



STAFF REPORT

To: Summit County Council
From: Ray Milliner, County Planner
Date of Meeting: April 14, 2021
Type of Item: Work Session
Subject: Development Code Amendment

Recommendation: Staff recommends that the Summit County Council review the proposed Development Code Amendment creating a Master Planned Development process and Neighborhood Mixed Use zone in the Snyderville Basin Development Code.

Background: On April 7, 2021, the County Council continued its review of the NMU zone and conducted a public hearing to receive public comment on the MPD process. The Council provided staff with edits for the NMU and instructed that staff return on April 14, 2021 for an additional work session.

Staff has made the edits requested and is asking the Council to continue its discussion on both documents.

Attachments

1. Proposed NMU with edits
2. Proposed MPD

10-3-11: MASTER PLANNED DEVELOPMENTS

INTENT

A Master Planned Development (MPD) is a comprehensive project design strategy. MPDs are intended to provide better opportunities to create projects that address site conditions, the characteristics of the surrounding properties, as well as community and market demands. The MPD process creates administrative tools to promote the efficient use of land resources as well as efficient public infrastructure and utility services. The goal of this strategy is to produce superior project design through flexibility and innovation to advance the goals of the Snyderville Basin General Plan and this Code.

APPLICABILITY

Required: Unless the property is subject to an approved Development Agreement, Settlement Agreement or Consent Agreement, the MPD process shall be required in all zones for the following:

1. Any Application for a rezone.
2. A Residential project with ten (10) or more Units of Density.
3. Any new Hotel or lodging project, Commercial, Retail, Office, Public, Quasi-public, Mixed Use, or Industrial project with 10,000 square feet or more of Gross Floor Area.

USES

An MPD can only contain Uses, which are Allowed, Low Impact or Conditional in the existing Zone District(s) in which it is located. When the project area includes more than one (1) Zone District, Uses may be relocated across Zone District lines if the Planning Commission determines that relocation results in a project design that advances the goals of the Snyderville Basin General Plan.

PROCESS

1. **Pre-Application Conference:** A pre-application conference shall be held with staff for the Applicant to become acquainted with the MPD procedures and related County requirements and schedules. Staff may give preliminary feedback to the Applicant based on information available at the conference and may inform the Applicant of potential issues or special requirements which may result from the proposal. Any direction or feedback given at the pre-application conference is not vested. Vesting occurs once a complete application is filed, and the project has been reviewed and approved by the County Council or Planning Commission.
2. **Pre-Application Work Session Public Meeting:** To provide an opportunity for the public and the Planning Commission to give preliminary input on a concept for an MPD, the Applicant may request a work session discussion with the Planning Commission after the pre-application conference with staff. Any direction or feedback given at the pre-application work session public meeting is not vested. Vesting occurs once a complete

application is filed, and the project has been reviewed and approved by the County Council or Planning Commission.

At the pre-Application work session public meeting, the Applicant will have an opportunity to present the preliminary concepts for the proposed MPD. The public will be given an opportunity to comment on the preliminary concepts so that the Applicant can address neighborhood concerns in preparation of an Application for an MPD.

It is recommended that the Applicant host neighborhood meetings in preparation of filing of a formal Application for an MPD and provide a report conveying neighborhood concerns discussed.

3. The MPD Application:

Plans for the MPD shall be submitted with a completed Application form supplied by the County. A list of minimum requirements will accompany the Application form. The Application must include written consent by all owners of the property to be included in the MPD. Once an Application is received, it shall be assigned to a staff planner who will review the Application for completeness. The Applicant will be informed if additional information is necessary to constitute a complete Application.

Planning Commission Review and Public Hearing: Except in the case of MPDs that include a rezone, the Planning Commission shall approve, approve with modifications, or deny an MPD. The Planning Commission action shall be in the form of written findings of fact, conclusions of law, and in the case of approval, conditions of approval. Action shall occur only after public hearing is held. To approve an MPD, the Planning Commission will be required to make the findings outlined in Section F herein. In the case of MPDs that include a rezone, the Planning Commission shall review and forward a recommendation to the County Council, including findings of fact, conclusions of law and conditions of approval.

County Council Review and Public Hearing: In the case of MPDs that include a rezone, the County Council shall approve, approve with modifications, or deny an MPD. The County Council action shall be in the form of written findings of fact, conclusions of law and in the case of approval, conditions of approval. Action shall occur only after a public hearing is held. To approve an MPD, the County Council will be required to make the findings outlined in Section F Herein.

4. Development Agreement:

Once the Planning Commission or County Council approves a Master Planned Development, the approval shall be put in the form of a Development Agreement reviewed by the County Attorney's office and shall contain, at a minimum, the following:

1. A legal description of the land;
2. All relevant zoning and Development Code parameters, including all findings, conclusions, and conditions of approval, specifying any exceptions outlining more or less restrictive Height or Setbacks;

3. An express reservation of the future legislative power and zoning authority of the County;
4. A copy of the approved Site plan, architectural plans, Landscaping plans, Grading plan, trails and Open Space plans, and other plans, which are a part of the approval;
5. A description of all Developer exactions or agreed upon public dedications;
6. The Developers agreement to pay all specified impact fees;
7. The form of ownership anticipated for the project;
8. A specific project phasing plan;

The Development agreement shall be signed by the Chair of either the Planning Commission or the Chair of the County Council and recorded with the Summit County Recorder. The Development Agreement shall contain language to allow for minor, administrative modifications without revision of the agreement. The Development Agreement shall be reviewed and signed as part of the final approval by the Planning Commission or County Council.

5. Vesting of Approval:

- a. MPDs Not Associated with A Final Subdivision Plat: Construction within the MPD area will be required to commence within five (5) years of the date of the MPD approval. After construction commences, the MPD shall remain valid if it is consistent with the approved specific project-phasing plan as set forth in the approved Final Site Plan and associated documents. It is anticipated that the specific project-phasing plan may require review and re-evaluation of the project at specified points in the Development of the project to be described in the Development Agreement.
- b. MPDs Not Associated with A Rezone but Requiring A Final Subdivision Plat: A final Subdivision plat must be recorded within five (5) years of the date of the MPD approval. Additionally, construction within the MPD area will be required to commence within five (5) years of the date of the MPD approval. If the required final Subdivision plat recordation and construction commencement has not taken place in the prescribed timeframe, the MPD shall expire and the final Subdivision plat shall be void.
- c. MPDs Associated with A Rezone, But Not Requiring A Final Subdivision Plat: Construction within the MPD area will be required to commence within five (5) years of the date of the MPD approval. After construction commences, the MPD shall remain valid if it is consistent with the approved specific project-phasing plan as set forth in the approved final Site Plan and associated documents. It is anticipated that the specific project-phasing plan may require review and re-evaluation of the project at specified points in the Development of the project. If the required construction commencement has not taken place in the prescribed timeframe, the MPD shall expire and the zone shall revert to the previous zone designation.

- d. MPDs Associated with A Rezone and Final Subdivision Plat: Unless otherwise extended per the provisions set forth in this chapter, a final Subdivision plat associated with a rezone must be recorded within five (5) years of the date of the MPD approval. Additionally, construction within the MPD area will be required to commence within five (5) years of the date of the MPD approval. If the required final Subdivision plat recordation and construction commencement has not taken place in the prescribed timeframe, the MPD shall expire and the zone shall revert to the previous zone designation.

After recordation of the final Subdivision plat and the commencement of construction, the MPD shall remain valid if it is consistent with the approved specific project plan and associated documents.

6. **MPD Modifications:**

- a. Minor Amendment: A minor amendment is defined as an amendment that does not increase square footage, density, or intensity of the previously approved MPD. A minor amendment shall be processed as a Low Impact Permit.
- b. Major Amendment: A major amendment is defined as an amendment that increases square footage, density, or intensity of the previously approved MPD. A major amendment shall be processed as an MPD.

MPD REQUIREMENTS

All MPD Applications shall meet the following minimum requirements. Additional project information necessary for the project analysis may be required at the discretion of the Community Development Director, Planning Commission, or County Council.

1. **AFFECTED PROPERTIES**: All MPD Applications shall include all contiguous holdings by the Owner, unless specifically waived by the Planning Commission. The rezoning Application shall be accompanied by an affirmation of ownership signed by the legal owner of the property. If the Property is under contract for sale, the affirmation shall be signed by the contract Owner and legal Owner and specify the date a contract of sale was executed. In the event corporations are involved, a copy of the resolution legally empowering the Applicant to make Application shall be provided with the Application.
2. **DENSITY**. The type of Development, number of units and Density permitted on a given Site will be determined through a site suitability analysis and shall not exceed the maximum Density in the zone, except as otherwise provided in this section. The Site shall be looked at in its entirety and the Density located in the most appropriate locations.

In cases where a project site contains more than one (1) Zone District, the Planning Commission may permit a shift of Density between Zone Districts if the shift results in the project advancing the goals set forth in the General Plan.

Square footage associated with underground/structured parking areas within an MPD is exempt from MPD Density calculations.

Square footage associated with deed-restricted affordable housing units within an MPD is exempt from MPD Density calculations.

3. **SETBACKS.** Setbacks for all structures within an MPD shall be determined by the requirements found in each individual Zone District.
 - a. **Exception:** To mitigate negative impacts, preserve view corridors or create a compatible street design/streetscape, the Planning Commission or County Council may modify the setbacks around the exterior boundary of the project. In some cases, that Setback may be increased to create an adequate buffer to adjacent Uses at the discretion of the County. The Planning Commission/County Council may reduce Setbacks within the project from those otherwise required provided the project meets minimum International Building Code and Fire Code requirements and advances the goals set forth in the General Plan.
4. **BUILDING HEIGHT.** The maximum Building Height for all structures within an MPD shall not exceed the requirements found in each individual Zone District.
5. **SITE PLANNING.** An MPD shall be designed to take into consideration characteristics of the Site upon which it is proposed to be placed. The project should be designed to fit the site, not the site modified to fit the project. The following shall be addressed in the site planning for an MPD:
 - a. Designing with the Topography: MPDs shall be designed to fit into the topography of the site. The Planning Commission/County Council may consider flexibility in the siting of the Development to best fit into the natural terrain, minimize excessive site grading and the need for excessive retaining.

Efforts shall be made to mitigate impacts of the Development on the natural environment and resources of the surrounding area. The project design shall make suitable provisions for the preservation of all affected Critical Lands.
 - b. Designing with Adjacent Uses: The MPD site plan shall take adjacent land uses into consideration. Development along the project perimeter shall adequately mitigate any potentially adverse influences, including but not limited to flooding, erosion, subsidence, sloping of the soil or other dangers and nuisances.
 - c. Building Location: All Buildings shall be located to avoid, to the extent practicable, Critical Lands. Building locations and associated lot configurations should be oriented to encourage active and passive solar design principles wherever practicable. Building design should create recognizable streets and other spaces with their edges defined by Buildings, making it easy for anyone to find their way around, and promote safety and accessibility.

- d. Access: All MPDs shall have vehicular access from a state highway or County road. All Developments shall have a secondary point of access/emergency access unless otherwise mitigated to the satisfaction of the Summit County Engineer and Fire Marshall. Roads, utility lines, and Buildings should be designed to work with the Existing Grade. Cuts and fills should be minimized.
- e. Trails: Existing trails should be incorporated into the project and should be maintained in their existing location whenever possible. Trail easements for existing trails may be required. Construction of new transportation and/or recreational trails will be required to be consistent with Summit County's Active Transportation Plan and/or Snyderville Basin Special Recreation District's Trails Master Plan, respectively. All new construction will meet or exceed the design standards set forth in the plans.
- f. Connectivity: All MPDs shall provide a means of direct, and safe pedestrian and bicycle linkages within the project area as well as connections to adjacent/off site sidewalk, pathway, and trail systems. Pedestrian/ equestrian/bicycle circulation shall be separated from vehicular circulation wherever reasonable.

Where applicable, MPDs will have a system of streets, alleys, and pedestrian pathways with multiple routes and connections serving the same origins and destinations. All streets, alleys, and pedestrian pathways shall connect to other streets and to existing and projected streets outside the proposed MPD or other Development. Dead ends or cul-de-sacs are discouraged.

- g. Snow Removal: Snow storage shall be compliant with the requirements of Chapter 10-4-14 of this Title. The Site plan shall include adequate areas for snow removal and snow storage. The landscape plan shall allow for snow storage areas. Structures shall be set back from any hard surfaces to provide adequate areas to remove and store snow. Snow should be stored on Site and not removed to an Off-Site location.
- h. Waste Disposal/Recycling Facilities: All waste disposal and recycling facilities shall be compliant with the requirements of Chapter 10-4-13 of this Title. The Site plan shall include adequate areas for trash dumpsters and recycling containers, including an adequate circulation area for pick-up vehicles. These facilities shall be enclosed and shall be included on the site and landscape plans for the Project. Pedestrian Access shall be provided to the refuse/recycling facilities from within the MPD for the convenience of residents and guests.
- i. Service and Delivery Access: Service and delivery Access and loading/unloading areas must be included in the Site plan. The service and delivery should be kept separate from pedestrian Areas.
- j. Utilities: Existing or proposed utility and public services for MPDs will be adequate to support the proposed project at normal service levels and will be designed in a manner to avoid adverse impacts on adjacent land uses, public services, and utility resources. Unless otherwise permitted by this Chapter.

6. **TRANSPORTATION:** MPDs shall include transportation approaches that add more options for public transportation, pedestrians, and bicycle users, and reduce the need for driving. An MPD should include:

- a. Transportation amenities including drop-off Areas for van and shuttle service, and a bus stop, if applicable;
- b. Bike facilities including but not limited to lockers and racks;
- c. Upgraded bike lanes or bike paths; and
- d. Agreements between businesses to stagger delivery services and commute times.

7. **EMPLOYEE/AFFORDABLE HOUSING.** All MPD Applications shall include a housing mitigation plan which must address employee Affordable Housing as required by Chapter 10-5 of this Title. The plan shall include consideration for underserved populations such as seniors, ability challenged and people in need of transitional housing.

8. **OPEN SPACE/PUBLIC SPACES.** All MPDs shall provide at least the minimum zone-required Open Space unless further increased through this MPD Process.

In more urbanized areas such as the Town Center (TC), Neighborhood Mixed Use (NMU) and Community Commercial (CC) zones, Open Space areas shall include Public Space as defined in this title. Public Spaces shall:

- a. Be well located to support a wide variety of activities and encourage social interaction, that promote health, well-being, social and civic inclusion;
- b. have a hierarchy of spaces that range from large and strategic to small and local spaces, including parks, squares, greens and pocket parks;
- c. have public spaces for all to use; and
- d. have trees and other planting within Public Spaces.

Ownership and maintenance all Open Space lands shall be specified in the MPD Application.

9. **OFF-STREET PARKING.** Unless modified pursuant to this chapter or an individual Zone District, all MPDs shall meet the parking requirements set forth in Section 10-4-9 of this title.
10. **COMPLIANCE WITH DEVELOPMENT EVALUATION STANDARDS.** Unless otherwise permitted by this Chapter, all MPD shall comply with all requisite Development evaluation standards found in Chapter 4 of this Title.
11. **GENERAL PLAN REVIEW.** All MPD applications shall be reviewed for consistency with the goals and objectives of the Snyderville Basin General Plan; however, such review for consistency shall not alone be binding.

12. **ENVIRONMENTAL MANAGEMENT EXPLANATION:** An MPD Application shall include a written explanation of how the project plan addresses the following environmental issues:

- a. Natural Environment: How does the proposed project integrate existing, and incorporate new natural features into a multifunctional network that supports quality of place, biodiversity, and water management? How does it address climate change mitigation and resilience? Will landscaping work to achieve this goal?
- b. Water Quality: What measures are being taken to manage water use by the Development, and what is being done to ensure the Development does not contaminate ground water or surrounding water ways.
- c. Air Quality: Explain what measures are being taken to ensure the Development does not have a negative effect on Summit County's air quality.
- d. Protection of Critical Lands: If the Development is adjacent to Critical Lands, or within a flood plain or wildfire interface area, explain what is being done to mitigate any negative impacts of the Development on those lands. How is the Development meeting the requirements in Chapter 10-4-3 of this Title?
- e. Energy Efficiency: Explain what is being done to ensure the Development is energy efficient. Are actions being taken to ensure the Development exceeds the minimum requirements found in the International Building Code?
- f. Building Materials: Explain what sustainable materials are being incorporated into the Development.
- g. Recycling/Waste Disposal: Explain the recycling program for the Development. How is it meeting the requirements found in Chapter 10-4-13 of this Title?
- h. Climate Responsive Design: Explain how the Development will work with the Snyderville Basin's climate, how architecture will consider seasonality, the direction of the sun (sun path and solar position), natural shade provided by the surrounding topography and environmental factors (such as wind, rainfall, humidity). Explain how the shaping Massing and Architecture will be designed to:
 - i. Reduce snow accumulations at entrances / exits;
 - ii. Incorporate passive solar heating;
 - iii. Wind driven natural ventilation;
 - iv. Locate windows, skylights etc. to benefit daylighting These also impact natural ventilation; and
 - v. Provide adequate snow storage and snow melt run-off capacity.
 - vi. **Contribute to Summit County's sustainability goals.**
- i. Landscaping: Explain how the proposed landscaping will be appropriate for the climate and topography of the site. Explain how the irrigation system will be water wise and designed to preserve as much water as possible.

13. **SITE DESIGN NARRATIVE.** A MPD Application shall include a written explanation of how the project plan addresses the following design questions:

- a. Project Neighborhood Connectivity. How does the proposed Development interconnect with the surrounding properties, neighborhood, and area? Including but not limited to:
 - i. Where will vehicles enter and exit the site?
 - ii. Where will new streets be developed?
 - iii. How pedestrian and bicycle routes (including commuter pathways, trails, and sidewalks) be provided through the project area?
- b. Availability of Neighborhood Facilities and Services. Is the location of the proposed Development within reasonable proximity (including walking and biking) to community facilities such as schools, retail centers, parks, etc.?
- c. Housing Needs. How does the proposed Development advance the community need for a mix of housing types and affordability?
- d. Character. What are the design objectives for the built environment, including Buildings and the public spaces that connect them? How do these design objectives address the local context, climate, and/or community needs?
- e. Site Design. How is the proposed Development designed to take advantage of the existing topography, landscape features, trees, wildlife corridors, existing structures, existing water ways, minimize site grading, etc.?
- f. Complete Street Design. How is the proposed Development street/circulation system designed to accommodate a variety of transportation modes (where appropriate), easy route finding, and safe speeds?
- g. Parking Areas. How does the proposed Development balance the need for parking with the need to design parking areas in a manner that minimize visibility, site grading, stormwater runoff and exterior lighting?
- h. Public and Private Outdoor Spaces. What is the proposed Development's need(s) for outdoor space, open space, habitat/wildlife areas, parks, or outdoor amenity areas? How does the proposed Development address these needs?
- i. External Storage and Service Facilities. How does the proposed project address needs for recycling, garbage collection, above ground utility equipment, mail facilities, service and delivery areas, equipment storage, etc.?
- j. Building Design. How does the Building/Buildings within the Development provide good quality internal and external environments for their users, promoting health and welfare? How does the Building/Buildings relate positively to the private, shared, and public spaces in the area?

F. REQUIRED FINDINGS OF FACT

The County must find enough evidence to support the following conclusions to approve an MPD. In some cases, conditions of approval will be attached to the approval to ensure compliance with these findings.

- a. The MPD is designed to fit well into the natural terrain, minimize excessive site grading and protect, preserve, and enhance the level of quality of the surrounding area.
- b. The MPD makes suitable provisions for the protection, preservation, and enhancement of watercourses, drainage areas, wooded areas, rough terrain and similar natural features and areas.
- c. The MPD takes adjacent land uses into consideration and mitigates potential impacts, including but not limited to flooding, erosion, subsidence, sloping of the soil or other dangers and nuisances, through careful planning.
- d. The MPD has direct vehicular access from a state highway or County road or suitable private road or driveway access meeting all requirements of the County Engineer and Fire Marshall.
- e. The MPD has a secondary point of access/emergency access or other mitigation satisfactory to the Summit County Engineer and Fire Marshall.
- f. All roads/streets within MPD follow the natural contours of the site wherever possible to minimize the amount of grading.
- g. Existing or proposed utility and public services are adequate to support the proposed MPD at normal service levels and are designed in a manner to avoid adverse impacts on adjacent land uses, public services, and utility resources.
- h. The proposed structures within the MPD are located on the most developable and least environmentally sensitive portions of the site. The open areas within the MPD are designed so that existing significant vegetation can be maintained to the greatest degree possible.
- i. The MPD includes adequate internal vehicular and pedestrian/equestrian/bicycle circulation.
- j. The Building/Buildings within the Development provide good quality internal and external environments for their users, promoting health and welfare.
- k. The proposed project integrates existing and incorporates new natural features into a multifunctional network that supports quality of place, biodiversity, and water management.
- l. **The proposed project contributes to Summit County's sustainability goals.**
- m. The MPD, as conditioned, complies with all the requirements of Chapter 4 of the Snyderville Basin Development Code.
- n. The MPD, as conditioned, is consistent with the General Plan.
- o. The MPD has been noticed and public hearing held in accordance with this Code.

SECTION 10-2-17

Neighborhood Mixed-Use 1 (NMU-1) Zone

A. Purpose: The purpose of the Neighborhood Mixed-Use 1 (NMU-1) Zone is to create new Development and redevelopment areas that are:

- Mixed use,
- Pedestrian-focused, and
- Transit-oriented

The desired development pattern of the NMU-1 Zone shall be facilitated through flexible site and community design principles that:

- Result in a mix of land uses that are compatible, mutually supportive, well connected through a variety of transportation choices.
- Result in convenient, safe, direct, and well-connected transit and pedestrian linkages,
- Result in A reduction in the need for parking,
- Result in Compact development that creates public spaces, including but not limited to plazas and other outdoor amenity areas; and
- Result in Sustainable infrastructure and building design consistent with best practices.

B. Uses: Uses in the NMU-1 zone are limited to the Following:

Allowed Uses

1. Bars, Taverns, clubs
2. Home Based Business, Class 1 (see Section 10-8-4)
3. Mixed Use Structure
4. Mobile Food Business
5. Open Space
6. Park, Community
7. Park, Neighborhood
8. Recycling Facilities, Class I
9. Solar Array, Minor
10. Telecommunication Facilities, Co-location
11. Trails, Community Wide
12. Trails, Neighborhood
13. Trailhead Parking
14. Offices, General
15. Retail Sales, Convenience Store

Low Impact Uses

1. Art Space with Limited Public Performances
2. Banks and Financial Services, no Drive-Through
3. Building and Maintenance Services
4. Childcare Center
5. Construction Management Office
6. Construction Services, Contract
7. Cultural Activity
8. Dwelling Unit, Employee
9. Funeral Services
10. Healthcare Facilities
11. Home Based Business, Class II
12. Laundromat
13. Offices, Medical and Dental
14. Personal Improvement Services
15. Personal Services
16. Property Management Offices, Check-in
17. Public Community Event Center
18. Rehearsal or Teaching Studio for creative, performing and/or martial arts with no public performances
19. Restaurant, Deli or Takeout (no drive through)
20. Restaurant Full Service
21. Retail Sales, General, less than 10,000 square feet in size
22. Telecommunication Facilities other than Co-location or Stealth
23. Telecommunication Facilities, Stealth
24. Transportation Services
25. Utility Facilities, Above Ground
26. Utility Facilities, Major
27. Utility Facilities, Underground
28. Veterinarian

Conditional Uses

1. Churches, Schools, Institutional uses
2. Commercial Event Center
3. Dwelling Unit, Multi-Family
4. Group Home
5. Hazardous Liquids or Materials Transmission Pipelines
6. Historic Structures, preservation of, including related Accessory and supporting Uses
7. Hotel, Motel, or Inn
8. Indoor Entertainment such as bowling alleys, skating rinks, movie theaters,

- performing arts center
- 9. Mobile Food Court
- 10. Nursing Home
- 11. Office, Intensive
- 12. Open Recreation Uses, Commercial
- 13. Park and Ride Lot
- 14. Parking Lot, Commercial
- 15. Public Facilities
- 16. Recreation and Athletic Facilities, Commercial
- 17. Recreation and Athletic facilities, Private
- 18. Recreation, Public
- 19. Retail sales, General, larger than 10,000 sf less than 50,000 sf in size

Temporary Uses

- 1. Temporary Use or Structure

B. Rezoning Eligibility: Properties must meet all the following criteria to be eligible for consideration for a rezone to NMU-1:

- 1. The property(s) must be designated for mixed-use on the Snyderville Basin General Plan, Future Land Use Map;
- 2. The property(s) must be adjacent to (or a redevelopment of) existing commercial, mixed-use, or Institutional/civic Development;
- 3. The property(s) must be located along an existing transit system or ~~as a~~ **within the County Master Planned Development process** ~~condition of approval~~, receive a **written** commitment to provide service from the County Regional Transportation Planning Director.
- 4. Property subject to the terms and conditions of any prior Development Agreement, Settlement Agreement or similar instrument shall remain subject to those terms and conditions until such time as the prior agreement is **amended or terminated as part of the Master Planned Development Process.** ~~expires or is amended.~~

C. Rezoning and Master Planned Development: A proposal for a rezone to the NMU-1 Zone shall be processed concurrently with a Master Planned Development application subject to Section ____ of this title.

D. Density: The maximum Density in the NMU-1 shall be determined by the ability of the proposed development to meet all required development and performance standards and criteria set forth in this title.

E. Setbacks: Unless otherwise permitted through the Master Planned Development process, setbacks in the NMU-1 Zone shall be as follows:

Exterior Boundary Setback	To mitigate negative impacts, preserve view corridors or create a compatible street design/streetscape, the Planning Commission or County Council may modify the setbacks around the exterior boundary of the project. In some cases, that Setback may be increased to create an adequate buffer to adjacent Uses at the discretion of the County. The Planning Commission/County Council may reduce Setbacks within the project from those otherwise required provided the project meets minimum International Building Code and Fire Code requirements and advances the goals set forth in the General Plan.
Front Setback	The minimum Front Setback is twenty feet (20') for all Structures. The twenty-foot (20') Front Setback may be reduced to ten feet (10'), provided all on-Site parking is at the rear of the Property or is in structured parking.
Front Setback if property line extends to the centerline of a road	The minimum Front Setback is forty-five feet (45') for all Structures. The forty-five-foot (45') Front Setback may be reduced to twenty feet (20'), provided all on-Site parking is at the rear of the Property or is in structured parking. All Structures and improvements, excluding driveways, are to be fully contained on the Lot.
Side Setback	The minimum side setback is ten feet (10').
Rear Setback	The minimum Rear Setback is ten feet (10').
Wetland Setback	40' from delineation line as defined by the Army Corps of Engineers
East Canyon Creek Setback	150' from centerline

River or Perennial Stream Setback	100' from centerline
Lake or Natural Pond Setback	50' from High Water Mark
Designated Roadway Setback, Highways 224, 40, 248, and Interstate 80	100' from the edge of the Right of Way
Frontage Road Setback, including, but not limited to Kilby Road, Rasmussen Road, Bitner Road, North Pace Frontage Road, and US- 40 Frontage Road	60' from the edge of the Right of Way

On a Corner Lot, one minimum Front Setback and one minimum side Setback is required with the following provisions:

- a. Any frontage with a driveway leading to a garage or Parking Space shall have a Front Setback.
- b. On any Corner Lot, a clear view area must be maintained. This is a triangular area formed by the property lines abutting the street and a line connecting them at points twenty-five (25) feet from the intersection of the property lines. No obstruction to view more than three (3) feet in Height shall be placed in the clear view area, including walls, Fences, Structures, signs, trees, shrubs, or hedges. When topography presents a clear view, the area shall be graded to provide visual clearance.

F. Height: Unless otherwise permitted through the Master Planned Development (MPD) process, the maximum building height in the NMU-1 Zone shall be forty-five feet (45').

Exception: The County Council may grant a height exception up to a maximum of 60 feet to accommodate affordable housing and/or structured parking through the MPD process.

For any Building ~~abutting~~ **sharing a common property line** with a Detached Single-Family Dwelling Unit, the maximum height is limited to forty-five feet (45') and may not be increased through any process.

Step back Requirement: Floors rising above thirty-five feet (35') in height shall be stepped back fifteen (15) horizontal feet from the building foundation at grade for building elevations that are facing a public street, public trail, or public open space. This step back does not apply to balconies on buildings with floors rising above thirty-five feet (35') in height.

G. Performance Standards: In addition to compliance with all Master Planned Development criteria set forth in Section _____ of this title, the following performance criteria shall apply to the NMU-1 Zone.

1. **Open Space:** Unless otherwise approved through the Master Planned Development process, all Master Planned Developments in the NMU-1 Zone shall provide twenty five percent (25%) of the project area for outdoor space, plaza, pathways, and/or trails and open Space.
2. **Mixed Use:** Unless otherwise approved through the MPD process, all Master Planned Developments in the NMU-1 Zone shall have a minimum of three land uses (residential, commercial, office, recreation, civic, etc.) integrated into the project area. A range of different uses along the street, as well as diversity in building design and scale is encouraged wherever practicable.
3. **Limitation on Direct Retail Sales:** Unless otherwise approved through the Master Planned Development process, no single retail use may exceed 50,000 square feet.
4. **Single-Story Commercial Building Standards** Unless otherwise approved through the Master Planned Development process, no single-story commercial structures greater than 1,000 square feet are permitted in the NMU-1 Zone.
5. **Access to Public Transportation:** All Master Planned Developments in the NMU-1 Zone shall provide facilities that substantially facilitate, enhance, and support the use of alternative public transportation options such as transit services, neighborhood circulators, employee shuttles, car share, bicycle share, and bicycle and pedestrian infrastructure. Unless otherwise permitted through the Master Planned Development process, all Master Planned Developments in the NMU-1 Zone shall provide a Transit Center, transportation stops and/or other improvements to access to the public transit system necessary to meet the needs mitigate the impacts of the Development. Unless otherwise permitted through the Master Planned Development process, all Transit Centers shall include a building with a waiting area, restrooms, bicycle lockers, and bike racks. All transportation stops shall include shelters and bicycle racks to meet the needs mitigate the impacts of the Development neighborhood.

6. **Neighborhood Connectivity:** All Master Planned Developments in the NMU-1 Zone shall provide pedestrian and bicycle linkages within the project area as well as connections to adjacent/off site sidewalk, pathway, and trail systems. Wherever possible, the Developer shall separate pedestrian and bicycle linkages from vehicular areas without disrupting the pedestrian way. Bicycle parking, storage, and bicycle racks consistent with the Summit County Bicycle Parking Standards, Guidelines and Regulations **shall be provided.**
7. **The Public Realm:** All Master Planned Developments in the NMU-1 Zone shall provide a project-specific Public Realm Plan for all areas to which the public has access including but not limited to streets, plazas, parking areas, sidewalks, pathways, and associated green spaces. The design of all utilities, infrastructure, and signs/wayfinding shall be included with the plan.
8. **Parking:** The following parking requirements shall be met. When calculations of the number of required off street parking spaces result in a fractional number, any fraction of 0.5 or larger shall be rounded up to the next higher whole number.

A. **Residential Uses:** Unless otherwise modified by the Master Planned Development process, residential parking shall comply with Section 10-4-9 of this title.

B. **Non-Residential Uses:** The base parking ratio shall be three and one-half (3.5) off street parking spaces per each one thousand (1,000) square feet of nonresidential space.

Exception: Parking greater than or less than 3.5 off street parking spaces per 1,000 square feet of non-residential area may be permitted by the Summit County Council as part of a Master Planned Development only after the applicant submits a parking study for comparable uses which demonstrates that a higher/lower demand can be anticipated.

- a. When reviewing a request to exceed or reduce the overall parking requirement the County Council shall consider:
 - i. Structured parking.
 - ii. Traffic patterns in the area and how the proposed parking plan will affect them.
 - iii. **Ingress and egress issues, and locations and whether they will affect traffic patterns**
 - iv. Requiring spaces for van pooling
 - v. Carpool spaces
 - vi. Covered bike parking

- vii. Site location as it relates to transit.
- viii. Shared Parking
- ix. Other conclusions from the Parking Study
- x. The change in parking shall not result in adverse impacts to public walkways, plazas, or other pedestrian circulation areas.

C. Parking Design: To minimize the potential adverse visual impacts of exterior parking, the following requirements shall apply to all parking areas:

1. Unless otherwise permitted through the Master Planned Development process, off-street parking areas shall be located to the rear of the building and be designed to facilitate and optimize the traffic and pedestrian flow of the development. Single purpose uses exceeding 10,000 square feet shall be permitted to design parking to the front façade provided exterior parking lots, parking structures are hidden from view from most primary streets and crossings serving the project and do not create unsafe pedestrian conditions.
2. Parking structures shall be designed to have the appearance of horizontal storied buildings that reflect the character of adjacent buildings.
3. Storefronts shall be located on the street level and designed to create street scape. shall be readily accessible by pedestrian/bicycle linkages and associated facilities.
4. Structured parking design and space count shall consider project access, circulation, convenience, and practicality and be required to conform to the parking guidelines in the NMU-1 Zone. **Design shall locate curb cuts away from the main thoroughfare.**
5. Developers shall utilize innovative parking reduction techniques such as shared parking, structured parking, smaller stalls, car stackers and valet parking.
6. Bicycle parking shall be provided. Bicycle parking shall be consistent with the Summit County Bicycle Parking Standards, Guidelines and Regulations.

9. **Architecture and Building Construction**: The project architecture shall foster a distinct neighborhood character. Designs shall be, sensitive to the landscape and topography of the site. While new structures are not required to mimic historic structures or themed designs, buildings in the NMU-1 Zone should reflect local and regional practices regarding materials, and roof forms. Streetscapes should respond to the human, pedestrian scale rather than the automobile. Architecture that relies on standardized corporate designs, mechanical climate control and automobile accessibility is strongly discouraged.

10. Sustainability: Projects shall be socially, economically, and environmentally sustainable. Buildings should be designed, oriented, and constructed to maximize the potential for improved efforts regarding:

- a. connectivity
- b. energy efficiency
- c. on-site energy generation
- d. solar orientation, natural light, and ventilation
- e. thermal and light reduction
- f. sustainable materials
- g. water conservation landscaping such as:
 - i. drought tolerant plant species
 - ii. native plant species
 - iii. xeriscaping
 - iv. time of day watering; and
 - v. rain or moisture sensors on irrigation systems

11. Site topography: The project shall be designed to incorporate existing site topography into its design features and to practice ~~sustainable~~ excavation and site work that minimizes import and export of materials. Final project grades and elevations may be established as part of the development application and determined through the MPD process.

12. Affordable Housing: All Master Planned Development projects seeking a height exception shall designate at least 50% of the total number of residential units as affordable as defined by chapter ____ of this Title. All other Master Planned Developments shall meet the minimum requirements as stated in Chapter ____ of this Title.



Proclamation No. 2021-9

PROCLAMATION DECLARING
April 2021
NATIONAL COUNTY GOVERNMENT MONTH
SUMMIT COUNTY, UTAH

Whereas, the nation's 3,069 counties serving more than 300 million Americans provide essential services to create vibrant communities; and

Whereas, counties move America forward by providing safety and technology, administering justice, building infrastructure and transportation systems, and promoting environmental stewardship and economic services that play a key role in everything from residents' daily commutes to emergency response; and

Whereas, each year since 1991 the National Association of Counties (NACo) has encouraged counties across the country to actively promote their own programs and services to the public they serve; and

Whereas, through NACo's President Gary Moore's, LEAD (Leadership, Education, Action, and Development) initiative, NACo is demonstrating how counties are leading the way to a more informed and heard citizenry nationwide; and

Whereas, Summit County's 27 departments and special districts embodied the LEAD initiative throughout 2020 and early 2021 in the way they responded this year to the COVID-19 pandemic. It took the County as a whole to keep residents informed and safe during this unprecedented public health crisis; and

Whereas, Summit County, Utah's employees and elected leadership are committed to and take pride in their responsibility to protect and enhance the health, safety, and welfare of residents in creative and efficient ways; and

Whereas, Summit County has around 350 employees who serve the more than 42,000 residents and hosts approximately 4 million overnight visits per year; and

Now, therefore, be it resolved the County Council, Summit County, Utah, does hereby proclaim April 2021 as National County Government Month and encourages all county officials, employees, schools and residents to learn more about county government programs and services by visiting the County's website, following the County on social media and participating in healthy dialogue that contribute to the success of the County.

APPROVED AND ADOPTED this 14th day of April, 2021.
SUMMIT COUNTY COUNCIL

Glenn Wright, Chair

Chris Robinson, Vice Chair

Kent Jones, Clerk

INTERLOCAL COOPERATION AGREEMENT FOR TRANSIT SYSTEM SERVICES

This Inter-local Cooperation Agreement (“*Agreement*”) is entered into this ____ day of _____, 2021 (the “*Effective Date*”), by and among **HIGH VALLEY TRANSIT DISTRICT**, a political subdivision of the State of Utah (hereinafter, “*District*”), and **SUMMIT COUNTY**, a political subdivision of the State of Utah (hereinafter, “*County*”). Each is individually referred to as a “*Party*” and collectively as the “*Parties*.”

RECITALS

WHEREAS, the County formed the District, a small public transit district, to provide regional public transit services to the County’s residents, workforce, and visitors, which is funded by the following sales and use taxes: (a) the county option sales and use tax to fund a system for public transit, Utah Code §59-12-2213, (b) the county-wide option sales and use tax for highways and public transit, Utah Code §59-12-2219, wherein all sales and use tax imposed in areas of Summit County outside of Park City Municipal Corporation, shall be distributed to the District, and (c) the county-wide option sales and use tax for a system for public transit, Utah Code §59-12-2220 (together the “*County Public Transit Taxes*”); and,

WHEREAS, it is the County’s desire that regional transit services be made available throughout the County; and,

WHEREAS, the District is a regional transit district empowered to provide the regional transit services which the County desires; and,

WHEREAS, the Parties hereto are willing to enter into this Agreement wherein the County agrees to annex into the District the remainder of the unincorporated Summit County and the District agrees to provide a regional system of public transit to the County’s residents, workforce, and visitors as hereinafter specified; and,

WHEREAS, the Parties are authorized by the *Utah Interlocal Cooperation Act*, as set forth in Title 11, Chapter 13, Section 202(1)(d), *Utah Code Annotated (UCA) 1953, as amended*, to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals, mutual covenants and agreements herein set forth, the mutual benefits to the Parties to be derived, and for other valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. Annexation.

1.1 County agrees to adopt a resolution from its County Council petitioning the District for annexation of all remaining unincorporated property within the County into the District (the “*Annexation Resolution*”), in form and substance as set forth in **Exhibit A** herein. The County shall comply with Utah Code §17B-1-403 or its successor law. The County shall file the Annexation Resolution and an administrative fee with the District. The administrative fee shall cover the costs associated with any public noticing, public hearing, or election required as part of the annexation process.

1.2 District agrees to process the Annexation Resolution and approve the annexation (the “*Annexation*”) so long as (a) an insufficient number of written protests are received by the District following the annexation public hearing, or (b) an election of registered voters within the County approves of the annexation, and the conditions precedent to Closing (defined hereafter) have been satisfied.

1.3 The Parties agree that they will act in good faith in completing the annexation process.

2. Sales and Use Taxes; Canyons Transit Fees; Kimball Area Transportation SSD Assessments.

2.1 County Public Transit Taxes. County agrees to remit to the District, on the schedules approved by the Utah State Tax Commission (the “*Tax Commission*”), all sales and use taxes collected pursuant to the County Public Transit Taxes.

2.2 Canyons Transit Fees. The Canyons Transit Service Agreement between Summit County, the Canyons Resort Village Association, Inc., and VR CPC Holdings, Inc., dated June 29, 2015 (the “*Canyons Transit Agreement*”) provides that the resort operators pay a fee for enhanced transit services to the Canyons Resort as part of its Development Agreement with the County. The fees associated with the Canyons Transit Agreement will be remitted to the District and the Canyons Transit Agreement shall be assigned to the District by the County in accordance with Section 3.2.

2.3 Kimball Area Transportation SSD Assessments. Pursuant to Summit County Code, Title 2, Chapter 31, the County operates the Kimball Area Transportation SSD for the purpose of providing enhanced transit services to businesses within the Kimball Junction Towncenter. Assessments from the Kimball Area Transportation SSD shall be remitted to the District to provide for the enhanced transit services to businesses within

the Kimball Junction Towncenter.

3. **Transfer of County Owned Transit Assets.** County shall transfer, and the District shall accept, acquire, and take assignment and delivery of, all County's right, title and interest, in and to all assets, properties, goodwill and rights of every nature, kind and description, whether tangible or intangible, real, personal or mixed, accrued or contingent, which are related to, used or held for use by the County in connection with the operation of transit within the unincorporated Summit County, as the same shall exist on the Closing Date. The assets to be transferred by the County and accepted by the District hereunder (collectively, the "*Transferred Assets*"), as more particularly set forth in this section, and the transfer thereof by the County and acceptance thereof by the District shall be an express condition precedent to Closing.

3.1 Real Property.

3.1.1 At Closing, County shall convey to the District by Special Warranty Deed marketable title in Summit County Tax Identification Parcel No. KAMC-1, located at 231 South 175 West, Kamas, Utah 84036 (the "*Kamas Business Commons Park & Ride Transit Center*"), in form and substance as set forth in **Exhibit B** hereto.

3.1.2 At Closing, County shall convey to the District by Special Warranty Deed marketable title in Summit County Tax Identification Parcel No. PCTC-6-X, located adjacent to the Sheldon D. Richins County Facility at Kimball Junction with an address of 6490 N. Landmark Dr., Park City, Utah 84098 (the "*County Transit Hub*"), in form and substance as set forth in **Exhibit C** hereto.

3.1.3 At Closing, the County shall dedicate, transfer, assign and convey to the District all existing interests in real property, which are owned by the County, including easements and rights-of-way, which are necessary for the operation of the public transit system. An itemized inventory of the existing real property interests, easements and rights-of-way, including bus shelters, to be assigned and conveyed hereunder are identified and shown on **Exhibit D** attached hereto.

3.1.4 All instruments assigning and/or granting the easements to the District pursuant to this section shall be in form and substance as set forth in **Exhibit E** hereto. All assignments shall be free and clear of all liens, encumbrances and claims whatsoever, and all grants of easement shall have a perpetual term.

3.2. Assignment of Contracts, Reports, Records and Intangibles.

3.2.1 Contracts.

3.2.1.1 The County agrees to assign to the District that certain contract entitled Bus Service Agreement between the Utah Transit Authority ("*UTA*"), Park City Municipal Corporation, and Summit County, dated August 24, 2011, whereby those parties agreed to participate jointly in operating transit service in and around Salt

Lake County and Summit County, and the same having been amended by that certain Addendum No. 1, Service and Alignment Change 2017, dated _____, 2017 (together, the “*SLC-SC Transit Agreement*”), in form and substance as set forth in **Exhibit F** hereto.

3.2.1.2 The County agrees to assign to the District the Canyons Transit Agreement, in form and substance as set forth in **Exhibit G** hereto.

3.2.1.3 The County agrees to assign to the District that certain contract entitled Service Provider/Professional Services Agreement, Kimball Circulator, LLC, dated June 1, 2017, and its First Amendment, dated September 19, 2019 (the “*Kimball Circulator Agreement*”), in form and substance as set forth in **Exhibit H** hereto.

3.2.1.4 The County agrees to assign to the District that certain contract entitled Master Services Agreement by and between Via Mobility LLC and Summit County, dated September 3, 2020, its First Amendment, dated April __, 2021, the TAAS Service Order for On-Demand Transit Services, dated April __, 2021, the TAAS Service Order for Fixed Route Transit Services, dated April __, 2021, and the Via Solution Terms of Use Acknowledgement, dated April __, 2021 (together, the “*Via Agreement*”), in form and substance as set forth in **Exhibit I** hereto.

3.2.2 County represents that there are no other service contracts, to which the County is a party, which are necessary to be assigned to the District in order for the District to operate and maintain a system of public transit within the County. All intangibles, reports and records related to the ownership and operation of Park City Transit, which are in the County’s possession, as identified in **Exhibit J** hereto, shall be assigned by the County to the District. Copies of all transit maps, maintenance and inspection records, and operation manuals which are maintained by and in the possession of the County shall be provided by the County to the District at or prior to Closing.

4. **Closing.** The closing of the transfer of the assets referenced herein (the “*Closing*”), will take place on a date and at a time and place mutually agreeable to the Parties subsequent to the Annexation, but in no event later than June 30, 2021.

4.1 **County Closing Deliverables.** At the Closing, County shall deliver to the District:

4.1.1 Special Warranty Deed, in the form attached as Exhibit B, duly executed by the County conveying the Kamas Business Commons Park & Ride Transit Center identified in and as required pursuant to Section 3.1.1 herein.

4.1.2 Special Warranty Deed, in the form attached as Exhibit C, duly executed by the County conveying the County Transit Hub identified in and as required pursuant to Section 3.1.2 herein.

4.1.3 Assignments and/or Grants of Easement, in the form attached as Exhibit E, duly executed by the County assigning and/or granting, as the case may be, to

the District the easements and rights-of-way identified in Exhibit D hereto, as required pursuant to Section 3.1.4 herein.

4.1.4 All documents required to be delivered by the County to the District pursuant to Section 3.2 herein as identified in Exhibits F, G, H, I and J hereto.

4.2 District's Closing Deliverables. At Closing, the District shall deliver to the County such other customary instruments, filings or documents, in form and substance satisfactory to the County, as may reasonably be requested by the County or as may be otherwise necessary or desirable to evidence and effect the of the transfer, conveyance and delivery of Transferred Assets to the District and to put the District in actual possession or control of the Transferred Assets.

5. **Representations and Warranties of the Parties.** As an inducement to the Parties to enter into this Agreement, the Parties hereby represent and warrant as follows:

5.1 Representations and warranties of the County. County hereby represents and warrants as follows as of the date of this Agreement and remade as of the Closing:

5.1.1 Authority of County. County has full power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by County of this Agreement, the performance by County of its obligations hereunder and the consummation by County of the transactions contemplated hereby have been duly authorized by all requisite legal action. This Agreement has been, and upon its execution will have been, duly executed and delivered by County; and, assuming due execution and delivery by both Parties hereto, this Agreement constitutes, and upon its execution will constitute, a legal, valid and binding obligation of County enforceable against County in accordance with its terms, except as may be affected by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally or by rules of law governing specific performance, injunctive relief or other equitable principles (regardless of whether such principles are considered in a proceeding at law or in equity).

5.1.2 No Conflicts; Consents. The execution, delivery and performance by County of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the organizational documents of County; (b) conflict with or result in a violation or breach of any provision of any law, regulation or order applicable to County; and (c) result in any breach of, constitute a default (or an event that, with or without notice or lapse of time or both, would become a default) under any agreement or other instrument, or result in the creation of any encumbrance on any of the Transferred Assets pursuant to any note, bond, mortgage, indenture, agreement, lease, license, permit, franchise, instrument, obligation or other contract to which County is a party or by which County or the Transferred Assets may be bound or affected.

5.1.3 No Liabilities. To County's knowledge, County has no liabilities of any nature arising out of, the operation of Park City Transit, whether accrued, absolute, contingent or otherwise, whether known or unknown.

5.1.4 Good and Marketable Title to be Conveyed. County owns good and marketable title to all of the Transferred Assets, free and clear of any encumbrance, title imperfection or restriction of any kind whatsoever (whether accrued, absolute, contingent, or otherwise). The delivery to the District of all assignments, grants of easement and assignment of easements at Closing will transfer to the District good and marketable title to all of the Transferred Assets, free and clear of any encumbrance. County makes no representation or warranty regarding the condition or suitability of the Transferred Assets and the District accepts the Transferred Assets in their as-is condition.

5.1.5 No Pending Actions. There are no actions pending or, to County's knowledge, threatened in connection with the Transferred Assets or County's ownership or operation thereof, nor is there any basis for any such action, that seek to prevent, hinder, modify, delay or challenge the transactions contemplated by this Agreement. There are no actions by County pending, or which County has commenced preparations to initiate, against any other person in connection with the Transferred Assets. There are no outstanding and unsatisfied, or to County's knowledge, threatened, orders, writs, judgments, injunctions, penalties or awards against, relating to or affecting the Transferred Assets, County's ownership or operation thereof or the transactions contemplated by this Agreement.

5.2 Representations and Warranties of the District. The District hereby represents as follows:

5.2.1 Powers of the District. The District has full power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by the District of this Agreement, the performance by the District of its obligations hereunder and the consummation by the District of the transactions contemplated hereby have been duly authorized by requisite action of its governing board. This Agreement has been, and upon its execution will have been, duly executed and delivered by the District; and, assuming due execution and delivery by both Parties hereto, this Agreement constitutes, and upon its execution will constitute, a legal, valid and binding obligation of the District enforceable against the District in accordance with its terms, except as may be affected by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally or by rules of law governing specific performance, injunctive relief or other equitable principles (regardless of whether such principles are considered in a proceeding at law or in equity).

5.2.2 No Conflicts; Consents. The execution, delivery and performance by the District of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the organizational documents of the District; (b) conflict

with or result in a violation or breach of any provision of any law, regulation or order applicable to the District; and (c) result in any breach of, constitute a default (or an event that, with or without notice or lapse of time or both, would become a default) under any agreement or other instrument to which the District is a party or by which the District may be bound or affected.

5.2.3 There are no actions pending or, to the District's knowledge, threatened that seek to prevent, hinder, modify, delay or challenge the transactions contemplated by this Agreement.

5.3 Survival. All representations of County and the District in this Agreement shall survive the Closing and shall remain in full force and effect, until the expiration of the statute of limitations following the date all performance thereunder was due to be performed.

6. Liabilities and Indemnification.

6.1 Indemnity by County. County will indemnify, reimburse, defend and hold the District and its officers, directors, trustees, employees, consultants and agents from and against and in respect of any and all demands, claims, actions, causes of action, judgments, assessments, taxes, fines, losses, damages, liabilities, interest, penalties, costs, and expenses, including, without limitation, reasonable legal fees, other professional fees and any disbursements incurred in connection therewith, (collectively "*Losses*"), resulting from, arising out of, relating to, or incurred by reason of: (a) any breach of any representation, warranty, covenant, or agreement of County contained in this Agreement or any agreement, instrument, or document executed and delivered by County pursuant hereto; (b) any action taken by any taxing authority in relation to the classification and taxation of the Transferred Assets for tax purposes as a result of this Agreement; and (c) the operation of Park City Transit prior to the Closing.

6.2 Indemnity by the District. The District will indemnify, reimburse, defend, and hold harmless County and its parent entity, shareholders, officers and directors, employees, consultants and agents from and against and in respect of any and all Losses suffered, incurred or sustained by any of them or to which any of them becomes subject, resulting from, arising out of or relating to: (a) any breach of any representation, warranty, covenant, or agreement of the District contained in this Agreement or other instrument or document executed and delivered by the District pursuant hereto or thereto; and (b) subsequent to Closing, any assumed liability.

7. **Waiver of Jury Trial**. To the fullest extent permitted by law, each of the Parties hereto expressly and knowingly waives any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of, under or in connection with this Agreement, the transactions contemplated hereby, or the actions of such party in the negotiation, administration, performance and enforcement hereof. Each Party further waives any right to consolidate any action in which a jury trial cannot be or has not been waived. This provision shall survive any termination of this Agreement.

8. **Governmental Immunity Act.** Because both Parties are governmental entities under the *Utah Governmental Immunity Act of Utah*, Utah Code §63G-7-101, *et. seq., as amended*, each Party is responsible and liable for any wrongful acts or negligence committed by its own officers, employees, or agents and neither Party waives any defense available to it under the *Utah Governmental Immunity Act of Utah*.

9. **Survivability.** With the exception of Sections 3 and 4, which merge with the Closing, all other provisions of this Agreement shall remain in full force and effect for the term of this Agreement.

10. **Relief of Obligation.** This Agreement does not in any way relieve either Party of any obligation or responsibility imposed upon it by law (Utah Code §11-13-208).

11. **Term.** This Agreement shall be in effect for a period of fifty (50) years from the Effective Date (Utah Code §11-13-216) unless otherwise terminated by the District and the County by mutual written agreement.

12. **Eminent Domain.** The County agrees to exercise on behalf of the District its powers of eminent domain in accordance with Utah Code §17B-2a-820 or successor law. The District is responsible for all costs and expenses associated with the eminent domain proceeding, including legal fees, appraiser fees, fair market value compensation, etc. The District shall provide written notice to the County of its desire to have the County exercise its powers of eminent domain. The notice shall identify the property to be condemned, the rationale of the District, and the timing of the condemnation. The District and the County together shall agree upon a condemnation strategy, including the hiring of outside legal counsel. Once the property is condemned, the County shall transfer the title to the property in fee simple to the District.

13. **Special Conditions, Considerations and Circumstances.** As a minimum level of service within the unincorporated county, the District shall operate the Kamas Service (10 Black), 6 Lime Line, Bitner Loop, Kimball Junction Circulator, and SLC-SC Transit.

14. **County Services**

14.1 **Legal Services.** The Summit County Attorney (the “*County Attorney*”) shall serve as the District’s General Counsel.

14.1.1 The County Attorney shall provide legal services, including, but not limited to negotiating, drafting and reviewing legal documents, regulations and policies; providing advice in labor and employment matters; and handling District litigation.

14.1.2 The County Attorney shall allocate to the District forty (40) hours per month of legal services.

14.1.3 As personnel and resources, as well as time, permits, the County Attorney may provide additional legal services in excess of the forty (40) hours per month upon the specific request of the District's General Manger or his/her designee.

14.1.4 Legal services shall be provided by attorneys who (a) are licensed to practice law within the State of Utah, and (b) are sworn civil deputies of the Summit County Attorney. Attorneys from the County shall at all times be deemed employees of the County and shall not be deemed employees of the District (Utah Code §11-13-222).

14.1.5 The District's Board of Trustees and General Manger may, upon the approval of the County Attorney, employ outside counsel to assist the County Attorney or to represent the District in a lawsuit or other action. While the District General Manger may control and direct the prosecution, defense and settlement of all lawsuits, the County Attorney shall determine the means by which such occurs.

14.2 Human Resource Services.

14.2.1 The County, through the County Manager, shall provide certain professional human resource services oversight to the District.

14.2.2 The County Manager shall allocate to the District ten (10) hours per month of human resource services.

14.2.3 All personnel actions of the District, including, but not limited to promotions, hiring, and discipline, shall be processed under the professional oversight of the Summit County Human Resource Director.

14.2.4 The Summit County Human Resource Director and his staff shall at all times be deemed employees of the County and shall not be deemed employees of the District (Utah Code §11-13-222).

14.3 Treasurer Services. The Summit County Treasurer (the "*County Treasurer*") shall serve as the District's Treasurer.

14.3.1 The County Treasurer shall be the custodian of all money, bonds, or other securities of the District.

14.3.2 The County Treasurer shall determine the cash requirements of the District and provide for the deposit and investment of all money by following the procedures and requirements of Utah Code Title 51, Chapter 7, State Money Management Act.

14.3.3 The County Treasurer shall receive all public funds and money payable to the District within three business days after collection, including all taxes, licenses, fines and intergovernmental revenue.

14.3.4 The County Treasurer shall keep an accurate detailed account of all money received under Section 14.3.3 in the manner directed by resolution of the Board of Trustees.

14.3.5 The County Treasurer shall collect all special taxes and assessments as provided by law and ordinance.

14.3.6 The County Treasurer shall allocate to the District five (5) hours per month of treasurer services.

14.3.7 The County Treasurer and her staff shall at all times be deemed employees of the County and shall not be deemed employees of the District (Utah Code §11-13-222).

14.3.8 The County Treasurer shall provide those duties set forth in Utah Code §17B-1-633.

14.4 Comptroller Services. The Summit County Financial Officer (the “*County Financial Officer*”) shall serve as the District’s Comptroller.

14.4.1 The Comptroller shall maintain the financial records for each fund of the District and all related subsidiary records, including a list of the outstanding bonds, their purpose, amount, terms, date and place payable.

14.4.2 The Comptroller shall authorize the payment of all claims against the District (accounts payable).

14.4.3 The Comptroller shall account for all funds received by the District (accounts receivable).

14.4.4 The Comptroller shall administer payroll.

14.4.5 The Comptroller shall, at least quarterly, provide the board with a list of all authority expenditures.

14.4.6 The Comptroller shall comply with the uniform accounting, budgeting and reporting procedures prescribed in the Uniform Accounting Manual for Local Districts.

14.4.7 The Comptroller shall comply with Utah Code §17B-2a-812.

14.4.8 The Comptroller shall not sign any single signature check.

14.4.9. The County Manager shall allocate to the District twenty (20) hours per month of comptroller services.

14.4.10 County Financial Officer and his staff shall at all times be deemed employees of the County and shall not be deemed employees of the District (Utah Code §11-13-222).

14.5 Administrative Services. The Summit County Regional Transportation Planning Director (the “*Transportation Director*”), Caroline Rodriguez, shall serve as the District’s interim General Manager. The Transportation Director’s staff shall serve as the interim administrative staff of the District. The Transportation Director and her staff shall each allocate thirty-five (35) hours per week of administrative services.

14.5.1 The Transportation Director shall perform all duties of the General Manager until such time that a permanent General Manager is selected by the District’s Board of Trustees.

14.5.2 The Transportation Director’s staff shall perform all duties delegated to it by the Transportation Director until such time that the permanent General Manager hires a permanent administrative staff.

14.6 Information Technology Services. The Summit County Information Technology Director (the “*IT Director*”) and his staff, shall serve as the Information Technology department of the District.

14.7 Civil Engineering Services. The Summit County Engineer and his staff, shall serve as the District engineer on a case-by-case basis.

14.8 Equipment. The County shall, as part of the services to be provided under this Section 14, provide to the District the necessary equipment for County personnel providing the governmental services which are the subject of this section, including necessary vehicles and other facilities as are needed in the performance of the services contemplated by this section.

14.9 Office Space. The County shall, as part of the services to be provided under this Section 14, provide to the District the necessary office space for County personnel providing the governmental services on a month-to-month leasehold basis, calculated as \$20.81 per square foot of space (UT Class B Office Buildings rate).

14.10 Consideration. The District shall pay the County for the governmental services which are the subject of this Section 14 a yearly fee of One Hundred Seventy Thousand and Sixty Dollars (\$170,060.00) for the term of five (5) years. This amount is based on a rate representing the average of the County’s current salary rates for the various employees, administrative overhead, and an equipment fee. The annual fee shall be payable on or before January 31st during each year of the effective term of this section. The foregoing rates shall be increased every December based upon the cost

increases as determined in advance by mutual agreement of the District and the County. A letter will be mailed to the District with the new agreed upon COLA rates every subsequent year.

14.11 Liabilities and Indemnification. This Section 14.8 applies solely to the governmental services which are the subject of this Section 14.

14.11.1 All privileges and immunities from liability which are ordinarily available to District employees shall apply to the County employees while performing governmental services under this Section 14.

14.11.2 County agrees and promises to indemnify and hold District, its officers, agents, officials and employees, and volunteers harmless and release them for and from any liability, costs or expenses arising from any action, causes of action, claims for relief, demands, damages, expenses, costs, fees or compensation, whether or not said actions, causes of action, claims for relief, demands, damages, costs, fees, expenses, and/or compensation are known or unknown, are in law or equity, and without limitation, all claims of relief which can be set forth through a complaint or otherwise that may arise out of the acts or omissions, negligent or otherwise, of the County and/or its officers, agents, officials, members, employees or volunteers in the performance of this Section 14.

14.11.3 District agrees and promises to indemnify and hold County, its officers, agents, officials and employees, and volunteers harmless and release them for and from any liability, costs or expenses arising from any action, causes of action, claims for relief, demands, damages, expenses, costs, fees or compensation, whether or not said actions, causes of action, claims for relief, demands, damages, costs, fees, expenses, and/or compensation are known or unknown, are in law or equity, and without limitation, all claims of relief which can be set forth through a complaint or otherwise that may arise out of the acts or omissions, negligent or otherwise, of the District and/or its officers, agents, officials, members, employees or volunteers in the performance of this Section 14.

15. Miscellaneous Provisions.

15.1 No Assignment. Neither Party may assign its interest in this Agreement without the written consent of the other Party.

15.2 No Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person or entity other than the Parties and their respective successors-in-interest.

15.3 Inducement. The making and execution of this Agreement has not been induced by any representation, statement, warranty or agreement other than those herein expressed.

15.4 No Recourse. This Agreement shall not create or be deemed to create or permit any personal liability or obligation on the part of any direct or indirect officer, employee, or representative of the County.

15.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

15.6 Business Relationship. This Agreement does not acknowledge the existence of or establish a partnership, joint venture, or any other form of business relationship between the Parties other than as expressly set forth herein, and this Agreement is limited solely to the purposes and interests expressed herein.

15.7 Severability. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable, or unenforceable, such void, voidable or unenforceable term or provision shall not affect the enforceability of any other term or provision of this Agreement; and the Parties agree to attempt in good faith to reform such void or unenforceable provision to the extent necessary to render such provision enforceable and to carry out its original intent.

15.8 Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, and no statements, promises, or inducements made by any Party or agents of any Party that are not contained in this Agreement shall be binding or valid. Alterations, extensions, supplements or modifications to the terms of this Agreement shall be agreed to in writing by the Parties, incorporated as amendments to this Agreement, and made a part hereof. To the extent of any conflict between the provisions of this Agreement and the provisions of any later agreements, the later agreements shall be controlling.

15.9 Construction. As used herein, all words in any gender shall be deemed to include the masculine, feminine or neuter, all singular words shall include the plural, and all plural words shall include the singular, as the context may require.

15.10 Amendment. This Agreement cannot be altered or amended except pursuant to an instrument in writing executed by the Parties.

15.11 Force Majeure. Performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrections, strikes, lock-outs, floods, earthquakes, fires, casualties, acts of God, epidemics, quarantine, restrictions, inability (when the responsible Party is faultless) to secure necessary labor, materials, tools, acts or failure to act of any public or governmental agency or entity, or by any other reason not the fault of the Party delayed in performing work or doing acts required under the terms of this Agreement, and in such event, the performance of such work or the doing of such act shall be excused for the period of the delay and the period of performance for any such work or the doing of any such act shall be extended for a period equivalent to the period of such delay.

15.12 Further Action. The Parties hereby agree to execute and deliver such additional documents and to take such further action as may become necessary or desirable to fully carry out the provisions and intent of this Agreement.

15.13 Expenses of Enforcement. In any proceeding to enforce, interpret, rescind or terminate this Agreement or in pursuing any remedy provided hereunder or by applicable law, the prevailing Party shall be entitled to recover from the other Party all costs and expenses, including a reasonable attorney's fee, whether such proceeding or remedy is pursued by filing suit or otherwise, and regardless of whether such costs, fees and/or expenses are incurred in connection with any bankruptcy proceeding. For purposes of hereof, the term "*prevailing Party*" shall include, without limitation, a Party who agrees to dismiss an action or proceeding upon the other's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought. The provisions set forth in this paragraph shall survive the merger of these provisions into any judgment.

15.14 Notice. Any notice required or desired to be given pursuant to this Agreement or otherwise relating to this Agreement shall be in writing, addressed to the Party at the address listed below, and shall be deemed effective: (i) upon personal delivery, or (ii) three business days following deposit in the United States Mail, postage prepaid, certified mail, return receipt requested.

To: **High Valley Transit District**
ATTN: Chair, Board of Trustees
60 N. Main Street
P.O. Box 128
Coalville, Utah 84017

Telephone:

To: **Summit County**
ATTN: County Manager
60 N. Main Street
P.O. Box 128
Coalville, Utah 84017

Telephone: (435) 336-3110

Either Party hereto may change its address for the purpose of receiving notices as herein provided by serving written notice given in the manner aforesaid.

15.15. Applicable Law; Jurisdiction and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Utah. The Parties hereby consent to the jurisdiction and venue of the state courts located in Summit County, Utah.

15.16. Counterparts. This Agreement may be executed in counterparts and delivered by electronic transmission.

16. Interlocal Cooperation Act Requirements.

In satisfaction of the requirements of the *Utah Interlocal Cooperation Act*, the Parties agree as follows:

16.1 This Agreement shall be conditioned upon the approval and execution of this Agreement by the Parties pursuant to and in accordance with the provisions of the *Utah Interlocal Cooperation Act*, as set forth in Utah Code Title 11, Chapter 13, including the adoption of resolutions of approval, but only if such resolutions of the legislative bodies of the Parties are required by the *Utah Interlocal Cooperation Act*.

16.2 In accordance with the provisions of Utah Code §11-13-202.5(3), this Agreement shall be submitted to the attorney authorized to represent each Party for review as to proper form and compliance with applicable law before this Agreement may take affect.

16.3 A duly executed copy of this Agreement shall be filed with the keeper of records of each Party, pursuant to §11-13-209 of the *Utah Interlocal Cooperation Act*.

16.4 No separate legal entity is created by the terms of this Agreement. To the extent that this Agreement requires administration other than as set forth herein, it shall be administered by the chief executive officer of each Party.

16.5 No real or personal property shall be acquired jointly by the Parties as a result of this Agreement unless this Agreement has been amended to authorize such acquisition. To the extent that a Party acquires, holds, or disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this Agreement, such Party shall do so in the same manner that it deals with other property of such Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the dates indicated by the signatures of the respective Parties.

Signed this ____ day of _____, 2021.

SUMMIT COUNTY

Glenn Wright, Chair
Summit County Council

ATTEST:

County Clerk

Reviewed and found to be in proper form and compliance with applicable law:

David L. Thomas

County Attorney

Signed this ____ day of _____, 2021.

HIGH VALLEY TRANSIT DISTRICT

Kim Carson, Chair
Board of Trustees

Reviewed and found to be in proper form and compliance with applicable law:

David L. Thomas

David L. Thomas
Chief Civil Deputy

EXHIBT A

Annexation Resolution

**RESOLUTION INITIATING PROCEEDINGS
RELATED TO THE ANNEXATION OF CERTAIN REAL
PROPERTY INTO THE BOUNDARIES OF THE
HIGH VALLEY TRANSIT DISTRICT
(Unincorporated County Annexation)**

WHEREAS, as set forth in the Utah Limited Purpose Local Government Entities – Local Districts, Title 17B, Chapter 1, et seq. Utah Code, 1953, *as amended* (the “Local District Act”), with all statutory references herein being to the Local District Act unless otherwise stated, the County Council of Summit County, Utah (the “County Council”), having created the High Valley Transit District (the “District”), as set forth in Summit County Code Title 2, Chapter 7, for the purpose of providing “a system of regional public transit by means of regular, continuing, shared-ride, and surface transportation services that are open to the general public”, with a Board of Trustees (the “Board”), who serves as the governing body of the District, and pursuant to the Local District Act has sole authority to annex property into the legal boundaries of the District; and

WHEREAS, pursuant to Utah Code §17B-1-402, the Board is authorized to annex area into the District by applying the provisions of Part 4 of the Local District Act, as the procedures governing the annexation; and

WHEREAS, Utah Code §§17B-1-403 and 404 provide that the process to annex an area into the District may be initiated by a resolution adopted by the “legislative body of each county whose unincorporated areas includes and each municipality whose boundaries include any of the area proposed to be annexed” into the District; and,

WHEREAS, Summit County (the “County”) has participated in a system of public transit for the benefit of its residents, workforce and visitors through the District and Park City Transit; and,

WHEREAS, the District and County have entered into an Interlocal Cooperation Agreement for Transit System Services, dated _____, 2021, which sets forth the terms and conditions upon which, among other things, (i) how County owned transit assets can be transferred to the District and assimilated into the District’s regional system of public transit; (ii) how the District may be financed through the imposition of appropriate sales taxes; and (iii) any special conditions, considerations and circumstances pertaining to the County and how transit services can be provided by the District to the residents, workforce, and visitors of the County, subject to the annexation of said area into the legal boundaries of the District; and

WHEREAS, the annexation of the remaining unincorporated areas of the County into the District is consistent with and furthers the District's mission and purpose of being a regional public transit system; and

WHEREAS, the County Council finds that under current circumstances, it is in the best interests of the public health, convenience and necessity of the citizens of the County to join the remaining portions of the unincorporated County into a regional transit authority through annexation and discontinue Park County Transit in order to more fully provide transit services to its residents, workforce and visitors, and, therefore, initiates the legal proceedings required to consider and approve the annexation in accordance with the requirements of Utah Code, Title 17B, Chapter 1, Part 4 of the Local District Act, including, without limitation, the notice, public hearing, protest and election procedures provided for therein.

NOW, THEREFORE, be it hereby resolved by the Summit County Council as follows:

SECTION 1. INCORPORATION OF RECITALS. The Recitals hereinabove set forth are incorporated into this Resolution and made a part hereof as though fully set forth herein.

SECTION 2. DECLARATION AND STATEMENT OF INTENT. The County Council hereby declares that the public health, convenience and necessity require the annexation of the remaining portions of the unincorporated County, as defined herein (the "Annexation Area"), into the legal boundaries of the High Valley Transit District and states its intent to annex said Annexation Area into the District subject to compliance with all procedural requirements of the Local District Act. The Annexation Area is to be annexed for the purpose of enabling the District to provide regional public transit service to the residents, workforce, and visitors of the County.

SECTION 3. INITIATION OF ANNEXATION PROCEEDINGS. Pursuant to and in conformance with the powers set forth in Utah Code §17B-1-403 and §17B-1-404, the County Council by this Resolution initiates the proceedings necessary for the annexation of the Annexation Area, as more particularly described in the form of the Notice of Annexation set forth in Section 5 herein, and as depicted on and attached hereto as EXHIBIT "A", which exhibit is incorporated herein by this reference.

SECTION 4. PUBLIC HEARING. The County Council hereby calls for a public hearing to held on the proposed annexation in conformance with the provisions of Utah Code §17B-1-409 and §17B-1-410. The public hearing held shall be set by the Board in conformance with the Local District Act.

SECTION 5. NOTICE OF THE PUBLIC HEARING.

(1) In conformance with the provisions of Utah Code §17B-1-410, the Secretary of the Board shall give written notice of the public hearing. The notice shall be given, in conformance with all applicable requirements of Utah Code §17B-1-409, (i) by mailing of said notice to each registered voter residing within the area proposed to be annexed, as determined by the voter registration list maintained by the county clerk as of a date selected by the Board for a public hearing which is at least twenty (20) but not more than sixty (60) days before the public hearing, and (ii) by posting of said notice in four (4) conspicuous locations within the area to be annexed, not fewer than ten (10) days nor more than thirty (30) days before the date of the public hearing.

(2) The Notice of Annexation shall be in substantially the following form:

THE FORM OF NOTICE APPEARS ON THE FOLLOWING PAGE

NOTICE OF ANNEXATION

NOTICE IS HEREBY GIVEN, pursuant to and in conformance with the provisions of Utah Code §§17B-1-409 and 410, that the Board of Trustees of the High Valley Transit District (the “Board”), under authority of Utah Code §17B-1-402, has initiated proceedings to annex the following real property, consisting generally of those real properties situated within the jurisdictional boundaries of unincorporated Summit County that have not previously been annexed into the High Valley Transit District (the “Annexation Area”), into the boundaries of the High Valley Transit District (the “District”). All statutory references herein are to Utah Code 1953, as amended.

The proposed Annexation Area is more particularly described in EXHIBIT “A” hereto.

In conformance with the provisions of Utah Code §17B-1-409 and §17B-1-410, the Board has called for a public hearing to held on the proposed annexation. The public hearing shall be held on the ____ day of _____, 2021, at the hour of 6:00 p.m., in the Summit County Council Chambers in the Summit County Courthouse, located at 60 N. Main Street, Coalville, Utah (Anchor Location). At the public hearing, the Board shall give full consideration to each written protest that has been filed, and hear and consider each interested person desiring to be heard concerning the proposed annexation. The Board may continue the public hearing to another date and time as it deems necessary.

The purpose of the proposed annexation is to facilitate regional public transit services being provided by the District to residents, workforce, and visitors of Summit County. Upon annexation, property taxes may be levied annually upon all taxable property within the proposed Annexation Area, sales taxes shall be imposed upon the sale of goods and services purchased within the proposed Annexation Area, and fees and charges may be imposed to pay for public transit services proposed to be provided by the Authority.

Any interested person may, pursuant to and in conformance with the provisions of Utah Code §17B-1-412, protest the proposed annexation by submitting a written protest to the Board no later than thirty (30) after the public hearing. The protest shall explain why the person is protesting the annexation.

END OF NOTICE

SECTION 6. APPROVAL OF THE ANNEXATION. If adequate protests are not timely filed, and otherwise in conformance with the provisions of Utah Code §17B-1-412 and §17B-1-414, the Board may adopt a resolution approving the annexation of the Annexation Area into the legal boundaries of the District. In conformance with the provisions of Utah Code §17B-1-412, the Board may not adopt a resolution approving the annexation if adequate protests are filed, absent an election of the registered voters of the Annexation Area.

SECTION 7. EFFECTIVE DATE. This Resolution shall take effect immediately upon its approval and adoption by the County Council.

APPROVED AND ADOPTED this ____ day of _____, 2021.

COUNTY COUNCIL
SUMMIT COUNTY, UTAH

ATTEST:

County Clerk

Chair

APPROVED AS TO FORM:

County Attorney

VOTING OF COUNTY COUNCIL:

Councilmember	_____	_____
Councilmember	_____	_____
Councilmember	_____	_____
Councilmember	_____	_____
Councilmember	_____	_____

EXHIBIT “A”
ANNEXATION AREA MAP

EXHIBIT B

Kamas Business Commons Park & Ride Transit Center

AFTER RECORDED, PLEASE RETURN TO:

David L. Thomas
Chief Civil Deputy
Summit County Attorney
P.O. Box 128
60 N. Main
Coalville, Utah 84017

Tax Identification No. KAMC-1

SPECIAL WARRANTY DEED

FOR GOOD AND VALUABLE CONSIDERATION, Summit County, a political subdivision of the State of Utah (the “**Grantor**”) having a mailing address at 60 N. Main Street, P.O. Box 128, Coalville, Utah 84017, hereby CONVEYS AND WARRANTS, against those claiming by, through and under the Grantor and not otherwise, to High Valley Transit District, a body corporate and politic of the State of Utah, (the “**Grantee**”) having a mailing address at 60 N. Main Street, P.O. Box 128, Coalville, Utah 84017, the Grantor’s right, title and interest in and to that certain tract of land located in Summit County, State of Utah, as described in **Exhibit “A”** attached hereto (the “**Subject Property**”).

SUBJECT TO all restrictions, reservations and other conditions of record as may be disclosed by a record examination of title.

TO HAVE AND TO HOLD the Subject Property, together with all tenements, hereditaments, and appurtenances thereunto belonging, unto the Grantee, and its successors and assigns, forever. The Grantor does hereby covenant to and with the Grantee that the Grantee is owner in fee simple of the Subject Property and that the Grantor will warrant and defend the same from all lawful claims whatsoever arising by, through and under the Grantor and not otherwise.

The undersigned further hereby acknowledges and affirms to the below named Notary Public that the undersigned appeared before such Notary Public and either executed this Deed before such Notary Public or acknowledged to such Notary Public that the undersigned executed this Deed for the purposes stated in it.

DATED as of the ____ day of _____, 2021.

Summit County

By: _____
Print Name: Thomas C. Fisher
Title: County Manager

STATE OF UTAH)
)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Thomas C. Fisher, the Summit County Manager in and on behalf of Summit County.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

EXHIBIT A

Real Property situated in Summit County, State of Utah described as follows:

KAMC-1, located at 231 South 175 West, Kamas, Utah 84036

EXHIBIT C

County Transit Hub

AFTER RECORDED, PLEASE RETURN TO:

David L. Thomas
Chief Civil Deputy
Summit County Attorney
P.O. Box 128
60 N. Main
Coalville, Utah 84017

Tax Identification No. PCTC-6-X

SPECIAL WARRANTY DEED

FOR GOOD AND VALUABLE CONSIDERATION, Summit County, a political subdivision of the State of Utah (the “**Grantor**”) having a mailing address at 60 N. Main Street, P.O. Box 128, Coalville, Utah 84017, hereby CONVEYS AND WARRANTS, against those claiming by, through and under the Grantor and not otherwise, to High Valley Transit District, a body corporate and politic of the State of Utah, (the “**Grantee**”) having a mailing address at 60 N. Main Street, P.O. Box 128, Coalville, Utah 84017, the Grantor’s right, title and interest in and to that certain tract of land located in Summit County, State of Utah, as described in **Exhibit “A”** attached hereto (the “**Subject Property**”).

SUBJECT TO all restrictions, reservations and other conditions of record as may be disclosed by a record examination of title.

TO HAVE AND TO HOLD the Subject Property, together with all tenements, hereditaments, and appurtenances thereunto belonging, unto the Grantee, and its successors and assigns, forever. The Grantor does hereby covenant to and with the Grantee that the Grantee is owner in fee simple of the Subject Property and that the Grantor will warrant and defend the same from all lawful claims whatsoever arising by, through and under the Grantor and not otherwise.

The undersigned further hereby acknowledges and affirms to the below named Notary Public that the undersigned appeared before such Notary Public and either executed this Deed before such Notary Public or acknowledged to such Notary Public that the undersigned executed this Deed for the purposes stated in it.

DATED as of the ____ day of _____, 2021.

Summit County

By: _____
Print Name: Thomas C. Fisher
Title: County Manager

STATE OF UTAH)
)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Thomas C. Fisher, the Summit County Manager in and on behalf of Summit County.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

EXHIBIT A

Real Property situated in Summit County, State of Utah described as follows:

PCTC-6-X, located at 6490 N. Landmark Dr., Park City, Utah 84098

EXHIBIT D

Inventory of Real Property Interests

EXHIBIT E

Assignment of Real Property Interests

Recording Requested By:

David L. Thomas
Chief Civil Deputy
Summit County Attorney
Summit County Courthouse
60 N. Main Street
Coalville, Utah 84017

Above Space for Recorder's Use Only

ASSIGNMENT OF EASEMENTS

IN CONSIDERATION of the sum of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **Summit County**, a political subdivision of the State of Utah ("*Assignor*"), hereby CONVEYS, ASSIGNS and QUIT CLAIMS to **High Valley Transit District**, a body politic and corporate of the State of Utah, and its successors-in-interest and assigns ("*Assignee*"), all right, title and interest which Assignor owns or otherwise claims in and to the following easements of record in Summit County, State of Utah, to wit:

By acceptance of this Assignment, Assignee hereby acknowledges and agrees that it shall take its rights and interests in and to the easements assigned hereunder "AS IS, WHERE IS" and without warranty of any kind, either express or implied.

The individual executing this Agreement on behalf of Grantor hereby warrants that he has the requisite authority to execute this Agreement on behalf of Assignor and that Assignor has agreed to be and is bound hereby.

WITNESS the hand of Assignor this ____ day of _____, 2021.

SUMMIT COUNTY

Thomas C. Fisher
County Manager

STATE OF UTAH)
: ss.

County of Summit)

On this _____ day of _____, 2021, personally appeared before me Thomas C. Fisher, signer of the above instrument, who duly acknowledged to me that he executed the same for and in behalf Summit County, and that said Summit County duly executed the same.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

Recording Requested By:

David L. Thomas
Chief Civil Deputy
Summit County Attorney
Summit County Courthouse
60 N. Main Street
Coalville, Utah 84017

Above Space for Recorder's Use Only

GRANT OF EASEMENT

Summit County, a political subdivision of the State of Utah ("*Grantor*"), hereby GRANTS AND CONVEYS to **High Valley Transit District**, a body corporate and politic of the State of Utah, and its successors-in-interest and assigns ("*Grantee*"), for the sum of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, a non-exclusive perpetual easement and right-of-way, and temporary construction easement, together with the right of access thereto including ingress and egress (the "*Easement*"), to be utilized by Grantee for the purpose of constructing, installing, owning, operating, inspecting, maintaining, repairing, altering, replacing, and protecting transit facilities (the "*Transit Facilities*"). The Easement shall be situated over, under, across and through the following real property of Grantor (the "*Easement Property*"), located in Summit County, State of Utah, more particularly described as follows:

SEE EXHIBIT "A"

attached hereto and incorporated herein by reference.

This Easement is granted subject to the following rights, covenants and restrictions:

1. Temporary Construction Easement. During the period that the Transit Facilities authorized hereunder are under construction, the Grantee shall have the right to utilize such portion of Grantor's property situated along and adjacent to the Easement Property as described herein as shall be reasonably necessary in connection with the initial construction and installation of the Transit Facilities. Grantee's construction and operational activities related to its use of the Easement Property as provided herein shall be performed in compliance with all applicable requirements of governmental entities having jurisdiction.

2. Access to Easement Property. It is understood and agreed that the Easement set forth herein gives, grants and conveys to Grantee, and the general public, the right of access, including ingress and egress, to and upon the Easement Property for the purposes set forth herein.

3. Reasonable Ground Restoration. Within a reasonable time following completion of construction of any improvements associated with the Transit Facilities within the Easement Property, subject to suitable weather and/or soil conditions, and excepting the Transit Facilities, Grantee, at its expense, shall reasonably restore the surface of the Easement Property or any other

property of Grantor disturbed by Grantee during construction, as near as practicable to its pre-construction condition.

4. Grantor's Continued Use of the Property. Grantor reserves the right to use and enjoy the Easement Property subject to this Easement and Grantee's rights hereunder, and so long as Grantor shall not construct any permanent buildings or other structures or improvements, or plant any trees or shrubs whose roots would contact Grantee's Transit Facilities, or otherwise do any thing or take any action which would unreasonably obstruct or interfere in any way with the Grantee's rights to the use of the Easement Property and Grantee's rights of access thereto as herein set forth.

5. Right to Remove Obstructions. Grantor expressly acknowledges and agrees that Grantee shall have the unilateral right, without notice or compensation to the Grantor, to physically remove any structure or other obstruction, and to cut and keep clear all trees, brush, native growth or foliage, which are now or may hereafter be situated within the Easement Property that may, in the Grantee's sole opinion, endanger, hinder or conflict with its rights hereunder. Grantee shall have no liability for any damage to any improvements made by Grantor to the extent such damage arises out of or in connection with Grantee's use of the Easement Property consistent with its rights hereunder.

6. No Representations or Warranties. Grantee is acquiring the Easement as is, where is, with all faults and defects, and GRANTOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF FITNESS FOR A PARTICULAR PUPOSE OR OTHERWISE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED. Grantor makes no representations or warranties regarding the environmental condition of the Easement Property or the Easement.

7. Covenant Running with the Land. The Easement and related rights granted hereunder create an equitable servitude on the Easement Property and constitute a covenant running with the land which shall be binding upon Grantor and the Grantee and their respective legal representatives, successors-in-interest and assigns.

8. Amendment. This Easement, and all rights, covenants and restrictions set forth herein may not be terminated, extended, modified or amended without the consent of Grantor and Grantee, and any such termination, extension, modification or amendment shall be effective only upon recordation in the official records of Summit County, Utah, of a written document effecting the same, duly executed and acknowledged by Grantor and Grantee.

9. Warranty of Authority. The individual executing this Agreement on behalf of Grantor hereby warrants that he has the requisite authority to execute this Agreement on behalf of the Grantor and that the Grantor has agreed to be and is bound hereby.

10. Acknowledgement of Agreement by Grantee. By accepting delivery of and recordation of this Grant of Easement, Grantee acknowledges and agrees with the terms and provisions hereof.

WITNESS the hand of Grantor this ____ day of _____, 2021.

Summit County

By: _____
Name: Thomas C. Fisher
Its: County Manager

STATE OF UTAH)
 : ss.
County of Summit)

On this ____ day of _____, 2021, personally appeared before me Thomas C. Fisher, signer of the above instrument, who duly acknowledged to me that he executed the same for and in behalf Summit County, and that said Summit County duly executed the same.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

EXHIBIT "A"
Legal Description of Easement Property

Exhibit F

Assignment and Assumption of SLC-SC Transit Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT
Between
HIGH VALLEY TRANSIT DISTRICT
And
SUMMIT COUNTY

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("*Agreement*") is made and entered into this ___ day of _____, 2021 (the "*Effective Date*"), between SUMMIT COUNTY, a political subdivision of the State of Utah (the "*County*") and HIGH VALLEY TRANSIT DISTRICT, a body corporate and politic of the State of Utah (the "*District*"). The County and District are collectively referred to herein as the "*Parties*."

WITNESSETH:

WHEREAS, the County has entered into a Bus Service Agreement between the Utah Transit Authority ("*UTA*"), Park City Municipal Corporation, and the County, dated August 24, 2011, whereby those parties agreed to participate jointly in operating transit service in and around Salt Lake County and Summit County, and the same having been amended by that certain Addendum No. 1, Service and Alignment Change 2017, dated _____, 2017 (together, the "*SLC-SC Transit Agreement*"); and,

WHEREAS, the purpose of this agreement is for the County to assign and the Authority to assume such SLC-SC Transit Agreement;

NOW, THEREFORE, the Parties mutually agree as follows:

For value received, Summit County does hereby assign, transfer, and set over to the High Valley Transit District all rights, title, interest, duties, and obligations in and to that certain SLC-SC Transit Agreement, subject to all terms and conditions thereof, a copy of which is attached thereto as Exhibit A and made part hereof, and the District hereby accepts and assumes the foregoing instrument, subject to all the terms and conditions thereof.

The County shall indemnify, reimburse, defend and hold the District harmless from any and all liability arising out of the SLC-SC Transit Agreement until the Effective Date.

The District shall indemnify, reimburse, defend and hold the County harmless from any and all liability arising out of the SLC-SC Transit Agreement on and after the Effective Date.

IN WITNESS WHEREOF, the Parties caused this Agreement to be executed as by law.

SUMMIT COUNTY

By: _____
Thomas C. Fisher
County Manager

HIGH VALLEY TRANSIT DISTRICT

By: _____
Kim Carson, Chair
Board of Trustees

EXHIBIT A

SLC – SC Transit Agreement

EXHIBIT G

Assignment and Assumption of Canyons Transit Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT
Between
HIGH VALLEY TRANSIT DISTRICT
And
SUMMIT COUNTY

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("*Agreement*") is made and entered into this ___ day of _____, 2021 (the "*Effective Date*"), between SUMMIT COUNTY, a political subdivision of the State of Utah (the "*County*") and HIGH VALLEY TRANSIT DISTRICT, a body corporate and politic of the State of Utah (the "*District*"). The County and District are collectively referred to herein as the "*Parties*."

WITNESSETH:

WHEREAS, the County entered into that certain Canyons Transit Service Agreement between Summit County, the Canyons Resort Village Association, Inc., and VR CPC Holdings, Inc., dated June 29, 2015 (the "*Canyons Transit Agreement*"); and,

WHEREAS, the purpose of this agreement is for the County to assign and the District to assume such Canyons Transit Agreement;

NOW, THEREFORE, the Parties mutually agree as follows:

For value received, Summit County does hereby assign, transfer, and set over to the High Valley Public Transit District all rights, title, interest, duties, and obligations in and to that certain Canyons Transit Agreement, subject to all terms and conditions thereof, a copy of which is attached thereto as Exhibit A and made part hereof, and the District hereby accepts and assumes the foregoing instrument, subject to all the terms and conditions thereof.

The County shall indemnify, reimburse, defend and hold the District harmless from any and all liability arising out of the Canyons Transit Agreement until the Effective Date.

The District shall indemnify, reimburse, defend and hold the County harmless from any and all liability arising out of the Canyons Transit Agreement on and after the Effective Date.

IN WITNESS WHEREOF, the Parties caused this Agreement to be executed as by law.

SUMMIT COUNTY

By: _____
Thomas C. Fisher
County Manager

HIGH VALLEY TRANSIT DISTRICT

By: _____
Kim Carson, Chair
Board of Trustees

EXHIBIT A

Canyons Transit Agreement

EXHIBIT H

Assignment and Assumption of Kimball Circulator Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT
Between
HIGH VALLEY TRANSIT DISTRICT
And
SUMMIT COUNTY

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("*Agreement*") is made and entered into this ___ day of _____, 2021 (the "*Effective Date*"), between SUMMIT COUNTY, a political subdivision of the State of Utah (the "*County*") and HIGH VALLEY TRANSIT DISTRICT, a body corporate and politic of the State of Utah (the "*District*"). The County and District are collectively referred to herein as the "*Parties*."

WITNESSETH:

WHEREAS, the County entered into that certain Service Provider/Professional Services Agreement, Kimball Circulator, LLC, dated June 1, 2017, and its First Amendment, dated September 19, 2019 (the "*Kimball Circulator Agreement*"); and,

WHEREAS, the purpose of this agreement is for the County to assign and the District to assume such Kimball Circulator Agreement;

NOW, THEREFORE, the Parties mutually agree as follows:

For value received, Summit County does hereby assign, transfer, and set over to the High Valley Transit District all rights, title, interest, duties, and obligations in and to that certain Kimball Circulator Agreement, subject to all terms and conditions thereof, a copy of which is attached thereto as Exhibit A and made part hereof, and the District hereby accepts and assumes the foregoing instrument, subject to all the terms and conditions thereof.

The County shall indemnify, reimburse, defend and hold the District harmless from any and all liability arising out of the Kimball Circulator Agreement until the Effective Date.

The District shall indemnify, reimburse, defend and hold the County harmless from any and all liability arising out of the Kimball Circulator Agreement on and after the Effective Date.

IN WITNESS WHEREOF, the Parties caused this Agreement to be executed as by law.

SUMMIT COUNTY

By: _____
Thomas C. Fisher
County Manager

HIGH VALLEY TRANSIT DISTRICT

By: _____
Kim Carson, Chair
Board of Trustees

EXHIBIT A

Kimball Circulator Agreement

EXHIBIT I

Assignment and Assumption of VIA Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

Between

HIGH VALLEY TRANSIT DISTRICT

And

SUMMIT COUNTY

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("*Agreement*") is made and entered into this ___ day of _____, 2021 (the "*Effective Date*"), between SUMMIT COUNTY, a political subdivision of the State of Utah (the "*County*") and HIGH VALLEY TRANSIT DISTRICT, a body corporate and politic of the State of Utah (the "*District*"). The County and District are collectively referred to herein as the "*Parties*."

WITNESSETH:

WHEREAS, the County entered into that certain Master Services Agreement by and between VIA Mobility LLC and Summit County, dated September 3, 2020, its First Amendment, dated April __, 2021, the TAAS Service Order for On-Demand Transit Services, dated April __, 2021, the TAAS Service Order for Fixed Route Transit Services, dated April __, 2021, and the Via Solution Terms of Use Acknowledgement, dated April __, 2021 (together, the "*VIA Agreement*"); and,

WHEREAS, the purpose of this agreement is for the County to assign and the District to assume such VIA Agreement;

NOW, THEREFORE, the Parties mutually agree as follows:

For value received, Summit County does hereby assign, transfer, and set over to the High Valley Transit District all rights, title, interest, duties, and obligations in and to that certain VIA Agreement, subject to all terms and conditions thereof, a copy of which is attached thereto as Exhibit A and made part hereof, and the District hereby accepts and assumes the foregoing instrument, subject to all the terms and conditions thereof.

The County shall indemnify, reimburse, defend and hold the District harmless from any and all liability arising out of the VIA Agreement until the Effective Date.

The District shall indemnify, reimburse, defend and hold the County harmless from any and all liability arising out of the VIA Agreement on and after the Effective Date.

IN WITNESS WHEREOF, the Parties caused this Agreement to be executed as by law.

SUMMIT COUNTY

By: _____
Thomas C. Fisher
County Manager

HIGH VALLEY TRANSIT DISTRICT

By: _____
Kim Carson, Chair
Board of Trustees

EXHIBIT A

VIA Agreement

EXHIBIT J

Assignments of Contracts

The Whileaway Ranch land use appeal documents can be found here:

<https://summitcounty.org/DocumentCenter/View/13160/Whileaway-Ranch-Land-Use-Appeal-Record-PDF>

March 22, 2021

Via – countycouncil@summitcounty.org

Summit County Council
60 N. Main Street
P.O. Box 128
Coalville, Utah 84107

Re: **ON REMAND**
Appeal of Conditional Use Permit Denial
Whileaway Ranch, Silver Creek Subdivision

Dear City Council:

As you are aware, this law firm represents Valerie Geist in connection with the above-referenced project located at 7664 North Whileaway Road (the "Property").

On February, 11, 2021, the Summit County Council met (as an appeal body) to hear my client's appeal of the decision of the Snyderville Basin Planning Commission (the "Commission") to deny my client's application for a conditional use permit ("CUP"). The Council made the decision to remand the matter back to the Planning Commission for review of three issues: overuse of metal, compliance with architectural requirements, and review of "human scale."

That remand has occurred, and at its meeting held on March 9, 2021, the Commission again denied Ms. Geist's conditional use permit application. The official CUP Denial Letter was dated March 11, 2021, and made the following findings:

1. The architectural requirements comply with 10-4-19;
2. The building materials have been changed to comply and is no longer a prefabricated metal building;
3. The Commission feels the human scale element does not comply when looking through the lens of 10-3-5b Standard 5.

I have prepared this letter in follow-up to my client's appeal, based upon the actions on remand of the Commission. For the reasons stated below, we request that this body overturn the decision of the Planning Commission and grant the requested Conditional Use Permit to Whileaway Ranch.

Durham Jones & Pinegar ► LEAD Advogados ► Rattagan Macchiavello Arocena ► Jiménez de Aréchaga Viana & Brause ► Lee International ► Kensington Swan ► Bingham Greenebaum ► Cohen & Grigsby ► Sayarh & Menjra ► Larrain Rencoret ► For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

Background Facts

If you will recall, this appeal involves Valerie Geist's application for a conditional use permit (the "Application") to build a commercial riding arena and stables on her property. Valerie Geist has been running her small equestrian business in Silver Creek for six years, caring for and training dressage horses. The facility she was renting lacked the appropriate permits, so she decided to purchase her own property and secure her own permit. Ms. Geist chose the Property because the county code allows equestrian uses and facilities in that area. She made application for her CUP, was denied, and this appeal resulted.

On appeal, this Council remanded the Application to the Commission with instructions to make findings on: (1) the human scale requirement of 10-3-5; (2) the architectural provisions of 10-4-19; (3) the prohibition of pre-fabricated metal buildings for commercial use.

In preparation for the remand, the Commission Staff issued a report, whereby it recommended that the Commission approve the Application for meeting all three considerations. On remand, the Planning Commission held that #2 and #3 were in compliance with the code. However, the Commission denied the application for failing to comply with *human scale*. As to human scale specifically, the staff report included in-depth analysis by Summit County's own professional architect, Peter Barnes. Mr. Barnes ultimately concluded that the project meets the requirements for human scale. Moreover, Mr. Barnes testified at length in the remand hearing as to the industry meaning of human scale, and that this particular structure meets that definition. Nevertheless, in its final decision, the Commission found that it "feels the human scale element does not comply when looking through the lens of 10-3-5b Standard 5"—despite a professional architect's conclusion to the contrary. Thus the Commission denied the CUP.

Argument

The Commission's denial of the Application should be reversed for two reasons. First, the denial of the Application is contrary to the Utah Conditional Use Permit statute, which permits denial only when conditions *cannot be* imposed to mitigate reasonably anticipated detrimental effects of a proposed use. Second, the Commission incorrectly concluded that the project does not meet human scale requirements under 10-3-5b. Each provides an independent basis for invalidating the Commission's decision.

Utah law is clear that "[a] land use authority *shall approve* a conditional use if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use" UTAH CODE § 10-9a-507(2)(a)(i) (emphasis added). Further, the land use authority may only reject a conditional use "[i]f the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards" *Id.* at § 507(2)(c). In short, the Commission cannot legally deny Ms. Geist's application unless there is no possible way for her to mitigate their concerns regarding human scale.

Despite this, the Commission denied Ms. Geist's Application for failing to meet human scale, but without any findings as to whether or not potential conditions could mitigate or resolve their concerns. The requirement to impose conditions, or otherwise find that none exist, is in place for precisely these types of cases. Without requiring the Commission to specify the exact issue with a proposed use, and whether or not the issue can be resolved, the Commission is free to arbitrarily reject any application on the basis of a highly subjective and undefined term. The Council should overturn the Commission's decision on this basis alone.

The Council should also overturn the Commission's decision because the project does in fact comply with *human scale*. The Commission's denial states that the human scale element was not complied with only "when looking through the lens of 10-3-5b Standard 5." This Development Code section states that a proposed use must be "compatible with the existing neighborhood character and with the character and

purpose provision of the applicable zoning district, and . . . not adversely affect surrounding land uses.” The requirements of Section 10-3-5b(5) are entirely separate and distinct from the “human scale” requirement, which, as Mr. Barnes notes, relates to “how we as people perceive the relative sizes of the structures” *Staff Report* at 9. By viewing human scale “through the lens” of 10-3-5b(5), the Commission inappropriately denied the Application based on a requirement that was not at issue on remand.

At the meeting, the Commission’s discussion largely equated *human scale* to *size*, and the concern with human scale mostly was a result of the feeling that the structure was too large. However, the County ordinances contain specific and separate limitations on the size of structures in that area. According to the staff report, the proposed building at Whileaway Ranch is significantly smaller than the maximum allowed. *Staff Report* at 9. The result of the Commissions’ decision, then is that a structure that objectively complies with the County’s size ordinance, is denied because it is subjectively too large. The state law does not allow this, and the decision should be overturned on that basis.

In light of the fact that its own staff report concluded the project meets human scale, based on Mr. Barnes’ analysis, the Commission did not correctly apply the human scale requirement. Moreover, the Commission did not follow the state law with regard to conditional use permits. For the foregoing reasons, we request that the Council overturn the Commission’s denial, and grant the application for conditional use permit. We appreciate your consideration in this matter.

Sincerely,
Dentons Durham Jones Pinegar



Brent N. Bateman

cc: Valerie Geist
Dave Thomas
Jami Brackin
Pat Putt

BEFORE THE SUMMIT COUNTY COUNCIL

**In the matter of
Whileaway Ranch CUP appeal**

**RESPONSE of the
SNYDERVILLE BASIN PLANNING
COMMISSION on REMAND**

INTRODUCTION AND PROCEDURAL HISTORY

Whileaway Ranch (“Appellant”) applied for a Conditional Use Permit (“CUP”) to construct commercial horse boarding stables and riding arena on property located in Silver Creek. In order to approve a CUP, the Snyderville Basin Planning Commission (“Planning Commission”) must find that the application meets all of the criteria of the Snyderville Basin Development Code (“Code”) as found in Summit County Code (“SCC”).

On November 10, 2020, the Planning Commission determined that the application did not comply with the Code and as a result, denied the CUP. The Appellant appealed that decision to the Summit County Council (“Council”) who considered the matter on February 10, 2021.

After hearing from the parties, the Council remanded the matter back to the Planning Commission to consider and make more detailed findings in three areas: (1) whether or not the application meets the architectural guidelines and if not, which specific provisions are not being met; (2) whether or not the application meets the “human scale” element required of all CUPs in SCC §10-3-5(C)(7); and (3) whether or not the application violates the provisions of SCC §10-4-19(A)(10) which prohibits the use of pre-fabricated metal structures.

The Appellant requested and was granted the ability to amend the application on remand, in order to fully comply with the requirements of the Development Code.

On March 9, 2021, the Planning Commission considered the application on remand and in answer to the questions presented by the Council on remand found that the application as now amended by the Appellant, did meet the architectural guidelines, and did not violate the prohibition on metal structures. However, the Planning Commission determined that the application still did not meet the requirements of SCC §10-3-5 as the scale of the riding arena and stables were not at a human scale consistent with adjacent development and appropriate to residential uses in the rural residential zoning district.

APPLICABLE LAW

Standard of Review

In this appeal, the Summit County Council is acting in a quasi-judicial manner¹ with the guidance of the Summit County Administrative Appeals Procedure.²

It is the Appellant's obligation to allege and prove that the land use authority (in this case the Planning Commission) erred in its land use decision.³

The Council's responsibility is to serve as the final decision maker regarding the interpretation and/or application of land use regulations.⁴ In making that determination, the scope of review for the Council is bifurcated between factual matters (findings of fact) and the interpretation and application of the regulations (conclusions of law).⁵

For factual matters, the review is a de novo review without deference to the land use authority's determination of the facts.

The scope of review for the legal conclusions of the decision itself, however, is one of correctness. To determine if the decision was correct, the Council must make a two-pronged determination. The first is whether the land use authority erred in **interpreting** the plain meaning of the regulatory language, and the second is whether the land use authority erred in **applying** the plain meaning of the regulatory language.⁶ The Utah Code mandates that the Council interpret and apply the regulatory language to favor the land use application unless the regulation plainly restricts the application.⁷

There is no dispute in this matter regarding the facts or the application as presented. The question before the Council on appeal is whether: (1) given the facts, were the provisions of §10-3-5(C)(7) interpreted correctly by the Planning Commission, and if so (2) given the facts, was the regulation applied correctly.

Statutory Construction

Under Utah law, statutes (including local land use regulations) should be interpreted to give effect to the intent of the legislative body making the regulation. To do so, you look first to the plain language of the regulation(s) and only if there is ambiguity or conflict in the plain language should legislative histories and policy considerations be considered in order to give effect to the intent of the legislative body.

¹ Utah Code Ann. §17-27a-701 and §17-27a-707(5).

² Adopted March 2018.

³ Utah Code Ann. §17-27a-703 and §17-27a-705.

⁴ Utah Code Ann §17-27a-701

⁵ Utah Code Ann §17-27a-707

⁶ Id.

⁷ Id.

Under commonly accepted norms of statutory interpretation, courts attempt to give effect to the legislative intent of statutes as evidenced by the statute's plain language.⁸ This is because courts have determined that "[t]he best evidence of the [legislative] intent is the statute's plain language."⁹ In doing so, courts "presume that the legislature used each word advisedly and give effect to each term according to its ordinary and accepted meaning."¹⁰ Courts "presume that the expression of one [term] should be interpreted as the exclusion of another."¹¹ Further, courts "interpret statutes to give meaning to all parts, and avoid rendering portions of the statute superfluous."¹² "To do so, [courts] read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters."¹³

In Nelson v. Salt Lake City, 905 P.2d 872, 875 (Utah 1995) (also quoted in Olsen v. Eagle Mountain City 2011 UT 10, ¶22) the Utah Supreme Court stated: "Only when we find ambiguity in the statute's plain language need we seek guidance from the legislative history and relevant policy considerations."¹⁴

Relevant Provisions of the Code

The Snyderville Basin Development Code (Code) sets forth the requirements for a CUP in [SCC §10-3-5](#). Subsection C.7 of that Section requires that buildings and structures which are part of a CUP application "... provide a human scale consistent with adjacent development and appropriate residential uses..." Subsection B.5 provides that "[n]o conditional use permit shall be approved unless the applicant demonstrates that: . . . 5. The use is compatible with the existing neighborhood character and with the character and purpose of the applicable zoning district, and will not adversely affect surrounding land uses."

ISSUE

1. Whether the Commission erred by denying the CUP based on their finding that the application did not meet the requirements of the Snyderville Basin Development Code as found in [SCC §10-3-5](#).

ADDITIONAL BACKGROUND

The applicant seeks to build both a home and commercial horse stables and riding arena on her parcel (tax ID number SL-D-206) located in the Silver Creek subdivision of the Snyderville Basin. Construction of the home requires only a building permit for which the Applicant has

⁸ Summit Water Distribution Company v. Summit County, 2005 UT 73, ¶ 17, 123 P.3d 437; Jensen v. Intermountain Health Care, Inc., 679 P.2d 903, 906 (Utah 1984).

⁹ Marion Energy, Inc. v. KFJ Ranch Partnership, 2011, UT 50, ¶ 14, 267 P.3d 863.

¹⁰ C.T. ex. Rel. Taylor v. Johnson, 977 P.2d 479, 481 (Utah 1999).

¹¹ Marion Energy, Inc., 2011 UT 50, ¶ 14.

¹² State v. Watkins, 2013 UT 28, ¶ 23, 309 P.3d 209.

¹³ State v. Barrett, 2005 UT 88, pp. 29, 127 P.3d 682 (Utah 2005).

¹⁴ (Quoting World Peace, 879 P.2d at 259); see also Schurtz v. BMW of N. Am., Inc., 814 P.2d 1108, 1112 (Utah 1991), ("We first look to the statute's plain language. Only if we find some ambiguity need we look further.").

applied, and for which there are no issues. However, because the riding arena and stables are over 10,000 square feet and intended for commercial use, a CUP is required and undisputed. The parcel is 2.65 acres.

Both the original and amended application indicated that the commercial building (riding arena and stables) would be approximately 14,130 square feet and located toward the front of the parcel. Although originally proposed as a “custom engineered Nucor steel building” ([R168](#)) on remand, the application was amended so that it is no longer a metal building ([R. 971, 974](#)), but would be wood and stucco with rock elements.

On October 27, 2020, the Planning Commission met to consider the application and hold a public hearing. ([R615-632](#)). No additional public hearing was scheduled on remand as the application remained substantially the same, with the same sized building, location, and uses. As such, the comments taken at the public hearing in October would still be applicable and were considered by the Planning Commission.

The CUP was denied, appealed and on February 10, 2021, the Summit County Council remanded to the Planning Commission for further review and input. That meeting took place on March 9, 2021. ([R. 849-850](#))

During deliberations of the application at the March 9th meeting, the Planning Commission specifically addressed the architectural elements with five of the six Commissioners in attendance agreeing that the application as now modified complied. ([R.979](#)) The Planning Commission further found that the Code provisions prohibiting pre-fabricated metal structures were no longer applicable under the amended application and that the application did not violate that provision ([R. 980](#)).

As for the remaining question on remand, a discussion was held regarding what “human scale” means, with evidence presented by staff member Peter Barnes, explaining why staff believed the application met the provisions of [SCC §10-3-5\(C\)\(7\)](#) ([R. 979-980](#)). Further discussion regarding both subsection C.7 as viewed in conjunction with subsection B.5 ensued with the Planning Commission making a final determination that the application did not meet the provisions of [SCC §10-3-5](#). Two of the six Planning Commission members believed that the application complied with those provisions. Four of the six believed it was not compliant with [SCC §10-3-5\(C\)\(7\)](#) when viewed in conjunction with subsection B.5. As a result, a motion to deny the CUP was passed by the Planning Commission. ([R.980 and 981](#))

On March 11, 2021, a Letter memorializing that decision was issued from the Planning Department.¹⁵ Contained within that letter was a finding of fact that the “Commission feels the human scale element does not comply when looking through the lens of [10-3-5b Standard 5](#).”

The appellant submitted a supplemental letter in support of their appeal to the Council on March 22, 2021.

¹⁵ See attached Exhibit A

The official [Record](#) on appeal was updated on March 31, 2021 with the addition of the March 9th Agenda, Staff Report, and Draft meeting minutes.

ARGUMENT

1. THE COMMISSION DID NOT ERR BY DENYING THE CUP BASED ON THEIR FINDING THAT THE APPLICATION DID NOT MEET THE REQUIREMENTS OF THE SNYDERVILLE BASIN DEVELOPMENT CODE AS FOUND IN SUMMIT COUNTY CODE §10-3-5.

In her supplemental letter, Appellant refers to Utah Code §10-9a-507 as the statutory authority regarding conditional uses. That provision is applicable to municipalities, not counties. The County provision is found in [Utah Code §17-27a-506](#), but the contents are essentially identical.

The Appellant asserts that the only way to deny a CUP application is if the “reasonably anticipated detrimental effects of the proposed use” cannot be mitigated with reasonable conditions. That assertion is not entirely correct. A CUP may be denied if that is the case, but it may also be denied if the application does not meet and comply with all of the standards and provisions of the applicable Code. The statute sets forth a two-pronged review of a CUP. The first step is to determine if the application complies with the Code.¹⁶ Only once an application has been deemed to comply with the Code, does the next step or analysis of the impacts, and possible conditions to mitigate those “reasonably anticipated detrimental effects” occur.¹⁷

The Appellant again suggests in their appeal, that the use of conditions in step two (i.e. those to mitigate the detrimental impacts), be applied to the analysis of step one (does the application comply with the Code), which is contrary to the statute. The application must comply with the Code first. Then and only then, is an analysis made of the detrimental impacts and conditions formulated to mitigate those impacts.

As directed by the Council, the Planning Commission discussed the provisions of [SCC §10-3-5\(C\)\(7\)](#) which requires that the buildings and structures of a CUP have a human scale consistent with adjacent development and appropriate residential uses. Staff provided information regarding what is “human scale” both in the staff report and verbally at the meeting. ([R.859-860 and 972-973](#)). The Commission considered the surrounding properties and the comparative size of other barns and out buildings. They also considered the size of the lot compared to building coverage on the lot. Other concerns expressed included whether the primary home structure should be built prior to the accessory buildings, and whether the structure was human scaled or equestrian scaled.

¹⁶ Utah Code [§17-27a-506\(1\)\(a\)](#)

¹⁷ Utah Code [§17-27a-506\(2\)](#)

The subject application is a 14,130 square foot building ([R7](#)) which would be accessory to a single-family home of approximately 3517 square feet ([R162](#)) located on a parcel that is 2.65 acres.

According to the Summit County [GIS](#) system and tax records, the average parcel size for the surrounding parcels (parcels 201 to 207, and 219 to 226) is 2.4 acres. The average home size is 2375 square feet and for those with accessory buildings or barns, the average size of the accessory building is 1454 square feet. A finding that the scale of the accessory building which is almost 10 times larger than the average accessory building, exceeds the “human scale consistent with adjacent development and residential uses”, is supported by the facts and evidence in the record. As a result, the motion to deny the CUP because the application does not comply with the provisions of [SCC §10-3-5](#) was appropriate and not in error.

CONCLUSION

The Planning Commission reviewed the present application, evidence in the record and determined that the application did not comply with the provisions of the Code. Pursuant to the provisions of [Utah Code §17-27a-506](#), the failure to meet the provisions of the Code is a basis to deny a CUP.

Although the applicant argues that the failure to meet the Code can be cured with conditions added to an approval of the CUP, Utah law is clear that those conditions are meant to address the detrimental effects of the application, such as a manure and waste plan or operating hours, etc. Addition a condition that the application should meet the Code and be of a human scale would be contrary to the purpose of that provision.

In reviewing the actions of the Planning Commission, the facts and evidence presented support the finding that the scale of the building was sized more to an equestrian rather than human scale. The Planning Commission’s decision was correct and not in error.

Respectfully submitted this 8th day of April 2021.

Summit County Attorney

Jami R. Brackin, Deputy
*Attorney for the Snyderville Basin
Planning Commission*

EXHIBIT A



March 11, 2021

Val Geist
4420 N. East Sawmill Rod
Park City, Utah 84098

via email valgeist@yahoo.com

RE: The Whileaway Ranch Conditional Use Permit, located on parcel SL-D-206 containing 2.59 Acres, 7664 North Whileaway Road, Park City, Summit County, Utah, File #2020-137

Dear Ms. Geist,

This letter is to confirm action taken by the Snyderville Basin Planning Commission "SBPC", during their regular meeting on Tuesday, March 9, 2021. The SBPC, with a split decision of 4-2, voted to deny the remanded application for the Whileaway Ranch Accessory Building over 10,000 square feet and Commercial Horse Boarding Conditional Use Permits based on the following:

Findings of Fact:

1. The architectural requirements comply with 10-4-19;
2. The building materials have been changed to comply and is no longer a prefabricated metal building;
3. The Commission feels the human scale element does not comply when looking through the lens of 10-3-5b Standard 5.

This decision will be reviewed before the Summit County Council when they consider final action of the appeal originally filed on November 23, 2021.

Please feel free to contact me by phone at (435) 336-3139; or by email at trobinson@summitcounty.org if you have any questions regarding this decision.

Sincerely,

A handwritten signature in cursive script that reads 'Tiffanie'.

Tiffanie Northrup-Robinson
Senior County Planner

Cc: Brent Bateman via email bbateman@djplaw.com
Jami Brackin via email jbrackin@summitcounty.org

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April 2021, a true and correct copy of the foregoing was delivered via electronic mail (email) to the following.

Appellant

Valerie Geist: valgeist@yahoo.com

Applicant

Brent N. Bateman: brent.bateman@dentons.com

Valerie F. Geist: valgeist@yahoo.com

County Council

Roger Armstrong: rarmstrong@summitcounty.org

Chris Robinson: cfr Robinson@summitcounty.org

Doug Clyde: dclyde@summitcounty.org

Glenn Wright: gwright@summitcounty.org

Malena Stevens: mstevens@summitcounty.org

Snyderville Basin Planning Commission

Joel Fine: jfine@summitcounty.org

Crystal Simons: csimons@summitcounty.org

John Kucera: jkucera@summitcounty.org

Ryan Dickey: rdickey@summitcounty.org

Thomas Cook: tc Cook@summitcounty.org

Bruce Carmichael: bcarmichael@summitcounty.org

Chris Conabee: cconabee@summitcounty.org

County Attorney's Office

Dave Thomas: dthomas@summitcounty.org

Maren Geary: mgeary@summitcounty.org

Margaret Olson: Molson@summitcounty.org

Ryan Stack: rstack@summitcounty.org

Community Development Department

Pat Putt: pputt@summitcounty.org

Peter Barnes: pbarnes@summitcounty.org

Tiffanie Robinson: trobinson@summitcounty.org

Jami R. Brackin

Public Comment Instructions

4/14/2021

If you would like to make public comments on any item not on the agenda, please email publiccomments@summitcounty.org by 12:00 p.m. on Wednesday, April 14th. Your comments will be read to the Council and made part of the meeting record.

If you are wishing to interact with Council during Public Input at 6:00 p.m., please:

1. Go to <https://zoom.us/j/772302472>
2. Enter meeting ID: 772-302-2472
3. Type in your full name, so you are identified correctly.
4. Set up your audio preferences.
5. You will be muted upon entering the meeting.
6. If you would like to comment, press the “Raise Hand” button at the bottom of the chat window.
7. When it is your turn to comment, the moderator will unmute your microphone. You will then be muted again after you are done speaking.