

# CITY OF STEAMBOAT SPRINGS

## AGENDA

### REGULAR MEETING NO. 2011-15 TUESDAY, SEPTEMBER 6, 2011

5:05 P.M.

**MEETING LOCATION:** Citizens' Meeting Room, Centennial Hall;  
124 10<sup>th</sup> Street, Steamboat Springs, CO

**MEETING PROCEDURE:** Comments from the Public are welcome at two different times during the course of the meeting: 1) Comments no longer than three (3) minutes on items **not** scheduled on the Agenda will be heard under Public Comment; and 2) Comments no longer than three (3) minutes on all scheduled public hearing items will be heard **following** the presentation by Staff or the Petitioner. Please wait until you are recognized by the Council President. With the exception of subjects brought up during Public Comment, on which no action will be taken or a decision made, the City Council may take action on, and may make a decision regarding, ANY item referred to in this agenda, including, without limitation, any item referenced for "review", "update", "report", or "discussion". It is City Council's goal to adjourn all meetings by 10:00 p.m.

A City Council meeting packet is available for public review in the lobby of City Hall, 137 10<sup>th</sup> Street, Steamboat Springs, CO, or on our website at [http://steamboatsprings.net/city\\_council/council\\_meetings](http://steamboatsprings.net/city_council/council_meetings). The e-packet is typically available by 1pm on the Friday before the meeting.

**PUBLIC COMMENT: Public Comment will be provided at 7 p.m., or at the end of the meeting, (whichever comes first).** CITY COUNCIL WILL MAKE NO DECISION NOR TAKE ACTION, EXCEPT TO DIRECT THE CITY MANAGER. **THOSE ADDRESSING CITY COUNCIL ARE REQUESTED TO IDENTIFY THEMSELVES BY NAME AND ADDRESS. ALL COMMENTS SHALL NOT EXCEED THREE MINUTES.**

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#### LIQUOR LICENSE AUTHORITY MEETING 5:00PM.

##### A. ROLL CALL (5:05PM)

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**B. PROCLAMATIONS:**

- 1. PROCLAMATION:** A proclamation recognizing the foresight of our community members who proposed Steamboat Springs as a start and finish stage on the USA Pro Challenge route, the work of the USA Pro Challenge Steamboat Stage Local Organizing Committee and Jim Schneider for his leadership as the Chair of the Local Organizing Committee. (Hinsvark)
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**C. COMMUNITY REPORTS/CITY COUNCIL DISCUSSION TOPICS:**

- 2. Pam Caskie, the Executive Director at Northwest Colorado Council of Governments.** (10 Minutes)
  - 3. Update on the health of the forest and how the forest impacts the lifestyle economy.** (Jamie Kingsbury, District Ranger for the Routt and Bears' Ears National Forests/Bentley) (10 Minutes)
  - 4. Yampa Valley Recycles: Let's talk plastic.** (Catherine Carson) (10 minutes)
  - 5. Finance Mid-Year Report.** (Hinsvark)
  - 6. Joint Meeting with the Chamber Board.** (45 minutes)
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**D. CONSENT CALENDAR: MOTIONS, RESOLUTIONS AND ORDINANCES FIRST READINGS**

ITEMS ON THE CONSENT CALENDAR GENERALLY REQUIRE LITTLE COUNCIL DELIBERATION AND MAY BE APPROVED WITH A SINGLE MOTION. ANY MEMBER OF THE COUNCIL OR THE PUBLIC MAY WITHDRAW ANY ITEM FROM THE CONSENT CALENDAR FOR FURTHER DISCUSSION AT ANY TIME PRIOR TO APPROVAL.

**LEGISLATION**

- 7. RESOLUTION:** A resolution recommending inclusion of the Steamboat (Hillcrest) Apartments, located at 302 11<sup>th</sup> Street, in the National Register of Historic Places. (Casale)



8. **RESOLUTION:** A resolution expressing intent to provide matching funds and assurances for Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) grant funds to design and construct a concrete sidewalk around Casey's Pond in Steamboat Springs, Colorado. (Hruby/Small)
9. **RESOLUTION:** A resolution ratifying the revised Intergovernmental Agreement between the City of Steamboat Springs and Routt County providing for the conduct and finance of a Regular Municipal Election to be held on Tuesday, November 1, 2011, as a coordinated election; and acknowledging continued municipal participation as such. (Franklin)
10. **FIRST READING OF ORDINANCE:** An ordinance creating a new Article VII in Chapter 12 of the Steamboat Springs Revised Municipal Code for the purpose of licensing the business of Pawn Broking; providing for severability; establishing an effective date; and setting a hearing date. (Lettunich)
11. **FIRST READING OF ORDINANCE:** An ordinance vacating a 20 foot wide utility easement located along the North lot line of lot 15 and the South lot line of lot 16 of Boulder Ridge Subdivision, and providing an effective date and setting a hearing date. (Lorson)

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**E. PUBLIC HEARING: ORDINANCE SECOND READINGS**

THE CITY COUNCIL PRESIDENT OR PRESIDENT PRO-TEM WILL READ EACH ORDINANCE TITLE INTO THE RECORD. PUBLIC COMMENT WILL BE PROVIDED FOR EVERY ORDINANCE.

12. **SECOND READING OF ORDINANCE:** An ordinance adopting the Uniform Election Code of 1992 in lieu of the Municipal Election Code of 1965 as amended, for the Regular Municipal Election to be held on November 1, 2011 to permit the City to participate in a coordinated mail ballot election with Routt County. (Franklin)

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**F. PUBLIC COMMENT: Public Comment will be provided at 7 p.m., or at the end of the meeting, (whichever comes first). CITY COUNCIL WILL MAKE NO DECISION NOR TAKE ACTION, EXCEPT TO DIRECT THE CITY MANAGER. THOSE ADDRESSING CITY COUNCIL ARE REQUESTED TO IDENTIFY THEMSELVES BY NAME AND ADDRESS. ALL COMMENTS SHALL NOT EXCEED THREE MINUTES.**

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## G. PLANNING COMMISSION REPORT

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PLANNING  
PROJECTS

### H. CONSENT CALENDAR - PLANNING COMMISSION REFERRALS:

ITEMS ON THE CONSENT CALENDAR GENERALLY REQUIRE LITTLE OR NO COUNCIL DELIBERATION AND MAY BE APPROVED WITH A SINGLE MOTION. A CITY COUNCIL MEMBER MAY REQUEST AN ITEM(S) BE REMOVED FROM THE CONSENT CALENDAR FOR FURTHER DISCUSSION. **ALL ORDINANCES APPROVED BY CONSENT SHALL BE READ INTO THE RECORD BY TITLE.**

#### 13. PROJECT: Ski Hill Subdivision, Parcel B (T Bar)

PETITION: Development plan application to allow an extension to the expiring temporary structure. The applicant requests a seven year extension to the temporary structure permit or until lease between applicants and land owner terminates, whichever is earlier.

LOCATION: 2045 Ski Time Square Drive.

APPLICANT: Greens Patrol, LLC, c/o John Holloway, Jr., P.O. Box 770908, Steamboat Springs, CO.

PLANNING COMMISSION VOTE: Approved 6-0 on August 25, 2011.

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## I. PUBLIC HEARING – PLANNING COMMISSION REFERRALS

### PUBLIC HEARING FORMAT:

- **Presentation by the Petitioner (estimated at 15 minutes). Petitioner to state name and residence address/location.**
- **Presentation by the Opposition.** Same guidelines as above.
- **Public Comment by individuals (not to exceed 3 minutes). Individuals to state name and residence address/location.**
- **City staff to provide a response.**

#### 14. APPEAL: Betterview Business Park Lots 4 & 5 (Clearwater Studios)

PETITION: Appeal of Planning Commission denial of preliminary plat to subdivide two lots and two outlots into three lots.

LOCATION: Betterview Business Park Lots 4 & 5

APPLICANT: Gerencser, LLC, c/o Ben Spiegel, P.O. Box 775481, Steamboat Springs, CO.

PLANNING COMMISSION VOTE: Denied 3-2 on August 25, 2011.

**15. PROJECT: Casey's Pond (Senior Center)**

PETITION: Development Plan/Final Development Plan to construct a 119,047 square foot senior living facility with associated parking, landscaping and sidewalks. The proposal includes variances to the maximum floor area ratio and minimum rear setback. The request also includes a request for extended vesting.

LOCATION: NW corner of Walton Creek Road and Owl Hoot Trail.

APPLICANT: Michael Olson/JK Architects, P.O. Box 772385, Steamboat Springs, CO; 870-1584.

PLANNING COMMISSION VOTE: Approved 6-0 on August 11, 2011.

**16. SECOND READING OF ORDINANCE:** An ordinance amending Chapter 26 of the Steamboat Springs Revised Municipal Code by adding a definition and use criteria for Animals, goats; revising the definition of farm animal; amending the use table to permit animals, goats as a use with criteria and prohibit this use in certain zone districts; providing for severability; providing an effective date; repealing all conflicting ordinances; and setting a hearing date. (Lorson)

**17. SECOND READING OF ORDINANCE:** An ordinance rezoning a Metes and Bounds parcel, as described in Exhibit A, from Residential Estate One – Low Density, (RE-1) to Industrial (I); repealing all conflicting ordinances; providing for severability; and providing an effective date. (Keenan)

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**J. REPORTS**

**18. Economic Development Update.**

**19. City Council**

**20. Reports**

- a. Agenda Review (Franklin):
  - 1.) City Council agenda for September 20, 2011.
  - 2.) SSRA agenda for September 20, 2011.
  - 3.) City Council budget agenda for October 4, 2011.

**21. Staff Reports**

- a. City Attorney's Update/Report. (Lettunich)
  - b. Manager's Report: Ongoing Projects. (Roberts)
-

**K. OLD BUSINESS**

**22. Minutes** (Franklin)

- a. Regular Meeting 2011-13, July 19, 2011.
  - b. Regular Meeting 2011-14, August 2, 2011.
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**L. ADJOURNMENT**

**BY: JULIE FRANKLIN, CMC  
CITY CLERK**

# Agenda Item # 1

## CITY COUNCIL COMMUNICATION FORM

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**FROM:** Deb Hinsvark, Director of Finance, X 240

**THROUGH:** Jon Roberts, City Manager

**DATE:** September 6, 2010

**ITEM:** A proclamation recognizing the foresight of our community members who proposed Steamboat Springs as a start and finish stage on the USA Pro Challenge route, the work of the USA Pro Challenge Steamboat Stage Local Organizing Committee and Jim Schneider for his leadership as the Chair of the Local Organizing Committee.

**NEXT STEP:** N/A

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DIRECTION  
 INFORMATION  
 ORDINANCE  
 MOTION  
 RESOLUTION

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**I. REQUEST OR ISSUE:**

The USA Pro Challenge event was a tremendous success and this proclamation helps recognize the people who helped make it happen.

**II. RECOMMENDED ACTION:**

None.

**III. FISCAL IMPACTS:**

None.

**IV. BACKGROUND INFORMATION:**

None.

**V. LEGAL ISSUES**

None.

**VI. CONFLICTS OR ENVIRONMENTAL ISSUES:**

None.

**VII. SUMMARY AND ALTERNATIVES:**

N/A.

**A proclamation recognizing the foresight of our community members who proposed Steamboat Springs as a start and finish stage on the USA Pro Challenge route, the work of the USA Pro Challenge Steamboat Stage Local Organizing Committee and Jim Schneider for his leadership as the Chair of the Local Organizing Committee.**

**WHEREAS**, Medalist Sports determined to stage both a start and a finish on the route of the USA Pro Challenge in Steamboat Springs, Colorado; and

**WHEREAS**, with the leadership of Jim Schneider a Local Organizing Committee was formed; and

**WHEREAS**, over \$100,000 was raised in sponsorships to support the event through the efforts of the Local Organizing Committee; and

**WHEREAS**, hundreds of hours of work were donated by the members of the local organizing committee, City employees, County employees, Chamber staff and volunteers; and

**WHEREAS**, the event will stand out as a true success for the City of Steamboat Springs in both its ability to draw visitors to the area and to increase the pride we feel in the community;

**NOW, THEREFORE**, be it proclaimed this 6<sup>th</sup> day of September, 2011, that the Steamboat Springs City Council expresses their gratitude to those who were helpful in bringing the USA Pro Challenge to Steamboat Springs, to Jim Schneider for his leadership, and to each of the members of the Local Organizing Committee and community volunteers and sponsors who helped with the event.

Attest:

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Julie Franklin, CMC  
City Clerk

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Cari Hermacinski, President  
Steamboat Springs City Council



## **AGENDA ITEM # 2**

**Pam Caskie, Executive Director at  
Northwest Colorado Council of  
Governments (NWCCOG)**

This item is a verbal presentation only.

# Agenda Item # 3

## CITY COUNCIL COMMUNICATION FORM

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**FROM:** Meg Bentley

**THROUGH:** Julie Franklin

**DATE:** September 6, 2011.

**ITEM:** Presentation by Jamie Kingsbury, District Ranger of the Hahns Peak-Bears Ears National Forest.

In this informational presentation, Ms. Kingsbury will speak to the health of the forest and to its part in Steamboat's lifestyle economy.

**NEXT STEP:** None.

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DIRECTION  
 INFORMATION  
 ORDINANCE  
 MOTION  
 RESOLUTION

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**I. REQUEST OR ISSUE:**

None.

**II. RECOMMENDED ACTION:**

None.

**III. FISCAL IMPACTS:**

None.

**IV. BACKGROUND INFORMATION:**

Given that the open space outside the Urban Growth Boundary is mostly Federal land and that those open space lands are a major part of the attractiveness for tourists, for Location Neutral Businesses and Employees, and for current residents, City Council's hearing regular updates from the U.S. Forest Service will be part of maintaining the assets described in the

Economic Development Policy.

**V. LEGAL ISSUES:**

None.

**VI. CONFLICTS OR ENVIRONMENTAL ISSUES:**

None.

**VII. SUMMARY AND ALTERNATIVES:**

None.

# Agenda Item # 4

## CITY COUNCIL COMMUNICATION FORM

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**FROM:** Catherine Carson, YVR Volunteer/Treasurer, 870-2896

**DATE:** September 6, 2011

**ITEM:** Let's Talk Plastic

**NEXT STEP:**

### The Steamboat Way: Focus on community

Our environment is important to our locals, visitors and economy.

**We ski, hike, bike and shop green!**

How can we reduce plastic in our environment?

Recognize the value of regional programs, and "Steamboatize" this idea



- DIRECTION
- INFORMATION
- ORDINANCE
- MOTION
- RESOLUTION

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**I. REQUEST OR ISSUE:**

Let's Talk Plastic

## **II. RECOMMENDED ACTION:**

Consider taking the next step to reduce plastic in our community.  
(Please reference attached *Let's Talk Plastic* power point presentation)

## **III. FISCAL IMPACTS:**

Positive.

Proposed Expenditure:

Funding Source:

## **IV. BACKGROUND INFORMATION:**

Steamboat's Green Bag History: *The Steamboat Way – Focus on Community, Opportunities & Solutions!*

*(please reference slide # 6 in attached Let's Talk Plastic power point presentation)*

- 1990: local activists and YVR produced 300 reusable bags
- 2008 – local activists approached YVR to energize “bag program”
- 2008 – 2011: Routt County Commissioners granted YVR “seed” money for a self sustaining revolving fund to purchase and sell reusable shopping bags:
- To date, approx 8,000 bags sold at cost
  - Local small retailers
  - Promotions at large retailers, including:
    - Thanksgiving “Put Your Turkey in a Bag”
    - Christmas “Bag Your Gifts”
    - Start your New Year with a Green Bag
    - Saint Patrick Day Green Bags
- 2009 Colorado Association of Ski Towns Bag Challenge
  - Steamboat finished 6th in per capita savings & 3rd in total bags saved
  - Steamboat shoppers used 169,285 reusable bags from March – August, 2009
- “Bagit” Movie – March, 2011
  - 135 attendees asked YVR to bring the discussion to the next level

## **V. LEGAL ISSUES:**

None at this time.

## **VI. CONFLICTS OR ENVIRONMENTAL ISSUES:**

*(please reference slide # 3 in attached "Let's Talk Plastic" power point)*

- An estimated 100,000 marine mammals and up to 1 million sea birds die every year after ingesting or being tangled in plastic marine litter.
- Plastic bags travel: they float easily in the air and water.
- They have been found on the bottom of the ocean and the top of Mt. Everest
- They are litter, clogging waterways and sewers
- They contaminate compost and hinder recycling efforts

## **VII. SUMMARY AND ALTERNATIVES:**

Free bags are just too expensive, both for our environment and our consumers. Please consider taking the next step to reducing plastic in our community.

### **LIST OF ATTACHMENTS**

- Attachment 1.        *"Let's Talk Plastic"* Power Point
- Attachment 2.        Rise Above Plastic Facts & Figures:  
[http://www.beachapedia.org/Rise\\_Above\\_Plastics\\_Facts\\_and\\_Figures](http://www.beachapedia.org/Rise_Above_Plastics_Facts_and_Figures)
- Attachment 3.        Leading the Way to a Cleaner Ocean
- Attachment 4.        Paper Vs. Plastic - *Neither*
- Attachment 5.        "Bag it" short video:    please click on "trailer" at  
<http://www.bagitmovie.com/>
- Attachment 6.        Fun and short kids rap video:  
<http://www.youtube.com/watch?v=o4xQlhTudS0&feature=related>
- Attachment 7.        Public Comment
- Attachment 8.        Petition and list of e-mail signatures.



## Free plastic bags are too expensive

United States uses 100 billion plastic bags per year:  
= 12 million barrels of petroleum or 504 million gallons  
= \$4 billion/year cost passed onto consumers

- 13 bags = petroleum to drive 1 mile
- Plastic bags take 400 – 1,000 years to biodegrade
- Less than 10% of plastic bags are recycled



## Wildlife and the Environment

- An estimated 100,000 marine mammals and up to 1 million sea birds die every year after ingesting or being tangled in plastic marine litter.
- Plastic bags travel: they float easily in the air and water.
- They have been found on the bottom of the ocean and the top of Mt. Everest
- They are litter; clogging waterways and sewers
- They contaminate compost and hinder recycling efforts



## ½ Days Litter Without Even Looking





## What about paper bags?

**Customers are rarely asked “Paper or Plastic” anymore because paper is no better:**

- High energy from production, use, and disposal as well as:
- High water, atmospheric emissions
- High cost and solid waste



Paper uses 14 million trees annually

Paper must be turned to pulp when recycled, creating cardboard, not more paper bags

Paper doesn't break down completely in landfills without light and oxygen

**Neither is Better!**

## Steamboat's Green Bag History

- 1990: local activists and YVR produced 300 reusable bags
- 2008 – local activists approached YVR to energize bag program
- 2008 – 2011: Routt County Commissioners granted YVR “seed” money for a self sustaining revolving fund to purchase and sell reusable shopping bags:
- **To date, approx 8,000 bags sold at cost**
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    - Start your New Year with a Green Bag
    - Saint Patrick Day Green Bags
- 2009 Colorado Association of Ski Towns Bag Challenge
  - Steamboat finished 6<sup>th</sup> in per capita savings & 3<sup>rd</sup> in total bags saved
  - **Steamboat shoppers used 169,285 reusable bags from March – August, 2009**
- “Bagit” Movie – March, 2011
  - **135 attendees asked YVR to bring the discussion to the next level**



## Success in Other Communities around the World

### World Wide Bag Bans:

- 1999 Corsica in large stores – first island
- 2002 Bangladesh all polyethylene bags – first large country
- 2003 Taiwan plastic plates, cups, cutlery
- 2003 Himachal Pradesh India manufacture, sale, and use of all plastic bags
- 2003 South Africa – all thick plastic bags, retailers not in compliance fined \$13,000US
- 2003 Rwanda – all polythene products
- 2004 Papa New Guinea all plastic bags, retailers not in compliance face jail time
- 2005 Delhi, Mumbai, Maharashtra, Sikkim, Goa, Keral and Karmatak States of India
- 2006 Tanzania all plastic bags
- 2007 Taiwan all plastic bags
- 2007 Kenya and Uganda all plastic bags
- 2008 China all plastic bags – production, sale and use of bags under .025mm thick
- 2008 Buenos Aires all plastic bags, must be biodegradable by 2010
- 2009 South Australia all plastic bags
- 2009 Bolivia all plastic bags
- 2010 France all non biodegradable bags at all shops
- 2010 Sioux Lookout, Ontario all plastic bags
- 2010 Wood Buffalo, Alberta all single use bags
- 2010 Manitoba all single use bags
- 2010 Thompson Canada plastic bags
- 2011 Italy all non biodegradable bags at all shops
- 2011 Northern Territory Australia all plastic bags
- 2011 New South Wales all plastic bags



## Success at Home

### US cities Bag Bans:

- 2007 San Francisco first US city - all plastic bags
- 2008 Manhattan Beach CA – all plastic bags
- 2008 Malibu City CA – all plastic bags, fine up to \$1000
- 2009 North Carolina barrier islands plastic bags
- 2009 Edmonds WA – all plastic bags
- 2009 Kaua'i and Maui HI – all plastic bags
- 2010 Los Angeles – all single use plastic bags, replacing a 10c tax
- 2011 Long Beach CA – plastic bags
- 2011 Calabasas CA – plastic bags
- 2011 Santa Monica CA – plastic bags
- 2011 Santa Clara CA – plastic bags
- 2011 Portland Oregon – all plastic bags in stores larger than 10,000 sq ft
- 2011 Maui HI – all plastic bags
- 2011 Telluride CO – all plastic bags townwide within town limits
- 2011 Westport CT – all plastic bags
- 2011 Brownville TX – all plastic bags



## Countries and Cities with Green Fees

2002 Ireland  
2007 Belgium  
2008 Israel  
2010 Washington DC  
2010 Mexico City  
2010 Telluride CO  
2011 Wales  
2011 Bulgaria  
2011 Brownsville TX  
2011 Aspen CO  
2011 Basalt CO



## Best Case Study: Ireland

In 2002 Ireland began charging 28cents US for plastic and paper bags.

This green fee reduced non reusable bag usage by 95%.

Now nearly everyone in Ireland supports their community and proudly carries a reusable bag.



## The Green Fee is NOT a “Tax”

### Green Fee

- Designed to educate
- Reduces the use of disposable bags
- Similar to Use Fees like:
  - Fish Creek Falls parking fee
  - Routt County Landfill tipping fee
  - Disposal fees for tires, car batteries, and motor oil

### Tax

- Effects everyone regardless of use
- Is harder to modify
- Less choice/options



## Carrots are good for you, but they don't reduce plastic bag use

As studies have shown, City Market and Safeway also found that their reusable bag credits proved ineffective.

What is effective:

- Any fee placed on the bags must be large enough to influence consumer choices, while remaining politically acceptable. (ICF 2010)
- Education, though not sufficient by itself, is a necessary component of any economic instrument aimed to reduce bag Consumption (Herrera 2008).
- Fees that are directly passed onto consumers have been effective at altering behavior (Herrera et al 2008 – 133).



Carrot or a Stick?

## Colorado Mountain Towns

- **Telluride**
  - October, 2010 banned plastic bags + 10 cents per bag fee on “permitted paper bags”
- **Aspen**
  - August, 2011, passed first reading for 20 cents per bag fee on all non reusable bags at grocers
- **Basalt**
  - August, 2011, passed first reading for 20 cents per bag fee on all non reusable bags at grocers
- **Carbondale**
  - September 2011, first reading is scheduled on ordinance for 20 cents per bag fee on all non reusable bags at grocers



## Colorado Mountain Towns' # 1 Goal: Support environment & reduce plastic

But, what about funds generated?



- Aspen's program funds local environmental programs including:
  - Programs and infrastructure to reduce waste and to recycle
  - Community cleanup events
  - Education and public website
  - Reusable bags to residents and visitors
  - Administer bag program, including 5% retained by stores, with a maximum of \$100 monthly, \$1,200 annually and \$25 monthly thereafter

## The Steamboat Way: Focus on community

Our environment is important to our locals, visitors and economy.

**We ski, hike, bike and shop green!**

How can we reduce plastic in our environment?

### **Bans aren't "Steamboat Friendly"**

Recognize the value of regional programs, and "Steamboatize" this idea



## Solutions/Suggestions

### **Think Global - Act Local**

- Begin with a "trial program" which can be reviewed modified, and managed
- Consider starting with all non reusable shopping bags at large, high use stores that sell groceries - focus on the goal of reducing plastic use
- The stores have and will continue to be our "bag partners," have participating stores retain 1-2c/bag without a maximum
- Let other stores opt in, at their discretion
- Any proposed fee should be meaningful towards reducing non reusable bag use: consider keeping it on par with regional discussions at 20c
- The goal is to reduce plastic; but, what about the funds?
  - Keep it similar to Routt County's tipping fee, with funds targeted toward waste reduction, recycling and other environmental programs
  - A "bag program" to purchase bags for low income residents and to offer reusable bags at a discount
  - Public information and store signage are also possibilities for a "bag program"
- Continue current "green bag", recycling and zero waste efforts



Keep our Mountains Green and  
thank you for talking plastic!



# Rise Above Plastics Facts and Figures

From Beachapedia

- The amount of plastic produced from 2000 - 2010 exceeds the amount produced during the entire last century.<sup>[1]</sup>
- Plastic is the most common type of marine litter worldwide.<sup>[2]</sup>
- An estimated 100,000 marine mammals and up to 1 million sea birds die every year after ingesting or being tangled in plastic marine litter.<sup>[3]</sup>
- Up to 80% of the plastic in our oceans comes from land-based sources.<sup>[4]</sup>
- Plastics comprise up to 90% of floating marine debris.<sup>[5]</sup>
- In 2009 about 3.8 million tons of waste plastic "bags, sacks and wraps" were generated in the United States, but only 9.4% of this total was recycled.<sup>[6]</sup>
- Plastics do not biodegrade, but instead break down into small particles that persist in the ocean, absorb toxins, and enter our food chain through fish, sea birds and other marine life.<sup>[7]</sup>
- Plastic bags are problematic in the litter stream because they float easily in the air and water, traveling long distances and never fully breaking down in water.
- Cleanup of plastic bags is costly. California spends \$25 million annually to landfill discarded plastic bags, and public agencies spend more than \$300 million annually in litter cleanup.<sup>[8]</sup>
- It is estimated that Americans go through about 100 billion plastic bags a year, or 360 bags per year for every man, woman and child in the country.<sup>[9]</sup>
- Those 100 billion plastic bags, if tied together, would reach around the Earth's equator 776 times!<sup>[10]</sup>

## Footnotes

1. ↑ Thompson, R.C. "Plastics, the environment and human health: current consensus and future trends." *Philosophical Transactions of the Royal Society B-Biological Sciences*. 364.1526 (2009):2153-2166.

2. ↑ Derraik, J.G.B. "The pollution of the marine environment by plastic debris: a review." *Marine Pollution Bulletin* 44, (2002): 843.

Gregory, M.R., Ryan, P.G. "Pelagic plastics and other seaborne persistent synthetic debris: a review of Southern Hemisphere perspectives." *Marine Debris – Sources, Impacts and Solutions*. Ed. J.M. Coe, D.B. Rogers. New York: Springer-Verlag, 1997, pp. 4, 9-66.

3. ↑ United Nations. *Marine Litter: Trash that Kills*. , Web. 14 Feb 2011.

[http://www.unep.org/regionalseas/marinelitter/publications/docs/trash\\_that\\_kills.pdf](http://www.unep.org/regionalseas/marinelitter/publications/docs/trash_that_kills.pdf), pp. 10.

Wallace, N. "Debris Entanglement in the Marine Environment: A Review." *Proceedings of the Workshop on the Fate and*





# Leading the Way Toward a Clean Ocean

Communities Around the World Take  
Action Against Single-Use Plastic Bags



# Leading the Way Toward a Clean Ocean

Communities Around the World Take  
Action Against Single-Use Plastic Bags



Written by:

Travis Madsen, Frontier Group

Julia Ritchie, Environment California Research & Policy Center

July 2011

# Acknowledgments

Environment California Research & Policy Center would like to thank Kirsten James at Heal the Bay and Leslie Tamminen at Seventh Generation Advisors for their review and insightful comments on drafts of this report. Additional thanks to Cameron Harris for research assistance and to Tony Dutzik and Rob Kerth at Frontier Group for editorial assistance.

The opinions expressed in this report are those of the authors and do not necessarily reflect the views of our funders or those who provided review. Any factual errors are strictly the responsibility of the authors.

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# Executive Summary

**O**ur oceans are polluted with millions of tons of plastic trash. In the Pacific Ocean, plastic debris churns in a soup called the Great Pacific Garbage Patch – an area twice the size of Texas where plastic bits outweigh plankton. Plastic pollution persists for hundreds of years, and can kill turtles, seabirds and other marine animals.

Throw-away plastic bags are a significant part of the problem. **To reduce ocean pollution and protect the environment, more than 80 national and local governments across the planet have taken official action** to ban throw-away plastic bags or to establish fees or taxes on such bags.

State, county, and city governments in California should follow their lead and ban the use of plastic grocery bags.

## **Plastic bags contribute to the pollution of California's ocean and beaches.**

- Californians use approximately 16 billion plastic bags per year – more than 400 annually per person.
- Less than 5 percent of plastic bags are recycled. Instead, they end up sitting in landfills, littering streets, clogging streams, fouling beaches, or floating out to sea.
- Plastic trash threatens ocean ecosystems. Sea turtles and other marine animals often mistake plastic bags for jellyfish and eat them, causing injury or death. In parts of the Pacific Ocean, including the Great Pacific Garbage Patch, plastic outweighs plankton by up to six times.

- The city of San Francisco estimated that the taxpayer cost to subsidize the recycling, collection, and disposal of plastic and paper bags amounts to as much as 17 cents per bag. Applied to California as a whole, that adds up to more than \$1 billion per year.

**More than 80 national and local governments around the world have taken action to protect the ocean by reducing the use of plastic bags.**

- At least 20 nations and 47 local governments have passed bans on distributing specific kinds of throw-away plastic bags, including the nations of Italy, Kenya, Mongolia, Macedonia, and Bangladesh; the states of Maharashtra, India and Buenos Aires, Argentina; and the cities of Karachi, Pakistan and Telluride, Colorado.
- Approximately 26 nations and local communities have established fee programs to reduce plastic bag use and/or increase the use of reusable alternatives, including Botswana, China, Hong Kong, Wales, Ireland, Israel, Canada's Northwest Territories, Toronto, Mexico City, and Washington, D.C.

**Bans and meaningful fee programs effectively reduce plastic bag pollution.**

- Bans and fee programs quickly reduce plastic bag distribution. Ireland, which in 2002 established a fee roughly equivalent to 28 U.S. cents per bag, saw plastic bag use drop by 90 percent within the first year. After Washington, D.C., implemented a much smaller 5 cent tax on plastic bags, the number of

bags distributed by food retailers fell from 22.5 million per month to 3.3 million per month. And the year after banning plastic bags at pharmacies and supermarkets in 2007, San Francisco businesses distributed 127 million fewer plastic bags, and cut overall bag waste reaching the city landfill by up to 10 percent.

**Eleven city and county governments in California have taken successful action to reduce plastic bag pollution.**

- Eleven California cities and counties have bans on plastic bags in effect, including Long Beach, Santa Monica, San Jose, San Francisco, and unincorporated Marin and unincorporated Los Angeles counties. Five of these communities, including Marin County and San Jose, have also authorized mandatory charges on paper bags to encourage citizens to use reusable bags.
- Two additional communities, Oakland and Manhattan Beach, passed bans that were later struck down after legal challenges by plastic bag manufacturers.

**Much more progress can be made to reduce plastic pollution in the ocean and transform our throw-away culture.**

- Education and recycling cannot keep pace with the generation of plastic bag pollution. Despite a 2006 law requiring retailers to place bag recycling bins in front of their stores, less than 5 percent of bags are recycled.
- To make a real impact, all California cities and counties should restrict the use of plastic bags, and advocate for similar action at the state level.

# Introduction

Our oceans are an irreplaceable treasure. The Pacific Ocean, for example, is central to California's culture and our livelihood. Off the rocky coast of Big Sur, sea otters frolic and sea turtles feed on jellyfish. The largest mammals on earth, blue whales, migrate up and down our shores. Pods of thousands of dolphins play in the wakes of ships. Seabirds congregate on beaches and harbors, belting out their familiar cries. And beneath the waves, the seafloor is covered with corals as old as redwoods.

Our oceans are also an incredibly valuable part of our economy. The Pacific Ocean contributes an estimated \$43 billion and more than 400,000 jobs to California's economy, particularly in tourism and recreation.<sup>1</sup>

Unfortunately, our oceans are also in trouble. Destructive overfishing, global

warming, habitat damage, and pollution are putting important marine ecosystems at risk. Many critical wildlife populations are in serious decline.

The problems facing our oceans are varied and complex, from our overdependence on fossil fuels to our careless use of natural resources. However, many of these problems can be traced back toward an unreasonable expectation that our oceans will be endlessly productive even as we use them as a trash receptacle.

To protect and preserve California's treasured ocean ecosystems for the long haul, we need to stop using ocean waters as a landfill. The most important way to accomplish this is to generate less trash.

Plastic bags – the throw-away kind you can pick up at many grocery stores –



*Our oceans are an irreplaceable treasure and an important part of our economy. To protect ocean ecosystems for the long haul, we need to stop using ocean waters as a landfill and generate less trash.*

are a good place to start. These bags help us move groceries for a few minutes, but they pollute our environment for hundreds of years. They represent a wasteful use of limited fossil fuel resources. Switching to reusable bags can cut down on the amount of plastic trash ending up in the ocean, and begin to raise public consciousness about the need to make our civilization more sustainable.

Banning plastic bags is an idea whose time has come. As this report shows, nations from Tanzania to Italy, and communities from Buenos Aires to Santa Monica, have taken action to reduce plastic bag pollution. While the list of policies covered in this report is not necessarily exhaustive, it does show the wide scope of action across the planet to protect our oceans, reduce litter, and use our natural resources more wisely.

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“By joining these global communities in banning plastic bags, California has an opportunity to build on its reputation for environmental leadership.”

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By joining these global communities in banning plastic bags, California has an opportunity to build on its reputation for environmental leadership. Each new county, city or town that takes action to reduce plastic bag pollution builds momentum towards a cleaner ocean for current and future generations.



# Plastic Bags Pollute California's Beaches and Ocean

Millions of tons of plastic trash pollute our oceans, everywhere from the poles to the equator.<sup>2</sup> According to the United Nations Environment Programme, every square mile of ocean contains 46,000 pieces of floating plastic, on average.<sup>3</sup>

For example, one thousand miles off the California coast, more than 100 million tons of plastic garbage has concentrated in an area known as the Great Pacific Garbage Patch.<sup>4</sup> Churned by ocean currents, this plastic trash spans an area twice the size of Texas.<sup>5</sup> Within this area, plastic outweighs plankton by up to six times.<sup>6</sup>

Too much of this trash comes from items that we use for a short time and then discard. Throw-away plastic bags are a prime – and visible – example. Plastic bags are convenient, but they are also durable and buoyant. For a few minutes

of carrying groceries, the bags have the potential to contaminate the ocean environment for hundreds of years.

Every year, Californians throw away approximately 16 billion plastic bags.<sup>7</sup> That adds up to more than 400 bags per person per year.<sup>8</sup> In 2007, Los Angeles County estimated that county residents used about 600 bags per year.<sup>9</sup> Less than 5 percent of these plastic bags end up recycled, despite the efforts of retailers to collect used bags in storefront bins, which are required by state law.<sup>10</sup> Instead, the bags end up sitting in landfills, littering streets, clogging streams, fouling beaches, or floating out to sea. According to beach cleanup volunteers working with the Ocean Conservancy, plastic bags were the sixth-most common item found on beaches worldwide over 25 years of clean up events, accounting for 5 percent of all trash items.<sup>11</sup>



*Throw-away plastic bags are a visible example of the trash contaminating our beaches and ocean. Although used for only a short while, a plastic bag can last for hundreds of years in the environment.*

## Plastic Trash Threatens Ocean Ecosystems

Plastic trash harms the health of ocean ecosystems. More than 260 marine species have been found with plastic in their stomachs or tangled around their bodies – interfering with feeding, movement and reproduction, and causing injury and death.<sup>12</sup>

In June 2011, researchers at UC San Diego’s Scripps Institute of Oceanography published a study finding that nearly one in ten small fish collected in the middle of the Pacific Ocean had plastic in their bodies. The researchers estimated that fish are eating as much as 24,000 tons of plastic each year, and that the plastic enters the food chain through small fish.<sup>13</sup>

Plastic pollution kills turtles, seabirds and other marine animals. Sea turtles are

a particularly visible example of a marine animal threatened by plastic pollution. Sea turtles often mistake plastic bags for jellyfish and eat them.<sup>14</sup> The bags can get trapped in the turtle’s digestive system, causing great harm. All seven species of sea turtle are in urgent danger of extinction.<sup>15</sup>

In March, 2011, a group of sea turtle scientists gathered in Hawaii to discuss the “ocean emergency” of plastic pollution.<sup>16</sup> In a press release, Dr. Wallace Nichols of the California Academy of Sciences wrote:<sup>17</sup>

“Last year I counted 76 plastic bags in the ocean in just one minute while standing in the bow of our sea turtle research boat at sea in Indonesia. Sea turtles have spent the past 100 million years roaming seas free of plastic pollution, and are now sadly the poster animal for impacts of our throw-away society on endangered species.”

One study by Australian scientists, including Dr. Kathryn Townsend, found that nearly 30 percent of turtle mortality in the eastern Moreton Bay region was due to plastic debris consumption. Half of the plastic in turtle stomachs was thin plastic, like the kind

used to make plastic bags.<sup>18</sup>

To protect the sea turtle and the broader ocean ecosystem, many communities around the world have taken action to reduce or eliminate plastic bag pollution.

*photo: Ron Prendergast, Melbourne Zoo*



*Sea turtles often mistake plastic bags for jellyfish and eat them, suffering harm.*

### **Plastic Pollution Costs Our Economy, Too**

Plastic pollution costs developing and industrialized nations up to \$1.3 billion annually, primarily by threatening fishing, shipping and tourism industries.<sup>19</sup> In the United States, governments spend at least \$11.5 billion annually on litter collection, disposal and enforcement. Businesses bear almost 80 percent of this burden.<sup>20</sup> The city of San Francisco estimated that the cost to taxpayers of subsidizing the recycling, collection, and disposal of plastic and paper bags amounts to as much as 17 cents per bag.<sup>21</sup> Applied across California as a whole, that likely adds up to more than 1 billion dollars per year.

Retailers spend hundreds of millions of dollars annually to provide single-use bags to customers. Supermarkets spend up to \$1,500 to \$6,000 a month to provide single-use bags to their customers at the check-out.<sup>22</sup> Stores typically pay 2 to 5 cents per plastic bag; these costs are embedded in food prices which are then passed onto consumers.<sup>23</sup>

# Communities Across the World Have Taken Action to Reduce Plastic Bag Pollution

**M**ore than 80 national and local governments across the world have taken official action to protect the ocean by reducing the use of plastic bags. In their place, retailers are selling reusable bags, or bags made from compostable material.

Nations from Kenya to Mongolia, and local governments from Maharashtra, India to Rio de Janeiro, Brazil, have taken action to ban throw-away plastic bags. Dozens more, from Hong Kong to Ireland, have established fee programs to reduce plastic bag use or support more sustainable alternatives. Other nations and communities have established taxes on businesses that distribute plastic bags.

## Bans on Plastic Bags

At least 20 nations and 46 local governments have implemented bans on distributing specific kinds of throw-away plastic bags.

Governments have had a variety of reasons to implement bag bans. Some communities enacted bag bans specifically to reduce ocean pollution – a rationale particularly common in communities whose economies depend upon whale watching and other forms of ocean tourism. Others chose to enact the policy to reduce litter. For example, the state of Maharashtra in India, where Bombay is located, banned plastic bags to prevent them from clogging storm drains and contributing to floods.<sup>24</sup>

Policies that ban the distribution of plastic bags are the most effective at reducing plastic bag pollution. For example, the year after banning plastic bags at pharmacies and supermarkets in 2007, San Francisco businesses distributed 127 million fewer plastic bags, and cut overall bag waste reaching the city landfill by up to 10 percent.<sup>25</sup> And four months after Huntingdon, Canada, banned plastic bags, the owner of a grocery store reported that 82 percent of his customers brought their own bags, while the remainder chose paper.<sup>26</sup>

Governments at the national, state and local level have created various types of plastic bag bans.

## Nations

At least 20 nations have passed bans to reduce bag pollution, including:<sup>27</sup>

Bangladesh	(2002)
Bhutan	(2005)
Botswana	(2007) <sup>28</sup>
China	(2008)
Eritrea	(2005)
Ethiopia	(2008)
France	(2010)
Kenya	(2008)
Italy	(2007)
India	(2002)
Macedonia	(2011) <sup>29</sup>
Mongolia	(2009) <sup>30</sup>
Papua New Guinea	(2009) <sup>31</sup>
Rwanda	(2005)
Somaliland	(2005)
South Africa	(2003)
Taiwan	(2003)
Tanzania	(2006)
Uganda	(2007)
United Arab Emirates	(2011)

## Local Governments Abroad

Additionally, more than 20 local governments outside of the United States have passed plastic bag bans, including:<sup>32</sup>

Dahka, Bangladesh	(2002)
South Australia	(2008)
Northern Territory, Australia	(2011)
Loddon Shire, Victoria, Australia	(2005)
Corsica, France	(1999)
Paris, France	(2007)
Rio de Janiero, Brazil	(2009)
Buenos Aires, Argentina	(2008)
Leaf Rapids, Manitoba, Canada	(2007)
Eriksdale, Manitoba, Canada	(2008) <sup>33</sup>
Coldwell, Manitoba, Canada	(2008) <sup>34</sup>
Huntingdon, Quebec, Canada	(2008)
Hurghada, Red Sea Province, Egypt	(2009) <sup>35</sup>
Delhi, India	(2009)
Maharashtra, India	(2005) <sup>36</sup>
Himachal Pradesh, India	(2009) <sup>37</sup>
Chandigarh, India	(2008) <sup>38</sup>
Karachi, Sindh, Pakistan	(2006) <sup>39</sup>
Zanzibar, Tanzania	(2006)
Llandysilio, Wales	(2007)

photo: Istockphoto.com, user McIninch



*Policies that ban the distribution of plastic bags or establish fees or taxes on such bags are effective at reducing plastic bag pollution, and encouraging the use of reusable bags.*



photo: Environment California staff



Eleven city and county governments in California have plastic bag bans in effect.

## Local Governments in the United States

Well over a dozen American communities outside of California have acted against plastic bags, including:<sup>40</sup>

American Samoa	(2011)
Maui County, Hawaii	(2008)
Kauai County, Hawaii	(2009)
At least 30 coastal communities in Alaska, including Bethel	(2009) <sup>41</sup>
Telluride, Colorado	(2011) <sup>42</sup>
Westport, Connecticut	(2008) <sup>43</sup>
Unincorporated Marshall County, Iowa	(2008) <sup>44</sup>
Outer Banks, North Carolina	(2009) <sup>45</sup>
Southampton Village, New York	(2011) <sup>46</sup>
Suffolk County, New York	(1998) <sup>47</sup>
Brownsville, Texas	(2011)
South Padre Island, Texas	(2011) <sup>48</sup>
Edmonds, Washington	(2009) <sup>49</sup>

## Local Governments in California

Within California, 13 city and county governments have taken action to reduce plastic bag pollution, including the citizens of Fairfax, in Marin County, who enacted a bag ban by popular vote through a ballot initiative in 2008.<sup>50</sup> Legal challenges from plastic bag manufacturers ended up invalidating two of these laws, in Oakland and Manhattan Beach.<sup>51</sup> Eleven areas currently have bag ban policies in effect, including:<sup>52</sup>

Unincorporated Marin County	(2011)
Fairfax (Marin County)	(2008)
Unincorporated L.A. County	(2010)
Calabasas (L.A. County)	(2011)
Malibu (L.A. County)	(2008)
Long Beach (L.A. County)	(2011)
Santa Monica (L.A. County)	(2011)
San Francisco	(2007)
Unincorporated Santa Clara County	(2011)
Palo Alto (Santa Clara County)	(2009)
San Jose (Santa Clara County)	(2010)

These areas represent fully 10 percent of the population of California.<sup>53</sup>

## Fee Programs and Taxes

Approximately 25 nations and local communities have established fee programs to reduce plastic bag use or encourage reusable alternatives.

Fee programs and taxes can have multiple purposes. First, by establishing a price on disposable bags, governments can send a price signal to citizens to motivate different behaviors. For example, in 2002 the Republic of Ireland established a 15 Euro cent tax on plastic bags (roughly equivalent to about 28 U.S. cents per bag today), applied to consumers at the point

of sale. In the first year of this policy, consumers used 90 percent fewer plastic bags. The tax grew relatively less effective over time, so the nation increased the tax in 2007. Overall, plastic bags have gone from 5 percent to less than 0.25 percent of the waste stream.<sup>54</sup>

Washington, D.C. provides another example. After the district implemented a much smaller 5 cent tax on plastic bags, the number of bags distributed by food retailers fell from 22.5 million per month to 3.3 million per month.<sup>55</sup> That is a decrease of more than 85 percent. This action translated into an observed decrease in plastic pollution in area rivers and streams. According to the Alice Ferguson Foundation, since implementation of the bag fee, river cleanup efforts have turned up 66 percent fewer plastic bags.<sup>56</sup>

Fee policies can also reimburse shop owners for any added expense of policy compliance. For example, stores in unincorporated Los Angeles County must charge customers 10 cents for every paper bag provided. The store retains the revenue and can use it to cover the cost of providing paper bags or the cost of educating customers about reusable bags. These types of features can help plastic bag reduction policies win the support of retail businesses.

Fee programs and taxes can also provide funding for government programs. For example, Ireland uses the money from its bag tax for recycling programs, enforcement of solid waste laws, and other environmental priorities.<sup>57</sup>

Some countries have both a ban on certain types of plastic bags, and fees on others. For example, China has banned disposable bags that fail to meet the durability standards necessary to be considered reusable. China then requires retailers to charge customers a fee to ob-

tain one of the more durable plastic bags, encouraging reuse.<sup>58</sup>

Governments that have created fee programs or taxes applied to throw-away bags include:<sup>59</sup>

## Nations

Belgium	(2007)
Botswana	(2007) <sup>60</sup>
Bulgaria	(2011)
China	(2008) <sup>61</sup>
Denmark	(1994) <sup>62</sup>
Hong Kong	(2009) <sup>63</sup>
Germany	(earlier than 2005) <sup>64</sup>
Ireland	(2002)
Israel	(2008)
The Netherlands	(2008) <sup>65</sup>
South Africa	(2003) <sup>66</sup>
Wales	(2011)

## Local Governments Abroad

Northwest Territories, Canada	(2010)
Toronto, Ontario, Canada	(2009)
Amqui, Quebec, Canada	(2008) <sup>67</sup>
Mexico City, Mexico	(2009)
Andalucia, Spain	(2011) <sup>68</sup>

## Local Governments in the United States

Washington, D.C.	(2009)
Montgomery County, Maryland	(2011)

## Local Governments in California

In California, state law prohibits local governments from enacting fees applying to plastic bags (although outright bans are permissible).<sup>69</sup> However, several communities have established fees on alternative bags to direct consumer behavior.

For example, after San Francisco’s plastic bag ban, critics noted that many people simply shifted to paper – another type of disposable bag with its own set of environmental problems.<sup>70</sup> In response, several California communities have established fees that apply to paper bags as a companion policy to a ban on plastic bags. These policies serve as a signal to encourage consumers to furnish and use their own reusable bags. These communities include:

Unincorporated L.A. County	(2010)
Marin County	(2011)
Calabasas (L.A. County)	(2011)
Long Beach (L.A. County)	(2011)
Santa Monica (L.A. County)	(2011)
San Jose (Santa Clara County)	(2010)

Telluride, Colorado enacted a similar fee policy to complement its plastic bag ban in 2011.<sup>71</sup>



*By taking action to reduce the use of plastic bags, communities across California are making a real difference in the problem of ocean pollution.*



# Policy Recommendations

Nothing we use for a few minutes should end up polluting our oceans for hundreds of years. Items meant only for a single use provide dubious convenience, and a great deal of hidden cost. When we throw away something like a plastic bag, “away” may actually mean our beaches, our treasured ocean, or the belly of a whale.

To protect our oceans and conserve precious natural resources, our culture needs to shift away from its “throw away” mentality.

Californians are leaders when it comes to protecting the environment. By taking action to reduce the use of plastic bags, communities across California are mak-

ing a real difference in the problem of ocean pollution.

But there is much more to be done. Education and recycling efforts simply cannot keep pace with the generation of plastic bag pollution.

Every city and county government in California should enact its own policy to limit the use of throw-away plastic bags. Not only can these individual policies have a meaningful impact on their own, they will build momentum for other state and local governments to take similar action.

Ultimately, California’s actions can lead to a cleaner ocean for current and future generations.

# Notes

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6. Algalita Marine Research Foundation, *Research - North Pacific Gyre Plankton Sample Analysis '07-'08*, undated, downloaded from [www.algalita.org/research/np\\_gyre\\_sample07-08.html](http://www.algalita.org/research/np_gyre_sample07-08.html) on 7 June 2011.

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8. Based on the 2010 population of California of 37.254 million, per 2010 U.S. Census data.

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10. According to the EPA's 2009 Municipal Waste Characterization Study, the recycling rate for plastic HDPE films (plastic bags, sacks, & wraps) was 6.1 percent. However, this statistic is likely artificially high because it includes all wraps and packaging, like "industrial stretch films" used in shipping, not just plastic bags. The recycling rate for plastic bags alone is probably closer to 1 to 5 percent, per note 9 and per U.S. Environmental Protection Agency, *2005 Characterization of Municipal Solid Waste*, Table 7. Moreover, years after the implementation of California's 2006 AB 2449, a law requiring in-store plastic bag recycling, the state still has not published data about the effectiveness of the program.

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42. Karen James, "Telluride Is the First Community in Colorado to Ban Plastic Bags," *The Watch*, 7 October 2010.

43. Wendy Carlson, "Westport First in State to Ban Plastic Bags," *New York Times*, 26 September 2008.

44. Associated Press, "Iowa County Joins San Francisco in Bag Ban," *The Street.com*, 8 April 2009.

45. This policy is the only bag ban in the United States to date that was created by a state legislature. It only applies to the Outer Banks of North Carolina, so we grouped it with local government policies.

46. "Southampton Village Bans Plastic Bags," *CBS New York / Associated Press*, 28 April 2011.

47. Suffolk County, New York, *Suffolk County Code, Chapter 301, Food Labeling and Packaging Article II, Uniform Packaging Practices for Retail Food Establishments*, Adopted 29 March 1998, available at [www.mindfully.org/Plastic/Suffolk-Co-NY-Ban.htm](http://www.mindfully.org/Plastic/Suffolk-Co-NY-Ban.htm).

48. Lynn Brezosky, "South Padre Bans Single-Use Plastic Bags," *San Antonio Express-News*, 19 January 2011.

49. Lynn Thompson, "Edmonds First In State to Ban Plastic Grocery Bags," *The Seattle Times*, 28 July 2009.

50. Jennie R. Romer, Esq., PlasticBagLaws.org, *State and Local Laws: California*, downloaded from [plasticbaglaws.org/legislation/state-laws/california-2/](http://plasticbaglaws.org/legislation/state-laws/california-2/) on 7 June 2011.

51. *Ibid.*

52. *Ibid.*

53. Kirsten James, Heal the Bay, *Local Action Adds Up*, Presentation at the 5<sup>th</sup> International Marine Debris Conference, Honolulu Hawaii, 20-25 March 2011.

54. State of Florida, Department of Environmental Protection, *Retail Bags Report for the Legislature*, 1 February 2010; S. McDonnell, F. Convery & S. Ferreira, *The Irish Plastic Bag Levy - A Review of Its Performance Five Years On*, undated, available at [www.webmeets.com/files/papers/EAERE/2008/294/Plastic%20Bags%20Irish%20Levy%20-%20EAERE%20PAPER%202008.pdf](http://www.webmeets.com/files/papers/EAERE/2008/294/Plastic%20Bags%20Irish%20Levy%20-%20EAERE%20PAPER%202008.pdf)

55. Lauren Markoe, NRDC, "How D.C. Beat the Plastic Bag Lobby," *On Earth*, 11 November 2010.

56. As cited by: Surfrider Foundation, *Ban the Bag: Washington D.C., A Success Story*, downloaded from [ww2.surfrider.org/dc/plastics.html](http://ww2.surfrider.org/dc/plastics.html), 27 June 2011.

57. See note 54.

58. Mary O'Loughlin, Fulbright Research Fellow, B.Y.O.B. (*Bring Your Own Bag*): *A Comprehensive Assessment of China's Plastic Bag Policy*, 17 February 2011, available at [digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1019&context=student\\_pubs](http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1019&context=student_pubs)

59. These policies are not uniform. Some fees and taxes apply to plastic bags. Others apply to paper bags as an added price signal complementing a ban on plastic bags. Some apply to consumers at the point of sale. Others apply to retailers upstream in the supply chain. The purpose of this report is to note the existence of these policies in a variety of locations across the world, and not to compare the relative strengths and weaknesses of these policies. Unless otherwise noted, the sources for all policies and adoption dates are: State of Florida, Department of Environmental Protection, *The Retail Bags Report: List of Retail Bag Policies*, updated 28 January 2011, available at [www.dep.state.fl.us/waste/retailbags/pages/mapsandlists.htm](http://www.dep.state.fl.us/waste/retailbags/pages/mapsandlists.htm); and Jennie R. Romer, Esq., PlasticBagLaws.org, *Legislation*, downloaded from [plasticbaglaws.org/legislation/](http://plasticbaglaws.org/legislation/) on 7 June 2011.

60. See note 28.

61. See note 58.

62. Denmark also taxes wasteful packaging and waste delivered to landfills to encourage more sustainable use of resources by product manufacturers and retailers.

63. City of Hong Kong, *Product Eco-Responsibility Ordinance*, Ordinance Number 32 of 2008, July 2008, available at [www.epd.gov.hk/epd/psb/files/PER\\_Ordinance\\_Eng.pdf](http://www.epd.gov.hk/epd/psb/files/PER_Ordinance_Eng.pdf).

64. Dan Magestro, "Plastic Bag Obsession," *The Lantern: Ohio State Student Newspaper*, 31 October 2005.

65. Heal the Bay, *List of Countries with Plastic Bag Fees and Bans*, 20 November 2009.

66. Johane Dikgang, Anthony Leiman and Martine Visser, University of Cape Town, *Analysis of the Plastic Bag Levy in South Africa*, Policy Paper 18, July 2010.

67. The Canadian Press, "Anti-Plastic Bag Movement Growing as Residents Adapt to New Laws," *CBC News Canada*, 21 April 2008.

68. "Andalucia Announced 10 Cent Tax on Plastic Bags from Jan 1," *TheReader.es*, 30 October 2010.

69. State of California, Public Resources Code, Section 42254, available at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).

70. See note 25.

71. See note 42.



**MORE THAN MEETS THE EYE**  
An occasional feature that digs deeper into things you've been wondering about

# Neither! Paper or Plastic?

We hear the question almost every time we go grocery shopping. Some shoppers answer automatically: plastic — convinced that they are making a better choice for the environment. Others ask for paper, believing the very same thing. The reality is that both paper and plastic bags gobble up natural resources and cause significant pollution. When you weigh all the costs to the environment, **you might just choose to reuse:**



	PAPER	PLASTIC
<b>CONSUMPTION</b>	Americans consume more than <b>10 billion paper bags</b> each year. Some <b>14 million trees</b> are cut down annually for paper bag production.	Worldwide, an estimated 4 billion plastic bags end up as litter each year. Tied end to end, <b>the bags could circle the Earth 63 times.</b>
<b>PRODUCTION</b>	<p><b>Paper, of course, comes from trees.</b> Trees are grown or found, then marked and felled.</p> <ol style="list-style-type: none"> <li>Logs are moved from the forest to a mill, where there is a three-year wait for the logs to dry before they can be used.</li> <li>Logs are stripped of bark and chipped into one-inch squares. The chips are "cooked" with tremendous heat and pressure.</li> <li>Then, they are "digested" with limestone and sulfurous acid until the wood becomes pulp.</li> <li>The pulp is washed, requiring thousands of gallons of fresh water and bleach, then pressed into finished paper.</li> <li>Cutting, printing, packaging and shipping to make paper bags require additional time, labor and energy.</li> </ol>	<p><b>Plastic is a by-product of oil refining.</b> Plastic bags are made from polyethylene, which comes from oil refineries as small resin pellets.</p> <ol style="list-style-type: none"> <li>A machine heats the pellet to about 340 degrees and pulls out from it a long, thin tube of cooling plastic.</li> <li>A hot bar is dropped on the tube at intervals, melting a line.</li> <li>Each melted line becomes the bottom of one bag and the top of another.</li> <li>The sections are cut out and a hole for the bag's handles is stamped in each piece.</li> </ol>
<b>POLLUTION</b>	The use of toxic chemicals during the production of paper for bags contributes to air pollution, such as acid rain, and water pollution.	Plastics production requires toxic chemicals. In an EPA ranking of hazardous waste, five of the top six were commonly used by the plastics industry. Hundreds of thousands of marine mammals die every year after eating discarded plastic bags. Turtles think the bags are jellyfish, their primary food source. Bags choke animals or block their intestines.
<b>RECYCLING</b>	Paper must be returned to pulp by using many chemicals to bleach and disperse the fibers. Although paper bags have a higher recycling rate than plastic, each new paper grocery bag you use is made from mostly virgin pulp for better strength and elasticity. Bags that are recycled are often turned into corrugated cardboard, not new paper bags.	Recycling almost any kind of plastic involves remelting and re-forming it. Because bags must first be separated by the type of plastic they were made from, the process is time-consuming and expensive. For example, it can cost \$4,000 to process and recycle 1 ton of plastic bags. This can then be sold on the commodities market for about \$32. More often than not, bags collected for recycling never get recycled. A growing trend is to ship them to countries such as India and China, where they are cheaply incinerated under more lax environmental laws.
<b>BIODEGRADABLE?</b>	Paper is degradable, but it cannot completely break down in modern landfills because of the lack of water, light, oxygen and other necessary elements. About 95 percent of garbage is buried beneath layers of soil that make it difficult for air and sunlight to reach it.	Petroleum-based plastics are not biodegradable, meaning they will not decompose over time. But they do take up less space than paper in a landfill: 2,000 plastic bags weigh 30 pounds; 2,000 paper bags weigh 280 pounds.



**WHAT YOU CAN DO**

Invest in **high-quality reusable bags**, each of which has the potential to eliminate an average of 1,000 plastic bags over its lifetime. The bag will pay for itself if your grocery store offers a 5- or 10-cent credit per bag.

Buy **collapsible plastic crates** and keep them in your car. At checkout, food goes into the crates, making it easy to bring food into the house in



## ***Let's Talk Plastic***

### **Short, Fun & Informative Video Links:**

#### **"Bag it" Trailer**

Click on "trailer" at <http://www.bagitmovie.com/>

#### **Kids Rap Video**

<http://www.youtube.com/watch?v=o4xQlhTudS0&feature=related>

**Anja Tribble**

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**From:** Anja Tribble  
**Sent:** Monday, August 15, 2011 8:34 AM  
**To:** 'Bart Kounovsky'; 'Cari Hermacinski'; 'Jon Quinn'; 'Kenny Reisman'; 'Meg Bentley'; 'Scott Myller'; 'Walter Magill'; Jon Roberts; 'Tony Lettunich (E-mail)'  
**Cc:** Julie Franklin  
**Subject:** FW: [City Council] Plastic Bags (1 of 3)

-----Original Message-----

From: Anja Tribble  
Sent: Monday, August 15, 2011 8:33 AM  
To: 'innovate0231@comcast.net'  
Subject: RE: [City Council] Plastic Bags

Dear Steve

Thank you for your comments. All three e-mails have been forwarded to City Council and the appropriate staff members.

Sincerely,

Anja Tribble-Husi  
Staff Assistant  
City Clerk's Office  
Steamboat Springs, Colorado

(970) 871-8225  
atribble@steamboatsprings.net

-----Original Message-----

From: webmaster@steamboatsprings.net [mailto:webmaster@steamboatsprings.net] On Behalf Of innovate0231@comcast.net  
Sent: Sunday, August 14, 2011 8:14 AM  
To: Anja Tribble  
Subject: [City Council] Plastic Bags

Steve Mendell sent a message using the contact form at [http://steamboatsprings.net/contact/City\\_Council](http://steamboatsprings.net/contact/City_Council).

Vote for this and I will vote you out:

<http://www.steamboattoday.com/news/2011/aug/13/bag-fee-proposal-coming-steamboat-springs/>

Continue to fund these tyrants and I will also vote you out.



**Anja Tribble**

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**From:** Anja Tribble  
**Sent:** Monday, August 15, 2011 8:35 AM  
**To:** 'Bart Kounovsky'; 'Cari Hermacinski'; 'Jon Quinn'; 'Kenny Reisman'; 'Meg Bentley'; 'Scott Myller'; 'Walter Magill'; Jon Roberts; 'Tony Lettunich (E-mail)'  
**Cc:** Julie Franklin  
**Subject:** FW: [City Council] Plastic Bags (2 of 3)

-----Original Message-----

From: webmaster@steamboatsprings.net [mailto:webmaster@steamboatsprings.net] On Behalf Of innovate0231@comcast.net  
Sent: Sunday, August 14, 2011 10:06 AM  
To: Anja Tribble  
Subject: [City Council] Plastic Bags

Steve Mendell sent a message using the contact form at  
[http://steamboatsprings.net/contact/City\\_Council](http://steamboatsprings.net/contact/City_Council).

In case any of you are even considering allowing our local lunatics to ignorantly impose a fee on plastic bags, kindly read this first:  
[http://www.boston.com/bostonglobe/magazine/articles/2008/09/28/in\\_praise\\_of\\_plastic/](http://www.boston.com/bostonglobe/magazine/articles/2008/09/28/in_praise_of_plastic/)

P.S.) Kindly stop using MY MONEY to fund this sort of ignorant tyranny.

**Anja Tribble**

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**From:** Anja Tribble  
**Sent:** Monday, August 15, 2011 8:36 AM  
**To:** 'Bart Kounovsky'; 'Cari Hermacinski'; 'Jon Quinn'; 'Kenny Reisman'; 'Meg Bentley'; 'Scott Myller'; 'Walter Magill'; Jon Roberts; 'Tony Lettunich (E-mail)'  
**Cc:** Julie Franklin  
**Subject:** FW: [City Council] Plastic Bags

-----Original Message-----

From: webmaster@steamboatsprings.net [mailto:webmaster@steamboatsprings.net] On Behalf Of innovate0231@comcast.net  
Sent: Sunday, August 14, 2011 10:37 AM  
To: Anja Tribble  
Subject: [City Council] Plastic Bags

Steve Mendell sent a message using the contact form at [http://steamboatsprings.net/contact/City\\_Council](http://steamboatsprings.net/contact/City_Council).

In my previous note, I cited this link (located behind a pay wall):  
[http://www.boston.com/bostonglobe/magazine/articles/2008/09/28/in\\_praise\\_of\\_plastic/](http://www.boston.com/bostonglobe/magazine/articles/2008/09/28/in_praise_of_plastic/)

The same article can be found here (for free):  
[http://www.keithob.com/stories/2008/11/in\\_praise\\_of\\_pl.html](http://www.keithob.com/stories/2008/11/in_praise_of_pl.html)

I recycle 100% of my plastic bags -- that is the most eco-friendly and sensible option available. Canvas bags, unless washed after EVERY usage, promote food poisoning:  
<http://network.nationalpost.com/np/blogs/theappetizer/archive/2009/05/20/back-to-plastic-reusable-grocery-bags-may-pose-public-health-risk.aspx>

Washing canvas bags after every usage has its own environmental issues, energy consumption, water consumption, water treatment.

I hope and trust you will NOT allow these ignorant tyrants to impose a fee upon the most ecologically and medically sound decision available to local consumers.

P.S.) Kindly stop using MY MONEY to fund this ignorant tyranny.

Previously e-mailed

## Anja Tribble

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**From:** Anja Tribble  
**Sent:** Monday, August 15, 2011 8:54 AM  
**To:** 'Bart Kounovsky'; 'Cari Hermacinski'; 'Jon Quinn'; 'Kenny Reisman'; 'Meg Bentley'; 'Scott Myller'; 'Walter Magill'; Jon Roberts; 'Tony Lettunich (E-mail)'  
**Cc:** Julie Franklin  
**Subject:** FW: [City Council] Plastic bags

-----Original Message-----

From: Anja Tribble  
Sent: Monday, August 15, 2011 8:52 AM  
To: 'zuberz@wildblue.net'  
Subject: RE: [City Council] Plastic bags

Dear Stan

Thank you for your comment. Your e-mail has been forwarded to City Council and the appropriate staff members.  
Sincerely,

Anja Tribble-Husi  
Staff Assistant  
City Clerk's Office  
Steamboat Springs, Colorado

(970) 871-8225  
[atribble@steamboatsprings.net](mailto:atribble@steamboatsprings.net)

-----Original Message-----

From: webmaster@steamboatsprings.net [mailto:webmaster@steamboatsprings.net] On Behalf Of zuberz@wildblue.net  
Sent: Monday, August 15, 2011 4:41 AM  
To: Anja Tribble  
Subject: [City Council] Plastic bags

Stan Zuber sent a message using the contact form at  
[http://steamboatsprings.net/contact/City\\_Council](http://steamboatsprings.net/contact/City_Council).

I agree with Cari Hermacinski that government should not be requiring this proposal.  
Maybe Catherine Carson needs to get together with the Safeway spokeswomen Kris Staaf.  
Let the stores mandate it not government.  
I see more and more people using recyclable bags and I know City Market pays \$.10 a bag when you use your own.  
Thanks for listening.  
Stan Zuber  
Hayden

Previously e-mailed

Previously e-mailed

**Anja Tribble**

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**From:** Anja Tribble  
**Sent:** Tuesday, August 16, 2011 8:41 AM  
**To:** 'keingalls@gmail.com'  
**Subject:** RE: Plastic Bags

Dear Kristin

Thank you for your comment. It has been received by City Council and has also been forwarded to the appropriate staff members.

Sincerely,

Anja Tribble-Husi  
Staff Assistant  
City Clerk's Office  
Steamboat Springs, Colorado

(970) 871-8225  
[atribble@steamboatsprings.net](mailto:atribble@steamboatsprings.net)

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**From:** Kristin Ingalls [mailto:keingalls@gmail.com]  
**Sent:** Tuesday, August 16, 2011 7:33 AM  
**To:** City Council  
**Subject:** Plastic Bags

Councilmen,

I am writing in reference to the proposal of the \$0.20 fee on disposable bags in grocery stores and potentially other businesses. I am all for helping the environment and reducing our footprint, but to add an additional charge on top of already inflated prices in this area?!? That is ridiculous, especially when we are trying to promote healthy eating and buying from local businesses. Furthermore, I honestly feel that it should be a decision made by each individual store, not by the government.

However, if this fee is going to be seriously considered and/or proposed and passed by our local government, how about we give shoppers a *positive* incentive to bring their own bags? For instance, if there is a charge of \$0.20 for each disposable bag used, give a \$0.20 off discount for each reusable bag one brings to the store. This way, it is *equitable* to both shoppers and businesses. I would most certainly start carrying my reusable bags everywhere if I knew I got a discount for using them and I don't think I'm alone in that.

I thank you for your time and consideration in my thoughts and ideas.

Kristin Ingalls

Previously e-mailed

## Anja Tribble

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**From:** Anja Tribble  
**Sent:** Monday, August 22, 2011 12:45 PM  
**To:** 'Bart Kounovsky'; 'Cari Hermacinski'; 'Jon Quinn'; 'Kenny Reisman'; 'Meg Bentley'; 'Scott Myller'; 'Walter Magill'; Jon Roberts; Tony Lettunich; Debra Hinsvark  
**Cc:** Julie Franklin  
**Subject:** FW: [City Council] Proposed fee for use of plastic or paper grocery sacks

-----Original Message-----

From: Anja Tribble  
Sent: Monday, August 22, 2011 12:43 PM  
To: 'charstees@springsips.com'  
Subject: RE: [City Council] Proposed fee for use of plastic or paper grocery sacks

Dear Charlene

Thank you for your comment. Your e-mail has been forwarded to City Council and the appropriate staff members.  
Sincerely,

Anja Tribble-Husi  
Staff Assistant  
City Clerk's Office  
Steamboat Springs, Colorado

(970) 871-8225  
[atribble@steamboatsprings.net](mailto:atribble@steamboatsprings.net)

-----Original Message-----

From: webmaster@steamboatsprings.net [mailto:webmaster@steamboatsprings.net] On Behalf Of charstees@springsips.com  
Sent: Saturday, August 20, 2011 9:48 AM  
To: Anja Tribble  
Subject: [City Council] Proposed fee for use of plastic or paper grocery sacks

Charlene Stees sent a message using the contact form at [http://steamboatsprings.net/contact/City\\_Council](http://steamboatsprings.net/contact/City_Council).

Regarding the proposed fee for use of plastic or paper grocery sacks, I wish to protest very strongly. These people proposing this fee are trying to raise money for their purposes, however, I'd like to ask them several questions.

1. What do they use in their waste paper baskets, and trash cans? How many large plastic bags do they purchase for their garbage cans?
2. How many paper towels do they use when a terry cloth hand towel could be used, washed, and dried?
3. How many disposable diapers do they use, or have they used in the past, when cloth diapers can be used, washed, and dried?
4. How many plastic water bottles have they purchased, used, and then thrown away?

Last comment!!! I'll continue to use my plastic sacks in my waste paper baskets. I'll continue to purchase trash bags for my garbage, and if I have to pay extra for them, I'll carry my groceries home in a pillow case or a gunny sack.

Previously e-mailed

Previously e-mailed

Thank you.

Charlene Stees  
235 Spruce Street.

<b>To:</b> City Council			
<b>Subject:</b> Encourage City Council to propose a green fee for non reusable bags			
Greetings,			
I just signed the following petition addressed to: Steamboat Springs City Council ----- Our environment is important to our locals and visitors. Please take the next step to reduce plastic in our environment and enlist a green fee for non reusable plastic and paper shopping bags in Steamboat's large, high use grocery stores. Thank you for your consideration and for keeping our mountains green and clean. ----- Sincerely,			
<b>Name</b>	<b>E-mail address</b>	<b>Location</b>	<b>Additional Comment</b>
Shara Ludlum	<a href="mailto:s7car7lett@gmail.com">s7car7lett@gmail.com</a>	Steamboat Springs, CO	
			I am all for this fee in order to have people think twice before blindly using yet another plastic bag. I have been to Smokey Mountain dumpsite in the Philippines, <a href="http://www.weinternational.org.ph">www.weinternational.org.ph</a> , and it makes you think twice before using plastic bags mindlessly. Also, I used to live in Telluride and totally agree with their plastic bag policy.
Sheila Farny	<a href="mailto:sheilafarny@yahoo.com">sheilafarny@yahoo.com</a>	Steamboat Springs, CO	
Jill Greene	<a href="mailto:jill_buhler@hotmail.com">jill_buhler@hotmail.com</a>	Boise, ID	
Carla Scarpone	<a href="mailto:scarpone.c@gmail.com">scarpone.c@gmail.com</a>	Denver, CO	
Keith Hicks	<a href="mailto:snowlizard@q.com">snowlizard@q.com</a>	Steamboat Springs, CO	Saving the environment is good.
Carin Zellerman	<a href="mailto:gargonakam@hotmail.com">gargonakam@hotmail.com</a>	New York, NY	

			The fee isn't exorbitant. Just makes you think twice about what you are wasting. I feel it is an excellent way to clean up and help our community. Save the Yampa!
Nikki Graber	<a href="mailto:geograber@gmail.com">geograber@gmail.com</a>	Oak Creek, CO	
Lukas Martinelli	<a href="mailto:cplax21@yahoo.com">cplax21@yahoo.com</a>	Pleasant Hill, CA	
Megan Moore-Kemp	<a href="mailto:meganbreenmoore@yahoo.com">meganbreenmoore@yahoo.com</a>	Steamboat Springs, CO	
Paulina Hoppel	<a href="mailto:chica-ph@wp.pl">chica-ph@wp.pl</a>	Poznan, Poland	
Leslie Dietz	<a href="mailto:lesliedietz11@gmail.com">lesliedietz11@gmail.com</a>	Steamboat Springs, CO	
Mary O'Brien	<a href="mailto:herbalmob@yahoo.com">herbalmob@yahoo.com</a>	Steamboat Springs, CO	
James M	<a href="mailto:jamesmnordlund@yahoo.com">jamesmnordlund@yahoo.com</a>	Fargo, ND	
Carol Lacey	<a href="mailto:23blondie@gmail.com">23blondie@gmail.com</a>	Steamboat Springs, CO	
Billy Texter	<a href="mailto:b_texter@yahoo.com">b_texter@yahoo.com</a>	Oak Creek, CO	
Jill Waldman	<a href="mailto:steamboatevents@hotmail.com">steamboatevents@hotmail.com</a>	Steamboat Springs, CO	To reduce plastic that harms animals and soil in our oceans and environment
Sarah Clausen	<a href="mailto:clausensintegrity@hotmail.com">clausensintegrity@hotmail.com</a>	Denver, CO	
Paul Potyen	<a href="mailto:quincy@paulpotyen.com">quincy@paulpotyen.com</a>	Steamboat Springs, CO	
Babette Dickson	<a href="mailto:babettedickson@yahoo.com">babettedickson@yahoo.com</a>	Steamboat Springs, CO	
Heather Bolles	<a href="mailto:hkimmey@comcast.net">hkimmey@comcast.net</a>	Steamboat Springs, CO	Because we don't need any more plastic floating around this planet :(
Caia LaCour	<a href="mailto:caialacour@hotmail.com">caialacour@hotmail.com</a>	New York, NY	
Melissa Finn	<a href="mailto:seifertma2000@yahoo.com">seifertma2000@yahoo.com</a>	Colorado Springs, CO	
Drew Howe	<a href="mailto:fifaworld2@gmail.com">fifaworld2@gmail.com</a>	Chattanooga, TN	
Craig Kennedy	<a href="mailto:craigpkennedy@gmail.com">craigpkennedy@gmail.com</a>	Steamboat Springs, CO	



			Single use plastic and paper bags symbolize the throw-away society we have become. I am signing in the hopes that this will start people thinking about ways to change behavior for a more sustainable future.
Sarah Jones	<a href="mailto:sbjones1120@gmail.com">sbjones1120@gmail.com</a>	Steamboat Springs, CO	
Parri Gabriel	<a href="mailto:parri.gabriel@gmail.com">parri.gabriel@gmail.com</a>	Steamboat Springs, CO	
Caitlin Rood	<a href="mailto:caitlin.rood@gmail.com">caitlin.rood@gmail.com</a>	Westminster, CO	
Pamela Dale	<a href="mailto:pmdale@msn.com">pmdale@msn.com</a>	Denver, CO	I visit Steamboat frequently and enjoy the beauty of this town.
Jessica Weaver	<a href="mailto:denverweaver@gmail.com">denverweaver@gmail.com</a>	Austin, TX	I visit Steamboat on a regular basis and hope to help the reduction of plastic in Steamboat.
Jennifer tamburrino	<a href="mailto:jentamburrino@gmail.com">jentamburrino@gmail.com</a>	Steamboat Springs, CO	Wow even when you have your bags they are always trying to give plastic for meats and chemicals. the checkers and baggers don't even realize the harm in those bags and how easily they give you 10 when you only need 5!!! AMEN to this petition, i will support it 100% . i wish i could attend but i have child activities i need to be at. good luck
Alisa Bonelli	<a href="mailto:ambonelli@yahoo.com">ambonelli@yahoo.com</a>	Steamboat Springs, CO	

Anne Mudgett	<a href="mailto:amudgett@comcast.net">amudgett@comcast.net</a>	Steamboat Springs, CO	
Drew Wills	<a href="mailto:getbackup05@gmail.com">getbackup05@gmail.com</a>	Colorado Springs, CO	
Ineke van der Velde	<a href="mailto:dtchgrl25@yahoo.com">dtchgrl25@yahoo.com</a>	Steamboat Springs, CO	In the Netherlands everyone brings their own grocery bags, it is 2nd nature to do so. Charging a small fee for a (perhaps little stronger plastic bag than what they have now) grocery bag is not a big deal and it will make you more committed to bringing your own bags!
Antonio Marxuach	<a href="mailto:xc.farmer.antoine@gmail.com">xc.farmer.antoine@gmail.com</a>	Steamboat Springs, CO	
Karen King	<a href="mailto:karen@karenriceking.com">karen@karenriceking.com</a>	Lafayette, CO	Great for our Nation! travelling to Stmbt. for over 2 decades, I support this "let's get bags" out of our lives! Who's idea was it anyway? What happened to carrying a backpack and using it until we passed it on to our grandchildren? Or SKINS for that matter? How old are you, anyway? KK
Faith McClure	<a href="mailto:faithmcllr@aol.com">faithmcllr@aol.com</a>	Steamboat Springs, CO	
Jennifer Wright	<a href="mailto:jennmwright@gmail.com">jennmwright@gmail.com</a>	Steamboat Springs, CO	
Shannon Casson	<a href="mailto:boo_wag@yahoo.com">boo_wag@yahoo.com</a>	Steamboat Springs, CO	
Anna White	<a href="mailto:annabwhite@gmail.com">annabwhite@gmail.com</a>	Steamboat Springs, CO	

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Ron Tragni	<a href="mailto:rtragni@hotmail.com">rtragni@hotmail.com</a>	Antioch, CA	
Tim Stone	<a href="mailto:tims@ksaarch.com">tims@ksaarch.com</a>	Steamboat Springs, CO	
Susan Owen	<a href="mailto:soozilla@msn.com">soozilla@msn.com</a>	Steamboat Springs, CO	
Mark Ross-Bryant	<a href="mailto:markoinsteamboat@gmail.com">markoinsteamboat@gmail.com</a>	Steamboat Springs, CO	to reduce plastic grocery bag consumption in Steamboat
Lena Rehberger	<a href="mailto:lena.rehberger@web.de">lena.rehberger@web.de</a>	Grebenhain,	
Nicole Weber	<a href="mailto:nicole4770@yahoo.com">nicole4770@yahoo.com</a>	Pasadena, MD	
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Ryan Bradley	<a href="mailto:cellq7@yahoo.com">cellq7@yahoo.com</a>	Greenbelt, MD	
Alex Woolery	<a href="mailto:minus.a@gmail.com">minus.a@gmail.com</a>	Julian, CA	
Valérie DISLE	<a href="mailto:vdisle@yahoo.fr">vdisle@yahoo.fr</a>	Saint Leu La Foret, France	
Peggy Acosta	<a href="mailto:amrani2@verizon.net">amrani2@verizon.net</a>	Womelsdorf, PA	

Judith Neumann	<a href="mailto:judeneum@yahoo.com">judeneum@yahoo.com</a>	Glenn Allen, VA	We are so far behind europe...noone there has offered plastic bags there for years and we want to be the best !!!!
Diana Ferreira	<a href="mailto:diana_lgp@hotmail.com">diana_lgp@hotmail.com</a>	Paços de Ferreira, Portugal	
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Karen Goodman	<a href="mailto:kgoodman@sssd.k12.co.us">kgoodman@sssd.k12.co.us</a>	Steamboat Springs, CO	
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Sheena Backus	<a href="mailto:lunv4ethan@hotmail.com">lunv4ethan@hotmail.com</a>	Glendale, AZ	
Christopher Jiggins	<a href="mailto:chrisjiggins@gmail.com">chrisjiggins@gmail.com</a>	Steamboat Springs, CO	Until there is a consiquence/ reward for using reusable bags the general public will not adopt this practice.

Elijah Campbell	<a href="mailto:freestylefuge@aol.com">freestylefuge@aol.com</a>	Steamboat Springs, CO	Until there is a consequence/ reward for using reusable bags the general public will not adopt this practice.
Glenn Little II	<a href="mailto:skifreelivelove@hotmail.com">skifreelivelove@hotmail.com</a>	Steamboat Springs, CO	Until there is a consequence/ reward for using reusable bags the general public will not adopt this practice.
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Susan Mizen	<a href="mailto:smizen@yahoo.com">smizen@yahoo.com</a>	Steamboat Springs, CO	
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Catherine Potyen	<a href="mailto:cate@catepotyen.com">cate@catepotyen.com</a>	Steamboat Springs, CO	
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Tim McCarthy	<a href="mailto:mountwerner@yahoo.com">mountwerner@yahoo.com</a>	Steamboat Springs, CO	

Nancy Roussy	<a href="mailto:quismepotestcurat111176@army.com">quismepotestcurat111176@army.com</a>	Ste-Florence, Canada	
Betsy Rapp	<a href="mailto:weberubbin@springsips.com">weberubbin@springsips.com</a>	Steamboat Springs, CO	If we can do our part as a community to give-up plastic bags at Safeway, City Market, and Walmart, the world will be a better place for it and we can be a model for others. It is the right thing to do!
Cody Perry	<a href="mailto:cody.perry@gmail.com">cody.perry@gmail.com</a>	Steamboat Springs, CO	If we can do our part as a community to give-up plastic bags at Safeway, City Market, and Walmart, the world will be a better place for it and we can be a model for others. It is the right thing to do!
Thomas Chadwick	<a href="mailto:tchadwick42@yahoo.com">tchadwick42@yahoo.com</a>	Gastonia, NC	If we can do our part as a community to give-up plastic bags at Safeway, City Market, and Walmart, the world will be a better place for it and we can be a model for others. It is the right thing to do!
George Danellis	<a href="mailto:georged@springsips.com">georged@springsips.com</a>	Steamboat Springs, CO	If we can do our part as a community to give-up plastic bags at Safeway, City Market, and Walmart, the world will be a better place for it and we can be a model for others. It is the right thing to do!

Carole Milligan	<a href="mailto:carole.milligan@stanfordalumni.org">carole.milligan@stanfordalumni.org</a>	Steamboat Springs, CO	I believe that this is the most effective way to change everyone's behavior and make us more accountable for our wasteful use of plastic.
Eric Schankerman	<a href="mailto:eric.schankerman@gmail.com">eric.schankerman@gmail.com</a>	Steamboat Springs, CO	I believe that this is the most effective way to change everyone's behavior and make us more accountable for our wasteful use of plastic.
Karen Tucker	<a href="mailto:ks.tucker48@gmail.com">ks.tucker48@gmail.com</a>	Pensacola, FL	I believe that this is the most effective way to change everyone's behavior and make us more accountable for our wasteful use of plastic.
Caitlin McGee	<a href="mailto:unc50fancaitlin@yahoo.com">unc50fancaitlin@yahoo.com</a>	Whitsett, NC	
Mike Antone	<a href="mailto:troubadour7777777@yahoo.com">troubadour7777777@yahoo.com</a>	Sacaton, AZ	
Andrea Nemec	<a href="mailto:andreanemec999@gmail.com">andreanemec999@gmail.com</a>	Osijek, Croatia	
Chantal Buslot	<a href="mailto:chanti@odie.be">chanti@odie.be</a>	Hasselt, Belgium	
Judith Abel	<a href="mailto:indiansummer80@gmx.net">indiansummer80@gmx.net</a>	Basel, Switzerland	
Klaudio Negric	<a href="mailto:knegric@gmail.com">knegric@gmail.com</a>	Rijeka, Croatia	
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Olivier Gomes	<a href="mailto:goulu95@hotmail.fr">goulu95@hotmail.fr</a>	Saint Leu La Foret, France	
Maria F.	<a href="mailto:f.g.maria@aol.it">f.g.maria@aol.it</a>	Verona, Italy	
Jason J Green	<a href="mailto:protectanimals@care2.com">protectanimals@care2.com</a>	Spotsylvania, VA	
Fawn Racoma	<a href="mailto:fawnracoma@yahoo.com">fawnracoma@yahoo.com</a>	Steamboat Springs, CO	
Kristina Johnson	<a href="mailto:kristina@structural-integration.com">kristina@structural-integration.com</a>	Steamboat Springs, CO	
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Travis Gainsley	<a href="mailto:travis.gainsley@gmail.com">travis.gainsley@gmail.com</a>	Steamboat Springs, CO	
Emmanuelle Vital	<a href="mailto:vitalresources@lindomundo.com">vitalresources@lindomundo.com</a>	Steamboat Springs, CO	

Michael Zopf	<a href="mailto:mzopf@co.routt.co.us">mzopf@co.routt.co.us</a>	Steamboat Springs, CO	
Lu Etta Loeber	<a href="mailto:lloeber@ix.netcom.com">lloeber@ix.netcom.com</a>	Steamboat Springs, CO	Steamboat Springs should continue to be a leader in sustainability and environmental issues. We would become a model for other rural communities.
Stephanie Finegan	<a href="mailto:menegusfinegan@gmail.com">menegusfinegan@gmail.com</a>	Clark, Colorado	
Wolfgang Bennett	<a href="mailto:wolf@mountainhomestove.com">wolf@mountainhomestove.com</a>	Steamboat Springs, CO	
LuAnn Foty	<a href="mailto:luannfoty@gmail.com">luannfoty@gmail.com</a>	Steamboat Springs, CO	Because I care about the Earth!!
Lilian Williams	<a href="mailto:lilianwilliams85@yahoo.com">lilianwilliams85@yahoo.com</a>	Bethesda, MD	
Lane Malone	<a href="mailto:lane_malone@comcast.net">lane_malone@comcast.net</a>	Steamboat Springs, CO	
Kyle Hornor	<a href="mailto:khonor@yahoo.com">khonor@yahoo.com</a>	Steamboat Springs, CO	
Sandi Gibson	<a href="mailto:osla@me.com">osla@me.com</a>	Steamboat Springs, CO	
Chloe Hartstein	<a href="mailto:absolutely.chloe@gmail.com">absolutely.chloe@gmail.com</a>	Oak Creek, CO	
Robert S. Moore	<a href="mailto:sarviscreek@gmail.com">sarviscreek@gmail.com</a>	Steamboat Springs, CO	
Sam Jones	<a href="mailto:Sam@allseasonfunds.com">Sam@allseasonfunds.com</a>	Steamboat Springs, CO	
Maggie Cane	<a href="mailto:magdoll5208@yahoo.com">magdoll5208@yahoo.com</a>	Steamboat Springs, CO	
Susan Holland	<a href="mailto:emeraldmountainenergy@zirkel.us">emeraldmountainenergy@zirkel.us</a>	Steamboat Springs, CO	to support fee on plastic bags....to have long term social change that will end the use of throw away bags
Laurie Edwards	<a href="mailto:sboaters@yahoo.com">sboaters@yahoo.com</a>	Steamboat Springs, CO	
Karen Post	<a href="mailto:karenpost@mindspring.com">karenpost@mindspring.com</a>	Steamboat Springs, CO	
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Kristina Golemanova	<a href="mailto:kr_golemanova@mail.bg">kr_golemanova@mail.bg</a>	Gabrovo, Bulgaria	
Tom Swissler	<a href="mailto:tswiss5@comcast.net">tswiss5@comcast.net</a>	Steamboat Springs, CO	



Kristen Davies	<a href="mailto:kristendavies47@yahoo.com">kristendavies47@yahoo.com</a>	Chicago, IL	
			We really do need to stop the wasteful and contaminating use of plastic bags. They don't biodegrade in the land fill, and our scarce petroleum resource is used to make them. Reusable fabric bags are a good solution, but people need to be "encouraged" to use them. A 20 cent fee should be good encouragement.
Lynn Abbott	<a href="mailto:labbotstbt@q.com">labbotstbt@q.com</a>	Steamboat Springs, CO	
Elizabeth Seabert	<a href="mailto:betsy@point6.com">betsy@point6.com</a>	Steamboat Springs, CO	
Bill Moser	<a href="mailto:bmoser2@earthlink.net">bmoser2@earthlink.net</a>	Steamboat Springs, CO	
Linda Fairchild	<a href="mailto:lsfairchild@yahoo.com">lsfairchild@yahoo.com</a>	Steamboat Springs, CO	
Elise Osterholt	<a href="mailto:eosterholt@yahoo.com">eosterholt@yahoo.com</a>	Clark, CO	
Ona Canady	<a href="mailto:signwithcanady@live.com">signwithcanady@live.com</a>	Steamboat Springs, CO	
Ben Perdue	<a href="mailto:benjam_co@yahoo.com">benjam_co@yahoo.com</a>	Steamboat Springs, CO	
Sherry Benson	<a href="mailto:benson_sherry@yahoo.com">benson_sherry@yahoo.com</a>	Steamboat Springs, CO	
Concerned Citizen	<a href="mailto:katiebgc@aol.com">katiebgc@aol.com</a>	Steamboat Springs, CO	

# Agenda Item # 5

## CITY COUNCIL COMMUNICATION FORM

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**FROM:** Deb Hinsvark, Director of Finance, X 240  
**THROUGH:** Jon Roberts, City Manager  
**DATE:** September 6, 2011  
**ITEM:** Mid Year, 2011, Financial Update  
**NEXT STEP:** Provide direction regarding proposed 2012 Revenues and Expenditures.

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DIRECTION  
 INFORMATION  
 ORDINANCE  
 MOTION  
 RESOLUTION

---

**I. REQUEST OR ISSUE:**

Council has requested and will receive a quick update on 2011's Fiscal Year to date. Also, in anticipation of the 2012 budget, staff will suggest a sales tax revenue level for 2012 and ask for some discussion regarding expenses.

**II. RECOMMENDED ACTION:**

None.

**III. FISCAL IMPACTS:**

None.

**IV. BACKGROUND INFORMATION:**

None.

**V. LEGAL ISSUES**

None.

**VI. CONFLICTS OR ENVIRONMENTAL ISSUES:**

None.

**VII. SUMMARY AND ALTERNATIVES:**

While the City has taken certain actions to reduce expenditures over the last two and a half years, the ongoing economic sluggishness will take a toll over the next few years on the City's ability to sustain today's level of activity without using reserves. Elimination of services that are not core City functions could reduce some of the pressure on the reserves. This conversation will introduce that idea.

**ATTACHMENTS:**

Attachment 1.Presentation.

## CITY OF STEAMBOAT SPRINGS FINANCIAL UPDATE THROUGH JULY 31, 2011

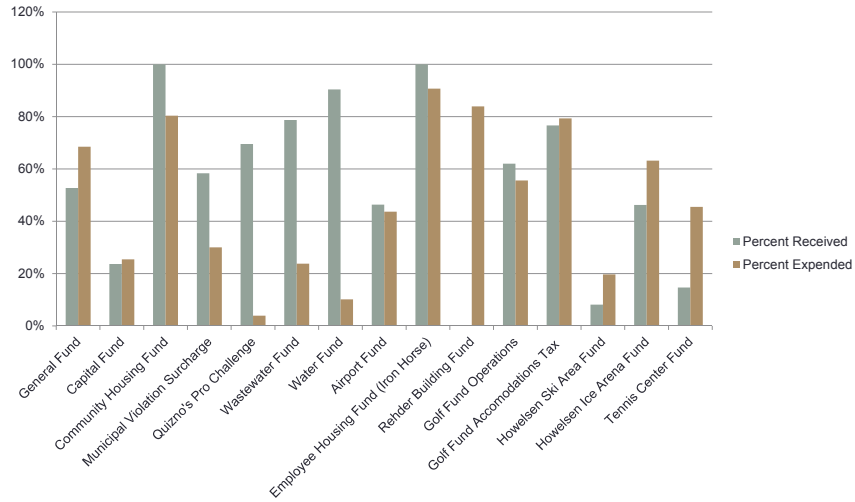
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Presented September 6, 2011

### Presentation Outline

- Current Year Financials
- Economic Update
  - National
  - Local
- 2012 Budget Process
  - Anticipated Revenue
  - Expenditure Considerations

## 2011 Analysis



## CIP Analysis

CIP Fund	Mid Year Estimate
Beginning Fund Balance per 2010 CAFR	\$ 6,887,314
Plus 2011 Estimated Revenue	\$ 867,836
Plus 2011 Estimated Grants Revenue	\$ 1,193,912
Less 2011 Approved Projects- still in estimate Spending	\$ (1,939,227)
Less 2010 Carry over spending (in beginning fund balance)	\$ (3,511,924)
Less 2011 Additional Approved Projects (Orton)	\$ (1,355,000)
Plus 2011 Additional Grants (Orton)	\$ 600,000
Ending Fund Balance	\$ 2,742,911

## National Economics

- The Associated Press reported in August that the stock market was “starting to feed economic fear. Some on Wall Street worry that the resulting blow to confidence (of multiple weeks of market losses) could push prices even lower,” and tip the economy into a new recession.
- At its August 9 meeting the FOMC stated it would likely keep federal funds rates low (0 – ¼%) through mid 2013 to “promote the ongoing economic recovery.”
- Several Wall Street economists don’t feel this is a realistic pronouncement, that rates will rise to as much as 4% by the end of 2012.

## Local Economics

- MTRiP reported in its July 2011 market briefing that hotel room booking would drop between July 2011 and December 2011 by 1.9%.
- School superintendent Brad Meeks expects enrollment to be 20-30 students higher this year. Enrollment increased from 2,088 students to 2,118 in 2009 and dropped 10 students in 2010.
- Yampa Valley Partners reports that although the median listing price for homes in Routt County has declined 13.3% from a year ago, the June listing price rose 2%.
- Building permits dropped from 371 through July 2010 to 301 through July 2011; however, the average permit fee rose from \$504 per permit to \$546 per permit.

## Unemployment

- Routt County's unemployment rate continued to climb from 6.9% at FYE 2009 to 8.7% at FYE 2010. Midyear 2011, the figure was 9.2%.
- Colorado as a whole was at 8.9% in December of 2010 and at mid-year was 8.5% (ranking us 28<sup>th</sup> among the 50 states).
- Steamboat Springs' jump in June is generally related to seasonality. In June 2010, for instance, Routt County's rate was 10.3%.

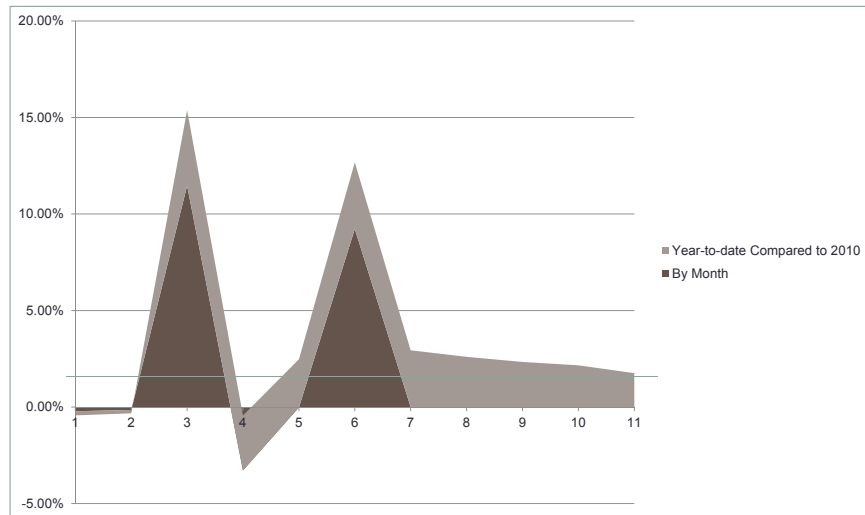
## 2011 Revenues

City of Steamboat Springs  
Sales Tax Comparison  
Includes all sales tax revenue  
Based on deposit date

CASH BASIS

	2010 Actual	2011 Budget by Month	2011 Actual	Dollar amount more (less) than budget (YTD 2011)	Budget Comparison		Actual Comparison	
					Incl(Dec) Budget Comparison	Year-to-date Budget Comparison	By Month	Year-to-date Compared to 2010
February	\$ 1,763,248	\$ 1,605,426	\$ 1,759,468	\$ 154,042	9.60%	9.60%	-0.21%	-0.21%
March	1,756,685	1,605,426	1,754,112	302,728	9.26%	9.43%	-0.15%	-0.18%
April	1,908,163	1,751,374	2,126,813	678,167	21.44%	13.67%	11.46%	3.91%
May	946,311	875,687	915,238	717,718	4.52%	12.29%	-3.28%	2.84%
June	884,986	729,739	884,867	872,846	21.26%	13.29%	-0.01%	2.49%
July	1,205,284	1,021,635	1,316,420	1,167,631	28.85%	15.39%	9.22%	3.45%
August	1,463,008	1,313,530	1,463,008	1,317,109	11.38%	14.79%	0.00%	2.94%
September	1,310,173	1,167,582	1,310,173	1,459,700	12.21%	14.49%	0.00%	2.60%
October	1,259,903	1,021,635	1,259,903	1,697,968	23.32%	15.31%	0.00%	2.34%
November	1,015,732	875,687	1,015,732	1,838,013	15.99%	15.36%	0.00%	2.16%
December	3,156,417	2,627,059	3,156,417	2,367,371	20.15%	16.22%	0.00%	1.75%
	<b>\$ 16,669,910</b>	<b>\$ 14,594,780</b>	<b>\$ 16,962,151</b>	<b>2,367,371</b>	<b>16.22%</b>	<b>16.22%</b>	<b>1.75%</b>	<b>1.75%</b>
Estimates (NOT actual amounts)								

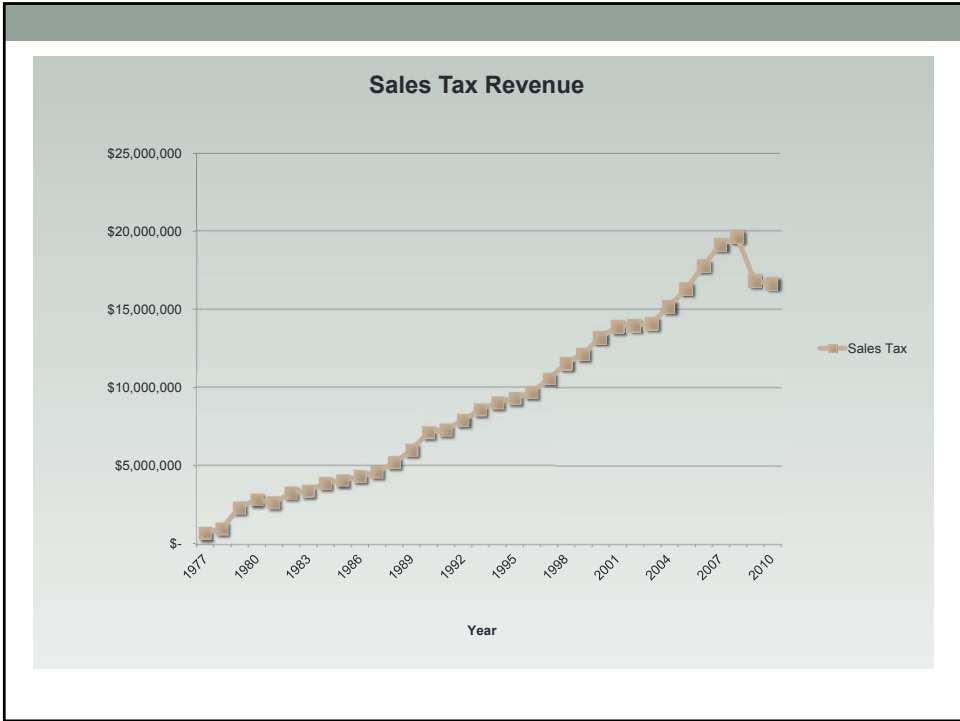
## Graphic Comparison



## 2005 Revenue Level

- Drop 2012 Sales Tax Revenue by 2% from anticipated 2011 revenue = \$16,622,908
- 2005 Sales Tax Revenue was \$16,295,479.
- From 2005 to 2008 sales tax revenue grew by an average of 5% annually.
- We learned, during this time, to operate on a model of rising revenues and followed with increased staff and services.





## 2005 GF Expenditures by Function Compared to 2010

	2005	2010	
General Government	\$ 3,994,619	\$ 3,462,000	-13.33%
Transportation Services	\$ 2,145,285	\$ 2,730,334	27.27%
Public Works	\$ 2,124,475	\$ 3,093,334	45.60%
Public Safety/Police	\$ 2,963,249	\$ 3,454,715	16.59%
Public Safety/Fire	\$ 1,647,829	\$ 2,842,714	72.51%
Legal and Municipal Court	\$ 470,474	\$ 491,960	4.57%
Parks, Open Space and Recreation	\$ 4,294,386 *	\$ 4,433,110	3.23%
Planning	\$ 986,347	\$ 759,748	-22.97%
Central Services	\$ 1,594,807	\$ 2,065,879	29.54%
Transfer to the Capital Fund	\$ 1,109,310	\$ 1,600,000	44.23%
Excess available for Fund Balance	\$ 1,516,351	\$ (826,101)	-154.48%

\* 2005 Numbers reflect Park Enterprise Funds (with the exception of golf), 2010 funds have been combined to mirror 2005.

## 2005 GF Expenditures by Classification Compared to 2010

	2005	2010	Percent Change
Personnel	\$ 11,296,786	\$ 14,373,722	27.24%
Operating	\$ 5,870,148	\$ 5,498,832	-6.33%
Equipment	\$ 116,043	\$ 193,262	66.54%
Community	\$ 1,316,688	\$ 1,191,325	-9.52%
Capital	\$ 26,999	\$ 437,734	1521.30%
Debt	\$ 1,203,477	\$ 489,103	-59.36%
Transfers	\$ 1,427,020	\$ 3,163,058	121.65%
	\$ 21,257,161	\$ 25,347,036	19.24%

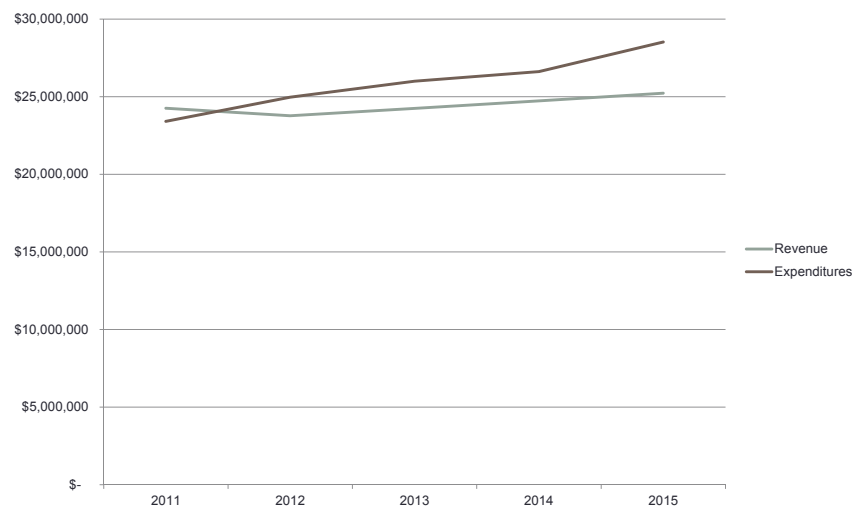
## Our Response to Date

- Close City Hall on Friday.
- Reduce all administrative and some service, staff time by 10%.
- Cut managerial salaries by 10%.
- Eliminate vacant positions and enact a reduction in force.
- Hold services at their current level.

## Additional Concerns of 2012

- We own over \$100 million in facilities that have over \$5 million in deferred maintenance issues.
- The volunteer firefighter pension program has a \$517,000 unfunded liability. According to the actuaries we are currently funded at 66% of future costs.
- CIP fund revenues are not expected to return to “normal” levels for a number of years and the CIP fund will require General Fund transfers.
- There is price pressure on gasoline, auto parts, fleet.
- We need to accommodate emergencies in the budget.
- With no new growth in our sights, our actions need to consider the long-term.

## 5-Year No Changes



## Potential Solutions

- Reserves
- Services
- Combination of Reserves and Services

## **AGENDA ITEM #6**

### **Joint meeting with Chamber Board**

This item is discussion only.

# Agenda Item # 7

## CITY COUNCIL COMMUNICATION FORM

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**FROM:** Alexis Casale, Historic Preservation Planner (Ext. 202)  
Tyler Gibbs, AIA, Director of Planning & Community  
Development (Ext. 244)

**THROUGH:** Jon Roberts, City Manager (Ext. 228)

**DATE:** September 6, 2011

**RE:** Review and comment on the National Register nomination of the  
Steamboat (Hillcrest) Apartments, 302 11<sup>th</sup> Street

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ORDINANCE  
 RESOLUTION  
 MOTION  
 DIRECTION  
 INFORMATION

---

**PROJECT NAME:** National Register of Historic Places nomination for the Steamboat  
(Hillcrest) Apartments

**LOCATION:** 302 11<sup>th</sup> Street

**HPC ACTION:** On August 10, 2011 the Historic Preservation Commission  
recommended that the nomination meets the criteria established by the  
National Park Service and recommend inclusion of the buildings in the  
National Register of Historic Places.

## EXECUTIVE SUMMARY:

### **1. Background Information:**

The City of Steamboat Springs became a Certified Local Government (CLG) in 1999. CLG status provides the City the ability to be involved in the commenting process for nominations of historic properties to the National Register of Historic Places. The Historic Preservation Commission (HPC) reviewed and commented on the Steamboat (Hillcrest) Apartments National Register nomination during its regular meeting on August 10, 2011. HPC found the Steamboat (Hillcrest) Apartments meet the criteria for listing in the National Register under:

- Criterion C, in the area of architecture as a superior local example of the Modern Movement's Usonian style and as an excellent example of architect Eugene Sternberg's body of work.

The Historic Preservation Commission supports the nomination of the Steamboat (Hillcrest) Apartments to the National Register of Historic Places.

### **Recommended Action:**

Historic Preservation staff recommends the listing of the buildings in the National Register of Historic Places. HPC reviewed and commented on the National Register nomination and found the nomination meets the established criteria and recommended inclusion of the buildings in the National Register of Historic Places.

Provide a signature to the State Historic Preservation Officer from the Chief Elected Official indicating support of the National Register of Historic Places nomination for the Steamboat (Hillcrest) Apartments through the resolution.

### **2. List of Attachments:**

- Attachment 1: HPC Staff Report
- Attachment 2: National Register Nomination
- Attachment 3: August 10, 2011 HPC Minutes
- Attachment 4: Example of the Signature Form



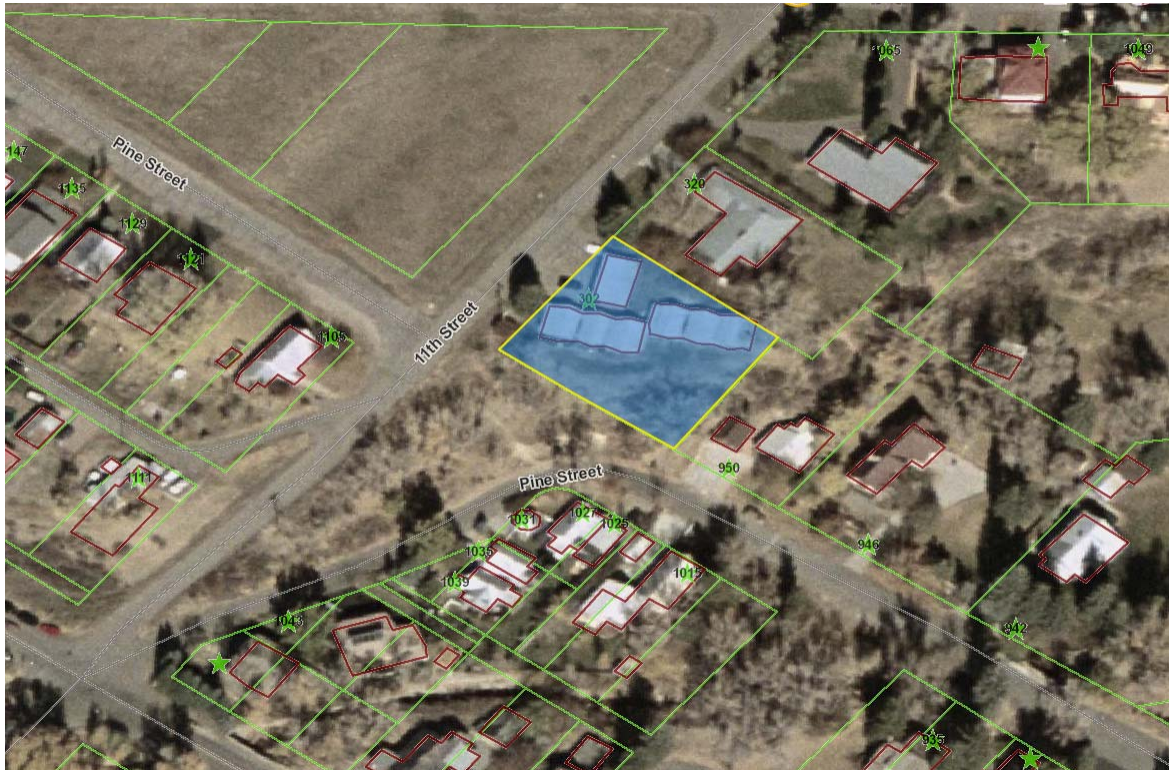
## DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT STAFF REPORT

<b>HISTORIC PRESERVATION COMMISSION AGENDA ITEM #4:</b>	
<b>Project Name:</b>	Steamboat (Hillcrest) Apartments
<b>Prepared By:</b>	Alexis Casale, Historic Preservation Planner (Ext 202)
<b>Through:</b>	Tyler Gibbs, AIA Director of Planning & Community Development (Ext. 244)
<b>Historic Preservation Commission (HPC):</b>	August 10, 2011
<b>Planning Commission (PC):</b>	N/A
<b>City Council (CC):</b>	September 6, 2011
<b>Zoning:</b>	(MF-2) Multifamily Residential Two – Medium Density
<b>Applicant:</b>	Hillcrest Apartments Inc. c/o Pat Turner at CMC 1330 Bob Adams Drive Steamboat Springs, CO 80487
<b>Request:</b>	Review and comment on the National Register nomination of the Steamboat (Hillcrest) Apartments, 302 11 <sup>th</sup> Street

### Staff Report - Table of Contents

Section		Pg
I.	Background	4-2
II.	Principal Discussion Items	4-2
III.	Staff Finding	4-2
IV.	Motion	4-3
V.	Attachments	4-3



**302 11<sup>th</sup> Street****I. BACKGROUND**

The Steamboat (Hillcrest) Apartments have been nominated to the National Register of Historic Places. Lauren Schaffer, consulting for Historic Routt County, completed the nomination for the owners. Certified Local Governments are required to review and comment on National Register nominations in their jurisdiction. The Commission (HPC) must then prepare a report as to whether or not the property meets the National Register criteria. In order to do this, an expert who meets the qualification standards in architecture, history, architectural history, or archaeology from the Commission must be present or consulted.

**II. PRINCIPAL DISCUSSION ITEMS**

Staff recommends that the Commission:

1. Review the information on the apartments and garage: architecture
2. Determine if the buildings are significant and retain integrity
3. Determine if the buildings meet the qualifying criteria established by the National Register
4. Provide comments regarding the project based on application of the National Register standards

**III. STAFF FINDING**

Staff finds the Steamboat (Hillcrest) Apartments are eligible to the National Register under Criterion C in the area of Architecture as a superior local example of the Modern Movement's

Usonian style and as an excellent example of architect Eugene Sternberg's body of work. Staff finds that the apartments retain a high level of integrity with minimal maintenance-related exterior alterations to the property and staff recommends that the commission recommend inclusion of the Steamboat (Hillcrest) Apartments into the National Register of Historic Places.

#### **IV. MOTION**

##### Recommended Motion

The City of Steamboat Springs' Historic Preservation Commission finds the Steamboat (Hillcrest) Apartments at 302 11<sup>th</sup> Street to be eligible to the National Register of Historic Places under Criterion C in the area of Architecture as a superior local example of the Modern Movement's Usonian style and as an excellent example of architect Eugene Sternberg's body of work and recommends inclusion of the Steamboat (Hillcrest) Apartments in the National Register of Historic Places.

#### **IV. ATTACHMENTS**

Attachment 1 – National Register Nomination Form for 302 11<sup>th</sup> Street, Steamboat (Hillcrest) Apartments

Attachment 2 - Photographs



OFFICE of  
ARCHAEOLOGY  
and HISTORIC  
PRESERVATION

**NOTICE OF PUBLIC MEETINGS**

**COLORADO HISTORIC PRESERVATION  
REVIEW BOARD**

And

**COLORADO STATE REGISTER REVIEW BOARD**

Friday, September 30, 2011

Trinity Methodist Church, Basement Annex  
1820 Broadway, Denver, Colorado



**TENTATIVE AGENDA\***

10:00 **COLORADO HISTORIC PRESERVATION REVIEW BOARD CALL TO ORDER**  
Edward C. Nichols, State Historic Preservation Officer

**APPROVAL OF MINUTES**  
Approval of meeting minutes for June 10, 2011

10:15 **NATIONAL REGISTER NOMINATION REVIEW**  
Explanation of program and procedures  
Public review, discussion and Board eligibility recommendation

**Denver & Intermountain Railroad Interurban No. 25**  
West 6<sup>th</sup> Avenue & Kipling, Lakewood (5JF.1048.16)

**Golden Cemetery (CLG)**  
755 Ulysses Street, Golden (5JF.401)

**Grace/St. Stephens Episcopal (CLG)**  
631 Tejon St., Colorado Springs (5EP.350)

**Fort Collins Streetcar 22 (CLG)**  
2333 Steele Dr., Colorado Springs (5EP.6891)

**Cardinal Mill (CLG)**  
Nederland vicinity, Boulder County (5BL.482)

**Independent Order of Oddfellows Lodge #41-(IOOF Hall) (CLG)**  
81 Russell Gulch Road, Russell Gulch (5GL.125)

**Kenjockety Cabins (CLG)**  
Rand vicinity, Grand County (5GA.1500)

**Jacobs Building**  
414 Main St., Buena Vista (5CF.2635)

**Steamboat Apartments-Hillcrest Apartments (CLG)**  
302 11<sup>th</sup> Street, Steamboat Springs (5RT.2624)

**Fort Talpa-Farisita**  
19176 Colorado Highway 69, Farisita (5HF.866)

**Viejo San Acacio Catholic Church**  
CO Hwy 142 & County Road 15 , Viejo San Acacio (5CT.131)

**Immaculada Concepción Catholic Church**  
CO Hwy 142 & County Road C.7, Chama (5CT.201)

**San Pablo y San Pedro Catholic Church**  
CO Hwy 142 & County Road 21, San Pablo (5CT.183)

**Hotchkiss Homestead**  
422 Riverside Drive, Hotchkiss (5DT.1049)

12:15\* **ADJOURNMENT OF COLORADO STATE HISTORIC PRESERVATION REVIEW BOARD**

\*\*\*\*\*

12:30\*\* **STATE REGISTER REVIEW BOARD CALL TO ORDER**  
Edward C. Nichols, President, History Colorado/Colorado Historical Society

**APPROVAL OF MINUTES**  
Approval of meeting minutes for June 10, 2011

12:35 **STATE REGISTER NOMINATION REVIEW**  
Explanation of nomination review procedures  
Board nomination review and eligibility recommendation

**Union Pacific Twin Unit Dining Car 5106**  
800 Seminole Rd., Denver (5DV.11223)

**Elmwood School (delisting)**  
2876 O Rd., Hotchkiss vicinity (5DT.1089)

**1:00\*\* ADJOURNMENT OF STATE REVIEW BOARD**  
**LUNCH FOR BOARD MEMBERS**

\*\*Preliminary agendas are subject to change. The final meeting agenda will be available on the Monday before the meeting. For a copy, contact the National Register Staff at 303-866-4681 or by e-mail at [astrid.liverman@chs.state.co.us](mailto:astrid.liverman@chs.state.co.us)

\*\*Time shown is approximate and subject to change depending on the length of time required for board review of each nomination.

**Copies of the nominations to be reviewed may be examined at:**

Office of Archaeology and Historic Preservation, National Register and State Register Offices,  
Civic Center Plaza, 1560 Broadway, Suite 400, Denver, CO 80202 Monday – Friday 8am to 5 pm

**NOMINATION SUBMISSION DATES AND REVIEW BOARD MEETING DATES**

Board meetings will typically be held in Denver

<u>SUBMISSION DEADLINES</u> <sup>o</sup>	<u>BOARD MEETINGS</u>	<u>SUBMISSION DEADLINES</u> <sup>o</sup>	<u>BOARD MEETINGS</u>
July 1, 2011 .....	September 30, 2011 <sup>oo†</sup>	February 10, 2012.....	May 18, 2012 <sup>†</sup>
October 7, 2011.....	January 20, 2012 <sup>oo†</sup>	June 8, 2012 .....	September 21, 2012 <sup>†</sup>

<sup>o</sup>Official nomination submissions must include all required materials including the nomination form, maps and photographs. Only complete and adequately documented nominations will be forwarded to the Review Board. Draft nominations may be submitted at any time. <sup>oo</sup>Location subject to change <sup>†</sup>Change of date

*A Preservation Program of*



**HISTORY** *Colorado*

# United States Department of the Interior National Park Service National Register of Historic Places Registration Form

This form is for use in nominating or requesting determination for individual properties and districts. See instruction in *How to Complete the National Register of Historic Places Registration Form* (National Register Bulletin 16A). Complete each item by marking "x" in the appropriate box or by entering the information requested. If an item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials and areas of significance, enter only categories and subcategories from the instructions. Place additional entries and narrative items on continuation sheets (NPS Form 10-900a). Use a typewriter, word processor, or computer, to complete all items.

## 1. Name of Property

historic name Steamboat Apartments

other names/site number Hillcrest Apartments/5RT.2624

## 2. Location

street & number 302 11<sup>th</sup> Street [N/A] not for publication

city or town Steamboat Springs [N/A] vicinity

state Colorado code CO county Routt code 107 zip code 80487

## 3. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act, as amended, I hereby certify that this  nomination  request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property  meets  does not meet the National Register criteria. I recommend that this property be considered significant  nationally  statewide  locally. ( See continuation sheet for additional comments.)

**CLG Draft**

Signature of certifying official/Title \_\_\_\_\_ Date \_\_\_\_\_  
Deputy State Historic Preservation Officer

Office of Archaeology and Historic Preservation, History Colorado, Colorado Historical Society  
State or Federal agency and bureau

In my opinion, the property  meets  does not meet the National Register criteria.  
( See continuation sheet for additional comments.)

Signature of certifying official/Title \_\_\_\_\_ Date \_\_\_\_\_

State or Federal agency and bureau \_\_\_\_\_

## 4. National Park Service Certification

I hereby certify that the property is:

- entered in the National Register  
 See continuation sheet.
- determined eligible for the National Register  
 See continuation sheet.
- determined not eligible for the National Register.
- removed from the National Register  
 See continuation sheet.
- other, explain  
 See continuation sheet.

Signature of the Keeper \_\_\_\_\_

Date of Action \_\_\_\_\_

Steamboat Apartments  
Name of Property

Routt County, Colorado  
County/State

**5. Classification**

**Ownership of Property**  
(Check as many boxes as apply)

- private
- public-local
- public-State
- public-Federal

**Category of Property**  
(Check only one box)

- building(s)
- district
- site
- structure
- object

**Number of Resources within Property**  
(Do not count previously listed resources.)

Contributing	Noncontributing	
3	0	buildings
0	0	sites
0	0	structures
0	0	objects
3	0	Total

**Name of related multiple property listing.**  
(Enter "N/A" if property is not part of a multiple property listing.)

N/A

**Number of contributing resources previously listed in the National Register.**

0

**6. Function or Use**

**Historic Function**  
(Enter categories from instructions)

DOMESTIC: multiple dwelling  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Current Functions**  
(Enter categories from instructions)

DOMESTIC: multiple dwelling  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**7. Description**

**Architectural Classification**  
(Enter categories from instructions)

MODERN MOVEMENT  
Other: Usonian  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Materials**  
(Enter categories from instructions)

foundation Concrete  
walls Brick  
roof Asphalt  
other \_\_\_\_\_  
\_\_\_\_\_

**Narrative Description**

(Describe the historic and current condition of the property on one or more continuation sheets.)

Steamboat Apartments

Name of Property

Routt County, Colorado

County/State

### 8. Statement of Significance

#### Applicable National Register Criteria

(Mark "X" in one or more boxes for the criteria qualifying the property for National Register listing.)

- A** Property is associated with events that have made a significant contribution to the broad patterns of our history.
- B** Property is associated with the lives of persons significant in our past.
- C** Property embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction.
- D** Property has yielded, or is likely to yield, information important in prehistory or history.

#### Criteria Considerations

(Mark "X" in all the boxes that apply.)

Property is:

- A** owned by a religious institution or used for religious purposes.
- B** removed from its original location.
- C** a birthplace or grave.
- D** a cemetery.
- E** a reconstructed building, object, or structure.
- F** a commemorative property.
- G** less than 50 years of age or achieved significance within the past 50 years.

#### Narrative Statement of Significance

(Explain the significance of the property on one or more continuation sheets.)

### 9. Major Bibliographical References

#### Bibliography

(Cite the books, articles and other sources used in preparing this form on one or more continuation sheets.)

#### Previous documentation on file (NPS):

- preliminary determination of individual listing (36 CFR 67) has been requested
- previously listed in the National Register
- previously determined eligible by the National Register
- designated a National Historic Landmark
- recorded by Historic American Buildings Survey

# \_\_\_\_\_

- recorded by Historic American Engineering Record

# \_\_\_\_\_

#### Areas of Significance

(Enter categories from instructions)

Architecture

#### Periods of Significance

1958

#### Significant Dates

1958

#### Significant Person(s)

(Complete if Criterion B is marked above).

N/A

#### Cultural Affiliation

N/A

#### Architect/Builder

Sternberg, Eugene D. (Architect)

W.L. Pierce (Contractor/Builder)

#### Primary location of additional data:

- State Historic Preservation Office
- Other State Agency
- Federal Agency
- Local Government
- University
- Other

Name of repository:

History Colorado, Colorado Historical Society

\_\_\_\_\_

\_\_\_\_\_

Steamboat Apartments  
Name of Property

Routt County, Colorado  
County/State

**10. Geographical Data**

**Acreeage of Property** less than 1

**UTM References**

(Place additional UTM references on a continuation sheet.)

1.    13    344479    4483524    (NAD27)  
      Zone    Easting    Northing

2.                     
      Zone    Easting    Northing

3.                     
      Zone    Easting    Northing

4.                     
      Zone    Easting    Northing

The UTM reference point was derived from heads up digitization on Digital Raster Graphic (DRG) maps provided to OAHP by the U.S. Bureau of Land Management.

[ ] See continuation sheet

**Verbal Boundary Description**

(Describe the boundaries of the property on a continuation sheet.)

**Boundary Justification**

(Explain why the boundaries were selected on a continuation sheet.)

**11. Form Prepared By**

name/title Laureen Lafferty Schaffer (for property owner)  
organization consultant for Historic Routt County date June 26, 2011  
street & number PO Box 770662 telephone (970) 871-8797  
city or town Steamboat Springs state CO zip code 80477

**Additional Documentation**

Submit the following items with the completed form:

**Continuation Sheets**

**Maps**

- A **USGS map** (7.5 or 15 minute series) indicating the property's location.
- A **Sketch map** for historic districts and properties having large acreage or numerous resources.

**Photographs**

Representative **black and white photographs** of the property.

**Additional Items**

(Check with the SHPO or FPO for any additional items)

**Property Owner**

(Complete this item at the request of SHPO or FPO.)

name Hillcrest Apartments Inc. c/o Pat Turner at Colorado Mountain College  
street & number 1330 Bob Adams Drive telephone \_\_\_\_\_  
city or town Steamboat Springs state CO zip code 80487-5027

**Paperwork Reduction Act Statement:** This information is being collected for applications to the National Register of Historic Places to nominate properties for listing or determine eligibility for listing, to list properties, and to amend existing listings. Response to this request is required to obtain a benefit in accordance with the National Historic Preservation Act, as amended (16 U.S.C. 470 *et seq.*)

**Estimated Burden Statement:** Public reporting burden for this form is estimated to range from approximately 18 hours to 36 hours depending on several factors including, but not limited to, how much documentation may already exist on the type of property being nominated and whether the property is being nominated as part of a Multiple Property Documentation Form. In most cases, it is estimated to average 36 hours per response including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form to meet minimum National Register documentation requirements. Direct comments regarding this burden estimate or any aspect of this form to the Chief, Administrative Services Division, National Park Service, 1849 C St., NW, Washington, DC 20240.



United States Department of the Interior  
National Park Service

National Register of Historic Places  
Continuation Sheet

Section number 8 Page 1

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**DESCRIPTION**

The 1958 Steamboat Apartments are comprised of two Usonian style apartment buildings and a detached garage building on a 100' x 140' (.32 acre) lot located at the northeast corner of the irregular intersection of Pine Street and Eleventh Street within the First Addition to Steamboat Springs.

**Setting**

A triangular-shaped undeveloped open space parcel owned by the surrounding property owners on Eleventh, Pine, and Crawford Streets is located across the street, to the northwest, of the Steamboat Apartments. The 1894 National Register-listed Crawford House (5RT.473, listed 8/7/2005) is located on the northwest corner of the open space at 1184 Crawford Street. The First Addition exhibits a mixture of residential styles with corresponding diverse construction histories. The terrain behind the buildings slopes sharply downward toward Pine Street and the town's commercial core to the south. Mature vegetation is present, with large evergreen trees located between the two residential apartment buildings and Eleventh Street. A grass lawn is maintained in the general building area, with natural vegetation dominating the sloped area on the southern part of the property. No public sidewalks exist in the neighborhood, while the few concrete walks on site feature functional pipe railing at the locations of stairs.

The two apartment buildings are sited diagonally on the lot, with their long facades oriented along an east-west axis, with Building 2 recessed slightly behind Building 1, with the garage located at the top north corner of the lot.

**Building 1, 1958 (Units 1, 2, and 3) (contributing)**

The single-story apartment building closest to Eleventh Street measures 24' N-S x 64' E-W, and is divided into three residential units numbered 1, 2, and 3. The building sits on a low concrete slab foundation. The lower exterior walls are faced with a red brick veneer, laid primarily in running bond, while the upper wall surface is clad with stained brown vertical board-and-batten siding. The lower brick walls and upper board-and-batten walls are separated by a metal belt course. The building's distinctive inverted-pitch, asphalt shingle "butterfly" roof features widely-overhanging eaves and heavy 3" x 10" exposed rafter tails and beams which are bolted to metal plates beneath the eaves. Metal coping bands appear along the edges of the front and back eaves. Three stained brown solid wood doors enter into the three apartment units, from a common concrete sidewalk on the north elevation. Two of these doors are covered by silver aluminum storm doors, while the third is covered by a black aluminum storm door. Three glass-in-wood-frame doors, each with an aluminum storm door, are placed in a near symmetrical tripartite division (2:3 rhythm of window placement) on the south (rear) elevation. Two of these rear doors open onto wood decks, while the third opens onto a small concrete porch. Three small single-light hopper windows penetrate the north elevation wall, above the brick veneer. Large expanses of single-light fixed-pane windows, set over single-light awning windows, and with fixed-pane transom lights, penetrate the south elevation, surmounting a portion of brick veneer foundation laid as surmounted stretchers. No doors or windows penetrate the east and west (end) elevations. This description derives largely from Carl McWilliams' 2008 intensive-level survey of the complex, on file at the Office of Archaeology and Historic Preservation.

United States Department of the Interior  
National Park Service

National Register of Historic Places  
Continuation Sheet

Section number 8 Page 2

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**Building 2, 1958 (Units 4, 5, and 6) (contributing)**

The apartment building farthest east from Eleventh Street measures 24' N-S x 64' E-W and is also divided into three apartment units numbered 4, 5, and 6. The building design, materials, and configuration is substantially the same as that of Building 1, as described above. However, while no fenestration is present on the west (end) facade, The easternmost unit features a chimney and rectangular window on the east elevation. The 1958 contract with the builder lists the chimney/fireplace as an extra add-on.<sup>1</sup>

The two residential buildings feature a public facade with minimal fenestration oriented toward the nearby street and a more private facade opening to the south. Each living unit comprises about 500 square feet. The buildings' interiors feature zoned plans, with three primary living areas and extensive built-in storage components in light-colored wood. Modest fixtures, simple efficient design, and easily cleaned surfaces prevail, with the open and light viewscape to the south being the dominant feature from within the residences.

**Garage, 1958 (contributing)**

The detached garage building is located 12' from Eleventh Street on the northern portion on the property. Constructed in 1958, the 40' x 22' functional, extremely low-pitch inverted-roof building opens to the west. The original plans, which detailed a garage building with a different opening and a footprint within the 25' setback required by local ordinance, caused controversy and resulted in the District Court ruling in favor of the neighboring property owner. As a result, the building permit was revoked and the architect provided new plans with a change in orientation of the garage and a 12' setback from the street. The four-stall garage is supported by an unpainted concrete foundation and divided into stalls A, B, C, and D. The north, south, and west elevations feature red brick veneer laid in a running bond. The uppermost portion of the wall surface on these three walls is clad with board-and-batten siding stained dark brown. Board-and-batten siding details the entire east (rear) elevation. Painted white boxed eaves overhang the entry facade, while the eaves on the east, north and south elevations are nearly closed. Two plywood paneled garage doors open on the west elevation and lead to an asphalt parking area and driveway which extends to Eleventh Street (McWilliams and *Steamboat Pilot* (July 17, 1958)).

The Steamboat Apartments retain excellent historic integrity in terms of setting, location, design, materials, workmanship, association, and feeling. There have been no additions and minimal, maintenance-related exterior alterations to the property's three buildings following their construction in 1958. These include the wall-mounted light fixtures adjacent to the apartment door entrances.

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<sup>1</sup> McWilliams and Linda Kakela Private Collection.

**United States Department of the Interior  
National Park Service**

**National Register of Historic Places  
Continuation Sheet**

Section number 8 Page 3

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**STATEMENT OF SIGNIFICANCE**

The 1958 Steamboat Apartments in Steamboat Springs are eligible to the National Register of Historic Places under Criterion C in the area of *architecture* as a superior local example of the Modern Movement's Usonian style and as an excellent example of architect Eugene Sternberg's body of work. Integrated into the surrounding landscape with expansive views oriented toward the Old Town area and south Yampa Valley, the complex embodies many of the defining characteristics of the Usonian design philosophy, including the use of natural materials which help blend the building into the site, dominant horizontal lines, integrated windows, and a distinctive butterfly roof with wide overhanging eaves. Additionally, the Steamboat Apartments evince the local community's long-term association with architect Eugene Sternberg, a master of mid-twentieth century regional architecture. Sternberg's personal focus on socially involved and affordable construction throughout his career is clearly evident in his design for the Steamboat Apartments. The period of significance is 1958, the year of construction.

**Historical Background**

**Eugene D. Sternberg (1915-2005)**

The following biographical information relative to Eugene Sternberg and his career is largely extracted from the Office of Archaeology and Historic Preservation's Colorado Architects' biographical sketch series. Born in Czechoslovakia on January 15, 1915, Eugene D. Sternberg earned a degree in architectural engineering in Prague. While pursuing graduate work in architecture at Cambridge University in England, World War II began. Sternberg remained in London during the war, teaching part time at Cambridge. He then joined the firm of Sir Patrick Abercrombie, where he was involved in rebuilding many of the homes and buildings destroyed by German bombing. While in England, he met and married his wife, Barbara. In 1945, the couple immigrated to the United States, where Sternberg had accepted a teaching appointment in the Department of City and Regional Planning at Cornell University. Shortly after, he became the first faculty member at the University of Denver's new School of Architecture. In 1949, Sternberg became associated with developer Edward Hawkins in the creation of the Arapahoe Acres development in Englewood (5AH.1434, National Register 11/3/1998). Hawkins' ideal to develop "socially conscious modern housing, combining quality architectural design and economical construction" attracted Sternberg to the project. As noted by architectural critic Michael Paglia in his obituary of Sternberg: "He was a utopian who believed in an ethical architecture that responded to social and economic forces as well as functional considerations and aesthetics. He infused his work with progressive politics, and he was guided by deeply felt moral imperatives. He believed in buildings that would enrich people's lives, both physically and spiritually. Stylistically, he was a modernist through and through, and he never wavered from his goal of achieving rational and responsible architecture."<sup>2</sup>

Sternberg is known for the many civic, residential, educational and commercial buildings he designed, including: Arapahoe Community College in Littleton circa 1966; the Littleton Heritage High School in 1969-1970, the Littleton Bemis Public Library in 1965, and the 1959 Arapahoe County Courthouse

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<sup>2</sup> Michael Paglia, "Memory Lane," *Denver Westword* (1 Sep 2005).

**United States Department of the Interior**  
National Park Service

**National Register of Historic Places**  
**Continuation Sheet**

Section number 8 Page 4

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Building and Law Center, also in Littleton. Altogether, Sternberg is responsible for over 400 known buildings in Colorado, Wyoming and Nebraska.<sup>3</sup>

**Steamboat Apartments: Architectural History**

At the end of 1957, the Steamboat Springs Town Board minutes detail the hiring of Eugene Sternberg to serve as planning consultant and architect to the newly formed Planning Commission. By early 1958, Sternberg began examining the town's fringe areas to determine the suitability of subdivisions and a junior college. Sternberg guided the efforts of the Beautification Project and worked directly with the Kiwanis and Lions Clubs on park projects. Sternberg is quoted in the July 18, 1957 *Steamboat Pilot* as wanting to "outlaw ugliness" and promoted open space and encouraged the use of evergreens, "remembering the long winter season" in Steamboat Springs. Projects in Steamboat Springs documented to have Sternberg direction during this time include the 1960 National Register-listed Chamber of Commerce Building (5RT.2616, 4/16/2010), the Methodist Church on Oak Street, the 1956 Yampa Valley Electric Association, the 1960 Stukey House, the Pierce House (built as the residence for the contractor for Steamboat Apartments), the 1960 Soda Creek Elementary addition (demolished 2007), and the conceptual Bristol Hotel and Howelsen Hill redesigns.

Routt County Assessor's Office records note the parcel on which the Steamboat Apartments are located as purchased by Alma Baer, et. al. in November 1957. Baer, Arthur Anderson, Zelma Harvey, Dorothy Wither, Ruth Beverly, and Betty Card thereafter formed a cooperative ownership group with a non-profit purpose. Six original shares in the co-op were issued to members in February 1959. The group hired Sternberg to design the residential buildings which he designated the "Steamboat Apartments" in original designs and drawing. However, in 1958 the local newspaper referred to the buildings as "Hillcrest Apartments" and by March of 1959, the Assessor's records note the owner of the property as Hillcrest Apartments, Inc.

The contract for construction of the Steamboat Apartments was awarded to W.L. Pierce in May 1958. Originally a \$40,000 project, the final total cost for the Steamboat Apartments came to \$45,068 with add-ons including the \$4,000 four-stall garage, the fireplace and chimney in the easternmost unit of Building 2 (the Wither apartment), and wood floors in the east unit of the western building.

Local newspaper coverage of Sternberg's activities in town and with various community groups feature frequently throughout 1957 and 1958. An announcement of plans for the apartment appeared in the February 20, 1958 printing of the *Steamboat Pilot*: "Sternberg also met Friday with the group planning the new apartment, on 11<sup>th</sup> street near the Joe Lake property. He has sketched tentative plans for this project." A subsequent article detailed the dispute over the placement of the garage. Finally, a photo of the apartments with the garage under construction appeared in the August 28, 1958 edition, with notations that the apartments were of modern construction and well-appointed.

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<sup>3</sup> For additional information, see: Carl McWilliams, Architectural Inventory Form for Chamber of Commerce Building, Steamboat Springs, Routt County, Colorado, 5RT.1044, recorded in 2007. On file at the Office of Archaeology and Historic Preservation.

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**Usonian Design Philosophy**

The following summary of the Usonian design philosophy is largely adapted from the Office of Archaeology and Historic Preservation's architectural lexicon.<sup>4</sup> Typically associated with modern residential architecture of the 1940s through the 1960s, Usonia as a design concept dated to the turn of the twentieth century. Conceived by Frank Lloyd Wright around 1900, the Usonia design philosophy evolved over many years, coming to fruition in the 1930s with the Broadacre City model constructed at Wright's Taliesin Fellowship in 1934. As his commissions for large, grand houses dropped off with the onset of the Great Depression, Wright looked for a way to address the need for affordable middle-class housing while employing a simple design.

Wright's ideas in part heralded emerging Utopian notions of population dispersal into anti-urban settlements. He forecast this would occur through the agency of the telephone and telegraph, radio, and the automobile, and be facilitated by standardized production of housing stock (...). But in the proposed organization of the city's infrastructure Wright's betrayed his democratic and egalitarian idealism. For example, an acre of land for the individual cultivation of food was to be afforded each person of a given age.<sup>5</sup>

For instance, one of Wright's interests, as private families increasingly employed fewer servants, was to centralize the kitchen, or "laboratory," and thus women, in daily life through a function reorganization of the residential building plan.<sup>6</sup> However, all social ills were not thoroughly addressed in his idealistic concept, as was a frequent criticism.

The result was an architecture he termed "Usonian," which focused on the residents of a culturally reformed United States. Wright employed the term as early as 1925, attributing the acronym to Samuel Butler's "United States of America." The Usonian houses were smaller than his sprawling Prairie style residences, exhibited little ornamentation and lacked basements or attics. These houses were arranged by zones, typically with three areas: living space, small bedrooms, and a kitchen-dining area. Built-in components and furniture allowed homeowners to appreciate the simpler, integrated space Wright intended.

The Usonian concept sought to holistically address planning, natural elements, and simple design on a human scale. Wright's philosophy originated with his increasing focus on community dynamics and daily human needs. He advocated decentralized communities with commercial, residential, educational, industrial, cultural and recreational facilities. While his early concepts of these communities remained just that, many of the components were applied in a handful of places across the country, though not on the scale that he originally envisioned. As Wright did with the Prairie style of his earlier career, he also focused intently on incorporating the smaller Usonian house within the specifics of their landscape

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<sup>4</sup> "Usonian Style," *Guide to Colorado's Historic Architecture and Engineering*, Office of Archaeology and Historic Preservation, <http://www.coloradohistory-oahp.org/guides/architecture/usonian.htm>, accessed May 2, 2008.

<sup>5</sup> Jeffery W. Howe, ed., *American House: Domestic Architecture in the USA* (London: PRC Publishing Ltd., 2002).

<sup>6</sup> Dell Upton, *Architecture in the United States*, Oxford History of Art (Oxford and New York: Oxford University Press, 1998) 43.

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**Continuation Sheet**

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and site. Wright integrated house with contours and vegetation in an active attempt to get away from overly boxy designs. Walls extended beyond the interior to the outside, intermingling the two. Large windows brought the outside in. Natural materials blended the building with its site while warm interior colors further contributed to that integration. Usonian houses were a departure from the stark International Style houses that often appeared to be dropped onto, rather than a part of, their location.

Also called Wrightian, numerous architects across the country adopted and adapted the Usonian style. General characteristics of associated buildings include: dominant horizontal lines; flat roofs with large overhangs; integrated windows; organic siting (a private side and a more public face, usually south-facing); concrete slab floors with integral gravity heating; built-in components; and inside-outside walls. The Steamboat Apartments exhibit many of these elements.

Located on a steep hillside directly about the original town area, the Steamboat Apartments are integrated into the landscape. Hillside construction figures prominently in the design, and while the building was constructed into the landscape contour, the building's design is respectful of its environment and does not attempt to dominate. The two components, natural and man-made, complement and serve each other. The building's form is an organic and integrated whole. Dominant horizontal lines, including the band of windows and over-hanging eaves, further serve to incorporate the building into the site. Natural materials and warm colors and textures bring together and complete the entire design. Sternberg's simple design eschews the traditional detailing associated with earlier styles. At the same time, the Steamboat Apartments embrace a human scale. The smaller buildings fit the site, are incorporated into its setting through form and materials, and, as a result, create a community befitting the co-operative association of its tenant-owners. The building uniquely embodies the local architecture of the period.

The Hillcrest Apartments, Inc. continues to own the buildings. In the late 1980s, the group did relinquish its non-profit status and formed a corporation under the identical name of the prior dissolved corporation. The Hillcrest Apartments, Inc. operate through its articles of incorporation and specialized by-laws.

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**GEOGRAPHICAL DATA**

**VERBAL BOUNDARY DESCRIPTION**

The Steamboat Apartments are located in Tract 100' x 140' in the SW Corner of Block 2 of the 1<sup>st</sup> Addition to Steamboat Springs, Section 8, Township 6 North, Range 84 West, known as 302 11<sup>th</sup> Street. More particularly the area is described as: "a tract of land located in the SE1/4SW1/4, Section 8, Township 6 North, Range 84 West of the 6<sup>th</sup> P.M., beginning at the intersection of the easterly line of Eleventh Street extended northerly, and the northerly line of Pine Street in the Town of Steamboat Springs; thence northerly along said easterly line of Eleventh Street a distance of 100 feet; thence at right angles, extended easterly and parallel to the northerly line of Pine Street a distance of 140 feet; thence southerly and parallel to the easterly line of Eleventh Street to the northerly line of Pine Street, a distance of 100 feet; thence along the northerly line of Pine Street extended westerly a distance of 140 feet to the place of beginning" (Stockholder's Lease).

**BOUNDARY JUSTIFICATION**

The boundary includes the land historically associated with the Steamboat Apartments.



United States Department of the Interior  
National Park Service

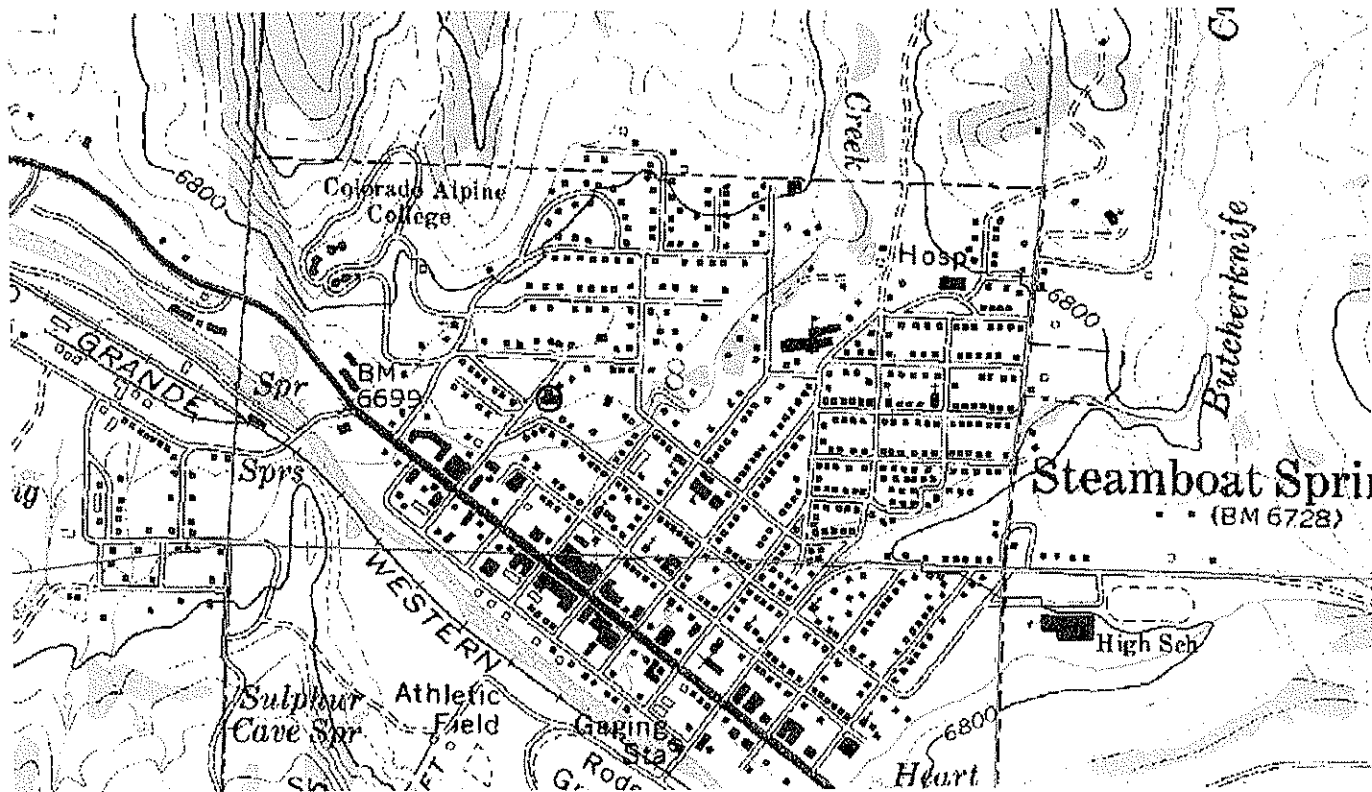
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USGS TOPOGRAPHIC MAP  
Steamboat Quadrangle, Colorado

PLSS:6<sup>th</sup> PM, T6N, R84W, NW1/4 of NE1/4 of  
SE1/4 of SW1/4 of Section 8  
Elevation: 6700'

7.5 Minute Series



**United States Department of the Interior**  
National Park Service

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**PHOTOGRAPH LOG**

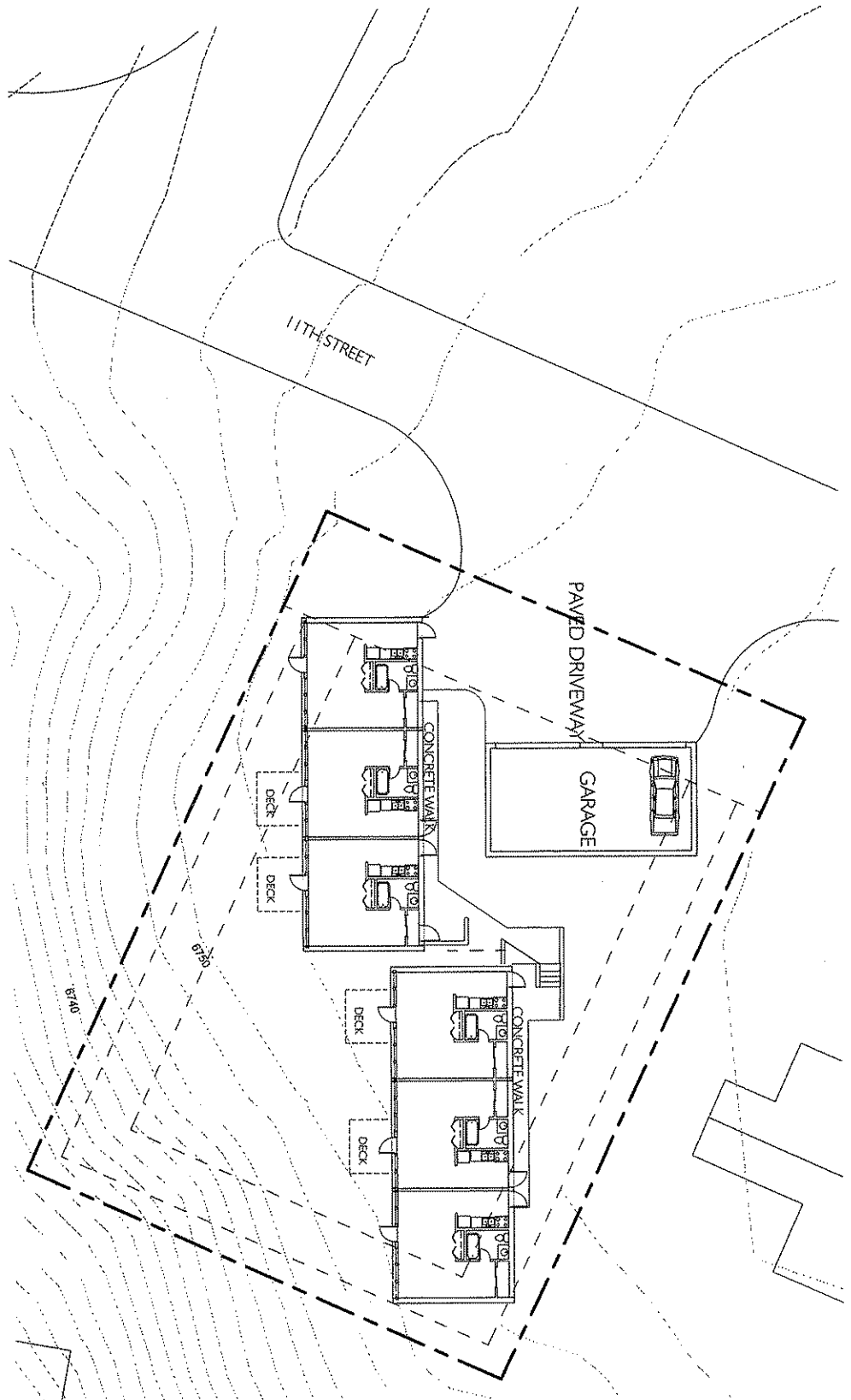
The following information pertains to all photograph numbers except as noted:

Photographer: Laureen Schaffer

Date of Photographs: June 28, 2011

Negatives: PO Box 770662, Steamboat Springs, CO 80477

<u>Photo No.</u>	<u>Photographic Information</u>
1	West elevation (front) of garage, camera facing east
2	North elevation (side) of garage, camera facing southeast
3	South elevation (side) of garage, camera facing northeast
4	East elevation (rear) of garage, camera facing northwest
5	North elevation of west building, camera facing east
6	West elevation of west building, camera facing east
7	West elevation of east building, camera facing east
8	Corridor between east and west building, camera facing south
9	North elevation of east building, camera facing east
10	East elevation of east building, camera facing southwest
11	South elevation of west building, camera facing northwest
12	South elevation of east building, camera facing northeast
13	Interior of west unit of east building, camera looking south



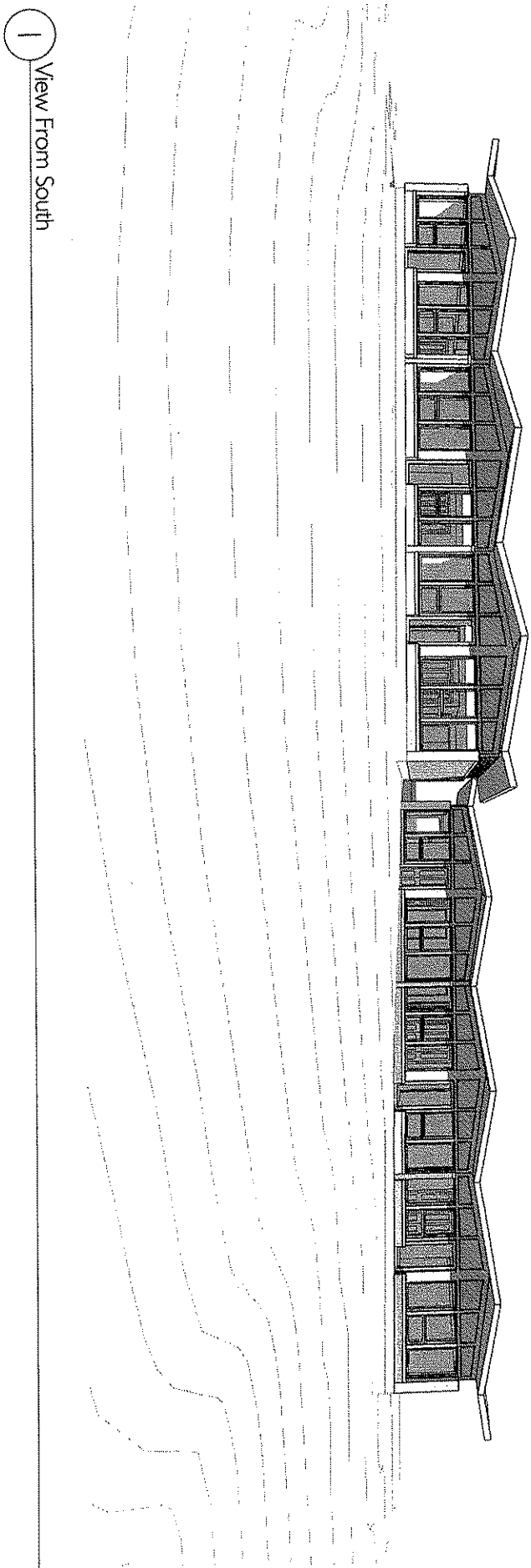
1 Level 1  
1" = 20'-0"

# Hillcrest Apartments

EXISTING CONDITIONS

HUMPHRIES POLI ARCHITECTS

24 APRIL 2008



1 View From South

# Hillcrest Apartments

EXISTING CONDITIONS

HUMPHRIES POLI ARCHITECTS

24 APRIL 2008

## ***DRAFT***

### **STEAMBOAT SPRINGS HISTORIC PRESERVATION COMMISSION MINUTES AUGUST 10, 2011**

The regular meeting of the Steamboat Springs Historic Preservation Commission was called to order at approximately 5:02 p.m. on Thursday, August 10, 2011, in Citizens' Meeting Room, Centennial Hall, 124 10th Street, Steamboat Springs, Colorado.

Historic Preservation Commission members in attendance were Sally TeStrake, Johnny Walker, Tracy Barnett and Cam Bunn.

Staff members present were Historic Preservation Planner Alexis Casale and Director of Planning & Community Development Tyler Gibbs. Minutes transcribed by Tami Heskett.

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#### **ROLL CALL**

#### **APPROVAL OF July 13, 2011 MEETING MINUTES**

Commissioner Barnett –

It looks like a word was left out on pg 3 under Tyler Gibbs comment in the 3<sup>rd</sup> line above the bottom of the paragraph 'it slows traffic down'? It makes it safer.

Commissioner Bunn –

On pg 4 under Tyler Gibbs 4<sup>th</sup> comment in the 2<sup>nd</sup> sentence 'new development' cross out the 'but' so it says 'new development that has to respect the river access'.

#### **MOTION:**

Commissioner Barnett moved to approve the minutes for July 13, 2011 as amended.  
Commissioner Bunn seconded the motion.

#### **VOTE:**

Vote: 3-0

Voting for approval of motion: Bunn, TeStrake, and Barnett

Abstaining (due to absence): Walker

Absent:

#### **PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA**

None.

#### **CONCEPTUAL REVIEW**

##### **National Register Nomination Review:**

##### **Steamboat (Hillcrest) Apartments (5RT.2624)**

Alexis Casale –

This is a nomination to the National Register of Historic Places for the Steamboat Apartments, also known as the Hillcrest Apartments. As a Certified Local Government we are required to

review and comment on all National Register Nominations and it will also be brought before City Council for their comments. Staff does find that the Steamboat Apartments are eligible to the National Register under criterion C under the area of architecture as a superior local example of the modern movements Usonian style and as an excellent example of architect Eugene Sternberg's body of work. Staff finds that the apartments retain a high level of integrity. Staff recommends that this Commission recommend inclusion of the Steamboat Apartments in the National Register of Historic Places.

Commissioner Barnett –  
What defines the Usonian period?

Alexis Casale –  
Usonian style is more of a prairie style brought about by Frank Lloyd Wright. It's meant to build and be sympathetic within the environment.

Commissioner TeStrake –  
There's a good description of that in the packet on pg 4-12.

Commissioner Walker –  
How many units are there?

Owner Sharon–  
6. There are 2 buildings with 3 units in each.

Commissioner Walker –  
Are there 6 individual owners or does 1 person own them all?

Owner Sharon–  
1 owner has 2 units and so there are 5 owners all together.

Commissioner Walker –  
They have one association by the same name?

Owner Sharon–  
It's a corporation called Hillcrest Apartments. .

Commissioner Walker –  
Are the units all the same floor plan?

Owner Sharon–  
The apartments are 1 bedroom. Some of them are a studio open design, but some of them are partitioned to make a 1 bedroom.

Commissioner Walker –  
They all have the same footprint?

Owner Sharon –  
Right, some are flipped but with the same footprint.

Commissioner Barnett –  
They are approximately 500 square feet.

Commissioner TeStrake –  
Pg 4-20 shows the floor plans.

Commissioner Bunn –  
Is this something that all of the homeowners had to agree to in order to move forward with this nomination?

Linda Kakela –  
All 5 owners were contacted and all 5 did sign on.

Alexis Casale –  
All 5 have been contacted and no one has disputed the nomination at this time.

Commissioner Bunn –  
Have there been any alterations to the building? I think that it was 1957 when it was built.

Linda Kakela –  
It's been defined as the most intact representation of the work of Eugene Sternberg in Northwest Colorado. I think that you would be hard pressed to find any modifications of the buildings. There is a roof repair going on later this month, but it is a repair and not an alteration to the butterfly roof.

Commissioner Bunn –  
They're going to do that unilaterally over all 6 units?

Linda Kakela –  
Yes.

Commissioner Barnett –  
They're using the same materials?

Linda Kakela –  
Hopefully they're going to be using a little bit more modern material than the fiber board that they might have used back then.

Commissioner Barnett –  
It does say asphalt.

Linda Kakela –  
The new materials will increase the R factor to R18 from 0.

Commissioner Walker –  
How long ago did you buy your unit?

Linda Kakela –  
We bought ours in 1987.

Commissioner Walker –  
Has that roof been an issue? We roll our eyes at butterfly roofs. Not because they aren't historically correct, but because of the engineering to make them weather proof. How has that held up over the years?

Linda Kakela –  
With the new materials the butterfly roof should function very well. It has held up fairly well over the years. There's been some leaking around the drains. It works very well in snow country since you don't get snow cascading onto sidewalks.

Commissioner TeStrake –  
I always wondered how that worked on a butterfly roof if it was meant to hold the snow load or not. It really has a system of drains.

Linda Kakela –  
In the interior of the valley there's an interior drain. As long as you keep those clean then they tend to drain very well.

Commissioner Bunn –  
Are the homeowners planning to do any kind of celebration, publicity, or anything once the roof is done and we have it on the register?

Linda Kakela –  
Alexis Casale and I talked a little bit about a celebration. I think that it would be a good opportunity for a celebration.

Commissioner TeStrake –  
Has there been any discussion amongst the owners about having it listed on the Local Register as well? That seems like that would be a natural step to take assuming this one is approved.

Linda Kakela –  
The opportunity came first for the National Register and because of the statewide visibility for Hillcrest that it made sense to do the National Register first and then take a look at either state or local.

Commissioner Bunn –  
I know that the Sternberg's used to live in Evergreen and I believe that Eugene died. Isn't his wife still living?



Linda Kakela –

Barbara Sternberg is still alive and lives in Denver. She is writing a book about Eugene's work. His student, who's the designer of DIA and the Denver Convention Center, continues to be a great advocate of Eugene Sternberg. That architect's name is Curtis Fentress. He is collecting the original works of Eugene Sternberg.

Commissioner Bunn –

It might be interesting to invite Barbara Sternberg as well as Curtis Fentress for that celebration.

Linda Kakela –

I've heard that Barbara Sternberg has a great interest in the Hillcrest Apartments.

Commissioner Bunn –

How does it compare? I'm not familiar with Arapahoe Acres in Englewood. Do you know how that compares, because that's a body of his work?

Alexis Casale –

I'm not that familiar with Arapahoe Acres.

Tyler Gibbs –

I'm familiar with Arapahoe Acres, but I'm not sure which homes in there were his.

Commissioner Bunn –

I think that it's a real opportunity to promote some publicity and awareness.

## **MOTION**

Commissioner TeStrake read the motion 'the City of Steamboat Springs Historic Preservation Commission finds the Steamboat (Hillcrest) Apartments at 302 11<sup>th</sup> St to be eligible to the National Register of Historic Places under criterion C in the area of architecture as a superior local example of modern movements Usonian style and as an excellent example of architect Eugene Sternberg's body of work and recommends inclusion of the Steamboat (Hillcrest) Apartments in the National Register of Historic Places and Commissioner Bunn seconded the motion.

## **VOTE**

Vote: 4-0

Voting in approval of the motion: Bunn, TeStrake, Barnett, and Walker

Absent: none

Commissioner Bunn –

On pg 4-4 is when this is going to be reviewed in Denver. It's going to be at 10:15 September 30. Maybe some people could be there. Alexis Casale was saying that it's a very interesting procedure.

(Commissioners don't think that any of them will be able to make it to the review in Denver).



OFFICE of ARCHAEOLOGY and HISTORIC PRESERVATION  
1560 Broadway, Ste. 400 Denver CO 80202

**COLORADO CERTIFIED LOCAL GOVERNMENT  
NATIONAL REGISTER NOMINATION REVIEW REPORT FORM**

Property Name: \_\_\_\_\_

Address: \_\_\_\_\_

Certified Local Government: \_\_\_\_\_

Date of public meeting at which nomination was reviewed: \_\_\_\_\_

Eligibility Criteria: (Check applicable boxes)

- Criterion A
- Criterion B
- Criterion C
- Criterion D

Please check the boxes below appropriate to the nomination review:

**Commission/Board**

- The commission/board recommends that the nomination meets the criteria checked above.
- The commission/board recommends that the nomination fails to meet any of the above criteria.
- The commission/board chooses not to make a recommendation on the nomination. Attach an additional sheet explaining the lack of a recommendation.

**Chief Elected Official**

- The chief elected official recommends that the nomination meets the criteria checked above.
- The chief elected official recommends that the nomination fails to meet any of the above criteria.
- The chief elected official chooses not to make a recommendation on the nomination. Attach an additional sheet explaining the lack of a recommendation.

Attach an additional sheet to make any further comments.

**Certify this report with both signatures below**

CLG Commission/Board Chair or Representative

Print name: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
(Date)

Chief Elected Official or Designee

Print name: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
(Date)

**CITY OF STEAMBOAT SPRINGS, COLORADO**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION RECOMMENDING INCLUSION OF THE STEAMBOAT (HILLCREST) APARTMENTS, LOCATED AT 302 11<sup>TH</sup> STREET, IN THE NATIONAL REGISTER OF HISTORIC PLACES.**

**WHEREAS**, the City of Steamboat Springs maintains a partnership with the National Park Service and operates as a Certified Local Government; and

**WHEREAS**, Certified Local Governments comment and recommend on National Register nominations in their jurisdiction; and

**WHEREAS**, the Steamboat (Hillcrest) Apartments are owned and maintained by Hillcrest Apartments Inc.; and

**WHEREAS**, the owners, Hillcrest Apartments Inc., voluntarily seek historic register designation; and

**WHEREAS**, the City's Historic Preservation Commission reviewed the nomination during its August 10, 2011 meeting and recommends that the nomination meets the criteria established for listing in the National Register.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STEAMBOAT SPRINGS, COLORADO:**

Section 1. The City of Steamboat Springs City Council finds the Steamboat (Hillcrest) Apartments at 302 11th Street to be eligible to the National Register of Historic Places under Criterion C in the area of Architecture as a superior local example of the Modern Movement's Usonian style and as an excellent example of architect Eugene Sternberg's body of work and recommends inclusion of the Steamboat (Hillcrest) Apartments in the National Register of Historic Places.

**PASSED, ADOPTED AND APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
**Cari Hermacinski, President  
Steamboat Springs City Council**

**ATTEST:**

\_\_\_\_\_  
**Julie Franklin, CMC  
City Clerk**

# Agenda Item # 8

## CITY COUNCIL COMMUNICATION FORM

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**FROM:** Janet Hruby, City Engineer (Ext. 245)  
Anne Small, Acting Director of General Services (ext. 249)

**THROUGH:** Jon B. Roberts, City Manager (ext. 228)

**DATE:** September 6, 2011

**ITEM:** Colorado Department of Transportation grant funds to construct concrete trail around Casey's Pond.

**NEXT STEP:** **RESOLUTION: A RESOLUTION EXPRESSING INTENT TO PROVIDE MATCHING FUNDS AND ASSURANCES FOR TRANSPORTATION EQUITY ACT FOR THE 21<sup>ST</sup> CENTURY (TEA-21) GRANT FUNDS TO DESIGN A CONCRETE SIDEWALK AROUND CASEY'S POND IN STEAMBOAT SPRINGS, COLORADO.**

---

RESOLUTION  
 INFORMATION  
 DIRECTION

---

### **I. REQUEST OR ISSUE:**

City Staff is requesting Council adoption of the attached resolution accepting Transportation Equity Act for the 21<sup>st</sup> Century grant funds through the Colorado Department of Transportation (CDOT) to design a concrete sidewalk around Casey's Pond. In addition, the resolution obligates the City's matching funds and authorizes the City Manager to execute the associated contract with the State.

### **II. RECOMMENDED ACTION/NEXT STEP:**

Motion to adopt a resolution authorizing the City of Steamboat Springs to enter into an agreement with the Colorado Department of Transportation, for current grant funding of \$45,650 to be used for the design phase of the concrete sidewalk.

### **III. FISCAL IMPACTS:**

Proposed project: Design approximately 1,100 linear feet of 8 foot wide trail around Casey's Pond.

Design Phase: \$45,650 grant amount from the CDOT  
\$11,390 matching funds in the 2011 Capital budget

**IV. BACKGROUND INFORMATION:**

Staff applied for Transportation Equity Act for the 21<sup>st</sup> Century grant funding through the Colorado Department of Transportation for the design and construction of 8 foot wide sidewalk around Casey's Pond. At this time only funding for the design phase is currently available. Construction funding will be added after Federal authorization of the construction phase, either by Formal Amendment or Option Letter. The attached resolution authorizes acceptance of the grant and approves the required City match.

**V. LEGAL ISSUES:**

The grant contract is a standard CDOT document which we have signed for similar projects in prior years.

**VI. CONFLICTS OR ENVIRONMENTAL ISSUES:**

None identified with this communication.

**VII. SUMMARY AND ALTERNATIVES:**

Council may elect to:

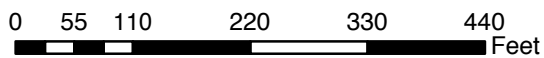
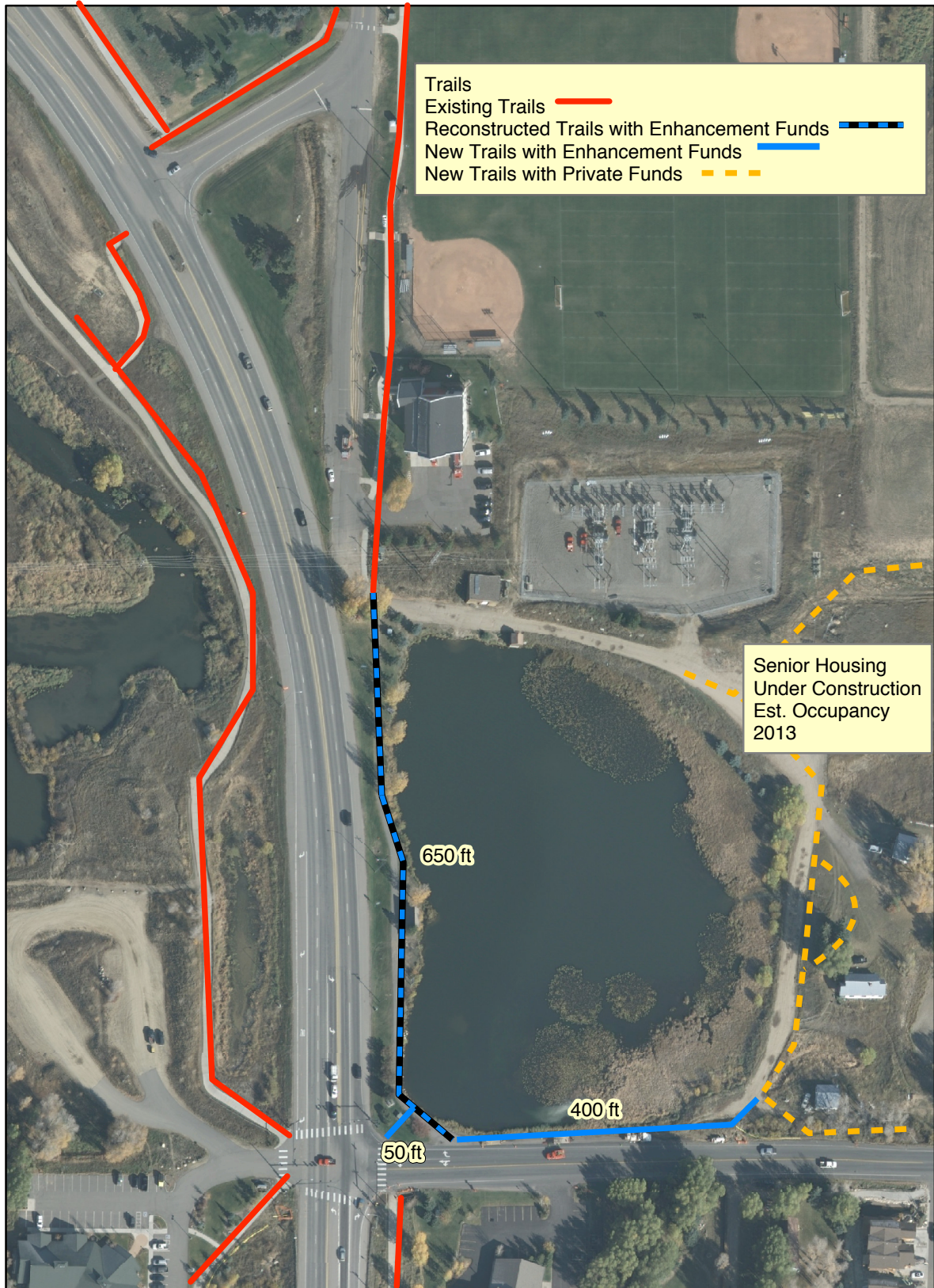
1. Adopt the attached resolution approving the execution of the grant
2. Decline to adopt the resolution and associated funds
3. Table the item and provide direction to staff on changes

**ATTACHMENTS:**

Attachment 1. Casey's Pond Trail Site Map.

# Casey's Pond Trail Layout

Attachment 1



**CITY OF STEAMBOAT SPRINGS, COLORADO**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION EXPRESSING INTENT TO PROVIDE MATCHING FUNDS AND ASSURANCES FOR TRANSPORTATION EQUITY ACT FOR THE 21<sup>ST</sup> CENTURY (TEA-21) GRANT FUNDS TO DESIGN AND CONSTRUCT A CONCRETE SIDEWALK AROUND CASEY'S POND IN STEAMBOAT SPRINGS, COLORADO.**

**WHEREAS**, the City of Steamboat Springs applied for grant funding from TEA-21 through the Colorado Department of Transportation (CDOT) to design and construct a concrete sidewalk around Casey's Pond in Steamboat Springs, Colorado; and

**WHEREAS**, TEA-21 and CDOT have made funds available totaling \$45,650.00; and

**WHEREAS**, the required City of Steamboat Springs matching funds total \$11,390; and

**WHEREAS**, at this time, CDOT is authorizing the funds for design purposes with the construction funds to be allocated after Federal authorization either by formal amendment, option letter or funding letter; and

**WHEREAS**, the required matching funds are included in the City's 2012 Capital budget; and

**WHEREAS**, the City Council of the City of Steamboat Springs, Colorado desires to enter into a contract with CDOT to complete this project.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STEAMBOAT SPRINGS, COLORADO, THAT:**

Section 1. Said contract (attached hereto as Exhibit A) is hereby approved, and the City Manager and City Clerk are instructed to execute the contract with CDOT .



**PASSED, ADOPTED AND APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
**Cari Hermacinski, President  
Steamboat Springs City Council**

**ATTEST:**

\_\_\_\_\_  
**Julie Franklin, CMC  
City Clerk**

(FMLAWRK)  
 PROJECT STE M251-023 (18335) Casey's Pond  
 REGION 3/(DAW)

Routing # 12 HA3 34200  
 PO # 271001461

**STATE OF COLORADO  
 DEPARTMENT OF TRANSPORTATION  
 Inter-Governmental Agreement (IGA)  
 With the  
 CITY OF STEAMBOAT SPRINGS**

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**1. PARTIES**

THIS AGREEMENT is entered into by and between, the STATE OF COLORADO acting by and through the Department of Transportation (hereinafter called the “State” or “CDOT”) and STEAMBOAT SPRINGS (hereinafter called the “Local Agency”).

**2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.**

This Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or their designee (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse the Local Agency for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

**3. RECITALS**

**A. Authority, Appropriation, And Approval**

Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment and the required approval, clearance and coordination have been accomplished from and with appropriate agencies.

**i. Federal Authority**

Pursuant to Title I, Subtitle A, Section 1108 of the “Transportation Equity Act for the 21<sup>st</sup> Century” of 1998 (TEA-21) and/or the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (SAFETEA-LU) of 2005 and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the “Federal Provisions”), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by the Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration (“FHWA”).

**ii. State Authority**

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-14.

**B. Consideration**

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.

**C. Purpose**

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT’s Stewardship Agreement with the FHWA for the Design & Construction of the Casey’s Pond Bicycle/Pedestrian Trail Project # STE M251-023 (18335) referred to as the Project, or the Work per the Scope of Work contained in Exhibit A .

**D. References**

All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

**4. DEFINITIONS**

The following terms as used herein shall be construed and interpreted as follows:

**A. Agreement or Contract**

“Agreement” or “Contract” means this Agreement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Agreement, and any future modifying agreements, exhibits, attachments or references that are incorporated pursuant to Colorado State Fiscal Rules and Policies.

**B. Agreement Funds**

“Agreement Funds” means funds payable by the State to Local Agency pursuant to this Agreement.

**C. Budget**

“Budget” means the budget for the Work described in **Exhibit C**.

**D. Consultant and Contractor**

“Consultant” means a professional engineer or designer hired by Local Agency to design the Work and “Contractor” means the general construction contractor hired by Local Agency to construct the Work.

**E. Evaluation**

“Evaluation” means the process of examining the Local Agency’s Work and rating it based on criteria established in **§6** and **Exhibits A** and **E**.

**F. Exhibits and Other Attachments**

The following exhibit(s) are attached hereto and incorporated by reference herein: **Exhibit A** (Scope of Work), **Exhibit B** (Resolution), **Exhibit C** (Funding Provisions), **Exhibit D** (Option Letter), **Exhibit E** (Checklist), **Exhibit F** (Certification for Federal-Aid Funds), **Exhibit G** (Disadvantaged Business Enterprise), **Exhibit H** (Local Agency Procedures), **Exhibit I** (Federal-Aid Contract Provisions) and **Exhibit J** (Federal Requirements).

**G. Goods**

“Goods” means tangible material acquired, produced, or delivered by the Local Agency either separately or in conjunction with the Services the Local Agency renders hereunder.

**H. Oversight**

“Oversight” means the term as it is defined in the Stewardship Agreement between CDOT and the Federal Highway Administration (“FHWA”) and as it is defined in the Local Agency Manual.

**I. Party or Parties**

“Party” means the State or the Local Agency and “Parties” means both the State and the Local Agency

**J. Work Budget**

Work Budget means the budget described in **Exhibit C**.

**K. Services**

“Services” means the required services to be performed by the Local Agency pursuant to this Contract.

**L. Work**

“Work” means the tasks and activities the Local Agency is required to perform to fulfill its obligations under this Contract and **Exhibits A** and **E**, including the performance of the Services and delivery of the Goods.

**M. Work Product**

“Work Product” means the tangible or intangible results of the Local Agency’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

**5. TERM and EARLY TERMINATION.**

The Parties’ respective performances under this Agreement shall commence on the Effective Date. This Agreement shall terminate 5 years from Effective date unless sooner terminated or completed as demonstrated by final payment and final audit.

**6. SCOPE OF WORK**

**A. Completion**

The Local Agency shall complete the Work and other obligations as described herein in **Exhibit A Scope of Work or Form 463**. Work performed prior to the Effective Date or after final acceptance shall not be considered part of the Work.

## **B. Goods and Services**

The Local Agency shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Contract Funds and shall not increase the maximum amount payable hereunder by the State.

## **C. Employees**

All persons employed hereunder by the Local Agency, or any Consultants or Contractor shall be considered the Local Agency's, Consultants' or Contractors' employee(s) for all purposes and shall not be employees of the State for any purpose.

## **D. State and Local Agency Commitments**

### **i. Design**

If the Work includes preliminary design or final design or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the Local Agency shall comply with and be responsible for satisfying the following requirements:

- a) Perform or provide the Plans to the extent required by the nature of the Work.
- b) Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
- c) Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
- d) Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
- e) Stamp the Plans produced by a Colorado Registered Professional Engineer.
- f) Provide final assembly of Plans and all other necessary documents.
- g) Be responsible for the Plans' accuracy and completeness.
- h) Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT and when final they shall be incorporated herein.

### **ii. Local Agency Work**

- a) The Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
- b) The Local Agency shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.
- c) The Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or of construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**. If the Local Agency enters into a contract with a Consultant for the Work:
  - (1) The Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, the Local Agency shall not enter into such Consultant contract.
  - (2) The Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.

(3) The Local Agency shall require that all billings under the consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.

(4) The Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.

(5) The Local Agency may expedite any CDOT approval of its procurement process and/or consultant contract by submitting a letter to CDOT from the Local Agency's attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b) and (d).

(6) The Local Agency shall ensure that the Consultant agreement complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:

(a) The design work under this Agreement shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

(b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.

(c) The consultant shall review the Construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.

d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require the Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

### iii. Construction

a) If the Work includes construction, the Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with the **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing Construction Contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.

b) If the Local Agency is performing the Work, the State may, after providing written notice of the reason for the suspension to the Local Agency, suspend the Work, wholly or in part, due to the failure of the Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.

c) The Local Agency shall be responsible for the following:

(1) Appointing a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures.

(2) For the construction of the Work, advertising the call for bids upon approval by the State and awarding the construction contract(s) to the low responsible bidder(s).

(a) All advertising and bid awards, pursuant to this agreement, by the Local Agency shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the Local Agency and its Contractor shall incorporate Form 1273 (**Exhibit I**) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 C.F.R. 633.102(e).

(b) The Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. The Local Agency must accept or reject such bid within three (3) working days after they are publicly opened.

(c) As part of accepting bid awards, the Local Agency shall provide additional funds, subject to their availability and appropriation, necessary to complete the Work if no additional federal-aid funds are available.

(3) The requirements of this §6(D)(iii)(c)(2) also apply to any advertising and awards made by the State.

(4) If all or part of the Work is to be accomplished by the Local Agency's personnel (i.e. by force account) rather than by a competitive bidding process, the Local Agency shall perform such work in accordance with pertinent State specifications and requirements of 23 C.F.R. 635, Subpart B, Force Account Construction.

(a) Such Work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency, the State and FHWA in advance of the Work, as provided for in 23 C.R.F. 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.

(b) An alternative to the preceding subsection is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 C.F.R. Part 31.

(c) If the State provides matching funds under this Agreement, rental rates for publicly owned equipment shall be determined in accordance with the State's Standard Specifications for Road and Bridge Construction §109.04.

(d) All Work being paid under force account shall have prior approval of the State and/or FHWA and shall not be initiated until the State has issued a written notice to proceed.

#### iv. State's Commitments

a) of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.

b) Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any major structures designed by, or that are the responsibility of, the Local Agency as identified in the Local Agency Contract Administration Checklist, **Exhibit E**,

#### v. ROW and Acquisition/Relocation

a) If the Local Agency purchases a right of way for a State highway, including areas of influence, the Local Agency shall immediately convey title to such right of way to CDOT after the Local Agency obtains title.

b) Any acquisition/relocation activities shall comply with all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted

Programs as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.

c) The Parties' respective compliance responsibilities depend on the level of federal participation; provided however, that the State always retains Oversight responsibilities.

d) The Parties' respective responsibilities under each level in CDOT's Right of Way Manual (located at [http://www.dot.state.co.us/ROW\\_Manual/](http://www.dot.state.co.us/ROW_Manual/)) and reimbursement for the levels will be under the following categories:

- (1) Right of way acquisition (3111) for federal participation and non-participation;
- (2) Relocation activities, if applicable (3109);
- (3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

**vi. Utilities**

If necessary, the Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company which may become involved in the Work. Prior to the Work being advertised for bids, the Local Agency shall certify in writing to the State that all such clearances have been obtained.

**vii. Railroads**

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by railroad company, the Local Agency shall make timely application to the Public Utilities commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities and:

- a) Execute an agreement setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- b) Obtain the railroad's detailed estimate of the cost of the Work.
- c) Establish future maintenance responsibilities for the proposed installation.
- d) Proscribe future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- e) Establish future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

**viii. Environmental Obligations**

The Local Agency shall perform all Work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

**ix. Maintenance Obligations**

The Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA, and the Local Agency shall provide for such maintenance and operations obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

**7. OPTION LETTER MODIFICATION**

Option Letters may be used to extend Agreement term, change the level of service within the current term due to unexpected overmatch, add a phase without increasing contract dollars, or increase or decrease the amount of funding. These options are limited to the specific scenarios listed below. The Option Letter shall not be deemed valid until signed by the State Controller or an authorized delegate. Following are the applications for the individual options under the Option Letter form:

**A. Option 1- Level of service change within current term due to unexpected overmatch in an overbid situation only.**



In the event the State has contracted all project funding and the Local Agency's construction bid is higher than expected, this option allows for additional Local Overmatch dollars to be provided by the Local Agency to be added to the contract. This option is only applicable for Local Overmatch on an overbid situation and shall not be intended for any other Local Overmatch funding. The State may unilaterally increase the total dollars of this contract as stipulated by the executed Option Letter (**Exhibit D**), which will bring the maximum amount payable under this contract to the amount indicated in **Exhibit C-1** attached to the executed Option Letter (future changes to **Exhibit C** shall be labeled as **C-2**, **C-3**, etc, as applicable). Performance of the services shall continue under the same terms as established in the contract. The State will use the Financial Statement submitted by the Local Agency for "Concurrence to Advertise" as evidence of the Local Agency's intent to award and it will also provide the additional amount required to exercise this option. If the State exercises this option, the contract will be considered to include this option provision.

**B. Option 2 – Option to add overlapping phase without increasing contract dollars.**

The State may require the contractor to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original contract with the contract dollars remaining the same. The State may exercise this option by providing a fully executed option to the contractor within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the contract will be considered to include this option provision.

**C. Option 3 - To update funding (increases and/or decreases) with a new Exhibit C.**

This option can be used to increase and/or decrease the overall contract dollars (state, federal, local match, local agency overmatch) to date, by replacing the original funding exhibit (**Exhibit C**) in the Original Contract with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc). The State may have a need to update changes to state, federal, local match and local agency overmatch funds as outlined in **Exhibit C-1**, which will be attached to the option form. The State may exercise this option by providing a fully executed option to the contractor within thirty (30) days after the State has received notice of funding changes, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the contract will be considered to include this option provision.

**8. PAYMENTS**

The State shall, in accordance with the provisions of this §7, pay the Local Agency in the amounts and using the methods set forth below:

**A. Maximum Amount**

**The maximum amount payable to the Local Agency under this contract shall be \$45,650.00**

The maximum amount payable is set forth in **Exhibit C** as determined by the State from available funds. Payments to the Local Agency are limited to the unpaid encumbered balance of the Contract set forth in **Exhibit C**. The Local Agency shall provide its match share of the costs, or, is prepared to receive the Federal Funding as evidenced by an appropriate ordinance/resolution or other authority letter which expressly authorizes the Local Agency the authority to enter into this Agreement and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as **Exhibit B**.

**B. Payment**

**i. Advance, Interim and Final Payments**

Any advance payment allowed under this Contract or in **Exhibit C** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract or such Exhibit. The Local Agency shall initiate any payment requests by submitting invoices to the State in the form and manner set forth in approved by the State.

**ii. Interest**

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by the Local Agency previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. The Local Agency shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

**iii. Available Funds-Contingency-Termination**

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, the Local Agency's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. The State's performance hereunder is also contingent upon the continuing availability of federal funds. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions hereof.

**iv. Erroneous Payments**

At the State's sole discretion, payments made to the Local Agency in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by the Local Agency, may be recovered from the Local Agency by deduction from subsequent payments under this Contract or other contracts, Agreements or agreements between the State and the Local Agency or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

**C. Use of Funds**

Contract Funds shall be used only for eligible costs identified herein.

**D. Matching Funds (Participating)**

**This Enhancement (18335) is 80% Federally Funded by the FHWA.**

The Local Agency shall provide matching funds as provided in **§7.A.** and **Exhibit C.** The Local Agency shall have raised the full amount of matching funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. The Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of the Local Agency and paid into the Local Agency's treasury. The Local Agency represents to the State that the amount designated "Local Agency Matching Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. The Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of the Local Agency. The Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the Local Agency's laws or policies.

**E. Reimbursement of Local Agency Costs**

The State shall reimburse the Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and **§7.** The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the State's obligation to reimburse all costs incurred by the Local Agency and submitted to the State for reimbursement hereunder, and the Local Agency shall comply with all such principles. The State shall reimburse the Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C.**

However, any costs incurred by the Local Agency prior to the date of FHWA authorization for the Work and prior to the Effective Date shall not be reimbursed absent specific FHWA and State Controller approval thereof. Costs shall be:

**i. Reasonable and Necessary**

Reasonable and necessary to accomplish the Work and for the Goods and Services provided.

**ii. Net Cost**

Actual net cost to the Local Agency (i.e. the price paid minus any items of value received by the Local Agency that reduce the cost actually incurred);

**9. ACCOUNTING**

The Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

**A. Local Agency Performing the Work**

If Local Agency is performing the Work, all allowable costs, including any approved services contributed by the Local Agency or others, shall be documented using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

**B. Local Agency-Checks or Draws**

Checks issued or draws made by the Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. All checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents shall be on file in the office of the Local Agency, clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other Work documents.

**C. State-Administrative Services**

The State may perform any necessary administrative support services required hereunder. The Local Agency shall reimburse the State for the costs of any such services from the Budget as provided for in Exhibit C. If FHWA funding is not available or is withdrawn, or if the Local Agency terminates this Agreement prior to the Work being approved or completed, then all actual incurred costs of such services and assistance provided by the State shall be the Local Agency's sole expense.

**D. Local Agency-Invoices**

The Local Agency's invoices shall describe in detail the reimbursable costs incurred by the Local Agency, for which it seeks reimbursement; the dates such costs were incurred; and the amounts thereof, and shall not be submitted more often than monthly.

**E. Invoicing Within 60 Days**

The State shall not be liable to reimburse the Local Agency for any costs unless CDOT receives such invoices within 60 days after the date for which payment is requested, including final invoicing. Final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or the State may offset them against any payments due from the State to the Local Agency.

**F. Reimbursement of State Costs**

CDOT shall perform Oversight and the Local Agency shall reimburse CDOT for its related costs. The Local Agency shall pay invoices within 60 days after receipt thereof. If the Local Agency fails to remit payment within 60 days, at CDOT's request, the State is authorized to withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to CDOT. Interim funds, shall be payable from the State Highway Supplementary Fund (400) until CDOT is reimbursed. If the Local Agency fails to make payment within 60 days, it shall pay interest to the State at a rate of one percent per month on the delinquent amounts until the billing is paid in full. CDOT's invoices shall describe in detail the reimbursable costs incurred, the dates incurred; and the amounts thereof, and shall not be submitted more often than monthly.

## 10. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §19, if applicable.

### A. Performance, Progress, Personnel, and Funds

The Local Agency shall submit a report to the State upon expiration or sooner termination of this Agreement, containing an Evaluation and Review of the Local Agency's performance and the final status of the Local Agency's obligations hereunder.

### B. Litigation Reporting

Within 10 days after being served with any pleading related to this Agreement, in a legal action filed with a court or administrative agency, the Local Agency shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State or its principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of CDOT.

### C. Noncompliance

The Local Agency's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Agreement.

### D. Documents

Upon request by the State, the Local Agency shall provide the State, or its authorized representative, copies of all documents, including contracts and subcontracts, in its possession related to the Work.

## 11. LOCAL AGENCY RECORDS

### A. Maintenance

The Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. The Local Agency shall maintain such records until the last to occur of the following: (i) a period of three years after the date this Agreement is completed or terminated, or (ii) three years after final payment is made hereunder, whichever is later, or (iii) for such further period as may be necessary to resolve any pending matters, or (iv) if an audit is occurring, or the Local Agency has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

### B. Inspection

The Local Agency shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe the Local Agency's records related to this Agreement during the Record Retention Period to assure compliance with the terms hereof or to evaluate the Local Agency's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Agreement, including any extension. If the Work fails to conform to the requirements of this Agreement, the State may require the Local Agency promptly to bring the Work into conformity with Agreement requirements, at the Local Agency's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require the Local Agency to take necessary action to ensure that future performance conforms to Agreement requirements and exercise the remedies available under this Agreement, at law or in equity in lieu of or in conjunction with such corrective measures.

### C. Monitoring

The Local Agency also shall permit the State, the federal government or any other duly authorized agent of a governmental agency, in their sole discretion, to monitor all activities conducted by the Local Agency pursuant to the terms of this Agreement using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program

data, special analyses, on-site checking, formal audit examinations, or any other procedures. All such monitoring shall be performed in a manner that shall not unduly interfere with the Local Agency's performance hereunder.

#### **D. Final Audit Report**

If an audit is performed on the Local Agency's records for any fiscal year covering a portion of the term of this Agreement, the Local Agency shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

### **12. CONFIDENTIAL INFORMATION-STATE RECORDS**

The Local Agency shall comply with the provisions of this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals.

#### **A. Confidentiality**

The Local Agency shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of the Local Agency shall be immediately forwarded to the State's principal representative.

#### **B. Notification**

The Local Agency shall notify its agents, employees and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

#### **C. Use, Security, and Retention**

Confidential information of any kind shall not be distributed or sold to any third party or used by the Local Agency or its agents in any way, except as authorized by the Agreement and as approved by the State. The Local Agency shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by the Local Agency or its agents, except as set forth in this Agreement and approved by the State.

#### **D. Disclosure-Liability**

Disclosure of State records or other confidential information by the Local Agency for any reason may be cause for legal action by third parties against the Local Agency, the State or their respective agents. The Local Agency shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, or assignees pursuant to this §10.

### **13. CONFLICT OF INTEREST**

The Local Agency shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of the Local Agency's obligations hereunder. The Local Agency acknowledges that with respect to this Agreement, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, the Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Local Agency's obligations to the State hereunder. If a conflict or appearance exists, or if the Local Agency is uncertain whether a conflict or the appearance of a conflict of interest exists, the Local Agency shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Agreement.

### **14. REPRESENTATIONS AND WARRANTIES**

The Local Agency makes the following specific representations and warranties, each of which was relied on by the State in entering into this Agreement.

#### **A. Standard and Manner of Performance**

The Local Agency shall perform its obligations hereunder, including in accordance with the highest professional standard of care, skill and diligence and in the sequence and manner set forth in this Agreement.

**B. Legal Authority – The Local Agency and the Local Agency’s Signatory**

The Local Agency warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement, or any part thereof, and to bind the Local Agency to its terms. If requested by the State, the Local Agency shall provide the State with proof of the Local Agency’s authority to enter into this Agreement within 15 days of receiving such request.

**C. Licenses, Permits, Etc.**

The Local Agency represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. The Local Agency warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Agreement, without reimbursement by the State or other adjustment in Agreement Funds. Additionally, all employees and agents of the Local Agency performing Services under this Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. The Local Agency, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for the Local Agency to properly perform the terms of this Agreement shall be deemed to be a material breach by the Local Agency and constitute grounds for termination of this Agreement.

**15. INSURANCE**

The Local Agency and its contractors shall obtain and maintain insurance as specified in this section at all times during the term of this Agreement: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the Local Agency and the State.

**A. The Local Agency**

**i. Public Entities**

If the Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then the Local Agency shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. The Local Agency shall show proof of such insurance satisfactory to the State, if requested by the State. The Local Agency shall require each Agreement with their Consultant and Contractor, that are providing Goods or Services hereunder, to include the insurance requirements necessary to meet Consultant or Contractor liabilities under the GIA.

**ii. Non-Public Entities**

If the Local Agency is not a "public entity" within the meaning of the Governmental Immunity Act, the Local Agency shall obtain and maintain during the term of this Agreement insurance coverage and policies meeting the same requirements set forth in §13(B) with respect to sub-contractors that are not "public entities".

**B. Contractors**

The Local Agency shall require each contract with Contractors, Subcontractors, or Consultants, other than those that are public entities, providing Goods or Services in connection with this Agreement, to include insurance requirements substantially similar to the following:

**i. Worker’s Compensation**

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of the Local Agency's Contractors, Subcontractors, or Consultant's employees acting within the course and scope of their employment.

**ii. General Liability**

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent the Local Agencies, products and completed operations, blanket Agreementual liability, personal injury, and advertising liability with minimum limits as follows: **(a)** \$1,000,000 each occurrence; **(b)** \$1,000,000 general aggregate; **(c)** \$1,000,000 products and completed operations aggregate; and **(d)** \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, contractors, subcontractors, and consultants shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Local Agency a certificate or other document satisfactory to the Local Agency showing compliance with this provision.

**iii. Automobile Liability**

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

**iv. Additional Insured**

The Local Agency and the State shall be named as additional insured on the Commercial General Liability policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

**v. Primacy of Coverage**

Coverage required of the Consultants or Contractor shall be primary over any insurance or self-insurance program carried by the Local Agency or the State.

**vi. Cancellation**

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Local Agency and the State by certified mail.

**vii. Subrogation Waiver**

All insurance policies in any way related to this Agreement and secured and maintained by the Local Agency's Consultants or Contractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against the Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

**C. Certificates**

The Local Agency and all Contractors, subcontractors, or Consultants shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Agreement. No later than 15 days prior to the expiration date of any such coverage, the Local Agency and each contractor, subcontractor, or consultant shall deliver to the State or the Local Agency certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Agreement or any sub-contract, the Local Agency and each contractor, subcontractor, or consultant shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§13**.

**16. DEFAULT-BREACH**

**A. Defined**

In addition to any breaches specified in other sections of this Agreement, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach.

**B. Notice and Cure Period**

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Agreement in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis..

## **17. REMEDIES**

If the Local Agency is in breach under any provision of this Agreement, the State shall have all of the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Agreement following the notice and cure period set forth in §14(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

### **A. Termination for Cause and/or Breach**

If the Local Agency fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Agreement and in a timely manner, the State may notify the Local Agency of such non-performance in accordance with the provisions herein. If the Local Agency thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Agreement or such part of this Agreement as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. The Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

#### **i. Obligations and Rights**

To the extent specified in any termination notice, the Local Agency shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and sub-Agreements with third parties. However, the Local Agency shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Agreement's terms. At the sole discretion of the State, the Local Agency shall assign to the State all of the Local Agency's right, title, and interest under such terminated orders or sub-Agreements. Upon termination, the Local Agency shall take timely, reasonable and necessary action to protect and preserve property in the possession of the Local Agency in which the State has an interest. All materials owned by the State in the possession of the Local Agency shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by the Local Agency to the State and shall become the State's property.

#### **ii. Payments**

The State shall reimburse the Local Agency only for accepted performance received up to the date of termination. If, after termination by the State, it is determined that the Local Agency was not in default or that the Local Agency's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Agreement had been terminated in the public interest, as described herein.

#### **iii. Damages and Withholding**

Notwithstanding any other remedial action by the State, the Local Agency also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Agreement by the Local Agency and the State may withhold any payment to the Local Agency for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from the Local Agency is determined.



The State may withhold any amount that may be due to the Local Agency as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. The Local Agency shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

## **B. Early Termination in the Public Interest**

The State is entering into this Agreement for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Agreement in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Agreement by the State for cause or breach by the Local Agency, which shall be governed by **§15(A)** or as otherwise specifically provided for herein.

### **i. Method and Content**

The State shall notify the Local Agency of the termination in accordance with **§16**, specifying the effective date of the termination and whether it affects all or a portion of this Agreement.

### **ii. Obligations and Rights**

Upon receipt of a termination notice, the Local Agency shall be subject to and comply with the same obligations and rights set forth in **§15(A)(i)**.

### **iii. Payments**

If this Agreement is terminated by the State pursuant to this **§15(B)**, the Local Agency shall be paid an amount which bears the same ratio to the total reimbursement under this Agreement as the Services satisfactorily performed bear to the total Services covered by this Agreement, less payments previously made. Additionally, if this Agreement is less than 60% completed, the State may reimburse the Local Agency for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Agreement) incurred by the Local Agency which are directly attributable to the uncompleted portion of the Local Agency's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to the Local Agency hereunder.

## **C. Remedies Not Involving Termination**

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

### **i. Suspend Performance**

Suspend the Local Agency's performance with respect to all or any portion of this Agreement pending necessary corrective action as specified by the State without entitling the Local Agency to an adjustment in price/cost or performance schedule. The Local Agency shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by the Local Agency after the suspension of performance under this provision.

### **ii. Withhold Payment**

Withhold payment to the Local Agency until corrections in the Local Agency's performance are satisfactorily made and completed.

### **iii. Deny Payment**

Deny payment for those obligations not performed, that due to the Local Agency's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

### **iv. Removal**

Demand removal of any of the Local Agency's employees, agents, or contractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Agreement is deemed to be contrary to the public interest or not in the State's best interest.

**v. Intellectual Property**

If the Local Agency infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Agreement, the Local Agency shall, at the State’s option (a) obtain for the State or the Local Agency the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

**18. NOTICES and REPRESENTATIVES**

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party’s principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

**A. State:**

Dave Schneider
CDOT Region 3
Resident Engineer
270 Ranney Street
Craig, CO 81625
(970) 826-5189

**B. Local Agency:**

Janet Hruby
City of Steamboat Springs
City Engineer
P.O. Box 775088
Steamboat Springs, CO 80477
(970) 871-8245

**19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE**

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by the Local Agency in the performance of its obligations under this Agreement shall be the exclusive property of the State and, all Work Product shall be delivered to the State by the Local Agency upon completion or termination hereof. The State’s exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. The Local Agency shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of the Local Agency's obligations hereunder without the prior written consent of the State.

**20. GOVERNMENTAL IMMUNITY**

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.

**21. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to the Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §21 applies.

The Local Agency agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Agreements and inclusion of Agreement performance information in a statewide Agreement management system.

The Local Agency's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Agreement, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of the Local Agency's performance shall be part of the normal Agreement administration process and the Local Agency's performance will be systematically recorded in the statewide Agreement Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of the Local Agency's obligations under this Agreement shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of the Local Agency's obligations. Such performance information shall be entered into the statewide Agreement Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Agreement term. The Local Agency shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that the Local Agency demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by CDOT, and showing of good cause, may debar the Local Agency and prohibit the Local Agency from bidding on future Agreements. The Local Agency may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of the Local Agency, by the Executive Director, upon showing of good cause.

## **22. FEDERAL REQUIREMENTS**

The Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended. A listing of certain federal and state laws that may be applicable are described in Federal Requirements **Exhibit J**, and the Supplemental Federal Provisions of October 15, 2010, **Exhibit K**.

## **23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

The Local Agency will comply with all requirements of **Exhibit G** and the Local Agency Contract Administration Checklist regarding DBE requirements for the Work, except that if the Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If the Local Agency uses any State- approved DBE program for this Agreement, the Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of the Local Agency's DBE program does not waive or modify the sole responsibility of the Local Agency for use of its program.

## **24. DISPUTES**

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement, shall be decided by the Chief Engineer of the Department of Transportation.

The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written

appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

## **25. GENERAL PROVISIONS**

### **A. Assignment**

The Local Agency's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments and subcontracts approved by the Local Agency or the State are subject to all of the provisions hereof. The Local Agency shall be solely responsible for all aspects of subcontracting arrangements and performance.

### **B. Binding Effect**

Except as otherwise provided in **§20(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

### **C. Captions**

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

### **D. Counterparts**

This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

### **E. Entire Understanding**

This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous addition, deletion, or other amendment hereto shall not have any force or affect whatsoever, unless embodied herein.

### **F. Indemnification - General**

If Local Agency is not a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., the Local Agency shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, subcontractors or assignees pursuant to the terms of this Agreement. This clause is not applicable to a Local Agency that is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq.

### **G. Jurisdiction and Venue**

All suits, actions, or proceedings related to this Agreement shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

### **H. Limitations of Liability**

Any and all limitations of liability and/or damages in favor of the Local Agency contained in any document attached to and/or incorporated by reference into this Agreement, whether referred to as an exhibit, attachment, schedule, or any other name, are void and of no effect.

This includes, but is not necessarily limited to, limitations on **(i)** the types of liabilities, **(ii)** the types of damages, **(iii)** the amount of damages, and **(iv)** the source of payment for damages.

### **I. Modification**

**i. By the Parties**

Except as specifically provided in this Agreement, modifications of this Agreement shall not be effective unless agreed to in writing by both parties in an amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF AGREEMENTS - TOOLS AND FORMS.

**ii. By Operation of Law**

This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein.

**J. Order of Precedence**

The provisions of this Agreement shall govern the relationship of the State and the Local Agency. In the event of conflicts or inconsistencies between this Agreement and its exhibits and attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions,
- ii. The provisions of the main body of this Agreement,
- iii. **Exhibit A** (Scope of Work),
- iv. **Exhibit B** (Local Agency Resolution),
- v. **Exhibit C** (Funding Provisions),
- vi. **Exhibit D** (Option Letter),
- vii. **Exhibit E** (Local Agency Contract Administration Checklist),
- viii. Other exhibits in descending order of their attachment.

**K. Severability**

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

**L. Survival of Certain Agreement Terms**

Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if the Local Agency fails to perform or comply as required.

**M. Taxes**

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. The Local Agency shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing the Local Agency for them.

**N. Third Party Beneficiaries**

Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

**O. Waiver**

Waiver of any breach of a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

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## **26. COLORADO SPECIAL PROVISIONS**

The Special Provisions apply to all Agreements except where noted in italics.

### **1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).**

This Agreement shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

### **2. FUND AVAILABILITY. CRS §24-30-202(5.5).**

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

### **3. GOVERNMENTAL IMMUNITY.**

No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

### **4. INDEPENDENT CONTRACTOR**

The Local Agency shall perform its duties hereunder as an independent contractor and not as an employee. Neither The Local Agency nor any agent or employee of The Local Agency shall be deemed to be an agent or employee of the State. The Local Agency and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for The Local Agency or any of its agents or employees.

Unemployment insurance benefits shall be available to The Local Agency and its employees and agents only if such coverage is made available by The Local Agency or a third party. The Local Agency shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. The Local Agency shall not have authorization, express or implied, to bind the State to any Agreement, liability or understanding, except as expressly set forth herein. The Local Agency shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

### **5. COMPLIANCE WITH LAW.**

The Local Agency shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

### **6. CHOICE OF LAW.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

### **7. BINDING ARBITRATION PROHIBITED.**

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contact or incorporated herein by reference shall be null and void.

### **8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. The Local Agency hereby certifies and warrants that, during the term of this Agreement and any extensions, The Local Agency has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that The Local Agency is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

### **9. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement.

The Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of The Local Agency's services and The Local Agency shall not employ any person having such known interests.

**10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.**

*[Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.*

**11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.**

*[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, Intergovernmental Agreements, or information technology services or products and services] The Local Agency certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Agreement and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), The Local Agency shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to The Local Agency that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Local Agency (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if The Local Agency has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If The Local Agency participates in the State program, The Local Agency shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that The Local Agency has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If The Local Agency fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, The Local Agency shall be liable for damages.*

**12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.**

The Local Agency, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Agreement.

Effective 1/1/09

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK**



**27. SIGNATURE PAGE**

Agreement Routing Number 12 HA3 34200 PO # 271001461

**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

**\* Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.**

<p align="center"><b>THE LOCAL AGENCY CITY OF STEAMBOAT SPRINGS CDOT VENDOR # 2000051</b></p> <p>By: _____ (Printed Name)</p> <p>Title: _____</p> <p>_____</p> <p align="center">*Signature</p>	<p align="center"><b>STATE OF COLORADO JOHN W. HICKENLOOPER, GOVERNOR Colorado Department of Transportation Donald E. Hunt, Executive Director CDOT</b></p> <p>By: Timothy J. Harris – CDOT Chief Engineer</p>
<p>Attested by</p> <p>By: _____ (Printed Name)</p> <p>Title: _____</p> <p>_____</p> <p align="center">*Signature</p>	<p align="center"><b>LEGAL REVIEW</b> John W. Suthers, Attorney General</p> <p>By: _____</p> <p align="center">Signature - Assistant Attorney General</p>

**ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

**CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. The Local Agency is not authorized to begin performance until such time. If The Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay The Local Agency for such performance or for any goods and/or services provided hereunder.**

**STATE CONTROLLER  
David J. McDermott, CPA**

By: \_\_\_\_\_

Colorado Department of Transportation

Date: \_\_\_\_\_

28. EXHIBIT A – SCOPE OF WORK

<b>COLORADO DEPARTMENT OF TRANSPORTATION</b> <b>DESIGN DATA</b>		Orig.Date: 02/01/2011 Rev.Date: Revision #: 0 Region #: 03		Project Code # (SA#): 18335    STIP#:	
Page 1 to 3 Status: <input checked="" type="checkbox"/> Preliminary <input type="checkbox"/> Final <input type="checkbox"/> Revised		Submitted By PM: KILLIANB    Approved by Program Engineer:		Project #: M251-023 PE Project Code:	
Date:		Date:		Project Description: CASEY'S POND - CITY OF STEAMBOAT SPGS County: 107 107 Municipality:	
Revised by:		Date:		System Code: O-Other Federal-Aid Highway Oversight By: O-Others Planned Length: 0.200	
Geographic Location: CITY OF STEAMBAOT SPRINGS					
Type of Terrain: Rolling					
Description of Proposed Construction/Improvement(Attach map showing site location) CONSTRUCTION OF BIKE FACILITY					
<b>1 Project Characteristics (Proposed)</b>			Median (Type): <input type="checkbox"/> Depressed <input type="checkbox"/> Painted <input type="checkbox"/> Raised <input checked="" type="checkbox"/> None		
<input type="checkbox"/> Lighting <input type="checkbox"/> Handicap Ramps <input type="checkbox"/> Curb and Gutter <input type="checkbox"/> Curb Only <input checked="" type="checkbox"/> Sidewalk Width= 8' <input type="checkbox"/> Bikeway Width= <input type="checkbox"/> Parking Lane Width= <input type="checkbox"/> Landscaping requirements (description):			<input type="checkbox"/> Traffic Control Signals <input type="checkbox"/> Striping <input type="checkbox"/> Left-Turn Slots <input type="checkbox"/> Continuous                  Width= <input type="checkbox"/> Right-Turn Slots <input type="checkbox"/> Continuous                  Width= Signing <input checked="" type="checkbox"/> Construction <input checked="" type="checkbox"/> Permanent <input type="checkbox"/> Other (description):		
<b>2 Right of Way</b>		Yes/No                  Est. #	<b>3 Utilities</b> (list names of known utility companies)		
ROW &/or Perm. Easement Required                  No                  _____ Relocation Required                  No                  _____ Temporary Easement Required:                  No                  _____ Changes in Access:                  No                  _____ Changes to Connecting Roads:                  No                  _____			unknown		
<b>4 Railroad Crossings</b> # of Crossings:			Recommendations :		
<b>5 Environmental</b>		Type: None	Approved On: / /	Project Code # Cleared Under:	Project # Cleared Under:
Comments:					
<b>6 Coordination</b>					
<input type="checkbox"/> Withdrawn Lands (Power Sites, Reservoirs, Etc.) Cleared through BLM or Forest Service Office                  Irrigation Ditch Name:					
<input type="checkbox"/> New Traffic Ordinance Required <input type="checkbox"/> Modify Schedule of Existing Ordinance                  Municipality:					
Other:					
<b>7 Construction Method</b>		Advertised By: Local	NoAd Reason:	Entity / Agency Contact Name:	Phone #:
<b>8 Safety Considerations</b>		Project Under:		Guardrail meets current standards: No	
<input type="checkbox"/> Variance in Minimum Design Standards Required		<input type="checkbox"/> Safety project not all standards addressed		Comments:	
<input type="checkbox"/> Justification Attached <input type="checkbox"/> Request to be Submitted		<input type="checkbox"/> Bridge(see item 12) <input type="checkbox"/> See Remarks		3R projects	
<input type="checkbox"/> Stage Construction (explain in remarks)		Safety Evaluation Complete (date):		Safety Evaluation Complete (date):	

Page 2 of 3	Project Code #(SA#): 18335	Project #: M251-023	Revise date:														
Use Columns A, B, C, D and/or E to identify facility described below																	
A = 040A		B =	C =	D =	E =												
<b>9 Traffic</b>																	
Current Year	ADT																
	DHV																
	DHV % Trucks																
Future Year	ADT																
	DHV																
Facility Location	<input type="checkbox"/> Industrial <input type="checkbox"/> Residential	<input type="checkbox"/> Commercial <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Residential	<input type="checkbox"/> Commercial <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Residential	<input type="checkbox"/> Commercial <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Residential	<input type="checkbox"/> Commercial <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Residential	<input type="checkbox"/> Commercial <input type="checkbox"/> Other							
<b>10 Roadway Class</b>																	
Route	040A																
Refpt	135.013	0.000															
Endrefpt	135.121	0.000															
Functional Classification	P																
Facility type	U																
Rural Code	1																
<b>11 Design Standards</b>																	
	Standard	Existing	Proposed	Ultimate	Standard	Existing	Proposed	Ultimate	Standard	Existing	Proposed	Ultimate	Standard	Existing	Proposed	Ultimate	
<b>Design Variance Required (substandard items are identified with an * in 1<sup>st</sup> column &amp; clarify as design variance with CDOT Form #464)</b>																	
Width of Travel Lanes																	
Shoulder width ft/outside																	
Shoulder width ft/outside																	
Design Speed																	
Cross Slope																	
Max. superelevation rate																	
Min. Radius																	
Min. Horizontal SSD																	
Min. Vertical SSD																	
Max Grade																	
<b>Design Decision Letter Required (substandard items are identified with an * in 1<sup>st</sup> column &amp; clarify with decision letter)</b>																	
Typical Section Type																	
# of Travel Lanes																	
Side Slope Dist. ("x")																	
Median Width																	
Posted Speed																	

Page 3 of 3	Project Code #(SA#): 18335	Project #: M251-023	Revise Date:	
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**12 Major Structures** S= to stay, R= to be removed, P= proposed new structure

Structure ID#	Length	Reference Point	Feature Intersected	Standard Width	Structure Roadway	Structural Capacity	Horizontal Clearance	Vertical Clearance	Year Built
---------------	--------	-----------------	---------------------	----------------	-------------------	---------------------	----------------------	--------------------	------------

Proposed Treatment of Bridges to Remain in Place(address bridge rail, capacity, and allowable surfacing thickness):

**13 Remarks**

The work includes design and engineering for constructing approximately 2,000 linear feet of 8' wide concrete trail around Casey's Pond in the City limits of Steamboat Springs. The Trail shall meet all ADA requirements and shall meet all guidelines required by FHWA.

**29. EXHIBIT B – LOCAL AGENCY RESOLUTION**

**LOCAL AGENCY  
ORDINANCE  
or  
RESOLUTION**

**30. EXHIBIT C – FUNDING PROVISIONS STE M251-023 (18335)**

**A. Cost of Work Estimate**

The Local Agency has estimated the total cost the Work to be \$56,960.00.00 which is to be funded as follows:

<b>1 BUDGETED FUNDS</b>				
a. Federal Funds				\$45,650.00
	(80% of Participating Costs)			
b. Local Agency Matching Funds				\$11,390.00
	(20% of Participating Costs)			
c. Local Agency Over-Matching Funds				\$0.00
<b>TOTAL BUDGETED FUNDS</b>				<b>\$56,960.00</b>
<b>2 ESTIMATED CDOT-INCURRED COSTS</b>				
a. Federal Share ( ___ of Participating Costs)				\$0.00
b. Local Agency				
Local Agency Share of Participating Costs		\$0.00		
Non-Participating Costs (Including Non-Participating Indirects)		\$0.00		
<b>TOTAL ESTIMATED CDOT-INCURRED COSTS</b>				<b>\$0.00</b>
<b>3 ESTIMATED PAYMENT TO LOCAL AGENCY</b>				
a. Federal Funds Budgeted (1a)				\$45,560.00
<b>TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY</b>				<b>\$45,560.00</b>
<b>FOR CDOT ENCUMBRANCE PURPOSES</b>				
1a. Federal Funds				\$45,560.00
1c. Local Agency Over-Matching Funds				\$11,390.00
<b>**Note Federal funds are not yet available for encumbrance at this time. Design &amp; Construction Phase Funds will be encumbered at a later date by Option Letter of Formal Amendment**</b>				
Less ROW Acquisition 3111 and/or ROW Relocation 3109				
Total Encumbrance Amount				\$0.00
Net to be encumbered as follows:				
WBS Element ROW Misc 3114				
	WBS Element	Design	3020	\$56,950.00
	WBS Element 18335-20.10	Const	3301	\$0.00
<b>TOTAL ENCUMBRANCE</b>				<b>\$56,950.00</b>

## **B. Matching Funds**

The matching ratio for the federal participating funds for this Work is 80% federal-aid funds to 20% Local Agency funds, it being understood that such ratio applies only to the \$56,950.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$56,950.00, and additional federal funds are made available for the Work, the Local Agency shall pay 0% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$56,950.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

## **C. Maximum Amount Payable**

The maximum amount payable to the Local Agency under this Agreement shall be \$45,560.00. For CDOT accounting purposes, the federal funds of \$45,560 and Local Agency Matching Funds of \$11,390.00 will be encumbered for a total encumbrance of \$56,950.00, unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

## **D. Single Audit Act Amendment**

All state and local government and non-profit organization Sub-The Local Agencies receiving more than \$500,000 from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes, shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 C.F.R. 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to Sub-The Local Agencies receiving federal funds are as follows:

### **i. Expenditure less than \$500,000**

If the Sub-The Local Agency expends less than \$500,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

### **ii. Expenditure exceeding than \$500,000-Highway Funds Only**

If the Sub-The Local Agency expends more than \$500,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

### **iii. Expenditure exceeding than \$500,000-Multiple Funding Sources**

If the Sub-The Local Agency expends more than \$500,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

### **iv. Independent CPA**

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

**31. EXHIBIT D – OPTION LETTER**

**SAMPLE IGA OPTION LETTER**

*NOTE: This option is limited to the specific contract scenarios listed below AND may be used in place of exercising a formal amendment.*

<b>Date:</b>	<b>State Fiscal Year:</b>	<b>Option Letter No.</b>	<b>CLIN Routing #</b>
<b>Original Contract CMS #</b>		<b>Option Letter CMS #</b>	
<b>Original Contract SAP #</b>		<b>Option Letter SAP #</b>	

**Local Agency Name:** \_\_\_\_\_

**A. SUBJECT:** (Choose applicable options listed below AND in section B and delete the rest)

1. Level of service change within current term due to an unexpected Local overmatch on an overbid situation ONLY;
2. Option to add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (does not apply to Acquisition/Relocation or Railroads);
3. Option to update funding (a new Exhibit C must be attached with the option letter and shall be labeled C-1 (future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.)

**B. REQUIRED PROVISIONS.** All Option Letters shall contain the appropriate provisions set forth below:

**(Insert the following language for use with Option #1):**

In accordance with the terms of the original Agreement (*insert FY, Agency code & CLIN routing # of Basic Contract*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to record a level of service change due to unexpected overmatch dollars due to an overbid situation. The Agreement is now increased by (*indicate additional dollars here*) specified in Paragraph/Section/Provision \_\_\_\_\_ of the original Agreement.

**(Insert the following language for use with Option #2):**

In accordance with the terms of the original Agreement (*insert FY, Agency code & CLIN routing # of Basic Contract*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to add an overlapping phase in (*indicate Fiscal Year here*) that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*). Total funds for this Agreement remain the same (*indicate total dollars here*) as referenced in Paragraph/Section/Provision/Exhibit \_\_\_\_\_ of the original Agreement.

**(Insert the following language for use with Option #3):**

In accordance with the terms of the original Agreement (*insert FY, Agency code & CLIN routing # of Basic Contract*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to update funding based on changes from state, federal, local match and/or local agency overmatch funds. The Agreement is now (*select one: increased and/or decreased*) by (*insert dollars here*) specified in Paragraph/-Section/-Provision/Exhibit \_\_\_\_\_ of the original Agreement. A new Exhibit C-1 is made part of the original Agreement and replaces Exhibit C. (The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.)



**(The following language must be included on ALL options):**

The amount of the current Fiscal Year contract value is (*increased/decreased*) by (\$ *amount of change*) to a new Agreement value of (\$ \_\_\_\_\_) to satisfy services/goods ordered under the Agreement for the current fiscal year (*indicate Fiscal Year*). The first sentence in Paragraph/Section/Provision \_\_\_\_\_ is hereby modified accordingly.

The total Agreement value to include all previous amendments, option letters, etc. is (\$ \_\_\_\_\_).

The effective date of this Option Letter is upon approval of the State Controller or delegate.

**APPROVALS:**

**For the The Local Agency:**

Legal Name of the Local Agency

\_\_\_\_\_

By: \_\_\_\_\_  
Print Name of Authorized Individual

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Title: Official Title of Authorized Individual

\_\_\_\_\_

**State of Colorado:**

**John W. Hickenlooper, Governor**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Executive Director, Colorado Department of Transportation

**ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

**State Controller  
David J. McDermott, CPA**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Form Updated: July 1, 2009

## **32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST**

### **LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST**

The following checklist has been developed to ensure that all required aspects of a project approved for Federal funding have been addressed and a responsible party assigned for each task.

After a project has been approved for Federal funding in the Statewide Transportation Improvement Program, the Colorado Department of Transportation (CDOT) Project Manager, Local Agency project manager, and CDOT Resident Engineer prepare the checklist. It becomes a part of the contractual agreement between the Local Agency and CDOT. The CDOT Agreements Unit will not process a Local Agency agreement without this completed checklist. It will be reviewed at the Final Office Review meeting to ensure that all parties remain in agreement as to who is responsible for performing individual tasks.

COLORADO DEPARTMENT OF TRANSPORTATION LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. STE M251-023	STIP No. TBD	Project Code 18335	Region 3
Project Location City of Steamboat Springs			Date 11/15/10
Project Description Construction of Bike/Pedestrian Facility			
Local Agency City of Steamboat Springs	Local Agency Project Manager Janet Hruby		
CDOT Resident Engineer Dave Schneider	CDOT Project Manager Brian Killian/Barry Andersen		
<p><b>INSTRUCTIONS:</b></p> <p>This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i>.</p> <p>The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.</p> <p>Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.</p> <p>The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.</p>			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
<b>TIP / STIP AND LONG-RANGE PLANS</b>			
2.1	Review Project to ensure it is consist with STIP and amendments thereto		X
<b>FEDERAL FUNDING OBLIGATION AND AUTHORIZATION</b>			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
<b>PROJECT DEVELOPMENT</b>			
5.1	Prepare Design Data - CDOT Form 463		X
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement	X	
5.4	Conduct Design Scoping Review Meeting	X	
5.5	Conduct Public Involvement	X	
5.6	Conduct Field Inspection Review (FIR)	X	
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	
5.9	Obtain Utility and Railroad Agreements	X	
5.10	Conduct Final Office Review (FOR)	X	
5.11	Justify Force Account Work by the Local Agency	X	
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	
5.13	Document Design Exceptions - CDOT Form 464	X	
5.14	Prepare Plans, Specifications and Construction Cost Estimates	X	
5.15	Ensure Authorization of Funds for Construction		X

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Previous editions are obsolete and may not be used

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
<b>PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE</b>			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6.2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.)  Dave Schneider _____ 11/15/10 CDOT Resident Engineer (Signature on File) Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances	X	
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
<b>ADVERTISE, BID AND AWARD</b>			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	
7.2	Advertise for Bids	X	
7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
<b>CONSTRUCTION MANAGEMENT</b>			
8.1	Issue Notice to Proceed to the Contractor	X	
8.2	Project Safety		X
8.3	Conduct Conferences: Pre-Construction Conference (Appendix B)	X	
	Pre-survey		
	• Construction staking	X	
	• Monumentation	X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in CDOT Construction Manual)	n/a	
	Concrete Pavement Pre-Paving (Agenda is in CDOT Construction Manual)	X	
	HMA Pre-Paving (Agenda is in CDOT Construction Manual)	n/a	
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Janey Hruby _____ 970-871-8245 Local Agency Professional Engineer or Phone number CDOT Resident Engineer	X	

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Previous editions are obsolete and may not be used

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8.6	Approve Shop Drawings	X	X
8.7	Perform Traffic Control Inspections	X	
8.8	Perform Construction Surveying	X	
8.9	Monument Right-of-Way	X	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates	X	
	Provide the name and phone number of the person authorized for this task.  Janey Hruby _____ 970-871-8245 _____ Local Agency Representative Phone number		
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	
8.12	Prepare Local Agency Reimbursement Requests	X	
8.13	Prepare and Authorize Change Orders	X	
8.14	Approve All Change Orders		X
8.15	Monitor Project Financial Status	X	
8.16	Prepare and Submit Monthly Progress Reports	X	
8.17	Resolve Contractor Claims and Disputes	X	
8.18	Conduct Routine and Random Project Reviews		X
	Provide the name and phone number of the person responsible for this task.  Dave Schneider _____ 970-826-5189 _____ CDOT Resident Engineer Phone number		
<b>MATERIALS</b>			
9.1	Conduct Materials Pre-Construction Meeting	X	
9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	X X X	
9.3	Perform Project Acceptance Samples and Tests	X	
9.4	Perform Laboratory Verification Tests	X	
9.5	Accept Manufactured Products  Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X	
9.6	Approve Sources of Materials	X	
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/> • Generate IAT schedule • Schedule and provide notification • Conduct IAT	X	X X
9.8	Approve mix designs • Concrete • Hot mix asphalt		X X
9.9	Check Final Materials Documentation	X	
9.10	Complete and Distribute Final Materials Documentation	X	

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Previous editions are obsolete and may not be used

<b>CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE</b>			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	X	
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
<b>FINALS</b>			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter	X	
11.3	Advertise for Final Settlement	X	
11.4	Prepare and Distribute Final As-Constructed Plans	X	
11.5	Prepare EEO Certification	X	
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11.8	Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer	X	
11.9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor	n/a	
11.10	Complete and Submit CDOT Form 1212 - Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment	X	
11.12	Complete and Submit CDOT Form 950 - Project Closure	X	
11.13	Retain Project Records for Six Years from Date of Project Closure	X	
11.14	Retain Final Version of Local Agency Contract Administration Checklist	X	

- cc: CDOT Resident Engineer/Project Manager  
 CDOT Region Program Engineer  
 CDOT Region EEO/Civil Rights Specialist  
 CDOT Region Materials Engineer  
 CDOT Contracts and Market Analysis Branch  
 Local Agency Project Manager

## EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agree by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

Required by 23 CFR 635.112

### 33. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE

#### SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 23. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

#### SECTION 2. DBE Obligation.

The recipient or its the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

#### SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency upon request:

Business Programs Office

Colorado Department of Transportation

4201 East Arkansas Avenue, Room 287

Denver, Colorado 80222-3400

Phone: (303) 757-9234

revised 1/22/98

Required by 49 CFR Part 23.41



### **34. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES**

#### **THE LOCAL AGENCY SHALL USE THESE PROCEDURES TO IMPLEMENT FEDERAL-AID PROJECT AGREEMENTS WITH PROFESSIONAL CONSULTANT SERVICES**

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded local agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states “The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost” and according to 23 CFR 172.5 “Price shall not be used as a factor in the analysis and selection phase.” Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a local agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting local agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting local agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The request for consultant services should include the scope of work, the evaluation factors and their relative importance, the method of payment, and the goal of 10% for Disadvantaged Business Enterprise (DBE) participation as a minimum for the project.
5. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,
- b. Approach to the Work,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services.

Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
  - b. Past performance,
  - c. Willingness to meet the time and budget requirement,
  - d. Location,
  - e. Current and projected work load,
  - f. Volume of previously awarded contracts, and
  - g. Involvement of minority consultants.
6. Once a consultant is selected, the local agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.
  7. A qualified local agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the local agency prepares a performance evaluation (a CDOT form is available) on the consultant.
  8. Each of the steps listed above is to be documented in accordance with the provisions of 49 CFR 18.42, which provide for records to be kept at least three years from the date that the local agency submits its final expenditure report. Records of projects under litigation shall be kept at least three years after the case has been settled.

CRS §§24-30-1401 through 24-30-1408, 23 CFR Part 172, and P.D. 400.1, provide additional details for complying with the preceding eight (8) steps.

35. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS

FHWA Form 1273

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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IV. Payment of Predetermined Minimum Wage ..... 3
V. Statements and Payrolls ..... 6
VI. Record of Materials, Supplies, and Labor..... 6
VII. Subletting or Assigning the Contract ..... 7
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XI. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion..... 8
XII. Certification Regarding Use of Contract Funds for Lobbying ..... 9

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this Agreement. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this Agreement. In the execution of this Agreement, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

ATTACHMENTS

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

I. GENERAL

b. The contractor will accept as his operating policy the following statement:

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

2. EEO Officer: The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

- Section I, paragraph 2;
Section IV, paragraphs 1, 2, 3, 4, and 7;
Section V, paragraphs 1 and 2a through 2g.

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this Agreement. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

6. Selection of Labor: During the performance of this Agreement, the contractor shall not:

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

II. NONDISCRIMINATION

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal

Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementations of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this Agreement, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

#### **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this Agreement, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor

either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

**8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this Agreement.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this Agreement. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

**9. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to

be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

### III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this Agreement or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this Agreement. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

### IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

#### 1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this Agreement.

#### 2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

#### 3. Payment of Fringe Benefits:

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### 4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

##### a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed

pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

**5. Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**6. Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this Agreement or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**7. Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**8. Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

**9. Withholding for Unpaid Wages and Liquidated Damages:**

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

## V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

### 1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

### 2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

## VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this Agreement.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

## VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise

disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

### VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this Agreement the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this Agreement, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this Agreement, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this Agreement that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

### IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

#### NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

*"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or*

*Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or*

*Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;*

*Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."*

### X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this Agreement, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this Agreement, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

### XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

#### 1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency



entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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**2. Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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**XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS OR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of

any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

2. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly

## **36. EXHIBIT J – FEDERAL REQUIREMENTS**

Federal laws and regulations that may be applicable to the Work include:

### **A. Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule)**

The "Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions. The requirements of 49 CFR 18 include, without limitation:

- i. the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d);
- ii. the Local Agency/Contractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30;
- iii. the Local Agency/Contractor shall comply with section 18.37 concerning any sub-Agreements;
- iv. to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 sub-Agreement procedures, as applicable;
- v. the Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

### **B. Executive Order 11246**

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or sub-the Local Agencies).

### **C. Copeland "Anti-Kickback" Act**

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

### **D. Davis-Bacon Act**

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and sub-the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

### **E. Contract Work Hours and Safety Standards Act**

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agencies and sub-the Local Agencies in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

### **F. Clear Air Act**

Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts in excess of \$100,000).

### **G. Energy Policy and Conservation Act**

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

**H. OMB Circulars**

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

**I. Hatch Act**

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

**J. Nondiscrimination**

42 USC 6101 et seq. 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et. seq. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.

**K. ADA**

The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213 47 USC 225 and 47 USC 611.

**L. Uniform Relocation Assistance and Real Property Acquisition Policies Act**

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

**M. Drug-Free Workplace Act**

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

**N. Age Discrimination Act of 1975**

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

**O. 23 C.F.R. Part 172**

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

**P. 23 C.F.R Part 633**

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

**Q. 23 C.F.R. Part 635**

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

**R. Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973**

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

**S. Nondiscrimination Provisions:**

S. Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

**i. Compliance with Regulations**

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

**ii. Nondiscrimination**

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

**iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment**

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

**iv. Information and Reports**

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

**v. Sanctions for Noncompliance.**

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

**T. Incorporation of Provisions§22**

The Contractor will include the provisions of paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

**EXHIBIT K – State of Colorado Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders Subject to The Federal Funding Accountability and Transparency Act of 2006 (FFATA) As Amended October 15, 2010**

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

**1. Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

**1.1. “Award”** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

- 1.1.1. Grants;
- 1.1.2. Contracts;
- 1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 1.1.4. Loans;
- 1.1.5. Loan Guarantees;
- 1.1.6. Subsidies;
- 1.1.7. Insurance;
- 1.1.8. Food commodities;
- 1.1.9. Direct appropriations;
- 1.1.10. Assessed and voluntary contributions; and
- 1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award **does not** include:

- 1.1.12. Technical assistance, which provides services in lieu of money;
- 1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 1.1.14. Any award classified for security purposes; or
- 1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

**1.2. “Central Contractor Registration (CCR)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.bpn.gov/ccr>.

**1.3. “Contract”** means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

**1.4. “Contractor”** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

**1.5. “Data Universal Numbering System (DUNS) Number”** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.

**1.6. “Entity”** means all of the following as defined at 2 CFR part 25, subpart C;

- 1.6.1. A governmental organization, which is a State, local government, or Indian Tribe;

- 1.6.2. A foreign public entity;
  - 1.6.3. A domestic or foreign non-profit organization;
  - 1.6.4. A domestic or foreign for-profit organization; and
  - 1.6.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.7. **“Executive”** means an officer, managing partner or any other employee in a management position.
  - 1.8. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
  - 1.9. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
  - 1.10. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
  - 1.11. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
  - 1.12. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
  - 1.13. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s Central Contractor Registration (CCR) profile, if applicable.
  - 1.14. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
  - 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
    - 1.15.1. Salary and bonus;
    - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
    - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
    - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
    - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
    - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
  - 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.

**1.17 "Vendor"** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

- 2. Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions.

Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

**3. Central Contractor Registration (CCR) and Data Universal Numbering System (DUNS) Requirements.**

**3.1. CCR.** Contractor shall maintain the currency of its information in the CCR until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update the CCR information at least annually after the initial registration, and more frequently if required by changes in its information.

**3.2. DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.

- 4. Total Compensation.** Contractor shall include Total Compensation in CCR for each of its five most highly compensated Executives for the preceding fiscal year if:

**4.1.** The total Federal funding authorized to date under the Award is \$25,000 or more; and

**4.2.** In the preceding fiscal year, Contractor received:

**4.2.1.** 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

**4.2.2.** \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

**4.3.** The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

- 5. Reporting.** Contractor shall report data elements to CCR and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.

- 6. Effective Date and Dollar Threshold for Reporting.** The effective date of these supplemental provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award



is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.

- 7. Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.
- 7.1 To CCR.** A Subrecipient shall register in CCR and report the following data elements in CCR *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:
- 37. 7.1.1** Subrecipient DUNS Number;
  - 38. 7.1.2** Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
  - 39. 7.1.3** Subrecipient Parent DUNS Number;
  - 40. 7.1.4** Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
  - 41. 7.1.5** Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
  - 7.1.6** Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.
- 7.2 To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:
- 42. 7.2.1** Subrecipient's DUNS Number as registered in CCR.
  - 43. 7.2.2** Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
- 8. Exemptions.**
- 44. 8.1.** These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 45. 8.2** A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 8.3** Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.
- 8.4** There are no Transparency Act reporting requirements for Vendors.
- 9. Event of Default.** Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

# Agenda Item # 9

## CITY COUNCIL COMMUNICATION FORM

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**FROM:** Julie Franklin, CMC (Ext. 248)  
City Clerk

**THROUGH:** Jon B. Roberts, City Manager (Ext. 228)

**DATE:** September 9, 2011

**ITEM:** **RESOLUTION:** A resolution ratifying the revised Intergovernmental Agreement between the City of Steamboat Springs and Routt County providing for the conduct and finance of a Regular Municipal Election to be held on Tuesday, November 1, 2011 as a Coordinated Election; and acknowledging continued municipal participation. (Franklin)

**NEXT STEP:** City Council to approve the attached resolution.

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ORDINANCE  
 RESOLUTION

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### **I. REQUEST OR ISSUE:**

City Council to ratify the revised Intergovernmental Agreement between the Routt County Clerk and Recorder and the City of Steamboat Springs to allow participation in a coordinated election to be held on Tuesday, November 1, 2011 in order to conduct a Regular Municipal Election.

**Council approved an IGA in July of this year; however staff was unaware that the County Clerk was in the process of revising the IGA.** All changes were to bring the agreement current with legislative changes. They include updates on deadlines that changed statutorily, corrections in grammar, submitting ballot content and TABOR notice electronically and having the district verify their address library. There were no real changes in district requirements.

### **II. RECOMMENDED ACTION/NEXT STEP:**

City Council to approve the resolution ratifying the revised Intergovernmental Agreement between the City of Steamboat Springs and Routt County providing for the conduct and finance of the November 1, 2011 Coordinated Election; and acknowledging continued municipal participation as such.

**III. FISCAL IMPACTS:**

The City of Steamboat Springs is responsible for all expenditures related to the municipal portion of the election.

**Proposed Expenditure:**

This cost is dependent upon the ballot size.

**Funding Source:**

The City has budgeted \$24,100 for this year's election.

**IV. BACKGROUND INFORMATION:**

On September 6, 1994, the City of Steamboat Springs and the Routt County Clerk and Recorder entered into an Intergovernmental Agreement to accommodate City participation in a coordinated election to be administered by the County Clerk. A revised Intergovernmental Agreement was approved by the Routt County Commissioners on August 16, 2011 between the Parties setting out the specific terms and conditions regarding the conduct and finance of any/all coordinated elections. The Routt County Clerk and I have an effective and strong working relationship and are comfortable moving forward with this coordinated election.

Furthermore, pursuant to CRS 1-7-116(5), the City must notify the Routt County Clerk if participation in the November coordinated election is desired.

**V. LEGAL ISSUES:**

None at this time.

**VI. SUMMARY AND ALTERNATIVES:**

The City Clerk's Office supports participation in the coordinated election on Tuesday, November 1, 2011 in order to conduct a Regular Municipal election.

**CITY OF STEAMBOAT SPRINGS, COLORADO**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION RATIFYING THE REVISED INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF STEAMBOAT SPRINGS AND ROUTT COUNTY PROVIDING FOR THE CONDUCT AND FINANCE OF A REGULAR MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 1, 2011, AS A COORDINATED ELECTION; AND ACKNOWLEDGING CONTINUED MUNICIPAL PARTICIPATION AS SUCH.**

**WHEREAS**, the City Council of the City of Steamboat Springs has determined it to be in the best interests of the City to conduct a Regular Municipal Election on Tuesday, November 1, 2011 as a "coordinated election" as defined in the Uniform Election Code of 1992, as amended; and

**WHEREAS**, pursuant to the Colorado Constitution and the Uniform Election Code, the County Clerk and the City (the "Parties") have the authority to cooperate or contract with each other to provide for the conduct and/or finance of coordinated elections; and

**WHEREAS**, a revised Intergovernmental Agreement was approved by the Routt County Commissioners on August 16, 2011 between the Parties setting out the specific terms and conditions regarding the conduct and finance of any/all coordinated elections, a copy which is attached hereto as Exhibit "A"; and

**WHEREAS**, the City Council deems it in the best interest of the community that the Intergovernmental Agreement between Routt County and the City be ratified.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STEAMBOAT SPRINGS, COLORADO, THAT:**

Section 1. The City Council hereby approves the terms and conditions of the Intergovernmental Agreement between the City of Steamboat Springs and Routt County.

Section 2. The City Council President and members acknowledge and authorize the continued term of said Intergovernmental Agreement on behalf of the City of Steamboat Springs in order to participate in a Regular Municipal Election on Tuesday, November 1, 2011 as a Coordinated Election.

**PASSED, ADOPTED AND APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
**Cari Hermacinski, President  
Steamboat Springs City Council**

**ATTEST:**

\_\_\_\_\_  
**Julie Franklin, CMC  
City Clerk**

## INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (Agreement) is made and entered into this 16<sup>th</sup> day of August, 2011 by and between Routt County, Colorado ("County") and Routt County Clerk and Recorder ("County Clerk") and the City of Steamboat Springs ("District"), collectively referred to herein as the "Parties," for the administration of their respective duties concerning the conduct of the coordinated election to be held on November 1, 2011 ("Election").

### RECITALS

A. Pursuant to Colorado Constitution Article XIV, Section 18(2)(a), and Section 29-1-203, C.R.S., as amended, the County Clerk and the District may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each, and any such contract may provide for the sharing of cost, the imposition of taxes, and incurring of debt; and

B. The County Clerk and the District are authorized to conduct elections as provided by law; and

C. The District has determined that it is in the best interests of the District to conduct its election to be held on November 1, 2011 (Election) as a "coordinated election" as such term is defined in the Uniform Election Code of 1992, as amended ("Code") and the Code contemplates the entry into and performance of an intergovernmental agreement to cooperate in the conduct and financing of the Election; and

D. The County Clerk and the District have determined that it is in the best interests of the County, the District, and respective inhabitants to cooperate and contract concerning the Election upon the terms and conditions contained herein.

### TERMS AND CONDITIONS

NOW, THEREFORE, for and in consideration of the premises and the promises herein contained, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

#### ARTICLE I PURPOSE AND GENERAL CONDITIONS

**1.01 Goal.** The purpose of this Agreement is to set forth the tasks to be completed by the County Clerk and the District to conduct and finance the Election.

**1.02 Designated Election Official, Other Election Personnel.** Except as otherwise provided in this Section 1.02, the County Clerk shall act as the Designated Election Official

("Official") for the conduct of the Election for the District for all matters in the Code which require action by the Official.

The District designates \_\_\_\_\_ as its Election Officer ("Officer") who shall act as the primary liaison between the District and the County Clerk. To the extent the Code requires that a "designated election official" with the District conduct a task, the Officer will act as such. Nothing herein shall be deemed or construed to relieve the County Clerk or the Board of Directors from their official responsibilities for the conduct of the Election.

**1.03 Jurisdictional Limitation.** The District encompasses territory within Routt County. This Agreement shall be construed to apply only to that portion of the District within Routt County.

**1.04 Term, Renewal, and Activation.**

A. Although this Agreement is specifically written to deal with the November 1, 2011 election, it is intended to be effective through December 31, 2011, and automatically renewed for successive one year periods thereafter, unless terminated in writing by notice given by the Party seeking termination to the other Party on or before November 15<sup>th</sup> prior to the December 31<sup>st</sup> on which the Agreement shall be terminated. The dates cited for the Election shall change to the proper November date as needed for the year in which the future coordinated election may occur. The intent of this automatic renewal provision is to put in place the intergovernmental agreement contemplated by the Code by the time required by the Code without extensive annual renegotiations.

(1) As soon as possible but no later than the date specified for such action in the Election Calendar published by the County Clerk for the applicable election date, the Official will submit a written plan to the Secretary of State which will include the requirements outlined in the Secretary of State's Rules and Regulations. The written plan will become a part of the Agreement as an attachment if the Election is held as a mail ballot election.

B. Although the Agreement automatically renews, actual use of the Agreement for any election by the District shall be conditioned upon:

(1) A determination, by Resolution of the governing body of the District, that an election is required and that such election should be held as a coordinated election.

(2) Notice of (1) being delivered to the County Clerk no later than the date specified for such action in the Election Calendar published by the County Clerk for the applicable election date.

(3) Acceptance of the notice indicated in (2) by the County Clerk and determination by the County Clerk that the County Clerk shall undertake its duties under the Agreement, with notice of such determination to be delivered to the District within five (5) days of the County Clerk's receipt of the notice indicated in (2).

Following the completion of (1), (2), and (3) above, the election procedures in the Agreement shall be activated.

ARTICLE II  
DUTIES OF THE COUNTY CLERK

2.01 **County Clerk Duties.** The Coordinated Election shall be conducted under the provision of C.R.S. Title 1. The County Clerk shall be responsible for the conduct of the Coordinated Election, adhering to all applicable provisions of the Code which are necessary or appropriate.

A. Production of a mailed Notice of the Ballot issues and or questions ("Amendment 1 Notice") required by the Colorado Constitution, Article X, Sec. 20 in accordance with Attachment 1.

B. Arrange for the printing, and have printed, all official ballots.

C. The Official shall determine the cost allocation for each participating entity in the Election. The District shall reimburse its proportional share of the actual cost either to the County Clerk or to the vendor directly in accordance with the directions of the County Clerk.

D. Appoint, provide written material to, train and pay a sufficient number of qualified election judges ("Election Judges"), as required by law, to adequately serve the number of electors anticipated to vote at the Election.

E. Conduct such formal training sessions for the Election Judges as are deemed reasonably necessary by the County Clerk.

F. Bill the District a reasonable fee for the cost of Election Judges, including training sessions, provided such cost shall be prorated by multiplying the number of judges for a given polling place by the reasonable fee and dividing the result by the number of jurisdictions utilizing each polling place.

G. Charge the District for all staff time solely related to the District for the preparation and conduct of the Election at each staff member's current pre-tax hourly rate. Charge the District its proportional share of the actual cost of staff time not solely related to the District for the preparation and conduct of the election.

H. Conduct and oversee the process of counting the ballots and reporting the results. The process to include appointment of a Duplication and Verification Board.

I. The Canvass of Votes ("Canvass") will be conducted by the County Clerk. The County Clerk shall generally oversee the conduct of the Board of Canvassers.

(1) The County Clerk shall appoint the Canvassers.

(2) Such Canvass shall be completed by the date specified for such action in the Election Calendar published by the County Clerk for the applicable election date and official results of the Canvass will be provided to each political subdivision (District) participating in the Coordinated Election.



(3) Each District will be responsible for issuing its own Certificates of Election for candidates and issues.

J. Store all unvoted ballots for a minimum of 6 months and all voted ballots and other election materials for a minimum of 25 months in such a manner that they may be accessed by the District, if necessary, to resolve any challenge or other legal questions that might arise regarding the Election.

K. Keep a careful and accurate and contemporaneous accounting of time, supplies and salaries chargeable to the District.

L. Adhere to all applicable provision of the Code which are necessary or appropriate to the performance of the above duties.

M. The Official shall publish the Notice of Election required no later than the date specified for such action in the Election Calendar published by the County Clerk for the applicable election date.

N. In the event the Election is canceled, the County Clerk shall post notice of the Cancellation of Election on the County's designated Notice Boards.

O. Requests for absentee and replacement ballots shall be transmitted and processed by the County Clerk at 522 Lincoln Ave., PO Box 773598, Steamboat Springs, CO 80477.

### ARTICLE III DUTIES OF THE DISTRICT

**3.01 District Duties.** In consideration of the foregoing, the District agrees to perform the following tasks and activities:

A. Provide to the County Clerk all required Amendment 1 Notices concerning the District's ballot issues and questions in the manner according to Code and the attached Amendment 1 Notice Agreement.

B. In accordance with Colorado Law, the ballot contents must be certified to the County by the District, in its exact and final form, no later than the date specified for such action in the Election Calendar published by the County Clerk for the applicable election date. Such ballot contents must be delivered to the County Clerk's office at 522 Lincoln Ave., Steamboat Springs, CO. In addition, ballot content shall be submitted electronically in NotePad or other compatible format to elections@co.routt.co.us. The District shall proof the layout and text of the official ballots no later than 50 days prior to the date of the election and before the authorization for the printing of ballots or the District shall proof and provide written notice acknowledging the layout and text of the sample and official ballots within one business day of receipt of the ballot proofs from the County Clerk, whichever occurs first.

C. Accept the established Election polling place(s) as the official polling place(s) for the Election. If the election is to be conducted by mail, the District will accept the official service center and designated dropoff sites as determined by the County Clerk.

D. The District and or Officer shall prepare and publish any legal notices of election which are required to be given to the electorate of the District according to statutes and ordinances governing their elections other than 2.01 (R) or as otherwise required by law. A copy of all legal notices published by the District shall be submitted to the Official.

E. Pick up Election materials from the County Clerk when requested following the Election.

F. Store all Election materials, not stored by the County Clerk, for that time required by the Code.

G. Pay the District's proportional share of actual costs of services, supplies, and mileage to the County Clerk upon receipt of the itemized statement or pay directly vendors or contractors as directed by the County Clerk.

H. The petition process for the District shall be entirely the responsibility of the District, and shall be done in compliance with applicable Colorado statutes, ordinances or charter provisions. This process includes, but is not limited to: approving the candidate or initiative petitions to be circulated within the District; receiving the petitions, and verifying the signatures of the petitions within the District.

I. The District will furnish the County Clerk with a current and accurate map of the District boundaries. The County Clerk will furnish the District with a list of street addresses from the SCORE Voter Registration system of all addresses contained within the district. The District shall certify as to the accuracy of these addresses within 5 days of receipt..

J. The process of receiving and filing of written comments will be the sole responsibility of the District.

K. Certificates of Election of candidates and issues will be issued by the District or Officer upon receipt of the official results from the County Clerk. Any additional Certificates of Election which are required by law to be forwarded to another division of government shall be the responsibility of the District.

L. Anytime prior to certification of the ballot District shall determine the order of names on nonpartisan ballot by lot following notification of candidates of time and place of lot drawing.

**3.02 Cancellation of Election by the District.** In the event the District, at some time after activation of this Agreement pursuant to section 1.04B. hereof, resolves not to hold the Election, then notice of such resolution shall be provided to the County Clerk immediately. The District shall promptly pay the County Clerk the full actual costs of the activities of the County Clerk relating to the election incurred both before and after the County Clerk's receipt

of such notice. The District shall publish notice, according to Code, of such cancellation in at least two newspapers of general circulation in Routt County. The Officer shall post notice of the cancellation at all buildings of the District. The District shall not cancel the election after the 25th day before the Election.

ARTICLE IV  
PROPORTIONAL SHARE OF ACTUAL COSTS

4.01 The Official shall determine the cost allocation for each political subdivision (District) participating in the Coordinated Election. The District shall reimburse the County for such election costs allocated to the District. Such reimbursement shall be made to the County within thirty days from the receipt of billing. (Example - each District will pay for the ballots based on their number of eligible voters including the consideration for the number of lines printed on the ballot.)

ARTICLE V  
MISCELLANEOUS

5.01 **Notices.** Any and all notices to be given by this Agreement are deemed to have been received and to be effective: (1) three (3) days after the same shall have been mailed by certified mail, return receipt requested; (2) immediately upon hand deliver; or (3) immediately upon receipt of confirmation that a fax was received; to the address of the Parties as set forth below or to such Party or addresses as may hereafter be designated in writing.

To County Clerk: Kay Weinland  
Routt County Clerk & Recorder  
Box 773598 / 522 Lincoln Ave.  
Steamboat Springs, CO 80477

To District: City of Steamboat Springs  
Attention: Julie Franklin  
P.O. Box 775088  
Steamboat Springs, CO 80477

5.02 **Integration.** The Parties acknowledge this Agreement constitutes the sole agreement between them relating to the subject matter hereof and that no Party is relying upon any oral representation made by another Party or employee, agent or officer of the Party.

5.03 **Amendments.** This Agreement can be amended only in writing and by signatures of both Parties.

5.04 **Actual Costs Defined.** "Actual Cost" includes, but is not limited to, the costs of labor (including fringe benefits), printing and materials itemized, identified, and consumed for the conduct of the Election.

**5.05 Damages for Negligence or Error.** In the event a court of competent jurisdiction finds the Election for the District was void or otherwise fatally defective due to a cause arising from the negligence or other error of the County Clerk, then the County Clerk shall, as liquidated damages and not as a penalty, refund or pay all amounts paid to the County Clerk, vendors or contractors designated by the County Clerk and other itemized costs for the Election paid by the District.

Likewise, as liquidated damages and not as a penalty, if the cause arises from the negligence or other error of the District, the District shall pay the County Clerk its reasonable court costs, attorney's fees and lost County Clerk staff time arising from litigation relating to the Election.

The District agrees to indemnify, defend and hold harmless the County Clerk from any and all loss, costs, demands or actions arising out of or related to any actions, errors or omissions of the District in completing its responsibilities relating to the Coordinated Election.

**5.06 Attorney Fees.** In the event either of the Parties brings suit to enforce or interpret any portion of this agreement, the party prevailing in such action shall be entitled to recover all costs incurred in such action, including without limitation reasonable attorney's fees.

**5.07 Conflict of Agreement with Law, Impairment.** In the event any provision in this Agreement conflicts with the Code, other statute, or valid prior Resolution duly adopted by the Board of County Commissioners, this Agreement shall be modified to conform to such law or resolution. No subsequent resolution of the Board of County Commissioners not of the District shall impair the rights of the County Clerk or the District hereunder without the consent of the other party to this Agreement.

**5.08 Time of Essence.** Time is of the essence of this Agreement. The statutory time requirements of the Code shall apply to completion of the tasks required by this Agreement. A calendar with specific dates will be attached to conform with the Code and Agreement. Exhibit B.

**5.06 Good Faith.** The Parties shall implement this Agreement in good faith, including acting in good faith in all matters that require joint or coordinated action.

**IN WITNESS WHEREOF,** the Parties hereto have signed this Agreement to be effective as of the date first written above.

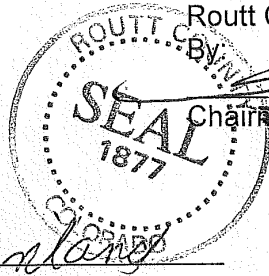
City of Steamboat Springs:

By:

\_\_\_\_\_  
Title

ATTEST:

\_\_\_\_\_

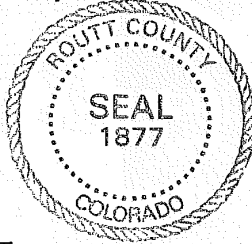


Routt County:

[Signature]  
Chairman, Board of Routt County Commissioners

ATTEST:

Kay Weinland  
Kay Weinland  
Routt County Clerk & Recorder



Routt County Clerk and Recorder:

Kay Weinland  
Kay Weinland

ATTEST:

[Signature]

## ATTACHMENT 1

### Production of "Amendment 1 Notice"

**WHEREAS**, by the previous Intergovernmental Agreement entered into for the November 1, 2011 Election by and between the County Clerk and Recorder of Routt County ("County Clerk") and the City of Steamboat Springs ("District"), collectively, the "parties," the Parties agreed to cooperate and contract for the purpose of conducting a coordinated election; and

**WHEREAS**, Colorado Constitution Article 10, Section 20 requires the production of a mailed notice of the ballot issues to be determined for the District that are subject to the requirements of said constitutional section ("Amendment 1 Notice"); and

**WHEREAS**, the Amendment 1 Notices of several jurisdictions are to be sent as a package where jurisdictions overlap ("Amendment 1 Notice Package"); and

**WHEREAS**, the need to produce the Amendment 1 Notice Package requires there be county-wide coordination of the production and mailing of the Amendment 1 Notice Package to effectuate the purposes of said constitutional section; and

**WHEREAS**, the Parties desire to set forth their respective responsibilities in the production and mailing of the Amendment 1 Notice Package for the coordinated election on November 1, 2011.

**NOW THEREFORE**, the Parties agree as follows:

1. The County Clerk shall perform the following services and activities for the District's election:

A. Determine the "least cost" method for mailing the Amendment 1 Notice Package, and determine the portion of such cost to be applied to the District.

B. Combine the text of the Amendment 1 Notice produced by the District with those of other districts to produce the Amendment 1 Notice Package.

C. Address the package to "All Registered Voters" at each address of one or more active registered electors of the District. Nothing herein shall preclude the County Clerk from sending the Amendment 1 Notice of the District to persons other than electors of the District if such sending arises from the County Clerk's efforts to mail the Amendment 1 Notice Package at "least cost."

D. Determine the order that the Amendment 1 Notice submittal of the District and of other jurisdictions shall be placed in the Amendment 1 Notice Package; provided, however, that the materials supplied by the District shall be kept together as a group and in the order supplied by the District in compliance with 2 (D).

E. Mail the Amendment 1 Notice Package, address as required by law no later than the date specified for such action in the Election Calendar published by the County Clerk for the applicable election date.

F. Provide an office address and telephone number for incorporation into the Amendment 1 Notice. Said information will be agreed upon in writing 42 days prior to the election. The designated office will be open during the County Clerk's regular business hours, 7:30 a.m. to 5:30 p.m. Monday through Thursday. The County Clerk or the County Clerk's Deputy shall respond to all correspondence and calls the County Clerk's office receives within its expertise relating to election procedures, but shall refer calls concerning the substance of the ballot issues and ballot questions and the operations of the District to its Officer pursuant to 1.02 of Intergovernmental Agreement.

G. Write, print, and incorporate any notice to be included in the Amendment 1 Notice Package that may inform the elector of the polling place or that may provide other information as may be required by law.

H. Provide the District an itemized statement of the costs of performing the tasks performed by the County Clerk.

2. The District shall perform the following services and activities for the District's election:

A. Adopt a resolution/ordinance designating the County Clerk as the Election Official for the District's election for the purposes of completing the tasks to be performed by the County Clerk on behalf of the District. File a copy with the County Clerk.

B. Designate an "Election Officer" to act as liaison between the District and County Clerk.

C. Determine the ballot issues to be voted upon at the election.

D. Include, within its Amendment 1 Notice, ballot titles in the order of preference: "NOTICE OF ELECTION TO INCREASE TAXES / TO INCREASE DEBT / ON A CITIZEN PETITION / ON A REFERRED MEASURE."

1. Prepare the text of the Amendment 1 Notice. Such Amendment 1 Notice shall include any District voter approved additions, and;

a) The Election Date, hours, ballot title, text, and local election office address and telephone number.

b) For proposed district tax or bonded debt increases, the estimated or actual total of district fiscal year spending for the current year and each of the past four years, and the overall percentage and dollar change.

c) For the first full fiscal year of each proposed district tax increase, district estimates of the maximum dollar amount of each increase and of district fiscal year spending without the increase.

d) For proposed district bonded debt, its principal amount and maximum annual and total district repayment cost, and the principal balance of total current district bonded debt and its maximum annual and remaining total district repayment cost.

e) Two summaries, up to 500 words each, one for and one against the proposal, of written comments filed with the Official 30 days before the election. No summary shall mention names of person or private groups, nor any endorsements of or resolution against the proposal. Petition representatives following these rules shall write this summary for their petition. The officer shall write this summary for their petition. The officer shall maintain and accurately summarize all other relevant written comments.

E. Inform the County Clerk of any voter-approved additions to the Amendment 1 Notice for the District and incorporate such addition in the Amendment 1 Notice supplied to the County Clerk.

F. All pros and cons regarding the District elections will be filed with the officer for public inspection. Copies of any written comments concerning a District ballot issue will be provided to the County Clerk within 72 hours or receipt of such comment and in their entirety on the 30th day prior to the election, whichever is earlier.

G. Summarize written comments concerning ballot issues following receipt of such comments received from the public as necessary for use in the Amendment 1 Notice.

H. Prepare the layout of the Amendment 1 Notice for the District according to law.

I. Determine the ballot title and text.

J. Respond to inquires as follows: The County Clerk shall refer correspondence and calls concerning the substance of the ballot issues or the operations to the District's Election Officer. The Officer shall reply to the originator of such substance and operation questions within a reasonable time after being notified of the same by the County Clerk.



1. The Officer shall be reasonably available to the County Clerk to advise and give oversight as may help in the conduct of the election.

K. Provide the District's completed Amendment 1 Notice to the County Clerk in Microsoft WordPad or compatible format to elections@co.routt.co.us. This submission, which shall be in the form that shall be printed by the County Clerk without special written dispensation from the County Clerk (such dispensation may be withheld for any or no reason), and shall be provided to the County Clerk on or before the 42<sup>nd</sup> day preceding the election.

L. Perform such acts as may be required by law, including circulation, approval, review, and all other activities, relating to any petition that may concern the District. The Election Officer shall interact with any district petition representative, including but not limited to, working to ensure that the Officer receives the summary of written comments for their petition with time required by law.

M. The District's Officer shall publish the full text and title of ballot issues as provided by C.R.S. 1-40-124 (2).

N. Pay the costs shown in the itemized statement provided to the District by the County Clerk either directly to the County Clerk or to such vendors or subcontractors as the County Clerk may designate.

O. District shall be responsible for all out-of-County mailing required.

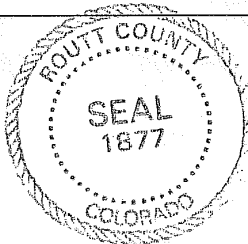
**IN WITNESS WHEREOF** the Parties hereto have executed this addendum to the effective the 16<sup>th</sup> day of August, 2011.

City of Steamboat Springs:

By:

\_\_\_\_\_  
Title

ATTEST:



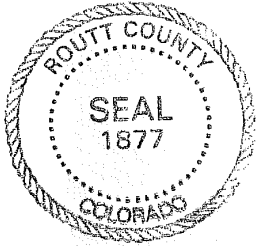
Routt County:

By:

Chairman, Board of Routt County Commissioners

ATTEST:

Kay Weinland, Routt County Clerk & Recorder



Routt County Clerk and Recorder:

Kay Weirland  
Kay Weirland

ATTEST:

Sherry Wapford, Dep

# Agenda Item # 10

## CITY COUNCIL COMMUNICATION FORM

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FROM: Anthony B. Lettunich, City Attorney (879-0100)

THROUGH: Jon Roberts, City Manager (Ext. 228)  
Chief J. D. Hays, Chief of Police (879-4344)  
Julie Franklin, City Clerk (871-8248)  
Deb Hinsvark, Finance Director (871-8240)

DATE: Tuesday, September 6, 2011

RE: Ordinance - First Reading: **AN ORDINANCE CREATING A NEW ARTICLE VII IN CHAPTER 12 OF THE STEAMBOAT SPRINGS REVISED MUNICIPAL CODE FOR THE PURPOSE OF LICENSING THE BUSINESS OF PAWN BROKING; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND SETTING A HEARING DATE.** (Lettunich)

NEXT STEP: Approve the Ordinance at First Reading by Motion; schedule for second reading.

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INFORMATION  
 MOTION  
 ORDINANCE

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### **I. REQUEST OR ISSUE:**

To approve the attached Ordinance at first reading by motion.

### **II. RECOMMENDED ACTION:**

Approve the attached Ordinance at first reading by motion.

### **III. FISCAL IMPACTS:**

None.

#### **IV. BACKGROUND INFORMATION:**

State statutes set forth definitions, required acts, and prohibited acts for pawnbrokers, and also authorize licensing and regulation of pawnbrokers by local licensing authorities, which would include the City of Steamboat Springs (C.R.S. §12-56-101 et seq.). However, the state statutes do not set forth a state licensing system. All licensing must be local.

The Uniform Consumer Credit Code ("UCCC"), as adopted in Colorado, establishes strict regulation of all consumer credit transactions, including finance charges, regulation of agreements and practices, consumer enforcement provisions for any UCCC violations, as well as other remedies, including criminal penalties. All of the requirements and sanctions of the UCCC would make it impossible, or impracticable, for a pawnbroker to operate in normal and customary fashion.

However, the UCCC does exclude from its coverage "[t]he rates and charges and the disclosure of rates and charges of a *licensed* pawnbroker established in accordance with a statute or ordinance concerning these matters." To be excluded from the UCCC a pawnbroker must be licensed. The drafters of the UCCC apparently assumed that some entity would be licensing pawnbrokers, even though it would not be the state of Colorado.

As a result of the foregoing, and to allow his operation to continue without the burdensome regulation of the UCCC, Cliff Russell, principal in R&R Leasing Company dba Mister Money of Steamboat, has requested the City establish a basic licensing system so that Mister Money of Steamboat and any other pawnbrokers that may seek to operate within the City in the future, may be excluded from UCCC requirements.

Many cities within Colorado, including most Front Range cities, including Denver, Fort Collins, Pueblo, Greeley and Boulder, have a municipal licensing process for pawnbrokers.

According to Police Chief J. D. Hays, Mister Money of Steamboat has, for years, complied with all state requirements for disclosure of transactions, identity of customers, serial numbers, etc. No new burdens, beyond those required by the state, would be placed on Mister Money of Steamboat, or any future additional pawnbrokers seeking to operate within the City, other than a basic licensing procedure and nominal fee for administrative purposes.

#### **V. LEGAL ISSUES:**

None.

**VI. CONFLICTS OR ENVIRONMENTAL ISSUES:**

None.

**VII. SUMMARY AND ALTERNATIVES:**

1. Approve the ordinance at first reading and schedule for second reading on September 20, 2011;
2. Table, table with directions, approve with amendments, or deny the ordinance at first reading.

End of City Council Agenda Communication Form

**CITY OF STEAMBOAT SPRINGS, COLORADO**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE CREATING A NEW ARTICLE VII IN CHAPTER 12 OF THE STEAMBOAT SPRINGS REVISED MUNICIPAL CODE FOR THE PURPOSE OF LICENSING THE BUSINESS OF PAWN BROKING; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND SETTING A HEARING DATE.**

**WHEREAS**, the City of Steamboat Springs recognizes that the business of pawn broking is commonly licensed by local government within the State of Colorado; and

**WHEREAS**, a local licensing system for pawn brokers is appropriate to protect the health, safety and welfare of the citizens of Steamboat Springs; and

**WHEREAS**, the requirement of a license to engage in the business of pawn broking will not unduly burden legitimate business activities within the City; and

**WHEREAS**, it is the intent of the City Council in Steamboat Springs in enacting this ordinance to regulate certain aspects of the business of pawn broking with the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STEAMBOAT SPRINGS, COLORADO:**

Section 1. Chapter 12 of the City of Steamboat Springs Revised Municipal Code is hereby amended by the addition of the following Article VII:

**ARTICLE VII - PAWNBROKER LICENSE**

**Section 12.300. Definitions**

The following words, terms and phrases, when used in this Article, shall have the meaning ascribed to them in this Section:

*Contract for purchase* means a contract entered into between a pawnbroker and a customer pursuant to which money is advanced to the customer by the pawnbroker on the delivery of tangible personal property by the customer on the

condition that the customer, for a fixed price and within a fixed period of time, to be no less than thirty days, has the option to cancel said contract.

*Customer* shall mean a person who delivers personal property into the possession of a pawnbroker for the purpose of entering into a contract for purchase or a purchase transaction.

*Fixed time* means that period of time, to be no less than thirty (30) days, as set forth in a contract for purchase, for an option to cancel said contract.

*Fixed price* means the amount agreed upon to cancel a contract for purchase during the option period. Said fixed price shall not exceed one-fifth of the original purchase price for each month, plus the original purchase price.

*Pawnbroker* means a person regularly engaged in the business of making contracts for purchase or purchase transactions in the course of his business.

*Local Law Enforcement Agency* means any marshal's office, police department, or sheriff's office with jurisdiction in the locality in which the customer enters into a contract.

*Peace officer* shall mean any undersheriff, or deputy sheriff (other than one appointed with authority only to receive and serve summons and civil process), police officer, state patrol officer, town marshal, or investigator for a district attorney or the Attorney General, who is engaged in full-time employment by the State or a city, county, town or judicial district within this State.

*Person* means a natural person, partnership, association, corporation, company, limited liability company, or other limited liability business entity.

*Purchase transaction* means the purchase by a pawnbroker in the course of his business of tangible personal property for resale, other than newly manufactured tangible personal property which has not previously been sold at retail, when such purchase does not constitute a contract for purchase.

*Tangible personal property* means all personal property other than choses in action, securities, or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his business in connection with a contract for purchase or purchase transaction.

## **Section 12.301.**

It shall be unlawful for any person to engage in the business of pawn broking except as provided in and authorized by this Article and without first having obtained a license from the City Clerk. Such license shall be kept current at all times.

Annual license fee. The annual license fee for carrying on the business of pawn broking shall be \$100 which shall be submitted together with an application for such license to the City Clerk. Said license fee is nonrefundable.

(1) Investigation and approval of licensees and managers required.

(a) No license shall be issued by the City Clerk until the application for a license has been investigated by the Chief of Police. Each applicant shall pay a nonrefundable investigation and/or fingerprint and photograph fee at the time the application is filed in an amount not to exceed that charged by the Colorado Bureau of Investigation. Further, each applicant shall furnish reasonable identification card to prove the applicant's name, date of birth and residency, and shall provide any other information which is requested on the application. If the applicant is not a natural person, such information shall be furnished for the manager of the applicant.

(2) No pawnbroker license shall be renewed or issued to an applicant whose owner or manager are any of the following persons:

(a) Subject to the provisions contained in Section 24-5-101, C.R.S., a person who has been convicted of: any felony or any crime which under the laws of this State would be a felony; any crime of which fraud or intent to defraud was an element, whether in this State or elsewhere; any crime of embezzlement or larceny against an employer or business; or any criminal conviction or civil violation related to any law or ordinance pertaining to the pawn industry;

(b) Any person under the age of eighteen (18);

(c) Any person who has made a false, misleading or fraudulent statement on his or her application for license.

(3) Within forty-five (45) days of receipt of an application for a new license or to renew a license, the City Clerk shall issue or renew such license provided that the Chief of Police after investigation has determined that the applicant will or has operated the business in such a manner as to fully comply with the requirements and purposes of this Article. A decision regarding said determination shall also be



made by the Chief of Police within forty-five (45) days of receipt of an application for license or renewal. The Chief of Police shall report his determination to the City Clerk within three working days.

**Section 12.302. Required Acts of Pawnbrokers.**

(1) A pawnbroker shall keep a numerical register or other tangible or electronic record in which the pawnbroker shall record the following information: The name, address, and date of birth of the customer, and the driver's license number or other identification number from any other form of identification that is allowed for the sale of valuable articles pursuant to [section 18-16-103, C.R.S.](#), or for the sale of secondhand property pursuant to [section 18-13-114, C.R.S.](#); the date, time, and place of the contract for purchase or purchase transaction; and an accurate and detailed account and description of each item of tangible personal property, including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identifying marks on such property. The pawnbroker shall also obtain a written declaration of the customer's ownership, which shall state that the tangible personal property is totally owned by the customer, or shall have attached to such declaration a power of sale from the partial owner to the customer, how long the customer has owned the property, whether the customer or someone else found the property, and, if the property was found, the details of the finding.

(2) The customer shall sign the register or other tangible or electronic record and the declaration of ownership and shall receive a copy of the contract for purchase or a receipt of the purchase transaction.

(3) The register or other tangible or electronic record, as well as a copy of the contract for purchase or a receipt of the purchase transaction, shall be made available to any local law enforcement agency for inspection at any reasonable time.

(4) The pawnbroker shall keep each register or other tangible or electronic record for at least three years after the date of the last transaction entered in the register.

(5) A pawnbroker shall hold all contracted goods within his jurisdiction for a period of ten days following the maturity date of the contract for purchase, during which time such goods shall be held separate and apart from any other tangible personal property and shall not be changed in form or altered in any way.

(6) A pawnbroker shall hold all property purchased by him through a purchase transaction for thirty days following the date of purchase, during which time such property shall be held separate and apart from any other tangible personal property and shall not be changed in form or altered in any way.

(7) Every pawnbroker shall provide the Chief of Police or his designee, on a weekly basis, with two records, on a form to be provided or approved by the Chief of Police or his designee, of all tangible personal property accepted during the preceding week and one copy of the customer's declaration of ownership. The form shall contain the same information required to be recorded in the pawnbroker's register or other tangible or electronic record pursuant to subsection (1) of this section. The Chief of Police or his designee shall designate the day of the week on which the records and declarations shall be submitted.

### **Section 12.303. Prohibited Acts**

(1) No pawnbroker shall enter into a contract for purchase or purchase transaction with any individual under the age of eighteen (18) years.

(2.) With respect to a contract for purchase, no pawnbroker may permit any customer to become obligated on the same day in any way under more than one contract for purchase agreement with the pawnbroker which would result in the pawnbroker obtaining a greater amount of money than would be permitted if the pawnbroker and customer had entered into only one contract for purchase covering the same tangible personal property.

(3) No pawnbroker shall violate the terms of the contract for purchase.

### **Section 12.304. Violations and penalties**

In addition to the revocation, suspension or denial of license issued, any person, including but not limited to any customer or pawnbroker, who violates any of the provisions of this Article, shall be guilty of a misdemeanor and shall be subject to punishment as authorized in the Municipal Code.

Section 2. All ordinances heretofore passed and adopted by the City Council of the City of Steamboat Springs, Colorado, are hereby repealed to the extent that said ordinances, or parts, thereof, are in conflict herewith.

Section 3. If any section, subsection, clause, phrase or provision of this Ordinance is, or the application thereof to any person or circumstance, shall to any extent, be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and shall in no way be affected, impaired or invalidated.

Section 4. The City Council hereby finds, determines and declares that this Ordinance is necessary for the immediate preservation of the public peace, health and safety.

Section 5. This Ordinance shall take effect immediately upon the expiration of five (5) days from and after its publication following final passage, as provided in Section 7.6 (h) of the Steamboat Springs Home Rule Charter.

Section 6. A public hearing on this ordinance shall be held on September 20, 2011 at 5:00 P.M., or as soon thereafter as this matter may be called on the agenda, in the Citizens Hall meeting room, Centennial Hall, Steamboat Springs, Colorado.

**INTRODUCED, READ AND ORDERED PUBLISHED**, as provided by law, by the City Council of the City of Steamboat Springs, at its regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
**Cari Hermacinski, President  
Steamboat Springs City Council**

**ATTEST:**

\_\_\_\_\_  
**Julie Franklin, CMC  
City Clerk**

**FINALLY READ, PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
**Cari Hermacinski, President  
Steamboat Springs City Council**

**ATTEST:**

\_\_\_\_\_  
**Julie Franklin, CMC  
City Clerk**

# Agenda Item # 11

## CITY COUNCIL COMMUNICATION FORM

---

**FROM:** Seth Lorson, AICP, City Planner (Ext. 280)  
**THROUGH:** Jon Roberts, City Manager (Ext. 228)  
**DATE:** September 6, 2011  
**ITEM:** First reading of ordinance to vacate a utility easement at Boulder Ridge Subdivision.  
**NEXT STEP:** The approval of an ordinance requires two readings to City Council. This is the first reading. The second reading is scheduled for September 20, 2011.

---

DIRECTION  
 INFORMATION  
 ORDINANCE  
 MOTION  
 RESOLUTION

---

**PROJECT NAME:** Boulder Ridge  
**PETITION:** A request to vacate a 20' wide utility easement located the lot line between lots 15 & 16.  
**LOCATION:** Boulder Ridge Subdivision Lots 15 & 16, 220 & 250 Boulder Ridge Road  
**APPLICANT:** Santa Fe Trail, LLC, C/O Jon Peddie

EXECUTIVE SUMMARY:

**1. Background Information:**

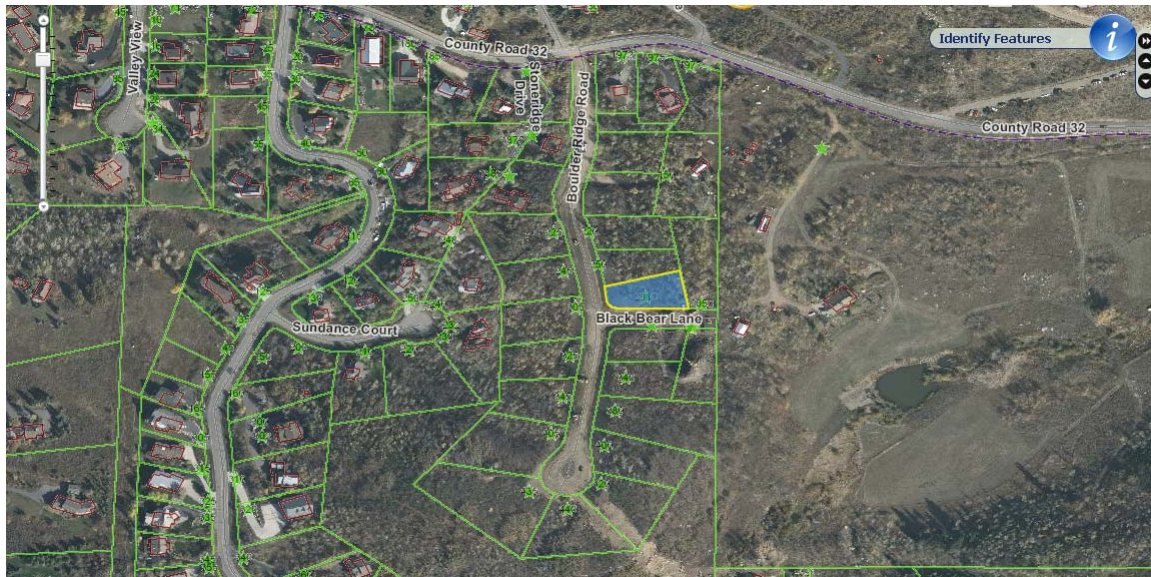
The applicant is requesting to vacate a utility easement as described above for the purpose of driveway for a single family residence.

All utilities party to the easement have approved the vacation.

**2. Recommended Motion:**

Staff recommends **approval** of the Ordinance vacating vacate a 20' wide utility easement located the lot line between lots 15 & 16.

**3. Project Location Map**



**CITY OF STEAMBOAT SPRINGS, COLORADO**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE VACATING A 20 FOOT WIDE UTILITY EASEMENT LOCATED ALONG THE NORTH LOT LINE OF LOT 15 AND THE SOUTH LOT LINE OF LOT 16 OF BOULDER RIDGE SUBDIVISION, AND PROVIDING AN EFFECTIVE DATE AND SETTING A HEARING DATE.**

**WHEREAS**, in accordance with Chapter 20, Art. I, Div. 3 of the Steamboat Springs Revised Municipal Code, the owners of Lot 5 of Riverside Subdivision Filing 2 wish to vacate a 20' wide utility easement located along the north lot line of lot 15 and the south lot line of lot 16 of Boulder Ridge Subdivision, as depicted in Exhibit A; and

**WHEREAS**, the Public Utility providers having reviewed the request and determined that the subject drainage and utility easements are not a necessary part of the District's public utility system, as depicted in Exhibit B; and

**WHEREAS**, the City Council finds that vacating the subject utility easement will promote the public interest by allowing for development where an easement is not needed by utilities.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STEAMBOAT SPRINGS, COLORADO:**

Section 1. That the drainage and utility easements as depicted in the attached Exhibit A are hereby vacated.

Section 2. That pursuant to Section 7-11 of the Charter of the City of Steamboat Springs, Colorado, the second publication of this ordinance may be by reference, utilizing the ordinance title.

Section 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion of this Ordinance.

Section 4. The City Council hereby finds, determines and declares that this ordinance is necessary for the immediate preservation of the public peace, health, and safety.

Section 5. This Ordinance shall take effect immediately upon the expiration of five (5) days from and after its publication following final passage, as provided in Section 7.6 (h) of the Steamboat Springs Home Rule Charter.

Section 6. A public hearing on this ordinance shall be held on \_\_\_\_\_, 2011 at 5:00 P.M. in the Citizens Hall meeting room, Centennial Hall, Steamboat Springs, Colorado.

**INTRODUCED, READ AND ORDERED PUBLISHED**, as provided by law, by the City Council of the City of Steamboat Springs, at its regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
**Cari Hermacinski, President  
Steamboat Springs City Council**

**ATTEST:**

\_\_\_\_\_  
**Julie Franklin, CMC  
City Clerk**

**FINALLY READ, PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
**Cari Hermacinski, President  
Steamboat Springs City Council**

**ATTEST:**

\_\_\_\_\_  
**Julie Franklin, CMC  
City Clerk**



**BOULDER RIDGE FILING NO. 2**  
 A REPLAT OF LOT 16 AND LOT 17 - BOULDER RIDGE  
 A SUBDIVISION LOCATED IN THE W 1/2 SW 1/4 AND SW 1/4 NW 1/4 OF SECTION 15,  
 TOWNSHIP 6 NORTH, RANGE 84 WEST, 6TH PRINCIPLE MERIDIAN, CITY OF  
 STEAMBOAT SPRINGS, ROUTT COUNTY, COLORADO



**CERTIFICATE OF DEDICATION AND OWNERSHIP**

KNOW ALL MEN BY THESE PRESENTS: THAT SANTA FE TRAIL, LLC, A COLORADO LIMITED LIABILITY COMPANY, BEING THE OWNER OF THE LAND DESCRIBED AS FOLLOWS: LOT 16 AND LOT 17, BOULDER RIDGE CONTAINING 0.83 ACRES AS RECORDED IN ROUTT COUNTY RECORDS AT RECEPTION NO. 680682 ON NOVEMBER 21, 2008 CITY OF STEAMBOAT SPRINGS, COUNTY OF ROUTT, STATE OF COLORADO, UNDER THE NAME AND STYLE OF BOULDER RIDGE, HAS LAID OUT, PLATTED AND SUBDIVIDED SAME AS SHOWN ON THIS PLAT, AND DOES HEREBY IRREVOCABLY DEDICATE TO THE PERPETUAL USE OF THE CITY OF STEAMBOAT SPRINGS, STATE OF COLORADO, THE UTILITY AND SNOW STORAGE EASEMENTS AS SHOWN HEREON FOR EMERGENCY ACCESS, THE INSTALLATION AND MAINTENANCE OF THE PUBLIC UTILITIES AND FOR SNOW STORAGE, RESPECTIVELY. THESE DEDICATIONS PRECLUDE THE CONSTRUCTION OF IMPROVEMENTS, OR THE DEPOSIT OF MATERIALS, IN THE EASEMENT AREA, WHICH COULD IMPAIR THEIR USE AS PROVIDED IN THIS DEDICATION.

IN WITNESS WHEREOF, THE SAID SANTA FE TRAIL, LLC, A COLORADO LIMITED LIABILITY COMPANY, HAS CAUSED ITS NAME TO BE HEREUNTO SUBSCRIBED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2011

BY \_\_\_\_\_  
 JON PEDDIE AS MEMBER/MANAGER OF SANTA FE TRAIL, LLC, A COLORADO LIMITED LIABILITY COMPANY

STATE OF COLORADO  
 COUNTY OF ROUTT

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2011, BY \_\_\_\_\_ AS MEMBER/MANAGER OF SANTA FE TRAIL, LLC, A COLORADO LIMITED LIABILITY COMPANY

MY COMMISSION EXPIRES: \_\_\_\_\_  
 WITNESS MY HAND AND OFFICIAL SEAL.

SIGNATURE \_\_\_\_\_  
 (SEAL) \_\_\_\_\_ NOTARY PUBLIC

**CONSENT OF DEED OF TRUST BENEFICIARY**

THE UNDERSIGNED BEING THE BENEFICIARY AND THE PUBLIC TRUSTEE OF ROUTT COUNTY, COLORADO, UNDER THAT CERTAIN DEED OF TRUST ENCLUMBERING THE PREMISES SUBDIVIDED HEREIN, SAID DEED OF TRUST BEING RECORDED AT RECEPTION NO. 672920 ROUTT COUNTY RECORDS, EXPRESSLY CONSENT TO AND JOIN IN THE PLATTING AND SUBDIVISION SHOWN HEREON, CONSENT TO AND JOIN IN THE PLATTING AND DEDICATION OF THE EASEMENTS SHOWN OR NOTED HEREON AND HEREBY SUBORDINATE THE INTERESTS OF THE UNDERSIGNED EXISTING BY VIRTUE OF SAID DEED OF TRUST TO THE PLATTING, SUBDIVISION AND EASEMENTS SHOWN HEREON AND TO THE AFORESAID DEDICATION.

ALPINE BANKS OF COLORADO A FEDERAL SAVINGS BANK  
 ROUTT COUNTY PUBLIC TRUSTEE  
 JEANNE WHIDDON

BY: \_\_\_\_\_ ADONNA ALLEN  
 BY: \_\_\_\_\_

TITLE: PRESIDENT OF ALPINE BANKS OF COLORADO  
 TITLE: \_\_\_\_\_

STATE OF COLORADO  
 COUNTY OF ROUTT

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2011, BY \_\_\_\_\_ AS PRESIDENT OF ALPINE BANKS OF COLORADO

MY COMMISSION EXPIRES: \_\_\_\_\_  
 WITNESS MY HAND AND OFFICIAL SEAL.

SIGNATURE \_\_\_\_\_  
 (SEAL) \_\_\_\_\_ NOTARY PUBLIC

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2011, BY JEANNE WHIDDON AS PUBLIC TRUSTEE OF ROUTT COUNTY

ATTEST: \_\_\_\_\_  
 KAY WEINLAND, ROUTT COUNTY CLERK AND RECORDER

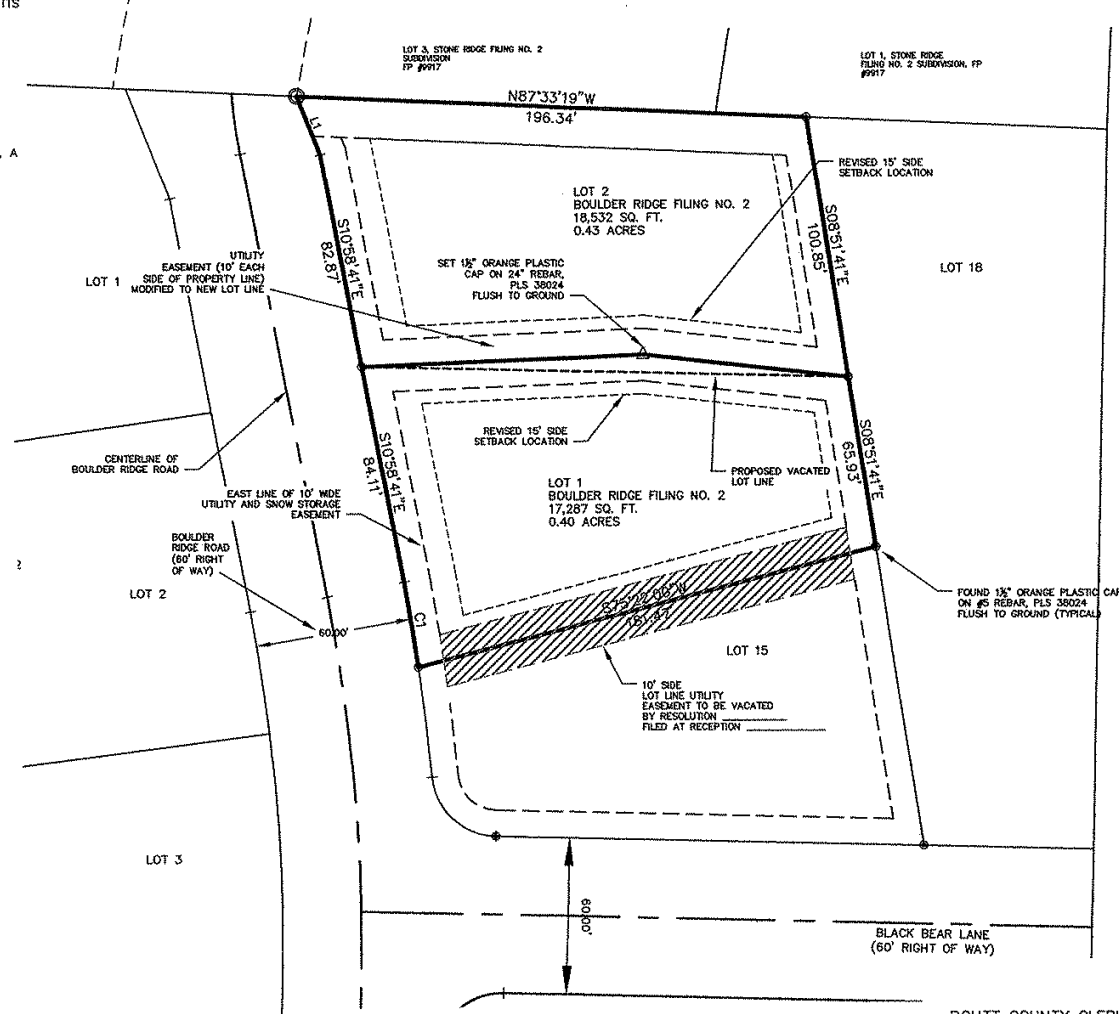
**ATTORNEY'S OPINION**

I, JILL BRABEC, BEING AN ATTORNEY AT LAW, DULY LICENSED TO PRACTICE BEFORE COURTS OF RECORD IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT I HAVE EXAMINED THE TITLE TO ALL LANDS HEREIN DEDICATED AND SHOWN UPON THIS PLAT AS REFLECTED IN THE LANDAMERICA TITLE COMMITMENT DATED \_\_\_\_\_ AND THAT TITLE TO SUCH LANDS IS VESTED IN SANTA FE TRAIL, LLC, A COLORADO LIMITED LIABILITY COMPANY, FREE AND CLEAR OF ALL LIENS, TAXES AND ENCUMBRANCES, EXCEPT FOR THE LIEN OF GENERAL REAL PROPERTY TAXES AND EXCEPT FOR PATENT RESERVATIONS, THE TRAVERSE AND RIGHT-OF-WAY OF CERTAIN DITCHES, PONDS AND SPRINGS, RIGHTS-OF-WAY, EASEMENTS AND ENCROACHMENTS OF RECORD AND APPARENT, RESTRICTIONS, RESERVATIONS, AGREEMENTS, AND COVENANTS, THE DEEDS OF TRUST SUBORDINATED HEREIN AND THOSE SPECIFIC SCHEDULE B EXCEPTIONS LISTED ON SAID TITLE COMMITMENT.

JILL BRABEC, ATTORNEY-AT-LAW  
 EFFECTIVE THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011

**FINAL PLAT NOTES:**

- 1) THIS CERTIFICATE DOES NOT CONSTITUTE A TITLE SEARCH BY FOUR POINTS SURVEYING AND ENGINEERING, INC. TO DETERMINE OWNERSHIP OR EASEMENTS OF RECORD. FOR ALL INFORMATION REGARDING EASEMENTS, RIGHTS-OF-WAY, OR TITLE OF RECORD, FOUR POINTS SURVEYING AND ENGINEERING, INC. RELIED UPON THE FINAL PLAT OF BOULDER RIDGE, ROUTT COUNTY RECORDS, RECEPTION NO. 680682 FOR ALL EASEMENTS AND RIGHT OF WAYS AND THE LANDAMERICA TITLE COMMITMENT DATED \_\_\_\_\_
- 2) ON THE FINAL PLAT OF BOULDER RIDGE 10 FOOT UTILITY EASEMENTS WERE DEDICATED ON ALL SIDE LOT LINES AND 10' UTILITY AND SNOW STORAGE EASEMENTS ON ALL FRONT LOTS LINES, BEING LOT LINE FACING A ROADWAY OR STREET. IN ADDITION, 15' UTILITY EASEMENTS ARE DEDICATED ON ALL REAR LOT LINES AND BOUNDARY LINES, BEING A LINE BORDERING THE PROPERTY BOUNDARY OR OPEN SPACE.



LINE TABLE					
LINE	LENGTH	BEARING			
L1	24.121	N21°38'20"W			

CURVE TABLE						
CURVE	LENGTH	RADIUS	DELTA	TANGENT	CHORD	BEARING
C1	33.12	750.00	2°36'59"	16.56	33.12	N09°40'42"W

**DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT APPROVAL**

THE DIRECTOR OF PLANNING SERVICES OF THE CITY OF STEAMBOAT SPRINGS, COLORADO, DOES HEREBY AUTHORIZE AND APPROVE THIS PLAT OF THE ABOVE SUBDIVISION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 2011.

BY: \_\_\_\_\_  
 TYLER GIBBS, AICP, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT

**CITY COUNCIL APPROVAL**

THE WITHIN PLAT OF BOULDER RIDGE FILING NO. 2, A REPLAT OF BOULDER RIDGE LOT 16 AND LOT 17 IS APPROVED FOR FILING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2011.

BY: \_\_\_\_\_  
 CARI HERMANISKI, CITY COUNCIL PRESIDENT

ATTEST: \_\_\_\_\_  
 JULIE JORDAN, CITY CLERK

**SURVEYOR'S CERTIFICATE**

I, WALTER N. MAGILL, PLS NO. 38024, A DULY REGISTERED LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THIS MAP AND SURVEY OF BOULDER RIDGE FILING NO. 2, A REPLAT OF BOULDER RIDGE LOT 16 AND LOT 17 (I) WAS PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION, (II) HAS BEEN PREPARED IN COMPLIANCE WITH ALL APPLICABLE LAWS OF THE STATE OF COLORADO AT THE TIME OF THIS SURVEY (III) IS ACCURATE TO THE BEST OF MY KNOWLEDGE AND (IV) CONTAINS ALL OF THE INFORMATION REQUIRED BY C.R.S. 38-51-101.

BY: \_\_\_\_\_  
 WALTER N. MAGILL, PLS 38024

**ROUTT COUNTY CLERK AND RECORDER'S ACCEPTANCE**

THIS MAP WAS ACCEPTED FOR FILING IN THE OFFICE OF THE CLERK AND RECORDER OF ROUTT COUNTY, COLORADO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D., 2011 AT RECEPTION NUMBER \_\_\_\_\_ TIME: \_\_\_\_\_ M. AND FILE NO. \_\_\_\_\_

ROUTT COUNTY CLERK AND RECORDER \_\_\_\_\_

**RECORDATION OF PROTECTIVE COVENANTS**

1) THE PROTECTIVE COVENANTS FOR MOUNTAIN VIEW ESTATES, FILING NO. 4 ARE RECORDED AT BOOK 446 AT PAGE 217, AND AMENDMENTS IN BOOK 475 AT PAGE 293 AND PAGE 274 OF THE ROUTT COUNTY RECORDS.

**ROUTT COUNTY SURVEYOR CERTIFICATE**

THIS MAP WAS FILED AND INDEXED AS FILE NO. SP \_\_\_\_\_ ON \_\_\_\_\_ DAY OF \_\_\_\_\_ 2011, AT \_\_\_\_\_ M. IN THE LAND SURVEY PLAT RECORDS FILE AND INDEX SYSTEM MAINTAINED IN THE OFFICE OF ROUTT COUNTY CLERK AND RECORDER PURSUANT TO C.R.S. 38-50-101.

ROUTT COUNTY SURVEYOR \_\_\_\_\_

BY: \_\_\_\_\_  
 RIDGWAY C. MOON

**SANTA FE TRAIL, LLC**

**BOULDER RIDGE FILING NO. 2 FINAL PLAT**

NO.	DATE	REVISIONS	INT

DATE: 8-29-2011 DESIGN: WNM  
 JOB NO. 1027-008.FP DRAFTED: WNM  
 DWG. NAME REVIEW: WNM

**Four Points Surveying and Engineering**

440 S. Lincoln Ave, Suite 4B  
 P.O. Box 775966,  
 Steamboat Springs, CO 80487  
 (970) 871-0772  
 wnmpepla@gmail.com

SHEET NO.  
 1  
 OF 1

City of  
Steamboat Springs 

EASEMENT VACATION/EASEMENT VERIFICATION SHEET  
UTILITY COMPANY NOTIFICATION

Name of Appellant

SANTA FE TRAIL, LLC

Home Phone 870-3673 Work Phone 870-0169

Mailing Address PO. BOX 882978 STEAMBOAT CO

Physical Address 1065 CRAWFORD AVE, STEAMBOAT, CO

Legal Description of Property LOTS 15 AND 16

Nature of Request SEE ATTACHED EXHIBITS

Comcast  
Dave Phillips

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title: \_\_\_\_\_

Qwest  
Communication Engineering Dept.

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Atmos Energy  
Clay Russell

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Steamboat Springs Water  
Joe Zimmerman

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Yampa Valley Electric Assoc.  
Chris Wyrzycki **LARRY COVILLO**

By: Larry Covillo  
Name Larry Covillo  
Title President

Mt. Werner Water  
Jay Gallagher

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

City of  
Steamboat Springs 

EASEMENT VACATION/EASEMENT VERIFICATION SHEET  
UTILITY COMPANY NOTIFICATION

Name of Appellant

SANTA FE TRAIL, LLC

Home Phone 846-3573 Work Phone 870-0169

Mailing Address P.O. BOX 882978 STEAMBOAT CO

Physical Address 1065 CRAWFORD AVE, STEAMBOAT, CO

Legal Description of Property LOTS 15 AND 16

Nature of Request SEE ATTACHED COMMENTS

Comcast  
Dave Phillips  
By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

~~Quest~~ CENTURYLINK  
Communication Engineering Dept.  
By: AK  
Name ANASTASIA KENNER  
Title ENGINEER

Atmos Energy  
Clay Russell  
By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Steamboat Springs Water  
Joe Zimmerman  
By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Yampa Valley Electric Assoc.  
Chris Wypych  
By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Mt. Werner Water  
Jay Gallagher  
By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

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Revised 04/20/06

# City of Steamboat Springs

## EASEMENT VACATION/EASEMENT VERIFICATION SHEET UTILITY COMPANY NOTIFICATION

Name of Appellant

SANTA FE TRAIL, LLC

Home Phone 8346-3873 Work Phone 878-0169

Mailing Address P.O. BOX 882978 STEAMBOAT, CO.


Physical Address 1065 CRAWFORD AVE, STEAMBOAT, CO.

Legal Description of Property LOTS 15 and 16

Nature of Request SEE ATTACHED DOCUMENTS

Contact  
**Dave Phillips**  
By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Qwest  
**Communication Engineering Dept.**  
By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_


Atmos Energy  
**Clay Russell Nick Planansky**  
By   
Name Nicholas Z. Planansky  
Title Distribution Operator

Steamboat Springs Water  
**Joe Zimmerman**  
By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Yampa Valley Electric Assoc.  
**Chris Wypych**  
By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Mt. Werner Water  
**Jay Gallagher**  
By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

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Revised 04/20/06

City of  
Steamboat Springs 

EASEMENT VACATION/EASEMENT VERIFICATION SHEET  
UTILITY COMPANY NOTIFICATION

Name of Appellant

SANTA FE TOOL CO.

Home Phone

970-359-3333

Work Phone

970-616-7171

Mailing Address

PO Box 582998 Steamboat CO

Physical Address

1505 Santa Fe Blvd Steamboat CO

Legal Description of Property

Lot 10 and 11

Nature of Request

SEE ATTACHED DOCUMENTS

Comcast

Dave Phillips

By:

Name

Title

Atmos Energy

Clay Russell

By:

Name

Title

Yampa Valley Electric Assoc.

Chris Wypych

By:

Name

Title

Qwest

Communication Engineering Dept.

By:

Name

Title

Steamboat Springs Water

Joe Zimmerman

By:

Name

Title

~~Mt. Werner Water~~

~~Jay Gallagher~~

~~By:~~

~~Name~~

~~Title~~

P:\FORMS\Easement Vacation.doc  
Revised 04/20/06

City of  
Steamboat Springs 

EASEMENT VACATION/EASEMENT VERIFICATION SHEET  
UTILITY COMPANY NOTIFICATION

Name of Appellant

SANTA FE TRAIL, LLC

Home Phone 846-3573 Work Phone 870-0169

Mailing Address P.O. BOX 882978 STEAMBOAT, CO

Physical Address 1865 CRAWFORD AVE, STEAMBOAT, CO

Legal Description of Property LOTS 15 AND 16

Nature of Request SEE ATTACHED EXHIBITS

Comcast  
Dave Phillips  
By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Qwest  
Communication Engineering Dept.  
By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Atmos Energy  
Clay Russell  
By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Steamboat Springs Water  
Joe Zimmerman  
By: Joe Zimmerman  
Name \_\_\_\_\_  
Title Utility Dept.

Yampa Valley Electric Assoc.  
Chris Wypych  
By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Mt. Werner Water  
Jay Gallagher  
By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

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Revised 04/20/06

# Agenda Item # 12

## CITY COUNCIL COMMUNICATION FORM

---

**FROM:** Julie Franklin, CMC (Ext. 248)  
City Clerk

**THROUGH:** Jon B. Roberts, City Manager (Ext. 228)

**DATE:** September 6, 2011

**ITEM:** **SECOND READING OF ORDINANCE:** An ordinance adopting the Uniform Election Code of 1992 in lieu of the Municipal Election Code of 1965 as amended, for a Regular Municipal Election to be held on November 1, 2011 to permit the City to participate in a coordinated election with Routt County. (Franklin)

**NEXT STEP:** To approve the second reading of ordinance adopting the Uniform Election Code as presented.

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ORDINANCE  
 RESOLUTION

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**I. REQUEST OR ISSUE:**

This ordinance is required if the City of Steamboat Springs intends to participate in the coordinated election on Tuesday, November 1, 2011 with the Routt County Clerk and Recorder under Article X, Section 20 of the Constitution of the United States. Pursuant to the City's Home Rule Charter, we are to follow the Municipal Election Code (Colorado Revised State Statutes, Title 31). However, when we participate in a coordinated election, we are required to "opt out" of the Municipal Election Code and adopt the regulations within the Uniform Election Code (Colorado Revised State Statutes, Title 1).

**II. RECOMMENDED ACTION/NEXT STEP:**

To approve the second reading of the ordinance adopting the Uniform Election Code of 1992 in lieu of the Municipal Election Code of 1965 as amended, for a Regular Election to be held on Tuesday, November 1, 2011, to permit the City to participate in a coordinated polling place election with Routt County.

**III. FISCAL IMPACTS:**

The City of Steamboat Springs is responsible for all expenditures related to the municipal portion of the election.

**Proposed Expenditure:**

This cost is dependent upon the ballot size.

**Funding Source:**

The City Clerk has budgeted \$24,100 for this year's election.

**IV. BACKGROUND INFORMATION:**

In years past, the City has participated with Routt County in coordinated elections with substantial rewards from an intergovernmental relationship perspective to providing an election that is easy for voters.

**V. LEGAL ISSUES:**

None identified at this time.

**VI. SUMMARY AND ALTERNATIVES:**

Staff supports participation in the coordinated election on Tuesday, November 1, 2011.



**CITY OF STEAMBOAT SPRINGS, COLORADO**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE ADOPTING THE UNIFORM ELECTION CODE OF 1992 IN LIEU OF THE MUNICIPAL ELECTION CODE OF 1965 AS AMENDED, FOR THE REGULAR MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 1, 2011 TO PERMIT THE CITY TO PARTICIPATE IN A COORDINATED MAIL BALLOT ELECTION WITH ROUTT COUNTY.**

**WHEREAS**, the passage of the TABOR Amendment in 1992 and other legislation means that several governmental jurisdictions in Routt County can hold simultaneous elections at the regular election on Tuesday, November 1, 2011; and

**WHEREAS**, CRS 31-10-108 and CRS 1-7-116 allow several governmental jurisdictions to coordinate their elections and to permit the voters to vote on all candidates, all ballot issues and questions on one ballot and/or on one election date and/or at one polling place; and

**WHEREAS**, the City of Steamboat Springs supports participation in such a coordinated election on November 1, 2011; and

**WHEREAS**, Article 2, Section 2.1 of the Charter of the City of Steamboat Springs directs that the Municipal Election Code of 1965 shall govern all City elections unless otherwise provided by the City Council by ordinance; and

**WHEREAS**, it is necessary to adopt the Uniform Election Code of 1992 in lieu of the Municipal Election Code of 1965 for the City to participate in a coordinated election.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STEAMBOAT SPRINGS, COLORADO:**

Section 1. ADOPTION OF UNIFORM ELECTION CODE. The City of Steamboat Springs hereby adopts the Uniform Election Code of 1992 to govern the regular municipal election to be held on November 1, 2011, in accordance with Article 2, Section 2.1 of the Charter of the City of Steamboat Springs and Section 31-10-102-7, Colorado Revised Statutes.

Section 2. CITY CLERK AUTHORIZED TO TAKE ALL ACTIONS TO CONDUCT ELECTION. The City Clerk is hereby directed to work with the Routt County Clerk and Recorder and authorized to take all necessary actions to

conduct the general election in accordance with Title X, Article 20 of the Colorado Constitution, the Uniform Election Code of 1992, and all other appropriate statutes.

Section 3. RATIFICATION. All actions of the City Clerk, which have been taken in conformity to the Uniform Election Code of 1992 prior to the effective date of this ordinance, are hereby ratified.

Section 4. SEVERANCE CLAUSE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portion of the ordinance.

Section 5. EFFECTIVE DATE. This ordinance shall take effect immediately upon the expiration of five (5) days from and after the date of final publication as provided by Charter.

Section 6. SAFETY CLAUSE. The City Council hereby finds, determines and declares that this ordinance is necessary for the immediate preservation of the public peace, health and safety.

**INTRODUCED, READ AND ORDERED PUBLISHED**, as provided by law, by the City Council of the City of Steamboat Springs, at its regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
**Cari Hermacinski, President  
Steamboat Springs City Council**

**ATTEST:**

\_\_\_\_\_  
**Julie Franklin, CMC  
City Clerk**

**FINALLY READ, PASSED AND APPROVED** this \_\_\_\_\_ day of  
\_\_\_\_\_, 2011.

\_\_\_\_\_  
**Cari Hermacinski, President,  
Steamboat Springs City Council**

**ATTEST:**

\_\_\_\_\_  
**Julie Franklin, CMC  
City Clerk**

# Agenda Item # 13

## CITY COUNCIL COMMUNICATION FORM

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**FROM:** Bob Keenan, Senior Planner (Ext. 260)  
Tyler Gibbs, AIA, Director of Planning and Community Development  
(Ext. 244)

**THROUGH:** Jon Roberts, City Manager, (Ext. 228)

**DATE:** September 6, 2011

**ITEM:** Ski Hill Subdivision, Parcel B (The T Bar); #DP-11-04

**NEXT STEP:** If approved, then the applicant may continue the use of the  
Temporary Structure for five (5) more years.

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**ORDINANCE**  
 **RESOLUTION**  
 **MOTION**  
 **DIRECTION**  
 **INFORMATION**

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**PROJECT NAME:** Ski Hill Subdivision, Parcel B (The T Bar); #DP-11-04

**PETITION:** A Development Plan application to allow an extension to the expiring temporary structure (T-Bar) located at 2045 Ski Time Square. The applicant requests a seven (7) year extension of the temporary structure permit or until lease between business owner and the land owner terminates, whichever is earlier.

**APPLICANT:** Greens Patrol, LLC c/o John Holloway, Jr., P.O. Box 770908, Steamboat Springs, CO 80477 (970) 879-5532 or email:  
[jholloway@hollowaylaw.com](mailto:jholloway@hollowaylaw.com)

**PC ACTION:** Recommended Approval: 6-0

**EXECUTIVE SUMMARY:**

The applicant is requesting Conditional Use approval of a temporary structure through a Development Plan to allow the existing modular building to exist in this location for an additional seven years or until the lease between the applicant and land owner terminates, whichever is earlier. The applicant currently holds a year to year lease with the landowner.

The applicant has concurrently submitted an application for administrative review of a Minor Exterior Modification to this temporary structure. This proposal includes additional square footage along the ski slopes that will allow for an additional bathroom, bar, and seating area. That same proposal also includes a change in color to the new and existing façade. The colors will be a grey-green for the body, sand brown for the trim, and steel grey for accent.

Planning Staff recommended approval of the applicant's proposal to the Planning Commission with conditions.

*Please see the attached Planning Commission Staff Report for more information.*

**Planning Commission Discussion:**

The Planning Commission Discussion centered on the length of the approval that the applicant was seeking (seven years) and how this type of development fits in with our base area. Given the temporary nature of the building and the limited vitality at the base area the Planning Commission decided to recommend approval but only for five years.

*Please see the attached meeting minutes for more information.*

**Public Comment:**

There was public comment from Paul Sachs who represents the Antlers condominium development to the east of the T-Bar. He shared the Antlers concerns regarding noise and parking.

*Please see the attached meeting minutes for more information.*

**Recommended Motion:**

With a vote of 6-0, the Planning Commission recommends approval of the Development Plan, #DP-11-04, with the following conditions of approval:

1. Approval of the proposed temporary structure is contingent upon the approval of the concurrent Minor Exterior Modification application (#MEM-11-05).
2. The temporary structure must be removed from the site no later than **five (5)** years from the date of approval or when the lease between the business owner and land owner terminates, whichever is earlier, unless the temporary structure receives another extension.
3. The temporary structure approval will terminate if restaurant/bar use is inactive for more than one (1) year.
4. The temporary structure approval shall only be good for the use of the structure as a restaurant/bar.
5. Access for emergency vehicles through the parking area must be maintained at all times.

6. The applicant must complete all proposed modifications as approved in application #MEM-11-05 prior to November 30, 2012.

**List of attachments:**

- Attachment 1. – PC Staff Report and Attachments.
- Attachment 2. - Draft PC Minutes.



## DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT STAFF REPORT

PLANNING COMMISSION AGENDA ITEM # 2	
<b>Project Name:</b>	Ski Hill Subdivision, Parcel B (The T Bar); #DP-11-04
<b>Prepared By:</b>	Bob Keenan, Senior Planner (Ext. 260)
<b>Through:</b>	Tyler Gibbs, AIA, Planning & Community Development Director (Ext. 244)
<b>Date:</b>	August 18, 2011
<b>Planning Commission (PC):</b>	August 25, 2011
<b>City Council (CC):</b>	September 6, 2011
<b>Zoning:</b>	Gondola Two (G-2)
<b>Applicant:</b>	Greens Patrol, LLC c/o John Holloway, Jr., P.O. Box 770908, Steamboat Springs, CO 80477 (970) 879-5532 or email: jholloway@hollowaylaw.com
<b>Request:</b>	A Development Plan application to allow an extension to the expiring temporary structure (T-Bar) located at 2045 Ski Time Square. The applicant requests a seven (7) year extension of the temporary structure permit or until lease between business owner and the land owner terminates, whichever is earlier.

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## **II. BACKGROUND**

Ski Hill Subdivision, Parcel B is located at the base area along the ski slopes adjacent to the approved, but not yet constructed, Thunderhead development to the west and the Antlers to the east. A temporary modular structure exists on this otherwise vacant parcel. Along with the temporary structure the City previously used this lot as a bus turnaround for Ski Time Square.

The existing modular building was approved in 2001 as temporary structure that housed a triage facility for the Ski Area. The structure was approved for two years but continued to be used as a triage facility until the triage use was moved to its current location in One Steamboat Place for the 2009/2010 ski season.

In January of 2010 the T Bar received approval of a Change of Use application to allow a restaurant/bar establishment within the temporary structure. The approval letter for the change of use indicated that the temporary structure would expire on November 30, 2011.

A temporary structure is defined as follows: *“A building, structure or use intended for removal or termination within a prescribed time not exceeding two (2) years or as set out in a building permit, development plan, or final development plan. The building or structure shall be removed, or the use shall be abandoned, after the prescribed time not exceeding two (2) years or as set out in a building permit, development plan, or final development plan.”*

## **III. PROJECT DESCRIPTION**

At this time the applicant is requesting Conditional Use approval of a temporary structure through a Development Plan to allow the existing modular building to exist in this location for an additional seven years or until the lease between the applicant and land owner terminates, whichever is earlier. The applicant currently holds a year to year lease with the landowner.

The applicant has concurrently submitted an application for administrative review of a Minor Exterior Modification to this temporary structure. This proposal includes additional square footage along the ski slopes that will allow for an additional bathroom, bar, and seating area. That same proposal also includes a change in color to the new and existing façade. The colors will be a grey-green for the body, sand brown for the trim, and steel grey for accent.

## **IV. PRINCIPAL DISCUSSION ITEMS**

A discussion on whether it is appropriate to allow a building and site planning that is not conforming to current Base Area Design Standards and other development standards at the ski base area to continue for seven more years.

*Staff Analysis: Staff finds that it may be acceptable to allow an extension to the life of this structure at this location based upon the following:*

- *The building houses a restaurant/bar use that adds vitality to an area that is in need of liveliness after the demolition of much of the Ski Time Square buildings that housed similar entertainment type uses.*
- *The proposed expansion and exterior modifications will be more esthetically pleasing than what exists and will go along way and masking the original modular appearance of the structure.*
- *The current development on the lot is not the “highest and best use” of the property and should not preclude future development of this lot.*
- *The temporary structure provides for an interim use of the property while new development at the base area is stagnant.*

## V. PROJECT ANALYSIS

### A) CRITERIA FOR APPROVAL

**CDC - Section 26-65 (d): No development plan shall be approved unless the planning commission and city council find that the plan meets all of the following criteria:**

The following section provides staff analysis of the application as it relates to key sections of the CDC. It is intended to highlight those areas that may be of interest or concern to planning commission, city council, staff or the public. For a comprehensive list of standards and requirements applicable to this proposal please refer to the CDC or contact the staff planner.

#### **CDC - Section 26-65(d)(1): Conformity with Community Plan**

*The development plan significantly furthers the preferred direction and policies outlined in the community plan or approved master plans.*

Staff Analysis: **Consistent;** The proposed temporary structure that houses a restaurant/bar conforms to the goals and policies stated within the Steamboat Springs Area Community Plan (SSACP). The proposal is supported by the following SSACP policy:

- Policy ED-2.1: Support opportunities to expand and increase the number of local businesses in Steamboat Springs.
- Policy ED-1.1: Continue to support tourism-related land uses, businesses, and marketing.

#### **CDC – Section 26-65(d)(2): Consistency with Surrounding Uses**

*The proposed development shall be consistent with the character of the immediate vicinity of the parcel proposed for development, or shall enhance or compliment the mixture of uses, structures and activities present in the immediate vicinity.*

Staff Analysis: **Consistent;** As a temporary structure and interim use for this property, staff finds that the proposed extension of the temporary structure use is consistent with surrounding

character of the immediate vicinity. The exterior modifications will also enhance the visual appeal of this structure and will bring it further into compliance with design standards.

The use of the structure as a restaurant/bar is also consistent with other uses in the vicinity such as Slopeside Bar and Grill,

Surrounding uses include the ski area to the south, Christie Club/Elkhorn to the east, construction staging on the Thunderhead lot to the east and Kutuk to the north.

**CDC – Section 26-65(d)(3) Minimize Adverse Impacts**

*The design and operating characteristics of the proposed development shall minimize any adverse impacts on surrounding uses and shall not cause a nuisance, considering factors such as proposed setbacks, planned hours of operation, and the potential for odors, noise, smoke, dust, glare, vibrations, shadows, and visual impacts from the proposed development.*

Staff Analysis: **Consistent;** The temporary structure minimizes visual impacts on surrounding properties with the existing landscaping, the use of colors and materials that are similar to those used on buildings in the base area, and with the new proposed addition that will mitigate the modular look of the current building. The operating characteristics of the use within the temporary structure are subject to the noise ordinance, liquor licensing rules, and other local regulations.

**CDC – Section 26-65(d)(4) Access**

*Access to the site shall be adequate for the proposed development, considering the width, grades, and capacities of adjacent streets and intersections and the entrance to the site. The adequacy of the facilities provided for any necessary service delivery, parking and loading, and trash removal shall also be considered. When appropriate, public transportation or other public or private transportation services and appropriate pedestrian facilities shall be made available to serve the use.*

Staff Analysis: **Consistent;** Access to the site is via Ski Time Square and is adequate to serve the structure and its use. The drive from Ski Time Square to the building is paved and has ample parking along all sides of the drive leaving room for emergency vehicles. Service delivery and trash removal are also accommodated within the site.

**CDC – Section 26-65 (d)(5) Minimize Environmental Impacts**

*The proposed development shall minimize its adverse impacts on the natural environment, including water quality, air quality, wildlife habitat, vegetation, wetlands, and natural landforms.*

Staff Analysis: **Consistent;** The proposed use should not create any adverse impacts on the natural environment.

**CDC – Section 26-65 (e)(6) Phasing**

Staff Analysis: **NA;** No phasing proposed

**CDC – Section 26-65 (e)(7) Compliance with other Standards**

*The proposed development shall comply with all other applicable requirements of this CDC, including article V, development standards.*

Staff Analysis: **Consistent;** The applicant has applied for a temporary structure approval so that significant investments in landscaping, sidewalks and other development standards are not required as they would be through approval of a Final Development Plan for a permanent structure. That said, the landscaping in the form of existing trees and ground cover help screen the east side of the building, parking is adequate and provided at a rate well beyond the required two spaces (previously approved through a Change of Use), and snow storage meets the requirements (previously reviewed and approved under original application).

**CDC – Section 26-65 (e)(8) Variance criteria**

Staff Analysis: **NA;** No variance requested as the approval is for a temporary structure.

**VI. STAFF FINDING & RECOMMENDED MOTION**

Staff Finding

Staff finds that the Development Plan application to allow a seven (7) year extension of the existing temporary structure permit for the T-Bar located at 2045 Ski Time Square is CONSISTENT with the criteria for approval with the following conditions of approval:

1. Approval of the proposed temporary structure is contingent upon the approval of the concurrent Minor Exterior Modification application (#MEM-11-05).
2. The temporary structure must be removed from the site no later than seven (7) years from the date of approval or when the lease between the business owner and land owner terminates, whichever is earlier, unless the temporary structure receives another extension.
3. The temporary structure approval will terminate if restaurant/bar use is inactive for more than one (1) year.
4. The temporary structure approval shall only be good for the use of the structure as a restaurant/bar.
5. Access for emergency vehicles through the parking area must be maintained at all times.

Recommended Motion

The Development Plan, # DP-11-04 is CONSISTENT with the required criteria for approval of a Development Plan with the following condition of approval:

1. Approval of the proposed temporary structure is contingent upon the approval of the concurrent Minor Exterior Modification application (#MEM-11-05).

2. The temporary structure must be removed from the site no later than seven (7) years from the date of approval or when the lease between the business owner and land owner terminates, whichever is earlier, unless the temporary structure receives another extension.
3. The temporary structure approval will terminate if restaurant/bar use is inactive for more than one (1) year.
4. The temporary structure approval shall only be good for the use of the structure as a restaurant/bar.
5. Access for emergency vehicles through the parking area must be maintained at all times.

## **VII. ATTACHMENTS**

- Attachment 1 – Original Approval Site Plan
- Attachment 2 - Original Approval Letter
- Attachment 3 – Minor Exterior Modification Plans
- Attachment 4 – Change of Use Approval Letter
- Attachment 5 - Public Comment Letter
- Attachment 6 – Photos of the Site



November 5, 2001

Mr. Karl Gills  
Yampa Valley Medical Center  
1024 Central Park Drive  
Steamboat Springs, CO 80487  
(sent via fax: 870-1223)

RE: Yampa Valley Medical Center Triage Facility #MN-01-53

Dear Karl,

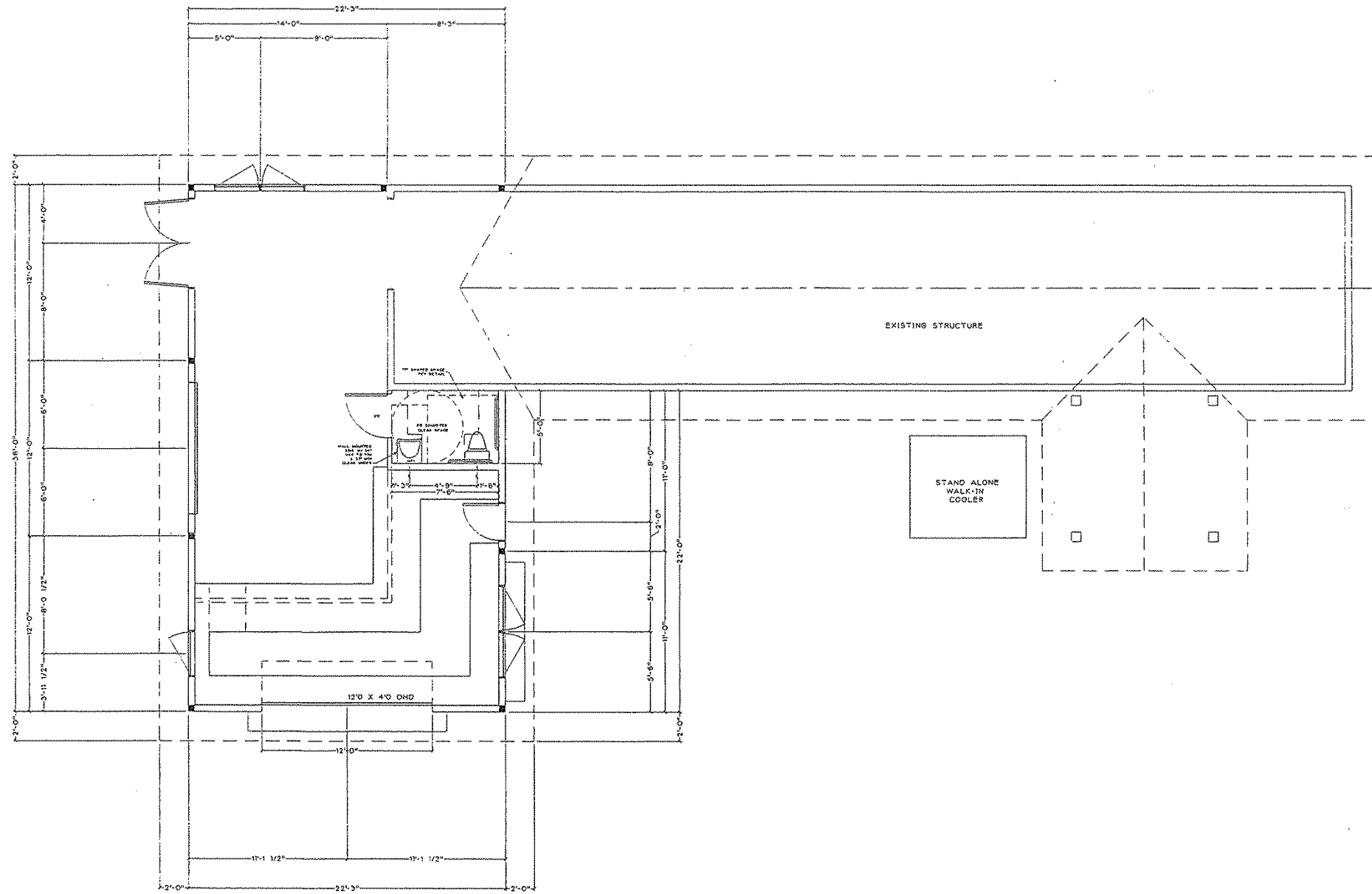
This letter is to confirm that the Director of Planning Services has approved your application for a Minor Development Permit to locate an 820 s.f. modular building, to be used as a temporary medical facility, adjacent to the existing SST turnaround location at the Christie Base area, Parcel B, Ski Hill Subdivision, on October 9, 2001.

The application was approved with the following conditions:

1. The applicant shall be responsible for the repair of any damage caused to the Temporary Bus Turnaround road as a result of construction or installation of the temporary building and utilities (or during daily operations of the facility). The repairs to the turnaround shall meet the required City specifications and shall be completed prior to opening of the facility for the 2001-02 ski season.
2. The applicant shall submit a written letter from the property owner approving the location of the proposed temporary building within the existing sewer and water easement.
3. The applicant shall provide written documentation from the Yampa Valley Medical Center and American Ski Corporation acknowledging the City's required two (2) year approval period for the temporary structure.
4. The applicant shall submit a Landscape Plan, to be reviewed and approved by the Department of Planning Services, prior to Building Permit. The Landscape Plan should consist of a minimum of eight (8) evergreen trees, with a minimum height of 4' each, for the purpose of screening the east, west and north elevations of the structure.



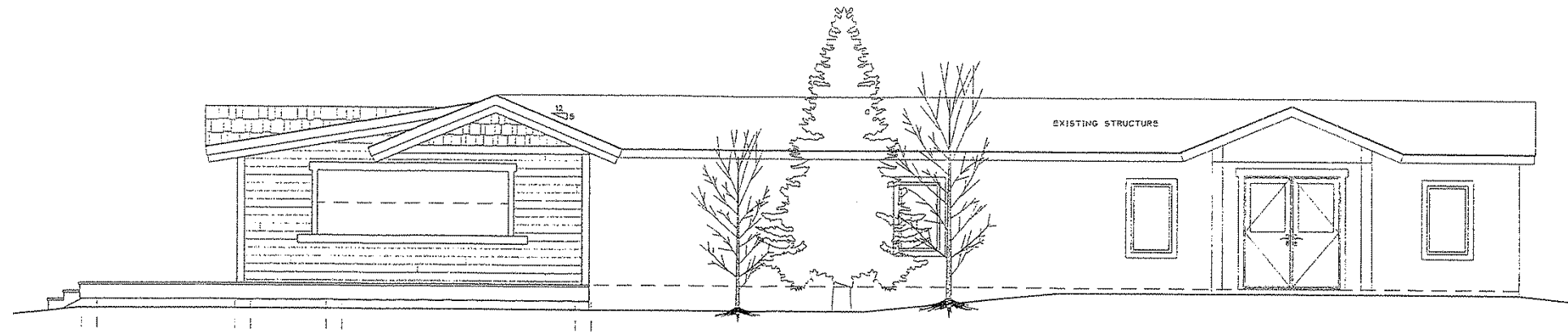




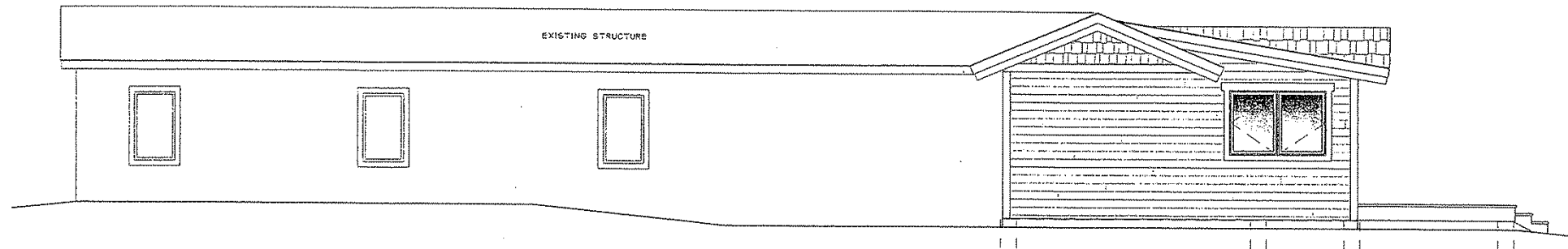
NOT FOR CONSTRUCTION

FLOOR PLAN (NEW & EXISTING)  
1/4" = 1'-0"

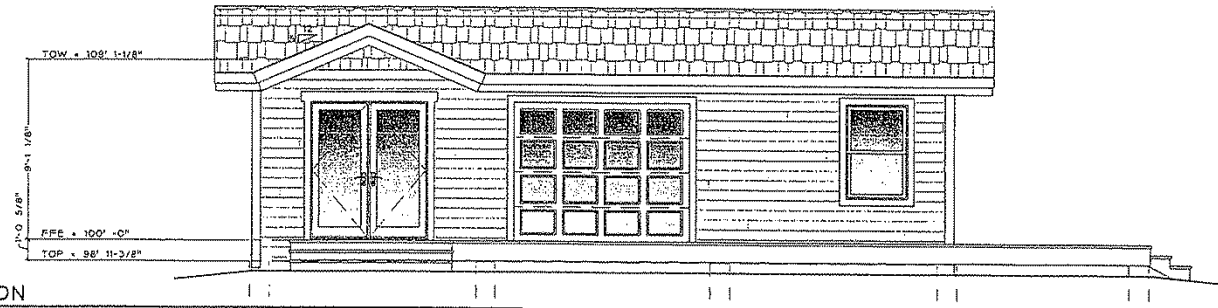
T Bar at Steamboat  
2045 Ski Time Sq Dr  
Steamboat Springs CO



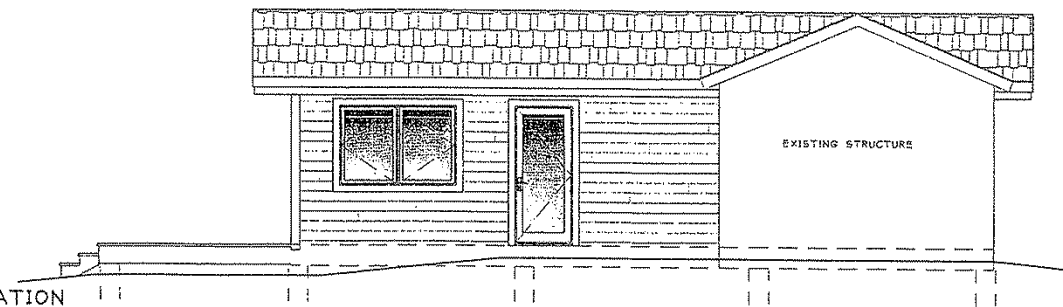
○ EAST ELEVATION  
1/4" = 1'-0"



○ WEST ELEVATION  
1/4" = 1'-0"



○ SOUTH ELEVATION  
1/4" = 1'-0"



○ NORTH ELEVATION  
1/4" = 1'-0"

NOT FOR CONSTRUCTION

January 4, 2010

Green Patrols, LLC  
c/o John Holloway Jr.  
P.O. Box 770908  
Steamboat Springs, CO 80477

RE: SKI HILL SUBDIVISION PARCEL B, #COU-09-01

Dear John:

This letter is to confirm that the Director of Planning and Community Development has approved your Change of Use application for 2045 Ski Time Square Drive on November 30, 2009. The Change of Use was from the former triage center into a restaurant establishment.

The application was processed in accordance with the provisions of Section 26-48 of the Community Development Code, which allows the Director of Planning and Community Development to administratively approve Change of Use applications. Public comment was received on this application from Jim Schneider with Steamboat Ski and Resort Corporation with operational concerns.

Please be advised that the restaurant operation is occurring in a temporary structure. Use of the structure after November 30, 2011 will require approval of a Conditional Use, with Public Review by the Planning Commission and City Council.

For you information, at one time the City had an agreement with the property owner to plow this private turnaround. If this agreement is re-enacted, no overnight parking will be permitted in the parking spaces, and there will be a windrow plowed at the edge of the pavement that the owner/operator will be required to remove. The City will not be responsible for removing the windrow or plowing the parking spaces.

Please contact me at 879-2060, ext. 224 with any questions on the above.

Sincerely,  
CITY OF STEAMBOAT SPRINGS

Jonathan Spence  
Senior Planner

cc: File copy #COU-09-01  
Chronological file



Date: August 10, 2011

To: Robert Keenan  
124 10<sup>th</sup> Street  
PO Box 775088  
Steamboat Springs, CO 80477-5088

From: Jim Schneider  
Vice President Skier Services  
Steamboat Ski & Resort Corp.  
2305 Mt. Werner Circle  
Steamboat Springs, CO 80487

Re: Minor Exterior Modification (MEM) application for Ski Hill Subdivision B #DP-11-04

Dear Bob,

The Steamboat Ski & Resort Corporation (SSRC) is providing public comment per the Surrounding Property Owner notification letter dated August 2, 2011 for the MEM of the T-Bar project. SSRC does not have objection specifically to the MEM or extension to the temporary structure permits; however we do believe that placing some visual appearance requirements on the permits are warranted.

The URA and other surrounding properties (Torian, Sheraton/Starwood, SSRC, OSP) will have invested somewhere in the neighborhood of \$25-30M in public improvements to the base area and believe that any new development or re-development such as this one, should be approved with conditions. We believe those conditions should include improvements to the property to begin conformance to Base Area Design Standards, and bring any landscaping improvements such as fencing and walkways to the same standards as the Promenade. (Certain exterior features such as fences made of old skis should not be permitted as part of this permit)

We are most certainly in favor of continued presence of daytime and nighttime activity in the Ski Time Square area and any enterprise that can help create this energy is a positive; however, the appearance to our guests at the base of a world class resort is something all base area property owners should strive to improve with each project, and we believe these conditions should be in place before approval granted. At the same time, we understand from the owner that full compliance of these standards may be cost prohibitive. Therefore, we are asking that the Planning Department to develop a plan, which over time, would bring this property closer to the same standards that all surrounding properties are being ask to adhere to.

Feel free to contact myself should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Jim Schneider".

Jim Schneider

Planning Commission Minutes

August 25, 2011

## **DRAFT**

**Ski Hill Subdivision Parcel B #DP-11-04 A Development Plan application to allow an extension to the expiring temporary structure (T-Bar) located at 2045 Ski Time Square. The applicant requests a seven (7) year extension of the temporary structure permit or until lease between applicant and the land owner terminates, whichever is earlier.**

Discussion on this agenda item started at approximately 5:04 p.m.

### **STAFF PRESENTATION**

Bob Keenan –

We have a development plan for a temporary structure to extend the temporary structure permit. The applicant is requesting a 7 year extension. Staff recommends approval with the conditions listed in the staff report. (He passed around the colors that are associated with the temporary structure). Those colors would be more consistent with the color patterns in the area. If the Planning Commission could add another condition of approval 'the minor exterior modification MEM1105', the condition 1 reads that it must be approved that the condition of the approval of this development plan is based upon the minor exterior modification getting approved. The staff is currently working with the applicant on this. We want to add a condition that the applicant completes the requirements within the minor exterior modification. Not only do they need approval, but they need to complete the project. The MEM must be completed by November 30, 2012. Staff reviewed the proposal and based off of the economy that we found it appropriate to allow a 7 year extension to the temporary structure.

### **APPLICANT PRESENTATION**

John Holloway –

This addition will make this look less like a trailer and more like a nice building where people want to come. We have a 1 year lease. This is a year to year operation. The reason why the 7 years came up was because it seemed to be consistent with some of the other developments in the area have been looking at. We have no problems with the 2 conditions.

### **COMMISSIONER QUESTIONS**

Commissioner Levy –

What did you say the actual materials were?

Bob Keenan –

It's a log-sided wainscot, T11 siding, and pine trim.

Commissioner Brookshire –

Condition 2 regarding the removal from the site, I don't understand how that works? I don't think that they own the building. How do we make the property owner move it?

Bob Keenan –

The owner has allowed the applicant to move forward with this application.

Commissioner Brookshire –

The permit that's being requested was not only to the petitioner, but to the property owner?

Bob Keenan –  
Correct.

Commissioner Levy –  
Are there any additional costs if we were to make this 5 years plus a 2 year administration review?

Bob Keenan –  
We don't have a process. It's a development plan, because the temporary structure is a conditional use. When their approval period expires the only way to renew that is through the same process unless we specify that now.

**PUBLIC COMMENTS**

Paul Sachs –  
The Antlers doesn't have any real issues with this proposal. Whether or not there's adequate parking to support this use and whether or not overnight parking restrictions will be enforced on this site. This has already been a problem in the past. Whether or not you've addressed any traffic issues with the access to this site since the entrance and exit is right in front of the Antlers. The noise level at the bar, since there have been complaints before, but were addressed. They feel this will be exacerbated by the expansion to the building. If everything is addressed then they're happy to see something happening at the base area.

**FINAL STAFF COMMENTS**

**FINAL COMMISSIONER COMMENTS**

Commissioner Hanlen –  
How did you review or skip over the parking requirements for this site?

Bob Keenan –  
The parking was approved with the change of use. The requirement is 2 parking spaces for this development.

Commissioner Meyer –  
Could you talk about the letter that you received from Jim Schneider at Ski Corp?  
Especially the last sentence about requesting that the Planning Department develop a plan which over time would bring this project closer to standards that all property owners are being asked to adhere to. Since we're not hearing and you're processing separately the 600 square feet addition we aren't privy to the details to that expansion. Could you address how the expansion addresses or doesn't address Ski Corp's concern?

Bob Keenan –  
The MEM brings it closer to the Base Area Design Standards. Full compliance with the Base Area Design Standards isn't anticipated thus the reason for the temporary structure approval. It's a great investment for them to put in the required infrastructures and that's the reason why they're doing the temporary structure approval.

August 25, 2011

## **DRAFT**

Commissioner Meyer –

Based on your knowledge of the materials especially the T11 siding would you say these are high quality materials?

Bob Keenan –

No.

Commissioner Meyer –

Would you say that they are moderate level?

Bob Keenan –

Yes.

Commissioner Lacy –

Have you thought at all about requiring some compliance with some of the landscape standards of the Base Area Design Standards or anything like that?

Bob Keenan –

We talked about that. They did put in a fair amount of landscaping with the original building. It is pretty mature now and it helps the building's aesthetics quite a bit. Requiring new landscaping with 2" caliper trees will not mature and provide appropriate screening until after the approval period for the temporary use expires did not seem logical.

Commissioner Levy –

Can we assume that parking, especially overnight parking and noise ordinances will be enforced? They aren't exempt from any of those actions?

Bob Keenan –

The noise ordinance is on a complaint basis. The overnight parking we can't enforce since it's on private property.

Commissioner Levy –

Who plows that circle? Is that private or public?

Bob Keenan –

When it was a bus turnaround it was public, but that went away and it's now private.

Commissioner Levy –

Overnight parking wouldn't affect condition 5 for access for emergency vehicles?

Bob Keenan –

There's plenty of room to park the vehicles on the side of the drive. If parking gets out of control or if they start parking in the wrong spots then that's when it affects emergency vehicle access.

Commissioner Levy –

Or if their parking affects access to the Antlers I would assume that would be enforced.

August 25, 2011

## **DRAFT**

Bob Keenan –

They don't access their property from this property.

Commissioner Levy –

I just want you to address the public comment. If they're saying that they've had problems in the past. It's not being ignored, it's either out of our jurisdiction or if it were in the City's jurisdiction it would be addressed. The same goes for the noise ordinance; they're still responsible for adhering to the new code.

Bob Keenan –

Yes, of course.

Commissioner Lacy –

Do you have any specific knowledge of any noise complaints from T-bar?

Bob Keenan –

No. The applicant has been willing to work closely with the Antlers.

John Holloway –

Our access is prior to the access to the Antlers and that's private property from the intersection there. The overnight parking issue, we don't want cars parked there overnight, but occasionally people do for various reasons. As far as the noise ordinance, we've talked with 1 Antlers resident who has small children and they would like us to close sooner rather than later. We try to close by 9 pm and people are out of there by 10:30 pm.

Tyler Gibbs –

We have much better tools now for enforcing noise complaints. I would assume that the enforcement to noise complaints to be more vigorous.

### **RECOMMEND MOTION**

#### Staff Finding

Staff finds that the Development Plan application to allow a seven (7) year extension of the existing temporary structure permit for the T-Bar located at 2045 Ski Time Square is CONSISTENT with the criteria for approval with the following conditions of approval:

1. Approval of the proposed temporary structure is contingent upon the approval of the concurrent Minor Exterior Modification application (#MEM-11-05).
2. The temporary structure must be removed from the site no later than seven (7) years from the date of approval or when the lease between the business owner and land owner terminates, whichever is earlier, unless the temporary structure receives another extension.
3. The temporary structure approval will terminate if restaurant/bar use is inactive for more than one (1) year.
4. The temporary structure approval shall only be good for the use of the structure as a restaurant/bar.



## **DRAFT**

5. Access for emergency vehicles through the parking area must be maintained at all times.

### Recommended Motion

The Development Plan, # DP-11-04 is CONSISTENT with the required criteria for approval of a Development Plan with the following condition of approval:

1. Approval of the proposed temporary structure is contingent upon the approval of the concurrent Minor Exterior Modification application (#MEM-11-05).
2. The temporary structure must be removed from the site no later than seven (7) years from the date of approval or when the lease between the business owner and land owner terminates, whichever is earlier, unless the temporary structure receives another extension.
3. The temporary structure approval will terminate if restaurant/bar use is inactive for more than one (1) year.
4. The temporary structure approval shall only be good for the use of the structure as a restaurant/bar.
5. Access for emergency vehicles through the parking area must be maintained at all times.

### **MOTION**

Commissioner Hanlen moved to approve DP-11-04 with the additional criteria 6 that the MEM is approved by Planning Staff and be completed prior to November 30, 2012 and Commissioner Robbins seconded the motion.

### **DISCUSSION ON MOTION**

Commissioner Levy –

I will be supporting the motion. The 7 years does concern me. I'm gambling that there's not going to be significant completion of the redevelopment in 7 years. Hopefully some will be started. As soon as things are finished up there this probably needs to disappear, but I don't see that happening in 7 years.

Commissioner Meyer –

I've got a problem with going 7 years. The reason is that the expansion is at a moderate level of construction. The applicant has a year to year lease so that if there is redevelopment it could go away in a year. I would have been comfortable with a 5 year with a 2 year option. I don't think that we've granted 7 year terms on even major construction. This is a temporary facility. It's been there forever. It became a public facility or the bar back in 2001. At this point it's almost been there for almost 10 years. To have this for another 7 years is a problem for me. I won't be supporting the motion. I totally want a vibrant base area and I appreciate this business gives it. If there was a 5 year motion on the floor I would be supporting it.

Commissioner Brookshire –

August 25, 2011

## **DRAFT**

You could offer to amend the motion. I will support the use. At some point in time you have to decide how many years is it temporary and how many years is it a zone change. Philosophically I agree with Commissioner Meyer's point.

Commissioner Lacy –

I would echo those same concerns. At some point temporary becomes not temporary. I'm a little bit concerned about the length. I would feel better with a 5 year at this time.

Commissioner Hanlen –

Going with a straight 5?

Commissioner Lacy –

I wouldn't put a 2 on top, because 1 of the things I don't want to create is a 2 year on the fly.

Commissioner Hanlen –

To my recollection we haven't approved any straight 7 year vesting approvals for any of the projects.

Commissioner Lacy –

They've all been 5+2.

Commissioner Hanlen –

Since we don't have any criteria to review it would need to be a straight period of time.

Commissioner Lacy –

Is your motion going to stand with the 7 year approval?

Commissioner Hanlen –

I agree with you. I would be open to changing it to 5.

Commissioner Lacy –

You're fine with a friendly amendment to make it a 5 year approval?

(Commissioner Hanlen and Commissioner Robbins are fine with the 5 year changed from 7 year vesting period).

Commissioner Lacy –

We recognize the value it brings to vitality in the base area. We definitely want that. I don't think anybody up here doesn't want that. Just a little bit of concern on the length of time for what's supposed to be a temporary item.

### **VOTE**

Vote: 6-0

Voting for approval of motion to approve: Lacy, Brookshire, Hanlen, Levy, Meyer and Robbins

Absent:

Two positions vacant

***DRAFT***

Discussion on this agenda item ended at approximately 5:28 p.m.

# Agenda Item # 14

## CITY COUNCIL COMMUNICATION FORM

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**FROM:** Seth Lorson, AICP, City Planner (Ext. 280)  
Tyler Gibbs, AIA, Director of Planning and Community Development  
(Ext. 244)

**THROUGH:** Jon Roberts, City Manager, (Ext. 228)

**DATE:** September 21, 2010

**ITEM:** Appeal of Planning Commission denial of a Preliminary Plat for the  
Betterview Business Park Subdivision Lots 4 – 5 (#PP-09-06).

**NEXT STEP** If City Council overturns Planning Commission the applicant can  
apply for a Final Plat and move forward with the concurrent Final  
Development Plan. If City Council upholds the denial the application  
will be terminated.

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ORDINANCE  
 RESOLUTION  
 MOTION  
 DIRECTION  
 INFORMATION

---

**PROJECT NAME:** Clear Water Studios - #PP-09-06

**PETITION:** Overturn a denial by Planning Commission of a Preliminary Plat to  
reconfigure 2 lots and 2 outlots into 3 buildable lots and process 1  
variance.

**LOCATION:** Physical Address: 1725 & 1825 13<sup>th</sup> Street

**APPLICANT:** Gerencser, LLC C/O Ben Spiegel  
P.O. Box 775654  
Steamboat Springs, CO 80477  
(970) 879-7580

**PC ACTION:** Planning Commission voted to deny on August 25, 2011; Vote: 3-2; Voting  
for motion to deny: Levy, Robbins, and Brookshire. Voting against motion to  
deny: Meyer and Lacy. Recused: Hanlen

**EXECUTIVE SUMMARY:**

**1. Background Information:**

The applicant is appealing the Planning Commission's denial of their request for a Preliminary Plat that would reconfigure currently platted outlots and allow for the proposed development of the Betterview Business Park Subdivision.

The existing outlots were platted in 2005 to provide protection for wetlands consistent with the Army Corps of Engineers evaluation and permit in effect at the time. The property had been proposed for development under the limitations of an Army Corps of Engineers Nationwide Permit which restricted wetlands disturbance within lots 1-6 to no more than 1/2 acre. The Preliminary Plat for Betterview Business Park Subdivision (PP-05-05) created 6 lots and 6 outlots with the following condition of approval:

*3. There shall be no disturbance or improvements within the Outlots 1-6 (except those necessary for subdivision improvements such as roadways, sidewalks, and water and sewer infrastructure, or landscaping).*

When the Betterview Business Park Subdivision was annexed into the City of Steamboat Springs in 2005 the Pre-annexation agreement also supported the limitations of the Nationwide Permit as noted in section I. B. that "the development of the property shall not disturb more than 1/2 acre of wetlands..." (See Attachment 5 of PC report.).

This condition was intended to be conveyed to the Final Plat as represented in the configuration of outlots and building envelopes. However, the Final Plat lacks a note to this affect. In addition, the outlots were not deed restricted as intended in the special conditions of the Army Corps of Engineers Nationwide wetlands permit that was issued in 2005.

Subsequently, the applicant applied for and the Army Corps of Engineers approved the request for an Individual Permit allowing for more extensive development of the wetlands. This approval had the affect of lifting the Corp's 1/2 acre limitation with additional requirements for specific on-site and off-site mitigation. The Corps of Engineers did not notify the City of Steamboat Springs of this review and approval at the time as required by their procedures. The Environment Protection Agency did comment and raised concerns about the proposal but did not take action to block approval of the Individual Permit. (See Attachment 10 of PC report.).

In March 2010, the Director of Planning and Community Development (then Tom Leeson) issued a determination consistent with the Pre-Annexation agreement reaffirming the City's position that the outlots (4 & 5) are "considered non-disturb areas and shall not be subdivided and/or developed in any manner." Under a mutually agreed upon process between the applicant and the City, the applicant appealed the Director's determination to City Council on May 18, 2010. The City Council upheld the director's determination unanimously, 6 – 0.

The applicant subsequently conferred with the City Attorney and the Director of Planning and Community Development (now Tyler Gibbs) with regard to their ability to request reconsideration of their application. The applicant stated that they did not believe that the City

had made adequate consideration of the Corps of Engineer's approval of an Individual Permit for development of the property. The City Attorney advised that the applicant always has the right to re-apply.

The Planning Director reviewed all relevant files to ascertain if there were any changed conditions that would warrant reconsideration. Given that the City of Steamboat Springs has not adopted specific wetlands standards or evaluation procedures that would supersede the Corps of Engineer's findings in this case, the Planning Director has made a determination that disturbance of wetland areas for development purposes shall be referred to the Army Corps of Engineers and that the reconsideration was warranted by the Corps issuance of an Individual Permit (See section V. Principal Discussion Items of PC report.).

Adjoining property owners and the EPA also raised concerns about the ability of the project to adequately pass expected run off as well as impacts on ground water levels, due to the filling of the wetlands (See Attachment 12). During the Spring of 2011 the Army Corps of Engineers reopened the comment period to reassess the wetland permit. The perceived drainage issue was resolved by the applicant by providing the necessary information in May 2011 (See Attachment 11 and Attachment 13 of PC report). Additionally, the Environmental Protection Agency recommended installation of foundations drains to help mitigate ground water concerns.

## **2. Planning Commission Discussion:**

The discussion was principally about the wetland impact of the proposed development. The Director of Planning and Community Development has determined that pending the development and adoption by the City of specific, enforceable standards regarding wetlands, development review at the City of Steamboat Springs will refer wetland issues to the Army Corps of Engineers which has a process for review and standards for filling and mitigating wetlands.

The Army Corps of Engineers wetland permitting process was questioned as to its relationship to the Environmental Protection Agency (EPA). This question was raised due to the EPA letter of objection during the comment period for the applicant's wetland permit. Subsequently, the Army Corps of Engineers has confirmed that the EPA does have veto power over wetland permits and did not exercise this right for this particular permit.

The pre-annexation agreement for Betterview Business Park Subdivision states, "Owner further agrees Owner's development of the property shall not disturb more than ½ acre of the wetlands identified and located by the wetlands study. Owner agrees that the City may enforce this restriction by withholding any development or building permit approval sought by Owner for a project that does not conform to this wetlands disturbance restriction." The applicant is requesting to fill 0.83 acres of wetlands. It was also noted that this agreement runs with the land and is binding on all future owners. Planning Commission discussed at length the relevance of this agreement and the consistency of not enforcing this for Lots 4 & 5 while it was enforced for Lots 1, 2, and 6.

Tyler Gibbs noted the City Attorney's perspective that the City has choice in the matter of enforcing the terms of the pre-annexation agreement or not.

In reference to the pre-annexation agreement, Commissioner Robbins specifically wanted the following question to be noted for the record; “What kind of liability would the City have if one of the other owners decided to enforce the terms of this contract?” Commissioner Robbins stated that she did not intend for staff to try and respond to this in the public hearing.

Motion to Deny

The motion to deny was based upon the above-mentioned language from the pre-annexation agreement and its enforcement for previously developed properties. Additionally, local wetlands are referenced in the community plan for protection and conservation which was cited in the motion to deny.

**3. Public Comment:**

One adjacent property owner expressed concern about the potential of ground water rising on his property as a result of this development and disagreed with the determination to refer wetland issues to the Army Corps of Engineers. Three other people spoke in favor of the proposed development and its benefit as a mixed-use infill project.

**4. New Information:**

None.

**5. Recommended Motion:**

Planning Commission recommends denial of the Preliminary Plat for Betterview Business Park Subdivision Lots 4 – 5 (PP-09-06).

**Alternative Motion:**

Should City Council overturn Planning Commission’s decision and find that Preliminary Plat for Betterview Business Park Subdivision Lots 4 – 5 (PP-09-06) to reconfigure 2 lots and 2 outlots into 3 buildable lots and process 1 variance **consistent** with the required findings for approval, the following conditions shall apply:

1. Prior to approval of a Final Plat a Community Housing Plan shall be approved.
2. Each phase of the phasing plan shall meet the requirements of the CDC on its own and shall contain the required streets, utilities, landscaping, and other improvements that are required per this approval. Prior to approval of a final plat, improvements outlined in CDC 26-141 Phasing shall be complete or collateral provided (for non-critical improvements).
3. Plat notes shall be created for the remaining wetlands to be “non-disturb” areas.
4. The acceptable completion of water and sewer infrastructure is considered “critical improvements” to this project. Building permits for or within this development, except for building C, shall not be approved until such time as the water and sewer infrastructure has been inspected, and granted preliminary acceptance by the City of Steamboat Springs Utility Division. Preliminary acceptance requirements include correction of all punch list items, acceptance of as-builts and record documents and acceptance of any and all necessary easements. Inspections for acceptance shall only occur during the months of May through October.

CITY COUNCIL COMMUNICATION FORM

Betterview Business Park Sub. Lots 4 - 5 - #PP-09-09

September 6, 2011

5. Civil construction plans prepared by a civil engineer licensed in the state of Colorado must be submitted to Public Works for review by Public Works, Planning, and City Utilities for review and approval prior to the start of any construction. We recommend submitting the construction plans a minimum of five weeks prior to start of construction.
6. Construction or placement of any improvements within a public utility easement including but not limited to trees, boulders, fences, berms, structures, private utility lines etc. that impairs the use of the easement as intended is precluded.
7. Based upon the existing conditions plan, it appears that the original developer of Betterview Business Park installed the private pressure sewer main outside of its intended easement. Prior to approval of the final plat, the applicant must either re-describe this easement as it passes through existing lots 4 and 5 such that the easement is a minimum of ten feet wide and centered on the existing sewer line, or the applicant must relocate the line as it passes through existing lots 4 and 5 such that it is located within the center of the existing easement. Any relocation of this sewer must receive design, inspection, and record documentation by the civil engineer of record.
8. Prior to final plat approval, the applicant must receive preliminary acceptance for the public water infrastructure or enter into an improvements agreement and post surety for the public water infrastructure. Please be advised that engineered construction drawings approved by the Utility Division are required prior to finalizing an improvements agreement and posting surety.
9. Civil construction plans prepared by a licensed Colorado civil engineer must be submitted to Public Works for review by Public Works, Planning, and City Utilities for review and approval prior to approval of any improvements agreement, building permit, or final plat and prior to the start of any construction. We recommend submitting the construction plans a minimum of five weeks prior to final plat application to allow time for review, comment response, and approval.
10. The developer shall pay his/her proportionate share of future traffic signal improvements at US40/Elk River Road intersection, calculated at **0.4%** of \$7,000,000 or **\$28,000** and at 13<sup>th</sup> St/Lincoln Avenue intersection, calculated at **1.3%** of \$3,300,000 or **\$42,900**. Payment shall be submitted prior to recordation of Final Plat or issuance of building permit, whichever comes first.
11. All proposed grading, fill of wetlands areas, and mitigation for wetlands preservation shall be complete by June 1, 2014 unless an extension to this timeframe has been approved by the Army Corp of Engineers and such proof of extension is provided to the City of Steamboat Springs.
12. Access easement shall be granted to Betterview Business Park Lot 3 to encompass the additional width of the proposed access entrance off of 13<sup>th</sup> St.
13. The following items to be identified for each phase on the construction plans are considered critical improvements associated with the subdivision and shall be constructed or collateral shall be placed in surety as part of this application:
  - i. Public drainage improvements including detention ponds
  - ii. Public sidewalk improvements
  - iii. Installation of street and traffic control signs
  - iv. Shared Access drive loop
  - v. Storm water quality features. (Vegetation must be established prior to CO when required as part of the feature design.)



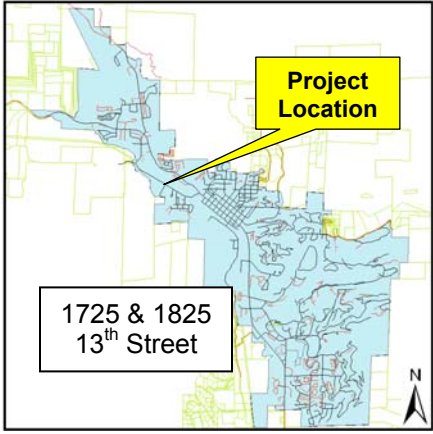
14. As a condition of approval when fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except when approved alternative methods are provided. This means any utilities in the road need to be in and the road completed to an all-weather driveable surface and fire hydrants in and accepted by the water purveyor before the Fire Department can sign off on building permits.
15. As a condition of approval all fire department access roads shall be dedicated to the City of Steamboat Springs as "Emergency Access Easements" and shall be noted on the Final Plat. Also a "Dedication of Easement" form supplied by the City shall be completed and recorded by the County Clerk's Office.
16. "FIRE LANE, NO PARKING, TOW-A-WAY ZONE" signs to be added along private access as approved by Fire Prevention.

**LIST OF ATTACHMENTS**

- Attachment 1. PC Staff Report PP-09-06 and attachments, August 25, 2010.
- Attachment 2. Staff Memo to PC with additional information.
- Attachment 3. Draft Planning Commission Minutes for August 25, 2010.
- Attachment 4. Applicant's letter of appeal from Planning Commission's denial.



## DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT STAFF REPORT

PLANNING COMMISSION AGENDA ITEM # 3: PP-09-06		
<b>Project Name:</b>	Clear Water Studios at Betterview Business Park Subdivision Lots 4 & 5	
<b>Prepared By:</b>	Seth E. Lorson, AICP, City Planner (Ext. 280)	
<b>Through:</b>	Tyler Gibbs, AIA, Director of Planning and Community Development (Ext. 244)	
<b>Planning Commission (PC):</b>	August 25, 2011	
<b>City Council (CC):</b>	September 6, 2011	
<b>Zoning:</b>	Industrial (I)	
<b>Applicant:</b>	Gerencser, LLC C/O Ben Spiegel P.O. Box 775654  Steamboat Springs, CO 80477	
<b>Location:</b>	1725 & 1825 13 <sup>th</sup> Street	
<b>Request:</b>	Preliminary Plat to reconfigure two existing lots and two existing outlots into 3 lots and to process 1 variance to subdivision standards in reference to an access easement exceeding 100 feet.	

Development Statistics - Overview		Staff Report - Table of Contents		
<b>Area:</b>	148,104 square feet; 3.4 acres	<b>Section</b>		<b>Pg</b>
<b>Number of Lots:</b>	3 lots (Lot 1: 52,794 SF; Lot 2: 46,467 SF; Lot 3: 48,738 SF)	I.	Staff Analysis Summary	3-2
		II.	Project Location	3-2
		III.	Background Information	3-3
		IV.	Project Description	3-3
		V.	Principal Discussion Items	3-4
		VI.	Staff/Agency Analysis	3-4
		VII.	Staff Findings and Conditions	3-9
		VIII.	Attachments	3-11

**I. COMMUNITY DEVELOPMENT CODE (CDC) – STAFF ANALYSIS SUMMARY**

**CDC - SECTION 26-67(E):** NO PRELIMINARY PLAT SHALL BE APPROVED UNLESS THE CITY COUNCIL FINDS THAT THE PLAN MEETS ALL OF THE FOLLOWING CRITERIA:

Subsection		Consistent			Notes
		Yes	No	NA	
1)	Conformity with the Community Development Code	<input checked="" type="checkbox"/>			
2)	Verification of Developable Lots	<input checked="" type="checkbox"/>			
3)	Conformance with other Applicable Regulations	<input checked="" type="checkbox"/>			
4)	Conformity with Community Plan	<input checked="" type="checkbox"/>			
5)	Compatible with Surrounding Area	<input checked="" type="checkbox"/>			
6)	Suitable for Development	<input checked="" type="checkbox"/>			
7)	Phasing	<input checked="" type="checkbox"/>			
8)	Variance	<input checked="" type="checkbox"/>			

**Staff Finding:** Staff finds the Preliminary Plat for Clear Water Studios is in compliance with the Community Development Code criteria for approval of a Preliminary Plat.  
*(Detailed policy analysis is located in Section V; Staff Findings and Conditions are in Section VI)*

**II. PROJECT LOCATION**



### **III. BACKGROUND INFORMATION**

In 2005, Betterview Business Park Subdivision was annexed into the City of Steamboat Springs. The Pre-annexation agreement notes in section I. B. that “the development of the property shall not disturb more than ½ acre of wetlands...” (See Attachment 5.).

In 2005, the Preliminary Plat for Betterview Business Park Subdivision (PP-05-05) created 6 lots and 6 outlots. An Army Corps of Engineers wetland permit was obtained for developing the wetlands in Lots 1 – 6. The outlots were created to provide protection for the remaining wetlands as is noted in the following condition of approval:

*3. There shall be no disturbance or improvements within the Outlots 1-6 (except those necessary for subdivision improvements such as roadways, sidewalks, and water and sewer infrastructure, or landscaping).*

This condition was conveyed to the Final Plat as outlots and building envelopes but lacks a plat note. The outlots were not deed restricted as intended in the special conditions of the Army Corps of Engineers nationwide wetlands permit that was issued in 2005.

In March 2010, the Director of Planning and Community Development (then Tom Leeson) issued a determination that the outlots (4 & 5) are “considered non-disturb areas and shall not be subdivided and/or developed in any manner.” Under a mutually agreed upon process between the applicant and the City, the applicant appealed the director’s determination to City Council on May 18, 2010. The City Council upheld the director’s determination unanimously, 6 – 0.

Subsequent to the above-mentioned City Council meeting the Director of Planning and Community Development (now Tyler Gibbs) has made a determination that disturbance of wetland areas for development purposes shall be referred to the Army Corps of Engineers (See section V. Principal Discussion Items.).

Army Corps of Engineers initially approved the applicant’s wetlands permit without proper notification as required by their procedures. Also, there was some uncertainty about the ability of the project to adequately pass expected run off, due to the filling of the wetlands, without flooding neighboring properties (See Attachment 12). The Army Corps of Engineers subsequently re-opened the comment period to reassess the wetland permit. The perceived drainage issue was resolved by the applicant by providing the necessary information in May 2011 (See Attachment 11 and Attachment 13). Additionally, the Environmental Protection Agency disagreed with the Army Corps determination that the applicant meets the criteria for a wetlands permit (See Attachment 10).

### **IV. PROJECT DESCRIPTION**

The application is a concurrent review of a Preliminary Plat and a Final Development Plan to subdivide 2 lots and 2 outlots into 3 lots and construct 5 buildings to be built in 3 phases. The

existing lots (Betterview Sub. Lots 4 [63,162 sf] & 5 [36,590 sf]) and outlots (Betterview Sub. Outlots 4 [36,590 sf] & 5 [12,632 sf]) are encumbered by wetlands and building envelopes.

The Preliminary Plat proposal is to remove the existing building envelopes and outlots dividing the lots into 3 buildable lots (Lot 1: 52,794 SF; Lot 2: 46,467 SF; Lot 3: 48,738 SF) and create new building envelopes and non-disturbance areas. The applicant has obtained an Army Corps of Engineers wetland permit to fill .99 acres of wetlands and purchase .84 credits at Finger Rock Preserve wetland bank (permit # SPK-2001-75341). A proposed private access road and associated easement exceeding 100 feet in length is a variance to the subdivision standards (CDC Sec. 26-184 (c) (4)).

## V. PRINCIPAL DISCUSSION ITEMS

### Wetlands

The Director of Planning and Community Development has made a determination that disturbance of wetland areas for development purposes shall be referred to the Army Corps of Engineers. This is a result of the City's undefined wetland policy. Below are excerpts from the SSACP referencing the community's desire to create a wetland policy but this has not yet happened.

***Goal NS-3: Our community will identify critical wetland areas and critical wildlife habitats, and enhance and conserve these areas for current and future generations.***

### *Rationale*

*The community has indicated through surveys that protecting and maintaining wildlife habitat is an important value. Wetlands are important habitats for birds and wildlife. The City and County do not have specific wetland protection regulations. Such regulations should provide for a setback from critical wetlands and include other protection strategies. Though wetlands are protected by federal regulations, these regulations do not define buffer areas or mitigation requirements that may be appropriate for a particular community or location.*

### ***Policy NS-3.1: Develop a local Wetland Protection Program.***

*A local wetland protection program can provide for a greater degree of local control and focus more attention on protection of the resource. It can also provide greater protection for isolated wetlands, or those wetlands not considered to be "jurisdictional" as a result of recent court cases.*

***Strategy NS-3.1(a): Prepare a Wetlands Inventory*** - *The city and county should cooperate with willing landowners to inventory wetlands in the study area. The inventory can be at a coarse level of detail (e.g., based on existing sources and interpretation of aerial photos accompanied by limited field verification), but it should be designed to identify all potential wetland areas. No disturbance of these areas would be allowed prior to more detailed study, which would either confirm the presence of wetlands or trigger a requirement for a more detailed delineation, or result in a determination that no wetlands are present.*

**Strategy NS-3.1(b): Develop a Wetlands Protection Program and Standards** – Key elements of a local program include establishment of a buffer zone and definition of mitigation requirements. There are two basic approaches in defining an appropriate buffer distance. One is to make a determination on a case-by-case basis after considering the importance of an individual wetland and the functions it serves. This approach provides more flexibility but it also requires more study and administrative time in implementing the regulation. An alternative approach is to base the buffer distance on the size of the wetland (e.g., a wetland less than an acre in size would have a 50-foot buffer distance, while a wetland an acre in size or greater would have a 100-foot buffer). It should be noted that a wetland buffer is not synonymous with a water body setback requirement, since some wetlands may not have standing water for much of the year.

A similar choice arises with respect to determining mitigation requirements. They can either be based on the quality and functionality of each wetland, which offers the flexibility as well as the disadvantages noted above, or on a pre-determined ratio, such as affecting one acre of wetlands is accompanied by a requirement to replace it with 1.5 acres of new wetlands.

**Table NS-1: Summary of Current Resource Protection Measures in City and County Land Development Codes**

Resource Type	Steamboat Springs	Routt County	Proposed Changes
Wetlands	Conditions of approval for new development require conformity with community plan and minimizing of impacts to wetlands. No specific standards are stated. In some cases, the setback from water bodies would be applicable. See below.	No specific reference is made to wetlands.	Adopt a local wetland ordinance that provides an appropriate buffer distance.

**VI. STAFF / AGENCY ANALYSIS**

**CDC Sec. 26-67 (e) Criteria for Review and Approval.**

Preliminary Plats shall be approved only where the plat, supporting materials and documentation, and any testimony and evidence presented during a public hearing (where applicable), establishes that all of the following criteria have been met:

1. **Conformity with Community Development Code.** *The proposed Preliminary Plat substantially conforms to all applicable requirements of the Community Development Code.*

*Staff Analysis:* **Consistent.** The proposed subdivision is consistent with Article VII. Subdivision Regulations, with the exception of the variance being processed with this application, and includes building envelopes as per Sec. 26-183 (a) (8) and non-disturb areas for the remaining wetlands.

2. **Verification of Developable Lots.** *Each lot proposed for development in the subdivision has demonstrated, to the satisfaction of the director, that it is developable. Elements reviewed for developability include a demonstrated ability to meet the requirements of this Community Development Code in terms of zone district standards, development standards, and subdivision standards:*

*Staff Analysis:* **Consistent.** The proposed development in the wetlands and outlots have demonstrated to the “satisfaction of the director” that it is developable. The director made a determination that the City of Steamboat Springs will defer to the Army Corp of Engineers as development pertains to delineated wetlands. The Army Corp of Engineers has issued wetland permit to fill .99 acres of wetlands and purchase .84 credits at Finger Rock Preserve wetland bank (permit # SPK-2001-75341).

3. **Conformance with other Applicable Regulations.** *The proposed subdivision conforms with applicable regulations and requirements including but not limited to provisions of state law, steamboat springs municipal code, and any requirements set by any capital improvement plan or program, or any approved subdivision improvements agreement or development agreement for the property.*

*Staff Analysis:* **Consistent.** Although the Pre-Annexation Agreement and the original Preliminary Plat have conditions requiring no more than ½ acre of wetland disturbance for the entire subdivision, the proposal for a new Preliminary Plat is considered an entirely new and separate application as determined by the City Attorney. Which allows for these conditions to be altered through the Preliminary Plat process.

4. **Conformity with Community Area Plan.** *The proposed subdivision shall conform to the preferred direction and any applicable policies of the community area plan.*

*Staff Analysis:* **Consistent.** Below are sections of the SSACP that are consistent with the proposed development.



**Goal LU-1:** *Our community will promote a functional, compact, and mixed-use pattern that integrates and balances residential and non-residential land uses.*

**Goal LU-2:** *Our community supports infill and redevelopment of core areas.*

**Policy CD-1.4:** *Encourage high quality site planning and building design.*

5. **Compatibility with Surrounding Area.** *The proposed subdivision shall be compatible with the character of the existing land uses in the area and shall not adversely affect the future development of the surrounding area.*

**Staff Analysis: Consistent.** The proposed development is industrial in use with the ability to create residential units on the second floor. According to the drainage report, and confirmed by the Army Corps of Engineers, filling the existing wetlands will not have an adverse impact on neighboring properties during peak snow melt run-off.

6. **Suitability for Development.** *The land proposed for subdividing shall be physically suitable for development, considering its topography (the presence of steep or unstable slopes), natural resource features (such as wetlands, floodplains, and sensitive wildlife habitat areas), and any environmental hazards (such as avalanche or landslide paths, rockfall hazard areas, or wildfire hazard areas) that may limit the property's development potential.*

**Staff Analysis: Consistent.** The proposed lots have significant wetlands and it has been determined that disturbance of wetland areas for development purposes shall be referred to the Army Corps of Engineers. The Army Corps of Engineers has approved this development and the associated wetland filling and mitigation.

7. **Phasing.** *If the proposed development is to be developed in phases, then each phase shall contain the required streets, utilities, landscaping, and other improvements that are necessary and desirable for residents of the project for that phase. Each phase of the phasing plan shall meet the requirements of the CDC on its own unless a variation is granted. If the development incorporates any amenities for the benefit of the City, such as trail connections, these shall be constructed in the first phase of the project, or, if this is not practical, then as early in the project as is reasonable.*

**Staff Analysis: Consistent.** The project is proposed in 3 phases with each phase having complete improvements. The project is required to build improvements or provide collateral prior to final plat (see condition of approval #1).

8. **Variance criteria.** *Preliminary plats seeking variation from up to two (2) subdivision standards listed in article VII, subdivision standards, where such variances do not qualify as minor adjustments shall meet the following criteria for approval in addition to the criteria in subsections 26-67(e)(1)--(7):*



Staff Analysis: **Consistent.** The only requested variance is to the subdivision standard regarding a private access road and associated easement exceeding 100 feet in length is a variance to the subdivision standards (CDC Sec. 26-184 (c) (4)).

- a. *Legal use.* The property and the use of such property for which the variance is requested is in full compliance with all requirements of the zone district in which the property is located, or there is a legal nonconforming structure or lot, or there is a conforming structure housing a legal nonconforming use. No variance may be granted which would permit or expand any unlawful use of property.

Staff Analysis: **Consistent.** The proposed plat is in conformance with the dimensional standards of the Industrial zone district.

- b. *Injury to adjoining property mitigated.* The variance will not permanently injure or adversely impact legal conforming uses of adjacent property; or the applicant has accurately assessed the impacts of the proposed variance and has agreed to mitigate those impacts. In making this determination the city council shall begin with the assumption that variations from development standards create impacts on adjacent properties, and shall place the burden of proof on the applicant to show:
  1. Impacts to adjacent properties are presumed.
  2. That there are no impacts, or that the impacts have been adequately mitigated. Unsupported opinions of impacts from surrounding property owners shall not be conclusive evidence of impacts.

Staff Analysis: **Consistent.** The proposed variance will have no adverse impacts on adjoining properties. The variance will allow for fewer accesses onto 13<sup>th</sup> Street and therefore allow for greater ease of travel.

- c. *Advantages outweigh disadvantages.* The applicant shall bear the burden of proof and demonstrate that the advantages of the variance substantially outweigh its disadvantages to the community and to neighboring lands.

Staff Analysis: **Consistent.** The proposed variance limits the number of accesses onto 13<sup>th</sup> Street to two. For a private drive to meet this subdivision criterion it would have to create a third access. A shared drive between lots is more desirable for the community by allowing for greater ease of travel.

- d. *Superior development.* The applicant shall demonstrate that the requested variation(s) from the dimensional or development standards will result in a development which better meets the intent of the underlying zone district and adopted plans.

Staff Analysis: **Consistent.** The proposed variance limits the number of accesses onto 13<sup>th</sup> Street to two. For a private drive to meet this subdivision criterion it would have to create a third access. A shared drive between lots is more desirable for the community by allowing fewer accesses onto 13<sup>th</sup> Street and facilitating parking in the rear of all three proposed lots.

- e. *Minimum relief.* The applicant shall demonstrate that the requested variation(s) is (are) the least modification possible of the CDC that will meet the design goals of the development.

Staff Analysis: **Consistent.** Lots 4 & 5 are at a fixed size and the access and site plan is the most logical for this proposal.

## VII. STAFF FINDING & CONDITIONS

### Finding / Motion

Staff / Planning Commission finds that Clear Water Studios at Betterview Business Park Lots 4 & 5, Preliminary Plat #PP-09-06 to create three industrial lots is **consistent** with the CDC Sec. 26-67 (e) criteria for review and approval, with the following conditions:

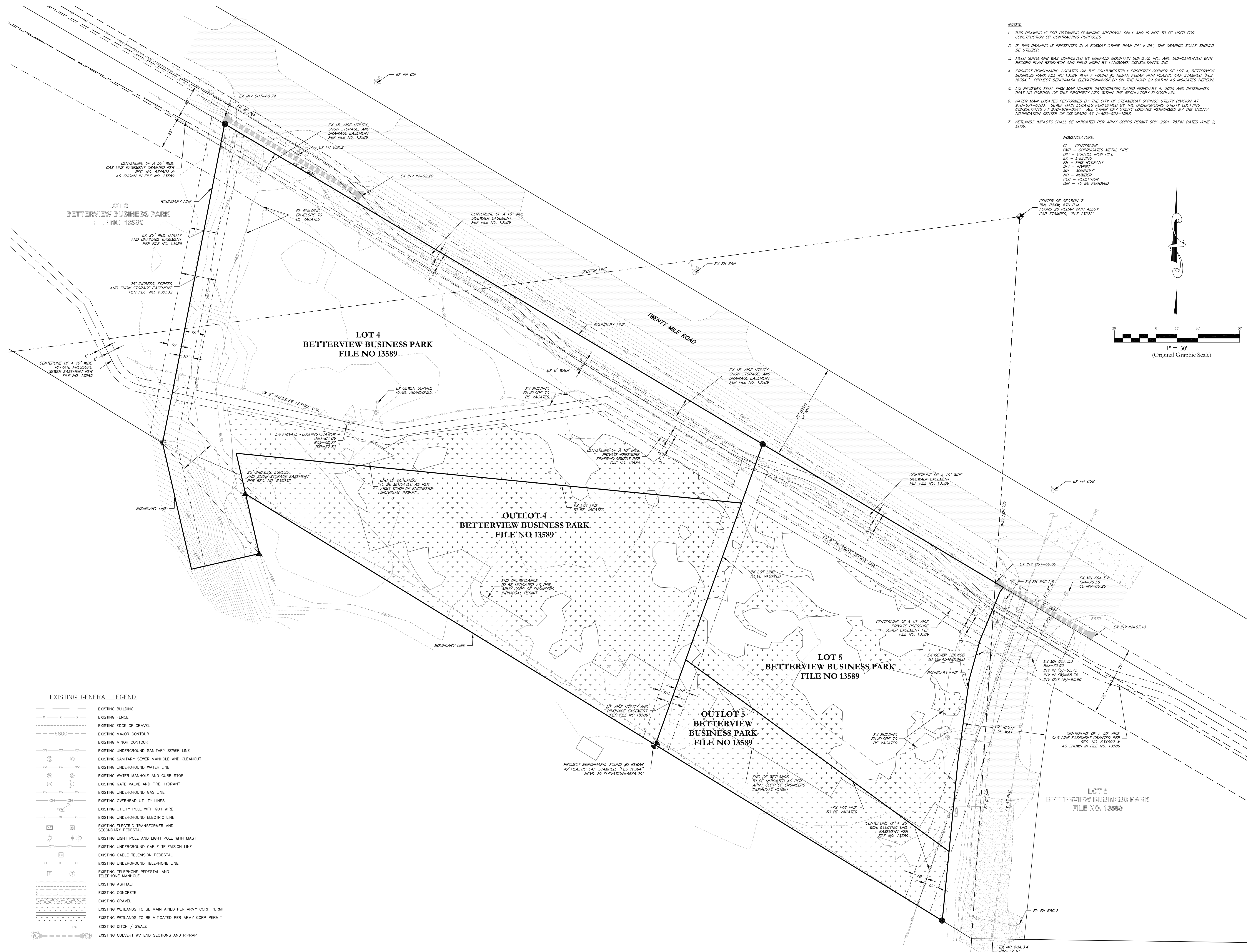
1. Each phase of the phasing plan shall meet the requirements of the CDC on its own and shall contain the required streets, utilities, landscaping, and other improvements that are required per this approval. Prior to approval of a final plat, improvements outlined in CDC 26-141 Phasing shall be complete or collateral provided (for non-critical improvements).
2. Plat notes shall be created for the remaining wetlands to be “non-disturb” areas.
3. The acceptable completion of water and sewer infrastructure is considered “critical improvements” to this project. Building permits for or within this development, except for building C, shall not be approved until such time as the water and sewer infrastructure has been inspected, and granted preliminary acceptance by the City of Steamboat Springs Utility Division. Preliminary acceptance requirements include correction of all punch list items, acceptance of as-builts and record documents and acceptance of any and all necessary easements. Inspections for acceptance shall only occur during the months of May through October.
4. Civil construction plans prepared by a civil engineer licensed in the state of Colorado must be submitted to Public Works for review by Public Works, Planning, and City Utilities for review and approval prior to the start of any construction. We recommend submitting the construction plans a minimum of five weeks prior to start of construction.
5. Construction or placement of any improvements within a public utility easement including but not limited to trees, boulders, fences, berms, structures, private utility lines etc. that impairs the use of the easement as intended is precluded.
6. Based upon the existing conditions plan, it appears that the original developer of Betterview Business Park installed the private pressure sewer main outside of its intended easement. Prior to approval of the final plat, the applicant must either re-describe this easement as it passes through existing lots 4 and 5 such that the easement is a minimum of ten feet wide and

centered on the existing sewer line, or the applicant must relocate the line as it passes through existing lots 4 and 5 such that it is located within the center of the existing easement. Any relocation of this sewer must receive design, inspection, and record documentation by the civil engineer of record.

7. Prior to final plat approval, the applicant must receive preliminary acceptance for the public water infrastructure or enter into an improvements agreement and post surety for the public water infrastructure. Please be advised that engineered construction drawings approved by the Utility Division are required prior to finalizing an improvements agreement and posting surety.
8. Civil construction plans prepared by a licensed Colorado civil engineer must be submitted to Public Works for review by Public Works, Planning, and City Utilities for review and approval prior to approval of any improvements agreement, building permit, or final plat and prior to the start of any construction. We recommend submitting the construction plans a minimum of five weeks prior to final plat application to allow time for review, comment response, and approval.
9. The developer shall pay his/her proportionate share of future traffic signal improvements at US40/Elk River Road intersection, calculated at **0.4%** of \$7,000,000 or **\$28,000** and at 13<sup>th</sup> St/Lincoln Avenue intersection, calculated at **1.3%** of \$3,300,000 or **\$42,900**. Payment shall be submitted prior to recordation of Final Plat or issuance of building permit, whichever comes first.
10. All proposed grading, fill of wetlands areas, and mitigation for wetlands preservation shall be complete by June 1, 2014 unless an extension to this timeframe has been approved by the Army Corp of Engineers and such proof of extension is provided to the City of Steamboat Springs.
11. Access easement shall be granted to Betterview Business Park Lot 3 to encompass the additional width of the proposed access entrance off of 13<sup>th</sup> St.
12. The following items to be identified for each phase on the construction plans are considered critical improvements associated with the subdivision and shall be constructed or collateral shall be placed in surety as part of this application:
  - i. Public drainage improvements including detention ponds
  - ii. Public sidewalk improvements
  - iii. Installation of street and traffic control signs
  - iv. Shared Access drive loop
  - v. Storm water quality features. (Vegetation must be established prior to CO when required as part of the feature design.)
13. As a condition of approval when fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except when approved alternative methods are provided. This means any utilities in the road need to be in and the road completed to an all-weather driveable surface and fire hydrants in and accepted by the water purveyor before the Fire Department can sign off on building permits.
14. As a condition of approval all fire department access roads shall be dedicated to the City of Steamboat Springs as "Emergency Access Easements" and shall be noted on the Final Plat. Also a "Dedication of Easement" form supplied by the City shall be completed and recorded by the County Clerk's Office.
15. "FIRE LANE, NO PARKING, TOW-A-WAY ZONE" signs to be added along private access as approved by Fire Prevention.

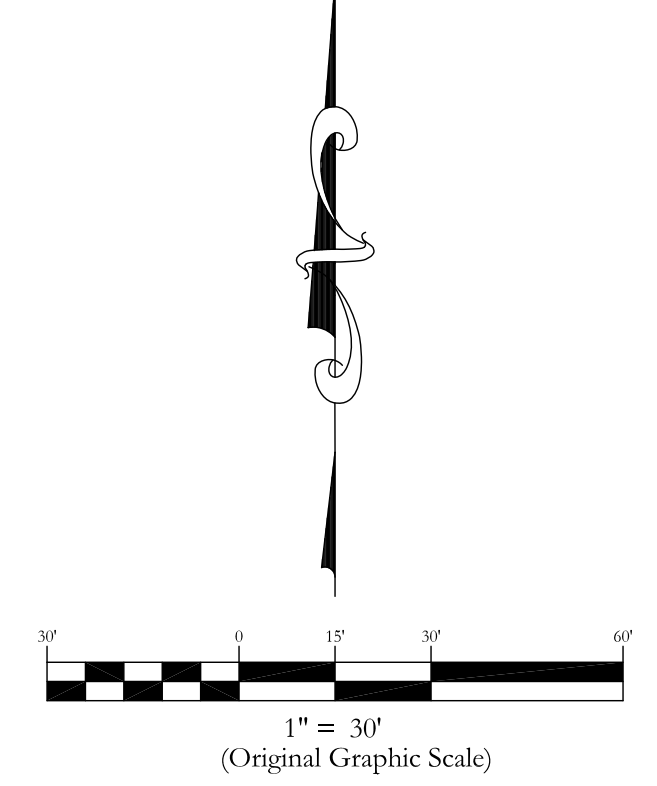
## **VIII. LIST OF ATTACHMENTS**

- Attachment 1 – Existing Conditions
- Attachment 2 – Proposed Plat
- Attachment 3 – Director’s Determination – March 30, 2010
- Attachment 4 – Applicant’s Narrative
- Attachment 5 – Betterview Annexation Ordinance
- Attachment 6 – City Council Administrative Appeal Staff Report – May 18, 2010
- Attachment 7 – City Council Minutes – May 18, 2010
- Attachment 8 – Public Comments
- Attachment 9 – Applicant’s Appeal Letter – April 7, 2010
- Attachment 10 – EPA Letter to the Army Corps of Engineers
- Attachment 11 – Applicant Letter to the Army Corps of Engineers
- Attachment 12 – Army Corps of Engineers Letter Regarding Reevaluation
- Attachment 13 – Army Corps of Engineers Letter of Approval



- NOTES:**
1. THIS DRAWING IS FOR OBTAINING PLANNING APPROVAL ONLY AND IS NOT TO BE USED FOR CONSTRUCTION OR CONTRACTING PURPOSES.
  2. IF THIS DRAWING IS PRESENTED IN A FORMAT OTHER THAN 24" x 36", THE GRAPHIC SCALE SHOULD BE UTILIZED.
  3. FIELD SURVEYING WAS COMPLETED BY EMERALD MOUNTAIN SURVEYS, INC. AND SUPPLEMENTED WITH RECORD PLAN RESEARCH AND FIELD WORK BY LANDMARK CONSULTANTS, INC..
  4. PROJECT BENCHMARK: LOCATED ON THE SOUTHWESTERLY PROPERTY CORNER OF LOT 4, BETTERVIEW BUSINESS PARK FILE NO. 13589 WITH A FOUND #5 REBAR WITH PLASTIC CAP STAMPED "7LS 16394". PROJECT BENCHMARK ELEVATION=6666.20 ON THE NAD 29 DATUM AS INDICATED HEREON.
  5. LCI REVIEWED FEMA FIRM MAP NUMBER 08107C082D DATED FEBRUARY 4, 2005 AND DETERMINED THAT NO PORTION OF THIS PROPERTY LIES WITHIN THE REGULATORY FLOODPLAIN.
  6. WATER MAIN LOCATES PERFORMED BY THE CITY OF STEAMBOAT SPRINGS UTILITY DIVISION AT 970-879-6531. SEWER MAIN LOCATES PERFORMED BY THE UNDERGROUND UTILITY LOCATING CONSULTANTS AT 970-879-0247. ALL OTHER DRY UTILITY LOCATES PERFORMED BY THE UTILITY NOTIFICATION CENTER OF COLORADO AT 1-800-922-1887.
  7. WETLANDS IMPACTS SHALL BE MITIGATED PER ARMY CORPS PERMIT SPH-2001-75341 DATED JUNE 2, 2009.

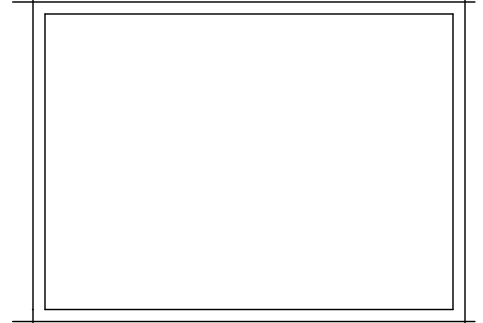
- NOMENCLATURE:**
- CL - CENTERLINE
  - CMP - CORRUGATED METAL PIPE
  - DIP - DUCTILE IRON PIPE
  - EX - EXISTING
  - FH - FIRE HYDRANT
  - INV - INVERT
  - MH - MANHOLE
  - NO - NUMBER
  - REL - RECEIPTION
  - RR - TO BE REMOVED



- EXISTING GENERAL LEGEND**
- — — — — EXISTING BUILDING
  - - - - - EXISTING FENCE
  - - - - - EXISTING EDGE OF GRAVEL
  - - - - - EXISTING MAJOR CONTOUR
  - - - - - EXISTING MINOR CONTOUR
  - - - - - EXISTING UNDERGROUND SANITARY SEWER LINE
  - - - - - EXISTING SANITARY SEWER MANHOLE AND CLEANDOUT
  - - - - - EXISTING UNDERGROUND WATER LINE
  - - - - - EXISTING WATER MANHOLE AND CURB STOP
  - - - - - EXISTING GATE VALVE AND FIRE HYDRANT
  - - - - - EXISTING UNDERGROUND GAS LINE
  - - - - - EXISTING OVERHEAD UTILITY LINES
  - - - - - EXISTING UTILITY POLE WITH GUY WIRE
  - - - - - EXISTING UNDERGROUND ELECTRIC LINE
  - - - - - EXISTING ELECTRIC TRANSFORMER AND SECONDARY PEDESTAL
  - - - - - EXISTING LIGHT POLE AND LIGHT POLE WITH MAST
  - - - - - EXISTING UNDERGROUND CABLE TELEVISION LINE
  - - - - - EXISTING CABLE TELEVISION PEDESTAL
  - - - - - EXISTING UNDERGROUND TELEPHONE LINE
  - - - - - EXISTING TELEPHONE PEDESTAL AND TELEPHONE MANHOLE
  - - - - - EXISTING ASPHALT
  - - - - - EXISTING CONCRETE
  - - - - - EXISTING GRAVEL
  - - - - - EXISTING WETLANDS TO BE MAINTAINED PER ARMY CORP PERMIT
  - - - - - EXISTING WETLANDS TO BE MITIGATED PER ARMY CORP PERMIT
  - - - - - EXISTING DITCH / SWALE
  - - - - - EXISTING CULVERT W/ END SECTIONS AND RIPRAP

**Brooks Design / Build, Inc.**  
 P.O. Box 775481  
 Steamboat, CO 80477  
 Phone: 970.879.6531  
 FAX: 970.879.9286  
 brooksdesignbuild.com

**Clear Water Studios**  
 at Twenty Mile Road  
 Lot #4 and Lot #5 Betterview Business Park  
 1825 & 1725 Thirteenth Street  
 Routt County, Colorado 80487  
 Existing Conditions Plan



This page prepared by:  
**LANDMARK CONSULTANTS, INC.**  
 141 9th Street - P.O. Box 774943  
 Steamboat Springs, Colorado 80477  
 Phone: 970.879.6531  
 www.LANDMARK.C.O.

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**C1.0**  
 Page: C1.0 of C1.5



# CLEARWATER STUDIOS AT TWENTY MILE ROAD

A REPLAT OF LOT 4 AND LOT 5, OF THE BETTERVIEW BUSINESS PARK SUBDIVISION  
 LOCATED IN THE NW¼, OF SECTION 7,  
 TOWNSHIP 6 NORTH, RANGE 84 WEST OF THE 6TH PRINCIPAL MERIDIAN,  
 CITY OF STEAMBOAT SPRINGS, COUNTY OF ROUTT, STATE OF COLORADO  
 ALSO KNOWN AS  
 CLEAR WATER STUDIOS AT TWENTY MILE ROAD

## PROJECT DATA TABLE

STANDARDS	I ZONE DISTRICT REQUIREMENTS	LOT 1	LOT 2	LOT 3
LOT AREA	NO MAX/NO MIN	1.24 ACRES	1.04 ACRES	1.12 ACRES
LOT WIDTH	NO MAX/30 FT MIN	50 MIN	192 MIN	179 MIN
LOT COVERAGE	0.6 MAX/NO MIN	N/A	N/A	N/A
UNITS PER LOT	DETERMINED BY F.A.R./NO MIN	N/A	N/A	N/A
FLOOR AREA RATIO	0.60 MAX	N/A	N/A	N/A
BUILDING HEIGHT	APH = 28 FT OH = 32 FT SPEC. WORK AREAS: APH = 40 FT OH = 40 FT	N/A	N/A	N/A
FRONT SETBACK	P/ACC = NO MAX P/ACC = 15 FT MIN	15'	15'	15'
SIDE SETBACK	P/ACC = NO MAX P/ACC = 10 FT	10'	10'	10'
REAR SETBACK	P/ACC = 10 FT	10'	10'	10'

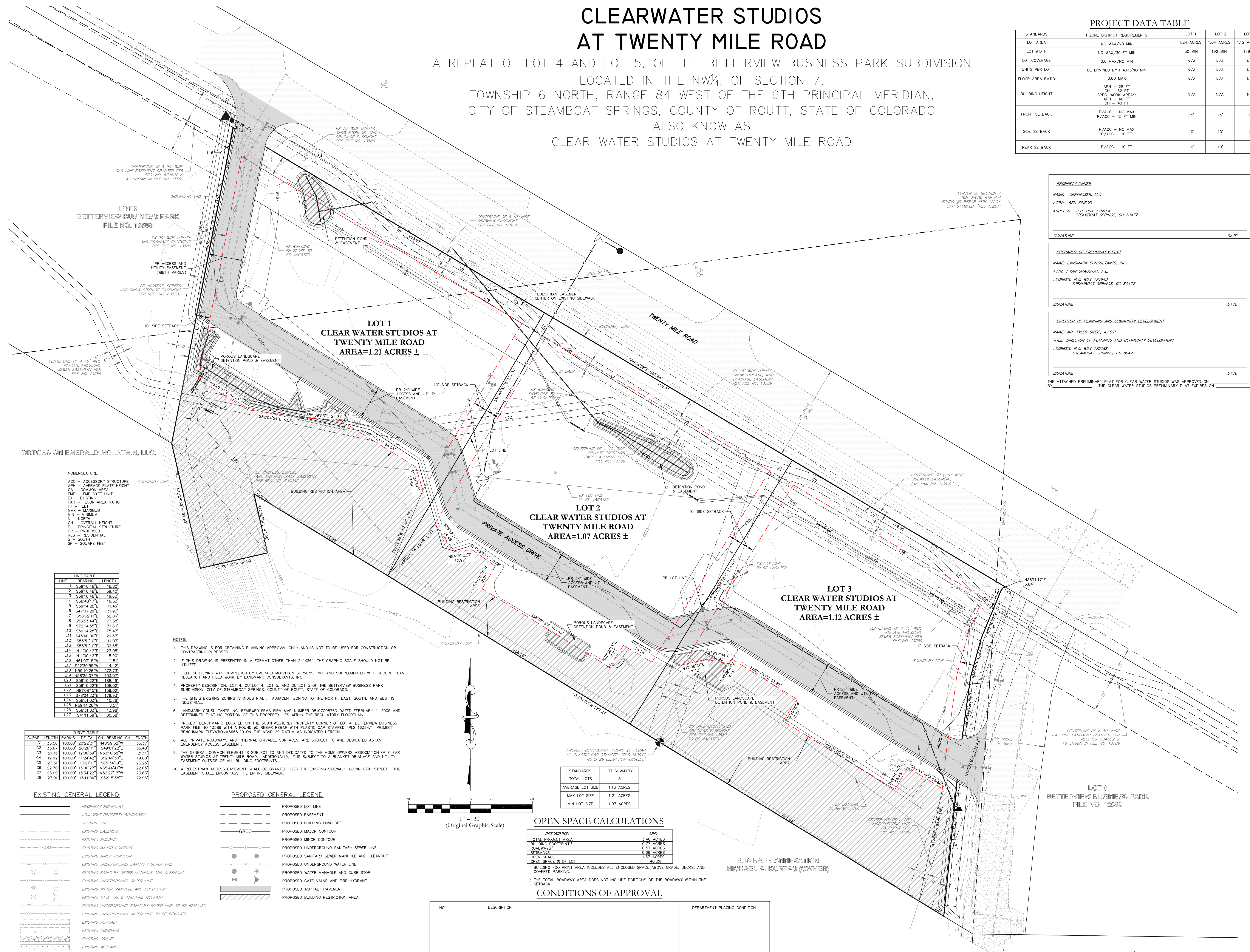
**Brooks Design / Build, Inc.**  
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**Clear Water Studios**  
 at Twenty Mile Road  
 Lot #4 and Lot #5 Betterview Business Park  
 1825 & 1725 Thirteenth Street  
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**PP1.0**  
 Page: PP1.0 of PP1.0



**PROPERTY OWNER**  
 NAME: GERENCSEK, LLC  
 ATTN: BEN SPIEGEL  
 ADDRESS: P.O. BOX 775654  
 STEAMBOAT SPRINGS, CO 80477  
 SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

**PREPARER OF PRELIMINARY PLAT**  
 NAME: LANDMARK CONSULTANTS, INC.  
 ATTN: RYAN SPAUSTAT, P.E.  
 ADDRESS: P.O. BOX 774943  
 STEAMBOAT SPRINGS, CO 80477  
 SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

**DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT**  
 NAME: MR. TYLER GIBBS, A.I.C.P.  
 TITLE: DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT  
 ADDRESS: P.O. BOX 775088  
 STEAMBOAT SPRINGS, CO 80477  
 SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

THE ATTACHED PRELIMINARY PLAT FOR CLEAR WATER STUDIOS WAS APPROVED ON \_\_\_\_\_  
 BY \_\_\_\_\_ THE CLEAR WATER STUDIOS PRELIMINARY PLAT EXPIRES ON \_\_\_\_\_

**LINE TABLE**

LINE	BEARING	LENGTH
L1	S59°10'48"E	18.807
L2	S59°10'48"E	59.407
L3	S59°10'48"E	19.613
L4	S34°48'17"E	16.313
L5	S59°14'28"E	71.465
L6	S47°37'29"E	31.363
L7	S58°21'11"E	52.866
L8	S58°34'47"E	73.388
L9	S72°14'55"E	31.400
L10	S59°14'28"E	75.477
L11	S45°40'08"E	29.677
L12	S58°31'07"E	11.003
L13	S58°31'10"E	32.652
L14	N11°00'42"E	23.055
L15	N11°00'42"E	15.907
L16	N61°07'15"W	1.511
L17	S22°20'25"W	14.421
L18	N59°10'26"W	272.713
L19	N58°25'07"W	433.077
L20	S59°10'27"E	188.491
L21	S59°10'27"E	108.002
L22	N81°08'15"E	159.022
L23	S78°04'23"E	179.932
L24	S58°31'03"E	10.796
L25	N59°14'28"W	8.011
L26	S58°31'03"E	13.985
L27	S41°11'59"E	80.588

**CURVE TABLE**

CURVE	LENGTH	RADIUS	DELTA	CH. BEARING	CH. LENGTH
C1	35.561	100.000	20°22'21"	N48°59'32"W	35.377
C2	35.471	100.000	20°22'21"	S49°01'22"E	35.485
C3	21.151	100.000	12°06'59"	N57°10'58"W	21.111
C4	19.821	100.000	11°24'42"	S52°49'50"E	19.885
C5	23.311	100.000	12°21'11"	S65°24'18"E	23.251
C6	22.701	100.000	13°00'27"	N65°44'41"W	22.651
C7	23.691	100.000	13°24'21"	N52°27'17"W	23.611
C8	23.011	100.000	13°11'04"	S54°25'38"E	22.981

- NOTES:**
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  - IF THIS DRAWING IS PRESENTED IN A FORMAT OTHER THAN 24"x36", THE GRAPHIC SCALE SHOULD NOT BE UTILIZED.
  - FIELD SURVEYING WAS COMPLETED BY EMERALD MOUNTAIN SURVEYS, INC. AND SUPPLEMENTED WITH RECORD PLAN RESEARCH AND FIELD WORK BY LANDMARK CONSULTANTS, INC.
  - PROPERTY DESCRIPTION: LOT 4, OUTLOT 4, LOT 5, AND OUTLOT 5 OF THE BETTERVIEW BUSINESS PARK SUBDIVISION, CITY OF STEAMBOAT SPRINGS, COUNTY OF ROUTT, STATE OF COLORADO.
  - THE SITE'S EXISTING ZONING IS INDUSTRIAL. ADJACENT ZONING TO THE NORTH, EAST, SOUTH, AND WEST IS INDUSTRIAL.
  - LANDMARK CONSULTANTS, INC. REVIEWED FEMA FIRM MAP NUMBER 0810700870D DATED FEBRUARY 4, 2005 AND DETERMINED THAT NO PORTION OF THIS PROPERTY LIES WITHIN THE REGULATORY FLOODPLAIN.
  - PROJECT BENCHMARK: LOCATED ON THE SOUTHWESTERLY PROPERTY CORNER OF LOT 4, BETTERVIEW BUSINESS PARK FILE NO. 13589 WITH A FOUND #5 REBAR WITH PLASTIC CAP STAMPED "PLS 16394". PROJECT BENCHMARK ELEVATION=6666.00 ON THE NODD 29 DATUM AS INDICATED HEREON.
  - ALL PRIVATE ROADWAYS AND INTERNAL DRIVABLE SURFACES, ARE SUBJECT TO AND DEDICATED AS AN EMERGENCY ACCESS EASEMENT.
  - THE GENERAL COMMON ELEMENT IS SUBJECT TO AND DEDICATED TO THE HOME OWNERS ASSOCIATION OF CLEAR WATER STUDIOS AT TWENTY MILE ROAD. ADDITIONALLY, IT IS SUBJECT TO A BLANKET DRAINAGE AND UTILITY EASEMENT OUTSIDE OF ALL BUILDING FOOTPRINTS.
  - A PEDESTRIAN ACCESS EASEMENT SHALL BE GRANTED OVER THE EXISTING SIDEWALK ALONG 13TH STREET. THE EASEMENT SHALL ENCOMPASS THE ENTIRE SIDEWALK.

**STANDARDS LOT SUMMARY**

STANDARDS	LOT SUMMARY
TOTAL LOTS	3
AVERAGE LOT SIZE	1.13 ACRES
MAX LOT SIZE	1.21 ACRES
MIN LOT SIZE	1.07 ACRES

### OPEN SPACE CALCULATIONS

DESCRIPTION	AREA
TOTAL PROJECT AREA	3.40 ACRES
BUILDING FOOTPRINT	0.77 ACRES
ROADWAYS	0.97 ACRES
SETBACKS	0.69 ACRES
OPEN SPACE	1.97 ACRES
OPEN SPACE % OF LOT	40.3%

- BUILDING FOOTPRINT AREA INCLUDES ALL ENCLOSED SPACE ABOVE GRADE, DECKS, AND COVERED PARKING.
- THE TOTAL ROADWAY AREA DOES NOT INCLUDE PORTIONS OF THE ROADWAY WITHIN THE SETBACK.

### CONDITIONS OF APPROVAL

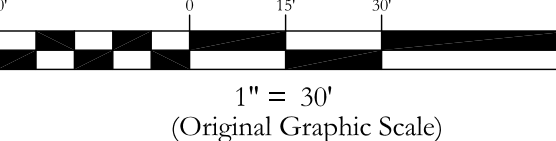
NO.	DESCRIPTION	DEPARTMENT PLACING CONDITION

### EXISTING GENERAL LEGEND

- PROPERTY BOUNDARY
- ADJACENT PROPERTY BOUNDARY
- SECTION LINE
- EXISTING EASEMENT
- EXISTING BUILDING
- EXISTING MAJOR CONTOUR
- EXISTING MINOR CONTOUR
- EXISTING UNDERGROUND SANITARY SEWER LINE
- EXISTING SANITARY SEWER MANHOLE AND CLEANOUT
- EXISTING UNDERGROUND WATER LINE
- EXISTING WATER MANHOLE AND CURB STOP
- EXISTING GATE VALVE AND FIRE HYDRANT
- EXISTING UNDERGROUND SANITARY SEWER LINE TO BE REMOVED
- EXISTING UNDERGROUND WATER LINE TO BE REMOVED
- EXISTING ASPHALT
- EXISTING CONCRETE
- EXISTING GRAVEL
- EXISTING WETLANDS

### PROPOSED GENERAL LEGEND

- PROPOSED LOT LINE
- PROPOSED EASEMENT
- PROPOSED BUILDING ENVELOPE
- PROPOSED MAJOR CONTOUR
- PROPOSED MINOR CONTOUR
- PROPOSED UNDERGROUND SANITARY SEWER LINE
- PROPOSED SANITARY SEWER MANHOLE AND CLEANOUT
- PROPOSED UNDERGROUND WATER LINE
- PROPOSED WATER MANHOLE AND CURB STOP
- PROPOSED GATE VALVE AND FIRE HYDRANT
- PROPOSED ASPHALT PAVEMENT
- PROPOSED BUILDING RESTRICTION AREA





March 30, 2010

Mr. Brian Hanlen  
Brooks Design/Build Inc.  
POB 775481  
Steamboat Springs, CO 80477

Re: Outlot 4 & 5 Betterview Business Park

Dear Mr. Hanlen:

The Planning & Community Development Department has made the determination that Outlot 4 and Outlot 5 of the Betterview Business Park are considered non-disturb areas and shall not be subdivided and/or developed in any manner.

This determination has been made for the following reasons:

1. The original Betterview Business Park Preliminary Plat, which was approved on August 11, 2005 was approved with six developable lots with building envelopes and six outlots that were considered “no disturb” areas. Condition of Approval #3 for the Betterview Business Park Preliminary Plat stated: “There shall be no disturbance or improvements within Outlots 1-6 (except those necessary for subdivision improvements such as roadways, sidewalks, and water and sewer infrastructure, or landscaping).”

The approval of the Betterview Business Park subdivision was contingent upon the creation of the non-disturbance outlots and the building envelopes in an effort to meet two of the criteria for approval of a Preliminary Plat. Criteria of approval 26-67(e)(2), Verification of Developable Lots, and 26-67(e)(6), Suitability for Development. The second of these two Criteria for Approval, Suitability for Development specifically states: “The land proposed for subdivision shall be physically suitable for development, considering its topography (the presence of steep or unstable slopes), natural resource features (such as wetlands, floodplains, and sensitive wildlife habitat areas), and any environmental hazards (such as avalanche or landslide paths, rockfall hazard areas, or wildfire hazard areas) that may limit the property’s development potential.” As a result of the subject property containing slopes over 30% and jurisdictional wetlands, the original developer of the Betterview Business Park Preliminary Plat created non-disturbance outlots that contained a majority of the above stated environmental constraints in an effort to prevent any impacts to those areas and demonstrate compliance with the criteria for approval. Without the creation of the six outlots and

building envelopes, the original subdivision would not have been approved. To allow further subdivision and/or development of the outlots would result in significant disturbance of the jurisdictional wetlands and would undermine the original intent of the outlots.

2. The owners of Lots 1, 2 and 6 of the Betterview Business Park have completed developments in accordance with the original subdivision requirements, meeting the intent of the no-disturb outlots, as well as remaining within the boundaries of the building envelopes. I raise this point to demonstrate that owners of lots within the Betterview Business Park purchased the property fully aware of the constraints placed upon the lots and proceeded with development in accordance. The owner of Outlot 4 & 5 should also have been fully aware of the limitations and constraints placed on the outlots.

Furthermore, given that other owners within the subdivision have completed developments in accordance with the original intent of the Betterview Business Park, it would be inequitable to allow development and/or subdivision of the outlots that would undermine that original intent.

For the above stated reasons, the Planning & Community Development Department have made the determination that Outlot 4 and Outlot 5 of the Betterview Business Park are considered non-disturb areas and shall not be subdivided and/or developed in any manner. This decision may be appealed in accordance with Sec. 26-50 of the Community Development Code.

If you have any questions, please do not hesitate to give me a call at 879-2060.

Sincerely,  
CITY OF STEAMBOAT SPRINGS

Tom Leeson, AICP  
Director of Planning & Community Development

c: Chronological File  
Preliminary Plat (PP-09-06) File



# Brooks Design / Build Inc.

July 19<sup>th</sup>, 2011

Tyler Gibbs, Director  
Seth Lorson, Planner  
Steamboat Springs Dept. of Planning & Community Development  
137 10<sup>th</sup> Street  
Steamboat Springs, CO 80487 970.879.2060



## RE: Application for Concurrent Review of Clear Water Studios

Tyler and Seth,

We are submitting this application for concurrent review of a Preliminary Plat and Development Plan / Final Development Plan for Lot #4 and Lot #5 of Betterview Business Park, Steamboat Springs Colorado.

### Project Narrative

Clear Water Studios is a mixed-use project that proposes (18) eighteen light industrial units to be sold as shells. This project will infill the existing urban fabric that is in dire need of redevelopment with a mixed-use product whose use and function is very flexible and adaptable. The property is currently zoned (I) Industrial. Current zoning will be able to serve the proposed function well as it is intended to be Industrial first with the complimentary (accessory) uses being retail, office, and residential. Over time as the City of Steamboat densifies and / or expands and if other opportunities for light industrial land have been developed to take the place of existing uses, the flexible use of the proposed buildings can then adapt to being destination retail and office while still containing the complimentary uses of residential. By placing additional densities within the existing fabric, no additional impacts are made to the Highway 40 corridor. This also creates the ability to achieve significant and realistic mode shifts as the project is within a close proximity to the existing downtown core. People will ride their bikes, walk, and take the bus when the distance is realistic. Within Steamboat Springs, there has been a significant shortage of the development of any new industrial land. Copper Ridge Business park is largely built out and the only other “nearby” industrial properties are located approximately forty minutes away in Hayden, Colorado. It is our long term goal that the project will act as a catalyst for the redevelopment of the remainder of the surrounding neighborhood.

When Betterview Business Park was initially created, the City and the Army Corps approved a wetlands mitigation program. However, the wetlands mitigation plan created an awkward and inefficient use of the land, resulting in sporadic pockets of developable and semi-developable land. In place of typical mitigation, there was a requirement of onsite improvements and an unusual request for a deed restriction for the remaining wetlands in lieu of credits. Those onsite improvements were not monitored as per the agreement with the Army Corp and subsequently the majority of the improvements have not survived. In addition to this, the original developer did not complete the work required under the wetlands permit from the Corps, and it expired in September, 2007. In essence, neither the City nor the Corps monitored the implementation of the required wetlands mitigation. Perhaps equally problematic, the original wetland mitigation plan was not noted on the final plat. Nor are there any recorded documents that describe the wetlands mitigation plan. Despite extensive due diligence, neither the Applicant, nor the

prior owner to Lot #5 (not the original developer) were aware of the mitigation plan, the permit from the Corps or that it had expired prior to the Applicant purchasing the land. There was simply no mention of the plan anywhere with the County Clerk and Recorder.

The Applicant first discovered that the wetlands mitigation, that should have been completed as part of the original subdivision process had not been completed, when we were researching the existing vesting for a six unit light industrial building on Lot #5. It then became apparent that that the original project was actually un-buildable under the wetlands mitigation plan that was previously approved by the City. The site grading and drainage plan was inaccurate by over 5'-0" which was discovered when the property was re-surveyed. These errors compounded with the inadequate and thus illegal snow storage made for an unbuildable site. This project represents an opportunity for the Army Corps of Engineers and for the City to address the inefficient and incomplete wetland mitigation on site. Through this development proposal we are proposing that the properties be reshaped into three lots, which will not only create a better overall project for the City, but allow both the Army Corps and the City to rectify the unfulfilled criteria of the original development.

## **Army Corp of Engineers Individual Permit**

In the fall of 2007 we began discussions with the Army Corps of Engineers on how best to move forward with this project and how best to achieve the common goal of rectifying the problems created by the initial development. Through detailed negotiations with the Corps, we have been approved for a full Individual Permit for the proposed development. As the Army Corps of Engineer's directive is no net loss of wetlands, we will have the opportunity to actually create more and better functioning wetlands as a result of developing this project.

We are proposing to:

- Provide compensatory mitigation area of 0.62 acres of palustrine emergent wetland credits that would be purchased at Finger Rock Preserve wetland mitigation bank. This will be a significant improvement to the Yampa water shed as we are exchanging very low quality wetlands for very high quality wetlands. This mitigation rate was determined through the Corps' permitting process and due in part to the low grade of the wetlands present onsite.
- Perform substantial improvements of the remaining wetlands onsite though the enhancement by planting riparian shrubs (willows, alders, and dogwoods) on 6'-0" centers throughout the wetland and a landscaped "boundary" at the border of the preserved wetland. All of this would be though the monitoring criteria as described by the Army Corps permit.
- Deed restrict the remaining wetlands on the Clear Water Subdivision Final Plat
- Detail the protection and maintenance of the wetlands in the declarations and covenants of the new development. This would include the snow storage, landscaping / native vegetation, maintenance of the detention ponds, etc.

While the CDC and the Community Area Plan have general language regarding preservation of wetlands, the City has not yet enacted a substantive wetlands mitigation ordinance. The City has no method for regulating wetlands mitigation, particularly wetlands banking and replacement. The City's definition of wetlands is essentially taken from the wetlands regulations published by the Corps; an indication that the drafters of the CDC anticipated looking to the Corps as the plenary regulator of the wetlands mitigation. The Corps has extensive experience and regulatory authority over wetlands mitigation. They have developed both the science and the procedures to ensure best practices in

wetlands mitigation. Due to the fact that City does not regulate wetlands mitigation while the Corps does, it is the Applicant's position that the City should defer to the regulation of wetlands mitigation by the Corps, at least until the City has adopted its own standards. Secondly, the vague language of the CDC does not provide the City with sufficient standards by which to determine any other outcome. Based on the above, that Applicant believes it has demonstrated that the property is suitable for development and that once the wetlands mitigation has been implemented as provided in permit issued by the Corps, that the completed project will be a far preferable resolution of the existing wetlands issues.

## **Vesting Extension Request**

Due to the size and complexity of the proposed development, we will request a vesting period of five years with an administrative extension of two years based on the significant investment made for the infrastructure improvements that will occur before any buildings can be constructed. We believe this request to be in alignment with the majority of proposals that have been reviewed by the City Council regarding extension of vesting rights.

## **2003 Steamboat Springs Community Area Plan Applicability**

*Goal LU-1: Our community will promote a functional, compact, and mixed-use pattern that integrates and balances residential and non-residential land uses.*

*Policy LU-1.1: The Future Land Use Plan creates an integrated and compatible mix of land uses.*

*Policy LU-1.2: Future development will be in compact mixed-use neighborhoods.*

*Goal LU-2: Our community supports infill and redevelopment of core areas.*

*Policy LU-3.1: New development will maintain and enhance the character and identify of existing residential neighborhoods.*

*Policy LU-3.2: New development will be designed to promote distinct new mixed-use neighborhoods.*

*Policy CD-2.2: Create a functional mix of uses in new neighborhoods and development areas.*

*Strategy T-1.1(a): Encourage Mixed-Use Infill Development*

*Policy H-1.3: Integrate housing in mixed-use areas.*

**Response: Consistent.** This is a project that is both mixed use in nature as well as being of a proximity that it will be very realistic to see significant mode shift in the years to come. The neighborhood is an existing one that is arguably in need of investment and redevelopment. We believe a significant project such as proposed will act as a catalyst in that redevelopment.

*Policy LU-5.1: Develop appropriate land use densities to support transit.*

*Policy T-1.4: New development shall incorporate transit-friendly design.*

*Policy T-1.1: New development, including infill, shall be designed to achieve walkable communities and limit trip generation.*

*Policy T-2.4: Promote the use of alternative modes of transportation by both locals and tourists.*

**Response: Consistent.** This project is correcting previously inadequate densities to adequately support public transit. The inconsistent pedestrian experience created by the pockets of "missing" development are addressed in the new proposal and created a more viable expectation that pedestrians will walk from Downtown to Clear Water Studios. The proposed development is located within a realistic walking and biking distance to expect significant mode shift. Soft surface trails at the interior of the site complete pedestrian connections that would have occurred informally over time.

*Policy CD-1.4: Encourage high quality site planning and building design.*

**Response: Consistent.**

*Policy CD-2.3: Incorporate natural features in new development areas and orient structures to maximize energy efficiency and water conservation.*

**Response: Consistent.** The structures have been designed to easily comply with the 2003 International Energy Code and the Steamboat Green Building Code. The majority of landscaping consists of native species of plant materials, which have been placed on the site appropriate to their water needs. All of the irrigation to the site will be with drip style emitters and there are no sections of turf which would require spray head irrigation. Ground cover will be a mixture of mulch, chip bark, cobble, and gravel with non-irrigated native grasses consistent with xeriscaping practices.

*Goal NS-3: Our community will identify critical wetland areas and critical wildlife habitats, and enhance and conserve these areas for current and future generations.*

**Response: Consistent.** This proposal, while impacting a portion of the low quality wetlands on site, will in end the end create a larger quantity of better functioning wetlands for the local watershed and community. This is achieved through enhancement and improvement of the wetlands to remain on site in addition to the purchase of high quality palustrine emergent wetland at the Finger Rock Preserve wetland mitigation bank.

*Goal NS-4: Our community will protect its important view corridors and visually sensitive areas, including its nighttime skies.*

**Response: Consistent.** The exterior lighting of the project will be utilizing minimal wattage bulbs with downcast fixtures that are Dark Sky Rated. The maximum wattage of the fixtures will be specified in the covenants. No invasive large scale parking lot lighting was incorporated to assist in achieving this goal. Please see the exterior lighting plan for more detail.

*Goal ED-1: Steamboat Springs will have a vital, sustainable, and diverse year-round economy.*

**Response: Consistent.** The light industrial units represent small businesses and jobs that are the backbone to the year round economy of Steamboat Springs. The potential diversity ranges from sign makers, cabinetry shops, warehouse type sales, and light manufacturing businesses.

*Policy ED-1.4: Opportunities for home occupations will be expanded.*

**Response: Consistent.** The light industrial units will have the option of containing a residential unit on the second floor (limited to 1,400 square feet) that if desired can serve as housing for the owner or employees of the business. By having the potential to have a shop, office and home contained within one structure, many efficiencies are created. These can be viewed as reduction in trip generation per unit, creating a more efficient use of available land within the City, and being able to afford a shop / office / house vs. not being able to own your business in Steamboat by trying to own two or three separate structures.

*Policy GM-2.2: Development will only be allowed in areas where it can be adequately served by critical public facilities and services.*

*Policy CF-1.9: Development that maximizes capitol facilities benefits and return on investment shall be encouraged*

**Response: Consistent.** As mentioned above, the previous development made for an inefficient use of the developable land with the existing City limits, which in turn neglected to capitalize on existing infrastructure.

## **Steamboat Springs City Development Code**

### ***Section 26-65. Development Plan***

#### ***Section 26-66. Final Development Plan***

*(d.) Criteria for review and approval.*

*(1) Conformity with community plan. The development plan significantly furthers the preferred direction and policies outlined in the community plan or approved master plans.*

**Response: Consistent.** Please see detailed analysis above in the Steamboat Springs Community Area Plan applicability section of this narrative.

*(2) Consistency with surrounding uses. The proposed development shall be consistent with the character of the immediate vicinity of the parcel proposed for development, or shall enhance or compliment the mixture of uses, structures and activities present in the immediate vicinity.*

**Response: Consistent.** The proposed development blends well into the surrounding uses while at the same time offering an improved direction for those neighboring properties to aspire to. The primary uses of the site is to be light industrial though we expect the complimentary uses of office, retail, and accessory residential to create a compact blend of multiple uses. The light industrial units will be sold as shells and the end users can tailor the space to their specific needs.

*(3) Conformity with the building and architectural standards. The proposed development complies with the building and architectural design standards of the CDC.*

**Response: Consistent.**

*(4) Minimize adverse impacts. The design and operation characteristics of the proposed development shall minimize any adverse impacts on surrounding uses and shall not cause a nuisance, considering factors such as proposed setbacks, planned hours of operation, and the potential for odors, noise, smoke, dust, glare, vibrations, shadows, and visual impacts from the proposed development.*

**Response: Consistent.**

*(5) Access. Access to the site shall be adequate for the proposed development, considering the width, grades, and capacities of adjacent streets and intersections and the entrance to the site. The adequacy of the facilities provided for any necessary service delivery, parking and loading, and trash removal shall also be considered. When appropriate, public transportation or other public or private transportation services and appropriate pedestrian facilities shall be made available to serve the use.*

**Response: Consistent.** By creating a looped road that runs from 13<sup>th</sup> Street on the current Lot #4 over to side street adjacent to Lot #5 which has direct access to 13<sup>th</sup> Street we have created a better functioning redundancy for vehicular and non-vehicular connectivity for general access, fire / emergency access, and trash removal. This proposal would provide (71) seventy one exterior parking spaces and (36) thirty six interior parking spaces for the eighteen light industrial units.

*(6) Minimize environmental impacts. The proposed development shall minimize its adverse impacts on the natural environment, including water quality, air quality, wildlife habitat, vegetation, wetlands, and natural landforms.*

**Response: Consistent.** This proposal, while impacting a portion of the low quality wetlands on site, will in end the end create a larger quantity of better functioning wetlands for the local watershed and community. This is achieved through enhancement and improvement of the wetlands to remain on site in addition to the purchase of high quality palustrine emergent wetland at the Finger Rock Preserve wetland mitigation bank.

*(7) Phasing. If the proposed development is to be developed in phases, then each phase shall contain the required streets, utilities, landscaping, and other improvements that are necessary and desirable for residents of the project for that phase. Each phase of the phasing plan shall meet the requirements of the CDC on its own unless a variation was granted. If the development incorporates any amenities for the benefit of the city, such as trail connections, these shall be constructed within the first phase of the project, or, if this is not practical, then as early in the project as is reasonable.*

**Response: Consistent.** Please refer to phasing plan for additional detail.

*(8) Compliance with other standards. The final development plan is in substantial conformance with the requirements of the CDC as modified by any approved variance, development plan, or PUD, for the property, and any applicable terms and conditions imposed by the city on any such prior approval granted to the property have been satisfied.*

**Response: Consistent**

### **Section 26-67. Preliminary Plat**

*(e) Criteria for approval.*

*(1) Conformity with CDC. The proposed preliminary plat substantially conforms to all applicable requirements of this CDC, including all applicable requirements of the zone district(s) in which the property to be subdivided is located, and all regulations applicable to any conditional uses, as such regulations may have been modified by an approved variance or PUD for the property.*

**Response: Consistent**

*(2) Verification of developable lots. Each lot proposed for development in the subdivision has demonstrated, to the satisfaction of the director, that it is developable. Elements reviewed for developability include a demonstrated ability to meet the requirements of this Community Development Code in terms of zone district standards, development standards, and subdivision standards.*

**Response: Consistent**

*(3) Conformance with other applicable regulations. The proposed subdivision conforms to any other applicable regulations and requirements including but not limited to provisions of state law, Steamboat Springs Municipal Code, and any requirements set by any capital improvement plan or program, or any approved subdivision improvements agreement or development agreement for the property.*

**Response: Consistent**

*(4) Conformity with community area plan. The proposed subdivision shall conform to the preferred direction and any applicable policies of the community area plan.*

**Response: Consistent.** Please see detailed analysis above in the Steamboat Springs Community Area Plan applicability section of this narrative.

*(5) Compatibility with surrounding area. The proposed subdivision shall be compatible with the character of existing land uses in the area and shall not adversely affect the future development of the surrounding area.*

**Response: Consistent.** The proposed development blends well into the surrounding uses while at the same time offering an improved direction for those neighboring properties to aspire to. The primary uses of the site is to be light industrial though we expect the complimentary uses of office, retail, and accessory residential to create a compact blend of multiple uses. The light industrial units will be sold as shells and the end users can tailor the space to their specific needs.

*(6) Suitability for development. The land proposed for subdivision shall be physically suitable for development, considering its topography (the presence of steep or unstable slopes), natural resource features (such as wetlands, floodplains, and sensitive wildlife habitat areas), and any environmental hazards (such as avalanche or landslide paths, rock-fall hazard areas, or wildfire hazard areas) that may limit the property's development potential.*

**Response: Consistent.** This proposal, while impacting a portion of the low quality wetlands on site, will in end the end create a larger quantity of better functioning wetlands for the local watershed and community. This is achieved through enhancement and improvement of the wetlands to remain on site in addition to the purchase of high quality palustrine emergent wetland at the Finger Rock Preserve wetland mitigation bank. There are no steep / unstable slopes, sensitive wildlife habitat areas, and floodplains, present on this site.

*(7) Phasing. If the proposed development is to be developed in phases, then each phase shall contain the required streets, utilities, landscaping, and other improvements that are necessary and desirable for residents of the project for that phase. Each phase of the phasing plan shall meet the requirements of the CDC on its own unless a variation was granted. If the development incorporates any amenities for the benefit of the city, such as trail connections, these shall be constructed within the first phase of the project, or, if this is not practical, then as early in the project as is reasonable.*

**Response:** Please refer to phasing plan for additional detail.

Variance request for exceeding 100'-0" private access easement

*(8) Variance criteria. Preliminary plats seeking variation from up to two (2) subdivision standards listed in article VII, subdivision standards, where such variances do not qualify as minor adjustments shall meet the following criteria for approval in addition to the criteria in subsections 26-67(e)(1)–(7):*

*(a.) Legal use.*

**Response: Consistent**

*(b.) Injury to adjoining property mitigated.*

**Response: Consistent.** There are no anticipated impacts to adjacent properties due to this request. The drainage study and engineering performed for this project address in great detail all concerns related to potential impacts.

*(c.) Advantages outweigh disadvantages.*

**Response: Consistent.** Public Works prefers to limit the frequency of private access points onto 13<sup>th</sup> Street. By providing the “loop” drive, we are able to accommodate access to the third site without requiring separate access onto 13<sup>th</sup> Street. This also creates a more efficient plan for the fire dept.

*(d.) Superior development.*

**Response: Consistent.** The contiguous development created by the proposal results a more consistent and effective frontage for 13<sup>th</sup> Street.

*(e.) Minimum relief.*

**Response: Consistent.** The alternative is to allow direct access for Lot #2 onto 13<sup>th</sup> Street. We believe the proposed layout is the best possible scenario for the project as well as the City.

Please contact us if you have any questions or need any clarification to any of the topics discussed above.

Sincerely,

Brian Hanlen,  
President, Brooks Design Build, Inc.

cc:

Ben Spiegel, Gerenscer, LLC

Kelly Colfer, Western Bionomics, LLC

Erik Griepentrog, P.E. and Ryan Spaustat, P.E., Landmark, Inc.

Lynaia M. South Orr, LLC, attorney, Law Office of Cheryl L. Hardy-Moore, P.C.





**CITY OF STEAMBOAT SPRINGS, COLORADO**

**ORDINANCE NO. 1975**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF STEAMBOAT SPRINGS, COLORADO, ANNEXING 8.76 ACRES INTO THE CORPORATE LIMITS OF THE CITY OF STEAMBOAT SPRINGS KNOWN AS THE BETTerview BUSINESS PARK AND REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the applicant, Betterview Investments, LLC, submitted a petition for annexation on November 22, 2004, to annex 8.76 acres into the corporate limits of the City of Steamboat Springs; and

WHEREAS, Colorado Revised Statute 31-12-104, 105, and 107, establish basic criteria rendering unincorporated property eligible for municipal annexation and places certain limitations on all annexations; and

WHEREAS, the Steamboat Springs City Council finds the Betterview Business Park petition for annexation to be in substantial compliance with the requirements of Colorado Revised Statutes 31-12-104, 105, and 107; and

WHEREAS, the Steamboat Springs City Council finds the Betterview Business Park petition for annexation to be consistent with the criteria for approval for an annexation per Sec. 26-63 of the Community Development Code; and

WHEREAS, the Steamboat Springs City Council finds the Betterview Business Park petition for annexation to be consistent with the policies of the Steamboat Springs Area Community Plan; and

WHEREAS, the Steamboat Springs City Council desires to annex 8.76 acres, known as the Betterview Business Park into the corporate limits of the City of Steamboat Springs.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STEAMBOAT SPRINGS, COLORADO, THAT:



**SECTION 1**

The City Council of Steamboat Springs finds the Betterview Business Park petition for Annexation meets the requirements in Colorado Revised Statutes 31-12-104, 105 and 107, as well as the criteria for approval for an annexation per Sec. 26-63 of the Community Development Code and hereby annexes 8.76-acres, known as Betterview Business Park into the corporate limits of the City of Steamboat Springs (Betterview Business Park legal description included as Attachment 1).

**SECTION 2**

A public hearing on this ordinance shall be held on February 1, 2005, at 5:15 P.M. in the Citizens Hall meeting room, Centennial Hall, Steamboat Springs, Colorado.

**SECTION 3**

All ordinances heretofore passed and adopted by the City Council of the City of Steamboat Springs, Colorado, are hereby repealed to the extent that said ordinances, or parts, thereof, are in conflict herewith.

**SECTION 4**

If any section, subsection, clause, phrase or provision of this Ordinance is, or the application thereof to any person or circumstance, shall to any extent, be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and shall in no way be affected, impaired or invalidated.

**SECTION 5**

The City Council hereby finds, determines and declares that this Ordinance is necessary for the immediate preservation of the public peace, health and safety.

**SECTION 6**

This Ordinance shall take effect immediately upon the expiration of five (5) days from and after its publication following final passage, as provided in Section 7.6 (h) of the Steamboat Springs Home Rule Charter.



INTRODUCED, READ AND ORDERED PUBLISHED, as provided by law, by the City Council of the City of Steamboat Springs, at its regular meeting held on the 18th day of January, 2005.

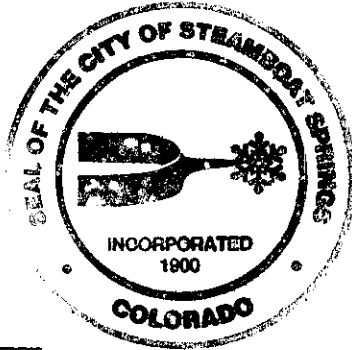


PAUL A. STRONG, President  
Steamboat Springs City Council

ATTEST:

Julie Jordan, City Clerk

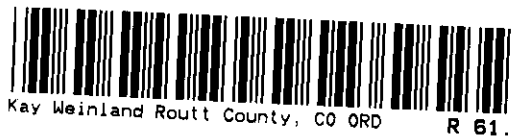
FINALLY READ AND ORDERED PUBLISHED, as provided by law, by the City Council of the City of Steamboat Springs, at its regular meeting held on the 1st day of February, 2005.



PAUL A. STRONG, President  
Steamboat Springs City Council

ATTEST:

Julie Jordan, City Clerk



**BETTERVIEW  
PRE-ANNEXATION AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of November, 2004, by and between BetterView Investments LLC, (insert address) P.O. Box 772027, Steamboat Springs Co 80417 hereinafter referred to as the "Owner," and the City of Steamboat Springs, a Colorado home rule municipal corporation, hereinafter referred to as "City".

**WITNESSETH:**

**WHEREAS**, the Owner desires to annex to the City of Steamboat Springs the property more particularly described on Exhibit "A," which is attached hereto, incorporated herein, and made a part hereof (such property is hereinafter referred to as "the Property"); and

**WHEREAS**, Owner has executed a petition to annex the Property, a copy of which petition is attached hereto as Exhibit "B," and incorporated herein and made a part hereof; and

**WHEREAS**, it is to the mutual benefit of the parties hereto to enter into the following Agreement; and

**WHEREAS**, Owner acknowledges that upon annexation, the Property will be subject to all ordinances, resolutions, and other regulations of the City, as they may be amended from time to time; and

**WHEREAS**, Owner acknowledges that the need for conveyances and dedication of certain property, including but not limited to property for streets, rights-of-way and easements, parks and open space, utility facilities and improvements, to City as contemplated in this Agreement are directly related to and generated by the development intended to occur within the Property and that no taking thereby will occur requiring any compensation.

**NOW, THEREFORE**, in consideration of the above premises and the covenants as hereinafter set forth, it is agreed by and between the parties as follows:

**I. ANNEXATION AND ZONING.** The annexation of the Property shall be in conformance with the Colorado Municipal Annexation Act of 1965, as amended, and with applicable City Revised Municipal Code provisions.

The Owner requests that the Property be zoned Industrial with uses per the Community Development Code upon annexation. Owner acknowledges that the City Council has sole authority to determine the appropriate zone district for the Property upon annexation and that the Owner's request does not bind the Planning Commission or City Council to adopt the Industrial zone district for the Property.

**A. Land Use.** All residential and commercial construction will be subject to the types and

Revised December 30, 1998  
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intensities of land use permitted pursuant to the City's Community Development Plan in effect on the date when building or development applications are filed.

**B. Wetlands.** Owner agrees to pay for a wetlands study to identify and locate wetlands located on the Property. Owner further agrees Owner's development of the property shall not disturb more than 1/2 acre of the wetlands identified and located by the wetlands study. Owner agrees that the City may enforce this restriction by withholding any development or building permit approval sought by Owner for a project that does not conform to this wetlands disturbance restriction.

**II. ANNEXATION MASTER PLAN FOR PROPERTY.** The Steamboat Springs Community Plan includes the entirety of the Property and specifies Industrial zoning for the property.

**III. LAND DEDICATION.** The dedication of parks and open space, public easements for utilities, rights-of-way for streets and other public ways and dedications for other public purposes shall be dedicated at the time of final plat, unless the City specifies another time. The City and the Owner agree that such dedications are directly related to and generated by development intended to occur within the Property and that no taking thereby will occur requiring any compensation.

**A. Roads And Utility Easements.** The Owner shall dedicate right-of-way for all roads and utility easements to the City. Owner shall include in the roadway dedications a parcel of real property known as Parcel 2. All utility easements, dedicated to the City, shall be for the use and the benefit of the various entities furnishing utility services, i.e., electrical, telephone, gas, TV cable, water sewer. All utilities will be placed underground.

**B. Natural Gas Line Easement.** Owner acknowledges that two Public Service Company high pressure natural gas transmission pipelines encumber the Property. Owner agrees either to cause the relocation of the lines off the Property or to convey or to dedicate a utility easement to the City or the Public Service Company, based on negotiations with the Public Service Company.

**IV. AVAILABILITY OF SERVICES.** City agrees to make available to the Property all of the usual municipal services in accordance with the ordinances and policies of the City which services include, but are not limited to, police protection and water and sewer services.

**V. WATER SERVICE.**

**A. Extension of Water Services.** Owner shall extend water mains and service lines to the Property in accordance with applicable City regulations. Owner shall install at his sole cost and expense all the water mains, trunk lines, pumping facilities and



appurtenances necessary to provide service from the City's system to the Property. Owner shall install at his sole cost and expense, all the water lines, fire hydrants and appurtenances within the Property. City may require the dedication of water mains and water main easements to the City in accordance with applicable City regulations.

- B. Water Service Availability.** The City does not warrant the availability of water service to the Owner for any phase of development. The City shall make a determination of water service availability by a water system analysis at the time the Owner requests water taps. In the event that the City determines that it has insufficient water service availability, no water taps shall be issued until such time as there is water service availability.
- C. Water Tap Fees.** Water tap fees shall be the existing City water tap fees at the time which the applicant requests water taps. Water tap fees shall be paid when a building permit for a structure is requested from the City.

**VI. WASTEWATER SERVICE.** City shall provide wastewater service to the Property.

- A. Extension of Wastewater Services.** Owner shall extend wastewater mains and service lines to the property in accordance with applicable City regulations. Owner shall install at his sole cost and expense all the wastewater mains, trunk lines, wastewater lift stations, and appurtenant facilities necessary to connect to the City's system. Owner shall install at his sole cost and expense all the wastewater lines and appurtenances within the Property. City may require the dedication of wastewater mains and wastewater main easements to the City in accordance with applicable City regulations. City will not accept the dedication of or maintenance responsibilities for any forced wastewater main.
- B. Wastewater Service Availability.** The City does not warrant the availability of wastewater service to the Owner for any phase of development. The City shall determine wastewater treatment capacity availability by a wastewater system analysis at the time the Owner requests wastewater taps. In the event that the City determines that it has insufficient wastewater treatment capacity availability, no wastewater taps shall be issued until such time as there is wastewater treatment capacity availability.
- C. Wastewater Tap Fees.** Wastewater tap fees shall be the existing City fees at the time which the applicant requests wastewater taps. Wastewater tap fees shall be paid when a building permit for a structure is requested from the City.

**VII. CONFORMANCE WITH CITY REGULATIONS.** Owner agrees that the design, improvement, construction, development, and use of the Property shall be in conformance with the City's Community Development Code and any other applicable City regulations



including, without limitation, those pertaining to subdivision, zoning, streets, storm drainage, utilities, and flood control.

**VIII. PUBLIC IMPROVEMENTS.** Owner agrees to design, construct and install in accordance with City approved plans, the following public improvements:

- A. Streets.** Owner agrees that Owner shall use Twenty Mile Road to access the Property. Owner's access shall comply with applicable City regulations, which may require multiple lots, if the Property is subdivided, to share a common access or accesses. Owner agrees to improve those portions of Twenty Mile Road abutting the Property to City standards. Owner proposes to construct at Owner's expense, the necessary roadway improvements adjacent to or within the Property at the time Owner develops the Property or any portion thereof. Owner's obligation to improve Twenty Mile Road shall include the obligation to pay for a traffic study to be used by the City in determining what improvements are required to upgrade Twenty Mile Road to City standards.
- B. Sidewalks.** Owner shall construct an eight foot wide, concrete, detached sidewalk along the full length of the Property's Twenty Mile Road frontage.
- C. Drainage.** Owner shall prepare and submit to the City a drainage plan, which shall be reviewed by the City Engineer for conformity with City drainage regulations existing at the time the Drainage Plan is submitted. Owner shall submit the plan and obtain the City Engineer's approval prior to the approval of any Preliminary Plat by the City Council. Owner shall be responsible to construct, at Owner's expense, all drainage improvements shown in the approved drainage plans.

Owner agrees to guarantee construction of all required improvements, and, if requested by City, to dedicate to City any or all required improvements.

**IX. EXCLUSIVITY OF ANNEXATION PETITION.** Owner agrees to not sign any other petition for annexation of the Property or any petition for an annexation election relating to the Property, except upon request of the City.

**X. MISCELLANEOUS PROVISIONS.**

- A. Interpretation.** Nothing in this Agreement shall constitute or be interpreted as a repeal of the City's ordinances or resolutions, or as a waiver of the City's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the City and its inhabitants, nor shall this Agreement prohibit the enactment or increase by the City of any tax or fee.
- B. Severability.** If any part, section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be invalid, such invalidity shall not affect the



validity of the remaining sections of the Agreement. The parties hereby declare that they would have agreed to the Agreement including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.

**C. Amendments to the Agreement.** This Agreement may be amended, at anytime, upon agreement of the parties hereto. Such amendments shall be in writing, shall be recorded with the County Clerk & Recorder of Routt County, Colorado, shall be covenants running with the land, and shall be binding upon all persons or entities having an interest in the Property subject to the amendment unless otherwise specified in the amendment.

In addition, this Agreement may be amended by the City and any Owner without the consent of any other Owner as long as such amendment affects only that Owner's portion of the Property. Such amendments shall be in writing, shall be recorded with the County Clerk & Recorder of Routt County, Colorado, shall be covenants running with the land, and shall be binding upon all persons or entities having an interest in the Property subject to the amendment unless otherwise specified in the amendment.

**D. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of and be binding upon the parties, their successors in interest, or their legal representatives, including all developers, purchasers and subsequent owners of any lots or parcels within the Property, and shall constitute covenants running with the land. This Agreement shall be recorded with the County Clerk & Recorder of Routt County, Colorado, at Owner's expense. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.

**E. Indemnification.** Owner agrees to indemnify and hold harmless the City and the City's officers, employees, agents, and contractors, from and against all liability, claims, and demands, including attorney's fees and court costs, which arise out of or are in any manner connected with the annexation of the Property, or with any other annexation or other action determined necessary or desirable by the City in order to effectuate the annexation of the Property, or which are in any manner connected with the City's enforcement of this Agreement. Owner further agrees to investigate, handle, respond to, and to provide defense for and defend against or, at the City's option, to pay the attorney's fees for defense counsel of the City's choice for, any such liability, claims, or demands.

**F. Termination.** If the annexation of the Property is, for any reason, not completed then this Agreement shall be null and void and of no force and effect whatsoever.

**G. No Right or Remedy of Disconnection.** No right or remedy of disconnection of the Property from the City shall accrue from this Agreement, other than provided





by applicable state laws. In the event the Property or any portion thereof is disconnected at Owner's request, the City of Steamboat Springs shall have no obligation to serve the disconnected property or portion thereof and this Agreement shall be void and of no further force and effect as to such property or portion thereof.

- H. Annexation and Zoning Subject to Legislative Discretion.** The Owner acknowledges that the annexation and subsequent zoning of the Property are subject to the legislative discretion of the City Council of the City of Steamboat Springs. No assurances of annexation or zoning have been made or relied upon by the Owner. In the event that the Steamboat Springs City Council, in the exercise of its legislative discretion, does not take any action with respect to the Property herein contemplated, then the sole and exclusive remedy for the breach hereof accompanied by the exercise of such discretion shall be the withdrawal of the petition for annexation by the Owner, or disconnection from the City in accordance with state law, as may be appropriate.
- I. Legal Discretion in the Case of Challenge.** The City reserves the right to not defend any legal challenge to this annexation, In the event such a challenge occurs prior to any expiration of any statute of limitation, the City may, at its discretion, choose to contest the challenge or allow the challenge to proceed without defense. This does not restrict the Owner from engaging the City's legal representatives in such a defense, at no cost to the City.
- J. Application of Town Policies.** Upon annexation, all subsequent development of the Property shall be subject to and bound by the applicable provisions of City ordinances, as amended, including public land dedications, provided however, that changes or amendments to the code, after the date of this Agreement shall in no way limit or impair City's obligation hereunder, except as specifically set forth in this Agreement.
- K. Amendments to Governing Ordinances, Resolutions and Policies.** As used in this Agreement, unless otherwise specifically provided herein, any reference to any provision of any City ordinance, resolution, or policy is intended to refer to any subsequent amendments or revisions to such ordinance, resolution, or policy, and the parties agree that such amendments or revisions shall be binding upon Owner.
- L. Legal Fees.** In the event that either party finds it necessary to retain an attorney in connection with a default by the other as to any of the provisions contained in this Agreement, the defaulting party shall pay the other's reasonable attorney's fees and costs incurred in enforcing the provisions of this Agreement.
- M. Reimbursement for Other Costs.** The Owner shall reimburse the City for any third party costs necessary for the orderly and proper development of the Property,



including but not limited to consultant's fees for planning and engineering, and attorney's fees for legal services beyond the normal document review, which is directly linked to the Property.

- N. **Avigation Easements.** Owner agrees to provide the City with an executed avigation easement upon the City's execution of this Agreement that provides the City an easement for the operation of aircraft to and from the Steamboat Springs Airport—Bob Adams Field.
- O. **Cooperation.** The parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of the Agreement, and will execute such additional documents as necessary to effectuate the same.
- P. **Timely Submittal of Materials.** Owner agrees to provide legal documents, surveys, engineering work, newspaper publication, maps, reports and other documents necessary to accomplish the annexation of the Property and the other provisions of this Agreement.
- Q. **Compliance with State Law.** The Owner shall comply with all applicable State law and regulations.

XI. **COMPLETE AGREEMENT.** This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. Except as provided herein there shall be no modifications of this Agreement except in writing, executed with the same formalities as this instrument. Subject to the conditions precedent herein this Agreement may be enforced in any court of competent jurisdiction.

By this acknowledgment, the undersigned hereby certify that the above Agreement is complete and true and entered into of their own free will and volition.

OWNER:





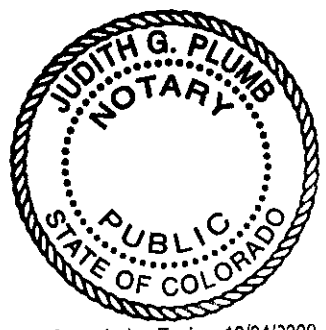
November, 2004 by Paul W. Hughes and Julie Jordan.

My commission expires: 10/04/2008

Witness My hand and official seal.

Judith G. Plumb

Notary Public



My Commission Expires 10/04/2008

# CITY COUNCIL COMMUNICATION FORM

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**FROM:** Seth Lorson, City Planner (Ext. 280)  
**THROUGH:** Jon Roberts, City Manager (Ext. 228)  
**DATE:** May 18, 2010  
**ITEM:** Clear Water Appeal of an Administrative Decision  
**NEXT STEP:** If City Council approves the appeal, the applicant can continue with development request to build in outlots.

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DIRECTION  
 INFORMATION  
 ORDINANCE  
 MOTION  
 RESOLUTION

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**PROJECT NAME:** Clear Water Studios at Betterview Business Park Subdivision Lots 4 & 5  
**PETITION:** Appeal of an administrative decision that Outlots 4 & 5 are not suitable for development.  
**LOCATION:** 1725 & 1825 13<sup>th</sup> Street  
**APPLICANT:** Gerencser, LLC C/O Ben Spiegel  
P.O. Box 775654  
Steamboat Springs, CO 80477  
**PC ACTION:** Director deemed the appeal does not present issues requiring planning commission review.

EXECUTIVE SUMMARY:

**1. Background Information:**

The Preliminary Plat for Betterview Business Park Subdivision (PP-05-05) created 6 lots and 6 outlots in 2005. An Army Corps of Engineers wetland permit was obtained for developing the wetlands in Lots 1 – 6. The outlots were created to provide protection for the remaining wetlands as is noted in the conditions of approval:

*3. There shall be no disturbance or improvements within the Outlots 1-6 (except those necessary for subdivision improvements such as roadways, sidewalks, and water and sewer infrastructure, or landscaping).*

This condition was conveyed to the Final Plat as outlots and building envelopes.

Months prior (June 2009) to application submittal for development of lots 4 & 5 (PP-09-06 & FDP-09-03), the applicant inquired in a pre-application conference as to the developability of the outlots. At that time staff provided the applicant with a letter informing them of the above condition (see attachment 3).

**2. Introduction:**

The City recognizes that the applicant has the ability to request development of the outlots through the preliminary plat process. The Director of Planning and Community Development and the applicant have mutually agreed upon administrative appeal process to deal with the outlot issue separately from the rest of the project.

Appeal of an administrative decision is outlined in **CDC Sec. 26-50**:

(a) *Purpose.* The purpose of the appeal of administrative decision process is to outline a procedure to be used when it is alleged that an administrative official has erred in a decision related to enforcement of the CDC.

(f) *Criteria for administrative appeal decision.* The planning commission and/or city council shall find in favor of the appellant if it is demonstrated that all of the following exist:

- (1) The application for appeal is complete;
- (2) The appellant presents the same information that the administrator reviewed in making the original decision (new information may be included in the appeal, however; the administrator shall first review the new information to determine the information's impact on the administrator's original decision); and

- (3) The opinion or interpretation of the appellant is more consistent with the CDC or the Steamboat Springs Area Community Plan than the decision of the administrator.

### **3. Community Development Code:**

Below are the two sections of the CDC referenced in the Director's administrative decision:

#### **Preliminary Plat Criteria for Approval:**

***Sec. 26-67 (e) (2) Verification of developable lots.*** Each lot proposed for development in the subdivision has demonstrated, **to the satisfaction of the director**, that it is developable. Elements reviewed for developability include a demonstrated ability to meet the requirements of this Community Development Code in terms of zone district standards, development standards, and subdivision standards.

***Sec. 26-67 (e) (6) Suitability for development.*** The land proposed for subdivision shall be physically suitable for development, considering its topography (the presence of steep or unstable slopes), natural resource features (such as **wetlands**, floodplains, and sensitive wildlife habitat areas), and any environmental hazards (such as avalanche or landslide paths, rockfall hazard areas, or wildfire hazard areas) that may limit the property's development potential.

Building envelopes and outlots were created during the original Preliminary Plat process (PP-05-05) through subdivision standards:

***Sec. 26-183 (a) (8) Standards for all subdivisions. Lots.*** Each lot shall have a contiguous useable lot area equal to or greater than the maximum lot coverage, as multiplied by the minimum lot area for the zone district in which it is located. (For example, if the maximum lot coverage for the zone district is thirty-five (35) percent and the minimum lot area for the zone district is one acre, then the lot shall have at least a minimum contiguous useable lot area of thirty-five (35) percent of one acre.) When a lot has areas of land that do not meet the definition of useable lot area, **building envelopes shall be established** on that lot that include only those areas of land that do meet the useable lot area definition. Exceptions to the building envelope portion of this provision shall be allowed only in the following circumstance:

- a. The useable land area on the lot is not appropriate for development due to geologic/soils instability, **impacts to environmentally sensitive areas**, inability to provide basic utilities to that portion of the site, vehicular access, or visual site sensitivity and overall disturbance of the site from excessive cut or fill. This determination shall be made by the director and the director of public works based upon documentation provided by the applicant.

#### **4. Steamboat Springs Area Community Plan:**

The following excerpts from the SSACP are relevant to wetlands and industrial development:

##### Land Use Classifications and Location Criteria (pg. 3-10)

##### **Industrial**

Land Uses: Light, general, and heavy industrial uses including repair shops, equipment storage, and manufacturing are appropriate in this classification. Service-oriented commercial and commercial distribution may also occur within this classification.

Locational Criteria: Industrial areas should be located away from populated areas, and traffic generated should not pass through residential areas. Industrial sites should have access to one or more major arterials.

Character: Industrial uses should be developed attractively with landscaping and buffering along key entry corridors to the community. Furthermore, **development should minimize environmental impacts**, including noise. Storage, loading, and work operations should be screened from view along all industrial area boundaries (when adjacent to non-industrial uses), and along all public streets.

Zone Districts: I – Industrial (City).

***Goal NS-3: Our community will identify critical wetland areas and critical wildlife habitats, and enhance and conserve these areas for current and future generations.***

##### *Rationale*

*The community has indicated through surveys that protecting and maintaining wildlife habitat is an important value. Wetlands are important habitats for birds and wildlife. The City and County do not have specific wetland protection regulations. Such regulations should provide for a setback from critical wetlands and include other protection strategies. Though wetlands are protected by federal regulations, these regulations do not define buffer areas or mitigation requirements that may be appropriate for a particular community or location.*

##### ***Policy NS-3.1: Develop a local Wetland Protection Program.***

A local wetland protection program can provide for a greater degree of local control and focus more attention on protection of the resource. It can also provide greater protection for isolated wetlands, or those wetlands not considered to be "jurisdictional" as a result of recent court cases.

**Strategy NS-3.1(a): Prepare a Wetlands Inventory** - The city and county should cooperate with willing landowners to inventory wetlands in the study area. The inventory can be at a coarse level of detail (e.g., based on existing sources and



interpretation of aerial photos accompanied by limited field verification), but it should be designed to identify all potential wetland areas. No disturbance of these areas would be allowed prior to more detailed study, which would either confirm the presence of wetlands or trigger a requirement for a more detailed delineation, or result in a determination that no wetlands are present.

**Strategy NS-3.1(b): Develop a Wetlands Protection Program and Standards –**

Key elements of a local program include establishment of a buffer zone and definition of mitigation requirements. There are two basic approaches in defining an appropriate buffer distance. One is to make a determination on a case-by-case basis after considering the importance of an individual wetland and the functions it serves. This approach provides more flexibility but it also requires more study and administrative time in implementing the regulation. An alternative approach is to base the buffer distance on the size of the wetland (e.g., a wetland less than an acre in size would have a 50-foot buffer distance, while a wetland an acre in size or greater would have a 100-foot buffer). It should be noted that a wetland buffer is not synonymous with a water body setback requirement, since some wetlands may not have standing water for much of the year.

A similar choice arises with respect to determining mitigation requirements. They can either be based on the quality and functionality of each wetland, which offers the flexibility as well as the disadvantages noted above, or on a pre-determined ratio, such as affecting one acre of wetlands is accompanied by a requirement to replace it with 1.5 acres of new wetlands.

**Table NS-1: Summary of Current Resource Protection Measures in City and County Land Development Codes**

Resource Type	Steamboat Springs	Routt County	Proposed Changes
Wetlands	Conditions of approval for new development require conformity with community plan and minimizing of impacts to wetlands. No specific standards are stated. In some cases, the setback from water bodies would be applicable. See below.	No specific reference is made to wetlands.	Adopt a local wetland ordinance that provides an appropriate buffer distance.

## 5. Past Projects:

Betterview Subdivision consists of 6 lots, 3 of which are developed (entirely within the lots and building envelopes) and others have been through the entitlement process. Staff has consistently upheld the subdivision standards that have created outlots and building envelopes. Below are excerpts of TAC communications citing this fact:

- **May 25, 2006 – FDP-06-08 (Lot 6)**

*The building layout is incorrectly drawn. The building footprint and all improvements (including parking) **must stay within the building envelope** as platted on the Final Plat. No improvements may extend outside that envelope. The driveway into the building envelope is limited to a width of 16 feet.*

- **March 6, 2007 – FDP-07-02 (Lot 5)**

Wetlands Development

*The building, parking lot, dumpster, and any fencing will need to be located **within the approved building envelope**.*

- **July 23, 2008 – FP-08-20 (Lot 3)**

*Please place a plat note that clearly precludes development and land disturbance of the outlot in accordance with the condition of approval of this subdivision that reads as follows: “**There shall be no disturbance or improvements within the Outlots 1-6 (except those necessary for subdivision improvements such as roadways, sidewalks, and water and sewer infrastructure, or landscaping).**”*

- **November 6, 2008 – FP-08-39 (Lot 1)**

*Please place a plat note that clearly precludes development and land disturbance of the outlot in accordance with the condition of approval of this subdivision that reads as follows: “**There shall be no disturbance or improvements within the Outlots 1-6 (except those necessary for subdivision improvements such as roadways, sidewalks, and water and sewer infrastructure, or landscaping).**”*

- **December 9, 2009 – PP-09-06 (Lots 4 & 5)**

*CDC 26-67(e)(6) Suitability for development. The proposal does not meet this criterion due to wetlands in the platted outlots. These outlots were platted specifically to preserve the wetlands therein.*

- a. PP-05-05 – Preliminary Plat for Betterview Business Park, condition of approval #3 reads: **There shall be no disturbance or improvements with the Outlots 1 – 6 (except those necessary for subdivision improvements such as roadways, sidewalks, and water and sewer infrastructure, or landscaping).***

## 6. List of Attachments:

Attachment 1: Director’s Administrative Determination – March 30, 2010

Attachment 2: Applicant’s Appeal of Administrative Determination – April 7, 2010

Attachment 3: Pre-Application Letter to Applicant – June 11, 2009  
Attachment 4: Betterview Business Park Subdivision Plat  
Attachment 5: Clear Water Studios Proposed Site Plan  
Attachment 6: Clear Water Studios Project Narrative  
Attachment 7: Clear Water Studios Army Corps of Engineers Permit  
Attachment 8: Clear Water Studios TAC Response Letter – February 26, 2010

CITY OF STEAMBOAT SPRINGS  
REGULAR MEETING NO. 2010-10  
TUESDAY, MAY 18, 2010  
MINUTES

**PUBLIC HEARING – PLANNING COMMISSION REFERRALS**

**14. APPEAL: Clear Water Studios**

PETITION: Appeal of an administrative decision that Outlots 4 & 5 are unbuildable.

This item has been postponed from the April 20, 2010 City Council meeting. City Council President Hermacinski read the appeal into the record. City Council President Pro-Tem Quinn disclosed that he provided technical support for Mr. Spiegel and Approach Design.

**UNANIMOUS CONSENT:** Council felt it was okay for City Council President Pro-Tem Quinn to remain seated.

Mr. Lorson stated that this is an appeal of the Planning Director's administrative decision. The Betterview Subdivision was platted with six lots and outlots and the outlots were all wetlands area. There was a condition that there be no disturbance of those outlots and that the outlots were unbuildable.

Mr. Ben Spiegel, owner, provided a brief history of the property.

Mr. Eric Griepentrog, Landmark, stated that this is a question of whether or not this property be developed as a cohesive property. He stated that this is a complete application; there is no new information; it is a matter of the Community Development Code versus the administrative decision. He also noted that the City has no mechanism that supersedes the Army Corps.

Mr. Alan Keefe, attorney, stated that the appellant needs guidance on what Council's position will be. He stated that just because this is platted does not mean it can't be replatted. He noted that there was no note on the plat.

**PUBLIC COMMENT:**

Mr. Alex Rogger, owner of Lot 3, is in extreme opposition to Clearwater development application. He believes that the applicant should have to follow the same rules as the neighbors; additionally he does not believe that their wetland solution will work. He voiced concern that his lot will be impacted by the spring run off. He asked Council to make Clearwater comply with the same rules.

Mr. James Pavlik, adjacent property owner, is also opposed to this application. He stated that he has an outlot that is currently under water and he believes that it is unfair that this applicant is asking for a new set of rules. He is not convinced that the wetland mitigation plan will work, thinks it is detrimental to the environment, and that other lots will become wetter because of it. Additionally, the letter from the Army Corps states that the approval shall not to be used if it is going to negatively affect other lots.

City Council President Pro-Tem Quinn stated that after further consideration he will step down on this item.

**MOTION:** Council Member Engelken moved and Council Member Reisman seconded to deny the appeal and uphold the administrative decision of the Planning Director. The motion carried 6/0. City Council President Pro-Tem Quinn stepped down.

Discussion during the motion:

Council Member Reisman believes that the risk to other property owners is too great. He supports the motion.

Council Member Myller stated that he is okay with replats and combining lots and finding new ways to do things. In this case he does not think he was given enough information to decide whether the wetland mitigation was as good as it was in the first plat. He would like to see more maintaining of the wetlands.

Council Member Magill also supports the motion feeling that the building envelopes are clearly defined on the plat.

Council Member Bentley voiced concern with this situation and so many irregularities in this case. The fact that the Army Corps issued a permit and the project was in the Technical Advisory Committee process and the applicant was not aware there was an issue. She believes these lots are an ideal place for infill and light industrial and could be a big benefit for the City. However, she noted the need to protect the wetlands and support the motion.

City Council President Hermacinski supports the motion as well.

City Council President Pro-Tem Quinn returned to the meeting.

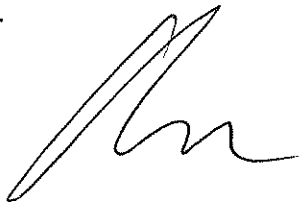
January 24, 2010

To Whom It May Concern:

I have been recently made aware of the desire of the owner of Lots 4 & 5, in the Betterview Business Park, to circumvent the rules governing the Outlot designations in order to develop those properties. As the developer of Lot 3, I was required to fully comply with these regulations. I was told, from the beginning of my development, that the Outlot area of my property was to be protected and undisturbed. Indeed, I have spent tens of thousands of dollars in design and construction in this pursuit.

Any elimination of wetlands upstream will have a DIRECT impact on the run-off and build-up of water in my Outlot. Issues already exist about the mitigation of run-off flow. In a large run-off year, as occurred three [3] years ago, water was flowing over the road just west of my lot for two consecutive afternoons. In more normal years, the ONLY culvert moving ALL the water from the south side of the road to the north, which is located between my building lot and Outlot, is filled beyond capacity each afternoon during peak melting. I am strongly opposed to any action which will impact water flows.

It was clear, from the Betterview Business Park Plat designations, as to where my building envelop was located and what my constraints would be to develop my project. Any claim of hardship or ignorance on the part of the owners of Lots 4 & 5 is simply outrageous. It clearly states in the 404 permit application that, 'the existing undisturbed wetlands located in Lots 3, 4 & 5 outside the building envelops will have recorded plat restrictions that will ensure that these undisturbed wetlands are protected from development in PERPETUITY'. The Plat, having been approved as such, demands that there is no negotiation, for development, on the part of ANY Outlot area located in the Betterview Business Park. To do otherwise would be a further example of the inconsistent nature of development and approval often exhibited, perhaps at times only perceived, by those responsible for its enforcement. I trust that the Steamboat Springs City Council and Planning Department will act in the interest of fairness and reject any appeal to disregard or change the rules which those of us, who have completed our projects and complied with the rules given to us, have followed.



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Alex Rogger, President Open Road Enterprises, LLC

# Precision Repair Service

1675 13<sup>th</sup> Street, Steamboat Springs, CO 80477  
879-2003 Fax 879-1900

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January 26, 2010

City of Steamboat Springs  
PO Box 775088  
Steamboat Springs, CO 80477  
Attention; Seth Lorson

Re: Clear Water Studios at Betterview Business Park Lots 4-5

Dear Seth:

We are the owners of the property to the east of the proposed building application. We purchased the property with the understanding that wetlands were not to be disturbed. We designed and built our shop to fit within allowable and buildable space under the rules of Steamboat Springs. This included very expensive solutions to protect the designated wetlands. We feel that any further construction in Betterview Business Park should be made to follow the same rules and guidelines that we were made to follow.

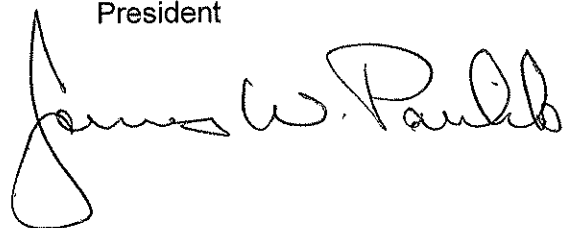
We have been in our building for about two years, and have noticed that our wetland, ditches, and culvert are at capacity as the water table rises in the spring. We have pictures (as does Ben Beall of Public Works) showing water rising over our sidewalk last spring. We are concerned that with more water from displacement of wetland buffer from lots 4-5, that there will be more water than our wetlands and property can handle.

Nathan Green of the Army Corp of Engineers said, "I also foresee the remaining lot, to the east of these lots, becoming wetter, as the water that would normally flow across the wetlands that are being developed will need to go somewhere".

We are opposed to encroachment on any wetland in any part of the subdivision. We ask the City to enforce the wetlands disturbance restrictions as they now stand for all new construction. The applicant may be willing to take a gamble on water displacement from wetland changes, but we are not.

Sincerely,

James W. Pavlik  
President

A handwritten signature in black ink, appearing to read "James W. Pavlik". The signature is fluid and cursive, with a large loop at the end.

# Brooks Design / Build Inc.



April 7, 2010

Julie Franklin, City Clerk  
PO Box 775088  
Steamboat Springs, CO 80477

## **RE: Appeal of Administrative Determination for Clear Water Preliminary Plat #PP-09-06**

Applicant: Gerencser, LLC c/o Ben Spiegel  
P.O. Box 775654  
Steamboat Springs, CO 80477

Dear Ms. Franklin:

Kindly accept this letter as a notice of appeal pursuant to CDC Section 26-50 of that certain decision made by Tom Leeson, Director of Planning and Urban Development, in his letter dated March 30, 2010, a copy of which is enclosed. In his letter, the Director makes the determination that Outlot 4 and Outlot 5 are “considered non-disturb areas and shall not be subdivided and/or developed in any manner.” The Director has incorrectly applied CDC Sections 26-67(e)(2) and 26-67(e)(6).

In his letter, the Director stated there were two reasons for this decision.

### **Determination #1**

The Director’s first stated reason is based upon the conditions for approval of the preliminary plat of the application for the prior subdivision of the land. The Director’s decision is incorrect for the following reasons:

- The Applicant has filed an application for a preliminary plat to replat the existing lots. The city is obligated to apply its current development standards to the application.
- The Director points to the conditions of approval for the application for a preliminary plat previously filed by a prior owner, Betterview Investment LLC (“**Prior Owner**”). Following the City’s approval of the Prior Owner’s preliminary plat, the City approved the final plat for Betterview Business Park, a copy of which is attached. Any conditions contained in the approval of the preliminary plat application by the Prior Owner merged into the final plat. If any conditions to approval were to survive the preliminary plat application, those conditions had to have been made part of the terms of the final plat. They were not. There exists nothing on the final plat that indicates any “non-disturb” area. There is no plat note, no legend, no restriction regarding the wetlands, restrictions on improvements or non-disturbance zones. Nothing.
- The Director implies that the term “outlot” signifies a no build area. But, as stated above, there exists nothing on the plat that defines an outlot. The CDC has no definition of the term



# Brooks Design / Build Inc.



“outlot.” There is nothing on the final plat and nothing recorded in the real estate records that creates this type of a restriction. There was no specific information provided on the final plat regarding the intended or permitted uses of the outlots. Planning staff is making a determination based on their own personal beliefs, not what is contained on the final plat or in the CDC.

- The Director is, in essence, stating that once a lot has been configured and platted, a new application will not even be considered. Nowhere in the CDC does it state that a lot cannot change shape, be congregated, subdivided, or otherwise altered once platted. In fact, the City often approves replats of properties that have previously been platted. We are asking that this new application be accepted and have the current code applied. The fact that the property was previously platted does not mean that the property can never be replatted again.
- The Director refers to CDC Section 26-67(e)(2) and concludes that the lot is not developable, but applies no reasoning or factual support for his decision. Section 26-67(e)(2) states that the elements for review are the ability to meet the requirements of the CDC in terms of zone district standards, development standards, and subdivision standards. The Application demonstrates that those requirements can be met. The Director failed to state any factual basis upon which he supports this determination. In his letter he cites no specific zone district standards, no development standards, and no subdivision standards that are not met. He failed to support his decision with any valid argument.
- In his letter, the Director states that the property is not suitable for development. CDC Section 26-67(e)(6) requires that property be “*physically* suitable for development”. The Director’s only stated reason why the property is not *physically* capable of being developed is that it contains “jurisdictional wetlands.” The Applicant has demonstrated that the property is physically capable of development, including the jurisdictional wetlands. In fact, the Applicant has applied for and received a full Individual 404 Permit by the Army Corp of Engineers, a copy of which is enclosed, for the proposed wetland mitigation. The City has no substantive wetlands ordinance thus the City has no method for regulating wetlands, particularly wetlands banking and / or replacement. The City’s definition of wetlands is essentially taken from the wetlands regulations published by the Corps; an indication that the drafters of the CDC anticipated looking to the Corps as the plenary regulator of the wetlands mitigation. The Corps has extensive experience and regulatory authority over wetlands mitigation. They have developed both the science and the procedures to ensure best practices in wetlands regulations / mitigation. Based on the above, the Applicant believes it has demonstrated that the property is physically suitable for development and that once the wetlands mitigation has been implemented as provided in permit issued by the Corps, that the completed project will be a far preferable resolution of the existing wetlands issues. Due to the fact that City does not regulate wetlands, while the Corps does, the City has no regulatory framework in which to overrule the Corps decision that the property is physically capable of being developed.

## Determination #2

The Director’s second stated reason for his decision is that other owners have improved their lots in accordance with the existing approved plan. This is not a decision based on the CDC and is

# Brooks Design / Build Inc.



merely an opinion stated by the Director. The CDC does not contain any provision that states when a portion of a development has been improved, the balance of the development may never, ever, throughout the remainder of human history, be replatted. There is no basis in law for this determination.

This letter is to provide notice that the Applicant has appealed the administrative decision of the Director. The Applicant requests that you set this appeal for a hearing before City Council.

Enclosed please find a check for \$250 as the fee required for this appeal.

Sincerely,

Brian Hanlen,  
President, Brooks Design Build, Inc.

- Enc: 1) Letter, dated March 30, 2010 from Tom Leeson addressed to Brian Hanlen;
- 2) Individual 404 Permit;
  - 3) Final Plat for Betterview Business Park;
  - 4) Narrative from Preliminary Plat Submittal for Clear Water Studios;
  - 5) Applicant responses to TAC comments

cc: Kelly Colfer, Western Bionomics, LLC  
Ben Spiegel, Gerencser, LLC  
Erik Griepentrog, P.E. and Ryan Spaustat, P.E.,  
Landmark, Inc.  
Alan Keefe, Esq., Sherman & Howard  
Joe Bronesky, Esq., Sherman & Howard



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

Ref: EPR-EP

December 8, 2008

Mike Jewell, Regulatory Branch Chief  
US Army Corps of Engineers, Sacramento District  
1325 J Street, Room 1480  
Sacramento, California 95814

RE: SPK-2001-75341  
Mr. Benjamin Spiegel  
Betterview Business Park  
Unnamed Tributary to the Yampa River

Dear Mr. Jewell:

We have reviewed the referenced public notice for authorization to place dredged or fill material in 0.98 acre of wetlands adjacent to an unnamed tributary of the Yampa River in conjunction with an industrial zoned development in Routt County, Colorado. The proposed project is to develop mixed-use commercial/residential buildings in Steamboat Springs, Colorado. Previously, 0.13 acre of wetlands was filled on the site under Nationwide Permit #39 and is currently out of compliance with existing permit conditions.

The Environmental Protection Agency (EPA) believes that with the current decrease in permit applications due, in part, to limited "jurisdictional wetlands" and regulatory authority in the Region, increased emphasis should be made to educate the public and potential permit applicants on the existing regulatory requirements in the Public Notices. Diligent application of the legal, regulatory requirements are made more critical by the federal agencies due to increasing cumulative losses of the wetland resource base and the relative scarcity of permit applications under the Clean Water Act Section 404 Program. The referenced public notice should include information regarding not only the application of the Section 404(b)(1) Guidelines and the requirements for permitting only the least damaging practicable alternative, but should also include information regarding the sequencing requirements in the Memorandum of Agreement between the EPA and the Army Corps of Engineers Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines (1990). The CWA and the Guidelines set a goal for restoring and maintaining existing aquatic resources. The Public Notice provides little to no information regarding these critical regulatory requirements.

In addition, we believe the proposed project has potential indirect and cumulative impacts not disclosed in the public notice or supporting documentation, and will result in more than



minor impacts on the aquatic environment despite the reported direct impacts to 0.98 acre of waters of the U.S. Despite the information regarding alternatives provided in the Public Notice, we believe the project, as currently proposed, does not comply with the Section 404 (b)(1) Guidelines due to the lack of information that clearly demonstrates that the proposed project is the least damaging practicable alternative [40 CFR 230.10(a)]. We have prepared the following comments and recommendations for your consideration in determining compliance with the Section 404(b)(1) Guidelines.

#### **Alternatives [40 CFR 230.10(a)]**

The placement of fill material for the stated purpose is not considered a water dependent activity as defined in the Section 404(b)(1) Guidelines. Accordingly, there is a rebuttable presumption of alternatives to the proposed project which are less damaging to the aquatic ecosystem unless clearly demonstrated otherwise. Section 230.10 states that *“an alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall basic project purposes. If it is otherwise a practicable alternative, an area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity may be considered.”* We believe less damaging practicable alternatives likely exist for the basic project purpose of commercial/residential development. We understand that the applicant believes that the proposed project (Alternative D) and its adverse direct impacts to aquatic resources is the most cost effective alternative. However, we believe less damaging practicable alternatives continue to be available to the applicant and should be further evaluated including; 1) off-site (upland) properties available to the applicant since the date of market entry in the Steamboat area, 2) on-site upland only development, 3) redesigning the development to reduce the numbers of units (i.e., Alternative B), 4) redesign the development for a different use (increased density, rental housing only, etc) under impact scenario - Alternative B, 5) no action.

EPA believes that the applicant needs to do an evaluation of off-site alternatives/properties potentially available to the applicant since the time the property was purchased. The Corps should then verify the information or do an independent review of the properties. In other words, an alternative is considered practicable if it was available at the time when the applicant was considering project locations, even if the alternative later becomes unavailable. A major purpose of the rebuttable presumption against non-water dependent activities is to require applicants to make a full investigation of alternatives before selecting and committing financial resources to a project requiring discharge in a special aquatic site. Therefore, an assessment of current property listings for alternative building sites is not appropriate. A retrospective look in time is required to determine if less damaging practicable alternatives were available to the applicant at the time the property was acquired. Without a retrospective look, the inflated property values may preclude a majority of alternatives as practicable. In general, based on the proposed alternatives presented in this application, we believe the applicant has not clearly demonstrated the lack of less damaging practicable alternatives for commercial/residential development and the project, as currently proposed, is not in compliance with part 230.10(a) of the Guidelines. Moreover, the applicant has not provided adequate information for practicability of less damaging on-site alternatives.



The applicant has provided information stating that Alternative B (with a total of 0.55 acre of fill in wetlands) would not be economically practicable because the return on investment would be 3 percent and that the income derived from the development would not be sufficient to finance construction of the Architectural Door and Windows, Inc. (ADW) facility. We are always very concerned with the primary argument by the consultants or property owners; that is, the applicant's inability to afford other less damaging alternatives. We believe the economic viability of the applicant's development project or the applicant's financial standing, in general, is immaterial to the determination of practicability. Part 230.10(a)(2) of the guidelines specifies that an alternative is practicable if it is available and "capable of being done." The development industry norm or average standards should be used as an objective range for determining costs, existing technologies, and logistics. If a project (i.e., any project) can be built considering the scope/cost of the project and still be viable, the alternative may still be practicable under the Guidelines. Further, the regulatory agencies cannot rely solely on the applicant's statements of financial standing and an audit should be required to verify this position. Published real estate sales information available on-site or in the vicinity may demonstrate that asking-sale prices at comparable business parks are significant which clearly supports our assertion that less damaging practicable alternatives are available to the applicant. The project needs to only make a profit, not facilitate other aspects of the development the applicant intends. The regulatory agencies cannot rely solely on the applicant's purpose and need for their perceived development constraints, including marketing objectives (see Corps of Engineers Plantation Landing 404(q) elevation dated 21 April 1989).

Additional on-site alternatives should be evaluated by the applicant. Current zoning does not limit the applicant from down-zoning further to reduce adverse impacts to special aquatic sites. We believe that an **upland only** alternative or Alternative B that avoids and minimizes impacts to wetlands from development of the site are practicable. In view of the scope/cost of this project, the level of analysis of practicable alternatives should be commensurate. The minimum economic thresholds should be independently evaluated by the Corps to determine if a project could be built in the uplands, or with minimal impacts, and meet the industry norms on rate of return (which should not include sunk costs such as the price of the land) or the applicant's financial standing.

### **Impact Disclosure**

We are concerned that the proposed project's total wetland impacts have not been fully evaluated by the applicant or disclosed in the public notice. We are concerned about indirect impacts to adjacent groundwater hydrology from the construction of the development sites (i.e., site grade elevations) and the foundation drains, should they be designed to intercept high groundwater in the area.

What indirect impact will these drains have on the adjacent wetlands not directly impacted by the development? Moreover, foundation drains are typically needed to eliminate hydrostatic pressure/loads from high groundwater and a sump pump is typically used to provide backup drainage control. Thicker concrete or sealed foundations will likely be needed in this

case to withstand the hydrostatic loads if no foundation drains are to be included in the design. Enforceable permit conditions will need to be developed to prevent these indirect impacts should a permit be issued for this project. Accordingly, we continue to have concerns that without special conditions to prevent indirect and cumulative impacts, the design of the development will have significantly greater impacts to adjacent wetlands than is disclosed in the public notice.

In addition, the proposed site grading plan may have an adverse affect on the hydrology of the adjacent wetlands should groundwater levels be affected by cut and fills for the development sites. We are concerned that these "avoided" wetlands may, in fact, be impacted by the grading plan on lots adjacent to wetlands. We believe that these lots will be difficult, if not impossible, to develop without additional wetland impacts and the information in the Public Notice may be incorrect.

### **Summary**

In view of the concerns presented above, including the lack of information clearly refuting the lack of less damaging practicable alternatives, we believe the proposed project is not in compliance with the Guidelines [40 CFR 230.10]. Accordingly, we recommend the Corp deny this project as proposed. Should more information be provided to the Corps, we believe that our review and comment is critical, especially if permit conditions are developed for unavoidable impacts.

Our comments and recommendations are directed to this specific proposed project, but this project also raises broader concerns with inconsistent action by Corps personnel to implement appropriate alternatives analysis for projects involving real estate development and wetland impacts. According to Part III of the Clean Water Act Section 404(q) Memorandum of Agreement (MOA) between EPA and the Department of Army, EPA may initiate policy implementation review through written notification if the "nature of the permit action or series of actions raises concerns regarding the application of existing policy or procedure...". We are very concerned with both this specific permit as well as the broader policy ramifications. The outcome of this permit decision and the alternatives analysis supporting the decision will likely be used by EPA as a permit example in implementing a formal request for policy implementation review in the future.

If you have any questions concerning these comments or recommendations, please contact Sarah Fowler at (303) 312-6192.

Sincerely,



Brian Caruso, PhD, Chief  
Wetlands and Watersheds Unit  
Ecosystem Protection Program

cc: Nathan Green, COE Grand Junction  
Ron Velarde, CDOW Grand Junction  
Allen Pfister, USFWS Grand Junction  
Jon Hranec, CWQCD Denver  
Tom Leeson, Director Planning and Community Development, Steamboat Springs







March 15, 2011

Nathan Green  
Regulatory Project Manager  
Regulatory Division, U.S. Army Corps of Engineers  
Sacramento District, Colorado West Regulatory Branch  
400 Rood Avenue, Room 142  
Grand Junction, Colorado 81501-2563  
970.243.1199 ext# 12

RE: Individual Wetlands Permit # SPK-2001-75341

Dear Mr. Green:

This letter is in response to your February 15, 2011 letter indicating that the Corps is “concerned with the ability of your proposed project to adequately pass expected runoff, including any additional runoff that may be caused by the increase in impermeable surface and decrease in wetland coverage on the project site. Additionally, we are concerned with the potential of your project to increase the water level on adjacent parcels during high runoff periods” as related to Individual Wetlands Permit # SPK-2001-75341.

Gerenscer, LLC, the owner of the subject property, retained Landmark Consultants, Inc (Landmark) to prepare a drainage report for the proposed development as part of the city of Steamboat Springs entitlement process. This drainage report, which Mr. Brian Hanlen forwarded to you on February 18, 2011, specifically addresses your above concern. Landmark performed its analysis using generally accepted engineering practices and city of Steamboat Springs criteria.

Our drainage study identified an increase in water surface elevation during significant storm events that impacted the property to the south. Gerenscer, LLC holds an easement granted by the adjacent property owner permitting this impact. Additionally, the impacted area is located in a platted building restriction area that prohibits the construction of structures and regularly contains standing water. Run-off from the site will be released at or below historical flow rates during the 5-year and 100-year storm events and the study did not identify any other upstream impacts.

Additionally, you also expressed concerns regarding impacts to groundwater elevation during our phone conversation. As currently proposed, the project consists of five-slab-on grade buildings and does not include any lower level or crawl space construction. The finished floor elevations of these structures are three to five feet above existing grade, well above the existing groundwater elevation. These conditions will permit the



continued flow of groundwater under the site similar to current conditions. Additionally, the increase in impervious surfacing as part of the project may decrease ground water recharge. Finally, the groundwater table at the site is under the significant influence of environmental factors including the water surface elevation of the Yampa River and seasonal precipitation amounts. These factors make any impact on the ground water table unquantifiable and likely negligible.

Please let me know if you have any additional comments or concerns.

Sincerely,  
Landmark Consultants, Inc

A handwritten signature in blue ink, appearing to read "Ryan Spaustat". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Ryan Spaustat, P.E.  
President



DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO CA 95814-2922

REPLY TO  
ATTENTION OF

February 15, 2011

Regulatory Branch (SPK-2001-75341)

Benjamin Spiegel  
Gerencser, Incorporated  
2673 Jacob Circle, Suite 200  
Steamboat Springs, Colorado 80487

Dear Mr. Spiegel:

We have received comments and concerns related to your proposed industrial/residential development in the Betterview Business Park. Specifically, we are concerned with the ability of your proposed project to adequately pass expected runoff, including any additional runoff that may be caused by the increase in impermeable surface and decrease in wetland coverage on the project site. Additionally, we are concerned with the potential of your project to increase the water level on adjacent parcels during high runoff periods.

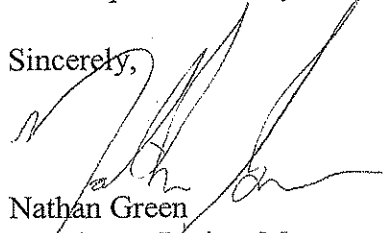
We have determined that sufficient information has emerged to warrant the reevaluation of the conditions of this permit as described in 33 CFR 325.7. The Corps is requesting that we hold informal consultations with you in order to further evaluate and possibly modify the terms and conditions of this permit by mutual agreement. If you can adequately prove that your current proposal will address the concerns listed above, we can conclude this matter. However, it is possible that you will need to modify your project design in order to ensure that your project will not result in any additional flooding of 13<sup>th</sup> Street or adjacent properties. In the event a mutual agreement cannot be reached, immediate suspension of your permit may be required.

Additionally, this would be a good time to submit any potential modifications to the scope or design of your currently permitted project. This would include any changes to the design of the approved Least Damaging Practicable alternative.

Please provide your responses and any additional information within 30 calendar days from the date of this letter. We encourage you to use this opportunity to resolve or rebut objections and to insure all available information is in our administrative record. The decision to modify a Department of the Army permit is our responsibility and we will consider all factors of the public interest in making that decision.

Please refer to identification number SPK-2001-75341 in any correspondence concerning this project. If you have any questions, please contact Nathan Green at Colorado West Regulatory Branch, 400 Rood Avenue, Room 134, Grand Junction, Colorado 81501-2563, email [Nathan.J.Green@usace.army.mil](mailto:Nathan.J.Green@usace.army.mil), or telephone 970-243-1199 x12. For more information regarding our program, please visit our website at [www.spk.usace.army.mil/regulatory.html](http://www.spk.usace.army.mil/regulatory.html).

Sincerely,



Nathan Green  
Regulatory Project Manager  
Colorado West Regulatory Branch

Enclosure:

Copy of 33 CFR 325.7

Copy furnished without enclosures:

Mr. Seth Lorson, City Planner, City of Steamboat Springs, Post Office Box 775088, 124 10th Street, Steamboat Springs, Colorado 80477



DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO CA 95814-2922

REPLY TO  
ATTENTION OF

May 5, 2011

Regulatory Division SPK-2001-75341

Benjamin Spiegel  
Gerencser, Incorporated  
2673 Jacob Circle, Suite 200  
Steamboat Springs, Colorado 80487

Dear Mr. Spiegel:

This letter is in response to the March 15, 2011 letter submitted on your behalf by Landmark Consultants, Incorporated. The project site is located at wetlands adjacent to an unnamed tributary to the Yampa River, within the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , Section 7, Township 6 North, Range 84 West, 6<sup>th</sup> PM, Routt County, Colorado, and can be seen on the Steamboat Springs USGS Topographic Quadrangle.

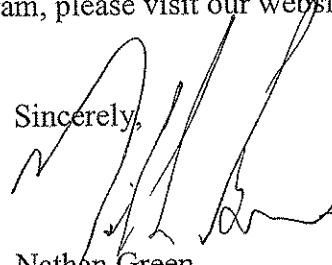
Your letter was in response to our concerns regarding the ability of your project, known as "Clearwater Studios at Twenty Mile Road", to adequately pass expected runoff, including any additional runoff that may be caused by the increase in impermeable surface and decrease in wetland coverage on the project site. We were also concerned with the potential of your project to increase the water level on adjacent parcels during high runoff periods. Additionally, we requested informal consultations with you in order to further evaluate and possibly modify the terms and conditions of this permit by mutual agreement.

After conducting these informal consultations with your agent and engineer, we have determined that you have adequately proven that your previously approved project is likely to pass expected runoff and is not likely to have adverse effects upon the groundwater levels of adjacent parcels. Thank you for your cooperation in this matter. No further action is required on your part regarding our letter of February 15, 2011.

Please refer to identification number SPK-2001-75341 in any correspondence concerning this project. If you have any questions, please contact Nathan Green at our Colorado West Regulatory Branch, 400 Rood Avenue, Room 134, Grand Junction, Colorado 81501-2563, email *Nathan.J.Green@usace.army.mil*, or telephone 970-243-1199 x12.

For more information regarding our program, please visit our website at  
[www.spk.usace.army.mil/regulatory.html](http://www.spk.usace.army.mil/regulatory.html).

Sincerely,

A handwritten signature in black ink, appearing to read 'Nathan Green', written over the word 'Sincerely,'.

Nathan Green  
Regulatory Project Manager  
Colorado West Regulatory Branch

Copy furnished:

Mr. Seth Lorson, City Planner, City of Steamboat Springs, Post Office Box 775088, 124 10<sup>th</sup>  
Street, Steamboat Springs, Colorado 80477

Mr. Brian Hanlen, Brooks Design / Build, Incorporated, Post Office Box 775481, Steamboat  
Springs, Colorado 80477



**DEPARTMENT OF PLANNING AND COMMUNITY  
DEVELOPMENT**

**M E M O R A N D U M**

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**DATE:** August 23, 2011  
**TO:** Planning Commission  
**FROM:** Seth Lorson, AICP, City Planner  
**SUBJECT:** Additional information for Clearwater Studios (PP-09-06 & FDP-09-03)

---

**Community Housing**

Staff recommends a condition of approval be added to the Preliminary Plat proposal as follows:

“Prior to approval of a Final Plat a Community Housing Plan shall be approved.”

Discussion:

CDC Sec. 26-149 Community Housing states that, “Community housing shall be required as a condition of approval for all development that contains the addition of three (3) or more residential units, including, without limitation: annexations, development plans, final development plans, preliminary plats, and final plats...”

The proposed development does not show residential units but does have the ability to create up to 18 residential units. If these units were to be condominium platted and sold as shells then finished at a later time as residential units, compliance with the above provision would be very difficult to enforce. A community housing plan that can anticipate potential build out scenarios is necessary.

**Pre-Annexation Agreement**

Per Assistant City Attorney Dan Foote –

The City is party to a pre-annexation agreement executed by a former owner of the property now known as the Betterview Subdivision. The pre-annexation agreement limits the amount of wetlands that may be disturbed in the Betterview Subdivision to 1/2 acre. The pre-annexation agreement is binding on all owners of property in the Betterview Subdivision, including the applicant. The pre-annexation agreement provides a basis for the City to deny approval of

development applications that violate the wetlands disturbance limitation. The City may exercise this authority even if the application otherwise complies with the CDC. Planning Commission review of this application may include consideration of the wetlands disturbance limitation.

### **Clarifications**

PP-09-06 staff report on pg. 3-3 reads:

*Subsequent to the above-mentioned City Council meeting the Director of Planning and Community Development (now Tyler Gibbs) has made a determination that disturbance of wetland areas for development purposes shall be referred to the Army Corps of Engineers (See section V. Principal Discussion Items.).*

This language is not meant to imply that the Director has made a determination regarding the Clear Water Studios project proposal. It merely states that pending the development and adoption by the City of specific, enforceable standards regarding wetlands, development review at the City of Steamboat Springs will refer wetland issues to the Army Corps of Engineers which has a process for review and standards for filling and mitigating wetlands.

PP-09-06 staff report on pg. 3-4:

The applicant has obtained an Army Corps of Engineers wetland permit to fill .99 acres of wetlands and purchase .84 credits at Finger Rock Preserve wetland bank (permit # SPK-2001-75341).

Should read:

The applicant has obtained an Army Corps of Engineers wetland permit to fill **.83** acres of wetlands and purchase **.83** credits at Finger Rock Preserve wetland bank (permit # SPK-2001-75341).

PP-09-06 staff report on pg. 3-9:

Condition of approval #3 reads:

*The acceptable completion of water and sewer infrastructure is considered “critical improvements” to this project. Building permits for or within this development, except for building C, shall not be approved until such time as the water and sewer infrastructure has been inspected, and granted preliminary acceptance by the City of Steamboat Springs Utility Division. Preliminary acceptance requirements include correction of all punch list items, acceptance of as-builts and record documents and acceptance of any and all necessary easements. Inspections for acceptance shall only occur during the months of May through October.*

The condition exempts Building C because it is cited so it can be served by existing water and sewer mains.

### **Minutes**

Planning Commission and City Council minutes from the original Preliminary Plat for Betterview Subdivision (PP-05-05) are on the attached CD.

**Additional Information**

- The attached CD contains the applicant's chronology of events with the Army Corps of Engineers with citation material.
- An additional public comment letter is attached.



**DRAFT**

**Betterview Business Park Lots 4 & 5 (Clearwater Studios) #FDP-09-03 A Final Development Plan to construct three (3) industrial buildings (38,442 square feet)**

Discussion on this agenda item started at approximately 6:55 p.m.

**DISCLOSURE**

Commissioner Hanlen stepped down.

**STAFF PRESENTATION**

Seth Lorson

**COMMISSIONER QUESTIONS**

**PUBLIC COMMENTS**

**FINAL STAFF COMMENTS**

**FINAL COMMISSIONER COMMENTS**

**RECOMMEND MOTION**

**MOTION**

Commissioner Levy moved to table FDP-09-03 and Commissioner Meyer seconded the motion.

**DISCUSSION ON MOTION**

**VOTE**

Vote: 5-0

Voting for approval of motion to approve: Lacy, Brookshire, Levy, Meyer and Robbins

Absent:

Two positions vacant

Discussion on this agenda item ended at approximately 6:55 p.m.

**Brooks Design / Build Inc.**

August 29<sup>th</sup>, 2011

RECEIVED

AUG 30 2011

Attachment 4



Julie Franklin, City Clerk  
PO Box 775088  
Steamboat Springs, CO 80477

**RE: Appeal of Planning Commission Denial for  
Clear Water Preliminary Plat #PP-09-06**

Applicant: Gerencser, LLC c/o Ben Spiegel  
P.O. Box 775654  
Steamboat Springs, CO 80477

Dear Ms. Franklin:

This letter is to serve as notice of appeal pursuant to CDC Section 26-47 of the decision made by Steamboat Springs Planning Commission on August 25<sup>th</sup> 2011 regarding the Clear Water Studios Preliminary Plat #PP-09-06.

There are concerns unique to this project that the applicant feels would warrant the need to be reviewed specifically by City Council.

Sincerely,

Brian Hanlen

President, Brooks Design Build, Inc.

cc: Ben Spiegel, Gerencser, LLC  
Kelly Colfer, Western Bionomics, LLC  
Erik Griepentrog, P.E. and Ryan Spaustat, P.E., Landmark, Inc.  
Lynaia M. South Orr, LLC, attorney, Law Office of Cheryl L. Hardy-Moore, P.C.

P.O. Box 775481 Steamboat Springs, CO 80477

Office 970.870.6531

Fax 970.879.9286

# Agenda Item # 15

## CITY COUNCIL COMMUNICATION FORM

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**FROM:** Jason K. Peasley, AICP, City Planner (Ext. 229)  
**THROUGH:** Jon Roberts, City Manager (Ext. 228)  
**DATE:** September 6, 2011  
**ITEM:** Casey's Pond, #DPF-10-04  
**NEXT STEP:** The applicant can proceed to civil documents and building permit for the proposed building.

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ORDINANCE  
 RESOLUTION  
 MOTION  
 DIRECTION  
 INFORMATION

---

**PROJECT NAME:** Casey's Pond, #DPF-10-04

**PETITION:** Development Plan/Final Development Plan to construct a 119,047 square foot senior living facility with associated parking, landscaping and sidewalks. The proposal includes variances to the maximum floor area ratio and minimum rear setback. The request also includes a request for extended vesting.

**APPLICANT:** Colorado Senior Residences dba Casey's Pond Senior Community, c/o Michael Olsen, Michael J.K. Olsen Architects, P.O. Box 772385, Steamboat Springs, CO 80477 (970) 870-1584 email: mjko@mjkoarch.com

**PC ACTION:** On August 11, 2011 the Planning Commission recommended to approve the Development Plan/Final Development Plan by a vote of 6-0. Commissioners Lacey, Levy, Meyer, Robbins, Hanlan and Brookshire voting in the affirmative, Commissioners absent, *None*.

CITY COUNCIL COMMUNICATION FORM

Casey's Pond, #DPF-10-04

September 6, 2011

**I. RECOMMENDED MOTION**

The Planning Commission recommends the City Council approve the Development Plan/Final Development Plan, #DPF-10-04 with the following conditions:

1. All fire department access roads shall be dedicated to the City of Steamboat Springs as "Emergency Access Easements" and shall be dedicated and noted on the Final Site Plan. Also a "Dedication of Easement" form supplied by the City shall be completed and recorded by the County Clerk's Office.
2. When fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except when approved alternative methods are provided. This means any utilities in the road need to be in and the road completed to an all-weather drivable surface and fire hydrants in and accepted by the water purveyor before the Fire Department can sign off on building permits.
3. Civil construction plans prepared by a licensed Colorado civil engineer must be submitted to Public Works for review by Public Works, Planning, Parks and Recreation, and Mt. Werner Water for review and approval prior to approval of any improvements agreement, grade & fill or building permit, or final plat and prior to the start of any construction. We recommend submitting the construction plans a minimum of five weeks prior to grade & fill or building permit application to allow time for review, comment response, and approval and incorporate the final construction plans into the grade & fill or building permit plans.
4. Prior to approval of civil construction plans a Development Agreement between the City and the Developer will be required. The agreement shall stipulate the developer will be required to:
  - i. Remove 350 cubic yards of sediment deposit from Casey's Pond.
  - ii. Submit a \$50,000 payment to Escrow for maintenance to the outlet pipe of Casey's Pond.
  - iii. Maintain the drainage outfalls from the development, including future removal of sedimentThe details of when each of these requirements must be completed will be established in the Development Agreement.
5. If at time of building permit there are any proposed private features within City property or rights-of-way, the owner must apply for a revocable permit agreement for those private site features. This project will be responsible for maintenance of any approved feature. No private features shall encroach on the multi-use and emergency access trails/routes.
6. The owner shall provide a construction easement to the City for the future Casey's Pond trail tie-in project. Details of the easement shall be worked out with the Public Works Engineering Department.
7. Prior to approval of a grade & fill or building permit the developer shall complete and record a sidewalk/trail maintenance agreement with the City for those portions of the multi-use and emergency trails which are required to be maintained by the developer.

## CITY COUNCIL COMMUNICATION FORM

Casey's Pond, #DPF-10-04

September 6, 2011

8. Provide a final copy of the Letter of Map Revision (LOMR) for the modifications made to the floodplain. The City shall be notified of any changes with the final design regarding the Floodplain Modification Study.
9. Owner will be required to have a third party project engineer conduct site inspections, testing, and construction observations to determine that the public and private improvements were constructed per approved plans as part of the City's improvements inspection process. A pre-construction meeting to outline the specific requirements for the project will be required prior to the start of construction.
10. The following items to be identified for each phase on the construction plans and /or building permit are considered critical improvements and must be constructed prior issuance of any TCO or CO; they cannot be bonded:
  - i. Public drainage improvements
  - ii. Public sidewalk improvements
  - iii. Installation of street and traffic control signs
  - iv. Access drive, driveway, and parking areas
  - v. Pedestrian crossing improvements
  - vi. Storm water quality features. (Vegetation must be established prior to CO when required as part of the feature design.)
11. A final plat shall be filed for the Casey's Pond Subdivision prior to building permit or grade and fill permit (site grading may occur under Preliminary Plat grade and fill permit).
12. The future development of Phase 2, including the FAR Variance, shall be vested for a period of ten (10) years, reviewed as a Development Plan/Final Development Plan and shall comply with all applicable standards of the Community Development Code at the time of Phase 2 submittal.
13. A development agreement will need to be entered into between the City and the developer prior to building permit or grade and fill permit regarding:
  - a. FAR Variance
  - b. Extended Vesting
  - c. Improvements to the City Park
  - d. Dredging and outlet structure improvements to Casey's Pond

## II. PLANNING COMMISSION DISCUSSION

The Planning Commission discussed the proposed project, the two proposed variances and the associated minor adjustment. Even though the code allows for certain variances to be processed as Minor Adjustments, the Commissioners agreed that they would have preferred for this project to be processed as a PUD given that three variations to the standards of the CDC were proposed. Many commissioners expressed that they felt this project could meet the public benefit requirements for a PUD required in the CDC. The Commission also discussed the request for permanent vesting for the increased Floor Area Ratio. The Commission agreed that they did not have the authority to grant vesting above ten years. They were also hesitant to grant permanent vesting for an expansion that was yet to be designed and required that any expansion be reviewed as a

CITY COUNCIL COMMUNICATION FORM

Casey's Pond, #DPF-10-04

September 6, 2011

Development Plan/Final Development Plan. Please see the draft minutes included as Attachment 2.

**III. BACKGROUND INFORMATION**

The subject property is approximately 5.5 acres in size and was created by the Casey's Pond Subdivision (#PP-10-04).

The parcel is bounded on the north by single family lots in the Wildhorse Meadows development, to the east by Owl Hoot Trail, to the south by Walton Creek Road and to the west by Casey's Pond, a park owned by the City of Steamboat Springs. Walton Creek runs along the south property line and the site contains wetlands, floodplain and floodway. Through the Preliminary Plat process, the site has been excavated to redefine the floodplain for Walton Creek, mitigate wetlands and extend Owl Hoot Trail through the site from the Wildhorse Meadows development to Walton Creek Road.

The subject parcel was rezoned on February 15, 2011 from Resort Residential One (RR-1) to Multi-Family Three (MF-3). The change in zoning allowed for this project to be reviewed under the Urban Design Standards and Entry Corridor Concepts in lieu of the Base Area Design Standards. This change in zoning introduces a maximum Floor Area Ratio to the site that was not present in the original zoning.

**IV. PUBLIC COMMENT**

Public comment was received in writing and at the Planning Commission hearing and is attached.

**V. NEW INFORMATION**

The applicant has requested that the increased Floor Area Ratio (FAR) be vested permanently (see Attachment 3). Community Development Code Section 26-203 allows for extended vesting through a Development Agreement up to ten (10) years. In order for the City Council to grant vesting above ten years, the City Council would have to pass an ordinance specifically exempting this development from the restrictions set forth in CDC Section 26-203.

As conditioned any expansion of the building vested by the additional FAR would be required to meet all applicable design and dimensional standards at the time of application and would be reviewed by Planning Commission and City Council as a Development Plan/Final Development Plan. The applicant has also proposed tying the vesting of the FAR variance to the specific use of the facility as a Congregate Senior Housing facility. These facts eases the Department of Planning and Community Development's concerns that this vesting would result in the approval of a specific building design that may be incompatible with the design standards of the City in the future.

CITY COUNCIL COMMUNICATION FORM

Casey's Pond, #DPF-10-04

September 6, 2011

Granting permanent vesting has the potential to set a precedent for future development application to request similar treatment. This raises the question as to what criteria may make this development unique and worthy of a special exception to the vesting provision in the CDC and furthermore what other types of development, if any, meet this threshold. If Council chooses to consider vesting beyond ten years, staff recommends establishing consistent eligibility criteria to avoid establishing an expectation that permanent vesting is available for all applicants.

**VI. LIST OF ATTACHMENTS**

Attachment 1 - Planning Commission Report dated August 11, 2011

Attachment 2 - Planning Commission Draft Minutes from August 11, 2011

Attachment 3 – Additional Public Comment

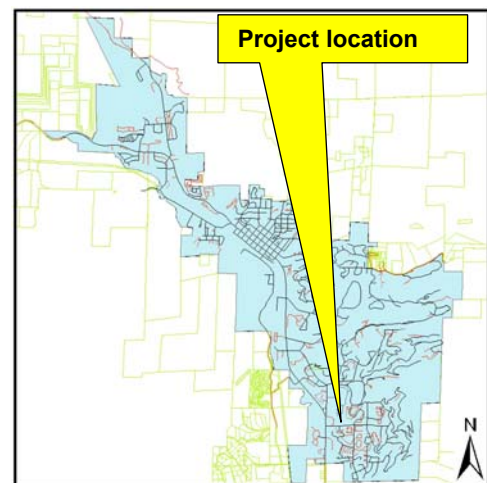
Attachment 4 – Applicant's Letter regarding permanent vesting

Attachment 5 – Applicant's vision booklet



## DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT STAFF REPORT

PLANNING COMMISSION AGENDA ITEM # 2:	
<b>Project Name:</b>	Casey's Pond Subdivision, Parcels A and C (Casey's Pond Senior Living Facility) #DPF-10-04
<b>Prepared By:</b>	Jason K. Peasley, AICP, City Planner (Ext. 229)
<b>Through:</b>	Tyler Gibbs, AIA, Director of Planning and Community Development, (Ext. 244)
<b>Planning Commission (PC):</b>	August 11, 2011
<b>City Council (CC):</b>	September 6, 2011
<b>Applicant:</b>	Colorado Senior Residence, Inc. c/o Michael JK Olsen Architects, PO Box 772385, Steamboat Springs, CO 80477
<b>Request:</b>	Development Plan/Final Development Plan to construct a 121,000 square foot senior living facility with associated parking, landscaping and sidewalks. The proposal includes variances to the maximum floor area ratio and minimum rear setback.



Development Statistics - Overview	
<b>Lot Area:</b>	240,466 square feet
<b>Gross Floor Area:</b>	121,293 square feet
<b>Lot Coverage:</b>	58,441 square feet
<b>Floor Area Ratio:</b>	0.75
<b>Building Height</b>	
Average Plate Height (APH):	23' 9"
Overall Height (OH):	63' 0"

Staff Report - Table of Contents		
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## I. COMMUNITY DEVELOPMENT CODE (CDC) – STAFF ANALYSIS SUMMARY

<b>CDC - SECTION 26-66 (D):</b> NO DEVELOPMENT PLAN/FINAL DEVELOPMENT PLAN SHALL BE APPROVED UNLESS THE CITY COUNCIL FINDS THAT THE PLAN MEETS ALL OF THE FOLLOWING CRITERIA:					
Subsection		Consistent			Notes
		Yes	No	NA	
1)	Conformity with Community Plan	<input checked="" type="checkbox"/>			
2)	Consistency with Surrounding Uses	<input checked="" type="checkbox"/>			
3)	Conformity with Building and Architectural Standards	<input checked="" type="checkbox"/>			
4)	Minimize Adverse Impacts	<input checked="" type="checkbox"/>			
5)	Access	<input checked="" type="checkbox"/>			
6)	Minimize Environmental Impacts	<input checked="" type="checkbox"/>			
7)	Phasing	<input checked="" type="checkbox"/>			
8)	Variance Criteria	<input checked="" type="checkbox"/>			

**Staff Finding:** Staff finds the Development Plan/Final Development Plan for the Casey's Pond Senior Living Facility to be in compliance with the Community Development Code criteria for approval of Development Plan/Final Development Plan with a variance to the maximum floor area ratio and the minimum rear setback.  
*(Detailed policy analysis is located in Section VII; Staff Findings and Conditions are in Section VIII)*

## II. PROJECT LOCATION



### **III. BACKGROUND INFORMATION**

The subject property is approximately 5.5 acres in size and was created by the Casey's Pond Subdivision (#PP-10-04).

The parcel is bounded on the north by single family lots in the Wildhorse Meadows development, to the east by Owl Hoot Trail, to the south by Walton Creek Road and to the west by Casey's Pond, a park owned by the City of Steamboat Springs. Walton Creek runs along the south property line and the site contains wetlands, floodplain and floodway. Through the Preliminary Plat process, the site has been excavated to redefine the floodplain for Walton Creek, fill in areas of wetlands and extend Owl Hoot Trail through the site from the Wildhorse Meadows development to Walton Creek Road.

The subject parcel was rezoned on February 15, 2011 from Resort Residential One (RR-1) to Multi-Family Three (MF-3). The change in zoning allowed for this project to be reviewed under the Urban Design Standards and Entry Corridor Concepts in lieu of the Base Area Design Standards. This change in zoning introduces a maximum Floor Area Ratio to the site that was not present in the original zoning.

### **IV. PROJECT DESCRIPTION**

The proposed development consists of a single building senior living facility with approximately 121,000 square feet of independent living, assisting living and skilled nursing facilities. The project also includes surface parking and a series of public sidewalks on site and on the Casey's Pond Park. (See Attachment 1 for more details)

This project is being processed as a Conditional Use for a nursing home in the MF-3 Zone District.

Conditional uses are those uses that are generally in keeping with the purpose and intent of the zone district yet may have more impacts to surrounding properties and the community than uses by right or uses with criteria. Conditions may be placed upon these uses as deemed appropriate in order to avoid or mitigate potential impacts.

### **V. PRINCIPAL DISCUSSION ITEM**

- FAR Variance: The applicant is applying for an FAR variance up to 0.75 (0.50 maximum permitted in MF-3 Zone District) for the future expansion (Phase 2) of the proposed building. The massing of the proposed addition is conceptual and is being processed only through the Development Plan process. Staff has reviewed this request with respect to fire access, parking and other site constraints and has found it to be generally consistent with the standards of the CDC. A Final Development Plan for the addition will be required to ensure compliance with all applicable City requirements at the time of submittal.
- Vesting: The applicant is requesting a 5+2 vesting for the Development Plan in order to allow for the FAR variance for the future expansion (Phase 2) to be vested for up to seven years. Staff supports the request for additional vesting to allow for the future expansion of this project with additional review by the City through the FDP process. The additional

two years of vesting may be approved by the Director if the project is in substantial conformance with the CDC at the time of the extension. The applicant is not requesting additional vesting for the FDP on Phase 1.

- Community Housing: The proposed project consists of independent living, assisting living and skilled nursing facilities. The use of this project is an institutional use and is exempted from the provision of community housing units per CDC Section 26-149(d).

**VI. OVERVIEW OF DIMENSIONAL AND DEVELOPMENT STANDARDS**

The following list was compiled by the project planner to provide an overview of key standards applicable to the project. Items in **bold** do not comply with applicable standards; refer to Project Analysis section for additional information. Interested parties are encouraged to review the Community Development Code (CDC) or contact the project planner for a comprehensive list of all applicable standards.

**A. DIMENSIONAL STANDARDS**

<b>CDC Section 26-132 (MF-3 Zone District)</b>			
<b>Standard</b>	<b>Maximum</b>	<b>Minimum</b>	<b>Proposed</b>
<i>Lot Area</i>	None	3,000 s.f.	240,466 s.f.
<i>Lot Coverage</i>	0.45	None	0.24
<i>Units per Lot</i>	None	None	N/A
<i>Floor Area Ratio (FAR)</i>	0.50	None	<b>Phase 1- 0.51</b> <b>Phase 2- 0.75</b>
<i>Building Height</i>	APH-35 ft. OH-57 ft.	None None	23' 9" 63' 0" (processed as a minor adjustment)
<b>Setbacks</b>			
<i>Front</i>	None	P – 15 ft. P (3 <sup>rd</sup> story and above) – 20 ft.	20 ft.
<i>Side</i>	None	10 ft.	15 ft.
<i>Rear</i>	None	10 ft.	<b>5 ft.</b>

## **B. URBAN DESIGN STANDARDS**

Staff finds that the project is in conformance with all applicable Urban Design Standards. The following are standards that are subject to interpretation and discussion by the Planning Commission:

### Freestanding Garage Banks – General

- *Freestanding garage banks shall incorporate materials, scale, colors, architectural details and roof slopes compatible with those found on primary buildings. Architectural details may include, but are not limited to:*
  - *Window openings defined by frames, sills and lintels;*
  - *Change in wall plane at least six inches every ten feet;*
  - *Vertical change in material or masonry patter.*

Staff Analysis: **Consistent;** The proposed freestanding garage banks are consistent with the primary structure in terms of materials, color and architectural details while the scales are significantly different. Staff finds this to be consistent with the intent of the standard.

### Roof Form and Function- Design Standards

- *Generally, multi-family buildings shall incorporate roof pitches of between 5:12 and 12:12; however, alternative roof forms or pitches may be allowed for small roof sections over porches, entryways or similar features.*

Staff Analysis: **Consistent;** While the majority of the building has roof pitches between 5:12 and 12:12, the single story portion of the building has a 3:12 pitch. Staff finds this to be consistent with the intent of the standards and produces a building with roof pitches that are proportional to the building height.

### Parking Location – General

- *Parking areas shall be located behind buildings, distributed between the sides and rear of building, unless otherwise permitted below.*
- *Surface parking areas are prohibited between the front façade of the building and the street.*

Staff Analysis: **Consistent;** The surface parking for this facility is located adjacent to Owl Hoot Trail, the lowest volume road adjacent to the project site. Given the sites proximity to Casey's Pond Park and Walton Creek Road, this is the most appropriate location for surface parking to mitigate its visual impacts on the entry corridor. The building mass, freestanding garage bays and landscaping have been used to screen the parking from the public vantage point (US Highway 40). Staff finds this to be consistent wit the intent of the standard to reduce the visual impacts of surface parking in the entry corridor.

### Building Orientation

- *Building shall be arranged and grouped so that their primary orientation complements on another and adjacent existing development by:*

- *Framing the corner of an adjacent street intersection or entry point to the development;*
- *Framing and enclosing a “main street” pedestrian and/or vehicle access corridor within the development site;*
- *Framing and enclosing on at least three sides parking areas, public spaces or other site amenities;*
- *Framing and enclosing outdoor dining or gathers spaces for pedestrians between buildings; or*
- *Framing on or more “fingers” of natural vegetation.*

Staff Analysis: **Consistent;** The proposed facility frames the adjacent park and the intersection of Walton Creek Road and Owl Hoot Trail. The building is oriented to place its primary façade towards Casey's Pond Park and US Highway 40 with a secondary façade facing Walton Creek Road.

## VII. STAFF / AGENCY ANALYSIS

### CRITERIA FOR APPROVAL

**CDC - Section 26-66 (d) – Final Development Plan: No final development plan shall be approved unless the Planning Commission and City Council find that the plan meets all of the following criteria:**

The following section provides staff analysis of the application as it relates to key sections of the CDC. It is intended to highlight those areas that may be of interest or concern to Planning Commission, City Council, staff or the public. For a comprehensive list of standards and requirements applicable to this proposal please refer to the CDC or contact the staff planner.

**CDC - Section 26-66(d)(1): Conformity with Community Plan.**

Staff Analysis: **Consistent;** The Casey's Pond Senior Living Facility project is in conformity with the following Steamboat Springs Area Community Plan goals and policies:

- Policy CD-1.4: Encourage high quality site planning a building design.
- Policy CD-1.5: Infill and redevelopment projects shall be compatible with the context of existing neighborhoods and development.
- Policy CD-1.6: Promote health and human services programs that strengthen and support individuals, families and neighborhoods.

**CDC – Section 26-66(d)(2): Consistency with Surrounding Uses.**

Staff Analysis: **Consistent;** The Casey's Pond Senior Living Facility project is consistent with surrounding uses that high density residential adjacent to Walton Creek Road. The proposed project steps its mass down as it approaches Walton Creek Road where multi-family uses are 2-3 stories in height. A grade separation between the development and the single-family lots in the Wildhorse Meadows development helps to mitigate the change in density between the two sites.

**CDC – Section 26-66 (d)(3): Conformity with the building and architectural standards.**

*Staff Analysis:* **Consistent;** The Casey's Pond Senior Living Facility project is consistent with all general building and architectural design standards in the CDC as well as the Urban Design Standards (see section VI above).

**CDC – Section 26-66(d)(4): Minimize Adverse Impacts.**

*Staff Analysis:* **Consistent;** The Casey's Pond Senior Living Facility project is not expected to produce adverse impacts. The plan conforms to the Urban Design Standards for a site that is highly visible from US Highway 40. The site has been designed to accommodate the specific needs of a senior living facility to minimize any impacts inherent to the use.

**CDC – Section 26-66(d)(5): Access.**

*Staff Analysis:* **Consistent;** Access to project will be off of Owl Hoot Trail and has been approved by the City of Steamboat Springs Public Works Department.

**CDC – Section 26-66 (d)(6): Minimize Environmental Impacts.**

*Staff Analysis:* **Consistent;** The Casey's Pond Senior Living Facility project is not expected to produce any significant environmental impacts. Impacts from stormwater runoff to Casey's Pond will be mitigated through bioswales and a commitment by the developer to dredge Casey's Pond to accommodate additional stormwater detention in the pond.

**CDC – Section 26-66 (d)(7): Phasing.**

*Staff Analysis:* **Consistent;** The project will be completed in two phases. Each phase has been designed to stand alone. The second phase is being approved through the Development Plan process only and will be required to be reviewed as a Final Development Plan to ensure compliance with all City regulations at the time the application is submitted.

**CDC-Section 26-65 (d) (8) Variance criteria.**

Development plans seeking variation from up to two (2) of dimensional standards, development or subdivision standards listed in article V, development standards and article VII, subdivision standards, where such variances do not qualify as minor adjustments shall meet the following criteria for approval in addition to the criteria in subsections 26-65(e)(1)--(8):

Variance Request #1: The Casey's Pond Senior Living Facility project is requesting a variance to the required ten (10) foot rear setback in the Multi-Family Three, (MF-3) zone district. The rear property line is adjacent to the Casey's Pond Park.

- a. **Legal Use.** The property and the use of such property for which the variance is requested is in full compliance with all requirements of the zone district in which the property is located, or there is a legal nonconforming structure or lot, or there is a conforming structure housing a legal nonconforming use. No variance may be granted which would permit or expand any unlawful use of property.

Staff Analysis: **Consistent.** The proposed building is a conditional use in the MF-3 Zone District. The use permit is being processed with this application.

- b. **Injury to Adjoining Property Mitigated.** The variance will not permanently injure or adversely impact legal conforming uses of adjacent property; or the applicant has accurately assessed the impacts of the proposed variance and has agreed to mitigate those impacts. In making this determination the City Council shall begin with the assumption that variations from development standards create impacts on adjacent properties, and shall place the burden of proof on the applicant to show:
- Impacts to adjacent properties are presumed.
  - That there are no impacts or that the impacts have been adequately mitigated. Unsupported opinions of impacts from surrounding property owners shall not be conclusive evidence of impacts.

Staff Analysis: **Consistent.** The proposed variance will have no adverse impacts on the adjacent properties. An adjacent property affected is Parcel C of the Casey's Pond Subdivision, a parcel created to remove contamination from the project site, primarily for lending purposes. Parcel C is not developable and will eventually be combined with Parcel A when the contaminated soils are remediated. The other adjoining parcel, Casey's Pond Park will not be affected by the encroachment. The project proposed significant improvements to the park including sidewalks and trails.

- c. **Advantages Outweigh Disadvantages.** The applicant shall bear the burden of proof and demonstrate that the advantages of the variance substantially outweigh its disadvantages to the community and to neighboring lands.

Staff Analysis: **Consistent.** The advantages of the building encroaching on the rear setback outweigh the disadvantages due to the limited impact of the encroachment and the significant improvements proposed to Casey's Pond Park in conjunction with this project.

- d. **Superior Development.** The applicant shall demonstrate that the requested variation(s) from the dimensional standards will result in a development which better meets the intent of the underlying zone district and adopted plans.

Staff Analysis: **Consistent.** The proposed exception to ten (10) foot required rear setback provides superior development by increasing the use of the site for a community facility that will provide significant improvements to Casey's Pond Park.

- e. **Minimum Relief.** The applicant shall demonstrate that the requested variations are the least modification possible of the CDC that will meet the design goals of the development.

Staff Analysis: **Consistent.** The requested variance is the least modification possible that will meet the design goals of the development and results in a superior building design.

Variance Request #2: The Casey's Pond Senior Living Facility project is requesting a variance to the maximum floor area ratio (0.50) in the Multi-Family Three, (MF-3) zone district. Phase 1 has an FAR of 0.51 and phase 2 will increase the FAR to 0.75 with additional review as an FDP.

- a. **Legal Use.** The property and the use of such property for which the variance is requested is in full compliance with all requirements of the zone district in which the property is located, or there is a legal nonconforming structure or lot, or there is a conforming structure housing a legal nonconforming use. No variance may be granted which would permit or expand any unlawful use of property.

Staff Analysis: **Consistent.** The proposed building is a conditional use in the MF-3 Zone District. The use permit is being processed with this application.

- c. **Injury to Adjoining Property Mitigated.** The variance will not permanently injure or adversely impact legal conforming uses of adjacent property; or the applicant has accurately assessed the impacts of the proposed variance and has agreed to mitigate those impacts. In making this determination the City Council shall begin with the assumption that variations from development standards create impacts on adjacent properties, and shall place the burden of proof on the applicant to show:
- Impacts to adjacent properties are presumed.
  - That there are no impacts or that the impacts have been adequately mitigated. Unsupported opinions of impacts from surrounding property owners shall not be conclusive evidence of impacts.

Staff Analysis: **Consistent.** The proposed variance will have no adverse impacts on the adjacent properties. The additional FAR is compatible with the surrounding properties zoned RR-1 that contains no FAR maximum.

- f. **Advantages Outweigh Disadvantages.** The applicant shall bear the burden of proof and demonstrate that the advantages of the variance substantially outweigh its disadvantages to the community and to neighboring lands.

Staff Analysis: **Consistent.** The advantages of the building exceeding the maximum FAR outweigh the disadvantages due to greater utilization of an infill site and compliance with the Urban Design Standards for the south entry corridor.

- g. **Superior Development.** The applicant shall demonstrate that the requested variation(s) from the dimensional standards will result in a development which better meets the intent of the underlying zone district and adopted plans.

Staff Analysis: **Consistent.** The proposed variance to the maximum FAR provides superior development by increasing the use of the site for a community facility that will provide significant improvements to Casey's Pond Park.



- h. **Minimum Relief.** The applicant shall demonstrate that the requested variations are the least modification possible of the CDC that will meet the design goals of the development.

*Staff Analysis:* **Consistent.** The requested variance is the least modification possible that will meet the design goals of the development and results in a superior building design.

## VIII. STAFF FINDING & CONDITIONS

### Finding

The Casey's Pond Senior Living Facility Development Plan/Final Development Plan (#DPF-10-04) is consistent with the findings for approval for a Development Plan/Final Development Plan with the following conditions:

1. All fire department access roads shall be dedicated to the City of Steamboat Springs as "Emergency Access Easements" and shall be noted on the Final Plat. Also a "Dedication of Easement" form supplied by the City shall be completed and recorded by the County Clerk's Office.
2. When fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except when approved alternative methods are provided. This means any utilities in the road need to be in and the road completed to an all-weather drivable surface and fire hydrants in and accepted by the water purveyor before the Fire Department can sign off on building permits.
3. Civil construction plans prepared by a licensed Colorado civil engineer must be submitted to Public Works for review by Public Works, Planning, Parks and Rec, and Mt. Werner Water for review and approval prior to approval of any improvements agreement, grade & fill or building permit, or final plat and prior to the start of any construction. We recommend submitting the construction plans a minimum of five weeks prior to grade & fill or building permit application to allow time for review, comment response, and approval and incorporate the final construction plans into the grade & fill or building permit plans.
4. Prior to approval of any grade & fill or building permit a Development Agreement between the City and the Owner will be required for the use of Casey's Pond for required on-site detention and mitigation requirements by the development. The developer shall be required to dredge 350 cy of material from Casey's Pond and contribute \$50,000 toward improvements of the outfall structure.
5. Prior to issuance of any Certificate of Occupancy for the development all dredging work in Casey's Pond must be completed in accordance with the executed development agreement.
6. Submit the permit for modifications to the wetlands/ waters of the state from Army Corp of Engineers prior to construction.
7. Prior to issuance of a building permit, complete a revocable permit for any private site features to be constructed on City property including: XXXX (insert list such as benches, lights, etc.). This project will be responsible for maintenance of those

- features. No private features shall encroach on the multi-use and emergency access trails/routes.
8. Prior to approval of a grade & fill or building permit the developer shall complete and record a sidewalk/trail maintenance agreement with the City for those portions of the multi-use and emergency trails which are required to be maintained by the developer.
  9. Please provide an updated copy of the Floodplain Modification Study reflecting any changes with the final design.
  10. Owner will be required to have a third party project engineer conduct site inspections, testing, and construction observations to determine that the public and private improvements were constructed per approved plans as part of the City's improvements inspection process. A pre-construction meeting to outline the specific requirements for the project will be required prior to the start of construction.
  11. At time of first final plat for the development, provide a construction easement to the City for the future Casey's Pond trail tie-in project with an agreed upon expiration date.
  12. Prior to approval of any grade & fill permit or building permit submit a revised, stamped final traffic impact study reflecting the final proposed bed count and incorporating language that the study does not include the required pedestrian or transit connections but items are included on the DPF plans.
  13. The following items to be identified for each phase on the construction plans and /or building permit are considered critical improvements and must be constructed prior issuance of any TCO or CO; they cannot be bonded:
    - Public drainage improvements
    - Public sidewalk improvements
    - Installation of street and traffic control signs
    - Access drive, driveway, and parking areas
    - Pedestrian crossing improvements
    - Storm water quality features. (Vegetation must be established prior to CO when required as part of the feature design.)
  14. A final plat shall be filed for the Casey's Pond Subdivision prior to building permit or grade and fill permit (site grading may occur under Preliminary Plat grade and fill permit).
  15. A development agreement will need to be entered into between the City and the developer prior to building permit or grade and fill permit regarding:
    - a. FAR Variance
    - b. Extended Vesting
    - c. Improvements to the City Park
    - d. Dredging and outlet structure improvements to Casey's Pond

## **IX. LIST OF ATTACHMENTS**

1. Applicants Narrative
2. Public Comment
3. DPF Plan Set



1169 HILLTOP PKWY, SUITE #205B  
P.O. BOX 772385  
STMBT. SPRGS., CO 80477  
PHONE: 970-870-1584  
FAX: 970-871-0217  
mjko@mjkoarch.com

Colorado Senior Residences, Inc.  
Development Plan and Final Development Plan  
Date: March 15, 2011 (Revised August 3, 2011)

### **Narrative**

The proposed Development Plan (DP), Final Development Plan (FDP), and Conditional Use (CU) simultaneously applied for herein apply to Parcel A, Casey's Pond Subdivision. In conjunction with the above two variances (setback & FAR) and one minor adjustment (building overall height) are requested. The non-profit developing entity is Colorado Senior Residences, Inc. a Non Profit Corporation dba Casey' Pond Senior Living. The purpose of the development is to relocate the existing Doak Walker Skilled Nursing Facility currently housed on Yampa Valley Medical Center's campus to a new home. In addition to the Doak Walker's 60 Skilled Nursing Beds the new facility will house an additional 26 Memory Care Beds, 30 Assisted Living Beds, and 39 Independent Living Beds. The following supporting functions and corresponding spaces will also be included; Kitchen, Dining, Physical Therapy, Activity, Administration, and Laundry. This institution which will allow "aging in place across the continuum" will provide the community of Steamboat Springs with a unique institution unmatched by neighboring mountain towns including but not limited to Aspen, Vail, and Summit County.

The Casey's Pond Preliminary Subdivision was approved by City Council on July 6, 2010. Construction of the north south Owl Hoot Trail extension dividing the original site into the subject Parcel A to the west and Parcel B to the east was completed Fall 2010. The Final Plat process for this subdivision has not been initiated. Per the Subdivision's Conditions of Approval the wetlands are currently being re-delineated by Kelly Colfer with Western Bionomics through the Army Corps of Engineers. Upon their acceptance of the re-delineation defining the wetlands location and size a 404 Nationwide Permit application will be then be submitted. (Udapte: The proposed wetland re-delineation has been recently accepted by the Army Corps of Engineers and the 404 Permit Application is anticipated for submission by August 8, 2011.) Upon obtaining this permit, which ultimately maps the final wetlands boundary, the Final Plat process will be initiated. It should be noted that until the Final Plat is approved and recorded Parcel A cannot be titled to Colorado Senior Residences, Inc. The property is

currently under the title of Casey's Pond, LLC and only Parcel A will be transferred to Colorado Senior Residences, LLC. Therefore, this DP/FDP/CU and any subsequent entitlements will be processed under the ownership name of Colorado Senior Residences, LLC. It is understood the approval of the Nationwide Permit and Recordation of the Final Plat will be required as DP/FDP/CU conditions of approval. For the purposes of this submittal the re-delineated wetlands noted above have been indicated represented herein.

As part of the above noted subdivision work the demolition took place of all but one of the existing structures on Parcel A. It was determined at this time a small gasoline spill penetrated the soil in the northwest corner of Parcel A. Therefore, the contaminated area with a safety margin was carved out of Parcel A and relabeled Parcel C and will be recorded as such post Final Plat. Upon completion of cleanup it is anticipated Parcel C title will be delivered to Colorado Senior Residences, Inc. by Casey's Pond LLC.

Parcel A and Parcel C were rezoned to the MF-3 Zone District and the City's Future Land Use Map was updated accordingly per City Council approval on February 15, 2011. It was felt the Urban Design Guidelines and Entry Corridor Concepts associated with the MF-3 Zone District were a more appropriate zone district overlay.

The Building's Construction Classification Type V-A as well as State Regulations dictate the proposed building's organization. For example the Skilled Nursing component is required to be a single story building and the Memory Care & Assisted Living cannot be above the second floor. Only Independent Living can be located on floors higher than the second floor. These constraints directly correlate to the building massing, its footprints size, and how it is arranged on the site. All efforts have been undertaken to fit the proposed building within the setbacks and outside utility easements. However, a zero setback parallel to the property line adjacent to Casey Pond is requested as one of two Variances. It is believed this request has no negative impact to the adjacent property or other due to the fact this parcel will never be developed. The second Variance is for future FAR of .75. The current building as proposed and allowable FAR are each .50. This variance applies only to the DP not the FDP. Finally, the Independent Living is the only building function to be above the second floor, therefore, a Height Minor Adjustment is requested. The center portion of the building is less than 20% over the allowable height of 57'-0" at 63'-0".

The current Federal Emergency Management Agency (FEMA) mapping represents a flood plane across the southern portion of the site. This mapping has been studied and a proposed map revision has been review by the City of Steamboat Springs Planning Services Department and submitted to FEMA. The purpose of this Conditional Letter of Map Revision (CLOMR) is to redefine the 100 & 500 year flood plane to the south of the previously approved Casey's Pond Subdivision sidewalk on the southern portion of the site. Upon completion of this

sidewalk a Letter of Map Revision (LOMR) will be filled for that permanently changes the boundaries of the flood plane. This is required due to the necessary building organization and footprint noted above. It is understood that approval of both the CLOMR and LOMR will be required as DP/FDP/CU conditions of approval. The CLOMR application to FEMA has been accepted.

A small barn exists on Parcel A. It is in disrepair and has no foundation. There is no known historical significance. Reasonable preservation efforts will be undertaken with the goal to relocate the stabilized structure on to adjacent City Parks & Recreation Land. It is felt such a location will create opportunities for public use through interpretive signage or other. Initial discussions have taken place with the City of Steamboat Springs Parks & Recreation Department. It is understood such relocation will require approval by the Parks & Recreation Board. Should the City of Steamboat Springs Parks & Recreation Department object to the relocation onto city land there will be no choice but to demolish the structure.

The site is bounded by road access on two sides, the new Owl Hoot Trail to the east and Walton Creek Road to the south. However, emergency access is limited from Walton Creek Road due the need to cross Burgess Creek. Thus, Owl Hoot Trail is effectively the only public road available for emergency access. However, emergency access is achieved around the entire proposed building by the following Trails & Sidewalk. At the north a Multi-use Trail connects the parking lot to the Casey's Pond Trail with emergency access for use by Parcel A. To the south a Sidewalk allows for emergency access connecting Owl Hoot Trail to the Casey's Pond Trail. Extensive discussions with Fire Prevention and Public Works have taken place in order to define the solution presented above.

DP/FDP requirement is new development to designate 15% of the total developed parcel area as Open Space. Here the area defined by the southern sidewalk to Walton Creek Road is defined as Open Space. It is felt the location of this space in relationship to the City's Casey's Pond Parcel will extend the current park and stimulate increased public use.

The site provides for 75 parking spaces of which 6 are located in a garage. Due to the nature of Senior Facilities the Users typically do not have cars. Therefore, the primary use of the parking is for staff and guests. Only the Independent Living component will have Users that require parking. There will be two on demand shuttle vans available to all users. Fox Higgins Transportation Group has prepared parking study (See attached Memo dated September 10, 2010.) as well as a traffic study (See Casey's Pond Project Traffic Impact Study dated May 13, 2010.). The information outlined in these documents does not indicate any additional infrastructure requirements from that noted above. (Update: A final revised Traffic Study is in process and should be received by August 8, 2011.)

It should be noted the design process is an Integrated Design Process with numerous Stakeholder and Consulting Engineer coordination meetings. One of the areas that the resultant outcome can clearly be identified is the integration of the civil & building design with the landscaping. Two specific examples include the integration of bio-filtration swale surface water treatment and the amphitheater design.

The first is the bio-filtration swales. These are not storm water detention ponds but a much better performing solution both in water treatment and visual appearance. The size and approximate location were dictated by civil design requirements but the bio-filtration swale design and integration into the overall landscape scheme were simultaneously coordinated directly with the Landscape Designer and Architect. The second is the amphitheater as a unique design solution to address the requirement for an unsightly retaining wall. The design team understood the project's view from Highway 40 is of primary importance. The amphitheater softens the grade separation from the Casey's Pond Parcel perimeter emergency access sidewalk/trail up to the building. This softening will be perceived both from Highway 40 as well as a pedestrian strolling the pond's perimeter.

Since the landscaping is difficult to visualize compared to the building elevations and perspective sketches extra effort has been placed to describe in words the proposed solution herein.

Conceptually, the Parcel A & Parcel C landscaping will be supportive of the buildings intended uses and compliant with the intended prescribed standards described in the Steamboat Springs Revised Municipal Code. The Urban Design Standards state the setback buffer associated with the parking areas and the interior property will be 'moderately' planted. All landscape treatments will be supported by automated irrigation, which amounts to approximately 4.27 acres. All planting beds and landscape areas within 10' of the building's foundation will be irrigated by drip lines only, while seed or sod turf areas will be covered by spray heads. Seeded areas of disturbed areas immediately adjacent to Burgess Creek and Casey's Pond will be temporarily irrigated, until established. Special attention will be paid to the unique environmental conditions of Steamboat Springs, including accommodation of snow storage and durable plant species. The principles and best practices of xeriscaping will be incorporated and the plant palette will consist largely of those species recommended in the Steamboat Springs Urban Design Standards, adopted February 2008.

Special attention was applied to the edge conditions due to the unique interface with the Burgess Creek drainage and Casey's Pond. The East edge of the property will be bounded by Owl Hoot Trail with landscape improvements as recommended for a landscape buffer treatment adjacent to roadway, as described above. The surface water drainage swale adjacent to the detached

sidewalk will provide bio-filtration through a native seed mix that will be maintained approximately 12" – 18" height, Spring through Fall.

Similarly, the North property edge will include a bio-filtration swale with a native seed mix that is maintained at 12" – 18", Spring through Fall. Evergreen trees provide a visual buffer along this edge. It should be noted that the treatment of surface water thru these bio-filtration swales has been thoughtfully addressed. A variance with the City's Public Works Department has been agreed upon to utilize Casey's Pond as stormwater storage. The pond will be dredged to in excess capacity for the required stromwater storage. In additions moneys will contributed to facilitate maintenance of the Pond's outlet pipe under Highway 40.

The West perimeter of the property is bounded by the proposed Casey's Pond Trail that provides a clear landscape transition between the manicured interior of the property and the emergent marsh edge of Casey's Pond. West of the sidewalk trail, the existing character of Casey's Pond edge will be maintained and improved in areas of disturbance with an appropriate riparian native seed mix.

The South edge of the property is bounded by Burgess Creek. Here again, the sidewalk serves as a clear landscape transition between the manicured interior of the property and the riparian corridor of native grasses, willows, dogwood, and cottonwoods. The landscape character of Burgess Creek will be maintained and improved upon by removing existing debris from the creek and introducing an appropriate, riparian native seed mix in areas of disturbance.

The landscape treatment of the property interior is intended to be an amenity for both residents and employees of the facility, and enhance the appearance of the building. The foundation planting beds, lawn areas, and garden spaces are intended to provide residents and employees with useable, comfortable and attractive outdoor spaces, and the greater community with a visually appealing landscape that is complementary of Steamboat's unique landscape character.

In these ways, the intent is for the property's landscape treatment to be durable, functional, species-appropriate, and attractive with year-round interest.

As noted above the design approach employed is an Integrated Design Process. Not only does this approach manifest itself in the exterior design but also in the interior to balance all stakeholder's with realistic building practices and budget. One result is a building although not seeking to achieve any specific "green" accreditation but will employ many "green" solutions from low VOC finishes to increased insulation balanced with the mechanical system.

Architecturally the buildings organization is dictated by state regulations allowing only the Independent Living to exceed two stories in height and limiting the Skilled Nursing to one story. Therefore, this larger mass was placed at the center

of the lower wings extending off to the north and south. This massing arrangement not only results in a preferred aesthetic but a functionally efficient solution. The building was placed along the western edge of the site to address both Casey's Pond and Highway 40. The parking area was tucked behind the building effectively screening it from both Highway 40 and Walton Creek Road. In addition the Garage was placed along the edge of Owl Hoot Trail and oriented inward allowing it to further screen the parking area.

The building itself sprawls across the site almost randomly as viewed from the exterior creating an interesting juxtaposition of massing. The massing is then articulated and subsequently broken down further in scale by the use of color and texture. The three primary colors and corresponding textures employed are horizontal clapboard, vertical board & batten, and stone masonry. The wood timber accents in conjunction with the stone create a sense of a mountain lodge while the clapboard and board & batten hint of Steamboat's past. One can see references to the historic Cabin Hotel that once stood where the new Steamboat Springs Library now stands. This historic reference is fulfilled by the Arts & Crafts flavor accentuated by the tall and narrow window proportions and simulated divided lites. The ultimate goal is to create a project that hides its institutional nature. Thus the site plan and architectural vernacular were carefully crafted to speak to a wide demographic of its users including but not limited to age, income, and background.

In conclusion one can see extensive efforts have been made to physically integrate the proposed project with the greater Steamboat Community. This is the first step in the hope for its social integration to the community as well.



July 24, 2011

Steamboat Springs Planning Commission and City Council  
c/o Jason Peasley - [jpeasley@steamboat-springs.net](mailto:jpeasley@steamboat-springs.net)

Re: Planning Proposal – Senior Campus at Casey’s Pond

Dear Sir and Madam:

On behalf of the 425 members of Steamboat’s Over The Hill Gang I wish to indicate our strong support for the new senior campus being planned for the Casey’s Pond site.

Last year, our Senior Housing Committee surveyed the housing and services available for seniors in the Steamboat area and around the country\*. We found that there was a serious lack of facilities here – totally inadequate independent living, assisted living only in Hayden, and an oversubscribed skilled nursing facility in Steamboat.

Just as we were conducting our study we were pleased to learn of the announcement by Yampa Valley Medical Center of the Casey’s Pond Senior Campus. Karl Gills, CEO of YVMC invited us to follow along on the planning of the project from the very beginning.

As we became aware of the details of this project we were able to compare it to other projects we had studied around the country. We were very pleased to find that this will be a superior facility in several ways. Most importantly, the facility will offer independent living, assisted living, memory care and skilled nursing, all on the same connected campus. The vital significance of this is that it could allow couples with different needs to still be together and it will allow better and more economical targeting of services.

This project is very important to the Steamboat Springs community. It will fill a critical need for seniors who have lived here a long time, and it will enable some of us who retired to Steamboat to stay here. Also importantly, there are many younger persons who have moved here and raised families. This new facility will allow these younger persons to move their aging parents to Steamboat where the generations can be together and be cared for.

This will be a project that Steamboat Springs can be proud of. We urge your support.

Sincerely,

Bill Dring President, Steamboat’s Over The Hill Gang (Former Chair of Senior Housing Committee)  
3043 Mountaineer Circle  
Steamboat Springs  
970 870 3274  
[billdring@comcast.net](mailto:billdring@comcast.net)

\*The OTHG report on Senior Housing and Senior Services is available at Werner Library and on the web at:  
[http://yampavalley.info/centers/recreation/organizations/over\\_the\\_hill\\_gang/pages/home\\_page\\_-\\_senior\\_housing\\_and\\_senior\\_services](http://yampavalley.info/centers/recreation/organizations/over_the_hill_gang/pages/home_page_-_senior_housing_and_senior_services)

**Jason Peasley**

---

**From:** pgloor@aol.com

**Sent:** Thursday, July 28, 2011 10:53 AM

**To:** Jason Peasley; billdring@comcast.net

**Subject:** Senior Campus at Casey's Pond

To the Steamboat Springs Planning Commission and City Council:

We support the plan for the Senior Campus at Casey's Pond.

Thank you for considering our support of the plan.

Rich and Pat Gloor  
Over the Hill Gang

## Jason Peasley

---

**From:** louis raphael [louis.raphael34@yahoo.com]  
**Sent:** Friday, July 29, 2011 4:14 PM  
**To:** Jason Peasley  
**Cc:** billdring@comcast.net; molly raphael  
**Subject:** Senior Campus at Casey's Pond

We support the project at Casey's Pond.  
We are seniors who reside in Steamboat Springs.  
When we become less active, we hope there is a facility to assist us.

Thanks,  
Louis Raphael  
Molly Raphael  
OTHG

**Jason Peasley**

---

**From:** Jane Stein [steingroup@verizon.net]

**Sent:** Saturday, July 30, 2011 3:23 PM

**To:** Jason Peasley

**Cc:** 'Dring, Bill'

**Subject:** Senior Campus at Casey's Pond

For the Steamboat Springs Planning Commission and City Council

As members of the Over the Hill Gang and long-time/part-time Steamboat residents, we support the building of the Senior Campus at Casey's Pond. Based on our observations at the Strings classical music concerts and the Seminars at Steamboat, there is a substantial aging population in town. The campus might well serve their needs.

Jane and Bob Stein

**Jason Peasley**

---

**From:** Bob Schuellein [bobschuellein@comcast.net]

**Sent:** Monday, August 01, 2011 5:34 PM

**To:** Jason Peasley

**Subject:** Support for Senior project

I support the senior project.

**Bob Schuellein**

**bobschuellein@comcast.net**

**972-571-7805**

## Jason Peasley

---

**From:** Naomi Hopkins [stmbtnono@mailstation.com]  
**Sent:** Friday, February 11, 2000 11:21 AM  
**To:** Jason Peasley  
**Subject:** Senior Campus at Casey's Pond

Please be advised my huband Denny Hopkins, and myself totaly support this project. I wish they could have started this in the year of 2011.  
Please support the senior campus at Casey's Pond.

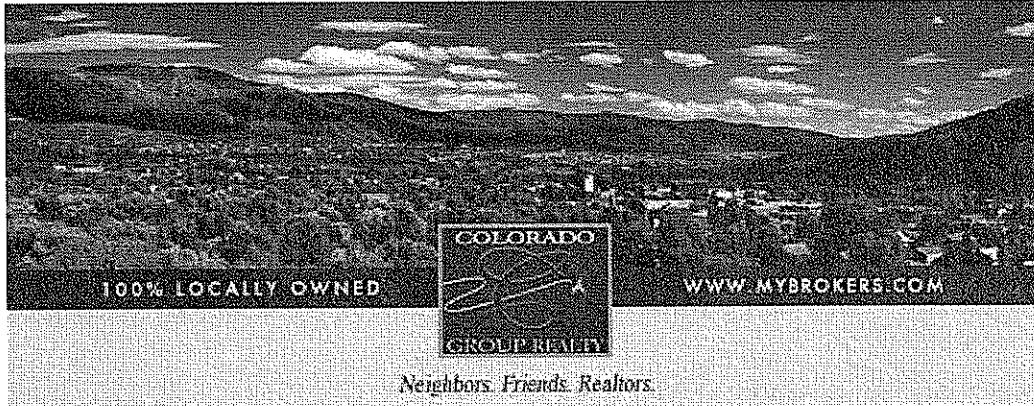
Thank you...

Naomi Hopkins    OTHG member  
PO Box 773594  
Steamboat Springs , Co. 80477

**Jason Peasley**

---

**From:** Nancy Westphale [NKW@mybrokers.com]  
**Sent:** Wednesday, July 27, 2011 10:07 AM  
**To:** Jason Peasley  
**Cc:** billdring@comcast.net  
**Subject:** Senior Campus at Casey's Pond



Hi Jason,

I support this project enthusiastically!

Kind regards,

Nancy Westphale ( OTHG)

**Nancy Westphale,**  
**Eco-Broker**  
Associate Broker  
Colorado Group Realty  
970.846.0504 : cell  
[nkw@mybrokers.com](mailto:nkw@mybrokers.com)  
Neighbors. Friends. Realtors.

Downtown Office  
Sheraton Office  
Hayden Office

[Search Steamboat Springs Real Estate Listings](#)  
[www.MyBrokers.com](http://www.MyBrokers.com)  
[unsubscribe](#)

**Jason Peasley**

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**From:** Janet Dring [janetdring@comcast.net]

**Sent:** Tuesday, July 26, 2011 11:04 AM

**To:** Jason Peasley

**Subject:** Senior Campus at Casey's Pond  
Steamboat Springs Planning Commission and City Council.

I urge you to support this project. It will be wonderful for Steamboat Springs to have this multi-level senior facility.

Sincerely,

Janet B Dring



**Jason Peasley**

---

**From:** Louise Brainard BRAINARD [lbrain@sbcglobal.net]

**Sent:** Tuesday, July 26, 2011 6:48 PM

**To:** Jason Peasley

**Cc:** billdring@comcast.net

**Subject:** Senior Campus at Casey's pond

We support this project, the Senior Campus. This is very much needed in Steamboat Springs.

Jim and Louise Brainard

OTHG

**Jason Peasley**

---

**From:** Donna Downing [donnasteamboat@gmail.com]

**Sent:** Monday, July 25, 2011 4:02 PM

**To:** Jason Peasley

**Cc:** billdring@comcast.net

**Subject:** Senior Campus at Casey's Pond

I support the Senior Campus at Casey's Pond.

Donna Downing  
The Over the Hill Gang

**Jason Peasley**

---

**From:** pskikelly@aol.com  
**Sent:** Monday, July 25, 2011 4:10 PM  
**To:** Jason Peasley  
**Subject:** support for senior project.

Hi, I definitely support the senior project for Steamboat, I think that it will be a valuable addition to our community.

Patti Kelly  
870-0737  
1838 Hunters Ct., Steamboat, CO

## Jason Peasley

---

**From:** Lynn Downing [hld.djd@gmail.com]  
**Sent:** Monday, July 25, 2011 3:53 PM  
**To:** Jason Peasley  
**Subject:** Senior Campus at Casey's Pond

I support the Senior Campus at Casey's Pond.

H. Lynn Downing  
Over The Hill Gang

**Jason Peasley**

---

**From:** jefogliano@comcast.net

**Sent:** Monday, July 25, 2011 9:47 AM

**To:** Jason Peasley

**Subject:** Senior campus

As a former member of the Steamboat Springs Planning Commission and United Way Board, I strongly support thr Casey's Pond senior housing campus. This would be a much needed facility in an ideal location.

Joe Fogliano

## Jason Peasley

---

**From:** Peggy Ganong [peggy.ganong@me.com]  
**Sent:** Monday, July 25, 2011 1:55 PM  
**To:** Jason Peasley  
**Subject:** Senior campus at Casey's Pond

I support this project  
As our senior population grows this will provide a much needed service and provide jobs  
for the community  
Peggy Ganong. OTHG  
Sent from my iPhone

**Jason Peasley**

---

**From:** Judy Jones [stmbytwildlifephotog@comcast.net]

**Sent:** Sunday, July 24, 2011 4:54 PM

**To:** Jason Peasley

**Subject:** Senior campus project

We need this in our community. You will have lots of support.

Judy Jones

website - [www.judy-jones-photo-source.com](http://www.judy-jones-photo-source.com)

email - [stmbytwildlifephotog@comcast.net](mailto:stmbytwildlifephotog@comcast.net)

## Jason Peasley

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**From:** Carole L Cohen [bcc@zirkel.us]  
**Sent:** Sunday, July 24, 2011 5:03 PM  
**To:** Jason Peasley  
**Subject:** senior campus

We support this project.  
Carole & Burt Cohen



## Jason Peasley

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**From:** dktucker@windstream.net  
**Sent:** Sunday, July 24, 2011 5:25 PM  
**To:** Jason Peasley  
**Subject:** senior campus at Casey's Pond

To the Steamboat Springs Planning Commission and City Council:

I support this project!

Thanks,  
Dee Tucker, OTHG

**Jason Peasley**

---

**From:** Diane McCrann [ddmccrann@gmail.com]

**Sent:** Sunday, July 24, 2011 9:13 PM

**To:** Jason Peasley

**Subject:** Senior Campus at Casey's Pond

**TO:** Steamboat Springs Planning Commission and City Council

I support the Senior Campus at Casey's Pond project and encourage the City of Steamboat to approve the site planning and design.

Sincerely,  
Diane McCrann  
OTHG member and Steamboat resident

**Jason Peasley**

---

**From:** Patricia Wirschem [pwirschem@gmail.com]

**Sent:** Sunday, July 24, 2011 9:18 PM

**To:** Jason Peasley

**Subject:** Senior Campus

I definitely support this project. It will be a great addition to our community & the people it serves.

**Jason Peasley**

---

**From:** bjheub@aol.com  
**Sent:** Monday, July 25, 2011 7:23 AM  
**To:** Jason Peasley  
**Subject:** Senior Campus

I definitely support the Senior Living Campus at Casey's Pond project. It is badly needed in Steamboat and will be an added benefit for our family.

Thank you,  
Barbara Heuberger

**Jason Peasley**

---

**From:** Lindarose Berkley [lindarose@richardberkleymd.com]

**Sent:** Monday, July 25, 2011 9:08 AM

**To:** Jason Peasley

**Cc:** Dring Bill

We support the Senior Campus at Casey's Pond and are eager to see this project get underway. Thank you. Lindarose and Richard Berkley

**Jason Peasley**

---

**From:** Caroline Wellford [rockymtnskincare@gmail.com]

**Sent:** Monday, July 25, 2011 8:10 AM

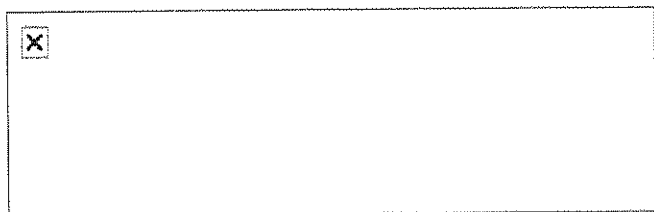
**To:** Jason Peasley

**Subject:** Casey's Pond

Just wanted to voice my opinion that I support this project 100%! It is disparately needed in SB to fill the void with have for this sector of our community.

Thank you

Caroline



Caroline Wellford cell: 970 846 6668

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**Jason Peasley**

---

**From:** IJ and Carol Fisher [fisherski@comcast.net]

**Sent:** Monday, July 25, 2011 9:10 AM

**To:** Jason Peasley

**Cc:** billdring@comcast.net

**Subject:** senior campus @ casey's pond

Dear Mr. Peasley,

We'd like to go on record that we support the Senior Campus at Casey's Pond project. We look forward to seeing construction there as soon as possible.

Sincerely,

I.J. and Carol Fisher



STEAMBOAT  
SKI &  
RESORT  
CORP.

CITY OF  
STEAMBOAT  
SPRINGS  
PARKING  
AREA  
FOR  
SOFTBALL  
FIELDS

M  
R1  
INV IN (SE)=6757.97'  
INV OUT (W)=6757.87'

NOTE: THE OWNER OF THE SUBJECT PROPERTY WAS GIVEN THE RIGHT TO USE THE ROAD AROUND THE LAKE GOING BACK TO THE COUNTY ROAD UPON THE SOUTH SIDE OF THE PROPERTY AND THE PROPERTY WAS SUBJECT TO THE SAME RIGHT. THE PRESENT ACCESS TO THE PROPERTY IS ALONG THE ROAD AROUND THE LAKE FROM PINE GROVE ROAD-US HIGHWAY 40 LOCATED ON THE NORTH SIDE OF THE PROPERTY PER BOOK 302, PAGE 298

ZONE A  
NO BFE  
DETERMINED

PARCEL  
BK. 302  
PG. 298

EXISTING DIVERSION STRUCTURE TO  
CASEY'S POND TO REMAIN UNDISTURBED.

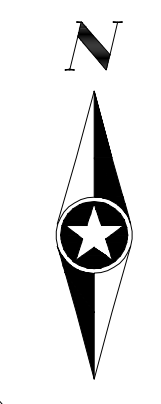
THIS PORTION OF THE DRIVEWAY USED TO  
RUN SOUTHERLY TO THE COUNTY ROAD N/K/A  
WALTON CREEK ROAD. PRESENTLY THERE  
EXISTS A DIRT BERM WHICH HAS  
EFFECTIVELY ELIMINATED THE DRIVEWAY  
CONNECTION WITH WALTON CREEK ROAD.

15' PERMANENT ESMT. FOR  
EXPANSION OF WALTON CREEK  
ROAD AND UNDERGROUND  
UTILITIES

20' PERMANENT ESMT.  
FOR EXPANSION OF  
WALTON CREEK ROAD  
AND UNDERGROUND  
UTILITIES

WALTON CREEK ROAD  
(RIGHT-OF-WAY VARIES)

GAS LINE GENERALLY  
RUNS ALONG THE  
NORTH SIDE OF  
WALTON CREEK ROAD



- LEGEND
- EXISTING MAJOR CONTOUR
  - EXISTING MINOR CONTOUR
  - EXISTING SANITARY SEWER LINE
  - EXISTING SANITARY MANHOLE
  - EXISTING WATER LINE
  - EXISTING CURB STOP AND BLOW OFF VALVE
  - EXISTING GATE VALVE AND FIRE HYDRANT
  - EXISTING ELECTRIC
  - EXISTING ELECTRIC TRANSFORMER
  - EXISTING GAS LINE
  - EXISTING TELEPHONE PEDESTAL
  - EXISTING 100' YEAR FLOODPLAIN

**VTBS Architects**

1860 BLAKE STREET, SUITE  
170 DENVER, CO 80202  
TEL 303.675.0041 FAX  
303.675.0052

**SEH**

**pearl**  
Senior Living

**CASEY'S POND**  
DISTINCTIVE SENIOR LIVING  
STEAMBOAT SPRINGS, COLORADO

**2855 OWL HOOT TRAIL**  
STEAMBOAT SPRINGS, CO 80487

BUILDING DESIGN IS FOR A RENTAL APARTMENT  
COMMUNITY TO BE OWNED AND MANAGED BY REAL  
ESTATE PROFESSIONALS FAMILIAR WITH AND  
RESPONSIBLE FOR BUILDING CARE AND  
MAINTENANCE. BUILDING(S) SHALL NOT BE SOLD IN  
THE FORM OF A CONDOMINIUM, STOCK-  
COOPERATIVE, OR PARTIAL OWNERSHIP BUILDING.  
BUILDING(S) ARE NOT DESIGNED TO THE STANDARDS  
REQUIRED FOR THESE OWNERSHIP FORMATS.

**NOT FOR CONSTRUCTION**

**FINAL DEVELOPMENT PLAN**  
JUNE 30, 2011

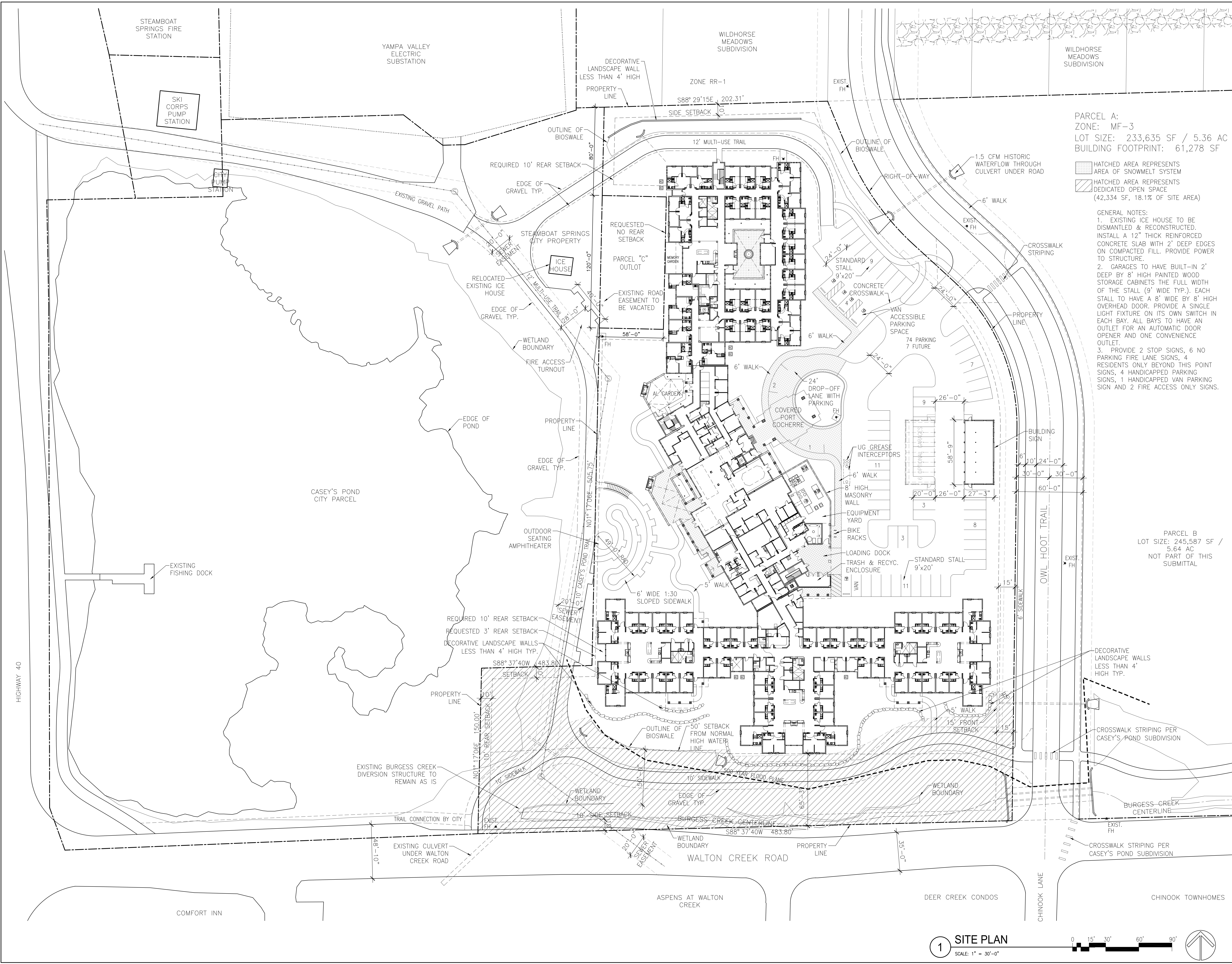
NO	DATE	REVISIONS
2/1/11	PROGRESS SET	
6/30/11	FINAL DEVELOPMENT PLAN	

PROJECT: 10022  
DRAWN: RC CHECKED: JH  
DATE: 6/30/11

EXISTING CONDITIONS  
POST PHASE I

**C6.01**





PARCEL A:  
 ZONE: MF-3  
 LOT SIZE: 233,635 SF / 5.36 AC  
 BUILDING FOOTPRINT: 61,278 SF

HATCHED AREA REPRESENTS  
 AREA OF SNOWMELT SYSTEM  
 HATCHED AREA REPRESENTS  
 DEDICATED OPEN SPACE  
 (42,334 SF, 18.1% OF SITE AREA)

- GENERAL NOTES:
- EXISTING ICE HOUSE TO BE DISMANTLED & RECONSTRUCTED. INSTALL A 12" THICK REINFORCED CONCRETE SLAB WITH 2" DEEP EDGES ON COMPACTED FILL. PROVIDE POWER TO STRUCTURE.
  - GARAGES TO HAVE BUILT-IN 2' DEEP BY 8" HIGH PAINTED WOOD STORAGE CABINETS THE FULL WIDTH OF THE STALL (9' WIDE TYP.). EACH STALL TO HAVE A 8' WIDE BY 8' HIGH OVERHEAD DOOR. PROVIDE A SINGLE LIGHT FIXTURE ON ITS OWN SWITCH IN EACH BAY. ALL BAYS TO HAVE AN OUTLET FOR AN AUTOMATIC DOOR OPENER AND ONE CONVENIENCE OUTLET.
  - PROVIDE 2 STOP SIGNS, 6 NO PARKING FIRE LANE SIGNS, 4 RESIDENTS ONLY BEYOND THIS POINT SIGNS, 4 HANDICAPPED PARKING SIGNS, 1 HANDICAPPED VAN PARKING SIGN AND 2 FIRE ACCESS ONLY SIGNS.

PARCEL B  
 LOT SIZE: 245,587 SF /  
 5.64 AC  
 NOT PART OF THIS  
 SUBMITTAL

**VTBS Architects**  
 1860 BLAKE STREET, SUITE  
 170 DENVER, CO 80202  
 TEL 303.675.0041 FAX  
 303.675.0052

**pearl**  
 Senior Living

**CASEY'S POND**  
 DISTINCTIVE SENIOR LIVING  
 STEAMBOAT SPRINGS, COLORADO  
 2855 OWL HOOT TRAIL  
 STEAMBOAT SPRINGS, CO 80487

BUILDING DESIGN IS FOR A RENTAL APARTMENT  
 COMMUNITY TO BE OWNED AND MANAGED BY REAL  
 ESTATE PROFESSIONALS FAMILIAR WITH, AND  
 RESPONSIBLE FOR BUILDING CARE AND  
 MAINTENANCE. BUILDING(S) SHALL NOT BE SOLD IN  
 THE FORM OF A CONDOMINIUM, STOCK  
 COOPERATIVE, OR PARTIAL OWNERSHIP BUILDING.  
 BUILDING(S) ARE NOT DESIGNED TO THE STANDARDS  
 REQUIRED FOR THESE OWNERSHIP FORMATS.

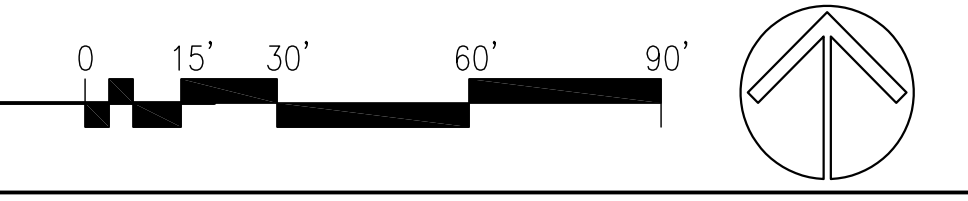
NOT FOR CONSTRUCTION

FINAL DEVELOPMENT PLAN  
 MARCH 8, 2011

NO.	DATE	REVISIONS
2/1/11	PROGRESS SET	
3/8/11	FINAL DEVELOPMENT PLAN	

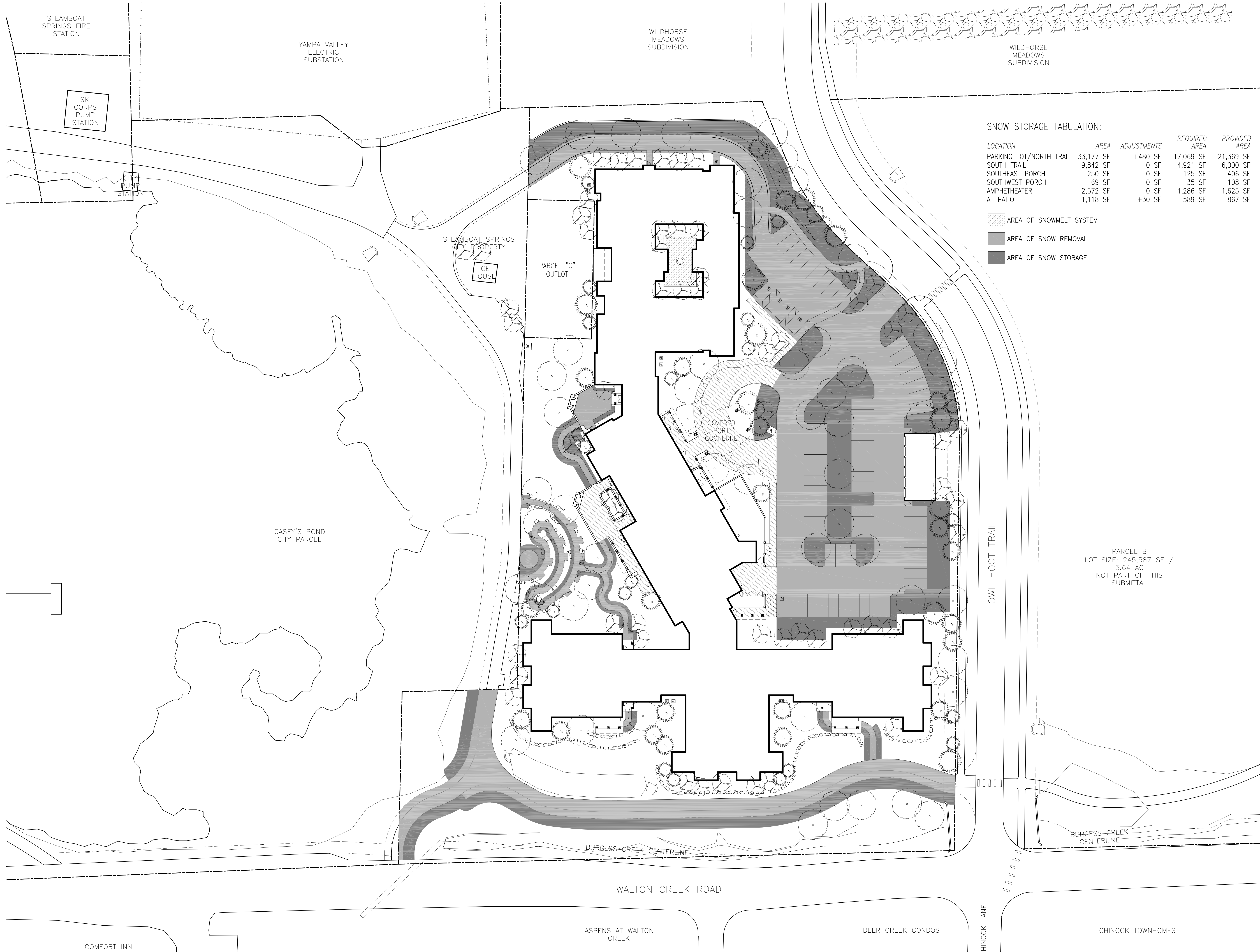
PROJECT: 10022  
 DRAWN: \_\_\_\_\_ CHECKED: \_\_\_\_\_  
 DATE: 3/8/11  
 SITE PLAN

**1 SITE PLAN**  
 SCALE: 1" = 30'-0"



**A2.01**





**SNOW STORAGE TABULATION:**

LOCATION	AREA	ADJUSTMENTS	REQUIRED AREA	PROVIDED AREA
PARKING LOT/NORTH TRAIL	33,177 SF	+480 SF	17,069 SF	21,369 SF
SOUTH TRAIL	9,842 SF	0 SF	4,921 SF	6,000 SF
SOUTHEAST PORCH	250 SF	0 SF	125 SF	406 SF
SOUTHWEST PORCH	69 SF	0 SF	35 SF	108 SF
AMPHETHEATER	2,572 SF	0 SF	1,286 SF	1,625 SF
AL PATIO	1,118 SF	+30 SF	589 SF	867 SF

- AREA OF SNOWMELT SYSTEM
- AREA OF SNOW REMOVAL
- AREA OF SNOW STORAGE

PARCEL B  
 LOT SIZE: 245,587 SF /  
 5.64 AC  
 NOT PART OF THIS  
 SUBMITTAL

**VTBS Architects**  
 1860 BLAKE STREET, SUITE  
 170 DENVER, CO 80202  
 TEL 303.675.0041 FAX  
 303.675.0052

**pearl**  
 Senior Living

**CASEY'S POND**  
 DISTINCTIVE SENIOR LIVING  
 STEAMBOAT SPRINGS, COLORADO  
 2855 OWL HOOT TRAIL  
 STEAMBOAT SPRINGS, CO 80487

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**NOT FOR CONSTRUCTION**

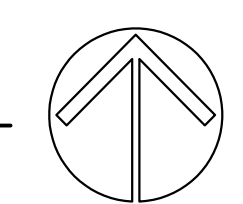
**FINAL DEVELOPMENT PLAN**  
 MARCH 8, 2011

NO	DATE	REVISIONS
2/1/11	PROGRESS SET	
3/8/11	FINAL DEVELOPMENT PLAN	

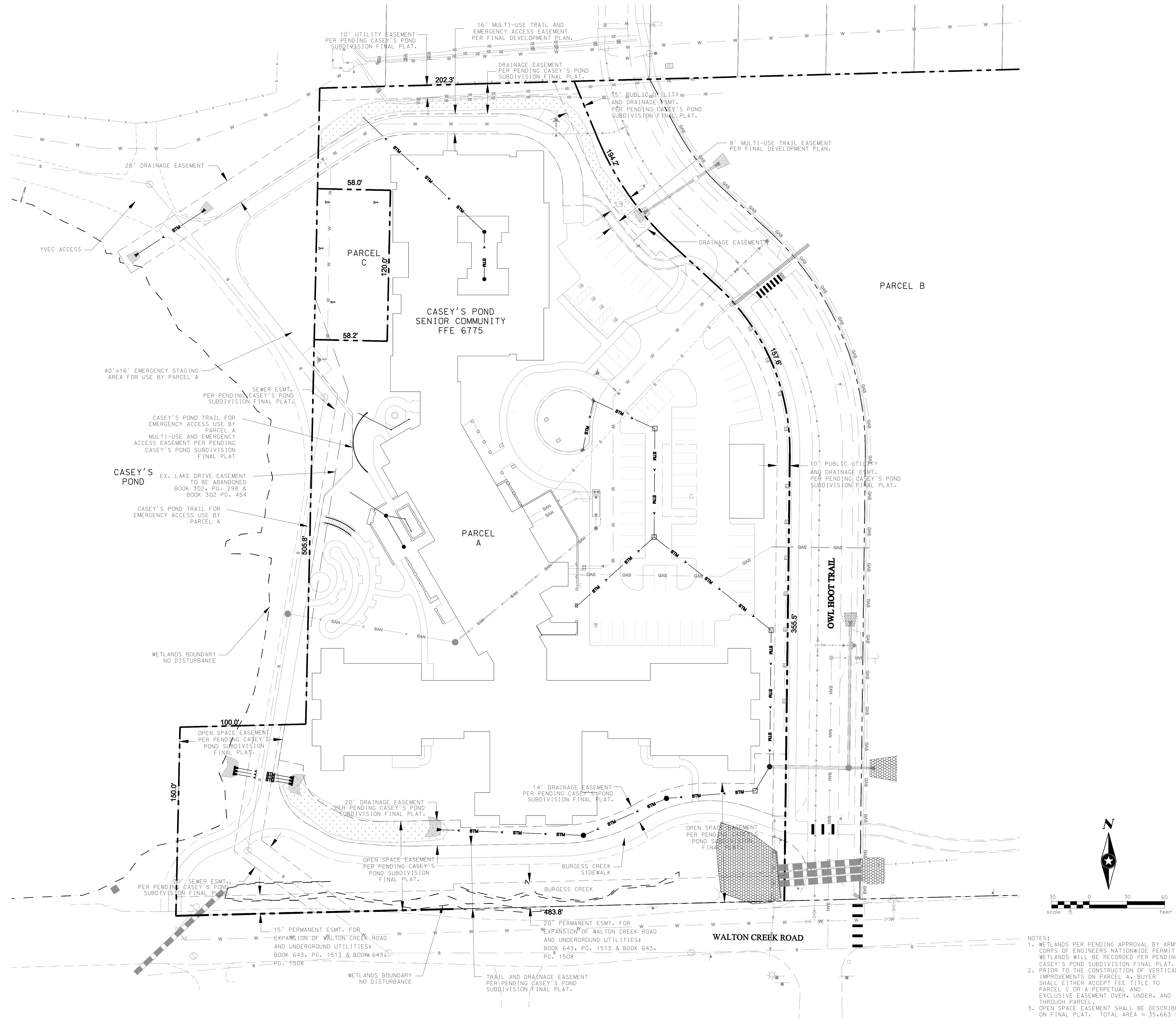
PROJECT: 10022  
 DRAWN: \_\_\_\_\_ CHECKED: \_\_\_\_\_  
 DATE: 3/8/11

SNOW STORAGE PLAN

**1 SNOW STORAGE PLAN**  
 SCALE: 1"=30'







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**FINAL DEVELOPMENT PLAN**  
 JUNE 30, 2011

NO	DATE	REVISIONS
2/1/11	PROGRESS SET	
6/30/11	FINAL DEVELOPMENT PLAN	

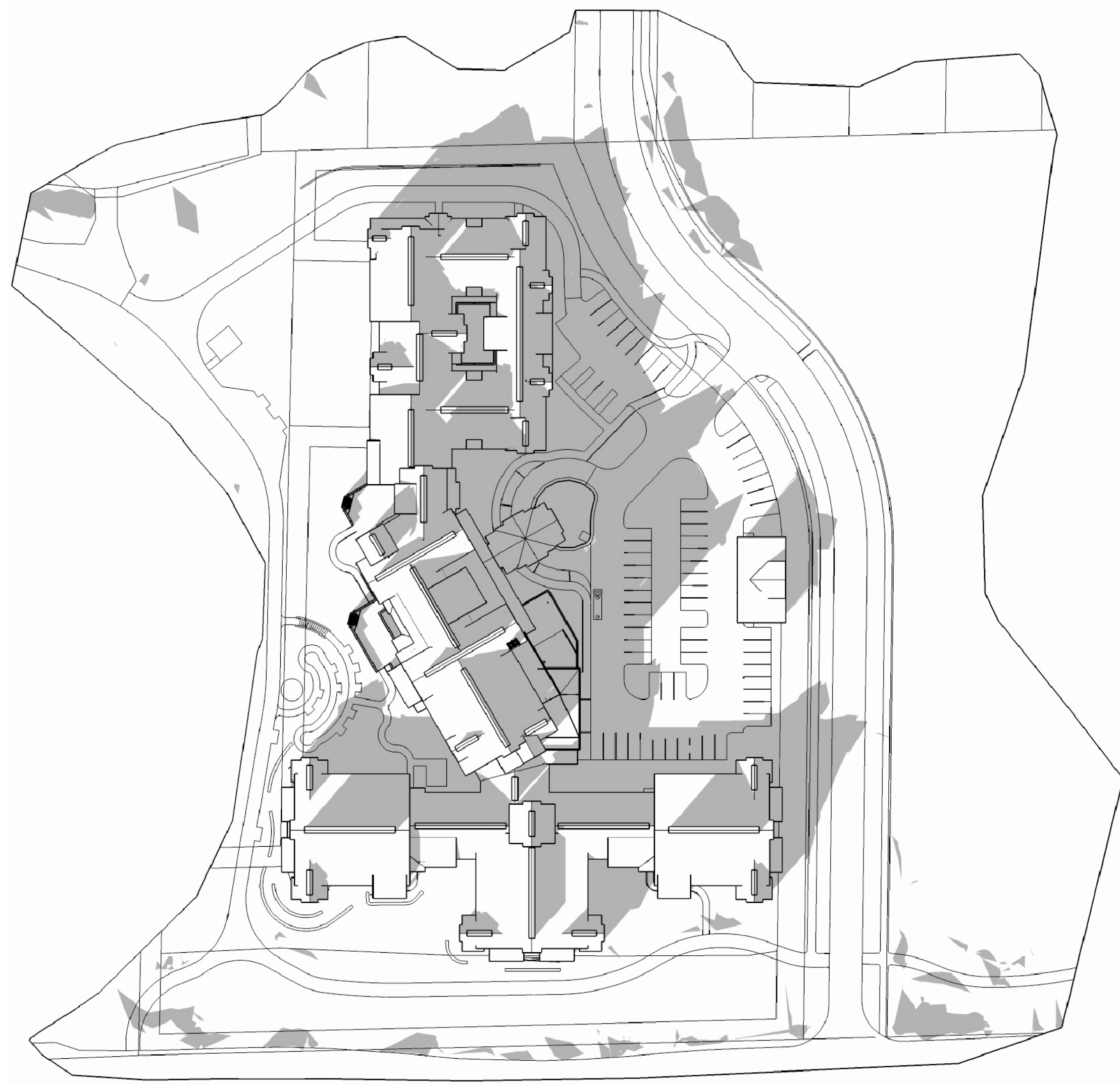
PROJECT: 1002Z  
 DRAWN: RC CHECKED: JH

DATE: 6/30/11  
 EASEMENT PLAN

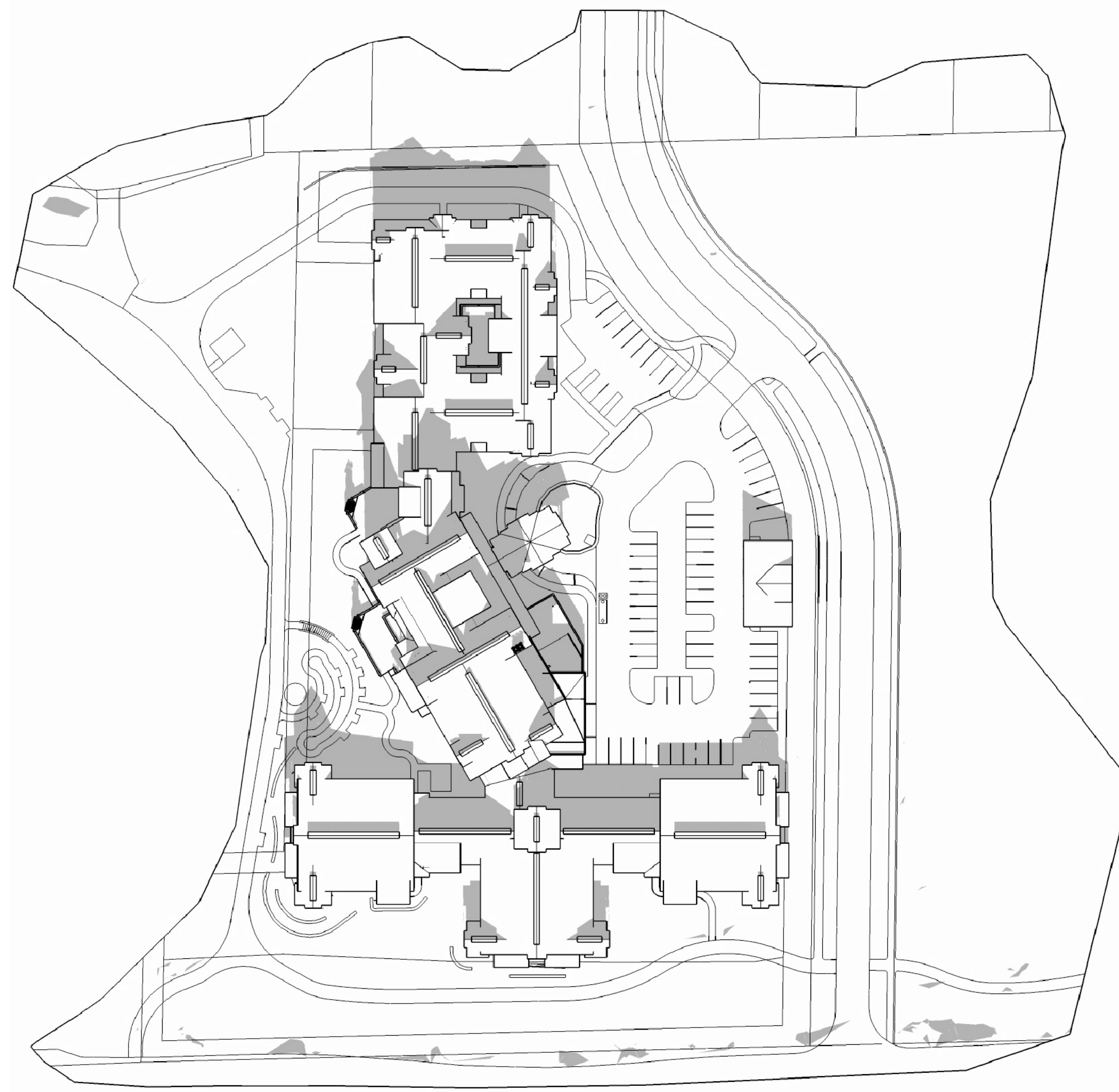
**C2.03**

- NOTES:
1. WETLANDS PER PENDING APPROVAL BY ARMY CORPS OF ENGINEERS NATIONWIDE PERMIT. WETLANDS WILL BE RECORDED PER PENDING CASEY'S POND SUBDIVISION FINAL PLAT.
  2. PRIOR TO THE CONSTRUCTION OF VERTICAL IMPROVEMENTS ON PARCEL A, BUYER SHALL EITHER ACCEPT FEE TITLE TO PARCEL C OR A PERPETUAL AND EXCLUSIVE EASEMENT OVER, UNDER, AND THROUGH PARCEL.
  3. OPEN SPACE EASEMENT SHALL BE DESCRIBED ON FINAL PLAT. TOTAL AREA = 35,663 SF

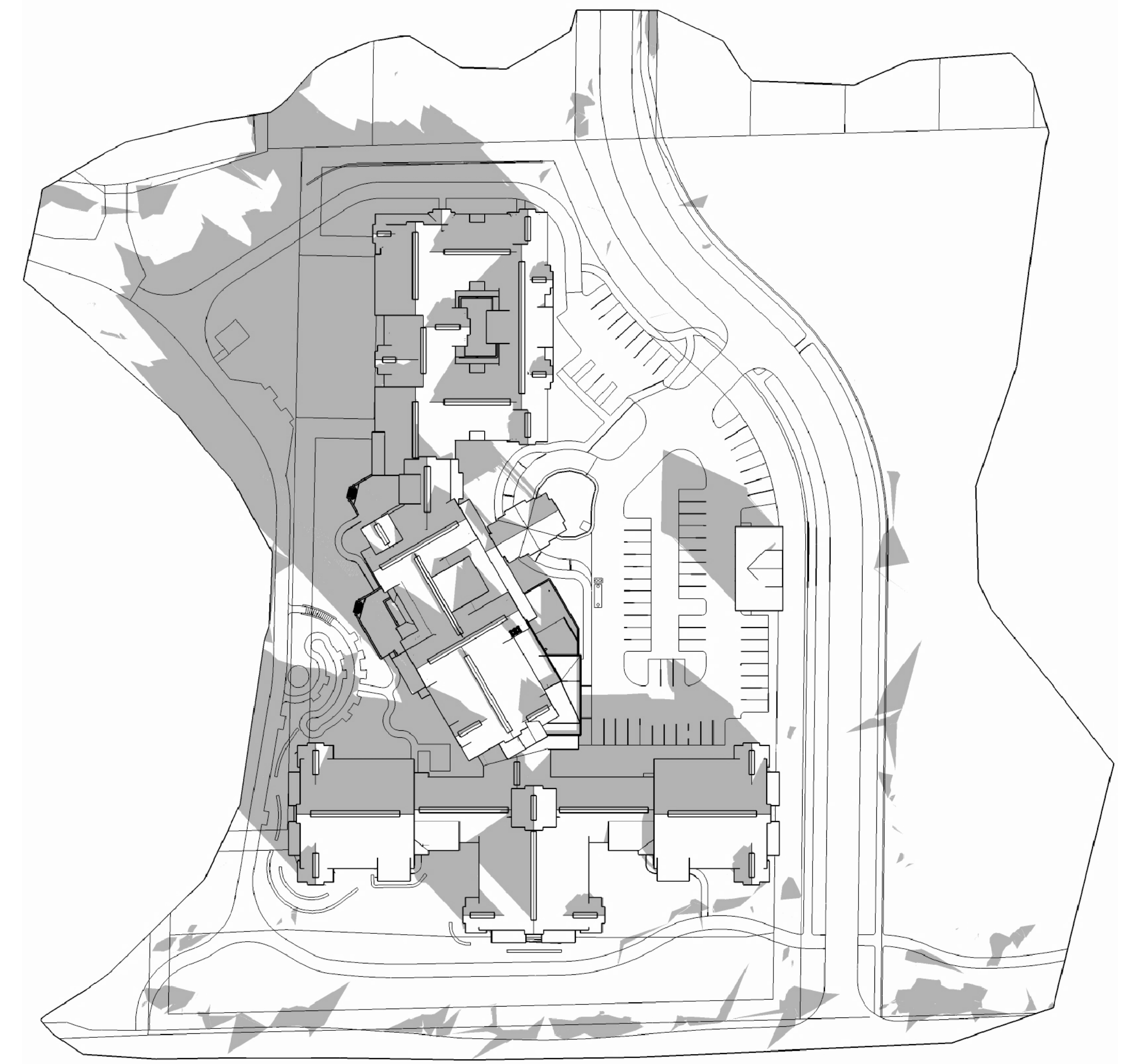




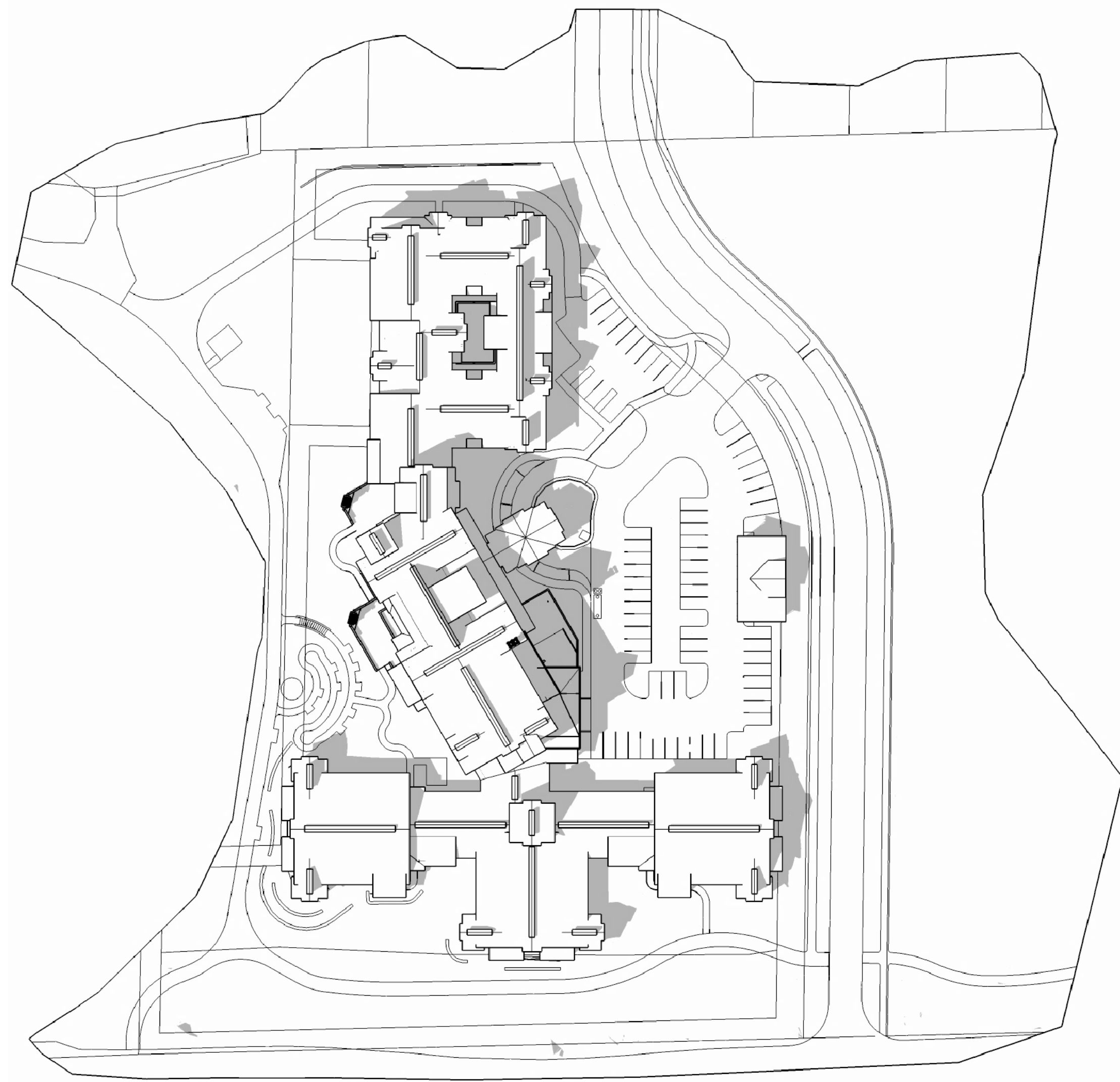
3 SHADOW PLAN - DEC. 21 @ 3PM  
NTS



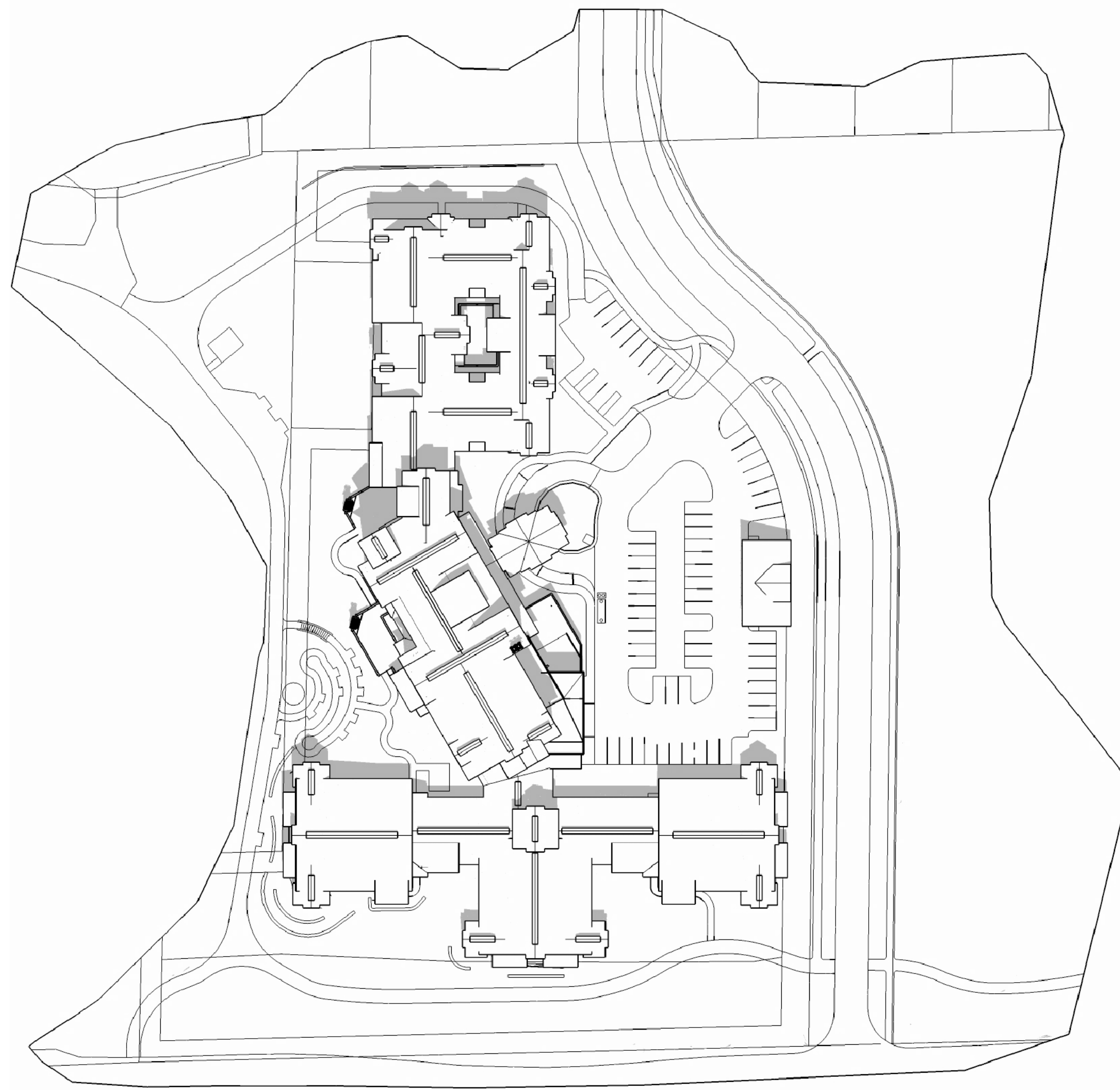
2 SHADOW PLAN - DEC. 21 @ 12PM  
NTS



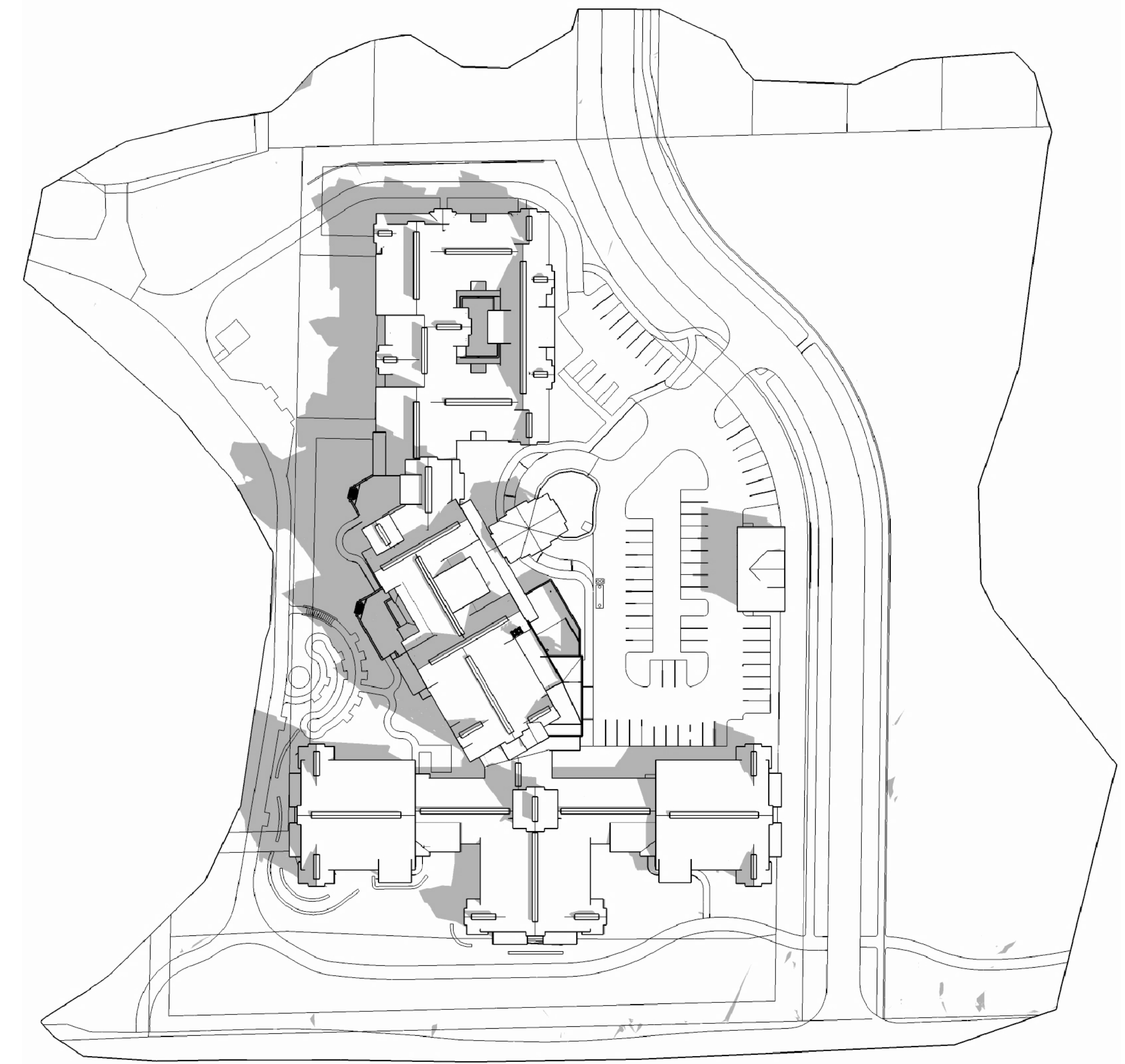
1 SHADOW PLAN - DEC. 21 @ 9AM  
NTS



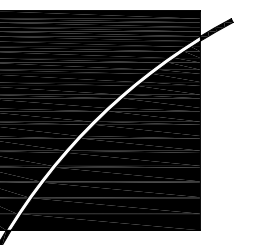
6 SHADOW PLAN - MAR. 21 @ 3PM  
NTS



5 SHADOW PLAN - MAR. 21 @ 12PM  
NTS

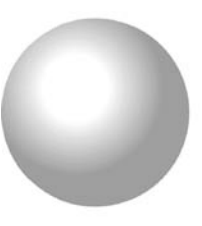


4 SHADOW PLAN - MAR. 21 @ 9AM  
NTS



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CASEY'S POND  
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FINAL DEVELOPMENT PLAN  
MARCH 8, 2011

NO	DATE	REVISIONS
2/1/11	PROGRESS SET	
3/8/11	FINAL DEVELOPMENT PLAN	

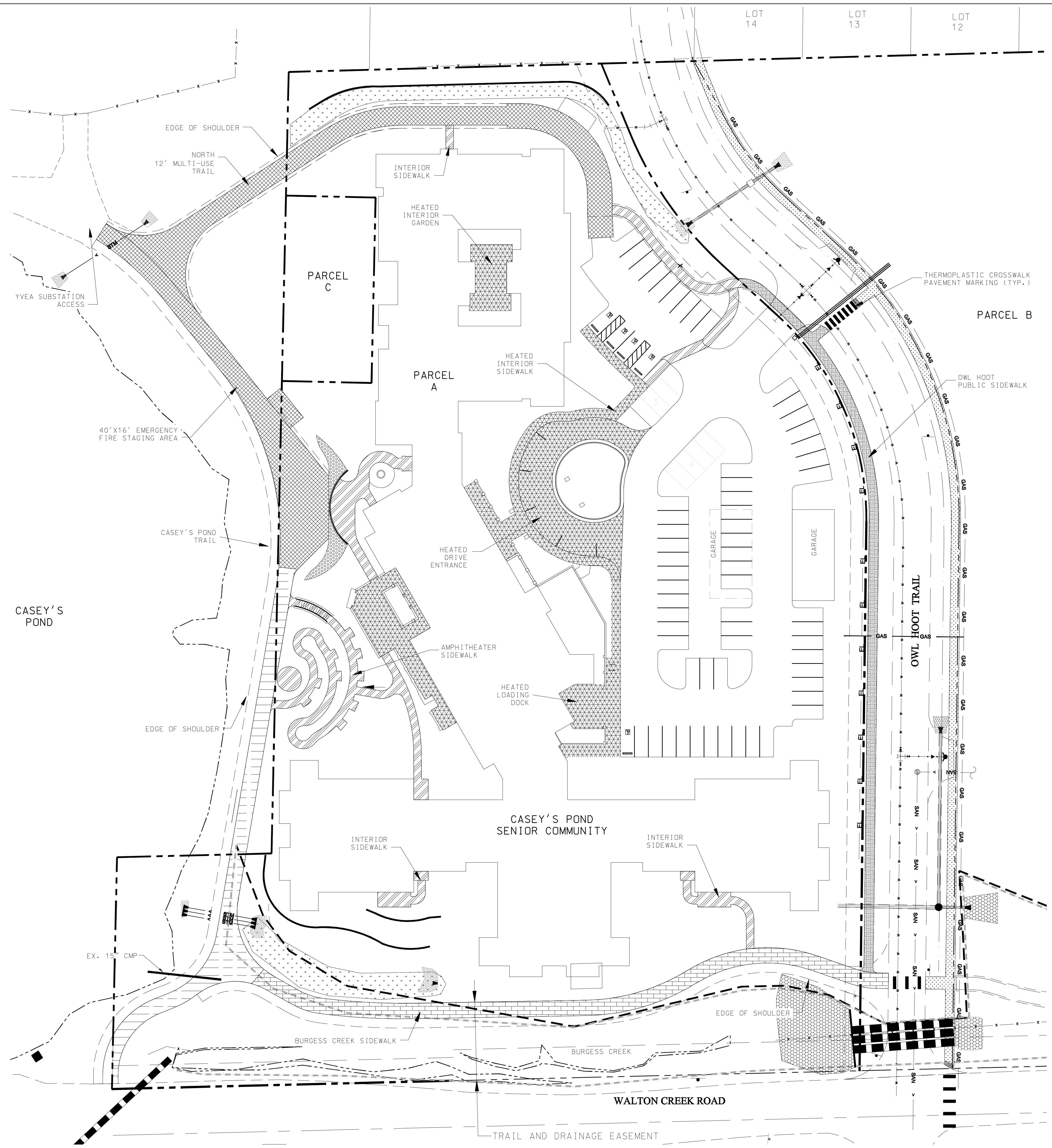
PROJECT: 10022  
DRAWN: \_\_\_\_\_ CHECKED: \_\_\_\_\_  
DATE: 3/8/11

SHADOW PLAN

A9.01

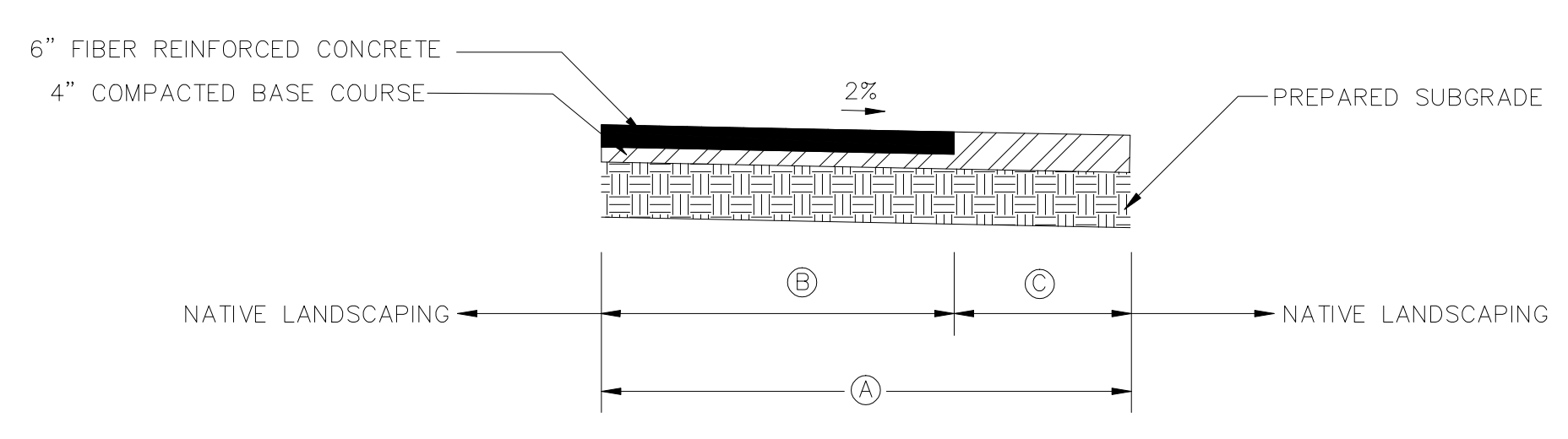


P:\U2\VTBSA\1125935-final-dgn\10-Civil\Civil 3D-112593\Production Drawings\FDP\C2.04 Sidewalks.dwg

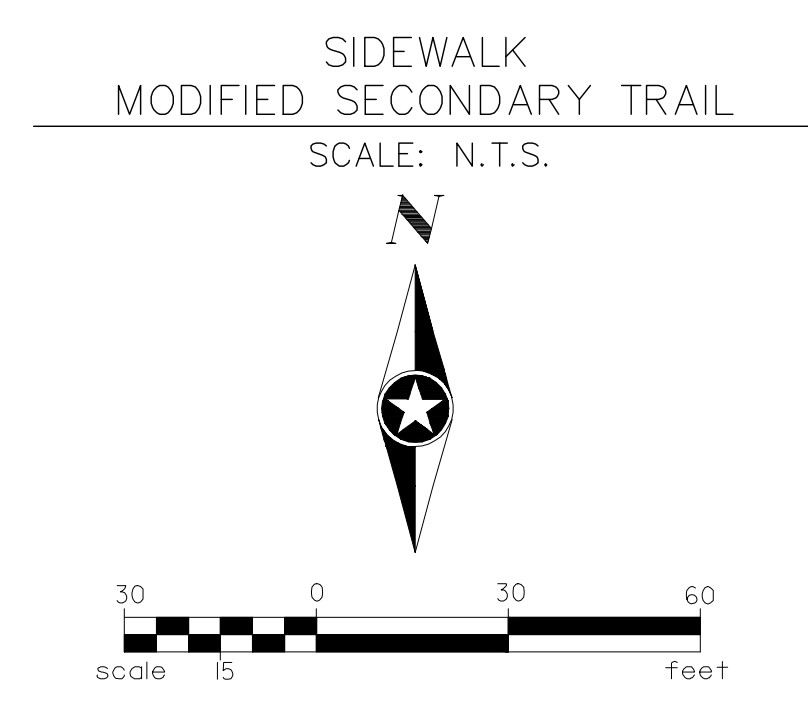


IDENTIFICATION	WIDTH	SQUARE FOOTAGE	REMARKS
NORTH MULTI-USE	12'	10,576	6" FIBER REINFORCED CONCRETE SLAB WITH 4" COMPACTED CLASS 6 BASE COURSE WITH 2' OR 6" COMPACTED CLASS 6 BASE SHOULDER
CASEY'S POND TRAIL	10'	5,087	6" FIBER REINFORCED CONCRETE SLAB WITH 4" COMPACTED CLASS 6 BASE COURSE WITH 6" COMPACTED CLASS 6 BASE SHOULDER
BURGESS CREEK SIDEWALK	10'	5,227	6" FIBER REINFORCED CONCRETE SLAB WITH 4" COMPACTED CLASS 6 BASE COURSE WITH 6" CLASS 6 COMPACTED BASE SHOULDER
OWL HOOT PUBLIC SIDEWALK	6'	2,919	4" FIBER REINFORCED CONCRETE SLAB WITH 4" COMPACTED BASE COURSE WITH 1" COMPACTED BASE SHOULDER
INTERIOR SIDEWALK	5'	5,246	4" CONCRETE SLAB WITH 4" PREPARED SUBGRADE
HEATED ENTRANCE DRIVE	24'	2,965	6" CONCRETE SLAB WITH HEATING COILS AND REFLECTIVE BARRIER, 2" RIDGID INSULATION AND 2" COMPACTED BASE COURSE
HEATED ENTRANCE SIDEWALK AND LOADING DOCK	5'	4,135	6" CONCRETE SLAB WITH HEATING COILS AND REFLECTIVE BARRIER, 2" RIDGID INSULATION AND 2" COMPACTED BASE COURSE
HEATED REAR PATIO	VARIABLES	1,780	6" CONCRETE SLAB WITH HEATING COILS AND REFLECTIVE BARRIER, 2" RIDGID INSULATION AND 2" COMPACTED BASE COURSE
HEATED INTERIOR GARDEN	VARIABLES	1,020	6" CONCRETE SLAB WITH HEATING COILS AND REFLECTIVE BARRIER, 2" RIDGID INSULATION AND 2" COMPACTED BASE COURSE
*OWL HOOT PUBLIC SIDEWALK EAST	6'	4,415	4" FIBER REINFORCED CONCRETE SLAB WITH 4" COMPACTED BASE COURSE WITH 1" COMPACTED BASE SHOULDER

\*NOTE: OWL HOOT PUBLIC SIDEWALK EAST IS NOT A PART OF THE QUANTITIES OR COSTS



DESIGN SPEED	5 MPH	DRAINAGE <sup>1</sup>	2% SIDESLOPE
EASEMENT WIDTH	16' MIN. (A)	SHOULDER TYPE	6" (C)
PAVED WIDTH	10' (B)	LANDSCAPE TYPE <sup>2</sup>	TBD
FENCES ARE NOT PERMITTED WITHIN EASEMENT.		PEDESTRIAN LIGHTING TYPE	NONE
		<sup>1</sup> DRAINAGE SWALES TO PROTECT UPHILL SIDE OF TRAIL (TYPICAL).	
		<sup>2</sup> LANDSCAPE MAY VARY AS APPROPRIATE BY PROJECT LOCATION.	

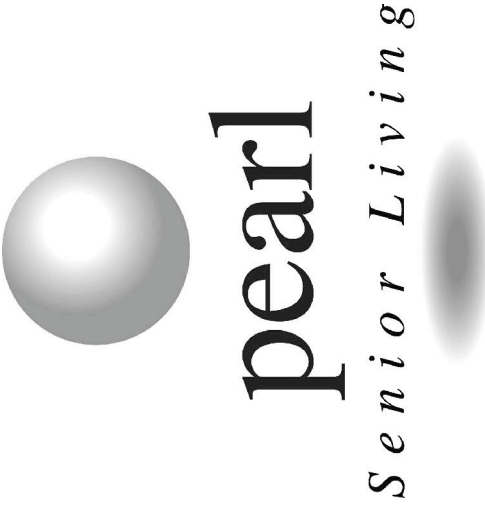


- LEGEND**
- OWL HOOT PUBLIC SIDEWALK
  - BURGESS CREEK SIDEWALK
  - CASEY'S POND TRAIL
  - NORTH MULTI-USE ACCESS
  - INTERIOR SIDEWALKS
  - HEATED CONCRETE
  - OWL HOOT PUBLIC SIDEWALK EAST

DESIGN SPEED	5 MPH	DRAINAGE <sup>1</sup>	2% SIDESLOPE
EASEMENT WIDTH	16' MIN. (A)	SHOULDER TYPE	2" (C)
PAVED WIDTH	12' (B)	LANDSCAPE TYPE <sup>2</sup>	TBD
FENCES ARE NOT PERMITTED WITHIN EASEMENT.		PEDESTRIAN LIGHTING TYPE	NONE
		<sup>1</sup> DRAINAGE SWALES TO PROTECT UPHILL SIDE OF TRAIL (TYPICAL).	
		<sup>2</sup> LANDSCAPE MAY VARY AS APPROPRIATE BY PROJECT LOCATION.	

NORTH MULTI-USE  
MODIFIED SECONDARY TRAIL  
SCALE: N.T.S.

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**CASEY'S POND**  
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**2855 OWL HOOT TRAIL**  
**STEAMBOAT SPRINGS, CO 80487**

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**NOT FOR CONSTRUCTION**

**FINAL DEVELOPMENT PLAN**

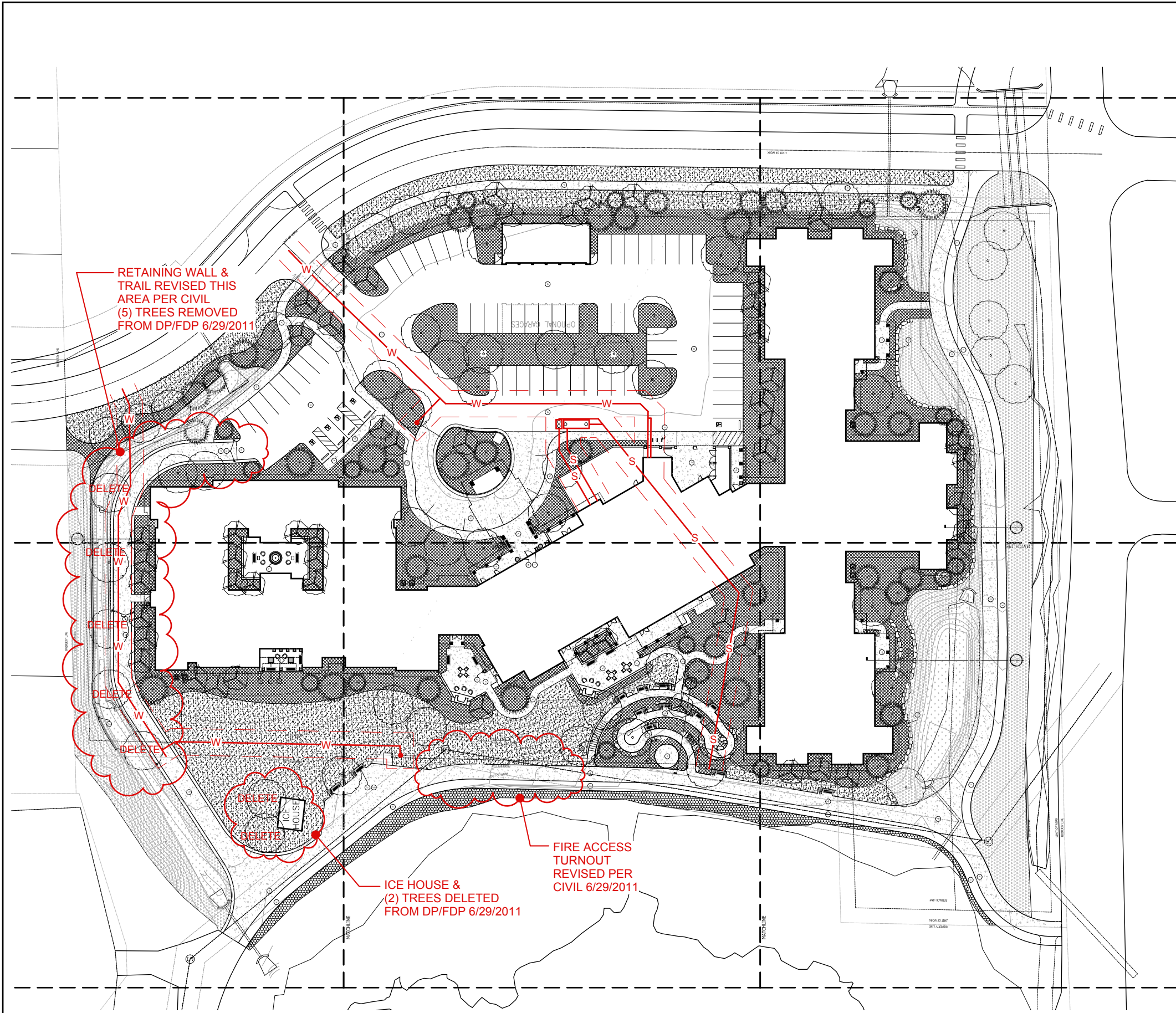
NO	DATE	REVISIONS
2/1/11		PROGRESS SET
6/30/11		FINAL DEVELOPMENT PLAN

PROJECT: 10022  
DRAWN: RC CHECKED: JH

DATE: 6/30/11  
SIDEWALK EXHIBIT

**C2.04**





PLANTING LEGEND	SYMBOL	AREA / QTY
TURF GRASS	[Symbol]	37,700 S.F.
PLANTING AREA	[Symbol]	45,425 S.F. TOTAL
SHRUBS - 5 GAL. @ 36" O.C.		50 %
ORN. GRASS - 1 GAL @ 24" O.C.		25 %
PERENNIALS / FLOWERS		15% 10%
PERENNIALS / FLOWERS		15% 10%
RIPARIAN SEED MIX	[Symbol]	29,700 S.F.
MARSH IMPROVEMENT AREA	[Symbol]	14,400 S.F.
NATIVE SEED MIX	[Symbol]	3,600 S.F.
EVERGREEN TREE: 8'-10' HT.	[Symbol 'a']	25
EVERGREEN TREE: 10'-12' HT.	[Symbol 'b']	27
EVERGREEN TREE: 12'-14' HT.	[Symbol 'c']	11
ORNAMENTAL TREE 2" CAL.	[Symbol]	44
DECIDUOUS SHADE TREE 3" CAL.	[Symbol]	56 49

**VTBS Architects**  
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 303.675.0052

**ValleyCrestDesignGroup**  
 Jame Hyatt Studio  
 4330 Steeplech Street, Third Floor  
 Denver, CO 80202-2464  
 T/ 303.825.2010 F/ 303.825.2015  
 vcdesigngroup.com

**pearl**  
 Senior Living

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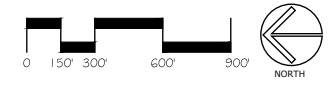
NOT FOR CONSTRUCTION

FINAL DEVELOPMENT PLAN  
 3/15/11

NO	DATE	REVISIONS
2/1/11	PROGRESS SET	
03/15/11	FINAL DEVELOPMENT PLAN	

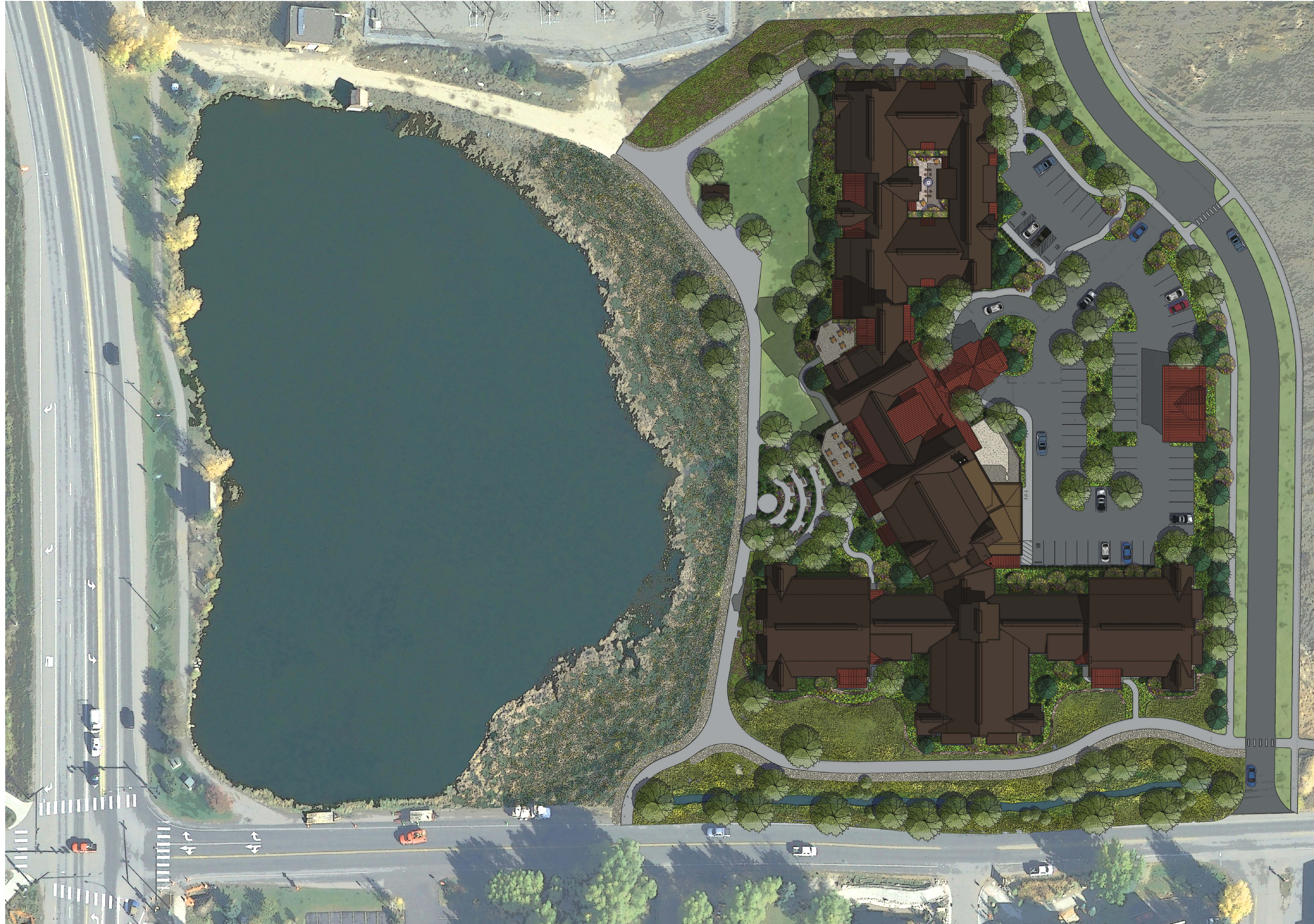
PROJECT: 10022  
 DRAWN: \_\_\_\_\_ CHECKED: \_\_\_\_\_  
 DATE: 03/15/2011

OVERALL PLANTING PLAN



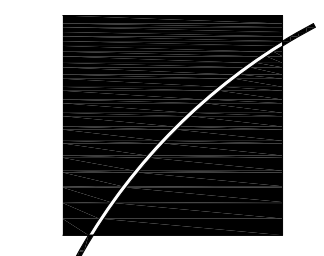
L4.00





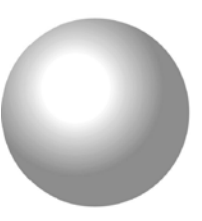
**1 ILLUSTRATED SITE PLAN**

SCALE: NTS



**VTBS Architects**

1860 BLAKE STREET, SUITE  
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TEL 303.675.0041 FAX  
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**FINAL DEVELOPMENT PLAN**  
MARCH 8, 2011

NO	DATE	REVISIONS
2/1/11	PROGRESS SET	
3/8/11	FINAL DEVELOPMENT PLAN	

PROJECT: 10022  
DRAWN: \_\_\_\_\_ CHECKED: \_\_\_\_\_  
DATE: 3/8/11

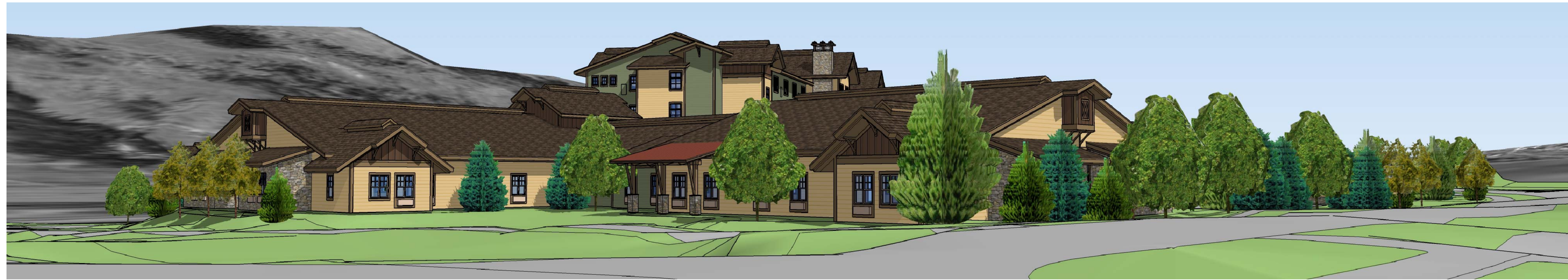
ILLUSTRATED SITE PLAN

**A1.03**





1 NORTH EAST VIEW  
SCALE: NTS



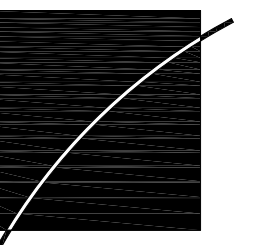
2 NORTH WEST VIEW  
SCALE: NTS



3 SOUTH WEST VIEW  
SCALE: NTS



4 SOUTH EAST VIEW  
SCALE: NTS



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FINAL DEVELOPMENT PLAN  
MARCH 8, 2011

NO	DATE	REVISIONS
2/1/11		PROGRESS SET
3/8/11		FINAL DEVELOPMENT PLAN

PROJECT: 10022  
DRAWN: CHECKED:  
DATE: 3/8/11

SITE PANORAMAS

A18.01



**DEPARTMENT OF PLANNING AND COMMUNITY  
DEVELOPMENT**

**MEMORANDUM**

---

**DATE:** August 11, 2011  
**TO:** Planning Commission  
**FROM:** Jason K. Peasley, AICP, City Planner  
**SUBJECT:** Casey's Pond vesting, minor adjustment criteria analysis and revised conditions of approval

---

At the request of the Planning Commission, the following items are included for your consideration:

**Casey's Pond Vesting**

The applicant has requested that Phase 2 of the proposed project, including the FAR variance, be vested in perpetuity so long as the use remains a senior living facility.

*Staff Analysis:* Staff is in support of tying permanent vesting to the use of the property. The permanent vesting will allow this community facility to expand as necessary and fully utilize the site's development potential. Future addition to the facility is required to be reviewed as a Final Development Plan and comply with all applicable standards as a condition of approval.

**CDC Section 26-69: Minor Adjustment**

Staff has reviewed the proposed height variance as a minor adjustment in accordance with the following criteria:

Minor Adjustment from Section 26-132: Dimensional Standards, overall height.

Maximum overall height in the MF-3 Zone District: 57 feet

Requested overall height: 63 feet (10% variation)

*(d) Criteria for review and approval. Minor adjustments may be approved only upon a finding that all of the following criteria have been met:*

- (1) The requested minor adjustment is consistent with the preferred direction and policies of the community plan and the stated purpose of this CDC;*

**Staff Analysis: Consistent.** The proposal is consistent with the following SSACP goals and policies:

- Policy CD-1.4: Encourage high quality site planning a building design.
- Policy CD-1.5: Infill and redevelopment projects shall be compatible with the context of existing neighborhoods and development.
- Policy CD-1.6: Promote health and human services programs that strengthen and support individuals, families and neighborhoods.

The proposal is also consistent with the following purposes of the CDC (Section 26-1):

- Foster the city's resort, business and other economic bases
- Encourage the most appropriate and efficient use of land

- (2) The requested minor adjustment is consistent with the intent of any approved development permit, development plan, final development plan, final plat, or PUD for the property;*

**Staff Analysis: Consistent.** The proposal is consistent with the proposed Final Development Plan for the Casey's Pond Senior Living Facility. The requested additional height facilitates the efficient use of the property for the purposes of creating a well designed Senior Living Facility.

- (3) The requested minor adjustment is the minimum amount of relief required and will have no significant adverse impact on the health, safety or general welfare of nearby properties or the general public;*

**Staff Analysis: Consistent.** The proposal is the minimum amount of relief required to meet the needs of the development. There are no significant adverse impacts of the requested additional height as it is consistent with the maximum height for the adjacent RR-1 zoned properties.

- (4) Any adverse impacts resulting from the minor adjustment will be mitigated to the maximum extent practical;*

**Staff Analysis: Consistent.** The proposal minimizes the adverse impacts of the requested additional height by only building a portion of the proposed building to 63 feet. A significant portion of the proposed building is below the 57 foot maximum in the MF-3 Zone District.

- (5) *When the requested minor adjustment is for a building height modification, the minor adjustment shall:*
- a. *Not be substantially out of scale with adjacent buildings;*
  - b. *Shall not result in snowshed which would damage or otherwise adversely impact adjacent properties;*
  - c. *Shall not result in increased shadowing which would damage or otherwise adversely impact adjacent properties.*

**Staff Analysis: Consistent.** The proposal is compatible with the scale of development surrounding the site including that which could be developed on the adjacent RR-1 zoned properties. The building also steps down in height as it transitions to the less intensive development across Walton Creek Road. The proposal will not result in snowshed or shadowing impacts on adjacent properties.

- (6) *The requested minor adjustment is either:*
- a. *Of a technical nature and is required to compensate for some practical difficulty or unusual feature of the site or the proposed development that is not shared by landowners in general; or*
  - b. *An alternative or innovative design practice that achieves the same or increases the degree of the objective of the existing standard being modified.*

**Staff Analysis: Consistent.** The proposal is an alternative design that achieves the same degree of compatibility with surrounding development as the typical height maximum. Placing the highest portion of the building at the center of the site allows for the building to step down and transition in size to the less intensive development across Walton Creek Road while still maintaining compatibility with the adjacent RR-1 zone district.

- (7) *When the requested minor adjustment is for a building envelope adjustment for a single-family or duplex lot, the criteria provided in subsection 26-151(h) shall be required to be satisfied in addition to the criteria listed above for a minor adjustment.*

**Staff Analysis: n/a.** The request does not adjust a building envelope.

**Revised Conditions of Approval:**

The Casey's Pond Senior Living Facility Development Plan/Final Development Plan (#DPF-10-04) is consistent with the findings for approval for a Development Plan/Final Development Plan with the following conditions:

1. All fire department access roads shall be dedicated to the City of Steamboat Springs as "Emergency Access Easements" and shall be dedicated and noted on the Final Site Plan. Also a "Dedication of Easement" form supplied by the City shall be completed and recorded by the County Clerk's Office.
2. When fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except when approved alternative methods are provided. This means any utilities in the road need to be in and the road completed to an all-weather drivable surface and fire hydrants in and accepted by the water purveyor before the Fire Department can sign off on building permits.
3. Civil construction plans prepared by a licensed Colorado civil engineer must be submitted to Public Works for review by Public Works, Planning, Parks and Recreation, and Mt. Werner Water for review and approval prior to approval of any improvements agreement, grade & fill or building permit, or final plat and prior to the start of any construction. We recommend submitting the construction plans a minimum of five weeks prior to grade & fill or building permit application to allow time for review, comment response, and approval and incorporate the final construction plans into the grade & fill or building permit plans.
4. Prior to approval of civil construction plans a Development Agreement between the City and the Developer will be required. The agreement shall stipulate the developer will be required to:
  - i. Remove 350 cubic yards of sediment deposit from Casey's Pond.
  - ii. Submit a \$50,000 payment to Escrow for maintenance to the outlet pipe of Casey's Pond.
  - iii. Maintain the drainage outfalls from the development, including future removal of sedimentThe details of when each of these requirements must be completed will be established in the Development Agreement.
5. If at time of building permit there are any proposed private features within City property or rights-of-way, the owner must apply for a revocable permit agreement for those private site features. This project will be responsible for maintenance of any approved feature. No private features shall encroach on the multi-use and emergency access trails/routes.
6. The owner shall provide a construction easement to the City for the future Casey's Pond trail tie-in project. Details of the easement shall be worked out with the Public Works Engineering Department.
7. Prior to approval of a grade & fill or building permit the developer shall complete and record a sidewalk/trail maintenance agreement with the City for those portions of the multi-use and emergency trails which are required to be maintained by the developer.

8. Provide a final copy of the Letter of Map Revision (LOMR) for the modifications made to the floodplain. The City shall be notified of any changes with the final design regarding the Floodplain Modification Study.
9. Owner will be required to have a third party project engineer conduct site inspections, testing, and construction observations to determine that the public and private improvements were constructed per approved plans as part of the City's improvements inspection process. A pre-construction meeting to outline the specific requirements for the project will be required prior to the start of construction.
10. The following items to be identified for each phase on the construction plans and /or building permit are considered critical improvements and must be constructed prior issuance of any TCO or CO; they cannot be bonded:
  - i. Public drainage improvements
  - ii. Public sidewalk improvements
  - iii. Installation of street and traffic control signs
  - iv. Access drive, driveway, and parking areas
  - v. Pedestrian crossing improvements
  - vi. Storm water quality features. (Vegetation must be established prior to CO when required as part of the feature design.)
11. A final plat shall be filed for the Casey's Pond Subdivision prior to building permit or grade and fill permit (site grading may occur under Preliminary Plat grade and fill permit).
12. The future Phase 2, including the FAR Variance, shall be reviewed as a Final Development Plan and shall comply with all applicable standards of the Community Development Code at the time of Phase 2 submittal.
13. A development agreement will need to be entered into between the City and the developer prior to building permit or grade and fill permit regarding:
  - a. FAR Variance
  - b. Extended Vesting
  - c. Improvements to the City Park
  - d. Dredging and outlet structure improvements to Casey's Pond

**Attachments:**

Attachment 1: Additional public comments



## Jason Peasley

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From: Jeff Brown [brown.jeffrey@yahoo.com]  
Sent: Thursday, August 11, 2011 12:06 PM  
To: Jason Peasley  
Cc: Catherine Hagney Brown; rob@rhstickler.com  
Subject: Casey's Pond Subdivision, Parcels A & C #DPF-10-04

As owner of Lot #15 in Wildhorse Meadows, adjoining the proposed senior residence, I strongly object to the project and to your staff report. I urge the commission to soundly reject the requested variances for both phases of the project. Planning Commission staff's assertion that the development, including the height variance, the maximum floor area ratio and the minimum rear setback will NOT affect nearby properties is ridiculous.

The property was zoned for residential when we purchased our Wildhorse lot. While that was changed in February and we support residences for seniors in Steamboat Springs, we expect the Planning Commission to abide by the requirements of the CDC by NOT granting variances merely because they are requested. The project will lead to much greater traffic on Owl Hoot Lane including increased noise and more frequent EMT visits -- that just goes with living near a fully occupied senior center. Further, the extreme height of the building will be a major detriment to our southerly views, especially given that my property faces the back wall of the building and the parking garages and lots will be an eyesore. While its existence alone will have a further negative impact on the valuation of my property, I hope the Commission will not make matters worse by granting the architects and developers carte blanche in terms of these variances.

The CDC was thoughtfully developed by planning commission staff and the community with zoning requirements meant to preserve the community, allow for RESPONSIBLE development and, I hope, preserve existing (now, depressed) property values. There is no reason this project cannot be designed within the existing zoning rules rather than granting these variances. Please reject the requests for height, FAR and minimum setback variances and insist that the architects design the project within the CDC's existing zoning requirements.

Sincerely,  
Jeffrey P. Brown



**Jason Peasley**

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**From:** Kay Burch [kburch@zirkel.us]  
**Sent:** Thursday, August 11, 2011 9:52 AM  
**To:** Jason Peasley  
**Cc:** Bill Dring  
**Subject:** Senior Campus  
My husbad and I suport the Senior Campus Project.

Kay Burch & Sid Hopkins

**Jason Peasley**

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**From:** Arborpeter@cs.com  
**Sent:** Wednesday, August 10, 2011 7:04 PM  
**To:** Jason Peasley  
**Cc:** billdring@comcast.net  
**Subject:** Senior Campus at Casey's Pond  
To Steamboat Springs Planning Commission and City Council

Regarding the Plan to build a Senior Campus at Casey's Pond, my wife and I are among the many in our community who consider this project vitally important to our community and to its senior members most particularly. The project has our full support and we follow each stage of the development with intense personal interest

Rosemary and Peter Cullinan (OTHG)

**Jason Peasley**

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**From:** Carolyn Deverell [cdeverellmath@yahoo.com]

**Sent:** Wednesday, August 10, 2011 11:45 AM

**To:** Jason Peasley

**Cc:** billdring@comcast.net

**Subject:** Senior Campus at Casey's Pond

Dear Mr. Peasley,

As an OTHG member, and a currently active senior who chose to retire in Steamboat Springs, and would love to be able to remain in this community if and when I might need some kind of housing that would provide assisted living or nursing care in the future, I urge you to support the new Senior Campus at Casey's Pond.

This construction needs to move forward, so please do all that you can to facilitate this worthy and much-needed project.

Sincerely, Carolyn Deverell

Jason Peasley

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**From:** David Moulton [oc24us@comcast.net]  
**Sent:** Tuesday, August 09, 2011 8:05 PM  
**To:** Jason Peasley  
**Subject:** Support Senior Campus at Casey's Pond

Dear Mr. Peasley

I believe that the planned Senior Campus at Casey's Pond will be a wonderful asset for this community and I support the approval of the project. There is a growing population of seniors in the Yampa Valley and this type of facility is something that many of us will need sooner than we'd like to think. I have attended several briefings on this project and it appears to be a well thought out plan that will serve our community very well. I'm looking forward to seeing the project completed and open for business.

David Moulton  
Member - Steamboat's Over the Hill Gang  
322 Hilltop Pkwy  
Steamboat Springs, CO 80487-3112  
Hm 970-870-1956

## Jason Peasley

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**From:** Doug Smith [dougandjosmith@comcast.net]  
**Sent:** Tuesday, August 09, 2011 2:57 PM  
**To:** Jason Peasley  
**Subject:** Casey's Pond Project for seniors

Attn: Jason Peasley

I wish to voice my support for this much-needed project!

Thank you,  
Doug Smith  
3390 Covey Circle

**Jason Peasley**

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**From:** Nancy Paul [nprogerdog@gmail.com]

**Sent:** Tuesday, August 09, 2011 2:40 PM

**To:** Jason Peasley

**Subject:** Senior Campus and Casey's Pond

I support this project.

Nancy

**Jason Peasley**

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**From:** DONEDEN@aol.com  
**Sent:** Tuesday, August 09, 2011 9:21 AM  
**To:** Jason Peasley  
**Subject:** Senior Campus at Casey's Pond

To: Steamboat Springs Planning Commission and City Council

My husband and I very much support a Senior Campus at Casey's Pond, have attended two meetings to see the plans, etc. Everything looks very good including a final care center. I would have moved my mother here for her final years had we had the center now. We need this for our ageing community who wish to spend the rest of our years in Steamboat and this magnificent valley.

Sincerely,

Gail (and Don) Eden



**Jason Peasley**

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**From:** Barbara Schmidt [Barbara.Schmidt@lifecare-hospitals.com]  
**Sent:** Monday, August 08, 2011 8:38 PM  
**To:** Jason Peasley  
**Subject:** Senior Campus

I support this project.

**Jason Peasley**

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**From:** Steve Richheimer [richheimer@zirkel.us]

**Sent:** Monday, August 08, 2011 10:45 PM

**To:** Jason Peasley

**Subject:** Senior Campus at Casey's Pond

Steamboat Springs Planning Commission and City Council,

I fully support the Senior Campus project near Casey's Pond.

Steven L. Richheimer  
Over the Hill Gang Member  
29790 Elk View Dr  
Steamboat Springs, CO 80487  
970 871-4593  
e-mail: richheimer@zirkel.us

Jason Peasley

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**From:** Elaine Gilbertson [elainegilbertson@gmail.com]

**Sent:** Tuesday, August 09, 2011 7:39 AM

**To:** Jason Peasley

**Subject:** Senior Campus at Casey's Pond

I am unable to attend the planning meeting of Aug 11th, however I very much support the much needed project.

Elaine Gilbertson

Over the Hill Gang, past president

15-72

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Date **DRAFT**

**Casey's Pond Subdivision, Parcels A and C (Casey's Pond Senior Living Facility) #DPF-10-04 Development Plan/Final Development Plan to construct a 121,000 square foot senior living facility with associated parking, landscaping and sidewalks. The proposal includes variances to the maximum floor area ratio and minimum rear setback.**

Discussion on this agenda item started at approximately 5:04 p.m.

**STAFF PRESENTATION**

Jason Peasley –

I provided you with a memo. Within that memo there's a tweak on the vesting request from the applicant. At your request there's a staff analysis of the minor adjustment criteria for the height variance. There are also revised conditions of approval that you requested, worked with the applicant, Public Works, and the fire department to come up with some different and more clear conditions of approval for the project. There is also additional public comment.

**APPLICANT PRESENTATION**

Carl Gills –

(He gave a brief background of the project). There are many different licensing standards that we have to deal with this project. It's a complex project with 4 levels of care, which include independent living, assisted living, memory care, and skilled nursing care. The idea is not just what the building is going to be used for right now, but how we grow to meet the needs of the people in the future. We need the flexibility in the future to expand this project. Any type of expansion that we do in the future will be subject a review by the Planning Commission and City Council. Another thing we need to think about is how do we expand the community. This will also serve a significant benefit to the community on its face. There's nothing out there that is a continual care type of community. There has been a significant amount of community support. This is the 1<sup>st</sup> step in 3 final steps toward bringing Casey's Pond project through completion. The entitlements are important in trying to get our maximum amount of pricing from our contractor. Getting the project approved through the Planning Commission and City Council is important. If everything goes as planned then we will be able to start construction in spring 2012.

Charles Gee –

We try to emulate a type of community. We feel that this location achieves that. We wanted this to be very close to the hospital and the different amenities. Senior housing in general has a very low impact to communities. We will provide transportation and this project is located right off of the main bus route, which is very important. We have done a significant parking study and we determined that we have adequate parking. Even with an expansion we don't feel that there will be any further impacts with traffic.

The zone change is a very important part of the element. It also created what we saw as a down zone and that's what's caused this FAR variance request. Overall we've only requested 3 variances.

Date **DRAFT**

The project is a total of 144 units. We're going to have 60 skilled nursing beds, 26 memory care units, 30 assisted living units, and 34 independent living apartments. In the 120,000 square feet that we have over 40% of the building is common area and amenity space. The expansion that we're doing is just adding units.

Senior housing is a very sustainable type of community. Universal design really drives the design of a community. It really allows the resident to have a good quality of life. The 60 unit skilled nursing has to be on 1 story. You can't stack occupancy uses above that. The middle portion of the building is the 4 story portion where the independent living apartments are located. The ground floor has all of the amenity space, administration, and kitchens. The 4 story tower is where our height variance request is. We have 2 fronts to the building. The corners of the building are a very residential scale story. The multiuse trails are going to also be fire access roads. We will be able to link the core trail to this property. There will be a garden/amphitheatre which is similar to a winding trail. We chose an arts and crafts theme.

We are very conscious in providing variety. (He mentioned the materials being used on the building). We feel that it blends in really well with the landscaping. (He mentioned how the gardens represent natural landscaping to the Casey's Pond and Yampa River area). It also provided a visual buffer from Burgess Creek. We plan on cleaning up the Burgess Creek area. We incorporated the use of environmental bio-swaes all along the Burgess Creek area. Since we are close to Casey's Pond we felt that we could adequately handle our storm water in that basin. We have agreed to landscape all along the Casey's Pond area. We agree to escrow \$50,000 for the City improvement of this outfall that goes out underneath Hwy 40. We had wetlands that were former ponds that had drained years ago that eventually formed wetlands in the area. They were identified as very low quality wetlands. Our mitigation is to buy into the wetlands at Finger Rock in South Routt County. We hope to expand some of the wetlands.

(He showed where some of the variances are located). There is some contamination of the soil in parcel C. The contamination was caused by an old farm tank that was left there, but some petroleum had leaked out. It isn't pluming out towards the property however.

We wanted to maintain a pitched roof throughout. We feel that the 4 stories don't impact anyone's views. It was recommended to us that we go from RR1 to MF3 zoning. We went from an unlimited FAR based on the form code to the 0.5 FAR. What we're requesting is an increase to 0.74 since we only have 0.25 lot coverage. We're going to add some independent living units. Once parcel C is cleaned up we want to extend the wings. (He explained an expansion that may include some underground parking for in the future). We may be back in front of you requesting another garage.

The provision for a vesting period of 2+5 it really doesn't meet our needs. We have no problems going through the DP each time we do an addition. That's why we would like to tie that additional FAR to our conditional use and provide that in the development agreement.

## **COMMISSIONER QUESTIONS**

Commissioner Levy –

Date **DRAFT**

The minor adjustment is a variance, is that correct?

Jason Peasley –  
Correct.

Commissioner Levy –  
How come that would make 3 variances even though 1 is processed separately from the other 2? Why wasn't this processed as a PUD?

Jason Peasley –  
It met the threshold of the minor adjustment. The 2 development variances were part of the project and so that's why we didn't go through a PUD.

Commissioner Levy –  
On the supplemental staff report that you gave us on pg 3 where we were reviewing the minor height adjustment at the top of the page (5) 'not be substantially out of scale with adjacent buildings'. Would that be reviewed to the potential? Wildhorse Meadows has an FDP in place. To the north it is adjacent to that parcel. On their FDP do we know what kind of product is expected to be adjacent to this building?

Jason Peasley –  
That is their single family component. I think that there's only 1 building in there that's a 2-3 story single family home.

Commissioner Levy –  
You don't feel that is out of scale with that type of product?

Jason Peasley –  
There's quite a bit of grade separation between the 2 and so it mitigates the scale.

Charles Gee –  
Just to the north of the project there are a number of 4 story condominiums and the Wildhorse Lodge is at least 6 stories. The Wildhorse development was developed in the nature of having multiple types of densities around it. That grade change will allow those houses to see over the top of that 2 story element.

Commissioner Robbins –  
The amphitheatre that you pulled out, are you designating that to the City?

Charles Gee –  
No, that is still within our property boundary.

Commissioner Robbins –  
It's not going to be open in general for the public to use.

Charles Gee –  
It's not going to be closed. If you ride a bicycle you'll be able to hang out here and we encourage that.



Date **DRAFT**

Commissioner Robbins –

That's what I was leading up to if it was opened to use by the public for them to sit around. What kind of endangerment does that put your patients in?

Charles Gee –

It's very tough not only for the seniors, but it's tough for the visitor.

Carl Gills –

I wouldn't see the relocation of the Steamboat Springs free concert series being relocated to this site.

Commissioner Robbins –

I understand. I was just thinking about the casual goer byer just hanging out and you have patients hanging out there as well and the potential for some negative interaction and how that would play out. I'm just thinking liability.

Charles Gee –

The skilled nursing area has an independent enclosed patio and there's an independent patio where most of the people will be staying. There will be benches and the ability to have wheelchairs. (He showed a fire department connection).

Commissioner Meyer –

Can you put up the slide that shows the overhead of the sidewalk plan? What I noticed is that you have all of the parking in the front of the building. The only way that the public could access is by either going through the building, which I don't think that you want a lot of public walking through the building or you have to walk all the way around the building. You're going to use that space in the summer time and it's not going to be very accessible in the winter. By putting it way out in the back facing the pond you really cut off any possible public use.

Charles Gee –

We didn't want the parking in the back of the building. You can walk on the sidewalk, you can park on the street since it's wide enough, and there's crosswalks at various locations where you can cross. This isn't a parking lot for the park users. We feel that needs to be developed somewhere else.

Commissioner Hanlen –

It seems like the MF3 zoning is an awkward square peg in a round hole for this site. If the site would have been zoned CC then we wouldn't have the FAR issue, we wouldn't have the height issue, and the severity of the setbacks wouldn't be so severe. Tyler Gibbs's response was that it doesn't really fit any zone district. Based off of the requests that we're seeing tonight about permanent vesting coming with a conditional use it seems like what we're recognizing is that 3 years is too short. It seems that at the same time we've gotten away from any kind of permanent vesting. It seems like the only way to properly permanently vest a site is through zoning as opposed to any type of development. Is this the best way to create future predictability to open the doors up to what you want to do in the future? Whether you receive approval for it tonight what's to say that this isn't going to

Date **DRAFT**

be problematic or create issues whether it's in 5, 10, 15, 20 years from now. You created a long list of a lot of things. It seems like to open that up as a blanket approval. It seems problematic at best. Are we better off rezoning this concurrently with the development plan from MF3 to CC to remove a lot of the issues that are inappropriate for the zone district?

Tyler Gibbs –

With the CC comes a number of other permitted uses that wouldn't be appropriate for this site. Not only does it allow for those commercial uses, but it requires those uses. There isn't any other contiguous commercial zoning in the area. It seems more appropriate to make the variance to allow greater amount of an acceptable use as opposed to allowing the potential for some unintended uses.

Commissioner Hanlen –

When you were referring to ground floor uses, via the use chart or via the entry corridor standards?

Tyler Gibbs –

Via the use chart.

Commissioner Hanlen –

I think that this is a good looking project and I think that it's appropriate for the site. My question is aimed more towards consistency from project to project and how staff treats one project to the next. When you're measuring the height, in the past we've measured from existing or proposed grade whichever is the most severe. Currently it's showing a 63' height to the maximum height of the structure. Based off of existing grade isn't existing grade 8-10' below that point of most severe height? Currently it shows off of proposed.

Charles Gee –

It's a cut and fill site. The majority of the site is consistent with the grade that we're achieving.

Commissioner Hanlen –

It's just the way that the projects have been interpreted in the past we haven't seen it applied that loosely. I'm not saying that I disagree with the way that this is being measured it's just a consistency question from project to project of how are we measuring this? It seems like this has been done in the past and it seems pretty significant relative to past projects.

Tyler Gibbs –

I can't speak to how past projects were measured.

Commissioner Hanlen –

Moving forward how are we going to measure these? I will pick on the most severe project that we've had, which was on Burgess Creek Rd. We were pulling from the most severe point of existing grade to measure what the height was regardless of fill or how the development was being treated. How are we doing this moving forward?

Tyler Gibbs –

Date **DRAFT**

Do you feel that the definition of height in the code isn't sufficiently clear?

Commissioner Hanlen –

It's back to where we keep going, which is it's not necessarily how it's written, but rather how it gets interpreted by staff. Currently the way it reads is whichever is the most severe. While I don't disagree with the final visual, that's not the way that it's been interpreted.

Commissioner Meyer –

I wanted everyone to know that it wasn't until we walked into the room that we got this book. It's very helpful. It would have been even more helpful at our work session. We didn't get any elevations until yesterday at 3pm. I wanted the public to know that we're looking at this for the first time.

Public Comment was taken.

Commissioner Meyer –

Isn't the maximum vesting in our code 10 years?

Jason Peasley –

I looked into this and City Council has the ability to basically allow vesting of any period of time.

Commissioner Meyer –

Our CDC specifically says the maximum vesting will be 10 years.

Jason Peasley –

City Council has the ability to extend that time.

Commissioner Lacy –

But we don't.

Jason Peasley –

I'll have to look in the code some more to make sure of that.

Commissioner Meyer –

I just wanted to make sure that you had indicated that the independent portion was going to be rentals?

Charles Gee –

The entire project is going to be rentals.

Commissioner Meyer –

There are different models in different areas where you buy shares or coop.

Charles Gee –

This is not an entry fee product. It's a pure rental product. Some like a month to month and others like a year lease. We feel that people need to try it and if they don't like it then they don't need to invest their life savings into our product.

Date **DRAFT**

Commissioner Meyer –

Someone who's there on a more transient rental basis is more likely to use your shuttle service, but if somebody lives there and they're capable of driving then they're going to have their own vehicle. I realize that you did a parking study. What Carl Gills knows over at the Doak that there are days when there's nobody parking there and there are days especially during the week when all of your staff is there that parking lot fills up. It's a very employee intensive use.

Charles Gee –

The average entrance age is 75. This is not a retirement product. This is an independent living product. A lot of these people are looking because they have assisted living needs or are planning ahead. Very rarely do they drive.

Commissioner Meyer –

Your addition phase 2 of 60,000 square feet. You say that you haven't really costed phase 2 yet. You don't know what it's going to be. I don't know what the water table is going to be over there, but putting anything underground is very expensive.

Charles Gee –

It is cheaper than buying land for expansion. It will require dewatering.

Carl Gills –

With the size of this project we couldn't make underground parking work at this time. That parking lot isn't the Doak lot, but it serves as 1 of 2 primary parking lots for our employees. We keep that front row open for non-employee parking. When we have looked into the various models of transient living in some cases it seems to be on the decline in terms of popularity. There have been some communities that were built that way that have had difficulties providing refunds to the estate after the resident leaves. A lot of seniors utilize the appreciation in their homes as they sell those to have access to fees to buy into the community. With housing in Steamboat slowing down that's actually inhibiting residents from being able to move into this type of community.

Commissioner Meyer –

Can you educate me on a bio-swale and why it's different than our typical storage ponds that we see?

Charles Gee –

A bio-swale handles water quality and a collection pond handles storm events. We felt that the ultimate discharge to the pond was so close that we felt that it was appropriate to discharge into that pond. Water quality isn't dealt with in detention ponds. Bio-swales slow the flow down through rip rap and rock structures naturally. You're trying to emulate the natural way in which water is handled. As it goes through there the sediment is deposited within the bio-swale. The toxins are handled through transpiration.

Commissioner Meyer –

How often do you expect to dredge?

Date **DRAFT**

Charles Gee –

It may be an as needed basis.

Commissioner Robbins –

Because it's not really known how often that's going to need to happen and one of the conditions that you have is that they are required to dredge 350 cubic yards in material and contribute \$350,000 in improvements. I don't know how far that's going to go. Do you think that we need more than a development agreement provision maybe something like a maintenance easement forever future maintenance?

Jason Peasley –

Planning staff, Charles Gee, and Philo met and talked about some ongoing maintenance of the pond as an actual feature. The \$50,000 investment that Casey's Pond is making is intended to provide long-term viability of the pond in lieu of long-term ongoing maintenance.

Commissioner Robbins –

I wasn't thinking of one of the other, I was thinking in addition to.

Charles Gee –

We are going after an FHA/HUD loan, which doesn't allow you to have undefined maintenance needs outside of your parcel lot. You have to maintain this pond and they won't allow it in the loan. What is the most pressing need for the health of the pond? This is a City Park and we're doing quite a bit for this City Park.

Commissioner Lacy –

If the City does need to perform some maintenance would it make sense for us to have an easement to be able to go on their land to perform maintenance?

Charles Gee –

There will be an easement for construction already established there.

Commissioner Robbins –

Where are the easements where Burgess Creek comes down?

Charles Gee –

(He showed where the easement is located).

Commissioner Robbins –

You said that you were piping under the sidewalk?

Charles Gee –

Yes.

Commissioner Robbins –

If something happens to that then can the City come in and fix that?

Charles Gee –

We're responsible for that. The agreement says that we need to maintain all of our outfalls.

Date **DRAFT**

Commissioner Brookshire –  
In moving the Doak facility, is Grandkids anticipated to move at the same time as the Doak facility?

Carl Gills –  
Grandkids will not move with the Doak that's part of Yampa Valley Medical Center. We had originally discussed creating a new childcare facility in the future. We will work with Grandkids to establish intergenerational programs, which will cause the need to transport children to the community.

Commissioner Brookshire –  
Doesn't that have something to do with the rating of the facility? I've heard a term called Eden.

Carl Gills –  
The Eden program as it relates to the Doak is a nationally recognized program that tries to deinstitutionalize the lives of the seniors that are living there. Having the onsite childcare facility isn't required.

Commissioner Brookshire –  
The Doak rating won't drop?

Carl Gills –  
It shouldn't. The individualized eating areas as opposed to 1 big eating area are more Eden like.

Commissioner Brookshire –  
Are you anticipating the airlocks for diseases that require quarantine?

Charles Gee –  
We took movements from the greenhouse design and that's creating small homes for seniors. These will serve 20 residents at a time.

Carl Gills –  
All of those concerns that you're speaking to are strictly dictated by the State.

Commissioner Brookshire –  
You can choose to not be a certain certification.

Carl Gills –  
We could, but what we have designed here is that all of the skilled nursing areas are skilled level.

Charles Gee –  
The architect pointed out that by State Health Code there is an isolation area by the skilled nursing area.

Date **DRAFT**

Commissioner Levy –

In the supplemental packet that we received today condition 12 on pg 5 of 5 from the memorandum ‘future phase 2, including the FAR Variance, shall be reviewed an FDP’. Does that mean that we’re not seeing it as a DP as well or is that all rolled into 1 term?

Jason Peasley –

Any event they have no other variances they would be reviewed as an FDP.

Commissioner Levy –

Since I haven’t seen it and we haven’t gotten any building envelope or any site location for phase 2, which that would be reviewed in a DP and not an FDP. We’re skipping that part of the review for phase 2 to be able to have say of location?

Jason Peasley –

The concept is to approve it on a semi-conceptual level at this point.

Commissioner Robbins –

I thought that when we discussed this on Monday we were going to have a building envelope already designated so that we had a site that we were approving instead of a blanket variance approval.

Commissioner Lacy –

If you look at the variance criteria that we have to review to approve this particular FAR variance, I think that what everyone is getting at if you look at all of the criteria. One of the items that we have to say is that this exhibits superior development. I think that what everyone is struggling with is that the language says ‘the applicant shall demonstrate that the requested variation from the dimensional standards will result in a development which better meets the intent of the underlying zone district in the adopted plans’. We need a little bit of explanation to how we can say that this is a superior development when we don’t know what the development is.

Commissioner Levy –

I thought that the applicant agreed that phase 2 would go through the complete review process. In my mind the FDP is more minimal. It’s architecture and some minor things where everything else is reviewed in the DP.

Charles Gee –

We thought about it quite a bit. We’re ok with going through the process at that time. We’re hoping that it’s not just a 1 time process as long as we stay within the numerical FAR. We’re willing to change that condition.

Commissioner Hanlen –

What was the judgment call that was made regarding the entry corridor standards? Are they mandatory or merely suggestions? That speaks to some of the discussions that we’ve had with Tyler Gibbs about all of these different community plans. Is noncompliance with a part of the entry corridor standards necessarily a variance or are they merely recommendations?



Date **DRAFT**

Jason Peasley –  
They're standards.

Commissioner Hanlen –  
Can you show me on the plan which is the 3:12 roof?

Erik Hall –  
(He showed where the different elevations are located using the PowerPoint).

Commissioner Hanlen –  
The roof pitches on the tall tower, aren't they a 3:12?

Erik Hall –  
(He showed the 3-D model to demonstrate the different roof pitches).

Commissioner Hanlen –  
The roof pitch on that whole southern wing is 4:12?

Erik Hall –  
Or higher.

Commissioner Hanlen –  
I think that it's a great looking product. This is something that I've been questioning for a couple of years. The entry corridor standards state minimum of 5:12 unless it's an accent roof. I felt like whether you wanted the project or liked the project or not Walgreen's received a pretty extensive list of what turned into variances for their project. It seems like whether we support it or not or whether staff supports it or not aren't those roof pitches necessarily a variance? I'm looking for consistency from project to project. This project looks great. I'm not necessarily saying that it's bad, but it just seems like there's a longer list of variances based off of the way we've interpreted standards on other projects.

Jason Peasley –  
The actual regulation reads 'generally multi-family buildings shall incorporate roof pitches between 5:12 and 12:12'.

Commissioner Hanlen –  
I fully understand that the Base Area would have been prohibitively expensive. It seems like it's inconsistent with the way that we typically review these. I know language like 'generally meets' and when you say 'it meets the intent of' it doesn't seem like that's the way it's been implied. It sounds like staff is fully supportive and I would assume that the majority of Planning Commission is fully supportive of the variance, but is it none the less a variance? It seems like the way that this has been interpreted isn't the way we review projects.

Tyler Gibbs –  
I'm not sure how you create the appropriate regulations that have both predictability and flexibility. That's always a challenge to define. The tool is to define what was the intent and apply that intent as consistently as possible.

Date **DRAFT**

Commissioner Hanlen –

I would say that we do need to address that. The whole idea that a building doesn't look good unless it has a 5:12 pitch or steeper is a blunt tool that I don't think works very well. The building is articulated well and it looks good, but based off of the way that I thought that we were interpreting the standards it doesn't necessarily meet it. It seems inconsistent and it seems that the entry corridor standards need to be readdressed.

Tyler Gibbs –

The standard was that we thought that the varied roof pitches would be met at 5:12 or greater. We don't want to be forced into a situation where we would require that.

Commissioner Hanlen –

What did you say? Are we approving a variance to the FAR tonight that's a blank of extended vesting? It didn't sound like you did say that, but that's what our packet says.

Charles Gee –

The packet was the intent. We wanted to tie it into the entire site since we don't know where it's going to expand. We prefer to have the DP agreement negotiated where it states that we have a 0.75 FAR envelope of the entire site subject to 2 conditions. One is that the conditional does not change. The secondary one that it comes back through approval at that time.

Commissioner Levy –

We have a letter from a neighboring lot owner from Wildhorse Meadows claiming that the size of the project will diminish her property values. That's specifically called out in the guidelines that the variance substantially outweighs the disadvantages to the community and neighboring lands. I wanted to make sure that was one of the considerations. You don't necessarily itemize the disadvantages or advantages in the staff analysis. I wanted to make sure her concerns were addressed and that you still feel that the benefits to the project still outweigh her concerns.

Jason Peasley –

At the time we didn't really contemplate that this would have a negative effect on property values. My thought was more on an appearance standpoint.

Commissioner Levy –

Do we have any further clarification of what disadvantages should be analyzed or should all potential disadvantages be analyzed when we're analyzing advantages versus disadvantages?

Tyler Gibbs –

We're getting into more of a figment of personal perception.

Commissioner Levy –

I'm not saying that letter is fact. Did you consider what the potential impact may be or mitigate that there's any potential disadvantage to neighboring land values?

Date **DRAFT**

Jason Peasley –  
No it was not.

Commissioner Hanlen –  
On the site plan at the southern edge of the parking lot is it impossible due to grade? We don't have a civil drawing in our packet, we have a landscape plan, but there's no numbers on it. At the southeast edge of the parking lot is it possible to put a pedestrian connection out to Owl Hoot Dr? It seems like you have a bottleneck where there's only 1 exit point to get out to the sidewalk that fronts that right of way. It seems like either one is going to occur naturally. I don't know if the grade is too steep and there would have to be stairs.

Charles Gee –  
That's possible. What we want to do is control these pedestrian crossings.

Commissioner Robbins –  
Were you referring from the property to the trail and not across the street?

Commissioner Lacy –  
He means from the parking lot to the sidewalk.

Commissioner Hanlen –  
The ditch wouldn't keep someone from crossing the street.

Charles Gee –  
(He showed where there are heated sidewalks).

Commissioner Hanlen –  
I understand your goal of control and focusing the pedestrian activity. What tends to happen organically is that people will find the shortest point from point A to point B and whether it's the residences or it's the employees all of a sudden that path gets cut a month or 2 after the project is done.

Charles Gee –  
67% of our residences won't be able to walk across the parking lot.

Commissioner Hanlen –  
It seems like there's going to be a lot of activity on the site whether the trails occur naturally or organically.

Charles Gee –  
I don't have a problem with adding a sidewalk there. How do you define a connection from here to the back of the site? We're trying to avoid people walking by the residences windows.

Commissioner Brookshire –  
How are you going to pay for this? I think that it's a great project. I really like the design and I think that it would be an attribute to Steamboat Springs. I think that it's going to help

Date **DRAFT**

the entry corridor as opposed to what's there now. If we're going to get all of those over the hill gangers moved in I don't understand how these units get paid for?

Charles Gee –

We have investment bankers that are nationally known. It's a not for profit type of community. We don't have an equity partner to sell and make money off of this project. Whatever excess cash we get goes right back into sustaining the community. We're not looking to raise funds outside of this community.

Commissioner Brookshire –

In picking a classification for independent living what's an average cost per month to reside there?

Charles Gee –

We haven't determined our rent. It's not a real estate product. They would be paying for those services.

Commissioner Brookshire –

Comparing a unit from this project to a unit from the Doak with similar size and square footage you anticipate the cost to the user to be roughly the same.

Charles Gee –

Right now our performance shows that we're using the same payer rates as in the Doak Walker Center.

## **PUBLIC COMMENTS**

Bill Dring –

Our study indicated that we have very serious lack of supporting housing for seniors. Our 435 members are very active and independent sometime in the future some of us are going to need support. Without this project we'll be forced into bad choices or we're going to have to leave town. Secondly in our report we studied supportive housing throughout the country. This will be something that Steamboat Springs will be proud of.

## **FINAL APPLICANT COMMENTS**

Charles Gee –

The RR zoning had a much more intensive FAR potential. We're not asking for an unlimited FAR, which would have been under the RR zoning. We're asking for an FAR of 0.75. In terms of the adjacent neighbors I believe that this is going to increase the property value. You have more seniors in Routt County than in Denver.

## **FINAL STAFF COMMENTS**

Jason Peasley –

It doesn't even mention a maximum vesting period in the code. It just says that typical vesting is 3 years. You can up it to any timeframe that you feel is appropriate.

Commissioner Meyer –

It used to be in there that we had a 10 year maximum.

Date **DRAFT**

Tyler Gibbs –

It ultimately takes City Council to make that final determination. You're making a recommendation to City Council.

## FINAL COMMISSIONER COMMENTS

## RECOMMEND MOTION

The Casey's Pond Senior Living Facility Development Plan/Final Development Plan (#DPF-10-04) is consistent with the findings for approval for a Development Plan/Final Development Plan with the following conditions:

1. All fire department access roads shall be dedicated to the City of Steamboat Springs as "Emergency Access Easements" and shall be noted on the Final Plat. Also a "Dedication of Easement" form supplied by the City shall be completed and recorded by the County Clerk's Office.
2. When fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except when approved alternative methods are provided. This means any utilities in the road need to be in and the road completed to an all-weather drivable surface and fire hydrants in and accepted by the water purveyor before the Fire Department can sign off on building permits.
3. Civil construction plans prepared by a licensed Colorado civil engineer must be submitted to Public Works for review by Public Works, Planning, Parks and Rec, and Mt. Werner Water for review and approval prior to approval of any improvements agreement, grade & fill or building permit, or final plat and prior to the start of any construction. We recommend submitting the construction plans a minimum of five weeks prior to grade & fill or building permit application to allow time for review, comment response, and approval and incorporate the final construction plans into the grade & fill or building permit plans.
4. Prior to approval of civil construction plans a Development Agreement between the City and the Developer will be required. The agreement shall stipulate the developer will be required to:
  - i. Remove 350 cubic yards of sediment deposit from Casey's Pond.
  - ii. Submit a \$50,000 payment to Escrow for maintenance to the outlet pipe of Casey's Pond.
  - iii. Maintain the drainage outfalls from the development, including future removal of sediment

The details of when each of these requirements must be completed will be established in the Development Agreement.

5. If at time of building permit there are any proposed private features within City property or rights-of-way, the owner must apply for a revocable permit agreement for those private site features. This

Date **DRAFT**

- project will be responsible for maintenance of any approved feature. No private features shall encroach on the multi-use and emergency access trails/routes.
6. The owner shall provide a construction easement to the City for the future Casey's Pond trail tie-in project. Details of the easement shall be worked out with the Public Works Engineering Department.
  7. Prior to approval of a grade & fill or building permit the developer shall complete and record a sidewalk/trail maintenance agreement with the City for those portions of the multi-use and emergency trails which are required to be maintained by the developer.
  8. Provide a final copy of the Letter of Map Revision (LOMR) for the modifications made to the floodplain. The City shall be notified of any changes with the final design regarding the Floodplain Modification Study.
  9. Owner will be required to have a third party project engineer conduct site inspections, testing, and construction observations to determine that the public and private improvements were constructed per approved plans as part of the City's improvements inspection process. A pre-construction meeting to outline the specific requirements for the project will be required prior to the start of construction.
  10. The following items to be identified for each phase on the construction plans and /or building permit are considered critical improvements and must be constructed prior issuance of any TCO or CO; they cannot be bonded:
    - i. Public drainage improvements
    - ii. Public sidewalk improvements
    - iii. Installation of street and traffic control signs
    - iv. Access drive, driveway, and parking areas
    - v. Pedestrian crossing improvements
    - vi. Storm water quality features. (Vegetation must be established prior to CO when required as part of the feature design.)
  11. A final plat shall be filed for the Casey's Pond Subdivision prior to building permit or grade and fill permit (site grading may occur under Preliminary Plat grade and fill permit).
  12. The future Phase 2, including the FAR Variance, shall be reviewed as a Final Development Plan and shall comply with all applicable standards of the Community Development Code at the time of Phase 2 submittal.
  13. A development agreement will need to be entered into between the City and the developer prior to building permit or grade and fill permit regarding:
    - a. FAR Variance
    - b. Extended Vesting
    - c. Improvements to the City Park
    - d. Dredging and outlet structure improvements to Casey's Pond

**MOTION**

Commissioner Robbins moved to approve DPF-10-04 with a change to condition 12 as provided in the memorandum not in the original packet that requires the applicant to come back through the DP/FDP process and Commissioner Brookshire seconded the motion.

**DISCUSSION ON MOTION**

Commissioner Levy –

We love this project. I think that it's an appropriate density. I have problems with 3 variances. One is processed separately, but it's still 3 variances. Commissioner Hanlen brought it up the point that height could have been another variance and why it didn't come through a PUD. That would have been a more appropriate process. There are some ideas from the RR zone district that you like and there are architectural guidelines and standards from the entry corridor standards in the MF zone district that you like. I feel like a PUD would have addressed everything. I don't think that you would have had any trouble meeting the public benefit standard. That was the ideal purpose for the PUD. It feels like with this we're putting a square peg into a round hole. We have these certain standards for reviewing every type of application. I feel like we have to make exceptions, because this is an exceptional product. A product that we know the community needs. I'm having a lot of trouble with how to process that.

Commissioner Meyer –

I have no trouble with the conditional use. I'm very supportive of the concept. I would be very uncomfortable approving this without some term on the FAR exception recommended to City Council. I think that to give a blank check of 60,000 square feet on a building that we don't know where it's going to go. Commissioner Robbin's motion included that they would have to go back through a DP/FDP. I'm comfortable, but if we give them an infinite vesting on 0.75 with 60,000 square feet of we don't know where it's going to go. We wouldn't do it for anybody else. I would support your motion if you amended it to have a term on the 0.75 variance to expire in 10 years. I think that gives a lot of latitude on financing. In 10 years you don't know where you're going to put that extra 60,000 square feet then we as a community should re-look at it. I realize that will impact your financing. I really appreciate the color coding key that we received. We haven't spoken a lot about the materials, the quality of materials, and the colors. I'm very excited about the architecture. There are a lot of really good things here. I'm stuck on this phase 2 60,000 square feet as a player to be named later.

(Commissioner Robbins and Brookshire accepted that as an amendment to the motion).

Commissioner Hanlen –

Do we allow cultured stone for the entry corridor standards or does it have to be a natural stone?

Jason Peasley –

I'll have to look at the entry corridor standards.

Commissioner Hanlen –



Date **DRAFT**

Would this be better served, I'm thinking of the long term predictability for the developer for this project. I'm concerned about something being passed tonight and all of a sudden becomes problematic in the future where are we better off putting this into a PUD, are we better off changing the zoning, or are we better off with the way the motion stands? It seems like it's been handled awkwardly. Even though it doesn't change the final product of what we see today it potentially radically changes the process that any of these additions go through. Should those necessarily come with that burden or should this be smooth sailing?

Commissioner Lacy –

You're throwing out a general thought. At this point if you have a thought then maybe you should propose what you think would work better at this time if you're not in agreement with the motion.

Commissioner Robbins –

It is general deliberation.

Commissioner Hanlen –

It seems like the PUD that they more than meet the public benefit. It's not the typical extraction process that we would normally associate with the PUD. I wouldn't see that the project would have to kick in any additional product or cash if we kicked it into a PUD. Are we approving a better product be rezoning it, doing a PUD, or doing the motion as it stands?

Commissioner Robbins –

If we kicked it into a PUD what would be the requirements at this point for the applicant? Do we start all over in the PUD process?

Commissioner Hanlen –

It creates permanent vesting through a PUD versus this weird. I've never seen something quite like this. It seems atypical for anything that's been done in the City. Are we creating something that turns into this problem when nobody in this room is coming back 15-20 years from now pulling up some document that they found in the staff's archive saying 'see what it says right here'. Is that too problematic? Are we better off creating some permanent vesting through zoning? Typically something permanent would be through zoning as opposed to being conditioned with the development.

Commissioner Lacy –

I would agree that this would have been better to have started in a PUD process in the beginning. I think that it would have been ideal for that. I think that what I like now with the proposal with the motion as it stands now. I like the idea that they're coming back to do a DP/FDP. I like the idea that we've limited that FAR approval to that 10 year period. It's not the blank check. 60,000 square feet without seeing it is a little scary. It's certainly nothing that we've ever done before. Obviously this is something that this community wants and that they need. It's all of the things that Commissioner Meyer mentioned. It's well done and you obviously put a lot of time into this. This is something that Steamboat Springs can treasure for many years. It's a little bit nerve racking for us to get our heads around this whole idea of this phase 2 that is unknown and giving it some kind of blank check approval.

Date **DRAFT**

I feel like with the change that Commissioner Robbins has proposed and Commissioner Brookshire seconded on item 12 in the conditions and with Commissioner Meyer's addition on limiting the vesting to 10 years. I actually feel more comfortable with this now than I did before. Otherwise I would have agreed that the PUD might be a better way to go.

Carl Gills –

The concern that I have since this project will evolve is that it won't develop but evolve. I honestly think that in 10 years we won't know the answers. Can those vesting rights be renewed?

Tyler Gibbs –

You pick a zoning then you get everything that comes with it. The prior zoning did allow the density that's consistent with the land use plan. Looking at some additional vesting on this density isn't a new concept on this site.

Commissioner Hanlen –

That came with much more expensive standards to meet.

Tyler Gibbs –

It's a packaged deal and if you want to pick and choose from one zoning to another then you can do that through the PUD process. I think that in the context of this conversation it's worth recalling that density was a part of what was considered appropriate for this site.

Commissioner Hanlen –

If we're approving the FAR increase, but it still has to come back through a DP/FDP is the only thing that changes is that the additional FAR will not result in a variance? The theory being with additional FAR if it looks great then that's fine. If it's a 6-story monstrosity on the side of the road then we're not so good with the FAR. Based off of the way the motion sits right now what does that look like? Is there no variance in the next staff report that we see for the next addition?

Jason Peasley –

There's not a question about whether they can do additional FAR for the next addition, it's what does it look like.

Commissioner Lacy –

Which is what I think that everyone cares about. We would love to approve it all. That's exactly what we would like to do. It puts us in an unusual circumstance to approve something that we can't see in any fashion.

Commissioner Brookshire –

That's all taken care by coming back through the process right?

Commissioner Robbins –

Right. That's why I felt comfortable was being able to see that.

Commissioner Brookshire –

Date **DRAFT**

I don't understand what the anxiety would be given that they have to come back through for all of those reviews.

Commissioner Meyer –

This body is recommending to City Council. They can certainly amend, modify. There has to be consistency. We have to worry about the next entity that comes in the room or the entity that we told a month ago that they can only have 5 years in this economic climate. There are some options that we have granted, but we have not done 10 years. When the code was rewritten all of the vestings that had an infinite vesting were taken down to 10 years.

Commissioner Lacy –

I think that Commissioner Meyer's concern is valid. It's about setting a precedent that we've never done before. Now do other applicant's feel that they should be entitled to the same thing?

Commissioner Hanlen –

It's not necessarily for this application. What ripples in the pond are we going to have to deal with once we open that gate?

Commissioner Robbins –

Are we also opening, I know that you can't bind the future City Council. By approving something that needs to come automatically for this variance for future DP/FDP approval are we binding that future City Council to this?

Commissioner Lacy –

We would be binding them to the 0.75 FAR. The full review would still occur on the DP/FDP.

Commissioner Levy –

In the new set of conditions I don't see a reference to this approval being dependent on current ownership and the current proposal.

Commissioner Meyer –

It's based on use.

Commissioner Hanlen –

That phrase was added tonight.

Commissioner Levy –

There are 15 in the original packet. Now we're down to 13.

Commissioner Hanlen –

It's on the cover page, but it's not one of the conditions.

Jason Peasley –

We can add that. We can do under item 12 a 10 year vesting tied to use.

**Date** **DRAFT**

(Commissioner Robbins and Brookshire accept the friendly).

Commissioner Levy –

The 10 year FAR vesting is dependent on the use application on the senior facility.

**VOTE**

Vote: 6-0

Voting for approval of motion to approve: Lacy, Brookshire, Hanlen, Levy, Meyer and Robbins

Absent:

Two positions vacant

Discussion on this agenda item ended at approximately 7:02 p.m.

**Jason Peasley**

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**From:** kengold@cmn.net  
**Sent:** Friday, August 26, 2011 4:34 PM  
**To:** Jason Peasley  
**Subject:** Pearl Senior Living Project

>To: Steamboat Springs City Council

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>RE: Pearl Senior Center at Casey's Pond

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>Dear Council Members and Planning Staff,

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>I am writing this letter in support of the application for the Pearl Senior Center at Casey's pond. As a long term resident of Steamboat, I believe I have a perspective that represents the opinions and life experience of many people who have come to call Steamboat our home. I moved here 34 years ago along with a number of then youngish Baby Boomers who were looking for a particular lifestyle that Steamboat had to offer. We didn't necessarily envision ourselves living our entire lives here, but once entrenched in the community, finding long term jobs or careers and then starting and raising our families, it became obvious that this is where we did want to live our entire lives. It seems hard to fathom, but those of us who came here in our late 20s or 30s back in the 70's are now on the verge of entering that "senior" population and consideration of the next 20 years and our futures as seniors in Steamboat is crucial.

>

>The Pearl Senior Center represents an opportunity for our community to have a state of the art senior facility to serve our current generation of seniors and a much larger population of seniors emanating from the Baby Boomers that will be in line to use the facility 15 to 20 years from now and on into the future. In the past, the opportunities for Seniors to remain in Steamboat has been limited due to the lack of available facilities to accommodate this growing need and those seniors who were here were more likely to give up their homes and relocate to a community that could meet those needs. The generation of Baby Boomers of which I am a part, is unique in that we are the largest generation of people to move to Steamboat in the last 30 years and unlike our predecessors who may have grown up here, we chose to move here to live our lives and raise our families. We are a much more active generation and having lived our lives here and brought up our children here and I believe a majority of us wish to maintain our home here permanently. The Pearl Center would offer us the opportunity to do so. In addition, many of us have elderly parents who we would certainly prefer to relocate here to be closer to us and their grandchildren rather than somewhere more distant and separate. I would anticipate that the Center would also draw residents from all of Northwest Colorado as well because there isn't another facility of it's kind and as the premier senior facility in the mountains it will become a benchmark to be envied by other mountain towns.

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>The Pearl Senior Center will be facility that from it's outset will provide many jobs in our community both during construction and ongoing thereafter with permanent positions for their initial staff and then for additional staff members as needed as the center grows to serve the needs of our community.

>

>I've had the opportunity in my career as a realtor and developer to be part of many development applications to the City as an advocate, sometimes an opponent and more than several times as an applicant myself and I have witnessed the continuing evolution and changing of the approval process and approval mentality as we have weaved our way through the ups and downs of the economy, the development boom and bust and the growth of our town. Many times, I have seen situations occur where the best intentions of the City Council, Staff and applicants themselves have unintentionally resulted in some short sightedness when it came to certain projects which underestimated the needs of a growing community and consequently had to be revisited at a later date usually with much additional cost involved and loss of time. The original Doak Walker Center is an example of such a situation. I would hope that this unnecessary step can be anticipated and avoided with respect to the Pearl Senior Center.

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>I know there is universal support for this project amongst the Staff,  
>Council Members and our community in general, but I encourage you not  
>to take that support for granted and undermine the potential for the  
>applicant to procure the best possible financing at the earliest  
>possible time to get this project out of the ground as soon as they can  
>to accelerate its progress. To do that, in this challenging economic  
>and lending environment, I believe Council should allow Pearl to have  
>the vesting they are requesting to expand the facility in the future as  
>needed without any further approvals or necessity to return to the  
>planning process. This will demonstrate to potential lenders our  
>community's commitment to supporting this project whole heartedly and  
>without reservation and show in fact that we have the foresight and  
>intention to be proactive about building this facility and maintaining  
>it as a state of the art senior facility that will be able to serve the  
>needs of this community not only for the next 10 years, but far into  
>the future. I would hope that an inadvertent misstep by the applicant  
>and staff with respect to choosing their zoning and presenting the  
>project as a PUD won't penalize the project as a whole and hamstring  
>them from getting the best possible financing option which could delay  
>construction. Thank you

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>Ken Gold

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**TO: Steamboat Springs City Council**  
**FROM: Pearl Senior Living (Development, Marketing, and Operations Manager)**  
**DATE: August 31, 2011**  
**RE: Casey's Pond Senior Community – Final Development Plan Approval Request**

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On behalf of Colorado Senior Residences (CSR), the owner and operator of Casey's Pond Senior Community (Casey's Pond), Pearl Senior Living (PSL) has prepared the following information for consideration in your deliberations of our request for Final Development Plan (FDP) approval. Its purpose is to provide the Steamboat Springs City Council an understanding of the formation genesis and financial structure of the project, the unique characteristics of congregate senior living that sets it apart from other traditional developments that have or may occur in the Steamboat Springs area and the key elements of the quantitative and qualitative market feasibility research that was directly applied to our design programming, economic modeling and long-term master planning.

We want to emphasize the importance of granting Casey's Pond Senior Community future expansion flexibility beyond the current development code and Planning Commission vesting decision because of reasons unique to senior living and the desire to maintain an economically sustainable senior community that evolves to meet the needs and changes of the area population. By having flexibility to expand long-term, the probability of success will increase and it will allow for adaptation to the continually changing senior housing healthcare landscape our country.

We have now concluded that the current MF-3 zoning and Development Plan Approval process that was recommended for us to follow does not adequately address the future expansion needs that are unknown today and could affect the long-term economic vitality and future desirability of the community beyond ten years. The conundrum that ensued from the process we pursued appears to be more of a technical flaw than a deviation from the goals of the comprehensive plan or the appropriateness of the site.



The site's original zoning of RR-1 has no FAR cap and therefore would have allowed for higher densities than we are currently seeking. That higher density would have been a protected right beyond a FDP vesting barring the unlikely downzoning of the entire RR-1 district. However, other aspects of the RR-1 zoning would have still required variance requests.

Prior to our DP and FDP application during our property due diligence, we were told by Planning Staff and our local consultants not to pursue a PUD with the R-1 zoning as was suggested by Planning Commission during our hearing last month to have been a more appropriate path. Our decision not to pursue the PUD was partially attributed to timing issues as we were originally trying to break ground in 2011 and therefore we were under a very aggressive schedule. Discovery of environmental contamination last fall caused us to slow down and reschedule groundbreaking until 2012 that in retrospect we should have reopened the PUD door. A PUD would have worked since we could demonstrate overwhelming public benefit and be willing and able to follow the requirements and process.

We do not fault staff in their recommendation not to use a PUD as it was a learning process for both parties and we made the ultimate decision on our course. We all believed at the time that we were pursuing the most efficient process. Senior Housing is a very complex product driven by state and federal requirements and licensing as well as universal design objectives that have many variables not found in more typical development projects. This problem is not unique to Steamboat Springs, as zoning and development codes in many communities in the US are often not consistent to the continually evolving senior housing needs and unique characteristics.

With our current goal of closing our financing at the end of this year in order to break ground in Spring 2012, we unfortunately do not have the luxury of time to back up and start over. We will need entitlements and a building permit in order to satisfy lender financing requirements to close. Therefore we have been working closely with planning staff from the date of our Planning Commission approval until now to find an alternative method to achieve our long-term expansion goals within the current zoning and Final Development Plan before you.

It is our understanding from advice from staff and was intimated by Planning Commission in our hearing, that the City Council has the ability to enact an ordinance allowing the senior community to expand naturally over a longer period of time through a mutually agreed upon Development Agreement that maintains the integrity of the planning approval process in effect at the time an expansion is sought. This tool was not available to the Planning Commission as they are bound by the code.

We understand the Council's usual reluctance to extend vesting of development rights beyond the 10 years established in the code. However, we strongly believe that the unique nature of the investment in a not-for-profit congregate senior living facility

warrants distinguishing this project from more typical for-profit developments that occur in the area. The following proposed ordinance process will ensure continued community and council input into the design of anticipated future expansions.

Should you elect to follow this direction of a special ordinance, the Development Agreement would allow long-term expansion rights up to a maximum FAR of .75 as approved by Planning Commission, in various forms and phases that will increase the community by approximately 60,000 square feet provided the property use remains a senior congregate living community. In the unlikely event the use changes, the expansion rights would terminate. This avoids any precedent setting actions that would be inconsistent with your macro planning , code and development goals for other properties.

Each time an expansion is sought, a new development approval application (DP & FDP) will be submitted into the planning process allowing for appropriate input from the citizens and will judged by the design merits and development requirements in effect at that time. It will also adhere to the regional goals of intensifying existing in-fill land within the urban growth boundaries and reduce sprawl.

### **History & Ownership**

The concept of creating a multi-tiered senior living campus emanated from the Yampa Valley Medical Center Board of Trustees and executive administration (YVMC). Many of these members personally had or are currently experiencing the aging of their own senior parents and thus recognized the limitations within the current Doak Walker Care Center that only provides skilled nursing and rehabilitation services, the most intensive and expensive of all senior living care.

They understand the process of “*aging-in-place*” and the benefits of offering a comprehensive continuum of senior living that can maximize senior resident’s independence, provide comfort and security as well as specialized living environments to support mobility, memory impairment and spatial orientation. Senior Communities such as envisioned for Casey’s Pond will provide specialized care that cannot be duplicated living alone or even living with family members that become pseudo-caregivers and has been proven to increase the overall quality-of-life for senior residents and their families.

The YVMC board directed its administration to seek out a senior living expert that would come to Steamboat Springs to determine market demand and design a sustainable senior community at a new location that would take on the economic challenges of the Skilled Nursing operation and increase the service offering. While good market demand is prevalent, the market size is much smaller than typical urban and suburban markets senior developments that offer a full continuum of living choices and services.

Pearl Senior Living ([www.pearlSeniorLiving.com](http://www.pearlSeniorLiving.com)) was selected to create a roadmap for design, programming, financing, marketing and managing of a full continuum of care community. Using a similar template of the YVMC, the board and management facilitated the organization structure for the long-term ownership and stewardship of Casey's Pond. The result of which is Colorado Senior Residences, Inc. (CSR), d/b/a "Casey's Pond Senior Living", a single asset private 501-c-3 not-for-profit entity supported by a community-based board of directors and advisory committee members.

PSL and CSR worked together in assembling an experienced team of senior living experts in market feasibility, finance, architecture, interior design, landscaping and construction; to apply their knowledge in developing a state-of-the-art continuum of care senior living community. You can learn more about Casey's Pond vision and the team responsible at [www.caseyspond.com](http://www.caseyspond.com).

### **Market Demand**

CSR engaged two notable and respected senior living market research firms, The Highland Group from Boulder, Colorado ([www.thehighlandgroupinc.com](http://www.thehighlandgroupinc.com)) and Promatura Group from Oxford, Mississippi ([www.promatura.com](http://www.promatura.com))

The Highland Group's primary focus has been in establishing quantitative market demand, which is based on studying demographic analysis and trends, identifying geographic service boundaries, applying industry-tested demand methodologies to establish current and projected future needs which is then translated into a development program that produces the number of living units for each continuum of senior living lifestyle environment.

Promatura Group designed and facilitated mail-out surveys to randomly targeted seniors age 70+ in Steamboat Springs and adult children age 45-59 that have senior parents in the greater Steamboat Springs market as well as outside the region across the country.

In addition to these market research endeavors, PSL also conducted personalized focus group interviews that were targeted to local seniors and adult children to engage in discussion groups to ascertain subtleties and preferences unique to the area that was applied to the design and program. The body of knowledge compiled in these processes established the current design programming, unit count and density for now and into the long-term future.

### **The Doak Mission**

One notable element of Casey's Pond will be the re-creation and improvement of the Doak Walker Care Center ("The Doak"). It will be relocated from its current location at the YVMC, thus freeing up much needed space to increase vital medical services to the

region. The Doak will remain a licensed skilled nursing facility (SNF) certified by the State of Colorado Medicaid Division to provide skilled nursing care to residents. The new “Doak” will continue to accept residents with the same financial options (self-pay, commercial insurance, Medicaid and Medicare) that exist today. It is also going to be certified by the federal Medicare program to provide short-term rehabilitative skilled nursing care to hospital- discharged patients that will benefit from various therapies that support recuperation from surgeries or illnesses.

The new “Doak” management team will apply the success story of its stellar operating history to the entire Casey’s Pond campus. My InnerView, a nationally notable customer satisfaction survey firm has recently honored the Doak for high customer and employee satisfaction scoring in the top 10% of 9,500 skilled nursing facility units on each of the two surveys and is in the elite group that scored this high on BOTH surveys. This was a repeat recognition. Equally as impressive, The Doak is now a “5-Star Home”, as determined by the Centers for Medicare and Medicaid. The Doak’s scores are the highest in Colorado sharing this honor with only two other Skilled Nursing Facilities out of over 200 ranked.

### **Financial Structure**

The CSR Board mission is focused on delivering the highest quality of care possible while mandating that Casey’s Pond operates in an economically self-sufficient manner. It is important to note that no public funds will be used to capitalize or financially support operations of the community. The YVMC board has provided capital in the form of a community investment to be used as working capital to launch the project as well as an additional pledge of financial support in the form of credit support guaranties to back the project debt financing and further insure success.

The project program’s current construction phase has been designed to meet rigorously tested market feasibility and demand, as well as support lender economic feasibility tests that ensure it will be able to meet debt service, pay its bills and accrue working capital to maintain and continually improve its systems and physical plant.

### **Design Characteristics of Senior Communities**

The Casey’s Pond Senior Community will have 144 total residential units consisting of 34 Independent Living apartment villas, 30 Assisted Living apartments, 26 Memory Care Alzheimer apartments and 60 Skilled Nursing beds. Congregate services provided will include but not be limited to meal service, housekeeping, transportation, recreation and social programming as well as medical and personal care related assistance with medication, bathing, dressing, incontinence, walking and rehabilitation.

The community will have the following amenities:

- Bistro
- Wine Bar
- Formal Dining Rooms in Each Living Environment
- Outdoor Cafe Option for IL & AL
- Physical and Occupational Therapy Center
- Exercise Center
- Exam Room for House Calls
- Dedicated Activity & Socialization Living Rooms for Each Living Environment
- Multi-purpose Activity Center to Support Educational Presentations & Meetings
- Beauty & Barber Salons
- Spa & Massage Room
- Computer Training Station
- Outdoor Verandas & Gardens
- Outdoor Garden Amphitheatre
- Specialized and Securitized Memory Care Garden
- Indoor & Outdoor Fireplaces and an Outdoor Fire Pit
- Art Gallery
- Business Center
- Mail Center
- Walking Trails
- Heated Sidewalks & Patios
- Spiritual & Meditation Room
- Valet Parking
- Dog Relief Area
- Employee Lounge & Patio
- Outdoor Cooking Grill
- Three Distinct Separate Living Environments in the Skilled Nursing Wing.

### **Infrastructure**

The importance of having the approval and flexibility of adding additional living units as well and increased activity spaces such as an therapy pool, daycare, greenhouse, workshops, etc. is demonstrated with the infrastructure currently designed to be constructed with this FDP. This includes a higher than average amount of amenity and circulation space. The subdivision process recently completed at Casey's Pond included installing the necessary utilities in Owl Hoot Lane that will support our requested maximum .75 FAR.

Adding additional living units will support economic self-sufficiency by improving economies of scale that allow for spreading CP's fixed costs against a larger volume of residents.

CP's current phase provides for a building square foot allocation of:

60% living units

40% amenities and circulation

Typical senior living industry standards are:

70 - 75% living units

25- 30% amenities and circulation

We have conscientiously programmed a larger percentage of amenity and circulation space in the current phase to enhance resident quality of life with a master planning goal of additional phases, relaxing the living unit to amenity/circulation ratio and improving overall economic operating efficiencies.

### **Impacts**

Congregate Senior Communities are by nature great examples of sustainability and smart growth. Senior Housing studies consistently confirm that seniors are far less impactful than users of other types of development. Examples include evidence that seniors drive less and own fewer vehicles than the general population. They do not proportionally over-burden school systems or public amenities such as libraries and recreational facilities. Congregate senior communities promote compact and environmentally responsible living as people cycle from larger single-family homes into attached condominium style living with shared amenities.

Casey's Pond Traffic Demand Study supports up to 200 units on the site without negative impacts to the roadway infrastructure that is well within the maximum number of units achievable with a .75 FAR. Additionally, Casey's Pond will have a centralized transportation program that will substantially reduce overall daily vehicular trips and will generally travel at off-peak times. Management also has the discretion and control to create staff shifts that do not overlap with local peak traffic patterns. The community is also across the street from a bus stop on Walton Creek Road which management will encourage employees to use.

### **Community Benefits, Linkages and Synergy**

Casey Pond will become a cherished community asset for local seniors and adult children as well as to all the residents of Routt County. We know of no other similar resort community in the country with such a robust and innovative senior product offering; therefore providing competitive advantages for Steamboat Springs for both relocation and employee retention. It will also play a significant role in economic diversification and stimulus, support for other community organizations and fostering multiple synergies that can have joint programmatic and economic benefits.

Examples may include:

- Creating a significant number of new year-round high-quality jobs.
- Serving as an internship and training site for local community college students that aspire to the health care field and culinary arts.
- Offering part time jobs to high school students.
- Providing tutoring opportunities for area students that will foster community service volunteerism in such areas as computer training for seniors, public speaking engagements, etc.
- Establishing joint programs with the Northwest Colorado Visiting Nurse Association, such as integrating their wellness programming and Hospice services within Casey's Pond.
- Serving as an educational resource and conducting regular speaking engagements on important aging topics.

### **Concluding Remarks**

We sincerely respect the challenges of municipal planning commissions and city councils to protect the interests of their constituencies, which translate into sensible approvals of new projects, whether for-profit, private not-for-profit, or public buildings. We urge that you approve the Final Development Plan that was unanimously accepted by planning Commission with the exception of adopting an ordinance supporting a development agreement that allows the community to expand over time as required in multiple phases provided the overall density does not exceed .75 FAR. Each needed expansion would be subject to the development approval process. This would remain in effect as long as the property remains a congregate senior community. The unique nature of this senior community use precludes establishment of any future precedents that would be contrary to existing zoning privileges or vesting rights.

While we cannot predict the future with a succinct phasing program today, we believe strongly that the project will be a success in its initial phase and that market demand will grow over time. This demand is not only based on current seniors "aging-in-place" in Steamboat Springs, as demonstrated by the majority of Over the Hill Gang members that will age from the early to mid-sixties to the mid-seventies to early eighties in the next ten to fifteen years, but also demographic projections that have the sixty-five year and older population in Routt County growing at twice the rate of the US and Colorado Front Range. And recognize that local adult children of senior parents both current residents and new ones that will migrate into the region, will seek out Casey's Pond to relocate their loved ones to Steamboat to be closer to them and their grandchildren.

Thank you in advance for your consideration of our approval request.



**Caseys Pond DPF – Applicant’s  
vision booklet**

This item is a ring bound booklet distributed to City Council separately. A copy is available for review with the City Clerk’s Office.

# Agenda Item # 16

## CITY COUNCIL COMMUNICATION FORM

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**FROM:** Seth Lorson, AICP, City Planner (Ext. 280)  
Barb Wheeler, Code Enforcement Officer (Ext. 274)  
Tyler Gibbs, AIA, Director of Planning and Community Development  
(Ext. 244)

**THROUGH:** Jon Roberts, City Manager, (Ext. 228)

**DATE:** September 6, 2011

**ITEM:** Goats.

**NEXT STEP:** If City Council approves the second reading, the ordinance will be codified in the CDC.

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**ORDINANCE**  
 **RESOLUTION**  
 **MOTION**  
 **DIRECTION**  
 **INFORMATION**

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**PROJECT NAME:** Goats - #TXT-11-03

**PETITION:** Approval of a text amendment to the Community Development Code (CDC) that will allow for goats in single-family and duplex lots in those certain zone districts.

**LOCATION:** Single-family and duplex zone districts.

**APPLICANT:** City of Steamboat Springs  
124 10<sup>th</sup> Street  
Steamboat Springs, CO 80487

**PC ACTION:** Planning Commission tabled to July 28, 2011; Vote: 4-0; PC is hearing a revised proposal and any changes will be presented in the rainbow packet.

**CC 1<sup>st</sup> READING:** City Council voted to approve first reading on August 2, 2011; Vote: 6 – 1.

**EXECUTIVE SUMMARY:**

**1. Background:**

A couple of years ago the Department of Planning & Community Development started researching goats as a non-chemical means of controlling noxious weeds. The thinking was that perhaps they could be used in some of the parks and open space around the City, especially on the face of Howelson Hill and the area around The Howler. During our research we found out what truly incredible animals they are. Goats are ruminants, with four compartments in their stomachs, much like a cow. Goats are ungulates as well, with cloven hooves.

Goats will remove unwanted weeds, including noxious weeds. They eat brambles and other scrub that other species will not eat. Female and neutered goats do not generate significant odors. Goats require very little room, as little as 25 square foot per goat, depending on the breed, making them ideal for backyard pets.

There are 6 traditional breeds, however, there are many, many other breeds and they are growing rapidly, including pygmy, dwarf and mini's. Goats weigh between 35 and 250 pounds at maturity. The larger animals are usually raised as meat producers. The smaller goats are the pygmy, dwarf and mini's. These are no bigger than a number of domestic dogs. Miniature goats average around 24" tall and 35-100 pounds, compared to some large dogs that average around 30" tall and can weigh over 100 pounds. Mini's are usually a pygmy or dwarf crossed with a more traditional breed, making more milk production and a little larger animal.

Current code allows up to five small farm animals on lot areas larger than one-half (1/2) acre in RE & O zone areas of the City with pens and corrals located at least thirty (30) feet from all property boundaries.

**PROPOSED CHANGES:**

***Animals, Temporary Goats.* Use of no more than 3 wethers (altered males) or does for domestic purposes for no longer than 10 days. Goats shall not be 'at large' as defined in Municipal Code Section 4-10 "Animals running at large."**

***Animals, Goats.* Goat wethers (altered males) or does.**

**Use with Criteria**

- a. Goats numbering no less than 2, maximum of 3, with the exception of nursing kidlets belonging to does on the property, until weaned or up to sixteen (16) weeks maximum age per lot or contiguous lots under common ownership.**
- b. No bucks shall be allowed**
- c. Goats shall be kept in a secure enclosure, an area surrounded by a fence, a wall or a combination of both, at all times except when under direct supervision. No "at large" goats shall be allowed.**
- d. Enclosures (fences), including shelters, shall be located so that they are located at the rear area (backyard) of the property. Enclosures shall be a minimum of two**

- hundred (200) square feet per goat. Enclosures shall be constructed with durable construction materials as required in CDC Sec. 26-133. Site plan and elevation shall be provided with application.**
- e. Shelters shall be provided at all times. Shelters shall be a fully enclosed, well ventilated structure, with a door that may remain open for easy access to the outside enclosure area. Shelters shall be constructed with durable construction materials as required in CDC Sec. 26-133. Shelters shall be located so they meet the minimum principle structure setback requirements. Site plan and elevation shall be provided with application.**
  - f. Enclosures & shelters shall be kept in a neat and sanitary condition at all times and must be cleaned on a regular basis to prevent the attraction of pests and offensive odors.**
  - g. Pest control shall be required at all times.**
  - h. The property where goats are kept shall be subject to inspection by City of Steamboat Springs Staff should complaints be received.**
  - i. Feed shall be stored in a bear proof container if located outdoors.**
  - j. Shall not be used for commercial purposes.**
  - k. No slaughtering of animals shall be allowed on the property.**
  - l. Two (2) to five (5) goats shall be allowed per ½ acre in the Residential Estate (RE) and Open Space and Recreation (OR) zone districts.**
  - m. Goats shall only be allowed on lots which principal use is Single-family dwelling unit or Duplex.**

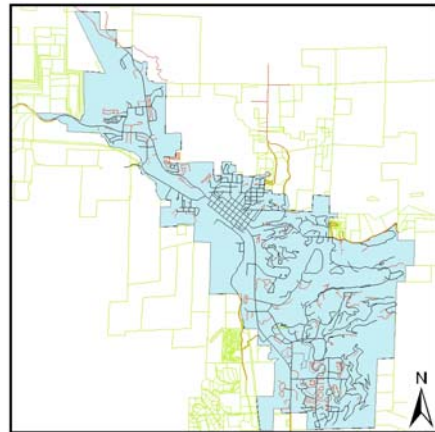
### **LIST OF ATTACHMENTS**

Attachment 1. – PC Staff Report TXT-10-07, July 28, 2011



## DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT STAFF REPORT

PLANNING COMMISSION AGENDA ITEM # 2	
<b>Project Name:</b>	<b>Goats - #TXT-11-12</b>
<b>Prepared By:</b>	Jason Peasley, AICP, City Planner (Ext. 229)  Barb Wheeler, Planning Code Enforcement Officer, (Ext. 274)
<b>Through:</b>	Tyler Gibbs, Dept. of Planning & Community Development Director (Ext. 244)
<b>Planning Commission (PC):</b>	Tabled to July 28, 2011
<b>City Council (CC):</b>	1 <sup>st</sup> Reading: August 2, 2011 2 <sup>nd</sup> Reading: September 6, 2011
<b>Location:</b>	Single-Family, Duplex, Multi-Family and Mobile Home lots within the City of Steamboat Springs.
<b>Request:</b>	Text Amendment to the CDC to amend Section 26-402 to include criteria for the review and approval of Animals, Goats within the City of Steamboat Springs.



Staff Report - Table of Contents		
Section		Pg
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II.	Project Location	2-2
III.	Background Information	2-2
IV.	Staff/Agency Analysis	2-4
V.	Staff Findings and Conditions	2-4
VI.	Attachments	2-5

**I. COMMUNITY DEVELOPMENT CODE (CDC) – STAFF ANALYSIS SUMMARY**

<b>CDC - SECTION 26-61(D): CRITERIA FOR APPROVAL.</b> APPROVAL OF THE AMENDMENT SHALL BE GRANTED ONLY IF IT APPEARS BY CLEAR AND CONVINCING EVIDENCE PRESENTED DURING THE PUBLIC HEARING BEFORE PLANNING COMMISSION OR CITY COUNCIL THAT THE FOLLOWING CONDITIONS EXIST:					
Subsection		Consistent			Notes
		Yes	No	NA	
1)	Conformity with the community plan.	<input checked="" type="checkbox"/>			
2)	Error or goal/objective.	<input checked="" type="checkbox"/>			
3)	Public safety	<input checked="" type="checkbox"/>			
<b>Staff Finding:</b> Staff finds that the proposed Community Development Code Text Amendment, #TXT-11-12, to amend Section 26-402 to include criteria for the review and approval of Animals, Goats is consistent with the approval criteria in CDC Section 26-61 (d). <i>(Detailed policy analysis is located in Section IV; Staff Findings and Conditions are in Section V)</i>					

**II. LOCATION**

All Single-Family and Duplex lots within the City of Steamboat Springs.

**III. BACKGROUND INFORMATION**

A couple of years ago the Department of Planning & Community Development started researching goats as a non-chemical means of controlling noxious weeds. The thinking was that perhaps they could be used in some of the parks and open space around the City, especially on the face of Howelson Hill and the area around The Howler. During our research we found out what truly incredible animals they are. Goats are ruminants, with four compartments in their stomachs, much like a cow. Goats are ungulates as well, with cloven hooves.

Goats will remove unwanted weeds, including noxious weeds. They eat brambles and other scrub that other species will not eat. Female and neutered goats do not generate significant odors. Goats require very little room, as little as 25 square foot per goat, depending on the breed, making them ideal for backyard pets.

There are 6 traditional breeds, however, there are many, many other breeds and they are growing rapidly, including pygmy, dwarf and mini’s. Goats weigh between 35 and 250 pounds at maturity. The larger animals are usually raised as meat producers. The smaller goats are the pygmy, dwarf and mini’s. These are no bigger than a number of domestic dogs. Miniature goats average around 24” tall and 35-100 pounds, compared to some large dogs that average around 30” tall and can weigh over 100 pounds. Mini’s are usually a pygmy or dwarf crossed with a more traditional breed, making more milk production and a little larger animal.

Current code allows up to five small farm animals on lot areas larger than one-half (1/2) acre in RE & O zone areas of the City with pens and corrals located at least thirty (30) feet from all property boundaries.

### **PROJECT DESCRIPTION**

*Animals, Temporary Goats.* Use of no more than 3 wethers (altered males) or does for domestic purposes for no longer than 10 days. Goats shall not be 'at large' as defined in Municipal Code Section 4-10 "Animals running at large."

*Animals, Goats.* Goat wethers (altered males) or does.

#### Use with Criteria

- a. Goats numbering no less than 2, maximum of 3, with the exception of nursing kidlets belonging to does on the property, until weaned or up to sixteen (16) weeks maximum age per lot.
- b. No bucks shall be allowed
- c. Goats shall be kept in a secure enclosure, an area surrounded by a fence, a wall or a combination of both, at all times except when under direct supervision. No "at large" goats shall be allowed.
- d. Enclosures (fence), including shelters, shall be located so that they are located at the rear area (backyard) of the property. Enclosures shall be a minimum of two hundred (200) square feet per goat. Enclosures shall be constructed with durable construction materials as required in CDC Sec. 26-133. Site plan and elevation shall be provided with application.
- e. Shelters shall be provided at all times. Shelters shall be a fully enclosed, well ventilated structure, with a door that may remain open for easy access to the outside enclosure area. Shelters shall be located so they meet the minimum principle structure setback requirements. Site plan and elevation shall be provided with application.
- f. Enclosures & shelters shall be kept in a neat and sanitary condition at all times and must be cleaned on a regular basis to prevent the attraction of pests and offensive odors.
- g. Pest control shall be required at all times.
- h. The property where goats are kept shall be subject to inspection by City of Steamboat Springs Staff should complaints be received, however, staff may not enter the premises without the owner/occupant present.
- i. Feed shall be stored in a bear proof container if located outdoors.
- j. Shall not be used for commercial purposes.
- k. No slaughtering of animals shall be allowed on the property.
- l. Two (2) to five (5) goats shall be allowed per ½ acre in the Residential Estate (RE) and Open Space and Recreation (OR) zone districts.



- m. Goats shall only be allowed on lots which principal use is Single-family dwelling unit or Duplex.

#### IV. STAFF / AGENCY ANALYSIS

##### **Criteria for Review and Approval.**

(d) *Criteria for approval.* In considering any application for amendment to the CDC, the following criteria shall govern unless otherwise expressly required by the CDC. Approval of the amendment shall be granted only if it appears by clear and convincing evidence presented during the public hearing before planning commission or city council that the following conditions exist:

- (1) *Conformance with the community plan.* The amendment to the CDC will substantially conform with and further the community plan's preferred direction and policies.

*Staff Analysis: Consistent:* The proposed CDC Text Amendments are consistent with the following Steamboat Springs Area Community Plan policy:

- *Policy CD-3.4: Continue to support community agriculture and a rural way of life.*

- (2) *Error or goal/objective.* The amendment to the CDC will correct an error, or will further a public goal or objective.

*Staff Analysis: Consistent:* The proposed CDC Text Amendments will further the public goal of continuing to support community agriculture and a rural way of life.

- (3) *Public safety.* The amendment to the CDC is necessary to ensure public health, safety and welfare.

*Staff Analysis: Consistent:* The proposed CDC Text Amendments is necessary to ensure the public health, safety and welfare by furthering the goals and policies of the Steamboat Springs Area Community Plan.

#### V. STAFF FINDING & CONDITIONS

##### **Finding**

**Staff Finding:** Staff finds that the proposed Community Development Code Text Amendment, #TXT-11-12, to amend Section 26-402 to include criteria for the review and approval of *Animals, Temporary Goats and Animals, Goats* is consistent with the approval criteria in CDC Section 26-61 (d).

**VI. LIST OF ATTACHMENTS**

Attachment 1: Ordinance

**CITY OF STEAMBOAT SPRINGS, COLORADO**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING CHAPTER 26 OF THE STEAMBOAT SPRINGS REVISED MUNICIPAL CODE BY ADDING A DEFINITION AND USE CRITERIA FOR ANIMALS, GOATS; REVISING THE DEFINITION OF FARM ANIMAL; AMENDING THE USE TABLE TO PERMIT ANIMALS, GOATS AS A USE WITH CRITERIA AND PROHIBIT THIS USE IN CERTAIN ZONE DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; REPEALING ALL CONFLICTING ORDINANCES; AND SETTING A HEARING DATE.**

**WHEREAS**, the City Council adopted the revised Community Development Code as Ordinance #1802 on July 23, 2001; and

**WHEREAS**, the City of Steamboat Springs committed to a regular, ongoing review of the Community Development Code so that the provisions contained therein are relevant and applicable to the community at any given point in time; and

**WHEREAS**, the City Council has recognized the importance of local food production; and

**WHEREAS**, the City Council finds it appropriate allow goats in the City of Steamboat Springs; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STEAMBOAT SPRINGS, COLORADO:**

Section 1. Sec. 26-92 Use Classifications shall be amended as follows:

Table 26-92  
Table of Permitted Principal Uses

R = Use by Right      CR = Use with Criteria      C = Conditional Use      Blank Cell = Prohibited

Use Classification and Specific Principal Uses*	AGRICULTURAL USES																T2 - N E	T3 - N G1	T3 - N G2	T4 - N C	T5 - TC	S D
	O R	RE	RN	R O	RR	M H	MF	G - 1	G - 2	C O	C Y	CN	CC	CS	I							
Agriculture	C R	R														R						
Animal, domestic	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
Animal, farm	C R	CR																				
Animal, Chicken	R	R	R	R	C R	C R	CR					CR	CR	C R	C R	R	R	R	C R	C R	C R	
<b>Animal, Temporary Goats</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>
<b>Animal, Goats</b>	<b>C R</b>	<b>CR</b>	<b>CR</b>	<b>C R</b>	<b>C R</b>		<b>CR</b>									<b>C R</b>	<b>CR</b>	<b>C R</b>	<b>C R</b>			

NOTE: Remainder of Use Chart unchanged.

Section 2. Sec. 26-402 Definitions and Use Criteria shall be amended as follows:

*Animals, farm.* Animals not normally considered household pets, or kept wholly or partially outside of a residential structure, including but not limited to horses, mules, burros, llamas, bison, elk, deer, cattle, swine, sheep, poultry (with the exception of chicken hens **and goats**), **and** ostrich ~~and goat~~.

***Animals, Temporary Goats.* Use of no more than 3 wethers (altered males) or does for domestic purposes for no longer than 10 days. Goats shall not be 'at large' as defined in Municipal Code Section 4-10 "Animals running at large."**

***Animals, Goats.* Goat wethers (altered males) or does.**

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- e. Shelters shall be provided at all times. Shelters shall be a fully enclosed, well ventilated structure, with a door that may remain open for easy access to the outside enclosure area. Shelters shall be constructed with durable construction materials as required in CDC Sec. 26-133. Shelters shall be located so they meet the minimum principle structure setback requirements. Site plan and elevation shall be provided with application.**
- f. Enclosures & shelters shall be kept in a neat and sanitary condition at all times and must be cleaned on a regular basis to prevent the attraction of pests and offensive odors.**
- g. Pest control shall be required at all times.**
- h. The property where goats are kept shall be subject to inspection by City of Steamboat Springs Staff should complaints be received.**
- i. Feed shall be stored in a bear proof container if located outdoors.**
- j. Shall not be used for commercial purposes.**
- k. No slaughtering of animals shall be allowed on the property.**
- l. Two (2) to five (5) goats shall be allowed per 1/2 acre in the Residential Estate (RE) and Open Space and Recreation (OR) zone districts.**
- m. Goats shall only be allowed on lots which principal use is Single-family dwelling unit or Duplex.**

Section 3. All ordinances heretofore passed and adopted by the City Council of the City of Steamboat Springs, Colorado, are hereby repealed to the extent that said ordinances, or parts, thereof, are in conflict herewith.

Section 4. If any section, subsection, clause, phrase or provision of this Ordinance is, or the application thereof to any person or circumstance, shall to any extent, be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and shall in no way be affected, impaired or invalidated.

Section 5. The City Council hereby finds, determines and declares that this Ordinance is necessary for the immediate preservation of the public peace, health and safety.

Section 6. This Ordinance shall take effect immediately upon the expiration of five (5) days from and after its publication following final passage, as provided in Section 7.6 (h) of the Steamboat Springs Home Rule Charter.

Section 7. A public hearing on this ordinance shall be held on September 6, 2011, at 5:00 P.M. in the Citizens Hall meeting room, Centennial Hall, Steamboat Springs, Colorado.

**INTRODUCED, READ, AND ORDERED PUBLISHED**, as provided by law, by the City Council of the City of Steamboat Springs, at its regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
**Cari Hermacinski, President  
Steamboat Springs City Council**

**ATTEST:**

\_\_\_\_\_  
**Julie Franklin, CMC  
City Clerk**

**FINALLY READ, PASSED AND APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
**Cari Hermacinski, President  
Steamboat Springs City Council**

**ATTEST:**

\_\_\_\_\_  
**Julie Franklin, CMC  
City Clerk**



# Agenda Item # 17

## CITY COUNCIL COMMUNICATION FORM

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**FROM:** Bob Keenan, Senior Planner (Ext. 260)  
Tyler Gibbs, AIA, Director of Planning and Community Development  
(Ext. 244)

**THROUGH:** Jon Roberts, City Manager, (Ext. 228)

**DATE:** September 6, 2011

**ITEM:** A Meets & Bounds Parcel of Land #ZMA-09-03 - Ordinance

**NEXT STEP:** If City Council approved the first reading on August 2<sup>nd</sup>, this is the second and final reading.

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**ORDINANCE**  
 **RESOLUTION**  
 **MOTION**  
 **DIRECTION**  
 **INFORMATION**

---

**PROJECT NAME:** A Meets & Bounds Parcel of Land #ZMA-09-03

**PETITION:** A proposed Zoning Map Amendment for a tract of land, as described in Exhibit A of the attached ordinance, from Residential Estate – Low Density (RE-1) to Industrial (I).

**APPLICANT:** Dawes Family LLLP & MFLP Steamboat Springs, LLP c/o Landmark Consultants, Erik Griepentrog, P.O. Box 774943, Steamboat Springs, CO 80477 (970) 871-9494

**PC ACTION:** On July 28<sup>th</sup> the Planning Commission voted 5-0 to approve.

**EXECUTIVE SUMMARY:**

The applicant is seeking approval of a Zoning Map Amendment to change the zoning of the subject metes and bounds parcel from Residential Estate – Low Density to Industrial.

This project is located just to the west of the new Yampa Valley Funeral Home and directly to the east of the airport. For more information on the location please see the Planning Staff Report attachment.

Planning Staff has reviewed the proposal and finds that it is in conformance with the criteria of approval for a Zoning Map Amendment. Please see the attached Planning Staff Report for more detail on the staff findings.

**Planning Commission Discussion:**

There was relatively little discussion on this item. The Planning Commission had general questions for the applicant and staff.

**Public Comment:**

There was no public comment on this item.

**Recommended Motion:**

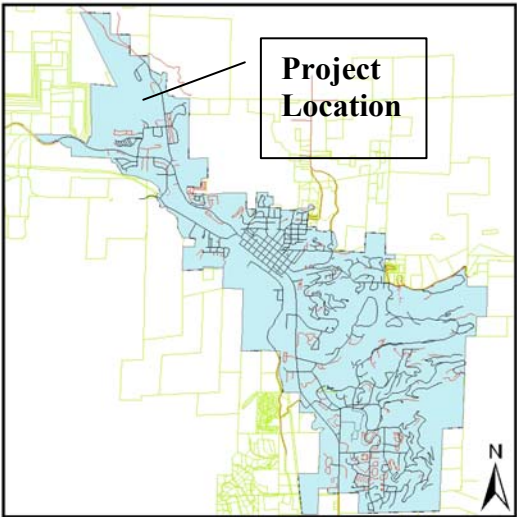
The Planning Commission recommended approval with a vote of: 5-0

**List of attachments:**

Attachment 1 – PC Staff Report With Attachments



## DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT STAFF REPORT

<b>PLANNING COMMISSION AGENDA ITEM #3:</b>																									
<b>Project Name:</b>	A Meets & Bounds Parcel of Land #ZMA-09-03																								
<b>Prepared By:</b>	Bob Keenan, Senior Planner (Ext. 260)																								
<b>Through:</b>	Tyler Gibbs, AIA, Director of Planning & Community Development (Ext. 244)																								
<b>Planning Commission (PC):</b>	July 28, 2011																								
<b>City Council (CC):</b>	August 2, 2011 First Reading September 6, 2011 Second Reading																								
<b>Existing Zoning:</b>	Residential Estate One, Low Density (RE-1)																								
<b>Applicant:</b>	Daws Family LLLP & MFLP Steamboat Springs, LLP c/o Landmark Consultants, Erik Griepentrog, P.O. Box 774943, Steamboat Springs, CO 80477 (970) 871-9494																								
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<b>Request:</b>	A proposed Zoning Map Amendment for a tract of land, as described in Exhibit A of the attached ordinance, from Residential Estate – Low Density (RE-1) to Industrial (I).																								

## **I. STAFF FINDING**

Staff finds that the proposed Official Zoning Map Amendment for a tract of land, as described in Exhibit A of the attached ordinance, from Residential Estate – Low Density (RE-1) to Industrial (I) to be consistent with the Community Development Code criteria for approval for an Official Zoning Map Amendment.

## **II. PROJECT LOCATION**

*See attachment 1 for a vicinity map of the parcel of land that is to be rezoned.*

## **III. BACKGROUND INFORMATION**

This vacant tract of land by the Steamboat Springs Municipal Airport is currently zoned RE-1. It appears that the RE-1 designation was made in 2001 as part of the new Community Development Code (CDC) and Zoning Map. At that time of the code and zoning change, the majority of the properties zoned Agriculture and Recreation were reclassified as Residential Estate – Low Density. The intent of this designation was that it be a “placeholder” zoning.

## **IV. STAFF ANALYSIS**

### **Criteria for Review and Approval**

In considering any petition for amendment to the Official Zoning Map, the following criteria contained in Section 26-62 shall govern unless otherwise expressly required by the CDC. The ordinance approving the rezoning amendment shall be approved and adopted only if it appears by *clear and convincing* evidence presented during the public hearing before City Council that the following conditions exist:

1. **Justification. One of the following conditions exists:**
  - a) The rezoning is necessary to correct a mistake in the current zoning map; or
  - b) The amendment to the overlay zone district was an error; or
  - c) The rezoning is necessary to respond to changed conditions since the adoption of the current zoning map; or
  - d) The rezoning will substantially further the Community Plan’s Preferred Direction and Policies, or specific area plans, and the rezoning will substantially conform to the Community Plan Land Use Map designation for the property, or is accompanied by an application for an amendment to the Community Plan Land Use Map and the amendment is approved prior to approval of the requested zoning map amendment.

***Staff Finding: Consistent***

*Staff finds this request is consistent with justifications (d). The proposed zoning map amendment will substantially further the Community Plan's Preferred Direction and Policies and substantially conforms to the Community Plan Land Use designation of Industrial.*

2. **Compatibility with Surrounding Development.** The type, height, massing, appearance and intensity of development that would be permitted by the proposed amendment will be compatible with surrounding zone districts, land uses, and neighborhood character, and will result in a logical and orderly development pattern within the community.

***Staff Finding: Consistent***

*Staff finds the proposed zone change will eventually lead to development intensity similar to what exist across Elk River Road in the Copper Ridge Subdivision and, therefore, is consistent with most of the surrounding uses with exception described below.*

*It is important to note that there is an existing single-family residence directly adjacent to the north of the subject property. While the proposed Industrial zone district at this location is not compatible with this adjacent land use, the Future Land Use designation for the neighboring single-family residence is also Industrial and full realization of the Community Area Plan cannot be achieved without making changes to the zoning to be consistent with the community vision for this area.*

*The proposed Industrial zoning is also consistent with that of the neighboring airport as the Airport Master Plan indicates that strictly residential uses are not an acceptable land use in such close proximity to the airport.*

3. **Advantages vs. Disadvantages.** The advantages of the zone district proposed substantially outweigh the disadvantages to the community and/or neighboring land occasioned by the zoning amendment; and

***Staff Finding: Consistent***

*Staff finds the advantages of rezoning the property outweigh the disadvantages to the community as the proposed zoning is better suited for this industrial area than that of the current residential zoning.*

4. **Consistent with Purpose and Standards of Zone District.** The amendment will be consistent with the purpose and standards of the zone district to which the property is proposed to be designated.

***Staff Finding: Consistent***

*This amendment is consistent with the purpose and standards of the Industrial zone districts as the future build out of this parcel is required comply with the standards of the Industrial zone district.*

**Industrial Zone District Purpose and Intent:**

“The industrial zone district is designed and intended to accommodate industrial uses with varying degrees of impacts. Uses allowed by right are generally those that are conducted entirely within an enclosed structure and have no negative impacts beyond the property where the use is located. Uses with criteria are generally those that may have outdoor operations and visual or environmental impacts that can be mitigated through application of additional requirements. Conditional uses are generally those uses that may have offsite impacts and therefore require specific mitigation to minimize those impacts.”

5. **Effects on Natural Environment.** That the proposed amendment will not result in significant adverse effects on the natural environment, including water quality, air quality, wildlife habitat, vegetation, wetlands, and natural landforms.

***Staff Finding: Consistent***

*The proposed amendment will not result in any significant adverse effects on the natural environment as there is no current development proposed for this property. Furthermore, this property is a metes and bounds parcel and the CDC requires a Final Plat to create a legal city lot prior to any development. At the time of the Final Plat a review will be completed to identify any potential environmental constraints and building envelopes may be created to avoid development of those sensitive areas.*

**V. STAFF FINDINGS AND MOTION**

Staff finds that the Official Zoning Map Amendment for a tract of land, as described in Exhibit A of the attached ordinance, from Residential Estate – Low Density (RE-1) to Industrial (I) to be consistent with the Community Development Code criteria for approval for an Official Zoning Map Amendment.

**Motion:**

Planning Commission recommends approval of ZMA-09-03 with the findings that the application is consistent with the criteria for approval in Section 26-62 of the Steamboat Springs Community Development Code.

**VI. LIST OF ATTACHMENTS**

1. Vicinity Map
2. Ordinance

## Exhibit A

### Property Description

A PARCEL OF LAND BEING A PORTION OF PARCEL B AS DESCRIBED IN RECEPTION NO. 643515 IN THE ROUTT COUNTY RECORDS; LOCATED IN THE NW ¼ OF THE NW ¼ OF SECTION 6, TOWNSHIP 6 NORTH, RANGE 84 WEST OF THE 6TH PRINCIPAL MERIDIAN; CITY OF STEAMBOAT SPRINGS, COUNTY OF ROUTT, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF THE NW ¼ OF THE NW ¼ OF SAID SECTION 6 FROM WHICH THE NW CORNER OF SAID SECTION 6 BEARS N00°06'00"E 410.00 FEET;

THENCE S00°06'00"W 852.30 FEET ALONG SAID WEST LINE OF SECTION 6;  
THENCE N79°21'00"E 1029.00 FEET TO THE WEST BOUNDARY OF HIGHWAY NO. 129;  
THENCE N08°16'00"W 878.00 FEET ALONG THE WEST BOUNDARY OF HIGHWAY NO. 129;  
THENCE S76°49'48"W 907.41 FEET TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM AIRPORT MEADOWS FILING NO. 1, AS RECORDED IN FILE NO. 7604 IN THE ROUTT COUNTY RECORDS, AS AMENDED BY SURVEYOR'S CERTIFICATE RECORDED JULY 24, 1974 IN BOOK 395 AT PAGE 317 IN THE ROUTT COUNTY RECORDS.





**CITY OF STEAMBOAT SPRINGS, COLORADO**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE REZONING A METES AND BOUNDS PARCEL, AS DESCRIBED IN EXHIBIT A, FROM RESIDENTIAL ESTATE ONE – LOW DENSITY, (RE-1) TO INDUSTRIAL (I); REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, in accordance with Chapter 26, Art. III, Div. 2, Section 26-62 of the Steamboat Springs Revised Municipal Code, a rezoning has been initiated by the property owner to rezone the subject property from Residential Estate – Low Density to Industrial; and

**WHEREAS**, the Zoning Map Amendment is consistent with findings for approval of a Zoning Map amendment; and

**WHEREAS**, the Zoning Map Amendment is consistent with the preferred direction, goals, and policies of the Steamboat Springs Area Community Plan; and

**WHEREAS**, the Planning Commission of the City of Steamboat Springs has considered the same and recommended approval of the rezoning; and finds that the request is in compliance with all rezoning criteria contained within Section 26-62(d) of the Community Development Code; and

**WHEREAS**, the City Council of the City of Steamboat Springs has considered the Planning Commission recommendation and finds the request is in compliance with all of the rezoning criteria of Section 26-62(d) of the Community Development Code; and

**WHEREAS**, the City Council of the City of Steamboat Springs considers that it is in the public interest to rezone the subject properties in accordance with the provisions of this Ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STEAMBOAT SPRINGS, COLORADO, THAT:**

**SECTION 1**

The City Council specifically finds that the procedures for an Official Zoning Map Amendment within the City of Steamboat Springs as prescribed in Chapter 26 of the Steamboat Springs Revised Municipal Code, have been fulfilled, and the Council hereby approves the rezoning for the subject property as set forth below. The City Council also finds that this ordinance is necessary for the health, safety, and welfare of the community.

## **SECTION 2**

Pursuant to Chapter 26, Art. III, Div. 2, Section 26-62 of the Steamboat Springs Revised Municipal Code, the metes and bounds parcel, as described in Exhibit A, is hereby rezoned to Industrial (I).

## **SECTION 3**

In accordance with Chapter 26, Art. III, Div.2, Section 26-62 of the Steamboat Springs Revised Municipal Code, the Director of Planning Services is hereby directed to modify and amend the Official Zoning Map of the City to indicate the zoning specified above.

## **SECTION 4**

All ordinances heretofore passed and adopted by the City Council of the City of Steamboat Springs, Colorado, are hereby repealed to the extent that said ordinances, or parts, thereof, are in conflict herewith.

## **SECTION 5**

If any section, subsection, clause, phrase or provision of this Ordinance is, or the application thereof to any person or circumstance, shall to any extent, be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and shall in no way be affected, impaired or invalidated.

## **SECTION 6**

The City Council hereby finds, determines and declares that this Ordinance is necessary for the immediate preservation of the public peace, health and safety.

## **SECTION 7**

This Ordinance shall take effect immediately upon the expiration of five (5) days from and after its publication following final passage, as provided in Section 7.6 (h) of the Steamboat Springs Home Rule Charter.

**INTRODUCED, READ AND ORDERED** published, as provided by law, by the City Council of the City of Steamboat Springs, at its regular meeting held on the \_\_\_ day of \_\_\_\_\_, 2011.

x \_\_\_\_\_  
Cari Hermacinski, President  
Steamboat Springs City Council

\_\_\_\_\_  
Julie Franklin, City Clerk

**FINALLY READ, PASSED AND APPROVED** this \_\_\_ day of \_\_\_\_\_, 2011.

x \_\_\_\_\_  
Cari Hermacinski, President  
Steamboat Springs City Council

\_\_\_\_\_  
Julie Franklin, City Clerk

**CITY OF STEAMBOAT SPRINGS, COLORADO**

**ORDINANCE NO. \_\_\_\_\_**

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**WHEREAS**, in accordance with Chapter 26, Art. III, Div. 2, Section 26-62 of the Steamboat Springs Revised Municipal Code, a rezoning has been initiated by the property owner to rezone the subject property from Residential Estate – Low Density to Industrial; and

**WHEREAS**, the Zoning Map Amendment is consistent with findings for approval of a Zoning Map amendment; and

**WHEREAS**, the Zoning Map Amendment is consistent with the preferred direction, goals, and policies of the Steamboat Springs Area Community Plan; and

**WHEREAS**, the Planning Commission of the City of Steamboat Springs has considered the same and recommended approval of the rezoning; and finds that the request is in compliance with all rezoning criteria contained within Section 26-62(d) of the Community Development Code; and

**WHEREAS**, the City Council of the City of Steamboat Springs has considered the Planning Commission recommendation and finds the request is in compliance with all of the rezoning criteria of Section 26-62(d) of the Community Development Code; and

**WHEREAS**, the City Council of the City of Steamboat Springs considers that it is in the public interest to rezone the subject properties in accordance with the provisions of this Ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STEAMBOAT SPRINGS, COLORADO:**

Section 1. The City Council specifically finds that the procedures for an Official Zoning Map Amendment within the City of Steamboat Springs as prescribed in Chapter 26 of the Steamboat Springs Revised Municipal Code, have been fulfilled, and the Council hereby approves the rezoning for the subject property as set forth below. The City Council also finds that this ordinance is necessary for the health, safety, and welfare of the community.

Section 2. Pursuant to Chapter 26, Art. III, Div. 2, Section 26-62 of the Steamboat Springs Revised Municipal Code, the metes and bounds parcel, as described in Exhibit A, is hereby rezoned to Industrial (I).

Section 3. In accordance with Chapter 26, Art. III, Div.2, Section 26-62 of the Steamboat Springs Revised Municipal Code, the Director of Planning Services is hereby directed to modify and amend the Official Zoning Map of the City to indicate the zoning specified above.

Section 4. All ordinances heretofore passed and adopted by the City Council of the City of Steamboat Springs, Colorado, are hereby repealed to the extent that said ordinances, or parts, thereof, are in conflict herewith.

Section 5. If any section, subsection, clause, phrase or provision of this Ordinance is, or the application thereof to any person or circumstance, shall to any extent, be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and shall in no way be affected, impaired or invalidated.

Section 6. The City Council hereby finds, determines and declares that this Ordinance is necessary for the immediate preservation of the public peace, health and safety.

Section 7. This Ordinance shall take effect immediately upon the expiration of five (5) days from and after its publication following final passage, as provided in Section 7.6 (h) of the Steamboat Springs Home Rule Charter.

**INTRODUCED, READ AND ORDERED PUBLISHED**, as provided by law, by the City Council of the City of Steamboat Springs, at its regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

---

**Cari Hermacinski, President  
Steamboat Springs City Council**

**ATTEST:**

---

**Julie Franklin, CMC  
City Clerk**

**FINALLY READ, PASSED AND APPROVED** this \_\_\_\_\_ day of  
\_\_\_\_\_, 2011.

\_\_\_\_\_  
**Cari Hermacinski, President  
Steamboat Springs City Council**

**ATTEST:**

\_\_\_\_\_  
**Julie Franklin, CMC  
City Clerk**



Property Description

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# Agenda Item # 18

## CITY COUNCIL COMMUNICATION FORM

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**FROM:** Jon Roberts, City Manager (Ext. 218)

**DATE:** September 6, 2011

**ITEM:** Economic Development Activities/Update

**NEXT STEP:** Council Questions/Direction

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DIRECTION  
 INFORMATION

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### **I. REQUEST OR ISSUE:**

As part of City Council's current 2011 Goals and Objectives, the number 1 priority is Jobs/Economy/Budget. This report provides an update on Economic Development activities over the last 30+ days. The Steamboat Springs Economic Development Policy was adopted by Council and has been distributed to Council and is posted on the City Website.

### **II. RECOMMENDED ACTION/NEXT STEP:**

No Action required; however, we welcome questions and seek Council feedback on the current economic activities and the attached plan and survey responses. The Steamboat Springs Economic Development Council (SSEDC) started a business visitation program this summer. This program is similar to my ongoing informal, 1-1 meetings with local businesses which I started over a year ago. A survey/report on the findings from the business visitations will be available in September.

### **III. FISCAL IMPACTS:**

None associated with this communication; however, now that Council's Economic Development Plan is finalized and adopted, there may be some budget impacts that will require a future allocation in 2011 or 2012 (i.e. direct incentives, micro loans, etc.)

### **VI. BACKGROUND INFORMATION:**

Based on City Council current Goals and Objectives of improving the local economy and job creation as well as direction from the special Council Meetings, staff continues to meet with local businesses and the various local and state Economic Development groups to help provide positive support and work to improve a "Business Friendly" environment in the community.

I continue to meet with local businesses to listen to there issues, solve problems and get feedback on the how the City can better serve them and improve our services.

Yampa Valley Partners is now known as Yampa Valley Data Partners and will continue to provide monthly “Fast Facts” for local (Routt and Moffat) economic information and data (jobs, retain sales, natural resources, real estate/construction, etc. [www.yampavalleypartners.com](http://www.yampavalleypartners.com)

## **V. LEGAL ISSUES:**

None associated with this Communication.

## **VI. CONFLICTS OR ENVIRONMENTAL ISSUES:**

None associated with the communication

## **VII. SUMMARY AND ALTERNATIVES:**

Over the last month, Council Members and Staff participated in the following Economic Development activities and meetings:

June/July/August: USA Pro Cycling Local Organizing Committee (LOC)

August 2: Steamboat Springs Mainstreet Board Meeting

August 10: Meeting with Riverwalk Developer

August 12: Welcome Reception for Chamber Director Tom Kern

August 12: Chamber Business Seminar

August 17: Chamber Mixer

August 18: Randy Rudasics: Colorado Mountain College Business Resource Center

August 23: Colo. Coal and Power Generation Conference- Steamboat Sheraton – City Sponsored

August 23-25: Colorado Water Congress – Steamboat Sheraton

August 24: Steamboat Springs Economic Development Council (SSEDC)

August 26/27: USA Pro Cycling Events

August 30: Local Marketing District (LMD)

### **Future Economic Meetings/Activities:**

September 7: Northwest Colorado Oil and Gas Symposium- Hayden- RSVP by Sept. 1

September 14: Routt County Economic Development Cooperative (RCEDC)

September 15: Yampa Valley Sustainability Expo

September 29: CMC Business Resource Center: Alternative Business Lending Options- City Sponsor- Centennial Hall

September 29-October 1: 2011 Steamboat Springs Bike Summit- Steamboat Grand, Steamboat Community Center, Downhill Race at Ski Area

October 12: Moffat County Economic Development Partnership: Small Business Resource Fair- Craig, Moffat County Fairgrounds

If Council Members have any questions, please do not hesitate to contact me at ext. 218 or cell 970-761-0016.

## **AGENDA ITEM # 19**

### **City Council Updates**

A report will be provided at the meeting.

# Agenda Item # 20a1

\*\*\*\*\*TENTATIVE AGENDA FOR TUESDAY, SEPTEMBER 20, 2011\*\*\*\*\*

This agenda is tentative and the information is subject to change until the agenda is finalized.

## CITY OF STEAMBOAT SPRINGS

### AGENDA

REGULAR MEETING NO. 2011-16

TUESDAY, SEPTEMBER 20, 2011

4:00 P.M.

**MEETING LOCATION:** Citizens' Meeting Room, Centennial Hall;  
124 10<sup>th</sup> Street, Steamboat Springs, CO

**MEETING PROCEDURE:** Comments from the Public are welcome at two different times during the course of the meeting: 1) Comments no longer than three (3) minutes on items **not** scheduled on the Agenda will be heard under Public Comment; and 2) Comments no longer than three (3) minutes on all scheduled public hearing items will be heard **following** the presentation by Staff or the Petitioner. Please wait until you are recognized by the Council President. With the exception of subjects brought up during Public Comment, on which no action will be taken or a decision made, the City Council may take action on, and may make a decision regarding, ANY item referred to in this agenda, including, without limitation, any item referenced for "review", "update", "report", or "discussion". It is City Council's goal to adjourn all meetings by 10:00 p.m.

A City Council meeting packet is available for public review in the lobby of City Hall, 137 10<sup>th</sup> Street, Steamboat Springs, CO, or on our website at [http://steamboatsprings.net/city\\_council/council\\_meetings](http://steamboatsprings.net/city_council/council_meetings). The e-packet is typically available by 1pm on the Friday before the meeting.

**PUBLIC COMMENT: Public Comment will be provided at 7 p.m., or at the end of the meeting, (whichever comes first).** CITY COUNCIL WILL MAKE NO DECISION NOR TAKE ACTION, EXCEPT TO DIRECT THE CITY MANAGER. **THOSE ADDRESSING CITY COUNCIL ARE REQUESTED TO IDENTIFY THEMSELVES BY NAME AND ADDRESS. ALL COMMENTS SHALL NOT EXCEED THREE MINUTES.**

---

**EXECUTIVE SESSION 4:00-5:00PM.**

**SSRA MEETING 5:00-5:30PM.**

**A. ROLL CALL**

---

**\*\*\*\*\*TENTATIVE AGENDA FOR TUESDAY, SEPTEMBER 20, 2011\*\*\*\*\***

This agenda is tentative and the information is subject to change until the agenda is finalized.

**B. EXECUTIVE SESSION: (4:00 PM)**

**EXECUTIVE SESSION:** To discuss the topics set forth below. The specific citation to the provision or provisions of C.R.S. §24-6-402, subsection (4) that authorize(s) the City Council to meet in an executive session is set out below. The description of the topic is intended to identify the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized:

a. A discussion of personnel matters. This discussion is authorized under the following provisions:

§24-6-402(4)(f)(I), which permits an executive session to discuss “[p]ersonnel matters except if the employee who is the subject of the session has requested an open meeting, or if the personnel matter involves more than one employee, all of the employees have requested an open meeting.”

---

**C. COMMUNITY REPORTS/CITY COUNCIL DISCUSSION TOPIC: (5:30 PM)**

**1. Joint Meeting with the School Board. (45 minutes)**

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**D. CONSENT CALENDAR: MOTIONS, RESOLUTIONS AND ORDINANCES FIRST READINGS**

ITEMS ON THE CONSENT CALENDAR GENERALLY REQUIRE LITTLE COUNCIL DELIBERATION AND MAY BE APPROVED WITH A SINGLE MOTION. ANY MEMBER OF THE COUNCIL OR THE PUBLIC MAY WITHDRAW ANY ITEM FROM THE CONSENT CALENDAR FOR FURTHER DISCUSSION AT ANY TIME PRIOR TO APPROVAL.

**2. RESOLUTION:** Closing the volunteer firefighter defined benefit pension plan. (Foote)

---

**E. PUBLIC HEARING: ORDINANCE SECOND READINGS**

THE CITY COUNCIL PRESIDENT OR PRESIDENT PRO-TEM WILL READ EACH ORDINANCE TITLE INTO THE RECORD. PUBLIC COMMENT WILL BE PROVIDED FOR EVERY ORDINANCE.

**3. SECOND READING OF ORDINANCE:** An ordinance creating a new Article VII in Chapter 12 of the Steamboat Springs Revised Municipal Code for the purpose of licensing the business of Pawn

**\*\*\*\*\*TENTATIVE AGENDA FOR TUESDAY, SEPTEMBER 20, 2011\*\*\*\*\***

This agenda is tentative and the information is subject to change until the agenda is finalized.

Broking; providing for severability; establishing an effective date; and setting a hearing date. (Lettunich)

4. **SECOND READING OF ORDINANCE:** An ordinance vacating a 20 foot wide utility easement located along the North lot line of lot 15 and the South lot line of lot 16 of Boulder Ridge Subdivision, and providing an effective date and setting a hearing date. (Lorson)

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**F. PUBLIC COMMENT: Public Comment will be provided at 7 p.m., or at the end of the meeting, (whichever comes first).** CITY COUNCIL WILL MAKE NO DECISION NOR TAKE ACTION, EXCEPT TO DIRECT THE CITY MANAGER. **THOSE ADDRESSING CITY COUNCIL ARE REQUESTED TO IDENTIFY THEMSELVES BY NAME AND ADDRESS. ALL COMMENTS SHALL NOT EXCEED THREE MINUTES.**

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**G. PLANNING COMMISSION REPORT**

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**H. CONSENT CALENDAR - PLANNING COMMISSION REFERRALS:**  
ITEMS ON THE CONSENT CALENDAR GENERALLY REQUIRE LITTLE OR NO COUNCIL DELIBERATION AND MAY BE APPROVED WITH A SINGLE MOTION. A CITY COUNCIL MEMBER MAY REQUEST AN ITEM(S) BE REMOVED FROM THE CONSENT CALENDAR FOR FURTHER DISCUSSION. **ALL ORDINANCES APPROVED BY CONSENT SHALL BE READ INTO THE RECORD BY TITLE.**

5. **PROJECT:**  
PETITION:  
LOCATION:  
APPLICANT:  
PLANNING COMMISSION VOTE:

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**I. PUBLIC HEARING – PLANNING COMMISSION REFERRALS**

**PUBLIC HEARING FORMAT:**

- **Presentation by the Petitioner (estimated at 15 minutes). Petitioner to state name and residence address/location.**
- **Presentation by the Opposition.** Same guidelines as above.
- **Public Comment by individuals (not to exceed 3 minutes). Individuals to state name and residence address/location.**
- **City staff to provide a response.**

6. **PROJECT:**  
PETITION:



**\*\*\*\*\*TENTATIVE AGENDA FOR TUESDAY, SEPTEMBER 20, 2011\*\*\*\*\***

This agenda is tentative and the information is subject to change until the agenda is finalized.

LOCATION:  
APPLICANT:  
PLANNING COMMISSION VOTE:

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**J. REPORTS**

**7. Economic Development Update.**

**8. City Council**

**9. Reports**

- a. Agenda Review (Franklin):
  - 1.) City Council agenda for October 4, 2011.
  - 2.) City Council agenda for October 18, 2011.

**10. Staff Reports**

- a. City Attorney's Update/Report. (Lettunich)
  - b. Manager's Report: Ongoing Projects. (Roberts)
- 

**K. ADJOURNMENT**

**BY: JULIE FRANKLIN, CMC  
CITY CLERK**

# Agenda Item # 20a2

## \*\*\* Tentative Agenda \*\*\*

### STEAMBOAT SPRINGS REDEVELOPMENT AUTHORITY

## AGENDA

MEETING NO. SSRA-2011-06  
TUESDAY, SEPTEMBER 20, 2011  
5:00 P.M.

**MEETING LOCATION:** Citizens' Meeting Room, Centennial Hall;  
124 10<sup>th</sup> Street, Steamboat Springs, CO

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**A. ROLL CALL (5:00 P.M.)**

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**B. BASE AREA REDEVELOPMENT**

1. Request for Funding Allocation. (Hruby)
- 

**C. APPROVAL OF MINUTES**

2. **MINUTES:**
    - a. Steamboat Springs Redevelopment Authority Regular Meeting  
SSRA-2011-05, June 7, 2011.
- 

**D. ADJOURNMENT (5:00 P.M.)**

**BY: JULIE FRANKLIN  
CLERK TO THE BOARD**

# Agenda Item # 20a3

\*\*\*\*\*TENTATIVE AGENDA FOR TUESDAY, OCTOBER 5, 2010\*\*\*\*\*

This agenda is tentative and the information is subject to change until the agenda is finalized.

## CITY OF STEAMBOAT SPRINGS

### AGENDA

REGULAR MEETING NO. 2011-17  
TUESDAY, OCTOBER 4, 2011

8:00 A.M.

**MEETING LOCATION:** Citizens' Meeting Room, Centennial Hall;  
124 10<sup>th</sup> Street, Steamboat Springs, CO

**MEETING PROCEDURE:** Comments from the Public are welcome, provided they are no longer than three (3) minutes on all public hearing items and will be heard **following** the presentation by Staff. Please wait until you are recognized by the Council President.

A City Council meeting packet is available for public review in the lobby of City Hall, 137 10<sup>th</sup> Street, Steamboat Springs, CO.

#### A. ROLL CALL

START TIME	TIME ALLOTTED	
7:30 – 8:00	30 Minutes	Breakfast
8:00 – 8:30	30 Minutes	Presentation of the Proposed Budget City Manager Director of Financial Services
8:30 – 9:45	1 Hour 15 Minutes	6 Year Capital Projects Budget
9:45 – 10:00	15 Minutes	Break
10:00 – 12:00	2 Hours	General Fund Operations Budget
12:00 – 1:00	1 Hour	Lunch

**\*\*\*\*\*TENTATIVE AGENDA FOR TUESDAY, OCTOBER 5, 2010\*\*\*\*\***

This agenda is tentative and the information is subject to change until the agenda is finalized.

<b>START TIME</b>	<b>TIME ALLOTTED</b>	
1:00 – 2:00	60 Minutes	Enterprise Funds & Fleet Fund Budgets
2:00 – 2:15	15 Minutes	Local Marketing District Budget
2:15 – 2:45	30 Minutes	Community Support Allocation – Staff Recommendation
2:45 – 3:00	15 Minutes	Break
3:00 – 3:30	30 Minutes	Chamber Presentation
3:30 – 4:00	30 Minutes	Public Comment
4:00-4:30	30 Minutes	Review of Revisions & Amendments/Budget Wrap Up

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**MISCELLANEOUS BUSINESS**

- 1. Discussion of Council Retreat/Open House.**

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**B. ADJOURNMENT**

**BY: JULIE FRANKLIN, CMC  
CITY CLERK**

## **AGENDA ITEM #21a**

### **City Attorney's Report**

A report may be provided at the meeting.

# Agenda Item # 21b

## City Manager Report

To: City Council President and Members  
From: Jon Roberts, City Manager  
Date: September 6, 2011  
Subject: City Manager Update: August 2 – September 6

### City Council Meeting Follow Up- Aug. 2 meeting and before:

- Houses on Amethyst: Nuisance/Abatement notices mailed. Notices posted on doors. Realtor, Ron Wendler and other owner contacted us to say weeds would be cut by Sept. 3. Joel will provide further update at the Council Meeting, if needed.
- Paperless Packet for City Council: 1 pads distributed to Council on Sept. 2 for Sept. 6 meeting- paper packet provided as well.
- City Website: Anne Small met with Council Members Bentley and Reisman, Sept. 1.
- Whistler Bike Park update: Bike Park group scheduled to meet on Sept. 14 with Parks & Rec. Commission.
- Whistler Park Handicapped Swing repairs: Swing Replaced.
- Status on Blue Sage “trespass” bike park: Parks and Rec. Commission supported removal and reseeding “several” of the features immediately; removal land reseeding of other features “after” an alternative site exists. –Chris will be available to answer further questions.
- Staff meeting with ICMA Consultants re: Fire Dept. evaluation/consolidation: Aug. 31
- Update from Planning Dept. DP Lite, CDC Advisory Group (see attached)

### City Manager Meetings/Activities:

- Weekly Rotary Meetings
- Weekly meetings with the press: Jack Weinstein
- Lunch with Council Members: Aug. 8 and Aug. 22
- Employee Picnic: Aug. 11
- Meetings with LMD, Ski Corp, Staff on ¼ cent sales tax, flight guarantee program
- Mainstreet meeting: Aug. 2
- USA Pro Cycling Tour planning meeting- Every Monday- replaced barricades at Riverwalk with Boulders
- Meeting with County Manager Tom Sullivan: Aug. 3
- Volunteer Fire Pension: Aug. 4
- Community Support Coalitions meeting: Aug. 15
- Meeting with each Department on 2012 budgets (Aug. 3 – Sept. 1)
- Building Dept. Oversight Committee: Aug. 17
- Colorado Mountain College Ground breaking: Aug. 18
- Randy Rudasics, CMC: Business Resource Office: Aug. 18
- Ken Brenner: Aug. 31
- Rocky Mountain Youth Corp Tour and Reception: Aug. 31
- Candidate Forum: Sept. 1

### **Economic Development:**

- Working with Wendy of several projects: Business visitations, Airport FBO, Smartwool coordination, ICMA report re: Fire Dept. and Consolidation.
- SSEDC meeting: Aug. 24
- Air Service Program –Ballot issue: Aug. 22
- Meet with LMD: Aug. 30
- Met with Mark Scully: RE: Riverwalk Development: Aug. 10
- Welcome reception for Chamber Director Tom Kern: Aug. 12
- Business Seminar: Smokehouse: Aug. 12
- Chamber Mixer: Aug. 17
- Business visitations: BAP- with Bill Gamber and Tracy Barnett: Aug. 9
- USA Pro Cycling Challenge: meetings every couple days: Hosp. Tent- Aug. 26/27
- Meeting with Routt County Riders: Aug. 31

### **Finance/Budget:**

- All Dept. budgets submitted to Finance on July 20. City Manager meeting with each Dept. to review draft budgets in detail (Aug. 3- Sept. 1)
- Management Team review of CIP for proposed 2012 CIP
- Deb and Jon working with the 2012 Community Support Coalitions
- Deb, Jon, Wendy working with ICMA consultant on Fire Dept. evaluation/consolidation

### **Fire:**

- The ICMA Consultants draft report and meeting: August 31.
- USA Pro Cycling
- Fire/EMS staff Recruitment
- 2012 Budget

### **General Services:**

- Numerous RFPs, Bids and Contracts in process
- Normal insurance claims, litigation, Risk Management activities

### **Parks & Rec.:**

- USA Pro Cycling
- 2012 Budget

### **Personnel:**

- Recruiting for Deputy City Manager (internal recruitment)
- Normal Human Resources activities

### **Planning:**

- Continuing work on the Community Plan Update
- Ty is working with a citizens group to begin work on revisions to the CDC and the Development Plan “lite” process.
- 2012 Budget
- Continuing to work with the CDC User Advisory Group to update CDC



**Public Works/Utilities:**

- USA Pro Cycling
- Airport FBO project- review of proposals
- Numerous utility projects are under design and construction- several compliments from downtown merchants and Mainstreet on success of the utility project.
- Janet Hruby continues to coordinate the URA project, updates are sent to Council on a regular basis.
- West Lincoln Park Bridge Bid- \$647,000 awarded to Native Excavating
- 13<sup>th</sup> Street Water Main Bid- \$1,536,000 awarded to Native Excavating

**Police:**

- USA Pro Cycling
- Normal law enforcement, code enforcement, nuisance complaints, etc.
- Police Officer Recruitment

**ATTACHMENTS:**

Attachment 1. Planning Update.

## City Manager's Report - Update from Planning

### Status of DP Lite Process

The objective of the Development Plan (DP) Lite initiative is to define a process and appropriate level of submittal information that will allow an applicant to receive earlier approval of fundamental development issues such as building height, massing, lot coverage and basic site layout. This will allow the applicant to confirm project feasibility prior to significant investment in detailed design and engineering. This is particularly critical in our current economic climate where financing is difficult and predictability paramount.

The process allows both the applicant and the City to identify issues that can and will need to be resolved at later phases and thereby avoid surprises that are harder to address later in the project design. The draft process, including a modified list of submittal requirements, was vetted with all Technical Advisory Committee (TAC) representatives as well as frequent applicants familiar with the development review process.

The proposed DP Lite process is currently being used in a trial run on an actual development application. An open dialogue is being maintained to improve understanding on the part of the applicant and the City as to what issues need further review at this point in time and which can confidently be deferred for later resolution. The experienced gained from the Ptarmigan redevelopment review, as well as additional test case submittals, is intended to provide the experience necessary to bring potential code changes forward with the confidence and support of all parties.

### Community Development Code User Advisory Group

The City's Community Development Code, like most codes around the country, is the product of many years of amendments. Many amendments were done quickly in response to a specific situation, often to prevent recurrence of some issue that the community found problematic at the time. Inevitably the code suffers from unintended lack of coordination, outright contradictions and frequent vagueness.

While staff will continue to identify and address shortcoming wherever possible, a prioritized effort to address the most egregious frustrations is necessary. The Planning Director contacted members of the community most familiar with the code and asked for their assistance. The objective is to make the code a more effective and user friendly tool for implementing the City's land use and development policies. While the process may identify policy questions it is not intended to unilaterally propose land use policy changes that may more appropriately be addressed in the Area Community Plan or other forum.

The following individuals are currently participating in the User Advisory Group: Tom Fox, Brian Hanlen, Ed MacArthur, Kathi Meyer, Scott Myller, Peter Patten, Brent Pearson, Bill Rangitsch, Eric Smith, and Ryan Spaustat. Paul Stettner has been invited but unable to attend to date. The meetings are open and will be posted in the future.

The initial priorities identified by the group include: the PUD process, vesting and administrative review of "Use with Criteria." Staff is currently putting together a more detailed work program and schedule.

# Agenda Item # 22a

CITY OF STEAMBOAT SPRINGS

REGULAR MEETING NO. 2011-13

TUESDAY, JULY 19, 2011

## MINUTES

Ms. Cari Hermacinski, City Council President, called Regular Meeting No. 2011-13 of the Steamboat Springs City Council to order at 4:30pm, Tuesday, July 19, 2011, in Centennial Hall, Steamboat Springs, Colorado.

City Council Members present: Cari Hermacinski, Jon Quinn, Meg Bentley, Bart Kounovsky, Walter Magill, Scott Myller and Kenny Reisman.

Staff Members present: Jon Roberts, City Manager; Tony Lettunich, City Attorney; Wendy DuBord, Deputy City Manager; Julie Franklin, City Clerk; Deb Hinsvark; Director of Financial Services; Philo Shelton, Director of Public Works; Alexis Casale, Historic Preservation Planner; Kim Weber, Manager of Revenue and Budget; Tyler Gibbs, Director of Planning Services; Dan Foote, Staff Attorney; Chris Wilson, Director of Parks, Open Space and Recreation; and Joel Rae, Police Captain.

**NOTE: All documents distributed at the City Council meeting are on file in the Office of the City Clerk.**

**EXECUTIVE SESSION:** To discuss the topics set forth below. The specific citation to the provision or provisions of C.R.S. §24-6-402, subsection (4) that authorize(s) the City Council to meet in an executive session is set out below. The description of the topic is intended to identify the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized:

a. A discussion of personnel matters. This discussion is authorized under the following provisions:

§24-6-402(4)(f)(I), which permits an executive session to discuss “[p]ersonnel matters except if the employee who is the subject of the session has requested an open meeting, or if the personnel matter involves more than one employee, all of the employees have requested an open meeting.”

**MOTION:** City Council President Pro-Tem Quinn moved and Council Member Bentley seconded to adjourn Regular Meeting 2011-13 at approximately 4:30pm to go into Executive Session for the reason set forth above. The motion carried

**STEAMBOAT SPRINGS CITY COUNCIL MINUTES  
REGULAR MEETING 2011-13  
July 19, 2011**

5/0. Council Member Myller and Council Member Magill had not yet arrived. Council Member Myller arrived at 4:35pm. Council Member Magill arrived at 4:55pm.

**MOTION:** City Council President Pro-Tem Quinn moved Council Member Bentley seconded to come out of Executive Session and reconvene the Regular Meeting 2011-13 at approximately 5:10pm. The motion carried 7/0.

Persons attending the Executive Session: Cari Hermacinski, Jon Quinn, Meg Bentley, Walter Magill, Scott Myller, Bart Kounovsky, Kenny Reisman, Tony Lettunich, Jon Roberts and Wendy DuBord.

City Council President Hermacinski noted for the record, that if any person who participated in the executive session believes that any substantial discussion of matters not included in the motion to go into the executive session occurred during the executive session, or that any improper action occurred during the executive session in violation of the Open Meetings Law, that person should state his/her concerns for the record.

No concerns were indicated.

**PROCLAMATIONS:**

- 1. PROCLAMATION: A proclamation honoring the Fireworks Crew for the 2011 July 4<sup>th</sup> fireworks show.**

Council Member Kounovsky read the proclamation into the record.

The crew was present to accept the proclamation. Scott Borden thanked the City for the support and for allowing them to put on the show.

Ms. DuBord read the names of all the volunteers. The crew spent hours doing this and put on this best show in Colorado.

Mr. Tim Borden thanked Council for the overwhelming recognition and stated that all the sponsors should be clearly recognized.

**CONSENT CALENDAR: MOTIONS, RESOLUTIONS AND ORDINANCES  
FIRST READINGS**

**STEAMBOAT SPRINGS CITY COUNCIL MINUTES  
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- 2. RESOLUTION: A resolution acknowledging appointments to the Yampa Valley Housing Authority and the Public Art Board, and changing the number of members on the Public Art Board.**

City Council President Hermacinski read the resolution title into the record.

- 3. RESOLUTION: A resolution ratifying the Intergovernmental Agreement between the City of Steamboat Springs and Routt County providing for the conduct and finance of a Regular Municipal Election to be held on Tuesday, November 1, 2011, as a coordinated election; and acknowledging continued municipal participation as such.**

City Council President Hermacinski read the resolution title into the record.

- 4. RESOLUTION: A resolution ratifying the Amended Articles of Association of the Northwest Colorado Council of Governments/Economic Development District and the Bylaws of the Northwest Colorado Council Of Governments Economic Development District.**

City Council President Hermacinski read the resolution title into the record.

- 5. MOTION: A motion nominating a representative and an alternate to the Northwest Colorado Council of Governments Economic Development District Board of Directors.**

City Council President Hermacinski read the motion into the record.

She noted the need to make appointments and also suggested the City Manager.

**MOTION:** Council Member Myller moved and Council Member Bentley seconded to approve a motion nominating a representative and an alternate to the Northwest Colorado Council of Governments Economic Development District Board of Directors; Council Member Magill and Jon Roberts. The motion carried 7/0.

**STEAMBOAT SPRINGS CITY COUNCIL MINUTES  
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- 6. FIRST READING OF ORDINANCE: An ordinance approving a lease between the City of Steamboat Springs and Smartwool, LLC and authorizing the City Council President to sign lease documents; repealing all conflicting ordinances; providing for severability; and providing an effective date.**

City Council President Hermacinski read the ordinance title into the record.

**MOTION:** City Council President Pro-Tem Quinn moved and Council Member Bentley seconded to approve items 2, 3, 4 and 6 of the Consent Calendar; a resolution acknowledging appointments to the Yampa Valley Housing Authority and the Public Art Board, and changing the number of members on the Public Art Board; a resolution ratifying the Intergovernmental Agreement between the City of Steamboat Springs and Routt County providing for the conduct and finance of a Regular Municipal Election to be held on Tuesday, November 1, 2011, as a coordinated election; and acknowledging continued municipal participation as such; a resolution ratifying the Amended Articles of Association of the Northwest Colorado Council of Governments/Economic Development District and the Bylaws of the Northwest Colorado Council Of Governments Economic Development District; first reading of an ordinance approving a lease between the City of Steamboat Springs and Smartwool, LLC and authorizing the City Council President to sign lease documents; repealing all conflicting ordinances; providing for severability; and providing an effective date. The motion carried 7/0.

- 7. FIRST READING OF ORDINANCE: An ordinance for the purpose of submitting to a vote of the electors of the City of Steamboat Springs, Colorado the question of whether the City should be allowed to increase the Sales Tax by .25% from 4.5% to 4.75% for a period of five years and dedicating the revenues from said tax to the Steamboat Springs Local Marketing District to support commercial air-service to Yampa Valley Regional Airport in Hayden; and establishing an effective date and an expiration date.**

City Council President Hermacinski read the ordinance title into the record.

Mr. Chris Diamond provided a history of the Local Marketing District and stated that the issue of how it is funded and managed is very complex. Now is time for a broad community discussion and education effort. We experienced a significant reduction in demand for airline seats and were forced to reduce the number of seats. We got through the winter, but were six percent off the prior year. If this

**STEAMBOAT SPRINGS CITY COUNCIL MINUTES  
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continues, we would not recover. There were discussions about a Rural Transit Authority but it was decided that a short term solution was needed for the direct flight challenge.

Mr. Chuck Porter, Winter Air Service Task Force/Treasurer of the Local Marketing District (LMD), stated that everyone benefits when someone gets on a plane to come here. He provided a PowerPoint presentation highlighting the following: the ad hoc committee; Northwest Colorado Benefits from air; more seats = more passengers; exploring funding options; task force model; polling mythology; polling takeaways; and the initiative flow.

Mr. Steve Dawes, Chairman of the LMD, stated that the initial Fly Steamboat program was a voluntary contribution program. However, it became clear that a permanent funding mechanism was necessary and they moved forward with the LMD. It has become apparent that we will have a problem with funding a couple years down the road. By 2013 the LMD will have wiped out its reserves. He asked that Council approve this ordinance and let the voters decide.

Mr. Larry Mishawn, Vice President of Resort Group, feels that there is a compelling case to put this on the ballot and encouraged the Council to move forward.

Ms. Hinsvark stated that the Winter Air Service Task Force has been good about communicating with Finance staff; however she does have a few items of concern. With a sales tax increase, there are sales and use tax. Eliminating the use tax would eliminate the vehicle tax; therefore she suggested adding the words sales **and use tax** to the ballot language. She asked that the one percent administration fee be added to the agreement as well. She believes that the language should be defined more narrowly so it is not seen as a general sales tax. The funding will go to the LMD and she would like to have an intergovernmental agreement (IGA) with them for this new funding and for the existing funding.

Council Member Reisman spoke to the financial and philosophical snapshot looking forward, and asked if there is a strategic plan for western flights. Mr. Porter stated that they need to focus on selling seats in the market they can afford. Mr. Diamond stated that they are so far behind that they have to go "where the fish are that we can reach" which are the strong markets. They would like to look west but it will take a lot more money.



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**MOTION:** City Council President Pro-Tem Quinn moved and Council Member Kounovsky seconded to approve the first reading of an ordinance for the purpose of submitting to a vote of the electors of the City of Steamboat Springs, Colorado the question of whether the City should be allowed to increase the Sales Tax by .25% from 4.5% to 4.75% for a period of five years and dedicating the revenues from said tax to the Steamboat Springs Local Marketing District to support commercial air-service to Yampa Valley Regional Airport in Hayden; and establishing an effective date and an expiration date; "tightening up" the language as noted by Ms. Hinsvark and moving forward with an IGA with the 1% administrative fee. The motion carried 7/0.

**PUBLIC HEARING: ORDINANCE SECOND READINGS**

- 8. SECOND READING OF ORDINANCE: An ordinance creating a new Article V in Chapter 12 of the Steamboat Springs Revised Municipal Code for the purpose of licensing Non Cigarette Tobacco Product Retailers; providing for severability; establishing an effective date; and setting a hearing date.**

*This item has been postponed from the July 5, 2011 City Council Meeting.*

City Council President Hermacinski read the ordinance title into the record.

Council Member Kounovsky stepped down.

PUBLIC COMMENT: No one appeared for public hearing.

**MOTION:** Council Member Reisman moved and Council Member Bentley seconded to approve the second reading of an ordinance creating a new Article V in Chapter 12 of the Steamboat Springs Revised Municipal Code for the purpose of licensing Non Cigarette Tobacco Product Retailers; providing for severability; establishing an effective date; and setting a hearing date. The motion carried 6/0. Council Member Kounovsky stepped down.

Council Member Kounovsky returned to the meeting.

**STEAMBOAT SPRINGS CITY COUNCIL MINUTES  
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- 9. SECOND READING OF ORDINANCE: An ordinance amending Section 16-12 of the Steamboat Springs Revised Municipal Code to authorize the Director of Parks, Open Space and Recreational Services to extend the season for rafting from public river accesses between River Creek Park and Stockbridge Center; providing an effective date; providing for severability; and setting a hearing date.**

*This item has been postponed from the July 5, 2011 City Council Meeting.*

City Council President Hermacinski read the ordinance title into the record.

Council Member Reisman asked if the language needs to specifically reference sections a, b and c so that the flows are specifically mentioned. Mr. Foote stated that the intent is to keep the limitations in place and allow the director to modify date. Mr. Foote recommended the following language: "The provisions of this subparagraph d. shall not affect the applicability of the provisions of subparagraphs a., b., and c."

Council Member Bentley asked if limits for tubing when flows are too low could be added. Mr. Wilson stated that it could; however this ordinance speaks to rafts only. Between the Yampa River Management Plan and the Code there are three triggers to address this.

PUBLIC COMMENT: No one appeared for public hearing.

**MOTION:** Council Member Reisman moved and Council Member Myller seconded to approve the second reading of an ordinance amending Section 16-12 of the Steamboat Springs Revised Municipal Code to authorize the Director of Parks, Open Space and Recreational Services to extend the season for rafting from public river accesses between River Creek Park and Stockbridge Center; providing an effective date; providing for severability; and setting a hearing date; as modified by Mr. Foote. The motion carried 7/0.

- 10. SECOND READING OF ORDINANCE: An ordinance approving a hangar lease to Allen Storie at the Steamboat Springs Airport and authorizing the City Council President to sign lease documents; repealing all conflicting ordinances; providing for severability; and providing an effective date.**

City Council President Hermacinski read the ordinance title into the record.

**STEAMBOAT SPRINGS CITY COUNCIL MINUTES  
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PUBLIC COMMENT: No one appeared for public hearing.

**MOTION:** Council Member Bentley moved and Council Member Myller seconded to approve the second reading of an ordinance approving a hangar lease to Allen Storie at the Steamboat Springs Airport and authorizing the City Council President to sign lease documents; repealing all conflicting ordinances; providing for severability; and providing an effective date. The motion carried 7/0.

**11. SECOND READING OF ORDINANCE: 5th supplemental appropriation ordinance of 2011.**

City Council President Hermacinski read the ordinance title into the record.

Ms. Weber noted the addition of the Community Cycling Connection in the amount of \$49,700.

PUBLIC COMMENT: No one appeared for public hearing.

**MOTION:** City Council President Pro-Tem Quinn moved and Council Member Myller seconded to approve the second reading of the 5th supplemental appropriation ordinance of 2011. The motion carried 6/1. Council Member Kounovsky opposed.

**PLANNING COMMISSION REPORT**

PLANNING  
PROJECTS

No report was provided.

**CONSENT CALENDAR - PLANNING COMMISSION REFERRALS**

PLANNING  
PROJECTS

**12. FIRST READING OF ORDINANCE: An ordinance amending Community Development Code Sec. 26-84 (D) (1) "Historic Preservation Commission" to allow out of City residents residing within Routt County the ability to apply for and serve on the Historic Preservation Commission in accordance with ordinance 2190 of the Revised Municipal Code.**

City Council President Hermacinski read the ordinance title into the record.

Council Member Bentley suggested limiting this to one person, or 25 percent of the board.

**STEAMBOAT SPRINGS CITY COUNCIL MINUTES  
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Ms. Casale stated that the Commission currently has one member outside of City limits. Mr. Gibbs stated that they would like to have 2, due to the challenge of finding people to serve.

PUBLIC COMMENT:

Ms. Tracy Barnett, Historic Preservation Commission member, stated that the challenge of getting qualified people to serve is more important than trying to limit the number of people in the County that can serve.

**MOTION:** City Council President Pro-Tem Quinn moved and Council Member Myller seconded to approve the first reading of an ordinance amending Community Development Code Sec. 26-84 (D) (1) "Historic Preservation Commission" to allow out of City residents residing within Routt County the ability to apply for and serve on the Historic Preservation Commission in accordance with ordinance 2190 of the Revised Municipal Code. The motion carried 7/0.

**PUBLIC HEARING – PLANNING COMMISSION REFERRALS**

**13. SECOND READING OF ORDINANCE: An ordinance amending Article III, Chapter 7 of the Steamboat Springs Revised Municipal Code regarding allowable noise levels.**

City Council President Hermacinski read the ordinance title into the record.

Mr. Gibbs stated that the ordinance was amended to allow fines be deducted if an establishment makes improvements to mitigate the noise. The City has been working with Mainstreet, the Chamber, the Transportation Committee, law enforcement and the entertainment industry on this ordinance. The plan is to come back to Council and report on how this ordinance is working and if there are problems.

Council Member Reisman asked about refuse collection exemptions. Mr. Gibbs stated that the hope is to encourage trash removal at a time that would be less disruptive. However, the intent is not to use the ordinance to punish people for trying to move their garbage.

PUBLIC COMMENT:

Mr. Billy Franklin, touring musician from New Orleans, stated that the music scene in Steamboat is great in terms of a small town. He provided some industrial noise pollution information and noted that at the beginning of this

**STEAMBOAT SPRINGS CITY COUNCIL MINUTES  
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July 19, 2011**

meeting when people were congregating the decibel level was 72. He stated that he understands the point of the ordinance and believes that in general, it works. However he thinks that a 65 or 70 decibel level is more reasonable.

Mr. Mike Miller, Sunpies, stated that his concern is that they are in violation when they roll out their dumpsters because they have to roll them to a different location. He knows that this is not the intent of the ordinance and suggested that the language be changed for refuel removal. Also, he is concerned about the way the smoking law is written, which pushes people outside where they are loud. He stated that the entertainment industry on Yampa Street is growing and it will only get louder.

Mr. Brooks Scram asked when this issue turned from political to personal. He stated that if the Council passes a low decibel level it will put their businesses in jeopardy because no one can comply.

Ms. Liz Wahl, Restaurant Association and Steamboat Ski & Resort Corporation, thanked everyone that has been working on this. She stated that she does not believe in passing laws on the premise of maybe someone will catch you and maybe they won't. She asked, if everyone is at 68 decibels during the day then why we are passing this ordinance at 65. She stated that initially she was concern with tying noise violations to the liquor license, but it was clarified that this conditional already exists, so she is okay with that language.

Mr. Scott Agnew, St. Cloud Mountain Club, is concerned with this ordinance; but is not opposed to a reasonable ordinance. This is not the answer for Steamboat. As Steamboat gets more and more combining of commercial and residential space, this will become more of an issue because the distances between commercial and residential are getting smaller. He voiced concern that a group can leave his bar and wake his neighbors up because he only has 20 feet to comply. This is really about the noise coming from the streets, which is actually a barometer about how our town is doing. He thinks we should be looking at changing the building code and putting the onerous on the developers.

City Council President Hermacinski clarified that the reason we are having this noise ordinance discussion is that the City was approached by citizens and businesses asking the Council to update the ordinance.

Ms. Amy Garris, Ghost Ranch Saloon, stated that her "citizen's initiative" was included in the packet which suggests an entertainment overlay zone. She is not sure if businesses should be impacted just because they are located next to a mixed use development. An overlay zone would enable the City to allow for more strict ordinances where there are high density residential populations. Within the

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zone she suggested 75 during the day, 70 at night and 60 or 55 after 2:00am. She is also concerned that the ordinance being complaint based allows one person to put someone's business in jeopardy and one trip to court could "tip the scale" on any local business.

Mr. Collin Kelly supports the ordinance. He lives in the alley between 6<sup>th</sup> and 7<sup>th</sup> they sleep in the basement because it's too loud at night. He stated that he has run many bars in Denver and Mexico and noise is the owner's responsibility. He is opening an establishment on Yampa and they have put a vestibule in. The noise problem is due to the fact that the windows and doors are open and there is no vestibule at the Ghost Ranch.

*Inaudible* works and lives at Howelsen Place, and he couldn't agree more. When the doors are open at the Ghost Ranch it is very loud. He loves what downtown has to offer and is asking for a reasonable noise ordinance.

Ms. Janet McTague, resident at Howelsen Place, stated that their other home is in downtown Fort Collins and believes that this can work; it is all about balance. They do close their windows, and it is still just too loud at times. She accepts the responsibility of living downtown but also want to see this consideration coming from the other side.

Mr. Chris Freese, disc jockey, supports a decibel level of 69.

Mr. Brian Smith believes it is asking a lot for a mixed use developments to comply with this decibel level, 60 is too low.

Mr. Ryan Spaustat stated that if we want to have mixed use neighborhoods, then the possibility of a good nights sleep has to be included. He supports the ordinance.

Mr. Gregory Effinger is very excited about the direction that Steamboat's nightlife is taking. He believes that it is irresponsible to pass the ordinance as drafted because 60 is way too low. He supports 70.

Mr. John Sanderson stated that he supported 60 decibels until he saw the readings that had been taken.

Mr. Rae spoke to the exchange rate of a discussion which is taken into consideration with other factors like temperature and wind, etc. A prosecutable case is at 3 decibels over the allowable level; they begin enforcing when there is a period of time that is above the 63 decibel level. The other issue has to do with

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the background noise, which will give a louder reading when there is a short distance between the background noise and target noise.

There was a show of hands of those for and against the ordinance.

City Council President Pro-Tem Quinn stated that there is a lot of history behind this issue; it is not just about one venue. In the past there were issues with Levels and the Torian Plum, and the Old Town Pub and the Nites Rest Motel. The current ordinance was not working and the City needs to find a balance. A vibrant nightlife is part of what defines Steamboat but business owners need to take responsibility for their business. Residential is important; but the City is not out there looking to close businesses. The enforceable level will be 63 and the ordinance will compel changes on both sides. A vestibule is a common sense solution; and we want builders to build high quality products as well.

**MOTION:** City Council President Pro-Tem Quinn moved and Council Member Kounovsky to approve the second reading of an ordinance amending Article III, Chapter 7 of the Steamboat Springs Revised Municipal Code regarding allowable noise levels. The motion carried 5/2. Council Member Magill and Council Member Reisman opposed.

Discussion during the motion:

Council Member Magill does not support the ordinance and wants the decibel level to be 65. It seems that at 60 we would be headed for lawsuits and disputes.

Council Member Kounovsky supports the motion. He is comfortable with where we are and with the police force enforcing the laws in the appropriate manner.  
**DIRECTION:** City Clerk to schedule a noise ordinance follow up 3 and 6 months out.

Council Member Reisman stated that there is nothing in the ordinance that speaks to how business owners are not responsible for the noise people make outside the business. Mr. Gibbs clarified that when people are on the public space the business owner is not responsible. Council Member Reisman referenced the space at Sunpies between the building and the bike racks. Mr. Gibbs stated that staff thought communication would be a better tool for this rather than adding it into the ordinance.

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Council Member Reisman does not support the ordinance as is. He believes that 60 decibels will force businesses to walk a fine line. However, he stated that he has heard that if the City does change the ordinance we will be putting people out of business. He does not believe that Council is putting them out of business; the choices they make are doing that.

Council Member Myller supports the motion. He would like to see proactive solutions from the venues to contain their sound. He believes that 60 is reasonable to meet, and "tweaks" may be necessary, like a vestibule.

Council Member Bentley stated that the issue is exasperated by mixed use development and we need to start with the building code. However, where is the give and take on this? A good night's sleep has to part of the plan. She supports the motion with the hope that there will be more give and take.

City Council President Hermacinski supports the motion. She is comfortable with the ordinance because staff measured outside the Old Town Pub, a 100 year old building on Fat Tuesday with a band, and they were in compliance.

Mr. Garris clarified that her windows are never open and she can't afford a vestibule.

**GENERAL PUBLIC COMMENT**

Ms. Liz Wahl spoke to a situation this summer when she was stuck downtown and was not able to get a taxi or catch a bus. She believes that the transportation system needs to be looked at.

**REPORTS**

- 14. Economic Development Update.**
  - a. Consideration of a 4<sup>th</sup> appropriation committee.**

Ms. Hinsvark stated that she attempted to take the entities that request funding but do not fit not the three coalitions, and place them into another coalition in order to get the budget "vetting" and the due diligence that is necessary. She has talked to the steering committee and they are happy to guide and mentor a 4<sup>th</sup> coalition. Mr. Mark Anderson stated that they have already gotten three requests that do not fit into the coalitions.



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PUBLIC COMMENT:

Mr. Kerry Shea, President of the Chamber Marketing Committee, stated that they feel that strong summer marketing and a unified messaging piece is imperative. The City and the Chamber have a true partnership and the Chamber is dedicated to that partnership. With respect to the 4<sup>th</sup> Coalition, they are not in favor of summer marketing wrapped into a 4<sup>th</sup> coalition.

Mr. Mark Walker, Chamber Board, spoke to the summer marketing task force and noted that they spent a lot of time researching how we market Steamboat. It is a complex and important issue and they found that overall we have a pretty good deal with Chamber marketing. He believes that we need to look at summer marketing as a stand alone piece as to not dilute its importance.

Mr. Dean Vogelaar does not support adding summer marketing to a 4<sup>th</sup> coalition. He spoke to the "ebb and flow" between Council and the Chamber, which is an important piece and communication needs to continue. The strength of the Chamber is in its committees and the strengths that they bring.

Ms. Kathy Stokes, Chamber Board, supports keeping summer marketing separate. It is very different from other groups that get money from the City.

Mr. Larry Mishawn agrees.

Mr. Jeff Steinke, President of the Chamber, does not support being added to a 4<sup>th</sup> coalition. He stated that the new director has ideas about options and opportunities for a permanent funding source. The new Director will start September 6, 2011 and the Chamber would like him to be here before they move forward.

**DIRECTION:** Schedule a September 19, 2011 joint meeting with the Chamber.

Mr. Peter Hunter stated that summer marketing is very critical and Council needs a direct line of communication.

Mr. Randy Rudacious, Chamber Board, asked that Council "protect the ties" and not dilute the summer marketing fund by adding competing interests.

Mr. Grant Fenton, Chamber Board, believes that this is an important decision that Council should not delegate to another group.

Mr. Rex Brice, Steamboat Restaurant Group, noted the need to make sure that we continue to have summer and winter business.

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Ms. Tracy Barnett, Mainstreet Steamboat Springs, believes summer marketing should be kept separate.

Ms. Hinsvark stated that applications are due August 1, 2011. Council Member Kounovsky stated that he likes the direction that Council is going, but he does want to streamline the process. At some point, we may not be able to get all these requests into one coalition. Ms. Hinsvark stated that there needs to be more due diligence than there was last year.

Council Member Magill supports the 4<sup>th</sup> coalition. He agrees with separating the Chamber, but supports including Mainstreet, the Mountain Village Partnership and the bike initiative items.

Council Member Bentley supports a 4<sup>th</sup> Coalition without summer marketing. However she questioned whether the Yampa Valley Housing Authority (YVHA) and Yampa Valley Partners should be included.

Council Member Myller agrees that YVHA should not be included because they have an intergovernmental agreement.

**UNANIMOUS CONSENT:** Remove the Chamber summer marketing and special events and the Housing Authority.

**b. Economic Development Policy.**

Ms. Hinsvark stated that she has made several of the suggested changes but there is still no consensus on the title. Council Member Bentley suggested Economic Development Policy. **UNANIMOUS CONSENT.**

Council Member Bentley does not agree with the "preserve and protect assets" including City staff. Ms. Hinsvark stated that Management Team felt strongly that they wanted to mention that employees are assets and recognize their roles.

Council Member Bentley suggested recognizing City employees in a different way, like a "spotlight" on The City Page or a wall in City Hall with employee photos and biographies.

**15. City Council**

Council Member Kounovsky:

1. Asked if the tall grass at a house on Amethyst Drive is a nuisance.  
**DIRECTION:** Staff to follow up.

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Council Member Reisman:

1. Noted that he has not been picking up his paper packet but rather has been reading it on line.

Council Member Bentley:

1. Spoke to the proposed addition to the City's website regarding "business/economic climate". City Council President Hermacinski noted that it could cost up to \$4,000 to update the site. **MOTION:** City Council President Pro-Tem Quinn moved and Council Member Bentley seconded to approve up to \$4,000 for a "business/economic climate" page out of Council's Contingency fund. The motion carried 7/0.

**16. Reports**

**a. Agenda Review:**

**1.) City Council agenda for August 2, 2011.**

Council reviewed the above agenda.

**17. Staff Reports**

**a. City Attorney's Update/Report.**

Mr. Lettunich had no report.

**b. Manager's Report: Ongoing Projects.**

Mr. Roberts reported on the following:

1. Reported that Steamboat Springs will host the January 26-27, 2012 Colorado Association of Ski Towns meeting. Normally Council Members and Department Directors make presentations to the group and provide a small breakfast.

**ADJOURNMENT**

**MOTION:** Council Member Bentley moved and City Council President Pro-Tem Quinn seconded to adjourn Regular Meeting 2011-13 at approximately 8:40pm. The motion carried 7/0.

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**MINUTES PREPARED, REVIEWED AND RESPECTFULLY SUBMITTED BY:**

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Julie Franklin, CMC  
City Clerk

**APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011.**

# Agenda Item # 22b

CITY OF STEAMBOAT SPRINGS

REGULAR MEETING NO. 2011-14

TUESDAY, AUGUST 2, 2011

## MINUTES

Ms. Cari Hermacinski, City Council President, called Regular Meeting No. 2011-14 of the Steamboat Springs City Council to order at 5:01pm, Tuesday, August 2, 2011, in Centennial Hall, Steamboat Springs, Colorado.

City Council Members present: Cari Hermacinski, Jon Quinn, Meg Bentley, Bart Kounovsky, Scott Myller and Kenny Reisman. Walter Magill Arrived at 5:06pm.

Staff Members present: Jon Roberts, City Manager; Tony Lettunich, City Attorney; Wendy DuBord, Deputy City Manager; Sabrina James, Records Clerk; Deb Hinsvark; Director of Financial Services; Philo Shelton, Director of Public Works; Tyler Gibbs, Director of Planning Services; Ron Lindroth, Fire Chief; Chris Wilson, Director of Parks, Open Space and Recreation; and J.D. Hays Rae, Police Captain.

**NOTE: All documents distributed at the City Council meeting are on file in the Office of the City Clerk.**

### **COMMUNITY REPORTS/CITY COUNCIL DISCUSSION TOPIC:**

#### **1. Education Fund Board Update.**

Ms. Christy Brown, President of the Education Fund Board, was present to answer any questions.

Council Member Bentley thanked Ms. Brown for the thorough and informative report.

Council Member Reisman stated he was glad to see everything worked out well with the accounting and the audits.

#### **2. Update on the Colorado Coal and Power Generation conference and request for sponsorship.**

Mr. Jerry Nettleton, Environmental Manager with Twentymile Coal Mine, provided some information on Twentymile's contributions to their employees and the

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community. He stated that the coal mine is one of the largest companies in Routt County. It has 500 full time employees 100 temporary or contract employees. He gave multiple examples of other ways the coal mine makes financial contributions to the community.

Mr. Nettleton highlighted some of the speakers and topics that will be discussed at the Water and Energy Conference that will be held August 23<sup>rd</sup> at The Sheraton.

City Council President Pro-Tem Quinn thanked Mr. Nettleton for the report and the invitation to the conference. Council Member Magill, Mr. Shelton, and Mr. Roberts will be attending the conference.

Council Member Bentley asked that Mr. Nettleton give a presentation to Council every year. She believes that it is important that the coal mine offers public education and out reach programs to the community.

City Council President Hermacinski agreed with Council Member Bentley and thinks that coal is an important part of our future.

**MOTION:** City Council President Pro-Tem Quinn moved and Council Member Kounovsky seconded to donate the government sponsored level of \$1000 to be taken from the City Councils contingency budget. The motion carried 7/0.

**3. Request from Steamboat Art Museum (SAM) to sell the back bar in the Rehder Building to Little Snake River Museum in Savory Wyoming.**

City Council President Pro-Tem Quinn asked if SAM could make use of the bar for events that they do in house.

Mr. Rod Hanna, Board Member Steamboat Art Museum, explained that SAM is turning the space into an exhibition space and will be putting an opening in the front part of the museum and the bar is in the way. The bar is not of use to them and they feel it is a good solution for it to go to another museum in an area from where it came from.

Council Member Bentley noted that transferring the bar to another museum is the best use, rather than storing it somewhere.

PUBLIC COMMENT: No one appeared for public comment.

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**MOTION:** Council Member Bentley moved and Council Member Magill seconded to sell the bar to the Little Snake River Museum for \$7000.00 with a \$2000 "finders fee" be donated to SAM; net of \$5000.00 to the city. The motion carried 7/0.

**CONSENT CALENDAR: MOTIONS, RESOLUTIONS AND ORDINANCES  
FIRST READINGS**

**4. RESOLUTION: A resolution establishing a licensing fee for Non Cigarette Tobacco Retailers.**

City Council President Hermacinski read the resolution title into the record.

Council Member Kounovsky stepped down.

PUBLIC COMMENT: No one appeared for public comment.

**MOTION:** Council Member Magill moved and Council Member Bentley seconded to approve a resolution establishing a licensing fee for Non Cigarette Tobacco Retailers. The motion carried 6/0. Council Member Kounovsky stepped down.

Council Member Kounovsky returned to the meeting.

**5. RESOLUTION: A resolution approving the submittal of a grant application to Great Outdoors Colorado for the Howelsen Hill Snowmaking Project, expressing intent to provide matching funds and intent to provide annual maintenance of the proposed snowmaking.**

City Council President Hermacinski read the resolution title into the record

Council Member Kounovsky asked if the addition of new snowmaking equipment will increase the operating budget for Parks and Recreation.

Mr. Wilson stated that the new equipment will add some additional seasonal hours, but also will allow faster snowmaking compared to the slower guns which take much longer to make snow. He believes they will break even.

PUBLIC COMMENT: No one appeared for public comment.

**MOTION:** Council Member Bentley moved and City Council President Pro-Tem Quinn seconded to approve a resolution approving the submittal of a grant application to Great Outdoors Colorado for the Howelsen Hill Snowmaking

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Project, expressing intent to provide matching funds and intent to provide annual maintenance of the proposed snowmaking. The motion carried 7/0.

- 6. RESOLUTION: A resolution approving the submittal of a grant application to Great Outdoors Colorado for the Emerald Mountain Park Planning Project, expressing intent to provide matching funds.**

City Council President Hermacinski read the resolution title into the record.

Council Member Magill stated that he thought they put money aside for an Emerald Mountain Plan.

Council Member Myller stated the funds that were set aside previously were for the Rodeo Grounds, which was similar.

City Council President Hermacinski would like to make the approval of submission of the grant contingent upon HEMP raising \$15,000 match. She pointed out that citizens associated with items 5 & 7 have raised the matching funds so those do not come from the City's CIP. She would like to see the same thing on agenda item 6.

Mr. Wilson stated that the funds were not previously donated for the Master Plan in this way. The HEMP board has been discussing grants and fund raising to work toward this goal.

City Council President Hermacinski stated that she is not inclined to support this until the 2012 CIP is done in aggregate so they can compare "apples to apples". She requests that they switch the match to privately raised funds and the grant will be submitted after the funds are raised. In October, if the budgeting process is different, they can always commit some public funds.

Council Member Reisman stated that he is okay with donating staff support, but HEMP needs to find the matching funds.

Council Member Kounovsky agrees with City Council President Hermacinski wants to see the CIP budget before he would support this and the match needs to come from the HEMP group.

Council Member Myller asked if they could donate the money from the Council funds. There is 11,000 dollars left for the next four months.

PUBLIC COMMENT: No one appeared for public comment.



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**MOTION:** City Council President Pro-Tem Quinn moved and Council Member Bentley seconded to approve the City of Steamboat moving forward with a grant application funding 1000 dollars out of the City councils contingency budget and 14,000 dollars of match funds to be obtained privately from HEMP. The motion carried 4/3. Council Members Kounovsky, Reisman and Hermacinski opposed.

Discussion during the motion:

Council Member Magill does not want to miss out on the grant. He asked if there is a deadline for submitting the grant.

Mr. Wilson said that there is a submission deadline for the grant and it is important to get a motion for Ms. DelliQuadri to move forward with the grant.

Mr. Roberts stated that Council's concern regarding the CIP is prudent since it is primarily funded by development related dollars, excise fee and use tax. The five year CIP is going to be challenged for the next several years and any thing City Council can do to relieve an obligation of the CIP funding would be prudent.

- 7. RESOLUTION: A resolution approving the submittal of a grant application to Great Outdoors Colorado for the Howelsen Hill Magic Carpet Ski Lift Project, expressing intent to provide matching funds and intent to provide annual maintenance of the proposed Magic Carpet ski lift.**

City Council President Hermacinski read the resolution title into the record.

- 8. RESOLUTION: Approving an Intergovernmental Agreement between the City of Steamboat Springs and the Steamboat Springs Local Marketing District ("LMD") concerning the operation of the LMD.**

City Council President Hermacinski read the resolution title into the record.

Mr. Lettunich explained the changes and stated that there are some disagreements on the administrative fee to be charged (one percent on the .25 cent sales tax and/or one percent on the existing accommodation tax).

**PUBLIC COMMENT:**

Mr. Tom Sharp, attorney for the LMD, stated that there is no objection to the one percent administration fee against the sales tax. The disagreement is the

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one percent added against the accommodations tax. He stated that the original 2004 ordinance directs the LMD to spend the full revenues received from the accommodations tax and there is nothing that authorizes the retention of the one percent on the accommodations tax. The IGA would be inconsistent with the ordinance. The LMD does not understand the services or value they would get from the City for the one percent fee, which amounts to approximately 10,000 - 13,000 dollars in addition the one percent under the sales tax.

City Council President Hermacinski stated that it is required by law to go through audits and necessary reports that come with an income stream from a tax.

Ms. Hinsvark stated that she has apologized for the lack of communication between the City and the LMD. The LMD is a government and they have to be audited and must file both budget and end of year reports with the State. The City has always done the LMD's accounting and bookkeeping since inception. She said the LMD asked the City to audit their taxes, which would mean auditing the collection of the tax from the tax payers within the LMD, which is collected by the State. The City does not have the ability to audit for them. There are outside entities that can and their costs are about 3500.00 dollars. Ms. Hinsvark stated the one percent pays for the accounting, book keeping, auditing and filing of reports for the LMD.

City Council President Hermacinski asked if the one percent equaled out to 10,000 dollars per year. She asked Ms. Hinsvark if the LMD is being charged for the overhead.

Ms. Hinsvark stated the one percent came after researching the Education Fund Board's accounting process. They hired from the private sector which cost them 15,000 dollars to run their audit and reports.

City Council President Pro-Tem Quinn asked if they need to make a decision tonight. Lettunich stated that there needs to be a decision for seconded reading.

City Council President Hermacinski asked Mr. Lettunich if taking 10,000 dollars /year adjusted for inflation to pay for the accounting instead of taking one percent of the income stream would be an option. Mr. Lettunich stated that should not be a problem. He said that an entity should be charged for the services that are rendered. Mr. Lettunich asked if the LMD would be willing to sign off on the IGA before the second reading.

City Council President Hermacinski asked Mr. Sharp if the language was changed to 10,000 dollars/year adjusted for inflation would address the legal concerns. Mr. Sharp directed the question to Mr. Steve Dawes.

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Mr. Dawes, Local Marketing District, believes the IGA, as is, has accomplished a lot. They have the transparency; they have an agreement on the one percent administration fee, to adopt bylaws, and to improve the documentation on payables. The issue is the extra 10,000 dollars. The sole purpose of the proposed sales tax is to bring in more money, to bring in more seats on the airline program.

City Council President Hermacinski stated that if the LMD used an outside private auditor the charges would be in excess of 10,000 dollars.

City Council President Pro-Tem Quinn understands Mr. Dawes' concerns and pointed out that the City asks other entities to pay these fees. These were not accounted for previously. He thinks it is appropriate to keep the one percent in the IGA and it would also be appropriate for the LMD to request the one percent back from each Council on an ongoing basis as a contribution towards the air program. The City needs to have this fully accountable.

**MOTION:** City Council President Pro-Tem Quinn moved and Council Member Myller seconded to approve the draft starting on page 9 as written including the one percent. Amend the motion to further direct the Finance department to draft a letter of deliverables and a schedule. The motion carried 6/1. Council Member Magill opposed.

Discussion took place regarding the one percent or 10,000 dollar fee; legal issues; tax payers challenging the one percent retainage.

**DIRECTION:** Finance Director to draft a letter of deliverables for the LMD.

**9. FIRST READING OF ORDINANCE: An ordinance adopting the Uniform Election Code of 1992 in lieu of the Municipal Election Code of 1965 as amended, for the Regular Municipal Election to be held on November 1, 2011 to permit the City to participate in a coordinated mail ballot election with Routt County.**

City Council President Hermacinski read the ordinance title into the record.

**MOTION:** City Council President Pro-Tem Quinn/Council Member Myller; To approve items 7 & 9 of the Consent Calendar; a resolution approving the submittal of a grant application to Great Outdoors Colorado for the Howelsen Hill Magic Carpet Ski Lift Project, expressing intent to provide matching funds and intent to provide annual maintenance of the proposed Magic Carpet ski lift; first

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reading of an ordinance adopting the Uniform Election Code of 1992 in lieu of the Municipal Election Code of 1965 as amended, for the Regular Municipal Election to be held on November 1, 2011 to permit the City to participate in a coordinated mail ballot election with Routt County. The motion carried 7/0.

**PUBLIC HEARING: ORDINANCE SECOND READINGS**

- 10. SECOND READING OF ORDINANCE: An ordinance approving a lease between the City of Steamboat Springs and Smartwool, LLC and authorizing the City Council President to sign lease documents; repealing all conflicting ordinances; providing for severability; and providing an effective date.**

City Council President Hermacinski read the ordinance title into the record.

**MOTION:** Council Member Bentley moved and City Council President Pro-Tem Quinn seconded to approve the second reading of an ordinance approving a lease between the City of Steamboat Springs and Smartwool, LLC and authorizing the City Council President to sign lease documents; repealing all conflicting ordinances; providing for severability; and providing an effective date. The motion carried 7/0.

- 11. SECOND READING OF ORDINANCE: An ordinance for the purpose of submitting to a vote of the electors of the City of Steamboat Springs, Colorado the question of whether the City should be allowed to increase the Sales and Use Tax by .25% from 4.5% to 4.75% for a period of five years and dedicate the revenues from said tax to the Steamboat Springs Local Marketing District to support guarantees to commercial air carriers to provide non-stop service to the Yampa Valley Regional Airport in Hayden; and establishing an effective date and an expiration date.**

City Council President Hermacinski read the ordinance title into the record.

Mr. Rob Pearlman, Senior Vice President of Sales and Marketing at Steamboat Ski and Resort Corporation (SSRC) stated the costs of having airlines fly into Steamboat are going up 25% every year just to increase seats by 4%. The accommodations went down approximately 33%. Capacity is down 27%; this is the lowest since 1994/95. It is important for the community to understand how important it is to approve the .25% cent tax to keep seats open for guests to fly into Steamboat.

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Mr. Kent Meyers reported on the importance of the air program and how Steamboat is no different than any other resort. He gave an example of Eagle/Vail how they pay American Airlines half a million dollars to fly into Eagle/Vail. For the month of September Eagle/Vail paid \$100,000 to keep American Airlines flying into Vail. All small communities have had challenges in keeping airlines flying into their airports.

Council Member Myller has concerns about the tax, because the locals all pay for this when they pay for their groceries and other amenities.

Mr. Pearlman gave an example of how much the increase would cost a family of 4, \$3.66/month more than they currently pay on a yearly basis that works out to \$39.96/year.

Council Member Reisman asked when the education program will be presented to the community, because right now people are concerned that is all to benefit Ski Corp.

Mr. Pearlman said the campaign will start tomorrow. There are a lot of things that need to happen, put a committee together have discussion with Ski Corp, LMD, and the Chamber.

Council Member Magill stated how important it is to have the air program so that people can fly into Steamboat, because a lot of visitors won't drive to Steamboat for a ski vacation.

Mr. Lettunich pointed out the additional language on page 11-5, Section 10, of the IGA.

City Council President Pro-Tem Quinn stated that it is going to be a huge effort to show everyone how this benefits the whole community, not just Ski Corp. and the lodging community.

**MOTION:** City Council President Pro-Tem Quinn moved and Council Member Magill seconded to approve with the amended language on Section 10, an ordinance for the purpose of submitting to a vote of the electors of the City of Steamboat Springs, Colorado the question of whether the City should be allowed to increase the Sales and Use Tax by .25% from 4.5% to 4.75% for a period of five years and dedicate the revenues from said tax to the Steamboat Springs Local Marketing District to support guarantees to commercial air carriers to provide non-stop service to the Yampa Valley Regional Airport in Hayden; and establishing an effective date and an expiration date. The motion carried 7/0.

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**PLANNING  
PROJECTS**

**PLANNING COMMISSION REPORT**

Council Member Magill asked Mr. Gibbs about the Planning Commission update letter and delay in getting the items complete and if they needed more staff.

Mr. Gibbs stated that there are a lot of things that need to get done. They are addressing these issues as quickly as possible. Development review activity is slow, it still takes a significant proportion of customer service is very important. Staff balances their time between development reviews and customer projects, time beyond that is dedicated to move the code reforms through. No one is dedicated to one project.

City Council President Hermacinski asked if the citizens group to review the CDC has been seated and if the revisions are moving along. Gibbs said yes and he would update Council at a later time.

Council Member Reisman asked about the Steamboat Hotel sign and if the Code is clear on the dimming of signs. Mr. Gibbs is looking into it to see if the sign is working correctly. The manager of the hotel said that when the hotel is booked he turns the sign off. Gibbs noted that the sign code could use work.

**CONSENT CALENDAR - PLANNING COMMISSION REFERRALS:**

**PLANNING  
PROJECTS**

**12. PROJECT: Steamboat Christian Center**

PETITION: Final development plan to construct an addition of a new multi-use building in three phases and to process variances to the side building setback standards and snow storage requirements.

City Council President Hermacinski read the project into the record.

**13. FIRST READING OF ORDINANCE: An ordinance amending Chapter 26 of the Steamboat Springs Revised Municipal Code by adding a definition and use criteria for Animals, goats; revising the definition of farm animal; amending the use table to permit animals, goats as a use with criteria and prohibit this use in certain zone districts; providing for severability; providing an effective date; repealing all conflicting ordinances; and setting a hearing date.**

City Council President Hermacinski read the ordinance title into the record.

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Council Member Magill asked if the goats will be allowed in all zones.

Mr. Lorson commented on the text amendment to the Community Development Code regarding temporary goats, which allows no more than 3 goats for 10 days for weeding. He spoke to owning goats in the other Zone districts and the type of fencing that is used.

PUBLIC COMMENT: No one appeared for public comment.

**MOTION:** Council Member Myller moved and Council Member Reisman seconded to approve an ordinance amending Chapter 26 of the Steamboat Springs Revised Municipal Code by adding a definition and use criteria for Animals, goats; revising the definition of farm animal; amending the use table to permit animals, goats as a use with criteria and prohibit this use in certain zone districts; providing for severability; providing an effective date; repealing all conflicting ordinances; and setting a hearing date. The motion carried 6/1. Council Member Magill opposed.

- 14. FIRST READING OF ORDINANCE: An ordinance rezoning a Metes and Bounds parcel, as described in Exhibit A, from Residential Estate One – Low Density, (RE-1) to Industrial (I); repealing all conflicting ordinances; providing for severability; and providing an effective date.**

City Council President Hermacinski read the ordinance title into the record.

**MOTION:** Agenda Items 12 and 14; a final development plan to construct an addition of a new multi-use building in three phases and to process variances to the side building setback standards and snow storage requirements; Council Member Kounovsky/City Council President Pro-Tem Quinn; **APPROVED;** Vote 7/0.

#### **H. PUBLIC HEARING – PLANNING COMMISSION REFERRALS**

- 15. PROJECT: Original Addition to Steamboat Springs, Block 28, Lots 7-9**

PETITION: Development Plan to process a conditional use permit for outdoor sales in a mobile vending cart.

City Council President Hermacinski read the project into the record.

Council Member Bentley stated that this proposal is located right across from Chao Gelato who pays rent monthly for their location. She feels that this will

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directly affect their business. She stated that it is in the City's Economic Development Plan to encourage established businesses.

Mr. Derrik Stahlecker, applicant, stated that he will be paying rent on the property where he is located and the processing fee for a new business is very expensive.

PUBLIC COMMENT: No one appeared for public comment.

**MOTION:** Council Member Bentley moved and Council Member Magill seconded to deny the development plan to process a conditional use permit for outdoor sales in a mobile vending cart. The motion failed 2/5. Council Members Hermacinski, Quinn, Myller and Reisman and Kounovsky opposed.

Council Member Magill said that he feels they are undercutting the established businesses.

City Council President Pro-Tem Quinn noted that another restaurant could open up next-door and sell ice cream.

Council Member Reisman agrees that we do need to protect the existing businesses, but as a government they need to be user friendly, transparent, consistent and encourage new business.

**MOTION:** City Council President Pro-Tem Quinn moved and Council Member Myller seconded to approve the development plan to process a conditional use permit for outdoor sales in a mobile vending cart. The motion carried 5/2. Council Members Magill and Council Members Bentley opposed.

**16. SECOND READING OF ORDINANCE: An ordinance amending Community Development Code Section 26-84 (D) (1) "Historic Preservation Commission" to allow out of City residents residing within Routt County the ability to apply for and serve on the Historic Preservation Commission in accordance with ordinance 2190 of the Revised Municipal Code.**

City Council President Hermacinski read the ordinance title into the record.

**MOTION:** Council Member Myller moved and City Council President Pro-Tem Quinn seconded to approve the second reading of an ordinance amending Community Development Code Section 26-84 (D) (1) "Historic Preservation Commission" to allow out of City residents residing within Routt County the



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ability to apply for and serve on the Historic Preservation Commission in accordance with ordinance 2190 of the Revised Municipal Code. The motion carried 7/0.

**REPORTS**

**18. City Council**

Council Member Magill:

1. Asked about the "renegade" bike park behind the Blue Sage subdivision and also for follow up on the Whistler Park activity. Mr. Wilson stated the Parks and Recreation Commission has met regarding this issue and they directed staff to remove some of the structure and to post "No trespassing signs" on the property. The Whistler Bike project is still moving forward with the process to get approved.

City Council President Hermacinski asked if the "improvements" that have been added are going to be temporarily removed?

Mr. Wilson stated that it will be removed until another park can be built. He said Duckles Construction has volunteered to reclamate the property at no cost to the City.

Council Member Bentley does not agree with rewarding a group with a new park when they illegally built on private property.

Council Member Kounovsky:

1. Commented on the new bike lanes and how the tubers are using them on Yampa and it seems to be working well.

City Council President Hermacinski:

1. Is meeting with Mr. Grant Fenton and Mr. Rob Mitchell about the "sharrows".

Council Member Reisman:

1. Asked about the dilapidated work out equipment on the lower Spring Creek trail. Mr. Wilson stated that there is no money in the budget to maintain this equipment so the equipment that is in bad shape is removed. The equipment that is still in good condition is left for people who still want to use it.

City Council President Pro-Tem Quinn:

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1. Asked Mr. Wilson to look into the handicap swing at Whistler Park that needs to be repaired.
2. Asked if there could be a safer way for individuals to cross Highway 40 when getting off at the Dream Island bus stop? Mr. Shelton stated that the US 40 NEPA study identified an underpass for that area and should there be funding for it. Currently there is no easy temporary solution.

Council Member Myller:

1. Will be attending the Bike Town meeting and URAAC Meetings this week.
2. Will be attending the Parks and Recreation and Planning Commission meetings next week.
3. Emerald Mountain Park Partnership group is meeting quite a bit. He thanked Council for the little bit of funding. It is a big job and daunting job for the 15 people. He said getting over the Master plan hurdle will be a huge accomplishment and hopefully they can meet that deadline.

Council Member Bentley:

1. Would like Ms. Jamie Kingsbury, District Ranger, to address Council about the health of the forest and how the forest impacts us. City Council President Hermacinski stated that Ms. Kingsbury is scheduled on the September 20 agenda.
2. Has questions for Mr. Lettunich regarding, the Lanning house, Fairview/Miller and acquiring the affordable housing lots that Vectra Bank owns. Mr. Lettunich to report back.

**GENERAL PUBLIC COMMENT:**

Mr. Ken Brenner stated that the Friends of the Yampa have been successful at raising 100,000 dollars for improvements of the river. They are hoping to complete the project this fall. He thanked Council for their support to the Friends of the Yampa.

Council Member Magill asked about the repair on the C-Hole. Mr. Wilson stated that the C-Hole will be repaired using CIP funds. Repair cost will be minimal.

**19. Reports**

**a. Agenda Review:**

**1.) City Council agenda for September 6, 2011.**

Council reviewed the above agenda.

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City Council President Hermacinski noted that the first reading of the budget is scheduled for October 17, seconded reading is scheduled for November, and so the new Council members can be involved.

**20. Staff Reports**

**a. City Attorney's Update/Report.**

Mr. Lettunich had no report.

**b. Manager's Report: Ongoing Projects.**

Mr. Roberts reported on the following:

1. New electronic tablets for Council and what would best fit their needs:

City Council President Pro-Tem Quinn discussed with Council the electronic device that would be best suited for Council and the paperless packet.

Council Member Magill asked why the need to "lock down" the iPad machine and if it was necessary to return the machine every week to have packet added to it.

Council Member Reisman asked if it is necessary to drop off on Tuesday and pick up on Friday, if everything is electronic. Why can't they just keep the tablet and download the packets instead of returning it to City hall weekly.

City Council President Hermacinski asked if Council wants to move forward.

**DIRECTION:** Staff to order 8 ipads.

**MOTION:** Council Member Magill moved and Council Member Reisman seconded to purchase 8 iPads; 7 for Council and 1 for the City Manager. The motion carried 7/0.

**OLD BUSINESS**

**21. Minutes**

**a. Regular Meeting 2011-12, July 5, 2011.**

**MOTION:** Council Member Bentley moved and City Council President Pro-Tem Quinn seconded to approve the July 5, 2011 City Council minutes. The motion carried 7/0.

**ADJOURNMENT**

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**MOTION:** Council Member Myller moved and Council Member Bentley seconded to adjourn Regular Meeting 2011-14 at approximately 7:20pm. The motion carried 7/0.

**MINUTES PREPARED, REVIEWED AND RESPECTFULLY SUBMITTED BY:**

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Julie Franklin, CMC  
City Clerk

**APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011**