

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
FEBRUARY 11, 2010**

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building, City Council Chambers, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, February 11, 2010.

Closed Session

3:00 p.m. Personnel, property and litigation

Work Session

4:30 p.m. Council questions and comments

4:40 p.m. Legislative update

4:50 p.m. Recreation Center update

P. 7 - 42

5:20 p.m. Comstock Avenue sidewalk

P. 43 - 49

- Update
- Public input

5:50 p.m. Break

Regular Meeting

6:00 p.m.

I ROLL CALL

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

III PUBLIC INPUT (*Any matter of City business not scheduled on agenda*)

IV WORK SESSION NOTES AND MINUTES OF MEETING OF JANUARY 28, 2010

P. 50 - 53

V NEW BUSINESS (*New items with presentations and/or anticipated detailed discussions*)

1, Consideration of the display of art on City-owned property at the 528 Main Street walkway – Park City Historical Society

P. 54 - 59

2. Consideration of authorization of the City Manager to enter into the Agreement For Conveyance of a Conservation Easement Deed between the Afton Osguthorpe Sheltered Trust, Summit Land Conservancy and Park City Municipal Corporation in the amount of \$5,750,000, plus the reimbursement of 150 water credits for \$375,000, and approval of the Conservation Easement, each in form approved by the City Attorney, regarding Parcel SS-98, which is comprised of approximately 121 acres in Summit County, Utah

P. 60 - 96

VI ADJOURNMENT

A majority of City Council members may meet socially after the meeting. If so, the location will be announced by the Mayor. City business will not be conducted.

Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the City Recorder at 435-615-5007 at least 24 hours prior to the meeting.

Wireless internet service available in Marsac Building on Wednesdays and Thursdays – 4 p.m. to 9 p.m.

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
FEBRUARY 18, 2010**

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will **not** hold its regularly scheduled meeting on Thursday, February 18, 2010.

Posted: 02/08/10

See www.parkcity.org

**PARK CITY COUNCIL MEETING TENTATIVE
SUMMIT COUNTY, UTAH
FEBRUARY 25, 2010**

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building, City Council Chambers, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, February 25, 2010.

Closed Session

Property and litigation

Work Session

5:00 p.m. Council questions and comments

5:10 p.m. Legislative update

5:20 p.m. Park Silly Sunday Market

- Update
- Public input

5:50 p.m. Break

Regular Meeting

6:00 p.m.

I ROLL CALL

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

III PUBLIC INPUT *(Any matter of City business not scheduled on agenda)*

IV WORK SESSION NOTES AND MINUTES OF MEETING OF FEBRUARY 4, 2010

V NEW BUSINESS *(New items with presentations and/or anticipated detailed discussions)*

1. Consideration of a Special Services Contract with the Park Silly Sunday Market
2. Consideration of an Ordinance approving the extension of the 68 Prospect Street Replat, an amendment to Lots 8, 9 and 10 of Block 18 of the Park City Survey, Park City, Utah
 - (a) Public hearing
 - (b) Action
3. Consideration of an Ordinance approving a one year extension of the 313 Daly Avenue Subdivision Plat, an amendment to Parcels 1 and 2
 - (a) Public hearing

(b) Action

4. Consideration of an Ordinance approving a one year extension of the Habitat Replat Plat Amendment, located at 154 Marsac Avenue, Park City, Utah

(a) Public hearing

(b) Action

5. Consideration of an Appeal of the Planning Commission's December 9, 2009 approval of a Conditional Use Permit for 1440 Empire Avenue, applicant Craig Elliott AIA - Appellants David and Rosemary Olsen, Rick Margolis, and Bill and Dianne Newland

(a) Staff presentation and scope of appeal

(b) Appellants' presentation

(b) Possible Action

6. Consideration of an Ordinance approving the 1440 Empire Avenue Subdivision, located at 1440 Empire Avenue, Park City, Utah

(a) Public hearing

(b) Action

VI ADJOURNMENT

A majority of City Council members may meet socially after the meeting. If so, the location will be announced by the Mayor. City business will not be conducted.

Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the City Recorder at 435-615-5007 at least 24 hours prior to the meeting.

Wireless internet service available in Marsac Building on Wednesdays and Thursdays – 4 p.m. to 9 p.m.

Posted: 02/22/10

See www.parkcity.org

Note: This future meeting schedule is TENTATIVE and subject to change.
PARK CITY COUNCIL TENTATIVE MEETING SCHEDULE

March 2010

- 4 Legislative update
Professional Services Agreement with Bowen Collins and Associates for the design of the Judge Tunnel Pipeline in the amount of \$____
- 11 **Liza gone**
Legislative update
Budget update
- 18 Renewable Energy Feasibility Study for Park City (1 hour)
- 25 **No meeting**

April 2010

- 1
- 8 **No meeting**
- 15 Quarterly goal update
Anti-discrimination ordinance
- 22
- 29

May 2010

- 6 Presentation of budget – work
- 13 Budget - work
- 20 Budget - work
- 27 Budget – work

Pending Items:

Open space maintenance
U S Postal Service gang boxes in Old Town - MC
Quinn's WTP Building Construction Contract – TT
Special event prioritization – work
Performance measures (work)
Resolution amending (or replacing) Resolution No. 20-07, adopting Affordable Housing Guidelines and Standards for Park City, Utah
Carrying capacity/market analysis survey
Wild land interface issues

City Council Staff Report



Author: Matt Twombly
Subject: Recreation Center Remodel Design Update
Date: February 11, 2010
Type of Item: Informational

Summary Recommendation –

This report is for informational purposes only.

Topic: Recreation Center Remodel Design

Background:

At the May 7, 2009 meeting Council discussed the phasing plan and budget for the Recreation Center Remodel project. The Council direction from the meeting was to proceed with the Recreation Center Remodel project as one project (replace the tennis building), however after the bids are received in late winter/early spring, Council could determine a level of assurance, based on sales tax revenues, to proceed with the construction of the project or not. This is the council direction still in effect and being followed by staff. Since the budget adoption the design team has developed drawings and completed the Master Plan Development (MPD) process.

The Planning Commission reviewed the Pre- MPD application and site planning on October 28, 2009. The Planning Commission found the project consistent with the General Plan. On November 11, 2009 the Planning Commission reviewed the MPD for the project. The Planning Commission gave comment, generally about Height, Open Space, visual analysis of building, façade lengths, and future build-out.

On December 2, 2009 the City held a public open house where approximately 50 people attended to comment on the design of the Recreation Center. Also on December 2, 2009, the Recreation Advisory Board (RAB) had their regularly scheduled meeting and discussed the design of the remodel project. On December 3rd, 2009 staff presented the design development drawings to City Council. The public were generally supportive of the presented design and both RAB and Council were supportive in moving forward with the design as presented.

On December 9, 2009 The Planning Commission heard this application as part of the regular agenda. At that time a public hearing was also held. The Commission's comments generally concerned the height due to the regulation tennis clear zone, the height and the architecture of the entry element and it's compatibility with the neighborhood, the color of the metal panels, and construction impacts.

Based on the Commissioner's comments and public input, the design team reworked certain aspects of the previous design (See Exhibit A), including a redesign to the entry feature and reduction in height to the tennis building. The redesigned entry feature now includes gabled roof forms that are more consistent with those found in the neighborhood and a lowered overall entry element. The entry element will be approximately one foot higher than the main tennis ridge. Previously this feature was significantly higher. The previously proposed gray panel has been exchanged for a dark bronze panel color. The façade has been modified to reflect a floor plan change

(mechanical room), which is now located on the south façade, breaking up the building length with form, additional gabled roof element, and material color change. The clerestories have also been redesigned. Four (4) clerestories on each side of the tennis roof structure are now proposed. Additionally, the clerestories have been slid down off the ridge to align with the new tennis ridge height.

Analysis:

The Park City Recreation Center Master Planned Development was approved by the Planning Commission On January 20, 2010. Consistent with allowances in the Land Management code, the project was reviewed under the MPD criteria for a height exception from the CUP allowed height of 40' (exception requested from 1" and 9" at the clerestory windows; 5" at the tennis ridge; and 2'-8" at the entry) as well as the reduction of parking. All MPD criteria were met for the request of the height and parking exception. All standard Conditions of Approval were applied as well as additional or modified conditions of approval. See attached action letter from Planning (Exhibit B). The added/modified conditions are number 10-13, 15, & 16. The project managers worked with the commission over the last three Planning Commission meetings on the hours of work, including limited hours of construction, based on the public comment and concerns.

Final Action by the Planning Commission may be appealed to the City Council within 10 calendar days of the Final Action. A majority of Council may call up any Final Action within 15 days of the Final Action. There was no appeal or call up made within the timeframe allowed.

One of the comments raised in the public open house and reiterated by Council at the December 3, meeting was the size of the soft arts studio. In the design changes made through MPD process; the soft arts studio square footage was increased from approximately 600 square feet to 1000 square feet. The feasibility study identified between 4000 – 6000 square feet total for Weights/Cardio space. The current design allocates 5,223 square feet which is consistent with the study. The design incorporates the following program elements:

	Current Square Footage (estimated)		Proposed Square Footage	
Group Fitness	Group Fitness	1,053 sq ft	Group Fitness	1,190 sq ft
	Spin	500 sq ft	Spin	771 sq ft
		1,553 sq ft	Fitness Storage	225 sq ft
			Soft Arts	1,051 sq ft
				3,237 sq ft
Weight		1,974 sq ft		3,311 sq ft
Cardio		1,000 sq ft		1,913 sq ft
Tennis		25,854		29,000 sq ft
Track		None		7,850 sq ft
Administration		2,500 sq ft	Office 1	114 sq ft
			Office 2	114 sq ft
			Office 3	118 sq ft
			Conf. Room	195 sq ft
			Workroom	137 sq ft
			Rec Storage	66 sq ft
			Rec Staff	798 sq ft
				1542 sq ft
Tennis Office		Included Above	Tennis Office	327 sq ft
			Tennis Director	151 sq ft
			Tennis Conf.	148 sq ft

			626 sq ft
Life Guard	None	Life Guard Office	172 sq ft
		Laundry	81 sq ft
			253 sq ft
Lobby	1220 sq ft		3,130 sq ft
Reception Desk	Included above		600 sq ft
Reception Office	Included above		267 sq ft
Child Care	350 sq ft		667 sq ft
Pro Shop	252 sq ft		350 sq ft
Party Room	None		448 sq ft
Day Spa	Included in circulation below		None
Locker Rooms	2,600 sq ft	M. Shower/Locker	1170 sq ft
	Included above	M. Steam	84 sq ft
	No Family	Family Change	135 sq ft
	No Family	Family Change	135 sq ft
	Included above	W. Shower Locker	1330 sq ft
	Included above	W. Steam	84 sq ft
			2,938 sq ft
Restaurant	3,000 sq ft		None
Game Room	None		631 sq ft
Bouldering	None		451 sq ft
Custodial	50 sq ft		158 sq ft
Rec Storage	1,386 sq ft		913 sq ft
Bubble Storage	None		400 sq ft
Tennis Storage	None		963 sq ft
Emergency Storage	None		190 sq ft
Circulation/ Mechanical/ Electrical/ Etc.	11,177sq ft		13,027 sq ft
Gymnasium	9,462 sq ft		9,462 sq ft
Total Building	62,378 sq ft		82,327 sq ft

During the MPD process the design team was requested to consider upgrading the remodel to an essential facility. The upgrade would enable the facility to be used after a seismic event as a shelter. Due to the timing of the production of contract documents the design does not include the upgrade, and because the upgrade was not included in the project budget, the upgrade will be bid as alternate. The estimated cost of the upgrade is approximately \$200,000. If Council decides to proceed with the upgrade after bidding there will additional design costs of approximately \$32,000 to re-do the entire structural construction documents to include the upgrade.

Since the approval of the MPD by the Planning Commission, the Design Team has proceeded with the contractor prequalification process. The Request for Qualifications (RFQ) has been advertised and the Pre-qualification package including Design Development (DD's) drawings are assembled for distribution to contractors. The design team has updated the timeline through construction included below:

MPD Approval	January 20, 2010
Finalize DD's for Contractor Prequalification	January 21 – February 10, 2010
VCBO develop CD's	February 1 - March 30, 2010
Advertisement for RFQ	February 4 – February 10, 2010
Distribute DD for cost estimates	February 10, 2010
Pre-qualification proposal meeting	February 16, 2010
RFQ submittals	February 22, 2010
Shot list of pre-qualified contractors	February 22 – March 1, 2010

Cost estimates/ value engineering	March 1 – March 30, 2010
Building Review	March 30 – April 15, 2010
Bidding Period	April 15 – May 10, 2010
Bid opening	May 10, 2010
Council direction/Bid Award	May 20, 2010
Recreation Center tenant notification	May 20 – July 20, 2010
Relocate RC to Iron Horse	June 1- June 15, 2010
Mobilize for Construction	July 10, 2010
Construction	July 10, 2010 – October 15, 2011
Relocate RC from Iron Horse	October 15 – November 1, 2011

There has been recent Council member inquiry into the amount of tennis usage at the facility and the following information was disseminated based on this inquiry. The City does not sell many tennis passes, as most people purchase a punch card or just pay hourly for their court. Depending on the time of year, these numbers vary. While tennis is busy in the winter, the summer is even busier (4 more courts being used). The fitness and weight room areas are not as busy in the summer as people are outside more.

Our best overall estimate, by visually seeing users at the facility from day to day and throughout the year, is that tennis users comprise 40% – 50% of the total users. For the last three fiscal years, the department has tracked a performance measure to try and book 50% of the available court hours. In 2007, they hit 48% for both the winter and summer. In 2008, they hit 52% in the winter and 48% in the summer. In 2009, they hit 55% in the winter and 47% in the summer. Although this does not represent total usage, it's a good measure of use that we track and worthy of mention.

Passes Sold as of Jan. 22, 2010 for this fiscal year.

Pass Type	Number passes	Revenue
Tennis & Fitness Annual – Couple	8	\$5,248
Tennis & Fitness Annual – Family	5	\$4,973
Tennis & Fitness Annual – Single	13	\$10,275
Tennis & Fitness Winter – Couple	2	\$1,249
Tennis & Fitness Winter – Single	3	\$1,796
Indoor Court Punch Card	74	\$15,652
Tennis Lesson Punch Card	218	\$56,739
Fitness Punch Card	1,867	\$104,387
Fitness Passes	569	\$101,539

FY	Tennis Expenses	Tennis Revenues	“Profit”
05	\$451,199	\$537,633	\$86,434
06	\$495,756	\$624,469	\$128,713
07	\$476,019	\$578,979	\$102,960
08	\$516,750	\$617,255	\$100,505
09	\$563,586	\$657,202	\$93,616

In April of 2009 a summary report was presented to Council during budget discussions. In that report, there were some use projections:

Amenity Group	Proposed Square Footage	Cost to Construct & Outfit	Total Hours in a year	Max Users per hr	Total User Hrs per Yr	Cost per User Hour @ 100% Capacity per year	Estimated Current or Projected Hrs used per year	Construction Cost per year based on estimated or projected usage	Cost based on 40 year lifespan	Ongoing replacement cost
Fitness Room	2,941	\$294,100	5,564	50	278,200	\$1.06	1,080	\$272.31	\$6.81	\$
Weight Room	5,517	\$689,625	5,564	30	166,920	\$4.13	21,900	\$31.49	\$0.79	\$\$\$
Cardio Area	1,409	\$176,125	5,564	20	111,280	\$1.58	21,900	\$8.04	\$0.20	\$\$\$
Spinning	619	\$61,900	5,564	16	89,024	\$0.70	368	\$168.21	\$4.21	\$\$\$
Childcare	658	\$131,600	5,564	20	111,280	\$1.18	1,500	\$87.73	\$2.19	\$
Bouldering	373	\$150,000	5,564	10	55,640	\$2.70	7,300	\$20.55	\$0.51	\$
Indoor track	4,305	\$538,125	5,564	35	194,740	\$2.76	23,725	\$22.68	\$0.57	\$
Indoor Tennis Courts	28,928	\$4,100,000								
Pro Shop	354	0	5,564	16	89,024	\$46.05	53,414	\$76.76	\$1.92	\$
Party Room	340	\$44,250	5,564	50	278,200	\$0.16	2,555	\$17.32	\$0.43	\$
		\$51,000	5,564	20	111,280	\$0.46	624	\$81.73	\$2.04	\$
		\$1,000,000								
Restaurant	3,000	0	5,564	125	695,500	\$1.44	18,250	\$54.79	\$1.37	\$\$\$

The design team is comfortable with the changes that have been made to the design of the building as approved by the Planning Commission, as well as the conditions of approval on the Construction Mitigation, and the minor changes to the programming elements; and request that Council review the changes and reaffirm the previous direction to proceed with the production of the Construction Documents and the prequalification and bidding of the project.

Department Review: This report has been reviewed by representatives of Sustainability, Recreation, Planning, Legal Departments and the City Manager's Office and their comments have been integrated into this report.

Alternatives:

A. This report is informational and does not require Council action. Staff requests Council review the information and provide comment to staff.

Significant Impacts:

The construction cost estimates will be updated by the end of March prior to bidding the project. The approved MPD is significantly similar to the plan Council saw in early December. Since it did change slightly, staff wanted Council to see the approved plans that will be put out to bid over the next few months.

Staff Recommendations:

This report is for informational purposes only.

Attachments: Exhibit A – MPD approved Design Drawings
Exhibit B – Action letter

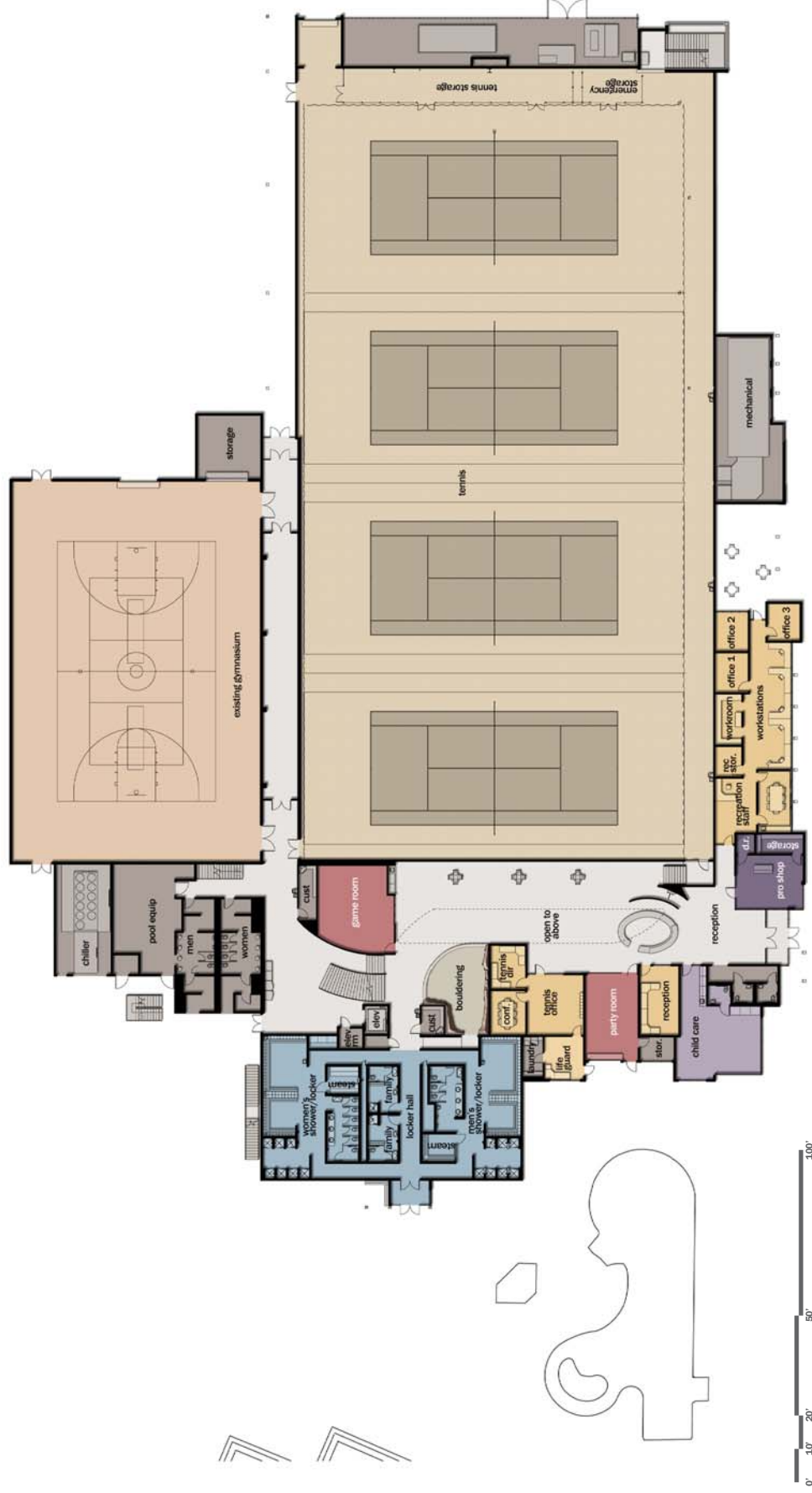


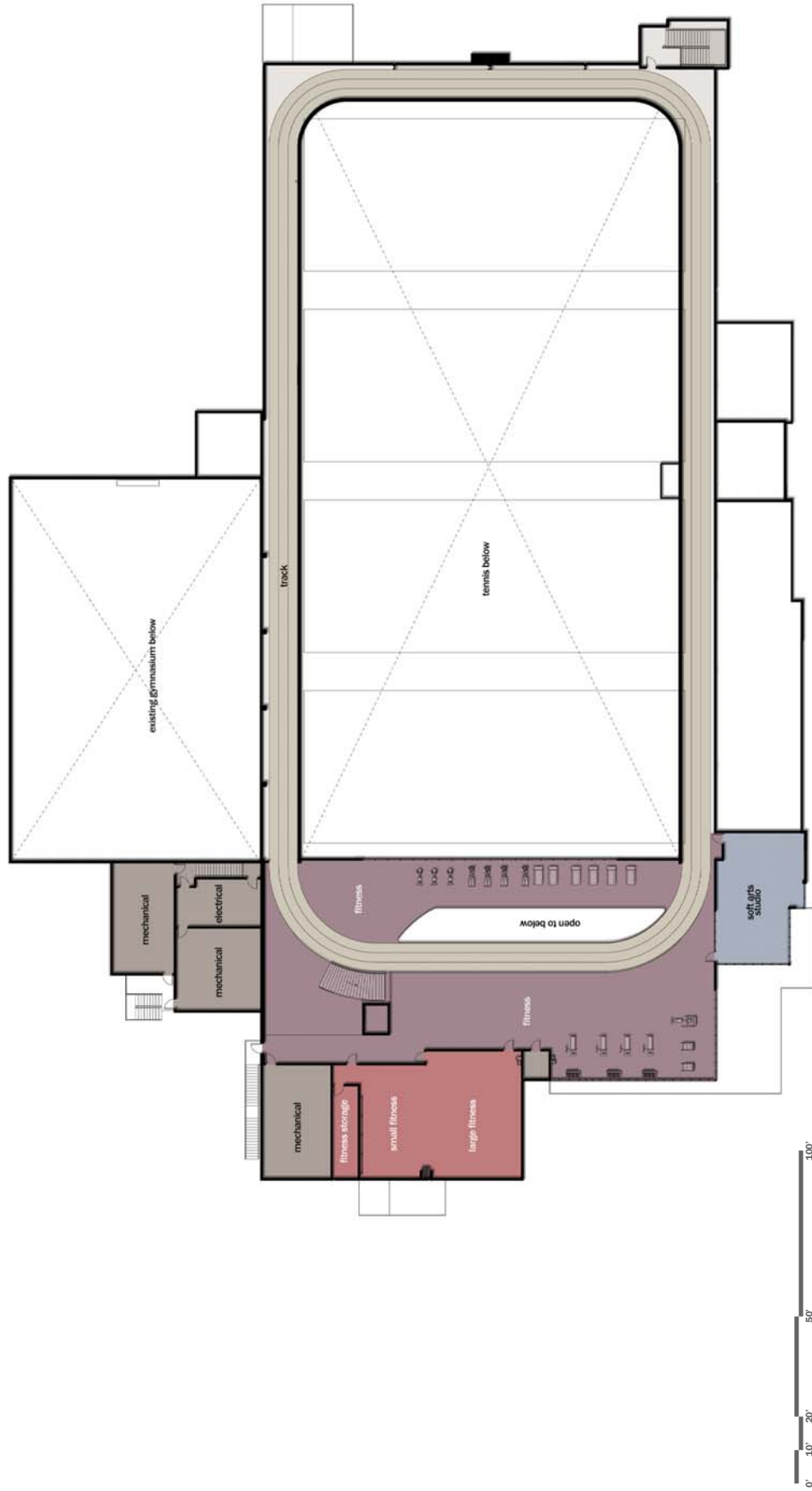


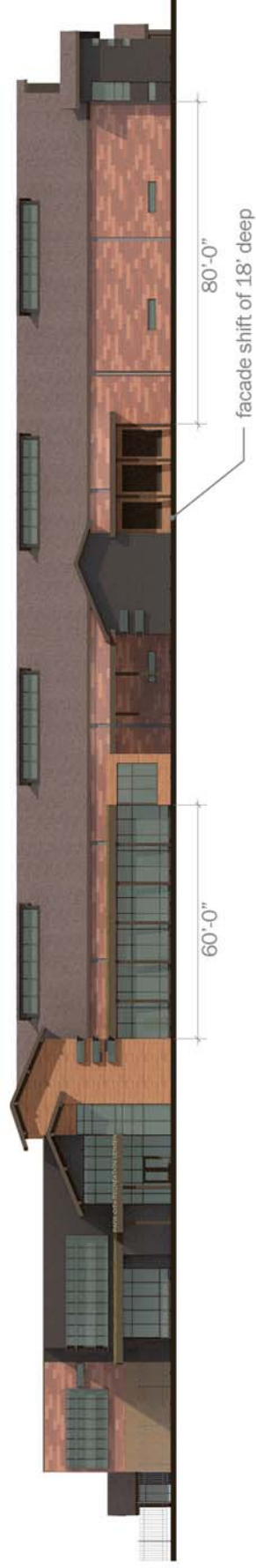
Site Plan - Existing West Lot



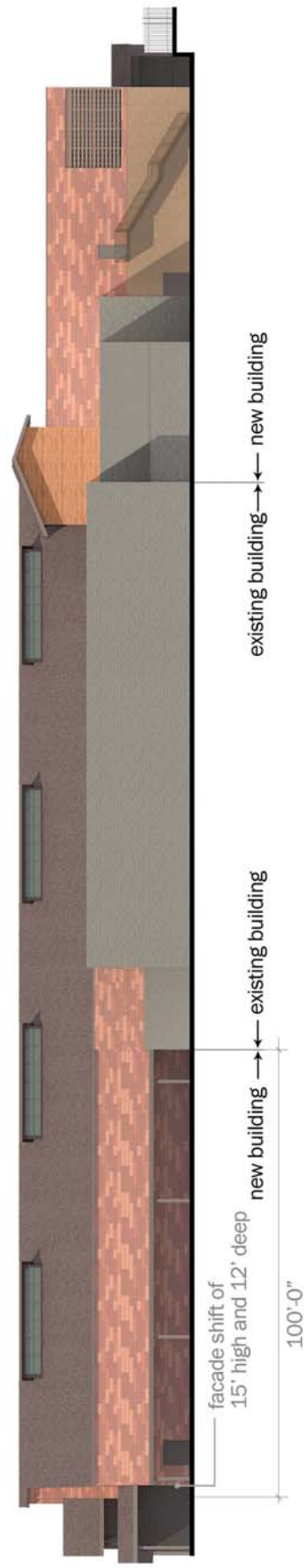
- | | | | |
|----|---|---|--------------------------------------|
| 1 | existing tennis courts | a | bike racks |
| 2 | existing pool | b | solar hot water panels |
| 3 | existing gymnasium | c | solar panels |
| 4 | future natatorium | d | water-wise landscaping |
| 5 | future multi-purpose gymnasium | e | native grass and boulder landscaping |
| 6 | future restaurant | f | green roof |
| 7 | 2-story fitness, recreation & lockers | | |
| 8 | tennis building (4 courts w/ running track) | | |
| 9 | existing park | | |
| 10 | snow storage | | |
| 11 | site lighting (see elevation) | | |



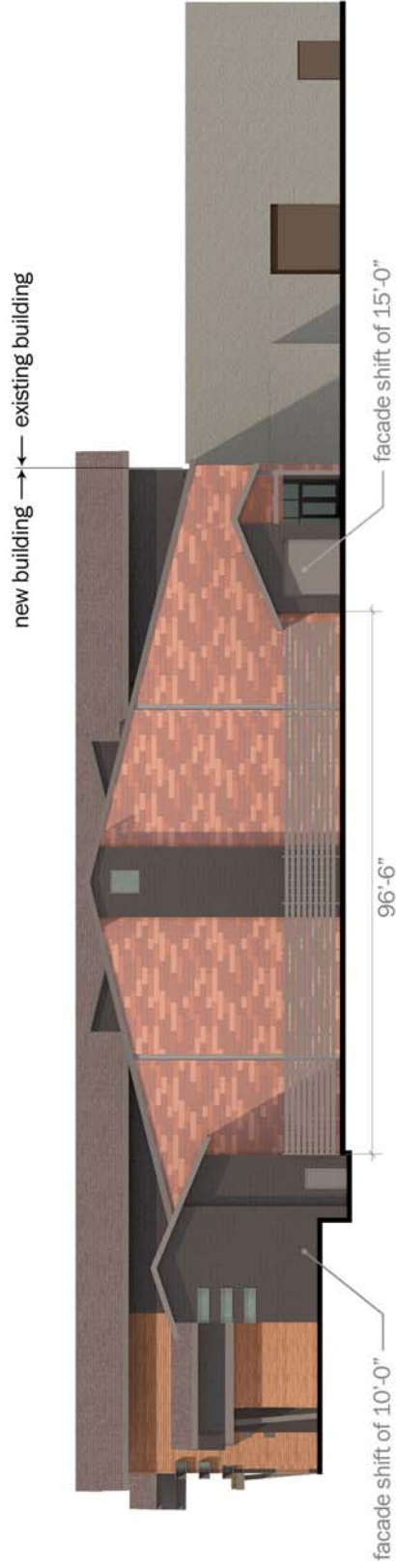




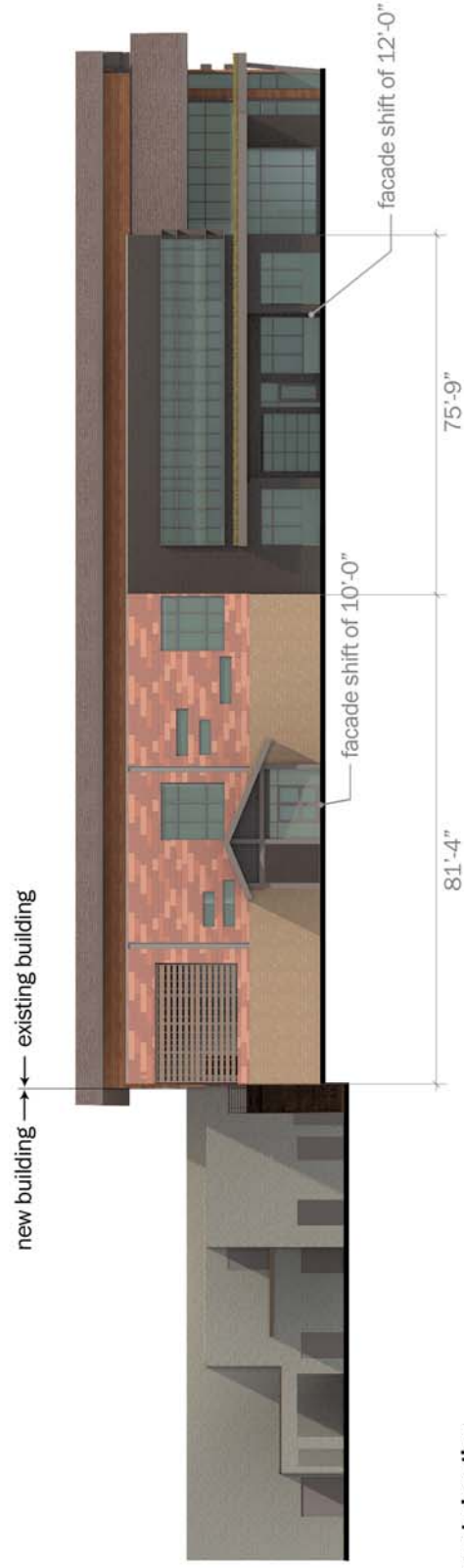
south elevation
meets facade variation A requirements



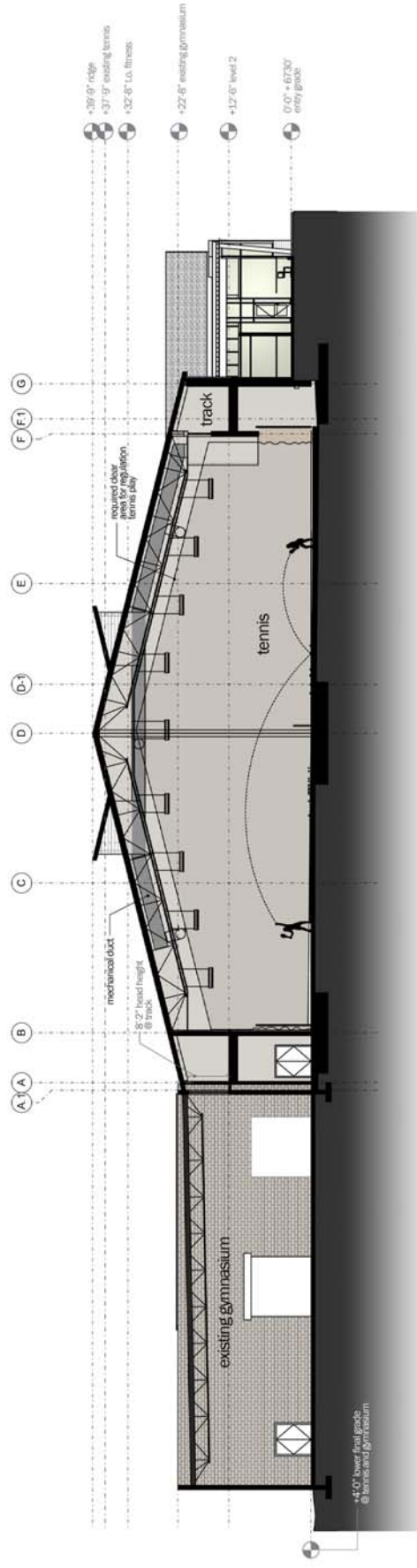
north elevation
meets facade variation A requirements

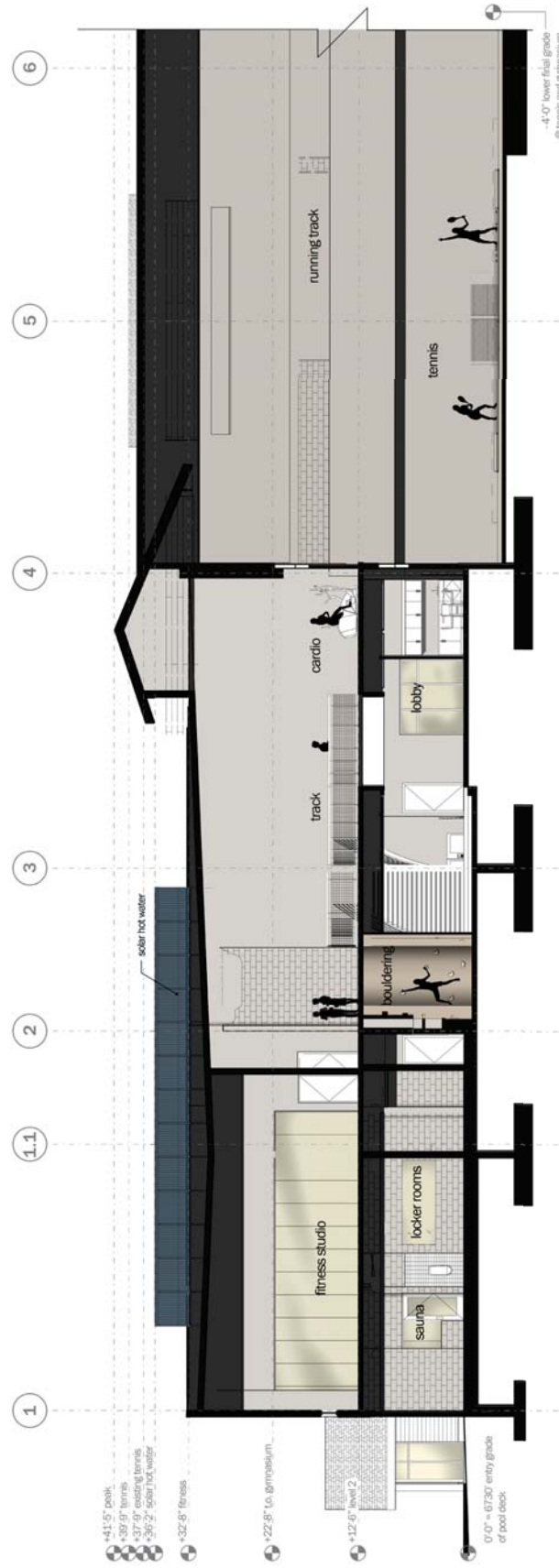


east elevation
meets facade variation A requirements

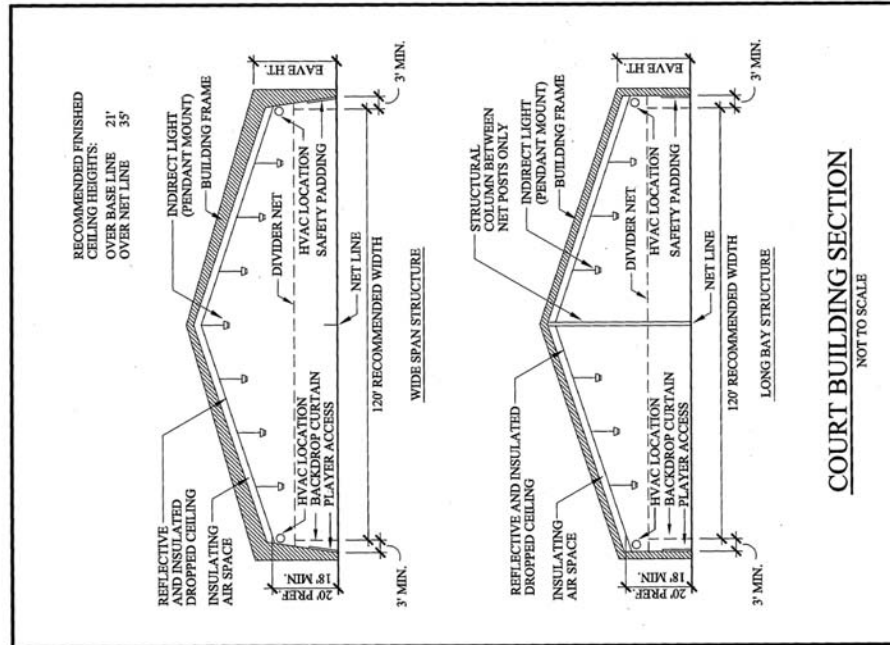


west elevation
meets facade variation A requirements









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DRAWINGS ARE ILLUSTRATIVE ONLY AND ASEA AND USTA
ACCEPT NO RESPONSIBILITY FOR THEIR USE.



A minimum clearance of 12' (3.68m) from the sideline to a fixed obstruction (light pole or wall) is recommended. Light poles, if present, should be centered on or immediately adjacent to the court boundary, or located at the net line. If the court dimensions are reduced by the owner so that the recommended clearance cannot be achieved, fixed obstructions should be located at the court boundary. Benches may be located within the recommended clearance; they should be within 12' (3.68m) of the net line and at least 10' (3.04m) from the sideline. Portable equipment, such as cooler stands, umpire's chairs and players' chairs, may be located within the recommended clearance; these items should be as close to the net line as practical and no more than 12' (3.68m) from the net line. Existing facilities which have fixed obstructions not meeting these recommendations should consider the use of appropriate padding. Use of divider netting between courts is recommended.

The space directly over the court should be free of overhead obstructions and should be not less than 18' (5.487m) at the eaves, 21' (6.401m) over the baseline and 35' (10.668m) at the net, although 38' (11.582m) is recommended, measured to the interior finished ceiling.

There should be at least 18' (5.487m) behind the baseline to the backdrop curtain; 21' (6.401m) is recommended. To accommodate arriving and departing players, there should be a passageway behind the courts at least 3' (914mm) wide, separated from the court by an opaque backdrop curtain. The curtain should extend at least 10' (3.048m) above the finished court surface.



A view of an indoor tennis court, showing the ceiling and lighting system. The court shows excellent use of space, and also includes backdrop curtains, divider nets and spectator seating. Another observation deck is located above the court, allowing spectators to come and go without disturbing the players. Photo courtesy of Innoce Courts or America.

Types

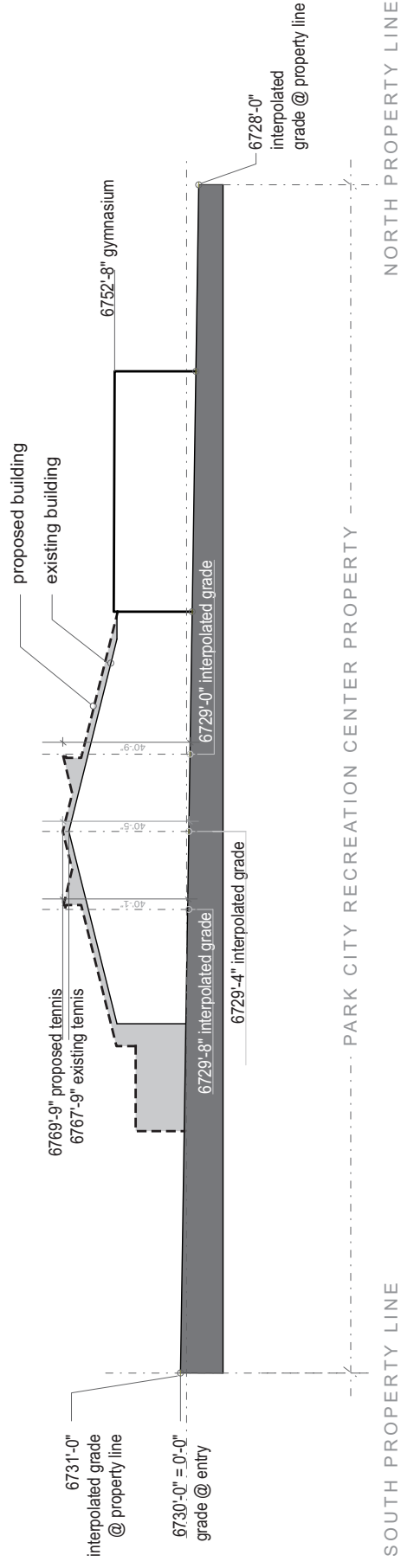
There are three types of tennis court enclosures: air structures (or bubbles), fabric-frame structures and rigid framed metal buildings. Both air structures and fabric-frame structures may offer some tax savings over steel buildings since they are counted as temporary structures, not buildings, for property tax purposes in some localities. All three types of enclosures are considered relocatable and, therefore, they all have some resale value.

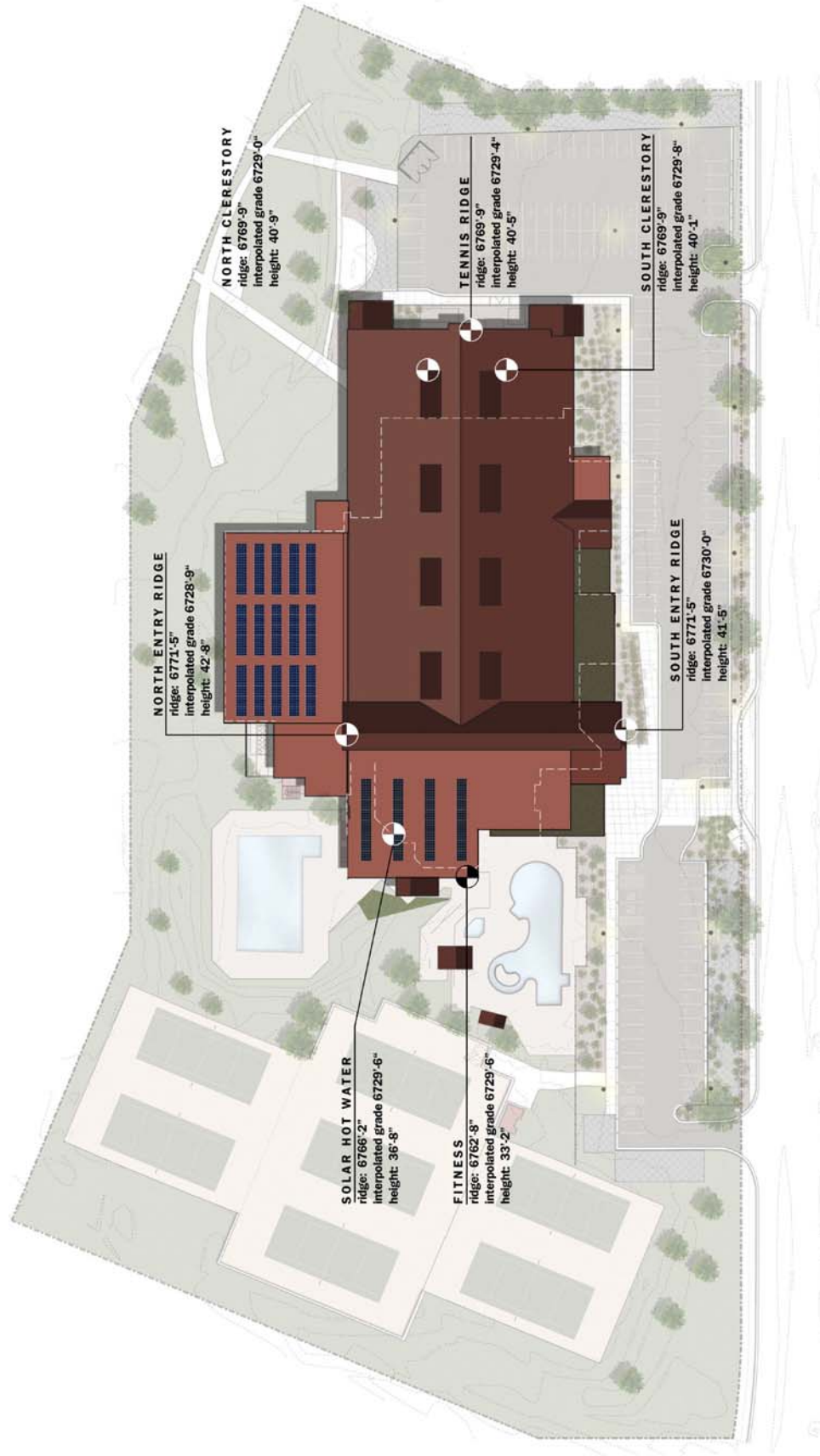
Air Structures

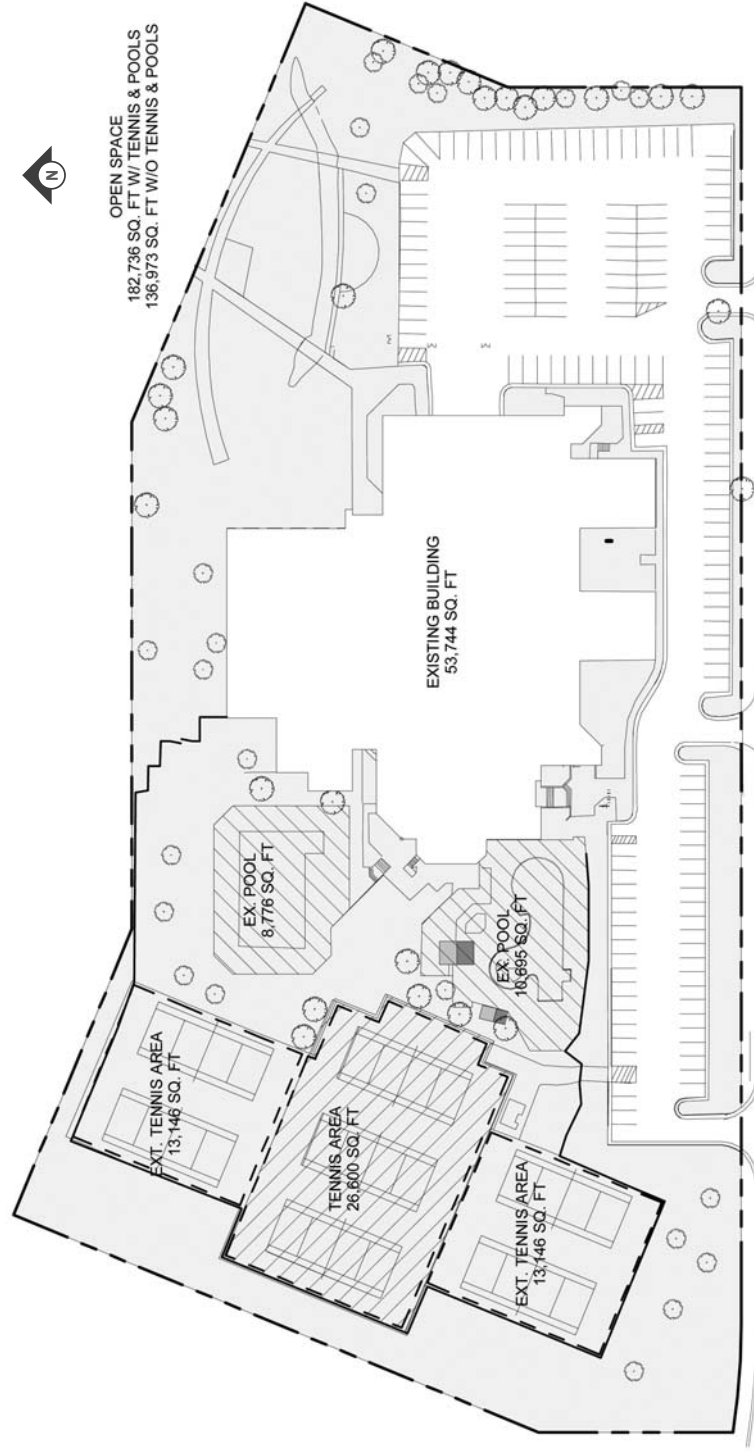
Air structures, or tennis bubbles, are single- or multi-ply fabric structures which are supported by air pressure supplied by air blowers, which also can provide ventilation, heating or air conditioning. Where air structures will be heated or air conditioned, multi-ply structures are recommended. The average air structure covers 1-5 courts, but such structures can be manufactured to cover any number of courts.

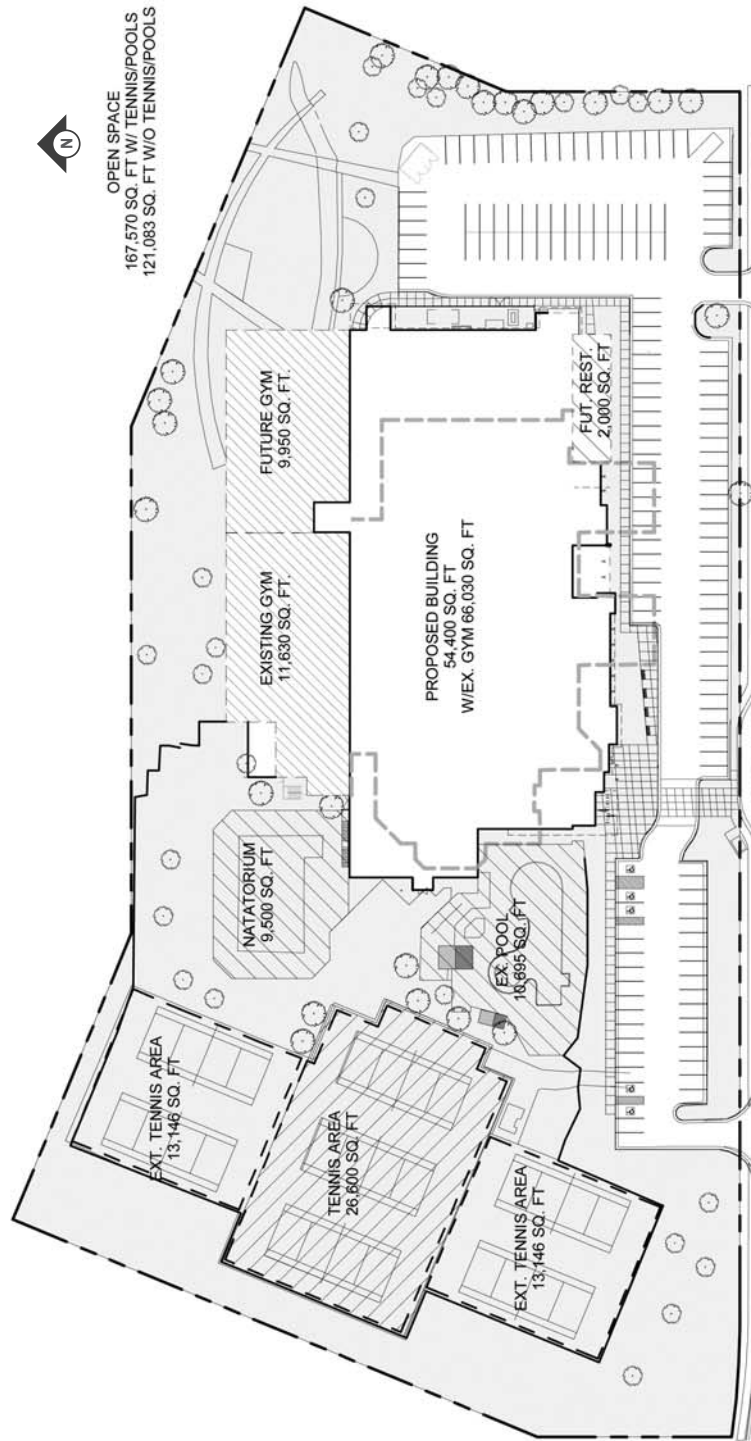
Interpolated Grade Diagram

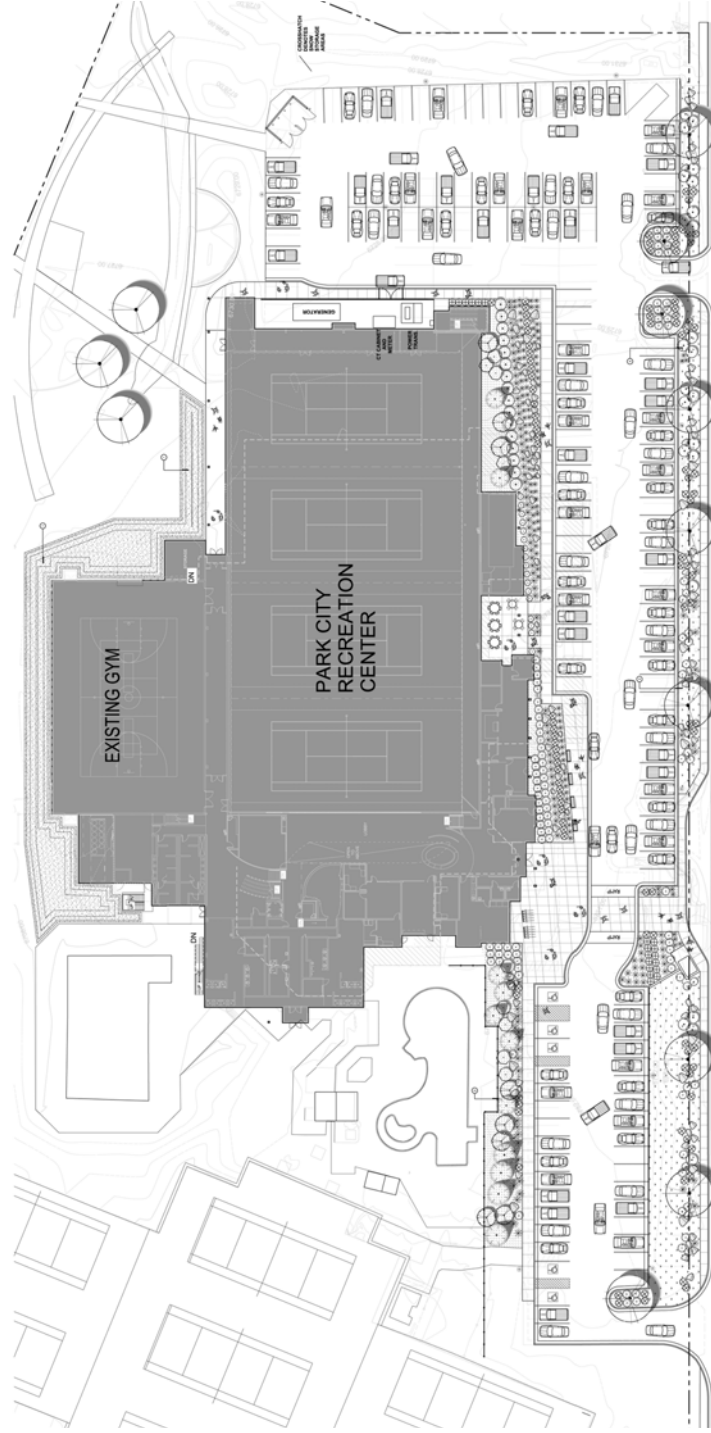
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Proposed Plan Material & Amenities

P A R K C I T Y R E C R E A T I O N C E N T E R • P A R K C I T Y, U T A H • 20 JAN 2010

trees



White Fir
Abies concolor



Bridleway Pine
Pinus contorta



Big Tooth Maple
Acer grandidentatum



Mountain Mahogany
Cercocarpus ledifolius



Aspen
Populus tremuloides

shrubs & groundcover



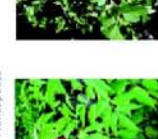
Mountain Mahogany
Cercocarpus ledifolius



Utah Serviceberry
Amelanchier alatanis



Elderberry
Sambucus racemosa



Alpine Currant
Ribes alpinum



Big Sage
Artemisia tridentata



Rubber Rabbit Brush
Chrysothamnus nauseosus



Golden Finger Shrub
Potentilla fruticosa

grasses & perennials



Karl Foerster Grass
Syrphoanthus alba



Red Twig Dogwood
Cornus sericea



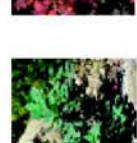
Antelope Bitterbrush
Purshia tridentata



Grown Low Sumac
Rhus aromatica 'Grown Low'



Creeping Oregon Grape
Mahonia repens



Tri Leaf Sumac
Rhus trilobata



Kinkadee
Archiolepis lasiocarpa



Rocky Mountain Penstemon
Penstemon strictus

amenities



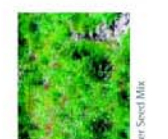
Colored Concrete



Landscape Boulder



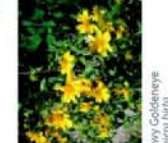
Shenandoah Switch Grass
Panicum virgatum 'Shenandoah'



Whirlflower Seed Mix



Moonshine Yarrow
Achillea 'Moonshine'



Showy Goldeneye
Viguiera lutea



Silky Lupine
Lupinus albus



Stone Blank Rock

amenities



Stone Bench



Stone Bench



Stone Bench



Stone Bench



Stone Bench



Stone Bench



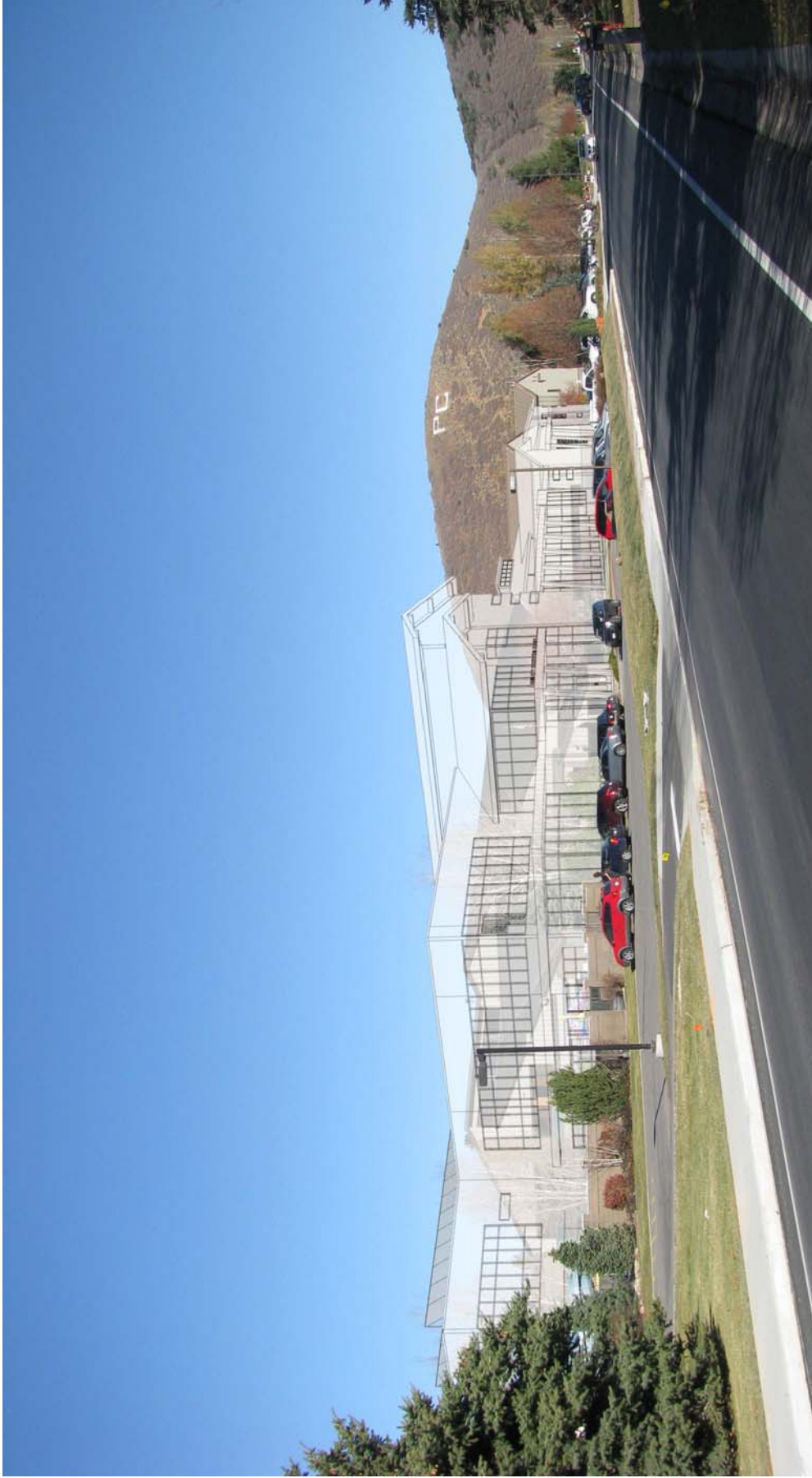
Stone Bench



Stone Bench

Arc Sizio Design, Inc.







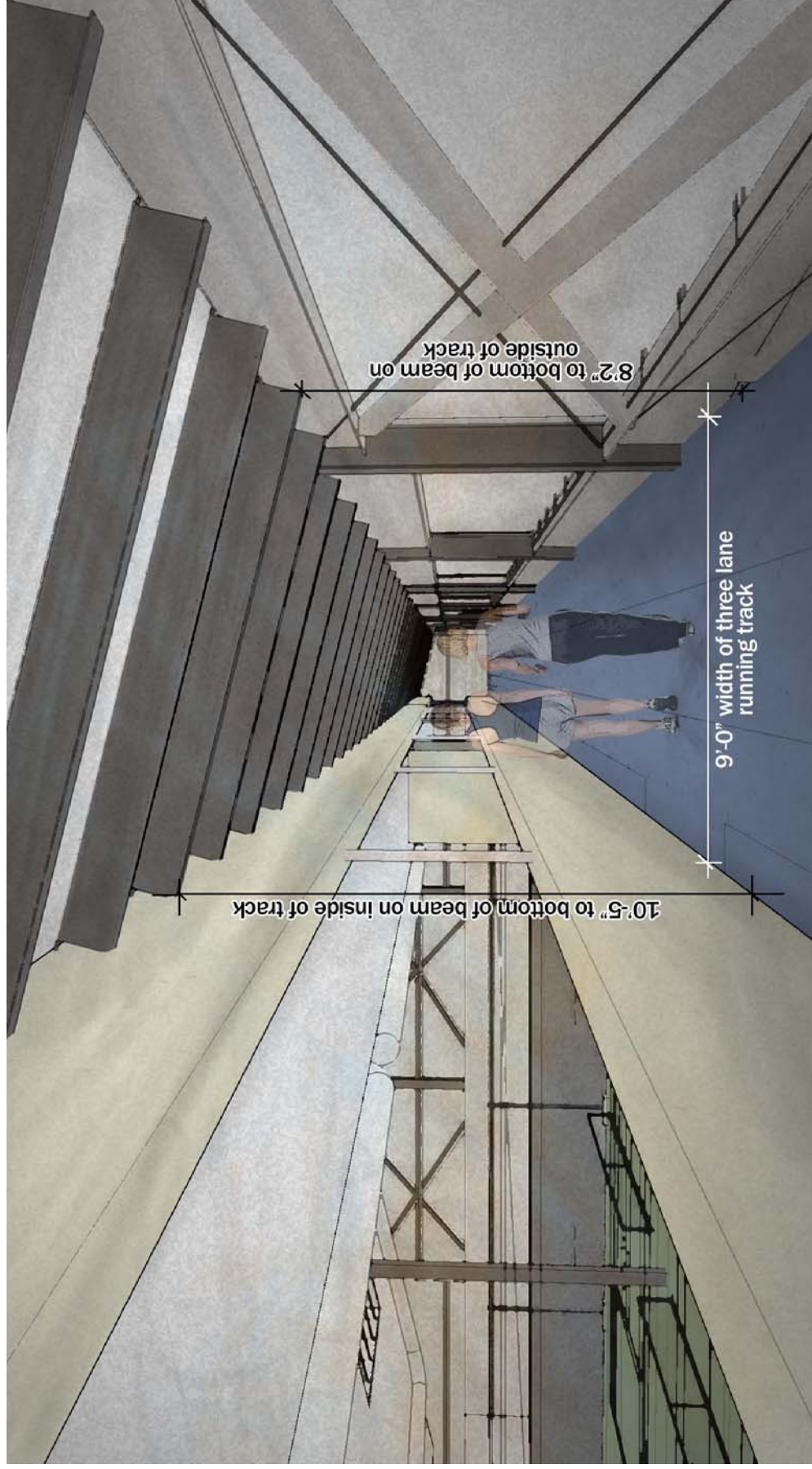












Exterior Finish Colors



exterior finishes

PARK CITY RECREATION CENTER
PARK CITY, UTAH



**THE PLANNING COMMISSION
PARK CITY, SUMMIT COUNTY, UTAH**

RE: MASTER PLANNED DEVELOPMENT

The Planning Commission of Park City, Utah met on Wednesday, January 20, 2010 for a regularly scheduled and duly noticed meeting. After determining that a quorum was present, the Commission conducted its scheduled business. Among the items heard by the Commission was the 1200 Little Kate Road – Park City Racquet Club Master Planned Development application.

NOTICE OF PLANNING COMMISSION ACTION:

Project Address: 1200 Little Kate Road
Application #: PL-09-00785
Type of Hearing: Master Planned Development
Hearing Date: January 20, 2010

Commission Action: **APPROVED** the request pursuant to the findings of fact, conclusions of law and conditions of approval as written below.

Findings of Fact:

1. The Racquet Club Master Planned Development is located on Lot 1 of the Racquet Club Subdivision. Lot 1 consists of 7.5 acres. The lot is of sufficient area to accommodate the 85,015 s.f. (gross area), 66,030 s.f. (footprint) public recreation facility, circulation, parking, future phases, and provide the minimum required minimum 30% open space for redeveloped areas.
2. The proposed facility open space is 44.7% and includes exterior tennis and pools as well as future phases.
3. The total proposed building footprint is 66,030 s.f. and gross square footage is 85,015.
4. The property is located in the Residential Development (RD) zoning district.
5. The Racquet Club received a Conditional Use Permit in 1977 for Recreation Commercial which granted an overall 40 foot building height.
6. This property is subject to the Racquet Club subdivision plat and any conditions of approval of that plat.
7. The maximum Building Height in the Residential Development (RD) zoning district is 28 feet (33 feet with a pitched roof). Previous CUP approval granted a

40 foot building height for a public recreation facility. The application includes a height exception request (per interpolated grade) for 2'-8" (over previous CUP approval) of additional building height for the entry feature, 5" of additional building height for the main tennis ridge, 1" of additional height for the south clerestories and 9" of additional height for the north clerestories.

8. The existing Racquet Club contains 155 parking spaces.
9. A reduction in parking is requested at 148 parking spaces. A bicycle rack will be provided adjacent to the main entrance.
10. Setbacks within the Residential Development (RD) are twenty feet (20') in the front, fifteen feet (15') in the rear, and twelve feet (12') on the sides. The MPD requires twenty-five (25') foot setbacks from all sides. The building complies with these setback requirements. The Parking Area which is being restriped and reoriented, and not expanded, does not meet the front yard setback and an exception has been requested to maintain the existing six feet (6') in the front yard.
11. The *Analysis* section of this staff report is incorporated herein.

Conclusions of Law:

1. The MPD, as conditioned, complies with all the requirements of the Land Management Code.
2. The MPD, as conditioned, meets the minimum requirements of Section 15-6-5 of this Code.
3. The MPD, as conditioned, is consistent with the Park City General Plan.
4. The MPD, as conditioned, provides the highest value of open space, as determined by the Planning Commission.
5. The MPD, as conditioned, strengthens and enhances the resort character of Park City.
6. The MPD, as conditioned, compliments the natural features on the Site and preserves significant features or vegetation to the extent possible.
7. The MPD, as conditioned, is Compatible in Use, scale and mass with adjacent Properties, and promotes neighborhood Compatibility.
8. The MPD provides amenities to the community so that there is no net loss of community amenities.
9. The MPD, as Conditioned, is consistent with the employee Affordable Housing requirements as adopted by the City Council at the time the Application was filed.
10. The MPD is not subject to the Sensitive Lands requirements of the Land Management Code. The project has been designed to place Development on the most developable land and lease visually obtrusive portions of the Site.
11. The MPD, as conditioned, promotes the Use of non-vehicular forms of transportation through design and by providing trail connections by the location on a proposed bus route. Bicycle parking racks will be provided.
12. The MPD has been noticed and public hearing held in accordance with this Code.

Conditions of Approval:

1. All standard conditions of approval apply to this MPD.
2. All applicable conditions of approval of the Racquet Club subdivision shall apply to this MPD.
3. A final water efficient landscape and irrigation plan that indicates snow storage areas and native drought tolerant plant materials appropriate to this area, is required prior to building permit issuance.
4. All exterior lights must conform to the City lighting ordinance. Parking lot and security lighting shall be minimal and approved by Planning Staff prior to issuance of a certificate of occupancy.
5. All exterior signs require a separate sign permit. Application for a sign permit shall be made to the Planning Department prior to installation of any temporary or permanent signs.
6. Exterior building materials and colors and final design details must be in substantial compliance with the elevations, color and material details exhibits and photos reviewed by the Planning Commission on January 20, 2010, and shall be approved by staff prior to building permit issuance. Materials shall not be reflective and colors shall be warm, earth tones that blend with the natural colors of the area.
7. The final building plans, parking lot details and landscaping, and construction details for the project shall meet substantial compliance with the drawings reviewed by the Planning Commission on January 20, 2010.
8. The City Engineer prior to Building Permit issuance must approve utility, storm water systems and grading plans, including all public improvements.
9. Staff must approve the Construction Mitigation Plan to issuance of any building permits and shall include appropriate contact information as required. Signs posted on site will indicate emergency contacts.
10. *Work is restricted to Monday through Friday 7 am to 6pm. Saturday work time is restricted from 9 am to 6 pm. Work will not be allowed on the following holidays: Christmas, New Years, Memorial Day, Labor Day, 4th of July and Thanksgiving. This would include the time for start up of heavy equipment and start up of any vehicles. Idling of vehicles will not be allowed. Auxillary lighting will also be restricted to these hours. (Draft condition. Meeting minutes not yet available).*
11. Lay down and staging are will be restricted to existing parking lots and disturbed construction area. Applicant will minimize placement adjacent to housing units as much as possible.
12. Transportation of labor to and from the job site from an off site parking location shall be a condition of the construction contract. On site parking shall be restricted to those authorized and controlled by the project superintendent in coordination with Recreation Center officials.
13. The applicant will notify all affected property owners within 300 feet prior to construction commencing of conditioned work hours, contact information and general project description.
14. A limit of disturbance area will be identified during the building permit review.
15. The applicant shall submit a total employee count at time of building permit. Prior to Certificate of Occupancy the applicant shall provide verification that the

employee count has not increased. Should there be an increase in the total employee count the applicant shall be subject to the terms and conditions of Housing Resolution 20-07; Section E Redevelopment.

16. Future phases of Natatorium, Restaurant and Gymnasium expansion are included in this master plan and would be subject to an Amendment to this MPD. The Development Agreement will stipulate per 15-6-4(I) the Amendment will not justify a review of the entire master plan. Future phases will be subject to minimum open space requirements of 30%.
17. An internal parking review will occur one year after Certificate of Occupancy (or the facility is fully operational) to analyze parking load and demand.

Any person who submitted written comment on a proposal, the owner of any property within three hundred feet (300') of the boundary of the subject site, or the owner of the subject property may appeal to the City Council any action pertaining to the approval. The petition must be filed in writing with the Planning Department within ten (10) calendar days of a Planning Commission decision.

Best Regards,

Kayla Sintz, AIA
City Planner

City Council Staff Report



Subject: Comstock Sidewalk
Author: Matthew Twombly, Heinrich Deters
Date: February 11, 2010
Type of Item: Informational

Recommendation

Reaffirm direction to construct a sidewalk/pathway on the east side of Comstock Drive, consistent with WALC committee recommendations.

Background

On May 22nd, 2008 as part of the FY 2009 budget approval Council directed staff to defer the initial \$540,000 sidewalk project on the east side of Comstock Drive and consider an incremental approach. Staff was directed to review the project for a year and return to Council with an assessment of the projects success.

In February of 2009, pursuant to the adopted WALC recommendations, the City entered into a contract with Fehr & Peers Transportation Consultants to perform a study of existing conditions and provide professional recommendations on traffic calming measures at the identified locations.

On April 21, 2009, a public Open House was held to review preliminary findings of the Fehr and Peer's Traffic Calming Study and to provide a forum for public input on possible traffic calming measures. Approximately fifty people attended the meeting. They were provided an opportunity to vote for specific recommendations, as well as, provide written comments on the projects.

At the June 18, 2009 City Council meeting, staff and the consultants recommended measures for Comstock included several traffic calming devices in addition to a sidewalk on the east side of Comstock Dr. Council approved all recommended measures presented in the June 18th Staff report including a 5' sidewalk on the east side of Comstock.

On October 1, 2009, Council and staff provided an additional opportunity for public comment on the proposed sidewalk for Comstock. Based upon the input, Council asked staff to return with additional information on the project.

On October 28, 2009, staff held a public open house for the underpass at Comstock drive and Kearns Boulevard. In addition to providing information on the underpass, staff provided an opportunity for the public to see some conceptual drawings and cross sections of a few options for the proposed sidewalk along Comstock drive, and how the sidewalk and tunnel projects would dovetail.

On December 3, 2009 staff returned to City Council based upon direction to provide analysis that the sidewalk would not impact the landscaping within the Right of Way outside the

existing pavement section, to discuss the bus stop improvements and determine a cost estimate for widening the intersection/paving a trail connection to the tunnel.

Analysis

At the December 3, 2009 Council meeting, staff presented two options for providing a pathway along the East side of Comstock Drive. Option A (Recommended) proposed a pedestrian pathway without bike lanes that did not impact landscaping within the right of way outside the line of the existing curb and gutter, and Option B proposed a pathway and bicycle lanes that did impact the landscaping. Staff also noted that two 11' travel lanes and parking on the West side of the street will be included in the design.

There may be some minor impacts to the landscaping within the City right of way, at the intersection of Comstock and Kearns and to minor work on driveways to have them tie in to the sidewalk per City specifications.

Council directed staff to return to discuss options of a sidewalk and parking. Staff has provided two exhibits for the project. Option A shows a 6' (min.) - 8' (max.) path or sidewalk with a park strip between the path and the roadway. Representatives from Sustainability, Engineering, Planning and Public Works met on December 18, 2009 and reached the consensus to recommend proceeding with Option A.

Staff recommends Option A because it solves the majority of WALC issues and neighborhood compatibility issues. The path and park strip provides additional safety where a park strip is located between the path and travel lanes (for most of Comstock except as the roadway narrows at the Kearns intersection). The widened path and park strip allows for bicycle travel in the opposite direction of traffic. The path is wide enough and park strip is wide enough to allow more efficient snow removal and snow storage on the park strip. The widened pathway will allow for multiple user groups to use the path. The park strip allows for mailboxes to remain along the roadway. The park strip and narrowing of the roadway provides traffic calming. The park strip provides additional landscape which provides a more residential perception to the roadway. The largest identified user group in this area consists of children and families which would be best served by a separated path.

Option B provides parking along the East and West side of Comstock. Staff does not recommend Option B because it provides the lowest level of service identified by WALC and neighborhood compatibility issues raised by the residents. A 5' sidewalk adjacent to parking raises issues of safety for pedestrians and bicyclists. The safety issues include riding the wrong way on the sidewalk for families and children, the opening of car doors onto the sidewalk, the crossing of the street by pedestrians and bicycles due to the lack of width. Mail boxes will be placed in the sidewalk which also affects safety of users as well as snow removal. Snow removal will require a higher level of service where cars are parked adjacent to the sidewalk. Traffic will be impacted especially for the widest vehicles including buses and emergency vehicles due to the accumulation of snow at the gutters forcing parking into the roadway requiring a higher level of service. The largest identified user group in this area consists of children and families which would not be best served by parking and sidewalk at the back of curb.

Staff looked at additional options of including some parking along the East side of Comstock and determined that adding bulb outs to limit parking will only be more expensive due to additional drainage requirements and road re-profiling. The additional bulb outs would also create a significant increase in the level of service for snow removal. Additional no parking signs could be used instead of bulb outs but that would have the same effect as Option B, and likely cause confusion on where residents could park and require additional parking enforcement to be effective.

Staff also looked at extending the landscaping and driveways from the adjacent property owners into the roadway and providing a sidewalk along the roadway. Staff did not recommend this option due to the fact that it does not provide for the goals identified by WALC. The path would not have a buffer between the traffic and users. Mailboxes would be installed in the path creating some issues for safety and snow removal. Snow removal and storage would remain an issue adjacent to the roadway. The lengthening of the driveways may or may not provide additional parking in driveways and parking may extend onto the pathway or sidewalk.

The maintenance of park strips for City installed projects is typically the City's responsibility as stated within the Municipal Code **Title 14 TREES/LANDSCAPING; STREETS, SIDEWALKS AND STAIRS; STREET CUTS; SNOW REMOVAL; STREET ADDRESS; SYSTEM; NEWS RACKS.** Section 14-1-10 reads: "The City accepts responsibility for maintenance of planted areas on public property and the City's rights-of-way for City installed projects, which are regularly maintained by City staff." Therefore, the owners would either need to execute the City's standard encroachment agreements that we use for un-built right of ways, or preferably, amend the code to address resident plantings within City projects so that the neighbors would retain maintenance responsibility. Staff recommends returning to Council to amend the code to have the adjacent neighbors maintain landscaping in the City rights of way for City installed projects. The City Manager recommends that the City maintain the park strip as currently stated in the code for this project.

The illustrations have been provided by Horrocks Engineering through a change order to the SR-248 tunnel project. During Visioning Council directed staff to not proceed with the construction of the Comstock and Sidewinder sidewalks due to other significant impacts from other infrastructure projects. Staff will likely proceed with the project later in the year and issue a Request for Proposals (RFP) for the design and engineering of the Comstock sidewalk, and Sidewinder sidewalk project per the City's procurement code. Upon recommendation by a selection committee staff will return to Council for the Award of the Service Provider Agreement for the design and engineering of the project.

Significant Impacts

WALC – This project is consistent with approved WALC recommendations. Regional and Neighborhood connectivity along with safety represent 3 of the 5 overriding goals of the Walkability Study. The construction of the sidewalk/path on Comstock Drive is a vital link in the overall pedestrian and biking connectivity in town and a designated Safe Route to School route. The WALC Committee identified and recommended this specific location as part of the "Spine" concept for a higher level of service and included high priority projects such as the underpass at the Comstock and SR-248 intersection and traffic calming improvements in the

area. Also identified by WALC is the construction of a sidewalk from Comstock to Gold Dust Lane which in connection with the Comstock sidewalk will complete the pedestrian connection through Prospector.

Right-of-way - The construction of the sidewalk will be, with potential minor exceptions, within the existing pavement section, thus minimal and temporary landscape and driveway impacts are anticipated. Parking on the east side of the street is currently prohibited, so there will be no additional parking impact.

Budget - There is currently \$540,000 budgeted out of the \$15 Million WALC bond. The allotted \$540,000 includes funding for a sidewalk and the recrowning of the roadway and drainage improvements. A further \$400,000 is budgeted for traffic calming on Comstock Drive. There is \$400,000 budgeted for the sidewalk along the South side of Sidewinder from Comstock to Gold Dust and other traffic calming improvements in the area.

Annual O&M - Estimates for the Comstock sidewalk/path include \$4,356 in basic maintenance, in addition to \$1,680 for signs and painted crosswalks. These maintenance costs do not include maintenance for the landscaped park strips. If the City performs the maintenance on the park strip the cost would be approximately \$1,400 in annual maintenance. The cost for maintenance will need to be prioritized in the Fiscal Year 2011 Budget with other requests.

In May of 2008, Council confirmed direction to provide snow removal service for new sidewalks on major neighborhood corridors, which include Comstock Drive and Little Kate Road. Future snow removal of all WALC proposed sidewalks are lumped into one budget option. The costs are \$67,045 annually which includes a dedicated sidewalk plow, depreciation of machine, staffing 5 days a week and two snow hauls. The addition of plowing services on Comstock will be prioritized as an option in the FY 2011 budget with other options.

During the 2010 visioning, Council directed staff to defer the construction of the Comstock and Sidewinder sidewalk projects until the summer of 2011.

Alternatives:

- A. Approve the request, and reaffirm direction to proceed with the Comstock Sidewalk Project and for staff and Council to amend the Municipal Code Title 14 at a future date.**
- B. Modify the request: Council could choose to modify current Council direction.
- C. Deny the request: Council could choose to not continue with the project at this time.
- D. Continue the Item: Council may feel there is not enough information to make a decision, and have staff return with more information.
- E. Do Nothing: Same effect as continuance.

Departmental Review

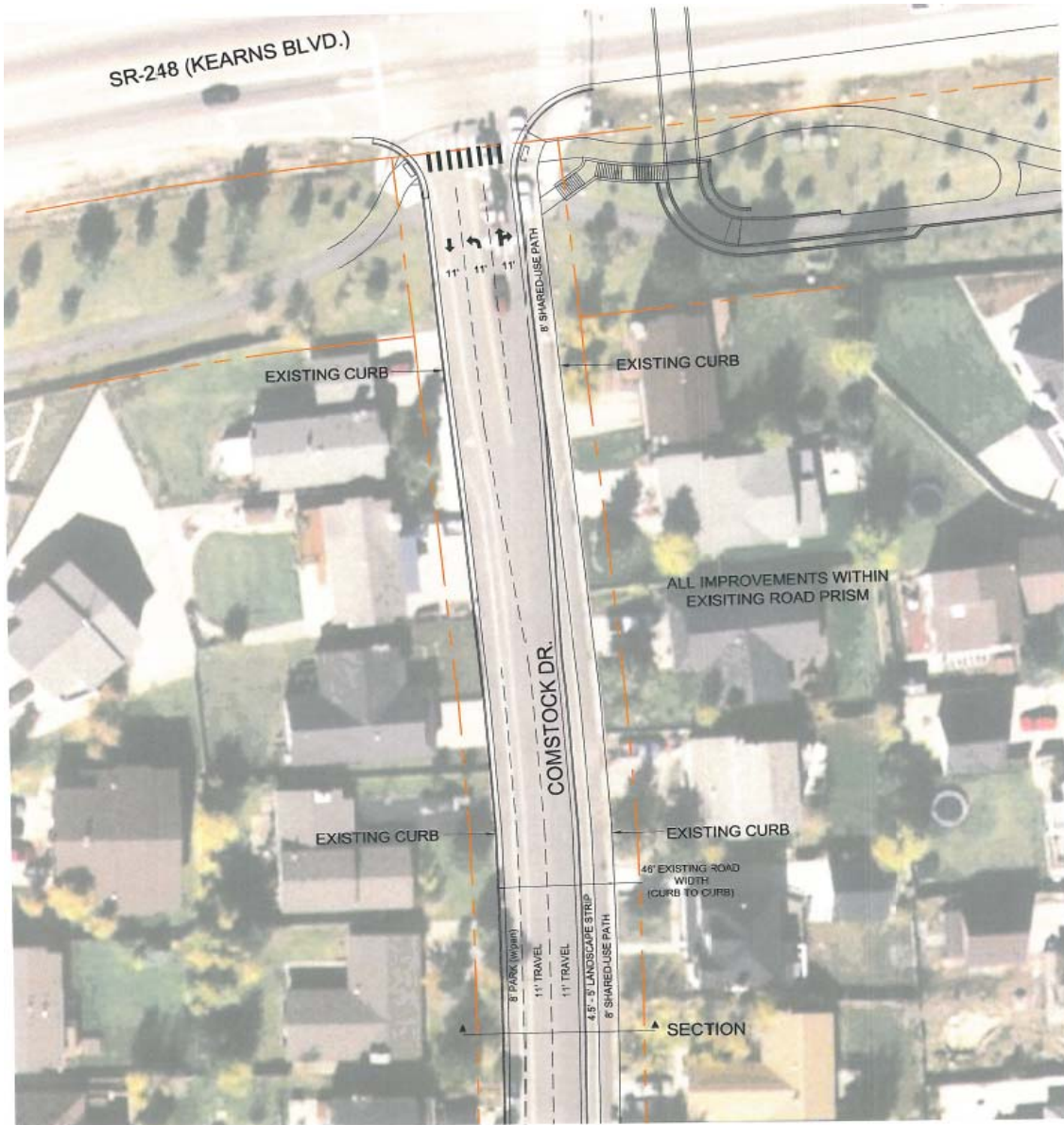
This report has been reviewed by the Sustainability Team, Public Works Departments (streets, parks, and transit), City Engineer, Legal Department, and City Manager.

Staff Recommendations:

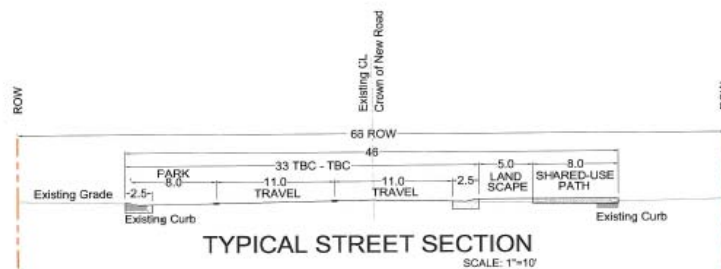
Direct staff to proceed with current Council direction to construct a sidewalk or pathway on the east side of Comstock Drive, and to have staff return to Council for an amendment to the Municipal Code Title 14 at a future date.

Attachments:

Exhibit A -Comstock Drive illustrated Options A and B

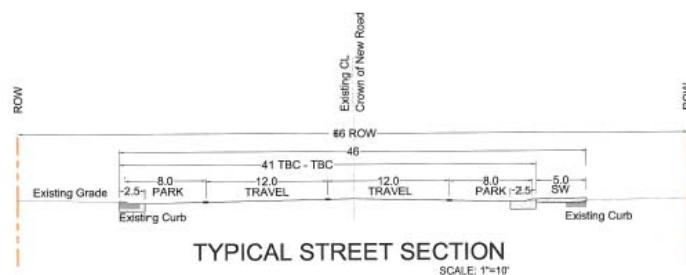


OPTION A COMSTOCK EXHIBIT
8' SHARED-USE PATH WITH LANDSCAPE STRIP
SCALE: 1"=40'





OPTION B COMSTOCK EXHIBIT
 PARKING EAST AND WEST SIDES WITH 5' SIDEWALK
 SCALE: 1"=40'



HORROCKS
 ENGINEERS

**PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
JANUARY 28, 2010**

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, January 28, 2010. Members in attendance were Dana Williams, Alex Butwinski, Candace Erickson, Joe Kernan, Cindy Matsumoto, and Liza Simpson. Staff present was Michael Kovacs, Assistant City Manager; Mark Harrington, City Attorney; Bret Howser, Budget Manager; and Max Paap, Special Events Manager.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

1. Council comments – Alex Butwinski spoke about attending the Planning Commission and Art Advisory Board meetings. Liza Simpson thanked staff working on the street during Sundance and discussed inter-agency business. Candace Erickson explained the Health Department's distribution of the H1N1 vaccination and announced that Director Steve Jenkins will be retiring in April. As liaison to the Chamber, Ms. Erickson detailed marketing efforts and lodging information. Cindy Matsumoto thanked staff for their work on Sundance and reported on the School District meeting where she volunteered to serve on its long-range planning team. Joe Kernan recognized staff and Sundance operations.

Mayor Williams discussed the range of outstanding projects conducted by local Eagle Scouts. He attended his first meeting as a member of the Snyderville Basin Water Reclamation District and asked the Legal Department to carefully review a connection into The Colony. The Mayor announced that a student delegation from Beijing is visiting Park City. He reported on the COG meeting, specifically senior issues. The mayors agreed that senior housing is a county-wide issue and are considering applying for CDBG funding as a group. A representative from Mountainlands Community Housing in attendance at the meeting indicated that this has never been done before, but felt that a joint application would be powerful. Alex Butwinski commented on the ULCT's Day at the Legislature where Rudy Guliano spoke

2. Sundance Film Festival update – Max Paap spoke about the partial street closure on Park Avenue intended to accommodate buses; there were no complaints from associated businesses. The management of the China Bridge and festival parking went well. The Racquet Club Condominiums entrances were staffed from 4 p.m. to 10 p.m. Friday, Saturday, Sunday and Monday. Mayor Williams commented on parking personnel charging more for premium parking. Ms. Matsumoto disclosed that she received complaints about delivery truck parking.

3. Legislative update – Michael Kovacs indicated that there are about 200 bills and the City has narrowed its interest to tracking about 100. The City is opposed to HB48

which would amend the tourism, recreation, cultural, convention and airport facilities tax. HB54 proposes a tax exemption for water facilities which the City is monitoring. The City supports HB 61, real property sales information disclosure, and HB72, Utah School seismic hazard inventory. He discussed further amendments to HJR2, joint resolution on property tax exemption, and the City opposing joint resolution HJR7, prohibiting a property transfer tax. SB 42, 43 and 94 relate to amendments to the Public Employee Retirement System and Tom Bakaly has been sitting on a special committee for the past year on this issue. In response to a question from Joe Kernan, Mr. Kovacs described the state's defined benefit plan. He discussed anticipated bills that are being drafted, but have no numbers yet.

III PUBLIC INPUT (*Any matter of City business not scheduled on agenda*)

None.

IV WORK SESSION NOTES AND MINUTES OF MEETINGS OF JANUARY 7, AND JANUARY 14, 2010

Joe Kernan, "I move approval of the work session notes and minutes of the meetings of January 7 and 14, 2010". Liza Simpson seconded. Motion unanimously carried.

V NEW BUSINESS (*New items with presentations and/or anticipated detailed discussions*)

1. Consideration of an Ordinance amending the Land Management Code of Park City, Utah, to address revisions to Sections 15-2.3, 15-6, 15-10, 15-11 and 15-12 regarding development regulations and master planned developments in the HR-2 and HCB Districts, timeframe for appeals to Board of Adjustment and Planning Commission, and Historic Design Review Process for minor projects and applications – The Mayor opened the public hearing; there were no comments and he requested a motion to continue. Cindy Matsumoto, "I move to continue to an uncertain date". Alex Butwinski seconded. Motion unanimously carried.

2. Consideration of (1) the issuance and sale of the City's water revenue bonds, for the purpose of financing the cost of acquisition, construction and completion of improvements to the water system of the City, including the acquisition and financing of certain water rights, and related improvements and facilities and paying the costs incurred in connection with the issuance and sale of the water revenue bonds and (2) the potential economic impact that the facilities will have on the private sector – Jed Briggs pointed out that the numbers on the pricing of the bonds were finalized this morning which was authorized through the approval of the parameters resolution. He explained the purpose of the issuance is to cover the purchase of water from the Jordanelle Special Service District. The City has been leasing water from JSSD at a price that increased 4% every year and Mr. Briggs discussed a table outlining the savings to the City in the long term, \$16.7 million by 2034, as a result of the purchase. Discussion ensued on the cost of delivering water to Park City. Consultant Dave Miner

commented on the City's favorable bond rating and the popularity of Park City's bonds in the market. The average rate for all maturities over a 50 year period is 3.17% and similar to the rates an AAA rated organization would receive.

(a) Public hearing - The Mayor opened the public hearing; there was no public comment.

(b) Consideration of a Resolution authorizing the issuance and confirming the sale of up to \$13,000,000 Park City, Utah Water Revenue Bonds, Series 2010; authorizing the execution and delivery of a Supplemental Indenture of Trust to secure said Bonds, and other documents required in connection therewith; and related matters – Joe Kernan, "I move we approve New Business Item #2". Alex Butwinski seconded. Motion unanimously carried.

3. Consideration of a Resolution affirming Park City's support of and partnership with the 2010 Census – Bret Howser explained that two weeks ago, representatives from the Census Bureau presented information on partnering and this Resolution reflects the City's intention to cooperate and support the process. Liza Simpson, "I move we approve a Resolution affirming Park City's support of and partnership with the 2010 Census". Cindy Matsumoto seconded. Motion unanimously carried.

4. Consideration of an Amendment #2 to Carollo Professional Services Agreement in an amount of \$325,000 – Kathy Lundborg introduced Jeff Beckman, Carollo Engineers, who is the project manager on the water treatment plant. He explained that Carollo was hired by the City to design the facility and through the process, identified new approaches that will help with efficiencies and the delivery of water, some of which were not included in the original scope of the project. These costs as well as design changes recommended by the Planning Commission are reflected in the amendment. He discussed the need to adequately study the water treatment plant's location and its potential pressure and effects on the treatment membrane. Discussion ensued about the previous Carollo credit to the City. Joe Kernan, "I move to approve Item 4 under New Business". Liza Simpson seconded. Motion unanimously carried.

VII ADJOURNMENT

With no further business, the regular meeting of the City Council was adjourned.

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 3 p.m. Members in attendance were Mayor Dana Williams, Alex Butwinski, Candace Erickson, Joe Kernan, Cindy Matsumoto, and Liza Simpson. Staff present was Michael Kovacs, Assistant City Manager; Tom Daley, Assistant City Attorney; Kyle MacArthur, Water Analyst; Kathy Lundborg, Water Manager; Ken Mitchell, Water Analyst, Jason Christiansen, Legal Intern; Diane Foster, Sustainability Manager; Roger Evans, Building Inspector; Ron Ivie, Chief Building Official; Rhoda Stauffer, Housing Specialist; Jeff Schoenbacher, Environmental Specialist; Brian Anderson, Parking Manager; Jon Weidenhamer, Economic Development Manager; Max Paap, Special Events Manager; Bob Kollar,

Joint Venture Manager; Phyllis Robinson, Community Affairs Manager; and Mark Harrington, City Attorney. Joe Kernan, "I move to close the meeting to discuss property and litigation". Candace Erickson seconded. Motion carried unanimously. The meeting opened at approximately 6 p.m. Liza Simpson, "I move to open the meeting". Joe Kernan seconded. Motion unanimously carried.

The meeting for which these minutes were prepared was noticed by posting at least 24 hours in advance and by delivery to the news media two days prior to the meeting.

Prepared by Janet M. Scott

Janet M. Scott, City Recorder

City Council Staff Report



Subject: Outdoor Display of Art in City-owned walkway
between 510 and 528 Main Street
Author: Sharon Bauman
Department: Executive
Date: February 11, 2010
Type of Item: Administrative

Summary Recommendations: Staff recommends that City Council review and approve the request from the Park City Historical Society for the outdoor display of a mining bucket on City-owned Property on the walkway between 510 and 528 Main Street.

Background: The Park City Historical Society submitted an application for Display of Art on City-owned Property. The request is for outdoor display of a 1901 Silver King Aerial Tramway Bucket in the City-owned walkway between the Park City Museum (528 Main Street) and Rocky Mountain Chocolate/Dolly's Bookstore (510 Main Street). The location is inside an area bordered by a retaining wall on the south side of the Museum on the westerly portion of the walkway. The CUP is approved or denied by Planning, subject to final approval by the City Council as property owner.

Analysis: It is the intent of Park City to encourage and accommodate the placement and enjoyment of outdoor public works of art and artifacts; therefore, certain City-owned Properties are available for art that promotes visual interest and economic vitality of Park City's Historic and resort-based community.

LMC Chapter 15-4-15 Outdoor Display of Works of Art on City-owned Property requires review by the Planning, Engineering and Building Departments for compliance with a number of criteria. The Planning Department has reviewed and approved the request subject to the Findings of Fact and Conditions of approval outlined in Exhibit A - Notice of Planning Department Administration Action. A site plan is attached as Exhibit B. The tramway bucket is displayed in Exhibit C.

Section 15-4-15(C) requires that City Council (as owner) review and give final approval of the proposal, and may seek a recommendation from the arts-related advisory board. The Public Art Advisory Board reviewed the proposed location in January and recommends approval.

Department Review:

The request has been reviewed by the Planning, Building, Engineering, Executive and Legal Departments.

Alternatives:

- A. Approve:** Staff recommends that City Council approve the outdoor display of the mining bucket by the Historical Society, between 510 and 528 Main Street, subject to the Findings of Fact and Conditions of Approval listed in Exhibit A.

- B. Deny:** City Council could deny the request for placement of an outdoor display of art on City-owned Property.
- C. Modify:** City Council could direct Staff to work with the applicant to seek alternate locations for the mining bucket display.
- D. Continue the Item:** Council could request that the item be continued to provide additional information.
- E. Do Nothing:** This would be the same as denying the request.

Significant Impacts:

Display of the mining bucket may enhance the historic nature and Park City's Historic District. The outdoor display would be available for viewing by the general public and may generate interest in the Park City Historical Society and Museum.

Consequences of not taking the recommended action:

The historic mining bucket would not be displayed in the public walkway.

Recommendation: Staff recommends that City Council review and approve the request from the Park City Historical Society for the outdoor display of a mining bucket on City-owned Property on the walkway between 510 and 528 Main Street.

Exhibit A - Notice of Planning Department Administrative Action

Exhibit B - Site Plan

Exhibit C - Tramway Bucket Photos

Exhibit A - Notice of Planning Department Administrative Action

NOTICE OF PLANNING DEPARTMENT ADMINISTRATIVE ACTION

<u>Project Name</u>	Mining Bucket Public Art Outdoor Display
<u>Project Description</u>	Administrative Conditional Use Permit
<u>Date of Action</u>	January 11, 2010

Action Taken By Planning Staff: The Planning staff APPROVED the Mining Bucket Public Art Conditional Use Permit based on the findings of fact and conditions of approval outlined in this letter.

The City received a complete and signed application on January 8, 2010 for outdoor display of a mining bucket on City property in the Historical Commercial Business (HCB) zone. It is the intent of Park City to encourage and accommodate the placement and enjoyment of outdoor public works of art and artifacts; therefore, certain City-owned Properties are available for the display of art and artifacts. The approval is subject to the requirements of the Land Management Code Section 15-4-15 (B); however, if the City finds at any future date that the conditions of approval are not being adhered to, this conditional use permit may become void and the display shall be removed.

(B) REVIEW CRITERIA

(1) The outdoor display of works of art (and artifacts) must comply with the height and Setback requirements of the Zoning District where it is located. **Complies-** *The display meets both the height and setback requirements of the zone. The site is located in the Historic Commercial Business zoning district. There are no setback requirements and the display's height of approximately 7 feet is well under the 45 foot height limit of the zone.*

(2) Outdoor display of works of art (and artifacts) that are displayed in excess of six (6) months must be designed and created with materials that will withstand the weather conditions and the elements. **Complies-** *The proposed display is made of steel and will withstand weather conditions and elements.*

(3) The outdoor display of works of art (and artifacts) must comply with all applicable Building Codes. **Complies-** *As conditioned.*

(4) In cases where the City is not the Owner of record of the work of art (or artifact) displayed, the City accepts no liability in cases of damage or theft of the art. **Complies-** *As stated in the review criteria, the City shall not be liable in cases of damage or theft of the art or artifact.*

(5) No sale price may appear on the work of art, however, the name of the artist, the name of a gallery sponsoring the art, the name of the art work, and/or a brief narrative specific to the work of art, not exceeding one square foot (1 sq. ft.), may be attached to the work of art or its support base. **Complies-** *No price tag will appear on the display. A narrative sign may be placed at the base and it will not exceed 1 square foot in size.*

(6) The outdoor display of works of art (and artifacts) shall not create a hazard to the public due to moving parts, sharp edges, or extension into public Rights-of-Way, including sidewalks, or pedestrian and vehicular Areas; nor shall the display restrict vision at intersections. **Complies-** *A signed and executed encroachment agreement will be required from the City Engineer prior to installation of the display.*

(7) All lighting shall conform to the lighting regulations in Land Management Code Chapter 15-5-5(l) Lighting. **Complies-** *No lighting is proposed. A separate electrical permit is required for all lighting.*

FINDINGS OF FACT:

Upon review of your application, staff finds that:

1. This application has been reviewed under Section 15-4-15 (B) of the Land Management Code and complies with the review criteria.
2. The proposed display is to go in the walkway/plaza between Park City Museum (528 Main Street) and Rocky Mountain Chocolate/Dolly's Bookstore (510 Main Street).
3. The mining bucket will be installed on a 2' by 3' concrete pad.
4. The display will stand approximately 7' tall.
5. The City Engineer will prepare and encroachment agreement to be signed and executed prior to installation of the display.
6. A building permit is required by the Building Department prior to installation. Any lighting shall be reviewed by the Planning Department and an electrical permit from Building Department necessary.
7. The City shall not be liable in cases of damage or theft of the display.

CONDITIONS OF APPROVAL:

1. A building permit must be obtained from the Building Department prior to installation of the display. The display shall not impede access to the natural gas meter.
2. The display shall not inhibit any pedestrian circulation and any sharp edges of the display must be blunted.
3. An encroachment agreement shall be signed and executed prior to installation of the display.
4. City Council review and approval is required as a condition precedent to installation.

Exhibit B - Site Plan

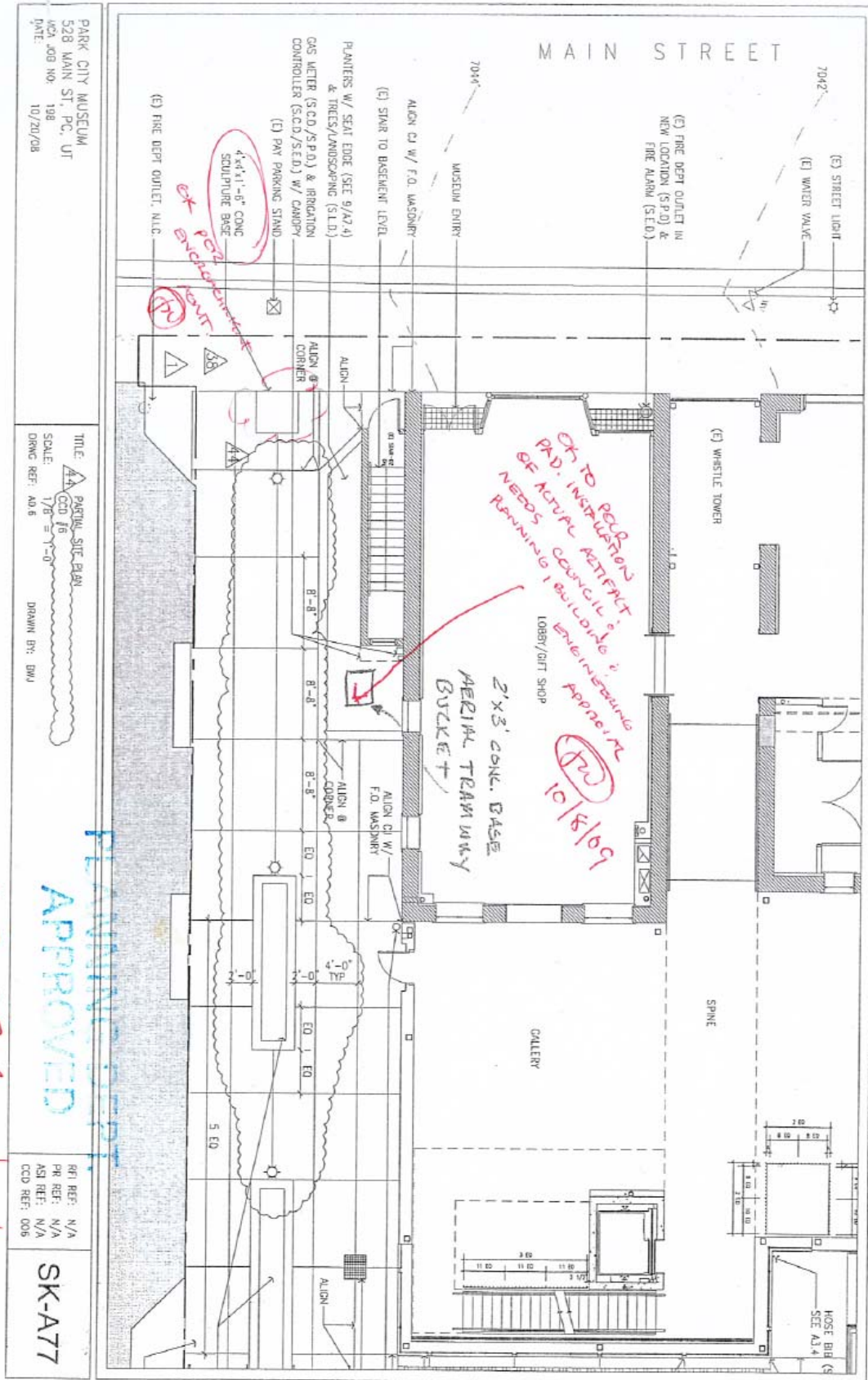


Exhibit C - Tram Bucket



Similar bucket on
Display inside Museum



Actual Bucket for
Outside Display



City Council Staff Report

Subject: Proposal to Purchase a Conservation Easement
Author: Diane Foster
Department: Sustainability
Date: February 11, 2010
Type of Item: Administrative

Summary Recommendations:

Staff recommends that Council review the attached proposal, take public input, and authorize of the City Manager to enter into the Agreement For Conveyance of a Conservation Easement Deed between the Afton Osguthorpe Sheltered Trust, Summit Land Conservancy and Park City Municipal Corporation in the amount of \$5,750,000, plus the reimbursement of 150 water credits for \$375,000, and authorize the City Manager to sign the Conservation Easement, each in form approved by the City Attorney, regarding Parcel SS-98, which is comprised of approximately 121 acres in Summit County, Utah. Summit Land is responsible for \$1,000,000 of the purchase price.

Background:

The Osguthorpe family, through their attorney, initiated a discussion with the City in September 2009 regarding the Right of First Refusal Agreement and the possibility of the City purchasing a Conservation Easement on the parcel. Since the acquisition of adjacent property from the Osguthorpes in 1990, the City has made several offers to purchase (either a conservation easement or the full parcel) the Osguthorpe's 121 acre parcel, SS-98.

On October 8, 2009 City Council publically approved a Right of First Refusal Agreement between the Osguthorpe family and Park City Municipal. Since that time staff continued to work with the Osguthorpe family on the potential to purchase either a conservation easement or purchase the parcel fee simple. The family also explored other options directly with Summit Land.

Analysis:

Parcel SS-98 is located in Summit County on route 248, just outside of City limits. This beautiful piece of farming and ranching property sits in one of Park City's two entry corridors and is currently zoned Hillside Stewardship Zone which carries development rights of 1 unit per 30 acres or 1 unit per 40 acres on sensitive lands, as defined in the Snyderville Basin Development Code. However, the land is located within Park City's Annexation Declaration Area and, if annexed into the City, could be assigned the Community Transition Zone, as that is the zoning that has been assigned to the IHC campus and other parcels in that area. In the CT zone, parcel SS-98 could have up to 121 homes placed on it. Furthermore, a 1990 agreement between the City and the family granted the Osguthorpes 150 water fee credits.

Since the early 1940s, Osguthorpes have been stewards of the land in Park City and to this day visibly maintain their commitment to agricultural preservation. The family's desire is to continue to farm the 121 acre parcel, as they have for generations.

Whereas Park City has attempted to purchase this property in the past to preserve it as open space and whereas the Osguthorpe family is willing to place a Conservation Easement on the property that removes all current and future density from this parcel and also allow public trail access, this agreement has the potential to be a win-win for the citizens of Park City and the Osguthorpe family.

The Osguthorpe family had a "Yellow Book" appraisal completed on the parcel in January 2010. (A "Yellow Book" appraisal is an appraisal done using the Uniform Appraisal Standards for Federal Land Acquisitions, a manual published by the Appraisal Institute in cooperation with the U.S. Department of Justice.) The appraisal valued the parcel at \$9,400,000. The Osguthorpes family is willing to sell the parcel for \$9 million, however, their preference would be to have a conservation easement placed on the parcel.

The recommended purchase price for the conservation easement is \$5.75 million, or \$47,521 per acre. The price is comparable to the \$48,485/acre purchase of the Kimball Junction/PRI parcel made by the City and Summit County a year ago. At 61% of the appraised value, this conservation easement is priced below a typical conservation easement price of 80% of appraised value.

If approved, the purchase of the conservation easement will be funded in partnership with the Summit Land Conservancy. As proposed, Park City Municipal will pay \$4.75 million and the Summit Land Conservancy will raise the additional \$1 million over the next two years to complete the purchase of the easement, with the City acting as guarantor. The City will fund its \$4.75 million share entirely from dedicated open space funds including

- the remaining \$1.7 million in open space bond funds;
- funds from Open Space Impact Fees; and
- the portion of the Flagstaff Transfer Fees that are specified to be used for open space.

All of these funds are dedicated for open space only and cannot be used for budget shortfalls or other CIP matters due to the restraints on each account.

The prospective conservation easement purchase was reviewed by the Citizen's Open Space Advisory Committee (COSAC) in January 2010. COSAC forwarded to City Council a positive recommendation to utilize the remaining open space bond funds towards the purchase of the conservation easement.

Summit Land Conservancy and the City are co-grantees and will jointly administer the conservation easement. The conservation includes specific allowed uses and restricted uses. Instead of reiterating the allowed and restricted uses here, staff recommends

Council review Exhibits C&D of the Conservation Easement Agreement in detail. Future utility uses are prohibited. While all of the allowed and restricted uses will exist in perpetuity, because of the time needed to determine the right solution that protects the crops while avoiding hunting and funding for the solution, the agreement suggests a one-year delay in the no hunting provision and also a one-year delay in the installation of a summer mountain biking/hiking trail (December 2010). While the Osguthorpes have already initiated discussions with the DWR and other groups about the possibility of fencing the alfalfa field or other non-hunting solutions, none of these groups can commit funds immediately and many have upcoming grant cycles. Because of this, staff believes this is a reasonable request – and delaying the trail will protect the public.

The Osguthorpes have agreed to request annexation into the City within a year provided the City includes this property in its own petition at no cost to the Osguthorpes. This annexation will pave the way for the City to be able to annex the property in Round Valley which would have been precluded without this property due to creation of an island.

In this agreement, the City also gains a future right of first refusal that extends beyond the current ten-year agreement. While all development rights will be extinguished with the establishment of the Conservation Easement, the property will retain agricultural value. Should the Osguthorpes wish to sell the parcel in the future, the City has a right of first refusal and the terms thereof are the same as the terms approved by City Council in the October 8, 2009 meeting. Additionally, should the Osguthorpes no longer wish to maintain the property for agricultural purposes and wish to lease the property, the City will also have a right of first refusal on leasing the parcel.

Water Development Fee Credits

In 1990 the City entered into an agreement with the Osguthorpe family that both settled litigation and resulted in the City purchasing other property. 150 Water Development Fee Credits were also granted to the Osguthorpes. Each certificate has a \$2,500 credit against Park City's water development impact fee and is currently fully transferable. The proposed agreement includes a provision to buy back these Water Fee Development Credits at face value of \$375,000.

Department Review:

This proposal and exhibits has been reviewed by the City Manager as well as the Legal and Sustainability departments.

Alternatives:

- A. Approve:** The City would enter into an agreement with the Osguthorpe family to purchase a Conservation Easement on parcel SS-98 and to buy back 150 Water Development Fee Credits.
- B. Deny:** The City would not enter into an agreement with the Osguthorpe family to purchase a Conservation Easement on parcel SS-98 and to buy back 150 Water Development Fee Credits.

C. Modify: Council may request modifications to the agreement with the Osguthorpe family to purchase a Conservation Easement on parcel SS-98 and to buy back 150 Water Development Fee Credits.

D. Do Nothing: This will have the same impact as denying the request.

Significant Impacts:

Public Access: This conservation easement will provide summer trail access for mountain biking, hiking and trail running in the summer, beginning in the summer of 2011 and winter cross country and snowshoeing trail access. (see Attachment 2) Because of the overwhelmingly positive response to the new groomed trails in Round Valley, staff believes the winter cross country & snowshoeing trails, shown in blue on Attachment 2, will be of significant public value.

Land is sold for development: Without a conservation easement, and even with the Right of First Refusal for ten years, is still possible that the land could be sold for development. If the City were to annex the parcel, it could *potentially* receive density of up to 121 lots with 150 water credits. This intensity of any potential development would have a significant impact on route 248 and on other City infrastructure. Because of the topography of the land, many of the homes could be visible from the road.

Best and last opportunity: Due to the certain circumstances, this may be the City's best opportunity to purchase a conservation easement on this parcel.

Recommendation:

Staff recommends that Council review the attached proposal, take public input, and authorize of the City Manager to enter into the Agreement For Conveyance of a Conservation Easement Deed between the Afton Osguthorpe Sheltered Trust, Summit Land Conservancy and Park City Municipal Corporation in the amount of \$5,750,000, plus the reimbursement of 150 water credits for \$375,000, and authorize the City Manager to sign the Conservation Easement, each in form approved by the City Attorney, regarding Parcel SS-98, which is comprised of approximately 121 acres in Summit County, Utah. Summit Land is responsible for \$1,000,000 of the purchase price.

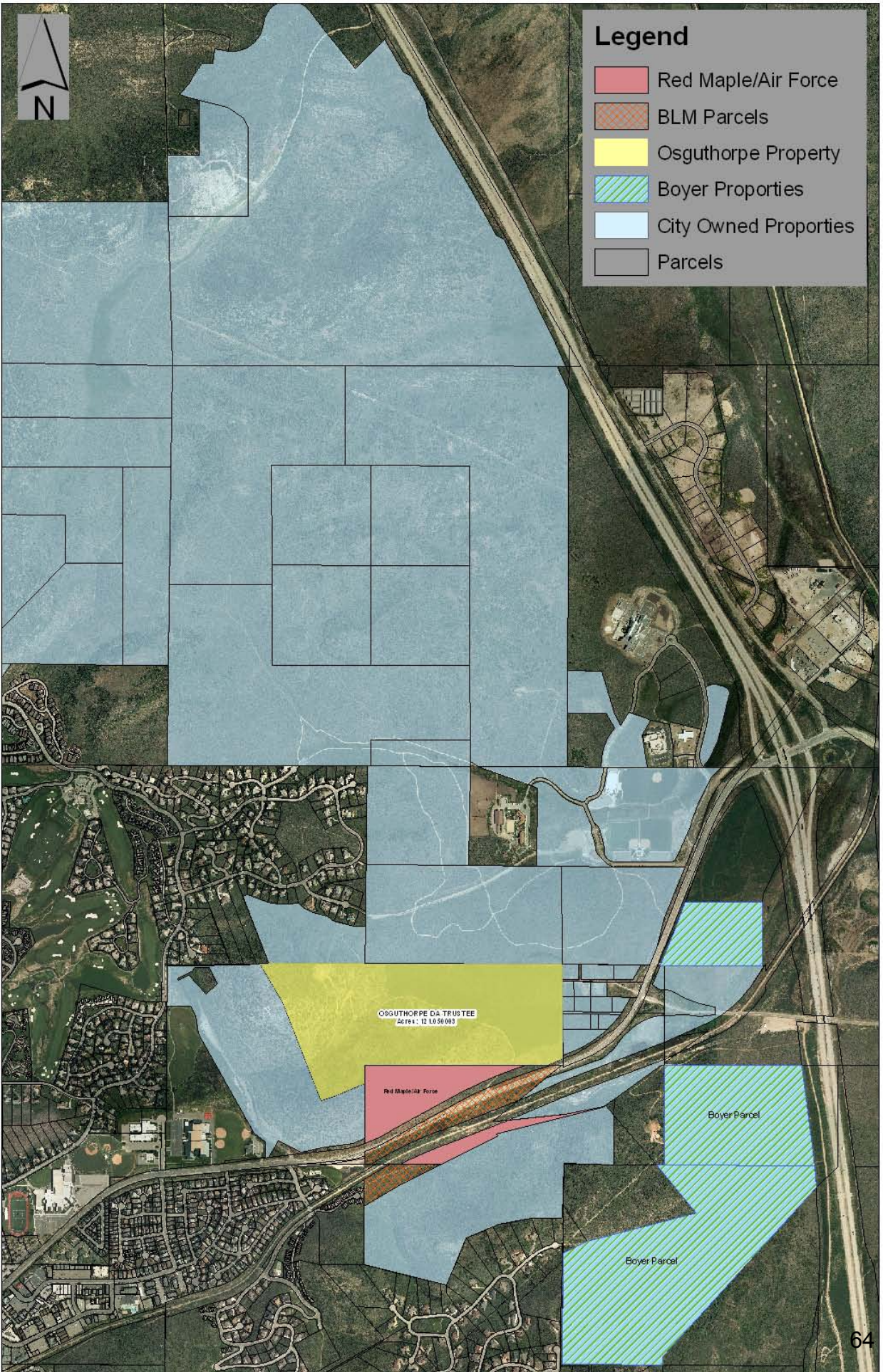
Attachments: *(please note change in naming convention so as to minimize confusion between the attachments to the staff report and the exhibits included in the Conservation Easement)*

Attachment 1: Map of Area

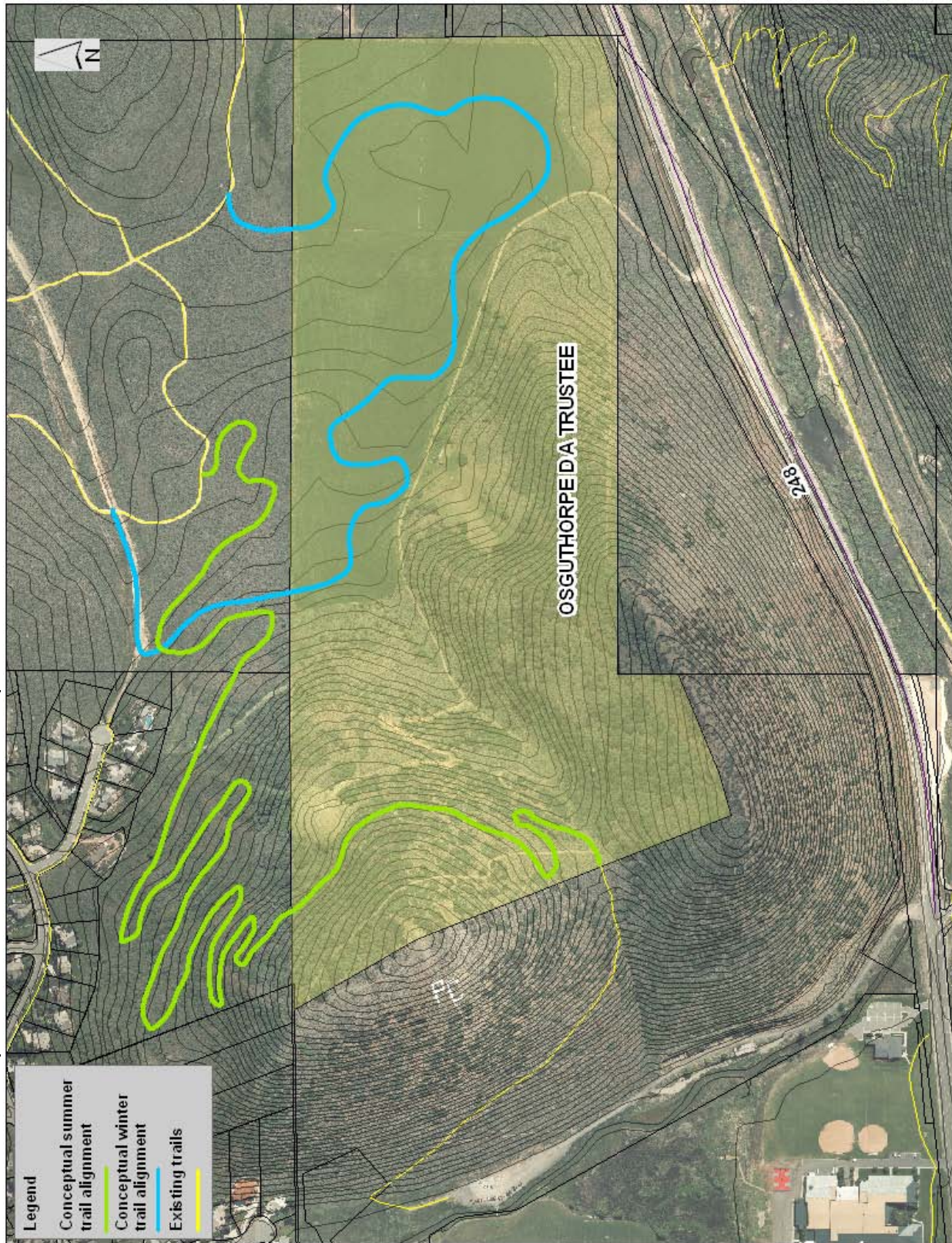
Attachment 2: Proposed Summer & Winter Trail Additions

Attachment 3: Agreement for Conveyance of Conservation Easement Deed

Attachment 4: Conservation Easement Agreement (with its own Exhibits)



Attachment 2: Proposed Summer & Winter Trail Map



**AGREEMENT FOR CONVEYANCE OF
CONSERVATION EASEMENT DEED**

AGREEMENT made this ____ day of February, 2010, by and among Stephen A. Osguthorpe, Jerry S. Osguthorpe, Sue Ann Larson and Karen Brown, each in his or her capacity as a Trustee of The Afton S. Osguthorpe Sheltered Trust ((hereinafter collectively referred to as the “Owners”), with a mailing address of 1700 White Pine Canyon Rd., Park City, Summit County, Utah 84060-6506, Park City Municipal Corporation (together with its employees, agents, contractors, successors and assigns hereinafter collectively referred to as “PCMC” or the “Buyer”) and Summit Land Conservancy (together with its employees, agents, contractors, successors and assigns hereinafter collectively referred to as “Summit Land” or the “Buyer”), a Utah nonprofit corporation organized under the laws of the State of Utah, with a mailing address of P.O. Box 1775, Park City, Summit County, Utah 84060.

RECITALS:

A. Owners are the Owners of approximately 121 acres located along the S.R. 248 to the northeast of Park City limits in unincorporated Summit County, Utah, and identified in the county tax records as Parcel SS-98 (see attached Exhibit “A”), and more particularly described in the Recorder Plat of Section 3, Township 2S, Range 4 E, Salt Lake Base and Meridian prepared by Summit County Recorder (hereinafter the “Property”);

B. Owners desire to preserve and protect the conservation values of the Property and place a conservation easement thereon (hereinafter the “Protected Property”) and Buyer has agreed to accept a conservation easement deed describing the same, all in accordance with the laws of the State of Utah and in particular Utah Code Ann. 57-18-1 et seq (1985);

C. The Property is subject to a First Right of Refusal to Purchase Real Estate (hereinafter the “First Right of Refusal”) executed on January 21, 2010 by and between the Owners and Park City Municipal Corporation (PCMC), and attached to this Agreement as Exhibit “B”.

D. The Park City Council at an open meeting on February ___, 2010 has approved this Agreement.

E. The parties hereto are willing to enter into an easement, granted in perpetuity, for the purposes to be agreed upon and to be set forth therein; and

F. The parties wish to enter into this Agreement in order to memorialize the terms and conditions under which said conservation easement deed will be granted and accepted.

NOW THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and promises set forth herein, the parties agree as follows:

1. Easement Grant; General Description of Terms. The parties agree to negotiate, execute and record a conservation easement deed (hereinafter the “Easement Deed”) to be held by PCMC and Summit Land as co-grantees upon the terms set forth herein for the purposes of protecting in perpetuity the conservation values, including open spaces, natural resources, agricultural uses, and scenic qualities, inherent in the Protected Property. The Easement Deed shall be in substantially the form attached hereto as Exhibit “A”. Notwithstanding the foregoing, the parties specifically acknowledge and agree that each shall have the right to negotiate in good faith the terms, provisions, and conditions of said Easement Deed in accordance with the parties' intentions in entering this Agreement and in consummating this transaction and always with an eye toward preserving the aforementioned conservation values inherent in the Protected Property to the maximum extent reasonably practicable under the circumstances. Buyer shall bear primary responsibility for and all costs of drafting the initial version of the Easement Deed.

2. a. Consideration. The purchase price for the Easement Deed shall be \$5,750,000.00.

b. Additional Consideration. PCMC shall purchase 150 water fee credit certificates from Owners for \$375,000.00 payable at Closing.

c. Payment Terms. Owners acknowledge that Owners received \$750,000.00 upon the execution of the First Right of Refusal from PCMC and that said sum is a credit against the total purchase price of the Easement Deed. PCMC shall pay at closing the sum of \$4,375,000.00 to be paid by certified check, electronic funds transfer, or other good and current funds acceptable to Owners at Closing. The balance of \$1,000,000.00 shall be paid by certified check, electronic funds transfer, or other good and current funds acceptable to Owners by Summit Land

no later than two years from the date of Closing. Should Summit Land fail to pay any part of that sum, PCMC shall pay the balance of funds not paid.

d. Bargain Sale. Owners believe that the purchase price for the Property specified in this Agreement is below fair market value. As the Buyer agrees that all of the Property shall be permanently and irrevocably dedicated to environmental and public purposes, an agreement material to Owners decision to enter into this Agreement, Owners intends that the difference between the purchase price and fair market value shall be a charitable contribution to Buyer. However, Buyer makes no representation as to the tax consequences of the transaction contemplated by this Agreement. Owners will obtain independent tax counsel and be solely responsible for compliance with the gift value substantiation requirements of the Internal Revenue Code.

3. Other Terms and Conditions.

a. Owners shall continue to own and use the water from the well located on the Property for agricultural purposes. Owners and PCMC agree to hereby amend the existing agreement dated October 1, 1990 to delete PCMC's obligation to purchase the water and well. At the time Owners cease using the Property for agricultural purposes, Owners shall offer to sell the well and related pipes and equipment, as well as reserved water rights, to PCMC at a price to be negotiated at the time of purchase prior to selling the water to a third party ("City Option").

b. The Easement Deed shall define agricultural use to include farming of crops and existing grazing of sheep, horses and cattle as permitted uses reserved to the Owners in perpetuity.

c. The Easement Deed shall include a grant of a public trail easement to be cut as shown in green on the map attached as Exhibit C. PCMC shall erect and maintain a fence between the trail and the Property's grazing and irrigated crop growing areas. The Easement Deed shall grant a public winter trail access for cross country and snowshoeing uses only, as shown in blue on the map. The parties agree, should it be necessary, that an elk/deer fence may be erected around the irrigated crop areas of the Property so as to discourage elk and deer from grazing in such area. The parties agree the cost of erecting and maintaining said fence shall be borne by Owners, and may continue so long as the Owners continue to use this area for crop growing. PCMC or its assigns shall be responsible for winter gates for the winter trail use. Should the Owners cease such use, and PCMC leases the land, then PCMC shall be solely responsible for the maintenance of the fence.

d. The Easement Deed shall prohibit hunting, beginning one year from the date of closing. Should an elk /deer fence be erected as contemplated in paragraph c. above, then the prohibition on hunting may begin upon completion of the fence if sooner than the one year period.

e. Owners agree to petition for annexation into Park City with ROS zoning within one year from the date of Closing, and execute all necessary plat and document approvals to effectuate the annexation upon approval by PCMC. Such petition may be in conjunction with PCMC for other Park City Round Valley property. PCMC agrees to pay or waive any and all annexation costs and fees

f. Should Owners desire to sell the Property in the future, PCMC has a first right of refusal and the parties agree to adhere to the process outlined in said First Right of Refusal. Should Owners cease using the Property for agricultural uses, but do not desire to sell the Property, PCMC shall have a first right of refusal to lease the Property to continue agricultural uses.

4. Timing and Closing. This Agreement and Easement Deed shall be executed by the parties and recorded by Buyer by February 12, 2010, unless this date is extended by the mutual written consent of the parties.

5. Responsibility for Costs of Easement Transaction. The parties hereto agree that Owners herein shall be responsible for any appraisal fee, survey costs, and the attorneys' fees and costs incurred by the Owners in connection with this transaction, regardless of whether the parties reach agreement under Paragraph 2 and a closing occurs under Paragraph 3.

6. **Title Insurance.** At Closing, Owners agree to pay for a standard-coverage owner's policy of title insurance insuring Buyer in the amount of the Purchase Price. Owners shall provide a preliminary title report within 3 days of Closing. If, upon such examination of title to the Premises, Buyer finds that title to the Property is encumbered so as to adversely impact the values sought to be protected by the Easement Deed, in its sole discretion, then Buyer shall notify Owners of that fact in writing at least one (1) days prior to the Closing, and this Agreement shall be void and without recourse to any party unless the parties may agree that Owners may attempt to remove any such encumbrances, in which event Owners shall give written notice thereof to Buyer within five (5) days of receipt of said notice. Thereupon the time of Closing shall be extended for a period designated by Owners, not to exceed sixty (60) days. If at the expiration of the extended time, Owners shall have failed to remove such encumbrances(s), then at either parties' option, this Agreement shall be void and without recourse to any party or Buyer shall have the election (at that time) to accept such title as Owners can deliver and pay therefor the Purchase Price, without reduction, in which case Owners shall deliver such title with proper reference in the Deed that title is delivered subject to the aforementioned encumbrance(s).

7. Closing Contingency. If Buyer is unable to raise the funds, and so notifies Owners in writing on or before February 12, 2010, Buyer shall have the option of terminating this Agreement, or may extend this date with the written agreement of Owners. If Buyer elects to terminate this Agreement, or if Owners does not agree to such an extension, this Agreement shall thereupon become null and void, and the parties hereto shall not be bound by its terms. In the event Buyer has not notified Owners in writing of Buyer's inability to raise said total by the above-specified date, this contingency shall lapse.

8. Owner's Covenants and Representations. During the term of this Agreement, Owners covenants and agrees not to suffer any material change adversely affecting the conservation values inherent in the Protected Property or the conservation purposes of the Easement Deed contemplated hereby. Any such adverse material change suffered by Owners shall afford Buyer the right, at its option, of terminating this Agreement without recourse to either party.

9. Governing Law. The laws of the State of Utah shall govern this Agreement.

10. Merger. All prior negotiations, discussions, and agreements of or by and between the parties and/or their representatives are herein merged and there are and shall be no other agreements and/or other statements by the parties other than may be contained herein or in a subsequent amendment hereto executed by the parties with all the formalities hereof.

11. Binding Effect. This Agreement shall be binding upon the heirs, administrators, executors, successors and assigns of the parties hereto, and Buyer shall have the right to record the Easement Deed, but not this Agreement in the Summit County Registry of Deeds.

12. Notices. All notices, requests, and other communications required or permitted to be given under this Agreement shall be in writing, except as otherwise provided herein, and shall be delivered by hand or sent by certified mail, postage prepaid, return receipt requested (in which event notice shall be deemed to have been given when so delivered or when deposited in the mail) to the appropriate address set forth above or at such other address as such party may hereafter designate by notice given in like fashion.

13. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

14. Assignment. Neither Owners nor Buyer shall assign any of its interest in this Agreement or in the Property until after the Easement Deed shall have been executed, accepted and recorded consistently with the provisions of this Agreement.

15 Due Authorization and Execution. Each party represents and warrants to the other party that execution and delivery of this Agreement and the assignments and other documents contemplated hereby, has been duly authorized by all necessary municipal, corporate, trust, or trustee action. Stephen A. Osguthorpe expressly represents and warrants that in his capacity as a Trustee of the Sheltered Trust, he has been duly authorized by all Trustees of the Sheltered Trust to execute this Agreement on behalf of each Trustee and the Sheltered Trust.

The undersigned parties have each duly caused this Agreement to be executed by their respective officers or representatives thereunto duly authorized, as of the date(s) set forth below.

OWNERS:

The Afton S. Osguthorpe Shelter Trust, by and
through its Trustees:

Date

Stephen A. Osguthorpe, Co-Trustee

BUYER:

Summit Land Conservancy

Date

By: _____
Its _____,
Hereunto Duly Authorized

Park City Municipal Corporation

Date

By: _____
Its _____,
Hereunto Duly Authorized

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 200____, by _____.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 200____, by _____, the _____ of Summit Land Conservancy, a Utah nonprofit corporation.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

STATE OF _____)
 : ss.
COUNTY OF _____)

*The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by
_____, the _____ of Summit Land
Conservancy, a Utah nonprofit corporation.*

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

WHEN RECORDED, RETURN TO:
Summit Land Conservancy
P.O. Box 1775
1650 Park Avenue, Suite 202
Park City, Utah 84060

CONSERVATION EASEMENT DEED AND AGREEMENT

THIS CONSERVATION EASEMENT DEED AND AGREEMENT ("Agreement") is made this ____ day of February, 2010 ("Effective Date") by and between The Afton S. Osguthorpe Sheltered Trust ("Owner"), and Park City Municipal Corporation, a political subdivision of the state of Utah ("City") and Summit Land Conservancy, a Utah nonprofit corporation, ("Summit Land") (Owner, City and Summit Land are referred to individually as a "Party" and collectively as the "Parties").

The following Exhibits are attached to and are incorporated into this Agreement by this reference:

Exhibit A: Legal Description of the Property;
Exhibit B: Property Map;
Exhibit C: Permitted Uses and Practices; and
Exhibit D: Restricted Uses and Practices.

Exhibit E: Trail Map

RECITALS

A. Owner owns approximately 121 acres of real property and appurtenances located in Summit County, State of Utah (collectively, the "Property"). The Property is described in Exhibit A and shown for reference purposes on the Property Map attached as Exhibit B.

B. As fee owner of the Property, Owner owns the affirmative rights to identify, preserve, and protect forever the Conservation Values (defined below) of the Property. Owner desires to grant a conservation easement to the City and Summit Land pursuant to the 'Land Conservation Easement Act' of Utah's statutes, Sections 57-18-1 to 57-18-7, which authorizes protection of natural, scenic, open space, aesthetic, historic, hydrologic, ecological, agricultural, and scientific values that are of great importance to Owner, the City, Summit Land, the people of Summit County, and the people of the State of Utah, and in accordance with the federal tax code and Internal Revenue Service rules and regulations applicable to qualified conservation contributions.

C. The conservation values intended to be preserved and protected for the public benefit (as defined in § 1.170A-14(d)(2)(i) of the IRS Regulations) under this Agreement include primarily agriculture, recreation, and undeveloped, scenic view-shed. The Property as a second priority provides habitat for elk, moose, and numerous small mammals and birds. Along with

conservation easements on adjacent lands owned by others, the Property provides buffer to the town of Park City, protecting the views from its entry corridor along Highway 248. The property may also be used for educational purposes to showcase local farming practices or other features of the property. The above-described values and public benefits are collectively referred to in this Agreement as the “Conservation Values”.

D. As of the Effective Date, Summit Land is a nonprofit corporation incorporated under the laws of Utah as a tax-exempt public charity described in Sections 501(c)(3) and 509(a)(1) of the IRS Code (defined below), organized to protect and conserve natural areas and ecologically significant land for agricultural, scientific, charitable, and educational purposes; both Summit Land and the City are “qualified organizations” within the provisions of Section 170(h) of the IRS Code, qualified to acquire and hold conservation easements; and are qualified “holders” of a conservation easement under the Utah statute.

E. To accomplish the Conservation Purposes (defined below), Owner desires to convey to the City and Summit Land and the City and Summit Land desire to obtain from the Owner a conservation easement that restricts the uses of the Property and that grants certain rights to the City and Summit Land in order to preserve, protect, identify, monitor, enhance, and restore in perpetuity the Conservation Values in order of their priority. Owner acknowledges receipt of the information and disclosures required under Utah Code Section 57-18-4 more than three days prior to executing this Agreement.

F. The rights granted to the City and Summit Land under this Agreement have been donated in part by the undersigned Owner, and this Agreement is intended to qualify as a charitable donation of a partial interest in real estate (as defined under § 170(f)(3)(B)(iii) of the IRS Code) to a qualified organization (a “Qualified Organization”) as defined in § 1.170(A-14(c)(1) of the IRS Regulations.

CONSERVATION EASEMENT TERMS

IN CONSIDERATION of the recitals set forth above, the mutual covenants, terms, conditions, and restrictions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, and pursuant to the Utah state law, in particular, the ‘Land Conservation Easement Act’ of Utah’s statutes, Sections 57-18-1 to 57-18-7, Owner voluntarily grants and conveys to, and the City and Summit Land accept, a perpetual conservation easement in, on, over, and across the Property, subject to the terms and conditions set forth in this Agreement, restricting forever the uses that may be made of the Property and granting the City and Summit Land certain rights in the Property (the “Conservation Easement”); and Owner and City/Summit Land agree as follows:

1. CONSERVATION PURPOSES. The purposes of the Conservation Easement are to preserve and protect in perpetuity and, in the event of their degradation or destruction, to enhance and restore the significant relatively natural features and the Conservation Values of the Property. In particular, the purpose of the Conservation Easement is to primarily permanently protect the existing agricultural uses, recreational values, open and undeveloped nature of the property. Other secondary conservation purposes and benefits of the Conservation Easement include maintaining wildlife habitat and reducing urban density and traffic along the Highway

248 corridor. In achieving the above-named purposes (collectively the “Conservation Purposes”), it is the intent of the Conservation Easement to permit the continuation of such uses of the Property as may be conducted consistent with the Conservation Values protected herein.

2. EASEMENT DOCUMENTATION REPORT. The Parties acknowledge that an Easement Documentation Report (the “Report”) has been prepared, which provides a collection of baseline data on the Property and its natural resources and an assessment of the consistent uses. The Parties agree that the Report contains an accurate representation of the biological and physical condition of the Property as of the Effective Date and of the historical uses of the Property, including historical water uses. In addition to the public benefits described as the Conservation Values, the Report identifies public policy statements and/or other factual information supporting the significant public benefit of the Conservation Easement.

Owner and City/Summit Land approve the Report, a copy of which is on file with the Owner and City/Summit Land at their respective addresses for notices set forth below.

3. CITY’S AND SUMMIT LAND’S RIGHTS. In order to accomplish the Conservation Purposes, the rights and interests that are granted and conveyed to the City and Summit Land by this Agreement include the following:

A. Preserve and Protect. The City and Summit Land may preserve, protect, identify, monitor, and, in the event of their degradation or destruction, enhance, and restore in perpetuity the Conservation Values.

B. Entry and Access Rights. The City and Summit Land are, by this Agreement, granted rights of access, whether by public ways or otherwise and including, but not limited to, any access easements appurtenant to the Property or held by Owner, to enter upon the Property in order to monitor compliance with and otherwise enforce the terms of this Agreement, to study and make scientific observations of the Property and of natural elements and ecosystems and other features of the Property, to determine whether the Owner’s activities are in compliance with the terms of this Agreement, and to take all actions deemed necessary by City/Summit Land to enforce the terms of this Agreement, all upon reasonable prior notice to Owner and in a manner that does not unreasonably disturb the use of the Property by Owner consistent with the Conservation Easement. Solely limited to exercising emergency rights pursuant to 8(c) below, the City and Summit Land have the right of immediate entry to the Property if, in its reasonable judgment, such entry is necessary to prevent, terminate, or mitigate a violation of the Conservation Easement, or to preserve and protect the Conservation Values. The City is hereby granted a perpetual public trail easement to be cut as shown in green on Exhibit E and the City is further granted a public winter trail access for cross country and snowshoeing uses only, as shown in blue on the map attached as Exhibit E.

C. Enforcement. The City and Summit Land may prevent or enjoin any activity on or use of the Property that constitutes a breach of this Agreement and may enforce the restoration of such areas or features of the Property that might be damaged by any breach.

D. Additional Actions. The City and Summit Land may, but are not obligated to, employ the use of herbicides to control non-native or native weeds and invasive

plant species if, as reasonably determined by City/Summit Land, other weed control methods have been ineffective; provided, however, that City/Summit Land will obtain the prior consent of Owner, which consent will not be unreasonably withheld, conditioned, or delayed.

4. PERMITTED USES OF THE PROPERTY. Except as prohibited or otherwise limited by this Agreement, Owner reserves the right to use and enjoy the Property in any manner that is consistent with the Conservation Purposes. The uses set forth in Exhibit C, though not an exhaustive list of consistent uses and practices, are consistent with the Conservation Easement and will not be precluded, prevented, or limited, except as specifically conditioned in Paragraph 5 or Exhibit D, or in those instances in which prior approval by the City or Summit Land is required under this Agreement.

5. LIMITED AND PROHIBITED USES OF THE PROPERTY. Any activity on or use of the Property that is inconsistent with the Conservation Purposes (including, without limitation, any activity or use that diminishes or impairs the Conservation Values) is prohibited. Though not an exhaustive list of prohibited and restricted uses, none of the uses described in Exhibit D will be made of the Property.

6. PROPOSED PRACTICES OR ACTIVITIES. If any question exists regarding whether certain uses or activities are permitted or would be inconsistent with the Conservation Purposes or would diminish or impair the Conservation Values, Owner will notify the City and Summit Land in writing and obtain the City's and Summit Land's written approval prior to engaging in such practices or activities.

7. APPROVAL REQUEST.

A. City and Summit Land Approval. Owner will not undertake or permit any activity requiring prior approval by the City and Summit Land without first having notified and received approval from the City and Summit Land as provided herein. Prior to the commencement of any activity for which this Agreement requires prior written approval by the City and Summit Land, Owner will send the City and Summit Land written notice of Owner's intention to undertake such activity. The notice will inform the City and Summit Land of all aspects of the proposed activity, including location, design, materials or equipment to be used, dates and duration, and all other relevant information and will be delivered in a manner required by this Agreement. If in the City's or Summit Land's judgment additional information is required to adequately review the proposal, the City or Summit Land will send written notice requesting such additional information within 15 days of receipt of Owner's notice.

B. City and Summit Land Decision. No later than 45 days from the City's and Summit Land's receipt of information adequate to review the proposal, the City and Summit Land will notify Owner of its disapproval or approval or Owner's proposal, or that the City or Summit Land may approve the proposal with certain specified modifications. The City's and Summit Land's decision must be based upon the City's and Summit Land's assessment of the proposed activity in relation to its consistency or inconsistency with the terms of this Agreement. Approval to proceed with, or failure to object to, any proposed use or activity will not constitute consent to any subsequent use or activity of the same or any different nature.

C. Owner's Compliance. Regardless of whether or not the City's or Summit Land's approval is required under this Paragraph, Owner will comply with § 1.170A-14(g)(5)(ii) of the IRS Regulations and will notify the City and Summit Land before exercising any reserved right that may have an adverse impact on the Conservation Values.

8. REMEDIES.

A. Notice of Violation; Corrective Action. If any party becomes aware that a violation of the terms of this Agreement has occurred or is threatened to occur, such party shall give written notice of such violation. If party in receipt of the notice fails to cure the violation within thirty (30) days after receipt of notice from the other party, or under circumstances where the violation cannot reasonably be cured within a thirty (30)-day period, fails to begin curing such violation within the thirty (30)-day period or fails to continue diligently to cure such violation until finally cured, the Owner, City or Summit Land as the case may be will have all remedies available at law or in equity to enforce the terms of this Agreement, including, without limitation, the right to seek a temporary or permanent injunction with respect to such activity, to cause the restoration of that portion of the Property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity (regardless of whether the costs of restoration exceed the value of the Property), to pay monetary amounts which, if not paid, could result in extinguishment, modification, non-enforcement or impairment of the Agreement, and/or to recover any additional damages arising from the violation. The Parties' rights under this Paragraph apply equally to actual or threatened violations of the terms of this Agreement. The Parties agree that each Parties' remedies at law for any violation of the terms of this Agreement are inadequate and that each Party is entitled to the injunctive relief described in this Paragraph, both prohibitive and mandatory, in addition to such other relief to which either Party may be entitled, including specific performance of the terms of this Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this Paragraph are cumulative and are in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of the 'Land Conservation Easement Act' of Utah's statutes, Sections 57-18-1 to 57-18-7 are incorporated into this Agreement by this reference, and this Agreement includes all of the rights and remedies set forth therein.

B. Costs of Enforcement. In any action, suit or other proceeding undertaken to enforce the provisions of this Agreement, the prevailing Party will be entitled to recover from the non-prevailing Party all reasonable costs and expenses, including attorneys' fees, and if such prevailing Party recovers judgment in any action or proceeding, such costs and expenses will be included as part of the judgment. In addition, any costs of restoration will be borne by the Owner if Owner is deemed to be responsible for damage to the Property.

C. Emergency Enforcement. If the City or Summit Land, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate imminent, significant damage to the Conservation Values or to prevent an irreparable breach or extinguishment of the Conservation Easement, the City and Summit Land may pursue its remedies under this Agreement without prior notice to Owner and without waiting for the cure period to expire.

D. Good Faith; No Waiver. Enforcement of the terms and provisions of this Agreement will be in done in good faith to preserve the Conservation Values, and the failure of any Party to discover a violation or to take action under this Agreement will not be deemed or construed to be a waiver of the Party's rights under this Agreement with respect to such violation in the event of any subsequent breach. In no event will any delay or omission by any Party in exercising any right or remedy constitute an impairment of or a waiver of such right or remedy.

E. Remedies Cumulative. No single or partial exercise of any right, power or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder and all remedies under this Agreement may be exercised concurrently, independently or successively from time to time. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies which may be available at law or equity.

F. Acts Beyond the Parties' Control. Nothing contained in this Agreement will be construed to entitle any Party to bring any action against Owner for any injury to or change in the Property resulting from causes beyond the Parties' control, including fire, flood, storm, earth movement, and other natural disasters.

9. REPRESENTATIONS AND WARRANTIES.

A. Hazardous Materials. To the best of Owner's knowledge, Owner represents and warrants that the Property (including, without limitation, soil, groundwater, and surface water) is free of any conditions that individually or in the aggregate: (i) constitute a present or potential threat to human health, safety, welfare, or the environment; or (ii) violate any Environmental Law (defined below). Owner represents and warrants that aside from the existin water well, there are no underground tanks located on the Property. Owner represents and warrants that Owner will comply with all Environmental Laws in using the Property and that Owner will keep the Property free of any material environmental defect, including, without limitation, contamination from Hazardous Materials (defined below). Owner represents that Owner has no knowledge of mining activity on the Property, but discloses that abandoned tunnels or shafts may exist on, under or in close proximity to the Property.

B. State of Title. Owner represents and warrants that Owner has good and marketable title to the Property (including all appurtenances, including, without limitation, all minerals and mineral rights (subject to federal or state mineral reservations of record)), free and clear of any liens or encumbrances that might cause extinguishment of the Conservation Easement, or that would materially impair the Conservation Purposes, and that the Owner has full right and authority to enter into this Agreement and grant the Conservation Easement.

C. Compliance with Laws. Owner has not received notice of and has no knowledge of any material violation of any federal, state, county, or other governmental or quasi-governmental statute, ordinance, rule, regulation, law, or administrative or judicial order with respect to the Property.

D. No Litigation. Owner represents and warrants that there is no action, suit, or proceeding that is pending or threatened against the Property or any portion thereof relating to

or arising out of the ownership or use of the Property, or any portion thereof, in any court or before or by any federal, state, county, or municipal department, commission, board, bureau, agency, or other governmental instrumentality.

E. Authority To Execute Agreement. The person or persons executing this Agreement on behalf of the City and Summit Land represent and warrant that the execution of this Agreement has been duly authorized by the City and Summit Land. The person or persons executing this Agreement on behalf of Owner represent and warrant that the execution of this Agreement has been duly authorized by Owner.

10. COSTS, LEGAL REQUIREMENTS, AND LIABILITIES. Owner will be responsible for and will bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property and agrees that the City and Summit Land will have no duty or responsibility for the operation or maintenance of the Property (except for the upper fence separating the public trail easement and any maintenance of the winter trail), the monitoring of hazardous conditions on the Property, or the protection of Owner, the public, or any third parties from risks relating to conditions on the Property. Owner agrees to pay before delinquency any and all real property taxes and assessments levied on the Property and agrees that the Owner will keep the City's and Summit Land's interest in the Property free of any liens, including those arising out of any work performed for, materials furnished to, or obligations incurred by Owner. Owner will be solely responsible for any costs related to the maintenance of general liability insurance covering Owner's acts on the Property. Except for Annexation fees which will be paid or waived by the City, the Owner remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use by Owner on the Property and permitted by this Agreement, and any activity or use will be undertaken in accordance with all applicable federal, state, and local laws, rules, regulations, and requirements. If more than one person or entity constitutes Owner, the obligations of each and all of them under this Agreement will be joint and several.

11. RUNNING WITH THE LAND. The Conservation Easement created by this Agreement burdens and runs with the Property in perpetuity. Every provision of this Agreement that applies to Owner or City/Summit Land also applies forever to and burdens or benefits, as applicable, their respective agents, heirs, devisees, administrators, employees, personal representatives, lessees, and assigns, and all other successors as their interest may appear.

12. SUBSEQUENT TRANSFERS. Provided such is consistent with the right of first refusal or other purchase agreement requirements with the City, Owner may transfer the Property in its entirety, but not in any portion less than its entirety. Owner (without consideration) may assign title and this Agreement to different family members or Trustees pursuant to administration of the trust, with prior notice to the City and Summit Land. Owner agrees that the terms, conditions, restrictions, and purposes of this Agreement or reference thereto will be inserted by Owner in any subsequent deed or other legal instrument by which Owner divests either the fee simple title or a possessory interest (including, but not limited to, any leases) of the Property; and Owner further agrees to notify the City and Summit Land of any pending transfer (including, without limitation, leases) at least forty five (45) days in advance of the transfer. Leasing all or any portion of the Property for a period of five (5) or more years is subject to prior written approval by the City and Summit Land, which approval will not be unreasonably

withheld, conditioned, or delayed. The failure of the Owner to comply with this Paragraph will not impair the validity of this Agreement or limit its enforceability in any way. Any successor in interest of the Owner, by acceptance of a deed, lease, or other document purporting to convey an interest in all or any portion of the Property, will be deemed to have consented to, reaffirmed, and agreed to be bound by all of the terms, covenants, restrictions, and conditions of this Agreement.

13. CROSS INDEMNIFICATION. Notwithstanding any other provision of this Agreement to the contrary, the Parties indemnify, defend, and hold each other, including, without limitation, each Party's directors, officers, employees, agents, contractors, and their successors and assigns (collectively, the "Indemnified Parties"), harmless from and against any costs, liabilities, penalties, damages, claims (whether based on negligence or strict liability), or expenses (including reasonable attorneys' fees) and litigation costs that the Indemnified Parties may suffer or incur as a result of or arising out of: (a) use of or activities on the Property by the Party; (b) the inaccuracy of any representation or warranty made herein by the Party; (c) any material breach of this Agreement by the Party; and (d) approvals for activities requested of a Party whether given or withheld under this Agreement, except as the result of the unreasonableness, gross negligence or intentional misconduct of the Party from whom approval was sought.

Notwithstanding the foregoing, Owner indemnifies, defends, and holds harmless the City and Summit Land and its Indemnified Parties for all of the following:

A. Approvals. Any claim, liability, damage, or expense suffered or incurred by or threatened against the City or Summit Land by a third party and related to any approvals requested by Owner, whether given or withheld by the City or Summit Land under this Agreement, except as such claim, liability, damage, or expense is the result of the City's or Summit Land's unreasonableness, gross negligence or intentional misconduct.

B. Taxes. Any real property taxes, insurance, utilities, or assessments that are levied against the Property, including those for which exemption cannot be obtained, or any other costs of maintaining the Property.

C. Hazardous Materials. Any Hazardous Material being present on the Property after the Effective Date, unless brought to the Property by the Indemnified Parties.

Nothing herein shall waive any defense or limitation in the Utah Government Immunity Act.

14. CHANGE OF CONDITIONS. In granting the Conservation Easement, Owner has considered the possibility that uses prohibited by the terms of this Agreement may become more economically valuable than permitted uses and that neighboring properties may be used entirely for such prohibited uses in the future. It is the intent of Owner, the City and Summit Land that any such changes will not be deemed circumstances justifying the termination of this Agreement or the extinguishment of the Conservation Easement. In addition, the inability of Owner, or Owner's heirs, successors or assigns, to conduct or implement any or all of the uses

permitted under this Agreement, or the unprofitability of doing so, will not impair the validity of this Agreement or be considered grounds for its termination or extinguishment.

15. EXTINGUISHMENT. If circumstances arise in the future that render the purposes of this Agreement impossible to accomplish, this Agreement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each Party will promptly notify the other when it first learns of such circumstances. In accordance with IRS regulation, the amount of the proceeds to which the City and Summit Land will be entitled (based proportionally on their respective contribution to the purchase price), after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, will be determined, unless otherwise provided by law at the time, in accordance with Paragraph 17 below. Summit Land will use all such proceeds in a manner consistent with the Conservation Purposes.

16. CONDEMNATION. If all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Agreement, Owner, the City and Summit Land will join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds will be divided in accordance with the proportionate value of the, City's, Summit Land's and Owner's interests as of the Effective Date, it being expressly agreed that this Agreement constitutes a compensable property right. All expenses incurred by Owner, the City and Summit Land in such action will be paid out of the recovered proceeds.

17. PROPERTY INTEREST VALUATION. In accordance with § 1.170A-14(g)(6) of the IRS Regulations, the Conservation Easement constitutes a real property interest immediately vested in the City and Summit Land, which the Parties stipulate to have a fair market value equal to 61% of the full fair market value of the Property as of the Effective Date. For the purpose of this Agreement, the ratio of the value of the Conservation Easement to the unencumbered value of the Property will remain constant.

The City and Summit Land make no representation as to the tax consequences of the transaction contemplated by this Easement Agreement. Owner will obtain independent tax counsel and be solely responsible for compliance requirements of the Code.

18. AMENDMENT. If circumstances arise under which an amendment to or modification of this Agreement might be appropriate, the City, Summit Land and Owner may by mutual written agreement jointly amend this Agreement, provided that no amendment will be made that will adversely affect the qualification of the Conservation Easement or the status of Summit Land as a qualified holder under any applicable laws, including the IRS Code or Utah statute. Any such amendment will be consistent with the protection of the conservation and preservation of the Conservation Values of the Property and the Conservation Purposes of this Agreement; will not affect its perpetual duration; and will not permit any private benefit to any person or entity without proportionate benefit to the City and Summit Land, in accordance with rules and regulations governing 501(c) non-profit organizations, City bond and impact fee funds, and Summit Land's internal policies and procedures. Any such amendment will be recorded in

the land records of Summit County, Utah. Nothing in this Paragraph will require either Party to agree to any amendment or to consult or negotiate regarding any amendment.

19. NOTICE.

A. Notice for Entry. Where notice to Owner of the City's or Summit Land's entry upon the Property is required under this Agreement, the City or Summit Land will notify any of the persons constituting Owner or their authorized agents by telephone or in person or by written notice in the manner described in Paragraph 19(B) prior to such entry.

B. Written Notices. Any written notice called for in this Agreement will be delivered: (i) in person; (ii) by certified mail, return receipt requested, postage prepaid; (iii) by facsimile with the original deposited with the United States Post office, postage prepaid on the same date as sent by facsimile; or (iv) by next-business-day delivery through a reputable overnight courier that guarantees next-business-day delivery and provides a receipt. Notices must be addressed as follows:

To Summit Land:	Summit Land Conservancy P.O. Box 1775 1650 Park Avenue, Suite 202 Park City, Utah 84046 Attention: Cheryl Fox, Executive Director
To Park City:	Diane Foster Park City Municipal Corporation P.O. Box 1480 Park City, UT 84060
With a Copy to:	City Attorney P.O. Box 11480 Park City, UT 84060
To the Owner:	The Afton S. Osguthorpe Sheltered Trust attn: Stephen A. Osguthorpe 1700 White Pine Canyon Rd., Park City, , Utah 84060-6506

Either Party may, from time to time, by written notice to the other, designate a different address that will be substituted for the relevant address or addresses set forth above. Notice is deemed to be given upon receipt.

20. INTERPRETATION.

A. Intent. It is the intent of this Agreement to protect the Conservation Values in perpetuity by prohibiting and restricting specific uses of the Property, notwithstanding

economic or other hardship or changes in circumstances or conditions. If any provision in this Agreement is found to be ambiguous, an interpretation consistent with protection of the Conservation Values and Conservation Purposes is favored, regardless of any general rule of construction. In the event of any conflict between the provisions of this Agreement and the provisions of any use and zoning restrictions of the State of Utah, the county in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions will apply.

B. Governing Law. This Agreement will be interpreted in accordance with the laws of the State of Utah.

C. Captions. The captions have been inserted solely for convenience of reference and are not part of the Agreement and will have no effect upon construction or interpretation.

D. No Hazardous Materials Liability. Notwithstanding any other provision of this Agreement to the contrary, nothing in this Agreement will be construed such that it creates in or gives to the City or Summit Land: (i) the obligations or liabilities of an “owner” or “operator” as those words are defined and used in Environmental Laws (defined below), including, without limitation, (ii) the obligations or liabilities of a person described in 42 USC Section 9607(a)(3); (iii) the obligations of a responsible person under any applicable Environmental Law; (iv) any obligation to investigate or remediate any Hazardous Materials associated with the Property; or (v) any control over Owner’s ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

E. Construction. The Parties acknowledge and agree that (i) each Party is of equal bargaining strength; (ii) each Party has actively participated in the drafting, preparation and negotiation of this Agreement; (iii) each Party has consulted with its own independent counsel, and such other professional advisors as it has deemed appropriate, relating to any and all matters contemplated under this Agreement; (iv) each Party and its counsel and advisors have reviewed this Agreement; (v) each Party has agreed to enter into this Agreement following such review and the rendering of such advice; and (vi) any rule of construction to the effect that ambiguities are to be resolved against the drafting Parties shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto

F. Definitions.

(i) The term “IRS Code” means the Internal Revenue Code of 1986, as amended through the applicable date of reference.

(ii) The term “Development Rights” means and includes any and all legal rights under federal, state, and/or local laws, ordinances, rules or regulations now in effect or enacted after this date to develop and build structures, expressed as the maximum number of dwelling units per acre for residential parcels or square feet of gross floor area for nonresidential parcels, that could be permitted under applicable zoning and subdivision rules and regulations.

(iii) The terms “Owner” and “City” or “Summit Land”, and any pronouns used in place thereof, mean and include, respectively, Owner and Owner’s personal

representatives, heirs, devisees, personal representatives, and assigns, and all other successors as their interest may appear and the City/Summit Land and their successors and assigns.

(iv) The term “Hazardous Materials” includes, without limitation, any of the following wastes, materials, chemicals, or other substances (whether in the form of liquids, solids, or gases, and whether or not airborne) which are ignitable, reactive, corrosive, toxic, or radioactive, or which are deemed to be pollutants, contaminants, or hazardous or toxic substances under or pursuant to, or which are to any extent regulated by or under or form the basis of liability under any statute, regulation, rule, ordinance, order, or requirement concerning such wastes, materials, chemicals, or other substances (in each case, an “Environmental Law”), including, but not limited to, petroleum-based products and any material containing or producing any polychlorinated biphenyl, dioxin, or asbestos, as well as any biocide, herbicide, insecticide, or other agrichemical, at any level that may (a) constitute a present or potential threat to human health, safety, welfare, or the environment, (b) exceed any applicable or relevant and appropriate cleanup standard, or (c) cause any person to incur any investigation, removal, remediation, maintenance, abatement, or other cleanup expense; it being understood that such Environmental Laws include, but are not limited to Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC Section 9601 et seq.); the Hazardous Materials Transportation Act (49 USC Sections 6901 et seq.); similar Utah state environmental laws; and any rule, regulation, or other promulgation adopted under any of the foregoing laws.

(v) All references to the “IRS Regulations” means the Internal Revenue Service Treasury Regulations, 26 C.F.R. Ch. 1, § 1.170A-14 as amended through the applicable date of reference.

21. ASSIGNMENT. The City or Summit Land with notice to Owner may freely assign this Agreement to a qualified government entity or a non-profit tax-exempt public charity qualified at the time of transfer as an eligible donee under the IRS Code Section 170(h) and as a qualified “holder” under the ‘Land Conservation Easement Act’ of Utah’s statutes, Section 57-18-3.

22. SEVERABILITY AND ENFORCEABILITY. The terms and purposes of this Agreement are intended to be perpetual. If any provision herein shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby, (i) such holding or action shall be strictly construed; (ii) such provision shall be fully severable; (iii) this Agreement shall be construed and enforced as if such provision had never comprised a part hereof; (iv) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision or by its severance from this Agreement; and (v) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid and unenforceable provision as may be possible

23. EXHIBITS. Each exhibit referred to in, and attached to, this Agreement is an integral part of this Agreement and is incorporated in this Agreement by this reference.

24. COUNTERPARTS. This Agreement may be executed in one or more counterparts, all of which taken together shall be considered one and the same agreement and each of which shall be deemed an original. This Agreement shall become effective when each Party shall have received a counterpart signature page signed by all of the other Parties.

25. RECORDING. The City and Summit Land are authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Agreement, and Owner agrees to execute any such instruments upon reasonable request.

26. ENTIRE AGREEMENT. This Agreement, including the Exhibits attached hereto, sets forth the entire agreement and understanding of the Parties with respect to the transactions contemplated by this Agreement and supersedes all prior arrangements, promises, communications, representations, warranties and understandings, whether oral or written, by any Party or any officer, employee, representative or agent of any Party with respect to the transactions contemplated by this Agreement.

OWNER AND SUMMIT LAND have executed this Conservation Easement Agreement as of the Effective Date.

OWNER:

By: _____

Print Name: _____

Title: _____

SUMMIT LAND:

Summit Land Conservancy, a Utah
nonprofit corporation

By: Richard Sheinberg

Print Name: _____

Title: Chairman, Board of Trustees

CITY:

By: _____

Print Name: _____

Title: _____

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 200____, by _____.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 200____, by _____, the _____ of Summit Land Conservancy, a Utah nonprofit corporation.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 200____, by _____, the _____ of Summit Land Conservancy, a Utah nonprofit corporation.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

**EXHIBIT A
TO
CONSERVATION EASEMENT AGREEMENT**

LEGAL DESCRIPTION OF THE PROPERTY

**EXHIBIT B
TO
CONSERVATION EASEMENT AGREEMENT**

PROPERTY MAP



**EXHIBIT C
TO
CONSERVATION EASEMENT AGREEMENT**

PERMITTED USES AND PRACTICES

The uses set forth in this Exhibit C detail specific activities that are permitted under this Conservation Easement Agreement. The uses set forth in this Exhibit C are also intended to provide guidance in determining the consistency of other activities with the Conservation Purposes. Notwithstanding the uses set forth in this Exhibit C and, notwithstanding any provision of this Conservation Easement Agreement to the contrary, in no event will any of the permitted uses of the Property (whether set forth in this Exhibit C or elsewhere in this Conservation Easement Agreement) be conducted in a manner or to an extent that diminishes or impairs the Conservation Values or that otherwise violates this Conservation Easement Agreement.

1. AGRICULTURE. Owner retains the right to use the Property for agricultural production, or to permit others to use the Property for agricultural production, in accordance with applicable law. As used herein, “agricultural production” shall mean the production, processing, storage or retail marketing of crops, and existing sheep, horse and cattle grazing on natural forage available (no feed lots). For purposes hereof, crops include, but are not limited to: (a) crops currently on the Property including alfalfa; (b) field crops, including corn, wheat, oats, rye, barley, hay, potatoes, cotton, tobacco, herbs and dry beans; (c) vegetables, including lettuce, tomatoes, snap beans, cabbage, carrots, beets, onions, mushrooms, and soybeans; and (e) horticultural specialties, including sod, seeds, nursery stock, ornamental shrubs, ornamental trees, Christmas trees and flowers..

2. CONSERVATION PLAN. All agricultural operations on the Property shall be conducted in a manner consistent with generally accepted “Best Management Practices,” as those practices may be identified from time to time by appropriate governmental or educational institutions, and in a manner not wasteful of soil resources or detrimental to water quality or conservation. All agricultural operations shall be conducted in accordance with applicable law.

3. ROADS AND TRAILS. The construction of new roads is prohibited anywhere on the Property, except as set forth in the remainder of this Paragraph. Relocation or further improvement of the existing road will require the prior written approval of the City and Summit Land, which will not be unreasonably withheld. Owner may repair and maintain existing trails on the Property as of the Effective Date at the current level of improvement for such trails as of the date of this Conservation Easement Agreement. New trails may be established upon prior written approval by the City and Summit Land, which will not be unreasonably withheld; provided any new trails will be constructed of non-manufactured, natural materials. After December 1, 2010, provided the Owner has ended hunting/predatory control, the City may construct and maintain the new winter trail in the public trail easements as granted in Section 3(B) of the Easement. The City may construct and open the upper trail at any time at its own risk, provided the fence is installed.

4. PASSIVE RECREATIONAL AND TEMPORARY USES. Owner and City may conduct passive, non-commercial recreational activities on the public trail easements, including, but not limited to, skiing, bird watching, hiking, biking, horseback riding on trails, and picnicking. Special events approved by the City may occur on the winter trail provided such are not inconsistent with the Conservation Values and only upon prior written approval by the Owner and Summit Land. The City may groom trails for public winter trail access for cross country and snowshoeing uses only, as shown in blue on the map attached as Exhibit E, provided the City is responsible for any damage to the Property or irrigation equipment.

5. WATER RESOURCES. Existing ditches and drainage improvements may be maintained, but new water resources and facilities may be constructed only upon prior written approval of the City and Summit Land, which will not be unreasonably withheld.

6. HABITAT RESTORATION ACTIVITIES. Activities to restore or enhance native plant communities or wildlife habitat will be permitted pursuant to a restoration plan approved by the Owner, the City and Summit Land.

7. SIGNS. The right to place a limited number of signs on the Property for the following purposes:

A. To state the purpose of the Easement and the terms of this Conservation Easement Agreement; and

B. To identify trails or interpretive sites on the Property; and

C. To state rules and regulations, safety, or hazardous conditions found on the Property in accordance with the Owner's, the City's and Summit Land's established guidelines for properties they own; and

D. To post fence lines and tilled areas "no trespassing" and close the winter trail seasonally to protect agriculture and to close trails temporarily on the Property in order to protect public safety or to protect wildlife.

8. FIRE SUPPRESSION. Owner may remove brush and vegetation necessary to minimize the risk of wildfire on the Property. Potential means to reduce or remove high risk fuel loads may include, but would not be limited to: mechanized methods; biological controls, including short-duration grazing; slash, stack and burn; or controlled burns.

9. FERTILIZERS, PESTICIDES, HERBICIDES, AND OTHER BIOCIDES. Use of fertilizers is permitted in compliance with all applicable laws, rules, regulations and manufacturer's label instructions. Herbicides may be used anywhere on the Property only for the control of non-native noxious weeds and other invasive exotic plant species and conducted in compliance with all applicable laws, rules, regulations and manufacturer's label instructions. Use of herbicides for any other purpose must be approved by the City and Summit Land. Use of pesticides and biocides requires advanced notice to the City and Summit Land. Aerial spraying of any chemicals is prohibited. Use of biological weed and insect control agents will be permitted, subject to prior notice the City and Summit Land.

10. WATER RIGHTS. The Property subject to this easement includes all water and water rights, ditches and ditch rights, springs and spring rights, reservoir and storage rights, wells and groundwater rights, and other rights in and to the use of water historically used on or otherwise appurtenant to the Property (collectively, the “Water Rights”).

Except for the City’s option in Paragraph 3(a) of the Agreement for Conveyance of a Conservation Easement executed concurrently herewith, Owner shall not transfer, encumber, sell, lease or otherwise separate the Water rights for the Property or change the historic use of the Water Rights without the consent of the City and Summit Land. Owner shall not abandon or allow the abandonment of, by action or inaction, any of the Water Rights without the consent of the City and Summit Land.

11. PROCEDURE TO CONSTRUCT TEMPORARY STRUCTURES AND OTHER IMPROVEMENTS. Except as otherwise provided herein, Owner and City may undertake construction, reconstruction, or other improvement of the Property only as provided below. Owner shall provide notice to the City and Summit Land prior to undertaking any construction of agricultural or other improvements on the Property as permitted herein, so as to enable the City and Summit Land to review the proposed activity for compliance with the terms hereof.

A. Fences. Fencing that exists on the Property as of the Effective Date may be repaired and replaced, and new fencing may be built anywhere on the Property for purposes of reasonable and customary property management without any further permission of the City or Summit Land,. Reasonable access shall be provided for use of the public trail easements.

B. Existing Agricultural Structures & Improvements. Existing agricultural structures and improvements may be repaired, reasonably enlarged and replaced at their current locations.

C. New Agricultural Structures & Improvements. New temporary or seasonal structures and improvements to be used for agricultural production (as defined above) and not to be used for any dwelling may be built on the Property only with the advanced, written permission of the City and Summit Land. If the City becomes Owner or leases the Property, the City may construct trailhead improvements, parking and, in the event of public garden use, a small equipment storage accessory structure not to exceed 800 square feet in a location approved by Summit Land.

**EXHIBIT D
TO
CONSERVATION EASEMENT AGREEMENT**

RESTRICTED USES AND PRACTICES

Though not an exhaustive list of prohibited uses, none of the uses described below will be made of the Property. The following are set forth both to list specific prohibited activities on the Property and to provide guidance in determining whether or not other activities are inconsistent with the Conservation Purposes.

1. **NO SUBDIVISION.** The legal or de facto division, subdivision, or partitioning of the Property is prohibited. Notwithstanding the fact that, as of the Effective Date, the Property might be comprised of separate legal parcels, the terms and conditions of this Conservation Easement Agreement will apply to the Property as a whole, and the Property will not be sold, transferred, or otherwise conveyed except as a whole, intact, single piece of real estate; it being expressly agreed that neither the Owner nor the Owner's personal representative, heirs, successors, or assigns will sell, transfer, or otherwise convey any portion of the Property that constitutes less than the entire Property. The existence of any separate legal parcels, if any, as of the Effective Date will not be interpreted to permit any use or activity on an individual legal parcel that would not have been permitted on such individual legal parcel under the terms and conditions of this Conservation Easement Agreement as applied to the Property as a whole. Notwithstanding the remainder of this Paragraph, ownership of the Property may be held in the form of undivided interests as tenants in common, whether by choice or by operation of any applicable laws, but no owner of an undivided interest in the Property will have the right of exclusive occupancy or exclusive use of any separate portion of the Property, or any right to have the Property partitioned in kind, whether pursuant to Utah statute or otherwise.

2. **NO SEVERANCE OF WATER RIGHTS.** Except for the City's option in Paragraph 3(a) of the Agreement for Conveyance of a Conservation Easement executed concurrently herewith, Owner shall not transfer, encumber, sell, lease or otherwise separate the Water rights for the Property or change the historic use of the Water Rights without the consent of the City and Summit Land. Owner shall not abandon or allow the abandonment of, by action or inaction, any of the Water Rights.

3. **NO USE OR TRANSFER OF DEVELOPMENT RIGHTS.** Except as allowed under Exhibit C, the exercise of any development rights associated with the Property is prohibited, including, without limitation, the construction or placement of any residential or other buildings, roads or vehicle trails, golf courses, camping accommodations, boat ramps, bridges, mobile homes, house-trailers, permanent tent facilities, quonset huts or similar structures, underground tanks, or billboards, signs, or other advertising, and/or other structures or improvements, street lights, utility structures or lines, sewer systems or lines.

Except as allowed under Exhibit C, all development rights that are now or hereafter allocated to, implied, reserved, or inherent in the Property are terminated and extinguished and may not be used on or transferred to any portion of the Property as it now or hereafter may be

bounded or described or to any other property adjacent or otherwise nor used for the purpose of calculating permissible lot yield of the Property or any other property.

4. NO NATURAL RESOURCE DEVELOPMENT. The exploration for or extraction of minerals, gas, hydrocarbons, soils, sands, gravel, or rock, or any other material on the surface of the Property is prohibited. Owner will not grant any rights to any minerals, oil, gas, or hydrocarbons, including exploration or extraction rights in or to the Property, and Owner will not grant any right of access to the Property to conduct exploration or extraction activities for minerals, oil, gas, or hydrocarbons, or other substances on any other property. Any underground testing, exploration or mining must comply with all applicable regulations and laws. Any such activity is limited to subsurface rights and must be approved in advance by the City and Summit Land and must at all times be conducted consistent with the conservation values herein.

5. NO HAZARDOUS MATERIALS. Use, dumping, storage, or other disposal of non-compostable refuse, trash, sewer sludge, unsightly or toxic materials, or Hazardous Materials is prohibited, except that fertilizers and herbicides permitted under Exhibit C may be used and stored on the Property, provided that all such use and storage is in compliance with applicable health, safety, and Environmental Laws and regulations and further provided that all such use and storage does not diminish or impair the Conservation Values.

6. NO FEED LOTS. The establishment or maintenance of any commercial feedlots, which are defined as any confined area or facility within which the land is not grazed or cropped annually for purposes of engaging in the business of the reception and feeding of livestock for hire is prohibited.

7. NO JUNK YARDS. Storage or disassembly of inoperable automobiles, machinery, equipment, trucks, and similar items for purposes of storage, sale, or rental of space for any such purpose is prohibited.

8. NO ALTERATION OF NATURAL WATER COURSES; NO DEGRADATION OF WATER QUALITY. Manipulation or alteration of any natural water course, wetland, streambank, shoreline, vernal pool or body of water is prohibited. Activities or uses detrimental to water quality, including, but not limited to, degradation or pollution of any surface or subsurface waters, are prohibited.

9. NO OFF ROAD VEHICLE USE. Except as reasonably and minimally necessary for the uses allowed under Exhibit C, the use of any motorized vehicles off roadways is prohibited.

10. NO DESTRUCTION OF NATIVE VEGETATION. The removal, cutting or destruction of native vegetation is prohibited except as reasonably incident to permitted activities as described in Exhibit C.

11. NO TIMBER HARVESTING. The taking or harvesting of standing timber is prohibited, except for disease or insect control or to prevent property damage or personal injury. Owner may collect dead timber, standing or downed, for personal use. In no event may standing or downed timber be collected for or used for commercial purposes.

12. UTILITIES. Granting or installation of new utility corridors.
13. BILLBOARDS. Construction, maintenance, leasing, or erection any commercial signs or billboards on the Property.
14. NO HUNTING, TRAPPING OR FISHING. Hunting, trapping, or fishing is prohibited on the Property after January 31, 2011.
15. INCONSISTENT OR ADVERSE ACTIONS. Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips or commercial helicopter pads be constructed on the Property. Any action or practice that is inconsistent with the Conservation Purposes or that diminishes or impairs the Conservation Values is strictly prohibited.

**EXHIBIT E
TO
CONSERVATION EASEMENT AGREEMENT**

TRAIL MAP

