an actual or *de facto* subdivision of the Property.

B. Construction. Grantor will not construct or affix to the ground any structures or facilities on the Property for use in human habitation, to shelter domestic animals or feral cats, or for commercial or industrial activities whether temporary or permanent. No materials shall be applied to the property in the maintenance of the property or for trail use that are impervious to water or are of a synthetic material.

C. Wildlife Disturbance or Harassment. Harassment of wildlife on the Property by people, vehicles or domestic animals is prohibited. The taking, removal, translocation or captivation of wildlife is prohibited, except as necessary for problem animal control

D. Hunting. Hunting is prohibited.

E. Alteration of Watercourses and Topography. Grantor will not change, disturb, alter, excavate, or impair any watercourse or wetland or the topography of the ground on the Property, except as expressly permitted by Section III of this Easement. Grantor shall conform to all state and federal laws when constructing or altering wetlands, watercourses and habitat.

F. Non-native Species. Grantor will not introduce into the Property any non-native plant or animal species other than those generally accepted for habitat improvement or as mutually agreed upon by Grantor and Grantee. Feral cats may not be fed on the property.

G. Roads. No roads over, through, or across this property are permitted

except for:

1) Snow's Lane and its maintenance of which shall ensure that the road is not improved beyond its existing condition as identified in the baseline documentation inparticular that the road not be widened or made to accommodate increased traffic beyond it historic use;
2) the existing skier evacuation road the use of which is granted to Park City Mountain Resort and the maintenance of which shall ensure that no paving or impervious, synthetic materials be applied to the property.

H. Recreational Structures. No permanent recreational structures or facilities will be allowed on the Property.

I. Motorized Vehicles. Are not permitted to access this property except for:

1) Use of All Terrain Vehicles by Grantor in conjunction with Grantor's use and enjoyment of the property provided however that this use does not extend to the general public or to successors in interest.
2) Emergency vehicles.
3) Vehicles used in routine maintenance of the Property provided these vehicles are in sound working order.
4) Vehicles necessary to carry out a permitted use as identified under Section III of this Easement, provided these vehicles are in sound working order.
5) Vehicles used in accordance with the Park City Mountain Resort Easement provided these vehicles stay on the established easement and are in sound working order.
6) Vehicles attendant to an existing residential use in accordance with any recorded Rights-of-Way or easement for Snow's Lane.

J. Agricultural Uses. Agricultural uses are prohibited on this property.

K. Dumping. Trash, debris, ashes, sawdust, and other non-compostable refuse may not be dumped or otherwise disposed of on the Property.

L. Utilities. New utility corridors and new utilities are prohibited.

M. Mineral Activities. Exploration or extraction of oil, gas, rock, gravel, sand, minerals, artifacts, or other materials found in, on, or under the Property by Grantor is prohibited. No sub-surface exploration or extraction of oil, gas, rock, gravel, sand, minerals, artifacts, or other materials (including the lease, sale, or other disposition of the rights to such materials) are permitted by this document.

N. Billboards. Grantor will not construct, maintain, lease, or erect any commercial signs, political signs or billboards on the Property.

O. Hazardous Waste. Grantor will not store, dump, or otherwise dispose of any toxic and/or hazardous material on the Property. Neither this specific prohibition nor any other right granted in this Easement makes Grantee an owner of the Property.

Nor does it permit Grantee to control any use of the Property by Grantor which may result in the storage, dumping or disposal of hazardous or toxic materials; provided, however, Grantee may bring an action to protect the Conservation Values of the Property. This prohibition does not impose liability on Grantee, nor shall Grantee be construed as having liability as a "responsible party" under CERCLA or other similar state or federal statutes.

P. Water Development. No portion of the property shall be used for residential, commercial, or recreational develop of water resources, in particular the spring known as Hidden Spring which feeds the Conservation Values of the property, and shall be protected by this Conservation Easement. Grantor shall not file a claim on the rights of Hidden Spring.

SECTION VI - BREACH, RESTORATION, AND REMEDIES

A. Breach and Restoration. Where Grantee becomes aware of a violation or potential violation of any restriction contained in this Easement, or becomes aware of any damage or potential damage to the Conservation Values associated with the Property, whether precipitated by Grantor or by a third party, Grantee may notify Grantor in writing of such violation, potential violation, damage or potential damage. Upon Grantor's receipt of such notice, Grantor agrees to immediately take action to prevent or stop the activity which potentially or actually violates the terms or intent of this Easement.

Grantor shall have thirty (30) days after receipt of such notice to undertake actions, including restoration of the Property, that are reasonably calculated to swiftly correct the conditions caused by such violation. If Grantor fails to take such corrective action, Grantee may undertake appropriate action, including legal action, to effect such corrections. Grantor shall pay the cost of such corrections, including Grantee's expenses, court costs, and attorney's fees.

B. Injunctive and Other Relief. In the event Grantor undertakes or causes to be undertaken any activity on the Property that requires Grantee's prior approval and such approval is not obtained consistent with Section IV of this Easement, or where Grantor undertakes or causes to be undertaken any activity in violation or potential violation of the terms of this Easement; Grantee shall have the right to obtain injunctive relief or writs from courts of competent jurisdiction to stop any unauthorized activities and/or force the restoration of that portion of the Property affected by such activity to a similar or equivalent condition that existed prior to the unauthorized activity. Such restoration may include, but is not limited to, restoring soils, replanting suitable native vegetation, and/or taking such other action as Grantee deems necessary to achieve restoration. In such case, the costs of restoration and litigation, including reasonable attorney's fees, shall be borne by Grantor or those of its successors or assigns against whom a judgment is entered.

C. Actual or Threatened Non-Compliance. Grantor acknowledges that actual or threatened instances of non-compliance under this Easement constitute immediate and irreparable harm. Grantee is entitled to invoke the equitable jurisdiction of any court to enforce this Easement.

D. Cumulative Remedies. Grantee's remedies set forth in this Easement are cumulative. Any, or all, of the remedies may be invoked by Grantee if there is an actual or threatened violation of this Easement.

E. Delay in Enforcement. A delay in enforcement shall not be construed as a waiver of Grantee's right to enforce the terms of this Easement.

SECTION VII – MAINTENANCE COSTS, TAXES & FEES

As between Grantor and Grantee, Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including responsibility for the control of noxious weeds in accordance with all applicable Utah laws. As between Grantor and Grantee, Grantor agrees to bear all costs of operation, upkeep and maintenance of the Property, and agrees to reimburse the Grantee and its successors and assigns for all claims and obligations arising from the operation, upkeep, and maintenance of the property. As between Grantor and Grantee, Grantor shall pay any and all lawful taxes, assessments, fees, and charges levied by competent authority.

SECTION VIII – INDEMNITY AND INSURANCE

A. Grantor and successors in assigns agree to defend, indemnify and hold harmless the Grantee from and against any damage, liability and loss occasioned by, growing out of, or arising or resulting from any act or omission by the Grantor, its agents or employees while on the Property.

B. Grantor also agrees to defend and indemnify Grantee against obligations arising from past, present or future dumping of hazardous materials on the Property, and any obligations associated with their cleanup or containment.

SECTION IX - ASSIGNMENT OF EASEMENT

Grantee may not transfer or assign its interest in the Property created by this Easement except to a "qualified organization" (within the meaning of Section 170(h) (3) of the Internal Revenue Code) which is organized or operated primarily or substantially for one or more of the conservation purposes specified in Section 170(h) (4) (a) of said Code. Any such qualified organization shall agree to enforce the conservation purposes protected by this Easement. Grantee may not transfer its rights under this Easement, in whole or in part, without the prior written consent of Grantor, which consent shall not be unreasonably withheld.

SECTION X - BASELINE DATA

A Baseline inventory shall be completed prior to the signing of the Easement. The parties acknowledge that this collection of baseline data contains an accurate

representation of the Property's condition and natural resources as of the date of the execution of this Easement in accordance with Treasury Regulation 1.170A-14(g)(5)(I). The parties agree that subsequent updates to the Baseline Inventory will be signed by both Grantee and Grantor and attached to the Baseline Inventory in Exhibit C of this Easement. The parties acknowledge that an inventory of baseline data relating to the Property has been completed by competent professionals familiar with the Property. Copies of this inventory of baseline data and subsequent updates to the Baseline inventory are on file in Grantee's offices.

Notwithstanding the foregoing, should a future controversy arise over the biological and/or physical condition of the Property, the parties may use all relevant documents, surveys, reports and other information to assist in resolving the controversy.

SECTION XI
SUBSEQUENT SALE, EXCHANGE, OR INVOLUNTARY CONVERSION

Grantor, and Grantee agrees that the conveyance of this Easement creates a property right immediately vested in Grantee as well as a public trust vested in the Grantee. Grantee's property right in this Easement shall be based on the condition and improvements on the Property at the time the Easement is established, and this condition shall be documented as referred to in Section X, above. For purposes of this Section, the property right shall be deemed to have a fair market value at least equal to the proportionate value this Easement bears to the entire value of the Property as a whole at the time of its creation. That proportionate value of Grantee's property rights shall remain constant. Should a change in conditions give rise to the extinguishment of this Easement, as provided in Treasury Regulation Section 1.170A-14(g)(6)(I) or any subsequent revision to that section of the IRS Code, or extinguishment of a portion of Grantee's rights under this Easement, Grantee on a subsequent sale, exchange, conveyance, or involuntary conversion of the Property or a portion of the Property shall be entitled to a portion of the proceeds at least equal to such proportionate value of this Easement as established at the time of its creation. All interpretations of Grantee's property rights shall follow Treasury Regulation Section 1.170.

Grantor agrees that reference to this Easement will be made in any subsequent deed, or other legal instrument, by means of which any interest in the Property (including any leasehold interest) is conveyed, and that a copy of this Easement will be attached thereto. The separate parcels described in Exhibit A shall be considered one Property and shall not be divided, subdivided or otherwise separated. Grantor agrees to encumber title to the Property so that ownership of the Property never vests in more than one entity at any single point in time, this restriction to run with the Property in perpetuity. Grantee's acceptance of this Easement is contingent upon Grantor's placement of such encumbrance on title of the Property. Grantor will notify Grantee in writing of any conveyance of interest by sending written notice to Grantee as provided in Section IV, Subsection A. Grantor agrees to provide notice of this Easement to all successors in interest, and to any potential purchasers or subsequent owners. In the event Grantor elects to sell the Property, Grantor agrees to provide notice of this Easement in any sale or solicitation materials or information. Any failure to comply with the terms of this paragraph shall in no manner render this Easement or any provisions of this Easement unenforceable.

SECTION XII – AMENDMENTS

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Easement; provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the State of Utah. Any such amendment shall be consistent with the purpose of this Easement, shall not affect its perpetual duration, shall not permit residential, commercial or industrial development of the Property and shall not permit any impairment of the significant Conservation Values of the Property. Any such amendment shall be filed in the County Recorder's office of Summit County, Utah. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

SECTION XIV - MISCELLANEOUS PROVISIONS

A. Partial Invalidity. If any provision of this Easement, or the application of this Easement, or the application of this Easement to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement, and the application of such provisions to persons or circumstances other than those to which it is found to be invalid, shall not be affected thereby.

B. Enforcement. Grantor intends that enforcement of the terms and provisions of this Easement shall be at the discretion of Grantee, and that Grantee's failure to exercise its rights under this Easement, in the event of any breach by Grantor, shall not be considered a waiver of Grantee's rights under this Easement in the event of any subsequent breach.

C. "Grantor" and "Grantee". The term "Grantor", as used in this Easement, and any pronouns used in place thereof shall mean and include the above-named Grantor, and its successors and assigns. The term "Grantee", as used in this Easement and any pronouns used in place thereof shall mean Utah Open Lands Conservation Association and its successors and assigns.

D. Titles. Section and Subsection titles and subtitles are for convenience only and shall not be deemed to have legal effect.

E. Liberal Construction. This Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property, and in accordance with Utah Code Ann. §§ 57-18-1 to 57-18-7. The parties acknowledge that each has reviewed and revised this Easement with the assistance of counsel, and that no rule of construction resolving ambiguities against the drafting party shall be employed in interpreting this Easement.

F. Successors. This Easement is binding upon, and will inure to the benefit of Grantor's and Grantee's successors in interest and assigns. All subsequent owners of the Property are bound to all provisions of this Easement to the same extent as

Grantor.

G. Governing Law. This Easement will be interpreted and construed in accordance with applicable Utah laws.

H. Entire Agreement. This Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

I. Compliance With Law. All uses and practices permitted by this Easement, shall comply with all applicable state and federal laws.

J. Effective Date. The effective date of this Easement will be the date signed by all parties.

K. Notice Requirements. Grantor hereby acknowledges that Grantee, at least three days prior to the execution of this Easement, discussed with it the types of conservation easements available, the legal effect of each easement, and the advisability of consulting legal counsel concerning the possible legal and tax implications associated with granting this Easement.

L. Merger. The Parties intend that this Easement will not merge. It being the intent of the Parties that the Easement never be extinguished but remains in full force, enjoining Grantee or its successor in interest to perpetually comply with its terms and conditions regardless who holds title to the underlying fee interest.

M. Change of Conditions. The fact that any use of the Property expressly prohibited by this Easement or otherwise determined inconsistent with the purpose of this Easement may become significantly more valuable or economical than permitted uses, or that neighboring properties may in the future be put entirely to uses inconsistent with this Easement, has been considered by Grantor in granting this Easement. It is Grantor's belief that any such changes will increase the public's benefit and interest in the continuation of this Easement, and it is the intent of both Grantor and Grantee that any such changes not be considered circumstances sufficient to terminate this Easement, in whole or in part. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination.

N. Superiority of Easement. Any mortgage, trust deed, lien, judgment, or other financial interest executed or entered against the Property hereafter shall be subordinate to this Easement and in no way enable the holder of such interest or their successor(s) in interest to breach the terms of this Easement or otherwise compromise the Conservation Values protected thereby.

IN WITNESS WHEREOF, Grantor and Grantee hereby execute this Easement to be effective as of the date first written above.

GRANTEE:

UTAH OPEN LANDS CONSERVATION ASSOCIATION

By: _____
Name: Brad T. Barber
Title: Chairman, Board of Directors

GRANTORS:

_____
Herbert S. Armstrong, as Trustee of the Herbert Armstrong Family Trust, dated March 15, 2006

_____
William M. Armstrong

STATE OF UTAH)
: ss.
County of Summit)

On this 29 day of September 2009, Herbert S. Armstrong, known to me to be the person whose name is subscribed to the instrument set forth above, personally appeared before me, Ken Davis, a Notary Public for the State of Utah, and acknowledged that they executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and affix my notaries seal on the date above written.

(SEAL)

KENNETH DAVIS
NOTARY PUBLIC - STATE OF UTAH
3565 E. CENTER CREEK ROAD
HEBER CITY, UT 84032
My Comm. Exp. 06/10/2012

_____
Notary Public for the State of Utah
Residing at
Heber City UT

My commission expires June 10, 2012

STATE OF UTAH)
: ss.
County of Summit)

On this 29 day of September 2009, William M. Armstrong, known to me to be the person whose name is subscribed to the instrument set forth above, personally appeared before me, Ken Davis, a Notary Public for the State of Utah, and acknowledged that they executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and affix my notaries seal on the date above written.

(SEAL)

Notary Public for the State of Utah
Residing at
Heber City UT 84032

KENNETH DAVIS
NOTARY PUBLIC - STATE OF UTAH
3565 E. CENTER CREEK ROAD
HEBER CITY, UT 84032
My Comm. Exp. 06/10/2012

STATE OF UTAH)
: ss.
County of Salt Lake)

On this 29 day of Sept, 2009, who is known to me to be the Chair of Utah Open Lands, and the person whose name is subscribed to the instrument set forth above, personally appeared before me, Brad T Barber, a Notary Public for the State of Utah, and acknowledged that he executed the same on behalf of Utah Open Lands.

IN WITNESS WHEREOF, I hereunto set my hand and affix my notary seal on the date above written.

KAMRIN L. WILSON
Notary Public
State of Utah
My Commission Expires Dec. 18, 2010
[illegible] Dr. SLC, UT 84106

(SEAL)

Notary Public for the State of Utah
Residing at

My commission expires

Exhibit A
Property Description

Parcel 1:

A parcel of land located in the southwest quarter of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at the center of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence along the north-south quarter section line South 00°09'43" East 2620.08 feet to the south quarter corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian; thence along the section line South 89°45'08" West 2642.76 feet to the southwest corner of said Section 8; thence along the section line North 00°04'42" East 2638.42 feet to the west quarter corner of Section 8; thence along the east-west quarter section line South 89°55'05" East 1315.94 feet; thence South 14°28'58" East 617.12 feet to the center of a stream; thence South 28°07'11" East 538.00 feet; thence North 47°38'37" East 500.05 feet; thence North 50°59'02" East 277.98 feet; thence North 56°26'17" East 261.84 feet; thence North 53°48'11" East 112.57 feet; thence along a fence line North 01°13'39" East 343.94 feet to the east-west quarter section line; thence along said quarter section line South 89°46'50" East 5.97 feet to the point of beginning.

Summit County Tax Serial No. PP-25-C.

Excepting therefrom those portions lying within the following:

An parcel of land located in the north half of the southwest quarter of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point that is South 00°04'42" West 422.59 feet along section line and East 1425.18 feet from the west quarter corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence South 14°28'58" East 182.61 feet; thence South 28°07'11" East 88.00 feet; thence South 29°42'27" West 334.41 feet; thence North 74°55'41" West 118.35 feet; thence North 28°15'43" West 361.50 feet; thence North 61°44'17" East 413.30 feet to the point of beginning.

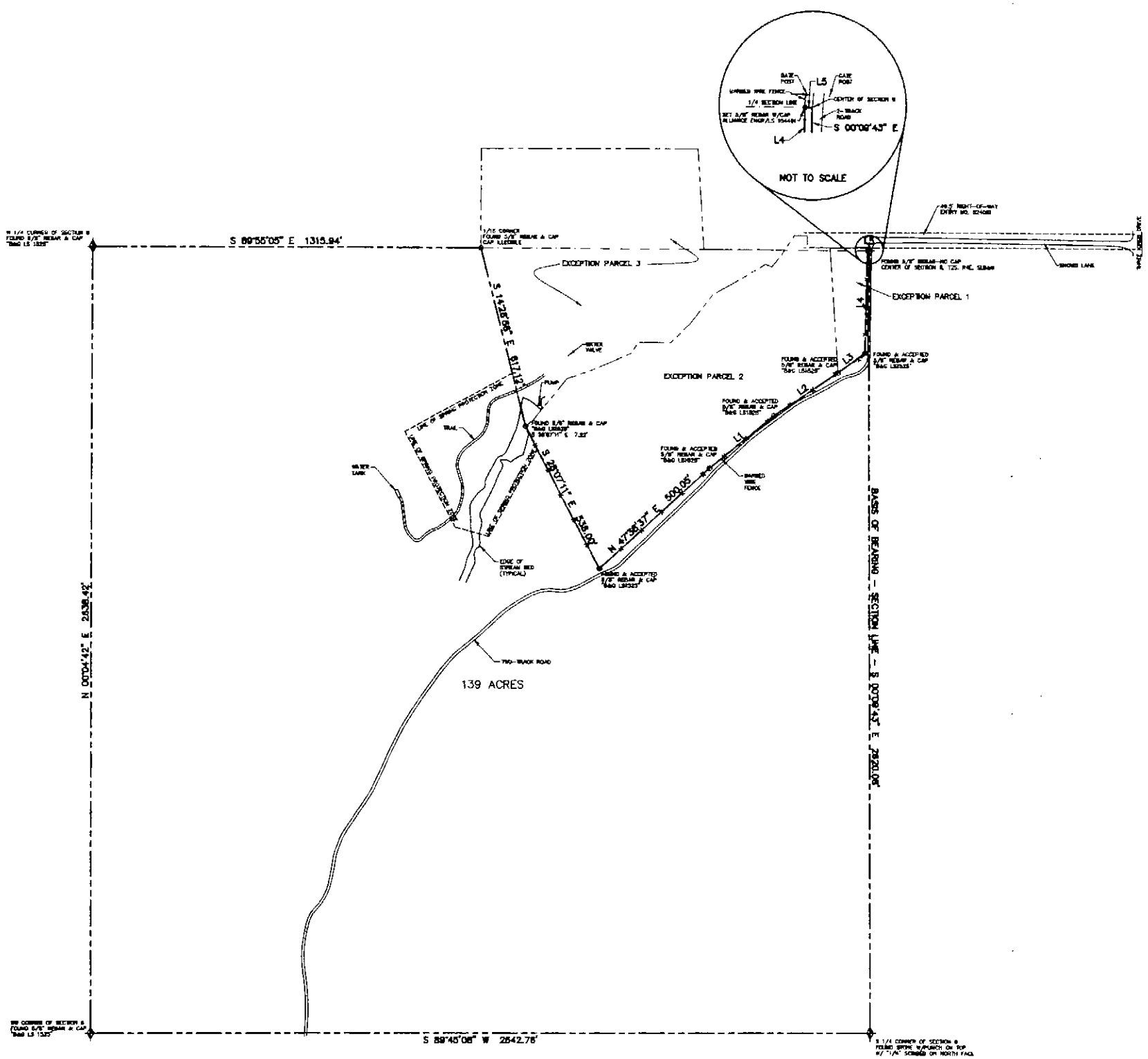
Parcel 2:

A parcel of land located in the south half of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point that is North 6.44 feet and West 2631.22 feet from the east quarter corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being the center of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence along the quarter section line North 89°46'50" West 5.97 feet; thence North 59.69 feet; thence East 903.53 feet to the westerly edge of Three Kings Road; thence along the westerly edge of Three Kings Road South 49.50 feet; thence West 897.56 feet; thence South 10.21 feet to the point of beginning.

Portions of Summit County Tax Serial Numbers: PCA-1001-1, PCA-1001-7-A, and SS-108-E.

Exhibit B
Property Map



SURVEYOR'S CERTIFICATE

I, Martin A. Morrison, certify that I am a Registered Land Surveyor and that I hold Certificate No. 4938739, as prescribed by the laws of the State of Utah, and that a survey of the following described property was performed under my direction.

Martin A. Morrison — 9-25-'09
Martin A. Morrison — Date

DEED DESCRIPTION

All of the Southwest quarter of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Excepting from the above described parcel, any portions lying within the following:

Exception Parcel 1:

Beginning at a point South 2630.74 feet and West 2776.80 feet from the northeast corner of Section 8, Township 2 South, Range 4 East, Salt Lake and Meridian; and running thence South 4°03' East 421.40 feet; thence North 53°40' East 112.87 feet; thence North 0°53' East 354.74 feet; thence South 89°30' West 126.00 feet to the point of beginning.

Exception Parcel 2:

Beginning at a point South 2630.74 feet and West 2776.80 feet from the northeast corner of Section 3, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence South 4°03' East 421.40 feet; thence South 56°22' West 261.80 feet; thence South 50°52' West 278.0 feet; thence South 47°34' West 500.0 feet; thence North 28°34 West 538.0 feet to the center line of a ditch; thence North 53°10' East 36.0 feet along said ditch to an old spring; thence North 40° East 181.0 feet; thence North 71° East 87.0 feet; thence North 66°36' East 147.61 feet; thence North 30°35' East 43.50 feet; thence East 111.0 feet; thence North 45° East 86.0 feet; thence North 37°38' East 125.0 feet; thence North 59°50' East 207.0 feet; thence South 67°05' East 23.0 feet; thence North 37°55' East 55.0 feet; thence North 34°15' East 75.0 feet; thence East 43.82 feet; thence South 37.0 feet; thence South 86°25' East 77.0 feet to the point of beginning.

Exception Parcel 3:

Beginning at a point which is North 89°57'02" West along the quarter section line 2631.13 feet, and North 89°59'04" West 252.24 feet from the east quarter corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian; thence South 34°15' West 75.08 feet; thence South 37°35' West 55.00 feet; thence North 67°05' West 23.00 feet; thence South 59°50' West 207.00 feet; thence South 37°38' West 125.00 feet; thence South 45° West 88.00 feet; thence West 111.00 feet; thence South 30°35' West 43.50 feet; thence South 66°36' West 147.61 feet; thence South 71° West 87.00 feet; thence South 40° West 181.00 feet; thence South 53°10' West 36.00 feet; thence North 13°23'56" West 663.21 feet; thence North 0°00'48" East 333.81 feet; thence South 89°58'18" East 735.63 feet; thence South 3°33'36" East 334.29 feet; thence South 89°59'05" East 306.61 feet to the point of beginning.

SURVEY DESCRIPTION

A parcel of land in the southwest quarter of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at the center of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence along the north-south quarter section line South 00°09'43" East 2620.06 feet to the south quarter corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian; thence along the section line South 89°45'08" West 2642.76 feet to the southwest corner of said Section 8; thence along the section line North 00°04'42" East 2638.42 feet to the west quarter corner of Section 8; thence along the east-west quarter section line South 89°55'05" East 1315.94 feet; thence South 14°28'58" East 617.12 feet to the center of a stream; thence South 28°07'11" East 538.00 feet; thence North 47°38'37" East 500.05 feet; thence North 50°59'02" East 277.98 feet; thence North 56°26'17" East 261.84 feet; thence North 53°48'11" East 112.57 feet; thence along a fence line North 01°13'39" East 343.94 feet to the east-west quarter section line; thence along said quarter section line South 89°48'50" East 5.97 feet to the point of beginning.

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N 50°59'02" E	277.98
L2	N 56°26'17" E	261.84
L3	N 53°48'11" E	112.57
L4	N 01°13'39" E	343.94
L5	S 89°48'50" E	5.97

NOTES

1. Basis of survey: Found survey monuments as shown.
2. Property corners were set or found as shown.
3. Date of survey: September 23, 2009
4. Property location: Southwest quarter of Section 8, T2S, R4E, SLB&M

200' 0 200' 400'

(435) 649-9467
Alliance Engineering
CONSULTING ENGINEERS LAND PLANNERS SURVEYORS
323 Main Street P.O. Box 2664 Park City, Utah 84060-2664

STAFF:
MARSHALL KING
MARTY MORRISON
KYLE AVERY

REVISED: 9/29/09
DATE: 9/25/09

BOUNDARY SURVEY
ARMSTRONG TRUST

FOR: PARK CITY MUNICIPAL CORPORATION
JOB NO.: 7-6-09
FILE: X:\ThaynesCanyon-usphm\dwg\srv\srvy2009\070609.dwg

SHEET 1 OF 1

EXHIBIT F.23

Exhibit C

Baseline Documentation

Armstrong Property

Baseline Documentation

August 11, 2009

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This baseline documentation was developed from actual site visits by Arthur Morris (Utah Open Lands Ecologist/Conservation Stewardship Director), and Wendy Fisher (Utah Open Lands Executive Director). This Baseline Documentation is to be used in conjunction with the Armstrong Conservation Easement. This Baseline Documentation will be updated during monitoring visits.

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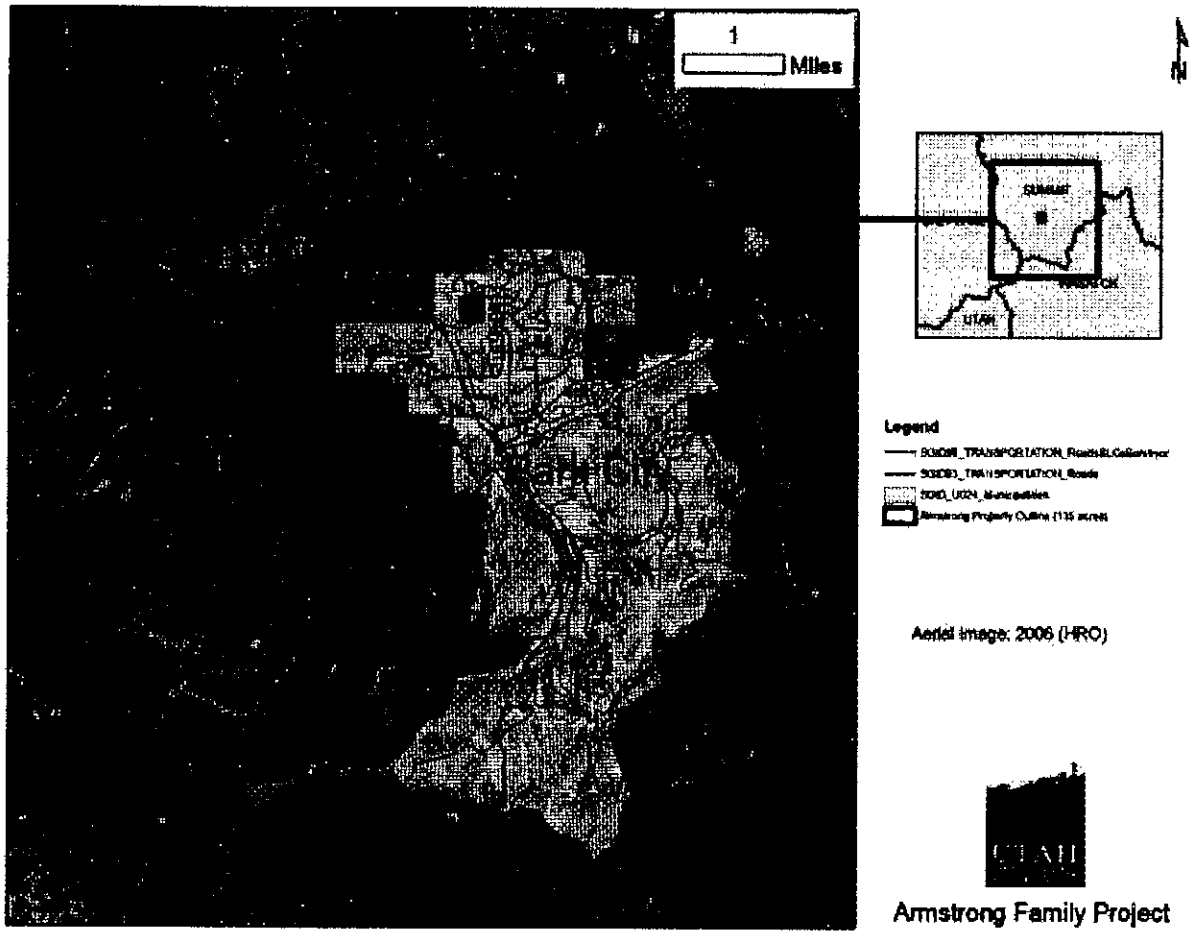

Figure 1. Locator map for the Armstrong Property.

EXHIBIT F.32

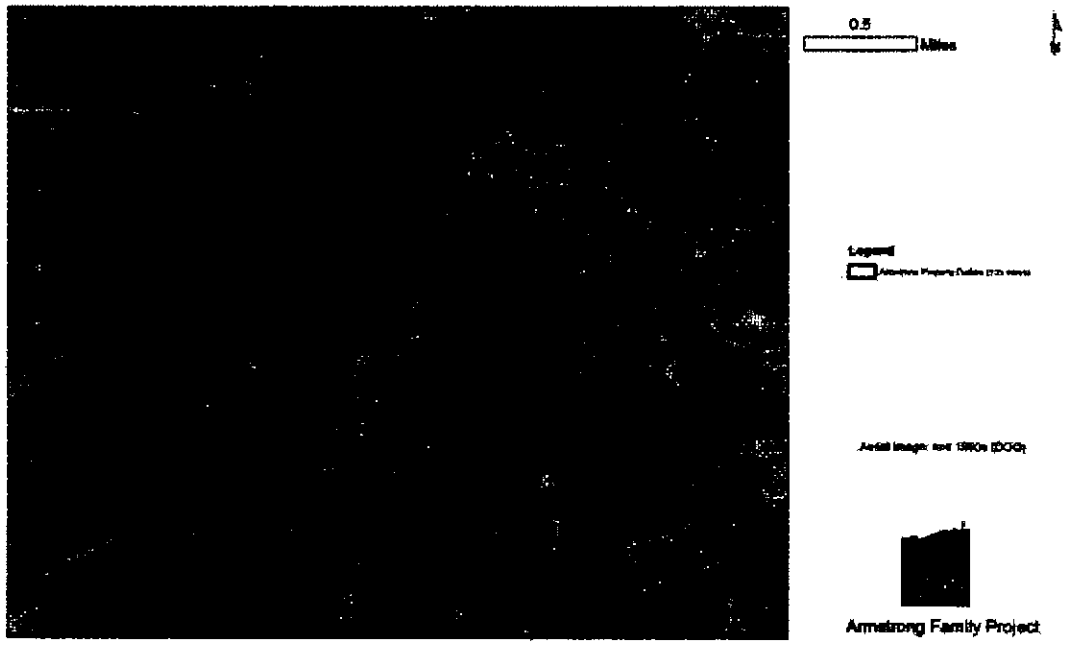

Figure 2a. Mid 1990's aerial photo of the Armstrong Property.

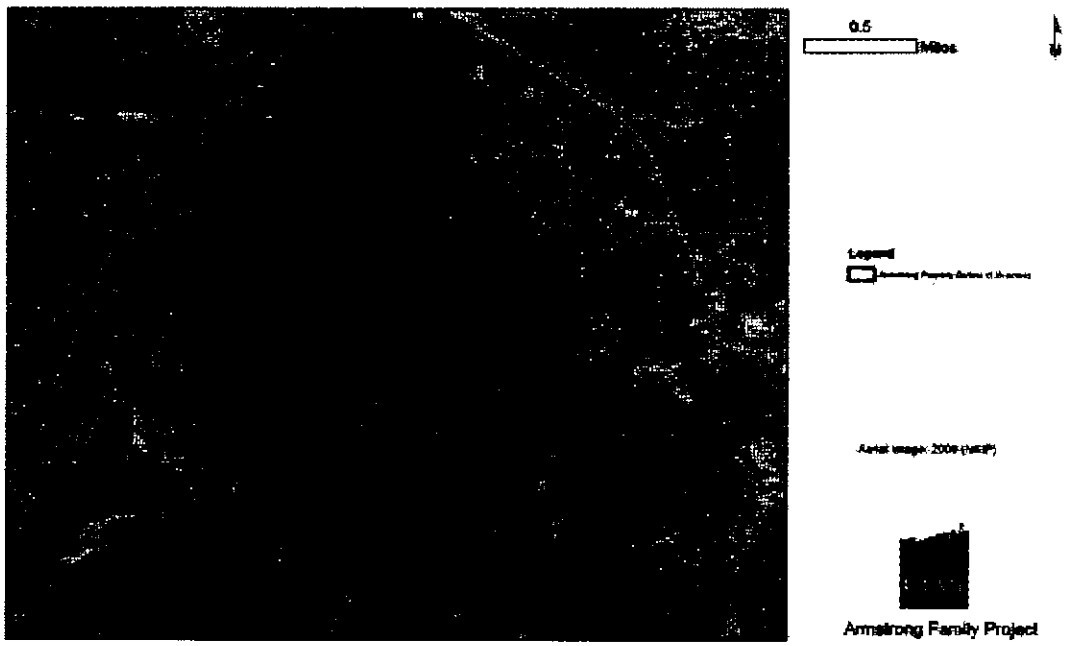

Figure 2b. 2006 aerial photo of the Armstrong Property.

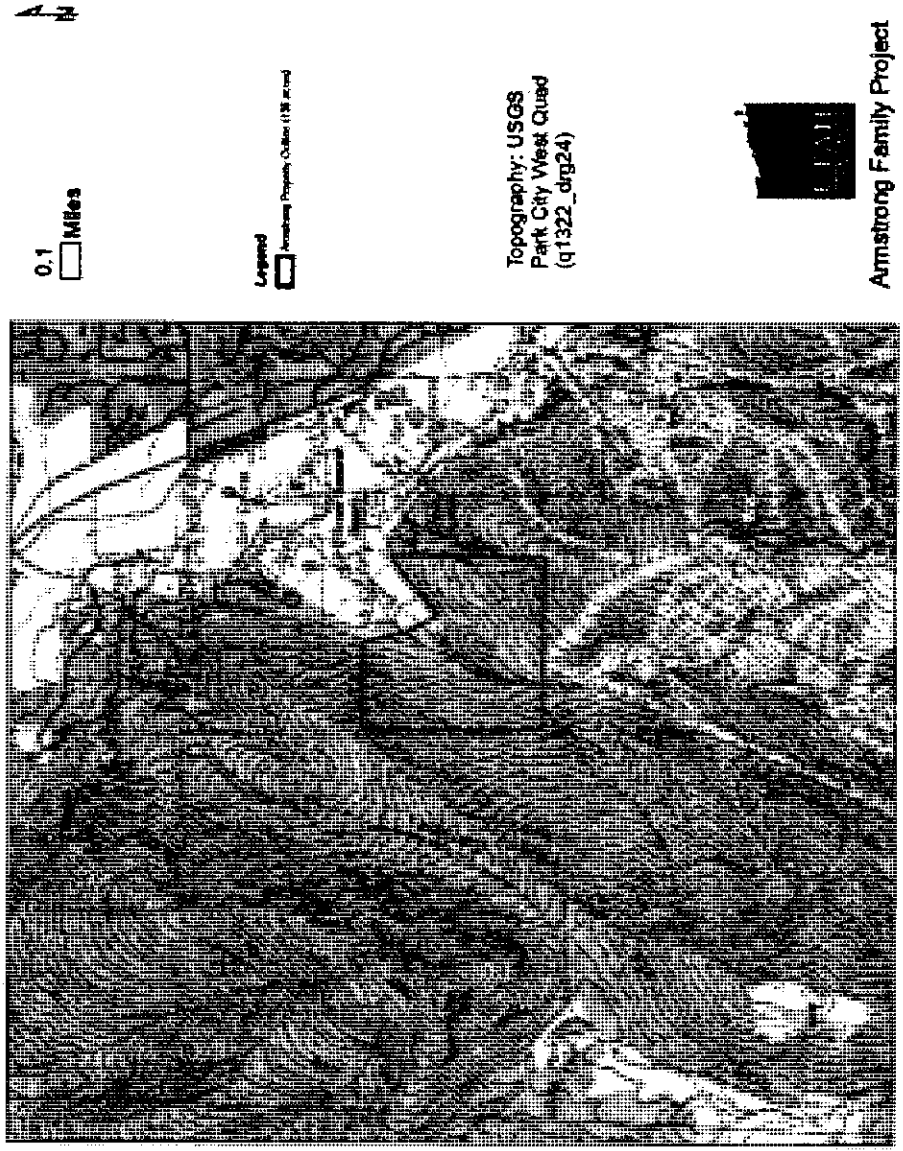

Figure 3. Topography of the Armstrong Property.

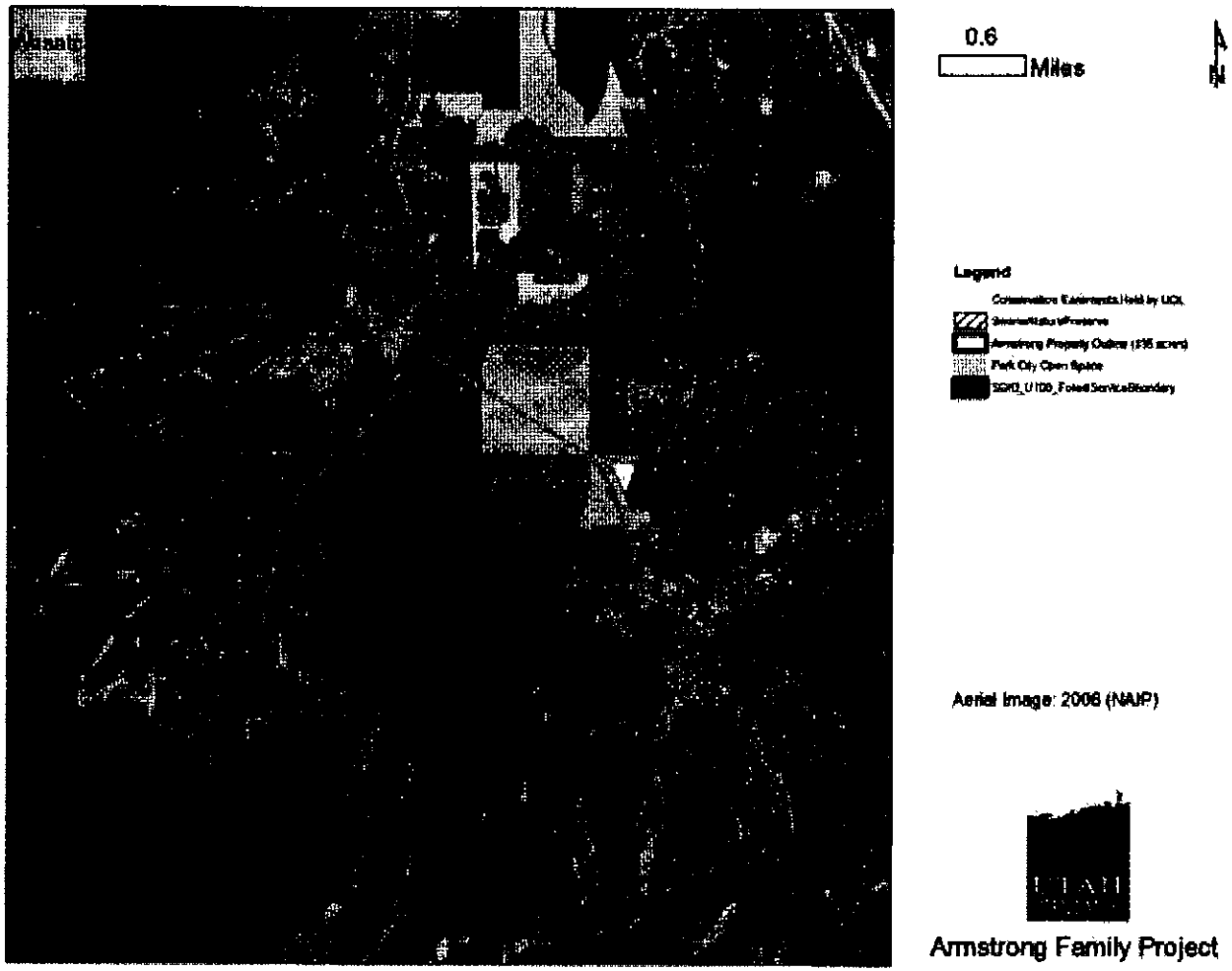

Figure 4. Open space context for the Armstrong Property.

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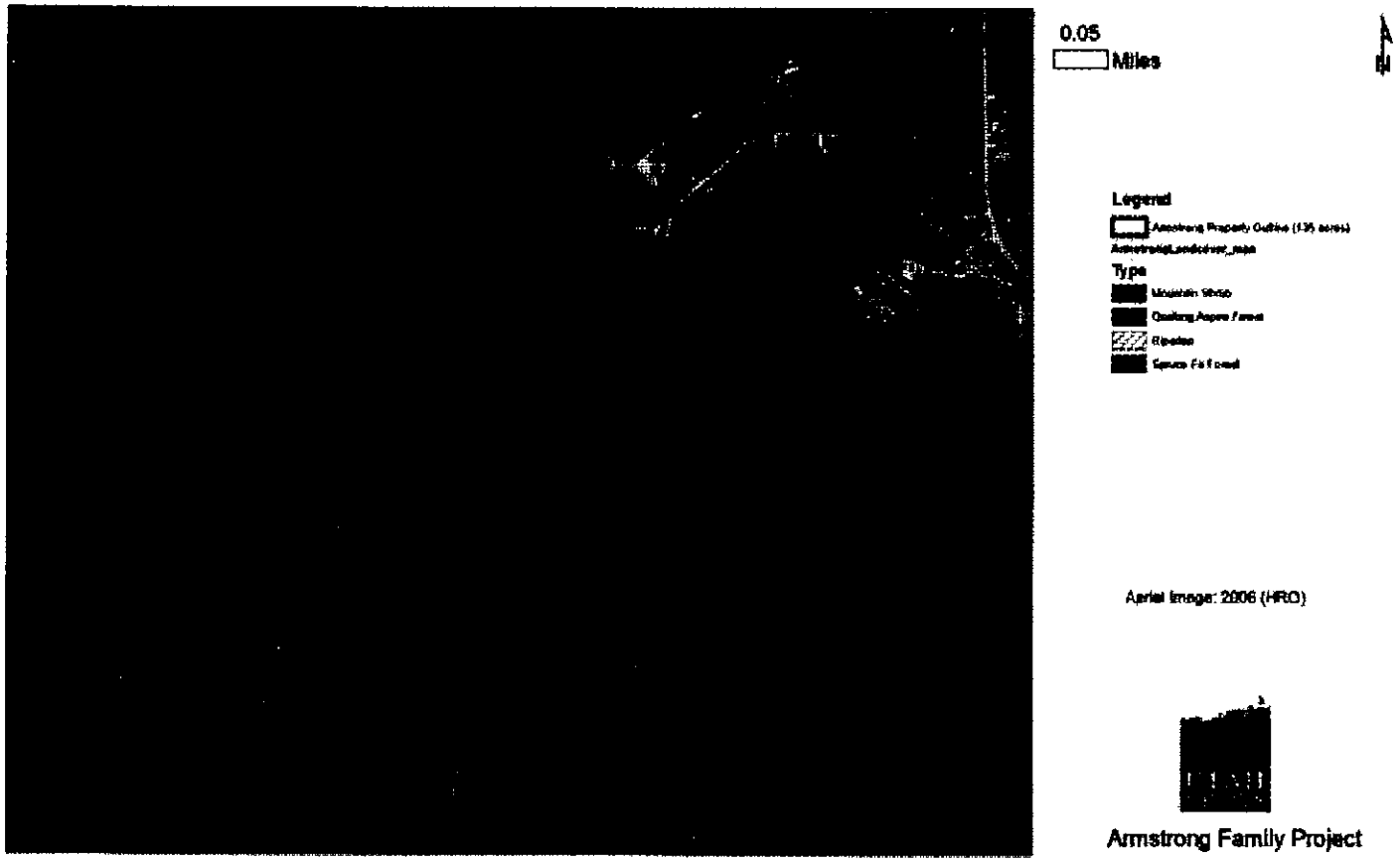

Figure 5. Landcover of the Armstrong Property delineated from on-site observations. The riparian area represents an area without distinct boundaries that is closely connected to and influenced by Thaynes Canyon Creek and other streams. Riparian forest blends with wider aspen forest on the Property, in part because low-lying portions of Thaynes Canyon provide microclimates similar to riparian. Large aspens with stem diameters greater than 12 in and heights of 70 ft or more occur along the low-lying and riparian portions of Thaynes Canyon.

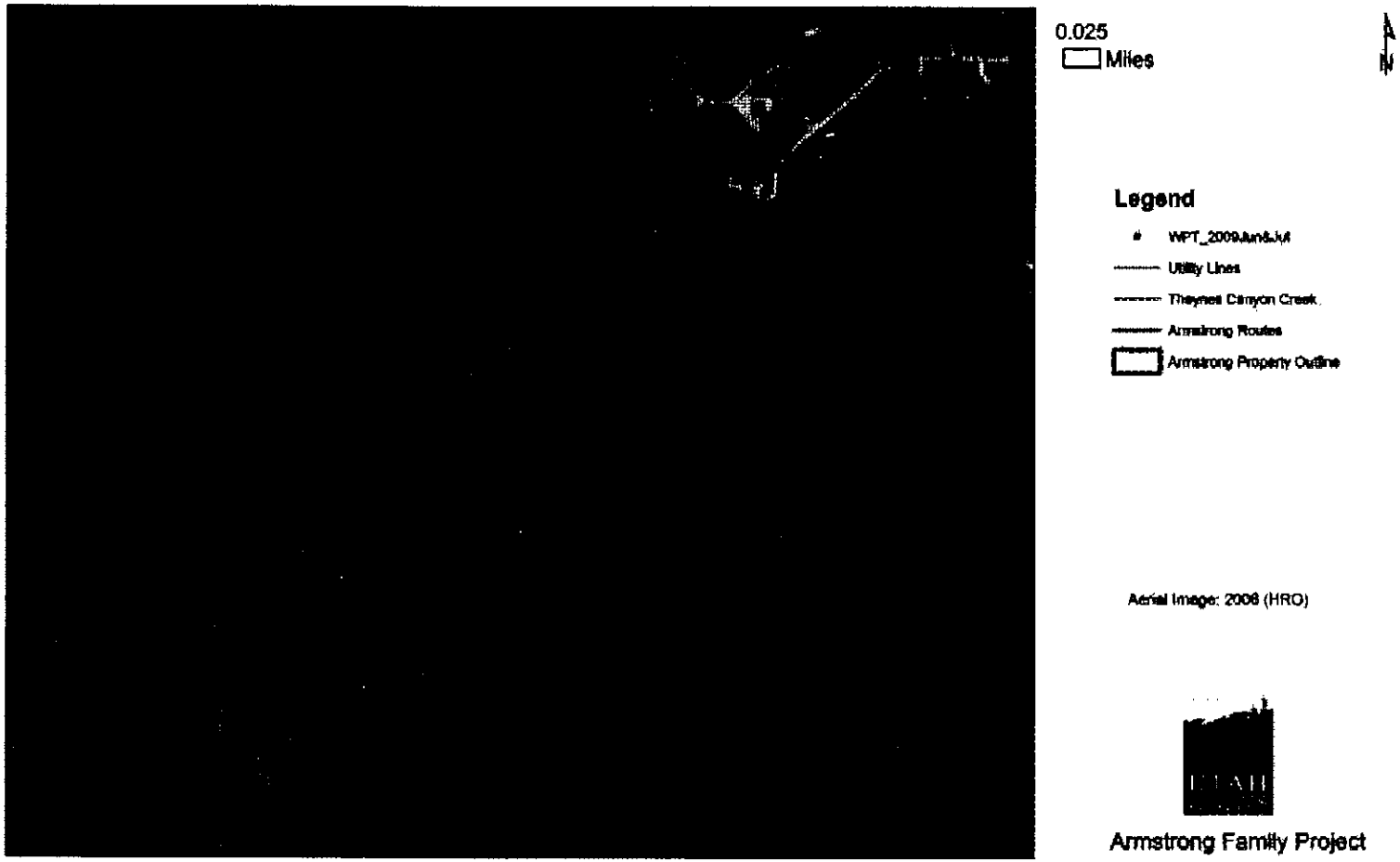

Figure 6. Map of the Armstrong Property showing routes, Thaynes Canyon Creek, and waypoints (photopoints) established during baseline documentation. Routes and creek channel are approximate. Tributary streams are not shown although at least three tributary streams joined Thaynes Canyon Creek downstream from point 18 at the time of this baseline documentation.

GENERAL

Land Type

The open land described in this baseline documentation is termed the Armstrong Property (Hereafter also "the Property"). The Armstrong Property is approximately 135 acres (Figures 1 through 6). It is located in Section 12 in Township 1 South, Range 3 East, Salt Lake base and meridian. The exact parcel description is recorded in the Deed of Conservation Easement.

The Armstrong Property is a relatively natural area very near to Park City in Summit County at about 7,000 ft above sea level. Vegetation on the Armstrong Property parcel is marked by Rocky Mountain quaking aspen (*Populus tremuloides*) forest communities, riparian areas, and hillsides with Gambel's oak (*Quercus gambelii*), bigtooth maple (*Acer grandidentatum*), mountain mahogany (*Cercocarpus ledifolia*), and other shrubs and herbaceous plants that function as food sources and shelter for birds and other wildlife. The Property functions as valuable summer range for mule deer (*Odocoileus hemionus*), elk (*Cervus canadensis*), and year round range for black bear (*Ursus americana*). Habitat on the Property is appropriate for sensitive wildlife species that have been documented in the area, including northern goshawks (*Accipiter gentilis*), western toads (*Bufo boreas*), and Lewis's woodpeckers (*Melanerpes lewis*). Thaynes Canyon Creek runs through the Property (Figures 6 and 7). The open space of the Armstrong Property lies in a rapidly developing area. The Property is, however, near other protected open spaces and National Forest (Figure 5).

Figure 7. Looking down on the Property from the hillside to the west. The ski run that appears as a brown cut through the trees on the ridge between the viewer and the urban area of Park City is just beyond the eastern boundary of the Property. (Jun 10, 2009)

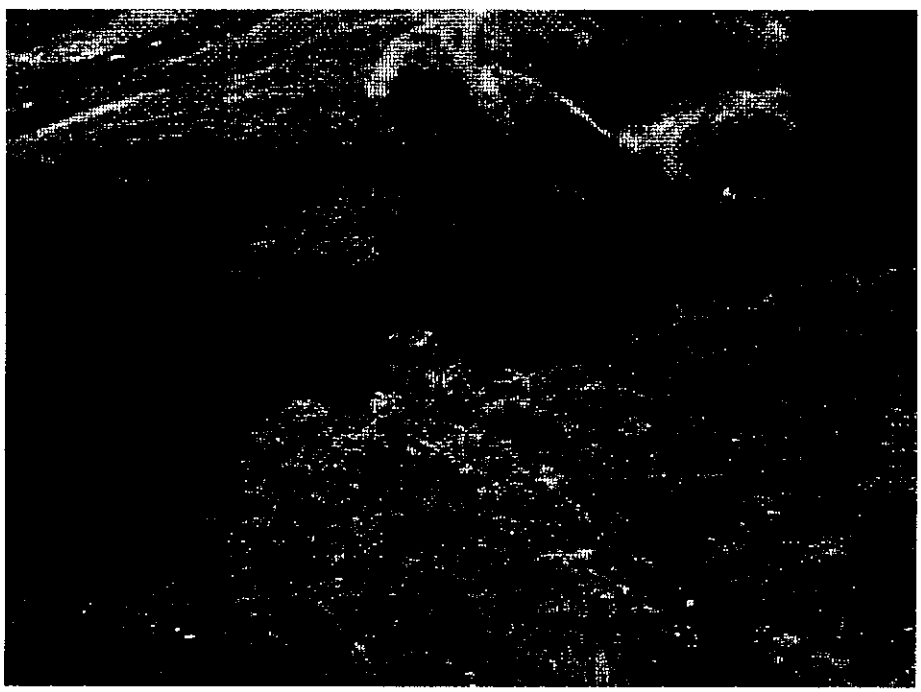

Figure 8. Looking down on the Property from the hillside to the west. The ski runs are just beyond the boundaries of the Property to the east and north. (Jun 10, 2009)

Figure 9. Looking northward along a main route through the trees. Note the dense undergrowth of maples and serviceberry. A few young aspen like the ones in the foreground were found in some places, particularly in disturbed areas. There are fewer young aspen in most areas on the Property than would be expected for a self-regenerating aspen forest. (Jun 10, 2009)

Table 1. Armstrong Property approximate acreage*

LANDCOVER	ACRES	%
Quaking Aspen Forest	87.5	64.9
Mountain Shrub	43.6	32.3
Spruce-Fir Forest	3.8	2.8
Total	*134.9*	
Riparian**	6.8	5.0

Notes:

** Acreage was calculated from polygons drawn in ArcMap on a 2006 High Resolution Orthophotograph (HRO; Figure 4) obtained from the Utah Spatial Geographic Information Database (SGID). The Property boundaries were copied from the Summit County Parcel layer.*

***Boundaries of riparian areas were not discrete on the Property. Riparian habitat was mapped as low-lying areas where the streams occurred, but because several small streams ran through the Property and general riparian forest characteristics were similar to other aspen forest on the Property, acreage was not separated from quaking aspen forest in this summary table.*

Conservation Values

The Property provides open space in a rapidly urbanizing area of Summit County. The Armstrong Property serves as a buffer between developed areas and uplands; it creates a scenic viewshed to the northeast of Park Drive. It provides important habitat, including riparian habitat.

Conservation values of the Armstrong Property include:

1. **Natural**: The Property provides riparian and other habitat for birds, small mammals, reptiles, and invertebrates as well as a variety of plants including many native species. The natural value of the Property is enhanced by its relatively large size (135 acres) and topography and vegetation that include areas of shelter for wildlife as well as access to water. The property preserves a portion of Thaynes Canyon Creek, one reportedly perennial spring, a relatively natural riparian area, aspen forest, and adjacent hillsides with native Gambel oak and mountain shrubs; such native vegetation supports varied ecological interactions and provides valuable habitat for wildlife. The Division of Wildlife Resources includes the property in the high value year-round range for black bears (SGID_U100_BlackBear) and high value summer range for mule deer (SGID_U100_MuleDeer). Much of the property supports Rocky Mountain quaking aspen forest community. Evidences of elk and moose (*Alces alces*) were observed in aspen forest and mountain shrub habitat on the Property. The low-lying portion of Thaynes Canyon on the Property has dense vegetation including riparian plants under an overstory of quaking aspens. Hillside uplands on the Property support quaking aspen patches intermixed with patches of Gambel oak, mountain mahogany, big sagebrush (*Artemisia tridentata),* and other associated shrubs, forbs, and grasses such as bitterbrush (*Purshia tridentata*), peavine (*Lathyrus* sp.), lupine (*Lupinus* sp.), and penstemon (*Penstemon* sp.). Riparian habitats are considered the highest priority habitats for conservation in Utah because of their values to plants, wildlife, and people (Parrish *et al.* 2002, Gorrell *et al.* 2005). Flowing water, aspen forest, and mountain shrub habitats are also considered priority habitats for conservation in Utah (Parrish *et al.* 2002, Gorrell *et al.* 2005).

2. **Scenic**: The Property provides visual beauty at the landscape scale as well as smaller scales. The western hillside of Thaynes Canyon on the Property forms a significant part of the view from Park Drive (Park City's main street) and the Property can be seen from nearby ski resorts. The Property helps to preserve mountain scenery in an area in which housing and commercial development form an increasingly large part of the viewscape.

3. Other **Aesthetic**: The Property preserves positive aesthetic qualities valuable both on and off the Property. The Property forms a relatively quiet natural buffer between developed areas, roads, and ski runs. On the Property, quiet refuge conditions exist where the sounds of the city are relatively minimal. The sounds

of running water, wind in trees, birds, and other natural sounds and silence can be easily enjoyed on and near the Property. In addition, other senses including smell, touch, and taste can find stimulation and enjoyment in the natural conditions and objects of the Property.

4. **Public Education**: The Property can facilitate outdoor and experiential learning. The Property provides natural "classrooms" with abundant teaching resources in the form of streams, riparian areas, forests, geologic materials, plants, and animals. The Property is well-suited for the teaching of science (e.g., biology, botany, ecology, etc.), art, reading, writing, physical education, and any other subject for which an outdoor, open setting can improve learning. The Property preserves a readily accessible, relatively natural representation of the Wasatch mountains and natural communities of high priority for conservation in Utah.

5. **Cultural**: The Property contributes to a positive quality of life and recreational and tourist experience in the Park City area by providing the kinds of open space that help to give the area its appealing natural mountain character.

Public recreation is a potential future value for the Property. Public trails on the Property may provide routes for hiking in the future.

Figure 10. View looking eastward through the riparian aspen forest toward Thaynes Canyon Creek. Riparian areas and aspen forests such as these are high priority habitats for conservation in Utah. (Jun 10, 2009)

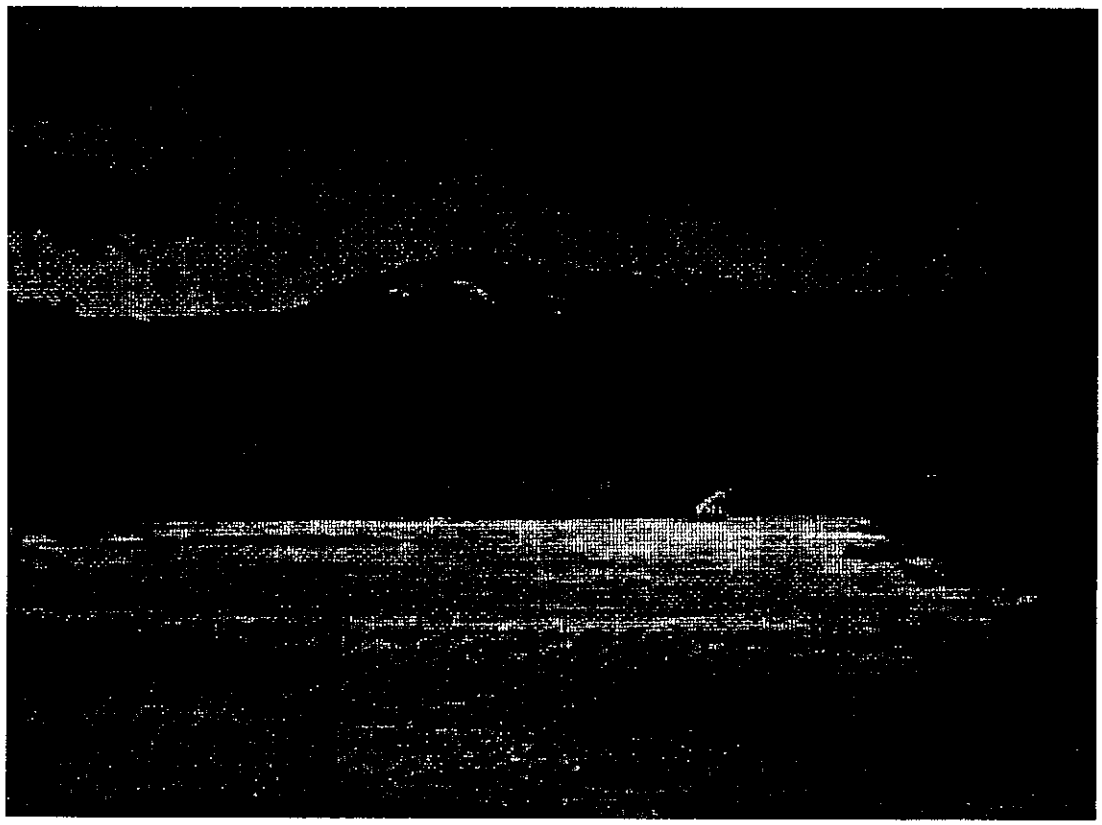

Figure 11. Looking westward toward the Property from Three Kings Drive. The Property extends up the hillside behind the barn and to the left. The lone Douglas fir visible on the hillside near the center of this photograph is inside the Property just south (left) of the Property boundary. (Nov 19, 2008)

Ownership

The Armstrong Family owns the Property.

Stewardship and Management

The Armstrong Family is responsible for management and ongoing maintenance of the Property. Utah Open Lands, as the Conservation Easement grantee, will monitor the property and enforce conditions of the easement to ensure that the Conservation Values are preserved.

Adjacent Land

The Armstrong Property is bounded by private property (Figure 11).

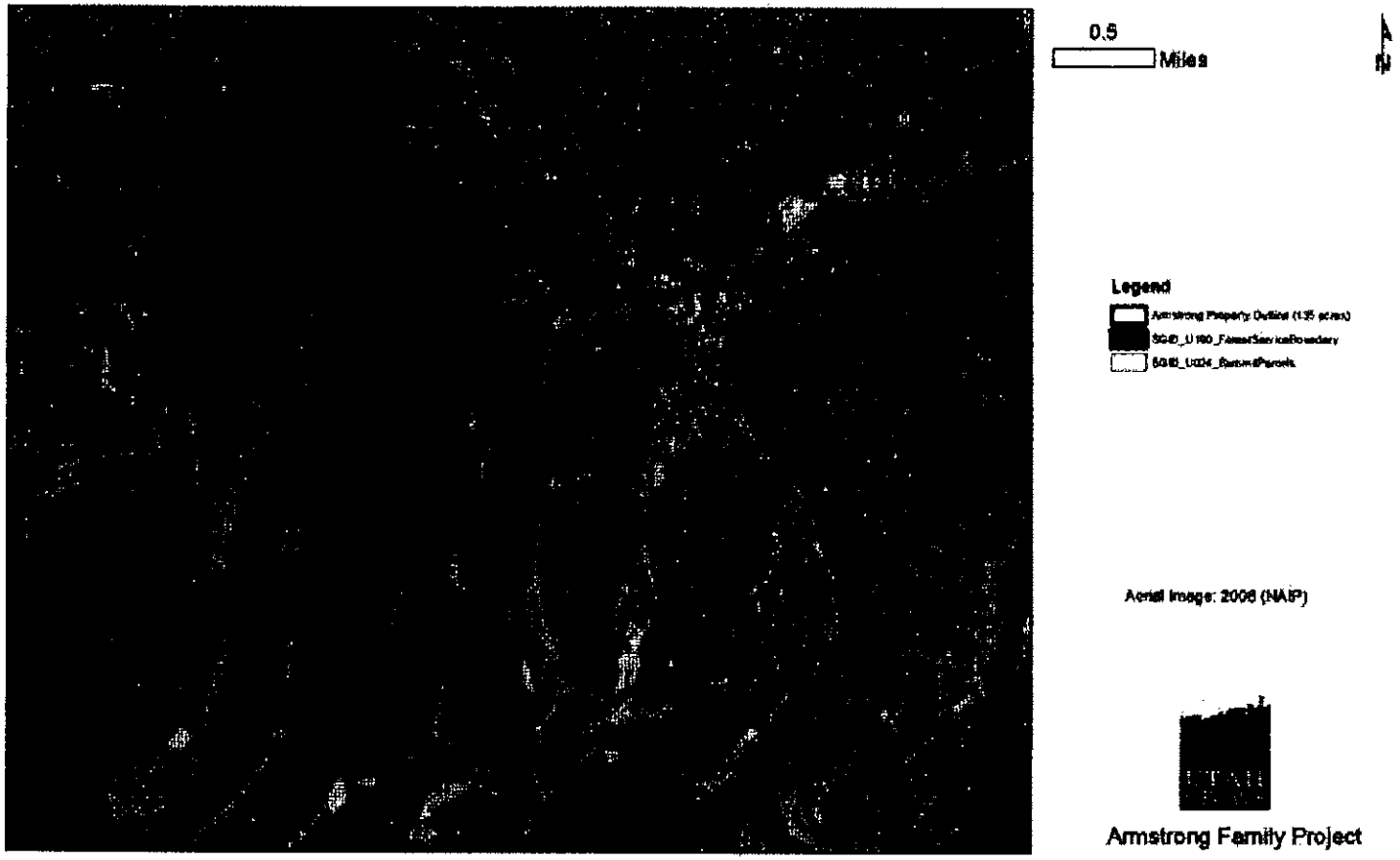

Figure 12. Map of the Armstrong Property showing nearby parcels. All parcels surrounding the Property are private property.

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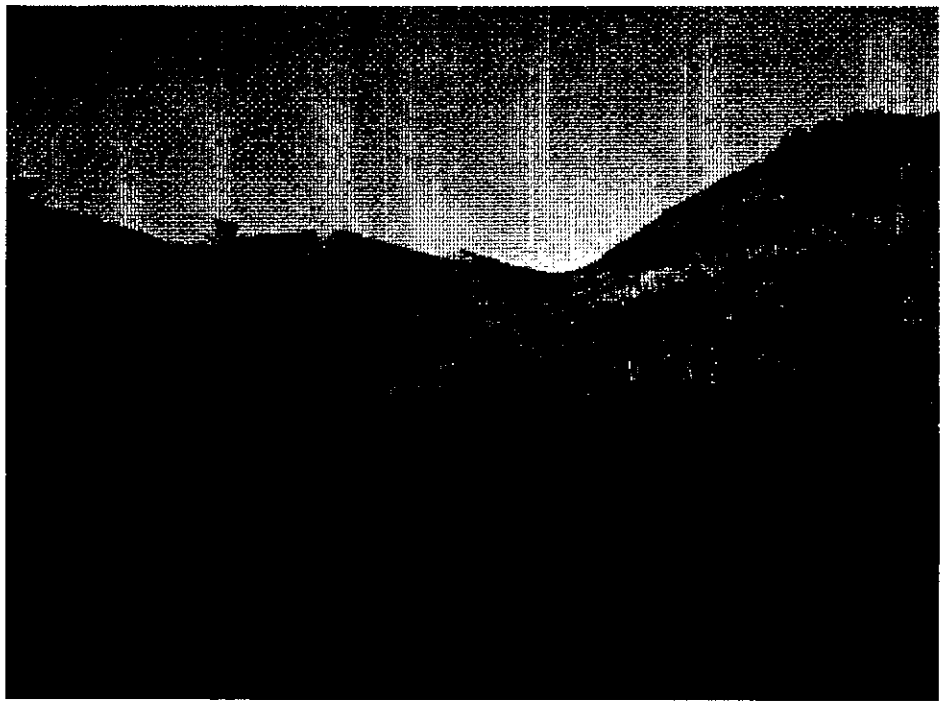

Figure 13. View southward across adjacent property up Thaynes Canyon from near the southern Property boundary. (Jul 14, 2009; near WPT 308)

Figure 14. View of Park City and nearby urban areas looking eastward from near the western boundary of the Property. The bottom of the Property in Thaynes Canyon is visible at the lower right. The Armstrong pastures and barns are visible at the lower left center of the Photograph. (Jun 10, 2009; near WPT 242)

Access

Public road access to the Property is currently from Snow Lane, which is a spur from Three Kings Drive. Snow Lane is a private road that will be included in the Conservation Easement. Restrictions in the Conservation Easement will apply to Snow Lane.

Routes have been cleared through the forests on the Property in several places (Figure 6).

Historical Context

A complete history of the Armstrong Property was not recorded during this baseline documentation. Observations on the Armstrong Property suggest that buildings have not recently existed on most of the property. Human use of the property is evident along the access roads in the bottom of Thaynes Canyon that are maintained to be passable to high-clearance vehicles. Human impact is also evident along the property boundaries, which have been cleared in places. Nearby undeveloped land was historically used for recreational activities such as off-road vehicle use and camping; some of this also occurred on this Property in the past. Livestock grazing also occurred on the Property during the last century, but does not currently occur on the property. It is reported that in the late 1800's much or all of the forests on the Property were cut for wood for the booming mining industry in the Park City area.

Threats to Conservation Values

Maintenance: While maintenance of the Property is necessary to keep it clean, attractive, and safe, some maintenance decisions could also degrade conservation values of the Property. For example, chemical control of noxious weeds could kill desirable plants. Conversely, inappropriately relaxed monitoring and enforcement of necessary restrictions may result in unsafe and unsightly conditions.

Invasive Species: Invasive plants and animals pose threats to the ecological integrity of the natural area. Effective management will encourage a diversity of healthy native plant and animal species. Consistent control of vanguard individual invasive plants will be necessary to prevent establishment and spread of invasive plant populations on the Property. Control of invasive species on the Property should be a priority.

Ecological Isolation: Houses, buildings, and roads are already found near the Property. Ongoing urbanization threatens to isolate the Property so that natural movements of plants, animals, and material are hindered or prevented; this will degrade ecological processes that help maintain the scenic, wildlife, and plant habitat values. Protection of connections to nearby natural areas will be valuable. To prevent isolation of the Property, outreach will probably be needed. Human aid may also be or become desirable for some historically natural processes, such as dispersing native plant seeds on the Property.

Pest control: Some plants and animals on the Property may be undesirable; however, the designation of an organism as a pest and attempts to control these pests may introduce the potential for harm to the conservation values of the Property. Some organisms may simply be perceived as pests, while actually presenting little or no threat and great benefits (e.g., bats). Many wild animals have the potential to present problems for humans (e.g., coyotes, deer, mountain lions, wasps, mosquitoes), but solving these problems does not always require complete local eradication of the wild animals. Outreach may be important to create a cultural climate that accepts or appropriately manages interactions with wild animals. Chemicals used to control nuisance plants and animals on the Property have the potential to do collateral damage; therefore, physical and mechanical control options are encouraged whenever possible. Before control is attempted, consequences to the conservation values should be carefully considered. Biological control of invasive plants or animals (i.e., by introduction of another organism) is discouraged because of the potential for unforeseen but significantly negative biological interactions. In some cases the use of chemical herbicides will probably be required to control invasive plants.

Pets: Off-leash dogs may pose threats to the conservation values of the Property, particularly if dogs are allowed to roam off the trails and or are aggressive toward wild animals or people. Community and governmental support to control dogs on the Property will be important to prevent them from disturbing or harming recreational users and or wildlife. Dog fecal waste is not desirable on the Property. Feral and loose domestic cats present predation threats to wild animals including small mammals and birds. Some birds native to the Property such as spotted towhees (*Pipilo maculatus*) are ground-nesters and are therefore particularly vulnerable to cats. Feral cat feeding or sheltering should not occur on the Property.

Fire: Historically, fires were probably important for maintaining healthy ecosystems in the area that includes the Armstrong Property. However, uncontrolled fire on the Property can now threaten the safety of buildings and people. Recreational fire-building should probably be prohibited on the Property. Removal of burnable materials from the Property can degrade ecological processes, particularly if the removal is widespread and or involves removal of valuable large wood habitat. However, some method of removing small woody debris and other natural fuels may be beneficial if it mimics the effects of fire.

Inappropriate recreational uses: Some forms of recreational use tend to diminish conservation values of the Property. For example, trails may degrade natural and scenic beauty and increase erosion of steep hillsides on the Property. Use by humans and pets poses threats to wildlife and plants in the natural area. Patterns and consequences of off-trail use will need to be monitored and appropriate outreach and accountability strategies instituted as necessary to preserve the conservation values. The creation of additional new trails should probably be limited or not occur at all, and it might be best to reclaim and revegetate existing routes. Soil characteristics including erodability should be considered before trail construction (*see, for instance*, the Recreational Development section of the soil report for the Property, NRCS 2008). Any trails should be well-

designed to prevent damage to the natural areas, especially the riparian area. Proper trail maintenance and signage will be required if trails are allowed. Some outreach efforts will be appropriate to help people understand the nature of recreation in an open space which is also preserved for scenic and ecological values.

Climate Change: Large-scale climate change will affect the environment local to the Property. If predicted temperature increases of a few degrees occur, native organisms on the Property will respond both to higher temperatures and side effects such as increased drought or invasion by other plants and animals. Therefore, stewardship of the Property would do well to emphasize conservation of water resources including riparian habitat and encourage a variety of native species.

Hazardous and Toxic Materials

No known hazardous or toxic materials are reported to be located on the Property, nor were signs detected that indicated hazardous or toxic material (e.g., dead animals, fluid discharge, inexplicable soil disturbance, or waste containers). No sites of environmental concern are listed on or very near the Property (SGID_U100_StateCERCLIS; SGID_U100_NationalPriorityList, SGID_U100_DERRMasterIndex).

No oil or gas pipelines are known to cross the Property (no signs observed during baseline observations; SGID_U024_OilGasPiplines). An electrical power line runs across the Property, although Utah GIS data do not show electrical power lines or telephone infrastructure on the Property (SGID_U024_TelephoneInfrastructure, SGID_U024_ElectricalLines).

ECOLOGY

Ecoregion

The Armstrong Property is part of the Wasatch and Uintah Mountains ecoregion and has been classified specifically in the Wasatch Montane Zone (Woods *et al.* 2001). The Property has middle elevation forested mountain slopes and ridges characteristic of the Wasatch Montane Zone. The Property occurs in what Stokes (1986) classified as the Wasatch Range of the Middle Rocky Mountains physiographic province.

Climate

Temperatures in the area of the Property range from below zero degrees Fahrenheit (F) during the winter months of November through March to infrequently over 90 degrees F during the summer months of July and August (personal observation), with a mean average temperature of about 40 to 45 degrees F (NRCS 2008), and long, cold winters. Mean average annual minimum temperatures for the area are characterized as -20 to -10

degrees F (Hardiness Zone 5).[1] The annual frost-free period lasts 40 to 80 days (Woods *et al.* 2001), with an estimated 30 to 45 days above 86 deg. F (Heat Zone 5).[2] Annual precipitation averaged about 20 inches from 1948 to 1991, with an average of about 130-140 inches of snowfall (data from Park City Radio, Park City Fire Station, and Park City Summit House[3]).

Broad climate descriptions for the area generalize small-scale environmental differences that correspond with specific conditions on the Property. Small-scale environmental variability occurs on the Property due to abiotic variables (elevation, slope aspect, water, slope steepness, ground material, position relative to other physical features, etc.), and to biotic variables (plant species, plant height, plant density, animal use, etc.). Some small-scale environmental variability can be generally recognized. For example, south-facing slopes are the hottest and driest, snow drifts into low-lying areas, and densely vegetated areas provide thermal shelter. Riparian areas-- the interfaces between land and water-- are typically cooler and moister in the summer than upland areas. These and other small-scale climate variations contribute to desirable biological diversity by contributing to habitat complexity and biodiversity within the larger physiography.

Geology

No formal geology report is available for the Property. The Soils Report (NRCS 2008) indicates soils are derived from sedimentary parent material.

The Property occurs in a historical area for metal mining in Utah (Doelling and Tooker 1983) and is near reported mineral deposits (SGID_U250_MineralDeposits1988). Several historic, but currently inactive mines exist near the Property. A reported deposit of barite, alunite, fluorspar, and sulfur occurs on or near the Property (Doelling 1983). The Property occurs within the boundaries of a reported phosphate deposit (SGID_U250_PhosphateDeposits1988). No potash deposits are reported for the area of the Property (SGID_U250_PotashDeposits1988).

No coal deposits are known to occur at the Property (SGID_U250_CoalDepositAreas1988). The Property occurs near the edge of the Utah-Idaho-Wyoming thrust belt, a geologic feature that typically stores oil and gas (SGID_U250_OilGasDeposits1988).

Soils

A soil map and detailed soil survey information can be found in the NRCS (2008) Custom Soil Resource Report for the Property (*see also* Figure 14).

Information from the NRCS (2008) report includes:

[1] 2006 arborday.org Hardiness Zone Map 1990. http://www.arborday.org/media/zones.cfm
[2] American Horticultural Society Heat Zone Map 1997. http://www.ahs.org/publications/heat_zone_map.htm
[3] Western Regional Climate Center see http://www.wrcc.dri.edu/cgi-bin/Climsmut.html

- Most soils on the Property are classified as loams (Manila-Henefer Complex) and gravelly loams (Parkcity-Dromedary Gravelly Loams). The Manila-Henefer complex loam soils typically supporting shrubs such as Gambel oak and big sagebrush, and other shrubs and plants such as snowberry (*Symphoricarpos oreophilus*), bluebunch wheatgrass (*Pseudoroegneria spicata*), Oregon grape (*Mahonia repens*), and thickleaf peavine (*Lathyrus lanszwertii*). Parkcity-Dromedary Gravelly loams typically support a variety of forbs and grasses such as mountain brome (*Bromus marginatus*), sticky geranium (*Geranium vicosissimum*), mountain snowberry (*Symphoricarpus oreophilus*), and quaking aspen.
- Soils on the western hillside of the Property are very cobbly loams (Horrocks-Agassiz very cobbly loams). They typically support bluebunch wheatgrass (*Pseudoroegneria spicata*), Gambel's oak, bitterbrush, big sagebrush, arrowleaf balsamroot (*Balsamorhiza sagittata*), and other shrubs, forbs, and grasses.
- No soil on the Property is listed as a typical hydric soil, although hydric conditions exist in riparian areas.
- Soils of the Manila-Henefer Complex are considered to be farmland soils of statewide importance; no other important farmland soils exist on the Property.
- Soils of the Property are rated poor as a potential source of sand or gravel.

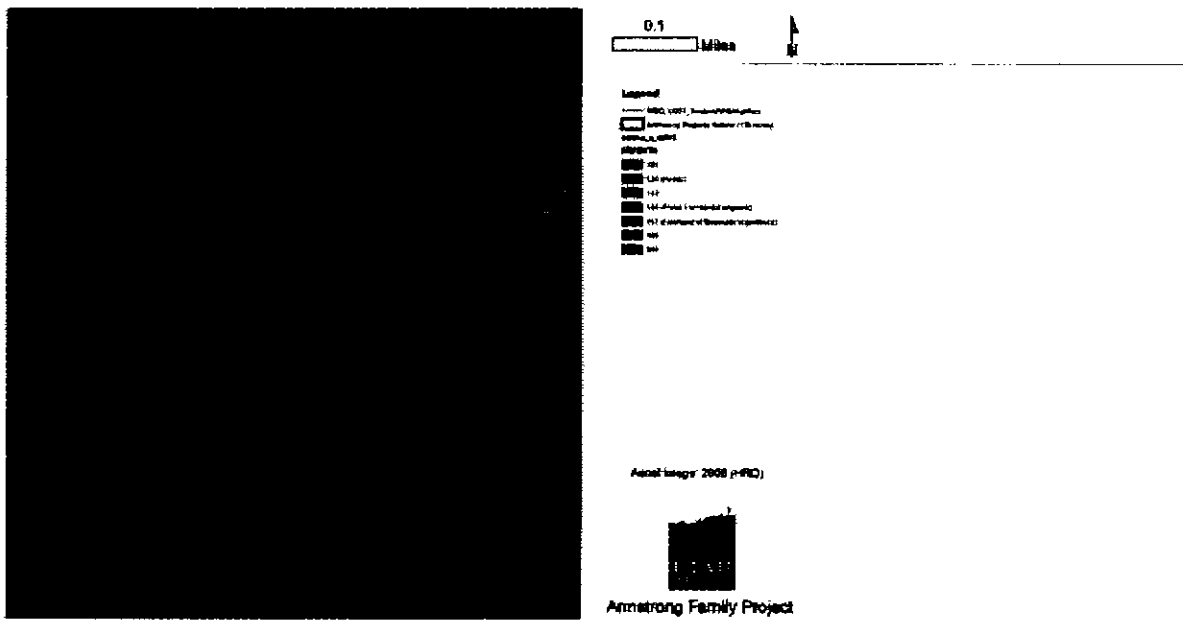

Figure 15. Soils map of the Armstrong Property. Codes for soils: 101—Agassiz-Rock outcrop complex, 30-70% slopes; 126—Echocreek loam, 2-10% slopes; 143—Horrocks-Agassiz very cobbly loams, 30-70% slopes; 154—Manila-Ant Flat loams, 2-8% slopes; 157—Manila-Henefer complex, 8-15% slopes; 159—Parkcity-Dromedary gravelly loams, 15-30% slopes; 160—Parkcity-Dromedary gravelly loams, 30-70% slopes.

Watershed

The Armstrong Property occurs in the Toll Canyon – East Canyon Creek Watershed (SGID_U024_Watersheds_Area).

Water

Surface water

Permanent springs are reported to occur on or near the Property. Other surface water occurs seasonally on the Property. Thaynes Canyon Creek was historically perennial, but now at least a portion dries completely during summers, possibly because of upstream water diversions. At the time of baseline observations on July 14, 2009, Thaynes Canyon Creek was completely dry at the upstream end of the Property; however, several streams on the Property contributed to substantial flow in Thaynes Canyon Creek near the northern boundary of the Property; all flow in Thaynes Canyon Creek below the Property was from tributaries that entered the channel on the Property and from Sullivan Spring, which is a perennial spring at the northern end of the Property. Thaynes Canyon Creek is diverted in a culvert around Sullivan Spring. A portion of Sullivan Spring is diverted to an underground water tank on the Property for domestic use (see Figure A.3.8).

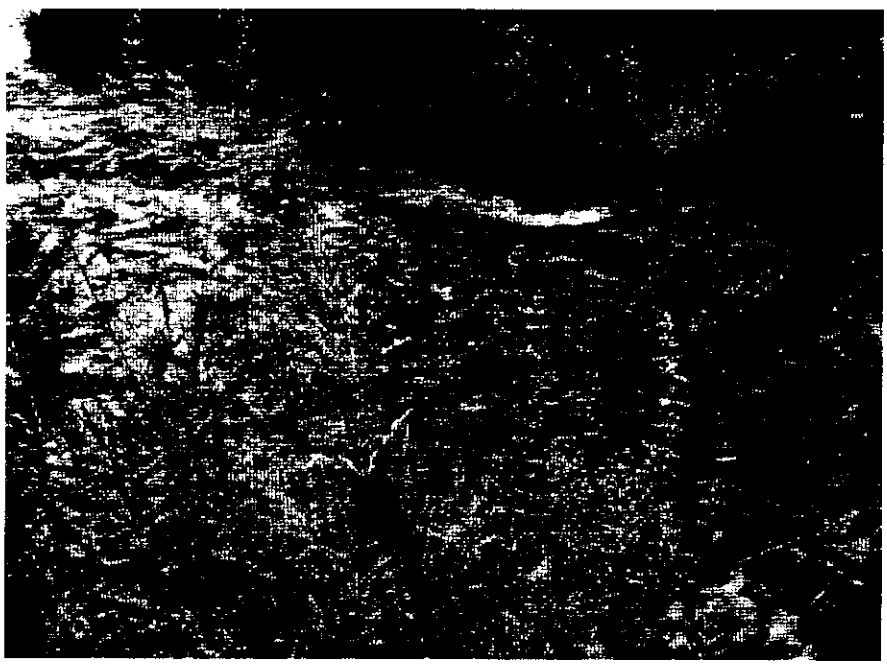

Figure 16. Thaynes Canyon Creek just below (north) from the Property. This is the area where stream parameters were measured that are reported in Table 2. (Jul 14, 2009; near WPT 219)

Figure 17. A tributary stream near where it crosses the road at the bottom of Thaynes Canyon. This stream enters the Property uphill across the western Property boundary. (Jun 10, 2009; near WPT 229)

Figure 18. A tributary stream flowing onto the Property near the western boundary of the Property. (Jun 10, 2009; near WPT 234)

Table 2. Physical characteristics of Thaynes Canyon Creek as it flows out of the Armstrong Property.*

Bankfull Channel Width	10-12 ft
Bankfull Channel Depth	1-2 ft
Substrate	Cobble and gravel
Gradient**	0.08
Sinuosity	Not calculated; several smaller tributaries combine.
Entrenchment	Low
Channel Form	Riffle-Pool
Flow Obstructions	Mostly rock
Woody Debris	None; probably some higher in the forest
Lateral Overland Flows	Probably good hyporheic flows; several seasonal tributaries
Aquatic Organisms	algae; caddisfly larvae, stonefly larvae

Notes

** Information reported here is based on observations of Thaynes Canyon Creek on July 14, 2009. At this time, the creek channel was dry at the upstream (northern) boundary of the Property.*

*** Gradient was estimated from marked contour lines in USGS topographic map (Figure 4).*

Ground water

Utah GIS data suggests groundwater occurs more than 10 ft below the surface of the Property (SGID_U500_ShallowGroundWater). However, no direct measurements of groundwater depths or conditions were accomplished during baseline documentation.

Figure 19. Wildflowers along the road on the ridge near the eastern property boundary. Mountain sunflowers (shown; yellow), asters (shown; whitish), penstemons (shown; blue), yarrow, nettleleaf horsemint, arrowleaf balsamroot and others were common along this relatively dry ridge. (Jul 14, 2009; near WPT 313)

Vegetation

Plant communities

The most common plant community on the Property is quaking aspen forest, which covers most of the east-facing (west) side of the valley, the valley bottom, and a substantial portion of the Property on the west-facing (east) side of the valley. Diameter breast height of overstory aspen is commonly greater than 12 inches, with tree heights more than 50 feet. Aspens with estimated heights greater than 70 ft were observed. Old aspens appear to be at least 50 years old; the rings on one cut aspen indicated an age close to 80 years. Aspen regeneration is very limited in places, with a vigorous mid and overstory of bigtooth maple in many areas, and young conifers in at least one area. In more open, disturbed areas such as those along the power-line corridor, aspen regeneration is more pronounced. Rates of recruitment of new aspen into the overstory were not determined during this baseline assessment; however, it appears that in substantial parts of the Property there is relatively little if any recruitment. Abundant mid-story trees of species other than aspen combined with little aspen regeneration in places suggest that if current trends continue, portions of the current aspen forest will transition to forests dominated by other species. Other overstory species intermixed in the aspen forest on the Property include bigtooth maple, service berry (*Amelanchier utahensis*), chokecherry (*Prunus virginiana*), douglas fir (*Pseudotsuga menziesii*), and Engelmann spruce (*Picea engelmanii*). Midstory species include the aforenamed trees

and shrubs as well as snowberry, ninebark (*Physocarpus malvaceus*), Woods rose (*Rosa woodsii*), currant (*Ribes hudsonianum*), and others. The understory in much of the aspen forest is lush with species such as peavine, meadowrue (*Thalictrum* sp.), lupine, sticky geranium, woods strawberry (*Fragaria vesca*), white Colorado columbine (*Aquilegia coerula* var. *ochroleuca*), yarrow (*Achillea millefolium*), and sweet cicely (*Osmorhiza* sp.). Grasses in the aspen forest include a high proportion of introduced orchard grass (*Dactylis glomerata*) low in the valley, as well as timothy (*Phleum pratense*) and smooth brome (*Bromus inermis*) in places and other species throughout. Conifer stands occur on the east-facing (west) slopes of the canyon; they appear to be dominated by Douglas fir and white fir (*Abies concolor*). Engelmann spruce and fir trees occur under aspen overstory in places. Scattered Douglas fir also occur on the west-facing hillside of the Property.

Riparian vegetation is similar to the aspen forest throughout the canyon bottom and further up on cool hillsides, probably because those places in the canyon remain moist and cool enough to be similar to areas closer to the creek. The canyon bottom supports dense, productive vegetation of types adapted to moist and cool conditions. Therefore, riparian over and mid stories are typical of quaking aspen forest, but with larger trees than are typically found in nearby quaking aspen stands. Grasses and forbs are productive and diverse in riparian areas, with a higher proportion of typical riparian species than are found elsewhere on the Property; these species include rushes (*Juncus* sp.), cow parsnip (*Heracleum maximum*), common monkeyflower (*Mimulus guttatus*), woods strawberry, Richardson's geranium (*Geranium richardsonii*), starry false Solomon's seal (*Maianthemum stellatum),* bluebells (*Mertensia* sp.), twinberry (*Lonicera involucrata*), and baneberry (*Actaea rubra*).

Forest and shrubland dominated by bigtooth maple, Gambel oak, and other mountain shrubs occur on the uplands near the ridges and on the relatively dry and hot west-facing slopes. Patches of dense bigtooth maple, oaks, and shrubs such as serviceberry and chokecherry occur on both sides of the canyon, but are most pronounced on the west-facing (east) side of the canyon. Curlleaf mountain mahogany occurs near the eastern ridge. Plant communities on the relatively dry, warm hillsides and the ridge near the eastern border of the Property are more open than lower in the canyon, with patches of low plants and exposed dirt and rocks interspersed with clumps of taller trees and shrubs. Grasses and forbs in the oak-shrub hillside include great basin wild rye (*Leymus cinereus*), mountain sunflower (*Helianthella uniflora),* arrowleaf balsamroot, lupine, yarrow, aster (*Aster* sp.), nettleleaf horsemint (*Agastache urticifolia*), creeping Oregon grape, peavine, skyrocket gilia (*Ipomopsis aggregata*), and others.

Many non-native species are also present on the Property, including orchard grass, timothy, smooth brome, and Kentucky bluegrass (*Poa pratensis*); invasive species such as alfalfa (*Medicago sativa*), white clover (*Trifolium repens*), and noxious weeds including hoary cress (white top; *Cardaria draba*), musk thistle (*Carduus nutans*), hound's tongue (*Cynoglossum officinale*), and garlic mustard (*Alliara petiolata*) were also found on the Property.

Southwestern Region GAP Analysis (SWreGAP) classified most of the Property as Rocky Mountain aspen forest. In general, SWreGAP analysis landcover delineations appear reasonable for the Property, although they did not separate small patches (less than about 1-acre in extent) nor adequately represent maple-oak stands as observed in 2008 and 2009; in addition, patches of sagebrush steppe and riparian landcover were misidentified. Misidentification of some landcover types by SWreGAP analysis reflects inherent difficulties of using automated methods to delineate landcover types from distance imagery. SWreGAP data indicate that plant communities with spectral bands typical of aspen forest occurred uniformly across the Property, while on-site observations show that patches of other landcover types actually also occur. The relative homogeneity of SWreGAP data suggest that many patches of non aspen forest on the Property are smaller than approximately 1-acre. On-site observation also indicates that scattered aspen occur on the Property even in plant communities with many non-aspen species. Thaynes Canyon Creek is not represented in SWreGAP data for the Property because open water was a minor fraction of any cell of the classification grid. Finally, acres of riparian shrubland reported by SWreGAP are less than the actual amount of riparian habitat on the Property because dominant riparian overstory and midstory species are the same as those in surrounding quaking aspen forest and so were not separated using the automated methods and remote sensing data of SWreGAP analysis. (The entire low-lying portion of Thaynes Canyon provides microclimate conditions similar to those typically found in riparian areas.)

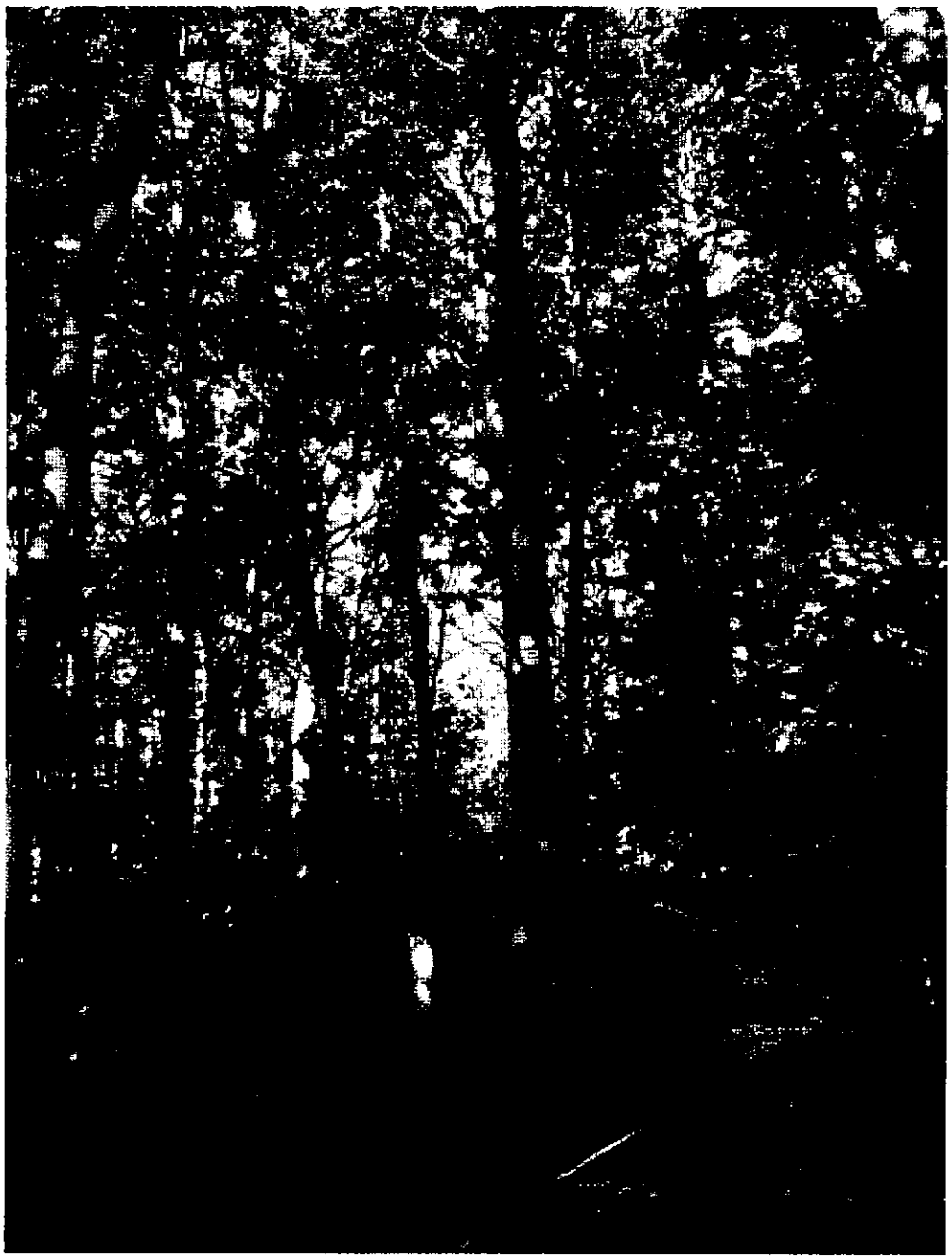

Figure 20. Aspen forest with conifers growing up underneath. Conifers often replace quaking aspens in mixed stands like this where aspen regeneration and recruitment are not facilitated by disturbances such as fire (June 10, 2009; near WPT 23).

Figure 21. Looking westward along the north property boundary line. Gambel oak, bigtooth maple, serviceberry, and chokecherry are the most abundant shrubs and trees on this hillside; patches with different proportions of these species occur on the hillside. Quaking aspen and scattered Douglas fir also occur on the hillside. Mountain mahogany is common high on the Property near the ridge. The lone Douglas fir just visible to the left of center in this photograph is the same tree referenced in Figure 9. (Jul 1, 2009; near WPT 269)

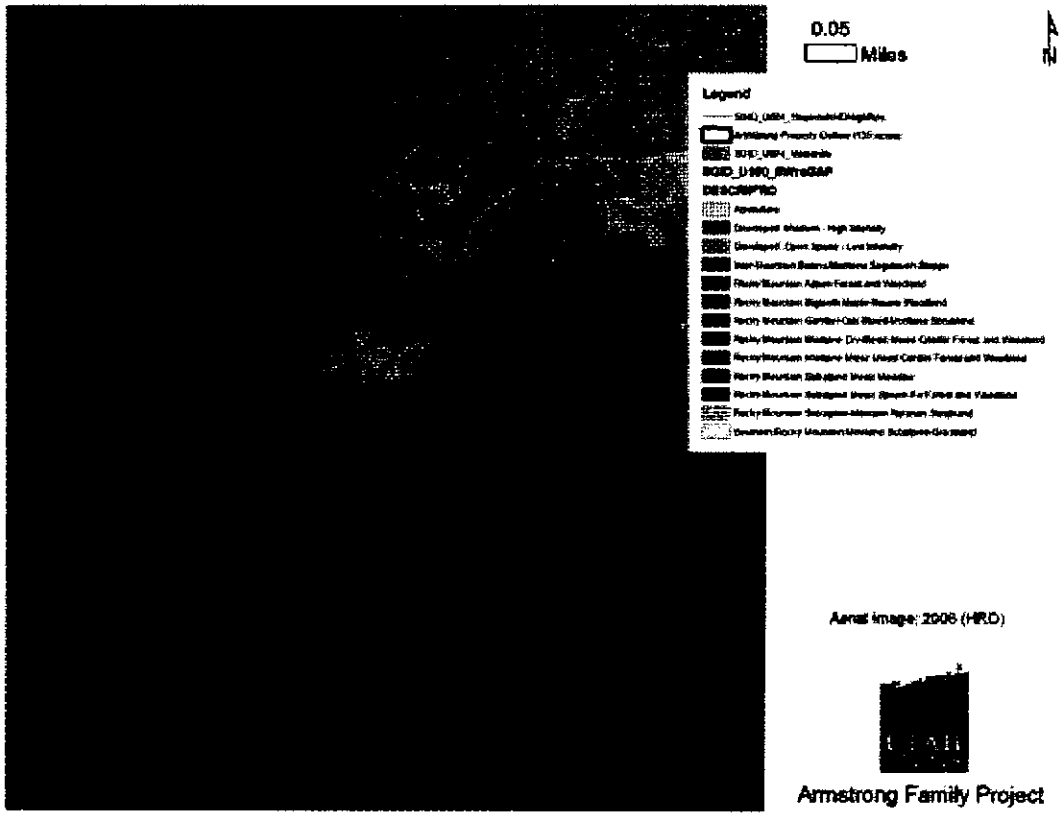

Figure 22. Landcover types classified by spectral reflectance, evaluated by SWreGAP. Intermountain Basins Montane Sagebrush Steppe is misidentified near the southern and eastern property boundaries (actually mountain shrub and aspen forest grow in these areas adjacent to grasses and forbs in ski-run lanes).

Seral Stage

Plant communities of the Property have not been altered by grazing, fire, or other widespread disturbances within recent years; they appear to be mostly mid to late successional. Aspen forests appear to be late successional without as much regeneration as would be expected in many areas. If current trends continue, at least parts of the current aspen forest will probably be replaced by other forest types.

Habitat Types of Special Concern for Conservation in Utah

Riparian habitat is listed as the highest priority habitat for conservation in Utah by the Utah Division of Wildlife Resources (Figure 16; Gorrell *et al.* 2005) and Utah Partners in Flight (Parrish *et al.* 2002). Flowing water, quaking aspen forests, and mountain shrub communities are also listed as priority habitats for conservation in Utah (Gorrell *et al.* 2005, Parrish *et al.* 2002)

Plant species listed as special concern for conservation

No known threatened, endangered, or sensitive plant species were observed or reported on the Property.

Plant and Animal Species of Special Concern for Conservation
Attempts were made during baseline observations to identify unusual plant and animal species on the Property, including those that warrant special concern for conservation. Observations during baseline documentation visits were not definitive; more thorough surveys would be needed to determine the existence or define the status of species of special concern on the Property.

Wildlife

The relatively undeveloped conditions of the Armstrong Property help to ensure the presence of some wildlife. Several animal species were observed, or their tracks, scat, or burrows were observed during baseline observations; however, baseline observations represent only a fraction of the actual species present.

It is foreseeable that continued urban development will effectively limit the number and types of organisms that desire to and can occur on the Property. Therefore, species that can effectively exist in close contact with human activity form the most likely future wildlife component of the property. Birds, butterflies, bats, mice, voles, pocket gophers (probably *Thomomys talpoides*), and adaptable predator species such as coyotes (*Canis latrans*), raccoons (*Procyon lotor*), and weasels (*Mustela* sp.) are likely to be found on the Property in the future. Mule deer, elk, and moose (*Alces alces*) and their predators could continue to use the Property for many years, depending on patterns of adjacent development.

Figure 23. Wildlife trails in mountain shrub (dominated in this stand by bigtooth maple) on the western hillside. These trails are used by mule deer, elk, and moose on the Property. Trails such as these are common throughout the Property. (Jul 1, 2009)

Mammals

The Property provides food, water, and shelter resources for mammals; mammals are in turn integral to the ecosystem. Small mammal herbivores and those that feed on seeds and fruits influence vegetation and disperse seeds. Some kinds of small mammals also feed on invertebrates such as crickets and grasshoppers. The burrows of small mammals provide shelter for other animals and are thought to aid in soil aeration and water infiltration. Small mammals form a base of prey species for predatory birds, reptiles, and

mammals. Evidences of coyotes, red squirrels (*Tamiasciurus hudsonicus),* and pocket gophers were observed on the Property.

Larger mammals on the Property may influence vegetation structure and dynamics and soil structure. Abundant mule deer and elk tracks and scat were observed on and near the Property, and relatively fresh beds were also observed, suggesting that mule deer and elk use the Property at least for summer range. A spotted mule deer fawn with a doe was observed on the Property. A severed, gnawed fawn leg was also observed, showing both that mule deer with babies use the Property, and that predators or scavengers were also present. Large mammals require large areas of appropriate habitat; the Property will primarily be useful for many deer, elk, and their predators only as long the possibility exists for migration to and from the Property.

Mammals listed as special concern for conservation: No threatened, endangered, or sensitive (TES) mammals were detected on the Property during baseline observations, and none were reported on the Property[4].

Birds

The Armstrong Property includes habitat for birds with a variety of foraging, resting, and nesting requirements. Many birds, including robins (*Turdus migratorius*), western tanagers (*Piranga ludoviciana*), spotted towhees, mountain chickadees (*Poeceli gambeli*), northern flickers (*Colaptes auratus*), and black-billed magpies (*Pica hudsonia*) were observed on the Property.

Birds listed as special concern for conservation: Bird species of priority for conservation have been documented in the area of the Property (Appendix 2).

[4] http://dwrcdc.nr.utah.gov/rsgis2/Search/Display.asp?FlNm=corytown

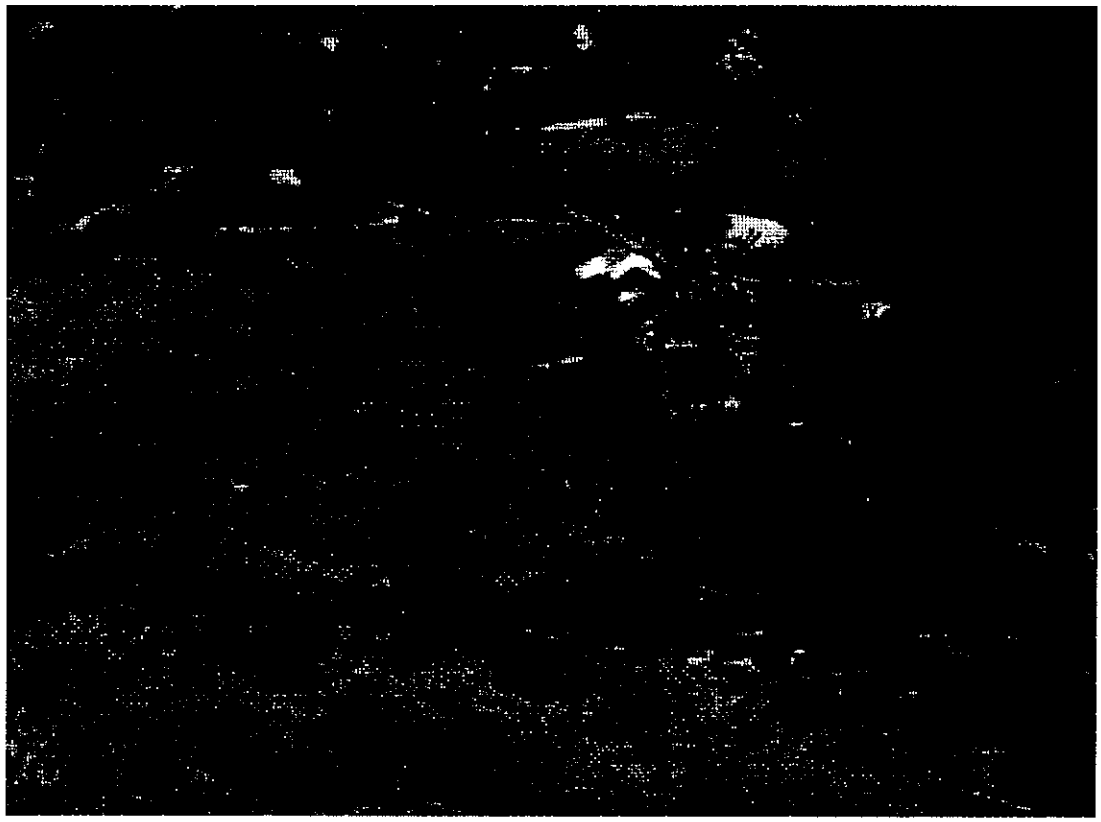

Figure 24. Male western tanager in curlleaf mountain mahogany with the Armstrong pastures and barns in the background. This photograph is looking eastward from the western hillside. (Jun 10, 2009; near WPT 265)

Reptiles and Amphibians

Habitat is fair on the Property for reptiles and amphibians adapted to semi-arid, Wasatch Front ecosystems. Reptiles and amphibians on the Property prey on invertebrates and small vertebrates and form part of the prey-base for other predators. A small lizard (*Sceloperus* sp.) was observed during baseline observations. It is considered likely that garter snakes (*Thamnophis* sp.), rubber boas (*Charina bottae*), and tiger salamanders (*Ambystoma tigrinum)* also occur on the Property.

<u>*Reptiles and amphibians listed as special concern for conservation:*</u> Western toads (*Bufo boreas*) and Columbia spotted frogs (*Rana luteiventris*) have been documented in the area of the Property (Appendix 2).

Fish

No fish were observed in Thaynes Canyon Creek.

Fish listed as special concern for conservation: Bonneville cutthroat trout (*Oncorhynchus clarki utah*) have been documented in the area of the Property and may exist low in Thaynes Canyon Creek (Appendix 2).

Invertebrates

Invertebrates are important ecological elements on the Property as they support other wildlife species, interact with vegetation, link vegetation and wildlife, function in decomposition, and connect other ecological elements in nutrient cycles and energy transfers. Invertebrates observed on the Property include grasshoppers, flies, bees, wasps, butterflies (at least 6 species were observed), moths, beetles, ants, dragonflies, and spiders, as well as aquatic caddisfly larvae and stonefly larvae (Figure 17). Natural habitat complexity (viewed by some people as messiness) helps to provide invertebrates with the habitat they need.

Invertebrates listed as special concern for conservation: No invertebrate species of concern for conservation in Utah are known to occur on the Property; however, habitat may be appropriate for western pearlshells (a freshwater mussel; *Margaritifera falcata*), which were reported to occur in nearby areas in the early 1900's (Appendix 2).

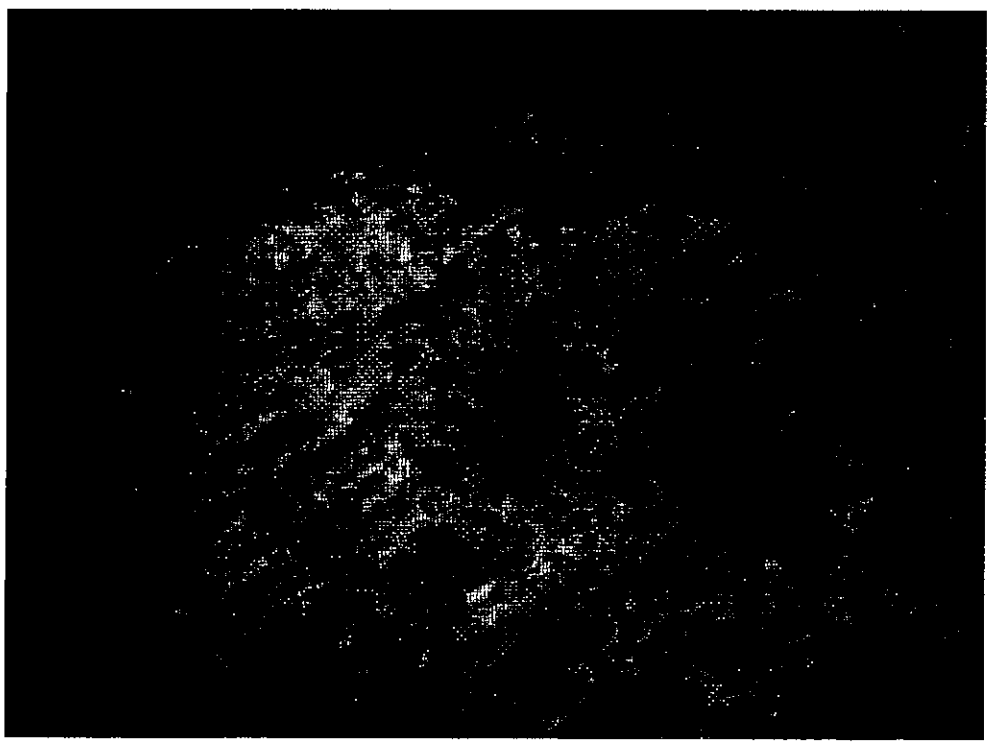

Figure 25. Stonefly larvae on an overturned rock from Thaynes Canyon Creek just downstream from the Property boundary. Invertebrates such as these help to link aquatic and terrestrial systems because the larvae are aquatic and the adults are terrestrial. (Jul 14, 2009)

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APPENDIX 1. PHOTOPOINT COORDINATES

Points were established and photographs collected from the Property and nearby areas. Points were established with a Garmin GPSMAP 60CSX. The coordinate system is WGS 1984. Data points and corresponding photographs are on file with Utah Open Lands. Points 300-321 were established manually on a 2006 high-resolution orthophotograph without the use of GPS, then coordinates were output from ArcMap, therefore elevation is not shown for those points.

WPT	lat	long	Alt
2	40.7233	-111.85949	2050.6
3	40.65991	-111.52457	2141
4	40.65984	-111.52474	2141.7
5	40.65971	-111.52513	2146
6	40.65942	-111.52519	2147.5
7	40.65935	-111.52527	2148.7
8	40.65919	-111.525	2147.2
9	40.6584	-111.52458	2151.1
10	40.658	-111.52422	2151.5
11	40.6579	-111.52474	2155.4
12	40.65761	-111.52518	2158.5
13	40.65728	-111.52571	2164
14	40.6565	-111.52633	2172.4
15	40.65603	-111.52665	2177.5
16	40.65495	-111.52734	2189.3
17	40.65531	-111.52757	2187.8
18	40.65602	-111.52742	2182.3
19	40.65666	-111.52721	2178.9
20	40.65686	-111.52702	2175.1
21	40.65737	-111.52651	2167.9
22	40.65776	-111.52609	2162.4
23	40.65819	-111.52565	2158.3
24	40.65834	-111.52551	2157.1
25	40.65869	-111.52556	2156.1
26	40.65922	-111.52551	2152.5
217	40.65999	-111.52444	2139
218	40.65984	-111.52439	2140
219	40.65968	-111.52451	2130.2
220	40.65932	-111.52529	2155.9
221	40.65919	-111.52544	2156.1
222	40.65867	-111.52549	2156.6
223	40.65795	-111.52589	2165
224	40.65711	-111.52673	2176.8
225	40.65662	-111.52722	2184.9
226	40.65563	-111.52739	2191.9
227	40.65536	-111.52746	2195.3
228	40.65526	-111.52743	2197
229	40.65506	-111.52734	2200.6
230	40.65391	-111.52924	2239.7
231	40.65406	-111.53008	2267.6
232	40.65406	-111.53009	2262.3
233	40.65429	-111.53001	2265.7
234	40.65496	-111.53	2261.4
235	40.6552	-111.53004	2264.5
236	40.65572	-111.53003	2267.4
237	40.65689	-111.53001	2270
238	40.65767	-111.5304	2300.5
239	40.65831	-111.53042	2313.5
240	40.65928	-111.5309	2350.5
241	40.65964	-111.53122	2372.9
242	40.65964	-111.53127	2372.4
243	40.65997	-111.53141	2385.1
244	40.66004	-111.53141	2383
245	40.66011	-111.5315	2388.3
246	40.66012	-111.53151	2388.7
247	40.66013	-111.53152	2392.6
248	40.66013	-111.53154	2389.5
249	40.66016	-111.53156	2389.7
250	40.66017	-111.53158	2389.7
251	40.66018	-111.5316	2389
252	40.66027	-111.53169	2388.5
253	40.66028	-111.53171	2388.7
254	40.66029	-111.53172	2388.3
255	40.6603	-111.53172	2389.2

256	40.6603	-111.53171	2389.2
257	40.6603	-111.53171	2388
258	40.66031	-111.5317	2388
259	40.66031	-111.5317	2386.8
260	40.66035	-111.53168	2387.5
261	40.66039	-111.53164	2387.1
262	40.6604	-111.53159	2388.3
263	40.66041	-111.53159	2387.5
264	40.66096	-111.53107	2375.5
265	40.66115	-111.53011	2343.8
266	40.66115	-111.53	2335.6
267	40.66116	-111.52886	2288.3
268	40.66119	-111.52772	2242.1
269	40.66115	-111.52612	2175.6
270	40.66117	-111.52522	2169.1
271	40.6624	-111.52524	2152
272	40.66236	-111.52427	2134.7
273	40.662	-111.52109	2107.6
300	40.65972	-111.52448	
302	40.65888	-111.52624	
305	40.65391	-111.52751	
306	40.65391	-111.52696	
307	40.6539	-111.52674	
308	40.6539	-111.52658	
309	40.65391	-111.52633	
311	40.6539	-111.52391	
312	40.6539	-111.5223	
313	40.65462	-111.52196	
314	40.65488	-111.52192	
315	40.65528	-111.52239	
316	40.65553	-111.5223	
318	40.65871	-111.52274	
319	40.65803	-111.52403	
320	40.65799	-111.52422	
321	40.65514	-111.52715	

APPENDIX 2: COMPLETE LIST OF THREATENED, ENDANGERED, AND SENSITIVE WILDLIFE SPECIES DOCUMENTED NEAR THE ARMSTRONG PROPERTY.

Species documentation and codes obtained from the UDWR Utah Conservation Data Center, http://atlas.utah.gov/wildlife/viewer.htm. accessed Jun 2009. Species highlighted yellow are considered most likely to select habitat on the Property.

Quad Areas Containing Threatened, Endangered, and Sensitive Animal Species Occurrences

Rec	USGS Quad Map	Scientific Name	Common Name	Identified?	Date Observed	State Status	Federal Status
6	PARK CITY WEST	*Accipiter gentilis*	Northern Goshawk	Y - Yes	7/29/2004	CS	
10	PARK CITY WEST	*Dolichonyx oryzivorus*	Bobolink	Y - Yes	6/25/2004	SPC	
7	PARK CITY WEST	*Centrocercus urophasianus*	Greater Sage-grouse	Y - Yes	5/18/2004	SPC	
8	PARK CITY WEST	*Oncorhynchus clarki utah*	Bonneville Cutthroat Trout	Y - Yes	8/28/1998	CS	
3	PARK CITY WEST	*Oncorhynchus clarki utah*	Bonneville Cutthroat Trout	? - Questionable	7/20/1998	CS	
1	PARK CITY WEST	*Oncorhynchus clarki utah*	Bonneville Cutthroat Trout	Y - Yes	6/2/1998	CS	
2	PARK CITY WEST	*Oncorhynchus clarki utah*	Bonneville Cutthroat Trout	Y - Yes	5/22/1998	CS	
9	PARK CITY WEST	*Buteo regalis*	Ferruginous Hawk	Y - Yes	8/25/1988	SPC	
16	PARK CITY WEST	*Bufo boreas*	Western Toad	Y - Yes	7/4/1982	SPC	
15	PARK CITY WEST	*Margaritifera falcata*	Western Pearlshell	Y - Yes	7/4/1927	SPC	
13	PARK CITY WEST	*Melanerpes lewis*	Lewis's Woodpecker	Y - Yes	8/7/1913	SPC	
4	PARK CITY WEST	*Oncorhynchus clarki utah*	Bonneville Cutthroat Trout	Y - Yes	1998	CS	
5	PARK CITY WEST	*Oncorhynchus clarki utah*	Bonneville Cutthroat Trout	Y - Yes	1998	CS	
12	PARK CITY WEST	*Bufo boreas*	Western Toad	Y - Yes	1913	SPC	
14	PARK CITY WEST	*Rana luteiventris*	Columbia Spotted Frog	Y - Yes	1931-PRE	CS	
11	PARK CITY WEST	*Margaritifera falcata*	Western Pearlshell	Y - Yes	1928-PRE	SPC	

APPENDIX 3. ADDITIONAL PHOTOGRAPHS

A.3.1. Gate on the access road at the south boundary of the Property. (Nov 19, 2008; WPT 305)

Exhibit D

Allowed Trail

EXHIBIT F.73

Armstrong Open Space Recreation Access Option (GPS points)

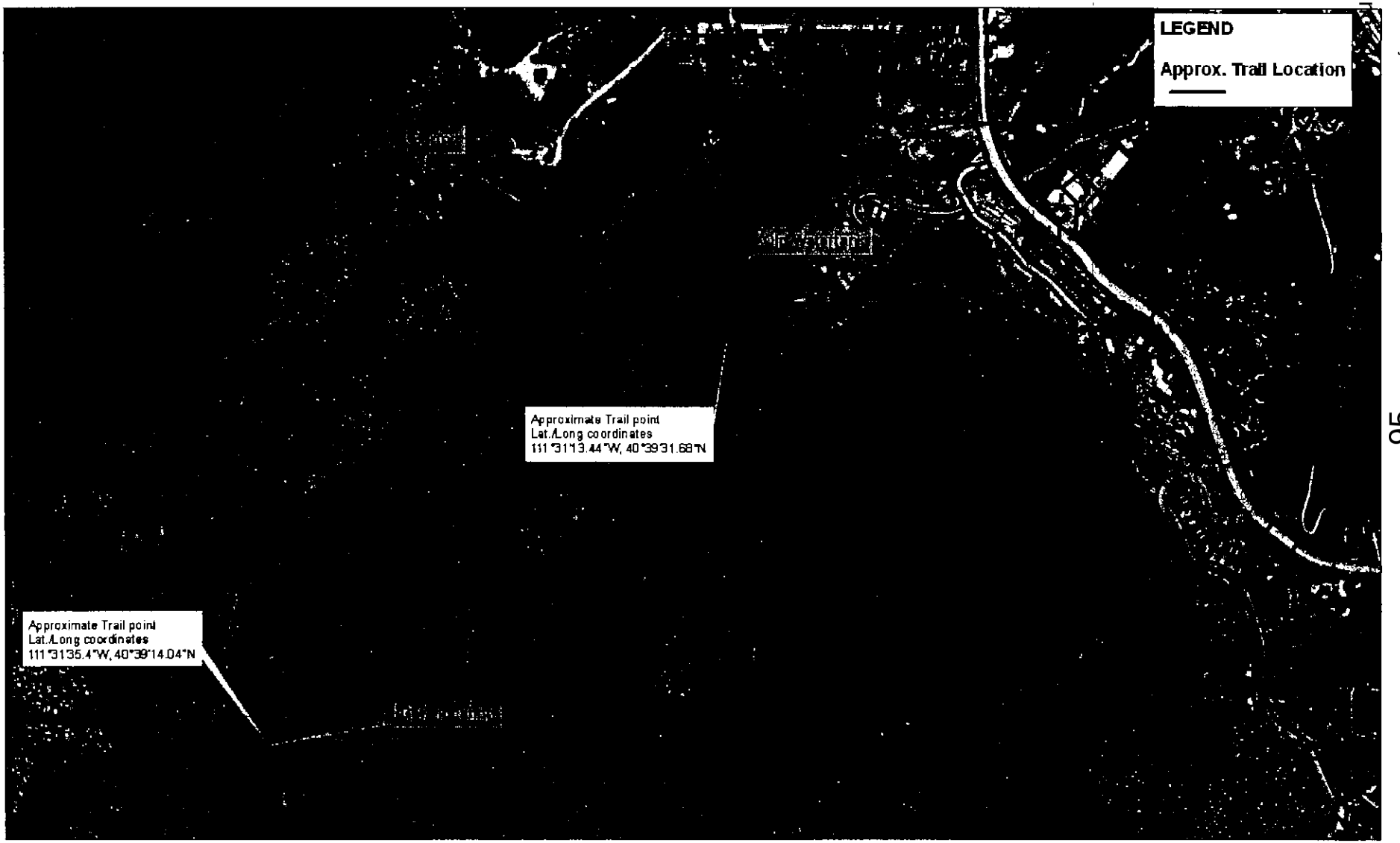

EXHIBIT G.1

Feb. 15, 2012

Summit County Planning Dept
Att: Dan Chied

re: proposed B & B on Snow's Ln.

Dear Sir,

I am writing to voice my concerns about the proposed B and B at the Kelly property on Snows Ln and why such use should not be sanctioned.

The reasons which weigh against this change of use can be summarized as follows -

1: There is no public access to the property. In fact Park City installed the "private road" sign.

2: There is no public maintenance or snow removal. My brother and I plow the road on irregular basis. If it is not plowed no emergency or fire vehicles can gain access -

3: Two years ago a Conservation easement was deeded to Utah Open Lands. The land under Snows Ln. was included in that easement. The easement categorically prohibits any expansion or use of the property except access which was in existence at the time of the easement

EXHIBIT G.2

(access to 6 homes).

Very truly yours

Mel Armstrong

1500 Snow Ln

Park City

Summit County Planning Dept

Park City Council

...ng
...ntwis Jr
...283452
...y Ut 84068

EXHIBIT H

COPY

PARK CITY 1884

Legal Department

July 20, 2012

Via U.S. Mail
Joseph P. Barrett, Esq.
TESCH LAW OFFICES
314 Main Street, 2nd Flr
Park City, UT 84060

RE: Silver Moose Ranch vs. Summit County, et al

Joseph:

I am writing to you on behalf of Park City Municipal Corporation. I attended the hearing on the temporary restraining order held Monday, July 16, 2012. I also had a chance to review the pleadings. Unfortunately, some germane facts have been misapprehended. First, Park City Municipal owns Snow's Lane in fee. Secondly, the conservation easement – which is held by Utah Open Lands (and not Park City Municipal) as grantee – covers Snow's Lane. Finally, Park City Municipal stepped into the shoes of the Armstrongs when it purchased the Armstrong property in 2009, thereby becoming the grantor of the 1988 "Kelley easement" over Snow's Lane.

Park City Municipal's position on this matter is that the use of the 1988 Kelley easement for access to a commercial business improperly expands the scope of that easement. Clearly, the parties intended in 1988 to provide for ingress and egress to and from a single family, private, non-commercial residence.

The judge's July 16 ruling directs the county to either approve, approve with conditions, or deny the CUP application. I would assume that Park City Municipals's position *vis a vis* the Kelley easement would provide a basis for Summit County to deny the CUP application. If necessary, however, Park City Municipal will file a separate action alleging breach of the terms of the easement. Other issues related to the Utah Open Lands conservation easement may also be addressed if need be.

I am happy to meet with any or all of you to discuss this matter.

Sincerely,

PARK CITY MUNICIPAL CORPORATION

Thomas A. Daley, Sr.
Deputy City Attorney

cc: Heinrich Deters, PCMC Sustainabilty Dept.
Jami Brackin, Esq., Summit County Attorney's Office
Wendy Fisher, Utah Open Lands
Jonathan Clyde,Esq., Clyde Snow & Sessions
Mel Armstrong

Park City Municipal Corporation • 445 Marsac Avenue • P.O. Box 1480 • Park City, Utah 84060-1480
Phone (435) 615-5029 • FAX (435) 615-4916

July 19, 2012

Amir Caus
County Planner
Summit County Community Development
P.O. Box 128
60 North Main
Coalville, UT 84017

Dear Mr. Caus,

Utah Open Lands received information regarding the request for a conditional use permit for the Silver Moose Ranch Bed and Breakfast from Summit County. We will be reviewing this information at our regularly scheduled board meeting on July 19, 2012. It is our understanding that this bed and breakfast has been operating without a conditional use permit since the fall of 2011.

Utah Open Lands' legal counsel is currently reviewing the right of way access easements. It is important to note that since this business activity has been taking place without a conditional use permit, it is in violation of the conservation easement as it is has also been in violation of the current code.

Utah Open Lands is the grantee of a conservation easement on property which includes land immediately adjacent to the subject property inclusive of Snow's Lane. Utah Open Lands was granted this conservation easement in 2009 and it was at this time that the city of Park City purchased the acreage for which Utah Open Lands holds the conservation easement.

Under the terms of the conservation easement, Snow's Lane may not be improved beyond its current condition. The easement also acknowledges rights of access along Snow's Lane for access to residential properties. The purpose for this language in the conservation easement was to ensure the continued protection of the conservation values of the property. These conservation values include the public benefit of the properties attendant wildlife habitat, secluded open space nature, designated non motorized public trail, scenic vista and watershed quality value. The conservation easement purpose is to protect and enhance these values.

It is stated in your report that the emergency access to bring skiers off of the mountain is used routinely by Park City Mountain Resort. In our monitoring of the conservation easement we have only seen infrequent use by ski patrol for this purpose and only in winter. As you are aware a locked gate prevents general motorized vehicular use.

Any review of this request for conditional use permit should address first and foremost the violation to existing code. One of the purposes for following County Codes and Regulations and due process is to provide a thorough review of all the potential impacts to all the potential stakeholders. Utah Open Lands has concerns that if the Bed and Breakfast is also used for conferences, weddings, corporate retreats and larger gatherings that appropriate attention has not been paid to whether Snow's Lane can accommodate the evacuation of 50 cars and current residents in the event of an emergency. The idea of regular use of this right of way for 50 cars seems out of compliance with the spirit of the easement.

Utah Open Lands is also concerned about other potential violations to the conservation easement due to guests being un aware of the sensitive nature of the property and the conservation easement.

Utah Open Lands has not had sufficient time to review this request and asks for additional information. We will be reviewing this issue at our regularly scheduled board meeting, today. I will forward to you the board's formal review of this issue after that meeting. Please be aware that the board may seek to continue this issue or deny review as we have not received a request from the Grantor of the conservation easement.

Respectfully,

Wendy E Fisher
Executive Director

TESCH
LAW OFFICES
A Professional Law Corporation

Joseph E. Tesch
joet@teschlaw.com

314 Main Street - Suite 200
PO Box 3390
Park City, Utah 84060-3390
Tel: (435) 649-0077
Fax: (435) 649-2561

February 4, 2013

Via Electronic Mail
AC Caus
Summit County Council
60 North Main Street
Coalville, Utah 84017

Re: Silver Moose Ranch LLC—Conditional Use Permit Application

Dear AC,

After we obtained a copy of the minutes of the planning commission meeting, we went through those minutes and tried to answer the questions voiced and those statements made which were not based on true facts. We have also included a summary statement.

Importantly, many of the comments made were based upon the unsubstantiated assumption that this B & B is a "commercial" Operation. As will be shown, this assumption is in error.

These materials are being presented to you so that, to the extent you deem appropriate, you include them in your staff report. To the extent you do not intent to include them, please let us know. You are, of course, authorized to include this entire submittal if you deem it relevant.

If you have any questions or need any additional information please let me know.

BACKGROUND SUMMARY

Applicants, Brian and Tamara Mooring ("Moorings") are both owners and live-in managers of Silver Moose located at 320 Snows Lane Park City, Utah.

As further described in its CUP Application, Silver Moose is a (6) six bedroom private home located on 13 acres in a Mountain Remote (MR) zoning area focusing on high level customer service in a tranquil and scenic setting (http://www.silvermooseranch.com) (Exhibit 2) Five (5) of the six (6) bedrooms are available for B & B occupancy. The owner/manager occupies the sixth room.

PROCEDURAL HISTORY

Shortly before October 14, 2011, Tamara Mooring, on behalf of Silver Moose, asked a Summit County clerk what type of license was required to open a Bed and Breakfast. The Clerk indicated that Silver Moose must apply for a nightly rental license.

On October 14, 2011, Ms. Mooring applied for and paid $175.44 for such a license. The check was returned and Tamara was informed that 320 Snows Lane already had a nightly rental license. (Exhibit 3)

Shortly thereafter, Applicants received a one (1) year Summit County Business License on behalf of Silver Moose as a nightly rental business with an effective date of January 16, 2011. (Exhibit 4).

In early 2012, Applicants received a proposed Business License form from Summit County seeking total fees in the amount of $200.00 to renew the 2011 Business License.

On January 28, 2012, Applicants, in reliance upon the County's request, submitted to the Summit County Clerk the Business License Renewal Application along with a check for $200.00. As clearly reflected on the Business License Renewal Application and contrary to any alternative assertion, Applicants have at all times represented to Summit County and others that Silver Moose is a Bed and Breakfast. (Exhibit 5).

On February 1, 2012, Ms. Mooring received a letter on behalf of Applicants from Summit County Community Development Code Enforcement Officer, Dan Child ("Officer Child"). Therein, Officer Child noted that he was returning the $200.00 check and Business License Renewal Application on the basis that "it seems that the required land-use approval (Conditional Use Permit) for a business of this nature at this location was never obtained." Id. In other words, the County rejected the Business License Renewal Application and conditioned the processing of it on the issuance of a Conditional Use Permit ("CUP"). (Exhibit 6)

Applicants were surprised by this apparent rejection of their business license renewal application, and on or about February 6, 2012, Applicants met with County officials to resolve the issue. At that time, Applicants were informed that there may be an issue with the right of way easement to the Property. In addition, applicants learned that Mr. Mel Armstrong had submitted a handwritten complaint to the County objecting to Silver Moose's Business License Renewal Application. Upon information and belief, Mr. Armstrong claimed that three (3) issues (allegedly concerning the right of way easement, the septic system, and water rights) precluded the County from issuing the business license. Applicants attempted to obtain a copy of Mr. Armstrong's letter to the County; however, the County was unable to provide it in advance of the filing of their Complaint.

Over the next several weeks Applicants continued their attempts to resolve the various issues. In addition, Applicants were in the process of preparing the requested applications to be submitted to the County.

On March 20, 2012, notwithstanding the continuing negotiations, Officer Child sent Applicants a letter claiming that they had not yet "straightened things up" and instructing that they "immediately discontinue bed and breakfast inn operations" (Exhibit 7).

On March 24, 2012 Applicants' legal counsel, Jeffrey D. Salberg, sent a letter to the Summit County Planning Commission in response to Officer Child's March 20th letter and the allegations advanced by Mr. Armstrong. (Exhibit 8).

On March 28, 2012, Applicants submitted an initial CUP application ("First CUP Application") along with the required fee and accompanying letter addressing the issues raised by the County during their negotiations (Exhibit 9). Applicants' First CUP Application also included information concerning the proposed bed and breakfast business plan, floor plans, aerial images, and septic permit from Summit County Public Health Department. Id.

On April 6, 2012, Applicants received a letter from the Park City Interim Manager Diane Foster[1] claiming that the right of way could not be used for 'commercial purposes.' (Exhibit 10)

Ms. Foster's letter ignores that Applicants are seeking permission to conduct an in home business defined by Summit County as "for-profit activity administered or conducted from a residence within the County." (Exhibit 11)

On May 7, 2012, the County sent a letter to the Applicants concerning the First CUP Application stating that:

> Upon reviewing the information provided to Summit County, Staff has found that there is insufficient evidence to show legal access to the [P]roperty for a commercial operation such as a Bed and Breakfast. Until such time as sufficient easement or access can be shown, either by agreement by all parties with an interest in the property, or by order of a court of competent jurisdiction, we cannot process this application. Therefore, we are returning the enclosed application in its entirety including your application fees. (Exhibit 12)

Contrary to this assertion, Silver Moose is not a 'commercial operation.' Rather it is a Bed and Breakfast Inn defined by the Development Code as an owner-occupied residence where rooms are rented and meals are provided.

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[1] Upon information and belief, the entire 1,000 feet of Snows Lane is in Summit County, not Park City.

Upon information and belief, no legal opinion was rendered on or before May 7, 2012 concluding that there was no legal access to the Property. The May 7th Letter also indicated that it served as a Notice of Violation and instructed the Applicants to "cease and desist any commercial operation on the premises within thirty (30) days of this notice." Id.

Upon receiving the May 7th Letter, although not required by the Snyderville Basin Development Code or other law, Applicants attempted to reach a resolution based on an "agreement by all parties with an interest in the property" as suggested by the County. Id. Accordingly, Applicants engaged in discussions and negotiations with the County. The parties did not immediately reach an agreement, and therefore, on June 5, 2012, the County agreed to extend the "Cease and Desist" order previously issued. (Exhibit 13)

Thereafter the parties continued to negotiate and prior to June 30, 2012, Applicants requested another extension on the "Cease and Desist."

On June 26, 2012, the County denied the request for an extension of the Cease and Desist order and demanded that Applicants discontinue their operation as a bed and breakfast by July 1, 2012 – just before the busy Independence Weekend that had been booked for months in advance. (Exhibit 14).

On or about June 27, 2012, Applicants submitted a second CUP Application ("Second CUP Application") that was accepted by the County and is the subject of the instant appeal (Exhibit 15).

PLANNING COMMISSION HEARING

On November 8, 20012, prior to the public hearing before the Planning Commission and after fully vetting Applicants' CUP Application with all County Departments, the Community Development Staff Report concluded that:

1. The proposed use is in accordance with the General Plan;

2. The use conforms to all applicable provisions of Snyderville Basin Development Code, including but not limited to, any applicable provisions of this Section and Chapter 4 of this Title, the General Plan, and State and Federal regulations;

3. The use is not detrimental to public health, safety or welfare;

4. The use is appropriately located with respect to public facilities; and

5. The use is compatible with the existing neighborhood character and with the character and purpose provision of the applicable zoning district, and will not adversely affect surrounding land uses.

At the public hearing, Staff properly explained that pursuant to Utah law, a conditional use shall be approved as long as any impacts can be reasonably mitigated. Further, Staff informed the Planning Commission that except for the easement issue (more fully described herein), there were no negative comments from any service providers and the intended use was permissible under the applicable zoning regulations.

Staff further recommended that the Planning Commission vote to approve the CUP Application with conditions relating to easement and water. As will be further discussed, water rights are not an issue and the Applicants hereby request that the County Council approve the CUP Application with the only condition relating to the easement. Applicants also consent to a condition that no other owner of the property be residing on the premises while B & B guests are present. The scrutiny which this application has received has been extraordinary. The County Building Department's long standing refusal to even accept an application based upon its false conclusion that the access wasn't sufficient, thereby denied the applicant an ability to even defend it's clear access easement.

In addition, after the County significantly delayed this matter and frustrated the ongoing attempts of Applicant to resolve the issues, to refuse a continuance of the Planning Commission hearing allegedly based upon the Applicant's length of operation, deprived applicants of a fair hearing. No excuse exists for treating citizens in this manner. (See Exhibit 23)

Applicants hereby respond to the specific findings of the Planning Commission as follows:

RESPONSE TO FINDINGS OF THE PLANNING COMMISSION

Planning Commission Finding No. 1: The application does not comply with Chapter 4 of the Development Code because information regarding roads, parking, and water is deficient. The County's standards in Section 10-4-5 of the Code require clear evidence that water is available, that the water quantity is available, that proper use of the water is available, and that the water quality can be met for the use. Section 10-4-10 requires that all access roads must meet AASHTO standards, meaning paved roads, and this access road is a dirt road. With regard to parking, the County cannot control special events, and there is no transportation plan or traffic study to understand how the applicant would manage parking for those events.

Response to Finding No. 1:

The Applicant has complied with all provisions of Chapter 4 of the Development Code as follows:

Roads

Snows Lane is not a dirt road (Exhibit 16). Snows lane is paved and is already sufficiently wide (18 feet plus an additional shoulder area) to accommodate emergency vehicles and any traffic generated by an in-home business such as a Bed and Breakfast. Snows Lane is used as an emergency access to Park City Mountain Resort for emergency evacuations. In fact, on January 11, 2013 following a ski accident, Park City Mountain Ski Patrol evacuated Mr. Mooring into an ambulance waiting on Snows Lane.

According to the County Engineer, Snows Lane meets all AASHTO standards and is sufficient for the intended purpose of a Bed and Breakfast. Upon information and belief, the entire 1,000 feet of Snows Lane is in Summit County, not Park City. It also conforms to Snyderville Basin LMC Section 10-10-1 Table 1 (Rural Minor) roads.

Contrary to public remarks, there has never been an issue with children playing on Snows Lane; and the road usage has not escalated as a result of Silver Moose. Snows Lane can comfortably handle the volume of traffic for a (5) five bedroom Bed and Breakfast and Applicants estimate that at a maximum at any given time, two thirds of all guests drive to this quiet respite. Anecdotal information about one red corvette is denied unless proof is presented that if it existed at all, it belonged to a guest at Silver Moose.

Parking and Special Events

All parking for Silver Moose has been and shall continue to remain on-site with no street parking or plans to expand any parking options.

Silver Moose maintains a (2) two-car garage and a concrete parking pad for (5) five vehicles. In addition, on the rare occasion where an event may require more parking, Silver Moose can easily accommodate (50) fifty additional parking spaces along a private driveway (Exhibit 17).

Since its inception as a Bed and Breakfast, Silver Moose has held only (3) events in excess of (20) twenty guests. Although not required, each event was managed by a professional event planner.

As a typical example, during the 2013 Sundance Film Festival, Silver Moose was fully booked (all five rooms for ten days straight) and only (1) guest, who stayed for three (3) days had a car during the entire (10) ten day event.

There is no obligation upon a (6) six-bedroom residence to perform either a transportation plan or traffic study and Summit County Ordinances govern only special events with more than 150 guests.

Water

Silver Moose's water right includes .45 acre feet for domestic purposes. Usually this is interpreted to mean for culinary use, not use for ingestion or livestock. We have an engineering report demonstrating that this is sufficient water for the use of the six (6) room B & B. There is no state regulation requiring more than this confirmed water right.

The attached letter from Bill Loughton with Loughlin Water Entities, LLC, confirms that .45 acre feet per year for domestic purposes as permitted by the current water right is sufficient quantity for the projected uses. Moreover, any additional regulation of culinary water is in the jurisdiction of the Utah Division of Water Rights. (Exhibit 18).

Planning Commission Finding No. 2: The use is detrimental to public health, safety, and welfare due to problems with the water right and water quality; there is no information that clearly demonstrates that there is a water right that is convertible and water quality provisions can be met; and because the use has a detrimental impact on the neighbors and the character of the neighborhood.

Response To Finding No. 2:

As described in Response to Finding No. 1, Applicants have clearly demonstrated that there are no issues surround water rights or water quality.

ALLEGED DETRIMENTAL IMPACT ON NEIGHBORS

Bed and Breakfast Inn

The Snyderville Basin Development Code defines a Bed and Breakfast as follows:

> **§10-11-1.30 Bed and Breakfast Inn:**
> An owner occupied residence in which up to eight rooms are rented for overnight lodging to travelers, and where one or more meals is provided to the guests only, the price of which may be included in the room rate. (Exhibit 19)

Silver Moose squarely falls within this definition.

There is no support for the contention that the intended use of Silver Moose as a Bed and Breakfast is considered a "Commercial Business" under Summit County or Utah law. Rather, **Summit County's own definitions states that, "an in home business refers to all for-profit activity administered or conducted from a residence within the County. A commercial business is anything that is not considered an in home business"** (See Exhibit 11) as noted a Bed and Breakfast is required to be operated within a residence.

In order to promote in home businesses, Summit County adopted Ordinance #191-C to reduce the enhanced service fee applicable to in home businesses. Ordinance 191-C specifically identified the "unique position of in home businesses as compared to other business" and recognized that, "in-home businesses within Summit County provide valuable services to the community and its economy" – precisely the intent of Silver Moose. (Exhibit 20)

Owner-Occupied

The term "owner-occupied residence" is not defined in the Development Code. However, as the Deputy County Attorney has correctly stated, a "primary residence" is not required to satisfy this obligation.

Utah law acknowledges that property owners may own multiple residences, and may reside or occupy more than one at different times in any given year. Accordingly, the use of "residence" does not, in and of itself, require a minimum duration or frequency of sleeping in a dwelling to qualify as a "residence." Board of Equalization of Summit County v. State Tax Com'n, 98 P.3d 782, 2004 UT App 283 (Utah App. 2004)

The Code does not require any particular level of ownership and the Moorings' presence as owner/managers and residents of 320 Snows Lane does qualify Silver Moose as an "owner occupied residence."

Moreover, as most B&B's are occupied by a manager that is the Owner of the business, this term should be construed consistent with the understanding in the community.

Other Businesses on Snows Lane

There are at least (9) nine businesses located on Snows Lane registered with the State of Utah, including but not limited to:

- 170 Snows Lane which maintains a registered business cattle operation called Armstrong Brothers 1300 East Partnership at the residence of Defendant Mel Armstrong; and
- 180 Snows Lane which maintains an active business registry for Armstrong Park City, LLC

Planning Commission Finding No. 3: The use is not compatible with the existing neighborhood character and will adversely affect surrounding land uses as it has been clearly demonstrated through testimony at the public hearing that there are traffic and transportation issues and that the road cannot be improved and cannot be safely used to access this use.

Response To Finding No. 3:

The proposed use is compatible with the existing mountain remote residential neighborhood and will not adversely affect surrounding land uses. Much of the testimony at the public hearing was based on incorrect assertions (dirt road, water rights etc.) and misinformation which was due in large part to the Applicants inability to attend the hearing.

Neighborhood Character

Snows Lane is located amidst resort developments and subdivision neighborhoods comprised of at least (62) sixty-two different non-local, second homeowners, rental properties and businesses. These properties include a major hotel (Hotel Park City), multiple subdivisions, including single-family homes, condominiums, townhomes, cottages and lofts, commercial areas including shopping and dinning, and municipal facilities such as a golf course and Park City Mountain Resort.

Prior to and at the hearing on February 13, 2013, Applicants intend to submit Expert testimony concerning the neighborhood character as it relates to a Bed and Breakfast Inn from Nancy McLaughlin, Association Manager - Bed & Breakfast Inns of Utah.

Noise and Traffic

Silver Moose has been fully operational as a Bed and Breakfast since November 2011 and there have never been any complaints to either Summit County Code Enforcement or to the Summit County Sheriff concerning noise or traffic. (Exhibit 21)

Many residents including Herb Armstrong, the brother of Defendant Mel Armstrong and other neighbors have thanked the Applicants for operating such a quiet, peaceful operation in this mountain remote zone.

Summit County's Traffic Engineer has estimated traffic impacts generated by a Bed and Breakfast are slightly higher than a single-family dwelling. Intuitively, a Bed and Breakfast would trigger less traffic than a nightly rental since some food service is on-site.

Although Silver Moose has never generated any noise complaints, Applicants have closely monitored noise levels as reflected in the attached (Exhibit 23)

Road Improvement

Since Snows Lane is already paved (is not a dirt road) and is sufficient to accommodate emergency vehicles and any traffic generated by a Bed & Breakfast, Applicants do not currently seek to improve the road. However, the suggestion that it cannot be improved is legally erroneous.

Planning Commission Finding No. 4:
These particular issues cannot be mitigated by conditions as the road cannot be upgraded under the easement which requires that it remain in its current state.

Response To Finding No. 4:

Easement/Access
The only issue requiring mitigation involves the access easement. Applicants are not currently seeking to upgrade Snows Lane beyond its current condition. Nonetheless, the confirmation of the easement is an issue currently pending before Utah's Third District Court and Applicant's concede that this matter may be made a condition to any approval of the CUP Application.

Question: Is there any infirmity in the right of Silver Moose to use Snows Lane?

Both Park City Municipal Corporation and Mel Armstrong have raised issues claiming that Silver Moose doesn't have an easement to use Snows Lane as an access way for a bed and breakfast.

While these issues ultimately need to be sorted out by a court of law (and we have filed suit to resolve that issue as soon as possible) a few axiomatic principals of law demonstrate the lack of merit in those claims:

1. The Deed and the Special Warranty Deed to applicant in 1987 contains this explicit easement: "Together with a right of way for ingress and egress from Parcel 1 and Parcel 2 for a roadway which is approximately 3 rods wide..." This easement is for the use of Snows Lane as access to the Applicant's property.

Since this right of way, "for ingress to and egress from" is not qualified in any way, it is plain on its face and as evidence that a separate unexpressed intent was hoped for by the granting parties several years earlier, is relevant.

2. Even assuming that evidence of a different intent could be relevant under different legal circumstances, since our client is a "*bonafide purchaser*", without knowledge of any limiting intent, it takes and owns that easement without any limitation outside of the recorded easement.

3. Further, bed and breakfast is not "a commercial use" but rather more a residential property with an in-home business.

4. Based on the foregoing, there is no limitation on the easement which prohibits it from being used for the purpose of the use of the residence as a bed and breakfast.

5. The claim of Utah Open Lands that its conservation easement obtained from the owner of the burdened property approximately 10 years after the granting of the ingress and egress easement in 1987. Somehow limits the use with the access easement is without legal foundation. Obviously, and without doubt, without the consent of the owner of the easement, neither Mel Armstrong nor Utah Open Lands, nor anyone else, could modify or impose additional limitations on that easement. No consent has been given.

Again, this matter will be resolved in District Court. However, since the issue had been raised in the proceedings before the Planning Commission, we thought it was appropriate to at least present these clear principals of law for your consideration. (See Exhibit 24), a preliminary draft of a summary judgment memorandum on this issue. This draft is preliminary an applicant reserves the right to materially change or alter it's content.

CONCLUSION

The Snyderville Basin General Plan states as one of its five economic objectives:

> All resort development has been and must continue to be oriented to resort and guest accommodations that support the recreational nature of the area, and enhance county and special service district tax bases, create jobs, provide only a reasonable level of impact on the Park City School District.

The instant application is consistent with this objective and Applicants respectfully submit that their pending CUP Application should be granted.

Please contact the undersigned for further clarification in advance of an anticipated Public Hearing on February 13, 2013.

Sincerely,

TESCH LAW OFFICES, P.C.

Joseph E. Tesch
Joseph P. Barrett
Stephanie K. Matsumura

cc: Jami Brackin, Esq. (via email)
Thomas A. Daley, Sr. Esq. (via email)
AC Caus (via email)

EXHIBIT 1

TESCH
LAW OFFICES
A Professional Law Corporation

Joseph P. Barrett
joseph@teschlaw.com
(435) 608-0321

314 Main Street - Suite 200
PO Box 3390
Park City, Utah 84060-3390
Fax: (435) 649-2561

October 23, 2012

Via Electronic Mail
jbrackin@co.summit.ut.us
Jamie R. Bracken
Deputy Summit County Attorney
60 North Main Street, Suite 227
P.O. Box 128
Coalville, Utah 84017

Dear Jamie:

Re: Silver Moose Ranch LLC

Following our conversation today, please accept this formal request on behalf of Silver Moose to continue the anticipated Summit County Planning Commission Meeting from November 13, 2012 until December 11, 2012.

As discussed, our clients wish to attend the Planning Commission Meeting in support of their pending application for a conditional use permit (CUP).

Unfortunately, they have made prior arrangements to be out of the country on November 13, 2012.

You expressed that because the county is being sued, the Silver Moose CUP must remain on the November 13, 2012 calendar. Please note that this CUP application has been pending with Summit County since June 27, 2012 and this modest request to permit our client's their due process rights does not appear unreasonable.

In an effort to avoid further unnecessary court involvement, kindly advise if this proposal is acceptable on before the close of business on Friday, October 26, 2012.

Sincerely,
Tesch Law Offices, P.C.

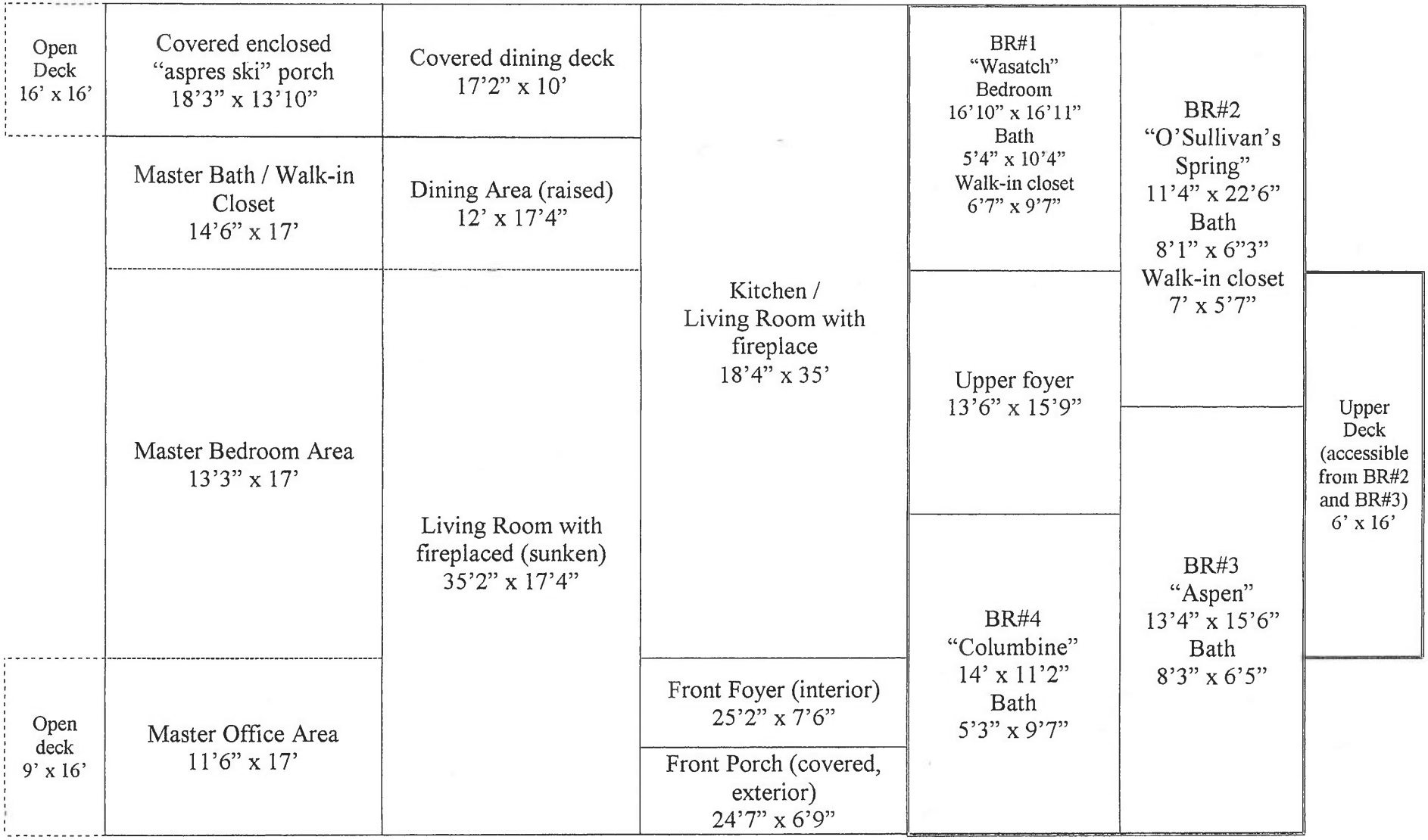
Joseph P. Barrett

Joseph P. Barrett

EXHIBIT 2

EXHIBIT J.15

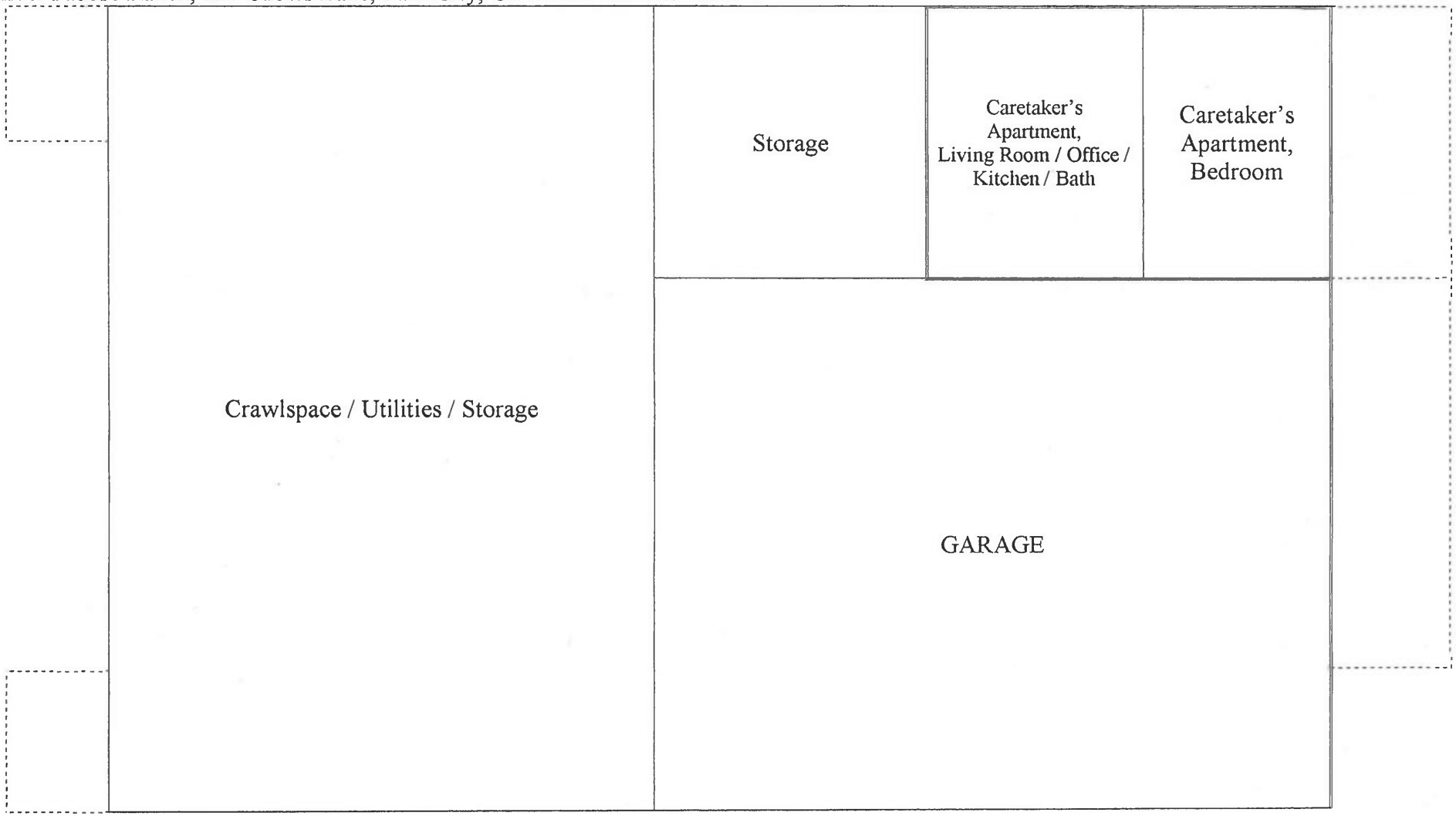
Silver Moose Ranch, 320 Snows Lane, Park City, UT 84060 435-729-0002
General NOT-TO-SCALE Interior Floor Plan. Room dimensions noted are as measured



Four bedrooms are in an "upper wing", denoted by double border line ^
Half flight stairs from Living Room into upper foyer

Drawing by Tamara Mooring; Dimensions by Brian & Tamara Mooring; Not-to-Scale; Room dimensions have been "squared off"

Silver Moose Ranch, 320 Snows Lane, Park City, UT 84060 435-729-0002



Ground Floor (Garage and Bedroom #6 / Caretaker's Apartment)

Drawing by Tamara Mooring; Dimensions by Brian & Tamara Mooring; Not-to-Scale; Room dimensions have been "squared off"

EXHIBIT 3

EXHIBIT J.18

TAMARA L. MOORING 07/11
BRIAN E MOORING
320 SNOWS LN
PARK CITY, UT 84060-6717

110

31-297/1240 2798
8557564054

10/14/2011
Date

Pay to the Order of Summit County $ 175.44

One hundred seventy five & 44/100 Dollars

Wells Fargo Bank, N.A.
Utah
wellsfargo.com

For

Tamara L Mooring

⑆124002971⑆ 8557564054⑈ 00110

EXHIBIT 4

EXHIBIT J.20

UTAH STATE TAX COMMISSION
TAXPAYER SERVICES DIVISION 210 N 1950 W SALT LAKE CITY UT 84134 Website: tax.utah.gov

Sales Tax License and/or Use Tax Certificate of Registration

SILVER MOOSE RANCH LLC
SILVER MOOSE RANCH LLC
320 SNOWS LN
PARK CITY UT 84060-6717

Account Number: **10014332-003-STC**

This business is registered to make taxable sales from the incorporated city of:
Park City

Outlet: 001 Issued: November 18, 2011 Valid until revoked or cancelled. Post in a noticeable place.

This business is authorized to make taxable sales, purchase tax free for resale, collect and remit sales and use taxes in the State of Utah. The authority to engage in business is subject to city and/or county business licensing laws and other rules and regulations. This license may be revoked for violations or failure to comply with these laws, rules and regulations. If this business moves, closes or is sold, you must contact the Tax Commission immediately by calling 801-297-2200 or toll free 1-800-662-4335 and return this license to the Tax Commission for cancellation. This license is NOT transferable.

NOTICE:
This license MUST be posted in a conspicuous place and is not transferable

COUNTY CLERKS SEAL SUMMIT COUNTY 1854 STATE OF UTAH

License Number: 3559
Date Issued: 01/16/2011

Business License

The below named person or firm is hereby granted a license to do business as stated below in Summit County Utah, subject to the provisions of the Business License Code of Summit County and subsequent amendments relating to the above for the period indicated:

Expires: 01/15/2012
Fee: 175.44

Name:
Silver Moose Ranch

Location: 320 Snows Lane
Type of Business: Nightly Rental

To: William R. Kelley
320 West Snows Lane
Park City UT 84060

Deputy Clerk

County Clerk

County Clerk • 60 North Main Coalville, UT 84017 • (435) 336-3204 • www.summitcounty.org

EXHIBIT 5

EXHIBIT J.22

SILVER MOOSE RANCH 10/11
320 SNOWS LN
PARK CITY, UT 84060-6717

1027

31-297/1240 2798
5561359216

1-28-12
DATE

PAY TO THE ORDER OF Summit County Clerk $ 200.00

two hundred and xx/100 DOLLARS

WELLS FARGO Wells Fargo Bank, N.A. Utah wellsfargo.com

FOR

Tamara L Mooring

⑆124002971⑆ 5561359216⑈ 01027

Harland Clarke

e: 435-336-3204
435-336-3030
Box 128
lorth Main
lville UT 84017

2012

Date: 12/19/2011
Acct #: 3559

Fees are due before 01/16/2012
Please take a few minutes to review and update the following information for your business.

LICENSE FEES

Previous Balance	0.00
Nightly Rental	$ 200.00
Total Fees	**$ 200.00**

Send payment to:
Summit County Clerk
PO Box 128
Coalville, Utah 84017

BUSINESS INFORMATION

☐ Information is current ☑ Make corrections as marked ☐ Out of Business, date_____

Name: Silver Moose Ranch
Address: 320 Snows Lane
Phone: ~~781-956-9562~~ 435-729-0002
Nature of Business: Bed & Breakfast
State Tax ID: 017306938
State License #: EIN:

In order to improve communication, please provide a valid email address
Email Address: info@silvermooseranch.com
Square Footage:
State Registration Number:

NEED A C.U.P.
CANNOT RENEW LIC.

OWNER INFORMATION

☑ Information is current ☐ Make corrections as marked

Name: William R. Kelley
Address: 320 Snows Lane, Park City UT 84060
Phone: 781-956-9562

Commercial Late Fees
$50 if not paid by February 15th
$100 if not paid by March 15th
$200 if not paid by April 15th

In-home Late Fees
$25 if not paid by February 15th
$50 if not paid by March 15th
$75 if not paid by April 15th

EXHIBIT 6

SUMMIT COUNTY

Community Development
Dan Child
Code Enforcement

February 1, 2012

Ms. Tamara L. Mooring
320 Snow Lane
Park City, UT 84060

Re: Bed and Breakfast Operations at Silver Moose Ranch

Dear Ms. Mooring:

It has been brought to the attention of the Summit County Community Development Department that you are operating a bed and breakfast business at the above address. As we have looked further into this business license renewal request, it seems that the required land-use approval (Conditional Use Permit) for a business of this nature at this location was never obtained.

Therefore, we are unable to grant a renewal of this business license. Please refer to the following link from the County Website to apply for a Conditional Use Permit:
http://www.co.summit.ut.us/communitydevelopment/downloads/snyderville/CUP_Basin.pdf

If you have any questions regarding this matter, please contact me.

Respectfully,

Dan Child

Dan Child
Code Enforcement Officer

Enclosure: Returned check and renewal form.

Summit County
Community Development Department
Park City (435)615-3130 Coalville (435)336-3130
trushton@co.summit.ut.us

EXHIBIT 7

Community Development
Dan Child
Code Enforcement

Notice of Violation

March 20, 2012

Ms. Tamara L. Mooring
320 Snow Lane
Park City, UT 84060

Re: Bed and Breakfast operations at Silver Moose Ranch

Dear Ms. Mooring:

It has been almost two weeks since I spoke with anyone in Mr. Salberg's office. We were told by you and the lawyers' office that someone would come in and try to straighten things up. We haven't heard from anyone and we are still receiving complaints that you are still conducting business as a Bed and Breakfast. Summit County does require that you have a Conditional Use Permit and a current business license to operate as a bed and breakfast business at the above address.

Therefore, we are asking you again to please discontinue operating as a bed and breakfast inn at the Silver Moose until which time you obtain the appropriate permits and licenses.

Remedial action required to correct violation: Immediately discontinue bed and breakfast inn operations upon receipt of this notice.

Amount of civil fees for each violation: $500.00 per violation. (Civil fines shall accrue daily, immediately upon receipt of this Notice of Violation until violation is corrected). Only one Notice of Violation is required for any 12-month period. Civil fees are imposed immediately upon any subsequent violations or "Notice of Citation."

If you have any questions regarding this matter, please contact me.

Respectfully,

Dan Child

Dan Child
Code Enforcement Officer

Dan & AC said that we have to resolve the Road Access issue before submitting form. We had a copy of form & checkbook in hand.

Summit County
Community Development Department
Park City: (435)615-3130 Coalville (435)336-3130
dchild@summitcounty.org

NE

EXHIBIT 8

JEFFREY D. SALBERG
Counselor at Law

345 West 600 South, Suite 109
Heber City, Utah 84032
Tel. (435) 657-3691 Fax. (888) 251-3609
Licensed in Utah, Indiana and Florida

March 24. 2012

A C Caus
Summit County Plan Commission
P.O. Box 128
Coalville, UT 84017

Re: 320 West Snow's Lane – Conditional Use Permit

Dear Mr. Caus,

When we last spoke you shared some of the concerns that might exist in obtaining a conditional use permit for a bed and breakfast in the existing structure located at 320 W. Snow's Lane in Summit County. You specifically mentioned legal issues that might relate to the right-of-way easement for ingress and egress that serves the property. I will also briefly comment on a couple of other issues that were also mentioned during our conversation.

Right of Way: The easement for a right of way for ingress and egress from Parcel No. 1 and Parcel No. 2 over a roadway which is approximately three rods wide (and the center line being particularly described) was created by deed. It is an easement appurtenant to the dominant estate. The current owner, William R. Kelley, Jr. first acquired the property from First Security Mortgage Company by Special Warranty Deed dated May 6, 1988, a copy of which is attached hereto as Exhibit "A". The validity of the foreclosure sale to Kelley was confirmed by the Utah Supreme Court after extensive litigation initiated by W. Melvin Armstrong and Herbert Armstrong and Joseph and Raye Ringholz. (As a side note, easement appurtenant are transferred upon a mortgage foreclosure sale. Kratovik & Werner, *Modern Mortgage Law and Practice*, Section 8.03 (2nd ed.))

Snow's Lane begins at Three Kings Drive and provides access to Herbert Armstrong's residence, William Kelley's residence and one or two other residences. Kelley's large six bedroom home, including care taker quarters, sits on approximately 12 acres of land including a pond, out-buildings for horses and extensive pasture. The land was originally part of the Armstrong farms.

The deeded grant of right-of-way for ingress and egress did not contain any limiting language regarding the use of the right of way. A six bedroom home could easily house a

Second, the use of five of the six bedrooms of the Kelley residence for bed and breakfast purposes will not create any greater use of the right of way than a large family or a family that often entertains out of town guests. Use of the right-of-way by any guests that stay at the Kelley residence will place no greater burden on the right-of-way then if the residence was occupied by a large family or a family that regularly entertains visiting friends and family. The existing homes use as a bed and breakfast does not, and will not, interfere with the use of the easement by the serviant estate. In fact, since the occupancy of the bed and breakfast rarely exceeds use of one to three bedrooms, there will be less traffic on the right-of-way then if there were adults living in each bedroom full time.

Third, the use will not require alterations or improvements to the existing easement. Whatever maintenance and care Snow's Lane has benefited from over the years is and will remain adequate.

In 2009, the Armstrongs sold a conservation easement to the City, which by its language attempts to place restrictions on the use, care and maintenance of Snow's Lane, part of which is in the county. While there is restrictive language regarding improvements to Snow's Lane, the grant cannot adversely affect the pre-existing dominant tenants utilizing Snow's Lane. While Kelley has no plans to pave Snow's Lane, I do not believe the serviant tenant or its successors can prevent Kelley from doing so if paving the right of way would make it more serviceable and lower maintenance costs.

In conclusion, there is no increase in the existing potential use of Snow's Lane. Even if there were, the use would not cause any unreasonable damage to the serviant estate or interfere unreasonably with its enjoyment.

Septic System: The septic system, which was operating adequately for a six bedroom home, was expanded and improved beyond normal specifications in 2011. Information from the contractor that performed the work will be presented with the application for conditional use permit so it can be reviewed by the appropriate department.

Water Rights: The use of the property as a bed and breakfast would not require any increase in rights that currently exist for a six bedroom home, irrigation of acreage and watering of horses and livestock on the property. (Water Right No. 35-8439). By judicial determination, Kelley also has an existing easement on Herbert Armstrong's abutting property for the operation and maintenance of a water pipeline to his home, including care for the pump, etc. The Armstrongs were permanently enjoined from interfering with the delivery of Kelley's water under his water rights.

As I was completing this letter, it came to my attention that a cease and desist letter has been sent to the residence by Officer Childs. Mr. Kelley and Mr. Mooring are proceeding in good faith to obtain the appropriate permit even though they were given incorrect information during their due diligence when planning the bed and breakfast, which led them to believe only a business license was required.

Please do not require them to cease and desist from operating while they go through the necessary administrative function to obtain the Conditional Use Permit. I believe that their application will have every likelihood of being approved. Allowing the bed and breakfast to continue so that it may honor its commitments to current reservations will not cause any significant harm to the public. However, Kelley and Mooring would be irreparably harmed if they had to cancel existing reservations. I'm sure your favorable consideration on this point will be much appreciated.

I have requested that Mr. Mooring proceed to prepare the appropriate application and pay the required fee. If I can assist in expediting this matter or there becomes a need to further discuss any legal issues that may be of concern, please do not hesitate to call.

Respectfully,

Jeffrey D. Salberg

EXHIBIT 9

Community Development Department
P.O. Box 128
60 North Main Street
Coalville, Utah 84017
Phone: 435-615-3124
Fax: 435-615-3046
www.summitcounty.org

CONDITIONAL USE PERMIT APPLICATION FORM

Owner(s) of Record:

Name: William KELLEY Phone: _____

Mailing Address: 320 SNOW'S LANE

City: PARK CITY State: UTAH Zip: 84060

E-Mail Address: _____ Fax: _____

Authorized Representative to Whom All Correspondence Is to be Sent:

Name: BRIAN MOORING Phone: 435-729-6002

Mailing Address: 320 SNOW'S

City: PARK CITY State: UTAH Zip: 84060

E-Mail Address: BRIANMOORING@AOL.COM Fax: _____

Project Information:

Parcel #: PP-25-D Subdivision Name: N/A

Address: 320 SNOW'S LANE PARK CITY Section: ____ Township: ____ Range: ____

Do you currently have constructions plans turned in for Building Permit review? YES (plan check #) _____ NO

Project Description (acreage, building square footage, number of lots, etc.):

SEE ATTACHED

As of 9.1.10

FOR OFFICE USE ONLY

☒ Residential Project: *Planning Fee*: $400.00. *Engineering Fee*: $20.00

☐ Non-Residential Project: *Planning Fee:* $1,000.00 per acre of disturbed land or 1,000 sq ft of building footprint area, whichever is greater (if the development area is less than one acre, the fee shall be $1,000). *Engineering Fee:* $90.00 per acre of disturbed land (if the development area is less than one acre, the fee shall be $90.00).

☐ Wind Turbine, Solar, or Recycling Facility:

☐ Residential Project: *Planning Fee*: $200.00. *Engineering Fee*: $10.00

☐ Non-Residential Project: *Planning Fee*: $500.00 per acre of disturbed land or 1,000 square feet of building footprint area, whichever is greater (if the development area is less than one acre, the fee shall be $500.00). *Engineering Fee*: $45.00 per acre of disturbed land (if the development area is less than one acre, the fee shall be $45.00).

☒ *Snyderville Basin*

☐ *Eastern Summit County*

RECEIPT #: _____ DATE RECEIVED: _____ RECEIVED BY: ____

[redacted]

OWNER(S) ACKNOWLEDGEMENT

All application fees must be paid at time of application submittal. No application will be processed until all application fees are paid. Notification and publication fees for required public hearing notices (individual notices mailed to property owners - $2.00 per notice; 14 day publication of legal notice in local newspaper - cost of notice) will be billed to applicant at the time a hearing is scheduled. Notification fees must be paid within 10 days of billing.

PLEASE NOTE REGARDING FEES; the payment of fees and /or the acceptance of such fees by County Staff does not constitute any sort of approvals, vesting, or signify that the application is complete or appropriate in any manner. The collection of fees is simply a requirement to begin the review process that will ultimately make such determinations.

I hereby declare under penalty of perjury that this application form, and all information submitted as part of this application form is true, complete, and accurate to the best of my knowledge. Should any information or representation submitted in connection with this application form be incorrect or untrue, I understand that Summit County may rescind any approval or sufficiency determination, or take other appropriate action.

Applicant ~~Owner(s)~~ Signature: [signature] Date: 3/27/12

3/27/12
As attorney for William Kelley, William Kelley Jr. is the owner of the property at 320 Snow's Lane and he authorizes the submittal of this application.

[signature]
Attorney for William Kelley Jr.

As of 9.1.10

OWNER SIGNATURE: [signature] DATE: 3/27/2012

March 29, 2012

To: Summit County Planning Commission
Attention of: A.C. Caus and Dan Childs
Re: Conditional Use Permit Application, Silver Moose Ranch Bed & Breakfast
Submitted by Brian & Tamara Mooring; 320 Snows Lane, Park City, UT 84060, 435-729-0002

Property Description, according to Summit County Utah Assessor / Recorder Property Record Card (William R, Kelley, Jr, Account # 0060883, Parcel PP-25-D):

Acres: 12.720
House, built in 1974: Living Area: 7542 square feet

Silver Moose Ranch, 320 Snows Lane, is a proposed bed-and-breakfast style lodging focused on high level customer service in a scenic, tranquil setting.

Lodging Capacity:
In addition to several large meeting rooms, the house has 4 bedrooms, plus a Master Suite, each with a private bath, for a typical lodging capacity of 10 adult guests. Two rooms are suites which could accommodate an additional child or two.

Parking: There is a two car garage and a concrete parking pad which can accommodate 5 vehicles, with up to 50 more parallel parking spaces available along the driveway.

Interior floor plan:
The Ranch house has a good interior floor plan for the proposed business. There are four bedrooms with private baths in the upper wing. Additionally, there is a large private master suite with luxury bath, sitting room and fireplace. The centrally located open kitchen and living room with fireplace makes a convenient meeting area for small groups. The kitchen is ideal for a cooking class and as a location to serve home-style breakfasts and après ski snacks. The larger dining room/ living meeting room can be arranged several ways to accommodate dinner parties, receptions, business meetings, and even small wedding ceremonies. See attached, rough drawing (not to scale)

Site Map:
The location of the facility, privacy and breath-taking views are without match in Park City. The Ranch is located at the base of Thaynes Canyon, and has easy access to mountain bike and hiking trails. The 13 acres contains ponds, a bubbling stream, and enough open area for larger gatherings. See attached satellite /map imagery.

Septic System and Water Rights:
In a letter drafted by Jeffrey Salberg, attorney, regarding questions about the use of the property at 320 Snows Lane for a bed and breakfast business, the following statements were made about the septic system and water rights. The date on the septic system remodel permit, through Summit County Public Health Department, was August, 10, 2011.

Septic System: The septic system, which was operating adequately for a six bedroom home, was expanded and improved beyond normal specifications in

SUMMIT COUNTY COMMUNITY DEVELOPMENT
MAR 30 2012
RECEIVED

2011. Information from the contractor that performed the work will be presented with the application for conditional use permit so it can be reviewed by the appropriate department.

Water Rights: The use of the property as a bed and breakfast would not require any increase in rights that currently exist for a six bedroom home, irrigation of acreage and watering of horses and livestock on the property. (Water Right No. 35-8439). By judicial determination, Kelley also has an existing easement on Herbert Armstrong's abutting property for the operation and maintenance of a water pipeline to his home, including care for the pump, etc. The Armstrongs were permanently enjoined from interfering with the delivery of Kelley's water under his water rights.

Right of Way and Road Usage:
The Salberg letter, presented separately in its entirety, thoroughly addresses right of way and road usage issues. It should be noted that emergency vehicles use Snow's Lane frequently in order to evacuate the injured from Park City Mountain Resort.

Business Description:
Business web site www.silvermooseranch.com description:

Southern Comfort meets Western charm. Rustic comfort awaits you at Silver Moose Ranch. Situated on 13 acres of very private, natural beauty, the ranch features cascading springs, several ponds, lush lawns, 360 degree mountain views. Newly renovated for the 2011 – 2012 winter season, the Ranch house features stone pillars, thick wood beams, vaulted ceilings and rustic accents. All bedrooms include wireless Internet access; an in-suite full bathroom and new, luxury linens. Common spaces, featuring multiple sitting areas, inside and out, are available for your lounging comfort. Snuggle next to one of the fireplaces, or sip your coffee on the deck by the bubbling spring-fed creek. A privately situated hot-tub is available for your après ski relaxation and star-gazing. The gorgeous professional kitchen (with almost 18 feet of windows), dining room, living room and large meeting room can also be reserved for your group meeting, dinner, reception, party, wine tasting, cooking class or entertainment events.

The Ranch is so private, even the locals don't know we're here. But, yet, so close to everything! Just two blocks from ski lift and restaurants, and steps away from hiking and biking trails. The Ranch is adjacent to Park City Municipal Conservation Land, which will remain undeveloped – there's not a condo within view. The Silver Star Lift at Park City Mountain Resort is a mere 700 yards away, and Canyons Resort and Deer Valley Resort are within 3.5 miles.

Description of a "busy" week during "high season":
Beginning on January 11, 2012, we had an extended family/friend group visit for a ski vacation. There were 6 adults and 4 children renting 4 bedrooms for 4 nights. They had two rental cars. They arose early every morning, skied all day until the lifts closed, returned to the Ranch to relax in the hot tub, ordered dinner in, relaxed by the fire, and went to bed early. Their two rental cars went up and down Snows Lane once each day. After they checked out, we had two separate couples check in, one for 3 nights, and the other for 8 nights. The 8-night couple did not have a car, but used the Park City Transit System to get to and from various local attractions. The other

couple was here for a romantic retreat and rarely left their bedroom. So for that week of January 11 – 17 (Wednesday through Tuesday), we had an occupancy rate of 68% (which was higher than average, thus this was a "busy" week), with approximately one car for every 5 guests. For the entire "high season", our occupancy rate was 48% (approximately 2-3 bedrooms in use by 5 guests). In our observations, approximately a third of our guests do not have a car, but instead walk or use the public transportation system.

A "typical" guest experience consists of a married couple who stay for 2 to 3 nights. We have an equal blend of first time visitors, and Utah residents looking for a convenient getaway. Our guests are looking for seclusion and tranquility and appreciate the scenery, peace and quiet found at Silver Moose Ranch. During ski season, about half our guests are active sports enthusiasts. The rest are here to enjoy the history and beauty of the area, and to experience the entertainment, shopping and dining of the Park City / Snyderville / Kimball Junction area.

Business management:
The Silver Moose Ranch Bed & Breakfast is managed by live-in residents Brian & Tamara Mooring, who relocated to Utah from Alabama in 2011. In Alabama, they ran Woods Ferry Farm, www.woodsferryfarm.com, (still being operated by family members), a 98 acre estate on the Coosa River in St. Clair County. The farm consists of forest and open lands to support and promote the native wildlife population; a 3 acre muscadine vineyard, and an organic herb farm. From this setting, Tamara ran a Health-Department licensed catering company for 10 years.

Guest Reviews from our First season:
My husband and I just got back from 3 days at Silver Moose Ranch and had the best time! What a wonderful place to stay! Thank you Brian (Tamara was away)! The Moorings are wonderful people and terrific innkeepers -- they really have a knack for making you feel comfortable and happy, from the attractive rooms-with-bath, to the cozy fireside overstuffed chairs and sofas, to the yummy breakfasts (the Moorings are great cooks - former caterers), to all the little details they have paid attention to. As other reviewers have pointed out, it's more like a lodge, with plenty of "common area" space, than the typical B&B (we too were glad to find a place that wasn't the usual frilly Victorian.) It was lovely to come back to the ranch after a day on the slopes and hit the hot tub, munch some freshly-baked cookies and collapse in front of a blazing fire or take a nap. As others have noted, the ranch is nestled in among pastures with pretty views and a bubbling brook and pond – a magical and tranquil spot and yet just a couple minutes from downtown Park City and all the ski areas. This was our first trip to Park City, and we'll be back – hopefully with friends in tow! – Melissa

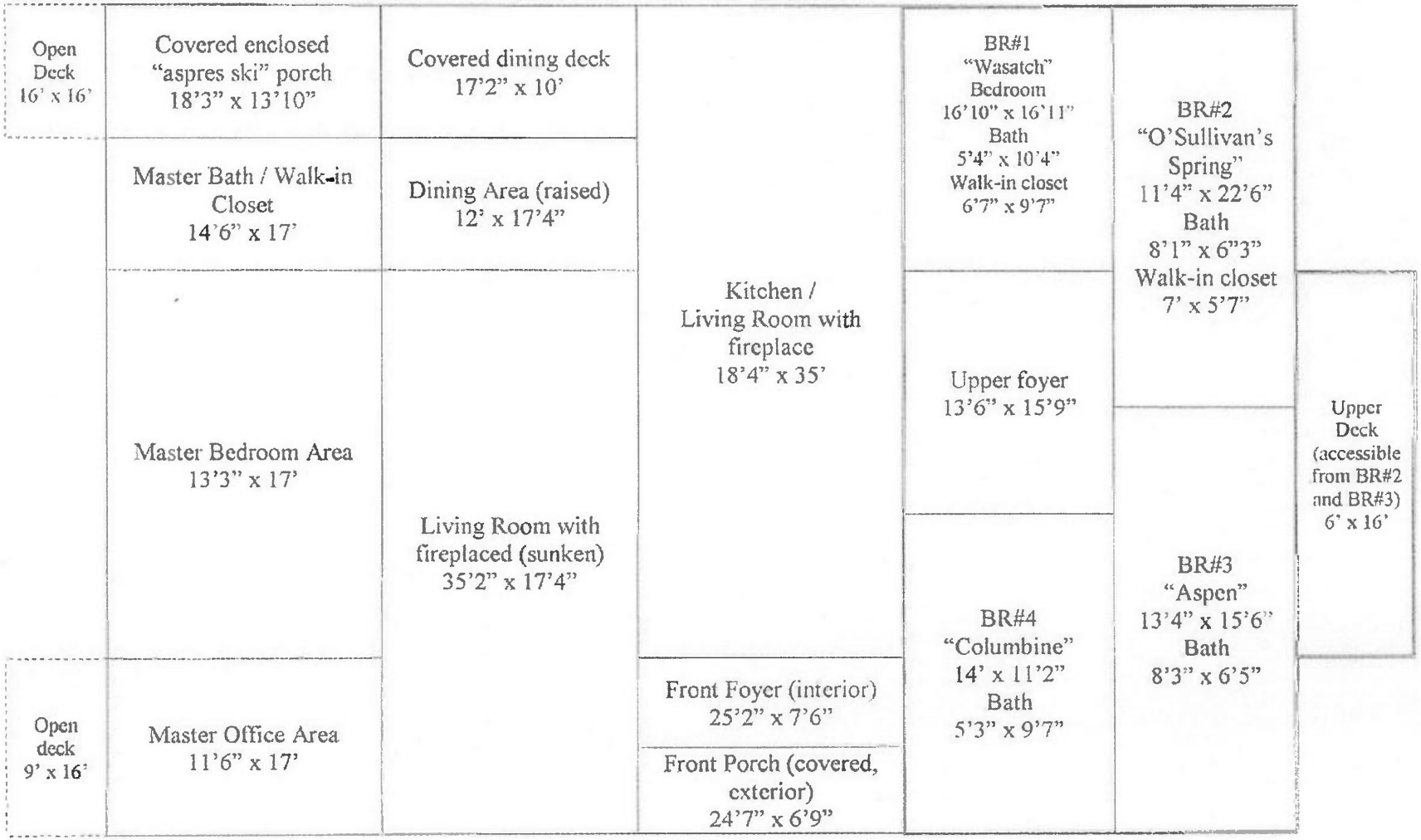
The house and ranch are gorgeous. The views of the mountains and the pasture, the creeks and ponds, and open spaces are peaceful and relaxing. I enjoyed being surrounded by nature and animals and feeling like you're way out in the country, but you're actually just a quick drive, walk, or free bus ride to town, the resorts, or anywhere else in Park City. The location really was the best of both worlds, and the setting made for a magical retreat.
Tamara is a great cook. Breakfast was served every morning. She made a variety of delicious breakfasts -- from waffles with apple compote to eggs made to order to pancakes with fresh berry sauce -- as well as treats in the afternoon and evening (brownies, cakes, caramel popcorn, cookies, and more). It seemed like there was always some wonderful smell wafting up from the

kitchen. The guest area has its own coffee/tea maker with individual servings so you can make coffee in the morning before you come down for breakfast, or have an evening tea in your room. As for the rooms, I stayed in two: O'Sullivan's Spring and Columbine. Both were charming and each were thoughtfully decorated and designed with comfort and ease in mind. O'Sullivan's felt like a separate cabin with its sloped ceiling and wood beams, door to a little deck, and fishing theme. The rustic country furnishings and the mix of new pieces and interesting antiques were great touches. I was staying with a friend so it was wonderful to have such a spacious room; it had an ample walk-in closet with a fridge, a full-sized couch and coffee table where we could both set up our laptops and work, or watch a movie together, and a huge, comfy king-sized bed in which we hardly knew the other one was there.
The Columbine room was light and airy with a high ceiling, spring-themed decor, and a lovely view of the pond. The custom desk hadn't arrived yet, but I'm sure the addition will make the room an ideal retreat for a writer or anyone else who wants a quiet, serene room to work in.
In short: better than a luxury resort/hotel for amenities, provides a unique experience... truly exceptional place to stay. – Luis

It took me almost a month of reading reviews checking websites until I decided on somewhere to stay on my honeymoon. Silver moose was incredible so nice to stay in a home like environment. Even tho the house was full I would have never known. The property was beautiful. We stayed in wasatch which I think is the best room there. Breakfast was so yummy. Tamara and Brian where wonderful even when I got stuck. Can't wait to come back in summer with kids. Thank you silver moose for such a great stay. – Natasha

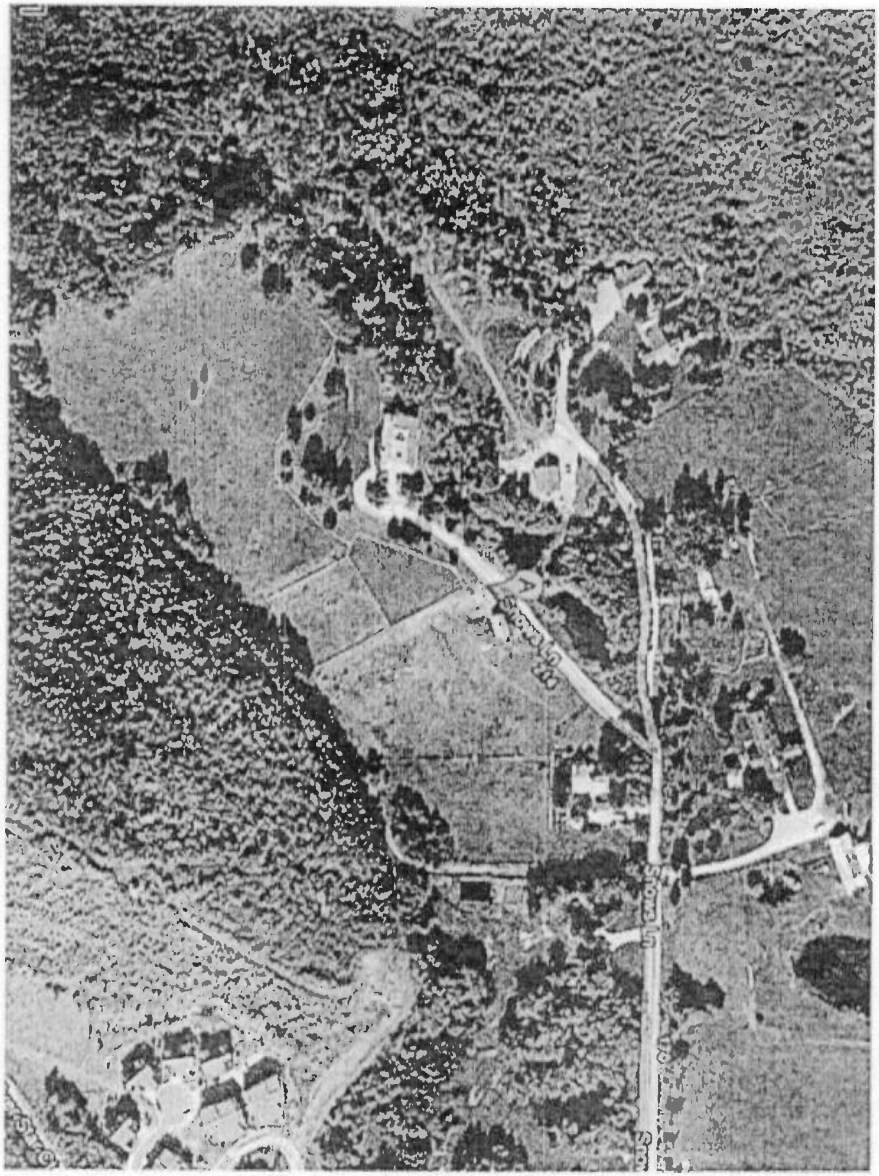
My husband and I had such an amazing getaway at this B&B. Brian and Tamara have a gorgeous home that is so warm and inviting. The views are just beautiful. You feel like you are miles away from anything when it's just minutes to outdoor activities and park city's main street. Our room was cozy and comfortable. All the rooms have a private bath and ours had access to a balcony. After going out to dinner, we were cold to the bones. We got back, grabbed a glass of wine and sat in front of one of their fireplaces. Breakfast was delicious! The only reason for 4 stars is that the room we stayed in had pretty thin walls. Luckily everyone was very quiet. The other thing is there is a small quirk with our room in which there is a window by the ceiling in the bathroom (no one would be able to see in, it's like 9 ft up) and it connected to another bathroom. So, once dark, every time we or the other room turned on our light we would see a faint light from each others bathroom. It wasn't very bright and not really a big deal we just closed the bathroom door. Overall, we loved staying here and plan on coming back later in the year! -- Lisa

Silver Moose Ranch, 320 Snows Lane, Park City, UT 84060 435-729-0002
General NOT-TO-SCALE Interior Floor Plan. Room dimensions noted are as measured



Four bedrooms are in an "upper wing", denoted by double border line ^
Half flight stairs from Living Room into upper foyer

Drawing by Tamara Mooring; Dimensions by Brian & Tamara Mooring; Not-to-Scale; Room dimensions have been "squared off"



SILVER MOOSE RANCH 10/11
320 SNOWS LN
PARK CITY, UT 84060-6717

1035
31-297/1240 2798
5561359216

MARCH 28 2012
DATE

PAY TO THE ORDER OF SUMMIT COUNTY $ 420.00

Four Hundred and Twenty and 00/100 DOLLARS

WELLS FARGO
Wells Fargo Bank, N.A.
Utah
wellsfargo.com

FOR

⑆124002971⑆ 5561359216⑈ 01035

Hardest Clarke

EXHIBIT J.42

STORE YOUR DUPLICATE CHECKS IN YOUR CHECK BOX.

☑ Track your expenses...
☐ Clothing ☐ Food ☐ Transportation
☐ Credit Card ☐ Utilities ☐ Mortgage
☐ Entertainment ☐ Insurance ☐ Other: _____

☐ TAX-DEDUCTIBLE ITEM

1035

MARCH 25 2012

BALANCE FORWARD
THIS ITEM 420
BALANCE
OTHER
BALANCE FORWARD

SUMMIT COUNTY
Four Hundred and Twenty dollars

For added security, your name and account number do not appear on this copy.

NOT NEGOTIABLE

From: brianmooring <brianmooring@aol.com>
To: tmooring <tmooring@aol.com>
Subject: Fwd: Septic field repair
Date: Fri, Mar 30, 2012 11:33 am

----Original Message----
From: Corey Hardman <coreyhardman71@yahoo.com>
To: brianmooring <brianmooring@aol.com>
Sent: Wed, Feb 29, 2012 5:23 pm
Subject: Septic field repair

To whom it may concern,

In August of 2011 Bill Kelly placed a call to me Corey Hardman on a request to have a septic system inspected. When i inspected the system which required digging up the system to find the problem, there were repairs needed. I contacted Summit County Health Dept. and with there help were able to redesign the system with a new designed product which is more efficiant and enviormently friendly. All inspections were preformed and approved by Summit County Health Dept.

Regards,
Corey Hardman

Corey Hardman
Corey Hardman Const. Inc.
435 671 0706

SUMMIT COUNTY PUBLIC HEALTH DEPARTMENT

SMALL WASTEWATER FACILITY PERMIT

(435)-336-3222

Permit #: _____ Application #: _____ Date: 8-10-2011

Name of Applicant: Bill Kelly Tax ID#: PP-25-D

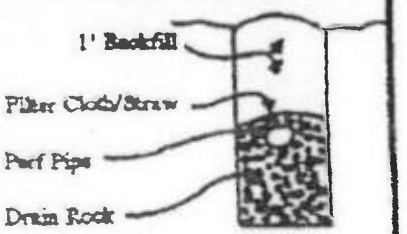
Property Address: 320 Snowslane City: _____

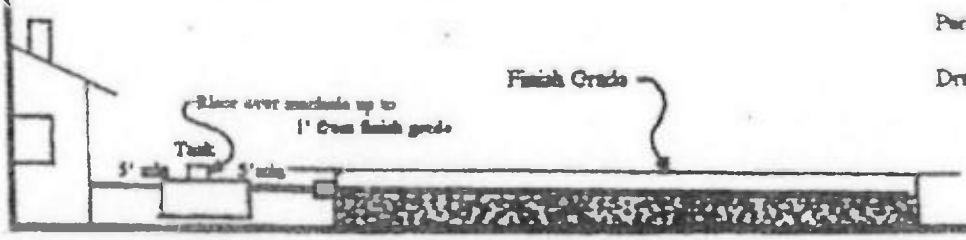
Subdivision: _____ Lot #: _____ Lot size: _____

Lat: _____ Long: _____ Water Supply: _____

Remodel Drain Field

A: Tank Volume _____ Gal.
B: Length of Drain Field _____ LF——Not to exceed 100' per run
C: Width of Drain Field _____ LF
D: Drain Rock under pipe _____ FT





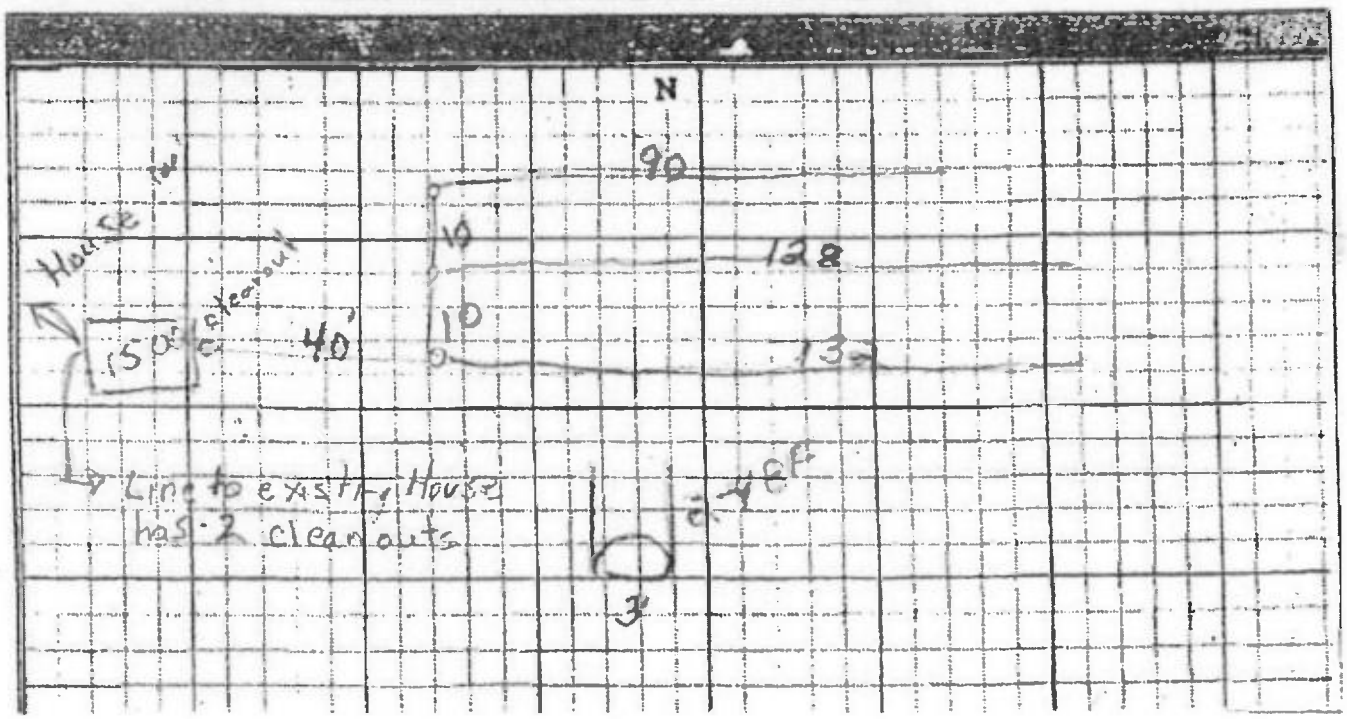


EXHIBIT 10

PARK CITY 1884

Office of City Manager

April 6, 2012

Mrs. Tamara Mooring
Mr. Brian Mooring
320 Snows Lane
Park City, UT 84060

Dear Mr. and Mrs. Mooring,

I understand that you are operating a bed & breakfast at 320 Snows Lane. The purpose of this letter is to bring to your attention that Snows Lane is not a public roadway, and cannot be used for commercial purposes.

Snows Lane lies within a 135-acre open space parcel which was placed into a conservation easement on September 29, 2009. Public use of the parcel (including Snows Lane) is limited to the trail defined in the conservation easement. This roadway is expressly restricted to existing residential access, and some limited use by Park City Mountain Resort through Thaynes Canyon. The easement does not allow for any expansion of access to Snows Lane for commercial purposes.

Members of the public and business patrons (such as paying guests at a bed & breakfast) are prohibited from driving motorized vehicles on Snows Lane. Please note that non-paying visiting friends and family would not be defined as public.

Should you have any questions about the statements of fact in this letter, please contact me.

Sincerely,

Diane Foster
Interim City Manager

cc
Bob Jasper, Summit County Manager
Don Sargent, Community Development Director, Summit County
Kent Jones. Summit County Clerk
Wendy Fisher, Utah Open Lands

Park City Municipal Corporation • 445 Marsac Avenue • P.O. Box 1480 • Park City, UT 84060-1480
Phone (435) 615-5180 • FAX (435) 615-4901

EXHIBIT 11

SUMMIT COUNTY BUSINESS LICENSING PROCESS AND APPLICATION

A Summit County Business license is required if you are starting, buying, or operating or conducting any business within the unincorporated areas of Summit County.

The following steps are subject to Ordinance 191-E

1. Read the State of Utah publication "Doing Business in Utah, a Guide to Business Information" http://tax.utah.gov/forms/pubs/pub-38.pdf

2. Register your business with the State. Visit www.osbr.utah.gov and complete the process. This will walk you through registering a business name (DBA) and you will receive a business name registration number. This needs to be done prior to applying for a County business license.

3. Fill out a Summit County Business License Application (www.summitcounty.org/clerk).
   - Generally, an *in-home business* refers to all for-profit activity administered or conducted from a residence within the County. The in-home license fee is **$75.00**
   - A *commercial business* is anything that is not considered an in-home business. The commercial license fee is **$200.00.**

4. Send the completed application to the Summit County Clerk's Office and pay the license fee. We accept cash, checks, or credit cards for payment. The application can take up to 2 weeks to be approved as it will need to be approved by the Planning, Health, Assessor, Sheriff, and fire departments. They mayask questions about your business to verify that your business meets all licensing requirements. In-home businesses are subject to a drive-by site inspection.

5. If you are running a commercial business in the Snyderville Basin (area surrounding Park City) you need to contact Public Works (435) 336-3970 for Kimball Area Transit Assessment information. A license will not be issued until this fee is paid. There are no exceptions.

We will process your application and then mail out your business license or a statement of why it was not approved. Each license is effective through January 15th of the year that it is issued. Each December you will be issued a renewal notice.

County Clerk • 60 North Main PO Box 128 Coalville, UT 84017 • (435) 336-3204 • www.summitcounty.org

EXHIBIT 12

Dan Child
Code Enforcement Officer

May 7, 2012

Silver Moose Ranch Bed and Breakfast
c/o Brian and Tamara Mooring
320 Snows Lane
Park City, UT 84060

Re: "Silver Moose Ranch Bed and Breakfast" Commercial Operation and Conditional Use Permit status

To whom it may concern:

The Summit County Community Development Department has reviewed your request for a Conditional Use Permit for the "Silver Moose Ranch" Bed and Breakfast, located at 320 Snows Lane, Park City, Summit County, Utah.

Upon reviewing the information provided to Summit County, Staff has found that there is insufficient evidence to show legal access to the property for a commercial operation such as a Bed and Breakfast. Until such time as a sufficient easement or access can be shown, either by agreement of all parties with an interest in the property, or by order of a court of competent jurisdiction, we cannot process this application. Therefore, we are returning the enclosed application in its entirety including your application fees.

Inasmuch as there is no valid permit to operate a commercial Bed and Breakfast and insufficient information to process an application at this time, this letter shall also serve as a NOTICE OF VIOLATION. You are hereby instructed to cease and desist any commercial operation on the premises within thirty (30) days of this notice. Failure to do so will result in further legal action which may include criminal charges. .

If you have any questions, feel free to contact me at (435) 336-3130 or dchild@summitcounty.org.

Sincerely,

Dan Child

Dan Child
Code Enforcement Officer

Cc: file

Community Development Department
Enforcement Division
Summit County Courthouse, 60 N. Main St., P.O. Box 128, Coalville, Utah 84017
Phone (435) 336-3130 Fax (435) 336-3046
dchild@summitcounty.org

EXHIBIT 13

Dan Child
Code Enforcement Officer

June 5, 2012

Silver Moose Ranch Bed and Breakfast
c/o Brian and Tamara Mooring
320 Snows Lane
Park City, UT 84060

Re: "Silver Moose Ranch" Bed and Breakfast, Commercial Operation and Conditional Use Permit

Brian and Tamara:

The Summit County Community Development Department has reviewed and approved your request for an extension of the Cease and Desist order for the "Silver Moose Ranch" Bed and Breakfast, located at 320 Snows Lane, Park City, Summit County, Utah.

This extension allows for the operation of the Silver Moose bed and breakfast until June 30, 2012. At that time the "Cease and Desist" order previously issued will be in effect. Please use this extra time to resolve the problems and issues, so you may continue your operation.

If you have any questions, feel free to contact me at (435) 336-3130 or dchild@summitcounty.org.

Sincerely,

Dan Child

Dan Child
Code Enforcement Officer

Cc: file

Community Development Department
Enforcement Division
Summit County Courthouse, 60 N. Main St., P.O. Box 128, Coalville, Utah 84017
Phone (435) 336-3130 Fax (435) 336-3046
dchild@summitcounty.org

EXHIBIT 14

Dan Child
Code Enforcement Officer

June 26, 2012

Silver Moose Ranch Bed and Breakfast
c/o Brian and Tamara Mooring
320 Snows Lane
Park City, UT 84060

Re: "Silver Moose Ranch" Bed and Breakfast, Second Extension

Brian and Tamara:

The Summit County Community Development Department is denying your request for a second extension of the Cease and Desist order for the "Silver Moose Ranch" Bed and Breakfast, located at 320 Snows Lane, Park City, Summit County, Utah.

As stated in previous correspondence to you, it is unlawful to conduct a commercial business in Summit County without first receiving a business license and any other applicable permits. This letter is to inform you that you must discontinue your operation as a bed and breakfast by July 1, 2012.

Please verify that you have legal access to your property for commercial purposes, have been issued a current business license for your business and have obtained a Conditional Use Permit to resume your operation.

Thank you for your cooperation in this matter. If you have any questions, feel free to contact me at (435) 336-3130 or dchild@summitcounty.org.

Sincerely,

Dan Child

Dan Child
Code Enforcement Officer

Cc: file

Community Development Department
Enforcement Division
Summit County Courthouse, 60 N. Main St., P.O. Box 128, Coalville, Utah 84017
Phone (435) 336-3130 Fax (435) 336-3046

EXHIBIT 15

RECEIPT

DATE 6/27/12 NO. 8490

RECEIVED FROM SILVER MOOSE RANCH

ADDRESS 320 SNOWS LN PARK CITY UT 84060 DOLLARS $ 1,200.00

FOR RENT B+B CUP SILVER MOOSE SUB

ACCOUNT | HOW PAID

CASH | CHECK | MONEY ORDER

BY ATS

Summit County Community Development P.O. Box 128 Coalville, Utah 84017

Community Development Department
P.O. Box 128
60 North Main Street
Coalville, Utah 84017
Phone: 435-615-3124
Fax: 435-615-3046
www.summitcounty.org

SUMMIT COUNTY

NAL USE PERMIT APPLICATION FORM

Kelley Phone:

Snows Lane

State: UT Zip: 84060

Fax:

o Whom All Correspondence is to be Sent:

ra Mooring Phone: 435-729-0002

Snows Lane

State: UT Zip: 84060

mooring@aol.com Fax:

Subdivision Name: N/A

Address: 320 Snows Lane, Park City, UT Section: Township: Range:

Do you currently have constructions plans turned in for Building Permit review? YES (plan check #) NO

Project Description (acreage, building square footage, number of lots, etc.):

Re-Submit of Application — B+B CUP - SILVER MOOSE
by Tamara Mooring June 27, 2012
Tamara L Mooring

As of 9.1.10

EXHIBIT 16

EXHIBIT J.58

EXHIBIT 17

EXHIBIT J.61

DRIVEWAY
320 Snows Ln
Silver Moose Ranch
Snows Ln
50 ft
20 m
Imagery ©2013 GeoEye, State of Utah, Map data ©2013 Google -
Edit in Google Map Maker

R309. Environmental Quality, Drinking Water.
R309-510. Facility Design and Operation: Minimum Sizing Requirements.
R309-510-1. Purpose.

This rule specifies requirements for the sizing of public drinking water facilities such as sources (along with their associated treatment facilities), storage tanks, and pipelines. It is intended to be applied in conjunction with R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-510-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

R309-510-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-510-4. General.

This rule provides estimates of quantities and flow rates which shall be used in the design of new systems, or if there is an absence of data collected by the public water system meeting the required confidence level for a reduction mentioned below, when evaluating water sources, storage facilities and pipelines. Within each of these three broad categories, the designer shall ascertain the contributions on demand from the indoor use of water, the outdoor use of water, and fire suppression activities (if required by local authorities). These components must be added together to determine the total demand on a given facility.

R309-510-5. Reduction of Requirements.

If acceptable data are presented, certain number of days of peak day demand to establish minimum source capacity; certain number of years of annual demand to establish minimum water right requirements; and certain number of readings of peak hourly demand to establish minimum peak instantaneous demand; showing that the requirements made herein are excessive for a given project, the requirements may be appropriately reduced to the 90th percentile of readings, on a case by case basis by the Executive Secretary. In the case of Recreational Home Developments, in order to qualify for a quantity reduction, not only must the actual water consumption be less than quantities required by rule but enforceable policy restrictions must have been approved which prevent the use of such dwellings as a permanent domicile and these restrictions shall have been consistently enforced. The Executive Secretary may re-consider any reduced minimums if the nature and use of the system changes.

R309-510-6. Water Conservation.

This rule is based upon typical current water consumption patterns in the State of Utah. They may be excessive in certain settings where legally enforceable water conservation measures exist. In these cases the requirements made in this section may be reduced on a case-by-case basis by the Executive Secretary.

R309-510-7. Source Sizing.

(1) Peak Day Demand and Average Yearly Demand.

Sources shall legally and physically meet water demands under two separate conditions. First, they shall meet the anticipated water demand on the day of highest water consumption. This is referred to as the peak day demand. Second, they shall also be able to provide one year's supply of water, the average yearly demand.

(2) Estimated Indoor Use.

In the absence of firm water use data, Tables 510-1 and 510-2 shall be used to estimate the peak day demand and average yearly demand for indoor water use.

TABLE 510-1
Source Demand for Indoor Use

Type of Connection	Peak Day Demand	Average Yearly Demand
Year-round use		
Residential	800 gpd/conn	146,000 gal./conn
ERC	800 gpd/ERC	146,000 gal./ERC
Seasonal/Non-residential use		
Modern Recreation Camp	60 gpd/person	(see note 1)
Semi-Developed Camp		
a. with pit privies	5 gpd/person	(see note 1)
b. with flush toilets	20 gpd/person	(see note 1)
Hotel, Motel, and Resort	150 gpd/unit	(see note 1)
Labor Camp	50 gpd/person	(see note 1)
Recreational Vehicle Park	100 gpd/pad	(see note 1)
Roadway Rest Stop	7 gpd/vehicle	(see note 1)
Recreational Home Development	400 gpd/conn	(see note 1)

Note 1. Annual demand shall be based on the number of days the system will be open during the year times the peak day demand unless data acceptable to the Division, with a confidence level of 90% or greater showing a lesser annual consumption, can be presented.

TABLE 510-2
Source Demand for Individual Establishments[a]
(Indoor Use)

Type of Establishment	Peak Day Demand (gpd)
Airports	
a. per passenger	3
b. per employee	15
Boarding Houses	

a. for each resident boarder and employee	50
b. for each nonresident boarders	10
Bowling Alleys, per alley	
a. with snack bar	100
b. with no snack bar	85
Churches, per person	5
Country Clubs	
a. per resident member	100
b. per nonresident member present	25
c. per employee	15
Dentist's Office	
a. per chair	200
b. per staff member	35
Doctor's Office	
a. per patient	10
b. per staff member	35
Fairgrounds, per person	1
Fire Stations, per person	
a. with full-time employees and food prep.	70
b. with no full-time employees and no food prep.	5
Gyms	
a. per participant	25
b. per spectator	4
Hairdresser	
a. per chair	50
b. per operator	35
Hospitals, per bed space	250
Industrial Buildings, per 8 hour shift, per employee (exclusive of industrial waste)	
a. with showers	35
b. with no showers	15
Launderette, per washer	580
Movie Theaters	
a. auditorium, per seat	5
b. drive-in, per car space	10
Nursing Homes, per bed space	280
Office Buildings and Business Establishments, per shift, per employee (sanitary wastes only)	
a. with cafeteria	25
b. with no cafeteria	15
Picnic Parks, per person (toilet wastes only)	5
Restaurants	
a. ordinary restaurants (not 24 hour service)	35 per seat
b. 24 hour service	50 per seat
c. single service customer utensils only	2 per customer
d. or, per customer served (includes toilet and kitchen wastes)	10
Rooming House, per person	40
Schools, per person	
a. boarding	75
b. day, without cafeteria, gym or showers	15
c. day, with cafeteria, but no gym or showers	20
d. day, with cafeteria, gym and showers	25
Service Stations[b], per vehicle served	10

Skating Rink, Dance Halls, etc., per person	
a. no kitchen wastes	10
b. Additional for kitchen wastes	3
Ski Areas, per person (no kitchen wastes)	10
Stores	
a. per public toilet room	500
b. per employee	11
Swimming Pools and Bathhouses[c] ,per person	10
Taverns, Bars, Cocktail Lounges, per seat	20
Visitor Centers, per visitor	5

NOTES FOR TABLE 510-2:

1. Source capacity must at least equal the peak day demand of the system. Estimate this by assuming the facility is used to its maximum.

2. Generally, storage volume must at least equal one average day's demand.

3. Peak instantaneous demands may be estimated by fixture unit analysis as per Appendix E of the 2006 International Plumbing Code.

(a) When more than one use will occur, the multiple use shall be considered in determining total demand. Small industrial plants maintaining a cafeteria and/or showers and club houses or motels maintaining swimming pools and/or laundries are typical examples of multiple uses. Uses other than those listed above shall be considered in relation to established demands from known or similar installations.

(b) or 250 gpd per pump,

(c) 20 x {Water Area (Ft^2) / 30} + Deck Area (Ft^2)

(3) Estimated Outdoor Use.

In the absence of firm water use data, Table 510-3 shall be used to estimate the peak day demand and average yearly demand for outdoor water use. The following procedure shall be used:

(a) Determine the location of the water system on the map entitled Irrigated Crop Consumptive Use Zones and Normal Annual Effective Precipitation, Utah as prepared by the Soil Conservation Service (available from the Division). Find the numbered zone, one through six, in which the water system is located (if located in an area described "non-arable" find nearest numbered zone).

(b) Determine the net number of acres which may be irrigated. This is generally done by starting with the gross acreage, then subtract out any area of roadway, driveway, sidewalk or patio pavements along with housing foundation footprints that can be reasonably expected for lots within a new subdivision or which is representative of existing lots. Before any other land area which may be considered "non-irrigated" (e.g. steep slopes, wooded areas, etc.) is subtracted from the gross area, the Division shall be consulted and agree that the land in question will not be irrigated.

(c) Refer to Table 510-3 to determine peak day demand and average yearly demand for outdoor use.

(d) The results of the indoor use and outdoor use tables shall be added together and source(s) shall be legally and physically capable of meeting this combined demand.

TABLE 510-3
Source Demand for Irrigation
(Outdoor Use)

Map Zone	Peak Day Demand (gpm/irrigated acre)	Average Yearly Demand (AF/irrigated acre)
1	2.26	1.17
2	2.80	1.23
3	3.39	1.66
4	3.96	1.87
5	4.52	2.69
6	4.90	3.26

(4) Accounting for Variations in Source Yield.

The design engineer shall consider whether flow from the source(s) may vary. Where flow varies, as is the case for most springs, the minimum flowrate shall be used in determining the number of connections which may be supported by the source(s). Where historical records are sufficient, and where peak flows from the source(s) correspond with peak demand periods, the Executive Secretary may grant an exception to this requirement.

R309-510-8. Storage Sizing.

(1) General.

Each storage facility shall provide:

(a) equalization storage volume, to satisfy average day demands for water for indoor use as well as outdoor use,

(b) fire suppression storage volume, if the water system is equipped with fire hydrants and intended to provide fire suppression water, and

(c) emergency storage, if deemed appropriate by the water supplier or the Executive Secretary, to meet demands in the event of an unexpected emergency situation such as a line break or a treatment plant failures.

(2) Equalization Storage.

(a) All public drinking water systems shall be provided with equalization storage. The amount of equalization storage which must be provided varies with the nature of the water system, the extent of outdoor use and the location of the system.

(b) Required equalization storage for indoor use is provided in Table 510-4. Storage requirements for non-community systems not listed in this table shall be determined by calculating the average day demands from the information given in Table 510-2.

TABLE 510-4
Storage Volume for Indoor Use

Type	Volume Required (gallons)
Community Systems	
Residential;	
per single resident service connection	400
Non-Residential;	

per Equivalent Residential Connection (ERC)	400
Non-Community Systems	
Modern Recreation Camp; per person	30
Semi-Developed Camp; per person	
a. with Pit Privies	2.5
b. with Flush Toilets	10
Hotel, Motel and Resort; per unit	75
Labor Camp; per unit	25
Recreational Vehicle Park; per pad	50
Roadway Rest Stop; per vehicle	3.5
Recreational Home Development; per connection	400

(c) Where the drinking water system provides water for outdoor use, such as the irrigation of lawns and gardens, the equalization storage volumes estimated in Table 510-5 shall be added to the indoor volumes estimated in Table 510-4. The procedure for determining the map zone and irrigated acreage for using Table 510-5 is outlined in Section R309-510-7(3).

TABLE 510-5
Storage Volume for Outdoor Use

Map Zone	Volume Required (gallons/irrigated acre)
1	1,782
2	1,873
3	2,528
4	2,848
5	4,081
6	4,964

(3) Fire Suppression Storage.

Fire suppression storage shall be required if the water system is intended to provide fire fighting water as evidenced by fire hydrants connected to the piping. The design engineer shall consult with the local fire suppression authority regarding needed fire flows in the area under consideration. This information shall be provided to the Division. Where no local fire suppression authority exists, needed fire suppression storage shall be assumed to be 120,000 gallons (1000 gpm for 2 hours).

(4) Emergency Storage.

Emergency storage shall be considered during the design process. The amount of emergency storage shall be based upon an assessment of risk and the desired degree of system dependability. The Executive Secretary may require emergency storage when it is warranted to protect public health and welfare.

R309-510-9. Distribution System Sizing.

(1) General Requirements.

The distribution system shall be designed to insure that minimum water pressures as required in R309-105-9 exist at all points within the system. If the distribution system is equipped with fire hydrants, the Division will require a letter from the local fire authority

stating the fire flow and duration required of the area to insure the system shall be designed to provide minimum pressures as required in R309-105-9 to exist at all points within the system when needed fire flows are imposed upon the peak day demand flows of the system.

(2) Indoor Use, Estimated Peak Instantaneous Demand.

(a) For community water systems and large non-community systems, the peak instantaneous demand for each pipeline shall be assumed for indoor use as:

$Q = 10.8 \times N^{0.64}$

where N equals the total number of ERC's, and Q equals the total flow (gpm) delivered to the total connections served by that pipeline.

For Recreational Vehicle Parks, the peak instantaneous flow for indoor use shall be based on the following:

TABLE 510-6

Peak Instantaneous Demand for Recreational Vehicle Parks

Number of Connections	Formula
0 to 59	$Q = 4N$
60 to 239	$Q = 80 + 20N^{0.5}$
240 or greater	$Q = 1.6N$

NOTES FOR TABLE 510-6:

Q is total peak instantaneous demand (gpm) and N is the maximum number of connections. However, if the only water use is via service buildings the peak instantaneous demand shall be calculated for the number of fixture units as presented in Appendix E of the 2006 International Plumbing Code.

(b) For small non-community water systems the peak instantaneous demand to be estimated for indoor use shall be calculated on a per-building basis for the number of fixture units as presented in Appendix E of the 2006 International Plumbing Code.

(3) Outdoor Use, Estimated Peak Instantaneous Demand.

Peak instantaneous demand to be estimated for outdoor use is given in Table 510-7. The procedure for determining the map zone and irrigated acreage for using Table 510-7 is outlined in Section R309-510-7(3).

TABLE 510-7

Peak Instantaneous Demand for Outdoor Use

Map Zone	Peak Instantaneous Demand (gpm/irrigated acre)
1	4.52
2	5.60
3	6.78
4	7.92
5	9.04
6	9.80

(4) Fire Flows.

(a) Distribution systems shall be designed to deliver needed fire flows if fire hydrants are provided. The design engineer shall consult with the local fire suppression authority regarding needed fire flows in the area under consideration. This information shall be provided to the Division. Where no local fire suppression authority exists, needed fire flows shall be assumed to be 1000 gpm unless the local planning commission provides a letter indicating that the system will not be required to provide any fire flows, in which case fire hydrants will not be allowed to be installed on any mains.

(b) If a distribution system is equipped with fire hydrants, the system shall be designed to insure that minimum pressures required by R309-105-9 exist at all points within the system when fire flows are added to the peak day demand of the system. Refer to Section R309-510-7 for information on determining the peak day demand of the system.

KEY: drinking water, minimum sizing, water conservation
Date of Enactment or Last Substantive Amendment: April 27, 2009
Notice of Continuation: March 22, 2010
Authorizing, and Implemented or Interpreted Law: 19-4-104

EXHIBIT 18

LOUGHLIN
WATER ASSOCIATES ♦ LLC

February 1, 2013

Silver Moose Ranch, LLC
Attn: Brian Mooring
320 Snows Lane
Park City, UT 84060

Subject: **Sufficiency of Water Rights of Silver Moose Ranch Bed & Breakfast**

Dear Brian:

My opinion that the 0.45 acre feet of water rights available to the Silver Moose Ranch Bed & Breakfast (B&B) for domestic purposes under water right 35-8439 is sufficient for the intended use of a 6-bedroom B&B based on the projected occupancy rate and uses.

I base my opinion on the following:

- You and your wife, Tamara Mooring, are the managers of Silver Moose Ranch B&B located at 320 Snows Lane, Summit County, Utah.

- Utah water right 35-8439 allows 0.45 acre feet of water to be used for domestic purposes.

- The Silver Moose Ranch B&B has 6 bedrooms, including the two occupied by you and your wife. The 5 bedrooms reserved for guests have a maximum of 2 guests per bedroom, or 10 guests for all 5 bedrooms.

- You, Brian Mooring, advised me that the projected occupancy rate for the 5 bedrooms of the B&B is 44 percent per annum. This equates to an average of 4.4 guests per night. You also advised me that this was the occupancy rate for the Silver Moose Ranch B&B for the year 2012. You also advised me that the reported occupancy rate for B&B's in the Park City area is 43 percent per annum.

- In reaching my conclusion, because there is no state published estimate of water usage for B&Bs, I used a comparable rate for a Rooming House which is 40 gallons per day per person. See Utah Administrative Code (UAC) R309-510-7(2).

- I also reviewed the attached Certificate of Beneficial Use for Water Right 35-8439.

3100 W. Pinebrook Road, Ste. 1100 ♦ Park City, Utah 84098
Phone: 435.649.4005 ♦ Fax: 435.649.4085 ♦ Mobile: 435.659.1752 ♦ www.LoughlinWater.com

- Based on the above information and assumptions, I estimate the annual domestic water use of the Silver Moose Ranch B&B to be about 0.29 acre-feet which is well within the water right of 0.45 acre feet.

If you have any questions or need more information, please do not hesitate to call me at (435) 649-4005 (office) or (435) 659-1752 (mobile).

Loughlin Water Associates, LLC

LICENSED PROFESSIONAL GEOLOGIST
WILLIAM D. LOUGHLIN
5205683-2250
STATE OF UTAH

William D. Loughlin, P.G.
Manager, Principal Hydrogeologist

Attachment A – Certificate of Beneficial Use for Water Right 35-8439

ATTACHMENT A

CERTIFICATE OF BENEFICIAL USE FOR WATER RIGHT 35-8439

CERTIFICATE OF BENEFICIAL USE

STATE OF UTAH

WATER RIGHT No: 35 - 8439
****

1. WATER RIGHT AND OWNERSHIP INFORMATION:

   A. NAME: William R. Kelley
   ADDRESS: P.O. BOX 257
   Hull MA 02045

   B. RIGHT EVIDENCED BY:
   35-8439 (Award 439 Weber River Decree)

   C. PRIORITY DATE: 1872 PRIORITY OF CHANGE a18437: November 2, 1994

2. SOURCE INFORMATION:

   A. QUANTITY OF WATER: 0.165 cfs OR 6.5027 acre-feet

   B. DIRECT SOURCE: Hidden Springs & Thanes Canyon Creek

   C. POINT OF DIVERSION -- SURFACE:
   (1) S 526 feet W 3,743 feet from the E¼ corner, Section 08, T 2S, R 4E, SLBM

   D. COUNTY: Summit

3. STORAGE. Water is diverted for storage into:

   (1) Kelley Decorative Pond, from Jan 1 to Dec 31.
   CAPACITY: 0.136 acre-feet. INUNDATING: 0.12 acres. DAM HEIGHT: 2 feet.
   Area inundated includes all or part of the following legal subdivisions:

BASE	TOWN	RANG	SEC	NORTH-WEST¼				***	NORTH-EAST¼				***	SOUTH-WEST¼				***	SOUTH-EAST¼			
				NW	NE	SW	SE	***	NW	NE	SW	SE	***	NW	NE	SW	SE	***	NW	NE	SW	SE
SL	2S	4E	08					***					***		X			***				

4. WATER USE INFORMATION:
   35-8439

   IRRIGATION: from Mar 1 to Nov 1. IRRIGATING: 1.870 acres.

   STOCKWATER: from Jan 1 to Dec 31 STOCK UNITS: 10.

   DOMESTIC: from Jan 1 to Dec 31 FAMILIES: 1.

   OTHER: from Jan 1 to Dec 31 FISH CULTURE:

Acre Feet allowed by this Right for this Use: 0.1627

PLACE OF USE: (which includes all or part of the following legal subdivisions:)

	Northwest Quarter				Northeast Quarter				Southwest Quarter				Southeast Quarter				Section
BS TOWN RANG SC	NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE	Totals
SL 2S 4E 08				*				*		1.8700		*				*	1.8700
																Group Total:	1.8700

5. PLACE OF USE (Stockwatering): (which includes all or part of the following legal subdivisions:)

BASE	TOWN	RANG	SEC	NORTH-WEST¼ ***				*** NORTH-EAST¼ ***				*** SOUTH-WEST¼ ***				*** SOUTH-EAST¼ ***			
				NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE
SL	2S	4E	08										X						

LIMITATION(S) -- Water Right 35 - 8439 is limited to:
the irrigation requirements of 1.8700 acres,
an annual diversion for irrigation of 5.6100 acre-feet,
an annual diversion for stockwatering of 0.2800 acre-feet,
an annual diversion for domestic purposes of 0.4500 acre-feet.

6. EXPLANATORY:

Total Quantity of Water includes pond evaportion calculate by data from 'Consumptive Use of Irrigated Crops in Utah', Research Report 145, for the NWS Station at Park City at 0.12 acre X 1.3558 feet = 0.1627 acre-feet.

7. SIGNATURE OF STATE ENGINEER & ACKNOWLEDGMENT OF NOTARY PUBLIC:

The right evidenced by this certificate is restricted to the change described herein, and the certificate in no way establishes nor validates the water right claimed by the applicant, and the change is to in no way enlarge the original right or rights. This certificate entitles the holder to use only sufficient water from all rights combined to constitute an economic duty without waste of water. The works used in this change are to be operated and maintained in such a manner and condition as will prevent waste of water.

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office this

17th day of FEBRUARY 20 06.

In the event ownership of the right evidenced by this certificate is transferred, it is the responsibility of the new owner to update the State Engineer's records by submittal of the appropriate report of conveyance

DIVISION OF WATER RIGHTS STATE OF UTAH

Jerry D. Olds
JERRY D. OLDS, P.E.
State Engineer

STATE OF UTAH)
) SS
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this

17th day of FEBRUARY, 20 06 by JERRY D. OLDS, State Engineer of Utah.

Notary Public

EXHIBIT 19

SNYDERVILLE BASIN DEVELOPMENT CODE

10-11-1.30 **Bed and Breakfast Inn**: An owner occupied residence in which up to eight rooms are rented for overnight lodging to travelers, and where one or more meals is provided to the guests only, the price of which may be included in the room rate.

ORDINANCE # 191-C

AN ORDINANCE AMENDING "EXHIBIT A" ALSO KNOWN AS THE BUSINESS LICENSE FEE SCHEDULE OF ORDINANCE NUMBER 191-B.

WHEREAS, the Board of County Commissioners of Summit County recognize that in home businesses within Summit County provide a valuable service to the community and its economy; and

WHEREAS, the Board of County Commissioners recognize that the fee schedule adopted as Exhibit A to Ordinance number 191-B had an enhanced service fee which created a substantial increase to the fees previously charged to in home businesses; and

WHEREAS, the Board of County Commissioners recognize and desire that the fees adopted in Exhibit A of Ordinance 191-B were based upon an empirical fee study analysis to conform with the provisions of Utah Law; and

WHEREAS, the Board of County Commissioners feel that the dramatic increase in fees for in home businesses would generate an increase in non-compliance with Ordinance 191-B; and

WHEREAS, the Board of County Commissioners feel that in light of the unique position of in home businesses as compared to other businesses as well as the value of ensuring compliance with the business regulations of Summit County warrant the elimination of the enhanced service fee for in home businesses; and

WHEREAS, Article 3, Section 1(B) of Ordinance 191-B anticipates amendments to the fee schedule;

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, STATE OF UTAH, AS FOLLOWS:

1. That the Business License Fee Schedule as adopted as Exhibit A to Ordinance 191-B shall be and is hereby amended as indicated on Exhibit A to this ordinance which is attached hereto and incorporated by reference herein.

2. This ordinance shall become effective after subsequent publication in accordance with State Law.

APPROVED, ADOPTED and PASSED and ordered published by the Summit County Board of Commissioners, this 15th day of March, 2006.

BOARD OF COUNTY COMMISSION
Robert Richer
Commission Chair

Ordinance #191-C

ATTEST:

Susan Follett, County Clerk

COMMISSIONERS VOTED:

RICHER	Aye
ELLIOTT	Aye
WOOLSTENHULME	Aye

Ordinance 191-C
EXHIBIT A - Business License Fee Schedule

Business Type	Administrative / Application Fee	Enhanced Service Fee	Site Inspection Fee	TOTAL to Summit County
Commercial				
Ski Resort	$67.36	$108.08	Paid to Fire District	$175.44
Lodging / rental	$67.36	$108.08	Paid to Fire District	$175.44
Restaurant/Retail	$67.36	$108.08	Paid to Fire District	$175.44
Office	$67.36	$108.08	Paid to Fire District	$175.44
Neighborhood retail	$67.36	$108.08	Paid to Fire District	$175.44
Service	$67.36	$108.08	Paid to Fire District	$175.44
Light industrial	$67.36	$108.08	Paid to Fire District	$175.44
Day Care	$67.36	$108.08	Paid to Fire District	$175.44
For Hire Vehicle	$67.36	$108.08	Paid to Fire District	$175.44
In-home business	$67.36	$0	$0	$67.36
Solicitor	$67.36	$108.08	$0	$175.44
Temporary license	$67.36	$108.08	$0	$175.44
Event license	$67.36	$108.08	$174.56	$350.00

EXHIBIT 20

EXHIBIT J.82

Kristy James

From: Adrianne Steed [asteed@summitcounty.org]
Sent: Wednesday, January 30, 2013 12:58 PM
To: Kristy James
Subject: Records Request
Attachments: Snows Lane.pdf

Kristy: I am unable to locate any involvements for the Address Snows lane (Silver Moose Ranch) Park City, Utah for the Dates October 2011 to Present January 30, 2013. If you need further assistance please let me know.

Adrianne Steed
Secretary
6300 Justice Center Road
Park City, Utah 84098
www.summitcountysheriff.org
Office 435.615.3599
Fax 435.615.3523

Request for a Record
Utah Government Records Access and Management Act
Must be submitted in writing

To: Government Entity: Summit County Sheriff

Person Making Request:

Name: Kristy James

Mailing Address: Tesch Law Offices, P.C. PO Box 3390 Park City, Utah 84060

Daytime Telephone Number: 435-649-0077

Records Requested: Silver Moose

I desire access to or copies of the following records: (describe with reasonable specificity, attach additional sheet if necessary)

Any and all Complaints concerning loud noises, traffic violations, or similar incidents from October 2011 to present arising in the vicinity of Snows Lane, Park City, UT

Additional sheets attached? Yes (No)

This request is submitted under the authority of Section 63-2-101 et. Seq., Utah Coda, (GRAMA).

(Yes) / No — I believe this request should be handled as an expedited (five day) request under Section 63-2-204(3), because, for the reasons outlined in the attached explanation, expedited response to this request benefits the public rather than the person making the request (if applicable, describe the reasons the public will benefit from an early response to this request and attach that summary to this request. Without this provision the request will be handled as soon as reasonably possible, but can take up to ten business days to be granted).

(Yes) / No — I agree to pay a reasonable fee to cover the actual cost of duplicating a record if copies are requested, not to exceed $ unlimited, in conformance with the government entity's policy as determined by ordinance or written formal policy adopted by the governing body. I understand that there is no charge for inspecting a record.

Date: 1/29/13

Kristy M. James
Signature of Person Making Request

EXHIBIT J.84

Kristy James

From: Melissa Hardy [mhardy@summitcounty.org]
Sent: Thursday, January 31, 2013 10:13 AM
To: Kristy James
Subject: FW: GRAMA request

From: Melissa Hardy
Sent: Tuesday, January 22, 2013 3:51 PM
To: 'Kristy James'
Subject: RE: GRAMA request

Kristy,

I reviewed the GRAMA request for Silver Moose-loud noises, traffic violations, or similar incidents from October 2011 to Present with our Code Enforcement Officer. He stated he has had no complaints from that date to current.
It was mentioned traffic violations are not reported to us. We would not be able to comment regarding this portion of your request.

At this time, since we have no information to give you I am going to close this GRAMA request. If there is any issue with this, please let me know.

Thanks,

Melissa Hardy
Project Coordinator
435-336-3157
435-615-3157
435-783-4351 ext. 3157

From: Kristy James [mailto:kristy@teschlaw.com]
Sent: Monday, January 14, 2013 3:50 PM
To: Melissa Hardy
Cc: Joseph Barrett
Subject: GRAMA request

Hi Melissa,
Attached is the GRAMA request that I called you about. Additionally, you have my e-mail address now, so if you are able to electronically send me the minutes would be great!

Thank you again for all your help!! ☺
Kristy

Kristy M. James
Paralegal

Request for a Record
Utah Government Records Access and Management Act
Must be submitted in writing

To: Government Entity: Summit County Community Development Department

Person Making Request:

Name: Kristy James

Mailing Address: Tesch Law Offices, P.C. PO Box 3390 Park City, Utah 84060

Daytime Telephone Number: 435-649-0077

Records Requested: Silver Moose

I desire access to or copies of the following records: (describe with reasonable specificity, attach additional sheet if necessary)

Any and all complaints concerning loud noises, traffic violations, or similar incidents from October 2011 to present arising in the vicinity of Snows Lane

Additional sheets attached? Yes (No)

This request is submitted under the authority of Section 63-2-101 et. Seq., Utah Coda, (GRAMA).

(Yes) No — I believe this request should be handled as an expedited (five day) request under Section 63-2-204(3), because, for the reasons outlined in the attached explanation, expedited response to this request benefits the public rather than the person making the request (if applicable, describe the reasons the public will benefit from an early response to this request and attach that summary to this request. Without this provision the request will be handled as soon as reasonably possible, but can take up to ten business days to be granted).

(Yes) No — I agree to pay a reasonable fee to cover the actual cost of duplicating a record if copies are requested, not to exceed $ unlimited, in conformance with the government entity's policy as determined by ordinance or written formal policy adopted by the governing body. I understand that there is no charge for inspecting a record.

Date: 1-14-13

Kristy M. Jones
Signature of Person Making Request

EXHIBIT 21

Noise levels at Silver Moose Ranch

Noise readings were taken at the Silver Moose Ranch during a 2 week period from 18 January 2013 through 31 January 2013. This time period encompassed the Sundance Film Festival when the Silver Moose was fully booked. It would be expected that this timing would be representative of the "noisiest" time frame to be expected at Silver Moose Ranch.

Table A shows the actual readings. Site 1 was taken on the concrete parking pad and site 2 was taken half way down the driveway. Site reading times were generally at 8 AM and 4 PM .

As noise dissipates quickly over distance covered, any noise generated from the actual bed and breakfast would be significantly weaker as heard at an off residence location than what was measured within table A.

Two data points are very clear from Table A. First is that the actual noise readings are very low. As can be seen in Table B the readings are in the "faint" category. The second point that can be seen from the data is that the noise level actually comes up as we move away from Silver Moose Ranch and nearer to the neighbor structures as the readings from site 2 were generally higher than the readings from site 1. We attribute this to noise generated from nearby development along Hwy 224 / Park Avenue.

TABLE A – Actual noise readings in dB.

Date	Site 1 (Parking Pad)	Site 2 (1/2 way down driveway)
18 January	38 dB 41 dB	42 dB 43 dB
19 January	39 dB 42 dB	41 dB 42 dB
20 January	41 dB 41 dB	43 dB 43 dB
21 January	39 dB 44 dB	42 dB 45 dB
22 January	40 dB 41 dB	43 dB 46 dB
23 January	38 dB 44 dB	42 dB 43 dB
24 January	42 dB 42 dB	43 dB 45 dB
25 January	43 dB 43 dB	42 dB 45 dB
26 January	37 dB 39 dB	44 dB 48 dB
27 January	39 dB 44 dB	43 dB 46 dB
28 January	41 dB 39 dB	44 dB 42 dB
29 January	39 dB 42 dB	42 dB 39 dB
30 January	42 dB 43 dB	42 dB 43 dB
31 January	41 dB 40 dB	38 dB 44 dB

Table B - Decibel Levels of Common Sounds

Decibels (dB)	Degree	Sound Source
225	Deafening	12" Cannon @ 12' in front and below
195	Deafening	Saturn rocket
180	Deafening	Aircraft at take-off
160	Deafening	Ram jet
150	Deafening	Turbo jet
140	Deafening	Artillery fire
130	Deafening	Threshold of pain, decibels at or above 130 cause immediate ear damage. Hydraulic press, pneumatic rock drill
120	Deafening	Riveter, chipper, thunder, diesel engine room, fireworks display
110	Deafening	Punch press, close to a train, ball mill
100	Very Loud	Passing truck, home lawn mower, car horn @ 5 meters, wood saw, boiler factory
90	Very Loud	Decibels at or above 90 regularly cause ear damage. Noisy factory, truck without muffler
80	Loud	Noisy office, electric shaver, alarm clock, police whistle

70	Loud	Average radio, normal street noise
60	Moderate	Conversational speech
50	Moderate	Normal office noise, quiet stream
45	Moderate	To awaken a sleeping person
40	Faint	Average residence, normal private office
30	Faint	Recording studio, quiet conversation
20	Very Faint	Whisper, empty theater, ticking of watch
10	Very Faint	Threshold of good hearing
0		Threshold of excellent youthful hearing

Table B from internet site: "http://home.earthlink.net/~dnitzer/4HaasEaton/Decibel.html"

EXHIBIT 22

EXHIBIT J.91

Joseph P. Barrett
joseph@teschlaw.com
(435) 608-0321

314 Main Street - Suite 200
PO Box 3390
Park City, Utah 84060-3390
Fax: (435) 649-2561

October 23, 2012

Via Electronic Mail
jbrackin@co.summit.ut.us
Jamie R. Bracken
Deputy Summit County Attorney
60 North Main Street, Suite 227
P.O. Box 128
Coalville, Utah 84017

Dear Jamie:

Re: Silver Moose Ranch LLC

Following our conversation today, please accept this formal request on behalf of Silver Moose to continue the anticipated Summit County Planning Commission Meeting from November 13, 2012 until December 11, 2012.

As discussed, our clients wish to attend the Planning Commission Meeting in support of their pending application for a conditional use permit (CUP).

Unfortunately, they have made prior arrangements to be out of the country on November 13, 2012.

You expressed that because the county is being sued, the Silver Moose CUP must remain on the November 13, 2012 calendar. Please note that this CUP application has been pending with Summit County since June 27, 2012 and this modest request to permit our client's their due process rights does not appear unreasonable.

In an effort to avoid further unnecessary court involvement, kindly advise if this proposal is acceptable on before the close of business on Friday, October 26, 2012.

Sincerely,
Tesch Law Offices, P.C.

Joseph P. Barrett

Joseph P. Barrett

EXHIBIT 23

Joseph E. Tesch (A3219)
Joseph P. Barrett (8088)
Stephanie K. Matsumura (10370)
TESCH LAW OFFICES, P.C.
314 Main St., Ste. 200
Park City, UT 84060-3390
Telephone: (435) 649-0077
Facsimile: (435) 649-2561
joet@teschlaw.com
joseph@teschlaw.com
stephaniem@teschlaw.com
Attorneys for Plaintiffs

**IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SUMMIT COUNTY, STATE OF UTAH**

SILVER MOOSE RANCH, LLC, a Utah limited liability company; **WILLIAM R. KELLEY**, an individual, **BRIAN MOORING**, an individual, **TAMARA LEIGH MOORING**, an individual, Plaintiffs, vs. **SUMMIT COUNTY,** a political subdivision of the State of Utah, **PARK CITY MUNICIPAL CORPORATION**, a political subdivision of Summit County and the State of Utah, **WILLIAM M. (MEL) ARMSTRONG,** an individual, **and JOHN DOES 1-20.** Defendants.	**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** Civil No. 120500429 Judge Todd Shaughnessy

Plaintiffs Silver Moose Ranch, LLC ("Silver Moose"), William R. Kelley ("Mr. Kelley"), Brian Mooring ("Mr. Mooring"), and Tamara Mooring ("Ms. Mooring") (collectively "Plaintiffs"), by and through their attorneys Joseph E. Tesch, Joseph P. Barrett, and Stephanie K. Matsumura of TESCH LAW OFFICES, P.C., hereby submit this Memorandum in Support of

their Motion for Summary Judgment against Summit County ("County"), Park City Municipal Corporation ("Park City"), William M. Armstrong ("Mr. Armstrong"), and John Does 1-20 (collectively "Defendants"). Plaintiffs seek a judgment declaring that Mr. Kelley's access easement ("Easement") is unambiguous, that the Easement constitutes a legal right of way, and that Plaintiffs may use Mr. Kelley's Easement in the manner and to the extent they see fit, so long as Plaintiffs' passage serves the limited purposes of ingress and egress.

STATEMENTS OF UNDISPUTED MATERIAL FACT

1. Mr. Kelley purchased the real property at 320 Snows Lane by deed and for value, on May 6, 1988. See a copy of the recorded Mr. Kelley's 1988 Special Warranty Deed ("1988 Deed") attached as Exhibit A.

2. Mr. Kelley's purchased the 1988 Deed from First Security Mortgage Company as part of a foreclosure proceeding. See *id.*, and the affidavit of Mr. Kelley, attached as Exhibit B.

3. The 1988 Deed included a right of way (i.e. the Easement) over Mr. Armstrong's property located on Snows Lane. *See* Exhibit A.

4. Mr. Kelley's purchase of the 1988 Deed was recorded on May 13, 1988. *Id.*

5. Mr. Kelley's Easement is defined in the 1988 Deed as follows:

> "TOGETHER WITH a right of way for ingress to and egress from Parcel No. 1 and Parcel No. 2 over a roadway which is approximately three yards wide, the centerline of which is more particularly described as follows. . . ." *Id.*

6. The language used to describe the Easement in the 1988 Deed is identical to the language describing the access easement in the deeds used in the two transfers occurring immediately prior to Mr. Kelley's purchase and which form Mr. Kelley's chain of title for 320 Snows Lane. See the 1987 Special Warranty Deed ("1987 Deed") and 1986 Quit-Claim Deed ("1986 Deed"), attached as Exhibits C and D.

7. Mr. Kelley was not a party to the creation of the Easement. *See* exhibits C and D.

8. Businesses registered with the State of Utah as owned by and/or registered to Mr. Armstrong and/or his brother, Herbert Armstrong, were located at Snows Lane addresses before and after Mr. Kelley's purchase of the 1988 Deed. *See* copies of records of business registration for Rincon Inc., Armstrong Brothers 1300 East Partnership, Armstrong Brothers, L.L.C., and Armstrong Park City, L.L.C., attached hereto as Exhibits E, F, G, and H.

SUMMARY JUDGMENT STANDARD

Under Utah law, "[s]ummary judgment is appropriate when the evidence shows that there is no genuine issue as to any material fact and that the moving party is entitles to a judgment as a matter of law." *Anderson Development Co. v. Tobias,* 2005 UT 25, ¶ 19, 116 P.3d 323. Rule 56(e) of the Utah Rules of Civil Procedure provides that where a party presents affidavits, deposition testimony, or other evidence in support of its motion for summary judgment, "an adverse party may not rest upon the mere allegations or denials of the pleadings, but the response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial." *See Brigham Truck & Implement Co. v. Fridal, et al,* 746 P.3d 1171, 1173 (Utah 1987) (emphasis added.)

This Motion is supported by the 1988 Deed transferring the property at 320 Snows Lane and its Easement to Mr. Kelley, the 1987 and 1986 Deeds forming Mr. Kelley's chain of title which each include precisely the same Easement, Mr. Kelley's affidavit, a copy of Mr. Armstrong's letter to Summit County concerning Mr. Kelley's Easement, two letters from Summit County to Mr. and Ms. Mooring regarding their operations and Summit County's conservation easement, Summit County Code and license applications regarding bed and breakfasts, and copies of records of registration of business entities operating on Snows Lane,

each attached as Exhibits. These documents show that there are no disputes of fact material as to the legitimacy of the 1988 Deed creating the Easement, that the language defining the Easement is unambiguous, that the Easement is limited to ingress and egress only, that Mr. Kelley's Deed and Easement are not affected by the later-recorded interests of Summit County, and that Plaintiffs are entitled to declaratory judgment as a matter of law.

ARGUMENT

I. THE LANGUAGE OF MR. KELLEY'S EASEMENT IS UNAMBIGUOUS.

The language of Mr. Kelley's Easement is unambiguous because it is not facially ambiguous and does not reasonably and plausibly support the self-serving meaning proffered by the Defendants. The Defendants' evidence does not relate to the parties' understanding of the Easement's terms at the time of the grant and does not change the usual and natural meaning of the Easement's terms. The Defendants' proposed interpretation is also flatly contradicted by the undisputed use of Snows Lane by business entities before and after Mr. Kelley's purchase of the 1988 Deed (including a business registered to Mr. Armstrong). Finally, the Easement's unambiguous terms are sufficient for the Court to construe the Easement as a matter of law.

A. The Language of Mr. Kelley's Easement is Facially Unambiguous.

Utah courts construe an easement by deed according to the language within the deed's four corners if that language is unambiguous. *See Daines v. Vincent*, 90 P.3d 1269, 1279 (Utah 2008) ("[A]bsent a finding of facial ambiguity, the parties' intentions must be determined solely from the language of the contract.") (internal quotations and citations omitted); and *Ault v. Holden*, 44 P.3d 781, 2002 UT 33, ¶37 (Utah 2002) ("Deeds are construed like other written legal instruments.") Utah courts recognize two kinds of contractual ambiguity: 1) facial ambiguity, and 2) ambiguity regarding the intent of the parties. *Daines*, 90 P.3d at 1275-76.

When construing a written agreement, courts first determine if facial ambiguity exists. *Id.,* at 1276.

Facial ambiguity is a question of law. *Id.* A term or provision of an agreement is ambiguous if it reasonably and plausibly supports more than one interpretation due to "uncertain meanings of terms, missing terms, or other facial deficiencies." *Id.* However, a term or provision cannot be made ambiguous merely because a party seeks to infuse it with a self-serving meaning. *Id.* In order to determine whether a deed's terms reasonably and plausibly support the competing meanings proffered by the parties, Utah courts may refer to reliable, credible extrinsic evidence that allows the court to better understand the knowledge of the parties at the time of the grant, and hence the plain meaning of its terms as understood by the parties when the grant was made. *Id.*, at 1278. [1]

1. The Terms of the Easement Do Not Support the Meaning Proffered By the Defendants.

Defendants have offered a self-serving interpretation of the Easement—that ingress and egress may only serve residential purposes—that is not reasonably and plausibly supported by the Deed's language. "[T]here can be no ambiguity where [extrinsic] evidence is offered in an attempt to obscure otherwise plain contractual terms." *Id.*, at 1277-78, citing *Saleh v. Farmers Ins. Exchange,* 133 P.3d 428, 2006 UT 20, ¶ 17 (Utah 2006) (stating that contractual terms are not ambiguous merely because a party seeks to "endow [them] with a different interpretation

[1] "After reviewing the evidence offered, the *Ward* rule justifies a finding of ambiguity only if the competing interpretations are . . . plausible and reasonable in light of the language used." *Daines,* 90 P.3d at 1278 (explaining the first prong of the contractual ambiguity test established by *Ward v. Intermountain Farmers Association,* 907 P.2d 264 (Utah 1995), which requires an initial finding of facial ambiguity prior to any use of parol to determine the contracting parties' intent, and requires that intent be construed without the use of parol if the terms of the agreement are unambiguous.) Moreover, "Deed interpretation poses questions of fact only if extrinsic factual evidence is relevant *and* the deed remains ambiguous after applying all relevant tools of construction." *Stern v. Metropolitan Water Dist. of Salt Lake & Sandy*, 274 P.3d 935, 941, fn7 (Utah 2012), citing *Hartman v. Potter,* 596 P.2d 653, 656 (Utah 1979) (emphasis added.)

according to [their] own interests") (internal citation omitted). So, even where evidence is offered in an attempt to show an agreement's facial ambiguity, the "analysis of the evidence. . . [is] ultimately circumscribed by the language of the agreement." *Daines,* 90 P.3d at 1277.

A "plausible" meaning is "a proffered alternative interpretation. . .[that] must be more than a conjecture but may be less than a certainty[,]" and "must be based upon the usual and natural meaning of the language used and may not be the result of a forced or strained construction." *Saleh*, 133 P.3d at 433 (internal citations omitted). For example, in *Saleh*, the Supreme Court reviewed a provision in a home insurance policy that read, "[Farmers] will pay no more than the actual cash value until repair or replacement is completed." *Id.*, at 432. Farmers calculated the full assessment value of the fire-damaged portion of Mr. Saleh's home, and also calculated a depreciated value reflecting the present (i.e. cash) value of that portion of Mr. Saleh's house prior to the fire. *Id.* Under Farmers' interpretation, if he chose to repair the damaged section, Mr. Saleh would first receive the cash value, and later receive the balance of the full assessment value (i.e., the depreciation amount) once repairs were complete. *Id.* If he chose to not repair the damage, Mr. Saleh would receive only the cash value. *Id.* Mr. Saleh initially opted to not repair and received only the cash value. *Id.* He then decided to repair the house eight months later, and was paid the depreciation amount after repairs were completed. *Id.*

Mr. Saleh argued the provision was ambiguous, and could reasonably mean that Farmers "must make periodic payments from the depreciation reserve as significant amounts of repair and replacement work are completed." *Id.* The Court summarized Mr. Saleh's argument as asking the Court to read the provision to mean "until *significant* repair or replacement is completed." *Id.* This, however, the Court refused to do, stating, "It is [] not plausible to suggest that the phrase can be interpreted to mean that repairs or replacement could be complete, but that

additional repairs or replacements remained to be done. The work is either complete or it is not." *Id.* The Court affirmed the provision as unambiguous, and that Farmers was entitled to withhold the entire depreciation reserve until repairs were complete. *Id.* at 433-34.

Here, the Defendants suggest an interpretation that cannot be reasonably and plausibly supported by the Easement's brief, clear terms. The Defendants contend that Mr. Kelley's Easement is limited to residential, non-commercial use.[2] Yet the terms of the Easement—". . .a right of way for ingress to and egress from [Mr. Kelley's property]. . . over a roadway. . . "—reflect no such restriction, as the "usual and natural meaning" of those terms do not refer to a residential/commercial distinction in any way. For example, the usual meaning of "ingress" is "the act of entering, or the power or liberty of entrance or access"[3]; egress is defined "as the action or right of going or coming out, or a place or means of going out";[4] and "right of way" as "the legal right of passage over another's ground, or the area over which a right of way exists."[5] The usual meanings of these terms do not address any further detail of entry, exit, or any aspect

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[2] *See* Exhibit I, Summit County's April 6, 2012 letter from Interim City Manager Diane Foster to Mr. and Ms. Mooring suggesting that "[t]his roadway is expressly limited to existing residential access, and some limited use by Park City Mountain Resort through Thaynes Canyon." Summit County attributed this limitation to a 2009 conservation easement affecting much of the Snows Lane area, and alleging without support that a bed and breakfast is a "commercial operation." *See also* Exhibit J, Summit County's May 7, 2012 cease and desist letter sent to Mr. and Ms. Mooring regarding the use of Snows Lane by Silver Moose, again alleging without support that the B&B is a "commercial operation" and that Silver Moose had not yet shown that it had "legal access for use by a commercial operation. . . ."

Moreover, the Defendants' suggestion—that the Easement allows only residential use—is actually a proxy for their actual objection to an increase in use. *See* Exhibit K, a February 15, 2012 letter from Mr. Armstrong to the Summit County Planning Department (also positing that the 2009 conservation easement limits use by the Plaintiffs). However, Utah case law and the unambiguous text of the Easement permit Plaintiffs to change the intensity of their use, so long as such use serves the limited purposes of ingress and egress. *See* Section II and fn.12., *infra*.

[3] *See* Mirriam-Webster's Dictionary, *available at* http://www.merriam-webster.com/dictionary/; last visited January 26, 2013, at 1.53 p.m.

[4] *Id.*

[5] *Id.*; *accord*, Black's Law Dictionary 703 (5th ed.1979) ("[I]ngress and egress" mean "the right. . .to enter, go upon, and return from the lands in question.")

of those acts, whether the terms are taken alone, in combination in the Easement's text, or in the context of creating the Easement as part of a deed transferring fee simple for otherwise landlocked parcels. Had the parties intended to limit use of the Easement in the manner Defendants suggest, they would have done so in terms capable of plausibly defining such restrictions. They did not.

Even assuming, *arguendo*, that the parties actually intended some unrecorded restriction of this Easement, the Defendants have provided no reliable, credible evidence supporting this contention. For example, the Defendants have provided no account of discussions between the parties involved in the creation of the Easement, nor any explanation of how or why a putatively unrecorded restriction was not memorialized in the 1988 Deed or previous deeds. Further, while the Defendants have only contended that a conservation easement granted to Summit County by Mr. Armstrong limits the Plaintiffs to existing residential uses of Snows Lane,[6] any evidence regarding the conservation easement is irrelevant to determining whether any facial ambiguity exists in the Easement at issue. As the conservation easement was not in effect for the Snows Lane area until 2009, it cannot shed light on the granting parties' understanding of the usual and natural meanings of the terms of the Easement at the time of the grant in 1988 or before.

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[6] Notably, the assertions in Summit County's letters contradict Summit County Code and business licensing requirements. For example, Summit County's Business License Application (attached as Exhibit L) states that "Generally, an in-home business refers to all for-profit activity administered or conducted from a residence within the County," and that "[a] commercial business is anything that is not considered an in-home business." Summit County, however, *requires* the use of an "owner occupied residence" to qualify an operation as a "bed and breakfast." *See* Exhibit M, Snyderville Basin Development Code Section 10-11-1.30 (defining "Bed and Breakfast Inn"). This logically concedes that a bed and breakfast must occur in a home, that a bed and breakfast must be an "in-home business," and is thus not a "commercial" business.

AS A BFP, NO UNRECOREDED LIMITATION IS RELEVANT

In addition, Mr. Kelley is a bona fide purchaser of the 1988 Deed and Easement, with interests superior to those granted to Summit County in its 2009 conservation easement. "A bona fide purchaser is one who pays valuable consideration for a conveyance, acts in good faith, and takes without notice of an adverse claim or others' outstanding rights to the seller's title." *Baldwin v. Burton*, 850 P.2d 1188, 1197 (Utah 1993). Mr. Kelley paid value in good faith for the 1988 deed, and properly recorded it in 1988. *See* Exhibit A. "A bona fide purchaser is one who takes without actual or constructive knowledge of facts sufficient to put him on notice of the complainant's equity." *Grahn v. Gregory*, 800 P.2d 320, 323 (Utah App. 1990), citing *Blodgett v. Marsh,* 590 P.2d 298, 303 (Utah 1978). Here, the Defendants have presented no evidence showing circumstances in 1988 that would have put Mr. Kelley on notice of such a restriction. To the contrary: business registrations with the State of Utah provided actual notice of Snows Lane's use by at least one business entity predating Mr. Kelley's purchase (*see* Exhibit E), and Mr. Kelley's chain of title shows no competing interest or restriction affecting his Easement at the time of his 1988 purchase.

To the contrary, the court should note that Snows Lane has been used by business entities registered with the State as located on Snows Lane (or having their registered agent on Snows Lane) from at least as early as 1974 to the present date. This includes businesses owned by Mr. Armstrong himself and his brother, Herbert Armstrong:

- Rincon, Inc., registered at 170 Snows Lane by Herbert Armstrong from 1974 to 1976;
- the Armstrong Brothers 1300 East Partnership, a cattle-selling business owned by Mr. Armstrong himself from 1997 to 2003, also registered at 170 Snows Lane;
- Armstrong Brothers, L.L.C., owned by Mr. Herbert Armstrong, and registered at 180 Snows Lane from 2005 to 2008; and
- Armstrong Park City, L.L.C., owned by Mr. Herbert Armstrong, and registered at 180 Snows Lane from 2005 to the present.

See copies of business registration information for each entity attached as Exhibits E, F, G, and H, respectively. Mr. Armstrong and Herbert Armstrong have availed themselves of Snows Lane for business and/or commercial purposes over the last 48 years and including the present day. This information provided actual notice to parties of the 1986, 1987, and 1988 Deeds of the business use of Snows Lane (as well as to Summit County in 2009). As a result, the Defendants' contentions—that Snows Lane has served and presently serves only residential use, and that such a restriction was intended upon and binds Plaintiffs—are wholly without merit. Per *Daines* and *Saleh*, the Defendants self-serving interpretation is not plausibly within the usual and natural meaning of the Easement's language, cannot render its language ambiguous, and the court should find the Easement to be unambiguous as a matter of law.

2. The Easement Has No Missing Terms and Its Language Sufficiently Describes the Easement's Burden as a Matter of Law.

Mere brevity of language does not automatically yield multiple reasonable meanings, reveal or imply missing terms, or render an agreement facially ambiguous. In fact, the Utah Supreme Court has stated that an access easement, in particular, may be (and was) unambiguous even where a "necessary" term was not expressly included in its language, so long as the Easement's burden is "unambiguously communicate[d]" by its plain terms.

In *Evans v. Board of County Com'rs.*, 123 P.3d 432 (Utah 2005), the Court affirmed that though the location of the road to be used for an access easement was not stated or described by the language of the deed creating the easement,[7] the easement was unambiguous, nonetheless.

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[7] The easement's language read:

> "Reserving to the grantor the public use and right-of-way over and into Pine Street from the State Highway and a 56' wide right-of-way over and across the last parcel of land [included in the quit claim deed(the Strip)], from Pine Street to connect with grantor's remaining property over which Utah County agrees to build a good gravel road within 90 days of the date of this instrument to provide access to grantor's remaining land."

("Although the location of the easement was not fixed, the deed language removed from all doubt that the grantor and grantee intended to create an easement for a particular purpose, covering an ascertainable minimum area.") *Id.*, at 435 (emphasis added). The Supreme Court stated that the access easement's necessary terms were the easement's width, minimum length, minimum gross area, purpose ("a road connecting Pine Street and the corner property"), and the dominant and servient estates.[8] *Id.*

The Court centered its reasoning and decision on the need to communicate the burden of an easement to the parties:

> "Guiding and informing our approach to ascertaining whether the Evans's easement description contained all essential terms is the core principle that the burden of the servitude must be communicated to the owner of the servient estate with sufficient clarity to understand it. The principle is an application to easements of the basic concepts of the law of contracts that the duties of a party to a contract must be described in detail sufficient to make it possible to ascertain whether the agreement has been kept or broken."

Id., at 434, citing *Nielsen v. Gold's Gym*, 2003 UT 37, ¶ 13, 78 P.3d 600. The Court then concluded that the Evans' easement unambiguously included "a full complement of data describing its minimum burden to the County's fee interest." *Id.*

Evans, 123 P.3d at 433. The Court characterized the deed as having "no express description of the location of the Evans's easement and no vesting in anyone the authority to position the easement." *Id.* at 434.

[8] "The minimum extent of the servitude can be easily extracted from the text of the deed. The area of the servient estate. . .is precisely described, as is the width of the easement. . . . At minimum, the length of the easement would be equal to the width of the strip at a point bounded by Pine Street on one side and the Evans's property on the other. The minimum gross area of the strip subject to the servitude can be easily calculated by multiplying the length by the width. The dominant estate, the Evans's corner property, is identified. The stated purpose of the easement, a road connecting Pine Street to the corner property, is clear. Whatever uncertainty the County may have about the ultimate location of the Evans's easement, the deed unambiguously communicated a full complement of data describing its minimum burden to the County's fee interest." *Evans*, at 435 (emphasis added.)

In light of *Evans*, the language of Mr. Kelley's Easement is facially unambiguous, as it describes all the essential terms of an access easement and communicates the burden of the Easement to the parties. Its language describes the Easement's purpose: providing "ingress" and "egress."[9] The Easement describes the dominant estate (320 Snows Lane) and the location and size of the road crossing the servient estate.[10] The terms here are more comprehensive and precise than those affirmed by the Supreme Court as describing the access easement in *Evans* unambiguously as a matter of law.

Finally, the Defendants' allegation of an unrecorded limitation to residential use amounts to a suggestion that there must be terms missing from the Easement. Yet the *Evans* court specifically barred this very argument where the terms necessary for an access easement are present or are sufficiently descriptive of the burden on the servient estate: "[A]ll of the County's assertions that the term locating the easement is essential are variations on the theme that express descriptive language is required for the County to get what it bargained for. This complaint is unavailable. . .under the approach we announce today." *Id.*, at 436. Therefore, the Defendants' same argument must also fail, as Mr. Kelley's Easement includes all the terms deemed by the *Evans* Court to be necessary and to sufficiently describe an unambiguous access easement.

As a result, the terms of the 1988 Deed unambiguously describe Mr. Kelley's Easement as a matter of law.

II. THE EASEMENT'S UNAMBIGUOUS LANGUAGE LIMITS THE PLAINTIFFS' USE OF MR. KELLEY'S EASEMENT ONLY TO INGRESS AND EGRESS.

Mr. Kelley's unambiguous Easement by deed must be construed using only the plain meaning of the grant's language, which expressly restricts Plaintiffs' use of the Easement to

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[9] *See* Exhibit A.
[10] *Id.*

ingress and egress via Snows Lane and describes no other limitation. "In the absence of ambiguity, construction of a deed is a question of law," *Ault v. Holden*, 44 P.3d 781, 2002 UT 33 (Utah 2002). "Where an easement is created by a written instrument, like. . .a deed, the rights founded on such an instrument are limited to the uses and extent fixed by the instrument." *Gillmor v. Macey*, 121 P.3d 57, 67 (Utah App. 2005), citing *Labrum v. Rickenbach*, 711 P.2d 225, 227 (Utah 1985) (internal quotations omitted.) Thus, "[w]here the language of the grant leaves no doubt as to its meaning, the terms of the easement cannot be expanded beyond what is contained in the instrument." *Id.* (internal quotations omitted); *accord Daines*, 90 P.3d at 1279 (". . .[A]bsent a finding of facial ambiguity, "the parties' intentions must be determined solely from the language of the contract. . . . As a result, we do not need to resort to the admission of parol evidence on the question of intent.")

For example, in *Gillmor v. Macey*, after the Court of Appeals determined that specific subsections of the agreement describing Gillmor's easements were unambiguous, it construed (or affirmed the trial court's construction of) those terms as a matter of law. One such section limited the persons to whom the access easement was granted. The text granted "[v]ehicular access (ingress and egress)" over the easements to "Gillmor and his immediate family to the first degree of consanguin[i]ty, and their spouses and children. . . " without restricting the purpose of such access. *Id.* at 64. Other sections of the agreement granted more limited access to Gillmor's invitees for the express purposes of "maintenance, animal husbandry, and hunting" only, and further limited Gillmor's invitees to "[no] more than 18 persons and six vehicles. . .for hunting purposes at any time." *Id.*, at 68. The *Gillmor* court concluded that Nadine Gillmor's personal right of access "does not modify the Agreement's clear limitations on others," as shown by the unambiguous portions of the agreement. *Id.*, at 67.

Here, the unambiguous language of Mr. Kelley's Easement by deed limits Plaintiffs' use to ingress and egress via Snows Lane. This is clear language and its consequences are easily understood. For example, Plaintiffs may not park vehicles on the Easement portion of Snows Lane; they may not use the Easement road for purposes unrelated to ingress and egress (such as hunting or allowing animals to graze); and they may not enter the Easement in order to exit at a place other than the egress' end-point (i.e. they may not leave midway through Mr. Armstrong's land to travel to areas that are otherwise inaccessible from 320 Snows Lane). Had the parties wished to include such uses, they could and would have done so in the text of the Easement. They did not.

Instead, controlling case law and the unambiguous language of Mr. Kelley's Easement allow the Plaintiffs' use of the dominant estate within its terms' "usual and natural" meaning. For example, because none of the restrictions suggested above apply to the Easement, Plaintiffs may use Mr. Kelley's right of way for business purposes (just as Mr. Armstrong and his brother, Herbert Armstrong, have used it for business purposes over the last 48 years). Further, Plaintiffs may use the easement with the frequency or intensity as they see fit, as that is the only meaning of the Easement's terms proffered to the court that is reasonable and plausible.[11]

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[11] The Defendants have implied a connection between the Plaintiffs' business use and an increase in Snows Lane's use, and further suggested that such a putative increase would be barred by the Easement. This ignores the prior and ongoing business uses of Snows Lane by entities owned by Mr. Armstrong and others. It also ignores that increased use is *more* likely to result from alternative, yet strictly residential, uses of 320 Snows Lane than would result from Plaintiffs' B&B. For example, were 320 Snows Lanes' six bedrooms each leased to different renters, or each used by one or more members of the same family who each have a car, far more traffic would result from such continuous residential use than would flow from intermittent use by patrons of a B&B. The Defendants are plainly attempting to limit the Plaintiffs' use of Snows' Lane by bootstrapping a bar on business use into the Easement's terms, even though there is no logical connection between business use and increased use, and despite the Easement's terms unambiguously restricting use only to ingress and egress, but in no other way. The Defendants' contentions are therefore illogical, are contradicted Mr. Armstrong's and

CERTIFICATE OF SERVICE

EXHIBIT A

1988 Deed

7553

290223

SUMMIT COUNTY TITLE
89 MAY 13 PM 3:10

WHEN RECORDED, MAIL TO:

David R. Olsen, Esq.

P. O. Box 1168

Salt Lake City, UT 84110

Space Above for Recorder's Use

SPECIAL WARRANTY DEED

FIRST SECURITY MORTGAGE COMPANY, a corporation organized and existing under the laws of the State of Utah, with its principal office at Salt Lake City, of County of Salt Lake, State of Utah, grantor, hereby CONVEYS AND WARRANTS against all claiming by, through or under it to WILLIAM R. KELLEY, JR., grantee, of P. O. Box 257, Hull, Massachusetts 02045, for the sum of TEN AND NO/100 DOLLARS and other consideration, the following described tracts of land in Summit County, State of Utah:

See Exhibit "A" attached hereto and by this reference incorporated herein and made a part hereof.

Grantor makes no warranty as to the effect of any of the following:

1. An action pending in the District Court of the Third Judicial District in and for the County of Summit, State of Utah, entitled First Security Mortgage Company, a Utah corporation (successor in interest to R E H, Incorporated), Plaintiff, vs. Hebert S. Armstrong, William Melbourne Armstrong, Jr., Joseph F. Ringholz and Raye C. Ringholz, Defendants, and filed as Civil No. 9447, records of Summit County, Utah.

   Lis Pendens in said action was recorded on July 10, 1987, as Entry No. 273994, in Book 438, at Page 20, records of Summit County, Utah.

2. An action pending in the District Court of the Third Judicial District, in and for the County of Summit, State of Utah, entitled William R. Kelley, Jr., Plaintiff, vs. First Security Mortgage Company, a Utah corporation, et al., Defendant, filed as Civil No. 9532, records of Summit County, Utah. (See copy of complaint for purpose of action.)

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Lis Pendens in said action was recorded September 22, 1987, as Entry No. 277037, in Book 445, at page 193, records of Summit County, Utah.

3. A Special Warranty Deed executed in favor of Leucadia Financial Corporation, dated November 25, 1987, recorded November 30, 1987, as Entry No. 280465, in Book 454, at Page 217, records of Summit County, Utah.

4. A Quit-Claim Deed executed in favor of Leucadia Financial Corporation, dated November 25, 1987, recorded November 30, 1987, as Entry No. 280466, in Book 454, at Page 220, records of Summit County, Utah.

The officer who signs this deed hereby certifies that this deed and the transfer represented thereby was duly authorized by the grantor.

In witness whereof, the grantor has executed this deed as of this 6th day of May, 1988.

FIRST SECURITY MORTGAGE CORPORATION

By: Wayne L. Lartz

Its: Asst V.P.

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On the 6th day of May, 1988, personally appeared before me Wayne L. Lartz, who being by me duly sworn, did say, that he is the Asst V.P. of First Security Mortgage Company, and that said instrument was signed in behalf of said corporation by authority of its bylaws or a resolution of its board of directors, and said Wayne L. Lartz acknowledged to me that said corporation executed the same.

Deborah L. Barker
Notary Public
Residing at Salt Lake City, Utah

My Commission Expires:

DEBORAH L. BARKER NOTARY PUBLIC STATE OF UTAH

2

EXHIBIT "A" TO SPECIAL WARRANTY DEED

The real property is located in Summit County, State of Utah.

Said real property is also described as follows:

Parcel No. 1: Beginning at a point South 2630.74 feet and West 2776.80 feet from the northeast corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, and running thence South 4 degrees 03' East 421.40 feet; thence South 56 degrees 22' West 261.80 feet; thence South 50 degrees 52' West 278.0 feet; thence South 47 degrees 34' West 500.0 feet; thence North 28 degrees 34' West 538.0 feet to the center line of a ditch; thence North 53 degrees 10' East 36.0 feet along said ditch to an old spring; thence North 40 degrees East 181.0 feet; thence North 71 degrees East 87.0 feet; thence North 66 degrees 38' East 147.61 feet; thence North 30 degrees 35' East 43.50 feet; thence East 111.0 feet; thence North 45 degrees East 86.0 feet; thence North 37 degrees 38' East 125.0 feet; thence North 59 degrees 50' East 207.0 feet; thence South 67 degrees 05' East 23.0 feet; thence North 37 degrees 55' East 55.0 feet; thence North 34 degrees 15' East 75.0 feet; thence East 43.82 feet; thence South 37.0 feet; thence South 88 degrees 25' East 77.0 feet to the point of beginning.

PARCEL NO. 2: Beginning at a point South 2630.74 feet and West 2776.80 feet from the Northeast corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, and running thence South 4 degrees 03' East 421.40 feet; thence North 53 degrees 40' East 112.67 feet; thence North 0 degrees 53' East 354.74 feet; thence South 89 degrees 30' West 126.00 feet to the point of beginning.

TOGETHER WITH a right-of-way for ingress to and egress from Parcel No. 1 and Parcel No. 2 over a roadway which is approximately three rods wide, the centerline of which is more particularly described as follows:

BEGINNING AT a point South 2607.61 feet and West 2853.77 feet from the Northeast corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, and running thence South

89 degrees 36' East, 2597.86 feet, more or less, to the center of the state highway.

LESS AND EXCEPTING from Parcel No. 1 and Parcel No. 2, the following:

BEGINNING AT a point South 2615.05 feet and West 2724.10 feet from the Northeast corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being on a fence line and running thence South 1 degree 24'14" West along said fence line 151.84 feet; thence North 88 degrees 25' West 132.89 feet; thence North 0 degrees 16' West 150.00 feet; thence South 88 degrees 25' East 84.595 feet; thence North 89 degrees 30' East 52.69 feet to the point of beginning.

SUBJECT TO easements, restrictions, and rights of way appearing of record.

ALSO SUBJECT TO the lien of general property taxes after January 1, 1988.

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(4)

EXHIBIT B

Affidavit of William E. Kelley

William R. Kelley
839 Nantasket Ave.
Hull, MA 02045

September 6, 2012

The property located at 320 Snows Lane, Park City, Utah was available to me because of a foreclosure. When I purchased it, along with having a beautiful residence for my family, it was my intent to produce income. From the very beginning, I had clients who boarded their horses at the ranch and I leased out my own.

Since the first year I owned the property, I have rented out rooms both as nightly rentals, and as year-round. Over the course of the years, I have had companies like Levi Strauss and a few celebrities rent the property for corporate events and parties.

Snow's Lane is my primary home and under current zoning regulations an in-home business/B & B is allowed. Under the same existing zoning, there are a number of various in-home businesses operating in Summit County - accounting firms, real estate firms, and many others.

Summit County Ordinance #191-B states, "Whereas, the Board of County Commissioners of Summit County recognize that in-home businesses within Summit County provide a valuable service to the community and its economy." It further states that, "A commercial business is any for-profit activity that is not an in-home business." The genuine fact is, by means of Summit County's own definition, a bed and breakfast ***is*** an in-home business and not a commercial one.

Therefore, I am not breaking any zoning regulations by producing a modest amount of money from my in-home business and I plan on continuing renting out rooms in my residence, as I have done in the past.

Sincerely,

William R. Kelley, Jr.

CATHY E. LYNCH
MY COMM. EXPIRES
JULY 4, 2019
NOTARY PUBLIC
COMMONWEALTH OF
MASSACHUSETTS

The Commonwealth of Massachusetts
On this 7 day of September 2012
before me, the undersigned notary public, personally appeared
William R. Kelley, Jr.
proved to me through satisfactory evidence of identification, which was photo ID
to be the person whose name is signed on the preceding or attached document who swore
or affirmed to me that the contents of the document are truthful and accurate to the best of
his/her knowledge and belief
CATHY E. LYNCH, Notary Public
My Commission Expires July 4, 2019

EXHIBIT C

1987 Deed

Thomas L. M. Esq.
Van Cott, Bagle, Cornwall & McCarthy
P.O. Box 45340, Salt Lake City, Utah 84145

SUMMIT COUNTY TITLE

Space Above for Recorder's Use

Special Warranty Deed

(Corporate Form)

NP 10.50

FIRST SECURITY MORTGAGE COMPANY, a corporation organized and existing under the laws of the State of Utah, with its principal office at Salt Lake City, of County of Salt Lake City, State of Utah, grantor, hereby CONVEYS AND WARRANTS against all claiming by, through or under it to

LEUCADIA FINANCIAL CORPORATION, a Utah Corporation

of 529 East South Temple, Salt Lake City, Utah 84102 grantee for the sum of ----TEN AND NO/100---- DOLLARS the following described tracts of land in Summit County, State of Utah:

See Exhibit "A" attached hereto and by this reference incorporated herein and made a part hereof.

(This document is being re-recorded to show correct notarial acknowledgement)

SUMMIT COUNTY TITLE
87 NOV 30 PM 3:15
280465

The officers who sign this deed hereby certify that this deed and the transfer represented thereby was duly authorized under a resolution duly adopted by the board of directors of the grantor at a lawful meeting duly held and attended by a quorum.

In witness whereof, the grantor has caused its corporate name and seal to be hereunto affixed by its duly authorized officers this 25th day of November, A.D. 1987.

Attest:

Secretary.

(Corporate Seal)

FIRST SECURITY MORTGAGE COMPANY
By
Wayne L. Lantz
President.

STATE OF UTAH
COUNTY OF SALT LAKE
500 454 PAGE 217 } ss. 500 453 PAGE 451

On the 25th day of November 1987, A.D., personally appeared before me Wayne L. Lantz and who being by me duly sworn, did say, each for himself, that he, the said Wayne L. Lantz is the Asst Vice president, and he, the said is the secretary of First Security Mortgage Company, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors, and said Wayne L. Lantz and each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of the said corporation.

Notary Public

My Commission Expires: April 1, 1989 Residing at: Park City, Utah

FORM 184C1 — WARRANTY DEED, SPECIAL, CORP. FORM — Kelly Co., 55 W. Ninth South, S.L.C., Utah

280465

EXHIBIT "A" TO SPECIAL WARRANTY DEED

Attached to that certain Special Warranty Deed
dated November 25, 1987 and incorporated
therein and made a part thereof by reference.

The real property subject to said Special Warranty Deed is located in Summit County, State of Utah and is more particulary described as follows:

Said real property is also described as follows:

Parcel No. 1: Beginning at a point South 2630.74 feet and West 2776.80 feet from the northeast corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, and running thence South 4 degrees 03' East 421.40 feet; thence South 56 degrees 22' West 261.80 feet; thence South 50 degrees 52' West 278.0 feet; thence South 47 degrees 34' West 500.0 feet; thence North 28 degrees 34' West 538.0 feet to the center line of a ditch; thence North 53 degrees 10' East 36.0 feet along said ditch to an old spring; thence North 40 degrees East 181.0 feet; thence North 71 degrees East 87.0 feet; thence North 66 degrees 38' East 147.61 feet; thence North 30 degrees 35' East 43.50 feet; thence East 111.0 feet; thence North 45 degrees East 86.0 feet; thence North 37 degrees 38' East 125.0 feet; thence North 59 degrees 50' East 207.0 feet; thence South 67 degrees 05' East 23.0 feet; thence North 37 degrees 55' East 55.0 feet; thence North 34 degrees 15' East 75.0 feet; thence East 43.82 feet; thence South 37.0 feet; thence South 88 degrees 25' East 77.0 feet to the point of beginning.

PARCEL NO. 2: Beginning at a point South 2630.74 feet and West 2776.80 feet from the Northeast corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, and running thence South 4 degrees 03' East 421.40 feet; thence North 53 degrees 40' East 112.67 feet; thence North 0 degrees 53' East 354.74 feet; thence South 89 degrees 30' West 126.00 feet to the point of beginning.

TOGETHER WITH a right-of-way for ingress to and egress from Parcel No. 1 and Parcel No. 2 over a roadway which is approximately three rods wide, the centerline of which is more particularly described as follows:

BEGINNING AT a point South 2607.61 feet and West 2853.77 feet from the Northeast corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, and running thence South

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89 degrees 36' East, 2597.86 feet, more or less, to the center of the state highway.

LESS AND EXCEPTING from Parcel No. 1 and Parcel No. 2, the following:

BEGINNING AT a point South 2615.05 feet and West 2724.10 feet from the Northeast corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being on a fence line and running thence South 1 degree 24'14" West along said fence line 151.84 feet; thence North 88 degrees 25' West 132.89 feet; thence North 0 degrees 16' West 150.00 feet; thence South 88 degrees 25' East 84.595 feet; thence North 89 degrees 30' East 52.69 feet to the point of beginning.

SUBJECT TO easements, restrictions, and rights of way appearing of record.

ALSO SUBJECT TO the lien of general property taxes after January 1, 1987.

ALSO SUBJECT TO that certain Lis Pendens recorded September 22, 1987 as Entry No. 277037, in Book 445 at Page 193, records of Summit County, Utah, which Lis Pendens relates to an action pending in the District Court of the Third Judicial District in and for the County of Summit, State of Utah, entitled, William R. Kelley, Jr., Plaintiff, vs. First Security Mortgage Company, a Utah corporation, et al., Defendants, filed as Civil No. 5532 of the records of Summit County, Utah.

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5822m
112487

EXHIBIT J.118

EXHIBIT D

1986 Deed

Entry No. 261629

QUIT-CLAIM DEED

F. S. PRINCE, JR. and ANNE A. PRINCE, individually and collectively grantors, of South Laguna, County of Orange, State of California, and Salt Lake City, County of Salt Lake, State of Utah, respectively, hereby QUIT-CLAIM to R E H INCORPORATED, a Utah corporation, grantee, for the sum of TEN AND NO/100 DOLLARS and other valuable consideration the following described tract of land in Summit County, State of Utah:

See Exhibit 'A' attached hereto and incorporated herein

WITNESS the hand of said grantors, this 23 day of November, A.D., one thousand nine hundred and eighty-six.

F. S. Prince, Jr.

Anne A. Prince

STATE OF CALIFORNIA)
: ss.
COUNTY OF ORANGE)

On this 3rd day of November, 1986, before me, GEORGE J. RAGANO, a Notary Public in and for said County of ORANGE, State of California, residing therein, duly commissioned and sworn, personally appeared F. S. PRINCE, JR., known to me to be the person described in and whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

Bk. 108 Pg. 525

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official Seal the day and year first above written.

OFFICIAL SEAL
GEORGE J. PAGANO
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
ORANGE COUNTY
My Commission Exp. Feb. 17, 1988

Notary Public in and for said County, of Orange, State of California

My Commission Expires:
2-17-88

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On the 21st day of November, 1986, personally appeared before me ANNE A. PRINCE, the signer of the within instrument, who duly acknowledged to me that she executed the same.

Notary Public
Residing at: Salt Lake City, Utah

My Commission Expires:
June 13, 1990

2651g

408 526

-2-

EXHIBIT "A"

Real property situated in the County of Summit, State of Utah, and described as follows:

PARCEL NO. 1: Beginning at a point South 2630.74 feet and West 2776.80 feet from the Northeast corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, and running thence South 4 degrees 03' East 421.40 feet; thence South 56 degrees 22' West 261.80 feet; thence South 50 degrees 52' West 278.0 feet; thence South 47 degrees 34' West 500.0 feet; thence North 28 degrees 34' West 538.0 feet to the center line of a ditch; thence North 53 degrees 10' East 36.0 feet along said ditch to an old spring; thence North 40 degrees East 181.0 feet; thence North 71 degrees East 87.0 feet; thence North 66 degrees 38' East 147.61 feet; thence North 30 degrees 35' East 43.50 feet; thence East 111.0 feet; thence North 45 degrees East 86.0 feet; thence North 37 degrees 38' East 125.0 feet; thence North 59 degrees 50' East 207.0 feet; thence South 67 degrees 05' East 23.0 feet; thence North 37 degrees 55' East 55.0 feet; thence North 34 degrees 15' East 75.0 feet; thence East 43.82 feet; thence South 37.0 feet; thence South 88 degrees 25' East 77.0 feet to the point of beginning.

PARCEL NO. 2: Beginning at a point South 2630.74 feet and West 2776.80 feet from the Northeast corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, and running thence South 4 degrees 03' East 421.40 feet; thence North 53 degrees 40' East 112.67 feet; thence North 0 degrees 53' East 354.74 feet; thence South 89 degrees 30' West 126.00 feet to the point of beginning.

TOGETHER WITH a right-of-way for ingress to and egress from Parcel No. 1 and Parcel No. 2 over a roadway which is approximately three rods wide, the centerline of which is more particularly described as follows:

BEGINNING AT a point South 2607.61 feet and West 2853.77 feet from the Northeast corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, and running thence South 89 degrees 36' East, 2597.86 feet, more or less, to the center of the state highway.

LESS AND EXCEPTING from Parcel No. 1 and Parcel No. 2, the following:

BEGINNING AT a point South 2615.05 feet and West 2724.10 feet from the Northeast corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being on a fence line and running thence South 1 degree 24'14" West along said fence line 151.84 feet; thence North 88 degrees 25' West 132.89 feet; thence North 0 degrees 16' West 150.00 feet; thence South 88 degrees 25' East 84.595 feet; thence North 89 degrees 30' East 52.69 feet to the point of beginning.

EXHIBIT E

Business Registration Information for Rincon, Inc.

EXHIBIT F

Business Registration Information for Armstrong Brothers 1300 East Partnership

EXHIBIT G

Business Registration Information for Armstrong Brothers, L.L.C.

EXHIBIT H

Business Registration Information for Armstrong Park City, L.L.C.

EXHIBIT I

Summit County's April 6, 2012 Letter to Mr. and Ms. Mooring

PARK CITY 1884

Office of City Manager

April 6, 2012

Mrs. Tamara Mooring
Mr. Brian Mooring
320 Snows Lane
Park City, UT 84060

Dear Mr. and Mrs. Mooring,

I understand that you are operating a bed & breakfast at 320 Snows Lane. The purpose of this letter is to bring to your attention that Snows Lane is not a public roadway, and cannot be used for commercial purposes.

Snows Lane lies within a 135-acre open space parcel which was placed into a conservation easement on September 29, 2009. Public use of the parcel (including Snows Lane) is limited to the trail defined in the conservation easement. This roadway is expressly restricted to existing residential access, and some limited use by Park City Mountain Resort through Thaynes Canyon. The easement does not allow for any expansion of access to Snows Lane for commercial purposes.

Members of the public and business patrons (such as paying guests at a bed & breakfast) are prohibited from driving motorized vehicles on Snows Lane. Please note that non-paying visiting friends and family would not be defined as public.

Should you have any questions about the statements of fact in this letter, please contact me.

Sincerely,

Diane Foster
Interim City Manager

cc
Bob Jasper, Summit County Manager
Don Sargent, Community Development Director, Summit County
Kent Jones. Summit County Clerk
Wendy Fisher, Utah Open Lands

Park City Municipal Corporation • 445 Marsac Avenue • P.O. Box 1480 • Park City, UT 84060-1480
Phone (435) 615-5180 • FAX (435) 615-4901

EXHIBIT J

Summit County's May 7, 2012 Cease and Desist Letter to Mr. and Ms. Mooring

Dan Child
Code Enforcement Officer

May 7, 2012

Silver Moose Ranch Bed and Breakfast
c/o Brian and Tamara Mooring
320 Snows Lane
Park City, UT 84060

Re: "Silver Moose Ranch Bed and Breakfast" Commercial Operation and Conditional Use Permit status

To whom it may concern:

The Summit County Community Development Department has reviewed your request for a Conditional Use Permit for the "Silver Moose Ranch" Bed and Breakfast, located at 320 Snows Lane, Park City, Summit County, Utah.

Upon reviewing the information provided to Summit County, Staff has found that there is insufficient evidence to show legal access to the property for a commercial operation such as a Bed and Breakfast. Until such time as a sufficient easement or access can be shown, either by agreement of all parties with an interest in the property, or by order of a court of competent jurisdiction, we cannot process this application. Therefore, we are returning the enclosed application in its entirety including your application fees.

Inasmuch as there is no valid permit to operate a commercial Bed and Breakfast and insufficient information to process an application at this time, this letter shall also serve as a NOTICE OF VIOLATION. You are hereby instructed to cease and desist any commercial operation on the premises within thirty (30) days of this notice. Failure to do so will result in further legal action which may include criminal charges. .

If you have any questions, feel free to contact me at (435) 336-3130 or dchild@summitcounty.org.

Sincerely,

Dan Child

Dan Child
Code Enforcement Officer

Cc: file

Community Development Department
Enforcement Division
Summit County Courthouse, 60 N. Main St., P.O. Box 128, Coalville, Utah 84017
Phone (435) 336-3130 Fax (435) 336-3046
dchild@summitcounty.org

EXHIBIT K

February 15, 2012 letter from Mr. Armstrong to the Summit County Planning Department

Feb. 15, 2012

Summit County Planning Dept
Att: Dan Chied

re: proposed B & B on Snow's Ln.

Dear Sir,

I am writing to voice my concerns about the proposed B and B at the Kelly property on Snows Ln and why such use should not be sanctioned.

The reasons which weigh against this change of use can be summarized as follows -

1: There is no public access to the property. In fact Park City installed the "private road" sign.

2: There is no public maintenance or snow removal. My brother and I plow the road on irregular basis. If it is not plowed no emergency or fire vehicles can gain access -

3: Two years ago a Conservation easement was deeded to Utah Open Lands. The land under Snow's Ln. was included in that easement. The easement categorically prohibits any expansion or use of the property except access which was in existence at the time of the easement

(access to 6 homes).

Very truly yours
Mel Armstrong
1500 Snow Ln
Park City

EXHIBIT L

Summit County's Business License Application

SUMMIT COUNTY BUSINESS LICENSING PROCESS AND APPLICATION

A Summit County Business license is required if you are starting, buying, or operating or conducting any business within the unincorporated areas of Summit County.

The following steps are subject to Ordinance 191-E

1. Read the State of Utah publication "Doing Business in Utah, a Guide to Business Information" http://tax.utah.gov/forms/pubs/pub-38.pdf

2. Register your business with the State. Visit www.osbr.utah.gov and complete the process. This will walk you through registering a business name (DBA) and you will receive a business name registration number. This needs to be done prior to applying for a County business license.

3. Fill out a Summit County Business License Application (www.summitcounty.org/clerk).
   - Generally, an *in-home business* refers to all for-profit activity administered or conducted from a residence within the County. The in-home license fee is $75.00
   - A *commercial business* is anything that is not considered an in-home business. The commercial license fee is **$200.00.**

4. Send the completed application to the Summit County Clerk's Office and pay the license fee. We accept cash, checks, or credit cards for payment. The application can take up to 2 weeks to be approved as it will need to be approved by the Planning, Health, Assessor, Sheriff, and fire departments. They mayask questions about your business to verify that your business meets all licensing requirements. In-home businesses are subject to a drive-by site inspection.

5. If you are running a commercial business in the Snyderville Basin (area surrounding Park City) you need to contact Public Works (435) 336-3970 for Kimball Area Transit Assessment information. A license will not be issued until this fee is paid. There are no exceptions.

We will process your application and then mail out your business license or a statement of why it was not approved. Each license is effective through January 15th of the year that it is issued. Each December you will be issued a renewal notice.

County Clerk • 60 North Main PO Box 128 Coalville, UT 84017 • (435) 336-3204 • www.summitcounty.org

EXHIBIT M

Snyderville Basin Development Code Section 10-11-1.30

or rental of automobiles, noncommercial trucks, motorcycles, motor homes, recreational vehicles, or boats, including incidental storage, maintenance, and servicing. Typical uses include new and used car dealerships, motorcycle dealerships, and boat, trailer, or recreational vehicle dealerships.

10-11-1.23 **Auto Wrecking Yard**: The dismantling or wrecking of used motor vehicles or trailers, or the storage, sale, or dumping of dismantled or wrecked vehicles or their parts.

10-11-1.24 **Available Capacity**: A determination that the public facility or infrastructure required to serve a development will be available within a reasonable period of time following issuance of a development permit for a proposed development. For purposes of this Title, the capacity provided by a public facility shall be considered "available" if such facility is in existence or is a planned capital improvement.

10-11-1.25 **BOA**: The Board of Adjustment of Summit County, Utah.

10-11-1.26 **Banks and Financial Services**: An establishment primarily engaged in the provision of financial and banking services. Typical uses include banks, savings and loan institutions, stock and bond broker's loan and lending activities.

10-11-1.27 **Bar**: An establishment serving alcoholic beverages for consumption on the premises. The term "bar" shall also include taverns, discotheques, night clubs, private liquor clubs, saloons and other similar uses.

10-11-1.28 **Base Area Lift**: Any lift which persons ordinarily use without first using some other lift.

10-11-1.29 **Basement**: That portion of a building having its floor subgrade (below ground level) on any side.

10-11-1.30 **Bed and Breakfast Inn**: An owner occupied residence in which up to eight rooms are rented for overnight lodging to travelers, and where one or more meals is provided to the guests only, the price of which may be included in the room rate.

10-11-1.31 **Berm**: A man-made mound of earth contoured so as to form a mound above the general elevation of the adjacent ground or surface and used to shield and buffer various land uses.

10-11-1.32 **Billboard**: A freestanding sign used, designed or intended to direct attention to a business, product, or service that is not sold, offered,

From: Derrick Radke
Sent: Thursday, January 17, 2013 1:30 PM
To: Amir Caus
Cc: Jami Brackin; Kent Wilkerson
Subject: RE: Silver Moose Ranch Bed and Breakfast CUP

Hi All,

After to talking with Jami Brackin, Deputy County Attorney, I understand that the access issues related to this project relate to Snow Lane and not to the driveway that connects Snow Lane to the structure. Please let me know if this assumption is not correct. Please note that Snow Lane is partially in Summit County, and partially in Park City Municipal and that my comments only relate to the portion in Summit County. I have no knowledge of Park City's Standards.

To the best of my knowledge, based on a review of AASHTO, it does not require that a road be paved or otherwise surfaced with any identified materials. However it does discuss the different properties of "High-type" pavement (paved or otherwise hard surfaced) and "Low-type" (unpaved, gravel and dirt surfaces) pavements and the various design parameters that should be considered when using either one.

The SB Development Code does require roads to meet certain standards for new development. Chapter 10-4-10, Section G states:

> 2. All roads shall have a base capable of supporting a gross vehicle weight of at least forty thousand (40,000) pounds. The County Engineer may require additional support base depending on the specific function and traffic volumes anticipated on the roadway.
>
> 3. All roads shall include compacted road base, covered with either concrete or asphalt material, with the exception of emergency access roads, which may be compacted gravel or road base. Roads must meet all applicable County design standards.

Table 1, Rural Road design Standards, requires private Roads (minor) to have an 18 to 20 foot width (AASHTO is similar at 18 feet, but adds 2 foot shoulders). I believe the PCFD requires a minimum width of 20 feet clear width with no on-street parking. Based only on GIS Mapping images, the existing road is fairly narrow and does not appear to meet the width required for new development. Please not that I have not been to the site to measure the existing road width, but we can measure it if you believe the issue is relevant (ie. If the project is considered new and may be required to upgrade the road to current standards). Let me know if you need the existing road width.

Kent Wilkerson, Summit County's Traffic Engineer, has estimated traffic impacts at 2.4 pm peak additional trips and approximately 20 +/- average daily trips being generated by the Bed and Breakfast. These numbers are slightly higher than a single family dwelling. As such, the traffic impact will only be slightly higher than if the structure remains a home. Intuitively, a Bed & Breakfast would have fewer trips than a "nightly Rental" since some food service is on-site.

Our office has no opinion on the access right-of-way as we have not seen it and it would be a legal interpretation in any case.

If CDD or Legal Staff determine that the project would need to meet current Code requirements for new development, then the improvements should be a condition of approval, and the existing access should then meet the minimum Code requirements. If such is the case, a plan should be submitted for review

Please let me know if there are any questions.

Derrick Radke, PE
Summit County Engineer

Commissioner Klingenstein made a motion to approve the Heath Timberwolf Subdivision plat amendment with the following findings as shown in the staff report:

Findings:

1. **No member of the public will be materially injured as a result of removal of a previously platted ski easement.**
2. **There is good cause for the amendment, as the applicant will be better able to protect existing trees on the lot.**
3. **Access to the mountain is provided for via the ski easement located on Lot 15.**

And with the following conditions:

Conditions

1. **A construction mitigation plan will demonstrate measures beyond normal for the protection of trees.**
2. **The Limits of Disturbance line will be rigorously maintained.**

The motion was seconded by Commissioner Franklin and passed unanimously, 6 to 0.

4. Public hearing and possible action regarding a Conditional Use Permit request for Silver Moose Bed and Breakfast, 320 Snows Lane, Park City; Brian and Tamara Mooring, applicants – ***Amir Caus, County Planner***

County Planner Amir Caus presented the staff report and provided a vicinity map showing the location of the bed and breakfast and explained that the zoning is Mountain Remote (MR). He reported that notice was sent to property owners within 1,000 feet and published in the Park Record. One comment was received prior to publication of the staff report and is included in the staff report. Additional comment has since been received and provided to the Planning Commissioners. Planner Caus explained that in 2011, the County Clerk's Office issued a business license for nightly lodging for this property. Later in 2011 the applicant wanted to revise the business license and change it to a bed and breakfast use. When Planning Staff reviewed that request, they determined that a bed and breakfast is a conditional use in the MR Zone, and Staff did not sign off on the business license because there was no CUP. In February 2012 the applicant requested a CUP, and Staff found there was an access issue, so it was returned as an incomplete application. At that point litigation started, and in August 2012, the judge enjoined the County, preventing them from enforcing any zoning rules on the bed and breakfast.

Deputy County Attorney Jami Brackin clarified that the applicants filed a lawsuit seeking to force the County to look at the CUP application. All applications must meet the conditions of Chapter 4 of the Development Code, and it was felt at the time that they did not have the appropriate access as required by the Code. Therefore, Staff returned the application, and the applicant sued the County. The court granted a temporary restraining order against the County enjoining and restricting them from doing any Code enforcement. The applicant has been operating a business without a license for more than a year, and the County cannot enforce that. They are operating a business without

the proper land use permit, a CUP, and the County cannot enforce against that until a decision is made on the CUP application. Once the decision is made on the application, she can return to the Court and tell them a decision has been made and try to get the temporary restraining order lifted.

Planner Caus explained that this is a single-family residence built in 1974 with six bedrooms being rented out, and no increase is proposed in the structure. He provided a representative floor plan of the house.

Commissioner Klingenstein asked the applicant's representative to indicate on the floor plan where the caretaker lives. **Commissioner Franklin** noted that only five bedrooms are shown on the floor plan.

Planner Caus explained that the Code defines a bed and breakfast as an owner-occupied residence in which up to eight rooms are rented for overnight lodging to travelers and where one or more meals are provided to guests only, with the price of those meals being included in the rates. The State Code states that a conditional use shall be approved as long as any impacts can be reasonably mitigated. Except for the access issue, there were no negative comments from the service providers.

Commissioner Velarde asked if a nightly rental use requires a CUP. Planner Caus replied that it does not. **Commissioner Velarde** asked why the applicant did not continue to operate as a nightly rental. Planner Caus replied that food service is the primary difference, which is a big business draw for the owners.

Commissioner Klingenstein asked if there is a problem with a water right. Planner Caus explained that a letter was sent by the Park City Attorney explaining the water rights, and the current water rights are for a single-family residence. Staff followed up with the Division of Water Rights, and they believed there would be sufficient water for this use, but they are requesting an application for a change of designation with the Division of Water Rights from single-family to a bed and breakfast. Ms. Brackin explained that, after the packet was published, Staff received a copy of a 2001 judgment from Judge Hilder in which the water issue was litigated. It was determined that they had enough water for a single-family residence only. The State Division of Drinking Water says they have enough, but they need to do a change order. They may lose some of the water with the change order, and there is apparently some water in the pond, but it would have to be treated before it could be used. At this point, the applicant has not done any of that. According to Chapter 4 of the Code, the applicant is required to have a sufficient water right. **Commissioner Klingenstein** asked what the water right would be converted to. Ms. Brackin replied that it would be converted to a commercial water right. **Commissioner Velarde** confirmed with Planner Caus that if the use were to remain nightly rental, the water right could remain as a right for a single-family residence. Ms. Brackin clarified that nightly rental anticipates that the whole house is rented out a night at a time, not a hotel use. If they separate out the bedrooms and rent them to different people, that is not a nightly rental but a hotel.

Planner Caus stated that Staff is recommending approval of the CUP but with an additional condition that the water right conversion must be made. **Commissioner Klingenstein** asked whether the water quality regulations that must be met are State, Federal, or County. Planner Caus replied that they are State regulations. He explained that the applicant would also be required to meet an affordable housing requirement of .33 unit, and with the two operators living on site and working there full time, that requirement is met. Staff recommended that the Planning Commission vote to approve the Conditional Use Permit with the conditions shown in the staff report and the additional condition that the property designation be changed from single-family to bed and breakfast with the State Division of Water Rights and that all water quality requirements shall be met.

Chair Taylor asked Planner Caus to address the easement issue. Planner Caus explained that an easement was granted to the property owner in 1988. It was a private drive that was later dedicated to Park City, which owns a portion of the access. Ms. Brackin explained that the access drive from Snow's Lane to the house was granted to the single-family home by the Armstrongs. Since then, the Armstrongs have sold their parcels to Park City, and Utah Open Lands has a conservation easement on that access. The question is whether the access granted by the Armstrongs was for a single-family home or if it is sufficient for a commercial business. The Armstrongs and Park City have taken the position that the easement was granted for a single-family home, not for a commercial use. **Chair Taylor** asked if the nightly rental use on the residence affected the easement. Ms. Brackin reiterated that nightly rental assumes that the whole house is rented out as a single-family residence, which would not change that.

Commissioner Velarde asked if the applicant provided a description of what they were planning to do with the house when they applied for a business permit for nightly rental. Planner Caus replied that, typically, when an applicant goes to the Clerk's office they just indicate that it will be a nightly rental, and that is all that is required. **Commissioner Velarde** asked if the applicants had a way of knowing when they applied for a nightly rental that they would be renting the whole house and not individual rooms or if they had a way of knowing they were breaking the rules. Ms. Brackin explained that the only paperwork documentation shows that they filled out paperwork stating nightly rental, and they were issued a license for nightly rental. She has no idea what conversations took place. **Commissioner Velarde** asked if the property tax was maintained as a single-family primary residence. Ms. Brackin replied that she believes it was. **Commissioner Velarde** commented that it is strange that the County would issue the applicant a business license knowing they would not be living there as a primary residence. Ms. Brackin explained that it depends on how many nights the house is rented out. The business license is required so they pay the appropriate transient room tax, sales tax, etc., required by the State of Utah. The home could still qualify as a primary residence if it is only rented out for a short period of time during the year. The owner could have used this as their primary residence the majority of the year. **Commissioner Velarde** asked about the advantage to the owner of changing the designation to bed and breakfast.

Commissioner Klingenstein replied that they could get multiple rental of rooms as opposed to a single unit.

Commissioner DeFord asked if Ms. Brackin would go to court and get the temporary restraining order lifted if the CUP is approved, and then the applicant would have to cease operation until they meet all the conditions. Ms. Brackin explained that they would have to meet the requirements of Chapter 4, which requires access and water, and if those conditions are not met, the County can enforce. **Commissioner DeFord** commented that there seem to be a lot of negative questions on this application. The facts seem to indicate that they should not approve the CUP, but Staff is recommending that they approve it. Ms. Brackin explained that the recommendation came from Planning Staff, and she does not care what decision is made as long as there is a decision so she can go back to court and let them know a decision has been made. **Commissioner DeFord** asked if the applicant can still operate until the County goes to court and gets the restraining order lifted. Ms. Brackin replied that one might assume that they would not take any more reservations, but until the restraining order is lifted, the County is prohibited from enforcing against them. They are on notice that they are taking bookings at their own risk. **Commissioner DeFord** noted that some of the neighbors were concerned about the applicants holding big events at the bed and breakfast and asked if the CUP would limit the scope of the operation and the size of events. Ms. Brackin replied that this does not grant them any kind of event permit. They would have to come to the County for a separate event permit. Director Sargent explained that the trigger for a special event permit is 150 or 200 people. **Commissioner DeFord** stated that he could understand the concern if there were a lot events resulting in a lot of increased traffic on Snow's Lane. There was also concern about increased noise from a bed and breakfast. Planner Caus explained that would be enforced under the noise ordinance.

Joseph Barrett, an attorney with Joe Tesch, stated that he represents Silver Moose Bed and Breakfast, which has impeccable reviews through on-line websites and has been highly regarded as a bed and breakfast for quite some time. He claimed that in all of their dealings with Summit County, the owners have always represented this is a bed and breakfast. In January 2011 Silver Moose was operating as a nightly rental business and received an application to renew the nightly rental business license for 2012. When they submitted their check with their business license, they were surprised to be informed that they would need a CUP, and they made a CUP application to the County in early 2012. On two occasions the County refused to process the CUP, and their check was returned. After that happened twice, the applicant hired counsel. He stated that they went to court to enforce the processing of the CUP, because there were no other alternatives. The result was to preserve the status quo. The court ruled that they want the bed and breakfast to stay in business until the issues with the application and refusal of the County to process it has been resolved. The court did not delve into the water issue, and he heard about that for the first time tonight, but they were aware that there is an issue regarding access. He stated that his office sent information electronically last evening to spell out the access issue. He referred to page 26 of the staff report and stated that is the applicable access through Snow's Lane, that it is clear and unequivocal, and there is no

dispute that a special warranty deed was conveyed as part of a long process of an interlineation dating back to 1974 when the house was built. He believed that satisfies any burden on the County to determine appropriate access. If someone wants to challenge that easement, they should file a legal action, and that has not been done. A public comment period is not the appropriate forum for someone to challenge an easement that runs with the land. He acknowledged that there are challenges, but none of them have been litigated or instituted litigation. His client has sought declaratory action from the court to affirm the easement language if they are required to, but they would rather not, because they believe the language speaks for itself. He stated that the easement issue is nothing more than a red herring. If there are problems with access to the land, that should be addressed in litigation, and if there are no problems with access to the land, there should be no conditions. He and his clients are pleased with Staff's report, and he read from the findings/Code criteria discussion shown as Item F in the staff report. He stated that his clients have satisfied everything they can, and if there is a legal issue, it needs to be brought up by the party who feels aggrieved, but he represents the party that has access. If the Planning Commission is not convinced that a CUP is warranted at this point, he would ask that they afford the applicant an opportunity before they are shut down and put out of business to go back to court and see what further redress they need to seek. He stated that they have done everything they can, and it may take a year to get a declaratory injunction or the easement litigated. They are in the midst of litigation over the easement, which he did not believe should be an issue. He stated that the applicant has satisfied everything, but there seems to be a reluctance from Staff to engage in a political mismatch that should not impact what has gone on. He claimed that Silver Moose is compliant and that they have been open, honest, and transparent, and want to stay in business, but they need a CUP, and he asked the Planning Commission to grant it.

Commissioner DeFord asked if the applicant would get their business license back if the CUP is approved. Ms. Brackin replied that they would, assuming they meet the conditions of the CUP. **Commissioner DeFord** confirmed with Ms. Brackin that if the CUP is approved, she would still go to court and get the restraining order lifted, and the applicant would have to stop operating as a business until they get the access worked out so they could meet the conditions. He asked Mr. Barrett if it would take a year to get the access resolved. Mr. Barrett replied that, if they are required to litigate it, it could take more than a year. **Commissioner DeFord** asked what the process would be to get that worked out. Mr. Barrett replied that it would be to issue the CUP. The easement has been established, and there is no question that there is access. He stated that the County has enough in what the applicant has written to them to show that they have an easement that gives ingress and egress to their parcels. Planner Caus explained that Staff has two conflicting documents, and that is where they have a problem. Ms. Brackin explained that Mr. Barrett is making this far simpler than it is. He has provided documents that he believes grant them an easement. Conflicting documents have been received from the other side that indicate otherwise. The County is not in the position of making a decision one way or the other; that is not their role. That is a judge's job. Therefore, a condition would have to be imposed, because Staff has conflicting documents and conflicting positions, and the CUP would be issued on the condition that there is appropriate access,

and the parties involved would have to work that out. **Commissioner DeFord** asked if the applicant would be out of business until the access is worked out. Ms. Brackin explained that, in theory, the applicant would not be able to operate a commercial bed and breakfast without the appropriate licenses and permits. Mr. Barrett stated that the County could permit the applicant to maintain their business pending the results of the issue that has been attached as a condition, and that is what they intend to ask the court for. They intend to ask the temporary injunction to continue through the determination of the access. He stated that the judge is in a position to maintain the status quo, and he asked the Planning Commission to take that same position. He stated that Silver Moose has been in business for more than two years, and nothing will change if the County allows them to go forward. He did not think there are competing views; he believed they have opinion versus recorded deeds, and they should rely on the recorded legal instrument, not opinion letters they have received from interested parties.

Commissioner Velarde asked what the applicant thinks the real problem is, recalling that he referred to the access issue as a red herring. Mr. Barrett replied that the real issue is probably political, stating that there have been efforts by some public agencies to purchase the land in question. If the land does not have access, it devalues the land. If the land has unrestricted access for the use that has been occurring for a period of time, it greatly increases the value. He stated that they are not asserting that in the CUP application, but the applicant has informed him that they have been approached about selling the parcel and numbers to make that transaction happen, and they believe there is an effort to minimize the value of the property by limiting the access. **Commissioner Velarde** asked what public agency Mr. Barrett was referring to. Mr. Barrett replied that he is not certain whether it was Park City Municipal Corporation or Utah Open Lands, but they have written letters stating that access to the commercial business exceeds the scope of the easement and that Snow's Lane may not be improved beyond its current condition. He stated that they will not improve Snow's Lane beyond its current condition, and there is no basis for Park City to state that the access improperly expands the scope, because the applicant has unlimited scope. He stated that litigation is pending only because they could not get any recourse.

Commissioner Lawson stated that the finding regarding public health, safety, and welfare is an issue for him. He sensed that this type of operation is not compatible with a single-family home area, particularly in a rural area like this with minimal lighting, being out of the way and hard to find. Referring to Finding 5 regarding compatibility with the neighborhood character, he would say that if there were other bed and breakfasts in the area or nightly rentals and this was an "in" place to be when visiting Park City, it might be compatible. He stated that he has difficulty accepting a bed and breakfast in this location with the concerns they have seen in writing so far. He indicated that he would be interested in hearing the public input. He reiterated that he is struggling with Findings 3 and 5, particularly with compatibility with this neighborhood. He stated that he is comfortable with leaving the easement issue up to the court to deal with.

Commissioner Klingenstein agreed that they need to stay out of the legal issue and stick with planning issues. He stated that a big concern for him is special events, and he confirmed with Staff that anything up to 150 people would not require a permit, and that little lane would have to take the impact of maybe 50 to 100 cars with no ability to manage that. He asked if they could have special events up to a certain size any day they want. Ms. Brackin explained that anyone who might want to have a party at their house could have a party for up to150 people without a permit from the County. However, if they are a business, they need to look at the commercial aspect, and that is where the easement issue comes in. They need to look at whether it has a commercial component or whether it is just for a single family. **Commissioner Klingenstein** commented that if it were just five bedrooms and five cars, the impact would be pretty low. A private citizen will not have parties at their house several days a week; they might have one or two parties in the course of nice weather. This use could expand the use and have multiple special events without regulation.

Chair Taylor asked if commercial access is a court decision or a planning decision. Ms. Brackin explained that whether or not they have sufficient access for a commercial use is up to the courts. All the Planning Commission is deciding is whether to issue a CUP for the bed and breakfast, knowing that issue is on the table. That is why they have made Finding 2 and the conditions of approval, and the same thing applies to the water issue. **Commissioner Klingenstein** stated that the question he would ask is what impact the traffic and noise issues of this commercial use would have on the neighborhood, and he is concerned about health, safety, and welfare.

Chair Taylor opened the public hearing.

Heinrich Deters, representing Park City Municipal Corporation, stated that access is a key point to this development, and Park City has a big issue with access and the interpretation of the easement. In a letter from Park City of July 20, 2012, they stated that the question of legal access contemplates the use of a private road owned by the Armstrongs to travel to and from a private, single-family residence, not to a commercial business. Park City Municipal Corporation, as the successor of the interest of the Armstrongs, maintains the same expectation. The Utah Supreme Court held in 1978 that in situations like the one before the Planning Commission, the owner of the dominant estate, which in this case is the Kelleys, may enjoy to the fullest extent the rights conferred by an easement granted to them. However, they may not alter the easement's character so as to further burden increased restrictions on the subservient estate, which is Park City Municipal Corporation at this point. He explained that the people involved in the original easement discussion understood the spirit and intent and can speak to that. The City cites that there is no logic in the argument that the impacts of ingress and egress from a commercial bed and breakfast do not change the character of an easement granted 25 years ago for a private, single-family residence. Had the Armstrongs intended the scope of the easement to allow anything more than a road to get from a private residence, or if that was the Kelleys' desire at the time, the easement would have expressed that. He stated that it is the City's understanding that a traffic study has not been conducted by the applicant, and they

would like to understand why that has not been done. With regard to the water issue, it is important to note that the County's concurrency ordinance requires proof that the water usage is applicable when filing for a CUP. He pointed out that the July 20 letter states that there are numerous misapprehended issues associated with the court-based decision. The plaintiffs failed to join all necessary and indispensable parties to the lawsuit, given the fact that Park City Municipal now owns Snow's Lane; therefore, the court's decision may be vacated on a motion of Park City Municipal Corporation or Utah Open Lands, the holder of the easement. He stated that, if the Planning Commission were to do anything other than deny the CUP, Park City Municipal Corporation would be forced to intervene in the existing lawsuit or file its own lawsuit and petition for a temporary restraining order.

Wendy Fisher, the Executive Director of Utah Open Lands, explained that Utah Open Lands holds a conservation easement on this property which was granted to them in 2009. She has been the Executive Director for 21 years, and the Kelley property has never come before the Board of Directors for any sort of purchase, and there has never been any communication from their organization to the applicants. There is no hidden agenda from Utah Open Lands' perspective and they have never discussed purchasing this property. She explained that the conservation easement covers Snow's Lane, and when a conservation easement is granted, it is done with the current conditions of the property as well as the ingress and egress. At the time the conservation easement was granted, it was documented as being for a residential use, which is spelled out in the conservation easement. They do not know when this started operating as a bed and breakfast, but because it did not have a CUP, it would have been in violation of the conservation easement. In looking at increased traffic issues and the possible need for a change to Snow's Lane, it would necessitate Utah Open Lands determining whether the conservation easement would allow an improvement. The conservation easement states that Snow's Lane cannot be improved beyond its current condition. She stated that conservation easements are governed by the Internal Revenue Code and are seen as perpetual and run with the land and subsequent grantees. Additionally, Utah Open Lands cannot amend a conservation easement to privately benefit an individual. The grantor, Park City, has not asked Utah Open Lands to amend the conservation easement, so they cannot address that, but any conditions regarding what would happen on Snow's Lane would have to be considered by Utah Open Lands.

Chair Taylor asked what "improved" means in a legal sense. He asked if it means physically improved, such as curb and gutter and asphalt, or if it means change of use. Ms. Fisher replied that she will not speak on the legal issues, but as the easement currently states, it cannot be improved beyond its current condition. Mr. Deters stated that he spoke to the City Engineer about that, and the road would have to be widened to 20 feet and have a hard surface, depending on certain drainage issues.

Commissioner Velarde asked if a family with four teenagers, each with their own car, would be allowed to live in this home undisturbed by the City or Utah Open Lands, but because someone operated a bed and breakfast for a year without anyone knowing about

it, they are now assuming there will be damage to the road. Mr. Deters clarified that the spirit of the easement is stated as being for a single family. He believed there are those who can speak to the difference between a commercial bed and breakfast and a single-family unit. It rests on the access and protection of the easement and the commitment the City has made to the conservation easement, the Armstrongs, and the community to preserve this area. **Commissioner Velarde** asked if the City would have complaints if this were a family who decided to take in four foster children. Mr. Deters replied they would not, because it would be a single family. Clearly this use has gone from nightly rental to a bed and breakfast for commercial benefit. He noted that there are only two bed and breakfasts in Park City, which is a higher commercial use, and considering that the business owner can operate special events and weddings, that is a huge benefit to a commercial entity. With that comes impacts.

Liza Simpson stated that she would like to provide a resource about the bed and breakfast industry. As the general manager of a 12-room bed and breakfast in the Historic District of Park City for 10 years, as a member of the professional Association of Innkeepers International, and as a professional innkeeper, she wanted to speak to some of the questions that were raised and answer questions the Planning Commissioners might have. With regard to the difference between a nightly rental and a bed and breakfast, the bed and breakfast use is much more intensive. A nightly rental rents out the entire house, but renting out five individual rooms could mean up to 10 cars, and with the innkeeper having to go out to get supplies, it is a much more intensive traffic use. She stated that when she managed a bed and breakfast, they worked hard to manage traffic and even suggested that guests not bring cars to try to minimize impacts in the neighborhood. She stated that the impacts are so much more intense that, if they consider approving the CUP, they should include a condition regarding automobile usage. The applicant's website says nothing about using alternative transportation or where parking is located. She stated that events are an issue. A bed and breakfast this small would have a difficult time surviving without being able to do events, and weddings are the bread and butter of this industry. She suggested that the Planning Commission strictly limit the applicant's ability to do events until all the issues have been resolved. She noted that the applicant's website indicates that guests can invite other people to have breakfast with them, but it is her understanding that the County Code only allows a bed and breakfast to serve food to their guests. She stated that the website states they have five bedrooms for rent, but County Code requires that the innkeepers live on site, and she did not understand where the innkeepers would live if they are renting all five bedrooms. Planner Caus clarified that the house is actually a six-bedroom house. Ms. Simpson stated that the Professional Association of Innkeepers has worked for the last 25 years to bring the bed and breakfast industry into a standard of professionalism they can all be proud of. Anyone who wants to open a bed and breakfast needs to do their homework and apply for the correct license and be sure they comply with County, City, and health codes. She did not believe the Planning Commission should reward someone who does not do that.

Commissioner Velarde confirmed with Ms. Simpson that there are only two bed and breakfasts in Park City.

Diane Foster, Interim City Manager for Park City, stated that a bed and breakfast is not compatible with these properties. The people who live in this area have either owned their property for a very long time or they knew what they were buying into when they purchased their homes. This area is rural, with a dirt road, and it is not compatible with this use. People did not buy into having a wedding next door and listening to the band. Even if they condition this permit, over the long term they probably will not be able to maintain that character. She noted that a CUP is an allowed use if they can mitigate the impacts. It is absolutely important to mitigate the impacts in this case, because this is a dirt road, and the impacts of a business cannot be mitigated in this condition. The reality is, Summit County will not have the enforcement power to go into this neighborhood and enforce the use, and approving a CUP would just be a blank check for the applicant to go forward. She acknowledged that the applicants are already in business, but the Planning Commission should not reward someone who has operated their business illegally for the past two years.

Hank Rothwell, a resident on Snow's Lane, explained that the real issue is that this is an inappropriate planning use. The access is a dirt road, and this is in the MR Zone. The applicant's counsel talks about a business or commercial use, and this is very clearly a business and commercial use in a very rural residential neighborhood. The County Code defines a B & B as an owner-occupied residence. If the owner operates a B & B, they will have a different concern than if they hire managers to come in from elsewhere to run their commercial business in a neighborhood zone. He stated that the owner does not live here. The application shows Mr. Kelley as the owner, and Mr. Kelley has always been represented to Park City, the neighbors, and the courts as the owner. He stated that the business has been in existence this year, and this year they have seen increased traffic, and traffic is a safety and health issue if the neighbors have pets or children on a dirt road. They live on a dirt road because that is the lifestyle they have wanted and that the neighborhood has always represented. He could not see how a commercial operation is compatible with this neighborhood. Public facilities appropriately located for this use do not include transit or any access other than too many cars going up and down the road. He requested that they deny the application. It is not a nightly rental; it is a business in an inappropriate zone.

Dylan Rothwell stated that he lived on Snow's Lane for four years, and now he lives adjacent to Snow's Lane. He stated that the majority of his time on Snows' Lane was spent on his front lawn with his two-year-old and four-year-old daughters. With regard to the difference if the applicant's house had four teenagers, if those teenagers were driving up and down Snow's Lane at 40 mph, he would walk up the road and talk to the parents face to face. When he tries to talk to a guy in a rented red Corvette about speeding down the lane, there is no communication. He stated that they live in a wonderful rural area, and the applicants are exploiting that to leach off of what the neighbors have created in terms of community. The families here have lived here for decades, and his family has occupied their home for decades. The bed and breakfast is thriving off the proximity to Park City, and this is not the way a neighborhood should be.

They tolerated an abnormal amount of traffic, similar to five teenagers constantly using the road. Then the usage escalated to nightly rental with constant special big events that cannot be regulated. That is not a neighborhood. The land here is open, with everyone being a full-time, permanent resident in a quiet area. The owners of the bed and breakfast do not permanently live here and have a use that is not compatible with the neighborhood and is dangerous for his family, and they are not adding any value to the neighborhood. The use is not compatible, and he asked the Planning Commission to deny the permit. He stated that two out of the five findings cannot be met, and this is not the same as a house with a big family. It is a commercial entity sneaking under the regulations. If this property were in Park City, this would not be allowed, and just because they are in Summit County does not mean they do not have to respect the neighborhood.

Brent Gold, an attorney representing Mel Armstrong, stated that he takes a little offense at the characterization of the easement situation as a red herring, and it is quite the contrary when looking at the history of this historic property which has been in the Armstrong family since 1940. He reviewed the history of the property prior to 1940 and explained that the names associated with this property are the royalty of Summit County and Park City. He noted that the conservation easement parcel literally encompasses the Kelley parcel, and the interests of Utah Open Lands should be manifest. He indicated the remaining Armstrong holdings. He stated that the history of the easement does not start in 1988 when the Kelleys acquired the property. The easement was created in 1959 by Herbert A. Snow, Mel Armstrong's grandfather, and it was created because he bequeathed a piece of property to his widow. Because it was bequeathed, it was necessary to create an easement to give his surviving wife a piece of property and access to that property and to give Ann Armstrong an easement to her property. The extent, scope, and purpose of an easement is determined by the original grantor and grantee of the easement. The biggest problem with long-term easements is that, by the time they go to court, no one is alive who was there when the easement was created. However, in this case, they have three Armstrongs who were there and were beneficiaries of the easement and the parties who were burdened with the easement because their estates served the easement. It is the personal knowledge of the Armstrongs that, because this was a family compound, the purpose of the easements was to serve the private interests of a very close-knit family. They can verify that the intent was for this to be a private enclave and to preserve it as a single-family residence. Chapter 4 of the Development Code states that the applicants must meet the requirements of the road section to qualify for a CUP. With respect to water, the Code also talks about specific information the applicant must present before the CUP can be approved, and that has not been presented. Mr. Gold stated that it would take a considerable amount of time to go through a change application for the water right. He noted that there is a judgment in the packet that was issued by the district court, although Mr. Barrett claims this is the first time he was aware there was an issue with water. In page 21 of the applicant's application, they quote from the judgment. That judgment strictly limits the Kelley water right to the water that historically the Princes used for their domestic culinary purposes. The decree specifically states that they shall not in any way increase the water they use on the premises. This is private water that comes out of a stream, and the Kelleys know how much water they can use. They

had to go to court to limit the water they were using in the late 1980's and early 1990's. He maintained that the water issue is critical, because the Kelleys will be using more water, and that does not even relate to the water that will be used for special events. Mr. Gold explained that the applicant must comply with the road section of the Code in order to receive a CUP, and they have not even approached their requirement to convince the Commission that the road is adequate. They cannot use this road for commercial purposes unless they comply with the Code section. He stated that the Planning Commission should reject the application. This use is completely incompatible with the neighborhood. The conservation easement which Park City has acquired is a crown jewel of open space in an attempt to preserve a historic area, and this use would entirely diminish that effort.

Chair Taylor closed the public hearing.

Commissioner Klingenstein stated that he has difficulty with Finding 2 in terms of meeting the provisions of Chapter 4. He acknowledged that Chapter 4 is set up for large-scale developments, but the Code does state that a CUP must comply with Chapter 4. He explained that they are supposed to have definitive information on water and water supply. He confirmed with Planner Caus that this house is on a septic system and stated that they have no information on that. He has no idea about the parking requirement and how parking is proposed on the site. They have testimony that this is a dirt road, but this is a commercial use, and he asked if that means the road should be paved to meet County standards. He asked Ms. Brackin to explain road standards. Ms. Brackin explained that the Code requires that the road meet ASHTO standards, which are national standards. She does not have the information regarding ASHTO standards for commercial uses, but she understands that they require a paved surface. However, the road is within the Park City limits, and the Planning Commission has heard testimony from Park City that their standards would require a paved surface for the commercial use. **Commissioner Klingenstein** recalled that he had heard testimony that the easement maintains the road in its current state. Ms. Brackin confirmed that the information from Utah Open Lands and Park City is that the easement is maintained in its current state and cannot be improved. If Chapter 4 requires improvement to the road and the easement prevents that, there is a conflict. **Commissioner Klingenstein** referred to Finding 4 that the use is appropriately located with respect to public facilities and asked if that refers to the County's public facilities, because the County's public facilities are not accessible from this use. Ms. Brackin replied that her understanding of public facilities is water, sewer, power, telephone, cable, etc. **Commissioner Klingenstein** stated that he did not believe this use is compatible with the existing neighborhood, and he would not want this use in his neighborhood because of the impacts. He has many concerns that are not addressed in this application.

Community Development Director Don Sargent explained that the Code identifies CUPs with respect to bed and breakfasts, which are allowed in Rural Residential, Hillside Stewardship, and MR Zones. They are prohibited in all commercial zones. That implies that bed and breakfast conditional uses belong in the more remote areas of the

Snyderville Basin, and Staff took that into consideration. Looking at the adjacent uses and a bed and breakfast being an appropriate use in these zones, Staff felt they should proceed with a possible recommendation, with conditions to mitigate the impacts that were identified. As the application continued, the issues with the neighbors and the access question came up, and they felt they could not make a definitive recommendation without a public hearing and considering that access is an issue. From the outset, based only on the Code, it appeared that this use would be appropriate in this zone, but that is notwithstanding public input and additional information that might warrant further consideration.

Commissioner Klingenstein asked if this application could be conditioned so it could only be a bed and breakfast, with no events or anything else. **Chair Taylor** stated that he believed they could impose whatever conditions they want to. Ms. Brackin explained that State Code allows them to impose reasonable conditions to mitigate the impacts, and if the impacts of an event would be such that the only way to mitigate them would be to prevent them, they could do so. Director Sargent explained that impacts must be associated with Code requirements and standards and cannot go beyond or outside of the Development Code.

Commissioner Lawson stated that he does not come to the same conclusions with regard to the findings that the staff report does. He believed there is great potential regarding the safety of the neighborhood due to the additional traffic, and he did not believe the appropriate public facilities are in place to service a commercial operation, meaning an unpaved road in and out of this location. He stated that he cannot find that this use in this particular location is compatible with the neighborhood.

Commissioner Franklin stated that, in taking a broader look at the neighborhood, there is a development just down the road from this, Silver Star, with nightly rentals and a lot of traffic which mostly goes down Thaynes Canyon Road. He stated that he would be prone to approve the CUP with a condition that they fall back on the Code and take a strong stand on the definition of a bed and breakfast to require the owner to be an occupying resident in the structure.

Commissioner Velarde asked who lives in the home. Mr. Barrett replied that Brian and Tamara Mooring are partial owners and managers and live on site. **Commissioner Velarde** asked what it means to be partial owners and asked if they are included on the deed. Mr. Barrett replied that he did not know. He has been told they have an ownership interest with Mr. Kelley, but he does not know how that is structured. **Commissioner Velarde** asked if the owners have ever had more cars on the property than the bedrooms allow; i.e., an event that went beyond the nightly rental of the bedrooms. Mr. Barrett replied that he did not know the answer to that. **Commissioner Velarde** asked if property taxes are currently being paid as a primary residence. Ms. Brackin stated that, according to the Summit County Recorder records that are available on line, the owner is William Kelley. There is no indication of any other ownership interest than Mr. Kelley. The property is taxed as a single-family residence and receives the discount for a single-

family residence. Additionally, 12 acres of the property is currently assessed as greenbelt agricultural land. The owners applied for a greenbelt rate in 2004, and that has not been lifted or rolled back. **Commissioner Klingenstein** confirmed with Ms. Brackin that means they have an agricultural use that produces a certain amount of income to meet the greenbelt status. **Commissioner Velarde** noted that they cannot call this a bed and breakfast if the owner does not live there. Ms. Brackin confirmed that under the definition in the Code, a bed and breakfast is owner occupied. **Commissioner Klingenstein** asked if they are talking about the owner of real estate or the owner of an LLC running a business within the real estate and stated that is a gray area for him.

Commissioner DeFord stated that he has difficulty with finding that this use is compatible with the neighborhood. He noted that Silver Star has entirely different ingress and egress issues that are favorable to their environment. This access dives deep into a private neighborhood, and he does not see that as being compatible with Silver Star. Having a commercial business surrounded by private residences is a problem for him, because the staff report says the use is compatible. He asked if the applicant was required to provide a traffic study. Planner Caus replied that what is proposed was sufficient for the Engineer's Office, and they raised no concerns. The Health Department also did not raise any concerns about water and sewer. **Commissioner DeFord** stated that he was not certain how to measure public health, safety, and welfare, and that is a gray area for him.

Mr. Barrett stated that he has provided a document prepared by the Moorings summarizing the business history on Snow's Lane. He stated that he counts six separate businesses being run on Snow's Lane from 1974 to the present. There has been everything from a ranch to a farm to Majestic Mountain Studios to an LLC owned by the Armstrong brothers. He wanted to present that for the Planning Commission to consider whether this is really a non-business setting. He stated that this is the type of use that is permissible under Utah law, and the CUP is appropriate under these circumstances, satisfying the conditions of the Planning Commission. He stated that Staff has gone to great lengths to meet with the Health Department, County Engineer, Fire Department, Building Department, and Planning Department to prepare this report. The report recognizes in the conclusions of Staff that is highly competent and very articulate and much more knowledgeable about these subjects that the application satisfies the conditions. The Planning Commission is entitled to question their judgment, but he encouraged them to not be persuaded by the clamor they heard. On behalf of the applicants, he stated that they are willing and able to engage in reasonable time, place, and manner restrictions that would satisfy the Planning Commission. They are willing to accept conditions on water, the access, and time, place, and manner restrictions. If the Planning Commission is inclined to not approve with conditions, he asked that they be given an opportunity to take the matter to court.

Commissioner Klingenstein asked if the reference to time, manner, and place means that the applicant is willing to say they do not need to have receptions, weddings, etc., and that all they want to do is run a bed and breakfast. Mr. Barrett stated that without his

clients present, he could not say that tonight. What he had in mind was a limitation on the scope of any such events. He explained that his clients are out of the country, and they had requested a continuance so they could be here to answer questions, but the County Attorney was opposed to that in light of the litigation, so he is here to represent their interests. While he suggested time, place, and manner restrictions could be discussed, he could not confirm that is what they are willing to do at this point.

Chair Taylor asked about an appeal process for CUPs. Ms. Brackin confirmed that the Planning Commission is the final decision maker on CUPs, and any interested party can appeal the decision within 10 days by filing an appeal with the Community Development Department, with the appeal to be heard by the County Council.

Commissioner Velarde asked why the County Attorney would not allow a continuance so the applicant could be here to answer questions. Ms. Brackin replied that it is because the County is currently enjoined from enforcing their laws. There is an operator who has been running a business without a license for almost year, and they do not want to go any further into the year. Director Sargent noted that the ability to continue to operate has been extended one other time as well, and from the Staff perspective, the sooner they get this resolved the better. **Commissioner Velarde** stated that there are so many questions about this that, in order to be fair, she believed the applicants need to be present to represent themselves. She stated that Mr. Barrett cannot possibly know all the answers. She would like to ask the applicants what they are growing that they believe they deserve an agricultural exemption and how they think they qualify to be a bed and breakfast when they do not live there.

Commissioner Velarde made a motion to continue this item to the December 13 meeting. The motion died for lack of a second.

Commissioner Klingenstein commented that he is not happy about this either way, because he felt the courts threw them into an area he is not comfortable dealing with. He stated that he does not have the information he is looking for and feels like he is being pushed to make a decision.

Commissioner Klingenstein made a motion to deny the Conditional Use Permit for the Silver Moose Ranch Bed and Breakfast based on the following findings:
<u>Findings</u>:

1. **The application does not comply with Chapter 4 of the Development Code because information regarding roads, parking, and water is deficient. The County's standards in Section 10-4-5 of the Code require clear evidence that water is available, that the water quantity is available, that proper use of the water is available, and that the water quality can be met for the use. Section 10-4-10 requires that all access roads must meet ASHTO standards, meaning paved roads, and this access road is a dirt road. With regard to parking, the County**

cannot control special events, and there is no transportation plan or traffic study to understand how the applicant would manage parking for those events.

2. **The use is detrimental to public health, safety, and welfare due to problems with the water right and water quality; there is no information that clearly demonstrates that there is a water right that is convertible and water quality provisions can be met; and because the use has a detrimental impact on the neighbors and the character of the neighborhood.**
3. **The use is not compatible with the existing neighborhood character and will adversely affect surrounding land uses as it has been clearly demonstrated through testimony at the public hearing that there are traffic and transportation issues and that the road cannot be improved and cannot be safely used to access this use.**
4. **These particular issues cannot be mitigated by conditions as the road cannot be upgraded under the easement which requires that it remain in its current state.**

The motion was seconded by Commissioner Lawson and passed by a vote of 5 to 1, with Commissioners DeFord, Franklin, Klingenstein, Lawson, and Taylor voting in favor of the motion and Commissioner Velarde voting against the motion.

Commissioner Velarde stated that, if they are dealing with just the five findings before them, she believes Staff has told them that this is compatible and meets the County Code. The fact that no one else in the neighborhood is operating one is not enough to stand on. She believed Director Sargent had articulated clearly that this is an appropriate place for a bed and breakfast, and that is the only point she thinks holds water. If the road is not their business, it is not their business. That is why she voted against the motion.

5. <u>Public hearing and possible action regarding a Development Agreement associated with the Utah Olympic Park Specially Planned Area, 3419 Olympic Parkway, Park City; Colin Hilton on behalf of Utah Athletic Foundation, applicant</u> – *Amir Caus, County Planner*

Chair Taylor stated that several of the Commissioners are concerned that they received the development agreement this morning and did not get a fair chance to review it. It is their opinion that the community has come up on the short end of development agreements recently, and although they want to receive a presentation this evening, he wanted the applicant to know that they will probably continue this item with no action until they have had a fair chance to review it.

Planner Caus presented the staff report and explained that the SPA approval for the Olympic Park was for 295,000 square feet of development, with 67,000 square feet of athlete workforce housing, 40,000 square feet of sports medicine facility, expansion of the existing day lodge, construction of additional lots and athlete space, and three