



HURRICANE CITY UTAH

Mayor

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City Council

Joseph Prete

Dave Sanders

David Hirschi

Kevin Thomas

Doug Heideman

Hurricane City Council Meeting Agenda

March 3, 2022

3:30 PM

City Council Chambers 147 N 870 W, Hurricane

Notice is hereby given that the City Council will hold a Regular Meeting in the City Council Chambers 147 N 870 W, Hurricane, UT. [Meeting Link on Webex](#) Meeting number: 2630 456 5376 Meeting password: HCcouncil Join from a video or application Dial 26304565376@cityofhurricane.webex.com. You can also dial 173.243.2.68 and enter your meeting number. Join by phone +1-415-655-0001 US Toll Access code:26304565376. A silent roll call will be taken, followed by the Pledge of Allegiance and prayer by invitation. **THOSE WISHING TO SPEAK DURING PUBLIC FORUM MUST SIGN IN WITH THE RECORDER BY 6:00 P.M.**

3:30 PM Growth Workshop with the Planning Commission

5:00 p.m. Pre-meeting

1. Discussion regarding **Peach Days**-David Stirland

6:00 p.m. - Call to Order

Prayer

National Anthem-Kalister Hutchings

Pledge

Public Forum – Comments from Public

Please Note: In order to be considerate of everyone attending the meeting and to more closely follow the published agenda, public comments will be limited to 2 minutes per person per item. A spokesperson representing a group to summarize their concerns will be allowed 5 minutes to speak. Repetitious commentary will not be allowed. If you need additional time, please request agenda time with Cindy Beteag in writing before 5:00 p.m. the Wednesday one week before the Council meeting.

OLD BUSINESS

1. Consideration and possible approval of a **reduction in park and road impact fees for an apartment complex located at approximately 6129 W 100 South H-4-2-4-3211** - Kyle Arbizu
2. Consideration and possible approval of a **Resolution declaring parents are the primary stakeholders in their child's life**-Laurel Frost
3. Consideration and possible approval of a **contract award for a chip seal project.**

4. Discussion on **short term rental ordinance**-Nanette Billings

NEW BUSINESS

1. Presentation from Ironman
2. Consideration and possible approval of an **Interlocal Cooperation Agreement with Ironman**
3. Consideration and possible approval of **awarding the runway lighting project at the airport** - Mike Vercimak
4. Local Consent for **Hurricane Mountain Bike Festival**
5. Consideration and possible approval of awarding the **bid to purchase and install bleachers at the Hurricane Equestrian Park** - Darren Barney
6. Discussion regarding **concerns at the animal shelter**- Tracy Sahleen
7. **Public Hearing** to take comments on the following:
 - a. The creation of **Sand Hollow Mesa Public Infrastructure District No. 1** as an independent body corporate and politic; authorizing and approving a governing document, an interlocal agreement, and a notice of boundary action; and related matters
 - b. The creation of **Sand Hollow Mesa Public Infrastructure District No. 2** as an independent body corporate and politic; authorizing and approving a governing document, an interlocal agreement, and a notice of boundary action; and related matters
 - c. The creation of **Sand Hollow Mesa Public Infrastructure District No. 3** as an independent body corporate and politic; authorizing and approving a governing document, an interlocal agreement, and a notice of boundary action; and related matters
 - d. The creation of **Bench Lake Public Infrastructure District** as an independent body corporate and politic; authorizing and approving a governing document, an interlocal agreement, and a notice of boundary action; and related matters
8. Consideration for adoption of a **resolution of the City Council of Hurricane City, Utah, providing for the creation of Sand Hollow Mesa Public Infrastructure District No. 1** as an independent body corporate and politic; authorizing and approving a governing document, an interlocal agreement, and a notice of boundary action; and related matters
9. Consideration for adoption of a **resolution of the City Council of Hurricane City, Utah, providing for the creation of Sand Hollow Mesa Public Infrastructure District No. 2** as an independent body corporate and politic; authorizing and approving a governing document, an interlocal agreement, and a notice of boundary action; and related matters
10. Consideration for adoption of a **resolution of the City Council of Hurricane City, Utah, providing for the creation of Sand Hollow Mesa Public Infrastructure District No. 3** as an independent body corporate and politic; authorizing and approving a governing document, an interlocal agreement, and a notice of boundary action; and related matters

11. Consideration for adoption of a **resolution of the City Council of Hurricane City, Utah, providing for the creation of Bench Lake Public Infrastructure District** as an independent body corporate and politic; authorizing and approving a governing document, an interlocal agreement, and a notice of boundary action; and related matters
12. Consideration and possible approval of an ordinance to **change the Power Board's meeting schedule**-Scott Hughes
13. Consideration and possible approval of a proposed **Zone Change Amendment request located at 1200 W 4600 S from RA-1, residential agriculture 1 unit per acre, to R1-15**, residential one unit per 15,000 square feet. Parcel number H-3403-K. Joshua Coen Applicant. Clark Spilker and Pope Engineering Agent.
14. Consideration and possible approval of a proposed **Zone Change Amendment request located at approximately 600 S 3500 W from R1-6, residential one unit per 6,000 square feet; R1-8, residential one unit per 8,000 square feet; R1-10, residential one unit per 10,000 square feet; R1-15, residential one unit per 15,000 square feet, to R1-6, residential one unit per 6,000 square feet and R1-8, residential one unit per 8,000 square feet**. Parcel number H-4-2-12-1102. D. R. Horton (Don Bean) Applicant. Adam Allen Agent.
15. Consideration and possible approval of a **Land Code Use Amendment to Title 10, Chapter 15, regarding Planned Commercial development standards**
16. Consideration and possible approval of a **preliminary plat for Desert Sands Area G, a 125 unit single-family subdivision located at 3000 S Sand Hollow Road**. The Hollows LLC Applicant. Brett Burgess Agent.
17. Consideration and possible approval of **awarding the contract for the Old Hwy 91 Pavement Rehabilitation Project**-Arthur LeBaron
18. Consideration and discussion of **water acknowledgment statement to be required as part of land use applications**.

Adjournment

I hereby certify that the above notice was posted to the city website, (www.cityofhurricane.com) posted to the state public notice website, and at the following locations:

1. City office – 147 North 870 West, Hurricane, UT
 2. The Post Office – 1075 West 100 North, Hurricane, UT
 3. The library – 36 South 300 West, Hurricane, UT
- _____ for the City Recorder



STAFF COMMENTS

Consideration and possible approval of a **reduction in park and road impact fees for an apartment complex located at approximately 6129 W 100 South H-4-2-4-3211** - Kyle Arbizu

Discussion:

The applicant is requesting that the City adjust their impact fees for an 18 unit apartment complex. An impact fee is a fee charged with a building permit that is used to build master plan infrastructure. An impact fee is justified within Utah law as a tool to have developers contribute to their impact within the City. The City uses these fees to help build new roads, parks, water line, wells, and other needed improvements required by growth. The City must go through a rigorous process set by state law to adopt impact fees, including an impact fee analysis study and public hearings. Hurricane City has followed those steps and has adopted several impact fees that gets charge for every building permit for each new unit built within Hurricane City.

Hurricane City Code list standards that an applicant needs to meet in order for the City Council to approved adjusted impact fees:

Sec. 9-2-5. - Adjustments. (Impact Fee)

A.Request. In order to ensure that impact fees are imposed fairly, and in order to respond to unusual circumstances in specific cases, the City may adjust the standard impact fee at the time the fee is charged. Such adjustment shall be made only upon specific written request to the City by persons subject to payment of such fees and after consideration of the matter by the City at a regular meeting of the City Council.

B.Submission of application; decision. The City may adjust the amount of impact fees to be paid on any specific development based upon studies and data submitted by the developer evidencing that the impact fee imposed is unfair or not reasonably related to the impacts caused by such new development. The application to adjust fees, together with any supporting data and studies, shall be submitted to the City staff for review and recommendation to the City Council. Within 30 days, the City Council shall consider all pertinent information and make any adjustments deemed appropriate at a regular meeting of the City Council.

At the time of this report, staff has not done a full review of the request and does not have a recommendation at this time. Staff generally recommends that any application to adjust impact fees is held to the highest standard allowed by City code to ensure fairness with all those who develop within Hurricane City.

Findings:

The application is currently under review.

Recommendation:

Staff is reviewing the application and does not have a recommendation at this time.

Attachments:

1. impactfees
2. impact-fee-handbook
3. Hurricane City Council Agenda
4. Shadow Brook Apartments Estimate-200 amp
5. Shadow Ridge Apartments
6. Anderson Apartments 3-5-2020 Arch Set
7. CURTIS ANDERSON-HURRICANCE APARTMENTS-C6.0 LANDSCAPING
8. Impact fee reduction
9. Impact Fees - Fays Summary

Impact Fees & Housing Affordability

A Guide for Practitioners



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IMPACT FEES AND HOUSING AFFORDABILITY

A Guidebook for Practitioners

Prepared for:
U.S. Department of Housing and Urban Development
Washington, DC

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June 2008

About the Guidebook

This Guidebook was prepared by Liza K. Bowles of Newport Partners, LLC and Arthur C. Nelson of Virginia Polytechnic Institute and State University under contract to the Department of Housing and Urban Development. It draws heavily on various research papers prepared under subcontract to Newport Partners. These papers and their authors are listed here:

- *The Past, Present and Future of Impact Fees*, August 2005, prepared by James C. Nicholas, University of Florida;
- *State Impact Fee Enabling Acts and Housing Affordability*, February 2005, prepared by Arthur C. Nelson, Ph.D., Professor and Director of Graduate Studies in Urban Affairs and Planning, Virginia Polytechnic Institute and State University, and Clancy Mullen, Duncan Associates;
- *Proportionate Share Impact Fees and Housing Affordability*, January 2006, prepared by Arthur C. Nelson, Ph.D., Professor and Director of Graduate Studies in Urban Affairs and Planning, Virginia Polytechnic Institute and State University; and Liza K. Bowles and David J. Dacquist, Newport Partners; and,
- *Infrastructure Financing Techniques: Impact Fees and Alternatives*, June 2005, prepared by Arthur C. Nelson, Ph.D., Professor and Director of Graduate Studies in Urban Affairs and Planning, Virginia Polytechnic Institute and State University.
- The case study material was developed by Bowles and Dacquist of Newport Partners in conjunction with Nicholas, Nelson, Mullen and Juergensmeyer.

Full copies of the briefing papers as well as additional resource material prepared under this project are available at HUD's Regulatory Barriers Clearinghouse <http://www.huduser.org/rbc/>.

Acknowledgements

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Finally, we acknowledge the constructive review by David Crowe (who also provided data on the relationship between house size and occupants per unit by unit type) and Paul Emrath, both of the National Association of Home Builders.

NOTICE

This report was prepared as an account of work sponsored by the U.S. Department of Housing and Urban Development. Views and opinions expressed herein are the responsibility of the authors. References herein to any product, process or system do not constitute an endorsement, but are included solely because they are considered essential to the object of the report.

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Executive Summary

Impact fees are one-time charges applied to new development. Impact fees are a form of land-use regulation designed to assure that communities maintain adequate levels of public facilities in the face of growth. The resulting revenue generated for the construction or expansion of new facilities is coincidental to their land-use regulatory (i.e. police power) purpose. Were it not for growth many communities would have adequate public facilities and often if growth is at a manageable pace adequate public facilities can be provided concurrent with the impacts of growth. To assure adequate public facilities, impact fees are assessed and dedicated principally for the provision of additional water and sewer systems, schools, libraries, parks and recreation facilities, and other infrastructure made necessary by the presence of new residents in the area. The funds collected cannot be used for operation and maintenance, repair, alteration, or replacement of capital facilities.

As will be noted, impact fees are not the best way in which to finance most public facilities from a variety of theoretical perspectives and instead taxes are. However, in the absence of the legal or political ability to raise taxes combined with a desire to maintain level-of-service quality in their communities, elected officials may see impact fees as a pragmatic solution.¹

Impact fees have expanded and evolved substantially throughout the United States over recent decades, and currently appear in a wide variety of forms covering different types of infrastructure in varying amounts around the country. These changes have taken place through legislation, regulations and court cases. While the process is extraordinarily complex and there have been many debates over the specifics, in some ways the underlying fee principles are now better defined and more straightforward than in the past. Indeed, it may be one reason impact fees have grown substantially in many communities.

However, impact fees remain somewhat controversial. Different interests naturally have different perspectives on impact fees, as the table below notes.

Stakeholder	Perceptions and Concerns
HUD	Need to keep housing affordable, need to help communities struggling with infrastructure financing problems
States	Financing of infrastructure is important to economic growth, new taxes are not popular
Local government (planners, elected officials, active citizens)	Often want to manage growth, want to preserve housing values, don't want new taxes, may have little financial incentive to promote affordable housing
Developers	Want to maximize return, want a predictable system, cannot always pass fees on to builder or land owner
Builders	Want to maximize return, cannot justify building affordable homes if lot costs and fees are too high
Home buyers	Low and moderate income buyers cannot afford high fees, often there is no substitute choice of housing
General population	Impact fees keep general taxes lower, often do not understand the impact that fees have on housing prices and the need for affordable housing

¹ While local general funds are composed of many sources of revenue, for the most part they come from local taxes. The 2002 Census of Government Finances shows local government "general revenues" totaled \$727 billion with taxes accounting for \$535 billion or nearly 75%.

One of the central themes in structuring and implementing impact fees of all types is the concept of "proportionate share," which has been generally accepted and dates back to at least the 1970's. From a legal standpoint, impact fees are legally prohibited from charging developments more than a proportionate share of the cost of new facilities. This is closely related to the very definition of impact fees, which are distinguished from taxes or general charges and required to be based on actual or projected expenditures. Charging proportionate shares is also frequently supported from a policy and fairness standpoint. Ensuring that impact fees do not charge more than the proportionate share is fair and equitable and protects affordable housing from paying a disproportionate share.

Notwithstanding the broad underlying support for proportionate shares, it also leads directly to significant questions and complications. In reality while the courts have made it clear that lawful impact fees must reflect proportionate shares, they have also accepted very relaxed approaches including the common use of impact fees set at average levels and then applied to every case in the community. In other words, so long as the process achieved an overall, general correspondence between costs and fees, it could be legally accepted as an impact fee. Yet using flat fees to pay costs that do not vary with unit size has had serious drawbacks because it charges smaller homes and apartments disproportionately large shares of costs, and larger homes and apartments disproportionately smaller shares. Unlike real property taxes, flat fees tend to have a "regressive" effect; that is, they fall disproportionately on those with lower incomes than with higher ones.

Designing More Equitable Fees

The purpose of this guidebook is to help practitioners design fees that more equitably reflect actual proportionate share and therefore have less of a negative impact on housing affordability. It is not a primer on impact fees and assumes some general familiarity with public financing terminology. It is not a research report but a guideline, based on substantial research, for addressing issues of housing affordability and equity. Fortunately, modern information systems make it easier than ever before for communities to develop impact fees that correspond more accurately to actual costs associated with new homes. While there are different variables that might be used for this purpose, based on a comprehensive literature review and research conducted in the course of this project, the authors found that the simplest and most universal factor associated with actual costs is the square footage of the home. For certain impact fees, particularly those covering libraries, parks, open space and construction of schools, square footage of the homes may be sufficient for allocating costs. For other fees, such as those covering roads, public safety and water or drainage, additional significant variables should also be considered along with dwelling unit square footage in determining the appropriate costs and payments. Depending on the particular fee, these variables might include size of lots and the density of subdivisions or broader neighborhoods. But the key point is that basing all types of impact fees in whole or in part on house or apartment square footage rather than charging uniform rates is straightforward to implement and helps to avoid overcharging smaller units more than their true proportionate share.

This Guidebook takes this core research finding and applies it to the construction of impact fee programs. It includes information that is useful to local jurisdictions that are either in the process of implementing impact fees, or considering revisions to current impact fee programs. It includes information on the history of impact fees; discusses alternative financing models to ensure the most appropriate financing tools are at least considered; summarizes state legislation which can influence the design of local impact fee programs; and addresses how to design impact fees to be more progressive. Case studies of local government impact fee programs that should provide valuable insights to the reader on the development of innovative impact fee programs that are sensitive to affordable housing are also included.

Additional information is presented in this Guidebook in the form of a series of decision guides that include model questions and potential answers. Some of the questions and answers are potentially applicable to all local governments with infrastructure financing needs, with the balance geared toward increasing the level of understanding and providing guidance on questions of equity and revenue credits. These decision guides draw off the text in each chapter and will help the user make decisions based on their unique needs and circumstances. The issues are presented in two specific sets of decision guides which lead the reader through a series of questions and answers.

- The first set of decision guides is included in Chapter Two, Capital Facility and Infrastructure Financing Options, relates to categorizing the financing needs and providing for various financing options based on subject matter. This series of guides is meant to help the practitioner take the material presented in this chapter on infrastructure financing options and decide whether impact fees are the most appropriate financing tool. Infrastructure financing needs range from very simple and clear needs to complex situations. The simplest infrastructure needs for public facilities that will be constructed without any regard to user ability to pay (such as fire stations) are under one decision guide, while complex infrastructure needs dealing with the extent users are willing to pay for specifics are under another decision guide.
- The second set of decision guides is included in Chapter Four, Impact Fees and Housing Affordability. This set of decision guides delves more deeply into issues relating to specific impact fee program design to help practitioners take the material presented in this chapter relating to equity and apply the material through the question and answer format. The decision guides are intended to help practitioners determine whether their existing impact fee programs meet basic equity and fairness criteria; and, in the case of new programs, ensure a program design that is fair and equitable.

The appendices included in this Guidebook include core background and research information for reference purposes. We have included these pieces as they can contribute to a better understanding of impact fees and how the authors arrived at the recommendations contained in the Guidebook.

Additional Resources

Key to both designing fair and equitable impact fees, and ensuring that they withstand the scrutiny of the legal system, is incorporating good data. Fortunately, there is substantial data often available at the local level. In addition, the Department of Housing and Urban Development maintains a website where practitioners can find useful resources that form the underlying basis for this Guidebook. This website is: <http://www.huduser.org/rbc/>.

Introduction

On January 9, 2003, Lincoln, Nebraska's Mayor Don Wesely stood on a bumpy graveled portion of West Adams Street that leads to new homes in northwest Lincoln to drive home his attitude on the need for impact fees.

"The washboard-like graveled West Adams Street is an example of how big the funding gap for extending arterial streets really is and why impact fees are needed," said Mayor Wesely. "The City has fallen so far behind that the City is not scheduled to pave this street for another six years. It's less safe than a paved road, it's dusty, and it's a daily problem for the residents.

This is the wrong way to build our community. If impact fees had been in place, West Adams would have been paved much sooner because the street fees would have helped pay for the improvements.

Critics have said impact fees will stop growth," said Mayor Wesely. "What stops growth is uncertainty and the inability to pay for new streets, water and sewer systems and parks. Impact fees are not the whole solution, but they are a fair way to share the costs between the new development and the taxpayer."²

Mayor Wesely's comments echo those of many city officials who want to find a way to pay for growth. Impact fees have now become a fact of life in an ever-increasing number of communities. Originally a phenomenon of fast-growing coastal communities in Florida and California, the use of such fees has now spread to mid-America. Increasingly impact fees are seen by local officials as the best option available. .

Impact fees, one-time charges on new development, provide revenue for new or expanded infrastructure to support new development. Impact fees take the form of a predetermined monetary payment -- a fee -- and are generally levied against developers to fund capital expansion of large-scale public facilities and services.³ Increasingly, such fees play an integral part in giving local governments the ability to cope with the many burdens of rapid population growth such as the need for new parks, roads, schools, jails, public buildings, sewer and water treatment facilities, and public safety (fire, police, and Emergency Medical Service) facilities.⁴

Impact fees have become widely used especially in growing regions for a variety of reasons but three in particular: a) locally elected officials are increasingly loathe to ask voters and voters are generally unwilling to raise their taxes in part to help provide increasingly higher levels of new facilities demanded by new development, and b) state and local governments have municipal financing constraints including state constitutional limits on property tax rates, and c) there is little financing provided by state and federal governments for infrastructure to local governments. While in theory there are many better ways to finance infrastructure, in practice impact fees often become the path of least political and legal resistance.

² News release accessed from <http://www.lincoln.ne.gov/city/mayor/media/2003/011303a.htm>.

³ See Susan M. Denbo, *Development Exactions: A New Way to Fund State and Local Government Infrastructure Improvements and Affordable Housing?*, 23 REAL EST. L.J. 7, 11 (1994).

⁴ Juergensmeyer & Roberts, *supra* note 1, at 421.

In one form or another, impact fees now exist in nearly all U.S. states and are a common technique used to generate revenue for capital funding necessitated by new development.⁵ To date, approximately twenty-six states have enacted impact fee enabling legislation and in most other states impact fees are enacted pursuant to home rule powers or pursuant to individual local government enablement.

Historically, it has been a primary function of state and local governments to construct, operate, maintain, and improve the basic physical infrastructure of American communities. However, as a result of three significant events in American history, this traditional approach began to break down. The first of these events was the sharp rise in inflation in the 1970s⁶ and the decimation of fixed-base taxes such as the motor fuels tax. The second factor leading to the breakdown of the traditional approach was the general hostility to the taxation of real property, thus forcing local jurisdictions to look elsewhere to fund the ever-increasing demands of constituents.⁷ Third, was the failed expectation that the federal government would pay a significant portion of infrastructure costs. Although, historically, the federal government has paid little or no portion of such costs, many environmental mandates enacted in the '70's, especially regarding clean water, did initially include significant federal financial support. Many communities began to rely on these funds just at the time the federal government returned to a more traditional role of limited financial support for local infrastructure. Because these factors were occurring at a time when the pace of urban development was increasing, especially in the fast growing communities in Florida and California, both the demand for and the cost of investment in public infrastructure began to climb, while at the same time the available financial resources were falling. As a result, there arose an increasing need for investment concurrent with declining means.

Florida, especially, presented a financial "perfect storm". Population was growing rapidly, homebuyers were expecting higher levels of services, and the lessening of state and federal support resulted in ever-increasing demands of localities. An increasing share of the responsibility to pay for these and other public investments fell directly on local jurisdictions by default.⁸ In order to assume control of providing these infrastructure needs, local governments were forced to pay the associated costs commonly by raising local property taxes. At the same time, they were hit by the "taxpayers' revolt." Increasingly, local elected officials faced a public demand to increase public services without increasing taxes. Impact fees arose from this environment as an acceptable political alternative to solve the need for financing. Because of their intrinsic attractiveness to local governments, their use for an ever-increasing number of facilities and services spread rapidly.

⁵ See J. Juergensmeyer & T. Roberts, *Land Use Planning and Development Regulation Law 421* (Practitioner Treatise 2003), and J. Nicholas, A. Nelson, & J. Juergensmeyer, *A Practitioner's Guide to Development Impact Fees 13* (1991) [hereinafter cited as Nicholas, Nelson & Juergensmeyer].

⁶ For most of the country's history inflation averaged two percent or less, with the periods of war being significant exceptions. Beginning in the 1960s and continuing through the 1980s, inflation existed at hitherto unprecedented rates, peaking at over 18 percent in the late 1970s. See U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS website, available at www.bls.gov (last visited Oct. 2, 2003).

⁷ See generally Lawrence Susskind, *Proposition 2 ½: Its Impact on Massachusetts* (1983).

⁸ Both state governments and the federal government limited funding programs for public investments because of a sharp rise in cost. Furthermore, there was a greater burden on the local governments responsible for handling these matters because of required improvements to many infrastructure facilities, such as water pollution control facilities. See, e.g., The Water Pollution Control (Clean Water) Act, 33 U.S.C. § § 1251 et seq. (1994).

However, impact fees are often criticized for having adverse effects on housing affordability either by raising prices, reducing supply or both. Some recent studies show that carefully tailored impact fees may not necessarily reduce the supply of housing that is affordable and in fact may increase it.⁹ Nonetheless, Vicki Been observes that:

“...impact fees also can be abused, either to exclude low-and moderate-income residents or people of color from communities, or to exploit new homebuyers, who have no vote in the community. They also can be unfair to those caught in the transition from other forms of infrastructure finance. By careful attention to the myriad of issues ...researchers can help local governments seize the potential impact fees offer for promoting more efficient development patterns while minimizing any negative effects impact fees might have on the affordability of housing and the distribution of housing opportunities to all residents (emphasis added).¹⁰

Her concluding observation is the very purpose of this Guidebook: to educate practitioners on impact fees and present recommended approaches that can reduce potentially adverse effects of impact fees on housing affordability. Two approaches are recommended. The first is to calculate impact fees based on house size in square feet because, as noted by the National Association of Home Builders, as the size of the house increases so does the number of occupants at least up to a certain size (see Chapter 5). The second is to waive or defer impact fees on affordable housing, as done in several communities around the nation (see Chapter 6).

Why is housing affordability an important impact fee local policy consideration? In many (and some would say most) growing metropolitan areas, school teachers, first responders, building maintenance, retail and service workers among many others are simply unable to afford to buy or rent housing in the very communities in which they work. Instead they either pay a disproportionate amount of their income for housing in or near communities where they work or, more often, live in other communities incurring substantial commuting costs.¹¹ As a result, many become detached from communities where they work – and in the case of public service workers such as teachers and first responders this undermines community cohesion. Indeed, first responders may not be able to respond timely to catastrophic events because they may live so far away. The extent to which impact fees may by themselves weaken housing affordability to people working in the community and what can be done to offset this outcome is the focus of this Guidebook.

The overall guidance presented in this document is based on considerable research conducted over the years and additional research conducted specifically for this project. The research findings clearly support

⁹ Gregory Burge and Keith Ihlanfeldt of the DeVoe Moore Center and the Department of Economics at Florida State University found that through a cause-and-effect analysis the supply of multi-family and higher-density single-family homes increased in suburban communities that had impact fee programs. Among the reasons are removing “NIMBY” concerns about such housing “paying its own way”. In *Impact Fees and Single-Family Home Construction* they note “(i)mpact fees earmarked for public services other than water and sewer system improvements are found to increase the construction of small homes within inner suburban areas and of medium and large homes within all suburban areas” and in *The Effects of Impact Fees on Multifamily Housing* they state “(i)mpact fees earmarked for public services other than for offsite water and sewer system improvements are found to expand the stock of multifamily housing construction within inner suburban areas.”

¹⁰ Vicki Been synthesizes these issues in “Impact Fees and Housing Affordability”, *Cityscape: A Journal of Policy Development and Research*, 8(1): 139-185 (2005).

¹¹ See *Paycheck to Paycheck*, National Housing Coalition (2004).

the intuitively obvious assumption that bigger houses place more demand on services. Thus, bigger homes should pay higher fees to be fair and equitable. The basic conclusion of the authors and the underlying premise of the guidance is that to be fair and equitable, impact fees need to be based on square footage as a starting point, followed, in some cases, by additional elements that further vary costs across households to reflect other underlying cost differences. The guidance offered here is meant to be a balanced and pragmatic approach to implementing equitable fees.

The Guidebook has six chapters, a series of questions presented as decision guides included within two of the chapters, and three appendices.

- Chapter 1 examines the use of impact fees historically and currently, and briefly looks at future patterns and the need to structure fees progressively to limit the impact on affordable housing.
- Chapter 2 provides an overview of various infrastructure financing options to help practitioners understand the basic financing options and ensure that a thoughtful approach is taken to considering various options. The simplest infrastructure financing needs, covered in Decision Guide 2-1, are public facilities or services that need to be provided without any regard to user ability to pay or extent of use; for example, fire services or police protection. The most complex infrastructure needs, covered in Decision Guide 2-4, tend to be infrastructure necessary but with a substantial ability to assess the users for specifics; for example, roads, which might be funded at least in part by tolls. Other programs fall somewhere between the simple and complex.
- Chapter 3 provides an overview of the role of the state in impact fee programs. It includes summary information about the states with enabling legislation and reports the types of facilities eligible for impact fee financing.
- Chapter 4 is designed to give clear guidance on how to set impact fees that are consistent with the concept of proportionate share. The chapter begins with a review of key elements associated with setting the amounts of particular impact fees. It explains the rationale for the use of impact fees based on square footage, and in some cases, additional elements. This chapter includes decision guides that serve as checklists of procedures that local governments can follow to assure that impact fee design does not unduly affect housing affordability. The focus here is on proactive measures to alleviate impact fee effects.
- Chapter 5 presents case studies documenting how impact fees incorporating these principles have been implemented in three jurisdictions around the U.S.: Atlanta, Georgia; Albuquerque, New Mexico; and, Alachua County, Florida.
- Chapter 6 concludes this Guidebook. It is an overall summary of the Guidebook contents.

Supplemental materials which local government planners may find useful in understanding the relationship between impact fees and the comprehensive plan; and the provision of infrastructure financing through special assessment districts are included as Appendix A and B. Appendix C is sample land purchase option contract language that the authors received from a developer showing how such contracts may be used to “internalize” impact fee payments to the seller of land – consistent with land economic theory. Appendix D is a briefing paper prepared while doing research for the Guidebook. This is a core piece of research that examines the variables that can create the greatest negative impact on housing affordability and inadvertent inequities that disproportionately affect the smallest and most affordable units. Conversely, it also details the variables that should be included to create impact fees that are fair and equitable. This briefing paper serves as a reference piece for the approach suggested in this Guidebook.

Chapter 1 - Impact Fees - Past, Present and Future

This chapter serves as a background on impact fees and how they have evolved over time. It also includes data on how impact fees are being assessed today with tables summarizing national data and several useful local examples illustrating specific impact fee structures. This chapter concludes by introducing the concept of equity as applied to impact fees and the impact on affordable housing.

The Need for Infrastructure Financing Tools

The financing of basic community infrastructure in the United States has become more complex and more expensive as each year passes. It has become more complex because we are continually expanding our urbanized areas and, thereby, requiring increased quantities of infrastructure. Table 1-1 shows some basic trends for the United States. The urbanization of the nation's population has continued and with continued urbanization come increasing numbers of people and households looking to government for services, including the provision of infrastructure. The population continues its shift to metropolitan areas,¹² although at a lower rate than in the past.¹³ Both the number and the populations of all urban areas have continued to grow, with growth of the medium-sized cities being the greatest. In both the medium and largest cities the population per city declined, simply indicating that the cities added to that size grouping would be at the lower end of the size range, thus reducing the average size.

But increased numbers of people in cities alone understates the demand. As incomes have increased, the public's expectations of and demand for public facilities have grown. Schools are no longer aggregations of classrooms but have become multimedia learning and social/cultural centers. The transition has greatly

TABLE 1-1. METROPOLITAN POPULATION, CITIES & POPULATION PER CITY 1980 - 2000				
	1980	1990	2000	% Increase 1980-2000
Population (000)				
Total	226,546	248,719	281,422	24.2%
Metropolitan	177,143	198,023	229,192	29.4%
Non-Metro	49,399	50,696	52,229	5.73%
% Urban	78.20%	79.60%	81.40%	
Cities 500K and Over				
Number	22	23	29	31.8%
Population	28,400.00	30,100.00	35,888.25	26.4%
Per City	1,290,909	1,308,696	1,237,526	-4.14%
Cities 100K – 500K				
Number	147	172	213	44.9%
Population	28,400.00	33,300.00	40,193.32	41.5%
Per City	193,197	193,605	187,819	-2.78%
Cities under 100K				
Number	18,513	19,067	19,214	3.79%
Population	83,800.00	89,700.00	98,800.00	17.9%
Per City	4,527	4,704	5,142	13.6%
Source: Statistical Abstract of the US, 2001, p. 1-67.				

¹² There is a circularity here as new metropolitan areas continue to be created, thus adding to the metropolitan population by the simple act of creating more metropolitan areas.

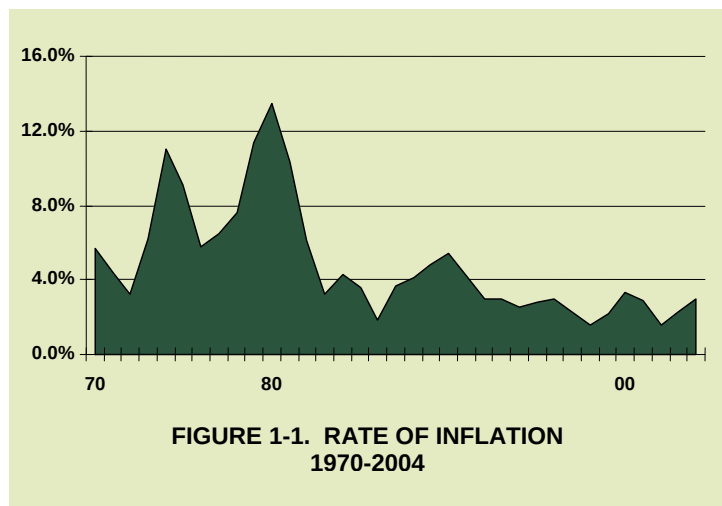
¹³ In 1920 the urban population first equalled the non-urban population in the U.S. Since then urbanization has grown to reach over 80 percent by the year 2000.

increased the cost of providing educational facilities. The same is true for park and recreational facilities. Gone are the days when a ballfield was simply an otherwise vacant area where ball was played. Now they are stadiums with all the accoutrements, including red dirt. A fire department no longer simply puts out fires; today it offers advanced life support. These evolutions are responses to public demands. Few would doubt that the quality of modern public services is greatly improved.¹⁴ Few would doubt that the cost of these services has greatly increased.

The federal government has long since reached a peak in being a growth source of revenue to state and local governments. Since 1972, the federal portion of state and local revenues has remained constant at about 20%,¹⁵ leaving state and local governments to rely on their own revenue-generating abilities to meet the demands of the public. Some suggest that the federal government is responsible for many of the increased costs being borne by local governments through the use of unfunded and partially mandates.¹⁶

As urbanization and public demands grew, inflation became an important political/economic fact of life. For most of the life of the nation, inflation was not an issue.¹⁷ During the 1970s and 80s this was not the case. One of the more pernicious aspects of inflation is that it significantly weakens the revenue from fixed-base taxes, such as the motor fuel taxes. Inflation increases the cost that fixed-base revenue sources are to cover without increasing the means to pay those costs. Inflation increases the cost of road construction and maintenance but does nothing to the proceeds derived from a 6¢ or 8¢ per gallon levy. In the face of such a problem the logical thing to do is to raise the fixed-base tax. Property taxes, while not fixed-base, require action to be increased. The action required is an increase in the assessed or taxable value of the property.

Figure 1-1 shows annual rates of inflation from 1970 to 2004. During the time period the average was 4.95% per year, approximately twice the long-term rate of inflation. Annual inflation during 1980 was 13.5% and the year-over-year rate peaked during 1980 at over 17%. Such rates of price growth meant that the purchasing power of fixed-base taxes, such as the motor fuels tax, declined by 13.5% during 1980. One of the commodities most responsive to inflation is real estate, including development property. In fact, real property inflation tends to proceed



¹⁴ Nostalgia notwithstanding.

¹⁵ *Stat. Abstract of the US*, 2001, page 262.

¹⁶ The Clean Water Act required massive expenditures to be made largely by local governments. Of course, it could be argued that it was those local jurisdictions that dirtied the water so the burden of clearing that same water should be borne by them.

¹⁷ From 1929 (the first year of consistent price indices) to date, the annual increase in prices has averaged 3.3%. If the two periods of rapid inflation are removed, the long-term rate of inflation drops to 2%.

faster than general inflation.¹⁸ General inflation increased public facility operating and capital costs but it also increased the prices of both new and existing homes, thereby increasing the property taxes on those properties. It should not be surprising that California's Proposition 13 was enacted in 1978, during a period of unprecedented inflation. Proposition 13 rolled back property taxable values to 1975 and capped their rate of increase.¹⁹

Massachusetts soon followed in 1980 with Proposition 2½, which took its name from the limit on property taxes being no more than 2.5% of taxable value.²⁰ Since the referendum enactment of these two limits, all states have taken some action on limiting property taxes.²¹ Thus, property taxes tend to act like fixed-base taxes because of the limitations imposed by legislation or constitutional amendment.

Local governments were faced with conflicting demands:

- Increase the supply of facilities, especially infrastructure, to larger populations;
- Increase the quality of public facilities, also to larger populations; and,
- Avoid tax increases in meeting these demands.

As these events unfolded, the philosophy of taxation moved more toward the use of the *Benefit Principle* and away from *Ability to Pay Principle*.²² This shift, combined with continuing urbanization and inflation eroding the tax base, set the stage for "alternative" sources of revenues.

As a result of new federal environmental mandates local jurisdictions were also being directed to make massive investments in water pollution control facilities.²³ These investments originally were funded up to 85% by federal grants. They are now funded by federal loans amounting to 45%. The highway system that was to be primarily funded by federal sources has fallen into disrepair with increasing congestion because of the inadequacy of federal funding. States elected not to assume the primary role that the federal government was abandoning for precisely the same reason that the federal government was abandoning it: cost. The responsibility for highway maintenance and other major public investments have fallen to local jurisdictions by default. Where local governments attempted to assume these responsibilities they were met with the "taxpayers' revolt," a reaction to the increase in property taxes that resulted from increasing local absorption of these responsibilities as well as a more general unwillingness to pay the costs for homebuyers that did not yet live in their communities.. Clearly some other means of funding were needed. When the power to tax proved unsuccessful, local jurisdictions looked to their police powers as a means to address the problem.

American local jurisdictions have great discretion in the exercise of their power to protect the public's health, safety and welfare. By contrast, they have almost no independent discretion in the exercise of their power to tax without voter approval. It was natural then that the police powers would be turned to as an

¹⁸ Between 1980 and 2000, all prices rose at 3.8% percent per year while shelter costs rose at 4.4%. See *Stat. Abstract of the U.S.*, 2001, p. 454. The median sales price of a new single-family home grew by 4.9% per year. See *Ibid.* p. 598. The median price of existing home sales rose by 4.1% per year.

¹⁹ See John Kirlin. *The Political Economy of Fiscal Limits*. Lexington, MA: Lexington Books.

²⁰ *Ibid.*

²¹ Therese J. McGuire, "Proposition 13 and Its Offspring: For Good or Evil?", 52 *National Tax Journal*, 1999, 129-138.

²² Musgrave, Richard A., and Peggy B. Musgrave. 1989. *Public Finance in Theory and Practice*. 5th ed. New York: McGraw-Hill.

²³ The "Water Pollution Control Act," commonly known as the Clean Water Act, PL 92-500.

alternative. Local communities found that growth and development meant more traffic, wastewater, and school children that somehow had to be accommodated. Absent the funds to make physical improvements, congestion resulted and with congestion also came citizen outrage. Increasingly, local elected officials faced a public demand to reduce taxes and maintain or even increase services. In such an environment, growth and development came to be viewed as detrimental rather than beneficial.²⁴ The detrimental aspects of urban growth provided the basis to invoke the police powers and protect the public against the congestion and loss of “quality of life” that further growth and development would entail.

The impact fee arose not out of any great thought or plan, but simply from desperation resulting from conflicting demands placed on local officials. Citizens demanded quality public services and taxpayers insisted on lower taxes. Builders demanded that they be allowed to serve a clearly apparent market for their products and those that earned their livings from development fought for their jobs. Local governments were vested with the authority to impose on new development reasonable conditions that were consistent with the protection of the public’s health, safety and welfare in all of its manifestations. The impact fee filled this role. As a result, the use of impact fees spread rapidly with Florida in the forefront.

To understand the evolution of the impact fee it may be helpful to understand the state of urban infrastructure through considering a representative example. The small community of Key West, Florida, originally a private enclave, that still maintains those traditions today, is an island jutting out into the Straits of Florida. The city had been dumping its untreated sewage into the Straits. In order for the City of Key West to fund an Environmental Protection Agency mandated sewage treatment system, it would have to raise the monthly bill for each home owner by \$65 to fund the expansion with revenue bonds.²⁵ An increase of \$65 per month was considered to be outrageous and the citizens turned it down, thus creating an environmental and funding crisis. This crisis ultimately became an issue in the further development of the City in that the City was barred from making new sewer connections and thus new construction could not proceed. A cost-sharing agreement was struck between the City and the development interests that included a monthly bill increase of \$15 which, combined with an impact fee, funded the sewage treatment system and development was allowed to proceed. As a result, the City stopped pumping its raw sewage into the Gulf Stream.

Education presented another area in which impact fees have filled a funding gap. Like sanitary and road infrastructure, school construction tended to be financed from inelastic revenue sources, and, these too failed to keep pace with need in areas of rapid growth with many schools becoming increasingly overcrowded.

Large scale, fast paced growth is not nationwide or even state-wide. In rapidly growing Florida, the actual growth areas are confined to no more than 10% of the geographic area of the state. Significant state funding support could not be expected for that would mean taxing both the growing and the non-growing (and therefore poorer²⁶) areas with the result being taxing the poor to subsidize the more affluent. The state’s legislatures joined the federal government in the position that if the needs were great enough, the

²⁴ See William K. Reiley, *The Use of Land*, New York: Crowell, 1972.

²⁵ One of the authors (Nicholas) served as a consultant to the City of Key West during this period and these facts are from the author’s on-site observations.

²⁶ In Florida, the per capita incomes of the non-growing portions of the state amount to approximately 50% of those of the growth areas. See *Florida Statistical Abstract*, 1995, pp. 199-204.

prosperous growth areas had the ability to fund the improvements needed to serve growth. What they lacked was the willingness to raise the funds.

Now, given this situation, what realistic alternatives were available to local governments? Although some communities did agree to raise local taxes, as a general rule, this approach did not get very far. Even in areas that increased taxes, they were generally insufficient to respond to the magnitude of the needs. Some communities sought to restrict growth to a level which could be accommodated by existing infrastructure. As could be expected, this “solution” has been hotly opposed by the building industry. Impact fees were the alternative to further congestion and a shut-down of building. Impact fees charged new construction and generated revenue that the community could use to expand the physical infrastructure needed to accommodate that growth.

However, impact fees have significant drawbacks. Capital improvements and infrastructure are needed “up front,” but impact fees dribble in.²⁷ Roads, schools, parks and utilities are all needed ahead of development.²⁸ The problem is that funding is not available “up front” unless it is put up by the developer or borrowed by the host local government. Developers and local governments assiduously avoid both of these actions. Impact fees, while becoming an important component of local government finance, do not address the timing problem. Impact fees, as they are commonly implemented, charge new development when the construction is actually permitted. Thus the impact fee receipts “dribble in” as construction occurs. While jurisdictions prefer any revenues” to no revenues at all, they would prefer up-front revenues so that facilities can be constructed and be available as new development occurs.

Alpharetta, Georgia, received public support for a general obligation bond issue for road and fire facilities improvements. A large portion of this debt was for growth accommodating improvements that would be paid for by impact fees. The impact fees collected were used to pay debt service, thereby reducing the necessary tax rate. The key to this program was the public’s willingness to support a general obligation bond. This support facilitated an impact fee funding program that provided road and fire protection improvements “up front” and did so at the lowest possible cost.

The key to resolving the “dribble in” problem is bonding, but bonding requires a secure source of revenue that can be pledged. Impact fees are not considered to be secure because their receipt will rise and fall with the level of construction in a community. The solution is to create some type of security, borrow against that security, and then use impact fees to make the required payments.

²⁷ Sometimes this is referred to as “trickle in.”

²⁸ There is the question of where in the development process impact fees should be assessed. In particular, the earlier in the development process a given impact fees is collected, the longer the developer has to pay financing and other carrying costs and the more costly the home may become. The issue of timing is addressed in Chapter 4.

The Proliferation of Impact Fees

Table 1-2 shows the national average impact fees for 2003-2004 for single-family dwellings by type and it illustrates the wide range of fees with school impact fees being the most expensive and libraries the least. These norms are derived from a sample of 152 local governments including 44 in California, 51 in Florida and 57 in other states. These data are for jurisdictions that charge impact fees of various types. Not all of the 152 local governments charge each type listed in the table so the number per impact fees varies. The method of sampling is not scientific. Rather, the sampling was done by opportunity, meaning that when the opportunity presented itself, data were included in the sample.²⁹ Even with the caveats on sampling methodology, the table is useful in illustrating the types of fees and relative costs.

As interesting as the cost of impact fees is the rate of growth in such fees. Table 1-3 shows the average non-utility (not including water and sewer) impact fee amount and annual growth rate from 1988 to 2004.

TABLE 1-2. AVERAGE IMPACT FEES BY TYPE			
ROADS		SCHOOLS	
Maximum	\$7373	Maximum	9,936
Minimum	130	Minimum	348
Average	1,761	Average	3,169
PARKS		PUBLIC SAFETY	
Maximum	8228	Maximum	8,031
Minimum	102	Minimum	79
Average	1344	Average	568
STORM DRAINAGE		LIBRARY	
Maximum	6,000	Maximum	1,843
Minimum	160	Minimum	54
Average	1,227	Average	415
WATER		SEWER	
Maximum	7,763	Maximum	6,998
Minimum	237	Minimum	265
Average	2,237	Average	2,061

TABLE 1-3. AVERAGE TOTAL NON-UTILITY IMPACT FEE SINGLE FAMILY HOME 1988 – 2004		
Year	Amount	Avg. Annual % increase
1988	\$5,781	
1991	\$7,649	10.8%
1995	\$7,849	0.65%
1997	\$8,006	0.99%
1999	\$8,970	6.0%
2000	\$9,767	8.9%
2002	\$10,183	2.1%
2004	\$11,012	4.1%
1988 - 2004		5.66%

The data shown in Table 1-3 are the results of the national survey conducted by Duncan Associates and are the averages for the jurisdictions included in this survey. (The 2005 survey can be found at <http://www.huduser.org/rbc> or obtained from Duncan Associates.) The average has grown at an annual rate of 4.07%. This may be contrasted with a rate of inflation (CPI) of 2.7% during the same period, and a construction cost index of about 2.9% (Engineering News Record, Annual Cost of Construction Index). It is apparent that the rate of increase has not been steady over the period. The trend line shown in Figure 1-2 is simply the annual rate of growth over the 16-year period rather than the year-to-year rate seen in Table 1-3.

²⁹ Impact fee data for inclusion in the sample was prepared by James C. Nicholas.

The data shown in Table 1-3 are the averages for all jurisdictions included in the sample. Over time many more jurisdictions have been included and some have dropped out. Given that the sample is not scientifically drawn, the conclusions drawn must be tempered. Table 1-4 presents a constant sample of impact fees.

The amounts in Table 1-4 are substantially less than those of Tables 1-2 or 1-3 because not all fees were included in the constant sample. When the sample was begun in 1988 only a few types of impact fees were included. Those impact fees for the named jurisdictions have been followed over the 16 years and these results are shown in Table 1-4. It is interesting to note that the rate of increase of residential impact fees for the constant sample is in general accord with the variable sample; and that the data in Table 1-4 (depicted graphically in Figure 1-3) show the non-residential fees, especially industrial fees, have been growing more rapidly than residential fees. One explanation might be the lack of developer opposition in commercial versus residential.

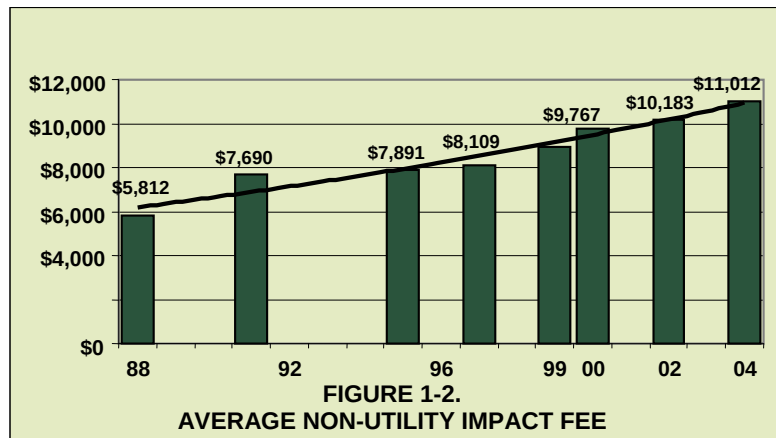
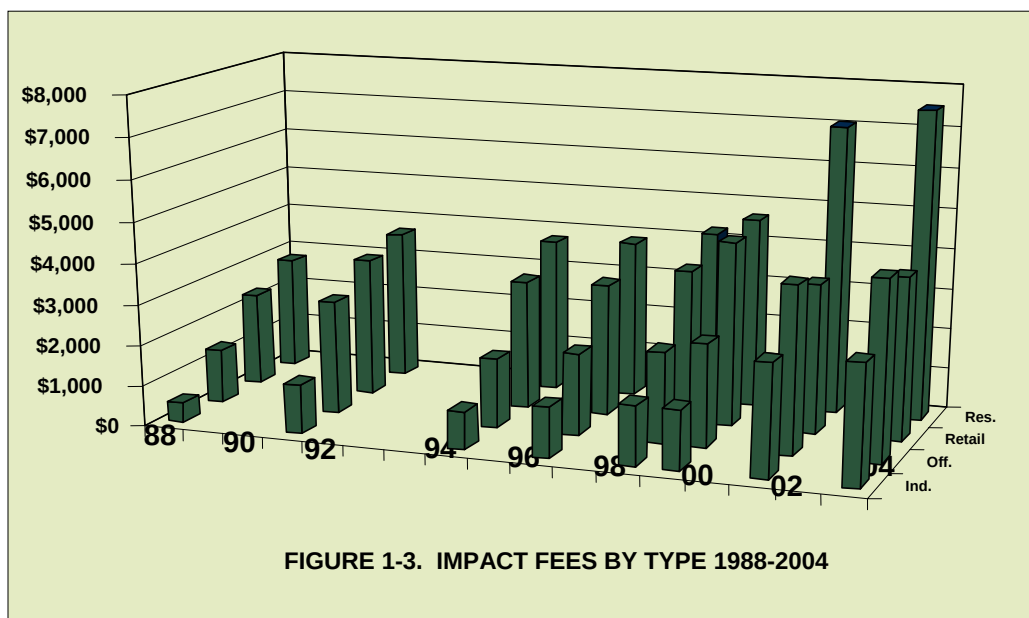


TABLE 1-4. CONSTANT SAMPLE IMPACT FEE 1988 – 2004			
	1988	2004	Avg. Annual % Increase
Residence	\$2,782	\$7,564	10.7%
Industrial	\$481	\$2,913	31.6%
Office	\$1,316	\$4,518	15.2%
Retail	\$2,277	\$3,978	4.7%



General Trends in Impact Fees

Subsequent chapters of this Guide will provide detailed guidance as to how future impact fees can be shaped to be more equitable and more sensitive to housing affordability while also providing for sound fiscal decision-making. This section addresses the issue more generally providing historical perspectives, emerging practices, and lingering realities.

Impact fees began as minor supplements to traditional sources of capital improvement finance. The water and sewer impact fees that were at issue in the 1975 case of *Contractors and Builders Association of Pinellas County v. City of Dunedin*³⁰ were \$325 for water and \$475 for sewer.³¹ These 1975 amounts are substantially below the \$2,131 and \$1,963 of today.³² Similarly, the “transportation” fee litigated in *Broward County v. Janis Development Corp.*³³ was \$100 which is very much less than the average road impact fee of \$1,679, even after considering inflation.³⁴ The amounts of impact fees thus began small and became much larger. The role of impact fees began as supplemental and is now primary. But, the impact fee debate continues. That debate has evolved, however, from *whether* impact fees should be assessed at all to *how* they are assessed.

Local level debates concerning impact fees can address different types of equity. Intergenerational equity may be of concern because impact fees assessed on new homes may adversely affect the ability of the children of current residents of the community to buy homes where they grew up. Representational equity may be of concern because to the extent that impact fees are assessed on new homes bought by new residents of the community, these new residents had no say in the adoption of the policy. Equity in endowments may be of concern to the extent that impact fees are considered a form of “initiation” fee into a community much like country clubs charge high initiation fees affordable only to the affluent. While these concepts of equity are important, the focus of this Guidebook is how to address proportionate equity – that is, the extent to which the fee reflects the actual impact different housing units have on community facilities.

A critical aspect of proportionality is the extent to which impact fees are based on the impact of new development on facilities. Many impact fee programs assume that each residential unit had the same impact on facilities regardless of size, type, density, location, or other factors. Hence, the impact fee for a large single-family detached home is the same as for a small efficiency apartment despite the fact that census figures clearly show substantial differences in occupancy rates. These impact fees are described as “flat rate” fees, and are inherently unfair. The result is that flat rate impact fees have a “regressive” effect; that is, they fall disproportionately on those with lower incomes than with higher ones.

This Guidebook focuses on methodologies for calculating impact fees to ensure that the regressive effect is reduced if not eliminated. Through taking an approach that more correctly allocates the proportionate share, the resulting fees are far less regressive.³⁵ When done properly, impact fees as presently practiced

³⁰ 329 So. 2d 314.

³¹ *Ibid.* at 315. These fees are for a single-family detached unit.

³² The 1975 water fee of \$325 would be \$1,265 after adjustment for changes in the CPI, and the \$475 sewer fee would amount to \$1,603. These indicate that the relative amount of Dunedin's fees has remained about the same.

³³ 311 So.2d 371.

³⁴ Adjusting the \$200 from 1974 to 2002 by the CPI yields a 2002 value of \$683.

³⁵ In *Dolan v. Tigard* (512 U.S. 687 (1994)) the US Supreme Court established the “rough proportionality” standard for exactions such as impact fees. The court ruled that “the necessary connection required by the Fifth Amendment is ‘rough proportionality.’ No precise mathematical calculation is required but the (local government) must make some sort of . . .

in many if not most places would be reduced for smaller units on smaller lots, in locations where facilities currently exist including public transit, and in configurations that economize especially on vehicular trips.

For example, a study by James Duncan and Associates for Santa Fe, New Mexico found that trips per dwelling unit rose consistently with respect to unit size, from 6.7 trips per day for two-bedroom units averaging about 1,800 square feet and 2.07 persons up to 11.93 daily trips for five bedroom units averaging 4,985 square feet and 4.06 persons.³⁶ Further reductions are possible when transit is accessible. In metropolitan areas without rail transit about 93 percent of all trips are done by the automobile but in metropolitan areas with rail transit the figure drops to about 75 percent.³⁷

Regressivity and the Impact on Affordable Housing

A common practice has been to charge residential impact fees based on the type of residence: single-family detached, single-family attached, multi-family, mobile home, etc. This method (although much preferable to flat impact fees with no variations) implicitly assumes that the only relevant distinction among dwellings is the type of unit and that there is at least some degree of homogeneity within unit types. Both of these implicit assumptions are simply incorrect. The net effect of the unit-type approach to levying impact fees has been to ignore all characteristics other than the type of dwelling unit. The result has been that while multifamily and mobile home units tend to have lower fees than detached units, a modest single-family detached unit of 1,200 square feet will pay the same amount as a mansion of 10,000 feet or more. The problems inherent with such an approach led some jurisdictions to look for other variables that when applied can result in more equitable fee structures. Recently, several jurisdictions have set impact fees that look to the size rather than the type of unit as the basis for assessing impact fees.³⁸ The premise of this approach is that it is the size of the dwelling, rather than its type, that is the better predictor of impact on the need for infrastructure. Three examples illustrate the benefit of this approach.

One of the first jurisdictions to address the regressivity problem was Palm Beach County, Florida. Palm Beach County had been using a unit type approach to residential impact fees and was dissatisfied with the relative burden on that approach between less expensive and more expensive dwellings. In response, the County incorporated unit size in calculating its residential impact fees. An example is its school impact fee, as shown in Table 1-5.

determination that the required (exaction) is related both in nature and extent to the proposed development's impact. Data such as that developed by the National Association of Home Builders reported in Chapter 5 showing the relationship between house size and occupancy (up to 3,000 or perhaps more square feet) nationally may help meet the rough proportionality test.

³⁶ Duncan Associates, *Capital Improvements Plan for Water, Wastewater, Road, Park, Fire and Police Development Impact Fees for the City of Santa Fe*, March 2003 draft.

³⁷ Authors' calculations based on the *Nationwide Household Transportation Survey for 2001*.

³⁸ See J. Nicholas, "On The Progression of Impact Fees," *Journal of the American Planning Association*, Vol. 58, No.4, 1992.

TABLE 1-5. PALM BEACH COUNTY SCHOOL IMPACT FEE	
Unit Size:	Impact Fee
800 Square Feet and Under	\$272.05
801 - 1,399	\$557.62
1,400 - 1,999	\$893.35
2,000 - 3,599	\$1,259.95
3,600 and Over	\$1,543.59

Had the traditional unit type approach been used, the single-family detached fee would have been \$1,221. Smaller and presumably more affordable units receive a substantial reduction in the fee paid.

Miami-Dade County, Florida, also assesses its school impact fee on the basis of unit size. Rather than using size groupings, a simple formula calculates the fee based on a fixed \$612 amount plus 91.8 cents per square foot of unit size:

$$\text{School Fee} = \$612 + \$0.918 * \text{FT}^2$$

Canton, Georgia recently adopted park and recreation impact fees that also use unit size as the basis for fees, as shown in Table 1-6.

TABLE 1-6. CANTON PARK IMPACT FEES	
Total Growth Cost	\$42,054,887
Residential	26,094,512
Non-residential	4,349,086
Net Growth Cost*	\$12,233,362
Residential	\$10,485,738
New Residential FT ²	19,905,404
Cost per FT ²	\$0.53
Non-residential	\$2,250,246
New Non-residential FT ²	12,972,159
Cost per FT ²	\$0.17
*After amount paid by taxes	

As shown in the table, the park impact fee in Canton is simply 53¢ per square foot of living area regardless of the type of dwelling. These and several other jurisdictions have been shifting away from unit type and towards assessment bases that reduce the regressivity of impact fees and properly assess fees based on impact. These attempts have been rather cautious and have tended to be incremental steps rather than giant leaps. Each jurisdiction has tended to build upon the experience of the previous one and to extend anti-regressive methodologies. Chapter Four, Impact Fees and Housing Affordability, includes a much more detailed discussion of these issues.

In summary, while impact fees appear to be here to stay, the role and scope of impact fees can continue to evolve. The task is to continue the expansion of new methodologies that satisfy the legal criteria for impact fees while accommodating both the interests of cities and counties looking to finance an ever-increasing share of capital costs and the legitimate concerns of the shelter industry for equity in the application of impact fees. This Guidebook deals with the regressivity problem and suggests methods of developing impact fees that are more equitable and, as a result, are more sensitive to the impact upon affordability.

Chapter 2 - Capital Facility and Infrastructure Financing Options

The purpose of this chapter is to discuss a range of infrastructure financing options, including impact fees, in order that the practitioner might have a more complete understanding of the options available and make informed choices. Impact fees, as well as other financing mechanisms, must be considered within the context of the local planning process. The relationship between impact fees, planning and exactions is described in Appendix A. This chapter also includes several decision guides which lay out various financing options in the form of questions, and present choices in the form of decision trees. The chapter opens with a general discussion of pricing as the underlying economic theory helps to determine the best options.

Included in this chapter is a discussion of developer exactions, special financing districts, and development taxes, as well as impact fees. Despite their differences, these alternative funding techniques all have a common theme: they shift the costs of new infrastructure from the general public to the new developments that create the need.

Principles of Efficient Facility Pricing

Economic theory supports the view that efficient pricing of public facilities alone will make land-use patterns more efficient, thereby saving resource lands for resource uses and facilitating efficient urban development. If public facilities were priced according to the costs of serving different locations, efficient development patterns would be encouraged. However, the choice of a local facility financing method affects the pattern of urban development. For example, residential density and distance from a water or sewer treatment plant influences the costs of sewer facilities and services. If the true costs of providing water or sewer service are subsidized and new development does not pay its full share of those costs, inefficient development will occur. It is "inefficient" in the sense that costs exceed benefits, which is seen in the form of infrastructure expansion and maintenance backlogs. It may also be inequitable in the sense that lower-cost development may subsidize higher-cost development.

In order to understand the efficiency and equity issues, the general nature of the costs of providing public facilities such as water and sewer services will be used to illustrate these concepts. These costs can be divided into three basic components:

The capital costs of producing the service. As a rule, these facilities, such as treatment plants, are subject to economies of scale and declining average cost. Being a function of the number of users and not necessarily distance from the facility, these costs usually are independent of residential distance away from the facilities or density of development.

The costs associated with the delivery of the service, such as sanitary sewer lines. Generally, these costs increase proportionally as distance increases. Increased residential density usually results in economies. For example, greater density allows for economies due to larger sewer pipe sizes run over shorter distances.

The short-run costs of actually producing the good; in other words, the maintenance and operation costs. These costs are incurred independent of density or distance, and are determined by actual use, such as the cost of actually processing the sewage once collected.

Average cost pricing occurs when the government charges everyone equally for the same service, regardless of the real cost to provide that service to a particular user. For example, sewer fees set on an average basis would charge connections to homes on half-acre lots five miles from the treatment plant the same as homes on 6,000 square foot lots one mile from the plant. As a result of average cost pricing, outlying developments are subsidized by other residents. Urban sprawl is encouraged when new development does not take account of the additional or marginal costs of providing service to it.

Table 2-1 illustrates this situation using actual figures from Loudoun County, Virginia, in 1984.³⁹ Notice that if all development is charged the same for service, some developments effectively subsidize other developments. If subsidized development is actually occupied by households that are more affluent than development being overcharged, there is also an inequity created. Unfortunately, Loudoun County is not at all an isolated example of this kind of inefficiency and inequity.

TABLE 2-1. ANNUAL CAPITAL FACILITY AND SERVICE DELIVERY COSTS 1,000 HOUSING UNITS CONSTRUCTED AT DIFFERENT DENSITIES, LOUDOUN COUNTY, VIRGINIA
[Prototypical communities of 1,000 units, 3,260 residents and 1,200 students.]

Facility Cost Category	Rural Low-Density 1 du/5 acres	Rural Cluster 1 du/acre	Moderate Density 2.67 du/acre	High Density 4.5 du/acre
Costs that vary with density	\$4,052	\$3,609	\$2,621	\$2,555
School operating costs	\$3,046	\$3,046	\$2,256	\$2,256
School transportation costs	\$187	\$153	\$67	\$33
Road maintenance costs	\$110	\$55	\$38	\$26
Water, sewer operating costs	\$709	\$355	\$260	\$240
Costs that do not vary with density	\$908	\$908	\$908	\$908
Public schools capital costs	\$243	\$243	\$243	\$243
Law enforcement	\$165	\$165	\$165	\$165
Fire/rescue services	\$58	\$58	\$58	\$58
Health/welfare services	\$295	\$295	\$295	\$295
General administration	\$147	\$147	\$147	\$147
Total Annual Costs	\$4,960	\$4,517	\$3,529	\$3,463

Source: Smythe and Laidlaw 1986. Figures not adjusted for inflation.

Public finance economists advocate marginal cost pricing, the cost of producing one more unit of output, in the form of a three-part tariff as an alternative to average cost pricing. One part of the tariff would be a charge for the costs of the capital facility used to produce the good, such as the cost of building a water or sewer treatment plant. This charge is a flat fee per connection since these costs do not vary by density or distance, although the charge may vary by size of connection to reflect approximate variation in treatment-plant capacity that must be reserved for that use.

The second part of the tariff is a charge for the costs of delivering the service, such as the cost of extending sewer lines to the house. It is a flat rate per house based on the average cost of extending a sewer line to

³⁹ Robert B Smythe and Charles D. Laidlaw, "Density-Related Public Costs," American Farmland Trust (Washington D.C.), 1986.

that and other homes in the same subdivision. The longer the sewer line and the lower the density, the higher the charge.

The third part of the tariff is a charge for actual use, based on the short-run costs of producing the service. It is a charge on the per-unit cost of providing potable water or processing sewage. A sewerage charge could be based on the volume of sewage passing out of the home and into the sewer line. More typically, it is based partly on the volume of water passing through a water meter into the home.

Planners argue that costs associated with lower-density development patterns may be reduced if facility-use was charged based on the three-part tariff. More-distant and less-dense development would only occur if its expected benefits to both developers and purchasers exceeded its additional or marginal costs to the public. Developers would not build and purchasers would not buy homes in inefficient developments since the charges would price such development out of the market. Under this theory, the primary task of planners is simply to determine the location of central facilities such as water and sewer plants and then price their use according to the three-part tariff. The market would then dictate appropriate land-use patterns. Although this discussion is simplistic, it does convey that marginal cost pricing can force developers to take account of all the fiscal costs and benefits of development before they try to have their plans approved.

The key question is, why is marginal cost pricing not being used, and why instead do communities look to rather inefficient growth controls? One reason is that the costs of developing and implementing a more accurate pricing system are high. It is a much more difficult technical task to determine marginal versus average-cost pricing systems. In a perfect situation, the marginal costs of serving each development and the extent of facility use by each household would be calibrated and assessed. In practice, this is beyond the technical capacities of most local governments. Even calculating marginal costs by area, such as for neighborhoods or sewage drainage basins, is difficult to understand and explain making adoption and implementation unlikely.

Another reason is that political costs are high. Communities may choose not to employ marginal cost pricing because they do not want to discriminate among members of the community, especially if the community is homogeneous in many respects. For example, if cost pricing is based on geographic service areas, then boundary lines must be drawn, and it is often difficult to convince people near the boundary that their cost of service is significantly higher than their neighbor's on the other side of the line. Many communities apply only a flat charge for residential water, regardless of the distance a home is from the supply or how much water is consumed. Such policy may seem fair; all residents have equal access to the facility and are free to consume what they need. To such communities, it does not matter that some may use more or less than others. It also is the situation that in most communities taxes on commercial and industrial enterprises subsidize residential public services. Marginal pricing would mean sharing this subsidy with new residents and thereby reducing the welfare of existing residents.

General Financing Options

There are five very broad ways to raise revenue for public facilities: general taxes, dedicated taxes, special assessments, user fees, and impact fees. There are certainly more categories that may be considered (such as federal and state grants and low-interest loans, charitable donations and lotteries), but this section focuses on the principal revenue sources available to most, albeit not all, local governments. Each is discussed below.

General Taxes. In the past general taxes, particularly property taxes, funded all infrastructure. Given the need of localities to now limit general taxes, such taxes today are most appropriate where there are exclusivity and free-rider issues, such as in parks and public safety, and where the general public well-being is enhanced, such as education and libraries.

Dedicated Taxes. A good example of a dedicated tax is the gasoline tax where revenues go exclusively for enhancing roads (including in some instances transit), normally under the argument that higher transit use preserves road capacity. There are examples of other dedicated taxes, such as California's per-square-foot tax on new buildings to help finance local schools, and Florida's real estate transfer tax where a share is dedicated to acquiring environmentally sensitive land by the state.

Special Assessments. In Texas, Municipal Utility Districts are often formed by private developers then turned over to local government to charge property within master-planned communities for the cost of installing and maintaining infrastructure within and, in some cases, outside the community. This is also the case with many developments-of-regional-impact in Florida. Indeed, the fastest growing segment of governance nationally is in the formation of special districts which usually serve the sole function of providing and maintaining infrastructure, as shown in Table 2-3. Special districts will be discussed in the next section.

User Fees. User fees are the most direct way in which to connect the benefit of the service to those who pay for it. Water and wastewater meter connections and subsequent charges by volume of use may be the best example of such a direct connection, because if one does not pay to connect to public water one does not receive it. Indeed, some of the earliest court cases surrounding impact fees related to that portion of the water and wastewater connection fee used to finance capital expansion.

Impact Fees. Impact fees are an attempt to generate revenue where general or dedicated taxes/assessments cannot cover all the capacity expansion costs. These are differentiated from user fees because they are, in effect, a reservation capacity fee – they provide the facility capacity whether or not those who paid actually use that capacity at any given point in time. Also, unlike user fees, they are directly tied to planning in that they are used to help finance a local capital improvement program that itself implements overall community planning objectives.

Public finance criteria indicate that for most facilities impact fees may be inappropriate for a variety of economic efficiency and social welfare reasons. Only water and wastewater facilities would seem to be appropriate facilities for which impact fees should be assessed. Other facilities, such as public safety, parks, libraries, and schools, are best financed through general funds and debt retired through general obligation bonds. Roads are financed best from user fees and dedicated taxes. Yet, impact fees are used to help finance all these and other facilities by an ever-increasing number of communities.

Table 2-2 summarizes the nature of facility financing in terms of the economic variables that should be considered in selecting financing: marginal cost, scale economy, exclusivity, and price elasticity of demand. The rightmost column identifies the most rational choice on pure economic grounds, without consideration for local conditions.

TABLE 2-2. ECONOMIC CHARACTERISTICS AND PREFERRED FUNDING FOR
SELECTED MAJOR FACILITIES

Facility	Marginal Cost Characteristic	Scale Economy	Exclusivity	Demand Elasticity	Preferred Capital Expansion Financing
<i>Water</i>	Lumpy for central facilities	Large	Exclusive	Low	<i>Impact Fees</i>
<i>Wastewater</i>	Lumpy for central facilities	Large	Exclusive	Low	<i>Impact Fees</i>
<i>Stormwater</i>	Lumpy for central facilities	Large	Nonexclusive	Low	<i>Special assessment based on impervious surface</i>
<i>Parks</i>	Lumpy for major parks, relatively smooth for smaller parks	Small to moderate	Nonexclusive	Moderate	<i>General taxes</i>
<i>Recreation Centers</i>	Lumpy for most	Small to moderate	Can be exclusive	Moderate	<i>General taxes and user fees</i>
<i>Library</i>	Lumpy	Small to moderate	Nonexclusive	Moderate	<i>General taxes</i>
<i>Fire</i>	Lumpy for central facilities, moderate for stations, smooth for vehicles	Small	Nonexclusive	Low	<i>General taxes</i>
<i>Police</i>	Lumpy for central facilities, moderate for precincts, smooth for vehicles	Small	Nonexclusive	Low	<i>General taxes</i>
<i>Emergency Medical</i>	Lumpy for central facilities, moderate for stations, smooth for vehicles	Small	Nonexclusive	Low	<i>General taxes</i>
<i>Highways</i>	Lumpy for most, smooth for local streets	Large to moderate	Exclusive through tolls	High	<i>Dedicated taxes and tolls</i>
<i>Schools</i>	Lumpy	Small to moderate	Nonexclusive	Moderate	<i>General taxes</i>
<i>Colleges</i>	Lumpy	Large	Exclusive through tuition	Moderate	<i>User fees (tuition) and general taxes</i>
<i>Transit</i>	Lumpy	Large	Exclusive through fares	High	<i>User fees (fares) and general or dedicated taxes</i>

For the most part, impact fees do not appear to comport with public finance principles as they relate to capital financing. Yet, there is a growing use of impact fees to build new parks, libraries, public safety

facilities, schools, and roads – all facilities that are better-financed from other means. Why is this? The next section reviews the practicalities of employing some development or project-specific alternative financing mechanisms to see why impact fees are gaining popularity.

Principal Revenue Methods

Although there are numerous financing alternatives available, discussion in this section is limited to the following three broad categories:

- Developer Exactions;
- Special Assessment Districts; and,
- Impact Assessments

The principal alternatives within each category are reviewed first and then assessed relative to policy-making criteria which will be introduced later.

Developer Exactions

Developer exactions are generally defined as the private provision of land or facilities to serve public infrastructure needs created by new development; they are made as a condition of development approval. In some states, private contributions must be “volunteered” (often not truly voluntary) by the developer and are referred to as “proffers.” Note that impact fees are not considered a developer exaction per se but instead fall into the “impact assessment” category.

In most communities, developers are already required to construct at their own expense and dedicate to the local government all public improvements within a subdivision that are designed to serve only that subdivision. These internal improvements, which must be constructed to standards set by the local government, typically include local streets, sidewalks, water distribution lines, wastewater collection mains, and storm sewers.

Clearly, however, the improvements within a subdivision are only a part of the total public improvements that are needed or affected by a new subdivision. Off-site facilities such as schools and parks typically serve residents of a number of different subdivisions. Streets in new subdivisions will always connect to a network of collector and arterial roads outside the subdivision. Similarly, most subdivisions tie into larger networks of water, wastewater, and stormwater systems.

Typical exactions include the dedication of park land, school sites, and road rights-of-way. In addition to the dedication of land, developers may be required to construct public facilities, such as widening the portion of a substandard street on which the development has frontage, or installing a traffic signal at a nearby congested intersection. Finally, exactions may take the form of monetary contributions, such as fees in lieu of dedication, or developer participation in a pro rata share of the cost of installing a traffic signal.

Monetary exactions are superficially similar to impact fees. Indeed, fees in lieu of dedication are a direct precursor of impact fees. The distinction lies in the manner in which the fee is assessed and the purposes of the fee. In-lieu fees are usually based on land costs only and are ill-suited for public services not requiring extensive amounts of land. Impact fees, on the other hand, are designed to cover a proportionate

share of the capital facility costs and may be applied to a wider variety of services. Monetary or in-kind exactions other than land are typically site-specific and often negotiated on a case-by-case basis, whereas impact fees are based on a general formula that applies equally to all developments.

In general, exactions fall into two broad categories: mandatory land dedication requirements and negotiated exactions. A major limitation common to both types of exactions is that they tend to address only those public improvements that are either on-site or in close proximity to the development. Such needs as roadway systems to relieve congestion or treatment plants to relieve the overloaded are generally beyond the power of an individual developer to address through the exaction process.

Mandatory Dedication Requirements. Mandatory park or school dedication requirements with in-lieu fee provisions typically apply only to residential subdivisions and are based on the number of dwelling units proposed. Requirements based on a percentage of site area have been overturned by the courts, since they do not recognize the differing service demands created by low- and high-density developments. Land dedication usually is required at the subdivision stage of the development process.

Land-dedication exactions have the advantage of being closely related to on-site needs created by new development. They have a long history of use and are generally accepted as legitimate exercises of local police power. They treat all residential subdivisions similarly and are relatively simple to administer.

A major drawback, however, is that land dedication only covers the cost of land and makes no contribution toward the cost of new capital improvements required by new development. In addition, since they are generally administered through the subdivision ordinance, developments not requiring land subdivision, such as apartments or previously platted land, are often exempted from the requirements.

Negotiated Exactions. Monetary or in-kind exactions are generally the result of open-ended negotiations between the developer and the local government, rather than from the application of a previously defined methodology. They may be imposed at any stage of the development process, particularly during requests for regulatory approvals such as zoning, special permits, or planned unit developments, where the local governing body has broad discretionary authority. Such exactions typically involve public improvements in close proximity to the development.

While negotiated exactions are standard procedure in many communities, they are tightly regulated in some states. In North Carolina and Virginia, for example, the state governments have authorized two kinds of zoning districts: general-use districts and conditional-use districts. Local governments cannot require developer contributions as a condition of granting general-use zoning, and can accept proffers only when conditional-use zoning is requested. In Virginia, jurisdictions outside of Northern Virginia and the Eastern Shore that have not been expressly granted conditional zoning authority are severely limited by the types of proffers that may legally be accepted.

In comparison with land-dedication requirements, negotiated exactions may cover the capital cost of public facilities in addition to land costs. Since such exactions are based on the specifics of an individual development proposal, they can address public-facility improvement needs, such as driveway turning lanes, that are directly related to the development.

Another drawback of negotiated exactions is that they lack the attributes of predictability and equity that gained park dedications their early and wide acceptance. The amount of the exaction may depend on

accidents of geography, such as the amount of land owned by a developer that happens to coincide with right-of-way needs, or on the political or bargaining skill of the applicant. Small developments, although they may cumulatively result in the need for significant capital improvements, often escape such exaction requirements because individually they are not capable of making significant contributions. Negotiations are often time-consuming and expensive for both the developer and the local permitting authority. Roadway exactions, for example, may be based on a traffic impact study required for each major development project.

Development Agreements. A variant of both of these approaches is the development agreement that is negotiated between the developer and the local government. Unlike mandatory dedications and negotiated exactions, development agreements cover a broad range of facilities (and other issues), provide for timing, phasing, and financing schedules, establish obligations of both parties, and help to settle issues that may otherwise have emerged in the future. Once in place, development agreements provide certainty to both the developer and local government on what to expect as the project builds out. Development agreements are widely used throughout California and Florida, and are increasingly seen in other growing states (Porter and Marsh 1989).

Special Assessment Districts

While developer exactions may be gaining in popularity, they do have their limitations. Exactions are only one-time assessments usually dedicated to capital improvements. As such, developer exactions have little relationship to maintenance and operating expenses, and they do not aid in the process of getting existing development to contribute its proportionate share of capital improvements. Special assessment techniques reviewed here help solve this problem. Many local governments will use both developer exactions and special assessment programs.

Special assessment districts are the broad title that includes local improvement districts, municipal utility districts, and other sub-jurisdictional entities whose purpose is to finance and often maintain capital facilities to accommodate growth and development. They are commonly characterized as geographic areas within which fees or taxes are collected (in addition to jurisdiction-wide general taxes) to fund capital investments or special services that clearly benefit properties within the district. The distinctive feature of special assessment districts is the very close and visible tie between the facility constructed or maintained and those who benefit from and pay for it. Unlike other financing options that target new development to pay for a share of communitywide improvements, special assessment districts assess all properties in a defined area for the range of facilities being provided. Assessments can finance debt service needed to provide the initial capital facilities and subsequently finance operations and maintenance costs. It is perhaps for this reason that they are the largest growing segment of American government. Table 2-3 reports the change in government units by type for the period 1972 through 2002.

TABLE 2-3. GOVERNMENT UNITS: 1972 - 2002⁴⁰

Type of Government	1972	1982	1992	2002	Change From 1972	Percent Change
Federal	1	1	1	1	0	0.00%
State	50	50	50	50	0	0.00%
County	3,044	3,041	3,043	3,043	(1)	-0.03%
City	18,517	19,076	19,296	19,431	914	4.94%
Township	16,991	16,734	16,666	16,506	(485)	-2.85%
School District	15,781	14,851	14,556	13,522	(2,259)	-14.31%
<i>Special District</i>	23,885	28,078	33,131	35,356	11,471	48.03%

Special assessment districts are attractive for several reasons. They shift the burden of infrastructure finance from the general public to properties receiving direct benefit, while avoiding the short-term time horizon of purely private infrastructure provision. Property owners are assured that their additional taxes or fees will be spent in a manner that will benefit them, with a more single-minded focus than is characteristic of general-purpose government activities. Most states permit the creation of local improvement districts with the approval of the majority of property owners within the district. In Florida, the developer can unilaterally impose a local improvement district on all development subject to approval by the governing body. In Texas, "municipal improvement districts" serve the same function and are often tied to eventual annexation to a nearby city if the development is outside the city limits. In most cases, once the district is created, participation is mandatory for all property owners. An exception is Colorado, which permits the creation of special districts with voluntary participation of property owners within the district.

Assessments within special assessment districts are based on attributes of property--such as property value, parcel size, street frontage or use--assumed to be directly proportional to benefits accruing to property owners. However, the basis and level of assessments may vary within the district. For water and wastewater, utility assessments can reflect use. For drainage, stormwater assessments can be based on impervious surface area. For roads, assessments are often based on road frontage. For all other facilities, assessments can be based on value.

Special assessment districts have the ability to assess both existing development and vacant land in the immediate vicinity of the capital improvement. Particularly in local improvement districts with a considerable amount of existing development, revenue streams are more predictable than those of impact fees, development taxes, and developer exactions, which are dependent on development cycles. One concrete advantage resulting from the greater predictability of the revenue stream is that bonds can be issued by pledging to levy assessments necessary to repay the bonds.

Once established to provide infrastructure services, special assessment districts often operate outside the public spotlight that is focused, in most communities, on elected general governments. The proliferation of special assessment districts can weaken the authority of general governments to deal effectively with growth and to govern in the comprehensive way that they should. Widespread use of such districts can create a confusing hodgepodge of overlapping, independent taxing and assessment jurisdictions that lack the visibility and accountability, as well as the ability to coordinate different activities that characterize

⁴⁰ Census Bureau, 2002 Census of Governments, CGO2-1(P), July 2002, accessed January 22, 2005 from http://ftp2.census.gov/govs/cog/2002COGprelim_report.pdf

general-purpose governmental entities. Appendix B reviews details of a typical special assessment district process from the State of Washington.

Tax Increment Financing. A variant of special assessment districts is tax increment financing (TIF) districts. They differ from other special financing districts in that no special fees are assessed in addition to jurisdiction-wide taxes. District revenues consist of a diversion of that portion of revenues attributable to new development within the district. District revenues are used to retire bonds that finance the initial improvements that stimulated the new development. It is this internal financing, or bootstrap redevelopment, approach that accounts for much of the popularity of the TIF technique.

TIF is particularly attractive to cities because other taxing authorities, such as counties and school districts, may be required to contribute to the redevelopment fund, and that fund is ordinarily under the control of the city or its redevelopment agency. In theory, the other jurisdictions do not lose revenue because there would be no growth in the TIF district's tax base without the stimulating public investment. Even if this were true, however, the development attracted to the TIF district might have otherwise occurred elsewhere in the region.

Impact Assessments

Impact assessments are scheduled charges made against new development for the purpose of financing public facilities. Impact fees are obviously included in this category, but so are impact taxes and dedicated real estate transfer taxes.

Impact Taxes. A development impact tax, also called an improvement tax, is a tax on new construction, usually assessed at the time of application for a building permit. Impact taxes are generally based on the value of new improvements, and tend to be more popular than other kinds of taxes because they are levied on new construction rather than existing development. However, re-roofing, remodeling, and alterations to existing structures are also subject to such a tax. Even in a high-growth community like San Jose, California, over one-third of total building permit valuation is for such remodeling activities.

Unlike impact fees, impact taxes need not be based on the cost of facilities needed to serve the development, and the special studies required to justify impact fees are not required. In addition, revenues from such taxes may be spent in any way the local jurisdiction sees fit, subject to the provisions of state enabling legislation.

Impact taxes are not widely used. One exception is California; since passage of Proposition 13 in 1978, which limited local government revenue substantially, many California communities have resorted to impact taxes as a way to finance public facilities. The legislature also enabled impact taxes for schools affecting all new development, not just residential. California is not alone. Oregon enables local governments to impose a transportation impact tax, and Tennessee enables an "adequate public facilities" tax, as needed, to match infrastructure to new development demands.

Real Estate Transfer Taxes. Real estate transfer taxes are levied on real estate transactions. While impact taxes are generally based only on the value of new improvements, real estate transfer taxes are assessed on sales price, which includes the value of both land and improvements. As with all taxes, real estate transfer taxes cannot be adopted by local governments without state enabling legislation. Real estate transfer taxes are not dependent on new development, but rather on an active real estate market.

Transfer tax revenues are more predictable than revenues from impact fees or exactions and hence more suitable for bond financing. However, to solve infrastructure problems, there must be an explicit dedication of such taxes for infrastructure. In addition, if the real estate transfer tax is applied to all transactions including resales of existing homes, it would have a markedly different incidence than a program of developer exactions or impact fees.

Impact Fees. Impact fees (also known as development impact fees, system development charges, and connection charges) are charges levied on new development to pay for the construction of off-site capital improvements that benefit the contributing development. Impact fees are typically assessed using a fee schedule that sets forth the charge per dwelling unit or per 1,000 square feet of nonresidential floor space. Impact fees are one-time, up-front charges, with the payment usually made at the time of building permit approval, although some jurisdictions allow extended payments over a period of years.

Impact fees are a political response to the notion that development should pay its own way. In some communities, impact fees are actually considered a pro-growth tool because of their ability to defuse rising no-growth sentiments, ensure facility adequacy, and facilitate development approval. In addition, because they are typically used as a replacement for negotiated exactions, impact fees add speed and predictability to the development process. Impact fees are also more equitable than informal systems of negotiated exactions and are likely to generate considerably more revenue.

Impact fees can be used to fund a wider variety of services and types of facilities than is possible with exactions or special districts. Unlike dedication requirements that cover only land costs, impact fees can be used to cover the full capital cost of new facilities. Impact fees can also be structured to require new development to buy into service delivery systems with existing excess capacity, thus recouping prior public investments made in anticipation of growth demands. Recoupment of prior investments is generally not possible with other types of exactions.

The requirement that impact fees be spent to benefit the fee-paying development is typically met by earmarking revenues for expenditure in the zone in which they are collected. The requirement that fee revenues be spent within a reasonable period of time following fee payment imposes an additional constraint. However, proper design of benefit zones, provisions for pooling revenues from adjacent zones, and supplementing impact fee revenues with funds from other sources can overcome obstacles to successful fee implementation.

Sometimes impact fee revenue is pledged to support bonded debt service incurred to provide facilities needed to accommodate growth. In these cases bond covenants may call for using impact fee revenue first for this purpose, but to assure timely and adequate payment of debt service the fiscal base of the community is also pledged to the extent needed.

The primary strengths of impact fees include applicability to a wide range of public services, ability to promote efficient development patterns, predictability for public and private sectors, acceptability due to a clear linkage with the needs of new development, and some ability to help with bonded debt service. Their limitations weaknesses include inability to fund operating costs, lack of expenditure flexibility, and dependence on construction cycles.

Policy-Making Criteria

Each alternative likely has its own limitations, so how does one know which is best from the perspective of local government's need to meet facility financing needs and society's interest in supporting housing affordability? The following sections identify certain policy-making criteria and apply them to a comparative assessment.⁴¹

Revenue Potential. Any financing scheme must generate sufficient revenue to meet needs. In this context, however, revenue potential means the ability to generate revenue roughly concurrent with the development as well as the ability to use the revenue as supplemental security for general obligation and revenue bonds and for certificates of participation that are used to finance large-scale improvements meeting present and future needs. Finally, revenue potential means the ability to have all development contribute revenues, not just certain development under certain conditions.

The chief limitation of *developer exactions* is that only development triggering these actions pays and payment is usually limited to what is negotiated. For example, *mandatory dedications* address only a limited range of facilities, usually school and park land, and affect only new subdivisions and, often, only those exceeding a certain size. Although in-lieu fees for land dedication are common, our research indicates in-lieu revenues are insufficient to provide land of suitable quality at other locations. *Negotiated exactions* and *development agreements* can address a broader range of facilities including funds for them. Developer exactions as a class are poorly to moderately able to generate the revenue needed.

Impact assessments may be better able to generate the revenue needed because the base includes all new development. Here, however, *development taxes* are not widely used and are usually limited to a small range of facilities. On a practical level, *real estate transfer taxes* will not solve infrastructure financing problems unless they are dedicated to that purpose, because otherwise they will quickly be spent on other needs and the infrastructure financing problems will remain. *Impact fees* are seen as having the broadest base of dedicated revenue for new facilities of the three alternatives, but even here state statutes can limit impact fees to a small range of facilities. New Mexico, for example, does not allow impact fees to be assessed for schools, libraries, and community centers, and Georgia does not allow impact fees for transit.

Local improvement districts have potentially the greatest power of all financing mechanisms to generate revenue to finance capital expansion needed to accommodate development, but they often cannot finance off-site facilities impacted by the development they serve.

Proportionality. This is the connection between the demand for facilities created by new development, the cost of meeting those demands, and the extent to which the alternative apportions those costs to new development. Proportionality can also mean geographic equity and housing affordability if costs vary appropriately, but these two issues are separately discussed below.

Proportionality relates to equity, but equity comes in two broad forms: horizontal and vertical. Horizontal equity means essentially that similarly situated people will be treated similarly. Impact fees have survived challenge on this charge because at their simplest they meet this equity principle. Vertical equity considers differences within the same class based on objective measures or criteria. The trouble is that impact fees can be horizontally equitable but vertically inequitable. For example, under horizontal equity all dwellings

⁴¹ This scheme was initially devised by Dr. Arthur C. Nelson and James B. Duncan for application to Hickory, North Carolina and has since been adapted by Duncan & Associates for use in numerous other communities.

would be assessed the same impact fee for parks. If dwelling units differ by the number of people living in them based on type or size of dwelling then vertical equity is not achieved. Federal data show, for example, that in 2003 the average household size of units less than 500 square feet was nearly 2.0 while for units over 2,500 square feet it was more than 3.0. Charging each unit the same means that the smaller unit over-pays with respect to its occupancy level while the larger unit under-pays.

In reviewing the options that are available against the criterion of proportionality, *developer exactions* are poor methods by which to assure proportionality. There exists some potential to achieve this in *development agreements* and, to some extent, in *negotiated exactions*, but our collective experience is that proportionality is a secondary concern to primarily mitigating impacts of new development. Moreover, not all development is subject to developer exactions. Among the *impact assessment* mechanisms, *impact taxes* and *real estate transfer taxes* are not required by law to be proportionate, but this is the very underpinning of *impact fees*. *Local improvement districts* are probably proportionate since all costs are internalized and apportioned usually based on some formula, but since they do not usually address off-site impacts, proportionality overall is not likely achieved.

Geographic Equity. This issue results from the fact that some areas are more costly to serve than others. This is one area where marginal cost pricing can become an element of policy-making even where the political will to charge prices based on marginal cost may not otherwise be present. An element of geographic equity is infill and redevelopment, since we often find older areas have excess infrastructure capacity (such as under-utilized schools). Even where the infrastructure needs to be upgraded, the cost can be less per unit of development if infill and redevelopment is encouraged.

It is difficult to presume that any *developer exaction* alternative by its design attempts to achieve geographic equity. The same can be said for *local improvement districts*. Neither *impact taxes* nor *real estate transfer taxes* are sensitive to geographic equity. Only *impact fees* have this potential and, while not widely used to achieve this form of equity, they are becoming more common across the country.

Administrative Ease. This factor refers to whether an alternative can be administered efficiently, and whether compliance can be achieved at reasonable cost.

Developer exactions are costly on local governments in two respects: first because such exactions typically engage local government and attorneys on all cases involving exactions; second because revenue generated (or its in-kind value from dedications) comes only from affected development. Moreover, developer exactions normally do not generate adequate revenue to compensate for the cost of processing them.

Impact assessments and *local improvement districts* are quite efficient in achieving their purposes. *Impact taxes*, *real estate transfer taxes*, and *impact fees* are assessed and collected easily through standard government processes. *Local improvement districts* are like developer exactions in that they involve usually extensive negotiations between the parties, but the result is a stream of revenue some of which may be used to offset the local government cost, and the continuing revenue supports development-specific infrastructure.

Public Acceptance. Above all, the alternative policy must have the potential for receiving broad public acceptance. In our view, this means that current taxpayers/ratepayers will not face higher taxes or rates for the benefit of new development, both in the near and long terms.

Most of these alternatives enjoy broad public acceptance. The *real estate transfer tax* may not enjoy a broader base of support since anyone selling property has to pay it, and almost everyone sells some property in his or her life. *Developer exactions* may allow citizens a chance to extract concessions but only on the most visible proposals. *Impact taxes* and *impact fees* probably have broad public appeal, but because impact taxes are not as widely used (perhaps because of the word “tax”), impact fees by default are probably more widely accepted.

Housing Affordability. This criterion relates to the ability of any alternative to be created or calibrated to reflect differences in facility cost by size and type of housing unit (proportionality), as well as the ability to offset costs for certain housing based on ability to pay.

None of the *developer exaction* alternatives are explicitly sensitive to housing affordability. *Development agreements* may include housing affordability features, but only on a case-by-case basis. Except for assessing residential development based on type and size of unit, *local improvement districts* are not explicitly sensitive to housing affordability. *Impact taxes* are usually based on house size so they appear to address housing affordability indirectly; similarly, *real estate transfer taxes* based on property value only address affordability implicitly. *Impact fees* have the greatest potential for being designed to minimize effects on housing affordability and can include provisions to waive fees altogether, as most impact fee enabling statutes provide.

Table 2-4 summarizes these alternative financing mechanisms in terms of these criteria.

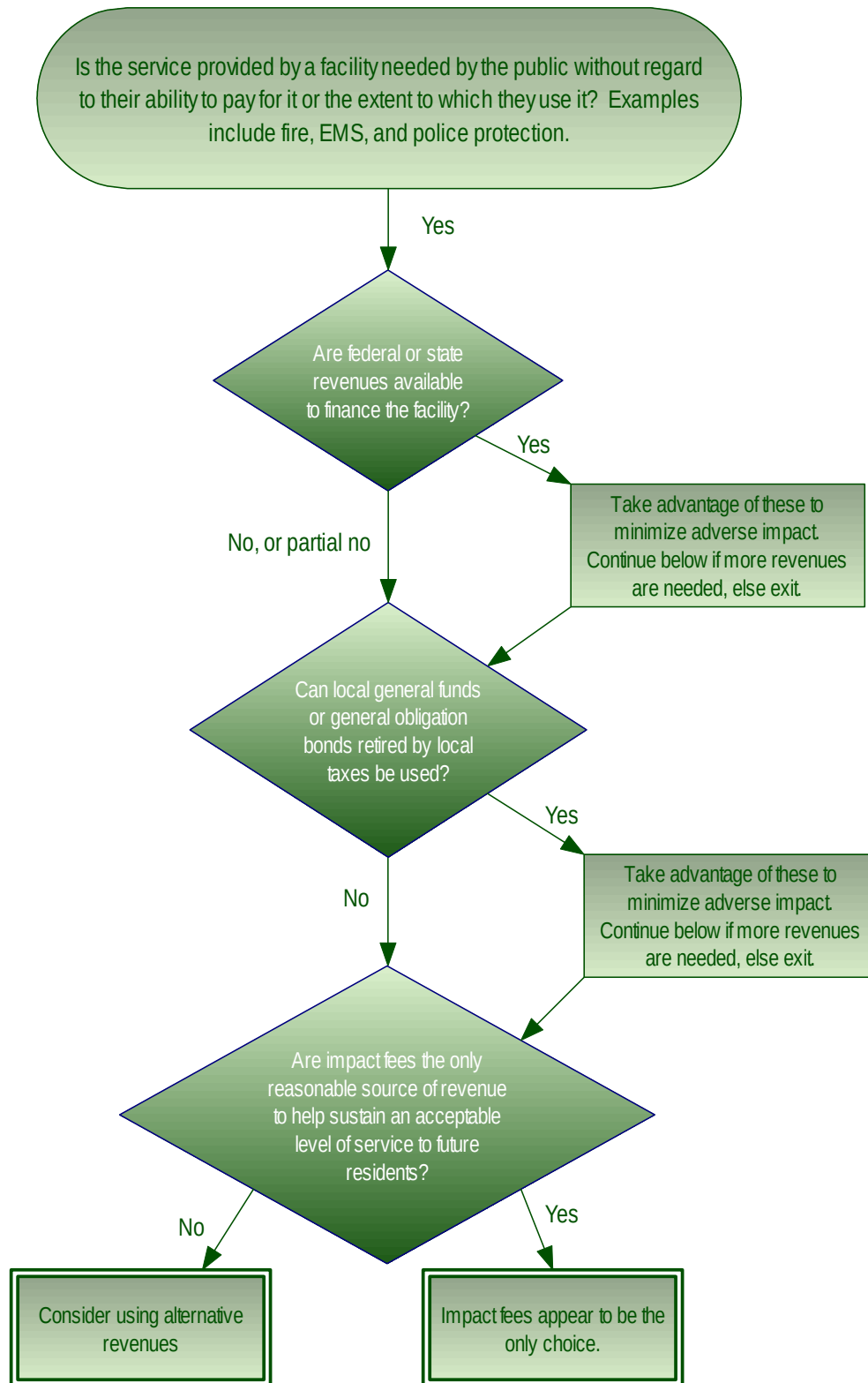
TABLE 2-4. SUMMARIZING THE POLICY-MAKING ISSUES OF ALTERNATIVE FINANCING MECHANISMS

Mechanism	Revenue Potential	Proportionality	Geographic Equity	Administrative Ease	Public Acceptance	Calibrated to Reflect House Impact Differences
<i>Mandatory Dedications</i>	Low – Usually applies to subdivisions.	Low – Often based on how much can be exacted in ad hoc negotiations.	Low – Exaction does not vary by geographic need.	Moderate – Features of actual dedications (such as location of park dedication land) can be disputed.	High – Affects only new development.	Low – Essentially a flat fee type of exaction.
<i>Development Agreements</i>	High – Can internalize project costs and fund off-site externalities.	Low – Often based on how much can be exacted in ad hoc negotiations.	High – Can take account of geographic variations.	Low – Often requires complex & expensive negotiations.	High – Affects only new development and can lead to more concessions than other exactions.	Low – Based only on an ad hoc negotiation that need not consider.
<i>Impact Taxes</i>	Moderate – Usually based on statutory limits.	Low – Based usually on statutory limits.	Low – Assessed without respect to geographic variations.	High – Usually based on simple assessment and collection procedures.	Moderate – Existing residents may pay when they buy a new home.	Low to Moderate – Usually based on value or a flat fee per unit.
<i>Impact Fees</i>	Moderate – Only based on difference between available revenue and revenue needed.	High – Legal standards require it.	High – Based on service area design which varies based on geographic differences.	High – Usually based on simple assessment and collection procedures.	Moderate – Existing residents may pay when they buy a new home.	Moderate to High – Can be designed to reflect differences in impact based on house occupancy characteristics.
<i>Real Estate Transfer Taxes</i>	Moderate – Limited to real estate sales and subject to statutory limits.	Low – Based on value but not on proportionality of impact.	Low – Assessed without respect to geographic variations.	High – Usually based on simple assessment and collection procedures.	Low to Moderate – Existing residents may pay when they buy and sale homes.	Moderate – Based on value which can reflect house impact differences.
<i>Local Improvement Districts</i>	Low – Limited usually to project and does not include development outside districts.	Moderate – Can be designed reflecting proportionate impacts and benefits but often not.	High – Can take account of geographic variations.	High – Usually based on simple assessment and collection procedures.	High – Affects only new development.	Low – Not usually designed to reflect differences in impact based on house occupancy characteristics.

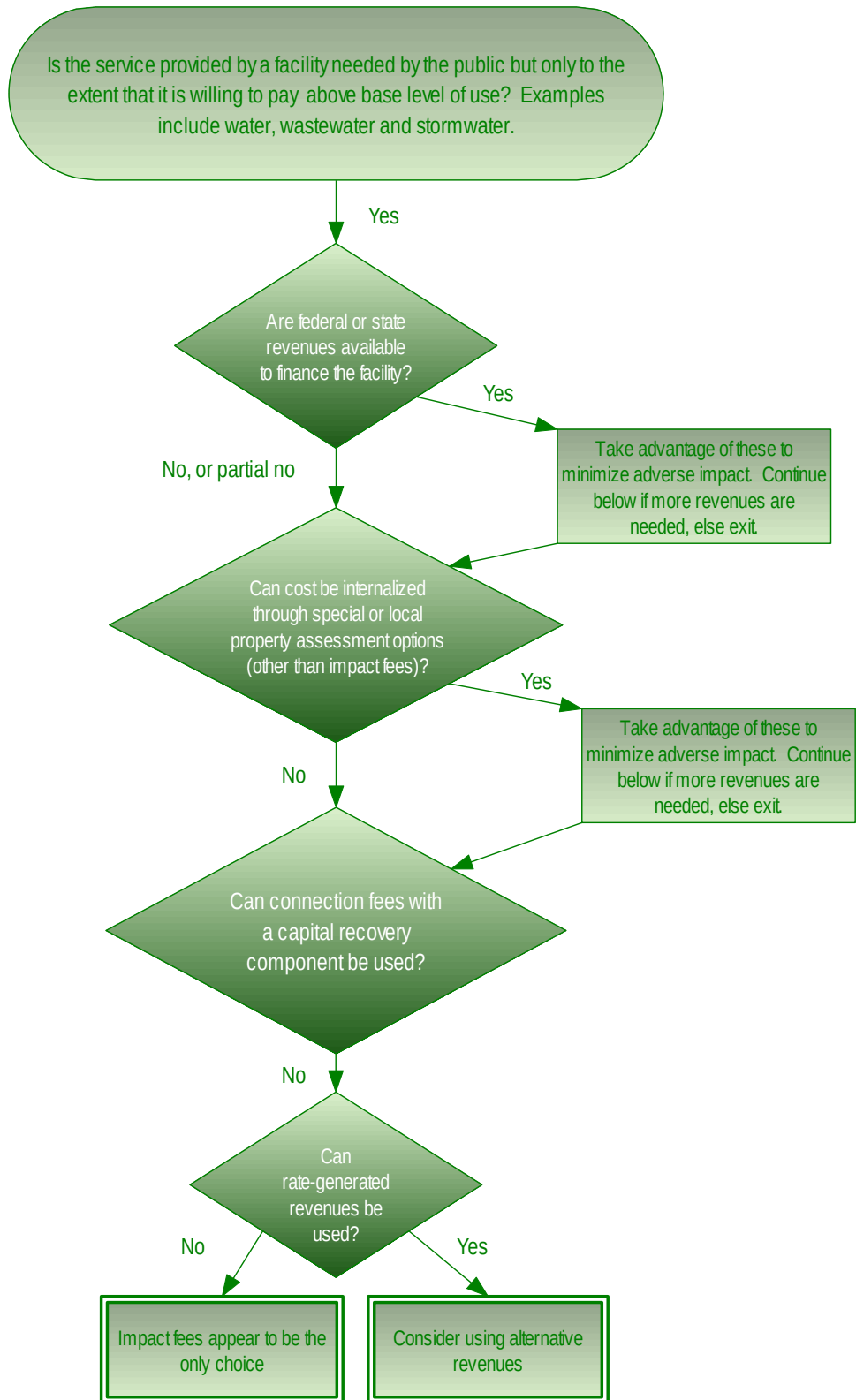
Alternative Funding Decision Charts

For a variety of political, legal, and pragmatic reasons impact fees are often seen as the most flexible option to address facility financing needs even though for the most part other funding alternatives may appear superior. Nonetheless, it is important to consider alternatives first to be sure that the impact fee choice is the best available option. The decision charts for specific facilities that follow are designed to help practitioners make rational decisions on potential funding mechanisms and consider if impact fees meet their needs. They should be used as a guide in the decision-making process.

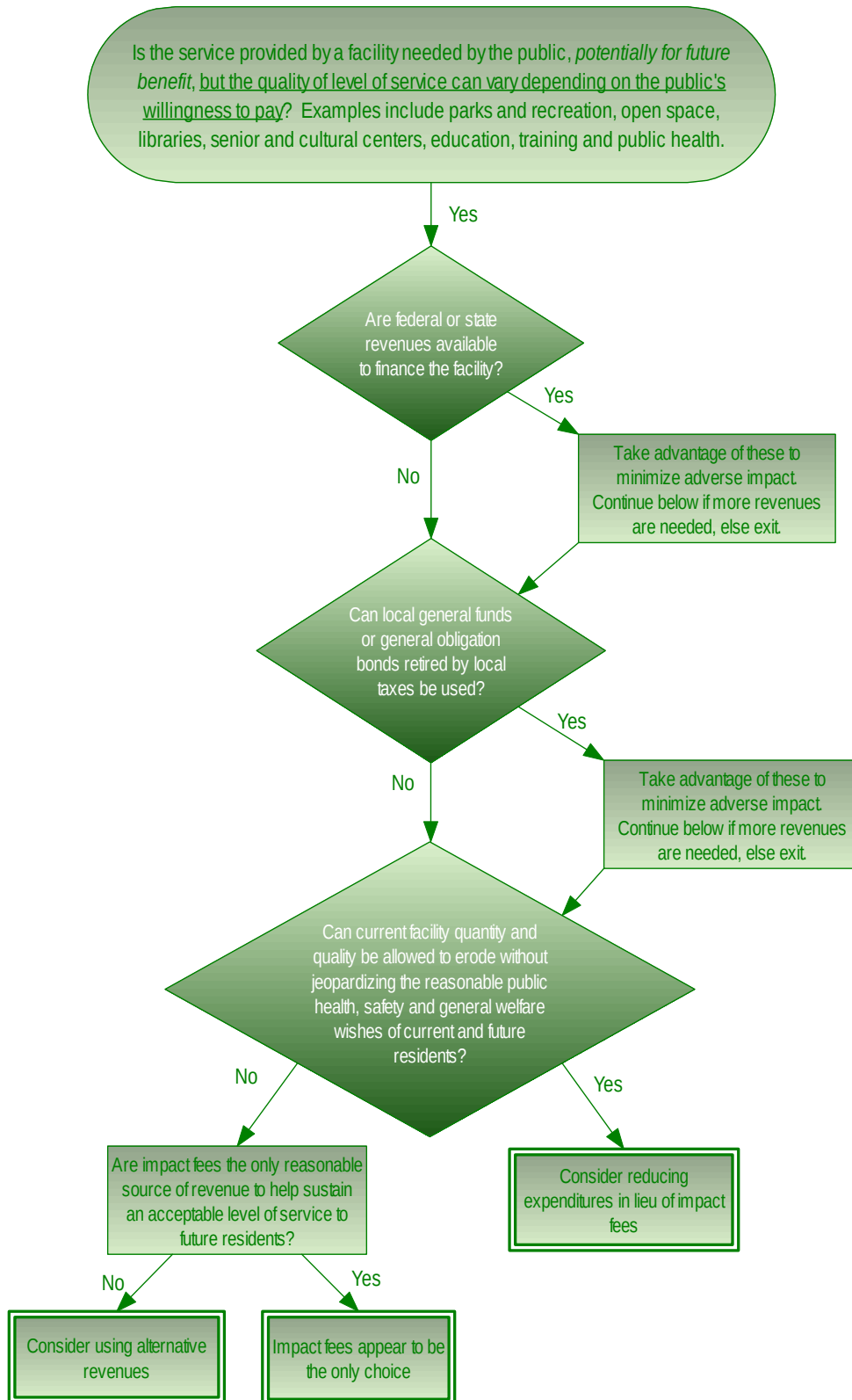
Decision Chart 2.1 Public Safety Facilities



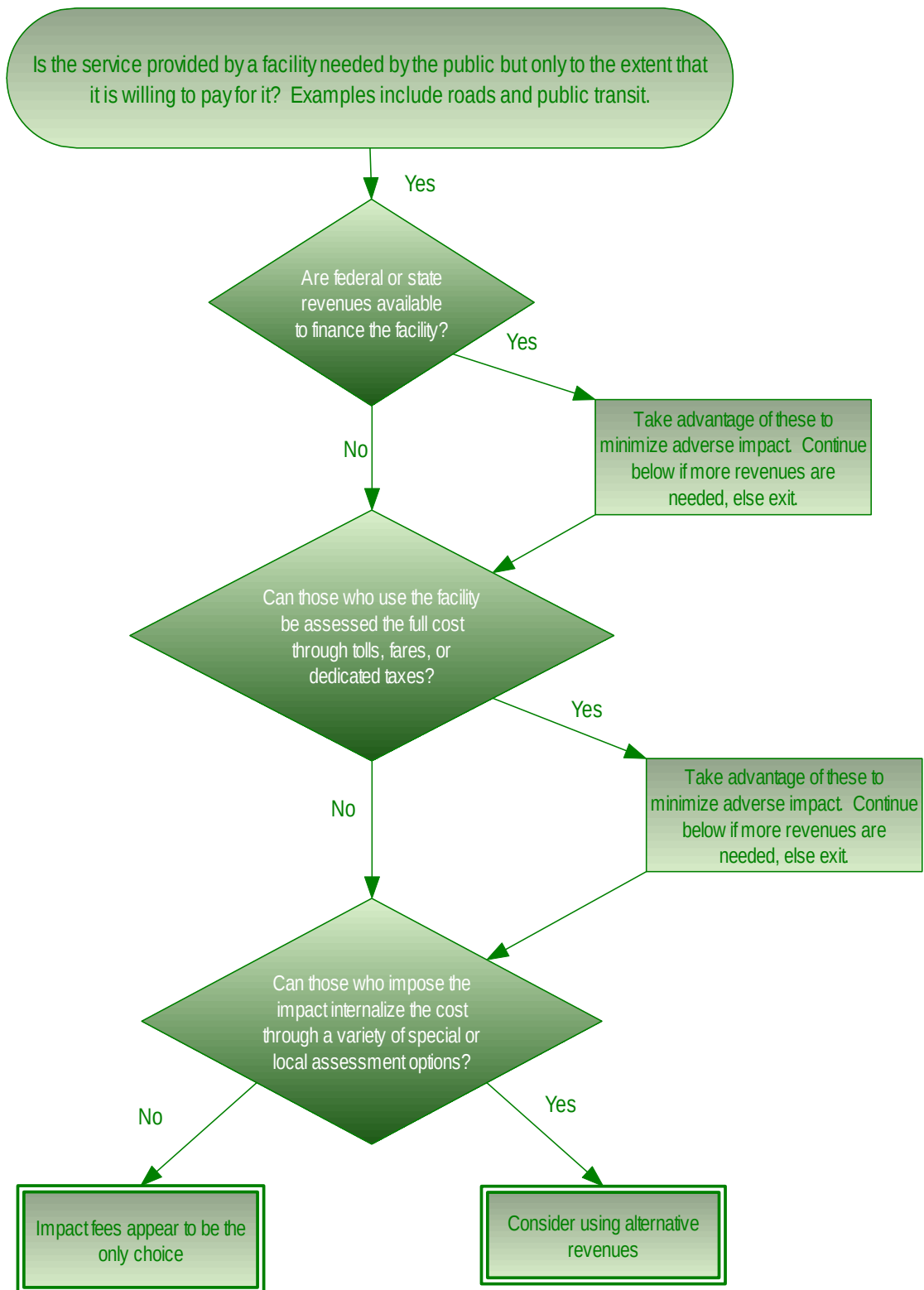
Decision Chart 2.2 Water-Based Utilities



Decision Chart 2.3 Public Amenity Facilities



Decision Chart 2.4 Transportation



Chapter 3 - The Role of the State

This chapter briefly summarizes states with impact fee enabling acts, and includes summary tables, and examples of evolving state statutes. It highlights those states that address affordable housing, reviewing how they enable facilitation of affordable housing in light of locally assessed impact fees. This information is useful to practitioners as the state statutes obviously affect the local impact fee design. For those states without enabling legislation, practitioners should look to case law.

Impact fees were originally developed by local governments in the absence of explicit state enabling legislation. Consequently, such fees were originally defended as an exercise of local government's broad "police power" to protect the health, safety and welfare of the community. The courts gradually developed guidelines for constitutionally valid impact fees, based on the relationship (in legal parlance "rational nexus") that must exist between the regulatory fee or exaction and the activity that is being regulated. Texas adopted the first general impact fee enabling act in 1987. To date, 26 states (illustrated in Figure 3-1) have adopted impact fee enabling legislation (for other than water and wastewater fees). These acts



have tended to embody the constitutional standards that have been developed by the courts. Some states where impact fees are popular, such as Florida, currently do not have impact fee enabling legislation. In Florida, the authority of cities and counties to adopt impact fees is solidly established in case law. In some other states, such as Tennessee and North Carolina, impact fees and development taxes are generally authorized for individual jurisdictions through special acts of the legislature.

FIGURE 3-1. STATES WITH IMPACT FEE ACTS

Review of State Enabling Acts

Table 3-1 lists the states with enabling acts and reports the facilities eligible for impact fee financing. Some notable recent developments in impact fee legislation illustrate that states continue to wrestle with impact fee authority, parameters, and procedures. Several examples are highlighted here, and the full text of all the state statutes is posted at <http://www.huduser.org/rbc/> and may be obtained from HUD or the authors.

The Texas legislature amended that state's impact fee enabling act, effective September 1, 2001. Credits against the impact fees for other taxes or fees that would be paid by new development and used for capital improvements of the same facility type as the impact fee are now required. As an alternative to performing a revenue credit calculation, cities⁴² can simply reduce the impact fees by 50 percent. The maximum width of road impact fee service areas was increased from three to six miles, and the amount of time between mandatory updates was increased from three to five years. The recalculation requirement described above

⁴² In Texas, counties have very limited authority to regulate development and do not have impact fee authority.

was eliminated. Finally, the number of public hearings required before impact fees could be updated was reduced from two to one (two are still required for initial adoption).

The Idaho legislature recently amended that state's impact fee enabling act in a way that favored a manufacturer in its dispute with the local highway district. Micron, a local manufacturer, had filed an independent assessment with the highway district for an expansion to its existing manufacturing facilities in Boise in which it claimed that it should get credit for all property taxes paid in the past or in the future by Micron to the district and available for capital improvements. The amendments to the act, which became effective July 1, 2002, seem to require local governments to calculate revenue credits in such a way that an existing business that expands its operations or builds a new facility gets credit for past and future tax payments by the business within the same service area, even though the gross fee before credits is based only on the net increase in traffic generated by the expansion or new construction. If interpreted as the act appears to intend, an existing business that expands or opens a new branch within the same service area would likely never pay a road impact fee, while a business that does not have existing operations within a service area would be required to pay. Such an inequitable outcome would be subject to challenge as contrary to the enabling act's more general "proportionate share" language. As a result, the amendments to the state act cast a cloud of uncertainty over how revenue credits should be calculated in Idaho.

Two brief examples of states' continuing efforts to refine impact fee authority are illustrated here:

- Arkansas adopted an impact fee enabling act on April 22, 2003. The act only applies to municipalities and water or wastewater providers, it does not authorize impact fees for counties. It clarified the authority of cities to enact impact fees, which had not been firmly established before this. Like most state acts, it does not allow school impact fees. It is relatively short and has few requirements. Its only unusual feature is that it requires that the amount of the impact fee paid be itemized separately on the closing statements when property is sold. The original version of the bill, drafted at the request of the state homebuilders association, had proposed that the fees for single-family homes actually be paid at time of closing by the buyer, but this requirement was dropped in conference committee.
- Colorado also adopted an impact fee enabling act. Senate Bill 15 was signed by the governor on November 16, 2001. Among other things, this bill created a new Section 104.5: Impact Fees, in Article 20 of Title 29, Colorado Revised Statutes, which specifically provides that:

Pursuant to the authority granted in section 29-20-104 (1) (g) and as a condition of issuance of a development permit, a local government may impose an impact fee or other similar development charge to fund expenditures by such local government on capital facilities needed to serve new development.

Home-rule cities in Colorado had long assessed impact fees, but the authority of counties and towns to assess impact fees was less clear. While clarifying the authority issue, the enabling act has created some confusion about whether local governments can assess impact fees at time of building permit, or whether they must assess them at some earlier stage in the development process.

In New Mexico, House Bill 334, which was signed by the governor and became law in 2001, specifically authorizes impact fee waivers for affordable housing projects.

The Nevada legislature passed Assembly Bill 458, which became effective July 1, 2001. The bill added traffic signals, parks, police stations and fire stations to the list of facilities that could be funded with impact fees.

TABLE 3-1. FACILITIES ELIGIBLE FOR IMPACT FEE ASSESSMENT BY STATE

State	Roads	Water	Sewer	Storm Water	Parks	Fire	Police	Library	Solid Waste	School
Arizona (cities)	•	•	•	•	•	•	•	•	•	
Arizona (counties)	•	•	•		•	•	•			
Arkansas	•	•	•	•	•	•	•	•		
California	•	•	•	•	•	•	•	•	•	•
Colorado	•	•	•	•	•	•	•	•	•	
Georgia	•	•	•	•	•	•	•	•		
Hawaii	•	•	•	•	•	•	•	•	•	•
Idaho	•	•	•	•	•	•	•			
Illinois	•									
Indiana	•	•	•	•	•					
Maine	•	•	•		•	•			•	
Montana	•	•	•	•	•	•	•	•	•	
Nevada	•	•	•	•	•	•	•			
New Hampshire	•	•	•	•	•	•	•	•	•	•
New Jersey	•	•	•	•						
New Mexico	•	•	•	•	•	•	•			
Oregon	•	•	•	•	•					
Pennsylvania	•									
Rhode Island	•	•	•	•	•	•	•	•	•	•
South Carolina	•	•	•	•	•	•	•			
Texas	•	•	•	•						
Utah	•	•	•	•	•	•	•			
Vermont	•	•	•	•	•	•	•	•	•	•
Virginia	•									
Washington	•				•	•				•
West Virginia	•	•	•	•	•	•	•			•
Wisconsin (cities)	•	•	•	•	•	•	•	•	•	
Wisconsin (counties)		•	•	•	•	•	•	•	•	

Selected provisions of state impact fee enabling acts are summarized in Table 3-2. The first column shows the maximum number of years that impact fees can be retained by a local government before being spent on eligible facilities or refunded back to the fee payer. The second column indicates the presence of a rather onerous recalculation requirement, which mandates that the local government recalculate the impact fees after completion of the capital improvements plan, then refund any excess collected if actual costs were less than projected costs. This provision was in the original Texas act and was copied virtually verbatim in several other acts. The third column indicates whether and for how long fee assessment locks in the amount of the fee. In the Texas act, the fee schedule in effect at time of platting is the maximum fee that may be charged to development within the subdivision, regardless of when development actually occurs. The final column indicates the frequency within which the fees must be updated.

TABLE 3-2. SELECTED IMPACT FEE PROVISIONS

State	Time Limit for Expenditures	Recalculation Requirement	Assessment Locks in Fee	Update Frequency
Arizona (cities)	None	no	No	none
Arizona (counties)	5 years	no	No	2 years
Arkansas	7 years	no	No	none
California	5 years	no	No	none
Colorado	none	no	No	none
Georgia	6 years	no	180 days	none
Hawaii	6 years	no	No	none
Idaho	10 years	no	1 year	5 years
Illinois	5 years	no	No	5 years
Indiana	6 years	no	3 years	5 years
Maine	none	yes	No	none
Montana	none	no	No	none
Nevada	10 years	yes	No	3 years
New Hampshire	6 years	no	No	none
New Jersey	none	no	No	none
New Mexico	7 years	yes	4 years	5 years
Oregon	none	no	No	none
Pennsylvania	none	yes	No	none
Rhode Island	8 years	no	No	none
South Carolina	5 years	no	Forever	none
Texas	10 years	no	Forever	5 years
Utah	6 years	no	No	none
Vermont	6 years	yes	No	none
Virginia	15 years	yes	Forever	2 years
Washington	6 years	no	No	none
West Virginia	6 years	no	No	none
Wisconsin (cities)	none	no	No	none
Wisconsin (counties)	none	no	No	none

Impact Fee Statutes and Affordable Housing

Of the 26 states that have explicit impact fee enabling statutes, 14 address affordable housing: California, Colorado, Georgia, Idaho, Indiana, New Jersey, New Mexico, Pennsylvania, South Carolina, Texas, Vermont, Washington, West Virginia, and Wisconsin. Only Idaho, New Mexico, Pennsylvania, and South Carolina define affordable housing and all use variations of HUD's 80 percent median income standards. The rest would presumably leave it to local governments to define the term for local application.

Fourteen states enable impact fees to be waived on qualifying affordable housing developments. Of those, five require waived fees to be financed or paid for from a source of revenue not related to impact fees: Georgia, Idaho, South Carolina, Utah, and Washington. Another nine states enable waivers without making up the lost revenue: Colorado, Indiana, New Jersey, New Mexico, Pennsylvania, Texas, Vermont, West Virginia and Wisconsin.

Other states address affordable housing in different ways. California exempts housing dedicated for elderly occupants and state-owned migrant farm labor housing from school impact fees. Texas requires that local governments failing to properly certify impact fees would be assessed a penalty of 10 percent of their collections with the funds deposited in a housing trust fund.

Two states require an affordable housing impact assessment of sorts. South Carolina requires that "Before imposing a development impact fee on residential units, a governmental entity shall prepare a report which

estimates the effect of recovering capital costs through impact fees on the availability of affordable housing within the political jurisdiction of the governmental entity” (6-1-930(A)(2)). Wisconsin has a similar provision requiring that local governments devising impact fees “. . . includ(e) an estimate of the effect of recovering these capital costs through impact fees on the availability of affordable housing within the political subdivision” (66.0617(4)(a)3.).

Chapter 4 - Impact Fees and Housing Affordability

This Guidebook encourages local governments to consider issues of fairness and equity which work in favor of affordable housing. This chapter reviews key elements associated with setting the amounts of particular impact fees in different jurisdictions. It explains the rationale for the use of impact fees based on square footage as a starting point, followed, in some cases, by additional elements that further vary costs across households to reflect other underlying cost differences.

The chapter begins by reviewing the general choice of impact fee cost variables and possible approaches to defining choices faced by many jurisdictions. Next, the chapter presents the recommended logical method of using household square footage to determine the impact fees of a wide variety of improvements, ranging from parks, to fire, to roads, to water and sewage. This section also describes methods in addition to residential square footage that can be used to set impact fees for facilities such as water supplies or roads. Next, simplified methods are further explained through the use of real-world examples of specific kinds of impact fee setups that have occurred in selected locations. Finally, underlying policy approaches commonly used to limit the effect of impact fees on particular types of affordable housing, with supplemental decision guides about affordability exemptions, exclusions, waivers and forgivable loans are included.

It is important to note that the guidance given in this chapter is based on years of research and consulting with local governments, and has come together in this Guidebook as the authors' best recommendation based on this experience base. Readers should also refer to Appendix C of the Guidebook for further understanding and discussion of the methodology suggested in this chapter.

Review of Impact Fee Cost Variables

Impact fees can be calculated in a range of different amounts and imposed using a wide variety of different structures that ultimately depend on the state, the local jurisdiction, and the preferences of citizens who influence the local government process. This is partly a reflection of legal distinctions and partly a reflection of policy matters. Over time, fees have evolved as the complexity of impact fee arrangements and amounts of money being collected have grown.

Early uses of impact fees were typically in simple forms using constant or flat fees across houses or apartments, often without regard to any notion of size or type of unit that was covered under the fee. This kind of fee structure charges impact fees to purchasers in a way that is simple to calculate and provides the necessary revenues for construction of infrastructure. Many jurisdictions still charge flat impact fees on all residential units regardless of type or size. However, underlying costs across units range widely based on size of the unit and number of occupants that tend to use more or less of particular services. While the fixed amounts are undoubtedly simple to understand and enforce, they are inherently unfair. Flat rate impact fees compromise affordability and are socially negative to the degree they systematically overcharge purchasers in smaller, less expensive houses or apartments and undercharge others in the most valuable houses.

If impact fees are to be varied based on differences between units, then what is the appropriate variable? Choices are essentially unit type (single-family detached, townhouse, condominium, apartment and

manufactured home are usual types), number of bedrooms, or size in square feet. Then the per capita multiplier would be characterized as persons per unit, based on unit type, number of bedrooms, or square footage of heated space. (In the case of schools the measure would be based on public school students.) All would be an improvement over assessing a flat fee on all residential units despite differences in occupancies between them.

Research done as background for this project indicates that assessing impact fees for residential development based on persons per 1,000 square feet may be the easiest and fairest way to make such assessments. It is fair because persons per dwelling unit rise as the size of the unit increases, to a point, so this relationship may be necessary to meet the proportionality criterion of impact fees. It is easier because the relationship can be calculated simply as the quotient of total residential square feet from assessor records and total population for the same year of the assessor records. From this at least a rough proportionality is derived that assures more equitable treatment than a flat fee. This simple yet equitable approach to calculating impact fees is based on several studies showing a general pattern that persons per 1,000 square feet do not vary much by type of unit within a jurisdiction. Table 4-1 summarizes results from five such studies. While variations exist in occupancy levels between types of units, they are considered *de minimus*. Exactions such as impact fees need only meet the principle of “rough” proportionality so focusing on precise differences in levels of occupancy between types of units should not be necessary. All that should be necessary is calculating the overall average figure of persons per 1,000 square feet for the jurisdiction for which impact fees may be assessed.

TABLE 4-1 PERSONS PER 1,000 SQUARE FEET

County	SF Detached	SF Attached	Apartment/Condo	Average
Brevard FL	1.5	1.4	1.4	1.4
Collier FL	1.2	1.1	1.2	1.2
DeKalb GA	1.4	1.3	1.3	1.3
Douglas CO	1.4	1.3	1.6	1.4
Stafford VA	1.4	1.6	1.4	1.4

Source: Compendium of studies conducted by the authors.

Mechanically, for any given jurisdiction the relevant impact fee (except for public school impact fees) should be proportional to the following expression:

$$[Total Residents / Total Residential Heated Space] * 1,000$$

where:

Total Residents is either based on the most recent census or a current estimate,

Total Residential Heated Space is the sum of residential space in square feet based on property assessor records for the same year as the residential estimate.⁴³

* The multiplier 1,000 provides a figure for persons per 1,000 square feet of heated area.

⁴³ If the 2000 census is used, then the denominator should be the sum of total residential heated space constructed 2000 or earlier based on assessor records.

Note that where the impact fees involve public school services, *Total Public School Students* should be substituted for *Total Residents* with the balance of the formula remaining the same. Technically, there may also be a floor (such as a minimum assessment for all units under 800 square feet) and a ceiling (such as a maximum assessment for units more than 3,500 square feet (see Table 4-3), unless local knowledge suggests otherwise.⁴⁴ This approach was pioneered by the metropolitan Atlanta chapter of the National Association of Home Builders and used widely throughout that metropolitan area. It is also becoming increasingly used in Florida and in numerous Mountain and Western states. To a very large extent, this approach to calculating impact fees may do more to lessen potentially adverse effects on housing affordability than any other – aside from waiving fees outright (see the case studies and related discussions below).

Research by the National Association of Home Builders based on the American Housing Survey data appears to support this approach with some refinement.⁴⁵ Table 4-2, reporting NAHB's analysis, shows the national average persons per unit for different categories of house base based in 500 square foot increments above 1,000 square feet. It is more precise than the more general calculation reported in Table 4-1. It confirms that between a range of house sizes – in this case 1,000 and 3,000 square feet – persons per unit increases as house size increases. The rate of increase between categories falls as size increases, however.

Using NAHB's data, one way in which to refine estimates of persons per unit based on house size is to establish a base number of persons for the first 1,000 square feet of a residential unit, then increase the number of persons per unit in 500-square foot categories up to 3,000 square feet. This would show that for all residential units the average occupancy is 2.03 persons for units at or less than 1,000 square feet and increases at an average of about 0.16 persons per unit for each increment of 500 square feet to 3,000 square feet, capped at 3.05 persons per unit thereafter. Detached units would have slightly higher base and cap figures at 2.35 to 3.07 respectively. For single-family attached (townhouse) units, the range to be 2.03 to 2.66 and for multifamily the range is 1.89 to 2.29.

The NAHB analysis does not consider smaller units (under 500 and between 500 and 1,000 square feet) or larger ones up to 3,500 square feet. The data also appear to consider only occupied ones – thus overstating the impact by removing vacant units nonetheless intended for occupancy (such as those for-sale, for-rent, or vacant between moves). This would have the effect of increasing impact fees more than normally recommended in practice. Using the NAHB's reporting format for persons per unit by increments of 500 square feet, Table 4-3 reports a refined analysis. It extends the detached unit analysis for detached units because of the very sizeable number of homes in those categories but has fewer categories for all forms of attached units (townhouses, condominiums, cooperatives and apartments) because of reduced sample size.

⁴⁴ For example, in popular coastal areas, new homes within walking distance of the beach range from 4,000 square feet to more than 10,000 square feet because they are rented by multiple families during holidays. At the other end of the spectrum, a college town may have four or more persons per small apartment unit even though the national average is around half that.

⁴⁵ Memorandum July 7, 2006 from David A. Crowe, Senior Staff Vice President, to David Engel, Director, Affordable Housing Research and Technology Division, U.S. Department of Housing and Urban Development.

TABLE 4-2. OCCUPANCY BY OCCUPIED UNIT SIZE BASED ON UNIT TYPE

Unit Type	Square Foot Range	Persons Per Unit	Change in Persons Per 1,000 Square Feet	Percent Change in Persons Per 1,000 Square Feet
All	<1,000	2.03		
	1,000-1,500	2.49	0.46	22.7%
	1,500-2,000	2.67	0.18	7.2%
	2,000-2,500	2.83	0.16	6.0%
	2,500-3,000	2.95	0.12	4.2%
Single Family Detached	3,000+	3.05	0.10	3.4%
	<1,000	2.35		
	1,000-1,500	2.57	0.22	9.4%
	1,500-2,000	2.70	0.13	5.1%
	2,000-2,500	2.86	0.16	5.9%
Single Family Attached	2,500-3,000	2.96	0.10	3.5%
	3,000+	3.07	0.11	3.7%
	<1,000	2.03		
	1,000-1,500	2.33	0.30	14.8%
	1,500-2,000	2.42	0.09	3.9%
Multi-Family	2,000-2,500	2.50	0.08	3.3%
	2,500-3,000	2.62	0.12	4.8%
	3,000+	2.66	0.04	1.5%
	<1,000	1.89		
	1,000-1,500	2.27	0.38	20.1%
	1,500-2,000	2.42	0.15	6.6%
	2,000-2,500	2.30	-0.12	-5.0%
	2,500-3,000	2.43	0.13	5.7%
	3,000+	2.29	-0.14	-5.8%

Source: National Association of Home Builders based on analysis of *American Housing Survey for the United States in 2003*.

TABLE 4-3. OCCUPANCY BY UNIT SIZE BASED ON UNIT TYPE FOR ALL UNITS

Unit Type	Square Foot Range	Persons Per Unit	Change in Persons Per 1,000 Square Feet	Percent Change in Persons Per 1,000 Square Feet
Detached	<500	2.01		
	500-1,000	2.15	0.14	7.0%
	1,000-1,500	2.44	0.29	13.5%
	1,500-2,000	2.60	0.16	6.6%
	2,000-2,500	2.77	0.17	6.5%
	2,500-3,000	2.86	0.09	3.2%
	3,000-3,500	2.94	0.08	2.8%
	3,500+	3.02	0.08	2.7%
Attached	<500	1.36		
	500-1,000	1.61	0.25	18.4%
	1,000-1,500	1.95	0.34	21.1%
	1,500-2,000	2.20	0.25	12.8%
	2,000-2,500	2.21	0.01	0.5%
	2,500+	2.29	0.08	3.6%

Source: Weighted-unit analysis of *American Housing Survey for the United States in 2003*, based on number of non-seasonal occupants per unit by unit type and size, including vacant units.

This application of the NAHB approach results in the following formulas based on national data, which is a refinement to the approach illustrated in Table 4-1:

Detached Units

Occupancy = 2.02 persons per unit beginning at 500 square feet
plus 0.000333 persons per square foot (equivalent to about 0.333 persons per 1,000 square feet) up to 3,500 square feet then
3.02 persons at 3,500 square feet and larger

Attached Units

Occupancy = 1.36 persons per unit beginning at 500 square feet
plus 0.000465 persons per square foot (equivalent to 0.465 persons per 1,000 square feet) up to 2,500 square feet then up to 2,500 square feet then
2.29 persons at 2,500 square feet and large

The actual figures can be estimated for each of the more than 40 metropolitan areas included in the *American Housing Survey*, including the more than 200 sub areas. They may be more difficult to estimate for individual communities, however, because of data limitations. This is why the simple approach suggested in Table 4.1 and its associated discussion may be practical. Adjusting locally derived figures by national trends may help refine local analysis.⁴⁶

In addition, the maximum or cap figures shown above for detached and attached units are more an artifact of sampling limitation than reality in many situations. While the occupancy level may flatten out above a certain size in some communities it may increase in others. Moreover, very large homes may provide living quarters for support staff. For example, in some affluent sections of all metropolitan areas families may employ nannies with one benefit being living quarters for them and their children. In resort areas, large homes may not be occupied by many people during the off-season but during peak season a large home may serve multiple families each renting sections of the home or pooling resources to rent the entire home. Finally, there is some concern that inevitably as population pressures increase along with rising energy prices and rising home mortgage interest rates larger homes may become available for formal (such as separate entrances and kitchens and such) to informal (such as one entrance and common use of certain rooms) thereby resulting in larger homes being occupied by more people than may have been assumed when the home is constructed. It may be reasonable local planning policy to include this contingency in long-range land-use and facility planning.

There are other considerations. Even with the characteristics determined, the actual analysis of impact fees based on societal costs is not entirely straightforward. For example, every home effectively has a set of unique occupants based on number of people, gender, ages and other characteristics, yet impact fees for the specific house do not vary in this level of detail. Checking each family each year to set fees is not only impractical but it would be a charge on each family rather than an impact fee on the house. Therefore,

⁴⁶ If local conditions are roughly proportionate to national experience it may be possible to use the formulas adjusted to reflect local conditions.

rather than basing individual household charges on actual family characteristics the fees should properly be based on amounts that would *typically* be charged on the property. These charges would reflect the fees from the average, projected occupants that tend to occupy the property being taxed and who pay the costs resulting from the fee. Setting typical fees generally avoids the need to review occupants of the house over time, while still charging fees based on the likely potential charges from such a house. Although the actual fees to owners could easily be more or less than costs they incur in any particular year, the idea is that over time the occupants will evolve, owners will change, and average differences between actual families in a home and typical families that might occupy the same home will tend to become smaller. As a result, to the extent that impact fees vary across houses the differences are based on characteristics of the home and its location, and while those characteristics will typically relate to specific occupants they may not do so in particular cases.

A final point is necessary. Measuring impact based on the occupancy of the original tenants will mask overall occupancy over the life of the structure. This will have the effect of over- or under-charging. For example, the authors are aware of homes constructed in resort coastal areas that are used principally as second homes so the apparent occupancy level is small when averaged over the year – and school impacts are negligible since the school children, if any, attend elsewhere. Yet, over a generation, that same home may become part of the regular stock of homes occupied by permanent residents and their children. Impact fees assessed based on the original occupancy characteristics in this case would be under-charged based on long-term impacts of the home on the community. At the other end of the spectrum, a new subdivision in a metropolitan area may be occupied initially by families with children and the public school student generation rate can appear quite large. Yet, over time, as the children move out of the house, the parents remain often becoming “empty nesters” before they sell perhaps to a new family with children. Impact fees based on the original occupancy in this case would be over-charged relative to long-term impacts of the home. It is for these reasons that long-term, average occupancy characteristics are the normally recommended basis for calculating impact fees.

Description of Square Footage Valuations Using Impact Fees

Experience has shown that impact fees can potentially be imposed for financing a wide range of public facilities and services. Of course, there are variations in the underlying laws as well as in the particular fees that communities want and need to put into place. This section presents basic descriptions of the logical procedures that can potentially be used to set different types of impact fees, assuming the community is legally authorized to do so and the residents have chosen to act this way. Note that in this section the discussion is designed to be general, so that it works across communities.

For this analysis, impact fees are organized into the following five types:

- Parks and libraries
- Police and fire
- Water, sewer and stormwater
- Roads
- Schools

There are some general principles used in these procedures that apply to all types of impact fees, and are perhaps the most important guidance in this document. This includes basing impact fees on the size or square footage, because setting any fee at a fixed amount regardless of house size tends to overcharge

small houses and undercharge large houses. Even though fees that are equal for all houses might be legal, that approach is unnecessarily simplified and will clearly compromise housing affordability. The recommendation is to use conditioned square footage as the best parameter capturing size of home. While the number of bedrooms or internal rooms might also work, they are discouraged here. The most important reason is that designation of rooms as bedrooms and division of internal rooms both are more subject to irrelevant manipulation than conditioned square footage. In the simplest case, basing impact fees entirely on house size may be sufficient.

General Principles. The preliminary steps in determining the amount of any particular impact fee are as follows.

1. Identify a specific target service and an affected geographic area,
2. Determine the size of the affected population (the number and square footage of houses projected and, for impact fees on schools, the number of schoolchildren),
3. Estimate the total capital cost required to provide the target service, and the amount of capital currently provided or expected to be provided by revenue sources other than impact fees, and
4. Calculate the balance of capital costs for the target services that need to be covered by impact fees because they are not currently provided or expected to be provided by other sources.

The other principles used to set impact fees typically differ from one type of fee to another. This happens when the underlying costs vary significantly based not only on house size, but also on house characteristics or neighborhood attributes other than size. Examples include distance from the home to a specific facility, or density around the home in a small neighborhood. The most basic variability factors related to each type of impact fee are discussed in the following sections. While actual impact fees may ultimately vary with other factors as well, so long as the variables laid out here correspond to most of the variation across homes, the need for using additional variables is relatively small and the added complexity may be large.

It is most common for the straightforward situation to arise when new facilities being analyzed are based on serving new development alone, since that simplifies identifying the amount of funding (and limit on that amount) that can be collected from new facilities. Once the amount of capital needed from impact fees is calculated and the number of homes expected to be built and covered by the fees is determined, then the fee amounts can be calculated. As noted above, in the simplest cases these data may be sufficient to set specific impact fees applicable throughout the relevant community. In other more complex cases the impact fees should vary based on additional factors related to the underlying project. If for some reason the impact fee amounts determined at this stage are unworkable or unacceptable, then this process must be repeated starting with the preliminary steps above until an acceptable case is identified.

The basic process for setting different types of impact fees is illustrated under each of the five types: parks and libraries; police and fire; water, sewer and stormwater; roads; and schools.

Parks and Libraries. The general principles can readily be used to cover the cost of building public parks and libraries. Unlike other impact fees these typically do not depend on factors such as distance from the home to the service, since users must pay their own travel costs. Similarly, given the number of users, the costs are independent of the sizes of lots where user homes are located, and the overall density of the neighborhoods where users live because such services are based not on density but delivery of the service consistent with level-of-service standards. The single factor with the greatest effect on costs is the size of houses in the service area, because larger homes will house larger families that will generally tend to use parks and libraries more than smaller families. As shown earlier, larger homes up to some threshold have

more occupants than smaller ones. It is simple and straightforward to vary impact fees between houses based on house area, with overall amounts of all the fees set to cover the underlying costs.

Example:

If a new library will serve 25,000 new residents and cost \$1,000,000 to build, then the total library impact fee per new resident would be \$40. Assuming all new residents live in detached homes and using the formula above, the impact fee for a 2,000 square foot home would be:

$$(2.02 \times \$40) + (0.000333 \times (2,000 - 500) \times \$40) = \$100.80.$$

Police and Fire. Another common type of impact fees is for police or fire services. These funds will cover items such as new or enlarged police stations or firehouses, or long-lived capital equipment used by these departments. Generally speaking, larger homes clearly present greater potential demands on these services because they contain more occupants and more property. As a result, fees could properly increase with house square footage. Furthermore, both police and fire departments will experience costs that vary with the square mileage of their jurisdictions because of the need to travel. This means that the impact fee can vary across properties based on the distance from the property to the government office.

Example:

If a new fire station will serve 25,000 residents and cost \$20,000,000 to build, then the total fire station impact fee per new resident is \$800. If a new detached home is 2,000 square feet, the fire department impact fee would be:

$$(2.02 \times \$800) + (0.000333 \times (2,000 - 500) \times \$800) = \$2,016.00.$$

To the extent the distance from the fire department to the new house affects the cost of providing protection, the fees should be higher or lower at varying distances. For example, in Missoula, MT, the impact fee for rural areas is on the order of 10 times that for urban areas because lower densities mean more fire stations per unit for the same response time than higher density areas.

Water, Sewer and Stormwater. Many communities provide homeowners with water from publicly owned facilities. Frequently they will also treat or dispose of household sewage, and manage stormwater from large or medium-sized subdivisions. While the day-to-day costs of operations are typically covered by tax receipts or marginal fees collected from all users, the capital expense needed to invest in construction or expansion of the required equipment and facilities may be raised from impact fees on new homes.

Example:

If a new water supply facility will serve 10,000 new residents and cost \$10,000,000 to build, then the water supply impact fee on new houses averages \$1,000 per resident. If a new detached home is 2,000 square feet the impact fee would be:

$$(2.02 \times \$1,000) + (0.000333 \times (2,000 - 500) \times \$1,000) = \$2,520.00$$

However, two additional factors affect the appropriate fee per house.

Distance from House to Water Supply Facility. First, to the extent the separation between houses and the water supply facility significantly increases the cost of the water system, the impact fees

should be higher at above-average distances from the water supply facility and lower at below-average distances. For example, if the water source serves an area extending 10 miles in each direction, then the cost experienced by the water supplier might rise and the fees imposed on purchasers should be increased over a range from, say, \$500 per new resident at a distance of up to 2 miles to \$2,000 per new resident at distances from 8 to 10 miles. The effect is to vary the fees imposed on purchasers to the extent costs vary with distances from their homes to the water supply.

Neighborhood Density. Second, to the extent the separation between nearby houses varies significantly across users, the cost of the pipe approaching the houses will also vary, even assuming the distances to the supply facility is the same. Other things equal, the result is for larger pipes that can serve multiple houses to be less expensive per house than smaller pipes dedicated to a single house. If the increase or decrease in cost associated with neighborhood density was 10 percent above or below the average, then this component of impact fees could logically vary by 10 percent across neighborhoods.

The combination of distance to water supply, neighborhood density, and house size would determine the actual fees on particular houses. Based on the particular values in this example, homes located at high (low) distances from the water supplier and from one another would face fees up to 30 percent higher (lower) than average, as listed in Table 4-4.

TABLE 4-4. IMPACT FEE ADJUSTMENTS BASED ON DISTANCE TO WATER SUPPLIER AND NEIGHBORING HOUSES

	Low distance to water supplier	Average distance to water supplier	High distance to water supplier
Low distance to neighboring houses	-30%	-10%	+10%
Average distance to neighboring houses	-20%	0%	+20%
High distance to neighboring houses	-10%	+10%	+30%

Roads. Roads may be the single facility most often covered by modern impact fees on new residential construction. This could properly include the entire cost of building new roads inside a newly built subdivision, as well as the incremental costs of expanding existing roads located close to the subdivision.

To date, few road impact fees have been adopted that vary by the size of the dwelling unit. This is largely because road impact fees are generally based on national trip generation rate data, and the ITE manual⁴⁷ does not provide rates by dwelling unit size. However, the fact that trip generation rates for residential uses vary by the size of the household is actually well documented in the transportation planning literature. As shown in Table 4-5 below, the average number of vehicle trips generated per day is almost directly proportional to the number of people living in the dwelling unit, which as discussed earlier, is strongly related to the size of the dwelling unit.

⁴⁷ Institute of Transportation Engineers (ITE), *Trip Generation* 7th ed., 2003.

TABLE 4-5. VEHICLE TRIPS BY HOUSEHOLD SIZE

Household Size	Daily Trips	PM Peak Hr Trips	
		Single-Family	Multi-Family
One Person	3.5	0.369	0.323
Two Persons	6.7	0.707	0.618
Three Persons	8.8	0.928	0.812
Four Persons	10.6	1.118	0.978
Five Persons or More	12.5	1.319	1.154

Source: Daily trips from Transportation Research Board, NCHRP Report 365, "Travel Estimation Techniques for Urban Planning," Washington, D.C.: National Academy Press, Table 9 (for urban areas with populations of 500,000 to 1 million), 1998; PM peak hour trips based on 10.55% of daily trips in PM peak hour for single-family and 9.23% of daily trips in PM peak hour for apartment units from ITE, Trip Generation, 7th edition, 2003.

Other factors can also be considered. First, data from one source indicate that vehicle miles per driver drop by about 50 percent between low-density homes (one unit per 4 acres) and high-density homes (10 units per acre). Second, a further adjustment should be made to the extent it can be shown that new homes located in high-density urban areas generally lead to less traffic than equally sized new homes in rural areas, because more alternative forms of transportation are available for the urban homes and the distances separating them from important destinations are less. Note that this is a factor different from and broader than the density of the immediate neighborhood where the home is located.

Example:

If new roads to serve 5,000 new residents will cost \$10,000,000 to build, then the road construction impact fee on new houses averages \$2,000 per new resident. If a new house size is 2,000 square feet, the impact fee would be the:

$$(2.02 \times \$2,000) + (0.000333 \times (2,000 - 500) \times \$2,000) = 5,040.00$$

However, it is also appropriate for the impact fees to be set higher in low-density, rural areas and lower than average in high-density ones. Note that these factors could be considered both in the subdivision or local neighborhood where the house lies, as well as the larger general neighborhood where the subdivision lies, since both can affect the cost of road construction or improvement in different ways.

As an example, in one location the amount of traffic per driver per year was found to drop by 50 percent as house density grows from a low of one unit per 4 acres to a high of 10 units per acre. This obviously affects the necessary road construction in which case the impact fee for road construction should change accordingly. If the distribution of house densities is symmetrical, this would correspond to a maximum 50% increase or 50% decrease from an impact fee of say \$2,000 per resident based on density. This means that the road impact fees would range from a maximum of \$1,000 to \$4,000 per resident between high- and low-density areas.

Schools. Schools are one of the property types that are less commonly covered by modern impact fees, although fees on schools are certainly not rare (Table 3-1 lists 7 states out of 25, including California, that specifically provide for impact fees on schools). Those fees appear conceptually similar to impact fees that

finance parks and libraries in that they do not vary directly with individual lot size or overall housing density. One exception is the extent that the school district pays for student transportation and therefore experiences higher cost in low-density communities. However, note that the school bus operating costs are not capital costs and should not be covered by impact fees. The other substantial difference between schools and other public facilities is that overall school costs are clearly driven by *student* population, not *total* population. This suggests that school-related impact fees on different sizes of houses should be set based on the community's typical number of public school students in houses of those sizes, rather than the total number of occupants or adults in the houses. It makes a difference to the extent that the ratio of students to house size varies substantially across house types, since that was not considered to be an issue with other fees based on occupants per 1,000 square feet.

Example:

If new public schools to serve 3,000 new students will cost \$30,000,000 to build, then the public school impact fee would be \$10,000 per new student. If public school students are equivalent roughly to one-quarter of the household size this is equivalent to \$2,500 per new resident. If the average new house size is 2,000 square feet, then the impact fee per new house should be the following:

$$(2.02 \times \$2,500) + (0.000333 \times (2,000 - 500) \times \$2,500) = 6,300.00.$$

Summary

Impact fees can be set once the amount of funds needed for particular projects in specified areas has been determined. While the idea is to set each impact fee based on underlying costs, the appropriate methods for calculating particular fees can vary across fee category. There is reason to believe that essentially all fees would justifiably vary based on square footage of houses in the service area, and for some types of fees including parks and libraries this may be the only variable needed. By contrast, for other fees there are additional factors that may affect costs to the point where they should be considered. For example,

- police and fire costs may also depend to some degree on the distance from a house to the police or fire station,
- costs of water, sewer and stormwater facilities can vary significantly with distance from the house to the central facility, as well as based on the overall density of homes near the target home,
- costs of roads per house will reflect the amount of roads built primarily for that house as well as the additional roads built to serve groups of homes in the same general area, and
- setting impact fees for schools involves analyzing whether the square footage used to support students is similar or different across housing types. If it is different then the impact fees should be adjusted for different housing types to be consistent with numbers of students per 1,000 square feet in each type.

Note that while examples given above listed impact fees at fixed amounts per square footage over a range of square footage, those amounts might in principle vary depending on structure size. This means they might, for example, add fewer fees to additional square footage in large houses than in smaller houses. For example, the fee might go up per 1,000 square feet by a fixed amount, up to 3,000 square feet, then by a lesser amount for each additional 1,000 square feet. The result would be for cost to increase in both sizes, but by less in the large house than in the small house.

The information presented in this section is summarized in the following table.

TABLE 4-6. BASIC FACTORS FOR SETTING HOUSE-LEVEL IMPACT FEES

Impact Fee Category	Factors for Setting House-Level Impact Fees
Parks and Libraries	Square footage of house
Police and Fire	Square footage of house Distance from house to police or fire service
Water, Sewer and Stormwater	Square footage of house Distance from house to water or drainage facility Density of neighborhood where house is located
Roads	Square footage of house Amount of roads built primarily to serve the specific house Amount of roads built to serve groups of houses including the specific house
Schools	Square footage of house Number of students per 1000 square feet by housing type

Elements of Program Design

The approach to setting impact fees as described in the previous section is only part of the issue to be considered. From a practical standpoint, communities must make many decisions ultimately leading up to the design and implementation of the impact fees, and the results will likely depend on those details. This section reviews each of the following impact fee design and service issues:

- Service area design
- Level of service standards
- Situation-specific reductions
- Revenue credits
- Broadest reasonable base
- Timing of payment

Designing Service Areas

Impact fee practice requires that fees collected in a “service area” are spent in that area. But this is really just a starting point. Users have some flexibility in setting the service area, and as a matter of practice the larger the service area the more flexibility there is in spending the revenue where (and when) needed most. Service areas that are too small and/or too numerous can result in insufficient revenue generated in many of them to spend on infrastructure improvements. Finally, many services – especially public safety – act as a system in serving the entire jurisdiction. Even though it is may be easiest to design and administer one service area for an entire jurisdiction, it is also important to consider refining service area design and fee structure in ways that preserve or promote housing affordability. There are several ways this can be approached, as discussed below.

Service Area Design Based on Extent of Existing Infrastructure. If the infrastructure needed to serve growth in one large part of the community is already in-place, but substantial new investment is needed in another, then service areas may be drawn reflecting this. In Albuquerque, for example, city staff and

consultants determined that the park system served seven different parts of the city. In “fully served” areas, park land was sufficient to serve projected development needs, while in “partially served” areas, substantial new investment was needed. As a result, in areas where parks were sufficient to meet future needs the park impact fees were zero. In this situation, impact fees would have no effect on housing affordability where infrastructure already exists to meet future needs.

Subject to applicable laws and customs, the kinds of facilities that lend themselves to this analysis include neighborhood and community parks, branch libraries, public safety, roads, community centers, and schools.

Service Area Design Based on Extent of Revenue Credit. Even where all parts of a community need new or expanded infrastructure to meet development needs, in some cases locally generated revenue may be sufficient to finance those needs while in others it is not. This was the case in Albuquerque as it designed its seven road service areas. In areas where road needs were the greatest to meet relatively rapid growth, impact fees were high. In other areas that needed some road enhancements, however, the fee became zero because the aggregate road-related revenue generated by all existing and projected development in those cases was sufficient to finance road needs.

Only those facilities that have a relatively predictable revenue stream dedicated to them (such as roads where there are dedicated gasoline taxes) may be appropriate for this kind of service area design.

Service Area Design Based on Response Time. In cases where a constant level of service is desired, the cost to provide the service can vary greatly based on density of development. For example, Missoula County, Montana, wished to maintain an eight-minute public safety response time throughout the county. This meant building more fire stations in remote and less densely settled areas than in closer areas developed at higher density. It settled on a three-tier service-area design that charges impact fees reflecting differential cost of maintaining the desired level of service where those costs varied considerably based on location and density.

Service Area Design Based on Alternative Funding. There are circumstances when parts of a jurisdiction already have the revenue stream needed to assure adequate public facilities. For example, in Texas, many Municipal Service Districts (MSDs) generate their own revenue to construct and maintain facilities. In Florida, many Developments of Regional Impact form local improvement districts for the same purpose. More specialized arrangements can have the same effect, such as tax increment financing districts and various forms of special assessment districts. Where these alternative financing mechanisms fund the same facilities that impact fees would, service areas may be drawn to exclude them or implementing ordinances drafted to exempt them from impact fee assessments – and expenditures of impact fees in those areas. Care must be taken, however, to assure this is done properly. For example, while Texas MSDs may finance their own infrastructure, they typically do not finance the regional roads and regional parks serving them.

Service Area Exclusions. Sometimes parts of a jurisdiction may be excluded from service areas even if the service area otherwise surrounds them. This could be the case in redevelopment areas where, although there is no taxing or special assessment district in place, adequate funding sources have been identified to meet infrastructure needs. For example, one part of Albuquerque, Mesa del Sol, is not in any service area principally because separate planning and financing mechanisms are being developed to facilitate growth

there. Through a development agreement with the city, all on-site and relevant off-site infrastructure will be financed through a variety of mechanisms uniquely available to it.

Level of Service Standards

Although it is usual practice to adopt the same level of service (LOS) standard across an entire jurisdiction – such as Level of Service D for roads, or 3.50 acres of park per 1,000 residents – this need not be the case. Variable LOS standards are suitable when past, present or future development patterns, constraints, or other factors combined with policy provide a rational basis for it. For example, some Florida counties have an LOS Standard of D for urban areas and C for suburban/rural areas. The rationale is that urban areas are understood to be more prone to congestion than areas farther away, and the cost to maintain the same level of service area could discourage development closer in. Another possibility is public safety response-time level of service differences. Although Missoula chose to have the same response time everywhere, it might have decided to vary response times within each of the tiers. Fees would have gone down but fire insurance premiums would likely have gone up in the non-urban tier. Note that variable LOS standards may not be suitable for libraries, schools, water or wastewater facilities. Decision chart 4.1 is designed to help guide decisions on the appropriate LOS standards.

It is important to note that, if a higher level-of-service is adopted in an area, infrastructure should be brought up to the new standard through revenue from sources other than impact fees.

Situation-Specific Reductions

Because there are always exceptions to any rule, impact fee ordinances usually have the option for the feepayer to conduct an independent fee calculation study to show that the impacts of a particular development may be less than assumed in the impact fee schedule. This assures due process but it can be cumbersome and does not allow for situations in which research has shown reasonably conclusively that impacts are reduced across-the-board in a class of situations. For example, in the early 1990s, Atlanta was the first city in the nation to reduce road impact fees for development near heavy-rail transit stations automatically – and to this date remains the only city to do so. A few jurisdictions reduce water, wastewater and stormwater impact fees based on density of development, with Scottsdale having perhaps the most detailed approach. Individual jurisdictions may make

Atlanta, Georgia: An Innovative Approach to Affordability

Key Atlanta officials were concerned about potentially adverse effects of impact fees on affordable housing. To address these concerns, Atlanta became the first jurisdiction in the nation to adopt the following features.

- 50% reduction if within 1,000 feet of a rail transit station.
- 100% reduction if located within an enterprise zone.
- 100% reduction if located within a federally-chartered empowerment zone.
- 100% reduction if part of a qualified historic preservation project
- 100% reduction if the unit rents for less than 60% of the regional median rent or sells for less than 1.5 times the regional new home sale price.
- 50% reduction if the unit rents for between 60% and 80% of the regional median rent or sells for between 1.5 and 2.5 times the regional new home sale price.
- Broadens the assessment base for parks and recreation by charging non-residential development.

Georgia law requires that revenues waived through these reductions must be offset from sources of revenue other than impact fees. This requirement does not apply to the 50% reduction for being within 1,000 feet of a rail station because studies show that traffic impact is reduced roughly proportionate with this relationship. More information is included in Chapter 5, Case Studies.

refinements to impact fee calculations affecting specific developments based on their particular situation.⁴⁸

Situation-specific reductions may be mostly applicable to transportation and water-related utilities in the following ways:

Transportation. As density increases, vehicle miles traveled per person decreases, based on census data compiled in 2001 for the National Household Transportation Survey. Reductions increase further with the presence of public transit. Generally speaking, the reduction in miles per person from the lowest residential density category (fewer than 75 units per square mile) to the highest (more than 6,000 units per square mile) is about half.

TABLE 4-7. AVERAGE DAILY VEHICLE MILES TRAVELED PER HOUSEHOLD PERSON BY UNIT TYPE

Units Per Square Mile	Miles Per Person	Percent Change Between Categories
151 - 700	29.5	
701 - 2,000	27.1	8.4%
2,001 – 4,000	24.0	11.3%
4,001 – 6,000	20.3	15.6%
6,000+	14.2	30.0%

Source: Nationwide Household Transportation Study 2001, calculated by authors based on annual average vehicle miles per drive times drivers per household person by density category divided by 365.

Proximity of rail stations also reduces vehicle trips. Although the reduction varies by system, a sample of studies indicates the reduction ranges by a third to a half for projects located within about one-quarter mile of rail transit stations.

Water-Related Utilities. Unlike transportation, no national data exist to indicate the range of reductions in water, wastewater, and stormwater impacts associated with residential development features. Scottsdale evaluated costs associated with providing capital facilities throughout the city to several residential unit types and derived the following impact fee schedule based on residential unit density:

Transportation and water-related utilities have significant situation-specific reduction potential. Since they also tend to have among the highest impact fee levels, they merit reductions based on density to help assure that such fees do not impact adversely on housing affordability.

⁴⁸ There is a unique situation-specific reduction used in some jurisdictions that is important to note. Age-restricted residential developments such as retirement communities ostensibly do not generate school children, have fewer persons per unit and per 1,000 square feet, and in other respects impose fewer demands on many facilities than other communities. Some jurisdictions exempt such communities from school impact fees and lower impact fees for other facilities. The age-restriction is enforced via covenant that runs with the title that current and future owners must oblige. In some cases, however, covenants are not enforced resulting in owners and/or tenants raising children (theirs or others from their kin or kith) thus increasing school impacts. The school district, which never received the impact fees to expand schools to meet this unexpected demand must enforce the covenant through legal action or doing nothing. The latter option seems to be the norm. Some local governments choose not to recognize these and similar covenants because of their inability or unwillingness to enforce them, and thus impact fees are not reduced. This is purely a local policy decision.

<u>Density</u>	<u>Impact Fee per Unit</u>
1 unit per 2.5 acres	\$5,492
1 unit per acre	\$3,382
2-4 unclustered units per acre	\$2,203
2-4 clustered units per acre	\$1,802
5-8 units per acre	\$1,585
9+ units per acre	\$1,337

Source: Duncan Associates.

Similarly, Denver's water impact fee schedule is based on density, as shown in the following:

<u>Density</u>	<u>Impact Fee per Unit</u>
1 unit per acre	\$17,767
2 units per acre	\$9,709
3 units per acre	\$7,022
4 units per acre	\$5,679
5 units per acre	\$4,873
6 units per acre	\$4,336
7 units per acre	\$3,952
Duplex	\$3,100
Multi-Family 3+ units	\$1,350

Source: Denver Water.

Revenue Credits

New development often brings with it new revenue that in some ways help provide the same facilities for which impact fees are also assessed. For example, general obligation bonds used to finance new or expanded capital facilities that are retired by property taxes will result in new development paying part of those bonds. Dedicated gasoline taxes, school capital assessments on real property, special levies for parks, and so forth, are candidates for revenue credit calculation to reduce certain impact fees. The reason is that unless the impact fee is reduced by this "revenue credit" the effect may be that new development pays for the same facility twice.

For example, consider a recent court case out of Florida, *Florida Home Builders Association v. Osceola County School Board*. In this case, the county adopted an impact fee for schools essentially as follows (using rounded figures and simplifying the calculation for illustration purposes only):

\$20,000	Cost per student
0.50	Students per single-family detached unit
0.25	Students per townhouse
0.20	Students per apartment, condominium unit
\$10,000	Impact fee per single-family detached unit
\$5,000	Impact fee per townhouse unit
\$4,000	Impact fee per apartment, condominium unit

However, the fee did not consider the new taxes new development generates that flow in part to help finance the very class of facilities for which impact fees are assessed. Florida enables local school boards to charge up to 2 mills⁴⁹ (\$200 per \$100,000 assessed value) for school capital purposes. This assessment is on all development, not just residential development. In this case, the local school board was assessing the maximum and using about half the dedicated revenue stream to retire debt for new schools. (The other half is used for maintenance and repair.) Because all development is assessed – not just residential development – an appropriate estimate of the revenue credit would be based on calculating the average assessed value per student, then estimating the present (discounted) value of the stream of revenue new development would contribute to help finance school facilities (excluding maintenance and repair), and deducting that from the gross cost per student. If the average assessed value per student in this county was \$512,000 and 1 mill was assessed to finance school capital facilities, then over 25 years (the typical bond period) assuming 4% government borrowing, new development would generate about \$8,000 (rounded up) for school capital facilities. The revised calculation would be as follows:

\$20,000	Gross impact cost per student
(\$8,000)	Revenue credit per student
\$12,000	Net impact cost per student
0.50	Students per single-family detached unit
0.25	Students per townhouse
0.20	Students per apartment, condominium unit
\$6,000	Impact fee per single-family detached unit
\$3,000	Impact fee per townhouse unit
\$2,400	Impact fee per apartment, condominium unit

The fees would thus be on the order of 40% lower when considering the revenue credit. (In fact, the court ordered the school district to calculate a revenue credit.)

Broadest Reasonable Base

Impact fees for parks and recreation, library and school facilities usually fall on only residential development. Residential impact fees are thus assessed on only a subset of the total base of development in the jurisdiction. One way to reduce potentially adverse effects of impact fees on housing affordability is to broaden the base of impact fee assessment to include all development. In some instances – notably for parks – local governments have been able to quantify the impact of non-residential development and thus justify assessing non-residential impact fees. Except for California, however, school facility impact fees are assessed on only residential development.

To expand the impact fee assessment base, two factors must be taken into account: what is the impact of non-residential development on these facilities, and how would they benefit from their provision?

The first factor is addressed simply as follows: There is a very high correlation between new jobs and new population and housing growth. In most American communities, job growth attracts new residents. Indeed, the relationship between job growth and overall community growth is so strong that input-output analysis – the mainstay of economic impact assessment – focuses only on jobs and not on residents or households.

⁴⁹ A mill is short for the word millage, a term used in property taxes. The easiest way to understand tax millages is to use a 1 mill tax as an example. A one mill property tax will produce \$1.00 in taxes on each 1,000 dollars of “assessed value”.

It is perhaps by definition that new jobs cause the impacts on facilities that need community amenities to be remedied in part by impact fees.

The second factor is also addressed easily. Richard Florida has chronicled the relationship among such services as parks and recreation, libraries, and education. He found that firms are attracted to areas that provide these facilities and without them in sufficient quality, firms will locate elsewhere. Firms thus benefit from the provision of such facilities.⁵⁰ Moreover, the Supreme Court in *Dolan v. City of Tigard, OR*, noted that “no precise mathematical calculation is required” to establish a relationship between the impact of development and exactions necessary to offset it. A reasonable case can be made that all impact fees should be assessed to all development because (a) in various ways all development impacts on all facilities; and (b) all development benefits from all facilities in various ways.

Timing of Payments

Where in the development process should impact fees be paid to lessen their potential burden on housing affordability? Numerous statutes specify that impact fee assessments and collections occur at the building permit state. Others are silent and in states without impact fee enabling acts the timing of payment is mostly local option. There are two issues here: the point of assessment and the point of collection. Sometimes they are simultaneous such as being assessed and collected concurrent with the building permit – this is perhaps the most common approach as it is the most efficient administratively. It is also the earliest point in the development process where the expected impacts of new development are known best. Impact fees assessed and collected at that stage increase the chance that fees will flow into new or expanded infrastructure roughly concurrent with the impacts of new development.

This does not mean to exclude consideration of assessing and collecting impact fees at other stages of the development process. Perhaps the best stage theoretically is during the sale of land from the land owner to a developer because this increases the likelihood that the land market – through the seller of land – internalizes the impact fee, consistent with economic theory. In many situations this is not practical because final development plans may not be known for years. However, where a land transfer is part of a land sale option agreement that itself is based on securing necessary land-use decisions, including entitlements providing reasonable specificity in overall development, it may be possible to assess and collect the impact fee as part of the condition of land-use and development approval. Under these circumstances, developers purchasing land may include in their land purchase option contract a clause specifying how the price will be adjusted reflecting fees anticipated to be paid. (See Appendix C for sample language.) This may be a practice in only those cases where there is a transfer of land that also engages the land-use decision-making process.

Some local governments assess and collect impact fees at the end of the development process concurrent with the final inspection or issuance of the certificate of occupancy. This has the advantage of preventing the builder from incurring finance costs on the period between the impact fee payment at the building permit stage and sale of the home. Where a residential structure is to be held for rental it allows the builder/owner to finance the fee with lower-cost “take-out” financing, the long-term or permanent financing that replaces interim or construction financing. A variant on this approach is assessing impact fees at the building permit stage but collecting them at the final inspection or certificate of occupancy stage. This has

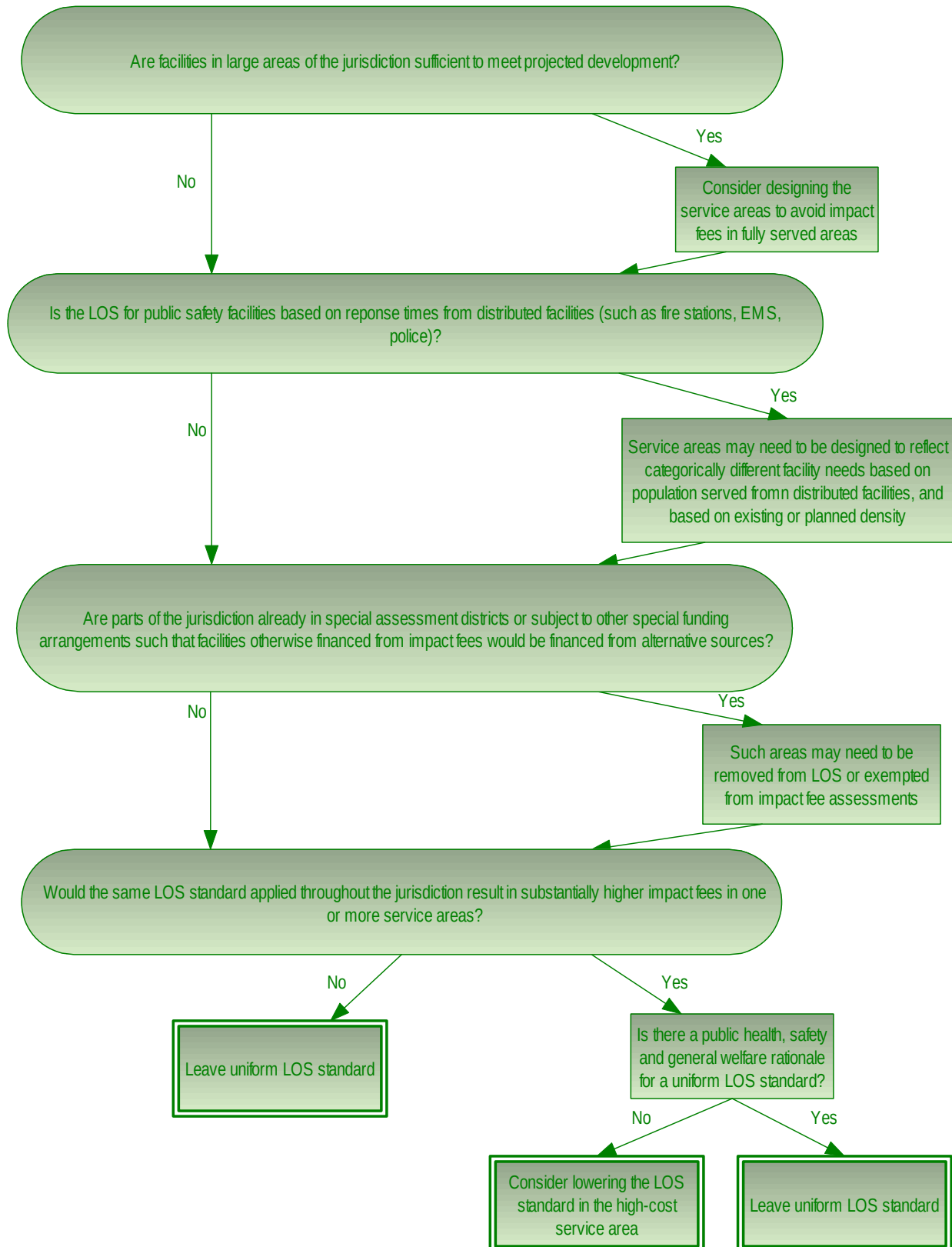
⁵⁰ Richard Florida, *The Flight of the Creative Class*, 2005, Collins (New York); *Cities and the Creative Class*, 2005, Routledge (London); *The Rise of the Creative Class*, 2004, Basic Books (New York).

the advantage of allowing local government to budget for the revenue before it is paid and provides the developer with increased certainty on the amount. This is the approach used by Alachua County, Florida in the case study to be reviewed later. Timing payments in this way may help reduce potentially adverse effects of impact fees on housing affordability.

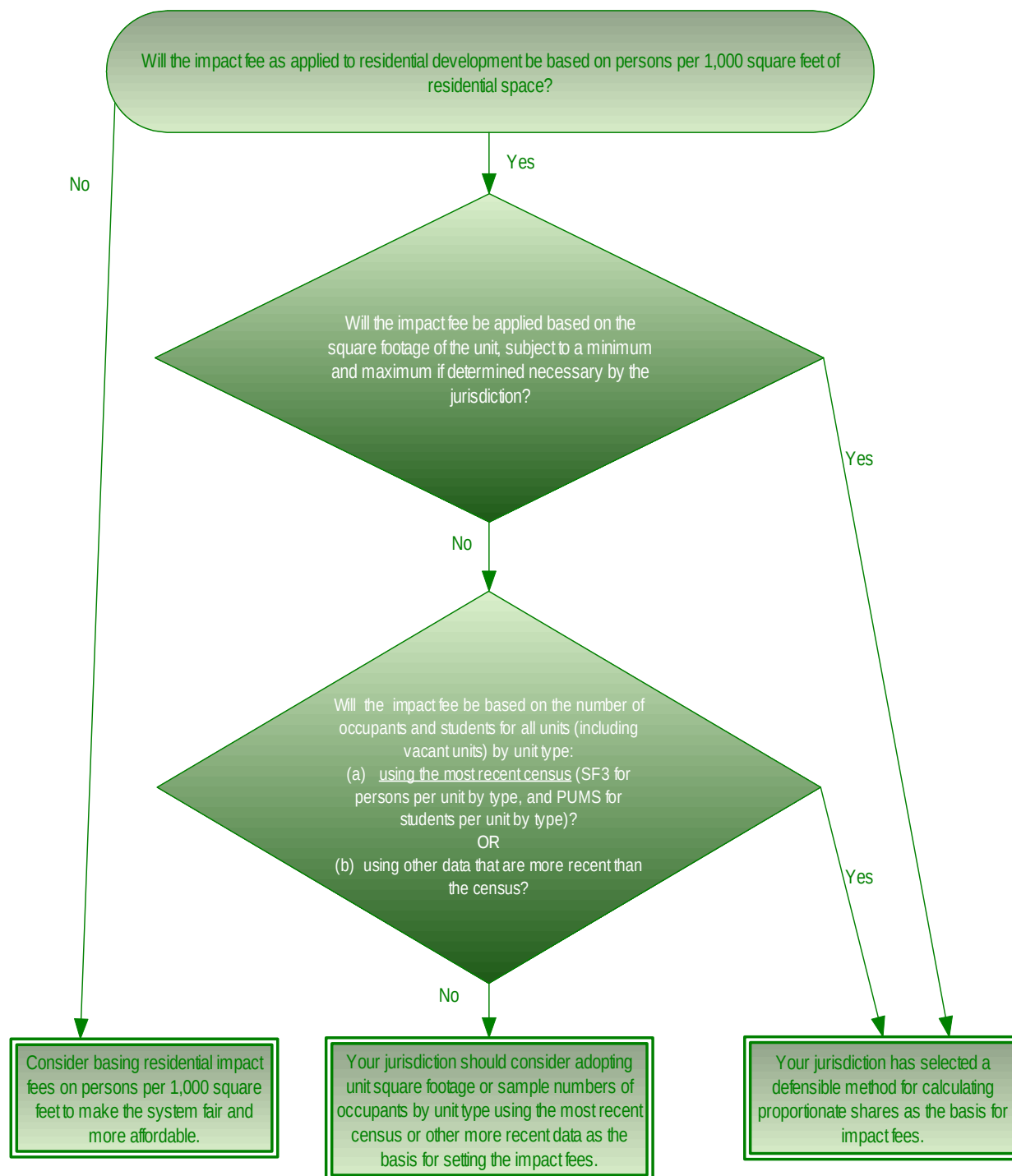
Impact Fee Decision Charts

The following section includes several additional decision charts designed to help practitioners apply the guidance included in this chapter.

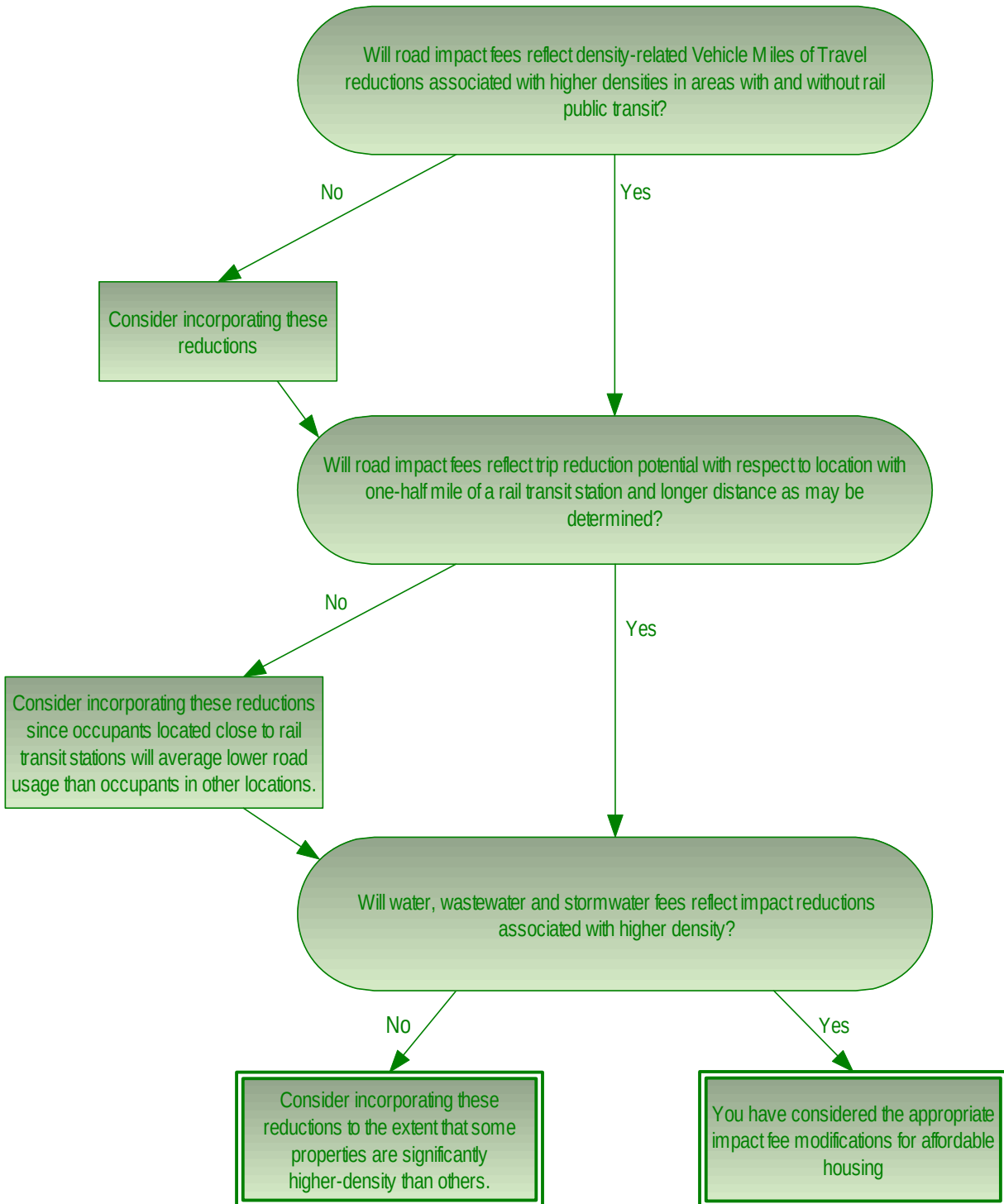
Decision Chart 4.1 Designing a Level of Service (LOS) Area



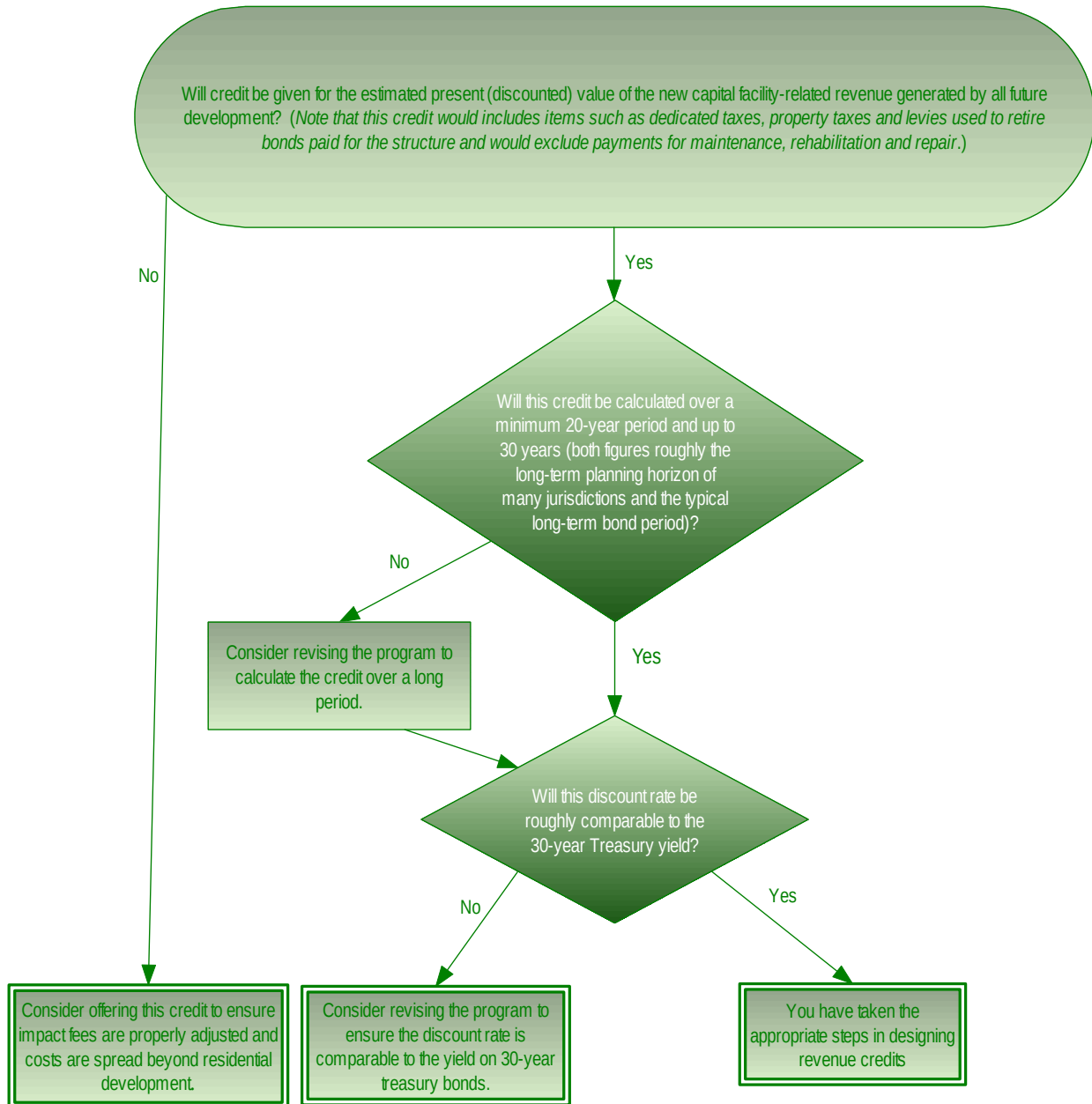
Decision Chart 4.2 Designing for Affordable Housing



Decision Chart 4.3 Including Situation Specific Reductions



Decision Chart 4.4 Assessing Appropriate Revenue Credits



Specific Housing Affordability Measures as Part of Impact Fee Policy

Impact fee design can go a considerable way towards reducing potentially adverse effects of impact fees on housing affordability, but there are other affordability measures that should also be considered. The most important possibility is that even where impact fees are generally charged in an equitable manner, qualifying affordable housing may still need to be *exempted* from fees. Particular relevant circumstances relating to exemptions are reviewed in this section, including exemptions, exclusions, waivers and forgivable downpayment loans.

Exemptions

Exemptions are given when new development does not create a new impact. For example, a home that is removed and rebuilt does not increase its impact on facilities – unless of course the home is made bigger and will over time presumably allow more people to occupy it.

Another potential form of exemption could be the remodeling of a structure formerly used for a non-residential purpose into a residential one. Converting abandoned warehouses into lofts has been popular for a generation and in recent years there has been the conversion of older high-rise office towers into residential units. Sometimes jurisdictions exempt these kinds of conversions on the assumption that they create no new impact relative to that occasioned by the tenants in a prior use. Other jurisdictions, however, impose impact fees on the estimated difference in impact when moving from one use to another, and the full impact fee if the conversion involves a structure that has been vacant for five or 10 years or so.

Reuse and rehabilitation of existing structures is an efficient urban development activity and the view posed here is that it should be encouraged. Moreover, converting a structure from a nonresidential use to a residential one may result in fewer impacts relative to the prior tenants. For example, a 200,000 square foot general office

Collier County: Impact Fee Assistance Program Designed to Promote Affordable Housing and Encourage Rehabilitation

The County has adopted three affordable/workforce housing programs which are funded by a combination of County resources. Two of the programs provide impact fee deferrals to qualified applicants for the lifetime of their ownership of the home. The home must be homesteaded and owner-occupied; however, there is no limit to the number of years an owner may participate in the program and the payment does not balloon at the end of the term of the agreement. The third deferral program is for affordable rental apartments, which provides a deferral from the payment of the impact fees for a term of six years and nine months. The County also provides for the waiver of impact fees (except for Water and Sewer and Educational Facilities Impact Fees) for publicly owned residential housing. – Excerpted from a letter to Alton Colvin, Executive Director Florida Legislative Committee on Intergovernmental Relations from James V. Mudd, Collier County Manager, November 9, 2005.

In addition, the Collier County Community Redevelopment Agency has created the Impact Fee Assistance Program to provide financial assistance to redevelopment projects in targeted areas as a way to encourage rehabilitation of degraded structures. The funding for this program comes in part from Tax Increment Financing.

For each project, the county may provide up to 50% of the total impact fees. There is a maximum amount of funding allocated each year for impact fee assistance, so the program is managed on a “first come, first served” basis as well as an eligibility point system.

building will generate about 1,100 one-way trips during a typical weekday.⁵¹ If converted into 200 units averaging 1,000 square feet each, one-way weekday trips will fall about 70% to about 420.⁵² Clearly, the community may gain from such a conversion especially if the building is already vacant or in other ways underutilized.

Many urban areas are ripe or becoming ripe for conversion to other land uses and in the process become revitalized. Exempting impact fees in situations where existing space is being rehabilitated but no new space added can help facilitate revitalization. Indeed, in the office building example above, even adding space to accommodate a doubling of units would still result in a net reduction in trips than were generated by the tenants of the office building.

Exclusions

Excluding certain new development from impact fees may be warranted when alternative revenues are available to finance the very infrastructure that would be financed from impact fees. For example, in Albuquerque, the city does not charge water or wastewater impact fees in areas where federal and state funds are being used to construct related infrastructure. Not only was the area an imminent health hazard but the existing and new homes being built there catered to low-income households. Likewise, DeKalb County, Georgia, will be excluding development in community improvement districts, business improvement districts, empowerment zones, and enterprise zones where alternative financing mechanisms are or will be used to finance the same facilities that would be financed from impact fees.

In these examples, excluded areas are identified clearly on maps, facilities constructed in those areas that may otherwise have been funded from impact fees are identified, and alternative sources of revenue are allocated for their construction.

Waivers

Sometimes it is desirable from a public policy perspective to simply waive all or a share of the impact fees on certain, qualifying residential development. In some states, however, outright waivers may not be allowed and a waiver can be accomplished only by identifying substitute revenue. These forms of waiver are reviewed, along with the concept of the *de minimus* waiver described below.

Outright Waiver. In states that have no impact fee enabling act (such as Florida, Nebraska and Ohio) waivers can be provided. Presumably they are targeted for residential units or their occupants meeting certain conditions and presumably consistent with public policy purposes. In New Mexico, however, the enabling act specifically provides for such an outright waiver.

Substitute Revenues. Most state impact fee enabling legislation requires that waived revenues be replaced with others that are identified. Sometimes this may be Community Development Block Grants and in others a local housing trust. The usual solution is not to waive, however.

⁵¹ Institute of Transportation Engineers, Trip Generation, (2003), for general office building, p. 1158. One-way is total multiplied by 50% to avoid double-counting the same trip.

⁵² Institute of Transportation Engineers, Trip Generation, (2003), for high-rise apartment building, p. 348. One-way is total multiplied by 50% to avoid double-counting the same trip.

Atlanta, Georgia, has devised a unique way to solve this problem. Because of its already high quality of infrastructure, the city established the level of service for parks and recreation, and public safety *below* the current level of service meaning that for planning purposes it had excess facility capacity. Impact fees thus “recouped” the value of this excess capacity. New residential development in targeted areas defined for housing affordability purposes became eligible for 50% to 100% waivers with the waived revenues replaced by recoupment revenues. Recoupment revenues not used for waivers are then reinvested in the facilities so that over time facility capacity has increased while impact fees were waived or reduced on qualifying affordable housing.

De Minimus. In states with and without impact fee legislation there is the concern that if a substantial amount of impact fee revenue is lost through waivers, then facilities that would have been financed from impact fees will not get built when planned and overall facility quality might erode. The term *de minimus* is used to indicate that it is a very minor amount or low risk.

Although hard statistical evidence is illusive in this regard, the general impression is that waived impact fees constitute a *de minimus* share of the total facility financing package. Even in Atlanta where officials admit freely that the waiver program was too generous, lost revenues have not affected its expansion of facilities to meet new development needs.

Unless experience shows otherwise, it may be reasonable for local governments to waive all or part the impact fees assessed on qualifying affordable housing and assume the impact on revenue needed to provide new or expanded facilities will be *de minimus*. In states with impact fee enabling legislation, local governments may consider inserting *de minimus* language into impact fees ordinances and codes, and noting on capital improvement programs that in the event impact fee revenues fall short of projections because of waivers, other revenue will be generated as needed from such sources as federal and state grants and loans, and allowable inter-fund transfers.

Forgivable Downpayment Loans

There are two concerns about waiving impact fees for qualifying housing. First, what if the short-term market-clearing price for a house is the same whether or not impact fees are charged? In a normally competitive housing market this would be the case. While some development interests would argue that impact fees are simply passed on to home buyers, in fact economic theory shows this not to be the case in the short term. Waived impact fees may not reduce the sales price of the housing resulting in no benefit to the low- and moderate-income buyer and may also deprive the local government of revenue it may need to construct facilities. In this scenario, the builder is the beneficiary of a “windfall” profit.

Second, what if the household for whom the waiver was granted moves and sells the home to a higher-income household – what long-term benefit did the waiver accomplish?

Recognizing these limitations on waiving impact fees directly, a small but growing number of jurisdictions are using a forgivable downpayment loan as an indirect way to waive the fees. Here’s how it works:

- The developer pays the impact fee. However, to reduce the financing and administrative costs associated with paying the fee at the building permit stage, the fee is assessed there but collected

upon issuance of the certificate of occupancy (or final inspection – depending on the state), which can be timed to occur roughly coincidental with closing to a buyer.

- The local government collects the impact fee and uses it as it would for all impact fees.
- The local government uses other funds to lend the home buyer an amount equal to the impact fee to be used for the downpayment. The local government uses federal (CDBG), state (SHIP in the case of Florida), or local (housing trust) funds for this purpose.
- The loan to the homebuyer is forgiven over time; for example in Alachua County, Florida, the loan is forgiven at the rate of 20% per year for each year the household remains in the house for up to five years. If the home is sold before then, the remaining balance becomes due without interest.

Technically, these steps do not waive the impact fee. Rather, the impact fee is paid by the developer while the homebuyer is assisted in purchasing the home with a downpayment loan equal to the fee, and the fee is forgiven in five years if the home is not sold by the homebuyer.

Deferred Impact Fee Payment

Martin County, Florida, uses another approach. It allows developers of very low, low, and moderate income housing to have impact fee payments deferred for 10 to 15 years. Relevant features include⁵³:

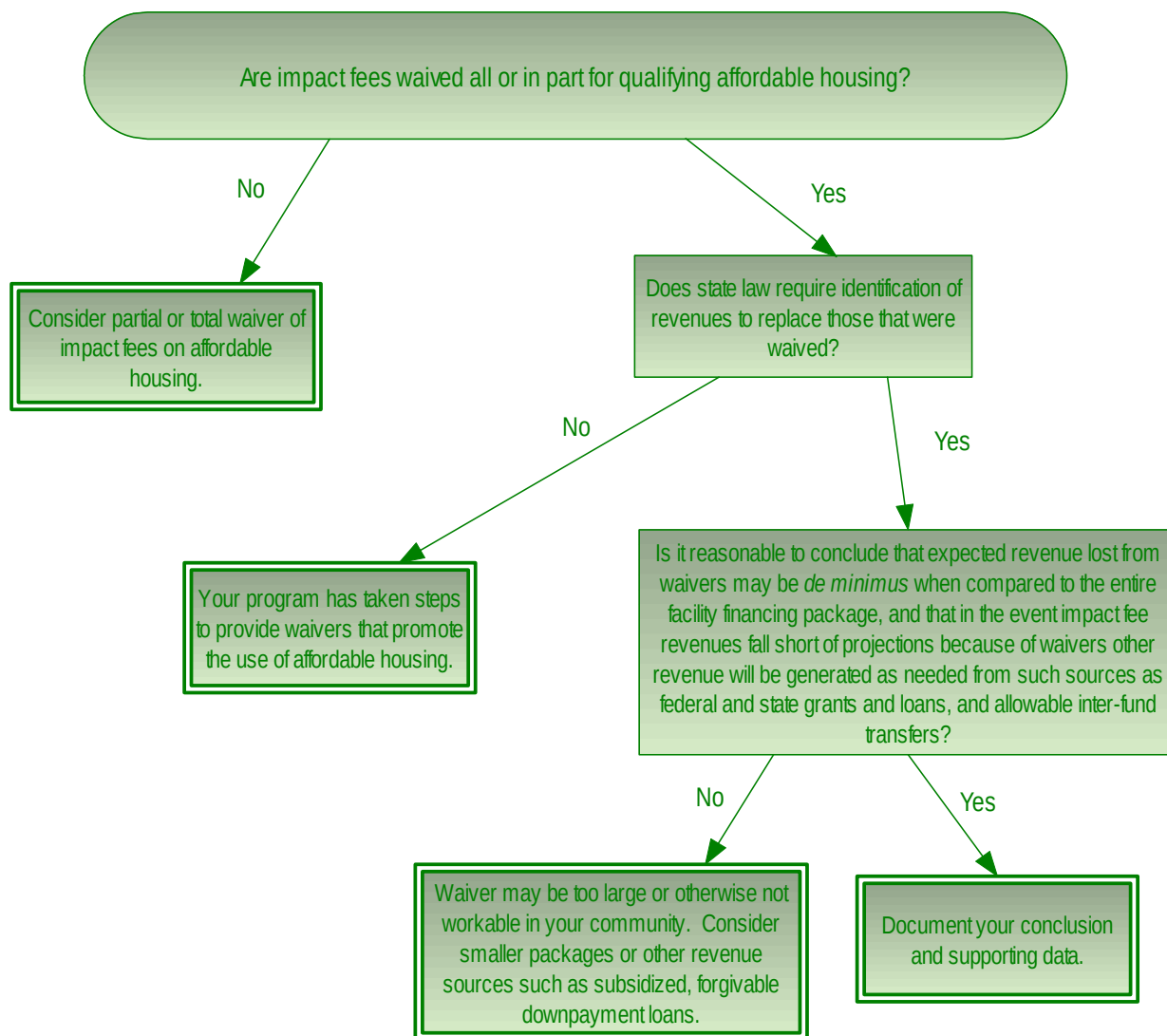
- Buyers of very low and low income housing may apply for a loan from the County for 100 percent of the impact fees assessed on very low and low income housing as defined in the Martin County Comprehensive Plan. Repayment is due upon sale or transfer of the affected property, or at the end of 15 years, whichever occurs first, unless the County chooses to allow refinancing of the loan if the affected housing continues to meet the County's definition of very low or low income housing.
- Buyers of moderate income housing may apply for a loan from the County for 50 percent of the impact fees assessed on moderate income housing as defined in the Martin County Comprehensive Plan. The interest on the loan shall be equivalent to the County's long term borrowing rate at the time of the loan. Repayment of the loan plus interest is due upon sale or transfer of the affected property, or at the end of ten years, whichever occurs first, unless the County chooses to allow refinancing of the loan if the affected housing continues to meet the County's definition of moderate income housing.
- To receive a deferral of impact fees the sales prices of the homes cannot exceed 90 percent of median area purchase price as established by the United States Department of the Treasury in accordance with section 3(b)2 of the United States Housing Act of 1937. In addition, house size is correlated to household size, so that the home to be constructed does not exceed HUD income guidelines.

⁵³ See Martin County Ordinance No. 562, pt. 1, § 6.11, 12-7-1999.

Housing Affordability Questions to Consider

The following decision guide poses questions on specific ways in which impact fees should be waived or exempted from certain new residential developments to help advance housing affordability.

Decision Chart 4.5 Affordable Housing



Chapter 5 - Case Studies

The impact fee systems of three jurisdictions are described in this section: Atlanta, Georgia; Albuquerque, New Mexico; and, Alachua County, Florida. These communities were chosen for their innovative approaches to devising progressive impact fees (meaning that the fees are structured to be higher for higher income houses that correspondingly use more services) and sheltering affordable housing from potentially adverse impacts of impact fees. This chapter should be highly useful to communities that are considering impact fees and concerned with affordability.

Atlanta, Georgia

In 1993, the City of Atlanta, Georgia, adopted the state's second development impact fee program and the first since passage of the Georgia Development Impact Fee Act in 1990. It was then and probably remains today a national leader in how it tailors the impact fee program to address affordable housing concerns. Lessons learned may be applicable broadly especially in jurisdictions that have significant prior investments in infrastructure and are growing but not stressed with growth.



The City of Atlanta, Georgia, is the state's largest city at over 435,000 residents. It also has about as many jobs bringing its "daytime" functional population to more than 800,000 as more people commute into work or school than out. The state constitution confers home rule authority to cities thereby providing Atlanta with a broad range of powers and flexibility with which to use them. At the time of the impact fee policy-making process, the city was governed by a mayor, an 18-member council elected by districts (13) and at-large (5), and an elected council president. It is a strong-mayor government in that the mayor proposes legislation including an annual city budget, and administers policies adopted by council. In 1990, the city was anticipating adding about 40,000 new residents and 180,000 new jobs by 2010, based on projections of the Atlanta Regional Commission. The city also had a history of not incurring large debt and thus paying for many new capital items on a pay-as-you-go basis. Since the city did not want to ask voters to authorize more bonds to finance new capital facilities in advance of growth, it saw impact fees as a way to help bridge the financing gap. Yet, it was also more sensitive than most jurisdictions about the effects of impact fees on affordable housing.

Enabling Legislation for Atlanta

Although arguably enabled through home rule authority, the Georgia legislature adopted the Development Impact Fee in 1990 to provide guidance to local governments in how impact fees would be crafted and implemented. The Act enables local governments to assess impact fees for fire and emergency medical, police, road, library, parks and recreation, stormwater, water and wastewater facilities. Initially, Atlanta wished to assess fees on all facilities except libraries since they are administered by counties. Although the city did adopt impact fees for water and wastewater systems, they were quickly dropped in large part because the language of the Act essentially waives the requirement to apply the Act to those facilities. A stormwater fee was considered but never implemented; the city instead is considering a city-wide special

district to manage these facilities. The impact fees adopted by the city generate revenues for parks and recreation, fire and EMS, police, and roads.

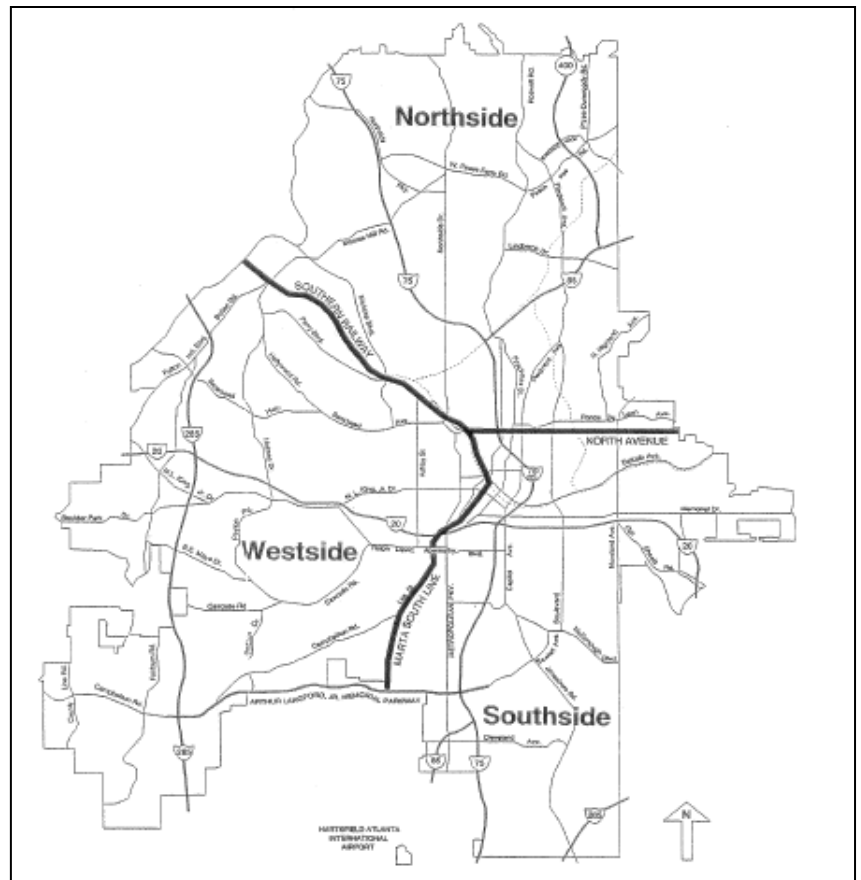
It is important to note that although setting impact fees based on the size of the unit is recommended in this Guidebook such was not done in Atlanta. The Atlanta program pre-dates many advances in impact fee practice such as this but the authors have been informed that when the city updates its program it will use the size-based approach. There are so many other pioneering features of the program affecting housing affordability however that Atlanta deserves review as an important case study. Practitioners would be advised to consider many of Atlanta's approaches in addition to considering varying impact fees by the size of the unit at least up to a certain size threshold based on local conditions.

The Act requires service areas for each facility. Recognizing that public safety activities function best as a system of facilities serving the entire city, only one service area was designed for those facilities. Parks and recreation services were considered more locally serving, so three service areas were crafted (see Figure 5-1) . Although two service areas were considered initially for roads (north and south), in the end the city was considered one large service area. This decision was made in part by recognizing that traffic patterns are decided north-south throughout the day and because at 32 square miles the city is not physically very large.

The Act requires that level of service standards be adopted as a way to measure current capacity deficiencies or surpluses, and in part to help project future development needs.

However, to measure development impacts across different land uses, such as residential, commercial, industrial, and institutional, a uniform measure was devised based on functional population. Conceptually, functional population estimates the full-time equivalent number of people any given facility needs to serve during work days ("daytime functional population") or around the clock ("24/7 functional population"). It adopted functional population levels of service for parks and recreation, and public safety facilities – being the first in the nation to do so.

The city inventoried its park and recreation facilities and found that on a city-wide basis it had nearly 7 acres of park per 1,000 functional residents. It adopted a level of service (LOS) standard of 5.75 acres per



1,000 functional residents meaning that it had sufficient excess capacity to accommodate growth to 2010. Impact fees collected for park and recreation facilities could thus be considered “recoupment” revenues under provisions of the Act, essentially recovering for the taxpayers the value of excess capacity it financed for the benefit of new development.

The consulting team also determined that the city had about 500 square feet of fire/EMS space and about 790 square feet of police space per 1,000 functional residents. The city adopted LOS standards of 470 and 660 square feet per 1,000 functional residents, respectively, which was the projected 2010 LOS, based on existing facilities and growth projections. This also created a “recoupment” situation for the city.

For roads, the city adopted an LOS standard calling for a volume-to-capacity ratio of 0.75 for all major roads, meaning that the road system should have 25 percent more capacity than used; the ratio translates roughly into a level “D” in transportation engineering terms. Because the city was then at a 0.71 ratio, this implied that excess capacity existed, but the city determined all the impact fee revenues generated from road impact fees should be used to expand capacity and thus recoupment was not an administrative feature.

The Act requires that costs be estimated based on historical and/or projected expenditures and rendered to a cost per unit of service based on the adopted LOS. That cost must be reduced to reflect any non-local revenue credits such as state or federal grants, and local revenue credits such as the present value of that share of debt service on bonds used to finance the same type of facilities for which impact fees are assessed generated by new development. The fees themselves were calculated as follows in Table 5-1 (below):

TABLE 5-1. ATLANTA IMPACT FEE CALCULATIONS

Parks and Recreation		
Cost Feature	North	South + West
Improvement Cost per Acre	\$43,000	\$43,000
Land Cost per Acre	\$46,047	\$10,442
Total Cost per Acre	\$89,047	\$53,442
Non-Local Revenue Credits	\$ 0	\$ 0
Local Revenue Credits	\$ 0	\$ 0
Net Impact Cost per Acre	\$89,047	\$53,442
Acres per Functional Resident	0.00575	0.00575
Impact Fee per Resident	\$ 512	\$ 351
Fire/Emergency Medical Service		
Cost Feature	Citywide	
Improvement Cost per Square Foot	\$152.00	
Non-Local Revenue Credits	\$ 0	
Local Revenue Credits	\$ 0	
Total Impact Cost per Square Foot	\$152.00	
Square Feet per Functional Resident	0.47	
Impact Fee per Resident	\$ 71.44	
Police		
Cost Feature	Citywide	
Improvement Cost per Square Foot	\$ 31.00	
Non-Local Revenue Credits	\$ 0	
Local Revenue Credits	\$ 0	
Total Impact Cost per Square Foot	\$ 31.00	
Square Feet per Functional Resident	0.66	
Impact Fee per Resident	\$ 20.46	
Transportation (Roads)		
Cost Feature	Citywide	
Cost Per Vehicle Mile Traveled at LOS	\$1,869	
Non-Local Revenue Credits	(\$ 787)	
Net Cost per Mile	\$1,082	
Local Revenue Credits	Variable	

Note: Road impact fees are reduced based on property values of different land uses.

The Act allows developers to offer improvements to those facilities that are scheduled for impact fee financing and thereby reduce the fees charged per unit. For example, if a road impact fee is \$1 million but the \$600,000 road improvement project in front of the development is scheduled to be improved using impact fees in part, the developer may make those improvements (probably at lower cost than the city and earlier than scheduled) and reduce the impact fee accordingly – in this case down to \$400,000. The fee schedules for Atlanta appear in Table 5-2.

TABLE 5-2. ATLANTA FEE SCHEDULES

	Land Use Type	Number of Dwelling Units	Pop*/ Unit	Acres per 1,000 Pop*	Acres per Unit	Cost per Acre	Net Cost per Unit
PARKS & RECREATION – NORTHSIDE	Single-family	1	1.60	5.75	0.0092	\$89,047	\$819
	Multi-family	1	1.11	5.75	0.0064	\$89,047	\$570
PARKS & RECREATION – SOUTHSIDE & WESTSIDE	Single-family	1	1.60	5.75	0.0092	\$53,442	\$492
	Multi-family	1	1.11	5.75	0.0064	\$53,442	\$342
	Land Use Type	Number of Dwelling Units	Pop*/ Unit	Sq Footage/ 1,000 Pop*	Sq Ft per Unit	Cost per Sq Ft	Cost per Unit
FIRE/EMS	Single-family	1	1.60	470	0.7520	\$152	\$114
	Multi-family	1	1.11	470	0.5217	\$152	\$79
POLICE	Single-family	1	1.60	660	1.0560	\$31	\$33
	Multi-family	1	1.11	660	0.7326	\$31	\$23
	Land Use Type	Number of Dwelling Units	Peak Hr VMT/ Unit	Cost/ Peak Hr VMT	Cost per Unit	Property Tax Credit	Net Cost per Unit
TRANSPORTATION	Single-family	1	1.02	\$1,154	\$1,177	\$190	\$987
	Multi-family	1	0.5	\$1,154	\$577	\$107	\$470

* Pop refers to functional population. The population numbers adjusted for the daytime commuting population.

The unique ways in which Atlanta facilitates affordable housing production through its impact fee program are also important to understand. Key Atlanta officials, such as Leon Eplan and Fernando Costa, then Commissioner of Planning and Director of Planning, respectively, under the Maynard Jackson Administration, were concerned about the potentially adverse effects of impact fees on affordable housing. To address these concerns, Atlanta became the first jurisdiction in the nation to adopt the following features:

- 50% reduction if within 1,000 feet of a rail transit station.
- 100% reduction if located within an enterprise zone.
- 100% reduction if located within a federally chartered empowerment zone.
- 100% reduction if part of a qualified historic preservation project
- 100% reduction if the unit rents for less than 60% of the regional median rent or sells for less than 1.5 times the regional new home sale price.
- 50% reduction if the unit rents for between 60% and 80% of the regional median rent or sells for between 1.5 and 2.5 times the regional new home sale price.
- Broadens the assessment base for parks and recreation by charging non-residential development.

Georgia law requires that revenues not collected from impact fees must be offset from sources of revenue other than impact fees. This requirement to collect from other sources does not apply to the 50% reduction for being within 1,000 feet of a rail station because studies show that traffic impact is reduced roughly proportionate with this relationship. The analysis indicates that Atlanta remains the only jurisdiction that recognizes this relationship. In all other respects, however, the city is required by law to offset lost impact fee revenues through identified sources. This is where recoupment comes into play.

For parks and recreation, and public safety, impact fees essentially reimburse taxpayers for investments generating excess capacity for the benefit of new development. It is these “recoupment” revenues that are used to reduce the fees assessed on qualifying affordable housing. This approach is used in no other jurisdiction. In addition, although the city does not recoup road impact fees (all revenues are dedicated to capacity-expansion), it has nonetheless been able to offset road impact fees for qualifying affordable housing through bond arbitrage (interest from bond proceeds before bond revenue is spent), community development block grant, and even general fund sources.

Recoupment is based on adopting a level of service standard below the current service level so that at least for a while impact fees reimburse for the value of excess capacity. Yet, Atlanta has been even more creative in sheltering affordable housing from impact fee burdens while *expanding* parks and recreation, and public safety facilities in excess of adopted LOS standards. This is a unique win-win innovation. Here is how it works:

By setting the adopted impact fee level of service standard below current levels – which carries the risk that services over time will be degraded relative to the present – impact fee revenues can be used to offset assessments on affordable housing. Because not all revenues are used for this purpose – more likely about a quarter – the remaining revenue is in fact used to expand capacity and to leverage investment. For example, because parks and recreation impact fees generated new revenue in excess of covering affordable housing offsets, the new revenue could be used as match to leverage even more investment in parks. The effect is that affordable housing is sheltered from impact fee effects yet facility capacity is increased. Moreover, the combination of impact fees leveraging investment means that today Atlanta’s current acreage of parks per 1,000 residents is *more* than in 1993. The same is true for public safety.

Atlanta was also the first jurisdiction that expands the base of impact fee assessments across all land uses for parks and recreation. The usual custom is to assess only residential development for parks and recreation facilities, and libraries. (This is also the case in those states where school facility impact fees are assessed, the exception being California where non-residential development is required by statute to also pay school impact fees.) Thus, the entire burden for financing these facilities falls on roughly half to two-thirds of the development base. However, because Atlanta kept park and recreation facility reservation records by type of reservation (company picnic, church league, etc.), the consultants were able to determine that a very high percentage of the formal use of these facilities was for the benefit of non-residential land uses. The city thus had a reasonable basis on which to assess all land uses thereby reducing the magnitude of impact fees assessed on residential property.

Research for this project indicates that no other jurisdiction assessing impact fees is as comprehensive as Atlanta in sheltering affordable housing from potentially adverse effects.

Lessons from Atlanta

More than a decade after implementing its pioneering program, Atlanta is reflecting on its pioneering approach. Several lessons became evident during the case study. First, using the regional median measures for housing affordability in Atlanta during the 1990s meant that because housing values and incomes were lower in the city than in much of the metropolitan area (the city used HUD's regional figures), many more housing units qualified for reductions than if only city-specific value were used. In effect, for Atlanta, the reductions may have been too generous.

Second, not all development in targeted areas needed to have the impact fee reduced. It turned out that several developers of properties in targeted areas had no knowledge of the impact fee reductions and came to pull building permits assuming the impact fee would be paid, only to learn from staff that fees would be waived. This finding suggests that impact fee reductions may need to be targeted to a smaller group or more specific situations.

Third, as the city updates its impact program, it may cut back on the number and nature of reductions. Its initial concern in the 1990s was whether impact fees may affect growth in the city. That concern has dissipated as the city is attracting more higher-income residents yet it is still able to provide affordable housing.

Fourth, Atlanta as elsewhere has learned that impact fees do not by themselves facilitate construction of new facilities but may stimulate leveraging. City officials informed us that parks and recreation impact fees have enabled the city to leverage foundation (like Ford, Rockefeller, etc.) and other investments that result in a higher effective level of service now than in 1992, despite an officially adopted level of service that is lower.

As Atlanta prepares for an update, it is likely to reduce the scope of affordable housing reductions such as those for targeted geographic areas, enterprise and empowerment zones in particular, but retain many key reductions relating to transportation and affordable housing per se. As former commissioners of planning Leon Eplan and Michael Dobbins observed, the broad scale of impact fee reductions did its job of encouraging housing construction in blighted or other targeted areas. Now that Atlanta's housing market is healthy, future reductions should be more targeted.

Legal Issues for Atlanta

Since the Act was adopted in 1990 there have only been two legal challenges in Georgia, both decided favorably to local government. In *Metro Atlanta Home Builders Association v. Cherokee County*, the state Court of Appeal ruled that a single county-wide service area including cities was consistent with the Act even though impact fees are not collected from building permits issued by the cities themselves.

More recently, in *Southeast Legal Foundation v. City of Atlanta*, the federal District Court ruled that the plaintiff had no legal standing to challenge the city's use of only one service area instead of two for roads. In that case, the plaintiff alleged that while most impact fees for roads were collected in the northern part of the city in the areas of Midtown and Buckhead, those revenues were being spent mostly in the south for such purposes as sidewalks along streets. Had the case gone to trial, the City was prepared to show that more than 80% of the impact fees assessed were credited back to developers who constructed road improvements that would have been financed by impact fees instead. Of the remaining funds, much if not

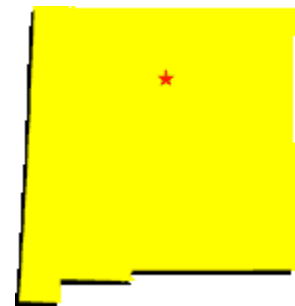
most were used to improve sidewalks in the south so that workers living in the south could get to their jobs in the north – consistent with the city’s strong city-wide north-south travel pattern.

Next Steps for Atlanta

Atlanta will undertake a major updating of its impact fee program in the near future. As it does, it will retain key affordable housing features and be more refined in impact fee calculations and assessments on housing. For example, road impact fees may be reduced for situations where development occurs along transit corridors (not just within 1,000 feet of a rail station), or in configurations that reduce vehicle use. The number and size of areas targeted for impact fee reductions will be reduced and fewer homes will likely be eligible for reduced impact fees but all homes meeting affordable housing criteria will remain eligible for reductions. The update will likely raise impact fees, which are currently a modest \$1,400 per unit on average. This will provide the city with even more funds with which to leverage non-local and private funding for key facilities. As former commissioners of planning Eplan and Dobbins observed, the real benefit of impact fees to the city was their role in leveraging multiple sources of revenues especially for parks and recreation facilities, and roads.

Albuquerque, New Mexico

In 2005, the City of Albuquerque, New Mexico, adopted an impact fee program that is unique for 1) its attention to differences in facility costs between parts of the city, 2) its reductions in impact fees for attaining land-use efficiencies that by their nature reduce facility impacts, and 3) its outright waivers for affordable housing. Consequently, it is one of the most sophisticated impact fee programs yet adopted. Lessons learned may be applicable broadly especially in jurisdictions that are committed to minimizing potentially adverse effects of impact fees on affordable housing through direct (waiver) and indirect (cost-variation and impact-reduction) approaches.



The City of Albuquerque, New Mexico, is the state's largest city at over 510,000 residents and is projected to reach nearly 625,000 residents by 2025. The state constitution confers home rule authority to cities thereby providing Albuquerque with a broad range of powers and flexibility with which to use them. The city's governance structure can be characterized as a strong-mayor, the position of which serves as the chief administrator for city policy. The city council is composed of seven members elected by district, with a council president elected from among council members.

The City started its impact fee deliberations in the early 1990s then decided to embark on a large-scale, community-driven visioning approach to address issues of urban form, land use and facility efficiencies, equity, long-range capital facility financing, and related “big picture” issues. That process led to the Planned Growth Strategies (PGS) plan which was adopted in 2004. Chief among its many innovations was establishing tiers called “fully served,” “partially served,” and “unserved.” The purpose of the tiers was to recognize that some areas of the city already had most or all the infrastructure needed to serve new development but other areas did not. Also, “fully served” areas were more likely than “partially served” ones to have infill and redevelopment opportunities. From the city's perspective, it would be a more efficient use of existing resources to encourage development in fully served areas – where facilities already exist – and also encourage more efficient development patterns in partially served areas through a pricing

structure in part based on impact fees. The rest of this section reviews how the impact fee structure emerged from this basic planning objective.

The fees went into effect on July 1, 2005.

Enabling Legislation for Albuquerque

The City of Albuquerque is authorized to impose development impact fees. The New Mexico Development Fees Act [5-8-1 to 5-8-42 NMSA 1978] authorizes all cities and counties to enact or impose impact fees on land within their respective corporate boundaries and to pay specified costs of constructing capital improvements or facility expansions with impact fees. Section 5-8-3.B "If it complies with the Development Fees Act, a municipality or county may enact or impose impact fees on land within its respective corporate boundaries." Section 5-8-2.I defines an impact fee as:

[A] charge or assessment imposed by a municipality or county on new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, development fees and any other fee that functions as described by this definition. The term does not include hook-up fees, dedication of rights of way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks or curbs if the dedication or construction is required by a previously adopted valid ordinance or regulation and is necessitated by and attributable to the new development.

The statute authorizes specific services to be funded with impact fees. Section 5-8-2. provides the list:

- "[C]apital improvement" means any of the following facilities that have a life expectancy of ten or more years and are owned and operated by or on behalf of a municipality or county:*
- (1) water supply, treatment and distribution facilities; wastewater collection and treatment facilities; and storm water, drainage and flood control facilities;*
 - (2) roadway facilities located within the service area, including roads, bridges, bike and pedestrian trails, bus bays, rights of way, traffic signals, landscaping and any local components of state and federal highways;*
 - (3) buildings for fire, police and rescue and essential equipment costing ten thousand dollars (\$10,000) or more and having a life expectancy of ten years or more; and*
 - (4) parks, recreational areas, open space trails and related areas and facilities.*

The New Mexico enabling act adopts the proportionate share concept in Section 5-8-7: "[t]he fee shall not exceed the cost to pay for a proportionate share of the cost of system improvements, based upon service units, needed to serve new development."

In Section 5-8-2.G "facility expansion" is defined in the statute as the "expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development." Section 5-8-2.G further specifies that "facility expansion" does not include "the repair, maintenance, modernization or expansion of an existing facility to

better serve existing development..."

The Act specifies that no impact fees shall be spent to provide new or better facilities for existing development. Furthermore, fees collected for public safety capital improvements and facility expansion can only be spent for public safety capital facilities and facility expansions and not for any other type of improvements or facilities.

A capital improvement plan is required by the Act to be the basis of impact fee programs. Section 5-8-23 requires that "If the governing body adopts an ordinance, order or resolution approving the land use assumptions, the municipality or county shall provide for a capital improvements plan to be developed by qualified professionals using generally accepted engineering and planning practices..."

Therefore, the City of Albuquerque is authorized to adopt public safety impact fees provided that the fees do not exceed a proportionate share of the cost of providing capital improvements to new developments within service areas. Furthermore, those impact fees must be in accord with land use assumptions adopted by the City Council and be incorporated into Capital Improvement Plans. What follows are the calculations for public safety impact fees consistent with these requirements.

The Act also requires service areas for each facility. The Act also allows different levels of service for individual service areas – similar to other impact fee statutes – but rarely applied. In Albuquerque, the city decided that for public safety facilities not only were two service areas logical but different levels of service within each. The city reasons that although public safety activities function best as a system of facilities serving the entire city, the city is actually divided by the Rio Grande River into eastern and western parts so two service areas were devised (Figure 5-2). For parks and recreation, seven areas were created (Figure 5-3). To account for topographical features creating unique drainage sheds, five drainage

facility service areas were created (Figure 5-4). Finally, in recognizing important differences in travel patterns and the extent to which road facilities were fully developed, seven service areas were drafted (Figure 5-5).

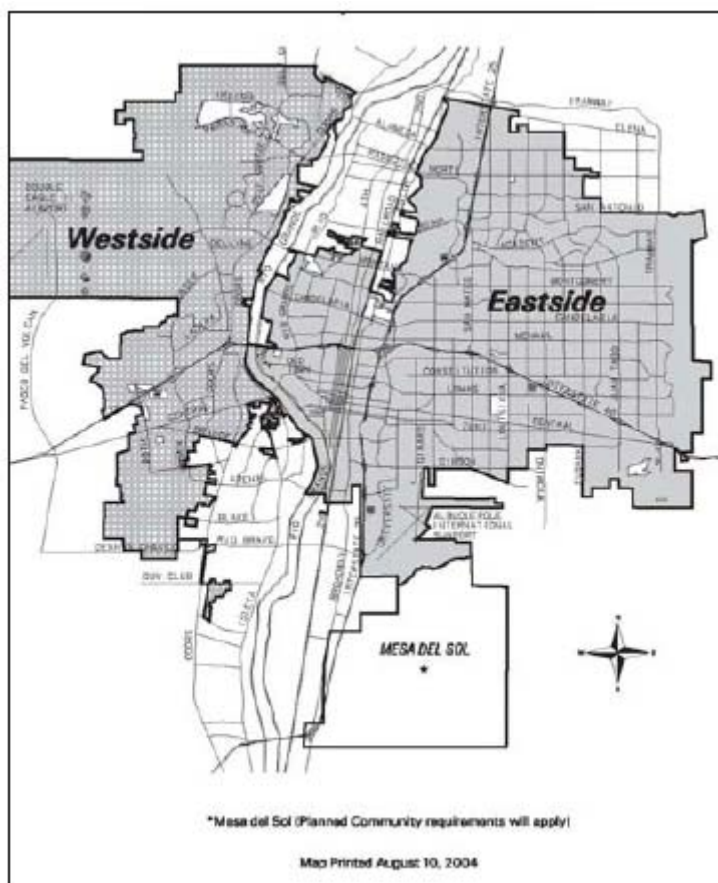


FIGURE 5-2. PUBLIC SAFETY SERVICE AREA

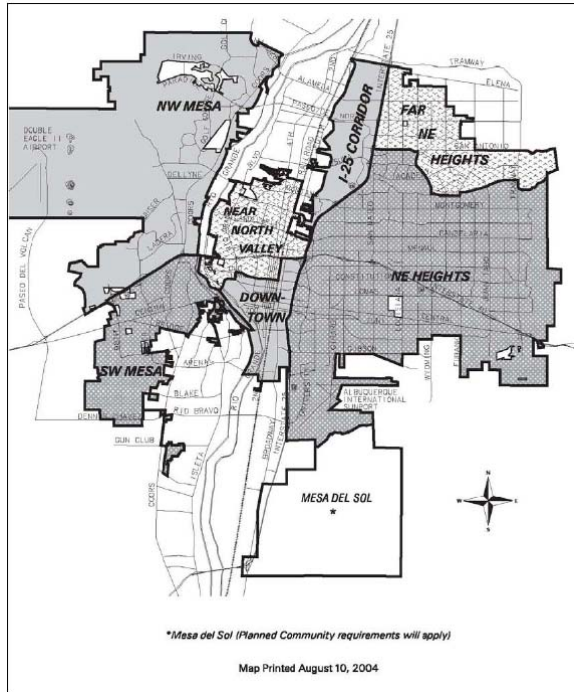


FIGURE 5-3. PARKS, RECREATION FACILITIES AND OPEN SPACE SERVICE AREAS

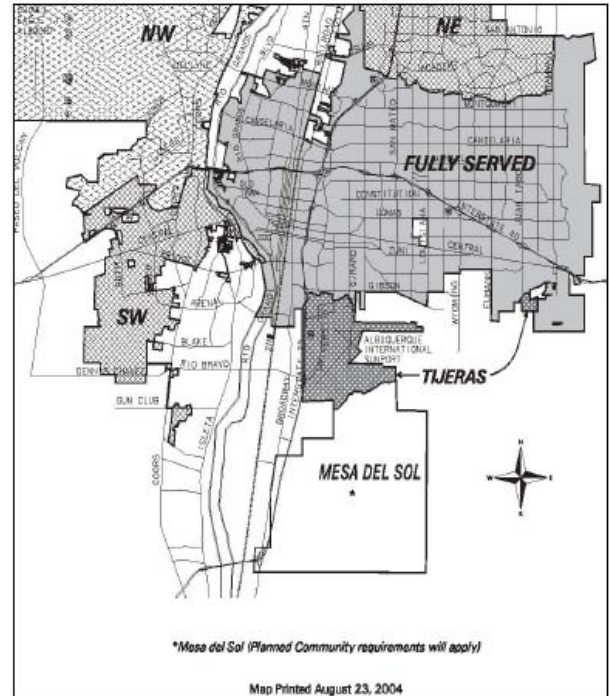


FIGURE 5-4. DRAINAGE FACILITY SERVICE AREAS

The Act requires that levels of service standards be adopted as a way to measure current capacity deficiencies or surpluses, and in part to help project future development needs. Capital improvement plans and costs need to be related to service areas, and impact fees calculated accordingly. Where revenue was known to be available to help finance needed facilities, costs were reduced to a "net" impact cost. For public safety facilities, the level of service standard was based on functional population while for parks, recreation facilities, trails and open space it was based on residents. For drainage it was based on impervious surface, and for roads it was based on travel behavior by land use. Tables 5-3 through 5-6 provide the impact fee calculations for residential structures.

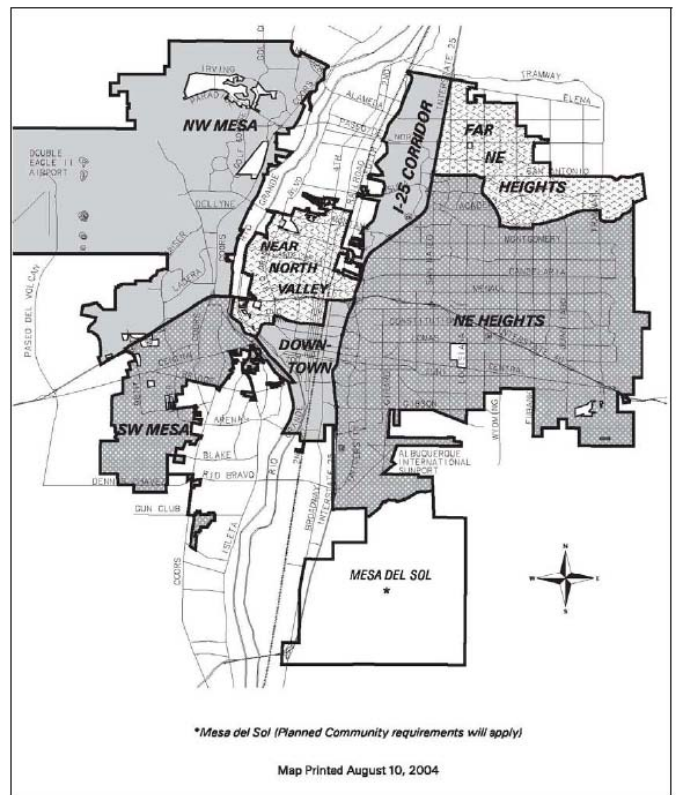


FIGURE 5-5. ROAD FACILITY SERVICE AREAS

TABLE 5-3. ALBUQUERQUE PUBLIC SAFETY LEVEL OF SERVICE, NET IMPACT COSTS, AND
IMPACT FEES BY SERVICE AREA

Step		East Side	West Side
New Functional Population 2004 – 2025		47,991	63,779
Total Public Safety Cost per Capita		\$371.47	\$278.17
Fire and Emergency Protection Levels of Service			
Persons Served per Fire Station		22,886	20,782
New Stations Needed by 2025		3	2
Fire Improvement Costs		\$11,395,311	\$9,175,144
Fire Cost Per Capita		\$237.45	\$143.86
Police Levels of Service			
Citywide Facilities, Square Ft. per Capita		0.444	0.444
Citywide Cost per Capita		\$94.77	\$94.77
Service Area Facilities, Square Ft. per Capita		0.163	0.163
Service Area Costs per Capita		\$39.25	\$39.54
Police Cost per Capita		\$134.02	\$134.31
Development Type	Functional Occupants	Unit Costs per 1,000 Square Feet	
		East Side	West Side
Residential	0.743	\$275.92	\$206.62

**TABLE 5-4. ALBUQUERQUE PARKS, RECREATION FACILITY, TRAIN AND OPEN SPACE LEVEL OF SERVICE, NET
IMPACT COST, AND IMPACT FEES BY SERVICE AREA**

SERVICE AREA	Academy/ NE	Central/ University	Foothills/ SE	North Albuquerque	North Valley/I-25	SW Mesa	NW Mesa/ Volcano
Local Parks (Neighborhood & Community)							
Level of Service per 1,000 People	2.600	2.600	2.600	2.600	2.600	2.600	2.600
Needed Additional Acres	2.13	0.00	8.88	20.07	16.71	71.29	110.44
Acres Available in Inventory	26.49	12.74	47.61	59.00	3.95	81.53	109.02
Acres to be Acquired	0.00	0.00	0.00	0.00	12.76	0.00	0.00
Acquisition Cost per Acre	\$125,000	\$110,000	\$105,000	\$125,000	\$122,500	\$72,000	\$120,000
Acquisition Cost	\$0	\$0	\$0	\$0	\$1,562,708	\$0	0.00
Acres to be Developed	2.13	0.00	8.88	20.07	16.71	71.29	110.44
Existing Surplus	0.00	78.17	7.11	0.00	0.00	0.00	22.90
Net Acres to be Developed	2.13	0.00	1.77	20.07	16.71	71.29	87.54
Development Cost per Acre	\$175,000	\$175,000	\$175,000	\$175,000	\$175,000	\$175,000	\$175,000
Development Cost	\$373,555	\$0	\$309,225	\$3,511,690	\$2,923,830	\$12,475,645	\$15,319,465
Facilities Cost per Acre	\$226,007	\$226,007	\$226,007	\$226,007	\$226,007	\$226,007	\$226,007
Facilities Cost	\$482,434	\$0	\$399,354	\$4,535,228	\$3,776,027	\$16,111,871	\$19,784,567
Total Cost Local Parks	\$855,989	\$0	\$708,579	\$8,046,918	\$8,262,565	\$28,587,516	\$35,274,864
Cost per Capita	\$1,042.62	\$0	\$207.49	\$1,042.62	\$1,285.80	\$1,042.62	\$830.45
Less Grants	(\$70.41)	\$0	(\$14.01)	(\$70.41)	(\$86.84)	(\$70.41)	(\$56.08)
Less Bond Credit	(\$208.52)	\$0	(\$41.50)	(\$208.52)	(\$257.16)	(\$208.52)	(\$166.09)
<i>Net Local Park Cost</i>	<i>\$763.69</i>	<i>\$0</i>	<i>\$151.98</i>	<i>\$763.69</i>	<i>\$941.80</i>	<i>\$763.69</i>	<i>\$608.28</i>
Trails							
Cost per Capita	\$21.88	\$21.88	\$21.88	\$21.88	\$21.88	\$21.88	\$21.88
Less Grants	(\$1.48)	(\$1.48)	(\$1.48)	(\$1.48)	(\$1.48)	(\$1.48)	(\$1.48)
Less Bond Credit	(\$4.38)	(\$4.38)	(\$4.38)	(\$4.38)	(\$4.38)	(\$4.38)	(\$4.38)
<i>Net Trails Cost</i>	<i>\$16.03</i>	<i>\$16.03</i>	<i>\$16.03</i>	<i>\$16.03</i>	<i>\$16.03</i>	<i>\$16.03</i>	<i>\$16.03</i>

TABLE 5-5. ALBUQUERQUE NET IMPACT COSTS, PROJECTED IMPERVIOUS ACRES, AND DRAINAGE IMPACT FEE PER ACRE BY SERVICE AREA

Service Area	Net Impact Costs	Total Area (Acres)	Projected Impervious Acres, 2000-2025	Cost Per Impervious Acre
NW	\$ 55,015,528	15,490	3,915	\$ 14,052
SW	\$ 35,393,166	9,021	2,757	\$ 12,836
Fully Served	\$ 0	40,250	2,009	\$ 0
Tijeras	\$ 2,933,604	2,611	221	\$ 13,290
Far NE	\$ 15,044,434	11,753	1,474	\$ 10,208

TABLE 5-6. ALBUQUERQUE LEVEL OF SERVICE, NET IMPACT COST, ROAD IMPACT FEES BY SERVICE AREA

Land Use	Trip Rate (PM Peak)	Trip Rate (Daily)	Assessable Trip Length	Total Trip Length	% New Trips	Total Impact Cost	Annual Gas Tax Proxy	Gas Tax Proxy Offset	Net Impact Cost	Downtown	NE Heights	Near North Valley	Far NE Heights	I-25 Corridor	NW Mesa	SW Mesa	Fee
Single Family Detached																	
Less than 1,500 sf	0.68	6.35	6.28	6.78	100%	\$3,617	\$17	\$233	\$3,384	\$0	\$0	\$0	\$1,069	\$2,113	\$2,626	\$2,702	N/D
1,500 sf to 2,499 sf	1.02	9.57	6.28	6.78	100%	\$5,425	\$25	\$351	\$5,075	\$0	\$0	\$0	\$1,585	\$3,160	\$3,933	\$4,046	\$3,068
2,500 sf or Larger	1.14	10.74	6.28	6.78	100%	\$6,063	\$28	\$394	\$5,670	\$0	\$0	\$0	\$1,754	\$3,521	\$4,388	\$4,516	N/D
Multi-Family	0.67	6.72	4.19	4.69	100%	\$2,376	\$12	\$170	\$2,206	\$0	\$0	\$0	\$512	\$1,276	\$1,651	\$1,706	\$1,902
Condominium/Townhouse	0.52	5.86	4.19	4.69	100%	\$1,844	\$11	\$148	\$1,695	\$0	\$0	\$0	\$218	\$885	\$1,212	\$1,260	\$1,657
Mobile Home Park	0.60	4.99	4.29	4.79	100%	\$2,178	\$9	\$129	\$2,049	\$0	\$0	\$0	\$765	\$1,344	\$1,629	\$1,671	\$1,687
Retirement Home	0.35	3.71	2.39	2.89	100%	\$709	\$4	\$58	\$651	\$0	\$0	\$0	\$74	\$335	\$462	\$481	\$828
Congregate Care Facility	0.20	2.02	3.09	3.59	71.6%	\$375	\$2	\$28	\$347	\$0	\$0	\$0	\$67	\$193	\$255	\$264	N/D

By and large, these fee schedules are notable for their treatment of affordable housing in two significant respects. First, the service areas are carefully designed with respect to parks, recreation facilities, trails and open space, drainage, and road facilities. Generally, the more built-out and compact an area, the lower the fee – in several cases being zero. In effect, when existing facilities are sufficient to meet future demand no impact fee need be assessed. On the other hand, the lower the investment in facilities and the greater the projected growth, the higher the fees. The effect is to encourage infill and redevelopment in closer-in areas where excess capacity exists while charging substantial fees where new facilities are needed to accommodate growth. It is possible that some development may be lured away from lower-density areas where new facilities are needed and into higher-density ones where facilities that can accommodate development needs exist.

Second, the fees are based on the size of structures and in particular residential units. Census data show clearly that larger dwellings on average have more residents than smaller ones (such as shown in Tables 4-2 and 4-3 above). By apportioning impact fees based on dwelling unit size, the smaller and more affordable residential units pay a lower fee than larger ones.

By themselves, these two features are notable improvements in impact fee policy and “Smart Growth” friendly. The City is going further, as will be seen in the next section.

Special Affordable Housing Provisions for Albuquerque

The City of Albuquerque has taken two additional actions to reduce the potentially adverse effect of impact fees on affordable housing: waiving fees; and, encouraging designs and configurations of new development to reduce facilities impacts – thereby reducing fees potentially for all affected housing stock.

New Mexico's impact fee Act enables local governments to waive impact fees on affordable housing. At 5-8-3, the Act allows that a “municipality or county may waive impact fee requirements for affordable housing projects” while 5-8-1 defines affordable housing as “any housing development built to benefit those whose income is at or below eighty percent of the area median income; and who will pay no more than thirty percent of their gross monthly income towards such housing.” The City is taking advantage of these statutory provisions to waive or reduce impact fees for qualified housing in the following respects:

- Impact fees for owner-occupied housing affordable to households earning 80% or less of the Metropolitan “area median income” (AMI) are waived completely.
- Impact fees for owner-occupied housing affordable to households earning 80% or less of AMI within “Planned Village Development Zones” – essentially areas targeted for compact suburban villages, and “Infill Development Zones” – essentially areas targeted for urban-scale infill and redevelopment, are waived completely.
- Impact fees for the affordable units in projects located within certain Centers and Corridors identified in the Comprehensive Plan are waived completely.
- Impact fees for affordable units within mixed-income projects located elsewhere are reduced by 60%. The City defines “mixed-income projects” as (a) for owner-occupied housing, not less than 20% or more than 50% of the total owner-occupied units in the development affordable to

households earning 80% or less of AMI and at least 40% of remaining units affordable at 120% or more of AMI, and (b) for rental housing, not less than 20% or more than 40% of the total rental units in the development affordable to households earning 60% or less of AMI and at least 30% of the total units serving families at 80% or more of AMI.

In addition, the City is finding through policy-making that certain developments by their nature in specific parts of the city can lead to efficiencies, such as reducing travel by providing employment or shopping services near existing residential areas. It thus reduces impact fees for nonresidential development from 30% (for retail) to 70% (for industrial) west of the Rio Grande River, an area that is devoid of substantial employment, shopping, or service opportunities. While not directly related to affordable housing, the policy recognizes that achieving the jobs-housing balance will nonetheless help advance housing affordability by reducing costs associated with commuting.

During 2005 and 2006, the City anticipates adjusting fees downward for many types of development, including housing, in a variety of targeted areas.

How will the City offset lost revenue and continue building new facilities? Where facilities already exist and where efficiencies can be attained where new facilities are needed, the lost revenue is *per se* not needed. The real revenue that is lost comes from waiving fees on certain housing where fees would be otherwise assessed. In other states that enable fee waivers, replacement revenues need to be identified but this is not the case in New Mexico. One theory is that in the scheme of things the lost revenue is *de minimus* and not sufficient to warrant concern at least from a legal perspective. Another is that the general fund will be used to fill in revenue gaps as needed to provide facilities when needed. The general fund includes tax revenue from existing and new development, including taxes paid by occupants of affordable housing, so it would be a matter of public policy that everyone in the community would offset revenues through impact fee waivers on affordable housing.

Legal Issues for Albuquerque

After adopting impact fees in late 2004 but having not implemented them until mid-2005, the New Mexico legislature considered amending the Act to undercut the City's program. It would have done so by disallowing "marginal cost" calculations of impact fees, a term used in the Planned Growth Strategies (PGS) to guide impact fee calculations. The bill would instead require "average cost" calculations. The bill passed the House but failed to be moved out of a Senate committee before adjournment. It is uncertain how the amendment would actually have changed the City's program since, technically, the fees were actually calculated based on long-term average cost principles (total future costs divided by total future development). Since the law would not have required that the same impact fee be assessed throughout a jurisdiction -- which was supportive of the principles of apportioning impacts based on differences in costs by service areas -- experts were uncertain what practical down-side effects there would be.

Lessons from Albuquerque

It may be too early to learn many lessons from Albuquerque's unique approach, especially as it relates to affordable housing, but some may be apparent. First, the City has shown that multiple service areas reflecting substantially different levels of facility availability between them can result in much lower (and sometimes no) impact fees where sufficient facilities already exist. Care must be taken not to make service

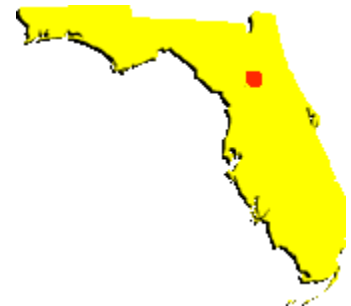
areas too small, however, as this may reduce revenue to levels below those needed to actually make facility investments.

Second, the City is pioneering efforts to include impact fee reductions for certain developments that reduce facility impacts through an across-the-board adjustment. Normally, such adjustments are done on a case-by-case “independent fee calculation study” that could be expensive, time-consuming, and contentious. Time will tell whether actual impacts were reduced. Nonetheless, the logic would appear sound, and if overall facility impact reductions are somewhat less than assumed, they may still be more than would have occurred in the absence of such policy.

Third, the City may have one of the most aggressive approaches to reducing potentially adverse effects of impact fees on affordable housing. The extent to which this may lead to delay in constructing facilities or require significant contributions from the general fund will not be known perhaps for years. Even if these outcomes are realized, the City’s approach may lead to more dispersion of affordable housing, improved jobs-housing and workforce-housing balance, more stable neighborhoods, greater housing choices, and other benefits that may offset the costs.

From the broader perspective, one must not lose sight that the whole impact fee approach pursued by Albuquerque is rooted in its PGS policy, a variation of a “Smart Growth” policy. At its heart, the PGS seeks to encourage infill and redevelopment, encourage development to go where facilities exist and away from areas where they don’t, increase housing options, improve housing affordability, and result in more efficient land uses, among other things. Impact fees merely help implement these and related policies, not guide them.

Alachua County, Florida



Alachua County is a moderately fast growing county in north-central Florida, about 100 miles north of Orlando, and home to the University of Florida, the state’s largest university and the County’s largest employer. During the 1990s, it grew from about 183,000 to 218,000 residents, or a little less than 20%. (Florida grew by about 23% during the same period.) As in many growing jurisdictions throughout Florida, impact fees have long been considered one option to facilitate new development without raising taxes or imposing lower standards of service on existing development.

The County initially adopted a road impact fee in 1991 (a flat \$686 per single-family unit) but repealed it in 1993 principally because of concerns about the effect of impact fees on housing affordability. As growth continued and along with it demand for new facilities increased yet revenues available for new facilities could not keep pace, interest in impact fees was renewed in the early 2000s. In 2004, a technical report was prepared covering public buildings, fire, rescue, parks, and roads, and in 2005 all the fees except those for rescue and public buildings were implemented. To address affordable housing concerns, the County also implemented a pioneering affordable housing impact fee set-aside program. The discussion leading to this program and how it works may be instructive to other communities.

Alachua County's population in 2005 was estimated at 230,000. The largest city is Gainesville which has a population of about 100,000. More than half the county population lives in unincorporated areas. In Florida, all counties have home rule powers which, when combined with police powers, provide local governments with considerable flexibility to address problems. The county commission is composed of five elected officials serving staggered four-year terms. The chairman is selected annually by the board.

In the early 2000s, county commissioners began to express their concern about the county's ability to expand facilities to meet development needs given its current funding levels. It was also concerned about affordable housing.⁵⁴ In 2003, the County commissioned a study into affordable housing needs. It found that production of affordable housing requires proactive measures through policies and financial incentives.

After that study was issued, the County engaged Dr. James C. Nicholas of the University of Florida in 2004 to prepare a technical report for impact fees to help finance public buildings, fire/rescue, parks, and roads.⁵⁵ Both studies led the County to adopt impact fees for three facilities (public buildings and rescue were deferred) but with an impact fee set-aside program for affordable housing, details of which will be discussed later.

Enabling Legislation for Alachua County

In Florida, impact fees are based on case law emanating from the 1970s and refined through the early 1990s, with little change in case law since then (see Nicholas, Nelson and Juergensmeyer 1991; Juergensmeyer and Roberts 2001). In addition, state planning law (Chapter 163 Part II, F.S.) requires local governments to project capital facility needs and identify revenues sufficient to fully fund them. Implementing state law is Rule 9J-5 of the Florida Administrative Code, which identifies impact fees as a potential source of revenue to help finance capital improvements.

Although Florida does not have an impact fee enabling statute, Florida case law requires that communities meet the "dual rational nexus test" (Nicholas, Nelson & Juergensmeyer 1991). This test has two major components:

- (1) The facilities to be charged to new development as impact fees must be needed to serve that new development, and
- (2) The funds collected as impact fees must be earmarked and spent for the purposes for which they were collected.

Implied in this test is that no impact fee can exceed a pro rata or proportionate share of the anticipated costs of providing new developments with capital facilities.

Today, impact fees in Florida are used to finance a wide range of activities including but not limited to schools, parks, beaches, trails, open space, public safety, public buildings, roads, drainage, water, wastewater, emergency shelters, boat docks, community centers, cemeteries, and golf courses.

⁵⁴ The online affordable housing needs study and the appendix can both be accessed via: http://growth-management.alachua.fl.us/housing/housing_study.php.

⁵⁵ The technical report by Dr. Nicholas can be found in the public hearing materials package at http://publicinformation.alachua.fl.us/documents/impact_fees/092804_Impact_Fee_Public_Hearing.pdf.

Impact Fees in Alachua County

The method employed in the Alachua County impact fee program is the so-called “needs driven” approach, also known as the “standards approach.” This method begins by identifying the level of service for a facility or service, such as 3 acres of parks per 1,000 residents. This would convert to 131 square feet of park area per capita. It would follow that a new home with 2.5 persons in residence would need 327 square feet of park area in order to maintain that standard. Using the historic or projected costs of the jurisdiction, the cost for providing an acre of parks is calculated and then applied to the needs of particular units or types of development. If park costs per acre are found to be \$20,000, the cost per square foot would be \$0.46, the cost per capita would be \$60 and the cost per residence would be \$150.

The alternate method is the so-called “improvements driven” approach. This approach begins by developing an improvement program for a service such as parks. The costs of the growth-serving park improvements are then spread over the units of growth expected during the life of the improvement program. If the level of service is 3 acres of parks per 1,000 residents and if parks cost \$20,000 per acre in the future, the cost would be the same as that of the needs driven calculation. However, it is a rare occurrence when future costs for capital improvements, especially land acquisition, are equal to historic costs. The result is that improvements based impact fees tend to be higher than needs based.

The first set of data needed to calculate impact fees are the land use assumptions, shown in Table 5-7. These data are drawn from the census and other available data from the Alachua County Comprehensive Plan. Between 2002 and 2003, the unincorporated area of the County lost population. This was due to annexations by the City of Gainesville. All the fees except roads are assessed county-wide since those facilities serve county-wide needs.

TABLE 5-7. LAND USE ASSUMPTIONS

	2000	2004	2005	2009	2010
COUNTYWIDE					
Population	215,498	225,501	229,967	248,722	253,643
Dwelling Units	95,113	99,528	101,499	109,777	111,949
Households	87,509	91,571	93,384	101,001	102,999
Res. Floor Area	171,203,400	179,150,337	182,698,225	197,598,576	201,507,875
Office Floor Area	9,405,834	10,391,501	10,577,108	11,317,313	11,557,267
Ind. Floor Area	9,549,169	10,270,777	10,405,283	11,125,264	11,356,194
Retail Floor Area	8,034,555	8,617,640	8,735,609	9,181,358	9,355,909
Total Area	198,192,958	208,430,255	212,416,225	229,222,511	233,777,245
UNINCORPORATED					
Population	104,479	97,388	100,114	111,725	114,814
Dwelling Units	47,535	44,309	45,549	50,832	52,237
Households	43,350	40,408	41,539	46,357	47,638
Res. Floor Area	85,563,000	79,755,787	81,987,886	91,497,211	94,026,841
Office Floor Area	7,793,405	8,181,599	8,763,889	9,413,595	9,576,021
Ind. Floor Area	5,545,421	5,744,287	6,042,586	6,484,359	6,594,802
Retail Floor Area	5,515,470	5,707,971	5,996,722	6,337,375	6,422,538
Total Area	104,417,296	99,389,643	102,791,084	113,732,539	116,620,202

SOURCES: Bureau of the Census, 2000 Decennial Census; Alachua County, March 2004; Florida Statistical Abstract, various years; Bureau of the Census, Annual Estimates of Population for Counties of Florida: April 1, 2000 to July 1, 2003 (CO-EST2003-01-12); Bureau of Economic and Business Research, Florida Population Studies: Projections of Florida Population by County 2003-2030, Bulletin 138, February 2004; Bureau of Economic and Business Research, Florida Estimates of Population, January 2004. Fishkind & Associates, March 19, 2001, memo to Ken Zeichner, Alachua County Principal Planner. Note: The population reported is the total population less those institutionalized.

These assumptions were supplemented with other data on service standards, impact costs, non-local revenues, and new revenues new development may generate that may be used to help finance the same facilities for which impact fees are assessed. The impact fee technical report used these land use assumptions plus cost and revenue data to prepare impact fees for public buildings, fire, rescue, parks, and roads. Except for public buildings and rescue, all fees were adopted. The impact fee calculations for those facilities are summarized in the Appendix A.

Impact fees for all housing units are assessed on a per-square-foot basis for all residential units. Although the technical report recommended that impact fees top-out for homes larger than 3,900 square feet, the impact fee advisory committee recommended and the County Commission adopted a fee that tops-out at 2,600 square feet.⁵⁶ This is purely a policy decision. To further reduce potential effects on housing affordability, the County reduced the road impact fees (the largest of those implemented) to 65% of the potential amount that could be assessed. This was also purely a policy decision. In this case, the concern was that because road impact fees would be by far the largest of all fees, they may impact more on housing affordability. This approach was endorsed by a coalition of residential and commercial developers.

The County's assessment approach is very much in keeping with the guidance contained in this document. It means that larger homes will be charged more than smaller ones. Only a few jurisdictions apply impact fees in this way with most assessing fees based on type of dwelling (single-family detached, townhouse, apartment, manufactured home, etc.) and sometimes by type that is tiered reflecting different size categories. The Alachua County approach is thus designed to reduce potentially adverse effects of impact fees on lower-cost housing because, usually, smaller homes cost less than larger ones. The rationale is sound because larger homes on average have more occupants than smaller ones (see Table 4-2).

Mechanically, impact fees are assessed at the building permit stage but collected prior to the issuance of the Certificate of Occupancy (when the home is finished and ready for occupancy.) That is, the size of the house is determined when application for a building permit is made and the fee is assessed based on the total number of square feet up to 2,600.

Affordable Housing Impact Fee Relief Program for Alachua County

In response to information presented in the 2003 affordable housing study and local residential developers, Alachua County established an *Affordable Housing Impact Fee Relief Program*. In 2005, the County apportioned \$100,000 into the fund. Here is how it works: Qualifying homebuyers must have gross annual incomes less than 80% of Area Median Income, adjusted for family size, as established annually by the United States Department of Housing and Urban Development. In 2004, the most recent year applicable, the median family income was \$52,200⁵⁷ of which 80% would be \$41,760.⁵⁸ It is difficult to tell how many households seeking to purchase new homes would benefit from this approach, however.

⁵⁶ These draft reports are not official but give some insight into deliberations.

⁵⁷ From http://www.web-mtg.com/Public/florida_news/florida_median_income_areas_cities_counties.htm#median_income_2004_florida_counties accessed September 9, 2005.

⁵⁸ Table 5-7 indicates that the average household size was 2.41 in 2004. Assuming 5% down, 30-year period, 6% interest, and \$300 other monthly obligations, such a household could afford to purchase a home of about \$93,000. Payments would be \$675 per month.

The maximum purchase price of a qualifying single-family home cannot exceed the maximum allowable purchase price as established in the Alachua County State Housing Initiatives Partnership Program Local Housing Assistance Plan (2004). That plan, adopted in 2004, capped purchase prices at \$131,603 for new construction and \$103,000 for existing homes. The 2006-2008 SHIP Local Housing Assistance Plan, adopted in 2005, caps purchase prices at \$140,000 for new construction and \$103,000 for existing homes. (Note: an existing home would be subject to payment of impact fees in the case where a permit is issued to build additional living space.) The most recent federal income tax return is used to verify household income and family size.⁵⁹

For qualifying sale of new homes to low-income households, the impact fees assessed at the building permit stage are turned into a “soft second”⁶⁰ mortgage at the certificate of occupancy stage with 0% interest as a deferred mortgage over five years. At the end of each year, 20% of the second mortgage is forgiven and at five years it is forgiven completely. The balance of the second mortgage is due on sale or refinance if homes are sold or refinanced within the five-year term, regardless of the buyer’s or seller’s current income. No income tests are necessary after the initial assistance is provided to the buyer as the soft second mortgage is not transferable.

The extent to which this program is effective cannot be immediately known. The County budgeted \$100,000 in general revenue to fund the first year of the program, but as of October 1, 2005, no funds have been expended for this purpose. Nevertheless, it may be too early to assess the effectiveness of this program as impact fees have been assessed only on building permit applications submitted after March 28, 2005. Community outreach by county staff to realtors, builders, and manufactured housing dealerships is in the initial stage. Other potential beneficiaries include homeowners with room additions or accessory dwellings, where building permits are being issued. Local market rate home builders are simply not building homes meeting the affordable housing parameters in unincorporated Alachua County. Indeed, a recent Internet search of homes⁶¹ that would fit the affordable price range for the average household at low income found only 13 new homes of 166 on the market meeting the price parameters, and all these were on one condominium project. However, affordable housing providers do produce new housing under \$140,000 in Alachua County. The Alachua County Property Appraiser’s sales records indicate that 22 new homes sold between September 2004 and January 2005 for a sales price between \$85,000 and \$138,100, for an average of \$114,750.⁶²

⁵⁹ If no tax return is available, then eligibility is based on verification of current income and family size of the household intending to reside in the unit.

⁶⁰ Also called a “silent second” in some applications. This term is used by the County to characterize its program.

⁶¹ www.realtor.com accessed September 9, 2005, for Gainesville and surrounding communities searching for homes built in 2005 (thus “new” homes) under \$145,000.

⁶² Alachua County Property Appraiser website sales search at www.acpafl.org/saleresults.asp for homes built in 2004-2005 between September 2004 to September 2005 in unincorporated Alachua County (city code 0400).

Lessons from the Case Studies

The case studies presented here offer some real-world examples of the affordable housing guidance contained in this Guidebook. Currently, very few communities waive impact fees for affordable housing entirely. The Albuquerque case study shows this can be done where state enabling legislation allows waivers without identifying replacement or substitute revenues. The Atlanta case study reports waivers are financed through a unique “recoupment” system that may be the only one of its kind in the nation, despite being adopted more than a decade ago in 1993. These are two extremes that may not be possible in many states whether or not they have impact fee enabling legislation.

The Alachua County case study offers a third and perhaps more realistic approach to reducing, if not eliminating, impact fees for qualified affordable housing. A modest general fund allocation is provided to offset the cost of impact fees for qualifying affordable housing, and is provided as a soft-second no-interest deferred mortgage. If the subject dwelling remains occupied by the initial buyer for five years, the deferred loan is forgiven.

Chapter 6 - Summary and Conclusions

During the next 30 years, America will need to build about 2 million homes annually to keep pace with demand. It has produced this level of new homes for much of the past decade in large part because of favorable interest rates and reasonably ample land on which to build. Still, the past five years have seen some of the highest rates of housing price increases on record – and for a lot of reasons these are the “good times” in the residential real estate market.

Challenges are looming. Rising interest rates are already cooling new construction. Rising energy prices will erode personal disposable income. Foreign competition for such building materials as steel, concrete, lumber, and even gypsum (for wallboard) reduces domestic supply and increases construction prices. The next few years in new housing construction may see a reduction in supply that when coupled with growing demand and rising prices may reduce greatly the amount of housing that is considered “affordable.”

Against this backdrop is increasing demand put on local governments to provide quality public services and facilities. Congress and most statehouses are devolving responsibility for local financing of local public facilities and service to local governments. States have also acted in numerous ways to restrict facility financing options.

Impact fees have evolved as an important means of bridging the gap between facility needs and the revenue available to pay for them. Impact fees have many detractors who argue correctly on public finance and social welfare grounds that impact fees are not the best solution to solving local facility financing problems. However, for reasons related to taxpayer resistance, legal constraints and pragmatism, impact fees are often viewed as the necessary evil to solve pressing needs.

The potential effect of impact fees on housing affordability is hotly debated, with evidence seemingly supporting all views. Impact fees are likely here to stay but that does not mean they are rigidly implemented instruments of public policy. To the contrary, the impact fees of the 1970s bear little resemblance to those of the 2000s. One significant area of evolution is in calculating the fees. As noted above, much can be achieved to soften the potentially adverse effect of impact fees on housing affordability. And if that is still not enough there exist other approaches in which potentially adverse effects can be softened further if not eliminated entirely.

It is hoped that HUD's Guidebook will elevate impact fee practice to the point where every reasonable design and calculation approach is used to protect or advance housing affordability, while fairly and accurately serving underlying societal needs.

APPENDICES

Appendix A. The Relationship between Impact Fees, Planning and Exactions

This appendix puts impact fees into the context of planning and broadly reviews their relationship to exactions.

Impact Fees and Planning

Impact fees come near the tail-end of a planning and implementation process.⁶³ The legal logic for impact fees came initially through the exercise of local police powers provided in home rule charters, subdivision regulation authority, zoning enabling legislation, and utility statutes. Since they must be tied to regulation, they are sometimes called regulatory impact fees. They must be based on the relationship between growth and its demand on facilities needed to serve it. Also, they must not exceed the “proportionate share” of the impact of growth on facilities. This is the foundation of the “dual rational nexus test” (see section on proportionate-share impact fees).

The Georgia Department of Community Affairs, provides useful guidance on how this is established. First, long-range projections of population, housing unit demand, and employment growth are made and adopted officially. This is typically over a 10- to 20-year planning horizon.

Second, community planning goals are established that are designed to guide growth consistent with them. One or more goals may relate to housing affordability – a topic addressed elsewhere in this Guidebook.

Third, a comprehensive, long-range (typically 10- to 20-year) land use plan is prepared to help guide development to achieve planning goals.

Fourth, the projections are converted into facility demand. Suppose a community will double in population, adding 100,000 new residents over the planning horizon. Suppose also that it already has 500 acres of park land or 5 acres per 1,000 residents. Its current “level of service” is thus 5 acres per 1,000 residents. If the community is satisfied with the current level of service, it may adopt it as the official level of service standard. The next 500 acres of park are thus included generally in a long-range capital improvement element (CIE).

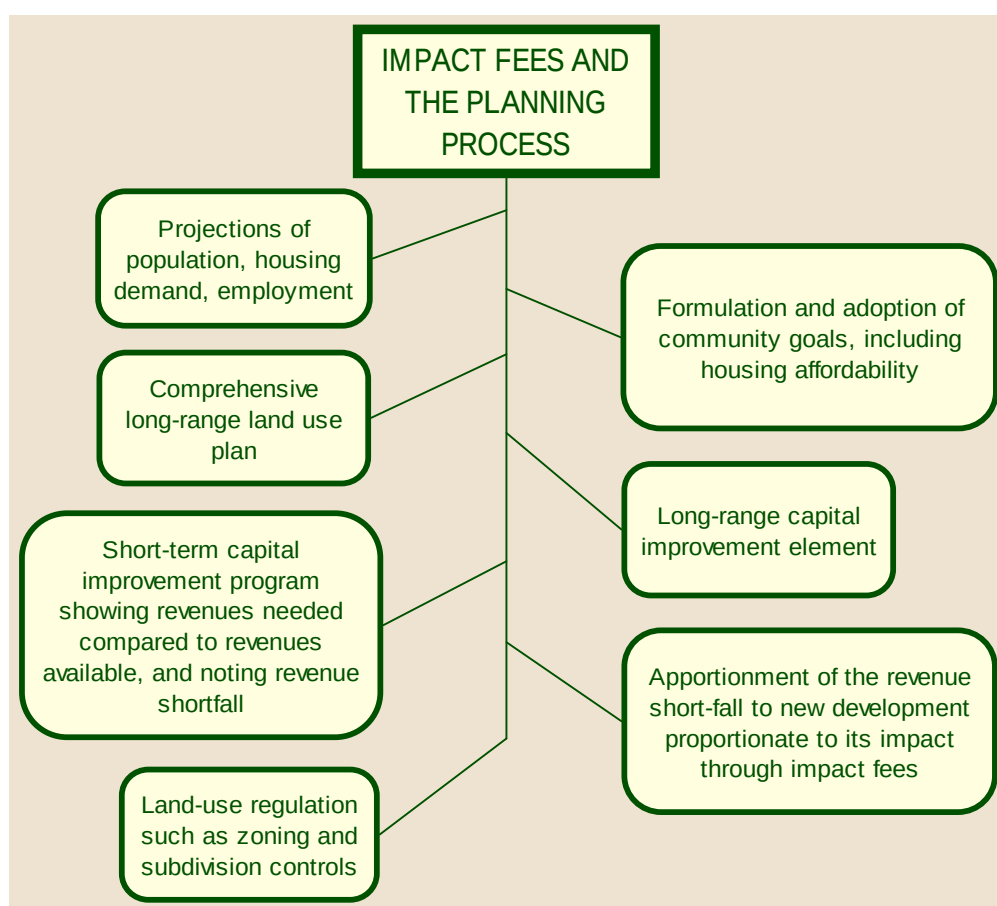
The Capital Improvement Element is implemented by a capital improvement program (CIP) which in Georgia is typically five to 10 years. This is the fifth step. In the case of parks, it shows the park land and acquisition improvement projects needed over that period to accommodate new development. Costs are estimated and sources of revenue available to cover those costs are identified. These revenue sources may include federal, state, and local funds, gifts from foundations, civic groups or individuals, and

⁶³ For a review of the planning and impact fee process, see Edward J. Kaiser and Raymond J. Burby “Exactions in Managing Growth: The Land Use Perspective” in *Private Supply of Public Services* edited by Rachelle Alterman New York University Press (1988). See also James C. Nicholas, Arthur C. Nelson, and Julian C. Juergensmeyer, *A Practitioners’ Guide to Development Impact Fees*, American Planning Association (1991). For a general review of the land-use and facility planning process, see Edward Kaiser, David Godschalk, Philip Berke and F. Stuart Chapin, *Urban Land Use Planning*, fourth edition, University of Illinois Press (2006).

dedicated sources of revenue such as a dedicated property tax used to expand park inventory. If there is a short-fall in revenue needed to fully-fund the park CIP, impact fees are used to make up the gap.

Impact fees are themselves the sixth step of the planning and implementation process. Once the CIP gap has been identified a process is undertaken to apportion the shortfall in revenues to benefiting development. An impact fee schedule is developed and applied to land development permits, building permits, and/or certificates of occupancy as determined locally.

The last step in the process is designing and implementing land development regulations. Zoning and subdivision controls regulate the actual timing, shape, density and other features of development especially including residential development. Once a development has been deemed consistent with zoning and subdivision regulations – and others as locally required, it is then assessed impact fees proportionate to its impact on facilities as determined from the first five steps in the planning and implementation process.



Impact Fees and Exactions

The land-use regulatory step itself may include other forms of exactions. Suppose for example that land needs to be rezoned and then subdivided to meet a developer's objectives presumably consistent with the goals and framework of the comprehensive land-use plan. The rezoning process may identify unique or unanticipated impacts of it on the community. These may include environmental, habitat, localized facility, and other impacts. Comprehensive plans, CIE's, CIP's and impact fees cannot anticipate all potential

forms of development impacts so it is the rezoning and subdivision stage that does so. Drainage, stream setback, buffers, access improvements, utility extensions and so forth may be needed to assure the development mitigates impacts not covered by impact fees or other community-based investments shown in the CIP. Subdivision regulations also assure that on-site improvements are made at no or relatively little cost to the community – although those improvements are usually dedicated to the community for long-term maintenance after they are installed and accepted.

Rezoning and subdivision exactions are negotiated as part of the development approval process. After the rezoning (if needed) and subdivision final orders have been adopted, the developer then pays impact fees to mitigate the off-site facility impacts the final orders do not cover. The distinction here is that there is a two-stage development approval process, one that addresses unique and development-specific impacts and the other that addresses community-wide development impacts on facilities.

Two qualifications are in order. About half the states have impact fee enabling statutes but nearly all of them limit the use of impact fees to a list of facilities (see Chapter 3). Thus, if a development impacts facilities for which impact fees are not or cannot be assessed, it may be required to mitigate its impact on those facilities through additional exactions. In addition, if a development exaction includes money or improvements to mitigate off-site improvements that would otherwise have been paid through impact fees, the development receives a credit against those impact fees to avoid double-charging.

There is another set of “near impact fee” exactions that are used commonly. For example, many communities require a share of land within developments to be dedicated to the public for such uses as parks, school sites, and other facilities. Where a community park impact fee pays only for community- and regional-scale parks but not local ones, mandatory land dedications for local parks may not be subject to an impact fee credit. In states where school impact fees are not enabled or communities that choose not to have them, mandatory land dedications for school sites – or fees in-lieu based on the land value – do not result in an impact fee credit.

There is probably room for improvement in how exactions other than impact fees are implemented. In many communities, impact fees are a relatively minor part of the total package of development exactions. On-site infrastructure exactions such as for subdivision improvements are usually far larger in total cost than impact fees. Thus, from the perspective of housing affordability, understanding the nature of how other exactions are negotiated or calculated is recommended. Often, exactions provide benefits to future development that are not recovered by the exacted development. In part this is simple expediency on behalf of local government and even the developer. To craft a non-impact system to recoup the value of infrastructure for the benefit of the exacted development can be complex, and can obligate local government to more burdens. Nonetheless, this Guidebook recommends that some effort be made to do so.

For example, so-called “latecomer” assessments should be allowed more liberally than they are perhaps at present. A latecomer assessment is a public-to-private agreement that new development benefiting from improvements installed by previous developments for its benefit is assessed its proportionate share of the benefit value. The funds are collected by the local government – based on a formula akin to impact fees – and then rebated to the developer creating the benefits. Latecomer fees are allowed in many states but should be enabled by all and used more liberally in those that already have the authority. This is just another way in which to soften the effect of exactions on housing affordability.

Appendix B. Special Assessment Districts

This appendix draws heavily from local improvement district concepts and procedures in Washington State, particularly Chapters 35.43 through 35.56 RCW. The procedures reviewed here are common among local improvement districts, special assessment districts, municipal utility districts, and other mechanisms by which a project's infrastructure – including off-site infrastructure – can be financed through long-term debt retired by new development, thereby avoiding impact fees. A distinct advantage over impact fees is also that special assessment districts can finance operating expenses, rehabilitation, and renewal of infrastructure.

Once approved locally, special assessment district processes ultimately lead to the sale of bonds to investors and the retirement of those bonds via annual assessments on the property owners within a district. Goals of the special assessment district process are twofold:

- ✓ to present a bond portfolio to investors that will entice them to invest at as low a rate of return as possible; and
- ✓ to assess property owners as fairly as possible in relation to special benefits received.

Washington State statutes specify that the assessment per parcel must not exceed the special benefit of the improvement to that parcel, which is defined as the difference between the fair market value of the property before and after the local improvement project. This helps improve equity as higher value properties will be assessed higher amounts. In addition, Washington State statutes require that the assessments must be proportionate to one another.

Washington statutes provide for two specific methods of assessing benefited properties, but also allow the local government to choose any other method which meets the basic criteria. The two main assessment methods are:

- ✓ The “mathematical” method, which is relatively inexpensive to create and easy to explain to property owners. It can be composed of front-foot assessments for roads (per lineal foot of property street frontage), area (per square foot of property), zones or sectors, and units (per lot or parcel). It is possible to use several different types of mathematical assessment within one district.
- ✓ The “special benefit analysis,” which furthers proportionality but is more costly to implement. It involves using a certified appraiser to calculate the value of each parcel with and without the infrastructure improvement project, calculate the difference between those two values (the special benefit), apportion project costs assignable to the special assessment district to all special benefits, and use the ratio to determine the assessment for each parcel.

One important feature of Washington's special assessment district statute is that off-site infrastructure improvements can be provided. Thus, instead of charging development within the special assessment district impact fees for off-site infrastructure, the special assessment district itself can theoretically generate the equivalent in fees through either in-kind construction or revenue produced through the sale of special assessment district bonds.

In Washington, special assessment districts have been found to be very well-suited for filling in gaps in a city's existing infrastructure such as in older plats where the full complement of today's required improvements do not exist. Special assessment districts can also provide a means for whole neighborhoods to improve their quality of life, using long-term financing at relatively lower interest rates.

Typically, because special assessment districts are governmental entities complete with their own budget, the local governing body becomes the governing body for them. Although the typical special assessment district dissolves once the bonds have been retired, expanded versions of special assessment districts can allow for the local governing body to establish a budget, provide staff or contract out as needed, make and collect assessments, and provide for operations, rehabilitation, and replacement over the long term.

Appendix C. Land Purchase Option Contract Language Accounting for Impact Fees at the Purchase of Land

The following is sample language included in the land purchase option contract provided to the authors by a developer/builder in Florida. It provides in part that the final price of land to be purchased will be reduced by the anticipated impact fees to be paid.

Section [____]. Purchase Price Adjustment. To the extent the purchaser is required to pay, either before Closing or within one (1) year after the Closing, to the City of [____], and/or to the County of [____], and/or to the State of [____] or any other governmental or quasi-governmental authority or entity any development "impact" fees or other surcharges (hereinafter referred to as "Charges") associated with the development of the Property (other than fees or charges for customary permits such as zoning, site disturbance and building permits), the Purchase Price shall be reduced by the sum equal to the amount actually assessed and paid by the Purchaser for such Charges. In the event such Charges are assessed against the Purchaser or the Property prior to Closing, the Purchase Price shall be reduced by such amount, in addition to any other adjustments, credits or prorations otherwise provided in this Agreement. The Purchaser shall provide the Seller with such documentation as the Seller shall reasonably require with respect to the assessment of such Charges. In the event such Charges are assessed against the Purchaser or the Property after Closing, the Purchaser shall promptly deliver to the Seller notice of such assessment, whereupon the Seller shall have ten (10) days after the receipt of notice of such assessment within which to remit to the Purchaser a portion of the Purchase Price representing the amount of such Charges. Nothing set forth in this Section [____] shall vest, or be deemed to vest, in favor of the Seller any right to appeal, contest or otherwise challenge the validity or amount of any Charges assessed against the Purchaser or the Property, and the Seller hereby expressly covenants and agrees not to contest the validity or amount of any such Charges. The provisions of this Section [____] shall survive Closing and the delivery of all instruments of conveyance set forth herein.

Appendix D. Proportionate Share Impact Fees and Housing Affordability

Introduction and Overview

An examination of impact fees nationwide and in individual markets shows a remarkable range in the approach and methodologies by which impact fees are assessed. Given the large number of localities that have implemented impact fees and the range in purposes, this range is not surprising. What is increasingly clear is that there are considerable inequities in the ways impact fees are often assessed. Variations in housing type, unit size, density, and other factors have an effect on costs but are often not accounted for in impact fee studies. Impact fees, if not carefully constructed, can be regressive as applied and a fundamental violation of equity. The purpose of this briefing paper is to highlight the variables that can create the greatest negative impact on housing affordability and inadvertent inequities that disproportionately affect the smallest and most affordable units. The approach is to provide an overview of the concerns and a series of examples with appropriate data to validate the issues.

An article in *Units*, the trade magazine for the National Apartment Association, offers important insights into differences in impact between different types of dwellings.⁶⁴ The example is of Volusia County, Florida, which charges impact fees of \$1,927 for each new dwelling unit to help cover its cost of providing fire protection, parks, and public schools to apartment residents – regardless of type. Because impact fees for residential units are based on occupancy or number of persons per unit, the County perhaps reckoned that with an average of 2.02 persons (based on the 2000 Census), the impact of the typical dwelling on these facilities amounts to \$953 per person, or \$1,925 per unit.

A closer look at Census figures, however, reveals that the average persons per occupied unit for single-family detached homes is 2.39, but for apartments it is 1.17, less than half. To be equitable, these impact fees should be \$2,277 for single-family homes and \$1,115 for apartments. Instead, single-family homes pay \$350 less than they should while apartments pay \$812 more. In Volusia County, impact fees are not proportionately assessed on apartments considering average apartment occupancy rates. Unfortunately, this is not an isolated example.

This briefing paper begins with a review of equity principles, explores different conceptual applications, reviews actual applications in selected communities, and offers insights to advance professional impact fee practice.

Equity Basics

Impact fees are one-time charges assessed on new development to help pay for the new or expanded infrastructure it needs. After a generation of rapidly growing national acceptance, the impact fee debate continues. That debate has evolved, however, from *whether* impact fees should be assessed at all to *how* they are assessed.

Impact fees elicit concerns about equity. Intergenerational equity may be of concern because impact fees assessed on new homes may adversely affect the ability of the children of current residents of the

⁶⁴ Arthur C. Nelson, National Apartment Association, *Units*, (2004).

community to buy homes where they grew up. Representational equity may be of concern because to the extent that impact fees are assessed on new homes bought by new residents of the community, these new residents had no say in the adoption of the policy. Equity in endowments may be of concern to the extent that impact fees are considered a form of “initiation” fee into a community much like country clubs charge high initiation fees affordable only to the affluent. While these concepts of equity are important, the focus of this briefing paper is on proportionate equity – that is, the extent to which the fee reflects the actual impact different housing units have on community facilities. The legal principle of proportionality is reviewed in another briefing paper so the focus here is on applying the principle through calculations.

A critical aspect of proportionality is the extent to which impact fees are based on the *impact* of new development on facilities. Consider new residential development. In the Volusia County example above, the county merely assumed that each residential unit had the same impact on facilities regardless of size, type, density, location, or other factors. Hence, the impact fee for a large single-family detached home is the same as for a small efficiency apartment despite the fact that census figures clearly show substantial differences in occupancy rates. The following discussion reviews differences in proportionate impacts based on dwelling unit type, size, density, location, and configuration.

Dwelling Unit Type: The Volusia County example illustrates that different residential unit types have proportionately different levels of occupancy that in turn impact facilities differently. The example of school impact fees, which tend to be among the highest of all impact fees, is reviewed here. Based on data from the 2000 Census, the average student generation rate in Volusia County is 0.41 per single-family home but only 0.13 for apartments with an overall county average of 0.31 students.⁶⁵ In other words, charging the same school impact fees for apartments as for single-family detached homes means that apartments are charged proportionately about 2.5 times more than their average impact while single-family detached homes are charged about a quarter less. The effect is that apartments are subsidizing detached homes.

Size: Size also matters. Remember that impact fees are one-time charges on new development to help pay for the public facilities needed to serve it. Conceptually, if new single family detached homes built in the community averages 2.5 persons per unit, the construction of an average new single family detached home adds 2.5 people to the community. If the community wishes to maintain the current “level of service” that is, say, 5 acres of improved park land per 1,000 residents, this would be 0.005 acres per new resident which, multiplied by 2.5 persons per unit, means the new home will require 0.0125 acres of new park land to maintain the desired level of service. If the cost of an improved acre of park land is \$100,000, the impact fee per unit would be \$500 per new resident or \$1,250 per new home. In some communities, this is precisely how impact fees are calculated and assessed for all new homes constructed regardless of size. Yet, census data show that the smaller the dwelling unit (regardless of type) the fewer the number of people who live in it on average. Detached homes of 1,000 square feet for example average about 2.19 persons per unit while homes of 3,500 square feet average about 3.02 persons (see Table 4-3). Thus, to be proportionate to differences in impact, impact fees should really range from \$1,093 for the smaller home to \$1,510 for the larger home.

⁶⁵ Figures from 2000 US Census 5% Public Use Micro Sample (PUMS) data; figures shown are public school students attending pre-school through 12th grade per total unit—students per occupied unit are 0.44 for single-family detached and 0.19 for apartments with 5 or more units and 0.35 for all units.

This leads to a related issue of proportionality – vertical equity. Conceptually, higher-income households are better able to afford things than lower-income households. Although impact fees are not based on income, there is an important albeit subtle relationship between house size, income, and the burden impact fees have on households based on house value and income. This distinction is raised here because one of the concerns about impact fees is their effect on housing affordability related to household income. A fixed fee will thus be higher proportionately on the smaller home with a lower value (and on average fewer people) than on the larger home with a higher value (and on average more people). Table 1 shows the relationship between house value and house size. Clearly, as house size increases so does its value.

Table 1. Relationship Between House Value and House Size (in Sq. Ft.)

House Value	Size	House Value	Size
Less than \$10,000	900	\$80,000 to \$99,999	1,614
\$10,000 to \$19,999	1,044	\$100,000 to \$119,999	1,716
\$20,000 to \$29,999	1,188	\$120,000 to \$149,999	1,834
\$30,000 to \$39,999	1,314	\$150,000 to \$199,999	1,999
\$40,000 to \$49,999	1,378	\$200,000 to \$249,999	2,183
\$50,000 to \$59,999	1,451	\$250,000 to \$299,999	2,332
\$60,000 to \$69,999	1,478	\$300,000+	2,500+
\$70,000 to \$79,999	1,513		

Source: Adapted from American Housing Survey 2001.

Table 2 goes one step further by showing the relationship between house size, household income, persons per unit, and lot size. Clearly, as house size increases so does household income, persons per unit, and lot size. The implications of this table on housing affordability should be clear. If calibrating impact fees to be sensitive to affordable housing concerns is desired, scaling them based on house size is necessary because as house size increases so do average occupancy levels and hence impact on facilities. Unfortunately, these simple relationships are usually not considered in impact fee methodologies with the result that impact fees are normally regressive as applied – that is, they fall disproportionately on smaller homes with lower values and fewer occupants with lower incomes than on larger homes. This is a fundamental violation of equity.

Table 2. Relationship Between House Size, Household Income, Persons Per Unit, and Lot Size

House Size	Income	Persons	Lot Size
Less than 500 square feet	\$21,982	2.21	0.22
500 to 999 square feet	\$27,370	2.27	0.25
1,000 to 1,499 square feet	\$37,187	2.51	0.33
1,500 to 1,999 square feet	\$52,134	2.69	0.37
2,000 to 2,499 square feet	\$63,649	2.89	0.43
2,500+ square feet	\$76,526	3.02	0.52

Source: Adapted from American Housing Survey 2001.

To address housing affordability concerns, DeKalb County, Georgia, is considering one of the nation's first comprehensive proportionate share impact fee, methodologies that recognizes differences in impact based on house size. Its methodology for parks and recreation, libraries, public safety facilities, and transportation results in impact fees totaling \$1.66 per square foot. Not only was the county able to generate data and

craft a methodology that converts facility impacts for a wide range of facilities – including transportation which heretofore has rarely been done – but it has also done so in a manner that is consistent with the logical extension of proportionality. This is a breakthrough for national impact fee practice. As currently under consideration, Table 3 shows that for homes of 900 square feet (about the median size of a Habitat for Humanity house in metropolitan Atlanta) which average about 1.9 persons per home, the impact fee is \$1,330 or 1.7% of the house value and 3.4% of the average annual income of the household. In contrast, for homes of 3,500 square feet that average 3.3 persons per unit, impact fees are \$5,818 or 2.2% of the house value and 6.3% of the average household income.

Table 3. DeKalb County, Georgia, Progressive Impact Fee System

Size	Value	Persons	Fee	Percent of Home Value	Income	Percent of Income
900	\$79,819	1.9	\$1,330	1.7%	\$39,127	3.4%
1,300	\$115,295	2.2	\$2,161	1.9%	\$51,652	4.2%
1,800	\$143,142	2.3	\$2,992	2.1%	\$63,346	4.7%
2,300	\$189,197	2.7	\$3,990	2.1%	\$81,362	4.9%
3,500	\$269,573	3.3	\$5,818	2.2%	\$92,143	6.3%

Source: Calculated from the *American Housing Survey* 1996 for Metropolitan Atlanta, GA, interpolated and adjusted to 2004 values.

It is important to note that the “progressive” nature of impact fee assessments contemplated by DeKalb is coincidental – the impact fees are based proportionately on different levels of impact generated by housing units of different sizes, not on incomes or values.

Density: It goes almost without saying that apartments are of higher density than single-family homes and for this reason there is the normal perception that they contribute more to highway congestion than lower-density, single-family detached homes. Yet, as will be seen below, higher-density areas result in fewer automobile trips at shorter distances per trip. Spreading out development requiring more and longer trips may exacerbate congestion. This is an important consideration because while impact fee programs give a break to apartments based on data from the Institute of Transportation Engineers (ITE) *Trip Generation* (now in its 7th edition) that show fewer trips per apartment unit than per single-family detached unit (including Volusia County), they do not consider lower trip distances between apartment and single-family detached units based on other federal travel data. Thus, while Volusia County’s road impact fees for apartments are 30 percent less than for single-family homes based only on trips, there is no further adjustment for vehicle miles traveled (VMT). Why is this important? The higher the VMT the more road capacity is required to accommodate the traffic impacts. Volusia County’s road impact fees may thus over-charge for residential development in higher-density areas for this reason.

Location: Location also matters. Thus far only one impact fee program has been identified that reduces impact fees based on proximity to rail transit stations and none with respect to bus lines. Atlanta recognizes the reduced impact on roads because of close proximity to public rail transit. The city reduces impact fees by 50 percent for all multifamily communities within one-quarter mile of rail transit stations and 25 percent for developments between one-quarter and one-half miles. This was instituted in 1993, but it is possible that Atlanta remains the lone pioneer. DeKalb County, Georgia, is considering reductions in road impact fees for new development located along bus corridors; the reductions may range from 10 percent to 30 percent.

Configuration: Mixed-use developments also reduce road impacts. For example, some studies of mixed-use projects show up to a 40 percent reduction in road impacts. When living-working-shopping-services are all nearby, fewer car trips are needed and certainly the distance traveled is reduced. New urbanism, new towns, new communities, planned unit developments and the like probably all reduce their impact on facilities. Numerous examples exist but have not been codified into impact fee studies.

Impact Variations by Housing Type

This section presents information showing how impacts between different residential types and sizes vary in terms of type, size, location, density, and configuration. To help with this assessment, four housing prototypes are devised and compared with an average dwelling as shown in Table 4. Figures for house size (in heated/cooled square feet), lot size (or its equivalent in terms of attached units), density, occupants, and public school students are roughly comparable to national averages for each prototype although there will be regional variations. Note that we highlight “Average Dwelling” using figures that are intended to be reasonably typical of the average of all dwelling units.

Table 4. Five Housing Prototypes

Unit Type	Living Area in Square Feet	Lot Size in Square Feet	Acres Per Unit	Units Per Acre	Occupants Per Unit	Public School Students Per Unit
Detached Large Lot	3,000	20,000	0.500	2.0	2.75	0.65
Average Dwelling	2,000	10,000	0.250	4.0	2.50	0.50
Detached Cluster	1,500	5,000	0.125	8.0	2.25	0.25
Townhouse/Low-Rise Apartment	1,200	3,000	0.075	13.3	2.15	0.22
Apartment/Condo	900	1,000	0.025	40.0	2.00	0.20

Source: Adapted by authors from the *American Housing Survey 2001*.

Because many local governments charge impact fees for all residential units based on a single average, a comparison can be made between impact fees assessed for the average dwelling in relation to larger and smaller units, and attached and detached units. For instance, Table 5 shows results from a recent national survey, indicating that more than one-third of jurisdictions assessing impact fees charge a flat fee for all units without respect to type, size, or other characteristics for at least one facility. The survey also showed that an average of 17 percent of all jurisdictions surveyed have a flat rate for all residential development and 34 percent do so for at least one facility.

Table 5. Distribution of Jurisdictions Charging Flat Fee For Residential Development

Facility	Percent Charging One Fee
Roads	5.8 %
Water	11.4%
Wastewater	11.6%
Stormwater	8.5%
Parks	22.6%
Library	20.0%
Fire	21.6%
Police	29.2%
General Government	33.3%

Schools	9.3%
Average	17.3%
Any Facility	33.9%

Source: Duncan Associates, national survey, February 2005.

Table 6 shows the facilities for which impact fees are considered along with level of service standards and net impact costs.⁶⁶ The impact costs per unit of impact are rounded averages based on national surveys.

Table 6. Impact Fee-Financed Facilities, Net Impact Cost, Level of Service

<i>Facility</i>	<i>Impact Unit</i>	<i>Net Impact Cost Per Impact Unit</i>	<i>Level of Service</i>
Libraries	Persons	\$100.00	2 books per capita @ \$50 net cost per book including land and capital costs.
Parks	Persons	\$250.00	5 acres of park per 1,000 residents @ \$50,000 net cost per acre including land and capital costs.
Fire/EMS*	Dwelling	\$60.00	\$1,000,000 net cost to serve the average density including land and capital costs.
Police	Dwelling	\$30.00	\$500,000 net cost to serve the average density including land and capital costs.
Schools	Student	\$3,000.00	Net cost per student station including land and capital costs.
Roads	Miles	\$50.00	Net cost per average daily trip mile and 20 net daily miles per person including land and capital costs.
Drainage	Sq. Feet	\$0.75	Net cost per impervious square foot including collection and storage network.
Water	Gallon	\$5.00	Net cost per gallon of treatment and storage but not network costs; 100 gallons per person, average daily demand during peak month.
		\$250,000	Net cost per mile of water main.
Wastewater	Gallon	\$5.00	Net cost per gallon of treatment but not network costs; 80 gallons per person, average daily demand during peak month.
		\$250,000	Net cost per mile of wastewater main.

Source: Adapted by authors from national survey of impact fee use by Duncan & Associates, February 2005. Net costs mean those after accounting for other revenues available to finance the same facilities for which impact fees are to be assessed. Fire/EMS and Police assumes 5-minute response time in an area serving a uniform density of 0.25 acres per unit, total of 17,920 units.

These costs are in line with typical communities based on level of service standards observed nationally.⁶⁷ Costs can vary based on level of service policies, land, local construction, and labor conditions.⁶⁸ Considered separately now are how costs vary based on type and size of unit, density, location, and configuration.

Variation Based on House Size and Type

⁶⁶ "Net" impact costs mean capital facility impact costs per unit of development less new tax, fee, and other revenues generated by new development that help finance the same facilities, such as that portion of a dedicated school facility property tax that is used to pay debt service for new schools.

⁶⁷ See the briefing paper on extent and variation of impact fees.

⁶⁸ For water and wastewater, we assume 100 gallons demand per capita per day for the average annual day and 115 gpcpd for peak month average daily demand. For wastewater we assume 90 gpcpd for both.

Table 7 shows the variation in impact fees between the four prototypes based only on house size and type of unit. Communities that charge impact fees based on only the average unit will typically under-charge larger units on larger lots and over-charge smaller, often detached units on smaller lots or at higher density. In this example, the net impact cost to serve a large home on a large lot is \$13,470 but the impact fees would be \$10,350 or 23 percent less when based on average house size. On the other hand, smaller homes, townhouses, and apartments at higher densities cost less than the average yet would pay impact fees ranging from \$1,710 to \$3,945 or 20 percent to 62 percent more than their net impact cost.⁶⁹

Table 7. Variation in Impact Fees Based on House Size and Type

<i>Facility</i>	<i>Average Dwelling</i>	<i>Detached Large Lot</i>	<i>Detached Cluster</i>	<i>Townhouse/ Low-Rise Apartment</i>	<i>Apartment/ Condominium</i>
Impact Measure	Development Impacts By Unit Type				
Persons Per Unit	2.5	3.00	2.25	2.15	2.00
Students Per Unit	0.5	0.650	0.250	0.220	0.200
1-Way Miles	50	60	45	43	40
Impervious Land Per Unit	4,000	6,000	3,500	2,250	1,500
Gallons Water	250	300	225	215	200
Gallons Wastewater	200	240	180	172	160
Facility	Net Facility Impact Costs By Unit Type				
Libraries	\$250	\$300	\$225	\$215	\$200
Parks	\$625	\$750	\$563	\$538	\$500
Fire	\$150	\$180	\$135	\$129	\$120
Police	\$75	\$90	\$68	\$65	\$60
Schools	\$1,500	\$1,950	\$750	\$660	\$600
Roads	\$2,500	\$3,000	\$2,250	\$2,150	\$2,000
Drainage	\$3,000	\$4,500	\$2,625	\$1,688	\$1,125
Water	\$1,250	\$1,500	\$1,125	\$1,075	\$1,000
Wastewater	\$1,000	\$1,200	\$900	\$860	\$800
Total Net Impact Cost	\$10,350	\$13,470	\$8,640	\$7,379	\$6,405
Over (Under) Charge Amount		(\$3,120)	\$1,710	\$2,972	\$3,945
Over (Under) Charge Percent		-23.2%	19.8%	40.3%	61.6%

Source: Calculations by authors.

This example, based on reasonable estimates of national averages, shows that charging impact fees on the basis of only the average size of the dwelling unit results in larger homes at lower densities being subsidized by smaller, usually more affordable homes at higher density.

Impact Variation Based on Density

For some facilities, density probably is not a determinative factor in calculating impact fees. Libraries, government administration, and schools come to mind (aside from school bus costs that will vary by density). Other facilities range from being mildly to greatly influenced by density such as utilities, transportation, and public safety facilities – principally fire and emergency medical response.

⁶⁹ Water and wastewater charges based on average daily demand.

Numerous studies have shown that density is a substantial influencing factor in extending wastewater and stormwater systems. Burchell's synthesis of literature suggests that higher-density development (more than 6 units per acre) is about 20% to 30% less costly to serve with wastewater and stormwater services than lower density.⁷⁰ Because the cost effects relating to stormwater facilities are incorporated in the figures above, they are not considered here.

Density of the geographic area within which development occurs (as opposed to density of the development itself – see below for “configuration” of individual development projects) has a strong influence on mode choice to destinations and distance to destinations. Higher-density areas may lend themselves to more walking and bicycling to some destinations than lower-density ones, and higher-density areas may have public transit options that lower-density ones do not. Also, higher-density areas may make the trips between destinations shorter. All this suggests that from the perspective of road impact fees – usually the highest of all impact fees assessed – density matters.

The effect of density on public safety, water and wastewater, and road facility impact is considered here. Public safety facilities need to be located to respond to emergencies usually within 5 to 10 minutes after a call. The more densely developed an area is usually the lower the capital cost (land, buildings, and equipment) per home. For a given number of homes, the size and associated cost of water and wastewater networks decline per home as density increases. Likewise, higher density is usually associated with fewer and shorter road trips. To begin this analysis, five density ranges are created that for convenience are based on the availability of travel data by density range, with an assumed average density within each range.

Table 8. Density-Range Categories and Average Density by Category

Residential Units Per Square Mile, Range	Average Residential Units Per Square Mile
26 – 700	500
701 - 2,000	1,200
2,001 - 4,000	3,000
4,001 - 6,000	5,000
>6,000	7,000

Source: Calculation by authors. Density ranges based on categories of residential unit development at the level of census tracts used by the National Household Travel Survey, 2001.

Consider first density and the cost of public safety facilities. Assume a 5-minute response time as the level of service for fire/EMS and police facilities. In a low-density area, one fire station may be able to serve 10 square miles of development around it but at higher densities perhaps only 4 square miles may be served. Table 9 illustrates the differences in costs associated with different densities per person. Note that costs per person are reduced by about half when density increases from 500 to 1,200 units per square mile, and by another half when density increases to 3,000 units per square mile.

⁷⁰ Robert Burchell, et al., *The Costs of Sprawl Revisited*, National Academy of Sciences (2000).

Table 9. Density-Based Public Safety Facility Net Impact Costs

Residential Units Per Square Mile, Range	Residential Units Per Square Mile, Average	Residents at Constant Occupancy	Square Miles Served by Station and Precinct	Persons Served Per Station and Precinct	Fire/EMS Cost Per Person	Police Cost Per Person	Total Cost Per Person
26 - 700	500	1,250	10	12,500	\$80	\$40	\$120
701 - 2,000	1,200	3,000	8	24,000	\$42	\$21	\$63
2,001 - 4,000	3,000	7,500	6	45,000	\$22	\$11	\$33
4,001 - 6,000	5,000	12,500	5	62,500	\$16	\$8	\$24
>6,000	7,000	17,500	4	70,000	\$14	\$7	\$21

Source: Calculation by authors. Cost per person based on units per square mile times average unit density from Table 4 which is divided into cost per fire/EMS station and police precinct in Table 6.

It is observed that impact fees are typically assessed throughout a jurisdiction without respect to variations in density. The argument is normally made that because public safety facilities serve the entire jurisdiction and each facility backs others, there would be no variation by service area since there would be just one. However, if planning shows clearly different densities between sub-areas of the jurisdiction, density-based impact fees may be considered reflecting the differences in cost illustrated in Table 9.

Consider now variations in water and wastewater capital costs based on density. Two separate issues are considered. First, as density decreases the cost of providing the network of mains and other improvements outside subdivisions increases. Second, the costs of central water and wastewater facilities are roughly constant for average daily personal use but for water vary by time of year reflecting principally lawn irrigation and other outdoor water use.

For the network cost, consider a very simplistic set of assumptions: a) the same size of water and wastewater main can serve the same number of people whether they are concentrated in one square mile of development or 10 (that is, as land area increases density decreases proportionately); b) the main traverses through the center of a square mile and residential developments tap onto it and internalize costs of extending the network within them (that is, each connecting development serves an area a half mile wide); c) the terrain is unproblematic; and d) the cost to install a mile of water and wastewater mains is \$250,000 each or \$500,000 together. These simplistic assumptions allow us to calculate the variation in water and wastewater network costs by density which is done in Table 10.

Table 10. Water and Wastewater Network Costs Per Unit By Density

Residential Units Per Square Mile, Range	Residential Units Per Square Mile, Average	Cost Per Unit
26 – 700	500	\$1,000
701 - 2,000	1,200	\$417
2,001 - 4,000	3,000	\$167
4,001 - 6,000	5,000	\$100
>6,000	7,000	\$71

Source: Calculated by authors. Network costs based on \$250,000 per mile for water and wastewater mains from Table 6.

Central facility demand for normal daily use is roughly the same per person but variation in water demand in certain months occurs as density declines reflecting outdoor use such as for irrigation, swimming pools, and washing cars. For this part of the analysis, we keep persons per unit constant to assure consistent assessment of how costs vary only by density. Table 11 calculates the cost of central treatment demand for both normal average daily use and peak seasonal use.

Table 11. Central Water and Wastewater Treatment Costs Per Unit By Density with Constant Occupancy

Residential Units Per Square Mile, Range	Units Per Square Mile				
	26 - 700	701 - 2,000	2,001 - 4,000	4,001 - 6,000	>6,000
<i>Units Per Acre</i>	2.0	4.0	8.0	13.3	40.0
<i>Persons Per Unit, Constant Occupancy</i>	2.50	2.50	2.50	2.50	2.50
<i>Average Daily Water Demand, Gallons</i>	250	250	250	250	250
<i>Average Daily Water Cost</i>	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250
<i>Average Daily Wastewater Demand, Gallons</i>	200	200	200	200	200
<i>Average Daily Wastewater Cost</i>	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
<i>Equivalent Land Area, Square Feet</i>	20,000	10,000	5,000	3,000	1,000
<i>Additional Average Daily Water Demand During Peak, Gallons</i>	4,000	2,000	800	500	300
<i>Additional Peak Season Average Daily Demand, Gallons</i>	\$20,000	\$10,000	\$4,000	\$2,500	\$1,500
<i>Total Cost Per Unit</i>	\$22,250	\$12,250	\$6,250	\$4,750	\$3,750

Source: Calculated by authors.

Table 12 combines information from Tables 10 and 11 to illustrate water and wastewater fees by density and assuming average household sizes by density as provided in Table 11. The variation is substantial. Costs to serve units at the lowest density (corresponding roughly to large-lot homes) are nearly twice those of the next density category (corresponding roughly to the average-size lots) and nearly four times the

middle density category (corresponding roughly to small and cluster lots). The difference is mostly associated with peak seasonal use which can be reduced through pricing or policy or both. In the absence of such policies, varying central treatment costs by density would appear to improve proportionality in impact fee assessments.

Table 12. Total Water and Wastewater Costs Per Unit By Density With Constant Occupancy

<i>Residential Units Per Square Mile, Range</i>	<i>Network Costs Per Unit</i>	<i>Central Treatment Costs Per Unit, Constant Occupancy</i>	<i>Total Costs</i>	<i>Total Costs Per Person</i>
26 - 700	\$1,000	\$22,250	\$23,250	\$9,300
701 - 2,000	\$417	\$12,250	\$12,667	\$5,067
2,001 - 4,000	\$167	\$6,250	\$6,417	\$2,567
4,001 - 6,000	\$100	\$4,750	\$4,850	\$1,940
>6,000	\$71	\$3,750	\$3,821	\$1,529

Source: Calculated by authors.

This section concludes with consideration of variation in road costs based on density. The principal concern here is whether road demand varies by density. Generally, higher density results in fewer trips and shorter distances traveled between land uses. Table 13 reports average vehicle miles traveled per driver for all residential units and by unit type for 2001 based on density at the census tract level.

Table 13. Average Daily Vehicle Miles Traveled Per Household Person by Unit Type, 2001

<i>Units Per Square Mile</i>	<i>Miles Per Person</i>	<i>Percent Change Between Categories</i>
151 - 700	29.5	
701 - 2,000	27.1	8.4%
2,001 – 4,000	24.0	11.3%
4,001 – 6,000	20.3	15.6%
6,000+	14.2	30.0%

Source: Nationwide Household Transportation Study 2001, calculated by authors based on annual average vehicle miles per drive times drivers per household person by density category divided by 365.

Vehicle miles traveled per person fall with respect to residential density. Between the lowest density (about one unit per four acres) and the highest density (about 10 units per acre – roughly townhouse density), vehicle miles traveled per driver fall by about half. Indeed, the rate of change in reduction in miles traveled per person increases among the two highest density categories, as noted on the table.

It is also suspected that as density increases so does the opportunity to use transit, bicycle, or walk to work. Table 14 shows mode choice for all trips with respect to density (measured at the level of census tracts). Expected patterns emerge. Although the private motorized vehicle mode (car, van, sport utility vehicle, pick-up truck, large truck) dominates in all categories, it falls considerably between the 4,000-6,000 and >6,000 unit-per-square-mile categories (essentially cluster home to townhouse density). Trips via bus nearly double between the same density categories, while rail trips increase nearly six-fold. Walking to work increases at about the same rate between the three most dense categories.

Table 14. Trip Distribution by Density, 2001

Housing Units Per Square Mile	Private Motor Vehicle	Bus	Rail	Bicycle	Walk	All Other Modes
26 – 750	97.0%	0.5%	0.3%	0.1%	1.7%	0.5%
751 - 2,000	95.4%	1.1%	1.2%	0.3%	1.4%	0.6%
2,001 - 4,000	92.4%	2.8%	1.6%	0.4%	2.4%	0.4%
4,001 - 6,000	82.4%	7.4%	3.2%	1.4%	5.0%	0.7%
6,000+	56.6%	13.7%	18.7%	1.4%	8.6%	0.9%
All	90.9%	2.90	2.5%	0.5%	2.8%	0.5%

Source: Nationwide Household Transportation Study 2001, calculated by authors based on mode journey to work by workers using only complete responses and grouping detailed mode categories into the ones reported here.

All these considerations are combined for road impact fee purposes in Table 15. Average daily vehicle miles traveled per person for each density category are reduced by 50% to assign trips half to the origin (the home) and half to the destination to avoid double counting. The adjusted figure is multiplied by the cost per mile of a one-way trip. Although there is little difference between the lowest and second lowest density categories, substantial differences are seen in others. The greatest rate of reduction in miles traveled is between the density categories of 751-2,000 and 2,001-4,000 units per square mile. At the higher density, regularly scheduled bus and light rail service becomes feasible, and land uses are sufficiently close that more non-vehicle trips are needed.

Table 15. Road Impact Fees Per Person by Density Category

<i>Housing Units Per Square Mile</i>	<i>Average Daily Vehicle Miles Per Person</i>	<i>One-Way Miles Per Person</i>	<i>Net Impact Cost @ \$50 Per Mile</i>	<i>Percent Change from Lower Density</i>
26 - 750	26.3	13.1	\$656	
751 - 2,000	24.9	12.4	\$622	-5.3%
2,001 - 4,000	21.7	10.9	\$543	-12.7%
4,001 - 6,000	19.9	9.9	\$497	-8.5%
6,000+	18.6	9.3	\$464	-6.5%

Source: Nationwide Household Transportation Study 2001, calculated by authors. Average daily vehicle miles per person calculated as annual person miles traveled divided by total household members divided by average vehicle occupancy. Cost per mile from Table 6.

Clearly, density matters, especially for facilities such as wastewater, public safety, and highways. Table 16 summarizes impact fees for all facilities except drainage. Density-related facilities include public safety, water and wastewater, and roads while non-density related facilities include libraries, park and recreation, and schools. (Of course these facilities are affected by density but not as much as others.) Seen here is that impact fees per person vary remarkably between the different density categories. Fees per person for the lowest density exceed \$13,000 while for the middle-density category, where transit service becomes feasible, fees per person are less than half.

Table 16. Non-Density Related + Density-Related Net Impact Costs Per Person

	Residential Units Per Square Mile, Range				
Residential Units Per Square Mile, Range	26 - 700	701 – 2,000	2,001 – 4,000	4,001 - 6,000	>6,000
Public Safety Cost Per Person	\$120	\$63	\$33	\$24	\$21
Water and Wastewater Cost Per Person	\$9,300	\$5,067	\$2,567	\$1,940	\$1,529
Road Cost Per Person	\$656	\$622	\$543	\$497	\$464
Libraries	\$100	\$100	\$100	\$100	\$100
Parks and Recreation	\$250	\$250	\$250	\$250	\$250
Schools	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
Total Cost Per Person	\$13,426	\$9,101	\$6,493	\$5,811	\$5,364
Percent Change from Lower Density		-32.2%	-28.7%	-10.5%	-7.7%

Source: Calculated by authors. Stormwater is excluded for brevity.

Table 17 applies these per-person figures to the residential prototypes by density category. (Stormwater is excluded to highlight differences without further complication) Some information presented is probably not realistic such as detached large lots in the highest density category and 40-unit per acre apartments in the lowest density category. However, it is reasonable to compare impact fee levels between the three lowest-density categories since they can apply to county-level situations where all five residential types and all three density categories may be present. Also, to be consistent between residential types, we will only consider the effect of density on each of them. For each residential type, fees are in the order of one-third less in the category of 751 to 2,000 units per mile than in the lowest density category, and they are about half in the category of 2,001 to 4,000 units per square mile. Interestingly, the rate of change beyond about 4,000 units per square mile is not as pronounced. Clearly, to assure proportionality and therefore equity in impact fee assessments, house type, size, and density need to be considered.

Table 17. Impact Fees By Unit Type by Density

	Residential Units Per Square Mile, Range				
Unit Type	26 - 700	751 - 2,000	2,001 - 4,000	4,001 – 6,000	>6,000
Detached Large Lot	\$40,279	\$27,302	\$19,479	\$17,432	\$16,093
Average Dwelling	\$33,566	\$22,752	\$16,232	\$14,526	\$13,411
Detached Cluster	\$30,210	\$20,477	\$14,609	\$13,074	\$12,070
Townhouse/Low-Rise Apartment	\$28,867	\$19,567	\$13,960	\$12,493	\$11,533
Apartment/Condominium	\$26,853	\$18,202	\$12,986	\$11,621	\$10,728

Source: Calculated by authors. Stormwater is excluded for brevity.

Variation in Location

Location is considered in two respects: specific area and distance from service. Specific area means that in some portions of a jurisdiction it is simply more expensive to install infrastructure than in others; for example, a mesa composed of rock versus a talus slope within the same jurisdiction – as seen in Albuquerque, New Mexico. These are idiosyncratic and need to be addressed on a case-by-case basis. Needless to say, impact fees that blend high-cost and low-cost areas together into an average cost applied everywhere would have the effect of charging low-cost areas more and high-cost areas less than their proportionate share of many facility impacts.

Distance from service means that the farther away development is from a specific service, the less likely the service will be used or accessible in a timely manner. Two types of facilities are especially sensitive to this: public safety and public transit. Public safety facilities, such as fire, police, and emergency medical, are often designed to provide service within five minutes of a call. New development that results in service beyond this threshold may require new facilities. However, if no new facilities are provided, there is little penalty other than delay – except for fire service. Fire insurance rates are based in part on response times and if new development extends average response times for the jurisdiction beyond certain thresholds, the fire insurance rating for all property goes up – meaning that fire insurance premiums increase. In terms of impact fees, if more fire stations are needed to serve the same population but across a larger area, fire impact fees will need to be higher. If fees are the same across the jurisdiction – as most are – development in higher-density areas will be paying more than its proportionate share and development in lower-density areas will be paying less. Clearly, density could be a factor in calculating impact fees for fire protection and perhaps other public safety facilities. This is an area worthy of future research.

Accessibility to public transit has a measurable impact on road demand. For example, in Arlington County, Virginia, 47 percent of the workforce commutes via transit and 73 percent of them walk to transit stations – yet its density is only half that of Los Angeles (where transit ridership is less than that of Arlington's). National studies have shown that dwelling units within one-half mile of transit stations have about 60 percent fewer automobiles than their metropolitan area averages. Finally, numerous studies have shown that rail transit ridership ranges from 25 to 50 percent of workers living within $\frac{1}{4}$ mile of stations and half that between $\frac{1}{4}$ and $\frac{1}{2}$ mile, and others indicate that use of bus transit ranges from 15 to 30% for workers living within $\frac{1}{4}$ mile of the bus line and about half that between $\frac{1}{4}$ and $\frac{1}{2}$ mile. The reductions applicable to a given situation will need to be estimated based on local conditions; this need not be difficult, however, as data allowing for such analysis are provided in the Census Transportation Planning Package for all metropolitan areas.

One example application of this type of analysis is a road impact fee recently adopted by the City of Tucson, Arizona, which reduced residential road impact fees in the downtown core area of the city. The 2000 Census data on average travel time to work for workers over sixteen years of age using other modes than public transportation is summarized in Table 18. The data revealed a modest difference between the Central Core area (19.1 minutes) and the rest of the city (21.6 minutes). Additional analysis revealed little differences between other sections of the city. Not only do Central Core residents travel somewhat quicker (and presumably shorter) routes to work when they use automobiles and other private forms of transportation, they are also more likely to use alternative modes of travel. Only 78.8 percent of Central Core residents take private motor vehicles to work compared to 90.8 percent of other city residents. Taking into account both the reduced tendency to use private motor vehicles and shorter trip lengths, residential

development in the Central Core can be expected to generate only about 77 percent of the vehicular travel demand generated by residential development in other parts of the city, as shown in Table 18.

Table 18. Road Reduction Factor for Core Residential Development

	Central Core	Rest of City	Ratio
Percent Driving Private Motor Vehicle to Work	78.8%	90.8%	0.87
Travel Time, Non-Public Transportation (minutes)	19.1	21.6	0.88
Reduction in Road Impact for Residential in Central Core			0.77

Source: Duncan Associates, *Road and Park Impact Fee Study for the City of Tucson*, June 2004, based on 2000 U.S. Census, SF-3 sample data (1 in 6 sample) of workers 16 years or older; Central Core area approximated by Pima County census tracts 1-19, 22, 24-25.01, 26-29.01, 38.01, 45.04-45.05.

Also, consider the potential effect of transit availability on road demand. Using data from the 2001 National Household Transportation Survey, we constructed comparisons shown in Table 19. Metropolitan areas over one million residents with a transit system that included rail have decidedly lower rates of private vehicle use than those without – about 20 percent less overall.

Table 19. Private Vehicle Trips in Metropolitan Areas 1+ Million Population With and Without Transit Systems That Include Rail

	Units Per Square Mile					
With Rail Transit	26 - 700	701 - 2,000	2,001 - 4,000	4,001 - 6,000	>6,000	All
Private Vehicle	95.6%	91.8%	87.0%	75.0%	49.4%	75.3%
Transit	2.3%	6.8%	9.0%	18.1%	40.1%	19.0%
Bicycle	0.1%	0.1%	0.4%	1.5%	0.9%	0.6%
Walk	2.1%	1.1%	3.1%	5.3%	8.7%	4.7%
Other	0.0%	0.2%	0.4%	0.1%	0.9%	0.4%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Without Rail Transit						
Private Vehicle	96.8%	95.9%	93.1%	87.2%	75.9%	92.8%
Transit	1.4%	2.2%	4.4%	7.8%	13.6%	4.3%
Bicycle	0.1%	0.3%	0.3%	0.9%	2.7%	0.4%
Walk	1.5%	1.2%	2.0%	3.9%	7.6%	2.2%
Other	0.2%	0.5%	0.2%	0.2%	0.3%	0.2%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: Nationwide Household Transportation Study 2001, calculated by authors.

Variation in Configuration

Urban form and design heavily impact transportation demand. Mixed uses and, better still, master-planned mixed-use developments, can reduce automobile use substantially. For example, in a typical single-use office/business park, walking trips may account for 3 to 8 percent of all mid-day trips. That figure rises to 20 to 30 percent when other uses are accessible such as shopping, and personal and financial services.

Even greater gains are made when new community design combines compact development (even in the suburbs), mixed uses, connectivity, and networks of pedestrian and bicycle pathways. Modern neo-traditional or new urbanism designs reduce trip lengths and induce non-vehicular use for short trips, especially if also served by mass transit. Studies in California have shown that when compared to

conventional suburban subdivisions with single or few uses, curvilinear streets, and cul-de-sacs, modern new community design can reduce VMT by 50 percent. These adjustments would need to be made on a case-by-case basis.

On this point, it is useful to note that most road impact fee ordinances allow a developer to prepare an “individual fee calculation study” to demonstrate that their project will have less impact on the road system than indicated by the fee schedule. The developer of a mixed-use project could use this option to quantify the reduction in external trips that should be expected due to the nature of the project. For example, the current edition of ITE’s *Trip Generation* shows an across-the-board reduction of about 10 percent in trips generated within planned unit developments. Loveland, Colorado, has a provision allowing for the road impact fees to be reduced 25 percent for mixed-use projects that meet certain criteria. As is shown in the Albuquerque case study, variations can range from about 10 to 50 percent depending on the configuration of new development.

Applications of Proportionate Share Impact Fee Variations in Practice

Impact fee enabling statutes and relevant case law require that impact fees be based proportionate to the impact new development has on facilities. Where residential impact varies by occupancy, unit size, density, location, and configuration, these considerations should be taken into account. When done properly, impact fees as presently practiced in many if not most places would be reduced for smaller units on smaller lots in locations where facilities currently exist including public transit and in configurations that economize especially on vehicular trips. In this section, we report the applications of many, albeit not all, of the concepts presented above.

While most impact fees do acknowledge the difference between housing types, such as single-family and multi-family units, few of them vary by unit size. This is beginning to change. For example, one-third of the 18 Florida counties that assessed school impact fees in 2002 based the fees on some measure of dwelling unit size. Three of the counties (Lake, Broward, and Hillsborough) base fees on the number of bedrooms in combination with housing type. Two counties (Martin and Palm Beach) have translated bedrooms into four or five size categories (e.g., a one-bedroom unit is on average less than 800 square feet, etc.). Finally, one county (Miami/Dade) charges school fees on a per square foot basis.

Table 20. Assessment Basis for Florida School Impact Fees

Assessment Basis	Counties
Flat Rate per Dwelling	Volusia
Housing Type	Citrus , Collier, Hernando, Lee, Manatee, Orange, Osceola, Pasco, St. Lucie, St. Johns, Seminole
Housing Type & Bedrooms	Broward, Hillsborough, Lake
Size Categories	Martin, Palm Beach
Square Footage	Miami/Dade

Source: Survey by Duncan Associates, July 2002.

There are several reasons for the continuing predominance of impact fees that do not vary by unit size. One obvious reason is that a flat fee per dwelling unit is easier to calculate and has fewer data requirements. While this is still the case, the data requirements are not insurmountable, and greater resources are now available. The other principal reason for the predominance of one-size-fits-all residential impact fees was legal in nature. In the early days of the development of impact fees in the late

1970s and early 1980s, there were no state impact fee enabling acts, and impact fees were based on the "police power" of local governments to regulate development in order to advance the health and welfare of the community. Great care had to be taken to ensure that impact fees would not be struck down as an illegal tax by the courts. Even today, there is a residual feel by some attorneys that a fee per square foot for residential development may appear more like a tax than a regulatory fee. However, this should no longer be a major concern. Impact fees are explicitly authorized by enabling legislation in 25 states, and are based on well-established case law in most others. In addition, impact fees for nonresidential uses have always been assessed on a square footage basis.

Data on which to base variable rate impact fees are now widely available, much of it on the internet. Data on the relationship between the size of the unit (measured in bedrooms or rooms) and the number of people or public school students living in the unit are available from U.S. census sample data for areas with a population of 100,000 or more. Data on the relationship between the number of bedrooms in a unit and the square footage of the unit are available from real estate and property appraiser data in most communities. These readily available data are sufficient to develop variable-rate impact fees for those types of facilities that are typically charged only on residential uses on a per capita or per student basis, such as park, school, and library impact fees.

To date, few road impact fees have been adopted that vary by the size of the dwelling unit. This is largely because road impact fees are generally based on national trip generation rate data, and the ITE manual⁷¹ does not provide rates by dwelling unit size. However, the fact that trip generation rates for residential uses vary by the size (and even the income) of the household is actually well documented in the transportation planning literature. As shown in Table 21 below, the average number of vehicle trips generated per day is almost directly proportional to the number of people living in the dwelling unit, which as discussed earlier, is strongly related to the size of the dwelling unit.

Table 21. Vehicle Trips by Household Size

Household Size	Daily Trips	PM Peak Hr Trips	
		Single-Family	Multi-Family
One Person	3.5	0.369	0.323
Two Persons	6.7	0.707	0.618
Three Persons	8.8	0.928	0.812
Four Persons	10.6	1.118	0.978
Five Persons or More	12.5	1.319	1.154

Source: Daily trips from Transportation Research Board, NCHRP Report 365, "Travel Estimation Techniques for Urban Planning," Washington, D.C.: National Academy Press, Table 9 (for urban areas with populations of 500,000 to 1 million), 1998; PM peak hour trips based on 10.55% of daily trips in PM peak hour for single-family and 9.23% of daily trips in PM peak hour for apartment units from ITE, *Trip Generation*, 7th edition, 2003.

In order to develop trip rates by the size of the unit in square feet, one must first find the relationship between average household size and size characteristics reported by the Census Bureau. The most recent and reliable data on average household size by number of bedrooms or rooms are the five percent sample

⁷¹ Institute of Transportation Engineers (ITE), *Trip Generation* 7th ed., 2003.

data from 2000 U.S. Census. The five percent sample data for the City of Tucson are combined with sample data for some other cities and unincorporated portions of Pima County. However, the City of Tucson makes up 73 percent of the total population sampled. The results obtained should therefore be representative of the City of Tucson. The average household size for all single-family units from the two samples is identical, and for multi-family is almost identical. Because of the nature of the data sources for unit size in square feet, the average household size was varied by rooms for single-family units and by bedrooms for multi-family, as shown in Table 22.

Table 22. Average Household Size by Rooms and Bedrooms

Housing Type	Sample Households	Weighted Population	Weighted Households	Avg. HH Size
Single-Family, 4 Rooms or Fewer	1,245	58,662	24,141	2.43
Single-Family, 5 Rooms	1,744	91,937	34,494	2.67
Single-Family, 6 Rooms	1,674	93,632	33,617	2.79
Single-Family, 7 Rooms	1,010	60,023	20,513	2.93
Single-Family, 8 Rooms or More	657	44,646	13,585	3.29
All Single-Family Detached Units	6,330	348,900	126,350	2.76
Multi-Family, Efficiency	433	15,132	10,140	1.49
Multi-Family, One Bedroom	1,409	53,483	32,345	1.65
Multi-Family, Two Bedrooms	1,533	78,925	34,582	2.28
Multi-Family, Three Bedrooms	353	23,902	7,885	3.03
Multi-Family, Four Bedrooms or More	72	6,014	1,533	3.92
All Multi-Family Units	3,800	177,456	86,485	2.05

Source: U.S. Census Bureau, 2000 Public Use Microdata Sample (PUMS), 5 percent weighted sample data for portions of Pima County including the City of Tucson (PUMAs 201, 202, 204, 206 and 207) for households occupying single-family detached and multi-family units.

The above information on household size by room/bedrooms is combined with the trip rate data by household size presented earlier to derive peak hour trip rates by the size of the unit, represented by rooms and bedrooms, as shown in Table 23.

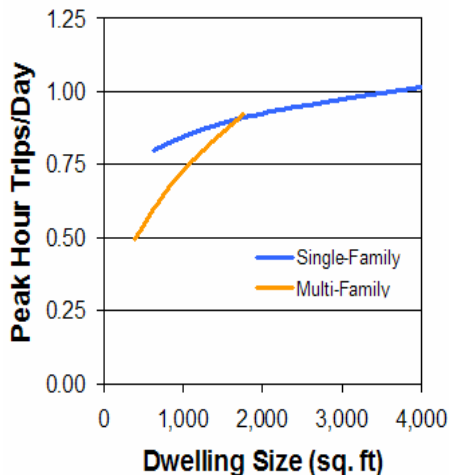
Table 23. Peak Hour Trips by Rooms and Bedrooms

Housing Type	Avg. HH Size	Peak Hr Trips
Single-Family, 4 Rooms or Fewer	2.43	0.806
Single-Family, 5 Rooms	2.67	0.860
Single-Family, 6 Rooms	2.79	0.884
Single-Family, 7 Rooms	2.93	0.917
Single-Family, 8 Rooms or More	3.29	0.983
All Single-Family Detached Units	2.76	0.872
Multi-Family, Efficiency	1.49	0.488
Multi-Family, One Bedroom	1.65	0.546
Multi-Family, Two Bedrooms	2.28	0.683
Multi-Family, Three Bedrooms	3.03	0.822
Multi-Family, Four Bedrooms or More	3.92	0.983
All Multi-Family Units	2.04	0.628

Source: Average household sizes from Table 22; peak hour trips derived from Table 21 using linear interpolation.

To determine a relationship between the unit square footage and peak hour trip rates, a data set was compiled with information on the square footage of dwelling units from single-family detached and multi-family units derived from two different data sources. For single-family detached units, the Pima County Tax Assessor data for the 2004 tax year was analyzed. Tax Assessor data give total living space in square feet and the total number of rooms for the majority of single-family homes in the City of Tucson. Data from the Arizona Multi-Family Housing Association provides information on all apartment complexes in the City of Tucson consisting of 20 or more units. This information includes the number of dwelling units by floor plan, and the floor plan information includes number of bedrooms and square footage. From these two data sources, a stratified random sample was taken that was distributed in the same proportion by housing type and size (rooms for single-family and bedrooms for multi-family) as households from the 2000 Census.

Figure 1. Relationship of Trips to Size



The combined data base consisted of information on 10,000 single-family detached and multi-family dwelling units. To this data base, a variable for peak hour trips was added, based on housing type and number of bedrooms or rooms shown in the preceding table. Regression analysis was then performed to determine the relationship between unit size in square feet and persons residing in the unit. Housing type turned out to be significant, with single-family and multi-family units displaying much different relationships.

Both linear and logarithmic regressions were performed for single-family detached and multi-family data sets. In both cases, logarithmic equations were determined to provide the best explanation of the data.⁷² The curves described by the equations are shown in Figure 1.

While the equations for single-family detached and apartment units are very different, there is actually relatively little overlap and at 1,125 square feet, the midpoint of the 1,000 to 1,250 square foot category, the two equations produce the identical result. Only 2.2 percent of the apartment units in the sample are larger than 1,250 square feet, and while 21.6 percent of the single-family units in the sample are less than 1,000 square feet, it is unlikely that very many homes that size are being built in Tucson today. Consequently, the progressive residential rates were based on the multi-family equation for up to 1,000 square feet, and on the single-family equation for the larger size categories.

Using the regression equations, peak hour trip rates were derived for 12 square footage size categories. The two curves intersect in the 1,250 to 1,500 square foot range. Since the multi-family equation yields the lower trip rate estimates, and since relatively few single-family units are being built in the lower size range, the multi-family equation is used for unit sizes less than 1,500 square feet, and the single-family equation for larger units. The results are shown in Table 24.

⁷² The equation for single-family detached units is $\ln(y) = 0.1271 * \ln(x) - 1.0433$, where y is peak hour trips per day and x is the floor area of the unit in square feet; the R^2 is 0.600 and the t-statistics are 94 for the x-coefficient and -108 for the y-intercept. The equation for multi-family units is $\ln(y) = 0.4182 * \ln(x) - 3.2062$; the R^2 is 0.763 and the t-statistics are 114 for the x-coefficient and -135 for the y-intercept.

Table 24. Residential Road Impact Fees by Size Category

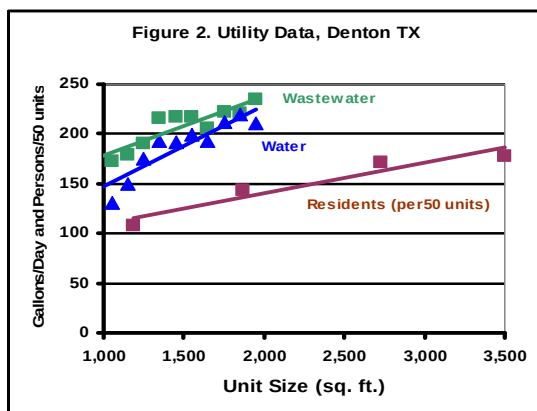
Housing Type/Size Category	Midpoint	Peak Hour Trips	Road Fee
Less than 500 sq. ft.	375	0.48	\$2,186
500 - 749 sq. ft.	625	0.60	\$2,743
750 - 999 sq. ft.	875	0.69	\$3,198
1,000 - 1,249 sq. ft.	1,125	0.76	\$3,462
1,250 - 1,499 sq. ft.	1,375	0.83	\$3,829
1,500 - 1,999 sq. ft.	1,750	0.91	\$4,196
2,000 - 2,999 sq. ft.	2,500	0.95	\$4,386
3,000 - 3,999 sq. ft.	3,500	0.99	\$4,562
4,000 sq. ft. or more	4,500	1.03	\$4,738

Source: Duncan Associates and Dr. James C. Nicholas, *Road and Park Impact Fee Study for the City of Tucson*, June 2004.

Like road impact fees, water and wastewater impact fees are seldom varied by unit size. In the vast majority of cases, fees are charged based on the size of the water meter, although a sizable minority are charged residential fees on a per dwelling unit basis. In a few communities, residential fees are charged on the basis of the number of water fixtures.

While the authors are unaware of any national statistics on the relationship between water consumption and wastewater generation by dwelling unit size, that there is a relationship certainly makes intuitive sense.

Larger units tend to house more people, and water and wastewater demand forecasts are mostly a function of the projected increase in population. One would expect larger households, who tend to occupy larger homes, to have greater demand for water and wastewater services than smaller households. In fact, there is some limited data from Denton, Texas, which tends to support this conclusion.

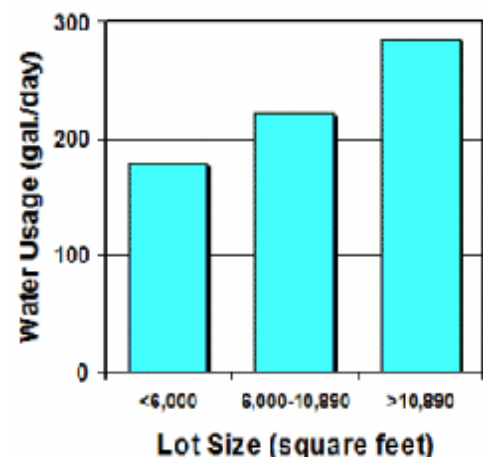


Denton County on the average household size for two-bedroom, three-bedroom, four-bedroom and five-bedroom or more single-family units for 1990. Finally, the average square footage of single-family units was determined for each bedroom category from realtor listings for January, 2003. All of these data are plotted in Figure 2.

While the utility demand data are only available for smaller units (the average apartment in Denton used 203 gallons per day during this same period), they indicate that utility demand increases with dwelling size even more strongly than household size increases with dwelling size. These data support the reasonableness of using average household size as an indicator of water and wastewater demand. Several communities have used this relationship to base

The Denton Municipal Water Utility provided data on water and wastewater demand for single-family units between 1,000 and 2,000 square feet in 100-square-foot blocks for the years 1998 and 1999. Census data information was available for

Figure 3. Water Use by Lot Size, Santa Fe, NM



utility fees on the square footage of the residential dwelling unit, including Orange County, North Carolina; and Collier County, Florida.

Some water impact fees are based, not on the size of the dwelling unit, but on the size of the lot, due to the fact that larger lots require more water for landscaping, which is the biggest use of water during the peak summer months. Santa Fe, New Mexico, recently adopted water impact fees that vary by lot size, based on a study of water use records that found water usage is strongly related to lot size, as shown in Figure 3. Other communities with water fees that vary by lot size include Basalt, Colorado; Fort Collins, Colorado; and Scottsdale, Arizona.

Most fire and police impact fees are based on calls-for-service data. Unfortunately, emergency call data are seldom available by the size of the dwelling unit. Another drawback is that calls for individual land uses can fluctuate significantly from one year to the next. An alternative approach is to use call data only to determine a cost allocation between residential and nonresidential development. Based on the reasonable assumption that the cost to serve development will increase

proportionately to the square footage of new development, the residential cost per square foot can be determined by dividing the cost to serve residential development by the amount of residential square footage (the same can be done for nonresidential). This was the approach used in developing fire impact fees for Santa Fe, shown in Figure 4.

While many communities have adopted variable-rate impact fees for individual facilities, few have implemented variable fees by dwelling unit size for a broad array of facilities. One community that has adopted such a set of impact fees is Santa Fe, New Mexico. The sum of that city's water, wastewater, road, park, police, and fire impact fees is illustrated in Figure 5.

Figure 4. Calculated Fire Fees, Santa Fe, NM

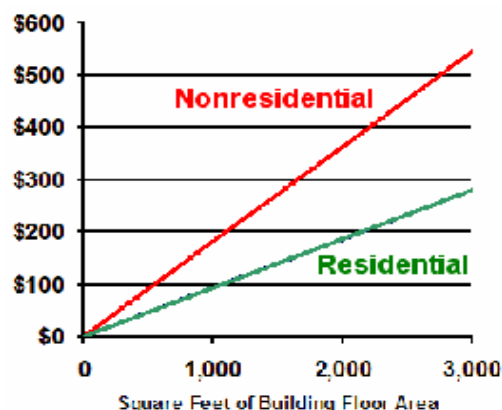
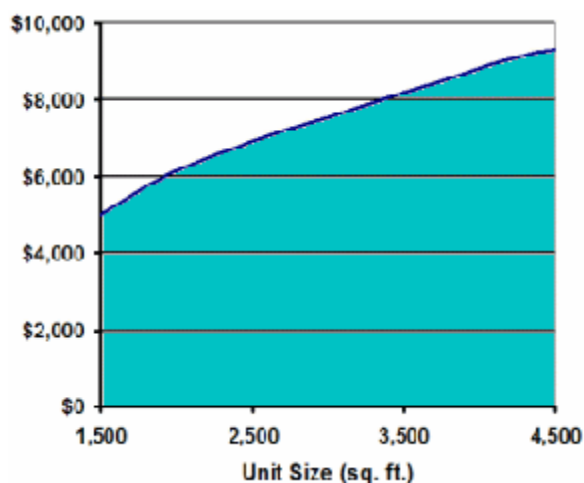


Figure 5. Sum of Fees in Santa Fe, NM



Conclusion: Moving Toward Truly Proportionate Impact Fees

As seen in other briefing papers the concept of calculating impact fees based on “proportionate share” principles has long been established but the details have been lacking. The example of Volusia County, Florida was given because like many other communities the idea of proportionate share is reduced simply to facility needs per residential unit without respect to type, size, location, density or configuration. Strictly speaking, this may meet the minimum legal test justifying impact fees – after all in *Dolan v. Tigard* the US Supreme Court asserted that while a relationship needs to be established between the impact of development and the mitigation needed there is no need for a precise calculation – but this begs the question. If housing affordability is a concern, impact fee calculations need to truly embrace proportionate share principles. This briefing paper outlines how to address many of the details.

As seen in the examples reviewed in this briefing paper, impacts vary by residential unit type, size, density, location, and configuration. The differences in impact between large detached homes on large lots in low-density settings far away from commercial centers and the same-sized home on a small lot in higher-density settings closer-in may be considerable. Peak water demand may be more than double, road impacts can be higher and public safety costs three or four times more in lower-density settings than in higher-density ones. As shown above, total impacts per person between the lowest- and highest-density categories are about 2.5 times and are nearly double between the second-least and second-most dense categories across all unit types (see Table 16). These differences are attributable to density and indirectly by location. When considering variation on occupancy by type and size of unit, the differences become even more stark being about four times between large homes in the lowest-density settings and apartments in the highest-density settings and about 2.5 times between the second-least and second-most densely settled areas (see Table 17).

These examples of refined use of proportionate share impact fees can aid in lowering fees assessed on low- and moderate-income housing below the average cost, thereby aiding in the production of such housing. Census data, transportation data, utility data, and public safety response data show clearly that impact fees calculated on the basis of unit size, perhaps including consideration of unit type, are more proportionate than averaging costs across all dwelling units or even by type of unit. Case law so far does not require apportioning impact fees by unit type or size but given the weight of the statistical evidence this may only be a matter of time. Communities that calculate impact fees based on dwelling unit type, size, density, and location, and allow for fees to be tailored to account for configuration, will likely ensure that by themselves impact fees are not necessarily an impediment to the production of affordable housing.

There is a final consideration relating to courts and impact fee enabling statutes. At the moment, neither courts nor state enabling statutes have addressed impact variations based on these factors. It may be a matter of time before either one or both occur. However, waiting for this to happen is not necessary. The basic calculation methods and data are already available, as shown in this paper, to refine impact fees to substantially reduce any potentially adverse effect that they have on housing affordability. It may also be the case that generally available data could be used to challenge impact fee schedules not considered truly proportionate with respect to type, size, density, location, and perhaps, to configuration.



IMPACT FEE HANDBOOK

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NAHB

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National Association of Home Builders

This publication is designed as a resource to provide accurate and authoritative information in regard to the subject matter covered with the understanding that its authors are not engaged in rendering legal, accounting, and other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.

Impact Fee Handbook

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This handbook is also available online as a downloadable pdf at:

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CHAPTER 1

Introduction

- *What Are Impact Fees?*
- *Why Do We Have Impact Fees?*
- *Local Government Fiscal Stress and the Rise of Impact Fees*

The United States is experiencing a public infrastructure financing deficit that is the result of increasing demand for new and upgraded infrastructure systems coupled with diminished fiscal resources. Communities have turned to impact fees as a politically expedient means by which to construct public infrastructure systems. However, the use of impact fees may shift much of the financial burden away from all public infrastructure users (the general public) to a narrow segment of the public—homebuilders and new homebuyers. Aside from basic issues of fairness and equity, the use of impact fees raises legal, economic, technical, administrative, policy, and financial concerns for interested parties.

This Handbook was developed to provide homebuilders and other parties interested in impact fees a resource for exploring these issues and to provide strategies for achieving balanced infrastructure financing solutions.

The Impact Fee Handbook includes the following sections:

- Legal Aspects of Impact Fees
- Economic Aspects of Impacts Fees
- A Closer Look at Impact Fee Technical Studies
- Administrative Issues
- Alternatives to Impact Fees
- Political and Public Relations Strategies
- Appendices:
 - A** Case Studies
 - B** State Impact Fee Enabling Legislation Summary Chart
 - C** General Impact Fee Statute Considerations
 - D** Arizona, Montana, and Texas Impact Fee Statutes
 - E** Resources

While each section of the Handbook was designed to stand on its own, the Handbook's value lies in connecting each section so as to present the reader with a comprehensive picture of impact fees. It is recommended that the reader familiarize him or herself with the contents of the entire Handbook and then read in depth the sections most relevant to your situation. If there are areas that should be covered based on real world success and

failures in working with impact fees, readers are encouraged to let the staff at NAHB know so they can be addressed in future Handbook updates.

What Are Impact Fees?



Generally, impact fees are charges levied against new development in order to generate revenue for the purpose of funding capital improvements necessitated by that development. *Impact fees should not be confused with subdivision exactions that require developers either to "dedicate" land for public use or contribute cash in lieu of land for the purchase of land or facilities perceived to be necessary by local governments.* As a fundamental tool, impact fees are broader and more flexible than subdivision exactions. Impact fees can be levied on various types of development, including subdivision, condominium, commercial, and industrial projects. Unlike subdivision exactions, impact fees can be used to fund the construction of offsite facilities.

Typically, impact fees are:

- levied on an "up-front" or "front-end" basis, usually at the time of building permit issuance or subdivision approval;
- dedicated to a specific public use, such as a transportation facilities, sewer facilities, water facilities, or parks and recreation facilities, etc.;
- calculated on the basis of the number of residents or bedrooms in a dwelling, the square footage of a building, the linear footage of the front property line, or as a flat fee per unit or building lot, or some other formulation; and,
- prescribed by ordinance, although the dollar amount may or may not be specified.

Government has long imposed narrower charges for a variety of onsite capital improvements, including sewer and water hookups, storm water management facilities, and street and sidewalk construction. More recently, though, communities have levied impact fees on developers for a number of offsite improvements such as the development of community-wide recreational facilities, the construction of highway segments, or the expansion of centralized wastewater treatment plants. Often the need for these services and facilities is only indirectly attributed to a specific subdivision or project, giving rise to developer objections to funding such general improvements.

Impact fees range from several hundred to hundreds of thousands of dollars per home or building. They raise such fundamental social questions as:

- Who *really* pays?
- How is the fee calculated?
- Where does the money go?
- How and where is the money spent?
- Who *really* benefits from the new or expanded public facilities? What is the impact on housing costs?

- How is economic development affected? What are a community's financing alternatives?
- How does an impact fee policy mesh with a community's and region's affordable housing policy?
- Is new development being required to pay its *fair* share or something more?

Why Do We Have Impact Fees?

Impact fees were initiated in the 1970s in Florida and California—areas facing high growth and restrictive tax systems. Coupled with cutbacks in federal aid, local governments began searching for a new funding source: impact fees. In reality, many of these "fees" are a hidden charge placed upon a discrete segment of the general public—those citizens moving into new houses and apartments. In many, if not most, cases, consumers paying these charges already live in the community. They are first-time or move-up home buyers, and new families or individuals leaving their parent's home. .

The use of impact fees has spread rampantly as a result of several factors. Local governments are often pressed to extend public services to urban expansion areas because of a strong market preference for suburban housing products coupled with an expanding population base and rapid rate of new household formation. In particular, governments in high-growth areas struggle to keep pace with the demand for new public services while simultaneously maintaining and repairing existing public facilities. The cost of constructing new public infrastructure has increased substantially over the past decade as local governments compete in a globalized marketplace for raw materials, while at the same time, spending more to meet stringent federal and state mandated design standards. Nonetheless, citizens expect local governments to maintain existing levels of service despite diminishing fiscal resources.

Traditionally, local government has financed public services through (i) general fund revenues and (ii) the issuance of general obligation bonds that are repaid by future property tax collections, or (iii) revenue bonds that are paid through the net revenues of the utility constructing the improvements. General obligation bonds are defined as a debt liability backed by the full faith and credit of the issuing community. Revenue Bonds are backed by the full faith and credit of the community's utilities. Any of these approaches tends to be politically unpopular with existing residents.

Communities argue that the use of these financing mechanisms may require property tax increases, utility rate increases, or reductions in existing services. In addition, many states have adopted constitutional or statutory limitations on a local government's ability to issue debt, commonly including a requirement to attain approval by a majority or supermajority of voters.

In addition, voters across the nation have passed tax-cutting measures, including California's Proposition 13 and Massachusetts' Proposition 2^{1/2}, to limit the ability of local governments to raise taxes and to reduce the scope of government and government-supported services.

One consequence of the popularly termed "taxpayer revolt" is the emergence of local government policy that deems residential development acceptable only if it can "pay its own way." In many communities, public officials maintain that new development exacts public costs that exceed expected benefits. Decision makers, therefore, are frequently reluctant to approve development proposals that would require significant and politically unpopular outlays for service expansion. If they do approve development, local policy makers often condition permission to build on the payment of impact fees, effectively shifting some of the responsibility for service and facility provision from the public to the private sector.

Usually, however, decision makers fail to recognize the broad range of benefits associated with new development. They look only to the short term costs rather than to the full range of benefits a new development project generates at the time of project completion such as increased property tax revenues and other economic contributions by new households.

Impact fees generally do not require voter approval nor do they result in property tax or utility rate increases, at least directly, paid by current residents.

Local Government Fiscal Stress and the Rise of Impact Fees

During the past 30 years, many local governments have experienced some degree of fiscal stress resulting from rising service demands and from constraints on their ability to raise revenues. Fiscal stress, broadly defined, is when public service demands grow because of increasing population, inflation, rising real incomes, or other reasons, while the local revenue base—taxes, grants, and user fees and charges—does not grow fast enough to meet the increased public service demands. The difference in the growth rates of service demands and revenues necessitates either increases in tax rates or decreases in the level of services, or some combination of the two.

Another source of fiscal stress may have come from decreasing aid from the federal government, in part resulting from the changing focus of the federal government away from domestic issues to foreign policy, national defense, and homeland security.¹

For an aggregation of all local governments, there is no definitive measure of effective tax rates. A crude measure of effective tax rates is local general revenues from their own sources (that is, total revenues less revenues from locally owned public utilities, transit systems, local employee retirement systems, and federal and state aid), as a percentage of Gross Domestic Product (GDP). This ratio provides an estimate of effective local government revenue-raising efforts since it measures their own-source general revenues (OSGR) relative to aggregate output (GDP).

During the 30-year period from 1966 to 1996, the period that includes the "tax revolts" in California and Massachusetts, local governments lessened their reliance on property taxes. In 1966 revenues from property taxes comprised nearly half of the total local

revenues, however, 30 years later, in 1996, the property taxes only comprised 28 percent.² Since 1966, local governments confronting rising service demands from mandates from higher levels of government and their own constituents and constrained from increasing property taxes, raised revenues from other sources.

Rising Service Demands

Population growth visibly increases public service demands. Roads, schools, and other public facilities become more congested. In order to keep a constant level of public services, the local public capital stock must expand to reduce congestion (assuming there was no excess capacity prior to growth). Inflation also increases the cost of providing public services, as local governments must pay more for their purchases of goods and services, including employee compensation.

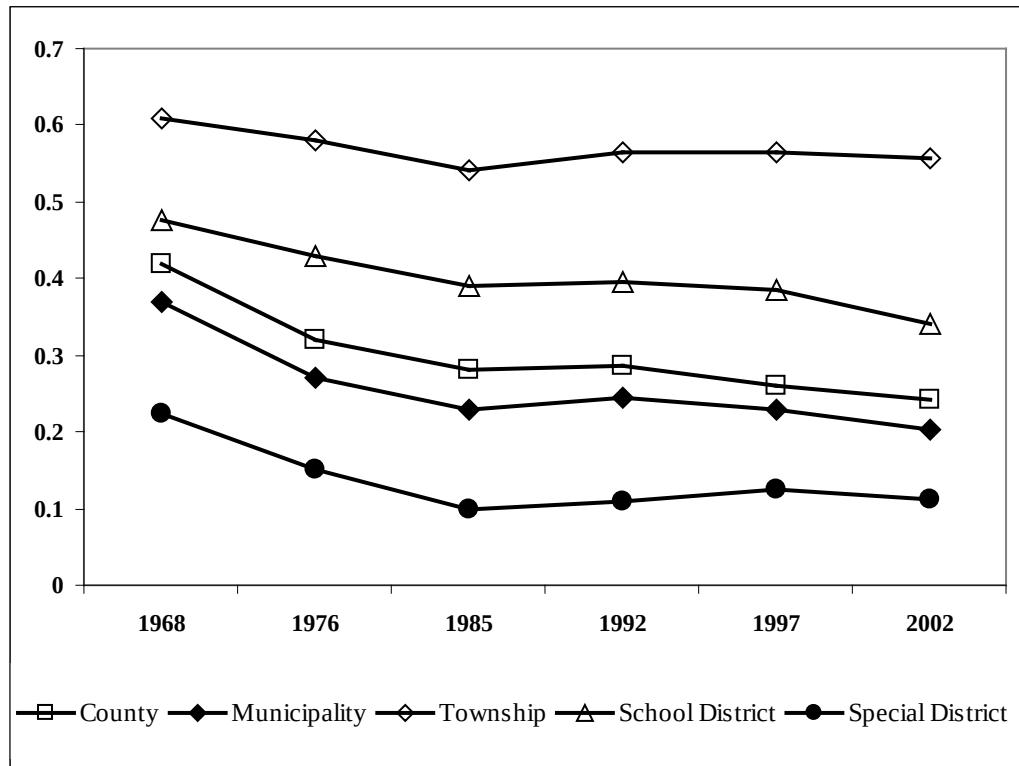
Another source of pressure on local governments for increased public services comes from higher levels of government. Since the mid-1960s, both federal and state governments have increasingly turned to mandates on local government to provide for increased levels of environmental protection, increased quality of public education, and upgraded jail facilities, to name a few. For local government officials, these mandates from higher levels of government are particularly burdensome because they are often completely unfunded. Local officials must devote portions of their fiscal resources to satisfying the requirements of federal and state governments rather than addressing local priorities.

Revenue Constraints

Two other sources of fiscal stress on local government are constraints on their ability to raise local revenues and decreased state and federal aid. According to Altshuler and Gomez-Ibanez (1993, p. 23), voter discontent with taxes of all sorts grew during the 1970s, when real incomes were flat or declining but effective tax rates were rising.³ The most visible manifestations of voter dissatisfaction with property taxes came in 1978 with the passage of Proposition 13 in California and Proposition 2¹/₂ in Massachusetts.⁴ These pieces of legislation required their respective state governments to stabilize effective property tax rates at the levels that prevailed in the mid-1970s. Fee and miscellaneous revenues have increased substantially compared to property taxes as a result of property tax limitations placed on local governments. By 1999, 23 states generated more local revenue from fees and miscellaneous income than property taxes, an increase from only three states in 1972. The increased dependence of local governments on sources of revenue other than property taxes has led to a decrease in local property taxes as a share of general revenue. Overall, the proportion of property taxes as a part of general revenue has decreased from an average of 40.3 percent in 1972 to 29.1 percent in 1999.⁵

The chart on the following page highlights local property tax revenue as a proportion of general revenue from 1968 to 2002.⁶

Figure 1.1: Local Property Taxes as a Proportion of General Revenue (1968 – 2002)



Source: 1968-1997 data from chart in "State and Local Finances under Pressure", edited by David L. Sjoquist, 2003. 2002 data obtained from the U.S. Census Bureau, Census of the Governments. www.census.gov/govs/www/

Opposition to property taxation also came from groups concerned about the inequality of per-pupil expenditures for elementary and secondary education among school districts within their states. Reliance on local property taxes to finance public schools allowed school districts with high levels of property wealth per pupil to fund high-quality programs with relatively low effective tax rates, while school districts with low levels of property wealth per pupil were forced to levy relatively high effective tax rates to fund lower-quality programs. These groups argued that state aid did not sufficiently reduce inequalities in per-pupil spending across the state, and that the remaining inequalities violated the state constitutional provisions of adequate education spending for all pupils. Successful court cases in California, New Jersey, Iowa, Texas, and other states required states to reallocate state aid and, in some instances, to reduce reliance on property taxation for financing public education. The Michigan legislature has acted to require the state to assume full responsibility for school funding in place of local property taxes.

Declining Federal and State Aid

Further exacerbating local government fiscal stress has been the relative decline in aid from higher levels of government for the past 30 years. The changing composition of federal and state aid since the late 1970s has adversely affected the ability of state and local governments to finance infrastructure. A stark decline in aid from the federal level of

government has contributed to the growing problem. To compensate for the declining fiscal assistance from the federal government, local governments have pursued other revenue sources.

Economic factors have also played a role in decreasing government aid. For example, poor economic conditions during the 2001 recession created additional fiscal pressure on local governments. State and federal government tax collections decreased, which meant less funding was appropriated to local governments. As a result, local governments tapped reserves, raised existing fees and charges, and adopted measures to create diverse revenue sources to fill the revenue gap.⁷

Local Government Response to Fiscal Stress

The fiscal stress confronting local governments and, to a lesser extent, state governments, forced many state and local government officials to find ways to reduce expenditures. Reducing current service levels is politically difficult because diminished service levels are readily visible to constituents and are often as contentious as tax increases. One method of limiting expenditure growth is to reduce spending for infrastructure maintenance. This expedient choice allows local officials to keep other services at current levels, and the effects of deferring maintenance spending are not readily or immediately apparent.

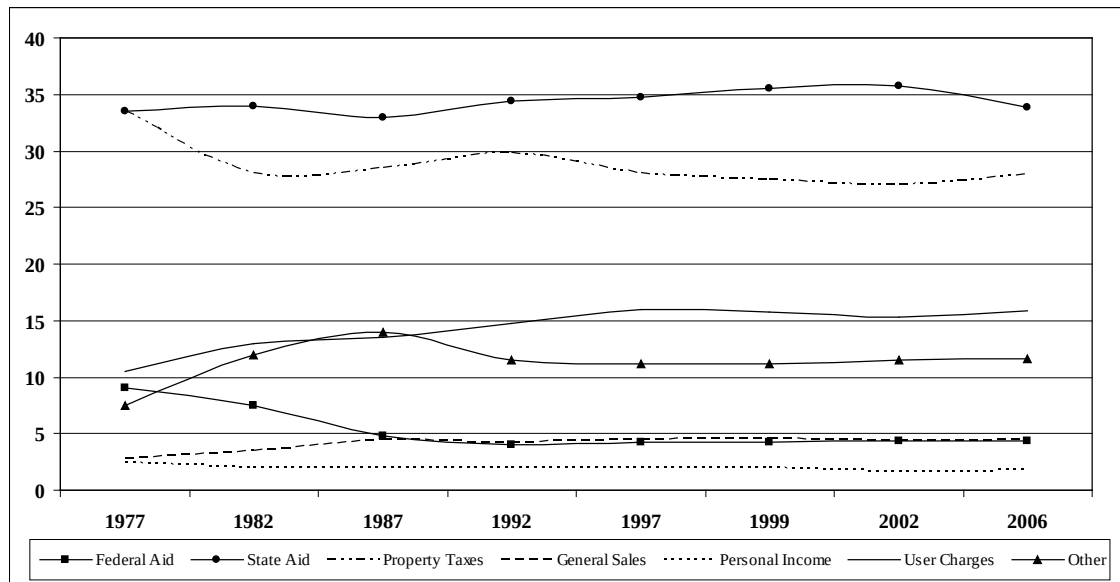
The deadly collapse of the I-35W Bridge in Minneapolis in 2007, and the catastrophic failure in 2005 of the levees in New Orleans following Hurricane Katrina punctuate the nation's current infrastructure maintenance crisis. These failures are a symptom of the nation's systemic neglect of infrastructure which, according to a 2007 Urban Land Institute report, has resulted in a \$1.6 trillion deficit in needed repair and maintenance spending through 2010.⁸

Revenue Diversification

Local governments diversified their sources of general revenues in response to opposition to property taxes. During the 1970s, property taxes accounted for approximately 34 percent of locally raised general revenues. Between 1977 and 1999, the proportion of local own source general revenues from property taxes fell from 34 percent to 27 percent (see graph below). Sales taxes, which had provided approximately 3.5 percent local own-source general revenues in the 1970s, accounted for approximately 4.5 percent of local government OSGR by 1999. Approximately 16 percent of all local OSGR came from user charges and miscellaneous revenues by 1999.⁹

The graph on the following page highlights the share of funding sources contributing to local general revenues from 1977 to 2006.

Figure 1.2: Share of Funding Sources Contributing to Local General Revenues (1977 – 2006)



Source: Robert Tannenwald, Are State and Local Revenue Systems becoming Obsolete?, National Tax Journal, Sept. 2002.

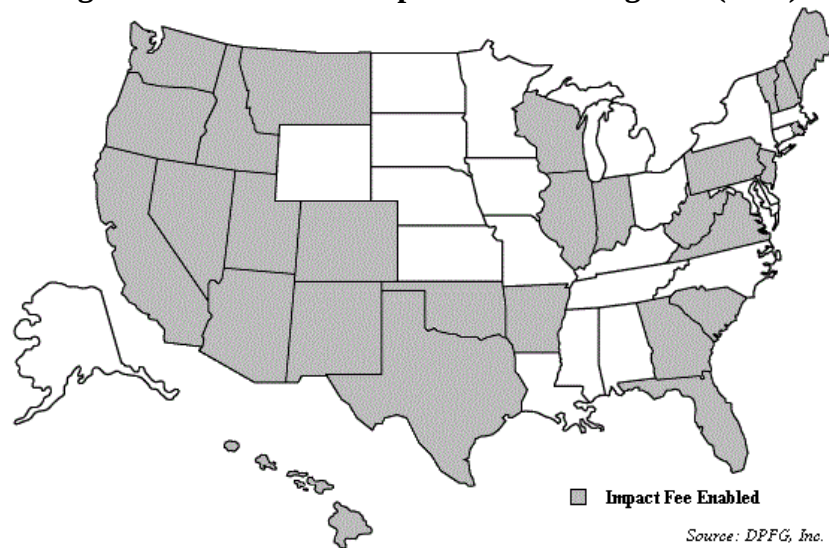
U.S. Census Bureau. Census of the Governments: 1977, 1982, 1987, 1992, 1997, 1999. www.census.gov/govs/www/. 2002, 2006 data updated utilizing the same source.

Footnote: "Other" category consists of: selective sales, corporate income, motor vehicle license tax, other taxes, and miscellaneous general revenue.

Impact Fee Usage

The use of impact fees has spread widely throughout the United States, especially in regions affected by rates of growth and development including southern and western states. It is less common for communities in Midwestern or northeastern states to utilize impact fees. As of 2015, twenty-nine (29) states had impact fee enabling statutes. In addition to states with impact fee enabling statutes, communities in "home-rule" states may also use impact fees even if a state enabling statute has not been enacted.

Figure 1.3: States with Impact Fee Enabling Acts (2015)



According to statistics publicized by the Government Accountability Office (GAO), 39 percent of counties and 59 percent of communities with populations greater than 25,000 imposed some type of impact fee to finance infrastructure.¹⁰

Where impact fees are utilized, the dollar amount per home has grown substantially over the years. For example, Snyder and Stegman (1986, p. 76), citing a California Building Industry Association study, found that the average impact fee, measured in 1983 dollars, on a single-family detached house, with 3 bedrooms, rose from \$1,087 in 1975 to \$6,847 in 1983, or 511 percent.¹¹ Based on more recent surveys conducted by Duncan Associates, a similar new home in California would require impact fee payments of approximately \$22,154 in 2012 and \$23,455 in 2015, representing a 6% increase in over the four year period.¹²

Conclusion

In light of the economic pressures on local governments, it is easy to understand why local governments are increasingly turning to impact fees for the provision of public services. *For growing communities, impact fees represent a vast store of potential revenue that can be tapped at less political cost than other sources. This does not mean, however, that impact fees are always the best or wisest solution for the financing of public infrastructure when taking into account social equity considerations and the need to maintain long-term community support for capital spending programs.*

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CHAPTER 2

Legal Concepts of Impact Fees

- *Authority to Impose Impact Fees*
- *Impact Fees as Unlawful Taxes*
- *Federal and State Constitutional Issues*

This chapter discusses general legal principles that apply to typical impact fees. Because these principles vary from state to state, it is important to consult with counsel when faced with an impact fee ordinance.

There are three key legal concepts that have a direct bearing on whether the fee has been validly enacted and applied. First, a municipality must have authority to enact the impact fee—either from a state enabling statute or implied by other legal authority. Second, the impact fee must not be imposed in a manner that makes it an unlawful “tax in disguise.” Third, an impact fee must be constitutional. Additionally, organizations and individuals who are considering a challenge to an impact fee must be able to show that an injury has occurred as a result of the impact fee.

Authority to Impose Impact Fees

Without the proper legal authority, municipalities are unable to enact an impact fee. This authority is express—granted by a state legislation—or implied by a municipality’s inherent powers.

Enabling Legislation

Many states have enabling legislation which specifically authorizes impact fees. These statutes usually are beneficial for builders as they help to establish certainty and transparency in the development process. Impact fee statutes usually require municipalities to follow prescribed procedures when implementing local impact fee programs.

Georgia’s enabling statute, for example, allows municipalities and counties to charge development impact fees if they first enact a comprehensive plan with a capital improvements section. The statute establishes legislative intent, outlines definitions, procedures and the appeals process to be used in the implementation of any impact fee. Ga. Code Ann. §§ 36-71-1 *et seq.* (2006). Most notably, Georgia’s statute requires municipalities to form an advisory committee, which includes representatives from the development industry, to assist with the creation of an ordinance. Ga. Code Ann. § 36-

71-5 (2006). If the municipality fails to properly form this committee, the impact fee is invalid.

When municipalities fail to follow the procedures or parameters outlined in a state enabling statute, the resulting impact fee ordinance may not have been properly enacted. In some states, municipalities must strictly follow the planning and zoning procedures outlined in the enabling statute. For example, an impact fee ordinance in Idaho was invalidated because the city was located within a county containing less than 200,000 people, the minimum imposed by the state law for empowering cities to impose development impact fees. *Idaho Building Contractors Ass’n v. City of Coeur D’Alene*, 890 P.2d 326 (Idaho 1995).

On the other hand, some state courts have upheld impact fees even when a municipality has not strictly followed all of the procedures in the state’s enabling statute. For example, in *Charleston Trident Home Builders, Inc. v. Town Council of Summerville*, 632 S.E.2d 864 (S.C. 2006), a court found that a municipality “substantially compli[ed]” with an enabling statute even though its capital improvements plan did not incorporate every element required by the statute.

Usually, impact fee enabling statutes classify what type of infrastructure may be improved through the use of impact fees. For example, Virginia’s statute authorizes municipalities to use impact fees for road improvements, but additionally allows for public facilities impact fees only on properties that are currently zoned agricultural and are being subdivided for by-right residential development. Va. Code Ann. § 15.2-2317 – 2329. If a municipality attempts to impose an impact fee for infrastructure not authorized under the enabling statute, there is a strong likelihood that it is invalid. An impact fee for school improvements was invalidated in Nevada because the enabling statute did not specifically authorize school impact fees. *Douglas County Contractor’s Ass’n v. Douglas County*, 929 P.2d 253, 259-261 (Nev. 1996).

Implied Authority

In the absence of a state enabling statute, municipalities must have some other source of authority from the state before they may impose an impact fee. Municipalities are commonly described as operating under either home rule or Dillon’s Rule. This important distinction has a direct bearing on a municipality’s ability to enact impact fees and other growth control measures.

Municipalities which operate under Dillon’s Rule are limited to those powers which have been expressly granted by the state.¹ Therefore, a Dillon’s Rule municipality must be able to rely on a state enabling statute before it has authority to impose an impact fee. In a classic Dillon’s rule case, the Supreme Court of New Hampshire invalidated an impact fee because the municipality had not been expressly granted this power under the statute authorizing municipalities to charge administrative fees. *Bd. of Water Comm’rs v. Mooney*, 660 A.2d 1121 (N.H. 1995).

Some Dillon’s Rule municipalities have argued that their ability to enact impact fees stems from their general planning and zoning authority—which usually includes the ability to impose fees. This argument, however, may be on the decline because courts have proven unwilling to equate the authority to impose administrative fees with the authority to enact an impact fee.²

On the other hand, home rule municipalities have a greater degree of independence over their regulation of land use. Generally, home rule municipalities have broad discretion in the exercise of their planning and zoning powers, so long as their regulation does not conflict with state law.

Home rule municipalities often rely on this authority to justify their ability to enact impact fees.³ For example, a Nebraska court upheld an impact fee under a city’s home rule charter—finding that the city’s home rule authority was sufficiently broad that it included the authority to impose taxes on development. *Home Builders Ass’n v. City of Lincoln*, 711 N.W.2d 871 (Neb. 2006).

In contrast, other courts have imposed greater limits on the ability of home rule municipalities to enact impact fees.⁴ The Supreme Court of Mississippi, for example, held that the state’s home rule statute did not allow the municipality to assess impact fees without express enabling authority. *Mayor of Ocean Springs v. Homebuilders Ass’n*, 932 So.2d 44 (Miss. 2006). The court distinguished the municipality’s ability to impose fees with its ability to enact taxes. The court noted that, under Mississippi’s constitution, general municipal services must be funded by traditional tax revenue, and the state had to explicitly authorize an alternative method, such as impact fees.

Impact Fees As Unlawful Taxes

As the Mississippi case shows, it is important to determine whether an impact fee actually amounts to an unlawful tax—even when a municipality might otherwise have authority to impose the impact fee. The central distinction here is that the power to tax is separate from the state’s police power. As put by the Arizona Supreme Court, in *Casa Grande v. Tucker*, 817 P.2d 947, 950 (Ariz. 1991):

A tax is imposed upon the party paying it by mandate of the public authorities, without his being consulted in regard to its necessity, or having any option as to its payment. The amount is not determined by any reference to the service which he receives from the government, but by his ability to pay, based on property or income. On the other hand, a fee is always voluntary, in the sense that the party who pays it originally has, of his own volition, asked a public officer to perform certain services for him, which presumably bestow upon him a benefit not shared by other members of society.

Whether an impact fee results in an unlawful tax depends on the facts of a specific case and specific tests created by state courts. Frequently, courts examine where the impact

fee funds are going in any tax vs. fee analysis. If an impact fee is used to raise revenue for general public infrastructure, instead of defraying the impact of development on a specific type of infrastructure, the impact fee takes on characteristics of a tax. *Courts also look at whether those who pay the impact fee are, in fact, causing the infrastructure problem and whether the proceeds being applied to infrastructure will benefit those who pay (development) and not just the public as a whole.*⁵

Federal and State Constitutional Issues

Even when a municipality has properly enacted an impact fee ordinance, it must still meet certain constitutional requirements before it can be considered valid. Impact fees may be challenged on three grounds under the U.S. Constitution: (1) the ordinance violates a developer's due process rights; (2) it results in a violation under the Equal Protection Clause; and (3) the fee is an unconstitutional exaction under the Fifth Amendment. Regarding due process and equal protection, the status of the law mostly well-settled. Unfortunately, the legal atmosphere is less settled concerning claims that impact fees are unconstitutional exactions.

In addition, note that state constitutions and state statutes often provide similar protection to the U.S. Constitution and can often be brought as separate claims under a single lawsuit.

Violations of the 14th Amendment—Due Process & Equal Protection

The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution prohibits states from depriving any person of their property without due process of law. When the government has acted arbitrarily and/or irrationally, the developer can bring a due process claim and may be entitled to damages under 42 U.S.C. §1983, and/or injunctive relief. Similarly, when the government has discriminated against the developer, the developer can bring an equal protection claim under 42 U.S.C. §1983.

Due Process

An impact fee ordinance may be challenged under the due process clause even though the municipality has acted within its police powers to protect the public. Due process claims focus on whether the impact fee in question is a *reasonable* exercise of the state's police power. To raise a successful due process claim, the developer must show that the municipality's interference with his property rights was arbitrary, irrational and capricious.

Substantive Due Process

In substantive due process cases, most courts use a three pronged test. *First, is the exaction rationally related to a legitimate public purpose? Second, are the means adopted to achieve this purpose reasonably necessary? Third, is the regulation unduly*

oppressive on the property owner? If the ordinance fails any of the three prongs of the test, it will be invalidated. The third prong is generally the most disputed.

Although the third prong requires the application of a "balancing test" between the rights and needs of the public versus the rights of the individual property owner, there are several factors used to determine whether the ordinance is unduly oppressive: (1) the nature of the harm sought to be avoided; (2) the availability and effectiveness of less drastic means of achieving the goal of the ordinance; and (3) the economic loss suffered by the property owner.

It is difficult to overcome the test used in substantive due process challenges. Therefore, such challenges are not often successful.

Procedural Due Process

In procedural due process cases, an ordinance imposing exactions on developers may be challenged if it was not enacted under the proper procedures set forth in the state enabling legislation. *Whether a municipality has violated a developer's right to procedural due process often depends upon local law. The procedural due process afforded to an individual will vary according to each state's own laws but generally, the developer will be entitled to fair notice and a hearing on the issue at hand.*

Raising a claim of procedural due process is not an effective way to prevent the imposition of an exaction. In effect, a procedural due process violation serves merely as a delaying tactic. Following a judgment in favor of a developer claiming a violation of procedural due process, the municipality will often reenact the exaction legislation with the necessary corrections to ensure the protection of procedural due process rights.

Equal Protection

In some cases an exaction may also be challenged on the theory that it violates the right to equal protection. The Equal Protection Clause of the Fourteenth Amendment ensures all people equal protection under the law, meaning that states cannot unreasonably discriminate between persons who are similarly situated.

The use of a classification of development, resulting in different treatment for each group, does not necessarily result in a violation of the equal protection clause of the United States Constitution. Equal protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made. Unless a case involves a "suspect classification," which includes treating groups of people differently based on race, national origin, religion, or alienage, the law merely requires that classifications be rationally related to legitimate governmental purposes.

When an ordinance does not expressly use classifications for the purposes for imposing exactions on developers, the ordinance may still be subject to an equal protection challenge if the ordinance is discriminatory in its application.

In most cases, it is difficult to successfully challenge a zoning ordinance on equal protection grounds because the ordinance only needs to be rationally related to legitimate government purpose and the challenger must rebut a presumption that the ordinance (a legislative act) is constitutional and valid.

Violations of the 5th Amendment—Impact Fees as Unconstitutional Exactions

The Fifth Amendment to the U.S. Constitution requires that private property shall not be taken for public use without just compensation. Traditionally, a taking occurs when the government physically invades private property or requires the dedication of a piece of property to the state. Second, a government *regulation*, as opposed to a physical intrusion, can also be a basis for a takings lawsuit. Finally, the U.S. Supreme Court has also recognized that the Fifth Amendment is implicated when the government places conditions on a development applicant in return for a development permit (i.e. exactions). Unfortunately, the Supreme Court’s jurisprudence is limited to cases where the government has conditioned a development approval on a case-by-case (also called *ad hoc*) basis, and it is an open question as to whether legislatively-imposed impact fees are subject to the same analysis. Nevertheless, NAHB consistently argues that legislatively-imposed exactions and *ad hoc* exactions must both meet the same constitutional requirements. Specifically, NAHB argues that the Court’s decisions in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994) instruct municipalities regarding the appropriate level of and purposes for the exaction.

In *Nollan*, the Court explained that *there must be an “essential nexus” between the development condition and the anticipated impacts of the development. Without this connection, the condition could result in a violation of the Fifth Amendment.*

In *Dolan*, the Court discussed what constitutes a reasonable level of a development condition. The Court held that *development conditions must bear a “rough proportionality” to the development’s impact on existing infrastructure.* In order to meet this proportionality requirement, municipalities must make an individualized determination that the impact of proposed development warrants the exaction. “No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.” *Dolan* at 391.

Where a condition of development approval is not in proportion with the development’s anticipated impact, the *Dolan* rough proportionality test is not met and the government has violated the Fifth Amendment. This violation occurs regardless of whether the imposition by the government is for a dedication of land or for a monetary payment. *Koontz v. St. Johns River Water Management District*, 133 S.Ct. 2586 (2013).

Several courts have directly applied the heightened scrutiny standard in *Nollan* and *Dolan* to impact fees.⁶ The California Supreme Court, for example, stated that a municipality must account for the actual impact of a proposed development, as well as any relative benefit the project will contribute, before imposing a fee. *Ehrlich v. City of Culver City*, 911 P.2d 429 (Cal. 1996).

Other courts have refused to extend this standard to monetary conditions like impact fees.⁷ Courts in this camp frequently distinguish *Nollan* and *Dolan* from legislatively-imposed conditions. These courts usually explain that “the two-pronged heightened scrutiny that the Court adopted in *Dolan* was animated by the Court’s particular concern with the sort of governmental leveraging that can arise in case-by case . . . imposition of development conditions.” *Rogers Machinery, Inc. v. Washington County*, 45 P.3d 966 (Or. Ct. App. 2002). In other words, because impact fees apply generally to all developers, the heightened scrutiny test does not apply.

States with express enabling authority for impact fees usually include the standards for nexus and proportionality within the text of the statute itself.⁸ *Otherwise, three general tests have emerged among the state courts to determine the constitutionality of impact fees (1) the reasonable relationship test, (2) the dual rational nexus test, and the (3) specifically and uniquely attributable test. These state tests stem from either state enabling statutes or case law.*

The first test is the least restrictive, and only requires a reasonable relationship between the fee and the new development’s impact on public facilities.⁹ This test is the most favorable to government, as it is fairly easily satisfied.

The dual rational nexus test has two components, which both must be satisfied in order for an impact fee to be constitutional. First, the impact fee must be reasonably attributable to new development’s impact on the municipality’s infrastructure. Second, the funds from the fee must be used to benefit the new development itself.¹⁰

In *Upton v. Town of Hopkinton*, 945 A.2d 670 (N.H. 2008), the Supreme Court of New Hampshire recently explained the dual rational nexus test this way:

[A]n impact fee must be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee.

Resolution of the dual rational nexus test is dependent on the facts of each individual case. A court will analyze the methodology used to calculate a development’s impact and whether capital improvements actually benefit the development that is required to pay the fee. If this methodology is sound, a court is likely to find the impact fee to be constitutional.¹¹

The most restrictive test, and therefore the most favorable to development, is the specifically and uniquely attributable test. ‘Specifically and uniquely attributable’ means that a new development creates the need, or an identifiable portion of the need, for additional capacity to be provided by the required improvement or facility. Illinois is the author and primary user of the specifically and uniquely attributable test although a few states have applied it as well. *Pioneer Trust & Sav. Bank v. Village of Mt. Prospect*, 176 N.E.2d 799 (Ill. 1961). The principal challenge developers can bring against impact fees in these states is whether the new development is the sole cause of the allegedly needed capital facilities.

Standing

The party challenging an impact fee ordinance must have “standing” before bringing a claim in court. Essentially, this means that the party must have suffered a tangible injury as a result of the impact fee. For a builder or developer, this standing is based on payment of the fee. However, for an organization, such as a homebuilder’s association, standing tends to occur more often.

Generally, an organization can have standing on behalf of its members if it meets the following requirements: “(1) [it] has suffered an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” When the plaintiff is not the object of the government action, standing is not precluded, but it is “substantially more difficult” to establish. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-62, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

In the context of impact fees, courts will likely find that an organization has standing when one of its members has had to pay the fee. For example, in *Charleston Trident Home Builders, Inc. v. Town Council*, 632 S.E.2d 864 (S.C. 2006), the Supreme Court of South Carolina held that the home builders association had standing because there was evidence that its president had paid more than \$100,000 worth of impact fees since the ordinance was enacted. *While it may be possible for an organization to establish standing for the future payment of impact fees, it will be difficult to establish that an injury is imminent and not speculative.*¹²

Organizations generally claim declaratory or injunctive relief, rather than monetary damages, because courts are unlikely to find that all members have suffered identical damages.

Endnotes

1. Dillon's rule is named for John Forrest Dillon, a 19th Century judge who determined that, under the 10th Amendment to the U.S. Constitution, local governments are mere political subdivisions of the state when exercising their powers.
2. *Durham Land Owners Ass'n v. County of Durham*, 630 S.E.2d 200 (N.C. Ct. App. 2006).
3. See, e.g. *McCarthy v. City of Leawood*, 894 P.2d 836 (Kan. 1995); *HBA of Dayton & Miami Valley v. City of Beavercreek*, 729 N.E.2d 349 (Ohio 2000).
4. See, e.g. *Twin City Fire Ins. Co. v. City of Madison*, 309 F.3d 901 (5th Cir. 2002).
5. *Eastern Diversified Properties, Inc. v. Montgomery County*, 570 A.2d 850 (Md. 1990); *Home Builders Ass'n of Greater Des Moines v. City of West Des-Moines*, 644 N.W.2d 339 (Iowa 2002).
6. *N. Ill. Home Builders Ass'n v. County of Dupage*, 649 N.E.2d 384 (Ill. 1995); *Town of Flower Mound v. Stafford Estates Ltd. P'ship*, 135 S.W.3d 620 (Tex. 2004); *Benchmark Land Co. v. City of Battle Ground*, 14 P.3d 172 (Wash. Ct. App. 2000).
7. *San Remo Hotel L.P. v. S.F. City & County*, 364 F.3d 1088 (9th Cir. 2004); *Clajon Prod. Corp. v. Petera*, 70 F.3d 1566 (10th Cir. 1995); *Home Builders Ass'n of Cent. Ariz. v. City of Scottsdale*, 930 P.2d 993 (Ariz. 1997); *Krupp v. Breckenridge Sanitation Dist.*, 19 P.3d 687 (Colo. 2001); *McCarthy v. City of Leawood*, 894 P.2d 836 (Kan. 1995); *Waters Landing Ltd.P'ship v. Montgomery County*, 650 A.2d 712 (Md. 1994).
8. See, e.g. Ariz. Rev. Stat. § 9-463.05; Ark. Code Ann. § 14-56-103; Me. Rev. Stat. Ann. tit 30-A § 4354; Mont. Code Ann. § 7-6-1601 – 1604.
9. Cal. Gov't Code § 66001 (B) (2007).
10. *Banberry Dev. Corp. v. South Jordan City*, 631 P.2d 899 (Utah 1981);
11. *HBA of Dayton & Miami Valley v. City of Beavercreek*, 729 N.E.2d 349 (Ohio 2000).
12. *Newton County Home Builders Ass'n v. Newton County*, 648 S.E.2d 420 (Ga. Ct. App. 2007).

CHAPTER 3

Economic Implications of Impact Fees

- *Introduction*
- *Who Ultimately Pays an Impact Fee?*
- *Implications of Higher House Prices*
- *Are Impact Fees Really Necessary?*
- *Conclusion*

Impact fees on new residential development are a form of market intervention. In the absence of an intervention, the economic forces of supply and demand will bring about an unconstrained outcome to the interactions among consumers and producers of housing, and the suppliers of inputs (such as land, labor, building materials, and the entrepreneurial skill to consummate the process) utilized to build the housing. Impact fees unquestionably change the outcome. The questions remain: In what ways do impact fees affect the economic forces of supply and demand and by how much.

Part of the unconstrained outcome of supply and demand within a local housing market is a set of pricing components for new housing units and each of the inputs that comprise the building of a home. Such pricing components may include, but not be limited to: land, labor, building materials and profit. In this framework, profit is considered a price paid to developers to induce them to risk capital and apply entrepreneurial skill to residential development projects. The imposition of an impact fee influences at least one of these prices. If the pricing components for a project remain unchanged, and an impact fee is imposed, the price of housing increases. In short, someone has to pay the fee. Chapter 3 explains why, in the typical case, pricing components are unlikely to decrease, meaning the home buyer is ultimately the party who pays the impact fee.

Chapter 3 also demonstrates that the imposition of impact fees may cause home prices to increase by more than the amount of the impact fee. Such a scenario occurs primarily because development costs, such as financing charges and broker commissions, are often calculated as a percentage of other costs. To illustrate the effect that impact fees passed on to home buyers may have on housing affordability, the number of households “priced out” of the market as a result of the impact fee is described and estimated. For purposes of the chapter, priced out is defined as households able to qualify for a mortgage on a median-priced home prior to the imposition of the impact fee, but not afterward.

This leads naturally to the question of whether or not impact fees are really necessary. Chapter 3 demonstrates that, given existing fees and taxes within a typical metropolitan area, the economic activity generated and supported by home building may, after some

time, result in enough additional local government revenue to cover current expenses plus the cost of providing infrastructure. In this sense, new housing can be said to pay for itself.

Who Ultimately Pays an Impact Fee?

From the perspective that developers and home builders are the ones that provide the cash outlay for impact fees, it may be said that they pay the impact fees. However, similar to any tax or other costs imposed on businesses, the ultimate burden of payment will, to varying degrees, be passed to new home buyers in the form of higher house prices¹ (or, equivalently, smaller houses with fewer amenities), or come from suppliers of products and services utilized to build and deliver the home in the form of lower prices paid for those products and services.

To put this argument in perspective, Figure 3.1 identifies the components that comprise the price of a typical single family home.

**Figure 3.1 Sale Price Breakdown
For an Average Single-Family Home in 2013**

Average Lot Size: 14,359 sq. ft.
Average Finished Area: 2,607 sq. ft.

Description	Average	Share of Price
Finished Lot Cost (including financing cost)	\$74,509	18.60%
Total Construction Cost	\$246,453	61.70%
Financing Cost	\$5,479	1.40%
Overhead and General Expenses	\$17,340	4.30%
Marketing Cost	\$4,260	1.10%
Sales Commission	\$14,235	3.60%
Profit	\$37,255	9.30%
Total Sales Price	\$399,532	100%

The cost of an impact fee is fully passed on to the home buyer, unless any of the seven line items in Figure 3.1 are reduced. Theoretically, it is possible that the ultimate effect of impact fees is to reduce demand for these inputs and drive down the price of the items. The question is how likely this is to happen in practice for a particular item.

Impact fees, building permit fees, and water and sewer fees fall within the total construction cost figure. In most cases, permit and other fees imposed by local governments on new construction, will most likely not decrease over time as reason for imposing a fee on the construction of a home is to raise revenue, it makes little sense for the local jurisdiction to simultaneously relinquish that revenue through a concomitant reduction in fees on the same home.

In order for a reduction in the cost of labor per home to occur, wage rates for local construction workers must decline. For a significant wage decline to occur in response to an impact fee on new residential construction, new residential construction within the jurisdiction must account for a large proportion of the demand for local construction labor and construction workers building the homes must have relatively few opportunities for work on new residential construction in neighboring jurisdictions, on non-residential new construction, or on remodeling.

If a residential impact fee is imposed across all jurisdictions in a market area, including potential development sites on the fringes, it, by definition, removes the option for local workers to construct new homes that are not subject to the impact fee. On the other hand, to the extent that such a broadly imposed fee inhibits new construction, it could be discerned that the replacement of existing structures would be delayed, which may result in an increase in the demand for remodeling work.

A similar argument applies to overhead and general expenses. New home construction typically represents a minor part of a local economy that a change in impact fees would not change demand enough to generate noticeable declines in prices paid for general overhead expenses. In the short run, if impact fees inhibit new construction, the effect may be to increase overhead costs per unit, as overhead would then need to be allocated across fewer units of production.

It seems even more obvious that conditions in a single local market will have no significant impact on the cost of building materials. Markets for building materials are regional, if not national and may even be international, in scope. The effect of one local market on demand for building materials is typically negligible and imposing a fee on construction in one jurisdiction will not generally result in the builders paying less for lumber, wall board, or other building products.

Credit markets are also national or international in scope, making it difficult for local action to have an effect on financing costs. Locally imposed impact fees will not reduce the interest rates or improve the terms builders and developers can obtain on acquisition, development, and construction loans.

At first, it may seem reasonable to assume that, because the builders and developers write the checks, the impact fee is deducted from the profit. Such a scenario would not be true in a competitive market, however, as profits to home building must remain competitive with home building in nearby areas and returns available in other, similar industries with a corresponding level of risk. Otherwise, builders would be better off constructing homes elsewhere, pursuing a different business, or investing resources in alternative investment options. In short, a competitive rate of return is required in order to keep local builders in business in the long run.

Home building is widely recognized as a competitive industry. According to a 2003 monograph by the American Real Estate and Urban Economics Association, "In the United States, as in most countries, the market for housing services per se can be

approximated by a competitive market... Few landlords or developers are large enough to exert significant market power.”²

A competitive housing market is defined as large numbers of consumers and producers acting independently to make market decisions. The firms in the market are competing against one another, and there are no barriers to entry: whenever firms are earning excess profits, these are competed away by other firms who enter the industry, increase supply, and compete away the excess.

The most complicated item to analyze is the raw land cost. It is conceivable that an impact fee imposed on local construction to some extent inhibits demand for raw land and places downward pressure on the price. The extent to which this happens depends on local housing market conditions, other local land use policies—including policies of other local governments in the surrounding area—and the time frame being considered.

If impact fees are imposed in one jurisdiction but land is readily available in a surrounding market area that does not impose impact fees, builders may choose not to purchase land in the jurisdiction that imposes the fee unless owners of land within the jurisdiction are willing to take a reduction in price that fully compensates for the fee.

However, there are realistic scenarios under which land in surrounding jurisdictions may not be readily available. One scenario may be that surrounding jurisdictions are unwilling to change zoning or accelerate approval of residential building permits to accommodate construction activity that would otherwise spill over into their areas from the jurisdiction imposing the impact fee.

Even if home building is largely confined to the area over which the fee is imposed or land is already owned by builders, the willingness of land owners to sell at a lower price depends upon economic conditions and other land use policies within that jurisdiction. If other profitable uses for the land are available, and local jurisdictions readily change zoning to allow land to be utilized for those purposes, the owner of the land has no reason to accept a lower price for a residential use. Notwithstanding current zoning restrictions, the owner may be unwilling to sell land at a price that offsets the impact fee, if he or she reasonably expects zoning restrictions to change in the future.

Given the local nature of land use decisions, the types of restrictions often imposed, and the role of expectations, a reasonable working assumption is that nationwide residential developers will have difficulty passing impact fees to land owners in the form of lower land prices, and will therefore tend to pass them on instead to home buyers in the form of higher house prices.

From the perspective of new home buyers, the price of the home to the buyer may increase by more than the impact fee amount. One may ask, how can this scenario be possible? Payment of an impact fee typically occurs during development. An impact fee paid early in the production process has associated carrying costs and can substantially increase the costs builders and developers pay. In a typical case, NAHB

estimates that total developer and builder costs will increase by 137 percent of the impact fee.

NAHB research shows that, on average, regulations imposed by government at all level account for 25 percent of the final price of a new single family home built for sale¹. Every time a local or regional government raises construction costs by, for example, increasing the price of construction permits or impact fees, the cost of building a house rises. In fact, the final price of the home to the buyers will usually go up by more than the increase in the government fee. This is because each time construction costs increase other costs such as commissions and financing charges automatically rise as well. As a result, most cost increases are passed on to the buyers with additional charges. The size of these charges depends both on the type of fee/cost increase and when it is imposed in the development/construction process. NAHB estimates that the add-on charges range from 0 percent if a fee is imposed directly on buyers to 39 percent if cost is incurred when applying for site development approval (see Figure 3.2). So that for every \$1 increase in fees incurred, for example, when acquiring a building permit, the final price of a new home to its final customer rises by \$1.20. Alternatively, every \$833 increase in fees imposed at the time of the building permit results in a \$1,000 increase in house prices.

Figure 3.2 Impact Fee Effect on Sale Price

<u>Description</u>	<u>Time (months)</u>
Length of time:	
Permit to Start	0.8
Start to Construction Completion	6.2
<u>Construction Completion to Home Sale</u>	<u>4.8</u>
Total	<u>11.8</u>

<u>Building Costs/Fees</u>	<u>Add-on Charges</u>
Imposed directly on buyer	0%
During construction	16%
At start of construction	18%
When building permit acquired	20%
During development	37%
When applying for site development approval	39%

The bottom line is that a \$1,000 impact fee imposed at the time of development approval will typically increase the costs to builders and developers to at least \$1,390. Most if not all of the price increase is likely to be passed on to home buyers. In some cases, depending on particular local conditions, the price increase may be partially

¹ See P. Emrath "How Government Regulation Affects the Price of a New Home", Housing Economics Online, July 2011

offset by falling land prices. In rare circumstances, depending on local conditions, the price increase may be partially offset by declining wages for construction workers.

Impact fees on rental housing units would have similar effects on prospective tenants. Impact fees would tend to increase rents in new units to cover higher development costs.

Implications of Higher House Prices ⁵

When an impact fee is passed to the buyer, what are the implications? Obviously, one is an adverse effect on housing affordability. One way to illustrate the potential extent of the adverse effect is to apply national mortgage underwriting standards to estimate the households that qualified for a mortgage before a house price increase, but no longer qualify for a mortgage afterwards. Households that no longer qualify for a mortgage following the price increase are referred to as being “priced out” of the market for the home.

Applying this approach to the U.S. as a whole reveals that in 2014—utilizing typical assumptions about the mortgage, down payment, property taxes and property insurance, a \$1,000 impact fee which increases the price of a median-priced new home by \$1,370, prices out about 282,588 households as illustrated below in Figure 3.3.

Figure 3.3 US Households Priced Out of the Market by Impact Fees, 2014

Description	Mortgage Rate	House Price	Monthly Mortgage Payment	Taxes and Insurance	Minimum Income Needed	Households That Can Afford House
Without Fee	4.50%	\$275,000	\$1,321	\$391	\$73,382	41,959,112
With Fee	4.50%	\$276,370	\$1,328	\$393	\$73,748	41,676,524
Difference		\$ 1,37	\$ 7	\$ 2	\$ 366	- 282,588

* Calculations assume a 10% down payment and a 45 basis point fee for private mortgage insurance. A Household Qualifies for a Mortgage if Mortgage Payments, Taxes, and Insurance are 28% of Income.

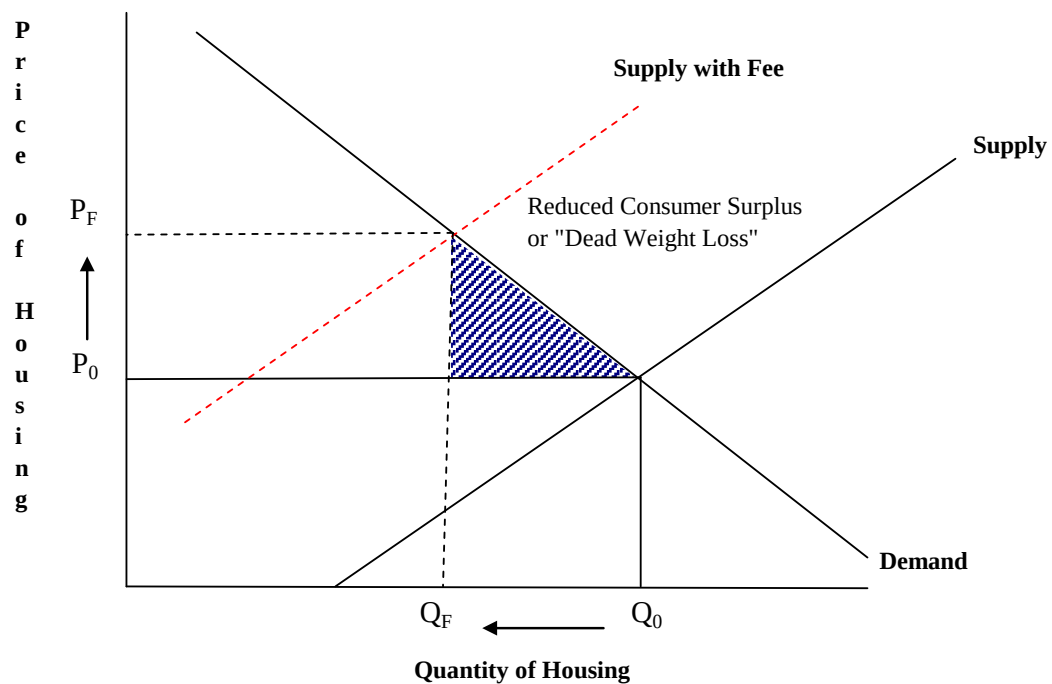
The priced-out calculation requires an income distribution as illustrated in Figure 3.3, and assumptions about mortgages, property taxes and property insurance. The income distribution, taxes and insurance rates are based largely on data from the Census Bureau’s American Community Survey (ACS). Given appropriate information about housing prices, income distributions, taxes and insurance rates, it’s possible to apply the priced-out analysis to local housing markets.

NAHB estimated new house prices for 357 Metropolitan Statistical Areas (MSAs).⁶ Household income distributions, as well as information about real estate taxes and insurance, are available for MSAs from the ACS.⁷ The priced-out analysis based on these data for 357 MSAs are illustrated in [Exhibit A](#) located at the end of this chapter.

The number of households priced out of the market by a \$1,000 impact fee (resulting in a \$1,370 price increase) ranges from a low of 19 in the Napa, CA, MSA and 30 in the Carson City, NV, MSA, to a high of 5,742 in the New York, Northern New Jersey, Long Island NY-NJ MSA. The MSA with second largest number of priced-out households is the Chicago, Joliet, Naperville IL-IN-WI MSA, with 5,325 households priced out as the result of the imposition of an impact fee.

The priced-out results do not provide a specific answer to the extent of the impact on new construction (that would require a complicated economic model that includes estimates of the willingness of households to buy smaller houses, older houses, or houses with fewer amenities; interrelationships between different segments of the local housing market; and adjustments made by home builders and surrounding local governments). It is possible, however, to indicate the general effects impact fees have on new construction on a graph of supply and demand in a local housing market as illustrated in Figure 3.4 below.

Figure 3.4 Supply and Demand in a Local Housing Market



The imposition of an impact fee translates into an increase in the cost to produce a home. On Figure 3.4, the imposition of an impact fee is equivalent to shifting the supply curve up and to the left. The effect of the impact fee on consumers of new homes is thus some combination of a price increase and reduction in quantity of housing produced.

The area below the demand curve but above the market price is called a “consumer surplus,” because all consumers pay the same, market-clearing price for housing although many of them may be willing to pay more. When the imposition of an impact fee shifts the supply curve, the consumer surplus is reduced. Consumers are made worse off because they are both consuming less housing and paying a higher price for housing. The lost surplus is called a “dead weight loss” and is illustrated as the area of the shaded triangle in Figure 3.4.

Note that, although local builders maintain a normal profit margin in this scenario, total profits are reduced, as the same per unit profit margin is earned on fewer units of production.

Existing homes in the area will also be affected by this scenario, because they are substitutes for new housing. As impact fees raise the prices of new homes and prospective buyers view existing homes as an alternative, upward pressure is placed on the prices of existing homes. Empirical research supports the argument that impact fees raise the price of existing homes as well as new homes.⁸ This research finds that existing homes are relatively close substitutes for new homes in particular impact-fee-imposing jurisdictions.

Similarly, prospective renters are likely to consider existing rental units as substitutes for new rental units, placing upward pressure on rental rates for existing housing. The combination of rising prices for existing homes and rental rates in existing rental units results in “windfall” gains to current owners of housing units. The opposite is true for current tenants in existing rental units as they are doubly squeezed by impact fees. The ability of current tenants to purchase a home or move to a newer rental unit is hampered by higher housing prices and tenants may be forced to pay higher rents for their current residence.

To the extent that impact fees raise the price of all homes in a given community, the affordability of housing in that area is reduced. A reduction in housing affordability will have a negative effect on attracting and retaining workers and will have a direct impact on local governments as police officers, firefighters, teachers, and other public sector workers are heavily impacted when home prices rise. In addition, the shortage of affordable housing will make it difficult for the community to retain its own sons and daughters as they leave their parents’ homes and look for affordable first homes of their own.

Are Impact Fees Really Necessary?

The premise underlying the use of impact fees is that development, especially residential development, does not pay for its fair share of the burden imposed upon the local government as new development requires the expansion of public infrastructure as well as the hiring of additional public sector workers.

NAHB has developed a model to estimate the costs to local governments for the additional public infrastructure and public sector workers that are attributable to new growth. Detail on the methodology is available in the report *The Local Impact of Home Building in a Typical Metropolitan Area: Comparing Costs to Revenues for Local Governments*:

http://www.nahb.org/fileUpload_details.aspx?contentTypeID=3&contentID=35601&subContentID=119792.

The general approach of the model is to assume local jurisdictions supply residents of new homes with the same levels of services that they currently provide, on average, to occupants of existing structures. The amount spent by jurisdictions to provide public services is available to the public from the Census of Governments, where all units of government in the U.S. report line item expenses, revenues, and intergovernmental transfers once every five years to the Governments Division of the U.S. Census Bureau. The Census of Governments accounts can be aggregated for every local government in a typical metropolitan area and then used to estimate total annual expenses per 100 single family and 100 multifamily housing units.

Local taxes and government spending patterns vary considerably by jurisdiction across the U.S., so defining averages for a typical metropolitan area is not completely straightforward. The figures presented in Figure 3.5 were calculated by aggregating data from the majority of the roughly 88,000 local governments in the U.S. and scaling them to the number of housing units. Areas in which revenues collected by local jurisdictions exceed 15 percent of personal income were excluded in order to exclude extreme values from cases where significant local government activity exists without substantial housing markets (for example, mining communities).

**Figure 3.5 Current Expenses for Local Governments
per 100 Housing Units**

Description	Single Family	Multifamily
Education	\$ 142,000	\$ 82,000
Police Protection	45,000	33,000
Fire Protection	20,000	15,000
Corrections	14,000	11,000
Streets and Highways	6,000	4,000
Water Supply	15,000	8,000
Sewerage	8,000	4,000
Health	19,000	14,000
Recreation and Culture	21,000	16,000
Other General Government	69,000	51,000
Electric Utilities	15,000	11,000
Gas Utilities	2,000	1,000
Public Transit	1,000	1,000
Other Government Functions	1,000	-
Total	\$ 378,000	\$ 251,000

Source: NAHB calculations based on data from the Census of Governments, U.S. Census Bureau.

In addition to current expenses, providing services to residents requires local governments to make capital expenditures for items such as schools and other buildings, equipment, roads, and other structures.

Estimating capital expenditures for schools, roads and other structures is more complicated than estimating current expenses. The process is to estimate a traditional economic model, where expenditures are a function of labor and capital, with state level data, for which information about the capital stock can be derived.⁹ The results are then applied to the typical metropolitan area, where capital required per housing unit can be computed as a residual. The results for 100 single family and 100 multifamily housing units are illustrated in Figure 3.6.

Figure 3.6 Capital Needed by Local Governments to Support 100 Housing Units (in \$ Thousand)

Description	Single Family	Multifamily
Schools	\$ 759,000	\$ 442,000
Hospitals	83,000	61,000
Other buildings	241,000	179,000
Highways & streets	150,000	104,000
Conservation & development	5,000	4,000
Sewer systems	189,000	99,000
Water supply	249,000	130,000
Other structures	241,000	179,000
Total	\$ 1,917,000	\$ 1,198,000

Source: results from NAHB "local impact of home building" model that estimates capital owned and maintained by local governments:
http://www.nahb.org/fileUpload_details.aspx?contentTypeID=3&contentID=35601&subContentID=10018

If, in the estimation of local policy makers, the increase in property tax revenues generated by development would not be sufficient to cover the increases in debt service and other costs of providing public services, local governments may decide to impose impact fees on new growth in order to maintain property tax rates at the current level. Often omitted from policy makers' estimates are the long-term economic and fiscal benefits of growth.

NAHB has also developed a model to estimate the total economic benefits of home building. The model captures the effect of the construction activity itself (Phase I), the ripple impact that occurs when income earned from construction activity is spent and recycled in the local economy (Phase II) and the ongoing impact from new homes occupied by residents who pay taxes and purchase locally produced goods and services (Phase III). In order to accurately capture the positive impact residential construction has on a community, it's important to include the ripple effects and the ongoing benefits.

In each phase, the expanded economic activity results in additional revenue for local governments in the area. In Phase I, even without impact fees, local government

revenue is generated by local sales taxes on materials, and a variety of other taxes and fees paid by the local businesses that participate in the process of building, marketing, and selling the home. In Phase II, as the income earned in Phase I is spent, local government revenue is generated by sales taxes, other taxes and fees paid by local consumers and businesses resulting from the expanded economic activity, and revenue for government-owned utilities and other local government enterprises. In Phase III, the residents of the new homes spend money locally and generate taxes, fees, and revenue for local government much as in Phase II—with the exception that the revenue is recurring, and also includes the increase in local property taxes that normally results from the development of residential properties.

Results of the revenue generated in each phase for a typical metropolitan area can be found in the report *The Local Impact of Home Building in a Typical Metropolitan Area: Income, Jobs, and Taxes Generated*:

http://www.nahb.org/fileUpload_details.aspx?contentTypeID=3&contentID=35601&subContentID=28002.¹⁰ Results in the report assume an average impact fee (broadly defined to include permits, hook-up charges, etc.) of \$7,008 per single family and \$2,762 per multifamily housing unit.

In order to judge whether or not impact fees are necessary, the results are recalculated under the alternative assumption that home builders and developers pay **no impact or other fees of any kind to local governments**. These results are summarized in Figure 3.7.

Figure 3.7 Revenue Generated for Local Governments per 100 Housing Units

Description	One-Time Effect				Ongoing, Annual	
	Phase I		Phase II		Phase III	
	Single Family	Multi- Family	Single Family	Multi- Family	Single Family	Multi- Family
Business Property Taxes	\$ 163,000	\$ 54,000	\$ 140,000	\$ 61,000	\$ 90,000	\$ 100,000
Residential Property Taxes	-	-	-	-	270,000	107,000
General Sales Taxes	125,000	46,000	45,000	20,000	29,000	32,000
Specific Excise Taxes	22,000	7,000	19,000	8,000	12,000	14,000
Income Taxes	23,000	10,000	12,000	5,000	8,000	8,000
Licenses Taxes	1,000	1,000	1,000	-	1,000	1,000
Other Taxes	21,000	7,000	18,000	8,000	11,000	13,000
Residential Permit/Impact Fees	-	-	-	-	-	-
Utilities & Other Govt. Enterprises	88,000	38,000	106,000	46,000	134,000	97,000
Hospital Charges	45,000	20,000	20,000	9,000	42,000	40,000
Transportation Charges	19,000	8,000	9,000	4,000	6,000	6,000
Education Charges	20,000	9,000	9,000	4,000	6,000	6,000
Other Fees and Charges	86,000	32,000	57,000	25,000	39,000	37,000
Total	\$ 613,000	\$ 232,000	\$ 436,000	\$ 190,000	\$ 648,000	\$ 461,000

Source: results from NAHB "local impact of home building" model that estimates the economic benefits of new construction. Technical documentation available from the NAHB Housing Policy Department.

The next issue to address is whether the generated revenues are sufficient to cover all costs listed in Figures 3.5 and 3.6, employing several conservative assumptions to avoid understating costs. For example, it is assumed that demand for public capital facilities generated by the new housing units cannot be met through current excess capacity. Instead, local governments invest in new structures and equipment at the start of the first year, prior to the construction of any homes. To the extent that neither assumption

is true, interest costs would be somewhat lower than reported in the following discussion.

To compare the streams of revenues and expenditures over time, it is assumed that half of the current expenses and half of the ongoing, annual revenues are realized in the first year. This would be the case if construction and occupancy took place at an even rate throughout the year.

The difference between revenues and current expenses in a given year is an operating surplus. At the beginning of the first year, capital investment is financed through debt by borrowing at the current municipal bond interest rate, with the interest accruing throughout the year. Each year following the first year, the operating surplus is first utilized to pay the interest on the debt, then to pay off the debt at the end of the year. Results are illustrated for the 100 single family homes in Figure 3.8 and 100 multifamily units in Figure 3.9.

Figure 3.8 Costs and Revenue for Local Governments Generated by 100 Single Family Units in a Typical Metropolitan Area With No Impact Fees

Year	Current Expenses	Revenue	Operating Surplus	Capital Investment Start of Year	Debt Outstanding End of Year	Interest on Debt	Net Income
1	\$ 189,000	\$ 1,372,681	\$ 1,183,681	\$ 1,917,000	\$ 820,824	\$ 87,505	\$ (820,824)
2	378,000	647,748	269,748	-	588,545	37,468	232,280
3	378,000	647,748	269,748	-	345,662	26,865	242,883
4	378,000	647,748	269,748	-	91,692	15,778	253,970
5	378,000	647,748	269,748	-	-	4,185	265,563
6	378,000	647,748	269,748	-	-	-	269,748
7	378,000	647,748	269,748	-	-	-	269,748
8	378,000	647,748	269,748	-	-	-	269,748
9	378,000	647,748	269,748	-	-	-	269,748
10	378,000	647,748	269,748	-	-	-	269,748
11	378,000	647,748	269,748	19,000	-	-	250,748
12	378,000	647,748	269,748	-	-	-	269,748
13	378,000	647,748	269,748	-	-	-	269,748
14	378,000	647,748	269,748	-	-	-	269,748
15	378,000	647,748	269,748	-	-	-	269,748

Source: results from NAHB "local impact of home building" models.

Figure 3.9 Costs and Revenue for Local Governments Generated by 100 Multifamily Housing Units in a Typical Metropolitan Area With No Impact Fees

Year	Current Expenses	Revenue	Operating Surplus	Capital Investment Start of Year	Debt Outstanding End of Year	Interest on Debt	Net Income
1	\$ 125,500	\$ 652,645	\$ 527,145	\$ 1,198,000	\$ 725,540	\$ 54,685	\$ (725,540)
2	251,000	460,846	209,846	-	548,813	33,119	176,728
3	251,000	460,846	209,846	-	364,018	25,052	184,795
4	251,000	460,846	209,846	-	170,788	16,616	193,230
5	251,000	460,846	209,846	-	-	7,796	202,050
6	251,000	460,846	209,846	-	-	-	209,846
7	251,000	460,846	209,846	-	-	-	209,846
8	251,000	460,846	209,846	-	-	-	209,846
9	251,000	460,846	209,846	-	-	-	209,846
10	251,000	460,846	209,846	-	-	-	209,846
11	251,000	460,846	209,846	14,000	-	-	195,846
12	251,000	460,846	209,846	-	-	-	209,846
13	251,000	460,846	209,846	-	-	-	209,846
14	251,000	460,846	209,846	-	-	-	209,846
15	251,000	460,846	209,846	-	-	-	209,846

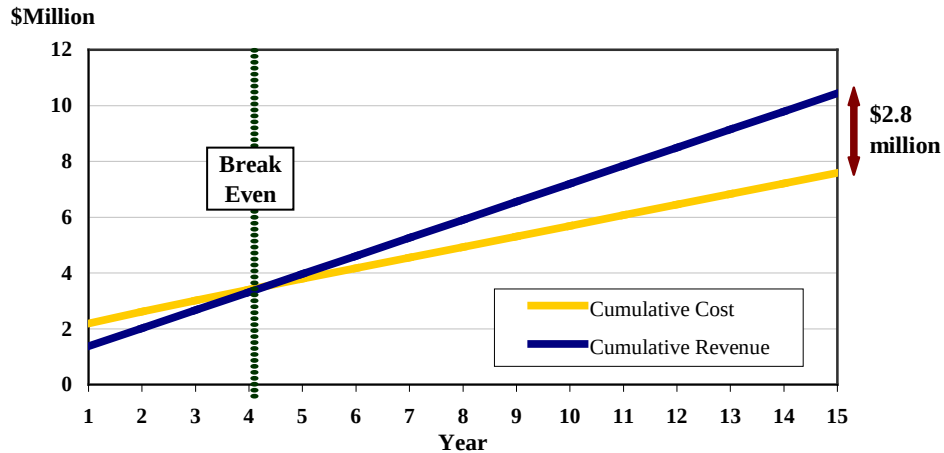
Source: results from NAHB "local impact of home building" models.

As Figure 3.8 illustrates, in the first year without the imposition of impact fees, 100 average single family homes constructed in the typical metropolitan area, generate an estimated \$1.4 million in tax and other revenue for local governments. 100 average single-family homes also generate \$189,000 in current expenditures to the local government for providing public services to the net new households at current levels, and \$1.9 million in capital investment for new infrastructure and equipment necessary to serve the needs of new residents. The analysis assumes that local governments finance the capital investment by borrowing at the current municipal bond rate.

In a typical year after the first, the 100 single-family homes result in \$648,000 in recurring tax and other revenue for local governments, and \$378,000 in local government expenditures needed to continue providing services at current levels.

After 15 years, the homes will generate a cumulative \$10.4 million in revenue for local governments compared to only \$7.6 million in expenditures, including annual current expenses, capital investment, and interest on debt as illustrated in Figure 3.10.

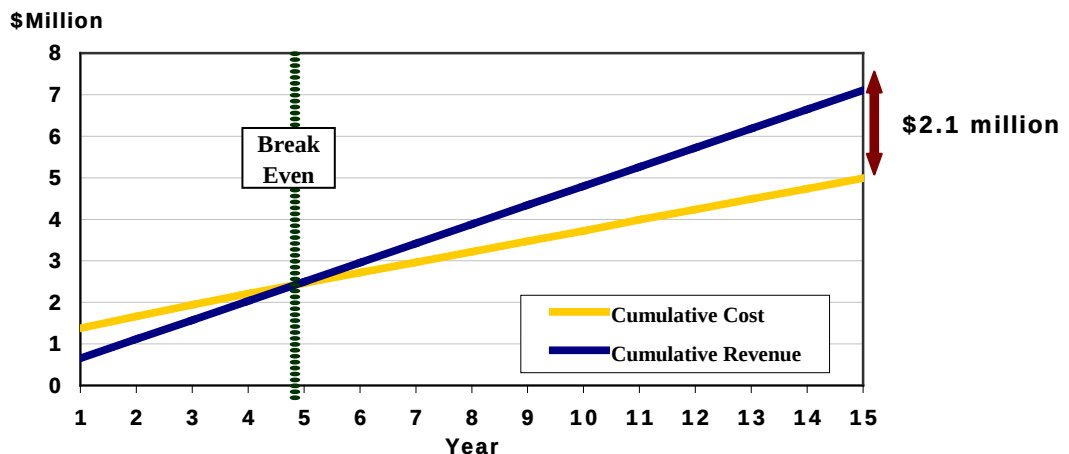
Figure 3.10. Costs Compared to Revenue: 100 Single Family Homes with No Impact Fees



Similarly, in the first year without the use of impact fees, 100 average multifamily housing units constructed in a typical metropolitan area, generate an estimated \$653,000 in taxes and other revenue for local governments while requiring approximately \$126,000 in current expenditures for local governments to provide public services at current levels to the net new households, and \$1.2 million in capital investment for new structures and equipment necessary to serve the needs of new residents. Again, it was assumed that local governments finance the capital investment by borrowing at the current municipal bond rate.

In a typical year after the first, the 100 multifamily housing units result in an additional \$461,000 in tax and other revenue for local governments, and \$251,000 in local government expenditures needed to continue providing services at current levels. After 15 years, the homes will generate a cumulative \$7.1 million in revenue compared to \$5.0 million in costs (Figure 3.11).

Figure 3.11 Costs Compared to Revenue: 100 Multifamily Units with No Impact Fees



In *The Local Impact of Home Building in a Typical Metropolitan Area: Income, Jobs, and Taxes Generated*, NAHB showed that, in an average revenue structure (including average impact fees), an average single family house will pay for itself (from the standpoint of local governments in the area) in four years, and an average multifamily housing unit will pay for itself in approximately five years.

Figures 3.10 and 3.11 illustrate that, impact and other construction-related fees are eliminated, the revenues attributable to new growth that remain from Figure 3.7 are sufficient enough for the average single-family and multifamily housing units to pay for themselves within a five-year timeframe. After a breakeven point at approximately five (5) years, the average single-family and multifamily unit begins generating excess revenue that local governments may use to reduce taxes or finance other projects, including the expansion of services to other residents in the area.

Many revenue items in Figure 3.7 result from general expansion of the local economy of a metropolitan area and cannot be assigned with certainty to a particular jurisdiction. This creates fiscal challenges, as many costs (such as those associated with primary and secondary education) are borne entirely by the jurisdiction in which a home is constructed. However, if each jurisdiction ignores the economics of the broader housing and labor market in which it is situated, and considers only revenues that can be documented with certainty when making decisions regarding impact fee policies or other measures with the potential to restrict the supply of housing, the result will be a general shortage of housing that will stifle business growth and create housing affordability problems. The purpose of this chapter was not to trivialize the significant fiscal challenges many local jurisdictions face, but to document the net economic benefits jurisdictions in a market area may realize if they allow an adequate supply of housing to be constructed.

Conclusion

The information presented in this chapter has illustrated how a \$1,000 impact fee will typically be passed to the ultimate buyer of the home; how the buyer often ends up paying more than \$1,000 extra for the home; and how the increase in the price of the home will create housing affordability issues by reducing consumption of housing in addition to increasing prices for the housing buyers do consume.

Moreover, given the tax and fee structures that prevail throughout the United States, the expanded economic activity resulting from residential construction generates considerable revenue for local governments in the area. In the typical case, after the initial five (5) year period following construction, revenues from various sources, excluding impact fees (or permit, or hook-up, or other construction-related), are adequate to extend existing level of public services the new residences.

Endnotes

1. Higher prices include the case of a house that may sell for the same price but is smaller, on smaller lot, or includes fewer amenities. In this case the buyer may be paying the same price but getting less housing in return, an effective price increase. For simplicity, this chapter describes primarily the case where the characteristics of the house remain constant while the price changes.
2. Richard Greene and Stephen Malpezzi. A Primer on U.S. Housing Markets and Housing Policy. AREUEA Monograph Series No. 3, The Urban Institute Press, Washington (2003). Richard Greene is currently Associate Dean for Graduate Programs and Oliver T. Carr, Jr. Chair of Real Estate Finance at George Washington University. Stephen Malpezzi is Professor, and Lorin and Marjorie Tiefenthaler Distinguished Chair in Real Estate at the University of Wisconsin-Madison.
3. U.S Census Bureau. Houses Sold and for Sale by Stage of Construction and Median Number of Months on Sales Market: <http://www.census.gov/const/stageann.pdf>, and Length of Time for New Residential Construction: <http://www.census.gov/const/www/lengthoftimeindex.html>.
4. NAHB, 2006 Cost of Doing Business Study.
5. A substantial portion of the material in this section is adapted from “Metro Area House Prices and Affordability” by Elliot Eisenberg in Housing Economics, July 2007.
<http://www.nahb.org/generic.aspx?sectionID=734&genericContentID=79606&channelID=311>
6. “New Home Prices by State and Metro Areas” by Paul Emrath and Helen Fei Liu in Housing Economics, June 2007:
<http://www.nahb.org/generic.aspx?sectionID=734&genericContentID=78655&channelID=311>
7. “Residential Real Estate Tax Rates in the American Community Survey” by Natalia Siniavskaia in Housing Economics, May 2007:
<http://www.nahb.org/generic.aspx?sectionID=734&genericContentID=76984&channelID=311>
8. See for example "An Empirical Examination of the Effect of Impact Fees on the Housing Market," by Larry D. Singell and Jane H. Lilleydahl in Land Economics, February 1990; "Pricing Implications of Development Exactions on the Existing Housing Stock," by Charles Delaney and Marc Smith in Growth and Change, Fall 1989; or “Do Impact Fees Raise the Price of Existing Housing” by Shishir Mathur in Housing Policy Debate, 2007 (Issue 4).
9. The procedure is explained in detail in the technical appendix to The Local Impact of Home Building in a Typical Metropolitan Area: Comparing Costs to Revenues for Local Governments.
10. Details of the model used to estimate the results are available in NAHB’s Local Impact of Home Building Model: Technical Appendix. The document is too large to be downloaded over the internet but can be obtained by contacting NAHB’s Housing Policy Department.

Exhibit A

NATIONAL ASSOCIATION OF HOME BUILDERS
Households Priced Out of the Market by a \$1,000 Price Increase, 2014

Metropolitan Statistical Area	Median New Home Price	Income Needed to Qualify	Households		
			All	Percent that Can Afford	Priced Out
Abilene, TX MSA	240,384	71,059	62,311	25%	144
Akron, OH MSA	269,153	75,822	293,691	29%	407
Albany, GA MSA	140,973	38,181	56,249	45%	160
Albany-Schenectady-Troy, NY MSA	401,105	117,214	336,867	19%	369
Albuquerque, NM MSA	225,407	57,214	344,294	43%	659
Alexandria, LA MSA	207,636	51,993	69,543	37%	178
Allentown-Bethlehem-Easton, PA-NJ MSA	307,829	87,794	318,081	29%	513
Altoona, PA MSA	349,984	92,322	48,629	17%	44
Amarillo, TX MSA	272,883	83,203	94,499	29%	142
Ames, IA MSA	284,375	78,675	37,083	30%	53
Anchorage, AK MSA	373,186	98,659	131,380	35%	192
Anderson, IN MSA	259,819	70,209	47,967	24%	105
Anderson, SC MSA	230,499	56,789	71,988	39%	110
Ann Arbor, MI MSA	270,400	78,181	143,994	41%	233
Anniston-Oxford, AL MSA	171,771	43,116	48,622	50%	117
Appleton, WI MSA	251,328	72,245	87,202	38%	212
Asheville, NC MSA	240,017	58,015	173,969	40%	333
Athens-Clarke County, GA MSA	228,491	58,608	70,685	35%	128
Atlanta-Sandy Springs-Marietta, GA MSA	221,742	56,955	1,980,222	48%	4,135
Atlantic City-Hammonton, NJ MSA	299,539	90,537	100,674	28%	136
Auburn-Opelika, AL MSA	314,741	78,066	54,042	25%	74
Augusta-Richmond County, GA-SC MSA	208,798	52,477	198,133	44%	407
Austin-Round Rock-San Marcos, TX MSA	232,454	69,043	667,355	45%	1,285
Bakersfield-Delano, CA MSA	241,976	62,459	258,396	40%	479
Baltimore-Towson, MD MSA	228,013	57,989	1,060,179	56%	2,014
Barnstable Town, MA MSA	616,381	151,432	80,879	11%	24
Baton Rouge, LA MSA	226,874	56,548	306,517	48%	530
Battle Creek, MI MSA	241,340	72,350	56,027	26%	114
Bay City, MI MSA	240,615	70,478	45,788	28%	79
Beaumont-Port Arthur, TX MSA	183,574	55,775	142,970	39%	349
Bellingham, WA MSA	293,969	72,746	77,203	35%	145
Bend, OR MSA	326,459	81,842	68,995	31%	101
Billings, MT MSA	247,752	63,972	67,882	35%	153
Binghamton, NY MSA	255,988	82,431	103,527	26%	164
Birmingham-Hoover, AL MSA	263,064	64,348	447,016	38%	681
Blacksburg-Christiansburg-Radford, VA MSA	210,790	52,204	67,158	52%	141
Bloomington, IN MSA	205,783	51,066	77,320	42%	147
Bloomington-Normal, IL MSA	207,654	62,994	71,053	51%	172
Boise City-Nampa, ID MSA	269,591	66,056	239,837	33%	474
Boston-Cambridge-Quincy, MA-NH MSA	430,296	111,855	1,749,426	32%	1,829
Boulder, CO MSA	310,031	74,378	128,370	47%	191
Bowling Green, KY MSA	202,515	52,107	53,579	40%	93
Bremerton-Silverdale, WA MSA	293,074	74,090	90,100	41%	167
Bridgeport-Stamford-Norwalk, CT MSA	878,625	240,996	339,772	1%	186
Brownsville-Harlingen, TX MSA	116,704	35,831	126,119	47%	478
Brunswick, GA MSA	289,183	73,721	40,866	29%	59
Buffalo-Niagara Falls, NY MSA	395,105	128,302	469,199	10%	266

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Metropolitan Statistical Area	Median New Home Price	Income Needed to Qualify	Households		
			All	Percent that Can Afford	Priced Out
Burlington, NC MSA	155,202	38,966	56,995	54%	154
Canton-Massillon, OH MSA	220,267	60,406	165,387	35%	326
Cape Coral-Fort Myers, FL MSA	292,932	80,100	259,094	26%	279
Carson City, NV MSA	343,367	84,201	22,243	34%	30
Cedar Rapids, IA MSA	146,885	41,106	99,047	64%	218
Champaign-Urbana, IL MSA	254,760	76,429	93,065	29%	141
Charleston-North Charleston-Summerville, SC MSA	288,677	72,424	269,643	34%	491
Charlotte-Gastonia-Rock Hill, NC-SC MSA	243,499	62,366	683,782	43%	1,181
Charlottesville, VA MSA	262,901	63,558	78,144	51%	128
Chattanooga, TN-GA MSA	182,679	46,376	210,567	46%	510
Chicago-Joliet-Naperville, IL-IN-WI MSA	308,424	92,108	3,473,022	31%	5,325
Chico, CA MSA	274,636	67,806	89,007	31%	128
Cincinnati-Middletown, OH-KY-IN MSA	244,344	66,318	865,663	41%	1,623
Clarksville, TN-KY MSA	140,513	35,802	103,093	64%	306
Cleveland, TN MSA	159,148	39,165	49,234	56%	138
Cleveland-Elyria-Mentor, OH MSA	272,149	79,010	830,043	28%	1,103
Coeur d'Alene, ID MSA	250,758	60,527	55,100	37%	100
College Station-Bryan, TX MSA	192,998	56,025	88,453	36%	198
Columbia, MO MSA	214,130	54,865	76,589	42%	128
Columbia, SC MSA	213,026	52,771	291,253	44%	670
Columbus, GA-AL MSA	188,924	47,549	114,070	43%	247
Columbus, IN MSA	270,724	69,587	30,780	41%	66
Columbus, OH MSA	254,712	72,249	725,749	38%	1,452
Corpus Christi, TX MSA	192,237	59,548	163,365	38%	405
Dallas-Fort Worth-Arlington, TX MSA	289,824	89,627	2,412,714	31%	3,676
Dalton, GA MSA	168,738	42,291	48,593	40%	122
Danville, IL MSA	130,985	39,651	32,323	54%	106
Danville, VA MSA	167,278	41,519	49,204	42%	168
Davenport-Moline-Rock Island, IA-IL MSA	220,693	64,422	158,920	38%	363
Dayton, OH MSA	291,432	84,249	333,881	24%	411
Decatur, AL MSA	179,407	45,017	61,915	50%	106
Decatur, IL MSA	225,354	69,191	52,324	37%	109
Deltona-Daytona Beach-Ormond Beach, FL MSA	357,650	96,058	213,555	15%	214
Denver-Aurora-Broomfield, CO MSA	306,315	74,688	1,049,652	42%	1,791
Des Moines-West Des Moines, IA MSA	269,083	76,308	245,972	40%	507
Detroit-Warren-Livonia, MI MSA	294,783	91,235	1,666,009	26%	2,434
Dothan, AL MSA	238,111	58,693	53,913	34%	93
Dover, DE MSA	158,002	37,589	65,290	67%	148
Duluth, MN-WI MSA	214,426	56,782	117,200	44%	287
Durham-Chapel Hill, NC MSA	252,354	65,845	216,839	40%	353
Eau Claire, WI MSA	223,405	63,094	64,452	39%	158
El Centro, CA MSA	234,495	59,418	42,914	32%	68
El Paso, TX MSA	171,999	51,310	267,497	39%	694
Elizabethtown, KY MSA	178,046	45,538	48,608	53%	175
Elkhart-Goshen, IN MSA	218,863	57,199	70,981	44%	161
Erie, PA MSA	300,781	88,158	111,662	17%	188
Eugene-Springfield, OR MSA	286,284	73,007	147,425	28%	227

Households Priced Out of the Market by a \$1,000 Price Increase, 2014

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			All	Percent that Can Afford	Priced Out
Evansville, IN-KY MSA	183,817	47,332	149,798	49%	256
Fairbanks, AK MSA	228,035	61,929	33,892	47%	98
Fargo, ND-MN MSA	223,606	62,807	91,187	41%	195
Farmington, NM MSA	254,662	62,485	35,965	47%	90
Fayetteville, NC MSA	203,097	53,953	147,433	42%	393
Fayetteville-Springdale-Rogers, AR-MO MSA	271,763	67,378	182,509	35%	276
Flagstaff, AZ MSA	229,039	54,724	49,607	43%	94
Flint, MI MSA	225,094	71,795	171,869	26%	342
Florence-Muscle Shoals, AL MSA	138,411	34,354	54,083	56%	175
Fond du Lac, WI MSA	244,900	71,637	41,020	38%	105
Fort Collins-Loveland, CO MSA	289,367	70,156	128,382	39%	199
Fort Smith, AR-OK MSA	190,863	48,139	124,807	39%	289
Fort Wayne, IN MSA	238,403	62,176	167,061	38%	338
Fresno, CA MSA	293,061	73,897	304,713	30%	456
Gadsden, AL MSA	170,888	43,165	36,353	43%	62
Gainesville, FL MSA	202,516	53,567	94,526	43%	184
Gainesville, GA MSA	207,524	51,934	61,424	47%	152
Glens Falls, NY MSA	269,828	77,148	51,033	30%	75
Goldsboro, NC MSA	188,687	49,767	45,559	40%	106
Grand Junction, CO MSA	258,995	60,551	56,846	43%	88
Grand Rapids-Wyoming, MI MSA	253,115	71,378	297,890	34%	641
Greeley, CO MSA	269,681	64,966	96,568	40%	189
Green Bay, WI MSA	231,028	65,732	124,309	40%	224
Greensboro-High Point, NC MSA	288,492	74,552	295,059	28%	445
Greenville, NC MSA	184,839	48,872	90,674	44%	204
Greenville-Mauldin-Easley, SC MSA	277,468	67,903	254,703	34%	380
Gulfport-Biloxi, MS MSA	162,576	44,342	108,125	48%	270
Hagerstown-Martinsburg, MD-WV MSA	206,117	51,465	106,312	55%	238
Hanford-Corcoran, CA MSA	189,803	47,603	39,541	55%	114
Harrisburg-Carlisle, PA MSA	323,166	87,531	219,380	30%	310
Harrisonburg, VA MSA	175,588	41,958	47,538	54%	122
Hartford-West Hartford-East Hartford, CT MSA	319,298	91,708	477,064	37%	723
Hattiesburg, MS MSA	243,791	64,017	52,169	34%	88
Hickory-Lenoir-Morganton, NC MSA	252,219	62,967	150,672	27%	276
Holland-Grand Haven, MI MSA	247,807	67,911	97,057	42%	222
Honolulu, HI MSA	393,669	87,662	307,228	40%	420
Hot Springs, AR MSA	262,134	65,875	46,326	27%	66
Houma-Bayou Cane-Thibodaux, LA MSA	271,420	69,031	72,220	35%	115
Houston-Sugar Land-Baytown, TX MSA	195,144	60,997	2,167,245	47%	4,234
Huntsville, AL MSA	165,823	40,142	171,081	62%	384
Idaho Falls, ID MSA	161,729	40,306	41,575	60%	108
Indianapolis-Carmel, IN MSA	260,699	67,557	697,114	38%	1,312
Iowa City, IA MSA	271,832	76,239	67,287	36%	132
Ithaca, NY MSA	280,564	89,282	36,575	30%	40
Jackson, MI MSA	188,708	52,506	63,934	44%	190

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Jackson, MS MSA	244,997	63,545	192,760	38%	370
Jackson, TN MSA	193,808	49,633	47,158	37%	84
Jacksonville, FL MSA	280,185	73,490	508,999	34%	856
Jacksonville, NC MSA	148,170	37,704	66,124	66%	233
Janesville, WI MSA	213,437	64,369	62,636	38%	152
Jefferson City, MO MSA	224,583	57,677	59,464	46%	126
Johnson City, TN MSA	163,973	40,268	83,177	50%	239
Johnstown, PA MSA	301,932	84,153	60,029	19%	66
Joplin, MO MSA	144,861	37,416	72,896	55%	245
Kalamazoo-Portage, MI MSA	254,025	72,309	135,068	29%	243
Kankakee-Bradley, IL MSA	191,793	58,765	41,504	35%	111
Kansas City, MO-KS MSA	292,243	80,318	814,964	33%	1,194
Kennewick-Pasco-Richland, WA MSA	328,527	85,647	92,841	32%	129
Killeen-Temple-Fort Hood, TX MSA	169,434	50,058	146,822	51%	367
Kingsport-Bristol-Bristol, TN-VA MSA	179,999	45,171	122,105	43%	323
Kingston, NY MSA	377,249	114,249	72,871	19%	74
Knoxville, TN MSA	213,424	52,723	294,901	44%	537
Kokomo, IN MSA	215,884	54,403	39,545	41%	70
La Crosse, WI-MN MSA	219,155	62,946	57,652	37%	92
Lafayette, IN MSA	231,863	58,658	80,628	39%	156
Lafayette, LA MSA	187,491	47,716	110,350	52%	217
Lake Charles, LA MSA	234,773	60,482	81,131	36%	147
Lakeland-Winter Haven, FL MSA	236,300	64,659	235,702	30%	358
Lancaster, PA MSA	269,950	74,049	196,147	35%	413
Lansing-East Lansing, MI MSA	254,683	75,840	184,760	30%	390
Laredo, TX MSA	164,186	50,884	72,117	36%	196
Las Cruces, NM MSA	231,803	57,551	71,069	34%	130
Las Vegas-Paradise, NV MSA	182,564	46,013	755,412	55%	2,044
Lebanon, PA MSA	262,028	71,597	53,811	35%	115
Lewiston, ID-WA MSA	255,924	65,790	26,662	31%	59
Lexington-Fayette, KY MSA	175,954	44,491	194,617	55%	509
Lima, OH MSA	213,974	58,512	40,561	38%	100
Lincoln, NE MSA	229,995	66,939	123,808	38%	266
Little Rock-North Little Rock-Conway, AR MSA	207,826	52,753	283,816	46%	636
Logan, UT-ID MSA	223,458	53,659	42,138	46%	82
Longview, TX MSA	155,971	44,591	72,341	50%	218
Longview, WA MSA	246,663	65,225	35,426	32%	77
Los Angeles-Long Beach-Santa Ana, CA MSA	445,105	107,294	4,292,536	22%	3,813
Louisville/Jefferson County, KY-IN MSA	229,997	59,226	533,456	44%	1,140
Lubbock, TX MSA	250,013	76,069	111,958	29%	173
Lynchburg, VA MSA	223,782	54,240	102,347	43%	196
Macon, GA MSA	198,624	52,472	84,446	39%	169
Madera-Chowchilla, CA MSA	271,959	67,513	41,538	36%	73
Madison, WI MSA	293,258	83,743	244,625	35%	381
Manchester-Nashua, NH MSA	323,009	95,042	159,493	28%	230
Mansfield, OH MSA	222,557	61,861	48,355	33%	103
McAllen-Edinburg-Mission, TX MSA	137,758	42,748	237,476	40%	656
Medford, OR MSA	272,536	69,332	74,464	26%	156
Memphis, TN-MS-AR MSA	194,193	52,811	493,575	45%	1,183

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Medford, OR MSA	272,536	69,332	74,464	26%	156
Memphis, TN-MS-AR MSA	194,193	52,811	493,575	45%	1,183
Merced, CA MSA	351,321	88,213	79,793	16%	92
Miami-Fort Lauderdale-Pompano Beach, FL	342,099	97,050	2,058,718	17%	1,953
Midland, TX MSA	240,632	69,973	51,972	45%	111
Milwaukee-Waukesha-West Allis, WI MSA	346,831	100,111	641,192	22%	943
Minneapolis-St. Paul-Bloomington, MN-WI	336,496	89,372	1,327,842	36%	2,009
Mobile, AL MSA	163,596	42,440	154,719	50%	327
Modesto, CA MSA	255,320	64,669	166,773	37%	281
Monroe, LA MSA	196,501	50,170	70,146	37%	106
Monroe, MI MSA	227,025	62,366	57,536	42%	106
Montgomery, AL MSA	199,530	48,515	150,721	49%	276
Morgantown, WV MSA	208,761	51,142	51,113	42%	107
Morristown, TN MSA	203,473	50,167	50,289	38%	100
Mount Vernon-Anacortes, WA MSA	245,286	62,316	42,494	45%	77
Muncie, IN MSA	208,458	55,525	48,842	33%	103
Muskegon-Norton Shores, MI MSA	205,803	60,633	65,952	32%	129
Myrtle Beach-North Myrtle Beach-Conway, SC	203,843	50,379	137,484	41%	283
Napa, CA MSA	580,197	142,369	44,979	13%	19
Naples-Marco Island, FL MSA	413,389	105,952	123,245	22%	75
Nashville-Davidson--Murfreesboro--Franklin, TN	261,290	65,354	622,873	40%	1,096
New Haven-Milford, CT MSA	318,180	93,482	337,231	29%	514
New Orleans-Metairie-Kenner, LA MSA	248,612	65,357	476,731	36%	750
New York-Northern New Jersey-Long Island	407,805	113,408	7,040,717	19%	5,742
Niles-Benton Harbor, MI MSA	355,099	96,306	67,997	17%	80
North Port-Bradenton-Sarasota, FL MSA	290,155	78,160	294,796	27%	371
Ocala, FL MSA	226,250	60,413	134,869	28%	333
Ocean City, NJ MSA	448,406	118,716	39,273	18%	35
Odessa, TX MSA	216,022	62,359	48,352	41%	108
Ogden-Clearfield, UT MSA	285,382	69,601	182,900	45%	391
Oklahoma City, OK MSA	230,816	63,382	487,440	38%	935
Olympia, WA MSA	290,425	74,854	103,069	42%	207
Omaha-Council Bluffs, NE-IA MSA	219,334	65,366	356,329	44%	731
Orlando-Kissimmee-Sanford, FL MSA	323,141	85,927	805,830	23%	955
Oshkosh-Neenah, WI MSA	249,872	72,679	66,752	34%	154
Oxnard-Thousand Oaks-Ventura, CA MSA	391,706	94,599	272,711	41%	343
Palm Bay-Melbourne-Titusville, FL MSA	359,862	98,315	221,973	19%	257
Panama City-Lynn Haven-Panama City Beach, FL	187,641	48,955	66,256	51%	123
Pascagoula, MS MSA	162,073	44,932	55,327	49%	161
Pensacola-Ferry Pass-Brent, FL MSA	171,995	45,705	187,473	53%	489
Peoria, IL MSA	279,063	83,796	154,710	26%	283
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD	270,854	75,346	2,240,167	41%	3,914
Phoenix-Mesa-Glendale, AZ MSA	299,444	74,110	1,594,811	34%	2,670

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Pittsburgh, PA MSA	383,844	110,558	1,012,323	16%	934
Port St. Lucie, FL MSA	346,618	99,486	183,423	21%	199
Portland-South Portland-Biddeford, ME MSA	321,500	84,074	218,046	34%	281
Portland-Vancouver-Hillsboro, OR-WA MSA	324,988	83,386	873,789	33%	1,190
Poughkeepsie-Newburgh-Middletown, NY MSA	315,346	93,615	231,194	35%	383
Prescott, AZ MSA	271,476	65,766	98,451	33%	184
Providence-New Bedford-Fall River, RI-MA MSA	314,448	84,389	623,169	32%	805
Provo-Orem, UT MSA	289,202	68,850	149,368	41%	309
Pueblo, CO MSA	212,056	54,060	62,804	42%	182
Punta Gorda, FL MSA	255,458	72,257	79,495	25%	189
Racine, WI MSA	283,360	83,396	75,451	32%	110
Raleigh-Cary, NC MSA	239,300	60,054	477,113	51%	986
Reading, PA MSA	255,169	74,361	143,350	35%	309
Redding, CA MSA	242,398	60,089	66,329	36%	109
Reno-Sparks, NV MSA	302,827	75,485	173,013	32%	295
Richmond, VA MSA	220,984	54,604	481,937	54%	1,003
Riverside-San Bernardino-Ontario, CA MSA	294,917	74,642	1,269,021	36%	2,050
Roanoke, VA MSA	247,589	61,709	138,319	40%	310
Rochester, MN MSA	289,029	76,208	74,890	46%	139
Rochester, NY MSA	363,279	119,792	421,843	15%	418
Rockford, IL MSA	161,275	52,310	132,629	45%	402
Rocky Mount, NC MSA	197,825	52,868	52,983	38%	107
Rome, GA MSA	233,496	60,762	33,306	34%	73
Sacramento--Arden-Arcade--Roseville, CA MSA	368,853	92,854	796,644	29%	1,004
Saginaw-Saginaw Township North, MI MSA	220,475	64,958	81,456	31%	155
Salem, OR MSA	278,962	72,881	149,861	29%	271
Salinas, CA MSA	336,843	81,481	125,003	32%	156
Salisbury, MD MSA	172,707	43,739	44,757	51%	78
Salt Lake City, UT MSA	286,243	69,358	389,439	42%	777
San Antonio-New Braunfels, TX MSA	227,539	68,643	774,537	36%	1,712
San Diego-Carlsbad-San Marcos, CA MSA	443,256	106,876	1,117,831	27%	912
San Francisco-Oakland-Fremont, CA MSA	441,837	106,571	1,665,167	39%	1,597
San Jose-Sunnyvale-Santa Clara, CA MSA	447,432	107,821	647,818	42%	729
San Luis Obispo-Paso Robles, CA MSA	419,878	100,466	103,348	29%	137
Sandusky, OH MSA	243,727	66,843	32,955	32%	68
Santa Barbara-Santa Maria-Goleta, CA MSA	427,335	101,612	143,151	28%	120
Santa Cruz-Watsonville, CA MSA	287,744	68,260	90,282	47%	151
Santa Fe, NM MSA	180,544	42,743	65,157	62%	119
Santa Rosa-Petaluma, CA MSA	325,692	79,106	191,860	43%	262
Savannah, GA MSA	205,157	53,207	139,421	44%	311
Scranton--Wilkes-Barre, PA MSA	345,255	96,513	222,523	18%	274
Seattle-Tacoma-Bellevue, WA MSA	368,710	94,273	1,397,266	38%	1,775
Sebastian-Vero Beach, FL MSA	433,676	117,492	61,928	11%	37

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Sheboygan, WI MSA	295,862	85,947	48,035	23%	79
Shreveport-Bossier City, LA MSA	199,792	51,275	151,106	48%	284
Sioux City, IA-NE-SD MSA	269,059	78,691	50,974	26%	72
Sioux Falls, SD MSA	180,932	49,784	89,630	56%	283
South Bend-Mishawaka, IN-MI MSA	275,678	72,826	119,914	27%	222
Spartanburg, SC MSA	169,499	42,354	115,152	52%	317
Spokane, WA MSA	358,134	93,874	192,335	21%	244
Springfield, IL MSA	248,178	74,317	87,129	35%	142
Springfield, MA MSA	357,528	97,210	259,426	23%	343
Springfield, MO MSA	210,300	53,752	184,137	39%	450
Springfield, OH MSA	245,947	68,424	53,722	27%	95
St. Cloud, MN MSA	238,803	62,543	71,849	44%	136
St. George, UT MSA	218,646	52,782	52,381	43%	121
St. Joseph, MO-KS MSA	212,137	55,439	50,925	39%	103
St. Louis, MO-IL MSA	263,137	72,040	1,115,669	36%	2,071
State College, PA MSA	261,048	69,018	53,699	44%	88
Stockton, CA MSA	311,589	78,983	219,842	32%	252
Sumter, SC MSA	131,871	33,549	38,919	65%	124
Syracuse, NY MSA	299,007	95,900	268,267	23%	387
Tallahassee, FL MSA	220,666	56,798	137,300	42%	279
Tampa-St. Petersburg-Clearwater, FL MSA	376,565	103,652	1,177,086	17%	842
Terre Haute, IN MSA	203,506	54,299	73,531	42%	173
Toledo, OH MSA	255,682	73,852	260,186	26%	362
Topeka, KS MSA	216,320	62,215	91,646	40%	221
Trenton-Ewing, NJ MSA	446,961	136,243	134,536	23%	88
Tucson, AZ MSA	287,021	73,702	399,026	29%	660
Tulsa, OK MSA	223,880	60,536	375,628	40%	867
Tuscaloosa, AL MSA	248,394	59,158	79,981	37%	120
Tyler, TX MSA	232,175	65,966	74,360	33%	129
Utica-Rome, NY MSA	298,972	94,627	118,949	17%	169
Valdosta, GA MSA	137,268	35,630	54,958	49%	196
Vallejo-Fairfield, CA MSA	255,570	64,307	143,461	53%	259
Vineland-Millville-Bridgeton, NJ MSA	177,370	55,125	50,779	44%	104
Virginia Beach-Norfolk-Newport News, VA-NC	234,587	59,056	648,268	50%	1,370
Visalia-Porterville, CA MSA	253,824	63,209	134,074	33%	272
Waco, TX MSA	201,313	60,613	87,319	33%	163
Warner Robins, GA MSA	232,089	60,349	53,293	43%	116
Waterloo-Cedar Falls, IA MSA	232,706	64,308	65,726	37%	166
Wausau, WI MSA	243,269	70,353	49,835	39%	111
Wenatchee-East Wenatchee, WA MSA	239,422	60,552	42,564	42%	94
Wichita Falls, TX MSA	223,899	70,763	64,542	30%	159
Wichita, KS MSA	226,945	64,818	245,039	41%	586
Williamsport, PA MSA	289,987	79,994	43,826	22%	70
Wilmington, NC MSA	266,712	66,865	152,944	35%	282
Winchester, VA-WV MSA	233,050	56,203	51,402	41%	62
Winston-Salem, NC MSA	189,420	48,459	201,425	46%	445
Worcester, MA MSA	296,995	79,168	307,142	40%	428
Yakima, WA MSA	276,602	72,065	75,369	26%	135
York-Hanover, PA MSA	265,832	74,801	170,288	37%	352
Youngstown-Warren-Boardman, OH-PA MSA	232,467	65,474	224,983	30%	405
Yuba City, CA MSA	246,352	63,666	57,492	35%	115
Yuma, AZ MSA	178,173	46,100	69,720	45%	187

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A Closer Look at Impact Fee Technical Studies

- *Methodology*
- *Population and Land Use Assumptions*
- *Levels of Service*
- *Credits*
- *Construction and Land Costs*
- *Offsets*
- *Credits*
- *Service Areas*
- *Transportation-Related Issues*
- *Legitimacy of Growth-Related Costs*
- *Proportionate-Share Impact Fees*
- *Discount Impact Fee Schedules*
- *Commonly Found Errors*
- *Revising State Statutes to Address Jurisdictional Overreach*
- *Conclusion*

When local governments decide to implement impact fees, they will commonly direct either their staff or a consultant to prepare a document that, among other things, analyzes the public costs of constructing capital facilities, calculates the share that is needed to serve new development, and determines the portion of that share which will not be paid from other fees and taxes on new development. This study is called a technical memorandum, fee calculation study, public facility needs assessment, nexus report, or some such similar name (herein termed “technical study”).

The technical study is important because it is needed to demonstrate that the impact fees are logically related to a need created by new development and that the amount charged is proportional to the cost of providing public facilities. The technical study is not part of the impact fee ordinance itself but it provides the necessary background and is the source for the schedule of impact fees contained in the ordinance.

In order to determine the fairness and legality of any impact fee charge, it is necessary to illustrate how the impact fees were calculated. The local government should always make the technical study available prior to a public hearing on an impact fee ordinance or at any time after adoption. In rare cases, the technical study is not available or was

never prepared. In these instances, the local government is susceptible to legal challenges on the basis that the impact fee schedule was established arbitrarily. It should be emphasized that impact fee calculation is a complex and subtle matter and even experienced impact fee consultants make errors that can potentially result in overcharges (see Chapter 2, pp. 15-18).

Some state impact fee laws specifically require a technical study and mention particular aspects of the study which must be present. *Technical studies prepared by or for local governments should always be checked against applicable state statutes in order to verify that all requirements of the applicable state statutes have been addressed.* Even in the absence of pertinent state laws, a sound impact fee technical study is essential to establish the validity of impact fees (see Chapter 2, pp. 15-18). This chapter will discuss various technical issues that should be addressed in impact fee studies and point out some common errors made in impact fee methodologies and calculations.

Methodology

The preparation of an impact fee technical study has much in common with the preparation of a fiscal impact study except that the former considers only capital costs, not operating costs. The fiscal consequences of new development must be accounted for because, unless it can be shown that the public cost of providing capital facilities for new development exceeds the amount of revenue generated by new development for capital construction purposes, then impact fees cannot be justified.

Just as there are several different approaches to fiscal impact analysis, there are several different methodologies that may be used to estimate impact fees. The different approaches can produce different results and it can be argued that some are more accurate than others. These methods are referred to by various names, but there are three essential types: the *incremental expansion approach*, the *buy-in approach*, and the *plan-based approach*. All three approaches are commonly employed in the United States.

Incremental Expansion Approach

The key operating assumption in impact fee technical studies that use the incremental expansion approach is that future development will require the same types of capital facilities at existing levels of service and current replacement costs as those capital facilities currently being utilized by existing development.

The incremental expansion approach documents the current level of service using either quantitative or qualitative measures. The incremental expansion approach examines the replacement cost of existing capital facilities within a proposed impact fee category and divides this cost by the population served to produce a figure that is the average cost per capita for a particular type of facility. It is assumed that future costs per capita will maintain existing levels of service and will approximate the current replacement

costs of providing these facilities. Figure 4.1 provides an example of how a fire impact fee may be established utilizing the incremental expansion approach.

Figure 4.1: Sample Impact Fee Calculation Utilizing the Incremental Expansion Approach

Description	Calculation	Amount
Replacement Cost of Fire Station	A	\$ 2,000,000
Population Served by Existing Station	B	10,000
Average Replacement Cost per Person	$(A / B) = C$	\$ 200
Persons per Household	D	2.2
Impact Fee per Household	$C * D = E$	\$ 440

Assuming the cost of maintaining existing levels of service follows current patterns, the incremental expansion approach may give a reasonable approximation of the costs necessary to serve new development. This approach also requires minimal planning on the part of the local community, and is easiest to execute in a technical study.

However, the incremental expansion approach has a serious flaw. It assumes that the cost to provide facilities throughout the community is the same in any particular part of the community. But costs in a particular location depend on local conditions. Using the fire facility fee as an example, the cost of providing fire facilities for a property within the response radius of an existing station will differ substantially from the cost of providing new facilities for properties beyond the reach of existing stations. Properties that can be served by existing fire facilities will not require the expenditure of additional capital funds. The incremental expansion approach makes no distinction between properties that require additional capital spending and properties that don't.

Buy-In Approach

A variation on the incremental expansion approach has been devised which is sometimes referred to as a buy-in approach. The buy-in approach seeks to recoup from new development the cost of the excess capacity present in existing facilities which is available to serve new development. The buy-in approach utilizes the actual cost of the facility when it was constructed. Rather than dividing by the population presently served by the facility, the denominator includes present population plus projected future population of the service area which can be served by the facility in question without additional capital improvements. In this way the government recovers from new development an amount determined to be its fair share of the cost of previously constructed facilities. The rationale for the buy-in approach is that new development will pay its fair share of the remaining capacity of completed facilities.

Plan-Based Approach

The key operating assumption of the plan-based approach is that future development will follow adopted community plans, and future capital facilities needs and costs will vary based on location and types of new development.

The plan-based approach differs from the incremental expansion approach and buy-in approach as it does not rely on replacement costs or the actual costs, respectively, averaged over the entire community's population but rather the plan-based approach relies on specific planned facilities and the populations projected to be served by them. Again using fire facilities as an example, the plan-based approach would begin with the community's comprehensive plan or capital facilities plan to find how many new fire stations were planned for future populations to provide a specified level of service (e.g., minimum response time). The service area of each station would be examined to determine planned densities, land uses, and populations. The cost of providing service in each service area would be obtained from the same kind of engineering cost estimates used to prepare the capital budget (or from the capital budget itself ¹). Presumably, there would be differences in the costs from station-to-station, reflecting differences in equipment needed to address different fire risks associated with the specific mix of land uses in each station's service area. The impact fee calculation would involve dividing the capital cost for each station by the number of units served (dwellings, increments of nonresidential space) and/or projected to occupy each service area.

The technical study may use different unit types for determining impact fees depending upon the infrastructure system in question, such as gallons of demand for water systems or trips generated for roadway systems. The plan-based approach is more time consuming (therefore more expensive) but is thought to be more realistic as it examines individual service areas and their public facility requirements in detail. It should be noted, however, that this approach may drastically over or underestimate service demands for plans with long planning horizons (i.e. a 20-year plan). As such, the plan-based approach is best utilized with a three- to five-year planning horizon.

Special attention must be paid to ensuring that the capital facilities plan maintains a level of service that is consistent with the community's existing levels of service. If higher levels of service are being implemented the technical study must allocate a portion of the costs associated with the higher level of service to existing development and indicate what alternative funding sources will be used by the community (excluding impact fees) to upgrade existing facilities to meet the new proposed increased levels of service (see Level of Service section below).

If a jurisdiction is attempting to implement levels of service that are higher than their current service standards, the jurisdiction must fund the costs associated with increasing the existing level of service with funding sources other than impact fees before it can begin to levy and collect impact fees at the higher level of service. In such situations, the jurisdiction will often designate a funding source for increasing the existing level of service. *In such a situation, care should be taken in subsequent technical study reviews to verify that the jurisdiction did provide the designated funding to finance the higher levels of service.* Past experience has shown that often times the jurisdiction never provided the designated funding to increase the levels of service although they imposed impact fees based upon the higher level of service.

Hybrid or Ad-hoc Approaches

Some communities utilize a hybrid or ad-hoc methodology that combines elements of all of the impact fee approaches. The most important consideration when evaluating a hybrid or ad-hoc approach is whether the state statute is followed. Further, it is important to consider the strengths and weaknesses of the approach utilized compared to other more conventional approaches.

Population and Land Use Assumptions

Many state impact fees enabling laws require the community to specify the population and land use assumptions upon which the impact fee calculation will be based. This is important because the plan-based approach and buy-in methods rely on projections of future population and land use. However, the incremental expansion approach is not typically reliant on these assumptions. Normally, the community's comprehensive plan would be the source for these assumptions and projections. If the community has no comprehensive plan, or is out of date, a separate study may be used. Communities unwilling or unable to commission a comprehensive plan or special study sometimes ignore the issue of growth assumptions by using the incremental expansion approach.

The population and land use assumptions are worth examining in detail because the amount of the impact fee will depend on the number of persons, dwellings, and nonresidential land uses that will share responsibility for capital costs. *A common error in impact fee studies is inadequate consideration of household size trends or failure to consider and evaluate household size and trends at all.* Household size is important because a small change in the average household size can create substantial changes in overall population or in demand for housing. Many studies only consider the community's household size as reported in the most recent census and assume that future families will share the same characteristics as existing families. There is no valid reason to make this assumption. Census data show that household size has been decreasing over time for the U.S. as a whole. NAHB studies indicate that this trend is reflected in many local areas as well. The census data also show that families which have recently moved (the source of most local population growth) have a smaller household size than the national average. This trend has the following implications for impact fee calculations: fewer persons in each household means that the marginal impact of each additional dwelling unit is less; furthermore, a greater number of dwelling units will be needed to house an equivalent population, thus sharing costs over a greater number of units and reducing the per-unit impact fee amount. This is especially true given current demographic trends associated with aging baby boomers who are downsizing and/or Millennials who tend to remain single much longer than previous generations.

Land use assumptions also need to take account of demand from nonresidential land uses in order to avoid over-counting the demands and costs related to population and housing. For example, police and fire capital facilities will be sized to serve both

residential and nonresidential development, so costs should be spread over both types in proportion to the demand generated by each.

Levels of Service

Level of service is a concept for defining the quantity of public facilities that must be provided in order to adequately satisfy citizens' demands for capital facilities. For example, the number of public park acres per capita is a measure of the level of service for park facilities and the average response time is a measure of the level of fire, emergency medical, and police services. When calculating the amount of public facilities that will be required to serve new growth, one must select a specific level of service in order to quantify the required investment. For example, if the selected level of service for park facilities is 0.03 acres per capita and the projected population increase is 10,000 persons, then the required investment is 300 ($10,000 \times 0.03$) additional acres. *Many communities assume, wrongly, that they are free to select the level of service of public facilities for new development.*

A community may not require new development to fund a higher level of service that it did not require for existing development. The only level of service that may be used to quantify the public facility requirements of new development is the level of service currently provided in the community. There is one exception, however: a community may require higher levels of service for new development if it is concurrently implementing a plan to raise the level of service for existing development and is funding the plan with revenues other than impact fees on new development.

If a community plans to increase its levels of service and has indicated in the technical study the source from which the funding will be derived to accomplish this, it is important to periodically verify that the community has in fact utilized those funding sources rather than impact fees to meet this end.

All technical memoranda should address the issue of levels of service explicitly. Many address levels of service implicitly, inappropriately, or not at all. Additionally, many state statutes require that levels of service be disclosed and to the extent that a technical study does not address the levels of service, such a technical study may not be compliant with state statutes leaving the community open to potential legal challenges.

Construction and Land Costs

Replacement costs as utilized in the incremental expansion or plan-based approaches should be based on estimates prepared by qualified state license engineers, actual bids, or data provided by a costing service such as Marshall & Swifts or RS Means. Land values should be supported by recent comparable land sales occurring within the immediate area over the last 6-month period. More times than not, replacement cost estimates lack the supporting documentation necessary to determine the reasonableness of the cost. To the extent that replacement costs are inflated, new growth will fund facility costs in excess of existing levels of service.

If the buy in approach is utilized to estimate impact fees, the actual costs of the facilities should be used as opposed to their current replacement costs. In the *Boa v. Seattle* (Washington 1965)² case, the court held that the “value” of facilities must be based on the historical cost rather than the inflated replacement cost of the facility, thereby rejecting a buy-in fee based on the purported replacement cost of the facilities rather than the much lower historical costs. If for whatever reason the replacement cost is utilized in the buy-in approach, allowance for depreciation should be taken to reduce the costs to more closely align with historic costs.

Offsets

Certain state enabling acts, such as Utah and Arizona, require impact fees to be reduced based upon future cash flows generated from new development, including but not limited to: property taxes, construction sales taxes, gas taxes, state shared revenue and other revenue sources that will be utilized to pay for capital facilities (offsets). *The impact fee amount is established to cover the cost of capital facilities less these other revenue collections.*

An equitable impact fee methodology will take offsets into account when estimating impact fee amounts. Technical studies that include offsets recognize that new development provides financial contributions other than impact fees to fund capital facilities. In essence, offsets protect home builders and homebuyers from double-paying for the same capital facilities. Potential offsets include:

- Grants;
- Gasoline taxes;
- Sales taxes;
- User fees;
- Bond repayments (i.e. through property taxes);
- Property taxes dedicated to fund capital facilities;
- Transfer taxes; and,
- State shared revenues.

Credits

An impact fee payer is entitled to a reduction in the amount of the impact fee (a credit) to compensate for contributions he or she has made or will make toward the cost of capital facilities. It is essential that the technical study and/or impact fee ordinance provide developers and builders with a mechanism to receive credits if they are due. *Many technical studies ignore the methodologies of how impact fee credits are to be calculated thus leading to inconsistent impact fee credit calculations.*

There are three key types of credits:

- 1) *In-Lieu of Impact Fee Credits*: credits provided to developers or home builders in exchange for the construction and/or dedication of infrastructure items that would otherwise be funded through impact fees. For example, a developer should receive credit equal to the cost of constructing and dedicating a sewer treatment plant if a portion of the local community's sewer impact fee is normally utilized to pay for sewer treatment facilities.
- 2) *Excess Capacity Impact Fee Credits*: credits for dedication of public facilities that provide excess capacity beyond what is required by a particular project that would otherwise be funded by impact fees. For example, a local community may request that a developer build and dedicate a new sewer treatment plant with enough capacity to serve the project in question but also other neighboring projects that will be completed in the future. In this case, the developer is not only given impact fee credits for the developer's immediate project; the developer is also given impact fee credits for the costs of the excess capacity. These excess capacity impact fee credits are the personal property of the developer and may be applied to the developer's future projects or sold to other developers with development projects located within the service area.
- 3) *Land Use Credits*: credit for a change in land use that results in less impact than the previous land use. Credits are generally addressed in the impact fee ordinance itself. For example, when a large portion of the community's general plan is amended from residential to industrial uses, adjustments to the impact fee ordinance are required.

Consideration should also be given to the interaction between impact fee credits and alternative infrastructure financing tools such as special taxing districts. Special taxing districts in most cases are separate political subdivisions established for the purpose of issuing tax exempt bonds to fund public infrastructure. Special taxing districts vary from state-to-state and are called: Community Facilities Districts (California, Hawaii and Arizona), Municipal Utility Districts (Texas), Community Development Districts (Florida), Public Improvement Districts (Texas, New Mexico) and Special Improvement Districts and General Improvements Districts (Nevada). (See Chapter 6 for more information on this topic). Because special taxing districts are used to finance public infrastructure, to the extent that a special taxing district is financing capital improvements that would otherwise be funded through impact fees, impact fee credits must be given for the cost of the capital improvements funded through the special taxing district.

As a side note, the use of special taxing districts by developers and communities is a very effective way of having growth pay for growth. The use of special taxing districts may dramatically reduce the amount of impact fees required by a community. For more information on the use of special taxing districts as an alternative to impact fees see Chapter 6. Additionally, the NAHB has published a handbook specifically dedicated to

special purpose taxing districts entitled, [An Overview of Special Purpose Taxing Districts](http://www.nahb.org/en/research/nahb-priorities/land-development/special-purpose-taxing-districts.aspx). The publication may be found on the NAHB website at <http://www.nahb.org/en/research/nahb-priorities/land-development/special-purpose-taxing-districts.aspx>.

If an ordinance/technical study does not adequately address the issue of impact fee credits, developers and/or home builders may wish to include impact fee credit provisions in their development agreement(s) with the applicable community documenting the understanding of the parties in relation to how impact fee credits will be calculated and administered.

Service Areas

Generally defined, a service area is a geographic area that is served by a public facility. For example, the service area of a neighborhood park is the residential community near the park where the users of the park live. Service areas are generally defined by proximity and accessibility (i.e., areas within the service area are closer to the facility and/or have easier access to the facility than areas outside the service area). The concept of service area does not mean that the facility is reserved exclusively for service area residents or that the facility never provides services to those outside the service area. It means, rather, that the facility was designed and intended primarily to serve a given area.

From the standpoint of fairness and equity, the use of service areas are preferred if a community is implementing or updating an impact fee program. *Service areas allow impact fees to be more closely linked to the actual cost of providing capital facilities in a given service area.*

Service areas are important for a number of reasons. The capacity of existing public facilities is usually inconsistent across a community. Some service areas will have capacity to serve additional development, others will not. Land use, density, topography, and access will vary from one service area to another and this will cause the expense of providing needed capital facilities for new development to vary from one area to another.

Because many states require that impact fees be roughly proportional to capital costs imposed by development, each service area should be examined to determine the capital cost implications of development in that specific area. The capital cost calculations should also take into account the existing levels of service provided in individual service areas. In the administration of the impact fee ordinance, it will be easier to show that impact fees collected from a property are spent to benefit that property if impact fees collected in a service area are placed in an account dedicated exclusively to spending for capital facilities in that service area.

Many communities designate the entire community as a single service area on the theory that individual capital facilities are part of a system, such as the park system, road system, or school system. According to this view, impact fees collected in one area

may be spent on any other part of the system because improvements anywhere in the system benefit the entire system. Communities prefer this method as it also provides them with greater flexibility in spending impact fees. Also, fewer service areas reduce the administrative burden of tracking impact fee revenue and expenditures.

There are several problems caused by communities using just one service area. In general, the benefits of a public facility diminish with distance from it. Therefore, if impact fees collected in one local area are spent to construct a facility in a different area, the area where the fees were paid will not be the principal beneficiary of that capital spending. For example, it is difficult to see the rational nexus between park impact fees collected on the west side of town and a new neighborhood park constructed with those fees on the east side of town. *Courts and State legislatures in some states have determined that new development, though it need not be the sole beneficiary of impact fee spending, must benefit more than other property from spending of the impact fees it has paid.* Unless impact fees are accounted for and spent within the local service area where they are collected, it is difficult to demonstrate the legally required rational nexus (see Chapter 2, pp. 15-16).

If a "systems approach" to impact fee spending is taken, then a new method of impact fee calculation is required. Since new facilities constructed with impact fee revenues are assumed to improve the "system" for the benefit of all system users, impact fee calculations must account for the fact that the majority of system users are existing residents. In other words, new development must not be asked to pay more than its pro rata fair share for system improvements. Given that in any year the amount of new development is a small fraction of the amount of existing development, new development therefore must pay only a fraction of the cost of new capital facilities.

Transportation-Related Issues

There are a number of technical issues related to the calculation of traffic or road impact fees that do not apply to other types of impact fees. These have to do with peak versus average daily traffic volumes, trip diversion, trip substitution, and sources of trip generation data.

Peak Traffic versus Average Daily Traffic

Different land uses generate traffic at different rates. Road impact fee formulas should take this into account by making use of local trip generation studies or data from national sources such as the Institute of Transportation Engineers (ITE). The results of trip generation studies are reported as the number of trip ends generated by an increment of land use (dwelling unit, 1,000 square feet of retail space, number of hospital beds, etc.) expressed as the average number of trips in a 24-hour period and/or the average number of trips during the peak hour(s). Some communities base impact fee calculations on average daily traffic (ADT) and others on peak hour trips. For example, a number of Florida cities and counties use ADT, whereas a number of California and Illinois communities use peak hour traffic as the basis for calculations.

Whether ADT or peak hour traffic should be the basis for road impact fee calculations can be debated. A case can be made, however, that not every trip generated by new development creates a need for additional roadway capacity. Trips added to adjacent roads during off-peak hours in most cases will not add significantly to congestion on those roads. For example, a nightclub that opens at 9:00 p.m. and closes at 2:00 a.m. will add trips to the adjacent roads at a time when roads have more than enough available capacity to absorb these trips. It would be difficult to justify road impact fees for this nightclub use because it does not create a need for additional lane capacity. Road impact fees are justified, however, when trips are added during times when the road is already operating at or near capacity (i.e., peak hours) such that the level of service will be decreased unless additional capacity is added. Most land uses generate traffic throughout the day, but it is the traffic they generate during peak hours, when adjacent roads are least able to accommodate additional trips, that is critical to determining the demand for additional road capacity created by new development for which an impact fee will be charged. Trips generated during off-peak hours, when capacity is ample, have little impact, create no need for additional capital improvements, and should not enter the calculation of road impact fees.

It should be noted that the concepts related to peak versus average daily demand also apply to water and wastewater impact fees.

Trip Diversions

A common but not universal practice is to apply a trip diversion factor in the calculation of road impact fees. This factor accounts for the fact that some trips to a land use are not separate, single-purpose trips but, instead, are diverted from the stream of traffic passing by. For example, the trip diversion factor for a convenience store is high because visits to the store frequently occur while the driver is pursuing another trip purpose, such as returning from work. If the work trip and the store trip were counted separately, over counting would occur. The diversion factor for doctors' offices is low because such trips are usually planned in advance rather than impulsively combined with another trip purpose. The diversion factor is applied as a percentage by which the trips generated by a land use are reduced.

Trip Substitution

Not all trips generated by new development are net new trips. Some trips to a new land use replace existing trips. For example, when a neighborhood convenience store opens, some longer trips to a highway shopping center are replaced by shorter trips to the convenience store. The net result is actually a lower impact on the road system because the new trips are shorter. In general, when new retail uses are added to a saturated market, there is not a proportionate increase in shopping trips. Instead, trip destinations shift from one area to another.

Because of trip diversion and trip substitution effects, at least one locality, Los Angeles, exempts certain land uses from road impact fees. The exempt land uses are generators of local short-distance trips including car washes, gasoline stations, automotive repair shops, walk-in or drive-through banks, convenience stores, free-standing supermarkets, storage facilities, convalescent hospitals, and restaurants. These land uses are not thought to substantially affect the region's transportation infrastructure.³

Sources of Trip Generation Data

The best data source for trip generation is a properly conducted study carried out in the community that imposes the impact fees. Such studies can be expensive, so many communities use data derived from studies in other communities such as the Institute of Transportation Engineers (ITE) manual, *Trip Generation*. Use of data from the ITE manual is legitimate, provided the limitations of the data are well understood. The ITE manual compiles trip generation data on a wide variety of different land uses based on local studies conducted throughout the United States. For some land uses, the data is derived from a large number of studies covering a broad range of the independent variables (e.g., number of employees, leasable area, etc.). More confidence can be placed in this data than in the data for other land uses which may be derived from only two or three local studies. Indeed *Trip Generation* contains caveats and warnings about data limitations. While the ITE is certainly a reputable organization, it would be a mistake to uncritically accept their published data. Impact fee payers would be well advised to carefully consider the source and reliability of the trip generation rates on which impact fee schedules are based. In some cases, the commissioning of an independent fee calculation study may result in considerable impact fee savings.

Legitimacy of Growth-Related Costs

An essential part of impact fee calculations is the determination of the cost of capital facilities that new development will require. In an ideal world, the capital facility needs of new growth are set out in a well-considered and duly-approved long-range comprehensive plan. Every year the five-year capital improvement plan that identifies the cost and source of funds for capital projects is updated and adopted. In the real world, however, impact fee ordinances are frequently adopted in the absence of either comprehensive planning or capital improvement planning. In these cases, capital facility cost data may be found in the appendices of impact fee technical memoranda, in separate engineering cost estimates, in consultant reports, or elsewhere. *Like every other aspect of impact fee calculation, cost data should be examined critically.*

Each item that is proposed to be funded with impact fees should be examined to determine if it meets the definition of capital costs for which impact fees may be charged. If state statutes apply, there will be a specific description of legitimate capital costs in the law. The local ordinance itself should contain a definition of "capital cost" or "capital facility." For example, the definition may include buildings, but not furniture, books, computers, or nondurable items with a useful life of three years or less. Generally, some "soft costs" such as legal and engineering costs may be permitted, but

these may be limited.⁴ Other noncapital costs such as "contingencies," "administrative costs," and "interest" are questionable. Operating costs, maintenance, repairs, salaries, and other recurring costs should not be included.

Next, it should be determined if the facilities are intended to serve new development, if they will correct an existing deficiency, or if they will principally benefit existing development. A simple test is to assume that there will be no new growth and determine if the facility will still be needed. If the facility is still needed, then it is obviously intended to benefit existing residents and may not be funded with impact fees paid by new development. The capital improvement plan or other documents may provide details that indicate who the principal beneficiaries will be. For example, the budget documents may state that the purpose is to correct a deficiency, or they may indicate that the facility will be located in a developed part of the community, or that it improves or replaces an existing facility. In cases where the principal beneficiary of the facility is existing development, its cost should not be included in impact fee calculations.

Having determined that a capital facility is a type that qualifies for impact fee funding under state and local law and that the principal beneficiary will be new development, the next question concerns whether the amount of spending proposed is commensurate with needs and conforms to existing levels of service in the community. For example, if existing neighborhood parks are less than 10 acres in size, a proposal for a new 35-acre neighborhood park should be questioned. Likewise, a proposal to purchase a ladder truck for a fire station that serves low-density residential land use should raise a red flag.

Unlike general obligation bond issues, which must be approved by taxpayers at referendum, the political threshold for impact fee spending is very low. As a result, there is not as much pressure on the community to contain costs. Under this relaxed spending discipline, municipal departments have a tendency to "gold-plate" their capital requests. This danger is magnified when there is no comprehensive planning or capital budgeting process that requires department managers to justify their capital requests to the legislative body in a public hearing.

Proportionate-Share Impact Fees

At times a jurisdiction may use proportionate-share impact fees. The rationale behind proportionate-share impact fees is that impact fees for new residential units are "proportionate" to unit size. The idea being that larger units have more people with higher incomes who generate greater impacts on public facilities. Accordingly, larger units should pay higher impact fees than smaller units. However, the argument for impact fees graduated by unit size is not convincing and in fact is counterproductive to housing affordability.⁵ The more straightforward and cost-effective way to promote affordable housing is to charge one flat impact fee for all housing units and to apply waivers selectively for affordable housing units.

Practitioners who believe impact fees should vary by unit size attempt to calculate impact fees precisely. But impact fees, as opposed to taxes, tend to be regressive. Methodologies designed to establish progressive impact fee structures may undermine their legitimacy as fees; such calculations are not legally mandated. The courts have rarely commented on methodology unless the resulting fee differences were extreme.

In fact, Dolan simply requires “rough proportionality” in setting impact fees that reflect the public facility costs of new residential development. Rough proportionality can be satisfied with the calculation of one impact fee for all residential units. This position is supported by the finding that the difference in persons per household is less than one person in comparing units of less than 1,000 square feet with units of up to 3,000 square feet.⁵ Local jurisdictions that develop more complicated methods in an attempt to calculate proportionate-share impact fees will find the resulting fee schedules more difficult to defend and more costly to calculate, and more time consuming to administer, as well as exceeding the “rough proportionality” requirements of Dolan.

If proportionate-share impact fees are used, they should employ the most relevant demand generator to estimate facility impacts, but population (including school-aged children) is the best indicator only in limited applications. Furthermore, the drivers of demand used in public facility planning and capital improvements programming should correspond to the demand generators employed in impact fee calculations. Since impact fees based on unit size reflect needs generated by population (or number of children) but are calculated on the basis of housing characteristics, local jurisdictions would have to reconcile these relationships.

When graduated impact fees for residential units are considered instead of one flat impact fee, one should verify that the best unit characteristic is being utilized. The choices are typically unit type, unit size, or number of bedrooms. Of these factors, unit type is by far the most widely used. Data on single family, multifamily/apartments, and other unit types are publicly available for most local jurisdictions, and practitioners usually can generate defensible impact fees that are specific to housing unit type. Practitioners who prefer unit size to type are more likely to use data on number of bedrooms, because these data are more readily available and accessible than data on unit size. If unit size data is also available, practitioners should select the factor that predicts occupancy most consistently.

One often hears the argument that one level impact fee is inferior to impact fees graduated by unit size. Static impact fees are assumed to be regressive, whereas impact fees graduated by unit size are progressive. Thus, graduated fees are assumed to mitigate the negative impacts of impact fees on affordable housing. This argument ignores four advantages of level impact fees, the most important of

which is that they are inherently progressive. As such, when making a case against proportionate-share impact fees one may want to employ the following arguments.

Household Size – Homes in any size/cost range that pay the same impact fees are occupied by households of different sizes. Smaller households would tend to be more affluent than larger households purchasing houses in the same size cohort. Thus, with the same impact fee charged for these housing units, higher-income households with fewer occupants would overpay whereas lower-income households with more occupants would underpay relative to facility impacts.

Housing Affordability - Although the claim is made that graduated impact fees improve housing affordability, this approach is very crude. Affluent households that opt to purchase smaller units would receive the same benefit as lower-income households occupying units in the same size range.

Impact Fee Sensitivity - Static or flat impact fees are less sensitive to the vagaries of the market than variable fees. Revenues from graduated fees will be more difficult to predict than revenues from flat fees.

Ease of Calculation - Static impact fees require less detailed calculations of revenue credits than graduated impact fees. When unit size is the attribute used to estimate proportionate demand for graduated impact fees, practitioners are obligated to calculate multiple revenue credit streams that relate unit size to revenue generation. With variable fees, ad valorem-based revenue credits must correspond to residential segments of the tax base that pay the taxes. Similarly, sales tax-related credits must be proportionate to taxable spending driven primarily by household income.

Even if there was a flawless logic to justify impact fee calculations based on unit size, the feasibility of the approach has to be evaluated in every case. We have assessed the tasks and questions local practitioners would need to resolve to impose defensible impact fees based on unit size. We found that the amount of data need to do such a calculation properly is voluminous and will be more expensive to implement than a static impact fee calculation.

Additionally, when reviewing proportionate-share impact fee technical studies, one must keep in mind Dolan's rough proportionality test and not ignore the proportionate treatment of revenue credits to ensure that fundamentals of cost accounting as well as the logic of fiscal impact analysis are taken into account. When impact fees are used to raise revenues needed for public facilities, flat residential impact fees can minimize the potentially negative influences on housing affordability. Compared with impact fees graduated by unit size, flat fees are straightforward to estimate, easy to administer, and actually more progressive when revenue credits are taken into account.

For more detailed information related to proportionate-share impact fees see the NAHB's publication [Proportionate-Share Impact Fees](http://www.nahb.org) on the NAHB's website at www.nahb.org.

Discounted Impact Fee Schedules

After calculating the impact fee amount according to a formula that will vary for each type of impact fee, many communities discount this nominal fee amount by a certain percentage. The nominal impact fee amount represents the highest amount that can be legally charged. There are technical, administrative, and political reasons for discounting this fee amount. Impact fee calculation is a complex technical exercise that often requires expert judgment. As a result, technical and judgmental errors are common. To protect a community from liability in the event of a legal challenge to its ordinance, the fee amounts are sometimes discounted to account for the possibility of overcharges due to technical errors. Impact fee ordinances are easier to administer if fee payers accept a simple flat fee rather than insisting on their right to individual fee determinations. Fee schedules will therefore be discounted as an incentive to avoid time-consuming individual fee calculations. For political reasons, such as keeping fees in line with those charged by other communities, a community may decide to charge less than the calculated fee.

Commonly Found Errors

Figure 4.2 on the following page illustrates some of the most common errors found in technical studies relating to the calculation of impact fees.

Figure 4.2: Common Errors with Impact Fee Technical Studies

	Error	Explanation	Example
1	Construction Cost Estimate and Adopted Capital Improvements Plan Inconsistencies	Cost estimates utilized in the technical study do not agree to the costs identified in the community budget, capital improvement plan or recently completed projects. In order to verify the reasonableness of costs utilized in the technical study, such costs should be compared to costs from the community budget, capital improvement plan or recently completed projects.	In one community, there was a discrepancy of 24% between school construction costs identified in the technical study and costs identified in the capital improvement plan.
2	Current Levels of Service Not Properly Documented and/or Applied	Some communities fail to assess the current levels of service enjoyed by existing residents and do not use the current levels of service as a standard to which new development must be held. As a result, development fee studies may tend to require new development to pay for and operate at higher levels of service than existing residents.	A recent review of impact fees in a community in Virginia revealed that new development was being required to provide a higher level of service for parks than was currently being enjoyed by existing residents. The level of service established as the guideline from which to calculate the park impact fees was 13.8 acres of park land for every 1,000 residents of the county. In reality, the current level of service for park land for the county was found to be 8.8 acres of parkland for every 1,000 county residents.
3	Funding Offsets Ignored or Improperly Applied	Technical studies may ignore additional funding sources attributable to new development. Additional funding sources that would offset impact fees must be considered and may include: i) gasoline taxes; ii) sales taxes; iii) user fees; iv) bond repayments (i.e. through property taxes); v) property taxes dedicated to fund capital facilities; and vi) transfer taxes.	A community in Oregon applied a credit for future debt payments that was discounted to arrive at the offset utilized to reduce the fees. The community chose to discount future debt repayments, however, did not discount the cost of infrastructure to be installed in the future. Discounting the future debt repayments and not discounting the infrastructure costs resulted in a decrease in the offsets being applied and consequently an inaccurate increase in the system development charge (impact fee).
4	Inflated Land and Building Cost Estimates	Cost estimates for buildings and land utilized in technical studies often do not correspond with construction or land cost indices. Communities may inflate construction and land costs by using cost estimates derived during periods of dramatic growth and increased demand for construction materials and land.	During the boom, Arizona experienced a period of dramatic growth and escalation in land prices. A comparison of land costs in technical studies adopted by an Arizona community revealed an unrealistic increase in the land cost per acre from \$76,800 to \$370,424 in a four year period and the technical study provided no support for the increase.

	Error	Explanation	Example
5	Math Errors	Technical studies often include numerous math errors which affect the final assessed impact fee amount.	One community in Arizona inadvertently doubled the construction cost of a roadway improvement from \$25 million to \$50 million, resulting in a substantial increase in the impact fees required by the community.
6	Correcting Existing Deficiencies	Impact fees must only be established to finance the public infrastructure required to service new development, not to repair or improve the public facilities that provide service to existing residents.	A review of a technical study in one community found that \$108 million in sidewalk improvements were to be financed with impact fees in developed areas of the community to make the city compliant with the American with Disabilities Act. This was a clear violation of using impact fees to correct existing deficiencies.
7	Impact Fee Alternatives Not Considered	Community officials may be unaware of alternatives that exist to finance public infrastructure. Special taxing districts represent one alternative to the use of impact fees and allow growth to pay for growth. In some states, special taxing districts may be allowed to finance a broader array of eligible infrastructure than the eligible infrastructure that can be financed through development impact fees.	A California community formed a special taxing district, known as a community facilities district (CFD), in response to a public safety funding crisis resulting from rapid growth in residential construction and lagging retail sales. It was determined there would be revenue shortfall in providing police and fire services to accommodate the community's need for the services. Through the use of a CFD, the community was able to ensure the necessary services were provided to its residents while at the same time allowing growth to pay for growth.
8	State Statute Compliance	Oftentimes, communities fail to fully conform to the guidelines stipulated in the state enabling impact fee statutes. A review of the requirements of the state statute is important to ensure that they are being met.	An impact fee review for a Montana community found that of the approximately 23 items required by the state statute to be addressed in a technical study, the community failed to fully comply with 6 items.

	Error	Explanation	Example
9	Misappropriation of Impact Fees	Impact fees are collected for specific public infrastructure items (e.g. water resources, water transmission lines) and the impact fees can only be spent on the facilities for which the impact fee are collected. Audits of impact fee accounts indicate that jurisdictions often comingle funds and do not spend the impact fees on the infrastructure for which they were collected.	A 2016 audit of a community's impact fee accounts revealed that while the City's impact fee study indicated that the City was supposed to be utilizing 49% of its sewer impact fee collections for water reclamation facilities and 51% for sewer collection lines; the City had expended 91% of its sewer impact fee collections for the water reclamation facilities and only 9% for the collection system.

Revising State Statutes to Address Jurisdictional Overreach

Background

Reviewing impact fee technical studies leads to many questions and concerns related to the assumptions utilized in the technical study. In practice, it is common to meet with the jurisdiction's staff to discuss and hopefully resolve concerns related to the technical study. Often, however, it is not unusual for a jurisdiction to ignore the home building industry's concerns related to a technical study, especially if the changes result in a decrease of impact fees. In such a situation, the builders and/or the local home building association either need to let the issue go unresolved, litigate the issue, or alternatively, revise the state's impact fee enabling legislation.

For example, after years of conflict with Arizona municipalities in relation to the calculation of impact fees, in May 2011, the home builders of Arizona, working through their respective home builders associations (collectively, the HBA), were successful in passing Senate Bill 1525 (SB1525) that made sweeping changes to the way Arizona municipalities must calculate and collect impact fees.

SB1525 was an outgrowth of the HBA attempting to work with Arizona jurisdictions over a number of years to modify their aggressive tactics when estimating impact fees. Some of the challenges that the HBA found when reviewing the jurisdictional impact fee technical studies encompassed all of the challenges outlined in Figure 4.2. More specifically, the HBA was concerned with:

1. Growth paying for non-growth related public improvements (e.g. performing arts centers, town lakes)
2. Construction cost estimates provided by unqualified municipal staff (e.g. a fire chief preparing cost estimates for a fire station).
3. The non-use of service areas to determine levels of service and to estimate infrastructure costs and the impact fees necessary to provide services to new growth at existing service levels.
4. Funding levels of service that are in excess of existing service levels.
5. Challenges with the proportionality of the impact fees versus benefits received.
6. Lack of transparency in the impact fee process.

Key provisions of SB1525

To address the aforementioned challenges with jurisdictional technical studies, SB1525 included the following key provisions:

1. Provided jurisdictions with the ability to continue to collect current impact fee schedules to pay debt service on existing bonds for public improvements either constructed or underway, even if the impact fee would no longer be allowed after the effective date of the Bill, which was January 1, 2012.

2. Introduced the phrase "necessary public services." This is a new definition that narrowed the use of impact fees to address home builder concerns about the improper use of impact fees for general government purposes and certain public facilities, such as public parks over 30 acres or libraries over 10,000 square feet.
3. Limited impact fees to the proportional share of the cost of new infrastructure that is attributable to new development only, and prohibited increasing the level of service that is provided to existing residents.
4. Clarified that offsets against impact fees need only be provided for taxes that are applied to capital costs of infrastructure.
5. Made clear that credits against impact fees are only due when a developer pays for, or is required to provide, infrastructure in an infrastructure-improvements plan (IIP) for which impact fees were assessed.
6. Created new public notice and hearing procedures for assessing, adopting, and amending development fees. Existing fee studies and plans were to be replaced using the new system outlined under SB1525 no later than August 1, 2014, or the municipality would be prohibited from collecting impact fees.
7. Required IIPs to: (i) identify all capital projects that are the subject of impact fees; (ii) disclose existing facilities; (iii) disclose costs to existing facilities not associated with new development; (iv) identify offsets to public infrastructure costs financed by impact fees; and, (v) require construction costs estimates be prepared by Arizona state licensed professionals.
8. Mandated a refund to current property owners of certain impact fees if the infrastructure that is the subject of a impact fee is not built within 10 years or the time identified in the IIP, or 15 years for water and wastewater projects.
9. Required creation of either an advisory committee to provide input on adoption and administration of impact fees or a biennial audit of a municipality's impact fee program.

For more details on SB1525 and to find the complete version of Arizona's impact fee statute, refer to Appendix D.

Other states with favorable impact fee statutes include Montana and Texas. Montana's impact fee statute is fairly succinct yet it requires jurisdictions to adhere to common impact fee practices that lead to fair and equitable impact fees. Texas' statute, while more in depth than Montana's is fairly comprehensive in its scope. Both the Montana and Texas statutes have been included as part of Appendix D.

Conclusion

Local governments are attracted to impact fees because of their potential to generate revenue at a lower political cost than some other measures such as jurisdictional general obligation bond elections. There is a cost to be paid, however, which is related to the greater complexity and difficulty of setting a truly fair and legal impact fee amount. Unlike taxes which may be set at arbitrary levels, impact fees must be proportional to the actual cost of providing capital facilities. Making these calculations, as the above discussion points out, is neither simple nor straightforward. It is also easy to make mistakes. As a result, the community imposing the fee pays a price in the form of higher administrative costs, consultant fees, and legal fees when the methodology is challenged.

Endnotes

1. For this reason, some state impact fee laws require that the community adopt a capital budget before implementing impact fee legislation.
2. *Boe v. Seattle*, 66 Wa.2d 152 (Wash. 1965)
3. As reported in *Waukesha County Impact Fee Study* by Barton-Aschman Associates, Inc., Vandewalle & Associates, Whyte Hirschboeck Dudek S.C., Siemon, Larsen & Marsh.
4. The Wisconsin law limits such costs to 10 percent.
5. Emil Malizia and Lucy Gallo, *Proportionate-Share Impact Fees*, (National Association of Home Builders, October 2009)

CHAPTER 5

Administrative Issues

- *Definition of Capital Costs*
- *The Use of Impact Fees to Pay Interest Costs*
- *The Comprehensive Plan and Capital Improvement Plan*
- *Independent Fee Calculation Study*
- *When Fees Are Due*
- *Accounting*
- *Refunds*
- *Advisory Panels*
- *Appeals*
- *Credits and Reimbursements*
- *Exemptions*
- *Grandfathering*
- *Conclusion*

The local impact fee ordinance is the legal document that establishes a community or county's impact fee program. It should also establish the administrative procedures by which the program will be implemented and cover such issues as when impact fees are paid, how they will be accounted for and spent, independent fee calculation procedures, refunds of fees collected but not spent, administrative appeals, etc. Together with technically correct impact fee calculations, proper administration of the impact fee program is necessary to establish the constitutionality and legality of the impact fee program.

In states where the legislature has enacted impact fee enabling laws, local impact fee ordinances must comply with specific administrative requirements. Whether there are state enabling statutes or not, court decisions may establish requirements that local ordinances must address and adhere to. This chapter will cover administrative aspects of impact fee programs with emphasis on areas where many local ordinances could be improved. Unlike taxes and other revenue sources, local governments do not have as much discretion in the handling of impact fee revenues. Particular care and attention are required in the administration of impact fees to assure fairness and legal sufficiency.

Definition of Capital Costs

The local ordinance should contain a precise definition of the kinds of capital costs that qualify for impact fee funding. If state impact fee laws apply, the local ordinance may



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be more restrictive but may not include a broader range of cost items than the state law permits. Generally acceptable cost items include land, buildings, durable equipment and machinery, grading, paving, landscaping, and associated engineering costs. Items that would generally not be considered as capital costs include recurring expenses such as those for consumable supplies, salaries, training, maintenance, repairs, administrative costs, program operating costs, nondurable equipment (less than three years useful life), and the like.

Some items of moderate durability such as vehicles, books, computers, and furniture are questionable as capital expenses. The problem with these items is that they are not fixed in location and are hard to track. For example, computers purchased with impact fee funds and placed in a school serving new development one year may end up in a different school the next year. The portability of these items makes it difficult to assure, or even sometimes to tell, that impact fees are being used to benefit the development that paid the fees.

The Use of Impact Fees to Pay Interest Costs

The use of impact fees to pay the interest portion of debt service for capital facilities is controversial. Unlike taxpayers who pay for capital facilities on the installment plan through bond financing, the impact fee payer pays for his share of needed infrastructure all at once in a lump sum. Many times this payment is made years before the facilities are provided, particularly because the impact fee payer has no control over when facilities are constructed. The impact fee payer starts off with a capital facility principal account balance of zero. In these cases, the impact fee payer is in essence double paying for the infrastructure—first through impact fees, and again through other taxes, i.e. property taxes, which are used to retire debt on the same infrastructure. It is difficult to understand, therefore, how interest on debt can be justified as a capital cost for which impact fees may be expended when the fee payer has paid his share of the principal in full before receiving a building permit. In those situations where a local government has issued ad valorem debt to fund the construction of capital improvements, it is necessary to review the impact fee calculation to determine that a reduction in the impact fee has been made for interest on debt service to avoid the potential of double charging.

The Comprehensive Plan and Capital Improvement Plan



*Has a comp
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prepared?*

In examining an impact fee ordinance, a fundamental question arises as to the source of the assessment of public facility needs which is the basis for the impact fees. The public facility needs assessment should not be a "wish list." The capital facility requirements should be based on a thorough analysis of future growth and appropriate levels of service for each type of facility that establishes a clear and logical connection (rational nexus) between anticipated growth and the type and amount of capital spending that growth will require. It should be emphasized that demonstration of a rational nexus is not merely desirable but is essential to establishing the legality of the ordinance. In some states a report providing the rational nexus is also a statutory requirement (see Chapter 2, pp. 15-18).

The comprehensive plan is the benchmark by which nexus is measured. This plan should include population and land use projections, establish appropriate levels of service for public facilities, examine existing service levels and deficiencies, and identify the capital facilities that will be needed because of new growth.

The capital improvement plan (CIP) or capital budget will attach a cost to the facilities identified in the comprehensive plan and match the facility to an appropriate funding source. The CIP usually covers a five-year period and is updated and approved every year. Other documents may be relied on to provide a public facility needs assessment, but the comprehensive plan and CIP have the advantage and added weight of being officially adopted by the legislative body after a public hearing process.

Some communities have no comprehensive plan (or none that is up-to-date), CIP, or formal capital budgeting process. This has not deterred them from imposing impact fees. Such communities run the risk of having their ordinances overturned because they are not able to document that the fees they charge are rationally related and proportional to the capital costs occasioned by new development.

The impact fee study, capital improvement program, and comprehensive plan must account for differences between the levels-of-service currently provided to existing residents and the levels-of-service proposed for facilities to be financed with impact fees. If current levels-of-service are deemed deficient, then funding sources (other than impact fees) to correct these deficiencies must be identified and detailed to prevent new development from bearing the financial burden of improving service levels for the benefit of existing residents. Annual monitoring is crucial to assure that upgraded levels-of-service enjoyed by existing residents is not financed by impact fee payers, but by other means that assign costs to those who benefit from the improvements.

Independent Fee Calculation Study

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Does the impact fee ordinance specify how the independent fee study must be conducted?

The impact fee ordinance should outline the process for developers and builders to obtain variances that would reduce or eliminate their need to pay impact fees so as to allow flexibility in cases involving special circumstances. A community should also offer a variance process when the applicant believes that the schedule of fees in the ordinance does not reflect the actual monetary impact of a particular project (many already do this). This is usually accomplished through an independent fee calculation study. Under these procedures the applicant commissions and pays for a study which may entitle the applicant to a reduction in impact fees if it convincingly shows that the project will require less public capital expense than assumed in the impact fee study. For example, a road impact fee may be based on trip generation figures from the Institute of Traffic Engineer (ITE) Trip Generation Handbook. An applicant for a convenience store may question the ITE trip rates for this use because they are based on only a few studies and the range of rates varies widely. An independent study of trip generation specifically targeting the

particular market in question may find lower trip generation rates and justify reduced impact fees.

Some ordinances specify exactly how an independent fee study must be conducted and some even require that the government hire a consultant to conduct an independent impact fee study, although the applicant must pay the consultant's fees. In fairness to the applicant, there should be few restrictions on the methods used to conduct the study. The applicant should be free to present their case in his or her own way. In the end the independent fee study must stand or fall on its own merits. A rigorously logical and competent study based on a defensible methodology should be acceptable to any reasonable person. The applicant should also be free to hire the consultant of his choice. Only the applicant has an incentive to control the cost of the study, and the interposition of the government between the applicant and the consultant would make cost control impossible.

When Fees Are Due

The most convenient way to administer an impact fee program is to withhold some permit or approval needed for development or occupancy until the impact fee is paid. Impact fee payment can therefore be made a condition of plat approval, of issuance of a building permit, or of a certificate of occupancy. Probably the most common practice is to make impact fees due at the time the building permit is issued. *From the building industry's point of view, it is preferable for the impact fee amount to be determined at the earliest possible time (i.e. development agreement or plat map recordation) but to fall due and payable at the latest possible time (i.e., certificate of occupancy)..*

The earlier a developer or builder knows what his project's impact fee liability will be, the easier it will be to make adjustments. If this information is known too late, it may be impossible to adjust the product or the price to compete in the marketplace. If the ordinance relies on a schedule of standard impact fee charges, then the information can be obtained at any time. If, however, impact fees are determined on a case-by-case basis, or if calculations of credits are involved, then these calculations should be performed well in advance of the time that the fee amounts are actually due, say, at the time of plat approval.

Because development does not actually cause impacts until a land use commences or a building is occupied, the fees should not be payable until as close to the time that a use or occupancy begins. A more practical reason is that a builder must carry the financial burden of the impact fee from the time of payment until closing, incurring finance charges during this period which are passed on in the form of higher home prices. If impact fees were paid at time of issuance of the certificate of occupancy (if applicable) or at settlement, carrying costs would ordinarily be minimized.

Accounting

Unlike tax revenues, which are deposited in a general fund to be spent with broad discretion, impact fees must be separately accounted for and expended for the specific purposes for which they were collected. Impact fees must not be freely transferred to other accounts to be spent for other purposes. For example, a park impact fee should be credited to a park capital improvement account in a subaccount for the particular park service area where it was collected. Interest earned on impact fee funds should be credited to the proper accounts. In general, impact fees must be spent for the intended purpose within a definite period of time or else be refunded to the fee payer. Therefore, records must be kept of the amounts paid, the identity of the fee payers, the dates the fees are paid into the accounts, and the dates the fees are spent. A frequently established rule is that fees are spent in the same order that they were deposited in the account.

The government has little discretion in disposing of the funds in impact fee accounts. The funds must be spent for the particular capital facilities listed in the capital improvement plan which formed the basis for the fee calculations, or they must be refunded to the fee payers. Over the years, accounting for impact fees and their expenditure has become an essential topic, with the payers of impact fees wanting assurances that impact fees are being expended for their intended purpose. The state of Arizona has even gone so far as to require a biennial audit of the impact fee accounts to ensure that impact fees are being properly utilized.

Refunds

?

Does the state enabling statute require impact fees to be refunded with interest if not used within a reasonable timeframe?

When the government collects an impact fee for a specific purpose but does not spend it for that purpose, it has no choice but to refund the fee because it may not be used for any other purpose. Therefore, all impact fee ordinances should contain refund provisions. Most ordinances permit impact fees to be held for five to ten years before they are eligible to be refunded. We would argue that, since most capital improvement plans cover a five-year period, any impact fees not spent in one five-year capital budget cycle should be refunded. It hardly needs to be mentioned that impact fees should be refunded with interest. The interest rate should be the same as that which the government receives on its long-term deposits.

The fact that a refund is due indicates that the government erred in collecting the impact fee. Therefore, the government has an affirmative obligation to identify the impact fee payers who are due a refund and to make the refunds promptly. Unfortunately, most impact fee ordinances put the burden on the impact fee payers to prove to the government that they are owed refunds. Few ordinances address the issue of unclaimed or undeliverable refunds. These should probably remain in the original impact fee account for the class of infrastructure to which they were originally dedicated rather than be transferred to the general fund.

Some ordinances impose an administrative fee that is deducted from refunds. Given that the government erred in collecting the fee or in failing to spend funds in a timely manner, the fee payer should not be charged for the government's errors. In addition, expending impact fee dollars on administration violates the principle that impact fees must not be used for operating expenses but only for the capital facilities for which they were collected.

Advisory Panels

To ensure fairness in the administration of the impact fee program, oversight should be provided by an independent, objective citizen advisory panel. This is needed because government has a vested interest in the revenue produced by the program and therefore cannot provide objective and unbiased oversight. This panel should be composed of citizens appointed by the legislative body, and at least 40 percent of its members should represent those most affected by the program, including builders, developers, real estate agents, architects, engineers, etc. No elected or hired official of the local government should sit on the panel.

The panel should conduct an annual audit of impact fee accounts, review the administration of the program, and assess impact fee calculations and fee schedules annually. The panel should advise the legislative body on the operation of the impact fee program by publishing an annual report. The advisory panel can also play a role in the appeals process by hearing appeals in the first instance and issuing a nonbinding, advisory opinion.

Participation in an advisory panel provides an important opportunity to voice issues and concerns related to the planning and/or implementation of impact fees.

Appeals

An impact fee payer who believes he or she has been unfairly treated should have access to an appeals process. The ordinance should provide the impact fee payer the opportunity to seek relief by submitting alternative fee calculation studies or other evidence to the agency administering the fee program. The administrative agency's decision could be appealed to the citizen advisory panel or (if established) a hearing examiner or board of administrative appeals. From this point, further appeals could be taken to the local legislative body or, if still unresolved, to the courts. Alternatively, some states are exploring whether disputes over impact fees should be resolved by an arbitration panel that is independent of the courts. The reasoning behind this strategy is that an arbitration panel provides the opportunity to resolve conflict much more quickly and with fewer legal costs than the court system.

Credits and Reimbursements

In most cases the impact fee amount due can be determined from schedules in the ordinance. In some instances, however, adjustments will need to be made on an

individual basis. For example, a developer may agree to provide land or to construct facilities of the type for which impact fees would be charged. In such cases the developer is entitled to receive a credit or reimbursement equal to the market value of the land or facilities provided which is subtracted from his impact fee bill. In cases where the value of land or facilities exceeds the amount of impact fees due, the developer might receive the difference in cash or in the form of transferable credit against future impact fee liabilities. The latter could be limited to apply only to the specific category of fees for which credit was originally granted.

However, many ordinances do not address credits or reimbursements. In all cases, developers and builders should attempt to include language in their development agreements with the community's charging impact fees that provide for credits and/or reimbursements as a safeguard.

Credits should also apply when there is a change in existing land use. For example, if a land use is changed from residential to commercial, there will be an impact due to increased traffic. But the impact fees should not be based on the total number of trips generated by the commercial use but on the *net increase in* trips. The residential trips that were taken off the roads by the change of land use are the basis for the credit.

Sometimes land use changes from a more intense use to a less intense use. The reduction of impact on public infrastructure is thus a benefit to the community. A case can be made that, if developers whose actions increase the impact on infrastructure must pay a fee for that impact, then developers whose actions reduce impacts should receive something (a reverse impact fee) from the government. Government may resist making cash payments in such cases but transferable impact fee credits are certainly appropriate.

Exemptions

For reasons of public policy, government may wish to make some uses exempt from the payment of impact fees. One example of exempt land use might be affordable housing for low- and moderate-income households. It would not be fair, however, to burden new development with increased fees because some categories are exempt. Capital facilities for exempt land uses should be funded from a source of revenue other than impact fees on new development.

Exemptions can raise constitutional concerns about equal protection because some properties are charged impact fees and some are not. A valid public purpose can justify unequal treatment but some communities take the extra step of establishing administrative procedures whereby impact fees are paid on behalf of exempt categories by general revenues passed through a nonprofit organization (see Chapter 2, pp. 15-18).

Grandfathering

When first implementing an impact fee program the question arises about which properties, if any, should be grandfathered, i.e., deemed to have established a prior right to proceed with development without paying impact fees. For example, on the effective date of the impact fee ordinance there may be projects in the approval pipeline which were accepted for processing or for which development agreements have been reached before an impact fee program was either contemplated or announced and whose feasibility relies on financial assumptions that did not include payment of impact fees. Depending on the fee levels, these projects may fail if required to pay impact fees. In fairness, projects accepted for processing before announcement of an impact fee requirement should be grandfathered. Some states such as Texas have strong vesting statutes. Verify state and local laws regarding vesting when addressing grandfathering issues.

Conclusion

Just as an impact fee is difficult to correctly calculate, impact fee programs are difficult to design and administer so that all legal criteria are met. Unlike the administration of programs funded by general revenues, administration of impact fee programs is complicated by the fact that impact fee revenue accounts have many strings attached. Bureaucrats accustomed to exercising broad discretion over general funds may not fully appreciate that they have practically no discretion over the disposition of impact fee revenues. For this reason, it is important that impact fee ordinances be very carefully drafted to provide strict control of impact fee accounts.

Alternatives to Impact Fees

- *Infrastructure Financing Objectives*
- *Methods of Financing Infrastructure*
- *Alternatives to Impact Fees*

The United States is presently confronting an infrastructure crisis of historic proportions. While the problems related to infrastructure finance have grown, the creative application of appropriate financing vehicles has not. Impact fees are viewed by many local communities as an inevitable solution to finance infrastructure due to the declining availability of state, federal, and local general fund revenues. In truth, the United States' use of impact fees is relatively young—and cannot be viewed as a “one size fits all” solution. There are viable alternatives to impact fees that may, in some cases, offer a more fair, equitable, expedient or politically viable mechanism to address a community's infrastructure deficits.

This section outlines the different methods of public and private financing of new infrastructure, describes the equity and efficiency attributes of each, and poses possible alternatives to impact fees.

Infrastructure Financing Objectives

The fundamental purpose of any infrastructure financing vehicle is to enable local governments to deliver infrastructure that is needed to serve new demand. However, every infrastructure financing vehicle presents some tradeoffs as there are multiple and sometimes conflicting objectives that must be weighed as well.

Comparisons of different methods of financing new infrastructure inevitably involve discussions of achieving expediency, equity, economic efficiency, ease of administration, and political acceptability. There is no ideal method for all possible scenarios because each method involves trade-offs between these objectives.¹

Expediency

Since the basic purpose of infrastructure improvements is to meet the demand of existing and new users, infrastructure improvements should be constructed prior to or concurrent with new development. Achieving this important objective ensures that existing infrastructure systems are not overwhelmed by new demand. Further, this is one objective that all major stakeholders (local governments, residents and homebuilders) can agree is important.

Economic Efficiency

An infrastructure financing vehicle is “economically efficient” when the capacity of public facilities is expanded up to the point where the cost of increasing the capacity to produce one more unit of service (marginal cost) is equal to the cost to the user for using an additional unit of service (price of the service). Efficiency criteria also imply that the method(s) employed to finance new infrastructure promote efficiency in housing production and consumption, and orderly development. It is generally assumed that residential housing is competitively produced and, therefore, infrastructure financing should not unduly distort the decisions of housing consumers regarding the size and type of house desired nor unduly interfere with home builders' methods of production. New development should be located near already developed land to minimize the cost of providing additional public services if near-in locations offer residents similar benefits in terms of comparable housing and other amenities. If new residents have strong preferences for locations away from existing development, are willing to pay the additional cost of being provided with public services, and are charged the additional cost, remote development can be considered orderly and economically efficient.

Equity

Equity considerations in public service provision revolve around two principles: the benefits principle and the ability-to-pay principle (or vertical equity principle). The benefits principle requires that those who benefit from a public service should be the ones who pay for the service. In this regard, the benefits principle is analogous to the efficiency criterion of public service provision. This principle can be best applied to cases where it is important to conserve resources (e.g., water), access to the service is not considered a basic need (e.g., a municipal golf course, performing arts center, equestrian center, town lake, etc.), and it is administratively feasible to charge users directly.

In cases where it is not feasible to charge users directly (e.g., local streets) or the service is considered a basic need (e.g., police and fire protection), the cost of providing for these services has generally been allocated to the members of the community according to their ability to pay. That is, higher-income or wealthier individuals, the most commonly used measures of ability-to-pay, pay more toward the cost of providing public services than do poorer individuals.² The decision to finance public services according to ability-to-pay or benefits received is difficult when it is possible to charge users of the service directly but the service is considered to be so important that access to the service cannot be based on ability to pay. Public elementary and secondary education are examples of services that are provided through the tax system (ability-to-pay principle) but could hypothetically be financed by charging registration fees or tuition to families with children in the public school system.

Ease of Administration

All public infrastructure financing solutions require some form of public administration. Potentially, the administration of a financing vehicle that fully meets all of the other objectives might be so administratively burdensome to the local community that it would be impractical. Alternatively, it is conceivable that an infrastructure financing vehicle would be structured to facilitate ease of administration at the cost of expediency, equity, and efficiency.

Political Acceptability

Local communities usually must weigh conflicting public interests when making policy decisions related to infrastructure finance. Sometimes existing residents view their interests and needs as at odds with those of new residents. Policymakers should look to find solutions that offer broad political acceptability, while providing equal protection to minority members of the community such as new entrants.

Methods of Financing Infrastructure

Methods of financing new infrastructure may be classified as either public or private. The more traditional or public method consists of the local (or state) government issuing bonds to finance the construction and installation of the infrastructure and then using a portion of the locality's revenues to service the debt (i.e., pay interest to bondholders and amortize the principal). Another method, although not always feasible or desirable, is to charge the users of the infrastructure directly through tolls, user fees, or other charges. In some instances, the fees can be set high enough to cover the debt service and current operating and maintenance costs. Under public financing methods, the entire community pays something toward the use of new capital facilities. Under private financing methods, the cost of providing new capital facilities is borne by those individuals and businesses that benefit directly, or are considered the underlying cause of the need for new capital. Impact fees are one form of private financing of new infrastructure, although in some aspects they are similar to property taxes.³

The following provides a description of infrastructure financing methods that may be used as alternatives to impact fees. These descriptions are general in nature. The tools summarized in this chapter may vary widely from state-to-state in terms of their applicability and even the terminology used to describe them.

Table 6.1: Summary of Alternatives to Impact Fees

	Expediency	Efficiency	Equity	Administration	Political Acceptability
Taxes	○	○	●	●	○
General Obligation Bonds	●	○	●	●	○
Revenue Bonds	●	○	●	●	○
User Fees	●	●	-	○	-
Special Taxing Districts	●	●	●	-	●
Local Improvement Districts	●	●	●	-	-
Special Service Districts	-	-	-	○	-
Tax Increment Financing	-	●	●	○	○
Private Exactions (Including Impact Fees)	-	-	-	-	-

Key:

- Inferior to Impact Fees
- Neutral/Varies
- Superior to Impact Fees

Taxes

Property taxes, general sales taxes, and personal income taxes are traditionally the major sources of revenues for local governments to directly finance additions to infrastructure, or to service general obligation bonds.

Expediency

Property taxes, general sales taxes, and personal income taxes are typically collected in annually recurring increments. These revenue sources are usually dependent on having development in place to provide a tax base. Therefore, these revenue sources do not provide an extremely expedient funding source for infrastructure in advance of new development; however, if sufficient tax revenue sources are available, they can be a more expedient method of constructing public infrastructure than that of impact fees.

Efficiency

Because these tax revenues are derived from the public at large, there is no direct link or sometimes even no link at all, between those who pay for the infrastructure and those who use it.⁴

Although they are considered two distinct forms of revenues, there are instances in which taxes can behave like user fees. For example, special excise taxes such as motor fuels taxes, hotel/motel room occupancy taxes, motor vehicle registration fees, and other specific taxes are similar to user fees if they are dedicated to restricted uses rather than placed in the community's general fund. For example, gasoline taxes and motor vehicle registration fees dedicated to funding transit and road construction and improvements act like user fees insofar as they attempt to charge only the users of certain publicly provided services.

Equity

There are cases where it is not feasible to charge individual users directly for their use of the public service (e.g., police and fire protection, local streets), thus tax financing is the only feasible method of providing these services. In contrast, services such as public schools, libraries, and parks can be financed by charging the users directly for their use of the services, but it is considered poor social policy to deny anyone access to these services because of their inability to pay. For these types of services, equity considerations usually outweigh efficiency considerations, and thus the services and their underlying infrastructure are generally tax-financed.

Administration

Virtually all local and state communities already have the administrative capacity to manage taxes.

Political Acceptability

The use of taxes to fund infrastructure offers important advantages to local communities and homebuilders, when compared to impact fees. Because taxes are generally collected from a broad-base of the citizenry, they are an appropriate source of funding for infrastructure that provides a broad benefit. However, the public is often resistant to new taxes and there are often statutory limitations that cripple a local community's ability to use them to advance major capital programs.

General Obligation Bonds

Another traditional method of financing new public infrastructure is for the local government to issue general obligation (GO) bonds and to service the debt from local general revenue sources. GO bonds are backed by the "full faith and credit" of the issuing locality and serviced by local general revenues, usually tax revenues and sometimes from grants from higher levels of government. GO bondholders are guaranteed that the locality will use any general revenue source available to pay the interest due and to repay principal on maturing bonds. These bonds usually carry the lowest rate of interest because of these guarantees.

Expediency

GO bonds allow a local community to spend money on infrastructure by borrowing against future revenues of the community. This provides communities with an expedient mechanism to implement new infrastructure that will attract new development and thereby increase the overall tax base available to repay bonds in the future.

Efficiency

The efficiency of GO bonds depends on infrastructure being paid for with the bonds providing an equal benefit to everybody paying taxes into the community that issues them. For example, if a city issued GO bonds that were only used to pay for a neighborhood park benefiting a small area, it would not be considered efficient, because residents outside of the area would not be equally responsible for paying debt service but would not receive benefits. Alternatively, if the GO bonds were used to make improvements to a regional or community park that provided an equal benefit to all residents, then their use would be considered efficient.

Equity

In contrast to impact fees, new development is not singled out to pay for infrastructure and, therefore, GO bonds would be considered more equitable if they provide a broad community-wide benefit.

Administration

GO bonds are different from impact fees in that their use is not subject to the same constitutional and statutory protections given to homebuilders. It is not necessary for a community to establish rational nexus or fulfill many of the administrative or technical burdens of impact fees (i.e. an impact fee technical study would not be required). However, most states have adopted limitations on the amount of bonded indebtedness that may be created, and on the types of infrastructure that GO bond debt may be used for.

Political Acceptability

In order for GO bonds to be backed by the "full faith and credit" of the issuing locality, the locality must have sufficient taxing authority to service the debt. To ensure that localities can indeed back their GO bonds, most states restrict the issuance of GO bonds. A frequent restriction imposed by states is limiting the bonded indebtedness of any locality to a set proportion of the locality's assessed property value.

There is great variation among the states concerning which types of local governments must obtain voter approval (e.g., cities, counties, townships, school districts) and the majority needed to obtain approval (i.e., a simple majority or a super majority).

GO bonds can be difficult to implement as they must typically be voted on by the qualified electors of a community. *Since they are backed by the full faith and credit of that community, GO bonds must provide a direct and tangible benefit to existing residents if they are to pass the election.*

GO bonds carry lower interest rates than revenue bonds and are, therefore, the least costly to the locality. Governments are bound by constitutional and statutory imposed limits on the maximum GO bond amounts allowed to be issued. These limits are often expressed as a percentage of the value of the property within the community.⁵

Revenue Bonds

Revenue bonds are an infrastructure financing vehicle that has also traditionally been used by local communities. *Revenue bonds are public indebtedness that is serviced from specific revenue streams such as a certain percentage of the revenues from property taxes, sales taxes, income taxes, or through user fees.* Because the dedicated revenue streams are not as constant or predictable as the total stream of general revenues, they usually carry a higher rate of interest than GO bonds to compensate the bondholders for the higher risk.

Revenue bonds carry fewer restrictions regarding the volume of indebtedness a locality may incur because they are not backed by the "full faith and credit" of the issuing locality. These instruments are more flexible than GO bonds in financing public infrastructure because they can be used to publicly finance capital expenditures when they

are backed by tax revenues and to privately finance capital expenditures when they are backed by user charges, special assessments, tax increments, and, in some instances, impact fees.

Revenue bonds offer similar advantages and disadvantages as GO bonds when compared to impact fees (see above).

User Fees

*User fees are direct charges to infrastructure users related to the amount of services used. They can be used for a type of infrastructure that can be metered such as water, sewer, gas, electricity, and telecommunications systems. The most common forms of general user charges for local governments are hospital room charges, school lunch sales, parking fees, and sewer fees.*⁶

Expediency

User fees are commonly used in combination with revenue bonds, providing an expedient source of revenues that can be used for infrastructure improvements.

Efficiency

Properly structured, user charges are an efficient method of servicing revenue bonds and paying for the operating and maintenance costs of certain public services. Because users of public services are faced with the cost of using the service, user fees promote more efficient use of the public capital stock than do taxes.⁷

Equity

User charges may violate some people's concept of equity because access to public services is limited by an individual's ability to pay. Despite the possibility of inequitable treatment of some individuals, user charges are appropriate where the cost of administering the system is low relative to total revenues and where conservation of resources and alleviation of congestion is of paramount importance. The use of user charges to service revenue bonds for toll roads, municipal golf courses, water treatment plants, and sewer systems is usually considered appropriate.

Administration

Depending on the service, user fees can be more difficult and costly to administer than impact fees as the local community or other infrastructure operators must regularly meter infrastructure use and collect revenues.

Political Acceptability

The political acceptability of implementing user fees generally depends on the infrastructure type that fees are being proposed. Most citizens will balance questions of efficiency and equity in determining whether to support user fees. As mentioned earlier, primary and secondary school education is seen as too important for children to be subject to user fees when some families may not be able to afford to pay them. Alternatively, most households inherently recognize the appropriateness of paying only for the water or electricity used – giving them the flexibility to use more if they can afford it and protecting them from their neighbors’ excessive use.

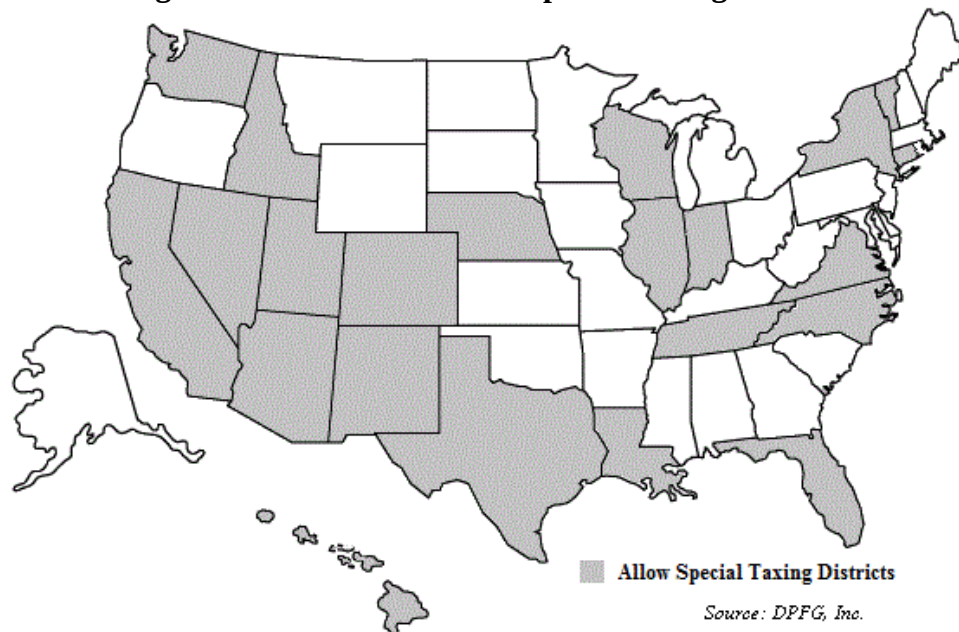
Special Taxing Districts

A special taxing district is typically a separate political subdivision separate and distinct from the county or community that established it. *The sole purpose of special taxing districts is to finance, construct and/or acquire public improvements through the use of tax-exempt bonds, user fees, and property tax levies, special tax levies, etc.* Depending on the state statute, these districts may utilize tax-exempt special assessment bonds, GO bonds, or revenue bonds. Bonds are typically repaid over a 20 to 30 year period by property owners, residing within the boundaries of the special taxing district, making special assessment or ad valorem property tax payments—rather than as upfront impact fees paid by the homebuilder.

Special taxing districts are established over areas which benefit from the public improvements constructed, and usually require a vote or petition of land owners and/or resident electors. Currently, 21 states allow special taxing districts.⁸ Examples of special taxing districts include:

- Community Development Districts (Florida)
- Community Facilities Districts (Arizona, California, Hawaii)
- Community Infrastructure Districts (Idaho)
- General Improvement Districts (Nevada)
- Metropolitan Districts (Colorado)
- Municipal Utility Districts (Texas)
- Public Infrastructure Districts (New Mexico, Texas)
- Special Improvement Districts (Nevada)
- Special Service Districts (Utah)

Figure 6.1: States that Allow Special Taxing Districts



Special taxing districts typically require that the developer and local community agree on a General Plan and District Development Agreement. This provides both the developer and local community more flexibility and control over how infrastructure funds are spent – and can help ensure that infrastructure funds result in a direct benefit to development within the district.

Expediency

Special taxing districts provide for more expedient delivery of public infrastructure than impact fees as bonds are issued early in the development process to fund the construction of public improvements in advance of growth. With special taxing districts, the timing of bond issuances is typically coordinated with project development milestones. This feature of special taxing districts reduces the risks of funding excess infrastructure system capacity far in advance of new development.

Efficiency

Special taxing districts are more economically efficient than impact fees because only those public improvements that specifically benefit the residents residing within the boundaries of the special taxing districts can be financed. Additionally, public infrastructure constructed by a special taxing district is funded utilizing tax-exempt bonds that carry a lower cost of financing than that of private debt and/or equity as is typically the case with impact fees, thereby potentially resulting in lower home prices and/or carrying costs for homeowners.

Equity

The use of special taxing districts is considered very equitable as the public improvements being demanded by the residents residing within the boundaries of the special taxing district are being funded and paid for by these residents. Often, impact fees may be utilized to fund public improvements for which residents receive little or no perceived benefit.

Administration

Special taxing districts create some administrative challenges because a new political subdivision of the state must be established and organized in order to use this financing vehicle. However, property tax levies or special assessments are typically collected via the county treasurer which poses few administrative challenges. In addition, most states allow special taxing districts to collect a special administrative tax levy to compensate for these costs, thus, special taxing districts become fully self-sustaining.

Special taxing districts are not necessarily more complicated to administer compared to impact fees. For example, it is not necessary to establish level-of-service standards or complete a defensible impact study in order to use this financing vehicle.

Political Acceptability

Special taxing districts are frequently used because they are more acceptable to both the developer and the public at large. *Obligations of a special taxing district are non-contingent liabilities to the local community. Therefore, the local community may be more willing to establish a special taxing district than other mechanisms that may require the community to pledge its full faith and credit.*

In addition, only new and future residents in a special taxing district must pay for the infrastructure constructed or acquired by the district; therefore existing residents would not have to pay higher taxes as a result of new development.

For more information on special purpose taxing districts, go to the NAHB's website and download NAHB's publication at <http://www.nahb.org/en/research/nahb-priorities/land-development/special-purpose-taxing-districts.aspx>.

Local Improvement Districts

Local Improvement Districts (LIDs) are special purpose districts created by communities and/or counties to allow for the imposition of special assessments or property tax levies in a specific area. These funds may be used to pay for infrastructure that provides a direct benefit to the area or as debt payment for special assessment or GO bonds. Depending on the state, the debt of a LID may be secured by the underlying land within the district or by the full faith and credit of the local community that formed it.

LIDs have many applications. *They are commonly used to complete infrastructure improvements in an area that has fragmented property ownership.* For example, a LID could be formed in a rural community to pave a gravel road that would provide service to several individual farm owners. Alternatively, LIDs have been used to construct streetcar improvements benefiting dozens of individual property owners in an urban community.

Typically, LIDs require a petition or election of property owners within the district before the governing body of the local community can establish them.

The key distinction between a LID and a special taxing district is that LIDs are typically formed and controlled by the community or county in which they are formed, while the establishment of special taxing districts is initiated by property owners and are usually overseen by a governing board.

LIDs generally offer similar advantages and disadvantages when compared to impact fees as special taxing districts. The only key differentiation is in states where the debt of a LID is a contingent liability of the local community, in which case it may be more difficult to attain political acceptance.

Special Service Districts

Another method of financing infrastructure and providing public services is the creation of special service districts. These are autonomous units of government, created by local governments, with the permission of state governments to provide a single or very narrow range of related public services. *The key distinction between special service districts and special taxing districts is that special service districts have an ongoing role in maintaining and operating infrastructure facilities, while special taxing districts typically finance, construct and/or acquire the public improvements and then dedicate the public improvements to other public entities for ongoing operations and maintenance.* Within the limits set by the state enabling provisions, these units of local government can issue debt and levy taxes, or impose user charges to service the debt and to finance current operations without the interference of other local governments. The most common form of independent district is the school district. Other special service districts include mass transit, roads, water supply and treatment, and other public utilities. Special service districts have also been created to provide police and/or fire protection, health care, and housing. In 2007 there were 13,051 independent school districts and 37,381 other special service districts.⁹

The boundaries of special service districts may coincide with the boundaries of the local government that created them, or, in the case of areas with many small local governments, the special district boundaries may include a number of small local units of general governments.

Special service districts may utilize impact fees to raise revenues for new infrastructure construction.

There are vast differences in the types and organizational structures of special service districts. Therefore, it is difficult to make general comparisons between this method of infrastructure financing and impact fees.

Equity

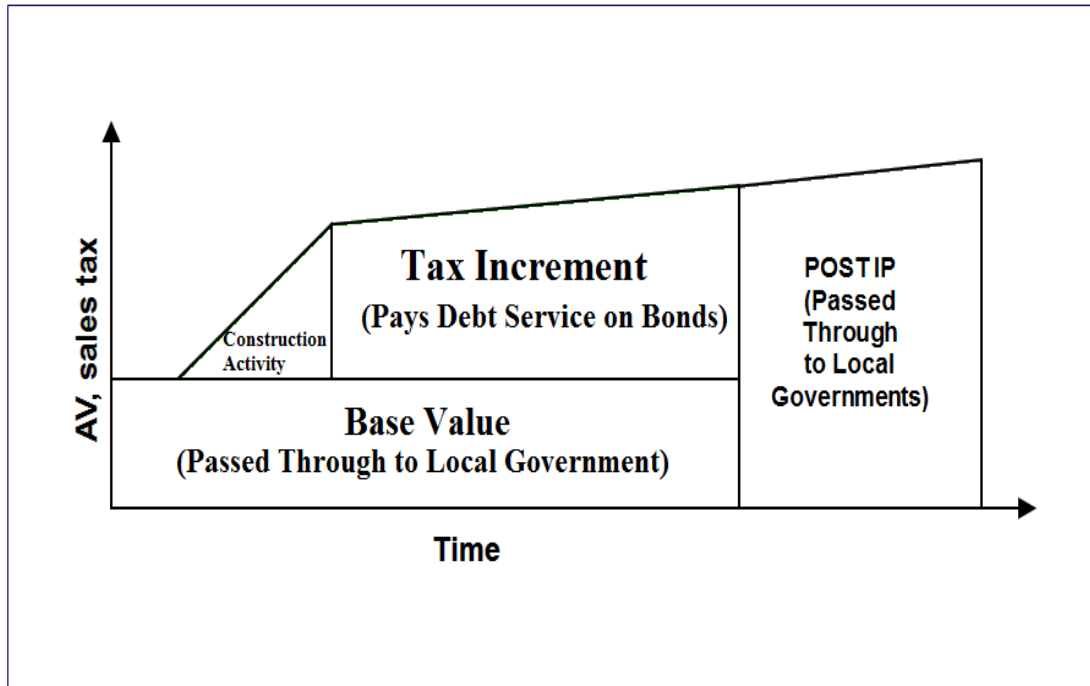
It should be noted, however, that one of the benefits of large special districts is that the financial and other costs associated with rapid population growth and commercial and industrial development are spread over a large population base and geographic area, rather than concentrated in small areas where the burdens of growth can be overwhelming.

Administration

Local governments may, at times, be reluctant to create special service districts because of potential administrative difficulties. The major disadvantage is that creation of too many special service districts fragments decision making and coordination among local governments.

Tax Increment Financing

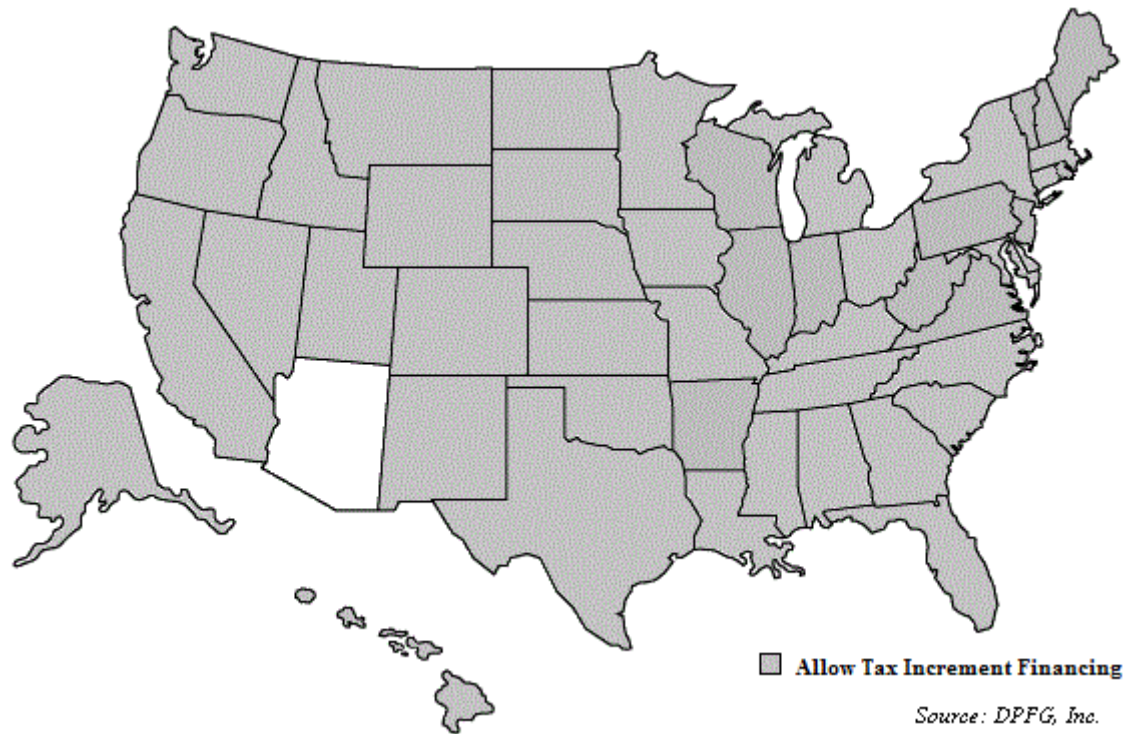
Tax Increment Financing Districts (TIF) capture the tax increment resulting from the increase in the assessed valuation as the result of new development activities or property appreciation for the purpose of making local public infrastructure improvements. The tax increment is the difference between total tax revenues after development and an established "baseline" level of tax revenues prior to development. The tax increment, or a portion of the increment, is diverted from general fund revenues to service revenue bonds issued by the parent community to finance new capital investment and/or provide increased services within the district.¹⁰ Once the tax increment period (IP) has expired, all revenues are returned to the appropriate agencies. A diagram of a typical TIF is shown below:



Most often, TIF is utilized in conjunction with redevelopment and as such boundaries of TIF districts mirror those of redevelopment areas designated by the community. One exception to this rule is New Mexico, which allows the creation of a Tax Increment Development District (TIDD) to be used to capture the incremental sales tax and property tax revenues within a TIDD to finance the construction and/or acquisition of public improvements related to Greenfield development provided the TIDD will create jobs and utilize sustainable development techniques.

Forty-nine states and the District of Columbia allow the use of tax increment financing as a vehicle to finance public infrastructure. Only Arizona does not allow tax increment financing.¹¹

Figure 6.2: States that Allow Tax Increment Financing



Expediency

As TIF financing is reliant upon an increase in property tax revenues from new development, TIF financing is on par with that of impact fees related to expediency.

Efficiency

TIF tends to be more efficient than impact fees because those who are bearing the cost of the infrastructure investment, new and current owners in the financing district, have a voice in determining the service levels they want and therefore the amount of new capital needed.

Equity

The use of TIF supports the objective of inter- generational equity. Because tax bases and rates are uniform throughout the community, new entrants and established residents are treated identically.¹² If impact fees are set on a uniform basis, or if impact fees or special assessments are based on physical characteristics of the properties, then TIF would also be superior to those financing mechanisms according to the ability-to-pay principle. However, impact fee financing, may be superior to TIF according to the benefit principle. With impact fee financing, there is a linkage, however tenuous, between the cost to an individual and the benefits received.

Administration

TIF tends to be fairly complicated from an administrative standpoint, because the local government has to complete complex technical studies when establishing a TIF district. Additionally, the local government has to participate in the on-going administration of a district.

Political Acceptability

While TIF is currently allowed in the majority of states, the use of this financing mechanism has increasingly come under political fire. For many, TIF is inexorably linked to the unpopular use of eminent domain—though it need not be. TIF may also spur battles among local units of government, who may object to the establishment of a TIF district because of the fiscal stress caused by reduced tax revenues captured by the district combined with increased service demands. However, this issue has been resolved in some states which require that a fiscal impact analysis is completed in tandem with the TIF financial study. The fiscal impact analysis is completed to identify what mitigation measures would be necessary to ensure that public services will be fully funded in the future.

Private Exactions

The most direct forms of private infrastructure finance are locally imposed exactions on builders and developers, either to directly construct and install infrastructure, or to dedicate land for the construction of infrastructure. Impact fees are a form of exaction in which the developer pays a fee to the locality and the locality uses the proceeds to construct and install the infrastructure. The builder or developer must borrow to finance land development, construction, and new capital facilities. The developers or builders will, to the extent possible, pass all costs forward to the ultimate buyer or backward to landowners. As a result of the added costs of developer-financed infrastructure, the ultimate purchaser must put up more cash for closing and borrow more to purchase the property (see Chapter 3).

Expediency

Private exactions may or may not be expedient depending on how they are implemented. A local community will often require an exaction to be complete in advance of new development in order to ensure that adequate facilities are available. Alternatively, impact fees are technically a form of exaction and are not expedient given that they are collected in arrears.

Efficiency

Private financing of infrastructure is more costly than public financing because private borrowers almost invariably bear higher interest rates than public borrowers, especially if the public authority issues debt with interest that is exempt from federal

(and possibly state) income taxes. Because mortgage interest payments are deductible from federal, and possibly state, income taxes, the difference in *effective* interest rates paid by private borrowers and public borrowers is not as great as the difference in nominal interest rates. However, not all private borrowers can take full advantage of the mortgage interest deduction; itemized deductions for mortgage interest are of full value only if other tax deductions, including real estate property taxes, are at least equal to the standard deduction (\$12,600 for married couples filing joint returns and \$6,300 for single individuals in 2016).¹³

Despite the higher cost of private borrowing versus public borrowing, it may be argued that exactions on developers and builders are efficient. Downing and McCaleb (1987, p. 53) argue that sophisticated exactions (including impact fees) *do* possess the attributes of efficient prices because those who are considered to be the proximate cause of the need for new infrastructure, or are the primary beneficiaries, pay the cost of the facilities.¹⁴ Conversely, Snyder and Stegman (1986, p. 31) argue that development fees and other forms of private financing of public capital facilities, where exclusion is possible, promote inefficiency in the use of public facilities by reducing user fees and charges to cover only short-run costs rather than long-run costs. Furthermore, Snyder and Stegman argue that development fees *do not* promote efficiency because the ultimate payers do not determine what they pay for, or the size and amount of infrastructure that is to be built.¹⁵ In addition, if impact fees are set on a uniform basis and therefore do not reflect the actual cost to the locality for providing public services, the fees may encourage inefficient development if new development occurs at locations that are not near existing development.¹⁶ Impact fees that are based on the number of bedrooms, acreage, or front-footage are another source of inefficiency in that they force builders, in their attempt to minimize fees, to produce housing units that are not the ones most desired by home buyers.¹⁷

Equity

A key issue with exactions is that they are often implemented by local communities on an ad-hoc basis. Further, exactions may violate the ability-to-pay concept of equity. Lower-income households pay more, relative to their income, than do higher-income households for the same capital facilities. Exactions are particularly burdensome to buyers of low-income households if they are used to finance infrastructure for roads, police and fire protection, schools, libraries, parks, or other public services from which it is either difficult or impossible to exclude anyone, or which are deemed so socially important that no one should be excluded on the basis of the ability-to-pay.

Private financing of new infrastructure and public financing of replacement infrastructure, often based on ability to pay, involve a double standard in the treatment of new entrants compared to the treatment of established residents. Although current residents may believe it is fair to force new entrants to privately finance new infrastructure and to publicly finance replacement infrastructure, there may be a downside for current residents if new entrants can thwart moves to publicly finance

replacement infrastructure (e.g., refurbishing and modernizing older schools) that primarily benefit established residents.¹⁸

Administration

The use of exactions, including impact fees, can be challenging for local communities to administer. Specifically, all development projects have different impacts on public infrastructure systems. Administering a fair and balanced exaction or impact fee program is difficult when there are so many nuances in various development projects. Chapter 5 of this handbook includes a detailed description of the challenges related to impact fee programs, which can be broadly understood to relate to exactions in general.

Political Acceptability

While the use of exactions and impact fees may be more politically acceptable than other forms of infrastructure financing to existing residents—it does pose some complicated political questions for local communities regarding their fairness to new residents. Chapter 7 of this Handbook includes a detailed discussion of political issues associated with impact fees, which can be understood to broadly address all forms of exactions.

Endnotes

1. A complete presentation of equity, efficiency, administrative, and political criteria for infrastructure finance can be found in Snyder and Stegman, *Paying for Growth*, pp. 27-38.
2. Wealth is usually measured by the amount of assessed real property owned by an individual.
3. Paul P. Downing and Thomas S. McCaleb, "The Economics of Development Exactions," in Nelson, ed., *Development Exactions*, 1988, p. 53, *op. cit.*
4. T.R. Lakshmanan, P. Nijkamp, E.T. Verhoef and P. Rietveld, *Benefits and Costs of Transport, Classification, Methodologies and Policies*, 2001.
5. David R. Berman, *Local Government and the States: Autonomy, Politics, and Policy*, 2003.
6. U.S. Bureau of the Census, *Total State and Local Government Finances in 1992-93*, pp. 1, 2.
7. Thomas P. Snyder and Michael A Stegman, 1986, p. 31.
8. National Association of Home Builders, *Infrastructure Series: Part II: Infrastructure Finance, Does your state encourage innovation?*
9. U.S. Bureau of the Census, *Statistical Abstract of the United States 2007*.
10. Opponents of tax increment financing argue that these programs may require cost subsidization from taxpayers outside of the tax increment district. David B. Lawrence and Susan C. Stephenson, "The Economics and Politics of Tax Increment Financing," *Growth and Change* (Winter 1995), p. 106.
11. National Association of Home Builders, *Infrastructure Series: Part II: Infrastructure Finance, Does your state encourage innovation?*
12. National League of Cities, *Financing Infrastructure: Innovations at the Local Level* (Washington, DC, 1987).

13. Commerce Clearing House, 1996 *U.S. Master Tax Guide*, p. 85. For a discussion of the interaction between the standard deduction and the mortgage interest deduction, see Paul Emrath, "Cost of Finance and Taxes for New and Old Homes," *Housing Economics* (September 1993), pp. 5-8. Internal Revenue Service for 2016 Standard Deduction Amounts.
14. Paul P. Downing and Thomas S. McCaleb, "The Economics of Development Exactions," in Nelson, ed., *Development Exactions*, 1987.
15. Thomas P. Snyder and Michael A. Stegman, *op. cit.*
16. *Ibid.*
17. *Ibid.*
18. Thomas P. Snyder and Michael A. Stegman, *op. cit.*, p. 30.

Public Affairs Strategies

- *Arguments and Strategies to be Utilized to Defeat Fee Proposals*
- *What to do if an Impact Fee Seems Inevitable*
- *Groups Likely to Support the Home Builders Association Position*
- *Groups Likely to Oppose the Home Builders Association Position*

A sound public affairs strategy which is carried out in a successful manner will benefit the home builders association by influencing legislation and public actions. As the implementation of impact fees and impact fee increases are typically the result of political rather than economic motivations, home builder associations may successfully address these issues through a solid public affairs strategy.

HBAs must adopt a strategy to influence impact fee public policy. If impact fees are not currently being discussed in your community, it may only be a matter of time before they are considered as a method to finance new or expand existing infrastructure. Impact fee use has steadily increased across the country since originating in Florida and California decades ago and impact fee enabling legislation has now been adopted in 28 states.

Chapter 7 focuses on identifying key policy issues that should be considered by governments when creating or increasing impact fees. The chapter outlines arguments and strategies that rely on these policy issues and have been successful in defeating or modifying impact fees.

Additionally, a list of provisions HBAs should urge governments to consider for inclusion in impact fee legislation and ordinances is included in this chapter. The protections and provisions found within impact fee ordinances play an important role in ensuring that the money collected for a purpose is actually spent on that project or service. Certain provisions, if included in the impact fee legislation or ordinance, not only protect the home builder but also the home buyer, local government and existing tax payers. Examples of what issues should be considered in an impact fee have stature has been included as Appendix C. Arizona's impact fee statute has been included as Appendix D. The Arizona Statute was updated in 2011 to address the continued challenges that the Arizona HBAs were experiencing with jurisdictional technical studies and the public sector's reluctance to address the HBA's concerns. The resulting legislation is one of the most comprehensive impact fee statutes in the country and one that other HBAs may want to consider utilizing in whole or in part to prevent jurisdictional overreach. The Montana and Texas impact fee statutes have also been included as additional impact fee statutes that provide many of the checks noted within this publication to prevent jurisdictional abuses.

As HBAs work to defeat or negotiate an impact fee, it is always best to form a coalition which supports the HBA's position. A sound strategy may include building a coalition with mutual interest groups, e.g., business, labor, civil rights, and housing organizations. Prepare materials that may be provided to the media and other key decision makers that detail the economic and social costs of impact fees. Be sure to meet with the media throughout the process to advance their understanding of this financing mechanism.

Arguments and Strategies to Utilize to Defeat Fee Proposals

Impact fees are proposed in a community for many reasons. A HBA's public affairs strategy should be dynamic enough to address the varied reasons for using the impact fee as a tool to finance infrastructure and public services.

Cost of Infrastructure

Many communities simply lack the funds or think they lack the funds to finance infrastructure improvements and expand services. Often, the lack of financing is caused by either a cap imposed upon property taxes or voter resistance to increased taxes. In these cases, it is essential to identify the economic sensitivity of impact fees as an infrastructure finance mechanism. And HBAs should always examine their community's budget to check the validity of the budget shortfall or limitations. Many local jurisdictions try to make up for seriously deferred maintenance of existing infrastructure by charging fees to new growth. HBA's should be prepared to challenge this practice when encountered as discussed in earlier chapters.

The cyclical nature of housing construction makes impact fees an unreliable revenue source. The amount of revenue generated through assessment and collection of impact fees may fluctuate dramatically during times of high and low growth, making fiscal planning based on impact fee revenues unpredictable and difficult. Additionally, the goal of raising additional revenue through impact fees may be attained only in the short term in a growing community. The use of impact fees may result in stifled economic development and limited growth.

If growth is limited by impact fees, the direct and indirect benefits of growth—such as a larger property tax base, increased employment opportunities, increased disposable income, increased sales and other tax revenues—will also be limited. And in regions where communities are competing for growth, impact fees can push to the growth to other areas if the fees are high enough and the market is sensitive.

In communities that are suffering from declining new home construction, impact fees are a naïve way to address the community's infrastructure needs. To the extent that the community is financing the construction of infrastructure through bonds supported by impact fees, the community will not likely receive the funds necessary to retire the bonds as impact fee financing depends on a reliable source of revenue.

If the cost to construct public infrastructure or provide public services is a challenge faced in a community then the following arguments may be useful:

- Ensure the community has explored all of the alternative financing mechanisms available such as its statutory bonding capacity, special taxing districts, tax increment financing, public/private partnerships, grants, etc. Information relating to infrastructure finance solutions may be found in the NAHB's three part series available at www.nahb.org/infrastructurefinance. These publications are:
 - *Building for Tomorrow: Innovative Infrastructure Solutions* (2003): This is a 32-page report that explains more than 20 innovative financing and delivery mechanisms and presents case studies on how those tools have been applied successfully.
 - *Infrastructure Solutions—Best Practices from Results-Oriented States* (2007), features research from the NCSL regarding the best state enabling legislation for some of 11 infrastructure finance alternatives. NCSL looked at statutory language from all the states authorizing the use of these finance tools and highlighted the best-written laws – those that showed the most promise for helping local governments make effective use of those tools.
 - *Infrastructure Finance: Does Your State Encourage Innovation?* (Updated 2012) features a matrix of all 50 states, showing which states authorize the use of the 12 most commonly used infrastructure finance tools discussed in *Building for Tomorrow*. It highlights a more in-depth research report written by the National Conference of State Legislatures (NCSL) that summarizes state enabling authority for these tools and includes links to the relevant statutes.
 - *An Overview of Special Purpose Taxing Districts* (2014) features an in-depth study of the benefits of special purpose taxing districts and how the districts may be used to finance public infrastructure in advance of growth.
- Identify the economic sensitivity of impact fees as an infrastructure financing mechanism.
- Describe the long term impacts on housing affordability and economic development (more detail under “slow growth or no growth”).

Slow Growth or No Growth

Oftentimes communities propose impact fees aiming to discourage or prevent growth. Housing affordability is not considered an issue when no-growth is the goal as the policy makers intend to create barriers to housing construction.

If the slow growth or no growth argument is at the forefront of impact fee issues, or even masquerading behind them, then an HBA should consider making the following points:

- **Create a constituency for affordable housing.** Note that impact fees are included within the sale price of new homes and thus are amortized over the life of the mortgage. Amortizing impact fees significantly adds to the cost of the home, which decreases the ability of many people to purchase a home. For example, as a point of reference, a \$6,000 impact fee on a \$275,000 home, with a 4.50 percent 30-year mortgage, increases the total closing and financing costs of the home by \$8,220. If fewer people can afford to buy new homes, then fewer new homes will be built; if housing is limited, so too will be the property tax base—and as such impact fee revenues. Please refer back to Chapter 3 for more information on NAHB's priced-out model.
- **Impact fees place a disproportionate burden on lower-income households.** For example, suppose a household with an annual income of \$48,000 is buying a \$200,000 house with a \$180,000 mortgage at 5.0 percent. A \$5,000 increase in house price due to an impact fee would require an increase of 2.5 percent in down payment and \$325 more annually in house payments, which is 0.7 percent of the family's income. In a household with an income of \$69,000 buying a \$300,000 house with the same mortgage terms, the same rise in price would cause the same increase in annual payments, an increase equaling only 0.5 percent of that family's income.
- **Argue the equity issue.** Costs for the construction of infrastructure has traditionally been paid from general revenues of the community. When a local government is benefiting from a budget surplus, there is little justification for turning to new revenue sources such as impact fees. Why should a builder or home buyer pay for the basic needs of a community when the community itself can afford them?
- **Check the motives of the impact fee proponents.** Ensure impact fees are being assessed as a means of raising needed revenue and not for exclusionary purposes.
- **Identify the negative effect impact fees will have on a community.** If your community is competing for new or expanded businesses with neighboring communities that have no such fees, the economic development and growth will simply move next door.
- ***Impact fees not only lead to an increase in the price of new homes but also an increase in the prices of existing homes, as both new and existing homes are close substitutes.*** If the cost for new homes is more expensive than existing homes, demand for existing homes will increase, resulting in an increase in existing home prices. The increase in home values will make housing less

affordable for existing homes at the expense of buyers of both new and existing homes.

- **Advocate paying the impact fee at the latest point in the construction process.** The later the impact fee is paid, the lower the impact on the housing price. One suggestion is to pay the impact fee upon the receipt of the certificate of occupancy. Alternatively, in some communities, impact fees have been financed as an annual special assessment amortized over a twenty year period.

Political Expediency/No New Taxes

Elected community officials may utilize impact fees as a method to address infrastructure issues without raising taxes. Due to the long build-out schedule for constructing public infrastructure, it is incumbent upon successors to manage the tax decisions made by current elected community officials if impact fee revenues fail to meet growth projections. Residents of new construction are a constituency of the future and are often only represented by the HBA.

For communities utilizing impact fees as a way to hide the real costs of infrastructure, you may want to influence community officials with the following arguments:

- **Provide alternative mechanisms for the financing of public infrastructure.** This is outlined in more detail in Chapter 6.
- ***Verify that impact fees represent only the actual costs of providing public services to the new home buyer.*** It is also important to make sure that the community is capable of maintaining the facility (or service) after the facility is constructed. In the future, a fiscal crisis may occur and the community may find that revenue funds are insufficient to operate and maintain the facilities.
- **Argue that a majority of new homes are purchased by the existing residents who have already been financing infrastructure through property taxes, etc.** These new home owners are already living in the community and create no new burden on the public infrastructure of the community.

Equity Issue/Growth Pays for Itself

In many communities, elected community officials and residents believe that it is fair for new growth to pay for itself. If a community believes that growth should always pay its own way, the following arguments for opposing impact fees may be helpful:

- **Impact fees imposed for public infrastructure services that benefit and serve both new and existing residents are discriminatory if they are levied only on new homeowners.** Alternative sources of funding, such as gasoline taxes to pay for roads, are available and more fairly distribute the cost of services among those who use them.

- **When impact fees are designated to pay for the construction of future planned facilities, the buyer is paying not just for available facilities, but also for projected infrastructure.** Impact fees are often collected from a constituency that may not enjoy the benefits for which the impact fee paid. The average turnover in home ownership is six years. Many times it takes longer than six years to build infrastructure and develop services.
- **Make sure that impact fees earmarked for building certain infrastructure are used for that purpose and in the community or service area they were intended to support.** Impact fee monies should not be commingled with the funds in the general fund, and to the extent that impact fees are not expended for their intended use over a reasonable time period, they should be returned to the homeowners.
- *Impact fees may result in "double taxation" of buyers of new housing as new residents may be charged twice for a portion of the public infrastructure; once through the payment of an impact fee and second through the repayment of bonds.*

What to do if an Impact Fee Seems Inevitable

If it is apparent that an impact fee proposal will be approved, there are several options that may minimize the effect of the fees and ensure they are being spent for the purpose they were collected:

- Work to establish specific procedures for enacting local fee ordinances, including requirements for public hearings and legal notice.
- Suggest alternative mechanisms for the financing of public infrastructure (Chapter 6).
- Review the impact fee study to ensure that: (i) the impact fee study is compliant with the requirements of the impact fee statute; (ii) the impact fee study is mathematically accurate; (iii) the impact fee study is in agreement with supporting documents and studies (e.g. CIP); (iv) the impact fee study allocated costs to multiple service areas; (v) the impact fee study is supported by reasonable growth estimates; (vi) construction costs are provided by licensed professionals; (vii) impact fees are reduced by funding offsets; and (viii) the impact fee study is based on existing levels of service..
- Provide economic data to demonstrate the influence that impact fees have on housing affordability in an effort to lower the impact fee and/or transfer the timing of the payment of the impact fee further in the development and building process.

- *Conduct a detailed legal and technical review of the ordinance or statute especially the portion that applies to the rational nexus test. Ensure the assessment of the impact fees conforms to the requirements of the ordinance or statute.* NAHB's Land Use & Design Department provides technical and policy assistance through its ordinance reviews. NAHB's Legal Services can provide assistance and advice on legal issues with the ordinance or statute.
- In the case where a state does not currently regulate impact fees, make sure the community has established administrative guidelines. Many communities fail to comply with the administrative requirements and accounting that must occur when utilizing impact fees as a method of financing public infrastructure.
- HBAs in states with adopted impact fee statutes must be knowledgeable of the provisions contained therein. Most state statutes have specific requirements for communities to follow when adopting impact fees. Make sure the local ordinance is in compliance with the requirements of the impact fee statute. In communities where no state statute has been adopted, confirm the impact fee is in line with established criteria as outlined in other chapters of this handbook.
- Certify that the community commits to conducting an annual capital project update. Doing so will help eliminate completed projects from the impact fee schedule, add new projects if needed and document expenditures for constructed facilities. The purpose of the annual capital project update is to ensure the home buyer receives the infrastructure and services for which the impact fees were paid and that the community is both planning ahead and being accountable.
- *Ensure the ordinance requires the community to perform a periodic update of the impact fee program. Provisions in many state statutes have a schedule for periodic impact fee program updates. The goal of these updates is to make sure that the plans and fees for new infrastructure and services are realistic and accurately represent the burden imposed by new development.*
- As an integral component of the fee program update, communities must also include a timeframe to update development projections. A sound ordinance should require the community to regularly update the base year and planning horizon as well as provide a new analysis of facility standards and needs (since these can change over time) and, most importantly, provide updated and realistic facility costs. Material cost fluctuations may greatly impact the construction costs of capital facilities.
- Ensure that credits and reimbursements are part of a consistent documentation process. HBAs can add significant value to the building and development community in this field. It is prudent to ensure the community is required to adequately track fee payments and projects so that in the event impact fee funds are not spent, refunds can be made. Credits should also be given in the case of changes in land use that reduce demands on infrastructure.

- Communities assessing impact fees must properly account for the fees received from new development. Ensure the community ordinance requires funds for fee programs to be deposited into separate interest-bearing accounts. The accounts typically should also use multiple categories for fees and projects. And a public accounting of how the funds were spent needs to be a requirement for the local jurisdiction.
- Push to have impact fees paid as late in the homebuilding process as possible, such as the receipt of the certificate of occupancy
- Suggest a gradual phasing of the bill's fee requirements. Phasing in the assessment of impact fees results in a less abrupt change in the functioning of builders, developers, and consumers.

Groups Likely to Support the Home Builders Association Position

As stated earlier, HBAs have a stronger ability to influence impact fee legislation when part of a broader coalition. As such, it is important to garner support through communication with other organizations early on regarding the provisions of the impact fee proposal. It may also be advantageous to proactively communicate with business clubs, labor, housing, civil rights, and property owner groups. Local commercial and residential homebuilders and developers may also be a source of support.

Enlisting the support of recent and potential new home buyers will likely play an important role in challenging impact fee proposals. Home buyers elect the officials of the governing body and may represent a powerful source of support as decreasing the affordability of housing will likely be important to home buyers.

Maintain an open line of communication with support groups and ensure that efforts to challenge impact fee proposals are coordinated. Effectively challenging impact fee proposals requires a consistent coordination of efforts between supportive groups.

Groups Likely to Oppose the Home Builders Association Position

While some groups will support the position of HBAs, there will also be groups in support of the impact fee proposals. Communicating with groups that may not share the same perspective on impact fees can be an effective way to learn how to formulate a strategy and arguments that would be tenable to all parties and for the HBA to be viewed as an effective advocate for rational development.

As impact fees represent an additional revenue source to communities, the imposition or increase of impact fees will likely be supported by community officials. It becomes increasingly difficult to effectively influence the implementation of impact fees as the capital budgeting and planning processes progress. Whenever possible, early

involvement in the budgeting and capital planning processes of the community will provide the best opportunity for HBAs to influence the impact fees being proposed.

It is likely that in an effort to discourage or limit community growth, antidevelopment organizations and groups may strongly oppose the efforts of HBAs. It is prudent to stay abreast of the current events of these groups and communicate periodically with the leaders of antidevelopment groups.

Conclusion

Developing a political and public relations strategy to affect an impact fee proposal is essential to building broad-based support in the community that will give additional weight to the building industry's position. Garnering the support of community organizations, professional groups and potential home buyers early in the capital budgeting and planning process will provide a better opportunity to effectively influence the implementation of the proposed impact fees. Following public hearings and the adoption of the fee ordinance, successfully challenging the impact fees without litigation becomes increasingly difficult.

APPENDICES

A Case Studies

B State Impact Fee Enabling Legislation Summary Chart

C General Impact Fee Statute Considerations

D Arizona, Montana, and Texas Impact Fee Statutes

E Resources

APPENDIX A

Case Studies

Home Builders Associations (HBAs) throughout the United States continue to experience challenges related to jurisdictions’ implementation of development impact fees. In order to show case the actions a number of HBAs have taken in relation to such challenges, case studies have been included that include dealing with issues of: (i) changing impact fee consultants; (ii) statutory authority to implement Fees; (iii) the timed payment of Fees; (iv) the misappropriation of Fees; and (v) levels of service. Although some of the case studies may be dated, the logic and approach of the actions taken by the HBAs is still relevant today.

I. CHANGING IMPACT FEE CONSULTANTS AND UNINTENDED CONSEQUENCES

(Note: For political sensitivity, the names of the county and the consultants in question have been omitted.)

BACKGROUND

ABC County’s (County) Impact Fee Ordinance (Ordinance) requires impact fees to be used only for capital facility costs for which the impact fees are levied and that add capacity needed to serve new development. Furthermore, the Ordinance requires the County to encumber the impact fees six years from the date the impact fees are paid and spend the impact fee within nine years from the date the fees are paid. Otherwise, the fee payer is entitled to a refund.

The County’s impact fees have been updated on a biennial basis since 1994. Consultant A prepared the 2012 update and for many years prior, and Consultant B prepared the 2014 update. Consultant A and Consultant B are credentialed impact fee consulting firms. Both firms calculated the fees using the consumption-based methodology.

Although the overall methodology did not change, the 2014 update recommended a \$15,888 (or 384 percent) increase in impact fees for a single-family detached, 2,000 square foot home. This case study explores how underlying approaches used by impact fee consultants can affect the fee calculations.

2012 and 2014 Impact Fee Comparison

Single Family (Detached) 2,000 sq ft	2012	2014	\$ Increase	% Increase
Schools	\$ 1,964	\$ 15,305	\$ 13,341	679%
Parks & Recreation	905	2,418	1,513	167%
Public Libraries	309	289	(20)	-6%
Fire & Rescue	-	324	324	N/A
Law Enforcement	135	192	57	42%
Public Buildings	826	1,499	673	81%
Total	\$ 4,139	\$ 20,027	\$ 15,888	384%

Schools

As described in the 2012 update, the School District has been implementing an aggressive capital improvement program resulting in marginal additions to existing schools rather than constructing new schools to meet enrollment demand. No capacity-adding projects were included in the School District's current Five-Year Work Plan.

The capital cost per student station of \$11,170 in the 2012 update was based on the marginal cost of expanding capacity in existing schools. In the 2014 update, the capital cost per student station of \$39,846 was assumed, which reflects the cost of building new schools.

Differences in the application of the consumption-based (e.g. incremental expansion) methodology and interpretation of the County's Ordinance in determining the capital cost per student station were key factors in the \$13,341 increase in school impact fees.

Parks and Recreation

In the 2012 Study, the cost of park land was excluded from the Parks and Recreation impact fee calculation because at that time and for the foreseeable future, the County had no plans to increase its inventory of park land. Instead, the County will be developing park land that is already in inventory.

The 2014 Study included calculations demonstrating how the County's achieved level of service for park land exceeded the adopted level of service, consistent with findings in the 2012 Study. The County still has no plans to acquire additional park land. However, the 2014 Study included the cost of park land, at achieved levels of service, in the cost component of the impact fee calculation. Park land accounts for 52 percent of the 2014 impact fee cost component, with park land improvements and facilities accounting for the remainder.

Differences in the application of the consumption-based methodology and interpretation of the County's Ordinance in determining the capital cost for parks and recreation were key factors in the \$1,513 increase in parks and recreation impact fees.

Fire and Rescue

The 2012 Study recommended the Fire and Rescue Fee be set at zero as the County's Capital Improvement Plan (CIP) did not propose any capacity-adding improvements. However, the 2014 Study noted three new stations have been included in the current CIP, so a Fire and Rescue impact fee was recommended for adoption.

Initially, the 2014 Study included a \$14.6 million Training and Administrative Facility in the land and buildings inventory used in calculating the cost component of the fee. However at the County's request, the cost of this facility was later removed, as there is no need for a similar facility in the future.

Law Enforcement

The 2012 Study allocated capital costs on a per call basis² and used the existing inventory of vehicles and equipment in determining the cost component of the law enforcement impact fee. The 2014 Study allocated costs on a functional population basis and used a flat capital cost per officer based on information obtained from other jurisdictions. The level of service in the 2014 Study was based on the number of officers per 1,000 functional residents.

A comparison of the two approaches, calculated on a per capita basis, highlights certain anomalies between the two approaches. For example, the overall capital cost was \$10.8 million less in 2014 compared to 2012, and the service area population increased by 86,318 persons (or 12 percent) from 2012 to 2014. In total, the per capita cost declined by \$25.50 per person over the biennial period.

2012 and 2014 Law Enforcement Capital Cost Comparison

Description	Figure
<i>2014 Law Enforcement Impact Fee Study</i>	
Service Area Functional Population	699,882
Cost per Functional Resident	\$ 106.50
Total Equipment and Vehicle Value	\$ 74,537,433
Service Area Peak Population	818,439
Per Capita Cost	\$ 91.07
<i>2012 Law Enforcement Impact Fee Study</i>	
Total Equipment and Vehicle Value	\$ 85,341,771
Unincorporated Peak Population Served	732,121
Per Capita Cost	\$ 116.57

In spite of the decreases noted above, the 2014 Law Enforcement impact fee increased significantly across all land uses, as illustrated below.

- Office (50,000 sq. ft. and less) increased 1,325 percent
- Retail (50,000 sq. ft. and less) increased 335 percent
- Fast Food Restaurant increased 1,480 percent

Persons per housing unit increased slightly in 2014, which affected the residential land use fees, but different approaches in calculating functional population in the 2012 and 2014 studies accounts for the majority of the nonresidential land use increases.

For example, the peak population in the 2014 study was 1,443,996; however, the peak population in the 2012 study was 1,640,084—a decrease of 196,088. The primary difference appears to be in the transient population assumption, which affects the Parks & Recreation, Fire and Rescue, Law Enforcement and Public Building impact fee calculations.

¹ The 2012 Study also included the Law Enforcement impact fee calculated on a per capita basis.

Furthermore, the functional population coefficient for many nonresidential land uses differed in the 2014 Study compared to the 2012 Study due to methodologies developed and applied by the two consulting firms.

2012 and 2014 Functional Population Coefficient Comparison

Land Use	Functional Population Coefficient	
	Per 1,000 Sq Ft	
Drive-in Bank	1.815	2.280
Quality Restaurant	2.231	6.820
High Turnover Sit-Down Restaurant	2.375	6.780
Office (<= 50,000 sq ft)	0.801	1.410
Retail (<= 50,000 sq ft)	2.050	2.450
Fast Food Restaurant	3.699	8.900

Public Buildings

A significant amount of debt associated with existing public buildings was paid off between 2012 and 2014, which decreased the credit component in the 2014 Study. However, the increase in Public Building impact fees was also affected by the differences in functional population and functional population coefficients described above.

OUTCOME

Because impact fees are not subject to a regulatory body that establishes standardization in practice, a wide variety of approaches are used even when applying the primary methodologies: plan-based (or improvements-driven) and standards-based (or incremental expansion or consumption-based). It is important for local governments to fully understand the assumptions and methodologies included in the impact fee study and to take the steps necessary to limit inequitable (and unintended) inconsistencies that may arise with a change in the impact fee preparer.

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II. STATUTORY AUTHORITY LAWSUIT

Bozeman, Montana

BACKGROUND

In December of 1995, the City of Bozeman (City) voted to adopt fees for streets, fire, water and wastewater, without permission through state enabling legislation. The fees voted upon became effective March 23, 1996. At this time, the City only had “general governing powers” not “self-governing powers” and as such, would need state legislation to pass ordinances. Self-governing power, which is the power to enact any measure not expressly forbidden by state laws, was granted to the City in July 2001.

In 1998, following the narrow approval of Initiative 19 by voters, the City sought to substantially increase the existing amounts being assessed for fees. The fee schedule increase was enough for members of the Southwest Montana Building Industry Association (SWMBIA) to begin questioning the authority of the City to collect fees. The local building industry (Building Industry) and the SWMBIA formed a coalition to fight the implementation of the increased fees. In 1999, the City and the SWMBIA entered a lawsuit relating to the City’s fee ordinance on the grounds that the City did not have statutory authority to impose fees. The lawsuit was later certified as a class action lawsuit in 2000. The SWMBIA and its members were highly involved in all aspects of the lawsuit and formed a committee of builders to administer and oversee the lawsuit and to keep the SWMBIA informed of the status and progress, including fundraising, identifying necessary plaintiffs, and overall supervision as the lawsuit progressed.

Prior to and at the time of the fee issue, the state of Montana had not enacted state-enabling legislation for the implementation of fee programs. As state-enabling legislation had not been given, the SWMBIA believed the City had no authority to impose fees, to say nothing of the authority to collect or arbitrarily increase the unfounded fees without industry input or the preparation of a technical fee study. A highly important factor that contributed to the substantiality of the SWMBIA’s case was not straying from the central argument that the city lacked the statutory authority to impose the fees. Years later in 2005, the passing of State Bill 185 allowed jurisdictions to implement fee programs on the legal basis of Montana Code 7-6-1601 et. seq.

City officials and other supporters for higher fees consistently used media channels to purport that any and all infrastructure problems or deficiencies were the result of the Building Industry’s pursuing litigation over fees. Accordingly, the SWMBIA routinely used the local media to combat the misinformation and mischaracterization of the Building Industry and focused the public relations effort on educating the public about the SWMBIA’s position and the importance of challenging the City’s existing fee study. Allies of the SWMBIA included numerous members of the local and state building associations as well as state and local realtors. Efforts were focused on educating allies of the need for litigation and formally requesting their financial support to challenge the fees. By maintaining open lines of communication with allies throughout the process, the SWMBIA was able to receive additional funding when necessary.

OUTCOME

In February 2001, the lawsuit was settled and the City agreed to:

- Return a total of \$5.1 million to approximately 1,000 fee payers resulting in a refund of approximately \$5,000 per residential dwelling.

Bozeman Fee Refund	
Fee Category	Amount Refunded
Street and Fire	\$ 2,231,410
Water	1,293,369
Sewer	1,606,555
Total	<u>\$ 5,131,334</u>
Residential Dwellings ⁽¹⁾	1,000
Refund per Residential Dwelling	<u>\$ 5,131</u>

Footnote:

(1) Figure is approximate.

- Reduce the existing fee schedule by 10 percent until a new study could be completed.
- Allow local builders reasonable participation in the preparation of the new fee study.

After settlement was reached, the SWMBIA continued its public relations approach by providing the public with detailed information about the settlement and the parties eligible to receive fee refunds. The SWMBIA and the class were very pleased with the outcome of the lawsuit, however, the reasonable participation in the preparation of the new fee studies never really materialized.

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III. TIME PAYMENT OF FEES

Hillsborough County, Florida

BACKGROUND

The water and sewer systems for Hillsborough County, Florida (County) had substantial excess capacity within certain service areas caused by a combination of overly optimistic population projections, housing market down turns, down planning, and reluctance on the part of the County to approve rezonings involving higher residential densities.

The County was having difficulty meeting its bond payment obligations, and bond rating agencies threatened to downgrade the County to “junk bond” status. The reclassification would make it difficult for the County to successfully finance any future capital improvements through the issuance of bonds.

The water and sewer development impact fees (fees) in the County were structured to meet the needs of providing necessary capital infrastructure and were some of the highest utility fees in Florida. At the time of receiving certificate of occupancy, homebuilders paid fees of \$3,665 per single family residence for water and sewer.

As a means of generating revenue, the County sought to implement a “stand-by” charge, which the Tampa Bay Builders Association (TBBA) felt was arbitrarily chosen and did not meet the provisions of rational nexus tests. As such, the TBBA threatened legal action.

The TBBA participated in a task force offering suggestions on how to increase revenues and cut expenses and suggested allowing the County to adopt the stand-by charge as a way to raise revenue and to allow the stand-by charge and fees to be financed by home buyers over a period of time. As a result of the concept of allowing the homebuilder to finance both the stand-by charge as well as the Fees through the use of special assessment bonds was created. The goal of the time payment of fees program was to accelerate the collection of funds by the County and to shift the burden of fees from the home builder to the home buyer and to protect the County’s bonding ability and rating.

To accomplish the implementation of a time payment system, the County proposed a new fee, called the Accrued Guarantee Revenue Fee (AGRF), to reimburse the cost of the unused water and wastewater capacity in the utility system. Following extensive discussion, it was agreed that the County would adopt an AGRF of \$445 for water and \$645 for wastewater for a total AGRF of \$1,090. Fees now due for water and wastewater were increased from the average of \$3,665 per single family residence to a total of \$4,755. The fee increase is illustrated in the table on the following page.

County Water and Wastewater Fees	
Description of Fee	Amount
AGRF ⁽¹⁾	\$ 1,090
Average Fee	3,665
Total Fee	\$ 4,755

Footnote:

(1) The acronym represents the Accrued Guarantee Revenue Fee.

By participating in the time payment program, the home builder paid \$2,500 known as the Builder Payment. The time payment fee is paid prior to the issuance of a certificate of occupancy while the home buyer, as part of their property tax bill, pays the remaining \$2,255 over 20 years, amounting to approximately \$230 per year.

Time Payment of Fees Example		
Fee Breakdown	Amount	When Paid
Homebuilder	\$ 2,500	Certificate of Occupancy
Homebuyer	2,255	Amortized over 20 years.
Total	<u>\$ 4,755</u>	

Participation in the time payment system is voluntary and home builders have the option to participate in the time payment program or to pay the fees themselves and include them in the cost of the home. Home buyers who purchase homes participating in the time payment system have the option to pay the annual assessments or to prepay the fees at any time without penalty.

OUTCOME

The time payment program of water and sewer fees has been in effect since 1997 and has been beneficial to the county government as well as the building industry. Following the adoption of the initial program, the County performed a rate/services study that concluded additional funds would be necessary to support the time payment system. The County agreed to maintain the builder fee at \$2,500 but increase the AGRF to \$5,865, with the home buyer paying \$3,365 over 20 years.

Since the adoption of the time payment system, several rate adjustments have been made based on the results of annual studies conducted by the County. In 2002, the home builder payment was **reduced** to \$2,170, and the total fees for a single family residence were \$5,495, with home buyers financing \$3,325 over 20 years. Without the implementation of the time payment program, home builders in the County would pay a total of \$5,495 in water and sewer Fees. The time payment system reduces the Fees paid by the home builder by \$3,325 per single family residence and allows the home buyer to finance the balance through a tax assessment, potentially at lower interest rates than conventional home mortgages.

The development of the time payment system offers the following benefits:

- * Reduces home builder's direct costs.
- * Passes some fees to the home buyer and potentially at lower interest rates.
- * Provides an alternative to conventional fees.

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IV. LEVELS OF SERVICE

Yuba City, California

BACKGROUND

In October 2006, the North State Building Industry Association (BIA), working with an outside consulting firm, began reviewing the proposed development impact fees (fees) prepared by consultants on behalf of the City of Yuba City, California (City). As the City offered a variety of public services, the fees and nexus studies covered the following categories:

- 1) Community Services (police, fire, corporation yard and city hall)
- 2) Roads
- 3) Parks & Recreation
- 4) Library
- 5) Levee
- 6) Sewer
- 7) Water
- 8) Storm Drainage

The initial fees circulated by the City had increased the single-family rate from \$24,270 to \$64,193.

Fees within the State of California are controlled by Government Code 66000-6605 (Mitigation Fee Act) which was adopted in 1987 as AB 1600. The power to collect fees is contained in the city's police powers to protect the public health, safety and welfare of the citizens. Section 66001(a) of the Government Code requires any imposition of a Fee as part condition of development must show the following nexus:

- Identify the purpose of the fee;
- Identify how the fee is to be used;
- Determine how a reasonable relationship exists between the fee's use and the type of development project on which the fee is imposed;
- Determine how a reasonable relationship exists between the need for the public facility and the type of development project on which the Fee is imposed.

The nexus findings are typically made in a fee program's corresponding fee study (Nexus Study) or must be made in the ordinance that establishes the fee program. Additionally, AB 2751 created Section 66001(g) in 2007, which clearly states new development is not responsible for curing any existing deficiency in the current fee program. Understanding AB 1600 and the nexus requirements are critical in negotiating with any jurisdiction regarding fees.

As such, the BIA and their outside consultant focused on the following key assumptions: population build-out, interest rates, existing deficiencies, level of service standards, residential equivalency rates

and construction cost contingencies. For example, the City had originally estimated design, engineering and construction contingency as 65 percent of the hard construction costs. This is 30 to 40 higher than most jurisdictions typically estimate in any fee program. Additionally, the City utilized the fee program to increase the de-facto level of standard from 4.06 acres per 1,000 residents to 10.0 acres per 1,000 residents. Adjustments made to these two assumptions reduced the proposed fees by more than \$15,000 per residential unit.

The goal was to ensure that development paid its fair share of future infrastructure needs, recognizing the temporal economic conditions currently facing business interest in the City. In addition to negotiating with key the City staff members, an Ad Hoc committee was created which included two members of the City council to provide input on key level of service standards, existing deficiencies and interest rate assumptions associated with financing infrastructure improvements. Through this process the BIA and their outside consulting group were able to significantly reduce the fees to be paid by new development.

OUTCOME

In September 2007, the City council adopted revised fees that were substantially reduced from the originally proposed fees proposed in October 2006. The revised fees reflect a position that provides for development paying its fair share of future infrastructure cost and ensures that the proposed fees are justifiable under state guidelines while meeting the City's desired level of service standards. The table below illustrates the results realized by the BIA working with their outside consultants upon the completion of the fee review and subsequent adoption by the City:

Yuba City Fee Update									
Fee Category	September			Numerical Variance			Percentage Variance		
	Existing Fee	Oct 2006	2007 Adopted	Existing - Proposed	Proposed - Adopted	Existing - Adopted	Existing - Proposed	Proposed - Adopted	Existing - Adopted
		Proposed Fee	Fee						
Police	\$ 593	\$ 1,876	\$ 1,196	\$ 1,283	\$ (680)	\$ 603	216%	-36%	102%
Fire	749	1,587	1,361	838	(226)	612	112%	-14%	82%
Roads	3,583	14,117	9,094	10,534	(5,023)	5,511	294%	-36%	154%
Corporation Yard	-	934	814	934	(120)	814	0%	-13%	0%
Parks & Recreation	2,692	9,320	6,160	6,628	(3,160)	3,468	246%	-34%	129%
Library	954	1,082	912	128	(170)	(42)	13%	-16%	-4%
Levee	-	5,366	2,874	5,366	(2,492)	2,874	0%	-46%	0%
City Hall	-	667	516	667	(151)	516	0%	-23%	0%
Sewer	4,990	7,826	5,261	2,836	(2,565)	271	57%	-33%	5%
Drainage	-	6,575	3,061	6,575	(3,514)	3,061	0%	-53%	0%
Water	7,209	10,644	5,796	3,435	(4,848)	(1,413)	48%	-46%	-20%
Administration	-	699	496	699	(203)	496	0%	-29%	0%
Affordable Housing	3,500	3,500	1,750	-	(1,750)	(1,750)	0%	-50%	-50%
Total	\$ 24,270	\$ 64,193	\$ 39,291	\$ 39,923	\$ (24,902)	\$ 15,021			

When there are substantial increases in fees, there is a good chance that a jurisdiction may be attempting to increase its levels of service standards or to remedy existing deficiencies with Fee revenues generated by new growth. Special attention needs to be placed on construction cost estimates, as these costs are often times significantly higher than those currently being experienced in the market place. Lastly, consideration should be given to bringing in outside fee consultants who work solely for the private sector to augment the BIA review team.

V. SIZE-BASED RESIDENTIAL FEE ASSESSMENTS

BACKGROUND

It is common among jurisdictions to assess fees for residential dwellings based upon unit type. For example, a flat fee is charged for all single family residences, without taking into consideration the size of the residence. In recent years, the notion of assessing residential fees based upon the size of the unit (square footage or the number of bedrooms) has become popular throughout jurisdictions in the United States. Several communities, such as Missoula, Montana; Baton Rouge, Louisiana; Palo Alto, California; Burlington, Vermont; and Hillsborough and Manatee County, Florida, have adopted size-based residential fee programs.

For example, the Manatee County, Florida impact fee schedule for single-family detached homes is presented below.² Except for public education, the fees are based on unit size. The square footage ranges for most categories are minor (300 to 500 square feet); however, the methodology assumes demand for public facilities, other than schools, is homogenous for all homes greater than 2,200 square feet.

Single-Family Detached	Law Enforcement	Libraries	Multi-Modal Transportation				Parks & Natural Resources	Public Safety	Public Education	Admin Surcharge
			NE District	NW District	SE District	SW District				
1,000 sq ft or less	\$ 178	\$ 95	\$ 2,290	\$ 2,185	\$ 1,686	\$ 1,335	\$ 430	\$ 96	\$ 3,238	\$ 44
1001 - 1300 sq ft	\$ 276	\$ 148	\$ 3,564	\$ 3,400	\$ 2,623	\$ 2,078	\$ 669	\$ 149	\$ 3,238	\$ 69
1301 - 1700 sq ft	\$ 378	\$ 202	\$ 4,874	\$ 4,650	\$ 3,588	\$ 2,833	\$ 915	\$ 204	\$ 3,238	\$ 94
1701- 2200 sq ft	\$ 477	\$ 255	\$ 6,126	\$ 5,843	\$ 4,509	\$ 3,560	\$ 1,154	\$ 257	\$ 3,238	\$ 119
2201 or more sq ft	\$ 595	\$ 319	\$ 7,633	\$ 7,282	\$ 5,619	\$ 4,434	\$ 1,441	\$ 321	\$ 3,238	\$ 149

Total Single-Family Fee	NE District	NW District	SE District	SW District
1,000 sq ft or less	\$ 6,371	\$ 6,266	\$ 5,767	\$ 5,416
1001 - 1300 sq ft	\$ 8,113	\$ 7,949	\$ 7,172	\$ 6,627
1301 - 1700 sq ft	\$ 9,905	\$ 9,681	\$ 8,619	\$ 7,864
1701- 2200 sq ft	\$ 11,626	\$ 11,343	\$ 10,009	\$ 9,060
2201 or more sq ft	\$ 13,696	\$ 13,345	\$ 11,682	\$ 10,497

An impetus to the emergence of this approach to assessing fees is the argument revolving around the regressive nature of impact fees. Fees that are regressive increase as a percentage of residential dwelling size as the residential dwelling size decreases. Therefore, the fee remains the same without regard to the size of the unit.

The purpose of this discussion is to emphasize the primary arguments of proponents and opponents to this method of calculating residential fees.

PROPOSERS

Proponents of square foot and number of bedroom based residential fee assessments argue that assessing fees based on unit size provides a more equitable assessment of fees as smaller residences are not paying a proportionately higher share of fees compared to larger residences. Basing the

assessment of fees on the size of a residential dwelling or the number of bedrooms in that dwelling makes the fee less regressive than assessing fees based upon unit type.¹

The central premise of the argument is that, in general, larger residences house more people, and with a greater number of people, there results a greater demand for public services. On the other hand, small residences house fewer people and as such would require fewer public services. It is argued that the dwelling does not have an impact on the demand for public services, but it is the people residing in the dwelling that have the impact, and assessing fees based upon housing size proportionately places the burden of paying the fees on those who create the greatest demand for public infrastructure and services.

OPPONENTS

Opponents to the assessment of residential fees based upon square footage and number of bedrooms argue that it is not feasible to transform fees from something regressive to something that is not regressive.

The difficulty in assessing residential fees based upon unit size is that the assumption that larger residences house a greater number of people does not always follow the aspects of the argument set forth by proponents of this approach. As a simple example, some households nearing retirement or with fewer dependents may purchase housing that is much larger than is necessary to provide space for visiting relatives or entertaining guests. Additionally, the definition of what constitutes a “bedroom” varies from source to source. A room may be defined as a “den” to one person, while the very same room may be considered a “bedroom” by another.

It is important that home builder associations stay abreast of the developments in this approach as it is likely that this method of calculating residential fees will become more common in the future.³

For further information on recent fee trends and ways to deal with fee proposals, it may be helpful to work with the NAHB to ascertain how HBAs in other parts of the United States manage impact fees.

Endnote

1. Nicholas, James C. 1992. “On the Progression of Impact Fees,” *Journal of the American Planning Association* 58: 517–525
2. This schedule reflects impact fees in effect for the period April 18, 2016 to April 17, 2017.
3. National Association of Home Builders, *Proportionate-Share Impact Fees*

APPENDIX B

State Impact Fee Summary Chart

State		Legislative Reference	Fees May Be Imposed For											Requirements					
			Roads	Water	Sewer	Storm Water	Parks	Fire	Police	Library	Solid Waste	School	Utilities	Improvements Plan	Interest Bearing Account	Spend Within "X" Years	Waiver for Affordable Housing	Advisory Committee	Stage for Payment (1)
Alabama																			
Alaska																		Anytime	
Arizona (Cities)	AZ Rev. Stat. Ann., § 9-463.05		X	X	X	X	X	X	X	X			X	X	10		X	BP/CO	
Arizona (Counties)	AZ Rev. Stat. Ann., § 11-1102 et seq.		X	X	X	X	X	X	X				X	X	10		X	BP/CO	
Arkansas	AK Code, § 14-56-103 (cities only)		X	X	X	X	X	X	X	X			X	X	7			CO	
California	CA Gov't Code, § 66000 et seq. (mitigation fee act); § 66477 (Quimby Act for park dedication/fee-in-lieu); § 17620 et. seq. (school fees)		X	X	X	X	X	X	X	X	X	X	Yes		6			Certificate of occupancy	
Colorado	CO Rev. Stat., § 29-20-104.5; § 29-1-801804 (earmarking requirements); § 22-54-102 (school fee prohibition)		X	X	X	X	X	X	X	X		X		X		X			
Connecticut																			
Delaware																			
Florida	FL Stat., § 163.31801		X	X	X	X	X	X	X	X	X	X						Anytime	
Georgia	GA Code Ann., § 36-71-1 et seq.		X	X	X	X	X	X	X	X			X	X	6	X	X	BP	
Hawaii	HI Rev. Stat., § 46-141 et seq.; § 264-121 et seq.		X	X	X	X	X	X	X	X	X	X	Yes	X	X	6		BP	
Idaho	ID Code, § 67-8201 et seq.		X	X	X	X	X	X	X				X	X	8 (2)	X	X	BP	
Illinois	605 Ill. Comp. Stat. Ann., § 5/5-901 et seq.		X											X	X	5		BP/CO	
Indiana	ID Code Ann., § 36-7-4-1300 et seq.		X	X	X	X	X						X	X	6	X	X	BP	
Iowa																			
Kansas																			
Kentucky																			
Louisiana																			
Maine	ME Rev. State. Ann., Title 30-A, § 4354		X	X	X		X	X			X		X						
Maryland	MD Code, Art. 25B, § 13D		X	X	X	X	X	X	X	X	X	X							
Massachusetts																			
Michigan																			
Minnesota																			
Mississippi																			
Missouri																			
Montana	MT Code Annotated, Title 7, Chapter 6, Part 16		X	X	X	X	X	X	X	X	X	X	X	X	X		X	BP	
Nebraska																			
Nevada	NV. Rev. Stat., § 278B		X	X	X	X	X	X	X				X	X	10		X	BP/CO	
New Hampshire	NH Rev. Stat. Ann., § 674:21		X	X	X	X	X	X	X	X	X	X			6			CO	
New Jersey	NJ Perm. Stat., § 27:1C-1 et seq.; § 40:55D-42		X	X	X	X							Yes					BP	
New Mexico	NM. Stat. Ann., § 5-8-1 et seq.		X	X	X	X	X	X	X				X	X	7	X	X	BP	
New York																			
North Carolina																			
North Dakota																			
Ohio																			
Oklahoma	OK Statutes, § 62-895		X	X	X	X	X	X	X	X									
Oregon	OR Rev. State, § 223.297 et seq.		X	X	X	X	X						X						
Pennsylvania	PA Stat. Ann., Title 53, § 10502-A et seq.		X										Yes			Yes		BP	
Rhode Island	General Laws of RI, § 45-22.4		X	X	X	X	X	X	X	X	X	X		X	8			CO	
South Carolina	Code of Laws of SC, § 6-1-910 et seq.		X	X	X	X	X	X	X				X	X	3	X		BP	
South Dakota																			
Tennessee																			
Texas	TX Local Gov't Code Ann., Title 12, § 395.001 et seq.		X	X	X	X							X	X	10	X	X	BP/CO	
Utah	UT Code, § 11-36-101 et. seq.		X	X	X	X	X	X	X			X	X (3)	X	6	X			
Vermont	VT Stat. Ann., Title 24, § 5200 et seq.		X	X	X	X	X	X	X	X	X	X	X		6	X			
Virginia	VA Code Ann., § 15.2-2317 et seq.		X										X	X	15		X	CO	
Washington	WA Rev. Code Ann., § 82.02.050 et seq.		X				X	X			X		X	X	6	X			
West Virginia	WV Code, § 7-20-1 et seq.		X	X	X	X	X	X	X	X	X		X	X	6	X			
Wisconsin	WI Stats., § 66.0617		X	X	X	X	X	X	X	X	X		X	X	7	X		BP/CO	
Wyoming																			

Source: National Impact Fee Survey, 2015

Footnotes:

(1) BP = Building Permit; CO = Certificate of Occupancy.

(2) Idaho - 20 years for wastewater and drainage.

(3) Political Subdivisions serving populations under 5,000 as of the last federal census need not comply with the capital facilities plan requirements.

APPENDIX C

General Impact Fee Statute Considerations

The following document aims to serve as a reference for homebuilders to review common issues discussed in impact fee statutes. While all state impact fee statutes are unique, the majority of impact fee statutes share the following common characteristics.

- Definitions
- Minimum Standards for Development Impact Fee Ordinances
- Advisory Committee
- Service Areas
- Imposition of Development Impact Fees
- Proportionate Share of Improvement Costs Determination
- Capital Improvements Plan
- Credits
- Accounting for Collected Development Impact Fees
- Refunds
- Collection

A thorough discussion about the characteristics outlined above can be found in its respective section below.

DEFINITIONS

- The definitions section should include a detailed list of the public facilities for which impact fees are assessed.
- Examples of public facilities may include: Water supply production, treatment, storage and distribution facilities, wastewater collection, treatment and disposal facilities roads, streets and bridges, including rights-of-way, traffic signals, storm water collection, retention, detention, treatment and disposal facilities, flood control facilities, parks, open space and recreation areas, public safety facilities, including law enforcement, fire, emergency medical and rescue and street lighting facilities.

MINIMUM STANDARDS FOR DEVELOPMENT IMPACT FEES ORDINANCES

Minimum standard requirements for development impact fee ordinances may include:

- Should be based upon the proportionate share of the cost of system improvements. Development impact fees shall be based on actual system improvement costs or reasonable estimates of such costs.

- Should be calculated on the basis of levels of service for public facilities in the development impact fee applicable to existing development as well as new growth and development. The construction, improvement, expansion or enlargement of new or existing public facilities for which a development impact fee is imposed must be attributable to the capacity demands generated by the new development.
- Should specify the time in the development process at which the development impact fee is to be collected. Times for the collection of the development impact fee may include: (i) the commencement of construction of the development, (ii) the issuance of a building permit or (iii) as may be agreed by the developer and the governmental entity.
- Should include a provision for credits in accordance with the requirements of the “Credits” section.
- Should include a provision prohibiting the expenditure of development impact fees except in accordance with the requirements of the “Earmarking and Expenditure of Collected Development Impact Fees” section.
- Should make a determination as to whether one service area or more than one service area is necessary to establish a correlation between impact fees and benefits.
- May exempt all or part of a particular development project from development impact fees provided that such project is determined to create affordable housing.
- Should provide that development impact fees shall only be spent for the category of system improvements for which the fees were collected and either within or for the benefit of the service area in which the project is located.
- Should provide for a refund of development impact fees in accordance with the requirements of the “Refunds” section.
- Should provide for appeals regarding development impact fees in accordance with the requirements of the “Appeals” section.
- Should provide a detailed description of the methodology by which costs per service unit are determined.
- Should include a schedule of development impact fees for various land uses per unit of development.
- Should not subject any development to double payment of impact fees. (i.e. Homebuilder should not be responsible to pay impact fees and also pay to retire the debt to pay for the infrastructure)
- May exempt from development impact fees for the following activities:
 - (i) Rebuilding the same amount of floor space of a structure, which was destroyed by fire or other catastrophe, providing the structure is rebuilt and ready for occupancy within two (2) years of its destruction;
 - (ii) Remodeling or repairing a structure which does not increase the number of service units;
- Should include a description of acceptable levels of service for system improvements.

DEVELOPMENT IMPACT FEE ADVISORY COMMITTEE

- The governmental entity should establish a development impact fee advisory committee.
- The composition of the advisory committee should have representatives from the home building community. It would be wise to have no less than 40% of the committee members

selected from the building community. An example composition may include a total of five (5) members appointed by the governing authority of the governmental entity, where two (2) or more members are active in development, building or real estate and are not employees of the governmental entity.

- The advisory committee should:
 - (i) Monitor and evaluate implementation of the capital improvements plan;
 - (ii) Recommend to the governmental entity that the capital improvements plan and development impact fees be updated or revised periodically.

SERVICE AREAS

- Service areas are defined as geographic areas identified by a governmental entity or by intergovernmental agreement in which specific public facilities provide service to development within the area. An important note on service areas is that impact fees collected for the intent to be spent on public facilities located within a specific service area should be separately accounted for to ensure that the impact fees are appropriately spent on public facilities located within the service area.

IMPOSITION OF DEVELOPMENT IMPACT FEES

- The advisory committee should be consulted on the development of the capital improvements plan.
- The public should be notified, through a public hearing, of any changes to be made to the capital improvements plan. Notification should be made by circulation in a recognized county newspaper.
- The public should be notified, through a public hearing, of the governmental entity's intent to consider adoption of an ordinance for the imposition of development impact fees.

PROPORTIONATE SHARE OF IMPROVEMENT COSTS DETERMINATION

- The impact fees should be based on a reasonable and fair formula or method, so that the impact fees do not exceed a proportionate share of the costs of the improvements to serve the new development.
- The following should be considered in the determination of proportionate share and accounted for in the calculation of the impact fee:
 - (i) Any offsets, credits, contribution of money, dedication of land, or construction of system improvements;
 - (ii) Payments anticipated to be made in the form of user fees and debt service payments;
 - (iii) The portion of general taxes or other revenues allocated to system improvements;
 - (iv) The cost of existing system improvements within the service area or areas;
 - (v) The extent to which new development will contribute to the cost of system improvements through taxation, assessment, or developer or landowner contributions, or has previously contributed to the cost of system improvements through developer or landowner contributions.
 - (vi) The extent to which the new development is required to contribute to the cost of existing system improvements in the future.

- (vii) The extent to which the new development should be credited for providing system improvements, without charge to other properties within the service area or areas;
- (viii) The availability of other sources of funding system improvements. (user charges, general tax levies, intergovernmental transfers, and special taxation)

CAPITAL IMPROVEMENTS PLAN

It is recommended that a capital improvements plan be prepared and that it be included as an element of the comprehensive plan. The capital improvements plan may contain the following:

- (i) A general description of all existing public facility deficiencies within the service area or areas and a reasonable estimate of all costs and a plan to develop the funding resources related to curing the existing deficiencies.
 - (ii) Means by which the governmental entity will use revenue sources other than impact fees to cure existing system deficiencies.
 - (iii) An analysis of the total capacity, the level of current usage, and commitments for usage of capacity of existing capital improvements to ascertain the current level of service.
 - (iv) The capital improvements plan should provide a table establishing the specific level or quantity of use of a service unit for each category of system improvements as well as an equivalency ratio of a service unit to various types of land uses, including residential, commercial, agricultural and industrial.
 - (v) A description of all system improvements and their costs necessitated by new development in the service area, to provide a level of service not to exceed the level of service adopted in the development impact fee ordinance.
 - (vi) The total number of service units necessitated by and attributable to new development within the service area.
 - (vii) The projected demand for system improvements required by new service units projected over a reasonable period of time. (The longer the timeframe, the less accurate the projected demand)
 - (viii) Identification of all sources available to the governmental entity for the financing of the system improvements.
 - (ix) A schedule setting forth estimated dates for commencing and completing construction of all improvements identified in the capital improvements plan.
- There should be a provision that the capital improvements plan will be periodically updated.

CREDITS

Provisions for impact fee credits may include:

- A credit or reimbursement for the present value of any construction of system improvements or contribution or dedication of land or money.
- Amount of Credit or the amount, time and form of reimbursement.
- A credit on future impact fees or reimbursement at the developer's choice for excess construction, funding or contribution from development impact fees.
- A credit on future impact fees for the amount in excess of the development's proportionate share.

ACCOUNTING/EXPENDITURE OF COLLECTED DEVELOPMENT IMPACT FEES

Suggestions for the allocation and expenditure of collected impact fees can be found below:

- Impact fees should be maintained in interest-bearing accounts. This could be further delineated by category of system improvements and the service area in which the fees are collected.
- Interest earned should be considered funds of the account, and should be subject to all restrictions placed on the use of development impact fees.
- Expenditures of development impact fees should be made only for the category of system improvements of the service area shown in the capital improvements plan.
- Annual reports should be produced that describe the amount of all development impact fees collected, or spent during the preceding year delineated by category of public facility and service area.
- A timeframe for the expenditure of development impact fees that have been collected should be specified. If the funds are not expended within the prescribed timeframe they should be refunded.

REFUNDS

Suggestions for impact fee refund language:

- Development impact fees that have been paid should be refunded if:
 - (i) The governmental entity, has failed to appropriate and expend the collected development impact fees.
 - (ii) The impact fees are paid under protest and a review of the fee paid determines that it exceeded the proportionate share.
- Refunds should be sent to the owner of record within a specified timeframe after it is determined that a refund is due.
- Interest accrued from the date on which the fee was originally paid should also be refunded.

COLLECTION

The collection of development impact fees primarily occurs at one of the following two stages in the construction process:

- (i) The issuance of a building permit; or
- (ii) The issuance of a certificate of occupancy.

For an example of how many of the aforementioned concepts were implemented into law by the home builders of Arizona, See Arizona's Impact Fee Statute included as Appendix D.

APPENDIX D

Arizona, Montana, and Texas Impact Fee Statutes

ARIZONA

Arizona's Response to Development Impact Fee Abuses

In 2011, after years of being on the receiving end of abusive development impact fee ordinances imposed by some of the rapidly growing cities in Arizona, the home building industry in Arizona, led by the Home Builders Association of Central Arizona, drafted Senate Bill 1525 (SB1525). This bill not only addressed these abuses but enacted comprehensive requirements for municipalities in Arizona that charge impact fees.

Background

During the housing boom years some of the fastest growing communities in Arizona began enacting development impact fee ordinances based on development impact fee studies that were lacking in many respects. Some of the more common challenges with these impact fees studies included:

- Inclusion of non-essential public improvements (e.g. cultural centers) in eligible costs;
- No delineation of service areas;
- Incomplete analysis of existing levels of service;
- Use of inconsistent levels of service;
- Using development fees to address existing infrastructure deficiencies;
- No consideration of funding offsets, or credits;
- Inaccurate cost estimates, and
- Logic and mathematical errors.

The result of these errors was to force new growth to fund more than its proportionate share of the public infrastructure burden.

SB 1525

As a result, the building industry drafted, lobbied for, and passed SB1525 in 2011. Among other things, this bill:

- Immediately required municipalities to remove “unnecessary public services” from their impact fee programs;
- Required existing municipal impact fee programs to be replaced with impact fees estimated pursuant to the tenets of SB 1525;

- Established strict deadlines for the adoption of impact fees which, if not met, required municipalities to stop collecting impact fees;
- Adopted constitutional “proportionality” requirements based on standardized service units;
- Required use of service areas in which there is a “substantial nexus” between public services and demand;
- Necessitated the preparation of infrastructure improvement plans by Arizona licensed engineers pursuant to approved land use assumptions;
- Required a detailed existing level of service analysis;
- Defined “necessary public services” and the facilities that would be eligible for funding through development impact fees;
- Required an offset to public service costs for other fees and taxes paid by new growth which will be used by the jurisdiction to fund public infrastructure costs, including but not limited to construction sales taxes, state shared revenues, existing municipal general obligation bonds, grants, etc.;
- Increased the amount of time and frequency of public hearings and industry input into the impact fee process; and
- Required a bi-annual audit of the impact fee program if the jurisdictions did not work with an impact fee advisory panel during the preparation of the impact fee program.

Result

As result of the enactment of SB1525, many jurisdictions’ impact fees were reduced by as much as 20 percent as they were forced to remove “unnecessary public services” from their impact fee calculations. Other jurisdictions decided to abandon their impact fee programs altogether given the amount of time and cost involved in revising the fees to be compliant with SB1525. Still other municipalities followed the tenets of SB1525, which led to a much more transparent and reasonable allocation of public service costs to new growth. In all, SB1525 was a huge success in reining in the jurisdictional abuses related to impact fee calculations and serves as a good model for other state impact fee statutes. Arizona’s full impact fee statute follows.

9-463.05. Development fees; imposition by cities and towns; infrastructure improvements plan; annual report; advisory committee; limitation on actions; definitions

- A. A municipality may assess development fees to offset costs to the municipality associated with providing necessary public services to a development, including the costs of infrastructure, improvements, real property, engineering and architectural services, financing and professional services required for the preparation or revision of a development fee pursuant to this section, including the relevant portion of the infrastructure improvements plan.
- B. Development fees assessed by a municipality under this section are subject to the following requirements:
1. Development fees shall result in a beneficial use to the development.
 2. The municipality shall calculate the development fee based on the infrastructure improvements plan adopted pursuant to this section.

3. The development fee shall not exceed a proportionate share of the cost of necessary public services, based on service units, needed to provide necessary public services to the development.
4. Costs for necessary public services made necessary by new development shall be based on the same level of service provided to existing development in the service area.
5. Development fees may not be used for any of the following:
 - a) Construction, acquisition or expansion of public facilities or assets other than necessary public services or facility expansions identified in the infrastructure improvements plan.
 - b) Repair, operation or maintenance of existing or new necessary public services or facility expansions.
 - c) Upgrading, updating, expanding, correcting or replacing existing necessary public services to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards.
 - d) Upgrading, updating, expanding, correcting or replacing existing necessary public services to provide a higher level of service to existing development.
 - e) Administrative, maintenance or operating costs of the municipality.
6. Any development for which a development fee has been paid is entitled to the use and benefit of the services for which the fee was imposed and is entitled to receive immediate service from any existing facility with available capacity to serve the new service units if the available capacity has not been reserved or pledged in connection with the construction or financing of the facility.
7. Development fees may be collected if any of the following occurs:
 - a) The collection is made to pay for a necessary public service or facility expansion that is identified in the infrastructure improvements plan and the municipality plans to complete construction and to have the service available within the time period established in the infrastructure improvement plan, but in no event longer than the time period provided in subsection H, paragraph 3 of this section.
 - b) The municipality reserves in the infrastructure improvements plan adopted pursuant to this section or otherwise agrees to reserve capacity to serve future development.
 - c) The municipality requires or agrees to allow the owner of a development to construct or finance the necessary public service or facility expansion and any of the following apply:
 - i. The costs incurred or money advanced are credited against or reimbursed from the development fees otherwise due from a development.

- ii. The municipality reimburses the owner for those costs from the development fees paid from all developments that will use those necessary public services or facility expansions.
 - iii. For those costs incurred the municipality allows the owner to assign the credits or reimbursement rights from the development fees otherwise due from a development to other developments for the same category of necessary public services in the same service area.
- 8. Projected interest charges and other finance costs may be included in determining the amount of development fees only if the monies are used for the payment of principal and interest on the portion of the bonds, notes or other obligations issued to finance construction of necessary public services or facility expansions identified in the infrastructure improvements plan.
- 9. Monies received from development fees assessed pursuant to this section shall be placed in a separate fund and accounted for separately and may only be used for the purposes authorized by this section. Monies received from a development fee identified in an infrastructure improvements plan adopted or updated pursuant to subsection D of this section shall be used to provide the same category of necessary public services or facility expansions for which the development fee was assessed and for the benefit of the same service area, as defined in the infrastructure improvements plan, in which the development fee was assessed. Interest earned on monies in the separate fund shall be credited to the fund.
- 10. The schedule for payment of fees shall be provided by the municipality. Based on the cost identified in the infrastructure improvements plan, the municipality shall provide a credit toward the payment of a development fee for the required or agreed to dedication of public sites, improvements and other necessary public services or facility expansions included in the infrastructure improvements plan and for which a development fee is assessed, to the extent the public sites, improvements and necessary public services or facility expansions are provided by the developer. The developer of residential dwelling units shall be required to pay development fees when construction permits for the dwelling units are issued, or at a later time if specified in a development agreement pursuant to section 9-500.05. If a development agreement provides for fees to be paid at a time later than the issuance of construction permits, the deferred fees shall be paid no later than fifteen days after the issuance of a certificate of occupancy. The development agreement shall provide for the value of any deferred fees to be supported by appropriate security, including a surety bond, letter of credit or cash bond.
- 11. If a municipality requires as a condition of development approval the construction or improvement of, contributions to or dedication of any facilities that were not included in a previously adopted infrastructure improvements plan, the municipality shall cause the infrastructure improvements plan to be amended to include the facilities and shall provide a credit toward the payment of a development fee for the construction, improvement, contribution or dedication of the facilities to the extent that the facilities

will substitute for or otherwise reduce the need for other similar facilities in the infrastructure improvements plan for which development fees were assessed.

12. The municipality shall forecast the contribution to be made in the future in cash or by taxes, fees, assessments or other sources of revenue derived from the property owner towards the capital costs of the necessary public service covered by the development fee and shall include these contributions in determining the extent of the burden imposed by the development. Beginning August 1, 2014, for purposes of calculating the required offset to development fees pursuant to this subsection, if a municipality imposes a construction contracting or similar excise tax rate in excess of the percentage amount of the transaction privilege tax rate imposed on the majority of other transaction privilege tax classifications, the entire excess portion of the construction contracting or similar excise tax shall be treated as a contribution to the capital costs of necessary public services provided to development for which development fees are assessed, unless the excess portion was already taken into account for such purpose pursuant to this subsection.
 13. If development fees are assessed by a municipality, the fees shall be assessed against commercial, residential and industrial development, except that the municipality may distinguish between different categories of residential, commercial and industrial development in assessing the costs to the municipality of providing necessary public services to new development and in determining the amount of the development fee applicable to the category of development. If a municipality agrees to waive any of the development fees assessed on a development, the municipality shall reimburse the appropriate development fee accounts for the amount that was waived. The municipality shall provide notice of any such waiver to the advisory committee established pursuant to subsection G of this section within thirty days.
 14. In determining and assessing a development fee applying to land in a community facilities district established under title 48, chapter 4, article 6, the municipality shall take into account all public infrastructure provided by the district and capital costs paid by the district for necessary public services and shall not assess a portion of the development fee based on the infrastructure or costs.
- C. A municipality shall give at least thirty days' advance notice of intention to assess a development fee and shall release to the public and post on its website or the website of an association of cities and towns if a municipality does not have a website a written report of the land use assumptions and infrastructure improvements plan adopted pursuant to subsection D of this section. The municipality shall conduct a public hearing on the proposed development fee at any time after the expiration of the thirty day notice of intention to assess a development fee and at least thirty days before the scheduled date of adoption of the fee by the governing body. Within sixty days after the date of the public hearing on the proposed development fee, a municipality shall approve or disapprove the imposition of the development fee. A municipality shall not adopt an ordinance, order or resolution approving a development fee as an emergency measure. A development fee assessed pursuant to this section shall not be effective until seventy-five days after its formal

adoption by the governing body of the municipality. Nothing in this subsection shall affect any development fee adopted before July 24, 1982.

D. Before the adoption or amendment of a development fee, the governing body of the municipality shall adopt or update the land use assumptions and infrastructure improvements plan for the designated service area. The municipality shall conduct a public hearing on the land use assumptions and infrastructure improvements plan at least thirty days before the adoption or update of the plan. The municipality shall release the plan to the public, post the plan on its website or the website of an association of cities and towns if the municipality does not have a website, including in the posting its land use assumptions, the time period of the projections, a description of the necessary public services included in the infrastructure improvements plan and a map of the service area to which the land use assumptions apply, make available to the public the documents used to prepare the assumptions and plan and provide public notice at least sixty days before the public hearing, subject to the following:

1. The land use assumptions and infrastructure improvements plan shall be approved or disapproved within sixty days after the public hearing on the land use assumptions and infrastructure improvements plan and at least thirty days before the public hearing on the report required by subsection C of this section. A municipality shall not adopt an ordinance, order or resolution approving the land use assumptions or infrastructure improvements plan as an emergency measure.
2. An infrastructure improvements plan shall be developed by qualified professionals using generally accepted engineering and planning practices pursuant to subsection E of this section.
3. A municipality shall update the land use assumptions and infrastructure improvements plan at least every five years. The initial five year period begins on the day the infrastructure improvements plan is adopted. The municipality shall review and evaluate its current land use assumptions and shall cause an update of the infrastructure improvements plan to be prepared pursuant to this section.
4. Within sixty days after completion of the updated land use assumptions and infrastructure improvements plan, the municipality shall schedule and provide notice of a public hearing to discuss and review the update and shall determine whether to amend the assumptions and plan.
5. A municipality shall hold a public hearing to discuss the proposed amendments to the land use assumptions, the infrastructure improvements plan or the development fee. The land use assumptions and the infrastructure improvements plan, including the amount of any proposed changes to the development fee per service unit, shall be made available to the public on or before the date of the first publication of the notice of the hearing on the amendments.
6. The notice and hearing procedures prescribed in paragraph 1 of this subsection apply to a hearing on the amendment of land use assumptions, an infrastructure improvements

plan or a development fee. Within sixty days after the date of the public hearing on the amendments, a municipality shall approve or disapprove the amendments to the land use assumptions, infrastructure improvements plan or development fee. A municipality shall not adopt an ordinance, order or resolution approving the amended land use assumptions, infrastructure improvements plan or development fee as an emergency measure.

7. The advisory committee established under subsection G of this section shall file its written comments on any proposed or updated land use assumptions, infrastructure improvements plan and development fees before the fifth business day before the date of the public hearing on the proposed or updated assumptions, plan and fees.
8. If, at the time an update as prescribed in paragraph 3 of this subsection is required, the municipality determines that no changes to the land use assumptions, infrastructure improvements plan or development fees are needed, the municipality may as an alternative to the updating requirements of this subsection publish notice of its determination on its website and include the following:
 - a) A statement that the municipality has determined that no change to the land use assumptions, infrastructure improvements plan or development fee is necessary.
 - b) A description and map of the service area in which an update has been determined to be unnecessary.
 - c) A statement that by a specified date, which shall be at least sixty days after the date of publication of the first notice, a person may make a written request to the municipality requesting that the land use assumptions, infrastructure improvements plan or development fee be updated.
 - d) A statement identifying the person or entity to whom the written request for an update should be sent.
9. If, by the date specified pursuant to paragraph 8 of this subsection, a person requests in writing that the land use assumptions, infrastructure improvements plan or development fee be updated, the municipality shall cause, accept or reject an update of the assumptions and plan to be prepared pursuant to this subsection.
10. Notwithstanding the notice and hearing requirements for adoption of an infrastructure improvements plan, a municipality may amend an infrastructure improvements plan adopted pursuant to this section without a public hearing if the amendment addresses only elements of necessary public services in the existing infrastructure improvements plan and the changes to the plan will not, individually or cumulatively with other amendments adopted pursuant to this subsection, increase the level of service in the service area or cause a development fee increase of greater than five per cent when a new or modified development fee is assessed pursuant to this section. The municipality shall provide notice of any such amendment at least thirty days before adoption, shall post the amendment on its website or on the website of an association of cities and towns if the municipality does not have a website and shall provide notice to the

advisory committee established pursuant to subsection G of this section that the amendment complies with this subsection.

E. For each necessary public service that is the subject of a development fee, the infrastructure improvements plan shall include:

1. A description of the existing necessary public services in the service area and the costs to upgrade, update, improve, expand, correct or replace those necessary public services to meet existing needs and usage and stricter safety, efficiency, environmental or regulatory standards, which shall be prepared by qualified professionals licensed in this state, as applicable.
2. An analysis of the total capacity, the level of current usage and commitments for usage of capacity of the existing necessary public services, which shall be prepared by qualified professionals licensed in this state, as applicable.
3. A description of all or the parts of the necessary public services or facility expansions and their costs necessitated by and attributable to development in the service area based on the approved land use assumptions, including a forecast of the costs of infrastructure, improvements, real property, financing, engineering and architectural services, which shall be prepared by qualified professionals licensed in this state, as applicable.
4. A table establishing the specific level or quantity of use, consumption, generation or discharge of a service unit for each category of necessary public services or facility expansions and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial and industrial.
5. The total number of projected service units necessitated by and attributable to new development in the service area based on the approved land use assumptions and calculated pursuant to generally accepted engineering and planning criteria.
6. The projected demand for necessary public services or facility expansions required by new service units for a period not to exceed ten years.
7. A forecast of revenues generated by new service units other than development fees, which shall include estimated state-shared revenue, highway users revenue, federal revenue, ad valorem property taxes, construction contracting or similar excise taxes and the capital recovery portion of utility fees attributable to development based on the approved land use assumptions, and a plan to include these contributions in determining the extent of the burden imposed by the development as required in subsection B, paragraph 12 of this section.

F. A municipality's development fee ordinance shall provide that a new development fee or an increased portion of a modified development fee shall not be assessed against a development for twenty-four months after the date that the municipality issues the final approval for a commercial, industrial or multifamily development or the date that the first building permit is issued for a

residential development pursuant to an approved site plan or subdivision plat, provided that no subsequent changes are made to the approved site plan or subdivision plat that would increase the number of service units. If the number of service units increases, the new or increased portion of a modified development fee shall be limited to the amount attributable to the additional service units. The twenty-four month period shall not be extended by a renewal or amendment of the site plan or the final subdivision plat that was the subject of the final approval. The municipality shall issue, on request, a written statement of the development fee schedule applicable to the development. If, after the date of the municipality's final approval of a development, the municipality reduces the development fee assessed on development, the reduced fee shall apply to the development.

G. A municipality shall do one of the following:

1. Before the adoption of proposed or updated land use assumptions, infrastructure improvements plan and development fees as prescribed in subsection D of this section, the municipality shall appoint an infrastructure improvements advisory committee, subject to the following requirements:
 - a) The advisory committee shall be composed of at least five members who are appointed by the governing body of the municipality. At least fifty per cent of the members of the advisory committee must be representatives of the real estate, development or building industries, of which at least one member of the committee must be from the home building industry. Members shall not be employees or officials of the municipality.
 - b) The advisory committee shall serve in an advisory capacity and shall:
 - i. Advise the municipality in adopting land use assumptions and in determining whether the assumptions are in conformance with the general plan of the municipality.
 - ii. Review the infrastructure improvements plan and file written comments.
 - iii. Monitor and evaluate implementation of the infrastructure improvements plan.
 - iv. Every year file reports with respect to the progress of the infrastructure improvements plan and the collection and expenditures of development fees and report to the municipality any perceived inequities in implementing the plan or imposing the development fee.
 - v. Advise the municipality of the need to update or revise the land use assumptions, infrastructure improvements plan and development fee.
 - c) The municipality shall make available to the advisory committee any professional reports with respect to developing and implementing the infrastructure improvements plan.
 - d) The municipality shall adopt procedural rules for the advisory committee to follow in carrying out the committee's duties.

2. In lieu of creating an advisory committee pursuant to paragraph 1 of this subsection, provide for a biennial certified audit of the municipality's land use assumptions, infrastructure improvements plan and development fees. An audit pursuant to this paragraph shall be conducted by one or more qualified professionals who are not employees or officials of the municipality and who did not prepare the infrastructure improvements plan. The audit shall review the progress of the infrastructure improvements plan, including the collection and expenditures of development fees for each project in the plan, and evaluate any inequities in implementing the plan or imposing the development fee. The municipality shall post the findings of the audit on the municipality's website or the website of an association of cities and towns if the municipality does not have a website and shall conduct a public hearing on the audit within sixty days of the release of the audit to the public.
- H. On written request, an owner of real property for which a development fee has been paid after July 31, 2014 is entitled to a refund of a development fee or any part of a development fee if:
1. Pursuant to subsection B, paragraph 6 of this section, existing facilities are available and service is not provided.
 2. The municipality has, after collecting the fee to construct a facility when service is not available, failed to complete construction within the time period identified in the infrastructure improvements plan, but in no event later than the time period specified in paragraph 3 of this subsection.
 3. For a development fee other than a development fee for water or wastewater facilities, any part of the development fee is not spent as authorized by this section within ten years after the fee has been paid or, for a development fee for water or wastewater facilities, any part of the development fee is not spent as authorized by this section within fifteen years after the fee has been paid.
- I. If the development fee was collected for the construction of all or a portion of a specific item of infrastructure, and on completion of the infrastructure the municipality determines that the actual cost of construction was less than the forecasted cost of construction on which the development fee was based and the difference between the actual and estimated cost is greater than ten per cent, the current owner may receive a refund of the portion of the development fee equal to the difference between the development fee paid and the development fee that would have been due if the development fee had been calculated at the actual construction cost.
- J. A refund shall include any interest earned by the municipality from the date of collection to the date of refund on the amount of the refunded fee. All refunds shall be made to the record owner of the property at the time the refund is paid. If the development fee is paid by a governmental entity, the refund shall be paid to the governmental entity.
- K. A development fee that was adopted before January 1, 2012 may continue to be assessed only to the extent that it will be used to provide a necessary public service for which development fees can

be assessed pursuant to this section and shall be replaced by a development fee imposed under this section on or before August 1, 2014. Any municipality having a development fee that has not been replaced under this section on or before August 1, 2014 shall not collect development fees until the development fee has been replaced with a fee that complies with this section. Any development fee monies collected before January 1, 2012 remaining in a development fee account:

1. Shall be used towards the same category of necessary public services as authorized by this section.
 2. If development fees were collected for a purpose not authorized by this section, shall be used for the purpose for which they were collected on or before January 1, 2020, and after which, if not spent, shall be distributed equally among the categories of necessary public services authorized by this section.
- L. A moratorium shall not be placed on development for the sole purpose of awaiting completion of all or any part of the process necessary to develop, adopt or update development fees.
- M. In any judicial action interpreting this section, all powers conferred on municipal governments in this section shall be narrowly construed to ensure that development fees are not used to impose on new residents a burden all taxpayers of a municipality should bear equally.
- N. Each municipality that assesses development fees shall submit an annual report accounting for the collection and use of the fees for each service area. The annual report shall include the following:
1. The amount assessed by the municipality for each type of development fee.
 2. The balance of each fund maintained for each type of development fee assessed as of the beginning and end of the fiscal year.
 3. The amount of interest or other earnings on the monies in each fund as of the end of the fiscal year.
 4. The amount of development fee monies used to repay:
 - a) Bonds issued by the municipality to pay the cost of a capital improvement project that is the subject of a development fee assessment, including the amount needed to repay the debt service obligations on each facility for which development fees have been identified as the source of funding and the time frames in which the debt service will be repaid.
 - b) Monies advanced by the municipality from funds other than the funds established for development fees in order to pay the cost of a capital improvement project that is the subject of a development fee assessment, the total amount advanced by the municipality for each facility, the source of the monies advanced and the terms under which the monies will be repaid to the municipality.

5. The amount of development fee monies spent on each capital improvement project that is the subject of a development fee assessment and the physical location of each capital improvement project.
 6. The amount of development fee monies spent for each purpose other than a capital improvement project that is the subject of a development fee assessment.
- O. Within ninety days following the end of each fiscal year, each municipality shall submit a copy of the annual report to the city clerk and post the report on the municipality's website or the website of an association of cities and towns if the municipality does not have a website. Copies shall be made available to the public on request. The annual report may contain financial information that has not been audited.
- P. A municipality that fails to file the report and post the report on the municipality's website or the website of an association of cities and towns if the municipality does not have a website as required by this section shall not collect development fees until the report is filed and posted.
- Q. Any action to collect a development fee shall be commenced within two years after the obligation to pay the fee accrues.
- R. A municipality may continue to assess a development fee adopted before January 1, 2012 for any facility that was financed before June 1, 2011 if:
1. Development fees were pledged to repay debt service obligations related to the construction of the facility.
 2. After August 1, 2014, any development fees collected under this subsection are used solely for the payment of principal and interest on the portion of the bonds, notes or other debt service obligations issued before June 1, 2011 to finance construction of the facility.
- S. Through August 1, 2014, a development fee adopted before January 1, 2012 may be used to finance construction of a facility and may be pledged to repay debt service obligations if:
1. The facility that is being financed is a facility that is described under subsection T, paragraph 7, subdivisions (a) through (g) of this section.
 2. The facility was included in an infrastructure improvements plan adopted before June 1, 2011.
 3. The development fees are used for the payment of principal and interest on the portion of the bonds, notes or other debt service obligations issued to finance construction of the necessary public services or facility expansions identified in the infrastructure improvement plan.
- T. For the purposes of this section:
1. "Dedication" means the actual conveyance date or the date an improvement, facility or real or personal property is placed into service, whichever occurs first.

2. "Development" means:
 - a) The subdivision of land.
 - b) The construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure that adds or increases the number of service units.
 - c) Any use or extension of the use of land that increases the number of service units.
3. "Facility expansion" means the expansion of the capacity of an existing facility that serves the same function as an otherwise new necessary public service in order that the existing facility may serve new development. Facility expansion does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development.
4. "Final approval" means:
 - a) For a nonresidential or multifamily development, the approval of a site plan or, if no site plan is submitted for the development, the approval of a final subdivision plat.
 - b) For a single family residential development, the approval of a final subdivision plat.
5. "Infrastructure improvements plan" means a written plan that identifies each necessary public service or facility expansion that is proposed to be the subject of a development fee and otherwise complies with the requirements of this section, and may be the municipality's capital improvements plan.
6. "Land use assumptions" means projections of changes in land uses, densities, intensities and population for a specified service area over a period of at least ten years and pursuant to the general plan of the municipality.
7. "Necessary public service" means any of the following facilities that have a life expectancy of three or more years and that are owned and operated by or on behalf of the municipality:
 - a) Water facilities, including the supply, transportation, treatment, purification and distribution of water, and any appurtenances for those facilities.
 - b) Wastewater facilities, including collection, interception, transportation, treatment and disposal of wastewater, and any appurtenances for those facilities.
 - c) Storm water, drainage and flood control facilities, including any appurtenances for those facilities.
 - d) Library facilities of up to ten thousand square feet that provide a direct benefit to development, not including equipment, vehicles or appurtenances.
 - e) Street facilities located in the service area, including arterial or collector streets or roads that have been designated on an officially adopted plan of the municipality, traffic signals and rights-of-way and improvements thereon.
 - f) Fire and police facilities, including all appurtenances, equipment and vehicles. Fire and police facilities do not include a facility or portion of a facility that is used to replace services that were once provided elsewhere in the municipality, vehicles and equipment used to provide administrative services, helicopters or airplanes or a facility that is used for training firefighters or officers from more than one station or substation.

- g) Neighborhood parks and recreational facilities on real property up to thirty acres in area, or parks and recreational facilities larger than thirty acres if the facilities provide a direct benefit to the development. Park and recreational facilities do not include vehicles, equipment or that portion of any facility that is used for amusement parks, aquariums, aquatic centers, auditoriums, arenas, arts and cultural facilities, bandstand and orchestra facilities, bathhouses, boathouses, clubhouses, community centers greater than three thousand square feet in floor area, environmental education centers, equestrian facilities, golf course facilities, greenhouses, lakes, museums, theme parks, water reclamation or riparian areas, wetlands, zoo facilities or similar recreational facilities, but may include swimming pools.
- h) Any facility that was financed and that meets all of the requirements prescribed in subsection R of this section.

- 8. "Qualified professional" means a professional engineer, surveyor, financial analyst or planner providing services within the scope of the person's license, education or experience.
- 9. "Service area" means any specified area within the boundaries of a municipality in which development will be served by necessary public services or facility expansions and within which a substantial nexus exists between the necessary public services or facility expansions and the development being served as prescribed in the infrastructure improvements plan.
- 10. "Service unit" means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated pursuant to generally accepted engineering or planning standards for a particular category of necessary public services or facility expansions.

Montana Impact Fee Statute

7-6-1601. Definitions. As used in this part, the following definitions apply:

- (1) (a) "Capital improvements" means improvements, land, and equipment with a useful life of 10 years or more that increase or improve the service capacity of a public facility.

(b) The term does not include consumable supplies.
- (2) "Connection charge" means the actual cost of connecting a property to a public utility system and is limited to the labor, materials, and overhead involved in making connections and installing meters.
- (3) "Development" means construction, renovation, or installation of a building or structure, a change in use of a building or structure, or a change in the use of land when the construction, installation, or other action creates additional demand for public facilities.
- (4) "Governmental entity" means a county, city, town, or consolidated government.

(5) (a) "Impact fee" means any charge imposed upon development by a governmental entity as part of the development approval process to fund the additional service capacity required by the development from which it is collected. An impact fee may include a fee for the administration of the impact fee not to exceed 5% of the total impact fee collected.

(b) The term does not include:

- (i) a charge or fee to pay for administration, plan review, or inspection costs associated with a permit required for development;
- (ii) a connection charge;
- (iii) any other fee authorized by law, including but not limited to user fees, special improvement district assessments, fees authorized under Title 7 for county, municipal, and consolidated government sewer and water districts and systems, and costs of ongoing maintenance; or
- (iv) onsite or offsite improvements necessary for new development to meet the safety, level of service, and other minimum development standards that have been adopted by the governmental entity.

(6) "Proportionate share" means that portion of the cost of capital system improvements that reasonably relates to the service demands and needs of the project. A proportionate share must take into account the limitations provided in 7-6-1602.

(7) "Public facilities" means:

- (a) a water supply production, treatment, storage, or distribution facility;
- (b) a wastewater collection, treatment, or disposal facility;
- (c) a transportation facility, including roads, streets, bridges, rights-of-way, traffic signals, and landscaping;
- (d) a storm water collection, retention, detention, treatment, or disposal facility or a flood control facility;
- (e) a police, emergency medical rescue, or fire protection facility; and
- (f) other facilities for which documentation is prepared as provided in 7-6-1602 that have been approved as part of an impact fee ordinance or resolution by:
 - (i) a two-thirds majority of the governing body of an incorporated city, town, or consolidated local government; or
 - (ii) a unanimous vote of the board of county commissioners of a county government

7-6-1602. Calculation of impact fees -- documentation required -- ordinance or resolution -- requirements for impact fees.

(1) For each public facility for which an impact fee is imposed, the governmental entity shall prepare and approve a service area report.

(2) The service area report is a written analysis that must:

- (a) describe existing conditions of the facility;
- (b) establish level-of-service standards;
- (c) forecast future additional needs for service for a defined period of time;
- (d) identify capital improvements necessary to meet future needs for service;
- (e) identify those capital improvements needed for continued operation and maintenance of the facility;
- (f) make a determination as to whether one service area or more than one service area is necessary to establish a correlation between impact fees and benefits;
- (g) make a determination as to whether one service area or more than one service area for transportation facilities is needed to establish a correlation between impact fees and benefits;
- (h) establish the methodology and time period over which the governmental entity will assign the proportionate share of capital costs for expansion of the facility to provide service to new development within each service area;
- (i) establish the methodology that the governmental entity will use to exclude operations and maintenance costs and correction of existing deficiencies from the impact fee;
- (j) establish the amount of the impact fee that will be imposed for each unit of increased service demand; and
- (k) have a component of the budget of the governmental entity that:
 - (i) schedules construction of public facility capital improvements to serve projected growth;
 - (ii) projects costs of the capital improvements;
 - (iii) allocates collected impact fees for construction of the capital improvements; and
 - (iv) covers at least a 5-year period and is reviewed and updated at least every 5 years.

(3) The service area report is a written analysis that must contain documentation of sources and methodology used for purposes of subsection (2) and must document how each impact fee meets the requirements of subsection (7).

(4) The service area report that supports adoption and calculation of an impact fee must be available to the public upon request.

(5) The amount of each impact fee imposed must be based upon the actual cost of public facility expansion or improvements or reasonable estimates of the cost to be incurred by the governmental entity as a result of new development. The calculation of each impact fee must be in accordance with generally accepted accounting principles.

(6) The ordinance or resolution adopting the impact fee must include a time schedule for periodically updating the documentation required under subsection (2).

(7) An impact fee must meet the following requirements:

(a) The amount of the impact fee must be reasonably related to and reasonably attributable to the development's share of the cost of infrastructure improvements made necessary by the new development.

(b) The impact fees imposed may not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in accommodating the development. The following factors must be considered in determining a proportionate share of public facilities capital improvements costs:

(i) the need for public facilities capital improvements required to serve new development; and

(ii) consideration of payments for system improvements reasonably anticipated to be made by or as a result of the development in the form of user fees, debt service payments, taxes, and other available sources of funding the system improvements.

(c) Costs for correction of existing deficiencies in a public facility may not be included in the impact fee.

(d) New development may not be held to a higher level of service than existing users unless there is a mechanism in place for the existing users to make improvements to the existing system to match the higher level of service.

(e) Impact fees may not include expenses for operations and maintenance of the facility.

7-6-1603. Collection and expenditure of impact fees -- refunds or credits -- mechanism for appeal required.

(1) The collection and expenditure of impact fees must comply with this part. The collection and expenditure of impact fees must be reasonably related to the benefits accruing to the development paying the impact fees. The ordinance or resolution adopted by the governmental entity must include the following requirements:

(a) Upon collection, impact fees must be deposited in a special proprietary fund, which must be invested with all interest accruing to the fund.

(b) A governmental entity may impose impact fees on behalf of local districts.

(c) If the impact fees are not collected or spent in accordance with the impact fee ordinance or resolution or in accordance with 7-6-1602, any impact fees that were collected must be refunded to the person who owned the property at the time that the refund was due.

(2) All impact fees imposed pursuant to the authority granted in this part must be paid no earlier than the date of issuance of a building permit if a building permit is required for the development or no earlier than the time of wastewater or water service connection or well or septic permitting.

(3) A governmental entity may recoup costs of excess capacity in existing capital facilities, when the excess capacity has been provided in anticipation of the needs of new development, by requiring impact fees for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been documented pursuant to 7-6-1602 in a manner that demonstrates the need for the excess capacity. This part does not prevent a governmental entity from continuing to assess an impact fee that recoups costs for excess capacity in an existing facility. The impact fees imposed to recoup the costs to provide the excess capacity must be based on the governmental entity's actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity.

(4) Governmental entities may accept the dedication of land or the construction of public facilities in lieu of payment of impact fees if:

(a) the need for the dedication or construction is clearly documented pursuant to 7-6-1602;

(b) the land proposed for dedication for the public facilities to be constructed is determined to be appropriate for the proposed use by the governmental entity;

(c) formulas or procedures for determining the worth of proposed dedications or constructions are established as part of the impact fee ordinance or resolution; and

(d) a means to establish credits against future impact fee revenue has been created as part of the adopting ordinance or resolution if the dedication of land or construction of public facilities is of worth in excess of the impact fee due from an individual development.

(5) Impact fees may not be imposed for remodeling, rehabilitation, or other improvements to an existing structure or for rebuilding a damaged structure unless there is an increase in units that increase service demand as described in 7-6-1602(2)(j). If impact fees are imposed for remodeling, rehabilitation, or other improvements to an existing structure or use, only the net increase between the old and new demand may be imposed.

(6) This part does not prevent a governmental entity from granting refunds or credits:

(a) that it considers appropriate and that are consistent with the provisions of 7-6-1602 and this chapter; or

(b) in accordance with a voluntary agreement, consistent with the provisions of 7-6-1602 and this chapter, between the governmental entity and the individual or entity being assessed the impact fees.

(7) An impact fee represents a fee for service payable by all users creating additional demand on the facility.

(8) An impact fee ordinance or resolution must include a mechanism whereby a person charged an impact fee may appeal the charge if the person believes an error has been made.

7-6-1604. Impact fee advisory committee.

(1) A governmental entity that intends to propose an impact fee ordinance or resolution shall establish an impact fee advisory committee.

(2) An impact fee advisory committee must include at least one representative of the development community. The committee shall review and monitor the process of calculating, assessing, and spending impact fees.

(3) The impact fee advisory committee shall serve in an advisory capacity to the governing body of the governmental entity.

Texas Impact Fee Statute

Sec. 395.001. DEFINITIONS.

In this chapter:

(1) "Capital improvement" means any of the following facilities that have a life expectancy of three or more years and are owned and operated by or on behalf of a political subdivision:

(A) water supply, treatment, and distribution facilities; wastewater collection and treatment facilities; and storm water, drainage, and flood control facilities; whether or not they are located within the service area; and

(B) roadway facilities.

(2) "Capital improvements plan" means a plan required by this chapter that identifies capital improvements or facility expansions for which impact fees may be assessed.

(3) "Facility expansion" means the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization, or expansion of an existing facility to better serve existing development.

(4) "Impact fee" means a charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, and any other fee that functions as described by this definition. The term does not include:

(A) dedication of land for public parks or payment in lieu of the dedication to serve park needs;

(B) dedication of rights-of-way or easements or construction or dedication of on-site or off-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks, or curbs if the dedication or construction is required by a valid ordinance and is necessitated by and attributable to the new development;

(C) lot or acreage fees to be placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or sewer mains or lines; or

(D) other pro rata fees for reimbursement of water or sewer mains or lines extended by the political subdivision.

However, an item included in the capital improvements plan may not be required to be constructed except in accordance with Section 395.019(2), and an owner may not be required to construct or dedicate facilities and to pay impact fees for those facilities.

(5) "Land use assumptions" includes a description of the service area and projections of changes in land uses, densities, intensities, and population in the service area over at least a 10-year period.

(6) "New development" means the subdivision of land; the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units.

(7) "Political subdivision" means a municipality, a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, or, for the purposes set forth by Section 395.079, certain counties described by that section.

(8) "Roadway facilities" means arterial or collector streets or roads that have been designated on an officially adopted roadway plan of the political subdivision, together with all necessary appurtenances. The term includes the political subdivision's share of costs for roadways and associated improvements designated on the federal or Texas highway system, including local matching funds and costs related to utility line relocation and the establishment of curbs, gutters, sidewalks, drainage appurtenances, and rights-of-way.

(9) "Service area" means the area within the corporate boundaries or extraterritorial jurisdiction, as determined under Chapter 42, of the political subdivision to be served by the capital improvements or facilities expansions specified in the capital improvements plan, except roadway facilities and storm water, drainage, and flood control facilities. The service area, for the purposes of this chapter, may include all or part of the land within the political subdivision or its extraterritorial jurisdiction, except for roadway facilities and storm water, drainage, and flood control facilities. For roadway facilities, the service area is limited to an area within the corporate boundaries of the political subdivision and shall not exceed six miles. For storm water, drainage, and flood control facilities, the service area may include all or part of the land within the political subdivision or its extraterritorial jurisdiction, but shall not exceed the area actually served by the storm water, drainage, and flood control facilities designated in the capital improvements plan and shall not extend across watershed boundaries.

(10) "Service unit" means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards and based on historical data and trends applicable to the political subdivision in which the individual unit of development is located during the previous 10 years.

SUBCHAPTER B. AUTHORIZATION OF IMPACT FEE

Sec. 395.011. AUTHORIZATION OF FEE.

(a) Unless otherwise specifically authorized by state law or this chapter, a governmental entity or political subdivision may not enact or impose an impact fee.

(b) Political subdivisions may enact or impose impact fees on land within their corporate boundaries or extraterritorial jurisdictions only by complying with this chapter, except that impact fees may not be enacted or imposed in the extraterritorial jurisdiction for roadway facilities.

(c) A municipality may contract to provide capital improvements, except roadway facilities, to an area outside its corporate boundaries and extraterritorial jurisdiction and may charge an impact fee under the contract, but if an impact fee is charged in that area, the municipality must comply with this chapter.

Sec. 395.012. ITEMS PAYABLE BY FEE.

(a) An impact fee may be imposed only to pay the costs of constructing capital improvements or facility expansions, including and limited to the:

- (1) construction contract price;
- (2) surveying and engineering fees;
- (3) land acquisition costs, including land purchases, court awards and costs, attorney 's fees, and expert witness fees; and
- (4) fees actually paid or contracted to be paid to an independent qualified engineer or financial consultant preparing or updating the capital improvements plan who is not an employee of the political subdivision.

(b) Projected interest charges and other finance costs may be included in determining the amount of impact fees only if the impact fees are used for the payment of principal and interest on bonds, notes, or other obligations issued by or on behalf of the political subdivision to finance the capital improvements or facility expansions identified in the capital improvements plan and are not used to reimburse bond funds expended for facilities that are not identified in the capital improvements plan.

(c) Notwithstanding any other provision of this chapter, the Edwards Underground Water District or a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may use impact fees to pay a staff engineer who prepares or updates a capital improvements plan under this chapter.

(d) A municipality may pledge an impact fee as security for the payment of debt service on a bond, note, or other obligation issued to finance a capital improvement or public facility expansion if:

- (1) the improvement or expansion is identified in a capital improvements plan; and
- (2) at the time of the pledge, the governing body of the municipality certifies in a written order, ordinance, or resolution that none of the impact fee will be used or expended for an improvement or expansion not identified in the plan.

(e) A certification under Subsection (d)(2) is sufficient evidence that an impact fee pledged will not be used or expended for an improvement or expansion that is not identified in the capital improvements plan.

Sec. 395.013. ITEMS NOT PAYABLE BY FEE.

Impact fees may not be adopted or used to pay for:

- (1) construction, acquisition, or expansion of public facilities or assets other than capital improvements or facility expansions identified in the capital improvements plan;
- (2) repair, operation, or maintenance of existing or new capital improvements or facility expansions;
- (3) upgrading, updating, expanding, or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental, or regulatory standards;
- (4) upgrading, updating, expanding, or replacing existing capital improvements to provide better service to existing development;
- (5) administrative and operating costs of the political subdivision, except the Edwards Underground Water District or a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may use impact fees to pay its administrative and operating costs;
- (6) principal payments and interest or other finance charges on bonds or other indebtedness, except as allowed by Section 395.012.

Sec. 395.014. CAPITAL IMPROVEMENTS PLAN.

(a) The political subdivision shall use qualified professionals to prepare the capital improvements plan and to calculate the impact fee. The capital improvements plan must contain specific enumeration of the following items:

- (1) a description of the existing capital improvements within the service area and the costs to upgrade, update, improve, expand, or replace the improvements to meet existing needs and usage and stricter safety, efficiency, environmental, or regulatory standards, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;
- (2) an analysis of the total capacity, the level of current usage, and commitments for usage of capacity of the existing capital improvements, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;
- (3) a description of all or the parts of the capital improvements or facility expansions and their costs necessitated by and attributable to new development in the service area based on the approved land use assumptions, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;
- (4) a definitive table establishing the specific level or quantity of use, consumption, generation, or discharge of a service unit for each category of capital improvements or facility expansions and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial, and industrial;

(5) the total number of projected service units necessitated by and attributable to new development within the service area based on the approved land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;

(6) the projected demand for capital improvements or facility expansions required by new service units projected over a reasonable period of time, not to exceed 10 years; and

(7) a plan for awarding:

(A) a credit for the portion of ad valorem tax and utility service revenues generated by new service units during the program period that is used for the payment of improvements, including the payment of debt, that are included in the capital improvements plan; or

(B) in the alternative, a credit equal to 50 percent of the total projected cost of implementing the capital improvements plan.

(b) The analysis required by Subsection (a)(3) may be prepared on a system-wide basis within the service area for each major category of capital improvement or facility expansion for the designated service area.

(c) The governing body of the political subdivision is responsible for supervising the implementation of the capital improvements plan in a timely manner.

Sec. 395.015. MAXIMUM FEE PER SERVICE UNIT.

(a) The impact fee per service unit may not exceed the amount determined by subtracting the amount in Section 395.014(a)(7) from the costs of the capital improvements described by Section 395.014(a)(3) and dividing that amount by the total number of projected service units described by Section 395.014(a)(5).

(b) If the number of new service units projected over a reasonable period of time is less than the total number of new service units shown by the approved land use assumptions at full development of the service area, the maximum impact fee per service unit shall be calculated by dividing the costs of the part of the capital improvements necessitated by and attributable to projected new service units described by Section 395.014(a)(6) by the projected new service units described in that section.

Sec. 395.016. TIME FOR ASSESSMENT AND COLLECTION OF FEE.

(a) This subsection applies only to impact fees adopted and land platted before June 20, 1987. For land that has been platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision before June 20, 1987, or land on which new development occurs or is proposed without platting, the political subdivision may assess the impact fees at any time during the development approval and building process. Except as provided by Section 395.019, the political subdivision may collect the fees at either the time of recordation of the subdivision plat or connection

to the political subdivision 's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.

(b) This subsection applies only to impact fees adopted before June 20, 1987, and land platted after that date. For new development which is platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision after June 20, 1987, the political subdivision may assess the impact fees before or at the time of recordation. Except as provided by Section 395.019, the political subdivision may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision 's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.

(c) This subsection applies only to impact fees adopted after June 20, 1987. For new development which is platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision before the adoption of an impact fee, an impact fee may not be collected on any service unit for which a valid building permit is issued within one year after the date of adoption of the impact fee.

(d) This subsection applies only to land platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision after adoption of an impact fee adopted after June 20, 1987. The political subdivision shall assess the impact fees before or at the time of recordation of a subdivision plat or other plat under Subchapter A, Chapter 212, or the subdivision or platting ordinance or procedures of any political subdivision in the official records of the county clerk of the county in which the tract is located. Except as provided by Section 395.019, if the political subdivision has water and wastewater capacity available:

(1) the political subdivision shall collect the fees at the time the political subdivision issues a building permit;

(2) for land platted outside the corporate boundaries of a municipality, the municipality shall collect the fees at the time an application for an individual meter connection to the municipality 's water or wastewater system is filed; or

(3) a political subdivision that lacks authority to issue building permits in the area where the impact fee applies shall collect the fees at the time an application is filed for an individual meter connection to the political subdivision 's water or wastewater system.

(e) For land on which new development occurs or is proposed to occur without platting, the political subdivision may assess the impact fees at any time during the development and building process and may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.

(f) An "assessment" means a determination of the amount of the impact fee in effect on the date or occurrence provided in this section and is the maximum amount that can be charged per service unit of such development. No specific act by the political subdivision is required.

(g) Notwithstanding Subsections (a)-(e) and Section 395.017, the political subdivision may reduce or waive an impact fee for any service unit that would qualify as affordable housing under 42 U.S.C. Section 12745, as amended, once the service unit is constructed. If affordable housing as defined by 42 U.S.C. Section 12745, as amended, is not constructed, the political subdivision may reverse its decision to waive or reduce the impact fee, and the political subdivision may assess an impact fee at any time during the development approval or building process or after the building process if an impact fee was not already assessed.

Sec. 395.017. ADDITIONAL FEE PROHIBITED; EXCEPTION.

After assessment of the impact fees attributable to the new development or execution of an agreement for payment of impact fees, additional impact fees or increases in fees may not be assessed against the tract for any reason unless the number of service units to be developed on the tract increases. In the event of the increase in the number of service units, the impact fees to be imposed are limited to the amount attributable to the additional service units.

Sec. 395.018. AGREEMENT WITH OWNER REGARDING PAYMENT.

A political subdivision is authorized to enter into an agreement with the owner of a tract of land for which the plat has been recorded providing for the time and method of payment of the impact fees.

Sec. 395.019. COLLECTION OF FEES IF SERVICES NOT AVAILABLE.

Except for roadway facilities, impact fees may be assessed but may not be collected in areas where services are not currently available, unless:

- (1) the collection is made to pay for a capital improvement or facility expansion that has been identified in the capital improvements plan and the political subdivision commits to commence construction within two years, under duly awarded and executed contracts or commitments of staff time covering substantially all of the work required to provide service, and to have the service available within a reasonable period of time considering the type of capital improvement or facility expansion to be constructed, but in no event longer than five years;
- (2) the political subdivision agrees that the owner of a new development may construct or finance the capital improvements or facility expansions and agrees that the costs incurred or funds advanced will be credited against the impact fees otherwise due from the new development or agrees to reimburse the owner for such costs from impact fees paid from other new developments that will use such capital improvements or facility expansions, which fees shall be collected and reimbursed to the owner at the time the other new development records its plat; or
- (3) an owner voluntarily requests the political subdivision to reserve capacity to serve future development, and the political subdivision and owner enter into a valid written agreement.

Sec. 395.020. ENTITLEMENT TO SERVICES.

Any new development for which an impact fee has been paid is entitled to the permanent use and benefit of the services for which the fee was exacted and is entitled to receive immediate service from any existing facilities with actual capacity to serve the new service units, subject to compliance with other valid regulations.

Sec. 395.021. AUTHORITY OF POLITICAL SUBDIVISIONS TO SPEND FUNDS TO REDUCE FEES.

Political subdivisions may spend funds from any lawful source to pay for all or a part of the capital improvements or facility expansions to reduce the amount of impact fees.

Sec. 395.022. AUTHORITY OF POLITICAL SUBDIVISION TO PAY FEES.

Political subdivisions and other governmental entities may pay impact fees imposed under this chapter.

Sec. 395.023. CREDITS AGAINST ROADWAY FACILITIES FEES.

Any construction of, contributions to, or dedications of off-site roadway facilities agreed to or required by a political subdivision as a condition of development approval shall be credited against roadway facilities impact fees otherwise due from the development.

Sec. 395.024. ACCOUNTING FOR FEES AND INTEREST.

(a) The order, ordinance, or resolution levying an impact fee must provide that all funds collected through the adoption of an impact fee shall be deposited in interest-bearing accounts clearly identifying the category of capital improvements or facility expansions within the service area for which the fee was adopted.

(b) Interest earned on impact fees is considered funds of the account on which it is earned and is subject to all restrictions placed on use of impact fees under this chapter.

(c) Impact fee funds may be spent only for the purposes for which the impact fee was imposed as shown by the capital improvements plan and as authorized by this chapter.

(d) The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours.

Sec. 395.025. REFUNDS.

(a) On the request of an owner of the property on which an impact fee has been paid, the political subdivision shall refund the impact fee if existing facilities are available and service is denied or the political subdivision has, after collecting the fee when service was not available, failed to commence construction within two years or service is not available within a reasonable period considering the

type of capital improvement or facility expansion to be constructed, but in no event later than five years from the date of payment under Section 395.019(1).

(b) Repealed by Acts 2001, 77th Leg., ch. 345, Sec. 9, eff. Sept. 1, 2001.

(c) The political subdivision shall refund any impact fee or part of it that is not spent as authorized by this chapter within 10 years after the date of payment.

(d) Any refund shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Section 302.002, Finance Code, or its successor statute.

(e) All refunds shall be made to the record owner of the property at the time the refund is paid. However, if the impact fees were paid by another political subdivision or governmental entity, payment shall be made to the political subdivision or governmental entity.

(f) The owner of the property on which an impact fee has been paid or another political subdivision or governmental entity that paid the impact fee has standing to sue for a refund under this section.

SUBCHAPTER C. PROCEDURES FOR ADOPTION OF IMPACT FEE

Sec. 395.041. COMPLIANCE WITH PROCEDURES REQUIRED.

Except as otherwise provided by this chapter, a political subdivision must comply with this subchapter to levy an impact fee.

Sec. 395.0411. CAPITAL IMPROVEMENTS PLAN.

The political subdivision shall provide for a capital improvements plan to be developed by qualified professionals using generally accepted engineering and planning practices in accordance with Section 395.014.

Sec. 395.042. HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN.

To impose an impact fee, a political subdivision must adopt an order, ordinance, or resolution establishing a public hearing date to consider the land use assumptions and capital improvements plan for the designated service area.

Sec. 395.043. INFORMATION ABOUT LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN AVAILABLE TO PUBLIC.

On or before the date of the first publication of the notice of the hearing on the land use assumptions and capital improvements plan, the political subdivision shall make available to the public its land use assumptions, the time period of the projections, and a description of the capital improvement facilities that may be proposed.

Sec. 395.044. NOTICE OF HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN.

(a) Before the 30th day before the date of the hearing on the land use assumptions and capital improvements plan, the political subdivision shall send a notice of the hearing by certified mail to any person who has given written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice of the hearing within two years preceding the date of adoption of the order, ordinance, or resolution setting the public hearing.

(b) The political subdivision shall publish notice of the hearing before the 30th day before the date set for the hearing, in one or more newspapers of general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies.

(c) The notice must contain:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN RELATING TO POSSIBLE ADOPTION OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the land use assumptions and capital improvements plan under which an impact fee may be imposed; and

(4) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the land use assumptions and capital improvements plan.

Sec. 395.045. APPROVAL OF LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN REQUIRED.

(a) After the public hearing on the land use assumptions and capital improvements plan, the political subdivision shall determine whether to adopt or reject an ordinance, order, or resolution approving the land use assumptions and capital improvements plan.

(b) The political subdivision, within 30 days after the date of the public hearing, shall approve or disapprove the land use assumptions and capital improvements plan.

(c) An ordinance, order, or resolution approving the land use assumptions and capital improvements plan may not be adopted as an emergency measure.

Sec. 395.0455. SYSTEMWIDE LAND USE ASSUMPTIONS.

(a) In lieu of adopting land use assumptions for each service area, a political subdivision may, except for storm water, drainage, flood control, and roadway facilities, adopt system-wide land use

assumptions, which cover all of the area subject to the jurisdiction of the political subdivision for the purpose of imposing impact fees under this chapter.

(b) Prior to adopting system-wide land use assumptions, a political subdivision shall follow the public notice, hearing, and other requirements for adopting land use assumptions.

(c) After adoption of system-wide land use assumptions, a political subdivision is not required to adopt additional land use assumptions for a service area for water supply, treatment, and distribution facilities or wastewater collection and treatment facilities as a prerequisite to the adoption of a capital improvements plan or impact fee, provided the capital improvements plan and impact fee are consistent with the system-wide land use assumptions.

Sec. 395.047. HEARING ON IMPACT FEE.

On adoption of the land use assumptions and capital improvements plan, the governing body shall adopt an order or resolution setting a public hearing to discuss the imposition of the impact fee. The public hearing must be held by the governing body of the political subdivision to discuss the proposed ordinance, order, or resolution imposing an impact fee.

Sec. 395.049. NOTICE OF HEARING ON IMPACT FEE.

(a) Before the 30th day before the date of the hearing on the imposition of an impact fee, the political subdivision shall send a notice of the hearing by certified mail to any person who has given written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice of the hearing within two years preceding the date of adoption of the order or resolution setting the public hearing.

(b) The political subdivision shall publish notice of the hearing before the 30th day before the date set for the hearing, in one or more newspapers of general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies.

(c) The notice must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON ADOPTION OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the adoption of an impact fee;

(4) the amount of the proposed impact fee per service unit; and

(5) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the plan and proposed fee.

Sec. 395.050. ADVISORY COMMITTEE COMMENTS ON IMPACT FEES.

The advisory committee created under Section 395.058 shall file its written comments on the proposed impact fees before the fifth business day before the date of the public hearing on the imposition of the fees.

Sec. 395.051. APPROVAL OF IMPACT FEE REQUIRED.

(a) The political subdivision, within 30 days after the date of the public hearing on the imposition of an impact fee, shall approve or disapprove the imposition of an impact fee.

(b) An ordinance, order, or resolution approving the imposition of an impact fee may not be adopted as an emergency measure.

Sec. 395.052. PERIODIC UPDATE OF LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN REQUIRED.

(a) A political subdivision imposing an impact fee shall update the land use assumptions and capital improvements plan at least every five years. The initial five-year period begins on the day the capital improvements plan is adopted.

(b) The political subdivision shall review and evaluate its current land use assumptions and shall cause an update of the capital improvements plan to be prepared in accordance with Subchapter B.

Sec. 395.053. HEARING ON UPDATED LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN.

The governing body of the political subdivision shall, within 60 days after the date it receives the update of the land use assumptions and the capital improvements plan, adopt an order setting a public hearing to discuss and review the update and shall determine whether to amend the plan.

Sec. 395.054. HEARING ON AMENDMENTS TO LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN, OR IMPACT FEE.

A public hearing must be held by the governing body of the political subdivision to discuss the proposed ordinance, order, or resolution amending land use assumptions, the capital improvements plan, or the impact fee. On or before the date of the first publication of the notice of the hearing on the amendments, the land use assumptions and the capital improvements plan, including the amount of any proposed amended impact fee per service unit, shall be made available to the public.

Sec. 395.055. NOTICE OF HEARING ON AMENDMENTS TO LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN, OR IMPACT FEE.

(a) The notice and hearing procedures prescribed by Sections 395.044(a) and

(b) apply to a hearing on the amendment of land use assumptions, a capital improvements plan, or an impact fee.

(c) The notice of a hearing under this section must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON AMENDMENT OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the amendment of land use assumptions and a capital improvements plan and the imposition of an impact fee; and

(4) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the update.

Sec. 395.056. ADVISORY COMMITTEE COMMENTS ON AMENDMENTS.

The advisory committee created under Section 395.058 shall file its written comments on the proposed amendments to the land use assumptions, capital improvements plan, and impact fee before the fifth business day before the date of the public hearing on the amendments.

Sec. 395.057. APPROVAL OF AMENDMENTS REQUIRED.

(a) The political subdivision, within 30 days after the date of the public hearing on the amendments, shall approve or disapprove the amendments of the land use assumptions and the capital improvements plan and modification of an impact fee.

(b) An ordinance, order, or resolution approving the amendments to the land use assumptions, the capital improvements plan, and imposition of an impact fee may not be adopted as an emergency measure.

Sec. 395.0575. DETERMINATION THAT NO UPDATE OF LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN OR IMPACT FEES IS NEEDED.

(a) If, at the time an update under Section 395.052 is required, the governing body determines that no change to the land use assumptions, capital improvements plan, or impact fee is needed, it may, as an alternative to the updating requirements of Sections 395.052-395.057, do the following:

(1) The governing body of the political subdivision shall, upon determining that an update is unnecessary and 60 days before publishing the final notice under this section, send notice of its determination not to update the land use assumptions, capital improvements plan, and impact fee by certified mail to any person who has, within two years preceding the date that the final notice of this matter is to be published, give written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice

of hearings related to impact fees. The notice must contain the information in Subsections (b)(2)-(5).

(2) The political subdivision shall publish notice of its determination once a week for three consecutive weeks in one or more newspapers with general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies. The notice of public hearing may not be in the part of the paper in which legal notices and classified ads appear and may not be smaller than one-quarter page of a standard-size or tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type.

(b) The notice must contain the following:

(1) a headline to read as follows: "NOTICE OF DETERMINATION NOT TO UPDATE LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN, OR IMPACT FEES";

(2) a statement that the governing body of the political subdivision has determined that no change to the land use assumptions, capital improvements plan, or impact fee is necessary;

(3) an easily understandable description and a map of the service area in which the updating has been determined to be unnecessary;

(4) a statement that if, within a specified date, which date shall be at least 60 days after publication of the first notice, a person makes a written request to the designated official of the political subdivision requesting that the land use assumptions, capital improvements plan, or impact fee be updated, the governing body must comply with the request by following the requirements of Sections 395.052-395.057; and

(5) a statement identifying the name and mailing address of the official of the political subdivision to whom a request for an update should be sent.

(c) The advisory committee shall file its written comments on the need for updating the land use assumptions, capital improvements plans, and impact fee before the fifth business day before the earliest notice of the government's decision that no update is necessary is mailed or published.

(d) If, by the date specified in Subsection (b)(4), a person requests in writing that the land use assumptions, capital improvements plan, or impact fee be updated, the governing body shall cause an update of the land use assumptions and capital improvements plan to be prepared in accordance with Sections 395.052-395.057.

(e) An ordinance, order, or resolution determining the need for updating land use assumptions, a capital improvements plan, or an impact fee may not be adopted as an emergency measure.

Sec. 395.058. ADVISORY COMMITTEE.

(a) On or before the date on which the order, ordinance, or resolution is adopted under Section 395.042, the political subdivision shall appoint a capital improvements advisory committee.

(b) The advisory committee is composed of not less than five members who shall be appointed by a majority vote of the governing body of the political subdivision. Not less than 40 percent of the membership of the advisory committee must be representatives of the real estate, development, or building industries who are not employees or officials of a political subdivision or governmental entity. If the political subdivision has a planning and zoning commission, the commission may act as the advisory committee if the commission includes at least one representative of the real estate, development, or building industry who is not an employee or official of a political subdivision or governmental entity. If no such representative is a member of the planning and zoning commission, the commission may still act as the advisory committee if at least one such representative is appointed by the political subdivision as an ad hoc voting member of the planning and zoning commission when it acts as the advisory committee. If the impact fee is to be applied in the extraterritorial jurisdiction of the political subdivision, the membership must include a representative from that area.

(c) The advisory committee serves in an advisory capacity and is established to:

- (1) advise and assist the political subdivision in adopting land use assumptions;
- (2) review the capital improvements plan and file written comments;
- (3) monitor and evaluate implementation of the capital improvements plan;
- (4) file semiannual reports with respect to the progress of the capital improvements plan and report to the political subdivision any perceived inequities in implementing the plan or imposing the impact fee; and
- (5) advise the political subdivision of the need to update or revise the land use assumptions, capital improvements plan, and impact fee.

(d) The political subdivision shall make available to the advisory committee any professional reports with respect to developing and implementing the capital improvements plan.

(e) The governing body of the political subdivision shall adopt procedural rules for the advisory committee to follow in carrying out its duties.

SUBCHAPTER D. OTHER PROVISIONS

Sec. 395.071. DUTIES TO BE PERFORMED WITHIN TIME LIMITS.

If the governing body of the political subdivision does not perform a duty imposed under this chapter within the prescribed period, a person who has paid an impact fee or an owner of land on which an impact fee has been paid has the right to present a written request to the governing body of the

political subdivision stating the nature of the unperformed duty and requesting that it be performed within 60 days after the date of the request. If the governing body of the political subdivision finds that the duty is required under this chapter and is late in being performed, it shall cause the duty to commence within 60 days after the date of the request and continue until completion.

Sec. 395.072. RECORDS OF HEARINGS.

A record must be made of any public hearing provided for by this chapter. The record shall be maintained and be made available for public inspection by the political subdivision for at least 10 years after the date of the hearing.

Sec. 395.073. CUMULATIVE EFFECT OF STATE AND LOCAL RESTRICTIONS.

Any state or local restrictions that apply to the imposition of an impact fee in a political subdivision where an impact fee is proposed are cumulative with the restrictions in this chapter.

Sec. 395.074. PRIOR IMPACT FEES REPLACED BY FEES UNDER THIS CHAPTER.

An impact fee that is in place on June 20, 1987, must be replaced by an impact fee made under this chapter on or before June 20, 1990. However, any political subdivision having an impact fee that has not been replaced under this chapter on or before June 20, 1988, is liable to any party who, after June 20, 1988, pays an impact fee that exceeds the maximum permitted under Subchapter B by more than 10 percent for an amount equal to two times the difference between the maximum impact fee allowed and the actual impact fee imposed, plus reasonable attorney's fees and court costs.

Sec. 395.075. NO EFFECT ON TAXES OR OTHER CHARGES.

This chapter does not prohibit, affect, or regulate any tax, fee, charge, or assessment specifically authorized by state law.

Sec. 395.076. MORATORIUM ON DEVELOPMENT PROHIBITED.

A moratorium may not be placed on new development for the purpose of awaiting the completion of all or any part of the process necessary to develop, adopt, or update land use assumptions, a capital improvements plan, or an impact fee.

Sec. 395.077. APPEALS.

(a) A person who has exhausted all administrative remedies within the political subdivision and who is aggrieved by a final decision is entitled to trial de novo under this chapter.

(b) A suit to contest an impact fee must be filed within 90 days after the date of adoption of the ordinance, order, or resolution establishing the impact fee.

(c) Except for roadway facilities, a person who has paid an impact fee or an owner of property on which an impact fee has been paid is entitled to specific performance of the services by the political subdivision for which the fee was paid.

(d) This section does not require construction of a specific facility to provide the services.

(e) Any suit must be filed in the county in which the major part of the land area of the political subdivision is located. A successful litigant shall be entitled to recover reasonable attorney's fees and court costs.

Sec. 395.078. SUBSTANTIAL COMPLIANCE WITH NOTICE REQUIREMENTS.

An impact fee may not be held invalid because the public notice requirements were not complied with if compliance was substantial and in good faith.

Sec. 395.079. IMPACT FEE FOR STORM WATER, DRAINAGE, AND FLOOD CONTROL IN POPULOUS COUNTY.

(a) Any county that has a population of 3.3 million or more or that borders a county with a population of 3.3 million or more, and any district or authority created under Article XVI, Section 59, of the Texas Constitution within any such county that is authorized to provide storm water, drainage, and flood control facilities, is authorized to impose impact fees to provide storm water, drainage, and flood control improvements necessary to accommodate new development.

(b) The imposition of impact fees authorized by Subsection (a) is exempt from the requirements of Sections 395.025, 395.052-395.057, and 395.074 unless the political subdivision proposes to increase the impact fee.

(c) Any political subdivision described by Subsection (a) is authorized to pledge or otherwise contractually obligate all or part of the impact fees to the payment of principal and interest on bonds, notes, or other obligations issued or incurred by or on behalf of the political subdivision and to the payment of any other contractual obligations.

(d) An impact fee adopted by a political subdivision under Subsection (a) may not be reduced if:

(1) the political subdivision has pledged or otherwise contractually obligated all or part of the impact fees to the payment of principal and interest on bonds, notes, or other obligations issued by or on behalf of the political subdivision; and

(2) the political subdivision agrees in the pledge or contract not to reduce the impact fees during the term of the bonds, notes, or other contractual obligations.

Sec. 395.080. CHAPTER NOT APPLICABLE TO CERTAIN WATER-RELATED SPECIAL DISTRICTS.

(a) This chapter does not apply to impact fees, charges, fees, assessments, or contributions:

(1) paid by or charged to a district created under Article XVI, Section 59, of the Texas Constitution to another district created under that constitutional provision if both districts are required by law to obtain approval of their bonds by the Texas Natural Resource Conservation Commission; or

(2) charged by an entity if the impact fees, charges, fees, assessments, or contributions are approved by the Texas Natural Resource Conservation Commission.

(b) Any district created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution may petition the Texas Natural Resource Conservation Commission for approval of any proposed impact fees, charges, fees, assessments, or contributions. The commission shall adopt rules for reviewing the petition and may charge the petitioner fees adequate to cover the cost of processing and considering the petition. The rules shall require notice substantially the same as that required by this chapter for the adoption of impact fees and shall afford opportunity for all affected parties to participate.

Sec. 395.081. FEES FOR ADJOINING LANDOWNERS IN CERTAIN MUNICIPALITIES.

(a) This section applies only to a municipality with a population of 105,000 or less that constitutes more than three-fourths of the population of the county in which the majority of the area of the municipality is located.

(b) A municipality that has not adopted an impact fee under this chapter that is constructing a capital improvement, including sewer or waterline or drainage or roadway facilities, from the municipality to a development located within or outside the municipality's boundaries, in its discretion, may allow a landowner whose land adjoins the capital improvement or is within a specified distance from the capital improvement, as determined by the governing body of the municipality, to connect to the capital improvement if:

(1) the governing body of the municipality has adopted a finding under Subsection (c); and

(2) the landowner agrees to pay a proportional share of the cost of the capital improvement as determined by the governing body of the municipality and agreed to by the landowner.

(c) Before a municipality may allow a landowner to connect to a capital improvement under Subsection (b), the municipality shall adopt a finding that the municipality will benefit from allowing the landowner to connect to the capital improvement. The finding shall describe the benefit to be received by the municipality.

(d) A determination of the governing body of a municipality, or its officers or employees, under this section is a discretionary function of the municipality and the municipality and its officers or employees are not liable for a determination made under this section.

Sec. 395.082. CERTIFICATION OF COMPLIANCE REQUIRED.

- (a) A political subdivision that imposes an impact fee shall submit a written certification verifying compliance with this chapter to the attorney general each year not later than the last day of the political subdivision's fiscal year.
- (b) The certification must be signed by the presiding officer of the governing body of a political subdivision and include a statement that reads substantially similar to the following: "This statement certifies compliance with Chapter 395, Local Government Code."
- (c) A political subdivision that fails to submit a certification as required by this section is liable to the state for a civil penalty in an amount equal to 10 percent of the amount of the impact fees erroneously charged. The attorney general shall collect the civil penalty and deposit the amount collected to the credit of the housing trust fund.

APPENDIX E

Resources

Web Resources

Impact Fees

NAHB www.nahb.org/infrastructurefinance

Impact Fees.com (Duncan and Associates) www.impactfees.com

National Impact Fee Roundtable www.impactfees.org

National Association of REALTORS <http://www.realtor.org/library/library/fg805>

American Planning Association <http://www.planning.org/policyguides/impactfees.html>

HUD <http://www.huduser.org/publications/affhsg/impactfees.html>

School Impact Fees

National Clearinghouse for Educational Facilities www.edfacilities.org/rl/impact_fees.cfm

Infrastructure Finance Alternatives

Council of Development Finance Agencies www.cdfa.net

National Conference of State Legislatures www.ncsl.org

NAHB PUBLISHED RESOURCES

[An Overview of Special Purpose Taxing Districts Proportionate-Share Impact Fees](#)

[Building for Tomorrow: Innovative Infrastructure Solutions](#)

[Infrastructure Finance: Does Your State Encourage Innovation](#)

[Infrastructure Solutions – Best Practices from Solution Oriented States](#)

AGENDA FORM

Date of City Council meeting: February 3rd

Name of Person Making Presentation: Kyle Arbizu

Address: PO BOX 727
Santa Clara, Utah 84765

Contact #:

Phone: 435-632-1493

e-mail: karbizu@pprmco.com

Approximate length of discussion: 10 Minutes may depend on council's questions

Description of item to be discussed: See explanation at the bottom of the page

If this is a complaint issue:

Have you tried to resolve the issue with staff? yes x no

If yes, with whom? _____

If you have a power point presentation, we would encourage you to keep it under 10 minutes. All other items discussed will be done as quickly and as efficiently as possible.

We appreciate the time and consideration of the Hurricane City Council considering this request. Between construction costs, inflation, and higher interest rates, it's become challenging to bring medium to high-density projects to fruition. We feel that these types of projects fill a necessary gap in the housing market. Not all person(s) moving to Southern Utah are looking to buy a home. It also provides additional housing to those person(s) just starting out, relocating, or experiencing changes in their living circumstances.

We're constructing 18 apartments on parcel H-4-2-4-3211. Our project contains only four two-bedrooms, six one-bedrooms, and eight studio apartments. This project site requires little to no additional work from the City for roads, and any new parking and roads for this project are being paid for, maintained, and installed by the developer. The estimate for our project that was provided by the City is \$41,292. We're seeking a reduction of 60% or \$24,775.20 so the project would still be paying \$16,516.80.

Lastly, we believe that City parks and trails are an essential part of the feel of Southern Utah. That being said, due to our unit sizing and the fact that the apartments will house fewer citizens than most homes and townhomes. Our estimate that was provided has Park and Recreation for the project at \$55,962. We're seeking a 50% reduction or \$27,981. This still leaves this single project contributing over \$27,981 to parks and trails or \$1,554.50 per residence.

Thank you for your time and consideration.

Estimate Fees

↳ Multi-Family

First, complete the information below. Then, click the "Estimate" button on the bottom of the page.

Fee Based Occupancies

:: use numbers only

ICC R-2 Residential Multiple Family 5B Garage Area (remove)

Square Feet: 2430

Declared Value: \$30,000.00

Calculated Value: \$60,750.00 ← selected

ICC R-2 Residential Multiple Family 5B Living Area (remove)

Square Feet: 11920

Declared Value: \$500,000.00

Calculated Value: \$679,440.00 ← selected

Fee Based Information

:: use numbers only

☒ Number of Units

18

Project Fees

:: use numbers only

☐ GROUP > 120/240 - Single Phase

☐	Clean Up Deposit Commercial	1 @	\$1,500.00 +	
☒	Habitat Fee - Multifamily	1 @	(0.2% x selected occupancy types)	*
☒	Multi-Family Permit Fee	1 @	(Table 1-A based on selected occupancy types)	*
☒	Multi-Family State Tax Fee	1 @	(1% x Multi-Family Permit Fee)	*
☒	i Park & Rec	1 @	(\$3,109.00 per Number of Units)	
☐	Parks-MultiFamily Adjusted	1 @	\$3109.00	
☒	i Plan Review	1 @	\$2846.00	
☐	Plan Review Deposit	1 @	\$1,000.00	
☐	Plan Review-Multi Family	1 @	\$1000.00	
☒	Power Conn-Multi Family-Adjusted	1 @	\$4503.00	
☐	Power Conn. - Residential Underground (New)	1 @	\$237.00	
☐	i Power Impact - Residential 200 AMP	1 @	(\$1,946.00 per Number of Units)	
☒	Power Impact 200 amp-Multi Family-Adjusted	1 @	\$36974.00	

Your Fee Estimate

Based On Your Selection

FEES

>
\$173,030.67

Habitat Fee - Multifamily	\$1,480.38
Multi-Family Permit Fee	\$4,378.50
Multi-Family State Tax Fee	\$43.79
Park & Rec	\$55,962.00
Plan Review	\$2,846.00
Power Conn-Multi Family-Adjusted	\$4,503.00
Power Impact 200 amp-Multi Family-Adjusted	\$36,974.00
Public Safety-Multi Family	\$4,626.00
Streets Impact - Residential	\$41,292.00
Water Connection 2"	\$5,483.00
Water Impact Fee 2"	\$15,442.00

Questions

For questions, use this contact information.

Tami Jones
Building
(435) 635-2811 x122 Ph.
(435) 635-2184 Fax
tami@cityofhurricane.com
www.cityofhurricane.com

Mailing Address

147 N 870 W
Hurricane, UT 84737

Physical Address

147 N 870 W
Hurricane, UT 84737
(view map)

☐	Power Impact-Residential 125 amp	1 @ \$0
☐	Public Safety Impact - Residential	1 @ (\$421.00 per Number of Units)
☒	Public Safety-Multi Family	1 @ (\$257.00 per Number of Units)
☐	Public Safety-Multi Family- Adjusted	1 @ \$257.00
☒	Streets Impact - Residential	1 @ (\$2,294.00 per Number of Units)
☐	Streets-MultiFamily Adjusted	1 @ \$2294.00
☐	Water Connection 1"	1 @ \$1,315.00
☐	Water Connection 1.5"	1 @ \$2,924.00
☒	Water Connection 2"	1 @ \$5,483.00
☐	Water Connection 3/4"	1 @ \$731.00
☐	Water Connection 5/8"	1 @ (\$550.00 per Number of Units)
☐	Water Impact 1"-New	1 @ \$3,860.00
☐	Water Impact 5/8"	1 @ (\$884.00 per Number of Units)
☐	Water Impact 5/8"-New	1 @ \$1,508.00
☐	Water Impact Fee 1.5"	1 @ \$5,092.00
☒	Water Impact Fee 2"	1 @ \$15,442.00
☐	Water Impact Fee 3/4"	1 @ \$1,273.00

Disclaimer

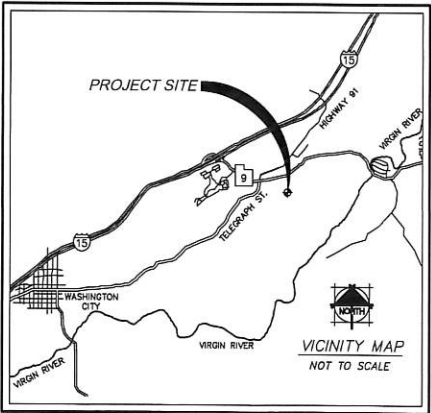
This information is to give you a general idea of permit fees and is subject to change.

CURTIS ANDERSON SHADOW RIDGE APARTMENTS

LOCATED IN SECTION 4, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SLB&M

GENERAL NOTES:

1. ALL CONSTRUCTION AND MATERIALS SHALL BE IN ACCORDANCE WITH THE CITY OF HURRICANE AND ASH CREEK SPECIAL SERVICE DISTRICT "STANDARD SPECIFICATIONS FOR DESIGN AND CONSTRUCTION".
2. THE CONTRACTOR SHALL TAKE ALL PRECAUTIONARY MEASURES NECESSARY TO PROTECT EXISTING IMPROVEMENTS WHICH ARE TO REMAIN IN PLACE. ANY AND ALL IMPROVEMENTS OR STRUCTURES WHICH ARE DAMAGED BY THE CONTRACTOR'S OPERATIONS SHALL BE REPAIRED OR RECONSTRUCTED SATISFACTORY TO THE CITY OF HURRICANE AND THE OWNER AT THE EXPENSE OF THE CONTRACTOR.
3. THE CONTRACTOR SHALL NOT BACKFILL ANY UTILITY OR DRAINAGE TRENCHES UNTIL THEY HAVE BEEN INSPECTED AND APPROVED BY THE CITY OF HURRICANE AND ASH CREEK SPECIAL SERVICE DISTRICT. THE CITY AND ASH CREEK SPECIAL SERVICE DISTRICT SHALL BE NOTIFIED AT LEAST 1 WORKING DAY IN ADVANCE OF ALL CONSTRUCTION.
4. ALL CONSTRUCTION SHALL BE AS SHOWN ON THESE PLANS, ANY ALTERATIONS SHALL HAVE THE PRIOR WRITTEN APPROVAL OF THE ENGINEER AND THE CITY OF HURRICANE.
5. THE CONTRACTOR SHALL, AT HIS OWN EXPENSE, LOCATE ALL OVERHEAD INTERFERENCE WHICH MAY AFFECT HIS OPERATION DURING CONSTRUCTION AND SHALL TAKE ALL NECESSARY PRECAUTIONS TO AVOID DAMAGE TO SAME. THE CONTRACTOR SHALL USE EXTREME CAUTION WHEN WORKING NEAR OVERHEAD OR UNDERGROUND POWER, TELEPHONE, GAS AND OTHER UTILITIES FOR THE SAFETY OF ALL PERSONNEL AND EQUIPMENT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL COSTS AND LIABILITY IN CONNECTION THEREWITH.
6. AN ENCROACHMENT PERMIT IS REQUIRED FOR WORK IN THE PUBLIC RIGHT OF WAY, THE CONTRACTOR SHALL SECURE ALL PERMITS AND INSPECTIONS REQUIRED FOR THIS CONSTRUCTION.
7. HANDICAP RAMPS SHALL BE CONSTRUCTED IN EACH QUADRANT OF AN INTERSECTION AS PER THE CITY STANDARD DRAWINGS (SEE ADOPTED DETAIL ON DETAIL SHEET). EXACT LOCATION OF RAMPS MAY BE ADJUSTED IN THE FIELD BY A CITY ENGINEER.
8. CONTRACTOR SHALL PROVIDE ALL NECESSARY HORIZONTAL AND VERTICAL TRANSITIONS BETWEEN NEW CONSTRUCTION AND EXISTING SURFACES TO PROVIDE FOR PROPER DRAINAGE AND FOR INGRESS AND EGRESS TO SAID CONSTRUCTION. THE EXTENT OF TRANSITIONS TO BE AS SHOWN ON PLANS.
9. THE CONTRACTOR SHALL TAKE ALL PRECAUTIONS NECESSARY TO PROTECT EXISTING PERMANENT SURVEY MONUMENTS. ANY MONUMENTS DISTURBED SHALL BE REPLACED AT THE EXPENSE OF THE CONTRACTOR BY A REGISTERED LAND SURVEYOR.
10. BEFORE ANY WORK IS STARTED IN THE RIGHT OF WAY, THE CONTRACTOR SHALL INSTALL CONSTRUCTION ZONE SIGNING AS REQUIRED BY THE "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES-LATEST EDITION".
11. ALL CONSTRUCTION SIGNING, BARRICADING AND TRAFFIC DELINEATION SHALL CONFORM TO THE "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES-LATEST EDITION".
12. FINAL SURVEY MONUMENTS TO BE INSTALLED AS PER HURRICANE CITY ADOPTED DRAWING AND LOCATION TO BE AS PER THE FINAL PLAT.
13. THE CONTRACTOR SHALL PROVIDE EROSION CONTROL. BEST MANAGEMENT PRACTICES TO LIMIT ON SITE EROSION AND SEDIMENT FROM LEAVING THE SITE. ALL BEST MANAGEMENT PRACTICES WILL BE APPROVED BY THE ENGINEER AND THE CITY OF HURRICANE.
14. ALL WORK SHALL BE CONTAINED ON SITE.
15. A TEMPORARY TRASH ENCLOSURE SHALL BE PROVIDED.
16. DUST CONTROL SHALL BE MAINTAINED; CONTRACTOR SHALL USE A WATER TRUCK DURING ALL EARTH MOVING ACTIVITIES.
17. PROJECTS SHALL INSTALL AN INFORMATIONAL SIGN ON SITE BEFORE CONSTRUCTION BEGINS. THIS SIGN WILL HAVE A MINIMUM SIZE, PLACEMENT LOCATION AND CONTENT INFORMATION WITH THE COMPANY NAME, PHONE CONTACT & GRADING PERMIT NUMBER.
18. PROJECTS SHALL SUBMIT A DUST CONTROL PLAN WITH DETAILS ON EQUIPMENT, SCHEDULING AND REPORTING OF DUST CONTROL ACTIVITIES.
19. A MANDATORY PRE-CONSTRUCTION MEETING WILL BE REQUIRED ON ALL PROJECTS PRIOR TO ANY GRUBBING, GRADING, OR CONSTRUCTION ACTIVITIES. THE PERMIT HOLDER WILL BE REQUIRED TO NOTIFY ALL DEVELOPMENT SERVICES INSPECTORS.
20. ALL LANDSCAPING TO BE MAINTAINED BY PROPERTY OWNER (CITY WILL NOT MAINTAIN).
21. A SPECIAL INSPECTOR FOR PAVING WILL BE REQUIRED (COST BORNE BY DEVELOPER).

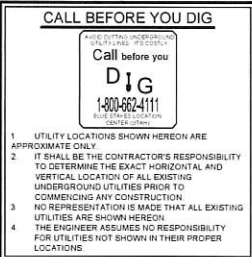


SHEET INDEX

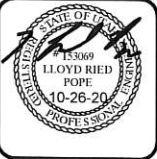
C0.00	TITLE SHEET
C1.00	SITE PLAN
C2.00	UTILITY PLAN
C3.00	GRADING & DRAINAGE PLAN
C4.00	LIFE SAFETY PLAN
C5.00	EROSION PLAN
C6.00	LANDSCAPE PLAN
C10.00	DETAIL SHEET

APPROVAL

ASH CREEK SEWER DISTRICT	DATE:
DOMINION ENERGY	DATE:
TDS COMMUNICATIONS	DATE:
CENTURYLINK	DATE:
WASHINGTON COUNTY WATER CONSERVANCY DISTRICT	DATE:
HURRICANE POWER DEPARTMENT	DATE:
HURRICANE PARKS DEPARTMENT	DATE:
HURRICANE VALLEY FIRE DISTRICT	DATE:
HURRICANE WATER DEPARTMENT	DATE:
HURRICANE STREETS DEPARTMENT	DATE:
HURRICANE PLANNING DEPARTMENT	DATE:
HURRICANE CITY ENGINEER	DATE:
HURRICANE PUBLIC WORKS DEPARTMENT	DATE:
HURRICANE CITY GIS	DATE:



NO.	DATE	BY	APPVD	REVISION DESCRIPTION

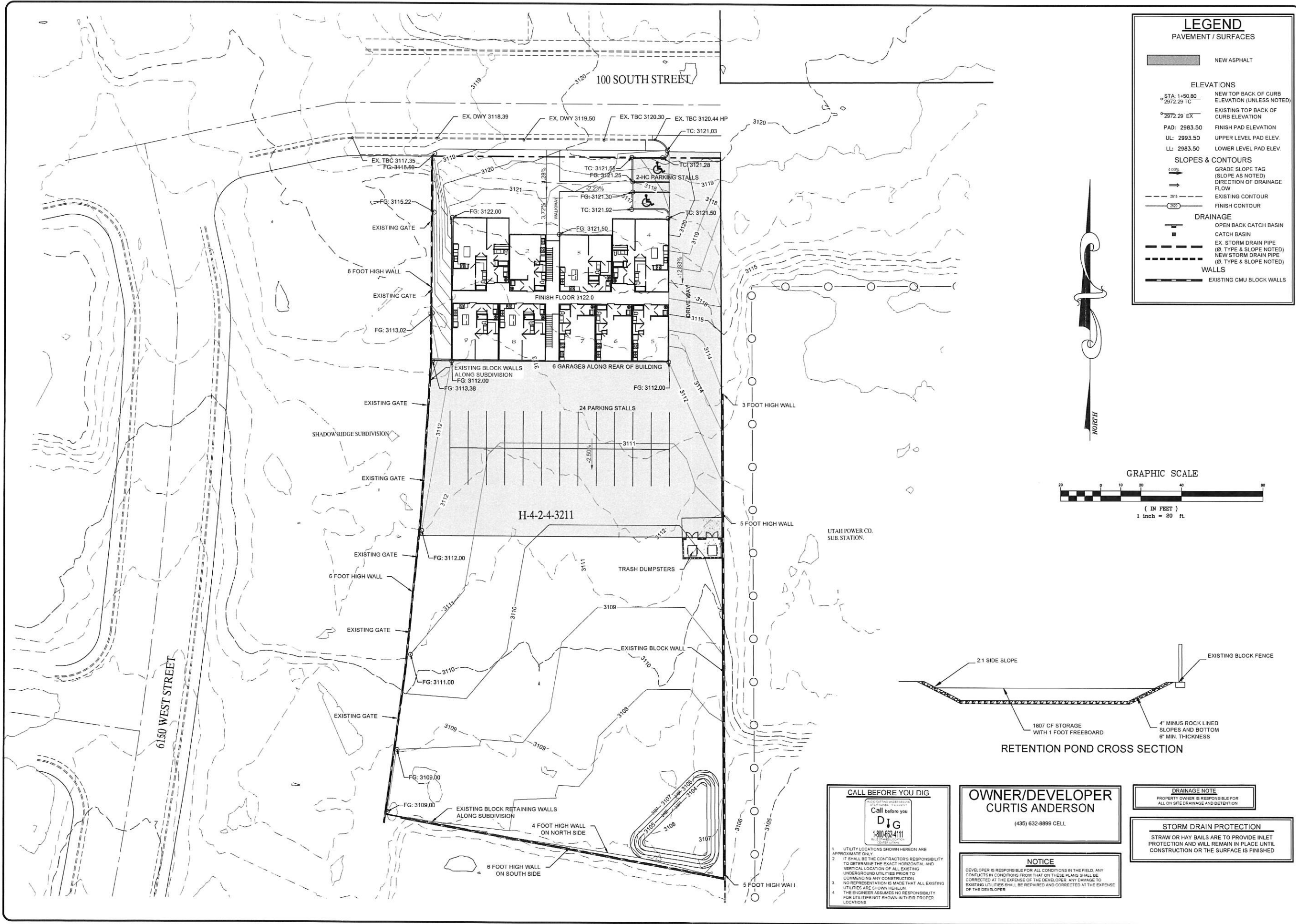


CURTIS ANDERSON
SHADOW RIDGE APARTMENTS
TITLE SHEET

LOCATED IN SECTION 4, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SLB&M

DESIGN BY
LRP
DATE
10-26-20
FILE NAME
CURTIS ANDERSON

24" x 36"
SCALE 1" = 1"
12" x 18"
SCALE 1" = 1"
SHEET NUMBER
C0.00



LEGEND
PAVEMENT / SURFACES

NEW ASPHALT

ELEVATIONS

STA: 1+50.80
2972.29 TC
2972.29 EX
PAD: 2983.50
UL: 2993.50
LL: 2983.50

NEW TOP BACK OF CURB ELEVATION (UNLESS NOTED)
EXISTING TOP BACK OF CURB ELEVATION
FINISH PAD ELEVATION
UPPER LEVEL PAD ELEV.
LOWER LEVEL PAD ELEV.

SLOPES & CONTOURS

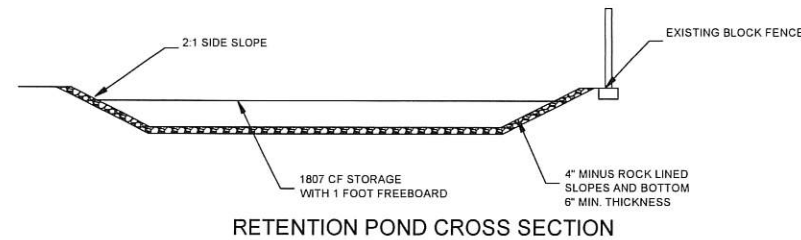
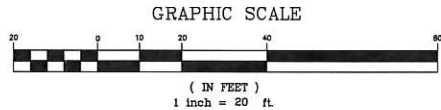
GRADE SLOPE TAG (SLOPE AS NOTED)
DIRECTION OF DRAINAGE FLOW
EXISTING CONTOUR
FINISH CONTOUR

DRAINAGE

OPEN BACK CATCH BASIN
CATCH BASIN
EX. STORM DRAIN PIPE (Ø, TYPE & SLOPE NOTED)
NEW STORM DRAIN PIPE (Ø, TYPE & SLOPE NOTED)

WALLS

EXISTING CMU BLOCK WALLS



CALL BEFORE YOU DIG

Call before you Dig
1-800-662-4111
UTAH POWER CO. (800) 662-4111

1. UTILITY LOCATIONS SHOWN HEREON ARE APPROXIMATE ONLY.
2. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO DETERMINE THE EXACT HORIZONTAL AND VERTICAL LOCATION OF ALL EXISTING UNDERGROUND UTILITIES PRIOR TO COMMENCING ANY CONSTRUCTION.
3. NO REPRESENTATION IS MADE THAT ALL EXISTING UTILITIES ARE SHOWN HEREON.
4. THE ENGINEER ASSUMES NO RESPONSIBILITY FOR UTILITIES NOT SHOWN IN THEIR PROPER LOCATIONS.

OWNER/DEVELOPER
CURTIS ANDERSON

(435) 632-8899 CELL

NOTICE

DEVELOPER IS RESPONSIBLE FOR ALL CONDITIONS IN THE FIELD. ANY CONFLICTS IN CONDITIONS FROM THAT ON THESE PLANS SHALL BE CORRECTED AT THE EXPENSE OF THE DEVELOPER. ANY DAMAGE TO EXISTING UTILITIES SHALL BE REPAIRED AND CORRECTED AT THE EXPENSE OF THE DEVELOPER.

DRAINAGE NOTE

PROPERTY OWNER IS RESPONSIBLE FOR ALL ON SITE DRAINAGE AND DETENTION

STORM DRAIN PROTECTION

STRAW OR HAY BAILS ARE TO PROVIDE INLET PROTECTION AND WILL REMAIN IN PLACE UNTIL CONSTRUCTION OR THE SURFACE IS FINISHED

NO. DATE BY APPVD REVISION DESCRIPTION

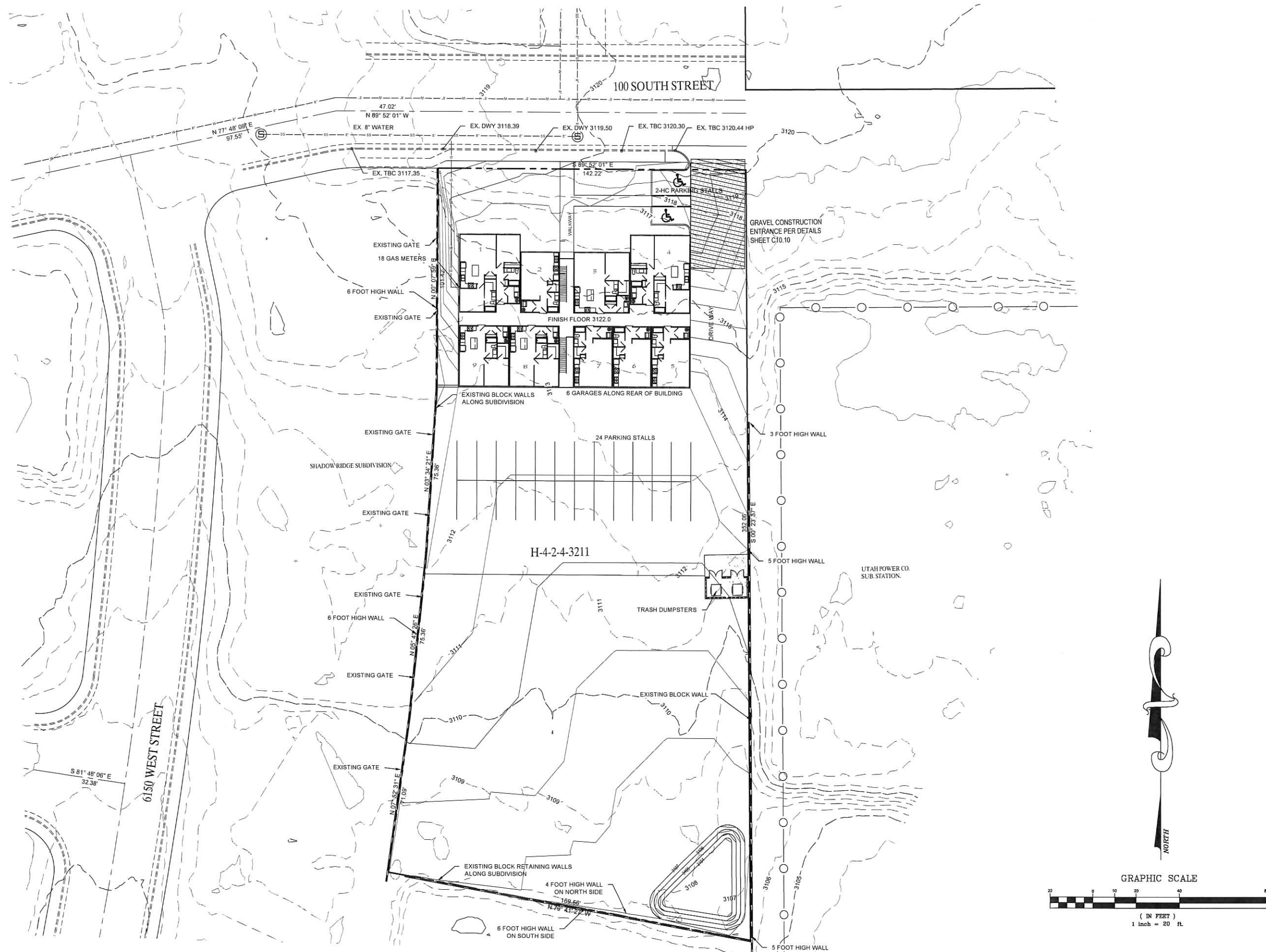
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DATE 10-26-20
FILE NAME CURTIS ANDERSON

24" x 36" SCALE 1" = 20'
12" x 18" SCALE 1" = 40'
SHEET NUMBER C3.00

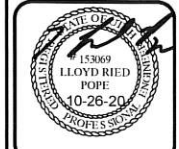
CURTIS ANDERSON
SHADOW RIDGE APARTMENTS
GRADING AND DRAINAGE PLAN
LOCATED IN SECTION 4, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SLB&M

STATE OF UTAH
LLOYD RIED
10-26-20
PROFESSIONAL SEAL

UTAH POWER CO. SUB. STATION.



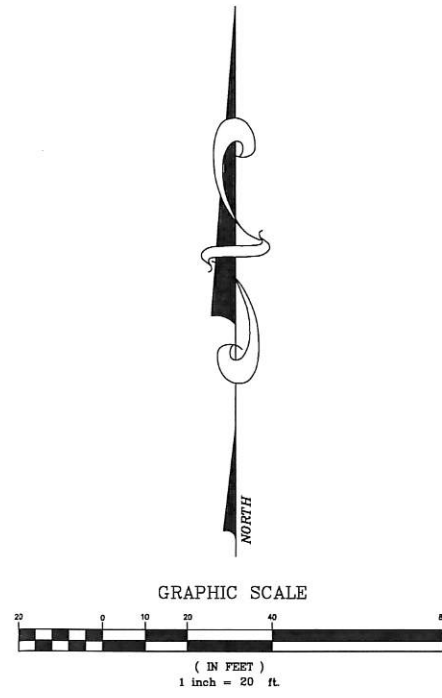
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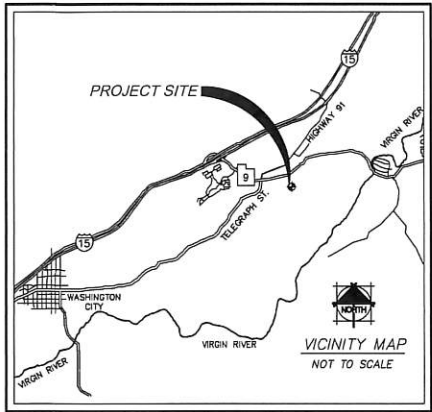
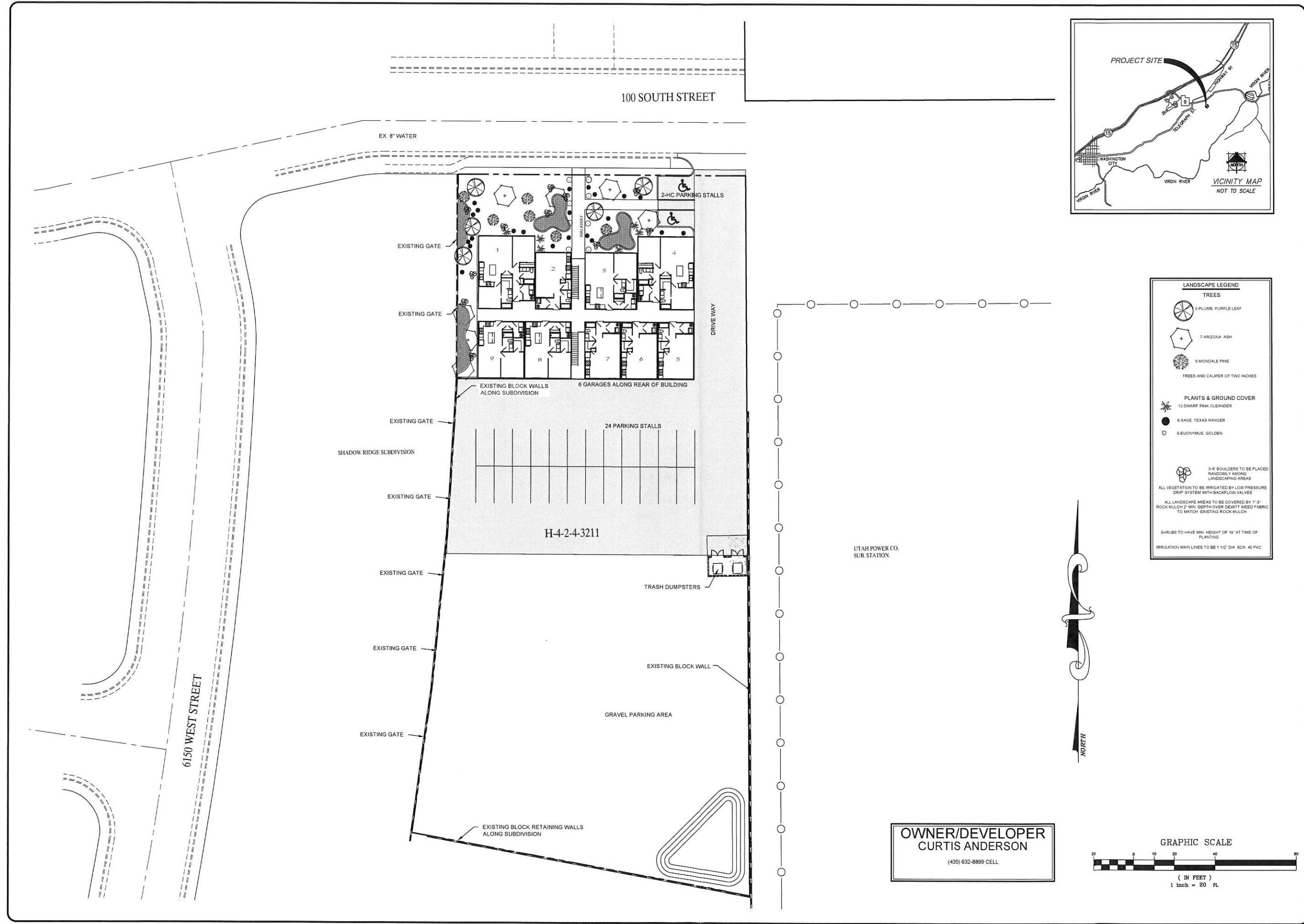


**L.R. POPE ENGINEERING INC.**
STRUCTURAL ENGINEER - CIVIL ENGINEER & SURVEYOR
1245 EAST 400 SOUTH, SUITE 143
ST. GEORGE, UTAH 84770
PHONE: 435-638-1776
FAX: 435-638-1778
EMAIL: lrp@lrpe.com

CURTIS ANDERSON
SHADOW RIDGE APARTMENTS
EROSION PLAN
LOCATED IN SECTION 4, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SLB&M

DESIGN BY
LRP
DATE
10-26-20
FILE NAME
CURTIS ANDERSON
24" x 36"
SCALE 1" = 20'
12" x 18"
SCALE 1" = 40'
SHEET NUMBER
C5.00





LANDSCAPE LEGEND

TREES

- 5-PLUMB PURPLE LEAF
- 7-ARIZONA ASH
- 8-MONZALE PINE

TREES AND CALIPER OF TWO INCHES

PLANTS & GROUND COVER

- 12-DWARF PINK CLEANDER
- 8-SAGE TEXAS RANGER
- 8-EUCHONYMUS GOLDEN

3-6 BOULDERS TO BE PLACED RANDOMLY AMONG LANDSCAPING AREAS

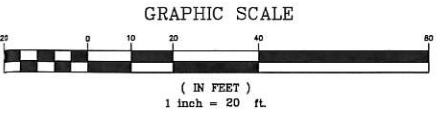
ALL VEGETATION TO BE IRRIGATED BY LOW PRESSURE DRIP SYSTEM WITH BACKFLOW VALVES

ALL LANDSCAPE AREAS TO BE COVERED BY 1-3" ROCK MULCH 2" MIN. DEPTH OVER DEWITT WEED FABRIC TO MATCH EXISTING ROCK MULCH

SHRUBS TO HAVE MIN. HEIGHT OF 18" AT TIME OF PLANTING

IRRIGATION MAIN LINES TO BE 1 1/2" DIA. SCH. 40 PVC

OWNER/DEVELOPER
CURTIS ANDERSON
(435) 632-8899 CELL



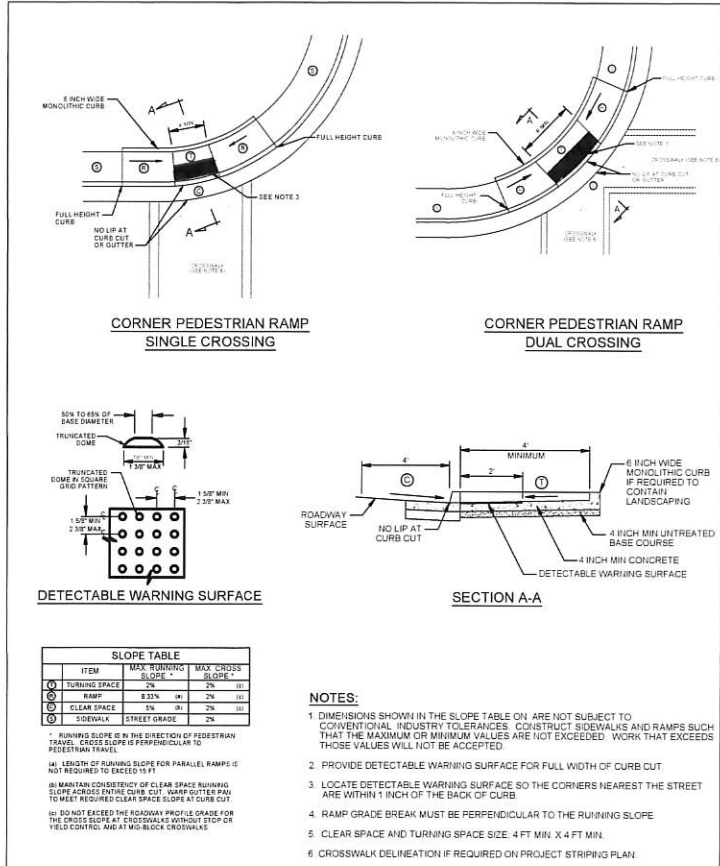
NO.	DATE	BY	APPVD	REVISION DESCRIPTION



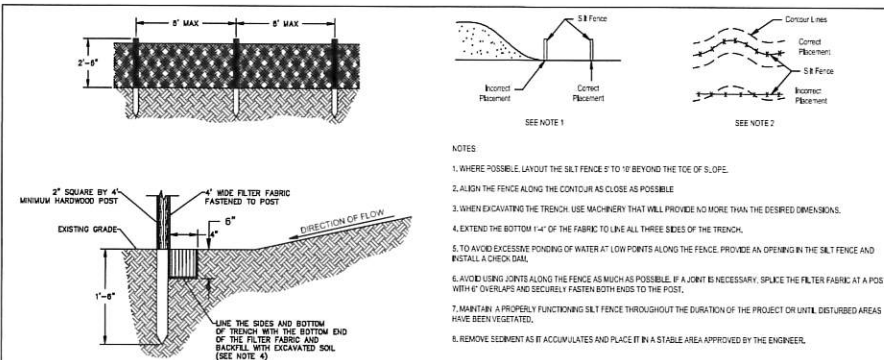
LRP
L. R. POPE ENGINEERING INC.
1206 EAST 100 SOUTH, SUITE 104
ST. GEORGE, UTAH
PHONE: 632-8899
FAX: 632-8899
WWW.LRPE.COM
L.R. POPE
STRUCTURAL ENGINEER, CIVIL ENGINEER & SURVEYOR
UTAH LICENSE # 15309
DESIGNED BY: CURTIS ANDERSON
CHECKED BY: L. R. POPE
DATE: 10-26-2024

CURTIS ANDERSON
SHADOW RIDGE APARTMENTS
LANDSCAPE PLAN
LOCATED IN SECTION 4, TOWNSHIP 41 SOUTH, RANGE 14 WEST, SLB&M

DESIGN BY
LRP
DATE
10-26-20
FILE NAME
CURTIS ANDERSON
24" x 36"
SCALE 1" = 20'
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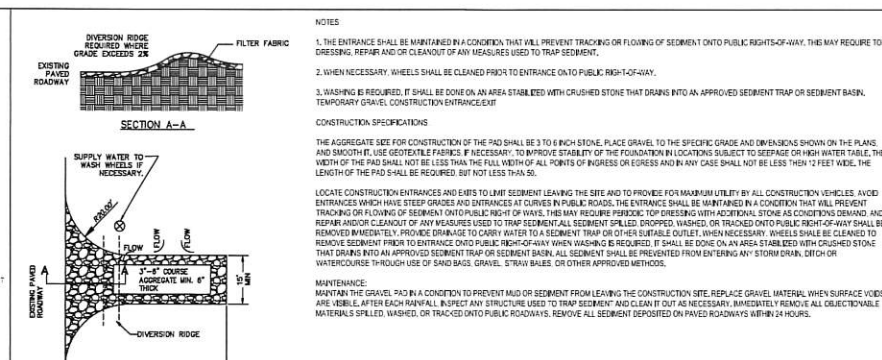


NOT TO SCALE



SPECIFICATIONS FOR SILT FENCE DETAIL

NOT TO SCALE



TEMPORARY GRAVEL CONSTRUCTION ENTRANCE / EXIT

NOT TO SCALE

EROSION CONTROL NOTES:

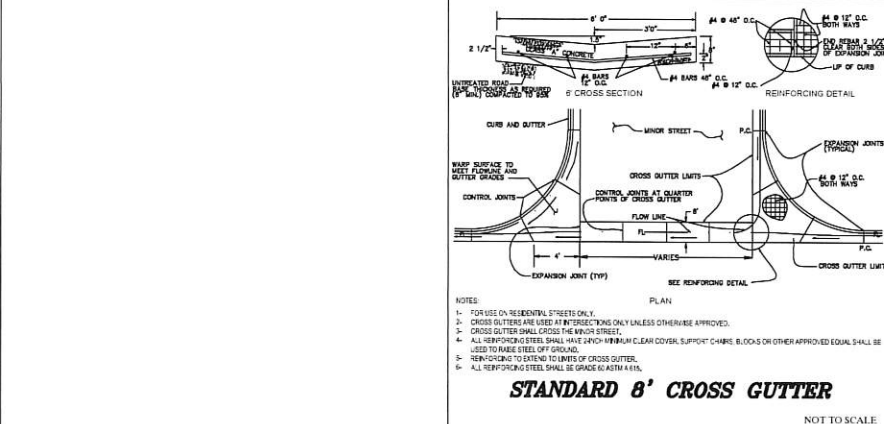
1. PROVIDE SEDIMENT BASINS AT THE BOTTOM OF EVERY DRAINAGE AREA PRODUCING SEDIMENT RUNOFF. THE BASINS SHALL BE MAINTAINED AND CLEANED AFTER EVERY STORM EVENT. THE BASINS MAY BE REMOVED AFTER SOIL STABILIZATION AND VEGETATION IS ESTABLISHED ON ERODABLE SLOPES
2. PROVIDE SEDIMENT CONTROL AROUND EVERY STORM DRAIN INLET TO PREVENT SEDIMENT FROM ENTERING THE STORM DRAIN SYSTEM
3. ALL EROSION CONTROL BEST MANAGEMENT PRACTICES (BMP'S) SHALL BE INSPECTED AND MAINTAINED REGULARLY AND AFTER EVERY STORM EVENT.
4. ANY ALTERNATIVE CONTROL MEASURES MUST BE APPROVED IN ADVANCE BY THE ENGINEER AND THE CITY OF HURRICANE.
5. THE CONTRACTOR SHOULD FOLLOW A WORK SCHEDULE THAT COORDINATES THE TIMING OF LAND-DISTURBING ACTIVITIES.
6. LIMIT LAND CLEARING AND RESTORE ALL GRADING AS SOON AS POSSIBLE
7. PRACTICE STAGED SEEDING TO RE-VEGETATE CUT AND FILL SLOPES AS THE WORK IS IN PROGRESS
8. AT ALL TIMES DURING CONSTRUCTION, THE CONTRACTOR SHALL BE RESPONSIBLE FOR PREVENTING AND CONTROLLING EROSION DUE TO WIND AND OTHER EROSION. THE CONTRACTOR SHALL ALSO BE RESPONSIBLE FOR MAINTAINING ALL EROSION CONTROL BMP'S
9. ADDITIONAL EROSION CONTROL MEASURES MAY BE REQUIRED BY THE ENGINEER OR THE CITY OF HURRICANE.
10. THE CONTRACTOR IS RESPONSIBLE FOR KEEPING THE STREETS CLEAN AND FREE FROM DEBRIS.
11. CONTRACTOR SHALL USE VEHICLE TRACKING CONTROL AT ALL ENTRANCES AND EXITS.
12. ALL WASH WATER (CONCRETE TRUCKS, VEHICLE CLEANING, ETC.) SHALL BE DISPOSED AS TO NOT ENTER THE STORM WATER SYSTEM.
13. CONTRACTOR SHALL PROVIDE DUST CONTROL AT ALL TIMES DURING CONSTRUCTION.
14. THE LIMITS OF DISTURBANCE SHALL BE STAKED BEFORE CONSTRUCTION BEGINS
15. COMPLY WITH ANY AND ALL REQUIREMENTS FROM THE CITY OF ST. GEORGE AND THE UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY.
16. A COPY OF THIS STORM WATER POLLUTION PREVENTION PLAN SHALL BE KEPT ON SITE DURING ALL CONSTRUCTION ACTIVITY. LONG TERM MAINTENANCE (POST CONSTRUCTION)

1. EROSION CONTROL STRUCTURES MAY BE REMOVED ONCE FINAL LANDSCAPING IS IN PLACE. EROSION CONTROL STRUCTURES BELOW SEEDING AREAS MUST REMAIN IN PLACE UNTIL THE ENTIRE AREA HAS BEEN ESTABLISHED. EROSION CONTROL IN PROPOSED PAVEMENT AREAS SHALL REMAIN IN PLACE UNTIL PAVEMENT IS COMPLETE

2. THE PROPERTY OWNER IS RESPONSIBLE TO COMPLY WITH ALL APPLICABLE STORM WATER REGULATIONS AT ALL TIMES. ALL BMP'S SHALL BE MAINTAINED TO EFFECTIVELY PREVENT THE IMPACTS OF THIS PROJECT'S CONSTRUCTION AND USE ON STORM WATER QUALITY.

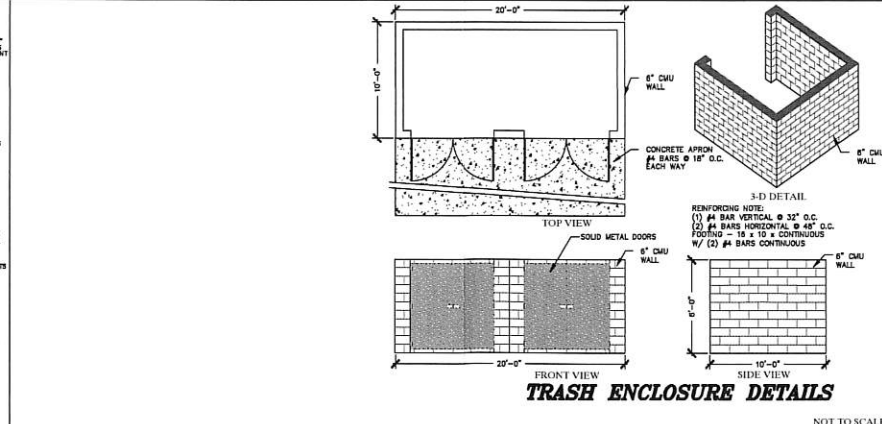
3. THE FOLLOWING PRECAUTIONS SHALL BE PERFORMED

- a. PERIODIC INSPECTION OF CATCH BASIN SEDIMENT TRAPS AND CLEANING WHEN THE BASIN IS MORE THAN 1/4 FULL. INSPECTIONS SHALL BE DONE AFTER EVERY MAJOR RAINFALL AND EVERY 6 MONTHS AS A MINIMUM. DISPOSAL OF ANY GREASE OR OIL MUST BE DONE IN ACCORDANCE WITH CURRENT ENVIRONMENTAL REGULATIONS.
- b. LITTER, DEBRIS, AND CHEMICALS MUST BE PICKED UP AND KEPT IN A LOCATION TO PREVENT POLLUTION OF STORM WATER DISCHARGE.
- c. PARKING AREAS SHALL BE KEPT FREE FROM AUTOMOBILE FLUIDS AS TO NOT WASH INTO THE STORM DRAIN SYSTEM.



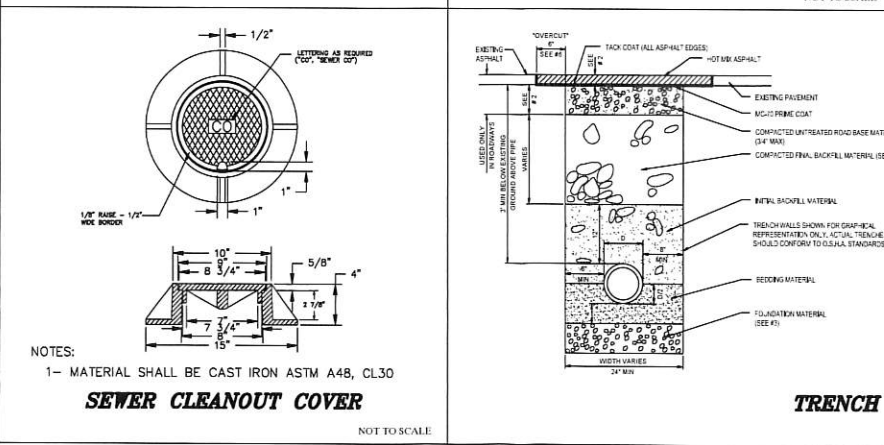
STANDARD 8' CROSS GUTTER

NOT TO SCALE



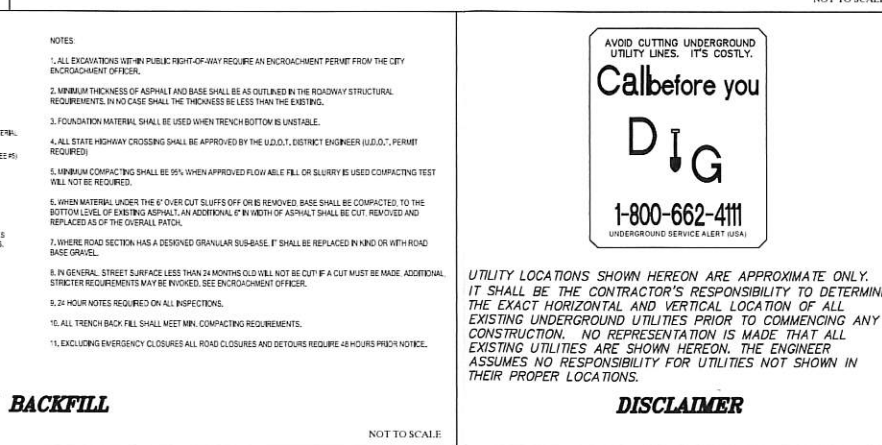
TRASH ENCLOSURE DETAILS

NOT TO SCALE



SEWER CLEANOUT COVER

NOT TO SCALE



TRENCH BACKFILL

NOT TO SCALE

AVOID CUTTING UNDERGROUND UTILITY LINES. IT'S COSTLY.

Call before you Dig

1-800-662-4111

UNDERGROUND SERVICE ALERT (USA)

UTILITY LOCATIONS SHOWN HEREON ARE APPROXIMATE ONLY. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO DETERMINE THE EXACT HORIZONTAL AND VERTICAL LOCATION OF ALL EXISTING UNDERGROUND UTILITIES PRIOR TO COMMENCING ANY CONSTRUCTION. NO REPRESENTATION IS MADE THAT ALL EXISTING UTILITIES ARE SHOWN HEREON. THE ENGINEER ASSUMES NO RESPONSIBILITY FOR UTILITIES NOT SHOWN IN THEIR PROPER LOCATIONS.

DISCLAIMER

NO. DATE BY APPVD REVISION DESCRIPTION

15309 LLOYD RIED POPE 10-26-20

1300 EAST 100 SOUTH, SUITE 100 ST. GEORGE, UTAH 84770 (PHONE) 432-6816 (FAX) 432-6816

L. R. POPE ENGINEERING INC. STRUCTURAL ENGINEERS, CIVIL ENGINEERS & SURVEYORS

CURTIS ANDERSON SHADOW RIDGE APARTMENTS DETAILS

LOCATED IN SECTION 4, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SLB&M

DESIGN BY LRP

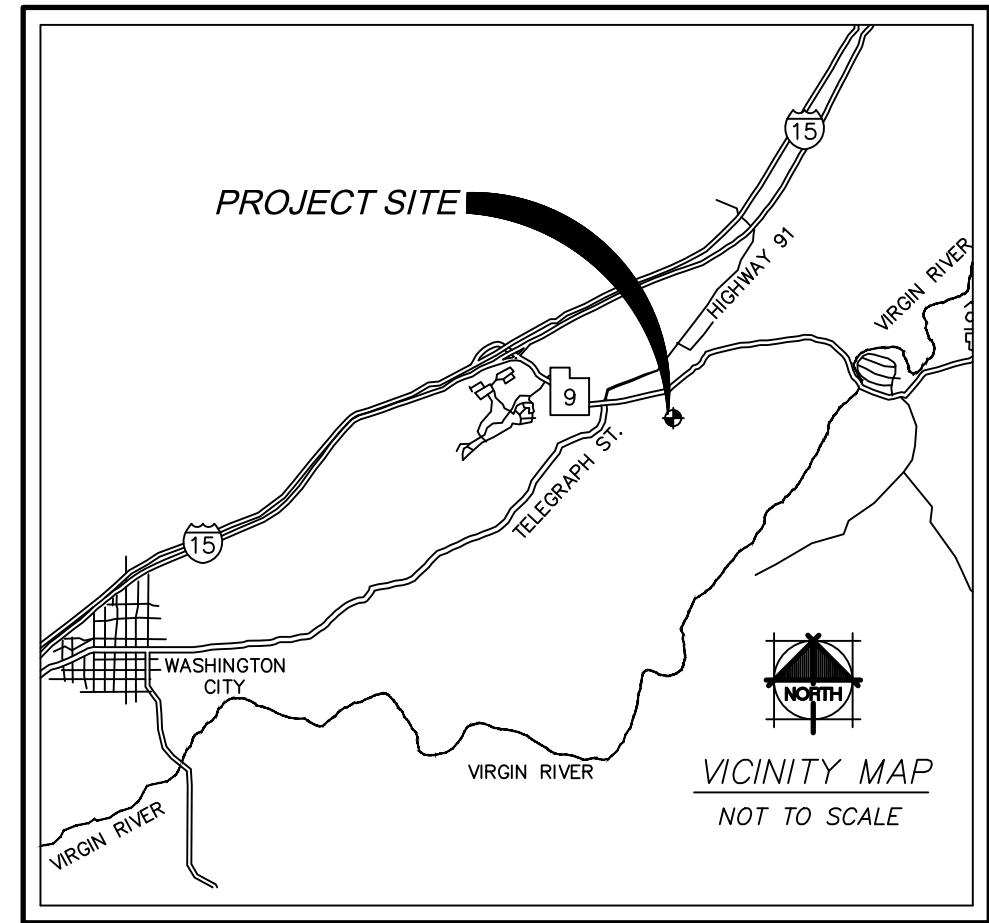
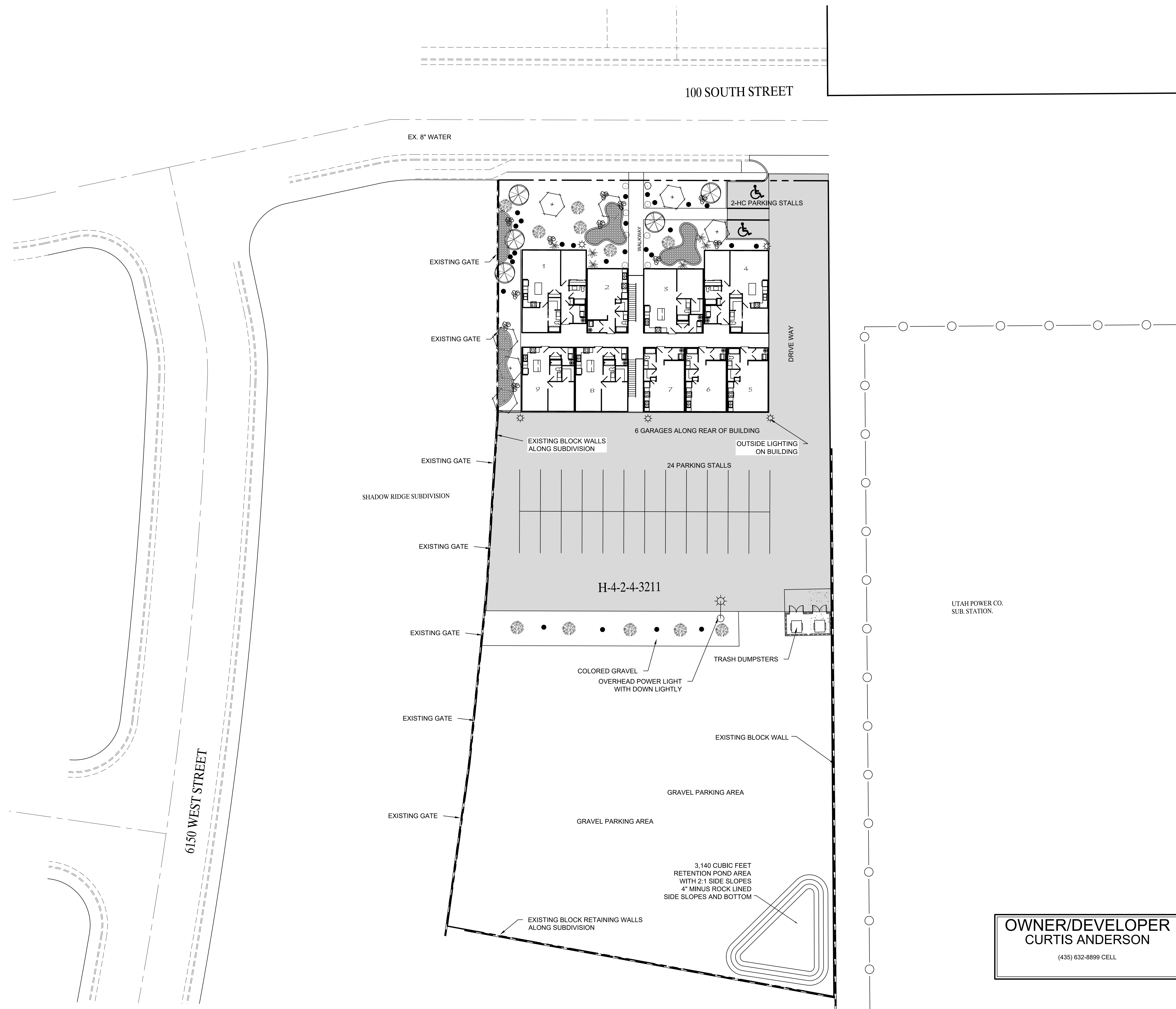
DATE 10-26-20

FILE NAME CURTIS ANDERSON

24" x 36" SCALE 1" = 1"

12" x 18" SCALE 1" = 1"

SHEET NUMBER C10.00



LANDSCAPE LEGEND

TREES



5-PLUMB, PURPLE LEAF



7-AZIZONA ASH



6-MONDALE PINE

TREES AND CALIPER OF TWO INCHES

PLANTS & GROUND COVER



12-DWARF PINK OLEANDER



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8-EUONYMUS, GOLDEN



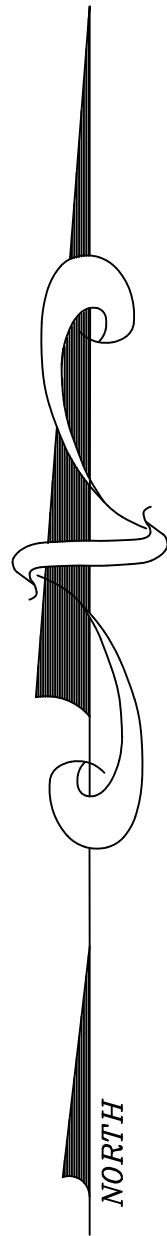
3'-6' BOULDERS TO BE PLACED
RANDOMLY AMONG
LANDSCAPING AREAS.

ALL VEGETATION TO BE IRRIGATED BY LOW PRESSURE
"DRIP" SYSTEM WITH BACKFLOW VALVES

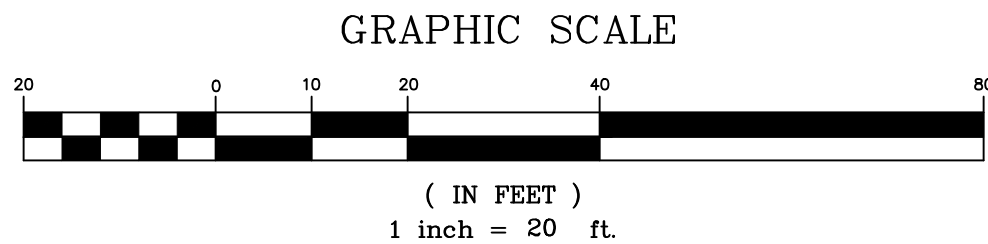
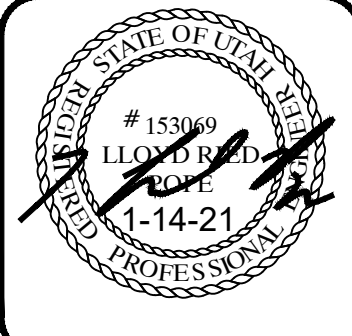
ALL LANDSCAPE AREAS TO BE COVERED BY 1"-3"
ROCK MULCH 2" MIN. DEPTH OVER DEVIANT WEED FABRIC
TO MATCH EXISTING ROCK MULCH.

SHRUBS TO HAVE MIN. HEIGHT OF 18" AT TIME OF
PLANTING

IRRIGATION MAIN LINES TO BE 1 1/2" DIA. SCH. 40 PVC



OWNER/DEVELOPER
CURTIS ANDERSON

[illegible]

LRP

1240 EAST 100 SOUTH SUITE 15-B
ST. GEORGE, UTAH
877. GEORGE. UTAH
PHONE, 435-628-1676
FAX, 435-628-1788
(EMAIL) lrpope@lrpope.com

L. R. POPE ENGINEERING INC.

STRUCTURAL ENGINEERS, CIVIL ENGINEERS & SURVEYORS

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CURTIS ANDERSON
SHADOW RIDGE APARTMENTS
LANDSCAPE PLAN

DESIGN BY LRP
DATE 10-26-20
FILE NAME CURTIS ANDERSON

24" x 36"
SCALE 1" = 20'
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SCALE 1" = 40'
SHEET NUMBER
C6.00

From: [Kyle Arbizu](#)
To: [Cindy Beteag](#)
Cc: [Landon A](#)
Subject: Re: agenda form
Date: Wednesday, January 26, 2022 11:08:12 AM
Attachments: [impactfees.pdf](#)
[impact-fee-handbook.pdf](#)

Cindy,

I've attached two studies on impact fees, one by HUD and one by The National Association of Home Builders. I'd put in our narrative that the location of this project requires little to no spending for street and parking infrastructure. We believe these costs should be reduced, so they commiserate with costs the City would incur. The other request was the reduction in Park fees which the proposed reduction we believe is still a large sum and pays for a good portion of a new park or would cover a long extension of walking or biking paths.

Kyle Arbizu
ARM®, HCCP®, CPM® Candidate
Managing Partner
Parkplace Residential, AMO®
[560 South Valley View Drive #3](#)
[Saint George, Utah 84770](#)
Office: [\(435\) 656-0770](#)
Mobile: [\(435\) 632-1493](#)
Fax: [\(844\) 672-5753](#)

Mailing
[PO BOX 727](#)
[Santa Clara, Utah 84765](#)
<https://www.pprmco.com>



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From: Cindy Beteag <cindy@cityofhurricane.com>
Date: Wednesday, January 26, 2022 at 10:21 AM
To: Kyle Arbizu <karbizu@pprmco.com>

Cc: Landon A <andersonlandon06@gmail.com>

Subject: RE: agenda form

Kyle,

You have been added to the agenda. This is how our code reads for adjustment requests:

• **Sec. 9-2-5. - Adjustments.**

A. Request. In order to ensure that impact fees are imposed fairly, and in order to respond to unusual circumstances in specific cases, the City may adjust the standard impact fee at the time the fee is charged. Such adjustment shall be made only upon specific written request to the City by persons subject to payment of such fees and after consideration of the matter by the City at a regular meeting of the City Council.

B. Submission of application; decision. The City may adjust the amount of impact fees to be paid on any specific development based upon studies and data submitted by the developer evidencing that the impact fee imposed is unfair or not reasonably related to the impacts caused by such new development. The application to adjust fees, together with any supporting data and studies, shall be submitted to the City staff for review and recommendation to the City Council. Within 30 days, the City Council shall consider all pertinent information and make any adjustments deemed appropriate at a regular meeting of the City Council.

Do you have any other supporting documents or studies that you want to include with your request?

Thank you,

Cindy Beteag

Cindy Beteag
City Recorder
Hurricane City
Office 435-635-2811 x 106

From: Kyle Arbizu <karbizu@pprmco.com>

Sent: Tuesday, January 25, 2022 10:25 AM

To: Cindy Beteag <cindy@cityofhurricane.com>

Cc: Landon A <andersonlandon06@gmail.com>

Subject: Re: agenda form

Cindy,

See completed form that has been attached. Please let us know if we can make it for the February 3rd agenda.

Thanks,

Kyle Arbizu
ARM®, HCCP®, CPM® Candidate
Managing Partner
Parkplace Residential, AMO®
560 South Valley View Drive #3
Saint George, Utah 84770
Office: (435) 656-0770
Mobile: (435) 632-1493
Fax: (844) 672-5753

Mailing
PO BOX 727
Santa Clara, Utah 84765
<https://www.pprmco.com>



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From: Cindy Beteag <cindy@cityofhurricane.com>
Date: Tuesday, January 25, 2022 at 9:46 AM
To: Kyle Arbizu <karbizu@pprmco.com>
Subject: agenda form

Cindy Beteag

Cindy Beteag
City Recorder
Hurricane City
Office 435-635-2811 x 106

Impact Fees

- An impact fee is a one-time charge imposed by local political subdivision (a municipality, county, special service district, etc) to mitigate the impact on local infrastructure caused by new development.
- Growth in the form of new homes and businesses requires expansion or enlargement of public facilities to maintain the same level and quality of public services for all residents of a community. Impact fees help fund expansion of public facilities necessary to accommodate new growth.
- Impact fees are governed by the Utah Impact Fees Act, found in Utah Code §11-36a-101 et. seq. A local political subdivision may charge impact fees by following the terms of the Impact Fees Act which requires approval and adoption of:
 - (a) a capital facilities plan, and
 - (b) an ordinance (Hurricane's impact fee ordinance is found in §9-2-1 et. seq of the Hurricane City Code.)
- A capital facilities plan is a complex analysis of a local government's existing level of public services, future needs due to anticipated growth and new development, and the anticipated cost to maintain the existing level of service. Adoption of a capital facilities plan requires notice and public hearing and is required if a governmental entity wishes to adopt an impact fee Ordinance.
- Impact fees may be used for permanent buildings and other physical facilities owned by the local government which have a life expectancy of more than 10 years. A local government may charge impact fees to fund the following public facilities:
 - (a) water systems and water rights
 - (b) roads
 - (c) wastewater systems
 - (d) stormwater control systems
 - (e) parks
 - (f) municipal power facilities
 - (g) public safety facilities (*i.e.*, police and fire facilities)
- Impact fees are intended to help fund expansion of public facilities, including acquisition of property or water rights, materials, and construction. Impact fees may not be used for routine maintenance of existing facilities, or for employee salaries.
- Impact fees may not be used to cure deficiencies in a public facility serving existing development or to raise the established level of service of a public facility serving existing development.
- In addition to containing a schedule of impact fees, an impact fee ordinance must contain provisions that:
 - (a) allows the local political subdivision to adjust the standard impact fee at the time the fee is charged to respond to unusual circumstances in specific cases and ensure that impact fees are fairly imposed,

- (b) governs calculation of the amount of the impact fee on a particular development in a way that permits adjustment of the impact fee based upon studies and data submitted by the developer, and
- (c) permits impact fee credit for dedication by the developer of a system improvement.

- An impact fee ordinance may not take effect until 90 days after the day on which the impact fee ordinance is approved.

- Low income housing, development activity attributable to the state, or other development activity with a broad public purpose may be exempt from impact fees if:

- (a) the impact fee ordinance allows such exemption, and

- (b) the ordinance establishes one or more sources of funds other than impact fees for that development activity.

- A local political subdivision may expend impact fees only for a system improvement identified in the capital facilities plan and for the specific public facility type for which the fee was collected. For example, a road impact fee must be spent on road construction, and a park impact fee must be spent on parks, etc.

- A local political subdivision must expend an impact fee within six (6) years after the impact fee is collected, except that impact fees may be held longer than six (6) years if the local political subdivision identifies in writing an extraordinary and compelling reason why the fees should be held longer than six (6) years and an absolute date by which the fees shall be expended.

- Impact fees must be kept in separate interest bearing accounts. At the end of each fiscal year, a report must be made which shows:

- (a) the amount and source for all money collected during the year

- (b) each expenditure from each account

- (c) the funds in each account by showing the year in which they were collected, the project for which they were collected, and the projected schedule for expenditure

- Impact fees are “exactions” within the meaning of exaction law. In order for such exaction to be valid:

- (a) there must be an essential link or “nexus” between a legitimate government interest and the impact fee, and

- (b) the amount of the impact fee must be “roughly proportionate” both in *nature* and *extent* to the impact of the proposed development.

A RESOLUTION OF THE CITY COUNCIL OF HURRICANE, UTAH, AFFIRMING
FUNDAMENTAL RIGHTS AND FREEDOMS GUARANTEED UNDER THE UTAH STATE
CONSTITUTION.

WHEREAS, when sworn in as public servants, the Mayor and each member of the Hurricane City Council pledged to uphold and defend the United States Constitution and to discharge their duties with fidelity; and

WHEREAS, the United States Constitution and, more specifically, the Due Process Clause of the Fourteenth Amendment, protects the fundamental right of parents to direct the care, upbringing, and education of their children; and

WHEREAS, the National Association of School Boards wrote a letter dated September 29, 2021 asking the U.S. Attorney General, Merrick Garland to use his political power to direct the FBI and the Department of Homeland Security (DHS) to target parents as “Domestic Terrorists” for being publicly vocal at school board meetings in opposition to their teaching Critical Race Theory (CRT), along with overtly sexual and inappropriate material to our children in our public schools; and

WHEREAS, the Attorney General did issue that directive to the FBI and DHS to target and go after parents, even in Utah, for expressing their opposition to the things being taught in our schools; and

WHEREAS, this misapplication of the law regarding “Domestic Terrorists” has resulted in parents facing prosecution for being vocal and have wrongfully been arrested, harassed and forbidden to attend, or participate, in school board meetings or even to speak to teachers or administrators, without the threat of being arrested, and

WHEREAS, parents, not the school board, are the primary caretakers and decision makers for their children and their education, and have every right, indeed the responsibility, to attend school board meetings and voice their concerns and opinions in that forum; and

WHEREAS, the Mayor and undersigned City Council members feel duty bound to raise an unequivocal voice against those things or actions that directly or indirectly attack or erode parents rights set forth by their constitutional rights and freedoms, that the Utah State Legislature has stated in Title 30-5a-103 and 62A-4a-201 that “it is the public policy of the state that a parent retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of the parent’s children,” and “The State recognizes that: “The States role is secondary and supportive to the Primary role of a parent” The State of Utah has also stated that “A fundamentally fair process must be provided to parents if the state moves to challenge or interfere with parents rights. A government entity must support any actions or allegations made in opposition to the rights and desires of a parent regarding the parent’s children by sufficient evidence to satisfy a parent’s constitutional entitlement to heightened protection against government interference with parent’s fundamental rights and liberty interests and, concomitantly, the right of the child to be reared by the child’s natural parent.”

BE IT HEREBY RESOLVED that we, as the Mayor and city council, declare that parents are THE primary stakeholders in their children's upbringing, and that as primary stakeholders, parents have the responsibility for what, and how, their children are taught. Parents have the unalienable right to participate in the political process on behalf of their children. All parties, including Parents, the Washington County School District, the Utah State Legislature, and the Utah Board of Education, as joint stakeholders in their respective areas of education, should seek partnership in ensuring the safety and proper education of children in the State of Utah and the entire Education System.

THEREFORE BE IT FURTHER RESOLVED that the Hurricane City Council and Mayor forward this resolution to the following parties, requesting:

1. The Utah Board of Education, the Utah School Board Association, and the Utah School Administrators Association (1) Publicly repudiate the National School Board Association's September 29th 'domestic terrorism' letter, (2) declare, by resolution, their affirmation that Parents are the Primary Stakeholders in their children's upbringing and are the "primary political participants" on behalf of their children's education, well-being, and future.
2. The Utah School Board Association withdraw its National School Board Association membership.
3. The Washington County School Board pass a resolution reaffirming its declaration that parents are the "primary" stakeholders in their children's education and upbringing, and commit to follow the Constitution of the United States and the State of Utah to protect the rights of parents to participate in the educational process, on behalf of their children, to ensure due process for all Parents.

DATED this _____ day of March, 2022.

Nanette Billings, Mayor

Attest:

Cindy Beteag, City Recorder

Council Members: Aye/Nay

Joseph Prete	_____
David Sanders	_____
David Hirschi	_____
Kevin Thomas	_____
Doug Heideman	_____



STAFF COMMENTS

Consideration and possible approval of a **contract award for a chip seal project.**

Discussion:

Findings:

3 Bids were received for this project. American Pavement Preservation out of Las Vegas was the low bidder. We have awarded contracts to this company in the past and they have performed well and their product was excellent.

Recommendation:

It is the recommendation of the staff that the slurry seal contract be awarded to American Pavement Preservation in the amount of \$195,218.66.

Attachments:

1. 2022 Chip Seal Bid Tabulation
2. 2022 Chip Seal Maps

2022 Chip Seal Project Bid Tabulation												
Contractor:			Interstate Rock Products		CKC Operations		CPCO		Staker Parsons		Intermountain	
Bid Schedule (Single Chip)												
Item	Quantity	Unit	Unit Price	Cost	Unit Price	Cost	Unit Price	Cost	Unit Price	Cost	Unit Price	Cost
Mobilization	1	Lump Sum	\$ 27,964.81	\$ 27,964.81	\$ 252.67	\$ 44,218.09	\$ 33,235.00	\$ 33,235.00	\$ 35,000.00	\$ 35,000.00	\$ 10,000.00	\$ 10,000.00
Traffic Control	1	Lump Sum	\$ 11,640.79	\$ 11,640.79	\$ 2,456.16	\$ 17,193.09	\$ 4,025.00	\$ 4,025.00	\$ 52,000.00	\$ 52,000.00	\$ 10,000.00	\$ 10,000.00
Chip Seal, Single Layer	147606	SY	\$ 1.01	\$ 149,082.06	\$ 1.16	\$ 171,222.96	\$ 1.01	\$ 149,082.06	\$ 1.40	\$ 206,648.40	\$ 0.90	\$ 132,845.40
LMCRS-2H Oil	248	Ton	\$ 838.14	\$ 207,858.72	\$ 771.68	\$ 191,376.64	\$ 746.60	\$ 185,156.80	\$ 860.00	\$ 213,280.00	\$ 725.00	\$ 179,800.00
			Total:	\$ 396,546.38	Total:	\$ 424,010.78	Total:	\$ 371,498.86	Total:	\$ 506,928.40	Total:	\$ 332,645.40
Alternate A Bid Schedule (Double Chip)												
Item	Quantity	Unit	Unit Price	Cost			Unit Price	Cost	Unit Price	Cost	Unit Price	Cost
Mobilization	1	Lump Sum	\$ 40,769.68	\$ 40,769.68			\$ 50,232.00	\$ 50,232.00	\$ 38,000.00	\$ 38,000.00	\$ 10,000.00	\$ 10,000.00
Traffic Control	1	Lump Sum	\$ 24,445.67	\$ 24,445.67			\$ 6,957.50	\$ 6,957.50	\$ 88,000.00	\$ 88,000.00	\$ 15,000.00	\$ 15,000.00
Chip Seal, Double Layer	147606	SY	\$ 1.76	\$ 259,786.56			\$ 1.69	\$ 249,454.14	\$ 2.80	\$ 413,296.80	\$ 1.80	\$ 265,690.80
LMCRS-2H Oil	496	Ton	\$ 838.14	\$ 415,717.44			\$ 746.60	\$ 370,313.60	\$ 860.00	\$ 426,560.00	\$ 725.00	\$ 359,600.00
			Total:	\$ 740,719.35			Total:	\$ 676,957.24	Total:	\$ 965,856.80	Total:	\$ 650,290.80
Alternate B Bid Schedule (900 South)												
Item	Quantity	Unit	Unit Price	Cost			Unit Price	Cost	Unit Price	Cost	Unit Price	Cost
Mobilization	1	Lump Sum	\$ 3,903.33	\$ 3,903.33			\$ 4,910.50	\$ 4,910.50	\$ 4,000.00	\$ 4,000.00	\$ 2,500.00	\$ 2,500.00
Traffic Control	1	Lump Sum	\$ 2,910.22	\$ 2,910.22			\$ 460.00	\$ 460.00	\$ 2,000.00	\$ 2,000.00	\$ 5,000.00	\$ 5,000.00
Chip Seal, Double Layer	4641	SY	\$ 6.52	\$ 30,259.32			\$ 4.40	\$ 20,420.40	\$ 9.20	\$ 42,697.20	\$ 11.00	\$ 51,051.00
LMCRS-2H Oil	8	Ton	\$ 1,129.17	\$ 9,033.36			\$ 1,699.53	\$ 13,596.24	\$ 1,100.00	\$ 8,800.00	\$ 4,000.00	\$ 32,000.00
			Total:	\$ 46,106.23			Total:	\$ 39,387.14	Total:	\$ 57,497.20	Total:	\$ 90,551.00



0 1,500 3,000 6,000 Feet

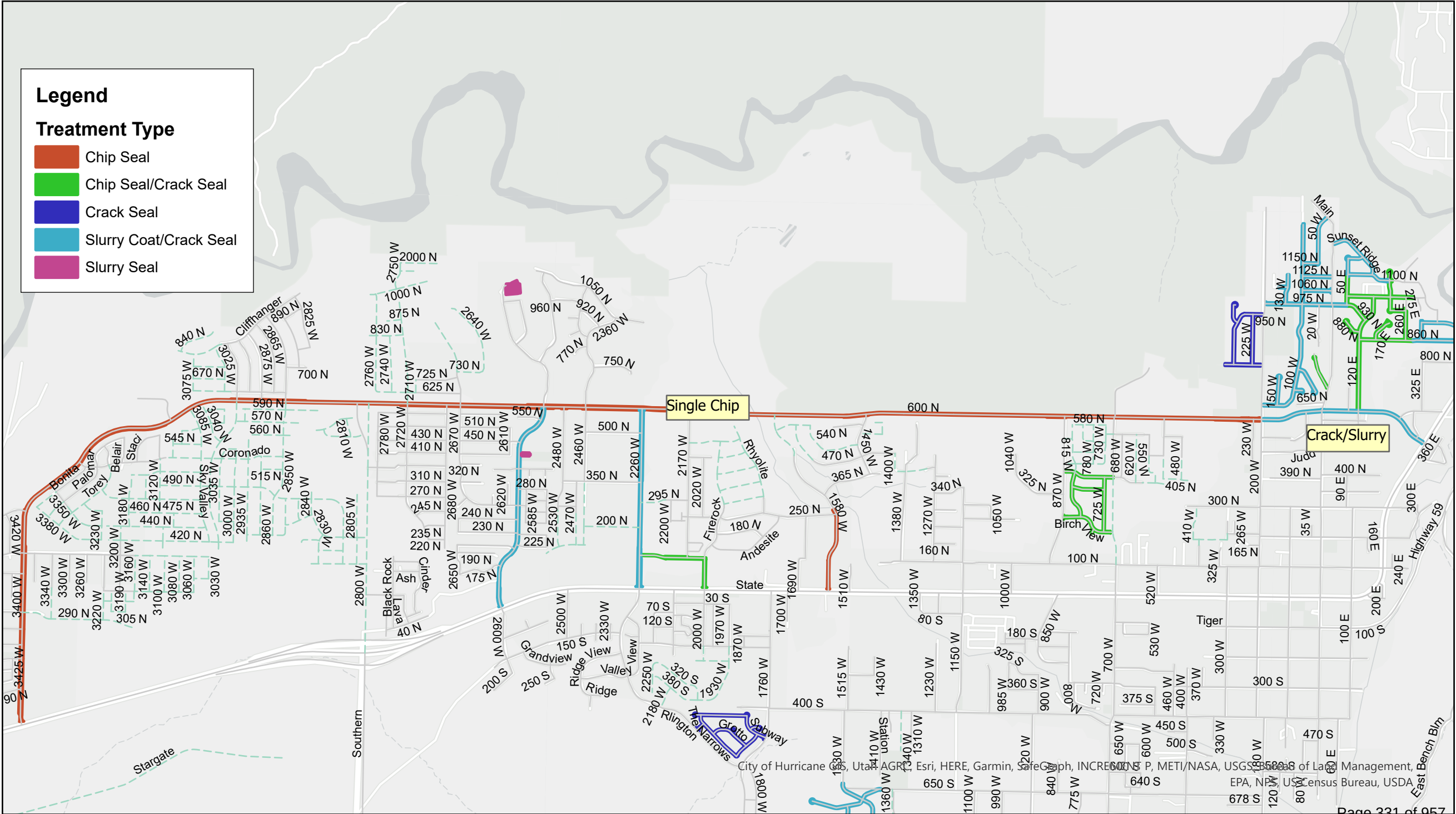
600 North

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Legend

Treatment Type

- Chip Seal
- Chip Seal/Crack Seal
- Crack Seal
- Slurry Coat/Crack Seal
- Slurry Seal



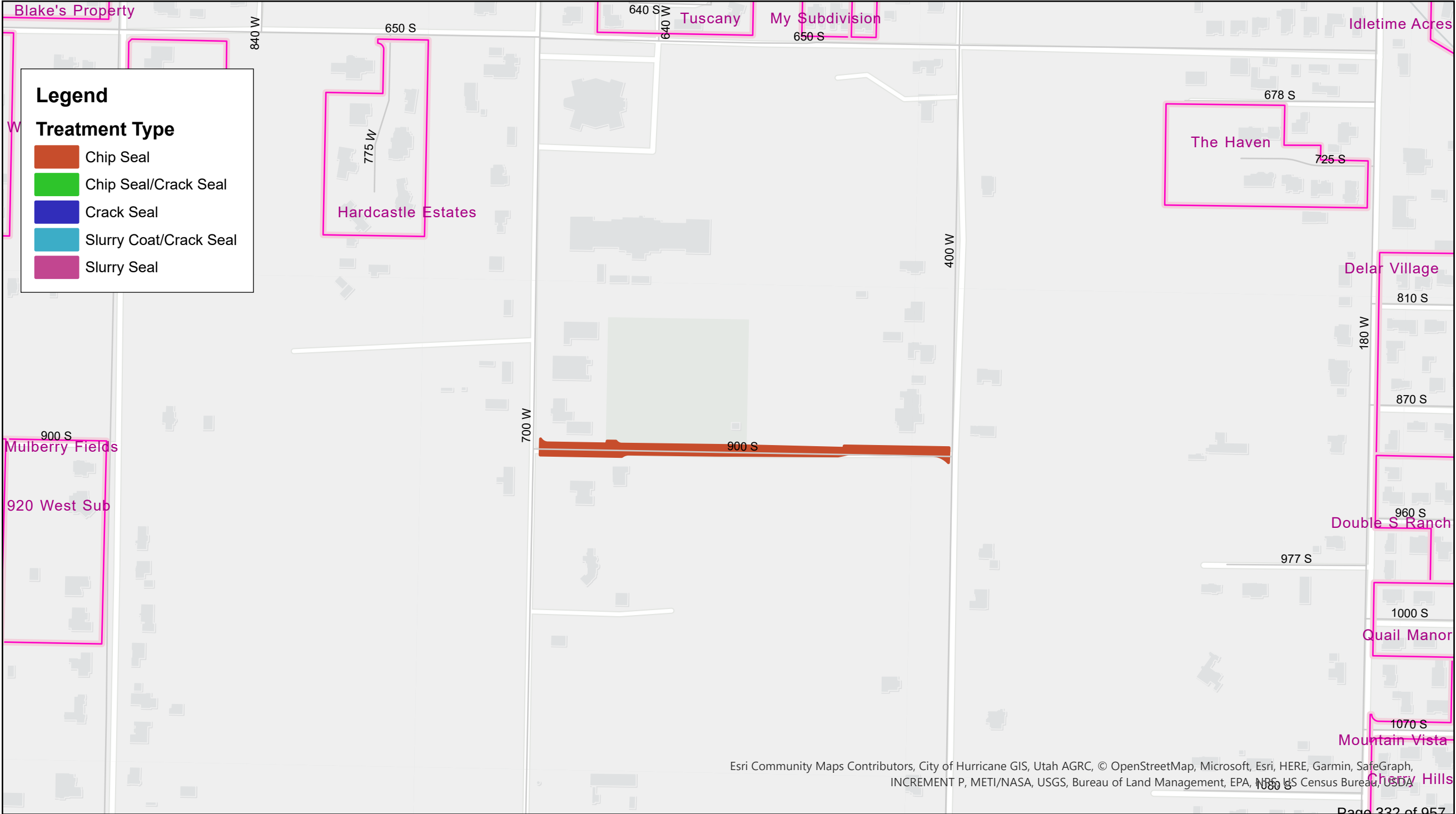


0 275 550 1,100 Feet

900 South
Double Chip



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0 195 390 780 Feet

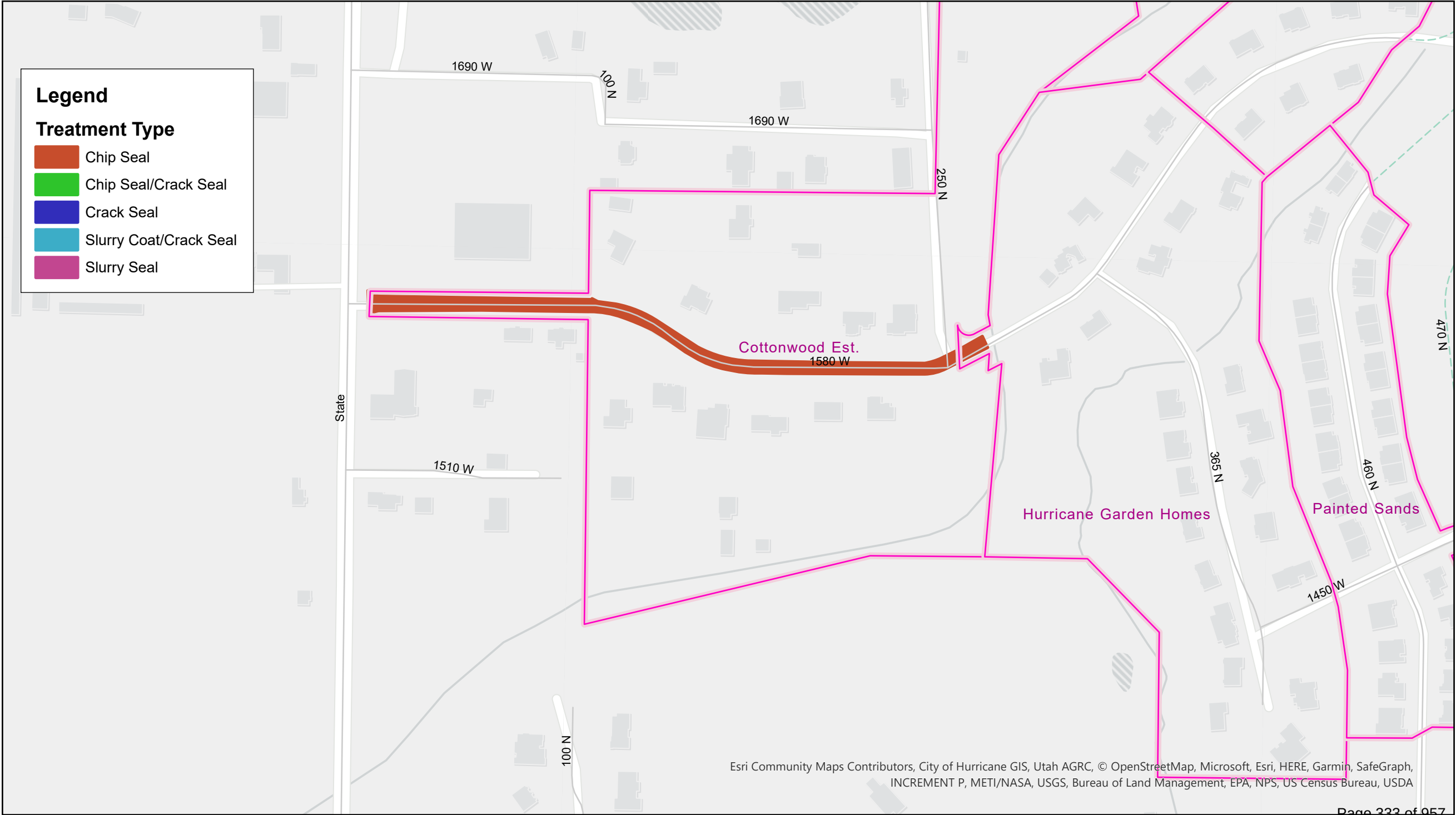
1580 W Double Chip

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Legend

Treatment Type

- Chip Seal
- Chip Seal/Crack Seal
- Crack Seal
- Slurry Coat/Crack Seal
- Slurry Seal





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0 300 600 1,200 Feet

3400 W Single Chip

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Legend

Treatment Type

Chip Seal

Chip Seal/Crack Seal

Crack Seal

Slurry Coat/Crack Seal

Slurry Seal

Chip Seal

Chip Seal/Crack Seal

Crack Seal

Slurry Coat/Crack Seal

Slurry Seal

The map displays a network of streets and treatment areas. The main road is 3400 W, highlighted in orange. Other streets include 3520 W, 3510 W, 3460 W, 3420 W, 3380 W, 3340 W, 3300 W, 3260 W, 3220 W, 3180 W, 3140 W, 3100 W, 3060 W, 3020 W, 2980 W, 2940 W, 2900 W, 2860 W, 2820 W, 2780 W, 2740 W, 2700 W, 2660 W, 2620 W, 2580 W, 2540 W, 2500 W, 2460 W, 2420 W, 2380 W, 2340 W, 2300 W, 2260 W, 2220 W, 2180 W, 2140 W, 2100 W, 2060 W, 2020 W, 1980 W, 1940 W, 1900 W, 1860 W, 1820 W, 1780 W, 1740 W, 1700 W, 1660 W, 1620 W, 1580 W, 1540 W, 1500 W, 1460 W, 1420 W, 1380 W, 1340 W, 1300 W, 1260 W, 1220 W, 1180 W, 1140 W, 1100 W, 1060 W, 1020 W, 980 W, 940 W, 900 W, 860 W, 820 W, 780 W, 740 W, 700 W, 660 W, 620 W, 580 W, 540 W, 500 W, 460 W, 420 W, 380 W, 340 W, 300 W, 260 W, 220 W, 180 W, 140 W, 100 W, 60 W, 20 W. The map also shows various treatment areas: Zions Gate RV, Zion Gate Est, Rock Hampton, Canyon Ridge, Park View, Wal-Mart Hurricane, and Coronado Ridge. The map is titled '3400 W Single Chip' and includes a legend for treatment types: Chip Seal (orange), Chip Seal/Crack Seal (green), Crack Seal (blue), Slurry Coat/Crack Seal (light blue), and Slurry Seal (purple). The map is provided on an as is basis and includes a disclaimer.

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0 230 460 920 Feet

3700 W Double Chip

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Legend

Treatment Type

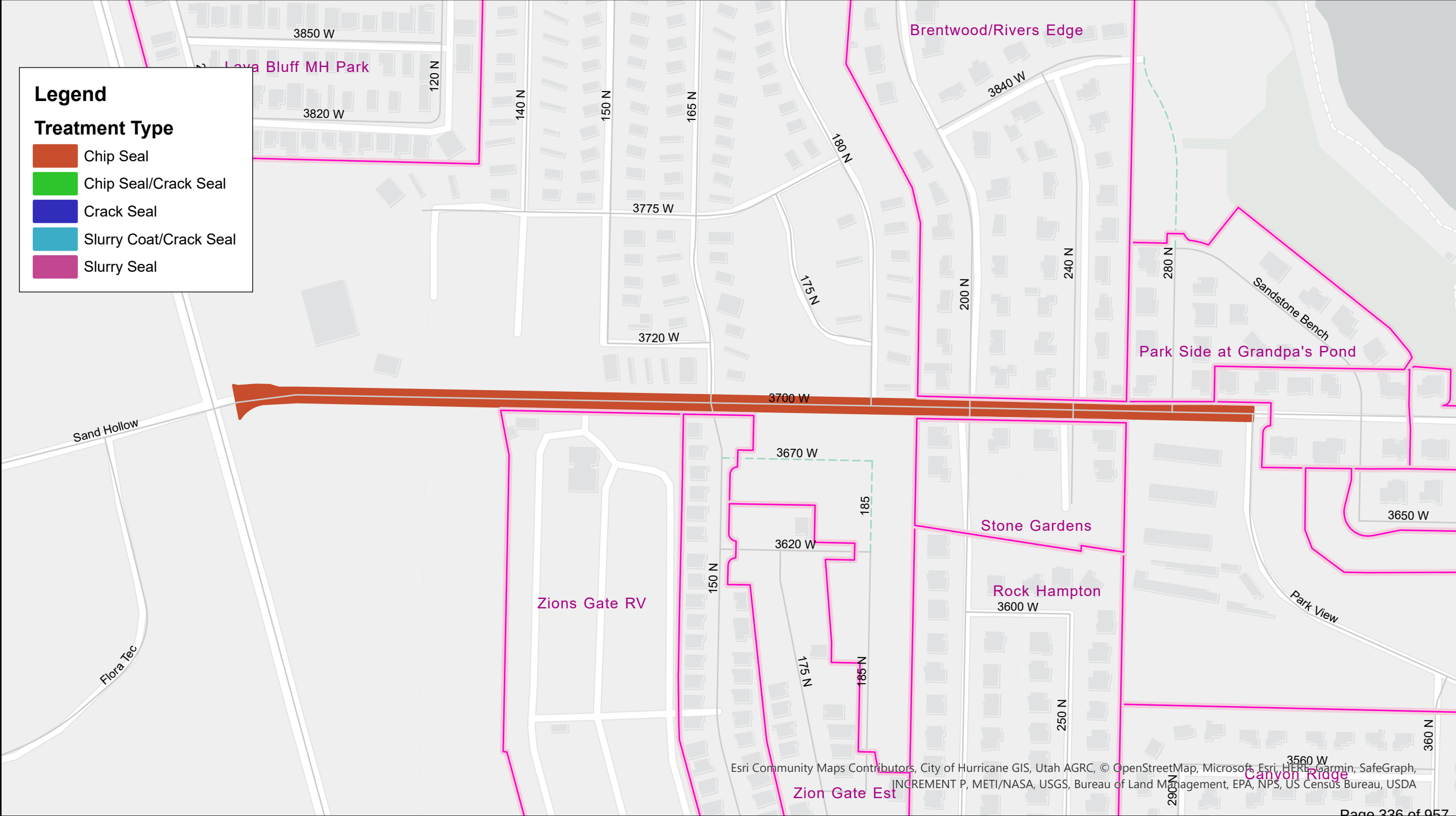
Chip Seal

Chip Seal/Crack Seal

Crack Seal

Slurry Coat/Crack Seal

Slurry Seal





0 275 550 1,100 Feet

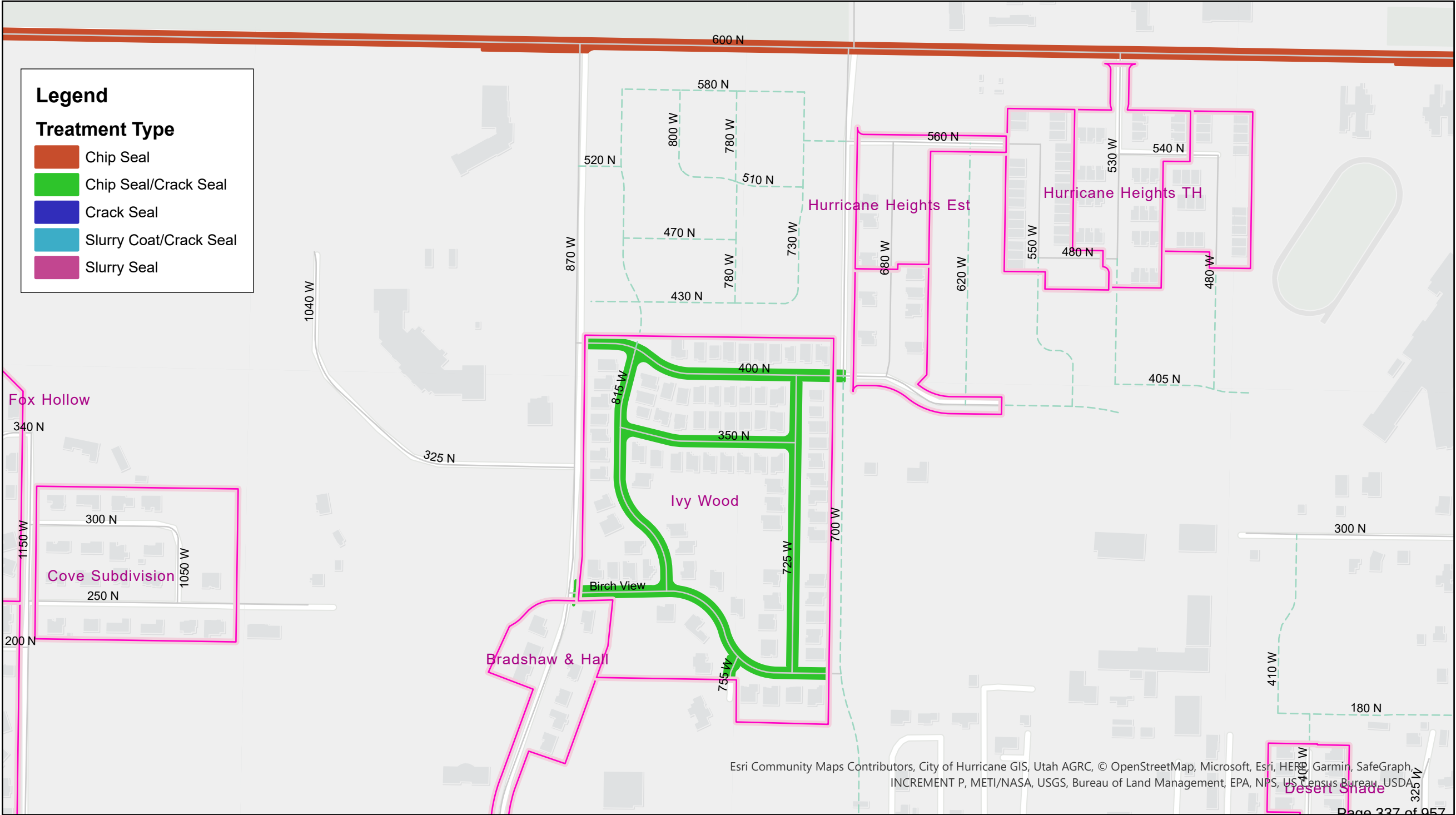
Ivy Wood Sub Single Chip

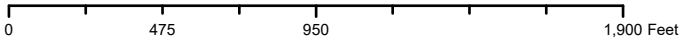
This map is provided on an as is basis. The City of Hurricane makes no warranties expressed or implied as to the quality, and completeness, of the map and data provided. While the City of Hurricane has reviewed the information on this map, in no event shall the City of Hurricane be liable for damages arising from use by others.

Legend

Treatment Type

-  Chip Seal
-  Chip Seal/Crack Seal
-  Crack Seal
-  Slurry Coat/Crack Seal
-  Slurry Seal





NE Hurricane Slurry/Crack
River View\Onyx Hills\Green Acres North Single Chip

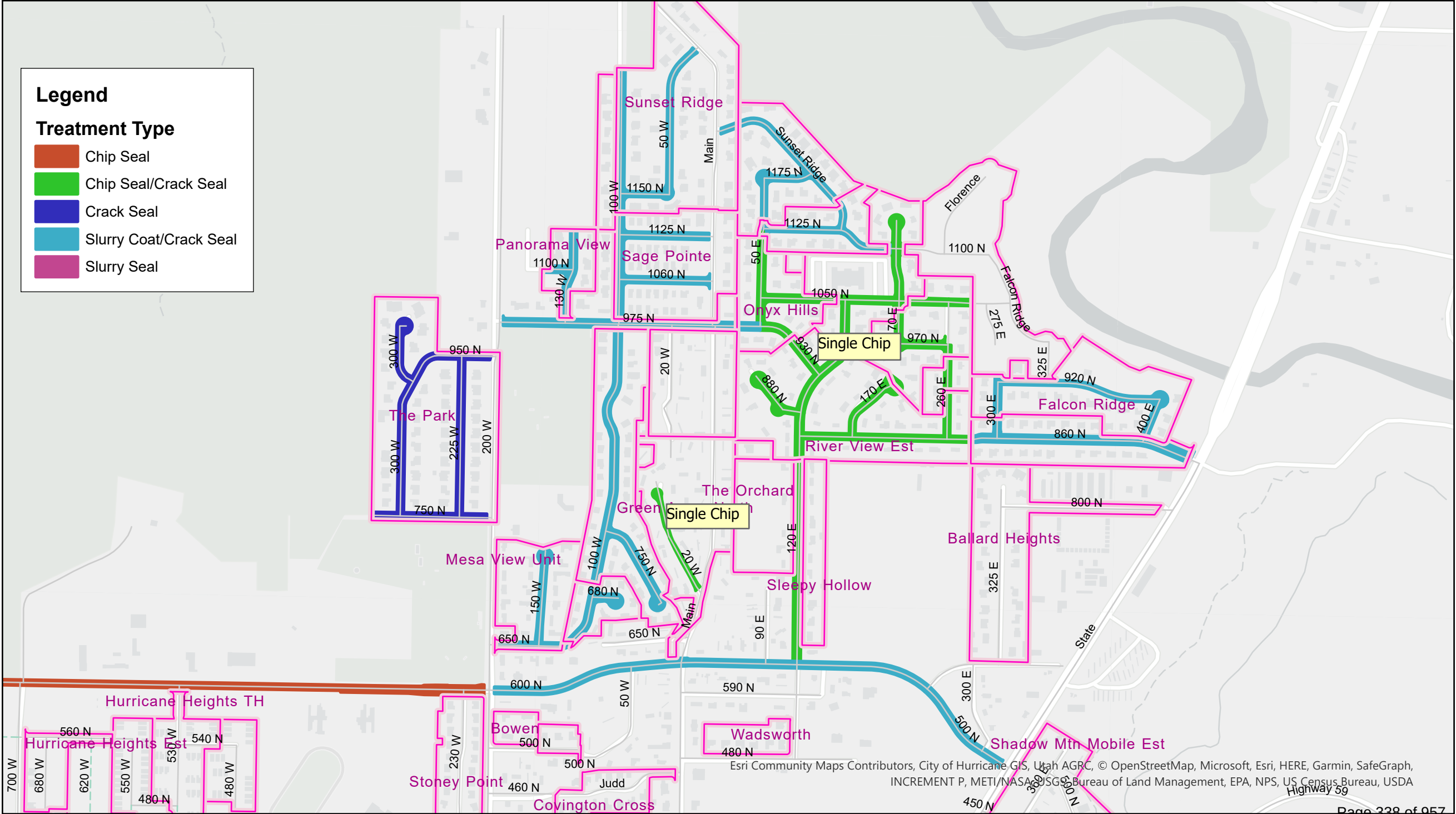


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Legend

Treatment Type

- Chip Seal
- Chip Seal/Crack Seal
- Crack Seal
- Slurry Coat/Crack Seal
- Slurry Seal



1-4-1: SENTENCING:

A. Penalty For Violation Of Ordinance **1** : Unless otherwise specifically authorized by statute, the city council may provide a penalty for the violation of any city ordinance by a fine not to exceed the maximum class B misdemeanor fine under Utah Code Annotated section 76-3-301, or by a term of imprisonment up to six (6) months, or by both the fine and term of imprisonment. The city council may prescribe a minimum civil or criminal penalty for the violation of any city ordinance ~~and may impose a civil penalty for the unauthorized use of city property, including, but not limited to, the use of parks, streets and other public grounds or equipment. Rules of civil procedure shall be substantially followed. (2000 Code)~~

1. Exceptions: The municipality may not impose a civil penalty and adjudication for the violation of a municipal moving traffic ordinance, except as authorized in U.C.A. § 10-3-703.5.

Commented [1]: That's in the state law

B. Term Of Imprisonment For Misdemeanors **2** : A person who has been convicted of a misdemeanor may be sentenced to imprisonment as follows:

1. In the case of a class B misdemeanor, for a term not exceeding six (6) months;
2. In the case of a class C misdemeanor, for a term not exceeding ninety (90) days. (1998 Code § 1-322)

C. Infractions **3** :

1. A person convicted of an infraction may not be imprisoned but may be subject to a fine, forfeiture and disqualification, or any combination. (1998 Code § 1-323; amd. 2000 Code)
2. Whenever a person is convicted of an infraction and no punishment is specified, the person may be fined as for a class C misdemeanor. (1998 Code § 1-323)

D. Fines Of Persons **4** : A person convicted of an offense may, in addition to any term of imprisonment imposed, be sentenced to pay a fine not to exceed:

1. Class B Misdemeanor: One thousand dollars (\$1,000.00) when the conviction is of a class B misdemeanor conviction; and
2. Class C Misdemeanor; Infraction: Seven hundred fifty dollars (\$750.00) when the conviction is of a class C misdemeanor conviction or infraction conviction. (1998 Code § 1-331; amd. 2000 Code)

E. Fines Of Corporations **5** : The sentence to pay a fine, when imposed upon a corporation, association, partnership or governmental instrumentality for an offense defined in this code, or the ordinances of the city, or for an offense defined outside of this code over which this city has jurisdiction, for which no special corporate fine is specified, shall be to pay an amount fixed by the court, not exceeding:

1. Class B Misdemeanor: Five thousand dollars (\$5,000.00) when the conviction is for a class B misdemeanor conviction; and

2. Class C Misdemeanor; Infraction: One thousand dollars (\$1,000.00) when the conviction is for a class C misdemeanor conviction or for an infraction conviction. (1998 Code § 1-332; amd. 2000 Code)

F. Bail/Fee Schedule:

CRIMINAL BAIL/FEE SCHEDULE FOR HURRICANE CITY ORDINANCES

Commented [2]: This table needs to be reformed at some point

Code Violation	Description	Class	Recommended Bail Amount	Recommendations For Notes
----------------	-------------	-------	-------------------------	---------------------------

	Business License Violations			
3-1-4	No business license	B	\$200.00	
3-2-4	Sale of alcohol without a license	B	600.00	
3-3A	Failure to pay sales tax	B	100.00	

3-4-5	Operation of a sexually oriented business without a valid license	B	400.00	
3-4-9	Employee of an SOB not licensed	B	300.00	
3-5-2	No transient merchant license	B	200.00	No mandatory court appearance required
3-6-5	Solicitation prohibited/no solicitor's license	B	360.00	No mandatory court appearance required
3-6-18	Solicitor violation of a "No Solicitation" notice	B	100.00	No mandatory court appearance required
3-6-19	Solicitor violating time of day restrictions	B	100.00	No mandatory court appearance required
3-9-2	No business license for rental property	B	200.00	

3-9-3	Rental of property in a residential zone for less than 30 days	B	300.00	
3-10-2	No on site manager	Infraction	50.00	
3-10-4	No guest register available/license not displayed	Infraction	50.00	
3-10-5	Occupancy violation	Infraction	50.00	
3-10-6	Room rented to a minor	Infraction	50.00	
3-10-7	Room rented for longer than 30 days	Infraction	50.00	
3-10-8	Sanitation requirements violation (each violation)	Infraction	50.00	
3-10-9	Failure to cooperate with an inspection	Infraction	50.00	
3-10-10	Failure to report violation of the law	Infraction	50.00	

	Public Health And Safety Violations			
4-2-3	Maintaining a public nuisance	C	100.00	
4-3-2	Weed nuisance	C	100.00	
4-4-1	Burn permit required	Infraction	100.00	
4-5-3	Disposal not in landfill	Infraction	100.00	
4-6-5	Litter regulations	Infraction	100.00	
4-6-6	Handbill regulations	Infraction	100.00	
4-8-1	No restroom facility	B	100.00	No mandatory court appearance required
4-8-2	No/improper dumpster	B	100.00	No mandatory court appearance required
4-8-3	Failure to place waste in dumpster	B	100.00	No mandatory court

				appearance required
4-8-4	Failure to dispose of waste	B	100.00	No mandatory court appearance required
4-9-1	Noise	Infraction	50.00	
4-10-4	Fugitive dust		Administrative	
4-11-4	Fireworks	B	\$100.00	
	Animal Control Violations			
5-2-3A1	2 limit kennel license	Infraction	100.00	
5-2-3A4a	No license each dog (first offense)	Infraction	50.00	Suspend \$10.00 on compliance
5-2-3A4a	No license each dog (second/subsequent offense)	Infraction	75.00	Suspend \$10.00 on compliance
5-2-3D3	Dog bite	Infraction	100.00	

5-2-3E1	No rabies vaccination (first offense)	Infraction	50.00	Suspend \$10.00 on compliance
5-2-3E1	No rabies vaccination (second/subsequent offense)	Infraction	75.00	Suspend \$10.00 on compliance
5-2-4A1	At large dog (first offense/each dog)	Infraction	50.00	
5-2-4A1	At large dog (second/subsequent offense per dog)	Infraction	75.00	
5-2-4A2	At large other	Infraction	50.00	
5-2-4A2	At large other (second/ subsequent offense)	Infraction	75.00	
5-2-4D/ 5-2-7A	Vicious animal not controlled	Infraction	100.00	
5-2-4E	Defecate in public place	Infraction	100.00	
5-2-4G	Animal trespass	Infraction	100.00	

5-2-4H	Poisoning	Infraction	100.00	
5-2-4K	Fail to give care	Infraction	100.00	
5-2-4K3	Promoting animal fighting	Infraction	100.00	
5-2-5A6	Chase cars	Infraction	50.00	
5-2-5A7	Attacks other animals	Infraction	100.00	
5-2-5A	Nuisance animal other offense	Infraction	100.00	
5-2-5B	Excessive barking	Infraction	100.00	
5-2-8B	Hit and run dog with car	Infraction	100.00	
5-2-11K	Retaking animal unlawfully	Infraction	50.00	
	Other Police Regulations			
5-3-2	Loitering	Infraction	50.00	

5-3-3	Discharging weapons in city limits (firearms)	B	100.00	
5-3-3	Discharging weapons in city limits (air rifle)	Infraction	50.00	
5-4-1A	Curfew	B	100.00	
5-4-1B	Parents responsible for curfew	Infraction	50.00	
	Vehicle Violations			
6-1-3D1	Too many vehicles for sale	Infraction	50.00	
6-1-3E2	Illegal parking of a semi	Infraction	100.00	
The late fee for parking violations shall be as follows (6-1-3F): \$20.00 if paid after 14 days following the violation notice. \$5.00 additional per month if not paid within 30 days.				
	Public Ways And Property Violations			

7-1-3	Obstructing the public right of way/construction materials in the roadway	B	\$100.00	No mandatory court appearance required
7-1-8	Illegal operation of an ATV	Infraction	50.00	
7-2-5	Concrete on the street	B	100.00	
7-3-3	Excavating in the street without a permit	B	200.00	
7-5-12B	Defacing headstone/landscape at the cemetery	Infraction	100.00	
7-6-2A	Defacing anything at a park	Infraction	100.00	
7-6-2B	Alcohol in parks	Infraction	100.00	
7-6-2C	Indecent language	Infraction	50.00	
7-6-2D	Camping in unassigned area	Infraction	50.00	

7-6-2E	Motor vehicles in park	Infraction	50.00	
7-6-2F	Skateboards at park	Infraction	50.00	
7-6-2G	Livestock in park	Infraction	50.00	
7-6-2I	Endangering a person	Infraction	50.00	
7-6-2J	Fire in unapproved area	Infraction	100.00	
7-6-2K	Posting handbills/ solicitation at park	Infraction	50.00	
7-6-2L	Weapon or firearm in park	Infraction	50.00	
7-6-2M	Teaching for profit without a permit	Infraction	50.00	
7-6-2O	Entertainment/exhibition without a permit	Infraction	50.00	
7-6-3A	Parks closed after dark	Infraction	50.00	

7-7-2	Failure to obtain an event permit	B	200.00	
	Land Use Code Violations			
10-9-5A	Development or use without a permit	C	150.00	
10-9-5B	Use inconsistent with permit	C	150.00	
10-9-5C	Use inconsistent with conditions of approval	C	150.00	
10-9-5D	Use inconsistent with land use title	C	150.00	
10-9-5E	Lot or setback nonconforming	C	150.00	
10-9-5F	Increasing intensity of use	C	150.00	
10-9-5G	Removing, defacing, or obscuring notice	C	150.00	

10-12-3A	Violation of use in an agricultural zone	C	150.00	
10-13-3A	Violation of use in a residential zone	C	150.00	
10-14-3A	Violation of use in a residential agriculture zone	C	150.00	
10-15-3A	Violation of use in a commercial zone	C	150.00	
10-16-3A	Violation of use in business and industrial zones	C	150.00	
10-17-3A	Violation of use in an open space and public facility zone	C	150.00	
10-32-7D	Failure to maintain landscape	C	150.00	
10-36	Sign ordinance violation	C	150.00	
10-37-5	Illegal accessory building/structure	C	150.00	

10-37-9	Fence too high	C	150.00	
10-37-9E	Fence is a visual obstruction	C	150.00	
10-42-3	Violation of home based business regulation	C	150.00	
10-43-3B	Illegal location of a manufactured/mobile home	C	150.00	
10-43-3C	Illegal location of an occupied recreational vehicle	C	150.00	
10-48-3B	No temporary use permit	C	150.00	
10-50-5	Violation of zoning for wireless telecommunications facilities	C	150.00	
10-51-3	Operating a bed and breakfast without a permit	C	150.00	

(Ord. 2008-6, 3-20-2008; amd. Ord. 2009-05, 4-16-2009; Ord. 2009-16, 11-5-2009; Ord. 2016-09, 10-20-2016; Ord. 2017-02, 1-5-2017; Ord. 2017-04, 2-2-2017)

Notes

1 1. UCA § 10-3-703.

2 2. UCA § 76-3-204.

3 3. UCA § 76-3-205.

4 4. UCA § 76-3-301.

5 1. UCA § 76-3-302.

1-4-2: OFFENSES DESIGNATED; CLASSIFIED:

A. Sentencing In Accordance With Chapter:

1. A person adjudged guilty of an offense under this code or the ordinances of this city shall be sentenced in accordance with the provisions of this chapter.

2. Ordinances enacted after the effective date of this code which involve an offense should be classified for sentencing purposes in accordance with this chapter, unless otherwise expressly provided. (1998 Code § 1-311)

B. Designation Of Offenses: Offenses are designated as misdemeanors or infractions. (1998 Code § 1-312)

C. Misdemeanors Classified 1 :

1. Misdemeanors are classified into two (2) categories:

- a. Class B misdemeanors;
- b. Class C misdemeanors.

2. An offense designated as a misdemeanor or any act prohibited or declared to be unlawful in this code or any ordinance of this city when no other specification as to punishment or category is made, is a class B misdemeanor. (1998 Code § 1-313)

D. Infractions:

1. Infractions are not classified.

2. Any offense which is made an infraction in this code or other ordinances of this city, or which is expressly designated an infraction and any offense designated by this code or other ordinances of this city which is not designated as a misdemeanor and for which no penalty is specified is an infraction. (1998 Code § 1-314)

E. Continuing Violation: In all instances where the violation of this code or any ordinance hereinafter enacted is a continuing violation, a separate offense shall be deemed committed on each day during or on which the violation occurs or continues to occur. (1998 Code § 1-315)

Notes

¹ 1. UCA § 76-3-104.

1-4-3: ADMINISTRATIVE HEARINGS:

A. Request: Unless otherwise specifically provided in any ordinance of the city or any code adopted by reference, a hearing before the city council may be requested by any person:

1. Who is denied or refused a permit or license by any officer, agent or employee of this city.

2. Whose permit or license is revoked, restricted, qualified or limited from that for which it was first issued. (1998 Code § 1-411)

B. Form Of Request; Time Limitation: The request for hearing must be made in writing to the mayor or city recorder-clerk and made within thirty (30) days following the date notice denying, refusing, revoking, qualifying or restricting the license or permit is mailed by the city to the applicant or license holder at his address as it appears on the application or license. (1998 Code § 4-412)

C. Procedure:

1. Time And Place: Following receipt of a request for hearing, the city council shall inform the person requesting a hearing of the time and place the hearing is to be held.

2. Witnesses; Evidence: At the hearing, the aggrieved party shall have the right to hear and examine any witnesses the city may produce to support its decision and to present his own evidence in support of his contention.

3. Decision Of City Council: The city council shall, within ten (10) days following the conclusion of the hearing, in writing, inform the person who requested the hearing of the decision of the city council. (1998 Code § 1-413)

D. Not Additional Remedy: This section shall not be construed so as to afford any aggrieved party more than one hearing before the city council nor shall the hearing provided in this section apply to any criminal complaint or proceeding. (1998 Code § 1-414)

1-4-4: RETURNED CHECKS OR OTHER NEGOTIABLE INSTRUMENTS:

Any person who makes, draws, signs or issues a check, draft, order or other instrument to the city of Hurricane shall be liable for the amount of such check, draft, order or instrument, plus a service fee in the amount of twenty dollars (\$20.00), if the check is not honored upon presentment and is marked "refer to maker", or the account upon which the check, draft, order or instrument is drawn does not exist, has been closed or does not have sufficient funds for payment in full of the check, draft, order or instrument. (Ord. 21-5-3, 5-3-2001)

1-5-5 CIVIL ENFORCEMENT

The City may impose civil penalties for the violation of any requirement, regulation, ordinance, or other provision of the Hurricane City Code. When imposing a civil penalty for violation of any requirement, regulation, ordinance, or other provision of the Hurricane City Code, the City shall follow the procedure of this section. Civil enforcement of any violation is only one option for enforcement. Nothing in this section removes the City's ability to use criminal proceedings or other enforcement strategies authorized by state law and this code in the resolution of code violations.

A. Notice of violation. Upon inspection and discovery that any provision of Hurricane City Code is being violated, the Planning Director, Chief of Police, Code Enforcement Officer, City Recorder or designee, shall provide written notice of the violation to the property owner, and in addition, may provide written notice of the violation to any other responsible party.

1. The notice of violation shall: (1) indicate the nature of the violation; (2) order the necessary action to correct the violation; (3) establish a reasonable time period for the necessary corrective actions to be completed (the "warning period"); and (4) state that the property owner and other responsible party (if any) will be subject to civil penalties if the violation is not corrected within the warning period.

2. The warning period shall be the minimum time period reasonably necessary to correct the violation, given the nature of the violation and the amount of effort needed to correct the violation. The warning period could be as short as several hours or as long as several weeks.

3. The notice of violation shall be delivered personally or mailed to the owner of record at the address shown on the records of the County Recorder, or to a person designated, in writing, by the owner of record as the owner's agent for the purpose of receiving notice of an ordinance violation. The notice of violation may also be delivered personally or mailed to any other responsible party. Personal delivery or mailing of the written notice shall serve to start the warning period.

B. Civil citation. If the violation remains uncorrected at the end of the warning period, the Planning Director, Chief of Police, [City Recorder](#) or Code Enforcement Officer may issue a civil citation to the property owner and/or other responsible party.

1. The civil citation shall be personally delivered, or mailed to the property owner, as shown on the records of the County Recorder.

2. The civil citation shall serve to start the imposition and accrual of civil penalties. The civil citation shall state that civil penalties are being assessed to the property owner and/or other responsible party for each day the violation persists, beginning on the date the civil citation is personally delivered or mailed.

C. Referral to Police Department. The Planning Director or Code Enforcement Officer may refer any violation to the Chief of Police for an immediate criminal enforcement action, as allowed by state law.

D. Daily violations. If provided in the citation, each day a violation is continued or maintained after the date the civil citation is personally delivered or mailed is considered a separate violation and shall give rise to a separate civil penalty for each day of violation. The filing of an appeal does not stop the daily accrual of any penalty unless the civil hearing officer ultimately dismisses the citation.

E. Civil penalties. A violation of any provision of this Code shall result in a civil penalty pursuant to the following schedule:

<u>Violation</u>	<u>Penalty</u>
<u>Unlicensed short-term rental (see section 3-10-11)</u>	<u>\$750 per day</u>
<u>Violation of short-term rental licensing standards (see section 3-10-11)</u>	<u>\$750 per day</u>
<u>Violation of zoning and licensing standards for Residential Hosting (see section 10-51)</u>	<u>\$750 per day</u>

F. Correction of violation required. The payment of a civil penalty does not relieve the obligation to correct the violation. The property owner or other responsible party is required to correct the violation regardless of whether or not the civil penalty has been paid.

G. Citation appeal. Any person who has received a civil citation and who wishes to dispute the violation may appeal the citation in writing to the civil hearing officer within 15 calendar days after the citation has been issued. If a person who has received a citation does not appeal within 15 days, the right to an appeal is lost. In such case, the person shall be responsible for both correcting the violation and paying all applicable civil penalties.

H. Appeal procedures.

1. The City Manager shall appoint the Civil Hearing Officer.

2. The Hearing Officer shall adopt rules of procedure that govern the review and adjudication of civil citation appeals. Such rules shall provide a meaningful opportunity for the appellant to present evidence documenting one of the following defenses:

a. At the time of the citation and at all times ensuing, the alleged violation did not and does not exist.

b. At the time of citation, compliance with the subject ordinance(s) would have violated the criminal laws of the state.

c. Compliance with the subject ordinance(s) would have presented an imminent and irreparable physical injury to persons or property.

d. The violation and failure to correct the violation were both caused by a force majeure event such as war, act of nature, or civil disturbance.

3. After reviewing the appeal, the Civil Hearing Officer may dismiss the citation only on a finding that one of the four defenses in paragraph 2 above applies to the appeal. If the hearing officer finds none of the defenses apply, the Hearing Officer shall uphold the citation and associated civil penalties. If the hearing officer upholds the citation, daily civil penalties shall continue to accrue after the hearing until the violation is corrected.

4. If the Hearing Officer upholds the citation, the Hearing Officer may, in the interest of justice and on behalf of the City, enter into an agreement for the delayed or periodic payment of the civil penalty by the violator.

5. If the Civil Hearing Officer upholds the citation, the hearing officer may partially or wholly abate the civil penalties for one of the following reasons only:

a. The violation was corrected promptly after the issuance of the civil citation and at the time of the appeal hearing the violation does not exist.

b. There has been a change in the actual ownership of the property where the violation exists since the time the citation was written, and the new owner is not related by blood, marriage, adoption, or common ownership to the prior owner.

I. Late fees. A late fee will be assessed for any unpaid civil penalty in instances where daily penalties are not accruing (such as when a violation has been corrected on the property but the civil penalty imposed by a citation for the earlier violation has not been paid, or when the violation was transitory and the unpaid civil penalty was only imposed for the period of time the violation existed). In such cases, a late fee equivalent to 25 percent of the civil penalty will be assessed 30 days after the date the civil citation is issued, or 15 days after the date of the appeal hearing, whichever is later. The property owner shall pay any late fee that is assessed in accordance with this section.

J. Collection of civil penalties. The City may file a civil action to collect any unpaid amount under this section. The violator and any responsible person shall pay for all costs of collection, including but not limited to attorney's fees and costs.

Sec. 3-10-11. Short term vacation rentals.

Regulations and restrictions imposed by this section are in recognition of the premise that a vacation rental provides lodging for a transient population that may or may not honor neighborhood mores or exhibit neighborly consideration to the same extent as permanent residents. Separation requirements listed in subsection B of this section and total license limits listed in subsection C of this section are based on a desire to maintain the overall residential character of neighborhoods and the purpose of single-family residential zones to promote safe locations for residential uses.

A. *Business license required.* No dwelling in any permitted zone shall be occupied or used as short term vacation rental until such time that the owner has obtained a short term vacation rental business license issued in accordance with the provisions of this section.

B. *Conditions for issuance of a business license for a short term vacation rental.* Issuance of a short term vacation rental business license by the Business License Officer shall be subject to the following:

1. A complete application for a short term vacation rental business license shall have been submitted in accordance with section 3-1-5, and which shall also include:

a. The name, address and phone number of the owner or other person designated by the owner as the property manager who shall be responsible for ensuring compliance with the rules and regulations specified in this section, and

b. A valid state tax number for remittance of transient lodging taxes.

2. The dwelling unit for which the business license is sought shall be located in a permitted zone according to this title and that has been built to meet building and fire codes for transient occupancy and has been issued a certificate of occupancy.

3. Portions of a single-family dwelling may not be used as a short term vacation rental unless licensed as a bed and breakfast or residential hosting facility in accordance with the regulations for that use. A short term vacation rental and a bed and breakfast or residential hosting facility may not be located in the same single-family dwelling. Only one vacation rental is allowed per property.

4. In permitted single-family zones, the owner of a single-family dwelling for which a short term vacation business license is sought does not hold a business license to operate another short term vacation rental within the City limits. For purposes of this subsection, "owner" means any individual, corporation, partnership, limited liability company, trust or other entity which has a legal or equitable ownership interest in the single-family dwelling, or any individual who has an ownership interest in any corporation, partnership, limited liability company, trust or other entity which has a legal or equitable ownership interest in the single-family dwelling.

5. In permitted single-family zones, the property line of another dwelling licensed as a short term vacation rental is not located within 300 feet, as measured along the same street or around the corner, of the front property line corners of the property where the proposed short term vacation rental license is being sought. This criterion does not apply to recreation resort zoning or motel type uses within commercial zoning.

C. *Limit on total number of short term vacation rental licenses within single-family zones as contained in title 10, chapter 13 of this Code.* The total number of short term vacation rental business licenses issued within single-family zones shall be limited in accordance with the following:

1. The maximum number of short term vacation rental business licenses for property in single-family zones to be issued shall be based on the total population of the City, allowing three licenses for every 1,000 of total population.

2. The total number of licenses available each year shall be recalculated based on an estimated population derived by adding the total number of new dwelling units times 2.9 residents per unit to the prior year's base population. The City shall readjust the population numbers every ten years after the release of the census numbers. If the census numbers are lower than the City's projection, the City shall not revoke any issued license but shall not issue any additional licenses until City population justifies additional license availability.

3. If, after the maximum number of licenses has been issued, an application meeting all other requirements for issuance of a license is received, the application shall be placed on a waiting list in order of the date of receipt. No fees will be due until a license becomes available. When a license becomes available, the first applicant on the waiting list shall be notified of the license availability, and the applicant shall have 45 days from the date of such notice to file a complete application and pay the filing fee, and six months thereafter to complete the licensing process. In the event that the applicant fails to file a complete application and filing fee within said 45 days, or fails to complete the licensing process within said six months, the application shall be deemed to have expired, and the next applicant will be notified of the license availability, and the same procedure shall apply.

4. In the event of a sale or other transfer of any property containing a dwelling licensed as a short term vacation rental, the purchaser or transferee of the property shall be required to apply for a new license within 45 days of the date of purchase or transfer. In the event that the purchaser or transferee fails to apply for a new license within said 45 days, the license will be forfeited and the owner must reapply for any available license or be placed on the waiting list.

D. *Parking regulations.* The owner of any property licensed as a short term vacation rental shall provide off street parking for guests in accordance with the following:

1. Off street parking shall be provided on the same lot as the dwelling which is licensed as a short term vacation rental.

2. Parking shall be provided at one vehicle per bedroom. Tandem spaces on a driveway may be used.

3. All guest parking shall be contained on the site.

4. No off street parking space may be located in front of the living area of the dwelling unless there is a circular driveway.

5. The number of vehicles allowed by the occupants of a vacation rental home shall be restricted to the number of off street parking spaces provided by the owner.

E. *Maintenance standards.* Any property that contains a dwelling which is licensed as a short term vacation rental shall conform to the following standards:

1. Structures shall be properly maintained, painted and kept in good repair, and grounds and landscaped areas shall be properly maintained and watered in order that the use in no way detracts from the general appearance of the neighborhood;

2. The use of a dwelling as a short term rental shall not in any way change the appearance of the dwelling or property for residential purposes; and

3. Each sleeping room must meet current international residential code codes for egress and be equipped with smoke and CO2 detectors. A fire exiting route plan and maximum occupancy number must be posted in each sleeping room.

F. *Prevention of noise, nuisance or trespass.* The owner of any dwelling licensed as a short term vacation rental shall be responsible to ensure that guests or occupants of the short term rental do not:

1. Create noises that by reason of time, nature, intensity or duration are out of character with noises customarily heard in the surrounding residential neighborhood.

2. Disturb the peace of surrounding residential property residents by engaging in shouting, fighting, playing of loud music, racing of cars or recreational vehicles on streets, engaging in outside recreational activities after 10:00 p.m., or other similar activities.

3. Interfere with the privacy of surrounding residents or trespass onto surrounding properties.

4. Allow pets or animals to create noise, roam the streets, trespass on neighboring properties, or create a mess that is not cleaned up by the owner or custodian of the pet or animal.

5. Engage in any disorderly or illegal conduct, including illegal consumption of drugs and alcohol.

G. *Required posting.* The following information must be posted in a clear, concise, and unambiguous manner and in a conspicuous location inside any dwelling licensed as a short term vacation rental:

1. A copy of the vacation rental business license.
2. The name, address, and phone number of the owner or property manager.
3. The location of all fire extinguishers.
4. A list of all rules applicable for vacation rentals.
5. The maximum occupancy of the vacation rental and the maximum number of vehicles allowed.

H. *Miscellaneous rules and regulations.* The following rules and regulations shall apply to any dwelling for which a short term vacation rental business license has been issued:

1. Outdoor pools, hot tubs or spas shall not be used between the hours of 11:00 p.m. and 6:00 a.m.
2. Maximum occupancy in any dwelling licensed as a short term vacation rental shall be ten persons at any one time. If, however, the property has a fire sprinkler system or other fire suppression system acceptable to the Hurricane Valley Fire District, a greater occupancy may be approved. Maximum occupancy of the dwelling must be included in the regulations sign.
3. The owner of any property containing a dwelling licensed as a short term vacation rental shall cause to be displayed in a City approved location on the exterior of the property an approved sign containing the name and 24-hour per day, 365-day per year telephone number of the owner or other party designated by the owner as property manager who will be responsible for receiving and resolving complaints regarding activities on the property and the conduct of its occupants and guests. The sign shall not exceed 12 inches by 18 inches and shall be the only sign other than an address permitted on a short term vacation rental property.
4. The owner or property manager shall provide information on current occupants to police, emergency, or City personnel as requested. The owner or other person designated as the property manager shall respond to complaints and concerns within one hour of any phone call or other notification. Failure of the owner or property manager to respond in a timely manner may result in a violation and possible fines to the business license holder and property owner.
5. The requirements of this section shall be in effect throughout the time a short term vacation rental license is in effect on the property, regardless of whether the property is occupied by the owner, nonpaying guests of the owner, or paying guests of the owner. The City finds that, given the practical difficulty of determining whether or not the occupants are paying guests, enforcement of the requirements contained in this section shall be based on whether the property is licensed as a short term vacation rental.

6. An inspection of a vacation rental property for compliance with these regulations will be performed at the time of business license review. Additional inspections may be performed with 24 hour notice to the license holder/property manager if deemed necessary by the City.

7. The owner of any dwelling licensed as a short term vacation rental shall be required to collect and remit on a timely basis transient lodging taxes.

I. *Enforcement provisions.*

1. Any owner of any dwelling within the City who allows or permits occupation of said dwelling as a short term vacation rental, as defined herein, without having first obtained a business license in accordance with the provisions of this section shall be in violation of this section and shall be cited with a civil citation or guilty of an infraction, which shall be punishable by a fine of up to \$750.00 for each day that they are found to be in violation. In addition, in the event that such dwelling is on the waiting list described in subsection C3 above at the time of such violation, the business license application for said dwelling shall be removed from said waiting list and the dwelling shall not be considered for a short term vacation rental business license unless a new application is submitted.

2. Any owner of any dwelling within the City, who, having first obtained a business license for use or occupation of said dwelling as a short term vacation rental, thereafter operates or permits operation of said short term vacation rental in violation of the terms and provisions of this section shall be cited with a civil citation or guilty of an infraction, and shall be punished by a fine of up to \$750.00 for each such violation.

3. Any person who occupies a short term rental as a guest and who violates any local ordinance or state law shall be subject to arrest, issuance of a citation, or other criminal process in accordance with all state, federal or local statutes, rules or ordinances.

4. Violation of any provision of this section regulating short term vacation rentals shall constitute a separate offense for each day said violation occurs or continues.

5. In the event of three or more violations of this section committed by an owner or guest, or any combination of the two, within any 12-month period, the City Council may, depending on the nature or extent of the violations, proceed with revocation of the business license for any short term vacation rental property in accordance with the provisions of the general business license ordinance.

(Ord. No. 2021-06 , 7-1-2021)

Ordinance No.

~~2022-~~ 1-06

AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE, UTAH AMENDING SECTIONS 1-4 AND 3-10-11 OF THE HURRICANE CITY CODE.

WHEREAS the City Council of Hurricane, Utah has previously approved and adopted Section 1-4 of the Hurricane City Code pertaining to the enforcement of city codes and Section 3-10-11 of the Hurricane City Code pertaining to the issuance of a business license for short term vacation rentals; and

WHEREAS said City Council ~~now finds it necessary and desirable to amend said Section 3-10-11 in order to preserve and protect the health safety and welfare of the residents of the City of Hurricane~~ deems it important to enforce the ordinances regarding short term rentals within Hurricane in order to protect the health and welfare of the community and protect the housing stock for future long term residents,

BE IT HEREBY ORDAINED by the City Council of Hurricane Utah that ~~Section 3-10-11 Chapter 1-4 of the Hurricane City Code~~ be, and is hereby, amended in its entirety to read as follows:

1-4-1: SENTENCING:

A. Penalty For Violation Of Ordinance 1 : Unless otherwise specifically authorized by statute, the city council may provide a penalty for the violation of any city ordinance by a fine not to exceed the maximum class B misdemeanor fine under Utah Code Annotated section 76-3-301, or by a term of imprisonment up to six (6) months, or by both the fine and term of imprisonment. The city council may prescribe a minimum civil or criminal penalty for the violation of any city ordinance and may impose a civil penalty for the unauthorized use of city property, including, but not limited to, the use of parks, streets and other public grounds or equipment. Rules of civil procedure shall be substantially followed. (2000 Code)

1. Exceptions: The municipality may not impose a civil penalty and adjudication for the violation of a municipal moving traffic ordinance, except as authorized in U.C.A. § 10-3-703.5.

Commented [1]: That's in the state law

B. Term Of Imprisonment For Misdemeanors 2 : A person who has been convicted of a misdemeanor may be sentenced to imprisonment as follows:

1. In the case of a class B misdemeanor, for a term not exceeding six (6) months;
2. In the case of a class C misdemeanor, for a term not exceeding ninety (90) days. (1998 Code § 1-322)

C. Infractions 3 :

1. A person convicted of an infraction may not be imprisoned but may be subject to a fine, forfeiture and disqualification, or any combination. (1998 Code § 1-323; amd. 2000 Code)

2. Whenever a person is convicted of an infraction and no punishment is specified, the person may be fined as for a class C misdemeanor. (1998 Code § 1-323)

D. Fines Of Persons 4 : A person convicted of an offense may, in addition to any term of imprisonment imposed, be sentenced to pay a fine not to exceed:

1. Class B Misdemeanor: One thousand dollars (\$1,000.00) when the conviction is of a class B misdemeanor conviction; and

2. Class C Misdemeanor; Infraction: Seven hundred fifty dollars (\$750.00) when the conviction is of a class C misdemeanor conviction or infraction conviction. (1998 Code § 1-331; amd. 2000 Code)

E. Fines Of Corporations 5 : The sentence to pay a fine, when imposed upon a corporation, association, partnership or governmental instrumentality for an offense defined in this code, or the ordinances of the city, or for an offense defined outside of this code over which this city has jurisdiction, for which no special corporate fine is specified, shall be to pay an amount fixed by the court, not exceeding:

1. Class B Misdemeanor: Five thousand dollars (\$5,000.00) when the conviction is for a class B misdemeanor conviction; and

2. Class C Misdemeanor; Infraction: One thousand dollars (\$1,000.00) when the conviction is for a class C misdemeanor conviction or for an infraction conviction. (1998 Code § 1-332; amd. 2000 Code)

F. Bail/Fee Schedule:

CRIMINAL BAIL/FEE SCHEDULE FOR HURRICANE CITY ORDINANCES

<u>Code Violation</u>	<u>Description</u>	<u>Class</u>	<u>Recommended Bail Amount</u>	<u>Recommendations For Notes</u>

	<u>Business License Violations</u>			
<u>3-1-4</u>	<u>No business license</u>	<u>B</u>	<u>\$200.00</u>	
<u>3-2-4</u>	<u>Sale of alcohol without a license</u>	<u>B</u>	<u>600.00</u>	
<u>3-3A</u>	<u>Failure to pay sales tax</u>	<u>B</u>	<u>100.00</u>	
<u>3-4-5</u>	<u>Operation of a sexually oriented business without a valid license</u>	<u>B</u>	<u>400.00</u>	
<u>3-4-9</u>	<u>Employee of an SOB not licensed</u>	<u>B</u>	<u>300.00</u>	
<u>3-5-2</u>	<u>No transient merchant license</u>	<u>B</u>	<u>200.00</u>	<u>No mandatory court appearance required</u>
<u>3-6-5</u>	<u>Solicitation prohibited/no solicitor's license</u>	<u>B</u>	<u>360.00</u>	<u>No mandatory court appearance required</u>
<u>3-6-18</u>	<u>Solicitor violation of a "No Solicitation" notice</u>	<u>B</u>	<u>100.00</u>	<u>No mandatory court appearance required</u>

3-6-19	Solicitor violating time of day restrictions	B	100.00	No mandatory court appearance required
3-9-2	No business license for rental property	B	200.00	
3-9-3	Rental of property in a residential zone for less than 30 days	B	300.00	
3-10-2	No on site manager	Infraction	50.00	
3-10-4	No guest register available/license not displayed	Infraction	50.00	
3-10-5	Occupancy violation	Infraction	50.00	
3-10-6	Room rented to a minor	Infraction	50.00	
3-10-7	Room rented for longer than 30 days	Infraction	50.00	
3-10-8	Sanitation requirements violation (each violation)	Infraction	50.00	

3-10-9	Failure to cooperate with an inspection	Infraction	50.00	
3-10-10	Failure to report violation of the law	Infraction	50.00	
	Public Health And Safety Violations			
4-2-3	Maintaining a public nuisance	C	100.00	
4-3-2	Weed nuisance	C	100.00	
4-4-1	Burn permit required	Infraction	100.00	
4-5-3	Disposal not in landfill	Infraction	100.00	
4-6-5	Litter regulations	Infraction	100.00	
4-6-6	Handbill regulations	Infraction	100.00	
4-8-1	No restroom facility	B	100.00	No mandatory court appearance required

4-8-2	No/improper dumpster	B	100.00	No mandatory court appearance required
4-8-3	Failure to place waste in dumpster	B	100.00	No mandatory court appearance required
4-8-4	Failure to dispose of waste	B	100.00	No mandatory court appearance required
4-9-1	Noise	Infraction	50.00	
4-10-4	Fugitive dust		Administrative	
4-11-4	Fireworks	B	\$100.00	
	Animal Control Violations			
5-2-3A1	2 limit kennel license	Infraction	100.00	
5-2-3A4a	No license each dog (first offense)	Infraction	50.00	Suspend \$10.00 on compliance
5-2-3A4a	No license each dog (second/subsequent offense)	Infraction	75.00	Suspend \$10.00 on compliance

5-2-3D3	Dog bite	Infraction	100.00	
5-2-3E1	No rabies vaccination (first offense)	Infraction	50.00	Suspend \$10.00 on compliance
5-2-3E1	No rabies vaccination (second/subsequent offense)	Infraction	75.00	Suspend \$10.00 on compliance
5-2-4A1	At large dog (first offense/each dog)	Infraction	50.00	
5-2-4A1	At large dog (second/subsequent offense per dog)	Infraction	75.00	
5-2-4A2	At large other	Infraction	50.00	
5-2-4A2	At large other (second/subsequent offense)	Infraction	75.00	
5-2-4D/ 5-2-7A	Vicious animal not controlled	Infraction	100.00	
5-2-4E	Defecate in public place	Infraction	100.00	
5-2-4G	Animal trespass	Infraction	100.00	

5-2-4H	Poisoning	Infraction	100.00	
5-2-4K	Fail to give care	Infraction	100.00	
5-2-4K3	Promoting animal fighting	Infraction	100.00	
5-2-5A6	Chase cars	Infraction	50.00	
5-2-5A7	Attacks other animals	Infraction	100.00	
5-2-5A	Nuisance animal other offense	Infraction	100.00	
5-2-5B	Excessive barking	Infraction	100.00	
5-2-8B	Hit and run dog with car	Infraction	100.00	
5-2-11K	Retaking animal unlawfully	Infraction	50.00	
	Other Police Regulations			
5-3-2	Loitering	Infraction	50.00	
5-3-3	Discharging weapons in city limits (firearms)	B	100.00	

5-3-3	Discharging weapons in city limits (air rifle)	Infraction	50.00	
5-4-1A	Curfew	B	100.00	
5-4-1B	Parents responsible for curfew	Infraction	50.00	
	Vehicle Violations			
6-1-3D1	Too many vehicles for sale	Infraction	50.00	
6-1-3E2	Illegal parking of a semi	Infraction	100.00	
The late fee for parking violations shall be as follows (6-1-3F): \$20.00 if paid after 14 days following the violation notice. \$5.00 additional per month if not paid within 30 days.				
	Public Ways And Property Violations			
7-1-3	Obstructing the public right of way/construction materials in the roadway	B	\$100.00	No mandatory court appearance required
7-1-8	Illegal operation of an ATV	Infraction	50.00	

7-2-5	Concrete on the street	B	100.00	
7-3-3	Excavating in the street without a permit	B	200.00	
7-5-12B	Defacing headstone/landscape at the cemetery	Infraction	100.00	
7-6-2A	Defacing anything at a park	Infraction	100.00	
7-6-2B	Alcohol in parks	Infraction	100.00	
7-6-2C	Indecent language	Infraction	50.00	
7-6-2D	Camping in unassigned area	Infraction	50.00	
7-6-2E	Motor vehicles in park	Infraction	50.00	
7-6-2F	Skateboards at park	Infraction	50.00	
7-6-2G	Livestock in park	Infraction	50.00	
7-6-2I	Endangering a person	Infraction	50.00	

7-6-2J	Fire in unapproved area	Infraction	100.00	
7-6-2K	Posting handbills/ solicitation at park	Infraction	50.00	
7-6-2L	Weapon or firearm in park	Infraction	50.00	
7-6-2M	Teaching for profit without a permit	Infraction	50.00	
7-6-2O	Entertainment/exhibition without a permit	Infraction	50.00	
7-6-3A	Parks closed after dark	Infraction	50.00	
7-7-2	Failure to obtain an event permit	B	200.00	
	Land Use Code Violations			
10-9-5A	Development or use without a permit	C	150.00	
10-9-5B	Use inconsistent with permit	C	150.00	

10-9-5C	Use inconsistent with conditions of approval	C	150.00	
10-9-5D	Use inconsistent with land use title	C	150.00	
10-9-5E	Lot or setback nonconforming	C	150.00	
10-9-5F	Increasing intensity of use	C	150.00	
10-9-5G	Removing, defacing, or obscuring notice	C	150.00	
10-12-3A	Violation of use in an agricultural zone	C	150.00	
10-13-3A	Violation of use in a residential zone	C	150.00	
10-14-3A	Violation of use in a residential agriculture zone	C	150.00	
10-15-3A	Violation of use in a commercial zone	C	150.00	

10-16-3A	Violation of use in business and industrial zones	C	150.00	
10-17-3A	Violation of use in an open space and public facility zone	C	150.00	
10-32-7D	Failure to maintain landscape	C	150.00	
10-36	Sign ordinance violation	C	150.00	
10-37-5	Illegal accessory building/structure	C	150.00	
10-37-9	Fence too high	C	150.00	
10-37-9E	Fence is a visual obstruction	C	150.00	
10-42-3	Violation of home based business regulation	C	150.00	
10-43-3B	Illegal location of a manufactured/mobile home	C	150.00	

10-43-3C	Illegal location of an occupied recreational vehicle	C	150.00	
10-48-3B	No temporary use permit	C	150.00	
10-50-5	Violation of zoning for wireless telecommunications facilities	C	150.00	
10-51-3	Operating a bed and breakfast without a permit	C	150.00	

(Ord. 2008-6, 3-20-2008; amd. Ord. 2009-05, 4-16-2009; Ord. 2009-16, 11-5-2009; Ord. 2016-09, 10-20-2016; Ord. 2017-02, 1-5-2017; Ord. 2017-04, 2-2-2017)

[Notes](#)

[1](#) [1. UCA § 10-3-703.](#)

[2](#) [2. UCA § 76-3-204.](#)

[3](#) [3. UCA § 76-3-205.](#)

4 4. UCA § 76-3-301.

5 1. UCA § 76-3-302.

1-4-2: OFFENSES DESIGNATED; CLASSIFIED:

A. Sentencing In Accordance With Chapter:

1. A person adjudged guilty of an offense under this code or the ordinances of this city shall be sentenced in accordance with the provisions of this chapter.

2. Ordinances enacted after the effective date of this code which involve an offense should be classified for sentencing purposes in accordance with this chapter, unless otherwise expressly provided. (1998 Code § 1-311)

B. Designation Of Offenses: Offenses are designated as misdemeanors or infractions. (1998 Code § 1-312)

C. Misdemeanors Classified 1 :

1. Misdemeanors are classified into two (2) categories:

a. Class B misdemeanors;

b. Class C misdemeanors.

2. An offense designated as a misdemeanor or any act prohibited or declared to be unlawful in this code or any ordinance of this city when no other specification as to punishment or category is made, is a class B misdemeanor. (1998 Code § 1-313)

D. Infractions:

1. Infractions are not classified.

2. Any offense which is made an infraction in this code or other ordinances of this city, or which is expressly designated an infraction and any offense designated by this code or other ordinances of this city which is not designated as a misdemeanor and for which no penalty is specified is an infraction. (1998 Code § 1-314)

E. Continuing Violation: In all instances where the violation of this code or any ordinance hereinafter enacted is a continuing violation, a separate offense shall be deemed committed on each day during or on which the violation occurs or continues to occur. (1998 Code § 1-315)

Notes

1. UCA § 76-3-104.

1-4-3: ADMINISTRATIVE HEARINGS:

A. Request: Unless otherwise specifically provided in any ordinance of the city or any code adopted by reference, a hearing before the city council may be requested by any person:

1. Who is denied or refused a permit or license by any officer, agent or employee of this city.

2. Whose permit or license is revoked, restricted, qualified or limited from that for which it was first issued. (1998 Code § 1-411)

B. Form Of Request; Time Limitation: The request for hearing must be made in writing to the mayor or city recorder-clerk and made within thirty (30) days following the date notice denying, refusing, revoking, qualifying or restricting the license or permit is mailed by the city to the applicant or license holder at his address as it appears on the application or license. (1998 Code § 4-412)

C. Procedure:

1. Time And Place: Following receipt of a request for hearing, the city council shall inform the person requesting a hearing of the time and place the hearing is to be held.

2. Witnesses; Evidence: At the hearing, the aggrieved party shall have the right to hear and examine any witnesses the city may produce to support its decision and to present his own evidence in support of his contention.

3. Decision Of City Council: The city council shall, within ten (10) days following the conclusion of the hearing, in writing, inform the person who requested the hearing of the decision of the city council. (1998 Code § 1-413)

D. Not Additional Remedy: This section shall not be construed so as to afford any aggrieved party more than one hearing before the city council nor shall the hearing provided in this section apply to any criminal complaint or proceeding. (1998 Code § 1-414)

1-4-4: RETURNED CHECKS OR OTHER NEGOTIABLE INSTRUMENTS:

Any person who makes, draws, signs or issues a check, draft, order or other instrument to the city of Hurricane shall be liable for the amount of such check, draft, order or instrument, plus a service fee in the amount of twenty dollars (\$20.00), if the check is not honored upon presentment and is marked "refer to maker", or the account upon which the check, draft, order or instrument is drawn does not exist, has been closed or does not have sufficient funds for payment in full of the check, draft, order or instrument. (Ord. 21-5-3, 5-3-2001)

1-5-5 CIVIL ENFORCEMENT

The City may impose civil penalties for the violation of any requirement, regulation, ordinance, or other provision of the Hurricane City Code. When imposing a civil penalty for violation of any requirement, regulation, ordinance, or other provision of the Hurricane City Code, the City shall follow the procedure of this section. Civil enforcement of any violation is only one option for enforcement. Nothing in this section removes the City's ability to use criminal proceedings or other enforcement strategies authorized by state law and this code in the resolution of code violations.

A. Notice of violation. Upon inspection and discovery that any provision of Hurricane City Code is being violated, the Planning Director, Chief of Police, Code Enforcement Officer, City Recorder or designee, shall provide written notice of the violation to the property owner, and in addition, may provide written notice of the violation to any other responsible party.

1. The notice of violation shall: (1) indicate the nature of the violation; (2) order the necessary action to correct the violation; (3) establish a reasonable time period for the necessary corrective actions to be completed (the "warning period"); and (4) state that the property owner and other responsible party (if any) will be subject to civil penalties if the violation is not corrected within the warning period.

2. The warning period shall be the minimum time period reasonably necessary to correct the violation, given the nature of the violation and the amount of effort needed to correct the violation. The warning period could be as short as several hours or as long as several weeks.

3. The notice of violation shall be delivered personally or mailed to the owner of record at the address shown on the records of the County Recorder, or to a person designated, in writing, by the owner of record as the owner's agent for the purpose of receiving notice of an ordinance violation. The notice of violation may also be delivered personally or mailed to any other

responsible party. Personal delivery or mailing of the written notice shall serve to start the warning period.

B. Civil citation. If the violation remains uncorrected at the end of the warning period, the Planning Director, Chief of Police, City Recorder or Code Enforcement Officer may issue a civil citation to the property owner and/or other responsible party.

1. The civil citation shall be personally delivered, or mailed to the property owner, as shown on the records of the County Recorder.

2. The civil citation shall serve to start the imposition and accrual of civil penalties. The civil citation shall state that civil penalties are being assessed to the property owner and/or other responsible party for each day the violation persists, beginning on the date the civil citation is personally delivered or mailed.

C. Referral to Police Department. The Planning Director or Code Enforcement Officer may refer any violation to the Chief of Police for an immediate criminal enforcement action, as allowed by state law.

D. Daily violations. If provided in the citation, each day a violation is continued or maintained after the date the civil citation is personally delivered or mailed is considered a separate violation and shall give rise to a separate civil penalty for each day of violation. The filing of an appeal does not stop the daily accrual of any penalty unless the civil hearing officer ultimately dismisses the citation.

E. Civil penalties. A violation of any provision of this Code shall result in a civil penalty pursuant to the following schedule:

<u>Violation</u>	<u>Penalty</u>
<u>Unlicensed short-term rental (see section 3-10-11)</u>	<u>\$750 per day</u>
<u>Violation of short-term rental licensing standards (see section 3-10-11)</u>	<u>\$750 per day</u>
<u>Violation of zoning and licensing standards for Residential Hosting (see section 10-51)</u>	<u>\$750 per day</u>

F. Correction of violation required. The payment of a civil penalty does not relieve the obligation to correct the violation. The property owner or other responsible party is required to correct the violation regardless of whether or not the civil penalty has been paid.

G. Citation appeal. Any person who has received a civil citation and who wishes to dispute the violation may appeal the citation in writing to the civil hearing officer within 15 calendar days after the citation has been issued. If a person who has received a citation does not appeal within 15 days, the right to an appeal is lost. In such case, the person shall be responsible for both correcting the violation and paying all applicable civil penalties.

H. Appeal procedures.

1. The City Manager shall appoint the Civil Hearing Officer.

2. The Hearing Officer shall adopt rules of procedure that govern the review and adjudication of civil citation appeals. Such rules shall provide a meaningful opportunity for the appellant to present evidence documenting one of the following defenses:

a. At the time of the citation and at all times ensuing, the alleged violation did not and does not exist.

b. At the time of citation, compliance with the subject ordinance(s) would have violated the criminal laws of the state.

c. Compliance with the subject ordinance(s) would have presented an imminent and irreparable physical injury to persons or property.

d. The violation and failure to correct the violation were both caused by a force majeure event such as war, act of nature, or civil disturbance.

3. After reviewing the appeal, the Civil Hearing Officer may dismiss the citation only on a finding that one of the four defenses in paragraph 2 above applies to the appeal. If the hearing officer finds none of the defenses apply, the Hearing Officer shall uphold the citation and associated civil penalties. If the hearing officer upholds the citation, daily civil penalties shall continue to accrue after the hearing until the violation is corrected.

4. If the Hearing Officer upholds the citation, the Hearing Officer may, in the interest of justice and on behalf of the City, enter into an agreement for the delayed or periodic payment of the civil penalty by the violator.

5. If the Civil Hearing Officer upholds the citation, the hearing officer may partially or wholly abate the civil penalties for one of the following reasons only:

a. The violation was corrected promptly after the issuance of the civil citation and at the time of the appeal hearing the violation does not exist.

b. There has been a change in the actual ownership of the property where the violation exists since the time the citation was written, and the new owner is not related by blood, marriage, adoption, or common ownership to the prior owner.

I. Late fees. A late fee will be assessed for any unpaid civil penalty in instances where daily penalties are not accruing (such as when a violation has been corrected on the property but the civil penalty imposed by a citation for the earlier violation has not been paid, or when the violation was transitory and the unpaid civil penalty was only imposed for the period of time the violation existed). In such cases, a late fee equivalent to 25 percent of the civil penalty will be assessed 30 days after the date the civil citation is issued, or 15 days after the date of the appeal hearing, whichever is later. The property owner shall pay any late fee that is assessed in accordance with this section.

J. Collection of civil penalties. The City may file a civil action to collect any unpaid amount under this section. The violator and any responsible person shall pay for all costs of collection, including but not limited to attorney's fees and costs.

THEREFORE, BE IT HEREBY ORDAINED by the Hurricane City Council Hurricane City Code 10-7-9 shall be, and is hereby, amended with the additional text as follows:

Sec. 3-10-11. Short term vacation rentals.

Regulations and restrictions imposed by this section are in recognition of the premise that a vacation rental provides lodging for a transient population that may or may not honor neighborhood mores or exhibit neighborly consideration to the same extent as permanent residents. Separation requirements listed in subsection B of this section and total license limits listed in subsection C of this section are based on a desire to maintain the overall residential character of neighborhoods and the purpose of single-family residential zones to promote safe locations for residential uses.

A. *Business license required.* No dwelling in any permitted zone shall be occupied or used as short term vacation rental until such time that the owner has obtained a short term vacation rental business license issued in accordance with the provisions of this section.

B. *Conditions for issuance of a business license for a short term vacation rental.* Issuance of a short term vacation rental business license by the Business License Officer shall be subject to the following:

1. A complete application for a short term vacation rental business license shall have been submitted in accordance with section 3-1-5, and which shall also include:

a. The name, address and phone number of the owner or other person designated by the owner as the property manager who shall be responsible for ensuring compliance with the rules and regulations specified in this section, and

b. A valid state tax number for remittance of transient lodging taxes.

2. The dwelling unit for which the business license is sought shall be located in a permitted zone according to this title and that has been built to meet building and fire codes for transient occupancy and has been issued a certificate of occupancy.

3. Portions of a single-family dwelling may not be used as a short term vacation rental unless licensed as a bed and breakfast or residential hosting facility in accordance with the regulations for that use. A short term vacation rental and a bed and breakfast or residential hosting facility may not be located in the same single-family dwelling. Only one vacation rental is allowed per property.

4. In permitted single-family zones, the owner of a single-family dwelling for which a short term vacation business license is sought does not hold a business license to operate another short term vacation rental within the City limits. For purposes of this subsection, "owner" means any individual, corporation, partnership, limited liability company, trust or other entity which has a legal or equitable ownership interest in the single-family dwelling, or any individual who has an ownership interest in any corporation, partnership, limited liability company, trust or other entity which has a legal or equitable ownership interest in the single-family dwelling.

5. In permitted single-family zones, the property line of another dwelling licensed as a short term vacation rental is not located within 300 feet, as measured along the same street or around the corner, of the front property line corners of the property where the proposed short term vacation rental license is being sought. This criterion does not apply to recreation resort zoning or motel type uses within commercial zoning.

C. *Limit on total number of short term vacation rental licenses within single-family zones as contained in title 10, chapter 13 of this Code.* The total number of short term vacation rental business licenses issued within single-family zones shall be limited in accordance with the following:

1. The maximum number of short term vacation rental business licenses for property in single-family zones to be issued shall be based on the total population of the City, allowing three licenses for every 1,000 of total population.

2. The total number of licenses available each year shall be recalculated based on an estimated population derived by adding the total number of new dwelling units times 2.9 residents per unit to the prior year's base population. The City shall readjust the population numbers every ten years after the release of the census numbers. If the census numbers are lower than the City's projection, the City shall not revoke any issued license but shall not issue any additional licenses until City population justifies additional license availability.

3. If, after the maximum number of licenses has been issued, an application meeting all other requirements for issuance of a license is received, the application shall be placed on a waiting list in order of the date of receipt. No fees will be due until a license becomes available. When a license becomes available, the first applicant on the waiting list shall be notified of the license availability, and the applicant shall have 45 days from the date of such notice to file a complete application and pay the filing fee, and six months thereafter to complete the licensing process. In the event that the applicant fails to file a complete application and filing fee within said 45 days, or fails to complete the licensing process within said six months, the application shall be deemed to have expired, and the next applicant will be notified of the license availability, and the same procedure shall apply.

4. In the event of a sale or other transfer of any property containing a dwelling licensed as a short term vacation rental, the purchaser or transferee of the property shall be required to apply for a new license within 45 days of the date of purchase or transfer. In the event that the purchaser or transferee fails to apply for a new license within said 45 days, the license will be forfeited and the owner must reapply for any available license or be placed on the waiting list.

D. *Parking regulations.* The owner of any property licensed as a short term vacation rental shall provide off street parking for guests in accordance with the following:

1. Off street parking shall be provided on the same lot as the dwelling which is licensed as a short term vacation rental.

2. Parking shall be provided at one vehicle per bedroom. Tandem spaces on a driveway may be used.

3. All guest parking shall be contained on the site.

4. No off street parking space may be located in front of the living area of the dwelling unless there is a circular driveway.

5. The number of vehicles allowed by the occupants of a vacation rental home shall be restricted to the number of off street parking spaces provided by the owner.

E. Maintenance standards. Any property that contains a dwelling which is licensed as a short term vacation rental shall conform to the following standards:

1. Structures shall be properly maintained, painted and kept in good repair, and grounds and landscaped areas shall be properly maintained and watered in order that the use in no way detracts from the general appearance of the neighborhood;

2. The use of a dwelling as a short term rental shall not in any way change the appearance of the dwelling or property for residential purposes; and

3. Each sleeping room must meet current international residential code codes for egress and be equipped with smoke and CO2 detectors. A fire exiting route plan and maximum occupancy number must be posted in each sleeping room.

F. Prevention of noise, nuisance or trespass. The owner of any dwelling licensed as a short term vacation rental shall be responsible to ensure that guests or occupants of the short term rental do not:

1. Create noises that by reason of time, nature, intensity or duration are out of character with noises customarily heard in the surrounding residential neighborhood.

2. Disturb the peace of surrounding residential property residents by engaging in shouting, fighting, playing of loud music, racing of cars or recreational vehicles on streets, engaging in outside recreational activities after 10:00 p.m., or other similar activities.

3. Interfere with the privacy of surrounding residents or trespass onto surrounding properties.

4. Allow pets or animals to create noise, roam the streets, trespass on neighboring properties, or create a mess that is not cleaned up by the owner or custodian of the pet or animal.

5. Engage in any disorderly or illegal conduct, including illegal consumption of drugs and alcohol.

G. Required posting. The following information must be posted in a clear, concise, and unambiguous manner and in a conspicuous location inside any dwelling licensed as a short term vacation rental:

1. A copy of the vacation rental business license.

2. The name, address, and phone number of the owner or property manager.

3. The location of all fire extinguishers.

4. A list of all rules applicable for vacation rentals.

5. The maximum occupancy of the vacation rental and the maximum number of vehicles allowed.

H. Miscellaneous rules and regulations. The following rules and regulations shall apply to any dwelling for which a short term vacation rental business license has been issued:

1. Outdoor pools, hot tubs or spas shall not be used between the hours of 11:00 p.m. and 6:00 a.m.

2. Maximum occupancy in any dwelling licensed as a short term vacation rental shall be ten persons at any one time. If, however, the property has a fire sprinkler system or other fire suppression system acceptable to the Hurricane Valley Fire District, a greater occupancy may be approved. Maximum occupancy of the dwelling must be included in the regulations sign.

3. The owner of any property containing a dwelling licensed as a short term vacation rental shall cause to be displayed in a City approved location on the exterior of the property an approved sign containing the name and 24-hour per day, 365-day per year telephone number of the owner or other party designated by the owner as property manager who will be responsible for receiving and resolving complaints regarding activities on the property and the conduct of its occupants and guests. The sign shall not exceed 12 inches by 18 inches and shall be the only sign other than an address permitted on a short term vacation rental property.

4. The owner or property manager shall provide information on current occupants to police, emergency, or City personnel as requested. The owner or other person designated as the property manager shall respond to complaints and concerns within one hour of any phone call or other notification. Failure of the owner or property manager to respond in a timely manner may result in a violation and possible fines to the business license holder and property owner.

5. The requirements of this section shall be in effect throughout the time a short term vacation rental license is in effect on the property, regardless of whether the property is occupied by the owner, nonpaying guests of the owner, or paying guests of the owner. The City finds that, given the practical difficulty of determining whether or not the occupants are paying guests, enforcement of the requirements contained in this section shall be based on whether the property is licensed as a short term vacation rental.

6. An inspection of a vacation rental property for compliance with these regulations will be performed at the time of business license review. Additional inspections may be performed with 24 hour notice to the license holder/property manager if deemed necessary by the City.

7. The owner of any dwelling licensed as a short term vacation rental shall be required to collect and remit on a timely basis transient lodging taxes.

I. Enforcement provisions.

1. Any owner of any dwelling within the City who allows or permits occupation of said dwelling as a short term vacation rental, as defined herein, without having first obtained a business license in accordance with the provisions of this section shall be in violation of this section and shall be cited with a civil citation or guilty of an infraction, which shall be punishable by a fine of up to \$750.00 for each day that they are found to be in violation. In addition, in the event that such dwelling is on the waiting list described in subsection C3 above at the time of such violation, the business license application for said dwelling shall be removed from said waiting list and the dwelling shall not be considered for a short term vacation rental business license unless a new application is submitted.

2. Any owner of any dwelling within the City, who, having first obtained a business license for use or occupation of said dwelling as a short term vacation rental, thereafter operates or permits operation of said short term vacation rental in violation of the terms and provisions of this section shall be cited with a civil citation or guilty of an infraction, and shall be punished by a fine of up to \$750.00 for each such violation.

3. Any person who occupies a short term rental as a guest and who violates any local ordinance or state law shall be subject to arrest, issuance of a citation, or other criminal process in accordance with all state, federal or local statutes, rules or ordinances.

4. Violation of any provision of this section regulating short term vacation rentals shall constitute a separate offense for each day said violation occurs or continues.

5. In the event of three or more violations of this section committed by an owner or guest, or any combination of the two, within any 12-month period, the City Council may, depending on the nature or extent of the violations, proceed with revocation of the business license for any short term vacation rental property in accordance with the provisions of the general business license ordinance.

(Ord. No. 2021-06 , 7-1-2021)

3-10-11: SHORT TERM VACATION RENTALS:

Regulations and restrictions imposed by this section are in recognition of the premise that a vacation rental provides lodging for a transient population that may or may not honor neighborhood mores or exhibit neighborly consideration to the same extent as permanent residents. Separation requirements listed in subsection B of this section and total license limits listed in subsection C of this section are based on a desire to maintain the overall residential character of neighborhoods and the purpose of single-family residential zones to promote safe locations for residential uses.

—A. Business License Required: No dwelling in any permitted zone residential zone shall be occupied or used as short term vacation rental until such time that the owner has obtained a short term vacation rental business license issued in accordance with the provisions of this section.

—B. Conditions for Issuance of a Business License for a Short Term Vacation Rental: Issuance of a short term vacation rental business license by the Business License Officer shall be subject to the following:

—1. A complete application for a short term vacation rental business license shall have been submitted in accordance with Section 3-1-5, and which shall also include:

- (a) the name, address and phone number of the owner or other person designated by —
— the owner as the property manager who shall be responsible for ensuring compliance
— with the rules and regulations specified in this section, and
- (b) a valid Utah state tax number for remittance of transient lodging taxes.

—2. The dwelling unit for which the business license is sought shall be a single-family dwelling located in a permitted zone according to this title and that has been built to meet building and fire codes for transient occupancy and has been issued a certificate of occupancy.

—3. Portions of a single-family dwelling may not be used as a short term vacation rental unless licensed as a bed and breakfast or residential hosting facility in accordance with the regulations for that use. A short term vacation rental and a bed and breakfast or residential hosting facility may not be located in the same single-family dwelling.

—4. In permitted single-family zones, the owner of a single-family dwelling for which a short term vacation business license is sought does not hold a business license to operate another short term vacation rental within the Hurricane City limits. For purposes of this subsection, "owner" means any individual, corporation, partnership, limited liability company, trust or other entity which has a legal or equitable ownership interest in the single-family dwelling, or any individual who has an ownership interest in any corporation, partnership, limited liability company, trust or other entity which has a legal or equitable ownership interest in the single-family dwelling.

—5. In permitted single-family zones, the property line of another dwelling licensed as a short term vacation rental is not located within three hundred feet (300'), as measured along the same street or around the corner, of the front property line corners of the property where the

Commented [SN2]: What does this mean? Are we limiting that a person may only own a single short-term rental within the City? Should this apply to recreation resort zoning?

~~proposed short-term vacation rental license is being sought. This criterion does not apply to Recreation Resort Zoning or motel type uses within commercial zoning.~~

~~—C. Limit On Total Number Of Short Term Vacation Rental Licenses within single-family zones as contained in Hurricane City Code 10-13: The total number of short term vacation rental business licenses issued within single-family zones the city of Hurricane shall be limited in accordance with the following:~~

~~—1. The maximum number of short term vacation rental business licenses for property in single-family zones to be issued shall be based on the total population of the cityCity, allowing three (3) licenses for every one thousand (1,000) of total population.~~

~~—2. The total number of licenses available each year shall be recalculated based on an estimated population derived by adding the total number of new dwelling units times 2.9 residents per unit to the prior year's base population. The City shall readjust the population numbers every ten years after the release of the census numbers. If the census numbers are lower than the City's projection, the City shall not revoke any issued license but shall not issue any additional licenses until City population justifies additional license availability.~~

~~—3. If, after the maximum number of licenses has been issued, an application meeting all other requirements for issuance of a license is received, the application shall be placed on a waiting list in order of the date of receipt. No fees will be due until a license becomes available. When a license becomes available, the first applicant on the waiting list shall be notified of the license availability, and the applicant shall have forty five (45) days from the date of such notice to file a complete application and pay the filing fee, and six (6) months thereafter to complete the licensing process. In the event that the applicant fails to file a complete application and filing fee within said forty five (45) days, or fails to complete the licensing process within said six (6) months, the application shall be deemed to have expired, and the next applicant will be notified of the license availability, and the same procedure shall apply.~~

~~—4. In the event of a sale or other transfer of any property containing a dwelling licensed as a short term vacation rental, the purchaser or transferee of the property shall be required to apply for a new license within forty five (45) days of the date of purchase or transfer. In the event that the purchaser or transferee fails to apply for a new license within said forty five (45) days, the license will be forfeited and the owner must reapply for any available license or be placed on the waiting list.~~

~~—D. Parking Regulations: The owner of any property licensed as a short term vacation rental shall provide off street parking for guests in accordance with the following:~~

~~—1. Off street parking shall be provided on the same lot as the dwelling which is licensed as a short term vacation rental.~~

~~—2. Parking shall be provided at one vehicle per bedroom. Tandem spaces on a driveway may be used.~~

~~—3. All guest parking shall be contained on the site.~~

~~—4. No off street parking space may be located in front of the living area of the dwelling unless there is a circular driveway.~~

~~—5. The number of vehicles allowed by the occupants of a vacation rental home shall be restricted to the number of off street parking spaces provided by the owner.~~

~~-~~

~~—E. Maintenance Standards: Any property that contains a dwelling which is licensed as a short term vacation rental shall conform to the following standards:~~

~~—1. Structures shall be properly maintained, painted and kept in good repair, and grounds and landscaped areas shall be properly maintained and watered in order that the use in no way detracts from the general appearance of the neighborhood;~~

~~—2. The use of a dwelling as a short term rental shall not in any way change the appearance of the dwelling or property for residential purposes; and~~

~~—3. Each sleeping room must meet current international residential code codes for egress and be equipped with smoke and CO2 detectors. A fire exiting route plan and maximum occupancy number must be posted in each sleeping room.~~

~~-~~

~~—F. Prevention Of Noise, Nuisance Or Trespass: The owner of any dwelling licensed as a short term vacation rental shall be responsible to ensure that guests or occupants of the short term rental do not:~~

~~—1. Create noises that by reason of time, nature, intensity or duration are out of character with noises customarily heard in the surrounding residential neighborhood.~~

~~—2. Disturb the peace of surrounding residential property residents by engaging in shouting, fighting, playing of loud music, racing of cars or recreational vehicles on streets, engaging in outside recreational activities after ten o'clock (10:00) P.M., or other similar activities.~~

~~—3. Interfere with the privacy of surrounding residents or trespass onto surrounding residential properties.~~

~~—4. Allow pets or animals to create noise, roam the streets, trespass on neighboring properties, or create a mess that is not cleaned up by the owner or custodian of the pet or animal.~~

~~—5. Engage in any disorderly or illegal conduct, including illegal consumption of drugs and alcohol.~~

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~~—G. Required Posting: The following information must be posted in a clear, concise, and unambiguous manner and in a conspicuous location inside any dwelling licensed as a short term vacation rental:~~

- ~~—1. A copy of the vacation rental business license.~~
 - ~~—2. The name, address, and phone number of the owner or property manager.~~
 - ~~—3. The location of all fire extinguishers.~~
 - ~~—4. A list of all rules applicable for vacation rentals.~~
 - ~~—5. The maximum occupancy of the vacation rental and the maximum number of vehicles allowed.~~
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~~—H. Miscellaneous Rules And Regulations: The following rules and regulations shall apply to any dwelling for which a short term vacation rental business license has been issued:~~

- ~~—1. Outdoor pools, hot tubs or spas shall not be used between the hours of eleven o'clock (11:00) P.M. and six o'clock (6:00) A.M.~~
- ~~—2. Maximum occupancy in any dwelling licensed as a short term vacation rental shall be ten (10) persons at any one time. If, however, the property has a fire sprinkler system or other fire suppression system acceptable to the Hurricane Valley fire district, a greater occupancy may be approved. Maximum occupancy of the dwelling must be included in the regulations sign.~~
- ~~—3. The owner of any property containing a dwelling licensed as a short term vacation rental shall cause to be displayed in a city approved location on the exterior of the property an approved sign containing the name and twenty four (24) hour per day, three hundred sixty five (365) day per year telephone number of the owner or other party designated by the owner as property manager who will be responsible for receiving and resolving complaints regarding activities on the property and the conduct of its occupants and guests. The sign shall not exceed twelve inches by eighteen inches (12" x 18") and shall be the only sign other than an address permitted on a short term vacation rental property.~~
- ~~—4. The owner or property manager shall provide information on current occupants to police, emergency, or city personnel as requested. The owner or other person designated as the property manager shall respond to complaints and concerns within one hour of any phone call or other notification. Failure of the owner or property manager to respond in a timely manner may result in a violation and possible fines to the business license holder and property owner.~~
- ~~—5. The requirements of this section shall be in effect throughout the time a short term vacation rental license is in effect on the property, regardless of whether the property is occupied by the owner, nonpaying guests of the owner, or paying guests of the owner. The city City finds~~

that, given the practical difficulty of determining whether or not the occupants are paying guests, enforcement of the requirements contained in this section shall be based on whether the property is licensed as a short term vacation rental.

—6. An inspection of a vacation rental property for compliance with these regulations will be performed at the time of business license review. Additional inspections may be performed with twenty twenty-four (24) hour notice to the license holder/property manager if deemed necessary by the cityCity.

—7. The owner of any dwelling licensed as a short term vacation rental shall be required to collect and remit on a timely basis transient lodging taxes.

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—I. Enforcement Provisions:

—1. Any owner of any dwelling in a residential zone within the city City of Hurricane who allows or permits occupation of said dwelling as a short term vacation rental, as defined herein, without having first obtained a business license in accordance with the provisions of this section shall be in violation of this section and shall be guilty of an infraction, which shall be punishable by a fine of up to seven hundred fifty dollars (\$750.00) for each such violation. In addition, in the event that such dwelling is on the waiting list described in 3-10-11(C)(3) at the time of such violation, the business license application for said dwelling shall be removed from said waiting list and the dwelling shall not be considered for a short term vacation rental business license unless a new application is submitted.

—2. Any owner of any dwelling in a residential zone within the city City of Hurricane, who, having first obtained a business license for use or occupation of said dwelling as a short term vacation rental, thereafter operates or permits operation of said short term vacation rental in violation of the terms and provisions of this section shall be guilty of an infraction, and shall be punished by a fine of up to seven hundred fifty dollars (\$750.00) for each such violation.

—3. Any person who occupies a short term rental as a guest and who violates any local ordinance or state law shall be subject to arrest, issuance of a citation, or other criminal process in accordance with all state, federal or local statutes, rules or ordinances.

—4. Violation of any provision of this section regulating short term vacation rentals shall constitute a separate offense for each day said violation occurs or continues.

—5. In the event of three (3) or more violations of this section committed by an owner or guest, or any combination of the two (2), within any twelve (12) month period, the city council may, depending on the nature or extent of the violations, proceed with revocation of the business license for any short term vacation rental property in accordance with the provisions of the general business license ordinance.

BE IT FURTHER ORDAINED that this ordinance shall be deemed to be of an urgent nature and shall take effect at the earliest possible time after publication and posting.

PASSED AND APPROVED this _____ day of _____, 202~~2~~⁴.

Nannette Billings~~John W. Bramall~~, Mayor

[Seal]
Attest:

Cindy Beteag, City Recorder

INTERLOCAL COOPERATION AGREEMENT
TO PROVIDE SUPPORT TO
IRONMAN WORLD CHAMPIONSHIP - ST. GEORGE (MAY 2022), THE
IRONMAN 70.3 WORLD CHAMPIONSHIP – ST. GEORGE (OCTOBER 2022), THE
IRONMAN 70.3 NORTH AMERICAN CHAMPIONSHIP (MAY 2023, 2025,) AND THE IRONMAN
NORTH AMERICAN CHAMPIONSHIP (MAY 2024)

This Interlocal Cooperative Agreement (the “Agreement”) is entered into by WASHINGTON COUNTY, a political subdivision of the State of Utah (“the County”); and HURRICANE CITY, a Utah municipal corporation (“the City”), hereinafter collectively referred to as “Participants”. The purpose of the Agreement is to set forth the obligations that the City will perform to support the County in hosting the IRONMAN World Championship – St. George (May 2022), the IRONMAN 70.3 World Championship (Oct. 2022), the IRONMAN 70.3 North American Championship (May, 2023 and 2025), and the IRONMAN North American Championship (May 2024) and fulfilling the County’s contract with World Triathlon Corporation (“WTC”).

RECITALS

WHEREAS, over the past eleven years, Washington County and the City have worked together with other public entities in order to host IRONMAN events; and

WHEREAS, the prior event hosting agreement between Washington County and WTC as well as the prior interlocal agreement between the City and County regarding the IRONMAN events have expired and need to be renewed for the area to successfully host new IRONMAN events; and

WHEREAS, the County has entered into Host Venue Agreements with WTC under which the County will host IRONMAN races for through 2025 (“IRONMAN Contracts”), copies of which are attached hereto as Exhibits “A, B and C”, and under which Washington County will host the IRONMAN World Championship – St. George (May 2022), the IRONMAN 70.3 World Championship (Oct. 2022), the IRONMAN 70.3 North American Championship (May, 2023 and 2025), and the IRONMAN North American Championship (May 2024)—(each individually referred to as an “Event” or collectively as “Annual Event”); and

WHEREAS, in addition to the IRONMAN Contract, Washington County has been selected to host the IRONMAN 70.3 World Championship and has entered into a Host Venue Agreement (“World Championship Contract”), a copy of which is attached hereto as Exhibit “B”, and under which Washington County will host the IRONMAN 70.3 World Championship – St. George (2021) (referred to as an “Event” or the “World Championship Event”); and

WHEREAS, The Utah Interlocal-Cooperation Act, Utah Code Annotated Sections 11-13-101 et seq. (1953, as amended), permits local public agencies, including counties and cities, to make the most efficient use of their powers through cooperating with other public agencies; and

WHEREAS, due to the large positive economic impact that will come to the City and its residents by having the IRONMAN events conducted in and around the City, the City is willing to assist the County in fulfilling some of the County’s responsibilities under the IRONMAN Contract and the World Championship Contract.

THEREFORE, the Participants agree as follows:

REQUIREMENTS OF THE COUNTY UNDER THE IRONMAN CONTRACTS
THAT SHALL BE PROVIDED BY THE CITY

- Section 1. The City shall provide the following to the County at no expense to the County (except as provided in Section 3), during each year of the term of the IRONMAN Contracts:
- (a) **Planning and Coordination.** Coordinate the use and permitting of needed and available City facilities, roads, easements and volunteer recruitment for all race sites in Hurricane City to include: race course, aid stations, concessions, parking, VIP hospitality, spectator viewing, transportation and municipal services.
 - (b) **Venues/Facilities.** The City will provide venues and facilities in a similar manner, location, and quantity as the City has historically provided. The Parties acknowledge that adjustments to the course may be needed from year to year based on new growth and development in the area. Any adjustments will be discussed and approved by the Parties well in advance of the annual event. Certain facilities and personal property listed herein will be required from the Tuesday before to the Tuesday immediately following each Race. The County shall identify all facilities and personal property listed herein needed for an Event, and the dates needed, no later than 60 days prior to an Event.

SERVICES

- Section 2. With respect to each Event and as coordinated by WTC's Race Director, the City shall facilitate, assist, and contribute services for the following support services as needed within the City:
- (a) **Police, Emergency and Other Municipal Services within the City.** Provide and/or arrange for the provision of costs for police and municipal services within the City necessary to plan and conduct the Events, including police, traffic operations, community awareness, waste management, and electrical services. The City shall ensure that police will command and ensure all emergency services (police, fire, and ambulance) needed to maintain public safety.
 - (b) **Traffic Control Devices and Services.** The City shall provide (or cause to be provided) diagrams and/or plans to assist with the placement of traffic devices within the City. The City shall have no obligation to provide traffic control devices, cones, message boards, etc.
 - (c) **Community Awareness.** The City shall provide community notifications via flyers, email, city newsletters, with utility bills, etc. (provided in a reasonable time before the Event) to all potentially affected persons and third parties within the city, informing them of planned street closures and Event schedules. The City shall also assist in determining needs and facilitating placement of message boards on roadways as coordinated by IRONMAN operations or its assigned contractors.
 - (c) **Waste Management Services.** The City shall ensure that the Venue is clean and well-kept at all times. Adjustments will be put in place according to the needs of WTC. The City shall provide (or cause to be provided) recycle containers, garbage units, large units for disposal, transportation, and manpower.

REIMBURSEMENT

- Section 3. The City shall receive reimbursement from IRONMAN and/or the County for all race day overtime costs for police and municipal services necessary to conduct the portion of the event that is within the boundary of the City, including police, traffic operations, traffic control devices (cones, barricades, ~~VMS~~ and VMS boards), community awareness, waste management, electrical services, and parking. The City shall coordinate police and service employee schedules in a cost-effective way during race week to provide for the least amount of overtime hours possible during race day.

TERM

- Section 4. This Agreement shall become effective on the date that both Participants have duly executed the Agreement and will continue in effect until thirty (30) days after the 2025 Event, unless otherwise agreed to in writing by the parties.

COMPLIANCE

- Section 5. The City shall agree to the following items in order to comply with the terms of the IRONMAN Contract and the World Championship Contract:
- (a) **Intellectual Property of WTC.** The City shall not, without WTC's prior written consent, use any intellectual property rights of WTC, including without limitation the IRONMAN® mark, the 70.3® mark, and the design mark known as the "M-DOT." The City shall promptly inform WTC of any possible misuse or infringement by any person or entity of the Event Logo or any other intellectual property of WTC.
 - (b) **No Construction; Street Cleaning.** Unless reasonably required and unavoidable, the City shall not begin and/or effect any structural, engineering, beautification, or related works during the Event and the week prior to the Event. The City shall be responsible for sweeping and cleaning up all Venue areas prior to and after each Event.
 - (c) **Venue & Race Course Exclusivity; Condition of Race Course.** The City shall provide WTC with exclusive use of agreed upon locations (as necessary for conducting the Event) within the Venue for purposes of staging and conducting the Race, the transition areas and infrastructure, the Expo, and all other aspects of the Event. The City shall ensure that, as necessary to conduct the Races, the Race course route (i.e., the roads, waterways, and other public spaces actually used for the Race) is closed to the public during the Race and for a reasonable period before and after the Race, and, subject to reasonable exceptions, is made exclusively available to WTC during such periods. The City shall ensure that all Race routes within the Venue are in good condition during the Event.

EXCLUSIVITY

- Section 6.

- (a) **Use of Racecourse and Event-Related Areas.** Notwithstanding anything to the contrary in this Agreement: During the period between (and including) the Monday preceding the Race Date until (and including) the Friday following the Race Date (collectively, the “Event Period”), the City shall not produce, conduct, host, or permit any event (other than such Event) that takes place, in whole or in part, on any portion of the Race course or at any Event-related area; provided, however, that during the Event Period (excluding Race day) private functions and corporate events may take place but only if such events do not do or include any of the following:
- (i) include any endurance-, running-, road cycling-, or swimming-related race, competition or event having a distance longer than an “Olympic” distance triathlon;
 - (ii) include any vendor exposition, tradeshow, and/or the selling of any merchandise and/or services that has the effect of exploiting the goodwill of the Event and/or gaining market exposure by way of intrusive and/or associative marketing practices;
 - (iii) occur on the Race course or at any other area where any part of the Event is being conducted, or adversely affect the ingress or egress to or from any such areas;
 - (iv) in any way jeopardize or adversely impact Event production or operations;
 - (v) infringe on any WTC intellectual property rights; or
 - (vi) include or constitute Ambush Marketing (as defined in Section 7 or otherwise promote themselves as purportedly being part of or in connection with the Event).
- (b) **Advertising Other Triathlon Companies or Long-Distance Triathlons.** Unless otherwise pre-approved, in writing, by WTC (which approval may be granted or denied in WTC’s sole discretion), during the Term and except as set forth in this Section, the City shall not permit its website to display any marketing, promotion, advertisement, reference, or the like, of (i) any other triathlon event series or company, including but not limited to International Triathlon Union (ITU), Revloution3 Triathlon, Life Time Fitness Triathlon, Challenge Family Triathlon, and HITS Triathlon (or any of their respective successors or assigns)(the “Ironman Competitors”), (ii) any person, entity, or group (other than WTC or any subsidiary or licensee thereof) that operates, organizes, produces, or is otherwise involved in any triathlon having a distance longer than that of an “Olympic” distance triathlon (as such distance is defined by the International Triathlon Union), or (iii) any triathlon having a distance longer than that of an “Olympic” distance triathlon (as such distance is defined by the International Triathlon Union), unless such triathlon is owned or operated by WTC or any subsidiary or licensee of WTC.
- Notwithstanding the foregoing, the City may permit its website to display marketing, promotion, advertisement, reference, and/or otherwise associate with, BBSC Endurance Sports (“BBSC”), provided however, that the City may not permit its website to display any marketing, promotion, advertisement, reference, or the like, of (A) any BBSC event(s) if such BBSC event(s) features any race distance longer than that of an “Olympic” distance triathlon (as such distance is defined by the International Triathlon Union), or (B) BBSC if BBSC or any of BBSC’s events are acquired by and/or operated by any Ironman Competitor.
- (c) **Non-Competition.** During the Term and the eighteen (18)-month period thereafter, the City shall not produce, support, advertise, promote, conduct, host, permit, or contract or partner with any person or entity (other than WTC or a subsidiary thereof) for or in connection with, any other triathlon located, in whole or in part, within the Venue if such event features any race distance longer than that of an “Olympic” distance triathlon (as

such distance is defined by the International Triathlon Union). Notwithstanding the foregoing, the City may support and promote existing events such as BBSC Endurance Sports triathlon races. However, the City may not support and promote any such events that feature any race distance longer than that of an “Olympic” distance triathlon, or if such events are acquired by and/or operated by any IRONMAN Competitor.

AMBUSH MARKETING

Section 7.

- (a) “Ambush Marketing” means selling (e.g., including, but not limited to, sponsorship, merchandise, vendor space), advertising, or marketing, by any third party that is not a WTC-authorized sponsor, merchandiser, and/or vendor of the Event, where such selling, advertising, or marketing (i) is in connection with, or in proximity to, the Event, or (ii) otherwise has the effect of exploiting the goodwill of the Event and/or gaining market exposure by way of intrusive and/or associative marketing practices.
- (b) The City shall not cause, engage in, or permit any Ambush Marketing, and, except to the extent the City is prohibited by law from doing so, the City shall prevent and stop Ambush Marketing at, near, or in connection with the Event, including without limitation by:
 - (i) Causing its employees and agents to promptly report, to WTC and the proper City or County authorities, any marketing or activity reasonably appearing to be Ambush Marketing;
 - (ii) Ensuring, prior to and during the Event, that the Event perimeter and any other key advertising locations under the City's control do not carry any form of temporary advertising or promotional material relating to the Event, except as may be approved in writing by WTC (in WTC's sole discretion);
 - (iii) Using, invoking, and applying the City's powers to protect all trademarks and copyrights associated with the Event;
 - (iv) Preventing the distribution of product samples, premiums, promotional literature and other commercial and non-commercial materials within the established Event perimeter or adjacent to the Event site, except where expressly authorized by WTC;
 - (v) As allowed by law, causing all signage and other physical items of Ambush Marketing to be taken down, moved, removed, and/or confiscated immediately by the City or, if applicable, law enforcement personnel; and
 - (vi) Cooperating with WTC to prevent Ambush Marketing, as may reasonably be requested by WTC.

INDEMNIFICATION

Section 8.

- (a) Each Participant agrees to be fully responsible for their own acts of negligence, or their respective agents' acts of negligence while acting within the scope of their authority, and agree to be liable for any damages resulting from said negligence to the extent permitted by law. Each Participant shall indemnify, defend and hold the other Participant and its officers, employees, and/or agents harmless from any and all claims, costs, liabilities, judgments, expenses or damages arising out of any negligent and/or act of malfeasance by the other party, its officers, employees, and/or agents.
- (b) Nothing contained herein shall be construed as consent by either of the Participants to be sued by third-parties in any manner arising from this Agreement, or as a waiver of sovereign immunity as to any Participant.

GENERAL PROVISIONS

Section 9.

- (a) **Interlocal Agreement to be Kept on File.** Each Participant will file this Agreement with its keeper of records.
- (b) **Approval.** This Agreement shall be approved by each party, pursuant to the requirements of the Interlocal Cooperation Act.
- (c) **Attorney Review.** This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each party, pursuant to the requirements of the Interlocal Cooperation Act.
- (d) **Costs.** Unless otherwise stated in this Agreement, each party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs.
- (e) **No Interlocal Entity.** No separate legal entity is created by the terms of this Agreement. To the extent that this Agreement requires administration other than as set forth herein, it shall be administered by the duly assigned employees of the Participants, acting as a joint board. No real or personal property shall be acquired jointly by the parties as a result of this Agreement. To the extent that a party acquires, holds, and disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this Agreement, such party shall do so in the same manner that it deals with other property of such party
- (f) **Participants Status.** Each Participant represents and warrants that it is a political subdivision of the State of Utah and is authorized to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

- (g) Termination of Agreement. This Agreement shall be in full force and effect and be legally binding upon the Participants only after its approval and execution by the governing bodies of each of the Participants. This Agreement shall automatically terminate if and when the Ironman Contract is terminated prior to the fulfillment of its term. Furthermore, the Participants by mutual consent may terminate the Agreement at any time after all contractual obligations and debts relating to this Agreement have been fulfilled and retired.
- (h) Counterparts. This Agreement may be executed in several counterparts, any one of which shall be regarded for all purposes as one original. The Participants agree that they will execute all instruments, documents, and resolutions or ordinances necessary to give effect to the terms of the Agreement.
- (i) Entire Contract. This Agreement merges and supersedes all prior negotiations, representations and agreements between the Participants relating to the subject matter hereof and constitutes the entire contract between the Participants.
- (j) Amendment. This Agreement shall not be modified or amended except in writing, which shall be signed by the duly authorized representative of each Participant after adoption of a resolution by the governing body of each participant approving the modification or amendment.
- (k) Dispute Resolution. The Participants to this Agreement are governmental entities working together for mutual advantage. In the event a dispute arises with respect to this Agreement, the Participants agree to first submit the matter to non-binding mediation.
- (l) Governing Law. This Agreement shall be governed by the laws of the State of Utah.

SIGNATURE BLOCK

IN WITNESS WHEREOF, the Participants have caused this Agreement to be executed by their duly authorized representatives as of the Date first written above.

WASHINGTON COUNTY

CITY OF HURRICANE

Victor Iverson, Chair
Washington County Commission

By: _____

Title: _____

Attest:

Attest:

Susan Lewis
Washington County Clerk-Auditor

Date: _____

Date: _____

Approved as to form and compatible with State law:

Deputy Washington County Attorney

City Attorney



HOST VENUE AGREEMENT

ST. GEORGE, UTAH (2020-2024)

This Host Venue Agreement (this "Agreement") is made as of May 3, 2019 (the "Effective Date") by and between:

- (i) **WORLD TRIATHLON CORPORATION**, a Florida corporation ("WTC"); and
- (ii) **WASHINGTON COUNTY**, a political subdivision of the State of Utah ("Host").

WTC and Host are sometimes referred to herein individually as "Party" and collectively as "Parties."

RECITALS

- A. WTC and its subsidiaries own and operate a global portfolio of IRONMAN® and IRONMAN® 70.3®-branded triathlon events.
- B. Subject to the terms of this Agreement, Host desires to have WTC conduct in and around St. George, Utah (the "Venue"), and WTC desires to conduct in and around the Venue, the IRONMAN® North American Championship triathlon race in years 2020 and 2023 and the IRONMAN® 70.3® North American Championship triathlon race in years 2021, 2022, and 2024.
- C. In consideration of WTC selecting the Venue as the site for the Events (as defined in Section 1) and providing the Host Sponsorship Benefits (as defined in Section 5), Host desires, subject to the terms of this Agreement, to provide the Host Support Services (as defined in Section 4) and to make certain payments, and grant certain rights, to WTC.
- D. The Parties further acknowledge that:
 - (1) The content of the following recitals is qualified by the terms and conditions of the Agreement;
 - (2) As the IRONMAN® 70.3® NORTH AMERICAN CHAMPIONSHIP each 70.3 Event (as defined in Section 1) will be positioned as one of the premier races on the IRONMAN 70.3 circuit;
 - (3) As the IRONMAN® NORTH AMERICAN CHAMPIONSHIP each 140.6 Event (as defined in Section 1) will be positioned as one of the premier races on the IRONMAN circuit;
 - (4) The Events are a key component for the Parties in building and promoting their respective brands;
 - (5) The Parties have already committed and will continue to commit significant resources toward the Events;

- (6) Each Party wishes to gain a return on its investment by making the most of the assets it has developed and the marketing and promotional opportunities available;
- (7) The Parties each have a responsibility and desire to build and protect their respective brands;
- (8) Event marketing is a key component in the marketing strategy of Host, and Host has a responsibility to utilize the Event to market and promote the area as a destination;
- (9) Host has a responsibility to respect and promote the IRONMAN® and IRONMAN® 70.3® brands and to honor the Trademark Standards and Usage Guidelines set forth in Exhibit D of the Agreement;
- (10) The Parties may have certain agreements and obligations (in addition to the Agreement), which must be fulfilled and which may place restrictions on what types of media and promotion can be utilized;
- (11) The use of photos, video, public relations, social media, and mass media will benefit both Parties by building the image, enthusiasm, awareness and success of the Event; and
- (12) Participation in the Events by premier athletes will generate excitement, create competitive Events, and will increase exposure for the Events and the Venue.

AGREEMENT

The Parties agree as follows:

1. **North American Championship Events.** Subject to the terms of this Agreement:

- (a) **Authorization; Ownership.** Host authorizes WTC to prepare and conduct the 140.6 Events and the 70.3 Events (as such terms are defined below) (each, an “Event” and collectively, the Events”) in and around the Venue in years 2020, 2021, 2022, 2023, and 2024 (each, a “Race Year” and collectively, the “Race Years”). WTC is and will be the owner of each Event and nothing herein constitutes a license by WTC to Host or to any third party to establish or operate any Event or Race (as defined below).
- (b) **North American Championship Races.**
 - (i) **IRONMAN® 70.3® - 70.3 Events.** With respect to the **2021, 2022, and 2024 Race Years**, WTC shall be responsible for operating, in and around the Venue, an IRONMAN® 70.3®-branded endurance triathlon (comprising, subject to cancellation of any part thereof due to weather conditions or other reasons, a 1.2 mile swim, 56 mile bicycle ride, and 13.1 mile run) (the “70.3 Race”) and performing certain administrative, operational, and sales and marketing functions related thereto (collectively, and together with the 70.3 Race and any additional races added under Section 1(f), a “70.3 Event”).
 - (ii) **IRONMAN® - 140.6 Events.** With respect to the **2020 and 2023 Race Years**, WTC shall be responsible for operating, in and around the Venue, an IRONMAN® -branded endurance triathlon (comprising, subject to cancellation of any part thereof due to weather conditions or other reasons, a 2.4 mile swim, 112

mile bicycle ride, and 26.2 mile run) (the "140.6 Race") and performing certain administrative, operational, and sales and marketing functions related thereto (collectively, and together with the 140.6 Race and any additional races added under Section 1(f), a "140.6 Event").

(c) Event Names.

- (i) General. When referring to any Event, Host shall (and shall use reasonable efforts to cause relevant third parties to) at all times use such official name of the Event (including mention of the official title sponsor, if any, and the official presenting sponsor, if any).
- (ii) 70.3 Events. The official name of each 70.3 Event will be IRONMAN® 70.3® NORTH AMERICAN CHAMPIONSHIP - ST. GEORGE. WTC may elect to add the name of a "title" sponsor or "presenting" sponsor to the official name of the 70.3 Event (e.g., "[*Title Sponsor*] IRONMAN® 70.3® NORTH AMERICAN CHAMPIONSHIP - ST. GEORGE, presented by [*Presenting Sponsor*]").
- (iii) 140.6 Events. The official name of each 140.6 Event will be IRONMAN® NORTH AMERICAN CHAMPIONSHIP - ST. GEORGE. WTC may elect to add the name of a "title" sponsor or "presenting" sponsor to the official name of the 140.6 Event (e.g., "[*Title Sponsor*] IRONMAN® NORTH AMERICAN CHAMPIONSHIP - ST. GEORGE, presented by [*Presenting Sponsor*]").

- (d) Race Dates. Subject to the terms of this Agreement and unless otherwise mutually agreed upon in writing by the Parties, the 70.3 Races and the 140.6 Races (each, a "Race" and collectively, the "Races") will, as applicable for the Race Year, be held annually on the following dates (the "Race Dates"):

IRONMAN® 70.3® NORTH AMERICAN CHAMPIONSHIP - ST. GEORGE	
Race Year	70.3 Race Date
2021	May 1, 2021
2022	May 7, 2022
2024	May 4, 2024

IRONMAN® NORTH AMERICAN CHAMPIONSHIP - ST. GEORGE	
Race Year	140.6 Race Date
2020	May 2, 2020
2023	May 6, 2023

- (e) Event Changes. WTC may in its reasonable discretion, in order to improve any Event, institute changes in the implementation or structure of such Event; provided, however, that no material change may be made to any previously confirmed location or venue(s) without the prior written consent of both Parties.
- (f) Additional Races. WTC shall have the option to conduct, as part of the Events and during the Event Period (as defined in Section 8), ancillary races in connection with the Event (e.g., IRONKIDS® and/or IRON GIRL® triathlon, duathlon, or run). WTC may create additional, race-specific logos for any such ancillary races conducted, and such

logos will be subject to the same restrictions applicable to the Event Logo (as defined in Exhibit E) under this Agreement.

2. **Term of Agreement.**

- (a) This Agreement is effective beginning on the Effective Date, and will continue in effect until the date that is thirty (30) days after the 2024 Event, unless this Agreement is sooner terminated in accordance with the terms of this Agreement (the "Term").
- (b) During the first three (3) months of 2024, the Parties shall discuss in good faith whether they desire to renew this Agreement beyond the Term (the "Renewal Period"). The Parties agree to decide by March 31, 2024 (the "Decision Date") whether or not to extend the Agreement for the Renewal Period, which decision must include whether or not the Parties desire for (i) future IRONMAN® 70.3®-branded events taking place at the Venue to be designated as the IRONMAN® 70.3® NORTH AMERICAN CHAMPIONSHIP and (ii) future IRONMAN®-branded events taking place at the Venue to be designated as the IRONMAN® NORTH AMERICAN CHAMPIONSHIP. If, prior to the Decision Date, the Parties mutually agree to terms for a Renewal Period then the Parties shall, prior to or on the Decision Date, execute a memo of understanding indicating the parameters of such Renewal Period. Such mutually agreed upon Renewal Period, if any, will be effective only if set forth in a separate, definitive written agreement signed by the Parties. Nothing in this subsection (b) creates any obligation on either Party to renew this Agreement, to extend the Term, or to enter into any other agreement.

3. **Financial Matters.**

- (a) Annual Payments to WTC. With respect to each Event, Host shall, under the terms of Exhibit A, pay WTC (or cause the Utah Sports Commission to pay WTC) the amounts stated in Exhibit A (each, an "Annual Payment").
- (b) Sponsorship & Expo Vendor Referrals; Revenue Share.
 - (i) Sponsorship & Expo Vendor Referrals. Host shall not grant or sell sponsorships, official designations, Expo space, or any other rights at or in connection with the Event to any third parties. With respect to each Event, Host shall have the right to refer to WTC reputable third-party Event-specific sponsors and Expo vendors (collectively, "Host-Referred Third-Party Sponsorships"), provided, however, that:
 - (A) Host shall focus on referring sponsors/Expo vendors in non-endemic categories from local, statewide, and regional companies and organizations;
 - (B) Host shall not refer sponsors/Expo vendors to WTC if such sponsors/Expo vendors sell products and/or services that fall within any of the categories set forth in Exhibit E (collectively, the "Restricted Sponsorship Categories"). If Host refers a sponsor/Expo vendor that falls within any of the Restricted Sponsorship Categories then Host shall not receive the Host Revenue Share (as defined below) with respect to such sponsor/Expo vendor. Due to occasional changes to the Restricted

Sponsorship Categories, WTC reserves the right to update the Restricted Sponsorship Categories, at any time and from time to time. Upon Host's request, WTC shall provide to Host the then-applicable list of Restricted Sponsorship Categories;

- (C) Host shall not communicate any Event sponsorship or Expo vendor opportunity to any potential sponsor or vendor unless such specific sponsor/Expo vendor has been pre-approved in writing by WTC;
 - (D) WTC reserves the right, in WTC's sole and absolute discretion, to reject any proposed sponsorship, sponsor, or Expo vendor including, without limitation, those referred by Host; and
 - (E) Host shall use best efforts to prevent third parties from purporting to be a sponsor or Expo vendor of the Event unless such party is a party to a Sponsorship and/or Expo Vendor Agreement (as defined below). Host does not have the authority to legally bind WTC, and Host shall not represent to any third party that Host has such authority. Any Host-Referred Third-Party Sponsorships will be valid only if in a written agreement signed by both WTC and the sponsor/Expo vendor party (a "Sponsorship and/or Expo Vendor Agreement").
- (ii) Host Revenue Share. If, during the period between the Effective Date and the final Event, WTC enters into a Sponsorship and/or Expo Vendor Agreement (specifically with respect to any Event) with a third-party sponsor or Expo vendor for a Host-Referred Third-Party Sponsorship where such sponsor or Expo vendor was referred to WTC by Host and was pre-approved by WTC in accordance with this Agreement, WTC shall pay to Host an amount equal to fifteen percent (15%) of the Net Proceeds (as defined below) (such amount referred to as the "Host Revenue Share").
- (A) "Net Proceeds" means, net of applicable taxes, ninety percent (90%) of the total cash actually received and retained by WTC from the applicable Host-Referred Third-Party Sponsorship (it being acknowledged by the Parties that such reduction by ten percent (10%) is for purposes of covering WTC's expected costs to activate and implement the benefits for such Host-Referred Third-Party Sponsorship.
 - (B) Based Only on Cash Proceeds. For the avoidance of doubt: Net Proceeds (1) will be based only on such cash proceeds to WTC from sponsorship sales and Expo fees from the Host-Referred Third-Party Sponsorship that are specific to the Event and (2) will not include the value of any in-kind contributions or budget-relieving or other services provided by the sponsor or any other party, except as may be approved in writing by WTC.
 - (C) Origination. Host will be deemed to have referred an Event-specific sponsor or Expo vendor to WTC if, in good faith, Host provides such sponsor/Expo vendor's name and contact information to WTC in writing, and, prior to such notice to WTC by Host, WTC is neither doing business nor has any contract with such sponsor/Expo vendor (or any of its

subsidiaries or affiliates), nor communicated, during the then prior 27 month period, with such sponsor/Expo vendor (or any of its subsidiaries or affiliates) regarding the possibility of doing business or entering into any contract with WTC (or any of its subsidiaries or affiliates).

- (D) Other Events. For avoidance of doubt: Host has no right to receive the Host Revenue Share (or any other commission or fee) in connection with any event(s) (other than the Event), regardless of whether Host referred to WTC a third-party sponsor/Expo vendor for such other event(s).
- (c) Taxes. All amounts payable to WTC by Host under this Agreement will exclude any applicable taxes, which shall be paid by Host.
- (d) Entry Fees; Other Revenues. Except as may be otherwise expressly specified in this Agreement, WTC shall be entitled to receive and retain all Event/Race entry fees, and all other revenues and value in-kind in connection with the Events, including without limitation all revenues from merchandise sales, sponsorships, hospitality passes, VIP, Expo booth sales, product licenses, and photograph sales.
- (e) Costs. To the extent Host does not timely provide any portion of the Host Support Services (as defined below), then, upon written request from WTC, Host shall, within thirty (30) days after delivery of such notice to Host, reimburse WTC to the extent WTC incurs, or will incur, any costs to obtain or provide any such Host Support Services not provided by Host. Such right of reimbursement does not limit WTC's remedies with respect to Host failing to provide any of the Host Support Services.

4. **Certain Obligations of Host.**

- (a) Host Support Services. Host shall timely provide to WTC (or, as the case may be, shall timely provide for WTC's benefit), the services, equipment, value in-kind, personnel, and other items set forth in Exhibit B (collectively, the "Host Support Services") for each Event. Unless otherwise expressly agreed to in this Agreement, Host shall provide the Host Support Services at Host's own cost. Host Support Services may be modified from time to time by WTC in its reasonable discretion, provided that no such change (i) results in any material additional cost or expense to Host or (ii) requires Host to do anything Host is not authorized, or does not have legal jurisdiction, to do or cause to be done.
- (b) Compliance with Law. In connection with each Event and Host's performance of its obligations under this Agreement, Host shall comply with all applicable laws, rules, and regulations.
- (c) Operational Aspects. In order to facilitate proper and timely planning, implementing, and conducting of each Event by WTC, Host shall, and shall cause each of its representatives, agents, and contractors to, follow instructions, solely regarding Event-related operational or technical issues, from WTC or any third party designated by WTC.
- (d) Intellectual Property of WTC. Except with respect to the Event Logo (the use of which by Host being subject to Section 10), Host shall not, without WTC's prior written consent, use any intellectual property rights of WTC, including without limitation the IRONMAN® mark, the 70.3® mark, and the design mark known as the "M-DOT." Host

shall promptly inform WTC of any possible misuse or infringement by any person or entity of the Event Logo or any other intellectual property of WTC.

- (e) Information Updates. Host shall, upon request from WTC, promptly inform WTC as to the status of the performance of Host's obligations hereunder, including without limitation regarding the Host Support Services.
- (f) Representations. Host covenants that each of the representations and warranties made by Host in Section 9 will be true and complete at all times during the Term.

5. Certain Obligations of WTC.

- (a) Host Sponsorship Benefits. WTC shall provide to Host (or, as the case may be, shall provide for Host's benefit and/or the benefit of the Event), the sponsorship benefits and other items set forth in Exhibit C (collectively, the "Host Sponsorship Benefits"). Unless otherwise expressly agreed to in this Agreement, the cost of any and all activation materials (e.g., including, without limitation, any signage, banners, boards, branding, etc.) required or necessary in connection with the Host Sponsorship Benefits, including without limitation any costs in connection with the design, production, and/or delivery thereof, are the sole responsibility of Host.
- (b) Operations, Equipment, and Personnel. Except to the extent required to be provided or obtained by Host as part of the Host Support Services, or as may be otherwise required under this Agreement, WTC shall provide for (or cause to be provided) all Race-related equipment, supplies, personnel (including volunteers), training of personnel (including volunteers), Race manuals/programs, Race Course route determination and design, Race Course set-up and tear-down, online and on-site athlete registration and check-in, welcome functions, award ceremonies, facility decoration, and all other technical and operational aspects of the Races. For the avoidance of doubt: WTC may require that the Event use Race timing, registration, photography, or other services provided by WTC or any of its affiliates, designees, or service providers.
- (c) Expo. WTC shall provide for a multi-day vendor exposition at the Event (the "Expo"), which Expo may be referred to as the "IRONMAN Village" or other name chosen by WTC. At the Expo, WTC (or its designee) may sell official IRONMAN-branded (or any other) merchandise and services, and, to the extent approved in writing by WTC, Event sponsors and other Expo vendors may sell or otherwise distribute other merchandise and services. Except as may otherwise be required by applicable law, Host shall not charge or assess any fee, tax, surcharge, or other cost to or on any vendor, contractor, or any other party in connection with the Expo, or any athlete entry fees, sponsorships, or any other aspect of the Event.
- (d) Website; Media; Broadcasts. WTC shall provide and maintain the official website that markets the Events (the "Event Website"), including a live global streaming webcast of the Races with stationary cameras at both transition areas and the finish line where possible based on Internet bandwidth. WTC shall retain the rights to all imagery and audiovisual works in connection with the Events, including but not limited to, television broadcast or cablecast (live or tape-delay), radio broadcast, Internet broadcast (audio or video), videotaping, filming, and photography, all of which, as between WTC and Host, is the sole property of WTC and, except as expressly set forth in this Agreement, will not

be reproduced, remarketed, or otherwise distributed or publicly displayed by Host without the written permission of WTC. WTC may, in its sole discretion, grant or license any or all of these rights to third parties or to Host.

(e) WTC to Facilitate Donations.

(i) Annual Donations.

(A) In connection with each 140.6 Event that takes place during the Term (*i.e.*, the 2020 and 2023 Events), WTC shall donate, or cause to be donated, a minimum of \$50,000.00 to one or more local not-for-profit organizations in the Washington County, Utah area (the "140.6 Event Donations").

(B) In connection with each 70.3 Event that takes place during the Term (*i.e.*, the 2021, 2022, and 2024 Events), WTC shall donate, or cause to be donated, a minimum of ~~\$25,000.00~~ to one or more local not-for-profit organizations in the Washington County, Utah area (the "70.3 Event Donations") and together with the 140.6 Event Donations, the "Annual Donations").

(ii) Acknowledgments. Notwithstanding the foregoing, the Parties acknowledge that if WTC obtains permission from the Foundation (as defined below) then WTC shall have the option to have all or part of the Annual Donations be made instead by The Ironman Foundation Inc., a Florida not-for-profit corporation (the "Foundation"). The Parties further acknowledge that if the Foundation so elects to make the Annual Donations then all terms and conditions (*e.g.*, distribution allocation, recipients, etc.) of the Annual Donations shall be determined by the Foundation (and in the sole and absolute discretion of the Foundation's Board of Directors). The Parties further acknowledge that the Foundation is not owned or controlled by WTC.

(f) Ancillary & Pre-Race Activities. WTC shall permit Host to, with WTC's prior written approval, conduct ancillary activities focused on the pro athletes, such as press conferences, charity visits, luncheons, clinics, and photo shoots. WTC shall permit Host to, with WTC's prior written approval, host and market pre-Race activities, such as a charity golf tournament, kids activities, a fitness festival, an awards after-party in Town Square, and/or a pasta dinner, to increase local and regional participation, in each case provided that such activities do not complete with the Events.

(g) Concessions. WTC shall provide to Host the non-exclusive right to provide food and beverage concessions at all Event locations and Host shall retain all revenue from such food and beverages sold by Host. Notwithstanding the foregoing, Host acknowledges that WTC has, and in the future may have additional, food and beverage partners (the "F&B Partners") and that such F&B Partners may, at no additional cost to the F&B Partners, sell, sample, and distribute their products at all Event locations.

(h) Professional Prize Purses.

- (i) 70.3 Events. WTC shall provide a prize purse of **\$75,000.00** for professional triathletes competing in the 70.3 Races (or other prize amount similar to other IRONMAN 70.3-branded regional championships).
 - (ii) 140.6 Events. WTC shall provide a prize purse of **\$150,000.00** for professional triathletes competing in the 140.6 Races (or other prize amount similar to other IRONMAN®-branded regional championships).
- (i) World Championship Entries.
- (i) 70.3 Events.
 - (A) Age-Group Slots. With respect to certain eligible top age-group finishers of the 70.3 Races, WTC will award non-transferable qualifying slots for entry in the applicable IRONMAN 70.3 World Championship ("Ironman 70.3 Age-Group Championship Slots"). The number of Ironman 70.3 Age-Group Championship Slots applicable to each 70.3 Race will be determined by WTC in its sole discretion and may change each year.
 - (B) Pro Slots. With respect to certain eligible top professional finishers of the 70.3 Races, WTC will award non-transferable qualifying slots for entry in the applicable IRONMAN 70.3 World Championship ("Ironman 70.3 Pro Championship Slots"). The number of Ironman 70.3 Pro Championship Slots applicable to each 70.3 Race will be **four (4)**.
 - (ii) 140.6 Events.
 - (A) Age-Group Slots. With respect to certain eligible top age-group finishers of the 140.6 Races, WTC will award non-transferable qualifying slots for entry in the applicable IRONMAN World Championship ("Kona Age-Group Championship Slots"). The number of Kona Age-Group Championship Slots applicable to each 140.6 Race will be determined by WTC in its sole discretion and may change each year.
 - (B) Pro Slots. With respect to certain eligible top professional finishers of the 140.6 Races, WTC will award non-transferable qualifying slots for entry in the applicable IRONMAN World Championship ("Kona Pro Championship Slots"). The number of Kona Pro Championship Slots applicable to the 2020 140.6 Race will be **six (6)**. The number of Kona Pro Championship Slots applicable to the 2023 140.6 Race will be determined by WTC in its sole discretion.
 - (j) Compliance with Law. In connection with the Event and WTC's performance of its obligations under this Agreement, WTC shall comply with all applicable laws, rules, and regulations.
 - (k) Information Updates. WTC shall, upon request from Host, promptly inform Host as to the status of the performance of WTC's obligations hereunder, including without limitation regarding the Host Sponsorship Benefits.

6. **Official Announcements; Promotions by Host.**

- (a) **Host Website.** Host, on its website, shall prominently advertise the Event and the fact that Host is hosting the Event, and at all times during the Term shall prominently display a link, on its website, to the Event Website.
- (b) **Announcements.** Host shall use reasonable efforts to consult with WTC's authorized public relations representative prior to issuing or approving any public announcements with respect to the Event, except that no such consultation will be required to the extent such announcements are required of Host as part of the Host Support Services (or otherwise required of Host under the terms of this Agreement), or that:
 - (i) are entirely administrative in nature, such as announcements informing the public regarding operational logistics or public safety matters (e.g., road closures, Event dates, Venue access); and
 - (ii) include only information in the public domain.

Upon Host's request, WTC shall provide to Host the name and contact information of such WTC authorized public relations representative.

- (c) **Other Matters.** Host shall not use the Event, any marketing opportunity related thereto or arising out of the Event, or the like, for any purpose other than to promote the Venue in a positive and universally appealing manner. To the extent Host is not prohibited by law from doing so, Host shall not permit any political statements, political campaign propaganda, or the like to be made (or made available) at the Event, or otherwise to be associated (or purported to be associated), whether directly or indirectly, with the Event or the marketing thereof.

7. **Ambush Marketing.**

- (a) **"Ambush Marketing"** means selling (e.g., including, but not limited to, sponsorship, merchandise, vendor space), advertising, or marketing, by any third party that is not a WTC-authorized sponsor, merchandiser, and/or vendor of the Event, where such selling, advertising, or marketing (i) is in connection with, or in proximity to, the Event, or (ii) otherwise has the effect of exploiting the goodwill of the Event and/or gaining market exposure by way of intrusive and/or associative marketing practices.
- (b) Host shall not cause, engage in, or permit any Ambush Marketing, and, except to the extent Host is prohibited by law from doing so, Host shall prevent and stop Ambush Marketing at, near, or in connection with the Event, including without limitation by:
 - (i) Causing its employees and agents to promptly report, to WTC and the proper Host authorities, any marketing or activity reasonably appearing to be Ambush Marketing;
 - (ii) Ensuring, prior to and during the Event, that the Event perimeter and any other key advertising locations under the Host's control do not carry any form of temporary advertising or promotional material relating to the Event, except as may be approved in writing by WTC (in WTC's sole discretion);

- (iii) Using, invoking, and applying Host's powers to protect all trademarks and copyrights associated with the Event;
- (iv) Preventing the distribution of product samples, premiums, promotional literature and other commercial and non-commercial materials within the established Event perimeter or adjacent to the Event site, except where expressly authorized by WTC;
- (v) Causing all signage and other physical items of Ambush Marketing to be taken down, moved, removed, and/or confiscated immediately by Host or, if applicable, law enforcement personnel; and
- (vi) Cooperating with WTC to prevent Ambush Marketing, as may reasonably be requested by WTC.

8. **Exclusivity.**

- (a) **Use of Racecourse and Event-Related Areas.** Notwithstanding anything to the contrary in this Agreement: During the period between (and including) the Monday preceding the Race Date until (and including) the Friday following the Race Date (collectively, the "Event Period"), Host shall not, unless otherwise mutually agreed upon by the Parties, produce, conduct, host, or permit any sporting event (other than such Event) that takes place, in whole or in part, on any portion of the Race course or at any Event-related area; provided, however, that during the Event Period festivals and community events (e.g., Washington City Cotton Days, etc.) may take place but only if such events do not do or include any of the following:
 - (i) include any endurance-, running-, road cycling-, or swimming-related race, competition or event;
 - (ii) include any sports-related vendor exposition, tradeshow, and/or the selling of any sports merchandise;
 - (iii) occur on the Race course or at any other area where any part of the Event is being conducted, or adversely affect the ingress or egress to or from any such areas;
 - (iv) in any way jeopardize or adversely impact Event production or operations;
 - (v) infringe on any WTC intellectual property rights; or
 - (vi) include or constitute Ambush Marketing (as defined in Section 7(a)) or otherwise promote themselves as purportedly being part of or in connection with the Event).
- (b) **Advertising Other Triathlon Companies or Long-Distance Triathlons.**
 - (i) Unless otherwise pre-approved, in writing, by WTC (which approval may be granted or denied in WTC's sole discretion), during the Term and except as set forth below in Section 8(b)(ii), Host shall not permit its website to display any marketing, promotion, advertisement, reference, or the like, of (i) any other triathlon event series or company, including but not limited to International Triathlon Union (ITU), Revolution3 Triathlon, Life Time Fitness Triathlon, Challenge Family Triathlon, and HITS Triathlon (or any of their respective successors or assigns) (the "Ironman Competitors"), (ii) any person, entity, or group (other than WTC or any subsidiary or licensee thereof) that operates, organizes, produces, or is otherwise involved in any triathlon having a distance

longer than that of an "Olympic" distance triathlon (as such distance is defined by the International Triathlon Union), or (iii) any triathlon having a distance longer than that of an "Olympic" distance triathlon (as such distance is defined by the International Triathlon Union), unless such triathlon is owned or operated by WTC or any subsidiary or licensee of WTC.

- (ii) Notwithstanding the foregoing, Host may permit its website to display marketing, promotion, advertisement, reference, and/or otherwise associate with, BBSC Endurance Sports ("BBSC"), provided, however, that Host may not permit its website to display any marketing, promotion, advertisement, reference, or the like, of (A) any BBSC event(s) if such BBSC event(s) features any race distance longer than that of an "Olympic" distance triathlon (as such distance is defined by the International Triathlon Union), or (B) BBSC if BBSC or any of BBSC's events are acquired by and/or operated by any Ironman Competitor.

- (c) Non-Competition. During the Term and the eighteen (18)-month period thereafter, Host shall not produce, support, advertise, promote, conduct, host, permit, or contract or partner with any person or entity (other than WTC or a subsidiary thereof) for or in connection with, any other triathlon located, in whole or in part, within the Venue if such event features any race distance longer than that of an "Olympic" distance triathlon (as such distance is defined by the International Triathlon Union).

9. **Representations and Warranties of Host.** Host represents and warrants that:

- (a) It has the full right and legal authority to enter into and fully perform this Agreement in accordance with the terms herein;
- (b) This Agreement is a legal, valid, and binding obligation of Host, enforceable against it in accordance with its terms; and
- (c) Neither the execution, delivery, nor performance of this Agreement by Host violates or will violate or cause a breach of any other agreement or obligation to which it is a party or to which it is bound, and, except with respect to any applicable Approvals & Permits and/or other similar inter-government agreements, no approval, consent, notice, or other action by or to any third party or any commission, board, or other governmental authority or agency is required in connection with the execution, delivery, or performance of this Agreement by Host.

10. **Limited License to Use the Event Logo.**

- (a) Grant of Limited Rights. Subject to the terms of this Agreement, WTC hereby grants to Host the limited, non-assignable, non-sublicensable, non-exclusive license to use, during the Term, the Event Logo (as defined in Exhibit D) in all reasonable forms of advertising and marketing, but only to the extent related to promotion of the Events. All uses of the Event Logo by Host must comply with the Trademark Standards & Usage Guidelines set forth in Exhibit D. Notwithstanding the foregoing and subject in each instance to WTC's prior written approval, which approval may be granted or denied in WTC's sole discretion, Host may permit participating cities and/or state parks to use the Event Logos in all reasonable forms of advertising and marketing, but only to the extent related to promotion of the Events.

- (b) No Use on Products. Host shall not use, and shall not authorize, license, or permit any third party to use, the Event Logo on or in connection with any products, merchandise, souvenirs, or other goods or services, in each instance unless pre-approved by WTC in writing.
- (c) Ownership; Goodwill. Host acknowledges that WTC is the owner of the Event Logo and Host shall not register, or apply to register, the Event Logo, any service mark, trademark, or domain name that is similar in any manner to, or that incorporates, the Event Logo, any of WTC's other trademarks or other intellectual property, or any mark with the word "IRON," or any equivalent term or phrase in any language. All goodwill and rights accruing or arising under the Event Logo, or in any copyrights or other intellectual property of WTC used in connection with this Agreement or any Event, enures solely to the benefit of WTC.

11. Indemnification; General Limitation of Liability; Liquidated Damages.

- (a) Each Party shall indemnify, protect, defend and hold harmless the other Party, its parent, subsidiaries, and affiliates, and each of their respective directors, officers, employees, contractors, volunteers, representatives, and agents, from and against any and all claims, liabilities, losses, damages, injuries, demands, actions, causes of action, suits, proceedings, judgments, and expenses, including without limitation, attorneys' fees, court costs, and other legal expenses, arising out of, directly or indirectly, or in connection with: (i) any breach or alleged breach of any provision of this Agreement by the other Party or any representation or warranty made by the other Party herein; or (ii) any act or omission to act by the other Party, or any of its employees, servants, or agents.
- (b) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT: WTC'S TOTAL MAXIMUM LIABILITY FOR ANY AND ALL LOSSES, INJURY, OR DAMAGES IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT, OR OTHERWISE) AND FOR ANY OTHER CLAIM, WILL BE LIMITED TO THE AMOUNT OF ANNUAL PAYMENTS (AS DEFINED HEREIN) BY HOST, UNDER THE TERMS OF THIS AGREEMENT, THAT ARE RECEIVED AND RETAINED BY WTC DURING THE THEN PRECEDING 24-MONTH PERIOD. THE LIMITATION OF LIABILITY SET FORTH HEREIN IS FOR ANY AND ALL MATTERS FOR WHICH WTC MAY OTHERWISE HAVE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER THE CLAIM ARISES IN CONTRACT, TORT, STATUTE OR OTHERWISE, AND THIS LIMITATION OF LIABILITY IS CUMULATIVE, WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES IN CONNECTION WITH THIS AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT.
- (c) The Parties acknowledge that the goodwill inherent in the IRONMAN® and IRONMAN® 70.3® brands and the Event Logo arises and is maintained, in large part, by each and every IRONMAN® and IRONMAN® 70.3® event worldwide, including the Events, being conducted as scheduled. Notwithstanding anything herein to the contrary, the Parties acknowledge that Host's failure or inability to host and support any Event as scheduled, absent a Force Majeure Event (as defined in Section 14), will cause WTC irreparable harm,

and that damages will be an insufficient and wholly inadequate remedy as a result of such a breach. If Host breaches this Agreement and such breach directly results in any Event not taking place when and as contemplated by this Agreement, Host shall, in addition to the Annual Payment for such Event, pay WTC, within thirty (30) days after receiving written demand from WTC, the amount of (i) \$300,000.00 (USD) for any 70.3 Event and (ii) \$500,000.00 (USD) for any 140.6 Event. The Parties intend that the Liquidated Damages are to provide for compensation for a portion of the damages suffered by WTC (e.g., Event relocation expenses, athlete travel expenses, and damage to WTC's reputation), are not intended as a penalty and that the stipulated amount is far less than the actual damages and consequential damages that would result from such a breach by Host.

- (d) This Section 11 will survive the expiration or termination of this Agreement for any reason.

12. **Insurance.** Each Party shall, throughout the Term, obtain and maintain its own comprehensive general liability insurance for each Event from a reputable insurance company for, without limitation, any and all claims of bodily injury, death, property damage, and advertising liability, and any and all litigation, arbitration and settlement costs, related to any claims for or by any Event participants, volunteers, referees, officials, scorekeepers, spectators, sponsors, and staff with a minimum combined single limit equal to but not less than two million U.S. dollars (\$2,000,000.00) per occurrence for any one incident or accident, and not less than five million U.S. dollars (\$5,000,000.00) in aggregate. Certificates evidencing the foregoing required insurance must be provided, upon request, to the other Party.

13. **Termination.**

- (a) Subject to Section 13(b): If either Party breaches a material provision of this Agreement, the non-breaching Party may terminate this Agreement upon thirty (30) days' written notice to the other Party (which notice must include a description of such breach) if, during such thirty (30) day period following receipt of such notice, the breaching Party fails to cure such breach.
- (b) Notwithstanding anything to the contrary herein, WTC may immediately terminate this Agreement:
- (i) at any time if WTC gives written notice to Host that WTC has determined, in its reasonable judgment, that an Event is unlikely to occur or be sufficiently profitable to WTC whether due to: (A) revocation or cancellation of, or failure to timely obtain, any of the Approvals & Permits (as defined in Exhibit B); (B) an insufficient number of paid entries or sponsorships received; or (C) any condition with respect to the Venue that could jeopardize the practicability of conducting the Race as planned, or that could create a safety risk for any Race participants or other Event visitors; or
 - (ii) if Host files, or in good faith has filed against it, a petition in bankruptcy, or is adjudicated bankrupt or insolvent, or makes an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law; or
 - (iii) if Host causes, engages in, or permits any Ambush Marketing.
- (c) Effects of Termination.

- (i) Expiration or termination of this Agreement for any reason will not relieve either Party from its obligation to perform under this Agreement to the extent such performance is due prior to the effective time of such termination.
- (ii) If this Agreement is terminated by WTC under the terms of Section 13(a) or Section 13(b)(ii), all unpaid Annual Payment amounts will be immediately due and payable to WTC.
- (iii) Except as provided otherwise herein, each Party reserves all other rights and remedies hereunder and otherwise permitted by law that have accrued prior to the effective time of such termination.

14. **Force Majeure.**

- (a) In the event either Party is prevented from performing any of its obligations under this Agreement by reason of any event outside of such Party's control, including, without limitation, fire, weather, unsafe conditions, volcano, explosion, flood, landslide, epidemic, acts of nature, war, terrorism, or other hostilities, strike, civil commotion, domestic or foreign governmental acts, orders, or regulations ("Force Majeure Event"), then such obligations of such Party during the duration of such Force Majeure Event, and for a reasonable time thereafter, will be suspended. In the case of cancellation of an Event due to a Force Majeure Event, the Parties agree to negotiate a date to reschedule such Event if practicable. If such canceled Event cannot reasonably be rescheduled or relocated within the Venue, neither Party shall be deemed to be in breach of this Agreement solely because of such cancellation. Neither any such cancellation, rescheduling, or relocation, nor the inability to reschedule or relocate, will, by itself, cause this Agreement to terminate. For purposes of this Agreement, neither the cancellation by WTC of any leg of the Race (e.g., the swim leg), nor the modification of the Race (e.g., distances, routes, etc.), will be deemed to be a cancellation of the Event.
- (b) If a Force Majeure Event causes an Event to be cancelled and such Event cannot reasonably be rescheduled or relocated within the Venue then the total amount of the Annual Payment payable by Host will be reduced as follows, depending on when cancellation is announced to the general public:

Number of Days before the Race that the Event Cancellation (due to Force Majeure) is Announced	<i>Annual Payment to be reduced by:</i>
More than 60 days	50%
7 to 60 days	25%
Less than 7 days	12.5%

For example: If cancellation of the 2020 Event (due to a Force Majeure Event) is announced 61 days before the Race, then the Annual Payment will instead be \$175,000 (i.e., \$350,000 reduced by 50%).

15. **Confidentiality.**

- (a) Subject to applicable laws, during the Term and the 36-month period thereafter, each Party (the "Receiving Party") shall, other than as provided herein, keep confidential and not use or disclose, directly or indirectly, any documents and/or materials labeled "confidential", any trade secrets, or any proprietary information owned, developed, or possessed by the other Party, whether in tangible or intangible form (collectively, "Confidential Information").
- (b) "Confidential Information" does not include any information that the Receiving Party conclusively establishes: (i) entered the public domain without Receiving Party's breach of any obligation owed to the disclosing Party; (ii) became known to the Receiving Party prior to the disclosing Party's disclosure of such information to such Receiving Party; (iii) is permitted to be disclosed by the prior written consent of the disclosing Party; (iv) became known to the Receiving Party from a source other than the disclosing Party, other than by breach of any obligation of confidentiality owed to the disclosing Party; or (v) was independently developed by the Receiving Party without breach of this Agreement.
- (c) The Receiving Party shall take all lawful measures to prevent the unauthorized use and disclosure of Confidential Information, and to prevent unauthorized persons or entities from obtaining or using Confidential Information. The Receiving Party shall refrain from directly or indirectly taking any action that would constitute or facilitate the unauthorized use or disclosure of Confidential Information.
- (d) The Receiving Party may disclose Confidential Information to its officers and employees to the extent necessary to enable the Receiving Party to perform its obligations hereunder, provided, however, that the Receiving Party shall be liable for any unauthorized use and disclosure of Confidential Information by any of its officers or employees.
- (e) The Receiving Party may disclose the terms of this Agreement to (i) its attorneys and other professional advisors who have a professional duty to the Receiving Party to keep confidential such information or (ii) a third party that has entered into a reasonably standard confidentiality agreement with the Receiving Party that prohibits such third party from disclosing such terms, where such third party requires to review this Agreement for purposes of evaluating a proposed (A) purchase by such third party of assets of or equity interests in the Receiving Party or (B) financing transaction involving the borrowing of funds or establishing a credit facility or other financing arrangement, in each case where Receiving Party would be the borrower or guarantor of such debt.
- (f) If the Receiving Party is required to disclose Confidential Information in order to comply with applicable law, regulations, court order, or other legal process, the Receiving Party agrees to provide reasonable advance written notice to the disclosing Party and each of the Parties shall use its reasonable efforts to secure confidential treatment of the Confidential Information to be disclosed (whether through protective orders or otherwise) and to ensure that only the minimum amount of Confidential Information necessary to comply with such requirements is disclosed.

16. **Assignment; Binding Effect.** No rights or obligations under this Agreement may be assigned or delegated by Host without the prior written consent of WTC, provided, however, that WTC hereby consents to any and all assignments and delegations that Host will from time to time make as necessary for purposes of providing the Host Support Services (e.g., inter-government agreements for municipal services, obtaining Approvals & Permits, etc.). Any purported assignment or delegation in violation of this Section is

void *ab initio*. All of the terms of this Agreement will apply to, be binding upon, and enure to the benefit of the Parties hereto, their successors, and permitted assigns. Subject to the immediately preceding sentence, no third party will have any rights or remedies under this Agreement.

17. **Relationship of the Parties.** The Parties are acting herein solely as independent contractors. Nothing herein contained will create or be construed as creating a partnership, joint venture, or agency relationship between the Parties. Each Party acknowledges and agrees that it neither has nor will give the appearance or impression of having any legal authority to bind or commit the other Party in any way. Each Party will be solely responsible for all wages, income taxes, worker's compensation, and any other requirements for all personnel it supplies in connection with this Agreement.

18. **Jurisdiction and Dispute Resolution.**

- (a) **Governing Law.** Notwithstanding the place where this Agreement may be executed by either Party, this Agreement and any claim, controversy, dispute or other matter arising hereunder or related hereto (whether by contract, tort or otherwise) shall be governed in accordance with the laws of the State of Florida, without regard to the conflict of laws provisions thereof that would result in the application of the laws of any other jurisdiction. In any litigation arising out of or relating to this Agreement, the Parties agree that venue shall be solely in either the United States District Court, Middle District of Florida, Tampa Division, or a Florida state court located in Hillsborough County, Florida (each, a "Tampa Court").
- (b) **Arbitration.** If a dispute, claim or controversy, with the exception of claims for injunctive and/or other equitable relief for intellectual property violations, unfair competition and/or the use and/or unauthorized disclosure of trade secrets or confidential information arises out of, relates to, or is in connection with this Agreement, any amendment of this Agreement or any breach of this Agreement ("Dispute"), and if the Dispute cannot be settled through direct discussions between the Parties, the Parties agree to settle the Dispute by arbitration administered by the American Arbitration Association ("AAA") whereby such Dispute shall be referred to a sole arbitrator selected by the Parties, or, if the parties are unable or unwilling to agree to such a selection, to AAA arbitration as the sole remedy as to all matters in Dispute, administered by the AAA in accordance with applicable Arbitration Rules to include the Optional Rules for Emergency Measures of Protection and Optional Procedures for Large, Complex Commercial Disputes, as interpreted and governed by the Florida Arbitration Code. The venue of any such arbitration shall be solely in Tampa, Florida. Judgment on the award rendered by the arbitrator may be entered solely in a Tampa Court. The arbitrator shall not have authority to award punitive or other damages in excess of compensatory damages and each Party irrevocably waives any claim thereto.
- (c) **Enforcement.** If either Party brings any arbitration or other action under this Agreement (including, without limitation, any challenge or appeal), the prevailing Party shall be entitled to recover from the other Party reasonable attorneys' fees and costs (including, without limitation, the cost of such arbitration or other action). The Parties agree to authorize the arbitrator to determine both the entitlement and apportionment of such fees and costs.
- (d) **Arbitration Charges.** Each Party shall initially bear an equal share of the arbitrator's compensation and administrative charges of the arbitration and shall make deposits with

the AAA of its share of the amounts requested by the AAA. Failure or refusal by a Party to timely pay its share of the deposits for the arbitrator(s)' compensation and administrative charges shall constitute a waiver by that Party of its rights to be heard, present evidence, cross-examine witnesses, and assert counterclaims. Informing the arbitrator of a Party's failure to pay its share of the deposits for the arbitrator's compensation and administrative charges for the purpose of implementing this provision will not be deemed to affect the arbitrator(s)' impartiality or ability to proceed with the arbitration.

- (e) General. The requirement for arbitration will not be deemed a waiver of any right of termination under this Agreement and the arbitrator is not empowered to act or make any award other than based solely on the rights and obligations of the Parties prior to any such termination. The Parties, their representatives, other participants and the arbitrator shall hold the existence, content, and result of arbitration in confidence. Any provisions of this Agreement not found to be in compliance with applicable law may be waived without effect on the agreement by the Parties to arbitrate as provided herein. Notwithstanding the foregoing, in the event of breach by a Party of any of its obligations hereunder, the non-breaching Party may seek injunctive or other equitable relief in any Tampa Court. A request by a Party to a court for interim measures shall not be deemed a waiver of the obligation to arbitrate.

19. Rights and Remedies. The rights and remedies provided by this Agreement are given in addition to any other rights and remedies either Party may have by law, statute, ordinance or otherwise. All such rights and remedies are intended to be cumulative, and the use of any one right or remedy by either Party shall not preclude or waive its right to any or all other rights or remedies.

20. Notices. All notices, requests, demands, and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given if emailed, hand delivered, or delivered by certified or registered mail or by overnight delivery service:

If to Host:

WASHINGTON COUNTY
TOURISM OFFICE
20 N. Main Street #105
St. George, UT 84770
Attention: Kevin Lewis, Director
Email: Kevin.Lewis@washco.utah.gov

(Or to such other address as Host furnishes to WTC in writing in accordance with this Section)

If to WTC:

WORLD TRIATHLON CORPORATION
3407 W. Dr. Martin Luther King Jr. Blvd, Suite 100
Tampa, Florida 33607
Attention: Chief Legal Officer
E-mail: Legal@ironman.com

(Or to such other address as WTC furnishes to Host in writing in accordance with this Section)

21. **Enforcement of Agreement.** Host hereby agrees to waive all defenses, if any, to enforcement of this Agreement that Host might otherwise have under the doctrine of sovereign immunity (or similar doctrine) in connection with any law, regulation, ordinance, decree, order, or any other source or authority.

22. **No Oral or Implied Waivers or Modifications.** If either Party fails to enforce any of the provisions of this Agreement or any rights hereunder or fails to exercise any election provided in this Agreement, it will not be considered to be a waiver of those provisions, rights or elections or in any way affect the validity of this Agreement. The failure of either Party to exercise any of these provisions, rights or elections will not preclude or prejudice such Party from later enforcing or exercising the same or any other provisions, rights or elections which it may have under this Agreement. No waiver will be of any force or effect unless set forth in a writing signed by the Party whose right is being waived. Subject to the immediately preceding sentence, no modifications to this Agreement will be binding upon the Parties unless modified, amended, cancelled, renewed, or extended in a writing signed by both Parties.

23. **Entire Agreement.** This Agreement (including all exhibits hereto) sets forth the entire agreement and understanding of the Parties relating to the subject matter hereof, and, with respect to such subject matter, supersedes all prior agreements, arrangements and understandings, written or oral, between the Parties. Except as may be expressly set forth herein, there are no promises, conditions, representations, understanding, interpretations or terms of any kind as conditions or inducement to the execution hereof or in effect between the Parties.

24. **Interpretation.** The section headings included in this Agreement are for convenience of reference only and will not affect or be utilized in construing or interpreting this Agreement. If any term, clause or provision hereof is held invalid or unenforceable by the arbitrator or a court of competent jurisdiction, such invalidity will not affect the validity or operation of any other term, clause or provision and such invalid term, clause, or provision will be deemed to be severed from this Agreement, provided that both the economic and legal substance of the transactions that this Agreement contemplates are not affected in an manner materially adverse to either Party. This Agreement may be executed in counterparts, each of which will be deemed an original binding document but all of which will constitute one and the same instrument. Neither this Agreement nor any provision herein will be construed in favor or against either Party based on which Party drafted this Agreement or such provision. The exchange of copies of this Agreement and of signature pages by facsimile transmission, by e-mail, in "portable document format" (PDF) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of any such means, constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of an original Agreement or signature pages for all purposes. For the avoidance of doubt: signatures of the Parties transmitted by facsimile, email, or other electronic means will be deemed to be their original signatures for all purposes

[Signature page directly follows this page]

The Parties have executed this Agreement to be effective as of the Effective Date.

WTC:

WORLD TRIATHLON CORPORATION

By: 
Name: ANDREW MESSICK
Title: PRESIDENT & CEO

HOST:

WASHINGTON COUNTY

By: 
Name: DEAN COX
Title: WASHINGTON COUNTY
COMMISSION CHAIR

[Schedule of Exhibits to this Agreement follows this page]

SCHEDULE OF EXHIBITS

EXHIBIT A: Annual Payments

EXHIBIT B: Host Support Services

EXHIBIT C: Host Sponsorship Benefits

EXHIBIT D: Trademark Standards & Usage Guidelines

EXHIBIT E: Restricted Sponsorship Categories

[Exhibits to this Agreement follow this page]

EXHIBIT A

Annual Payments; Wire Transfer Instructions

With respect to each Event, Host shall, in accordance with the payment schedule and payment instructions set forth below, pay WTC (or shall cause the Utah Sports Commission to pay WTC) the Annual Payments set forth below:

Regarding the Event for Race Year	Annual Payment to be paid to WTC (\$USD)	Annual Payment Installment Due Dates	Invoice Details*
2020	\$350,000.00	\$250,000 due on February 1, 2020	\$100,000 to be invoiced to Washington County
			\$150,000 to be invoiced to Utah Sports Commission
		\$100,000 due on June 1, 2020	\$100,000 to be invoiced to Utah Sports Commission
2021	\$200,000.00	\$150,000 due on February 1, 2021	\$100,000 to be invoiced to Washington County
			\$50,000 to be invoiced to Utah Sports Commission
		\$50,000 due on June 1, 2021	\$50,000 to be invoiced to Utah Sports Commission
2022	\$200,000.00	\$150,000 due on February 1, 2022	\$100,000 to be invoiced to Washington County
			\$50,000 to be invoiced to Utah Sports Commission
		\$50,000 due on June 1, 2022	\$50,000 to be invoiced to Utah Sports Commission
2023	\$350,000.00	\$250,000 due on February 1, 2023	\$100,000 to be invoiced to Washington County
			\$150,000 to be invoiced to Utah Sports Commission
		\$100,000.00 due on June 1, 2023	\$100,000 to be invoiced to Utah Sports Commission
2024	\$200,000.00	\$150,000 due on February 1, 2024	\$100,000 to be invoiced to Washington County
			\$50,000 to be invoiced to Utah Sports Commission
		\$50,000 due on June 1, 2024	\$50,000 to be invoiced to Utah Sports Commission

***Host Billing Contact Information:**

Washington County:

Contact Name: Kevin Lewis

Email address: kevin.lewis@washco.utah.gov

Telephone number: 435-986-3384

Utah Sports Commission:

Contact Name: Jeff Robbins

Email address: jrobbins@utahsportscommission.com

Telephone number: (801) 328-2335

Time is of the essence with respect to each such payment. All payments to WTC that are required or contemplated under this Agreement must be made in immediately available U.S. dollars via the following wire transfer instructions:

Bank Name: Bank of America, NY NY
Routing Number: 026009593
Account Name: World Triathlon Corporation
Account Number: 898052297785
SWIFT Code: BOFAUS3N

EXHIBIT B**Host Support Services**

B-1. With respect to each Event and as coordinated by WTC's Race Director, Host shall facilitate, assist, and contribute up to \$25,000.00 (based on the fair market value) for the following support services:

- (a) **Police & Emergency Services.** Ensure that police will command and ensure all emergency services (police, fire, and ambulance) needed to maintain public safety. Host shall temporarily install (or cause to be installed) a special command post that will bring together all three emergency services (police, fire and ambulance), private security, volunteer security personnel, and communications.
- (b) **Medical Professionals and Ambulance Services.** Ensure that ambulances will be distributed strategically at the Venue, transition area, celebration areas, along the Race route, and the Event medical area. A team of medical professionals, including a Medical Director, will coordinate and implement WTC's official medical plan.
- (c) **Traffic Control Devices and Services.** Provide all traffic devices, engineering diagrams, and plans to assure maximum road safety in partnership with local and state police services. Host shall provide (or cause to be provided) all variable message boards, barricades, cones for traffic control, special event traffic signage and parking signs, temporary traffic light system, and traffic control vehicles equipped with yellow arrows.
- (d) **Community Awareness.** Provide community notifications (provided a reasonable time before the Event) to all potentially affected persons and third parties, informing them of planned street closures and Event schedules.
- (e) **Swim Safety.** Host shall install and takedown (or cause to be installed and taken down) the swim course and will provide all lifeguards, crafts, and search and rescue scuba divers needed to assure the highest level of water safety.
- (f) **Waste Management Services.** Ensure that the Venue is clean and well-kept at all times. Adjustments will be put in place according to the needs of WTC. Recycle containers, garbage units, large units for disposal, transportation, and manpower will be provided by Host.
- (g) **Telephone/Internet Access; Electrical Services and Equipment; Lighting.** Provide to each site where necessary telephone and high-speed internet access to accommodate athlete check-in, exposition, merchandise sales, media center, meeting space, press conference, and race office. Host shall provide (or shall cause to be provided) a special Event electricity system. Power hook-ups will be provided by certified technicians under the applicable construction code and regulations. To the extent lighting is already present at the Venue, Host shall supply (or cause to be supplied) lighting for certain areas such as the transition area, swim, bike, and run courses, medical, and the finish area.
- (h) **Parking & Transportation Management.** Provide (or cause to be provided) (i) satellite parking lots outside the operations perimeter with parking lot attendants and (ii) transportation services and transportation for athletes and spectators on Race day.

- B-2.** With respect to each Event, and at no cost to WTC, Host shall, as the case may be, do, obtain, or provide (or cause to be done, obtained, or provided) the following:
- (a) **Lead Agency; Approvals & Permits.** Host shall serve as the "lead agency" to support the operational activities of the Event, including but not limited to facility and venue acquisition, permitting, police and emergency services acquisition, parking acquisition, communications acquisition, public awareness, and advocacy. To the extent it has the authority, right, power, ability, or legal jurisdiction to do so, Host shall ensure that, at no cost to WTC, WTC timely receives all governmental, regulatory, and third-party approvals, permits, access rights, business licenses, consents, ordinance exemptions, commitments, and licenses necessary or useful in connection with performance by Host or WTC of this Agreement, including without limitation the conducting of the Event, the Race, and the Expo, closures of roadways, use of loud amplified sound and music by WTC in connection with the Event, and Host's provision of the Host Support Services (collectively, the "Approvals & Permits"). Host shall ensure that, 180 days prior to each Event, all Approvals & Permits with respect to the Event are obtained, and that all Approvals & Permits will remain in effect for and during the Event; in each case at no cost to WTC (e.g., no charges for site fees, access fees, rental fees, closure fees, licensee fees, application fees, environmental impact fees, permit fees, etc.).
 - (b) **Hotel Rooms.** With respect to each 70.3 Event, Host shall provide (or cause to be provided) to WTC **one hundred fifty (150)** complimentary hotel room nights, for WTC staff, at the official host hotel(s) during Event week, plus **ten (10)** complimentary hotel room nights for pre-Event planning meetings during the Race Year. With respect to each 140.6 Event, Host shall provide (or cause to be provided) to WTC **two hundred (200)** complimentary hotel room nights, for WTC staff, at the official host hotel(s) during Event week, plus **fifteen (15)** complimentary hotel room nights for pre-Event planning meetings during the Race Year. All such hotels must be local to the Venue. Host shall also assist WTC with the coordination of local hotels and other entities to facilitate arrangements for local accommodations, travel, and tourist activities.
 - (c) **Concessions.** Host shall make arrangements for food and beverage concessions at all Event locations and will retain all revenue from such food and beverage concessions.
 - (d) **Promotion of the Event.** Host shall, at all times in consultation with WTC, assist with the marketing and promotion of each Event as follows:
 - (i) **Professional Athletes.** Host shall use reasonable efforts to assist WTC in providing appearance fees, complimentary lodging, and/or other incentives for the purposes of attracting top professional athletes to attend the Event.
 - (ii) **Installation/Removal.** Host shall install and remove all promotional visuals and light pole banners for each Event.
 - (iii) **Host Website.** Host shall, on its website(s), prominently advertise the Event and the fact that Host is hosting the Event, and at all times during the Term shall prominently display a link, on its website, to the Event Website.
 - (iv) **Promotional Highlight Videos.** Subject to the terms of this Agreement and certain other restrictions set forth in WTC's then-current television and media agreements (the "Third-Party Media Agreements"), Host may produce (or cause to be produced) pre-race promotional videos and post-race highlight videos to showcase the Event, the participants, and the destination (the "Promotional & Highlight Videos"). Subject to the terms of this Agreement and certain restrictions set forth in any applicable Third-Party

Media Agreements, Host may, upon receiving prior written consent from WTC (which consent may be granted, denied, or revoked in WTC's sole discretion) distribute videos via Host websites, through social media, and at the Event expo via Jumbotron, etc. In producing such Promotional & Highlight Videos, Host shall comply fully with guidelines of WTC's Media and Television departments. With respect to the Promotional & Highlight Videos, Host shall be solely responsible for all costs, including but not limited to production, filming, editing, distribution, and all equipment, cameras, etc.

- (v) **Social Media.** Host agrees to make use of its existing assets including websites, graphics, video footage (subject to the terms of this Agreement and the Third-Party Media Agreements), and photography, and shall utilize available personnel and resources to create additional marketing collateral to assist in marketing the Event via social media. In consultation with WTC, Host shall utilize press releases, interaction with Event participants, media interviews and other marketing communications. Host shall work under the supervision of a WTC authorized social media representative to coordinate social media activities and messaging. To ensure timely and effective social media marketing, upon Host's request, WTC shall provide to Host the name and contact info for such WTC authorized social media representative.
- (vi) **Press/Media.** In consultation with WTC, Host shall utilize available personnel and resources to assist in public relations efforts with local, regional and national media, by providing press releases, Event data, interviews, photos, video footage (subject to the terms of this Agreement and the Third-Party Media Agreements), and Event information to media outlets/representatives (collectively, the "Press & Media Information"). Host shall use best efforts to consult with a WTC authorized public relations representative prior to any distribution of such Press & Media Information.
- (vii) **Other Marketing.** As requested by WTC and from time to time, Host shall assist WTC with other marketing strategies that are mutually agreed upon in writing by WTC and Host.
- (e) **No Construction; Street Cleaning.** Unless reasonably required and unavoidable, Host shall not begin and/or effect any structural, engineering, beautification, or related works during the Event and the week prior to the Event. Host shall be responsible (or shall establish inter-local agreements with participating cities and venues to ensure compliance by those entities for the areas under their jurisdiction) for sweeping and cleaning up all Venue areas prior to and after each Event.
- (f) **Venue & Race Course Exclusivity; Condition of Race Course.** Host shall provide (or shall establish inter-local agreements with participating entities to provide) WTC with exclusive use of locations (as necessary for conducting the Event) within the Venue for purposes of staging and conducting the Races, the transition areas and infrastructure, the Expo, and all other aspects of the Events. Host shall ensure that, as necessary to conduct the Races, the Race course route (i.e., the roads, waterways, and other public spaces actually used for the Race) is closed to the public during the Races and for a reasonable period before and after the Races, and, subject to reasonable exceptions, is made exclusively available to WTC during such periods. Host shall ensure that all Race Course routes are in good condition during the Event Period. Host shall ensure that all Race routes within the Venue are in good condition during the Events.
- (g) **Swim Ingress/Egress; Swim Safety; Water Quality.** Host shall ensure (or shall establish inter-local agreements with participating entities to ensure) that there is adequate ingress/egress for the swim portion of the Races. Host shall ensure a safe swim course with no boat traffic from 5:00am

to 9:30 am on Race day. Host shall provide WTC with a clean water test report the day before each Event is to be held.

- (h) **Venues/Facilities.** Host shall provide (or shall establish inter-local agreements with participating entities to provide) certain areas of the St. George Town Square for the Event which shall consist of a large centralized area for run course, finish line, victory celebration area (finish area), athlete recovery area, concessions, parking, VIP hospitality, merchandise sales, spectator viewing, and pre-Race and/or post Event banquets (Dixie Center for 140.6 Events). Tents shall be provided by WTC. The Parties acknowledge that certain facilities will be required from the Tuesday before to the Tuesday immediately following each Race.
- (i) **VIP Experience.** Host will work with the WTC to ensure a memorable experience for all Event VIPs.
- (j) **Warehouse Space.** For each Event Host shall provide (or shall establish inter-local agreements with participating entities to provide) complimentary storage space (approximately 40,000 sq. ft. of warehouse space for each 70.3 Event and approximately 60,000 sq. ft. of warehouse space for each 140.6 Event) near the Event site to house WTC's Event equipment and supplies (the "**Complimentary Storage Space**"). The Complimentary Storage Space must be available to be staffed by WTC personnel to accept deliveries. Upon WTC's request Host shall make such Complimentary Storage Space available for WTC's use, provided, however, that WTC's use of the Complimentary Storage Space shall not exceed forty-five (45) days.

* * * * *

EXHIBIT C

Host Sponsorship Benefits

- C-1. With respect to each Event, WTC shall provide to the City of St. George (the “City”) the following sponsorship benefits:
- (a) **Designation**. The right to designate the City as an “Official Sponsor” of the Event in all reasonable forms of advertising and marketing. Such advertising and marketing is subject to approval by WTC.
 - (b) **Social Media**. The right to provide City-related content to WTC to be integrated into each Event’s social media campaign, including but not limited to, an announcement on the Event-specific Facebook pages related to the City’s sponsorship.
 - (c) **Event-Specific Email Inclusion**. The City may provide City-related content to WTC for inclusion in one (1) Event-specific email distributed by WTC to all persons who have opted-in to receive such email communications.
 - (d) **Logo Exposure**. Inclusion of the City’s logo, with a link to the City’s website, on the sponsorships page (or in the sponsorships section) of the Event-specific website.
 - (e) **Hospitality Passes**. Four (4) complimentary sponsor hospitality passes for the Event for use by the City’s employees and representatives, which passes grant access to certain selective benefits at the Event. WTC reserves the right to deny the use by any specific individual(s) of any hospitality passes.
 - (f) **Snow Fencing**. Six hundred feet (600’) of City-branded snow fencing, paid for and provided by the City, for placement by WTC at the Venue.
 - (g) **Public Announcer Mentions**. Public announcer mentions, acknowledging the City’s sponsorship of the Event, periodically during the Expo and on Race day at the Venue. The City shall provide the content of such announcements to WTC reasonably in advance.
 - (h) **Dasher Boards**. Two (2) logo inclusions on WTC’s Event specific host/venue dasher boards. Such dasher boards to be provided at WTC’s cost.
 - (i) **Expo**. The right to use a 10’ x 10’ space in the Expo at the Event, which Expo space may be used by the City to promote its products and services, provided that the City complies with WTC’s Expo rules and regulations.
 - (j) **Athlete Kit Inserts**. The right to provide City-branded items (such as coupons, samples, gifts, literature, brochures, etc.) for placement by WTC in the athlete Race kits, volunteer kits, and media kits at the Event.
 - (k) **Event Entries**. Two (2) complimentary Race entries for each Event (i.e., to participate as an age-group athlete in the Race) for use by the City’s employees or representatives. The City shall provide to WTC the name and email address for each athlete at least sixty (60) days prior to the applicable Race, and inform the athletes of the following requirements: (i) no entry may be sold,

assigned, or otherwise transferred; (ii) WTC will email online registration instructions to the athletes; (iii) each entry is for only the specific race, in the designated year, and cannot be used for any other race, or deferred for entry in such race in a later year; (iv) athletes must register online with WTC no later than forty-five (45) days prior to the applicable race or else the entry will be null and void, without any refund right or any other right to compensation or reimbursement; and (v) athletes must have a valid USA Triathlon (USAT) license on the day of the applicable race or purchase a one-day membership on-site at the race during athlete check-in.

C-2. With respect to each Event, WTC shall provide to the Washington County Convention & Tourism Office (the "Convention & Tourism Office") the following sponsorship benefits:

- (a) **Designation**. The right to designate the Convention & Tourism Office as an "Official Sponsor" of the Event in all reasonable forms of advertising and marketing. Such advertising and marketing is subject to approval by WTC.
- (b) **Social Media**. The right to provide Convention & Tourism Office-related content to WTC to be integrated into each Event's social media campaign, including but not limited to, an announcement on the Event-specific Facebook pages related to the Convention & Tourism Office's sponsorship.
- (c) **Event-Specific Email Inclusion**. The Convention & Tourism Office may provide Convention & Tourism Office-related content to WTC for inclusion in one (1) Event-specific email distributed by WTC to all persons who have opted-in to receive such email communications.
- (d) **Logo Exposure**. Inclusion of the Convention & Tourism Office's logo, with a link to the Convention & Tourism Office's website, on the sponsorships page (or in the sponsorships section) of the Event-specific website.
- (e) **Hospitality Passes**. Twenty (20) complimentary sponsor hospitality passes for the Event for use by the Convention & Tourism Office's employees and representatives, which passes grant access to certain selective benefits at the Event. WTC reserves the right to deny the use by any specific individual(s) of any hospitality passes.
- (f) **Snow Fencing**. Six hundred feet (600') of Convention & Tourism Office-branded snow fencing, paid for and provided by the Convention & Tourism Office, for placement by WTC at the Venue.
- (g) **Public Announcer Mentions**. Public announcer mentions, acknowledging the Convention & Tourism Office's sponsorship of the Event, periodically during the Expo and on race day at the Venue. The Tourism Office shall provide the content of such announcements to WTC reasonably in advance.
- (h) **Dasher Boards**. Two (2) logo inclusions on WTC's Event specific host/venue dasher boards. Such dasher boards to be provided at WTC's cost.
- (i) **Expo**. The right to use Expo space, provided that the Convention & Tourism Office complies with WTC's Expo rules and regulations. The size of the Tourism Office's Expo booths are as follows: (i) A 10' x 10' space in the Expo for discretionary use; (ii) A 10' x 20' space for sign making; and (iii) A 10' x 10' space for athlete surveys in the registration area at the Events.
- (j) **Athlete Kit Inserts**. The right to provide Convention & Tourism Office-branded items (such as

coupons, samples, gifts, literature, brochures, etc.) for placement by WTC in the athlete race kits, volunteer kits, and media kits at the Event.

- (k) **Finish-Line Arch.** The opportunity to have the Convention & Tourism Office's logos prominently displayed on the finish-line arch at the Event. Two (2) logos (one on each leg) will be placed on the back of the arch directly facing the athletes and spectators.
- (l) **Event Entries.** Six (6) complimentary Race entries for each Event (i.e., to participate as an age-group athlete in the Race) for use by the Convention & Tourism Office's employees or representatives. The Convention & Tourism Office shall provide to WTC the name and email address for each athlete at least sixty (60) days prior to the applicable Race, and inform the athletes of the following requirements: (i) no entry may be sold, assigned, or otherwise transferred; (ii) WTC will email online registration instructions to the athletes; (iii) each entry is for only the specific race, in the designated year, and cannot be used for any other race, or deferred for entry in such race in a later year; (iv) athletes must register online with WTC no later than forty-five (45) days prior to the applicable race or else the entry will be null and void, without any refund right or any other right to compensation or reimbursement; and (v) athletes must have a valid USA Triathlon (USAT) license on the day of the applicable race or purchase a one-day membership on-site at the race during athlete check-in.

C-3. With respect to each Event, WTC shall provide to the Utah Sports Commission (the "Sports Commission") the following sponsorship benefits:

- (a) **Designation.** The right to designate the Sports Commission as an "Official Sponsor" of the Event in all reasonable forms of advertising and marketing. Such advertising and marketing is subject to approval by WTC.
- (b) **Social Media.** The right to provide Sports Commission-related content to WTC to be integrated into each Event's social media campaign, including but not limited to, an announcement on the Event-specific Facebook pages related to the Sports Commission's sponsorship.
- (c) **Event-Specific Email Inclusion.** The Sports Commission may provide Sports Commission-related content to WTC for inclusion in one (1) Event-specific email distributed by WTC to all persons who have opted-in to receive such email communications.
- (d) **Logo Exposure.** Inclusion of the Sports Commission's logo, with a link to the Sports Commission's website, on the sponsorships page (or in the sponsorships section) of the Event-specific website.
- (e) **Banner Ads.** The right to provide Sports Commission-related content for online banner advertisement impressions on the Event-specific website.
- (f) **Athlete Guide.** The right to provide Sports Commission-related content for one (1) full page, four-color advertisement in the digital athlete guide distributed pre-race via email, produced by, or on behalf of, WTC for each Event.
- (g) **Hospitality Passes.** Four (4) complimentary sponsor hospitality passes for the Event for use by the Sports Commission's employees and representatives, which passes grant access to certain selective benefits at the Event. WTC reserves the right to deny the use by any specific individual(s) of any hospitality passes.

- (h) **Snow Fencing.** Six hundred feet (600') of Sports Commission-branded snow fencing, provided by the Sports Commission, for placement by WTC at the Venue.
 - (i) **Public Announcer Mentions.** Public announcer mentions, acknowledging the Sports Commission's sponsorship of the Event, periodically during the Expo and on race day at the Venue. The Sports Commission shall provide the content of such announcements to WTC reasonably in advance.
 - (j) **Dasher Boards.** Two (2) logo inclusions on WTC's Event specific host/venue dasher boards. Such dasher boards to be provided at WTC's cost.
 - (k) **Expo.** The right to use a 10' x 10' space in the Expo at the Event, which Expo space may be used by the Sports Commission to promote its products and services, provided that the Sports Commission complies with WTC's Expo rules and regulations.
 - (l) **Athlete Kit Inserts.** The right to provide Sports Commission-branded items (such as coupons, samples, gifts, literature, brochures, etc.) for placement by WTC in the athlete race kits, volunteer kits, and media kits at the Event.
 - (m) **Finish-Line Arch.** The opportunity to have the Sports Commission's logos prominently displayed on the finish-line arch at the Event. Two (2) logos (one on each leg) will be placed on the front of the arch directly facing the Race photographers.
 - (n) **Finish-Line Tape.** The opportunity to have the Sports Commission's logo displayed on the finish-line tape.
 - (o) **Event Entries.** Two (2) complimentary Race entries for each Event (i.e., to participate as an age-group athlete in the Race) for use by the Sports Commission's employees or representatives. The Sports Commission shall provide to WTC the name and email address for each athlete at least sixty (60) days prior to the applicable Race, and inform the athletes of the following requirements: (i) no entry may be sold, assigned, or otherwise transferred; (ii) WTC will email online registration instructions to the athletes; (iii) each entry is for only the specific race, in the designated year, and cannot be used for any other race, or deferred for entry in such race in a later year; (iv) athletes must register online with WTC no later than forty-five (45) days prior to the applicable race or else the entry will be null and void, without any refund right or any other right to compensation or reimbursement; and (v) athletes must have a valid USA Triathlon (USAT) license on the day of the applicable race or purchase a one-day membership on-site at the race during athlete check-in.
- C-4. With respect to each Event and in addition to the sponsorship benefits above, WTC shall provide to the City, the Convention & Tourism Office, and the Sports Commission (collectively, the "**Host Parties**") the following sponsorship benefits:
- (a) **License of Event Photos & Videos.** Subject to the terms of this Agreement and unless otherwise agreed to by the Parties in writing, during the Term and subject to any third-party intellectual property rights therein, the Host Parties shall have a limited, non-exclusive license (a "**Limited License**") to use (i) any of the WTC-owned photographs of the Event as may be provided to the Host Parties by WTC (the "**WTC Photos**") and (ii) any photographs and/or video of the Event produced by Host (the "**Host-Produced Photos & Videos**") provided that:

- (i) Such use is solely for purposes of promoting and advertising the Venue and the Host Parties' sponsorship of the Events;
 - (ii) Such use complies fully with all guidelines of WTC's Media and Television departments, including, without limitation, inclusion of proper copyright and attribution notices;
 - (iii) The Host Parties may use the WTC Photos and/or Host-Produced Photos & Videos in vacation planners, marketing brochures and on the Host Party websites in order to publicize the Event and attract/inform participants and spectators, provided, however, that in no event may the Host Parties use the WTC Photos or the Host-Produced Photos & Videos in connection with any merchandise, products, or services;
 - (iv) Upon WTC's request the Host Parties shall immediately discontinue use of any WTC Photos and/or Host-Produced Photos & Videos;
 - (v) The WTC Photos and Host-Produced Photos & Videos are, and shall remain, the property of WTC. Any and all rights in, to, or under the WTC Photos and Host-Produced Photos & Videos shall enure solely to the benefit of WTC; and
 - (vi) The Host Parties shall not transfer or assign the Limited License or sub-license any of the WTC Photos or the Host-Produced Photos & Videos.
- (b) **License of Event Logo.** During the Term, the Host Parties shall have a limited, non-exclusive license (the "License") to use the Event Logos, provided that:
- (i) Such use is solely for purposes of promoting and advertising the Venue and the Host Parties' sponsorship of the Events;
 - (ii) Such use complies fully with the terms of this Agreement, including without limitation, the Trademark Standards and Usage Guidelines contained in Exhibit D;
 - (iii) The Host Parties may use the Event Logos in vacation planners, marketing brochures and on Host Party websites in order to publicize the Event and attract/inform participants and spectators, provided, however, that in no event may the Host Parties sell or produce any IRONMAN-branded or Event-branded merchandise, products, or services;
 - (iv) The Event Logos are, and shall remain, the property of WTC, and any and all rights in, to, or under the Event Logos, or any copyrights or other intellectual property of WTC, shall enure solely to the benefit of WTC;
 - (v) The Host Parties shall not transfer or assign the License or sub-license any of the Event Logos; and
 - (vi) The License expires immediately upon expiration or earlier termination of this Agreement, provided, however, that following the Term the Host Parties shall be entitled to continue to use the Event Logos for historical purposes (e.g., to make reference to the Event and their sponsorship of the Event and to showcase that they are capable of hosting large scale events).

EXHIBIT D**TRADEMARK STANDARDS & USAGE GUIDELINES:**
EVENT-SPECIFIC LOGO**Sample Event Logo**

As applicable for each Event, each Event will feature one or more IRONMAN® or IRONMAN® 70.3® -branded logos customized by WTC for such Event (each, an "Event Logo"). WTC will design, create, and provide each Event Logo. The following is a sample logo for the 140.6 Event:



WTC may elect to, from time to time, modify the Event Logo by adding the name of a "title" sponsor or "presenting" sponsor to such logo.

General

The Event Logo must be used consistently and not altered. Modifications, variations, and incorrect uses of any Event Logo dilute the IRONMAN® brand and create consumer confusion, and are therefore not permitted. You play a vital role in protecting the integrity of WTC's intellectual property, such as the Event Logo. Please familiarize yourself with the following TRADEMARK STANDARDS & USAGE GUIDELINES, which you are required to follow when using any Event Logo in connection with any Event.

Pre-Approval Requirement

Without exception, all proposed uses of the Event Logo must be submitted to WTC for review **PRIOR TO USAGE**. All approval requests for use of any Event Logo must be submitted, along with a high resolution PDF image of the proposed use, to approvals@ironman.com for review by WTC. Please allow at least ten (10) business days for all approval requests to be answered. Any proposed use or item submitted that is not approved by WTC in writing within fifteen (15) days shall be deemed disapproved.

Trademark Ownership & Required Notice

Each Event Logo is, and shall remain, the property of WTC. Any and all rights to, in, and under the Event Logo, or any copyright or other intellectual property of WTC, shall enure solely to the benefit of WTC.

Notice must be given to the public that World Triathlon Corporation claims ownership of the Event Logo. Therefore, the following legal notice must clearly appear, in no smaller than 6-point size typeface, on all of your printed materials, products, websites, and all other items on which any Event Logo is used:

**IRONMAN® and 70.3® are registered trademarks of
World Triathlon Corporation. Used herein by permission.**

Other Requirements

Each use by Host of the Event Logo must:

- Be solely and directly related to performing Host's obligations, or exercising its rights, under this Agreement;

- Not be on any merchandise or services for sale or distribution (except to the extent expressly and specifically authorized by this Agreement or separate written agreement with WTC);
- Not constitute or involve transfer or assignment of the License or sub-license of any Event Logo; and
- Not have anything embedded in, added to, or superimposed on the Event Logo, or have any colors or color scheme different than that approved by WTC.

Improper Uses of the Trademarks "IRONMAN®" and "IRONMAN® 70.3®"

- IRONMAN® must be a single word, never hyphenated, and never capitalized as "IronMan".
- IRONMAN® and 70.3® must be two (2) separate words separated by no more and no less than one (1) character space.
- IRONMAN® is a brand name – an identifier of a specific source of goods and services. It is not an indicator of distance. "IRONMAN" must never be used as a standalone term or to denote distance. (e.g., never as "Ironman distance" or "Iron distance").
- IRONMAN® 70.3® is a brand name – an identifier of a specific source of goods and services. It is not an indicator of distance. "IRONMAN" must never be used as a standalone term or to denote distance. (e.g., never as "half ironman", "half ironman distance", or "half iron distance").
- 70.3® is a brand name – an identifier of a specific source of goods and services. It is not an indicator of distance. "70.3" must never be used as a standalone term to denote distance. (e.g., never as "70.3 miles")
- IRONMAN® should never be abbreviated as "IM."
- IRONMAN® 70.3® should never be abbreviated as "IM70.3."
- Stand-alone references to "an IRONMAN" or "a 70.3" are improper. Please add "triathlon" to such phrases (e.g., "an IRONMAN® 70.3® triathlon").
- Do not use "iron" (or any foreign translation thereof) as a prefix for, or component of, any words – whether displayed as one word (e.g., "ironwoman", "ironfamily", or "ironmate"), as two separate words (e.g., "iron woman", "iron family", or "iron mate"), or as a hyphenated word (e.g., "iron-woman", "iron-family", or "iron-mate"). (Exceptions include IRONMAN®, IRONKIDS®, and IRON GIRL®, all of which are trademarks owned by WTC.)

EXHIBIT E

Restricted Sponsorship Categories

COMPRESSION APPAREL	RACE REGISTRATION
WETSUIT	WATCH/TIMING
SUNGLASSES	GPS/FITBIT
MEDALS	ON-COURSE NUTRITION
FOOTWEAR	CHARITY
ENERGY BAR	RACE PHOTOGRAPHY
ENERGY GEL	SUNSCREEN
ISOTONIC / SPORTS BEVERAGE	INSOLES
ENERGY DRINKS	RECOVERY SANDAL
RECOVERY BEVERAGE	RECYCLING/GARBAGE/WASTE MANAGEMENT
SUPPLEMENTS	ONLINE TRAINING PLATFORM
CELL PHONE CASE	BEER
HEADPHONES	HOTEL
LIFESTYLE APPAREL	TRAVEL PARTNER
PERFORMANCE APPAREL	QUICK SERVE RESTAURANT
SWIM APPAREL & ACCESSORIES	BIKE APPAREL & ACCESSORIES



FIRST AMENDMENT
to
HOST VENUE AGREEMENT

This FIRST AMENDMENT TO THE HOST VENUE AGREEMENT (this "First Amendment") is effective as of October 6, 2020 (the "First Amendment Date") by and between **WORLD TRIATHLON CORPORATION**, a Florida corporation ("WTC"), and **WASHINGTON COUNTY**, a political subdivision of the State of Utah ("Host").

RECITALS

- A. This First Amendment amends that certain HOST VENUE AGREEMENT, dated May 3, 2019, between WTC and Host (the "Agreement"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.
- B. Whereas, in connection with the COVID-19 pandemic and the resulting impact to WTC's calendar of scheduled sporting events, the Parties wish to amend the Agreement to reflect the cancellation of the 2020 Event, provide an extension of the Term, and to update the Annual Payments accordingly.

The Parties agree as follows:

AMENDMENTS TO THE AGREEMENT

1. **Section B** of the Recitals of the Agreement is hereby deleted in its entirety and replaced with the following:

B. Subject to the terms of this Agreement, Host desires to have WTC conduct in and around St. George, Utah (the "Venue"), and WTC desires to conduct in and around the Venue, the IRONMAN® North American Championship triathlon race in years 2022 and 2024 and the IRONMAN® 70.3® North American Championship triathlon race in years 2021, 2023, and 2025.

2. **Section 1(a)** of the Agreement is hereby deleted in its entirety and replaced with the following:

(a) **Authorization: Ownership.** Host authorizes WTC to prepare and conduct the 140.6 Events and the 70.3 Events (as such terms are defined below (each, an "Event" and collectively, the "Events") in and around the Venue in years 2021, 2022, 2023, 2024, and 2025 (each, a "Race Year" and collectively, the "Race Years"). WTC is and will be the owner of each Event and nothing herein constitutes a license by WTC to Host or to any third party to establish or operate any Event or Race (as defined below.)

3. **Section 1(b)** of the Agreement is hereby deleted in its entirety and replaced with the following:

(b) **North American Championship Races.**

- (i) **IRONMAN® 70.3® - 70.3 Events.** With respect to the **2021, 2023 and 2025 Race Years**, WTC shall be responsible for operating, in and around the Venue, an IRONMAN® 70.3®-branded endurance triathlon (comprising, subject to cancellation of any part thereof due to weather conditions or other reasons, a 1.2 mile swim, 56 mile bicycle ride, and 13.1 mile run) (the "**70.3 Race**") and performing certain administrative, operational, and sales and marketing functions related thereto (collectively, and together with the 70.3 Race and any additional races added under **Section 1(f)**, a "**70.3 Event**").
- (ii) **IRONMAN® - 140.6 Events.** With respect to the **2022 and 2024 Race Years**, WTC shall be responsible for operating, in and around the Venue, an IRONMAN®-branded endurance triathlon (comprising, subject to cancellation of any part thereof due to weather conditions or other reasons, a 2.4 mile swim, 112 mile bicycle ride, and 26.2 mile run) (the "**140.6 Race**") and performing certain administrative, operational, and sales and marketing functions related thereto (collectively, and together with the 140.6 Race and any additional races added under **Section 1(f)**, a "**140.6 Event**").

4. **Section 1(d)** of the Agreement is hereby deleted in its entirety and replaced with the following:

- (d) **Race Dates.** Subject to the terms of this Agreement and unless otherwise mutually agreed upon in writing by the Parties, the 70.3 Races and the 140.6 Races (each, a "**Race**" and collectively, the "**Races**") will, as applicable for the Race Year, be held annually on the following dates (the "**Race Dates**"):

IRONMAN® 70.3® NORTH AMERICAN CHAMPIONSHIP - ST. GEORGE		IRONMAN® NORTH AMERICAN CHAMPIONSHIP - ST. GEORGE	
Race Year	70.3 Race Date	Race Year	140.6 Race Date
2021	May 1, 2021	2022	May 7, 2022
2023	May 6, 2023	2024	May 4, 2024
2025	May 3, 2025		

5. Section 2 of the Agreement is hereby deleted in its entirety and replaced with the following:

2. Term of Agreement.

- (a) This Agreement is effective beginning on the Effective Date, and will continue in effect until the date that is thirty (30) days after the 2025 Event, unless this Agreement is sooner terminated in accordance with the terms of this Agreement (the "Term").
- (b) During the first three (3) months of 2024, the Parties shall discuss in good faith whether they desire to renew this Agreement beyond the Term (the "Renewal Period"). The Parties agree to decide by March 31, 2025 (the "Decision Date") whether or not to extend the Agreement for the Renewal Period, which decision must include whether or not the Parties desire for (i) future IRONMAN® 70.3®-branded events taking place at the Venue to be designated as the IRONMAN® 70.3® NORTH AMERICAN CHAMPIONSHIP and (ii) future IRONMAN®-branded events taking place at the Venue to be designated as the IRONMAN® NORTH AMERICAN CHAMPIONSHIP. If, prior to the Decision Date, the Parties mutually agree to terms for a Renewal Period then the Parties shall, prior to or on the Decision Date, execute a memo of understanding indicating the parameters of such Renewal Period. Such mutually agreed upon Renewal Period, if any, will be effective only if set forth in a separate, definitive written agreement signed by the Parties. Nothing in this subsection (b) creates any obligation on either Party to renew this Agreement, to extend the Term, or to enter into any other agreement.

6. Section 5(e)(i) of the Agreement is hereby deleted in its entirety and replaced with the following:

(i) Annual Donations.

- (A) In connection with each 140.6 Event that takes place during the Term (*i.e.*, the 2022 and 2024 Events), WTC shall donate, or cause to be donated, a minimum of **\$50,000.00** to one or more local non-for-profit organizations in the Washington County, Utah area (the "140.6 Event Donations").
- (B) In connection with each 70.3 Event that takes place during the Term (*i.e.*, the 2021, 2023, and 2025 Events), WTC shall donate, or cause to be donated, a minimum of **\$25,000.00** to one or more local non-for-profit organizations in the Washington

County, Utah area (the "70.3 Event Donations" and together with the 140.6 Event Donations, the "Annual Donations").

7. **Section 5(i)(ii)(B)** of the Agreement is hereby deleted in its entirety and replaced with the following:

(B) **Pro Slots.** With respect to certain eligible top professional finishers of the 140.6 Races, WTC will award non-transferable qualifying slots for entry in the applicable IRONMAN World Championship ("Kona Pro Championship Slots"). The number of Kona Pro Championship Slots applicable to the 2022 140.6 Race will be **six (6)**. The number of Kona Pro Championship Slots applicable to the 2024 140.6 Race will be determined by WTC in its sole discretion.

8. The table of Annual Payments set forth in **Exhibit A** of the Agreement is hereby deleted in its entirety and replaced with the following:

Regarding the Event for Race Year	Annual Payment to be paid to WTC (\$USD)	Annual Payment Installment Due Dates	Invoice Details*
2020**	N/A**	N/A**	N/A**
2021	\$200,000.00	\$150,000 due on February 1, 2021	\$100,000 to be invoiced to Washington County \$50,000 to be invoiced to Utah Sports Commission
		\$50,000 due on June 1, 2021	\$50,000 to be invoiced to Utah Sports Commission
2022	\$350,000.00	\$250,000 due on February 1, 2022	\$100,000 to be invoiced to Washington County \$150,000 to be invoiced to Utah Sports Commission
		\$100,000 due on June 1, 2022	\$100,000 to be invoiced to Utah Sports Commission

2023	\$200,000.00	\$150,000 due on February 1, 2023	\$100,000 to be invoiced to Washington County
			\$50,000 to be invoiced to Utah Sports Commission
		\$50,000 due on June 1, 2023	\$50,000 to be invoiced to Utah Sports Commission
2024	\$350,000.00	\$250,000 due on February 1, 2024	\$100,000 to be invoiced to Washington County
			\$150,000 to be invoiced to Utah Sports Commission
		\$100,000 due on June 1, 2024	\$100,000 to be invoiced to Utah Sports Commission
2025	\$200,000.00	\$150,000 due on February 1, 2025	\$100,000 to be invoiced to Washington County
			\$50,000 to be invoiced to Utah Sports Commission
		\$50,000 due on June 1, 2025	\$50,000 to be invoiced to Utah Sports Commission

Host Billing Contact Information*Washington County**

Contact name: Kevin Lewis

Email address: kevin.lewis@washco.utah.gov

Telephone number: (435) 986-3384

Utah Sports Commission

Contact name: Jeff Robbins

Email address: jrobbins@utahsportscommission.com

Telephone number: (801) 328-2335

****Due to global health concerns related to the COVID-19 pandemic and solely with respect to the 2020 Event, WTC hereby waives its right to collect the Annual Payment from Host and agrees to apply any amounts paid by Host for the 2020 Event, if any, towards the 2021 Annual Payment.**

OTHER PROVISIONS

9. **No Other Changes.** Except as expressly provided in this First Amendment, the Agreement is not otherwise amended, modified, or affected by this First Amendment, and all other terms of the Agreement remain unchanged and in full force and effect.
10. **Miscellaneous.** The Agreement, as amended by this First Amendment, constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all prior or contemporaneous agreements, arrangements, and understandings, written or oral, between or among the Parties, except as may be specifically provided herein. No modifications, amendments, cancellations, renewals, or extensions of or to this First Amendment or the Agreement will be binding upon the Parties unless modified, amended, cancelled, renewed, or extended in a writing and signed by both Parties. This First Amendment will be binding upon, and enure to the benefit of, the Parties and their respective successors and assigns. Subject to the immediately preceding sentence, no third party will have any rights or remedies under the Agreement or this First Amendment. This First Amendment may be executed in counterparts, each of which will be deemed an original binding document and all of which will constitute one and the same instrument. An electronic (e.g., PDF) or facsimile copy of the executed this First Amendment or counterpart hereof will be deemed, and will have the same legal force and effect as, an original document.

This First Amendment has been executed and delivered by each Party's duly authorized representative as of the First Amendment Date.

HOST:

WASHINGTON COUNTY

By: 
Name: VICTOR IVERSON
Title: WASHINGTON COUNTY
COMMISSION CHAIR

WTC:

WORLD TRIATHLON CORPORATION

By: _____
Name: ANDREW MESSICK
Title: PRESIDENT & CEO



SECOND AMENDMENT
to
HOST VENUE AGREEMENT

This SECOND AMENDMENT TO THE HOST VENUE AGREEMENT (this "Second Amendment") is effective as of December __, 2021 (the "Second Amendment Date") by and between **WORLD TRIATHLON CORPORATION**, a Florida corporation ("WTC"), and **WASHINGTON COUNTY**, a political subdivision of the State of Utah ("Host").

RECITALS

- A. This Second Amendment amends that certain HOST VENUE AGREEMENT, effective as May 3, 2019, between WTC and Host, as amended by that certain as amended by that certain FIRST AMENDMENT TO HOST VENUE AGREEMENT, effective as of October 6, 2020 (collectively, the "Agreement"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.
- B. Whereas the Parties acknowledge that the 2022 Event (scheduled for May 7, 2022) will not occur and will instead be replaced with the 2021 IRONMAN® WORLD CHAMPIONSHIP triathlon event (which the terms of such event will be governed by that certain HOST VENUE AGREEMENT between the Parties effective as of December __, 2021.

The Parties agree as follows:

AMENDMENTS TO THE AGREEMENT

1. **Section B** of the Recitals of the Agreement is hereby deleted in its entirety and replaced with the following:

B. Subject to the terms of this Agreement, Host desires to have WTC conduct in and around St. George, Utah (the "Venue"), and WTC desires to conduct in and around the Venue, the IRONMAN® North American Championship triathlon race in 2024 and the IRONMAN® 70.3® North American Championship triathlon race in years 2021, 2023, and 2025.

2. **Section 1(a)** of the Agreement is hereby deleted in its entirety and replaced with the following:

(a) **Authorization; Ownership.** Host authorizes WTC to prepare and conduct the 140.6 Events and the 70.3 Events (as such terms are defined below (each, an "Event" and collectively, the "Events") in and around the Venue in years 2021, 2023, 2024, and 2025 (each, a "Race Year" and collectively, the "Race Years"). WTC is and will be the owner of each Event and nothing herein constitutes a license by WTC to Host or to any third party to establish or operate any Event or Race (as defined below.)

3. **Section 1(b)** of the Agreement is hereby deleted in its entirety and replaced with the following:

(b) **North American Championship Races.**

- (i) **IRONMAN® 70.3® - 70.3 Events.** **Solely with respect to the 2021, 2023 and 2025 Race Years**, WTC shall be responsible for operating, in and around the Venue, an IRONMAN® 70.3®-branded endurance triathlon (comprising, subject to cancellation of any part thereof due to weather conditions or other reasons, a 1.2 mile swim, 56 mile bicycle ride, and 13.1 mile run) (the "**70.3 Race**") and performing certain administrative, operational, and sales and marketing functions related thereto (collectively, and together with the 70.3 Race and any additional races added under **Section 1(f)**, a "**70.3 Event**").
- (ii) **IRONMAN® - 140.6 Events.** **Solely with respect to the 2024 Race Year**, WTC shall be responsible for operating, in and around the Venue, an IRONMAN®-branded endurance triathlon (comprising, subject to cancellation of any part thereof due to weather conditions or other reasons, a 2.4 mile swim, 112 mile bicycle ride, and 26.2 mile run) (the "**140.6 Race**") and performing certain administrative, operational, and sales and marketing functions related thereto (collectively, and together with the 140.6 Race and any additional races added under **Section 1(f)**, a "**140.6 Event**").

4. **Section 1(d)** of the Agreement is hereby deleted in its entirety and replaced with the following:

- (d) **Race Dates.** Subject to the terms of this Agreement and unless otherwise mutually agreed upon in writing by the Parties, the 70.3 Races and the 140.6 Race (each, a "**Race**" and collectively, the "**Races**") will, as applicable for the Race Year, be held annually on the following dates (the "**Race Dates**"):

IRONMAN® 70.3® NORTH AMERICAN CHAMPIONSHIP – ST. GEORGE	
Race Year	70.3 Race Date
2021	May 1, 2021
2023	May 6, 2023
2025	May 3, 2025

IRONMAN® NORTH AMERICAN CHAMPIONSHIP - ST. GEORGE	
Race Year	140.6 Race Date
2024	May 4, 2024

5. Section 2 of the Agreement is hereby deleted in its entirety and replaced with the following:

2. Term of Agreement.

- (a) This Agreement is effective beginning on the Effective Date, and will continue in effect until the date that is thirty (30) days after the 2025 Event, unless this Agreement is sooner terminated in accordance with the terms of this Agreement (the "Term").
- (b) During the first three (3) months of 2025, the Parties shall discuss in good faith whether they desire to renew this Agreement beyond the Term (the "Renewal Period"). The Parties agree to decide by March 31, 2025 (the "Decision Date") whether or not to extend the Agreement for the Renewal Period, which decision must include whether or not the Parties desire for (i) future IRONMAN® 70.3®-branded events taking place at the Venue to be designated as the IRONMAN® 70.3® NORTH AMERICAN CHAMPIONSHIP and (ii) future IRONMAN®-branded events taking place at the Venue to be designated as the IRONMAN® NORTH AMERICAN CHAMPIONSHIP. If, prior to the Decision Date, the Parties mutually agree to terms for a Renewal Period then the Parties shall, prior to or on the Decision Date, execute a memo of understanding indicating the parameters of such Renewal Period. Such mutually agreed upon Renewal Period, if any, will be effective only if set forth in a separate, definitive written agreement signed by the Parties. Nothing in this subsection (b) creates any obligation on either Party to renew this Agreement, to extend the Term, or to enter into any other agreement.

6. Section 5(e)(i) of the Agreement is hereby deleted in its entirety and replaced with the following:

(i) Annual Donations.

- (A) In connection with each 140.6 Event that takes place during the Term (*i.e.*, the 2024 Event), WTC shall donate, or cause to be donated, a minimum of **\$50,000.00** to one or more local non-for-profit organizations in the Washington County, Utah area (the "140.6 Event Donations").
- (B) In connection with each 70.3 Event that takes place during the Term (*i.e.*, the 2021, 2023, and 2025 Events), WTC shall donate, or cause to be donated, a minimum of **\$25,000.00** to one or

more local non-for-profit organizations in the Washington County, Utah area (the "70.3 Event Donations" and together with the 140.6 Event Donations, the "Annual Donations").

7. **Section 5(i)(ii)(B)** of the Agreement is hereby deleted in its entirety and replaced with the following:

(B) **Pro Slots.** With respect to certain eligible top professional finishers of the 140.6 Race, WTC will award non-transferable qualifying slots for entry in the applicable IRONMAN World Championship ("Kona Pro Championship Slots"). The number of Kona Pro Championship Slots applicable to the 2024 140.6 Race will be determined by WTC in its sole discretion.

8. The table of Annual Payments set forth in **Exhibit A** of the Agreement is hereby deleted in its entirety and replaced with the following:

Regarding the Event for Race Year	Annual Payment to be paid to WTC (\$USD)	Annual Payment Installment Due Dates	Invoice Details*
2020**	N/A**	N/A**	N/A**
2021	\$200,000.00	\$150,000 due on February 1, 2021	\$100,000 to be invoiced to Washington County
			\$50,000 to be invoiced to Utah Sports Commission
		\$50,000 due on June 1, 2021	\$50,000 to be invoiced to Utah Sports Commission
2022	N/A	N/A	N/A
2023	\$200,000.00	\$150,000 due on February 1, 2023	\$100,000 to be invoiced to Washington County
			\$50,000 to be invoiced to Utah Sports Commission

		\$50,000 due on June 1, 2023	\$50,000 to be invoiced to Utah Sports Commission
2024	\$350,000.00	\$250,000 due on February 1, 2024	\$100,000 to be invoiced to Washington County
			\$150,000 to be invoiced to Utah Sports Commission
		\$100,000 due on June 1, 2024	\$100,000 to be invoiced to Utah Sports Commission
2025	\$200,000.00	\$150,000 due on February 1, 2025	\$100,000 to be invoiced to Washington County
			\$50,000 to be invoiced to Utah Sports Commission
		\$50,000 due on June 1, 2025	\$50,000 to be invoiced to Utah Sports Commission

***Host Billing Contact Information**

Washington County

Contact name: Kevin Lewis

Email address: Kevin@GreaterZion.com

Telephone number: (435) 986-3384

Utah Sports Commission

Contact name: Jeff Robbins

Email address: jrobbins@utahsportscommission.com

Telephone number: (801) 328-2335

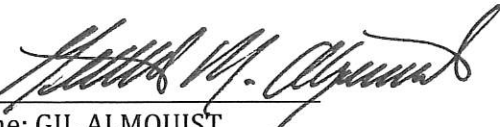
****Due to global health concerns related to the COVID-19 pandemic and solely with respect to the 2020 Event, WTC hereby waives its right to collect the Annual Payment from Host and agrees to apply any amounts paid by Host for the 2020 Event, if any, towards the 2021 Annual Payment.**

OTHER PROVISIONS

9. **No Other Changes.** Except as expressly provided in this Second Amendment, the Agreement is not otherwise amended, modified, or affected by this Second Amendment, and all other terms of the Agreement remain unchanged and in full force and effect.
10. **Miscellaneous.** The Agreement, as amended by this Second Amendment, constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all prior or contemporaneous agreements, arrangements, and understandings, written or oral, between or among the Parties, except as may be specifically provided herein. No modifications, amendments, cancellations, renewals, or extensions of or to this Second Amendment or the Agreement will be binding upon the Parties unless modified, amended, cancelled, renewed, or extended in a writing and signed by both Parties. This Second Amendment will be binding upon, and enure to the benefit of, the Parties and their respective successors and assigns. Subject to the immediately preceding sentence, no third party will have any rights or remedies under the Agreement or this Second Amendment. This Second Amendment may be executed in counterparts, each of which will be deemed an original binding document and all of which will constitute one and the same instrument. An electronic (e.g., PDF) or facsimile copy of the executed this Second Amendment or counterpart hereof will be deemed, and will have the same legal force and effect as, an original document.

This Second Amendment has been executed and delivered by each Party's duly authorized representative as of the Second Amendment Date.

HOST:**WASHINGTON COUNTY**

By: 
Name: GIL ALMQUIST
Title: WASHINGTON COUNTY
COMMISSIONER CHAIR

WTC:**WORLD TRIATHLON CORPORATION**

By: _____
Name: ANDREW MESSICK
Title: PRESIDENT & CEO

RESOLUTION NO. R-2021-2814

A RESOLUTION APPROVING REVISIONS TO THE IRONMAN AGREEMENTS

WHEREAS, Washington County has hosted IRONMAN branded triathlon events for the past ten years;

WHEREAS, IRONMAN Events have brought more than \$100 million in positive economic impact to local businesses and communities in Washington County;

WHEREAS, Washington County and World Triathlon Corporation ("WTC") entered into an agreement on May 3, 2019 for Washington County to host IRONMAN races for another five year term ("Agreement");

WHEREAS, in consideration of global travel restrictions and other challenges associated with the COVID-19 pandemic, the Parties wish to renew the existing Agreement to reflect necessary adjustments to ensure a quality world championship experience for all participants;

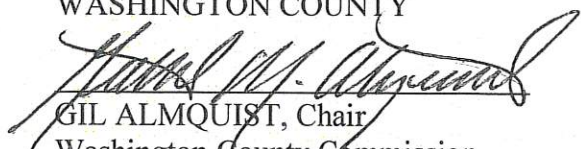
WHEREAS, the Parties have negotiated the attached ("Revised Agreements") which are a direct response to the aforementioned challenges;

WHEREAS, it is in the best interest of Washington County that the attached agreements be approved and executed; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COMMISSION OF WASHINGTON COUNTY, UTAH, that the attached Revised Agreements World Triathlon Corporation are approved and shall be executed.

VOTED UPON AND PASSED BY THE WASHINGTON COUNTY COMMISSION AT A REGULAR MEETING OF THE WASHINGTON COUNTY COMMISSION HELD ON THE 17TH DAY OF AUGUST, 2021.

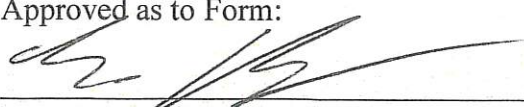
WASHINGTON COUNTY


GIL ALMQUIST, Chair
Washington County Commission

ATTEST:


Susan Lewis
Washington County Clerk-Auditor

Approved as to Form:


Deputy Washington County Attorney

Commissioner Almquist voted Aye
Commissioner Iverson voted Aye
Commissioner Snow voted Aye



HOST VENUE AGREEMENT

IRONMAN® 70.3® WORLD CHAMPIONSHIP - ST. GEORGE (2021-2022)

This Host Venue Agreement (this "Agreement") is entered into as of August 17, 2021 but is effective as of May 3, 2019 (the "Effective Date") by and between:

- (i) **WORLD TRIATHLON CORPORATION**, a Florida corporation ("WTC"); and
- (ii) **WASHINGTON COUNTY**, a political subdivision of the State of Utah ("Host").

WTC and Host are sometimes referred to herein individually as "Party" and collectively as "Parties."

RECITALS

- A.** WTC is the owner and operator of IRONMAN® 70.3® -branded triathlon events, including the annual IRONMAN® 70.3® World Championship triathlon event.
- B.** On or around December 28, 2018, Host formally submitted its bid for St. George, Utah (the "Venue") to become host of the 2021 IRONMAN® 70.3® World Championship (the "Championship Bid") and, as evidenced by the Letters of Support set forth within the Championship Bid (such letters attached hereto as Exhibit G), the community and key stakeholders within the Venue have a strong and collective desire to host the IRONMAN® 70.3® World Championship.
- C.** In consideration of WTC selecting the Venue as the site for each Event (as defined below) and providing the Host Sponsorship Benefits (as defined herein), Host desires, subject to the terms of this Agreement, to provide the Host Support Services (as defined herein) and to make certain payments, and grant certain rights, to WTC.
- D.** The Parties previously entered into that certain HOST VENUE AGREEMENT, effective as of May 3, 2019, regarding the 2021 Event (the "Prior Agreement") and, upon execution of this Agreement by the Parties, the Parties desire for this Agreement to modify and supersede the Prior Agreement.

AGREEMENT

The Parties agree as follows:

- 1. **The Events.** Subject to the terms of this Agreement:
 - (a) Authorization; Ownership.



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- (i) Certain Definitions.
 - (A) As used herein the term "Events" shall mean the 2021 Event and the 2022 Event (as such terms are defined below) (each, an "Event").
 - (B) As used herein the term "Event Periods" shall mean the 2021 Event Period and the 2022 Event Period (as such terms are defined below) (each, an "Event Period").
- (ii) 2021 & 2022 Championship Events.
 - (A) Host authorizes WTC to prepare and conduct the 2021 IRONMAN® 70.3® World Championship triathlon event (the "2021 Event") which will include a range of lifestyle activities for the community and visitors to enjoy and will take place in and around the Venue from **September 10, 2021** until **September 22, 2021** (the "2021 Event Period"), with the Women's Race and the Men's Race (as such terms are defined below) taking place concurrently on **Saturday, September 18, 2021**.
 - (B) Host authorizes WTC to prepare and conduct the 2022 IRONMAN® 70.3® World Championship triathlon event (the "2022 Event") which will include a range of lifestyle activities for the community and visitors to enjoy and will take place in and around the Venue from **October 21, 2022** until **November 2, 2022** (the "2022 Event Period"), with the Women's Race taking place on **Friday, October 28, 2022** and the Men's Race taking place on **Saturday, October 29, 2022**.
 - (C) WTC is and will be the owner of the Events and nothing herein constitutes a license by WTC to Host or to any third party to establish or operate the Events or Races (as defined below).
- (b) The Races. As part of each Event, WTC shall be responsible for operating, at the Venue, one (1) female participant-based IRONMAN® 70.3® World Championship-branded endurance triathlon (comprising, subject to cancellation of any part thereof due to weather conditions or other reasons, a 1.2-mile swim, 56-mile bicycle ride, and 13.1-mile run) (the "Women's Race") and one (1) male participant-based IRONMAN® 70.3® World Championship-branded endurance triathlon (comprising, subject to cancellation of any part thereof due to weather conditions or other reasons, a 1.2-mile swim, 56-mile bicycle ride, and 13.1-mile run) (the "Men's Race") and, together with the Women's Race, the "Races").
- (c) Name. The official name of each Event will be IRONMAN® 70.3® WORLD CHAMPIONSHIP presented by the Utah Sports Commission. WTC may elect to add the name of a "title" sponsor to the official name of the Event (e.g., "[*Title Sponsor*] IRONMAN® 70.3® WORLD CHAMPIONSHIP, presented by the Utah Sports Commission"). When referring to the Events, Host shall, and shall use reasonable efforts to cause relevant third parties to, at all times use such official name of each Event (including mention of the official title sponsor, if any, and the official presenting sponsor, if any).
- (d) Race Course. The Parties acknowledge and agree that the intended course for the Races

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(the “Race Course”) is attached as Exhibit F. Notwithstanding the foregoing and upon mutual written agreement by the Parties, the Race Course may be altered and/or amended during the period between the Effective Date and the occurrence of the Races.

- (e) Event Changes. WTC may in its reasonable discretion, in order to improve each Event, institute changes in the implementation or structure of such Event; provided, however, that no material change may be made to any previously confirmed location or venue(s) without the prior written consent of both Parties.
- (f) Additional Races. WTC shall have the option to conduct, as part of each Event and during the Event Period, certain ancillary races in connection with the Events (e.g., IRONKIDS® and/or IRON GIRL® triathlon, duathlon, or run). WTC may create additional, race-specific logos for any such ancillary races conducted, and such logos will be subject to the same restrictions applicable to the Event Logo (as defined in Exhibit E) under this Agreement.

2. Term of Agreement.

- (a) Prior Host Venue Agreement. The Prior Agreement is hereby terminated as of the Effective Date.
- (b) Term. This Agreement is effective beginning on the Effective Date, and will continue in effect until the date that is thirty (30) days after the 2022 Event, unless this Agreement is sooner terminated in accordance with the terms of this Agreement (the “Term”).

3. Financial Matters.

- (a) Host Venue Fees. Host shall, under the terms of Exhibit A, pay WTC (or cause the Utah Sports Commission to pay WTC) the amounts stated in Exhibit A (the “Host Venue Fees”).
- (b) Sponsorship & Expo Vendor Referrals; Revenue Share.
 - (i) Sponsorship & Expo Vendor Referrals. Host shall not grant or sell sponsorships, official designations, exposition vendor space, or any other rights at or in connection with any Event to any third parties. With respect to each Event, Host shall have the right to refer to WTC reputable third-party Event-specific sponsors and exposition vendors (collectively, “Host-Referred Third-Party Sponsorships”), provided, however, that:
 - (A) Host shall focus on referring sponsors and vendors in non-endemic categories from local, statewide, and regional companies and organizations;
 - (B) Host shall not refer sponsors or vendors to WTC if such sponsors or vendors sell products and/or services that fall within any of the categories set forth in Exhibit D (collectively, the “Restricted Sponsorship Categories”). If Host refers a sponsor or vendor that falls within any of the Restricted Sponsorship Categories then Host shall not receive the Host Revenue Share (as defined below) with respect to such sponsor or vendor. Due to occasional changes to the Restricted Sponsorship Categories, WTC reserves the right to update the Restricted Sponsorship Categories, at any

time and from time to time. Upon Host's request, WTC shall provide to Host the then-applicable list of Restricted Sponsorship Categories;

- (C) Host shall not communicate any Event sponsorship or vendor opportunity to any potential sponsor or vendor unless such specific sponsor or vendor has been pre-approved in writing by WTC;
 - (D) WTC reserves the right, in WTC's sole and absolute discretion, to reject any proposed sponsorship, sponsor, or vendor including, without limitation, those referred by Host; and
 - (E) Host shall use best efforts to prevent third parties from purporting to be a sponsor or vendor of the Event unless such party is a party to a Sponsorship and/or Expo Vendor Agreement (as defined below). Host does not have the authority to legally bind WTC, and Host shall not represent to any third party that Host has such authority. Any Host-Referred Third-Party Sponsorships will be valid only if in a written agreement signed by both WTC and the sponsor/Expo vendor party (a "Sponsorship and/or Expo Vendor Agreement").
- (ii) Host Revenue Share. If, during the period between the Effective Date and the 2022 Event, WTC enters into a Sponsorship and/or Expo Vendor Agreement (specifically with respect to the Events) with a third-party sponsor or exposition vendor for a Host-Referred Third-Party Sponsorship where such sponsor or vendor was referred to WTC by Host and was pre-approved by WTC in accordance with this Agreement, WTC shall pay to Host an amount equal to fifteen percent (15%) of the Net Proceeds (as defined below) (such amount referred to as the "Host Revenue Share").
- (A) "Net Proceeds" means, net of applicable taxes, ninety percent (90%) of the total cash actually received and retained by WTC from the applicable Host-Referred Third-Party Sponsorship (it being acknowledged by the Parties that such reduction by ten percent (10%) is for purposes of covering WTC's expected costs to activate and implement the benefits for such Host-Referred Third-Party Sponsorship.
 - (B) Based Only on Cash Proceeds. For the avoidance of doubt: Net Proceeds (1) will be based only on such cash proceeds to WTC from sponsorship sales and exposition vendor fees from the Host-Referred Third-Party Sponsorship that are specific to the Event and (2) will not include the value of any in-kind contributions or budget-relieving or other services provided by the sponsor or any other party, except as may be approved in writing by WTC.
 - (C) Origination. Host will be deemed to have referred an Event-specific sponsor or exposition vendor to WTC if, in good faith, Host provides such sponsor/vendor's name and contact information to WTC in writing, and, prior to such notice to WTC by Host, WTC is neither doing business nor has any contract with such sponsor/vendor (or any of its subsidiaries or affiliates), nor communicated, during the then prior 36-month period, with such sponsor/vendor (or any of its subsidiaries or affiliates) regarding the

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possibility of doing business or entering into any contract with WTC (or any of its subsidiaries or affiliates).

- (D) Other Events. For avoidance of doubt: Host has no right to receive the Host Revenue Share (or any other commission or fee) in connection with any event(s) (other than the Event), regardless of whether Host referred to WTC a third-party sponsor/vendor for such other event(s).

- (c) Taxes. All amounts payable to WTC by Host under this Agreement will exclude any applicable taxes, which shall be paid by Host.
- (d) Entry Fees; Other Revenues. Except as may be otherwise expressly specified in this Agreement, WTC shall be entitled to receive and retain all Event/Race entry fees, and all other revenues and value in-kind in connection with the Event, including without limitation all revenues from merchandise sales, sponsorships, hospitality passes, VIP, exposition booth sales, media licenses, product licenses, and photograph sales.
- (e) Costs. To the extent Host does not timely provide any portion of the Host Support Services (as defined below), then, upon written request from WTC, Host shall, within thirty (30) days after delivery of such notice to Host, reimburse WTC to the extent WTC incurs, or will incur, any costs to obtain or provide any such Host Support Services not provided by Host. Such right of reimbursement does not limit WTC's remedies with respect to Host failing to provide any of the Host Support Services.

4. **Certain Obligations of Host.**

- (a) Host Support Services. Host shall timely provide to WTC (or, as the case may be, shall timely provide for WTC's benefit), the services, equipment, value in-kind, personnel, and other items set forth in Exhibit B (collectively, the "Host Support Services") for the Events. Unless otherwise expressly agreed to in this Agreement, Host shall provide the Host Support Services at Host's own cost. Host Support Services may be modified from time to time by WTC in its reasonable discretion, provided that no such change (i) results in any material additional cost or expense to Host or (ii) requires Host to do anything Host is not authorized, or does not have legal jurisdiction, to do or cause to be done.
- (b) Compliance with Law. In connection with the Event and Host's performance of its obligations under this Agreement, Host shall comply with all applicable laws, rules, and regulations.
- (c) Operational Aspects. In order to facilitate proper and timely planning, implementing, and conducting of the Event by WTC, Host shall, and shall cause each of its representatives, agents, and contractors to, follow instructions, solely regarding Event-related operational or technical issues, from WTC or any third party designated by WTC.
- (d) Intellectual Property of WTC. Except with respect to the Event Logo (the use of which by Host being subject to Section 10), Host shall not, without WTC's prior written consent, use any intellectual property rights of WTC, including without limitation the IRONMAN® mark, the 70.3® mark, and the design mark known as the "M-DOT." Host shall promptly inform WTC of any possible misuse or infringement by any person or entity of the Event Logo or any other intellectual property of WTC.



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- (e) Information Updates. Host shall, upon request from WTC, promptly inform WTC as to the status of the performance of Host's obligations hereunder, including without limitation regarding the Host Support Services.
- (f) Representations. Host covenants that each of the representations and warranties made by Host in Section 9 will be true and complete at all times during the Term.

5. Certain Obligations of WTC.

- (a) Host Sponsorship Benefits. WTC shall provide to Host (or, as the case may be, shall provide for Host's benefit and/or the benefit of the Events), the sponsorship benefits and other items set forth in Exhibit C (collectively, the "Host Sponsorship Benefits"). Unless otherwise expressly agreed to in this Agreement, the cost of any and all activation materials (e.g., including, without limitation, any signage, banners, boards, branding, etc.) required or necessary in connection with the Host Sponsorship Benefits, including without limitation any costs in connection with the design, production, and/or delivery thereof, are the sole responsibility of Host.
- (b) Operations, Equipment, and Personnel. Except to the extent required to be provided or obtained by Host as part of the Host Support Services, or as may be otherwise required under this Agreement, WTC shall provide for (or cause to be provided) all Race-related equipment, supplies, personnel (including volunteers), training of personnel (including volunteers), Race manuals/programs, Race Course route determination and design, Race Course set-up and tear-down, online and on-site athlete registration and check-in, welcome functions, award ceremonies, facility decoration, and all other technical and operational aspects of the Races. For the avoidance of doubt: WTC may require that the Event use Race timing, registration, photography, or other services provided by WTC or any of its affiliates, designees, or service providers.
- (c) Expo. WTC shall provide for a multi-day vendor exposition at the Events (the "Expo"), which Expo may be referred to as the "IRONMAN Village" or other name chosen by WTC. At the Expo, WTC (or its designee) may sell official IRONMAN-branded (or any other) merchandise and services, and, to the extent approved in writing by WTC, Event sponsors and other Expo vendors may sell or otherwise distribute other merchandise and services. Except as may otherwise be required by applicable law, Host shall not charge or assess any fee, tax, surcharge, or other cost to or on any vendor, contractor, or any other party in connection with the Expo, or any athlete entry fees, sponsorships, or any other aspect of the Event.
- (d) Website; Media; Broadcasts. WTC shall provide and maintain the official website that markets the Events (the "Event Websites"), including a live global streaming webcast of the Races with stationary cameras at both transition areas and the finish line where possible based on Internet bandwidth. WTC shall retain the rights to all imagery and audiovisual works in connection with the Events, including but not limited to, television broadcast or cablecast (live or tape-delay), radio broadcast, Internet broadcast (audio or video), videotaping, filming, and photography, all of which, as between WTC and Host, is the sole property of WTC and, except as expressly set forth in this Agreement, will not be reproduced, remarketed, or otherwise distributed or publicly displayed by Host without the written permission of WTC. WTC may, in its sole discretion, grant or license any or all of these rights to third parties or to Host.

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- (e) WTC to Facilitate Donations.
 - (i) Donation Amount. In connection with the 2021 Event WTC shall donate, or cause to be donated, a minimum of \$40,000.00 USD to one or more local not-for-profit organizations in the Washington County, Utah area (the "2021 Donation"). In connection with the 2022 Event WTC shall donate, or cause to be donated, a minimum of \$75,000.00 USD to one or more local not-for-profit organizations in the Washington County, Utah area (the "2022 Donation" and together with the 2021 Donation, the "Donations").
 - (ii) Acknowledgments. Notwithstanding the foregoing, the Parties acknowledge that if WTC obtains permission from the Foundation (as defined below) then WTC shall have the option to have all or part of the Donations be made instead by The Ironman Foundation Inc., a Florida not-for-profit corporation (the "Foundation"). The Parties further acknowledge that if the Foundation so elects to make the Donations then all terms and conditions (e.g., distribution allocation, recipients, etc.) of the Donations shall be determined by the Foundation (and in the sole and absolute discretion of the Foundation's Board of Directors). The Parties further acknowledge that the Foundation is not owned or controlled by WTC.
- (f) Compliance with Law. In connection with the Events and WTC's performance of its obligations under this Agreement, WTC shall comply with all applicable laws, rules, and regulations.
- (g) Information Updates. WTC shall, upon request from Host, promptly inform Host as to the status of the performance of WTC's obligations hereunder, including without limitation regarding the Host Sponsorship Benefits.

6. Official Announcements; Promotions by Host.

- (a) Host Website. Host, on its website, shall prominently advertise the Events and the fact that Host is hosting the Events, and at all times during the Term shall prominently display a link, on its website, to the Event Websites.
- (b) Announcements. Host shall use reasonable efforts to consult with WTC's authorized public relations representative prior to issuing or approving any public announcements with respect to the Events, except that no such consultation will be required to the extent such announcements are required of Host as part of the Host Support Services (or otherwise required of Host under the terms of this Agreement), or that:
 - (i) are entirely administrative in nature, such as announcements informing the public regarding operational logistics or public safety matters (e.g., road closures, Event dates, Venue access); and
 - (ii) include only information in the public domain.

Upon Host's request, WTC shall provide to Host the name and contact information of such WTC authorized public relations representative.

- (c) Other Matters. Host shall not use the Events, any marketing opportunity related thereto or arising out of the Events, or the like, for any purpose other than to promote the Venue in a positive and universally appealing manner. To the extent Host is not prohibited by law from doing so, Host shall not permit any political statements, political campaign propaganda, or the like to be made (or made available) at the Events, or otherwise to be associated (or purported to be associated), whether directly or indirectly, with the Events or the marketing thereof.

7. **Ambush Marketing.**

- (a) "Ambush Marketing" means selling (e.g., including, but not limited to, sponsorship, merchandise, vendor space), advertising, or marketing, by any third party that is not a WTC-authorized sponsor, merchandiser, and/or vendor of the Event, where such selling, advertising, or marketing (i) is in connection with, or in proximity to, the Event, or (ii) otherwise has the effect of exploiting the goodwill of the Event and/or gaining market exposure by way of intrusive and/or associative marketing practices.
- (b) Host shall not cause, engage in, or permit any Ambush Marketing, and, except to the extent Host is prohibited by law from doing so, Host shall prevent and stop Ambush Marketing at, near, or in connection with the Event, including without limitation by:
- (i) Causing its employees and agents to promptly report, to WTC and the proper Host authorities, any marketing or activity reasonably appearing to be Ambush Marketing;
 - (ii) Ensuring, prior to and during the Event, that the Event perimeter and any other key advertising locations under the Host's control do not carry any form of temporary advertising or promotional material relating to the Event, except as may be approved in writing by WTC (in WTC's sole discretion);
 - (iii) Using, invoking, and applying Host's powers to protect all trademarks and copyrights associated with the Event;
 - (iv) Preventing the distribution of product samples, premiums, promotional literature and other commercial and non-commercial materials within the established Event perimeter or adjacent to the Event site, except where expressly authorized by WTC;
 - (v) Causing all signage and other physical items of Ambush Marketing to be taken down, moved, removed, and/or confiscated immediately by Host or, if applicable, law enforcement personnel; and
 - (vi) Cooperating with WTC to prevent Ambush Marketing, as may reasonably be requested by WTC.

8. **Exclusivity.**

- (a) Use of Race Course and Event-Related Areas. Notwithstanding anything to the contrary in this Agreement: During each Event Period, Host shall not, unless otherwise mutually agreed upon by the Parties, produce, conduct, host, or permit any sporting event (other than

such Event) that takes place, in whole or in part, on any portion of the Race course or at any Event-related area; provided, however, that during the Event Period festivals and community events (e.g., Washington City Cotton Days, etc.) may take place but only if such events do not do or include any of the following:

- (i) include any endurance-, running-, road cycling-, or swimming-related race, competition or event;
- (ii) include any sports-related vendor exposition, tradeshow, and/or the selling of any merchandise and/or services;
- (iii) occur on the Race Course or at any other area where any part of the Event is being conducted, or adversely affect the ingress or egress to or from any such areas;
- (iv) in any way jeopardize or adversely impact Event production or operations;
- (v) infringe on any WTC intellectual property rights; or
- (vi) include or constitute Ambush Marketing (as defined in Section 7(a)) or otherwise promote themselves as purportedly being part of or in connection with the Event).

(b) Advertising Other Triathlon Companies or Long-Distance Triathlons.

- (i) Unless otherwise pre-approved, in writing, by WTC (which approval may be granted or denied in WTC's sole discretion), during the Term and except as set forth below in Section 8(b)(ii), Host shall not permit its website to display any marketing, promotion, advertisement, reference, or the like, of (i) any other triathlon event series or company, including but not limited to International Triathlon Union (ITU), Professional Triathletes Organisation (PTO), Revolution3 Triathlon, Life Time Fitness Triathlon, Challenge Family Triathlon, and HITS Triathlon (or any of their respective successors or assigns) (the "Ironman Competitors"), (ii) any person, entity, or group (other than WTC or any subsidiary or licensee thereof) that operates, organizes, produces, or is otherwise involved in any triathlon having a distance longer than that of an "Olympic" distance triathlon (as such distance is defined by the International Triathlon Union), or (iii) any triathlon having a distance longer than that of an "Olympic" distance triathlon (as such distance is defined by the International Triathlon Union), unless such triathlon is owned or operated by WTC or any subsidiary or licensee of WTC.
- (ii) Notwithstanding the foregoing, Host may permit its website to display marketing, promotion, advertisement, reference, and/or otherwise associate with, BBSC Endurance Sports ("BBSC"), provided, however, that Host may not permit its website to display any marketing, promotion, advertisement, reference, or the like, of (A) any BBSC event(s) if such BBSC event(s) features any race distance longer than that of an "Olympic" distance triathlon (as such distance is defined by the International Triathlon Union), or (B) BBSC if BBSC or any of BBSC's events are acquired by and/or operated by any Ironman Competitor.

- (c) Non-Competition. During the Term and the eighteen (18)-month period thereafter, Host shall not produce, support, advertise, promote, conduct, host, permit, or contract or partner with any person or entity (other than WTC or a subsidiary thereof) for or in connection with, any other triathlon located, in whole or in part, within the Venue if such event features any race distance longer than that of an "Olympic" distance triathlon (as such distance is defined by the International Triathlon Union).

9. Representations and Warranties of Host. Host represents and warrants that:

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- (a) It has the full right and legal authority to enter into and fully perform this Agreement in accordance with the terms herein;
- (b) This Agreement is a legal, valid, and binding obligation of Host, enforceable against it in accordance with its terms; and
- (c) Neither the execution, delivery, nor performance of this Agreement by Host violates or will violate or cause a breach of any other agreement or obligation to which it is a party or to which it is bound, and, except with respect to any applicable Approvals & Permits and/or other similar inter-government agreements, no approval, consent, notice, or other action by or to any third party or any commission, board, or other governmental authority or agency is required in connection with the execution, delivery, or performance of this Agreement by Host.

10. Limited License to Use the Event Logo.

- (a) Grant of Limited Rights. Subject to the terms of this Agreement, WTC hereby grants to Host the limited, non-assignable, non-sublicensable, non-exclusive license to use, during the Term, the Event Logo (as defined in Exhibit E) in all reasonable forms of advertising and marketing, but only to the extent related to promotion of the Event. All uses of the Event Logo by Host must comply with the Trademark Standards & Usage Guidelines set forth in Exhibit E. Notwithstanding the foregoing and subject in each instance to WTC's prior written approval, which approval may be granted or denied in WTC's sole discretion, Host may permit participating cities and/or state parks to use the Event Logos in all reasonable forms of advertising and marketing, but only to the extent related to promotion of the Event.
- (b) No Use on Products. Host shall not use, and shall not authorize, license, or permit any third party to use, the Event Logo on or in connection with any products, merchandise, souvenirs, or other goods or services, in each instance unless pre-approved by WTC in writing.
- (c) Ownership; Goodwill. Host acknowledges that WTC is the owner of the Event Logo and Host shall not register, or apply to register, the Event Logo, any service mark, trademark, or domain name that is similar in any manner to, or that incorporates, the Event Logo, any of WTC's other trademarks or other intellectual property, or any mark with the word "IRON," or any equivalent term or phrase in any language. All goodwill and rights accruing or arising under the Event Logo, or in any copyrights or other intellectual property of WTC used in connection with this Agreement or the Event, enures solely to the benefit of WTC.

11. Indemnification; General Limitation of Liability; Liquidated Damages.

- (a) Each Party shall indemnify, protect, defend and hold harmless the other Party, its parent, subsidiaries, and affiliates, and each of their respective directors, officers, employees, contractors, volunteers, representatives, and agents, from and against any and all claims, liabilities, losses, damages, injuries, demands, actions, causes of action, suits, proceedings, judgments, and expenses, including without limitation, attorneys' fees, court costs, and other legal expenses, arising out of, directly or indirectly, or in connection with: (i) any breach or alleged breach of any provision of this Agreement by the other Party or any

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representation or warranty made by the other Party herein; or (ii) any act or omission to act by the other Party, or any of its employees, servants, or agents.

- (b) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT: WTC'S TOTAL MAXIMUM LIABILITY FOR ANY AND ALL LOSSES, INJURY, OR DAMAGES IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT, OR OTHERWISE) AND FOR ANY OTHER CLAIM, WILL BE LIMITED TO THE AMOUNT OF THE HOST VENUE FEES (AS DEFINED HEREIN) THAT IS RECEIVED AND RETAINED BY WTC. THE LIMITATION OF LIABILITY SET FORTH HEREIN IS FOR ANY AND ALL MATTERS FOR WHICH WTC MAY OTHERWISE HAVE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER THE CLAIM ARISES IN CONTRACT, TORT, STATUTE OR OTHERWISE, AND THIS LIMITATION OF LIABILITY IS CUMULATIVE, WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES IN CONNECTION WITH THIS AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT.
- (c) The Parties acknowledge that the goodwill inherent in the IRONMAN® 70.3® brand and the Event Logo arises and is maintained, in large part, by each and every IRONMAN® 70.3® event worldwide, including the Events, being conducted as scheduled. Notwithstanding anything herein to the contrary, the Parties acknowledge that Host's failure or inability to host and support the Events as scheduled, absent a Force Majeure Event (as defined in Section 14), will cause WTC irreparable harm, and that damages will be an insufficient and wholly inadequate remedy as a result of such a breach. If Host breaches this Agreement and such breach directly results in the Event not taking place when and as contemplated by this Agreement, Host shall, in addition to the Host Venue Fee for such Event, pay WTC, within thirty (30) days after receiving written demand from WTC, the amount of \$500,000.00 (USD). The Parties intend that the Liquidated Damages are to provide for compensation for a portion of the damages suffered by WTC (e.g., Event relocation expenses, athlete travel expenses, and damage to WTC's reputation), are not intended as a penalty and that the stipulated amount is far less than the actual damages and consequential damages that would result from such a breach by Host.
- (d) This Section 11 will survive the expiration or termination of this Agreement for any reason.

12. **Insurance.** Each Party shall, throughout the Term, obtain and maintain its own comprehensive general liability insurance for the Events from a reputable insurance company for, without limitation, any and all claims of bodily injury, death, property damage, and advertising liability, and any and all litigation, arbitration and settlement costs, related to any claims for or by any Event participants, volunteers, referees, officials, scorekeepers, spectators, sponsors, and staff with a minimum combined single limit equal to but not less than two million U.S. dollars (\$2,000,000.00) per occurrence for any one incident or accident, and not less than five million U.S. dollars (\$5,000,000.00) in aggregate. Certificates evidencing the foregoing required insurance must be provided, upon request, to the other Party.

13. **Termination.**

- (a) Subject to Section 13(b): If either Party breaches a material provision of this Agreement, the non-breaching Party may terminate this Agreement upon thirty (30) days' written notice to the other Party (which notice must include a description of such breach) if, during

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such thirty (30) day period following receipt of such notice, the breaching Party fails to cure such breach.

- (b) Notwithstanding anything to the contrary herein, WTC may immediately terminate this Agreement:
 - (i) at any time if WTC gives written notice to Host that WTC has determined, in its reasonable judgment, that the Event is unlikely to occur or be sufficiently profitable to WTC whether due to: (A) revocation or cancellation of, or failure to timely obtain, any of the Approvals & Permits (as defined in Exhibit B); or (B) any condition with respect to the Venue that could jeopardize the practicability of conducting the Races as planned, or that could create a safety risk for any Race participants or other Event visitors; or
 - (ii) if Host files, or in good faith has filed against it, a petition in bankruptcy, or is adjudicated bankrupt or insolvent, or makes an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law; or
 - (iii) if Host causes, engages in, or permits any Ambush Marketing.
- (c) Effects of Termination.
 - (i) Expiration or termination of this Agreement for any reason will not relieve either Party from its obligation to perform under this Agreement to the extent such performance is due prior to the effective time of such termination.
 - (ii) If this Agreement is terminated by WTC under the terms of Section 13(a) or Section 13(b)(ii), all unpaid Host Venue Fee amounts will be immediately due and payable to WTC.
 - (iii) Except as provided otherwise herein, each Party reserves all other rights and remedies hereunder and otherwise permitted by law that have accrued prior to the effective time of such termination.

14. Force Majeure; Cancellation due to Force Majeure.

- (a) In the event either Party is prevented from performing any of its obligations under this Agreement by reason of any event outside of such Party's control, including, without limitation, fire, weather, unsafe conditions, volcano, explosion, flood, landslide, epidemic, acts of nature, war, terrorism, or other hostilities, strike, civil commotion, domestic or foreign governmental acts, orders, or regulations ("Force Majeure Event"), then such obligations of such Party during the duration of such Force Majeure Event, and for a reasonable time thereafter, will be suspended. In the case of cancellation of the Event due to a Force Majeure Event, the Parties agree to negotiate a date to reschedule such Event if practicable. If such canceled Event cannot reasonably be rescheduled or relocated within the Venue, neither Party shall be deemed to be in breach of this Agreement solely because of such cancellation. Neither any such cancellation, rescheduling, or relocation, nor the inability to reschedule or relocate, will, by itself, cause this Agreement to terminate. For purposes of this Agreement, neither the cancellation by WTC of any leg of the Races (e.g.,

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the swim leg), nor the modification of the Races (e.g., distances, routes, etc.), will be deemed to be a cancellation of the Event.

- (b) If a Force Majeure Event causes the Event to be cancelled and the Event cannot reasonably be rescheduled or relocated within the Venue then the total amount of the Host Venue Fee payable by Host for such Event will be reduced as follows, depending on when cancellation is announced to the general public:

Number of Days before the Races that the Event Cancellation (due to Force Majeure) is Announced	<i>Host Venue Fee to be reduced by:</i>
More than 60 days	50%
7 to 60 days	25%
Less than 7 days	12.5%

For example: If cancellation of the 2022 Event (due to a Force Majeure Event) is announced 61 days before the Races, then the Host Venue Fee for the 2022 Event will instead be \$400,000 (i.e., \$800,000 reduced by 50%).

15. **Confidentiality.**

- (a) Subject to applicable laws, during the Term and the 36-month period thereafter, each Party (the "Receiving Party") shall, other than as provided herein, keep confidential and not use or disclose, directly or indirectly, any documents and/or materials labeled "confidential", any trade secrets, or any proprietary information owned, developed, or possessed by the other Party, whether in tangible or intangible form (collectively, "Confidential Information").
- (b) "Confidential Information" does not include any information that the Receiving Party conclusively establishes: (i) entered the public domain without Receiving Party's breach of any obligation owed to the disclosing Party; (ii) became known to the Receiving Party prior to the disclosing Party's disclosure of such information to such Receiving Party; (iii) is permitted to be disclosed by the prior written consent of the disclosing Party; (iv) became known to the Receiving Party from a source other than the disclosing Party, other than by breach of any obligation of confidentiality owed to the disclosing Party; or (v) was independently developed by the Receiving Party without breach of this Agreement.
- (c) The Receiving Party shall take all lawful measures to prevent the unauthorized use and disclosure of Confidential Information, and to prevent unauthorized persons or entities from obtaining or using Confidential Information. The Receiving Party shall refrain from directly or indirectly taking any action that would constitute or facilitate the unauthorized use or disclosure of Confidential Information.
- (d) The Receiving Party may disclose Confidential Information to its officers and employees to the extent necessary to enable the Receiving Party to perform its obligations hereunder, provided, however, that the Receiving Party shall be liable for any unauthorized use and disclosure of Confidential Information by any of its officers or employees.
- (e) The Receiving Party may disclose the terms of this Agreement to (i) its attorneys and other professional advisors who have a professional duty to the Receiving Party to keep

confidential such information or (ii) a third party that has entered into a reasonably standard confidentiality agreement with the Receiving Party that prohibits such third party from disclosing such terms, where such third party requires to review this Agreement for purposes of evaluating a proposed (A) purchase by such third party of assets of or equity interests in the Receiving Party or (B) financing transaction involving the borrowing of funds or establishing a credit facility or other financing arrangement, in each case where Receiving Party would be the borrower or guarantor of such debt.

- (f) If the Receiving Party is required to disclose Confidential Information in order to comply with applicable law, regulations, court order, or other legal process, the Receiving Party agrees to provide reasonable advance written notice to the disclosing Party and each of the Parties shall use its reasonable efforts to secure confidential treatment of the Confidential Information to be disclosed (whether through protective orders or otherwise) and to ensure that only the minimum amount of Confidential Information necessary to comply with such requirements is disclosed.

16. **Assignment; Binding Effect.** No rights or obligations under this Agreement may be assigned or delegated by Host without the prior written consent of WTC, provided, however, that WTC hereby consents to any and all assignments and delegations that Host will from time to time make as necessary for purposes of providing the Host Support Services (e.g., inter-government agreements for municipal services, obtaining Approvals & Permits, etc.). Any purported assignment or delegation in violation of this Section is void *ab initio*. All of the terms of this Agreement will apply to, be binding upon, and enure to the benefit of the Parties hereto, their successors, and permitted assigns. Subject to the immediately preceding sentence, no third party will have any rights or remedies under this Agreement.

17. **Relationship of the Parties.** The Parties are acting herein solely as independent contractors. Nothing herein contained will create or be construed as creating a partnership, joint venture, or agency relationship between the Parties. Each Party acknowledges and agrees that it neither has nor will give the appearance or impression of having any legal authority to bind or commit the other Party in any way. Each Party will be solely responsible for all wages, income taxes, worker's compensation, and any other requirements for all personnel it supplies in connection with this Agreement.

18. **Jurisdiction and Dispute Resolution.**

- (a) **Governing Law.** Notwithstanding the place where this Agreement may be executed by either Party, this Agreement and any claim, controversy, dispute or other matter arising hereunder or related hereto (whether by contract, tort or otherwise) shall be governed in accordance with the laws of the State of Florida, without regard to the conflict of laws provisions thereof that would result in the application of the laws of any other jurisdiction. In any litigation arising out of or relating to this Agreement, the Parties agree that venue shall be solely in either the United States District Court, Middle District of Florida, Tampa Division, or a Florida state court located in Hillsborough County, Florida (each, a "Tampa Court").
- (b) **Arbitration.** If a dispute, claim or controversy, with the exception of claims for injunctive and/or other equitable relief for intellectual property violations, unfair competition and/or the use and/or unauthorized disclosure of trade secrets or confidential information arises out of, relates to, or is in connection with this Agreement, any amendment of this Agreement or any breach of this Agreement ("Dispute"), and if the Dispute cannot be settled through direct discussions between the Parties, the Parties agree to settle the Dispute by arbitration administered by the American Arbitration Association ("AAA") whereby such Dispute shall be referred to a sole arbitrator selected by the Parties, or, if the

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parties are unable or unwilling to agree to such a selection, to AAA arbitration as the sole remedy as to all matters in Dispute, administered by the AAA in accordance with applicable Arbitration Rules to include the Optional Rules for Emergency Measures of Protection and Optional Procedures for Large, Complex Commercial Disputes, as interpreted and governed by the Florida Arbitration Code. The venue of any such arbitration shall be solely in Tampa, Florida. Judgment on the award rendered by the arbitrator may be entered solely in a Tampa Court. The arbitrator shall not have authority to award punitive or other damages in excess of compensatory damages and each Party irrevocably waives any claim thereto.

- (c) **Enforcement.** If either Party brings any arbitration or other action under this Agreement (including, without limitation, any challenge or appeal), the prevailing Party shall be entitled to recover from the other Party reasonable attorneys' fees and costs (including, without limitation, the cost of such arbitration or other action). The Parties agree to authorize the arbitrator to determine both the entitlement and apportionment of such fees and costs.
- (d) **Arbitration Charges.** Each Party shall initially bear an equal share of the arbitrator's compensation and administrative charges of the arbitration and shall make deposits with the AAA of its share of the amounts requested by the AAA. Failure or refusal by a Party to timely pay its share of the deposits for the arbitrator(s)' compensation and administrative charges shall constitute a waiver by that Party of its rights to be heard, present evidence, cross-examine witnesses, and assert counterclaims. Informing the arbitrator of a Party's failure to pay its share of the deposits for the arbitrator's compensation and administrative charges for the purpose of implementing this provision will not be deemed to affect the arbitrator(s)' impartiality or ability to proceed with the arbitration.
- (e) **General.** The requirement for arbitration will not be deemed a waiver of any right of termination under this Agreement and the arbitrator is not empowered to act or make any award other than based solely on the rights and obligations of the Parties prior to any such termination. The Parties, their representatives, other participants and the arbitrator shall hold the existence, content, and result of arbitration in confidence. Any provisions of this Agreement not found to be in compliance with applicable law may be waived without effect on the agreement by the Parties to arbitrate as provided herein. Notwithstanding the foregoing, in the event of breach by a Party of any of its obligations hereunder, the non-breaching Party may seek injunctive or other equitable relief in any Tampa Court. A request by a Party to a court for interim measures shall not be deemed a waiver of the obligation to arbitrate.

19. **Rights and Remedies.** The rights and remedies provided by this Agreement are given in addition to any other rights and remedies either Party may have by law, statute, ordinance or otherwise. All such rights and remedies are intended to be cumulative, and the use of any one right or remedy by either Party shall not preclude or waive its right to any or all other rights or remedies.

20. **Notices.** All notices, requests, demands, and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given if emailed, hand delivered, or delivered by certified or registered mail or by overnight delivery service:

If to Host:

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GREATER ZION CONVENTION & TOURISM OFFICE

20 N. Main Street #105

St. George, Utah 84770

Attention: Kevin Lewis, Director

 Email: Kevin@GreaterZion.com

(Or to such other addresses as Host furnishes to WTC in writing in accordance with this Section)

If to WTC:
WORLD TRIATHLON CORPORATION

3407 W. Dr. Martin Luther King Jr. Blvd, Suite 100

Tampa, Florida 33607

Attention: Chief Legal Officer

 E-mail: Legal@ironman.com

(Or to such other address as WTC furnishes to Host in writing in accordance with this Section)

21. **Enforcement of Agreement.** Host hereby agrees to waive all defenses, if any, to enforcement of this Agreement that Host might otherwise have under the doctrine of sovereign immunity (or similar doctrine) in connection with any law, regulation, ordinance, decree, order, or any other source or authority.

22. **No Oral or Implied Waivers or Modifications.** If either Party fails to enforce any of the provisions of this Agreement or any rights hereunder or fails to exercise any election provided in this Agreement, it will not be considered to be a waiver of those provisions, rights or elections or in any way affect the validity of this Agreement. The failure of either Party to exercise any of these provisions, rights or elections will not preclude or prejudice such Party from later enforcing or exercising the same or any other provisions, rights or elections which it may have under this Agreement. No waiver will be of any force or effect unless set forth in a writing signed by the Party whose right is being waived. Subject to the immediately preceding sentence, no modifications to this Agreement will be binding upon the Parties unless modified, amended, cancelled, renewed, or extended in a writing signed by both Parties.

23. **Entire Agreement.** This Agreement (including all exhibits hereto) sets forth the entire agreement and understanding of the Parties relating to the subject matter hereof, and, with respect to such subject matter, supersedes all prior agreements, arrangements and understandings, written or oral, between the Parties. Except as may be expressly set forth herein, there are no promises, conditions, representations, understanding, interpretations or terms of any kind as conditions or inducement to the execution hereof or in effect between the Parties.

24. **Interpretation.** The section headings included in this Agreement are for convenience of reference only and will not affect or be utilized in construing or interpreting this Agreement. If any term, clause or provision hereof is held invalid or unenforceable by the arbitrator or a court of competent jurisdiction, such invalidity will not affect the validity or operation of any other term, clause or provision and such invalid term, clause, or provision will be deemed to be severed from this Agreement, provided that both the economic and legal substance of the transactions that this Agreement contemplates are not affected in a manner materially adverse to either Party. This Agreement may be executed in counterparts, each of which will be deemed an original binding document but all of which will constitute one and the same instrument. Neither this Agreement nor any provision herein will be construed in favor or against either Party based on which Party drafted this Agreement or such provision. The exchange of copies of this Agreement and of signature pages by facsimile transmission, by e-mail, in "portable document format" (PDF) form, or by any

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other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of any such means, constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of an original Agreement or signature pages for all purposes. For the avoidance of doubt: signatures of the Parties transmitted by facsimile, email, or other electronic means will be deemed to be their original signatures for all purposes

[Signature page directly follows this page]



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The Parties have executed this Agreement to be effective as of the Effective Date.

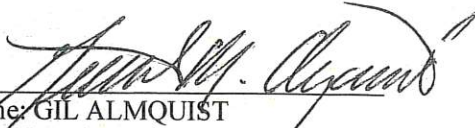
WTC:

WORLD TRIATHLON CORPORATION

By: 
Name: ANDREW MESSICK
Title: PRESIDENT & CEO

HOST:

WASHINGTON COUNTY

By: 
Name: GIL ALMQUIST
Title: WASHINGTON COUNTY
COMMISSIONER CHAIR

[Schedule of Exhibits to this Agreement follows this page]

SCHEDULE OF EXHIBITS

EXHIBIT A: Host Venue Fees

EXHIBIT B: Host Support Services

EXHIBIT C: Host Sponsorship Benefits

EXHIBIT D: Restricted Sponsorship Categories

EXHIBIT E: Trademark Standards & Usage Guidelines

EXHIBIT F: Race Course

EXHIBIT G: Letters of Support

[Exhibits to this Agreement follow this page]

EXHIBIT A

Host Venue Fees;
Wire Transfer Instructions

Event	Host Venue Fee (\$USD)	Payment Installments Due Dates*
2021 Event	\$450,000.00	\$400,000.00 due on February 1, 2021
		\$50,000.00 due on October 1, 2021
2022 Event	\$800,000.00	\$400,000.00 due on February 1, 2022
		\$400,000.00 due on November 1, 2022

***Host Billing Contact Information:**

INVOICES WILL BE SENT TO:

Utah Sports Commission:

Contact Name: Jeff Robbins

Email address: jrobbins@utahsportscommission.com

Telephone number: (801) 328-2335

WITH INVOICE COPIES SENT TO:

Washington County:

Contact Name: Kevin Lewis

Email address: Kevin@GreaterZion.com

Telephone number: 435-986-3384

Time is of the essence with respect to each such payment. All payments to WTC that are required or contemplated under this Agreement must be made in immediately available U.S. dollars via the following wire transfer instructions:

Bank Name: Bank of America, NY NY
 Routing Number: 026009593
 Account Name: World Triathlon Corporation
 Account Number: 898052297785
 SWIFT Code: BOFAUS3N

EXHIBIT B**Host Support Services**

With respect to each Event, and at **no cost to WTC**, Host shall, as the case may be, do, obtain, or provide (or cause to be done, obtained, or provided) the following:

- B-1. Approvals & Permits.** To the extent it has the authority, right, power, ability, or legal jurisdiction to do so, Host shall ensure that, at no cost to WTC, WTC timely receives all governmental, regulatory, and third-party approvals, permits, access rights, business licenses, consents, ordinance exemptions, commitments, and licenses necessary or useful in connection with performance by Host or WTC of this Agreement, including without limitation the conducting of the Event, the Races, and the Expo, closures of roadways, use of amplified sound and music by WTC in connection with the Event, food vendors and contracted catering companies used for the Event, and Host's provision of the Host Support Services (collectively, the "Approvals & Permits"). Host shall ensure that, 180 days prior to the Event, all Approvals & Permits with respect to the Event are obtained, and that all Approvals & Permits will remain in effect for and during the Event; in each case at no cost to WTC (e.g., no charges for site fees, access fees, rental fees, closure fees, licensee fees, application fees, environmental impact fees, permit fees, etc.).
- B-2. Coordination of Welcome Experience with Official Hotels.**
- Coordinate all accommodation partners & housing service for the Event
 - Conduct pre-Event training with hotel staff to understand demographic of guests
 - Coordinate welcome signage onsite
 - Be responsible for Event information inventory at each Official Hotel
- B-3. Electrical Services & Equipment; Lighting.** Host shall provide a special event electricity system. Power hook-ups will be provided by certified technicians under the applicable construction code and regulations. To the extent lighting and electricity is already present at the Venue and available for use by Host, Host shall supply lighting and electricity for the Venue areas such as the transition area, swim, bike, and run courses, medical, and the finish area. To the extent such lighting and electricity is necessary for the Event but not already present at such sites (or is not available for use by Host), Host shall use commercially reasonable efforts to assist WTC in procuring such additional lighting and electricity.
- B-4. Hotel Rooms.** Host shall provide (or cause to be provided) to WTC four hundred (400) complimentary hotel room nights during the applicable Event Period and fifty (50) complimentary hotel room nights prior to the applicable Event Period (as reasonably requested by WTC), for WTC staff, at the official hotels for each Event (such official hotels to be mutually agreed upon by the Parties) (collectively, the "Official Hotels").
- B-5. Lead Agency.** Host shall serve as the "lead agency" to support the operational activities of the Event including but not limited to facility and venue acquisition, permitting, police and emergency services acquisition, parking acquisition, communications acquisition, local accommodations, travel, volunteer recruitment, media, public awareness, and advocacy.
- B-6. Medical Professionals and Ambulance Services.** Host shall ensure that ambulances will be distributed strategically at the Venue, transition area, celebration areas, along the Race Course route, and the Event medical areas. Host shall provide its official medical plan to WTC and shall

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provide a reasonable opportunity for WTC to review and comment on the official medical plan prior to the Event Period. Host shall provide a team of medical professionals, including a Medical Director, who will coordinate and implement such official medical plan. Host acknowledges that an Event medical team of approximately 100 certified medical professionals will be required for the Event. Host shall ensure that dedicated EMS units will be on hand to respond to emergency transport needs and the general public during the Event Period.

- B-7. No Construction.** Unless reasonably required and unavoidable, Host shall not begin, permit, and/or effect any structural, engineering, beautification, or related works occurring during the Event Period.
- B-8. Notifications.** All local residents and businesses within the Venue that are impacted by the Event must be properly notified by the Host. This includes the effects of road closures, traffic advisories, etc.
- B-9. Parking and Shuttle Services.** Host shall provide (or cause to be provided) satellite parking lots outside the operations perimeter with parking lot attendants. Host shall, as necessary for the Event, provide (or cause to be provided) dedicated Race day shuttle buses to transport athletes and spectators in and around the Venue.
- B-10. Police and Emergency Services.** Host shall ensure that Police will command and ensure all emergency services (police, fire and ambulance) needed to maintain public safety. A special command post will be temporarily installed on the site, bringing together all three emergency services (police, fire and ambulance), private security, volunteer security personnel and communications. Host acknowledges and agrees that, throughout the course of the Event Period (and as necessary for each Race), Host will be responsible for providing approximately two hundred (200) police officers for purposes traffic control, road closures, crowd control and security during the Event Period.
- B-11. Race Course Exclusivity and Condition.** Host shall ensure that, as necessary to conduct the Races, the Race Course route is closed to the public during the Races and for a reasonable period before and after the Races, and, subject to reasonable exceptions, is made exclusively available to WTC during such periods. Host shall ensure that all Race Course routes are in good condition during the Event Period.
- B-12. Street Cleaning.** Host shall be responsible for sweeping and cleaning up all streets and other Event-related areas prior to, during, and after the Event.
- B-13. Swim Ingress/Egress.** Host shall ensure that there is safe and adequate ingress/egress for the swim portion of the Races. Host shall provide all water safety assets and personnel services required for a safe swim course including, without limitation, all tents, lifeguards, paddleboards, kayaks, PWCs, and motorized boats. Host shall pay and/or waive all access fees in connection with the swim portion of the Event including, without limitation, all site fees, visitor fees, park rentals, and all other fees related to use or access to the swim area facilities and amenities within the Venue.
- B-14. Terrorism and Counterterrorism Measures.** To the extent such measures are required by law or to the extent such measures are deemed necessary by local law enforcement (e.g., for the safety of the Event participants and spectators), Host shall be responsible for any and all costs for counterterrorism measures required in connection with the Event, including, without limitation,

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anti-terrorism personnel, equipment (e.g., suppression vehicles, jersey barriers, surveillance, etc.), and services.

- B-15. Top Overall Female & Male Finisher Award.** Host shall provide a high-quality individually customized award to the top overall female and top overall male winner of each Race (the “Top Finisher Award”). The intent of the Top Finisher Award is to reward the top finishers with a special keepsake to remember the Event and, as such, the unique design of the Top Finisher Award should represent and be symbolic to the Venue and the Event. Upon Host’s request, WTC shall advise Host regarding the Top Finisher Award and, also, shall provide to Host illustrations of top finisher awards given by other hosts of previous IRONMAN® 70.3® Championship events.
- B-16. Traffic Control and Services.** In consultation with WTC, Host shall develop a road closure and traffic management plan that guarantees a safe course for athletes and reduces impact on local residents. Host shall provide all traffic devices, engineering diagrams, and plans to assure maximum road safety in partnership with local and state police services. Host shall provide all variable message boards, barricades, cones for traffic control, special event traffic signage and parking signs, temporary traffic light system, and traffic control vehicles equipped with yellow arrows.
- B-17. Venues/Facilities.** During each Event Period and as necessary to accommodate the Event-related functions for each Event, Host shall provide the following venues, facilities, and/or spaces (as applicable):

USE	*TENTATIVE LOCATIONS	SPECIFICATIONS
MEDIA CENTER	CHILDREN’S MUSEUM (3 RD FLOOR) AND/OR DIXIE CONVENTION CENTER	Indoor, fully wired private space with seating for up to 100 media (4,500 square foot space)
PRESS CONFERENCE	TOWN SQUARE PARK OR DIXIE CONVENTION CENTER	Media-friendly space used to conduct the pre-race presser; possibly located near the expo (1,250 to 1,500 square foot space)
RACE OFFICE	SCHOOL DISTRICT BUILDING OR ALTERNATIVE LOCATION AS DETERMINED BY WTC	Large meeting room (1,000 square foot space)
CREDENTIAL OFFICE	SCHOOL DISTRICT BUILDING OR ALTERNATIVE LOCATION AS DETERMINED BY WTC	1,000 square foot space near the race office
VIP OFFICE	SCHOOL DISTRICT BUILDING OR ALTERNATIVE LOCATION AS DETERMINED BY WTC	1,000 square foot space

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WORLD CHAMPIONSHIP TEAM MEETING SPACE	SCHOOL DISTRICT BUILDING OR ALTERNATIVE LOCATION AS DETERMINED BY WTC	1,000 square foot space to accommodate up to 20 staff throughout the week
EXECUTIVE MEETING SPACE	SCHOOL DISTRICT BUILDING OR ALTERNATIVE LOCATION AS DETERMINED BY WTC	Board meeting room space available throughout the week
IRONMAN LIVE PRODUCTION	ADJACENT TO FINISHLINE	2,200 square foot space near the finish line
ATHLETE REGISTRATION	TOWN SQUARE PARK OR DIXIE CONVENTION CENTER	3,500 square foot space to process athletes over a three-day period
IRONMAN VILLAGE (EXPO)	TOWN SQUARE PARK OR DIXIE CONVENTION CENTER	40,000 square foot space to accommodate vendor booths near athlete registration
VIP RECEPTION	TECH RIDGE OR ALTERNATIVE LOCATION AS DETERMINED BY WTC	Capacity 250
MERCHANDISE	TOWN SQUARE PARK OR DIXIE CONVENTION CENTER	5,000 square foot space near athlete registration and the finish line (tented)
BIKE TECH	TOWN SQUARE PARK OR DIXIE CONVENTION CENTER	1,000 square foot space adjacent to athlete registration
PASTA/AWARDS BANQUET	DIXIE CONVENTION CENTER	Buffet-style arrangement with room for center stage and seating for 4,500 attendees including 200+ VIPs for both a pre-race and post-race banquet function (estimated at 50,000 square foot space)
ATHLETE'S GARDEN	TOWN SQUARE PARK	4,500 square foot space located near finish line
FOREIGN ATHLETE MEETINGS	ELECTRIC THEATRE OR DIXIE CONVENTION CENTER	Capacity of 300, theater style
VIP HOSPITALITY (RACE DAY)	TOWN SQUARE PARK	5,000 square foot space located near finish line
PROFESSIONAL LOUNGE (RACE DAY)	TOWN SQUARE PARK	800 square feet, capacity 75-100 located close to finish line
DOPING CONTROL	TOWN SQUARE PARK	900 square foot space located near finish line
MEDICAL & MASSAGE AREA	TOWN SQUARE PARK	5,000 square foot space located near finish line

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FINISH LINE CHUTE	MAIN STREET OR TABERNACLE OR NEARBY LOCATION	8,610-9690 square foot space - Space for spectators on either side of the chute, sound scaffolding, bleachers, and a jumbotron.
SECURITY POST	TOWN SQUARE PARK OR ALTERNATIVE LOCATION DETERMINED BY WTC	Secured temporary special command post installed at the event site, for purpose of bringing together all Event-related emergency services (police, fire, ambulance, etc.), private security, volunteer security personnel and communications.
SUPPLY DEPOT	TECH RIDGE OR ALTERNATIVE LOCATION DETERMINED BY WTC	Secured 44,000 square foot outdoor space needed fourteen (14) days prior to race day and five (5) days to organize event supplies and unload/load trucks.

** The Parties acknowledge that, as of the Effective Date, the exact dates, venues, facilities, and/or spaces to be used for the Events are not finalized and that, to the extent multiple locations are listed in the table set forth above, WTC will, in consultation with Host, determine the exact dates, venues, facilities, and/or spaces (as applicable) to be used for each Event.*

- B-18. VIP Experience.** With respect to VIP spectators attending the Event, Host shall work with WTC to ensure a memorable experience including securing and ensuring the exclusive use of mutually agreed upon venues for the duration of the Event (with certain mutually agreed upon venues being made available at least one (1) week prior to the Event).
- B-19. Volunteer Recruitment.** Host shall be responsible for assisting WTC with the recruitment of a minimum of 3,000 experienced Event volunteers who will, throughout the course of the Event, participate in volunteer activities in connection with the Event.
- B-20. Volunteer Banquet.** Host shall provide a volunteer banquet to include food and beverage catering for 3,000 attendees and all other aspects of the function (e.g., including without limitation, venue, lighting, tables, chairs, stage, entertainment, etc.).
- B-21. Waste Management Services.** Host shall maintain and ensure a clean environment at all times on its properties. Adjustments will be put in place according to the needs of WTC. Recycle containers, garbage units, large units for disposal, transportation, and manpower will be provided by Host. Host shall cause all trash bagged at aid stations within city limits to be removed by city/county services.

* * * * *

EXHIBIT C

Host Sponsorship Benefits

- C-1. With respect to each Event, WTC shall provide (or cause to be provided) to the **Utah Sports Commission** (the "Sports Commission") the following sponsorship benefits:
- (a) **Exclusive Rights.** During the Term, Sport Commission will have the right to exclusivity solely as it relates to sponsorship rights in the sports commissions category (the "Exclusive Category") with respect to the Events; provided, however, that WTC may allow other Exclusive Category companies (and any other companies) to (i) purchase or use booth space in, and distribute product (including products in the Exclusive Category) at, the Expo at the Events, (ii) purchase or use kit inserts at the Events, (iii) purchase or use Event-specific race program/guide or mobile application advertisements at the Events, or (iv) purchase or use advertisements under any WTC domain (which such activation benefits (as described in subclauses (i)-(iv)) Sports Commission acknowledges are neutral (i.e. not subject to exclusive rights)), so long as WTC does not authorize any third-party Exclusive Category company to (A) sponsor the Event with respect to the Exclusive Category, or (B) refer to itself or its products with respect to the Event using any of Sport's sponsorship designations with respect to Exclusive Category.
 - (b) **Partner Designations; Integrations.**
 - (i) The right to designate Sports Commission as the presenting sponsor of the Event, such that (A) the 2021 Event will be advertised and marketed as the "2021 IRONMAN® 70.3® WORLD CHAMPIONSHIP presented by the Utah Sports Commission" (which Event name is subject to addition of a title sponsor as described below) in reasonable forms of advertising and marketing. Such advertising and marketing is subject to pre-approval by WTC, and (B) the 2022 Event will be advertised and marketed as the "2022 IRONMAN® 70.3® WORLD CHAMPIONSHIP presented by the Utah Sports Commission" (which Event name is subject to addition of a title sponsor as described below) in reasonable forms of advertising and marketing. Such advertising and marketing is subject to pre-approval by WTC.
 - (ii) As presenting sponsor of the Event, Sports Commission will have its logo integrated (by WTC) generally underneath, but as part of, the Event Logos, with the size and placement of the Sports Commissions logo, and other design aspects relating to such placement, to be reasonably determined by WTC in consultation with Sports Commission.
 - (iii) Nothing herein prohibits WTC from granting to any third party a "title sponsorship" with respect to the Event (e.g. the "General Corp. 2021 IRONMAN 70.3 World Championship presented by Utah Sports Commission") that is more prominent than Sports Commission's presenting sponsorship designation, [so long as such title sponsor is not an Exclusive Category company]. Any such title sponsor may be included as part of the Event Logos.
 - (c) **Intellectual Property Rights.** During the Term, and in addition to having the right to use the Event Logos, WTC Photos, and Host-Produced Photos & Videos in accordance with Section C-4 below, Sports Commission will have a limited, non-exclusive license to use the official sponsor logos and the official designation logos of the Event (such logos to be created by WTC and provided to Sports Commission by WTC), provided that: (i) such use is solely for purposes of advertising Sports Commission's sponsorship of the Event; and (ii) such use complies fully with the terms of this

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Agreement, including without limitation, the Trademark Standards set forth in Exhibit E.

(d) **Digital & Media Activation – Event Partnership & Event Recap Video.**

- (i) Facebook: The right to provide Sports Commission-related content to WTC for two (2) social media posts on the Event-specific Facebook page.
- (ii) Instagram: The right to provide Sports Commission-related content to WTC for two (2) social media posts on WTC's official global Instagram account.
- (iii) Twitter: The right to provide Sports Commission-related content to WTC for two (2) social media posts on WTC's official global Twitter account.
- (iv) Email:
 - (A) The right to provide Sports Commission-related content for inclusion by WTC in one (1) Event-specific email distributed by WTC to those Event participants who have opted-in to receive such email communications.
 - (B) The right to provide a Sports Commission-related banner advertisement to be displayed by WTC in two (2) Event-specific emails distributed by WTC to those Event participants who have opted-in to receive such email communications.
- (v) Website:
 - (A) The right to provide Sports Commission-related content for inclusion in one (1) piece of editorial content (subject to applicable laws and regulations regarding disclosure of a commercial relationship) which will be posted by WTC on the IRONMAN.com page.
 - (B) Inclusion of the Sports Commission's logo, with a link to Sports Commission's website, on the sponsorships page (or in the sponsorships section) of the IRONMAN.com page.
- (vi) Mobile App: Inclusion of the Sports Commission's logo, on the sponsorships page (or in the sponsorships section), of the official athlete tracker mobile application produced by, or on behalf of, WTC for the Event.
- (vii) Event Specific Integration:
 - (A) The right to provide Sports Commission-related content for one (1) full-page advertisement in the official race program produced by, or on behalf of, WTC for the Event.
 - (B) The right to provide Sports Commission-related content for one (1) full-page advertisement in the digital athlete guide produced by, or on behalf of, WTC for the Event.

(e) **Event Activation.**

- (i) Signage:

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- (A) Two (2) placements of the Sports Commission logo on the camera side and two (2) placements of the Sports Commission logo on the spectator side of the header/horizontal (i.e. crossbar) of the finish line arch at the Event.
 - (B) Inclusion of the Sports Commission logo on the finish line tape at the Event.
 - (C) Two (2) Sports Commission -branded dasher boards for placement by WTC within the finish-line chute at the Event.
 - (D) Inclusion of the Sports Commission logo on the media/press conference step-and-repeat backdrop at the Event.
- (ii) Non-Retail Opportunities: Name-in-title integration into event non-retail items including:
- (A) Inclusion of the Sports Commission logo on the participant bag for the Event;
 - (B) Inclusion of the Sports Commission logo on the participant finisher shirt for the Event.
 - (C) Inclusion of the Sports Commission logo on the finisher medal for the Event.
 - (D) Inclusion of the Sports Commission logo on the hospital credentials at the Event.
 - (E) Inclusion of the Sports Commission logo on the participant race bib for the Event.
 - (F) Inclusion of the Sports Commission logo on the volunteer shirt at the Event.
 - (G) Inclusion of the Sports Commission logo in the sponsorships section of the official printed race program produced by, or on behalf of, WTC for the Event.
- (iii) Activation Opportunities:
- (A) The right to provide one (1) Sports Commission-branded item(s) (such as coupon(s), sample(s), gift(s), literature, brochure(s), etc.) for placement by WTC in the athlete race kits at the Event.
 - (B) The right to have a Sports Commission-branded zone or hot-spot on-course at the Event, which zone may include one (1) Sports Commission -branded arch, six hundred (600) feet of Sports Commission -branded snow fencing, and ten (10) Sports Commission -branded flags. Sports Commission shall provide, at Sports Commission's cost, the Sports Commission -branded signage for placement, by WTC, at such zone. All such Sports Commission branding is subject to pre-approval by WTC.
 - (C) Five (5) public announcer mentions during each Race (i.e., 5 total for the 2021 and 10 total for the 2022), acknowledging Sports Commission's sponsorship of the Event, at the finish line of the Event.
- (iv) Ironman Village:
- (A) Space in the Expo at the Event, up to 10' x 20' in dimensions, for use by Sports Commission provided that the Sports Commission complies with WTC's Expo rules and regulations. For such Expo space, Sports Commission will be provided with use of a table and chairs and basic (i.e., 120V or local equivalent) electrical access. Sports Commission shall be responsible for any requested upgraded electrical access (i.e., 240V or local equivalent), tent, and other on-site items or services as may be required by Sports Commission for such Expo space.

HOST VENUE AGREEMENT- PAGE 29 of 52

- (B) Five (5) public announcer mentions per day, acknowledging Sports Commission's sponsorship of the Event, periodically during the Event Expo.
- (f) **Public Relations.** The right to provide Sports Commission -related content for inclusion in a joint press release announcing Sports Commission's sponsorship of the Event.
- (g) **Hospitality Passes.** Twenty (20) complimentary sponsor hospitality passes for the Event for use by the Sports Commission's employees and representatives, which passes grant access to certain selective benefits at the Event. WTC reserves the right to deny the use by any specific individual(s) of any hospitality passes.
- C-2. With respect to each Event, WTC shall provide (or cause to be provided) to the City of St. George (the "City") the following sponsorship benefits:
- (a) **Designation.** The right to designate the City as the "Official Sponsor of 2021/2022 (as applicable for each Event) IRONMAN 70.3 World Championship" in all reasonable forms of advertising and marketing. Such advertising and marketing is subject to pre-approval by WTC.
- (b) **Social Media.** The right to provide City-related content to WTC to be integrated into the Event's social media campaign, including but not limited to, an announcement on the Event-specific Facebook pages related to the City's sponsorship.
- (c) **Event-Specific Email Inclusion.** The City may provide City-related content to WTC for inclusion in one (1) Event-specific email distributed by WTC to all persons who have opted-in to receive such email communications.
- (d) **Logo Exposure.** Inclusion of the City's logo, with a link to the City's website, on the sponsorships page (or in the sponsorships section) of the Event-specific website.
- (e) **Hospitality Passes.** Twenty (20) complimentary sponsor hospitality passes for the Event for use by the City's employees and representatives, which passes grant access to certain selective benefits at the Event. WTC reserves the right to deny the use by any specific individual(s) of any hospitality passes.
- (f) **Snow Fencing.** Six hundred feet (600') of City-branded snow fencing, paid for and provided by the City, for placement by WTC at the Venue.
- (g) **Public Announcer Mentions.** Public announcer mentions, acknowledging the City's sponsorship of the Event, periodically during the Expo and during the Races at the Venue. The City shall provide the content of such announcements to WTC reasonably in advance.
- (h) **Dasher Boards.** Two (2) logo inclusions on WTC's Event specific host/venue dasher boards. Such dasher boards to be provided at WTC's cost.
- (i) **Expo.** The right to use a 10' x 10' space in the Expo at the Event, which Expo space may be used by the City to promote its products and services, provided that the City complies with WTC's Expo rules and regulations.
- (j) **Athlete Kit Inserts.** The right to provide City-branded items (such as coupons, samples, gifts,

literature, brochures, etc.) for placement by WTC in the athlete Race kits, volunteer kits, and media kits at the Event.

C-3. With respect to each Event, WTC shall provide (or cause to be provided) to the **Greater Zion Convention & Tourism Office** (the "Convention & Tourism Office") the following sponsorship benefits:

- (a) **Designation**. The right to designate the Convention & Tourism Office as the "Official Sponsor of 2021/2022 (as applicable for each Event) IRONMAN 70.3 World Championship" in all reasonable forms of advertising and marketing. Such advertising and marketing is subject to pre-approval by WTC.
- (b) **Social Media**. The right to provide Convention & Tourism Office-related content to WTC to be integrated into the Event's social media campaign, including but not limited to, an announcement on the Event-specific Facebook pages related to the Convention & Tourism Office's sponsorship.
- (c) **Event-Specific Email Inclusion**. The Convention & Tourism Office may provide Convention & Tourism Office-related content to WTC for inclusion in one (1) Event-specific email distributed by WTC to all persons who have opted-in to receive such email communications.
- (d) **Logo Exposure**. Inclusion of the Convention & Tourism Office's logo, with a link to the Convention & Tourism Office's website, on the sponsorships page (or in the sponsorships section) of the Event-specific website.
- (e) **Hospitality Passes**. Sixty (60) complimentary sponsor hospitality passes for the Event for use by the Convention & Tourism Office's employees and representatives, which passes grant access to certain selective benefits at the Event. WTC reserves the right to deny the use by any specific individual(s) of any hospitality passes.
- (f) **Snow Fencing**. Six hundred feet (600') of Convention & Tourism Office-branded snow fencing, paid for and provided by the Convention & Tourism Office, for placement by WTC at the Venue.
- (g) **Public Announcer Mentions**. Public announcer mentions, acknowledging the Convention & Tourism Office's sponsorship of the Event, periodically during the Expo and on race day at the Venue. The Tourism Office shall provide the content of such announcements to WTC reasonably in advance.
- (h) **Dasher Boards**. Two (2) logo inclusions on WTC's Event specific host/venue dasher boards. Such dasher boards to be provided at WTC's cost.
- (i) **Expo**. The right to use Expo space, provided that the Convention & Tourism Office complies with WTC's Expo rules and regulations. The size of the Tourism Office's Expo booths are as follows:
 - (i) A 10' x 10' space in the Expo for discretionary use;
 - (ii) A 10' x 20' space for sign making; and
 - (iii) A 10' x 10' space for athlete surveys in the registration area at the Event.
- (j) **Athlete Kit Inserts**. The right to provide Convention & Tourism Office-branded items (such as coupons, samples, gifts, literature, brochures, etc.) for placement by WTC in the athlete race kits, volunteer kits, and media kits at the Event.
- (k) **Complimentary Race Entries**.

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- (i) *Grant of Entries.* Four (4) complimentary race entries for the Event (i.e., to participate as an age-group athlete in such races) for use subject to the terms of this Agreement (collectively, the “Entries”).
- (ii) *Requirements.* The Entries must be for the Convention & Tourism Office’s internal use only, such as awards in employee contests, competitions, etc.; Convention & Tourism Office shall not provide any of the Entries to individuals who are not employees or representatives of the Convention & Tourism Office. The Entries cannot, without WTC’s prior written approval, be advertised or marketed as a “gift with purchase” or otherwise offered for sale. Convention & Tourism Office shall not hold itself out, represent, or imply, to any recipient (each, an “Athlete”) of any of the Entries, or to any other third party, that Convention & Tourism Office represents or is an agent of WTC or that WTC endorses Convention & Tourism Office or any of its products or services (except to the extent expressly set forth herein).
- (iii) *Procedure.* Convention & Tourism Office shall provide to WTC the name and email address for each Athlete at least sixty (60) days prior to the applicable race, and inform the Athletes (and anyone else to whom any Entries are offered) of the following requirements:
 - (A) No Entry may be sold, assigned, or otherwise transferred by any Athlete (or by anyone else after distribution by Convention & Tourism Office);
 - (B) WTC will email online registration instructions to the Athletes;
 - (C) Each Entry is for only the specific race, in the designated year, and cannot be used for any other race, or deferred for Entry in such race in a later year;
 - (D) Athletes must register online with WTC no later than forty-five (45) days prior to the applicable race or else the Entry will be null and void, without any refund right or any other right to compensation or reimbursement; and
 - (E) Athletes must have a valid USA Triathlon (USAT) license on the day of the applicable race or purchase a one-day membership on-site at the race during athlete check-in.
- (iv) *Other Requirements.* The use of the Entry is conditioned upon the applicable Athlete first satisfying the Qualifying Requirements. With respect to using an Entry for the 2021 Event the term “Qualifying Requirements” means the Athlete must (i) in 2021 compete in at least one WTC -owned or WTC-licensed IRONMAN® or IRONMAN® 70.3®-branded race prior to August 15, 2021, and (ii) finish such qualifying race within the stated cut-off time for such race (cut-off times can be found in the athlete FAQ section of the applicable race-specific website). With respect to using an Entry for the 2022 Event the term “Qualifying Requirements” means the Athlete must (i) in 2022 compete in at least one WTC -owned or WTC-licensed IRONMAN® or IRONMAN® 70.3®-branded race prior to August 15, 2022, and (ii) finish such qualifying race within the stated cut-off time for such race (cut-off times can be found in the athlete FAQ section of the applicable race-specific website). The Athlete shall be solely responsible for any and all costs associated with the Qualifying Requirements, including, without limitation, the standard entry fee for the applicable qualifying race.
- (v) *Certain Limitations.* WTC reserves the right to deny, for good cause, the use by any specific individual(s) of any Entries (in the event of any such denial, Convention & Tourism Office shall be permitted to substitute individuals reasonably acceptable to WTC

HOST VENUE AGREEMENT- PAGE 32 of 52

to use such Entries). Without limiting the immediately preceding sentence, Convention & Tourism Office shall not provide any Entries to any person: (i) with a material relationship with any event organization or company that is a competitor of WTC; (ii) who is a member of the Ironman Pro Membership program or is otherwise a professional triathlete; or (iii) who is currently banned from competing in any WTC race (whether for violation of anti-doping rules, or otherwise).

C-4. With respect to each Event and in addition to the sponsorship benefits above, WTC shall provide to the City, the Convention & Tourism Office, and the Sports Commission (collectively, the “Host Parties”) the following sponsorship benefits:

(a) **License of Event Photos & Videos.** Subject to the terms of this Agreement and unless otherwise agreed to by the Parties in writing, during the Term and subject to any third-party intellectual property rights therein, the Host Parties shall have a limited, non-exclusive license (a “Limited License”) to use (i) any of the WTC-owned photographs of the Event as may be provided to the Host Parties by WTC (the “WTC Photos”) and (ii) any photographs and/or video of the Event produced by Host (the “Host-Produced Photos & Videos”) provided that:

- (i) Such use is solely for purposes of promoting and advertising the Venue and the Host Parties’ sponsorship of the Event;
- (ii) Such use complies fully with all guidelines of WTC’s Media and Television departments, including, without limitation, inclusion of proper copyright and attribution notices;
- (iii) The Host Parties may use the WTC Photos and/or Host-Produced Photos & Videos in vacation planners, marketing brochures and on the Host Party websites in order to publicize the Event and attract/inform participants and spectators, provided, however, that in no event may the Host Parties use the WTC Photos or the Host-Produced Photos & Videos in connection with any merchandise, products, or services;
- (iv) Upon WTC’s request the Host Parties shall immediately discontinue use of any WTC Photos and/or Host-Produced Photos & Videos;
- (v) The WTC Photos and Host-Produced Photos & Videos are, and shall remain, the property of WTC. Any and all rights in, to, or under the WTC Photos and Host-Produced Photos & Videos shall enure solely to the benefit of WTC; and
- (vi) The Host Parties shall not transfer or assign the Limited License or sub-license any of the WTC Photos or the Host-Produced Photos & Videos.

(b) **License of Event Logo.** During the Term, the Host Parties shall have a limited, non-exclusive license (the “License”) to use the Event Logos, provided that:

- (i) Such use is solely for purposes of promoting and advertising the Venue and the Host Parties’ sponsorship of the Event;
- (ii) Such use complies fully with the terms of this Agreement, including without limitation, the Trademark Standards and Usage Guidelines contained in Exhibit E;
- (iii) The Host Parties may use the Event Logos in vacation planners, marketing brochures and on Host Party websites in order to publicize the Event and attract/inform participants and spectators, provided, however, that in no event may the Host Parties sell or produce any IRONMAN-branded or Event-branded merchandise, products, or services;
- (iv) The Event Logos are, and shall remain, the property of WTC, and any and all rights in, to, or under the Event Logos, or any copyrights or other intellectual property of WTC, shall enure solely to the benefit of WTC;
- (v) The Host Parties shall not transfer or assign the License or sub-license any of the Event Logos; and

HOST VENUE AGREEMENT- PAGE 33 of 52

- (vi) The License expires immediately upon expiration or earlier termination of this Agreement, provided, however, that following the Term the Host Parties shall be entitled to continue to use the Event Logos for historical purposes (e.g., to make reference to the Event and their sponsorship of the Event and to showcase that they are capable of hosting large scale events).

EXHIBIT D

Restricted Sponsorship Categories

COMPRESSION APPAREL	RACE REGISTRATION
WETSUIT	WATCH/TIMING
SUNGLASSES	GPS/FITBIT
MEDALS	ON-COURSE NUTRITION
FOOTWEAR	CHARITY
ENERGY BAR	RACE PHOTOGRAPHY
ENERGY GEL	SUNSCREEN
ISOTONIC / SPORTS BEVERAGE	INSOLES
ENERGY DRINKS	RECOVERY SANDAL
RECOVERY BEVERAGE	RECYCLING/GARBAGE/WASTE MANAGEMENT
SUPPLEMENTS	ONLINE TRAINING PLATFORM
CELL PHONE CASE	BEER
HEADPHONES	HOTEL
LIFESTYLE APPAREL	TRAVEL PARTNER
PERFORMANCE APPAREL	SWIM APPAREL & ACCESSORIES
BIKE APPAREL & ACCESSORIES	

EXHIBIT E

Trademark Standards & Usage Guidelines: Event-Specific Logo

Sample Event Logo

Each Event will feature one or more IRONMAN® 70.3® World Championship-branded logos customized by WTC for the Events (each, an “Event Logo” and collectively, the “Event Logos”). WTC will design, create, and provide each Event Logo.

WTC may elect to, from time to time, modify the Event Logo by adding the name of a “title” sponsor or “presenting” sponsor to such logo.



General

The Event Logo must be used consistently and not altered. Modifications, variations, and incorrect uses of any Event Logo dilute the IRONMAN® brand and create consumer confusion, and are therefore not permitted. You play a vital role in protecting the integrity of WTC’s intellectual property, such as the Event Logo. Please familiarize yourself with the following TRADEMARK STANDARDS & USAGE GUIDELINES, which you are required to follow when using any Event Logo in connection with the Event.

Pre-Approval Requirement

Without exception, all proposed uses of the Event Logo must be submitted to WTC for review **PRIOR TO USAGE**. All approval requests for use of any Event Logo must be submitted, along with a high resolution PDF image of the proposed use, to approvals@ironman.com for review by WTC. Please allow at least ten (10) business days for all approval requests to be answered. Any proposed use or item submitted that is not approved by WTC in writing within fifteen (15) days shall be deemed disapproved.

Trademark Ownership & Required Notice

Each Event Logo is, and shall remain, the property of WTC. Any and all rights to, in, and under the Event Logo, or any copyright or other intellectual property of WTC, shall enure solely to the benefit of WTC.

Notice must be given to the public that World Triathlon Corporation claims ownership of the Event Logo. Therefore, the following legal notice must clearly appear, in no smaller than 6-point size typeface, on all of your printed materials, products, websites, and all other items on which any Event Logo is used:

**IRONMAN® and 70.3® are registered trademarks of
World Triathlon Corporation. Used herein by permission.**

Other Requirements

Each use by Host of the Event Logo must:

- Be solely and directly related to performing Host’s obligations, or exercising its rights, under this Agreement;

- Not be on any merchandise or services for sale or distribution (except to the extent expressly and specifically authorized by this Agreement or separate written agreement with WTC);
- Not constitute or involve transfer or assignment of the license or sub-license of any Event Logo; and
- Not have anything embedded in, added to, or superimposed on the Event Logo, or have any colors or color scheme different than that approved by WTC.

Improper Uses of the Trademarks “IRONMAN®” and “IRONMAN® 70.3®”

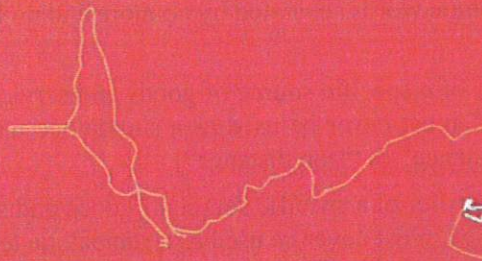
- IRONMAN® must be a single word, never hyphenated, and never capitalized as “IronMan”.
- IRONMAN® and 70.3® must be two (2) separate words separated by no more and no less than one (1) character space.
- IRONMAN® is a brand name – an identifier of a specific source of goods and services. It is not an indicator of distance. “IRONMAN” must never be used as a standalone term or to denote distance. (e.g., never as “Ironman distance” or “Iron distance”).
- IRONMAN® 70.3® is a brand name – an identifier of a specific source of goods and services. It is not an indicator of distance. “IRONMAN” must never be used as a standalone term or to denote distance. (e.g., never as “half ironman”, “half ironman distance”, or “half iron distance”).
- 70.3® is a brand name – an identifier of a specific source of goods and services. It is not an indicator of distance. “70.3” must never be used as a standalone term to denote distance. (e.g., never as “70.3 miles”)
- IRONMAN® should never be abbreviated as “IM.”
- IRONMAN® 70.3® should never be abbreviated as “IM70.3.”
- Stand-alone references to “an IRONMAN” or “a 70.3” are improper. Please add “triathlon” to such phrases (e.g., “an IRONMAN® 70.3® triathlon”).
- Do not use “iron” (or any foreign translation thereof) as a prefix for, or component of, any words – whether displayed as one word (e.g., “ironwoman”, “ironfamily”, or “ironmate”), as two separate words (e.g., “iron woman”, “iron family”, or “iron mate”), or as a hyphenated word (e.g., “iron-woman”, “iron-family”, or “iron-mate”). (Exceptions include IRONMAN®, IRONKIDS®, and IRON GIRL®, all of which are trademarks owned by WTC.)

EXHIBIT F

Race Course

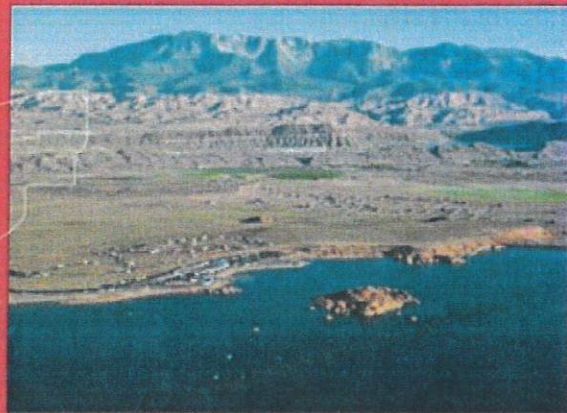
THE **SWIM** COURSE

1.2 Mile Loop



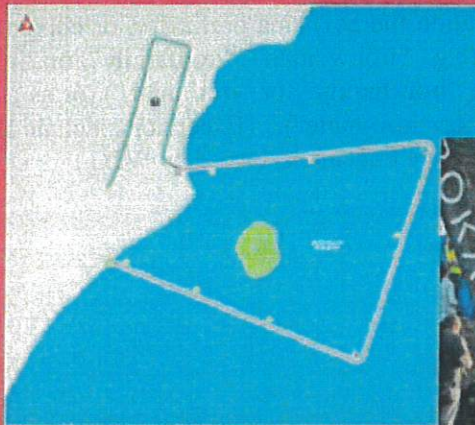
Sand Hollow State Park

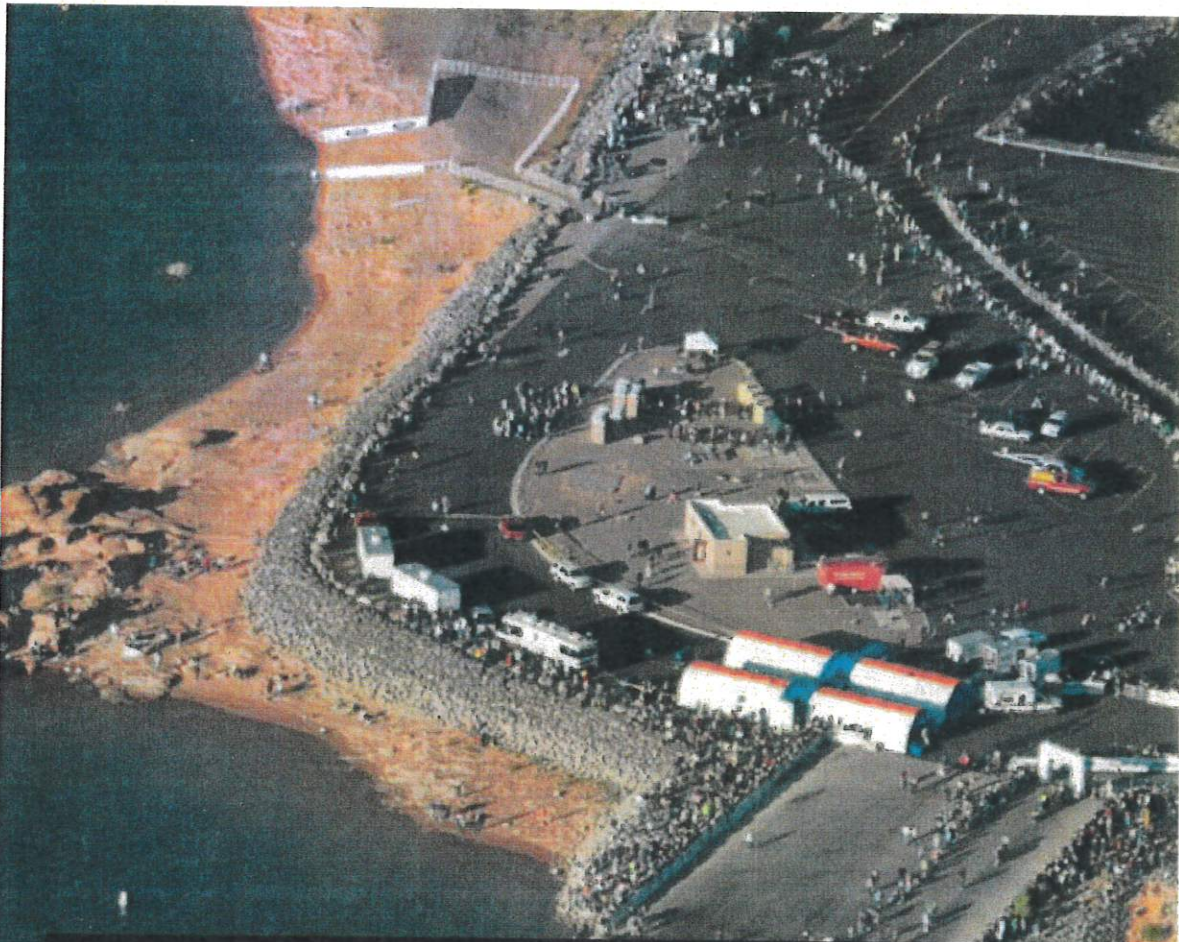
Brilliant orange sand beaches, desert sandstone and scenic rocky buttes surround the reservoir. The swim course takes athletes around a sandstone island that provides a spectacular scene for race footage and photographs. (Water test results on pages 67-70)



Starting Line

A one-loop swim takes place in the crystal blue water of Sand Hollow State Park in Hurricane, Utah – 20 minutes from downtown St. George.





T1

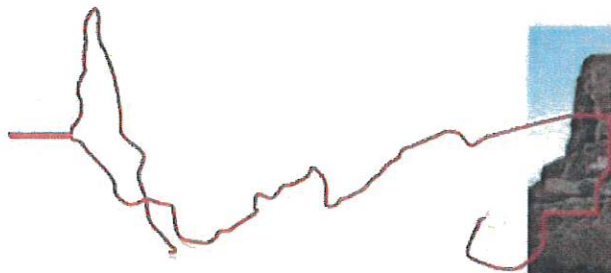
The swim venue provides a huge, paved parking area (more than 600,000 square feet) for staging/transitions, and easy shoreline viewing access for athletes and spectators. With all of the T1 transition features in place, there is parking available for approximately 300-400 vehicles in the transition area for VIPs. Additional spectator parking is available a short walking distance from the reservoir.

Shuttle buses will be provided to take athletes from St. George to T1 on both race mornings. Shuttles will also be provided to get spectators from the parking areas near *Sand Hollow* to and from the swim start.

NOTE: We have established a relationship with *TriBike Transport* to coordinate bike transportation to T1. As part of our bid proposal we will cover a portion of the cost for any athlete utilizing *TriBike* for T1 transport service.

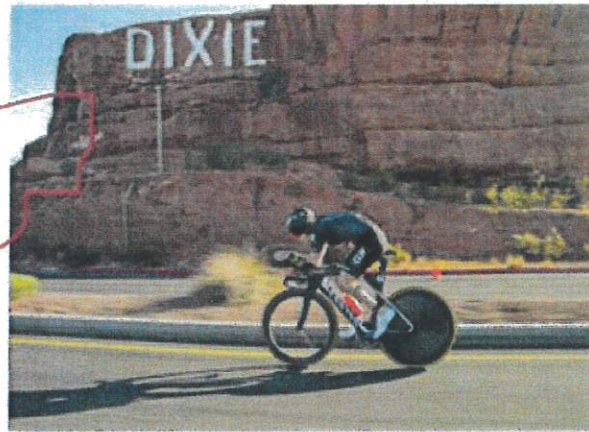
THE **BIKE** COURSE

56 miles featuring 2 state parks



Sand Hollow State Park

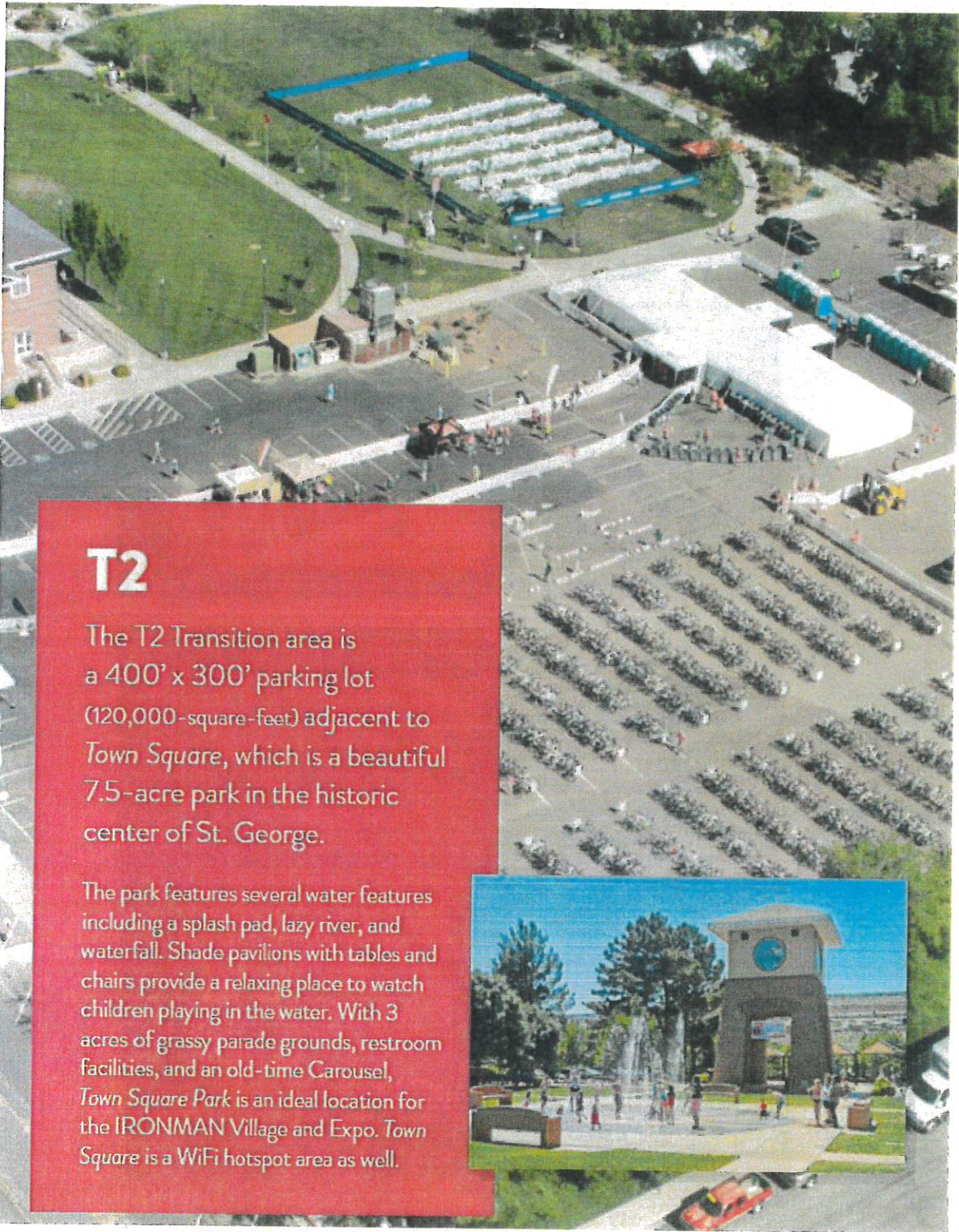
The bike course takes athletes on a highlight tour through some of the most stunning landscapes in the country. It starts by circling around the beautiful backdrop of *Sand Hollow Reservoir* and runs through the towns of Hurricane and Washington before making its way toward the city of St. George. After crossing the red bluff above the city, the course runs beneath the red hills and through an ancient lava flow on the west side of town.



Snow Canyon State Park

The course does a short out-and-back in the city of Ivins, then turns onto the signature climb through picturesque *Snow Canyon State Park*. At the top of the hill, riders turn for a fast descent to town on SR 18 and finish at T2 located in downtown St. George.

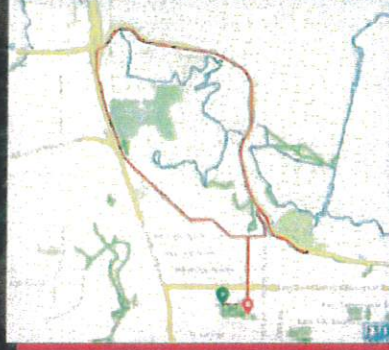




RUN COURSE OPTIONS

Option 1

The first option is a 2-loop course that includes the signature features of the existing course, along with 2 loops through the spectator friendly downtown area. The course starts in St. George's historic *Town Square*, heads up Main Street toward a short, steep climb up Skyline Drive to the top of the red bluffs above the city. With this amazing view, runners do an out and back along the ridge overlooking the city then work their way down Red Hills Parkway through the rustic sandstone, along the *Red Cliffs Desert Reserve*. The course turns left onto Bluff Street and works its way back down the cozy, tree-lined streets in town. Runners circle around the crowds at the finish line area in *Town Square* before heading back up Main Street for the second loop. With this option, we will need to implement a valve system in certain areas to allow ingress/egress for residents inside the loop.



Option 2

The second option is an out-and-back course following the current route of the *North American Championship*. The course goes up Main Street to Diagonal and Bluff Street before climbing up Red Hills Parkway, through the *Red Cliffs Desert Reserve*. The course offers an amazing view of the city while running along the bluff before returning to the finish line located on Main Street right in the heart of downtown St. George.

NOTE: The two course options are presented as a starting point for consideration, but we are flexible with making adjustments as needed based on the experience and recommendations of your team.



EXHIBIT G

Letters of Support



ZACHARY RENSTROM, CHAIR DEAN COX, COMMISSIONER VICTOR IVERSON, COMMISSIONER

November 22, 2018

World Triathlon Corporation
3407 W. Martin Luther King Blvd.
Tampa, FL 33607

To Whom It May Concern:

You will not regret it if the St. George Area is chosen for the Ironman 70.3 World Championships. I can say this because I have seen this community band together, time and time again, to support events big and small and make them amazing. In addition, you will be bringing the world to a unique vacation destination with so many incredible things to do and things to see. We have several national parks within a short drive, we are close to Las Vegas making our community accessible and there are few places in the world that can offer the scenery and unique landscape of Southern Utah.

I put my full support behind this event and if chosen, we will do our best to make this the greatest World Championship race Ironman has ever seen.

Sincerely,

Dean Cox

Dean Cox
Commissioner

197 EAST TUESDAY ST. GEORGE, UT 84770 435.624.5751 435.634.5752 www.co.utah.gov
WASHINGTON COUNTY UTAH DEAN COX, COMMISSIONER VICTOR IVERSON, COMMISSIONER

HOST VENUE AGREEMENT- PAGE 43 of 52



ZACHARY RENDTROM, CHAIR | DEAN COX, COMMISSIONER | VICTOR IVERSON, COMMISSIONER

November 22, 2018

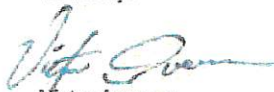
World Triathlon Corporation
3407 W. Martin Luther King Blvd.
Tampa, FL 33607

To Whom It May Concern:

I am writing this letter in support of the efforts to bring the Ironman 70.3 World Championships to the St. George Area. Ironman has been a great partner for the past few years and our community looks forward to this event every year. As you know, our community is known for its spirit of volunteerism and Ironman is a favorite among volunteers as seen in the survey results each year.

I want to offer my full support to bring this event to our community. I am completely confident that you will not regret your decision to host the World Championships here. Our community has so much to offer and I know I speak for our entire office when I say we are ready, we are willing and we will put forth our best effort to make this event shine and make a statement to the world.

Sincerely,



Victor Iverson
Commissioner

197 EAST YAKIMA AVE. ST. GEORGE, UT 84770 | 435.634.5700 | 435.624.8750 | WASHINGTON COUNTY
WASHINGTON COUNTY WASHINGTON COUNTY WASHINGTON COUNTY WASHINGTON COUNTY WASHINGTON COUNTY WASHINGTON COUNTY WASHINGTON COUNTY

HOST VENUE AGREEMENT- PAGE 44 of 52



ZACHARY RENSTROM, CHAIR DEAN COX, COMMISSIONER VICTOR IVERSEN, COMMISSIONER

November 22, 2018

World Triathlon Corporation
3407 W. Martin Luther King Blvd.
Tampa, FL 33607

To Whom It May Concern:

As a Washington County Commissioner, I was thrilled when I found out about the opportunity to hold the Ironman 70.3 World Championships in our community. Ironman has been a fantastic partner over the past few years and the events have brought a positive added element to our community. As a Commissioner, you have my full support in this effort and hope you choose the St. George Area for the World Championships.

Our community has embraced this race from the beginning and you can expect that same support for this race should we be chosen. The County will work with you to make any adjustments needed to make for a successful race and I will champion efforts to ready the community to welcome the world! You won't be disappointed by choosing Washington County!

Sincerely,

Zachary D. Renstrom
Commission Chair

197 EAST JEFFERSON ST. ST. GEORGE, UT 84770 • 435.004.5700 • 435.424.6700 • WWW.CO.WA.CO.UT
ZACHARY RENSTROM, CHAIR DEAN COX, COMMISSIONER VICTOR IVERSEN, COMMISSIONER

HOST VENUE AGREEMENT- PAGE 45 of 52



December 19, 2018

World Triathlon Corporation
3407 West Martin Luther King Boulevard
Tampa, FL 33607

To Whom It May Concern:

Over the last few years, the St. George City Council and I along with the city management team and many of our city employees went through a process of considering what we're all about as a city. We did this to help define our mission, vision and values, and to better brand St. George.

You may have seen a new city logo appear gradually on city vehicles, at city hall, on our letterhead and on some city uniforms. The logo resembles a wagon wheel, a nod to our heritage. It also looks like a cog or gear, signifying industry and commerce. It could be people standing together in a circle with open arms. It might refer to communication coming in and out of the community. It also reflects brightness, activity, happiness and optimism.

As we discussed the foundation and pillars of our city, we determined that activity and optimism are what define our healthy, active and positive community. Many of our residents and visitors are here because of St. George's enduring sunshine and amazing array of outdoor recreational possibilities.

Bringing the Ironman 70.3 World Championships to St. George will further enrich our community and provide Ironman 70.3 with a world-class destination beyond compare. Our city is committed to support this event from my office, through the City Council to the Police Department and our dedicated city employees. Together, we will work diligently to support this effort and provide Ironman 70.3, the athletes and spectators with an extraordinary experience.

I'm confident that, working together, we will be successful.

Sincerely,



Jonathan T. Pike
Mayor

Mayor Jonathan T. Pike
CITY OF ST. GEORGE

406 622 4800 | 1000 Lakeshore Blvd. N. | 33607-2000 | ST. GEORGE, FL 33607 | 33607-2000



City of Hurricane

Clark R. Fawcett
City Manager

John W. Bramall
Mayor

Pam Humphries
Darin Larson
Cheryl Reeve
Kevin Tervort
Kevin Thomas
Council Members

December 18, 2018

World Triathlon Corporation
3407 Dr. Martin Luther King Jr. Blvd
Suite 100
Tampa, FL 33607

To Whom It May Concern:

The City of Hurricane is excited at the opportunity to host the IRONMAN 70.3 World Championship in 2021! As you know, the IRONMAN 70.3 St. George starts at Sand Hollow Reservoir inside Hurricane City limits and the bike course takes each athlete through our historic downtown. We've been an integral part of this race each year since the beginning and would welcome the privilege of hosting the world for the 70.3 World Championships.

You have seen through past experience, how much this community embraces the current race. Our citizens line the streets to cheer on athletes, many of whom are local and our volunteers are committed and believe in what IRONMAN is all about. We are committed to providing a rewarding experience for the participants and we hope you choose our area to host this race. As Mayor of Hurricane, I fully support this effort and will make myself and other City officials available to plan and execute a successful race.

Sincerely

John Bramall
Mayor Hurricane City

147 N 870 W • Hurricane, Utah 84737
Phone (435) 635-2811 • Fax (435) 635-4284
www.cityofhurricane.com

HOST VENUE AGREEMENT- PAGE 47 of 52


TO: Director, World Triathlon Corporation

RE: Ironman 70.3 World Championship

To Whom It May Concern:

We are ready to welcome the Ironman 70.3 World Championships! As Mayor of Washington City, I have been able to be involved in the Ironman race for the past few years. I have seen countless athletes achieve their race goals on a very unique and challenging course. I have seen our City and Community embrace this race and I have experienced the thrill of accomplishment due to the hard work from our city employees and Police force.

Washington City is ready to welcome this event and you have our full support. We stand ready to work together in a spirit of cooperation to plan and execute a race that will be unlike any athlete has ever experienced.

I have been impressed with the Ironman organization and the team you have sent to our community each year. We look forward to strengthening further our relationship as we continue to work together on the North American Pro Championships and hope that you choose our home for the Ironman 70.3 World Championship Race.

Sincerely,



Kenneth E. Nelson
Mayor, Washington City

City of Washington, D.C. • 20004 • 202-724-1000 • www.washingtondc.gov
Mayor: Kenneth E. Nelson **City Manager:** Roger L. Johnson
Council Members: Tom C. Brinkley • Kyrle E. Campbell • Robert E. Nease • The Hon. Suzanne M. Spivey

HOST VENUE AGREEMENT- PAGE 48 of 52

IRONMAN 70.3
WORLD CHAMPIONSHIP

Mayor
Rick Rosenberg

City Manager
Edward O. Dickie III



City Council
Herb Basso
Wendell Gubler
Mary Jo Hafen
Ben Shakespeare
Jarett Wulfe

To Whom It May Concern:

As Mayor of Santa Clara, I offer my full support in any and all efforts to bring the Ironman 70.3 World Championships to the St. George Area. Our community has so much to offer the world and you will find that it is different than anything experienced anywhere in the world. It's rare that we are able to live in an area where we can experience such rare beauty, near perfect weather and live among citizens that are kind, caring and watch over one another.

I am confident that if you allow the world to come to our home, they will see and feel something different, something extraordinary that they haven't experienced anywhere else in the world. Our community is easily accessible, we have a large array of lodging, most activities are close to town and our amenities rival that of most large cities. Add incredible volunteers and Government Officials that will make it their mission to make this race great, and you have the perfect recipe for an unmatched World Championships.

I hope to be able to work with your team on this effort and look forward to a bright future!

Sincerely,


Mayor Santa Clara City

2603 Santa Clara Drive, Santa Clara, Utah 84765
Phone (435) 673-6712 Fax (435) 628-7338

HOST VENUE AGREEMENT- PAGE 49 of 52



GARY R. HERBERT
Governor
Spencer Cox
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of State Parks and Recreation

Jeff Rasmussen
Division Director

November 6, 2018

Mr. Kevin Lewis
Washington County Tourism
20 N Main #105
St. George UT 84770

Dear Mr. Lewis:

I am writing this letter in support of the proposed Ironman 70.3 world championship. Utah State Parks recognizes that there are some spectacular views and resources in our parks that would enhance the experience for competitors throughout the world. We realize that the economic impact would be very beneficial to the area. This is something we feel that we should be in support of to help the county and our other partners. This time of year is busy within our parks in the area and there would need to be good coordination and planning. I believe, in the end, this would be a great event to showcase what we have to offer in our State Parks and Southern Utah as a whole.

Sincerely,

Wayne Monroe
Southwest Region Manager
Utah State Parks

Northwest Region, 1084 North Redwood Road, Salt Lake City, UT 84116-1555
telephone (801) 533-5127 • facsimile (801) 533-4229 • TTY (801) 538-7458 • www.stateparks.utah.gov





HOST VENUE AGREEMENT- PAGE 50 of 52



Washington County School District
121 West Tabernacle
St. George, Utah 84770
Telephone (435) 673-3553
Fax: (435) 673-3216

SUPERINTENDENT LARRY G. BERGESON, M.Ed.

December 19, 2018

To Whom it May Concern,

Washington County School District wishes to acknowledge our support of the upcoming official Ironman world championship event to be held in St. George, Utah.

As part of this support, the School District will hold a professional development day the Friday of the event. This will allow our students to be out of school and available to volunteer their time. This also makes all of our school buses available to the City of St. George for use in transporting event participants. In addition, the School District parking lot will be vacant and open for the event to utilize as a transition area, as they have done in the past.

We are grateful for the opportunity to partner with the City of St. George and the Ironman organization in bringing this fantastic athletic achievement to our community. Please let us know if you have any additional questions.

Best regards,

Larry Bergeson
Larry Bergeson
Superintendent of Schools
Washington County School District

Asst. Supt. Secondary Ed.
RICHARD D. JENSEN, M.Ed.

Asst. Supt. Elementary Ed.
DAN W. JERRY, M.Ed.

Business Administrator
DANIEL L. JENSEN, M.Ed.

Asst. Dir. Instruction/Research
LYDIA L. JENSEN, M.Ed.

Asst. Dir. Physical Education
N. & R. JENSEN, M.Ed.

Asst. Dir. Student Learning
ROBERT JENSEN, M.Ed.

HOST VENUE AGREEMENT - PAGE 51 of 52



Washington County School District
821 West Tabernacle
St. George, Utah 84770
Telephone: (435) 673-3553
Fax: (435) 673-3216

SUPERINTENDENT LARRY G. BERGESON, M.Ed.

December 19, 2016

World Triathlon Corporation
3407 W. Martin Luther King Blvd, Suite #100
Tampa, Florida 33607

To Whom It May Concern:

The Washington County School District has been involved with the Ironman 70.3 and Ironman full distance St. George race since its first year providing athlete transportation from T2 to T1 the morning of the race. It has been a thrill for our drivers to greet athletes as they get ready to accomplish their life-long goals. We have thoroughly enjoyed being a part of this great event. We were even more thrilled to find out about the chance to host the Ironman 70.3 World Championships in the future.

On behalf of the Washington County School District, I lend my support behind this effort. We committed to closing down the schools for the Friday race so that busses can be used by St. George City for the race. In addition, with school out I expect students will volunteer to support the race in drives.

We sincerely hope you choose the St. George Area for this historic race and stand ready to support you in any way that we can.

Sincerely,



Brent Bills
Business Administrator

High School Secretary
Brent Bills, M.Ed.

Assistant Secretary
Brent Bills, M.Ed.

Business Administrator
Brent Bills, M.Ed.

Elementary Secretary
Brent Bills, M.Ed.

High School Secretary
Brent Bills, M.Ed.

High School Secretary
Brent Bills, M.Ed.

HOST VENUE AGREEMENT- PAGE 52 of 52



Office of the President

South Administration Office

December 5, 2018

World Triathlon Corporation
3407 West Martin Luther King Blvd.
Tampa, Florida 33607

To Whom It May Concern:

As the President of Dixie State University in St. George, Utah, I was thrilled to learn of the opportunity to host the Ironman 70.3 World Championship in our community. Ironman has been a fantastic partner over the past few years and the events have brought a positive element to the area.

I lend my full support in this effort and I sincerely hope you choose the St. George area for the World Championship. We would be happy to have your athletes train in our campus facilities including our state-of-the-art Human Performance Center, which is currently under construction and scheduled to be completed by the fall of 2019. Our community has embraced this race from the beginning and you can expect continued support from the university should you select St. George.

We will work with you to ensure a successful race and I will be happy to champion efforts along with our many community partners to welcome the World Championship! You will not be disappointed by choosing St. George for your 2021 location!

Sincerely,

A handwritten signature in black ink that reads "Richard B. Williams".

Richard B. Williams, Ph.D., ATC
President

www.dsu.edu



HOST VENUE AGREEMENT

2021 IRONMAN® WORLD CHAMPIONSHIP - ST. GEORGE

This Host Venue Agreement (this "Agreement") is made as of December 8, 2021 (the "Effective Date") by and between:

- (i) **WORLD TRIATHLON CORPORATION**, a Florida corporation ("WTC"); and
- (ii) **WASHINGTON COUNTY**, a political subdivision of the State of Utah ("Host").

WTC and Host are sometimes referred to herein individually as "Party" and collectively as "Parties."

RECITALS

- A. WTC is the owner and operator of IRONMAN®-branded triathlon events, including the 2021 IRONMAN® World Championship triathlon event, which was originally scheduled to take place in and around Kona, Hawaii on October 9, 2021.
- B. Host desires to have WTC relocate, and WTC desires to relocate, the 2021 IRONMAN® World Championship triathlon event to St. George, Utah (the "Venue"), subject to the terms of this Agreement.
- C. In consideration of WTC selecting the Venue as the site for the Event (as defined below) and providing the Host Sponsorship Benefits (as defined herein), Host desires, subject to the terms of this Agreement, to provide the Host Support Services (as defined herein) and to make certain payments, and grant certain rights, to WTC.
- D. The Parties previously entered into that certain HOST VENUE AGREEMENT, effective as of May 3, 2019, regarding certain IRONMAN® and IRONMAN 70.3® North American Championship events taking place at the Venue from 2020 to 2024, as amended by that certain FIRST AMENDMENT TO HOST VENUE AGREEMENT, effective as of October 6, 2020 (collectively, the "North American Championship Agreement") and, simultaneously with execution of this Agreement, the Parties are further amending the North American Championship Agreement to remove the 2022 IRONMAN® North American Championship triathlon event (scheduled for May 7, 2022) from the North American Championship Agreement.

AGREEMENT

The Parties agree as follows:

1. **The Event.** Subject to the terms of this Agreement:



HOST VENUE AGREEMENT- PAGE 2 of 28

- (a) Authorization; Ownership. Host authorizes WTC to prepare and conduct the 2021 IRONMAN® World Championship triathlon event (the “Event”) which will include a range of lifestyle activities for the community and visitors to enjoy and will take place in and around the Venue from **April 30, 2022** until **May 8, 2022** (the “Event Period”), with the Race (as such term is defined below) taking place on Saturday, May 7, 2022. WTC is and will be the owner of the Event and nothing herein constitutes a license by WTC to Host or to any third party to establish or operate the Event or Race (as defined below).
 - (b) The Race. As part of the Event, WTC shall be responsible for operating, in and around the Venue, an IRONMAN® World Championship-branded endurance triathlon (comprising, subject to cancellation of any part thereof due to weather conditions or other reasons, a 2.4-mile swim, 112-mile bicycle ride, and 26.2-mile run) (the “Race”).
 - (c) Name. The official name of the Event will be 2021 IRONMAN® WORLD CHAMPIONSHIP presented by the Utah Sports Commission. WTC may elect to add the name of a “title” sponsor to the official name of the Event (e.g., “[*Title Sponsor*] 2021 IRONMAN® WORLD CHAMPIONSHIP presented by the Utah Sports Commission). When referring to the Event, Host shall, and shall use reasonable efforts to cause relevant third parties to, at all times use such official name of the Event (including mention of the official title sponsor and the official presenting sponsor).
 - (d) Race Course. The Parties acknowledge and agree that the intended course for the Race (the “Race Course”) has been mutually agreed upon by the Parties. Notwithstanding the foregoing and upon mutual written agreement by the Parties, the Race Course may be altered and/or amended during the period between the Effective Date and the occurrence of the Race.
 - (e) Event Changes. WTC may in its reasonable discretion, in order to improve the Event, institute changes in the implementation or structure of such Event; provided, however, that no material change may be made to any previously confirmed location or venue(s) without the prior written consent of both Parties.
 - (f) Additional Races. WTC shall have the option to conduct, as part of the Event and during the Event Period, certain ancillary races in connection with the Event (e.g., IRONKIDS® and/or IRON GIRL® triathlon, duathlon, or run). WTC may create additional, race-specific logos for any such ancillary races conducted, and such logos will be subject to the same restrictions applicable to the Event Logo (as defined in Exhibit D) under this Agreement.
2. **Term of Agreement.** This Agreement is effective beginning on the Effective Date, and will continue in effect until the date that is thirty (30) days after the Event, unless this Agreement is sooner terminated in accordance with the terms of this Agreement (the “Term”).
3. **Financial Matters.**
- (a) Host Venue Fee. Host shall, under the terms of Exhibit A, pay WTC the amount stated in Exhibit A (the “Host Venue Fee”).
 - (b) Taxes. All amounts payable to WTC by Host under this Agreement will exclude any applicable taxes, which shall be paid by Host.



HOST VENUE AGREEMENT- PAGE 3 of 28

- (c) Event Rights & Revenues. Host shall not grant or sell sponsorships, official designations, exposition vendor space, or any other rights at or in connection with the Event to any third parties. Except as may be otherwise expressly specified in this Agreement, WTC shall be entitled to receive and retain all Event/Race entry fees, and all other revenues and value in-kind in connection with the Event, including without limitation all revenues from merchandise sales, sponsorships, hospitality passes, VIP, exposition booth sales, media licenses, product licenses, and photograph sales.
- (d) Costs. To the extent Host does not timely provide any portion of the Host Support Services (as defined below), then, upon written request from WTC, Host shall, within thirty (30) days after delivery of such notice to Host, reimburse WTC to the extent WTC incurs, or will incur, any costs to obtain or provide any such Host Support Services not provided by Host. Such right of reimbursement does not limit WTC's remedies with respect to Host failing to provide any of the Host Support Services.

4. Certain Obligations of Host.

- (a) Host Support Services. Host shall timely provide to WTC (or, as the case may be, shall timely provide for WTC's benefit), the services, equipment, value in-kind, personnel, and other items set forth in Exhibit B (collectively, the "Host Support Services") for the Event. Unless otherwise expressly agreed to in this Agreement, Host shall provide the Host Support Services at Host's own cost. Host Support Services may be modified from time to time by WTC in its reasonable discretion, provided that no such change (i) results in any material additional cost or expense to Host or (ii) requires Host to do anything Host is not authorized, or does not have legal jurisdiction, to do or cause to be done.
- (b) Compliance with Law. In connection with the Event and Host's performance of its obligations under this Agreement, Host shall comply with all applicable laws, rules, and regulations.
- (c) Operational Aspects. In order to facilitate proper and timely planning, implementing, and conducting of the Event by WTC, Host shall, and shall cause each of its representatives, agents, and contractors to, follow instructions, solely regarding Event-related operational or technical issues, from WTC or any third party designated by WTC.
- (d) Intellectual Property of WTC. Except with respect to the Event Logo (the use of which by Host being subject to Section 10), Host shall not, without WTC's prior written consent, use any intellectual property rights of WTC, including without limitation the IRONMAN® mark, the 70.3® mark, and the design mark known as the "M-DOT." Host shall promptly inform WTC of any possible misuse or infringement by any person or entity of the Event Logo or any other intellectual property of WTC.
- (e) Information Updates. Host shall, upon request from WTC, promptly inform WTC as to the status of the performance of Host's obligations hereunder, including without limitation regarding the Host Support Services.
- (f) Representations. Host covenants that each of the representations and warranties made by Host in Section 9 will be true and complete at all times during the Term.

5. Certain Obligations of WTC.

**HOST VENUE AGREEMENT- PAGE 4 of 28**

- (a) Host Sponsorship Benefits. WTC shall provide to Host (or, as the case may be, shall provide for Host's benefit and/or the benefit of the Event), the sponsorship benefits and other items set forth in Exhibit C (collectively, the "Host Sponsorship Benefits"). Unless otherwise expressly agreed to in this Agreement, the cost of any and all activation materials (e.g., including, without limitation, any signage, banners, boards, branding, etc.) required or necessary in connection with the Host Sponsorship Benefits, including without limitation any costs in connection with the design, production, and/or delivery thereof, are the sole responsibility of Host.
- (b) Operations, Equipment, and Personnel. Except to the extent required to be provided or obtained by Host as part of the Host Support Services, or as may be otherwise required under this Agreement, WTC shall provide for (or cause to be provided) all Race-related equipment, supplies, personnel (including volunteers), training of personnel (including volunteers), Race manuals/programs, Race Course route determination and design, Race Course set-up and tear-down, online and on-site athlete registration and check-in, welcome functions, award ceremonies, facility decoration, and all other technical and operational aspects of the Race. For the avoidance of doubt: WTC may require that the Event use Race timing, registration, photography, or other services provided by WTC or any of its affiliates, designees, or service providers.
- (c) Expo. WTC shall provide for a multi-day vendor exposition at the Event (the "Expo"), which Expo may be referred to as the "IRONMAN Village" or other name chosen by WTC. At the Expo, WTC (or its designee) may sell official IRONMAN-branded (or any other) merchandise and services, and, to the extent approved in writing by WTC, Event sponsors and other Expo vendors may sell or otherwise distribute other merchandise and services. Except as may otherwise be required by applicable law, Host shall not charge or assess any fee, tax, surcharge, or other cost to or on any vendor, contractor, or any other party in connection with the Expo, or any athlete entry fees, sponsorships, or any other aspect of the Event.
- (d) Website; Media; Broadcasts. WTC shall provide and maintain the official website that markets the Event (the "Event Website"), including a live global streaming webcast of the Race with stationary cameras at both transition areas and the finish line where possible based on Internet bandwidth. WTC shall retain the rights to all imagery and audiovisual works in connection with the Event, including but not limited to, television broadcast or cablecast (live or tape-delay), radio broadcast, Internet broadcast (audio or video), videotaping, filming, and photography, all of which, as between WTC and Host, is the sole property of WTC and, except as expressly set forth in this Agreement, will not be reproduced, remarketed, or otherwise distributed or publicly displayed by Host without the written permission of WTC. WTC may, in its sole discretion, grant or license any or all of these rights to third parties or to Host.
- (e) WTC to Facilitate Donations.
 - (i) Donation Amount. In connection with the Event WTC shall donate, or cause to be donated, a minimum of **\$115,000.00 USD** to one or more local not-for-profit organizations in the Washington County, Utah area (the "Donation").



HOST VENUE AGREEMENT- PAGE 5 of 28

- (ii) Acknowledgments. Notwithstanding the foregoing, the Parties acknowledge that if WTC obtains permission from the Foundation (as defined below) then WTC shall have the option to have all or part of the Donation be made instead by The Ironman Foundation Inc., a Florida not-for-profit corporation (the "Foundation"). The Parties further acknowledge that if the Foundation so elects to make the Donation then all terms and conditions (e.g., distribution allocation, recipients, etc.) of the Donation shall be determined by the Foundation (and in the sole and absolute discretion of the Foundation's Board of Directors). The Parties further acknowledge that the Foundation is not owned or controlled by WTC.
- (f) Compliance with Law. In connection with the Event and WTC's performance of its obligations under this Agreement, WTC shall comply with all applicable laws, rules, and regulations.
- (g) Information Updates. WTC shall, upon request from Host, promptly inform Host as to the status of the performance of WTC's obligations hereunder, including without limitation regarding the Host Sponsorship Benefits.

6. Official Announcements; Promotions by Host.

- (a) Host Website. Host, on its website, shall prominently advertise the Event and the fact that Host is hosting the Event, and at all times during the Term shall prominently display a link, on its website, to the Event Website.
- (b) Announcements. Host shall use reasonable efforts to consult with WTC's authorized public relations representative prior to issuing or approving any public announcements with respect to the Event, except that no such consultation will be required to the extent such announcements are required of Host as part of the Host Support Services (or otherwise required of Host under the terms of this Agreement), or that:
 - (i) are entirely administrative in nature, such as announcements informing the public regarding operational logistics or public safety matters (e.g., road closures, Event dates, Venue access); and
 - (ii) include only information in the public domain.

Upon Host's request, WTC shall provide to Host the name and contact information of such WTC authorized public relations representative.

- (c) Other Matters. Host shall not use the Event, any marketing opportunity related thereto or arising out of the Event, or the like, for any purpose other than to promote the Venue in a positive and universally appealing manner. To the extent Host is not prohibited by law from doing so, Host shall not permit any political statements, political campaign propaganda, or the like to be made (or made available) at the Event, or otherwise to be associated (or purported to be associated), whether directly or indirectly, with the Event or the marketing thereof.

7. Ambush Marketing.

- (a) "Ambush Marketing" means selling (e.g., including, but not limited to, sponsorship, merchandise, vendor space), advertising, or marketing, by any third party that is not a



HOST VENUE AGREEMENT- PAGE 6 of 28

WTC-authorized sponsor, merchandiser, and/or vendor of the Event, where such selling, advertising, or marketing (i) is in connection with, or in proximity to, the Event, or (ii) otherwise has the effect of exploiting the goodwill of the Event and/or gaining market exposure by way of intrusive and/or associative marketing practices.

- (b) Host shall not cause, engage in, or permit any Ambush Marketing, and, except to the extent Host is prohibited by law from doing so, Host shall prevent and stop Ambush Marketing at, near, or in connection with the Event, including without limitation by:
 - (i) Causing its employees and agents to promptly report, to WTC and the proper Host authorities, any marketing or activity reasonably appearing to be Ambush Marketing;
 - (ii) Ensuring, prior to and during the Event, that the Event perimeter and any other key advertising locations under the Host's control do not carry any form of temporary advertising or promotional material relating to the Event, except as may be approved in writing by WTC (in WTC's sole discretion);
 - (iii) Using, invoking, and applying Host's powers to protect all trademarks and copyrights associated with the Event;
 - (iv) Preventing the distribution of product samples, premiums, promotional literature and other commercial and non-commercial materials within the established Event perimeter or adjacent to the Event site, except where expressly authorized by WTC;
 - (v) Causing all signage and other physical items of Ambush Marketing to be taken down, moved, removed, and/or confiscated immediately by Host or, if applicable, law enforcement personnel; and
 - (vi) Cooperating with WTC to prevent Ambush Marketing, as may reasonably be requested by WTC.

8. **Exclusivity.**

- (a) Use of Race Course and Event-Related Areas. Notwithstanding anything to the contrary in this Agreement: During the Event Period, Host shall not, unless otherwise mutually agreed upon by the Parties, produce, conduct, host, or permit any sporting event (other than such Event) that takes place, in whole or in part, on any portion of the Race Course or at any Event-related area; provided, however, that during the Event Period festivals and community events (e.g., Washington City Cotton Days, etc.) may take place but only if such events do not do or include any of the following:
 - (i) include any endurance-, running-, road cycling-, or swimming-related race, competition or event;
 - (ii) include any sports-related vendor exposition, tradeshow, and/or the selling of any merchandise and/or services;
 - (iii) occur on the Race Course or at any other area where any part of the Event is being conducted, or adversely affect the ingress or egress to or from any such areas;
 - (iv) in any way jeopardize or adversely impact Event production or operations;
 - (v) infringe on any WTC intellectual property rights; or



HOST VENUE AGREEMENT- PAGE 7 of 28

- (vi) include or constitute Ambush Marketing (as defined in Section 7(a)) or otherwise promote themselves as purportedly being part of or in connection with the Event).
- (b) Advertising Other Triathlon Companies or Long-Distance Triathlons.
 - (i) Unless otherwise pre-approved, in writing, by WTC (which approval may be granted or denied in WTC's sole discretion), during the Term and except as set forth below in Section 8(b)(ii), Host shall not permit its website to display any marketing, promotion, advertisement, reference, or the like, of (i) any other triathlon event series or company, including but not limited to International Triathlon Union (ITU), Professional Triathletes Organisation (PTO), Revolution3 Triathlon, Life Time Fitness Triathlon, Challenge Family Triathlon, and HITS Triathlon (or any of their respective successors or assigns) (the "Ironman Competitors"), (ii) any person, entity, or group (other than WTC or any subsidiary or licensee thereof) that operates, organizes, produces, or is otherwise involved in any triathlon having a distance longer than that of an "Olympic" distance triathlon (as such distance is defined by the International Triathlon Union), or (iii) any triathlon having a distance longer than that of an "Olympic" distance triathlon (as such distance is defined by the International Triathlon Union), unless such triathlon is owned or operated by WTC or any subsidiary or licensee of WTC.
 - (ii) Notwithstanding the foregoing, Host may permit its website to display marketing, promotion, advertisement, reference, and/or otherwise associate with, BBSC Endurance Sports ("BBSC"), provided, however, that Host may not permit its website to display any marketing, promotion, advertisement, reference, or the like, of (A) any BBSC event(s) if such BBSC event(s) features any race distance longer than that of an "Olympic" distance triathlon (as such distance is defined by the International Triathlon Union), or (B) BBSC if BBSC or any of BBSC's events are acquired by and/or operated by any Ironman Competitor.
- (c) Non-Competition. During the Term and the eighteen (18)-month period thereafter, Host shall not produce, support, advertise, promote, conduct, host, permit, or contract or partner with any person or entity (other than WTC or a subsidiary thereof) for or in connection with, any other triathlon located, in whole or in part, within the Venue if such event features any race distance longer than that of an "Olympic" distance triathlon (as such distance is defined by the International Triathlon Union).

9. Representations and Warranties of Host. Host represents and warrants that:

- (a) It has the full right and legal authority to enter into and fully perform this Agreement in accordance with the terms herein;
- (b) This Agreement is a legal, valid, and binding obligation of Host, enforceable against it in accordance with its terms; and
- (c) Neither the execution, delivery, nor performance of this Agreement by Host violates or will violate or cause a breach of any other agreement or obligation to which it is a party or to which it is bound, and, except with respect to any applicable Approvals & Permits and/or other similar inter-government agreements, no approval, consent, notice, or other action by or to any third party or any commission, board, or other governmental authority or agency



HOST VENUE AGREEMENT- PAGE 8 of 28

is required in connection with the execution, delivery, or performance of this Agreement by Host.

10. **Limited License to Use the Event Logo.**

- (a) **Grant of Limited Rights.** Subject to the terms of this Agreement, WTC hereby grants to Host the limited, non-assignable, non-sublicensable, non-exclusive license to use, during the Term, the Event Logo (as defined in Exhibit D) in all reasonable forms of advertising and marketing, but only to the extent related to promotion of the Event. All uses of the Event Logo by Host must comply with the Trademark Standards & Usage Guidelines set forth in Exhibit D. Notwithstanding the foregoing and subject in each instance to WTC's prior written approval, which approval may be granted or denied in WTC's sole discretion, Host may permit participating cities and/or state parks to use the Event Logos in all reasonable forms of advertising and marketing, but only to the extent related to promotion of the Event.
- (b) **No Use on Products.** Host shall not use, and shall not authorize, license, or permit any third party to use, the Event Logo on or in connection with any products, merchandise, souvenirs, or other goods or services, in each instance unless pre-approved by WTC in writing.
- (c) **Ownership; Goodwill.** Host acknowledges that WTC is the owner of the Event Logo and Host shall not register, or apply to register, the Event Logo, any service mark, trademark, or domain name that is similar in any manner to, or that incorporates, the Event Logo, any of WTC's other trademarks or other intellectual property, or any mark with the word "IRON," or any equivalent term or phrase in any language. All goodwill and rights accruing or arising under the Event Logo, or in any copyrights or other intellectual property of WTC used in connection with this Agreement or the Event, enures solely to the benefit of WTC.

11. **Indemnification; General Limitation of Liability; Liquidated Damages.**

- (a) Each Party shall indemnify, protect, defend and hold harmless the other Party, its parent, subsidiaries, and affiliates, and each of their respective directors, officers, employees, contractors, volunteers, representatives, and agents, from and against any and all claims, liabilities, losses, damages, injuries, demands, actions, causes of action, suits, proceedings, judgments, and expenses, including without limitation, attorneys' fees, court costs, and other legal expenses, arising out of, directly or indirectly, or in connection with: (i) any breach or alleged breach of any provision of this Agreement by the other Party or any representation or warranty made by the other Party herein; or (ii) any act or omission to act by the other Party, or any of its employees, servants, or agents.
- (b) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT: WTC'S TOTAL MAXIMUM LIABILITY FOR ANY AND ALL LOSSES, INJURY, OR DAMAGES IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT, OR OTHERWISE) AND FOR ANY OTHER CLAIM, WILL BE LIMITED TO THE AMOUNT OF THE HOST VENUE FEE (AS DEFINED HEREIN) THAT IS RECEIVED AND RETAINED BY WTC. THE LIMITATION OF LIABILITY SET FORTH HEREIN IS FOR ANY AND ALL MATTERS FOR WHICH WTC MAY OTHERWISE HAVE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT,



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WHETHER THE CLAIM ARISES IN CONTRACT, TORT, STATUTE OR OTHERWISE, AND THIS LIMITATION OF LIABILITY IS CUMULATIVE, WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES IN CONNECTION WITH THIS AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT.

- (c) The Parties acknowledge that the goodwill inherent in the IRONMAN® brand and the Event Logo arises and is maintained, in large part, by each and every IRONMAN® event worldwide, including the Event, being conducted as scheduled. Notwithstanding anything herein to the contrary, the Parties acknowledge that Host's failure or inability to host and support the Event as scheduled, absent a Force Majeure Event (as defined in Section 14), will cause WTC irreparable harm, and that damages will be an insufficient and wholly inadequate remedy as a result of such a breach. If Host breaches this Agreement and such breach directly results in the Event not taking place when and as contemplated by this Agreement, Host shall, in addition to the Host Venue Fee for the Event, pay WTC, within thirty (30) days after receiving written demand from WTC, the amount of \$500,000.00 (USD). The Parties intend that the Liquidated Damages are to provide for compensation for a portion of the damages suffered by WTC (e.g., Event relocation expenses, athlete travel expenses, and damage to WTC's reputation), are not intended as a penalty and that the stipulated amount is far less than the actual damages and consequential damages that would result from such a breach by Host.
- (d) This Section 11 will survive the expiration or termination of this Agreement for any reason.

12. **Insurance.** Each Party shall, throughout the Term, obtain and maintain its own comprehensive general liability insurance for the Event from a reputable insurance company for, without limitation, any and all claims of bodily injury, death, property damage, and advertising liability, and any and all litigation, arbitration and settlement costs, related to any claims for or by any Event participants, volunteers, referees, officials, scorekeepers, spectators, sponsors, and staff with a minimum combined single limit equal to but not less than two million U.S. dollars (\$2,000,000.00) per occurrence for any one incident or accident, and not less than five million U.S. dollars (\$5,000,000.00) in aggregate. Certificates evidencing the foregoing required insurance must be provided, upon request, to the other Party.

13. **Termination.**

- (a) Subject to Section 13(b): If either Party breaches a material provision of this Agreement, the non-breaching Party may terminate this Agreement upon thirty (30) days' written notice to the other Party (which notice must include a description of such breach) if, during such thirty (30) day period following receipt of such notice, the breaching Party fails to cure such breach.
- (b) Notwithstanding anything to the contrary herein, WTC may immediately terminate this Agreement:
 - (i) at any time if WTC gives written notice to Host that WTC has determined, in its reasonable judgment, that the Event is unlikely to occur or be sufficiently profitable to WTC whether due to: (A) revocation or cancellation of, or failure to timely obtain, any of the Approvals & Permits (as defined in Exhibit B); or (B) any condition with respect to the Venue that could jeopardize the practicability of conducting the Race as planned, or that could create a safety risk for any Race



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participants or other Event visitors; or

- (ii) if Host files, or in good faith has filed against it, a petition in bankruptcy, or is adjudicated bankrupt or insolvent, or makes an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law; or
- (iii) if Host causes, engages in, or permits any Ambush Marketing.

(c) Effects of Termination.

- (i) Expiration or termination of this Agreement for any reason will not relieve either Party from its obligation to perform under this Agreement to the extent such performance is due prior to the effective time of such termination.
- (ii) If this Agreement is terminated by WTC under the terms of Section 13(a) or Section 13(b)(ii), all unpaid Host Venue Fee amounts will be immediately due and payable to WTC.
- (iii) Except as provided otherwise herein, each Party reserves all other rights and remedies hereunder and otherwise permitted by law that have accrued prior to the effective time of such termination.

14. Force Majeure; Cancellation due to Force Majeure.

- (a) In the event either Party is prevented from performing any of its obligations under this Agreement by reason of any event outside of such Party's control, including, without limitation, fire, weather, unsafe conditions, volcano, explosion, flood, landslide, pandemic, epidemic, acts of nature, war, terrorism, or other hostilities, strike, civil commotion, domestic or foreign governmental acts, orders, or regulations ("Force Majeure Event"), then such obligations of such Party during the duration of such Force Majeure Event, and for a reasonable time thereafter, will be suspended. In the case of cancellation of the Event due to a Force Majeure Event, the Parties agree to negotiate a date to reschedule such Event if practicable. If such canceled Event cannot reasonably be rescheduled or relocated within the Venue, neither Party shall be deemed to be in breach of this Agreement solely because of such cancellation. Neither any such cancellation, rescheduling, or relocation, nor the inability to reschedule or relocate, will, by itself, cause this Agreement to terminate. For purposes of this Agreement, neither the cancellation by WTC of any leg of the Race (e.g., the swim leg), nor the modification of the Race (e.g., distances, routes, etc.), will be deemed to be a cancellation of the Event.
- (b) If a Force Majeure Event causes the Event to be cancelled and the Event cannot reasonably be rescheduled or relocated within the Venue then the total amount of the Host Venue Fee payable by Host will be reduced as follows, depending on when cancellation is announced to the general public:

Number of Days before the Race that the Event Cancellation (due to Force Majeure) is Announced	<i>Host Venue Fee to be reduced by:</i>
More than 60 days	90%
7 to 60 days	80%


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Less than 7 days	70%
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For example: If cancellation of the Event (due to a Force Majeure Event) is announced 61 days before the Race, then the Host Venue Fee will instead be \$50,000 (i.e., \$500,000 reduced by 90%).

15. Confidentiality.

- (a) Subject to applicable laws, during the Term and the 36-month period thereafter, each Party (the “Receiving Party”) shall, other than as provided herein, keep confidential and not use or disclose, directly or indirectly, any documents and/or materials labeled “confidential”, any trade secrets, or any proprietary information owned, developed, or possessed by the other Party, whether in tangible or intangible form (collectively, “Confidential Information”).
- (b) “Confidential Information” does not include any information that the Receiving Party conclusively establishes: (i) entered the public domain without Receiving Party’s breach of any obligation owed to the disclosing Party; (ii) became known to the Receiving Party prior to the disclosing Party’s disclosure of such information to such Receiving Party; (iii) is permitted to be disclosed by the prior written consent of the disclosing Party; (iv) became known to the Receiving Party from a source other than the disclosing Party, other than by breach of any obligation of confidentiality owed to the disclosing Party; or (v) was independently developed by the Receiving Party without breach of this Agreement.
- (c) The Receiving Party shall take all lawful measures to prevent the unauthorized use and disclosure of Confidential Information, and to prevent unauthorized persons or entities from obtaining or using Confidential Information. The Receiving Party shall refrain from directly or indirectly taking any action that would constitute or facilitate the unauthorized use or disclosure of Confidential Information.
- (d) The Receiving Party may disclose Confidential Information to its officers and employees to the extent necessary to enable the Receiving Party to perform its obligations hereunder, provided, however, that the Receiving Party shall be liable for any unauthorized use and disclosure of Confidential Information by any of its officers or employees.
- (e) The Receiving Party may disclose the terms of this Agreement to (i) its attorneys and other professional advisors who have a professional duty to the Receiving Party to keep confidential such information or (ii) a third party that has entered into a reasonably standard confidentiality agreement with the Receiving Party that prohibits such third party from disclosing such terms, where such third party requires to review this Agreement for purposes of evaluating a proposed (A) purchase by such third party of assets of or equity interests in the Receiving Party or (B) financing transaction involving the borrowing of funds or establishing a credit facility or other financing arrangement, in each case where Receiving Party would be the borrower or guarantor of such debt.
- (f) If the Receiving Party is required to disclose Confidential Information in order to comply with applicable law, regulations, court order, or other legal process, the Receiving Party agrees to provide reasonable advance written notice to the disclosing Party and each of the Parties shall use its reasonable efforts to secure confidential treatment of the Confidential Information to be disclosed (whether through protective orders or otherwise) and to ensure

**HOST VENUE AGREEMENT- PAGE 12 of 28**

that only the minimum amount of Confidential Information necessary to comply with such requirements is disclosed.

16. **Assignment; Binding Effect.** No rights or obligations under this Agreement may be assigned or delegated by Host without the prior written consent of WTC, provided, however, that WTC hereby consents to any and all assignments and delegations that Host will from time to time make as necessary for purposes of providing the Host Support Services (e.g., inter-government agreements for municipal services, obtaining Approvals & Permits, etc.). Any purported assignment or delegation in violation of this Section is void *ab initio*. All of the terms of this Agreement will apply to, be binding upon, and enure to the benefit of the Parties hereto, their successors, and permitted assigns. Subject to the immediately preceding sentence, no third party will have any rights or remedies under this Agreement.

17. **Relationship of the Parties.** The Parties are acting herein solely as independent contractors. Nothing herein contained will create or be construed as creating a partnership, joint venture, or agency relationship between the Parties. Each Party acknowledges and agrees that it neither has nor will give the appearance or impression of having any legal authority to bind or commit the other Party in any way. Each Party will be solely responsible for all wages, income taxes, worker's compensation, and any other requirements for all personnel it supplies in connection with this Agreement.

18. **Jurisdiction and Dispute Resolution.**

- (a) **Governing Law.** Notwithstanding the place where this Agreement may be executed by either Party, this Agreement and any claim, controversy, dispute or other matter arising hereunder or related hereto (whether by contract, tort or otherwise) shall be governed in accordance with the laws of the State of Florida, without regard to the conflict of laws provisions thereof that would result in the application of the laws of any other jurisdiction. In any litigation arising out of or relating to this Agreement, the Parties agree that venue shall be solely in either the United States District Court, Middle District of Florida, Tampa Division, or a Florida state court located in Hillsborough County, Florida (each, a "Tampa Court").
- (b) **Arbitration.** If a dispute, claim or controversy, with the exception of claims for injunctive and/or other equitable relief for intellectual property violations, unfair competition and/or the use and/or unauthorized disclosure of trade secrets or confidential information arises out of, relates to, or is in connection with this Agreement, any amendment of this Agreement or any breach of this Agreement ("Dispute"), and if the Dispute cannot be settled through direct discussions between the Parties, the Parties agree to settle the Dispute by arbitration administered by the American Arbitration Association ("AAA") whereby such Dispute shall be referred to a sole arbitrator selected by the Parties, or, if the parties are unable or unwilling to agree to such a selection, to AAA arbitration as the sole remedy as to all matters in Dispute, administered by the AAA in accordance with applicable Arbitration Rules to include the Optional Rules for Emergency Measures of Protection and Optional Procedures for Large, Complex Commercial Disputes, as interpreted and governed by the Florida Arbitration Code. The venue of any such arbitration shall be solely in Tampa, Florida. Judgment on the award rendered by the arbitrator may be entered solely in a Tampa Court. The arbitrator shall not have authority to award punitive or other damages in excess of compensatory damages and each Party irrevocably waives any claim thereto.
- (c) **Enforcement.** If either Party brings any arbitration or other action under this Agreement (including, without limitation, any challenge or appeal), the prevailing Party shall be entitled to recover from the other Party reasonable attorneys' fees and costs (including,


HOST VENUE AGREEMENT- PAGE 13 of 28

without limitation, the cost of such arbitration or other action). The Parties agree to authorize the arbitrator to determine both the entitlement and apportionment of such fees and costs.

- (d) **Arbitration Charges.** Each Party shall initially bear an equal share of the arbitrator's compensation and administrative charges of the arbitration and shall make deposits with the AAA of its share of the amounts requested by the AAA. Failure or refusal by a Party to timely pay its share of the deposits for the arbitrator(s)' compensation and administrative charges shall constitute a waiver by that Party of its rights to be heard, present evidence, cross-examine witnesses, and assert counterclaims. Informing the arbitrator of a Party's failure to pay its share of the deposits for the arbitrator's compensation and administrative charges for the purpose of implementing this provision will not be deemed to affect the arbitrator(s)' impartiality or ability to proceed with the arbitration.
- (e) **General.** The requirement for arbitration will not be deemed a waiver of any right of termination under this Agreement and the arbitrator is not empowered to act or make any award other than based solely on the rights and obligations of the Parties prior to any such termination. The Parties, their representatives, other participants and the arbitrator shall hold the existence, content, and result of arbitration in confidence. Any provisions of this Agreement not found to be in compliance with applicable law may be waived without effect on the agreement by the Parties to arbitrate as provided herein. Notwithstanding the foregoing, in the event of breach by a Party of any of its obligations hereunder, the non-breaching Party may seek injunctive or other equitable relief in any Tampa Court. A request by a Party to a court for interim measures shall not be deemed a waiver of the obligation to arbitrate.

19. **Rights and Remedies.** The rights and remedies provided by this Agreement are given in addition to any other rights and remedies either Party may have by law, statute, ordinance or otherwise. All such rights and remedies are intended to be cumulative, and the use of any one right or remedy by either Party shall not preclude or waive its right to any or all other rights or remedies.

20. **Notices.** All notices, requests, demands, and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given if emailed, hand delivered, or delivered by certified or registered mail or by overnight delivery service:

If to Host:

GREATER ZION CONVENTION & TOURISM OFFICE
 20 N. Main Street #105
 St. George, Utah 84770
 Attention: Kevin Lewis, Director
 Email: Kevin@GreaterZion.com

(Or to such other addresses as Host furnishes to WTC in writing in accordance with this Section)

If to WTC:

WORLD TRIATHLON CORPORATION
 3407 W. Dr. Martin Luther King Jr. Blvd, Suite 100
 Tampa, Florida 33607

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Attention: Chief Legal Officer
E-mail: Legal@ironman.com

(Or to such other address as WTC furnishes to Host in writing in accordance with this Section)

21. **Enforcement of Agreement.** Host hereby agrees to waive all defenses, if any, to enforcement of this Agreement that Host might otherwise have under the doctrine of sovereign immunity (or similar doctrine) in connection with any law, regulation, ordinance, decree, order, or any other source or authority.
22. **No Oral or Implied Waivers or Modifications.** If either Party fails to enforce any of the provisions of this Agreement or any rights hereunder or fails to exercise any election provided in this Agreement, it will not be considered to be a waiver of those provisions, rights or elections or in any way affect the validity of this Agreement. The failure of either Party to exercise any of these provisions, rights or elections will not preclude or prejudice such Party from later enforcing or exercising the same or any other provisions, rights or elections which it may have under this Agreement. No waiver will be of any force or effect unless set forth in a writing signed by the Party whose right is being waived. Subject to the immediately preceding sentence, no modifications to this Agreement will be binding upon the Parties unless modified, amended, cancelled, renewed, or extended in a writing signed by both Parties.
23. **Entire Agreement.** This Agreement (including all exhibits hereto) sets forth the entire agreement and understanding of the Parties relating to the subject matter hereof, and, with respect to such subject matter, supersedes all prior agreements, arrangements and understandings, written or oral, between the Parties. Except as may be expressly set forth herein, there are no promises, conditions, representations, understanding, interpretations or terms of any kind as conditions or inducement to the execution hereof or in effect between the Parties.
24. **Interpretation.** The section headings included in this Agreement are for convenience of reference only and will not affect or be utilized in construing or interpreting this Agreement. If any term, clause or provision hereof is held invalid or unenforceable by the arbitrator or a court of competent jurisdiction, such invalidity will not affect the validity or operation of any other term, clause or provision and such invalid term, clause, or provision will be deemed to be severed from this Agreement, provided that both the economic and legal substance of the transactions that this Agreement contemplates are not affected in a manner materially adverse to either Party. This Agreement may be executed in counterparts, each of which will be deemed an original binding document but all of which will constitute one and the same instrument. Neither this Agreement nor any provision herein will be construed in favor or against either Party based on which Party drafted this Agreement or such provision. The exchange of copies of this Agreement and of signature pages by facsimile transmission, by e-mail, in "portable document format" (PDF) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of any such means, constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of an original Agreement or signature pages for all purposes. For the avoidance of doubt: signatures of the Parties transmitted by facsimile, email, or other electronic means will be deemed to be their original signatures for all purposes

[Signature page directly follows this page]



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The Parties have executed this Agreement to be effective as of the Effective Date.

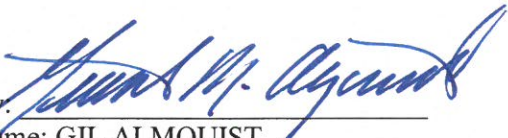
WTC:

WORLD TRIATHLON CORPORATION

By: 
Name: ANDREW MESSICK
Title: PRESIDENT & CEO

HOST:

WASHINGTON COUNTY

By: 
Name: GIL ALMQUIST
Title: WASHINGTON COUNTY
COMMISSIONER CHAIR

[*Schedule of Exhibits to this Agreement follows this page*]



SCHEDULE OF EXHIBITS

EXHIBIT A: Host Venue Fee

EXHIBIT B: Host Support Services

EXHIBIT C: Host Sponsorship Benefits

EXHIBIT D: Trademark Standards & Usage Guidelines

[Exhibits to this Agreement follow this page]



EXHIBIT A

Host Venue Fee; Wire Transfer Instructions

Host Venue Fee (\$USD)	Payment Installments Due Dates
\$500,000.00	\$250,000 due by February 1, 2022
	\$250,000 due by May 21, 2022

Host Billing Contact Information:

Washington County:

Contact Name: Kevin Lewis

Email address: Kevin@GreaterZion.com

Telephone number: 435-986-3384

Time is of the essence with respect to each such payment. All payments to WTC that are required or contemplated under this Agreement must be made in immediately available U.S. dollars via the following wire transfer instructions:

Bank Name: Bank of America, NY NY Routing Number: 026009593 Account Name: World Triathlon Corporation Account Number: 898052297785 SWIFT Code: BOFAUS3N



EXHIBIT B

Host Support Services

With respect to the Event, and at **no cost to WTC**, Host shall, as the case may be, do, obtain, or provide (or cause to be done, obtained, or provided) the following:

- B-1. Approvals & Permits.** To the extent it has the authority, right, power, ability, or legal jurisdiction to do so, Host shall ensure that, at no cost to WTC, WTC timely receives all governmental, regulatory, and third-party approvals, permits, access rights, business licenses, consents, ordinance exemptions, commitments, and licenses necessary or useful in connection with performance by Host or WTC of this Agreement, including without limitation the conducting of the Event, the Race, and the Expo, closures of roadways, use of amplified sound and music by WTC in connection with the Event, food vendors and contracted catering companies used for the Event, and Host's provision of the Host Support Services (collectively, the "Approvals & Permits"). Host shall ensure that, 180 days prior to the Event, all Approvals & Permits with respect to the Event are obtained, and that all Approvals & Permits will remain in effect for and during the Event; in each case at no cost to WTC (e.g., no charges for site fees, access fees, rental fees, closure fees, licensee fees, application fees, environmental impact fees, permit fees, etc.).
- B-2. Coordination of Welcome Experience with Official Hotels.**
- Coordinate all accommodation partners & housing service for the Event
 - Conduct pre-Event training with hotel staff to understand demographic of guests
 - Coordinate welcome signage onsite
 - Be responsible for Event information inventory at each Official Hotel
- B-3. Electrical Services & Equipment; Lighting.** Host shall provide a special event electricity system. Power hook-ups will be provided by certified technicians under the applicable construction code and regulations. To the extent lighting and electricity is already present at the Venue and available for use by Host, Host shall supply lighting and electricity for the Venue areas such as the transition area, swim, bike, and run courses, medical, and the finish area. To the extent such lighting and electricity is necessary for the Event but not already present at such sites (or is not available for use by Host), Host shall use commercially reasonable efforts to assist WTC in procuring such additional lighting and electricity.
- B-4. Hotel Rooms.** Host shall provide (or cause to be provided) to WTC four hundred (400) complimentary hotel room nights during the Event Period and fifty (50) complimentary hotel room nights prior to the Event Period (as reasonably requested by WTC), for WTC staff, at the official hotels for the Event (such official hotels to be mutually agreed upon by the Parties) (collectively, the "Official Hotels").
- B-5. Lead Agency.** Host shall serve as the "lead agency" to support the operational activities of the Event including but not limited to facility and venue acquisition, permitting, police and emergency services acquisition, parking acquisition, communications acquisition, local accommodations, travel, volunteer recruitment, media, public awareness, and advocacy.
- B-6. Medical Professionals and Ambulance Services.** Host shall ensure that ambulances will be distributed strategically at the Venue, transition area, celebration areas, along the Race Course route, and the Event medical areas. Host shall provide its official medical plan to WTC and shall

**HOST VENUE AGREEMENT- PAGE 19 of 28**

provide a reasonable opportunity for WTC to review and comment on the official medical plan prior to the Event Period. Host shall provide a team of medical professionals, including a Medical Director, who will coordinate and implement such official medical plan. Host acknowledges that an Event medical team of approximately 100 certified medical professionals will be required for the Event. Host shall ensure that dedicated EMS units will be on hand to respond to emergency transport needs and the general public during the Event Period.

- B-7. No Construction.** Unless reasonably required and unavoidable, Host shall not begin, permit, and/or effect any structural, engineering, beautification, or related works occurring during the Event Period.
- B-8. Notifications.** All local residents and businesses within the Venue that are impacted by the Event must be properly notified by the Host. This includes the effects of road closures, traffic advisories, etc.
- B-9. Parking and Shuttle Services.** Host shall provide (or cause to be provided) satellite parking lots outside the operations perimeter with parking lot attendants. Host shall, as necessary for the Event, provide (or cause to be provided) dedicated Race day shuttle buses to transport athletes and spectators in and around the Venue.
- B-10. Police and Emergency Services.** Host shall ensure that Police will command and ensure all emergency services (police, fire and ambulance) needed to maintain public safety. A special command post will be temporarily installed on the site, bringing together all three emergency services (police, fire and ambulance), private security, volunteer security personnel and communications. Host acknowledges and agrees that, throughout the course of the Event Period, Host will be responsible for providing approximately two hundred (200) police officers for purposes traffic control, road closures, crowd control and security during the Event Period.
- B-11. Race Course Exclusivity and Condition.** Host shall ensure that, as necessary to conduct the Race, the Race Course route is closed to the public during the Race and for a reasonable period before and after the Race, and, subject to reasonable exceptions, is made exclusively available to WTC during such periods. Host shall ensure that all Race Course routes are in good condition during the Event Period.
- B-12. Street Cleaning.** Host shall be responsible for sweeping and cleaning up all streets and other Event-related areas prior to, during, and after the Event.
- B-13. Swim Ingress/Egress.** Host shall ensure that there is safe and adequate ingress/egress for the swim portion of the Race. Host shall provide all water safety assets and personnel services required for a safe swim course including, without limitation, all tents, lifeguards, paddleboards, kayaks, PWCs, and motorized boats. Host shall pay and/or waive all access fees in connection with the swim portion of the Event including, without limitation, all site fees, visitor fees, park rentals, and all other fees related to use or access to the swim area facilities and amenities within the Venue.
- B-14. Terrorism and Counterterrorism Measures.** To the extent such measures are required by law or to the extent such measures are deemed necessary by local law enforcement (e.g., for the safety of the Event participants and spectators), Host shall be responsible for any and all costs for counterterrorism measures required in connection with the Event, including, without limitation,



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anti-terrorism personnel, equipment (e.g., suppression vehicles, jersey barriers, surveillance, etc.), and services.

- B-15. Top Overall Female & Male Finisher Award.** Host shall provide a high-quality individually customized award to the top overall female and top overall male winner of the Race (the “Top Finisher Award”). The intent of the Top Finisher Award is to reward the top finishers with a special keepsake to remember the Event and, as such, the unique design of the Top Finisher Award should represent and be symbolic to the Venue and the Event. Upon Host’s request, WTC shall advise Host regarding the Top Finisher Award and, also, shall provide to Host illustrations of top finisher awards given by other hosts of previous IRONMAN® Championship events.
- B-16. Traffic Control and Services.** In consultation with WTC, Host shall develop a road closure and traffic management plan that guarantees a safe course for athletes and reduces impact on local residents. Host shall provide all traffic devices, engineering diagrams, and plans to assure maximum road safety in partnership with local and state police services. Host shall provide all variable message boards, barricades, cones for traffic control, special event traffic signage and parking signs, temporary traffic light system, and traffic control vehicles equipped with yellow arrows.
- B-17. VIP Experience.** With respect to VIP spectators attending the Event, Host shall work with WTC to ensure a memorable experience including securing and ensuring the exclusive use of mutually agreed upon venues for the duration of the Event (with certain mutually agreed upon venues being made available at least one (1) week prior to the Event).
- B-18. Volunteer Recruitment.** Host shall be responsible for assisting WTC with the recruitment of a minimum of 3,000 experienced Event volunteers who will, throughout the course of the Event, participate in volunteer activities in connection with the Event.
- B-19. Volunteer Banquet.** Host shall provide a volunteer banquet to include food and beverage catering for 3,000 attendees and all other aspects of the function (e.g., including without limitation, venue, lighting, tables, chairs, stage, entertainment, etc.).
- B-20. Waste Management Services.** Host shall maintain and ensure a clean environment at all times on its properties. Adjustments will be put in place according to the needs of WTC. Recycle containers, garbage units, large units for disposal, transportation, and manpower will be provided by Host. Host shall cause all trash bagged at aid stations within city limits to be removed by city/county services.
- B-21. Venues/Facilities.** During the Event Period and as necessary to accommodate the Event-related functions, Host shall provide the following venues, facilities, and/or spaces (as applicable):

EVENT / FUNCTION	VENUE	DATE IN	DATE OUT	DATE
Welcome Banquet*	Dixie Center Exhibition Hall + Ballroom + Suites + Garden Room	Sunday, May 1	Tuesday, May 10	Thursday, May 5
Andrew’s Toast	Dixie Center - layout/location TBD	Sunday, May 8	Sunday, May 8	Sunday, May 8
Athlete Meeting (Age Group)	Dixie Center Exhibition Hall immediately after Welcome Banquet	Sunday, May 1	Tuesday, May 10	Thursday, May 5


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EVENT / FUNCTION	VENUE	DATE IN	DATE OUT	DATE
Awards*	Dixie Center Exhibition Hall + Suites	Sunday, May 1	Tuesday, May 10	Sunday, May 8
Banquet Meeting Space - Crew Meeting Space	Dixie Center - Sunbrook room A	Sunday, May 1	Tuesday, May 10	Sunday, May 1 - Tuesday, May 10
Banquet Meeting Space - Green Room	Dixie Center - Sunbrook room B	Sunday, May 1	Tuesday, May 10	Thursday, May 5 & Sunday, May 8
Banquet Meeting Space - Storage	Dixie Center - Sunbrook room C	Sunday, May 1	Tuesday, May 10	Sunday, May 1 - Tuesday, May 10
Dressing Room	Dixie Center - existing dressing room	Sunday, May 1	Sunday, May 8	Thursday, May 5 & Sunday, May 8
Banquet Video Production Meeting / Editing Space	TBD	Monday, May 2	Sunday, May 8	Thursday, May 5 & Sunday, May 8
COVID SAFETY OFFICER TEST SITE	TBD	TBD	TBD	TBD
SHARED: Executive Meeting Space + Sales and Partner Meeting Space	Tourism Office Conference Room (Capacity 12-15)	Monday, May 2	Saturday, May 7	Monday, May 2 - Sunday, May 8
Athlete Meeting - German**	Dixie Center Entrada Ballroom	Thursday, May 5	Thursday, May 5	Thursday, May 5
Pre-Race Press Conferences --	Electric Theater	Thursday, May 5	Thursday, May 5	Thursday, May 5
Pro Athlete Meeting - Male & Female**	Electric Theater	Thursday, May 5	Thursday, May 5	Thursday, May 5
Athlete Meeting - Spanish**	Dixie Center Entrada Ballroom	Thursday, May 5	Thursday, May 5	Thursday, May 5
Athlete Meeting - French**	Dixie Center Entrada Ballroom	Thursday, May 5	Thursday, May 5	Thursday, May 5
Athlete Meeting - Japanese**	Dixie Center Entrada Ballroom	Thursday, May 5	Thursday, May 5	Thursday, May 5
Athlete Meeting - Chinese**	Dixie Center Entrada Ballroom	Thursday, May 5	Thursday, May 5	Thursday, May 5
Post-Race Press Conferences (Women + Men)	Stairs overlooking IM Village - Town Square	Saturday, May 7	Saturday, May 7	Saturday, May 7
Credentials	TBD	Saturday, April 30	Saturday, May 7	Wednesday, May 4 - Friday, May 6
Media Center	TBD	Saturday, April 30	Saturday, May 7	Wednesday, May 4 - Friday, May 6
VIP - Race Week	TBD	Saturday, April 30	Saturday, May 7	Wednesday, May 4 - Friday, May 6
VIP - Breakfast Race Morning	Town Square Experience	Saturday, May 7	Saturday, May 7	Saturday, May 7
EVENT / FUNCTION	VENUE	DATE IN	DATE OUT	DATE
VIP - Finish Line	Main Street at Finish Line	Saturday, May 7	Saturday, May 7	Saturday, May 7
IRONMAN Village / Expo	Town Square	Friday, April 29	Sunday, May 8	Wednesday, May 4 - Sunday, May 8



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Merchandise	Town Square	Friday, April 29	Sunday, May 8	Wednesday, May 4- Sunday, May 8
Registration / Athlete Check-in	Town Square	Saturday, April 30	Friday, May 6	Tuesday, May 3 - Thursday, May 5
Pro Lounge - Race Day	Children's Museum - upstairs	Thursday, May 5	Saturday, May 7	Saturday, May 7
Doping Control	Children's Museum - upper loft area	Thursday, May 5	Saturday, May 7	Saturday, May 7
World Championship Team Meeting Space	TBD	Saturday, April 30	Monday, May 9	Sunday, April 30 - Monday, May 9
Banquet Video Production Meeting / Editing Space	TBD	Tuesday, May 3	Saturday, May 7	Saturday, May 7
Production / IRONMANLive	TBD	Tuesday, May 3	Friday, May 6	Saturday, May 7
Production / IRONMANLive / TV Interviews	TBD	Tuesday, May 3	Tuesday, May 10	Tuesday, May 3- Tuesday, May 10
Side Event - AWA Breakfast	Dixie Center Garden Room	Wednesday, May 4	Wednesday, May 4	Wednesday, May 4
Side Event - Community, Coffee + Donuts powered by Women for Tri	Dixie Center Garden Room	Thursday, May 5	Thursday, May 5	Thursday, May 5

EVENT / FUNCTION	VENUE	DATE IN	DATE OUT	DATE
Special Event - Swim Opening Ceremony (Female + Male)	Sand Hollow	Saturday, May 7	Saturday, May 7	Saturday, May 7
Special Event - IRONKIDS / Keiki Run	Town Square	Friday, May 6	Friday, May 6	Friday, May 6
Special Event - Fun Run	Town Square	Thursday, May 5	Thursday, May 5	Thursday, May 5
Special Event - Practice Swim(s)	Sand Hollow	Wednesday, May 4	Thursday, May 5	May 4-5
Special Event - Parade of Nations	Town Square	Thursday, May 5	Thursday, May 5	Thursday, May 5
Hoala Swim	Sand Hollow	Sunday, May 1	Sunday, May 1	Sunday, May 1
Heroes of Hawaii Event (name tbd)	Dixie Center Exhibition Hall	Monday, May 2	Monday, May 2	Monday, May 2
Irongents	Dixie Center - Room TBD	Monday, May 2	Monday, May 2	Monday, May 2
Mahalo Party*	Dixie Center Exhibition Hall	Sunday, May 1	Tuesday, May 10	Monday, May 9
Master Womens Breakfast	Dixie Center - Room TBD	TBD	TBD	Wednesday, May 4
Legends Event (POTENTIAL NEW EVENT)	Dixie Center - Room TBD	TBD	TBD	DATE - TBD
Age Group Awards	Town Square	TBD	TBD	Sunday, May 8 (Time TBD)

* Large banquets

** Foreign Athlete Meetings to take place in same location at different times.



EXHIBIT C

Host Sponsorship Benefits

C-1. With respect to the Event, WTC shall provide (or cause to be provided) to the **City of St. George** (the “City”) the following sponsorship benefits:

- (a) **Designation.** The right to designate the City as the “Official Sponsor of 2021 IRONMAN World Championship” in all reasonable forms of advertising and marketing. Such advertising and marketing is subject to pre-approval by WTC.
- (b) **Social Media.** The right to provide City-related content to WTC to be integrated into the Event’s social media campaign, including but not limited to, an announcement on the Event-specific Facebook pages related to the City’s sponsorship.
- (c) **Event-Specific Email Inclusion.** The City may provide City-related content to WTC for inclusion in one (1) Event-specific email distributed by WTC to all persons who have opted-in to receive such email communications.
- (d) **Logo Exposure.** Inclusion of the City’s logo, with a link to the City’s website, on the sponsorships page (or in the sponsorships section) of the Event-specific website.
- (e) **Hospitality Passes.** Twenty-five (25) complimentary sponsor hospitality passes for the Event for use by the City’s employees and representatives, which passes grant access to certain selective benefits at the Event. WTC reserves the right to deny the use by any specific individual(s) of any hospitality passes.
- (f) **Snow Fencing.** Six hundred feet (600’) of City-branded snow fencing, paid for and provided by the City, for placement by WTC at the Venue.
- (g) **Public Announcer Mentions.** Public announcer mentions, acknowledging the City’s sponsorship of the Event, periodically during the Expo and during the Race at the Venue. The City shall provide the content of such announcements to WTC reasonably in advance.
- (h) **Dasher Boards.** Two (2) logo inclusions on WTC’s Event specific host/venue dasher boards. Such dasher boards to be provided at WTC’s cost.
- (i) **Expo.** The right to use a 10’ x 10’ space in the Expo at the Event, which Expo space may be used by the City to promote its products and services, provided that the City complies with WTC’s Expo rules and regulations.
- (j) **Athlete Kit Inserts.** The right to provide City-branded items (such as coupons, samples, gifts, literature, brochures, etc.) for placement by WTC in the athlete Race kits, volunteer kits, and media kits at the Event.

C-2. With respect to the Event, WTC shall provide (or cause to be provided) to the **Greater Zion Convention & Tourism Office** (the “Convention & Tourism Office”) the following sponsorship benefits:

- (a) **Designation.** The right to designate the Convention & Tourism Office as the “Official Sponsor of



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2021 IRONMAN World Championship” in all reasonable forms of advertising and marketing. Such advertising and marketing is subject to pre-approval by WTC.

- (b) **Social Media**. The right to provide Convention & Tourism Office-related content to WTC to be integrated into the Event’s social media campaign, including but not limited to, an announcement on the Event-specific Facebook pages related to the Convention & Tourism Office’s sponsorship.
- (c) **Event-Specific Email Inclusion**. The Convention & Tourism Office may provide Convention & Tourism Office-related content to WTC for inclusion in one (1) Event-specific email distributed by WTC to all persons who have opted-in to receive such email communications.
- (d) **Logo Exposure**. Inclusion of the Convention & Tourism Office’s logo, with a link to the Convention & Tourism Office’s website, on the sponsorships page (or in the sponsorships section) of the Event-specific website.
- (e) **Hospitality Passes**. Seventy-five (75) complimentary sponsor hospitality passes for the Event for use by the Convention & Tourism Office’s employees and representatives, which passes grant access to certain selective benefits at the Event. WTC reserves the right to deny the use by any specific individual(s) of any hospitality passes.
- (f) **Snow Fencing**. Six hundred feet (600’) of Convention & Tourism Office-branded snow fencing, paid for and provided by the Convention & Tourism Office, for placement by WTC at the Venue.
- (g) **Public Announcer Mentions**. Public announcer mentions, acknowledging the Convention & Tourism Office’s sponsorship of the Event, periodically during the Expo and on race day at the Venue. The Tourism Office shall provide the content of such announcements to WTC reasonably in advance.
- (h) **Dasher Boards**. Two (2) logo inclusions on WTC’s Event specific host/venue dasher boards. Such dasher boards to be provided at WTC’s cost.
- (i) **Expo**. The right to use Expo space, provided that the Convention & Tourism Office complies with WTC’s Expo rules and regulations. The size of the Tourism Office’s Expo booths are as follows: (i) A 10’ x 10’ space in the Expo for discretionary use; (ii) A 10’ x 20’ space for sign making; and (iii) A 10’ x 10’ space for athlete surveys in the registration area at the Event.
- (j) **Athlete Kit Inserts**. The right to provide Convention & Tourism Office-branded items (such as coupons, samples, gifts, literature, brochures, etc.) for placement by WTC in the athlete race kits, volunteer kits, and media kits at the Event.
- (k) **Complimentary Race Entries**.
 - (i) **Grant of Entries**. Three (3) complimentary race entries for the Event (i.e., to participate as an age-group athlete in such races) for use subject to the terms of this Agreement (collectively, the “Entries”).
 - (ii) **Requirements**. The Entries must be for the Convention & Tourism Office’s internal use only, such as awards in employee contests, competitions, etc.; Convention & Tourism Office shall not provide any of the Entries to individuals who are not employees or representatives of the Convention & Tourism Office. The Entries cannot, without WTC’s



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prior written approval, be advertised or marketed as a “gift with purchase” or otherwise offered for sale. Convention & Tourism Office shall not hold itself out, represent, or imply, to any recipient (each, an “Athlete”) of any of the Entries, or to any other third party, that Convention & Tourism Office represents or is an agent of WTC or that WTC endorses Convention & Tourism Office or any of its products or services (except to the extent expressly set forth herein).

- (iii) Procedure. Convention & Tourism Office shall provide to WTC the name and email address for each Athlete at least sixty (60) days prior to the applicable race, and inform the Athletes (and anyone else to whom any Entries are offered) of the following requirements:
 - (A) No Entry may be sold, assigned, or otherwise transferred by any Athlete (or by anyone else after distribution by Convention & Tourism Office);
 - (B) WTC will email online registration instructions to the Athletes;
 - (C) Each Entry is for only the specific race, in the designated year, and cannot be used for any other race, or deferred for Entry in such race in a later year;
 - (D) Athletes must register online with WTC no later than forty-five (45) days prior to the applicable race or else the Entry will be null and void, without any refund right or any other right to compensation or reimbursement; and
 - (E) Athletes must have a valid USA Triathlon (USAT) license on the day of the applicable race or purchase a one-day membership on-site at the race during athlete check-in.
- (iv) Other Requirements. The use of the Entry is conditioned upon the applicable Athlete first satisfying the Qualifying Requirements. “Qualifying Requirements” means the Athlete must (i) in 2021 or 2022 compete in at least one WTC -owned or WTC-licensed IRONMAN® or IRONMAN 70.3® -branded race prior to March 15, 2022, and (ii) finish such qualifying race within the stated cut-off time for such race (cut-off times can be found in the athlete FAQ section of the applicable race-specific website). The Athlete shall be solely responsible for any and all costs associated with the Qualifying Requirements, including, without limitation, the standard entry fee for the applicable qualifying race.
- (v) Certain Limitations. WTC reserves the right to deny, for good cause, the use by any specific individual(s) of any Entries (in the event of any such denial, Convention & Tourism Office shall be permitted to substitute individuals reasonably acceptable to WTC to use such Entries). Without limiting the immediately preceding sentence, Convention & Tourism Office shall not provide any Entries to any person: (i) with a material relationship with any event organization or company that is a competitor of WTC; (ii) who is a member of the Ironman Pro Membership program or is otherwise a professional triathlete; or (iii) who is currently banned from competing in any WTC race (whether for violation of anti-doping rules, or otherwise).

C-3. With respect to the Event and in addition to the sponsorship benefits above, WTC shall provide to the City and the Convention & Tourism Office (collectively, the “Host Parties”) the following sponsorship benefits:

- (a) License of Event Photos & Videos. Subject to the terms of this Agreement and unless otherwise agreed to by the Parties in writing, during the Term and subject to any third-party intellectual property rights therein, the Host Parties shall have a limited, non-exclusive license (a “Limited License”) to use (i) any of the WTC-owned photographs of the Event as may be provided to the



HOST VENUE AGREEMENT- PAGE 26 of 28

Host Parties by WTC (the “WTC Photos”) and (ii) any photographs and/or video of the Event produced by Host (the “Host-Produced Photos & Videos”) provided that:

- (i) Such use is solely for purposes of promoting and advertising the Venue and the Host Parties’ sponsorship of the Event;
 - (ii) Such use complies fully with all guidelines of WTC’s Media and Television departments, including, without limitation, inclusion of proper copyright and attribution notices;
 - (iii) The Host Parties may use the WTC Photos and/or Host-Produced Photos & Videos in vacation planners, marketing brochures and on the Host Party websites in order to publicize the Event and attract/inform participants and spectators, provided, however, that in no event may the Host Parties use the WTC Photos or the Host-Produced Photos & Videos in connection with any merchandise, products, or services;
 - (iv) Upon WTC’s request the Host Parties shall immediately discontinue use of any WTC Photos and/or Host-Produced Photos & Videos;
 - (v) The WTC Photos and Host-Produced Photos & Videos are, and shall remain, the property of WTC. Any and all rights in, to, or under the WTC Photos and Host-Produced Photos & Videos shall enure solely to the benefit of WTC; and
 - (vi) The Host Parties shall not transfer or assign the Limited License or sub-license any of the WTC Photos or the Host-Produced Photos & Videos.
- (b) **License of Event Logo.** During the Term, the Host Parties shall have a limited, non-exclusive license (the “License”) to use the Event Logos, provided that:
- (i) Such use is solely for purposes of promoting and advertising the Venue and the Host Parties’ sponsorship of the Event;
 - (ii) Such use complies fully with the terms of this Agreement, including without limitation, the Trademark Standards and Usage Guidelines contained in Exhibit D;
 - (iii) The Host Parties may use the Event Logos in vacation planners, marketing brochures and on Host Party websites in order to publicize the Event and attract/inform participants and spectators, provided, however, that in no event may the Host Parties sell or produce any IRONMAN-branded or Event-branded merchandise, products, or services;
 - (iv) The Event Logos are, and shall remain, the property of WTC, and any and all rights in, to, or under the Event Logos, or any copyrights or other intellectual property of WTC, shall enure solely to the benefit of WTC;
 - (v) The Host Parties shall not transfer or assign the License or sub-license any of the Event Logos; and
 - (vi) The License expires immediately upon expiration or earlier termination of this Agreement, provided, however, that following the Term the Host Parties shall be entitled to continue to use the Event Logos for historical purposes (e.g., to make reference to the Event and their sponsorship of the Event and to showcase that they are capable of hosting large scale events).



EXHIBIT D

Trademark Standards & Usage Guidelines: **Event-Specific Logo**

Sample Event Logo

The Event will feature one or more IRONMAN® World Championship-branded logos customized by WTC for the Event (each, an “Event Logo”). WTC will design, create, and provide each Event Logo.

WTC may elect to, from time to time, modify the Event Logo by adding the name of a “title” sponsor or “presenting” sponsor to such logo.



General

The Event Logo must be used consistently and not altered. Modifications, variations, and incorrect uses of any Event Logo dilute the IRONMAN® brand and create consumer confusion, and are therefore not permitted. You play a vital role in protecting the integrity of WTC’s intellectual property, such as the Event Logo. Please familiarize yourself with the following TRADEMARK STANDARDS & USAGE GUIDELINES, which you are required to follow when using any Event Logo in connection with the Event.

Pre-Approval Requirement

Without exception, all proposed uses of the Event Logo must be submitted to WTC for review **PRIOR TO USAGE**. All approval requests for use of any Event Logo must be submitted, along with a high resolution PDF image of the proposed use, to approvals@ironman.com for review by WTC. Please allow at least ten (10) business days for all approval requests to be answered. Any proposed use or item submitted that is not approved by WTC in writing within fifteen (15) days shall be deemed disapproved.

Trademark Ownership & Required Notice

Each Event Logo is, and shall remain, the property of WTC. Any and all rights to, in, and under the Event Logo, or any copyright or other intellectual property of WTC, shall enure solely to the benefit of WTC.

Notice must be given to the public that World Triathlon Corporation claims ownership of the Event Logo. Therefore, the following legal notice must clearly appear, in no smaller than 6-point size typeface, on all of your printed materials, products, websites, and all other items on which any Event Logo is used:

**IRONMAN® is a registered trademark of
World Triathlon Corporation. Used herein by permission.**

Other Requirements

Each use by Host of the Event Logo must:

- Be solely and directly related to performing Host’s obligations, or exercising its rights, under this Agreement;

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- Not be on any merchandise or services for sale or distribution (except to the extent expressly and specifically authorized by this Agreement or separate written agreement with WTC);
- Not constitute or involve transfer or assignment of the license or sub-license of any Event Logo; and
- Not have anything embedded in, added to, or superimposed on the Event Logo, or have any colors or color scheme different than that approved by WTC.

Improper Uses of the Trademark “IRONMAN®”

- IRONMAN® must be a single word, never hyphenated, and never capitalized as “IronMan”.
- IRONMAN® is a brand name – an identifier of a specific source of goods and services. It is not an indicator of distance. “IRONMAN” must never be used as a standalone term or to denote distance. (e.g., never as “Ironman distance” or “Iron distance”).
- IRONMAN® should never be abbreviated as “IM.”
- Stand-alone references to “an IRONMAN” are improper. Please add “triathlon” to such phrase (e.g., “an IRONMAN® triathlon”).
- Do not use “iron” (or any foreign translation thereof) as a prefix for, or component of, any words – whether displayed as one word (e.g., “ironwoman”, “ironfamily”, or “ironmate”), as two separate words (e.g., “iron woman”, “iron family”, or “iron mate”), or as a hyphenated word (e.g., “iron-woman”, “iron-family”, or “iron-mate”). (Exceptions include IRONMAN®, IRONKIDS®, and IRON GIRL®, all of which are trademarks owned by WTC.)



SECOND AMENDMENT
to
HOST VENUE AGREEMENT

This SECOND AMENDMENT TO THE HOST VENUE AGREEMENT (this "Second Amendment") is effective as of December __, 2021 (the "Second Amendment Date") by and between **WORLD TRIATHLON CORPORATION**, a Florida corporation ("WTC"), and **WASHINGTON COUNTY**, a political subdivision of the State of Utah ("Host").

RECITALS

- A. This Second Amendment amends that certain HOST VENUE AGREEMENT, effective as May 3, 2019, between WTC and Host, as amended by that certain as amended by that certain FIRST AMENDMENT TO HOST VENUE AGREEMENT, effective as of October 6, 2020 (collectively, the "Agreement"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.
- B. Whereas the Parties acknowledge that the 2022 Event (scheduled for May 7, 2022) will not occur and will instead be replaced with the 2021 IRONMAN® WORLD CHAMPIONSHIP triathlon event (which the terms of such event will be governed by that certain HOST VENUE AGREEMENT between the Parties effective as of December __, 2021.

The Parties agree as follows:

AMENDMENTS TO THE AGREEMENT

1. **Section B** of the Recitals of the Agreement is hereby deleted in its entirety and replaced with the following:

B. Subject to the terms of this Agreement, Host desires to have WTC conduct in and around St. George, Utah (the "Venue"), and WTC desires to conduct in and around the Venue, the IRONMAN® North American Championship triathlon race in 2024 and the IRONMAN® 70.3® North American Championship triathlon race in years 2021, 2023, and 2025.

2. **Section 1(a)** of the Agreement is hereby deleted in its entirety and replaced with the following:

(a) **Authorization; Ownership.** Host authorizes WTC to prepare and conduct the 140.6 Events and the 70.3 Events (as such terms are defined below (each, an "Event" and collectively, the "Events") in and around the Venue in years 2021, 2023, 2024, and 2025 (each, a "Race Year" and collectively, the "Race Years"). WTC is and will be the owner of each Event and nothing herein constitutes a license by WTC to Host or to any third party to establish or operate any Event or Race (as defined below.)

SECOND AMENDMENT TO HOST VENUE AGREEMENT



3. **Section 1(b)** of the Agreement is hereby deleted in its entirety and replaced with the following:

(b) **North American Championship Races.**

- (i) **IRONMAN® 70.3® - 70.3 Events.** **Solely with respect to the 2021, 2023 and 2025 Race Years**, WTC shall be responsible for operating, in and around the Venue, an IRONMAN® 70.3®-branded endurance triathlon (comprising, subject to cancellation of any part thereof due to weather conditions or other reasons, a 1.2 mile swim, 56 mile bicycle ride, and 13.1 mile run) (the "**70.3 Race**") and performing certain administrative, operational, and sales and marketing functions related thereto (collectively, and together with the 70.3 Race and any additional races added under **Section 1(f)**, a "**70.3 Event**").
- (ii) **IRONMAN® - 140.6 Events.** **Solely with respect to the 2024 Race Year**, WTC shall be responsible for operating, in and around the Venue, an IRONMAN®-branded endurance triathlon (comprising, subject to cancellation of any part thereof due to weather conditions or other reasons, a 2.4 mile swim, 112 mile bicycle ride, and 26.2 mile run) (the "**140.6 Race**") and performing certain administrative, operational, and sales and marketing functions related thereto (collectively, and together with the 140.6 Race and any additional races added under **Section 1(f)**, a "**140.6 Event**").

4. **Section 1(d)** of the Agreement is hereby deleted in its entirety and replaced with the following:

- (d) **Race Dates.** Subject to the terms of this Agreement and unless otherwise mutually agreed upon in writing by the Parties, the 70.3 Races and the 140.6 Race (each, a "**Race**" and collectively, the "**Races**") will, as applicable for the Race Year, be held annually on the following dates (the "**Race Dates**"):

IRONMAN® 70.3® NORTH AMERICAN CHAMPIONSHIP - ST. GEORGE	
Race Year	70.3 Race Date
2021	May 1, 2021
2023	May 6, 2023
2025	May 3, 2025

IRONMAN® NORTH AMERICAN CHAMPIONSHIP - ST. GEORGE	
Race Year	140.6 Race Date
2024	May 4, 2024

SECOND AMENDMENT TO HOST VENUE AGREEMENT



5. **Section 2** of the Agreement is hereby deleted in its entirety and replaced with the following:

2. Term of Agreement.

- (a) This Agreement is effective beginning on the Effective Date, and will continue in effect until the date that is thirty (30) days after the 2025 Event, unless this Agreement is sooner terminated in accordance with the terms of this Agreement (the "Term").
- (b) During the first three (3) months of 2025, the Parties shall discuss in good faith whether they desire to renew this Agreement beyond the Term (the "Renewal Period"). The Parties agree to decide by March 31, 2025 (the "Decision Date") whether or not to extend the Agreement for the Renewal Period, which decision must include whether or not the Parties desire for (i) future IRONMAN® 70.3®-branded events taking place at the Venue to be designated as the IRONMAN® 70.3® NORTH AMERICAN CHAMPIONSHIP and (ii) future IRONMAN®-branded events taking place at the Venue to be designated as the IRONMAN® NORTH AMERICAN CHAMPIONSHIP. If, prior to the Decision Date, the Parties mutually agree to terms for a Renewal Period then the Parties shall, prior to or on the Decision Date, execute a memo of understanding indicating the parameters of such Renewal Period. Such mutually agreed upon Renewal Period, if any, will be effective only if set forth in a separate, definitive written agreement signed by the Parties. Nothing in this subsection (b) creates any obligation on either Party to renew this Agreement, to extend the Term, or to enter into any other agreement.

6. **Section 5(e)(i)** of the Agreement is hereby deleted in its entirety and replaced with the following:

(i) Annual Donations.

- (A) In connection with each 140.6 Event that takes place during the Term (*i.e.*, the 2024 Event), WTC shall donate, or cause to be donated, a minimum of **\$50,000.00** to one or more local non-for-profit organizations in the Washington County, Utah area (the "140.6 Event Donations").
- (B) In connection with each 70.3 Event that takes place during the Term (*i.e.*, the 2021, 2023, and 2025 Events), WTC shall donate, or cause to be donated, a minimum of **\$25,000.00** to one or

SECOND AMENDMENT TO HOST VENUE AGREEMENT



more local non-for-profit organizations in the Washington County, Utah area (the "70.3 Event Donations" and together with the 140.6 Event Donations, the "Annual Donations").

7. **Section 5(i)(ii)(B)** of the Agreement is hereby deleted in its entirety and replaced with the following:

(B) Pro Slots. With respect to certain eligible top professional finishers of the 140.6 Race, WTC will award non-transferable qualifying slots for entry in the applicable IRONMAN World Championship ("Kona Pro Championship Slots"). The number of Kona Pro Championship Slots applicable to the 2024 140.6 Race will be determined by WTC in its sole discretion.

8. The table of Annual Payments set forth in **Exhibit A** of the Agreement is hereby deleted in its entirety and replaced with the following:

Regarding the Event for Race Year	Annual Payment to be paid to WTC (\$USD)	Annual Payment Installment Due Dates	Invoice Details*
2020**	N/A**	N/A**	N/A**
2021	\$200,000.00	\$150,000 due on February 1, 2021	\$100,000 to be invoiced to Washington County
		\$50,000 due on June 1, 2021	\$50,000 to be invoiced to Utah Sports Commission
2022	N/A	N/A	N/A
2023	\$200,000.00	\$150,000 due on February 1, 2023	\$100,000 to be invoiced to Washington County
			\$50,000 to be invoiced to Utah Sports Commission

SECOND AMENDMENT TO HOST VENUE AGREEMENT



		\$50,000 due on June 1, 2023	\$50,000 to be invoiced to Utah Sports Commission
2024	\$350,000.00	\$250,000 due on February 1, 2024	\$100,000 to be invoiced to Washington County
			\$150,000 to be invoiced to Utah Sports Commission
		\$100,000 due on June 1, 2024	\$100,000 to be invoiced to Utah Sports Commission
2025	\$200,000.00	\$150,000 due on February 1, 2025	\$100,000 to be invoiced to Washington County
			\$50,000 to be invoiced to Utah Sports Commission
		\$50,000 due on June 1, 2025	\$50,000 to be invoiced to Utah Sports Commission

***Host Billing Contact Information**

Washington County

Contact name: Kevin Lewis

Email address: Kevin@GreaterZion.com

Telephone number: (435) 986-3384

Utah Sports Commission

Contact name: Jeff Robbins

Email address: jrobbins@utahsportscommission.com

Telephone number: (801) 328-2335

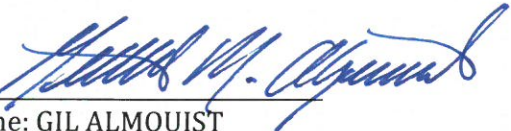
****Due to global health concerns related to the COVID-19 pandemic and solely with respect to the 2020 Event, WTC hereby waives its right to collect the Annual Payment from Host and agrees to apply any amounts paid by Host for the 2020 Event, if any, towards the 2021 Annual Payment.**

OTHER PROVISIONS

SECOND AMENDMENT TO HOST VENUE AGREEMENT

9. **No Other Changes.** Except as expressly provided in this Second Amendment, the Agreement is not otherwise amended, modified, or affected by this Second Amendment, and all other terms of the Agreement remain unchanged and in full force and effect.
10. **Miscellaneous.** The Agreement, as amended by this Second Amendment, constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all prior or contemporaneous agreements, arrangements, and understandings, written or oral, between or among the Parties, except as may be specifically provided herein. No modifications, amendments, cancellations, renewals, or extensions of or to this Second Amendment or the Agreement will be binding upon the Parties unless modified, amended, cancelled, renewed, or extended in a writing and signed by both Parties. This Second Amendment will be binding upon, and enure to the benefit of, the Parties and their respective successors and assigns. Subject to the immediately preceding sentence, no third party will have any rights or remedies under the Agreement or this Second Amendment. This Second Amendment may be executed in counterparts, each of which will be deemed an original binding document and all of which will constitute one and the same instrument. An electronic (e.g., PDF) or facsimile copy of the executed this Second Amendment or counterpart hereof will be deemed, and will have the same legal force and effect as, an original document.

This Second Amendment has been executed and delivered by each Party's duly authorized representative as of the Second Amendment Date.

HOST:**WASHINGTON COUNTY**By: 

Name: GIL ALMQUIST

Title: WASHINGTON COUNTY
COMMISSIONER CHAIR**WTC:****WORLD TRIATHLON CORPORATION**By: 

Name: ANDREW MESSICK ☺

Title: PRESIDENT & CEO

RESOLUTION NO. R-2021-2874

**A RESOLUTION APPROVING A NEW HOST VENUE IRONMAN AGREEMENT
REPLACING THE IRONMAN 70.3 NORTH AMERICA CHAMPIONSHIP WITH THE
IRONMAN WORLD CHAMPIONSHIP.**

WHEREAS, Washington County has hosted IRONMAN branded triathlon events for over ten years;

WHEREAS, IRONMAN Events have brought more than \$100 million in positive economic impact to local businesses and communities in Washington County;

WHEREAS, Washington County and World Triathlon Corporation (“WTC”) entered into an agreement on May 3, 2019 for Washington County to host IRONMAN races for another five year term (“Agreement”);

WHEREAS, in consideration of global travel restrictions and other challenges associated with the COVID-19 pandemic, the Parties wish to enter into a new agreement to reflect necessary adjustments so that WTC can hold a 2021 IRONMAN World Championship Event;

WHEREAS, the Parties have negotiated the attached (“Agreement”) which replaces the IRONMAN 70.3 North America Championship schedule in the spring of 2022 with the IRONMAN World Championship, to be hosted from April 30, 2022 through May 8, 2022;

WHEREAS, it is in the best interest of Washington County that the attached agreements be approved and executed; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COMMISSION OF WASHINGTON COUNTY, UTAH, that the attached Revised Agreements World Triathlon Corporation are approved and shall be executed.

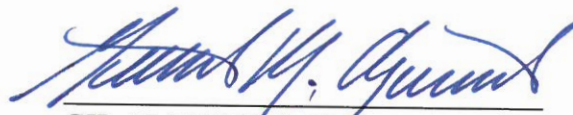
VOTED UPON AND PASSED BY THE WASHINGTON COUNTY COMMISSION AT A REGULAR MEETING OF THE WASHINGTON COUNTY COMMISSION HELD ON THE 7TH DAY OF DECEMBER, 2021.

(Signature block on following page.)

RESOLUTION NO. R-2021-2874

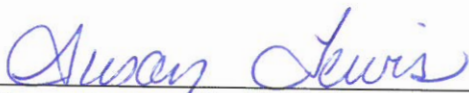
Page | 2

WASHINGTON COUNTY



GIL ALMQUIST, Chair
Washington County Commission

ATTEST:



Susan Lewis
Washington County Clerk-Auditor

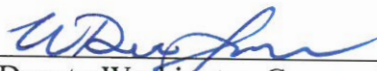
Commissioner Almquist voted

Commissioner Iverson voted

Commissioner Snow voted

Aye
Aye
Aye

Approved as to Form:



Deputy Washington County Attorney

January 31, 2022

Mike Vercimak
Public Works Director, Hurricane City
147 North 870 West
Hurricane, UT 84737

RE: Project Award Recommendation
AIP Project No. 3-49-0012-012-2022
Install Runway and Taxiway Lighting

Mike:

Two bids were received and opened on January 27, 2022, for the above referenced project. The project was advertised in The Spectrum on December 26, 2021, and January 2, 2022, and on the Jviation bid website. There were 6 prime contractors and 5 subcontractors that requested plans on the Jviation bid site. Jviation also emailed the bid advertisement to 6 electrical contractors to let them know about the project.

We checked the bids for errors or omissions. Mesquite Electric, LLC, had an error in Schedule I, which was corrected. No errors were found in the other bid and the error in the Mesquite Electric, LLC, bid did not alter the low bidder.

Based upon the attached bid tabulation, Mesquite Electric, LLC, is the low bidder. Their bid for all schedules is \$828,327.50. Their bid was \$90,673 less than the Engineer's estimate, or 9.9%.

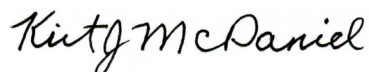
Since there were only two bidders, we have compared the unit prices of Mesquite Electric, LLC, with recent airport projects and they are comparable. It is our opinion the bid proposal submitted is fair and reasonable.

We recommend Mesquite Electric, LLC, be awarded the project in the amount of \$562,622.50 for Schedule I, \$265,705.00 for Schedule II, for a total bid of \$828,327.50.

After concurrence from Eric Trinklein, FAA Civil Engineer, we will provide you with the Notice of Award and Contract forms to be executed by Hurricane City and Mesquite Electric.

Call if you have questions.

Sincerely,



Kirt J. McDaniel, P.E.
Project Manager

cc: Eric Trinklein, FAA Civil Engineer

Main 435.673.4677

35 South 400 West | Suite 200 | St. George, UT | 84770
JVIATION.COM

Craig Ide, UDOT Engineer

Attachment

HURRICANE CITY MUNICIPAL AIRPORT (1L8)

HURRICANE, UTAH

AIP PROJECT NUMBER: 3-49-0012-012-2022

BIDS RECEIVED

HURRICANE CITY OFFICES

DATE: THURSDAY, JANUARY 27, 2022

TIME: 2:00 P.M. (LOCAL TIME)

Schedule I (Federal) - Runway Lighting

Schedule II (Federal) - Taxiway Lighting

BID SUMMARY ITEM	Engineer's Estimate	Mesquite Electric, LLC	Vellutini Corporation dba Royal Electric Company		
Contract Proposal (Division 2-1 thru 2-3)	✓	✓	✓		
Addendum No. 1 Acknowledgement (Division 2-2)	✓	✓	✓		
Addendum No. 2 Acknowledgement (Division 2-2)	✓	✓	✓		
Bid Bond (Division 2-5 thru 2-6)	✓	✓	✓		
Contractor Information (Division 2-7 thru 2-8)	✓	✓	✓		
Subcontractor/Material Supplier List (Division 2-9)	✓	✓	✓		
Equal Employment Opportunity Report (Div 2-11)	✓	✓	✓		
Buy American Certification (Div 2-13 thru 2-16)	✓	✓	✓		
Buy American Waiver Request (if appl.) (2-19 thru 2-21)	✓	N/A	N/A		
Buy American Conformance Listing (if app.) (Div 2-23)	✓	✓	✓		
Certification Regarding Tax Delinquency (Div 2-25)	✓	✓	✓		
Contractor's Statement of Qualifications (Div 2-27)	✓	✓	✓		
Bid Proposal Summary (Division 2-29 thru 2-33)	✓	✓	✓		
Schedule I Bid Proposal	\$ 586,000.00	\$ 562,622.50	\$ 1,195,488.00	\$ -	\$ -
Schedule II Bid Proposal	\$ 333,000.00	\$ 265,705.00	\$ 799,011.00	\$ -	\$ -
TOTAL COST - ALL SCHEDULES	\$ 919,000.00	\$ 828,327.50	\$ 1,994,499.00	\$ -	\$ -

* Red Text indicates that errors were found in the bid and the numbers revised for correctness.

BID TABULATION - SCHEDULE I

SCHEDULE I				Engineer's Estimate		Mesquite Electric, LLC		Vellutini Corporation dba Royal Electric Company			
Item No.	Description	Unit	Estimated Quantity	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
C-105a	Mobilization (10% Maximum)	LS	1	\$ 52,600.00	\$ 52,600.00	\$ 50,000.00	\$ 50,000.00	\$ 109,000.00	\$ 109,000.00		\$ -
C-102a	Temporary Erosion Control	LS	1	\$ 5,000.00	\$ 5,000.00	\$ 1,000.00	\$ 1,000.00	\$ 7,300.00	\$ 7,300.00		\$ -
L-101a	Install LED L-801A Airport Beacon, Complete	EA	1	\$ 12,000.00	\$ 12,000.00	\$ 23,900.00	\$ 23,900.00	\$ 26,900.00	\$ 26,900.00		\$ -
L-103a	Install 40' Tip-down Beacon Pole and Foundation, Complete	LS	1	\$ 40,000.00	\$ 40,000.00	\$ 32,800.00	\$ 32,800.00	\$ 40,500.00	\$ 40,500.00		\$ -
L-107a	Remove Windcone, Complete	EA	1	\$ 1,500.00	\$ 1,500.00	\$ 500.00	\$ 500.00	\$ 1,800.00	\$ 1,800.00		\$ -
L-107b	Install LED L-807 Windcone, Complete	EA	1	\$ 12,500.00	\$ 12,500.00	\$ 10,365.00	\$ 10,365.00	\$ 13,700.00	\$ 13,700.00		\$ -
L-108a	Install #8 AWG, L-824C, 5000V, Wire	LF	10,250	\$ 2.00	\$ 20,500.00	\$ 1.75	\$ 17,937.50	\$ 2.38	\$ 24,395.00		\$ -
L-108b	Install #6 AWG, Bare Copper Counterpoise Including Ground Ro	LF	12,000	\$ 2.00	\$ 24,000.00	\$ 1.80	\$ 21,600.00	\$ 1.38	\$ 16,560.00		\$ -
L-108c	Install #8 AWG, XHHW, 600V, Wire – per linear foot	LF	8,850	\$ 2.00	\$ 17,700.00	\$ 2.20	\$ 19,470.00	\$ 2.98	\$ 26,373.00		\$ -
L-109a	Install Airport Lighting Equipment Building with Electrical Equipm	LS	1	\$ 65,000.00	\$ 65,000.00	\$ 92,000.00	\$ 92,000.00	\$ 162,000.00	\$ 162,000.00		\$ -
L-109b	Install L-829 Constant Current Regulator, Ferroresonant, 5KW, wi	EA	1	\$ 17,500.00	\$ 17,500.00	\$ 16,700.00	\$ 16,700.00	\$ 17,000.00	\$ 17,000.00		\$ -
L-109c	Install L-854 Radio Controller, Complete	EA	1	\$ 5,000.00	\$ 5,000.00	\$ 5,100.00	\$ 5,100.00	\$ 4,790.00	\$ 4,790.00		\$ -
L-109d	Install S-1 Cutout with Lockable NEMA 1 Enclosure, Complete	EA	2	\$ 2,000.00	\$ 4,000.00	\$ 800.00	\$ 1,600.00	\$ 1,540.00	\$ 3,080.00		\$ -
L-109e	Install Electrical Service, Complete	LS	1	\$ 10,000.00	\$ 10,000.00	\$ 23,000.00	\$ 23,000.00	\$ 49,200.00	\$ 49,200.00		\$ -
L-110a	Install 1-2" SCH. 40 PVC Conduit (DEB)	LF	11,000	\$ 6.00	\$ 66,000.00	\$ 5.20	\$ 57,200.00	\$ 21.90	\$ 240,900.00		\$ -
L-110b	Install 1-2" HDPE Conduit Directionally Bored	LF	500	\$ 20.00	\$ 10,000.00	\$ 30.00	\$ 15,000.00	\$ 89.00	\$ 44,500.00		\$ -
L-115a	Install Electrical Junction Box, Complete	EA	9	\$ 700.00	\$ 6,300.00	\$ 600.00	\$ 5,400.00	\$ 1,550.00	\$ 13,950.00		\$ -
L-125a	Install LED L-861T Taxiway Edge Light in Soil, Complete	EA	0	\$ 1,200.00	\$ -	\$ 925.00	\$ -	\$ 3,300.00	\$ -		\$ -
L-125b	Install LED L-861 Runway Edge Light, Complete	EA	31	\$ 1,400.00	\$ 43,400.00	\$ 950.00	\$ 29,450.00	\$ 3,380.00	\$ 104,780.00		\$ -
L-125c	Install LED L-861E Runway Threshold Light, Complete	EA	16	\$ 1,500.00	\$ 24,000.00	\$ 925.00	\$ 14,800.00	\$ 3,440.00	\$ 55,040.00		\$ -
L-125d	Remove L-858 Guidance Sign, Style 4, Complete	EA	4	\$ 750.00	\$ 3,000.00	\$ 500.00	\$ 2,000.00	\$ 880.00	\$ 3,520.00		\$ -
L-125e	Install LED L-858 Guidance Sign, 2 Module	EA	8	\$ 4,500.00	\$ 36,000.00	\$ 3,950.00	\$ 31,600.00	\$ 8,900.00	\$ 71,200.00		\$ -
L-125f	Install LED L-858 Guidance Sign, 3 Module	EA	2	\$ 5,000.00	\$ 10,000.00	\$ 4,400.00	\$ 8,800.00	\$ 9,500.00	\$ 19,000.00		\$ -
L-125g	Install LED L-849I REIL System, Style E, Complete	EA	2	\$ 20,000.00	\$ 40,000.00	\$ 15,700.00	\$ 31,400.00	\$ 24,500.00	\$ 49,000.00		\$ -
L-125h	Install LED L-881 PAPI System, Style B, Complete	EA	2	\$ 30,000.00	\$ 60,000.00	\$ 25,500.00	\$ 51,000.00	\$ 45,500.00	\$ 91,000.00		\$ -
TOTAL SCHEDULE I					\$ 586,000.00		\$ 562,622.50		\$ 1,195,488.00		\$ -

* Red Text indicates that errors were found in the bid and the numbers revised for correctness.

BID TABULATION - SCHEDULE II

SCHEDULE II				Engineer's Estimate		Mesquite Electric, LLC		Vellutini Corporation dba Royal Electric Company			
Item No.	Description	Unit	Estimated Quantity	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
C-105a	Mobilization (10% Maximum)	LS	1	\$ 29,700.00	\$ 29,700.00	\$ 10,000.00	\$ 10,000.00	\$ 71,421.00	\$ 71,421.00		\$ -
L-108a	Install #8 AWG, L-824C, 5000V, Wire	LF	9,750	\$ 2.00	\$ 19,500.00	\$ 1.70	\$ 16,575.00	\$ 2.38	\$ 23,205.00		\$ -
L-108b	Install #6 AWG, Bare Copper Counterpoise Including Ground Ro	LF	7,250	\$ 2.00	\$ 14,500.00	\$ 1.80	\$ 13,050.00	\$ 1.42	\$ 10,295.00		\$ -
L-109b	Install L-829 Constant Current Regulator, Ferroresonant, 5KW, wi	EA	1	\$ 17,500.00	\$ 17,500.00	\$ 16,700.00	\$ 16,700.00	\$ 17,000.00	\$ 17,000.00		\$ -
L-110a	Install 1-2" SCH. 40 PVC Conduit (DEB)	LF	7,100	\$ 6.00	\$ 42,600.00	\$ 5.20	\$ 36,920.00	\$ 21.90	\$ 155,490.00		\$ -
L-125a	Install LED L-861T Taxiway Edge Light in Soil, Complete	EA	121	\$ 1,200.00	\$ 145,200.00	\$ 960.00	\$ 116,160.00	\$ 3,300.00	\$ 399,300.00		\$ -
L-125e	Install LED L-858 Guidance Sign, 2 Module	EA	2	\$ 4,500.00	\$ 9,000.00	\$ 3,950.00	\$ 7,900.00	\$ 8,900.00	\$ 17,800.00		\$ -
L-125f	Install LED L-858 Guidance Sign, 3 Module	EA	11	\$ 5,000.00	\$ 55,000.00	\$ 4,400.00	\$ 48,400.00	\$ 9,500.00	\$ 104,500.00		\$ -
TOTAL SCHEDULE II					\$ 333,000.00		\$ 265,705.00		\$ 799,011.00		\$ -

* Red Text indicates that errors were found in the bid and the numbers revised for correctness.

Cindy Beteag

From: Jason Campbell [REDACTED]
Sent: Thursday, February 24, 2022 12:35 PM
To: Nanette Billings; David Sanders; Kaden DeMille; Joseph Prete; Council; Doug Heideman; Kevin Thomas; David Hirschi; Jana Campbell
Subject: No lights at the airport please-Jason Campbell
Attachments: Runway Direction Map.jpg

Dear Council and Mayor,

I am writing to tell you how important it is to me that we do not add lights to the airport. It is not fair to the community that our night time peace be destroyed by night flying. Our rest and serenity is very important to the success of our children and hard working families as we spend time doing homework, relaxing after a day's work, backyard activities, sleeping and dinner with families. This is a peaceful time in our town and it is unthinkable that the convenience of a few to use the airport at night, at all of our expense, be considered.

1. If we approve lights at the airport **Helicopters and fixed wing aircraft will train at night with no CITY control or restrictions!** This issue is way bigger than a couple of our citizens that want the "convenience" of landing at home at the Taxpayers expense while destroying our nighttime peace and serenity.
2. This proposal will permanently destroy the night peace for many of our citizens for the foreseeable future! Once we take the Federal money to light the Airport we lose almost all control of who and how many can fly. The airport is mostly controlled by the Federal Government and Hurricane City is not able to use "conditional use" and "development agreements" as they are in most other City development and improvements.
3. Lights at the airport would negatively affect the vast majority of our community and change the town forever with the loss of peaceful sleep and family time alone, not to mention that all activities are more dangerous at night, including flying.
4. "the airport was here first" DOES NOT APPLY IN THIS CASE..... Night flying is NOT what has always been here. It is NOT what we knew when we moved into the vicinity of the airport.
5. "other airports have lights" DOES NOT APPLY IN THIS CASE.... Our airport is located very close to downtown and in what is now one of our fastest growing residential areas. Its close proximity to so many residents makes it different. Please look at the attached map or large map at the City office that shows the direction the runway is pointed into our downtown area. "Other Airports", generally speaking, do not have this proximity or direction of runway.
6. "this has been our plan" DOES NOT APPLY IN THIS CASE.... We change our long term plans all the time to accommodate changes in our community. No one could guess the hard lessons we have learned from the helicopters abusing our air space, please do not add the risk to our night peace. We have a chance to correct the course from a disaster.
7. Almost 60% of the hanger owners at the airport are NOT CITY RESIDENTS! They come fly in our town then go home to their quiet nights. THE VAST MAJORITY OF NIGHT FLIGHTS WILL MOST LIKELY BE DONE BY NON HURRICANE CITIZENS.
8. Safety. Our citizens, pilots and community will be in more danger with night flights. The truth is being twisted by the airport board and many in our airport community. There are a couple of selfish pilots that now fly at night without lights, this is very dangerous. The vast majority of accidents occur on the runway, takeoff and landings. Adding lights will SIGNIFICANTLY INCREASE THE DANGER. If there are no lights at Hurricane Airport there should be no or very little flying at night over our city. The planes will be at a high AGL (above ground level) and NOT on the runway, take off or landings or flying low AGL over our town. The idea that our town and its citizens will be safer with lights at the runway is a distortion of the truth and makes no sense.

Regards,

Jason Campbell



WGS_1984_Web_Mercator_Auxiliary_Sphere

DISCLAIMER: The information shown on this map was compiled from different GIS sources. The land base and facility information on this map is for display purposes only and should not be relied upon without independent verification as to its accuracy. Washington County, Utah will not be held responsible for any claims, losses or damages resulting from the use of this map.



Legend

Ownership

- | | |
|-------------------------------------|--|
| U.S. Forest Service | |
| U.S. Forest Service Wilderness | |
| Bureau of Land Management | |
| Bureau of Land Management Wildlife | |
| National Park Service | |
| Shiwiwits Reservation | |
| Utah Division of Wildlife Resources | |
| Utah Division of Transportation | |
| State Park | |
| State of Utah | |
| Washington County | |
| Municipally Owned | |
| School District | |
| Privately Owned | |
| Water | |
| Water Conservancy District | |
| State Assessed Oil and Gas | |
| Mining Claim | |

Notes

From: [Tom Hirschi](#)
To: [Council](#)
Subject: Airport
Date: Monday, February 28, 2022 11:11:15 AM

Please vote no on the lights at the airport

Sent from my iPhone

From: info@southernutahrealty.com
To: [Council](#); [Nanette Billings](#); [David Sanders](#); [Joseph Prete](#); [David Hirschi](#); [Kevin Thomas](#); [Doug Heideman](#)
Subject: Hurricane airport lights
Date: Friday, February 25, 2022 2:34:16 PM

Hello sir,

I represent a lot of clients in the Hurricane area. As a real estate agent I have found that Hurricane is a very peaceful quiet city and community to live. I have just come across information that the city of Hurricane is considering adding night lighting to the airport. I was hoping this was not true, but thru further research I am sorry to see it might happen. What ever happened to the value of the peaceful evenings to spend outdoors in your backyard with children and friends. Now the residents might have to close their windows and doors in the evenings so not to hear all sorts of aircraft. If this was in your backyard I'm sure you wouldn't want it.

Anyways, I'd love to hear your response.

Thank you,

Keith El-Bakri, CRS

Red Rock Real Estate

90 E. 100 S.

St. George, UT 84770

435-229-8297

info@southernutahrealty.com



From: [Lacee Jessop](#)
To: [Nanette Billings](#); [Council](#)
Subject: Lights at airport
Date: Monday, February 28, 2022 12:31:33 PM

Dear council,

We would like to cast a Big strong vote of NO airport lights please.

Our town doesn't need any more noise during the nights. Thank you for listening to the majority of those who live here. Only a handful of people living here would benefit from lights.

Lacee Jessop

Cindy Beteag

From: Melissa Lund [REDACTED]
Sent: Thursday, February 24, 2022 2:07 PM
To: Council
Cc: David Sanders; Doug Heideman; Nanette Billings; Joseph Prete; Kevin Thomas
Subject: No lights at Airport

Hello City Council Members:

Adding lights at night for air traffic damages the serenity of our town.
I feel that adding noise at night will be a huge disturbance, and adding unnecessary activity in that peaceful area.

Can we please have a moment of silence when they aren't flying directly over us all day long?

Who is on the airport board and is it represented by community members, or those who would benefit from the lighted facilities?

Flying at night is very dangerous and loud.
Our town loves the serenity and peace we enjoy in our nights, this will permanently destroy this peace!

If we add lights the town of Hurricane loses control of who flies. The Federal government rules will then apply. The City cannot control the night flying and training of helicopters and airplanes. Non citizens will fly to our town to train at night!

The new equestrian park will no doubt be negatively affected. Night flying with lights over animals could cause a disaster.

How many thousands of Hurricane City residents, children doing homework resting for school and work, will be subjected to loss of sleep?

We love our quiet star filled nights, and hope to keep it that way.

Thank you for your consideration,

Melissa Lund
[REDACTED]

[Sent from Yahoo Mail on Android](#)

From: [REDACTED]
Subject: [Council](#)
Date: Airport lights
Friday, February 25, 2022 12:11:33 PM

I wanted to let you know that I am strongly opposed to night lights at the airport. Already, just in the day the ongoing trainings of helicopters have been very disturbing. To have this and more use at night would be very detrimental to this areas wellbeing...the noise level, disturbing sleep, dangerous flying at night and the fact that the city would not have the control they need to keep our community peaceful, noise free and safe..... the reason most of us moved here.

my Verizon, Samsung Galaxy smartphone

From: [Shani Dutton](#)
To: [Council](#); [David Sanders](#); [Doug Heideman](#); [Joseph Prete](#); [Kevin Thomas](#); [Nanette Billings](#); [David Hirschi](#)
Subject: Airport lights voting
Date: Monday, February 28, 2022 1:30:40 PM

Dear council members,

I have lived in Hurricane my whole life. It's plain to see that we are growing and changing, but I for one would like to see this happen while hanging onto things that make Hurricane great. Like peaceful clear night skies.

I travel a lot up north for work and I'm grateful every time I come home to our peaceful home in the Hurricane fields. I'm copying most of my wife's letter to my email below as I 100% agree with her.

Please carefully consider what adding lights and federal regulations will do to the energy and beauty of our town.

Thanks for your consideration,

Stan Dutton

I would like to voice my opinion on the upcoming vote to add lights to our airport so helicopters can fly and train at night.

I live in south Hurricane. A few blocks north of the airport. The day time flight schedules of the past were already obnoxious enough. I felt with them because it was day time and I feel like we can compromise and work together so the air students and local pilots can go about their lives as well as us.

I'm however not happy at the prospect of noise and light pollution ruining our peaceful night skies. One of the best things about living here is the beautiful night sky and quiet evenings.

Please consider the majority of the communities feelings toward this and not just the airport board's appeals.

If we add lights, the town of Hurricane loses control of who flies. The Federal government rules will then apply. The City cannot control the night flying and training of helicopters and airplanes. Non-citizens will fly to our town to train at night!

I also feel like the planned equestrian park will be negatively impacted by the airport lights and noise.

I have small children and the last thing we need is loud helicopters flying by in the evenings when we are trying to get them to go to sleep.

As a final statement please consider the following information:

Light pollution, or artificial light at night, is the excessive or poor use of artificial outdoor light, and it disrupts the natural patterns of wildlife, contributes to the increase in carbon dioxide (CO2) in the atmosphere, disrupts human sleep, and obscures the stars in the night sky.

Let's keep the Hurricane fields peaceful and beautiful.

Sincerely, Shani Dutton and Stan Dutton

Sent from my iPhone

It has come to my attention that the City Council may be entertaining the thought of putting lights at the airport for night flying. As a very close neighbor of the airport, I wish to voice my very strong objection to lights. I heard the comment, "Well, the airport was there when you moved in". That is very true they did not, however, have lights then which makes all the difference.

I understand that there are certain people in and out of our community that would benefit from having lights at night, but I feel that the majority of our community would only be harmed by doing this.

Not only would the day and night time noise increase, the increase in traffic using the airport will make it difficult for any of us to have peace. Plus, there is an increasing danger of accidents happening with the increase in airport traffic.

If we have lights at the airport, the town of Hurricane loses control of who flies. The FAA rules will apply. The city cannot control the night flying and training of helicopters and airplanes. Non-citizens will fly to our town to train day and night.

The new equestrian park and Stratton Equestrian development would also be adversely affected due to the increase in traffic and noise at the airport.

Just want to say, if I have a vote, please reconsider lighting the airport at night.

Loyd & Linda Jessop, [REDACTED]

From: [Harmony Vanderhorst](#)
To: [Nanette Billings](#); [David Sanders](#); [Joseph Prete](#); [Council](#); [Doug Heideman](#); [Kevin Thomas](#); [David Hirschi](#)
Subject: Airport lights
Date: Tuesday, March 01, 2022 5:07:19 AM

Please vote NO for lights over the city.

How much money does the city have to contribute to the FAA to get them to help pay for the lights?

When we consider how many citizens will benefit from thousands of dollars spent to put lights at the airport, the cost benefit is not justified.

Our citizens who use the airport are an elite few. They have access to three other public and one private airport within a 50 mile radius that have lights.

This is not a priority project and would not be a responsible use of taxpayers dollars.

Thanks,
Harmony and Tyler Vanderhorst

From: [MICHAEL A BEARD](#)
To: [Council](#); [David Sanders](#); [Doug Heideman](#); [Nanette Billings](#); hirschi@cityyoghurricane.com; [Joseph Prete](#); [Kevin Thomas](#)
Subject: Hurricane airport lights and helicopter traffic at night
Date: Monday, February 28, 2022 2:36:24 PM

We strongly oppose the adding of lights to the airport in hurricane. We believe that doing so only serves non-residents to the detriment of neighboring taxpayers and voters. We do not want loud helicopters and airplanes landing in our neighborhood, decreasing land and real estate values and desirability, reducing quality of life here in Hurricane. The benefit of a very few individuals does not offset the damaging of a quality lifestyle for the many. Let the air traffic stay in St. George as well as the night noise and sky pollution.

Sincerely, Mike and Aaron Beard

From: [Todd Furse](#)
To: [Council](#); [David Sanders](#); [Doug Heideman](#); [Nanette Billings](#); [David Hirschi](#); [Joseph Prete](#); [Kevin Thomas](#)
Subject: Re: Airport Lights
Date: Monday, February 28, 2022 6:08:08 PM

Also, I forgot to mention another concern with the federal government. That is that we know the present administration has been known to fly large groups of illegal immigrants into local airports around the country. Is there a way for local governments to prevent or control who lands in our town?

Thank you for all you do!

-Todd Furse

On Mon, Feb 28, 2022 at 6:03 PM Todd Furse <[REDACTED]> wrote:

Hello Mayor Billings and City Council Members.

Todd Furse here.

I understand the need for lighting at the Hurricane Airport to provide safety for landings at night. But I am concerned that it will result in training being conducted through the night, disturbing the peace of the growing number of residents in that area, and possibly for other parts of our community. Is there a way to reach an agreement with the FAA that would limit the hours the airport can be used for training purposes to allow peaceful nights in the area, say, after 10 p.m. or so? I also realize that once the city accepted funding from the FAA for needed improvements that, like so many "gifts" from our corrupt federal government, strings are attached that require local control to be relinquished. However, it seems like some things might be open to negotiation BEFORE the lights are installed that would be a win-win for all concerned. Please investigate what can be done for local residents on this issue. Thank you very much!

From: [brad winder](#)
To: [Council](#)
Cc: [Nanette Billings](#); [David Sanders](#); [Joseph Prete](#); [Kevin Thomas](#); [David Hirschi](#); [Doug Heideman](#)
Subject: Lights at the Hurricane city airport
Date: Monday, February 28, 2022 10:13:15 PM

Please consider our citizens of Hurricane who have strong opposition to adding lights to the Hurricane City Airport when this is put to a vote. Having lights to allow more night flying will have a negative affect on the overall serenity of our town.

- This night flying will add a great deal of noise to our night sky.
- Flying at night is very dangerous and loud.
- If we add lights the town of Hurricane loses control of who flies. The Federal government rules will then apply. The City cannot control the night flying and training of helicopters and airplanes. Non citizens will fly to our town to train at night!
- The new equestrian park will no doubt be negatively affected. Night flying with lights over animals could cause a disaster.
- Residents, and children doing homework needing their rest for school and work, will be subjected to loss of sleep and danger from above.

Our town loves the serenity and peace we enjoy in our nights, and adding lights and encouraging all night flying will permanently destroy this peace! Please do not vote to add lights at our little community airport which is becoming more central to our town as development areas and homes have gone in all around it.

Thank you,

Brad Winder



Sent from my iPhone

Brad Winder

Sent from my iPhone

From: [Ruth Jeppson](#)
To: [Council](#); [David Sanders](#); [Joseph Prete](#)
Subject: Airport Lights.
Date: Wednesday, March 02, 2022 10:00:44 AM

Dear City Council Members,

I am writing to express my concern for the lights and additional flights coming into the Hurricane Airport.

I ask that you vote NO to adding lights to the Hurricane airport. My family and I have lived in our home here at [REDACTED] for ten years this year. We moved here to enjoy the serenity that

this area of town offers. I feel that the lights and more aircraft are not part of the farming area.

Please do not add the lights, send the aircraft to St. George airport, it is so close and in an area that is not residential. Houses are all around the Hurricane airport and will all be woken up at night and early hours with the flights coming in and out as well as the lights coming on.

Please for a moment think about if this was in your backyard and how it would affect your family lifestyle. Are the members on the airport board even part of our community? Do they know where the airport is located? Would they want this in their backyard?

Many things will be affected, the serenity of this part of town, animals are also affected by the loud sounds and traffic. Yes, we would all adjust to changes and I am not against change, but I do ask that the change fit the area. The farmers here rise early and work long hours, they should not be compromised. Thank you, all for your service to Hurricane City and please consider all residents of the city in your vote.

Ruth Jeppson

[REDACTED]

Hurricane, Ut 84737

From: [jenni klunker](#)
To: [Council](#); [David Sanders](#); [Doug Heideman](#); [Nanette Billings](#); [David Hirschi](#); [Joseph Prete](#); [Kevin Thomas](#)
Subject: NO lights at the airport
Date: Wednesday, March 02, 2022 7:02:51 AM

Dear Hurricane City Officials,

I would like to start off by thanking you for your service for this great city. We moved here almost 4 years ago and it has been such a great experience for our family. We came from a small town in central Utah and chose Hurricane over other areas because of the small town feel. What we have found the reason for this feel is because of the people in the community. These people care. These people support.

We also love the quiet, peaceful feeling. The town we moved from was much smaller. But it was much noisier.

We live just off of Airport Road. We love to see the planes flying over. But I believe the night sky would be disturbed by the lights. We worry the noise in our quiet Hurricane would go up considerably.

I am not a horse owner, but several of my neighbors are. I know when we do have more air traffic it is hard on their animals. Many of them make their living around these animals and depend on them.

Another thing we love about this great city is the beauty. We love the parks and recreation opportunities. The city has put considerable resources into creating and up keeping existing parks. We are grateful for this. The equestrian park will be a great new addition to our parks and recreation department. I'm concerned that this project will be effected negatively by adding lights to the airport.

My last concern is for my husband. He has suffered with insomnia for many years. He is very sensitive to noise at night and I am sure airplanes and helicopters flying at night would disturb his already fragile sleep cycle.

I am asking you NOT to allow lights at the airport.

Thank you for your time and sacrifice in serving our great city!

Sincerely,

Jenni Klunker

Sent from my iPhone

From: [Dayton Hall](#)
To: [Nanette Billings](#); [Joseph Prete](#); [David Sanders](#); [Kevin Thomas](#); [David Hirschi](#); [Doug Heideman](#)
Cc: [Cindy Beteag](#); [Kaden DeMille](#); [Council](#)
Subject: Hurricane Municipal Airport -- Reasons Not To Expand to 24-Hour Airport
Date: Tuesday, March 01, 2022 11:03:12 PM

Dear Mayor and City Council:

I am writing to request that the Council not expand the historical character of the Hurricane Municipal Airport. The scope of the Council's consideration of adding lights to the airport runway is not limited to a lighting issue. Rather, the question is whether the Council should change the airport to a 24-hour airport that is capable of supporting nighttime air traffic. There are two key reasons why the Council should decline to expand the airport to include 24-hour and nighttime air traffic.

First, over the years, the City Council has consistently granted zone changes and increased the residential density in the flight paths to the north and the south of the airport. To now subject those residents who have relied on the zone changes granted by the Council to nighttime air traffic is not fair to those residents and is inconsistent with prior City Councils' actions. In other words, because prior City Councils have allowed single family homes to be developed in the airport's flight path, there is a reasonable expectation that the Council would not expand the operations of the airport and subject those single family homes to air traffic during sleeping hours.

Second, the assumption that the Council could limit the nature of nighttime air traffic after investing in runway lighting is shortsighted and misguided. Even if rules and restrictions are initially placed on nighttime use, once the airport is converted to a 24-hour airport, the City will forever be pressured by businesses, airplane owners, and the FAA to allow more, bigger, and noisier nighttime air traffic. And, over time and incrementally, the nighttime air traffic will slowly become more voluminous and noisy.

In summary, I am requesting that the Council recognize its obligation to the residential developments that it has supported in the airport's flight path and not convert the airport into a 24-hour airport that will negatively impact residents' health, safety, and quality of life.

Sincerely,
Dayton Hall

From: [Sandra Keeler](#)
To: [Council](#)
Subject: Airport lights
Date: Wednesday, March 02, 2022 11:23:53 AM

My vote is no taxpayer funded lights! The airport only affects a few people and our area doesn't need either lights or noise from nighttime flying and landing. There are other facilities that can be used.

Thank you

Sandra Keeler



Hurricane

Sent from my iPhone

From: [Crow Kuphal](#)
To: [Nanette Billings](#); [Council](#); [Doug Heideman](#); [David Hirschi](#); [Joseph Prete](#); [David Sanders](#); [Kevin Thomas](#)
Subject: No lights at airport
Date: Wednesday, March 02, 2022 6:18:22 PM

Hello, i am emailing to urge you to vote no to putting lights at the hurricane airport. This would be a bad idea not only because it would negatively affect the current & future residents living around the airport, but the animals too. More and more people are moving out to the land around the airport, many with children. No one wants to be woken up by lights & airplanes in the night, but especially people with kids trying to rest for school. Livestock will be woken up & needlessly stressed over the sounds & lights which could negatively affect their lifespan & breeding. There are several horse riding schools around the area & planes waking people & horses up at night will cause so many problems. It could spook the horses, and the lights/sound would cause them to lose sleep which could result in a change of behavior in the animals, that is unsafe for the young students learning to ride. It will also disturb native wildlife in the surrounding area & confuse birds, harming their migration & breeding. The profit that a few already wealthy people would make from installing the lights is not worth more than the lives & happiness of hundreds of animals & hurricane residents. If you truly care about the people of hurricane over the pockets of a few non residents, you'll vote no.

Thank you

From: [Ellen Freeman](#)
To: [Council](#)
Subject: Lights at our Hurricane airport
Date: Wednesday, March 02, 2022 9:26:58 PM

My family here in rainbow canyon community are very opposed to lights on our runway at this small airport. It's a small airport and shouldn't have lights as such. Also of concern is the training helicopters flying in and out of the airport. Cargo planes are also not wanted. Risk and noise levels are the problem. Thanks for your consideration

From: [Jarolyn Stout](#)
To: [Council](#); [David Sanders](#); [Doug Heideman](#); [Joseph Prete](#); [Kevin Thomas](#); [David Hirschi](#); [Nanette Billings](#)
Subject: airport lights
Date: Wednesday, March 02, 2022 7:40:04 PM

We are weighing in on the airport light issue to be discussed at city council tomorrow evening. We live in area that has airplanes fly over all the time. (1020 South 400 West.) I don't think we are in a flight pattern to land since not all planes fly right over our home, but a lot of them manage to fly right over our house. (Sometimes it seems like they are just snooping, since there are plenty of fields they could fly over.) They are noisy. If lights are added at the airport, that adds more noise at night.

It seems that the taxpayer already funds most of the airport. A lot of people paying for the privilege of a few. Those with hangers should pay for the running of the airport as it is, let alone adding on lights to make the noise of the community extend into the evening hours. It is nice to sit out on a nice evening, without that added noise. Let's not add lights and ruin the nights too.

Thank you
Collin and Jarolyn Stout

From: [Lea Clement](#)
To: [Council](#)
Subject: No lights in the airport
Date: Wednesday, March 02, 2022 9:43:03 PM

Hello city of Hurricane,

My name is Lea Clement, and I'm emailing you to ask that you do not install the runway lights that are planned for the hurricane municipal airport. Not only will this hurt the local environment by creating further light/sound pollution, but it will also be inconvenient to the residents living here. Many of us own horses and the stress of their disturbed sleep cycle will affect them and the owners/riders, potentially creating a dangerous situation.

Sincerely,

A concerned citizen

SINGLE EVENT PERMIT

Local Consent

PURPOSE: Local business licensing authority provides written consent to the Alcoholic Beverage Control Commission to issue an event permit to an organization for the purposes of storage, sale, offer for sale, furnish, or allow the consumption of an alcoholic product on the event premises

AUTHORITY: Utah Code 32B-9-201

Hurricane, ☒ City ☐ Town ☐ County
Local business license authority

hereby grants its consent to the issuance of a temporary single event permit license to:

Applicant Entity/Organization: Zion Brewery

Event Name: Hurricane Mtn. Bike Festival

Event location address: 63 S. 100 W Hurricane UT. 84737
street city state zip

On the 25-26 day(s) of March, 2022
dates month year

during the hours of 3-9 p.m., pursuant to the provision of Utah Code 32B-9.
defined hours from - to

We recommend this entity as conducting a civic or community enterprise* ☐ Yes ☐ No
☐ Not providing a recommendation

***As Part of local consent required by 32B-9-201(1)(c), the locality may provide a recommendation as to whether the entity is conducting a civic or community enterprise.** A civic or community enterprise means a function that is in the nature of a temporary special event such as a social, business, religious, political, governmental, educational, recreational, cultural, charitable, athletic, theatrical, scholastic, artistic, or scientific event. A "civic or community enterprise" generally is a gathering that brings members of a community together for the common good. Single event permits may not be issued to or obtained by an entity or organization for the purpose of avoiding or attempting to avoid the requirement of state retail alcohol licensing.

Authorized Signature

Name/Title

Date

This is a suggested format. A locally produced city, town, or county form is acceptable.
AS OF SEPTEMBER 1, 2015, LOCAL CONSENT MUST BE SUBMITTED TO THE DABC BY THE APPLICANT.



147 N 870 WEST, HURRICANE, UTAH 84737
PHONE: 435-635-2811 FAX: 435-635-2184
www.cityofhurricane.com

Date of Application 2-18-22

Permit Fee	\$250.00
Application Fee	\$50.00
Total Due	\$300.00

◆ **SINGLE EVENT BEER PERMIT** ◆

NOTICE: Please complete each statement below. Incomplete applications will not be accepted.

SECTION A — BUSINESS INFORMATION

Name of Business: Zion Brewery
Business Phone: 435 680 0022 Fax Number: _____
Contact Person: Mr. Cristofor Pace
Business Address: 2400 Zion Park Blvd Springdale UT 84767
(Street Number) (Suite) (City) (State) (Zip)
Mailing Address (if different): 1 Dammeron Valley Dr. E Dammeron UT 84793
(Street Number) (City) (State) (Zip)
State Sales Tax Number: 45-356711 Does this business have a current DABC license: Yes
Business Type (check one):
Proprietorship ☐ Partnership ☐ Corporation ☐ Religious Organization ☐ Non-profit Corporation ☐

SECTION B — EVENT INFORMATION

Event Name: Hurricane Mtn. Bike Festival
Event Venue: _____
635 100W Hurricane UT 84737
(Street Number) (Suite) (City) (State) (Zip)
Date (s) of the event: March 25/26 Alcohol Service hours: 3 to 9 pm
Type of Event: Festival
Will food be available? Yes Full Meals? Yes Will minors attend the event? Yes

PART C — BUSINESS OWNER INFORMATION

A list of all corporate officers or partners must be included. This list must include name, home address, and phone number.

Owner's Name: Cristofor Pace Title: owner/manager
Home Address: 487 Zangaro dr. Washington UT 84780
(Street Number) (City) (State) (Zip)
Home Phone: - Cell Phone: 435 680 0022

Please add any additional owners/partners on a separate piece of paper and attach.

APPLICATION MUST INCLUDE A DETAILED PLAN ON AN 8 1/2" X 11" SHEET OF PAPER
SHOWING ALL CONTROL MEASURES.

STATE OF UTAH)

: ss.

COUNTY OF WASHINGTON)

I, Cristofer Pace, being first duly sworn, depose and say as follows:

1. The foregoing Application and Questionnaire is in all respects true and correct, to the best of my knowledge and belief and
2. I am the applicant above-named and have not leased, assigned or entered into a profit-sharing arrangement of any type with any other person for operation of the above-named business except as disclosed herein; and
3. I have received and read the beer/alcoholic beverage license ordinance of the City of Hurricane, and believe that this application in all respects conforms to the requirements thereof and
4. I consent to the entry in or upon the business premises by City employees or representatives at reasonable times for the purpose of inspecting the event premises to insure compliance with applicable laws, ordinances, rules and regulation; and
5. I understand and agree that any false information contained in this application shall be grounds for denial of this application and shall constitute perjury.

SUBSCRIBED AND SWORN TO before me this 22 day of 2, 20 22

Applicant [Signature]
Andy Betang
(NOTARY PUBLIC OR CITY LICENSE OFFICER)

TOTAL FEES \$ <u>300.00</u>	Office Use Only	AMOUNT PAID \$ <u>300.00</u>
DATE <u>2/22/22</u>	RECEIPT # <u>8.156029</u>	
CITY LICENSE NUMBER: _____		
DATE APPLICATION WENT TO CITY COUNCIL: _____		
DATE OF APPROVAL FROM STATE: _____		

CITY OF HURRICANE
147 NORTH 870 WEST
HURRICANE UT 84737 435-635-2811

Receipt No: 8.156029 Feb 22, 2022

ZION BREWERY

Previous Balance:	.00
NEW BUSINESS LICENSE	
NEW BEER LICENSE FEE	250.00
NEW BUSINESS LICENSE	
APPLICATION FEE	50.00
Total:	300.00
CHECK	
Check No: 2806	300.00
Total Applied:	300.00
Change Tendered:	.00

02/22/2022 1:35 PM

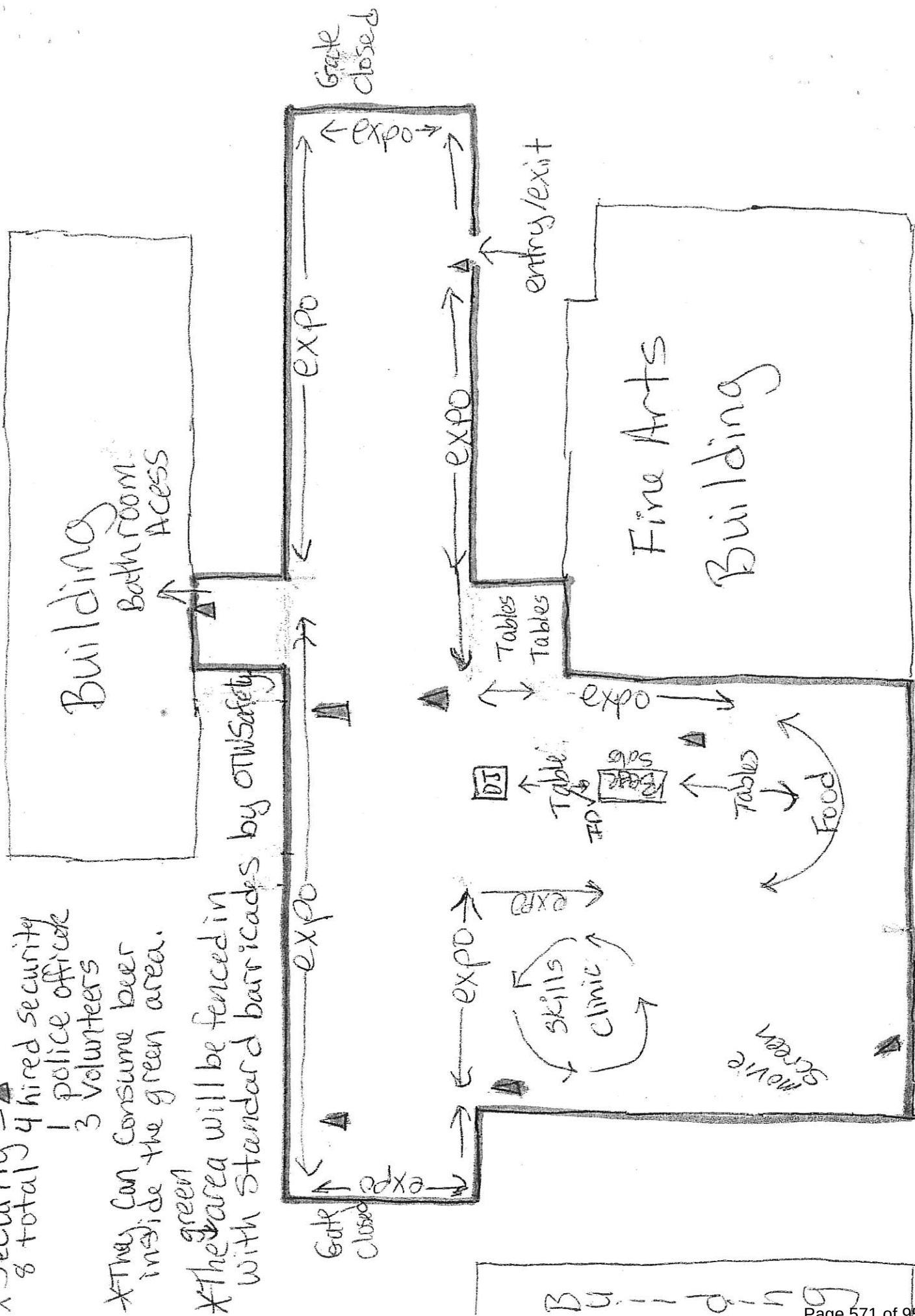
Hurricane Mountain Bike Festival

*Security = 8 total
 4 hired security
 1 police officer
 3 volunteers

*They can consume beer inside the green area.

*The area will be fenced in with standard barricades by OTW Safety

*The vendors trailers will also act as another layer of barriers.





Park Warehouse LLC

7495 W. Atlantic Ave., Suite #200-294
Delray Beach, FL 33446
888-321-5334

**Quality Commercial Site Furnishings for
Municipalities, Schools & Property Managers**

Billing

Payton Bullock
civil science
1453 S Dixie Ste 150 St.
George, UT 84770, UT 84737
Phone: 435-669-5916

Shipping

Payton Bullock
City of Hurricane
147 N 870 W
Hurricane city, UT 84737

Quote: Q252705

Quote Date

March 1, 2022

Quote Expiration

14 Days (03/15/2022)

Sales Rep: Rose x520

Ref#:

\$182,946.13

**If you receive a lower quote, please remember our
best price guarantee!**

Description	SKU	Cost	Qty	Total
335 Series - Bleacher Product 1 - Special Non-elevated 15 row x 139'-6" bleacher: Net seating capacity 1173 + 12 ADA seats per unit. Aluminum angle understructure with 8" Rise / 24" Run 2 x 10 anodized aluminum seat plank with poly end caps Double 2 x 10 mill finish aluminum foot plank with aluminum end caps 1 x 6 riser rows 2 - 14 and (2) 1 x 6 top row risers mill finish (4) 4'-6" wide vertical aisle with mid aisle handrail Chain link guardrail system 12 Wheel chair spaces Concrete wedge anchors SUBMITTALS REQUIRED	335-SPCL-BLEACHER-2	\$72,015.66 \$65,562.07	2	\$144,031.31 \$131,124.13
Bleacher Installation	105-INSTALL	\$29,550.00	1	\$29,550.00

Discount	\$12,907.18
Subtotal	\$160,674.13
Shipping	\$22,272.00
Total	\$182,946.13

**Park Warehouse LLC**

7495 W. Atlantic Ave., Suite #200-294
Delray Beach, FL 33446
888-321-5334

**Quality Commercial Site Furnishings for
Municipalities, Schools & Property Managers**

Quote Note: Bleachers ship knocked down, assembly required. Bleachers ship in bundles. Hardware is boxed separately and must be received and noted in your bill of lading. Please inspect and note any and all damages at the time you receive the bleachers. Thanks for the opportunity to do business! Bleachers ship knocked down, assembly required. Bleachers ship in bundles. Hardware is boxed separately and must be received and noted in your bill of lading. Please inspect and note any and all damages at the time you receive the bleachers. Thanks for the opportunity to do business! Economical mill finish foot plank and risers have been specified on this quote. NRS will not be responsible for discoloration or staining (dark black, brown, or white residue) resulting from unavoidable condensation that occurs during packing, transporting and storage, preceding and/or during installation. Removal of these stains or replacement of boards upon completion of installation is not part of this contract because stained mill finish boards meet all specified requirements. A clear anodized finish may be quoted at an additional cost to avoid potential discoloration or staining.



Park Warehouse LLC
7495 W. Atlantic Ave., Suite #200-294
Delray Beach, FL 33446
888-321-5334

**Quality Commercial Site Furnishings for
Municipalities, Schools & Property Managers**

SHIPPING:

All merchandise is sold F.O.B. Deliveries are made during normal business hours, 8am - 4pm Monday - Friday.

• Standard shipping charges are for Tailgate delivery to any commercial location on a commercial truck route.

• The truck driver is under no obligation to help you unload.

• If you are unable to accept a shipment via this method you must purchase additional services.

(Additional Services Available: Residential Delivery, Limited Access Delivery, Liftgate Service, Inside Delivery, Construction Site Delivery, Notify Before Delivery)

Customer Initials

SERVICE DISCREPENCIES:

If there is a discrepancy in the services requested and the minimum services required to deliver the product (either before or after delivery of product), Park Warehouse reserves the right to charge the customer for any necessary additional services provided at the time of delivery.

Customer Initials

INSPECTION OF SHIPMENTS (OR DAMAGED PRODUCT):

It is the customers responsibility to verify the delivery is for the correct product, count the number of pieces being delivered, and inspect for damages

• All claims of damage MUST be recorded on the delivery receipt provided by the delivery driver at the time of delivery and reported to us within 48 hours of delivery.

• Park Warehouse does NOT GUARANTEE replacement parts or product FREE of charge due to concealed or unreported damages

Customer Initials

CANCELLATIONS:

All cancellations must be done in writing prior to shipping. Made-to-Order items already in production may not be cancelled. Any order placed by credit card in excess of \$1000 and cancelled after the close of business on the day the order was placed shall incur a fee of 5%.

Customer Initials

RETURNS:

• We will accept returns of unused products up to 30 days from shipping date subject to ALL of the following terms and conditions:

• Written approval: You must receive written approval and utilize the instructions issued by our Customer Service Department before any merchandise can be returned.

• Shipping Returns: All merchandise must be returned in its original packaging, freight Prepaid. No Collect shipments are accepted.

• Re-Stocking & Shipping Fees: The customer is responsible for a minimum 25% re-stocking fee and all related shipping charges on product returned for reasons other than damage or defect. Original shipping charges will not be refunded.

Customer Initials

* Web-Orders: For online orders, Park Warehouse is not responsible if customer orders incorrect product or colors. All return and restock fees apply.

* Assembly Usually Required. Many of our products are shipped unassembled in order to minimize damage and lower freight charges.

* **Made-to-Order or Personalized items are not returnable unless a defect in manufacturing is presented to us with pictures prior to return.**

* **Unless Otherwise noted, shipping charges include standard delivery only. Liftgate service, notify before delivery available at additional cost.**

*** Ship date will be emailed to you. Ship dates are based on raw material availability and production time and can fluctuate. We appreciate your patience as we are fulfilling orders as quickly as possible. AND NOTE- DUE TO FLUCTUATIONS AND UNCERTAINTY OF RAW MATERIAL COSTS, THIS QUOTE IS VALID FOR 14 DAYS ONLY. ANY LEAD TIMES QUOTED ARE ESTIMATES AND MAY CHANGE DUE TO VOLATILITY AND DEMAND OF RAW MATERIALS.**

* Force Majeure: No Party to this Agreement shall be responsible for any delays or failure to perform any obligation under this Agreement due to acts of God, outbreaks, epidemic/pandemic or the spreading of disease or contagion strikes or other disturbances, including, without limitation, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, and any other cause beyond the control of such party. During an event of force majeure, the Parties' duty to perform obligations shall be suspended.

To accept this proposal, please sign below and initial each section above.

Signature of Authorized Person

Date

Print Name

*** By signing you are placing a binding order and agree to the terms of the sale as stated herein.**

Quote#:

Q252705

Total:

\$182,946.13

Terms:

Credit Card



STAFF COMMENTS

Discussion regarding **concerns at the animal shelter**- Tracy Sahleen

Discussion:

Findings:

Recommendation:

Attachments:

None

From: [Kaden DeMille](#)
To: [Council](#)
Cc: [Stephen Nelson](#); [Cindy Beteag](#)
Subject: FW: PID's
Date: Thursday, March 03, 2022 9:37:28 AM

Good morning Mayor and Council,

It is my understanding that a couple of you have been in contact with Clark over the last few days and had asked that he prepare a statement regarding PIDs from his perspective. Please find below a statement he provided to me. We are going to try and get it uploaded to the packet for tonight but I thought I would share it with you via email in case you don't happen to see it.

If I may share with you a couple of my thoughts regarding the PIDs tonight. Yesterday afternoon our staff committee met with our legal and financial counsel to comb through the documents that you have in your packet for tonight. The documents you will see do not contain the numerous remarks, suggestions and questions the staff have regarding these documents. I am not suggesting that the documents are ill written, just that staff submitted questions and possible revisions for the documents. Our legal counsel informed us that they would combine our staff comments and hopefully have the comments over to the PID representatives this morning for their review.

Please, please, please, (wo wo wo) it is my recommendation to the counsel that if in fact the counsel is interested in approving the PIDs before us tonight that we continue the decision until staff and legal counsel have had enough time to fully vet the documents. I understand this has been a lengthy process for the applicants; however, a decision of this magnitude should be based on documents that are complete. Even if the PIDs representatives are able to address the comments and concerns in the document today, I believe there is language in the document that still needs refined, there will not be adequate time to do this today.

I concur with Clark's comments below. I hope the council does not feel like approving the PIDs is the only option you have to deal with development in the Hurricane Fields area. The city has invested a great deal in the city master plan and the city has standards in place for the rolling out of infrastructure. It is my opinion that a PID will not necessarily make a better community (we have standards in place to deal with development), but I do feel like it would expedite the process.

A couple things to consider as we continue our PID proposal discussions:

1. PIDs will impact and will continue to impact Hurricane in the future. I would anticipate that as our current PIDs roll out, additional staffing will be required on the city's side to handle the expedited process and additional burden. Public works inspectors, building inspectors, engineering to name a few will have additional responsibilities above and beyond their current duties to ensure the proper rolling out of infrastructure. It is very likely that the council will see a significantly higher rate of employee requests in the future to keep up with the demand. This will place a burden on city budgets and it is important to remember that revenue off of residential growth alone is generally not adequate to keep up with the needs of a city.
2. One of the first sentences in our (Hurricane City's) PID policy statement indicates that "any

proposed public infrastructure district will be considered in relation to the **best interests of the city.**" I feel like it is important for us to carefully consider what is in the best interest of the city. If a PID is approved I believe it should serve a very specific purpose to solve a problem that may be difficult to handle otherwise. We have often discussed and have concerns about "affordable/attainable" housing. Much like Clark's comments below, if a PID is approved in residential areas, should the city be able to consider attainable housing in the PID area where we are able to negotiate with the PID to provide an attainable housing element in the project with proper deed restrictions in place? Perhaps this is not the appropriate place to consider attainable housing but what I am suggesting is that the council does have the ability to consider all things that are in the best interest of the city as we consider approving PIDs. Just a few thoughts to consider.

I hope this information helps, if you have any questions at all please feel free to let me know. Always happy to help.

See you tonight!

Kaden

From: Clark FAWCETT [REDACTED]
Sent: Wednesday, March 2, 2022 1:54 PM
To: Kaden DeMille <kaden@cityofhurricane.com>
Subject: PID's

Public Improvement Districts were approved by the State Legislature to assist with the planning and financing of developments. As you can see by the number of requests the City is getting, it is a good deal for the developers. If it were harder, or more expensive or took longer, the developers would be using conventional financing for these projects.

One of the positives I have heard is that it will make for better planned connected communities and will get the infrastructure in faster without the city having to pay for it. While some of this may be possible if the agreements are structured correctly, most of this argument is false. The city has a master plan. The roads, water, drainage and power lines all have been designed with proper standards. If these master plans are followed by the City, then the planned growth should be just as good without the PID as it would be with it. The City is in charge of planning the layout of the infrastructure and if executed correctly the city should be well planned. One of

the great benefits Hurricane has, is it is only about 15% built out. With this open area the city staff and officials should be able to vision and create a city that is well planned for the benefit of its residents. Two or three developers working together on adjacent projects should not make a better development than what the city has planned. Developers are looking out for their costs and benefits, for the maximum profits they can earn. While I don't believe developers are out to stick to the city, they are not concerned over how their development affects the entire city. Just stick to the standards and master plan. Don't let the developers tell you PID makes a better planned community this is not a benefit.

I am concerned that some developers will be allowed to develop even though they don't have the financial ability to develop. When the developer has to come up with all the money or be on the hook to pay the loan, they have to be very careful to make sure the development is viable. If things go bad their credit will suffer, and they will lose their investment. With a PID the developers need to still have enough skin in the game. A developer that is not well financed can get the money through the PID, with the future residents, or occupants of the development paying the bill. When Hurricane was much smaller and there were no projects coming, I could see the City Council wanting to help development along. There is enough growth now the city doesn't have to cater to developers. They don't need to be given zone changes, follow the master plan, they don't have to be given great deals through the PID. Make sure the developers are well financed and they have a good deal of their own money in the deal so they won't walk. Even though the City may not be on the hook for the debt, it will not be good for the City if the developers walk away and let the lender, and the property owner within the district suffer.

I know there is a great effort being made to warn the buyers of their responsibility to pay an additional tax when they buy within the district. The buyer has to be really aware when they buy in these developments. I would hope to think that these lots would be much cheaper up front than one done with conventional financing. I guess my feelings of many developers is they will get as much as they can. Will the developers make more money here than under conventional financing my feelings are YES, I would like to think maybe this would be a good way for homebuyers to get into the market with a little less up front even if they had to pay an additional tax. This may help some buyers but if the price of the lots are not substantially less than the conventionally financed lots then the buyer loses on both ends. I know from experience that within 5 years the city will be hearing from the residents of these developments asking why they are double taxed and why the city let the developer get away with this. We have seen this play out over the past years, where the developers sold the city on a better way to do things that the residents would love.. Homeowner's associations, private streets, etc have proven to be a source of problems for many of the citizens. We have had citizens from Sky Mountain, Lava Bluff, Brentwood, Quail Lake, Harrisburg, Arlington Heights, and several other developments come and complain about double taxation, and other problems associated with the subdivision they lived in because of things the developers convinced the City to allow. Think carefully and think ahead of what burden this way of financing will place on future residents. Would you like to be in a development paying double tax. If the PID finances offsite improvements, will you give the

homeowner credit for impact fees, or will the residents pay double tax plus impact fees. If the financing only covers interior improvements will the buyer pay the same price for the lot as other conventionally financed developments or will the price be enough lower that the buyer won't be double taxed while the developer makes more money.

If the City decides to allow the PID there should be an obvious advantage to the City. In big development parks should be planned for, future sub stations, fire stations, etc. These properties would then need to be purchased by the City through impact fees when they are needed. This should be required of developments; this is not the additional benefit. What makes this development worth the extra taxes that are being paid. I think an element of Affordable housing may be required with a certain number of lots with deed restriction to preserve them for the future. This would spread out the affordable housing and provide some much-needed homes for working people. Additional amenities in parks. The donation of the property set aside for parks, and the construction of parks. Open space that is usable for the public not just undevelopable property. Residential development does not provide enough tax base to pay for the needed services provided by the general fund. Mixed commercial that lessens traffic flow into other parts of town and provides commercial taxes could be a good community benefiting element. What does the city need in this area of the community that will benefit the City. Also, there should be fees paid up front to meet the extra burden placed on the staff to review and approve these developments. If there is a sufficient benefit to the city, then it might be worthwhile to use this financing.

My advice is to just be cautious and consider each development carefully. Larger developments may be able to provide extra benefits but small developments should not even be considered. A five-acre subdivision does not benefit the city in any way. The number of applications shows PID's are beneficial to the developers, make it beneficial to the City of don't do them.

Hurricane, Utah

March 3, 2022

The City Council (the “Council”) of Hurricane City, Utah (the “City”), met in regular session (including by electronic means) on March 3, 2022, at its regular meeting place in Hurricane, Utah at 6:00 p.m., with the following members of the Council being present:

Nanette Billings	Mayor
Joseph Prete	Councilmember
Dave Sanders	Councilmember
David Hirschi	Councilmember
Doug Heideman	Councilmember
Kevin Thomas	Councilmember

Also present:

Kaden DeMille	City Manager
Cindy Beteag	City Recorder

Absent:

After the meeting had been duly called to order and after other matters not pertinent to this Resolution had been discussed, the City Recorder presented to the Council a Certificate of Compliance with Open Meeting Law with respect to this March 3, 2022, meeting, a copy of which is attached hereto as Exhibit A.

Thereupon, the following Resolution was introduced in writing, read in full and pursuant to motion duly made by Councilmember _____ and seconded by Councilmember _____ adopted by the following vote:

AYE:

NAY:

The resolution was later signed by the Mayor and recorded by the City Recorder in the official records of the City. The resolution is as follows:

RESOLUTION 2022-13

A RESOLUTION OF THE CITY COUNCIL (THE “COUNCIL”) OF THE CITY OF HURRICANE, UTAH (THE “CITY”), PROVIDING FOR THE CREATION OF SAND HOLLOW MESA PUBLIC INFRASTRUCTURE DISTRICT NO. 1 (THE “DISTRICT”) AS AN INDEPENDENT BODY CORPORATE AND POLITIC; AUTHORIZING AND APPROVING A GOVERNING DOCUMENT, AN INTERLOCAL AGREEMENT, AND A NOTICE OF BOUNDARY ACTION; DELEGATING TO CERTAIN OFFICERS OF THE CITY THE AUTHORITY TO EXECUTE AND APPROVE THE FINAL TERMS AND PROVISIONS OF THE GOVERNING DOCUMENT, THE INTERLOCAL AGREEMENT, THE NOTICE OF BOUNDARY ACTION AND ANY OTHER DOCUMENTS RELATED THERETO; APPROVING OF AN ANNEXATION AREA; AUTHORIZING THE DISTRICT TO PROVIDE SERVICES RELATING TO THE FINANCING AND CONSTRUCTION OF PUBLIC INFRASTRUCTURE WITHIN THE ANNEXATION AREA; APPOINTING A BOARD OF TRUSTEES OF THE DISTRICT; AUTHORIZING OTHER DOCUMENTS IN CONNECTION THEREWITH; AND RELATED MATTERS.

WHEREAS, a petition (the “Petition”) was filed with the City requesting adoption by resolution the approval of the creation of three separate public infrastructure districts pursuant to the Public Infrastructure District Act, Title 17D, Chapter 4, Utah Code Annotated 1953, as amended (the “PID Act”) and relevant portions of the Limited Purpose Local Government Entities - Local Districts, Title 17B (together with the PID Act, the “Act”) within the boundaries of the City and approve an annexation area (the “Annexation Area”) which any of the districts may annex into therein without further approval or hearings of the City or the Council, as further described in Governing Document Exhibits A and C (as hereinafter defined) for the purpose of financing public infrastructure costs; and

WHEREAS, pursuant to the terms of the Act, the City may create one or more public infrastructure districts by adoption of a resolution of the Council and with consent of 100% of all surface property owners proposed to be included in the District (the “Property Owners”); and

WHEREAS, the Petition, containing the consent of such Property Owners has been certified by the Recorder of the City pursuant to the Act and it is in the best interests of the Property Owners that the creation of the District be authorized in the manner and for the purposes hereinafter set forth; and

WHEREAS, the City prior to consideration of this Resolution, held a public hearing to receive input from the public regarding the creation of the District and the Property Owners have waived the 60-day protest period pursuant to Section 17D-4-201 of the PID Act; and

WHEREAS, it is necessary to authorize the creation of the District under and in compliance with the laws of the State of Utah and to authorize other actions in connection therewith; and

WHEREAS, the hearing on the Petition was held at the City Hall because there is no reasonable place to hold a public hearing within the District's boundaries, and the hearing at the City Hall was held as close to the applicable area as reasonably possible; and

WHEREAS, the City mailed or caused to be mailed prior notice of the hearing to each of the Property Owners in compliance with Section 17B-1-211(1)(b) of the Act; and

WHEREAS, none of the Property Owners submitted a withdrawal of consent to the creation of the District before the public hearing on the Petition; and

WHEREAS, each board member appointed under this Resolution has previously filed with the City a disclosure of business relationships in compliance with Section 17D-4-202(9) of the PID Act; and

WHEREAS, according to attestations filed with the City, each board member appointed under this Resolution is registered to vote at their primary residence and is further eligible to serve as a board member of the District under Section 17D-4-202(3)(c) of the PID Act because they are agents of property owners within the District boundaries (as further set forth in the Petition); and

WHEREAS, the governance of the District shall be in accordance with the PID Act and the terms of a governing document (the "Governing Document") attached hereto as Exhibit B and an Interlocal Agreement between the City and the District, attached to the Governing Document as Governing Document Exhibit D; and

WHEREAS, pursuant to the requirements of the Act, there shall be signed, authenticated, and submitted to the Office of the Lieutenant Governor of the State of Utah a Notice of Boundary Action attached hereto as Exhibit C (the "Boundary Notice") and a Final Entity Plat to be attached thereto as Boundary Notice Appendix B (or as shall be finalized in accordance with the boundaries approved hereunder) (the "Plat").

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL, AS FOLLOWS:

1. Terms defined in the foregoing recitals shall have the same meaning when used herein. All action heretofore taken (not inconsistent with the provisions of this Resolution) by the Council and by officers of the Council directed toward the creation and establishment of the District, are hereby ratified, approved and confirmed.

2. The District is hereby created as a separate entity from the City in accordance with the Governing Document and the Act. The boundaries of the District shall be as set forth in the Governing Document and the Plat.

3. Pursuant to the terms of the PID Act, the Council does hereby approve the annexation of any area within the Annexation Area Boundaries into the District without any further action of the Council or the City and further approves withdrawal of any area within the Initial District Boundaries (as defined in the Governing Document) or Annexation Area Boundaries from the District without any further action, hearings, or resolutions of the Council or the City, upon compliance with the terms of the PID Act and the Governing Document.

4. The Council does hereby authorize the District to provide services relating to the financing and construction of public infrastructure within the Annexation Area upon annexation thereof into the District without further request of the District to the City to provide such service under 17B-1-407, Utah Code Annotated 1953 or resolutions of the City under 17B-1-408, Utah Code Annotated 1953.

5. It is hereby found and determined by the Council that the creation of the District is appropriate to the general welfare, order and security of the City, and the organization of the District pursuant to the PID Act is hereby approved.

6. The Governing Document and the Interlocal Agreement in the form presented to this meeting and attached hereto as Exhibits B and Governing Document Exhibit D are hereby authorized and approved and the District shall be governed by the terms thereof and applicable law.

7. The District Board is hereby appointed as follows:

(a) Trustee 1 – Josh Romney for an initial six-year term.

(b) Trustee 2 – Anthon Stauffer for an initial six-year term.

(c) Trustee 3 – Nate Brockbank for an initial four-year term.

(d) Such terms shall commence on the date of issuance of a Certificate of Creation by the Office of the Lieutenant Governor of the State of Utah.

8. The Council does hereby authorize the Mayor or a Councilmember to execute the Boundary Notice in substantially the form attached as Exhibit C and such other documents as shall be required to finalize the actions contemplated herein on behalf of the Council for submission to the Office of the Lieutenant Governor of the State of Utah.

9. Prior to certification of the creation of the District by the Office of the Lieutenant Governor of the State of Utah, the Council does hereby authorize the Mayor, a Councilmember, or the City Manager to make any corrections, deletions, or additions to the Governing Document, the Interlocal Agreement, and the Boundary Notice or any other document herein authorized and approved (including, but not limited to, corrections to the property descriptions therein contained) which may be necessary to conform the same to the intent hereof, to correct errors or omissions therein, to complete the same, to remove ambiguities therefrom, or to conform the same to other provisions of said instruments, to the provisions of this Resolution or any resolution adopted by the Council or the provisions of the laws of the State of Utah or the United States (provided that the debt and mill levy limitations established therein may not be modified pursuant to this provision).

10. The Board of Trustees of the District (the “District Board”) is hereby authorized and directed to record such Governing Document with the recorder of Washington County within 30 days of the issuance of a Certificate of Creation by the Office of the Lieutenant Governor of the State of Utah.

11. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

12. All acts, orders and resolutions, and parts thereof in conflict with this Resolution be, and the same are hereby, rescinded.

13. This resolution shall take effect immediately.

PASSED AND ADOPTED by the City Council of the City of Hurricane, Utah, this March 3, 2022.

CITY OF HURRICANE, UTAH

By: _____
Mayor

ATTEST:

By: _____
City Recorder

(Here follows other business not pertinent to the above.)

Pursuant to motion duly made and seconded, the meeting of the Council of the City adjourned.

By: _____
Mayor

ATTEST:

By: _____
City Recorder

STATE OF UTAH)
 : ss.
COUNTY OF WASHINGTON)

I, Cindy Beteag, the undersigned duly qualified and acting City Recorder of the City of Hurricane, Utah (“the City”), do hereby certify as follows:

The foregoing pages are a true, correct, and complete copy of the record of proceedings of the City Council (the “Council”), had and taken at a lawful meeting of the Council on March 3, 2022, commencing at the hour of 6:00 p.m., as recorded in the regular official book of the proceedings of the Council kept in my office, and said proceedings were duly had and taken as therein shown, and the meeting therein shown was duly held, and the persons therein were present at said meeting as therein shown.

All members of the Council were duly notified of said meeting, pursuant to law.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City, this March 3, 2022.

By: _____
City Recorder

EXHIBIT A

CERTIFICATE OF COMPLIANCE WITH OPEN MEETING LAW

I, Cindy Beteag, the undersigned City Recorder of the City of Hurricane, Utah (the “City”), do hereby certify that I gave written public notice of the agenda, date, time and place of the regular meeting held by the Council (the “Council”) on March 3, 2022, not less than 24 hours in advance of the meeting. The public notice was given in compliance with the requirements of the Utah Open and Public Meetings Act, Section 52-4-202, Utah Code Annotated 1953, as amended, by:

- (a) causing a Notice, in the form attached hereto as Schedule 1, to be posted at the City’s principal offices at least twenty-four (24) hours prior to the convening of the meeting, said Notice having continuously remained so posted and available for public inspection until the completion of the meeting; and
- (b) causing a copy of such Notice, in the form attached hereto as Schedule 1, to be published on the Utah Public Notice Website (<http://pmn.utah.gov>) at least twenty-four (24) hours prior to the convening of the meeting.

In addition, the Notice of 2022 Annual Meeting Schedule for the Council (attached hereto as Schedule 2) was given specifying the date, time and place of the regular meetings of the Council of the City to be held during the year, by causing said Notice to be (i) posted on _____, 20____, at the principal office of the City, (ii) provided to at least one newspaper of general circulation within the geographic jurisdiction of the City on _____, 20____ and (iii) published on the Utah Public Notice Website (<http://pmn.utah.gov>) during the current calendar year.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature this March 3, 2022.

By: _____
City Recorder

SCHEDULE 1

NOTICE OF MEETING AND AGENDA

SCHEDULE 2

NOTICE OF ANNUAL MEETING SCHEDULE

EXHIBIT B
GOVERNING DOCUMENT

EXHIBIT C

NOTICE OF BOUNDARY ACTION

(District No. 1)

NOTICE IS HEREBY GIVEN that the City Council of the City of Hurricane, Utah (the “Council”), acting in its capacity as the creating entity for the Sand Hollow Mesa Public Infrastructure District No. 1 (the “District”), at a regular meeting of the Council, duly convened pursuant to notice, on March 3, 2022 adopted a *Resolution Providing for the Creation of a Public Infrastructure District*, a true and correct copy of which is attached as EXHIBIT “A” hereto and incorporated by this reference herein (the “Creation Resolution”).

A copy of the Final Local Entity Plat satisfying the applicable legal requirements as set forth in Utah Code Ann. §17-23-20, approved as a final local entity plat by the Surveyor of Washington County, Utah, is attached as EXHIBIT “B” hereto and incorporated by this reference. The Council hereby certifies that all requirements applicable to the creation of the District, as more particularly described in the Creation Resolution, have been met. The District is not anticipated to result in the employment of personnel.

WHEREFORE, the Council hereby respectfully requests the issuance of a Certificate of Incorporation pursuant to and in conformance with the provisions of Utah Code Ann. §17B-1-215.

CITY COUNCIL, THE CITY OF HURRICANE, UTAH,
acting in its capacity as the creating authority for the
Sand Hollow Mesa Public Infrastructure District No. 1,

By: _____
 AUTHORIZED
 REPRESENTATIVE

STATE OF UTAH)
)
) :SS.
)
COUNTY OF WASHINGTON)

SUBSCRIBED AND SWORN to before me this ____ day of _____

NOTARY PUBLIC

EXHIBIT “A” TO NOTICE OF BOUNDARY ACTION

Copy of the Creation Resolution

EXHIBIT “B” TO NOTICE OF BOUNDARY ACTION

Final Local Entity Plat

**GOVERNING DOCUMENT
FOR
SAND HOLLOW MESA PUBLIC INFRASTRUCTURE DISTRICT NO. 1
HURRICANE CITY, UTAH**

March 3, 2022

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LIST OF EXHIBITS

EXHIBIT A	Initial District Boundary Map, Annexation Area Boundary Map, Vicinity Map, Legal Descriptions
EXHIBIT B	Interlocal Agreement between the District and Hurricane City

I. INTRODUCTION

A. Purpose and Intent.

The District is an independent unit of local government, separate and distinct from the City, and, except as may otherwise be provided for by State or local law or this Governing Document, its activities are subject to review by the City only insofar as they may deviate in a material matter from the requirements of the Governing Document. It is intended that the District will provide a part or all of the Public Improvements for the use and benefit of all anticipated inhabitants and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements. The District is not being created to provide any ongoing operations and maintenance services.

B. Need for the District.

There are currently no other governmental entities, including the City, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction installation, relocation, redevelopment, and financing of the Public Improvements needed for the Project. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.

C. Objective of the City Regarding District's Governing Document.

The City's objective in approving the Governing Document for the District is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by the District. All Debt is expected to be repaid by taxes imposed and collected for no longer than the Maximum Debt Mill Levy Imposition Term and at a tax mill levy no higher than the Maximum Debt Mill Levy for all commercial and residential properties, and/or repaid by Assessments. Debt which is issued within these parameters and, as further described in the Financial Plan, will insulate property owners from excessive tax burdens to support the servicing of the Debt and will result in a timely and reasonable discharge of the Debt.

This Governing Document is intended to establish a limited purpose for the District and explicit financial constraints that are not to be violated under any circumstances. The primary purpose is to provide for the Public Improvements associated with development and regional needs. Although the District has authority to directly provide public improvements, the District also has the authority to pledge tax revenues to an interlocal entity that provides public improvements.

It is the intent of the District to dissolve upon payment or defeasance of all Debt incurred or upon a determination that adequate provision has been made for the payment of all Debt.

The District shall be authorized to finance the Public Improvements that can be funded from Debt to be repaid from Assessments or from tax revenues collected from a mill levy

which shall not exceed the Maximum Debt Mill Levy on taxable properties and which shall not exceed the Maximum Debt Mill Levy Imposition Term on taxable properties. It is the intent of this Governing Document to assure to the extent possible that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy in amount and that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy Imposition Term in duration even under bankruptcy or other unusual situations. Generally, the cost of Public Improvements that cannot be funded within these parameters are not costs to be paid by the District.

II. DEFINITIONS

In this Governing Document, the following terms shall have the meanings indicated below, unless the context hereof clearly requires otherwise:

Annexation Area Boundaries: means the boundaries of the area described in the Annexation Area Boundary Map which have been approved by the City for annexation or withdrawal from or into one of the Districts upon the meeting of certain requirements.

Annexation Area Boundary Map: means the map depicting the Annexation Area Boundaries attached hereto as **Exhibit A**, describing the property proposed for annexation within the District.

Approved Development Plan: means a Preliminary Development Plan or other process established by the City for identifying, among other things, Public Improvements necessary for facilitating development for property within the District Area as approved by the City pursuant to the City Code and as amended pursuant to the City Code from time to time. For purposes of this Governing Document, the Master Plan / PDO Concept Submittal dated January 14, 2021, as approved by the City shall constitute an Approved Development Plan.

Assessment: means assessments levied in an assessment area created within the District.

Board: means the board of trustees of the District.

Bond, Bonds or Debt: means bonds or other obligations, including loans of any property owner, for the payment of which the District has promised to impose an ad valorem property tax mill levy, and/or collect Assessments.

City: means Hurricane City, Utah.

City Code: means the City Code of Hurricane City, Utah.

City Council: means the City Council of Hurricane City, Utah.

District: means the Sand Hollow Mesa Public Infrastructure District No. 1.

District Area: means the property within the Initial District Boundary Map and the Annexation Area Boundary Map.

Districts: means collectively, the District, Sand Hollow Mesa Public Infrastructure District No. 2, and Sand Hollow Mesa Public Infrastructure District No. 3, contemplated to be created contemporaneously with one another.

End User: means any owner, or tenant of any owner, of any taxable improvement within the District, who is intended to become burdened by the imposition of ad valorem property taxes subject to the Maximum Debt Mill Levy. By way of illustration, a resident homeowner, renter, commercial property owner, or commercial tenant is an End User. The business entity that constructs homes or commercial structures is not an End User.

Fees: means any fee imposed by the District for administrative services provided by the District.

Financial Plan: means the Financial Plan described in Section VIII which describes (i) the potential means whereby the Public Improvements may be financed; (ii) how the Debt is expected to be incurred; and (iii) the estimated operating revenue derived from property taxes for the first budget year.

General Obligation Debt: means a Debt that is directly payable from and secured by ad valorem property taxes that are levied by the District and does not include Limited Tax Debt.

Governing Document: means this Governing Document for the District approved by the City Council.

Governing Document Amendment: means an amendment to the Governing Document approved by the City Council in accordance with the City's ordinance and the applicable state law and approved by the Board in accordance with applicable state law.

Initial District Boundaries: means the boundaries of the area described in the Initial District Boundary Map.

Initial District Boundary Map: means the map depicting the Initial District Boundaries attached hereto as **Exhibit A**, describing the District's initial boundaries.

Limited Tax Debt: means a debt that is directly payable from and secured by ad valorem property taxes that are levied by the District which may not exceed the Maximum Debt Mill Levy.

Local District Act: means Title 17B of the Utah Code, as amended from time to time.

Maximum Debt Mill Levy: means the maximum mill levy the District is permitted to impose for payment of Debt as set forth in Section VIII.C below.

Maximum Debt Mill Levy Imposition Term: means the maximum term for imposition of a mill levy for any given series of bonds as set forth in Section VIII.D below.

Municipal Advisor: means a consultant that: (i) advises Utah governmental entities on matters relating to the issuance of securities by Utah governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (ii) shall be an individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place; and (iii) is not an officer or employee of the District.

Project: means the development or property commonly referred to as the Sand Hollow Mesa Project.

PID Act: means Title 17D, Chapter 4 of the Utah Code, as amended from time to time and any successor statute thereto.

Public Improvements: means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as generally described in the Local District Act, except as specifically limited in Section V below to serve the future taxpayers and inhabitants of the District Area as determined by the Board.

Regional Improvements: means Public Improvements and facilities that benefit the District Area and which are to be financed pursuant to Section VII below.

State: means the State of Utah.

Taxable Property: means real or personal property within the District Area subject to ad valorem taxes imposed by the District.

Trustee: means a member of the Board.

Utah Code: means the Utah Code Annotated 1953, as amended.

III. BOUNDARIES

The area of the Initial District Boundaries includes approximately three hundred twenty-four (324.285) acres and the total area proposed to be included in the Annexation Area Boundaries is approximately nine hundred twenty-nine (929.217) acres and includes all property within the District as well as an additional approximately six hundred four (604.832) acres. Maps of the Initial District Boundaries and Annexation Area Boundaries, a vicinity map, and legal descriptions of the Initial District Boundaries and the Annexation Area Boundaries are attached hereto together as **Exhibit A**. It is anticipated that the District's boundaries may change from time to time as it undergoes annexations and withdrawals pursuant to Section 17B-4-201, Utah Code, subject to Article V below.

IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION

The District Area consists of approximately nine hundred twenty-nine (929.217) acres of mostly undeveloped land. The current assessed valuation of the District Area at build out, is

expected to be sufficient to reasonably discharge the Debt under the Financial Plan. The population of the District Area at build-out is estimated to be approximately 9,000 people.

Approval of this Governing Document by the City does not imply approval of the development of a specific area within the District, nor does it imply approval of the number of residential units or the total site/floor area of commercial or industrial buildings identified in this Governing Document or any of the exhibits attached thereto, unless the same is contained within an Approved Development Plan.

V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES

A. Powers of the District and Governing Document Amendment.

The District shall have the power and authority to provide the Public Improvements within and without the boundaries of the District as such power and authority is described in the Local District Act, and other applicable statutes, common law and the Constitution, subject to the limitations set forth herein.

1. Improvements. The District shall have authority to provide for the planning, design, acquisition, construction, installation, and dedication to the City of the Public Improvements within and without the boundaries of the District. Prior to or contemporaneous with providing the foregoing for any other Public Improvements, the District must have arranged for the financing of the following improvements (the “Pre-Requisite Improvements”), as generally depicted in or required by the Approved Development Plan:

(a) 9.2 miles of public trails, trailheads, parking and restrooms with drinking facilities. The main trails connecting the Project to adjacent properties and trail systems would be 12' wide.

(b) A UDOT approved and designed interchange including two trails, one 12' and one 5', and two separate bike lanes.

(c) Dedications and improvements related to public utilities within the property.

(d) Dedication of land for a public power substation.

(e) Dedication and improvement of city parks and open spaces of at least 72 acres of the 279 acres of open space planned for the project. The 72 acres will be of developable land, and 51 of the 72 acres will be improved as active or programmable park spaces (the remaining approximately 21 acres would be passive park space). Conditioned on availability of required permits, one of the city parks will include a public fishing pond (we would need the city to help coordinate permitting approval of the pond). Other improvements to programmable park space will be as proposed by developer and approved by City staff.

(f) \$4,000,000 to be allocated to the construction by the City of a public safety building to house fire and/or police services located within the Project.

(g) Dedications and improvements required for a secondary irrigation system that would meet Governor Cox's proposed water conservation plan to utilize as little water as possible in public spaces throughout the property.

(h) All master planned public roadways depicted on the City's most recent master road plan, including sidewalks and curb/gutter as required by City standards.

The Pre-Requisite Improvements may be funded either through issuance of bonds or other sources of funds (such as developer contributions), but must be fully funded before other non-Pre-Requisite Improvements are financed through the District.

Any impact fee reimbursements or credits which become available due to the financing of public improvements by the Districts shall be for the benefit of the Districts and not any developer.

2. Operations and Maintenance Limitation. The purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The District shall dedicate the Public Improvements to the City or other appropriate public entity or owners association in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. Trails which are interconnected with a city or regional trail system shall be open to the public free of charge and on the same basis as residents and owners of taxable property within the District.

3. Improvements Limitation. Notwithstanding the provisions of Section V.A.1 and 2 above, without written authorization of the City, the District shall not be authorized to finance the costs of any improvements or facilities which are to be ultimately owned by one of the Districts.

4. Construction Standards Limitation. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

5. Procurement. The District shall be subject to the Utah Procurement Code, Title 63G, Chapter 6a.

6. Privately Placed Debt Limitation. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District's Governing Document.

We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

7. Annexation and Withdrawal.

(a) The District shall not include within any of its boundaries any property outside the District Area without the prior written consent of the City. The City, by resolution and this Governing Document, has consented to the annexation of any area within the Annexation Area Boundaries into the District. Such area may only be annexed upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be annexed and the passage of a resolution of the Board approving such annexation.

(b) The City, by resolution and this Governing Document, has consented to the withdrawal of any area within the District Boundaries from the District. Such area may only be withdrawn upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be withdrawn and the passage of a resolution of the Board approving such annexation.

(c) Any annexation or withdrawal shall be in accordance with the requirements of the PID Act.

(d) Upon any annexation or withdrawal, the District shall provide the City a description of the revised District Boundaries.

(e) Annexation or withdrawal of any area in accordance with V.A.6(a) and (b) shall not constitute an amendment of this Governing Document.

8. Overlap Limitation. The District shall not impose aggregate mill levy for payment of Debt that exceeds the Maximum Debt Mill Levy of the District. The District shall not consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the District unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Debt Mill Levy of the District, or unless such other district is approved by the City.

9. Initial Debt Limitation. On or before the effective date of approval by the City of an Approved Development Plan, the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (c) impose and collect any Assessments used for the purpose of repayment of Debt.

10. Total Debt Issuance Limitation. The Districts shall not issue Debt in excess of an aggregate amount of One Hundred Fifty Million Dollars (\$150,000,000). This amount excludes any portion of bonds issued to refund a prior issuance of debt by any of the Districts. In addition, the Total Debt Issuance Limitation does not apply to the District's pledge of its property tax revenues to the Debt of one of the other Districts. In the event two or more Districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each District.

11. Bankruptcy Limitation. All of the limitations contained in this Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term and the Fees have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(5), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the "political or governmental powers" reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the "regulatory or electoral approval necessary under applicable nonbankruptcy law" as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

12. Governing Document Amendment Requirement.

(a) This Governing Document has been designed with sufficient flexibility to enable the District to provide required facilities under evolving circumstances without the need for numerous amendments. Actions of the District which violate the limitations set forth in V.A.1-9 above or in VIII.B-G. shall be deemed to be material modifications to this Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

(b) Subject to the limitations and exceptions contained herein, this Governing Document may be amended by passage of a resolutions of the City and the District approving such amendment.

B. Preliminary Engineering Survey.

The District shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, maintenance, and financing of the Public Improvements within and without the boundaries of the District, to be more specifically defined in an Approved Development Plan. An estimate of the costs of the Public Improvements which

may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, maintained or financed was prepared based upon a preliminary engineering survey and estimates derived from the zoning on the property in the District Area and is approximately One Hundred Twenty-Five Million Dollars (\$125,000,000).

All of the Public Improvements will be designed in such a way as to assure that the Public Improvements standards will be compatible with those of the City and/or any other applicable public entity and shall be in accordance with the requirements of the Approved Development Plan. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

VI. THE BOARD OF TRUSTEES

A. Board Composition. The Board shall be composed of 3 Trustees who shall be appointed by the City Council pursuant to the PID Act. Trustees 1, 2, and 3 shall initially be at large. Trustee terms shall be staggered with initial terms as follows: Trustee 2 shall serve an initial term of 4 years; Trustees 1 and 3 shall serve an initial term of 6 years. All terms shall commence on the date of issuance of a certificate of creation by the Office of the Lieutenant Governor of the State of Utah. In accordance with the PID Act, appointed Trustees shall not be required to be residents of the District.

B. Transition to Elected Board. Respective board seats shall transition from appointed to elected seats according to the following milestones:

1. Trustee 1. Trustee 1 shall transition to an elected seat upon 2,500 registered voters residing within the District.

2. Trustee 2. Trustee 2 shall transition to an elected seat upon 5,000 registered voters residing within the District.

3. Trustee 3. Trustee 3 shall transition to an elected seat upon 7,500 registered voters residing within the District.

Notwithstanding the foregoing, any board seats which have not yet transitioned to an elected seat shall transition after twelve (12) years have passed from the date of issuance of a certificate of creation for the District. No transition pursuant to this Section shall become effective until the next scheduled regular election of the District. Registered voters within this Section shall mean voters whose “principal place of residence,” as that term is defined under Utah Code 20A-2-105(1)(a), is within the District.

C. Reelection and Reappointment. Upon the expiration of a Trustee’s respective term, any seat which has not transitioned to an elected seat shall be appointed by the City Council pursuant to the PID Act and any seat which has transitioned to an elected seat shall be elected pursuant to an election held for such purpose. In the event that no qualified candidate files to be considered for appointment or files a declaration of candidacy for a seat, such seat may be filled in accordance with the Local District Act.

D. Vacancy. Any vacancy on the Board shall be filled pursuant to the Local District Act.

E. Compensation. Only Trustees who are residents of the District may be compensated for services as Trustee. Such compensation shall be in accordance with State Law.

F. Conflicts of Interest. Trustees shall disclose all conflicts of interest. Any Trustee who discloses such conflicts in accordance with 17D-4-202 and 67-16-9, Utah Code, shall be entitled to vote on such matters.

VII. REGIONAL IMPROVEMENTS

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements. Regional Improvements may include, and may not be limited to, regional and connector roads; water, sewer and other utilities installed in said roads; an interchange at 3700 South Street and the Southern Parkway, and park and trail improvements.

Nothing herein shall prevent the City from financing and completing, or authorizing the finance and completion by another district, of other local or regional improvements not listed above, or approving other mill levies to facilitate the financing of the same.

VIII. FINANCIAL PLAN

A. General.

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment of the Public Improvements from its revenues and by and through the proceeds of Debt to be issued by the District. In addition, the District shall be permitted to finance the prepayment of impact fees for the Project. The Financial Plan for the District shall be to issue such Debt as the District can reasonably pay within the Maximum Debt Mill Levy Imposition Term from revenues derived from the Maximum Debt Mill Levy, Assessments and other legally available revenues. The total Debt that the Districts shall be permitted to issue shall not exceed One Hundred Fifty Million Dollars (\$150,000,000) and shall be permitted to be issued on a schedule and in such year or years as the Districts determine shall meet the needs of the Financial Plan referenced above and phased to serve development as it occurs. Any portion of bonds issued to refund a prior issuance of debt by the District shall not count against the permitted total Debt. The Total Debt Issuance Limitation shall not apply to the District's pledge of its property tax revenues to the Debt of one of the other Districts. In the event two or more Districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each District. All bonds and other Debt issued by the District may be payable from any and all legally available revenues of the District, including general ad valorem taxes to be imposed upon all Taxable Property within the District and Assessments. The District will also rely upon various other revenue sources authorized by law. These will include the power to assess

Fees, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time.

B. Maximum Interest Rate and Maximum Underwriting Discount.

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. In the event of a default, the proposed maximum interest rate on any Debt is not expected to exceed fifteen percent (15%). The proposed maximum underwriting discount will be five percent (5%). Debt, when issued, will comply with all relevant requirements of this Governing Document, State law and Federal law as then applicable to the issuance of public securities.

C. Maximum Debt Mill Levy.

(a) The “Maximum Debt Mill Levy” shall be the maximum mill levy the District is permitted to impose in upon the taxable property within the District for payment of Limited Tax Debt, and shall be 0.0045 per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code. Such Maximum Debt Mill Levy may also be used to pay administrative expenses of the District. Further, the Districts may not impose mill levies which in aggregate exceed 0.0045 per dollar of taxable value of taxable property in the District Area; provided that such levies shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code.

(b) Such Maximum Debt Mill Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202, Utah Code.

(c) It is anticipated that one or more of the Districts may overlap with a portion of the Bench Lake Public Improvement District (“BLPID”) approved by the City, given that the improvements proposed to be financed by the Districts may also benefit part of the area of the BLPID. The BLPID is forbidden from levying a maximum mill levy in the overlap area which exceeds 0.003, which is the Maximum Debt Mill Levy of the BLPID. The aggregate mill levy of the Districts and the BLPID together shall not in any event be permitted to exceed the Maximum Debt Mill Levy of the District, on any property located within any of the Districts and the BLPID.

D. Maximum Debt Mill Levy Imposition Term.

Each bond issued by the District shall mature within Thirty-One (31) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of a series of bonds after a period exceeding forty (40) years from the first date of imposition of the mill levy for such bond (the “Maximum Debt Mill Levy Imposition Term”).

E. Debt Repayment Sources.

The District may impose a mill levy on taxable property within its boundaries as a primary source of revenue for repayment of debt service. The District may also rely upon various other revenue sources authorized by law. At the District’s discretion, these may include the power to assess Assessments, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time. Except as described in Section VIII.C(a), the debt service

mill levy in the District shall not exceed the Maximum Debt Mill Levy or, the Maximum Debt Mill Levy Imposition Term, except for repayment of General Obligation Debt.

The District shall not be permitted to charge an End User the costs of any portion of a Public Improvement for which such End User has already paid or is presently obligated to pay through any combination of mill levy, Assessment, or impact fee. This provision shall not prohibit the division of costs between mill levies, Assessments, or impact fees, but is intended to prevent double taxation of End Users for the costs of Public Improvements.

F. Debt Instrument Disclosure Requirement.

In the text of each Bond and any other instrument representing and constituting Debt, the District shall set forth a statement in substantially the following form:

By acceptance of this instrument, the owner of this Bond agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this Bond contained herein, in the resolution of the District authorizing the issuance of this Bond and in the Governing Document for creation of the District.

Similar language describing the limitations in respect of the payment of the principal of and interest on Debt set forth in this Governing Document shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a developer of property within the boundaries of the District.

G. Security for Debt.

The District shall not pledge any revenue or property of the City as security for the indebtedness set forth in this Governing Document. Approval of this Governing Document shall not be construed as a guarantee by the City of payment of any of the District's obligations; nor shall anything in the Governing Document be construed so as to create any responsibility or liability on the part of the City in the event of default by the District in the payment of any such obligation.

H. District's Operating Costs.

The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the District's organization and initial operations, are anticipated to be Seventy-five Thousand Dollars (\$75,000), which will be eligible for reimbursement from Debt proceeds.

In addition to the capital costs of the Public Improvements, the District will require operating funds for administration and to plan and cause the Public Improvements to be constructed. The first year's administrative operating budget is estimated to be approximately Seventy-five Thousand Dollars (\$75,000) which is anticipated to be borne by developer(s) until such time a reimbursement can be derived from property taxes and other revenues, pursuant to a reimbursement agreement between the District and developers.

I. Bond and Disclosure Counsel.

It is the intent of the City that the District shall use competent and nationally recognized bond and disclosure counsel and Municipal Advisor with respect to District Bonds to ensure proper issuance and compliance with this Governing Document. The District has agreed to utilize the City's counsel, Gilmore & Bell, P.C., as bond and disclosure counsel and Zions Public Finance, Inc., as Municipal Advisor with respect to District Bonds as permitted by law. The foregoing requirement may be waived by vote of the City Council.

IX. ANNUAL REPORT

A. General.

The District shall be responsible for submitting an annual report to the City Manager's Office no later than 180 days following the end of the District's fiscal year.

B. Reporting of Significant Events.

The annual report shall include information as to any of the following:

1. Boundary changes made or proposed to the District's boundary as of December 31 of the prior year.
2. List of current interlocal agreements, if changed (to be delivered to the City upon request);
3. Names and terms of Board members and officers and progress towards milestones required for transition to elected Board;
4. District office contact information;
5. Rules and regulations of the District regarding bidding, conflict of interest, contracting, and other governance matters, if changed;
6. A summary of any litigation which involves the District Public Improvements as of the last day of the prior fiscal year;
7. Status of the District's construction of the Public Improvements as of last day of the prior fiscal year and listing all facilities and improvements constructed by the District that have been dedicated to and accepted by the City as of the last day of the prior fiscal year;
8. A table summarizing total debt authorized and total debt issued by the District as well as any presently planned debt issuances;
9. Official statements of current outstanding bonded indebtedness, if not previously provided to the City;

10. Current year budget including a description of the Public Improvements to be constructed in such year;

11. The District's financial statements, for the previous fiscal year, such statements shall be audited if required pursuant to State law or relevant bond documents (such statements shall be submitted within 30 days of completion if completed after 180 days following the end of the fiscal year);

12. Notice of any uncured events of default by the District, which continue beyond a 90 day period, under any Debt instrument; and

13. Any inability of the District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a 90 day period.

X. DISSOLUTION

Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of its outstanding indebtedness and other financial obligations as required pursuant to State statutes.

XI. DISCLOSURE TO PURCHASERS

Within thirty (30) days of the City adopting a resolution creating the District, the Board shall record a notice with the recorder of Washington County. Such notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the District; and (d) if applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion. Such notice shall further be filed with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, homebuilders, commercial developers, and commercial lessors, as applicable, disclose the following information to initial resident homeowners, renters, commercial property owners, and/or commercial tenants:

- (1) All of the information in the first paragraph of this XI;
- (2) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, **for every \$100,000 of taxable value**, there would be an **additional annual property tax of \$450** for the duration of the District's Bonds.”
- (3) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

XII. INTERLOCAL AGREEMENT

The form of the Interlocal Agreement required by the City Code, relating to the limitations imposed on the District's activities, is attached hereto as **Exhibit B**. The District shall approve the Interlocal Agreement in the form attached as **Exhibit B** at its first Board meeting after its organization. Failure of the District to execute the Interlocal Agreement as required herein shall constitute a material modification and shall require a Governing Document Amendment. The City Council shall approve the Interlocal Agreement in the form attached as **Exhibit B** at the public hearing approving the Governing Document.

EXHIBIT A

Initial District Boundary Map

Annexation Area Boundary Map

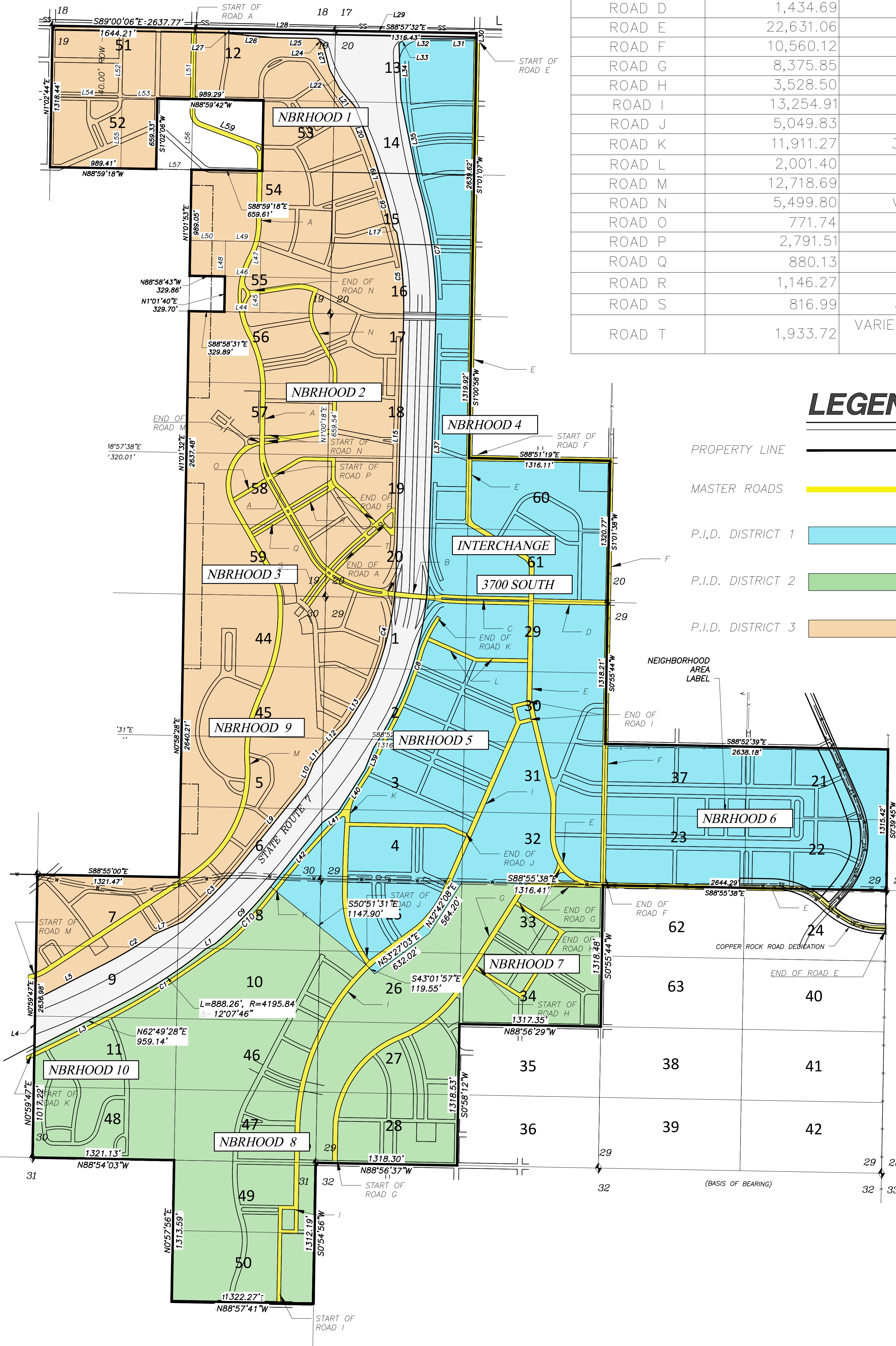
Vicinity Map

Legal Descriptions

(see following pages)

SAND HOLLOW MESA P.I.D. MAP

NEIGHBORHOOD ROADS		
ROAD	LENGTH	WIDTH
ROAD A	12,685.35	VARIES 30' TO 45' (TOTAL OF 75' IN ONE SECTION WITH DIVIDER)
ROAD B	965.73	45'
ROAD C	1,875.40	30' (TOTAL OF 75' WITH DIVIDER)
ROAD D	1,434.69	45'
ROAD E	22,631.06	VARIES 45' TO 50'
ROAD F	10,560.12	VARIES 45.22' TO 47.40' TO 50'
ROAD G	8,375.85	45'
ROAD H	3,528.50	35'
ROAD I	13,254.91	VARIES 35' TO 45'
ROAD J	5,049.83	VARIES 35' TO 45'
ROAD K	11,911.27	35' (ROAD CONNECTING TO J IS 45')
ROAD L	2,001.40	35'
ROAD M	12,718.69	VARIES 27.92' TO 45'
ROAD N	5,499.80	VARIES 23.21' TO 25' TO 35' TO 45'
ROAD O	771.74	35'
ROAD P	2,791.51	35'
ROAD Q	880.13	30' (TOTAL OF 85' WITH DIVIDER)
ROAD R	1,146.27	30' (TOTAL OF 85' WITH DIVIDER)
ROAD S	816.99	30' (TOTAL OF 82.61' WITH DIVIDER)
ROAD T	1,933.72	VARIES 19.12 TO 30' TO 35' (TOTAL OF 85' IN ONE SECTION WITH DIVIDER)



LEGEND

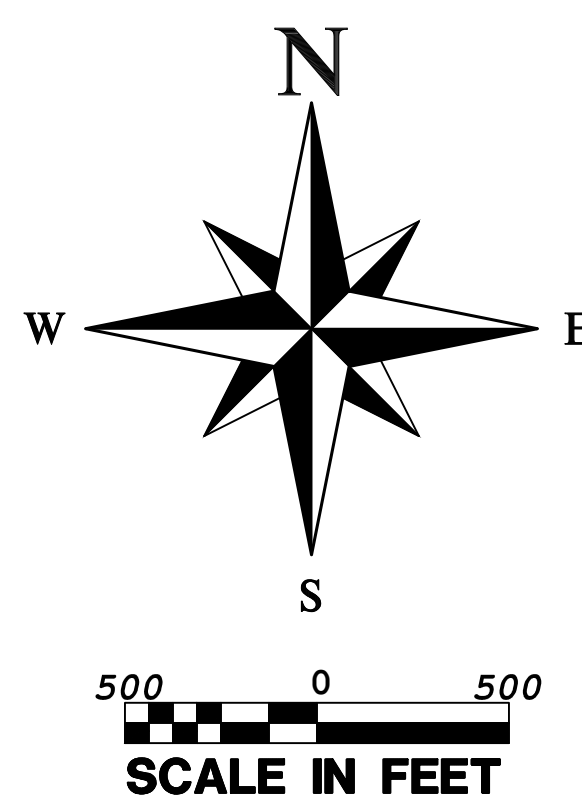
PROPERTY LINE

MASTER ROADS

P.I.D. DISTRICT 1

P.I.D. DISTRICT 2

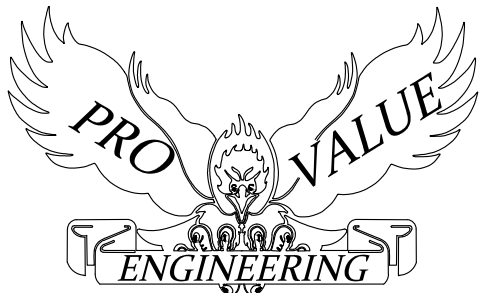
P.I.D. DISTRICT 3



SAND HOLLOW MESA P.I.D. DISTRICT 1 LEGAL DESCRIPTION
BEGINNING AT THE EAST QUARTER CORNER OF SECTION 29, TOWNSHIP SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN; THENCE N88°55'38"W 2644.29 FEET; THENCE N88°55'38"W 1316.41 FEET; THENCE S32°42'08"W 564.20 FEET; THENCE S53°27'03"W 632.02 FEET; THENCE N43°01'57"W 119.55 FEET; THENCE N50°51'31"W 1147.90 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY 7; THENCE ALONG SAID LINE THE FOLLOWING TWELVE (12) COURSES:
N38°56'24"E 771.59 FEET; THENCE N54°53'00"E 182.00 FEET; THENCE N32°26'53"E 459.99 FEET; THENCE N21°43'12"E 217.45 FEET; THENCE N89°28'28"E 335.12 FEET; THENCE S01°01'07"W 2588.88 FEET; THENCE N56°54'13"W THROUGH A CENTRAL ANGLE OF 31°23'56" A DISTANCE OF 1726.25 FEET; THENCE N01°41'50"E 2354.30 FEET; THENCE NORTHERLY ALONG THE ARC OF A 4150.00 FOOT RADIUS CURVE TO THE LEFT (LONG CHORD BEARS: N07°24'37"W 1313.79 FEET); CENTER POINT LIES N88°18'10"W THROUGH A CENTRAL ANGLE OF 18°12'54" A DISTANCE OF 1319.34 FEET; THENCE N11°26'26"W 783.27 FEET; THENCE N01°59'36"W 516.62 FEET; THENCE N53°53'15"E 78.08 FEET; THENCE S88°57'52"E 324.73 FEET; THENCE N89°28'28"E 335.12 FEET; THENCE S01°01'07"W 2588.88 FEET; THENCE N50°54'40"W 1320.29 FEET; THENCE S88°52'15"E 1313.68 FEET; THENCE S01°01'38"W 1320.77 FEET; THENCE S00°55'44"W 1318.21 FEET; THENCE S88°52'39"E 2638.18 FEET; THENCE S00°39'45"W 1315.42 FEET TO THE POINT OF BEGINNING. AREA CONTAINS 14,130,219 SQUARE FEET OR 324.385 ACRES.

SAND HOLLOW MESA P.I.D. DISTRICT 2 LEGAL DESCRIPTION
BEGINNING AT THE CENTER QUARTER CORNER OF SECTION 29, TOWNSHIP SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN; THENCE S00°55'44"W 1318.48 FEET; THENCE N88°56'29"W 1317.35 FEET; THENCE S00°58'12"W 1318.53 FEET; THENCE N88°56'37"W 1318.30 FEET; THENCE S00°54'56"W 1312.19 FEET; THENCE N88°57'41"W 1322.27 FEET; THENCE N00°59'47"E 1017.22 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY 7; THENCE ALONG SAID LINE THE FOLLOWING FOUR (4) COURSES: N62°49'28"E 959.14 FEET; THENCE N89°28'28"E 335.12 FEET; THENCE S01°01'07"W 2588.88 FEET; THENCE N56°54'13"W THROUGH A CENTRAL ANGLE OF 31°23'56" A DISTANCE OF 1726.25 FEET; THENCE N01°41'50"E 2354.30 FEET; THENCE NORTHERLY ALONG THE ARC OF A 4150.00 FOOT RADIUS CURVE TO THE LEFT (LONG CHORD BEARS: N44°10'55"E 738.36 FEET); CENTER POINT LIES N40°46'31"W THROUGH A CENTRAL ANGLE OF 10°05'08" A DISTANCE OF 739.32 FEET; THENCE S00°51'31"E 1147.90 FEET; THENCE S43°01'57"E 119.55 FEET; THENCE N53°27'03"E 632.02 FEET; THENCE N32°42'08"E 564.20 FEET; THENCE S88°55'38"E 1316.41 FEET TO THE POINT OF BEGINNING. AREA CONTAINS 10,951,391 SQUARE FEET OR 251.409 ACRES.

SAND HOLLOW MESA P.I.D. DISTRICT 3 LEGAL DESCRIPTION
BEGINNING AT THE NORTH QUARTER CORNER OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN; THENCE S89°00'06"E ALONG THE NORTH SECTION LINE, 1644.21 FEET TO THE WEST RIGHT-OF-WAY LINE OF HIGHWAY 7; THENCE ALONG SAID LINE THE FOLLOWING TWENTY THREE (23) COURSES: THENCE S00°59'31"W 45.11 FEET; THENCE S84°58'13"E 426.06 FEET; THENCE S89°00'29"E 400.00 FEET; THENCE S48°03'50"E 71.88 FEET; THENCE S14°16'38"E 250.20 FEET; THENCE S27°52'40"E 203.96 FEET; THENCE S40°47'44"E 219.32 FEET; THENCE S20°46'56"E 476.29 FEET; THENCE S16°34'05"E 351.50 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 3825.00 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS: S13°53'35"E 357.03 FEET); CENTER POINT LIES S73°25'55"W THROUGH A CENTRAL ANGLE OF 05°21'00" A DISTANCE OF 357.15 FEET; THENCE S38°23'13"E 54.09 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 3858.80 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (LONG CHORD BEARS: S04°24'08"E 818.17 FEET); CENTER POINT LIES S79°30'44"W THROUGH A CENTRAL ANGLE OF 12°10'16" A DISTANCE OF 819.74 FEET; THENCE S01°41'50"W 2354.29 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 2850.52 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS: S13°05'55"W 1126.85 FEET); CENTER POINT LIES N88°18'06"W THROUGH A CENTRAL ANGLE OF 22°48'00" A DISTANCE OF 1134.32 FEET; THENCE S32°05'57"W 378.86 FEET; THENCE S41°23'40"W 353.78 FEET; THENCE S38°56'26"W 125.00 FEET; THENCE S22°14'29"W 208.81 FEET; THENCE S38°56'26"W 931.87 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF A 3854.71 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS: S44°47'34"W 786.07 FEET); CENTER POINT LIES N51°03'34"W THROUGH A CENTRAL ANGLE OF 11°42'16" A DISTANCE OF 787.44 FEET; THENCE S66°32'48"W 294.49 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF A 3780.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (LONG CHORD BEARS: S58°53'35"W 519.33 FEET); CENTER POINT LIES N35°02'45"W THROUGH A CENTRAL ANGLE OF 07°52'41" A DISTANCE OF 519.74 FEET; THENCE S62°49'55"W 744.90 FEET; THENCE N00°59'27"E 1165.97 FEET; THENCE S88°55'00"E 1321.47 FEET; THENCE N00°58'28"E 660.13 FEET; THENCE N00°58'28"E 660.13 FEET; THENCE N01°00'55"E 3297.46 FEET; THENCE S88°58'43"W 329.86 FEET; THENCE N01°01'40"E 329.70 FEET; THENCE N88°58'43"W 329.86 FEET; THENCE N01°01'53"E 989.05 FEET; THENCE S88°59'18"E 659.61 FEET; THENCE N00°59'11"E 659.40 FEET; THENCE N88°59'32"W 988.85 FEET; THENCE S01°02'06"W 659.33 FEET; THENCE N88°59'18"W 989.41 FEET; THENCE N01°02'44"E 659.22 FEET; THENCE N01°02'44"E 659.22 FEET TO THE POINT OF BEGINNING. AREA CONTAINS 15,395,115 SQUARE FEET OR 353.423 ACRES.



PROVALUE ENGINEERING
20 SOUTH 850 WEST, #1
HURRICANE, UT 84717
Phone: (435) 668-8307

MAP FOR:
THE ROMNEY GROUP

2265 E. MURRAY HOLLADAY RD.
HOLLADAY, UT 84117
Phone: (801) 953-1110
DATE: 10/22/2021

SAND HOLLOW MESA
P.I.D. DISTRICTS

A PART OF SECTIONS 19, 20, 29, 30 & 31, T42S, R13W, S.L.B.#M.

SAND HOLLOW MESA PARCEL LEGAL DESCRIPTIONS

TITLE COMPANY LEGAL DESCRIPTION

LEGAL DESCRIPTIONS BY PARCEL:
SAND HOLLOW MESA PARCELS NO. 1--42 AND 44--63: (LABELED AS SUCH FOR REFERENCE PURPOSES ONLY)
PARCEL 1 (H-3400-A): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 2 (H-3400-D): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 3 (H-3400-E): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 4 (H-3400-H): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 5 (H-3421-C): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 6 (H-3421-D): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 7 (H-3421-E): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 8 (H-3421-F): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 9 (H-3421-H): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 10 (H-3421-G): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 11 (H-3421-I): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 12 (H-3409-B-2): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 13 (H-3410): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 14 (H-3410-B): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 15 (H-3410-C): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 16 (H-3410-D): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20 TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 17 (H-3410-E): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 18 (H-3410-F): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 19 (H-3410-G): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 20 (H-3410-J): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
LESS AND EXCEPTING FROM PARCELS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, THAT PORTION STIPULATED IN THAT ORDER OF OCCUPANCY RECORDED AUGUST 6, 2019, AS DOC. NO. 20190031223, OFFICIAL WASHINGTON COUNTY RECORDS.
PARCEL 21 (H-3399-B): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 22 (H-3399-I): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 23 (H-3399-D): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
~~PARCEL 24 (H-3409-G): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
LESS AND EXCEPTING FROM PARCELS 21, 22, 23 AND 24, COPPER ROCK PARKWAY AND 2100 WEST ROADWAY DEDICATION, RECORDED DECEMBER 26, 2018, AS DOC. NO. 2018005057.9, OFFICIAL WASHINGTON COUNTY RECORDS.
PARCEL 25 (H-3400-I): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 26 (H-3400-L): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 27 (H-3400-M): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 28 (H-3400-P): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 29 (H-3400-B): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 30 (H-3400-C): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 31 (H-3400-F): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 32 (H-3400-G): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 33 (H-3400-J): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 34 (H-3400-K): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
~~PARCEL 35 (H-3409-N): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
~~PARCEL 36 (H-3409-O): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
PARCEL 37 (H-3399-A): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
~~PARCEL 38 (H-3399-G): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
~~PARCEL 39 (H-3399-H): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
~~PARCEL 40 (H-3409-R): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
~~PARCEL 41 (H-3409-S): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
PARCEL 42 (H-3400-T): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 43: INTENTIONALLY OMITTED
PARCEL 44 (H-3421-A): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 45 (H-3421): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 46 (H-3421-J): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 47 (H-3421-K): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 48 (H-3421-L): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 49 (H-3422): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 31, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 50 (H-3422-B): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 31, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 51 (H-3409): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 52 (H-3409-C-2): THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4, AND THE WEST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 53 (H-3409-D): THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 54 (H-3409-E): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 55 (H-3409-F): THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4; THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4; THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4, AND THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 56 (H-3409-G): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 57 (H-3409-H): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 58 (H-3409-I): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 59 (H-3409-J): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 60 (H-3409-H): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 61 (H-3409-I): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
~~PARCEL 62 (H-3409-E): ALL OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE AND MERIDIAN.~~
~~PARCEL 63 (H-3409-F): ALL OF THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE AND MERIDIAN.~~

NOTE: PARCELS 24, 35, 36, 38, 40, 41, 42, 62 AND 63 ARE NOT PART OF THE OWNER'S PROPERTY AND ARE OWNED BY RIVER VALLEY DEVELOPMENT LLC

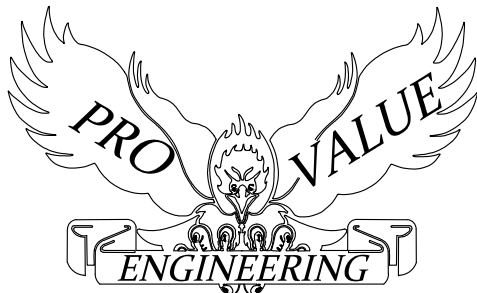
LEGAL LINE & CURVE TABLES

LINE TABLE		
LINE	LENGTH	DIRECTION
L1	106.64'	S60°44'58"W
L3	959.19'	S62°49'55"W
L4	453.78'	N1°00'36"E
L5	744.90'	N62°49'55"E
L7	294.49'	N66°32'48"E
L9	931.86'	N38°56'17"E
L10	208.81'	N22°14'20"E
L11	125.00'	N38°56'17"E
L12	353.78'	N41°23'31"E
L13	378.86'	N32°05'48"E
L15	2354.29'	N1°41'50"E
L17	54.09'	N38°23'13"W
L19	351.50'	N16°34'05"W
L20	476.29'	N20°46'56"W
L21	219.32'	N40°47'44"W
L22	203.96'	N27°52'40"W
L23	250.20'	N14°16'38"W
L24	71.88'	N48°03'50"W
L25	400.00'	N89°00'29"W
L26	426.06'	N84°58'13"W

LINE TABLE		
LINE	LENGTH	DIRECTION
L27	45.00'	N0°59'31"E
L28	993.56'	S89°00'29"E
L29	1316.43'	S88°57'52"E
L30	50.86'	S1°00'50"W
L31	335.12'	S89°28'28"W
L32	325.00'	N88°57'48"W
L33	77.87'	S53°45'42"W
L34	516.62'	S1°59'37"E
L35	783.27'	S11°26'26"E
L37	2354.30'	S1°41'50"W
L39	217.45'	S21°43'12"W
L40	459.99'	S32°26'53"W
L41	182.00'	S54°53'00"W
L42	756.86'	S38°56'17"W
L44	659.77'	S88°58'31"E
L45	329.72'	N1°01'27"E
L46	329.86'	S88°58'43"E
L47	329.72'	N1°01'27"E
L48	659.41'	N1°01'40"E
L49	329.84'	S88°58'54"E

LINE TABLE		
LINE	LENGTH	DIRECTION
L50	329.84'	S88°58'54"E
L51	659.37'	N1°01'53"E
L52	659.29'	N1°02'19"E
L53	659.52'	S88°59'42"E
L54	659.52'	S88°59'42"E
L55	659.29'	N1°02'19"E
L56	659.37'	N1°01'53"E
L57	659.61'	S88°59'18"E

CURVE TABLE					
CURVE	LENGTH	RADIUS	CHORD DIST.	CHORD BRG.	DELTA
C1	888.23'	4180.00'	886.56'	S56°44'40"W	12°10'30"
C2	519.74'	3780.00'	519.33'	N58°53'35"E	7°52'41"
C3	787.45'	3850.00'	786.08'	N44°47'51"E	11°43'08"
C4	1134.33'	2850.00'	1126.86'	N13°05'58"E	22°48'16"
C5	819.72'	3850.00'	818.17'	N4°24'08"W	12°11'57"
C6	357.15'	3825.00'	357.03'	N13°53'35"W	5°21'00"
C7	1319.34'	4150.00'	1313.79'	S7°24'37"E	18°12'54"
C8	1726.25'	3150.00'	1704.73'	S17°23'49"W	31°23'56"
C9	754.04'	4200.00'	753.03'	S44°04'53"W	10°17'12"
C10	739.32'	4199.99'	738.36'	N44°10'55"E	10°05'08"



PROVALUE ENGINEERING
20 SOUTH 850 WEST, #1
HURRICANE, UT 84737
Phone: (435) 668-8307

MAP FOR:
THE ROMNEY GROUP
2265 E. MURRAY HOLLADAY RD.
HOLLADAY, UT 84117
Phone: (801) 953-1110
DATE: 10/22/2021

SAND HOLLOW MESA
P.I.D. LEGAL DESCRIPTIONS

A PART OF SECTIONS 19, 20, 29, 30 & 31, T42S, R13W, S.L.B.#M.

EXHIBIT B

INTERLOCAL AGREEMENT BETWEEN

HURRICANE CITY, UTAH

AND

SAND HOLLOW MESA PUBLIC INFRASTRUCTURE DISTRICT NO. 1

THIS AGREEMENT is made and entered into as of this ____ day of _____, _____, by and between HURRICANE CITY, a home-rule municipal corporation of the State of Utah (“City”), and SAND HOLLOW MESA PUBLIC INFRASTRUCTURE DISTRICT NO. 1, a political subdivision of the State of Utah (the “District”). The City and the District are collectively referred to as the Parties.

RECITALS

WHEREAS, the District was organized to provide to exercise powers as are more specifically set forth in the District’s Governing Document approved by the City on March 3, 2022 (“Governing Document”); and

WHEREAS, the Governing Document makes reference to the execution of an Interlocal Agreement between the City and the District; and

WHEREAS, the City and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Interlocal Agreement (“Agreement”).

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

COVENANTS AND AGREEMENTS

1. **Operations and Maintenance.** The District shall dedicate the Public Improvements (as defined in the Governing Document) to the City or other appropriate jurisdiction in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. The District shall be authorized, but not obligated, to own Public Improvements not otherwise required to be dedicated to the City or other public entity, and all necessary equipment and appurtenances incident thereto. Trails which are interconnected with a city or regional trail system shall be open to the public free of charge and on the same basis as residents and owners of taxable property within the District.

2. **Improvements Limitation.** Without written authorization of the City, the District shall not be authorized to finance the costs of any improvements or facilities which are to be ultimately owned by one of the Districts.

Construction Standards. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction, as applicable. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work. The District may satisfy any City requirements for guaranty of performance of infrastructure completion by delivering to the City documentation evidencing the funds available to the District for such infrastructure as a result of the bonds issued by the District.

3. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District's Governing Document.

We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

4. Inclusion Limitation. The District shall not include within any of their boundaries any property outside the District Area without the prior written consent of the City. By the Governing Document, the City has consented to the annexation or withdrawal of any area within the Annexation Area into or from the District Boundaries. The District shall not include within any of its boundaries any property inside the inclusion area boundaries without the prior written consent of the City except upon petition of the surface property owners of 100 percent of such property and/or 100 percent of registered voters within the area to be included, as applicable, as provided in Section 17D-4-201(3), Utah Code.

5. Overlap Limitation. It is anticipated that one or more of the Districts may overlap with a portion of the Bench Lake Public Improvement District ("BLPID") approved by the City, given that the improvements proposed to be financed by the Districts may also benefit part of the area of the BLPID. The BLPID is forbidden from levying a maximum mill levy in the overlap area which exceeds 0.003, which is the Maximum Debt Mill Levy of the BLPID. The aggregate mill levy of the Districts and the BLPID together shall not in any event be permitted to exceed the Maximum Debt Mill Levy of the District, on any property located within any of the Districts and the BLPID. The Districts shall not, without the prior authorization of the City Council, consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the Districts.

6. Initial Debt. On or before the effective date of approval by the City of an Approved Development Plan (as defined in the Governing Document), the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of

funds from the operating fund to the Debt service funds; nor (c) impose and collect any fees used for the purpose of repayment of Debt.

7. Total Debt Issuance. The Districts shall not issue Debt in excess of an aggregate amount of One Hundred Fifty Million Dollars (\$150,000,000). This amount excludes any portion of bonds issued to refund a prior issuance of debt by any of the Districts. In addition, the Total Debt Issuance Limitation does not apply to the District's pledge of its property tax revenues to the Debt of one of the other Districts. In the event two or more Districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each District.

8. Bankruptcy. All of the limitations contained in this Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(4), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the "political or governmental powers" reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the "regulatory or electoral approval necessary under applicable nonbankruptcy law" as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

9. Dissolution. Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes.

10. Disclosure to Purchasers. Within thirty (30) days of the City adopting a resolution creating the District, the Board shall record a notice with the recorder of Washington County, Utah. Such notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the District; and (d) if applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion. Such notice shall further be filed with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, homebuilders, commercial developers, and commercial lessors, as applicable, disclose the following information to initial resident homeowners, renters, commercial property owners, and/or commercial tenants:

- (a) All of the information in the first paragraph of 11 of this Agreement;
- (b) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, **for every \$100,000 of taxable value**, there would be an **additional annual property tax of \$450** for the duration of the District’s Bonds.”

- (c) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

11. Governing Document Amendment Requirement. Actions of the District which violate the limitations set forth in V.A.1-9 or VIII.B-G of the Governing Document shall be deemed to be material modifications to the Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

12. Annual Report. The District shall be responsible for submitting an annual report to the City Manager’s Office no later than 180 days following the closing of the District’s fiscal year, containing the information set forth in Section VIII of the Governing Document.

13. Regional Improvements. The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements.

14. Maximum Debt Mill Levy.

(a) The “Maximum Debt Mill Levy” shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District for payment of Limited Tax Debt shall be 0.0045 per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8). Such Maximum Debt Mill Levy may also be used to pay administrative expenses of the District. Further, the Districts may not impose mill levies which aggregate in excess of 0.0045 per dollar of taxable value of taxable property in the District; provided that such levies shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code.

(b) Such Maximum Debt Mill Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202.

(c) Any other mill levy imposed by any other district with the authorization of the City shall not be applied toward the calculation of the Maximum Debt Mill Levy.

15. Maximum Debt Mill Levy Imposition Term. Each bond issued by the District shall mature within thirty-one (31) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of a series of bonds after a period exceeding forty (40) years from the first date of imposition of the mill levy for such bond (the “Maximum Debt Mill Levy Imposition Term”).

16. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: Sand Hollow Mesa Public Infrastructure District
 No. 1
 c/o Snow Jensen & Reece, PC
 912 West 1600 South, Ste. B200
 St. George, UT 84770
 Attn: Matthew J. Ence
 Phone: (435) 628-3688

To the City: Hurricane City
 147 N 870 W
 Hurricane, UT 84737
 Attn: City Manager
 Phone: (435) 635-2811

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

17. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties hereto and without amendment to the Governing Document.

18. Assignment. Neither Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

19. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party

in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

20. Term. This Agreement shall terminate upon the earlier to occur of dissolution of the District or fifty (50) years from the date hereof.

21. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Utah.

22. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

23. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

24. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the City any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the City shall be for the sole and exclusive benefit of the District and the City.

25. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

27. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

28. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Governing Document.

[SIGNATURE PAGE TO INTERLOCAL AGREEMENT]

SAND HOLLOW MESA PUBLIC
INFRASTRUCTURE DISTRICT NO. 1

By: _____
President

Attest:

Secretary

APPROVED AS TO FORM: _____

HURRICANE CITY, UTAH

By: _____
Mayor

Attest:

By: _____
Its: _____

APPROVED AS TO FORM: _____

Hurricane, Utah

March 3, 2022

The City Council (the “Council”) of Hurricane City, Utah (the “City”), met in regular session (including by electronic means) on March 3, 2022, at its regular meeting place in Hurricane, Utah at 6:00 p.m., with the following members of the Council being present:

Nanette Billings	Mayor
Joseph Prete	Councilmember
Dave Sanders	Councilmember
David Hirschi	Councilmember
Doug Heideman	Councilmember
Kevin Thomas	Councilmember

Also present:

Kaden DeMille	City Manager
Cindy Beteag	City Recorder

Absent:

After the meeting had been duly called to order and after other matters not pertinent to this Resolution had been discussed, the City Recorder presented to the Council a Certificate of Compliance with Open Meeting Law with respect to this March 3, 2022, meeting, a copy of which is attached hereto as Exhibit A.

Thereupon, the following Resolution was introduced in writing, read in full and pursuant to motion duly made by Councilmember _____ and seconded by Councilmember _____ adopted by the following vote:

AYE:

NAY:

The resolution was later signed by the Mayor and recorded by the City Recorder in the official records of the City. The resolution is as follows:

RESOLUTION 2022-14

A RESOLUTION OF THE CITY COUNCIL (THE “COUNCIL”) OF THE CITY OF HURRICANE, UTAH (THE “CITY”), PROVIDING FOR THE CREATION OF SAND HOLLOW MESA PUBLIC INFRASTRUCTURE DISTRICT NO. 2 (THE “DISTRICT”) AS AN INDEPENDENT BODY CORPORATE AND POLITIC; AUTHORIZING AND APPROVING A GOVERNING DOCUMENT, AN INTERLOCAL AGREEMENT, AND A NOTICE OF BOUNDARY ACTION; DELEGATING TO CERTAIN OFFICERS OF THE CITY THE AUTHORITY TO EXECUTE AND APPROVE THE FINAL TERMS AND PROVISIONS OF THE GOVERNING DOCUMENT, THE INTERLOCAL AGREEMENT, THE NOTICE OF BOUNDARY ACTION AND ANY OTHER DOCUMENTS RELATED THERETO; APPROVING OF AN ANNEXATION AREA; AUTHORIZING THE DISTRICT TO PROVIDE SERVICES RELATING TO THE FINANCING AND CONSTRUCTION OF PUBLIC INFRASTRUCTURE WITHIN THE ANNEXATION AREA; APPOINTING A BOARD OF TRUSTEES OF THE DISTRICT; AUTHORIZING OTHER DOCUMENTS IN CONNECTION THEREWITH; AND RELATED MATTERS.

WHEREAS, a petition (the “Petition”) was filed with the City requesting adoption by resolution the approval of the creation of three separate public infrastructure districts pursuant to the Public Infrastructure District Act, Title 17D, Chapter 4, Utah Code Annotated 1953, as amended (the “PID Act”) and relevant portions of the Limited Purpose Local Government Entities - Local Districts, Title 17B (together with the PID Act, the “Act”) within the boundaries of the City and approve an annexation area (the “Annexation Area”) which any of the districts may annex into therein without further approval or hearings of the City or the Council, as further described in Governing Document Exhibits A and C (as hereinafter defined) for the purpose of financing public infrastructure costs; and

WHEREAS, pursuant to the terms of the Act, the City may create one or more public infrastructure districts by adoption of a resolution of the Council and with consent of 100% of all surface property owners proposed to be included in the District (the “Property Owners”); and

WHEREAS, the Petition, containing the consent of such Property Owners has been certified by the Recorder of the City pursuant to the Act and it is in the best interests of the Property Owners that the creation of the District be authorized in the manner and for the purposes hereinafter set forth; and

WHEREAS, the City prior to consideration of this Resolution, held a public hearing receive input from the public regarding the creation of the District and the Property Owners have waived the 60-day protest period pursuant to Section 17D-4-201 of the PID Act; and

WHEREAS, it is necessary to authorize the creation of the District under and in compliance with the laws of the State of Utah and to authorize other actions in connection therewith; and

WHEREAS, the hearing on the Petition was held at the City Hall because there is no reasonable place to hold a public hearing within the District's boundaries, and the hearing at the City Hall was held as close to the applicable area as reasonably possible; and

WHEREAS, the City mailed or caused to be mailed prior notice of the hearing to each of the Property Owners in compliance with Section 17B-1-211(1)(b) of the Act; and

WHEREAS, none of the Property Owners submitted a withdrawal of consent to the creation of the District before the public hearing on the Petition; and

WHEREAS, each board member appointed under this Resolution has previously filed with the City a disclosure of business relationships in compliance with Section 17D-4-202(9) of the PID Act; and

WHEREAS, according to attestations filed with the City, each board member appointed under this Resolution is registered to vote at their primary residence and is further eligible to serve as a board member of the District under Section 17D-4-202(3)(c) of the PID Act because they are agents of property owners within the District boundaries (as further set forth in the Petition); and

WHEREAS, the governance of the District shall be in accordance with the PID Act and the terms of a governing document (the "Governing Document") attached hereto as Exhibit B and an Interlocal Agreement between the City and the District, attached to the Governing Document as Governing Document Exhibit D; and

WHEREAS, pursuant to the requirements of the Act, there shall be signed, authenticated, and submitted to the Office of the Lieutenant Governor of the State of Utah a Notice of Boundary Action attached hereto as Exhibit C (the "Boundary Notice") and a Final Entity Plat to be attached thereto as Boundary Notice Appendix B (or as shall be finalized in accordance with the boundaries approved hereunder) (the "Plat").

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL, AS FOLLOWS:

1. Terms defined in the foregoing recitals shall have the same meaning when used herein. All action heretofore taken (not inconsistent with the provisions of this Resolution) by the Council and by officers of the Council directed toward the creation and establishment of the District, are hereby ratified, approved and confirmed.

2. The District is hereby created as a separate entity from the City in accordance with the Governing Document and the Act. The boundaries of the District shall be as set forth in the Governing Document and the Plat.

3. Pursuant to the terms of the PID Act, the Council does hereby approve the annexation of any area within the Annexation Area Boundaries into the District without any further action of the Council or the City and further approves withdrawal of any area within the Initial District Boundaries (as defined in the Governing Document) or Annexation Area Boundaries from the District without any further action, hearings, or resolutions of the Council or the City, upon compliance with the terms of the PID Act and the Governing Document.

4. The Council does hereby authorize the District to provide services relating to the financing and construction of public infrastructure within the Annexation Area upon annexation thereof into the District without further request of the District to the City to provide such service under 17B-1-407, Utah Code Annotated 1953 or resolutions of the City under 17B-1-408, Utah Code Annotated 1953.

5. It is hereby found and determined by the Council that the creation of the District is appropriate to the general welfare, order and security of the City, and the organization of the District pursuant to the PID Act is hereby approved.

6. The Governing Document and the Interlocal Agreement in the form presented to this meeting and attached hereto as Exhibits B and Governing Document Exhibit D are hereby authorized and approved and the District shall be governed by the terms thereof and applicable law.

7. The District Board is hereby appointed as follows:

(a) Trustee 1 – Josh Romney for an initial six-year term.

(b) Trustee 2 – Anthon Stauffer for an initial six-year term.

(c) Trustee 3 – Nate Brockbank for an initial four-year term.

(d) Such terms shall commence on the date of issuance of a Certificate of Creation by the Office of the Lieutenant Governor of the State of Utah.

8. The Council does hereby authorize the Mayor or a Councilmember to execute the Boundary Notice in substantially the form attached as Exhibit C and such other documents as shall be required to finalize the actions contemplated herein on behalf of the Council for submission to the Office of the Lieutenant Governor of the State of Utah.

9. Prior to certification of the creation of the District by the Office of the Lieutenant Governor of the State of Utah, the Council does hereby authorize the Mayor, a Councilmember, or the City Manager to make any corrections, deletions, or additions to the Governing Document, the Interlocal Agreement, and the Boundary Notice or any other document herein authorized and approved (including, but not limited to, corrections to the property descriptions therein contained) which may be necessary to conform the same to the intent hereof, to correct errors or omissions therein, to complete the same, to remove ambiguities therefrom, or to conform the same to other provisions of said instruments, to the provisions of this Resolution or any resolution adopted by the Council or the provisions of the laws of the State of Utah or the United States (provided that the debt and mill levy limitations established therein may not be modified pursuant to this provision).

10. The Board of Trustees of the District (the “District Board”) is hereby authorized and directed to record such Governing Document with the recorder of Washington County within 30 days of the issuance of a Certificate of Creation by the Office of the Lieutenant Governor of the State of Utah.

11. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

12. All acts, orders and resolutions, and parts thereof in conflict with this Resolution be, and the same are hereby, rescinded.

13. This resolution shall take effect immediately.

PASSED AND ADOPTED by the City Council of the City of Hurricane, Utah, this March 3, 2022.

CITY OF HURRICANE, UTAH

By: _____
Mayor

ATTEST:

By: _____
City Recorder

(Here follows other business not pertinent to the above.)

Pursuant to motion duly made and seconded, the meeting of the Council of the City adjourned.

By: _____
Mayor

ATTEST:

By: _____
City Recorder

STATE OF UTAH)
 : ss.
COUNTY OF WASHINGTON)

I, Cindy Beteag, the undersigned duly qualified and acting City Recorder of the City of Hurricane, Utah (“the City”), do hereby certify as follows:

The foregoing pages are a true, correct, and complete copy of the record of proceedings of the City Council (the "Council"), had and taken at a lawful meeting of the Council on March 3, 2022, commencing at the hour of 6:00 p.m., as recorded in the regular official book of the proceedings of the Council kept in my office, and said proceedings were duly had and taken as therein shown, and the meeting therein shown was duly held, and the persons therein were present at said meeting as therein shown.

All members of the Council were duly notified of said meeting, pursuant to law.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City,
this March 3, 2022.

By: _____
City Recorder

EXHIBIT A

CERTIFICATE OF COMPLIANCE WITH OPEN MEETING LAW

I, Cindy Beteag, the undersigned City Recorder of the City of Hurricane, Utah (the "City"), do hereby certify that I gave written public notice of the agenda, date, time and place of the regular meeting held by the Council (the "Council") on March 3, 2022, not less than 24 hours in advance of the meeting. The public notice was given in compliance with the requirements of the Utah Open and Public Meetings Act, Section 52-4-202, Utah Code Annotated 1953, as amended, by:

- (a) causing a Notice, in the form attached hereto as Schedule 1, to be posted at the City's principal offices at least twenty-four (24) hours prior to the convening of the meeting, said Notice having continuously remained so posted and available for public inspection until the completion of the meeting; and
- (b) causing a copy of such Notice, in the form attached hereto as Schedule 1, to be published on the Utah Public Notice Website (<http://pmn.utah.gov>) at least twenty-four (24) hours prior to the convening of the meeting.

In addition, the Notice of 2022 Annual Meeting Schedule for the Council (attached hereto as Schedule 2) was given specifying the date, time and place of the regular meetings of the Council of the City to be held during the year, by causing said Notice to be (i) posted on _____, 20____, at the principal office of the City, (ii) provided to at least one newspaper of general circulation within the geographic jurisdiction of the City on _____, 20____ and (iii) published on the Utah Public Notice Website (<http://pmn.utah.gov>) during the current calendar year.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature this March 3, 2022.

By: _____
City Recorder

SCHEDULE 1

NOTICE OF MEETING AND AGENDA

SCHEDULE 2

NOTICE OF ANNUAL MEETING SCHEDULE

EXHIBIT B
GOVERNING DOCUMENT

EXHIBIT C

NOTICE OF BOUNDARY ACTION

(District No. 2)

NOTICE IS HEREBY GIVEN that the City Council of the City of Hurricane, Utah (the “Council”), acting in its capacity as the creating entity for the Sand Hollow Mesa Public Infrastructure District No. 2 (the “District”), at a regular meeting of the Council, duly convened pursuant to notice, on March 3, 2022 adopted a *Resolution Providing for the Creation of a Public Infrastructure District*, a true and correct copy of which is attached as EXHIBIT “A” hereto and incorporated by this reference herein (the “Creation Resolution”).

A copy of the Final Local Entity Plat satisfying the applicable legal requirements as set forth in Utah Code Ann. §17-23-20, approved as a final local entity plat by the Surveyor of Washington County, Utah, is attached as EXHIBIT “B” hereto and incorporated by this reference. The Council hereby certifies that all requirements applicable to the creation of the District, as more particularly described in the Creation Resolution, have been met. The District is not anticipated to result in the employment of personnel.

WHEREFORE, the Council hereby respectfully requests the issuance of a Certificate of Incorporation pursuant to and in conformance with the provisions of Utah Code Ann. §17B-1-215.

CITY COUNCIL, THE CITY OF HURRICANE, UTAH,
acting in its capacity as the creating authority for the
Sand Hollow Mesa Public Infrastructure District No. 2

By: _____
 AUTHORIZED
 REPRESENTATIVE

STATE OF UTAH)
)
) :SS.
)
COUNTY OF WASHINGTON)

SUBSCRIBED AND SWORN to before me this ____ day of _____

NOTARY PUBLIC

EXHIBIT “A” TO NOTICE OF BOUNDARY ACTION

Copy of the Creation Resolution

EXHIBIT “B” TO NOTICE OF BOUNDARY ACTION

Final Local Entity Plat

**GOVERNING DOCUMENT
FOR
SAND HOLLOW MESA PUBLIC INFRASTRUCTURE DISTRICT NO. 2
HURRICANE CITY, UTAH**

March 3, 2022

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LIST OF EXHIBITS

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I. INTRODUCTION

A. Purpose and Intent.

The District is an independent unit of local government, separate and distinct from the City, and, except as may otherwise be provided for by State or local law or this Governing Document, its activities are subject to review by the City only insofar as they may deviate in a material matter from the requirements of the Governing Document. It is intended that the District will provide a part or all of the Public Improvements for the use and benefit of all anticipated inhabitants and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements. The District is not being created to provide any ongoing operations and maintenance services.

B. Need for the District.

There are currently no other governmental entities, including the City, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction installation, relocation, redevelopment, and financing of the Public Improvements needed for the Project. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.

C. Objective of the City Regarding District's Governing Document.

The City's objective in approving the Governing Document for the District is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by the District. All Debt is expected to be repaid by taxes imposed and collected for no longer than the Maximum Debt Mill Levy Imposition Term and at a tax mill levy no higher than the Maximum Debt Mill Levy for all commercial and residential properties, and/or repaid by Assessments. Debt which is issued within these parameters and, as further described in the Financial Plan, will insulate property owners from excessive tax burdens to support the servicing of the Debt and will result in a timely and reasonable discharge of the Debt.

This Governing Document is intended to establish a limited purpose for the District and explicit financial constraints that are not to be violated under any circumstances. The primary purpose is to provide for the Public Improvements associated with development and regional needs. Although the District has authority to directly provide public improvements, the District also has the authority to pledge tax revenues to an interlocal entity that provides public improvements.

It is the intent of the District to dissolve upon payment or defeasance of all Debt incurred or upon a determination that adequate provision has been made for the payment of all Debt.

The District shall be authorized to finance the Public Improvements that can be funded from Debt to be repaid from Assessments or from tax revenues collected from a mill levy

which shall not exceed the Maximum Debt Mill Levy on taxable properties and which shall not exceed the Maximum Debt Mill Levy Imposition Term on taxable properties. It is the intent of this Governing Document to assure to the extent possible that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy in amount and that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy Imposition Term in duration even under bankruptcy or other unusual situations. Generally, the cost of Public Improvements that cannot be funded within these parameters are not costs to be paid by the District.

II. DEFINITIONS

In this Governing Document, the following terms shall have the meanings indicated below, unless the context hereof clearly requires otherwise:

Annexation Area Boundaries: means the boundaries of the area described in the Annexation Area Boundary Map which have been approved by the City for annexation or withdrawal from or into one of the Districts upon the meeting of certain requirements.

Annexation Area Boundary Map: means the map depicting the Annexation Area Boundaries attached hereto as **Exhibit A**, describing the property proposed for annexation within the District.

Approved Development Plan: means a Preliminary Development Plan or other process established by the City for identifying, among other things, Public Improvements necessary for facilitating development for property within the District Area as approved by the City pursuant to the City Code and as amended pursuant to the City Code from time to time. For purposes of this Governing Document, the Master Plan / PDO Concept Submittal dated January 14, 2021, as approved by the City shall constitute an Approved Development Plan.

Assessment: means assessments levied in an assessment area created within the District.

Board: means the board of trustees of the District.

Bond, Bonds or Debt: means bonds or other obligations, including loans of any property owner, for the payment of which the District has promised to impose an ad valorem property tax mill levy, and/or collect Assessments.

City: means Hurricane City, Utah.

City Code: means the City Code of Hurricane City, Utah.

City Council: means the City Council of Hurricane City, Utah.

District: means the Sand Hollow Mesa Public Infrastructure District No. 2.

District Area: means the property within the Initial District Boundary Map and the Annexation Area Boundary Map.

Districts: means collectively, the District, Sand Hollow Mesa Public Infrastructure District No. 1, and Sand Hollow Mesa Public Infrastructure District No. 3, contemplated to be created contemporaneously with one another.

End User: means any owner, or tenant of any owner, of any taxable improvement within the District, who is intended to become burdened by the imposition of ad valorem property taxes subject to the Maximum Debt Mill Levy. By way of illustration, a resident homeowner, renter, commercial property owner, or commercial tenant is an End User. The business entity that constructs homes or commercial structures is not an End User.

Fees: means any fee imposed by the District for administrative services provided by the District.

Financial Plan: means the Financial Plan described in Section VIII which describes (i) the potential means whereby the Public Improvements may be financed; (ii) how the Debt is expected to be incurred; and (iii) the estimated operating revenue derived from property taxes for the first budget year.

General Obligation Debt: means a Debt that is directly payable from and secured by ad valorem property taxes that are levied by the District and does not include Limited Tax Debt.

Governing Document: means this Governing Document for the District approved by the City Council.

Governing Document Amendment: means an amendment to the Governing Document approved by the City Council in accordance with the City's ordinance and the applicable state law and approved by the Board in accordance with applicable state law.

Initial District Boundaries: means the boundaries of the area described in the Initial District Boundary Map.

Initial District Boundary Map: means the map depicting the Initial District Boundaries attached hereto as **Exhibit A**, describing the District's initial boundaries.

Limited Tax Debt: means a debt that is directly payable from and secured by ad valorem property taxes that are levied by the District which may not exceed the Maximum Debt Mill Levy.

Local District Act: means Title 17B of the Utah Code, as amended from time to time.

Maximum Debt Mill Levy: means the maximum mill levy the District is permitted to impose for payment of Debt as set forth in Section VIII.C below.

Maximum Debt Mill Levy Imposition Term: means the maximum term for imposition of a mill levy for any given series of bonds as set forth in Section VIII.D below.

Municipal Advisor: means a consultant that: (i) advises Utah governmental entities on matters relating to the issuance of securities by Utah governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (ii) shall be an individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place; and (iii) is not an officer or employee of the District.

Project: means the development or property commonly referred to as the Sand Hollow Mesa Project.

PID Act: means Title 17D, Chapter 4 of the Utah Code, as amended from time to time and any successor statute thereto.

Public Improvements: means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as generally described in the Local District Act, except as specifically limited in Section V below to serve the future taxpayers and inhabitants of the District Area as determined by the Board.

Regional Improvements: means Public Improvements and facilities that benefit the District Area and which are to be financed pursuant to Section VII below.

State: means the State of Utah.

Taxable Property: means real or personal property within the District Area subject to ad valorem taxes imposed by the District.

Trustee: means a member of the Board.

Utah Code: means the Utah Code Annotated 1953, as amended.

III. BOUNDARIES

The area of the Initial District Boundaries includes approximately two hundred fifty-one (251.409) acres and the total area proposed to be included in the Annexation Area Boundaries is approximately nine hundred twenty-nine (929.217) acres and includes all property within the District as well as an additional approximately six hundred seventy-eight (677.808) acres. Maps of the Initial District Boundaries and Annexation Area Boundaries, a vicinity map, and legal descriptions of the Initial District Boundaries and the Annexation Area Boundaries are attached hereto together as **Exhibit A**. It is anticipated that the District's boundaries may change from time to time as it undergoes annexations and withdrawals pursuant to Section 17B-4-201, Utah Code, subject to Article V below.

IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION

The District Area consists of approximately nine hundred twenty-nine (929.217) acres of mostly undeveloped land. The current assessed valuation of the District Area at build out, is

expected to be sufficient to reasonably discharge the Debt under the Financial Plan. The population of the District Area at build-out is estimated to be approximately 9,000 people.

Approval of this Governing Document by the City does not imply approval of the development of a specific area within the District, nor does it imply approval of the number of residential units or the total site/floor area of commercial or industrial buildings identified in this Governing Document or any of the exhibits attached thereto, unless the same is contained within an Approved Development Plan.

V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES

A. Powers of the District and Governing Document Amendment.

The District shall have the power and authority to provide the Public Improvements within and without the boundaries of the District as such power and authority is described in the Local District Act, and other applicable statutes, common law and the Constitution, subject to the limitations set forth herein.

1. Improvements. The District shall have authority to provide for the planning, design, acquisition, construction, installation, and dedication to the City of the Public Improvements within and without the boundaries of the District. Prior to or contemporaneous with providing the foregoing for any other Public Improvements, the District must have arranged for the financing of the following improvements (the “Pre-Requisite Improvements”), as generally depicted in or required by the Approved Development Plan:

(a) 9.2 miles of public trails, trailheads, parking and restrooms with drinking facilities. The main trails connecting the Project to adjacent properties and trail systems would be 12' wide.

(b) A UDOT approved and designed interchange including two trails, one 12' and one 5', and two separate bike lanes.

(c) Dedications and improvements related to public utilities within the property.

(d) Dedication of land for a public power substation.

(e) Dedication and improvement of city parks and open spaces of at least 72 acres of the 279 acres of open space planned for the project. The 72 acres will be of developable land, and 51 of the 72 acres will be improved as active or programmable park spaces (the remaining approximately 21 acres would be passive park space). Conditioned on availability of required permits, one of the city parks will include a public fishing pond (we would need the city to help coordinate permitting approval of the pond). Other improvements to programmable park space will be as proposed by developer and approved by City staff.

(f) \$4,000,000 to be allocated to the construction by the City of a public safety building to house fire and/or police services located within the Project.

(g) Dedications and improvements required for a secondary irrigation system that would meet Governor Cox's proposed water conservation plan to utilize as little water as possible in public spaces throughout the property.

(h) All master planned public roadways depicted on the City's most recent master road plan, including sidewalks and curb/gutter as required by City standards.

The Pre-Requisite Improvements may be funded either through issuance of bonds or other sources of funds (such as developer contributions), but must be fully funded before other non-Pre-Requisite Improvements are financed through the District.

Any impact fee reimbursements or credits which become available due to the financing of public improvements by the Districts shall be for the benefit of the Districts and not any developer.

2. Operations and Maintenance Limitation. The purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The District shall dedicate the Public Improvements to the City or other appropriate public entity or owners association in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. Trails which are interconnected with a city or regional trail system shall be open to the public free of charge and on the same basis as residents and owners of taxable property within the District.

3. Improvements Limitation. Notwithstanding the provisions of Section V.A.1 and 2 above, without written authorization of the City, the District shall not be authorized to finance the costs of any improvements or facilities which are to be ultimately owned by one of the Districts.

4. Construction Standards Limitation. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

5. Procurement. The District shall be subject to the Utah Procurement Code, Title 63G, Chapter 6a.

6. Privately Placed Debt Limitation. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District's Governing Document.

We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

7. Annexation and Withdrawal.

(a) The District shall not include within any of its boundaries any property outside the District Area without the prior written consent of the City. The City, by resolution and this Governing Document, has consented to the annexation of any area within the Annexation Area Boundaries into the District. Such area may only be annexed upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be annexed and the passage of a resolution of the Board approving such annexation.

(b) The City, by resolution and this Governing Document, has consented to the withdrawal of any area within the District Boundaries from the District. Such area may only be withdrawn upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be withdrawn and the passage of a resolution of the Board approving such annexation.

(c) Any annexation or withdrawal shall be in accordance with the requirements of the PID Act.

(d) Upon any annexation or withdrawal, the District shall provide the City a description of the revised District Boundaries.

(e) Annexation or withdrawal of any area in accordance with V.A.6(a) and (b) shall not constitute an amendment of this Governing Document.

8. Overlap Limitation. The District shall not impose aggregate mill levy for payment of Debt that exceeds the Maximum Debt Mill Levy of the District. The District shall not consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the District unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Debt Mill Levy of the District, or unless such other district is approved by the City.

9. Initial Debt Limitation. On or before the effective date of approval by the City of an Approved Development Plan, the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (c) impose and collect any Assessments used for the purpose of repayment of Debt.

10. Total Debt Issuance Limitation. The Districts shall not issue Debt in excess of an aggregate amount of One Hundred Fifty Million Dollars (\$150,000,000). This amount excludes any portion of bonds issued to refund a prior issuance of debt by any of the Districts. In addition, the Total Debt Issuance Limitation does not apply to the District's pledge of its property tax revenues to the Debt of one of the other Districts. In the event two or more Districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each District.

11. Bankruptcy Limitation. All of the limitations contained in this Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term and the Fees have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(5), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the "political or governmental powers" reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the "regulatory or electoral approval necessary under applicable nonbankruptcy law" as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

12. Governing Document Amendment Requirement.

(a) This Governing Document has been designed with sufficient flexibility to enable the District to provide required facilities under evolving circumstances without the need for numerous amendments. Actions of the District which violate the limitations set forth in V.A.1-9 above or in VIII.B-G. shall be deemed to be material modifications to this Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

(b) Subject to the limitations and exceptions contained herein, this Governing Document may be amended by passage of a resolutions of the City and the District approving such amendment.

B. Preliminary Engineering Survey.

The District shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, maintenance, and financing of the Public Improvements within and without the boundaries of the District, to be more specifically defined in an Approved Development Plan. An estimate of the costs of the Public Improvements which

may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, maintained or financed was prepared based upon a preliminary engineering survey and estimates derived from the zoning on the property in the District Area and is approximately One Hundred Twenty-Five Million Dollars (\$125,000,000).

All of the Public Improvements will be designed in such a way as to assure that the Public Improvements standards will be compatible with those of the City and/or any other applicable public entity and shall be in accordance with the requirements of the Approved Development Plan. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

VI. THE BOARD OF TRUSTEES

A. Board Composition. The Board shall be composed of 3 Trustees who shall be appointed by the City Council pursuant to the PID Act. Trustees 1, 2, and 3 shall initially be at large. Trustee terms shall be staggered with initial terms as follows: Trustee 2 shall serve an initial term of 4 years; Trustees 1 and 3 shall serve an initial term of 6 years. All terms shall commence on the date of issuance of a certificate of creation by the Office of the Lieutenant Governor of the State of Utah. In accordance with the PID Act, appointed Trustees shall not be required to be residents of the District.

B. Transition to Elected Board. Respective board seats shall transition from appointed to elected seats according to the following milestones:

1. Trustee 1. Trustee 1 shall transition to an elected seat upon 2,500 registered voters residing within the District.

2. Trustee 2. Trustee 2 shall transition to an elected seat upon 5,000 registered voters residing within the District.

3. Trustee 3. Trustee 3 shall transition to an elected seat upon 7,500 registered voters residing within the District.

Notwithstanding the foregoing, any board seats which have not yet transitioned to an elected seat shall transition after twelve (12) years have passed from the date of issuance of a certificate of creation for the District. No transition pursuant to this Section shall become effective until the next scheduled regular election of the District. Registered voters within this Section shall mean voters whose “principal place of residence,” as that term is defined under Utah Code 20A-2-105(1)(a), is within the District.

C. Reelection and Reappointment. Upon the expiration of a Trustee’s respective term, any seat which has not transitioned to an elected seat shall be appointed by the City Council pursuant to the PID Act and any seat which has transitioned to an elected seat shall be elected pursuant to an election held for such purpose. In the event that no qualified candidate files to be considered for appointment or files a declaration of candidacy for a seat, such seat may be filled in accordance with the Local District Act.

D. Vacancy. Any vacancy on the Board shall be filled pursuant to the Local District Act.

E. Compensation. Only Trustees who are residents of the District may be compensated for services as Trustee. Such compensation shall be in accordance with State Law.

F. Conflicts of Interest. Trustees shall disclose all conflicts of interest. Any Trustee who discloses such conflicts in accordance with 17D-4-202 and 67-16-9, Utah Code, shall be entitled to vote on such matters.

VII. REGIONAL IMPROVEMENTS

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements. Regional Improvements may include, and may not be limited to, regional and connector roads; water, sewer and other utilities installed in said roads; an interchange at 3700 South Street and the Southern Parkway, and park and trail improvements.

Nothing herein shall prevent the City from financing and completing, or authorizing the finance and completion by another district, of other local or regional improvements not listed above, or approving other mill levies to facilitate the financing of the same.

VIII. FINANCIAL PLAN

A. General.

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment of the Public Improvements from its revenues and by and through the proceeds of Debt to be issued by the District. In addition, the District shall be permitted to finance the prepayment of impact fees for the Project. The Financial Plan for the District shall be to issue such Debt as the District can reasonably pay within the Maximum Debt Mill Levy Imposition Term from revenues derived from the Maximum Debt Mill Levy, Assessments and other legally available revenues. The total Debt that the Districts shall be permitted to issue shall not exceed One Hundred Fifty Million Dollars (\$150,000,000) and shall be permitted to be issued on a schedule and in such year or years as the Districts determine shall meet the needs of the Financial Plan referenced above and phased to serve development as it occurs. Any portion of bonds issued to refund a prior issuance of debt by the District shall not count against the permitted total Debt. The Total Debt Issuance Limitation shall not apply to the District's pledge of its property tax revenues to the Debt of one of the other Districts. In the event two or more Districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each District. All bonds and other Debt issued by the District may be payable from any and all legally available revenues of the District, including general ad valorem taxes to be imposed upon all Taxable Property within the District and Assessments. The District will also rely upon various other revenue sources authorized by law. These will include the power to assess

Fees, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time.

B. Maximum Interest Rate and Maximum Underwriting Discount.

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. In the event of a default, the proposed maximum interest rate on any Debt is not expected to exceed fifteen percent (15%). The proposed maximum underwriting discount will be five percent (5%). Debt, when issued, will comply with all relevant requirements of this Governing Document, State law and Federal law as then applicable to the issuance of public securities.

C. Maximum Debt Mill Levy.

(a) The “Maximum Debt Mill Levy” shall be the maximum mill levy the District is permitted to impose in upon the taxable property within the District for payment of Limited Tax Debt, and shall be 0.0045 per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code. Such Maximum Debt Mill Levy may also be used to pay administrative expenses of the District. Further, the Districts may not impose mill levies which in aggregate exceed 0.0045 per dollar of taxable value of taxable property in the District Area; provided that such levies shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code.

(b) Such Maximum Debt Mill Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202, Utah Code.

(c) It is anticipated that one or more of the Districts may overlap with a portion of the Bench Lake Public Improvement District (“BLPID”) approved by the City, given that the improvements proposed to be financed by the Districts may also benefit part of the area of the BLPID. The BLPID is forbidden from levying a maximum mill levy in the overlap area which exceeds 0.003, which is the Maximum Debt Mill Levy of the BLPID. The aggregate mill levy of the Districts and the BLPID together shall not in any event be permitted to exceed the Maximum Debt Mill Levy of the District, on any property located within any of the Districts and the BLPID.

D. Maximum Debt Mill Levy Imposition Term.

Each bond issued by the District shall mature within Thirty-One (31) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of a series of bonds after a period exceeding forty (40) years from the first date of imposition of the mill levy for such bond (the “Maximum Debt Mill Levy Imposition Term”).

E. Debt Repayment Sources.

The District may impose a mill levy on taxable property within its boundaries as a primary source of revenue for repayment of debt service. The District may also rely upon various other revenue sources authorized by law. At the District’s discretion, these may include the power to assess Assessments, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time. Except as described in Section VIII.C(a), the debt service

mill levy in the District shall not exceed the Maximum Debt Mill Levy or, the Maximum Debt Mill Levy Imposition Term, except for repayment of General Obligation Debt.

The District shall not be permitted to charge an End User the costs of any portion of a Public Improvement for which such End User has already paid or is presently obligated to pay through any combination of mill levy, Assessment, or impact fee. This provision shall not prohibit the division of costs between mill levies, Assessments, or impact fees, but is intended to prevent double taxation of End Users for the costs of Public Improvements.

F. Debt Instrument Disclosure Requirement.

In the text of each Bond and any other instrument representing and constituting Debt, the District shall set forth a statement in substantially the following form:

By acceptance of this instrument, the owner of this Bond agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this Bond contained herein, in the resolution of the District authorizing the issuance of this Bond and in the Governing Document for creation of the District.

Similar language describing the limitations in respect of the payment of the principal of and interest on Debt set forth in this Governing Document shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a developer of property within the boundaries of the District.

G. Security for Debt.

The District shall not pledge any revenue or property of the City as security for the indebtedness set forth in this Governing Document. Approval of this Governing Document shall not be construed as a guarantee by the City of payment of any of the District's obligations; nor shall anything in the Governing Document be construed so as to create any responsibility or liability on the part of the City in the event of default by the District in the payment of any such obligation.

H. District's Operating Costs.

The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the District's organization and initial operations, are anticipated to be Seventy-five Thousand Dollars (\$75,000), which will be eligible for reimbursement from Debt proceeds.

In addition to the capital costs of the Public Improvements, the District will require operating funds for administration and to plan and cause the Public Improvements to be constructed. The first year's administrative operating budget is estimated to be approximately Seventy-five Thousand Dollars (\$75,000) which is anticipated to be borne by developer(s) until such time a reimbursement can be derived from property taxes and other revenues, pursuant to a reimbursement agreement between the District and developers.

I. Bond and Disclosure Counsel.

It is the intent of the City that the District shall use competent and nationally recognized bond and disclosure counsel and Municipal Advisor with respect to District Bonds to ensure proper issuance and compliance with this Governing Document. The District has agreed to utilize the City's counsel, Gilmore & Bell, P.C., as bond and disclosure counsel and Zions Public Finance, Inc., as Municipal Advisor with respect to District Bonds as permitted by law. The foregoing requirement may be waived by vote of the City Council.

IX. ANNUAL REPORT

A. General.

The District shall be responsible for submitting an annual report to the City Manager's Office no later than 180 days following the end of the District's fiscal year.

B. Reporting of Significant Events.

The annual report shall include information as to any of the following:

1. Boundary changes made or proposed to the District's boundary as of December 31 of the prior year.
2. List of current interlocal agreements, if changed (to be delivered to the City upon request);
3. Names and terms of Board members and officers and progress towards milestones required for transition to elected Board;
4. District office contact information;
5. Rules and regulations of the District regarding bidding, conflict of interest, contracting, and other governance matters, if changed;
6. A summary of any litigation which involves the District Public Improvements as of the last day of the prior fiscal year;
7. Status of the District's construction of the Public Improvements as of last day of the prior fiscal year and listing all facilities and improvements constructed by the District that have been dedicated to and accepted by the City as of the last day of the prior fiscal year;
8. A table summarizing total debt authorized and total debt issued by the District as well as any presently planned debt issuances;
9. Official statements of current outstanding bonded indebtedness, if not previously provided to the City;

10. Current year budget including a description of the Public Improvements to be constructed in such year;

11. The District's financial statements, for the previous fiscal year, such statements shall be audited if required pursuant to State law or relevant bond documents (such statements shall be submitted within 30 days of completion if completed after 180 days following the end of the fiscal year);

12. Notice of any uncured events of default by the District, which continue beyond a 90 day period, under any Debt instrument; and

13. Any inability of the District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a 90 day period.

X. DISSOLUTION

Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of its outstanding indebtedness and other financial obligations as required pursuant to State statutes.

XI. DISCLOSURE TO PURCHASERS

Within thirty (30) days of the City adopting a resolution creating the District, the Board shall record a notice with the recorder of Washington County. Such notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the District; and (d) if applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion. Such notice shall further be filed with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, homebuilders, commercial developers, and commercial lessors, as applicable, disclose the following information to initial resident homeowners, renters, commercial property owners, and/or commercial tenants:

- (1) All of the information in the first paragraph of this XI;
- (2) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, **for every \$100,000 of taxable value**, there would be an **additional annual property tax of \$450** for the duration of the District's Bonds.”
- (3) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

XII. INTERLOCAL AGREEMENT

The form of the Interlocal Agreement required by the City Code, relating to the limitations imposed on the District's activities, is attached hereto as **Exhibit B**. The District shall approve the Interlocal Agreement in the form attached as **Exhibit B** at its first Board meeting after its organization. Failure of the District to execute the Interlocal Agreement as required herein shall constitute a material modification and shall require a Governing Document Amendment. The City Council shall approve the Interlocal Agreement in the form attached as **Exhibit B** at the public hearing approving the Governing Document.

EXHIBIT A

Initial District Boundary Map

Annexation Area Boundary Map

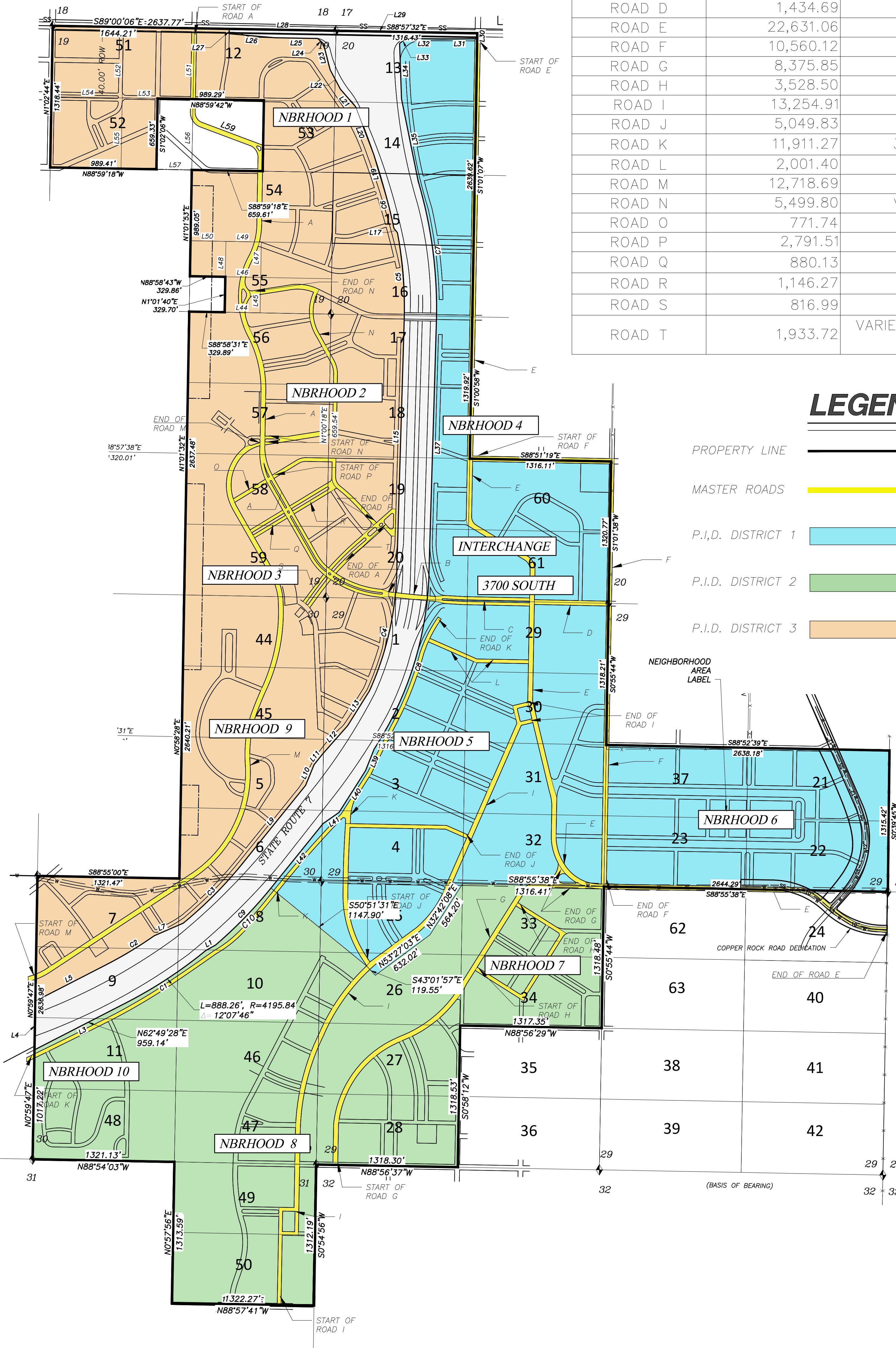
Vicinity Map

Legal Descriptions

(see following pages)

SAND HOLLOW MESA P.I.D. MAP

NEIGHBORHOOD ROADS		
ROAD	LENGTH	WIDTH
ROAD A	12,685.35	VARIES 30' TO 45' (TOTAL OF 75' IN ONE SECTION WITH DIVIDER)
ROAD B	965.73	45'
ROAD C	1,875.40	30' (TOTAL OF 75' WITH DIVIDER)
ROAD D	1,434.69	45'
ROAD E	22,631.06	VARIES 45' TO 50'
ROAD F	10,560.12	VARIES 45.22' TO 47.40' TO 50'
ROAD G	8,375.85	45'
ROAD H	3,528.50	35'
ROAD I	13,254.91	VARIES 35' TO 45'
ROAD J	5,049.83	VARIES 35' TO 45'
ROAD K	11,911.27	35' (ROAD CONNECTING TO J IS 45')
ROAD L	2,001.40	35'
ROAD M	12,718.69	VARIES 27.92' TO 45'
ROAD N	5,499.80	VARIES 23.21' TO 25' TO 35' TO 45'
ROAD O	771.74	35'
ROAD P	2,791.51	35'
ROAD Q	880.13	30' (TOTAL OF 85' WITH DIVIDER)
ROAD R	1,146.27	30' (TOTAL OF 85' WITH DIVIDER)
ROAD S	816.99	30' (TOTAL OF 82.61' WITH DIVIDER)
ROAD T	1,933.72	VARIES 19.12 TO 30' TO 35' (TOTAL OF 85' IN ONE SECTION WITH DIVIDER)



LEGEND

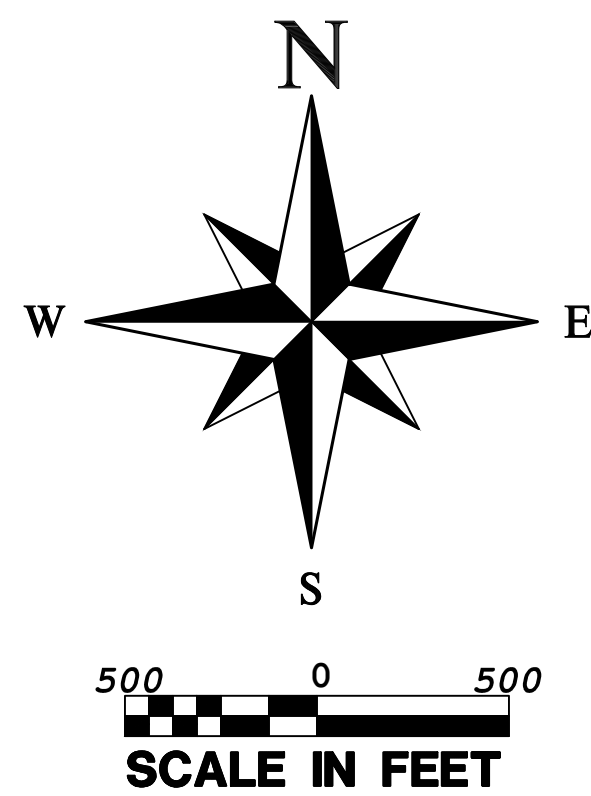
PROPERTY LINE

MASTER ROADS

P.I.D. DISTRICT 1

P.I.D. DISTRICT 2

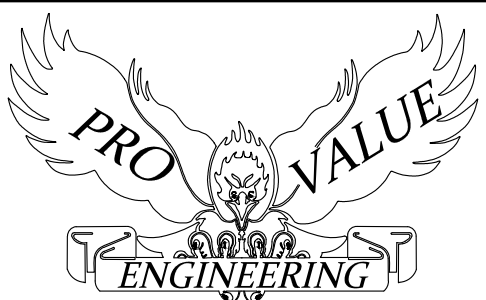
P.I.D. DISTRICT 3



SAND HOLLOW MESA P.I.D. DISTRICT 1 LEGAL DESCRIPTION
BEGINNING AT THE EAST QUARTER CORNER OF SECTION 29, TOWNSHIP SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN; THENCE N88°55'38"W 2644.29 FEET; THENCE N88°55'38"W 1316.41 FEET; THENCE S32°42'08"W 564.20 FEET; THENCE S53°27'03"W 632.02 FEET; THENCE N43°01'57"W 119.55 FEET; THENCE N50°51'31"W 1147.90 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY 7; THENCE ALONG SAID LINE THE FOLLOWING TWELVE (12) COURSES:
N38°56'24"E 771.59 FEET; THENCE N54°53'00"E 182.00 FEET; THENCE N32°26'53"E 459.99 FEET; THENCE N21°43'12"E 217.45 FEET; THENCE N89°28'28"E 335.12 FEET; THENCE S01°01'07"W 2588.88 FEET; THENCE N56°54'13"W THROUGH A CENTRAL ANGLE OF 31°23'56" A DISTANCE OF 1726.25 FEET; THENCE N01°41'50"E 2354.30 FEET; THENCE NORTHERLY ALONG THE ARC OF A 4150.00 FOOT RADIUS CURVE TO THE LEFT (LONG CHORD BEARS: N07°24'37"W 1313.79 FEET); CENTER POINT LIES N88°18'10"W THROUGH A CENTRAL ANGLE OF 18°12'54" A DISTANCE OF 1319.34 FEET; THENCE N11°26'26"W 783.27 FEET; THENCE N01°59'36"W 516.62 FEET; THENCE N53°53'15"E 78.08 FEET; THENCE S88°57'52"E 324.73 FEET; THENCE N89°28'28"E 335.12 FEET; THENCE S01°01'07"W 2588.88 FEET; THENCE N50°54'40"W 1320.29 FEET; THENCE S88°52'15"E 1313.68 FEET; THENCE S01°01'38"W 1320.77 FEET; THENCE S00°55'44"W 1318.21 FEET; THENCE S88°52'39"E 2638.18 FEET; THENCE S00°39'45"W 1315.42 FEET TO THE POINT OF BEGINNING.
AREA CONTAINS 14,130,219 SQUARE FEET OR 324.385 ACRES.

SAND HOLLOW MESA P.I.D. DISTRICT 2 LEGAL DESCRIPTION
BEGINNING AT THE CENTER QUARTER CORNER OF SECTION 29, TOWNSHIP SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN; THENCE S00°55'44"W 1318.48 FEET; THENCE N88°56'29"W 1317.35 FEET; THENCE S00°58'12"W 1318.53 FEET; THENCE N88°56'37"W 1318.30 FEET; THENCE S00°54'56"W 1312.19 FEET; THENCE N88°57'41"W 1322.27 FEET; THENCE N00°59'47"E 1017.22 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY 7; THENCE ALONG SAID LINE THE FOLLOWING FOUR (4) COURSES: N62°49'28"E 959.14 FEET; THENCE N89°28'28"E 335.12 FEET; THENCE S01°01'07"W 2588.88 FEET; THENCE N56°54'13"W THROUGH A CENTRAL ANGLE OF 31°23'56" A DISTANCE OF 1726.25 FEET; THENCE N01°41'50"E 2354.30 FEET; THENCE NORTHERLY ALONG THE ARC OF A 4150.00 FOOT RADIUS CURVE TO THE LEFT (LONG CHORD BEARS: N44°10'55"E 738.36 FEET); CENTER POINT LIES N40°46'31"W THROUGH A CENTRAL ANGLE OF 10°05'08" A DISTANCE OF 739.32 FEET; THENCE S50°51'31"E 1147.90 FEET; THENCE S43°01'57"E 119.55 FEET; THENCE N53°27'03"E 632.02 FEET; THENCE N32°42'08"E 564.20 FEET; THENCE S88°55'38"E 1316.41 FEET TO THE POINT OF BEGINNING.
AREA CONTAINS 10,951,391 SQUARE FEET OR 251.409 ACRES.

SAND HOLLOW MESA P.I.D. DISTRICT 3 LEGAL DESCRIPTION
BEGINNING AT THE NORTH QUARTER CORNER OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN; THENCE S89°00'06"E ALONG THE NORTH SECTION LINE, 1644.21 FEET TO THE WEST RIGHT-OF-WAY LINE OF HIGHWAY 7; THENCE ALONG SAID LINE THE FOLLOWING TWENTY THREE (23) COURSES: THENCE S00°59'31"W 45.11 FEET; THENCE S84°58'13"E 426.06 FEET; THENCE S89°00'29"E 400.00 FEET; THENCE S48°03'50"E 71.88 FEET; THENCE S14°16'38"E 250.20 FEET; THENCE S27°52'40"E 203.96 FEET; THENCE S40°47'44"E 219.32 FEET; THENCE S20°46'56"E 476.29 FEET; THENCE S16°34'05"E 351.50 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 3825.00 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS: S13°53'35"E 357.03 FEET); CENTER POINT LIES S73°25'55"W THROUGH A CENTRAL ANGLE OF 05°21'00" A DISTANCE OF 357.15 FEET; THENCE S38°23'13"E 54.09 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 3858.80 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (LONG CHORD BEARS: S04°24'08"E 818.17 FEET); CENTER POINT LIES S79°30'44"W THROUGH A CENTRAL ANGLE OF 12°10'16" A DISTANCE OF 819.74 FEET; THENCE S01°41'50"W 2354.29 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 2850.52 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS: S13°05'55"W 1126.85 FEET); CENTER POINT LIES N88°18'06"W THROUGH A CENTRAL ANGLE OF 22°48'00" A DISTANCE OF 1134.32 FEET; THENCE S32°05'57"W 378.86 FEET; THENCE S41°23'40"W 353.78 FEET; THENCE S38°56'26"W 125.00 FEET; THENCE S22°14'29"W 208.81 FEET; THENCE S38°56'26"W 931.87 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF A 3854.71 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS: S44°47'34"W 786.07 FEET); CENTER POINT LIES N51°03'34"W THROUGH A CENTRAL ANGLE OF 11°42'16" A DISTANCE OF 787.44 FEET; THENCE S66°32'48"W 294.49 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF A 3780.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (LONG CHORD BEARS: S58°53'35"W 519.33 FEET); CENTER POINT LIES N35°02'45"W THROUGH A CENTRAL ANGLE OF 07°52'41" A DISTANCE OF 519.74 FEET; THENCE S62°49'55"W 744.99 FEET; THENCE N00°59'27"E 1165.97 FEET; THENCE S88°55'00"E 1321.47 FEET; THENCE N00°58'28"E 660.13 FEET; THENCE N00°58'28"E 660.13 FEET; THENCE N01°00'55"E 3297.46 FEET; THENCE S88°58'43"W 329.86 FEET; THENCE N01°01'40"E 329.70 FEET; THENCE N88°58'43"W 329.86 FEET; THENCE N01°01'53"E 989.05 FEET; THENCE S88°59'18"E 659.61 FEET; THENCE N00°59'11"E 659.40 FEET; THENCE N88°59'32"W 988.85 FEET; THENCE S01°02'06"W 659.33 FEET; THENCE N88°59'18"W 989.41 FEET; THENCE N01°02'44"E 659.22 FEET; THENCE N01°02'44"E 659.22 FEET TO THE POINT OF BEGINNING. AREA CONTAINS 15,395,115 SQUARE FEET OR 353.423 ACRES.



PROVALUE ENGINEERING
20 SOUTH 850 WEST, #1
HURRICANE, UT 84717
Phone: (435) 668-8307

MAP FOR:
THE ROMNEY GROUP

2265 E. MURRAY HOLLADAY RD.
HOLLADAY, UT 84117
Phone: (801) 953-1110
DATE: 10/22/2021

SAND HOLLOW MESA
P.I.D. DISTRICTS

A PART OF SECTIONS 19, 20, 29, 30 & 31, T42S, R13W, S.L.B.#M.

SAND HOLLOW MESA PARCEL LEGAL DESCRIPTIONS

TITLE COMPANY LEGAL DESCRIPTION

LEGAL DESCRIPTIONS BY PARCEL:
SAND HOLLOW MESA PARCELS NO. 1--42 AND 44--63: (LABELED AS SUCH FOR REFERENCE PURPOSES ONLY)
PARCEL 1 (H-3400-A): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 2 (H-3400-D): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 3 (H-3400-E): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 4 (H-3400-H): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 5 (H-3421-C): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 6 (H-3421-D): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 7 (H-3421-E): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 8 (H-3421-F): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 9 (H-3421-H): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 10 (H-3421-G): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 11 (H-3421-I): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 12 (H-3409-B-2): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 13 (H-3410): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 14 (H-3410-B): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 15 (H-3410-C): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 16 (H-3410-D): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20 TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 17 (H-3410-E): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 18 (H-3410-F): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 19 (H-3410-G): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 20 (H-3410-J): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
LESS AND EXCEPTING FROM PARCELS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, THAT PORTION STIPULATED IN THAT ORDER OF OCCUPANCY RECORDED AUGUST 6, 2019, AS DOC. NO. 20190031223, OFFICIAL WASHINGTON COUNTY RECORDS.
PARCEL 21 (H-3399-B): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 22 (H-3399-I): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 23 (H-3399-D): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
~~PARCEL 24 (H-3409-G): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
LESS AND EXCEPTING FROM PARCELS 21, 22, 23 AND 24, COPPER ROCK PARKWAY AND 2100 WEST ROADWAY DEDICATION, RECORDED DECEMBER 26, 2018, AS DOC. NO. 2018005057.9, OFFICIAL WASHINGTON COUNTY RECORDS.
PARCEL 25 (H-3400-I): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 26 (H-3400-L): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 27 (H-3400-M): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 28 (H-3400-P): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 29 (H-3400-B): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 30 (H-3400-C): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 31 (H-3400-F): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 32 (H-3400-G): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 33 (H-3400-J): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 34 (H-3400-K): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
~~PARCEL 35 (H-3409-N): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
~~PARCEL 36 (H-3409-O): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
PARCEL 37 (H-3399-A): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
~~PARCEL 38 (H-3399-G): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
~~PARCEL 39 (H-3399-H): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
~~PARCEL 40 (H-3409-R): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
~~PARCEL 41 (H-3409-S): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
PARCEL 42 (H-3400-T): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 43: INTENTIONALLY OMITTED
PARCEL 44 (H-3421-A): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 45 (H-3421): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 46 (H-3421-J): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 47 (H-3421-K): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 48 (H-3421-L): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 49 (H-3422): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 31, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 50 (H-3422-B): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 31, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 51 (H-3409): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 52 (H-3409-C-2): THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4, AND THE WEST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 53 (H-3409-D): THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 54 (H-3409-E): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 55 (H-3409-F): THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4; THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4; THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4, AND THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 56 (H-3409-G): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 57 (H-3409-H): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 58 (H-3409-I): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 59 (H-3409-J): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 60 (H-3409-H): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 61 (H-3409-I): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
~~PARCEL 62 (H-3409-E): ALL OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE AND MERIDIAN.~~
PARCEL 63 (H-3409-F): ALL OF THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE AND MERIDIAN.

NOTE: PARCELS 24, 35, 36, 38, 40, 41, 42, 62 AND 63 ARE NOT PART OF THE OWNER'S PROPERTY AND ARE OWNED BY RIVER VALLEY DEVELOPMENT LLC

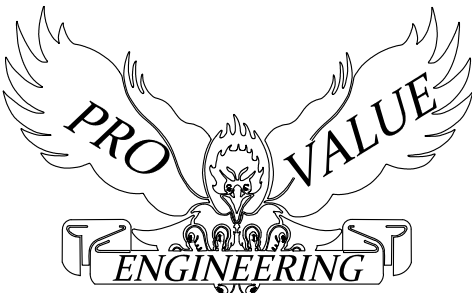
LEGAL LINE & CURVE TABLES

LINE TABLE		
LINE	LENGTH	DIRECTION
L1	106.64'	S60°44'58"W
L3	959.19'	S62°49'55"W
L4	453.78'	N1°00'36"E
L5	744.90'	N62°49'55"E
L7	294.49'	N66°32'48"E
L9	931.86'	N38°56'17"E
L10	208.81'	N22°14'20"E
L11	125.00'	N38°56'17"E
L12	353.78'	N41°23'31"E
L13	378.86'	N32°05'48"E
L15	2354.29'	N1°41'50"E
L17	54.09'	N38°23'13"W
L19	351.50'	N16°34'05"W
L20	476.29'	N20°46'56"W
L21	219.32'	N40°47'44"W
L22	203.96'	N27°52'40"W
L23	250.20'	N14°16'38"W
L24	71.88'	N48°03'50"W
L25	400.00'	N89°00'29"W
L26	426.06'	N84°58'13"W

LINE TABLE		
LINE	LENGTH	DIRECTION
L27	45.00'	N0°59'31"E
L28	993.56'	S89°00'29"E
L29	1316.43'	S88°57'52"E
L30	50.86'	S1°00'50"W
L31	335.12'	S89°28'28"W
L32	325.00'	N88°57'48"W
L33	77.87'	S53°45'42"W
L34	516.62'	S1°59'37"E
L35	783.27'	S11°26'26"E
L37	2354.30'	S1°41'50"W
L39	217.45'	S21°43'12"W
L40	459.99'	S32°26'53"W
L41	182.00'	S54°53'00"W
L42	756.86'	S38°56'17"W
L44	659.77'	S88°58'31"E
L45	329.72'	N1°01'27"E
L46	329.86'	S88°58'43"E
L47	329.72'	N1°01'27"E
L48	659.41'	N1°01'40"E
L49	329.84'	S88°58'54"E

LINE TABLE		
LINE	LENGTH	DIRECTION
L50	329.84'	S88°58'54"E
L51	659.37'	N1°01'53"E
L52	659.29'	N1°02'19"E
L53	659.52'	S88°59'42"E
L54	659.52'	S88°59'42"E
L55	659.29'	N1°02'19"E
L56	659.37'	N1°01'53"E
L57	659.61'	S88°59'18"E

CURVE TABLE					
CURVE	LENGTH	RADIUS	CHORD DIST.	CHORD BRG.	DELTA
C1	888.23'	4180.00'	886.56'	S56°44'40"W	12°10'30"
C2	519.74'	3780.00'	519.33'	N58°53'35"E	7°52'41"
C3	787.45'	3850.00'	786.08'	N44°47'51"E	11°43'08"
C4	1134.33'	2850.00'	1126.86'	N13°05'58"E	22°48'16"
C5	819.72'	3850.00'	818.17'	N4°24'08"W	12°11'57"
C6	357.15'	3825.00'	357.03'	N13°53'35"W	5°21'00"
C7	1319.34'	4150.00'	1313.79'	S7°24'37"E	18°12'54"
C8	1726.25'	3150.00'	1704.73'	S17°23'49"W	31°23'56"
C9	754.04'	4200.00'	753.03'	S44°04'53"W	10°17'12"
C10	739.32'	4199.99'	738.36'	N44°10'55"E	10°05'08"



PROVALUE ENGINEERING
20 SOUTH 850 WEST, #1
HURRICANE, UT 84737
Phone: (435) 668-8307

MAP FOR:
THE ROMNEY GROUP
2265 E. MURRAY HOLLADAY RD.
HOLLADAY, UT 84117
Phone: (801) 953-1110
DATE: 10/22/2021

SAND HOLLOW MESA
P.I.D. LEGAL DESCRIPTIONS

A PART OF SECTIONS 19, 20, 29, 30 & 31, T42S, R13W, S.L.B.#M.

EXHIBIT B

INTERLOCAL AGREEMENT BETWEEN

HURRICANE CITY, UTAH

AND

SAND HOLLOW MESA PUBLIC INFRASTRUCTURE DISTRICT NO. 2

THIS AGREEMENT is made and entered into as of this ____ day of _____, _____, by and between HURRICANE CITY, a home-rule municipal corporation of the State of Utah (“City”), and SAND HOLLOW MESA PUBLIC INFRASTRUCTURE DISTRICT NO. 2, a political subdivision of the State of Utah (the “District”). The City and the District are collectively referred to as the Parties.

RECITALS

WHEREAS, the District was organized to provide to exercise powers as are more specifically set forth in the District’s Governing Document approved by the City on March 3, 2022 (“Governing Document”); and

WHEREAS, the Governing Document makes reference to the execution of an Interlocal Agreement between the City and the District; and

WHEREAS, the City and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Interlocal Agreement (“Agreement”).

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

COVENANTS AND AGREEMENTS

1. **Operations and Maintenance.** The District shall dedicate the Public Improvements (as defined in the Governing Document) to the City or other appropriate jurisdiction in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. The District shall be authorized, but not obligated, to own Public Improvements not otherwise required to be dedicated to the City or other public entity, and all necessary equipment and appurtenances incident thereto. Trails which are interconnected with a city or regional trail system shall be open to the public free of charge and on the same basis as residents and owners of taxable property within the District.

2. **Improvements Limitation.** Without written authorization of the City, the District shall not be authorized to finance the costs of any improvements or facilities which are to be ultimately owned by one of the Districts.

Construction Standards. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction, as applicable. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work. The District may satisfy any City requirements for guaranty of performance of infrastructure completion by delivering to the City documentation evidencing the funds available to the District for such infrastructure as a result of the bonds issued by the District.

3. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District's Governing Document.

We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

4. Inclusion Limitation. The District shall not include within any of their boundaries any property outside the District Area without the prior written consent of the City. By the Governing Document, the City has consented to the annexation or withdrawal of any area within the Annexation Area into or from the District Boundaries. The District shall not include within any of its boundaries any property inside the inclusion area boundaries without the prior written consent of the City except upon petition of the surface property owners of 100 percent of such property and/or 100 percent of registered voters within the area to be included, as applicable, as provided in Section 17D-4-201(3), Utah Code.

5. Overlap Limitation. It is anticipated that one or more of the Districts may overlap with a portion of the Bench Lake Public Improvement District ("BLPID") approved by the City, given that the improvements proposed to be financed by the Districts may also benefit part of the area of the BLPID. The BLPID is forbidden from levying a maximum mill levy in the overlap area which exceeds 0.003, which is the Maximum Debt Mill Levy of the BLPID. The aggregate mill levy of the Districts and the BLPID together shall not in any event be permitted to exceed the Maximum Debt Mill Levy of the District, on any property located within any of the Districts and the BLPID. The Districts shall not, without the prior authorization of the City Council, consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the Districts.

6. Initial Debt. On or before the effective date of approval by the City of an Approved Development Plan (as defined in the Governing Document), the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of

funds from the operating fund to the Debt service funds; nor (c) impose and collect any fees used for the purpose of repayment of Debt.

7. Total Debt Issuance. The Districts shall not issue Debt in excess of an aggregate amount of One Hundred Fifty Million Dollars (\$150,000,000). This amount excludes any portion of bonds issued to refund a prior issuance of debt by any of the Districts. In addition, the Total Debt Issuance Limitation does not apply to the District's pledge of its property tax revenues to the Debt of one of the other Districts. In the event two or more Districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each District.

8. Bankruptcy. All of the limitations contained in this Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(4), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the "political or governmental powers" reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the "regulatory or electoral approval necessary under applicable nonbankruptcy law" as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

9. Dissolution. Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes.

10. Disclosure to Purchasers. Within thirty (30) days of the City adopting a resolution creating the District, the Board shall record a notice with the recorder of Washington County, Utah. Such notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the District; and (d) if applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion. Such notice shall further be filed with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, homebuilders, commercial developers, and commercial lessors, as applicable, disclose the following information to initial resident homeowners, renters, commercial property owners, and/or commercial tenants:

- (a) All of the information in the first paragraph of 11 of this Agreement;
- (b) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, **for every \$100,000 of taxable value**, there would be an **additional annual property tax of \$450** for the duration of the District’s Bonds.”

- (c) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

11. Governing Document Amendment Requirement. Actions of the District which violate the limitations set forth in V.A.1-9 or VIII.B-G of the Governing Document shall be deemed to be material modifications to the Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

12. Annual Report. The District shall be responsible for submitting an annual report to the City Manager’s Office no later than 180 days following the closing of the District’s fiscal year, containing the information set forth in Section VIII of the Governing Document.

13. Regional Improvements. The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements.

14. Maximum Debt Mill Levy.

(a) The “Maximum Debt Mill Levy” shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District for payment of Limited Tax Debt shall be 0.0045 per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8). Such Maximum Debt Mill Levy may also be used to pay administrative expenses of the District. Further, the Districts may not impose mill levies which aggregate in excess of 0.0045 per dollar of taxable value of taxable property in the District; provided that such levies shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code.

(b) Such Maximum Debt Mill Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202.

(c) Any other mill levy imposed by any other district with the authorization of the City shall not be applied toward the calculation of the Maximum Debt Mill Levy.

15. Maximum Debt Mill Levy Imposition Term. Each bond issued by the District shall mature within thirty-one (31) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of a series of bonds after a period exceeding forty (40) years from the first date of imposition of the mill levy for such bond (the “Maximum Debt Mill Levy Imposition Term”).

16. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: Sand Hollow Mesa Public Infrastructure District
No. 2
c/o Snow Jensen & Reece, PC
912 West 1600 South, Ste. B200
St. George, UT 84770
Attn: Matthew J. Ence
Phone: (435) 628-3688

To the City: Hurricane City
147 N 870 W
Hurricane, UT 84737
Attn: City Manager
Phone: (435) 635-2811

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

17. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties hereto and without amendment to the Governing Document.

18. Assignment. Neither Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

19. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party

in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

20. Term. This Agreement shall terminate upon the earlier to occur of dissolution of the District or fifty (50) years from the date hereof.

21. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Utah.

22. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

23. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

24. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the City any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the City shall be for the sole and exclusive benefit of the District and the City.

25. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

27. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

28. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Governing Document.

[SIGNATURE PAGE TO INTERLOCAL AGREEMENT]

SAND HOLLOW MESA PUBLIC
INFRASTRUCTURE DISTRICT NO. 2

By: _____
President

Attest:

Secretary

APPROVED AS TO FORM: _____

HURRICANE CITY, UTAH

By: _____
Mayor

Attest:

By: _____
Its: _____

APPROVED AS TO FORM: _____

Hurricane, Utah

March 3, 2022

The City Council (the “Council”) of Hurricane City, Utah (the “City”), met in regular session (including by electronic means) on March 3, 2022, at its regular meeting place in Hurricane, Utah at 6:00 p.m., with the following members of the Council being present:

Nanette Billings	Mayor
Joseph Prete	Councilmember
Dave Sanders	Councilmember
David Hirschi	Councilmember
Doug Heideman	Councilmember
Kevin Thomas	Councilmember

Also present:

Kaden DeMille	City Manager
Cindy Beteag	City Recorder

Absent:

After the meeting had been duly called to order and after other matters not pertinent to this Resolution had been discussed, the City Recorder presented to the Council a Certificate of Compliance with Open Meeting Law with respect to this March 3, 2022, meeting, a copy of which is attached hereto as Exhibit A.

Thereupon, the following Resolution was introduced in writing, read in full and pursuant to motion duly made by Councilmember _____ and seconded by Councilmember _____ adopted by the following vote:

AYE:

NAY:

The resolution was later signed by the Mayor and recorded by the City Recorder in the official records of the City. The resolution is as follows:

RESOLUTION 2022-15

A RESOLUTION OF THE CITY COUNCIL (THE “COUNCIL”) OF THE CITY OF HURRICANE, UTAH (THE “CITY”), PROVIDING FOR THE CREATION OF SAND HOLLOW MESA PUBLIC INFRASTRUCTURE DISTRICT NO. 3 (THE “DISTRICT”) AS AN INDEPENDENT BODY CORPORATE AND POLITIC; AUTHORIZING AND APPROVING A GOVERNING DOCUMENT, AN INTERLOCAL AGREEMENT, AND A NOTICE OF BOUNDARY ACTION; DELEGATING TO CERTAIN OFFICERS OF THE CITY THE AUTHORITY TO EXECUTE AND APPROVE THE FINAL TERMS AND PROVISIONS OF THE GOVERNING DOCUMENT, THE INTERLOCAL AGREEMENT, THE NOTICE OF BOUNDARY ACTION AND ANY OTHER DOCUMENTS RELATED THERETO; APPROVING OF AN ANNEXATION AREA; AUTHORIZING THE DISTRICT TO PROVIDE SERVICES RELATING TO THE FINANCING AND CONSTRUCTION OF PUBLIC INFRASTRUCTURE WITHIN THE ANNEXATION AREA; APPOINTING A BOARD OF TRUSTEES OF THE DISTRICT; AUTHORIZING OTHER DOCUMENTS IN CONNECTION THEREWITH; AND RELATED MATTERS.

WHEREAS, a petition (the “Petition”) was filed with the City requesting adoption by resolution the approval of the creation of three separate public infrastructure districts pursuant to the Public Infrastructure District Act, Title 17D, Chapter 4, Utah Code Annotated 1953, as amended (the “PID Act”) and relevant portions of the Limited Purpose Local Government Entities - Local Districts, Title 17B (together with the PID Act, the “Act”) within the boundaries of the City and approve an annexation area (the “Annexation Area”) which any of the districts may annex into therein without further approval or hearings of the City or the Council, as further described in Governing Document Exhibits A and C (as hereinafter defined) for the purpose of financing public infrastructure costs; and

WHEREAS, pursuant to the terms of the Act, the City may create one or more public infrastructure districts by adoption of a resolution of the Council and with consent of 100% of all surface property owners proposed to be included in the District (the “Property Owners”); and

WHEREAS, the Petition, containing the consent of such Property Owners has been certified by the Recorder of the City pursuant to the Act and it is in the best interests of the Property Owners that the creation of the District be authorized in the manner and for the purposes hereinafter set forth; and

WHEREAS, the City prior to consideration of this Resolution, held a public hearing to receive input from the public regarding the creation of the District and the Property Owners have waived the 60-day protest period pursuant to Section 17D-4-201 of the PID Act; and

WHEREAS, it is necessary to authorize the creation of the District under and in compliance with the laws of the State of Utah and to authorize other actions in connection therewith; and

WHEREAS, the hearing on the Petition was held at the City Hall because there is no reasonable place to hold a public hearing within the District's boundaries, and the hearing at the City Hall was held as close to the applicable area as reasonably possible; and

WHEREAS, the City mailed or caused to be mailed prior notice of the hearing to each of the Property Owners in compliance with Section 17B-1-211(1)(b) of the Act; and

WHEREAS, none of the Property Owners submitted a withdrawal of consent to the creation of the District before the public hearing on the Petition; and

WHEREAS, each board member appointed under this Resolution has previously filed with the City a disclosure of business relationships in compliance with Section 17D-4-202(9) of the PID Act; and

WHEREAS, according to attestations filed with the City, each board member appointed under this Resolution is registered to vote at their primary residence and is further eligible to serve as a board member of the District under Section 17D-4-202(3)(c) of the PID Act because they are agents of property owners within the District boundaries (as further set forth in the Petition); and

WHEREAS, the governance of the District shall be in accordance with the PID Act and the terms of a governing document (the "Governing Document") attached hereto as Exhibit B and an Interlocal Agreement between the City and the District, attached to the Governing Document as Governing Document Exhibit D; and

WHEREAS, pursuant to the requirements of the Act, there shall be signed, authenticated, and submitted to the Office of the Lieutenant Governor of the State of Utah a Notice of Boundary Action attached hereto as Exhibit C (the "Boundary Notice") and a Final Entity Plat to be attached thereto as Boundary Notice Appendix B (or as shall be finalized in accordance with the boundaries approved hereunder) (the "Plat").

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL, AS FOLLOWS:

1. Terms defined in the foregoing recitals shall have the same meaning when used herein. All action heretofore taken (not inconsistent with the provisions of this Resolution) by the Council and by officers of the Council directed toward the creation and establishment of the District, are hereby ratified, approved and confirmed.

2. The District is hereby created as a separate entity from the City in accordance with the Governing Document and the Act. The boundaries of the District shall be as set forth in the Governing Document and the Plat.

3. Pursuant to the terms of the PID Act, the Council does hereby approve the annexation of any area within the Annexation Area Boundaries into the District without any further action of the Council or the City and further approves withdrawal of any area within the Initial District Boundaries (as defined in the Governing Document) or Annexation Area Boundaries from the District without any further action, hearings, or resolutions of the Council or the City, upon compliance with the terms of the PID Act and the Governing Document.

4. The Council does hereby authorize the District to provide services relating to the financing and construction of public infrastructure within the Annexation Area upon annexation thereof into the District without further request of the District to the City to provide such service under 17B-1-407, Utah Code Annotated 1953 or resolutions of the City under 17B-1-408, Utah Code Annotated 1953.

5. It is hereby found and determined by the Council that the creation of the District is appropriate to the general welfare, order and security of the City, and the organization of the District pursuant to the PID Act is hereby approved.

6. The Governing Document and the Interlocal Agreement in the form presented to this meeting and attached hereto as Exhibits B and Governing Document Exhibit D are hereby authorized and approved and the District shall be governed by the terms thereof and applicable law.

7. The District Board is hereby appointed as follows:

(a) Trustee 1 – Josh Romney for an initial six-year term.

(b) Trustee 2 – Anthon Stauffer for an initial six-year term.

(c) Trustee 3 – Nate Brockbank for an initial four-year term.

(d) Such terms shall commence on the date of issuance of a Certificate of Creation by the Office of the Lieutenant Governor of the State of Utah.

8. The Council does hereby authorize the Mayor or a Councilmember to execute the Boundary Notice in substantially the form attached as Exhibit C and such other documents as shall be required to finalize the actions contemplated herein on behalf of the Council for submission to the Office of the Lieutenant Governor of the State of Utah.

9. Prior to certification of the creation of the District by the Office of the Lieutenant Governor of the State of Utah, the Council does hereby authorize the Mayor, a Councilmember, or the City Manager to make any corrections, deletions, or additions to the Governing Document, the Interlocal Agreement, and the Boundary Notice or any other document herein authorized and approved (including, but not limited to, corrections to the property descriptions therein contained) which may be necessary to conform the same to the intent hereof, to correct errors or omissions therein, to complete the same, to remove ambiguities therefrom, or to conform the same to other provisions of said instruments, to the provisions of this Resolution or any resolution adopted by the Council or the provisions of the laws of the State of Utah or the United States (provided that the debt and mill levy limitations established therein may not be modified pursuant to this provision).

10. The Board of Trustees of the District (the “District Board”) is hereby authorized and directed to record such Governing Document with the recorder of Washington County within 30 days of the issuance of a Certificate of Creation by the Office of the Lieutenant Governor of the State of Utah.

11. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

12. All acts, orders and resolutions, and parts thereof in conflict with this Resolution be, and the same are hereby, rescinded.

13. This resolution shall take effect immediately.

PASSED AND ADOPTED by the City Council of the City of Hurricane, Utah, this March 3, 2022.

CITY OF HURRICANE, UTAH

By: _____
Mayor

ATTEST:

By: _____
City Recorder

(Here follows other business not pertinent to the above.)

Pursuant to motion duly made and seconded, the meeting of the Council of the City adjourned.

By: _____
Mayor

ATTEST:

By: _____
City Recorder

STATE OF UTAH)
 : ss.
COUNTY OF WASHINGTON)

I, Cindy Beteag, the undersigned duly qualified and acting City Recorder of the City of Hurricane, Utah (“the City”), do hereby certify as follows:

The foregoing pages are a true, correct, and complete copy of the record of proceedings of the City Council (the "Council"), had and taken at a lawful meeting of the Council on March 3, 2022, commencing at the hour of 6:00 p.m., as recorded in the regular official book of the proceedings of the Council kept in my office, and said proceedings were duly had and taken as therein shown, and the meeting therein shown was duly held, and the persons therein were present at said meeting as therein shown.

All members of the Council were duly notified of said meeting, pursuant to law.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City,
this March 3, 2022.

By: _____
City Recorder

EXHIBIT A

CERTIFICATE OF COMPLIANCE WITH OPEN MEETING LAW

I, Cindy Beteag, the undersigned City Recorder of the City of Hurricane, Utah (the “City”), do hereby certify that I gave written public notice of the agenda, date, time and place of the regular meeting held by the Council (the “Council”) on March 3, 2022, not less than 24 hours in advance of the meeting. The public notice was given in compliance with the requirements of the Utah Open and Public Meetings Act, Section 52-4-202, Utah Code Annotated 1953, as amended, by:

- (a) causing a Notice, in the form attached hereto as Schedule 1, to be posted at the City’s principal offices at least twenty-four (24) hours prior to the convening of the meeting, said Notice having continuously remained so posted and available for public inspection until the completion of the meeting; and
- (b) causing a copy of such Notice, in the form attached hereto as Schedule 1, to be published on the Utah Public Notice Website (<http://pmn.utah.gov>) at least twenty-four (24) hours prior to the convening of the meeting.

In addition, the Notice of 2022 Annual Meeting Schedule for the Council (attached hereto as Schedule 2) was given specifying the date, time and place of the regular meetings of the Council of the City to be held during the year, by causing said Notice to be (i) posted on _____, 20____, at the principal office of the City, (ii) provided to at least one newspaper of general circulation within the geographic jurisdiction of the City on _____, 20____ and (iii) published on the Utah Public Notice Website (<http://pmn.utah.gov>) during the current calendar year.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature this March 3, 2022.

By: _____
City Recorder

SCHEDULE 1

NOTICE OF MEETING AND AGENDA

SCHEDULE 2

NOTICE OF ANNUAL MEETING SCHEDULE

EXHIBIT B
GOVERNING DOCUMENT

EXHIBIT C

NOTICE OF BOUNDARY ACTION

TO: The Lieutenant Governor, State of Utah

A copy of the Final Local Entity Plat satisfying the applicable legal requirements as set forth in Utah Code Ann. §17-23-20, approved as a final local entity plat by the Surveyor of Washington County, Utah, is attached as EXHIBIT “B” hereto and incorporated by this reference. The Council hereby certifies that all requirements applicable to the creation of the District, as more particularly described in the Creation Resolution, have been met. The District is not anticipated to result in the employment of personnel.

DATED this day of , 2022.

By: _____
 AUTHORIZED
 REPRESENTATIVE

STATE OF UTAH)
)
) :ss.
)
COUNTY OF WASHINGTON)

NOTARY PUBLIC

EXHIBIT “A” TO NOTICE OF BOUNDARY ACTION

Copy of the Creation Resolution

EXHIBIT “B” TO NOTICE OF BOUNDARY ACTION

Final Local Entity Plat

**GOVERNING DOCUMENT
FOR
SAND HOLLOW MESA PUBLIC INFRASTRUCTURE DISTRICT NO. 3
HURRICANE CITY, UTAH**

March 3, 2022

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EXHIBIT A	Initial District Boundary Map, Annexation Area Boundary Map, Vicinity Map, Legal Descriptions
EXHIBIT B	Interlocal Agreement between the District and Hurricane City

I. INTRODUCTION

A. Purpose and Intent.

The District is an independent unit of local government, separate and distinct from the City, and, except as may otherwise be provided for by State or local law or this Governing Document, its activities are subject to review by the City only insofar as they may deviate in a material matter from the requirements of the Governing Document. It is intended that the District will provide a part or all of the Public Improvements for the use and benefit of all anticipated inhabitants and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements. The District is not being created to provide any ongoing operations and maintenance services.

B. Need for the District.

There are currently no other governmental entities, including the City, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction installation, relocation, redevelopment, and financing of the Public Improvements needed for the Project. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.

C. Objective of the City Regarding District's Governing Document.

The City's objective in approving the Governing Document for the District is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by the District. All Debt is expected to be repaid by taxes imposed and collected for no longer than the Maximum Debt Mill Levy Imposition Term and at a tax mill levy no higher than the Maximum Debt Mill Levy for all commercial and residential properties, and/or repaid by Assessments. Debt which is issued within these parameters and, as further described in the Financial Plan, will insulate property owners from excessive tax burdens to support the servicing of the Debt and will result in a timely and reasonable discharge of the Debt.

This Governing Document is intended to establish a limited purpose for the District and explicit financial constraints that are not to be violated under any circumstances. The primary purpose is to provide for the Public Improvements associated with development and regional needs. Although the District has authority to directly provide public improvements, the District also has the authority to pledge tax revenues to an interlocal entity that provides public improvements.

It is the intent of the District to dissolve upon payment or defeasance of all Debt incurred or upon a determination that adequate provision has been made for the payment of all Debt.

The District shall be authorized to finance the Public Improvements that can be funded from Debt to be repaid from Assessments or from tax revenues collected from a mill levy

which shall not exceed the Maximum Debt Mill Levy on taxable properties and which shall not exceed the Maximum Debt Mill Levy Imposition Term on taxable properties. It is the intent of this Governing Document to assure to the extent possible that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy in amount and that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy Imposition Term in duration even under bankruptcy or other unusual situations. Generally, the cost of Public Improvements that cannot be funded within these parameters are not costs to be paid by the District.

II. DEFINITIONS

In this Governing Document, the following terms shall have the meanings indicated below, unless the context hereof clearly requires otherwise:

Annexation Area Boundaries: means the boundaries of the area described in the Annexation Area Boundary Map which have been approved by the City for annexation or withdrawal from or into one of the Districts upon the meeting of certain requirements.

Annexation Area Boundary Map: means the map depicting the Annexation Area Boundaries attached hereto as **Exhibit A**, describing the property proposed for annexation within the District.

Approved Development Plan: means a Preliminary Development Plan or other process established by the City for identifying, among other things, Public Improvements necessary for facilitating development for property within the District Area as approved by the City pursuant to the City Code and as amended pursuant to the City Code from time to time. For purposes of this Governing Document, the Master Plan / PDO Concept Submittal dated January 14, 2021, as approved by the City shall constitute an Approved Development Plan.

Assessment: means assessments levied in an assessment area created within the District.

Board: means the board of trustees of the District.

Bond, Bonds or Debt: means bonds or other obligations, including loans of any property owner, for the payment of which the District has promised to impose an ad valorem property tax mill levy, and/or collect Assessments.

City: means Hurricane City, Utah.

City Code: means the City Code of Hurricane City, Utah.

City Council: means the City Council of Hurricane City, Utah.

District: means the Sand Hollow Mesa Public Infrastructure District No. 3.

District Area: means the property within the Initial District Boundary Map and the Annexation Area Boundary Map.

Districts: means collectively, the District, Sand Hollow Mesa Public Infrastructure District No. 1, and Sand Hollow Mesa Public Infrastructure District No. 2, contemplated to be created contemporaneously with one another.

End User: means any owner, or tenant of any owner, of any taxable improvement within the District, who is intended to become burdened by the imposition of ad valorem property taxes subject to the Maximum Debt Mill Levy. By way of illustration, a resident homeowner, renter, commercial property owner, or commercial tenant is an End User. The business entity that constructs homes or commercial structures is not an End User.

Fees: means any fee imposed by the District for administrative services provided by the District.

Financial Plan: means the Financial Plan described in Section VIII which describes (i) the potential means whereby the Public Improvements may be financed; (ii) how the Debt is expected to be incurred; and (iii) the estimated operating revenue derived from property taxes for the first budget year.

General Obligation Debt: means a Debt that is directly payable from and secured by ad valorem property taxes that are levied by the District and does not include Limited Tax Debt.

Governing Document: means this Governing Document for the District approved by the City Council.

Governing Document Amendment: means an amendment to the Governing Document approved by the City Council in accordance with the City's ordinance and the applicable state law and approved by the Board in accordance with applicable state law.

Initial District Boundaries: means the boundaries of the area described in the Initial District Boundary Map.

Initial District Boundary Map: means the map depicting the Initial District Boundaries attached hereto as **Exhibit A**, describing the District's initial boundaries.

Limited Tax Debt: means a debt that is directly payable from and secured by ad valorem property taxes that are levied by the District which may not exceed the Maximum Debt Mill Levy.

Local District Act: means Title 17B of the Utah Code, as amended from time to time.

Maximum Debt Mill Levy: means the maximum mill levy the District is permitted to impose for payment of Debt as set forth in Section VIII.C below.

Maximum Debt Mill Levy Imposition Term: means the maximum term for imposition of a mill levy for any given series of bonds as set forth in Section VIII.D below.

Municipal Advisor: means a consultant that: (i) advises Utah governmental entities on matters relating to the issuance of securities by Utah governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (ii) shall be an individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place; and (iii) is not an officer or employee of the District.

Project: means the development or property commonly referred to as the Sand Hollow Mesa Project.

PID Act: means Title 17D, Chapter 4 of the Utah Code, as amended from time to time and any successor statute thereto.

Public Improvements: means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as generally described in the Local District Act, except as specifically limited in Section V below to serve the future taxpayers and inhabitants of the District Area as determined by the Board.

Regional Improvements: means Public Improvements and facilities that benefit the District Area and which are to be financed pursuant to Section VII below.

State: means the State of Utah.

Taxable Property: means real or personal property within the District Area subject to ad valorem taxes imposed by the District.

Trustee: means a member of the Board.

Utah Code: means the Utah Code Annotated 1953, as amended.

III. BOUNDARIES

The area of the Initial District Boundaries includes approximately three hundred fifty-three (353.423) acres and the total area proposed to be included in the Annexation Area Boundaries is approximately nine hundred twenty-nine (929.217) acres and includes all property within the District as well as an additional approximately five hundred seventy-six (575.794) acres. Maps of the Initial District Boundaries and Annexation Area Boundaries, a vicinity map, and legal descriptions of the Initial District Boundaries and the Annexation Area Boundaries are attached hereto together as **Exhibit A**. It is anticipated that the District's boundaries may change from time to time as it undergoes annexations and withdrawals pursuant to Section 17B-4-201, Utah Code, subject to Article V below.

IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION

The District Area consists of approximately nine hundred twenty-nine (929.217) acres of mostly undeveloped land. The current assessed valuation of the District Area at build out, is

expected to be sufficient to reasonably discharge the Debt under the Financial Plan. The population of the District Area at build-out is estimated to be approximately 9,000 people.

Approval of this Governing Document by the City does not imply approval of the development of a specific area within the District, nor does it imply approval of the number of residential units or the total site/floor area of commercial or industrial buildings identified in this Governing Document or any of the exhibits attached thereto, unless the same is contained within an Approved Development Plan.

V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES

A. Powers of the District and Governing Document Amendment.

The District shall have the power and authority to provide the Public Improvements within and without the boundaries of the District as such power and authority is described in the Local District Act, and other applicable statutes, common law and the Constitution, subject to the limitations set forth herein.

1. Improvements. The District shall have authority to provide for the planning, design, acquisition, construction, installation, and dedication to the City of the Public Improvements within and without the boundaries of the District. Prior to or contemporaneous with providing the foregoing for any other Public Improvements, the District must have arranged for the financing of the following improvements (the “Pre-Requisite Improvements”), as generally depicted in or required by the Approved Development Plan:

(a) 9.2 miles of public trails, trailheads, parking and restrooms with drinking facilities. The main trails connecting the Project to adjacent properties and trail systems would be 12' wide.

(b) A UDOT approved and designed interchange including two trails, one 12' and one 5', and two separate bike lanes.

(c) Dedications and improvements related to public utilities within the property.

(d) Dedication of land for a public power substation.

(e) Dedication and improvement of city parks and open spaces of at least 72 acres of the 279 acres of open space planned for the project. The 72 acres will be of developable land, and 51 of the 72 acres will be improved as active or programmable park spaces (the remaining approximately 21 acres would be passive park space). Conditioned on availability of required permits, one of the city parks will include a public fishing pond (we would need the city to help coordinate permitting approval of the pond). Other improvements to programmable park space will be as proposed by developer and approved by City staff.

(f) \$4,000,000 to be allocated to the construction by the City of a public safety building to house fire and/or police services located within the Project.

(g) Dedications and improvements required for a secondary irrigation system that would meet Governor Cox's proposed water conservation plan to utilize as little water as possible in public spaces throughout the property.

(h) All master planned public roadways depicted on the City's most recent master road plan, including sidewalks and curb/gutter as required by City standards.

The Pre-Requisite Improvements may be funded either through issuance of bonds or other sources of funds (such as developer contributions), but must be fully funded before other non-Pre-Requisite Improvements are financed through the District.

Any impact fee reimbursements or credits which become available due to the financing of public improvements by the Districts shall be for the benefit of the Districts and not any developer.

2. Operations and Maintenance Limitation. The purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The District shall dedicate the Public Improvements to the City or other appropriate public entity or owners association in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. Trails which are interconnected with a city or regional trail system shall be open to the public free of charge and on the same basis as residents and owners of taxable property within the District.

3. Improvements Limitation. Notwithstanding the provisions of Section V.A.1 and 2 above, without written authorization of the City, the District shall not be authorized to finance the costs of any improvements or facilities which are to be ultimately owned by one of the Districts.

4. Construction Standards Limitation. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

5. Procurement. The District shall be subject to the Utah Procurement Code, Title 63G, Chapter 6a.

6. Privately Placed Debt Limitation. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District's Governing Document.

We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

7. Annexation and Withdrawal.

(a) The District shall not include within any of its boundaries any property outside the District Area without the prior written consent of the City. The City, by resolution and this Governing Document, has consented to the annexation of any area within the Annexation Area Boundaries into the District. Such area may only be annexed upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be annexed and the passage of a resolution of the Board approving such annexation.

(b) The City, by resolution and this Governing Document, has consented to the withdrawal of any area within the District Boundaries from the District. Such area may only be withdrawn upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be withdrawn and the passage of a resolution of the Board approving such annexation.

(c) Any annexation or withdrawal shall be in accordance with the requirements of the PID Act.

(d) Upon any annexation or withdrawal, the District shall provide the City a description of the revised District Boundaries.

(e) Annexation or withdrawal of any area in accordance with V.A.6(a) and (b) shall not constitute an amendment of this Governing Document.

8. Overlap Limitation. The District shall not impose aggregate mill levy for payment of Debt that exceeds the Maximum Debt Mill Levy of the District. The District shall not consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the District unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Debt Mill Levy of the District, or unless such other district is approved by the City.

9. Initial Debt Limitation. On or before the effective date of approval by the City of an Approved Development Plan, the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (c) impose and collect any Assessments used for the purpose of repayment of Debt.

10. Total Debt Issuance Limitation. The Districts shall not issue Debt in excess of an aggregate amount of One Hundred Fifty Million Dollars (\$150,000,000). This amount excludes any portion of bonds issued to refund a prior issuance of debt by any of the Districts. In addition, the Total Debt Issuance Limitation does not apply to the District's pledge of its property tax revenues to the Debt of one of the other Districts. In the event two or more Districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each District.

11. Bankruptcy Limitation. All of the limitations contained in this Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term and the Fees have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(5), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the "political or governmental powers" reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the "regulatory or electoral approval necessary under applicable nonbankruptcy law" as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

12. Governing Document Amendment Requirement.

(a) This Governing Document has been designed with sufficient flexibility to enable the District to provide required facilities under evolving circumstances without the need for numerous amendments. Actions of the District which violate the limitations set forth in V.A.1-9 above or in VIII.B-G. shall be deemed to be material modifications to this Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

(b) Subject to the limitations and exceptions contained herein, this Governing Document may be amended by passage of a resolutions of the City and the District approving such amendment.

B. Preliminary Engineering Survey.

The District shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, maintenance, and financing of the Public Improvements within and without the boundaries of the District, to be more specifically defined in an Approved Development Plan. An estimate of the costs of the Public Improvements which

may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, maintained or financed was prepared based upon a preliminary engineering survey and estimates derived from the zoning on the property in the District Area and is approximately One Hundred Twenty-Five Million Dollars (\$125,000,000).

All of the Public Improvements will be designed in such a way as to assure that the Public Improvements standards will be compatible with those of the City and/or any other applicable public entity and shall be in accordance with the requirements of the Approved Development Plan. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

VI. THE BOARD OF TRUSTEES

A. Board Composition. The Board shall be composed of 3 Trustees who shall be appointed by the City Council pursuant to the PID Act. Trustees 1, 2, and 3 shall initially be at large. Trustee terms shall be staggered with initial terms as follows: Trustee 2 shall serve an initial term of 4 years; Trustees 1 and 3 shall serve an initial term of 6 years. All terms shall commence on the date of issuance of a certificate of creation by the Office of the Lieutenant Governor of the State of Utah. In accordance with the PID Act, appointed Trustees shall not be required to be residents of the District.

B. Transition to Elected Board. Respective board seats shall transition from appointed to elected seats according to the following milestones:

1. Trustee 1. Trustee 1 shall transition to an elected seat upon 2,500 registered voters residing within the District.

2. Trustee 2. Trustee 2 shall transition to an elected seat upon 5,000 registered voters residing within the District.

3. Trustee 3. Trustee 3 shall transition to an elected seat upon 7,500 registered voters residing within the District.

Notwithstanding the foregoing, any board seats which have not yet transitioned to an elected seat shall transition after twelve (12) years have passed from the date of issuance of a certificate of creation for the District. No transition pursuant to this Section shall become effective until the next scheduled regular election of the District. Registered voters within this Section shall mean voters whose “principal place of residence,” as that term is defined under Utah Code 20A-2-105(1)(a), is within the District.

C. Reelection and Reappointment. Upon the expiration of a Trustee’s respective term, any seat which has not transitioned to an elected seat shall be appointed by the City Council pursuant to the PID Act and any seat which has transitioned to an elected seat shall be elected pursuant to an election held for such purpose. In the event that no qualified candidate files to be considered for appointment or files a declaration of candidacy for a seat, such seat may be filled in accordance with the Local District Act.

D. Vacancy. Any vacancy on the Board shall be filled pursuant to the Local District Act.

E. Compensation. Only Trustees who are residents of the District may be compensated for services as Trustee. Such compensation shall be in accordance with State Law.

F. Conflicts of Interest. Trustees shall disclose all conflicts of interest. Any Trustee who discloses such conflicts in accordance with 17D-4-202 and 67-16-9, Utah Code, shall be entitled to vote on such matters.

VII. REGIONAL IMPROVEMENTS

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements. Regional Improvements may include, and may not be limited to, regional and connector roads; water, sewer and other utilities installed in said roads; an interchange at 3700 South Street and the Southern Parkway, and park and trail improvements.

Nothing herein shall prevent the City from financing and completing, or authorizing the finance and completion by another district, of other local or regional improvements not listed above, or approving other mill levies to facilitate the financing of the same.

VIII. FINANCIAL PLAN

A. General.

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment of the Public Improvements from its revenues and by and through the proceeds of Debt to be issued by the District. In addition, the District shall be permitted to finance the prepayment of impact fees for the Project. The Financial Plan for the District shall be to issue such Debt as the District can reasonably pay within the Maximum Debt Mill Levy Imposition Term from revenues derived from the Maximum Debt Mill Levy, Assessments and other legally available revenues. The total Debt that the Districts shall be permitted to issue shall not exceed One Hundred Fifty Million Dollars (\$150,000,000) and shall be permitted to be issued on a schedule and in such year or years as the Districts determine shall meet the needs of the Financial Plan referenced above and phased to serve development as it occurs. Any portion of bonds issued to refund a prior issuance of debt by the District shall not count against the permitted total Debt. The Total Debt Issuance Limitation shall not apply to the District's pledge of its property tax revenues to the Debt of one of the other Districts. In the event two or more Districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each District. All bonds and other Debt issued by the District may be payable from any and all legally available revenues of the District, including general ad valorem taxes to be imposed upon all Taxable Property within the District and Assessments. The District will also rely upon various other revenue sources authorized by law. These will include the power to assess

Fees, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time.

B. Maximum Interest Rate and Maximum Underwriting Discount.

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. In the event of a default, the proposed maximum interest rate on any Debt is not expected to exceed fifteen percent (15%). The proposed maximum underwriting discount will be five percent (5%). Debt, when issued, will comply with all relevant requirements of this Governing Document, State law and Federal law as then applicable to the issuance of public securities.

C. Maximum Debt Mill Levy.

(a) The “Maximum Debt Mill Levy” shall be the maximum mill levy the District is permitted to impose in upon the taxable property within the District for payment of Limited Tax Debt, and shall be 0.0045 per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code. Such Maximum Debt Mill Levy may also be used to pay administrative expenses of the District. Further, the Districts may not impose mill levies which in aggregate exceed 0.0045 per dollar of taxable value of taxable property in the District Area; provided that such levies shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code.

(b) Such Maximum Debt Mill Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202, Utah Code.

(c) It is anticipated that one or more of the Districts may overlap with a portion of the Bench Lake Public Improvement District (“BLPID”) approved by the City, given that the improvements proposed to be financed by the Districts may also benefit part of the area of the BLPID. The BLPID is forbidden from levying a maximum mill levy in the overlap area which exceeds 0.003, which is the Maximum Debt Mill Levy of the BLPID. The aggregate mill levy of the Districts and the BLPID together shall not in any event be permitted to exceed the Maximum Debt Mill Levy of the District, on any property located within any of the Districts and the BLPID.

D. Maximum Debt Mill Levy Imposition Term.

Each bond issued by the District shall mature within Thirty-One (31) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of a series of bonds after a period exceeding forty (40) years from the first date of imposition of the mill levy for such bond (the “Maximum Debt Mill Levy Imposition Term”).

E. Debt Repayment Sources.

The District may impose a mill levy on taxable property within its boundaries as a primary source of revenue for repayment of debt service. The District may also rely upon various other revenue sources authorized by law. At the District’s discretion, these may include the power to assess Assessments, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time. Except as described in Section VIII.C(a), the debt service

mill levy in the District shall not exceed the Maximum Debt Mill Levy or, the Maximum Debt Mill Levy Imposition Term, except for repayment of General Obligation Debt.

The District shall not be permitted to charge an End User the costs of any portion of a Public Improvement for which such End User has already paid or is presently obligated to pay through any combination of mill levy, Assessment, or impact fee. This provision shall not prohibit the division of costs between mill levies, Assessments, or impact fees, but is intended to prevent double taxation of End Users for the costs of Public Improvements.

F. Debt Instrument Disclosure Requirement.

In the text of each Bond and any other instrument representing and constituting Debt, the District shall set forth a statement in substantially the following form:

By acceptance of this instrument, the owner of this Bond agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this Bond contained herein, in the resolution of the District authorizing the issuance of this Bond and in the Governing Document for creation of the District.

Similar language describing the limitations in respect of the payment of the principal of and interest on Debt set forth in this Governing Document shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a developer of property within the boundaries of the District.

G. Security for Debt.

The District shall not pledge any revenue or property of the City as security for the indebtedness set forth in this Governing Document. Approval of this Governing Document shall not be construed as a guarantee by the City of payment of any of the District's obligations; nor shall anything in the Governing Document be construed so as to create any responsibility or liability on the part of the City in the event of default by the District in the payment of any such obligation.

H. District's Operating Costs.

The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the District's organization and initial operations, are anticipated to be Seventy-five Thousand Dollars (\$75,000), which will be eligible for reimbursement from Debt proceeds.

In addition to the capital costs of the Public Improvements, the District will require operating funds for administration and to plan and cause the Public Improvements to be constructed. The first year's administrative operating budget is estimated to be approximately Seventy-five Thousand Dollars (\$75,000) which is anticipated to be borne by developer(s) until such time a reimbursement can be derived from property taxes and other revenues, pursuant to a reimbursement agreement between the District and developers.

I. Bond and Disclosure Counsel.

It is the intent of the City that the District shall use competent and nationally recognized bond and disclosure counsel and Municipal Advisor with respect to District Bonds to ensure proper issuance and compliance with this Governing Document. The District has agreed to utilize the City's counsel, Gilmore & Bell, P.C., as bond and disclosure counsel and Zions Public Finance, Inc., as Municipal Advisor with respect to District Bonds as permitted by law. The foregoing requirement may be waived by vote of the City Council.

IX. ANNUAL REPORT

A. General.

The District shall be responsible for submitting an annual report to the City Manager's Office no later than 180 days following the end of the District's fiscal year.

B. Reporting of Significant Events.

The annual report shall include information as to any of the following:

1. Boundary changes made or proposed to the District's boundary as of December 31 of the prior year.
2. List of current interlocal agreements, if changed (to be delivered to the City upon request);
3. Names and terms of Board members and officers and progress towards milestones required for transition to elected Board;
4. District office contact information;
5. Rules and regulations of the District regarding bidding, conflict of interest, contracting, and other governance matters, if changed;
6. A summary of any litigation which involves the District Public Improvements as of the last day of the prior fiscal year;
7. Status of the District's construction of the Public Improvements as of last day of the prior fiscal year and listing all facilities and improvements constructed by the District that have been dedicated to and accepted by the City as of the last day of the prior fiscal year;
8. A table summarizing total debt authorized and total debt issued by the District as well as any presently planned debt issuances;
9. Official statements of current outstanding bonded indebtedness, if not previously provided to the City;

10. Current year budget including a description of the Public Improvements to be constructed in such year;

11. The District's financial statements, for the previous fiscal year, such statements shall be audited if required pursuant to State law or relevant bond documents (such statements shall be submitted within 30 days of completion if completed after 180 days following the end of the fiscal year);

12. Notice of any uncured events of default by the District, which continue beyond a 90 day period, under any Debt instrument; and

13. Any inability of the District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a 90 day period.

X. DISSOLUTION

Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of its outstanding indebtedness and other financial obligations as required pursuant to State statutes.

XI. DISCLOSURE TO PURCHASERS

Within thirty (30) days of the City adopting a resolution creating the District, the Board shall record a notice with the recorder of Washington County. Such notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the District; and (d) if applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion. Such notice shall further be filed with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, homebuilders, commercial developers, and commercial lessors, as applicable, disclose the following information to initial resident homeowners, renters, commercial property owners, and/or commercial tenants:

- (1) All of the information in the first paragraph of this XI;
- (2) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, **for every \$100,000 of taxable value**, there would be an **additional annual property tax of \$450** for the duration of the District's Bonds.”
- (3) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

XII. INTERLOCAL AGREEMENT

The form of the Interlocal Agreement required by the City Code, relating to the limitations imposed on the District's activities, is attached hereto as **Exhibit B**. The District shall approve the Interlocal Agreement in the form attached as **Exhibit B** at its first Board meeting after its organization. Failure of the District to execute the Interlocal Agreement as required herein shall constitute a material modification and shall require a Governing Document Amendment. The City Council shall approve the Interlocal Agreement in the form attached as **Exhibit B** at the public hearing approving the Governing Document.

EXHIBIT A

Initial District Boundary Map

Annexation Area Boundary Map

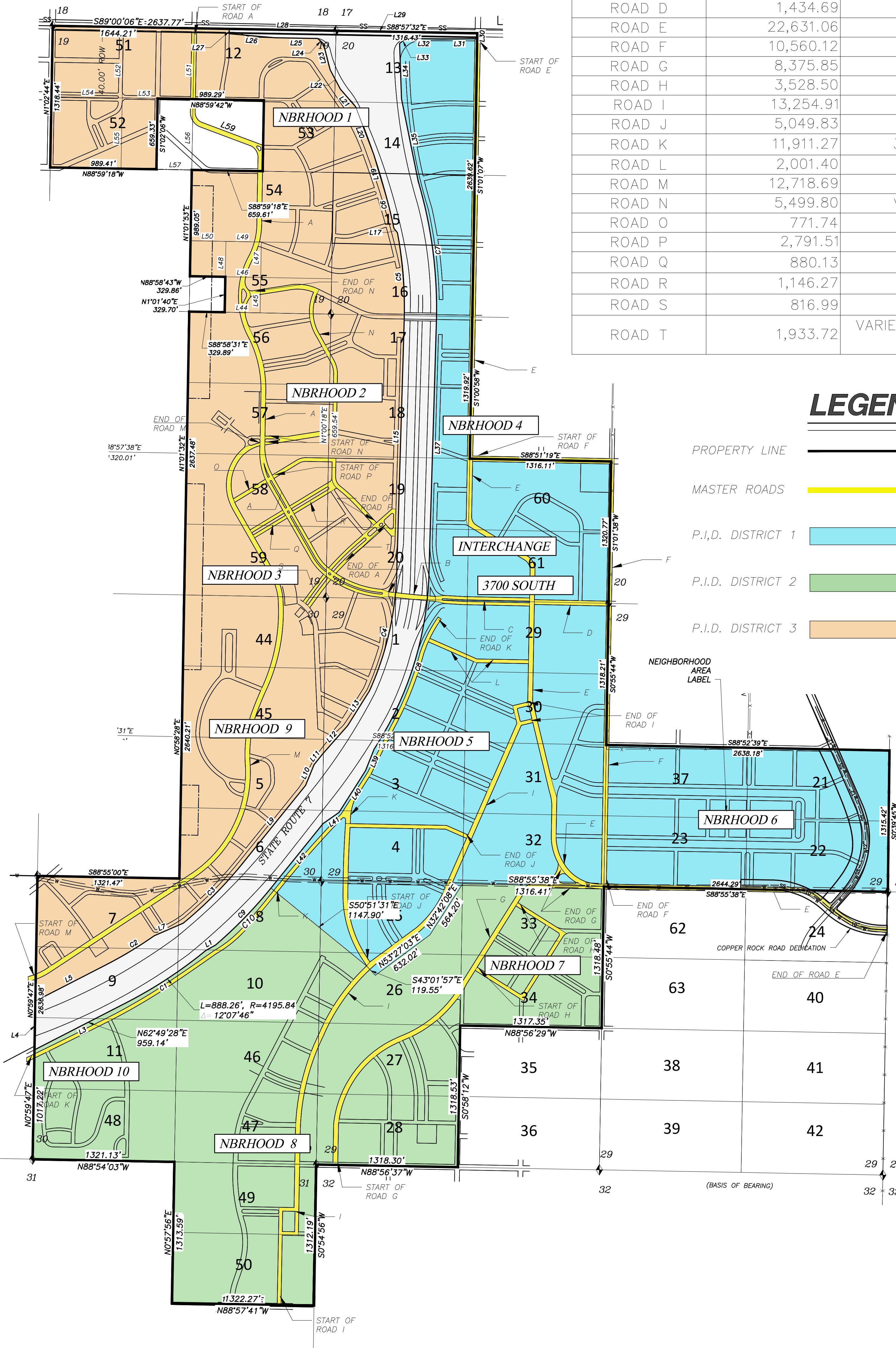
Vicinity Map

Legal Descriptions

(see following pages)

SAND HOLLOW MESA P.I.D. MAP

NEIGHBORHOOD ROADS		
ROAD	LENGTH	WIDTH
ROAD A	12,685.35	VARIES 30' TO 45' (TOTAL OF 75' IN ONE SECTION WITH DIVIDER)
ROAD B	965.73	45'
ROAD C	1,875.40	30' (TOTAL OF 75' WITH DIVIDER)
ROAD D	1,434.69	45'
ROAD E	22,631.06	VARIES 45' TO 50'
ROAD F	10,560.12	VARIES 45.22' TO 47.40' TO 50'
ROAD G	8,375.85	45'
ROAD H	3,528.50	35'
ROAD I	13,254.91	VARIES 35' TO 45'
ROAD J	5,049.83	VARIES 35' TO 45'
ROAD K	11,911.27	35' (ROAD CONNECTING TO J IS 45')
ROAD L	2,001.40	35'
ROAD M	12,718.69	VARIES 27.92' TO 45'
ROAD N	5,499.80	VARIES 23.21' TO 25' TO 35' TO 45'
ROAD O	771.74	35'
ROAD P	2,791.51	35'
ROAD Q	880.13	30' (TOTAL OF 85' WITH DIVIDER)
ROAD R	1,146.27	30' (TOTAL OF 85' WITH DIVIDER)
ROAD S	816.99	30' (TOTAL OF 82.61' WITH DIVIDER)
ROAD T	1,933.72	VARIES 19.12 TO 30' TO 35' (TOTAL OF 85' IN ONE SECTION WITH DIVIDER)



LEGEND

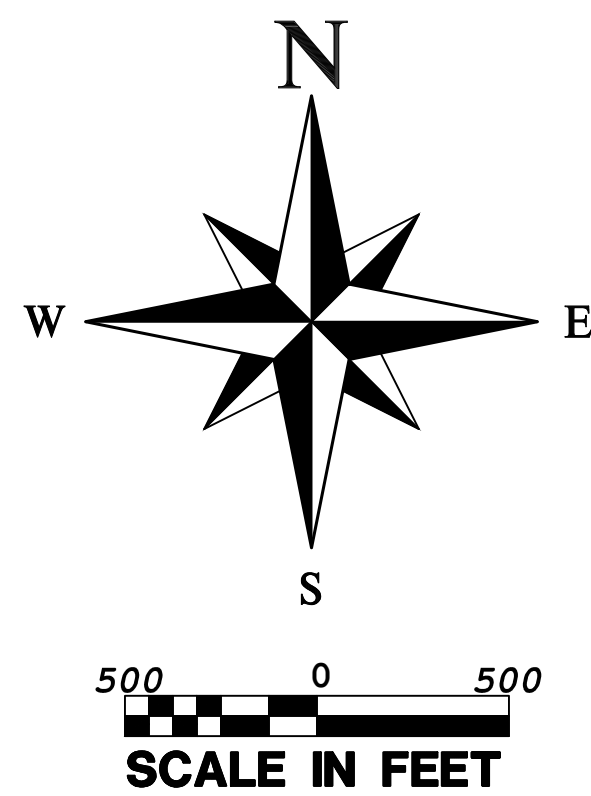
PROPERTY LINE

MASTER ROADS

P.I.D. DISTRICT 1

P.I.D. DISTRICT 2

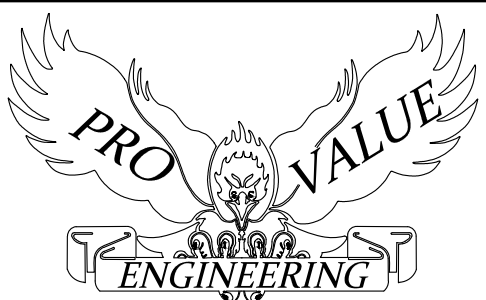
P.I.D. DISTRICT 3



SAND HOLLOW MESA P.I.D. DISTRICT 1 LEGAL DESCRIPTION
BEGINNING AT THE EAST QUARTER CORNER OF SECTION 29, TOWNSHIP SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN; THENCE N88°55'38"W 2644.29 FEET; THENCE N88°55'38"W 1316.41 FEET; THENCE S32°42'08"W 564.20 FEET; THENCE S53°27'03"W 632.02 FEET; THENCE N43°01'57"W 119.55 FEET; THENCE N50°51'31"W 1147.90 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY 7; THENCE ALONG SAID LINE THE FOLLOWING TWELVE (12) COURSES:
N38°56'24"E 771.59 FEET; THENCE N54°53'00"E 182.00 FEET; THENCE N32°26'53"E 459.99 FEET; THENCE N21°43'12"E 217.45 FEET; THENCE N89°28'28"E 335.12 FEET; THENCE S01°01'07"W 2588.88 FEET; THENCE N56°54'13"W THROUGH A CENTRAL ANGLE OF 31°23'56" A DISTANCE OF 1726.25 FEET; THENCE N01°41'50"E 2354.30 FEET; THENCE NORTHERLY ALONG THE ARC OF A 4150.00 FOOT RADIUS CURVE TO THE LEFT (LONG CHORD BEARS: N07°24'37"W 1313.79 FEET); CENTER POINT LIES N88°18'10"W THROUGH A CENTRAL ANGLE OF 18°12'54" A DISTANCE OF 1319.34 FEET; THENCE N11°26'26"W 783.27 FEET; THENCE N01°59'36"W 516.62 FEET; THENCE N53°53'15"E 78.08 FEET; THENCE S88°57'52"E 324.73 FEET; THENCE N89°28'28"E 335.12 FEET; THENCE S01°01'07"W 2588.88 FEET; THENCE N50°54'40"W 1320.29 FEET; THENCE S88°52'15"E 1313.68 FEET; THENCE S01°01'38"W 1320.77 FEET; THENCE S00°55'44"W 1318.21 FEET; THENCE S88°52'39"E 2638.18 FEET; THENCE S00°39'45"W 1315.42 FEET TO THE POINT OF BEGINNING. AREA CONTAINS 14,130,219 SQUARE FEET OR 324.385 ACRES.

SAND HOLLOW MESA P.I.D. DISTRICT 2 LEGAL DESCRIPTION
BEGINNING AT THE CENTER QUARTER CORNER OF SECTION 29, TOWNSHIP SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN; THENCE S00°55'44"W 1318.48 FEET; THENCE N88°56'29"W 1317.35 FEET; THENCE S00°58'12"W 1318.53 FEET; THENCE N88°56'37"W 1318.30 FEET; THENCE S00°54'56"W 1312.19 FEET; THENCE N88°57'41"W 1322.27 FEET; THENCE N00°59'47"E 1017.22 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY 7; THENCE ALONG SAID LINE THE FOLLOWING FOUR (4) COURSES: N62°49'28"E 959.14 FEET; THENCE N89°28'28"E 335.12 FEET; THENCE S01°01'07"W 2588.88 FEET; THENCE N56°54'13"W THROUGH A CENTRAL ANGLE OF 31°23'56" A DISTANCE OF 1726.25 FEET; THENCE N01°41'50"E 2354.30 FEET; THENCE NORTHERLY ALONG THE ARC OF A 4150.00 FOOT RADIUS CURVE TO THE LEFT (LONG CHORD BEARS: N44°10'55"E 738.36 FEET); CENTER POINT LIES N40°46'31"W THROUGH A CENTRAL ANGLE OF 10°05'08" A DISTANCE OF 739.32 FEET; THENCE S50°51'31"E 1147.90 FEET; THENCE S43°01'57"E 119.55 FEET; THENCE N53°27'03"E 632.02 FEET; THENCE N32°42'08"E 564.20 FEET; THENCE S88°55'38"E 1316.41 FEET TO THE POINT OF BEGINNING. AREA CONTAINS 10,951,391 SQUARE FEET OR 251.409 ACRES.

SAND HOLLOW MESA P.I.D. DISTRICT 3 LEGAL DESCRIPTION
BEGINNING AT THE NORTH QUARTER CORNER OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN; THENCE S89°00'06"E ALONG THE NORTH SECTION LINE, 1644.21 FEET TO THE WEST RIGHT-OF-WAY LINE OF HIGHWAY 7; THENCE ALONG SAID LINE THE FOLLOWING TWENTY THREE (23) COURSES: THENCE S00°59'31"W 45.11 FEET; THENCE S84°58'13"E 426.06 FEET; THENCE S89°00'29"E 400.00 FEET; THENCE S48°03'50"E 71.88 FEET; THENCE S14°16'38"E 250.20 FEET; THENCE S27°52'40"E 203.96 FEET; THENCE S40°47'44"E 219.32 FEET; THENCE S20°46'56"E 476.29 FEET; THENCE S16°34'05"E 351.50 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 3825.00 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS: S13°53'35"E 357.03 FEET); CENTER POINT LIES S73°25'55"W THROUGH A CENTRAL ANGLE OF 05°21'00" A DISTANCE OF 357.15 FEET; THENCE S38°23'13"E 54.09 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 3858.80 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (LONG CHORD BEARS: S04°24'08"E 818.17 FEET); CENTER POINT LIES S79°30'44"W THROUGH A CENTRAL ANGLE OF 12°10'16" A DISTANCE OF 819.74 FEET; THENCE S01°41'50"W 2354.29 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 2850.52 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS: S13°05'55"W 1126.85 FEET); CENTER POINT LIES N88°18'06"W THROUGH A CENTRAL ANGLE OF 22°48'00" A DISTANCE OF 1134.32 FEET; THENCE S32°05'57"W 378.86 FEET; THENCE S41°23'40"W 353.78 FEET; THENCE S38°56'26"W 125.00 FEET; THENCE S22°14'29"W 208.81 FEET; THENCE S38°56'26"W 931.87 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF A 3854.71 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS: S44°47'34"W 786.07 FEET); CENTER POINT LIES N51°03'34"W THROUGH A CENTRAL ANGLE OF 11°42'16" A DISTANCE OF 787.44 FEET; THENCE S66°32'48"W 294.49 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF A 3780.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (LONG CHORD BEARS: S58°53'35"W 519.33 FEET); CENTER POINT LIES N35°02'45"W THROUGH A CENTRAL ANGLE OF 07°52'41" A DISTANCE OF 519.74 FEET; THENCE S62°49'55"W 744.99 FEET; THENCE N00°59'27"E 1165.97 FEET; THENCE S88°55'00"E 1321.47 FEET; THENCE N00°58'28"E 660.13 FEET; THENCE N00°58'28"E 659.98 FEET; THENCE N01°00'55"E 329.74 FEET; THENCE S88°58'31"E 329.89 FEET; THENCE N01°01'40"E 329.70 FEET; THENCE N88°58'43"W 329.86 FEET; THENCE N01°01'53"E 989.05 FEET; THENCE S88°59'18"E 659.61 FEET; THENCE N00°59'11"E 659.40 FEET; THENCE N88°59'32"W 988.85 FEET; THENCE S01°02'06"W 659.33 FEET; THENCE N88°59'18"W 989.41 FEET; THENCE N01°02'44"E 659.22 FEET; THENCE N01°02'44"E 659.22 FEET TO THE POINT OF BEGINNING. AREA CONTAINS 15,395,115 SQUARE FEET OR 353.423 ACRES.



PROVALUE ENGINEERING
20 SOUTH 850 WEST, #1
HURRICANE, UT 84717
Phone: (435) 668-8307

MAP FOR:
THE ROMNEY GROUP

2265 E. MURRAY HOLLADAY RD.
HOLLADAY, UT 84117
Phone: (801) 953-1110
DATE: 10/22/2021

SAND HOLLOW MESA
P.I.D. DISTRICTS

A PART OF SECTIONS 19, 20, 29, 30 & 31, T42S, R13W, S.L.B.#M.

SAND HOLLOW MESA PARCEL LEGAL DESCRIPTIONS

TITLE COMPANY LEGAL DESCRIPTION

LEGAL DESCRIPTIONS BY PARCEL:
SAND HOLLOW MESA PARCELS NO. 1-42 AND 44-63: (LABELED AS SUCH FOR REFERENCE PURPOSES ONLY)
PARCEL 1 (H-3400-A): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 2 (H-3400-D): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 3 (H-3400-E): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 4 (H-3400-H): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 5 (H-3421-C): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 6 (H-3421-D): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 7 (H-3421-E): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 8 (H-3421-F): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 9 (H-3421-H): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 10 (H-3421-G): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 11 (H-3421-I): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 12 (H-3409-B-2): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 13 (H-3410): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 14 (H-3410-B): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 15 (H-3410-C): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 16 (H-3410-D): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20 TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 17 (H-3410-E): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 18 (H-3410-F): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 19 (H-3410-G): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 20 (H-3410-J): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
LESS AND EXCEPTING FROM PARCELS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, THAT PORTION STIPULATED IN THAT ORDER OF OCCUPANCY RECORDED AUGUST 6, 2019, AS DOC. NO. 20190031223, OFFICIAL WASHINGTON COUNTY RECORDS.
PARCEL 21 (H-3399-B): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 22 (H-3399-I): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 23 (H-3399-D): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
~~PARCEL 24 (H-3409-G): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
LESS AND EXCEPTING FROM PARCELS 21, 22, 23 AND 24, COPPER ROCK PARKWAY AND 2100 WEST ROADWAY DEDICATION, RECORDED DECEMBER 26, 2018, AS DOC. NO. 2018005057.9, OFFICIAL WASHINGTON COUNTY RECORDS.
PARCEL 25 (H-3400-I): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 26 (H-3400-L): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 27 (H-3400-M): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 28 (H-3400-P): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 29 (H-3400-B): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 30 (H-3400-C): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 31 (H-3400-F): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 32 (H-3400-G): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 33 (H-3400-J): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 34 (H-3400-K): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
~~PARCEL 35 (H-3409-N): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
~~PARCEL 36 (H-3409-O): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
PARCEL 37 (H-3399-A): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
~~PARCEL 38 (H-3399-G): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
~~PARCEL 39 (H-3399-H): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
~~PARCEL 40 (H-3409-R): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
~~PARCEL 41 (H-3409-S): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.~~
PARCEL 42 (H-3400-T): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 43: INTENTIONALLY OMITTED
PARCEL 44 (H-3421-A): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 45 (H-3421): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 46 (H-3421-J): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 47 (H-3421-K): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 48 (H-3421-L): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 49 (H-3422): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 31, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 50 (H-3422-B): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 31, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 51 (H-3409): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 52 (H-3409-C-2): THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4, AND THE WEST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 53 (H-3409-D): THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 54 (H-3409-E): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 55 (H-3409-F): THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4; THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4; THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4, AND THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 56 (H-3409-G): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 57 (H-3409-H): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 58 (H-3409-I): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 59 (H-3409-J): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 60 (H-3409-H): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
PARCEL 61 (H-3409-I): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.
~~PARCEL 62 (H-3409-E): ALL OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE AND MERIDIAN.~~
PARCEL 63 (H-3409-F): ALL OF THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE AND MERIDIAN.

NOTE: PARCELS 24, 35, 36, 38, 40, 41, 42, 62 AND 63 ARE NOT PART OF THE OWNER'S PROPERTY AND ARE OWNED BY RIVER VALLEY DEVELOPMENT LLC

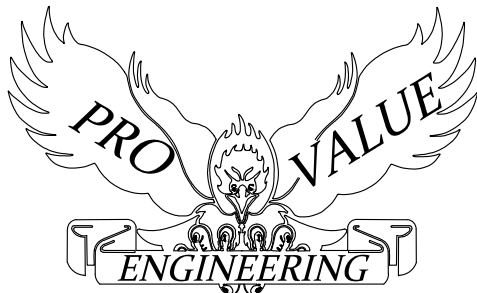
LEGAL LINE & CURVE TABLES

LINE TABLE		
LINE	LENGTH	DIRECTION
L1	106.64'	S60°44'58"W
L3	959.19'	S62°49'55"W
L4	453.78'	N1°00'36"E
L5	744.90'	N62°49'55"E
L7	294.49'	N66°32'48"E
L9	931.86'	N38°56'17"E
L10	208.81'	N22°14'20"E
L11	125.00'	N38°56'17"E
L12	353.78'	N41°23'31"E
L13	378.86'	N32°05'48"E
L15	2354.29'	N1°41'50"E
L17	54.09'	N38°23'13"W
L19	351.50'	N16°34'05"W
L20	476.29'	N20°46'56"W
L21	219.32'	N40°47'44"W
L22	203.96'	N27°52'40"W
L23	250.20'	N14°16'38"W
L24	71.88'	N48°03'50"W
L25	400.00'	N89°00'29"W
L26	426.06'	N84°58'13"W

LINE TABLE		
LINE	LENGTH	DIRECTION
L27	45.00'	N0°59'31"E
L28	993.56'	S89°00'29"E
L29	1316.43'	S88°57'52"E
L30	50.86'	S1°00'50"W
L31	335.12'	S89°28'28"W
L32	325.00'	N88°57'48"W
L33	77.87'	S53°45'42"W
L34	516.62'	S1°59'37"E
L35	783.27'	S11°26'26"E
L37	2354.30'	S1°41'50"W
L39	217.45'	S21°43'12"W
L40	459.99'	S32°26'53"W
L41	182.00'	S54°53'00"W
L42	756.86'	S38°56'17"W
L44	659.77'	S88°58'31"E
L45	329.72'	N1°01'27"E
L46	329.86'	S88°58'43"E
L47	329.72'	N1°01'27"E
L48	659.41'	N1°01'40"E
L49	329.84'	S88°58'54"E

LINE TABLE		
LINE	LENGTH	DIRECTION
L50	329.84'	S88°58'54"E
L51	659.37'	N1°01'53"E
L52	659.29'	N1°02'19"E
L53	659.52'	S88°59'42"E
L54	659.52'	S88°59'42"E
L55	659.29'	N1°02'19"E
L56	659.37'	N1°01'53"E
L57	659.61'	S88°59'18"E

CURVE TABLE					
CURVE	LENGTH	RADIUS	CHORD DIST.	CHORD BRG.	DELTA
C1	888.23'	4180.00'	886.56'	S56°44'40"W	12°10'30"
C2	519.74'	3780.00'	519.33'	N58°53'35"E	7°52'41"
C3	787.45'	3850.00'	786.08'	N44°47'51"E	11°43'08"
C4	1134.33'	2850.00'	1126.86'	N13°05'58"E	22°48'16"
C5	819.72'	3850.00'	818.17'	N4°24'08"W	12°11'57"
C6	357.15'	3825.00'	357.03'	N13°53'35"W	5°21'00"
C7	1319.34'	4150.00'	1313.79'	S7°24'37"E	18°12'54"
C8	1726.25'	3150.00'	1704.73'	S17°23'49"W	31°23'56"
C9	754.04'	4200.00'	753.03'	S44°04'53"W	10°17'12"
C10	739.32'	4199.99'	738.36'	N44°10'55"E	10°05'08"



PROVALUE ENGINEERING
20 SOUTH 850 WEST, #1
HURRICANE, UT 84737
Phone: (435) 668-8307

MAP FOR:
THE ROMNEY GROUP
2265 E. MURRAY HOLLADAY RD.
HOLLADAY, UT 84117
Phone: (801) 953-1110
DATE: 10/22/2021

SAND HOLLOW MESA
P.I.D. LEGAL DESCRIPTIONS

A PART OF SECTIONS 19, 20, 29, 30 & 31, T42S, R13W, S.L.B.#M.

EXHIBIT B

INTERLOCAL AGREEMENT BETWEEN

HURRICANE CITY, UTAH

AND

SAND HOLLOW MESA PUBLIC INFRASTRUCTURE DISTRICT NO. 3

THIS AGREEMENT is made and entered into as of this ____ day of _____, _____, by and between HURRICANE CITY, a home-rule municipal corporation of the State of Utah (“City”), and SAND HOLLOW MESA PUBLIC INFRASTRUCTURE DISTRICT NO. 3, a political subdivision of the State of Utah (the “District”). The City and the District are collectively referred to as the Parties.

RECITALS

WHEREAS, the District was organized to provide to exercise powers as are more specifically set forth in the District’s Governing Document approved by the City on March 3, 2022 (“Governing Document”); and

WHEREAS, the Governing Document makes reference to the execution of an Interlocal Agreement between the City and the District; and

WHEREAS, the City and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Interlocal Agreement (“Agreement”).

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

COVENANTS AND AGREEMENTS

1. **Operations and Maintenance.** The District shall dedicate the Public Improvements (as defined in the Governing Document) to the City or other appropriate jurisdiction in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. The District shall be authorized, but not obligated, to own Public Improvements not otherwise required to be dedicated to the City or other public entity, and all necessary equipment and appurtenances incident thereto. Trails which are interconnected with a city or regional trail system shall be open to the public free of charge and on the same basis as residents and owners of taxable property within the District.

2. **Improvements Limitation.** Without written authorization of the City, the District shall not be authorized to finance the costs of any improvements or facilities which are to be ultimately owned by one of the Districts.

Construction Standards. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction, as applicable. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work. The District may satisfy any City requirements for guaranty of performance of infrastructure completion by delivering to the City documentation evidencing the funds available to the District for such infrastructure as a result of the bonds issued by the District.

3. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District's Governing Document.

We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

4. Inclusion Limitation. The District shall not include within any of their boundaries any property outside the District Area without the prior written consent of the City. By the Governing Document, the City has consented to the annexation or withdrawal of any area within the Annexation Area into or from the District Boundaries. The District shall not include within any of its boundaries any property inside the inclusion area boundaries without the prior written consent of the City except upon petition of the surface property owners of 100 percent of such property and/or 100 percent of registered voters within the area to be included, as applicable, as provided in Section 17D-4-201(3), Utah Code.

5. Overlap Limitation. It is anticipated that one or more of the Districts may overlap with a portion of the Bench Lake Public Improvement District ("BLPID") approved by the City, given that the improvements proposed to be financed by the Districts may also benefit part of the area of the BLPID. The BLPID is forbidden from levying a maximum mill levy in the overlap area which exceeds 0.003, which is the Maximum Debt Mill Levy of the BLPID. The aggregate mill levy of the Districts and the BLPID together shall not in any event be permitted to exceed the Maximum Debt Mill Levy of the District, on any property located within any of the Districts and the BLPID. The Districts shall not, without the prior authorization of the City Council, consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the Districts.

6. Initial Debt. On or before the effective date of approval by the City of an Approved Development Plan (as defined in the Governing Document), the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of

funds from the operating fund to the Debt service funds; nor (c) impose and collect any fees used for the purpose of repayment of Debt.

7. Total Debt Issuance. The Districts shall not issue Debt in excess of an aggregate amount of One Hundred Fifty Million Dollars (\$150,000,000). This amount excludes any portion of bonds issued to refund a prior issuance of debt by any of the Districts. In addition, the Total Debt Issuance Limitation does not apply to the District's pledge of its property tax revenues to the Debt of one of the other Districts. In the event two or more Districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each District.

8. Bankruptcy. All of the limitations contained in this Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(4), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the "political or governmental powers" reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the "regulatory or electoral approval necessary under applicable nonbankruptcy law" as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

9. Dissolution. Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes.

10. Disclosure to Purchasers. Within thirty (30) days of the City adopting a resolution creating the District, the Board shall record a notice with the recorder of Washington County, Utah. Such notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the District; and (d) if applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion. Such notice shall further be filed with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, homebuilders, commercial developers, and commercial lessors, as applicable, disclose the following information to initial resident homeowners, renters, commercial property owners, and/or commercial tenants:

- (a) All of the information in the first paragraph of 11 of this Agreement;
- (b) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, **for every \$100,000 of taxable value**, there would be an **additional annual property tax of \$450** for the duration of the District’s Bonds.”

- (c) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

11. Governing Document Amendment Requirement. Actions of the District which violate the limitations set forth in V.A.1-9 or VIII.B-G of the Governing Document shall be deemed to be material modifications to the Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

12. Annual Report. The District shall be responsible for submitting an annual report to the City Manager’s Office no later than 180 days following the closing of the District’s fiscal year, containing the information set forth in Section VIII of the Governing Document.

13. Regional Improvements. The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements.

14. Maximum Debt Mill Levy.

(a) The “Maximum Debt Mill Levy” shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District for payment of Limited Tax Debt shall be 0.0045 per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8). Such Maximum Debt Mill Levy may also be used to pay administrative expenses of the District. Further, the Districts may not impose mill levies which aggregate in excess of 0.0045 per dollar of taxable value of taxable property in the District; provided that such levies shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code.

(b) Such Maximum Debt Mill Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202.

(c) Any other mill levy imposed by any other district with the authorization of the City shall not be applied toward the calculation of the Maximum Debt Mill Levy.

15. Maximum Debt Mill Levy Imposition Term. Each bond issued by the District shall mature within thirty-one (31) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of a series of bonds after a period exceeding forty (40) years from the first date of imposition of the mill levy for such bond (the “Maximum Debt Mill Levy Imposition Term”).

16. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: Sand Hollow Mesa Public Infrastructure District
 No. 3
 c/o Snow Jensen & Reece, PC
 912 West 1600 South, Ste. B200
 St. George, UT 84770
 Attn: Matthew J. Ence
 Phone: (435) 628-3688

To the City: Hurricane City
 147 N 870 W
 Hurricane, UT 84737
 Attn: City Manager
 Phone: (435) 635-2811

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

17. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties hereto and without amendment to the Governing Document.

18. Assignment. Neither Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

19. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party

in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

20. Term. This Agreement shall terminate upon the earlier to occur of dissolution of the District or fifty (50) years from the date hereof.

21. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Utah.

22. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

23. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

24. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the City any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the City shall be for the sole and exclusive benefit of the District and the City.

25. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

27. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

28. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Governing Document.

[SIGNATURE PAGE TO INTERLOCAL AGREEMENT]

SAND HOLLOW MESA PUBLIC
INFRASTRUCTURE DISTRICT NO. 3

By: _____
President

Attest:

Secretary

APPROVED AS TO FORM: _____

HURRICANE CITY, UTAH

By: _____
Mayor

Attest:

By: _____
Its: _____

APPROVED AS TO FORM: _____

Hurricane, Utah

March 3, 2022

The City Council (the “Council”) of Hurricane City, Utah (the “City”), met in regular session (including by electronic means) on March 3, 2022, at its regular meeting place in Hurricane, Utah at 6:00 p.m., with the following members of the Council being present:

Nanette Billings	Mayor
Joseph Prete	Councilmember
Dave Sanders	Councilmember
David Hirschi	Councilmember
Doug Heideman	Councilmember
Kevin Thomas	Councilmember

Also present:

Kaden DeMille	City Manager
Cindy Beteag	City Recorder

Absent:

After the meeting had been duly called to order and after other matters not pertinent to this Resolution had been discussed, the City Recorder presented to the Council a Certificate of Compliance with Open Meeting Law with respect to this March 3, 2022, meeting, a copy of which is attached hereto as Exhibit A.

Thereupon, the following Resolution was introduced in writing, read in full and pursuant to motion duly made by Councilmember _____ and seconded by Councilmember _____ adopted by the following vote:

AYE:

NAY:

The resolution was later signed by the Mayor and recorded by the City Recorder in the official records of the City. The resolution is as follows:

RESOLUTION 2022-16

A RESOLUTION OF THE CITY COUNCIL (THE “COUNCIL”) OF THE CITY OF HURRICANE, UTAH (THE “CITY”), PROVIDING FOR THE CREATION OF BENCH LAKE PUBLIC INFRASTRUCTURE DISTRICT (THE “DISTRICT”) AS AN INDEPENDENT BODY CORPORATE AND POLITIC; AUTHORIZING AND APPROVING A GOVERNING DOCUMENT, AN INTERLOCAL AGREEMENT, AND A NOTICE OF BOUNDARY ACTION; DELEGATING TO CERTAIN OFFICERS OF THE CITY THE AUTHORITY TO EXECUTE AND APPROVE THE FINAL TERMS AND PROVISIONS OF THE GOVERNING DOCUMENT, THE INTERLOCAL AGREEMENT, THE NOTICE OF BOUNDARY ACTION AND ANY OTHER DOCUMENTS RELATED THERETO; APPROVING OF AN ANNEXATION AREA; AUTHORIZING THE DISTRICT TO PROVIDE SERVICES RELATING TO THE FINANCING AND CONSTRUCTION OF PUBLIC INFRASTRUCTURE WITHIN THE ANNEXATION AREA; APPOINTING A BOARD OF TRUSTEES OF THE DISTRICT; AUTHORIZING OTHER DOCUMENTS IN CONNECTION THEREWITH; AND RELATED MATTERS.

WHEREAS, a petition (the “Petition”) was filed with the City requesting adoption by resolution the approval of the creation of three separate public infrastructure districts pursuant to the Public Infrastructure District Act, Title 17D, Chapter 4, Utah Code Annotated 1953, as amended (the “PID Act”) and relevant portions of the Limited Purpose Local Government Entities - Local Districts, Title 17B (together with the PID Act, the “Act”) within the boundaries of the City and approve an annexation area (the “Annexation Area”) which any of the districts may annex into therein without further approval or hearings of the City or the Council, as further described in Governing Document Exhibits A and C (as hereinafter defined) for the purpose of financing public infrastructure costs; and

WHEREAS, pursuant to the terms of the Act, the City may create one or more public infrastructure districts by adoption of a resolution of the Council and with consent of 100% of all surface property owners proposed to be included in the District (the “Property Owners”); and

WHEREAS, the Petition, containing the consent of such Property Owners has been certified by the Recorder of the City pursuant to the Act and it is in the best interests of the Property Owners that the creation of the District be authorized in the manner and for the purposes hereinafter set forth; and

WHEREAS, the City prior to consideration of this Resolution, held a public hearing to receive input from the public regarding the creation of the District, and the Property Owners have waived the 60-day protest period pursuant to Section 17D-4-201 of the PID Act; and

WHEREAS, it is necessary to authorize the creation of the District under and in compliance with the laws of the State of Utah and to authorize other actions in connection therewith; and

WHEREAS, the hearing on the Petition was held at the City Hall because there is no reasonable place to hold a public hearing within the District's boundaries, and the hearing at the City Hall was held as close to the applicable area as reasonably possible; and

WHEREAS, the City mailed or caused to be mailed prior notice of the hearing to each of the Property Owners in compliance with Section 17B-1-211(1)(b) of the Act; and

WHEREAS, none of the Property Owners submitted a withdrawal of consent to the creation of the District before the public hearing on the Petition; and

WHEREAS, each board member appointed under this Resolution has previously filed with the City a disclosure of business relationships in compliance with Section 17D-4-202(9) of the PID Act; and

WHEREAS, according to attestations filed with the City, each board member appointed under this Resolution is registered to vote at their primary residence and is further eligible to serve as a board member of the District under Section 17D-4-202(3)(c) of the PID Act because they are agents of property owners within the District boundaries (as further set forth in the Petition); and

WHEREAS, the governance of the District shall be in accordance with the PID Act and the terms of a governing document (the "Governing Document") attached hereto as Exhibit B and an Interlocal Agreement between the City and the District, attached to the Governing Document as Governing Document Exhibit D; and

WHEREAS, pursuant to the requirements of the Act, there shall be signed, authenticated, and submitted to the Office of the Lieutenant Governor of the State of Utah a Notice of Boundary Action attached hereto as Exhibit C (the "Boundary Notice") and a Final Entity Plat to be attached thereto as Boundary Notice Appendix B (or as shall be finalized in accordance with the boundaries approved hereunder) (the "Plat").

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL, AS FOLLOWS:

1. Terms defined in the foregoing recitals shall have the same meaning when used herein. All action heretofore taken (not inconsistent with the provisions of this Resolution) by the Council and by officers of the Council directed toward the creation and establishment of the District, are hereby ratified, approved and confirmed.

2. The District is hereby created as a separate entity from the City in accordance with the Governing Document and the Act. The boundaries of the District shall be as set forth in the Governing Document and the Plat.

3. Pursuant to the terms of the PID Act, the Council does hereby approve the annexation of any area within the Annexation Area Boundaries into the District without any further action of the Council or the City and further approves withdrawal of any area within the Initial District Boundaries (as defined in the Governing Document) or Annexation Area Boundaries from the District without any further action, hearings, or resolutions of the Council or the City, upon compliance with the terms of the PID Act and the Governing Document.

4. The Council does hereby authorize the District to provide services relating to the financing and construction of public infrastructure within the Annexation Area upon annexation thereof into the District without further request of the District to the City to provide such service under 17B-1-407, Utah Code Annotated 1953 or resolutions of the City under 17B-1-408, Utah Code Annotated 1953.

5. It is hereby found and determined by the Council that the creation of the District is appropriate to the general welfare, order and security of the City, and the organization of the District pursuant to the PID Act is hereby approved.

6. The Governing Document and the Interlocal Agreement in the form presented to this meeting and attached hereto as Exhibits B and Governing Document Exhibit D are hereby authorized and approved and the District shall be governed by the terms thereof and applicable law.

7. The District Board is hereby appointed as follows:

(a) Trustee 1 – Matt Lowe for an initial six-year term.

(b) Trustee 2 – John Lowe for an initial six-year term.

(c) Trustee 3 – Zachary Lowe for an initial four-year term.

(d) Such terms shall commence on the date of issuance of a Certificate of Creation by the Office of the Lieutenant Governor of the State of Utah.

8. The Council does hereby authorize the Mayor or a Councilmember to execute the Boundary Notice in substantially the form attached as Exhibit C and such other documents as shall be required to finalize the actions contemplated herein on behalf of the Council for submission to the Office of the Lieutenant Governor of the State of Utah.

9. Prior to certification of the creation of the District by the Office of the Lieutenant Governor of the State of Utah, the Council does hereby authorize the Mayor, a Councilmember, or the City Manager to make any corrections, deletions, or additions to the Governing Document, the Interlocal Agreement, and the Boundary Notice or any other document herein authorized and approved (including, but not limited to, corrections to the property descriptions therein contained) which may be necessary to conform the same to the intent hereof, to correct errors or omissions therein, to complete the same, to remove ambiguities therefrom, or to conform the same to other provisions of said instruments, to the provisions of this Resolution or any resolution adopted by the Council or the provisions of the laws of the State of Utah or the United States (provided that the debt and mill levy limitations established therein may not be modified pursuant to this provision).

10. The Board of Trustees of the District (the “District Board”) is hereby authorized and directed to record such Governing Document with the recorder of Washington County within 30 days of the issuance of a Certificate of Creation by the Office of the Lieutenant Governor of the State of Utah.

11. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

12. All acts, orders and resolutions, and parts thereof in conflict with this Resolution be, and the same are hereby, rescinded.

13. This resolution shall take effect immediately.

PASSED AND ADOPTED by the City Council of the City of Hurricane, Utah, this March 3, 2022.

CITY OF HURRICANE, UTAH

By: _____
Mayor

ATTEST:

By: _____
City Recorder

(Here follows other business not pertinent to the above.)

Pursuant to motion duly made and seconded, the meeting of the Council of the City adjourned.

By: _____
Mayor

ATTEST:

By: _____
City Recorder

STATE OF UTAH)
 : ss.
COUNTY OF WASHINGTON)

I, Cindy Beteag, the undersigned duly qualified and acting City Recorder of the City of Hurricane, Utah (“the City”), do hereby certify as follows:

The foregoing pages are a true, correct, and complete copy of the record of proceedings of the City Council (the "Council"), had and taken at a lawful meeting of the Council on March 3, 2022, commencing at the hour of 6:00 p.m., as recorded in the regular official book of the proceedings of the Council kept in my office, and said proceedings were duly had and taken as therein shown, and the meeting therein shown was duly held, and the persons therein were present at said meeting as therein shown.

All members of the Council were duly notified of said meeting, pursuant to law.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City,
this March 3, 2022.

By: _____
City Recorder

EXHIBIT A

CERTIFICATE OF COMPLIANCE WITH OPEN MEETING LAW

I, Cindy Beteag, the undersigned City Recorder of the City of Hurricane, Utah (the "City"), do hereby certify that I gave written public notice of the agenda, date, time and place of the regular meeting held by the Council (the "Council") on March 3, 2022, not less than 24 hours in advance of the meeting. The public notice was given in compliance with the requirements of the Utah Open and Public Meetings Act, Section 52-4-202, Utah Code Annotated 1953, as amended, by:

- (a) causing a Notice, in the form attached hereto as Schedule 1, to be posted at the City's principal offices at least twenty-four (24) hours prior to the convening of the meeting, said Notice having continuously remained so posted and available for public inspection until the completion of the meeting; and
- (b) causing a copy of such Notice, in the form attached hereto as Schedule 1, to be published on the Utah Public Notice Website (<http://pmn.utah.gov>) at least twenty-four (24) hours prior to the convening of the meeting.

In addition, the Notice of 2022 Annual Meeting Schedule for the Council (attached hereto as Schedule 2) was given specifying the date, time and place of the regular meetings of the Council of the City to be held during the year, by causing said Notice to be (i) posted on _____, 20____, at the principal office of the City, (ii) provided to at least one newspaper of general circulation within the geographic jurisdiction of the City on _____, 20____ and (iii) published on the Utah Public Notice Website (<http://pmn.utah.gov>) during the current calendar year.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature this March 3, 2022.

By: _____
City Recorder

SCHEDULE 1

NOTICE OF MEETING AND AGENDA

SCHEDULE 2

NOTICE OF ANNUAL MEETING SCHEDULE

EXHIBIT B
GOVERNING DOCUMENT

EXHIBIT C

NOTICE OF BOUNDARY ACTION

NOTICE OF IMPENDING BOUNDARY ACTION

TO: The Lieutenant Governor, State of Utah

NOTICE IS HEREBY GIVEN that the City Council of the City of Hurricane, Utah (the “Council”), acting in its capacity as the creating entity for the Bench Lake Public Infrastructure District (the “District”), at a regular meeting of the Council, duly convened pursuant to notice, on March 3, 2022 adopted a *Resolution Providing for the Creation of a Public Infrastructure District*, a true and correct copy of which is attached as EXHIBIT “A” hereto and incorporated by this reference herein (the “Creation Resolution”).

A copy of the Final Local Entity Plat satisfying the applicable legal requirements as set forth in Utah Code Ann. §17-23-20, approved as a final local entity plat by the Surveyor of Washington County, Utah, is attached as EXHIBIT “B” hereto and incorporated by this reference. The Council hereby certifies that all requirements applicable to the creation of the District, as more particularly described in the Creation Resolution, have been met. The District is not anticipated to result in the employment of personnel.

WHEREFORE, the Council hereby respectfully requests the issuance of a Certificate of Incorporation pursuant to and in conformance with the provisions of Utah Code Ann. §17B-1-215.

DATED this ____ day of _____, 2022.

**CITY COUNCIL, THE CITY OF HURRICANE, UTAH,
acting in its capacity as the creating authority for the
Bench Lake Public Infrastructure District**

By: _____
AUTHORIZED
REPRESENTATIVE

VERIFICATION

STATE OF UTAH)
:ss.
COUNTY OF WASHINGTON)

SUBSCRIBED AND SWORN to before me this ____ day of

_____, 2022.

NOTARY PUBLIC

EXHIBIT “A” TO NOTICE OF BOUNDARY ACTION

Copy of the Creation Resolution

EXHIBIT “B” TO NOTICE OF BOUNDARY ACTION

Final Local Entity Plat

CALYPSO AREA WITHIN THE BENCH LAKE P.I.D.

Date: 22-Nov-21

ACREAGE=148.9 ACRES

			BENCH LAKE - CALYPSO PROPERTY		
			PUBLIC IMPROVEMENT DISTRICT		
			TOTAL ESTIMATE		
ITEM No.	ITEM DESCRIPTION	UNIT PRICE Dollars & Cents	QUANTITY	UNITS	ITEM PRICE Dollars & Cents
P.I.D. ITEMS					
1	MASTER PLANNED ROAD W/ 18" WATER MAIN	\$ 1,000.00	4,000	LF	\$ 4,000,000.00
2	CULINARY WATER TANK - PORTION OF 3%	\$ 12,000,000.00	3.0%	LS	\$ 360,000.00
3	CULINARY WATER TANK (8 MILLION GALLONS) @ 3%	\$ 3,000,000.00	3.0%	LS	\$ 90,000.00
4	POWER TO WELL - PORTION OF 3%	\$ 1,000,000.00	3.0%	LS	\$ 30,000.00
TOTAL of P.I.D. ITEMS (Items 1 thru 4) =					\$ 4,480,000.00
S.H. MESA TOTAL		\$ 4,480,000.00			
ENGINEERING, CONST MGMT, AND TESTING		\$ 448,000.00			
CONTINGENCY		\$ 448,000.00			
GRAND TOTAL		\$ 5,376,000.00			

ITEMS INCLUDED IN THE MASTER PLANNED ROADS

Includes 18" water main, sewer mains, power, excavation, base course, asphalt pavement, curb & gutter, sidewalks.

ITEMS INCLUDED IN THE WATER TANK

Includes excavation, (2) 4 million gallon concrete tanks, pipe, fittings and appurtenances.

ITEMS INCLUDED IN THE WATER WELL

Includes drilling, casing and equpping two wells at 500 to 1000 gallon per minute per well.

ITEMS INCLUDED IN THE POWER

Includes power poles, buried power conduits and energized power lines from 1300 South to new well location.

NOTE:

CALYPSO CONTAINS 148.9 ACRES (519 UNITS)
THE BENCH LAKE P.I.D CONTAINS 4914 ACRES
PERCENTAGE OF PARTICIPATION = 3.0%

BENCH LAKE MESA PID WATER, POWER, ROAD ESTIMATES

Date: 11/22/2021 (revised 3/1/2022)

ACREAGE= 5058 ACRES

			BENCH LAKE		
			PUBLIC IMPROVEMENT DISTRICT		
			TOTAL ESTIMATE		
ITEM No.	ITEM DESCRIPTION	UNIT PRICE Dollars & Cents	QUANTITY	UNITS	ITEM PRICE Dollars & Cents
P.I.D. ITEMS					
1	MASTER PLANNED ROAD W/ 18" WATER MAIN	\$ 1,100.00	49,283	LF	\$ 54,211,300.00
2	CULINARY WATER TANK (8 MILLION GALLONS)	\$ 12,000,000.00	1	LS	\$ 12,000,000.00
3	CULINARY WATER WELL	\$ 3,000,000.00	1	LS	\$ 3,000,000.00
4	POWER TO WELL	\$ 1,000,000.00	1	LS	\$ 1,000,000.00
TOTAL of P.I.D. ITEMS (Items 1 thru 4) =					\$ 70,211,300.00
S.H. MESA TOTAL		\$ 70,211,300.00			
ENGINEERING, CONST MGMT, AND TESTING		\$ 7,021,130.00			
CONTINGENCY		\$ 7,021,130.00			
GRAND TOTAL		\$ 84,253,560.00			

ITEMS INCLUDED IN THE MASTER PLANNED ROADS

Includes 14" OR 18" water main, sewer mains, power, excavation, base course, asphalt pavement, curb & gutter, sidewalks.

ITEMS INCLUDED IN THE WATER TANK

Includes excavation, (2) 4 million gallon concrete tanks, pipe, fittings and appurtenances.

ITEMS INCLUDED IN THE WATER WELL

Includes drilling, casing and equpping two wells at 500 to 1000 gallon per minute per well.

ITEMS INCLUDED IN THE POWER

Includes power poles, buried power conduits and energized power lines from 1300 South to new well location.

PID ROAD ESTIMATES

Date: 9-Aug-21

			STARGATE AVE & ROUNDABOUT			SAND HOLLOW ROAD			GATEWAY DRIVE			JELLYSTONE ROAD			BASH PARKWAY			RESORT BOULEVARD			GLAMPERS WAY		
			ROAD LENGTH: 4000 LF			ROAD LENGTH: 7,300 LF			ROAD LENGTH: 5,549 LF			ROAD LENGTH: 5,140 LF			ROAD LENGTH: 6,258 LF			ROAD LENGTH: 2,411 LF			ROAD LENGTH: 2,033 LF		
			PAVEMENT AREA: 304,623 SQ FT			PAVEMENT AREA: 450,144 SQ FT			PAVEMENT AREA: 212,954 SQ FT			PAVEMENT AREA: 212,954 SQ FT			PAVEMENT AREA: 185,478 SQ FT			PAVEMENT AREA: 100,700 SQ FT			PAVEMENT AREA: 65,874 SQ FT		
ITEM No.	ITEM DESCRIPTION	UNIT PRICE Dollars & Cents	QUANTITY	UNITS	ITEM PRICE Dollars & Cents	QUANTITY	UNITS	ITEM PRICE Dollars & Cents	QUANTITY	UNITS	ITEM PRICE Dollars & Cents	QUANTITY	UNITS	ITEM PRICE Dollars & Cents	QUANTITY	UNITS	ITEM PRICE Dollars & Cents	QUANTITY	UNITS	ITEM PRICE Dollars & Cents	QUANTITY	UNITS	ITEM PRICE Dollars & Cents
SURFACE ITEMS																							
1	MOBILIZATION		1	LS	\$ 30,000.00	1	LS	\$ 50,000.00	1	LS	\$ 40,000.00	1	LS	\$ 40,000.00	1	LS	\$ 50,000.00	1	LS	\$ 20,000.00	1	LS	\$ 20,000.00
2	CLEAR & GRUBB	\$ 3,439.67	1	LS	\$ 3,439.67	1	LS	\$ 5,000.00	1	LS	\$ 4,000.00	1	LS	\$ 4,000.00	1	LS	\$ 4,500.00	1	LS	\$ 2,000.00	1	LS	\$ 2,000.00
3	POTHOLE WATER DISTRICT LINES - 3 LOCATIONS	\$ 247.97	10	HRS	\$ 2,479.70	100	HRS	\$ 24,797.00	150	HRS	\$ 37,195.50	50	HRS	\$ 12,398.50	100	HRS	\$ 24,797.00	30	HRS	\$ 7,439.10	30	HRS	\$ 7,439.10
4	TRAFFIC CONTROL	\$ 25,000.00	1	LS	\$ 25,000.00	1	LS	\$ 25,000.00	1	LS	\$ 25,000.00	1	LS	\$ 25,000.00	1	LS	\$ 25,000.00	1	LS	\$ 25,000.00	1	LS	\$ 25,000.00
5	OVEREX AND RECOMPACT (ROADWAY)	\$ 4.64	4000	CY	\$ 18,573.33	50016	CY	\$ 232,240.96	23661	CY	\$ 109,865.91	24433	CY	\$ 113,450.56	20609	CY	\$ 95,694.46	11189	CY	\$ 51,954.26	7320	CY	\$ 33,989.20
6	EXCAVATION	\$ 8.29	17000	CY	\$ 140,986.67	35215	CY	\$ 292,049.73	33123	CY	\$ 274,700.08	69108	CY	\$ 573,135.68	48257	CY	\$ 400,211.39	18349	CY	\$ 152,174.37	13206	CY	\$ 109,521.76
7	SCARIFY SUBGRADE & RECOMPACT	\$ 0.14	281160	SF	\$ 40,299.60	450144	SF	\$ 64,520.64	212954	SF	\$ 30,523.41	219898	SF	\$ 31,518.71	185478	SF	\$ 26,585.18	100699	SF	\$ 14,433.52	65874	SF	\$ 9,441.94
8	ROAD BASE	\$ 20.05	13325	TON	\$ 267,210.67	19694	TON	\$ 394,930.35	9317	TON	\$ 186,836.91	9490	TON	\$ 190,306.13	8115	TON	\$ 162,732.80	4405	TON	\$ 88,334.93	2882	TON	\$ 57,793.71
9	3" ASPHALT PAVEMENT	\$ 77.12	6662	TON	\$ 513,751.23	9847	TON	\$ 759,367.82	4659	TON	\$ 359,286.55	4745	TON	\$ 365,918.58	4057	TON	\$ 312,862.32	2203	TON	\$ 169,888.02	1441	TON	\$ 111,125.12
10	CURB & GUTTER ("L" OR "A")	\$ 20.74	9779	LF	\$ 202,783.86	11720	LF	\$ 243,033.73	3792	LF	\$ 78,633.44	9720	LF	\$ 201,560.40	12135	LF	\$ 251,639.45	2285	LF	\$ 47,383.28	1951	LF	\$ 40,457.24
11	5' SIDEWALK	\$ 5.71	42200	SF	\$ 240,821.33	SF	\$ -	SF	\$ -	23500	SF	\$ 134,106.67	69392	SF	\$ 395,997.01	6310	SF	\$ 36,009.07	10727	SF	\$ 61,215.41		
12	12' TRAIL	\$ 5.71	SF	\$ -	165516	SF	\$ 944,544.64	91006	SF	\$ 519,340.91	57430	SF	\$ 327,733.87	29148	SF	\$ 166,337.92	15144	SF	\$ 86,421.76	SF	\$ -	SF	\$ -
13	PEDESTRIAN RAMPS W/ DOME PAD	\$ 2,040.00	20	EA	\$ 40,800.00	20	EA	\$ 40,800.00	14	EA	\$ 28,560.00	10	EA	\$ 20,400.00	8	EA	\$ 16,320.00	4	EA	\$ 8,160.00	12	EA	\$ 24,480.00
14	MATERIALS TESTING	\$ 29,157.00	1	LS	\$ 29,157.00	1	LS	\$ 29,157.00	1	LS	\$ 29,157.00	1	LS	\$ 29,157.00	1	LS	\$ 29,157.00	1	LS	\$ 29,157.00	1	LS	\$ 29,157.00
15	PLANTER STRIP SOIL, USE ONSITE MAT.	\$ 9.70	1280	CY	\$ 12,420.27	1891	CY	\$ 18,349.00	140.44	CY	\$ 1,362.74	1938	CY	\$ 18,805.06	1836	CY	\$ 17,815.32	12568	CY	\$ 121,951.49	7801	CY	\$ 75,695.70
16	SIGNS (STOP & STREET)	\$ 559.47	1	EA	\$ 559.47	8	EA	\$ 4,475.73	6	EA	\$ 3,356.80	7	EA	\$ 3,916.27	10	EA	\$ 5,594.67	4	EA	\$ 2,237.87	6	EA	\$ 3,356.80
17	CONCRETE TRUCK APRON	\$ 8.25	10066	SF	\$ 83,044.50	SF	\$ -	SF	\$ -	SF	\$ -	SF	\$ -	SF	\$ -	SF	\$ -	SF	\$ -	SF	\$ -	SF	\$ -
18	SIGNS (DIRECTIONAL)	\$ 366.00	10	EA	\$ 3,660.03	20	EA	\$ 7,320.07	20	EA	\$ 7,320.07	7	EA	\$ 2,562.02	9	EA	\$ 3,294.03	2	EA	\$ 732.01		EA	\$ -
19	SIGNS (WARNING & REGULATORY)	\$ 394.44	46	EA	\$ 18,144.24	10	EA	\$ 3,944.40	10	EA	\$ 3,944.40	0	EA	\$ -		EA	\$ -		EA	\$ -	2	EA	\$ 788.88
20	STRIPING	\$ 6,491.00	1	LS	\$ 6,491.00	1	LS	\$ 6,491.00	1	LS	\$ 6,491.00	1	LS	\$ 6,491.00	1	LS	\$ 6,491.00	1	LS	\$ 6,491.00	1	LS	\$ 6,491.00
21	INSTALL 4" CONDUIT TO ROUNDABOUT	\$ 19.29	90	LF	\$ 1,736.40	LF	\$ -	LF	\$ -	LF	\$ -	LF	\$ -	LF	\$ -	LF	\$ -	LF	\$ -	LF	\$ -	LF	\$ -
22	LANDSCAPE ROACK AT ROUNDABOUT	\$ 1.04	30000	SF	\$ 31,100.00	SF	\$ -	SF	\$ -	SF	\$ -	SF	\$ -	SF	\$ -	SF	\$ -	SF	\$ -	SF	\$ -	SF	\$ -
WATER SYSTEM																							
23	WATERLINE, 12" DIA CL51 D.I.P.	\$ 71.50	5548	LF	\$ 396,682.00	6125	LF	\$ 437,937.50	4290	LF	\$ 306,735.00	5095	LF	\$ 364,292.50	6050	LF	\$ 432,575.00	2410	LF	\$ 172,315.00	14235	LF	\$ 1,017,802.50
24	WATERLINE, 10" DIA CL51 D.I.P.	\$ 65.00		LF	\$ -		LF	\$ -		LF	\$ -	178	LF	\$ 11,570.00	30	LF	\$ 1,950.00		LF	\$ -	2105	LF	\$ 136,825.00
25	WATERLINE, 8" DIA C-900 PVC	\$ 57.50	1029	LF	\$ 59,167.50		LF	\$ -		LF	\$ -	179	LF	\$ 10,292.50	250	LF	\$ 14,375.00		LF	\$ -	150	LF	\$ 8,625.00
26	FIRE HYDRANTS	\$ 6,322.00	8	EA	\$ 50,576.00	13	EA	\$ 82,186.00	6	EA	\$ 37,932.00	11	EA	\$ 69,542.00	14	EA	\$ 88,508.00	4	EA	\$ 25,288.00	4	EA	\$ 25,288.00
27	12" BUTTERFLY VALVES	\$ 4,067.00	9	EA	\$ 36,603.00	13	EA	\$ 52,871.00	8	EA	\$ 32,536.00	8	EA	\$ 32,536.00	6	EA	\$ 24,402.00	6	EA	\$ 24,402.00		EA	\$ -
28	10" BUTTERFLY VALVES	\$ 3,300.00		EA	\$ -		EA	\$ -		EA	\$ -	1	EA	\$ 3,300.00	1	EA	\$ 3,300.00		EA	\$ -	4	EA	\$ 13,200.00
29	8" GATE VALVES	\$ 2,550.00	9	EA	\$ 22,950.00		EA	\$ -		EA	\$ -	2	EA	\$ 5,100.00	3	EA	\$ 7,650.00		EA	\$ -	2	EA	\$ 5,100.00
IRRIGATION SYSTEM																							
30	12" CLASS 200 PURPLE IRRIGATION LINE	\$ 70.00	6577	LF	\$ 460,390.00	6124	LF	\$ 428,680.00	4289	LF	\$ 300,230.00	5451	LF	\$ 381,570.00	6329	LF	\$ 443,030.00	2409	LF	\$ 168,630.00	2254	LF	\$ 157,780.00
31	12" BUTTERFLY VALVES	\$ 4,067.00	18	EA	\$ 73,206.00	13	EA	\$ 52,871.00	8	EA	\$ 32,536.00	11	EA	\$ 44,737.00	10	EA	\$ 40,670.00	6	EA	\$ 24,402.00	6	EA	\$ 24,402.00
SEWER SYSTEM																							
32	24" SEWER MAIN	\$ 120.00		LF	\$ -		LF	\$ -		LF	\$ -		LF	\$ -	1279	LF	\$ 153,480.00		LF	\$ -		LF	\$ -
33	12" SEWER MAIN	\$ 71.00	3800	LF	\$ 269,800.00	935	LF	\$ 66,385.00		LF	\$ -	3806	LF	\$ 270,226.00		LF	\$ -		LF	\$ -		LF	\$ -
34	8" SEWER MAIN	\$ 50.00		LF	\$ -	1121	LF	\$ 56,050.00		LF	\$ -		LF	\$ -		LF	\$ -	1900	LF	\$ 95,000.00	1932	LF	\$ 96,600.00
35	12" SEWER STUB	\$ 71.00		LF	\$ -	110	LF	\$ 7,810.00		LF	\$ -		LF	\$ -		LF	\$ -		LF	\$ -		LF	\$ -
36	8" SEWER STUB	\$ 50.00	540	LF	\$ 27,000.00	110	LF	\$ 5,500.00		LF	\$ -	238	LF	\$ 11,900.00	250	LF	\$ 12,500.00	90	LF	\$ 4,500.00	70	LF	\$ 3,500.00
37	48" DIA SEWER MANHOLES	\$ 4,000.00		EA	\$ -	7	EA	\$ 28,000.00		EA	\$ -	10	EA	\$ 40,000.00		EA	\$ -	10	EA	\$ 40,000.00		EA	\$ -
38	60" DIA SEWER MANHOLES	\$ 6,000.00	9	EA	\$ 54,000.00	1	EA	\$ 6,000.00		EA	\$ -												

**GOVERNING DOCUMENT
FOR
BENCH LAKE PUBLIC INFRASTRUCTURE DISTRICT
HURRICANE CITY, UTAH**

March 3, 2022

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LIST OF EXHIBITS

EXHIBIT A	Initial District Boundary Map, Annexation Area Boundary Map, Vicinity Map, Legal Descriptions
EXHIBIT B	Interlocal Agreement between the District and Hurricane City

I. INTRODUCTION

A. Purpose and Intent.

The District is an independent unit of local government, separate and distinct from the City, and, except as may otherwise be provided for by State or local law or this Governing Document, its activities are subject to review by the City only insofar as they may deviate in a material matter from the requirements of the Governing Document. It is intended that the District will provide a part or all of the Public Improvements for the use and benefit of all anticipated inhabitants and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements. The District is not being created to provide any ongoing operations and maintenance services.

B. Need for the District.

There are currently no other governmental entities, including the City, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction installation, relocation, redevelopment, and financing of the Public Improvements needed for the Project. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.

C. Objective of the City Regarding District's Governing Document.

The City's objective in approving the Governing Document for the District is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by the District. All Debt is expected to be repaid by taxes imposed and collected for no longer than the Maximum Debt Mill Levy Imposition Term and at a tax mill levy no higher than the Maximum Debt Mill Levy for all commercial and residential properties, and/or repaid by Assessments. Debt which is issued within these parameters and, as further described in the Financial Plan, will insulate property owners from excessive tax burdens to support the servicing of the Debt and will result in a timely and reasonable discharge of the Debt.

This Governing Document is intended to establish a limited purpose for the District and explicit financial constraints that are not to be violated under any circumstances. The primary purpose is to provide for the Public Improvements associated with development and regional needs. Although the District has authority to directly provide public improvements, the District also has the authority to pledge tax revenues to an interlocal entity that provides public improvements.

It is the intent of the District to dissolve upon payment or defeasance of all Debt incurred or upon a determination that adequate provision has been made for the payment of all Debt.

The District shall be authorized to finance the Public Improvements that can be funded from Debt to be repaid from Assessments or from tax revenues collected from a mill levy

which shall not exceed the Maximum Debt Mill Levy on taxable properties and which shall not exceed the Maximum Debt Mill Levy Imposition Term on taxable properties. It is the intent of this Governing Document to assure to the extent possible that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy in amount and that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy Imposition Term in duration even under bankruptcy or other unusual situations. Generally, the cost of Public Improvements that cannot be funded within these parameters are not costs to be paid by the District.

II. DEFINITIONS

In this Governing Document, the following terms shall have the meanings indicated below, unless the context hereof clearly requires otherwise:

Annexation Area Boundaries: means the boundaries of the area described in the Annexation Area Boundary Map which have been approved by the City for annexation or withdrawal from or into the District upon the meeting of certain requirements.

Annexation Area Boundary Map: means the map depicting the Annexation Area Boundaries attached hereto as **Exhibit A**, describing the property proposed for annexation within the District.

Approved Development Plan: means, collectively, all development plans or other process established by the City for identifying, among other things, Public Improvements necessary for facilitating development for property within the District Area as approved by the City pursuant to the City Code and as amended pursuant to the City Code from time to time. For purposes of this Governing Document, the entitlements approved for the Projects, including Balance of Nature, Calypso Ridge, and entitlements approved for any other property included in the Initial District Boundaries prior to the date of approval of this Governing Document, shall constitute an Approved Development Plan.

Assessment: means assessments levied in an assessment area created within the District.

Board: means the board of trustees of the District.

Bond, Bonds or Debt: means bonds or other obligations, including loans of any property owner, for the payment of which the District has promised to impose an ad valorem property tax mill levy, and/or collect Assessments.

City: means Hurricane City, Utah.

City Code: means the City Code of Hurricane City, Utah.

City Council: means the City Council of Hurricane City, Utah.

District: means the Bench Lake Public Infrastructure District.

District Area: means the property within the Initial District Boundary Map and the Annexation Area Boundary Map.

End User: means any owner, or tenant of any owner, of any taxable improvement within the District, who is intended to become burdened by the imposition of ad valorem property taxes subject to the Maximum Debt Mill Levy. By way of illustration, a resident homeowner, renter, commercial property owner, or commercial tenant is an End User. The business entity that constructs homes or commercial structures is not an End User.

Fees: means any fee imposed by the District for administrative services provided by the District.

Financial Plan: means the Financial Plan described in Section VIII which describes (i) the potential means whereby the Public Improvements may be financed; (ii) how the Debt is expected to be incurred; and (iii) the estimated operating revenue derived from property taxes for the first budget year.

General Obligation Debt: means a Debt that is directly payable from and secured by ad valorem property taxes that are levied by the District and does not include Limited Tax Debt.

Governing Document: means this Governing Document for the District approved by the City Council.

Governing Document Amendment: means an amendment to the Governing Document approved by the City Council in accordance with the City's ordinance and the applicable state law and approved by the Board in accordance with applicable state law.

Initial District Boundaries: means the boundaries of the area described in the Initial District Boundary Map.

Initial District Boundary Map: means the map depicting the Initial District Boundaries attached hereto as **Exhibit A**, describing the District's initial boundaries.

Limited Tax Debt: means a debt that is directly payable from and secured by ad valorem property taxes that are levied by the District which may not exceed the Maximum Debt Mill Levy.

Local District Act: means Title 17B of the Utah Code, as amended from time to time.

Maximum Debt Mill Levy: means the maximum mill levy the District is permitted to impose for payment of Debt as set forth in Section VIII.C below.

Maximum Debt Mill Levy Imposition Term: means the maximum term for imposition of a mill levy for any given series of bonds as set forth in Section VIII.D below.

Municipal Advisor: means a consultant that: (i) advises Utah governmental entities on matters relating to the issuance of securities by Utah governmental entities, including

matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (ii) shall be an individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place; and (iii) is not an officer or employee of the District.

Project: means, collectively, the developments or properties commonly referred to as the Balance of Nature and Calypso Ridge projects, and any other development projects in the Initial District Boundaries which have received development entitlements prior to the approval of this Governing Document.

PID Act: means Title 17D, Chapter 4 of the Utah Code, as amended from time to time and any successor statute thereto.

Public Improvements: means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as generally described in the Local District Act, except as specifically limited in Section V below to serve the future taxpayers and inhabitants of the District Area as determined by the Board.

Regional Improvements: means Public Improvements and facilities that benefit the District Area and which are to be financed pursuant to Section VII below.

State: means the State of Utah.

Taxable Property: means real or personal property within the District Area subject to ad valorem taxes imposed by the District.

Trustee: means a member of the Board.

Utah Code: means the Utah Code Annotated 1953, as amended.

III. BOUNDARIES

The area of the Initial District Boundaries includes approximately one thousand three hundred twenty (1319.574) acres and the total area proposed to be included in the Annexation Area Boundaries is approximately five thousand fifty-eight (5,057.679) acres and includes all property within the District. Maps of the Initial District Boundaries and Annexation Area Boundaries, a vicinity map, and legal descriptions of the Initial District Boundaries and the Annexation Area Boundaries are attached hereto together as **Exhibit A**. It is anticipated that the District's boundaries may change from time to time as it undergoes annexations and withdrawals pursuant to Section 17B-4-201, Utah Code, subject to Article V below.

IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION

The District Area consists of approximately five thousand fifty-eight (5,057.679) acres of mostly undeveloped land. The current assessed valuation of the District Area at build out, is expected to be sufficient to reasonably discharge the Debt under the Financial Plan. The population of the initial District Boundary at build-out is estimated to be approximately 12,000

people; the population of the entire District Area is anticipated to be much larger, and highly dependent on approved development plans upon each given property in the District Area.

Approval of this Governing Document by the City does not imply approval of the development of a specific area within the District, nor does it imply approval of the number of residential units or the total site/floor area of commercial or industrial buildings identified in this Governing Document or any of the exhibits attached thereto, unless the same is contained within an Approved Development Plan.

V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES

A. Powers of the District and Governing Document Amendment.

The District shall have the power and authority to provide the Public Improvements within and without the boundaries of the District as such power and authority is described in the Local District Act, and other applicable statutes, common law and the Constitution, subject to the limitations set forth herein.

1. Improvements. The District shall have authority to provide for the planning, design, acquisition, construction, installation, and dedication to the City or other appropriate public agencies of the Public Improvements within and without the boundaries of the District. Prior to or contemporaneous with providing the foregoing for any other Public Improvements, the District must have arranged for the financing of the following improvements (the “Pre-Requisite Improvements”), as generally depicted in or required by the Approved Development Plan:

(a) Regional master planned roads and public utilities connecting the Project (including 14” or 18” water mains, sewer mains, excavation, base course, asphalt pavement, curb & gutter, and sidewalks) all to City standards.

(b) Regional water storage improvements, including excavation, two (2) 4 million gallon concrete tanks, pipe, fittings and appurtenances.

(c) Regional water wells, including drilling, casing and equipping two wells at 500 to 1000 gallon per minute per well.

(d) Power improvements consisting of a main transmission line from the 1300 South Substation to the substations at Balance of Nature and Sand Hollow Mesa along 2100 West and 2600 West Streets. A main power feed will be installed from the 2600 West – Sand Hollow Mesa Substation and will feed the new wells and new tanks power down 2600 West and to the east on the southeastern tip of Hurricane City.

In order to finance all of the Pre-Requisite Improvements, the District will be required to annex significant additional property into the initial District boundaries. In the event that the financing capacity of the District, including all property annexed therein, is not sufficient to fully finance all of the Pre-Requisite Improvements, then the District will obtain what financing it can for the Pre-Requisite Improvements, and with said financing

will either (a) complete such Pre-Requisite Improvements as can be completed with available financing, as said improvements are prioritized by the City; (b) dedicate the funds obtained by said financing toward the cost of completion of the Pre-Requisite Improvements by the City or other appropriate public utility agency(ies); or (c) some combination of (a) and (b), as agreed by the City.

The Pre-Requisite Improvements may be funded either through issuance of bonds or other sources of funds (such as developer contributions), but must be fully funded before other non-Pre-Requisite Improvements are financed through the District.

Any impact fee reimbursements or credits which become available due to the financing of public improvements by the District shall be for the benefit of the District and not any developer.

2. Operations and Maintenance Limitation. The purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The District shall dedicate the Public Improvements to the City or other appropriate public entity or owners association in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. Trails which are interconnected with a city or regional trail system shall be open to the public free of charge and on the same basis as residents and owners of taxable property within the District.

3. Improvements Limitation. Notwithstanding the provisions of Section V.A.1 or 2 above, without written authorization of the City, the District shall not be authorized to finance the costs of any improvements or facilities which are to be ultimately owned by the District.

4. Construction Standards Limitation. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

5. Procurement. The District shall be subject to the Utah Procurement Code, Title 63G, Chapter 6a.

6. Privately Placed Debt Limitation. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District's Governing Document.

We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed

appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

7. Annexation and Withdrawal.

(a) The District shall not include within any of its boundaries any property outside the District Area without the prior written consent of the City. The City, by resolution and this Governing Document, has consented to the annexation of any area within the Annexation Area Boundaries into the District. Such area may only be annexed upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be annexed and the passage of a resolution of the Board approving such annexation.

(b) The City, by resolution and this Governing Document, has consented to the withdrawal of any area within the District Boundaries from the District. Such area may only be withdrawn upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be withdrawn and the passage of a resolution of the Board approving such annexation.

(c) Any annexation or withdrawal shall be in accordance with the requirements of the PID Act.

(d) Upon any annexation or withdrawal, the District shall provide the City a description of the revised District Boundaries.

(e) Annexation or withdrawal of any area in accordance with V.A.6(a) and (b) shall not constitute an amendment of this Governing Document.

8. Overlap Limitation. The District shall not impose aggregate mill levy for payment of Debt that exceeds the Maximum Debt Mill Levy of the District. The District shall not consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the District unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Debt Mill Levy of the District, or unless such other district is approved by the City.

9. Initial Debt Limitation. On or before the effective date of approval by the City of an Approved Development Plan, the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (c) impose and collect any Assessments used for the purpose of repayment of Debt.

10. Total Debt Issuance Limitation. The District shall not issue Debt in excess of an aggregate amount of One Hundred Ten Million Dollars (\$110,000,000). This amount excludes any portion of bonds issued to refund a prior issuance of debt by the District. In the event two or more districts create an interlocal agency to issue debt, only the par amount issued by such

agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each district.

11. Bankruptcy Limitation. All of the limitations contained in this Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term and the Fees have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(5), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable nonbankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

12. Governing Document Amendment Requirement.

(a) This Governing Document has been designed with sufficient flexibility to enable the District to provide required facilities under evolving circumstances without the need for numerous amendments. Actions of the District which violate the limitations set forth in V.A.1-9 above or in VIII.B-G. shall be deemed to be material modifications to this Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

(b) Subject to the limitations and exceptions contained herein, this Governing Document may be amended by passage of a resolutions of the City and the District approving such amendment.

B. Preliminary Engineering Survey.

The District shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, maintenance, and financing of the Public Improvements within and without the boundaries of the District, to be more specifically defined in an Approved Development Plan. An estimate of the costs of the Public Improvements which may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, maintained or financed was prepared based upon a preliminary engineering survey and estimates derived from

the zoning on the property in the District Area and is approximately Eighty-five Million Dollars (\$85,000,000).

All of the Public Improvements will be designed in such a way as to assure that the Public Improvements standards will be compatible with those of the City and/or any other applicable public entity and shall be in accordance with the requirements of the Approved Development Plan. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

VI. THE BOARD OF TRUSTEES

A. Board Composition. The Board shall be composed of five (5) Trustees who shall be appointed by the City Council pursuant to the PID Act. Trustees 1, 2, 3, 4 and 5 shall initially be at large. Trustee terms shall be staggered with initial terms as follows: Trustees 1 and 2 shall serve an initial term of 4 years; Trustees 3, 4 and 5 shall serve an initial term of 6 years. All terms shall commence on the date of issuance of a certificate of creation by the Office of the Lieutenant Governor of the State of Utah. In accordance with the PID Act, appointed Trustees shall not be required to be residents of the District.

B. Transition to Elected Board. Respective board seats shall transition from appointed to elected seats according to the following milestones:

1. Trustee 1. Trustee 1 shall transition to an elected seat upon 2,500 registered voters residing within the District.

2. Trustee 2. Trustee 2 shall transition to an elected seat upon 3,750 registered voters residing within the District.

3. Trustee 3. Trustee 3 shall transition to an elected seat upon 5,000 registered voters residing within the District.

4. Trustee 4. Trustee 3 shall transition to an elected seat upon 6,250 registered voters residing within the District.

5. Trustee 5. Trustee 3 shall transition to an elected seat upon 7,500 registered voters residing within the District.

Notwithstanding the foregoing, any board seats which have not yet transitioned to an elected seat shall transition after twelve (12) years have passed from the date of issuance of a certificate of creation for the District. No transition pursuant to this Section shall become effective until the next scheduled regular election of the District. Registered voters within this Section shall mean voters whose “principal place of residence,” as that term is defined under Utah Code 20A-2-105(1)(a), is within the District.

C. Reelection and Reappointment. Upon the expiration of a Trustee’s respective term, any seat which has not transitioned to an elected seat shall be appointed by the City Council pursuant to the PID Act and any seat which has transitioned to an elected seat shall be elected pursuant to an election held for such purpose. In the event that no qualified candidate files to be

considered for appointment or files a declaration of candidacy for a seat, such seat may be filled in accordance with the Local District Act.

D. Vacancy. Any vacancy on the Board shall be filled pursuant to the Local District Act.

E. Compensation. Only Trustees who are residents of the District may be compensated for services as Trustee. Such compensation shall be in accordance with State Law.

F. Conflicts of Interest. Trustees shall disclose all conflicts of interest. Any Trustee who discloses such conflicts in accordance with 17D-4-202 and 67-16-9, Utah Code, shall be entitled to vote on such matters.

VII. REGIONAL IMPROVEMENTS

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements. Regional Improvements may include, and may not be limited to, a master planned road providing primary access to the Development and associated utilities in the roadway, two culinary water tanks, a water well, and power infrastructure to the water well. The extent to which the District will be able to finance these Improvements will depend primarily on how many additional properties in the Annexation Area are annexed into the District.

Nothing herein shall prevent the City from financing and completing, or authorizing the finance and completion by another district, of other local or regional improvements not listed above, or approving other mill levies to facilitate the financing of the same.

VIII. FINANCIAL PLAN

A. General.

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment of the Public Improvements from its revenues and by and through the proceeds of Debt to be issued by the District. In addition, the District shall be permitted to finance the prepayment of impact fees for the Project. The Financial Plan for the District shall be to issue such Debt as the District can reasonably pay within the Maximum Debt Mill Levy Imposition Term from revenues derived from the Maximum Debt Mill Levy, Assessments and other legally available revenues. The total Debt that the District shall be permitted to issue shall not exceed One Hundred Ten Million Dollars (\$110,000,000) and shall be permitted to be issued on a schedule and in such year or years as the District determines shall meet the needs of the Financial Plan referenced above and phased to serve development as it occurs. Any portion of bonds issued to refund a prior issuance of debt by the District shall not count against the permitted total Debt. In the event two or more districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each district. All bonds and other Debt issued by the District may be payable from any and all legally available revenues of the District, including general ad valorem taxes to be imposed upon all Taxable Property within the District

and Assessments. The District will also rely upon various other revenue sources authorized by law. These will include the power to assess Fees, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time.

B. Maximum Interest Rate and Maximum Underwriting Discount.

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. In the event of a default, the proposed maximum interest rate on any Debt is not expected to exceed fifteen percent (15%). The proposed maximum underwriting discount will be five percent (5%). Debt, when issued, will comply with all relevant requirements of this Governing Document, State law and Federal law as then applicable to the issuance of public securities.

C. Maximum Debt Mill Levy.

(a) The “Maximum Debt Mill Levy” shall be the maximum mill levy the District is permitted to impose in upon the taxable property within the District for payment of Limited Tax Debt, and shall be 0.003 per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code. Such Maximum Debt Mill Levy may also be used to pay administrative expenses of the District.

(b) Such Maximum Debt Mill Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202, Utah Code.

(c) It is anticipated that the District may overlap with one or more of the Sand Hollow Mesa Public Improvement Districts (“SHMPIDs”) approved by the City, given that the improvements proposed to be financed by the District shall also benefit the area of the SHMPIDs. Each of the SHMPIDs are forbidden from levying an aggregate mill levy in the overlap area which exceeds 0.0045, which is the Maximum Debt Mill Levy of the SHMPIDs. The aggregate mill levy of the District and the SHMPIDs together shall not in any event be permitted to exceed the Maximum Debt Mill Levy of the SHMPIDs, on any property located within both the District and any of the SHMPIDs.

D. Maximum Debt Mill Levy Imposition Term.

Each bond issued by the District shall mature within Thirty-One (31) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of a series of bonds after a period exceeding forty (40) years from the first date of imposition of the mill levy for such bond (the “Maximum Debt Mill Levy Imposition Term”).

E. Debt Repayment Sources.

The District may impose a mill levy on taxable property within its boundaries as a primary source of revenue for repayment of debt service. The District may also rely upon various other revenue sources authorized by law. At the District’s discretion, these may include the power to assess Assessments, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time. Except as described in Section VIII.C(a), the debt service

mill levy in the District shall not exceed the Maximum Debt Mill Levy or, the Maximum Debt Mill Levy Imposition Term, except for repayment of General Obligation Debt.

The District shall not be permitted to charge an End User the costs of any portion of a Public Improvement for which such End User has already paid or is presently obligated to pay through any combination of mill levy, Assessment, or impact fee. This provision shall not prohibit the division of costs between mill levies, Assessments, or impact fees, but is intended to prevent double taxation of End Users for the costs of Public Improvements.

F. Debt Instrument Disclosure Requirement.

In the text of each Bond and any other instrument representing and constituting Debt, the District shall set forth a statement in substantially the following form:

By acceptance of this instrument, the owner of this Bond agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this Bond contained herein, in the resolution of the District authorizing the issuance of this Bond and in the Governing Document for creation of the District.

Similar language describing the limitations in respect of the payment of the principal of and interest on Debt set forth in this Governing Document shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a developer of property within the boundaries of the District.

G. Security for Debt.

The District shall not pledge any revenue or property of the City as security for the indebtedness set forth in this Governing Document. Approval of this Governing Document shall not be construed as a guarantee by the City of payment of any of the District's obligations; nor shall anything in the Governing Document be construed so as to create any responsibility or liability on the part of the City in the event of default by the District in the payment of any such obligation.

H. District's Operating Costs.

The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the District's organization and initial operations, are anticipated to be Seventy-Five Thousand Dollars (\$75,000), which will be eligible for reimbursement from Debt proceeds.

In addition to the capital costs of the Public Improvements, the District will require operating funds for administration and to plan and cause the Public Improvements to be constructed. The first year's administrative operating budget is estimated to be approximately Seventy-five Thousand Dollars (\$75,000) which is anticipated to be borne by developer(s) until such time a reimbursement can be derived from property taxes and other revenues, pursuant to a reimbursement agreement between the District and developers.

I. Bond and Disclosure Counsel.

It is the intent of the City that the District shall use competent and nationally recognized bond and disclosure counsel and Municipal Advisor with respect to District Bonds to ensure proper issuance and compliance with this Governing Document. The District has agreed to utilize the City's counsel, Gilmore & Bell, P.C., as bond and disclosure counsel and Zions Public Finance, Inc., as Municipal Advisor with respect to District Bonds as permitted by law. The foregoing requirement may be waived by vote of the City Council.

IX. ANNUAL REPORT

A. General.

The District shall be responsible for submitting an annual report to the City Manager's Office no later than 180 days following the end of the District's fiscal year.

B. Reporting of Significant Events.

The annual report shall include information as to any of the following:

1. Boundary changes made or proposed to the District's boundary as of December 31 of the prior year.
2. List of current interlocal agreements, if changed (to be delivered to the City upon request);
3. Names and terms of Board members and officers and progress towards milestones required for transition to elected Board;
4. District office contact information;
5. Rules and regulations of the District regarding bidding, conflict of interest, contracting, and other governance matters, if changed;
6. A summary of any litigation which involves the District Public Improvements as of the last day of the prior fiscal year;
7. Status of the District's construction of the Public Improvements as of last day of the prior fiscal year and listing all facilities and improvements constructed by the District that have been dedicated to and accepted by the City as of the last day of the prior fiscal year;
8. A table summarizing total debt authorized and total debt issued by the District as well as any presently planned debt issuances;
9. Official statements of current outstanding bonded indebtedness, if not previously provided to the City;

10. Current year budget including a description of the Public Improvements to be constructed in such year;

11. The District's financial statements, for the previous fiscal year, such statements shall be audited if required pursuant to State law or relevant bond documents (such statements shall be submitted within thirty (30) days of completion if completed after one hundred eighty (180) days following the end of the fiscal year);

12. Notice of any uncured events of default by the District, which continue beyond a 90 day period, under any Debt instrument; and

13. Any inability of the District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a ninety (90) day period.

X. DISSOLUTION

Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of its outstanding indebtedness and other financial obligations as required pursuant to State statutes.

XI. DISCLOSURE TO PURCHASERS

Within thirty (30) days of the City adopting a resolution creating the District, the Board shall record a notice with the recorder of Washington County. Such notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the District; and (d) if applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion. Such notice shall further be filed with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, homebuilders, commercial developers, and commercial lessors, as applicable, disclose the following information to initial resident homeowners, renters, commercial property owners, and/or commercial tenants:

- (1) All of the information in the first paragraph of this XI;
- (2) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, **for every \$100,000 of taxable value**, there would be an **additional annual property tax of \$300** for the duration of the District's Bonds.”
- (3) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

XII. INTERLOCAL AGREEMENT

The form of the Interlocal Agreement required by the City Code, relating to the limitations imposed on the District's activities, is attached hereto as **Exhibit B**. The District shall approve the Interlocal Agreement in the form attached as **Exhibit B** at its first Board meeting after its organization. Failure of the District to execute the Interlocal Agreement as required herein shall constitute a material modification and shall require a Governing Document Amendment. The City Council shall approve the Interlocal Agreement in the form attached as **Exhibit B** at the public hearing approving the Governing Document.

EXHIBIT A

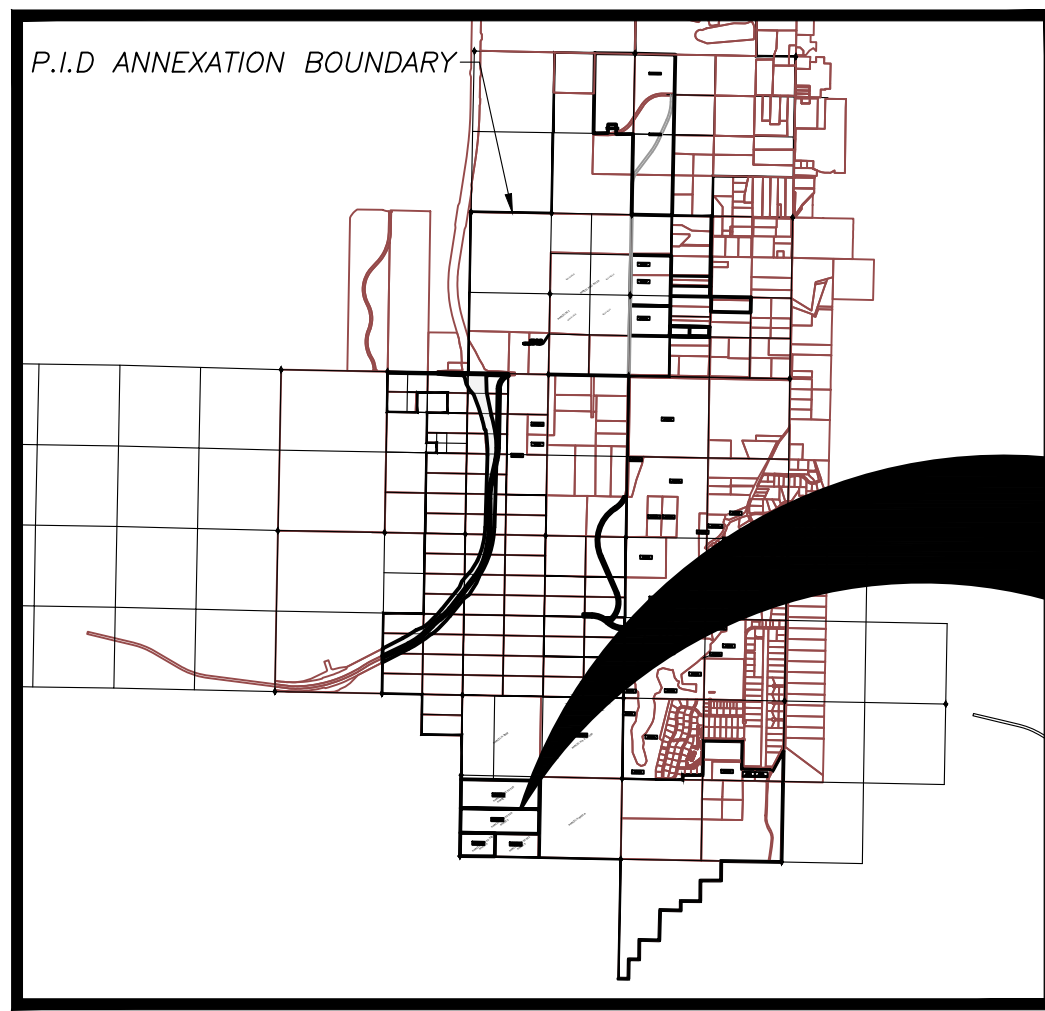
Initial District Boundary Map

Annexation Area Boundary Map

Vicinity Map

Legal Descriptions

(see following pages)



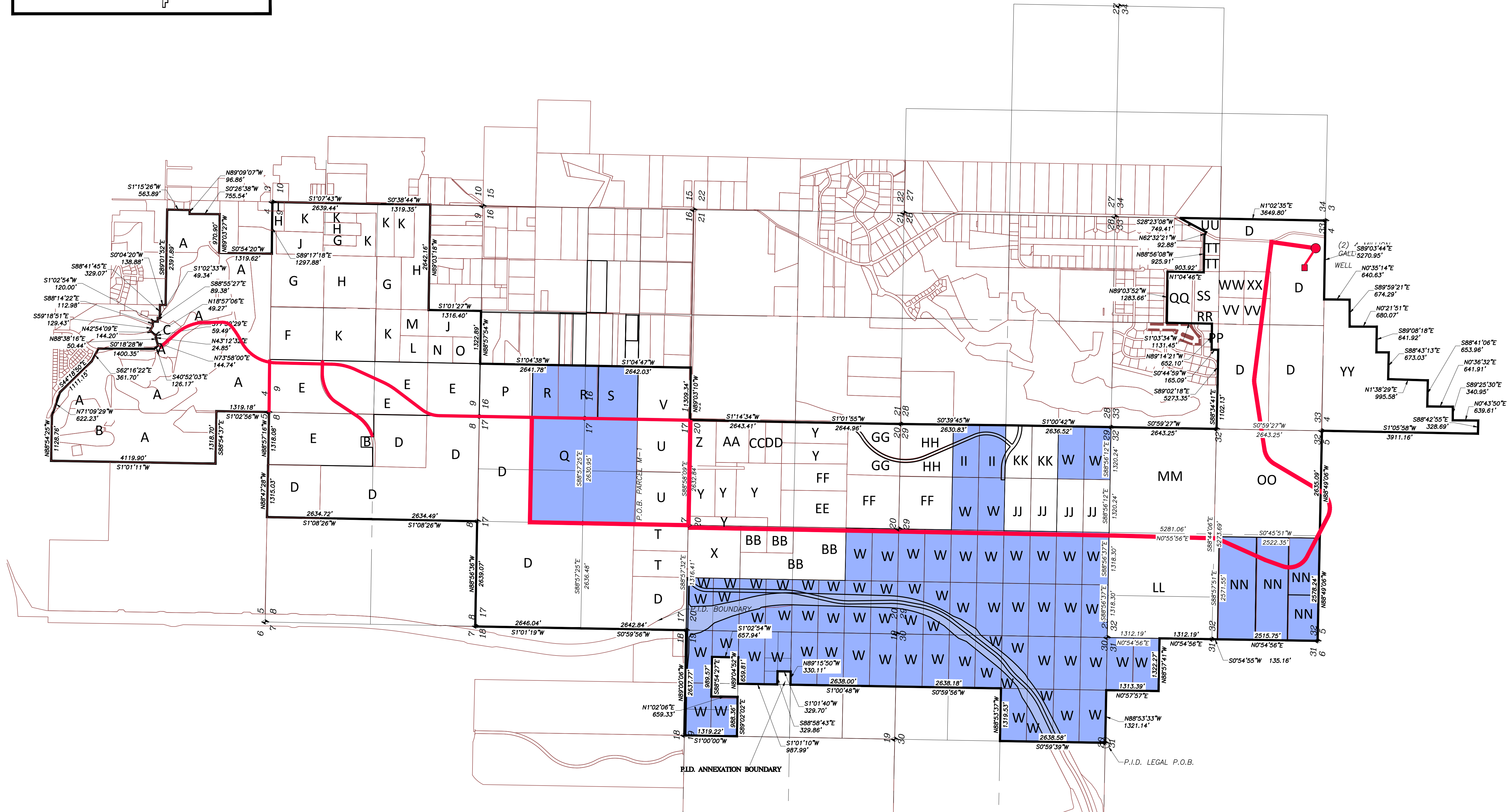
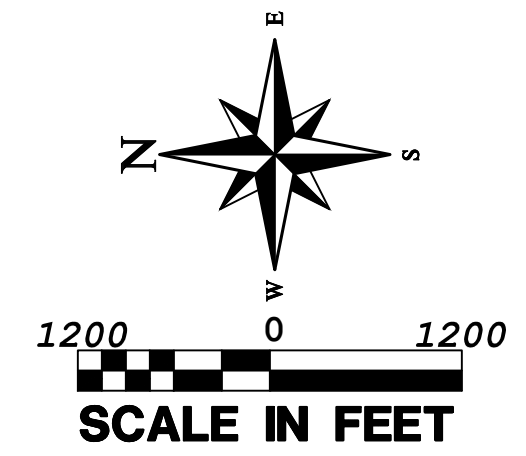
P.I.D.
LOCATION

PUBLIC INFRASTRUCTURE IMPROVEMENT DISTRICT MAP FOR: BENCH LAKE ANNEXATION BOUNDARY

LOCATED IN T42S & T43S, R13W, S.L.B.&M.
WASHINGTON COUNTY, UTAH

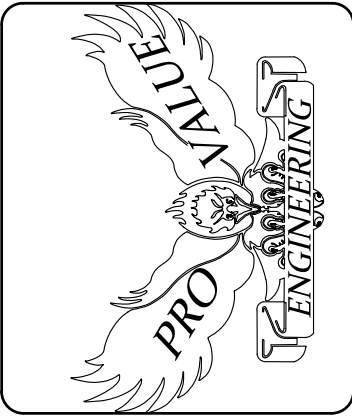
LEGEND

- P.I.D. PARTICIPANTS
- BENCH LAKE P.I.D. IMPROVEMENTS OF ROAD, WATERLINE, TANK, WELL, POWER AND UTILITIES. ROAD WILL BE 60 OR 77 FOOT WIDE WITH 12 FOOT TRAIL.
- SAND HOLLOW MESA P.I.D.'s #1-3 LOCATION
- PROPERTY LINE
- P.I.D. BOUNDARY LINE
- SECTION LINE
- SECTION CORNER AS DESCRIBED



REVISIONS	
NO	DESCRIPTION

PROVALUE ENGINEERING, INC.
Engineers - Land Surveyors - Land Planners
20 South 850 West, Suite 1
Hurricane City, Utah 84501
Phone: (435) 688-0801



PUBLIC INFRASTRUCTURE IMPROVEMENT DISTRICT MAP FOR:
BENCH LAKE ANNEXATION BOUNDARY
LOCATED IN T42S & T43S, R13W, S.L.B.&M.

DATE: 3-1-2022 SCALE: 1"=1200'
JOB NO. 659-001
SHEET NO. 1 OF 5

659-001

PARCEL SUMMARY FOR:
BENCH LAKE ANNEXATION BOUNDARY

LOCATED IN SECTION 32, T42S, R13W, S.L.B.&M.
WASHINGTON COUNTY, UTAH

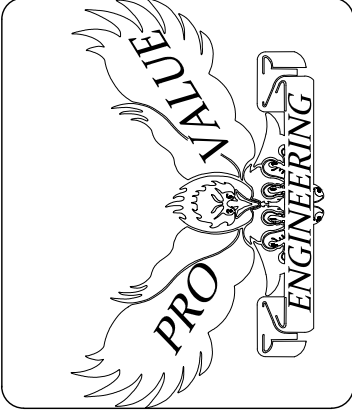
PARCEL ID	PARCEL #	OWNER	ADDRESS
A	H-3-2-4-139	WPP HURRICANE LAND LLC	595 S RIVERWOODS PKWY STE 400 LOGAN, UT 84321
A	H-3-2-4-44021	WPP HURRICANE LAND LLC	595 S RIVERWOODS PKWY STE 400 LOGAN, UT 84321
AA	H-3390-A-1	ISOM DAVID S & KATHLEEN A TRS	392 W 400 S HURRICANE, UT 84737
B	H-3-2-5-1104	HURRICANE CITY	147 N 870 W HURRICANE, UT 84737-1671
B	H-3-2-8-121	HURRICANE CITY	147 N 870 W HURRICANE, UT 84737-1671
BB	H-3-2-20-420	CAPITAL D INV LLC	1538 W 3780 S SAINT GEORGE, UT 84790
BB	H-3382	CAPITAL D INV LLC	1538 W 3780 S SAINT GEORGE, UT 84790
BB	H-3384-A-1	CAPITAL D INV LLC	1538 W 3780 S SAINT GEORGE, UT 84790
C	H-3-2-4-133	RR PENG A LLC	3507 KIRK CIR SALT LAKE CITY, UT 84106
CC	H-3390-A-2	JENSEN MARIAN I TR	146 E 5600 S OGDEN, UT 84405
D	H-3-2-8-1401	LOWE LAND 280 LLC	1038 E 760 N OREM, UT 84097
D	H-3-2-8-210	LOWE LAND 280 LLC	1038 E 760 N OREM, UT 84097
D	H-3-2-8-4101	LOWE LAND 280 LLC	1038 E 760 N OREM, UT 84097
D	H-3373	LOWE LAND 280 LLC	1038 E 760 N OREM, UT 84097
T	H-3374-C	LOWE LAND BL LLC	1038 E 760 N OREM, UT 84097
D	H-3403-U	LOWE LAND BL LLC	1038 E 760 N OREM, UT 84097
D	H-3403-W	LOWE LAND BL LLC	1038 E 760 N OREM, UT 84097
D	H-3403-X	LOWE LAND BL LLC	1038 E 760 N OREM, UT 84097
DD	H-3390-A-3	DIAMOND D RANCH INC	1822 N 2500 W SAINT GEORGE, UT 84770
E	H-3-2-8-1201	J R S INVESTMENTS L C	730 N 700 W SAINT GEORGE, UT 84770-2620
E	H-3-2-9-330	J R S INVESTMENTS L C	730 N 700 W SAINT GEORGE, UT 84770-2620
EE	H-3384-B	HUGHES DENICE J & BECKY JO	2175 E 2450 S ST GEORGE, UT 84790
F	H-3-2-9-410	BLAZZARD JAMES	233 KIRK AVE HENDERSON, NV 89015
FF	H-3385	FREI BLAKE	2508 STEFANIE LN SANTA CLARA, UT 84765
FF	H-3393	FREI BLAKE	2508 STEFANIE LN SANTA CLARA, UT 84765
FF	H-3399	FREI BLAKE	2508 STEFANIE LN SANTA CLARA, UT 84765
G	H-3-2-4-223	BLAU DELRAY R & MONA RAE TRS	114 HICKORY ST HENDERSON, NV 89015-5217
G	H-3-2-9-124	BLAU DELRAY R & MONA RAE TRS	114 HICKORY ST HENDERSON, NV 89015-5217
G	H-3-2-9-240	BLAU DELRAY R & MONA RAE TRS	114 HICKORY ST HENDERSON, NV 89015-5217
GG	H-3386-B	TYTANIUM DEV LLC	3439 S BARCELONA DR #46 SAINT GEORGE, UT 84790
H	H-3-2-4-222	HALL LEGRAND T & DONNA L TRS	121 HICKORY ST HENDERSON, NV 89015-6338
H	H-3-2-9-123	HALL LEGRAND T & DONNA L TRS	121 HICKORY ST HENDERSON, NV 89015-6338
H	H-3-2-9-130	HALL LEGRAND T & DONNA L TRS	121 HICKORY ST HENDERSON, NV 89015-6338
H	H-3-2-9-213	HALL LEGRAND T & DONNA L TRS	121 HICKORY ST HENDERSON, NV 89015-6338
HH	H-3399-NP	SPILSBURY CATTLE CO 1 LLC	110 S BLUFF ST SAINT GEORGE, UT 84770
I	H-3-2-4-224	BEECHER HELEN TR	960 W 1300 S HURRICANE, UT 84737
II	H-3399-B	WESTERN STATES VENTURES SG LLC	2265 E MURRAY HOLLADAY RD SALT LAKE CITY, UT 84117-5397
II	H-3399-I	WESTERN STATES VENTURES SG LLC	2265 E MURRAY HOLLADAY RD SALT LAKE CITY, UT 84117-5397
J	H-3-2-9-113	CALL FRANK RICHARD & CAROL A	101 CASCADING WATER PL LAKEWAY, TX 78734-2057
J	H-3-2-9-320	CALL FRANK RICHARD TR	101 CASCADING WATER PL LAKEWAY, TX 78734-2057
JJ	H-3399-E	DESERT LAKES LLC	321 N MALL DR T102 SAIN GEORGE, UT 84790
JJ	H-3399-F	DESERT LAKES LLC	321 N MALL DR T102 SAIN GEORGE, UT 84790
JJ	H-3399-G	DESERT LAKES LLC	321 N MALL DR T102 SAIN GEORGE, UT 84790
JJ	H-3399-H	DESERT LAKES LLC	321 N MALL DR T102 SAIN GEORGE, UT 84790
K	H-3-2-9-112	ZIONS GATE ESTATES LLC	3018 E 3300 S SALT LAKE CITY, UT 84109-2144
K	H-3-2-9-121	ZIONS GATE ESTATES LLC	3018 E 3300 S SALT LAKE CITY, UT 84109-2144
K	H-3-2-9-122	ZIONS GATE ESTATES LLC	3018 E 3300 S SALT LAKE CITY, UT 84109-2144
K	H-3-2-9-125	ZIONS GATE ESTATES LLC	3018 E 3300 S SALT LAKE CITY, UT 84109-2144
K	H-3-2-9-212	ZIONS GATE ESTATES LLC	3018 E 3300 S SALT LAKE CITY, UT 84109-2144

P.I.D. ANNEXATION BOUNDARY LEGAL DESCRPTION

BEGINNING AT THE SOUTH QUARTER CORNER OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN; THENCE N00°59'39"E ALONG THE QUARTER SECTION LINE, 2638.58 FEET; THENCE S88°53'37"E ALONG THE QUARTER SECTION LINE, 1319.53 FEET; THENCE N00°59'56"E ALONG THE SIXTEENTH SECTION LINE, 2638.18 FEET; THENCE N01°00'48"E ALONG THE SIXTEENTH SECTION LINE, 2638.00 FEET; THENCE S89°15'50"E 330.11 FEET; THENCE N01°01'40"E 329.70 FEET; THENCE N88°58'43"W 329.86 FEET; THENCE N01°01'10"E ALONG THE SIXTEENTH SECTION LINE, 987.99 FEET; THENCE S89°04'52"E 659.81 FEET; THENCE N01°02'54"E 657.94 FEET; THENCE N88°54'27"W 989.57 FEET; THENCE S01°02'06"W 659.33 FEET; THENCE N89°02'02"W 988.36 FEET; THENCE N01°00'00"E ALONG THE QUARTER SECTION LINE, 1319.22 FEET TO THE NORTH QUARTER CORNER OF SECTION 19; THENCE S89°00'06"E ALONG THE NORTH SECTION LINE OF SECTION 19, 2637.77 FEET; THENCE N00°59'56"E 2642.84 FEET TO THE WEST QUARTER CORNER OF SECTION 17; THENCE N01°01'19"E ALONG THE QUARTER SECTION LINE, 2646.04 FEET TO THE NORTHWEST CORNER OF SECTION 17; THENCE S88°56'36"E ALONG THE NORTH SECTION LINE OF SECTION 17, 2639.07 FEET TO THE SOUTH QUARTER CORNER OF SECTION 8; THENCE N01°08'26"E ALONG THE QUARTER SECTION LINE, 2634.49 FEET; THENCE N01°08'26"E 2634.72 FEET; THENCE S88°47'28"E 1315.03 FEET; THENCE S88°57'16"E 1318.08 FEET; THENCE N01°02'56"E 1319.18 FEET; THENCE N88°54'37"W 1318.70 FEET; THENCE N01°01'11"E 4119.90 FEET; THENCE S88°54'25"E 1128.76 FEET; THENCE S71°09'29"E 622.23 FEET; THENCE S44°18'50"E 1111.15 FEET; THENCE S62°16'22"E 361.70 FEET; THENCE S00°18'28"W 1400.35 FEET; THENCE S40°52'03"E 126.17 FEET; THENCE N73°58'00"E 144.74 FEET; THENCE N88°38'16"E 50.44 FEET; THENCE N43°12'32"E 24.85 FEET; THENCE S77°30'29"E 59.49 FEET; THENCE N18°57'06"E 49.27 FEET; THENCE N42°54'09"E 144.20 FEET; THENCE S59°18'51"E 129.43 FEET; THENCE S88°14'22"E 112.98 FEET; THENCE S01°02'54"W 120.00 FEET; THENCE S88°55'27"E 89.38 FEET; THENCE S01°02'33"W 49.34 FEET; THENCE S88°41'45"E 329.07 FEET; THENCE S00°04'20"W 138.88 FEET; THENCE S89°01'52"E 2391.89 FEET; THENCE S01°15'26"W 563.89 FEET; THENCE N89°09'07"W 96.86 FEET; THENCE S00°26'38"W 755.54 FEET; THENCE N89°03'27"W 970.90 FEET; THENCE S00°54'20"W 1319.62 FEET; THENCE S89°17'18"E 1297.88 FEET; THENCE S01°07'43"W 2639.44 FEET; THENCE S00°38'44"W 1319.35 FEET; THENCE N89°03'18"W 2642.16 FEET; THENCE S01°01'27"W 1316.40 FEET; THENCE N88°57'54"W 1322.89 FEET; THENCE S01°04'38"W ALONG THE SIXTEENTH LINE, 2641.78 FEET; THENCE S01°04'47"W ALONG THE SIXTEENTH LINE, 2642.03 FEET TO THE NORTH SECTION LINE OF SECTION 21; THENCE S88°59'31"E ALONG THE NORTH SECTION LINE, 1319.05 FEET TO THE NORTH QUARTER CORNER OF SECTION 21; THENCE S00°52'39"W ALONG THE QUARTER SECTION LINE, 2642.99 FEET; THENCE S00°52'39"W ALONG THE QUARTER SECTION LINE, 1854.13 FEET; THENCE S89°03'17"E 651.20 FEET; THENCE N67°32'58"E 719.36 FEET TO THE BOUNDARY LINE OF 1100 WEST STREET; THENCE ALONG SAID BOUNDARY, SOUTHERLY ALONG THE ARC OF A 777.03 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (LONG CHORD BEARS: S01°38'47"E 225.81 FEET), CENTER POINT LIES S83°17'30"E THROUGH A CENTRAL ANGLE OF 16°42'34" A DISTANCE OF 226.61 FEET; THENCE S06°55'26"W 79.06 FEET; THENCE ALONG THE BOUNDARY LINE OF HURRICANE CITY LIMITS THE FOLLOWING 50 (FIFTY) COURSES: WESTERLY ALONG THE ARC OF A 867.74 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (LONG CHORD BEARS: S74°01'54"W 176.73 FEET), CENTER POINT LIES S10°07'24"E THROUGH A CENTRAL ANGLE OF 11°41'23" A DISTANCE OF 177.04 FEET; THENCE S67°43'07"W 88.69 FEET; THENCE S05°49'49"W 293.40 FEET; THENCE S38°27'57"E 1605.65 FEET; THENCE N59°19'35"E 220.30 FEET; THENCE S30°40'12"E 50.00 FEET; THENCE S59°19'36"W 387.01 FEET; THENCE S01°09'10"W 662.01 FEET; THENCE N88°52'02"W 174.68 FEET; THENCE S04°34'12"E 999.91 FEET; THENCE N88°55'56"W 544.40 FEET; THENCE S01°06'55"W 1294.29 FEET; THENCE N89°02'59"W 1314.41 FEET; THENCE S00°59'24"W 1344.50 FEET; THENCE N88°56'46"W 1024.84 FEET; THENCE S13°20'01"W 1418.06 FEET; THENCE S13°36'52"W 965.73 FEET; THENCE S00°29'25"W 322.11 FEET; THENCE S89°02'20"E 883.29 FEET; THENCE N00°44'59"E 165.09 FEET; THENCE S89°14'21"E 652.10 FEET; THENCE N01°03'34"E 1131.45 FEET; THENCE S89°03'52"E 1283.66 FEET; THENCE S01°04'46"W 903.92 FEET; THENCE S88°56'08"E 925.91 FEET; THENCE S62°32'21"E 92.88 FEET; THENCE N28°23'08"E 749.41 FEET TO THE EAST SECTION LINE OF SECTION 33; THENCE S01°02'35"W ALONG THE EAST SECTION LINE, 1008.75 FEET; THENCE S01°02'35"W ALONG THE EAST SECTION LINE, 2641.06 FEET TO THE SOUTHEAST CORNER OF SECTION 33; THENCE N89°03'44"W ALONG THE SOUTH SECTION LINE OF SECTION 33, 1977.18 FEET; THENCE S00°35'14"W 640.63 FEET; THENCE N89°59'21"W 674.29 FEET; THENCE S00°21'51"W 680.07 FEET; THENCE N89°08'18"W 641.92 FEET; THENCE S00°18'23"W 309.88 FEET; THENCE N88°43'13"W 670.71 FEET; THENCE S01°46'31"W 995.60 FEET; THENCE N88°41'06"W 653.96 FEET; THENCE S00°36'32"W 641.91 FEET; THENCE N89°25'30"W 340.95 FEET; THENCE S00°31'00"W 639.64 FEET; THENCE N88°42'54"W 331.07 FEET; THENCE N01°05'58"E 3911.16 FEET TO THE SOUTHEAST CORNER OF SECTION 32; THENCE N88°49'06"W ALONG THE SOUTH SECTION LINE, FEET, 2635.09 FEET; THENCE N88°49'06"W ALONG THE SOUTH SECTION LINE, FEET, 2635.08 FEET TO THE SOUTHWEST CORNER OF SECTION 32; THENCE N00°54'56"E ALONG THE WEST SECTION LINE, 2650.91 FEET TO THE WEST QUARTER CORNER OF SECTION 32; THENCE N00°54'56"E ALONG THE WEST SECTION LINE, 1312.19 FEET; THENCE N88°57'41"W 1322.27 FEET; THENCE N00°57'57"E 1313.39 FEET TO THE SOUTH SECTION LINE OF SECTION 30; THENCE N88°53'33"W ALONG THE SOUTH SECTION LINE, FEET, 1321.14 FEET TO THE POINT OF BEGINNING. AREA CONTAINS 220,312,481 SQUARE FEET OR 5,057.679 ACRES.

REVISIONS		DATE	BY
NO	DESCRIPTION		

PROVALUE ENGINEERING, INC.
Engineers - Land Surveyors - Land Planners
20 South 850 West, Suite 1
Hurricane City, Utah 84503
Phone: (435) 688-0501



PARCEL SUMMARY SHEET FOR:
BENCH LAKE ANNEXATION BOUNDARY
LOCATED IN SECTION 32, T42S, R13W, S.L.B.&M.

DATE: 3-1-2022
SCALE: N/A

JOB NO:
689-001

SHEET NO:
2 OF 5

689-001

PARCEL SUMMARY FOR:
BENCH LAKE ANNEXATION BOUNDARY

LOCATED IN SECTION 32, T42S, R13W, S.L.B.&M.
WASHINGTON COUNTY, UTAH

K	H-3-2-9-310	ZIONS GATE ESTATES LLC	3018 E 3300 S SALT LAKE CITY, UT 84109-2144
K	H-3-2-9-420	ZIONS GATE ESTATES LLC	3018 E 3300 S SALT LAKE CITY, UT 84109-2144
KK	H-3400-Q	RIVER VALLEY DEV LLC	470 N 2450 W TREMONTON, UT 84337
KK	H-3400-R	RIVER VALLEY DEV LLC	470 N 2450 W TREMONTON, UT 84337
L	H-3-2-9-312	HALL BRAD S & VIRGINIA H	15142 W LACEY RD POCATELLO, ID 83202-5044
LL	H-3402	FIREBIRD LLC	3504 ANGELUS AVE GLENDALE, CA 91208
M	H-3-2-9-311	HALL DAVID B & ROSULAM	1021 LARKSPUR LN OAKLAND, OR 97462
MM	H-3-2-32-100	COPPER ROCK PROPERTIES LC	PO BOX 160 HURRICANE, UT 84737-0160
N	H-3-2-9-322	GARDNER DAVID LEE & PEGGY HALL TRS	241 W KIMBERLY DR HENDERSON, NV 89015
NN	H-3-2-32-310	CALYPSO RIDGE PROPERTIES LLC	5500 S HOLLADAY BLVD HOLLADAY, UT 84117
NN	H-3-2-32-320	CALYPSO RIDGE PROPERTIES LLC	5500 S HOLLADAY BLVD HOLLADAY, UT 84117
NN	H-3-2-32-321	CALYPSO RIDGE PROPERTIES LLC	5500 S HOLLADAY BLVD HOLLADAY, UT 84117
NN	H-3-2-32-330	CALYPSO RIDGE PROPERTIES LLC	5500 S HOLLADAY BLVD HOLLADAY, UT 84117
O	H-3-2-9-321	HOME POINT INC	PO BOX 974 PAROWAN, UT 84761-0974
OO	H-3401-A	TWIN VENTURES LLC	781 S AUTO MALL DR #102 AMERICAN FORK, UT 84003
P	H-3372	WRIGHT DAVID BURKE & KERRI M	PO BOX 86 GARRISON, UT 84728-0086
PP	H-3403-F	PERKINS MERRI ANN TR	1449 W 4620 S HURRICANE, UT 84737
Q	H-3373-NP	MOLLYS VIEW LLC	1568 S RIVER RD STE 200 SAINT GEORGE, UT 84790-2291
QQ	H-3403-C-2	JACOBSEN J DOUGLAS	4693 MADISON AVE OGDEN, UT 84403-3007
R	H-3345	BENCH LAKE LLC	243 E ST GEORGE BLVD #200 SAINT GEORGE, UT 84770
R	H-3346	BENCH LAKE LLC	243 E ST GEORGE BLVD #200 SAINT GEORGE, UT 84770
RR	H-3403-E-2	HEVELONE JOHANNA L TR	1301 W 4620 S HURRICANE, UT 84737
S	H-3347-A	CASSINAT JOHN & JAN	533 N 800 W PROVO, UT 84601
SS	H-3403-K	CAMPBELL R SCOTT & RONDA TRS	PO BOX 1700 SANDY, UT 84091-1700
T	H-3374-A	MILLS GLEN H TR	303 W 800 N # 5 CLEARFIELD, UT 84015
T	H-3374-B	MILLS GLEN H TR	303 W 800 N # 5 CLEARFIELD, UT 84015
TT	H-3403-D-1	ABANDONATO MARCEL JOSEPH & JENNIFER T	1693 HONORS CIR CORONA, CA 92883
TT	H-3403-D-3-A	ABANDONATO MARCEL JOSEPH & JENNIFER T	1693 HONORS CIR CORONA, CA 92883
U	H-3375	WASHINGTON COUNTY WATER CONSERV DIST	533 WATER WORKS WAY SAINT GEORGE, UT 84770
U	H-3376-A	WASHINGTON COUNTY WATER CONSERV DIST	533 WATER WORKS WAY SAINT GEORGE, UT 84770
UU	H-3403-C-3	RLB&M ENTERPRISES LLC	561 E TABERNACLE ST SAINT GEORGE, UT 84770
V	H-3347-B-1	EARL ZARBOCK LTD FAM PTSHP	PO BOX 901122 SANDY, UT 84090
VV	H-3403-E-1	QUALITY AUTO SALES LLC 401K PROFIT SHARING PLAN FBO STEELE HEIDI A	5376 W 3160 S HURRICANE, UT 84737
VV	H-3403-H	QUALITY AUTO SALES LLC 401K PROFIT SHARING PLAN FBO STEELE HEIDI A	5376 W 3160 S HURRICANE, UT 84737
W	H-3399-A	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3399-C	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3399-D	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3400-A	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3400-B	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3400-D	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3400-E	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3400-F	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3400-G	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3400-H	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3400-I	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3400-J	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3400-K	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3400-L	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3400-M	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3400-N	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138

REVISIONS		
NO	DESCRIPTION	DATE

PROVALUE ENGINEERING, INC.
Engineers - Land Surveyors - Land Planners
20 South 850 West, Suite 1
Hurricane City, Utah 84751
Phone: 1-435-666-6501



PARCEL SUMMARY SHEET FOR:
BENCH LAKE ANNEXATION BOUNDARY
LOCATED IN SECTION 32, T42S, R13W, S.L.B.&M.

DATE: 3-1-2022 SCALE: N/A
JOB NO. 659-001
SHEET NO: 3 OF 5

PARCEL SUMMARY FOR:
BENCH LAKE ANNEXATION BOUNDARY

LOCATED IN SECTION 32, T42S, R13W, S.L.B.&M.
WASHINGTON COUNTY, UTAH

W	H-3400-O	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3400-P	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3400-S	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3400-T	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3409	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3409-B-2	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3409-C-2	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3409-D	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3409-E	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3409-F	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3409-G	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3409-H	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3409-I	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3409-J	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3410	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3410-B	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3410-C	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3410-D	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3410-E	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3410-F	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3410-G	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3410-H	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3410-I	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3410-J	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3421	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3421-A	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3421-C	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3421-D	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3421-E	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3421-F	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3421-G	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3421-H	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3421-I	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3421-J	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3421-K	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3421-L	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3422	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
W	H-3422-B	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
WW	H-3403-E-3	FOISY STEVE E	2105 S BALBOA WAY # 8 SAINT GEORGE, UT 84770
X	H-3391	WAVSS LLC	2514 W SPILSBURY CT HURRICANE, UT 84737
XX	H-3403-A	GERONDALE LESLIE L	5376 W 3160 S HURRICANE, UT 84737
Y	H-3383-A-1	HURRICANE ENTERPRISES LTD	485 WESTMINSTER DR MORAGA, CA 94556-2318
Y	H-3386-A	HURRICANE ENTERPRISES LTD	485 WESTMINSTER DR MORAGA, CA 94556-2318
Y	H-3387	HURRICANE ENTERPRISES LTD	485 WESTMINSTER DR MORAGA, CA 94556-2318
Y	H-3388-A-1	HURRICANE ENTERPRISES LTD	485 WESTMINSTER DR MORAGA, CA 94556-2318
Y	H-3389-A-2-A	HURRICANE ENTERPRISES LTD	485 WESTMINSTER DR MORAGA, CA 94556-2318
Y	H-3389-B	HURRICANE ENTERPRISES LTD	485 WESTMINSTER DR MORAGA, CA 94556-2318
YY	H-3405-A	JAXSON PARK LLC	599 CYNTHIA LN SANTA CLARA, UT 84765
Z	H-3392	HEATON STEVE M & JUDY H	493 N 500 W SAINT GEORGE, UT 84770-4522

659-001

PROVALUE ENGINEERING, INC.
Engineers - Land Surveyors - Land Planners
70 South 850 West, Suite 1
Hurricane City, Utah 84737
Phone: 1-435-666-0501



PARCEL SUMMARY SHEET FOR:
BENCH LAKE ANNEXATION BOUNDARY
LOCATED IN SECTION 32, T42S, R13W, S.L.B.&M.

DATE: 3-1-2022
SCALE: N/A

JOB NO:
659-001

SHEET NO:
4 OF 5

REVISIONS	
NO	DESCRIPTION

659-001

Page 753 of 957

P.I.D. PARTICIPANT LEGAL DESCRIPTIONS FOR:
BENCH LAKE ANNEXATION BOUNDARY

LOCATED IN SECTION 32, T42S, R13W, S.L.B.&M.
WASHINGTON COUNTY, UTAH

BALANCE OF NATURE LEGAL DESCRIPTION

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN; THENCE N01°04'40"E, ALONG THE QUARTER SECTION LINE 1321.37 FEET TO THE CENTER QUARTER CORNER OF SECTION 17; THENCE N01°04'40"E ALONG THE QUARTER SECTION LINE, 1322.71 FEET TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 17; THENCE S88°55'19"E ALONG THE SIXTEENTH LINE, 2629.96 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 17; THENCE S01°02'06"W ALONG THE EAST SECTION LINE, 1321.10 FEET TO THE EAST QUARTER CORNER OF SECTION 17; THENCE S01°02'13" ALONG THE EAST SECTION LINE, 1321.10 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 17; THENCE N88°57'47"W ALONG THE SIXTEENTH LINE, 2631.90 FEET TO THE POINT OF BEGINNING.

AREA CONTAINS 6,953,936 SQUARE FEET OR 159.640 ACRES

1020 ACRE LEGAL DESCRIPTION

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN, BEING THE COMMON CORNER OF SECTIONS 29, 30, 31 & 32; THENCE S00°54'56"W, ALONG THE EAST SECTION LINE OF SECTION 31, 1312.19 FEET TO THE 1/16 CORNER OF SAID SECTION 31; THENCE N88°57'41"W, ALONG THE 1/16TH LINE, 1322.27 FEET TO THE NORTH-SOUTH 1/16TH LINE; THENCE N00°57'56"E, ALONG THE 1/16TH/ LINE, 1313.59 FEET TO THE 1/16TH CORNER ON THE SOUTH SECTION LINE OF SECTION 30; THENCE N88°53'33"W, ALONG THE SOUTH SECTION LINE, 1321.14 FEET TO THE SOUTH 1/4 CORNER OF SECTION 30; THENCE N00°59'47"E, ALONG THE 1/4 SECTION LINE, 2636.98 FEET TO THE CENTER QUARTER CORNER OF SECTION 30; THENCE S88°55'00"E, ALONG THE 1/4 SECTION LINE, 1321.47 FEET TO THE 1/16TH CORNER; THENCE N00°58'28"E, ALONG THE NORTH-SOUTH 1/16TH LINE, 2640.21 FEET TO THE 1/16TH CORNER ON THE SOUTH SECTION LINE OF SECTION 19; THENCE N01°01'32"E, ALONG THE NORTH-SOUTH 1/16TH LINE, 2637.48 FEET TO THE 1/16TH CORNER IN SECTION 19; THENCE S88°58'31"E, ALONG THE 1/4 SECTION LINE, 329.89 FEET; THENCE N01°01'40"E 329.70 FEET; THENCE N88°58'43"W 329.86 FEET TO THE NORTH-SOUTH 1/16TH LINE; THENCE N01°01'53"E, ALONG THE 1/16TH LINE, 989.05 FEET TO THE 1/16TH CORNER; THENCE S88°59'18"E, ALONG THE EAST-WEST 1/16TH LINE, 659.61 FEET; THENCE N01°01'27"E 659.45 FEET; THENCE N88°59'42"W 989.29 FEET; THENCE S01°02'06"W 659.33 FEET TO THE EAST-WEST 1/16TH LINE; THENCE N88°59'18"W, ALONG THE 1/4 SECTION LINE, 989.41 FEET TO THE 1/4 SECTION LINE; THENCE N01°02'44"E, ALONG THE 1/4 SECTION LINE, 1318.43 FEET TO THE NORTH QUARTER CORNER OF SECTION 19; THENCE S89°00'06"E, ALONG THE NORTH SECTION LINE OF SECTION 19, 2637.77 FEET TO THE COMMON CORNER OF SECTION 17, 18, 19, 20 (NORTHEAST CORNER OF SECTION 19); THENCE S88°57'52"E, ALONG THE NORTH SECTION LINE OF SECTION 20, 1316.43 FEET TO THE 1/16TH CORNER; THENCE S01°01'06"W, ALONG THE 1/16TH LINE, 2639.62 FEET; THENCE S01°00'58"W, ALONG THE 1/16TH LINE, 1319.92 FEET TO THE 1/16TH CORNER; THENCE S88°51'19"E, ALONG THE 1/16TH LINE, 1316.11 FEET TO THE 1/4 SECTION LINE OF SECTION 20; THENCE S01°01'38"W, ALONG THE 1/4 SECTION LINE, 1320.77 FEET TO THE SOUTH 1/4 CORNER OF SECTION 20, ALSO THE NORTH 1/4 CORNER OF SECTION 29; THENCE S00°55'44"W, ALONG THE 1/4 SECTION LINE IN SECTION 29, 1318.21 FEET TO THE 1/16TH CORNER; THENCE S88°52'39"E, ALONG THE 1/16TH LINE, 2638.18 FEET TO THE EAST SECTION LINE; THENCE S00°39'45"W, ALONG THE EAST SECTION LINE, 1315.42 FEET TO THE EAST 1/4 CORNER; THENCE N88°55'38"W, ALONG THE 1/4 SECTION LINE, 2644.29 FEET TO THE NORTH-SOUTH 1/16TH LINE; THENCE S0°55'44"W, ALONG THE 1/16TH LINE, 1318.48 FEET TO THE WEST-EAST 1/16TH LINE; THENCE N88°55'47"W, ALONG THE 1/16TH LINE, 1317.36 FEET TO THE NORTH-SOUTH 1/16TH LINE; THENCE S0°58'12"W, ALONG SAID 1/16TH LINE, 1318.53 FEET TO THE SOUTH SECTION LINE OF SECTION 29, THENCE N88°56'37"W, ALONG THE SOUTH SECTION LINE, 1318.30 FEET TO THE POINT OF BEGINNING. AREA IS 1,020.45 ACRES. LESS 91.24 ACRES FOR THE SR-7 HIGHWAY AND LESS 5.63 ACRES FOR COPPER ROCK PARKWAY AND 2100 WEST ROAD.

CONTAINING 923.58 ACRES.

CALYPSO RIDGE H-3-2-32-321 LEGAL DESCRIPTION

BEGINNING AT A POINT N88°59'25"W, 62.00 FEET FROM THE SOUTH 1/4 CORNER OF SECTION 32, T42S, R13W, SLB&M, RUNNING THENCE N88°59'25", 1434.44 FEET ALONG THE SECTION LINE; N1°06'01"E, 760.52 FEET; THENCE S88°59'25"E, 1432.96 FEET, THENCE S0°59'20"W, 760.52 FEET TO THE POINT OF BEGINNING.

AREA CONTAINS 1,090,306.8 SQUARE FEET OR 25.03 ACRES.

CALYPSO RIDGE H-3-2-32-330 LEGAL DESCRIPTION

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 32, T42S, R13W, SLB&M, RUNNING THENCE N1°08'24"E, 760.52 FEET ALONG THE SECTION LINE, THENCE S88°59'25"E, 1143.20 FEET; THENCE S1°06'01"W 760.52 FEET TO A POINT ON THE SOUTH LINE OF SECTION 32; THENCE N88°59'25"W, 1143.73 FEET ALONG THE SECTION LINE TO THE POINT OF BEGINNING.

AREA CONTAINS 869,626.92 SQUARE FEET OR 19.964 ACRES.

CALYPSO RIDGE H-3-2-32-320 LEGAL DESCRIPTION

BEGINNING AT A POINT S1°08'24"W, 1083.52 FEET ALONG THE SECTION LINE FROM THE WEST 1/4 CORNER OF SECTION 32, T42S, R13W, SLB&M, RUNNING THENCE S88°59'25"E, 2574.03 FEET; THENCE S0°59'20"W 806.87 FEET; THENCE N88°59'25"W, 2576.16 FEET TO A POINT ON THE WEST LINE OF SECTION 32; THENCE N1°08'24"E, 806.87 FEET TO THE POINT OF THE BEGINNING.

AREA CONTAINS 2,409,010.99 SQUARE FEET OR 55.68 ACRES.

CALYPSO RIDGE H-3-2-32-310 LEGAL DESCRIPTION

BEGINNING AT A POINT S1°08'24"W, 135.16 FEET ALONG THE SECTION LINE FROM THE WEST 1/4 CORNER OF SECTION 32, T42S, R13W, SLB&M, RUNNING THENCE S88°44'22"E, 2571.55 FEET; THENCE S0°59'20"W, 937.11 FEET; THENCE N88°59'25"W, 2574.03 FEET TO A POINT ON THE WEST LINE OF SECTION 32; THENCE N1°08'24"E, 948.38 FEET ALONG THE SECTION LINE TO THE POINT OF THE BEGINNING.

AREA CONTAINS 2,409,010.99 SQUARE FEET OR 55.68 ACRES.

BENCH LAKE H-3345 LEGAL DESCRIPTION

ALL 1/2 SW 1/4 NW 1/4 SEC 16 T42S R13W SLM

CONTAINING 20.0 ACRES

BENCH LAKE H-3346 LEGAL DESCRIPTION

NORTH 1/2 NORTH 1/2 NORTHWEST 1/4 SOUTHWEST 1/4; SOUTH 1/2 SOUTHWEST 1/4 NORTHWEST 1/4 SECTION 16 TOWNSHIP 42 SOUTH RANGE 13 WEST SALT LAKE MERIDIAN

CONTAINING 30.0 ACRES

JOHN CASSINAT H-3347-A LEGAL DESCRIPTION

THE SOUTH 3/4 OF THE NORTHWEST QUARTER OF THE SOUTHWEST (S3/4 NW1/4 SW1/4) OF SECTION 16, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN.

CONTAINING 30.0 ACRES

REVISIONS		DESCRIPTION	DATE	BY
NO				

PROVALUE ENGINEERING, INC.
Engineers - Land Surveyors - Land Planners
20 South 850 West, Suite 1
Hurricane City, Utah 84501
Phone: 1-435-666-0901



P.I.D. PARTICIPANT LEGAL DESCRIPTIONS FOR:
BENCH LAKE ANNEXATION BOUNDARY

LOCATED IN SECTION 32, T42S, R13W, S.L.B.&M.

DATE: 3-1-2022
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JOB NO.
699-001

SHEET NO:
5 OF 5

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699-001

EXHIBIT B

INTERLOCAL AGREEMENT BETWEEN HURRICANE CITY, UTAH AND BENCH LAKE PUBLIC INFRASTRUCTURE DISTRICT

THIS AGREEMENT is made and entered into as of this ____ day of _____, _____, by and between HURRICANE CITY, a home-rule municipal corporation of the State of Utah (“City”), and BENCH LAKE PUBLIC INFRASTRUCTURE DISTRICT, a political subdivision of the State of Utah (the “District”). The City and the District are collectively referred to as the Parties.

RECITALS

WHEREAS, the District was organized to provide to exercise powers as are more specifically set forth in the District’s Governing Document approved by the City on March 3, 2022 (“Governing Document”); and

WHEREAS, the Governing Document makes reference to the execution of an Interlocal Agreement between the City and the District; and

WHEREAS, the City and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Interlocal Agreement (“Agreement”).

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

COVENANTS AND AGREEMENTS

1. Operations and Maintenance. The District shall dedicate the Public Improvements (as defined in the Governing Document) to the City or other appropriate jurisdiction in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. The District shall be authorized, but not obligated, to own Public Improvements not otherwise required to be dedicated to the City or other public entity, and all necessary equipment and appurtenances incident thereto. Trails which are interconnected with a city or regional trail system shall be open to the public free of charge and on the same basis as residents and owners of taxable property within the District.

2. Improvements Limitation. Without written authorization of the City, the District shall not be authorized to finance the costs of any improvements or facilities which are to be ultimately owned by the District.

3. Construction Standards. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction, as applicable. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work. The District may satisfy any City requirements for guaranty of performance of infrastructure completion by delivering to the City documentation evidencing the funds available to the District for such infrastructure as a result of the bonds issued by the District.

4. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District's Governing Document.

We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

5. Inclusion Limitation. The District shall not include within any of their boundaries any property outside the District Area without the prior written consent of the City. By the Governing Document, the City has consented to the annexation or withdrawal of any area within the Annexation Area into or from the District Boundaries. The District shall not include within any of its boundaries any property inside the inclusion area boundaries without the prior written consent of the City except upon petition of the surface property owners of 100 percent of such property and/or 100 percent of registered voters within the area to be included, as applicable, as provided in Section 17D-4-201(3), Utah Code.

6. Overlap Limitation. It is anticipated that the District may overlap with one or more of the Sand Hollow Mesa Public Improvement Districts ("SHMPIDs") approved by the City, given that the improvements proposed to be financed by the District shall also benefit the area of the SHMPIDs. Each of the SHMPIDs are forbidden from levying an aggregate mill levy in the overlap area which exceeds 0.0045, which is the Maximum Debt Mill Levy of the SHMPIDs. The aggregate mill levy imposed by the District and the SHMPIDs together shall not in any event be permitted to exceed the Maximum Debt Mill Levy of the SHMPIDs, on any property located within both the District and any of the SHMPIDs. The District shall not, without the prior authorization of the City Council, consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the District.

7. Initial Debt. On or before the effective date of approval by the City of an Approved Development Plan (as defined in the Governing Document), the District shall not: (a) issue any

Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (c) impose and collect any fees used for the purpose of repayment of Debt.

8. Total Debt Issuance. The District shall not issue Debt in excess of an aggregate amount of One Hundred Ten Million Dollars (\$110,000,000). This amount excludes any portion of bonds issued to refund a prior issuance of debt by any of the District. In the event two or more districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each district.

9. Bankruptcy. All of the limitations contained in this Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(4), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable nonbankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

10. Dissolution. Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes.

11. Disclosure to Purchasers. Within thirty (30) days of the City adopting a resolution creating the District, the Board shall record a notice with the recorder of Washington County, Utah. Such notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the District; and (d) if applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion. Such notice shall further be filed with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, homebuilders, commercial developers, and commercial lessors, as applicable, disclose the following information to initial resident homeowners, renters, commercial property owners, and/or commercial tenants:

- (a) All of the information in the first paragraph of 11 of this Agreement;
- (b) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, **for every \$100,000 of taxable value**, there would be an **additional annual property tax of \$300** for the duration of the District’s Bonds.”

- (c) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

12. Governing Document Amendment Requirement. Actions of the District which violate the limitations set forth in V.A.1-9 or VIII.B-G of the Governing Document shall be deemed to be material modifications to the Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

13. Annual Report. The District shall be responsible for submitting an annual report to the City Manager’s Office no later than 180 days following the closing of the District’s fiscal year, containing the information set forth in Section VIII of the Governing Document.

14. Regional Improvements. The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements.

15. Maximum Debt Mill Levy.

(a) The “Maximum Debt Mill Levy” shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District for payment of Limited Tax Debt shall be 0.003 per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8). Such Maximum Debt Mill Levy may also be used to pay administrative expenses of the District.

(b) Such Maximum Debt Mill Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202.

(c) Any other mill levy imposed by any other district with the authorization of the City shall not be applied toward the calculation of the Maximum Debt Mill Levy.

16. Maximum Debt Mill Levy Imposition Term. Each bond issued by the District shall mature within thirty-one (31) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of a series of bonds after a period exceeding forty (40)

years from the first date of imposition of the mill levy for such bond (the “Maximum Debt Mill Levy Imposition Term”).

17. Annexation, or Pioneering Agreement in Lieu of Annexation. When, in the City’s reasonable judgment, a development application for a property within the District Annexation Area will require connection to or will rely upon the infrastructure financed by the District in order to receive development entitlements sought from the City, the applicant will be required to, as a condition of approval of such development entitlement, either (a) petition for annexation into the District, or (b) enter a pioneering agreement with the District such that the property owner shall reimburse the District for a proportionate share of the public infrastructure costs financed by the District. The City shall determine the proportionate share of costs to be reimbursed by the applicant under any pioneering agreement, and all such reimbursements paid to the District shall be applied toward outstanding bond obligations of the District.

18. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: Bench Lake Public Infrastructure District
 c/o Snow Jensen & Reece, PC
 912 West 1600 South, Ste. B200
 St. George, UT 84770
 Attn: Matthew J. Ence
 Phone: (435) 628-3688

To the City: Hurricane City
 147 N 870 W
 Hurricane, UT 84737
 Attn: City Manager
 Phone: (435) 635-2811

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

19. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties hereto and without amendment to the Governing Document.

20. Assignment. Neither Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent

of the other Party, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

21. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

22. Term. This Agreement shall terminate upon the earlier to occur of dissolution of the District or fifty (50) years from the date hereof.

23. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Utah.

24. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

25. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

26. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the City any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the City shall be for the sole and exclusive benefit of the District and the City.

27. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

28. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

29. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

30. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Governing Document.

[SIGNATURE PAGE TO INTERLOCAL AGREEMENT]

BENCH LAKE PUBLIC
INFRASTRUCTURE DISTRICT

By: _____
President

Attest:

Secretary

APPROVED AS TO FORM: _____

HURRICANE CITY, UTAH

By: _____
Mayor

Attest:

By: _____
Its: _____

APPROVED AS TO FORM: _____



STAFF COMMENTS

Consideration and possible approval of an ordinance to **change the Power Board's meeting schedule**-Scott Hughes

Discussion:

Findings:

Recommendation:

At the 2/22/22 Power Board meeting, the Board discussed changing the monthly public meeting from the last Tuesday of each month to the first Wednesday of each month. This would allow time for financial information that comes in throughout the last week of the month to be compiled in order to be ready to present to the Board. It would also limit the amount of Power Board meetings where preparation is hindered by a Monday holiday. The time would remain the same at 3:00 pm. The change was approved unanimously at the meeting by the Board members. The Power Board decided to cancel the meeting in March due to the short time frame between the February and March meetings due to the change. The next Power Board meeting will be held on 4/6/22 at 3:00 pm. This would change Hurricane City Code 8-4-2.

Attachments:

1. Ordinance 2022-01 Amending Section 8-4-2 Municipal Power Board

AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE, UTAH AMENDING SECTION 8-4-2 OF THE HURRICANE CITY CODE GOVERNING THE MUNICIPAL POWER BOARD.

WHEREAS the City Council of Hurricane, Utah desires to amend Section 8-4-2 subsection B.5 of the Hurricane City Code governing the Chairman and Vice Chairman and conduct of meetings; and

WHEREAS said City Council deems this amendment necessary and desirable for the preservation of the general health, safety and welfare of the residents of Hurricane,

BE IT HEREBY ORDAINED that Section 8-4-2 subsection B.5 of the Hurricane City Code shall be, and is hereby, amended in its entirety as follows:

8-4-2: MUNICIPAL POWER BOARD

Sec. 8-4-2. - Municipal Power Board.

- A. *Created.* There is hereby created and established the Municipal Power Board (hereafter in this chapter referred to as "board"), which shall act in an advisory capacity to the City Council.
- B. *Organization of board.*
 1. *Number; appointment.* The board shall consist of five commissioners, one of whom shall be a member of the City Council and/or Mayor. All members of the board shall be appointed by the Mayor with the advice and consent of the City Council.
 2. *Term.* Commissioners serving on the board as of the effective date hereof shall continue to serve as commissioners for the following term as designated by the Mayor and City Council: one for a term of two years; two for a term of three years; two for a term of four years. All successors to the first Board of Commissioners under this chapter shall be appointed for a term of four years and until their successors are appointed and have qualified, unless they shall be removed from office as provided in subsection B4 of this section. Any commissioner may be reappointed by the Mayor with the consent and approval of the City Council.
 3. *Vacancies.* Vacancies shall be filled by the mayor with the consent and approval of the City Council, for the unexpired term. No vacancy in the board shall impair the right of the remaining commissioners to exercise all the powers of the board.
 4. *Qualifications.* To be appointed commissioner, a person must reside in the City. Any commissioner may be removed from office prior to the expiration of his

appointed term by a majority vote of the City Council when such removal shall be deemed by the City Council to be in the best interests of the Power Department.

5. *Chairman and Vice Chairman; conduct of meetings.* The board will appoint from among the Board of Commissioners a Chairman and Vice Chairman of the board. The Chairman and Vice Chairman shall serve in such capacity for the length of one year. The Chairman shall preside over the meetings of the board, and the Vice Chairman shall act for the Chairman during the Chairman's absence. The board shall adopt reasonable rules for the conduct of its meetings, which shall be held at least once a month on the ~~fourth Tuesday at the City office building~~ **first Wednesday at the Clifton Wilson Substation**. All members of the board shall attend such meetings. No action shall be taken by the board except by the affirmative vote of at least three commissioners. Three commissioners shall constitute a quorum.

C. *Personnel.*

1. ~~*Superintendent*~~ ***Director*** of power system. The City Council shall select, define the duties and fix the compensation for a full-time “~~superintendent~~” **“director”** of the municipal power system. The ~~superintendent~~ **director** shall be responsible for the proper operation, maintenance and care of the municipal power system, and to perform any other duties or functions required by the City Council or board. The salary of the ~~superintendent~~ **director** shall be established by the City Council after due consideration of recommendations from the board. The normal working hours of the ~~superintendent~~ **director** not necessary to ensure the proper operation, maintenance and care of the municipal power system shall be devoted to other work as needed by the City. The Power ~~Superintendent~~ **Director** shall make weekly reports to the ~~Public Works Director, who will then report to the City Manager~~ relating to the power system. All of the functions and activities of the ~~Superintendent~~ **Director** shall be carried on under the direction of the ~~Public Works Director~~ **City Manager**.
2. *Employee benefits.* Benefits of employees of the Municipal Power Department shall be governed by and subject to general employee policies in effect for all employees of the City.

BE IT FURTHER ORDAINED that this Ordinance shall, after adoption and approval, take effect immediately upon publication or posting as required by law.

PASSED AND APPROVED this _____ day of March, 2022.

City of Hurricane

Nanette Billings, Mayor

Attest:

Cindy Beteag, City Recorder



STAFF COMMENTS

Consideration and possible approval of a proposed **Zone Change Amendment request located at 1200 W 4600 S from RA-1, residential agriculture 1 unit per acre, to R1-15, residential one unit per 15,000 square feet.** Parcel number H-3403-K. Joshua Coen Applicant. Clark Spilker and Pope Engineering Agent.

Discussion:

Findings:

Recommendation:

Attachments:

1. 2022-ZC-05 App
2. 2022-ZC-05 Coen
3. Ordinance 2022-05 Coen Zone Change Change
4. Coen Zone Change
5. Public Comments-zone change 4600 West

ZONE CHANGE APPLICATION

City of Hurricane
147 North 870 West
Hurricane, UT 84737
(435) 635-2811
FAX (435) 635-2184

Fee: \$500.00

For Office Use Only:
File No. 2022-ZC-05
Receipt No. 8-155263

Name: JOSHUA COEN Telephone: 602-614-2422

Address: 2018 WESTDLIFF DRIVE Fax No. _____

Agent (If Applicable): CLARK SPILKER & POPE ENGINEERING Telephone: 435-668-0262 & 435-669-2568

Email: JCOEN@ZIONSOLARPROS.COM Agent Email: CLARK@SPILKERHOMES.COM & ROBBE@LRPOPE.COM

Address/Location of Subject Property: 1200 WEST 4600 SOUTH HURRICANE UTAH

Tax ID of Subject Property: H-3403-K Existing Zone District: RA-1

Proposed Zoning District and reason for the request (Describe, use extra sheet if necessary)

IT IS PROPOSED THAT THE PARCEL BE CHANGED FROM RA-1 TO R1-15. THE PROPOSED

RESIDENTIAL DEVELOPMENT CONTAINS APPROX 30 LOTS NO LESS THAN 15,600 SQ FT EACH

Submittal Requirements: The zone change application shall provide the following:

- ☒ a. The name and address of every person or company the applicant represents;
- ☒ b. An accurate property map showing the existing and proposed zoning classifications;
- ☒ c. All abutting properties showing present zoning classifications;
- ☒ d. An accurate legal description of the property to be rezoned;
- ☒ e. Stamped envelopes with the names and addresses of all property owners within 250 feet of the boundaries of the property proposed for rezoning.
- ☒ f. Warranty deed or preliminary title report or other document (see attached Affidavit) showing evidence that the applicant has control of the property

Note: It is important that all applicable information noted above along with the fee is submitted with the application. An incomplete application will not be scheduled for Planning Commission consideration. Planning Commission meetings are held on the second Thursday and fourth Wednesday of each month at 6:00 p.m. Contact the Planning Department for the deadline date for submissions. Once your application is deemed complete, it will be put on the agenda for the next Planning Commission meeting. A deadline missed or an incomplete application could result in a month's delay.

(Office Use Only)

Date Received: _____ Application Complete: YES ☐ NO ☐

Date application deemed to be complete: _____ Completion determination made by: _____

ZONE CHANGE APPLICATION (General Information)

PURPOSE

All lands within the City are zoned for a specific type of land use (single family residential, multi-family, commercial, industrial, etc). Zoning occurs as a means to provide for a relationship between various types of land uses which promotes the health, safety, welfare, order, economics, and aesthetics of the community. Zoning is one of the main tools used to implement the City's General Plan.

WHEN REQUIRED

A zone change request is required any time a property owner desires to make a significant change to the use of his/her land. The change may be from one zone density (say 1 acre lots) to smaller lots (10,000 square foot lots). Or, it may be to an entirely different type of use, such as a change from single family zoning to multiple family or commercial zoning. Since the zone applied to your land limits what you can do, a rezoning application is typically the first step toward a change.

REQUIRED CONSIDERATIONS TO APPROVE A ZONE CHANGE

When approving a zone change the following factors should be considered by the Planning Commission and City Council:

1. Whether the proposed amendment is consistent with the Goals, Objectives and Policies of the City's General Plan;
2. Whether the proposed amendment is harmonious with the overall character of existing development in the vicinity of the subject property;
3. The extent to which the proposed amendment may adversely affect adjacent property; and
4. The adequacy of facilities and services intended to serve the subject property, including, but not limited to roadways, parks and recreation facilities, police and fire protection, schools, storm water drainage systems, water supplies, and waste water and refuse collection.

PROCESS

Contact the Planning Department for when the deadline for submission is. After it is deemed complete, staff will review the request, and prepare a report and recommendation for the Planning Commission. This will be reviewed at a public hearing where the applicant should attend, present the project, and respond to questions from the Planning Commission. Since it is a public hearing, members of the public may also have questions or comments. At the public hearing the Planning Commission will review the application and staff's report, and forward a recommendation to the City Council of approval, approval with modifications, or denial the zone change application.

Upon receipt of the Planning Commission recommendation, typically 1-2 weeks after the Planning Commission action, the City Council will consider and act on the Commission's recommendation. The action of the City Council is final. If denied, a similar application generally cannot be heard for a year.

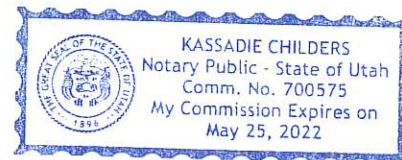
STATE OF UTAH)
COUNTY OF Washington :SS


(Property Owner)


(Property Owner)

Kamadije Mulders
(Notary Public)

My Commission Expires: May 25, 2022



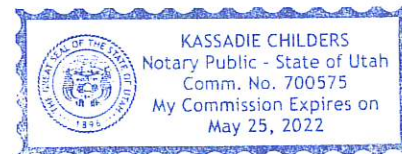
respects as our agent in matters pertaining to the attached.

(Property Owner)

(Property Owner)

Hamadi Children
(Notary Public)

My Commission Expires: May 25, 2022





STAFF COMMENTS

Agenda Date:	03/03/2022
Application Number:	2022-ZC-05
Type of Application:	Zone Change
Action Type:	Legislative
Applicant:	Joshua Coen
Agent:	Clark Spilker and Poppe Engineering
Request:	A Zone Change from RA-1 to R1-15
Location:	1200 W 4600 S
Zoning:	RA-1
General Plan Map:	Rural Residential

Planning Commission Recommendation

The Planning Commission recommends that the City Council deny the application based on

1. The proposed project was not in harmony with the General Plan
2. That services were inadequate for the area
3. That the proposed development was not harmonious with the surrounding community.

The recommendation was unanimous.

Discussion:

This property is located at the end of the currently unimproved 4620 S south of the Sky Ranch development. The applicant is proposing a zone change from RA-1 to R1-15 to allow for the building of 30 units. The applicant submitted a site plan which is not required for a zone change that does not involve a PDO. The submitted site plan will not be legally binding since it is not part of a preliminary site plan application. The applicant will need to file a preliminary plat at some later point in the development process.

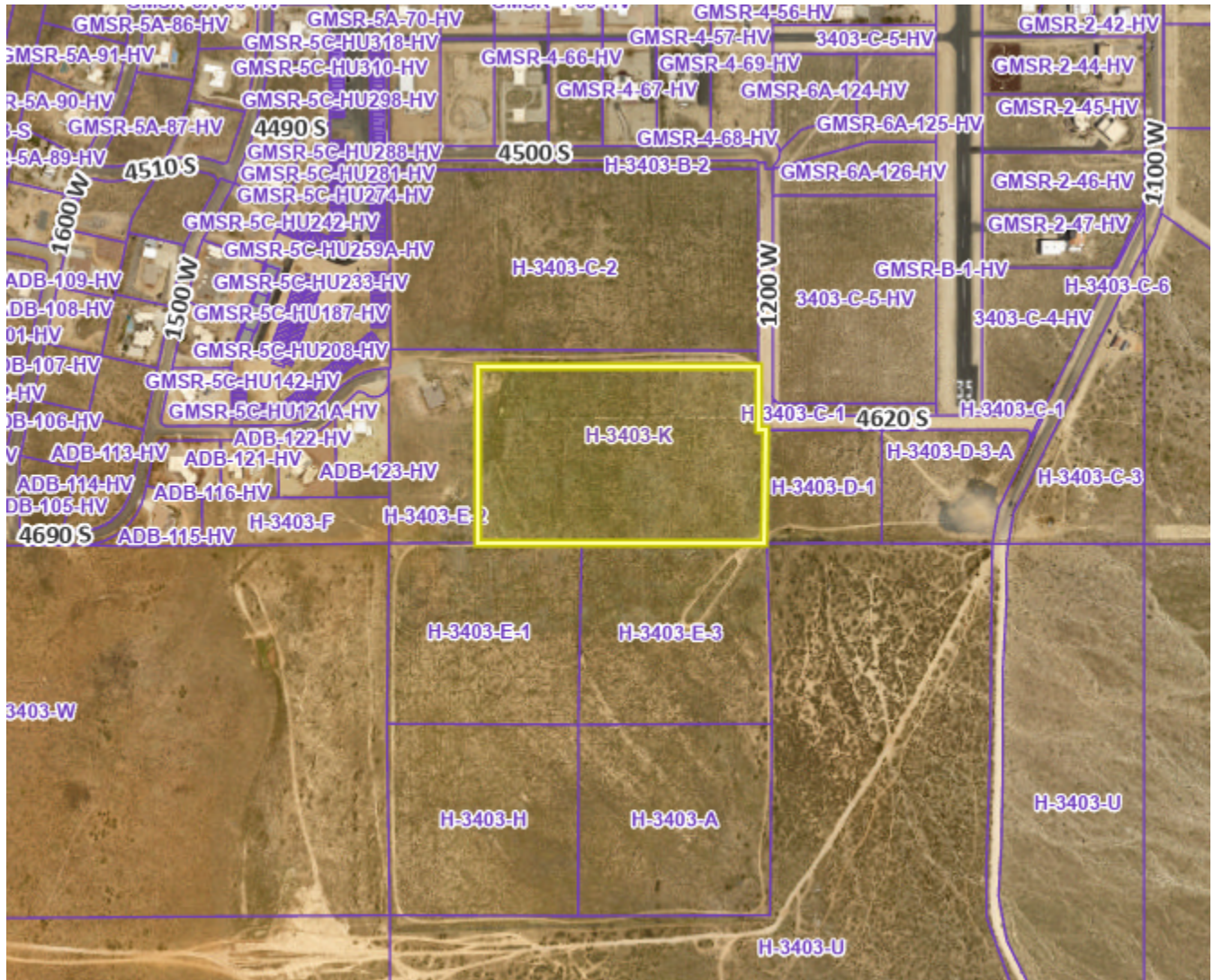
	Zoning	Adjacent Land Use
North	RA-1, Unincorporated	Undeveloped property, Sky Ranch development
East	RA-1	Undeveloped property
South	RA-1, R1-10 PDO	Future Solaroca development
West	RA-1, Unincorporated	Sky Ranch development

[*A link to the zoning map can be found here.*](#)

JUC Comments

These comments will need to be addressed with more detailed construction drawings and preliminary plats:

1. **Power:** No issues with zone change. Limited power in the area.



2. **Sewer:** No sewer in the area.
3. **Streets:** Need infrastructure improvements.
4. **Water:** No water line in the area. Water district line in the area but that does not meet city standards. Need to hook up to city system somehow
5. **Engineering:** No issues with the zone change. Limited utilities in the area. Parcel to the north was probably intended as a through street. Might need a different layout at the Preliminary Site Plan stage.
6. **Fire:** No water, limited access
7. **Cable/Phone:** No concerns
8. **Gas:** Not in the area

9. WCWCD: Line in the area but cannot service this property

Staff Comments

1. All proposed lots comply with R1-15 zoning
2. Parcel 3403-C-5-HV is not within city limits, the RA-1 zoning indicated is from the county's zone map.
3. Parcel H-3403-E-2 is a flag lot and the house is to the west of the property. Some negotiations with the property owner may be required for access
4. At the previous public hearing some concern was brought up about development so close to the Sky Ranch airport. This airport is not within city limits and, unlike the Hurricane City airport, is not protected by a runway protection zone in city code. Staff is concerned preventing development in the area to protect an airport outside of city limits may constitute an illicit taking and could open the city up to legal action from property owners. The City is currently working with the County and Sky Ranch HOA to help resolve some of the concerns.

Zone Change Factors:

When considering a zone change the Planning Commission must consider the following:
As per Hurricane City Code 10-7-7:

Approval Standards: A decision to amend the text of this title or the zoning map is a matter within the legislative discretion of the city council as described in subsection 10-7-5A of this chapter. In making an amendment, the following factors should be considered:

- 1. Whether the proposed amendment is consistent with goals, objectives and policies of the city's general plan;*
- 2. Whether the proposed amendment is harmonious with the overall character of existing development in the vicinity of the subject property;*
- 3. The extent to which the proposed amendment may adversely affect adjacent property; and*
- 4. The adequacy of facilities and services intended to serve the subject property, including, but not limited to, roadways, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection.*

1. Is the proposed amendment consistent with the City's General Plan's goals, objectives, and policies?

Response: The General Plan maps this area as Rural Residential which it defines as:

Rural Residential serves as a transition from agricultural to traditional neighborhoods or commercial uses. Appropriate densities for this land use include from one unit/40 acres to RA-.5 and RA-1.

This area was envisioned as a transition zone between denser neighborhoods to the north and the BLM land to the south. The proposed plan has 2.16 units per acre, which is less dense than the Solaroca development to the south. The maximum density in a R1-15 zone is 2.35 units per acre. Unlike Solaroca (the Will Group), that applicant has not provided any buffering or larger lots adjacent to neighboring property.

2. Is the proposed amendment harmonious with the overall character of existing development in the subject property's vicinity?

Response: Most of the area is currently undeveloped, except for Sky Ranch to the north. Almost the entirety of the surrounding property has received zone changes to similar or more dense zoning and is planned to be similar developments.

3. Will the proposed amendment affect the adjacent property?

Response: Yes. Although at a lesser scale than the surrounding already approved development

4. Are public facilities and services adequate to serve the subject property?

Response: Public facilities and services are currently inadequate for the project. Several larger developers, with or without a public infrastructure district, are working to bring services to the area. This development will probably rely on larger developments like Copper Rock and Solaroca to go in before they can get started. Significant off site improvements may be required on 4620 S.

10-37-4: ADEQUATE PUBLIC FACILITIES:

Land shall be developed only where existing infrastructure is in place or will be timely provided to service proposed development. The city may require an analysis to be completed to determine whether adequate public facilities are available to service a development and whether such development will change existing levels of service or will create a demand which exceeds acceptable levels of service for roadways, intersections, bridges, storm drainage facilities, water lines, water pressure, sewer lines, fire and emergency response times, and other similar public services. The city may disapprove a proposed development if demand for public services exceeds accepted levels of service. No subsequent approval of such development shall be given until either the developer or the city installs improvements calculated to raise service levels to the standard adopted by the City. (Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

Findings:

Staff makes the following findings:

1. The proposed zone change does not meet General Plan standards
2. The proposed zone change is generally harmonious with the approved surrounding development

3. The proposed amendment will have an impact on the area, but development is anticipated for the area.
4. The services are not currently adequate but are planned to be as other developments in the area are built out.

Recommendation: Staff recommends the City Council review this application and the zone change based on standards and consider residents' comments. Staff would recommend that the Planning Commission recommend denial of this zone change because it does not meet the General Plan map.

ORDINANCE NO 2022-__

AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE APPROVING THE REZONE
FOR PARCELS H-3403-K FOR SECTION OF R1-15, R1-10, R1-8 TO R1-6 AND R1-8

WHEREAS, Utah Code 10-9a allows Cities to regulate land use within their boundaries,

WHEREAS, the proposed amendment is not generally compatible with the current General
Plan's map for future use; and

WHEREAS, the proposed amendment is not generally in harmony with the overall character of
the proposed surrounding development; and

WHEREAS, proposed amendment does not have adequate services to property; and

WHEREAS, the Planning Commission gave a negative recommendation for the zone change
subject that zone change based on the findings

BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF HURRICANE CITY THAT
DENIES THE PROPOSED ZONE CHANGE FOR H-3403-K.

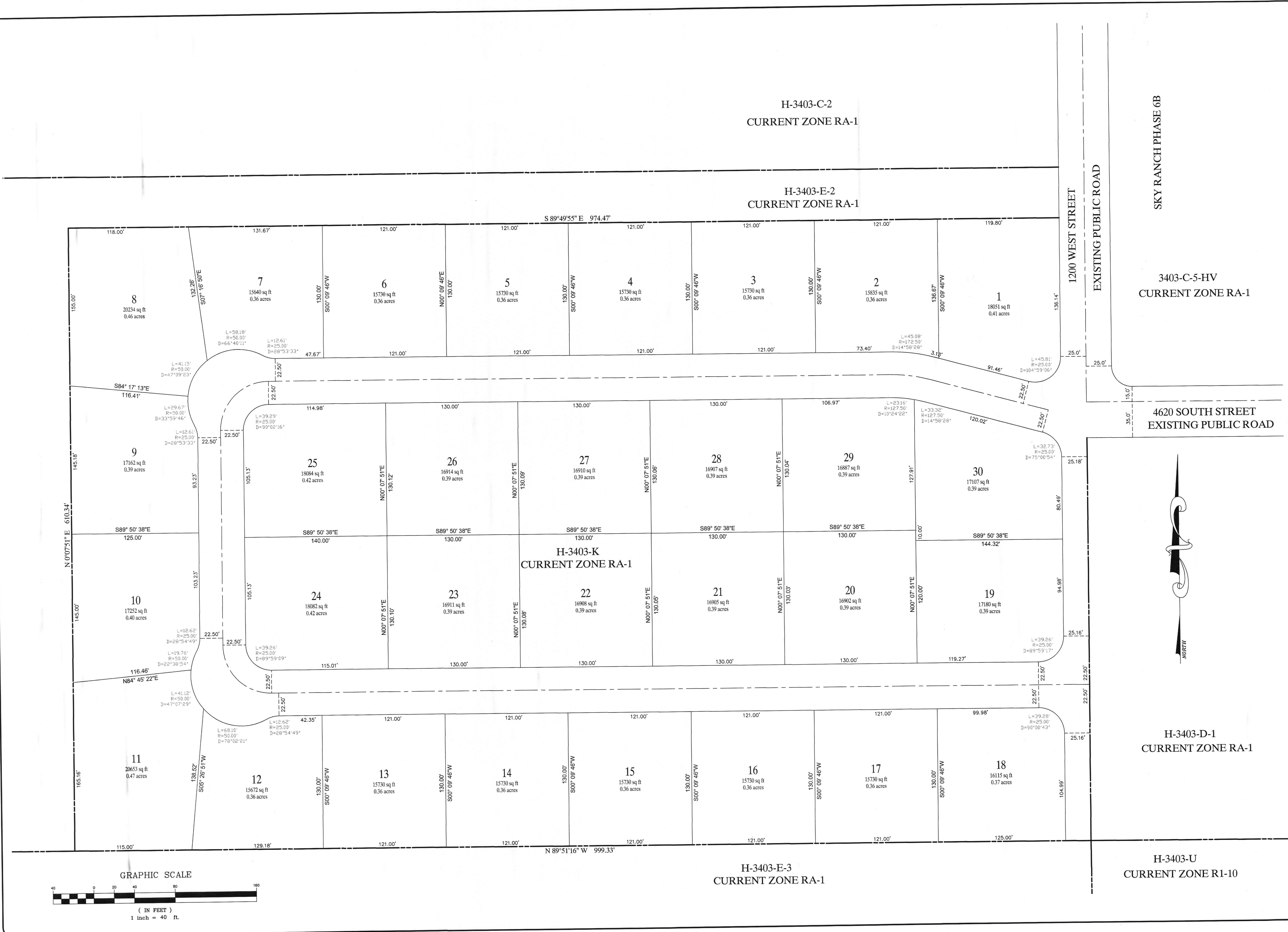
PASSED AND APPROVED on this 3rd day of March 2022.

Hurricane City

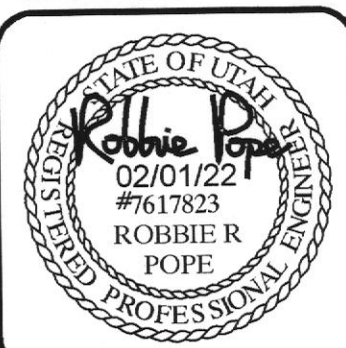
Mayor

Attest:

Cindy Beteag, City Recorder



NO.	DATE	BY	APPVD	REVISION DESCRIPTION



L. R. POPE ENGINEERING INC.
STRUCTURAL ENGINEER, CIVIL ENGINEER & SURVEYOR
1300 EAST 100 SOUTH, SUITE 100
ST. GEORGE, UTAH 84770
(PHONE) 435-638-4176
(FAX) 435-638-4178
(EMAIL) lrpope@lrpe.com

**COEN HURRICANE PROPERTY
RESIDENTIAL DEVELOPMENT
PRELIMINARY PLAN**
LOCATED IN SECTION 33, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SLB&M

DESIGN BY: RRP
DATE: JAN 2022
FILE NAME: COEN PROP
24" x 36"
SCALE 1" = 40'
12" x 18"
SCALE 1" = 80'
SHEET NUMBER
1 OF 1

From: Stephen Nelson
Sent: Tuesday, February 22, 2022 11:37 AM
To: Public Comment
Subject: FW: Regarding zoning south of Sky Ranch (Property H-3403-K)

From: Bruce Wettstein [REDACTED]
Sent: Saturday, February 19, 2022 7:36 PM
To: Stephen Nelson <stephen@cityofhurricane.com>
Subject: Regarding zoning south of Sky Ranch (Property H-3403-K)

February 18, 2022

For Planning Commission Meeting on February 23, 2022

Dear Stephen Nelson and Planning Commission,

This is regarding a new proposal for the 4600 S 1200 W property H-3403-K from Joshua Coen, concerning development of 14 acres south of Sky Ranch in Hurricane from RA-1 to R1-15, which is to be discussed at the planning commission meeting on February 23, 2022.

We are requesting that you deny this proposal from Joshua Coen at 4600 S 1200 W for this new 14 acre parcel of R1-15 and **keep it RA-1 only**. These 14 acres are closer to our community and **definitely does not** work for smaller lots with more homes on it. Please take into consideration our beautiful communities and what you are doing by letting this high-density housing go on around us.

Tyler Williamson with Solaroca somehow convinced you that the 280 acres he was going to develop of Solaroca, south of Sky Ranch, was going to fit in the area which it does not. The general plan for this area is zoned RA-1 and should stay RA-1. What the developer for Solaroca wants to do to the area is make it playground with 700 or more homes! We are confused on how you concluded that what Tyler Williamson wants for these 280 acres is what is best for the people and the area. **And unfortunately, none of us in this area were ever notified in any way of this proposal by Tyler Williamson and the 280 acres.**

We all moved to Sky Ranch and nearby communities for the large lots, open country feel, and beautiful views, which are under attack by all this high-density housing being approved. This has always been the general plan; how did high density get approved in this area?

We would really appreciate it if somehow you could have the approval for the 280 acres rescinded or get the developer to do only RA-1 homes. We feel let down in Sky Ranch, Adobe Hills, Cliff Dwellers and Moccasin Flats communities by approving the 280 acres and high-density housing, which we understand includes vacation rentals, which should not be allowed either. Had we known that this was being proposed we would have been at the meetings to stand up against this. We understand that landowners have the rights to build and develop but this area should be kept RA-1.

Please do not approve the 14 acres at 4600 S 1200 W for anything other than RA-1, which is what the general plan is. Perhaps a visit out here to see what's being done by approving high density housing in this area would be valuable; it is taking away all the beauty out here and is very sad.

Thank you for your time and understanding. There are other areas that are already zoned for greater density; please allow us to retain the unspoiled area that we have called home to remain.

Bruce and Nichole Wettstein

[REDACTED]

[REDACTED]

[REDACTED]

From: Stephen Nelson
Sent: Tuesday, February 22, 2022 11:35 AM
To: Public Comment
Subject: FW: SOLAROCA DEVELOPMENT 700 HOMES & NIGHTLY RENTALS

Sent: Sunday, February 20, 2022 8:56 AM
To: Stephen Nelson <stephen@cityofhurricane.com>
Subject: SOLAROCA DEVELOPMENT 700 HOMES & NIGHTLY RENTALS

WE OWN PROPERTY IN HURRICANE UTAH AT LOT#3 IN MOCCISAN FLATS ALL LOTS IN OUR AREA ARE TO ACRES TO 22 ACRES, OUR LOT IS 14 ACRES AND WE ARE VERY MUCH AGAINST THIS TYPE OF PROJECT COMING INTO OUR AREA. THE ROADS ARE NOT ABLE TO HANDLE THE TRAFFIC, DEVELOPMENT ALL AROUND THIS AREA SKYRANCH ARE ACRE PLUS, CLIFFDWELLER RANCH ACRE PLUS WE ARE ASKING THE PLANNING COMMISSION TO DENY SUCH A PROJECT. JOHN AND BRENDA HASLAM LOT #3 MOCCACIN FLATS

February 23, 2022

Planning and Zoning Commission
147 N. 870 W.
Hurricane, UT 84737

Issue: H-3403-K zone change and the senseless grow of small lots south of Adobehills and Skyranch

Planning Commissioners

Hurricane is the Gateway to Zion, make it unique & different

Hurricane will lose its' identity. People from all over the world travel to the greater Zion area, they also come to Hurricane. Hurricane is the gateway to Zion. If all the developments follow the path of St. George, Hurricane will lose its' unique identity. Developments in the southern edge of town are too far away from Hurricane town center to shop there once the new streets to UT7 are done. They will shop in St. George since its only 13 miles to all the shops on Telegraph road and about 10 miles to Hurricane City. It makes more sense to put higher density closer to town so that the city will benefit from their business. This will also bring more jobs into the city. Growing Hurricane from the center with density closer in and larger lots further out that reflect the historical character and maintain the beauty of the region makes more sense.

Why not have larger lots -half acre and larger to make Hurricane desirable and different from St. George and other towns in Utah? Families will have more space for children to play on their own property. Sure, some developers won't love it, but this is Hurricane, not the developer's town. The investors want to develop in Hurricane, so the investors will follow the rules of Hurricane.

Big lots south of Adobehills and Skyranch should follow the masterplan. Lots with 2+ acre are the perfect size for the area between Adobehills, Skyranch and BLM Land. Moccasin Flats sold nineteen 10 acre lots within 2 months. There is a big market for bigger lots. Please talk also to the developer for rezoning the Solaroca subdivision. If they rezone this area to 10 acre lots they actually can get between \$700,000 and \$1,000,000 per lot. With these 240 acres they make \$17-24 million dollars. They have less to invest (water, power, no sewer line, the septic tank is paid by the homeowner).

Bigger lots also make sense for the city. Most will be second homes with a worth of around \$3-4 million dollars. Recalculated, the city gets appr. \$540,000+ in taxes every year. It is the same amount as for small homes. Give these developers the roadmap to future developments closer to Hurricane and they will follow you. They want to do future business with Hurricane City and so they will consider it. So, you get the big homes and small homes too.

Where will the water come from for this growth in the south? Our neighbor has a well that has gone down more than 700 ft, after 2 years it was sanded again. The developers are here until they get their money, then they are gone, and Hurricane has the problem to support the water for the people. In the beginning it looks like a good deal, but after some years the taxpayers and the city are the losers, because the developers with the money are gone.

Hurricane renewed the master plan for \$90,000 tax dollars and they aren't following it. Why waste so much of our money for nothing, because no one follows it? The developer gets rules about the rezoning, but no one will enforce them. They should only be allowed to build if the services are there, but in the case of Solaroca the developer told my neighbor, that they want to start selling lots in 2023. Do you think services will be ready by then? Also, the parcels H-3403-K, H-3403-C-2, H-3403-D-1, H-3403-D-3-A (Totaling over 41 acres) will not have been services for the next 5+ years.

1100 West will be totally overcrowded. There is no walkway, no bike lane, no OTV lane, there will only be too much traffic. With these developments there will be thousands more cars out there. Today it is 8.5 miles to Hurricane, with only this development the 800 houses will bring appr. 1600 cars in the area. If only the half of them (Shopping, School etc.) will drive per day, this will be 13,600 miles a day (3.6 million miles a year) on Hurricane streets, especially on 1100 W. at the start of their trips. That's just for this development. But there are thousands more homes planed south of 4700. And what I said before, after the connection to the UT 7 is completed they will drive to St. George, and there is no job growth in Hurricane.

Access to Sand Mountain and nearby BLM land is also in jeopardy by all these new developments in our area. Many people of Hurricane use this.

Respectfully,

The image shows two handwritten signatures in black ink. The signature on the left is 'K. Haas' and the signature on the right is 'S. Schwientek'.

Karl Haas and Simone Schwientek

From: Stephen Nelson
Sent: Tuesday, February 22, 2022 11:33 AM
To: Public Comment
Subject: FW: Upcoming Planning Commission Meeting

From: Charlie Estes [REDACTED]
Sent: Monday, February 21, 2022 10:10 AM
To: Stephen Nelson <stephen@cityofhurricane.com>; fred@cityofhurricane.com; brienna@cityofhurricane.com
Subject: Upcoming Planning Commission Meeting

To Whom it may concern.

My Name is Charlie Estes, I own a house on the East side of Grassy Meadows. Unfortunately I will be traveling and not able to make it to the upcoming meeting on Feb 23rd but I wanted to express my concern that myself and much of the community purchased in the area to be able to live in a more rural area, to be away from the hustle and bustle. I love growth and development but would rather keep the higher density housing in the cities and to be able to keep the RV-1 Zoning in place for the community that I have bought into. Please take this into consideration in the upcoming meeting.

--

Thank you
Charlie Estes
Vox Nutrition / Parasol Group
[REDACTED]



February 22, 2022

Planning & Zoning Commission
147 N. 870 W.
Hurricane, UT 84737

Issue: H-3403-K Zone Change

Planning Commissioners:

We are not against development. Growth is a sign of a healthy community and land owners have a right to develop. We are asking you to **manage the growth** and follow the city's General Plan that shows this area as future Rural Residential. The history of why this area was designated as Rural Residential is because there was a desire from the Planning Commission and City Council to retain areas that would require larger lots. In the mapping process, areas were selected around agricultural areas and the edge of town for Rural Residential. **This area was one of them.** The idea of having larger lots on the edge of town follows Transect Zoning. This zoning model states that densities and impact should be increased as you are closer around the center of town. This model puts the most residents around needed services, reducing overall traffic and allowing the phasing of densities and uses across the City.

We are also asking that it be harmonious with the overall character of existing development. The houses to the north of this property are 1 unit/2 acre lots. The developed lots to the east are 1 unit/2 acre lots. The house directly to the west has 6 acres. The 40 acres to the south was recently denied high density by the City Council. We are asking that the development on H-3403-K be consistent with current development and no less than 1 unit/2 acre lots. We are all "Dark Sky" compliant, several of us have horses and a couple even have chickens. Regular residential lots will not blend with the character of our existing community.

This area should be a buffer zone to the high density of Solaroca that has already been approved. We are also asking that the surrounding parcels H-3403-C-2 directly north of H-3403-K and the parcels to the east, H-3403-D-1, H-3403-D-3-A, H-3403-C-3 be no less than 1 unit/2 acres. There must be special considerations for the last 3 parcels especially H-3403-D-3-A which is directly at the end of the runway and should not have any homes on it. **Please speak with Sky Ranch home owners for FAA requirements before moving forward with any of these.**

I keep hearing the reason these massive developments get approved is because "we approved that one." Maybe you should decline because that one WAS approved. Instead of trying to be fair to developers be fair to the RESIDENTS of this area and protect our fragile natural areas.

Approving Solaroca's 700 units with 360 multifamily in one of the most desirable areas in all of Hurricane was a huge mistake. Solaroca is **right next** to BLM with magnificent views of the cliffs. These lots will sell at a premium and don't need to be high density in order for the developer to make money. It is not your job to make sure every developer is happy and making maximum dollars. The residents of the immediate area and all Hurricane City residents will experience negative impact from this mistake: 1,400+ additional cars on 1100 W., inadequate services, damage to natural areas, loss of dark sky, and problems of short term rentals. **And** until other roads are put in how will police, fire, ambulances access this area on a clogged 1100 W? Where are the schools, churches, gas stations, etc? Have you required

Solaroca or other developers to include walking trails open to all residents or other amenities that the residents of Hurricane may want like a public pool? Now is the time to manage. Slow down.

We need a buffer zone between the high-end rural developments of Sky Ranch, Moccasin Flats, and Adobe Hills and the high density of Solaroca. Keep these parcels consistent to the General Plan and harmonious to the development that is here. **None of the 4 considerations for a zone change have been met!!!**

Two wrongs don't make it right. You have one chance to make the right choice. This time **choose us** and deny this density. Please don't be in such a hurry to get things approved that big mistakes are made like Solaroca. Development agreements are not as easy to enforce as Zoning Codes.

Respectfully,



Merri Ann Perkins (Crowther)



Robert Crowther
Adobe Hills Residents & Lot H-3403-F

Petition Against Density on H-3403-K, H-3403-C, H-3403-D-1, H-3403-D3-A (Totaling over 41 acres) and the Approved Solaroca Development

We are opposed to the density proposed (15,000 sq.ft. or .344 acres) on H-3403-K that the Planning & Zoning Commission will vote on February 23, 6:00 pm:

A Zone Change Amendment request located at approx.. 1200 W 4600 S from RA-1, residential one unit per acre, to R1-15, residential one unit per 15,000 square feet for a development that will contain 30 lots no less than 15,600 square feet each. Parcel number H-3403-K.

We are also opposed to any density less than 1 unit/2 acres that may be proposed in the future on H-3403-C-2 located directly north of H-3403-K. Also, parcels to the east H-3403-D-1, H-3403-D-3-A, and H-3403-C-3. Totaling over 41 acres that act as a buffer to Solaroca.

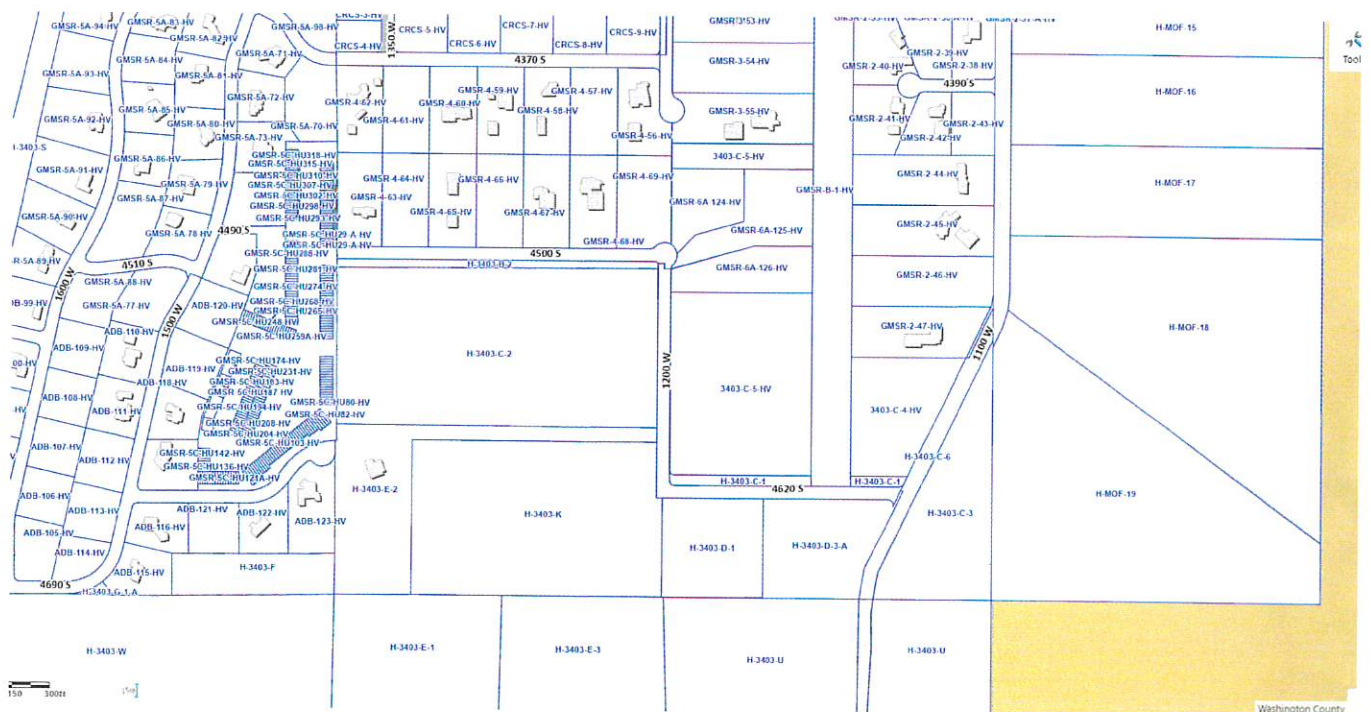
All these parcels are located right next to established development that are mostly 2 acres. This parcel is requested by the same developer that was recently approved for 700 units including nightly rentals called Solaroca directly to the south next to BLM. We are pursuing all methods to challenge Solaroca as well. Two wrongs won't make it right.

We request that these parcels totaling 41+ acres be harmonious to existing development and create a buffer zone to the massive Solaroca development. We request no more than 1 units/2 acres. We would have opposed the density of the 700 acres which is mostly quarter acres lots or smaller with nightly rentals -had we known about it. Two wrongs don't make a right.

We oppose the proposed densities for the following reasons:

- **-It's inconsistent with the General Plan** that shows this area as future Rural Residential. Appropriate densities for this land use include from one unit/40 acres to RA-.5 and RA-1.
- **-It is not harmonious with the overall character of existing development** which is mostly 2+ acre or larger. (Moccasin Flats = 10+ acres, Sky Ranch = most 2+ with minimum 1 acre, Adobe Hills = 1+)
- **Private airport and regulations need to be considered.** Low density minimizes risk on these parcels so close to runway.

- **-A possible 1,400+ cars** have already been approved in addition to all the new traffic from Copper Rock on 1100 West--the only direct route into town. More density will only add to the traffic issues.
- **-Services are currently not adequate** for the development and it should not be approved until actually in place.
- **-Losing the treasured “dark sky” in this area.**
- **-No vacation rentals.** We don't want any units in the Solaroca development approved for vacation rentals but especially not for these 34 acres so close to our properties. Our area is already dealing with the noise and problems that come with nightly rentals.
- **-Possibly losing OTV & equestrian access** to Sand Hollow State Park and BLM.
- **-We want to preserve** what makes Hurricane different from other cities in Washington County who have already developed their open fields to quarter acre lots and smaller losing the country feel that has become so rare.



Petition Against Density on H-3403-K, H-3403-C, H-3403-D-1, H-3403-D-3-A, H-3403-C-3 and the Approved Solaroca Development

Name & Address & Phone#

Signature

Mindy Johnson 4690 S. 1600 W. 510 364-4476

Lori Dubois 4564 S 1600 W 435 668 4623

LISA COOK 4458 S 1500 W

Janie Deeds 4426 S 1500 W

Brian Peterson 4476 S 1600 W

RENEE MORALES 4476 S 1600 W

Jim Oke 4415 S 1600 W

Karen R. Drake 4415 S, 1600 W

4393 S 1600 W HURRICANE, UT

Janet McHale 4418 S 1600 W Hurricane, UT

Wm Bryson 4376 S. 1600 W Hurr

Nicole McGough 1567 W, 4370 S Hurricane, UT

MATILDA M. DAVIS 1562 W 4376 S HURRICANE
UT 8477

Petition Against Density on H-3403-K, H-3403-C, H-3403-D-1, H-3403-D-3-A, H-3403-C-3 and the Approved Solaroca Development

Name & Address & Phone#

Signature

ROBERT J. DAVIS 1562 W 4370 S Hurricane, UT 84737 Robert J. Davis

Janet Smith 4429 S 1500 W Hurricane UT 84737 Janet Smith

Kang Song 4546 S 1500 W Hurricane UT Kang Song

B Douglas Snyder 4546 S 1500 W Hurricane UT B Douglas Snyder

Mari Ann Perkins (Crawther) 1449 W 4670 S Mari Ann Perkins

Judy Heiderscheidt 4090 S 1100 W Hurricane

Bill Marguardt 4090 S 1100 W Hurricane

Rebecca Skelton 4276 S 1100 W Hurricane UT Rebecca Skelton

David M. Keatz 11

Dennis Moore 1175 W 4390 S DAVID BLACK

1135 W 4390 S David Black

BARRY P. REINHERZ 84737 Barry P Reinherz

Linda Reinherz 1125 W 4390 S Hurricane UT Linda Reinherz

Linda D Reinherz 1125 W 4390 S Hurricane, UT

Petition Against Density on H-3403-K, H-3403-C, H-3403-D-1, H-3403-D-3-A, H-3403-C-3 and the Approved Solaroca Development

Name & Address & Phone#

Signature

CAROLYN SHERMAN 4446 S 1100 W, (530) 263-0398 Carolyn Sherman

Gerald Sherman 4446 S 1100 W Hurricane Gerald Sherman

Bud Crowther 1449 W 4620 S. Hurricane UT Bud Crowther

Michelle Smith 4538 S 1600 W Hurricane Michelle Smith

FRANK COTTEN 1516 W 4370 S Frank Cotten

Ken Barney 1529 W 4370 S. Ken Barney

Donna J Bernabei 4404 S 1500 W Donna Bernabei

Jayne Schertwate 8441 S 1500 W Jayne Schertwate

Kara Hunsst H3403-F 801-540-2278 Kara Hunsst

BRANDY HUNT H3403-F 801-682-5445 Brandy Hunt

Richard Bradley 323 899 5926 RICHARD BRADLEY

GENE PORTER 1168 W 4390 S Gene Porter

Carole Porter 1168 W 4390 S Carole Porter

Petition Against Density on H-3403-K, H-3403-C, H-3403-D-1, H-3403-D-3-A, H-3403-C-3 and the Approved Solaroca Development

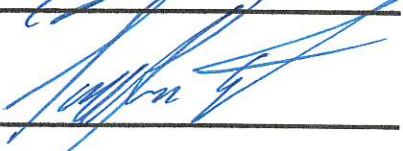
Name & Address & Phone#

Signature

Andrew Egbert 4501 S 1280 W Hurricane



Salli Egbert 4501 S 200 W Hurricane



Susan S. Sheridan 1268 W 4500 S Hurricane



Petition Against Density on H-3403-K, H-3403-C, H-3403-D-1, H-3403-D-3-A, H-3403-C-3 and the Approved Solaroca Development

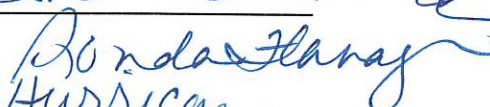
Name & Address & Phone#

Signature

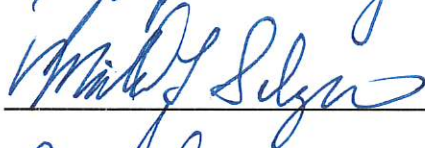
Kevin Stearns 11305 3940 W Hurricane UT 84737 

Jennifer Stearns 4446 S 1100 W, Hurricane, UT 84737 

Martha Honey 4145 S 1200 W Hurricane UT 84737 

Ronda Flanagan 1273 W 4370 S Hurricane 

Joseph Brough 7055 S. 1200 W. Hurricane, UT 84737

Michael Salzman 113 SW 3940 S Hurricane, UT 84737 

Ross Johnson 1116 W 4390 S Hurricane, UT 84737

Margaret Johnson 4376 S 1600 W Hurricane, UT 84737

Petition Against Density on H-3403-K, H-3403-C, H-3403-D-1, H-3403-D-3-A, H-3403-C-3 and the Approved Solaroca Development

Name & Address & Phone#

JOHN MORTON + SYLVIA WILKINSON
4219 S 1200 W, HURRICANE UT (313) 466-3238

Signature _____

Signature John Morton

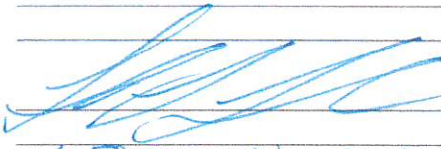
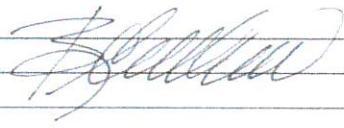
 _____

24 R

Name & Address &
Phone#

Signature

BONNIE GELER
4150 S 1100 W
HURRICANE UT 84737
626-482-2082



4150 S 1100 W Hurricane UT 84737
562-704-0592

Hurricane City Planning & Zoning meeting will be receiving public comment on this **February 23 at 6:00 pm**. Please come even if you don't want to speak. We had a room full last time and it was impactful. WE WON!!! We need a buffer zone between us and the massive Solaroca development (700 homes & nightly rentals) that is already approved. Please fight with us to stop high density on these lots. You may also deliver written comments to Stephen Nelson, Planning Director or Cindy Beteag, Recorder.

Hurricane City Bldg.
147 N. 870 W.
Hurricane, UT
435-635-2184
www.Cityofhurricane.com

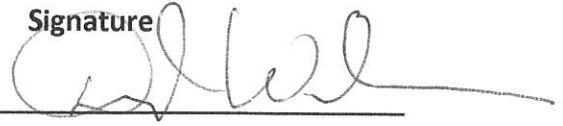
If you decide you want to sign the petition contact Merri Ann Perkins Crowther at 801-726-7707 by 8 p.m. on February 22.

Petition Against Density on H-3403-K, H-3403-C, H-3403-D-1, H-3403-D-3-A, H-3403-C-3 and the Approved Solaroca Development

Name & Address & Phone#

Signature

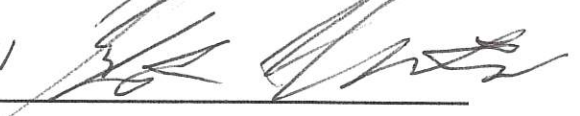
Douglas Washburn 4300 S B53 W



Robert Robinson 4653 S 1500 W



Ryan Robinson 4653 S 1500 W #1



Johanna L Hewellone 1301 W. 4620 So - 801-7930681

Erin 4017 S 1100 W. Hurricane 951-264-8488

DIANE 3861 S 1100 W Hurricane 435-3400674

Jane 3861 S 1100 West Hurricane 435 851 9782

Petition Against Density on H-3403-K, H-3403-C, H-3403-D-1, H-3403-D-3-A, H-3403-C-3 and the Approved Solaroca Development

Name & Address & Phone#

Signature

Fred Peterson 3596 S. 1100 W Hurricane, UT 

Ron Kelson 3486 S. 1100 W. Hurricane, UT 

~~Robert Vieira~~ 3464 S. 1100 W Hurricane UT  84737

Cassandra Vieira 3464 S. 1100 W Hurricane, UT  84737

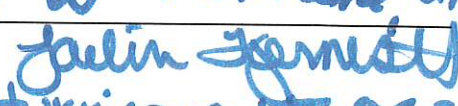
John Haslam 977 W. 3450 S. Hurricane UT 

Brenda Haslam 977 W. 3450 S Hurricane UT 84737

Scott Hurst 825 W 3390 S Hurricane, UT  84737

Brenda Hurst "Bren" 825 W. 3390 S. Hurricane, UT 84737

Brenda Dea 3587 S 1100 W Hurricane UT 84737

Jaelin Fjermestad 3540 S 1100 W. Hurricane, UT  84737

Jason Fjermestad 3540 S 1100 W Hurricane, UT. 84737

BRAN SAPP 925 W 3270 S Hurricane UT 84737

MaryAnn Sapp 925 W. 3270 S. Hurricane, UT 84737

Petition Against Density on H-3403-K, H-3403-C, H-3403-D-1, H-3403-D-3-A, H-3403-C-3 and the Approved Solaroca Development

Name & Address & Phone#

Signature

Tom Nay 949 W 3400 S
Hurricane UT



Jennifer Nay same as above



Marie L Peterson 917 W 3450 S ^{Hurricane}



STEPHENSON 917 W 3450 S STEPHEN PETERSON

GARY GLOVER, 3323 S 1100 W



Kimlynn Glover, 3323 S 1100 W



CANDY CHEN ⁸⁷³ 3825 S 1100 W



Colleen Conover 1035 W 3276 S



JOE PRATT 3442 S 1100 W



LYNN PRATT 3442 S 1100 W



CHRISTINE WILLIAMS 3832 S 1100 W Christine Williams

STEVE BLAKE 3832 S 1100 W Steve Blake

MIKE MCCOOL 3780 S 1100 W 

Petition Against Density on H-3403-K, H-3403-C, H-3403-D-1, H-3403-D-3-A, H-3403-C-3 and the Approved Solaroca Development

Name & Address & Phone#

Signature

Kod Hove 1420 W. 4620 S
435-216-1053

[Signature]

LON ALLEN 3422 S 1050 W
435-218-5254

[Signature]

Jeanne Allen 3422 S 1050 W.
435-862-7776

[Signature]

Phil Pizzuto 435-375 8903

[Signature]

DAVE PIZZUTO 435-635 4439 DAVE

RONALD TUCKER 702-376-0350 Ron

Carroll Tucker 702-376-1330 Carroll

Ken Kofoed 882 W. 3390 S.
435-705-9664

[Signature]

Travis Heidebreck 882 W. 3390 S.
801-959-7555

[Signature]

Bett Honan 955 W 3370 S
909816 9416

[Signature]

KA 955 W 3370 S
909241-5795875

[Signature]

Barbara Motta 1055 W. 3370 S

[Signature]

Jo Jo 3395 S 1050 W

[Signature]

Petition Against Density on H-3403-K, H-3403-C, H-3403-D-1, H-3403-D-3-A, H-3403-C-3 and the Approved Solaroca Development

Name & Address & Phone#

1421 S 4620 E Signature

SIMONE SOLDIENTEK 435-928-1159 S. Q. L. L. L.

Ula Robinson 4653 S. 1500 W Ula Robinson
Gayle Perini 964 W 3390 S Gayle Perini
306 200 2113

MARK PERINI " " Ula Perini

JAMES JORQUEZ 3418 S 850 W JAMES JORQUEZ 856-562-0349 JAMES JORQUEZ

JACHIE SOECIC 323-874-8151 JACHIE SOECIC 1036 W 3390 S

DONALD McDONALD 909-241-6473 DONALD McDONALD 1036 W 3390 S

DAVID PIZZATO 435-632-7213 DAVID PIZZATO 1021 W 3450 S. 952 W 3450 S.

KATHRYN WHITTON 518 857 7763 KATHRYN WHITTON 952 W. 3450 S. HARRIS

KATHRYN WHITTON 435-772-5505 KATHRYN WHITTON 952 W. 3450 S. HARRIS 3418 S. 850 W. HARRIS

JAMES JORQUEZ

MICHAEL BENSON 435-817-2284 3402 S. 850 W. HARRIS

NANCY BENSON 435-2299-435 3402 S 850 W HARRIS

Petition Against Density on H-3403-K, H-3403-C, H-3403-D-1, H-3403-D-3-A, H-3403-C-3 and the Approved Solaroca Development

Name & Address & Phone#

Signature

901 W. 3390S. Priscilla Coimbre

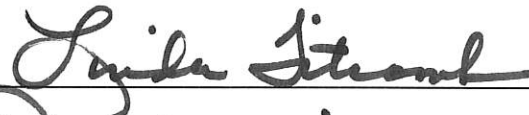


1024W 3390S



LINDA TITCOMB

1024W 3390 S



PAULA GAUCHE



3381S. 1100 W.

Kris Schofield 435 6350394



3381 S 1100 W Hurricane

Mandy Rein



869 W 3270S HURRICANE

Doug Corrier

3270S 1035W Hurricane



3898 SO. 1100 W. Hurricane Karla Goffman

3898 SO. 1100 W. Hurricane Jenni Goffman

926W 3450S HURRICANE



893W 3450S HURRICANE HAZE TUCKER

936W 3390S Hurricane Cheryl Almy

936W 3390S Hurricane R. Almy

Petition Against Density on H-3403-K, H-3403-C, H-3403-D-1, H-3403-D-3-A, H-3403-C-3 and the Approved Solaroca Development

Name & Address & Phone#

Signature

Brenda Scherer ^{760 715 4385} 3403S 1100W 84737 

John Scherer ^{760 715 9608} 3403S 1108W 84737 

BRUCE KETSTEIN

2362 S 675 W

HURRICANE, UT 84737 760.535.8411 

Nichole Wettstein 619-360-4984

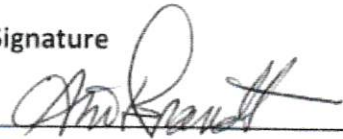
2362 S 675 W Hurricane UT 84737 Nichole Wettstein

Petition Against Density on H-3403-K, H-3403-C, H-3403-D-1, H-3403-D-3-A, H-3403-C-3 and the Approved Solaroca Development

Name & Address & Phone# 702-875-1193

Signature

ARIN + HERB BRANDT (Lot 43)



11

Petition Against Density on H-3403-K, H-3403-C, H-3403-D-1, H-3403-D-3-A, H-3403-C-3 and the Approved Solaroca Development

Name & Address & Phone#	435-512-2872	Signature
Sue Sanborn	3722 S. 1100 W. Hurricane 84737	
3521 S. 1100 W. Hurricane 84737		
Greg Williamson		
3521 S. 1100 W. Hurricane 84737		
SHARON L. Williamson		
Robert Widness		
Bob Widness		
Kathy Van Dewoestine		
Eric Van Dewoestine	11	
151 W 3270 S, Hurricane, UT		

Submitted for the Planning Meeting on Feb 23, 2022

Feb 22, 2022

Dear Stephen Nelson Planning Commissioner, and Planning Committee:

We are writing to you regarding yet another high-density project, located at 1200W 4600S, property H-3403-K being proposed by Joshua Coen. This development of 14 acres is in close proximity and south of the Sky Ranch (air-strip) in Hurricane, from RA-1 to R1-15 is scheduled to be discussed by the Planning Commission's public hearing on Feb 23, 2022

We are pleading that you oppose this zoning request proposed by Mr. Coen. This subject property is presently zoned RA-1, and is located at 1200W 4600S. Changing the zoning to R1-15 for these 14 acres could have a negative impact to the safety of our pilots, and any high-density community under, or close to the flight pattern. Planes are mechanical, and machines fail from time to time. We had an incident here a couple years ago, and fortunately the injuries were minor, thank God the pilot had the room for an emergency landing. Had there been the high-density housing Mr. Coen is requesting, the outcome of this emergency most likely would have been catastrophic. Keep in mind our runway is longer than the runway at the Hurricane municipal airport. Why this is important to Hurricane in general, is we can handle heavier aircraft used for emergencies for medical or fire related issues. Other negative impacts to our community, but not limited to include, the loss of our dark sky's, traffic, municipal resources, present infrastructure, etc. The lot size reduction/Higher density development goes against what is already around this community as well as not indicated on the city plan. It simply will not benefit the communities presently here with the density being requested.

Somehow, and without our knowledge an "agreement" was approved by the City Council without the residents of our communities (Sky Ranch & Cliff Dweller's) prior knowledge or input. Tyson Williamson's request for re-zoning of the 280 acres to the higher density was approved and affectively failed to meet the standard protocol for decisions that affect this community. Our fear is that this beautiful little town is becoming more like California every day. High density housing, traffic, short term vacation rentals etc., what's next California politics (or is it too late)? We feel the city had it right with the zoning that was planned back in the day.

We already have 3 commercial sized short term rentals in our small community that house 153 paying customers!!!! It's a nightmare for those who live here with the noise, the speeding, trespassers on our taxiways and airport active runway occur routinely as well as the high volume of traffic. These Commercial built, vacation homes made no sense in a residential development. This new high density development doesn't make sense as either. We support the original lower density zoning, not what Mr. Coen is requesting.

After I read a copy of the **draft** minutes from the October 21 2021 city council meeting (that have yet to be published on line as rules dictate, why are these minutes still not published?). There seemed to be only one question from a person by the name of Joseph, on the vote to ignore the current city zoning. It also states that this was approved subject to staff recommendations. SO based on that last line of the meeting minutes for that agenda item there was an open-ended agreement based on staff recommendations the decisions made that day can still be changed.

Why didn't the city council take into account the communities concern, at the very least consider our voices and reconsider the outrageous density that was provisionally approved by the last city council? This according to your own meeting minutes is not a done deal in any way. We request that the city council/planning commission reconsider that rushed decision to change the zoning to a detrimental and unsound plan, and agree to revisit and replace the zoning of the 280 acres back to the lower home density, and larger lot size.

Clearly, had the communities of Sky Ranch and Cliff Dwellers been notified of the hearing back in October, your council chambers would have been completely filled with concerned citizens. Just like it was on Feb 3, 2022 when we heard that the next development in our back yard was being proposed.

We feel that the city of Hurricane managers have put their interests over the interests of the residents. Continuing to approve more and more houses, shoehorned into an open planned, dark, private airpark community, will adversely affect the daily lives of those currently living there.

Don't let this historical place in Southern Utah, become more like California, New York, Chicago etc.

Thank you for your time,

Mark Harms

Julie Krogh

From: Stephen Nelson
Sent: Wednesday, February 23, 2022 10:35 AM
To: Public Comment
Subject: FW: H-3403-K zone change

From: Andrew Egbert [REDACTED]
Sent: Saturday, February 19, 2022 5:55 PM
To: Stephen Nelson <stephen@cityofhurricane.com>
Subject: H-3403-K zone change

Hello Stephen,

I am writing to request the above referenced zoning change be denied. ALL property in the area is master planned as RA-1 or larger. This zoning change does not meet the General Plan criteria.

Thank you in advance for your assistance and consideration regarding this matter.

Best regards,

Andrew Egbert
[REDACTED]
[REDACTED]
[REDACTED]

From: Stephen Nelson
Sent: Tuesday, February 22, 2022 11:37 AM
To: Public Comment
Subject: FW: H3403-k zone change

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

From: Jamie Deeds [REDACTED]
Sent: Saturday, February 19, 2022 1:08 PM
To: Stephen Nelson <stephen@cityofhurricane.com>
Subject: H3403-k zone change

As a new resident to Grassy Meadows Sky Ranch, I am disappointed to find out that the zoning in the area is being considered for change. When looking to purchase in the area, one of the biggest attractions was the views and the larger lot sizes. We understood the lots to be a minimum of an acre. With so many new homes going up in the immediate area already, (Copper Rock, Rock View, and it looks like across from the Hurricane airport also) the road which was just redone less than a year ago has become hazardous to drive on and is no longer an option to bike on. The infrastructure isn't capable of supporting the growth and should have been considered before these developments were given the green light to build. Please consider keeping lot sizes consistent with the area as there aren't enough options in the immediate area with bigger lots. Thank you.

Respectfully,
Jamie Deeds

Sent from my iPad

From: [Stephen Nelson](#)
To: [Cindy Beteag](#); [David Sanders](#); [David Hirschi](#); [Doug Heideman](#); [Joseph Prete](#); [Kaden DeMille](#); [Kevin Thomas](#); [Nanette Billings](#)
Subject: FW: Joshua Coen's H-4303-K Zone Change Application for 4600 S. 1200 W.
Date: Tuesday, March 01, 2022 1:29:56 PM
Attachments: [image002.png](#)

City Council,

I realized that this email was not included for the public comment.

Stephen Nelson, AICP

*Hurricane City
Planning Director
(435) 635-2811*



PLANNING & ZONING
HURRICANE CITY
UTAH

From: Randy Williams [REDACTED]
Sent: Tuesday, February 22, 2022 12:55 PM
To: Stephen Nelson <stephen@cityofhurricane.com>
Subject: Joshua Coen's H-4303-K Zone Change Application for 4600 S. 1200 W.

Dear Planning Commission:

Please do not approve this application. This acreage transitions from large lots at Sky Ranch, Adobe Hills, and the other neighboring developments to agricultural land, and then to BLM land. Amending the zoning from RA-1 to R1-15 simply does not belong here. Our back yard faces this proposed site, meaning we will lose the beautiful open space we enjoy and that drew us to our particular property and this neighborhood in the first place. Not to mention the impact of traffic, etc. that we know you are fully aware of. We plead with the

Commission to take into account the impact high-density housing would have on our rural community. We are simply asking that the zoning remain as-is in the general plan.

Sincerely,

Randy and Wendy Williams

, Hurricane, UT 84737

From: [Public Comment](#)
To: [Cindy Beteag](#); [David Sanders](#); [David Hirschi](#); [Doug Heideman](#); [Joseph Prete](#); [Kaden DeMille](#); [Kevin Thomas](#); [Nanette Billings](#)
Subject: FW: Question - Proposed Zoning Change to R1-15
Date: Tuesday, March 01, 2022 7:12:40 PM
Attachments: [sigimg1](#)

Please see the attached public comment.

From: marcel@mja-associates.com <marcel@mja-associates.com>
Sent: Friday, February 25, 2022 8:39 AM
To: Public Comment <publiccomment@cityofhurricane.com>
Cc: Marcel Abandonato <marcel@mja-associates.com>
Subject: Question - Proposed Zoning Change to R1-15

Hello Stephen,

I received your letter regarding the proposed zoning change to the property located at approx. 1200 W 4600 S, referenced as Parcel number H-3403-K.

We own two parcels next to this property. We own H-3403-D1 and H-3403-D-3-A.

Since our property is located immediately next to this parcel, will this zoning change apply to our properties as well?

If not, how can we request that the hearing includes our two parcels in this zoning change as well?

Thank you,

Marcel



Marcel Abandonato

MJA & ASSOCIATES

Office: 951.272.8294

Cell: 714.334.9119

marcel@mja-associates.com

www.mja-associates.com

200 South Main St., Suite 307 • Corona, CA 92882



STAFF COMMENTS

Consideration and possible approval of a proposed **Zone Change Amendment request located at approximately 600 S 3500 W from R1-6, residential one unit per 6,000 square feet; R1-8, residential one unit per 8,000 square feet; R1-10, residential one unit per 10,000 square feet; R1-15, residential one unit per 15,000 square feet, to R1-6, residential one unit per 6,000 square feet and R1-8, residential one unit per 8,000 square feet.** Parcel number H-4-2-12-1102. D. R. Horton (Don Bean) Applicant. Adam Allen Agent.

Discussion:

Findings:

Recommendation:

Attachments:

1. 2022-ZC-07 App
2. 2022-ZC-07 Map
3. Ordinance 2022-04 DR Horton Zone Change
4. 2022-ZC-07 DR Horton

ZONE CHANGE APPLICATION

City of Hurricane
147 North 870 West
Hurricane, UT 84737
(435) 635-2811
FAX (435) 635-2184

Fee: \$500.00

For Office Use Only:

File No. 2021-2C-07

Receipt No. 8.155613

Name: D.R. HORTON (DON BEAN) Telephone: 385-226-8859
12351 S GATEWAY PARK PLACE, D100

Address: DRAPER, UTAH 84020 Fax No. _____

Agent (If Applicable): ADAM ALLEN Telephone: 435-680-6711

Email: adam@alcsq.com

Address/Location of Subject Property: approx 600S 3500W R-1-6/R-1-8

Tax ID of Subject Property: H-4-2-12-1102 Existing Zone District: R-1-10/R-1-15

Proposed Zoning District and reason for the request (Describe, use extra sheet if necessary)
Proposed Zoning District is R-1-6 and R-1-8. The boundaries for the parcels being platted
are off and we want to clean up the map to keep consistent zoning throughout the area. The
Zoning that was done a little while ago followed proposed roads, that now have shifted during the
design process.

Submittal Requirements: The zone change application shall provide the following:

- ☒ a. The name and address of every person or company the applicant represents;
- ☒ b. An accurate property map showing the existing and proposed zoning classifications;
- ☒ c. All abutting properties showing present zoning classifications;
- ☒ d. An accurate legal description of the property to be rezoned;
- ☒ e. Stamped envelopes with the names and addresses of all property owners within 250 feet of the boundaries of the property proposed for rezoning.
- ☒ f. Warranty deed or preliminary title report or other document (see attached Affidavit) showing evidence that the applicant has control of the property

Note: It is important that all applicable information noted above along with the fee is submitted with the application. An incomplete application will not be scheduled for Planning Commission consideration. Planning Commission meetings are held on the second Thursday and fourth Wednesday of each month at 6:00 p.m. Contact the Planning Department for the deadline date for submissions. Once your application is deemed complete, it will be put on the agenda for the next Planning Commission meeting. A deadline missed or an incomplete application could result in a month's delay.

(Office Use Only)

Date Received: _____ Application Complete: YES ☐ NO ☐

Date application deemed to be complete: _____ Completion determination made by: _____

AFFIDAVIT
PROPERTY OWNER

STATE OF Arizona

COUNTY OF Mohave

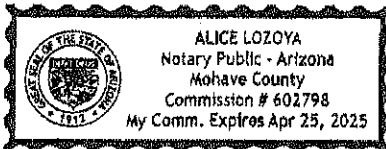
I (we), Western Mortgage & Realty Co., being duly sworn, depose and say that I (we) am (are) the owner(s) of the property identified in the attached application and that the statements herein contained and the information provided identified in the attached plans and other exhibits are in all respects true and correct to the best of my (our) knowledge. I (we) also acknowledge that I have received written instructions regarding the process for which I am applying and the Hurricane City Planning staff have indicated they are available to assist me in making this application.

Western Mortgage & Realty Co.
(Property Owner)

[Signature]
(Property Owner)

Tim. M. Tippet, Vice Pres

Subscribed and sworn to me this 18th day of January 2022



Alice Lozoya
(Notary Public)

Residing in: Arizona

My Commission Expires: April 25, 2025

Agent Authorization

I (we), _____, the owner(s) of the real property described in the attached application, do authorize as my (our) agent(s) _____ to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the City considering this application and to act in all respects as our agent in matters pertaining to the attached application.

(Property Owner)

(Property Owner)

Subscribed and sworn to me this _____ day of _____ 20____.

(Notary Public)

Residing in: _____

My Commission Expires: _____



DR HORTON SAND HOLLOW GATEWAY R-1-6 PARCEL

Beginning at a point that is on the East Line of Gateway Drive, as on file in the Washington County Recorder's Office, said point lies South 88°46'40" East 2651.36 feet along the North Section Line to the North Quarter Corner of Section 12; thence South 88°17'53" East along the North Section Line 852.38 feet and North 42.02 feet; from the Northwest Corner of Section 12, Township 42 South, Range 14 West, Salt Lake Base and Meridian; Running

thence along the East Line of Said Gateway Drive the following three (3) Courses: 1) northwesterly along a 12.50 foot radius curve to the right, (long chord bears North 39°22'55" West a distance of 18.84 feet, center point lies North 01°42'07" East) through a central angle of 97°49'56", a distance of 21.34 feet, 2) North 09°32'02" East 1,545.68 feet and 3) northerly along a 2,545.00 foot radius curve to the left, (long chord bears North 06°06'43" East a distance of 303.83 feet, center point lies North 80°27'58" West) through a central angle of 06°50'39", a distance of 304.01 feet; thence South 88°39'15" East 1,510.19 feet to the West Line of the Future Flora Tec Drive; thence southerly along said West Line and a 368.68 foot radius non-tangent curve to the right, (long chord bears South 07°06'22" East a distance of 105.60 feet, center point lies South 74°39'37" West) through a central angle of 16°28'02", a distance of 105.96 feet; thence South 01°22'30" West along said Future West Line 1,740.88 feet to the North Line of Jellystone Way, as on file with the Washington County Recorder's office; thence southwesterly along said North Line a 12.50 foot radius curve to the right, (long chord bears South 46°32'18" West a distance of 17.73 feet, center point lies North 88°37'30" West) through a central angle of 90°19'37", a distance of 19.71 feet; thence North 88°17'53" West 1,745.37 feet to the point of beginning.

containing 3,039,598 square feet or 69.78 acres.

Basis of Bearings for this description is North 88°51'50" West 2657.22 feet between the Southeast Corner (NW Cor Sec 12) and the South Quarter Corner of Section 2, Township 42 South, Range 14 West.

Closure:

Northing Diff: 0.000149

Easting Diff: 0.001584

Azimuth: 264°37'53"

Error Distance 0.001591

Total Distance 6988.120

Ratio: 1/1000000+



DR HORTON SAND HOLLOW GATEWAY R-1-8 PARCEL

Beginning at a point that is on the South Line of Jellystone Road, as on file in the Washington County Recorder's Office, said point lies South $88^{\circ}46'40''$ East 2651.36 feet along the North Section Line to the North Quarter Corner of Section 12; thence South $88^{\circ}17'53''$ East along the North Section Line 842.16 feet and South 35.02 feet; from the Northwest Corner of Section 12, Township 42 South, Range 14 West, Salt Lake Base and Meridian; Running thence South $88^{\circ}17'53''$ East along said South Line 1,747.09 feet; thence southeasterly along said South Line and a 19.50 foot radius curve to the right, (long chord bears South $43^{\circ}33'23''$ East a distance of 27.45 feet, center point lies South $01^{\circ}42'07''$ West) through a central angle of $89^{\circ}29'00''$, a distance of 30.45 feet to the West Line of the Future Flora Tec Roadway; thence South $01^{\circ}11'07''$ West along said West Line 1,178.36 feet to the North Line of Bash Parkway, as on file in the Washington County Recorder's Office; thence along said North Line the Following Five (5) Courses: 1) southwesterly along a 12.50 foot radius curve to the right, (long chord bears South $46^{\circ}23'23''$ West a distance of 17.74 feet, center point lies North $88^{\circ}48'53''$ West) through a central angle of $90^{\circ}24'33''$, a distance of 19.72 feet, 2) North $88^{\circ}24'20''$ West 1,262.13 feet, 3) westerly along a 358.00 foot radius curve to the right, (long chord bears North $79^{\circ}31'15''$ West a distance of 110.58 feet, center point lies North $01^{\circ}35'40''$ East) through a central angle of $17^{\circ}46'09''$, a distance of 111.03 feet, 4) westerly along a 457.24 foot radius reverse curve to the left, (long chord bears North $79^{\circ}42'52''$ West a distance of 144.29 feet, center point lies South $19^{\circ}21'50''$ West) through a central angle of $18^{\circ}09'23''$, a distance of 144.89 feet, and 5) North $88^{\circ}47'33''$ West 339.24 feet to the Easterly Line of Gateway Drive, as on file in the Washington County Recorder's Office; thence along said East Line the following Four (4) Courses: 1) northwesterly along a 12.50 foot radius curve to the right, (long chord bears North $43^{\circ}47'13''$ West a distance of 17.68 feet, center point lies North $01^{\circ}12'27''$ East) through a central angle of $90^{\circ}00'40''$, a distance of 19.64 feet, 2) North $01^{\circ}13'07''$ East 160.67 feet, 3) northerly along a 4,955.00 foot radius curve to the right, (long chord bears North $05^{\circ}22'35''$ East a distance of 718.48 feet, center point lies South $88^{\circ}46'53''$ East) through a central angle of $08^{\circ}18'55''$, a distance of 719.11 feet, 4) North $09^{\circ}32'02''$ East 272.76 feet, and 5) northeasterly along a 19.50 foot radius curve to the right, (long chord bears North $50^{\circ}37'04''$ East a distance of 25.63 feet, center point lies South $80^{\circ}27'58''$ East) through a central angle of $82^{\circ}10'05''$, a distance of 27.96 feet to the point of beginning.

Containing 2,223,816 square feet or 51.05 acres.

Basis of Bearings for this description is North $88^{\circ}51'50''$ West 2657.22 feet between the Southeast Corner (NW Cor Sec 12) and the South Quarter Corner of Section 2, Township 42 South, Range 14 West.

Closure:

Northing Diff: 0.011932

Easting Diff: 0.007638

Azimuth: $32^{\circ}37'23''$

Error Distance 0.014167

Total Distance 6022.100

Ratio: 1/425076

LEGAL DESCRIPTIONS:

OVERALL R-1-6 PARCEL
BEGINNING AT A POINT THAT IS ON THE EAST LINE OF GATEWAY DRIVE, AS ON FILE IN THE WASHINGTON COUNTY RECORDER'S OFFICE, SAID POINT LIES SOUTH 88°46'40" EAST 2651.36 FEET ALONG THE NORTH SECTION LINE TO THE NORTH QUARTER CORNER OF SECTION 12, THENCE SOUTH 88°17'53" EAST ALONG THE NORTH SECTION LINE 952.38 FEET AND NORTH 42.02 FEET FROM THE NORTHWEST CORNER OF SECTION 12, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SALT LAKE BASE AND MERIDIAN, RUNNING THENCE ALONG THE EAST LINE OF SAID GATEWAY DRIVE THE FOLLOWING THREE (3) COURSES: 1) NORTHWESTERLY ALONG A 12.50 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS NORTH 39°22'59" WEST A DISTANCE OF 18.84 FEET, CENTER POINT LIES NORTH 01°42'07" EAST) THROUGH A CENTRAL ANGLE OF 57°49'56", A DISTANCE OF 21.34 FEET, 2) NORTH 09°32'02" EAST 1,945.68 FEET AND 3) NORTHERLY ALONG A 2,545.00 FOOT RADIUS CURVE TO THE LEFT, (LONG CHORD BEARS NORTH 06°06'43" EAST A DISTANCE OF 303.83 FEET, CENTER POINT LIES NORTH 80°27'58" WEST) THROUGH A CENTRAL ANGLE OF 06°50'39", A DISTANCE OF 304.01 FEET, THENCE SOUTH 88°39'15" EAST 1,510.19 FEET TO THE WEST LINE OF THE FUTURE FLORA TEC DRIVE, THENCE SOUTHERLY ALONG SAID WEST LINE AND A 368.68 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, (LONG CHORD BEARS SOUTH 07°06'22" EAST A DISTANCE OF 105.60 FEET, CENTER POINT LIES SOUTH 74°39'37" WEST) THROUGH A CENTRAL ANGLE OF 16°28'02", A DISTANCE OF 105.96 FEET, THENCE SOUTH 01°22'30" WEST ALONG SAID FUTURE WEST LINE 1,740.88 FEET TO THE NORTH LINE OF JELLYSTONE WAY, AS ON FILE WITH THE WASHINGTON COUNTY RECORDER'S OFFICE, THENCE SOUTHWESTERLY ALONG SAID NORTH LINE A 12.50 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS SOUTH 46°32'18" WEST A DISTANCE OF 17.73 FEET, CENTER POINT LIES NORTH 88°37'30" WEST) THROUGH A CENTRAL ANGLE OF 90°19'37", A DISTANCE OF 19.71 FEET, THENCE NORTH 88°17'53" WEST 1,745.37 FEET TO THE POINT OF BEGINNING.

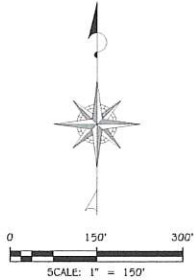
CONTAINING 3,039,598 SQUARE FEET OR 69.78 ACRES.

OVERALL R-1-8 PARCEL
BEGINNING AT A POINT THAT IS ON THE SOUTH LINE OF JELLYSTONE ROAD, AS ON FILE IN THE WASHINGTON COUNTY RECORDER'S OFFICE, SAID POINT LIES SOUTH 88°46'40" EAST 2651.36 FEET ALONG THE NORTH SECTION LINE TO THE NORTH QUARTER CORNER OF SECTION 12, THENCE SOUTH 88°17'53" EAST ALONG THE NORTH SECTION LINE 952.38 FEET AND SOUTH 35.02 FEET, FROM THE NORTHWEST CORNER OF SECTION 12, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SALT LAKE BASE AND MERIDIAN, RUNNING THENCE SOUTH 88°17'53" EAST ALONG SAID SOUTH LINE 1,747.09 FEET, THENCE SOUTHEASTERLY ALONG SAID SOUTH LINE AND A 19.50 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS SOUTH 43°33'23" EAST A DISTANCE OF 27.45 FEET, CENTER POINT LIES SOUTH 01°42'07" WEST) THROUGH A CENTRAL ANGLE OF 89°29'00", A DISTANCE OF 30.45 FEET TO THE WEST LINE OF THE FUTURE FLORA TEC ROADWAY, THENCE SOUTH 01°11'07" WEST ALONG SAID WEST LINE 1,178.36 FEET TO THE NORTH LINE OF BASH PARKWAY, AS ON FILE IN THE WASHINGTON COUNTY RECORDER'S OFFICE, THENCE ALONG SAID NORTH LINE THE FOLLOWING FIVE (5) COURSES: 1) SOUTHWESTERLY ALONG A 12.50 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS SOUTH 46°32'18" WEST A DISTANCE OF 17.74 FEET, CENTER POINT LIES NORTH 88°46'53" WEST) THROUGH A CENTRAL ANGLE OF 90°24'33", A DISTANCE OF 19.72 FEET, 2) NORTH 88°24'20" WEST 1,262.13 FEET, 3) WESTERLY ALONG A 358.00 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS NORTH 79°31'15" WEST A DISTANCE OF 110.58 FEET, CENTER POINT LIES NORTH 01°35'40" EAST) THROUGH A CENTRAL ANGLE OF 17°46'07", A DISTANCE OF 111.03 FEET, 4) WESTERLY ALONG A 457.24 FOOT RADIUS REVERSE CURVE TO THE LEFT, (LONG CHORD BEARS NORTH 79°42'52" WEST A DISTANCE OF 144.29 FEET, CENTER POINT LIES SOUTH 19°21'50" WEST) THROUGH A CENTRAL ANGLE OF 18°09'23", A DISTANCE OF 144.89 FEET, AND 5) NORTH 88°47'33" WEST 339.24 FEET TO THE EASTERLY LINE OF GATEWAY DRIVE, AS ON FILE IN THE WASHINGTON COUNTY RECORDER'S OFFICE, THENCE ALONG SAID EAST LINE THE FOLLOWING FOUR (4) COURSES: 1) NORTHWESTERLY ALONG A 12.50 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS NORTH 43°47'13" WEST A DISTANCE OF 17.68 FEET, CENTER POINT LIES NORTH 01°12'27" EAST) THROUGH A CENTRAL ANGLE OF 90°00'40", A DISTANCE OF 19.64 FEET, 2) NORTH 01°13'07" EAST 160.67 FEET, 3) NORTHERLY ALONG A 4,955.00 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS NORTH 09°22'30" EAST A DISTANCE OF 719.11 FEET, CENTER POINT LIES SOUTH 88°46'53" EAST) THROUGH A CENTRAL ANGLE OF 08°18'59", A DISTANCE OF 719.11 FEET, 4) NORTH 09°32'02" EAST 272.76 FEET, AND 5) NORTHEASTERLY ALONG A 19.50 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS NORTH 50°37'04" EAST A DISTANCE OF 25.63 FEET, CENTER POINT LIES SOUTH 80°27'58" EAST) THROUGH A CENTRAL ANGLE OF 82°10'05", A DISTANCE OF 27.96 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,223,816 SQUARE FEET OR 51.05 ACRES.

BASIS OF BEARINGS FOR THIS DESCRIPTION IS NORTH 88°51'50" WEST 2657.22 FEET BETWEEN THE SOUTHEAST CORNER (NW COR. SEC. 12) AND THE SOUTH QUARTER CORNER OF SECTION 2, TOWNSHIP 42 SOUTH, RANGE 14 WEST.

- CURRENT R-1-6 ZONING
66.04 ACRES
- CURRENT R-1-15 ZONING
PROPOSED R-1-6 ZONING
1.61 ACRES
- CURRENT R-1-8 ZONING
PROPOSED R-1-6 ZONING
2.13 ACRES
- CURRENT R-1-8 ZONING
44.65 ACRES
- CURRENT R-1-10 ZONING
PROPOSED R-1-8 ZONING
6.40 ACRES

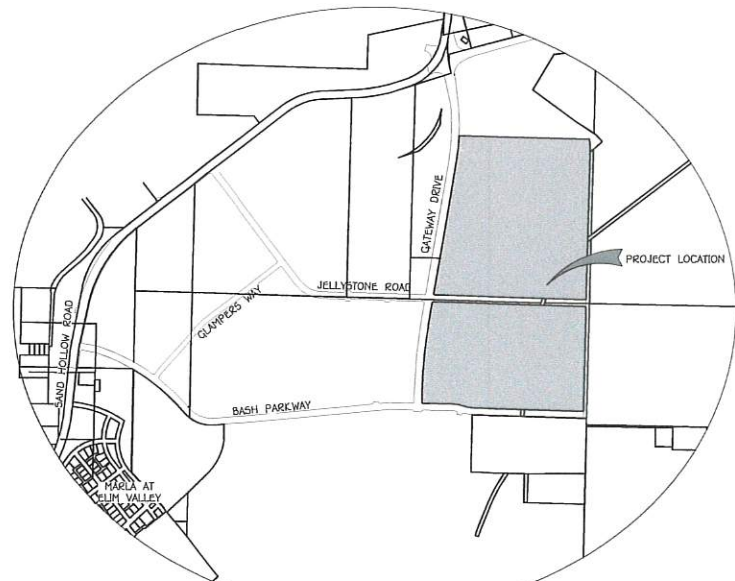


BASIS OF BEARINGS
N 88°51'50" W 2657.22'
(COR. TO COR.)

SOUTH QUARTER CORNER SECTION 2,
TOWNSHIP 42 SOUTH, RANGE 14 WEST
SALT LAKE BASE AND MERIDIAN
FOUND WASHCO ALUMINUM CAP

SOUTHEAST CORNER SECTION 2,
TOWNSHIP 42 SOUTH, RANGE 14 WEST
SALT LAKE BASE AND MERIDIAN
FOUND WASHCO ALUMINUM CAP

SOUTH QUARTER CORNER SECTION 1,
TOWNSHIP 42 SOUTH, RANGE 14 WEST
SALT LAKE BASE AND MERIDIAN
FOUND ROCK MONUMENT (TO BE
REPLACED WITH BRASS RING AND LID
MONUMENT)



VICINITY MAP (N.T.S.)



PRELIMINARY
NOT FOR
CONSTRUCTION



DATE: 1/15/2021
JOB #: 21-051
DRAWN BY: ASA
CHECKED BY: ASA

ZONE CHANGE PARCELS
SECTIONS 1&12, TOWNSHIP 42 S, RANGE 14 W SLB&M
HURRICANE, UTAH
SAND HOLLOW GATEWAY
EXHIBIT MAP

ZC-1

SHEET: 1 of 1

LEGAL DESCRIPTIONS:

OVERALL R-1-6 PARCEL

BEGINNING AT A POINT THAT IS ON THE EAST LINE OF GATEWAY DRIVE, AS ON FILE IN THE WASHINGTON COUNTY RECORDER'S OFFICE, SAID POINT LIES SOUTH 88°46'40" EAST 2651.36 FEET ALONG THE NORTH SECTION LINE TO THE NORTH QUARTER CORNER OF SECTION 12; THENCE SOUTH 88°17'53" EAST ALONG THE NORTH SECTION LINE 852.38 FEET AND NORTH 42.02 FEET, FROM THE NORTHWEST CORNER OF SECTION 12, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SALT LAKE BASE AND MERIDIAN; RUNNING THENCE ALONG THE EAST LINE OF SAID GATEWAY DRIVE THE FOLLOWING THREE (3) COURSES: 1) NORTHWESTERLY ALONG A 12.50 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS NORTH 39°22'59" WEST A DISTANCE OF 18.64 FEET, CENTER POINT LIES NORTH 01°42'07" EAST) THROUGH A CENTRAL ANGLE OF 97°49'56", A DISTANCE OF 21.34 FEET, 2) NORTH 09°32'02" EAST 1,545.68 FEET AND 3) NORTHERLY ALONG A 2,545.00 FOOT RADIUS CURVE TO THE LEFT, (LONG CHORD BEARS NORTH 06°06'43" EAST A DISTANCE OF 303.83 FEET, CENTER POINT LIES NORTH 80°27'58" WEST) THROUGH A CENTRAL ANGLE OF 06°50'39", A DISTANCE OF 304.01 FEET; THENCE SOUTH 88°39'19" EAST 1,510.19 FEET TO THE WEST LINE OF THE FUTURE FLORA TEC DRIVE; THENCE SOUTHERLY ALONG SAID WEST LINE AND A 368.68 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, (LONG CHORD BEARS SOUTH 07°06'22" EAST A DISTANCE OF 105.60 FEET, CENTER POINT LIES SOUTH 74°39'37" WEST) THROUGH A CENTRAL ANGLE OF 16°28'02", A DISTANCE OF 105.96 FEET; THENCE SOUTH 01°22'34" WEST ALONG SAID FUTURE WEST LINE 1,740.88 FEET TO THE NORTH LINE OF JELLYSTONE WAY, AS ON FILE WITH THE WASHINGTON COUNTY RECORDER'S OFFICE; THENCE SOUTHWESTERLY ALONG SAID NORTH LINE A 12.50 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS SOUTH 46°32'18" WEST A DISTANCE OF 17.73 FEET, CENTER POINT LIES NORTH 88°37'37" WEST) THROUGH A CENTRAL ANGLE OF 90°19'37", A DISTANCE OF 19.71 FEET; THENCE NORTH 88°17'53" WEST 1,745.37 FEET TO THE POINT OF BEGINNING.

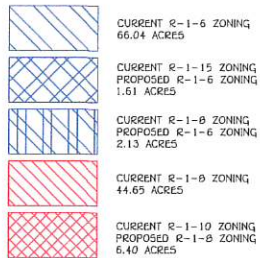
CONTAINING 3,039,598 SQUARE FEET OR 69.78 ACRES.

OVERALL R-1-8 PARCEL

BEGINNING AT A POINT THAT IS ON THE SOUTH LINE OF JELLYSTONE ROAD, AS ON FILE IN THE WASHINGTON COUNTY RECORDER'S OFFICE, SAID POINT LIES SOUTH 88°46'40" EAST 2651.36 FEET ALONG THE NORTH SECTION LINE TO THE NORTH QUARTER CORNER OF SECTION 12; THENCE SOUTH 88°17'53" EAST ALONG THE NORTH SECTION LINE 842.16 FEET AND SOUTH 35.02 FEET, FROM THE NORTHWEST CORNER OF SECTION 12, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SALT LAKE BASE AND MERIDIAN; RUNNING THENCE SOUTH 88°17'53" EAST ALONG SAID SOUTH LINE 1,747.09 FEET; THENCE SOUTHEASTERLY ALONG SAID SOUTH LINE AND A 19.50 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS SOUTH 43°33'23" EAST A DISTANCE OF 27.45 FEET, CENTER POINT LIES SOUTH 01°42'07" WEST) THROUGH A CENTRAL ANGLE OF 89°29'00", A DISTANCE OF 30.45 FEET TO THE WEST LINE OF THE FUTURE FLORA TEC ROADWAY; THENCE SOUTH 01°11'07" WEST ALONG SAID WEST LINE 1,178.36 FEET TO THE NORTH LINE OF BASH PARKWAY, AS ON FILE IN THE WASHINGTON COUNTY RECORDER'S OFFICE; THENCE ALONG SAID NORTH LINE THE FOLLOWING FIVE (5) COURSES: 1) SOUTHWESTERLY ALONG A 12.50 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS SOUTH 46°23'23" WEST A DISTANCE OF 17.74 FEET, CENTER POINT LIES NORTH 88°48'53" WEST) THROUGH A CENTRAL ANGLE OF 90°24'33", A DISTANCE OF 19.72 FEET, 2) NORTH 88°24'20" WEST 1,262.13 FEET, 3) WESTERLY ALONG A 358.00 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS NORTH 79°31'19" WEST A DISTANCE OF 110.58 FEET, CENTER POINT LIES NORTH 01°35'40" EAST) THROUGH A CENTRAL ANGLE OF 17°46'09", A DISTANCE OF 111.03 FEET, 4) WESTERLY ALONG A 457.24 FOOT RADIUS REVERSE CURVE TO THE LEFT, (LONG CHORD BEARS NORTH 79°42'52" WEST A DISTANCE OF 144.29 FEET, CENTER POINT LIES SOUTH 19°21'50" WEST) THROUGH A CENTRAL ANGLE OF 18°09'23", A DISTANCE OF 144.89 FEET, AND 5) NORTH 88°47'33" WEST 339.24 FEET TO THE EASTERLY LINE OF GATEWAY DRIVE, AS ON FILE IN THE WASHINGTON COUNTY RECORDER'S OFFICE; THENCE ALONG SAID EAST LINE THE FOLLOWING FOUR (4) COURSES: 1) NORTHWESTERLY ALONG A 12.50 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS NORTH 43°47'13" WEST A DISTANCE OF 17.68 FEET, CENTER POINT LIES NORTH 01°12'27" EAST) THROUGH A CENTRAL ANGLE OF 90°00'40", A DISTANCE OF 18.64 FEET, 2) NORTH 01°13'07" EAST 160.67 FEET, 3) NORTHERLY ALONG A 4,955.00 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS NORTH 09°22'39" EAST A DISTANCE OF 718.48 FEET, CENTER POINT LIES SOUTH 88°46'53" EAST) THROUGH A CENTRAL ANGLE OF 08°18'55", A DISTANCE OF 719.11 FEET, 4) NORTH 09°32'02" EAST 272.76 FEET, AND 5) NORTHEASTERLY ALONG A 19.50 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS NORTH 50°37'04" EAST A DISTANCE OF 25.63 FEET, CENTER POINT LIES SOUTH 80°27'58" EAST) THROUGH A CENTRAL ANGLE OF 82°10'09", A DISTANCE OF 27.96 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,223,816 SQUARE FEET OR 51.05 ACRES.

BASIS OF BEARINGS FOR THIS DESCRIPTION IS NORTH 88°51'50" WEST 2657.22 FEET BETWEEN THE SOUTHEAST CORNER (NW COR SEC 12) AND THE SOUTH QUARTER CORNER OF SECTION 2, TOWNSHIP 42 SOUTH, RANGE 14 WEST.

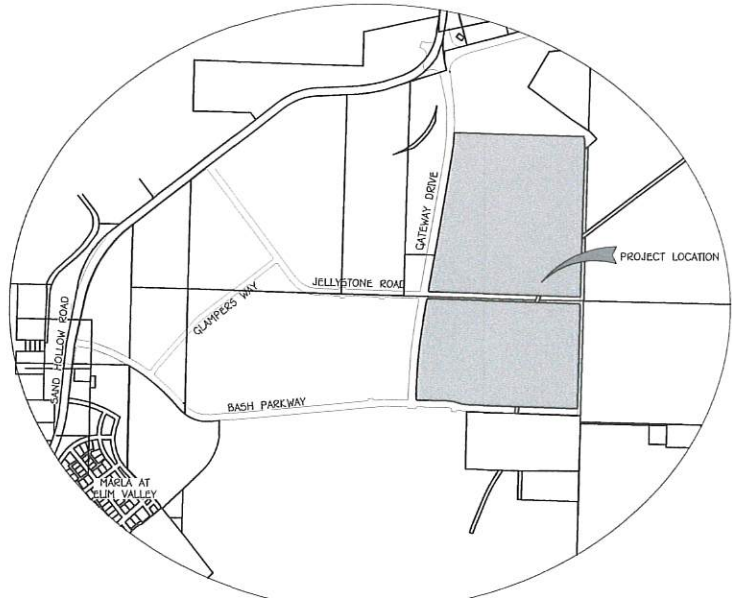


BASIS OF BEARINGS
N 88°51'50" W 2657.22'
(COR. TO COR.)

S 88°46'40" E 2651.36'
(COR. TO COR.)

SOUTH QUARTER CORNER SECTION 2,
TOWNSHIP 42 SOUTH, RANGE 14 WEST
SALT LAKE BASE AND MERIDIAN
FOUND WASHCO ALUMINUM CAP

SOUTH QUARTER CORNER SECTION 1,
TOWNSHIP 42 SOUTH, RANGE 14 WEST
SALT LAKE BASE AND MERIDIAN
FOUND ROCK MONUMENT (TO BE
REPLACED WITH BRASS RING AND LID
MONUMENT)



VICINITY MAP (N.T.S.)

WESTERN MTG &
REALTY CO
H-4-2-12-1102
R-1 ZONING

PL DATA:
L=21.34'
R=12.50'
Δ=097°49'56"
CB=N39°22'55"E
CL=18.64'

PL DATA:
L=27.96'
R=19.50'
Δ=082°10'09"
CB=N50°37'04"E
CL=29.63'

WESTERN MTG &
REALTY CO
H-4-2-12-1102
R-1-8 ZONING

PL DATA:
L=19.64'
R=12.50'
Δ=090°00'40"
CB=N43°47'13"W
CL=17.68'

WESTERN MTG &
REALTY CO
H-4-2-12-1102
R-1-10 ZONING

WESTERN MTG &
REALTY CO
H-4-2-12-1102
R-1-10 ZONING

PL DATA:
L=144.89'
R=457.24'
Δ=018°09'23"
CB=N79°42'52"W
CL=144.29'

PL DATA:
L=111.03'
R=358.00'
Δ=017°46'09"
CB=N79°31'15"W
CL=110.58'

BASH PARKWAY
(77.0' WIDE ROW)
PEACH PIT LLC
H-4-2-12-12011
PC ZONING

WESTERN MTG & REALTY CO
H-4-2-1-1103
R-1-6 & RM-3 ZONING

WESTERN MTG & REALTY CO
H-4-2-1-1103
R-1-15 ZONING

PL DATA:
L=105.96'
R=368.68'
Δ=016°28'02"
CB=S07°08'52"E
CL=105.60'

WESTERN MTG &
REALTY CO
H-3-2-7-4402
R-1-15 ZONING

PL DATA:
L=19.71'
R=12.50'
Δ=090°19'37"
CB=S46°32'18"W
CL=17.73'

PL DATA:
L=30.45'
R=19.50'
Δ=089°29'00"
CB=S43°31'23"E
CL=27.45'

WESTERN MTG &
REALTY CO
H-3-2-7-4402
R-1-15 ZONING

PL DATA:
L=19.72'
R=12.50'
Δ=090°24'33"
CB=S46°23'23"W
CL=17.74'

REV.	DATE	REVISION

PRELIMINARY
NOT FOR
CONSTRUCTION



DATE: 1/15/2021
JOB #: 21-051
DRAWN BY: ASA
CHECKED BY: ASA

ZONE CHANGE PARCELS
SECTIONS 1&12, TOWNSHIP 42 S, RANGE 14 W SLB&M
HURRICANE, UTAH
SAND HOLLOW GATEWAY
EXHIBIT MAP

ZC-1

SHEET: 1 of 1

ORDINANCE NO 2022-__

AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE APPROVING THE REZONE FOR PARCELS H-4-2-12-1102 FOR SECTION OF R1-15, R1-10, R1-8 TO R1-6 AND R1-8

WHEREAS, Utah Code 10-9a allows Cities to regulate land use within their boundaries,

WHEREAS, the proposed amendment is generally compatible with the current General Plan's map for future use; and

WHEREAS, the proposed amendment is generally in harmony with the overall character of the proposed surrounding development; and

WHEREAS, with the approval of the Sand Hollow Gateway PID, the roadway alignment have slightly changed and the City generally prefers zoning boundaries to follow roadways, landmarks, or parcel boundaries; and

WHEREAS, the Planning Commission gave a positive recommendation for the zone change subject that zone change

BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF HURRICANE CITY THAT:

1. That portions of PARCEL H-4-2-12-1102 be rezoned as shown in the following legal description attached in Exhibit A.

PASSED AND APPROVED on this 3rd day of March 2022.

Hurricane City

Mayor

Attest:

Cindy Beteag, City Recorder

Agenda Date:	03/03/2022
Application Number:	2021-ZC-04
Type of Application:	Zone Change
Action Type:	Legislative
Applicant:	D. R. Horton (Don Bean)
Agent:	Adam Allen
Request:	A Zone Change Request from R1-6, R1-8, R1-10, and R1-15 to R1-6 and R1-8
Location:	Approximately 600 S and 3500 W
Zoning:	R1-6, R1-8, R1-10, and R1-15
General Plan Map:	Planned Community

Planning Commission Recommendation

The Planning Commission gave a positive recommendation on the proposed zone change.

Discussion:

The applicant is seeking zone change to clean up the zone boundaries within the Sand Hollow Gateway PID. There are a few discrepancies within this property between the zone boundaries passed by the City Council in December 2019 and the approved PID roadways through the area. This change will bring the zone map and the PID plans into compliance with each other. The total area being changed is 10.01 acres of the 120.83 acres of property

	Zoning	Adjacent Land Use
North	RM-3	Proposed Elim Valley Apartments
East	R1-15	Undeveloped, later phase of Sand Hollow Gateway PID
South	PC, R1-10, RA-1	Agricultural uses and undeveloped space
West	RR, R1-8 PDO	Undeveloped, Sand Hollow Gateway resort and Cadence Active Adult community

JUC Comments

1. **Power:** PID improvements needs to get out to this property
2. **Water:** No concerns
3. **Streets:** No concerns
4. **Sewer:** No concerns
5. **Engineering:** No concerns
6. **Fire:** No concerns just far from a fire station currently
7. **Gas/Cable/Water Conservancy:** No concerns

1. Is the proposed amendment consistent with the City's General Plan's goals, objectives, and policies?

Response: The [General Plan Map](#) shows this area as a Planned Community:

Master planned communities should be complete communities that offer a mixture of housing types and supporting uses such as neighborhood and supporting commercial uses, offices, churches, schools, and parks. Development in this designation should take into account the character of existing surrounding development.

This area is already part of a larger master planned community with services being provided through the PID. This is a minor change that does not significantly differ from the City Council's intentions when approving the original zone change in 2019. Considering the changes will line up the zone boundaries with the boundaries of the approved neighboring developments which seems to be in line with those intentions.

2. Is the proposed amendment harmonious with the overall character of existing development in the subject property's vicinity?

Response: Most of the area is undeveloped. The Sand Hollow Gateway PID and Master Plan govern this area and call for a variety of similar uses in this area.

3. Will the proposed amendment affect the adjacent property?

Response: The total area being changed in this zone change is 10.01 acres. There may be a minor increase in the effect on the Peach Pit property but they also plan to develop in the near future. All the other surrounding properties will be part of the Sand Hollow Gateway PID master plan community.

4. Are public facilities and services adequate to serve the subject property?

Response: There are currently no services in the area but the Sand Hollow Gateway PID is planning to provide services to the area. Construction drawings have been submitted to the City.

Findings:

Staff makes the following findings:

1. The proposed amendment is generally compatible with the current General Plan's map and goals.
2. The proposed amendment is generally in harmony with the overall character of the approved development surrounding it, but there is almost no development adjacent to the property right now.
3. The proposed amendment will have an impact on the area but it is as anticipated in the Sand Hollow Gateway area
4. The services are currently not adequate for the development but are planned to be with the Sand Hollow Gateway PID.
5. Generally speaking, staff would recommend that zoning boundaries follow landmarks, roadways, or property lines in order to provide clarity in zoning map interpretation. See [Hurricane City Code 10-11-4. - Rules for locating zone boundaries.](#)

Recommendation: Staff recommends the City Council review this application and the zone change based on standards and considers residents' comments. Staff would recommend approval of this zone change based on staff and JUC comments.



STAFF COMMENTS

Consideration and possible approval of a **Land Code Use Amendment to Title 10, Chapter 15, regarding Planned Commercial development standards**

Discussion:

Hurricane City's General Plan recommends that City update the Planned Commercial code to encourage mixed-use developments, and provide greater regulations to ensure the City accomplishes the goals listed within the General Plan with the ordinance (see attached presentation for more information). There are two versions that have been uploaded for the City Council to review. Planned Commercial A was recommended by the Planning Commission and breaks down the mix by the square foot of the building, while Planned Commercial B, recommended by a few property owners in town, which breaks down the mix-use by total area. Staff included both to allow the Council to fully review both options. The Planning Commission's recommendation reflects the desire to have more substantial commercial footprint on the property.

Staff will give a full review of the ordinance and the proposed changes within the meeting.

Findings:

Recommendation:

Staff recommends that the City Council continue the item to allow for time for each City Councilmember to review the ordinance before approval.

Attachments:

1. Planned Commercial Zone A
2. Planned Commercial
3. Planned Commercial Zone B
4. Planned Commercial Zone
5. Mix Use Sheet
6. Commercial Use Table
7. Public Comment
8. PC Picture 1
9. Public Comment Picture 2
10. Public Comment Picture 4
11. Public Comment Picture 5

10-11-2: ZONE PURPOSES:

D. Commercial Zones: Commercial zones provide areas where a combination of business, commercial, entertainment, office, and related activities may be established, maintained and protected. Commercial zones are intended to provide a suitable environment for those commercial and service uses vital to the economic base of the city.

4. The purpose of the PC zone is to provide areas of mixed use developments where a combination of ~~destination-oriented~~destination-oriented business, retail commercial, entertainment, high density housing, and related uses may be established, maintained, and protected to serve both residents and nonresidents of the city. Typical uses in this zone include large scale, master planned commercial centers with outlying commercial pads, big box stores, offices, and various types of high density residential uses.

10-15-1: PURPOSE:

See section [10-11-2](#) of this title. (Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

10-15-2: SC10-15-1: PURPOSE:

See section [10-11-2](#) of this title. (Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

SCOPE:

The provisions of this chapter shall apply to any real property located in a commercial zone as shown on the official zoning map. No building, structure or real property shall be used and no building or structure shall be hereafter erected, structurally or substantially altered, or enlarged except as set forth in this chapter. Such requirements shall not be construed to prohibit or limit other applicable provisions of this title, this Code, or other laws. (Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

10-15-3: USES ALLOWED:

A. Permitted And Conditional Uses: Permitted and conditional uses allowed within commercial zones shall be as set forth in [table 10-15-1](#) of this section. Permitted and conditional uses are indicated by a "P" or "C", respectively, in the appropriate column. Uses not permitted are indicated by "N". Any use not shown on [table 10-15-1](#) of this section shall be prohibited unless the Zoning Administrator determines the use is substantially the same as a permitted or conditional use as provided in subsection [10-7-18E4](#) of this title.

TABLE 10-15-1

PERMITTED AND CONDITIONAL USES ALLOWED IN COMMERCIAL ZONES

	Zones				
Use	NC	GC	HC	PC	POC

Residential uses:					
Building, accessory	P	N	N	P	P
Dwelling, multiple-family ⁴	N	N	N	P	P
Dwelling, single-family ⁴	N	N	N	P	N
Dwelling, temporary	N	N	N	N	N
Dwelling, two-family ⁴	N	N	N	P	P
Manufactured home	N	N	N	N	N
Manufactured/mobile home park	N	N	N	N	N
Protective housing facility	N	N	N	N	N
Rehabilitation/treatment facility	N	P	P	P	P
Residential facility for elderly persons ¹	P	N	N	P	P
Residential facility for persons with a disability ¹	P	N	N	P	P

Residential facility for troubled youth	N	N	N	N	N
Transitional housing facility	N	N	N	N	N
Public and civic uses:					
Auditorium or stadium	N	P	P	P	N
Bus terminal	N	P	P	P	N
Cemetery	P	P	P	P	P
Church or place of worship	P	P	P	P	P
Club or service organization	P	P	P	P	P
Convalescent care facility	N	P	P	P	N
Cultural service	P	P	P	P	P
Golf course	P	P	P	P	P
Government service	N	P	P	P	N
Hospital	N	P	P	P	N
Operations center	N	P	P	P	P
Park	P	P	P	P	P
Post office	P	P	P	P	P
Protective service	P	P	P	P	P

Reception center	C	P	P	P	P
Utility, major ³	N	N	N	C	C
Utility, minor ³	P	P	P	P	P
Utility substation ³	P	P	P	P	P
Commercial uses:					
Agricultural sales and service	N	P	P	P	N
Animal hospital	P	P	P	P	N
Bail bond service	N	P	P	P	N
Bank or financial institution	P	P	P	P	P
Bed and breakfast, home	N	N	N	N	N
Bed and breakfast inn	P	P	P	P	N
Business equipment rental, services, and supplies	P	P	P	P	P
Car wash	P	P	P	P	P
Club, private	N	P	P	P	N
Construction sales and service	N	P	P	N	N
Convenience store	P	P	P	P	P

Family child daycare facility ²	P	N	N	<u>PN</u>	N
Family child group daycare facility ²	P	N	N	<u>PN</u>	N
Family child residential certificate care facility ²	P	N	N	<u>PN</u>	N
Family childcare center	P	P	P	P	P
Funeral home	N	P	P	P	N
Garden center	P	P	P	P	P
Gas and fuel, storage and sales	N	N	C	N	N
Gasoline service station	P	P	P	P	N
Hostel	N	P	P	P	N
Hotel	N	P	P	P	N
Kennel	C	P	C	C	C
Kennel, residential	P	N	N	N	N
Laundry or dry cleaning, limited	P	P	P	P	P
Liquor store	N	P	P	P	N
Media service	P	P	P	P	P
Medical or dental laboratory	N	P	P	P	N

Medical service	P	P	P	P	P
Motel	N	P	P	P	N
Office, general	P	P	P	P	P
Parking garage, public	N	P	P	P	P
Parking lot, public	N	P	P	P	P
Pawnshop	N	N	P	P	N
Personal care service	P	P	P	P	P
Personal instruction service	P	P	P	P	P
Printing and copying, limited	P	P	P	P	P
Printing, general	N	P	P	P	P
Produce stand	P	P	P	<u>PN</u>	P
Recreation and entertainment, indoor	P	P	P	P	P
Recreation and entertainment, outdoor	N	P	P	P	N
Recreational vehicle park	N	N	P	<u>NP</u>	N
Repair service	P	P	P	<u>NCP</u>	P
Research service	N	P	P	<u>NP</u>	N
Restaurant, fast food	P	P	P	P	P

Restaurant, general	P	P	P	P	P
Retail, general	P	P	P	P	P
Secondhand store	P	P	P	P	P
Shopping center	P	P	P	P	P
Takeoff and landing of aircraft	N	N	N	N	N
Tattoo establishment	P	P	P	N	N
Tavern	N	P	P	P	N
Temporary trailer	P	P	P	P	P
Transportation service	N	P	P	NC P	N
Vehicle and equipment rental or sale	N	P	P	NC P	N
Vehicle and equipment repair, general	N	P	P	N	N
Vehicle repair, limited	N	P	P	NC P	P
Veterinary service	P	P	P	N	N
Warehouse, self-service storage	P	P	N	N	N
Wireless telecommunication facility	See section 10-50-5 , table 10-50-1 of this title				
Industrial uses:					
Laundry services	N	N	N	P	N

I

Wholesale and warehousing, general	N	N	N	P	N
Wholesale and warehousing, limited	N	N	N	N	N

Notes:

1. See chapter 46 of this title.
2. See chapter 42 of this title.
3. See chapter 45 of this title.

4. In the area designated as Downtown District on the General Plan map, existing single family residential uses may continue as permitted residential uses. Use and development standards for an R-1-8 Zone shall apply. Existing approved multi-family and two family uses may continue as permitted residential uses. Use and development standards for an RM-2 Zone would apply. No new residential uses are permitted.

(Ord. 2016-11, 11-17-2016; amd. Ord. 2017-14, 8-17-2017)

B. Accessory Uses: Permitted and conditional uses set forth in [table 10-15-1](#) of this section shall be deemed to include accessory uses and activities that are necessarily and customarily associated with and incidental and subordinate to such uses.

1. Accessory uses shall be subject to the same regulations that apply to permitted and conditional uses in the same zone except as otherwise expressly provided in this title.

2. No accessory use, building, or structure shall be allowed on a lot unless a permitted or conditional use has been established. (Ord. 2017-14, 8-17-2017)

3. Accessory uses in commercial zones shall include, but not be limited to, the following:

Accessory dwelling units attached to a commercial permitted use structure or on the same lot and under same ownership as a permitted use structure.

Accessory dwelling units for security and maintenance personnel.

Cafeterias, dining halls and similar food service facilities when located within the main use and operated primarily for the convenience of employees, residents, clients, or visitors to the main use.

Garages and off street parking areas, subject to applicable standards of chapter 34, "Off Street Parking And Loading", of this title.

Recreational areas and facilities for the use of employees.

Recycling collection stations.

Refreshment stands and food and beverage sales located in uses involving public assembly.

Temporary uses, subject to applicable standards of chapter 48, "Temporary Uses", of this title. (Ord. 2012-8, 10-18-2012; amd. Ord. 2017-14, 8-17-2017)

C. Conditional Uses

1. Conditional uses may be considered by the Planning Commission if the use fits with the surrounding uses and will not cause any objectionable conditions as laid out in 10-15-7
2. For a repair service, transportation service, or vehicle and equipment rental or sale these uses should be near major roadways and have sufficient setback from residential parts of the development

10-15-4: DEVELOPMENT STANDARDS:

Development standards within commercial zones shall be as set forth in [table 10-15-2](#) of this section.

TABLE 10-15-2

DEVELOPMENT STANDARDS IN COMMERCIAL ZONES

Development Standard	Zones				
	NC	GC	HC	PC	POC
Lot standards:					
Minimum lot area	No requirement	No requirement	No requirement	5 acres (see note 3)	5 acres

Commented [1]: Probably need an exact number but no idea what that should be

Commented [2]: Should be moved to 10-15-7

Commented [3R3]: But leave cross-reference in the footnote so it is clear where to go to look for the standards.

Minimum lot width	No requirement	No requirement	No requirement	No requirement	No requirement
Building standards:					
Maximum height, main building ¹	35 feet	35 feet	35 feet	55 feet	55 feet
Maximum height, accessory building	20 feet	20 feet	20 feet	20 feet	20 feet
Setback standards - front yard:					
All buildings ²	20 feet	20 feet	20 feet	<u>10', corner lots 20' 20 feet</u>	20 feet
Setback standards - rear yard:					
Main building	New building on a lot abutting an existing agricultural or residential use: 10 feet Otherwise: No requirement				
Accessory building					
Setback standards - interior side yard:					
Main building	New building on a lot abutting an existing agricultural or residential use: 10 feet Otherwise: No requirement				
Accessory building					
Setback standards - street side yard:					

Main building	20 feet	20 feet	20 feet	20 feet	20 feet
Accessory building	Not permitted	Not permitted	Not permitted	Not permitted	Not permitted

Notes:

1. Except as otherwise permitted by subsection [10-15-7A](#) of this chapter.
2. Except as modified by the provisions of subsection [10-37-12F](#), "Setback Measurement", of this title.
3. An area less than five acres may be zoned for Planned ~~Commercial~~ [Commercial](#) use if the City Council finds that the zoning meets the following:
 - a. The zone change meets the standards within Hurricane City Code 10-7-7.
 - b. The property is ~~sufciently-incorporated~~ [incoperated](#) into an ~~existing~~ [excisting](#) commercial or multi-family development, and the proposed change will further the purpose of the ~~Planneding~~ [Commercial](#) ~~Commerical~~ Zone.

(Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

10-15-5: REGULATIONS OF GENERAL APPLICABILITY:

The use and development of real property in commercial zones shall conform to regulations of general applicability as set forth in the following chapters of this title:

- A. Design and compatibility standards: See chapter 33 of this title.
- B. Landscaping and screening: See chapter 32 of this title.
- C. Motor vehicle access: See chapter 35 of this title.
- D. Natural resource inventory: See chapter 31 of this title.
- E. Off street parking: See chapter 34 of this title.
- F. Signs: See chapter 36 of this title.
- G. Supplementary development standards: See chapter 37 of this title. (Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

10-15-6: REGULATIONS FOR SPECIFIC USES:

To the extent that use and development of real property includes any matter encompassed by a regulation for a specific use as set forth in division 6 of this title, such regulation shall apply in addition to the requirements of this chapter and shall prevail over any conflicting provision of this chapter. (Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

10-15-7: SPECIAL REGULATIONS:

A. Increased Height: Notwithstanding the height limitations shown in section [10-15-4](#), table [10-15-2](#) of this chapter a greater building height may be allowed in a commercial zone for a commercial use pursuant to a conditional use permit.

B. Use Within An Enclosed Building: Each use specified in section [10-15-3](#), table [10-15-1](#) of this chapter shall be conducted completely within a completely enclosed building, except for the parking of motor vehicles and services to persons therein.

C. Dust, Odor, Smoke, Noise, And Vibration: Each use specified in section [10-15-3](#), table [10-15-1](#) of this chapter shall be free from objectionable dust, odor, smoke, noise, and vibration.

D. Highway Commercial Zone Location: For property abutting SR-9, the Highway Commercial Zone shall begin at the highway right-of-way line and shall extend a distance of five hundred feet (500') from the State highway right-of-way line.

E. Vendor Carts: Vendor carts, as defined below, are subject to the following definitions, rules and limitations:

10-15-8: Planned Commercial Standards

A. Planned Commercial Developments shall incorporate elements of commercial and residential within each zoned area and development.

B. Mix Use Types: Planning Commercial Developments shall incorporate both commercial and residential uses.

a. Horizontal Mix Use: Development that combines single-use buildings on distinct parcels in a range of land uses in a planned development project.

b. Vertical Mixed Use: Development that combines different uses in the same building. Commercial or public uses shall only occupy lower levels.

A-c. Live/work Units: A live/work unit is defined as a single unit consisting of both a commercial/office and a residential component that is occupied by the same resident. The live/work unit shall be the primary dwelling of the occupant. Livework units must be deed-restricted that these units may only be owner-occupied and can not be sublet to long-term or short-term renters.

Commented [4]: Limit the size of live work to single bed room at most.

Commented [5]: Allow for long term renter for the full unit or owner occupied.

C. A preliminary site plan shall be submitted with every zone change to Planned Commercial.

D. Planned Commercial Development Site Plan shall have:

- a. A minimum of 20% of floor area shall be used for commercial uses listed within table 10-15-1. A minimum of 20% of floor area shall be used for long-term residential use as listed within table 10-15-1.
 1. The Planning Commission may approve a lower percentage of housing for developments that are adjacent to multi-family development.
 2. The Planning Commission may approve a lower percentage for commercial development if the project is located within or adjacent to existing commercial property.
 3. Each project shall have a mixture of use, including commercial and housing.
4. Residential Density: Projects that contain 20%-39% floor area as Commercial space shall not exceed 15 units an acre for residential areas. Projects that contain a minimum of 40% floor area as Commercial space shall not exceed 20 units an acre for residential areas.
 - a. Horizontal Mix Use: Residential areas shall be calculated based on the footprint of residential buildings and sections of buildings, parking, amenities, and roadways that primarily serve residential areas.
 - b. Vertical Mix Use: Buildings shall be measured by the percentage of space within the building that is used to occupy commercial vs residential. Then the percentage of each use shall apply to the footprint of the building to calculate density, including residential parking, amenities, and roadways that primarily serve residential areas.
 - i. Example: If a two-story building has a building footprint of 10,000 sq. ft. and the first floor is completely commercial use and the second floor is residential use, then 5,000 sq. ft. shall count towards the density of residential use.
 - c. Live/work Units: Units that meet the definition contained within the chapter shall be considered commercial use and shall not count toward the overall density of the project.
 - d. Shared Uses: Amenities and parking shall be designed with both commercial and residential uses in mind. Amenities that

both serve residential and commercial uses shall count toward residential density area.

i. Parking: Shared Parking must comply with Hurricane City Code 10-34-9.

b. A development agreement between the city and the applicant may be required by the city council and executed before the zoning designation shall be effective.

C. Each Planned Commercial development shall provide a preliminary site and final site plan as required in Hurricane City Code 10-7.

D. Landscaping: Landscaping within a Planned Commercial development shall follow the following standards:

1. Street trees are required for every 50' of frontage. These trees may be incorporated within park strips, landscape buffers, or planter boxes within the right-of-way.
2. The applicant shall comply with Hurricane City Standards for landscaping.
3. In lieu of a 10' landscaping buffer along the right-of-way frontage, an applicant can provide that space for sidewalks, outdoor dining, and retail space that enhances the neighborhood's walkability.
4. Parking lots and parking courts shall remain buffered by a 10' landscape area with one tree and three shrubs for every 35' linear feet.

Commented [6]: Buffered from what? From the street?

E. Off Street Parking: Parking lots shall not be located in front of buildings nearest the right-of-way but shall be contained within parking courts located to the side or behind buildings that front the right-of-way. Buildings may be located behind parking lots if other buildings are fronting onto the right-of-way, and a pedestrian path can be used to access the building from the right-of-way.

F. Street Design: A Developer or the City may propose different street cross-sections that enhance walkability, street life, outdoor gathering, traffic calming, street parking, and beautification. The City Council may must approve a different streetnew cross-section with a recommendation from the Planning Commission.

Planned Commercial

Mixed-Use Development in
Hurricane



Planned Commercial Purpose

The purpose of the PC zone is to provide areas of mixed use developments where a combination of destination-oriented business, retail commercial, entertainment, high density housing, and related uses may be established, maintained, and protected to serve both residents and non-residents of the city. Typical uses in this zone include large scale, master planned commercial centers with outlying commercial pads, big box stores, offices, and various types of high density residential uses.

Likely Use: Create walkable and complete neighborhood, provided commercial and residential development in key areas of town.

These zones likely should be limited in size to address key areas. Larger and master-planned communities should be encouraged to use a PDO process to ensure a variety of housing options are allowed. PC zoning is also a high-impact zone and PDOs are typically have less impact.

Current Concerns

No Density Limit

Right now, any density that could reasonably be supported by surrounding services and meet building height and setback requirements would be entitled.

Mixed Use Not Required

A project could be 100% residential or 100% commercial

Five Acre Minimum

The City Council wanted the flexibility to allow for smaller areas that were integrated into neighborhoods or commercial areas to be eligible for a zone change.

Planned Commercial Update

General Plan Recommends the City

Support mix uses developments in key areas to support future commercial growth. Require a minimum percentage of those developments be retained as commercial space. (Economy 1.8)

Consider revising the land use code for mixed use and planned commercial zones to set specific densities and percentages of residential uses in commercial zones, with density bonuses available for deed restricted rent and sales prices. p 43

Support mixed use developments in key areas to support future commercial growth. Require a minimum percentage of those developments be retained as commercial space.

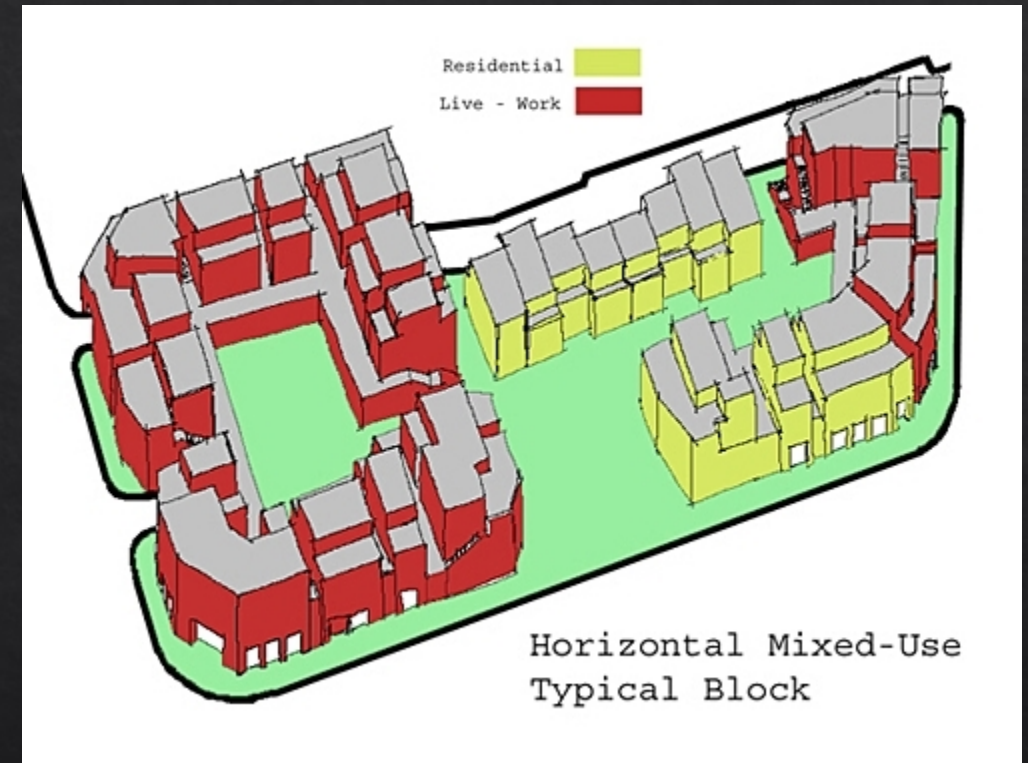
City Council has recommended to eliminate the five acre requirement if there is supporting commercial or residential in the area



Horizontal Mixed Use

Horizontal Mix Use: Development that combines single-use buildings on district parcels in a range of land uses in a planned development project.

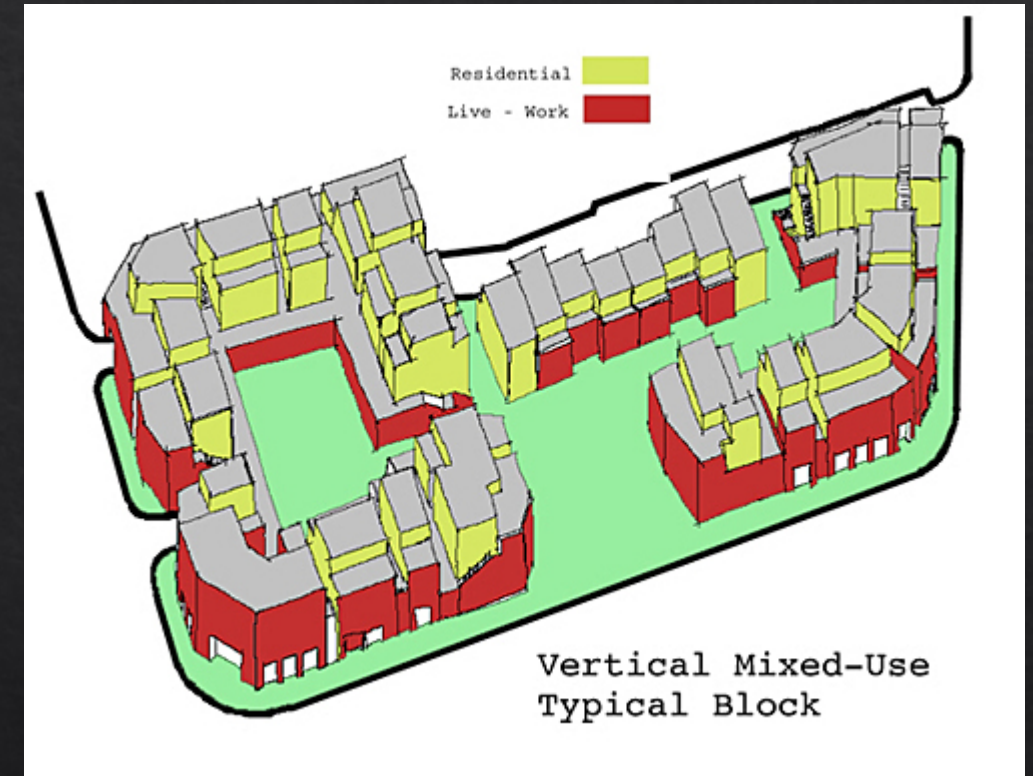
Buildings may be mixed-use but are not stacked and are placed side by side.



Vertical Mixed Use

Vertical Mixed Use: Development that combines different uses in the same building. Commercial or public uses shall only occupy lower levels.

This is your typical traditional mixed use type of development, with commercial and other public, uses occupying lower levels, and residential on the floors above.



Live-Work Units

Live/work Units: A live/work unit is defined as a single unit consisting of both a commercial/office and a residential component that is occupied by the same resident. The live/work unit shall be the primary dwelling of the occupant. Live-work units must be deed-restricted that these units may only be owner-occupied and can not be sublet to long-term or short-term renters.

These units are gaining popularity. It allows a homeowner to have part of their home as their office space.



Mixed Use Requirements

Options

- Require a certain percentage area of the project contain commercial or residential

- Pros: Sets a clear standard and would get consistent results, site plan will have more details.

- Cons: Difficult to define, requires more upfront from applicants.

- Require commercial sq ft or area minimums

- Pros: Sets a clear standard that would be easy to follow. Easier to define

- Cons: Mixture will likely vary from development to development, City deciding what area would work best.

- Require a Site Plan to be submitted with a zone change

- Pros: Allows flexibility and creativity by the applicant and city.

- Cons: Does not apply to PC property already zoned, may be arbitrary in decision making

Mixture Requirements

Current Recommendation

A minimum of 20% of floor area shall be used for commercial uses listed within table 10-15-1. A minimum of 20% of floor area shall be used for long-term residential use as listed within table 10-15-1.

Floor area may be difficult to calculate in preliminary stages.

After a review of a few commercial properties in Hurricane, about 25% of their commercial area is used for building, the remainder serves as driveways, parking, and landscaping. Residential normally requires less parking and driveways and utilizes more property.

It may be easier to base it on 20% (or 30%) commercial and 20% residential acres of use.

These calculations should be shown on both the preliminary and final site plans.

Shared amenities, such as parking, will need to be factored into consideration.

Density

Staff has reviewed several codes. Densities range from 12 units to 50 units in smaller cities. The average range is from 20-30 units an acre. A lot of mix use zones are also overlay based similar to the PDO with ranging densities. Staff would recommend 15-20 an acre for planned commercial areas in Hurricane:

Arcs of PC	15 units (80% of Development)	20 units (80% of Development)
5	67.50	90
10	135.00	180
15	202.50	270
20	270.00	360

Destiny Calculation

Current proposal is 20 units an acre for residential areas. This area is defined as

- Residential Buildings or section of mix-use buildings foot-print

- Residential amenities including roadways, open space, parking, landscape

- Shared Use Areas

- Work-live units do not count toward overall residential density.

These standards lean towards counting more area towards counting residential uses.

Questions?



Update

Staff Proposal

20% Residential with 20% Commercial sq. ft. 15 Units an Acre Max

Density Bonus: 40% Commercial, 20% Residential sq. ft. 20 units an Acre Max

Reason

Provide an incentive to provide additional commercial space

Allow development flexibility.

Provide housing and commercial in key areas

Example

5 Acres

Commercial %	Commercial Sq Ft	Residential Sq Ft.	Density	Max Number of Units	Likely Units (Average 800 sq ft)
20 %	21,780	87,120	15 Units	67.5	67.5
40%	43,560	65,340	20 Units	80	80
20%	10,890	43,560	15 Units	67.5	54.45
40%	21,780	32,670	20 Units	80	40.83

10-11-2: ZONE PURPOSES:

D. Commercial Zones: Commercial zones provide areas where a combination of business, commercial, entertainment, office, and related activities may be established, maintained and protected. Commercial zones are intended to provide a suitable environment for those commercial and service uses vital to the economic base of the city.

4. The purpose of the PC zone is to provide areas of mixed use developments where a combination of ~~destination-oriented~~ destination-oriented business, retail commercial, entertainment, high density housing, and related uses may be established, maintained, and protected to serve both residents and nonresidents of the city. Typical uses in this zone include large scale, master planned commercial centers with outlying commercial pads, big box stores, offices, and various types of high density residential uses.

10-15-1: PURPOSE:

See section [10-11-2](#) of this title. (Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

10-15-2: SC10-15-1: PURPOSE:

See section [10-11-2](#) of this title. (Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

SCOPE:

The provisions of this chapter shall apply to any real property located in a commercial zone as shown on the official zoning map. No building, structure or real property shall be used and no building or structure shall be hereafter erected, structurally or substantially altered, or enlarged except as set forth in this chapter. Such requirements shall not be construed to prohibit or limit other applicable provisions of this title, this Code, or other laws. (Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

10-15-3: USES ALLOWED:

A. Permitted And Conditional Uses: Permitted and conditional uses allowed within commercial zones shall be as set forth in [table 10-15-1](#) of this section. Permitted and conditional uses are indicated by a "P" or "C", respectively, in the appropriate column. Uses not permitted are indicated by "N". Any use not shown on [table 10-15-1](#) of this section shall be prohibited unless the Zoning Administrator determines the use is substantially the same as a permitted or conditional use as provided in subsection [10-7-18E4](#) of this title.

TABLE 10-15-1

PERMITTED AND CONDITIONAL USES ALLOWED IN COMMERCIAL ZONES

	Zones				
Use	NC	GC	HC	PC	POC

Residential uses:					
Building, accessory	P	N	N	P	P
Dwelling, multiple-family ⁴	N	N	N	P	P
Dwelling, single-family ⁴	N	N	N	P	N
Dwelling, temporary	N	N	N	N	N
Dwelling, two-family ⁴	N	N	N	P	P
Manufactured home	N	N	N	N	N
Manufactured/mobile home park	N	N	N	N	N
Protective housing facility	N	N	N	N	N
Rehabilitation/treatment facility	N	P	P	P	P
Residential facility for elderly persons ¹	P	N	N	P	P
Residential facility for persons with a disability ¹	P	N	N	P	P

Residential facility for troubled youth	N	N	N	N	N
Transitional housing facility	N	N	N	N	N
Public and civic uses:					
Auditorium or stadium	N	P	P	P	N
Bus terminal	N	P	P	P	N
Cemetery	P	P	P	P	P
Church or place of worship	P	P	P	P	P
Club or service organization	P	P	P	P	P
Convalescent care facility	N	P	P	P	N
Cultural service	P	P	P	P	P
Golf course	P	P	P	P	P
Government service	N	P	P	P	N
Hospital	N	P	P	P	N
Operations center	N	P	P	P	P
Park	P	P	P	P	P
Post office	P	P	P	P	P
Protective service	P	P	P	P	P

Reception center	C	P	P	P	P
Utility, major ³	N	N	N	C	C
Utility, minor ³	P	P	P	P	P
Utility substation ³	P	P	P	P	P
Commercial uses:					
Agricultural sales and service	N	P	P	P	N
Animal hospital	P	P	P	P	N
Bail bond service	N	P	P	P	N
Bank or financial institution	P	P	P	P	P
Bed and breakfast, home	N	N	N	N	N
Bed and breakfast inn	P	P	P	P	N
Business equipment rental, services, and supplies	P	P	P	P	P
Car wash	P	P	P	P	P
Club, private	N	P	P	P	N
Construction sales and service	N	P	P	N	N
Convenience store	P	P	P	P	P

Family child daycare facility ²	P	N	N	<u>PN</u>	N
Family child group daycare facility ²	P	N	N	<u>PN</u>	N
Family child residential certificate care facility ²	P	N	N	<u>PN</u>	N
Family childcare center	P	P	P	P	P
Funeral home	N	P	P	P	N
Garden center	P	P	P	P	P
Gas and fuel, storage and sales	N	N	C	N	N
Gasoline service station	P	P	P	P	N
Hostel	N	P	P	P	N
Hotel	N	P	P	P	N
Kennel	C	P	C	C	C
Kennel, residential	P	N	N	N	N
Laundry or dry cleaning, limited	P	P	P	P	P
Liquor store	N	P	P	P	N
Media service	P	P	P	P	P
Medical or dental laboratory	N	P	P	P	N

Medical service	P	P	P	P	P
Motel	N	P	P	P	N
Office, general	P	P	P	P	P
Parking garage, public	N	P	P	P	P
Parking lot, public	N	P	P	P	P
Pawnshop	N	N	P	P	N
Personal care service	P	P	P	P	P
Personal instruction service	P	P	P	P	P
Printing and copying, limited	P	P	P	P	P
Printing, general	N	P	P	P	P
Produce stand	P	P	P	<u>PN</u>	P
Recreation and entertainment, indoor	P	P	P	P	P
Recreation and entertainment, outdoor	N	P	P	P	N
Recreational vehicle park	N	N	P	<u>NP</u>	N
Repair service	P	P	P	<u>NCP</u>	P
Research service	N	P	P	<u>NP</u>	N
Restaurant, fast food	P	P	P	P	P

Restaurant, general	P	P	P	P	P
Retail, general	P	P	P	P	P
Secondhand store	P	P	P	P	P
Shopping center	P	P	P	P	P
Takeoff and landing of aircraft	N	N	N	N	N
Tattoo establishment	P	P	P	N	N
Tavern	N	P	P	P	N
Temporary trailer	P	P	P	P	P
Transportation service	N	P	P	NC P	N
Vehicle and equipment rental or sale	N	P	P	NC P	N
Vehicle and equipment repair, general	N	P	P	N	N
Vehicle repair, limited	N	P	P	NC P	P
Veterinary service	P	P	P	N	N
Warehouse, self-service storage	P	P	N	N	N
Wireless telecommunication facility	See section 10-50-5 , table 10-50-1 of this title				
Industrial uses:					
Laundry services	N	N	N	P	N

7

Wholesale and warehousing, general	N	N	N	P	N
Wholesale and warehousing, limited	N	N	N	N	N

Notes:

1. See chapter 46 of this title.
2. See chapter 42 of this title.
3. See chapter 45 of this title.

4. In the area designated as Downtown District on the General Plan map, existing single family residential uses may continue as permitted residential uses. Use and development standards for an R-1-8 Zone shall apply. Existing approved multi-family and two family uses may continue as permitted residential uses. Use and development standards for an RM-2 Zone would apply. No new residential uses are permitted.

(Ord. 2016-11, 11-17-2016; amd. Ord. 2017-14, 8-17-2017)

B. Accessory Uses: Permitted and conditional uses set forth in [table 10-15-1](#) of this section shall be deemed to include accessory uses and activities that are necessarily and customarily associated with and incidental and subordinate to such uses.

1. Accessory uses shall be subject to the same regulations that apply to permitted and conditional uses in the same zone except as otherwise expressly provided in this title.

2. No accessory use, building, or structure shall be allowed on a lot unless a permitted or conditional use has been established. (Ord. 2017-14, 8-17-2017)

3. Accessory uses in commercial zones shall include, but not be limited to, the following:

Accessory dwelling units attached to a commercial permitted use structure or on the same lot and under same ownership as a permitted use structure.

Accessory dwelling units for security and maintenance personnel.

Cafeterias, dining halls and similar food service facilities when located within the main use and operated primarily for the convenience of employees, residents, clients, or visitors to the main use.

Garages and off street parking areas, subject to applicable standards of chapter 34, "Off Street Parking And Loading", of this title.

Recreational areas and facilities for the use of employees.

Recycling collection stations.

Refreshment stands and food and beverage sales located in uses involving public assembly.

Temporary uses, subject to applicable standards of chapter 48, "Temporary Uses", of this title. (Ord. 2012-8, 10-18-2012; amd. Ord. 2017-14, 8-17-2017)

C. Conditional Uses

- ~~1. Conditional uses may be considered by the Planning Commission if the use fits with the surrounding uses and will not cause any objectionable conditions as laid out in 10-15-7~~
- ~~2. For a repair service, transportation service, or vehicle and equipment rental or sale these uses should be near major roadways and have sufficient setback from residential parts of the development~~

10-15-4: DEVELOPMENT STANDARDS:

Development standards within commercial zones shall be as set forth in [table 10-15-2](#) of this section.

TABLE 10-15-2

DEVELOPMENT STANDARDS IN COMMERCIAL ZONES

Development Standard	Zones				
	NC	GC	HC	PC	POC
Lot standards:					
Minimum lot area	No requirement	No requirement	No requirement	5 acres (see note 3)	5 acres

Commented [1]: Probably need an exact number but no idea what that should be

Commented [2]: Should be moved to 10-15-7

Commented [3R3]: But leave cross-reference in the footnote so it is clear where to go to look for the standards.

Minimum lot width	No requirement	No requirement	No requirement	No requirement	No requirement
Building standards:					
Maximum height, main building ¹	35 feet	35 feet	35 feet	55 feet	55 feet
Maximum height, accessory building	20 feet	20 feet	20 feet	20 feet	20 feet
Setback standards - front yard:					
All buildings ²	20 feet	20 feet	20 feet	<u>10', corner lots 20' 20 feet</u>	20 feet
Setback standards - rear yard:					
Main building	New building on a lot abutting an existing agricultural or residential use: 10 feet Otherwise: No requirement				
Accessory building					
Setback standards - interior side yard:					
Main building	New building on a lot abutting an existing agricultural or residential use: 10 feet Otherwise: No requirement				
Accessory building					
Setback standards - street side yard:					

Main building	20 feet	20 feet	20 feet	20 feet	20 feet
Accessory building	Not permitted	Not permitted	Not permitted	Not permitted	Not permitted

Notes:

1. Except as otherwise permitted by subsection [10-15-7A](#) of this chapter.
2. Except as modified by the provisions of subsection [10-37-12F](#), "Setback Measurement", of this title.
3. An area less than five acres may be zoned for Planned ~~Commercial~~ [Commercial](#) use if the City Council finds that the zoning meets the following:
 - a. The zone change meets the standards within Hurricane City Code 10-7-7.
 - b. The property is ~~sufciently-incorporated~~ [incorporated](#) into an ~~existing~~ [existing](#) commercial or multi-family development, and the proposed change will further the purpose of the ~~Planneding~~ [Planned](#) ~~Commercial~~ [Commercial](#) Zone.

(Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

10-15-5: REGULATIONS OF GENERAL APPLICABILITY:

The use and development of real property in commercial zones shall conform to regulations of general applicability as set forth in the following chapters of this title:

- A. Design and compatibility standards: See chapter 33 of this title.
- B. Landscaping and screening: See chapter 32 of this title.
- C. Motor vehicle access: See chapter 35 of this title.
- D. Natural resource inventory: See chapter 31 of this title.
- E. Off street parking: See chapter 34 of this title.
- F. Signs: See chapter 36 of this title.
- G. Supplementary development standards: See chapter 37 of this title. (Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

10-15-6: REGULATIONS FOR SPECIFIC USES:

To the extent that use and development of real property includes any matter encompassed by a regulation for a specific use as set forth in division 6 of this title, such regulation shall apply in addition to the requirements of this chapter and shall prevail over any conflicting provision of this chapter. (Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

10-15-7: SPECIAL REGULATIONS:

A. Increased Height: Notwithstanding the height limitations shown in section [10-15-4](#), table [10-15-2](#) of this chapter a greater building height may be allowed in a commercial zone for a commercial use pursuant to a conditional use permit.

B. Use Within An Enclosed Building: Each use specified in section [10-15-3](#), table [10-15-1](#) of this chapter shall be conducted completely within a completely enclosed building, except for the parking of motor vehicles and services to persons therein.

C. Dust, Odor, Smoke, Noise, And Vibration: Each use specified in section [10-15-3](#), table [10-15-1](#) of this chapter shall be free from objectionable dust, odor, smoke, noise, and vibration.

D. Highway Commercial Zone Location: For property abutting SR-9, the Highway Commercial Zone shall begin at the highway right-of-way line and shall extend a distance of five hundred feet (500') from the State highway right-of-way line.

E. Vendor Carts: Vendor carts, as defined below, are subject to the following definitions, rules and limitations:

10-15-8: Planned Commercial Standards

A. Planned Commercial Developments shall incorporate elements of commercial and residential within each zoned area and development.

B. Mix Use Types: Planning Commercial Developments shall incorporate both commercial and residential uses.

a. Horizontal Mix Use: Development that combines single-use buildings on distinct parcels in a range of land uses in a planned development project.

b. Vertical Mixed Use: Development that combines different uses in the same building. Commercial or public uses shall only occupy lower levels.

A-c. Live/work Units: A live/work unit is defined as a single unit consisting of both a commercial/office and a residential component that is occupied by the same resident. The live/work unit shall be the primary dwelling of the occupant. Livework units must be deed-restricted that these units may only be owner-occupied and can not be sublet to long-term or short-term renters.

Commented [4]: Limit the size of live work to single bed room at most.

Commented [5]: Allow for long term renter for the full unit or owner occupied.

C. A preliminary site plan shall be submitted with every zone change to Planned Commercial.

D. Planned Commercial Development Site Plans shall have:

- a. A minimum of 20% of the development floor-area shall be used for commercial uses listed within table 10-15-1. A minimum of 20% of the development floor-area shall be used for long-term residential use as listed within table 10-15-1.
 - i. The residential vs commercial area shall be calculated based on the intended use of improvements such as buildings, features, amenities, and infrastructure for either commercial or residential needs. Improvements intended to support both residential and commercial shall be calculated based on the percentage of the improvements that will be impacted either by commercial or residential needs. Mix Use Buildings use percentage shall be calculated in the same manner as calculating area for density.
 - ii. The Preliminary Site Plan shall show general areas and proposed percentages of use. Applicants shall provide final percentages of uses within the final site plan application. Percentage calculations shall be approved by the Planning Commission.
- b. The Planning Commission may approve a lower percentage of housing for developments that are adjacent to multi-family development.
- c. The Planning Commission may approve a lower percentage for commercial development if the project is located within or adjacent to existing commercial property.
- d. Each project shall have a mixture of residential and commercial use.
- e. Residential Density: Projects that contain 20%-39% area as Commercial space shall not exceed 15 units an acre for residential areas. Projects that contain a minimum of 40% area as Commercial space shall not exceed 20 units an acre for residential areas.
 1. Horizontal Mix Use: Residential areas shall be calculated based on the footprint of residential buildings and sections of buildings, parking, amenities, and roadways that primarily serve residential areas.
 2. Vertical Mix Use: Buildings shall be measured by the percentage of space within the building that is used to occupy commercial vs residential. Then the percentage of each use shall apply to the footprint of the building to calculate density, including residential parking, amenities, and roadways that primarily serve residential areas.

3. Example: If a two-story building has a building footprint of 10,000 sq. ft. and the first floor is completely commercial use and the second floor is residential use, then 5,000 sq. ft. shall count towards the density of residential use.
 4. Live/work Units: Units that meet the definition contained within the chapter shall be considered commercial use and shall not count toward the overall density of the project.
 5. Shared Uses: Amenities and parking shall be designed with both commercial and residential uses in mind. Amenities that both serve residential and commercial uses shall count toward residential density areas.
 6. Parking: Shared Parking must comply with Hurricane City Code 10-34-9.
- f. A development agreement between the city and the applicant may be required by the city council and executed before the zoning designation shall be effective.
- The area use shall be calculated based on the intended use of improvements such as buildings, features, amenities, and infrastructure for either commercial or residential needs. Improvements intended to support both residential and commercial shall be calculated based on the percentage of the improvements that will be impacted either by commercial or residential needs. Mix Use Buildings use percentage shall be calculated in the same manner as calculating area for density.
- The Planning Commission may approve a lower percentage of housing for developments that are adjacent to multi-family development.
- The Planning Commission may approve a lower percentage for commercial development if the project is located within or adjacent to existing commercial property.
1. Each project shall have a mixture of use, including commercial and housing.
1. gb. A development agreement between the city and the applicant may be required by the city council and executed before the zoning designation shall be effective.

C. Each Planned Commercial development shall provide a preliminary site and final site plan as required in Hurricane City Code 10-7.

D. Landscaping: Landscaping within a Planned Commercial development shall follow the following standards:

1. Street trees are required for every 50' of frontage. These trees may be incorporated within park strips, landscape buffers, or planter boxes within the right-of-way.
2. The applicant shall comply with Hurricane City Standards for landscaping.
3. In lieu of a 10' landscaping buffer along the right-of-way frontage, an applicant can provide that space for sidewalks, outdoor dining, and retail space that enhances the neighborhood's walkability.
4. Parking lots and parking courts shall remain buffered by a 10' landscape area with one tree and three shrubs for every 35' linear feet.

Commented [6]: Buffered from what? From the street?

E. Off Street Parking: Parking lots shall not be located in front of buildings nearest the right-of-way but shall be contained within parking courts located to the side or behind buildings that front the right-of-way. Buildings may be located behind parking lots if other buildings are fronting onto the right-of-way, and a pedestrian path can be used to access the building from the right-of-way.

F. Street Design: A Developer or the City may propose different street cross-sections that enhance walkability, street life, outdoor gathering, traffic calming, street parking, and beautification. The City Council may must approve a different streetnew cross-section with a recommendation from the Planning Commission.

10-11-2: ZONE PURPOSES:

D. Commercial Zones: Commercial zones provide areas where a combination of business, commercial, entertainment, office, and related activities may be established, maintained and protected. Commercial zones are intended to provide a suitable environment for those commercial and service uses vital to the economic base of the city.

4. The purpose of the PC zone is to provide areas of mixed use developments where a combination of ~~destination-oriented~~destination-oriented business, retail commercial, entertainment, high density housing, and related uses may be established, maintained, and protected to serve both residents and nonresidents of the city. Typical uses in this zone include large scale, master planned commercial centers with outlying commercial pads, big box stores, offices, and various types of high density residential uses.

10-15-1: PURPOSE:

See section [10-11-2](#) of this title. (Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

10-15-2: SC10-15-1: PURPOSE:

See section [10-11-2](#) of this title. (Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

SCOPE:

The provisions of this chapter shall apply to any real property located in a commercial zone as shown on the official zoning map. No building, structure or real property shall be used and no building or structure shall be hereafter erected, structurally or substantially altered, or enlarged except as set forth in this chapter. Such requirements shall not be construed to prohibit or limit other applicable provisions of this title, this Code, or other laws. (Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

10-15-3: USES ALLOWED:

A. Permitted And Conditional Uses: Permitted and conditional uses allowed within commercial zones shall be as set forth in [table 10-15-1](#) of this section. Permitted and conditional uses are indicated by a "P" or "C", respectively, in the appropriate column. Uses not permitted are indicated by "N". Any use not shown on [table 10-15-1](#) of this section shall be prohibited unless the Zoning Administrator determines the use is substantially the same as a permitted or conditional use as provided in subsection [10-7-18E4](#) of this title.

TABLE 10-15-1

PERMITTED AND CONDITIONAL USES ALLOWED IN COMMERCIAL ZONES

	Zones				
Use	NC	GC	HC	PC	POC

Residential uses:					
Building, accessory	P	N	N	P	P
Dwelling, multiple-family ⁴	N	N	N	P	P
Dwelling, single-family ⁴	N	N	N	P	N
Dwelling, temporary	N	N	N	N	N
Dwelling, two-family ⁴	N	N	N	P	P
Manufactured home	N	N	N	N	N
Manufactured/mobile home park	N	N	N	N	N
Protective housing facility	N	N	N	N	N
Rehabilitation/treatment facility	N	P	P	P	P
Residential facility for elderly persons ¹	P	N	N	P	P
Residential facility for persons with a disability ¹	P	N	N	P	P

Residential facility for troubled youth	N	N	N	N	N
Transitional housing facility	N	N	N	N	N
Public and civic uses:					
Auditorium or stadium	N	P	P	P	N
Bus terminal	N	P	P	P	N
Cemetery	P	P	P	P	P
Church or place of worship	P	P	P	P	P
Club or service organization	P	P	P	P	P
Convalescent care facility	N	P	P	P	N
Cultural service	P	P	P	P	P
Golf course	P	P	P	P	P
Government service	N	P	P	P	N
Hospital	N	P	P	P	N
Operations center	N	P	P	P	P
Park	P	P	P	P	P
Post office	P	P	P	P	P
Protective service	P	P	P	P	P

Reception center	C	P	P	P	P
Utility, major ³	N	N	N	C	C
Utility, minor ³	P	P	P	P	P
Utility substation ³	P	P	P	P	P
Commercial uses:					
Agricultural sales and service	N	P	P	P	N
Animal hospital	P	P	P	P	N
Bail bond service	N	P	P	P	N
Bank or financial institution	P	P	P	P	P
Bed and breakfast, home	N	N	N	N	N
Bed and breakfast inn	P	P	P	P	N
Business equipment rental, services, and supplies	P	P	P	P	P
Car wash	P	P	P	P	P
Club, private	N	P	P	P	N
Construction sales and service	N	P	P	N	N
Convenience store	P	P	P	P	P

Family child daycare facility ²	P	N	N	<u>PN</u>	N
Family child group daycare facility ²	P	N	N	<u>PN</u>	N
Family child residential certificate care facility ²	P	N	N	<u>PN</u>	N
Family childcare center	P	P	P	P	P
Funeral home	N	P	P	P	N
Garden center	P	P	P	P	P
Gas and fuel, storage and sales	N	N	C	N	N
Gasoline service station	P	P	P	P	N
Hostel	N	P	P	P	N
Hotel	N	P	P	P	N
Kennel	C	P	C	C	C
Kennel, residential	P	N	N	N	N
Laundry or dry cleaning, limited	P	P	P	P	P
Liquor store	N	P	P	P	N
Media service	P	P	P	P	P
Medical or dental laboratory	N	P	P	P	N

Medical service	P	P	P	P	P
Motel	N	P	P	P	N
Office, general	P	P	P	P	P
Parking garage, public	N	P	P	P	P
Parking lot, public	N	P	P	P	P
Pawnshop	N	N	P	P	N
Personal care service	P	P	P	P	P
Personal instruction service	P	P	P	P	P
Printing and copying, limited	P	P	P	P	P
Printing, general	N	P	P	P	P
Produce stand	P	P	P	<u>PN</u>	P
Recreation and entertainment, indoor	P	P	P	P	P
Recreation and entertainment, outdoor	N	P	P	P	N
Recreational vehicle park	N	N	P	<u>NP</u>	N
Repair service	P	P	P	<u>CP</u>	P
Research service	N	P	P	<u>NP</u>	N
Restaurant, fast food	P	P	P	P	P

Restaurant, general	P	P	P	P	P
Retail, general	P	P	P	P	P
Secondhand store	P	P	P	P	P
Shopping center	P	P	P	P	P
Takeoff and landing of aircraft	N	N	N	N	N
Tattoo establishment	P	P	P	N	N
Tavern	N	P	P	P	N
Temporary trailer	P	P	P	P	P
Transportation service	N	P	P	CP	N
Vehicle and equipment rental or sale	N	P	P	CP	N
Vehicle and equipment repair, general	N	P	P	N	N
Vehicle repair, limited	N	P	P	CP	P
Veterinary service	P	P	P	N	N
Warehouse, self-service storage	P	P	N	N	N
Wireless telecommunication facility	See section 10-50-5 , table 10-50-1 of this title				
Industrial uses:					
Laundry services	N	N	N	P	N

I

Wholesale and warehousing, general	N	N	N	P	N
Wholesale and warehousing, limited	N	N	N	N	N

Notes:

1. See chapter 46 of this title.
2. See chapter 42 of this title.
3. See chapter 45 of this title.

4. In the area designated as Downtown District on the General Plan map, existing single family residential uses may continue as permitted residential uses. Use and development standards for an R-1-8 Zone shall apply. Existing approved multi-family and two family uses may continue as permitted residential uses. Use and development standards for an RM-2 Zone would apply. No new residential uses are permitted.

(Ord. 2016-11, 11-17-2016; amd. Ord. 2017-14, 8-17-2017)

B. Accessory Uses: Permitted and conditional uses set forth in [table 10-15-1](#) of this section shall be deemed to include accessory uses and activities that are necessarily and customarily associated with and incidental and subordinate to such uses.

1. Accessory uses shall be subject to the same regulations that apply to permitted and conditional uses in the same zone except as otherwise expressly provided in this title.

2. No accessory use, building, or structure shall be allowed on a lot unless a permitted or conditional use has been established. (Ord. 2017-14, 8-17-2017)

3. Accessory uses in commercial zones shall include, but not be limited to, the following:

Accessory dwelling units attached to a commercial permitted use structure or on the same lot and under same ownership as a permitted use structure.

Accessory dwelling units for security and maintenance personnel.

Cafeterias, dining halls and similar food service facilities when located within the main use and operated primarily for the convenience of employees, residents, clients, or visitors to the main use.

Garages and off street parking areas, subject to applicable standards of chapter 34, "Off Street Parking And Loading", of this title.

Recreational areas and facilities for the use of employees.

Recycling collection stations.

Refreshment stands and food and beverage sales located in uses involving public assembly.

Temporary uses, subject to applicable standards of chapter 48, "Temporary Uses", of this title. (Ord. 2012-8, 10-18-2012; amd. Ord. 2017-14, 8-17-2017)

C. Conditional Uses

1. Conditional uses may be considered by the Planning Commission if the use fits with the surrounding uses and will not cause any objectionable conditions as laid out in 10-15-7
2. For a repair service, transportation service, or vehicle and equipment rental or sale these uses should be near major roadways and have sufficient setback from residential parts of the development

10-15-4: DEVELOPMENT STANDARDS:

Development standards within commercial zones shall be as set forth in [table 10-15-2](#) of this section.

TABLE 10-15-2

DEVELOPMENT STANDARDS IN COMMERCIAL ZONES

Development Standard	Zones				
	NC	GC	HC	PC	POC
Lot standards:					
Minimum lot area	No requirement	No requirement	No requirement	5 acres (see note 3)	5 acres

Commented [1]: Probably need an exact number but no idea what that should be

Commented [2]: Should be moved to 10-15-7

Commented [3R3]: But leave cross-reference in the footnote so it is clear where to go to look for the standards.

Minimum lot width	No requirement	No requirement	No requirement	No requirement	No requirement
Building standards:					
Maximum height, main building ¹	35 feet	35 feet	35 feet	55 feet	55 feet
Maximum height, accessory building	20 feet	20 feet	20 feet	20 feet	20 feet
Setback standards - front yard:					
All buildings ²	20 feet	20 feet	20 feet	<u>10', corner lots 20' 20 feet</u>	20 feet
Setback standards - rear yard:					
Main building	New building on a lot abutting an existing agricultural or residential use: 10 feet Otherwise: No requirement				
Accessory building					
Setback standards - interior side yard:					
Main building	New building on a lot abutting an existing agricultural or residential use: 10 feet Otherwise: No requirement				
Accessory building					
Setback standards - street side yard:					

Main building	20 feet	20 feet	20 feet	20 feet	20 feet
Accessory building	Not permitted	Not permitted	Not permitted	Not permitted	Not permitted

Notes:

1. Except as otherwise permitted by subsection [10-15-7A](#) of this chapter.
2. Except as modified by the provisions of subsection [10-37-12F](#), "Setback Measurement", of this title.
3. An area less than five acres may be zoned for Planned Commercial use if the City Council finds that the zoning meets the following:
 - a. The zone change meets the standards within Hurricane City Code 10-7-7.
 - b. The property is ~~sufficiently incorporated~~ incorporated into an ~~existing~~ existing commercial or multi-family development, and the proposed change will further the purpose of the Planned ~~Commercial~~ Commercial Zone.

(Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

10-15-5: REGULATIONS OF GENERAL APPLICABILITY:

The use and development of real property in commercial zones shall conform to regulations of general applicability as set forth in the following chapters of this title:

- A. Design and compatibility standards: See chapter 33 of this title.
- B. Landscaping and screening: See chapter 32 of this title.
- C. Motor vehicle access: See chapter 35 of this title.
- D. Natural resource inventory: See chapter 31 of this title.
- E. Off street parking: See chapter 34 of this title.
- F. Signs: See chapter 36 of this title.
- G. Supplementary development standards: See chapter 37 of this title. (Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

10-15-6: REGULATIONS FOR SPECIFIC USES:

To the extent that use and development of real property includes any matter encompassed by a regulation for a specific use as set forth in division 6 of this title, such regulation shall apply in addition to the requirements of this chapter and shall prevail over any conflicting provision of this chapter. (Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

10-15-7: SPECIAL REGULATIONS:

A. Increased Height: Notwithstanding the height limitations shown in section [10-15-4](#), table [10-15-2](#) of this chapter a greater building height may be allowed in a commercial zone for a commercial use pursuant to a conditional use permit.

B. Use Within An Enclosed Building: Each use specified in section [10-15-3](#), table [10-15-1](#) of this chapter shall be conducted completely within a completely enclosed building, except for the parking of motor vehicles and services to persons therein.

C. Dust, Odor, Smoke, Noise, And Vibration: Each use specified in section [10-15-3](#), table [10-15-1](#) of this chapter shall be free from objectionable dust, odor, smoke, noise, and vibration.

D. Highway Commercial Zone Location: For property abutting SR-9, the Highway Commercial Zone shall begin at the highway right-of-way line and shall extend a distance of five hundred feet (500') from the State highway right-of-way line.

E. Vendor Carts: Vendor carts, as defined below, are subject to the following definitions, rules and limitations:

10-15-8: Planned Commercial Standards

A. Planned Commercial Developments shall incorporate elements of commercial and residential within each zoned area and development.

B. Mix Use Types: Planning Commercial Developments shall incorporate both commercial and residential uses.

a. Horizontal Mix Use: Development that combines single-use buildings on distinct parcels in a range of land uses in a planned development project.

b. Vertical Mixed Use: Development that combines different uses in the same building. Commercial or public uses shall only occupy lower levels.

A-c. Live/work Units: A live/work unit is defined as a single unit consisting of both a commercial/office and a residential component that is occupied by the same resident. The live/work unit shall be the primary dwelling of the occupant. Livework units must be deed-restricted that these units may only be owner-occupied and can not be sublet to long-term or short-term renters.

Commented [4]: Limit the size of live work to single bed room at most.

Commented [5]: Allow for long term renter for the full unit or owner occupied.

C. A preliminary site plan shall be submitted with every zone change to Planned Commercial. Site plan shall have:

- a. A minimum of 20% or 40% of floor area shall be used for commercial uses listed within table 10-15-1. A minimum of 20% of floor area shall be used for long-term residential use as listed within table 10-15-1.
 1. The Planning Commission may approve a lower percentage of housing for developments that are adjacent to multi-family development.
 2. The Planning Commission may approve a lower percentage for commercial development if the project is located within or adjacent to existing commercial property.
 3. Each project shall have a mixture of use, including commercial and housing.
4. Residential Density: Projects that contain 20%-39% floor area as Commercial space shall not exceed 15 units an acre for residential areas. Projects that contain a minimum of 40% floor area as Commercial space shall not exceed 20 units an acre for residential areas. Residential Units shall not exceed 20 units an acre for residential areas.
 - a. Horizontal Mix Use: Residential areas shall be calculated based on the footprint of residential buildings and sections of buildings, parking, amenities, and roadways that primarily serve residential areas.
 - b. Vertical Mix Use: Buildings shall be measured by the percentage of space within the building that is used to occupy commercial vs residential. Then the percentage of each use shall apply to the footprint of the building to calculate density, including residential parking, amenities, and roadways that primarily serve residential areas.
 - i. Example: If a two-story building has a building footprint of 10,000 sq. ft. and the first floor is completely commercial use and the second floor is residential use, then 5,000 sq. ft. shall count towards the density of residential use.
 - c. Live/work Units: Units that meet the definition contained within the chapter shall be considered commercial use and shall not count toward the overall density of the project.
 - d. Shared Uses: Amenities and parking shall be designed with both commercial and residential uses in mind. Amenities that

both serve residential and commercial uses shall count toward residential density area.

i. Parking: Shared Parking must comply with Hurricane City Code 10-34-9.

b. A development agreement between the city and the applicant may be required by the city council and executed before the zoning designation shall be effective.

C. Each Planned Commercial development shall provide a preliminary site and final site plan as required in Hurricane City Code 10-7.

D. Landscaping: Landscaping within a Planned Commercial development shall follow the following standards:

1. Street trees are required for every 50' of frontage. These trees may be incorporated within park strips, landscape buffers, or planter boxes within the right-of-way.
2. The applicant shall comply with Hurricane City Standards for landscaping.
3. In lieu of a 10' landscaping buffer along the right-of-way frontage, an applicant can provide that space for sidewalks, outdoor dining, and retail space that enhances the neighborhood's walkability.
4. Parking lots and parking courts shall remain buffered by a 10' landscape area with one tree and three shrubs for every 35' linear feet.

Commented [6]: Buffered from what? From the street?

E. Off Street Parking: Parking lots shall not be located in front of buildings nearest the right-of-way but shall be contained within parking courts located to the side or behind buildings that front the right-of-way. Buildings may be located behind parking lots if other buildings are fronting onto the right-of-way, and a pedestrian path can be used to access the building from the right-of-way.

F. Street Design: A Developer or the City may propose different street cross-sections that enhance walkability, street life, outdoor gathering, traffic calming, street parking, and beautification. The City Council maymust approve a different streetnew cross-section with a recommendation from the Planning Commission.

Acre	Sq ft	GrossUnits An Acre	Gross Units An Acre at 20
1	43,560.00	15	20
2	87,120.00	30	40
3	130,680.00	45	60
4	174,240.00	60	80
5	217,800.00	75	100
6	261,360.00	90	120
7	304,920.00	105	140
8	348,480.00	120	160
9	392,040.00	135	180
10	435,600.00	150	200
11	479,160.00	165	220
12	522,720.00	180	240
13	566,280.00	195	260
14	609,840.00	210	280
15	653,400.00	225	300
16	696,960.00	240	320
17	740,520.00	255	340
18	784,080.00	270	360
19	827,640.00	285	380
20	871,200.00	300	400

Commercial Building Size	Sq. ft.	Lot Size	SQ FT
Rooster Run	5,362.00		
Lonny Boys Complex	10,930.00	1.9	82756.5
Abry	3,573.00	0.7	30492
1000 W 100 N	7,280.00	1.02	44431
1000 W 100 N	4,784.00	1.02	44431
Wendy's	3,350.00	0.78	33976
Cedar Post Pawn	3,200.00	0.1	4356
Maverik	3,940.00	1.44	62726
21 E State	4,284.00	0.19	8276.4
Main Street Café	1,000.00	0.11	4792
Lins	34,486.00	3.03	131986.8
Southern Utah State Bank	5,716.00	1.48	64469

Min Commercial Space	Commercial Building sq. ft.	
4,356.00	N/A	1,089.00
8,712.00	N/A	2,178.00
13,068.00	N/A	3,267.00
17,424.00	N/A	4,356.00
21,780.00	10,890.00	5,445.00
26,136.00	13,068.00	6,534.00
30,492.00	15,246.00	7,623.00
34,848.00	17,424.00	8,712.00
39,204.00	19,602.00	9,801.00
43,560.00	21,780.00	10,890.00
47,916.00	23,958.00	11,979.00
52,272.00	26,136.00	13,068.00
56,628.00	28,314.00	14,157.00
60,984.00	30,492.00	15,246.00
65,340.00	32,670.00	16,335.00
69,696.00	34,848.00	17,424.00
74,052.00	37,026.00	18,513.00
78,408.00	39,204.00	19,602.00
82,764.00	41,382.00	20,691.00
87,120.00	43,560.00	21,780.00

Percentage	Number of Bussiness
	1
13%	3
12%	1
27%	6
	2
10%	1
73%	1
6%	1
52%	2
21%	1
26%	1
9%	1

		Net Units An Acre 15	Net Units An Acre 20
17,424.00	8,712.00	13.50	18
34,848.00	17,424.00	27.00	36
52,272.00	26,136.00	40.50	54
69,696.00	34,848.00	54.00	72
87,120.00	43,560.00	67.50	90
104,544.00	52,272.00	81.00	108
121,968.00	60,984.00	94.50	126
139,392.00	69,696.00	108.00	144
156,816.00	78,408.00	121.50	162
174,240.00	87,120.00	135.00	180
191,664.00	95,832.00	148.50	198
209,088.00	104,544.00	162.00	216
226,512.00	113,256.00	175.50	234
243,936.00	121,968.00	189.00	252
261,360.00	130,680.00	202.50	270
278,784.00	139,392.00	216.00	288
296,208.00	148,104.00	229.50	306
313,632.00	156,816.00	243.00	324
331,056.00	165,528.00	256.50	342
348,480.00	174,240.00	270.00	360

Units a Sq. ft. 15	Units a Sq. ft. 20
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00
0.00	0.00

Acre	Sq ft	GrossUnits An Acre	Gross Units An Acre at 20
1	43,560.00	15	20
2	87,120.00	30	40
3	130,680.00	45	60
4	174,240.00	60	80
5	217,800.00	75	100
6	261,360.00	90	120
7	304,920.00	105	140
8	348,480.00	120	160
9	392,040.00	135	180
10	435,600.00	150	200
11	479,160.00	165	220
12	522,720.00	180	240
13	566,280.00	195	260
14	609,840.00	210	280
15	653,400.00	225	300
16	696,960.00	240	320
17	740,520.00	255	340
18	784,080.00	270	360
19	827,640.00	285	380
20	871,200.00	300	400

Commercial Building Size	Sq. ft.	Lot Size	SQ FT
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21 E State	4,284.00	0.19	8276.4
Main Street Café	1,000.00	0.11	4792
Lins	34,486.00	3.03	131986.8
Southern Utah State Bank	5,716.00	1.48	64469

Min Commercial Space	Commercial Building sq. ft.	Net Units An Acre 15
6,534.00	N/A	12.75
13,068.00	N/A	25.50
19,602.00	N/A	38.25
26,136.00	N/A	51.00
32,670.00	16,335.00	63.75
39,204.00	19,602.00	76.50
45,738.00	22,869.00	89.25
52,272.00	26,136.00	102.00
58,806.00	29,403.00	114.75
65,340.00	32,670.00	127.50
71,874.00	35,937.00	140.25
78,408.00	39,204.00	153.00
84,942.00	42,471.00	165.75
91,476.00	45,738.00	178.50
98,010.00	49,005.00	191.25
104,544.00	52,272.00	204.00
111,078.00	55,539.00	216.75
117,612.00	58,806.00	229.50
124,146.00	62,073.00	242.25
130,680.00	65,340.00	255.00

Percentage	Number of Bussiness
	1
13%	3
12%	1
27%	6
	2
10%	1
73%	1
6%	1
52%	2
21%	1
26%	1
9%	1

Net Units An Acre 20	Units a Sq. ft. 15	Units a Sq. ft. 20
17	0.00	0.00
34	0.00	0.00
51	0.00	0.00
68	0.00	0.00
85	0.00	0.00
102	0.00	0.00
119	0.00	0.00
136	0.00	0.00
153	0.00	0.00
170	0.00	0.00
187	0.00	0.00
204	0.00	0.00
221	0.00	0.00
238	0.00	0.00
255	0.00	0.00
272	0.00	0.00
289	0.00	0.00
306	0.00	0.00
323	0.00	0.00
340	0.00	0.00

Acre	Sq ft	GrossUnits An Acre	Gross Units An Acre at 20
1	43,560.00	15	20
2	87,120.00	30	40
3	130,680.00	45	60
4	174,240.00	60	80
5	217,800.00	75	100
6	261,360.00	90	120
7	304,920.00	105	140
8	348,480.00	120	160
9	392,040.00	135	180
10	435,600.00	150	200
11	479,160.00	165	220
12	522,720.00	180	240
13	566,280.00	195	260
14	609,840.00	210	280
15	653,400.00	225	300
16	696,960.00	240	320
17	740,520.00	255	340
18	784,080.00	270	360
19	827,640.00	285	380
20	871,200.00	300	400

Commercial Building Size	Sq. ft.	Lot Size	SQ FT
Rooster Run	5,362.00		
Lonny Boys Complex	10,930.00	1.9	82756.5
Abry	3,573.00	0.7	30492
1000 W 100 N	7,280.00	1.02	44431
1000 W 100 N	4,784.00	1.02	44431
Wendy's	3,350.00	0.78	33976
Cedar Post Pawn	3,200.00	0.1	4356
Maverik	3,940.00	1.44	62726
21 E State	4,284.00	0.19	8276.4
Main Street Café	1,000.00	0.11	4792
Lins	34,486.00	3.03	131986.8
Southern Utah State Bank	5,716.00	1.48	64469

Min Commercial Space	Commercial Building sq. ft.	
8,712.00	N/A	13,068.00
17,424.00	N/A	26,136.00
26,136.00	N/A	39,204.00
34,848.00	N/A	52,272.00
43,560.00	21,780.00	65,340.00
52,272.00	26,136.00	78,408.00
60,984.00	30,492.00	91,476.00
69,696.00	34,848.00	104,544.00
78,408.00	39,204.00	117,612.00
87,120.00	43,560.00	130,680.00
95,832.00	47,916.00	143,748.00
104,544.00	52,272.00	156,816.00
113,256.00	56,628.00	169,884.00
121,968.00	60,984.00	182,952.00
130,680.00	65,340.00	196,020.00
139,392.00	69,696.00	209,088.00
148,104.00	74,052.00	222,156.00
156,816.00	78,408.00	235,224.00
165,528.00	82,764.00	248,292.00
174,240.00	87,120.00	261,360.00

Percentage	Number of Bussiness
	1
13%	3
12%	1
27%	6
	2
10%	1
73%	1
6%	1
52%	2
21%	1
26%	1
9%	1

Net Units An Acre 15	Net Units An Acre 20	Units a Sq. ft. 15	Units a Sq. ft. 20
12.00	16	0.00	0.00
24.00	32	0.00	0.00
36.00	48	0.00	0.00
48.00	64	0.00	0.00
60.00	80	0.00	0.00
72.00	96	0.00	0.00
84.00	112	0.00	0.00
96.00	128	0.00	0.00
108.00	144	0.00	0.00
120.00	160	0.00	0.00
132.00	176	0.00	0.00
144.00	192	0.00	0.00
156.00	208	0.00	0.00
168.00	224	0.00	0.00
180.00	240	0.00	0.00
192.00	256	0.00	0.00
204.00	272	0.00	0.00
216.00	288	0.00	0.00
228.00	304	0.00	0.00
240.00	320	0.00	0.00

Acre	Sq ft	GrossUnits An Acr	Gross Units An Acre at 20	Min Commercial Space
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Commercial Building sq. ft.	Net Units An Acre	Net Units An Acre	Units a Sq. ft. 15
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Units a Sq. ft. 20

Acre	Sq ft	GrossUnits An Acre	Gross Units An Acre at 20
1	43,560.00	15	20
2	87,120.00	30	40
3	130,680.00	45	60
4	174,240.00	60	80
5	217,800.00	75	100
6	261,360.00	90	120
7	304,920.00	105	140
8	348,480.00	120	160
8.5	370,260.00	127.5	170
9	392,040.00	135	180
10	435,600.00	150	200
11	479,160.00	165	220
11.8	514,008.00	177	236
12	522,720.00	180	240
13	566,280.00	195	260
14	609,840.00	210	280
15	653,400.00	225	300
16	696,960.00	240	320
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Lins	34,486.00	3.03	131986.8
Southern Utah State Bank	5,716.00	1.48	64469

Min Commercial Space	Commercial Building sq. ft.	Net Units An Acre 15
8,712.00	N/A	12.00
17,424.00	N/A	24.00
26,136.00	N/A	36.00
34,848.00	N/A	48.00
43,560.00	21,780.00	60.00
52,272.00	26,136.00	72.00
60,984.00	30,492.00	84.00
69,696.00	34,848.00	96.00
74,052.00	37,026.00	102.00
78,408.00	39,204.00	108.00
87,120.00	43,560.00	120.00
95,832.00	47,916.00	132.00
102,801.60	51,400.80	141.60
104,544.00	52,272.00	144.00
113,256.00	56,628.00	156.00
121,968.00	60,984.00	168.00
130,680.00	65,340.00	180.00
139,392.00	69,696.00	192.00
148,104.00	74,052.00	204.00
156,816.00	78,408.00	216.00
165,528.00	82,764.00	228.00
174,240.00	87,120.00	240.00

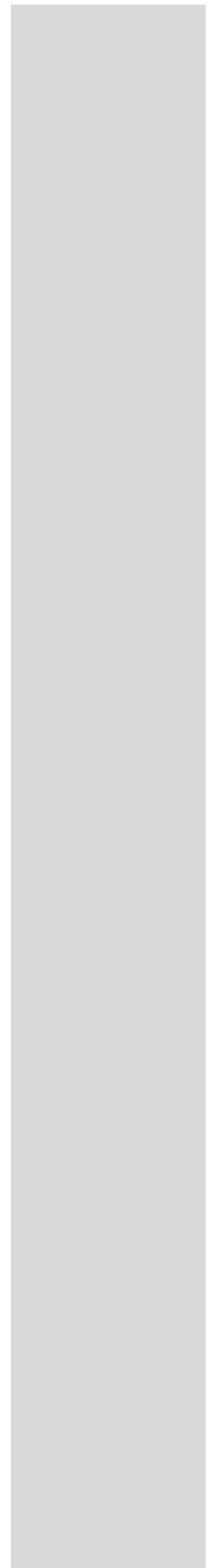
Percentage	Number of Bussiness
	1
13%	3
12%	1
27%	6
	2
10%	1
73%	1
6%	1
52%	2
21%	1
26%	1
9%	1

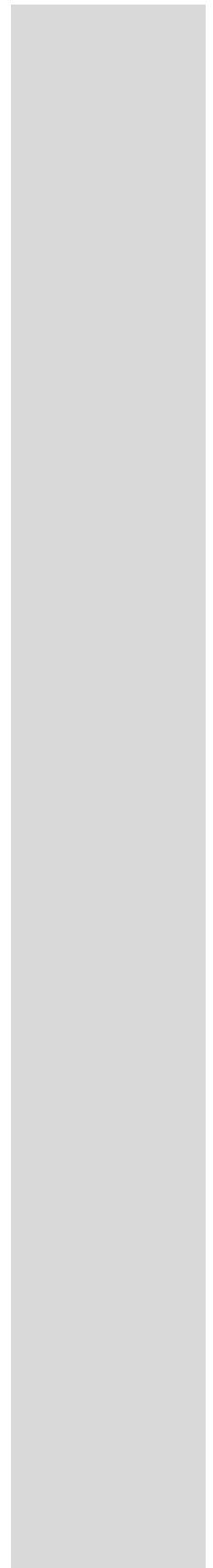
Net Units An Acre 20	Units a Sq. ft. 15	Units a Sq. ft. 20
16	0.00	0.00
32	0.00	0.00
48	0.00	0.00
64	0.00	0.00
80	0.00	0.00
96	0.00	0.00
112	0.00	0.00
128	0.00	0.00
136	0.00	0.00
144	0.00	0.00
160	0.00	0.00
176	0.00	0.00
188.8	0.00	0.00
192	0.00	0.00
208	0.00	0.00
224	0.00	0.00
240	0.00	0.00
256	0.00	0.00
272	0.00	0.00
288	0.00	0.00
304	0.00	0.00
320	0.00	0.00

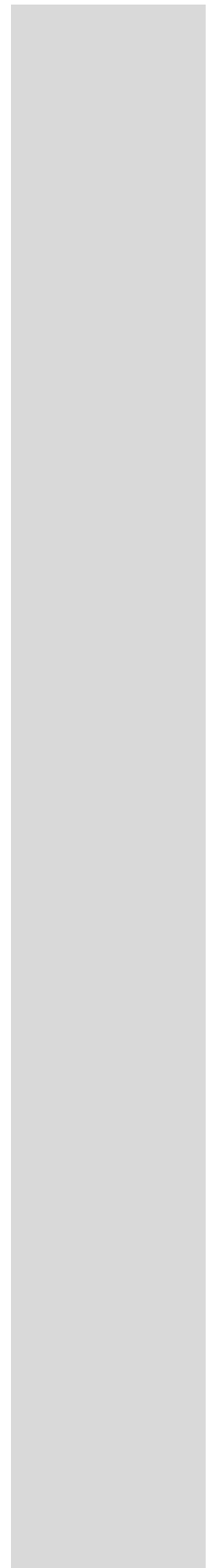
	Zones			
Use	NC	GC	HC	PC
Residential uses:				
Building, accessory	P	N	N	P
Dwelling, multiple-family ⁴	N	N	N	P
Dwelling, single-family ⁴	N	N	N	P
Dwelling, temporary	N	N	N	N
Dwelling, two-family ⁴	N	N	N	P
Manufactured home	N	N	N	N
Manufactured/mobile home	N	N	N	N
Protective housing facility	N	N	N	N
Rehabilitation/treatment facility	N	P	P	P
Residential facility for elderly	P	N	N	P
Residential facility for persons	P	N	N	P
Residential facility for troubled	N	N	N	N
Transitional housing facility	N	N	N	N
Public and civic uses:				
Auditorium or stadium	N	P	P	P
Bus terminal	N	P	P	P
Cemetery	P	P	P	P
Church or place of worship	P	P	P	P
Club or service organization	P	P	P	P
Convalescent care facility	N	P	P	P
Cultural service	P	P	P	P
Golf course	P	P	P	P
Government service	N	P	P	P
Hospital	N	P	P	P
Operations center	N	P	P	P
Park	P	P	P	P
Post office	P	P	P	P
Protective service	P	P	P	P
Reception center	C	P	P	P
Utility, major ³	N	N	N	C
Utility, minor ³	P	P	P	P
Utility substation ³	P	P	P	P
Commercial uses:				
Agricultural sales and service	N	P	P	P
Animal hospital	P	P	P	P
Bail bond service	N	P	P	P
Bank or financial institution	P	P	P	P
Bed and breakfast, home	N	N	N	N

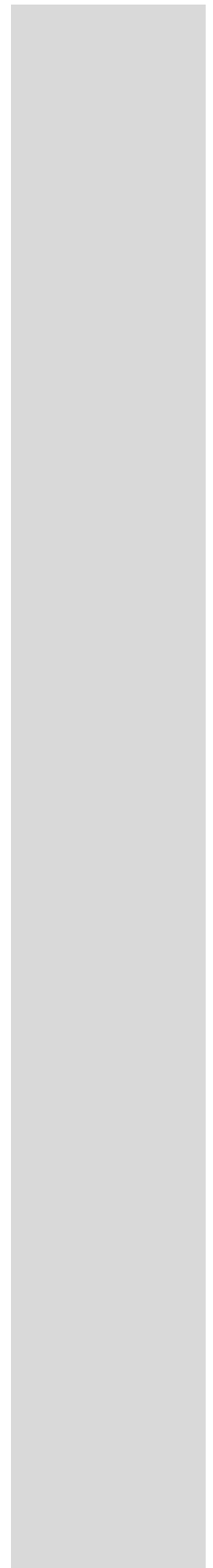
Bed and breakfast inn	P	P	P	P
Business equipment rental,	P	P	P	P
Car wash	P	P	P	P
Club, private	N	P	P	P
Construction sales and service	N	P	P	N
Convenience store	P	P	P	P
Family child daycare facility2	P	N	N	N
Family child group daycare	P	N	N	N
Family child residential	P	N	N	N
Family childcare center	P	P	P	P
Funeral home	N	P	P	P
Garden center	P	P	P	P
Gas and fuel, storage and	N	N	C	N
Gasoline service station	P	P	P	P
Hostel	N	P	P	P
Hotel	N	P	P	P
Kennel	C	P	C	C
Kennel, residential	P	N	N	N
Laundry or dry cleaning, limited	P	P	P	P
Liquor store	N	P	P	P
Media service	P	P	P	P
Medical or dental laboratory	N	P	P	P
Medical service	P	P	P	P
Motel	N	P	P	P
Office, general	P	P	P	P
Parking garage, public	N	P	P	P
Parking lot, public	N	P	P	P
Pawnshop	N	N	P	P
Personal care service	P	P	P	P
Personal instruction service	P	P	P	P
Printing and copying, limited	P	P	P	P
Printing, general	N	P	P	P
Produce stand	P	P	P	N
Recreation and entertainment,	P	P	P	P
Recreation and entertainment,	N	P	P	P
Recreational vehicle park	N	N	P	N
Repair service	P	P	P	C
Research service	N	P	P	N
Restaurant, fast food	P	P	P	P
Restaurant, general	P	P	P	P
Retail, general	P	P	P	P
Secondhand store	P	P	P	P

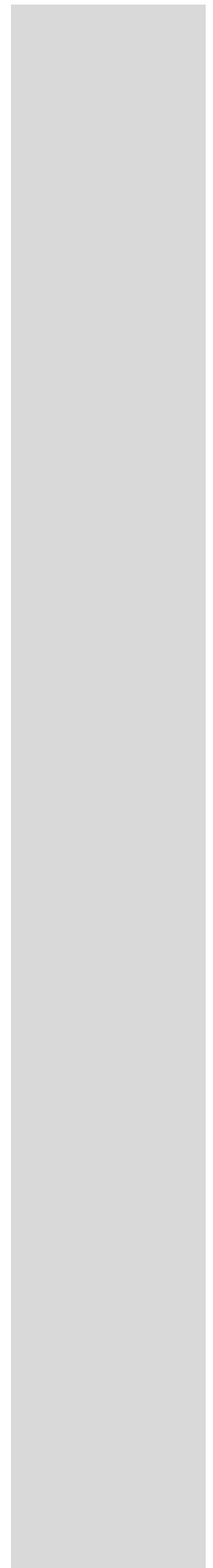
Shopping center	P	P	P	P
Takeoff and landing of aircraft	N	N	N	N
Tattoo establishment	P	P	P	N
Tavern	N	P	P	P
Temporary trailer	P	P	P	P
Transportation service	N	P	P	C
Vehicle and equipment rental	N	P	P	C
Vehicle and equipment repair,	N	P	P	N
Vehicle repair, limited	N	P	P	N
Veterinary service	P	P	P	N
Warehouse, self-service	P	P	N	N
Wireless telecommunication	See section 10-50-5, table 10-50-1 of this title			
Industrial uses:				
Laundry services	N	N	N	P
Wholesale and warehousing,	N	N	N	P
Wholesale and warehousing,	N	N	N	N

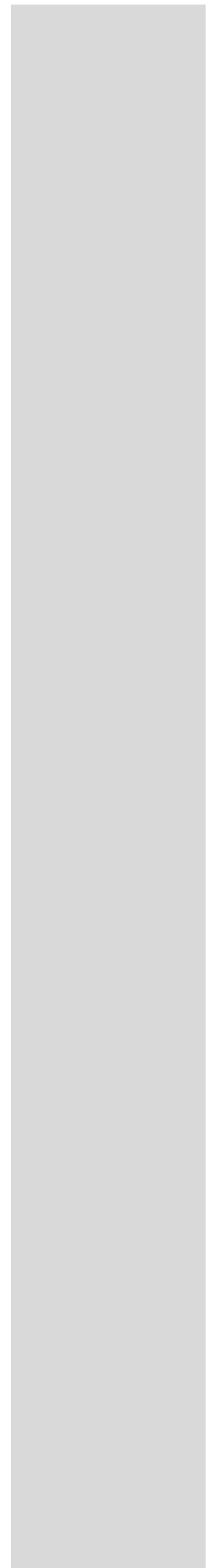


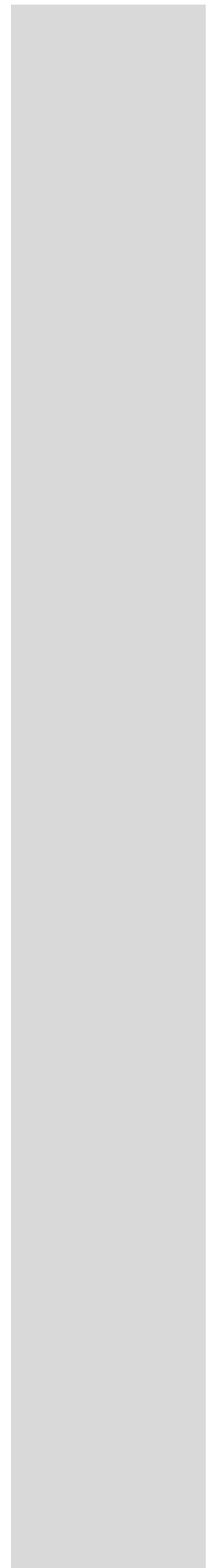


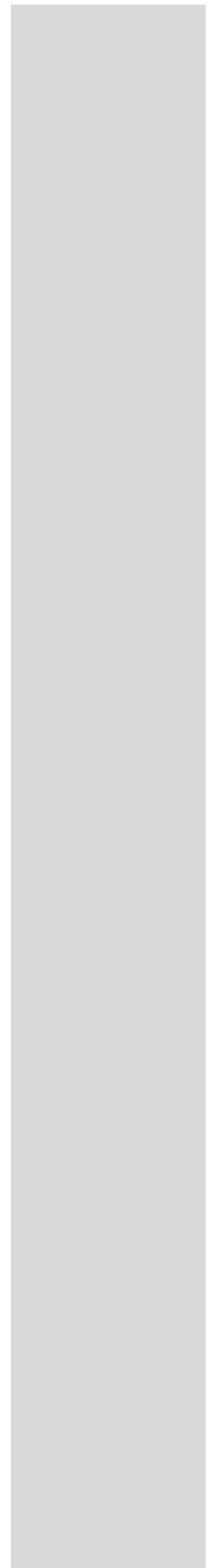


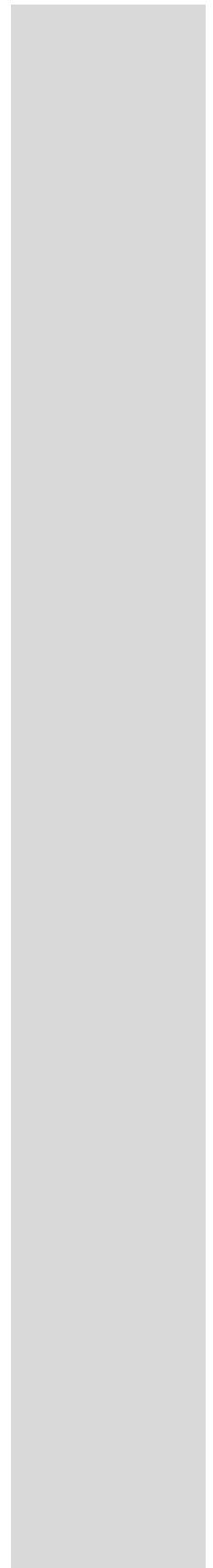


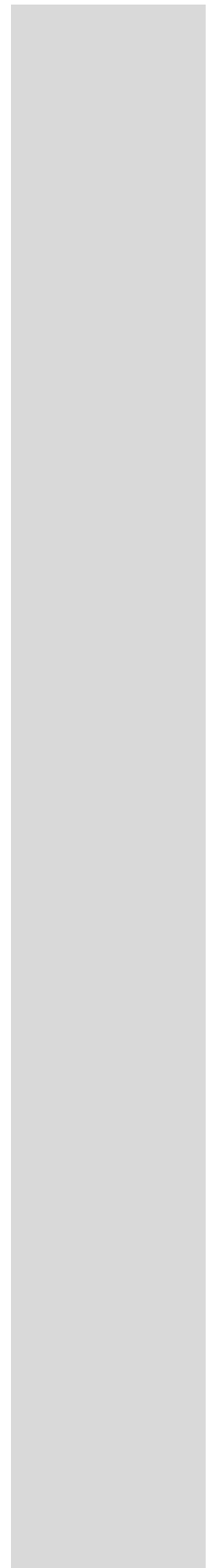


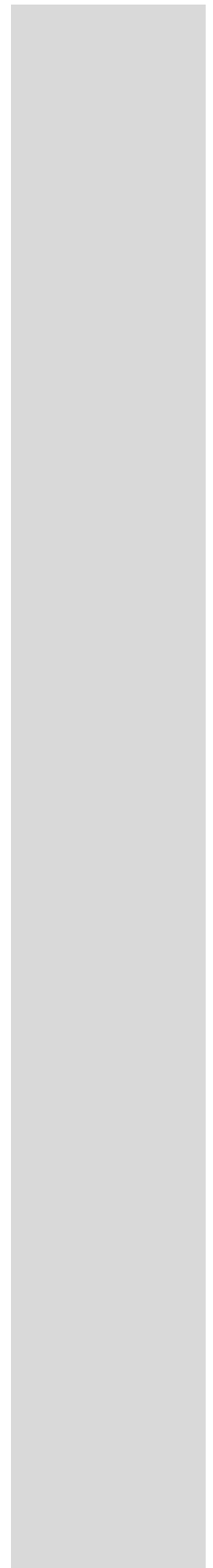


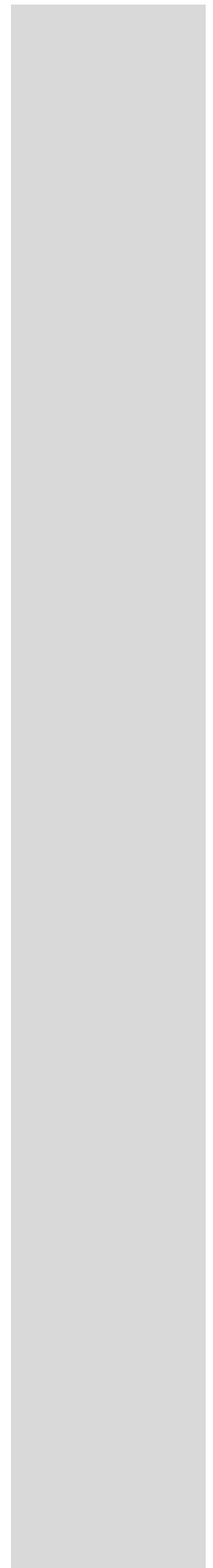


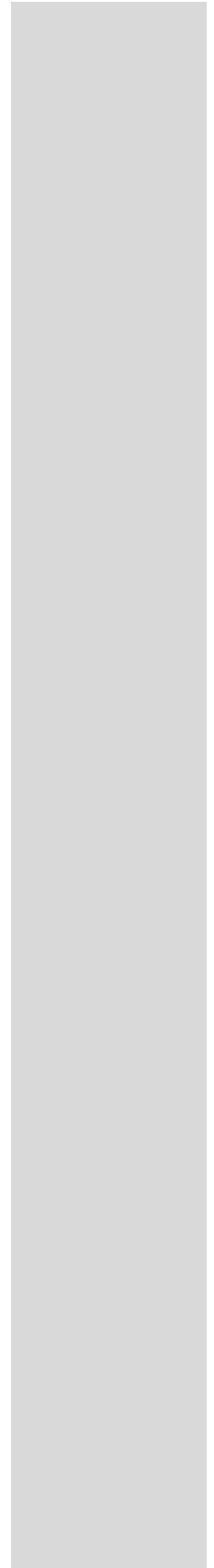


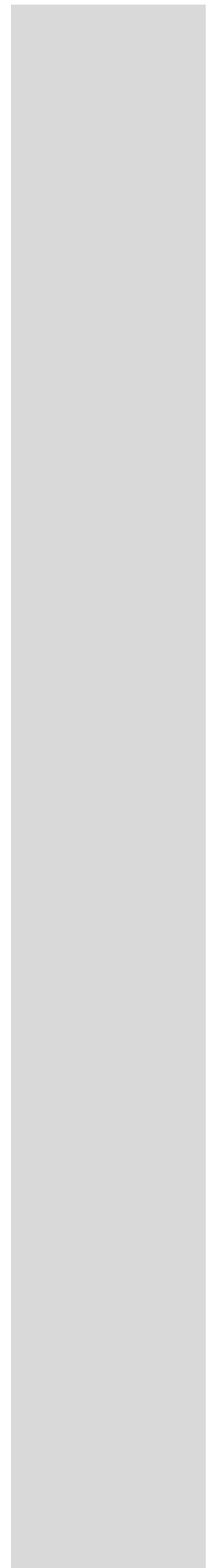


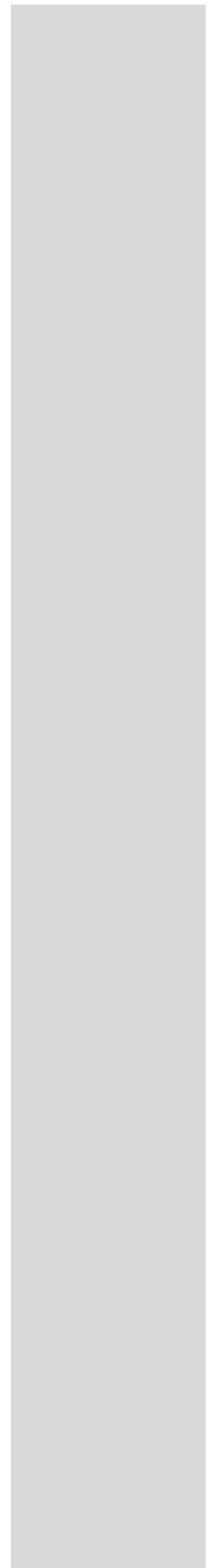


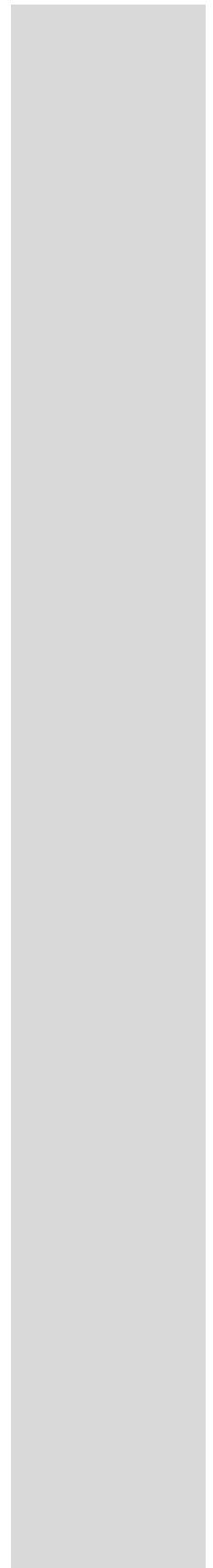


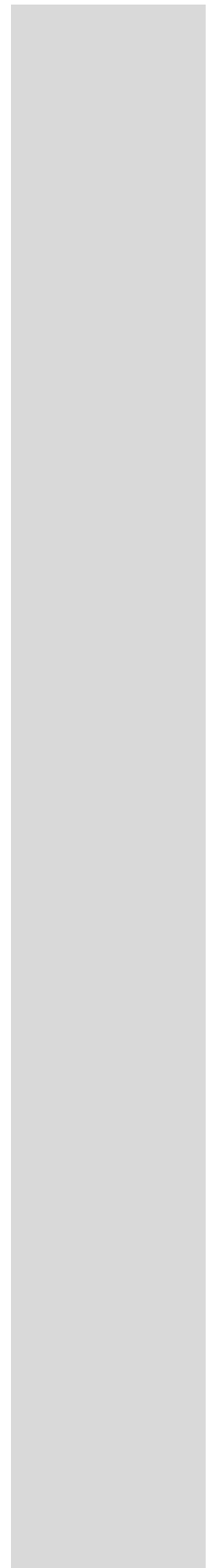


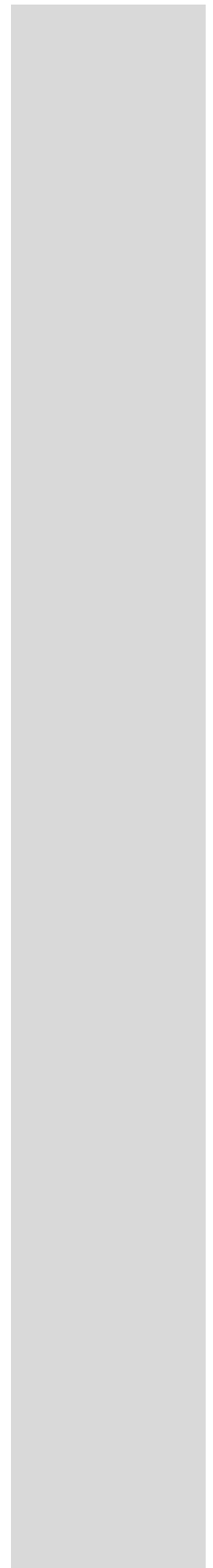


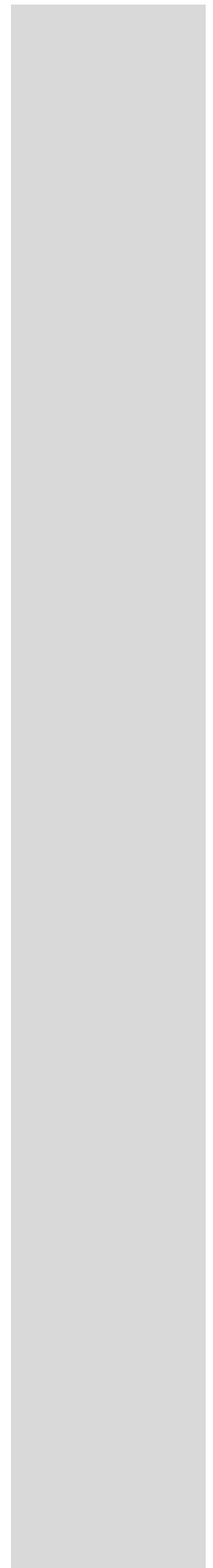


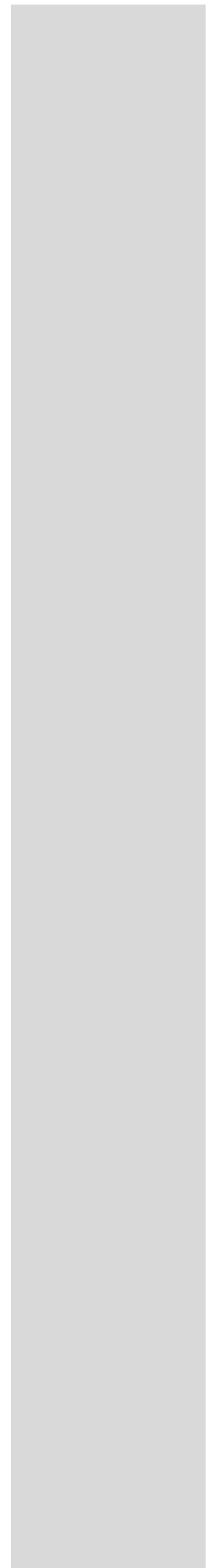


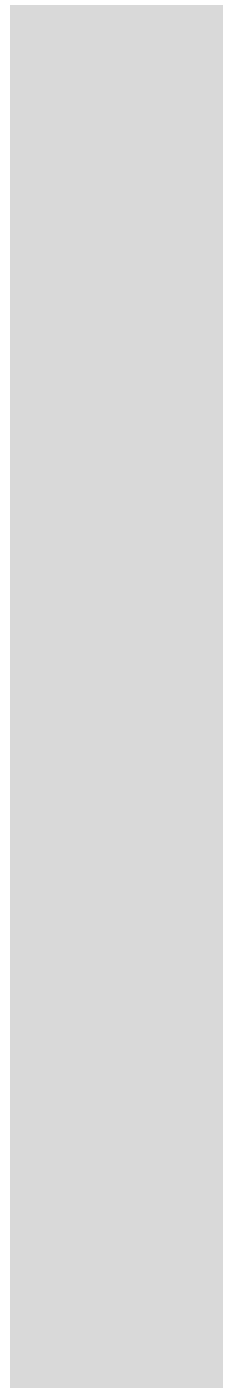












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Look at what coindtions should apply

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Look at what condtions may be needed

Look at what condtions may be needed

From: Stephen Nelson
Sent: Wednesday, February 23, 2022 5:40 PM
To: Brienna Spencer; Darrin LeFevre; 'Dayton Hall'; 'Fay Reber'; Fred Resch; Kevin Thomas; 'Mark Sampson'; 'Mark Sampson.1'; 'Michelle Cloud'; Nanette Billings; 'Paul Farthing'; Penny James Garcia; 'pennyjamesgarcia25@gmail.com'; 'Ralph Ballard'; 'Rebecca Bronemann'; 'Shelley Goodfellow'; 'Stephen Nelson'
Subject: FW: PC
Attachments: [Desert Hills Commercial Zoomed ut.png](#); [Desert Hills commercial elevations.png](#); [Desert Hills commercial size.png](#); [Hurricane Stone Brook Town Square aerial.png](#); [Hurricane Stone Brook Town Square elevation.png](#)

From: David N <davenasal@gmail.com>
Sent: Wednesday, February 23, 2022 3:09 PM
To: Stephen Nelson <stephen@cityofhurricane.com>; Dwain Schallenberger <dwain@investsouthernutah.com>
Subject: PC

Stephen-

Thanks for your time last week. We really appreciate the dialogue and open door policy provided. I had promised I would do some homework and send over some examples and I'm keeping my word with you with this email.

This is a recently completed commercial project in front of Desert Hills high school. It is in close proximity and walkable, with the small shop space that I think would do well in Hurricane, be attractive and provide the services that people are looking for. Architecture could obviously be different. This is smaller than what Hurricane would be but I think gives an idea.

There are also townhomes behind this that have done well.

This shows a c-store, restaurants/fast food, and other shops. Building sizes are as follows:

Gas Station- 6,925

DHP 2 - 4,462

DHP 3, - 4,462

DHP 4, - 5,933

DHP 5, - 4,416

DHP 6, - 4,416

Total of 30,614 sq ft utilizing 14.8% of the 4.78 acres of land that the project sits on. Ours in Hurricane is more than double that and can benefit from much more commercial square footage.

These share parking which I think helps maximize the commercial and has so far worked well. From our conversation and some people on the planning commission, it seemed like this sharing is part of the goal.

I have also attached an aerial of Stone Brook Town Square in Hurricane and the elevations. The county shows three buildings:

1- 8,345

2- 2,049

3. 2,282

Total 12,676 sq ft on 1.81 acres for 16.07% building usage on grounds, including grass strip.

We think planning the parcels based off of acreage instead of square footage will make planning and construction smoother for both the city and developer. Otherwise, I think one could impede the other.

Thanks again,

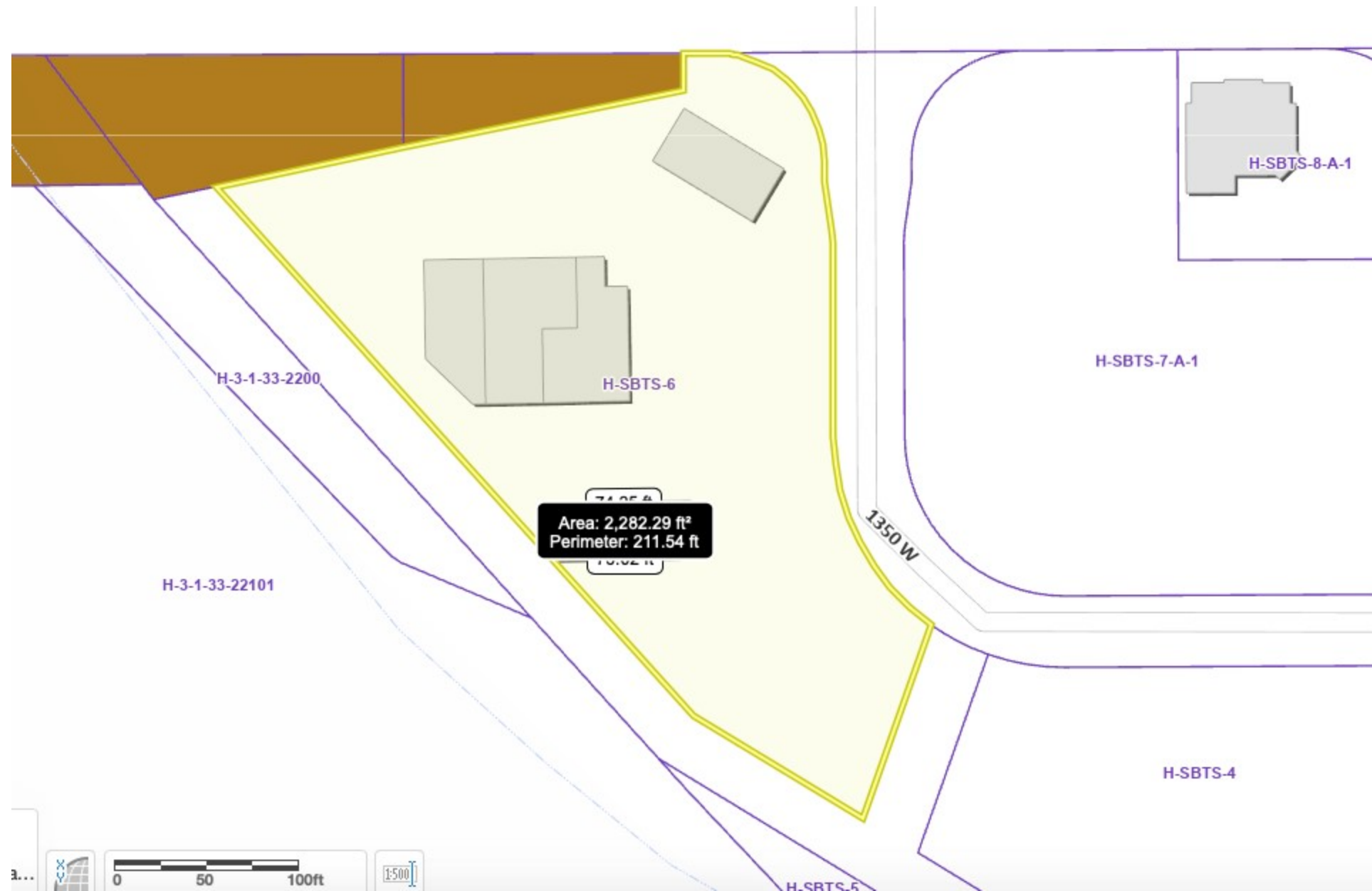
Dave Nasal
435-705-4474





4.78 acres = 208,216 sq ft

30,614 sq ft buildings 14.7%







STAFF COMMENTS

Consideration and possible approval of a **preliminary plat for Desert Sands Area G, a 125 unit single-family subdivision located at 3000 S Sand Hollow Road**. The Hollows LLC Applicant. Brett Burgess Agent.

Discussion:

Findings:

Recommendation:

Attachments:

1. 2021-PP-32 UPDATE APP
2. 2021-PP-32 Desert Sands Area G
3. PRELIMINARY-PLAT-Area G-1.25.22
4. Copy of Land Use Plan Desert Sands

PRELIMINARY PLAT APPLICATION

City of Hurricane
147 North 870 West
Hurricane, UT 84737
(435) 635-2811
FAX (435) 635-2184

Fee: \$150.00

For Office Use Only:

File No. 2021-PP-32

Receipt No. _____

Name: The Hollows, LLC.

Telephone: (435) 673-9336

Address: 1472 East 3950 South St. George, UT 84790

Fax No. _____

Email: bretteburgess@gmail.com

Agent Email: _____

Agent (If Applicable): Brett Burgess

Telephone: (435) 673-9336

Address/Location of Subject Property: 3000 South Sand Hollow Rd

Tax ID of Subject Property: H-4136-D-STL, H-4-2-23-411-STL

Zone District: R1-8

Proposed Use: (Describe, use extra sheet if necessary. Include total number of lots)

Residential Subdivision - 125 lots

Submittal Requirements: The preliminary plat application shall provide the following:

- ☒ 1. Description: In a title block located in the lower right-hand corner of the sheet the following is required:
 - ☒ a. The proposed name of the subdivision.
 - ☒ b. The location of the subdivision, including the address and section, township and range.
 - ☒ c. The names and addresses of the owner or subdivider, if other than the owner.
 - ☒ d. Date of preparation, and north point.
 - ☒ e. Scale shall be of sufficient size to adequately describe in legible form, all required conditions of Chapter 39, City Subdivision regulations.
- ☒ 2. Existing Conditions: The preliminary plat shall show:
 - ☒ a. The location of the nearest monument.
 - ☒ b. The boundary of the proposed subdivision and the acreage included.
 - ☒ c. All property under the control of the subdivider, even though only a portion is being subdivided. (Where the plat submitted covers only a part of the subdivider's tract, a sketch of the prospective street system of the unplatted parts of the subdivider's land shall be submitted, and the street system of the part submitted shall be considered in light of existing Master Street Plan or other Commission studies.)
 - ☒ d. The location, width and names/numbers of all existing streets within two hundred (200) feet of the subdivision and of all prior streets or other public ways, utility rights of way, parks and other public open spaces, within and adjacent to the tract.
 - ☒ e. The location of all wells and springs or seeps, proposed, active and abandoned, and of all reservoirs or ponds within the tract and at a distance of at least one hundred feet (100') beyond the tract boundaries.
 - ☒ f. Existing sewers, water mains, culverts or other underground facilities within the tract, indicating the pipe sizes, grades, manholes and the exact locations.

- ☒ g. Existing Hurricane Canal Company facilities; other ditches, canals, natural drainage channels and open waterways and any proposed realignments.
- ☒ h. Contours at vertical intervals not greater than five (5) feet.
- ☐ i. Identification of potential geotechnical constraints on the project site (such as expansive rock and soil, collapsible soil, shallow bedrock and caliche, gypsiferous rock and soil, potentially unstable rock or soil units including fault lines, shallow groundwater, and windblown sand) and recommendations for their mitigation.
- ☐ j. Information on whether property is located in desert tortoise take area

☒ 3. Proposed Plan: The subdivision plans shall show:

- ☒ a. The layout of streets, showing location, widths, and other dimensions of proposed streets, crosswalks, alleys and easements.
- ☒ b. The layout, numbers and typical dimensions of lots.
- ☒ c. Parcels of land intended to be dedicated or temporarily reserved for public use or set aside for use of property owners in the subdivision.
- ☒ d. Easements for water, sewers, drainage, utilities, lines and other purposes.
- ☒ e. Typical street cross sections and street grades where required by the Planning Commission. (All street grades over 5% should be noted on the preliminary plat)
- ☒ f. A tentative plan or method by which the subdivider proposes to handle the storm water drainage for the subdivision.
- ☒ g. Approximate radius of all center line curves on highways or streets.
- ☒ h. Each lot shall abut a street shown on the subdivision plat or on an existing publicly-dedicated street. (Double frontage or flag lots shall be prohibited except where conditions make other design undesirable)
- ☒ i. In general, all remnants of lots below minimum size left over after subdividing of a larger tract must be added to adjacent lots, rather than allow to remain as unusable parcels.
- ☐ j. Where necessary, copies of any agreements with adjacent property owners relevant to the proposed subdivision shall be presented to the Planning Commission.
- ☒ k. A letter from both the local sanitary sewer provider and culinary water provider indicating availability of service.
- ☒ l. Will this subdivision be phased? If yes show possible phasing lines.
- ☒ m. A tentative plan or method for providing non-discriminatory access to the subdivision for purposes of placement of communications infrastructure, and for purposes of placement of utility infrastructure.

☒ 4. Required copies of plans:

- ☒ a. Three copies of all full scale drawings
- ☒ b. One copy of each drawing on a 11 x 17 inch sheets. (8 1/2 x 11 is acceptable if the project is small and the plans are readable at that size).

5. Warranty deed or preliminary title report or other document (see attached Affidavit) showing evidence that the applicant has control of the property

NOTE: It is important that all applicable information noted above is submitted with the application. An incomplete application will not be scheduled for Planning Commission consideration. A deadline missed due to an incomplete application, could result in a month's delay. Planning Commission meetings are held on the second Thursday and fourth Wednesday of each month at 6:00 p.m. The deadline to submit an application to be placed on an agenda is no later than 12:00 noon 10 full business days before the Planning Commission meeting at which you plan for your application to be heard.

(Office Use Only)

Date Received: _____ Application Complete: YES ☐ NO ☐

Date application deemed to be complete: _____ Completion determination made by: _____

PURPOSE

The preliminary plat application is the first step in land development process in those instances where land is divided for eventual sale. The process is established to insure that all proposed divisions of land conform to the City General Plan and to adopted development standards of the Land Use Ordinance.

WHEN REQUIRED

The preliminary plat is required any time land is to be divided, re-subdivided or proposed to be divided into two (2) or more lots, parcels, sites, units, plots or other division of land for the purpose, whether immediate or future, for offer, sale, lease or development either on installment plan or upon any and all other plans, terms and conditions. It is not required on agricultural divisions where the agricultural parcel is divided to be combined with another agricultural parcel, nor is it required when two un-subdivided properties are merged, or where the boundary between two un-subdivided properties are adjusted.

The preliminary plat must be approved before a final plat can be processed and recorded.

Subdivision approval process:

- Determine current zoning for property.
- If zoning fits desired subdivision, meet with Planning staff to discussed the proposed project.
- Obtain a preliminary plat application form and complete the application and have a plat prepared by an engineer to meet the requirements on the preliminary plat application.
- Submit completed application, preliminary plat, and required \$150 fee to Planning Department before noon on the Wednesday two weeks before desired Planning Commission meeting. (see submittal dates sheet)
- Appear at the scheduled Planning Commission meeting to discuss preliminary plat, hear comments, answer questions, and receive recommendation of approval or disapproval from Planning Commission.
- Appear at the next scheduled City Council meeting that occurs after the Planning Commission meeting at which a recommendation was received. Hear City Council comments, answer questions, and receive City Council decision. City Council can approve the plat with conditions, recommend changes and send it back to the Planning Commission, or deny the plat.

If the preliminary plat is approved, have construction drawings for utilities and streets prepared by an engineer according to Hurricane City standards. Construction drawings must be approved by both the Hurricane Joint Utilities Committee and the Ash Creek Special Service District. Approval means changes are made and all required signatures are obtained.

Once the preliminary plat is approved by the City Council, the applicant has one year after receiving approval of the preliminary plat to submit the final plat to the Planning Commission for action. The Planning Commission may authorize a one-year time extension, provided the extension request is made before the one year time limit is reached. The Planning Commission will review and make recommendation to the City Council on the final plat when submitted. The City Council will typically review the Planning Commission recommendation within 1-2 weeks after the Commission action on the final plat.

APPEALS

The Planning Commission makes a recommendation to the City Council, so there is no appeal. The City Council's action on a preliminary plat is final unless appealed to the appropriate court.

AFFIDAVIT
PROPERTY OWNER

STATE OF UTAH)
 :ss
COUNTY OF)

I (we), _____, being duly sworn, depose and say that I (we) am (are) the owner(s) of the property identified in the attached application and that the statements herein contained and the information provided identified in the attached plans and other exhibits are in all respects true and correct to the best of my (our) knowledge. I (we) also acknowledge that I have received written instructions regarding the process for which I am applying and the Hurricane City Planning staff have indicated they are available to assist me in making this application.

(Property Owner)

(Property Owner)

Subscribed and sworn to me this _____ day of _____ 20__.

(Notary Public)

Residing in: _____

My Commission Expires: _____

Agent Authorization

I (we), _____, the owner(s) of the real property described in the attached application, do authorize as my (our) agent(s) _____ to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the City considering this application and to act in all respects as our agent in matters pertaining to the attached application.

(Property Owner)

(Property Owner)

Subscribed and sworn to me this _____ day of _____ 20__.

(Notary Public)

Residing in: _____

My Commission Expires: _____



City of Hurricane

Water Department
Ken Richins, Superintendent

October 7, 2021

To Whom It May Concern:

A will serve letter has been requested for Desert Sands Area located at approximately 4800 S Dixie Springs Drive in Hurricane, Utah.

Yes, we do have culinary water in the area of 4800 S Dixie Springs Drive in Hurricane, Utah.

A hydraulic water study may be required to ensure the waterline will deliver the required fire flows. A looped water system may be required

Sincerely,

Hurricane City Water – Dallan Wadsworth



Ash Creek Special Service District

1350 S. Sand Hollow Road

Hurricane, UT 84737

Office: (435) 635-2348 Fax: (435) 635-8550

ashcreek@infowest.com

October 13, 2021

Hurricane City
Stephen Nelson
127 N. 870 W.
Hurricane, UT 84737

RE: Area "G" At Desert Sands

Stephen,

There is sewer capacity for this project. The developers understand and agree that they will need to get plan approval for the sewer system.

After approval they agree to pay all costs associated with construction and impact fees. Please let us know if you have any questions.

Sincerely,

Amber Gillette
Engineering Tech
Ash Creek Special Service District

Desert Sands Area "G"

Zoning: PDO high density single family 4-8 Units per acre

We propose 125 lots of the following sizes.

Lot Number	Square Feet	Acres
1	9961	0.23
2	8892	0.20
3	10003	0.23
4	8891	0.20
5	8892	0.20
6	10003	0.23
7	10254	0.24
8	9979	0.23
9	9441	0.22
10	9749	0.22
11	11922	0.27
12	12449	0.29
13	9361	0.21
14	9568	0.22
15	10781	0.25
16	11931	0.27
17	10822	0.25
18	9721	0.22
19	8720	0.20
20	9568	0.22
21	8627	0.20
22	8654	0.20
23	9034	0.21
24	10414	0.24
25	10500	0.24
26	10215	0.23
27	10178	0.23
28	10500	0.24
29	10500	0.24
30	10500	0.24
31	9408	0.22
32	8676	0.20
33	8676	0.20
34	8716	0.20
35	9817	0.23
36	8838	0.20
37	8800	0.20
38	8800	0.20
39	11812	0.27
40	12163	0.28
41	12806	0.29
42	10500	0.24
43	10939	0.25
44	10720	0.25
45	9884	0.23
46	11408	0.26
47	8800	0.20
48	12038	0.28
49	10256	0.24
50	8000	0.18
Total Lot Area:		1,185,103
Average Lot Area:		9,481
Minimum Lot Area:		8,000
Lot count ≥8,000 sq. ft.		125
% Lots ≥8,000 sq.ft.		100%

Lot Number	Square Feet	Acres
51	8650	0.20
52	9000	0.21
53	10414	0.24
54	10000	0.23
55	10000	0.23
56	10000	0.23
57	10000	0.23
58	10000	0.23
59	9914	0.23
60	9049	0.21
61	8628	0.20
62	9643	0.22
63	9135	0.21
64	9135	0.21
65	8628	0.20
66	8120	0.19
67	9049	0.21
68	8000	0.18
69	9000	0.21
70	8914	0.20
71	8914	0.20
72	8000	0.18
73	8500	0.20
74	9000	0.21
75	9000	0.21
76	9500	0.22
77	8500	0.20
78	8914	0.20
79	8914	0.20
80	8000	0.18
81	8000	0.18
82	9000	0.21
83	9000	0.21
84	9000	0.21
85	9000	0.21
86	9064	0.21
87	8989	0.21
88	9000	0.21
89	9201	0.21
90	9135	0.21
91	9135	0.21
92	9135	0.21
93	9135	0.21
94	8120	0.19
95	8120	0.19
96	9049	0.21
97	8914	0.20
98	9000	0.21
99	9000	0.21
100	8000	0.18

Lot Number	Square Feet	Acres
101	8000	0.18
102	9000	0.21
103	9000	0.21
104	9064	0.21
105	9000	0.21
106	9000	0.21
107	9000	0.21
108	9522	0.22
109	9450	0.22
110	9450	0.22
111	8400	0.19
112	8400	0.19
113	9450	0.22
114	9450	0.22
115	9364	0.21
116	9690	0.22
117	8700	0.20
118	8700	0.20
119	8700	0.20
120	11626	0.27
121	10600	0.24
122	10600	0.24
123	12502	0.29
124	9000	0.21
125	8825	0.20



STAFF COMMENTS

Agenda Date:	3/3/2022
Application Number:	2021-PP-32
Type of Application:	Preliminary Plat Application
Action Type:	Administrative
Applicant:	The Hollows LLC
Agent:	Brett Burgess
Request:	Approval of a Preliminary Plat
Location:	3000 South Sand Hollow Rd
Zoning:	R1-8 PDO
General Plan Map:	Planned Community

Planning Commission Recommendation

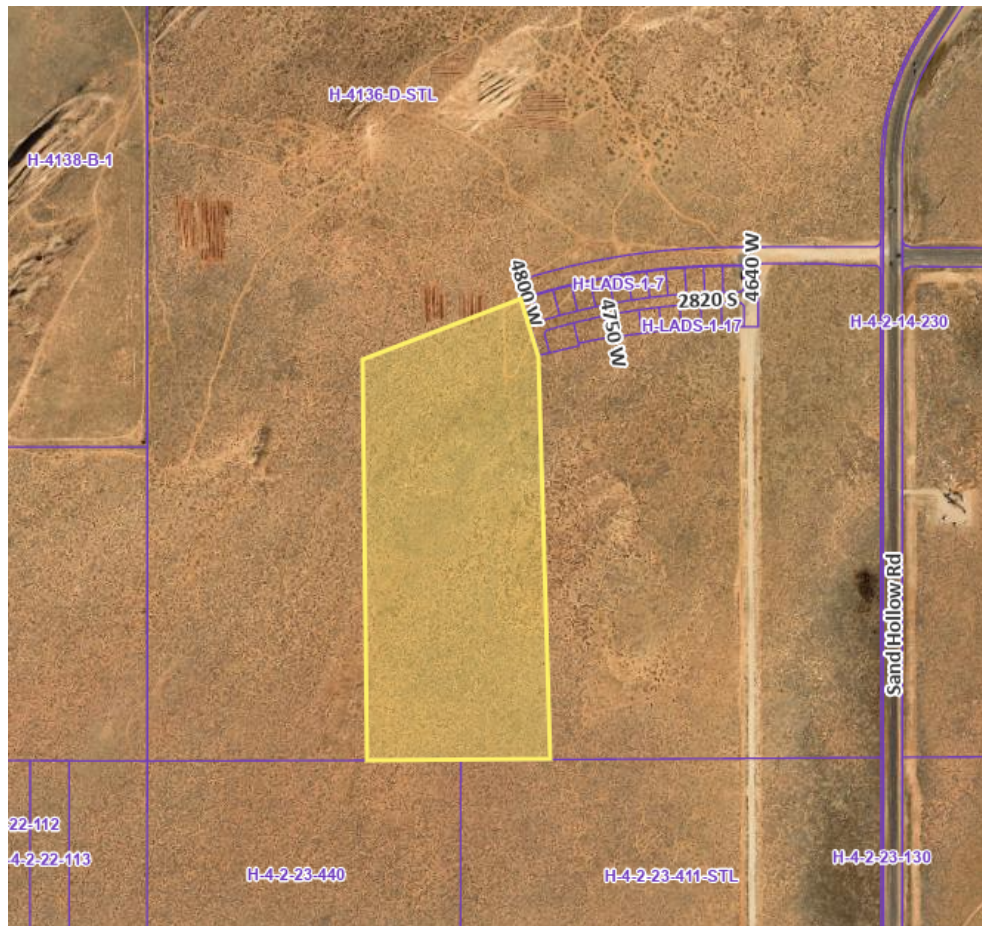
The Planning Commission gave a positive recommendation on the preliminary plat subject to staff and JUC comments.

Updated Comment:

After the Planning Commission review, staff did another review of the plat and found that one roadway, 2820 S, is over 800' long. Staff is currently reviewing this layout with engineering about this roadway way and the future master plan roadway in the area addressed in comments in item number 4 in the staff report.

Discussion:

This application was initially filed in November of 2021, due to issues with the alignment of the master planned roadway Dixie Springs Drive through the property the applicant asked that this application be tabled until they had new plans. This new plan resolves that issue. The applicant has filed a preliminary plat for Area G of Desert Sands, a 36.8 acre parcel with an additional 125 units. This area is immediately to the west of the Lakeside at Desert Sands and Sedero at Desert Sands areas that are currently under construction and is under the jurisdiction of the Desert Sands PDO application.



Map is approximate

JUC Comments

The following items will need to be addressed:

1. **Power:** Dixie Power area. Add on to existing power. Need improvements on Dixie Springs Drive. Preferably on both sides of the road this time. Need easements for power
2. **Sewer:** Have a line in Dixie Springs Drive and 4800 W
3. **Street:** Might need second access on Dixie Springs Drive
4. **Water:** Not clear what's happening with the existing water line. Would prefer it to be in a roadway but that can be negotiated in construction drawings.
5. **Engineering:** Check block lengths. Need second access sooner rather than later through to 3150 S. Need resolution for the water line. Need right turn lane on Sand Hollow Road
6. **Fire:** Second access and temporary fire turnarounds needed
7. **Cable/Phone/Gas/WCWD:** No comments

Staff Comments: Preliminary Plat

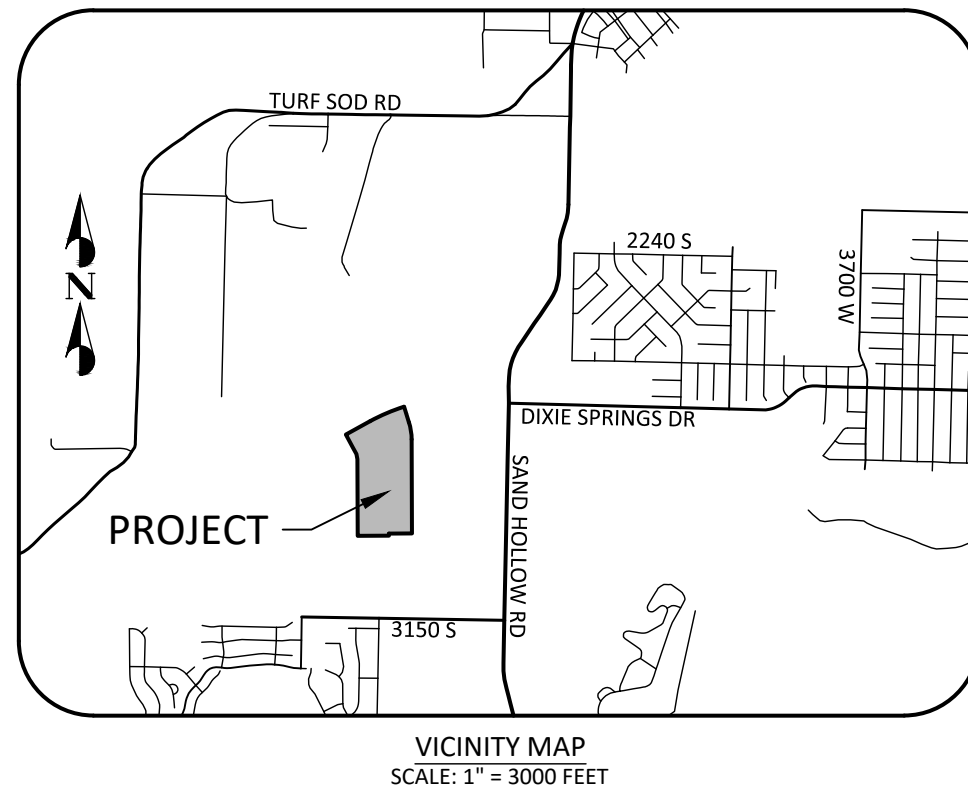
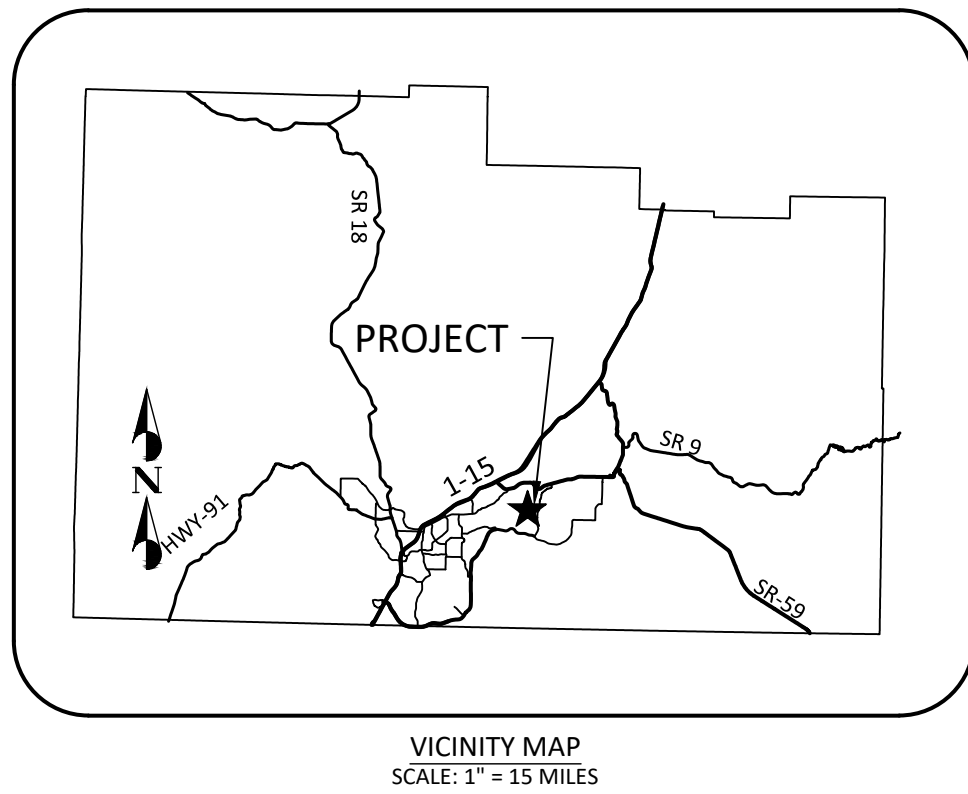
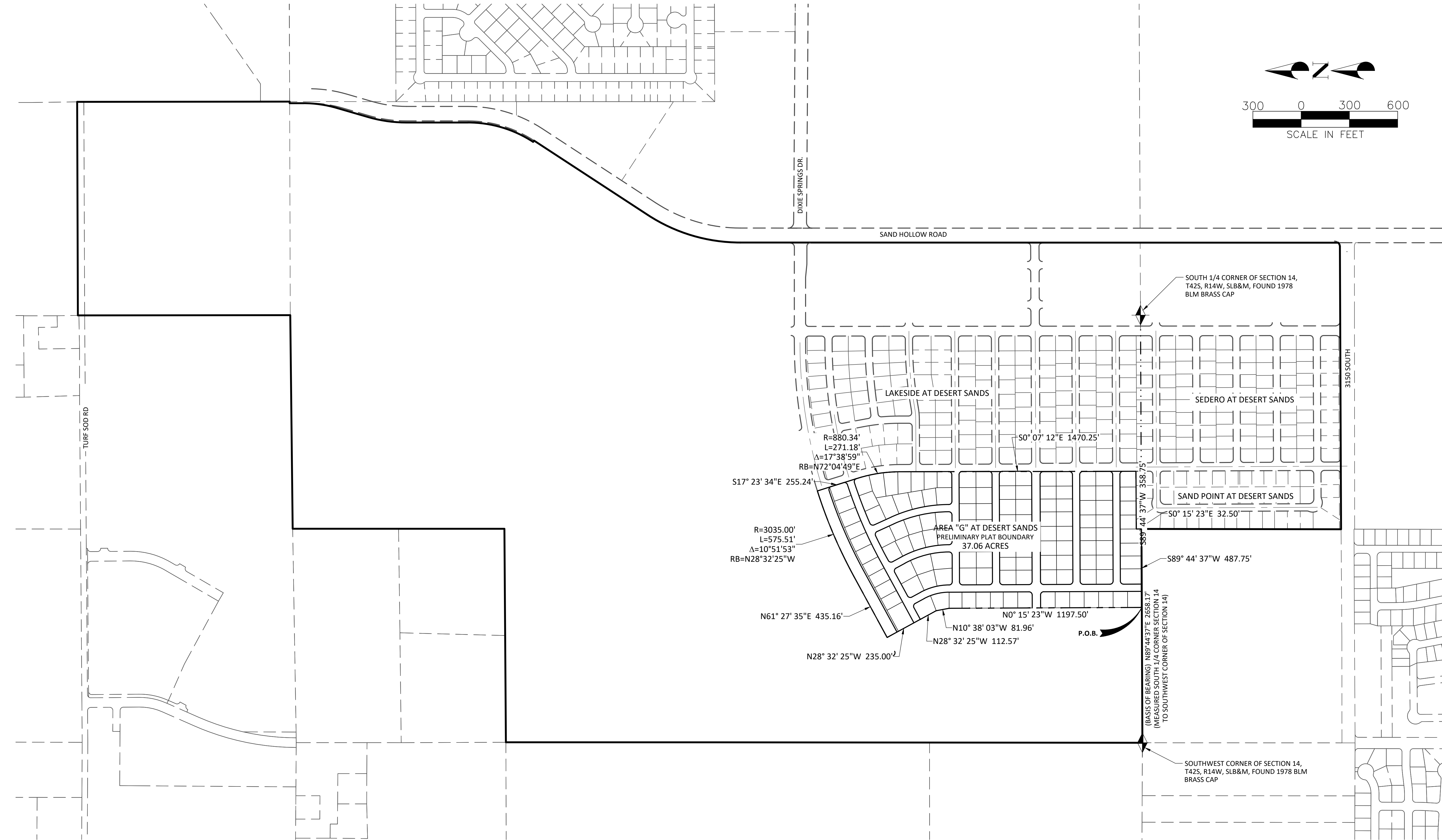
1. All lots comply with R1-8 PDO zoning and the preliminary site plan with the following exceptions
 - a. The realignment of Dixie Springs Drive

- b. Preliminary Site Plan indicates the area will be 140 units and 3.72 units per acre while this plat shows 125 units and 3.39 units per acre
2. The northern boundary of this plat is Dixie Springs Drive. Staff asked the applicant to realign the roadway to match the master plan and the applicant appears to have done so.



3. Road cross sections will need to be approved in the construction drawings process and match the cross sections approved for earlier phases of the development.
4. The recorded subdivision of Lakeside at Desert Sands shows 4800 W as a 45' public street but this plat shows it as a 52' public street. It is on the Transportation Master Plan as a 60' public street. This discrepancy will need to be resolved. Planning staff is currently discussing the issue with engineering.
5. All block lengths appear to meet city standards
6. A second access will be required for this subdivision. Either 4800 W should be extended through to 3150 S or 2950 S needs to be extended to Sand Hollow Road
7. Plat indicates property is not in a tortoise take area
8. Will serve letters have been provided by the culinary and sanitary water providers.
9. Park strips along Dixie Springs Drive will need to be landscaped. Staff recommends that street trees are planted every 50'.

Recommendation: Staff recommends the City Council review this application based on standards with Hurricane City Code. Staff recommends approval of the preliminary plat subject to staff and JUC comments.



LEGEND:	
	PROPERTY BOUNDARY
	SUBDIVISION BOUNDARY
	STREET CENTERLINE
	ROAD RIGHT OF WAY LINE
	PROPOSED PROPERTY LINE
	EXISTING PROPERTY LINE

OWNER/DEVELOPER

THE HOLLOWS, LLC.
1472 EAST 3950 SOUTH
ST. GEORGE, UTAH 84790

CONTACT

BRETT BURGESS
(435) 673-9336
bretteburgess@gmail.com

SITE DATA:

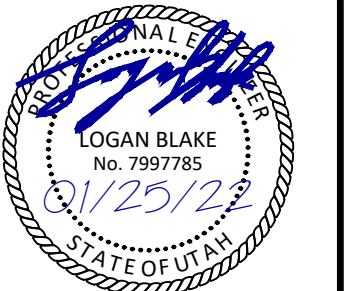
ZONING:	R1-8
SITE AREA:	36.8 ACRES
TOTAL DWELLING UNITS:	125 UNITS
DENSITY:	3.39 DU/AC

PRELIMINARY PLAT

FOR

AREA "G" AT DESERT SANDS

LOCATED IN THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP
42 SOUTH, RANGE 14 WEST, S.L.B.&M.



NO.	DESCRIPTION	DATE	APP'D.

PROJECT NAME:	AREA "G" AT DESERT SANDS
	HURRICANE SITLA PROPERTY
SHEET NAME:	4800 WEST DIXIE SPRINGS DR HURRICANE, UTAH
	COVER SHEET

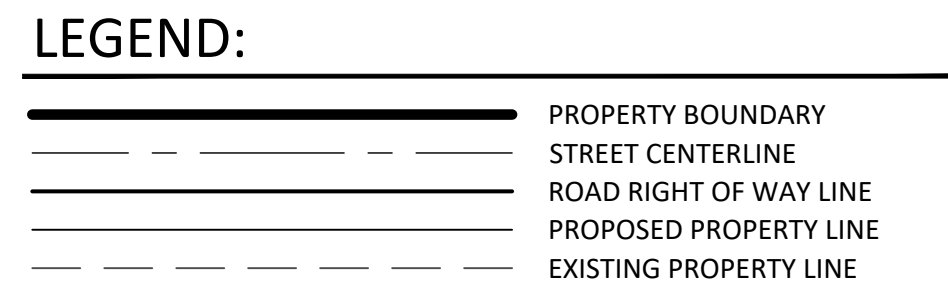
DSG ENGINEERING, INC.	LAND PLANNERS, LAND SURVEYORS, CIVIL ENGINEERS
	113 East 200 North Suite #2 St. George, UT 84770 Office (435) 628-2121



DATE:	JAN 2022
PM:	BB
DRAWN BY:	LB
DESIGNED BY:	LB
CHECKED BY:	
PROJECT NO.:	20-024
SCALE:	1" = 300'
SHEET NUMBER:	

CS-1

1 OF 5 TOTAL

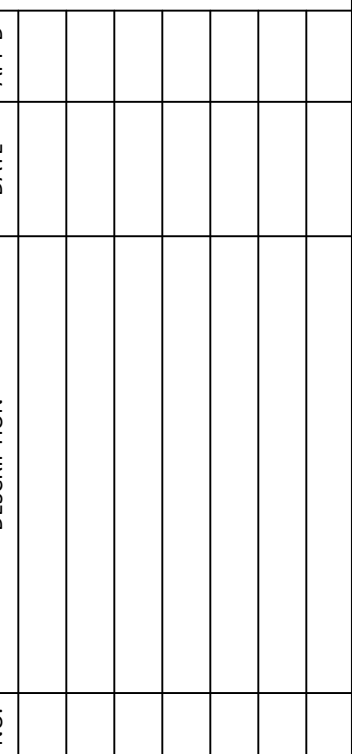
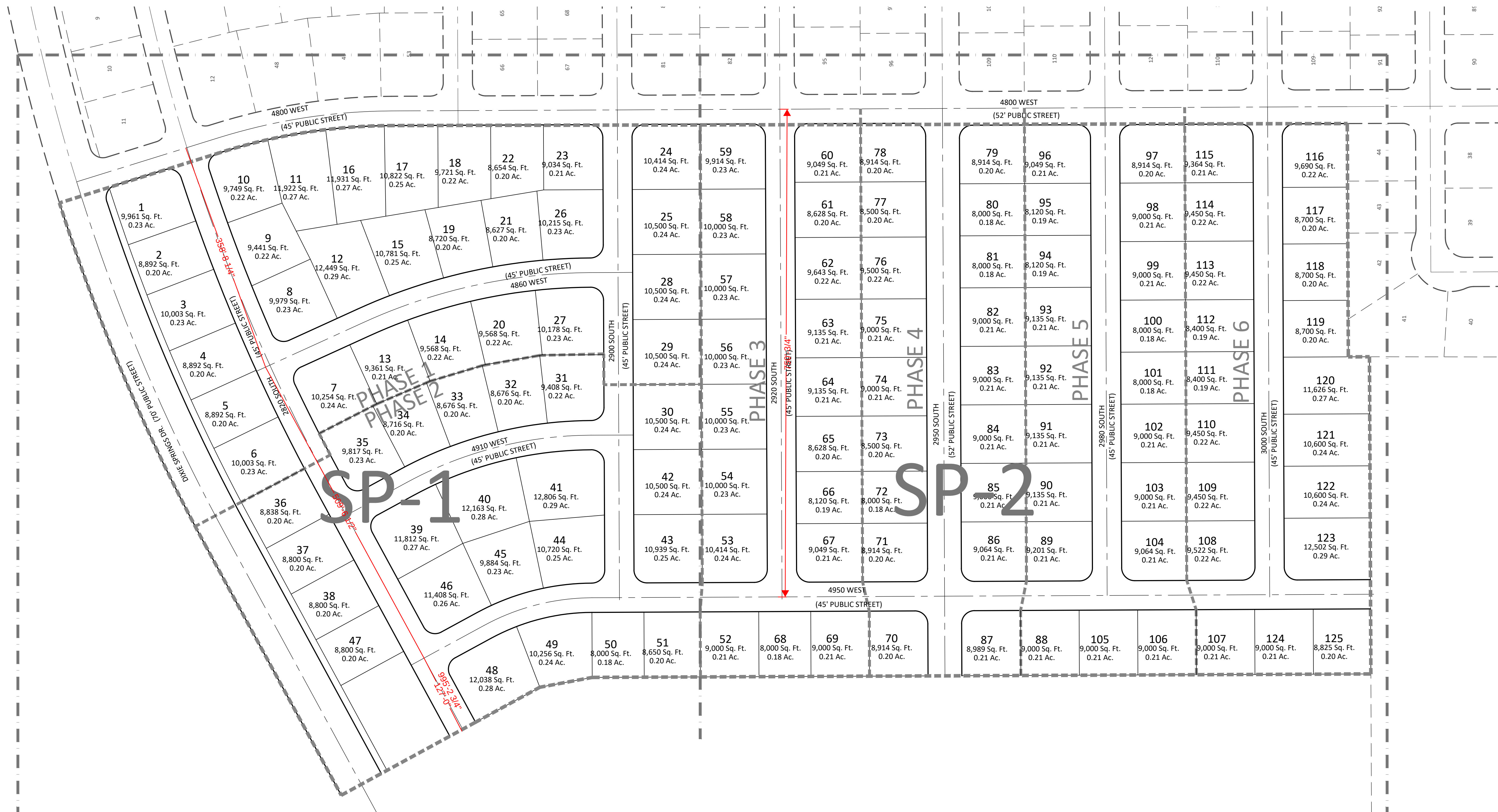


1. ALL STREETS TO BE PUBLIC RIGHT-OF-WAY, CONSTRUCTED TO CITY STANDARDS
2. THIS SITE IS NOT LOCATED WITHIN A DESERT TORTOISE TAKE AREA

THE HOLLOW, LLC.
1472 EAST 3950 SOUTH
ST. GEORGE, UTAH 84790

BRETT BURGESS
(435) 673-9336
bretteburgess@gmail.com

ZONING: R1-8
SITE AREA: 36.8 ACRES
TOTAL DWELLING UNITS: 125 UNITS
DENSITY: 3.39 DU/AC



AREA "G" AI DESERT SANDS
HURRICANE SITLA PROPERTY
4800 WEST DIXIE SPRINGS DR HURRICANE, UTAH
SHEET NAME: SHEET LAYOUT

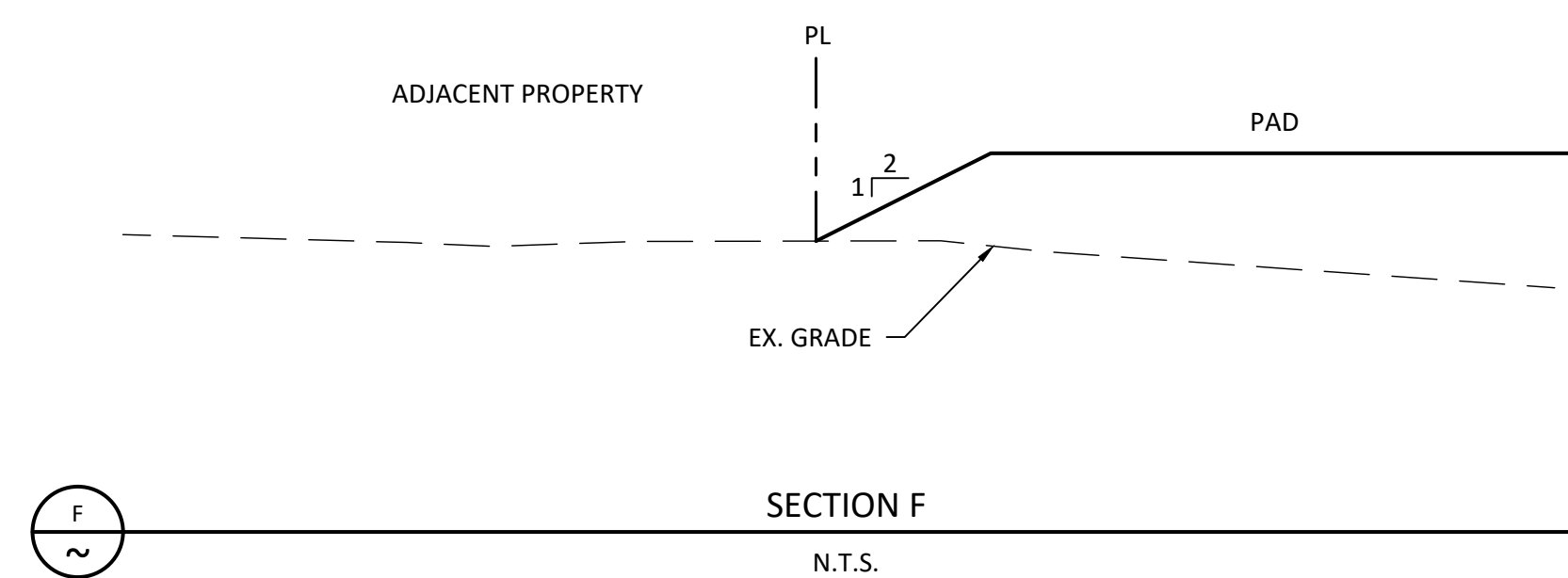
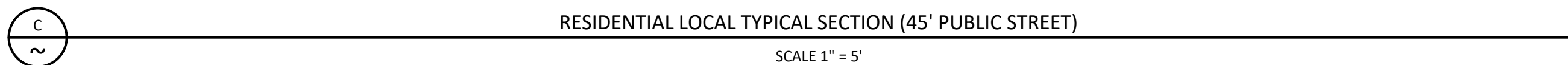
DSG ENGINEERING, INC.
LAND PLANNERS, LAND SURVEYORS, CIVIL ENGINEERS
1113 East 200 North Suite #2
St. George, UT 84770
Office (435) 628-2121

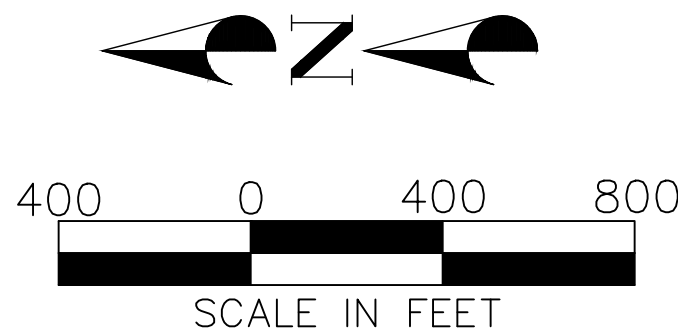


DATE :	JAN 2022
SCALE :	BB
DRAWN BY :	LB
DESIGNED BY :	LB
CHECKED BY :	
PROJECT NO. :	20-024
SCALE :	1" = 80'

SL-1

2 OF 5 TOTAL



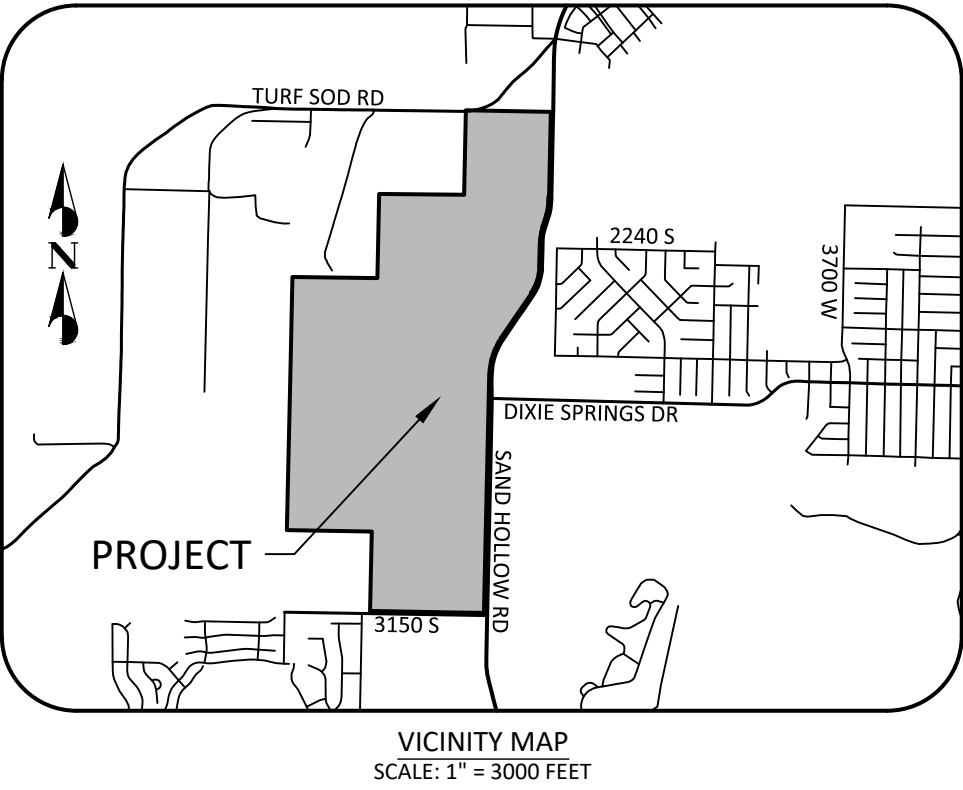
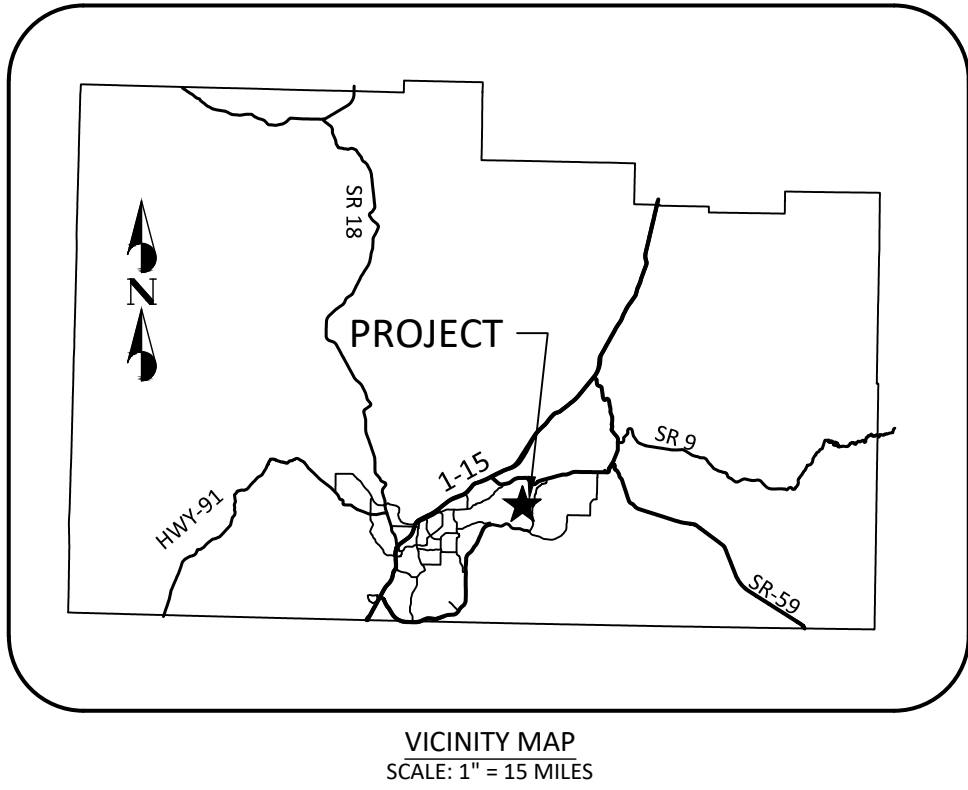


OWNER/DEVELOPER

THE HOLLOWES, LLC.
1472 EAST 3950 SOUTH
ST. GEORGE, UTAH 84790

CONTACT

BRETT BURGESS
(435) 673-9336
bretteburgess@gmail.com



LEGEND

- EXISTING RIGHT-OF-WAY LINE
- EXISTING PROPERTY LINE
- AREA BOUNDARY LINE
- PROPOSED MULTI USE TRAIL
- PAVED / UNPAVED
- LOW DENSITY SINGLE FAMILY RESIDENTIAL 1-3 UNITS/ACRE
- HIGH DENSITY SINGLE FAMILY RESIDENTIAL 4-8 UNITS/ACRE
- MULTI-FAMILY RESIDENTIAL 6-15 UNITS/ACRE
- NEIGHBORHOOD COMMERCIAL
- NATURAL OPEN SPACE

LAND USE TABLE

AREA	ACRES	UNITS	DUA	USE
A	35.8	127	3.55	SINGLE FAMILY
B	29.4	118	4.01	SINGLE FAMILY
C	11.4	44	3.86	SINGLE FAMILY
D	6.6	*	*	NEIGHBORHOOD COMMERCIAL
E	11.9	*	*	NEIGHBORHOOD COMMERCIAL
F	23.9	94	3.93	SINGLE FAMILY
G	37.6	140	3.72	SINGLE FAMILY
H	34.9	140	4.01	SINGLE FAMILY
I	17.3	138	7.98	MULTI FAMILY / RESORT
J	18.1	108	5.97	MULTI FAMILY
K	31.6	189	5.98	MULTI FAMILY
L	44.4	355	8.00	MULTI FAMILY / RESORT
M	36.2	140	3.87	SINGLE FAMILY
N	87.8	175	2.02	SINGLE FAMILY
OS	33.2	*	*	OPEN SPACE
TOTAL	460.1	1770	3.85	

PLANNED DEVELOPMENT
OVERLAY ZONE
FOR



LOCATED IN THE SOUTH HALF SECTION 14
AND NORTH HALF OF SECTION 23,
TOWNSHIP 42 SOUTH, RANGE 14 WEST, S.L.B.&M.

DESERT SANDS
PLANNED DEVELOPMENT
LOCATED IN HURRICANE, UTAH
LAND USE PLAN

DSG ENGINEERING, INC.
LAND PLANNERS, LAND SURVEYORS, CIVIL ENGINEERS



DATE :	MARCH 2021
PM :	BB
DRAWN BY :	LB
DESIGNED BY :	LB
CHECKED BY :	XX
PROJECT NO. :	20-024
SCALE :	1" = 400'
SHEET NUMBER :	

LUP-1
1 OF 1 TOTAL

BID TABULATIONS FOR**Bid: HURRICANE CITY OLD HIGHWAY 91 PAVEMENT REHAB****Date: 1-Mar-22****BID SCHEDULE A: TOTAL DEPTH RECLAMATION**

ITEM No.	ITEM DESCRIPTION	QUANTITY	UNITS	ENGINEER'S ESTIMATE		WESTERN ROCK		SUNROC		INTERSTATE ROCK	
				UNIT PRICE Dollars & Cents	ITEM PRICE Dollars & Cents	UNIT PRICE Dollars & Cents	ITEM PRICE Dollars & Cents	UNIT PRICE Dollars & Cents	ITEM PRICE Dollars & Cents	UNIT PRICE Dollars & Cents	ITEM PRICE Dollars & Cents
1	Mobilization	1	LS	\$40,000.00	\$40,000.00	\$34,000.00	\$34,000.00	\$123,500.00	\$123,500.00	\$50,000.00	\$50,000.00
2	Traffic Control	1	LS	\$30,000.00	\$30,000.00	\$105,000.00	\$105,000.00	\$165,500.00	\$165,500.00	\$50,000.00	\$50,000.00
3	SWPPlan	1	LS	\$1,000.00	\$1,000.00	\$17,500.00	\$17,500.00	\$14,000.00	\$14,000.00	\$8,900.00	\$8,900.00
4	Reconstruct Manhole	36	EA	\$700.00	\$25,200.00	\$900.00	\$32,400.00	\$1,035.00	\$37,260.00	\$990.00	\$35,640.00
5	Reconstruct Valve Box	113	EA	\$400.00	\$45,200.00	\$700.00	\$79,100.00	\$795.00	\$89,835.00	\$760.00	\$85,880.00
6	Reconstruct Monument	1	EA	\$1,000.00	\$1,000.00	\$750.00	\$750.00	\$850.00	\$850.00	\$820.00	\$820.00
7	Asphalt Sawcut	1000	LF	\$2.00	\$2,000.00	\$1.00	\$1,000.00	\$3.65	\$3,650.00	\$1.15	\$1,150.00
8	Dust Control & Watering	100	1000 GAL	\$20.00	\$2,000.00	\$105.00	\$10,500.00	\$40.00	\$4,000.00	\$160.00	\$16,000.00
9	Roadway Excavation	2,000	CY	\$10.00	\$20,000.00	\$19.75	\$39,500.00	\$11.00	\$22,000.00	\$6.95	\$13,900.00
10	Soft Spot Repair – Excavate out Material	2,500	CY	\$10.00	\$25,000.00	\$10.50	\$26,250.00	\$11.50	\$28,750.00	\$6.95	\$17,375.00
11	Soft Spot Repair – Placement of Granular Bor	1000	CY	\$25.00	\$25,000.00	\$10.75	\$10,750.00	\$31.90	\$31,900.00	\$33.50	\$33,500.00
12	Pulverization, 13-1/2" Depth	466,000	SF	\$0.20	\$93,200.00	\$0.15	\$69,900.00	\$0.12	\$55,920.00	\$0.16	\$74,560.00
13	Haul off Pulverized Material, 3-1/4" Depth	466,000	SF	\$0.25	\$116,500.00	\$0.16	\$74,560.00	\$0.11	\$51,260.00	\$0.15	\$69,900.00
14	Placement of Cement Treated Pulverized Material as Base Course, 10" Depth	52,100	SF	\$0.80	\$41,680.00	\$1.30	\$67,730.00	\$0.35	\$18,235.00	\$0.66	\$34,386.00
15	Full Depth Reclamation, 10" Depth	466,000	SF	\$0.80	\$372,800.00	\$1.10	\$512,600.00	\$1.10	\$512,600.00	\$1.10	\$512,600.00
16	Rotomill Existing Asphalt 1-3/4" Depth	49,100	SF	\$0.50	\$24,550.00	\$0.45	\$22,095.00	\$0.45	\$22,095.00	\$1.30	\$63,830.00
17	Geogrid, Tensar EX1200 or equivalent	2,500	SY	\$2.50	\$6,250.00	\$2.30	\$5,750.00	\$2.05	\$5,125.00	\$2.95	\$7,375.00
18	Geotextile, Mirafi 140N or equivalent	2,500	SY	\$0.80	\$2,000.00	\$1.50	\$3,750.00	\$3.00	\$7,500.00	\$4.05	\$10,125.00
19	Asphalt Pavement, Depths Vary	11,950	Ton	\$90.00	\$1,075,500.00	\$77.20	\$922,540.00	\$80.00	\$956,000.00	\$95.50	\$1,141,225.00
20	Paint Striping	800	Gal	\$60.00	\$48,000.00	\$32.50	\$26,000.00	\$41.50	\$33,200.00	\$39.50	\$31,600.00
21	Pavement Messages	12	EA	\$700.00	\$8,400.00	\$27.00	\$324.00	\$115.00	\$1,380.00	\$110.00	\$1,320.00
22	Road Base, if needed	200	Ton	\$22.00	\$4,400.00	\$15.00	\$3,000.00	\$21.90	\$4,380.00	\$26.00	\$5,200.00
23	Sign, Must Turn Right	2	EA	\$500.00	\$1,000.00	\$300.00	\$600.00	\$580.00	\$1,160.00	\$550.00	\$1,100.00
24	Relocate Street Sign	5	EA	\$600.00	\$3,000.00	\$200.00	\$1,000.00	\$400.00	\$2,000.00	\$380.00	\$1,900.00
TOTAL of BID SCHEDULE A=					\$2,013,680.00		\$2,066,599.00		\$2,192,100.00		\$2,268,286.00

I, Karl B. Rasmussen,

certify that the above tabulation is correct and represents the bids accepted by the CITY OF HURRICANE.

BID TABULATIONS FOR**Bid: HURRICANE CITY OLD HIGHWAY 91 PAVEMENT REHAB****Date: 1-Mar-22****BID SCHEDULE B: REMOVE & REPLACE BASE WITH CEM. T. BASE**

ITEM No.	ITEM DESCRIPTION	QUANTITY	UNITS	ENGINEER'S ESTIMATE		INTERSTATE ROCK		SUNROC		WESTERN ROCK- NO BID	
				UNIT PRICE Dollars & Cents	ITEM PRICE Dollars & Cents	UNIT PRICE Dollars & Cents	ITEM PRICE Dollars & Cents	UNIT PRICE Dollars & Cents	ITEM PRICE Dollars & Cents	UNIT PRICE Dollars & Cents	ITEM PRICE Dollars & Cents
1	Mobilization	1	LS	\$40,000.00	\$40,000.00	\$50,000.00	\$50,000.00	\$123,500.00	\$123,500.00		\$0.00
2	Traffic Control	1	LS	\$30,000.00	\$30,000.00	\$50,000.00	\$50,000.00	\$180,000.00	\$180,000.00		\$0.00
3	SWPPlan	1	LS	\$1,000.00	\$1,000.00	\$8,900.00	\$8,900.00	\$14,000.00	\$14,000.00		\$0.00
4	Reconstruct Manhole	36	EA	\$700.00	\$25,200.00	\$990.00	\$35,640.00	\$1,035.00	\$37,260.00		\$0.00
5	Reconstruct Valve Box	113	EA	\$400.00	\$45,200.00	\$760.00	\$85,880.00	\$795.00	\$89,835.00		\$0.00
6	Reconstruct Monument	1	EA	\$1,000.00	\$1,000.00	\$820.00	\$820.00	\$850.00	\$850.00		\$0.00
7	Asphalt Sawcut	1000	LF	\$2.00	\$2,000.00	\$1.15	\$1,150.00	\$3.65	\$3,650.00		\$0.00
8	Dust Control & Watering	100	1000 GAL	\$20.00	\$2,000.00	\$160.00	\$16,000.00	\$40.00	\$4,000.00		\$0.00
9	Roadway Excavation	2,000	CY	\$10.00	\$20,000.00	\$6.95	\$13,900.00	\$11.00	\$22,000.00		\$0.00
10	Soft Spot Repair- Excavate out Material	2500	CY	\$10.00	\$25,000.00	\$6.95	\$17,375.00	\$11.50	\$28,750.00		\$0.00
11	Soft Spot Repair – Placement of Granular Borrow	1000	CY	\$25.00	\$25,000.00	\$33.50	\$33,500.00	\$31.90	\$31,900.00		\$0.00
12	Excavation of Existing Asphalt & Base, 13-1/2" Depth	466,000	SF	\$0.20	\$93,200.00	\$0.25	\$116,500.00	\$0.06	\$27,960.00		\$0.00
13	Haul off Excavated Material	466,000	SF	\$0.60	\$279,600.00	\$0.60	\$279,600.00	\$0.32	\$149,120.00		\$0.00
14	Cement Treated Base Course, 10" Depth	518,100	SF	\$2.00	\$1,036,200.00	\$1.30	\$673,530.00	\$1.80	\$932,580.00		\$0.00
15	Rotomill Existing Asphalt 1-3/4" Depth	49,100	SF	\$0.50	\$24,550.00	\$1.30	\$63,830.00	\$0.45	\$22,095.00		\$0.00
16	Geogrid, Tensar EX1200 or equivalent	2,500	SY	\$2.50	\$6,250.00	\$2.95	\$7,375.00	\$2.05	\$5,125.00		\$0.00
17	Geotextile, Mirafi 140N or equivalent	2,500	SY	\$0.80	\$2,000.00	\$4.05	\$10,125.00	\$3.00	\$7,500.00		\$0.00
18	Asphalt Pavement, Depths Vary	11,950	Ton	\$90.00	\$1,075,500.00	\$95.50	\$1,141,225.00	\$80.00	\$956,000.00		\$0.00
19	Paint Striping	800	Gal	\$60.00	\$48,000.00	\$39.50	\$31,600.00	\$41.50	\$33,200.00		\$0.00
20	Pavement Messages	12	EA	\$700.00	\$8,400.00	\$110.00	\$1,320.00	\$115.00	\$1,380.00		\$0.00
21	Road Base, if needed	200	Ton	\$22.00	\$4,400.00	\$26.00	\$5,200.00	\$21.90	\$4,380.00		\$0.00
22	Sign, Must Turn Right	2	EA	\$500.00	\$1,000.00	\$550.00	\$1,100.00	\$580.00	\$1,160.00		\$0.00
23	Relocate Street Sign	5	EA	\$500.00	\$2,500.00	\$380.00	\$1,900.00	\$400.00	\$2,000.00		\$0.00
TOTAL of BID SCHEDULE B=					\$2,798,000.00		\$2,646,470.00		\$2,678,245.00		\$0.00

I, Karl B. Rasmussen,

certify that the above tabulation is correct and represents the bids accepted by the CITY OF HURRICANE.

NOTICE OF AWARD

To: Western Rock Products
4617 S. Pioneer Road, Suite 300
St. George, UT 84790

Date: March 1, 2022
Project: Hurricane City Old HWY 91
Pavement Rehab

The OWNER has considered the BID submitted by you for the above-described WORK in response to its Advertisement for Bids dated February 13, 2022, and Information for Bidders.

You are hereby notified that your BID has been accepted for items in the amount of \$2,066,599.50

You are required to return an acknowledge copy of this NOTICE OF AWARD to the OWNER.

Dated this 3rd day of March, 2022.

City of Hurricane

Owner

By _____

Name _____

Title _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD

is hereby acknowledged

by _____

this the _____ day of _____, 2022.

By _____

Name _____

Title _____

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____ (Corporation, Partnership, or Individual) hereinafter called Principal, and

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

(Name of Owner)

(Address of Owner)

hereinafter called OWNER, in the penal sum of _____
_____ Dollars, \$(_____) in lawful money of the United States,
for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly
and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with
the OWNER, dated the _____ day of _____ a copy of which is hereto attached and made a
part hereof for the construction of:

NOW. THEREFORE, if the Principal shall promptly make payment to all persons, firms, SUBCONTRACTORS,
and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in
such contract, and any authorized extension or modification thereof, including all amounts due for materials,
lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in
connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor,
performed in such WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void;
otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change,
extension of time, alteration or addition to the terms of the contract or to the WORK to be performed there
under or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND,
and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of the
contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.
IS WITNESS WHEREOF, this instrument is executed in 3 (number) counterparts, each one of which shall be deemed an original this the _____ day of _____.

ATTEST:

(Principal) Secretary

(SEAL)

Witness as to Principal

Address

Principal

By _____

Address

ATTEST:

(Surety) Secretary

Witness as to Surety

Address

Surety

By _____

Attorney-in-fact

Address

NOTE: Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the PROJECT is located.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____ (Corporation, Partnership, or Individual) hereinafter called Principal, and

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

(Name of Owner)

(Address of Owner)

hereinafter called OWNER, in the penal sum of _____
Dollars, \$(_____) in lawful money of the United States, for the payment of which sum well
and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these
presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with
the OWNER, dated the _____ day of _____ a copy of which is hereto attached and made a
part hereof for the construction of:

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings,
covenants, terms, conditions, and agreement of said contract during the original term thereof, and any
extensions thereof which may be granted by the owner, with or without notice to the Surety and during the one
year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully
indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure
to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in
making good any default, then this obligation shall be void; otherwise to remain in full force and effect.
PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change,
extension of time, alteration or addition to the terms of the contract or to WORK to be performed there under or
the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does
hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or
to the WORK or the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied. IN WITNESS WHEREOF, this instrument is executed in 3 counterparts, each one of which shall be deemed an original, this the _____ day of _____.

ATTEST:

Principal

(Principal) Secretary

(SEAL)

By _____

Address

Witness as to Principal

Address

ATTEST:

Surety

Address

NOTE: Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the PROJECT is located.

AGREEMENT

This AGREEMENT, made this _____ day of March by and between the City of Hurricane, hereinafter called OWNER" and Western Rock Products doing business as a Corporation hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the construction of the Hurricane City Old HWY 91 Pavement Rehab Project 2022.
2. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT described therein.
3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS within 30 calendar days after the date of the NOTICE TO PROCEED and will complete the same as specified in the CONTRACT DOCUMENTS unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.
4. The CONTRACTOR agrees to perform all of the Work described in the CONTRACT DOCUMENTS and comply with the terms therein for the sum of \$2,066,599.50.
5. The term "CONTRACT DOCUMENTS" means and includes the following:
 - A) Public Notice
 - B) Information for Bidders
 - C) Bid
 - D) Bid Bond
 - E) Agreement
 - F) Payment Bond
 - G) Performance Bond
 - H) Notice of Award
 - I) Notice to Proceed
 - J) Change Order
 - K) General Conditions
 - L) Supplementary General Conditions
 - M) SPECIFICATIONS prepared or issued by ProValue Engineering, dated February 2022.
 - N) DRAWINGS prepared by ProValue Engineering, dated February 2022.
 - O) ADDENDA:
 - No. 1 dated February 17, 2022.
 - No. 2 dated February 28, 2022.
 - No. _____ dated _____
6. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the CONTRACT DOCUMENTS.
7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in (3) each of which shall be deemed an original on the date first above written.
(Number of Copies)

OWNER:

City of Hurricane

By: _____

Name: _____

Title: _____

(SEAL)

ATTEST:

Name: _____

Title: _____

CONTRACTOR:

By: _____

Name: _____

(Please Type)

Address: _____

_SEAL)

ATTEST:

Name: _____

(Please Type)

Title: _____

Approved as to Form

NOTICE TO PROCEED

To: Western Rock Products
4617 South Pioneer Road, Suite 300
St. George, Ut 84790

Date: _____
Project: Hurricane City Old HWY 91
Pavement Rehab

You are hereby notified to commence WORK in accordance with the Agreement dated _____, on
or before _____, and you are to complete all on-site WORK on or before _____.

City of Hurricane

Owner

By _____

Name _____

Title _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD
is hereby acknowledged
by _____

this the _____ day of _____, 2022.

By _____

Name _____

Title _____

CHANGE ORDER

Order No. _____
Date: _____
Agreement Date: _____

NAME OF PROJECT: Hurricane City Old HWY 91
Pavement Rehab

OWNER: City of Hurricane

CONTRACTOR: _____

The following changes are hereby made to the CONTRACT DOCUMENTS:

Justification: _____

CHANGE TO CONTRACT PRICE:

Original CONTRACT PRICE

\$ _____

Current CONTRACT PRICE adjusted by previous CHANGE ORDERS

\$ _____

The CONTRACT PRICE due to this CHANGE ORDER will be (increased/decreased) by:

\$ _____

The new CONTRACT PRICE including this CHANGE ORDER will be

\$ _____

CHANGE TO CONTRACT TIME:

The CONTRACT TIME will be (increased/decreased) by _____ calendar days.

The date for completion of all work will be _____.

APPROVALS:

ENGINEER: _____

CONTRACTOR: _____

CITY OF HURRICANE: _____

City Council packet for ACKNOWLEDGEMENT OF WATER SUPPLY.

This was adopted by ST George city 2-3-22. This is basically Hurricane city requiring the applicant to obtain a guarantee of water through a will serve letter from the WCWCD. Which verifies that there is sufficient water supply and guarantee of water for the applicant.

At water board meeting on 2-22-22 waterboard voted to recommend to the city council that they adopt this ----- ? it is a plagiarized version version of st georges -----

In a meeting with Zack with the WCWCD Mayor Billings and I attended we asked Zack his opinion

About this will serve requirement. Zack stated he thinks it's a good Idea for all city pooling agreement partners to adopt something like this.

ACKNOWLEDGEMENT OF WATER SUPPLY

I/We, _____ am/are the applicant(s) of the application known as
_____ located on parcel(s) _____
within the Hurricane City, Washington County, Utah.

By my/our signature(s) below I/we do hereby acknowledge and agree to the following:

- 1. Approval of a development application by the City does not guarantee that sufficient water will be available to serve the zone, project, or permit for which this application is being submitted; and
- 2. Prior to receiving final approval for the application, and/or any building permit, the applicant may be required by Hurricane City to provide a guarantee of water service through a “Will Serve” letter from the Washington County Water Conservancy District (“District”) which verifies that there is a sufficient water supply and guarantee of water for the application; and
- 3. For any application which may be approved without the “Will Serve” letter from the District, the applicant assumes the entire risk of water availability for the project and/or application.

Signature(s):

_____ Name	_____ Applicant/owner	_____ Date
_____ Name	_____ Applicant/owner	_____ Date
_____ Name	_____ Applicant/owner	_____ Date
_____ Name	_____ Applicant/owner	_____ Date
_____ Name	_____ Applicant/owner	_____ Date