



HURRICANE CITY UTAH

Mayor

City Manager

Nanette Billings Kaden DeMille

City Council

*Joseph Prete
Dave Sanders
David Hirschi
Kevin Thomas
Doug Heideman*

Hurricane City Council Meeting Agenda

November 17, 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.**

3:40 - 4:00 p.m. Closed Meeting regarding potential purchase of real property and the character, professional competence, or physical or mental health of an individual

4:00 -4:30 p.m. Presentation from United We Pledge and discussion of Liberty Village

4:30-5:00 p.m. Discussion regarding tourism and distributing information regarding City events and tourism

5:00 p.m. Pre-meeting

6:00 p.m. - Call to Order

Prayer

Thought

Pledge of Allegiance

Declaration of any conflicts of interest

Minutes of the Regular City Council Meeting for November 4, 2021, December 2, 2021 and October 3, 2022

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 **Franchise Agreement between Hurricane City and Infowest**
2. Consideration and possible approval of a **donation to the Hurricane High School's robotics team Black Ops**
3. Consideration and possible approval **to fund \$3,000 for Wreaths Across America in memory of 528 Veterans Graves**
4. Ordinance 2022-54 Consideration and possible approval of a **A Zone Change Amendment request for Steward Land Holdings located at approx.. 3112 West State Street from HC, highway commercial, to PC, planned commercial.** Parcel number H-3-1-31-3009. Steward Land Holdings Applicant. Brad Brown Agent.
5. Consideration and possible approval of **allocating funds to the Tourism Board-April Gates/Doug Heideman**
6. Ordinance 2022-60: Consideration and possible approval of a proposed **Zone Change Amendment request located at approx.. 5200 West and 2500 South** from A-5, agriculture one unit per 5 acres, to RM-1/PDO, multifamily 6 units per acre with a Planned Development Overlay, and RR, recreation resort. Parcel numbers: H-4138-B, H-4138-L, H-4138-E. Chris Wyler Applicant. Brandee Walker-Civil Science Agent.
7. Consideration and possible approval of a preliminary plat for **Southern Dunes Townhomes, a recreation resort 345 townhome development located at 2600 W and 4200 S.** Southern Dunes Townhomes Applicant. Bush & Gudgeon, Inc Agent

NEW BUSINESS

1. Consideration and possible approval of **a new use and new lease for Motive Aero LLC** at City Airport unit 6S
2. Consideration and possible approval of **a new use and a new hangar lease at Lot 13 S 5 E**-Steve Young
3. Consideration and possible approval of **a new hangar lease at lot 3 S**-Steve Lemmon
4. Consideration and possible approval of **a new use and new hangar lease for eleven pad sites on plot 47** at the City Airport-Steve Lemmon
5. Public Hearing to take comments on the following:
 - a. Increasing the **power impact fee recovery rate** from 75% to 100 %
 - b. A request for disposal of property located along the north side of 3270 South for parcel #H-3395-A-P-2
6. Consideration and possible approval to **increase power impact fees from the existing impact fee facilities plan from a 75% recovery rate to a 100% recovery rate**-Scott Hughes
7. Consideration and possible approval of **awarding the foundation and control bid for the Three Falls Substation**-Jared Ross
8. Consideration and possible approval **of a reimbursement agreement for Painted Sands Ph 4** for the additional widening of 600 N. Ryan Wilde Applicant

9. 2022-PP-26: Consideration and possible approval on a **preliminary plat for Desert Sky Estates, a 73 lot residential subdivision located at 2100 W and 3350 S.** Desert Sky Estates Applicant. Ben Wilits and Tony Carter Agents.
10. 2022-ZC-36: Consideration and possible approval on a **Zone Change Amendment request located at the first bend headed south on Sand Hollow Road** to alter the zoning boundaries between RR, recreation resort, and RM-3, multifamily 15 units per acre, to align with the new road, Resort Drive, as well as RR, recreation resort, and GC, general commercial, to allow for the realignment of Sand Hollow Road.
11. 2022-ZC-37: Consideration and possible approval on a **Zone Change Amendment request located at 677 N State St from M-1, light industrial, to HC, highway commercial.** Myka Desormier Applicant. Dennis Parker Agent.
12. Consideration and possible approval of **disposing of property located along the north side of 3270 South** for parcel #H-3395-A-P-2
13. Consideration and possible approval of **revoking the business license for Las Juntas Autos-** Cindy Beteag
14. Consideration and possible approval of an **easement agreement modifying an existing easement on the north side of City-owned property located on 700 West Street** near State Street, affecting parcel numbers H-3-1-34-3217 and H-HVHC-1 through 5 - Arthur LeBaron
15. Consideration and possible approval of a **Memorandum of Understanding (MOU) between Hurricane City and Ash Creek Sewer District**
16. Consideration and possible approval of a **policy governing the Hurricane American Legion Equestrian Park-**Tiffani Wright/Darren Barney
17. Consideration and possible approval of a **Pass Through Funds Agreement with Utah Department of Transportation (UDOT)** for the 600 North multi-use trail- Arthur LeBaron
18. Consideration and possible approval of the **renewal of the distributing license for Carlson Distributing-** Cindy Beteag
19. Closed Meeting held pursuant to Utah Code section 52-4-205, upon request

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

1 Minutes of the Hurricane City Council meeting held on November 4, 2021, in the Council
2 Chambers at 147 North 870 West, Hurricane, Utah, at 4:00 p.m.

3 **Members Present:** Mayor John Bramall and **Council Members:** Nanette Billings, Darin Larson,
4 Joseph Prete, Dave Sanders, and Kevin Tervort.

5 **Also Present:** City Manager Kaden DeMille, City Attorney Fay Reber, Police Chief Lynn Excell,
6 Power Superintendent Scott Hughes, Public Works Director Mike Vercimak, Recreation Director
7 Kole Staheli, Planning Director Stephen Nelson, GIS Specialist Joe Rhodes, and City Recorder
8 Cindy Beteag

9 **AGENDA**

10 **4:00 p.m.** Work Meeting to discuss Canyons RV

11 Joby Venutti explained that he and his brother have been working on Canyons RV for the last
12 five years. The Canyons RV project has been in progress and owned by several parties over the
13 past thirty years. Mr. Venutti reviewed the intent for the property according to the original
14 brochure. The subdivision is a mix of permanent residents and nightly rental spaces. He would
15 like to operate this project as a recreation resort; however, this doesn't comply with any of the
16 zones. He asked for direction from the City Council regarding nightly rental use.

17 Councilwoman Billings explained that recreation resort zoning requires a clubhouse, pool, and
18 full-time onsite management. She is concerned that changing the use will affect current
19 homeowners in the development. Mayor Bramall feels the fair thing to do is hold a Public
20 Hearing.

21 **5:00 p.m. Pre-meeting** - Discussion of Agenda Items, Department Reports

22 David Viavos reported that the LPGA tour brought two million dollars in economic and media
23 impact. They are currently working on a project with the golf channel. The tournament has
24 obtained fifteen more sponsors for the upcoming event and seven national partners. He
25 presented information and explained what other cities pay to sponsor events, such as the
26 Bahamas, Delray Beach Open, and Utah Championship. He would like the City to be a part of
27 the LPGA tour. Hurricane City will benefit from the economic and media impact. He provided
28 information detailing the different package costs.

29 Scott Hughes reported that the Power Department received one bid to grade the substation,
30 which is close to the engineer's estimate.

31 Chief Excell introduced new officers, Jimmy Duffey and Riley Rodriguez. They have been
32 working with Dixie State University Police Academy to recruit more officers. The department is

1 short-staffed, and officers work long hours to cover the gap. The active-shooter investigation is
2 complete. The incident impacted fifteen vehicles. He will forward the information to the City
3 Council. He noted that Shop with Cop would be in person on December 11th.

4 Kole Staheli sent an email explaining the condition of the swimming pool. The new Aquatic
5 Director started on Monday. The Aquatic Director and maintenance staff are making repairs
6 and improvements to the facility in preparation for next year's pool season. He met with the
7 High School, and they pledged their continued support to Hurricane City. The Christmas Tree
8 lighting and festival is on November 29th. The department is still accepting applications to
9 decorate and donate trees to the silent auction. The proceeds will go to Kony Coins for Kids.
10 Councilwoman Billings recommended meeting with Cherish Families before committing to
11 donating to Kony.

12 Mike Vercimak expressed gratitude to the employees, Mayor, and City Council members.
13 Development is bustling, and he appreciates everyone's efforts. The Parks Department is still
14 short-staffed, but the Water and Street Departments are fully staffed. The Streets Department
15 will start crack sealing soon.

16 Arthur LeBaron reported that the Utah Department of Transportation is erecting the proposed
17 signal at Quail Lake on Monday. This will impact traffic for four weeks. The location of the bell
18 tower has been staked, and the Parks Department will start digging holes tomorrow. Mr.
19 LeBaron met with NRCS regarding environmental work for the detention basin and channel
20 improvement of Gould's Wash. He will forward the information to the City Council.

21 Stephen Nelson reported that the walking survey is open until November 14th. Councilman
22 Prete explained that the purpose of the survey is to gain feedback from the community
23 regarding ways to create a positive Downtown area. Mr. Nelson presented the first draft of the
24 Planning Commission and City Council Quick Reference Guide. The guide describes each zoning
25 area, overall zone density, and administrative and legislative decisions. Mr. Nelson is planning
26 training and workshops for the upcoming Planning Commissioners, City Council Members, and
27 Mayor.

28 **6:00 p.m. - Call to Order –**

29 Mayor John Bramall congratulated and welcomed incoming Mayor Nanette Billings.

30 **Pledge:** Mark Sampson

31 **Prayer:** April Pinkston

32 **Development Report** from the Planning Department

Fred Resch III reviewed all preliminary site plans and plat applications approved in 2021. He reported that 12,622 new residential units were approved this year. He provided a breakdown of the type of residential units approved.

Public Forum – Comments From Public

OLD BUSINESS

1. Consideration and possible approval of a **proposed zone change located at approximately 4700 S and 2600 W from RA-1 to R1-10. Parcel numbers H-3-2-32-310 and H-3-2-32-320.** Calypso Ridge Properties Applicant, Karl Rasmussen Agent.

Karl Rasmussen explained that this application was tabled subject to a development agreement. Stephen Nelson noted and explained the changes made to the initial development agreement. The applicant is in agreeance with the agreement.

Darin Larson motioned to approve the zone change request located at approximately 4700 S and 2600 W from RA-1 to R1-10. Parcel numbers H-3-2-32-310 and H-3-2-32-320. Subject to the proposed development agreement, Staff, and JUC comments. Seconded by Kevin Tervort. Nanette Billings, Darin Larson, Dave Sanders, and Kevin Tervort, voting aye. Joseph Prete voting nay. **Motion carried.**

NEW BUSINESS

1. Introduction and presentation of the **Hurricane High School's robotics team Black Ops**

Kaleb Henderson is part of the robotics team in Hurricane City. The stem community is getting bigger, which is an excellent opportunity for students.

The Hurricane High School's Robotics team won three competitions last year and placed second overall at the State level. Each year the teams get a new challenge to complete. Currently, the team mentors the Hurricane Elementry Robotics team, hosts competitions and does science camps. Haylee Martin reported that the school does not fund the teams. The team receives donations from the community. Mr. Henderson explained that the team's goal is to provide more opportunities for other students. Kaleb Shumway explained that they want to build a relationship with the City and asked if the City has resources to help their team. Haylee Martin noted that they also need a meeting venue, and she would like to start an FLL (First Lego League). Mayor Bramall feels the Community Center could provide a space for their meetings. Councilman Larson feels the Recreation Department could get involved too. Councilwoman Billings would like the applicant to commit to funding one team.

2. Consideration and possible approval of a **donation to the Hurricane High School's robotics team Black Ops**

Nanette Billings motioned to approve a donation to the Hurricane High School's robotics team Black Ops. To fund three FLL teams at \$772 per team with the students working towards funding one more team. Seconded by Dave Sanders. Darin Larson, Kevin Tervort, and Nanette Billings, voting aye. Joseph Prete voting nay. **Motion carried.**

3. Consideration and possible approval of a **proposed zone change located at 161 W 600 N from MH/RV to RM-1.** Parcel number H-281-A-4-N. Katie and Lloyd Leavitt Applicant

Katie Leavitt explained that the lot is currently zoned MH/RV. She feels that a duplex is a better fit. She discussed the parking that will be provided.

Kevin Tervort motioned to approve the zone change located at 161 W 600 North from MH/RV to RM-1 subject to staff and JUC comments. Seconded by Dave Sanders. Nanette Billings, Darin Larson, Joseph Prete, Dave Sanders, and Kevin Tervort, voting aye. **Motion carried unanimously.**

4. Consideration and possible approval of a proposed **zone change request located at approximately 3900 W and 1000 S in Sand Hollow PID from R1-6 and R1-8 to R1-6 and R1-8 with a PDO.** A piece of parcel number H-4-2-1-1103 and a section of H-4-2-12-1102. Western MTG and Realty Co Applicant. Brent Moser Agent

Karl Rasmussen explained that that is south of Glamper's Inn. Funding for the PID will take place next week, and infrastructure will start soon. Mr. Rasmussen thinks the infrastructure will be complete within the following year. The PID roads will include trails, and the applicant is meeting with Staff to discuss the park amenities. Stephen Nelson reported that the roads exceed the maximum street block length.

Dave Sanders motioned to approve the zone change request located at approximately 3900 W and 1000 S in Sand Hollow PID from R1-6 and R1-8 to R1-6 and R1-8 with a PDO subject to Stephen Nelson's comment regarding the block lengths, efficient parking, staff, and JUC comments. Seconded by Kevin Tervort. Nanette Billings, Darin Larson, Joseph Prete, Dave Sanders, and Kevin Tervort, voting aye. **Motion carried unanimously.**

5. Consideration and possible approval of a proposed **zone change located at approximately 2700 S and 2300 W from RA-1 to R1-10 with a PDO for 133 acres and M-1 for approximately 27 acres.** Parcel number H-3373-NP. Molly's View, LLC Douglas Howard, CEO Applicant. Richard Wedig Agent.

1 Tom Patent with Orcutt Winslow Architect reported that the applicant agrees to the
2 development agreement, and he provided a Master Plan Booklet for the development. They
3 will have to extend infrastructure to the site, and they have submitted the preliminary drainage
4 plan. However, the water that flows through this site will have to be addressed. The mission
5 and goal of the community is to create a community based on family, health, wellness, and
6 spirituality. The project contains expansive community gardens and green space. The proposed
7 community hospital and medical campus will provide emergency services for this area of town.
8 Councilwoman Billings reported that people are excited about the American Village and the
9 services the PID will provide.

10 Nanette Billings motioned to approve the zone change located at approximately 2700 S and
11 2300 W from RA-1 to R1-10 with a PDO for 133 acres and M-1 for approximately 27 acres as
12 presented subject to staff comments and development agreement. Seconded by Kevin Tervort.
13 Darin Larson, Dave Sanders, Nanette Billings, and Kevin Tervort, voting aye. Joseph Prete
14 abstained. **Motion carried.**

15 **6. Consideration and possible approval of a preliminary plat, containing 64 lots, located at**
16 **2105 S 3325 W.** Western MTG and Realty Co Applicant, Matt Lowe Agent.

17 Mayor Brammall reported that the Planning Commission and JUC recommend approval. Karl
18 Rasmussen reported that this project is southeast of the park approved in the Sand Hollow PID.
19 Mr. Rasmussen confirmed that there are no issues regarding fire access.

20 Darin Larson motioned to approve the preliminary plat for Peach Spring Estates subject to staff
21 and JUC comments. Seconded by Nanette Billings. Joseph Prete, Dave Sanders, Kevin Tervort,
22 Nanette Billings, and Darin Larson, voting aye. **Motion carried unanimously.**

23 **7. Consideration and possible approval of a proposed code amendment to Hurricane City**
24 **Code 10-26.** Hurricane City Planning Applicant.

25 Stephen Nelson recommended continuing this item to give the City Council time to review and
26 consider the changes. The main changes pertain to the phasing of amenities. Councilman Prete
27 suggested requiring the amenities within the first phase, and Councilwoman Billings wants to
28 make sure that onsite management is required.

29 Joseph Prete motioned to continue consideration and possible approval of a proposed code
30 amendment to Hurricane City Code 10-26. Seconded by Kevin Tervort. Nanette Billings, Darin
31 Larson, Joseph Prete, Dave Sanders, and Kevin Tervort, voting aye. **Motion carried**
32 **unanimously.**

33 **8. Consideration and possible decision of declaring Falcon Ridge Lot 38 as surplus**
34 **property**

Sharon Shores explained that Habitat for Humanity cannot purchase property in the current housing market, which is why they are asking the City to donate this lot. Councilwoman Billings noted that this property is not a buildable lot due to the slopes. Fay Reber explained that the City Council must consider whether the City has or anticipates that it will have no practical, economical, efficient, or appropriate use for the property currently or in the foreseeable future. After that determination is made, no disposition of surplus property shall be made for less than fair market value unless the City determines that the disposition of the property is in the public's best interest. Councilwoman Billings noted that the Historical Committee would like to place a marker and overlook in this area.

The City Council agreed that this is not surplus property.

Nanette Billings motioned to deny declaring Falcon Ridge Lot 38 as surplus property. The property is usable to the community and not surplus property. Seconded by Joseph Prete. Darin Larson, Dave Sanders, Kevin Tervort, Joseph Prete, and Nanette Billings, voting aye. **Motion carried unanimously.**

9. Consideration and possible decision regarding extending the renewal date for Joyce Glenn

Joyce Glen purchased this home as future retirement income. She added landscaping, a gazebo, and a pool and invested \$12,000 in installing an overhead sprinkler system and a water main break this summer, costing her \$10,000. She also had a private fire inspection on the overhead sprinkler system and the city inspection. Ms. Glenn noted that she did receive the renewal notice and thought she had paid the fee. Mayor Bramall asked if extending the license would cause unrest amongst the applicants on the waitlist. Fay Reber reported that the short-term vacation rental ordinance is part of the business license ordinance. He is unaware of any exception in the ordinance allowing the City Council to overrule this; however, the City Council has given other applicants additional time to comply.

Joseph Prete motioned to approve extending the renewal date or reinstating her license because Joyce Glen testified that she did not receive the notice and demonstrated her good faith and intent. Seconded by Nanette Billings. Darin Larson, Dave Sanders, Kevin Tervort, Nanette Billings, and Joseph Prete, voting aye. **Motion carried unanimously.**

10. Consideration and possible approval of awarding the bid for the Hurricane City Power Substation Grading & Utilities Plan - Scott Hughes

Kevin Tervort motioned to approve awarding the bid for the Hurricane City Power Substation Grading & Utilities Plan. Seconded by Dave Sanders. Nanette Billings, Darin Larson, Joseph Prete, Dave Sanders, and Kevin Tervort, voting aye. **Motion carried unanimously.**

11. Discussion regarding economic impacts to the City - Kaden DeMille

Kaden DeMille explained that the City has great employees; however, there has been a large amount of turnover. It has been challenging to find new employees. Mr. DeMille is worried about employees burning out. He reported that the City increased wages by three percent in July; however, many surrounding communities are increasing wages by up to ten percent in January. Hurricane City must stay competitive. Councilman Prete asked to what extent the City can reallocate tax revenue to wages or pull from other funds. Mr. DeMille reported that he typically reviews additional revenues when considering wage increases. Councilwoman Billings asked if this pertains to all employees. Mr. DeMille reported that these wage increases usually don't apply to employees with poor performance or who are topped out on their pay scale. Councilman Larson noted this issue in the private and public sectors. Councilwoman Billings suggested a work meeting to review the budget and discuss options. Chief Excell voiced gratitude towards Mr. DeMille and the City Council for their support. He explained seventy percent of new recruits in the Police Department have left in the past year. The City invests a lot of money in their training only to lose them a short time later. Councilwoman Billings asked Mr. DeMille to review the budget and present options to the City Council.

Mayor and Council reports

Mayor Bramall	Airport, Administration, Police, Animal Control, School Crossing Guards, Victim Services, Public Works, Engineering -
Nanette Billings	Parks & Cemetery, Appeals Board, Airport, Historical Preservation, Solid Waste District, and Youth Council – Reported that Washington Cities Veterans Program is at 10:00 a.m. on November 11 th .
Darin Larson	Planning Commission, Economic Development, Planning Department, Power, and Swimming Pool -
Joseph Prete	Court, Water, Recreation, Tree Board, and Beautification Committee -
Dave Sanders	Emergency Management, Streets & Drainage, Prosecutor's Office, Code Enforcement, and Building and Inspections -
Kevin Tervort	Ash Creek Special Service District, Golf Course, Industrial Park, Mosquito Abatement, Fire District -
Kaden DeMille	City Administration -

Dave Sanders motioned to go into a closed meeting. Seconded by Joseph Prete. Nanette Billings, Darin Larson, Joseph Prete, Dave Sanders, and Kevin Tervort, voting aye. **Motion carried unanimously.**

Adjournment: 9:50 p.m.

1 Minutes of the Hurricane City Council meeting held on December 2, 2021, in the Council
2 Chambers at 147 North 870 West, Hurricane, Utah, at 3:30 p.m.

3 **Members Present:** Mayor John Bramall and **Council Members:** Nanette Billings, Darin Larson,
4 Joseph Prete, Dave Sanders, and Kevin Tervort.

5 **Also Present:** City Attorney Fay Reber, Police Chief Lynn Excell, Power Superintendent Scott
6 Hughes, Public Works Director Mike Vercimack, Planning Director Stephen Nelson, Street
7 Superintendent Weston Walker, Recreation Director Kole Staheli, City Engineer Arthur LeBaron,
8 GIS Specialist Joe Rhodes, City Recorder Cindy Beteag, and Fire Chief Tom Kuhlman.

9 **AGENDA**

10 **3:30 p.m.** Work Meeting to discuss the proposed Public Infrastructure District Sand Hollow
11 Mesa and Bench Lake

12 Karl Rasmussen presented a map displaying the boundaries and estimates for each project.
13 Brennan Brown explained that the Bench Lake PID is a way to finance water and power. He
14 commented they met with the City a few months ago to discuss the problem of inadequate
15 infrastructure. They feel that approving the PID will help solve the problem.

16 Nanette Billings stated her concern is the end cost for the consumer. Marcus Keller explained
17 that the PID is a financing mechanism. Hurricane City can use its water revenue bonds to
18 finance these projects; however, there are other ways to finance the projects such as limited
19 tax obligation bonds, special assessments, or fees. Mr. Keller explained the key difference
20 between each financing tool. There are advantages and disadvantages to each. Mr. Brown
21 stated it will be a small tax because it covers a large area. Doing it this way, he thinks growth
22 will pay for itself. Mayor Bramall declared a conflict of interest. He voiced concern of the taxes
23 it would put on people that would only increase over the years.

24
25 Randy Larson explained that it is essential to weigh all facts to ensure that this benefits
26 everyone. Long-term property tax is not the only way to repay the bond. A PID will separate the
27 burden from the City. The group discussed connecting roads and master planning ahead of the
28 growth.

29 Mr. Keller noted that this is an economic development tool for the City. This will help the City
30 develop the master plan. He explained that master-planned communities give the most value
31 to the City. Matt Ence stated the governing documents will define all the details.

32 Councilman Prete feels it is important to be cautious when raising taxes. He is genuinely
33 concerned about the residents and community. The community wants measured growth, and a
34 PID escalates growth. The City needs the infrastructure but not rapid growth.

1 **5:00 p.m. Pre-meeting** - Discussion of Agenda Items, Department Reports

2 Chief Excell reported that there are two recruits in the Police Academy in Salt Lake. Sunny
3 Ulrich started in November and is currently working in the office until she graduates. Shop with
4 a Cop is on December 11th. The Water Department generator should be shipped from
5 Caterpillar on December 13th.

6 Kohle Staheli reported that the Fall sports leagues and programs are ending. He expressed
7 gratitude for the staff's hard work. The concerts at the fine arts museum will continue
8 throughout the month.

9 Weston Walker reported that chip sealing will start soon on the designated roads.

10 Ken Richins reported that the department is working to acquire property for a well and water
11 tank site south of Sky Ranch. He commented that Mayor Bramall has been instrumental in
12 obtaining easements for two water tanks from the Bureau of Land Management.

13 Tom Kuhlman reported that the new Deputy Chief started this week. Four new firefighters and
14 EMTs are in training and will hopefully be ready to go into the field next week.

15 **6:00 p.m. - Call to Order –**

16 **Pledge:** Kelby Iverson

17 **Prayer:** Sharon Shores

18 Approval of Minutes: August 5, 2021

19 Joseph Prete motioned to approve the minutes of the regular City Council meeting on August 5,
20 2021. Seconded by Nanette Billings. Darin Larson, Joseph Prete, Dave Sanders, Kevin Tervort,
21 and Nanette Billings, voting aye. Motion carried unanimously.

22 **OLD BUSINESS**

23 1. Consideration and possible approval of a **preliminary plat for Red Cliff Preliminary Plat,**
24 **a 31 lot duplex development, located at 2170 W 600 N.** Jay Rice - Red Cliff
25 Development Applicant. Jared Madsen - Alpha Engineering Agent.

26 Jared Madsen explained that the zone change has been approved and nothing has changed on
27 the preliminary plat. Stephen Nelson stated that secondary access needs to be secured for
28 before they build out. Mr. Madsen noted that access through Firerock will be provided in phase

one. Councilman Prete asked if the picnic areas and pathways have been provided. Mr. Madsen explained that the landscape designer is still designing. Mr. Nelson will make sure it is on the construction drawings.

Joseph Prete motioned to approve the preliminary plat for Red Cliff Preliminary Plat, a 31 lot duplex development, located at 2170 W 600 N. Seconded by Dave Sanders. Darin Larson, Joseph Prete, Dave Sanders, Kevin Tervort, and Nanette Billings, voting aye. Motion carried unanimously.

2. Consideration and possible approval of a proposed **zone change amendment request on 327 acres from RA-1, residential agriculture one unit per acre, to R1-10, residential one unit per 10,000 square feet. Parcel ID's H-3402 and H-3401-A.** Silver Flats LLC/ Duane Fielding Applicant, Jon Jensen Agent

Jon Jensen explained that the previous main concern was capacity. He stated the development agreement states that no development can start without adequate capacity. Stephen Nelson reported that approval should be subject to a development agreement. He explained that the application is asking for straight R1-10 zoning. Councilman Prete reiterated his previous concerns. He does not feel that the development agreement is enough protection for the City. The zoning should not be changed until the infrastructure can support it. Mr. Nelson reported that the in this area is four units per acre. Under the current zoning, the applicant could have two hundred and sixty-one units. The new zoning would be about eight hundred units. Mr. Jensen feels this matches the master plan and the surrounding properties. Councilwoman Billings agrees that this follows the master plan. She feels that the development agreement addressed the infrastructure concerns. Mr. Jensen stated that the applicant is interested in joining the PID discussed during the work meeting.

Darin Larson motioned to approve the zone change amendment request on 327 acres from RA-1, residential agriculture one unit per acre, to R1-10, residential one unit per 10,000 square feet. Parcel ID's H-3402 and H-3401-A. Subject to a development agreement noting that infrastructure is unavailable, and permits will not be issued until infrastructure is in place. Approval is based on it is consistent with the general plan, matches surrounding properties, and it will not negatively affect surrounding properties. Seconded by Kevin Tervort. Darin Larson, Dave Sanders, Kevin Tervort, and Nanette Billings, voting aye. Joseph Prete voting nay. Motion carried.

Public Forum – Comments From Public

Deborah Serrano lives in Peregrine Pointe. She referred back to the September 2nd meeting when the City Council advised the builder that they wanted single-family homes on the property. The builder returned with a multifamily plan and a density bonus. The surrounding communities are all single-family developments. She is concerned about the increase in traffic,

1 street parking, crime, and decrease in home value. The surrounding owners ask the City Council
2 to deny the zone change.

3 Clelen Tanner is speaking to item 6. When he bought his house, he was assured that the
4 property was single-family zoning. He feels it is important to stick to the General Plan. The
5 developer bought this property knowing what the zoning is. He is opposed to the change.

6 Margaret Sabey agrees that the applicant knew the property's zoning when they purchased the
7 property. The City Council voted no in September and gave the applicant options to go to the
8 Planning Commission with a single-family design. That is not what they are proposing. The
9 builder didn't do his part, and they are asking for a 20% increase.

10 Chris Anderson lives within two hundred and fifty feet of the property, and she is disappointed
11 because she did not receive a letter for the public hearing. Ms. Anderson is extremely
12 disappointed with the Planning Commission. Why go through all that work to update the
13 General Plan and then ignore it? The community is not asking the Council to deny the developer
14 the right to build. They are asking the Council to adhere to the zoning of the property.

15 Pam Webster is not confident that her voice and feelings hold weight.

16 Lee Beatty has lived on 300 North for seventy-three years. The Planning Commission and City
17 Council denied this. Paul Farthing should not have voted at the Planning Commission meeting
18 because he previously owned the property. Mr. Beatty cited the General Plan. The goals are to
19 protect the farmland and ensure that new development will not burden existing residents. The
20 zoning was put in place to protect existing neighborhoods. He encourages the Council to deny
21 the zone change.

22 Brad Tanner agrees that the developer knew the property was single-family when they bought
23 it. He echoes the previous comments and asks the City Council to deny the zone change.

24 Dan Tuttle didn't know about this when he purchased his home. He is saddened by how easy it
25 is for a developer to build high-density projects in Hurricane City. This is pitting neighbor against
26 neighbor, and they will fight the City if this is approved.

27 Sharon Shores was instrumental in obtaining the signatures opposing this. She listened to
28 recordings from the September meeting. It was said that the Council needs to slow down the
29 growth to catch up. A change in the General Plan should be rare, not every meeting. This is not
30 compatible with the General Plan, it is not harmonious with the surrounding area, and it affects
31 the neighbors.

32 **NEW BUSINESS**

1 **1. Consideration and possible approval of waiving the impact fees for Washington County**

2 Commissioner Victor Iverson explained that this 12,000 sq foot building will be a receiving area.
3 This is a resource for the law enforcement community. Currently, if a citizen is in a mental crisis
4 or any other type of crisis, law enforcement can only charge the citizen with a crime and take
5 them to jail or the hospital. The center allows law enforcement to offer an alternative option.
6 Southwest Public Health will manage this center. Law Agencies see this as a valuable tool.
7 Commissioner Iverson is requesting for the impact fees to be waived. Councilwoman Billings
8 feels this is a great opportunity to help people.

9 Kevin Tervort motioned to approve waiving the impact fees and building permit fee for
10 Washington County for this facility. Seconded by Dave Sanders. Darin Larson, Joseph Prete,
11 Dave Sanders, Kevin Tervort, and Nanette Billings, voting aye. Motion carried **unanimously**.

12 **2. Consideration and possible approval of the revocation of the business license for Big**
13 **Nail Construction - Cindy Beteag**

14 Cindy Beteag reported that the owner has not secured the necessary DOPL license.

15 Nanette Billings motioned to approve the revocation of the business license for Big Nail
16 Construction. Seconded by Kevin Tervort. Darin Larson, Joseph Prete, Dave Sanders, Kevin
17 Tervort, and Nanette Billings, voting aye. Motion carried **unanimously**.

18 **3. Consideration and possible approval to swap land and purchase additional acreage for**
19 **a substation - Scott Hughes**

20 Scott Hughes reported that the property owned by the Power Department is not adequately
21 sized to support a substation. The department worked with the property owner to swap land
22 and purchase the additional acreage. The access road will be on 1300 South. This substation will
23 help support development to the south and the main portion of town.

24 Dave Sanders motioned to approve the swap of land and purchase of additional acreage for a
25 substation in the amount of \$150,000. Seconded by Darin Larson. Joseph Prete, Darin Larson,
26 Dave Sanders, Kevin Tervort, and Nanette Billings, voting aye. Motion carried **unanimously**.

27 **4. Consideration and possible approval of a proposed zone change amendment request**
28 **located at 367 West 300 North from R1-10, residential one unit per 10,000 square feet,**
29 **to RM-2, multifamily 10 units per acre, to add to the existing Silver Leaf Townhome**
30 **development Parcel number H-334-14-A-1. Isom Clinton Floyd and Lillian Jones Family**
31 **LLC Applicant, Rick Bennion Agent.**

1 Karl Rasmussen presented a video explaining the project. The bottom road connects to 200
2 North and there is also connectivity to 300 North. The proposed townhomes are 2,000 square
3 feet per side. The City Council denied this last year. He explained that the property owner could
4 not sell the property so they approached the applicant again. They feel it fits with this property
5 and meets the four requirements for a zone change.

6 Stephen Nelson reported that improvements need to be made to the property's frontage, and
7 the City also requires improvements on the asphalt. Councilwoman Billings explained that
8 residents would not be resistant to the development if it was single-family homes. This zone
9 change will double the units. Councilman Larson reported that the Planning Commission
10 recommended approval with a split vote. They felt it fits with the current infrastructure. Mayor
11 Bramall is concerned because increased density requires enhancing utilities.

12 Nanette Billings motioned to deny the zone change amendment request located at 367 West
13 300 North from R1-10, residential one unit per 10,000 square feet, to RM-2, multifamily 10
14 units per acre, to add to the existing Silver Leaf Townhome development Parcel number H-334-
15 14-A-1 based on it is not consistent with the master plan, it is not harmonious, and it negatively
16 affects the neighboring property owners. Seconded by Joseph Prete. Dave Sanders, Nanette
17 Billings, and Joseph Prete, voting aye. Darin Larson and Kevin Tervort voting nay. Motion
18 **carried.**

19 **5. Consideration and possible approval of the Memorandum of Understanding with SUU**

20 Mike Green explained that there are still questions and items to discuss. He reported that SUU
21 has rejected the thirty-minute time limit and the one-hour time limit. Councilwoman Billings
22 reported that the Airport Board has suggested defining a specific time of day flight period. She
23 suggested incorporating a reminder that no run-on landing is allowed per the airport guidelines
24 and rules. Councilman Prete feels the MOU is uninspiring but shows some willingness.

25 Joseph Prete motioned to approve the Memorandum of Understanding with SUU. Seconded by
26 Nanette Billings. Darin Larson, Joseph Prete, Dave Sanders, Kevin Tervort, and Nanette Billings,
27 voting aye. Motion carried **unanimously.**

28 **6. Consideration and possible approval of a proposed zone change request located at 600**
29 **North and 2800 West to contain a PDO,** planned development overlay, with an
30 underlying zone of R1-8, residential one unit per 8,000 square feet. Parcel Numbers: H-
31 3-1-31-1106, H-3-1-31-1107, H-3-1-31-1108 DAF Development LLC Applicant.

32 Rick Richardson with Richardson Brothers Custom Homes explained that he has lived in
33 Southern Utah and developed here for thirty years. They have the community's best interest at
34 heart. Mr. Richardson thanked the City Council for their suggestions. This presented plan is a
35 fresh design. The density matches all surrounding properties. Councilwoman Billings explained

1 that the residents want single-family in this area. Mr. Richardson reported this type of design
2 has already been approved in the area. These are attached single-family homes. The homes are
3 not short terms rentals. They are individually owned. Councilman Larson reported that the
4 Planning Commission recommended approval. He asked what type of commercial will be on the
5 portion of the property that was split by the roadway alignment. Mr. Richardson commented
6 neighborhood commercial makes the most sense. The density is the same as Peregrine Pointe,
7 but the PDO allows them to cluster the homes. He sees this as enhancing the area. He thinks
8 the community will be happy with this product.

9 Stephen Nelson explained that amenities must be provided to qualify for a density bonus. The
10 applicant is providing a pool, pool house, and pickleball courts. Mr. Nelson also noted that a
11 wall along 600 North and 2800 West is required. Councilman Larson favors this because it is
12 surrounded by arterial roads. It is a good place for townhomes, and the density is the same as
13 the surrounding areas. Mr. Richardson noted that this matches the zoning and surrounding
14 properties.

15 Darin Larson motioned to approve the zone change request located at 600 North and 2800
16 West to contain a PDO based on it is consistent with the master plan, supports our policies, fits
17 the overall character, and does not have a detrimental effect on neighbors. Seconded by Kevin
18 Tervort. Darin Larson, Dave Sanders, and Kevin Tervort, voting aye. Nanette Billings and Joseph
19 Prete, voting nay. Motion **carried**.

- 20 **7. Consideration and possible approval of a proposed zone change request located at**
21 **1117 W 600 N from R1-10, residential one unit per 10,000 square feet, to RM-2,**
22 **multifamily 10 units per acre on the north end, R1-6, residential one unit per 6,000**
23 **square feet on the south end, and open space in the middle all to contain a PDO,**
24 **planned development overlay. GVS Holdings LLC, Applicant. Dwain Schallenberger,**
25 **Agent.**

26 The Planning Commission recommended that the south side remains R1-10. The applicant
27 agrees to stay R1-10 on the lower section. The General Plan does match their proposal. The
28 applicant has met with Valley Academy, and they preliminary approved extending the road.
29 They are coordinating the road on the west with the power department.

30 Kevin Tervort motioned to approve the zone change request located at 1117 W 600 N from R1-
31 10, residential one unit per 10,000 square feet, to RM-2, multifamily 10 units per acre on the
32 north end, R1-6, residential one unit per 6,000 square feet on the south end, and open space in
33 the middle all to contain a PDO subject to the south portion remaining R1-10 and staff and JUC
34 comments. Seconded by Dave Sanders. Joseph Prete, Kevin Tervort, Darin Larson, and Dave
35 Sanders, voting aye. Nanette Billings voting nay. Motion **carried**.

- 1 **8.** Consideration and possible approval of a **preliminary plat for Pecan Valley Estates**,
2 containing 43 lots, located at approx. 5140 W and future Dixie Springs Drive. Chris Wyler
3 Applicant, Civil Science Agent

4 Stephen Nelson reported that the Planning Commission recommended approval. The applicant
5 worked with Desert Sands to realign the roadway.

6 Nanette Billings motioned to approve the preliminary plat for Pecan Valley Estates based on
7 staff comments and the alignment of the road. Seconded by Kevin Tervort. Joseph Prete, Kevin
8 Tervort, Darin Larson, Nanette Billings, and Dave Sanders, voting aye. Motion carried
9 **unanimously.**

- 10 **9. Public Hearing** to take comments on the following.

11 Darin Larson motioned to go into a public hearing. Seconded by Dave Sanders. Joseph Prete,
12 Kevin Tervort, Darin Larson, Nanette Billings, and Dave Sanders, voting aye. Motion carried
13 unanimously.

- 14 A. Sensitive Land application for Cliff Shadow Phase 2 located at 1200 South and Angell
15 Heights Drive.

16 No comments

- 17 B. A Sensitive Land application for Mountain View Estates located at 1300 West and
18 650 South

19 No comments

20 Darin Larson motioned to go out of the public hearing. Seconded by Dave Sanders. Joseph
21 Prete, Kevin Tervort, Darin Larson, Nanette Billings, and Dave Sanders, voting aye. Motion
22 carried unanimously.

- 23 **10.** Consideration and possible approval on a **preliminary plat and sensitive lands**
24 **application, for Cliff Shadow Phase 2** located at the north end of Angell Heights Drive.
25 Todd Trane Applicant.

26 Stephen Nelson reported that the applicant has changed the preliminary plat showing the
27 roadway through the back lot with and the cul de sac will be at the bottom of the hill. The cul
28 de sac is on Eden's property. If they disagree, they will come back with a different plan.

1 Nanette Billings motioned to approve the preliminary plat and sensitive lands application, for
2 Cliff Shadow Phase 2. Seconded by Dave Sanders. Joseph Prete, Kevin Tervort, Darin Larson,
3 Nanette Billings, and Dave Sanders, voting aye. Motion carried **unanimously**.

4 **11. Consideration and possible approval of a preliminary plat and sensitive lands**
5 **application for Mountain View Estates**, a 35 lot subdivision, located at 1300 W 650 S.
6 Virginia Ashton Trust Applicant. Craig Engel RAC Inc Agent.

7 Craig Engel noted that the project is thirty-two lots due to the sixty-foot strip on 650 South.
8 Stephen Nelson reported that there are concerns regarding the roadways. The applicant sent a
9 letter in the packet declaring they are willing to comply with the master plan roadway and
10 widen their road. Approval should be subject to roadway alignment. Mr. Engel reported that
11 the applicant is working with Chris to loop water and develop secondary access. Mr. Nelson
12 noted that the applicant cannot fully develop this project until Chris's project is completed.

13 Nanette Billings motioned to approve the preliminary plat and sensitive land application for
14 Mountain View Estates a 32 lots subdivision subject to Staff and JUC comments. Councilman
15 Larson noted that the road on 650 South is in dire need of improvement, and he feels this road
16 should be moved up to the top of the list of roadways that the City needs to address. Seconded
17 by Dave Sanders. Joseph Prete, Kevin Tervort, Darin Larson, Nanette Billings, and Dave Sanders,
18 voting aye. Motion carried **unanimously**.

19 **12. Consideration and possible approval of an amended final plat for Stonebrook**
20 **Townsquare**, located at 1350 W and State Street. Comida Rapida LLC Applicants. Steve
21 Kemp Agent.

22 Stephen Nelson reported that the applicant submitted the amendment note and all the
23 concerns have been addressed.

24 Nanette Billings motioned to approve the amended final plat for Stonebrook Townsquare.
25 Seconded by Darin Larson. Joseph Prete, Kevin Tervort, Darin Larson, Nanette Billings, and Dave
26 Sanders, voting aye. Motion carried **unanimously**.

27 **13. Consideration and possible approval of a preliminary plat for Crocker Enterprises**, a 9-
28 lot industrial subdivision located at approx. on Old Hwy 91 and 492 N. Crocker
29 Enterprises Applicant. Brady Shakespear Agent.

30 The applicant has provided waterline access as well as a roadway. The main road was updated
31 to a public roadway. The Water Department has requested a public roadway to access the
32 water tank. The Planning Commission recommended not requiring access from the north or a
33 public right of way to the south, but the City Council disagreed. It needs to be a public right of
34 way. Stephen Nelson will take this back to JUC to get their recommendation.

- 1 Kevin Tervort motioned to approve the preliminary plat for Crocker Enterprises with a provision
2 there is a 41-foot dedicated roadway over the waterline, and the access point to STLA needs to
3 remain. Seconded by Dave Sanders. Joseph Prete, Kevin Tervort, Darin Larson, Nanette Billings,
4 and Dave Sanders, voting aye. Motion carried **unanimously**.
- 5 Mayor and Council reports

Mayor Bramall	Airport, Administration, Police, Animal Control, School Crossing Guards, Victim Services, Public Works, Engineering -
Nanette Billings	Parks & Cemetery, Appeals Board, Airport, Historical Preservation, Solid Waste District, and Youth Council – Nate was sworn in as Sheriff. The Solid Waste District is considering increasing the residential fee to fifty cents.
Darin Larson	Planning Commission, Economic Development, Planning Department, Power, and Swimming Pool -
Joseph Prete	Court, Water, Recreation, Tree Board, and Beautification Committee -
Dave Sanders	Emergency Management, Streets & Drainage, Prosecutor's Office, Code Enforcement, and Building and Inspections -
Kevin Tervort	Ash Creek Special Service District, Golf Course, Industrial Park, Mosquito Abatement, Fire District -
Kaden DeMille	City Administration -

- 6 Stephen Nelson reported that the City Council thank you dinner is on the 13th. The Moderate-
7 Income Housing report was submitted.
- 8 Adjournment: 9:53 p.m.

1 Minutes of the Hurricane City Council meeting held on October 3, 2022, in the Council
2 Chambers at 147 North 870 West, Hurricane, Utah, at 5:00 p.m.

3 **Members Present:** Mayor Nanette Billings and **Council Members:** Joseph Prete, Dave Sanders,
4 David Hirschi, Doug Heideman, and Kevin Thomas

5 **Also Present:** City Manager Kaden DeMille, City Attorney Dayton Hall, Police Chief Lynn Excell,
6 Power Superintendent Scott Hughes, Public Works Director Mike Vercimak, Planning Director
7 Stephen Nelson, Street Superintendent Weston Walker, Recreation Director Tiffani Wright, City
8 Engineer Arthur LeBaron, City Recorder Cindy Beteag, Finance Manager Paige Chapman, Human
9 Resource Director Selwin Lovell, Parks Director Darren Barney, and GIS Analyst Pam Blackmore

10 AGENDA

5:00 p.m. Pre-meeting - Discussion of Agenda Items, Department Reports

11
12 Arthur LeBaron had a multiple federal agency field trip to Goulds Wash. It was good to show
13 them what Goulds Wash consists of. He met with the Bureau of Land Management regarding
14 the proposed access to the equestrian park. He is waiting to hear back, but it sounds promising.
15 Two proposed subdivisions are on either side of the proposed roadway dedication for Antenna
16 Avenue. The subdivisions can only move forward once the dedication is approved. Mayor
17 Billings reported that some developers had expressed concern regarding the plan review time
18 frame. She asked if developers could pay an independent inspector to move their project along
19 faster. Mr. LeBaron's biggest concern is whether the consultant will work in the City's best
20 interest. Stephen Nelson pointed out that the building permit review looks at the international
21 building code defined by the State; however, each City has different standards for engineering
22 reviews, and outside firms may not be familiar with Hurricane City standards. Councilman Prete
23 asked what was causing the delays. Mr. LeBaron explained that most the pending projects
24 depend on the PID infrastructure to develop their site, and the Engineering Department is still
25 extremely busy. Councilman Heidemann reported that he was in the meeting with the
26 developers and thanked Mr. LeBaron for handling it so well. Mayor Billings reported that she
27 reviewed the list, and some plans have been here since June. She also noted that this is not only
28 affecting the PIDs; some developers feel like the City is holding up their projects and costing
29 them money. Mr. LeBaron stated that the review fees most likely do not cover the costs. He
30 noted that the department is short-staffed.

31 Stephen Nelson reported that Jason Cordova passed his mechanical test last week, and he's
32 been a great asset. The Appeals Board met today on a variance request and a request to
33 enlarge a nonconforming structure, and both were approved. The first meeting for the
34 Downtown Master Plan was held last week.

1 Weston Walker reported that the department has been busy with city cleanup. He noted that
2 there were piles of garbage around the dumpsters, and contractors dumped a large amount of
3 construction debris that should have been dumped in their dumpsters. Mayor Billings explained
4 the City has a contract to have dumpsters twice a year, but the City will have to pay for the
5 extra dumpsters brought in for the trash outside the dumpsters. Councilman Heidemann feels
6 city cleanup is an excellent way to keep the City beautiful, and it should be continued. Mr.
7 Walker noted that the chip seal project is near completion, and they will be back tomorrow to
8 blow off sidewalks and approaches.

9 Chief Excell reported that there are message boards around town reminding drivers to adhere
10 to red lights. Highway Safety is providing funding to support overtime shifts for patrol officers.
11 Mr. Excell sent a message to the prosecutor explaining that there is a zero-tolerance policy for
12 these traffic violations, and they expect violators to be cited. These traffic accidents are costing
13 a lot of time and lives. Trail Hero is this weekend, but they have yet to request any help from
14 the City. To date, the Police Department has responded to 6,700 cases. Cases involving the
15 youth homes have increased by sixty percent. The basement of the Police Department flooded.
16 No electronics were damaged, but some packaging in the evidence room was damaged. One
17 officer is finishing field training this week, three officers are in the Police Academy, and two
18 more will start next month. The department is fully staffed; however, one officer is leaving in
19 December. They tested for Sargents last week, and the position will be filled at the beginning of
20 the year. Councilman Heidemann expressed sadness regarding the fatal accident. Mr. Excell
21 reported that the incident is still under investigation, and he is not aware of any witnesses yet.
22 Many cars are parked on the road in that area, creating a sight distance problem.

23 Mike Vercimak reported that the City office is fielding complaints regarding the flooding and
24 chip seal. He noted that the City is still extremely busy. The frenzy has changed, and there is a
25 rush to finish projects and complete bonding.

26 Sel Lovell reported that the recently hired Hearing Officer is no longer with City. There are still
27 openings in the Parks and Power Department.

28 Darren Barney reported that they are trying to fill full-time and part-time positions. He reported
29 that the park bathrooms are being destroyed by vandalism, and he plans to add cameras to
30 next year's budget.

31 Tiffani Wright reported the pool is closed for the season, and aside from the pump going out, it
32 was a good season. They are also getting vandalized, so they are looking at getting cameras too.
33 Trunk or Treat is on October 27th from 6:00 p.m. to 8:00 p.m. The Christmas Tree Lighting is on
34 November 7th. Mayor Billing reported that the ribbon cutting for the Equestrian Park is on
35 November 5th.

36 Paige Chapman reported that the auditors are coming next week.

1 Scott Hughes invited the City Council to attend Public Power Day on October 4th. The
2 department is extremely busy and understaffed.

3 **6:00 p.m. - Call to Order –**

4 Mayor Nanette Billings welcomed everyone to the meeting.

5 Prayer, Thought, and Pledge: Cassie Daughtery

6 Declaration of any conflicts of interest

7 None

8 Swearing in of the new Youth City Council

9 Recognition of employees

10 Mayor Billings recognized the Street Department for their work during City Clean Up and the
11 flooding. She thanked Crystal Wright for promptly investigating and solving a customer's
12 concern regarding their solar credits. Lastly, she thanked Stephen Nelson for his positive energy
13 and vision for Hurricane City.

14 **Public Forum – Comments From Public**

15 **OLD BUSINESS**

16

17 1. Consideration and possible approval of **Ordinance 2022-50 amending Title 7, Chapters**
18 **4, 8, 10, 11; amending Title 13; and creating Title 7, Chapter 12 regarding Utility**
19 **Franchises - Dayton Hall**

20 Dayton Hall explained that this is the second time this has come to Council. Department Heads
21 have reviewed the ordinance, and Mr. Hall added their recommendations. He discussed the
22 changes made to the draft ordinance. There is concern regarding cuts made by providers
23 installing conduits in the roadway. Providers are required to maintain the conduits until the
24 road is repaved. Another addition to the draft is that utilities must be provided to public
25 buildings and facilities, even in low-density areas, if the City requests. Mr. Hall reported that
26 each applicant must provide a plan and a schedule as to when service will be provided
27 throughout the service area. He noted that Hurricane City is the service area. Infowest has no
28 concerns with this ordinance.

29 David Hirschi motioned to approve Ordinance 2022-50, amending Title 7, Chapters 4, 8, 10, 11;
30 amending Title 13; and creating Title 7, Chapter 12 regarding Utility Franchises. Seconded by

1 Doug Heideman. Joseph Prete, Kevin Thomas, Dave Sanders, David Hirschi, and Doug
2 Heideman, voting aye. Motion carried unanimously.

3
4 **2. Consideration and possible approval of Ordinance 2022-51 Amending Section 7-5**
5 **regarding the City Cemetery - Darren Barney**

6 Darren Barney reported that the summary and ordinance were provided in the packet. Mayor
7 Billings requested to increase the height of veteran headstones to match the headstones
8 provided by the National Monument Company. This amendment also restricts burials on
9 holidays observed by Hurricane City. Councilman Prete questioned the wording on 7-5-13. The
10 section states that monuments in the specific areas designated for infant and cremation burials
11 shall be flush with the surface of the lawns. He suggested revising the section to clarify that
12 monument should flush with the ground so it doesn't interfere with the mowers. The last line
13 mentions that if the monument interferes with a sprinkler, the owner is responsible for paying
14 for it. He asked how that is determined and how the City addresses monuments in violation.
15 Mr. Barney explained that they have not had to address this type of problem. Councilman
16 Thomas feels that the code should determine if a monument can be oversized, not the
17 Cemetery Superintendent. Mayor Billings confirmed that this ordinance applies to monuments
18 moving forward. Dayton Hall asked for clarification on the process for enforcing non-compliant
19 monuments. He suggests a thirty days grace period to bring the monument into compliance. If
20 the City is forced to bring the monument into compliance, then the City will bill the owner.
21 Councilman Thomas thinks sixty days is more appropriate due to the speed of the monument
22 companies.

23 Doug Heideman motioned to approve Ordinance 2022-51, amending Section 7-5 regarding the
24 City Cemetery with the addition that the monuments are flush with ground, not grass. The code
25 determines if a monument is non-compliant, and the customer is given sixty days to bring the
26 monument up to code. Final approval is subject to City Attorney review. Seconded by Dave
27 Sanders. Kevin Thomas, Joseph Prete, David Hirschi, Doug Heideman, and Dave Sanders, voting
28 aye. Motion carried unanimously.

29 Mayor Billings asked if the citizens could rent the Equestrian Park. Mr. Barney confirmed that
30 the park can be rented, and they are working on a fee schedule.

31 **NEW BUSINESS**

32 **1. Consideration and possible approval of a donation to the Hurricane High School's**
33 **robotics team Black Ops**

34 Hanna Martin reported that the team placed second in Utah and first in Idaho last year. One
35 hundred sixty teams competed in nationals, and the Hurricane High School team placed in the
36 top ten in three categories. Bella Nichols reported that this is the team's 7th year. Last year they

1 asked for funding for three First Lego League (FLL) teams and were approved for \$2316.
2 However, they could not fully take advantage of the funding due to timing so they never
3 received the money. They raised over \$30,000 through donors and sponsors to support their
4 team last year. They are asking the Council to support the growth of the Science, Technology,
5 Engineering, and Math (STEM) program by reapproving the funds and providing a space to
6 create three FLL teams.

7 Kaden DeMille reported there are several items on the agenda requesting funds. Some of which
8 are recurring. He explained that city funds come from citizens, and it is important to be good
9 stewards. This has never been budgeted, but the Council does have a small contingency fund.
10 He recommends setting perimeters for what type of projects should be supported. Councilman
11 Thomas thinks they are a great asset to the community, and he supports it on a personal level.
12 He read a quote from Horatio Bunce. Five or six groups are on the agenda asking the City for
13 support. He would support them from his pocket but not from the City. Councilman Heideman
14 commended them on raising the money. He agrees with Councilman Thomas. More groups are
15 reaching out, but they must draw the line somewhere. Councilman Hirschi commends them for
16 their courage to come before the City Council. He clarified that the City approved money last
17 year but could not use the funds because they were halfway through the season.

18 Mayor Billings asked what the City Council members could do to help. Hanna Martin suggests
19 forming a subcommittee led by a Council Member, Engineers, and team members to host a
20 STEM night at the recreation center once a month. Mr. Vick explained that they are not here
21 solely asking for money. They are looking for sponsors that want to invest in the kids. He
22 teaches the team fiscal responsibility. They didn't take the money last year because it wouldn't
23 be responsible. It is essential to invest in the students who will build the future. Mayor Billings
24 believes people, not government solve problems. Mr. Vick agreed that government does not
25 solve problems, but they help organize those who intend to help solve the problem.
26 Councilman Prete is inspired by multiple comments tonight. Reading through the agenda, he
27 was concerned about the number of groups seeking funding but after hearing from the
28 Robotics Team he feels this is a worthy cause. Councilman Sanders appreciates their passion
29 and how it was presented. He thinks the Council can help with a room and network with
30 community members that can help.

31 Rebecca Martin has had two children in this program. She appreciates the City Council's
32 consideration of taxpayers' dollars. This funding is meant to help elementary-aged children get
33 an early start.

34 Mr. Vick reported that after the kids received the funding last year, they went to all schools in
35 the City promoting this program. He asked for \$772 to fund one team. The program will fund
36 one team to match the City's investment. The City Council members personally donated funds
37 to support the team.

1 Patty Nation built a program called Project Lead the Way. She would love to meet with the
2 teams to provide support.

3
4 Joseph Prete motioned to approve funding for one robotics team in the amount of \$772.
5 Seconded by Dave Sanders. Joseph Prete and Dave Sanders voting aye. David Hirschi and Kevin
6 Thomas voting nay. Doug Heideman abstained. Mayor Billings voting, aye breaking the tie.
7 Motioned carried.

8 **2. Consideration and possible approval of a Domestic violence Proclamation** -Lindsey
9 Boyer, DOVE Center

10 Councilman Prete read the proclamation and explained that this proclamation designates
11 October as Domestic Violence Awareness month.

12 Joseph Prete motioned to approve the Domestic violence Proclamation. Seconded by Dave
13 Sanders. Kevin Thomas, Doug Heideman, David Hirschi, J Seph Prete, and Dave Sanders, voting
14 aye. Motion carried unanimously.

15 **3. Consideration and possible approval of a donation to the Foster Grandparent and**
16 **Senior Companion Program** - Joanne Lyman, Five County Association of Governments

17 Joanne Lyman provided flyers explaining the programs for low-income seniors. The senior
18 companions are paid \$3.50 an hour. The Foster grandparents go to schools to help students
19 with reading. The program has received a federal grant from Americorp; however, the program
20 must match \$10,000 to qualify for the grant. She explained a large portion of the match money
21 comes from the Cities and Counties. She has been allowed to do the vendor booths at the
22 Senior Conference In May to raise money. Councilman Prete asked if the Council has always
23 given \$1000. Ms. Lyman stated six years ago, the Council funded \$500, and the funding has
24 slowly increased over the years. Councilman Thomas supports their program, but his feelings
25 are the same as the last application. Councilman Prete feels this is a remarkable program that
26 he can support.

27 Kevin Thomas motioned to deny the donation to the Foster Grandparent and Senior
28 Companion Program. Seconded by David Hirschi. David Hirschi and Kevin Thomas voting, aye.
29 Joseph Prete, Doug Heideman, and Dave Sanders voting, nay.

30 Doug Heideman motioned to approve the donation of \$1000 to the Foster Grandparent and
31 Senior Companion Program. Seconded by Dave Sanders. Joseph Prete, Doug Heideman, and
32 Dave Sanders, voting aye. David Hirschi and Kevin Thomas voting nay. Motion carried.

33 **4. Consideration and possible approval of allocating funds to the Tourism Board** - April
34 Gates/Doug Heideman

1 Mayor Billings reported that the applicant requested a continuation.

2 Joseph Prete motioned to continue possible approval of allocating funds to the Tourism Board.
3 Dave Sanders seconded the motion. David Hirschi, Kevin Thomas, Dave Sanders, Doug
4 Heideman, and Joseph Prete voting aye. Motion carried unanimously.

5 **5. Consideration and possible approval of allocating funds to whileyourintown.com -**
6 Nanette Billings

7 Mayor Billings explained that while running for office, she was asked how community members
8 could find information in Hurricane City. The proposed company lists all businesses in
9 Hurricane, things to do, and events in the area. The annual fee is \$3,000. She explained the QR
10 codes would be placed throughout town and at every business. She feels that there is a lack of
11 traffic on the City website, and people need to know what is going on in the City. Councilman
12 Prete thinks this is a low price to pay for advertising. This will only solve some of the problem,
13 but it gets the word out there. He does not love the idea of being locked in with one business.

14 Kaden DeMille envisioned something more extensive. He thinks the City needs to look at social
15 media to promote events. He is discouraged that the City must do all the work to provide the
16 data to whileyourintown.com

17 Kevin Thomas motioned to deny allocating funds to whileyourintown.com. Seconded by Doug
18 Heideman. Joseph Prete, Dave Sanders, David Hirschi, Kevin Thomas, and Doug Heideman,
19 voting aye. Motion carried unanimously.

20 **6. Public Hearing** to take comments on the following:

21 A. The proposed temporary road closure at the intersection of the City streets designated
22 as 1515 West and 200 South

23 Joseph Prete motioned to go into public hearing. Seconded by Dave Sanders. Motion carried
24 unanimously.

25 James Bishop lives on the property near the proposed intersection. The gate will only stop the
26 vehicles, and most of the problem is people walking up and down the street. He would like
27 something in place to stop the pedestrians. There should be a barrier between residential and
28 commercial. He stated that if the City pays for the wall, he will donate the land for a road from
29 the RV Park. The owner of the RV park wants a block wall as long it still meets access
30 requirements. Mayor Billings feels it makes more sense to have the wall on the commercial
31 side.

1 Dale Grange submitted comments which are in the packet. His main concern is that the gate
2 doesn't solve the problem. Secondly, he is concerned about the temporary description of the
3 gate.

4 Kevin Kennedy is the owner of the RV park. He understands that his property is the issue, and a
5 crash gate will not stop pedestrian traffic. He is willing to discuss the costs of putting a wall up.

6 Wayne Baldwin urged the Council to address the situation. The problem is worse now than it
7 was a month ago. The neighbors will help with the cost if it is a money issue.

8 Kevin Thomas motioned to go out of public hearing. Seconded by Joseph Prete. Motion carried
9 unanimously.

10 **7. Consideration and possible approval of Ordinance 2022-48 regarding a temporary road**
11 **closure at the intersection of the City streets designated as 1515 West and 200 South**

12 Councilman Hirschi thinks the Council is in support of permanent closure. Dayton Hall explained
13 the process and reported that the City has satisfied the notice requirements. If the Council
14 intends to close the road permanently, the master transportation plan needs to be reviewed
15 and the second access issue needs to be addressed.

16 Kevin Thomas motioned to approve ordinance 2022-48 regarding a temporary road closure at
17 the intersection of the City streets designated as 1515 West and 200 South. Seconded by Dave
18 Sanders. Joseph Prete, David Hirschi, Doug Heideman, Kevin Thomas, and Dave Sanders, voting
19 aye. Motion carried unanimously.

20 **8. Consideration and possible approval of a new airport lease template - Dayton Hall**

21 Dave Houston explained that Steve Lemmon requested to build a large hangar complex. The
22 Airport Board voted to approve the project. There was one dissenting vote. Councilman Prete
23 asked where the language for the lease came from. Mr. Houston explained they combined
24 paragraphs from the existing leases and the lease used by St. George City. He noted that the
25 previous lease didn't address commercial uses. Dayton Hall explained that the key issues are
26 the term of the lease, the rental costs, and how it is increased. Councilman Prete asked if the
27 airport charges the lowest rent per square foot compared to other airports. Mr. Houston
28 reported that it is difficult to compare the costs considering the airport has a short runway, no
29 lights, and there are not utilities to all the hangars. Councilman Heideman noted that there are
30 very few new hangars due to the soil in the area. Mr. Houston included soil testing language in
31 the lease. Mr. Hall reported that the lease clarifies that if the airport is relocated City will pay
32 the cost of relocating the hangars.

33 Councilman Prete asked if ground leases are a better option. Moving the airport would be a
34 considerable expense for the City, especially if the City pays to move the hangars. Stephen

1 Lemmon reported that everything in this lease is the standard language. Mr. Hall will meet with
2 Councilman Prete to discuss ground leases if the Council wants to go that route.

3 Dave Sanders motioned to approve the new airport lease template. Seconded by Kevin Thomas.
4 Doug Heideman, David Hirschi, Dave Sanders, and Kevin Thomas, voting aye. Joseph Prete
5 voting nay. Motion carried.

6 **9. Consideration and possible approval of Resolution 2022-46 appointing David Sterling to**
7 **the Gateway at Sand Hollow Public Infrastructure District 1, 2, and 3 Board** - Matt Ence

8 Matt Ence explained these are three-member boards. David Sterling is well-known and active in
9 his community. Tim Tippetts and Brent Moser remain on the board. They anticipate five
10 meetings a year, which can be attended electronically. Members of this board make financial
11 decisions and issue bonds. Councilman Thomas asked how someone is qualified to serve on the
12 board. Mr. Ence explained that a board member must be a property owner or an officer of a
13 company that owns property and be a registered voter within the development.

14 Dave Sanders motioned to approve appointing David Sterling to the Gateway at Sand Hollow
15 Public Infrastructure District 1, 2, and 3 Board. Seconded by Doug Heideman. Kevin Thomas,
16 David Hirschi, Dave Sanders, and Doug Heideman, voting aye. Joseph Prete voting nay. Motion
17 carried.

18 **10. Consideration and possible approval of Resolution 202 -45 appointing Dustin Sullivan to**
19 **the Coral Junction Public Infrastructure District Board** - Matt Ence

20 Matt Ence reported that Derek Nelson and Rowley are remaining on the board. Dustin Sullivan
21 does not own property within the PID, but he is the project manager for Pinnacle Development.
22 Mr. Ence reported that state law does not prevent employees from serving on the board.
23 Councilman Prete confirmed that conflicts must be disclosed and ethical rules apply.

24 David Hirschi motioned to approve appointing Dustin Sullivan to the Coral Junction Public
25 Infrastructure District Board. Seconded by Dave Sanders. Kevin Thomas, Doug Heideman, David
26 Hirschi, and Dave Sanders, voting aye. Joseph Prete voting nay. Motion carried.

27 **11. Consideration and possible approval of a preliminary plat for Fox Meadows Estates, a**
28 **20 lot residential subdivision located at 2898 S 1100 W.** Gavin Godfrey Applicant. Luke
29 Godfrey Agent.

30 Dave Sanders motioned to table possible approval of a preliminary plat for Fox Meadows
31 Estates, a 20 lot residential subdivision located at 2898 S 1100 W. per the applicants' request.
32 Seconded by Kevin Thomas. Joseph Prete, Doug Heideman, David Hirschi, Dave Sanders, and
33 Kevin Thomas, voting aye. Motion carried unanimously.

1 **12. Discussion regarding the approval process for Glamper's Inn Project - Scott Nielson**

2 No discussion necessary.

3 **13. Ordinance 2022-54 Consideration and possible approval of a A Zone Change**
4 **Amendment request for Steward Land Holdings located at approx.. 3112 West State**
5 **Street from HC, highway commercial, to PC, planned commercial.** Parcel number H-3-
6 1-31-3009. Steward Land Holdings Applicant. Brad Brow Agent.

7 Brad Brown reported that they have met with staff several times and this is the product of what
8 they have discussed. This proposal places the planned commercial on the south end with higher
9 density in the middle. Stephen Nelson reviewed the surrounding uses. Mayor Billings is
10 concerned because eliminating commercial highway zoning pushes out commercial. Their
11 proposal is only a small portion of the commercial. Mr. Brown reported they have been working
12 through challenges with the City and surrounding owners. He feels that this follows the master
13 plan. Mr. Nelson explains that there is limited access to the property. There are a lot of hills,
14 and the plan shows the commercial on the bottom portion of the property with the density
15 behind the hill. Mr. Brown explained that the high density is the buffer between the single-
16 family and commercial. Councilman Prete noted that this proposal allows for fifteen units per
17 acre with a building height of fifty-five feet. Councilman Heideman feels that the high density
18 that has been approved has yet to make rent more affordable. He would like the commercial to
19 extend further north. Mr. Brown reported that their goal is to provide attainable housing. There
20 is limited access to the property and they are working on access with Walmart and the
21 Stratton's.

22 Stephen Nelson reported that the Planning Commission and staff gave a positive
23 recommendation. He explains that overall, they do not exceed the density, but there may be
24 higher density in some areas. He reported that the staff is okay with that. The code allows a
25 building height of fifty-five feet. Councilman Hirschi feels there is not adequate access for this
26 size of development. Mayor Billings is concerned that reducing commercial will affect the
27 citizens. Dayton Hall asked the Council to focus on the four-zone change criteria. Councilman
28 Hirschi feels this is not harmonious with surrounding uses, this and will negatively affect the
29 adjacent properties. Mr. Nelson feels there are benefits to this type of development. He
30 explained that rooftops help commercial flourish.

31 Scott Hughes reported that the Power Department has not run an analysis on the circuit.
32 Councilman Prete noted that the fourth factor four is not solely utilities. It is police, fire, and
33 school. He feels the Council need to broaden how they view adequate facilities. Mr. Nelson
34 reported that the school district has property in this area for a future school. Councilman
35 Thomas is is open to this concept but is not thrilled about the building height. Councilman
36 Prete feels this proposal is in line with the General Plan. He would be more open to the

proposal if a larger portion of the project was commercial. Although he feels it is important to give merit that staff and the Planning Commission recommended approval. Mr. Nelson noted that the concerns can be addressed with a development agreement. Councilman Thomas would like to limit the high-density buildings to three stories. Councilman Prete would prefer to continue this so concerns can be addressed.

Joseph Prete motioned to continue A Zone Change Amendment request for Steward Land Holdings located at approx... 3112 West State Street from HC, highway commercial, to PC, planned commercial until the developer comes back with a different proposal based on tonight's comments. Seconded by Doug Heideman. Kevin Thomas, Dave Sanders, Joseph Prete, and Doug Heideman, voting aye. David Hirschi voting nay. Motion carried.

Dayton Hall reported other cities do not allow Council to interact with developers. Hurricane City does not have a policy that explicitly disallows interactions with developers. Councilman Prete would like to scale back on communications with developers, and he prefers to make impartial decisions.

14. Ordinary e 2022-53 Consideration and possible approval of a Land Use Code Amendment request to Title 10 Chapter 21: Agriculture Protection Overlay, Title 10 Chapter 14: Residential Agriculture Zoning Standards, Title 10 Chapter 7 Section 9: Conditional Use Permit Standards, and Title 10 Chapter 12: Agriculture Zoning Standards.

Stephen Nelson reported that the Planning Commission feels it is important to update the code and directed staff to bring this to the City Council for consideration. The first change allows a property owner to obtain an agriculture protection if they have five acres of continuous property in the City. Councilman Prete pointed out that this change substantially restricts development. Mr. Nelson noted that the Planning Commission is aware of the impact. The Planning Commission directed staff to obtain direction from the City Council on whether land not within city limits can be used towards the five acres. Another change allows smaller lots if a master roadway dedication is required. The last change allows reception centers as a conditional use permit. Stephen Nelson read through the changed and reported that parking will be calculated according to the parking ordinance. Councilman Prete asked if the fire department had any concerns. Mr. Nelson will follow up with Fire Chief.

Kevin Thomas was excused at 10:50 p.m.

Joseph Prete motioned to continue Consideration and possible approval of a Land Use Code Amendment request to Title 10 Chapter 21: Agriculture Protection Overlay, Title 10 Chapter 14: Residential Agriculture Zoning Standards, Title 10 Chapter 7 Section 9: Conditional Use Permit Standards, and Title 10 Chapter 12: Agriculture Zoning Standards. Seconded by Doug Heideman.

Dave Sanders, David Hirschi, Joseph Prete, and Doug Heideman, voting aye. Motion carried unanimously.

15. Consideration and possible approval of an amended final plat for Moccasin Flats Lot 18 & 19 located at approximately 4500 S 1100 W. Anish Bhatia Hidden Rock Development Group Applicant. Bush and Gudgell (Gregg Meyers) Agent.

Dallin owns two large lots in Moccasin Flats that he is proposing to split into three lots. The lots on the north end are one acre and ten acre lots in the middle. Stephen Nelson mentioned that the Power Department has plans to expand the lines in the area, but they are concerned there won't be adequate power if more is approved before they can install it. He feels that creating one lot is less impactful, and JUC has to sign off on the amended plat before it can be recorded. He noted that the Planning Commission recommended approval before the heightened power concerns.

Dayton Hall explained that this is an important issue to discuss. He explained the three-phases of development. Zone changes have been granted for many years without adequate infrastructure. After the zone is changed, the next step is the preliminary plat and then the construction drawings. Approving preliminary plats without adequate facilities forces the JUC to stop the development. His opinion is that an adequate plan is one with a signed construction drawing showing bonded facilities to the area. The power department has reviewed approved construction drawings and feels they have reached capacity. Dayton Hall suggested putting a note on one lot declaring that the lot cannot be developed until there is adequate power services. Councilman Prete noted that the drainage also needs to be addressed in this area.

Joseph Prete motioned to approve the amended final plat for Moccasin Flats Lot 18 & 19 located at approximately 4500 S 1100 W. subject to a notation on the final plat restricting one of the three lots until it is proven there is adequate power in the area, and all staff and JUC comments. Seconded by David Hirschi. Doug Heideman, Dave Sanders, Joseph Prete, and David Hirschi, voting aye. Motion carried unanimously.

16. Consideration and possible approval of an amended final plat for Quail Lake Estates Lots 26 and 26A located at 4400 W State St #26. Darrell and Christine Leigh Applicant. Ryan Scholes/Alpha Engineering A ent.

Darrell Leigh explained they want to combine the two properties they purchased this year. Stephen Nelson reported staff's only concerns is rerouting the utilities. The water in master metered in this development; therefore, power is the only utility that needs to be capped.

David Hirschi motioned to approve the amended final plat for Quail Lake Estates Lots 26 and 26A located at 4400 W State St #26 subject to staff and JUC comments and disconnection of the

power. Seconded by Dave Sanders. Joseph Prete, Doug Heideman, David Hirschi, and Dave Sanders voting aye. Motion carried unanimously.

17. Consideration and possible approval of a road dedication plat for Antenna Avenue - Arthur LeBaron

Doug Heideman motioned to approve the road dedication plat for Antenna Avenue. Seconded by Joseph Prete. David Hirschi, Dave Sanders, Doug Heideman, and Joseph Prete voting aye. Motion carried unanimously.

18. Consideration and possible approval of a donation to the Latino Resource Fair - Luis Mendez & Dave Stirland

Dave Stirland reported that the LDS 18th Ward would like to sponsor a Latino resource fair on October 22nd from 11:00 a.m. to 2:00 p.m. The resource fair provides services for immigration, employment, and English lessons. They are asking for the City to allow them to use city facilities. Tiffani Wright reported that room rental is fifteen dollars an hour, outdoor accommodations are thirty-five, the stage is four hundred, and supplying power is one hundred.

Doug Heideman motioned to approve sponsorship for the Latino Resource Fair by use of facilities, stage, and electricity without charge. Seconded by David Hirschi. Dave Sanders, David Hirschi, Doug Heideman, and Joseph Prete voting aye. Motion carried unanimously.

Joseph Prete motioned to go into closed session to conduct a strategy session regarding purchasing assets. Seconded by Doug Heideman. David Hirschi, Dave Sanders, Joseph Prete, and Doug Heideman, voting aye. Motion carried unanimously.

Adjournment: 12:08 a.m.



AGENDA ITEM SUMMARY

TO: Hurricane City Council
FROM: Dayton Hall, City Attorney
DATE: November 8, 2022
RE: Infowest Franchise Agreement

- Infowest is requesting a franchise agreement with the City to allow Infowest to place infrastructure within the City's rights-of-ways in order to provide fiber to residents.
- The Council saw a draft franchise agreement in its last meeting. Two revisions have been made to the draft agreement since the Council last saw it: (1) a sentence was added in section 3.1 stating that before the 15-year term of the agreement ends, Infowest may request an extension of the agreement or a new agreement and (2) section 12.2 was added to the agreement stating that Infowest will make broadband service available to all residents (with some exemptions) within 5 years.
- The agreement complies with the recent franchise ordinance that the City Council passed, and the City Attorney approves of the form of the agreement.

Dayton Hall

From: Kelly Nyberg <nyberg@infowest.com>
Sent: Wednesday, October 19, 2022 9:04 PM
To: Dayton Hall
Cc: Kaden DeMille; Cindy Beteag; Nanette Billings; Randon Anderson; Cassidy B. Larson
Subject: Re; InfoWest - Franchise Agreement Update
Attachments: PastedGraphic-1.pdf

Dayton,

Thanks for the update. As for the requirement data, our intention is to complete a 100% broadband build out within 5 years.

Below is a map which shows how we plan to build the Hurricane fiber ring. You'll notice we are running our main fiber trunk line through the established downtown portion of the City and making that a priority. We will also establish a ring that connects back through some of the new development which will create a fully redundant and more reliable network.

Geographically we will start our build from the Sand Hollow Reservoir where we currently have fiber and work our way from there. Once we establish our core fiber ring we will begin to build out to specific neighborhoods.

Specific rollout timelines and geographic deployments will be based on our ability to get permitting from the city along with other factors such as open trench opportunities in new developments, possible pole attachment agreements with Scott and Power etc...

We have every hope that the City will be our advocate and help support our efforts to build and grow our broadband network and deployment efforts.

Unfortunately, I won't be able to attend tomorrow's City Council meeting. I have a previous commitment with the Tech Ridge Development in St George that I need to attend as we are providing much of their fiber infrastructure. Randon our Fiber Operations Manager will be there and possibly Cassidy Larson our CTO.

I think we've been attending City Council meetings so long that there probably won't be too many questions. We feel right at home sitting in the back with Staff. :) At this point, City Council will most likely want to make sure our agreement is ready to go and overall just want to know that InfoWest is committed to bring broadband Internet to the City and we are ready to do that.

I want to also thank you for all of your help on this. You are a huge asset to Hurricane City and they are lucky to have such a great attorney.

Please incorporate all that you can from this email including the network map into the agreement so we can show the geographic area and schedule for deployment for Council's review and discussion tomorrow.

If it does come up in the discussion the one item we would like to request would be an option for renewal after our 15 year term. We don't want to invest millions of dollars into our broadband network and then be left with no option to renew our agreement. Hopefully that can be something City Council can consider adding to the Agreement.

Thanks,

Kelly

On Oct 19, 2022, at 4:59 PM, Dayton Hall <dayton@cityofhurricane.com> wrote:

Hi Kelly:

I got your email today asking about a renewal option on the 15 year term.

At this point, the major hurdle is the requirement of HCC 7-12-6(C) to have a plan showing the timing of construction by geographic area and the schedule for completion of construction by geographic area to get service to the entire City. We need to incorporate that into the Agreement. You will see I inserted a placeholder for that Service Area issue in Article XII of the franchise agreement. With it being your system, I thought you would be the best person to come up with that proposal and plan. Because the City has not received that plan, the franchise agreement is on the agenda for a discussion only—not possible approval.

Thanks,

Dayton Hall

<image001.png>

Dayton Hall
City Attorney
Hurricane City
Office 435-635-2811 x 128

From: Dayton Hall

Sent: Monday, October 17, 2022 1:48 PM

To: Kelly Nyberg <nyberg@infowest.com>

Cc: Kaden DeMille <kaden@cityofhurricane.com>; Cindy Beteag <cindy@cityofhurricane.com>; Nanette Billings <billings@cityofhurricane.com>

Subject: RE: InfoWest - Franchise Agreement Update

Hi Kelly:

I have not heard back from you on this. Did you want to be on the agenda as a discussion item, or do you want it to be pushed back to the next meeting?

Thanks,

Dayton Hall

<image001.png>

Dayton Hall
City Attorney
Hurricane City
Office 435-635-2811 x 128

From: Dayton Hall

Sent: Tuesday, October 11, 2022 1:38 PM

To: Kelly Nyberg <nyberg@infowest.com>

Cc: Kaden DeMille <kaden@cityofhurricane.com>; Cindy Beteag <cindy@cityofhurricane.com>

Subject: RE: InfoWest - Franchise Agreement Update

Hi Kelly:

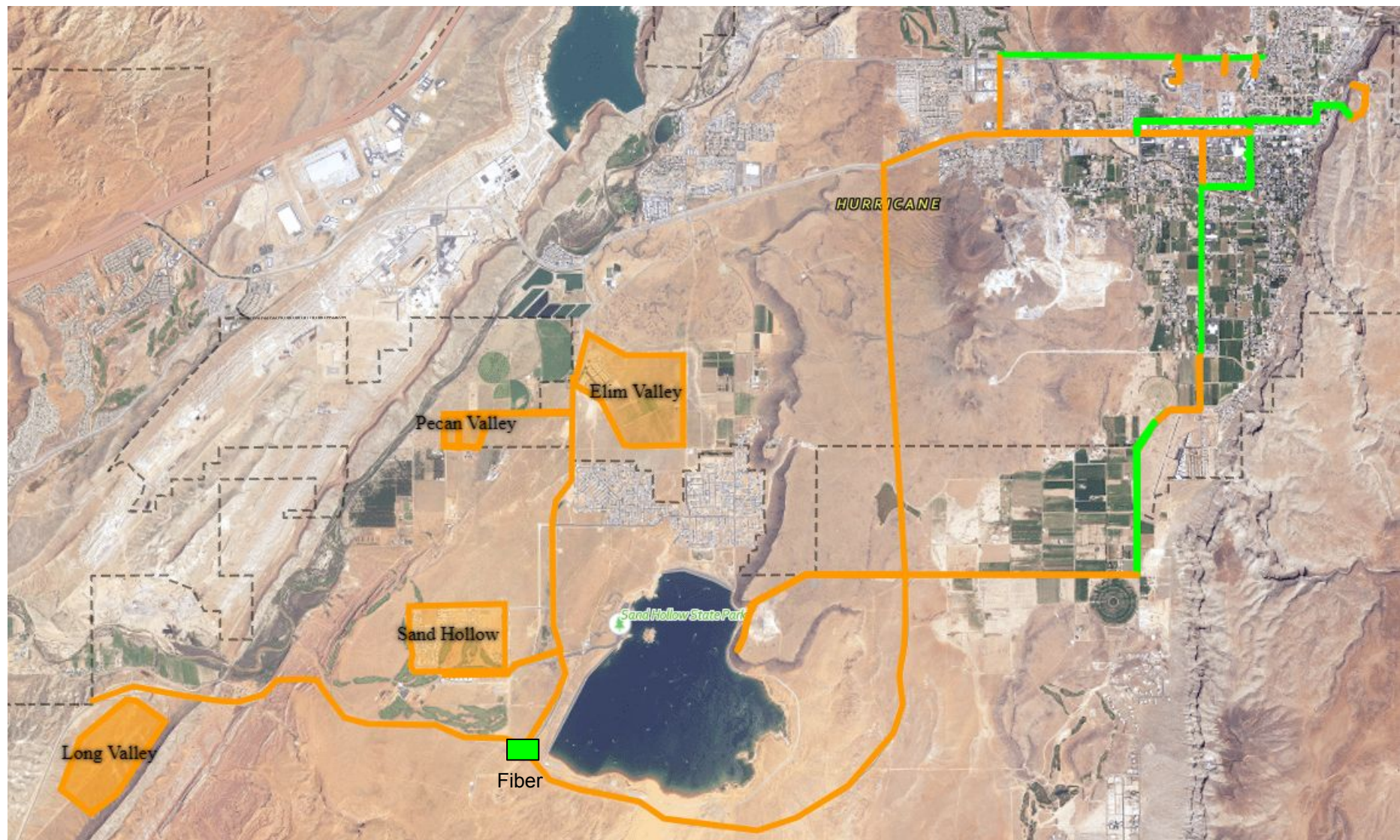
As you know, the Council approved an updated franchise ordinance last week, which I attached. I reviewed your latest draft proposed franchise agreement. The attached Word document has my comments and redlines to bring it into line with the new ordinance. The most substantial revision that we need to sort out is the requirement of HCC 7-12-6(C) to have a plan showing the timing of construction by geographic area and the schedule for completion of construction by geographic area to get service to the entire City. We need to incorporate that into the Agreement. You will see I inserted a placeholder for that Service Area issue in Article XII of the franchise agreement. With it being your system, I thought you would be the best person to come up with that proposal and plan. The cutoff for agenda item materials is the Friday before the meeting, so we do not have a lot of time to finalize an agreement for the Council to look at next Thursday. I hope we can have a final draft for the Council to look at. If not, we will at least have it on the agenda to get some feedback from the Council on any remaining, unresolved issues.

Thanks,

Dayton Hall

<image001.png>

Dayton Hall
City Attorney
Hurricane City
Office 435-635-2811 x 128



**TELECOMMUNICATIONS FRANCHISE AGREEMENT
BETWEEN HURRICANE CITY
AND FIF ST GEORGE, LLC dba INFOWEST**

THIS TELECOMMUNICATIONS FRANCHISE AGREEMENT (this “Agreement”) is entered into this 17th day of November, 2022 (the “Effective Date”) by and between **Hurricane City**, a municipal corporation and political subdivision of the State of Utah, with principal offices at **147 N 870 W, Hurricane, Utah 84737** (the “City”) and **FIF St. George, LLC, a Delaware limited liability company, doing business as INFOWEST**, a telecommunications corporation with its principle offices at **435 E Tabernacle St, St. George, Utah 84770** (the “Provider”). The CITY and the PROVIDER may sometimes be referred to herein collectively as the “Parties”.

RECITALS

WHEREAS, the Provider desires to provide telecommunications services within the City and, in connection therewith, to establish a telecommunications network in, under, along, over and across present and future rights-of-way of the City which consists of telecommunication lines, cables, and all other necessary appurtenances (the “System”); and

WHEREAS, after extensive consideration, the City, in exercising its management of public rights-of-way, has determined that it is in the best interest of the public to provide the Provider a non-exclusive franchise agreement to operate a telecommunications network within the City; and

WHEREAS, the City and the Provider have negotiated an arrangement whereby the Provider may provide its services within the City pursuant to the terms and conditions outlined in the Agreement and all applicable City ordinances, including Title 7, Chapter 12 of the City ordinances, and subject to the further reasonable regulation under the City’s police and other regulatory power.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the City and the Provider hereby agree as follows:

ARTICLE I FRANCHISE AGREEMENT

1.1 Agreement. Upon approval by the City Council and execution by both Parties, this Agreement shall be deemed to constitute a binding contract by and between the City and the Provider.

1.2 Grant of Franchise. The City, through this Agreement, hereby grants to the Provider the non-exclusive right, privilege, and franchise to install, repair, maintain, remove and replace its telecommunications system on, in, under, over and across the present and future public rights-of-way in the City in order to provide services.

1.3 Licenses. The Provider hereby acknowledges that it has, or will, obtained any and all necessary approvals, licenses or permits required by federal, state and local law to provide telecommunication services consistent with the provisions of this Agreement.

1.4 Financial Capability. The Provider hereby warrants that it has the financial capability to construct, maintain, and operate a telecommunications network and to otherwise comply with the provisions of this Agreement.

1.5 Relationship of Parties. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the Parties, and neither Party is authorized to nor shall either Party act toward third persons or the public in a manner that would indicate any such relationship.

1.6 Pole Attachments. The Provider's use of City poles, if any, is regulated by Hurricane City Code section 7-12-13.

ARTICLE II FRANCHISE FEE

2.1 Franchise Fee.

a. This agreement is subject to the Utah Municipal Telecommunications License Tax Act Title 10, Chapter 1, Sections 401 through 410, Utah Code Annotated, 1953 as amended, enrolled at the time this agreement is signed or as may be amended. Provider shall pay the City's municipal telecommunications license tax of a rate up to **3.5%** of the gross receipts from

telecommunications service attributed to the municipality. Said tax shall be paid through the Utah State Tax Commission.

b. All payments shall be made to the Utah State Tax Commission, whose current address is as follows:

Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134

c. Payments are due to the Utah State Tax Commission within forty-five (45) days after receipt by the Provider. Interest shall accrue on late payments at the rate of 1 ½% per month until paid. Compliance by the Provider with the terms and provisions of the Municipal Telecommunications Tax Act, and any rules and regulations promulgated thereunder, shall satisfy all requirements of this Agreement with respect to the calculation and payment of the Franchise Fee.

d. The City and the Provider hereby agree to negotiate in good faith any amendments to this Agreement as shall be necessary to accommodate changes in the Franchise Fee including payment provisions; provided, however, such new or changed provisions shall substantially confirm with the provisions contained in any permits held by other similarly situated companies.

e. City shall have access to any and all of Provider's business records upon reasonable notice for the purpose of auditing compliance with the above tax provisions.

f. The Provider hereby represents to the City that one of the purposes for entering into this Agreement is to obtain authority to build a network within the City to provide telecommunication services to customers within the City.

ARTICLE III

TERM AND RENEWAL

3.1 Term and Renewal. The franchise granted to the Provider herein shall be for a period of fifteen (15) years commencing on the Effective Date first set forth above in this Agreement unless this Agreement is terminated sooner as provided herein. Prior to the expiration of the franchise term, Provider may apply to the City Council for an extension of this Agreement or for a new franchise agreement. The City Council may approve Provider's application upon terms and conditions acceptable to the City.

3.2 Rights of Provider upon Expiration or Revocation. Upon expiration of this Agreement, whether by lapse of time, by agreement between the Parties, or by revocation or forfeiture, the Provider shall have the right to remove from the City's rights-of-way any and all of its system; however, in such an event, it shall be the duty of the Provider, immediately upon such removal, to restore the rights-of-way for which such system is removed to as good a condition as the same was before the removal was affected.

3.3 Rights of City upon Expiration or Revocation. Upon expiration of the term of this Agreement, forfeiture, or lawful revocation of this Agreement, and if no renewal or extension thereof is agreed upon, the Provider may, at the discretion of the City Council, be required, in part or entirely, to remove all its wires, poles, fixtures, and other facilities or equipment installed or used in the enjoyment of the franchise. Alternatively, the removal or sale of such facilities and equipment may be directed, limited, or conditioned by the City by agreement between the Parties or through means of other lawful municipal power or right. The City may continue to invoke any or all provisions of this franchise Agreement against the Provider or any successor entity enjoying de facto franchise privileges after expiration or revocation. The City and the Provider shall work together to take all other actions deemed by the City as necessary and proper to accommodate the transition to any successor as may be in the best interest of the City or its inhabitants and the Provider.

ARTICLE IV

USE AND RELOCATION OF FACILITIES IN THE PUBLIC RIGHTS-OF-WAY

4.1 Franchise Rights to Use the Public Rights-of-Way. The Provider shall have the right to use the public rights-of-way within the City to construct and maintain its network subject to the conditions set forth in this Agreement and Hurricane City Code Title 7, Chapter 12; provided, however, that the Provider shall not, pursuant to this Agreement, place any new poles, mains, cables, structures, pipes, conduits, or wires on, in, under, along, over, across or within any right-of-way, City park, pleasure ground, or other recreational area currently existing or developed in the future without a permit from the City. Nothing contained herein shall preclude the City from granting a revocable permit for such purpose. In addition, the Provider shall have the right to utilize any easements across private property granted to the City for utility purposes; provided, however, that the Provider obtain the City's prior written permission in each case and the documents granting any such easements to the City to authorize such use. The Provider specifically understands and acknowledges that certain City easements and rights-of-way may be prescriptive in nature, and that nothing in this Agreement extends permission to use the easement or right-of-way beyond the extent that the City may have acquired, and such easements and rights-of-way may be subject to third party prior or after-acquired interests. The Provider is cautioned to examine each individual easement and right-of-way and the legal arrangement

between the City and adjacent property owners. The City assumes no duty or obligation to defend any interest in any easement or right-of-way, and the Provider remains solely responsible to make any arrangements required as a result of other persons claiming an interest in the City easement or right-of-way.

4.2 Provider Duty to Relocate; Subordination to City Use. Whenever the City, for any lawful public purpose, shall require the relocation or reinstallation of any property of the Provider or the Provider's successors in any of the streets, alleys, rights-of-way, or public property of the City, it shall be the obligation of the Provider, upon notice of such requirement and written demand made of the Provider, and within a reasonable time thereof, but not less than thirty (30) calendar days, to remove and relocate or reinstall such facilities as may be reasonably necessary to meet the requirements of the City. Such relocation, removal, or reinstallation by the Provider shall be at no cost to the City; provided, however, that the Provider and its successors and assigns may maintain and operate such facilities, with the necessary appurtenances, in the new location or locations without additional payment, if the new location is a public place. Notwithstanding the foregoing, the duty of the Provider to install or relocate its lines underground shall be subject to the provisions of Article IV, Paragraph 4.4 below. Any money and all rights to reimbursement from the State of Utah or the federal government to which the Provider may be entitled for work done by the Provider pursuant to this Paragraph shall be the property of the Provider. The City shall assign or otherwise transfer to the Provider all rights the City may have to recover costs for such work performed by the Provider and shall reasonably cooperate with the Provider's efforts to obtain reimbursement. Notwithstanding anything to the contrary herein, the Provider's use of the right-of-way shall in all matters be subordinate to the City's use of the right-of-way for any public purpose. The City and the Provider shall coordinate the placement of their respective facilities and improvements in a manner that comports with City policies, designs, and standards, and which minimizes adverse impact on each other. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvements.

4.3 Duty to Obtain Approval to Move Provider Property; Emergencies. Except as otherwise provided herein, the City, without the prior written approval of the Provider, shall not intentionally alter, remove, relocate, or otherwise interfere with any Provider facilities. Approval by Provider will not be unreasonable withheld. However, if it becomes necessary (in the judgment of the Mayor, City Council, City Engineer, Fire Chief, Police Chief, or their designees) to cut, move, remove, or damage any of the cables, appliances, or other fixtures of the Provider because of a fire, emergency, disaster, or other imminent threat thereof, these acts may be done without prior written approval of the Provider, and the repairs thereby rendered necessary shall be made by the Provider, without charge to the City. Should the City take actions pursuant to this section, the Provider shall indemnify, defend, and hold the City harmless from and against any and all claims, demands, liens, or liability for (a) loss or damage to the Provider's property;

and/or (b) interruptions of telecommunications services provided by the use of or through the Provider's property (including telecommunications services provided by the Provider to the Provider's customers), whether such claims, demands, liens, or liability arise from or are brought by the Provider, its insurers, the Provider's customers, or third parties. If, however, the City requests emergency funding reimbursement from federal, state or other governmental sources, the City shall include in its request the costs incurred by the Provider to repair facilities damaged by the City in responding to the emergency. Any funds received by the City on behalf of the Provider shall be paid to the Provider within thirty (30) business days.

4.4 Location to Minimize Interference. All lines, poles, towers, pipes, conduits, equipment, property, structures, and assets of the Provider shall be located so as to minimize interference with the use of streets, alleys, rights-of-way, and open property by others and shall reasonably avoid interference with the rights of owners of property that abuts any of said streets, alleys, rights-of-way, or public property.

4.5 Repair of Damage. If, during the course of work on its facilities, the Provider causes damage to or alters any street, alley, right-of-way, sidewalk, utility, public improvement, or other public property, the Provider, at its own cost and expense and in a manner approved by the City, shall promptly and completely restore such street, alley, right-of-way, sidewalk, utility, public improvement, or other public property to its previous condition in accordance with applicable City ordinances, policies and regulations relating to repair work of similar character to the reasonable satisfaction of the City. Except in cases of emergency, the Provider, prior to commencing work in the public way, street or public property, shall make application for a permit to perform such work from the City Engineer or other department or division designated by the City. Provider shall also be required to obtain a road break permit from the Public Works Department. Such permit shall not be unreasonably withheld. The Provider shall abide by all reasonable regulations and requirements of the City for such work.

4.6 Guarantee of Repairs. For a period of twenty four (24) months following the completion of the repair work performed pursuant to Paragraph 4.5 above, the provider shall maintain, repair, and keep in good condition those portions of said streets, alleys, rights-of-way, or public property restored, repaired or replaced to the satisfaction of the City. However, when Provider cuts asphalt in a Right-of-Way, the Provider shall maintain the asphalt cut for perpetuity or until the roadway is completely repaved. Provider will comply with all applicable City Ordinances related to the posting of bonds and guarantee of repairs.

4.7 Safety Standards. It shall be the Provider's responsibility to ensure that the Provider's work, while in progress, be properly protected at all times with suitable barricades, flags, lights, flares, or other devices as are reasonably required by applicable safety regulations or standards

imposed by law including, but not limited to, signage in conformance with the Federal and State of Utah manuals on Uniform Traffic Control Devices.

4.8 City Supervision. The Provider shall construct, operate, and maintain its network within the City in strict compliance with all laws, ordinances, rules, and regulations of the City and any other agency having jurisdiction over the operations of the Provider. The Provider's network and all parts thereof within the City shall be subject to the right of periodic inspection by the City; provided, however, that such inspection shall be conducted at reasonable times and upon reasonable notice to the Provider.

4.9 Provider's Duty to Remove Network.

a. The Provider shall promptly remove, at its own cost and expense, from any public property within the City, all or any part of the network when one or more of the following conditions occur:

- i. This franchise grant is terminated or revoked pursuant to notice as provided herein; or
- ii. This franchise grant expires pursuant to the terms of this Agreement.

b. The removal of any or all of the network by the Provider that requires trenching or other opening of the City's streets shall be done only after the Provider complies with applicable City Ordinances related to opening City Streets.

c. The Provider shall receive notice in writing from the City setting forth one (1) or more of the occurrences specified in Subsection 4.9 (a) above and shall have ninety (90) calendar days from the date upon which said notice is received to remove or abandon such facilities.

4.10 Notice of Closure of Streets. Except in cases of emergency, the Provider shall notify the City not less than three (3) business days in advance of any construction, reconstruction, repair, or relocation of facilities which would require any street closure which reduces traffic flow to less than two (2) lanes of moving traffic. Except in the event of an emergency, as reasonably determined by the Provider, no such closure shall take place without prior authorization from the City. In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected as required by Paragraph 4.7 above, and the City shall receive no less than 48 hours' notice of said closure.

4.11 Agreement to Abide by Construction and Technical Requirements. In addition to the provisions of this Article 4, the Provider expressly agrees to comply with all other provisions of

City governing the construction and technical requirements of the Provider's network and system.

ARTICLE V POLICE POWERS

5.1 Police Powers. The City hereby expressly reserves, and the Provider hereby expressly recognizes, the City's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

ARTICLE VI SEVERABILITY

6.1 Severability. If any section, sentence, paragraph, term or provision of this Agreement is for any reason determined to be or rendered illegal, invalid or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the Parties shall negotiate, in good faith, an amendment to this Agreement. As used herein, "material consideration" for the City is its ability to collect the Franchise Fee during the term of this Agreement and its ability to manage its rights-of-way in a manner similar to that provided in this Agreement and the City's excavation ordinance. For the Provider, "material consideration" is its ability to use the rights-of-way for telecommunication purposes in a manner similar to that provided in this Agreement and the City's excavation ordinance.

ARTICLE VII EARLY TERMINATION; REVOCATION OF FRANCHISE; OTHER REMEDIES

7.1 Grounds for Termination. The City may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

a. The Provider fails to make timely payments of the Franchise Fee as required under Article II of this Agreement and does not correct such failure within sixty (60) calendar days after written notice by the City of such failure;

b. The Provider, by act or omission, materially violates a material duty herein set forth in any particular within the Provider's control, and with respect to which redress is not otherwise herein provided. In such event, the City, acting by or through its City Council, may determine, after a hearing, that such failure is of a material nature, and thereupon, after written notice giving the Provider notice of such determination, the Provider, within sixty (60) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such ninety (90) day period and failure to correct such conditions, the City may declare the franchise forfeited and this Agreement terminated, and thereupon, the Provider shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the ninety (90) day time period provided above, the City shall provide additional time for the reasonable correction of such alleged failure if the reason for the non-compliance was not the intentional or negligent act or omission of the Provider;

c. The Provider becomes insolvent, unable or unwilling to pay its debts; is adjudged bankrupt; or all or part of its facilities should be should under an instrument to secure a debt and is not redeemed by the Provider within sixty (60) calendar days; or

d. In furtherance of the Provider's policy or through acts or omissions done within the scope and course of employment, a director or officer of the Provider knowingly engages in conductor makes a material misrepresentation with or to the City that is fraudulent or in violation of a felony criminal statute of the State of Utah.

ARTICLE VIII NOTICES

8.1 City Designee and Address. The Mayor of the City or his/her designee(s) shall serve as the City's representative regarding administration of this Agreement. Unless otherwise specified herein, all notices from the Provider to the City pursuant to or concerning this Agreement shall be delivered to the City's representative at **147 N 870 W, Hurricane, Utah 84737**, or other such officer and address as the City may designate by written notice to the Provider.

8.2 Provider Designee and Address. Unless otherwise specified herein, all notices from the City to the Provider pursuant to or concerning this Agreement shall be delivered to 435 E Tabernacle St, St. George Utah, 84770; with a copy to General Counsel at the same address.

8.3 Failure of Designee. The failure or omission of the City' s or the Provider' s representative to act shall not constitute any waiver or estoppel by the City or the Provider.

ARTICLE IX INSURANCE AND INDEMNIFICATION

9.1 No Liability. Except as otherwise specifically provided herein, the City shall in no way be liable or responsible for any loss or damage to property, including financial or business loss (whether direct, indirect, or consequential), or any injury to or death of any person(s) that may occur in the construction, operation, or maintenance by the Provider of any of its lines and appurtenances hereunder, except to the extent of the City' s own negligence or willful misconduct. Notwithstanding any other provision of this Agreement, in no event shall either Party be liable for any consequential, special, incidental, punitive, indirect or similar damages.

9.2 Provider Indemnification of City. The Provider shall indemnify and, at the City' s option, defend and hold the City, its elected and appointed officers, agents, and employees thereof, harmless from and against any and all claims, suits, actions, liability and judgments for damages or otherwise harmless from and against claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from the exercise by the Provider of the related rights, or from the operations of the Provider within the City, and shall pay the costs of defense plus reasonable attorneys' fees. Said indemnification shall include, but not be limited to, the Provider' s negligent acts or omissions pursuant to its use of the rights and privileges of this Agreement including construction, operation and maintenance of telecommunications lines and appurtenances, whether or not any such use, act or omission complained of is authorized, allowed, or prohibited by this Agreement.

9.3 Notice of Indemnification. The Provider shall give prompt written notice to the City of any claim, demand or lien that may result in a lawsuit against the City. The City shall (i) give prompt written notice to the Provider of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (ii) unless, in the City' s sole judgment, a conflict of interest may exist between the City and the Provider with respect to such claim, demand or lien, permit the Provider to assume the defense of such claim, demand or lien with counsel satisfactory to the City. If such defense is not assumed by the Provider, the Provider shall not be subject to any liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, the Provider shall not be obligated to indemnify, defend or hold

the City harmless to the extent any claim, demand or lien arises out of or in connection with a breach by the City of any obligation under this Agreement or any negligent or otherwise tortious act or failure to act of the City or any of its elected or appointed officers, agents, or employees.

9.4 Insurance. The Provider shall file a Certificate of Insurance with the City prior to commencing any action pursuant to this Agreement, and shall at all times thereafter maintain in full force and effect, at its sole expense, an acceptably policy or policies which have one (1) of the three (3) highest or best rating from the Alfred M. Best Company of liability insurance, including comprehensive liability insurance. The policy(ies) shall name the City as an additional insured and in their capacity as such, also the City's elected and appointed officers, agents, and employees. Policies of insurance shall be in the minimum single limit amount of three million dollars (\$3,000,000) per occurrence. The insurer(s) shall be authorized to write the required insurance in the State of Utah. The policy(ies) of insurance shall be maintained by the Provider in full force and effect during the full term of this franchise Agreement. Each policy of insurance shall contain a statement on its face that the insurer(s) will not cancel the policy or fail to renew the policy, whether for nonpayment of premium or otherwise, and whether at the request of the Provider or for other reasons, except after thirty (30) calendar days' advance written notice mailed by the insurer(s) to the City, and that such notice shall be transmitted postage prepaid.

9.5 City's Right to Intervene. In any suit in which the City is named as a party and which seeks indemnification from the Provider, and in which the City, in its own reasonable discretion, believes that a conflict of interest with the Provider exists, the City shall have the right to provide its own defense in connection with the same. In such event, in addition to being reimbursed for any judgment that may be rendered against the City which is subject to indemnification hereunder, together with all court costs incurred therein, the Provider shall reimburse the City for all reasonable attorneys' fees including those employed by the City in such case (s), as well as all reasonable expenses incurred by the City by reason of undertaking the defense of such suit(s), whether such suit(s) are successfully defended, settled, compromised, or fully adjudicated against the City.

9.6 No Creation of Private Cause of Action. The provisions set forth herein are not intended to create liability for the benefit of third parties, but is solely for the benefit of the Provider and the City. In the event any claim is made against the City that falls under these indemnity provisions and a court of competent jurisdiction should adjudge, by final decree, that the City is liable therefore, the Provider shall indemnify and hold the City harmless of and from any such judgment or liability, including any court costs, expenses, and attorneys' fees incurred by the City in defense thereof. Nothing herein shall be deemed to prevent the Parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not, under any circumstances, relieve the Provider from its duty of defense against liability or paying any judgment entered against such party.

9.7 Performance Bonds and/or Cash Bonds and other Surety. To ensure completion of the Provider's performance of its obligations hereunder, the Provider shall furnish to the City a performance bond and/or cash bond from an insurer or guarantor that is acceptable to the City prior to commencing any action pursuant to this Agreement. At the City's sole discretion, and based on the project, a performance bond and/or cash bond may be required.

ARTICLE X REMEDIES

10.1 Duty to Perform. The Provider and the City hereby agree to take all reasonable and necessary actions to assure that the terms of this Agreement are performed.

10.2 Remedies at Law. In the event the Provider or the City fail to fulfill any of their respective obligations under this Agreement, the City or the Provider, whichever the case may be, shall have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

10.3 Third Party Beneficiaries. The benefits and protections provided by this Agreement shall inure solely to the benefit of the City and the Provider. This Agreement shall not be deemed to create any right in any person who is not a Party hereto and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a Party hereto.)

10.4 Reserved Rights. Nothing contained herein shall be deemed to preclude the Provider from pursuing any legal or equitable rights or remedies it may have to challenge the action of the City.

10.5 Force Majeure. The Provider shall not be held in default or non-compliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating thereto, where such non-compliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond the Provider's ability to control; however, the Provider shall not be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure of the City to enforce such prompt compliance.

10.6 No Waiver. Nothing herein shall be construed as to imply that the City waives any right, payment, or performance based on future legislation where said legislation impairs this Agreement in violation of the United States or Utah Constitutions.

ARTICLE XI TRANSFER OF FRANCHISE

11.1 Written Approval Required to Transfer. The Provider shall not transfer or assign any rights under this Agreement or the franchise granted herein to another entity unless the City first gives its approval in writing, which approval shall not be unreasonably withheld or delayed; provided, however, that the Provider may fully assign the franchise contained herein to its corporate parent, a corporate affiliate or a subsidiary, and also that inclusion of the franchise as property subject to the liens of the Provider's mortgages or other security interests shall not constitute a transfer or assignment. The City may withhold approval of a proposed transfer or assignment if the City Council finds that, based on the standards set out in Hurricane City Code 7-12-5, approval is not in the public interest. A lease of the Provider's system to a third party shall not constitute a transfer or assignment of the franchise for purposes of this Agreement. Any attempted assignment or transfer without such prior written consent shall constitute a default of the franchise and this Agreement. In the event of such a default, the City shall proceed according to the procedures set forth in this Agreement and any applicable state, federal or local law.

11.2 Procedure for Obtaining Approval for Transfer. At least ninety (90) calendar days before a proposed assignment or transfer of the Provider's franchise is scheduled to become effective, the Provider shall petition in writing for the City Council's written consent for such a proposed assignment or transfer. The City may withhold approval of a proposed transfer or assignment if the City Council finds that, based on the standards set out in Hurricane City Code 7-12-5, approval is not in the public interest.

11.3 Certification of Assignee. Before an assignment or transfer is approved by the City Council, the proposed assignee or transferee shall execute an affidavit acknowledging that it has read, understands, and intends to abide by this franchise Agreement.

11.4 Effect of Approval. In the event of any approved assignment or transfer, the assignee or transferee shall assume all obligations and liabilities of the Provider, except that an assignment or transfer shall not relieve the Provider of its liabilities under this franchise Agreement until the assignment actually takes place or unless specifically relieved by federal, state, or local law, or unless specifically relieved by the City Council at the time an assignment or transfer is approved.

11.5 Transfer upon Revocation by the City. The Provider and the City hereby agree that in the event of a lawful revocation of this franchise, at the Provider's request, which shall be made in the Provider's sole discretion, the Provider shall be given a reasonable opportunity to effectuate a transfer of its network to a qualified third party. The City further hereby agrees that during such a period of time, it shall authorize the Provider to operate pursuant to the terms of its prior franchise Agreement; however, in no event shall such authorization exceed a period greater than six (6) months from the effective date of such revocation. If, at the end of that six (6) month period, the Provider is unsuccessful in procuring a qualified transferee or assignee of its network which is reasonably acceptable to the City, the Provider and the City may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that the Provider's continued operation of its network during the six (6) month period shall not be deemed to be a waiver or extinguishment of any rights of either the City or the Provider. Notwithstanding anything to the contrary set forth herein, neither the City nor the Provider shall be required to violate federal or state law.

11.6 Abandonment of Facilities by the Provider. The Provider, with the consent of the City, may abandon any underground facilities in place, subject to the requirements of the City. In such an event, the abandoned network shall become the property of the City, and the Provider shall have no further responsibilities or obligations concerning those facilities.

ARTICLE XII SERVICE AREA

12.1 Service Area. The Provider shall provide telecommunication services via its System to all residents within the City boundaries (the "Service Area"), subject to the limitations set out in Hurricane City Code 7-12-6(D).

12.2 Sequence of Construction. Except as exempt under Hurricane City Code 7-12-6(D), Provider shall construct its System within the Service Area to make broadband service available to all residents within the City boundaries on or before November 17, 2027. Provider intends to construct its main underground fiber trunk line as shown on Exhibit B.

ARTICLE XIII GENERAL PROVISIONS

13.1 Binding Agreement. The Parties hereby represent that (i) when executed by their respective parties, this Agreement shall constitute all the legal and binding obligations of the Parties pertaining to the subject matter contained herein; and (ii) that each Party has complied

with all relevant statutes, ordinances, resolutions, by-laws, and other legal requirements applicable to their operation in entering into this Agreement. This Agreement shall be binding upon the heirs and successors, administrators and assigns of each of the Parties.

13.2 Governing Law. This Agreement shall be construed, interpreted and governed in accordance with the laws of the State of Utah. All disputes resulting in legal action shall be governed by the laws of the State of Utah. Jurisdiction shall be vested in the District Courts in and for the State of Utah. Venue is vested in the 5th Judicial District Court in and for Washington County, State of Utah or in any other successor district court of competent jurisdiction.

13.3 Interpretation of Agreement. The invalidity of any portion of this Agreement shall not prevent the remainder of this agreement from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include any other and all genders. The paragraph and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

13.4 Entire Agreement and Amendments. This Agreement and all attachments hereto constitute and represent the entire agreement and understanding between the Parties hereto and replaces any previous agreement, understanding or negotiation between the Parties with respect to the subject matter hereof, and may be modified or amended, supplemented, or changed only by the written agreement of the Parties, including the formal approval of the City Council. No oral modifications or amendments shall be effective.

13.5 Applicability of Hurricane City Ordinances. Except as expressly provided for herein, the terms, conditions, and requirements of Hurricane City Ordinance No. 2022-50, codified at Title 7, Chapter 12, shall apply to and govern the conduct and the relationship of the Parties as set out in this Agreement. For ease of reference, a copy of Ordinance No. 2022-50 is attached hereto as Exhibit A.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year set forth above.

HURRICANE CITY, UTAH

Mayor Nanette Billings

Date: _____

ATTEST:

CINDY BETEAG, CITY RECORDER

FIF ST. GEORGE, LLC – dba INFOWEST

By: _____

Title: _____

Date: _____

STATE OF _____) : Ss.
COUNTY OF _____)

On this ____ day of _____, 2022, _____
personally appeared before me _____, and duly
acknowledged to me that he/she signed the above and foregoing document, having been duly
authorized to execute this Agreement by resolution of FIF St. George, LLC and as permitted by
its governing documents.

NOTARY PUBLIC

EXHIBIT A

Ordinance No. 2022-50

**AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE, UTAH AMENDING
TITLE 7, CHAPTERS 4, 8, 10, 11; AMENDING TITLE 13, AND CREATING TITLE 7,
CHAPTER 12 OF THE HURRICANE CITY CODE REGARDING UTILITY
FRANCHISES**

WHEREAS, the City Council of Hurricane, Utah desires to amend Title 7, Chapters 4, 8, 10, 11; amend Title 13, and create Title 7, Chapter 12 of the Hurricane City Code regarding utility franchises;

WHEREAS, the 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 Title 7, Chapters 4, 8, 10, and 11 are all reserved, that Title 13 is reserved, and that Title 7, Chapter 12 is created as follows:

**TITLE 7, CHAPTER 4 – RESERVED
TITLE 7, CHAPTER 8 – RESERVED
TITLE 7, CHAPTER 10 – RESERVED
TITLE 7, CHAPTER 11 – RESERVED
TITLE 13 – RESERVED**

**TITLE 7 – PUBLIC WAYS AND PROPERTY
CHAPTER 12 – UTILITY FRANCHISES**

Table of Contents

Sec. 7-12-1.	Findings; Authority.
Sec. 7-12-2.	Definitions.
Sec. 7-12-3.	General Provisions; Scope and Application.
Sec. 7-12-4.	Application for Franchise.
Sec. 7-12-5.	Standards For Granting or Denying Applications.
Sec. 7-12-6.	Extension of Service; Duty to Serve; Community Access Services.
Sec. 7-12-7.	Reporting Requirements; Books and Records.
Sec. 7-12-8.	Franchise Fee.
Sec. 7-12-9.	Term of Franchise.
Sec. 7-12-10.	Transfers of Franchise.
Sec. 7-12-11.	Continuity Upon Termination or Transfer.
Sec. 7-12-12.	General Conditions and Requirements for Use of Rights-of-Way.
Sec. 7-12-13.	Underground installation of facilities; Pole Agreements.
Sec. 7-12-14.	Pole Attachment and Loading Analysis Requirements.
Sec. 7-12-15.	Small Cell Infrastructure.
Sec. 7-12-16.	Letter of Credit; Insurance; Bonding.
Sec. 7-12-17.	System Records Requirements.
Sec. 7-12-18.	Private Property; Obligation to Notify.
Sec. 7-12-19.	Applicable Codes.

Sec. 7-12-20. Removal of System; Abandonment of Systems.

Sec. 7-12-21. Unlawful Use; Repair After Unlawful Use; Acts Exempted.

Sec. 7-12-22. Revocation of Franchise; Fines and Penalties.

Sec. 7-12-23. Indemnification and Defense.

Sec. 7-12-1. Findings; Authority.

A. *Findings.* The City finds as follows:

1. Franchise Standards. It is in the interests of the public to allow certain franchises within the City and to establish standards for Providers in a manner that:
 - a. Establishes minimum standards and criteria for franchising Providers utilizing public Rights-of-Way;
 - b. Fairly and reasonably compensates the City on a competitively neutral and nondiscriminatory basis as provided herein;
 - c. Encourages competition by establishing terms and conditions under which Providers may use the rights-of-way to serve the public;
 - d. Protects the public interests and the City from any harm that may flow from such commercial use of Rights-of-Way;
 - e. Protects City police powers and the City's Rights-of-Way management authority in a manner consistent with federal and state law;
 - f. Protects the public interests in the development and use of the City infrastructure;
 - g. Protects the public's investment in improvements in the Rights-of-Way; and
 - h. Appropriately limits barriers to entry of franchising Providers.
2. Public Rights-of-Way. It is necessary and appropriate to develop uniform minimum standards for use of the public Rights-of-Way and to simplify City management of the rights-of-way. Public Rights-of-Way within the City:
 - a. Are critical to the travel and transport of persons and property in the business and social life of the City;
 - b. Are intended for public uses and must be managed and controlled consistent with that intent;
 - c. Can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare and general economic well-being of the City and its citizens; and
 - d. Are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation and maintenance in the Rights-of-Way.
3. Compensation. The City should receive fair and reasonable compensation for use of the public Rights-of-Way in conjunction with franchises.
4. Local Concern. The regulation of utilities and services within the Rights-of-Way is of local concern.

5. Development of Services. It is in the best interests of the City's taxpayers and citizens to promote the rapid development of services, including into areas of the City previously developed, on a nondiscriminatory basis, to assure the availability of services to the entire community.
- B. *Authority*. The City adopts this chapter pursuant to its power to manage public Rights-of-Way; to ensure that those rights-of-way are used for public purposes; and to receive fair and reasonable compensation for the use of rights-of-way by Providers pursuant to common law, the Utah Constitution, and statutory authority.

Sec. 7-12-2. Definitions.

For purposes of this chapter, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this section. The words "shall" and "will" are mandatory, and "may" is permissive. Undefined words shall have their common and ordinary meaning.

Antenna means communication equipment that transmits or receives an electromagnetic radio frequency signal used in the provision of wireless service.

Applicable Codes means the Utah State Code, Hurricane City Code, International Building Code (IBC), the International Fire Code, the National Electrical Code (NEC), National Electric Safety Code (NESC), as adopted and amended under Utah Code Annotated title 15A, State Construction and Fire Codes Act.

Applicable Standards means the structural standards for antenna supporting structures and antenna, known as ANSI/TIA-222, from the American National Standards Institute and the Telecommunications Industry Association.

Applicant means a Provider or their authorized agent who submits an application for an agreement or other authorizations that may be granted under this chapter.

City means Hurricane City, Utah, a Utah municipal corporation.

Eligible Support Structure means any monopole, utility pole, wireless support structure or related accessory equipment, as defined in this chapter, provided that it is existing at the time the relevant Application is filed with the City.

Franchise Agreement means a contract entered into in accordance with the provisions of this chapter between the City and a franchisee that sets forth the terms and conditions under which a Provider is authorized to place facilities in Rights-of-Way to provide utility, communications, video, telecommunication, or similar services.

Gross Revenue means all revenue or receipts derived by a Provider, or an affiliate of a Provider, in connection with its provision of services in the City governed by a Franchise Agreement. For purposes of revenue generated in relation to telecommunication services provided within the City, the definition of 'gross receipts' found in Utah Code Title 10, Chapter 1, Part 4, as amended, governs and applies. Gross Revenue includes all revenues of a provider

that may be included as gross revenue within the meaning of Utah Code Title 11, Chapter 26, as amended.

Monopole means a structure in the right-of-way erected by an applicant or provider specifically to support SWFs.

Nondiscriminatory describes the equal treatment of similar situated entities unless there is a reasonable, competitively neutral basis for different treatment.

PSC means the Public Service Commission or any successor thereto.

Person includes any individual, corporation, partnership, association, joint stock company, trust or any other legal entity, but not the City.

Provider means a provider of utility, wireless, communication, or similar services that utilizes Rights-of-Way or other City-owned or City-controlled property to provide the service. A Provider includes, but is not necessarily limited to, a person or entity that has entered into a Franchise Agreement with the City.

RF means radio frequency.

Related Accessory Equipment refers to equipment used in conjunction with an Antenna or other component of SWFs which may be attached to a wireless support structure or located on the ground at or near the base of a wireless support structure.

Rights-of-Way or *Right-of-Way* refers to any area within, on, above and below alleys, public roads, highways, streets, easements, and other similar public property, and may include sidewalks, park-strips and other areas associated with them and controlled by the City, primarily dedicated to, designed for or actually and customarily used for vehicular or pedestrian travel, and which, by their nature, may properly be used for installation of a utility or communication system, or any dedicated general public utility easement that the City may authorize a Provider to use.

Service Area means the geographic area in which a Provider is authorized and required to provide services.

Subscriber means any person or entity lawfully receiving service(s) from Provider or an affiliate of Provider.

Small Wireless Facility (SWF) means a wireless facility on which each provider's Antenna could fit within an enclosure of no more than six cubic feet in volume and for which all related accessory equipment, whether mounted on the pole or the ground, is cumulatively no more than 28 cubic feet in volume.

Sec. 7-12-3. General Provisions; Scope and Application.

- A. *Franchise Required.* Every Provider shall apply for and obtain a Franchise Agreement, easement, or other authorization approved by the City Council prior to placing any infrastructure or facilities in a Right-of-Way.
- B. *Operations on City-Controlled Property.* Subject to the requirements and considerations of this chapter, the City Council may grant to any person a franchise, easement, or other appropriate authorization on such terms and conditions as it deems reasonable, for the purpose of entering upon, constructing, building, operating, and maintaining any business or for other use of the property owned or controlled by the City. Franchises, easements, and authorizations shall be construed narrowly; no rights shall pass by implication.
- C. *In writing.* Any franchise, easement, or other authorization granted by the City shall be in writing and any franchise, easement, or other authorization not in writing shall be void.
- D. *Nature of franchise.* A franchise shall not convey title, equitable or legal, in the rights-of-way. A franchise is only the right and consent to install, repair, maintain, remove, or replace facilities on, over and under the rights-of-way for the limited purposes and for the limited period as stated in a Franchise Agreement. Except as provided in this chapter, the right may not be subdivided, assigned or subleased. A Franchise Agreement does not excuse a Provider from obtaining appropriate access or pole attachment agreements before collocating its system on the property of others, including the City's property. This subsection shall not be construed to prohibit a Provider from leasing conduit to another Provider, so long as the lessee has obtained a franchise.
- E. *Authorizations nonexclusive.* Franchises, easements, or other authorizations granted by the City shall be nonexclusive.
- F. *Applicability; Conflicts.* This chapter shall be construed and applied in a manner consistent with all applicable federal and state statutes. To the extent the provisions of this chapter conflict with applicable federal or state statutes, the federal or state statutes shall govern and this chapter shall be applied accordingly. This chapter shall apply to all franchises granted or renewed after the effective date hereof. This chapter shall further apply, to the maximum extent permitted by applicable federal or state law, to all existing franchises granted prior to the effective date hereof and to a provider providing services, without a franchise, prior to the effective date hereof. The revisions to this chapter adopted by ordinance and codified herein do not relieve a franchisee of any obligations that are included in an existing Franchise Agreement or that were relied on in the City's approval of an existing franchise.
- G. *Enforcement conditions.* In addition to containing such terms as the City may lawfully require, any Franchise Agreement granted pursuant to this chapter shall contain appropriate provisions for enforcement, compensation and protection of the public, consistent with the other provisions of this chapter, including, but not limited to, defining events of default, liquidated damages, as appropriate, and rights of termination or revocation.
- H. *City failure to enforce.* A provider shall not be relieved of its obligation to comply with any of the provisions of this chapter or any Franchise Agreement granted pursuant to this chapter by reason of any failure of the City to enforce prompt compliance.

- I. *Exercise of police power.* To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders or other directives that it finds necessary or appropriate in the lawful exercise of its police powers.

Sec. 7-12-4. Application for Franchise.

- A. *Application fee.* Every application for a franchise shall be accompanied by a nonrefundable application fee as may be set by the City Council from time to time by resolution and an agreement to pay reasonable costs incurred by the City to pay the costs of studying, investigating, and otherwise processing such application. City may require payment of a deposit to ensure payment of said reasonable costs incurred.
- B. *Information required.* A Provider seeking a Franchise Agreement, easement, or other authorization shall file an application with the City Recorder. The application shall contain or be accompanied by the following information:
 1. The name, address, and telephone number of the applicant.
 2. A detailed statement of the corporate or other business entity organization of the applicant, including, but not limited to, the following:
 - a. The names, residence addresses and business addresses of all officers, directors and partners or business associates of the applicant.
 - b. The names, residence addresses and business addresses of all persons and entities having controlling, or being entitled to have or control five percent or more of the ownership of the applicant, and the respective ownership share of each such person or entity.
 - c. The names and addresses of any parent of the applicant to the ultimate parent; and the names and addresses of each entity responsible in whole or in part for management or operation of the applicant, along with a description of the nature of the responsibilities of such entity or entities.
 - d. A description of the services intended to be provided by applicant.
 - e. A description of the previous experience of the applicant in providing services and constructing systems used to provide services; and an identification of all communities in the state where applicant, or any affiliate, provides services.
 - f. Certification of the Provider's financial ability to compensate the City for Provider's intrusion, maintenance, and use of the Rights-of-Way, as well as Provider's ability to make payments owed to the City during the term of any Franchise Agreement.
 - g. Information showing that the applicant has the technical and financial resources to build and operate any infrastructure or facilities that will be placed in Rights-of-Way.
 - h. Information regarding the character qualifications of the applicant.
 - i. A copy of the order from the PSC granting a certificate of convenience or necessity, if applicable.
 3. A detailed description of the proposed plan of operation of the applicant, which shall include, but not be limited to, the following:

- a. A map or maps showing the precise geographic area for which applicant seeks a Franchise Agreement.
 - b. Plans showing any existing locations of the system that will be used to provide services.
- C. *Additional information.* The City may request such additional information as it deems necessary to determine whether or not the application should be granted. The failure to file a complete application, or to provide additional information requests, is grounds for rejecting or denying an application.
- D. *Determination by City.* The City Council shall determine whether to award any franchise, easement, or other authorization based on and taking into account considerations relevant to the use of the Rights-of-Way and the public interest, health, and safety, without competitive bidding.
- E. *Renewals.* Franchise renewals shall be according to applicable state and federal law. The City and grantee by mutual consent, may enter into renewal negotiations at any time during the term of the franchise.

Sec. 7-12-5. Standards For Granting or Denying Applications.

- A. *Standards.* The City Council may schedule such public hearings and conduct such investigations as are necessary to determine whether granting the application is in the public interest, considering the following:
 - 1. The qualifications of the applicant, including but not limited to the following:
 - a. Years in business;
 - b. Number of employees and crews;
 - c. Existing infrastructure in southern Utah;
 - d. Number of redundant carriers, if any;
 - e. Amount of equipment;
 - f. Adequate General Liability insurance;
 - g. Existing relationships with other municipalities;
 - h. References from other municipalities;
 - i. Employee certifications related to the installation and maintenance of the proposed system;
 - j. Products or services offered by Provider;
 - k. Whether customer support services are locally situated;
 - l. Availability of physical path redundancy by Provider;
 - m. Capabilities of Provider's network;
 - n. Provider's historical gross and net revenues;
 - o. Ability of Provider to timely serve brownfield or legacy areas;
 - p. Availability of local technical support.
 - 2. Whether the application for construction and extension of the system is reasonable, considering the needs of the community;
 - 3. Whether the application, if granted, is likely to result in any portion of the City being unserved or underserved by the proposed system;
 - 4. Whether the application, if granted, would limit or enhance competition in the provision of communications services in the City;

5. Whether the applicant is willing and able to comply with its obligations under applicable law, and to agree to franchise conditions to protect the City against harm and liability, and ensure the franchise is enforceable;
 6. Whether the applicant is willing to agree to conditions that ensure that entities using its system can comply with conditions imposed under other provisions of this Code, including, without limitation, obligations imposed under chapter 10 of this title and title 13, chapter 1 of this Code and franchises issued thereunder;
 7. Whether the application requires the City to agree to conditions, or viability of the system depends upon, conditions that may harm consumers;
 8. Whether similar services are already available within the City; and
 9. Any other relevant information related to the applicant's proposed franchise.
- B. *Conditions.* The City Council may deny an application under this chapter or condition the approval of an application on such conditions, terms, requirements, or restrictions as it finds necessary to protect the public interest.

Sec. 7-12-6. Extension of Service; Duty to Serve; Community Access Services.

- A. *Minimum Service Area.* Except as provided in this section, the City shall not approve any franchise that provides for a Service Area smaller than the City boundaries, as it existed as of the effective date of the Franchise Agreement. The City may grant a franchise that permits a grantee to serve areas annexed after the effective date of the franchise. The foregoing does not apply where an applicant shows that the Service Area is economically infeasible; that granting a franchise for a smaller area will not adversely affect the development of competition throughout the City; and that the proposed Service Area is such that granting a franchise for that area will not unfairly disadvantage any franchised Provider.
- B. *Time to provide service.* A Provider must complete construction of its system within a reasonable time, so that it passes by all dwelling units within its Service Area, which time shall be specified in the franchise and subject to the density requirements in subsection D of this section.
- C. *Sequence of construction.* As a condition of receiving a franchise, each Provider must submit a plan for the sequence of construction that ensures it does not discriminate against residents of the City based on income. The plan must show the timing of construction by geographic area and the schedule for completion of construction by geographic area. A schedule for completion of construction may be tied to the success of the applicant in the marketplace. In determining whether the plan is acceptable, the City may take into account:
1. The amount of time required to build out the system to serve the City;
 2. The amount of construction required to serve the Service Area; and
 3. The time required to provide the applicant reasonable opportunities to recover its investment.
- D. *Extension of Service and Density requirements.* A Provider may, but is not required to, serve any portion of its Service Area where the density is less than five dwelling units per linear quarter mile unless the potential Subscriber agrees to pay extension charges as provided in this section. In extending service, the following requirements shall be met:

1. In any portion of the Service Area where the density is five dwelling units or more per linear quarter mile, a Provider shall provide service to any person that requests it at its normal connection fee; provided that Provider is able to reasonably obtain all easements or permissions, if any, which are necessary to extend service relating thereto. Where the distance from the Right-of-Way to the demarcation point on the potential Subscriber's premises is greater than 150 feet, a Provider may charge an additional, reasonable fee to recover the actual costs of extending the system the additional distance.
 2. In areas with less than five residential units per linear quarter mile, a Provider shall offer a cost sharing arrangement with residents desiring service wherein each will bear their proportionate share of construction costs. For example, if there are four dwelling units per linear quarter mile, Provider must extend service if the potential Subscriber(s) are willing to each pay one-fifth of the cost of extending the system to pass by the dwelling unit(s), and the Provider must bear the remaining construction cost. Should additional residents actually subscribe to service in areas where Subscribers have already paid a proportionate share under the extension cost sharing formula, Subscribers who have previously paid a proportionate share shall be reimbursed pro rata for their contribution or proportional share thereof. In such case, the pro rata shares shall be recalculated and each new Subscriber shall pay the new pro rata share, and all Subscribers who previously paid a proportionate share shall receive pro rata refunds. However, one year after completion of a project, Subscribers who have paid a share of line extension costs shall no longer be eligible for refunds.
 3. The Subscriber who must pay additional amounts for extended connections or for distribution cable construction, as provided in subsection D2 of this section, shall be given a written estimate of the additional amount payable by them prior to their subscription, and they shall in no event be required to pay more than five percent over this estimate.
- E. *Extension of Service to Public Buildings and Facilities.* The density requirements of subsection D of this section do not apply to public buildings and public facilities. Upon request from the City, a Provider shall timely extend service to the public buildings and public facilities identified by the City. Franchise Agreements may contain a provision whereby the City makes certain concessions in exchange for services being provided to Public Buildings or Facilities free of charge.
- F. *Use of City-Owned Conduits or Facilities.* The City may allow or require a Provider to utilize City-owned conduits, infrastructure, or facilities to facilitate the Provider's ability to serve the Provider's service area, upon terms agreeable to the City.
- G. The City may require a Provider to provide reasonable in-kind consideration in the form of conduit, facilities, or capacity in order to promote educational and governmental uses of the system, or in connection with the City's promotion of public, educational or governmental uses of the system.
- H. In lieu of requiring a Provider to build out to service the entire City as described in this section, the City Council may require a Provider to contribute to a fund to ensure all portions of the City are served by an acceptable and equivalent system.
- I. The franchise fee and other consideration provided for under this chapter is not in lieu of any tax or assessment; any fee for the use of the Rights-of-Way payable by Provider to

provide any other service; or any fee designed to recover costs associated with managing the Rights-of-Way, including by way of example, permit fees and pole attachment fees.

Sec. 7-12-7. Reporting Requirements; Books and Records.

- A. *Reporting Requirements.* Each Provider shall prepare annual reports to monitor compliance with the terms of a Franchise Agreement. By January 31 of each year, each grantee shall provide the City with a detailed statement of revenues for the previous year derived in connection with the provision of services in the City, sworn as accurate by an officer of the Provider, which statement shall identify:
 - 1. The number of Subscribers, by category of service;
 - 2. Service revenues, by category of service;
 - 3. Equipment revenues, by category of equipment;
 - 4. Other revenues, identifying the source of the revenues;
 - 5. The amount of any deduction from gross revenues, identifying the reason for the deduction, and the manner in which it was calculated;
 - 6. If revenues are allocated among the City and other entities, the total revenues, and the manner in which the revenues were allocated.
- B. The annual report shall be in a form the City prescribes, or if there is no form, in a form consistent with the manner in which Provider maintains its books and records.
- C. *Right to access.* The City shall have the right to review and make copies of books and records relevant to its enforcement of a Franchise Agreement and applicable law, including this chapter. Upon the City's request, books and records shall be produced at a convenient location in the City, or if books and records cannot be produced there, at a mutually agreeable location. To the extent the Utah Government Records and Management Act, Utah Code Annotated title 63G, chapter 2, and other applicable law permits, the City may agree in a Franchise Agreement that information contained within the books and records of Provider provided to the City shall be kept confidential by the City, and may agree to provide Provider reasonable notice of any request received by the City for disclosure of any books and records requested by Provider to remain confidential, so that the Provider may take appropriate action to protect confidential information from disclosure.
- D. *Prompt response required.* Provider shall promptly respond to requests for information from the City related to a Franchise Agreement or Provider's compliance with applicable law.
- E. *Audit.* In addition to other rights within this section, for the purpose of verifying the correct amount of the franchise fee, the books and records of the Provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the City at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records; provided that the City shall not audit the books and records of the Provider more often than annually. The Provider shall be required to reimburse the City the reasonable costs of an audit if the audit discloses that the provider has paid 95 percent or less of the compensation due the City for the period of such audit. In the event the accounting rendered to the City by the Provider herein is found to be incorrect, then payment shall be made on the corrected amount within 30 calendar days of written notice. The City may accept any amount offered by the Provider to remedy the

incorrect payment, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

Sec. 7-12-8. Franchise Fee.

- A. *Terms of payment.* Each Provider shall pay a franchise fee in connection with provision of services in an amount calculated as a percentage of Provider's annual Gross Revenue, as defined in this chapter. The annual payment shall be 6% of the Provider's annual Gross Revenue or the maximum amount permitted under federal or state law, whichever is less. Franchise fees shall be paid on a schedule set out in a Franchise Agreement. To the extent federal or state law requires or allows a different government entity or agency to collect the fees, the Franchise Agreement may provide for such arrangement. Acceptance of payment shall not be construed as an accord that the amount paid is correct nor shall it be construed to release any claim which the City may have for any further sums payable under this section. Any franchise fees which remain unpaid after the dates specified herein shall be delinquent and shall thereafter accrue interest at 12.5% per annum until paid.
- B. *Exemption from rate limitations.* Nothing in this chapter prevents the City from securing an exemption from rate limitations as permitted by state law, including the exemption permitted by Utah Code 10-1-404, as amended. Upon satisfying the requirements for an exemption from rate limitations, the rates applied pursuant to this chapter shall be applied accordingly.
- C. *Costs.* A Provider shall pay to the City or to third parties, at the direction of the City, an amount equal to the reasonable costs and reasonable expenses that the City incurs for the services of third parties (including, but not limited to, attorneys and other consultants) in connection with any franchise application, renewal, or Provider-initiated renegotiation of a Franchise Agreement; or amendment of this chapter; provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations.
- D. *Publication costs.* A provider shall assume any publication costs associated with its franchise that may be required by law.

Sec. 7-12-9. Term of Franchise.

A franchise granted pursuant to this Chapter shall be for a term established in a Franchise Agreement. In no event shall any franchise term exceed 15 years.

Sec. 7-12-10. Transfers of Franchise.

- A. *Consent of City required.* Unless specifically provided for in a Franchise Agreement and this chapter, a franchise or system shall not be sold, assigned, leased, subleased, mortgaged, transferred or conveyed in any manner whatsoever, either in whole or in part, voluntarily or involuntarily, nor shall any right, title or interest therein, either legal or equitable, pass to or vest in any person or entity other than the person or entity named as the Provider in the Franchise Agreement without the prior written consent of the City, obtained in accordance with the provisions of this section. Any attempt by the Provider

to sell, assign, transfer or convey any interest in the franchise without obtaining the prior written consent of the City shall constitute a default in the Franchise Agreement.

- B. *Changes of control included.* A "sale," "transfer" or "conveyance" of the franchise shall include any acquisition of the controlling interest of Provider, whether through purchase of stock, merger, consolidation or any other change of control. Without limiting the foregoing, a rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of 20 percent of the voting interest or management control of the Provider.
- C. *Considerations of City.* At least 120 days before a proposed sale, assignment, transfer or conveyance of a Provider's franchise is scheduled to become effective, such Provider shall petition in writing for the City's written consent to the proposed sale, assignment, transfer or conveyance. The City will not unreasonably withhold its consent, but without limitation, it may consider the technical ability, financial capability, legal qualifications and general character qualifications of the purchaser, assignee or transferee, including its experience and service record in other communities. A request for consent to the sale, assignment or transfer hereunder shall be made to the City in writing and the Provider and the proposed purchaser, assignee or transferee must cooperate with the City in its investigation of the transfer. A request for consent may be denied if the Provider or proposed purchaser, assignee or transferee fail to timely provide the City information the City requests in connection with its review of the transfer.
- D. *Approval without response.* The City shall be deemed to have approved a proposed sale, transfer or assignment in the event that its response is not communicated in writing to the Provider within 120 days following receipt of the petition for consent to the proposed sale, transfer or assignment, unless the City and Provider agree to an extension of this period, subject to the following conditions:
 - 1. Transferee shall assume all obligations and liability of the former Provider, known and unknown.
 - 2. An approval without response is not a representation, express or implied, that the Provider is in compliance with the franchise.
 - 3. A sale, assignment or transfer shall not relieve the former Provider of its liabilities under this chapter until the sale, assignment or transfer actually takes place unless otherwise specifically relieved by the City.
- E. *Approval where PSC approval is required.*
 - 1. *Notification.* When a transaction requires the approval of the PSC, the Provider or its successor entity shall promptly notify the City of the nature of the transaction and provide a certification from the successor entity that the successor entity unequivocally agrees to all of the terms of the original provider's franchise agreement and assumes all obligations thereunder; and the successor or entity is seeking, or has obtained, the approval of the PSC.
 - 2. *Where PSC approval is obtained.* Upon receipt of a notification and certification in accordance with subsection E1 of this section, the City shall send notice affirming the transfer of the franchise to the successor entity, the effectiveness of which shall be conditioned upon PSC approval, and compliance with any conditions established by the PSC. Provided that, if the City has good cause to believe that the successor entity may not comply with this Code or the franchise

agreement, it may require an application for the transfer. The application shall comply with, and shall be reviewed in accordance with this chapter.

F. *Assignment for creditors.* Notwithstanding any other provision of this chapter or a Franchise Agreement:

1. A franchise shall automatically terminate by force of law 120 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the grantee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding.
2. However, the franchise may be reinstated if, within the 120-day period:
 - a. The assignment, receivership or trusteeship is vacated; or
 - b. The assignee, receiver, or trustee has fully complied with the terms and conditions of this chapter and the Franchise Agreement and has executed an agreement, approved by a court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of the franchise agreement and this chapter.

G. *Foreclosure or judicial sale.* Notwithstanding any other provision of this chapter:

1. In the event of foreclosure or other judicial sale of any of the Provider's system or associated property, the City may revoke the franchise at a public hearing before the City Council, by serving notice upon the Provider and the successful bidder at the sale.
2. The franchise shall terminate 30 calendar days after serving such notice, unless:
 - a. The City approves the transfer of the franchise to the successful bidder; and
 - b. The successful bidder agrees with the City to assume and be bound by the terms and conditions of the franchise and applicable law.

Sec. 7-12-11. Continuity Upon Termination or Transfer.

In the event of a termination, revocation, or transfer of Provider's franchise for whatever reason, Provider shall ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. At the City's request, Provider shall cooperate with the City to operate Provider's system for a temporary period following termination or transfer of the franchise as necessary to maintain and to ensure an orderly transition from one operator to another to avoid disruption of public streets and public property, and to ensure continuity of service to Subscribers. During such period, the system shall be operated as if the terms and conditions of this chapter and Franchise Agreement continue to apply.

Sec. 7-12-12. General Conditions and Requirements for Use of Rights-of-Way.

Every Provider's system shall be subject to the following with respect to its facilities in the Rights-of-Way:

- A. *Quality and performance of work.* All work involved in the construction, maintenance, repair, upgrade and removal of the system shall be performed in a safe, thorough and reliable manner, using materials of good and durable quality. If, at any time, it is

determined by an agency or court of competent jurisdiction, or by the City in the exercise of its lawful authority, that any part of the system, including, without limitation, any means used to distribute signals over or within the system, is harmful to the public health, safety or welfare then the Provider shall, at its own cost and expense, promptly correct all such conditions.

- B. *Licenses and permits.* A provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade, or repair the system, including, but not limited to, any necessary approvals from persons and/or the City to use private property, easements, poles, or conduits. A Provider shall obtain any required permit, license, approval or authorization, including, but not limited to, excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval, or authorization is required.

C. *Relocation of system.*

1. *New grades or lines; excavation requirements.* If the City shall elect to alter or change the grade or location of any Right-of-Way, or if the City requires it as part of any public project, a Provider shall, at its own expense and within 30 days after written notice from the City, except as otherwise required by law, remove and relocate its system, and in each instance comply with the standards and specifications of the City, including the City's excavation ordinances. Provider's failure to comply with its obligation to remove or relocate its system pursuant to this chapter shall constitute a breach of the applicable Franchise Agreement.
2. *Relocation for other entities authorized to use Rights-of-Way.* A Provider shall promptly locate and relocate facilities to permit installation of additional utilities and infrastructure. A Provider's obligation to relocate facilities includes situations where development of roadways and utilities pursuant to City standards requires that the facilities be relocated. The costs to locate and relocate facilities shall be borne by the Provider.
3. *Emergency; City authority to move system.* The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of any system within the rights-of-way, in which event the City shall not be liable therefor to a Provider. The City shall notify a Provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this section.
4. *Temporary move for third party.* A Provider shall, upon prior reasonable written notice by the City or any person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its system to permit the moving of said structure. A Provider may impose a reasonable charge on any person other than the City for any such movement of its systems.

D. *Protection of structures, landmarks.*

1. *Protection of City property.* In connection with the construction, maintenance, repair, upgrade or removal of the system, a Provider shall, at its own cost and expense, protect any and all existing structures and property belonging to the City and all designated landmarks, as well as all other structures within any designated

landmark district. A Provider shall obtain the prior written consent of the City to alter any water main, power facility, sewerage or drainage system, or any other City structure on, over or under the Rights-of-Way of the City required because of the presence of the system. Any such alteration shall be made by the City or its designee on a reimbursable basis. A Provider shall be liable for the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City any City property, structure, or any other Rights-of-Way of the City involved in the construction, maintenance, repair, upgrade or removal of the system that may become disturbed or damaged as a result of any work thereon by or on behalf of a Provider.

2. *Restoring surfaces; fee or bond.* Without limiting the foregoing, in case of any disturbance of asphalt, pavement, sidewalk, driveway, or other surfacing, a Provider shall, at its own expense, replace and restore all asphalt, paving, sidewalk, driveway, or other surface of any Right-of-Way, street, or alley disturbed in accordance with the standards and specifications of the City. When a Provider cuts asphalt in a Right-of-Way, the Provider shall maintain the asphalt cut for perpetuity or until the roadway is completely repaved. The Provider shall fully comply with any ordinance adopted by the City requiring a road opening fee or bond to protect against the costs to the City if a Right-of-Way surface or other City infrastructure is disturbed and not properly restored.
- E. *Obstructions prohibited.* In connection with the construction, maintenance, upgrade, repair, or removal of a system, a Provider shall not unreasonably obstruct the Rights-of-Way of fixed guideway systems, railways, passenger travel or other traffic to, from or within the City without the prior consent of the appropriate authorities.
- F. *Location; minimum interference.* All structures, lines, pipes, and equipment installed by a Provider within the City shall be located and installed in accordance with City ordinances governing street excavation and use of public Rights-of-Way and shall be located so as not to obstruct or interfere with the proper use of Rights-of-Way and other public ways and places, and to cause a minimum of interference with the rights of property owners who abut any of the said Rights-of-Way alleys and other public ways and places, and not to interfere with existing public utility installations. All cables, wires, and associated equipment shall be installed, where possible, parallel with electric and telephone lines of the incumbent local exchange carrier, and shall utilize existing poles, conduits, and other facilities whenever possible. Any use of existing poles shall be conditioned on the approval of the Hurricane City Power Department as described in Section 7-12-13 of this Chapter.
- G. *Safety precautions.* A Provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A Provider shall comply with all applicable federal, state and local requirements, including, but not limited to, the National Electrical Safety Code.
- H. *Repair of Rights-of-Way.* If a Provider fails to maintain or restore public property, structures, or Rights-of-Way to the City's specifications and as set out in this chapter within a reasonable time, specified by the City, the City may after notice, or without notice if an imminent danger exists, repair the property itself, and the Provider shall

compensate the City for all costs it incurs in connection with the same. The City shall submit to such a provider an itemized statement of the cost incurred and the provider shall, within 30 days after receipt of the statement, pay to the City the invoiced amount. The City shall not be liable to Provider, and Provider shall defend and indemnify City, for any damage or loss incurred by Provider relating in any way to the City's repair or maintenance of the public property.

I. *Inspection and supervision of construction.*

1. At all reasonable times, a Provider shall permit examination by any duly authorized representative of the City of the system and its effect on the Rights-of-Way.
2. The City may require a Provider to prepare reports regarding the progress of work being performed, or that it is required to perform, in the Rights-of-Way.

J. *Trimming trees; authority.* A Provider may trim any trees upon and overhanging the streets, alleys, sidewalks, public easements, or Rights-of-Way of the City so as to prevent the branches of such trees coming in contact with the wires and cables of the Provider, provided that the Provider complies with all applicable City ordinances governing tree pruning or trimming. The Provider is responsible for harm caused to the trees by improper pruning or trimming. Prior to undertaking any tree trimming, Provider shall notify City and/or other property owner of Provider's intent.

Sec. 7-12-13. Underground installation of facilities; Pole Agreements.

- A. *Underground installation.* A Provider shall construct and install its system underground, unless a Provider secures authorization to construct its system aboveground or secures a pole agreement from the City as described in this section.
- B. *Provider's use of City's utility poles.* The Hurricane City Power Department may, in its sole discretion; (1) permit a Provider to construct and install its system aboveground or (2) enter into a pole agreement with a Provider to allow a Provider to place system components on a City's utility pole, based on the following considerations:
1. The feasibility of placing the Provider's system underground;
 2. The negative impacts on City property of placing the Provider's system underground;
 3. The negative impacts on the City's ability to manage, maintain, and utilize the City's utility poles if the Provider's system is placed aboveground or on the City's utility poles;
 4. Whether the Provider's request to place the system above ground is in an area of the City where cables, wires, and other like facilities of all other public utilities are placed underground; and
 5. Whether requiring the system to be placed underground will limit the ability to provide services to certain areas within the City.
- C. *City use of pole and conduits in Rights-of-Way.* Subject to any applicable state or federal regulations or tariffs, the City shall, after giving written notice, have the right, without cost, to make use of any poles or conduits controlled or maintained by or for use of the Provider that are located in any Right-of-Way. Such use by the City shall not interfere with current or future use by the Provider.

- D. *Use by others of poles.* In cases where access to a Provider's poles are not regulated by the Public Service Commission or by the Federal Communications Commission:
1. If another public utility is denied the privilege of utilizing poles or wire holding structures constructed and installed by the Provider within a Right-of-Way; and
 2. The City finds that such use would enhance the public convenience and would not unduly interfere with the Provider's operations.

The City may require the parties to enter into a mutually agreeable joint pole use agreement with respect to the then unused capacity until such time as the poles and wire holding structures are needed by the owner thereof, so as to avoid proliferation of poles and wire holding structures, and may set the terms and conditions for access if the parties cannot agree, in a manner consistent with the manner in which rates are set for poles under 47 USC section 224, or under state law.

- E. With respect to any portion of the system constructed and installed aboveground, the Provider shall, at its sole expense, reconstruct and reinstall such system underground pursuant to any project under which like facilities of similar systems are placed underground or wherever the owner of a pole on which the Provider is located moves its equipment underground.
- F. Electronic equipment may be placed aboveground in appropriate structures where existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe. The installation of Small Cell Infrastructure shall comply with the provisions of this chapter.

Sec. 7-12-14. Pole Attachment and Loading Analysis Requirements.

- A. *Applicability.* This section applies to any Provider-installed or Provider-owned equipment or infrastructure placed on any Eligible Support Structure, whether City-owned or Provider-owned, including any Related Accessory Equipment.
- B. *Requirements.*
1. *General.*
 - a. All pole attachments shall be properly engineered and assure the ongoing safety and reliability of the City's systems.
 - b. All attachments shall be reviewed and approved by the Hurricane City Power Department in conformance with the City's design and specification standards and policies.
 - c. Pole agreements are required before the placement of any attachment onto a City-owned pole.
 - d. A complete pole loading analysis (PLA) shall be submitted for all pole types and locations indicated requiring a PLA. Other locations or structure types may also require a PLA to be completed as determined by the City.
 - e. The PLA must be completed by a professional engineer licensed in the state and approved by the City. The PLA shall be signed and sealed by the engineer completing the analysis.
 - f. Attachments without proper analysis and approval shall be promptly removed.
 2. *Pole types and conditions requiring a PLA.*
 - a. A PLA is required for the following structure types:
 - i. Poles with angles greater than ten degrees (guyed or un-guyed);

- ii. Poles with spans larger than 200 feet;
 - iii. Poles with circuit taps (power or communication);
 - iv. All poles where the City conductors are dead ended;
 - v. Poles with transformers, capacitors or other equipment installed;
 - vi. Poles that are less than Class 3; or
 - vii. Poles that are over 20 years old. Poles with more than two attachments in addition to the City's electrical primary, secondary and neutral attachments; and
 - b. Other locations not addressed above identified by the City that pole strength or clearance concerns are identified.
3. *Pole loading analysis submittal requirements.*
- a. The attaching entity is responsible for all required field and engineering work required to perform the PLA.
 - b. Submittal documents required:
 - i. Detailed map showing the location(s) of the proposed attachments and project scope.
 - ii. Structure details showing existing framing as well as new attachments and/or proposed modifications to the structures. Identification of the owners of existing wires, cables and equipment shall be shown.
 - iii. The structure drawings shall identify existing attachments that will be or are no longer in use. All unused cables, wires, equipment shall be removed from the pole(s) as part of the proposed attachment project.
 - iv. Complete loading and strength calculations meeting the requirements outlined in this section.
 - v. For wireline attachments, plan and profile drawings shall be included with the analysis.
 - a. The pole loading analysis shall use the following criteria and standards:
 - i. Pole loading shall meet the requirements of the latest version of the National Electric Safety Code (NESC).
 - ii. Loading zone: NESC medium.
 - iii. Construction grade: Grade B.
 - iv. Design wire/cable ground clearances shall exceed the NESC requirements by at least one foot to account for variations in the field. All clearances shall be based on the worst-case temperatures or wire/cable loading which cause the highest amount of sag.
 - v. An analysis including but not limited to the poles, guys, anchors, support arms and other components shall be included in the PLA.
 - vi. Supply, communication, support and work safety zone spaces are to be indicated in the drawings.
 - b. Proposed pole configurations shall meet current City construction standards details.
 - c. All new or replaced poles shall have a minimum reserved capacity of:
 - i. Five percent for poles supporting single circuit lines.
 - ii. Fifteen percent for poles supporting double circuit lines.

- d. The PLA will be valid for a time period of no longer than six months from the time of the application submission. After this six-month period a new PLA will be required.

Sec. 7-12-15. Small Cell Infrastructure.

This section applies to and governs Small Wireless Facilities (SWF) and related equipment and facilities.

A. General standards.

SMALL CELL EQUIPMENT STANDARDS

Aesthetics	Equipment should match the aesthetics of surrounding poles.
Cables	All cables should be clearly labeled for future identification.
Cantennas	Antenna must be mounted directly on top of the pole, unless a side arm installation is required by a pole owner. A tapered transition between the upper pole and antenna is required.
Color	All equipment should be painted to match pole aesthetics. Paint should be powder coated over zinc paint. If a wood pole, the visible attachments and hardware shall be colored gray.
Conduits	All cables shall be in conduits made of a material approved by the Hurricane City Power Department and shall be flush with the pole unless required to be installed inside the pole.
Design wind velocity	All structural components of small cell pole, standard, base, equipment cabinet, couplers, anchor bolts, luminaires, antenna and other attachments to be used shall be designed for a minimum of 115 miles per hour wind velocity in accordance with Applicable Standards. Snow loading and other local conditions shall also be included in the pole design.
Equipment access doors	Lockable access door sized to install, maintain, and remove all small cell equipment as needed shall meet Provider's requirements. The City may require access, but Provider must grant permission.
External shrouding	The antenna shall be contained in a cantenna and any other equipment shall be contained in an equipment cabinet, unless the visual impact can otherwise be reduced by its location on the pole.
Ground mounted equipment box	Must meet and follow existing City ordinances for ground mounted utility boxes and be attached to a concrete foundation.
Hardware attachment	All hardware attachments should be hidden. Welding onto existing equipment is not permitted.
Height of equipment on pole	The lowest point may not be lower than 8 feet from the grade directly below the equipment enclosure.
Internal installs	Equipment shall be installed within an existing pole when technologically feasible and always on a new pole. Any equipment installed within a pole may not protrude from the pole except to the extent reasonably necessary to connect to power or a wireline.

Lights	There shall be no lights on the equipment unless required by federal law.
Pole height	No pole for small cell equipment shall exceed 50 feet in height. Attached antenna may be up to 10 additional feet for a total of 60 feet.
Power meter and service disconnect	Required by the City and in a location that: 1) minimizes its interference with other users of the City's right-of-way including, but not limited to, pedestrians, motorists, and other entities with equipment in the Right-of-Way, and 2) minimizes its aesthetic impact.
Sidearm installs	If permitted, may not allow the furthest point of the enclosure to extend more than 18 inches from the pole.
Stickers	Any on-pole cabinet and ground mounted utility box should be labeled: 1) a RF warning sticker, background to match pole color, no larger than 4 x 6 inches, facing to the street near the elevation of the antenna; 2) 4-inch by 6-inch (maximum) plate with the provider's name, location identifying information, and 24-hour emergency telephone number; and 3) no advertising, logos or decals.
Width	May not exceed in width the diameter of the pole by more than 3 inches on either side.

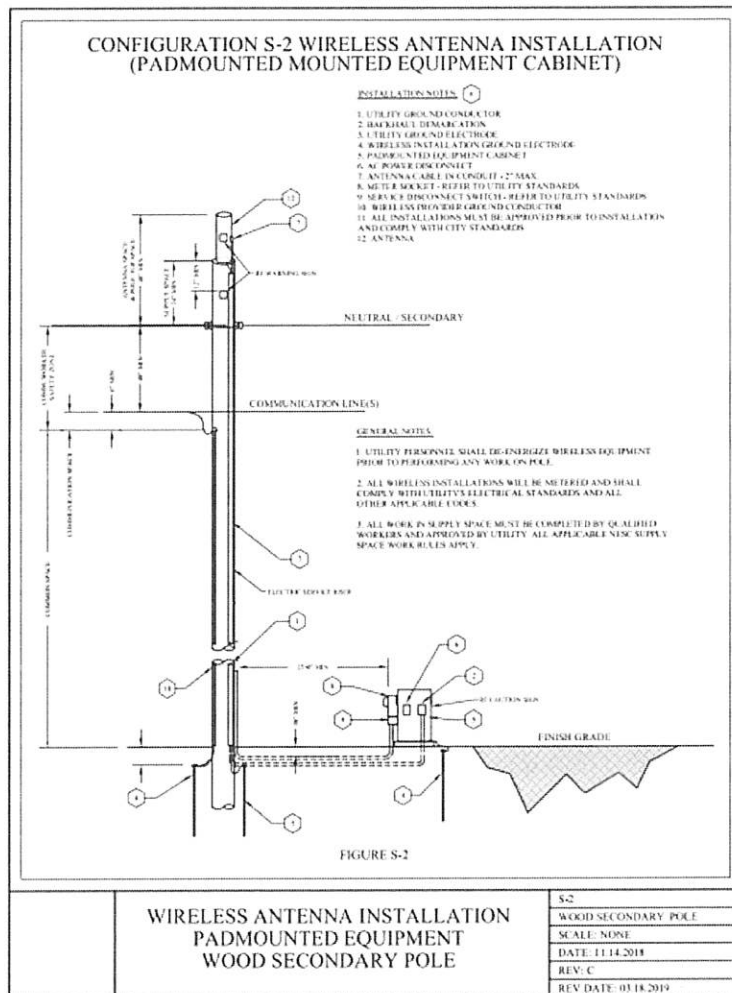
C. General requirements.

1. *Noise limitation.* System must meet the City-required noise limitation for ambient sound.
2. *Pole aesthetics.* Provider should provide detailed proposed pole aesthetics as part of their application.
3. *Position.* Poles shall not significantly obstruct property sight lines at the intersection of property lines and shall provide clearance for existing utilities. It is preferred that new poles be located in park strips.
4. *Right-of-Way position.* All equipment located within the public Right-of-Way shall be located such that it meets ADA requirements and does not obstruct, impede, or hinder usual pedestrian or vehicular travel or interferes with the operation and maintenance of signal lights, signage, street lights, street furniture, fire hydrants, or business district maintenance.
5. *Power and ground utility box.* Shall comply with all City and local code requirements. Backup batteries are not allowed.
6. *Permit and review.* All installations are subject to the City permit application and review process.

D. Attachments to utility poles.

1. *General requirements.*
 - a. All attachments to existing utility poles within the City Right-of-Way require an encroachment permit, prior to installation.
 - b. For a given pole location either pole mount or ground mount equipment shall be utilized; Both are not allowed at the same structure. Backup power devices are not allowed.

- c. A maximum of two enclosures including the disconnect and antenna shall be installed at each utility pole location. If ground-mounted enclosures are used pole mounted enclosures are not allowed.
 - d. If the City elects to move the utility lines underground after the Small Cell Infrastructure is installed, all carrier equipment shall be removed and relocated by Provider at not cost to the City.
 - e. Strand-mounted small cell devices are not allowed.
 - f. Provider shall submit evidence that the existing poles are appropriately sized and have sufficient strength to accommodate the additional small cell equipment loads. Provider shall also obtain and submit a letter of approval from the Hurricane City Power Department for the small cell equipment to be installed on the specific pole. The provider must comply with the City's pole attachment and loading requirements of this section.
 - g. Provider shall certify that radiation is at safe levels by a non-ionizing radiation electromagnetic radiation report (NIER). The NIER report shall be endorsed by a qualified professional. The report shall be submitted to the City and the Hurricane City Power Department. It shall specify minimum approach distances to the general public as well as electrical and communication workers that are not trained for working in an RF environment (uncontrolled) when accessing the pole by climbing or bucket.
 - h. Provider shall provide a disconnect so that the City has the ability to easily shut off radio signals and power while working on the pole.
2. *Equipment color.* Equipment should be colored to match pole.
 3. *Equipment shroud.*
 - a. The maximum dimensions for pole-mounted equipment shrouding shall be 38" H x 16" W x 12" D.
 - b. All hardware attachments shall be hidden to the maximum extent possible.
 - c. A maximum of two equipment shrouds, containing all required small cell equipment, shall be installed per pole. Provided, however, that one additional equipment shroud shall be allowed per pole if the antenna is located within the second equipment shroud.
 4. *Cantenna.*
 - a. If a cantenna is located on top of the pole the outer diameter shall be a maximum of 14 inches and the cantenna shall be no more than five feet tall, including antenna, radio head, mounting bracket, and all other hardware necessary for a complete installation.
 - b. If the cantenna is mounted to the side of the pole it shall be located inside a shroud of 5.5 cubic feet maximum. The width, depth, or diameter of the shroud size shall not be greater than 16 inches (maximum).
 5. *Exhibit.* The following image exhibits some of the requirements of this section for attachments to utility poles:



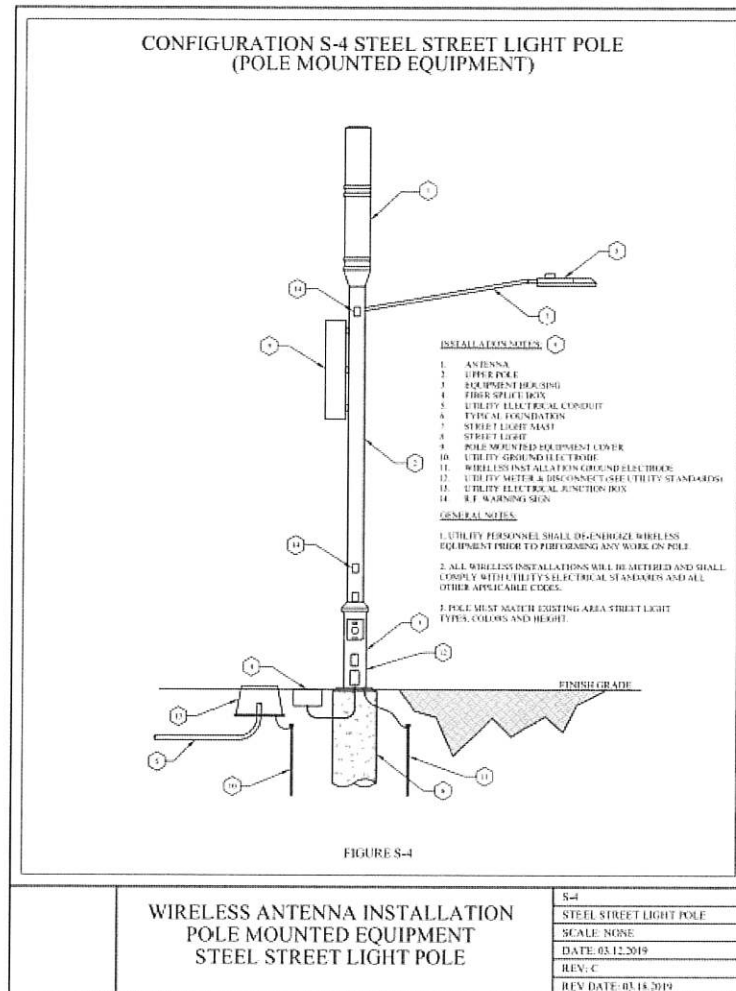
E. *Attachments to street lights.*

1. *General requirements.*

- a. The same small cell pole aesthetic is to be used to match existing streetlights in the area and maintain a cohesive appearance. The Provider shall perform a visual inspection (online street images are acceptable) prior to submitting a permitting application to determine existing aesthetics.
- b. Unless otherwise unfeasible the preferred installation configuration is to utilize poles that conceal all system components (i.e. meter, disconnect, radio, etc.).
- c. All small cell carrier equipment shall be housed internal to the pole or hidden behind an exterior shroud.
- d. The small cell components shall be sized to be visually pleasing. For a combination pole to be considered visually pleasing, the transition between the equipment cabinet and upper pole should be considered. A decorative transition shall be installed over the equipment cabinet upper bolts, or decorative base cover shall be installed to match the equipment cabinet size.

- e. Each pole component shall be architecturally compatible to create a cohesive aesthetic.
 - f. All pole mounted enclosures shall be securely attached with hardware (not strapped).
 - g. Provider shall certify that radiation is at safe levels by a non-ionizing radiation electromagnetic radiation report (NIER). The NIER report shall be endorsed by a qualified professional. The report shall be submitted to the City and the Hurricane City Power Department. It shall specify minimum approach distances to the general public as well as electrical and communication workers that are not trained for working in an RF environment (uncontrolled) when accessing the pole by climbing or bucket.
 - h. The City reserves the right to disconnect power to the radio when working on the pole. The provider shall provide a disconnect so the City has the ability to easily shut off radio signals and power while working on the pole.
 - i. All poles new or existing shall meet all City pole analysis requirements of this chapter.
 - j. All installations shall utilize City approved structures, arms, luminaires, and configurations and comply with all applicable City standards.
2. *Equipment color.* Equipment should be colored to match pole.
 3. *Equipment shroud.*
 - a. Equipment shrouding shall have a maximum 20-inch diameter, but a 16-inch diameter is preferred. The maximum height of the cabinet is five feet eight inches. The cabinet shall be round and installed below the pole.
 - b. If an antenna is located on the side of the pole, the antenna, radio equipment, brackets, and all other hardware required for a complete installation shall fit behind a 38" H x 16" W x 12" D maximum shroud, securely mounted (not strapped) to the pole.
 - c. The equipment cabinet and/or equipment cabinet cover shall not have a flat horizontal surface larger than 1.5 inches.
 - d. All hardware attachments shall be hidden to the maximum extent possible.
 4. *Cantenna.*
 - a. The antenna and antenna pole attachment shall be shrouded to meet the City's aesthetics. A tapered transition between the upper pole and cantenna shall be included.
 - b. The outer diameter shall be a maximum of fourteen inches and a maximum of five feet eight inches in length. The antenna shroud shall be colored to match pole.
 5. *Luminaire/luminaire mast arm.*
 - a. Luminaire shall meet the City's construction standards and specifications and shall match existing luminaires adjacent to permit location.
 - b. Luminaire mast arms shall match on adjacent streetlights or match aesthetics of adjacent streetlights. In any case, mast arms will be decorative.
 6. *Pole size, type and foundation.*

- a. Poles shall be round, straight, galvanized steel. Pole shall be architecturally compatible with the equipment cabinet. At least 15 percent of the pole design structural capacity shall be reserved for future City IOT installations.
 - b. The upper pole shall be scaled to 0.5 to 0.75 times the size of the equipment cabinet with ten inch minimum outer diameter. The pole diameter shall be scaled such that no flat, horizontal surface larger than 1.5 inches exists between the equipment cabinet and upper pole.
 - c. Precast concrete or cast-in-place pole foundations shall be designed per the City standards and to meet the building code requirements of ACI 318. While the City accepts cast-in-place foundations, precast concrete foundations are preferred and should be installed whenever possible.
 - d. Bolt circles shall be a 19.5-inch bolt circle when installing a 16-inch equipment cabinet and a 23.5-inch bolt circle when installing a 20-inch equipment cabinet.
7. *Access doors.*
- a. Lockable doors shall be installed in the equipment cabinet.
 - b. A hand hole shall be provided at the top and bottom of the pole to maintain electrical service for streetlights and future IOT attachments.
8. *Exhibit.* The following image exhibits some of the requirements of this section for attachments to wood street light poles:



F. Attachments to monopoles.

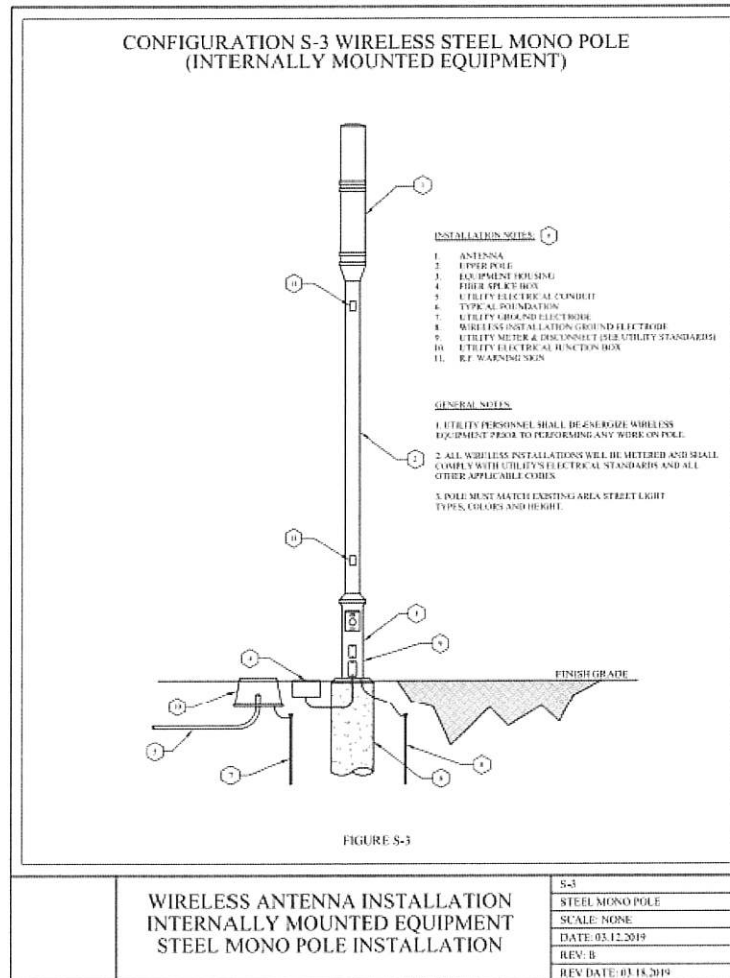
1. General requirements.

- a. The same small cell pole aesthetic is to be used to match existing streetlights in the area and maintain a cohesive appearance. The provider shall perform a visual inspection (online street images are acceptable) prior to submitting a permitting application to determine existing aesthetics.
- b. All small cell carrier equipment shall be housed internal to the pole or hidden behind an exterior shroud.
- c. The small cell components shall be sized to be visually pleasing. For a combination pole to be considered visually pleasing, the transition between the equipment cabinet and upper pole should be considered. A decorative transition shall be installed over the equipment cabinet upper bolts, or decorative base cover shall be installed to match the equipment cabinet size.
- d. Each pole component shall be architecturally compatible to create a cohesive aesthetic.
- e. All pole mounted enclosures shall be securely attached with hardware (not strapped).

- f. Provider shall certify that radiation is at safe levels by a non-ionizing radiation electromagnetic radiation report (NIER). The NIER report shall be endorsed by a qualified professional. The report shall be submitted to the City and the Hurricane City Power Department. It shall specify minimum approach distances to the general public as well as electrical and communication workers that are not trained for working in an RF environment (uncontrolled) when accessing the pole by climbing or bucket.
 - g. The City reserves the right to disconnect power to the radio when working on the pole. Provider shall provide a disconnect so City has the ability to easily shut off radio signals and power while working on the pole.
 - h. All poles new or existing shall meet all City pole analysis requirements of this chapter.
 - i. All installations shall utilize City approved structures, arms, luminaires, and configurations and comply with all applicable City standards. Ownership of monopoles will remain with the provider.
- 2. *Equipment color.* Equipment should be colored to match pole.
- 3. *Equipment shroud.*
 - a. Equipment shrouding shall have a maximum 20-inch diameter, but a 16-inch diameter is preferred. The maximum height of the cabinet is five feet eight inches. The cabinet shall be round and installed below the pole.
 - b. If an antenna is located on the side of the pole, the antenna, radio equipment, brackets, and all other hardware required for a complete installation shall fit behind a 38" H x 16" W x 12" D maximum shroud, securely mounted (not strapped) to the pole.
 - c. The equipment cabinet and/or equipment cabinet cover shall not have a flat horizontal surface larger than 1.5 inches.
 - d. All hardware attachments shall be hidden to the maximum extent possible.
- 4. *Cantenna.*
 - a. The antenna and antenna pole attachment shall be shrouded to meet the City's aesthetics. A tapered transition between the upper pole and cantenna shall be included.
 - b. The outer diameter shall be a maximum of fourteen inches and a maximum of five feet eight inches in length. The antenna shroud shall be colored to match pole.
- 5. *Pole size, type and foundation.*
 - a. Poles shall be round, straight, galvanized steel. Pole shall be architecturally compatible with the equipment cabinet. At least 15 percent of the pole design structural capacity shall be reserved for future City IOT installations.
 - b. The upper pole shall be scaled to 0.5 to 0.75 times the size of the equipment cabinet with ten-inch minimum outer diameter. The pole diameter shall be scaled such that no flat, horizontal surface larger than 1.5 inches exists between the equipment cabinet and upper pole.
 - c. Precast concrete or cast-in-place pole foundations shall be designed per the City standards and to meet the building code requirements of ACI 318. While the

City accepts cast-in-place foundations, precast concrete foundations are preferred and should be installed whenever possible.

- d. Bolt circles shall be a 19.5-inch bolt circle when installing a 16-inch equipment cabinet and a 23.5-inch bolt circle when installing a 20-inch equipment cabinet.
6. *Pole attachment and loading analysis requirements.* Any attachments to poles made pursuant to this section shall comply with Sec. 7-12-XX. -- Pole Attachment and Loading Analysis Requirements.
7. *Exhibit.* The following image demonstrates some of the requirements of this section for attachments to steel monopoles:



Sec. 7-12-16. Letter of Credit; Insurance; Bonding.

Each Franchise Agreement shall require, and each Provider shall supply, a letter of credit or similar surety and proof of adequate insurance. The City Council shall establish the specific surety and insurance requirements, taking into account the nature of the facilities being placed in the Rights-of-Way and the risks to the City and the public associated with the use of the Rights-of-Way. The City Council may require Provider to, as a condition of a Franchise Agreement

post a bond or other surety approved by the Council to ensure the maintenance of public Rights-of-Way pursuant to this chapter.

Sec. 7-12-17. System Records Requirements.

A Provider shall at all times maintain on file with the City, a full and complete set of plans, records and as-built hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the City's existing GIS system, of all installations and the types of equipment and systems installed or constructed in the Rights-of-Way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks. Maps shall be updated annually, or after a significant modification to the provider's plant. As-built maps are not required of providers for facilities already in the Rights-of-Way, where the maps do not exist; however, as those facilities are expanded, replaced or modified, maps shall be provided.

Sec. 7-12-18. Private Property; Obligation to Notify.

Providers shall not violate the private property rights of landowners. Before entering onto any private property, a Provider shall make a good faith attempt to contact the property owners in advance and describe the work to be performed.

Sec. 7-12-19. Applicable Codes.

Nothing in this chapter shall excuse a Provider from complying with Applicable Codes.

Sec. 7-12-20. Removal of System; Abandonment of Systems.

- A. *Effect of revocation, expiration or abandonment.* If a Franchise Agreement expires, is validly revoked, or the facilities installed pursuant to the Franchise Agreement are abandoned, the City may:
 - 1. Require the Provider to stop providing the franchised services; and
 - 2. Require the Provider to remove all or portions of the system that are not in the Rights-of-Way by virtue of another, valid franchise, within a reasonable time specified by the City; and
 - 3. Require the Provider to convey title to facilities that are not removed and that are not in the Rights-of-Way by virtue of another, valid Franchise Agreement, in a form satisfactory to the City and free and clear of all liens and encumbrances to the City.
- B. *Abandonment presumption.* In the event that the use of any portion of a franchised system is discontinued for a continuous period of 12 months, and 30 days after no response to written notice from the City to the last known address of Provider, the Provider shall be deemed to have abandoned such system. In addition to all other rights and remedies available to the City upon revocation, expiration or abandonment, the City may elect to assume control and ownership of abandoned facilities or infrastructure.
- C. *Dispute; No loss of City rights.* If there is a dispute as to whether a Franchise Agreement has expired, the facilities abandoned, or the franchise validly revoked; or if an order of the public service commission is required; the Provider may continue to provide the

service, or to occupy the Rights-of-Way pending resolution of the dispute, or issuance of the necessary orders, subject to reasonable conditions including payments for continued use and occupancy of the Rights-of-Way, established by the City. Any such continued operation shall in no way be construed as a renewal or other extension of the franchise, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution.

- D. *Procedures for removal of franchised property.* A Provider shall comply with all applicable laws in removing facilities and restore any affected Rights-of-Way to their former state at the time such system was installed. In removing its plant, structures and equipment, a Provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all Rights-of-Way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the Rights-of-Way cables, wires, attachments and poles prior to and after removal. Applicable liability, indemnity, and insurance provisions of this Code and of the franchise shall continue to apply as if the franchise was in full force and effect during the period of removal and until full compliance by a Provider with the terms and conditions of this section. If a provider fails to remove or restore, the City may do so and charge the provider for all costs incurred in doing so.
- E. *Leaving underground system.* Subject to the City's rights under this section, a Provider may abandon any underground system in place so long as it does not materially interfere with the use of the rights-of-way or with the use thereof by any public utility, cable operator, or other person.

Sec. 7-12-21. Unlawful Use; Repair After Unlawful Use; Acts Exempted.

- A. *Unlawful use.* Unless authorized by a Franchise Agreement, permit, or other written authorization issued by the City, or unless authority is granted by provisions of this Code or other ordinance of the City now or hereafter enacted, it shall be a class B misdemeanor, subject to penalty as provided in section 1-4-1 of this Code, for any person to:
 - 1. *Property controlled by City.* Construct, lay, excavate, erect, operate or maintain over, under, across, in or through any Right-of-Way or other property owned or controlled by the City, any infrastructure, system, utility, canal, ditch, construction, facility, or building.
 - 2. *Restricted areas.* Enter upon any property of the City contrary to any posting or marking restricting or prohibiting use of the area.
 - 3. *Damage to property.* Intentionally use or perform acts upon property of the City which materially impairs, alters or damages the property or improvements thereon.
- B. *Repair after unlawful use.* The City Council, in addition to any other penalty which may be imposed, may order any person who has damaged, altered or changed any property of the City to repair or restore the property to its original condition prior to the damage, alteration or change.

- C. *Acts exempted.* It shall not be a violation of this chapter where any person uses the public property of the City in the manner or for the purpose for which such property has been made available for public use, or to the extent the use is authorized by state law and state law prevents the City from requiring a franchise, easement or other written authorization for that particular use.

Sec. 7-12-22. Revocation of Franchise; Fines and Penalties.

- A. *Process.* A Franchise Agreement may be terminated, or penalties imposed as provided by other provisions of this Code, for a material failure to comply with the conditions of the Franchise Agreement, this chapter, or any other provisions of applicable law that the City is permitted to enforce. The City may only terminate the Franchise Agreement or impose penalties after providing a Provider notice of the alleged defect in performance and its intent to consider termination, and an opportunity to cure (except no opportunity to cure would be required for criminal acts, fraud, or where the violation by its nature cannot be cured). If the cure is not effected to the City's satisfaction within 30 days of such notice, the City may schedule a public hearing before the City Council to consider and determine whether or not to terminate the Franchise Agreement or impose penalties. A Provider must be provided an opportunity to present written materials to the City Council prior to the franchise termination hearing.
- B. *Effect of termination.* If a franchise is terminated, and the Provider holds no other franchise authorizing it to occupy the Rights-of-Way, the City may either acquire the franchised system in the City, free and clear of all liens and encumbrances at depreciated book value price or exercise any of the rights provided for under other provisions of this Code.
- C. *Remedies cumulative.* Nothing in this section prevents the City or a Provider from taking any other action or exercising any other remedy available at law or equity.

Sec. 7-12-23. Indemnification and Defense.

- A. Each Provider shall, as a condition of access to the Rights-of-Way, indemnify, defend, and hold harmless the City, its officers, boards, commissions, elected officials, agents, attorneys, representatives, servants and employees, from and against any liability for damages, costs, expenses, claims, suits, actions, judgments and liabilities, including, but not limited to, expenses for legal fees, whether suit be brought or not, disbursements and liabilities incurred or assumed by the City in connection with:
1. *Persons or property.* Damage to persons or property, in any way arising out of or through the acts or omissions of the Provider, its servants, officials, agents, attorneys, representatives or employees;
 2. *Failure to comply.* Any and all claims arising out of the Provider's failure to comply with the provisions of applicable law, or of any franchise or other authorization to use or occupy Rights-of-Way or its enjoyment of the same, or any and all claims arising out of its use of the Rights-of-Way;
 3. *Claims from use of Rights-of-Way.* Any and all claims which the Provider may now or hereafter have or claim to have against the City, its servants, agents, attorneys, representatives, employees or officials, due to or arising out of damage

to any of the Provider's property or equipment in the Rights-of-Way, including, without limitation, resulting or consequential loss of income, injury to reputation, or any other resulting or consequential damages of any kind, caused by or resulting from acts or omissions of the City or any of its servants, agents, attorneys, representatives, employees or officials except to the extent that such indemnity is prohibited by law; and

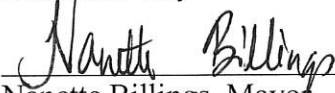
4. *Other disputes.* Any and all disputes arising out of a claim wherein damages or other relief is sought as a result of the City's procedure in connection with the issuance of a franchise, easement or other authorization to use the Rights-of-Way to the Provider.
- B. *Procedure for indemnity.* If any suit, claim, notice or other demand seeking regarding any of the above-indemnified claims is brought or threatened against the City, either independently or jointly with the Provider, or with any other person or municipality, Provider, upon notice given by the City, shall defend the City. If final judgment is obtained against the City, either independently or jointly with the Provider or any other defendants, Provider shall indemnify the City and pay such judgment with all costs and satisfy and discharge the same. In the event of litigation between Provider and the City, indemnification shall apply only upon the City's successful defense or prosecution of the litigation. This provision will not apply to damages that are not subject to indemnity under state law.
- C. *Rights additional to other rights.* All rights of the City pursuant to this provision are in addition to any other rights the City may have under any other ordinance, rule or regulation of law, or under any Franchise Agreement, easement or other authorization to use the Rights-of-Way.
- D. *Indemnity required.* No franchise, easement or other authorization to use the Rights-of-Way shall issue unless it contains an indemnity provision substantially similar to the requirements of this section.
- E. *Procedure for taxes erroneously recovered from customers.* The provisions of Utah Code 10-1-408, as amended, are hereby incorporated by reference.

BE IT FURTHER ORDAINED that this Ordinance shall, after adoption and approval, take effect immediately upon publication or posting as required by law.

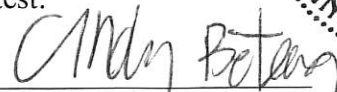
PASSED AND APPROVED this 3rd day of October 2022.



Hurricane City


Nanette Billings, Mayor

Attest:


Cindy Beteag, City Recorder

The foregoing Ordinance was presented at a regular meeting of the Hurricane City Council held at the Hurricane City Office Building on the 3rd day of October 2022. Whereupon a motion to

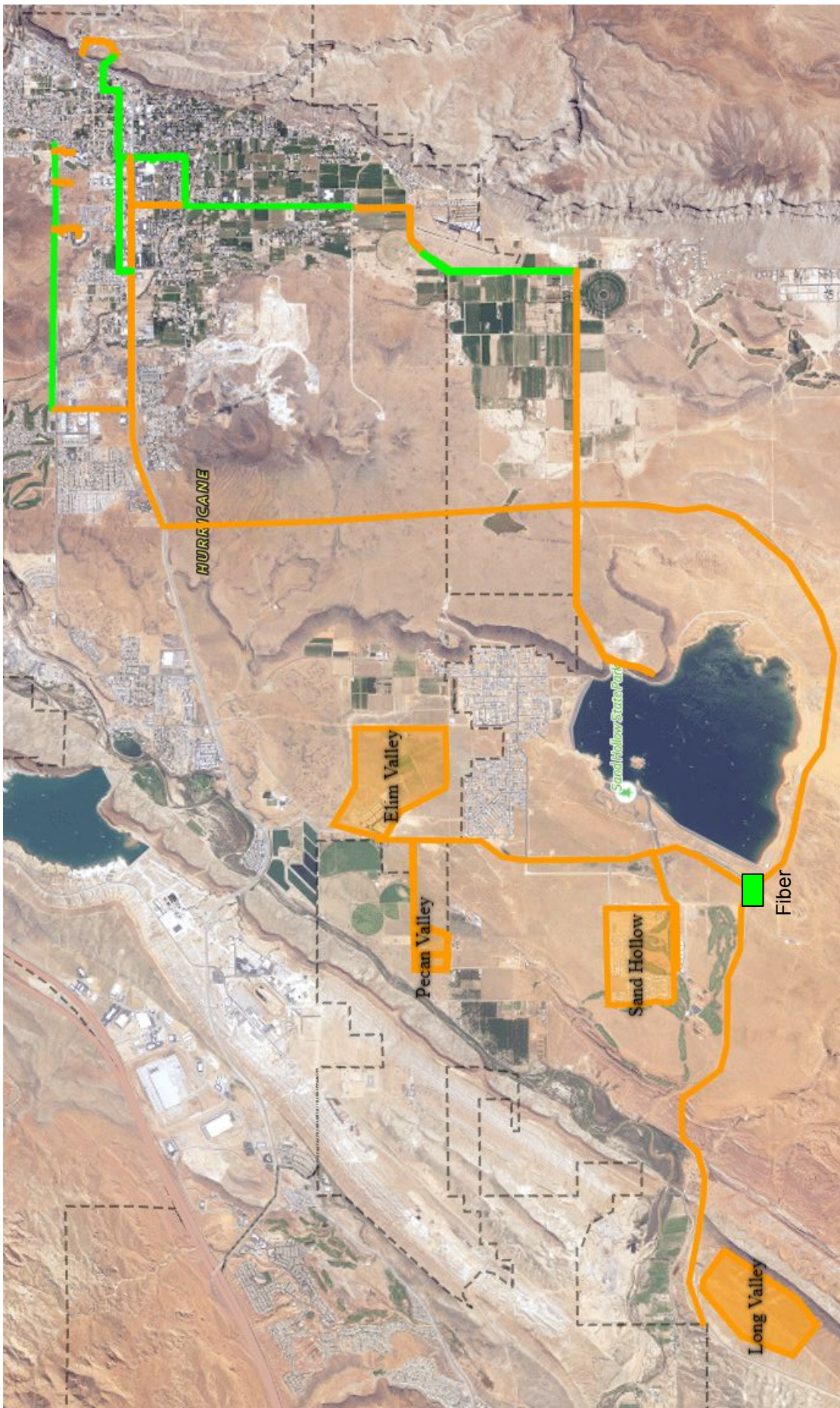
adopt and approve said Resolution was made by David Hirschi and seconded by Doug Heideman. A roll call vote was then taken with the following results:

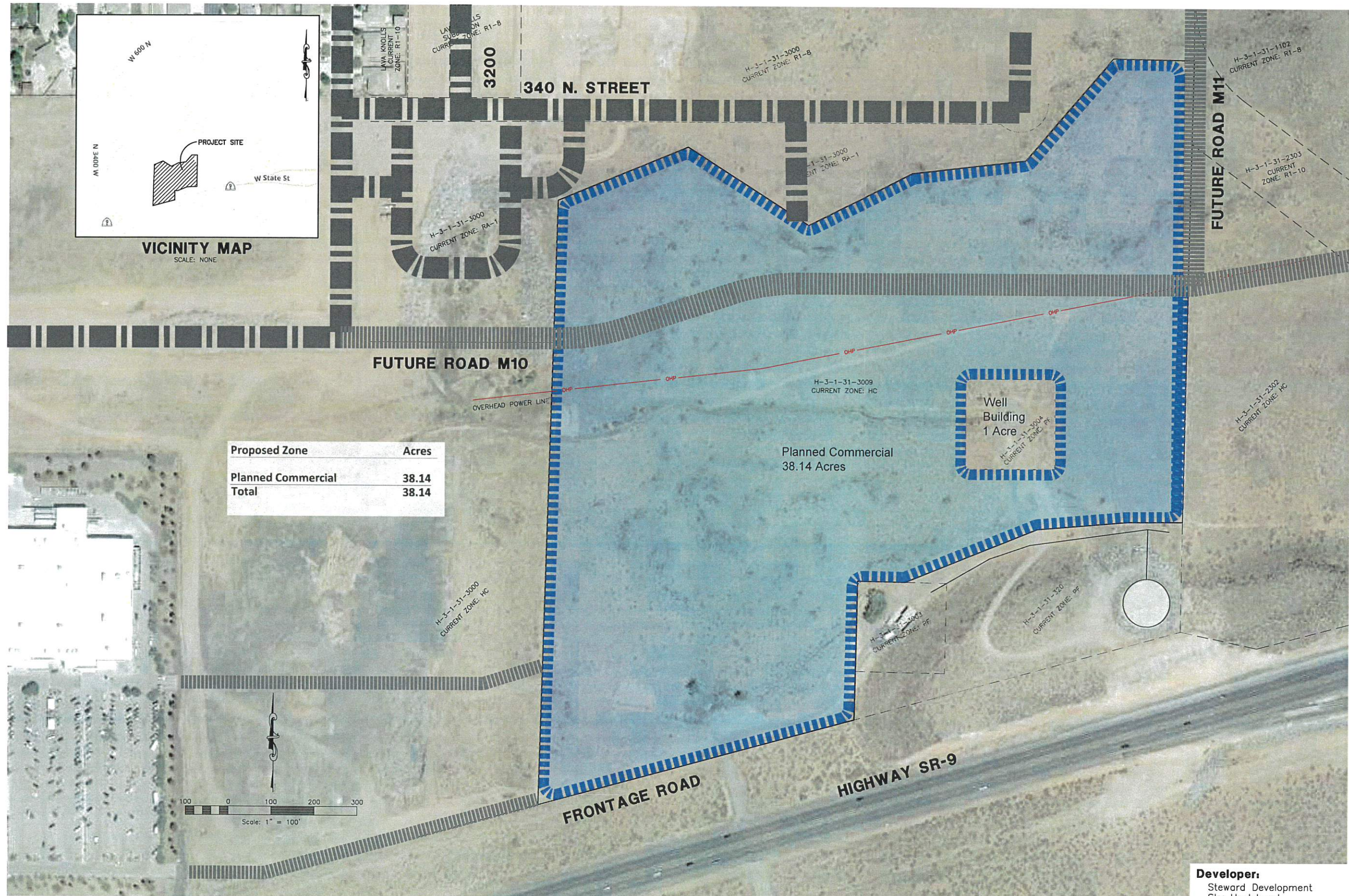
	Yea	Nay	Abstain	Absent
Joseph Prete	<u>X</u>	—	—	—
David Sanders	<u>X</u>	—	—	—
David Hirschi	<u>X</u>	—	—	—
Kevin Thomas	<u>X</u>	—	—	—
Doug Heideman	<u>X</u>	—	—	—

Cindy Beteag
Cindy Beteag, Recorder

EXHIBIT B

Map of Main Fiber Trunk Line





Proposed Zone	Acres
Planned Commercial	38.14
Total	38.14

Parcel H-3-1-31-3009

Washington County, Utah

REVISED
12:28 pm, Sep 09, 2022

Developer:
Steward Development
Sky Hazlehurst
1708 E. 5550 S. 84405
South Ogden, UT. (801) 837-2020



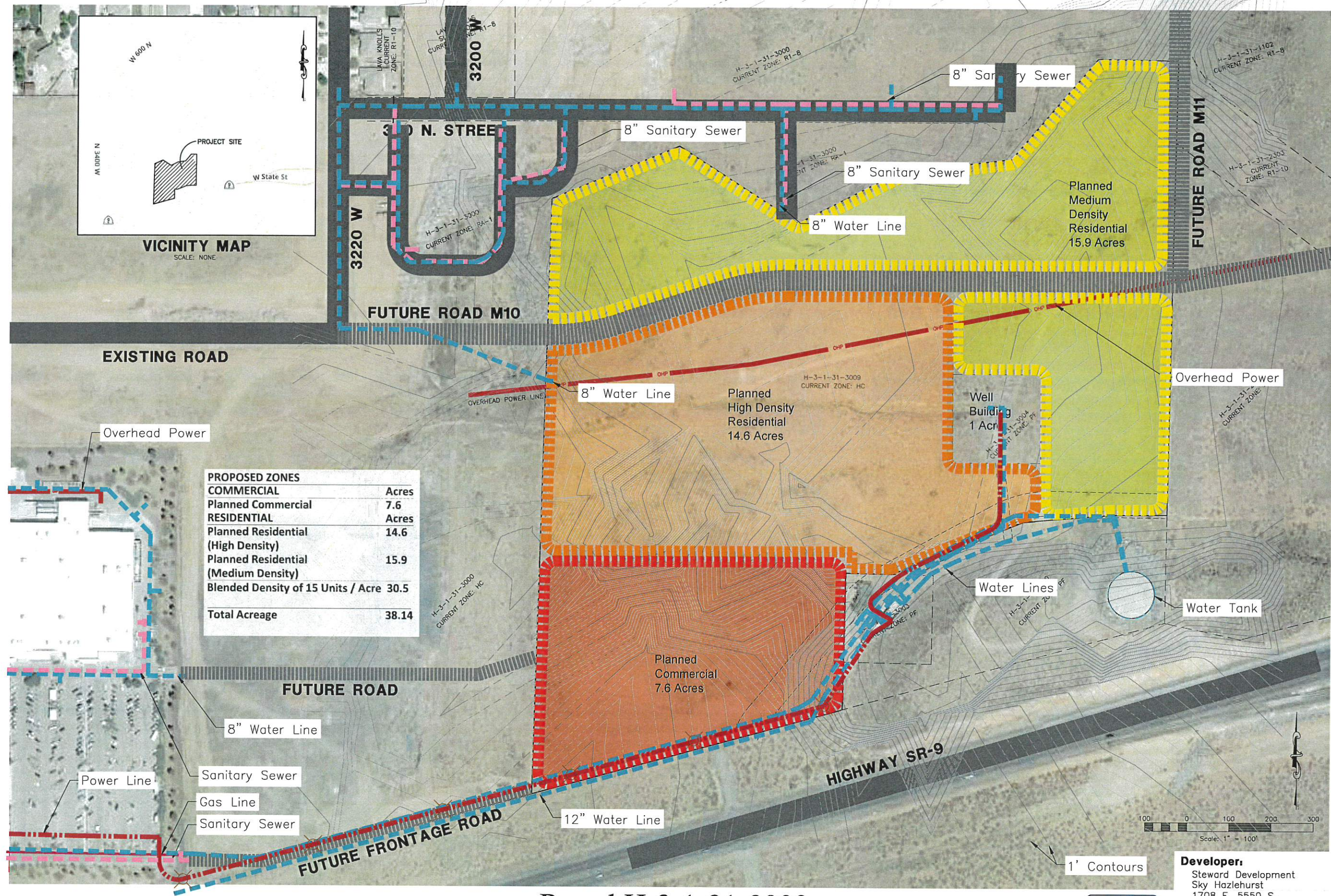
Reeve & Associates, Inc.
5160 SOUTH 1500 WEST, RIVERDALE, UTAH 84405
TEL: (801) 821-3100 FAX: (801) 821-2668 www.reeve-associates.com
LAND ENGINEERS • LAND SURVEYORS • LAND DEVELOPERS • LAND ACQUISITION

REVISIONS	DESCRIPTION
DATE	

Parcel H-3-1-31-3009 PART OF THE SW 1/4 OF SECTION 31, T.41S., R.13W., S.13B. & M., U.S. SURVEY HURRICANE CITY, WASHINGTON COUNTY, UTAH	Proposed Zoning Exhibit
--	--------------------------------

Project Info.
Engineer: N. Reeve
Planner: C. Cave
Designer: N. Peterson
Date: 8-25-22
Name: _____
Number: 7152-26

Sheet	2
1	Sheets



Parcel H-3-1-31-3009

Washington County, Utah

REVISED
12:28 pm, Sep 09, 2022

Developer:
Steward Development
Sky Hazlehurst
1708 E. 5550 S.
South Ogden, UT. 84405
(801) 837-2020

Project Info.
Engineer: N. Reeve
Planner: C. Cove
Designer: N. Peterson
Date: 8-25-22
Name:
Number: 7152-26

Sheet **2**
Sheets

Parcel H-3-1-31-3009
PART OF THE SW 1/4 OF SECTION 31 T41S, R13W, S11B & M., U.S. SURVEY
HURRICANE CITY, WASHINGTON COUNTY, UTAH

Preliminary Site Plan

REVISIONS	DESCRIPTION
DATE	

Reeve & Associates, Inc.
5160 SOUTH 1500 WEST, RIVERDALE, UTAH 84405
TEL: (801) 837-2100 FAX: (801) 837-2050 www.reeve-associates.com
TRAFFIC ENGINEERS • SURVEYORS • LAND SURVEYORS • CIVIL ENGINEERS • ENVIRONMENTAL ENGINEERS • PLANNERS

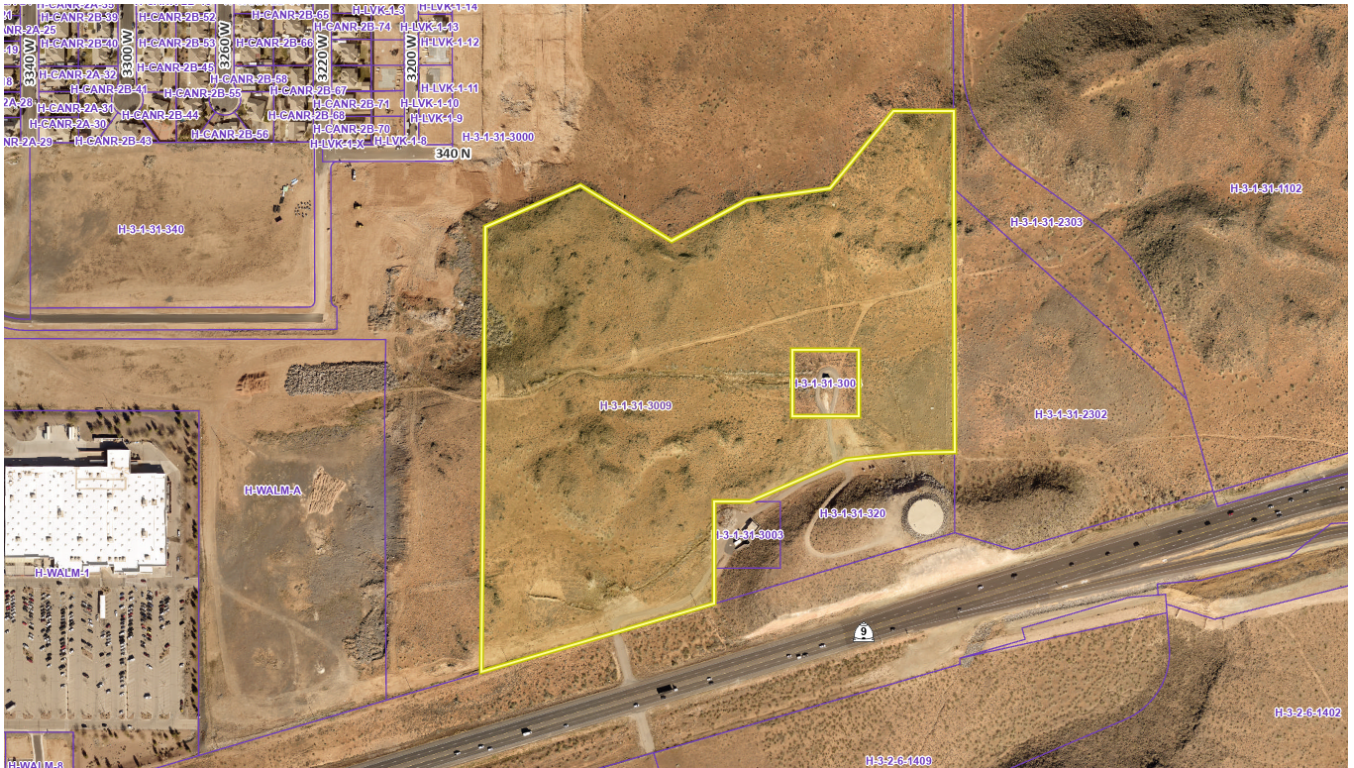
Agenda Date:	10/03/2022
Application Number:	2022-ZC-23 2022-PSP-41
Type of Application:	Zone Change and Preliminary Site Plan Application
Action Type:	Legislative
Applicant:	Steward Land Holdings
Agent:	Brad Brown
Request:	A Zone Change from Highway Commercial to Planned Commercial
Location:	3000 W State St
Zoning:	HC
General Plan Map:	Mixed Use, General Commercial and Single Family

Planning Commission Recommendation

The Planning Commission gave a positive recommendation on the proposed zone change.

Discussion: The applicant is seeking a zone change and preliminary site plan approval from Highway Commercial to Planned Commercial. The applicant is proposing a commercial center, high density residential, and medium density residential. This property is located on the north side of SR-9 to the east of Walmart. Hurricane City Water has two wells and a water tank in the vicinity of this property.

	Zoning	Adjacent Land Use
North	RM-1 PDO	Planned townhomes (Ridgeview townhomes)
East	HC, R1-10, R1-8	Undeveloped property
South	HC	SR-9 and undeveloped property
West	HC, RM-1	Planned townhomes and Walmart



Zone Change Factors:

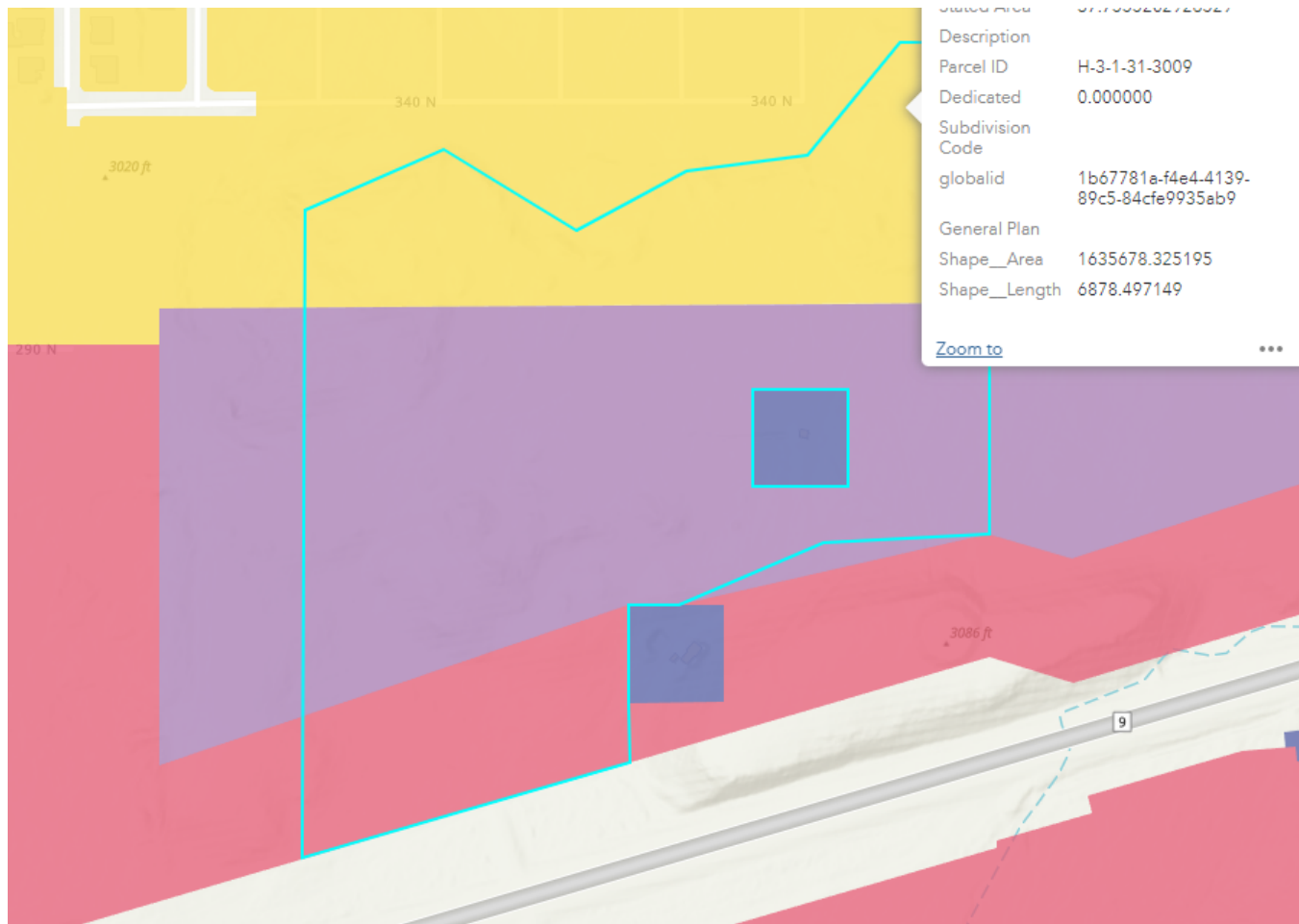
When considering a zone change the Planning Commission must consider the following:
As per Hurricane City Code 10-7-7:

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: This property has three designations on the General Plan Map



Hurricane City Future Land Use Map

GENERAL COMMERCIAL: Commercial uses that provide retail, employment and service uses for the City. These developments should be located along major corridors

MIXED USE: Mixed use areas should be developed as small districts or community centers offering a mix of retail, dining, entertainment, employment, and supporting residential. These developments should be easy and safe to navigate on foot and located in areas with access to major roads and surrounded with appropriate residential densities to support these uses.

SINGLE FAMILY: These uses should be located near supporting community uses such as,

but not limited to churches, schools, and parks. Appropriate densities for this land use include R1-15, R1-10, R1-8, and R1-6.

The applicant appears to have taken the General Plan into account in designing their plan by leaving in space a commercial area along the highway. Having more commercial and higher density residential in the middle area and medium density residential on the north end.

The General Plan also calls for “*Medium and high density residential developments should be planned near support facilities such as collector and arterial roads, schools, shopping, and employment centers. Medium and high density residential developments should be planned and designed to minimize impacts to nearby existing developments, while providing high-quality, attractive housing options*” It also calls for “*Support creating commercial spaces in population Centers in the City to provide services to those areas*” There are existing commercial uses in the area and planned schools and employment centers in the area

Overall staff believes this lines up with the spirit of the General Plan

2. Is the proposed amendment harmonious with the overall character of existing development in the subject property’s vicinity?

Response: There are almost no developments currently in the vicinity. To the north is an approved townhome development that will provide road and utility access to this site and to further to the west is the Walmart development. This plan is largely harmonious with what is approved in the area.

3. Will the proposed amendment affect the adjacent property?

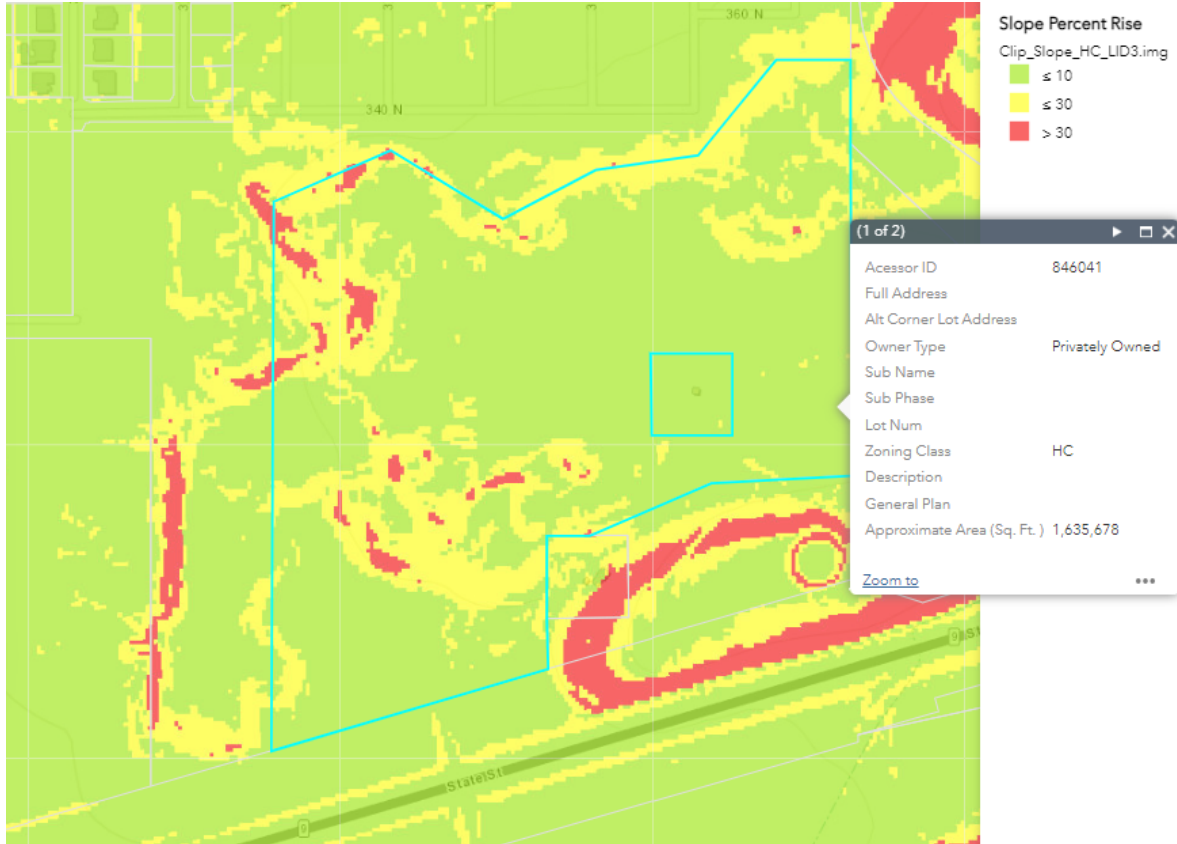
Response: Yes. Although the area is largely undeveloped currently. Commercial development in this area will be beneficial to the community.

4. Are public facilities and services adequate to serve the subject property?

Response: Public facilities and services are either planned to be brought to the property with the Villas at Lava Knolls development or are already at the property at the wells and water tanks. See JUC comments below.

Other Considerations:

This property is currently zoned Highway Commercial in an area of town where there is existing commercial development. The City in the past has expressed hesitation about commercial property being changed to residential when the City will eventually need more commercial space. However, there are several factors that may hinder commercial development on this property: the largest is poor access and visuals from SR-9. UDOT has declared that SR-9 will be a limited access corridor and no new intersections will be made west of the SR-7 interchange and all current stoplights will be turned into interchanges eventually. All access to this property will come from 290 N and eventually through the Walmart parking lot. There is also a large hill that the water tank is on that blocks visual of most of the property from SR-9 and steep topography throughout the property (shown below). Commercial developments are largely reliant on supporting residential uses. Staff believes that this plan will generate a better product on the commercial space being provided within the plan.



JUC Comments

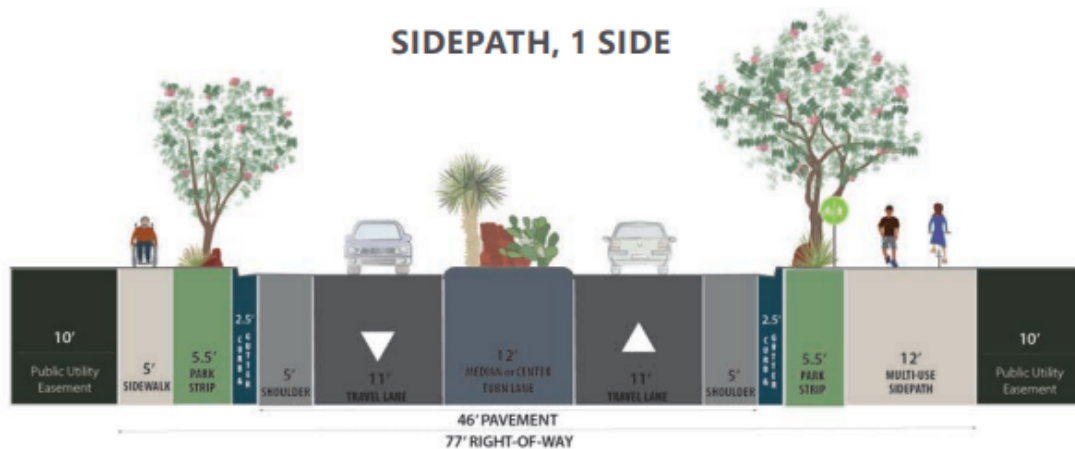
The following items will need to be addressed:

1. **Public Works:** Account for well protection zone.
2. **Sewer:** Possible manhole connection to 10" sewer line on the southeast corner of the Walmart property.
3. **Water:** Full water model and information about streets required.
4. **Fire:** No comments
5. **Engineering:** The Villas at Lava Knolls has planned subs to this property. Contact Interstate Rock to coordinate connections to roadways and utilities. Future Road M11 is a planned 84' ROW (77' probable) 12' trail on both sides or on the east side only. connects up to 3000 W and Sky Valley. The Active Transportation Master Plan indicates the trail goes all the way through to State St, may not be feasible with the hill. It appears water has been discharged from the production well site and the pump station site. Is the practice necessary and must it continue? Coordination with Hurricane City Water needed. It appears an existing easement does not cover all existing water lines. A frontage road will need to be on private property. A 30" storm drain pipe is shown along the southern property line on sheet 35 of the Hurricane Storm Drain Master Plan. Please account for this in the drainage study. Future Road M10 is a planned 77' ROW, 12' trail on the south side. Stubs from Villas at Lava Knolls will follow a slightly different alignment than what's on the plan.
6. **Streets:** No comments
7. **Power:** Upgrade existing powerline and put power underground. Rocky Mountain power easement crosses the middle of this property

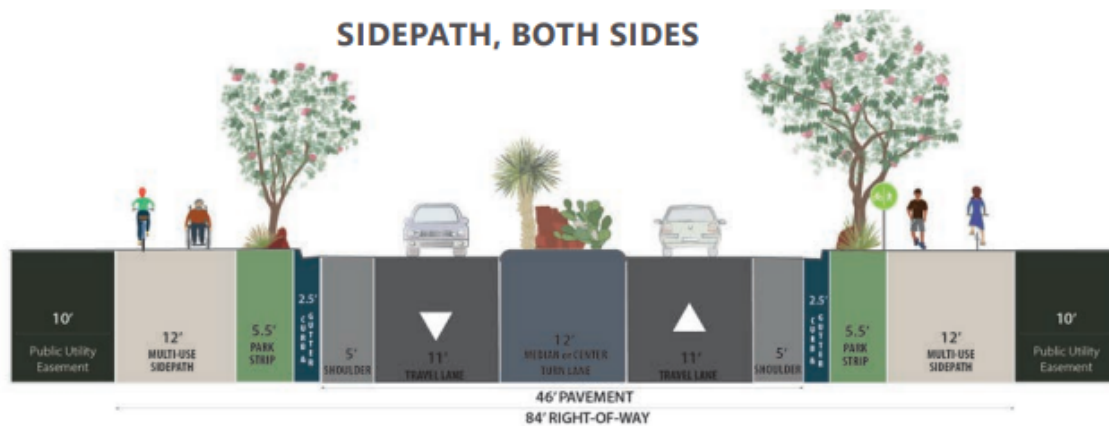
8. **Phone:** No comment

Staff Comments: Preliminary Site Plan

1. The newly passed Planned Commercial ordinance caps residential density at 15 units an acre unless 40% of the area is commercial or 10% of the units are affordable housing, in which case they can get a density bonus of up to 20 units per acre. The site plan indicates that the overall density in the residential area will not exceed 15 units an acre. The maximum number of units that could be developed in this property is 457 units. These units are proposed to clustered adjacent to the commercial use and have less density north of master plan roadway.
 - a. 20% of the property is designated for future commercial use
 - b. Staff would prefer a more detailed site plan that shows what densities are going in which area. The applicant has indicated about placing higher density south of the roadway and less density and the north side of the roadway. This clustering and movement of density can be allowed, but will need to be closely monitored to ensure the residential density does not exceed 15 units an acre total.
 - c. More detailed site plans will be required for each phase at the preliminary plat phase.
2. Appropriate well protection zones will be needed for the two wells onsite
3. Planned Commercial allows for buildings to be 55' tall. This would likely allow for four story buildings.
4. The two roads depicted connecting this site to Walmart do not currently exist and are conceptual. There are no development plans submitted on the property in between this one and Walmart. These are logical placements for roadways however.
5. Future Road M10 on the site plan (290 Nish) is a planned 77' ROW with a sidepath on the south side



6. Future Road M11 on the site plan (3000 W) is a planned 84' ROW with a sidepath on both sides



7. There are some steep slopes on the property that will need to be accounted for in the design. Sensitive lands applications will most likely be needed at the preliminary plat stage

Hurricane City slope map

Findings:

Staff makes the following findings:

1. The proposed zone change broadly meets the standards of the General Plan Map and goals
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 there is no development currently in the area.
4. Services are adequate or planned to become adequate for the area.
5. A preliminary site plan has been provided that shows how this property could be developed

Recommendation: Staff recommends the City Council review this application based on standards with Hurricane City Code. Staff is generally supportive of this plan and would recommend approval subject to the four considerations and staff and JUC comments.



PLANNING & ZONING
HURRICANE CITY
UTAH

147 N 870 W Hurricane UT
PHONE: 435.635.2811 FAX: 435.635.2184

ZONE CHANGE APPLICATION

For office use only: \$500.00 Fee
File No. 2622-2C-33
Receipt No. 7.699889

Name: Steward Land Holdings, Brad Brown Telephone: (801) 590-0980

Address: 1708 E 5550 S Ogden, UT 84403 Fax No. _____

Email: Brad@StewardLand.com Agent Email: _____

Agent (If Applicable): _____ Telephone: _____

Address/Location of Subject Property: 3000 w State Street, Hurricane, UT, 84737

Tax ID of Subject Property: H-3-1-31-3004 Existing Zone District: Highway Commercial (HC)

Proposed Zoning District and reason for the request (Describe, use extra sheet if necessary) Planned Commercial (PC)

The purpose for the requested zone change is to be able to do a mixed-use development more in line with the General Plan.

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 11 x 17-inch 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 UTAH)

:SS

COUNTY OF SLC

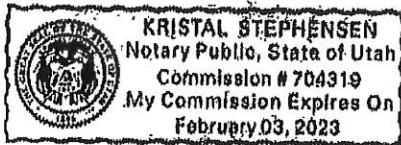
I (we), Mitchell J. Olsen being duly sworn, depose and say that I (we) am (are) the owner(s) of the property identified in the attached application and that the statements herein contained and the information provided identified in the attached plans and other exhibits are in all respects true and correct 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.

Mitchell J. Olsen
(Property Owner)

(Property Owner)

Subscribed and sworn to me this 31 day of August 2022

[Signature]
(Notary Public)



Residing In: Salt Lake County

My Commission Expires: 2/3/2023

Agent Authorization

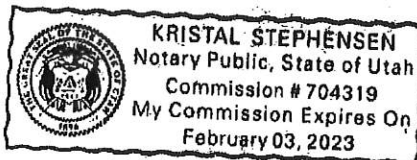
I (we), Mitchell J. Olsen the owner(s) of the real property described in the attached application, do authorize as my (our) agent(s) Steward Land Holdings, LLC to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the City considering this application and to act in all respects as our agent in matters pertaining to the attached application.

Mitchell J. Olsen
(Property Owner)

(Property Owner)

Subscribed and sworn to me this 15 day of September 2022

[Signature]
(Notary Public)



Residing In: Salt Lake County

My Commission Expires: 2/3/2023

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 wastewater 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.

Hurricane City Utah Zone Change Application

Approx. 3000 w State Street, Hurricane, UT, 84737

Tax ID: H-3-1-31-3004

Rezone from Highway Commercial (HC) to Planned Commercial (PC)

The name and address of every person or company the applicant represents:

Property Owner:

Mitchell J. Olsen

8142 South State Street

Salt Lake City, UT 84047

Applicant/Agent:

Steward Land Holdings LLC, Brad Brown

1708 E 5550 S Ste 18

Ogden, UT 84403

From: [Fred Resch](#)
To: [Kris Attento](#)
Cc: [Brienna Spencer](#)
Subject: RE: Zone Change application question
Date: Wednesday, August 24, 2022 1:55:44 PM
Attachments: [image001.png](#)

Kris,

Since the mailing list for this zone change is so small the City is willing to accept the application without the envelopes. We will send the letters ourselves. Once we get the application our planning technician will contact you for payment options

Fred Resch III
Assistant City Planner/Code Enforcement
Hurricane City
P: (435) 635-2811 x 110
E: fred@cityofhurricane.com



PLANNING & ZONING
HURRICANE CITY
UTAH

From: Kris Attento <Kris@stewardland.com>
Sent: Wednesday, August 24, 2022 1:04 PM
To: Fred Resch <fred@cityofhurricane.com>
Cc: Kris Attento <Kris@stewardland.com>
Subject: Zone Change application question

Hi. I'm working with Brad Brown on a Zone Change Application that he'll be submitting soon – I wanted to ask about requirement "E" on the application – stamped envelopes for all owners within 250 feet of the property.... I've been emailing the recorder's office and got directions to use their interactive map to get the mailing list of those property owners however, I believe we'd hoped to submit this application all via email since we are in Ogden. Obviously, I cannot send you via email a stamped envelope – is this something that your office can or will do for an additional fee?

This is in regard to parcel [H-3-1-31-3009](#) – the list of property owners within 250 feet is very small. I just want to make sure we're prepared when Brad is ready to submit this.

Any help you can provide is much appreciated!
Thank you!

Kris Attento Executive Assistant

1708 E. 5550 S. STE 18 Ogden, UT 84403

P: 801.590.0980 M: 801.698.1337

StewardLand.com

HURRICANE CITY
H-3-1-31-3003
147 N 870 W
HURRICANE, UT 84737

STRATTON BROTHERS LLC
H-3-1-31-3000
42 S 850 W
HURRICANE, UT 84737

HURRICANE CITY
H-3-1-31-320
147 N 870 W
HURRICANE, UT 84737-1671

FRIENDSHIP LLC, ET AL
H-3-1-31-2303
PO BOX 460
SANTA CLARA, UT 84765

FRIENDSHIP LLC, ET AL
H-3-1-31-2302
PO BOX 460
SANTA CLARA, UT 84765

OLSON ERNEST P
H-3-1-31-1102
220 LIVE OAK HILLS CT
SAN MARCOS, TX 78666

HURRICANE CITY
H-3-1-31-3004
147 N 870 W
HURRICANE, UT 84737

OLSEN MITCHELL J
H-3-1-31-3009
2463 E BARCELONA DR
SANDY, UT 84093-1148



Legend
Land Parcels

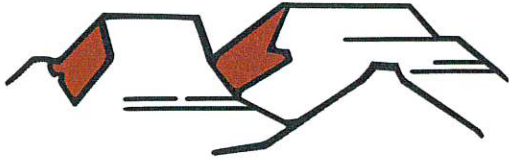
Ownership
U.S. Forest Service
U.S. Forest Service Wilderness
Bureau of Land Management
Bureau of Land Management Wildlife
National Park Service
Shoshone Reservation
Utah Division of Wildlife Resources
Utah Division of Transportation
State Park
State of Utah
Washington County
Municipality Owned
School District
Privately Owned
Water
Water Conservancy District
State Assessed Oil and Gas
Mining Claim

Notes

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.

A vertical number line with tick marks at 0, 752.33, and 1,504.7. The line is labeled '1,504.7' at the top and '0' at the bottom.

WGS_1984_Web_Mercator_Auxiliary_Sphere



PLANNING & ZONING HURRICANE CITY UTAH

147 N 870 W Hurricane UT
PHONE: 435.635.2811 FAX: 435.635.2184

PRELIMINARY SITE PLAN APPLICATION

For office use only: \$200.00 Fee

File No. 2022-PSP-41

Receipt No. 8-161797

Name: Steward Land Holdings, Brad Brown Telephone: 801-590-0980

Address: 1708 E. 5550 S., Ste 18, Ogden, UT 84403 Fax No. _____

Email: brad@StewardLand.com Agent Email: _____

Agent (If Applicable): _____ Telephone: _____

Address/Location of Subject Property: 3000 W State Street, Hurricane, UT 84737

Tax ID of Subject Property: H-3-1-31-3004 Zone District: _____

Proposed Use: (Describe, use extra sheet if necessary. Include total number of lots) _____

This application shall be accompanied by the following:

- ☐ 1. A vicinity map showing the general location of the project.
- ☐ 2. Three (3) copies of a site plan showing:
 - ☐ Topography showing 2' contours, identification of 30% or greater slopes;
 - ☐ The layout of proposed uses.
 - ☐ Location of open space when applicable.
 - ☐ Proposed access to the property and traffic circulation patterns.
 - ☐ Adjoining properties and uses;
 - ☐ Proposed reservations for parks, playgrounds, school, and any other public facility sites, if any.
- ☐ 3. Preliminary utility plan, including water, sewer, and storm drainage plans, and including access points to utilities.
- ☐ 4. Tables showing the number of acres in the proposed development and a land use summary; and
- ☐ 5. A phased development plan if applicable.
- ☒ 6. Warranty deed or preliminary title report or other document (see attached Affidavit) showing evidence that the applicant has control of the property
- ☒ 7. Signed and notarized Acknowledgment Water Supply (see attached)

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. Planning Commission meetings are held on the second Thursday and the 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 due to an incomplete application could result in a month's delay.

(Office Use Only)

Date Received: _____ Received by: _____

Date application deemed to be complete: _____ Completion determination made by: _____

AFFIDAVIT
PROPERTY OWNER

STATE OF UTAH)

:SS

COUNTY OF Salt Lake

I (we), Mitchell J Olsen, 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.

Mitchell J. Olsen
(Property Owner)

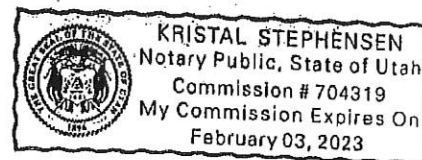
(Property Owner)

Subscribed and sworn to me this 6th day of September 2022

Kristal Stephensen
(Notary Public)

Residing in: Salt Lake County

My Commission Expires: 2/13/23



Agent Authorization

I (we), Mitchell J Olsen, the owner(s) of the real property described in the attached application, do authorize as my (our) agent(s) Steward Land Holdings, LLC 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.

Mitchell J. Olsen
(Property Owner)

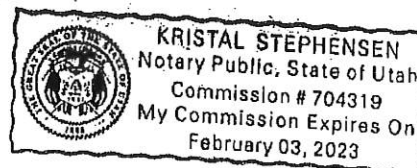
(Property Owner)

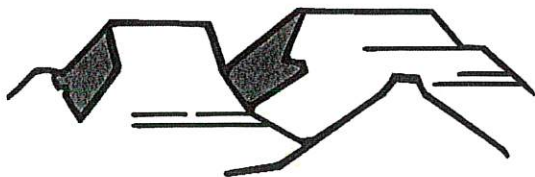
Subscribed and sworn to me this 6th day of September 2022

Kristal Stephensen
(Notary Public)

Residing in: Salt Lake County

My Commission Expires: 2/13/23





HURRICANE CITY UTAH

ACKNOWLEDGEMENT OF WATER SUPPLY

I/We, Brad Brown am/are the applicant(s) of the application known as 3000 W State Street located on parcel(s) H-3-1-31-3004 within the City of Hurricane, Washington County, Utah.

By my/our signature(s) below I/we do hereby acknowledge and agree to the following:

- 1 Neither acceptance nor approval of a development application by Hurricane City shall constitute a guarantee that sufficient water will be available to serve the zone designation, project, or permit for which this application is being submitted; and
- 2 Prior to receiving final approval for the application, the applicant may be required by Hurricane City to provide a guarantee of water availability which verifies that there is a sufficient water supply; and
- 3 For any application which may be approved without a guarantee of water availability, the applicant knowingly assumes the entire risk of water availability for the project and/or application; and
- 4 I/we waive any and all claims against Hurricane City that are in any way related to water availability for any project, permit, or use for which the land use application has been approved.

Dated this 6th day of September, 2022

Applicant Name: Brad Brown

Name of Signer (if different from Applicant Name): _____

Title of Signer: Managing Partner of Steward Land

Signature: [Signature]

STATE OF Utah)

COUNTY OF Weber)

On the 6th day of September, 2022, personally appeared before me Brad Brown, the signer of the above instrument, who duly acknowledged to me that he/she executed the same in the capacity indicated on behalf of the Applicant.

Notary Public: [Signature]

My Commission Expires: 3-15-2026



All signatures to this Acknowledgment, other than for Applicants signing in an individual capacity, shall be accompanied by documentation acceptable to the City attesting to the fact that the signer hereof is authorized to execute the Acknowledgment on behalf of the Applicant (e.g. a copy of a corporate resolution, copy of a partnership agreement, etc.). (Ord. No. 2022-37, 6-16-2022)

PRELIMINARY SITE PLAN

PURPOSE

The site plan review process is established to encourage adequate advanced planning and assure a good quality environment for the City. Such procedure is intended to provide for orderly, harmonious, safe, and functionally efficient development consistent with priorities, values, and guidelines stated in the various elements of the Hurricane City General Plan, and the Land Use Ordinance, and to protect the general welfare of the community.

WHEN REQUIRED

The preliminary site plan review is only required on the following projects when the Zoning Administrator determines the scope of the project requires both the preliminary site plan and site plan approval.

- a. Any multiple-family residential use.
- b. Any public or civic use.
- c. Any commercial use; or
- d. Any industrial use.

The preliminary site plan is also required with a submittal of zone changes to Planned Development Overlay, or changes to an approved Planned Development Overlay.

A preliminary site plan is not intended to permit actual development of property pursuant to such plan but is prepared merely to represent how the property could be developed. Submittal, review, and approval of an application for a preliminary site plan shall not create any vested rights to development.

Upon approval of a preliminary site plan, the applicant may prepare and submit the greater level of detail required for a site plan review application, which is required before construction may commence.

PROCESS

The preliminary site plan is submitted to the Planning and Building Department approximately 1 week and 1 day by no later than 12:00 p.m. prior to a regularly scheduled Planning Commission meeting. During this time prior to the meeting, staff will review the plan, and prepare a report and recommendation for the Planning Commission. The Planning Commission at the public meeting will review the application and staff's report, and approve, approve with conditions, or deny the preliminary site plan.

APPEALS

Since there are no vested rights with the approval of a preliminary site plan, the matter is generally not appealed. However, if an appeal is made, it would be filed with the Clerk of the Board of Adjustment located in the Planning and Building Department and heard by the Board of Adjustment. The decision of the Board of Adjustment is final unless appealed to a court of competent jurisdiction within thirty (30) days from the date of decision of the Board of Adjustment.

COMMITMENT FOR TITLE INSURANCE
ISSUED BY

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACTIONAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, Real Advantage Title Insurance Company, a California Corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within 30 days after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

REAL ADVANTAGE TITLE INSURANCE COMPANY

Countersigned By:

A handwritten signature in black ink, appearing to be "W.D. Burding, Jr.", written over a horizontal line.

BY: _____
William D. Burding, Jr.,
Executive Vice President & General Counsel

A handwritten signature in black ink, appearing to be "Ken Higley", written over a horizontal line.

BY: _____
Ken Higley, Title Officer
Real Advantage Title Insurance Company

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Real Advantage Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; [and] Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form].

- (b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- (c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
- (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
- (g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing [and authenticated by a person authorized by the Company].
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

8. PRO-FORMA POLICY

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

[9. ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.]

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Real Advantage Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; [and] Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

SCHEDULE B, PART I
Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Real Advantage Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; [and] Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form].

Copyright 2006-2016 American Land Title Association. All rights reserved.
The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited.
Reprinted under license from the American Land Title Association.



9. General Property Taxes for the year 2021 have been paid in the amount of \$5,825.18.
Tax Parcel # H-3-1-31-3009
10. Said property is within the boundaries of Hurricane and Tax District 3, and is subject to any charges and assessments levied thereunder.
11. Subject to all existing roads, streets, alleys, ditches, reservoirs, utilities, canals, pipe lines, power, telephone, sewer, gas or water lines, and right of way and easements thereof.
12. Grant of Easement and/or Right-of-Way and the terms, conditions and limitations contained therein:
In favor of: Hurricane City, a Utah Municipal Corporation
Recorded: 7/10/2019
Entry No.: 20190027165
13. Claim, right, title or interest to water or water rights, whether or not shown by the public records.
14. Any and all outstanding oil and gas, mining and mineral rights, minerals and ores situated in, upon or under the above described tract of land, together with the right of the proprietor of a vein or lode to extract his ore therefrom should the same be found to penetrate or intersect the premises and the right of ingress and egress for the use of said rights, along with any other rights in connection with or relative to the mining, removal or sale of the same (but not including the right to enter upon the surface of the premises).
15. Subject to the following matters referenced on that certain survey prepared as Job No. 5533-09, by Scott P. Woolsey, License No. 174919
16. NOTE: No existing Deed of Trust appears of record under the current owner(s). If this information is not correct, please notify the Company as soon as possible to provide information regarding the existing loan.
17. The transaction contemplated in connection with this Report is subject to the review and approval of the Company's Corporate Underwriting Department. The Company reserves the right to add additional items or make further requirements after such review.
18. The rights of parties in possession of the subject property under unrecorded leases, contracts, rental or occupancy agreements and any claims, rights or interests arising thereunder.
19. Obtain a copy of the Articles of Incorporation for Steward Land Holdings, LLC.

NOTE: A search of the Federal and State judgment records revealed no unpaid judgments, tax liens or open bankruptcies in the past eight years (except as noted) against:

Mitchell J. Olsen

Steward Land Holdings, LLC.

NOTE: According to the Official Records, there have been no documents conveying the land described herein within a period of 24 months prior to the date of this commitment,

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Real Advantage Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; [and] Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form].

EXHIBIT A

The Land referred to herein below is situated in the County of Washington, State of Utah, and is described as follows:

Commencing at the South Quarter Corner of Section 31, Township 41 South, Range 13 West, Salt Lake Base and Meridian; thence North 88°52'58" West along the Section line a distance of 751.16 feet; thence North, a distance of 452.94 feet to the Point of Beginning, said point being on the Northerly right of way line of Highway SR-9; thence South 74°50'08" West, along said right of way line a distance of 765.51 feet; thence North 01°42'49" East, a distance of 1399.98 feet; thence North 67°32'27" East a distance of 327.32 feet; thence South 57°30'11" East, a distance of 335.71, feet; thence North 63°09'32" East, a distance of 269.71 feet; thence North 83°12'08" East, a distance of 265.91 feet; thence North 40°40'01" East, a distance of 312.94 feet; thence South 88°58'18" East, a distance of 189.64 feet, to a point on the Center Section line of said Section 31; thence South 01°01'42" West, along said line a distance of 1070.46 feet; thence South 89°46'38" West, a distance of 131.69 feet; thence South 85°13'16" West, a distance of 211.19 feet; thence South 68°02'47" West, a distance of 332.30 feet; thence North 88°52'58" West a distance of 111.09 feet; thence South 01°07'02" West a distance of 320.61 feet to the Point of Beginning.

LESS and EXCEPTING the following described Parcel:

Commencing at the South Quarter Corner of Section 31, Township 41 South, Range 13 West, Salt Lake Base and Meridian; thence South 89°58'47" West a distance of 511.39 feet; thence North 00°01'13" West a distance of 1040.89 feet to the Southwest Corner of an existing 1 acre well site Parcel, and the Point of Beginning; thence North 00°01'13" West a distance of 208.71 feet; thence North 89°58'47" East a distance of 208.81 feet; thence South 00°01'13" East a distance of 208.71 feet; thence South 89°58'47" West a distance of 208.71 feet to the Point of Beginning.

Tax Parcel #: H-3-1-31-3009

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Real Advantage Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; [and] Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form].

ORDINANCE NO 2022-54

AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE APPROVING THE REZONE
FOR PARCEL H-3-1-31-3009 FROM HIGHWAY COMMERCIAL TO PLANNED
COMMERCAIL

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, the proposed amendment will have an impact on the area, but there is little development currently and the development may lead to enhance commercial space; and

WHEREAS, the services are adequate or planned to become adequate for the area; 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 be rezoned as shown in the following legal description attached in Exhibit A to Planned Commercial.
2. That the City Council approves the attached site plan.

PASSED AND APPROVED on this 3rd day of October 2022.

Hurricane City

Mayor

Attest:

Cindy Beteag, City Recorder

The foregoing Ordinance was presented at a regular meeting of the Hurricane City Council held at the Hurricane City Office Building on the 3rd day of October 2022. Whereupon a motion to adopt and approve said Resolution was made by _____ and seconded by _____. A roll call vote was then taken with the following results:

	Yea	Nay	Abstain	Absent
Joseph Prete	_____	_____	_____	_____
David Sanders	_____	_____	_____	_____
David Hirschi	_____	_____	_____	_____
Kevin Thomas	_____	_____	_____	_____
Doug Heideman	_____	_____	_____	_____

Cindy Beteag, Recorder

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B
DEVELOPMENT AGREEMENT

Hurricane City, Utah – City Council November 17, 2022

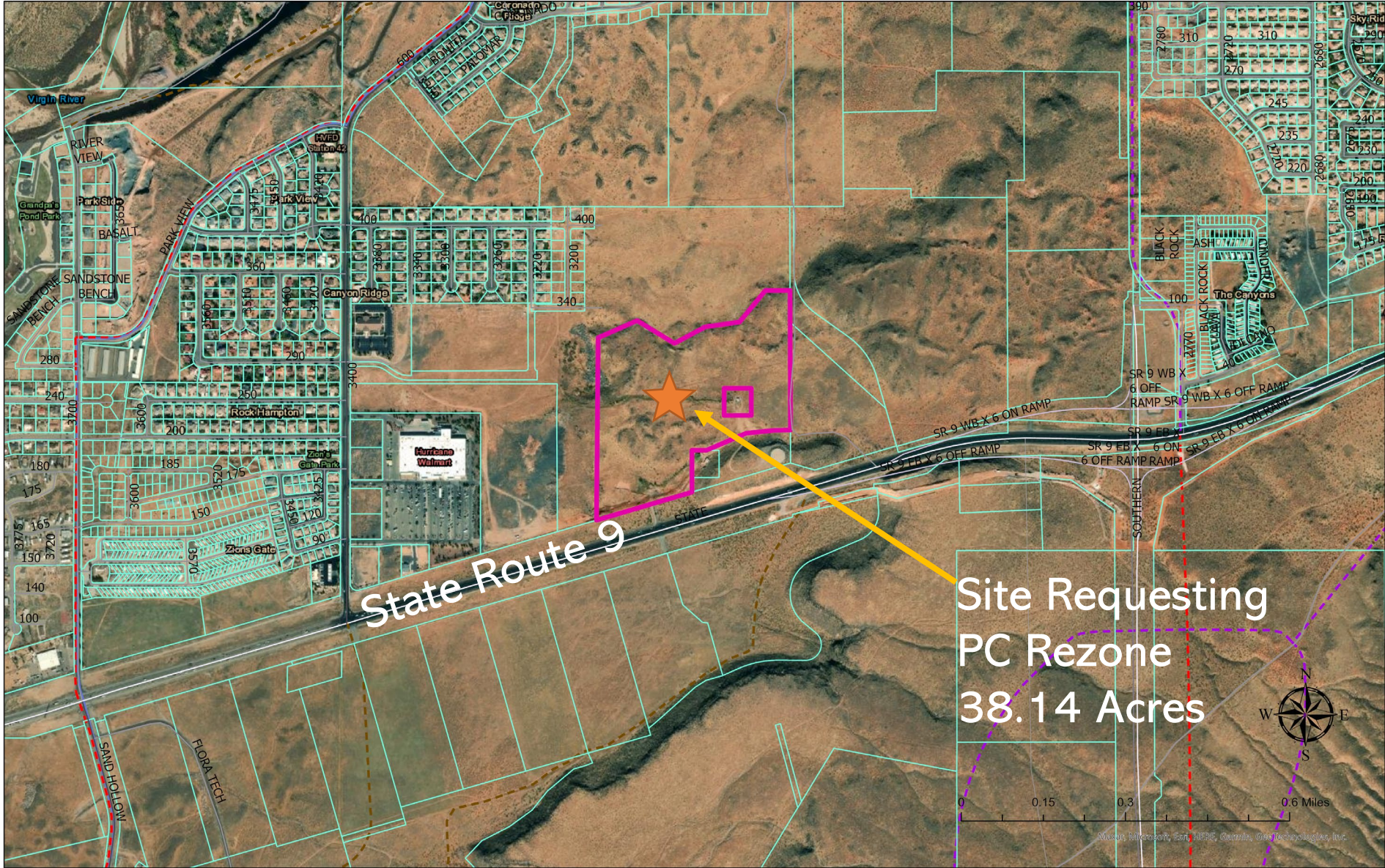


Brad Brown

Presentation Outline

- General Project Info
- Planning Commission Criteria Questions
 - 1 – General Plan conformance
 - 2 – Proposal harmonious with existing character
 - 3 – Affects on adjacent properties
 - 4 – Adequacy of facilities
- Affordable Housing
- Growth in Hurricane
- Height Limit

Site Area Map



VICINITY MAP
SCALE: NONE

Proposed Zone

Proposed Zone	Acres
Planned Commercial	38.14
Total	38.14

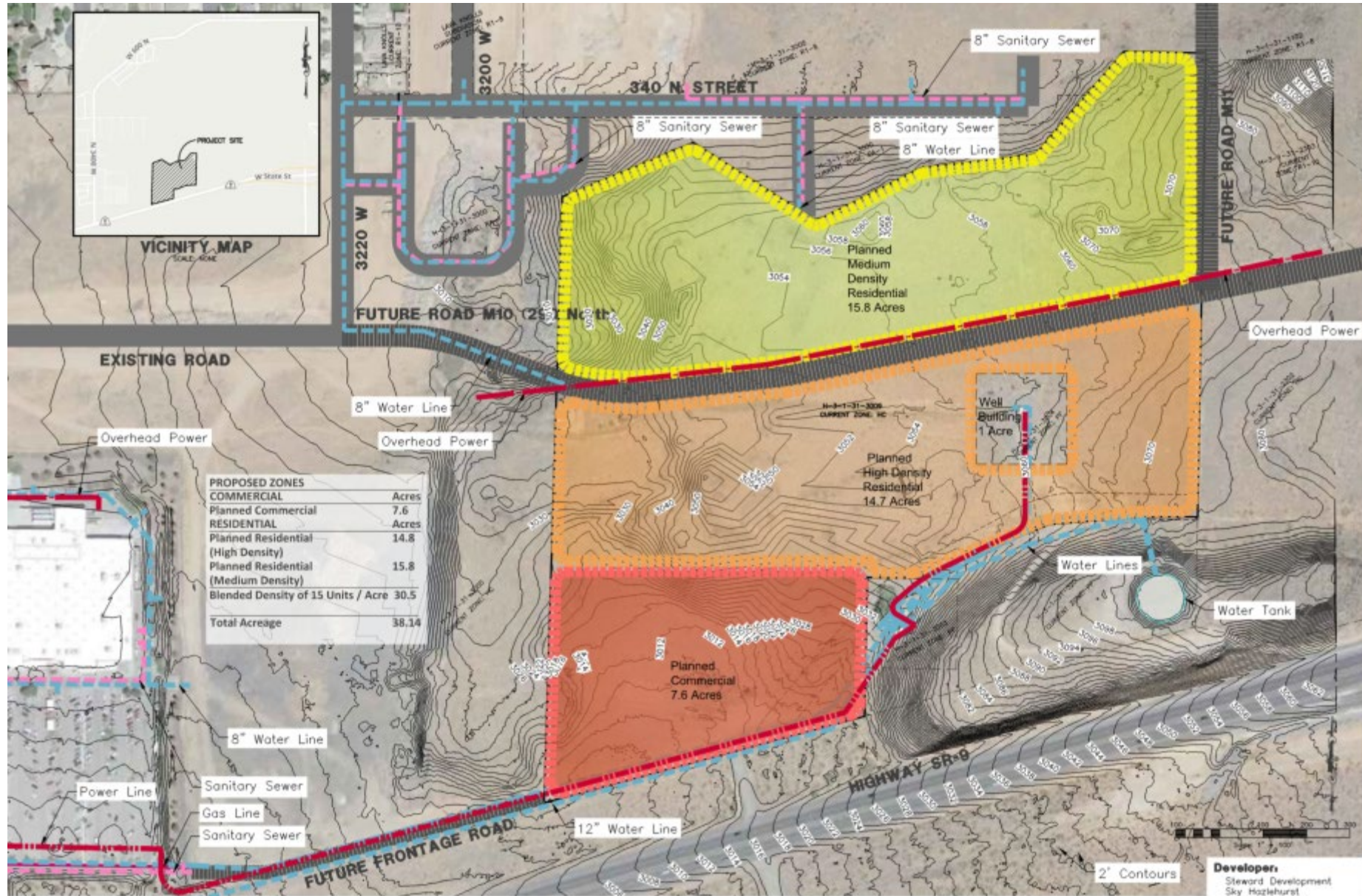
Map Labels:

- 340 N. STREET
- FUTURE ROAD M10
- FRONTAGE ROAD
- HIGHWAY SR-9
- Well Building 1 Acre
- Planned Commercial 38.14 Acres
- OVERHEAD POWER LINE
- Various zoning labels: H-3-1-31-3000 CURRENT ZONE: RA-1, H-3-1-31-3009 CURRENT ZONE: HC, H-3-1-31-3003 CURRENT ZONE: PF, H-3-1-31-2303 CURRENT ZONE: R1-10, H-3-1-31-1103 CURRENT ZONE: R1-B.

Scale: 1" = 100'

- Site Requesting PC Rezone

Updated Site Plan



Hurricane City – Rezone Questions

We will address these questions in the presentation:

Sec. 10-7-7. - Zoning map and text amendments.

E. 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.*

Hurricane City – Future Land Uses

1. Is the proposed amendment consistent with the City's General Plan's goals, objectives, and policies?

Response: This property has three designations on the General Plan Map



Hurricane City Future Land Use Map

Source: staff report

Proposed project includes three housing types:

- Single Family**
- Townhomes**
- Apartments**

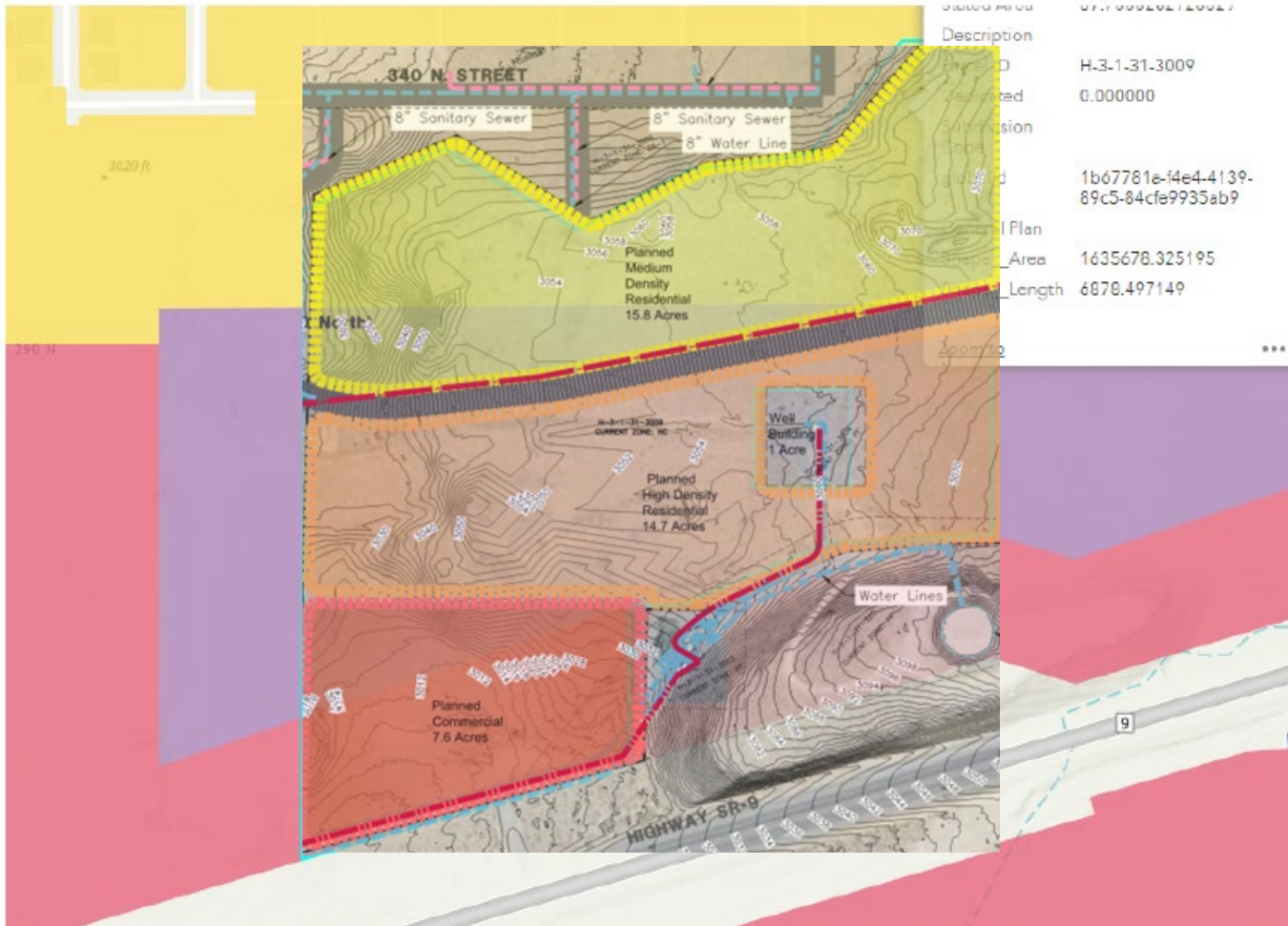
and

- Commercial on the highway.**

Hurricane City – Future Land Uses

1. Is the proposed amendment consistent with the City's General Plan's goals, objectives, and policies?

Response: This property has three designations on the General Plan Map



Hurricane City Future Land Use Map

Proposed project includes three housing types:

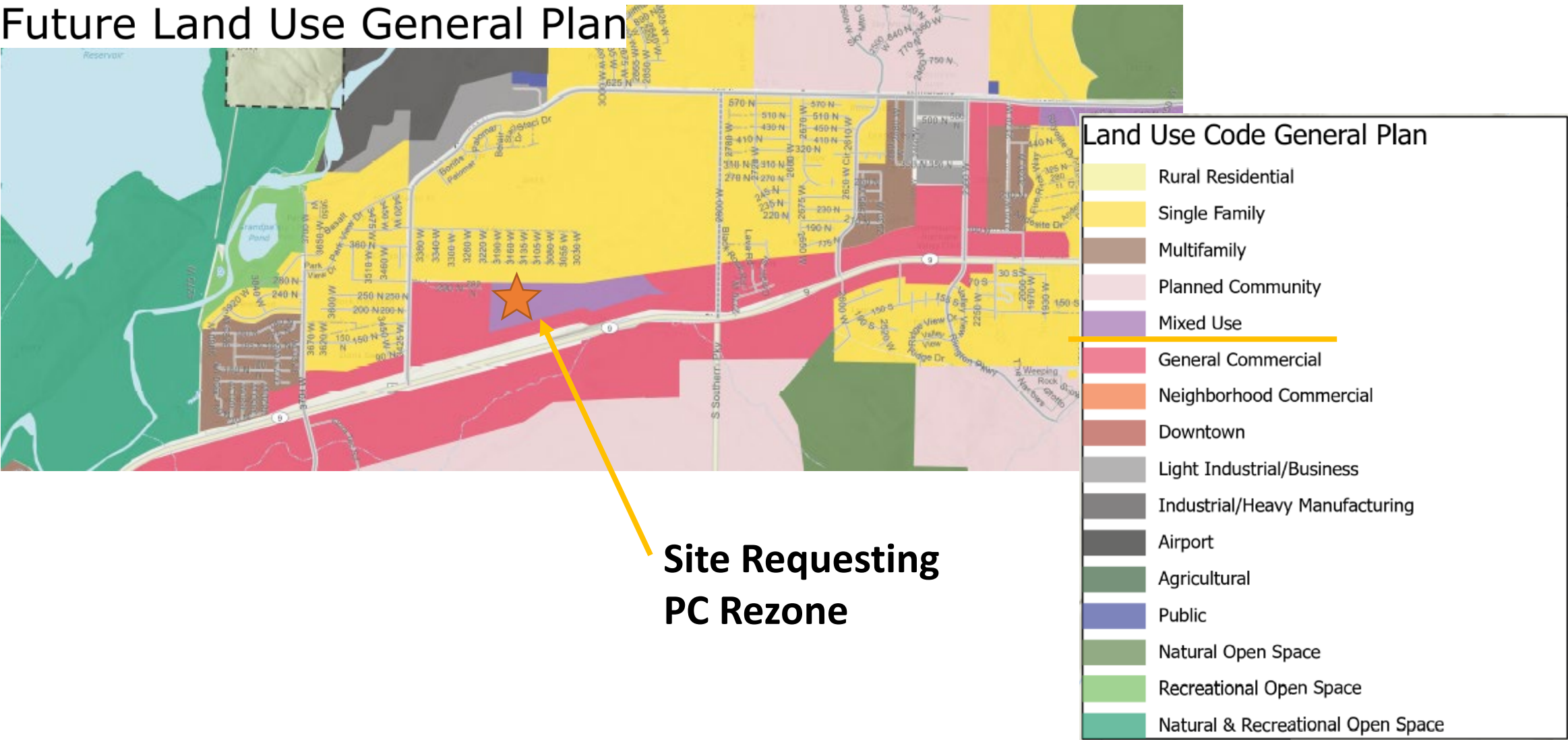
**Single Family
Townhomes
Apartments**

**and
Commercial on
the highway.**

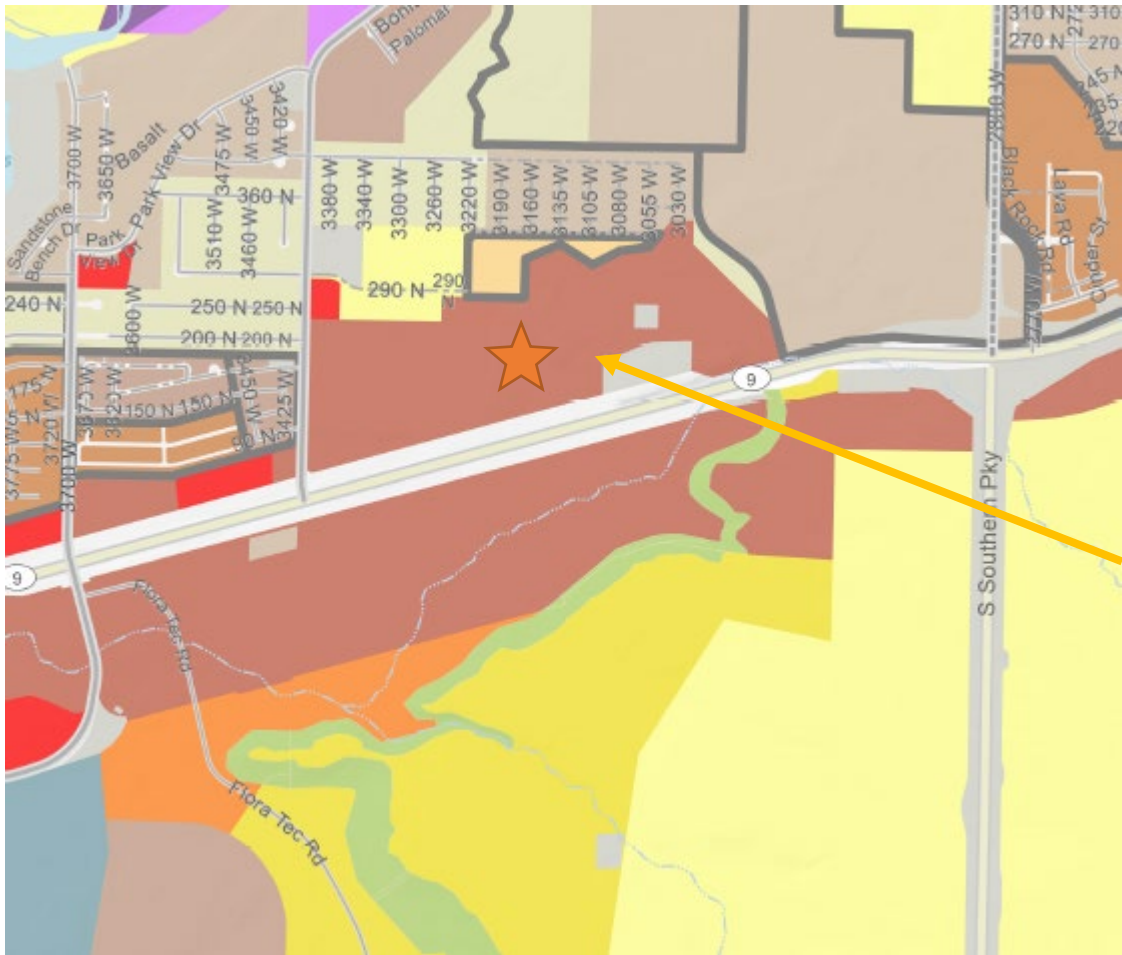
Source: staff report

Hurricane City – Future Land Uses

Future Land Use General Plan



Hurricane City – Current Zoning



Site Requesting
PC Rezone

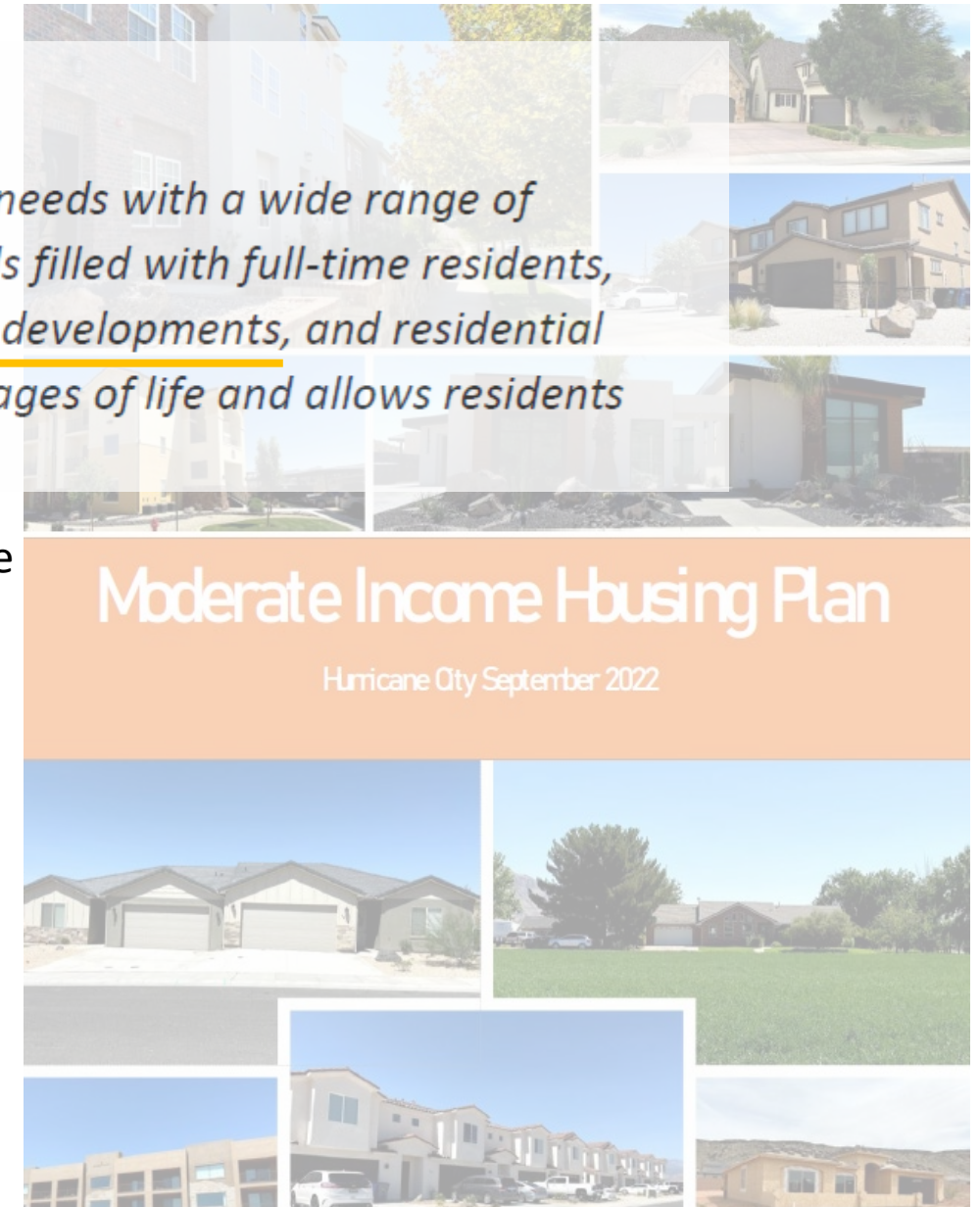
Zoning Overlays	
Overlay Type	
	Agricultural Protection Overlay
	Extraction Industries Overlay
	Planned Development Overlay
Zoning	
Classification	
	A-10: Agricultural - 1 Unit Per 10 Acres
	A-5: Agricultural - 1 Unit Per 5 Acres
	RR: Recreational Resort Zone
	OS: Open Space
	RA-1: Residential Agricultural - 1 Unit Per Acre
	RA-0.5: Residential Agricultural - 2 Units Per Acre
	R1-15: Residential - 1 Unit Per 15,000 Sq. Ft.
	R1-10: Residential - 1 Unit Per 10,000 Sq. Ft.
	R1-8: Residential - 1 Unit Per 8,000 Sq. Ft.
	R1-6: Residential - 1 Unit Per 6,000 Sq. Ft.
	RM-1: Multi-Family - 6 Units Per Acre
	RM-2: Multi-Family - 10 Units Per Acre
	RM-3: Multi-Family - 15 Units Per Acre
	MH/RV: Mobile Home - RV
	GC: General Commercial
	PC: Planned Commercial
	HC: Highway Commercial
	NC: Neighborhood Commercial
	BMP: Business/Manufacturing Park
	M-1: Light Industrial
	M-2: Heavy Industrial
	Public Facility

Hurricane City – Moderate Income Housing Plan/General Plan

OUR HOUSING VISION

In 2030, Hurricane is a city that addresses their diverse housing needs with a wide range of housing options. A balance of stable single-family neighborhoods filled with full-time residents, retirement communities, affordable, well-designed multi-family developments, and residential agriculture provides options for families and individuals at all stages of life and allows residents to age-in-place.

Source: Hurricane Moderate Income Housing Plan/General Plan



Hurricane City – Moderate Income Housing Plan/General Plan

Source: Hurricane Moderate Income Housing Plan/General Plan
Hurricane Strategies

“Development Incentives

3. Implement zoning incentives for moderate income units in new developments

Policy Recommendations

- Evaluate an inclusionary zoning incentive for new developments to build affordable housing for those making 80%, 50%, and 30% of Washington County AMI.
 - Add density bonus for Planned Development Overlay for affordable units. These incentives could include deed-restricted units or units that nonprofit housing organizations will construct.
 - Create incentives for developers to pay fees into a housing fund that could help support the creation or construction of affordable units.
 - Evaluate density bonus incentive for affordable housing within the Planned Commercial Mix Use Zone.
 - Look at allowing land transfers for density bonuses or using Transfer of Development Rights to create more affordable developments in exchange for keeping other property open.
 - Encourage or require a variety of housing options within Master Plan Communities, including affordable options.”

Source: Hurricane Moderate Income
Housing Plan/General Plan

Hurricane City – Moderate Income Housing Plan/General Plan

Source: Hurricane Moderate Income Housing Plan/General Plan
Hurricane Strategies

“Mixed Use Development

5. Create or allow for, and reduce regulations related to, multifamily residential dwellings compatible in scale and form with detached single-family residential dwellings and located in walkable communities within residential or mixed-use zones;

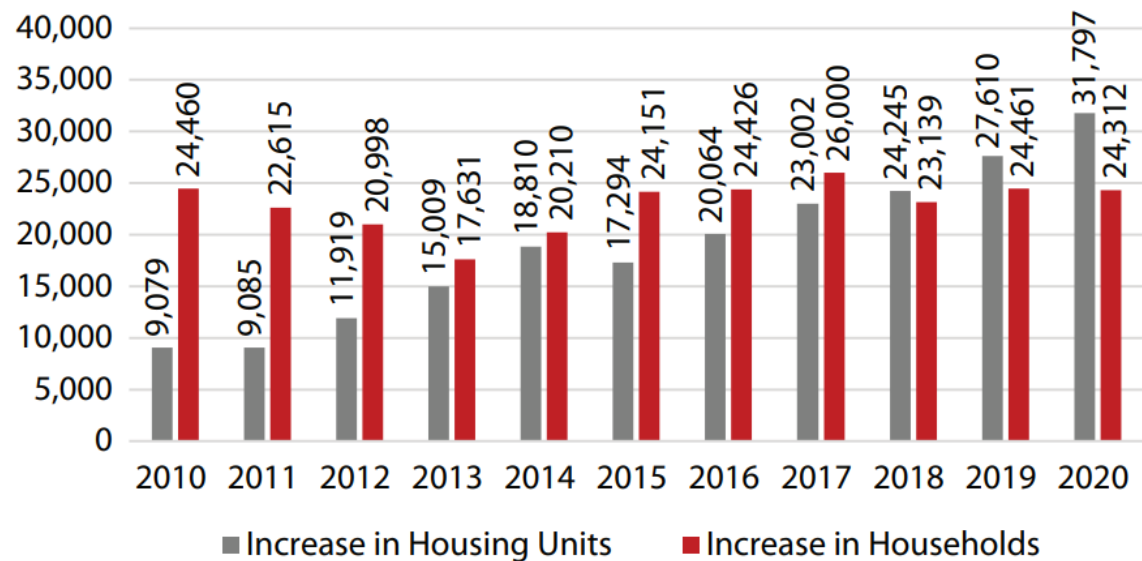
Policy Recommendations

- Create a Downtown Master Plan and review housing policy within the downtown. Consider eliminating or reducing single-family zoning for infill development and creating mixed-use standards within the downtown. The Downtown Master Plan is scheduled to begin in August 2022 and is anticipated to take six to eight months.
- Look at areas where “Missing Middle Housing” and mixed-use zones can be implemented within existing and future residential and commercial developments. Areas for review include new development along SR-7, Sand Hollow Road Commercial Areas, and around 3400 W on the north side of SR-9.
- Review the Planned Commercial Zoning density bonus factors. “

Source: Hurricane Moderate Income
Housing Plan/General Plan

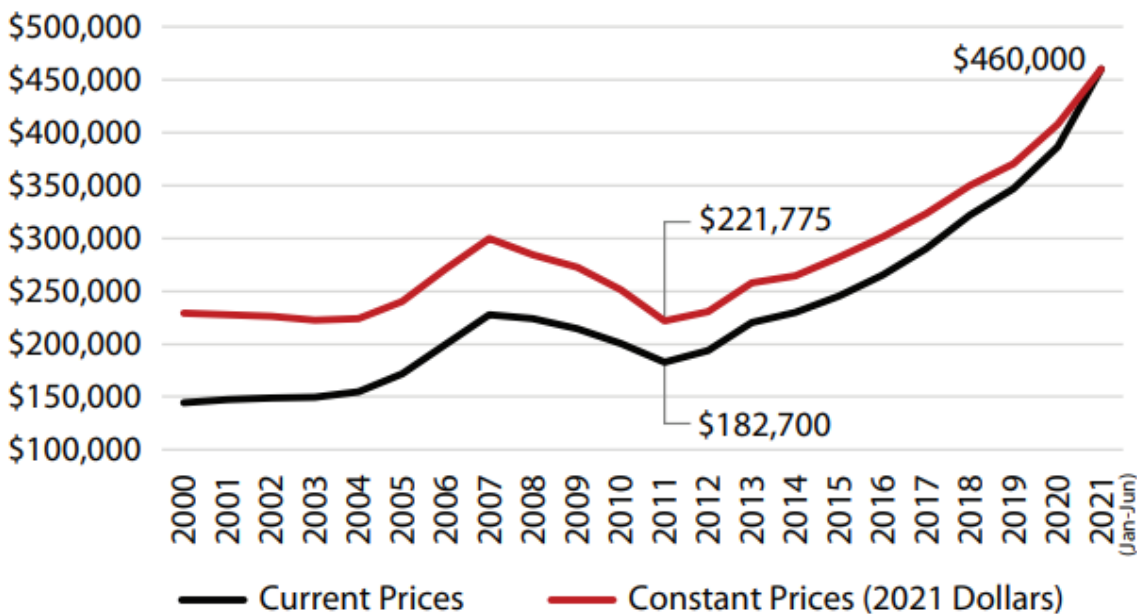
Utah Housing Prices

Figure 5: Annual Increase in Housing Units and Households in Utah, 2010–2020



Source: Kem C. Gardner Policy Institute, University of Utah

Figure 2: Median Sales Price of Single-Family Homes in Utah, 2000–2021



Source: UtahRealEstate.com

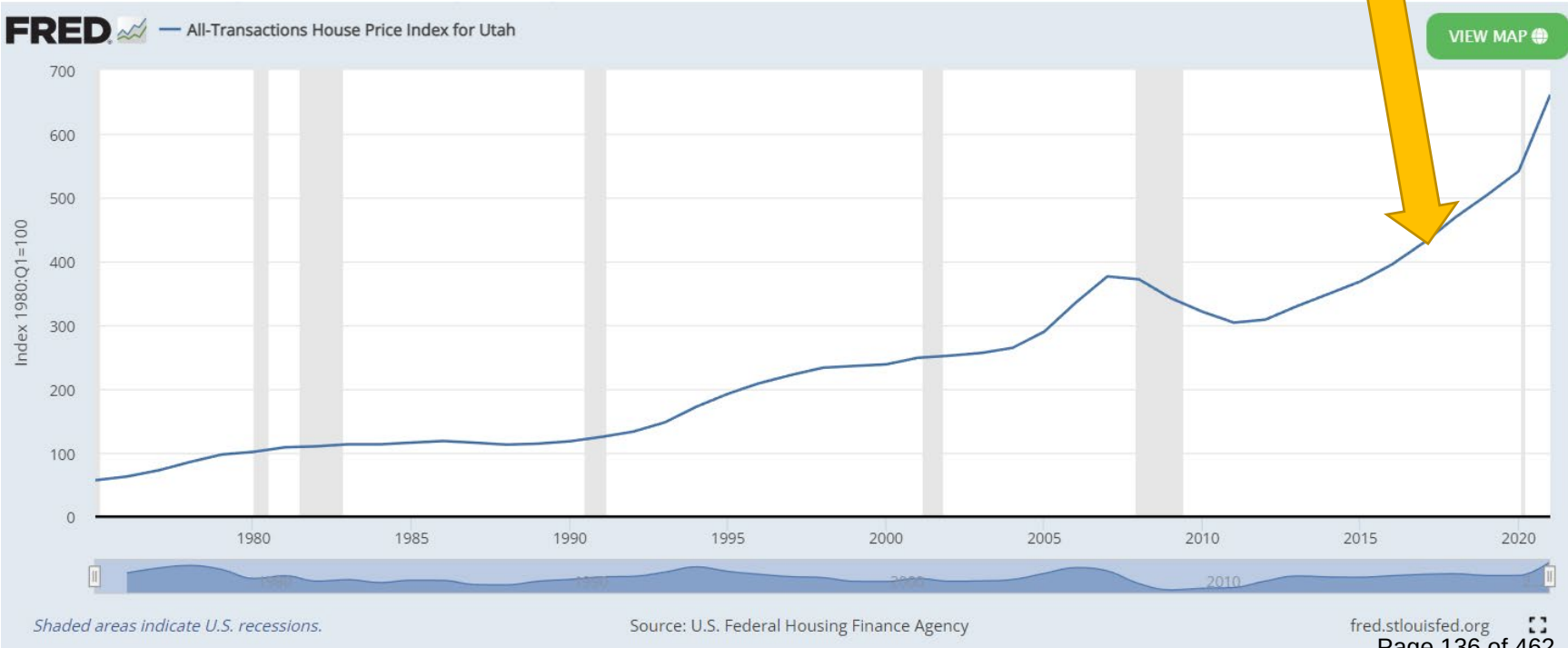
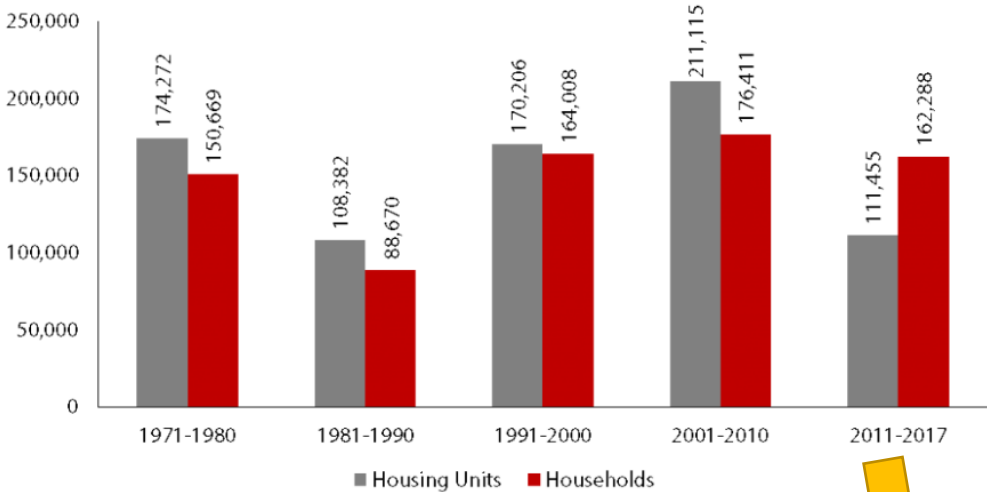
Housing Affordability

Affordable housing is specific to low income.

Housing affordability refers to the whole market and how it affects everyone.

Both affordable housing

Utah Housing Units vs. Household Growth



Housing Affordability

Steward is committed to working with the City to address housing affordability. This project will provide:

- **Housing Choices**
 - **Single-family, Townhomes, Multi-family**
- **Housing Supply in the right location**
 - **Near Schools**
 - **Near transportation infrastructure and future arterial roads**
 - **Limited impact to existing neighborhoods**
- **Affordable Units – The aerial and site plan have been designed with an affordable component integrated. Steward is willing to commit to 10% affordable units per the City's ordinance and Development Agreement.**

Hurricane City – Rezone Question #2

2. Is the proposed amendment harmonious with the overall character of existing development in the subject property's vicinity?

Response: There are almost no developments currently in the vicinity. To the north is an approved townhome development that will provide road and utility access to this site and to further to the west is the Walmart development. This plan is largely harmonious with what is approved in the area.

Source: staff report

In addition:

- The proposed development will have single family and townhomes near adjacent development. Apartments and commercial will be located near the highway.
- The proposed development is planned to be harmonious with the area by adding trails, pathways and critical street connections (M10/M11).

Hurricane City – Rezone Question #2

2. Is the proposed amendment harmonious with the overall character of existing development in the subject property's vicinity?

Building height limit was a concern that was brought up by council. We created an aerial image with the purpose of showing what 3-story buildings and the commercial building would 'feel' like.



Hurricane City – Rezone Question #3

3. Will the proposed amendment affect the adjacent property?

Response: Yes. Although the area is largely undeveloped currently. Commercial development in this area will be beneficial to the community.

Source: staff report

In addition:

- The proposed development will help the Hurricane community by adding three different types of housing choices to the market. One of the best ways to address attainable and affordable housing is by adding significant new housing choices and units to the market.
- The proposed development will benefit the local commercial businesses by adding more customers.
- The proposed development will benefit residents by increasing the street connectivity (M10/M11), adding a pathway (M10), and adding commercial to the area.
- The proposed development is on the perimeter of existing development and poses little to no traffic impact on existing neighborhoods.

Hurricane City – Rezone Question #3

Stratton Brothers LLC

3. Will the proposed amendment affect the adjacent property?

11/03/2022

To whom it may concern.

Steward Land Company - Hurricane Project at 3100 W SR-9

~~Interstate Rock~~^{Stratton Brothers} has been in discussions with Steward Land Company with regards to their project at 3100 W SR-9. We own, and are in the process of developing, the property to the North and to the West of their property. We are aware of their plans and we are supportive of the plan they are currently designing. We feel that their development and our development will be synergistic and will be a positive addition to the community.

As our properties are contiguous, and both are mostly undeveloped, there will be coordination and cooperation between Stratton Brothers and Steward, in terms of site planning, access points, and infrastructure.

We have agreed to coordinate cross access as needed between our property and Steward's property at a minimum, three locations, namely, 290 North as already defined, a frontage road connection across our property to the Walmart Parcel, and at least one connection to the North connecting our projects. These accesses will be formalized when appropriate – when site plans are coordinated and road locations are finalized.

Sincerely,



Craig Stratton

Hurricane City – Rezone Question #4

4. Are public facilities and services adequate to serve the subject property?

Response: Public facilities and services are either planned to be brought to the property with the Villas at Lava Knolls development or are already at the property at the wells and water tanks. See JUC comments below.

Other Considerations:

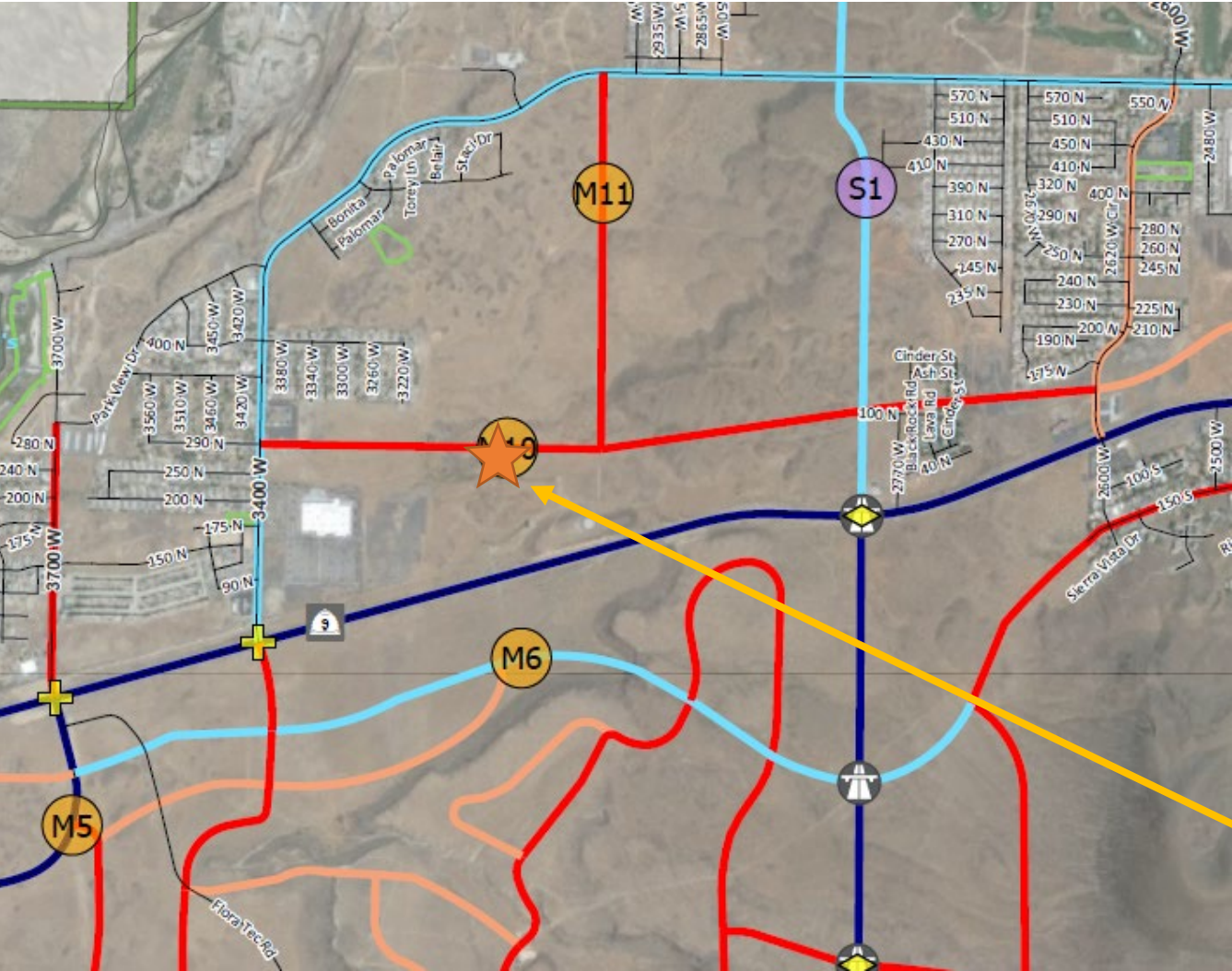
This property is currently zoned Highway Commercial in an area of town where there is existing commercial development. The City in the past has expressed hesitation about commercial property being changed to residential when the City will eventually need more commercial space. However, there are several factors that may hinder commercial development on this property: the largest is poor access and visuals from SR-9. UDOT has declared that SR-9 will be a limited access corridor and no new intersections will be made west of the SR-7 interchange and all current stoplights will be turned into interchanges eventually. All access to this property will come from 290 N and eventually through the Walmart parking lot. There is also a large hill that the water tank is on that blocks visual of most of the property from SR-9 and steep topography throughout the property (shown below). Commercial developments are largely reliant on supporting residential uses. Staff believes that this plan will generate a better product on the commercial space being provided within the plan. Source: staff report

In addition:

- The proposed development will benefit residents by increasing the street connectivity and keeping the right size of commercial highway space.

Hurricane's Transportation Plan

...**roadways**, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection.



Future Road Network

- Major Arterial (106' ROW)
- Minor Arterial (90' ROW)
- Major Collector (70' ROW)
- Minor Collector (60' ROW)

Future Improvement Projects

- Short-term
- Mid-term
- Long-term

Future Interchanges

- Double Interchange
- Single Interchange
- Future Bridges
- Existing Roads

Site Requesting
PC Rezone

Hurricane's Recreation

...roadways, **parks and recreation facilities**, police and fire protection, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection.



Parks Department Needs:

- The City NEEDS to:
 - Improve Existing Facilities (Partially completed)
 - Acquire More Park Land (Ongoing process)
 - Develop Additional Park Facilities (Ongoing process)
 - Develop a City Wide Trail System

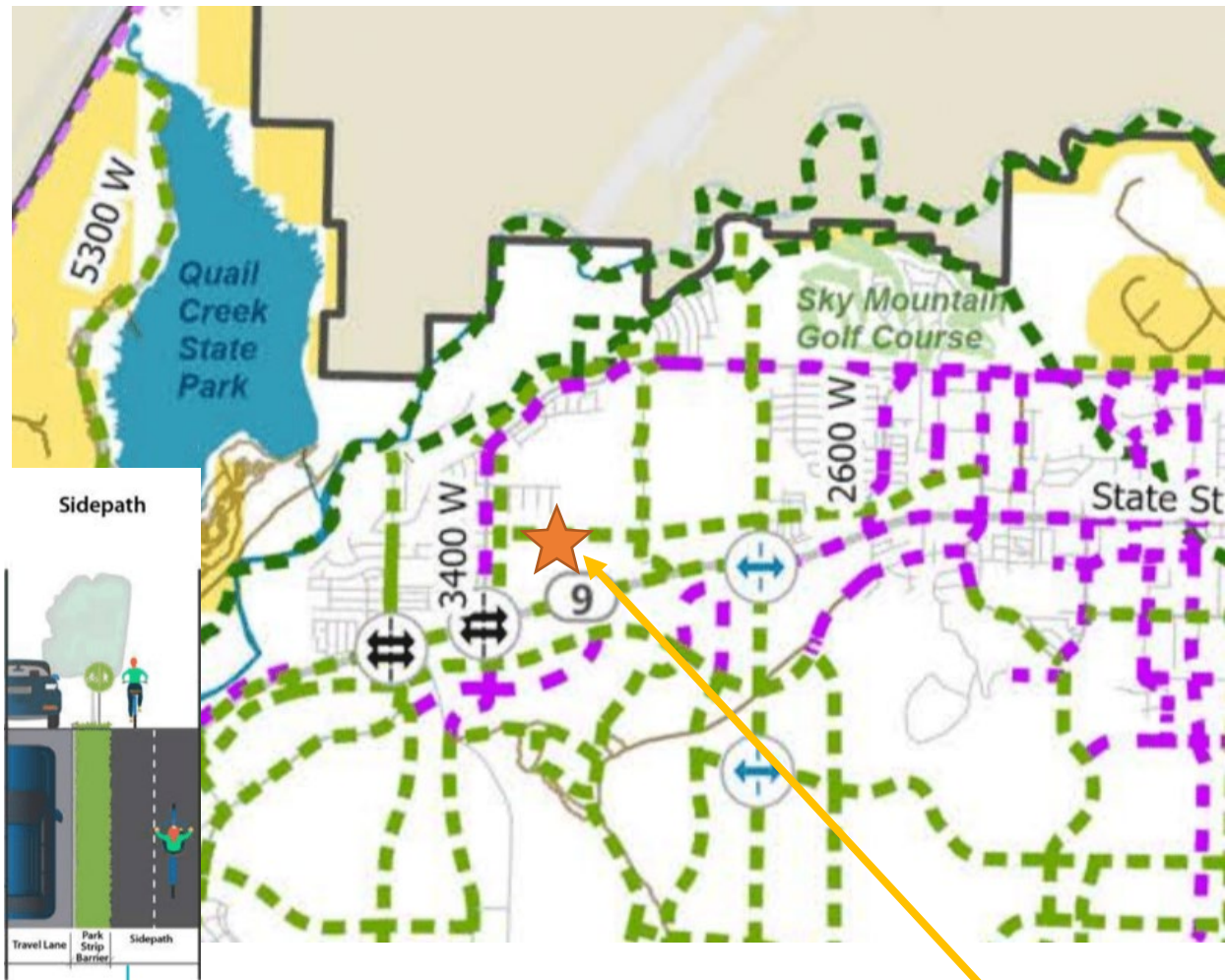
Source: Hurricane Parks and Rec.

This project will help Parks and Recreation needs by:

- Providing park and recreation impact fees (\$3,109 per fee)
- Developing trails and pathways
- Developing local HOA pocket park type amenities

Hurricane's Active Transportation Plan

...roadways, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection.



- Bike Lane
- Buffered Bike Lane
- Sidepath
- Shared Use Path

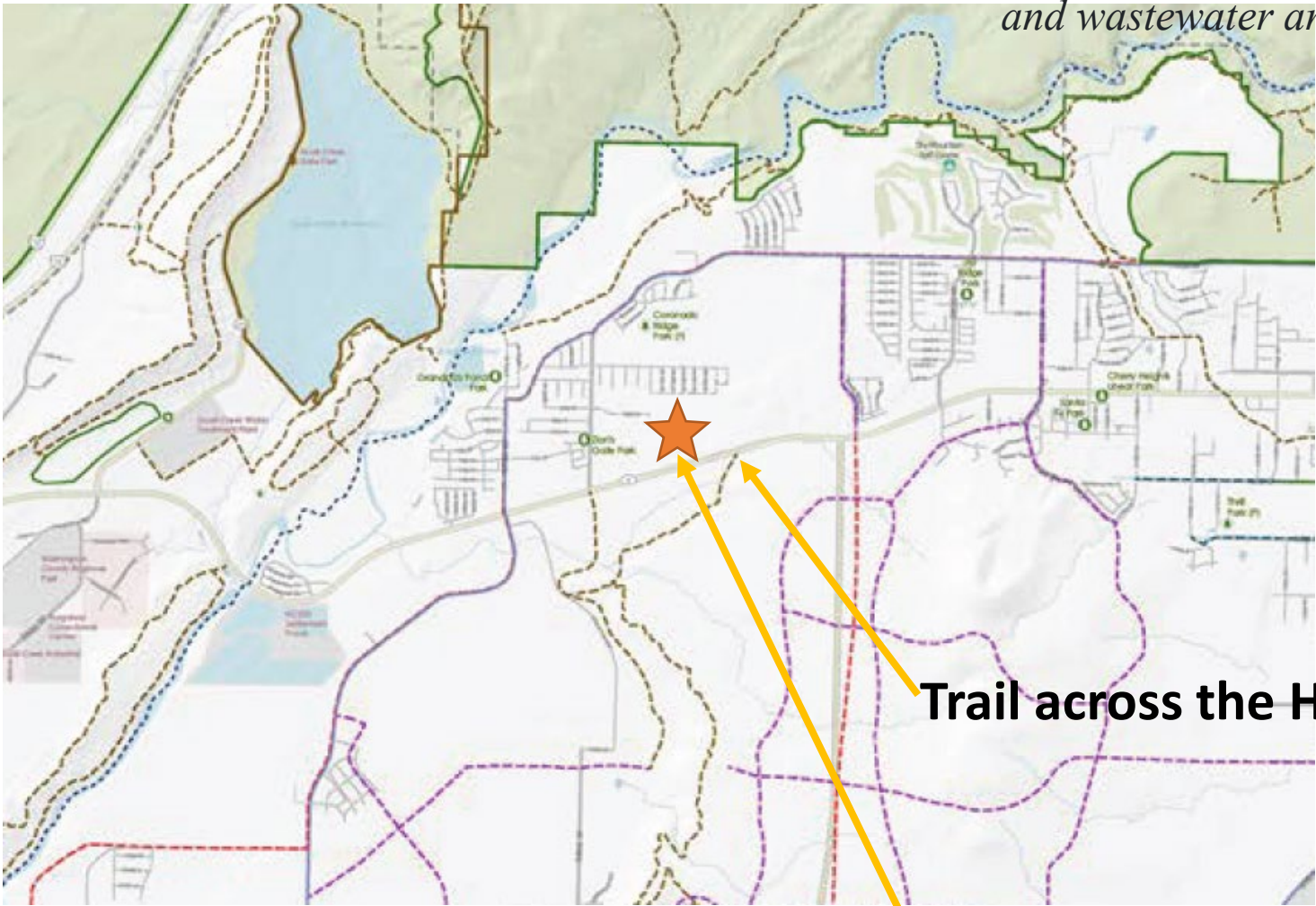
Table 2.1 Comparison of the most common AT facility types.

FACILITY TYPE	LOCATION	WITHIN ROW	UDOT SCHEMA
Signed Shared Roadway	On-Street	Yes	3C Signed Shared Roadway
Marked Shared Roadway	On-Street	Yes	3B Marked Shared Roadway
Shoulder Bikeway	On-Street	Yes	3A Shoulder Bikeway
Bike Lane	On-Street	Yes	2B Bike Lane
Buffered Bike Lane	On-Street	Yes	2A Buffered Bike Lane
Cycle Tracks	On-Street	Yes	1A, 1B, 1C Cycle Tracks
Sidepath	Off-Street	Yes	PP Parallel Bike Path
Shared Use Paths	Off-Street	No	n/a

Site Requesting
PC Rezone

Hurricane's Trail Plan

...roadways, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection.



Trail across the Highway

Site Requesting PC Rezone

Feedback from Police

*...roadways, parks and recreation facilities, **police** and fire protection, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection.*

We have discussed the proposed project with Chief Lynn Excell and he expressed his support for the project. He said that he supports it “150%.” He recognizes the need for additional staff as Hurricane grows.

He was also excited for the prospect of some ‘attainable housing’ as an option for his current and future officers to reside. He said it is difficult for them to find housing and a project like this would be a good fit.

We welcome the idea of officers living onsite as it will lead to a safer community and better overall living environment.

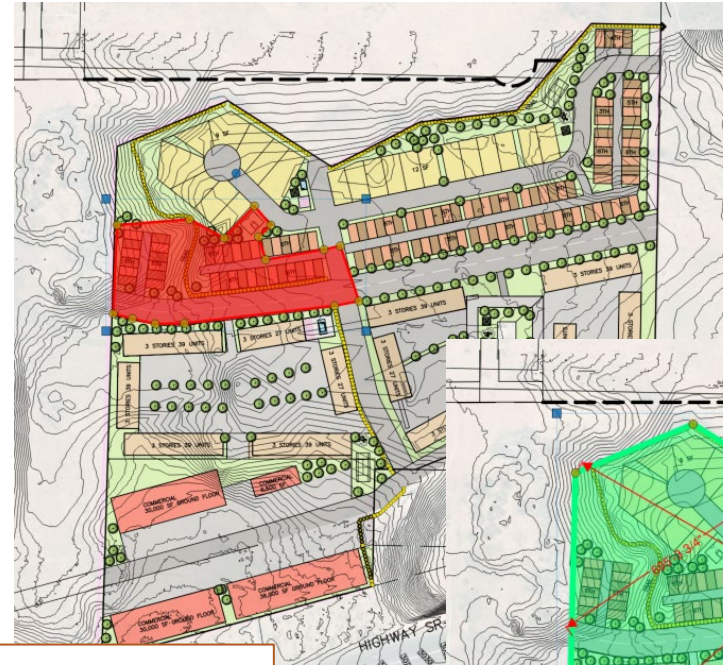


Feedback from Fire

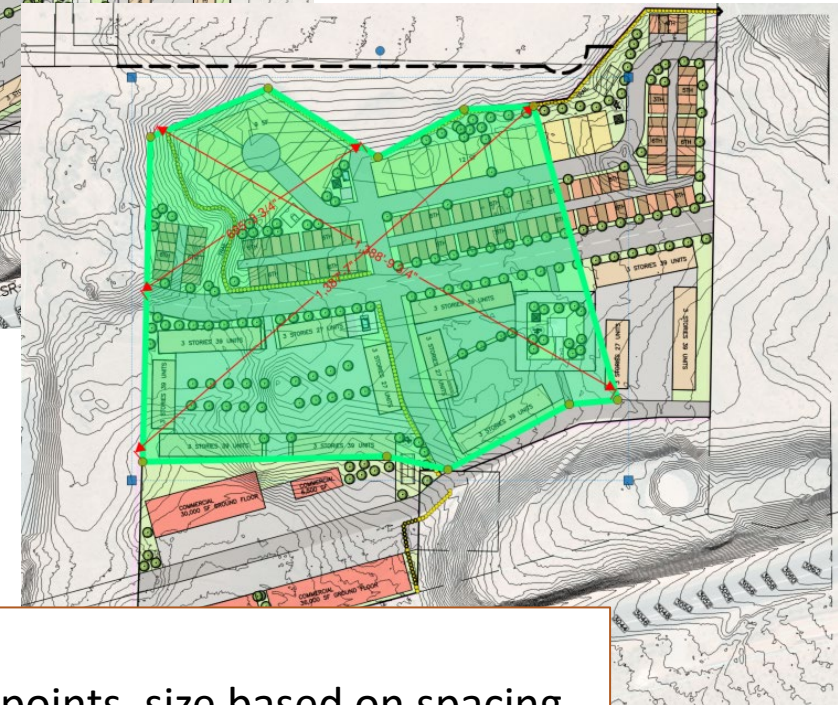


We had a good discussion with the Fire Chief John Postert. He was overall supportive of the project. We discussed how we will have to build in phases according to the fire code depending the access points.

...roadways, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection.



Phase 1:
1 access, 30 units



Phase 2:
2 access points, size based on spacing

Hurricane's Schools

*...roadways, parks and recreation facilities, police and fire protection, **schools**, stormwater drainage systems, water supplies, and wastewater and refuse collection.*

We discussed this project with Bryan Dyer, the Physical Facilities Director for Washington School District. After reviewing the concept plan for our project, Bryan said that they “don’t have any concerns at this time.” He also discussed with us plans for the new elementary within walking distance of our project.



Hurricane's Stormwater Drainage System

...roadways, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection.

Stormwater water will be detained on site and then will integrated with the city system. This has been discussed with the city engineers.

Hurricane's Water Supplies

...roadways, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, **water supplies**, and wastewater and refuse collection.

Water to provided by the City of Hurricane.

- Property is located within the City's service area.
- Property will be served from the upper pressure zone.
- Connection on the north side from the residential development along 340 North. Several proposed 8" stubs
- Connection to the west side from the Wal-Mart Development. (1) 8" stub existing.
- Transmission from the upper pressure zone is located on the south side of the project for connection and to loop the current system.
- A water model will be created to ensure appropriate design of water system.



Hurricane's Wastewater

...roadways, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection.

Provided by Ask Creek Special District.

- Property is located within their service district.
- Property will be served from multiple locations.
 - Connection on the north side from the residential development along 340 North. Several proposed 8" stubs
 - Connection to the west side from the Wal-Mart Development. (2) 10" stubs existing.



Hurricane's Refuse Collection

...roadways, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection.

We contacted Republic Services; they confirmed that we are in their service area and there won't be a problem with capacity.



Hurricane City Power

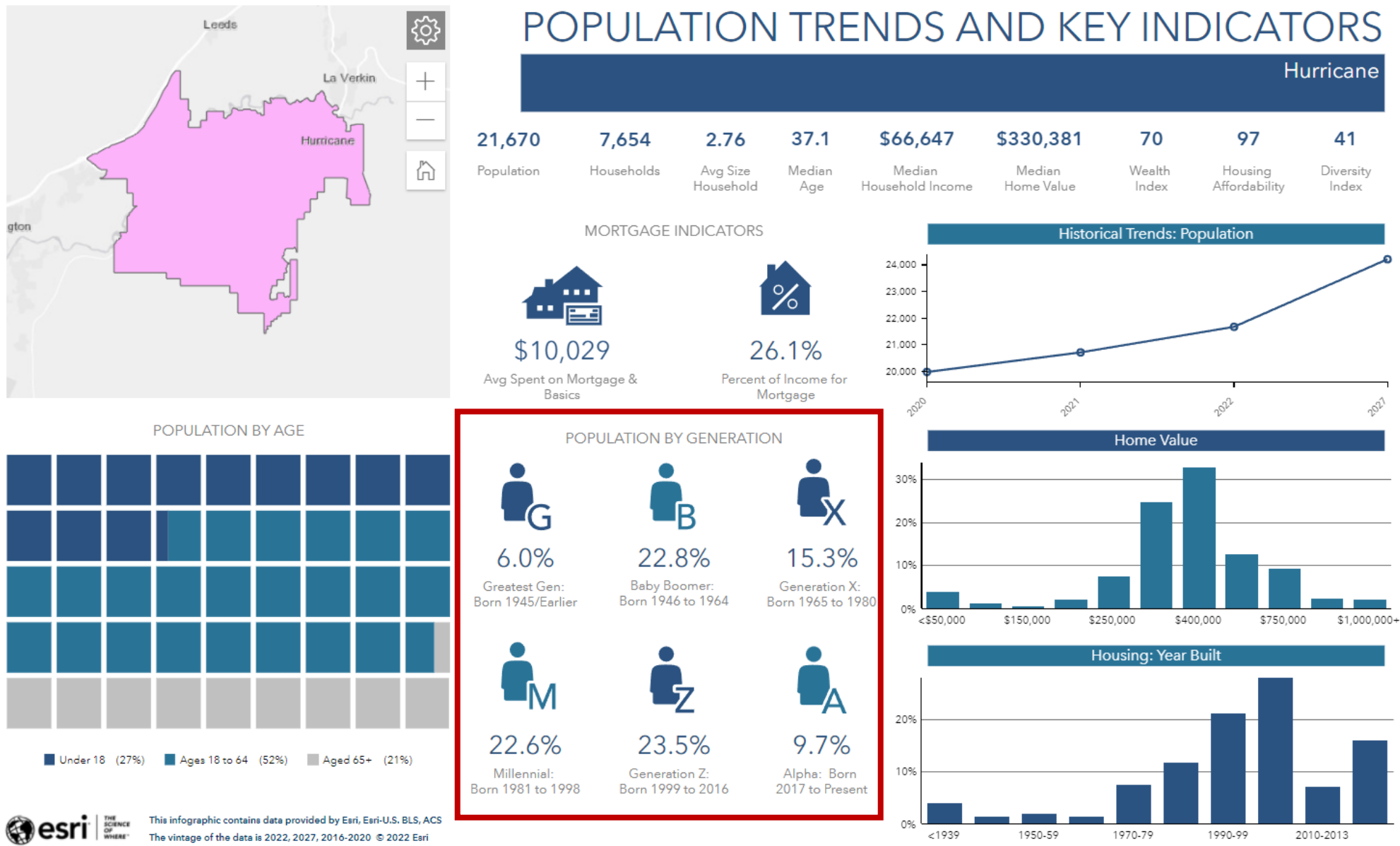
...roadways, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection.



We spoke with Scott Hughes, with Hurricane City Power. He said that there is power available for our project. The current circuit near our property is getting kind of full, but we have other feasible options like moving us onto another circuit or shifting loads.

With all the rezones and PIDs in the last few years, it is reasonable for the City to be cautious and careful, but as far as power is concerned, there is enough available. But it's more of a 'process' than a 'problem'; it's a function of having the infrastructure in place or putting it in place (which would be the responsibility of the developer).

This project will help meet Hurricane's wide demographics



Staff Comments – Planning Commission Recommendation



STAFF COMMENTS

Agenda Date:	10/03/2022
Application Number:	2022-ZC-23 2022-PSP-41
Type of Application:	Zone Change and Preliminary Site Plan Application
Action Type:	Legislative
Applicant:	Steward Land Holdings
Agent:	Brad Brown
Request:	A Zone Change from Highway Commercial to Planned Commercial
Location:	3000 W State St
Zoning:	HC
General Plan Map:	Mixed Use, General Commercial and Single Family

Planning Commission Recommendation

The Planning Commission gave a positive recommendation on the proposed zone change.

Discussion: The applicant is seeking a zone change and preliminary site plan approval from Highway Commercial to Planned Commercial. The applicant is proposing a commercial center, high density residential, and medium density residential. This property is located on the north side of SR-9 to the east of Walmart. Hurricane City Water has two wells and a water tank in the vicinity of this property.

Source: staff report

Staff Comments – Planning Commission Recommendation

Findings:

Staff makes the following findings:

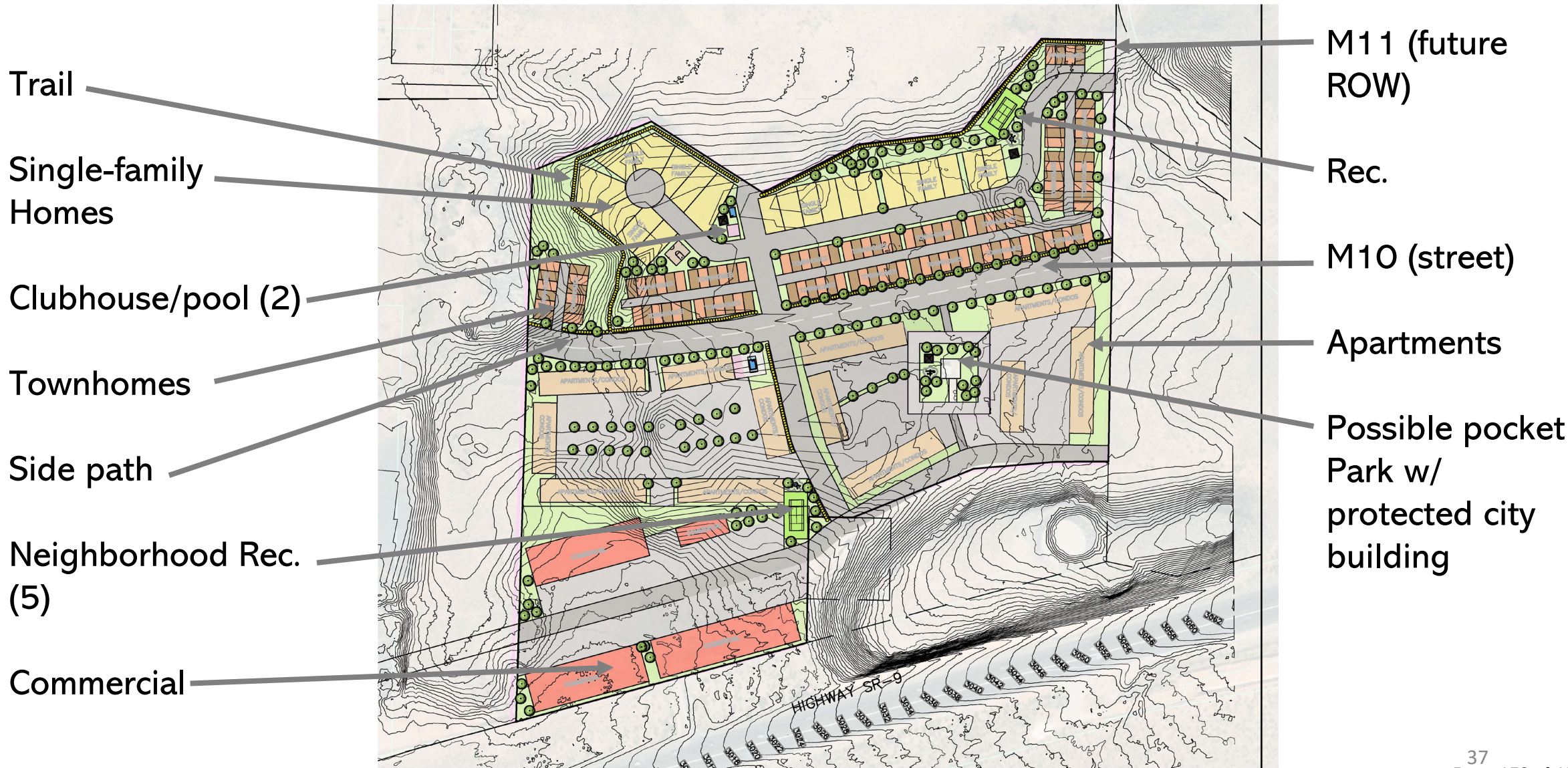
1. The proposed zone change broadly meets the standards of the General Plan Map and goals
2. The proposed zone change is generally harmonious with the approved surrounding development
3. The proposed amendment will have an impact on the area, but there is no development currently in the area.
4. Services are adequate or planned to become adequate for the area.
5. A preliminary site plan has been provided that shows how this property could be developed

Recommendation: Staff recommends the City Council review this application based on standards with Hurricane City Code. Staff is generally supportive of this plan and would recommend approval subject to the four considerations and staff and JUC comments.

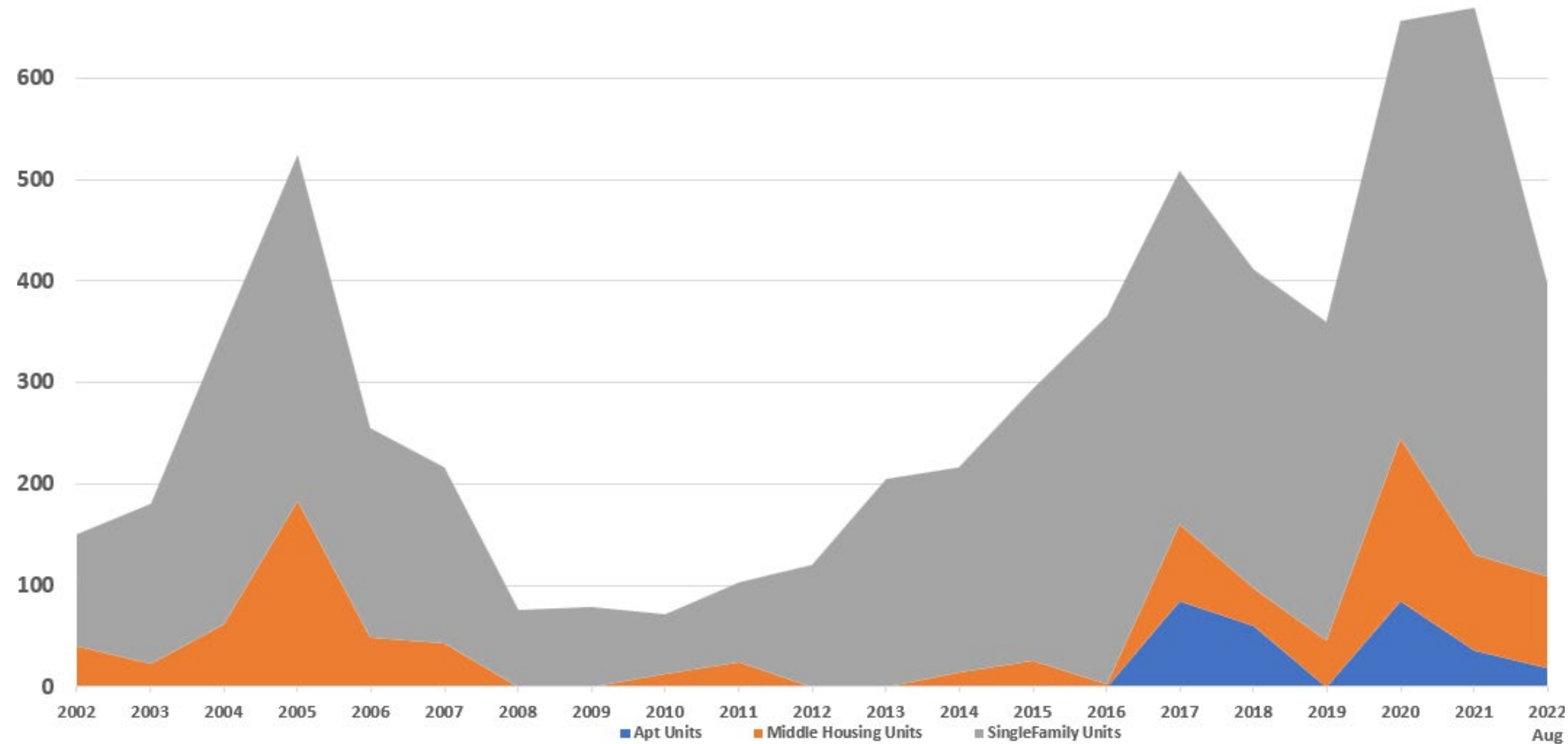
Source: staff report

Schematic Plan

HURRICANE CONCEPT 10.31.2022

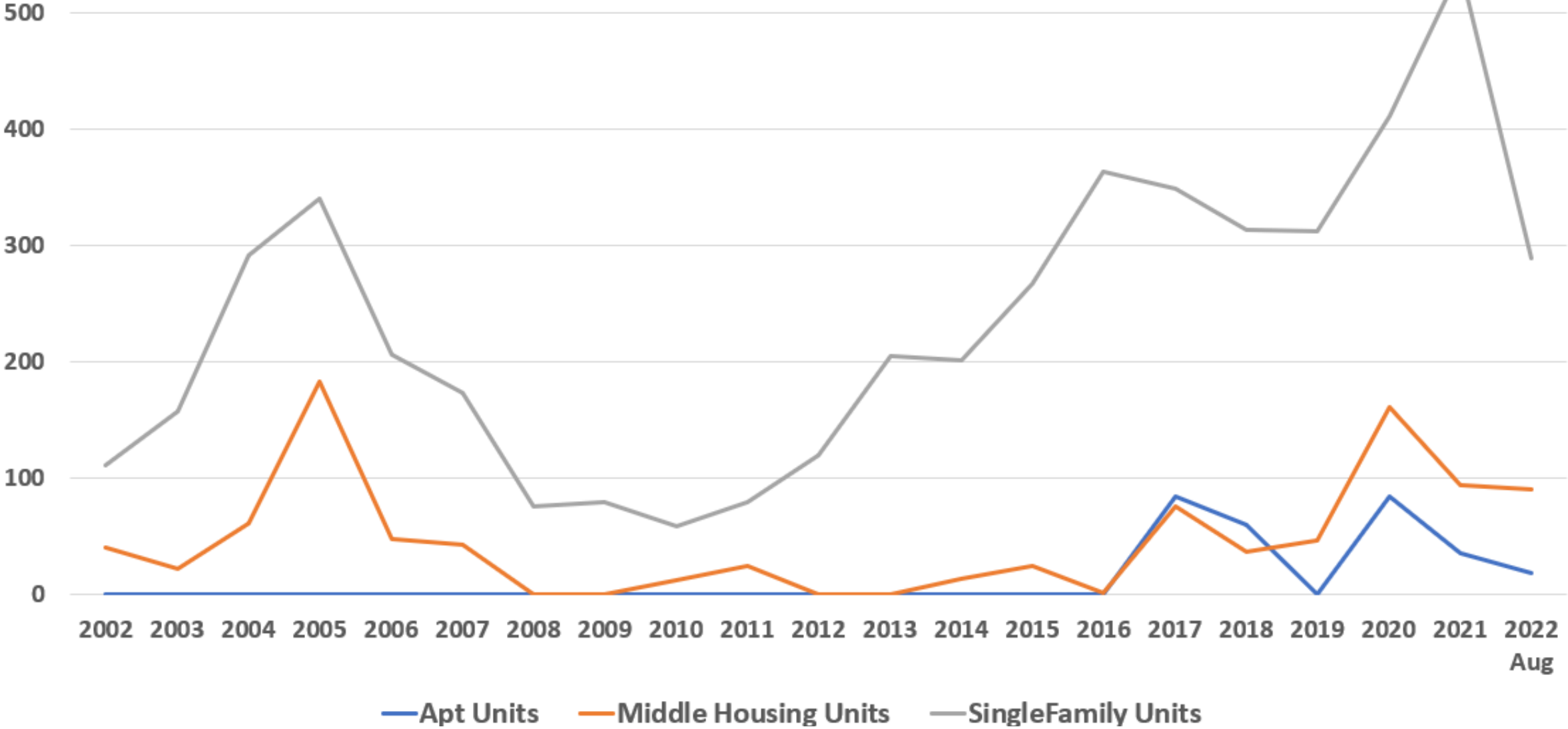


Hurricane Housing Units

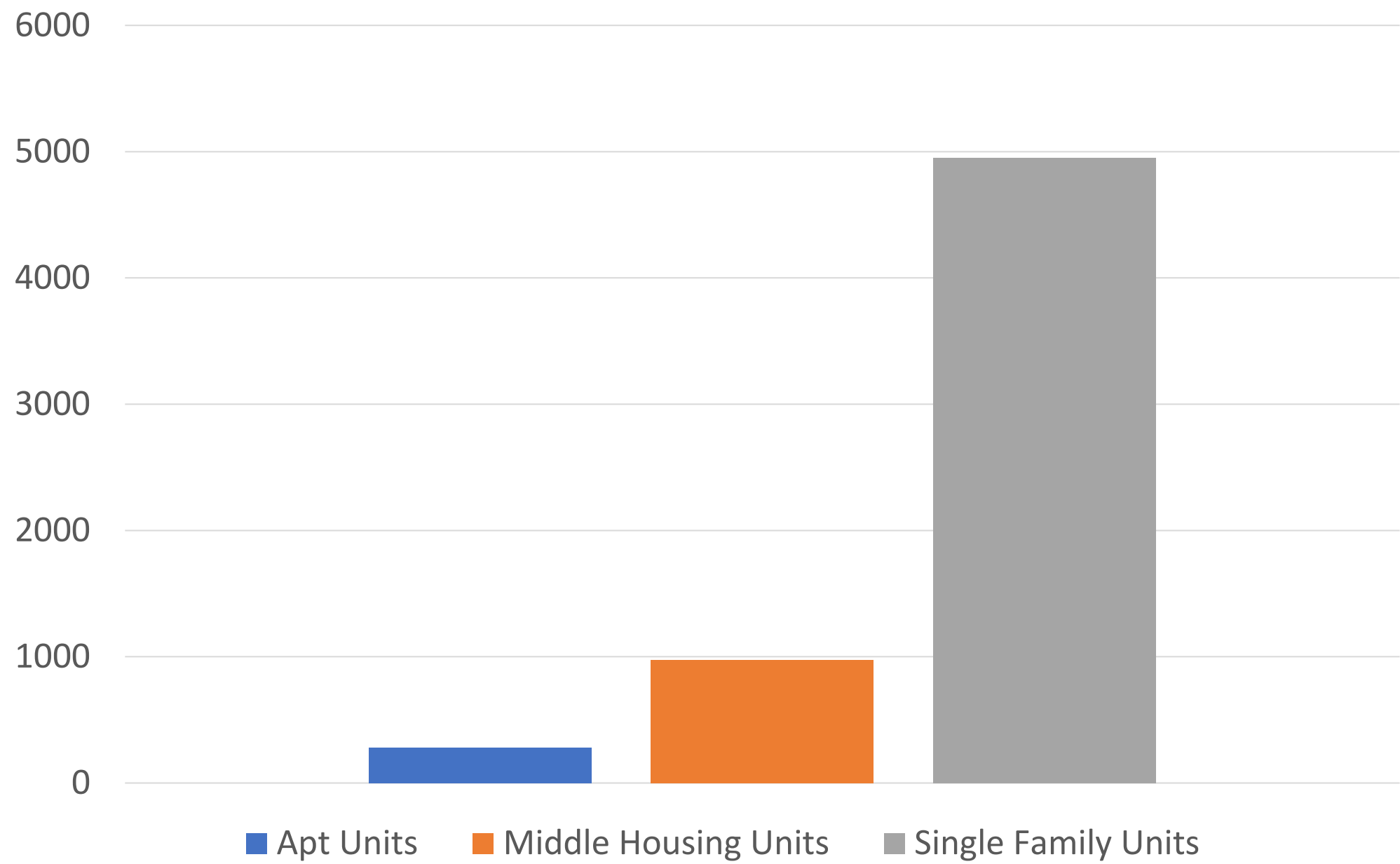


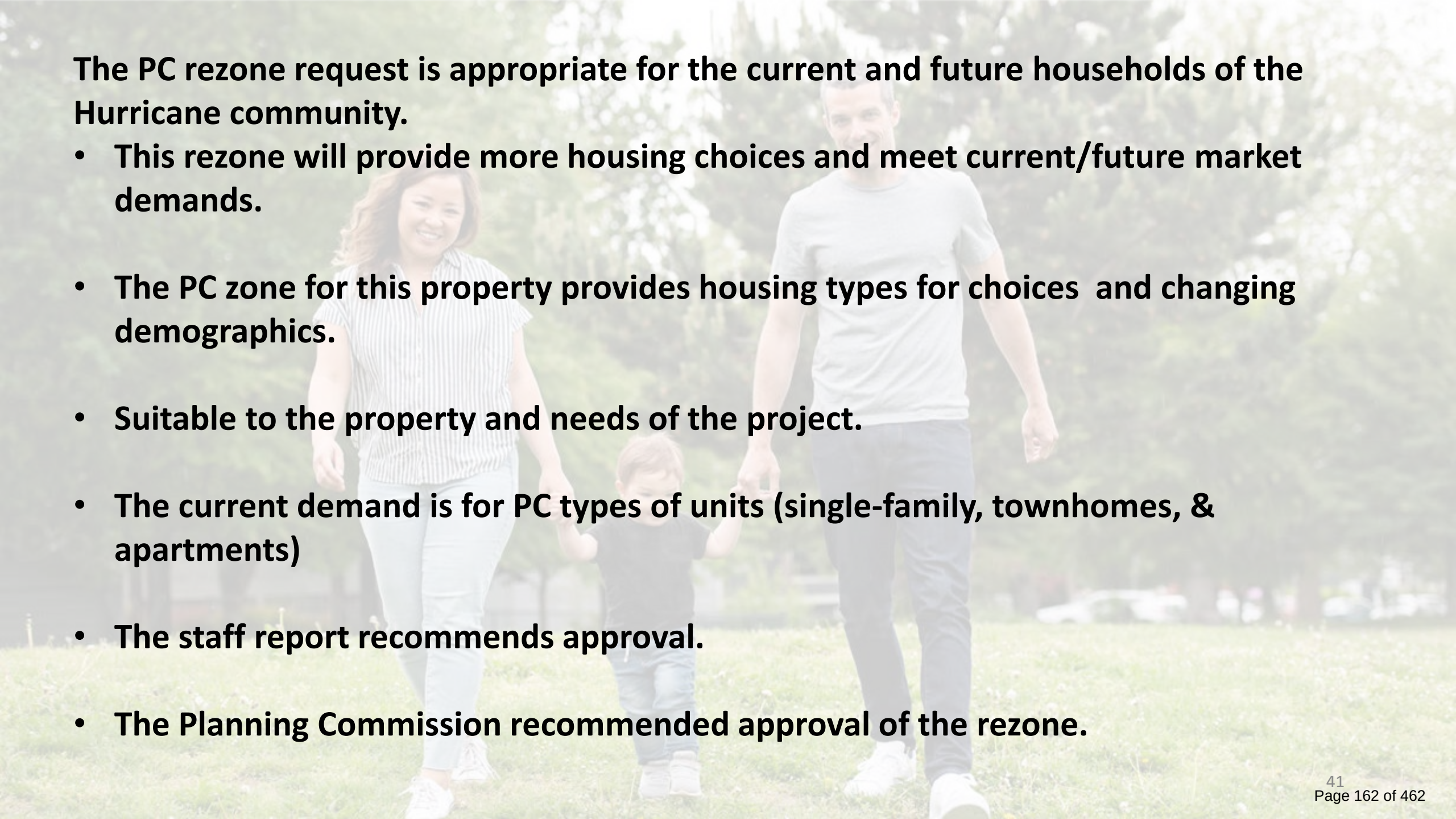
Source: Ivory-Boyer Construction Database

Hurricane Housing Units



Hurricane Housing Units Since 2002





The PC rezone request is appropriate for the current and future households of the Hurricane community.

- **This rezone will provide more housing choices and meet current/future market demands.**
- **The PC zone for this property provides housing types for choices and changing demographics.**
- **Suitable to the property and needs of the project.**
- **The current demand is for PC types of units (single-family, townhomes, & apartments)**
- **The staff report recommends approval.**
- **The Planning Commission recommended approval of the rezone.**



Return HVTA Proposal

Thursday November 17, 2022

Tabled discussion from 10/20/2022



★ Requesting \$3,000.00 - We are asking the cities to reinvest some of the money that the county and state has brought to the area through TRT funds into providing a better experience for tourists and locals alike.

★ Prior Funding from Hurricane City was \$5,430 in 2016 - Hurricane City directly paid invoices for the creating of HVTA in the form of: Attorney fees for By Laws and State filing fees, website design and hosting.

★ Follow Up - 'What is the impact of Tourism?' A question posed by Councilman Hirschi Washington County collected OVER \$1.2 Million in TRT funds in OCTOBER, 2022 alone. Our property taxes ARE lower, according to Greater Zion Tourism, the average homeowner in Washington County pays an average \$1,200 LESS yearly, BECAUSE of these taxes. Tourism IS important to each of us.

★ We are Actively Achieving Our Goals

SOCIAL MEDIA - Over 1,500 followers on Facebook and Instagram

WEBSITE - www.VisitHurricaneValley.com boasts a Calendar and a beautiful, easy to use format to facilitate tourists in their search for things to do and places to go.

GREATER INFLUENCE - We had a direct impact on the Greater Zion ad campaign, recommending they note locations in the Hurricane Valley using their Greater Zion Logo. Also, HVTA submitted the grant to the County for the 600 North Trail from Grandpa's Pond to 200 West (the Connector Trail).

★ Our Future Goals

We have slightly different goals and priorities than the county and state tourism boards, but equally important. While they are focused on getting tourists here and spending millions of taxpayer dollars to do so, our goal is to be the source of information to those millions of tourists who cannot all fit into the park, about other amazing activities to do in the area. The 'responsible' and 'sustainable' parts of our mission are to keep the impact of these millions of humans minimal on our public lands, and for them to want to come back year after year to be able to enjoy more of what there is to do around here.

Special Events and Fundraisers planned for the upcoming 2023-2024 year

- Photo Contest & Silent Auction
- Paddle Board & Paint
- HurriQuest
- Tri-State Jamboree (we are in negotiations on acquiring the hosting of this now)

Long Term Goals

- Develop a Hurricane Valley Trails Map to be distributed throughout the County
- Increase Traffic to our Website

★ Our Mission

Encourage visitors in the Hurricane Valley to extend their stay through education of the many activities, events, and options available outside Zion National Park and promoting Hurricane Valley as the place to "Stay & Play". It is our belief that by doing this while encouraging & supporting sustainable tourism, we will create a better experience for our tourists so that they will want to come back and stay longer - resulting in more transient room tax revenue which is better for our local economy and benefits those of us who call Hurricane Valley our home.

Hurricane City: Bills Paid for Hurricane Valley Tourism Alliance

Year	Payee	Details	Amount
2016	Ben Reusch-Attorney	Draft By-Laws; File required documents with the State	\$2,130.00
2017	Independent Publishing Company	Development of HV Tourism website	\$2,000.00
2017	Independent Publishing Company	Development of HV Tourism website	\$1,000.00
2017	Independent Publishing Company	Website hosting & Maintenance - 6 months @ \$50/month	\$300.00
		TOTAL:	\$5,430.00

Transient Room Taxes

⊕ [Return to Tax Listing \(/index.php?page_id=784\)](#)

Filing frequency: See Sales Related Taxes ([/index.php?page_id=977](#))

Payment frequency: See Sales Related Taxes ([/index.php?page_id=977](#))

Forms: TC-62T ([/forms/current/tc-62ttemplate.xls](#)); must be filed electronically through Taxpayer Access Point (<http://tap.utah.gov/>)

Publications: Pub 25 ([/forms/pubs/pub-25.pdf](#)), Pub 56 ([/forms/pubs/pub-56.pdf](#))

Statutes: §§59-12 Parts 3, 3A, and 6
(<https://le.utah.gov/asp/codelookup/codelookup.asp?chapter=59-12>)

Rules: R865-19S-79 (<https://rules.utah.gov/publicat/code/r865/r865-19s.htm#T48>), R865-19S-96
(<https://rules.utah.gov/publicat/code/r865/r865-19s.htm#T60>)

Revenue: Used by the county or municipality that imposed the tax

See also: Transient Room Taxes ([/index.php?page_id=917](#)) in the Sales Tax section of our site.

Information: **Counties or municipalities may adopt this tax to support tourism, recreation, cultural, convention or airport facilities within their jurisdiction.** It is assessed in addition to sales and use taxes on rentals of lodging accommodations that are less than 30 consecutive days.

Rentals exempt from sales and use taxes are also exempt from this tax.



UTAH STATE TAX COMMISSION
DIVISION OF REVENUE ACCOUNTING

TRT - MONTH OF OCT. 2022

2023-04
OCTOBER 2022

		TOTAL DISTRIB	TOTAL DEDUCT	FINAL DISTRIB	DIVERSIONS	BALANCE OWED	TOTAL PAID	BALANCE FWD
Trans Room Grand Totals:		\$11,036,894.74	\$71,739.82	\$10,965,154.92	\$399,844.42	\$0.00	\$10,565,310.50	\$0.00
Cnty Trans Room Totals:		\$9,143,548.99	\$59,433.07	\$9,084,115.92	\$399,844.42	\$0.00	\$8,684,271.48	\$0.00
Munic Trans Room Totals:		\$1,893,345.75	\$12,306.75	\$1,881,039.00	\$0.00	\$0.00	\$1,881,039.02	\$0.00
CNTY / CITY	LOCALITY	TOTAL DISTRIB	TOTAL DEDUCT	FINAL DISTRIB	DIVERSIONS	BALANCE OWED	TOTAL PAID	BALANCE FWD
18138	South Jordan	\$21,501.23	\$139.76	\$21,361.47	\$0.00	\$0.00	\$21,361.47	\$0.00
18139	South Salt Lake	\$5,376.67	\$34.95	\$5,341.72	\$0.00	\$0.00	\$5,341.72	\$0.00
18142	Taylorsville	\$1,927.51	\$12.53	\$1,914.98	\$0.00	\$0.00	\$1,914.98	\$0.00
18155	West Jordan	\$8,711.90	\$56.63	\$8,655.27	\$0.00	\$0.00	\$8,655.27	\$0.00
18167	West Valley City	\$61,059.57	\$396.89	\$60,662.68	\$0.00	\$0.00	\$60,662.68	\$0.00
19000	San Juan County	\$130,722.58	\$849.70	\$129,872.88	\$0.00	\$0.00	\$129,872.88	\$0.00
19002	Blanding	\$2,919.67	\$18.98	\$2,900.69	\$0.00	\$0.00	\$2,900.69	\$0.00
19004	Bluff	\$6,114.46	\$39.74	\$6,074.72	\$0.00	\$0.00	\$6,074.72	\$0.00
19009	Monticello	\$3,759.85	\$24.44	\$3,735.41	\$0.00	\$0.00	\$3,735.41	\$0.00
20000	Sanpete County	\$20,037.87	\$130.25	\$19,907.62	\$0.00	\$0.00	\$19,907.62	\$0.00
20020	Manti	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
20031	Spring City	\$165.81	\$1.08	\$164.73	\$0.00	\$0.00	\$164.73	\$0.00
21000	Sevier County	\$61,837.37	\$401.94	\$61,435.43	\$0.00	\$0.00	\$61,435.43	\$0.00
21025	Joseph	\$171.39	\$1.11	\$170.28	\$0.00	\$0.00	\$170.28	\$0.00
21031	Montree	\$488.45	\$3.17	\$485.28	\$0.00	\$0.00	\$485.28	\$0.00
21034	Richfield	\$10,735.92	\$69.78	\$10,666.14	\$0.00	\$0.00	\$10,666.14	\$0.00
21035	Salina	\$1,107.34	\$7.20	\$1,100.14	\$0.00	\$0.00	\$1,100.14	\$0.00
22000	Summit County	\$912,355.05	\$5,930.31	\$906,424.74	\$0.00	\$0.00	\$906,424.74	\$0.00
22006	Coalville	\$2,892.96	\$18.80	\$2,874.16	\$0.00	\$0.00	\$2,874.16	\$0.00
22017	Henefer	\$9.25	\$0.06	\$9.19	\$0.00	\$0.00	\$9.19	\$0.00
22030	Park City	\$221,312.05	\$1,438.53	\$219,873.52	\$0.00	\$0.00	\$219,873.52	\$0.00
23000	Tooele County	\$64,828.30	\$421.38	\$64,406.92	\$0.00	\$0.00	\$64,406.92	\$0.00
23048	Tooele City	\$5,295.16	\$34.42	\$5,260.74	\$0.00	\$0.00	\$5,260.74	\$0.00
24000	Uintah County	\$81,231.95	\$528.01	\$80,703.94	\$0.00	\$0.00	\$80,703.94	\$0.00
24014	Naples	\$2,736.15	\$17.78	\$2,718.37	\$0.00	\$0.00	\$2,718.37	\$0.00
24024	Vernal	\$11,415.91	\$74.20	\$11,341.71	\$0.00	\$0.00	\$11,341.71	\$0.00
24028	Ballard	\$2,411.72	\$15.68	\$2,396.04	\$0.00	\$0.00	\$2,396.04	\$0.00
25000	Utah County	\$549,096.19	\$3,569.13	\$545,527.06	\$0.00	\$0.00	\$545,527.06	\$0.00
25030	Eagle Mountain	\$501.18	\$3.26	\$497.92	\$0.00	\$0.00	\$497.92	\$0.00
25066	Lehi	\$32,606.60	\$211.94	\$32,394.66	\$0.00	\$0.00	\$32,394.66	\$0.00
25070	Lindon	\$473.35	\$3.08	\$470.27	\$0.00	\$0.00	\$470.27	\$0.00
25083	Orem	\$22,804.51	\$148.23	\$22,656.28	\$0.00	\$0.00	\$22,656.28	\$0.00
25085	Payson	\$2,142.26	\$13.92	\$2,128.34	\$0.00	\$0.00	\$2,128.34	\$0.00
25088	Pleasant Grove	\$4,139.65	\$26.91	\$4,112.74	\$0.00	\$0.00	\$4,112.74	\$0.00
25090	Provo	\$49,463.98	\$321.52	\$49,142.46	\$0.00	\$0.00	\$49,142.46	\$0.00
25103	Spanish Fork	\$4,898.49	\$31.84	\$4,866.65	\$0.00	\$0.00	\$4,866.65	\$0.00
25106	Springville	\$12,592.57	\$81.85	\$12,510.72	\$0.00	\$0.00	\$12,510.72	\$0.00
25117	Vineyard	\$706.07	\$4.59	\$701.48	\$0.00	\$0.00	\$701.48	\$0.00
26000	Wasatch County	\$269,790.79	\$1,753.64	\$268,037.15	\$0.00	\$0.00	\$268,037.15	\$0.00
26008	Heber	\$10,470.36	\$68.06	\$10,402.30	\$0.00	\$0.00	\$10,402.30	\$0.00
26011	Midway	\$12,831.27	\$83.40	\$12,747.87	\$0.00	\$0.00	\$12,747.87	\$0.00
26020	Hidout	\$36.36	\$0.24	\$36.12	\$0.00	\$0.00	\$36.12	\$0.00
27000	Washington County	\$1,243,424.19	\$8,082.26	\$1,235,341.93	\$0.00	\$0.00	\$1,235,341.93	\$0.00

October 20, 2022



UTAH STATE TAX COMMISSION
DIVISION OF REVENUE ACCOUNTING

2023-04

OCTOBER 2022

Trans Room Grand Totals:

Cnty Trans Room Totals:

Munic Trans Room Totals:

TOTAL DISTRIB

\$11,036,894.74

\$9,143,548.99

\$1,893,345.75

TOTAL DEDUCT

\$71,739.82

\$59,433.07

\$12,306.75

FINAL DISTRIB

\$10,965,154.92

\$9,084,115.92

\$1,881,039.00

DIVERSIONS

\$399,844.42

\$399,844.42

\$0.00

BALANCE OWED

\$0.00

\$0.00

\$0.00

TOTAL PAID

\$10,565,310.50

\$8,684,271.48

\$1,881,039.02

BALANCE FWD

\$0.00

\$0.00

\$0.00

CNTY /
CITY LOCALITY

	TOTAL DISTRIB	TOTAL DEDUCT	FINAL DISTRIB	DIVERSIONS	BALANCE OWED	TOTAL PAID	BALANCE FWD
27002 Apple Valley	\$1,086.93						
27008 Hurricane	\$27,771.31	\$7.07	\$1,079.86	\$0.00	\$0.00	\$1,079.86	\$0.00
27010 Ivins	\$11,863.97	\$180.51	\$27,590.80	\$0.00	\$0.00	\$27,590.80	\$0.00
27011 La Verkin	\$12,182.07	\$77.12	\$11,786.85	\$0.00	\$0.00	\$11,786.85	\$0.00
27019 Rockville	\$3,731.88	\$79.18	\$12,102.89	\$0.00	\$0.00	\$12,102.89	\$0.00
27020 St. George	\$90,431.49	\$24.26	\$3,707.62	\$0.00	\$0.00	\$3,707.62	\$0.00
27021 Santa Clara	\$12,844.82	\$587.80	\$89,843.69	\$0.00	\$0.00	\$89,843.69	\$0.00
27023 Springdale	\$67,299.40	\$83.49	\$12,761.33	\$0.00	\$0.00	\$12,761.33	\$0.00
27024 Toquerville	\$392.03	\$437.45	\$66,861.95	\$0.00	\$0.00	\$66,861.95	\$0.00
27026 Virgin	\$11,031.51	\$2.55	\$389.48	\$0.00	\$0.00	\$389.48	\$0.00
27027 Washington City	\$21,635.26	\$71.70	\$10,959.81	\$0.00	\$0.00	\$10,959.81	\$0.00
27035 Hildale	\$1,102.54	\$140.63	\$21,494.63	\$0.00	\$0.00	\$21,494.63	\$0.00
28000 Wayne County	\$56,881.22	\$7.17	\$1,095.37	\$0.00	\$0.00	\$1,095.37	\$0.00
28001 Bicknell	\$48.43	\$369.73	\$56,511.49	\$0.00	\$0.00	\$56,511.49	\$0.00
28005 Hanksville	\$1,017.69	\$0.31	\$48.12	\$0.00	\$0.00	\$48.12	\$0.00
29000 Weber County	\$251,879.74	\$6.61	\$1,011.08	\$0.00	\$0.00	\$1,011.08	\$0.00
29012 Farr West	\$1,940.51	\$12.61	\$250,242.52	\$0.00	\$0.00	\$250,242.52	\$0.00
29019 Huntsville	\$1,382.38	\$8.99	\$1,373.39	\$0.00	\$0.00	\$1,373.39	\$0.00
29022 Marriott-Staterville	\$4,987.47	\$32.42	\$4,955.05	\$0.00	\$0.00	\$4,955.05	\$0.00
29027 Ogden	\$25,337.67	\$164.69	\$25,172.98	\$0.00	\$0.00	\$25,172.98	\$0.00
29036 Riverdale	\$2,048.39	\$13.31	\$2,035.08	\$0.00	\$0.00	\$2,035.08	\$0.00
29043 Uintah	\$2,662.36	\$17.31	\$2,645.05	\$0.00	\$0.00	\$2,645.05	\$0.00
29051 West Haven	\$7,860.17	\$51.09	\$7,809.08	\$0.00	\$0.00	\$7,809.08	\$0.00

[illegible]

Events for November 2022

December »

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
	1	2	3	4	5	6
7	8	9	10	11 VETERANS DAY	12 Buddi Casady Race Golf on the Beach 2 Scout Golf Classic View All 4 Events »	13
14	15	16	17 Idaho Jones and the Quest for Anasazi's Lost Secret	18 Hurricane City Emergency Preparedness Fair Dutch Oven Delights	19	20
21	22	23	24 THANKSGIVING Taqueria Trot Turkey Trot 2022 Thanksgiving Dinner at Sand Hollow Resort Grille	25 Holiday Market 2022 at Legacy Park	26 Holiday Market 2022 at Legacy Park Southwest Barrel Racing 2022 Thanksgiving Trail Ride With Dixie 4 Wheel Drive View All 4 Events »	27
28 Hurricane City Christmas Tree Lighting	29	30				

December »

OUR WEBSITE CALENDAR FOR NOVEMBER



Events for November 18 - November 28

EVENTS FROM

2022-12

SEARCH

Keyword

FIND EVENTS

VIEW AS

List ▼

[« Previous Events](#)

[Next Events »](#)

NOVEMBER 2022

Hurricane City Emergency Preparedness Fair

November 18 @ 5:00 pm - 7:30 pm

Hurricane Community Center, 63 S 100 W
Hurricane, 84737 United States + [Google Map](#)

FREE

[Find out more »](#)

Dutch Oven Delights

November 18 @ 5:30 pm - 8:30 pm

Utah State University Extension - Washington County, 339 5500 W
Hurricane, UT 84737 United States + [Google Map](#)

\$15

Have you ever wondered how to use a dutch oven beyond the traditional dutch oven potatoes? Here's your chance to learn!

[Find out more »](#)

THANKSGIVING

November 24

[Find out more »](#)

Toquerville Trails Turkey Trot 2022

November 24 @ 10:00 am

\$20

Wake up and chase Turkey! This is a family and community tradition 18 years in the making. It starts Thanksgiving Morning (11/24/2022) at 10 am in Toquerville Park. The finish is also in the Park. Come and build up a great appetite for later in the day. Important! This is a trail run! It is not run on the roads. Toquerville's trails can be rough and rocky, presenting what we think is a fun challenge! Much of the course will...

[Find out more »](#)

Thanksgiving Dinner at Sand Hollow Resort Grille

November 24 @ 10:00 am - 3:00 pm

**Sand Hollow Resort Grille, 5662 W Clubhouse Drive
Hurricane, UT 84737 United States + [Google Map](#)**

\$64.99

Celebrate Thanksgiving with the people you love with a gorgeous view and mouth-watering food. Seatings: 10 AM - 3 PM Last seating at 2:30 PM
Pricing: \$64.99 adults \$36.99 kids Initial inquiries will be made to Karen at Karen@sandhollowresorts.com to reserve reservation times Please look at the discussion/postings on this page for the full menu and details

[Find out more »](#)

Holiday Market 2022 at Legacy Park

November 25 - November 26

**Legacy Park, 5500 700 S Street
Hurricane, UT 84737 United States + [Google Map](#)**

FREE

Get your holiday shopping done while supporting local businesses, crafters, and artisans!

[Find out more »](#)

Southwest Barrel Racing

November 26

**Washington County Regional Park, 5500 West 700 South
Hurricane, UT 84737 United States + [Google Map](#)**

SWBRA 2022 schedule. Most dates are the same as in years past but I added a 3 day race at the CrossHollow in Cedar City. I will be working on added money for this race and I'm excited to be adding a multi day event in Cedar. Please remember that all dates, times and locations are subject to change as needed. Thanks everyone that supports SWBRA MORE INFO PLEASE CALL JANIE (435)619-0193 EMAIL rjohnson@infowest.com

[Find out more »](#)

2022 Thanksgiving Trail Ride With Dixie 4 Wheel Drive

November 26 @ 10:00 am - 3:00 pm

**Sand Hollow State Park, 3351 S Sand Hollow Road
Hurricane, UT 84737 United States + [Google Map](#)**

Join us for a Plan B - Thanksgiving Trail Ride With Dixie 4-Wheel Drive! We will be running Plan B on Saturday, November 26th and we will meet at 10 AM at the water tanks on Sand Mountain. Please make sure to remember a flag, snacks, water, lunch, and a chair if you want one. This trail is rated a 7, so you will need lockers and at least 35" tires. Location Sand Hollow State Park 3351 Sand Hollow...

[Find out more »](#)

Holiday Lighting Ceremony "Where the Magic Begins"

November 26 @ 4:00 pm - 7:00 pm

Historic Downtown Cedar City Cedar City, UT United States + [Google Map](#)

The magic of the holiday season begins in Historic Downtown Cedar City on Saturday, November 26th, 2022, with festivities beginning as early as 4:00pm. at the Downtown Lighting Ceremony and opening night of the Holiday Tree Jubilee fundraising event. Downtown businesses and food trucks will be available at 4pm. The tree decorating contest with Iron County Care & Share will start at 4:14pm, official Lighting Ceremony program will start at 5:15pm. Featuring local entertainment, fun, and of course the big...

[Find out more »](#)

Hurricane City Christmas Tree Lighting

November 28 @ 6:00 pm

Hurricane City Leisure & Recreation, 63 S 100 W
Hurricane, UT 84737 United States + [Google Map](#)

FREE

Join us as we LIGHT the Hurricane City Christmas tree. We will expect a visit from Santa, enjoy donuts and hot chocolate, a live nativity, and some horse drawn carriage rides.

[Find out more »](#)

[« Previous Events](#)

[Next Events »](#)

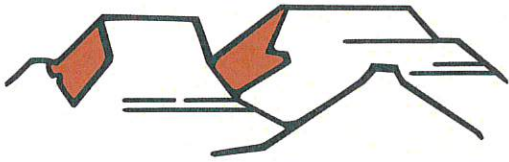
[+ EXPORT EVENTS](#)

Upcoming Events

There are no upcoming events at this time.



Designed by **Elegant Themes** | Powered by **WordPress**



PLANNING & ZONING
HURRICANE CITY
UTAH

147 N 870 W Hurricane UT
PHONE: 435.635.2811 FAX: 435.635.2184

ZONE CHANGE APPLICATION

For office use only: \$500.00 Fee
File No. 2022-2035
Receipt No. _____

Name: Pecan Valley Holdings LLC Telephone: 435-467-2216

Address: 5183 W 2040 S, Hurricane, UT 84737 Fax No. _____

Email: wyltile@gmail.com Agent Email: bwalker@civilscience.com

Agent (If Applicable): Chris Wyler / Civil Science Telephone: 435-668-4023

Address/Location of Subject Property: 5300 West 2600 South Pecan Valley

Tax ID of Subject Property: H-4138-L & H-4138-E Existing Zone District: A-5

Proposed Zoning District and reason for the request (Describe, use extra sheet if necessary) RR

The purpose of this ZC application is to transfer the existing RR zoning of 3.737 acres from the north area and move it south as shown on the exhibit as 8.357 acres. A decrease of 0.266 acres.

Submittal Requirements: The zone change application shall provide the following:

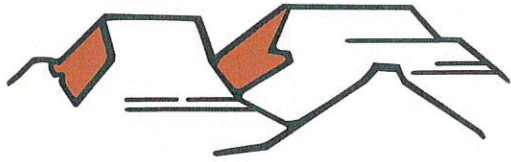
- ___a. The name and address of every person or company the applicant represents.
- ___b. An accurate 11 x 17-inch property map showing the existing and proposed zoning classifications.
- ___c. All abutting properties showing present zoning classifications.
- ___d. An accurate legal description of the 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: _____



PLANNING & ZONING
HURRICANE CITY
UTAH

147 N 870 W Hurricane UT
PHONE: 435.635.2811 FAX: 435.635.2184

ZONE CHANGE APPLICATION

For office use only: \$500.00 Fee

File No. _____

Receipt No. _____

Name: Pecan Valley Holdings LLC Telephone: 435-467-2216

Address: 5183 W 2040 S, Hurricane, UT 84737 Fax No. _____

Email: wyltile@gmail.com Agent Email: bwalker@civilscience.com

Agent (If Applicable): Chris Wyler / Civil Science Telephone: 435-668-4023

Address/Location of Subject Property: 5300 West 2600 South Pecan Valley

Tax ID of Subject Property: H-4138-L & H-4138-E Existing Zone District: RR & A-5

Proposed Zoning District and reason for the request (Describe, use extra sheet if necessary) RM-1 (with PDO)

The RM-1 with PDO overlay area totals 18.363 acres containing townhome units for a
density of 4.2 D.U./acre. The PDO will provide a recreation building, parking and park area.

Submittal Requirements: The zone change application shall provide the following:

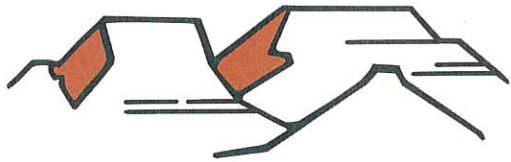
- ___a. The name and address of every person or company the applicant represents.
- ___b. An accurate 11 x 17-inch property map showing the existing and proposed zoning classifications.
- ___c. All abutting properties showing present zoning classifications.
- ___d. An accurate legal description of the 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: _____



PLANNING & ZONING HURRICANE CITY UTAH

147 N 870 W Hurricane UT
PHONE: 435.635.2811 FAX: 435.635.2184

PRELIMINARY SITE PLAN APPLICATION

For office use only: \$200.00 Fee
File No. 2622-PSA-93
Receipt No. _____

Name: Chris Wyler Telephone: 435-467-2216

Address: 444 E Tabernacle Bld B Ste 201, St. George 84770 Fax No. _____

Email: wyltile@gmail.com Agent Email: bwalker@civilsience.com

Agent (If Applicable): Civil Science Telephone: 435-668-4023

Address/Location of Subject Property: 5200 West 2500 South Pecan Valley

Tax ID of Subject Property: H-4138-B Zone District: Resort Rec

Proposed Use: (Describe, use extra sheet if necessary. Include total number of lots) Proposed 299 town home units and 17 condo units with a recreation commercial building, parking, and RV/boat parking area on 48.2 acres.

The preliminary site plan application is has 2 proposed zoning of RM-1 with PDO and RR.
This application shall be accompanied by the following:

- ____ 1. A vicinity map showing the general location of the project.
- ____ 2. Three (3) copies of a site plan showing:
 - ____ Topography showing 2' contours, identification of 30% or greater slopes:
 - ____ The layout of proposed uses.
 - ____ Location of open space when applicable.
 - ____ Proposed access to the property and traffic circulation patterns.
 - ____ Adjoining properties and uses:
 - ____ Proposed reservations for parks, playgrounds, school, and any other public facility sites, if any.
- ____ 3. Preliminary utility plan, including water, sewer, and storm drainage plans, and including access points to utilities.
- ____ 4. Tables showing the number of acres in the proposed development and a land use summary; and
- ____ 5. A phased development plan if applicable.
- ____ 6. Warranty deed or preliminary title report or other document (see attached Affidavit) showing evidence that the applicant has control of the property
- ____ 7. Signed and notarized Acknowledgment Water Supply (see attached)

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. Planning Commission meetings are held on the second Thursday and the 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 due to an incomplete application could result in a month's delay.

.....
(Office Use Only)

Date Received: _____ Received by: _____

Date application deemed to be complete: _____ Completion determination made by: _____



- U.S. Forest Service
- U.S. Forest Service Wilderness
- Bureau of Land Management
- Bureau of Land Management Wildlife
- National Park Service
- Shivwits 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

Pecan Valley Resort
Zone Change
Radius = 250'
9/12/2022

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.

HUNTER LYNDSLEY
H-4138-D
2413 S 5300 W
HURRICANE, UT 84737

SPEARS JOSHUA & BRANDI
H-PEV-3-50
1541 S 2400 E
HEBER CITY, UT 84032

STRATTON MARK L & AMYE C
H-4138-F
1925 TURF SOD RD
HURRICANE, UT 84737-3144

SANDS OF TIME ESTATES LLC
H-4139
2092 S 5200 W
HURRICANE, UT 84737

SYCAMORE VILLAGE LLC
H-4-2-10-221
2804 E 2000 S
SAINT GEORGE, UT 84790

WYLER CHRISTOPHER W
H-PEV-3-60
5202 W 2250 S
HURRICANE, UT 84737

LAW HOLDINGS LLC
H-4138-A
5202 W 2250 S
HURRICANE, UT 84737

FREI LOWELL H TR
H-4138-N
2845 S 5300 W
HURRICANE, UT 84737

PECAN VALLEY HOLDINGS LLC
H-4138-B-1
5202 W 2250 S
HURRICANE, UT 84737

BLAKE THOMAS A TR
H-4138-J
124 N MAIN
LA VERKIN, UT 84745

COOK JOHN & MELINDA
H-4-2-15-110
15 N MOSS HILL DR
BOUNTIFUL, UT 84010

PECAN VALLEY HOLDINGS LLC
H-4138-L
5202 W 2250 S
HURRICANE, UT 84737

STRATTON DYLAN
H-4138-K
PO BOX 803
NEW HARMONY, UT 84757

ALCOA HOLDINGS LLC
H-4128-A
1204 E SILVER SHADOWS DR
WASHINGTON, UT 84780

ALCOA HOLDINGS LLC
H-4128-G
1204 E SILVER SHADOWS DR
WASHINGTON, UT 84780

FREI LOWELL H TR
H-4138-C
2845 S 5300 W
HURRICANE, UT 84737

PECAN VALLEY HOLDINGS LLC
H-4138-B
5202 W 2250 S
HURRICANE, UT 84737

LH FREI LLC
H-4141
2845 S 5300 W
HURRICANE, UT 84737

PISTACHIO ORCHARDS LAND LLC
H-4136-A
2501 S ANTENNA AVE
HURRICANE, UT 84737

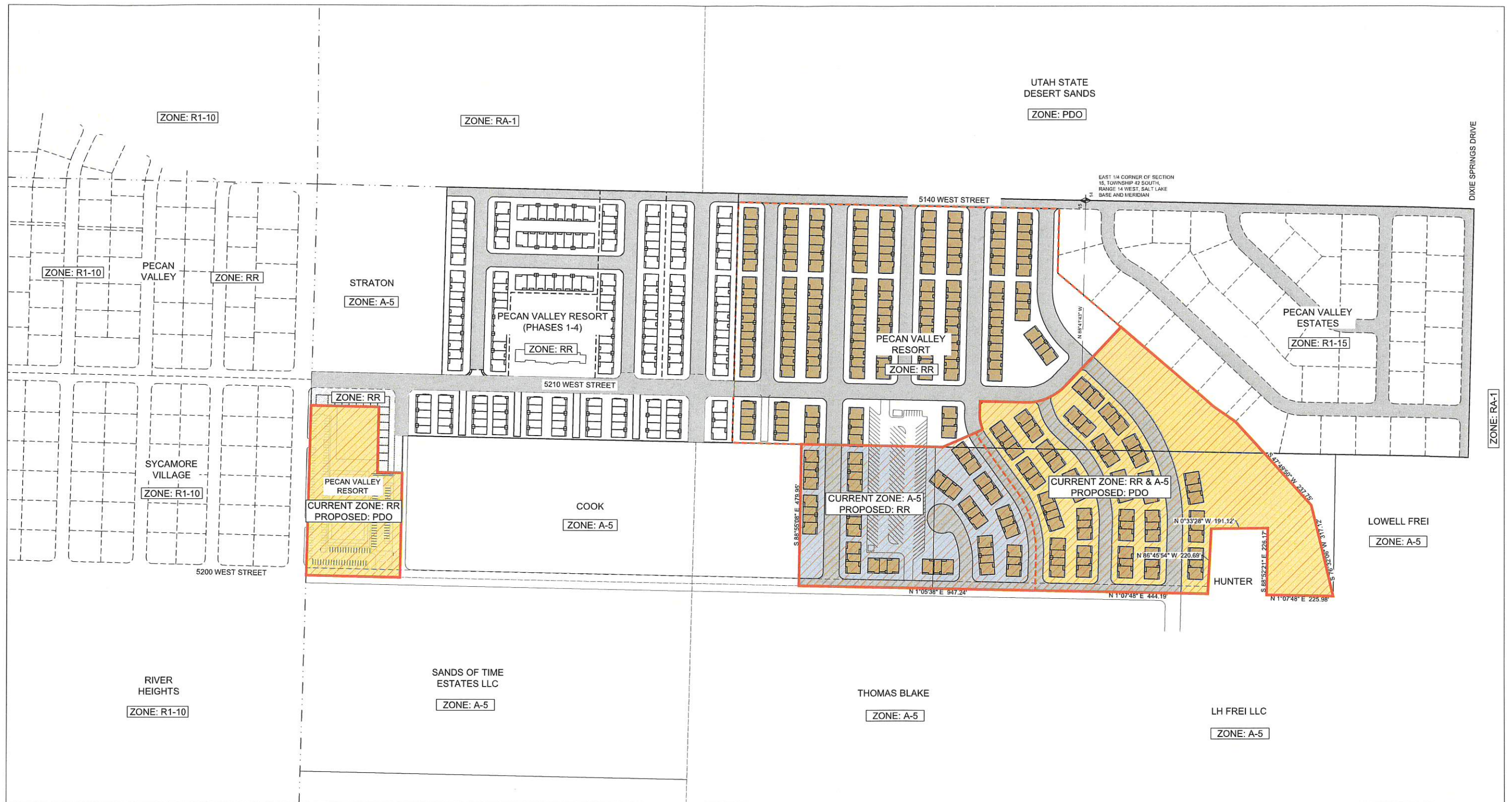
WYLER CHRISTOPHER
H-4-2-10-224
5202 W 2250 S
HURRICANE, UT 84737

UTAH STATE
H-4136-D-SLL
113 E 200 N STE 202
SAINT GEORGE, UT 84790

PECAN VALLEY HOLDINGS LLC
H-4138-B
5202 W 2250 S
HURRICANE, UT 84737

PECAN VALLEY HOLDINGS LLC
H-4138-E
5202 W 2250 S
HURRICANE, UT 84737

COCCIMIGLIO DAVE
H-PEV-3-59
1885 E 10225 S
SANDY, UT 84092



**PARCEL H-4138-E & H-4138-L
COMBINED LEGAL DESCRIPTION**

BEGINNING AT A POINT N 88°41'43" W 845.27 FEET ALONG THE CENTER SECTION LINE OF SECTION 15, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SALT LAKE BASE AND MERIDIAN, FROM THE EAST QUARTER CORNER OF SAID SECTION 15, POINT BEING ON THE WEST LINE OF A PARCEL MORE PARTICULARLY DESCRIBED IN DOCUMENT NO. 20210017450, RECORDED AND ON FILE IN THE OFFICE OF THE RECORDER, WASHINGTON COUNTY, STATE OF UTAH, AND RUNNING THENCE S 1°07'48" W 624.89 FEET ALONG SAID LINE, TO THE NORTHEAST CORNER OF A PARCEL MORE PARTICULARLY DESCRIBED IN DOCUMENT NO. 20220015183, RECORDED AND ON FILE IN THE OFFICE OF SAID RECORDER; THENCE ALONG SAID PARCEL THE FOLLOWING TWO (2) COURSES, (1) S 47°48'59" W 237.75 FEET, (2) THENCE S 78°32'05" W 317.12 FEET, TO A POINT ON THE EAST 1/16TH LINE OF SAID SECTION 15, THENCE N 1°07'48" E 225.98 FEET ALONG SAID LINE, TO THE SOUTHWEST CORNER OF A PARCEL MORE PARTICULARLY DESCRIBED IN DOCUMENT NO. 20170950011, RECORDED AND ON FILE IN THE OFFICE OF SAID RECORDER; THENCE ALONG SAID PARCEL THE FOLLOWING THREE (3) COURSES, (1) S 86°52'21" E 228.17 FEET, (2) THENCE N 0°33'28" W 191.32 FEET, (3) THENCE N 86°45'54" W 220.68 FEET, TO A POINT ON THE SAID EAST 1/16TH LINE, THENCE N 1°07'48" E 444.19 FEET ALONG SAID LINE, TO THE CENTER EAST 1/16TH CORNER, THENCE N 1°05'38" E 947.24 FEET ALONG THE EAST 1/16TH LINE OF SAID SECTION 15, TO THE SOUTHWEST CORNER OF A PARCEL MORE PARTICULARLY DESCRIBED IN DOCUMENT NO. 20140011173, RECORDED AND ON FILE IN THE OFFICE OF SAID RECORDER, THENCE S 88°52'21" E 470.16 FEET ALONG THE SOUTH LINE OF SAID PARCEL, TO A POINT ON THE WEST LINE OF SAID PARCEL MORE PARTICULARLY DESCRIBED IN DOCUMENT NO. 20210017450, THENCE S 1°05'47" W 949.11 FEET ALONG SAID LINE, TO THE POINT OF BEGINNING.

CONTAINS 18.09 ACRES MORE OR LESS

- AREA OF ZONE CHANGE APPLICATION
- PROPOSED PDO ZONING (18.363 ACRES, 4.2 D.U./ACRE)
- PROPOSED NEW RR ZONING (8.357 ACRES, 5.1 D.U./ACRE)
- EXISTING RR ZONING

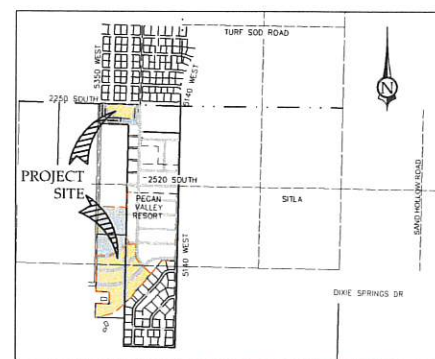
- EXISTING APPROVED RR ZONING REMOVED = 8.623 ACRES
- NEW PROPOSED RR ZONING ADDED = 8.357 ACRES
- **TOTAL REDUCED RR ZONING = -0.266 ACRES**

PECAN VALLEY HOLDINGS LLC
5183 W 2040S
HURRICANE, UT 84737
CHRIS WYLER
WYLTYLE@GMAIL.COM

**ZONE CHANGE EXHIBIT
RESORT RECREATION
PECAN VALLEY**

9/12/2022

CivilScience
Engineers | Surveyors | Solutions
1453 S. DIXIE DRIVE, SUITE 150
ST. GEORGE, UT 84770
435.986.0100





STAFF COMMENTS

Agenda Date:	10/20/2022
Application Number:	2022-ZC-35 2022-PSP-43
Type of Application:	Zone Change and Preliminary Site Plan
Action Type:	Legislative
Applicant:	Pecan Valley Holdings LLC
Agent:	Chris Wyler/Civil Science
Request:	A Zone Change from A-5 and RR to RM-1 PDO and RR
Location:	5300 W 2600 S
Zoning:	A-5 and RR
General Plan Map:	Planned Community

Planning Commission Recommendation

The Planning Commission recommends denying the application on the grounds of inadequate infrastructure.

Discussion:

The applicant has again brought in a zone change for an additional 15 acres to the Pecan Valley development. This plan removes even more space from the recreation resort area and into the PDO area and shows zone boundaries that follow street lines.

	Zoning	Adjacent Land Use
North	A-5	Undeveloped property
East	RR, R1-15	Pecan Valley Resort and Pecan Valley Estates

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 Map shows this area as Planned Community which it defines as: *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.*

RM-1 PDO is generally considered to be an acceptable density within the Planned Community portions of the General Plan Map.

This area is currently zoned A-5, agricultural one unit per 5 acres, there are many agricultural uses and larger homesteads in the area. The General Plan says: *1.1. Hurricane encourages the preservation of farms and open pastures that recall the agricultural heritage of Hurricane and help provide a sustainable local food source.* A buffer area between agriculture and multifamily use would be appropriate but is not provided by this plan.

2. Is the proposed amendment harmonious with the overall character of existing development in the subject property's vicinity?

Response: The adjoining properties are mostly zoned agricultural, with the exception of the already approved phases of Pecan Valley Resort. Staff has some concerns about multifamily adjacent to agricultural zoned land; however, no properties in the immediate vicinity of the southern property are being used for agricultural production at this time.

3. Will the proposed amendment affect the adjacent property?

Response: The proposed zoning will have an impact on the surrounding property. Less so than the overall development but the impact will be felt as the higher density residential uses move further into the agriculturally zoned area. The movement of the resort zoning will increase the overall number of resort units and thus increase the impact of the resort zoning.

4. Are public facilities and services adequate to serve the subject property?

Response: Services are currently inadequate but the applicant is currently working to get utilities to the property. Significant off-site improvements are necessary before public facilities and services will be

adequate to serve the property. The property is remote, and there are concerns from the Fire District and the Streets Department with additional units on Turf Sod Road until a connection to Dixie Springs Drive is established. The applicant has signed planned to extend many of these services to the property, but may need to provided additional upgrades with the additional units.

Other Considerations:

As this zone change does involve rezoning 8.357 acres to Recreation Resort, the analysis under Hurricane City Code Recreation Resorts 10-26-5 must be done:

B. In addition to the items required by 10-7-7, the City shall consider the following criteria in assessing any zone change application.

- 1. General Plan Map: Recreation Resort Zoning shall be located in Commercial, Planned Community, Mixed Use, or Multi-Family areas as labeled by the General Plan Map.*
- 2. Recreation Resort Zoning shall avoid clustering in a single location, and should be limited in size relative to the commercial or multi-family zoned area. Only in rare cases should a recreation resort zone exceed 20 acres.*
- 3. Recreation Resort Zoning shall only be located adjacent to Major Collectors, Minor Arterials, or Major Arterial Roads.*
- 4. Recreation Resort Zoning should help add to the commercial viability of an area within commercial areas listed in the General Plan Map. It may do this by adding commercial amenities, tourism, or renewed development of an area.*
- 5. Recreation Resort Zoning should not conflict with long term housing and moderate income housing needs of an area. Recreation Resort Zoning should not be located in places where multi-family housing could be built that would have easy access to public amenities and services, such as schools, parks, and utilities.*

1. The property is located in the Planned Community portion of the General Plan Map.
2. Pecan Valley Resort exceeds 20 acres; however, this would decrease the resort zoning by 0.266 acres (previous submission reduced it by 0.367 acres).
3. There are no master planned roadways adjacent to this property. The nearest master planned roadway is 5140 West, which is a minor collector.
4. Not applicable.
5. This property does not have easy access to public amenities and services. While multifamily may not be ideal on this property, long-term residential could be, as is planned to the southeast.

Preliminary Site Plan Review

The applicant is requesting preliminary site plan review for the area being considered for rezoning and the future phases of the already approved Pecan Valley Resort. Preliminary plats will be required for all of these phases.

JUC Comments:

Some comments are from earlier submissions

Power: Dixie Power area. Still waiting on off-site improvements. Probably will have enough capacity when they get to this part.

Water: Need an updated water model. Water is in the area but could be limited with this increase.

Streets: Second access needed to handle high density traffic flow.

Sewer: A lot of off-site sewer will be needed for this property. May need a regional lift station.

Engineering: 5200 W is 5350 W. The property should be acquired to connect 5350 W through. The Hunter and Lowell Frei parcels should be accessible from a public street.

Fire: Water supply and access

Gas: No concerns.

Cable: No comments

Staff Comments:

1. **Density:** The applicant is proposing 4.2 units per acre, RM-1 zoning allows up to six units per acre. The applicant is proposing 71 long-term townhome units and 228 resort townhome units.
2. The applicant is proposing that the already approved parking lot and clubhouse area on the north end of Pecan Valley Resort be zoned RM-1 PDO. The applicant has indicated to staff that this would be a recreation/community center open to the public.
3. **Amenities:** The total Pecan Valley Resort area has 473 units. Per HCC 10-26-4: Two clubhouses with 2,000 sq ft of nonoffice space and four pools of at least 2,000 sq ft are required. Two clubhouses are shown and the Planning Commission has approved a larger pool amenity with enhanced features in the phase 1 amenity area.
 - a. The Planning Commission may approve an alternative amenity package. Staff would be broadly supportive of some level of alternative compliance on this overall plan due to the fact that the code requiring amenities was passed during the design and construction of the overall resort area. The relevant codes are:
 - i. *Alternative compliance, such as splash pads, sports courts, and open space amenities may be considered by the Planning Commission to offset other amenities requirements.*
 - ii. *Pools: Pools may be combined for an enhanced amenity area with the approval of the Planning Commission.*
 - b. Staff has serious concerns with counting the proposed recreation/community center as an amenity for the resort when it is not zoned Recreation Resort and instead zoned RM-1 PDO. Other resorts in the city have been required to provide all of their amenities within the recreation resort zoning and have not been allowed to count amenities in other zones.
 - c. Another consideration is that HCC 10-26-4 states that: *“These amenities should be centrally located and have walking trails or sidewalks for access. Where applicable,*

multiple amenities should be placed throughout the property to ensure equitable access.”

With this addition the amenities are clustered around the northern end of the property.

Some sort of amenity should be placed on the southern end of the property.

4. **Parking:** A full parking plan will be needed for the preliminary plat approval. Most units will have garages sized enough to meet the requirements of, *“two parking spaces per unit or one space per bedroom, whichever is higher” (HCC 10-26-6 E)*
 - a. Previous submissions have indicated that 100 RV parking spaces are provided within the recreation resort zone. 94 spaces are required for the entire resort area.
5. While staff has no issues with long-term residential in this area staff has serious concerns with the plan as presented with regards to the integration of the two uses on the site plan. Staff has had problems in the already built portions of Pecan Valley where there is an approved resort on one street and long-term residential on another where people have bought in the long-term area thinking it was the short-term, which causes confusion for property owners and noise and parking issues for residents. This plan mitigates this from the previous plan by not having long-term and short-term units sharing a building but where they share a street and where the units will theoretically be identical looking the problems that exist in other phases of Pecan Valley will persist.
6. The applicant is proposing that 3.737 acres of resort zoning be removed from the northern property and 3.370 acres be added to the southern property. This change increases the number of approved resort units within Pecan Valley by 23 additional units.
7. Planned Development Overlays (PDO) are required to be a minimum of 5 acres. The proposed resort is a total of 3.737 acres. This zoning is attached to the resort and the other PDO. Generally speaking, the applicant is seeking to exchange property from Resort to PDO without changing the use and justifying an expansion of resort zoning. Because of this, staff would generally recommend that the clubhouse/fitness area remains in the same zone and that the Planning Commission consider the southern zone change independently.
8. Hurricane City Code 10-37-4 states:
 - a. *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.*
 - b. The City has generally interpreted this code to mean that developments should not be approved without an adequate, approved, and bonded for plan to install facilities and infrastructure to the property. The Sewer District has expressed concerns about sewer capacity. Also, the Fire District has serious concerns about increasing units and density along Turf Sod Road, which does not have a second access, and there are plans for an improved second access to the property to Dixie Springs Drive once connected to 5140 West. These plans have been signed, but the improvements have not been installed.

Findings:

Staff makes the following findings:

1. The application, for the most part, meets the standards of the General Plan and the General Plan Map.
2. Generally, the uses are not harmonious with most of the surrounding development.
3. The proposed amendment will have an impact on the area, although it is within the parameters of the General Plan.
4. Utility services are currently inadequate to serve the area and proposed project however, plans are already in motion to bring services to the property. The applicant has signed a plan to extend many of these services to the property, but may need to provide additional upgrades with the additional units.
5. The application meets some but not all of the requirements of rezoning to Recreation Resort, however this application will decrease the overall resort zoning in the area but increase the number of resort units.
6. Staff has concerns about the quality and enforceability of the proposed site plan

Recommendation: Staff recommends the City Council review this application and the zone change based on standards and considers residents' comments. Staff believes this is the best plan the applicant has presented yet but would like staff's concerns about layout and utilities in the area.

ORDINANCE NO 2022-60

AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE APPROVING THE REZONE FOR PARCEL H-4138-B, H-4138-L AND H-4138-E FROM AGRICULTURE-5 (A-5) TO RECREATION RESORT (RR) AND RESIDENTIAL MULTIFAMILY-1 (RM-1) PLANNED DEVELOPMENT OVERLAY (PDO), AND RECREATION RESORT (RR) TO MULTIFAMILY-1 (RM-1) PLANNED DEVELOPMENT OVERLAY (PDO)

WHEREAS, Utah Code 10-9a allows Cities to regulate land use within their boundaries,

BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF HURRICANE CITY THAT:

1. That Parcel H-4138-B, H-4138-L AND H-4138-E from Agriculture-5 (A-5) to Recreation Resort and Residential Multifamily-1 (RM-1) planned development overlay, and recreation resort to rm-1 planned development overlay shown in the following legal description and map attached in Exhibit A.
2. That the attached site plan is approved as shown in Exhibit B

PASSED AND APPROVED on this 20th day of October 2022.

Hurricane City

Mayor

Attest:

Cindy Beteag, City Recorder

The foregoing Ordinance was presented at a regular meeting of the Hurricane City Council held at the Hurricane City Office Building on the 20th day of October 2022. Whereupon a motion to adopt and approve said Resolution was made by _____ and seconded by _____. A roll call vote was then taken with the following results:

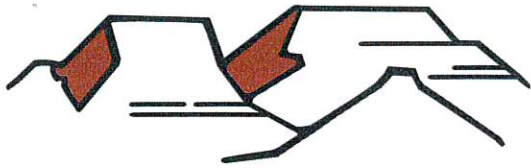
	Yea	Nay	Abstain	Absent
Joseph Prete	_____	_____	_____	_____
David Sanders	_____	_____	_____	_____
David Hirschi	_____	_____	_____	_____
Kevin Thomas	_____	_____	_____	_____
Doug Heideman	_____	_____	_____	_____

Cindy Beteag, Recorder

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B

SITE PLAN



PLANNING & ZONING
HURRICANE CITY
UTAH

147 N 870 W Hurricane UT
PHONE: 435.635.2811 FAX: 435.635.2184

PRELIMINARY PLAT APPLICATION

For office use only: \$150.00 Fee

File No. 2022-PP-20

Receipt No. 8-160765

Name: Southern Dunes Townhomes Telephone: _____

Address: 4061 South 2420 East, St. George, UT 84790 Fax No. _____

Email: anthonyboc1@gmail.com Agent _____ Email: _____
bobh@bushandgudgell.com

Agent (If Applicable): Bush & Gudgell, Inc. Telephone: 435-673-2337

Address/Location of Subject Property: SE ¼ Section 29, T42S, R13W

Tax ID of Subject Property: H-3400-O and H-3400-N Zone District: R1-10

Proposed Use: (Describe, use extra sheet if necessary. Include total number of 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.

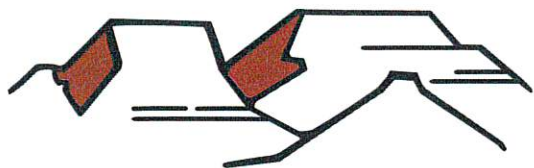
- ___ h. Contours at vertical intervals not greater than five (5) feet.
 - ___ i. Identification of potential geotechnical constraints on the project site (such as expansive rock and soil, collapsible soil, shallow bedrock, and caliche, gypsiferous rock and soil, potentially unstable rock or soil units 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 another document (see attached Affidavit) showing evidence that the applicant has control of the property
- ___ 6. Signed and notarized Acknowledgement Water Supply (see attached)

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) 20 full calendar 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: _____



PLANNING & ZONING
HURRICANE CITY
UTAH

147 N 870 W Hurricane UT
PHONE: 435.635.2811 FAX: 435.635.2184

PRELIMINARY SITE PLAN APPLICATION

For office use only: \$200.00 Fee

File No. 2022-PSP-30

Receipt No. 8-160764

Name: Southern Dunes Townhomes Telephone: _____

Address: 4061 South 2420 East, St. George, UT 84790 Fax No. _____

Email: anthonyboc1@gmail.com Agent Email: bobh@bushandgudgell.com

Agent (If Applicable): _____ Telephone: 435-673-2337

Address/Location of Subject Property: SE 1/4 Section 29, T42S, R13W

Tax ID of Subject Property: H-3400-O and H-3400-N Zone District: R1-10

Proposed Use: (Describe, use extra sheet if necessary. Include total number of lots) _____

This application shall be accompanied by the following:

- ____ 1. A vicinity map showing the general location of the project.
- ____ 2. Three (3) copies of a site plan showing:
 - ____ Topography showing 2' contours, identification of 30% or greater slopes;
 - ____ The layout of proposed uses.
 - ____ Location of open space when applicable.
 - ____ Proposed access to the property and traffic circulation patterns.
 - ____ Adjoining properties and uses;
 - ____ Proposed reservations for parks, playgrounds, school, and any other public facility sites, if any.
- ____ 3. Preliminary utility plan, including water, sewer, and storm drainage plans, and including access points to utilities.
- ____ 4. Tables showing the number of acres in the proposed development and a land use summary; and
- ____ 5. A phased development plan if applicable.
- ____ 6. Warranty deed or preliminary title report or other document (see attached Affidavit) showing evidence that the applicant has control of the property
- ____ 7. Signed and notarized Acknowledgment Water Supply (see attached)

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. Planning Commission meetings are held on the second Thursday and the 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 due to an incomplete application could result in a month's delay.

(Office Use Only)

Date Received: _____ Received by: _____

Date application deemed to be complete: _____ Completion determination made by: _____

Warranty Deed Page 1 of 1

Gary Christensen Washington County Recorder
 05/20/2022 02:05:09 PM Fee \$40.00 By AMERICAN
 SECURE TITLE TREMONTON

ORDER NO. 176531A/T

WHEN RECORDED MAIL DOCUMENT
 AND TAX NOTICE TO:
 RANLIFE HOMES CORDERO, LLC
 9272 South 700 East
 Sandy, UT 84070

WARRANTY DEED**RIVER VALLEY DEVELOPMENT, LLC, A UTAH LIMITED LIABILITY COMPANY**

Grantor, organized and existing under the laws of the State of Utah with its principal office at 470 NORTH
 2450 WEST, TREMONTON, County of BOX ELDER, State of UTAH
 hereby CONVEYS and WARRANTS to

Grantor

RANLIFE HOMES CORDERO, LLC

Grantee,

of Sandy, County of Box Elder, State of Utah, for the sum of TEN DOLLARS and other good and valuable
 consideration, the following tract of land in WASHINGTON county, State of UT, to-wit

All of 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 and Meridian.
 LESS THAT PORTION LYING WITHIN 2600 WEST

H-3400-N

Subject to easements, restrictions and rights of way appearing of record and enforceable in law and subject
 to 2022 taxes and thereafter.

The officers who sign this deed hereby certify that this deed and the transfer represented thereby was duly
 authorized under Resolution adopted by the Manager/Member(s) of the Grantor at a lawful meeting held and
 attended by a quorum.

In witness whereof, the Grantor has caused its Limited Liability Company name and seal to be hereunto
 affixed by its duly authorized Members, this 19 day of May, 2022.

RIVER VALLEY DEVELOPMENT, LLC, a Utah
 Limited Liability Company

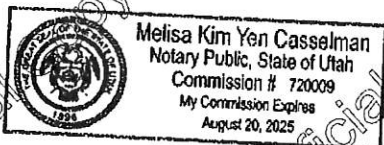
BY: 

BOYD COOK, AUTHORIZED SIGNATORY

STATE OF UTAH)

COUNTY OF BOX ELDER)

On the 19 day of May, 2022, personally appeared before me BOYD COOK, who being duly sworn, did say
 that he/she is the AUTHORIZED SIGNATORY of RIVER VALLEY DEVELOPMENT, LLC, a Utah Limited
 Liability Company, by authority of its Articles of Organization and duly acknowledged to me that the said
 Limited Liability Company executed the same.



Notary Public
 My Commission Expires: 08/20/2025
 Residing at: Premont, Utah

Special Warranty Deed Page 1 of 3
Gary Christensen Washington County Recorder
07/12/2022 04:38:48 PM Fee \$40.00 By US TITLE
INSURANCE AGENCY

When Recorded, Mail To:

Kirton McConkie
Attn: R. Gary Winger
50 E. South Temple, Suite 400
Salt Lake City, Utah 84111

Tax Parcel No. 4-3400-0

[Space Above for Recorder's Use]

SPECIAL WARRANTY DEED

KOBALT DEVELOPMENT GROUP, L.L.C., a Utah limited liability company ("Grantor"), does hereby convey to CAPITOL PROPERTIES ONE, LLC, a Utah limited liability company, whose address is 2880 S. Main St. Ste. 100, Salt Lake City, UT 84115 ("Grantee"), for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, a two-ninths (2/9) tenancy-in-common interest in the real property located in Washington County, State of Utah, and more particularly described on Exhibit A, which is attached hereto and incorporated herein by reference (the "Property") and Grantor warrants against all claiming by, through, or under it. Grantor hereby retains the remaining seven-ninths (7/9) interest in the Property as a tenant-in-common with Grantee.

The foregoing conveyance includes a two-ninths (2/9) tenancy-in-common ownership in all tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining, including but not limited to easements and rights-of-way over adjoining property, which easements and rights-of-way are appurtenant to the real property described on Exhibit A, and all of Grantor's interest in and to any land lying in the bed of any body of water, waterway or public street, public road or public avenue in front of or adjoining the land, and all of Grantor's interest in and to oil, gas, geothermal, water and mineral rights, wells, and all water rights appurtenant to the Property described on Exhibit A, which is attached hereto and incorporated herein by reference.

WITNESS the hand of said Grantor this 30th day of June, 2022.

KOBALT DEVELOPMENT GROUP, L.L.C.
a Utah limited liability company

By: K. OBL

Name: Kay C. Barton

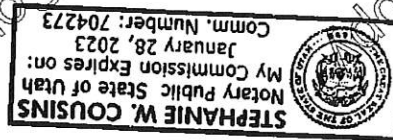
Its: Manager

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF Utah

COUNTY OF Salt Lake
: ss

On this 30th day of June, 2022, personally appeared before me Kay C. Barton, the manager of KOBALT DEVELOPMENT GROUP, L.C., a Utah limited liability company, known or satisfactorily proved to me to be the person who signed the foregoing instrument.



NOTARY PUBLIC
My Commission Expires: 1/28/23

LAES

**EXHIBIT A
DESCRIPTION OF REAL PROPERTY**

KOBALT DEVELOPMENT GROUP, LLC

of SALT LAKE CITY, County of SALT LAKE CITY, State of UTAH, for the sum of TEN DOLLARS and other good and valuable consideration, the following tract of land in WASHINGTON county, State of UT, to-wit.

All of 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 and Meridian.

LESS THAT PORTION LYING WITHIN 2600 WEST

AGEC

Applied GeoTech

July 29, 2022

RANlife Homes
9272 South 700 East
Sandy, Utah 84070

Attention: Anthony Bochino
Email: anthonyboc1@gmail.com

Subject: Geotechnical Consultation
Codero Subdivision
Hurricane, Utah
AGEC Project No. 2220977

Applied Geotechnical Engineering Consultants, Inc., (AGEC) was requested to conduct a geotechnical investigation for the proposed Codero Subdivision located in Hurricane, Utah. The study is currently in progress. We have scheduled to excavate 8 exploratory test pits across the 40-acre development. A final report will be provided upon completion of the study. The report summarizes the work to date and the conditions of the site along with conclusions to the suitability of the property for the proposed development.

Site Conditions

The property is located west of the Southern Shores Ski Lake Community project in south Hurricane. The property consists of undeveloped property. There is vacant property to the west, north and south.

The property slopes down to the north with approximately 30 feet of elevation change. The property is moderately covered with small brush and grasses infilled with wind blown sand and silt.

Geology

AGEC has reviewed the available literature for the property including the following:

- Literature Document No. 1:* Geologic Map of the Hurricane 7.5' Quadrangle, Washington County, Utah, Map M-187, 2003, Robert F. Biek.
- Literature Document No. 2:* Geologic Hazards and adverse Construction Conditions, St. George-hurricane Metropolitan Area, Washington County, Utah, SS-127, 2008, Lund et al.

Based on the literature review the following conclusions are made:

1. There is minor amounts of wind blown or aeolian type deposits overlying the basalt with greater amounts along the south end of the site.
2. There are not faults on or near the property. The nearest fault, the Hurricane Fault is on the order of 1.9 miles to the east.
3. There is also shallow hard rock anticipated below the surface sands.

Anticipated Subsurface Conditions

AGEC is in the process of completing 8 test pits (explorations) as shown below. AGECE has also reviewed previous geotechnical studies in the area including:

1. Romney Study – Larger parcel that included this parcel.
2. 100 Acre Study to the south

Based on our experience and review of the property, the subsurface conditions are anticipated to consist of silty sand (wind blown) overlying caliche and/or sandstone bedrock.

Groundwater was not encountered during previous investigations, nor anticipated throughout the property.

Proposed Construction

The property consists of approximately 40 acres and is to be developed with single family residences. There will be public improvements throughout the property.

Conclusions

Based on the review of the various items noted above, the following conclusions are noted:

1. The site is suitable for the proposed development. No geologic hazards other than hard rock for excavation purposes are noted on the property.
2. The site will require cuts and fills. The on-soils and bedrock may be used as fill materials.

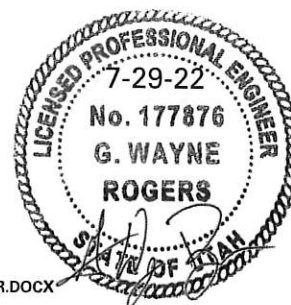
Limitations

AGEC will be providing a final report upon completion of the field exploration and the necessary laboratory testing. The information within this report may be used for review and preliminary design details.

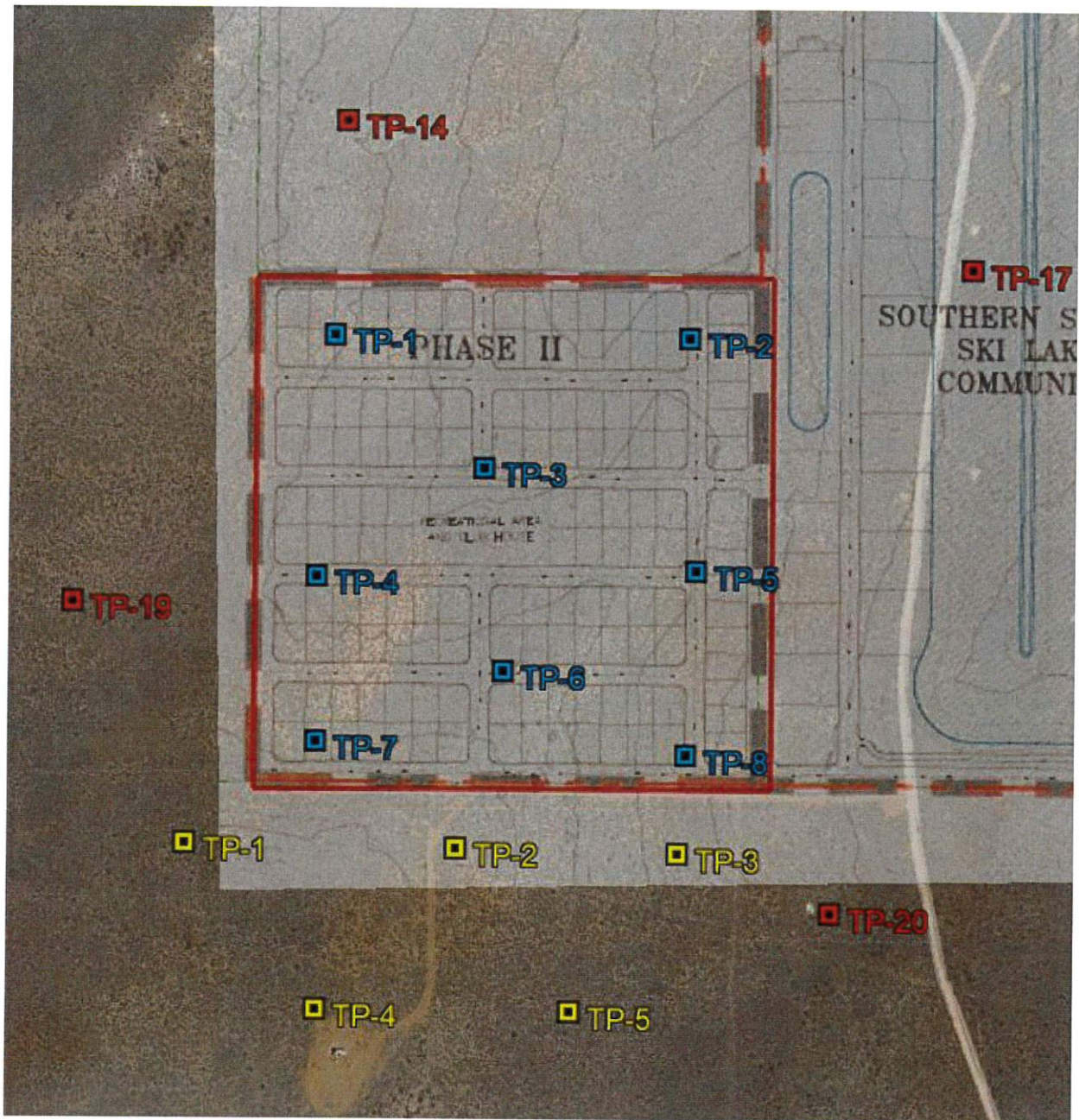
Sincerely,

APPLIED GEOTECHNICAL ENGINEERING CONSULTANTS, INC.

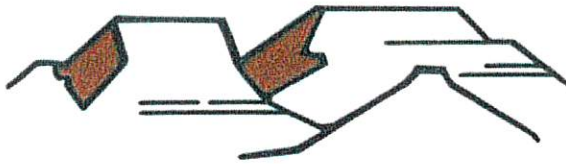
G. Wayne Rogers, P.E.



P:\2022 PROJECT FILES\2220900\2220977 - GT CORDERO SUBDIVISION (40 ACRES)\GEOTECHNICAL CONSULTATION LETTER.DOCX



Yellow TP- indicates test pits from 100 Acre Study
 Red TP- indicates test pits from Romney Study
 Blue = test pits this study



HURRICANE CITY UTAH

Water Department
Ken Richins, Superintendent

July 29, 2022

To Whom It May Concern:

Rainlife Homes Cordero LLC (the "Developer") has requested a culinary water will serve letter for the subdivision known as Southern Dunes Vacation Townhomes, located at approximately 2600 W Cliff View Drive in Hurricane, Utah (the "Project").

Infrastructure

The City currently has infrastructure to supply culinary water in the general area of the Project. However, Developer will be responsible to connect the Project to the existing water infrastructure, including the installation of infrastructure in dedicated public streets and as otherwise required to meet City standards. In addition, Developer may be required to obtain and supply a hydraulic water study to ensure the waterline will deliver required fire flows. A looped water system may be required.

Water Supply

As of the date of this letter, the city has adequate water to supply water to **345** residential connections within the Project. However, water within the City is a finite resource with limited supply. The ability of the City to supply water to previously approved projects, as well as continue to serve additional water customers, is contingent on water supplies being available from the Washington County Water Conservancy District (the "Conservancy District"). Therefore, the City's statements in this letter regarding the adequacy of water supply is (1) contingent on water being available from the Conservancy District and (2) shall expire one year from the date of this letter, after which a renewed will serve letter will be required for any property or lot that has not obtained a metered connection to the City's culinary water system. Developer is encouraged to obtain a guarantee of water from the Conservancy District.

General Requirements

In addition to the requirements and limitations described above, Developer shall be required to comply with all applicable laws, ordinances, policies, and construction and design standards. These requirements include, but are not limited to, secondary water system requirements and any obligations described in an applicable development agreement.

Sincerely,

Ken Richins
Water Department Superintendent



Ash Creek Special Service District

1350 S. Sand Hollow Road

Hurricane, UT 84737

Office: (435) 635-2348 Fax: (435) 635-8550

ashcreek@infowest.com

July 29, 2022

Bush & Gudgell, Inc
Ryan Lay
and
Hurricane City
Stephen Nelson
127 N. 870 W.
Hurricane, UT 84737

RE: Southern Dunes Vacation Townhomes

Stephen,

There is sewer capacity for this project. Connectivity will need to be in 2600 West to Copper Rock Parkway. 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,

Gary Wilcox
Inspections Department
Ash Creek Special Service District

AGEC

Applied GeoTech

July 29, 2022

RANlife Homes
9272 South 700 East
Sandy, Utah 84070

Attention: Anthony Bochino
Email: anthonyboc1@gmail.com

Subject: Geotechnical Consultation
Codero Subdivision
Hurricane, Utah
AGEC Project No. 2220977

Applied Geotechnical Engineering Consultants, Inc., (AGEC) was requested to conduct a geotechnical investigation for the proposed Codero Subdivision located in Hurricane, Utah. The study is currently in progress. We have scheduled to excavate 8 exploratory test pits across the 40-acre development. A final report will be provided upon completion of the study. The report summarizes the work to date and the conditions of the site along with conclusions to the suitability of the property for the proposed development.

Site Conditions

The property is located west of the Southern Shores Ski Lake Community project in south Hurricane. The property consists of undeveloped property. There is vacant property to the west, north and south.

The property slopes down to the north with approximately 30 feet of elevation change. . The property is moderately covered with small brush and grasses infilled with wind blown sand and silt.

Geology

AGEC has reviewed the available literature for the property including the following:

- | | |
|-----------------------------------|---|
| <i>Literature Document No. 1:</i> | Geologic Map of the Hurricane 7.5' Quadrangle, Washington County, Utah, Map M-187, 2003, Robert F. Biek. |
| <i>Literature Document No. 2:</i> | Geologic Hazards and adverse Construction Conditions, St. George-hurricane Metropolitan Area, Washington County, Utah, SS-127, 2008, Lund etal. |

Based on the literature review the following conclusions are made:

1. There is minor amounts of wind blown or aeolian type deposits overlying the basalt with greater amounts along the south end of the site.
2. There are not faults on or near the property. The nearest fault, the Hurricane Fault is on the order of 1.9 miles to the east.
3. There is also shallow hard rock anticipated below the surface sands.

Anticipated Subsurface Conditions

AGEC is in the process of completing 8 test pits (explorations) as shown below. AGECEC has also reviewed previous geotechnical studies in the area including:

1. Romney Study – Larger parcel that included this parcel.
2. 100 Acre Study to the south

Based on our experience and review of the property, the subsurface conditions are anticipated to consist of silty sand (wind blown) overlying caliche and/or sandstone bedrock.

Groundwater was not encountered during previous investigations, nor anticipated throughout the property.

Proposed Construction

The property consists of approximately 40 acres and is to be developed with single family residences. There will be public improvements throughout the property.

Conclusions

Based on the review of the various items noted above, the following conclusions are noted:

1. The site is suitable for the proposed development. No geologic hazards other than hard rock for excavation purposes are noted on the property.
2. The site will require cuts and fills. The on-soils and bedrock may be used as fill materials.

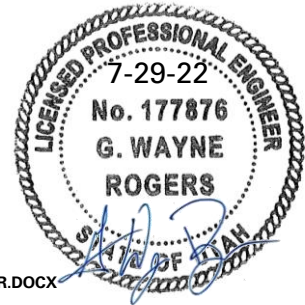
Limitations

AGEC will be providing a final report upon completion of the field exploration and the necessary laboratory testing. The information within this report may be used for review and preliminary design details.

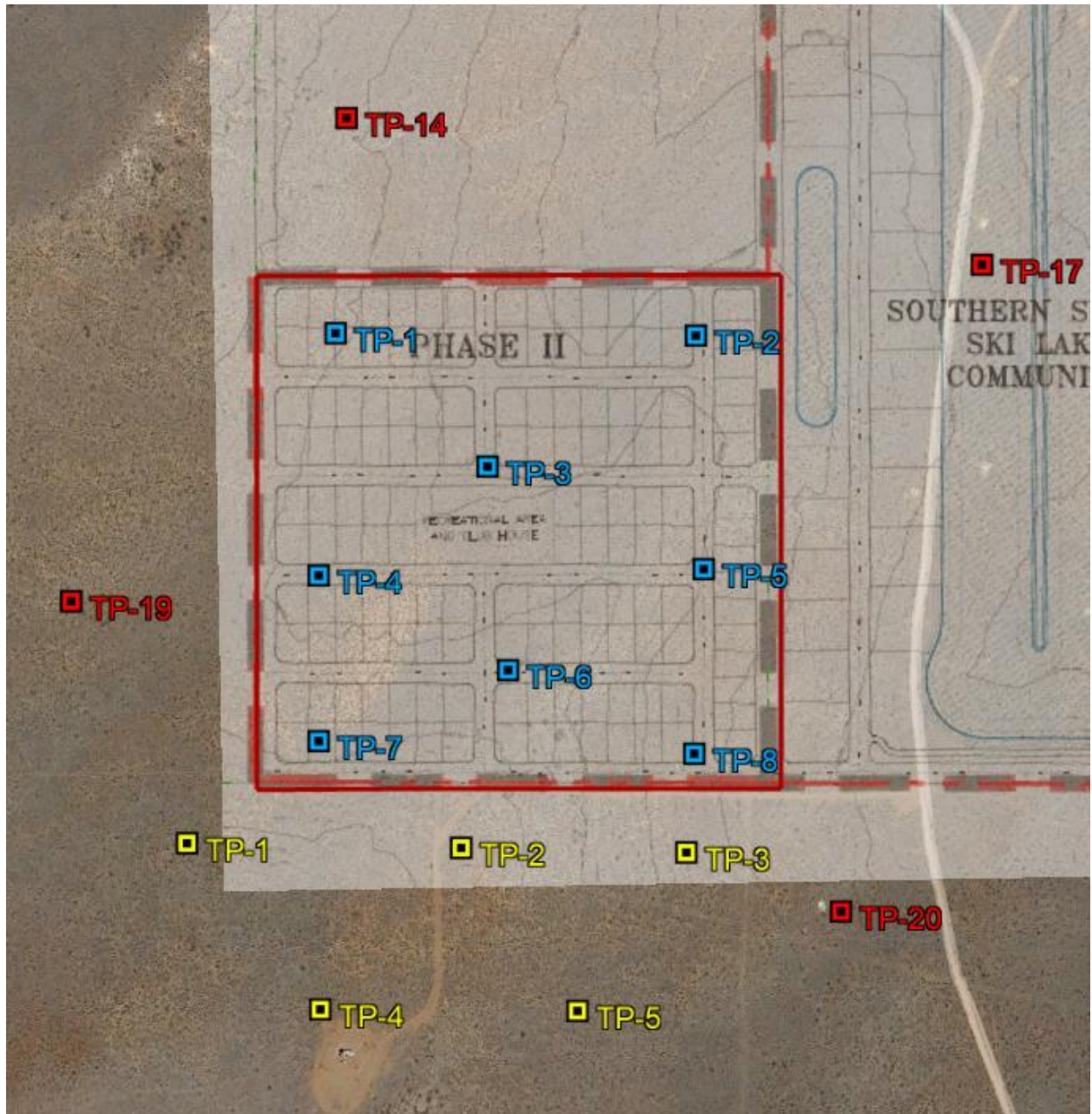
Sincerely,

APPLIED GEOTECHNICAL ENGINEERING CONSULTANTS, INC.

G. Wayne Rogers, P.E.



P:\2022 PROJECT FILES\2220900\2220977 - GT CORDERO SUBDIVISION (40 ACRES)\GEOTECHNICAL CONSULTATION LETTER.DOCX



Yellow TP- indicates test pits from 100 Acre Study
 Red TP- indicates test pits from Romney Study
 Blue = test pits this study



STAFF COMMENTS

Agenda Date:	09/22/2022
Application Number:	2022-PP-20 2022-PSP-38
Type of Application:	Preliminary Plat Application
Action Type:	Administrative
Applicant:	Southern Dunes Townhomes
Agent:	Bush & Gudgell, Inc
Request:	Approval of a Preliminary Plat and Site Plan
Location:	2600 W 4200 S
Zoning:	Recreation Resort
General Plan Map:	Planned Community

Update

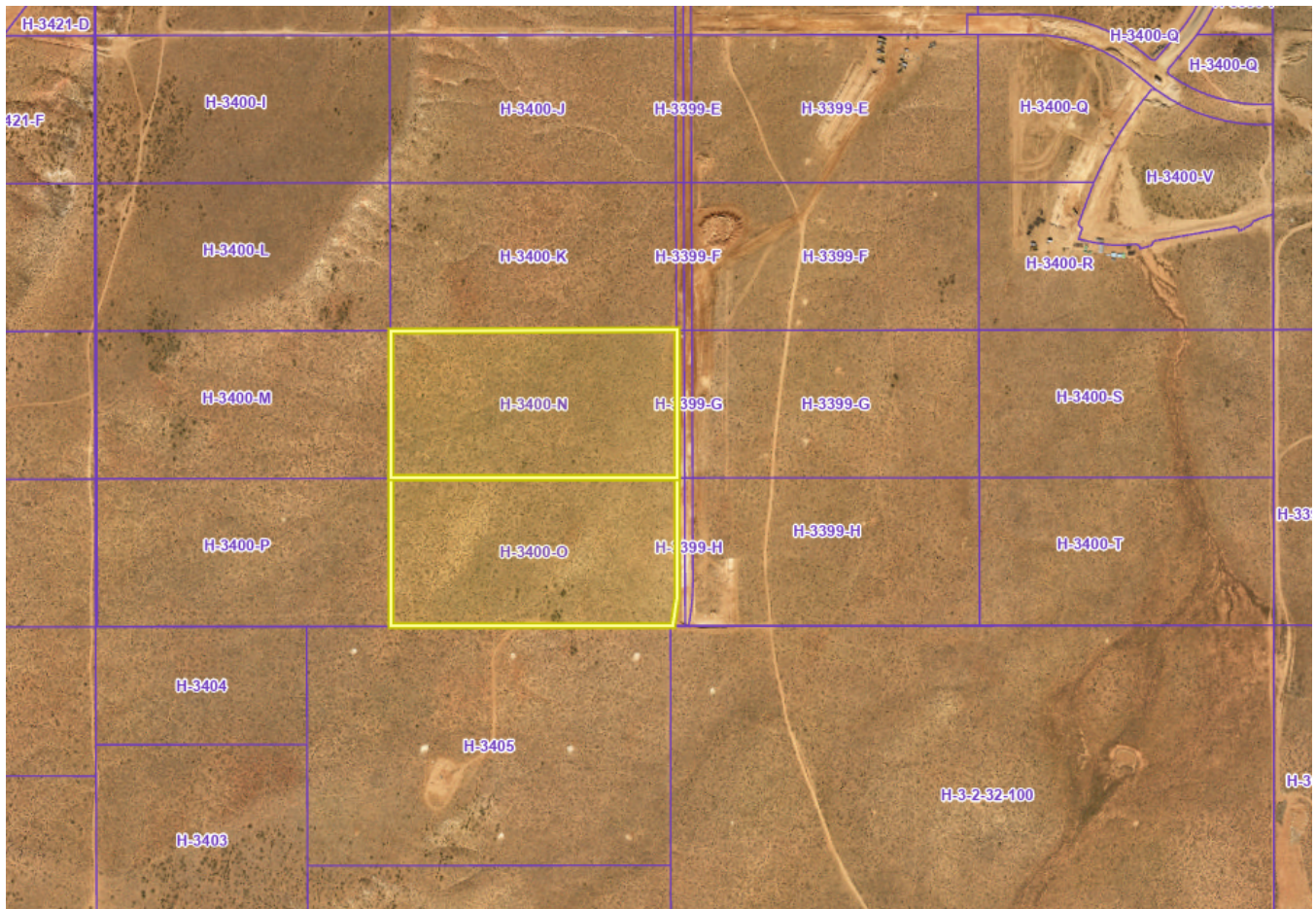
The Planning Commission continued this item at the last meeting for the items contained within this report. The application has provided an updated site plan and responses letter on Monday, Sept 19. This update has been included in the packet but is not reflected in the report below.

Discussion:

The applicant has filed a preliminary plat for Southern Dunes Townhomes within the Cordero development. The applicant is proposing 345 resort townhome units for a density of about 8.63 units per acre. The Cordero development, as approved in 2020 is split into three sections with different zonings: the west side is zoned Recreation Resort (Southern Dunes), the middle section is zoned R1-10 (Southern Shores) and the east side is zoned R1-6 (Cordero). A development agreement governs this development that limits the overall unit count to 700 units across all three sections. This preliminary plat will complete the preliminary plat process for the entire development. Utilities are still scarce throughout the region so any approval should be contingent on the developer being able to supply adequate services to the property.

08/25/2022

2022-PP-20
2022-PSP-38



JUC Comments

The following items will need to be addressed:

1. **Public Works:** Must dedicate and improve 2600 W. Must obtain full ROW for 2600 W and utilities.
2. **Power:** “At this time, the City’s power grid is inadequate to support all of the development planned in the area south of 2700 South Street. Although the Power Department has plans to expand and enhance its system to supply adequate power to this area, those plans are subject to funding limitations, the City’s acquisition of easements and rights-of-way, the availability of materials, and other limitations. Therefore, the Power Department cannot presently guarantee that it can provide power to all of the development planned in this area, which includes this proposed development.”
3. **Sewer:** No comments
4. **Street:** Do these units have garages? Driveways for parking? On street parking?
5. **Water:** Water model needed. Public or private streets? Private streets require ductile iron piping
6. **Engineering:** It appears this development is located in the FH110 subbasin of the Hurricane Storm Drain Master Plan and stormwater from this development will eventually drain to the open channel along 2100 W. The drainage study for this development should elaborate on how. Avoid block lengths greater than 800’ stub roadways accordingly. Verify corner lot driveways are out of sight distance triangles. 4300 S is a master-planned 84’ ROW with trails on the north and

08/25/2022

2022-PP-20
2022-PSP-38

south sides. 2600 W is a master-planned 77' ROW with a trail on the west side that will need to be dedicated at this time. For some reason the current ROW dedication for 2600 W shows a curve in the southeast corner of this development; the road needs to be straight through here.

7. **Fire:** Need second access and buildings to be sprinkled
8. **Cable:** Add Centurylink fiber optic notes for construction drawings
9. **Gas:** No comments.
10. **Water Conservancy:** No comments

Staff Comments: Preliminary Site Plan and Plat

1. Zoning is a Recreation Resort and meets the density requirements of that zone.
 - a. A "concept plan" that showed this area was submitted as part of the zone change that happened in 2020, before the requirements of the Recreation Resort zone were changed. Due to the fact that this previous plan was both substantially different than what is being proposed here and was not part of an official application this will be reviewed under HCC 10-26 as amended under Ordinance No. 2021-09
2. The development is partly governed by a development agreement which capped the total number of lots at 700 for the whole area. The development agreement required preliminary plats to list the number of lots that have been approved for the full Cordero development. This table is not provided. However, this plat plus the other approved preliminary plats add up to 691 units.
3. Staff would assume that all streets and alleyways not specifically marked "public" are private. This should be made more clear on the plat.
4. **Parking:** Per HCC 10-26-6: *"Within recreational resorts, an application shall provide two parking spaces per unit or one space per bedroom, whichever is higher. Tandem parking spaces are permitted only if approved as part of the preliminary site plan by the Planning Commission."*
 - a. It appears from the site plan that the townhome units will have garages and driveways such to meet this code but this should be called out
 - b. RV/trailer spaces are also required at a rate of one space per five units. 69 spaces are required and approximately 130 are provided
 - c. On-street parking is shown on Road F and Road G. On-street parking is allowed in Recreation Resort zoning, however the code states, *"Parking areas shall be located 50 feet away from any intersection of public roadways."* These parking spaces do not meet this standard
5. **Amenities:** Per HCC 10-26-4: two clubhouses with at least 2,000 sq ft of total nonoffice space and four pools of at least 2,000 sq ft are required. The proposed site plan shows two "amenity areas" and one pool. More details are required on the proposed amenities. The Planning Commission may approve consolidated amenities if it leads to a better amenity area. A Pool, club house and on-site management will need to be in place within the first phase of development.
6. **Block lengths and connectivity:** Per Hurricane City Design Standards: *"When designing local road networks, block lengths without an intervening connector street shall not exceed eight hundred feet (800') in length unless previous approval has been obtained from the City Engineer. Cul-de-sacs are not considered an intervening connecting street."* Several blocks do not meet this standard on one side or another.
 - a. This site plan appears to only show alleyway access to the property to the north and limited street access to the property to the west. The Preliminary Site Plan for Sand

Hollow Mesa Neighborhoods 7 and 8 shows full street access to this property at approximately the points these alleyways are shown.

- b. The applicant should provide better connection to the surrounding property to
 - i. Cut down on block lengths
 - ii. Provide better transportation and utility connections with adjacent properties.
- c. Connecting Streets: Hurricane City Code states the following for connectivity within subdivisions:

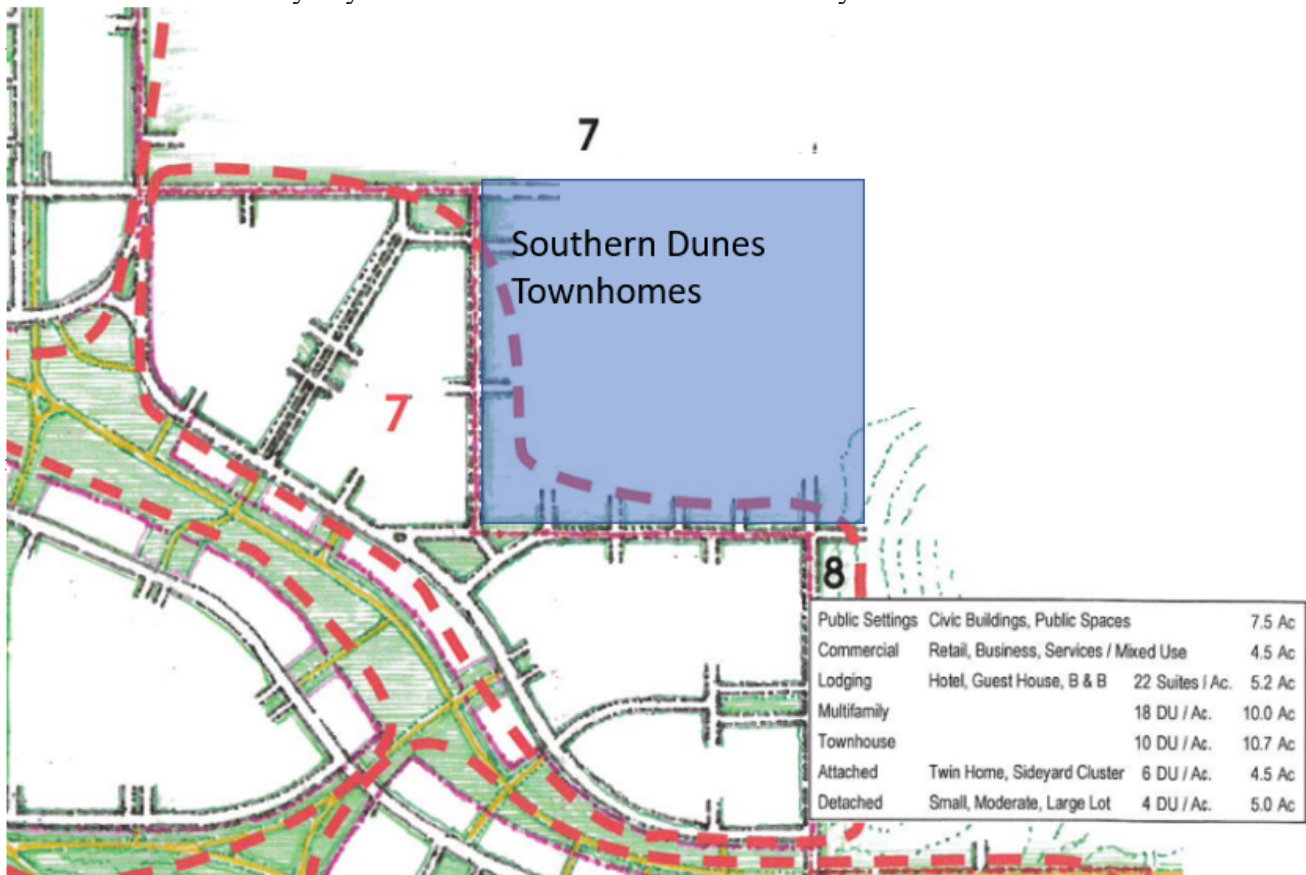
Sec. 10-39-11. - Subdivision streets and fencing.

A. Relation to adjoining street systems.

- 1. The arrangements of streets in new subdivisions shall make provision for the continuation of the existing streets to adjoining areas insofar as such may be deemed necessary by the Planning Commission for public requirements. New streets within subdivisions shall not preclude future access to adjoining properties.*
- 2. Standard residential streets shall approach the arterial or collector streets at an angle of not less than 80 degrees.*
- 3. Except as otherwise provided elsewhere in this Code, all subdivision streets and roadways shall be constructed and installed in accordance with the City roadway construction standards.*

A couple of recommendations would be to have Road B connect all the way through the project. Have Road F make a connection to the North. Have Road D connect to the west.

- d. All alleyways are shown to be 20' wide which may not meet fire code.



08/25/2022

2022-PP-20
2022-PSP-38

Southern Dunes Townhomes location superimposed on the approved Sand Hollow Mesa site plan

7. All park strips will need to be landscaped and have the proper improvements.
8. A will serve letter from the culinary and sanitary water providers has been provided
9. A note indicating whether or not the property is in a tortoise take area has not been provided

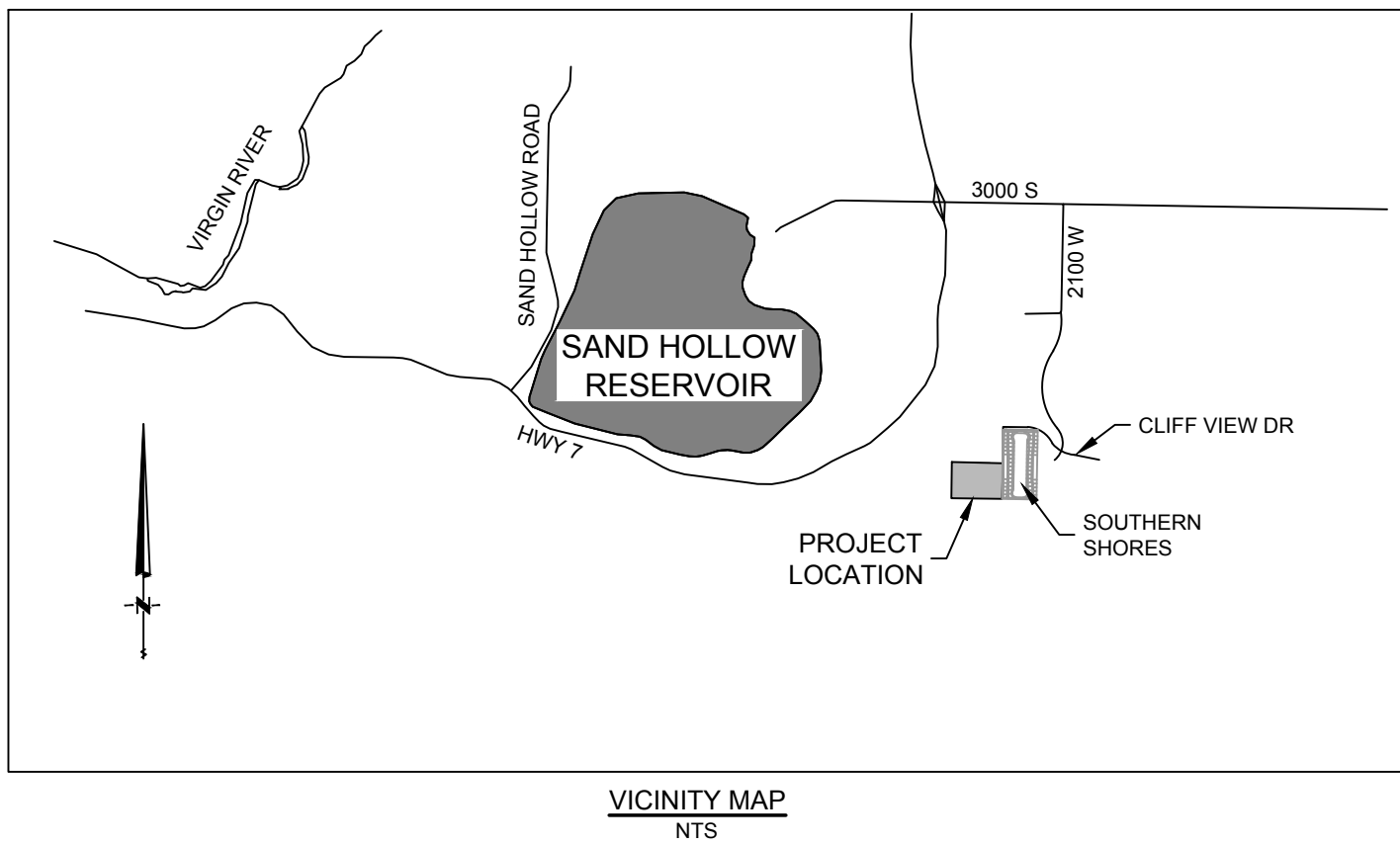
Recommendation: Staff recommends the Planning Commission review this application based on standards with Hurricane City Code. Staff would recommend continuing this application so the applicant can address staff concerns about layout and amenities.

B&G PROJECT NUMBER 221077

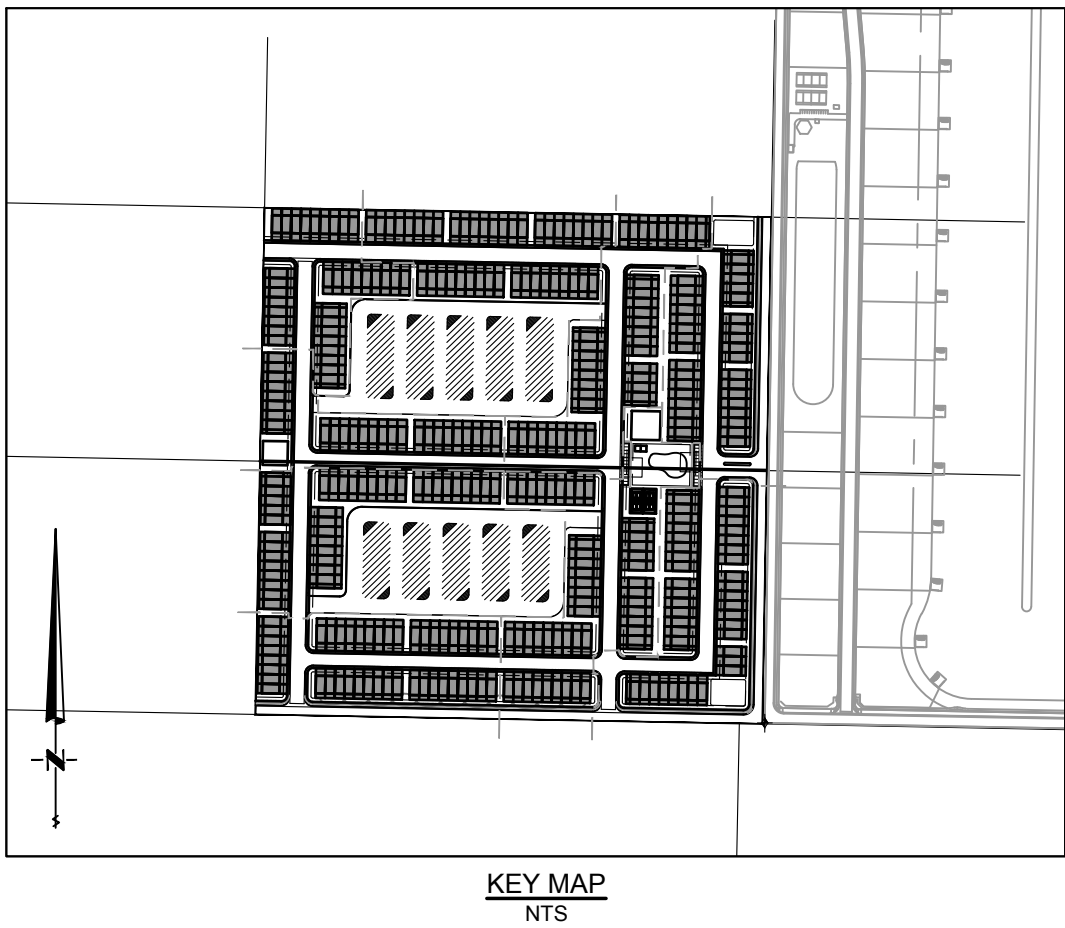
SOUTHERN DUNES TOWNHOMES

PRELIMINARY PLAT LOCATED IN HURRICANE, UTAH

SOUTHEAST 1/4 OF SOUTHWEST 1/4 OF SECTION 29 ,
TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN
PARCELS H-3400-N & H-3400-O



SHEET NO.	DESCRIPTION
1	COVER SHEET
2	SITE AND UTILITY PLAN
3	OFFSITE UTILITY PLAN
4	GRADING PLAN



GENERAL NOTES

- ALL CONSTRUCTION SHALL CONFORM WITH THE CURRENT EDITION OF HURRICANE CITY STANDARDS FOR DESIGN AND CONSTRUCTION, TOGETHER WITH HURRICANE CITY STANDARD DRAWINGS. ANY CONFLICT BETWEEN THESE PLANS AND HURRICANE CITY STANDARDS SHALL BE RESOLVED IN FAVOR OF HURRICANE CITY STANDARDS.
- ALL WORK SHALL BE SUPERVISED BY A PROPERLY LICENSED AND QUALIFIED GENERAL CONTRACTOR.
- CONSTRUCTION ACTIVITIES THAT DISTURB ONE OR MORE ACRES OF LAND MUST BE AUTHORIZED UNDER THE UTAH POLLUTANT DISCHARGE ELIMINATION SYSTEM (UPDES). OWNERS AND GENERAL CONTRACTORS ARE REQUIRED TO OBTAIN A STORM WATER PERMIT FROM THE STATE OF UTAH.
- THE CONTRACTOR/OWNER SHALL PROVIDE ADEQUATE RESOURCES TO CONTROL DUST ON THE SITE AND TRACKING OF MUD FROM THE SITE. DUST COMPLAINTS WILL RESULT IN SUSPENSION OF WORK UNTIL THE PROBLEM IS CORRECTED. TRACKING OF MUD ONTO ADJACENT STREETS SHALL BE MINIMIZED AND CLEANED UP DAILY.
- IT IS THE CONTRACTOR'S RESPONSIBILITY TO BE FAMILIAR WITH THE MUST-CALL MANDATORY INSPECTION LIST PROVIDED BY THE PUBLIC WORKS DEPARTMENT AND TO ARRANGE FOR MATERIAL TESTING AT THE STANDARD INTERVALS AND QUANTITIES REQUIRED AND PROVIDE DOCUMENTATION OF TEST RESULTS.
- PROOFS FOR STREET SIGNS SHALL BE SUBMITTED TO THE GIS COORDINATOR PRIOR TO ORDERING OF SIGNS.
- WORK IN THE PUBLIC WAY REQUIRES AN ENCROACHMENT PERMIT ISSUED BY HURRICANE CITY PUBLIC WORKS.
- A CITY-APPROVED TRAFFIC CONTROL PLAN MUST BE IN PLACE PRIOR TO COMMENCING ANY WORK THAT AFFECTS THE TRAVELLING PUBLIC.
- NO WORK SHALL COMMENCE UNTIL A NOTICE-TO-PROCEED HAS BEEN ISSUED BY HURRICANE CITY PUBLIC WORKS.

DEVELOPER INFORMATION
RANLIFE HOMES CORDERO LLC
ANTHONY BOCCHINNO
(801) 918-1779
9272 S. 700 E
SANDY, UT 84070

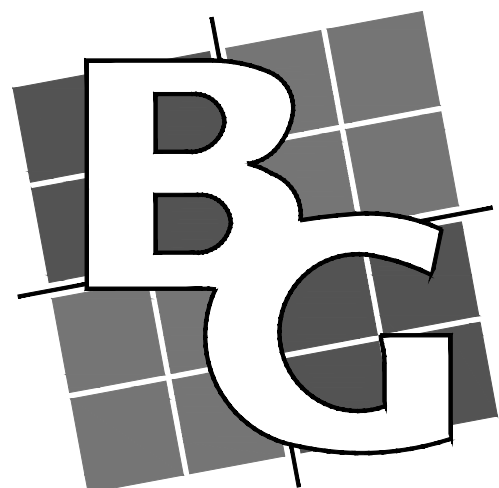
ENGINEER INFORMATION
BUSH AND GUDGELL, INC.
PROJECT MANAGER: RICK MEYER
(435) 673-2337
205 EAST TABERNACLE #4
ST. GEORGE, UT 84770

JULY 2022

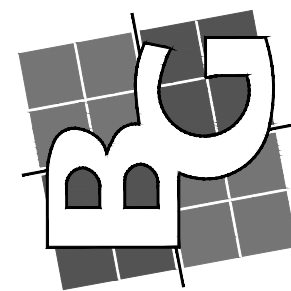
BUSH & GUDGELL, INC.

Engineers - Planners - Surveyors

205 East Tabernacle #4
St. George, Utah 84770
Phone (435) 673-2337



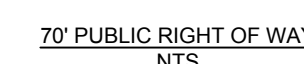
BUSH & GUDGELL, INC.
Engineers - Planners - Surveyors
205 East Tabernacle Suite #4
St. George, Utah 84770
Phone (435) 673-2337 / Fax (435) 673-3161
www.bushandgudgell.com



DATE: JULY 2022
DRAWN: CBW/CCL
APPROVED: WFM
SCALE: NTS
JOB NO. 221077

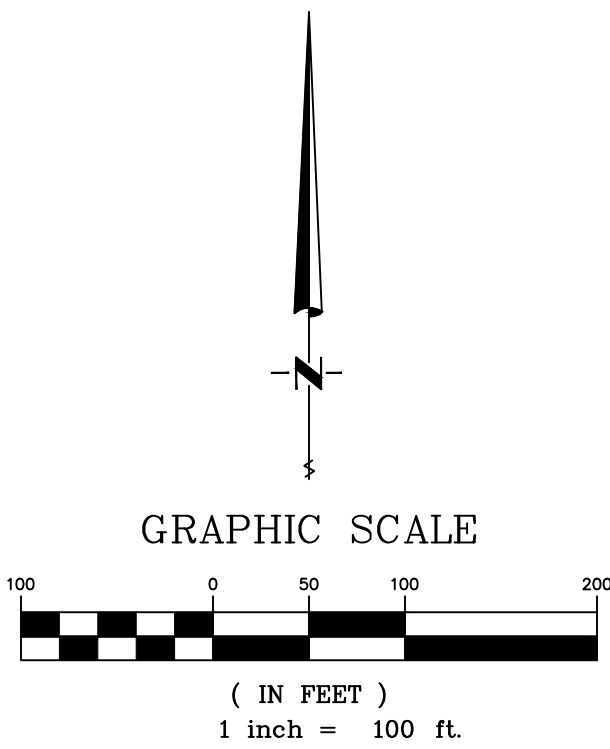
COVER SHEET
SOUTHERN DUNES TOWNHOMES
LOCATED IN HURRICANE, UTAH

SHEET 1 OF 4 SHEETS
FILE: 2207-PRELIMINARY PLAT



SHEET 2 OF 4 SHEETS
FILE: 221077-PRELIMINARY PLAT





4 OF 4 SHEETS
 LE: 221077-PRELIMINARY PLAT

ACKNOWLEDGEMENT OF WATER SUPPLY

I/We, RANLIFE HOMES CONDENS LLC am/are the applicant(s) of the application known as _____ located on parcel(s) _____ within the City of Hurricane, Washington County, Utah.

By my/our signature(s) below I/we do hereby acknowledge and agree to the following:

1. Neither acceptance nor approval of a development application by Hurricane City shall constitute a guarantee that sufficient water will be available to serve the zone designation, project, or permit for which this application is being submitted; and
2. Prior to receiving final approval for the application, the applicant may be required by Hurricane City to provide a guarantee of water availability which verifies that there is a sufficient water supply; and
3. For any application which may be approved without a guarantee of water availability, the applicant knowingly assumes the entire risk of water availability for the project and/or application; and
4. I/we waive any and all claims against Hurricane City that are in any way related to water availability for any project, permit, or use for which the land use application has been approved.

Dated this 29th day of July, 2022.

Applicant Name: RANLIFE HOMES CONDENS LLC

Name of Signer (if different from Applicant Name): BUTTON SHARP

Title of Signer: PRESIDENT

Signature: [Handwritten Signature]

STATE OF Utah)

COUNTY OF Salt Lake)

On the 29th day of July, 2022, personally appeared before me Laurie Lund the signer of the above instrument, who duly acknowledged to me that he/she executed the same in the capacity indicated on behalf of the Applicant.

Notary Public: [Handwritten Signature]
My Commission Expires: 2-12-2024



All signatures to this Acknowledgment, other than for Applicants signing in an individual capacity, shall be accompanied by documentation acceptable to the City attesting to the fact that the signer hereof is authorized to execute the Acknowledgment on behalf of the Applicant (e.g. a copy of a corporate resolution, copy of a partnership agreement, etc.). (Ord. No. 2022-37, 6-16-2022)

AFFIDAVIT

PROPERTY OWNER

STATE OF UTAH)

COUNTY OF Salt Lake

:SS

I (we), RANLIFE HOMES CORP LLC, 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.

Bertton Sharp
(Property Owner)

(Property Owner)

Subscribed and sworn to me this 29th day of July 2022

Laurie Lund
(Notary Public)

Residing in: Salt Lake

My Commission Expires: 2-12-2024



Agent Authorization

I (we), RANLIFE HOMES CORP LLC, the owner(s) of the real property described in the attached application, do authorize as my (our) agent(s) Dustin Johnson, Inc. 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.

Bertton Sharp
(Property Owner)

(Property Owner)

Subscribed and sworn to me this 29th day of July 2022

Laurie Lund
(Notary Public)

Residing in: Salt Lake

My Commission Expires: 2-12-2024

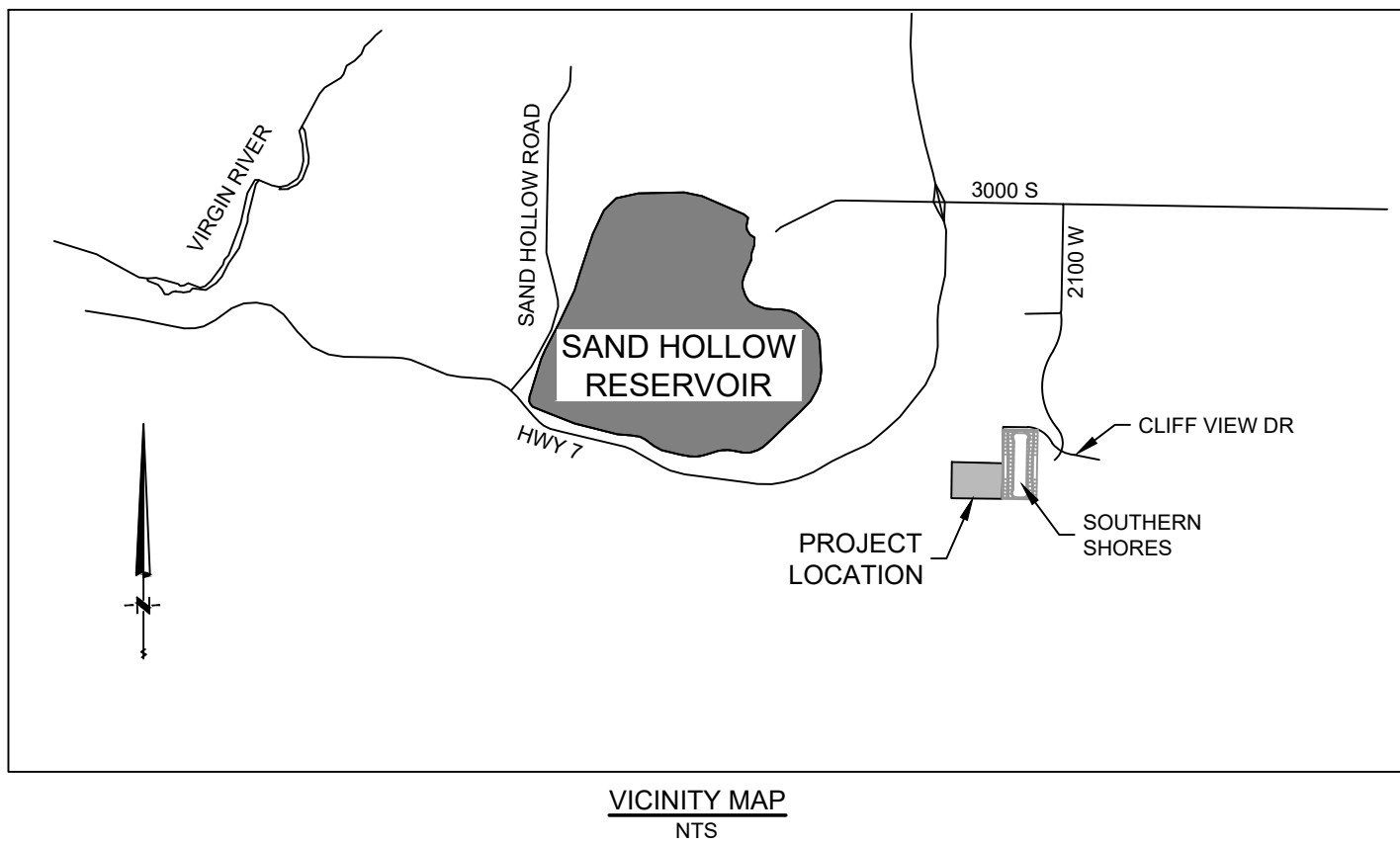


B&G PROJECT NUMBER 221077

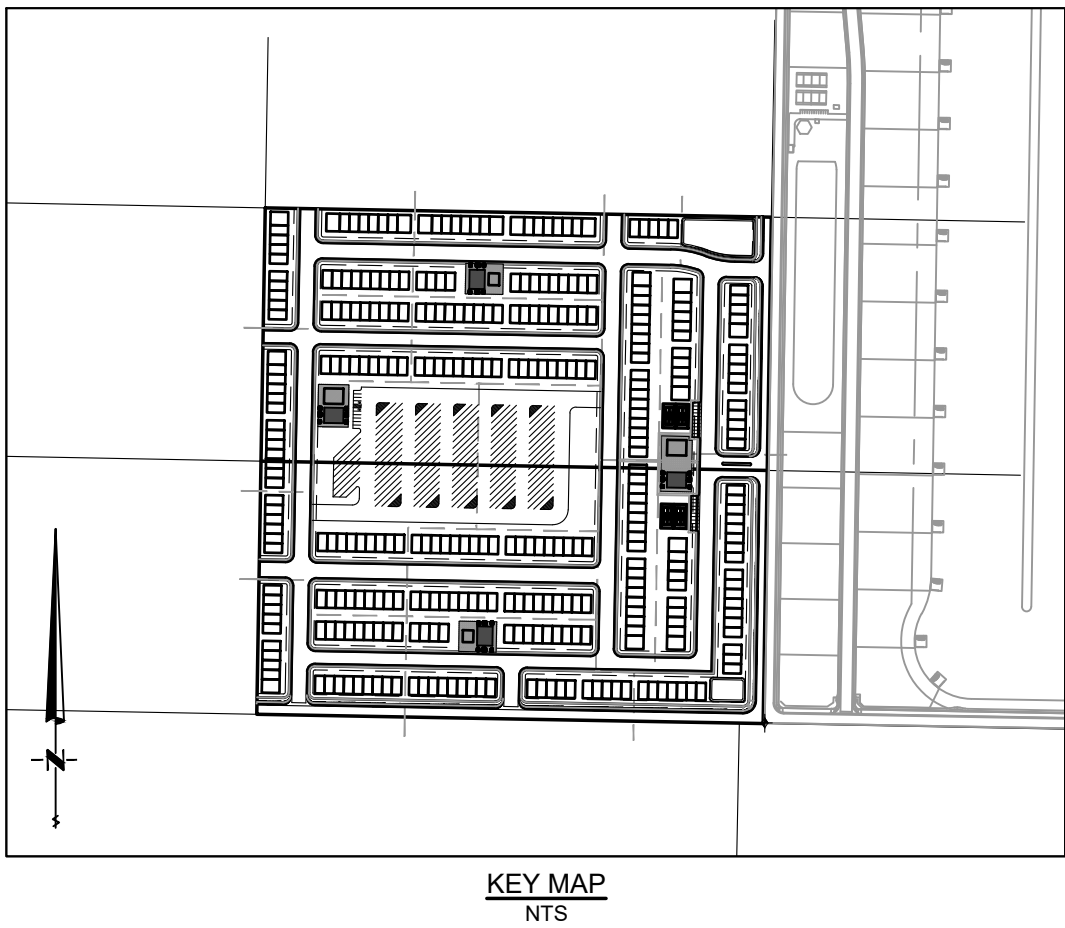
SOUTHERN DUNES TOWNHOMES

PRELIMINARY PLAT LOCATED IN HURRICANE, UTAH

SOUTHEAST 1/4 OF SOUTHWEST 1/4 OF SECTION 29 ,
TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN
PARCELS H-3400-N & H-3400-O



SHEET NO.	DESCRIPTION
1	COVER SHEET
2	SITE AND UTILITY PLAN
3	OFFSITE UTILITY PLAN
4	GRADING PLAN
5	PHASING EXHIBIT



GENERAL NOTES

- ALL CONSTRUCTION SHALL CONFORM WITH THE CURRENT EDITION OF HURRICANE CITY STANDARDS FOR DESIGN AND CONSTRUCTION, TOGETHER WITH HURRICANE CITY STANDARD DRAWINGS. ANY CONFLICT BETWEEN THESE PLANS AND HURRICANE CITY STANDARDS SHALL BE RESOLVED IN FAVOR OF HURRICANE CITY STANDARDS.
- ALL WORK SHALL BE SUPERVISED BY A PROPERLY LICENSED AND QUALIFIED GENERAL CONTRACTOR.
- CONSTRUCTION ACTIVITIES THAT DISTURB ONE OR MORE ACRES OF LAND MUST BE AUTHORIZED UNDER THE UTAH POLLUTANT DISCHARGE ELIMINATION SYSTEM (UPDES). OWNERS AND GENERAL CONTRACTORS ARE REQUIRED TO OBTAIN A STORM WATER PERMIT FROM THE STATE OF UTAH.
- THE CONTRACTOR/OWNER SHALL PROVIDE ADEQUATE RESOURCES TO CONTROL DUST ON THE SITE AND TRACKING OF MUD FROM THE SITE. DUST COMPLAINTS WILL RESULT IN SUSPENSION OF WORK UNTIL THE PROBLEM IS CORRECTED. TRACKING OF MUD ONTO ADJACENT STREETS SHALL BE MINIMIZED AND CLEANED UP DAILY.
- IT IS THE CONTRACTOR'S RESPONSIBILITY TO BE FAMILIAR WITH THE MUST-CALL MANDATORY INSPECTION LIST PROVIDED BY THE PUBLIC WORKS DEPARTMENT AND TO ARRANGE FOR MATERIAL TESTING AT THE STANDARD INTERVALS AND QUANTITIES REQUIRED AND PROVIDE DOCUMENTATION OF TEST RESULTS.
- PROOFS FOR STREET SIGNS SHALL BE SUBMITTED TO THE GIS COORDINATOR PRIOR TO ORDERING OF SIGNS.
- WORK IN THE PUBLIC WAY REQUIRES AN ENCROACHMENT PERMIT ISSUED BY HURRICANE CITY PUBLIC WORKS.
- A CITY-APPROVED TRAFFIC CONTROL PLAN MUST BE IN PLACE PRIOR TO COMMENCING ANY WORK THAT AFFECTS THE TRAVELLING PUBLIC.
- NO WORK SHALL COMMENCE UNTIL A NOTICE-TO-PROCEED HAS BEEN ISSUED BY HURRICANE CITY PUBLIC WORKS.

DEVELOPER INFORMATION
RANLIFE HOMES CORDERO LLC
ANTHONY BOCCHINNO
(801) 918-1779
9272 S. 700 E
SANDY, UT 84070

ENGINEER INFORMATION
BUSH AND GUDGELL, INC.
PROJECT MANAGER: RICK MEYER
(435) 673-2337
205 EAST TABERNACLE #4
ST. GEORGE, UT 84770

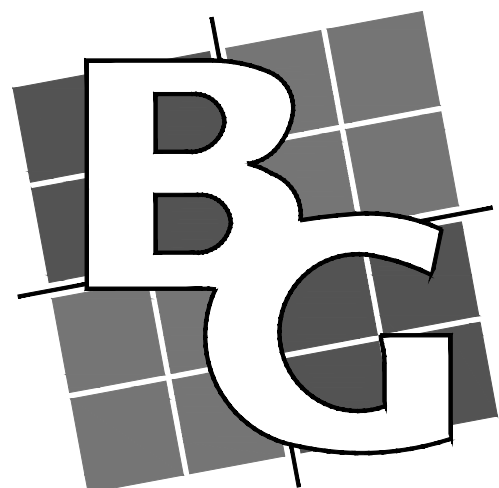
PROJECT INFORMATION	
ZONING	RR
LAND USE	PLANNED COMMUNITY
TOTAL AREA	39.97 ACRES
TOTAL UNITS	344
DENSITY	8.61 D.U./ ACRE

OCTOBER 2022

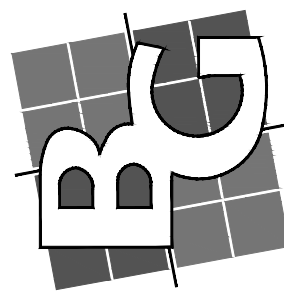
BUSH & GUDGELL, INC.

Engineers - Planners - Surveyors

205 East Tabernacle #4
St. George, Utah 84770
Phone (435) 673-2337



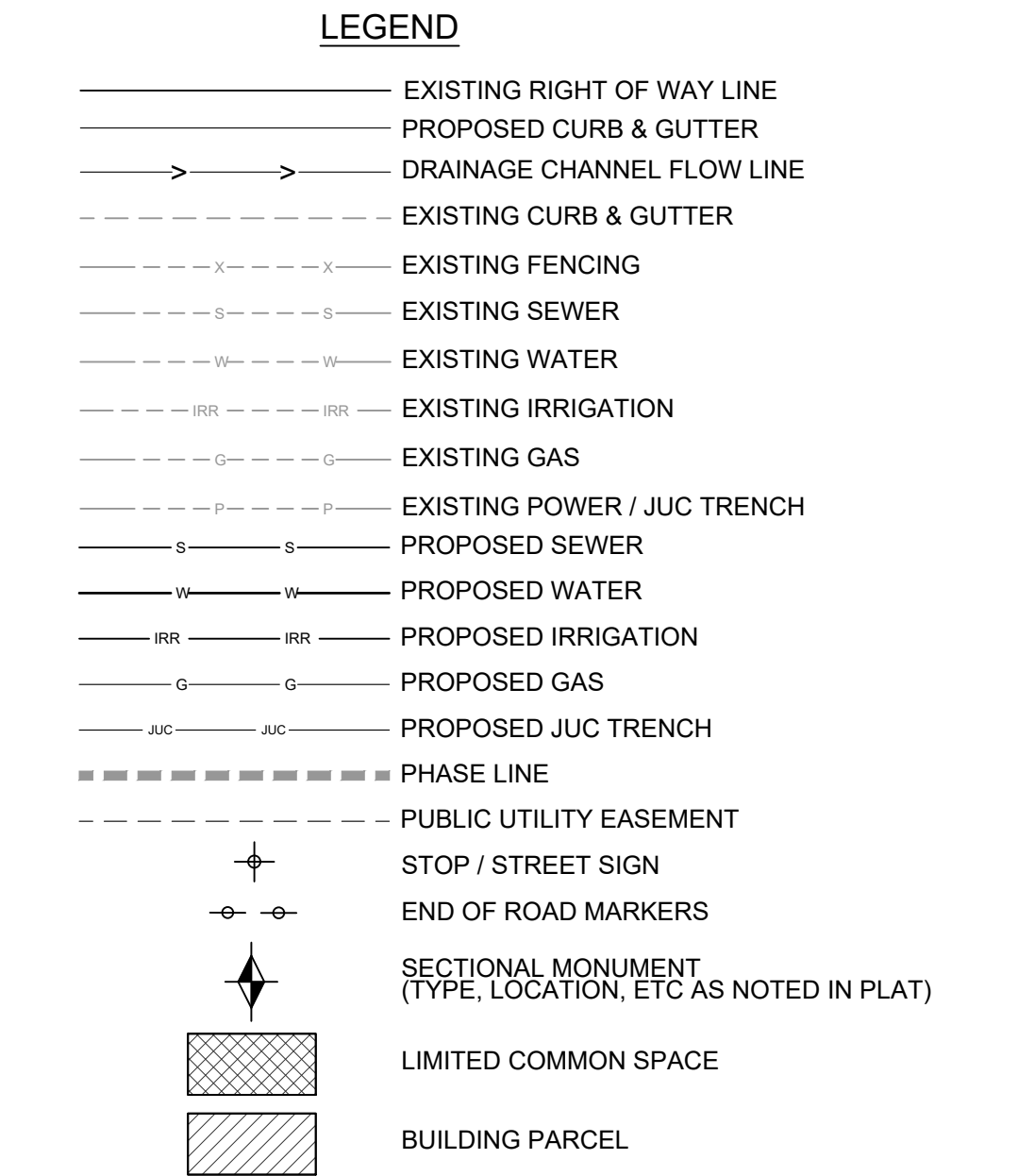
BUSH & GUDGELL, INC.
Engineers - Planners - Surveyors
205 East Tabernacle Suite #4
St. George, Utah 84770
Phone (435) 673-2337 / Fax (435) 673-3161
www.bushandgudgell.com



DATE: OCT 2022
DRAWN: CBW/CCL
APPROVED: WEM
SCALE: NTS
JOB NO. 221077

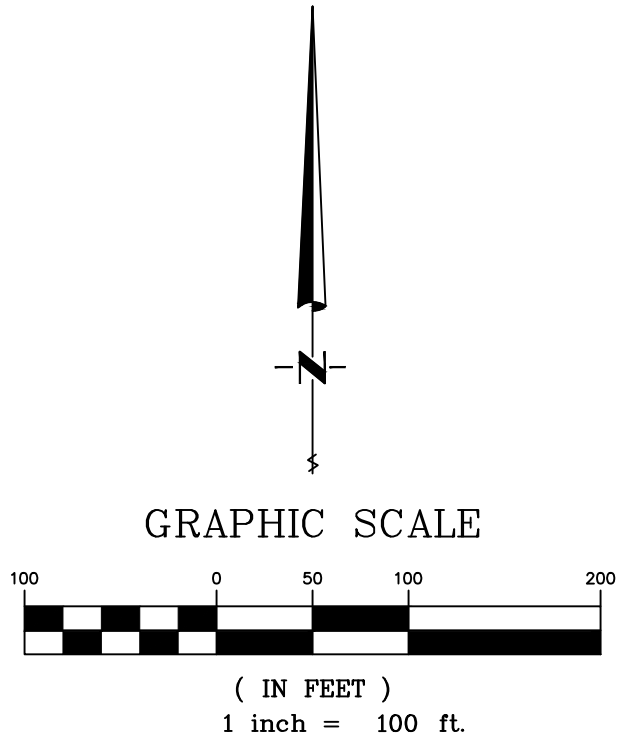
COVER SHEET
SOUTHERN DUNES TOWNHOMES
LOCATED IN HURRICANE, UTAH

SHEET 1 OF 5 SHEETS
FILE: 221077-PRELIMINARY PLAT



DEVELOPER INFORMATION
RANLIFE HOMES CORDERO LLC
ANTHONY BOCCINNO
(801) 918-1779
9272 S. 700 E
SANDY, UT 84070

ENGINEER INFORMATION
BUSH AND GUDGELL, INC.
PROJECT MANAGER: RICK MEYER
(435) 673-2337
205 EAST TABERNACLE #4
ST. GEORGE, UT 84770



2 OF 5 SHEETS
FILE: 221077-PRELIMINARY PLAT



DATE: OCT 2022

DRAWN: CERVIL

APPROVED: WFM

SCALE: 1"=100'

JOB NO. 221077

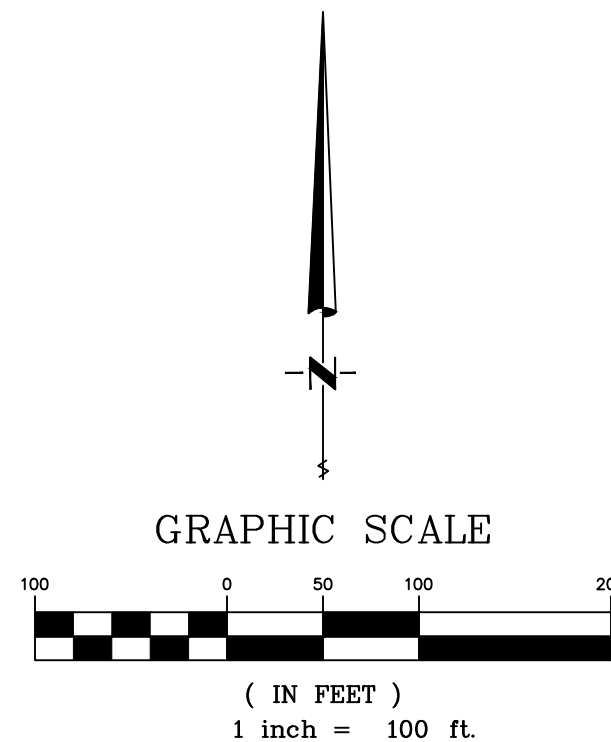
OFFSITE UTILITY PLAN

SOUTHERN DUNES TOWNHOMES

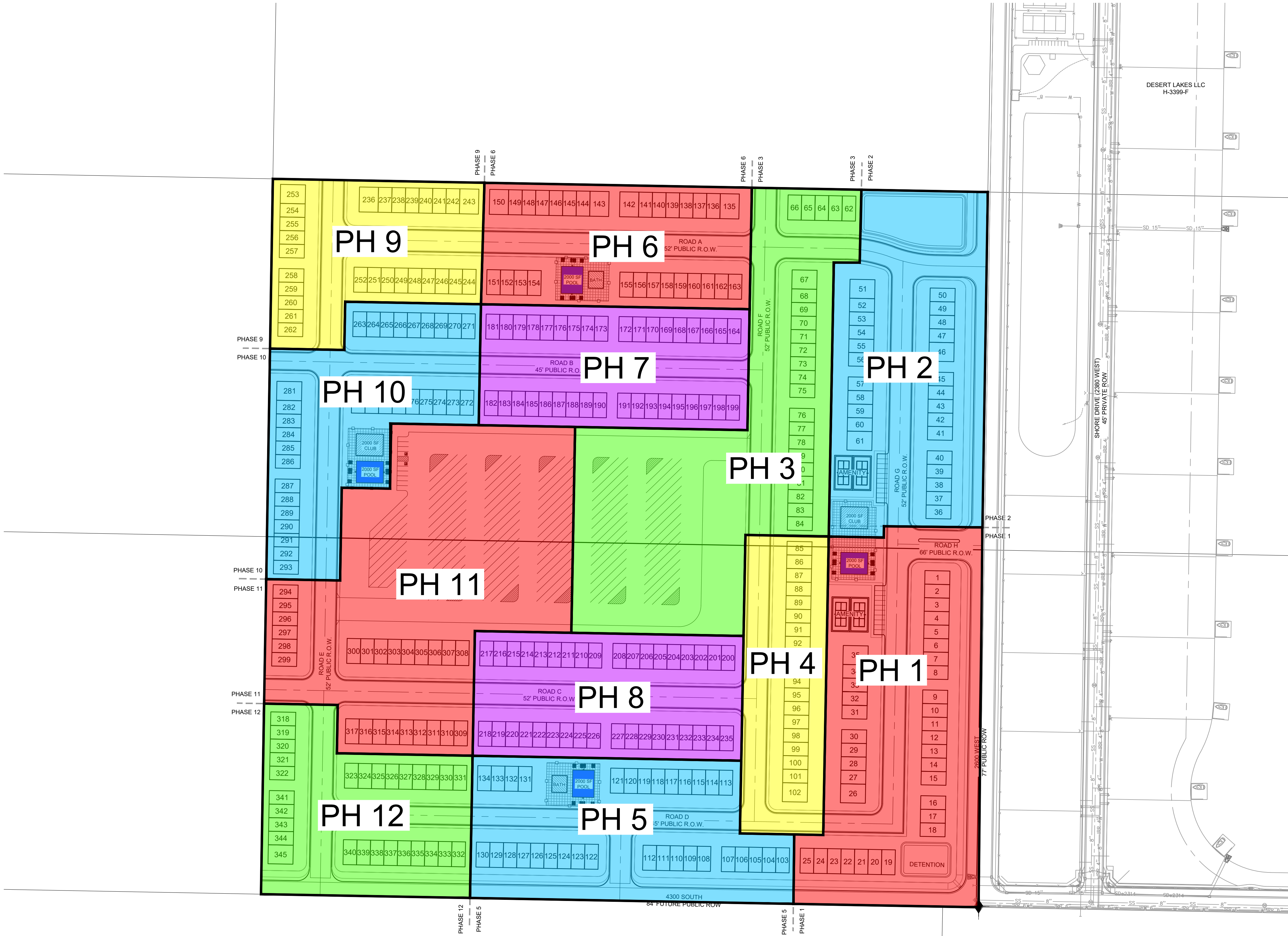
LOCATED IN HURRICANE, UTAH

SHEET 3 OF 5 SHEETS

FILE: 221077-PROJ-UTILITY PLAN



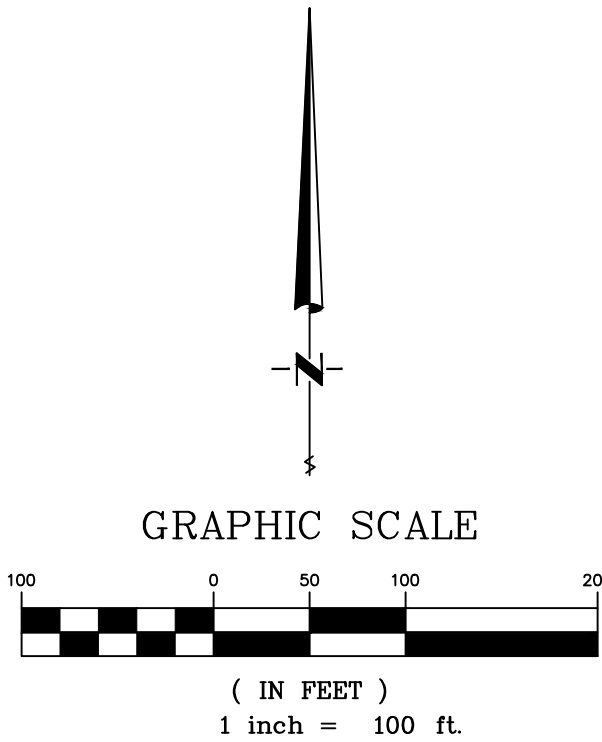
SHEET 4 OF 5 SHEETS
FILE: 221077-PRELIMINARY PLAT



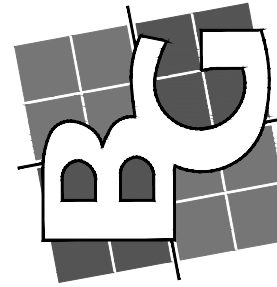
AVOID CUTTING UNDERGROUND UTILITY LINES. IT'S COSTLY.
Call
before you
Dig
1-800-662-4111
ALWAYS LOCATE UTILITIES FIRST

DEVELOPER INFORMATION
RANLIFE HOMES CORDERO LLC
ANTHONY BOCCHINO
(801) 919-1779
9272 S. 700 E
SANDY, UT 84070

ENGINEER INFORMATION
BUSH AND GUDGELL, INC.
PROJECT MANAGER: RICK MEYER
(435) 673-2337
205 EAST TABERNACLE #4
ST. GEORGE, UT 84770



BUSH & GUDGELL, INC.
Engineers - Planners - Surveyors
205 East Tabernacle Suite #4
St. George, Utah 84770
Phone (435) 673-2337 / Fax (435) 673-3161
www.bushandgudgell.com



DATE: OCT 2022
DRAWN: GBW/CCL
APPROVED: WFM
SCALE: 1"=100'
JOB NO. 221077

PHASING EXHIBIT
SOUTHERN DUNES TOWNHOMES
LOCATED IN HURRICANE, UTAH

SHEET 5 OF 5 SHEETS
FILE: 221077.PRELIMINARY PLAT

ADDENDUM NO. 1
DEVELOPMENT AGREEMENT
FOR
CORDERO ZONE CHANGE

THIS ADDENDUM NO. 1 (this “Addendum”) is made and entered into effective as of November 17, 2022, by and between the CITY OF HURRICANE, a Utah municipal corporation, hereinafter referred to as “City,” and River Valley Development, LLC, a Utah limited liability company, hereinafter referred to as “Developer.” This is an addendum to that certain Development Agreement For Cordero Zone Change dated as of January 21, 2021 (the “Development Agreement”), relating to the development of approximately 200 acres of land located within the City of Hurricane as more particularly described on EXHIBIT A of the Development Agreement (the “Project” as further outlined in the Development Agreement). All capitalized terms in this Addendum not defined in this Addendum have the meanings ascribed in the Development Agreement (including prior addenda, if any). The City and Developer agree as follows:

1. **Clarification of “Developer”.** The opening paragraph of the Development Agreement referenced, incorrectly, “L. Boyd Cook, Cordero, a Utah limited liability company” as the Developer. However, L. Boyd Cook is merely the authorized signer for the actual Developer, which is River Valley Development, LLC, a Utah limited liability company. The “Developer” means River Valley Development, LLC, a Utah limited liability company for all purposes of the Development Agreement, as amended from time to time including, without limitation, by this Addendum.
2. **Electrical Power.** Electrical power to the Project will be provided solely along the 2600 West corridor as per the approved construction drawings.
3. **Governing Standards.** The “Zoning Map” is added to the definition of “Approval Documents” in Section 3 (Governing Standards) of the original Development Agreement.
4. **Constructions Standards and Requirements.** The following language is added to subsection 5.a (Construction Standards and Requirements) of the original Development Agreement:

Prior to the construction of any road, utility, or public improvements within the Project, the City shall review proposed construction drawings and require adjustments or changes, if any, needed to meet the requirements of the Approval Documents and City Code. The City shall cooperate and allow Developer to construct the Offsite Improvements, and the City shall inspect, and accept Developer’s dedication of, the Offsite Improvements promptly upon completion. The City shall only accept improvements once improvements have been installed, inspected by the City or its representative, and a warrantee bond has been provided by Developer, all according to the Approval Documents and City Code.

5. **Adequate Public Facilities.**

- a. This subsection 5.a applies to any portion of the Project for which a preliminary subdivision has not already been approved by the City:
 - i. Developer understands, acknowledges and specifically agrees that: (a) power, water, and other utility services to the Property may not be currently available in sufficient capacity to serve some or all of the Property, and may not have been extended to the Property; (b) the granting of this zone change, approval of a preliminary plat, and review of construction drawings, does not in any way guarantee or warrant the availability and extension of power, water, or other utility services to the Property; (c) no application for any building or grading permit requiring the availability and extension of power, water, or other utility service for the specific property identified in the permit application, shall be filed, made, or approved until such time that such utilities or services are available and have been extended to the applicable property; and (d) Developer assumes all risk and liability associated with any development activity on the Property, including but not limited to all costs incurred for engineering, feasibility studies, etc., in the event that such services do not become available and are not extended to the Property.
 - ii. The City may deny any application for final plat(s) and/or building permit(s) if the City finds that (1) utilities, roadways, or other public facilities or infrastructure are inadequate to support the property that is the subject of that application or (2) services are not in the vicinity of the property that is the subject of that application. Notwithstanding the foregoing, the City may consider an application if the applicant can show that current utility systems, roadway systems, and other public facilities and infrastructure are adequate to meet the demand for the property that is the subject of that application and the applicant can provide a plan on how to reasonably connect the systems, facilities, and infrastructure to the property that is the subject of that application.
 - iii. As a prerequisite to any final plat(s) and/or building permit(s) approval with respect to any portion of the Project on, Developer shall submit and receive approval of a full drainage plan for the property that is the subject of the application. This drainage plan shall provide plans for proper retention or detention for runoff generated by the property that is the subject of the application, together with a plan to mitigate impacts from regional historic stormwater runoff onto or through the property that is the subject of the application in accordance with Hurricane City stormwater standards. The drainage plan shall be reviewed and approved by the City Engineer.
- b. The City shall not withhold preliminary or final plat approval, issuance of any permit, or any other land use approval on the basis or for the reason that power, water, or other utility services may be projected to be insufficient for potential property that is not the subject of that specific application. The City will consider only the property that is the subject of that application, when reviewing the

application. When considering needed power, water, or other utility services, the City agrees to only consider whether existing or proposed power, water, or other utility services are sufficient to serve the property that is the subject of that application, and not any other property.

6. **Miscellaneous.** All terms of the Development Agreement that conflict with the terms in this Addendum are superseded to the extent of the conflict. Except as expressly amended in this Addendum, the Development Agreement is reinstated, ratified and remains in full force and effect as written.

THIS ADDENDUM NO. 1 IS ACCEPTED AND AGREED TO BY:

CITY OF HURRICANE, a Utah municipal corporation,

Mayor

Date Signed _____

ATTEST:

City Recorder

RIVER VALLEY DEVELOPMENT, LLC

By: _____

Printed Name: L. Boyd Cook

Title: CFO and Authorized Signer



AGENDA ITEM SUMMARY

TO: Hurricane City Council
FROM: Dayton Hall, City Attorney
DATE: November 14, 2022
RE: Motive Aero LLC's Request for New Use and New Lease at City Airport – Hangar 6S

I. Introduction

Motive Aero LLC was previously granted a business license to operate an “aircraft service and training” business at hangar 6S of the City Airport. When Motive Aero requested the business license, the City had not yet updated its outdated lease template, so the business license was approved on the condition that the owner obtain an approved lease. The City Council has since updated the airport lease template. Motive Aero is now requesting a new lease. The new draft lease in the Council’s packet is based on the airport lease template approved by the Council.

II. Authority and Applicable Ordinances

The City owns the land at the City Airport, so the Council has broad discretion on which uses or businesses to allow. Applicants seeking permission for new activities, businesses, or uses at the City Airport do not have a guaranteed “right” to introduce new businesses or uses to the Airport.

Hurricane City Ordinance 2-1-2

It shall be the duty of the [Airport] Board to review and recommend approval or disapproval of any agreement for the lease of property at the airport and the proposed use of each parcel of leased land. Prior to consideration by the City Council, any person or entity desiring to lease property at the airport or otherwise conduct any activity at the airport shall first submit a copy of the proposed lease or description of the activity, accompanied by an architectural drawing of the building or site use proposed, to the airport manager for review by the Board. The Board shall forward its recommendation to the City Council as part of the proposed lease of property.

III. Airport Board Recommendations

The Airport Board unanimously recommended approval of this request.

IV. Other Considerations

Because the business license has already been approved, approval of the lease seems appropriate.



HURRICANE CITY
UTAH

SASO OPERATING AND LEASE AGREEMENT

BETWEEN

HURRICANE CITY, UTAH

AND

MOTIVE AERO LLC

Effective Date: November 17, 2022

SASO OPERATING AND LEASE AGREEMENT

THIS SASO OPERATING AND LEASE AGREEMENT (which, as amended from time to time, is defined herein as the ("Agreement") is entered into as of the 17th day of November, 2022, by and between the Hurricane City, Utah, a Utah municipal corporation, (the "City") and Motive Aero LLC, a Wyoming limited liability company, (the "Tenant").

RECITALS

WHEREAS, City owns and operates an airport located at 800 W. 2300 S., Hurricane, Utah 84737 (the "Airport"); and

WHEREAS, City and Tenant desire to accommodate, promote, and enhance general aviation at the Airport; and

WHEREAS, Tenant is qualified to provide services as a single aeronautical service operator ("SASO") as set forth herein and desires to lease certain real property at the Airport for the purpose of operating a SASO concession on the terms provided in this Agreement;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Agreement to Lease and Operate Concession

A. Agreement to Lease Premises. City hereby leases to Tenant and Tenant hereby leases from City that certain real property 4,800 square feet in size including a 65'x60' hangar pad plus five feet beyond the hangar pad on three sides excluding the front and located at the property identified as unit 6 S on the Airport property (the "Premises"). Tenant agrees to accept the Premises "as is" and City makes no warranty as to the condition of the Premises or its suitability for any particular purpose.

B. Disclosure of Soil Condition. City discloses to Tenant that the soil at the Airport is collapsible and otherwise unstable. Tenant is responsible to obtain appropriate soil evaluation reports, to adhere to the recommendations in the reports, and take whatever action is necessary to mitigate the soil condition on the Premises. Tenant is responsible to construct the hangar at the engineered drainage elevations so the drainage will flow properly. Tenant will maintain and keep the area around the Premises clear of debris and obstructions so as not to cause disruption in the expected normal drainage flow.

C. Construction of Tenant Improvements. Tenant shall construct or purchase and maintain continuous improvements on the leased Premises, which shall include a concrete pad, an aircraft hangar, fixtures, and any utilities as may be necessary for the Tenant's aviation related activities (referred to herein as the "Tenant Improvements"). Such Tenant Improvements must meet the Airport's Minimum Standards for Commercial Aeronautical Activities and Building Development Standards in effect as of the date of this Agreement. The Tenant agrees to submit plans/drawings of the proposed Tenant Improvements to City within eight (8) months of the execution date of this Agreement. Tenant shall be responsible to obtain and pay for proper building permits for the Tenant Improvements and comply with all the applicable ordinances of the City when planning and constructing the Tenant Improvements. Tenant agrees to complete

construction of the proposed Tenant Improvements within twenty four (24) months from the date the building permit is issued.

D. Grant of Concession and Purpose of Agreement. Tenant agrees that it shall have the right, privilege, and obligation to use the Premises for the following purposes: The non-exclusive operation of a SASO concession providing at a minimum the following services (as they may be more specifically required under the Airport's Minimum Standards for Commercial Aeronautical Activities): **AIRCRAFT SERVICE AND TRAINING**. Tenant shall provide to City the make, model, and registration number of any aircraft owned or controlled by Tenant, or that are subject to an authorized sublease, that are based at the Premises ("Aircraft").

E. Access. City agrees that if Tenant is not in breach of this Agreement, Tenant and Tenant's employees, officers, directors, subtenants that are approved by City pursuant to this Agreement, contractors, subcontractors, suppliers, agents, invitees, and other representatives ("Tenant's Associates") may ingress and egress across the Airport in the areas designated by City and as permitted by applicable Laws and Regulations, on a non-exclusive basis and to the extent reasonably necessary for Tenant's use, occupancy, and operations at the Premises.

F. Right of Flight and Other Reserved Rights. This Agreement conveys only a leasehold interest in the Premises (and grant of concession) on the terms and for the purposes provided herein, and it conveys no other rights, titles, or interest of any kind. City reserves rights in the Premises including but not limited to, a right of aircraft movement on Airport property, a right of flight for the passage of aircraft in the air, a right to cause such noise as may at any time be inherent in the operation of aircraft, subject to the rules, regulations, and policies as may be adopted from time to time by the City, and rights in water, minerals, oil, and gas.

G. Enjoyments of Rights. Subject to Tenant's complete performance of the payment and other obligations contained in this Agreement, Tenant shall enjoy the rights, uses, and privileges stated in this Agreement.

2. Term. The term of this Agreement shall commence on the date of execution of this Agreement and shall continue thereafter for a term of twenty (20) years until November 17, 2042, (the "Initial Term"). If the tenant desires to renew this Agreement, the tenant must notify the City in writing at least 60 days prior to the expiration of the initial term. Upon such notification, this lease shall renew for an additional five (5) year period at the lease rates stated in Section 3 of this Agreement.

3. Rent

A. Rent. For Tenant's lease of the Premises, Tenant covenants to pay to City without off-set or deduction the annual ground as shown in the table below and commencing on the date of execution of this Agreement. All rent shall be due and payable to the City of Hurricane annually in advance, without notice or demand from City, on the 1st day of August. The first years rent payment will be prorated to the next August 1st payment date.

<u>Years</u>	<u>Rent amount per square foot</u>		
2022 – 2027	.15	2058 – 2063	.33
2028 – 2033	.18		
2034 – 2039	.21		
2040 – 2045	.24		

2046 – 2051	.27
2052 – 2057	.30

C. Dishonored Checks. If any check paid on behalf of Tenant is dishonored or returned by a bank for any reason, Tenant shall pay all charges assessed to City by the bank plus a service charge of fifty dollars (\$50.00) per occurrence (or such other amount as City shall implement from time to time) in addition to other sums due under this Agreement.

D. Past Due Amounts. If tenant fails to pay when due any amount required to be paid by Tenant under this Agreement, such unpaid amount shall bear interest at the rate of eighteen percent (18%) from the due date of such amount to the date of payment in full, with interest. In addition, City may charge a sum of five percent (5%) of such unpaid amount as a service fee, which the parties agree is a reasonable amount to cover the additional costs for billing and collecting arising from Tenants failure to make payment in a timely manner. All amounts due under this Agreement are and shall be deemed to be rent, and shall be paid without abatement, deduction, off-set, prior notice, or demand (unless expressly provided by the terms of this Agreement). City's acceptance of any past due amount either full or partial (or its associated interest or service fee) shall not constitute a waiver of any default under this Agreement.

4. Tenant's Use of Premises and Airport

A. No Interference. Tenant and Tenant's Associates shall not use the Premises or the Airport in any manner that interferes with any operation at the Airport or decreases the Airport's effectiveness, as reasonably determined by the City at its sole discretion. Tenant shall promptly notify City of any use that creates such interference or decrease of effectiveness and remedy the same to City's satisfaction.

B. Comply with all Laws and Regulations. Tenant and Tenant's Associates shall comply at all times, at Tenant's sole cost, with any and all laws and regulations (as amended or otherwise modified from time to time) that are applicable to Tenant's use, occupancy, or operations at the Premises or the Airport (the "Laws and Regulations"), which include but not limited to, the Airport Rules and Regulations, Policies and Procedures, Minimum Standards for Commercial Aeronautical Activities, Utah Code Annotated, the Code of Revised Ordinances of the Hurricane City, the Protective Covenants of the Hurricane City Airport, applicable Federal Aviation Regulations, and all lawful, reasonable, and nondiscriminatory Airport policies and other requirements.

C. No Unauthorized Use. Tenant and Tenant's Associates shall use the Premises and the Airport only for purposes that are expressly authorized by this Agreement and shall not engage in any unauthorized use of the same. Unauthorized uses include, but are not limited to, any use that would damage, interfere with, or alter any improvement; restricting access on any road or other area that Tenant does not lease; placing waste materials on the Airport or disposing of such materials in violation of any Laws and Regulations; any use that would constitute a public or private nuisance or a disturbance or annoyance to other Airport users; the use of automobile parking areas in a manner not authorized by City; fueling activities on the Premises or any other area that City has not authorized; commercial activities except those activities authorized herein, aircraft parking, or storage in areas not leased by Tenant, any use unrelated to the purposes of this Agreement; and any use that would be prohibited by or would impair coverage under either party's insurance policies.

D. Permits and Licenses. Tenant shall obtain and maintain in current status all permits and licenses that are required under any Laws and Regulations in connection with Tenant's use, occupancy, or operations at the Premises or the Airport. In the event that Tenant receives notice from any governmental authority that Tenant lacks, or is in violation of, any such permit or license, Tenant shall provide City with timely written notice of the same.

E. Taxes and Liens. Tenant shall pay (before their respective due dates) all taxes, fees, assessments, and levies that relate to Tenant's use, occupancy, or operations at the Premises or the Airport and all other obligations for which a lien may be created relating thereto (including, but not limited to, utility charges and work for the Tenant Improvements). Within ten (10) days of notice of any such lien, Tenant shall have the lien removed or deposit with the City cash or other security acceptable to City in an amount sufficient to cover the cost of removing such lien. When contracting for any work in connection with the Premises, Tenant shall include in such contract a provision prohibiting the contractor or any subcontractor or supplier from filing a lien or asserting a claim against City's real property or any interest therein.

F. Damage to Property and Notice of Harm. Tenant, at Tenant's sole cost, shall repair or replace to City's satisfaction any damaged property that belongs to City or City's other Tenants to the extent that such damage arises from or relates to an act or omission of Tenant or Tenant's Associates. Tenant shall promptly notify City of any such property damage. If Tenant discovers any other potential claims or losses that may affect City, Tenant shall promptly notify City of the same.

G. No Alterations or Improvements. Tenant shall not make or cause to be made any alterations or improvements to the Premises or to other areas of the Airport without City's prior written consent.

H. Security. Tenant is responsible to comply, at Tenants sole cost, with all security measures that City, Federal Aviation Administration, the United States Transportation Security Administration or any other governmental authority having jurisdiction may require in connection with the Airport. Tenant shall protect and preserve security at the Airport, including, but not limited to, protecting security information and protecting any access points to the Airport that are maintained by Tenant. Tenant will be vigilant in watching for unusual activity or persons that do not belong at the Airport, and will report such to the Airport Manager or by calling 1-866-GA-SECURE.

I. Removal of Disabled or Derelict Aircraft. Tenant shall promptly remove or cause to be removed from any portion of the Airport not leased by Tenant the Aircraft (or any other aircraft that Tenant owns or controls) if it becomes disabled or derelict. Tenant may store such aircraft within the Tenant Improvements or, with the City's prior written consent, elsewhere at the Airport on terms and conditions established by City. If Tenant fails to comply with this requirement after a written request by City to comply, City may (but is not required to) cause the removal of any such aircraft at Tenant's expense by any means that City determines to be in City's best interests.

J. Maintenance, Repair, Utilities, and Storage. Tenant's use, occupancy, and operations at the Premises shall be without cost or expense to the City. Tenant shall be solely responsible to design and construct the Tenant Improvements and to maintain, repair, reconstruct, and operate the Premises and the Tenant Improvements at Tenant's sole cost and expense, including, but not limited to, all utility services, janitorial services, waste disposal, and ramp repair. Tenant shall at all times maintain the Premises and the Tenant Improvements in a

condition that is clean, safe, sanitary, and in good repair. Tenant shall perform all work in accordance with Laws and Regulations and in a good and workmanlike manner. City has sole discretion to determine the quality of the work. Tenant shall promptly remedy any condition that fails to meet this standard. In addition to other restrictions and requirements contained in this Agreement, Tenant shall not store outside of the Tenant Improvements (aircraft hangar) any inoperable equipment, discarded or unsightly materials, materials likely to create a hazard, trailers (except trailers designed to carry gliders), inoperative motor vehicles, or any other similar items. Tenant is responsible to keep the area five feet out from all four sides of the aircraft hangar clear of weeds and any debris.

K. Operations. Tenant's operations shall comply with the following.

(i) Airport Operations. Tenant shall occupy the Premises and shall operate at a minimum during normal scheduled business hours. Tenant shall operate in a manner that promotes effective Airport operations. Among other things, Tenant shall immediately notify the Airport Manager of any condition observed at the Airport that may create a hazard or disruption; Tenant shall refrain from annoying, disturbing, or impairing Airport customers, tenants, or employees; Tenant shall promptly respond to City's requests for information and reasonable assistance in connection with planning and other operational matters at the Airport; Tenant shall not divert business to off-Airport locations or engage in discriminatory business practices; and Tenant shall promptly respond to City's requests for information and reasonable assistance in connection with planning and other operational matters at the Airport.

(ii) Concession Service Standard. Tenant's concession shall provide high quality services and facilities in a good and proper manner to effectively meet the needs of the public and City. The privilege to operate this concession shall exist only so long as the character of Tenant's facilities and services are consistent with such standard.

(iii) Complaints. Tenant shall respond in a prompt manner to questions and complaints regarding Tenant's operations when raised by Airport users or by City, and Tenant shall provide a timely resolution of such questions and complaints.

(iv) Emergencies. If City determines for any reason that emergency conditions exist at the Airport, Tenant shall participate in any emergency response as directed by City or other agency in charge and shall operate in a manner that protects safety and the interests of the public.

(v) Safety. Tenant shall maintain appropriate safety items at the Premises as may be required by the City, Local Fire Authority, or other governmental agency, and shall ensure that Tenant's personnel are properly trained in the use of such safety items.

(vi) Personnel. Tenant shall control the conduct, demeanor, and appearance of its employees and Tenant's Associates so they do not annoy, disturb, or impair Airport customers, tenants, or employees. Tenant shall provide the Airport Manager with the name and contact number of a person who is responsible for and has authority to act on behalf of Tenant.

(vii) Deficiencies. Without limiting or waiving any other remedies available to City, including declaring a breach of this Agreement, City's remedies shall include the following in connection with deficiencies in Tenant's operations.

(a) Propose and Implement Cure. Tenant shall meet with the Airport Manager as he or she may request regarding the quality of Tenant's operations, whether or not in connection with a specific complaint. Tenant shall propose curative measures in response to City's determinations regarding deficiencies in Tenant's operations and shall implement as expeditiously as possible measures that are approved by City.

(b) Remove Employees and Associates. City shall have the right to require Tenant to remove from the Airport any employee or any of Tenant's Associates that City reasonably determines to be in violation any provision of this Agreement or otherwise detrimental to City's interests at the Airport.

5. City's Rights and Obligations

A. Airport Maintenance. Subject to subparagraph C. of this section, City agrees that as long as the Airport is certified to operate as an airport by the Federal Aviation Administration (or any successor agency), City shall keep the property of the Airport in good repair and free from obstruction in accordance with applicable Federal standards.

B. Access to Premises. City for itself and its employees, officers, directors, agents, and other representatives ("City's Associates") reserves the right to enter the Premises and Tenant Improvements at reasonable times and with reasonable notice for any purpose relating to the Airport including, but not limited to, conducting inspections, determining compliance with this Agreement, conduct Airport work, or for emergency purposes, provided that they shall not unreasonably interfere with Tenant's use of the Premises or Tenant's Improvements.

C. City's Right to Relocate Tenant's Improvements from Premises. It is understood and agreed that as conditions may require, the City has the right to require Tenant to relocate Tenant's Improvements from the Premises to a new location on the Airport property, or to a new location at a new airport if the City elects to relocate the Airport, which would be comparable to Tenants current leased Premises. Tenant shall bear the costs associated with relocating Tenant's Improvements and property to the new location. City agrees to provide the Tenant with a new SASO Operating and Lease Agreement for the new location upon the same terms and conditions as are contained herein for the unexpired term of this Agreement.

D. City Charges. City has the right to impose rates and charges in connection with any matter at the Airport in a manner consistent with Laws and Regulations.

E. City Directives. City is the owner and proprietor of the Airport, and City has the right to issue any lawful, reasonable, and non-discriminatory directive as a landlord and proprietor that City determines to be in City's best interests.

F. Governmental Acts. City is a governmental entity, and City has all rights, powers, immunities, and privileges afforded to it under Laws and Regulations. Tenant agrees that Tenant is subject to any lawful governmental act of City without regard to the provisions of this Agreement.

G. Condemnation. In the event that the demised Premises are condemned by any proper authority, the term of this lease will end on the date that Tenant is required to surrender possession of the Premises. Tenant shall be entitled to that portion of the condemnation proceeds attributable to the fair market value of any Tenant Improvements placed on the Premises by Tenant.

6. Indemnification

A. Indemnity by Tenant. Tenant agrees to indemnify, hold harmless, and defend City and its officers and employees from and against losses of every kind and character (including but not limited to, liabilities, causes of action, losses, claims, costs, fees, attorney fees, expert fees, court of dispute resolution costs, investigation costs, environmental claims, mitigation costs, judgments, settlements, fines, demands, damages, charges, and expenses) that arise out of or relate to: (i) this Agreement; (ii) any use, occupancy, or operations at the Premises or the Airport by Tenant or Tenant's Associates; or (iii) any wrongful, reckless, or negligent act or omission of Tenant or Tenant's Associates. Tenant shall use attorneys, experts, and professionals that are reasonably acceptable to City in carrying out this obligation. This obligation does not require Tenant to indemnify City and its officers and employees against losses (as defined above) that arise solely from the negligent acts or omissions of City and its officers and employees. The obligation stated in this Section 6.A. shall survive the expiration or other termination of this Agreement with respect to matters arising before such expiration or other termination. These duties shall apply whether or not the allegations made are proven to be true.

B. Waiver. Tenant assumes all risk of the use of the Premises and the Airport, and Tenant hereby knowingly, voluntarily, and intentionally waives any and all losses, liabilities, claims, and causes of action, of every kind and character, that may exist now or in the future (including, but not limited to, claims for business interruption and for damage to any aircraft) against City and its officers, employees, and volunteers arising from or related to Tenant's use, occupancy, or operations at the Premises or the Airport.

7. Hazardous Materials. Tenant shall not cause or permit any Hazardous Materials to be used, produced, stored, transported, brought upon, or released on, under, or about the premises or the Airport by Tenant or Tenant's Associates in violation of applicable Environmental Laws. Tenant is responsible for any such violation as provided by Section 6.A. of this Agreement. Tenant agrees that in the event of a release or threat of release of any Hazardous Material by Tenant or Tenant's Associates at the Airport, Tenant shall provide City with prompt notice of the same. Tenant shall respond to any such release or threat of release in accordance with applicable Laws and Regulations.

8. Assignment and Subleasing

A. Assignment. Tenant shall not assign any of its rights under this Agreement, including, but not limited to, rights in the Tenant Improvements, (whether such assignment is voluntary or involuntary, by merger, consolidation, dissolution, change in control, or any other manner), shall not encumber any such rights or record this Agreement (or any document or interest related thereto) and shall not delegate any performance under this Agreement, except with prior written consent of City to any of the same. City will not unreasonably withhold written consent to an assignment of this Agreement.

B. Subleasing. With prior written consent of City, Tenant shall have the right to sublease portions of the Premises and Tenant Improvements only for the purposes specified in this Agreement or to store an aircraft. City shall have the right to approve any sublease tenant and sublease agreement. Tenant shall impose on any approved sublease tenant the same terms set forth in this Agreement to provide for the rights and protections afforded to City. Tenant shall reserve the right to amend any sublease to conform to the requirements of this

Agreement, and any sublease shall be consistent with and subordinate to this Agreement as it is amended from time to time. Any sublease shall include an agreement that the sublease will attorn to and pay rent to City if Tenant ceases to be a party to this Agreement. Tenant shall provide to City a copy of any sublease executed by Tenant. No sublease shall relieve Tenant of any obligations under this Agreement.

9. Damage and Destruction. If any portion of the Premises or the Tenant Improvements is damaged in any manner, Tenant shall promptly remove from the Airport all debris and cause repairs to be made to restore the same to an orderly and safe condition. All work shall be performed in accordance with plans and specifications that are approved by City as being consistent or better than the original improvements. Tenant shall follow City's policies and procedures regarding obtaining building permits as necessary.

10. Default

A. Tenant's Default. Each of the following events shall constitute a default or breach of this Agreement by the Tenant. (i) Tenant fails to timely pay any installment of rent; (ii) Tenant violates any requirement under this Agreement (including, but not limited to, abandonment of the Premises) and fails to cure the same within sixty (60) days after written notice thereof by City to Tenant; (iii) Tenant assigns or encumbers any right in this Agreement, delegates any performance hereunder, or subleases any part of the Premises (except as expressly permitted in this Agreement); (iv) Tenant files a petition in bankruptcy, becomes insolvent, or has a petition filed against Tenant in bankruptcy, insolvency, or for reorganization or appointment of a receiver or trustee which is not dismissed within sixty (60) days; (v) Tenant petitions for or enters into an arrangement for the benefit of creditors, or suffers this Agreement to become subject to a writ of execution and such writ is not released within thirty (30) days; or (vi) Tenant defaults in constructing a Tenant Improvement as provided for in this Agreement.

B. Remedies. Upon default by Tenant under this Agreement, City may (at any time) pursue any or all remedies available to City, including, but not limited to, the following: (i) perform in Tenant's stead any obligation that Tenant has failed to perform, and Tenant shall promptly pay to City all costs incurred by City for such performance; (ii) terminate Tenant's rights under this Agreement upon delivering a written notice of termination; and (iii) re-enter and take possession of the Premises by any lawful means (with or without terminating this Agreement). Tenant shall pay all costs and damages arising out of Tenant's default, including, but not limited to, the cost of recovering possession of the Premises, the cost of improving and re-letting the Premises, and any attorney fees and costs. Notwithstanding any termination or re-entry, Tenant shall remain liable to pay the rent required under this Agreement for the remaining term of this Agreement, and Tenant shall pay City on demand for any deficiency in the same. No action by City or City's Associates shall be construed as an election by City to terminate this Agreement or accept any surrender of the Premises unless City provides Tenant with a written notice expressly stating that City has terminated this Agreement or accepted a surrender of the Premises. Following a default by Tenant under this Agreement, City shall exercise commercially reasonable, good faith efforts to mitigate its damages as required by applicable Utah law.

C. Default by City. City shall not be in default under this Agreement unless City fails to perform an obligation required of City under this Agreement within thirty (30) days after written notice by Tenant to City. If the nature of City's obligation is such that more than thirty (30) days are reasonably required for performance or cure, City shall not be in default if City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to

completion. In no event may Tenant terminate this Agreement or withhold the payment of rent or other charges provided for in this Agreement as a result of City's default.

D. Survival. The provisions of this Section 10 and the remedies and rights provided in Section 6 shall survive any expiration or termination of this Agreement.

11. Expiration or Termination

A. Disposition of Tenant Improvements. Upon the termination of this Agreement before or on the expiration date, Tenant shall do one of the following at the option of City: (1) surrender the Tenant Improvements to City if City has determined to accept the Tenant Improvements, with Tenant's rights, title, and interests in the Tenants Improvements being deemed transferred to the City upon the City accepting the same or (2) remove all Tenant Improvements from the Premises and Airport at Tenant's sole expense in a manner acceptable to City (and the obligations of section 6.A. shall apply to such removal). If Tenant fails to remove any Tenant Improvements under subsection (2), City may do so in any manner acceptable to City pursuant to Section 10.B.

B. Holding Over. If Tenant remains in possession of the Premises after any expiration or termination of this Agreement, such occupancy shall not waive any default under this Agreement and City may terminate such occupancy as a tenancy at will in accordance with Utah Law. During such occupancy, Tenant shall comply will all provisions of this Agreement that are applicable to an at-will-tenancy, and Tenant shall pay the following rent: ground rent at the highest rate then charged at the Airport and rent for the Tenant Improvements at fair market value based on City's survey of rent for similarly situated facilities at the Airport and at other western airports.

C. Survival. The provisions of this Section 11 shall survive any expiration or termination of this Agreement.

12. General Provisions

A. No Exclusive Rights. Nothing in this Agreement shall be construed to grant to Tenant any exclusive right or privilege for the conduct of any activity on the Airport (except to lease the Premises for Tenant's exclusive use as provided herein).

B. Agreement Preserves City's Compliance. This Agreement shall be interpreted to preserve City's rights and powers to comply with City's Federal and other governmental obligations.

C. Subordination to City's Government Commitments. This Agreement is subordinate to the provisions of any agreement between City and the United States or other governmental authority (regardless of when made) that affects the Airport, including, but not limited to, agreements governing the expenditure of Federal funds for Airport Improvements. In the event that the Federal Aviation Administration or other governmental authority requires any modification to this Agreement as a condition of City entering any agreement or participating in any program applicable to the Airport, Tenant agrees to consent to any such modification. If a governmental authority determines that any act or omission of Tenant or Tenant's Associates has caused or will cause City to be non-compliant with any of City's government commitments, Tenant shall immediately take such actions that may be necessary to preserve City's compliance with the same.

D. Subordination to Financing and Matters of Record. This Agreement is subordinate to the provisions of any agreements or indentures entered by City (regardless of when entered) in connection with any debt financing applicable to the Airport and is subordinate to any matter of record affecting the real property of the Airport.

E. Force Majeure. No act or event, whether foreseen or unforeseen, shall operate to excuse Tenant from the prompt payment of rent or any other amounts required to be paid under this Agreement. If City (or Tenant in connection with obligations other than payment obligations) is delayed or hindered in any performance under this Agreement by a force majeure event, such performance shall be excused to the extent so delayed or hindered during the time when such force majeure event is in effect, and such performance shall promptly occur or resume thereafter at the expense of the party so delayed or hindered. A “force majeure event” is an act or event, whether foreseen or unforeseen, that prevents a party in whole or in part from performing as provided in this Agreement, that is beyond the reasonable control of and not the fault of such party, and such party has been unable to avoid or overcome by exercising due diligence, and may include, but is not limited to, acts of nature, war, riots, strikes, accidents, fire, and changes in law.

F. Rights and Remedies. Except as expressly set forth in this Agreement, the rights and remedies set forth in this Agreement are not intended to be exhaustive and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently exist.

G. Attorneys Fees. If any action is brought to recover any rent or other amount under this Agreement because of any default under this Agreement, to enforce or interpret any of the provisions of this Agreement, or for the recovery of possession of the Premises, the party prevailing in such action shall be entitled to recovery from the other party(s) reasonable attorneys fees, court costs, the fees of experts and other professionals, and other costs arising from such action (including those arising from any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered. Tenant shall be responsible for all expenses, including but not limited to, attorney fees incurred by the City in any case or proceeding involving the Tenant or any permitted assignee of Tenant under or related to any bankruptcy or insolvency law. The provisions of this Section 12.G. shall survive any expiration or termination of this Agreement.

H. Governing Law, Venue, and Waiver of Jury Trial. This Agreement and the respective rights and obligations of the parties shall be governed by, interpreted, and enforced in accordance with the Laws of the State of Utah. Venue for any action arising out of or related to this Agreement or actions contemplated hereby may be brought in the United States District Court for Utah or the District Court for the State of Utah sitting in Washington County, Utah so long as one of such courts shall have subject matter jurisdiction over such action or proceeding, and each of the parties hereby irrevocable consents to the jurisdiction of the same and of the appropriate appellate courts there from. Process in any such action may be served on any party anywhere in the world. CITY AND TENANT EACH KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER FOR ALL MATTERS ARISING OUT OF OR RELATING TO THIS LEASE OR ANY USE, OCCUPANCY, OR OPERATIONS AT THE PREMISES OR THE AIRPORT. The provisions of this Section 12.H. shall survive any expiration or termination of this Agreement.

I. Amendments and Waivers. No amendment to this Agreement shall be binding on City or Tenant unless reduced to writing and signed by both parties. No provision of this Agreement may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced.

J. Severability. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect if both the economic and legal substance of the transactions that this Agreement contemplates are not affected in any manner materially adverse to any part. If any provision of this Agreement is held invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes of this Agreement.

K. Merger. This Agreement constitutes the final, complete, and exclusive agreement between the parties on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither party has relied on any statement, representation, warranty, now agreement of the other party except for those expressly contained in this Agreement. Any proposal materials or exhibits submitted by Tenant in response to a solicitation by City, to the extent accepted by City, shall also be incorporated in this Agreement.

L. Confidentiality. Tenant acknowledges that City is subject to legal requirements regarding the public disclosure of records. Tenant shall comply with such laws in connection with making any request that City maintain a record confidentially, and if Tenant complies with the same, Tenant shall have the right to defend any such request for confidentiality at Tenant's expense.

M. Relationship of Parties. This Agreement does not create any partnership, joint venture, employment, or agency relationship between the parties. Nothing in this Agreement shall confer upon any other person or entity any right, benefit, or remedy of any nature.

N. Further Assurances. Each party shall execute any document or take any action that may be necessary or desirable to consummate and make effective a performance that is required under this Agreement.

O. Miscellaneous. The headings in this Agreement are provided for convenience only and do not affect this Agreement's construction or interpretation. All references to Sections are to Sections in this Agreement. Each provision to be performed by Tenant shall be construed as both a covenant and a condition. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the drafting party. If Tenant consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several. References in this Agreement to any period of days shall mean calendar days unless specifically stated otherwise.

P. Time is of the Essence. Time is of the essence in this Agreement.

Q. Notices. Any notice, demand, written consent, or other communication required to be in writing under this Agreement shall be given in writing by personal delivery, express mail (postage prepaid), nationally recognized overnight courier with all fees prepaid (such as, by way of example, Federal Express or UPS), or certified mail (return receipt requested and postage prepaid) when addressed to the respective parties as follows.

If to City:

Hurricane City
City Attorney
147 N. 870 W.
Hurricane, UT 84737

If to Tenant:

Motive Aero LLC
Marc Campbell, Managing Partner
561 Sky ranch Rd. Ste B
Petaluma, CA 94954

Either City or Tenant may change its notice address by giving written notice (as provided herein) of such change to the other party. Any notice, demand, or written consent or communication shall be deemed to have been given, and shall be effective, upon compliance with this Section 12.Q. and delivery to the notice address then in effect for the party to which the notice is directed; provided, however, that such delivery shall not be defeated or delayed by any refusal to accept delivery or an inability to effect delivery because of an address change that was not properly communicated.

R. Binding Obligation. Tenant warrants and represents that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement as a legal, valid, and binding obligation of Tenant.

S. City Approval and Consent. Wherever in this Agreement it specifies the City must give approval or consent by the terms of this Agreement, such approval or consent shall not be unreasonably withheld. Unless otherwise specified, approval, consent, or action by the City refers to approval or consent by the Hurricane City Council.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

HURRICANE CITY

MOTIVE AERO LLC

Nanette Billings, Mayor

By: Marc Campbell
Its: Managing Partner

Attest:

Cindy Beteag, City Recorder

Approved as to form:

Dayton Hall, City Attorney



AGENDA ITEM SUMMARY

TO: Hurricane City Council
FROM: Dayton Hall, City Attorney
DATE: November 14, 2022
RE: Steve Young's/SD Young Inv. LLC's Request for a New Hangar, New Use and New Lease at City Airport

I. Introduction

Steve Young is requesting permission and a lease to build a new hangar at the City Airport. The hangar will be for private, personal use. Your packet includes information regarding the hangar that Mr. Young submitted, as well as a soils report. If Mr. Young obtains approval, then he will move forward with the construction process overseen by the JUC and the building department. If this new hangar and use is approved, it should be subject to Mr. Young meeting the requirements of the JUC and the Building Department for the construction of the hangar. The proposed lease in the packet is based on the hangar lease template approved by the Council.

II. Authority and Applicable Ordinances

The City owns the land at the City Airport, so the Council has broad discretion on which uses or businesses to allow. Applicants seeking permission for new activities, businesses, or uses at the City Airport do not have a guaranteed "right" to introduce new businesses or uses to the Airport.

Hurricane City Ordinance 2-1-2

It shall be the duty of the [Airport] Board to review and recommend approval or disapproval of any agreement for the lease of property at the airport and the proposed use of each parcel of leased land. Prior to consideration by the City Council, any person or entity desiring to lease property at the airport or otherwise conduct any activity at the airport shall first submit a copy of the proposed lease or description of the activity, accompanied by an architectural drawing of the building or site use proposed, to the airport manager for review by the Board. The Board shall forward its recommendation to the City Council as part of the proposed lease of property.

III. Airport Board Recommendations

The Airport Board unanimously recommended approval of this request.

IV. Other Considerations

If this new hangar and use is approved, it should be subject to Mr. Young meeting the requirements of the JUC and the Building Department for the construction of the hangar.



HURRICANE CITY
UTAH

PRIVATE HANGAR LEASE AGREEMENT
BETWEEN
HURRICANE CITY, UTAH
AND
STEVEN D. YOUNG and SD YOUNG INV, LLC

Effective Date: November 17, 2022

PRIVATE HANGAR LEASE AGREEMENT

THIS PRIVATE HANGAR LEASE AGREEMENT (which, as amended from time to time, is defined herein as the ("Agreement") is entered into as of the 17th day of November, 2022, by and between Hurricane City, Utah, a Utah municipal corporation, (the "City") and Steven D. Young, an individual, and SD Young Inv., LLC, a Utah limited liability company (referred to collectively herein as the "Tenant").

RECITALS

WHEREAS, City owns and operates an airport located at 800 W. 2300 S., Hurricane, Utah 84737 (the "Airport"); and

WHEREAS, City and Tenant desire to accommodate, promote, and enhance general aviation at the Airport; and

WHEREAS, Tenant desires to lease certain real property at the Airport for the purpose of constructing or purchasing a private hangar for aircraft as provided in this Agreement;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Agreement to Lease and Operate Concession

A. Agreement to Lease Premises. City hereby leases to Tenant and Tenant hereby leases from City that certain real property 3,800 square feet in size including five feet beyond the hangar pad on three sides excluding the front and located at the property identified as Lot 13 S 5 E on the Airport property, with the City determining the exact location of the pad (the "Premises"). Tenant agrees to accept the Premises "as is" and City makes no warranty as to the condition of the Premises or its suitability for any particular purpose.

B. Disclosure of Soil Condition. City discloses to Tenant that the soil at the Airport is collapsible and otherwise unstable. Tenant is responsible to obtain appropriate soil evaluation reports, to adhere to the recommendations in the reports, and take whatever action is necessary to mitigate the soil condition on the Premises. Tenant is responsible to construct the hangar at the engineered drainage elevations so the drainage will flow properly. Tenant will maintain and keep the area around the premises clear of debris and obstructions so as not to cause disruption in the expected normal drainage flow.

C. Construction of Tenant Improvements. Tenant shall construct or purchase and maintain continuous improvements on the leased Premises, which shall include a concrete pad, an aircraft hangar, fixtures, and any utilities as may be necessary for the Tenant's aviation related activities (referred to herein as the "Tenant Improvements"). Such Tenant Improvements must meet the Airport's Building Development Standards and any applicable Federal Aviation Administration requirements in effect as of the date of this Agreement. The Tenant agrees to submit plans/drawings of the proposed Tenant Improvements to City within eight (8) months of the execution date of this Agreement. Tenant shall be responsible to obtain and pay for proper building permits for the Tenant Improvements and comply with all the applicable ordinances of the City when planning and constructing the Tenant Improvements. Tenant agrees to complete

construction of the proposed Tenant Improvements within twenty-four (24) months from the date the building permit is issued.

D. Grant of Concession and Purpose of Agreement. Tenant agrees that it shall have the right, privilege, and obligation to use the Premises for the following purposes: The parking, storage, service, repair, light maintenance, operation, and modification or construction (on a noncommercial basis only) of Aircraft, plus incidental activities related to such purposes. An (“Aircraft”) shall be any aircraft that Tenant owns or controls, or that is subject to an authorized sublease, when approved in writing in advance by City. Tenant shall provide to City the make, model, and registration number of any Aircraft owned or controlled by Tenant, or that are subject to an authorized sublease, that are based at the Premises.

E. Access. City agrees that if Tenant is not in breach of this Agreement, Tenant and Tenant’s employees, officers, directors, subtenants that are approved by City pursuant to this Agreement, contractors, subcontractors, suppliers, agents, invitees, and other representatives (“Tenant’s Associates”) may ingress and egress across the Airport in the areas designated by City and as permitted by applicable Laws and Regulations, on a non-exclusive basis and to the extent reasonably necessary for Tenant’s use, occupancy, and operations at the Premises.

F. Right of Flight and Other Reserved Rights. This Agreement conveys only a leasehold interest in the Premises on the terms and for the purposes provided herein, and it conveys no other rights, titles, or interest of any kind. City reserves rights in the Premises including but not limited to, a right of aircraft movement on Airport property, a right of flight for the passage of aircraft in the air, a right to cause such noise as may at any time be inherent in the operation of aircraft, subject to the rules, regulations, and policies as may be adopted from time to time by the City, and rights in water, minerals, oil, and gas.

G. Enjoyments of Rights. Subject to Tenant’s complete performance of the payment and other obligations contained in this Agreement, Tenant shall enjoy the rights, uses, and privileges stated in this Agreement.

2. Term. The term of this Agreement shall commence on the date of execution of this Agreement and shall continue thereafter for a term of twenty (20) years until November 17, 2042, (the “Initial Term”). If the Tenant desires to renew this Agreement, the Tenant must notify the City in writing at least 60 days prior to the expiration of the initial term. Upon such notification, this lease shall renew for an additional five (5) year period at the lease rates stated in Section 3 of this Agreement.

3. Rent

A. Rent. For Tenant’s lease of the Premises, Tenant covenants to pay to City without off-set or deduction the annual ground rent as shown in the table below and commencing on the date of execution of this Agreement. All rent shall be due and payable to the City of Hurricane annually in advance, without notice or demand from City, on the 1st day of August. The first years rent payment will be prorated to the next August 1st payment date.

<u>Years</u>	<u>Rent amount per square foot</u>
2022 – 2027	.15
2028 – 2033	.18
2034 – 2039	.21
2040 – 2045	.24

2046 – 2051	.27
2052 – 2057	.30
2058 – 2063	.33

C. Dishonored Checks. If any check paid on behalf of Tenant is dishonored or returned by a bank for any reason, Tenant shall pay all charges assessed to City by the bank plus a service charge of fifty dollars (\$50.00) per occurrence (or such other amount as City shall implement from time to time) in addition to other sums due under this Agreement.

D. Past Due Amounts. If tenant fails to pay when due any amount required to be paid by Tenant under this Agreement, such unpaid amount shall bear interest at the rate of eighteen percent (18%) from the due date of such amount to the date of payment in full, with interest. In addition, City may charge a sum of five percent (5%) of such unpaid amount as a service fee, which the parties agree is a reasonable amount to cover the additional costs for billing and collecting arising from Tenants failure to make payment in a timely manner. All amounts due under this Agreement are and shall be deemed to be rent, and shall be paid without abatement, deduction, off-set, prior notice, or demand (unless expressly provided by the terms of this Agreement). City's acceptance of any past due amount either full or partial (or its associated interest or service fee) shall not constitute a waiver of any default under this Agreement.

4. Tenant's Use of Premises and Airport

A. No Interference. Tenant and Tenant's Associates shall not use the Premises or the Airport in any manner that interferes with any operation at the Airport or decreases the Airport's effectiveness, as reasonably determined by the City at its sole discretion. Tenant shall promptly notify City of any use that creates such interference or decrease of effectiveness and remedy the same to City's satisfaction.

B. Comply with all Laws and Regulations. Tenant and Tenant's Associates shall comply at all times, at Tenant's sole cost, with any and all laws and regulations (as amended or otherwise modified from time to time) that are applicable to Tenant's use, occupancy, or operations at the Premises or the Airport (the "Laws and Regulations"), which include but are not limited to, the Airport Rules and Regulations, Policies and Procedures, Minimum Standards for Commercial Aeronautical Activities, Utah Code Annotated, the Code of Revised Ordinances of Hurricane City, the Protective Covenants of the Hurricane City Airport, applicable Federal Aviation Regulations, and all lawful, reasonable, and nondiscriminatory Airport policies and other requirements.

C. No Unauthorized Use. Tenant and Tenant's Associates shall use the Premises and the Airport only for purposes that are expressly authorized by this Agreement and shall not engage in any unauthorized use of the same. Unauthorized uses include, but are not limited to, any use that would damage, interfere with, or alter any improvement; restricting access on any road or other area that Tenant does not lease; placing waste materials on the Airport or disposing of such materials in violation of any Laws and Regulations; any use that would constitute a public or private nuisance or a disturbance or annoyance to other Airport users; the use of automobile parking areas in a manner not authorized by City; fueling activities on the Premises or any other area that City has not authorized; commercial activities, aircraft parking, or storage in areas not leased by Tenant, any use unrelated to the purposes of this Agreement; and any use that would be prohibited by or would impair coverage under either party's insurance policies.

D. Permits and Licenses. Tenant shall obtain and maintain in current status all permits and licenses that are required under any Laws and Regulations in connection with Tenant's use, occupancy, or operations at the Premises or the Airport. In the event that Tenant receives notice from any governmental authority that Tenant lacks, or is in violation of, any such permit or license, Tenant shall provide City with timely written notice of the same.

E. Taxes and Liens. Tenant shall pay (before their respective due dates) all taxes, fees, assessments, and levies that relate to Tenant's use, occupancy, or operations at the Premises or the Airport and all other obligations for which a lien may be created relating thereto (including, but not limited to, utility charges and work for the Tenant Improvements). Within ten (10) days of notice of such lien, Tenant shall have the lien removed or deposit with the City cash or other security acceptable to City in an amount sufficient to cover the cost of removing such lien. When contracting for any work in connection with the Premises, Tenant shall include in such contract a provision prohibiting the contractor or any subcontractor or supplier from filing a lien or asserting a claim against City's real property or any interest therein.

F. Damage to Property and Notice of Harm. Tenant, at Tenant's sole cost, shall repair or replace to City's satisfaction any damaged property that belongs to City or City's other Tenants to the extent that such damage arises from or relates to an act or omission of Tenant or Tenant's Associates. Tenant shall promptly notify City of any such property damage. If Tenant discovers any other potential claims or losses that may affect City, Tenant shall promptly notify City of the same.

G. No Alterations or Improvements. Tenant shall not make or cause to be made any alterations or improvements to the Premises or to other areas of the Airport without City's prior written consent.

H. Security. Tenant is responsible to comply, at Tenants sole cost, with all security measures that City, Federal Aviation Administration, the United States Transportation Security Administration or any other governmental authority having jurisdiction may require in connection with the Airport. Tenant shall protect and preserve security at the Airport, including, but not limited to, protecting security information and protecting any access points to the Airport that are maintained by Tenant. Tenant will be vigilant in watching for unusual activity or persons that do not belong at the Airport, and will report such to the Airport Manager or by calling 1-866-GA-SECURE.

I. Removal of Disabled or Derelict Aircraft. Tenant shall promptly remove or cause to be removed from any portion of the Airport not leased by Tenant the Aircraft (or any other aircraft that Tenant owns or controls) if it becomes disabled or derelict. Tenant may store such aircraft within the Tenant Improvements or, with the City's prior written consent, elsewhere at the Airport on terms and conditions established by City. If Tenant fails to comply with this requirement after a written request by City to comply, City may (but is not required to) cause the removal of any such aircraft at Tenant's expense by any means that City determines to be in City's best interests.

J. Maintenance, Repair, Utilities, and Storage. Tenant's use, occupancy, and operations at the Premises shall be without cost or expense to the City. Tenant shall be solely responsible to design and construct the Tenant Improvements and to maintain, repair, reconstruct, and operate the Premises and the Tenant Improvements at Tenant's sole cost and expense, including, but not limited to, all utility services, janitorial services, waste disposal, and ramp repair. Tenant shall at all times maintain the Premises and the Tenant Improvements in a

condition that is clean, safe, sanitary, and in good repair. Tenant shall perform all work in accordance with Laws and Regulations and in a good and workmanlike manner. City has sole discretion to determine the quality of the work. Tenant shall promptly remedy any condition that fails to meet this standard. In addition to other restrictions and requirements contained in this Agreement, Tenant shall not store outside of the Tenant Improvements (aircraft hangar) any inoperable equipment, discarded or unsightly materials, materials likely to create a hazard, trailers (except trailers designed to carry gliders), inoperative motor vehicles, or any other similar items. Tenant is responsible to keep the area five feet out from all four sides of the aircraft hangar clear of weeds and any debris.

K. Operations. Tenant's operations shall comply with the following.

(i) Airport Operations. Tenant shall occupy the Premises and shall operate in a manner that promotes effective Airport operations. Among other things, Tenant shall immediately notify the Airport Manager of any condition observed at the Airport that may create a hazard or disruption; Tenant shall refrain from annoying, disturbing, or impairing Airport customers, tenants, or employees; and Tenant shall promptly respond to City's requests for information and reasonable assistance in connection with planning and other operational matters at the Airport. If City determines for any reason that emergency conditions exist at the Airport, Tenant shall participate in any emergency response as directed by City or other agency in charge and shall operate in a manner that protects safety and the interests of the public.

(ii) Safety. Tenant shall maintain appropriate safety items at the Premises as may be required by the City, Local Fire Authority, or other governmental agency

(iii) Personnel. Tenant shall control the conduct, demeanor, and appearance of its employees and Tenant's Associates so they do not annoy, disturb, or impair Airport customers, tenants, or employees. Tenant shall provide the Airport Manager with the name and contact number of a person who is responsible for and has authority to act on behalf of Tenant.

(iv) Deficiencies. Without limiting or waiving any other remedies available to City, including declaring a breach of this Agreement, City's remedies shall include the following in connection with deficiencies in Tenant's operations.

(a) Propose and Implement Cure. Tenant shall meet with the Airport Manager as he or she may request regarding the quality of Tenant's operations, whether or not in connection with a specific complaint. Tenant shall propose curative measures in response to City's determinations regarding deficiencies in Tenant's operations and shall implement as expeditiously as possible measures that are approved by City.

(b) Remove Employees and Associates. City shall have the right to require Tenant to remove from the Airport any employee or any of Tenant's Associates that City reasonably determines to be in violation of any provision of this Agreement or otherwise detrimental to City's interests at the Airport.

5. City's Rights and Obligations

A. Airport Maintenance. Subject to subparagraph C. of this section, City agrees that as long as the Airport is certified to operate as an airport by the Federal Aviation Administration (or any successor agency), City shall keep the property of the Airport in good repair and free from obstruction in accordance with applicable Federal standards.

B. Access to Premises. City for itself and its employees, officers, directors, agents, and other representatives ("City's Associates") reserves the right to enter the Premises and Tenant Improvements at reasonable times and with reasonable notice for any purpose relating to the Airport including, but not limited to, conducting inspections, determining compliance with this Agreement, conduct Airport work, or for emergency purposes, provided that they shall not unreasonably interfere with Tenant's use of the Premises or Tenant's Improvements.

C. City's Right to Relocate Tenant's Improvements from Premises. It is understood and agreed that as conditions may require, the City has the right to require Tenant to relocate Tenant's Improvements from the Premises to a new location on the Airport property, or to a new location at a new airport if the City elects to relocate the Airport, which would be comparable to Tenant's current leased Premises. Tenant shall bear the costs associated with relocating Tenant's Improvements and property to the new location. City agrees to provide the Tenant with a new Private Hangar Lease Agreement for the new location upon the same terms and conditions as are contained herein for the unexpired term of this Agreement.

D. City Charges. City has the right to impose rates and charges in connection with any matter at the Airport in a manner consistent with Laws and Regulations.

E. City Directives. City is the owner and proprietor of the Airport, and City has the right to issue any lawful, reasonable, and non-discriminatory directive as a landlord and proprietor that City determines to be in City's best interests.

F. Governmental Acts. City is a governmental entity, and City has all rights, powers, immunities, and privileges afforded to it under Laws and Regulations. Tenant agrees that Tenant is subject to any lawful governmental act of City without regard to the provisions of this Agreement.

G. Condemnation. In the event that the demised Premises are condemned by any proper authority, the term of this lease will end on the date that Tenant is required to surrender possession of the Premises. Tenant shall be entitled to that portion of the condemnation proceeds attributable to the fair market value of any Tenant Improvements placed on the Premises by Tenant.

6. Indemnification

A. Indemnity by Tenant. Tenant agrees to indemnify, hold harmless, and defend City and its officers and employees from and against losses of every kind and character (including but not limited to, liabilities, causes of action, losses, claims, costs, fees, attorney fees, expert fees, court of dispute resolution costs, investigation costs, environmental claims, mitigation costs, judgments, settlements, fines, demands, damages, charges, and expenses) that arise out of or relate to: (i) this Agreement; (ii) any use, occupancy, or operations at the Premises or the Airport by Tenant or Tenant's Associates; or (iii) any wrongful, reckless, or negligent act or omission of Tenant or Tenant's Associates. Tenant shall use attorneys, experts, and professionals that are reasonably acceptable to City in carrying out this obligation. This obligation does not require Tenant to indemnify City and its officers and employees against losses (as defined above) that arise solely from the negligent acts or omissions of City and its officers and employees. The obligation stated in this Section 6.A. shall survive the expiration or other termination of this Agreement with respect to matters arising before such expiration or

other termination. These duties shall apply whether or not the allegations made are proven to be true.

B. Waiver. Tenant assumes all risk of the use of the Premises and the Airport, and Tenant hereby knowingly, voluntarily, and intentionally waives any and all losses, liabilities, claims, and causes of action, of every kind and character, that may exist now or in the future (including, but not limited to, claims for business interruption and for damage to any aircraft) against City and its officers, employees, and volunteers arising from or related to Tenant's use, occupancy, or operations at the Premises or the Airport.

7. Hazardous Materials. Tenant shall not cause or permit any Hazardous Materials to be used, produced, stored, transported, brought upon, or released on, under, or about the premises or the Airport by Tenant or Tenant's Associates in violation of applicable Environmental Laws. Tenant is responsible for any such violation as provided by Section 6.A. of this Agreement. Tenant agrees that in the event of a release or threat of release of any Hazardous Material by Tenant or Tenant's Associates at the Airport, Tenant shall provide City with prompt notice of the same. Tenant shall respond to any such release or threat of release in accordance with applicable Laws and Regulations.

8. Assignment and Subleasing

A. Assignment. Tenant shall not assign any of its rights under this Agreement, including, but not limited to, rights in the Tenant Improvements, (whether such assignment is voluntary or involuntary, by merger, consolidation, dissolution, change in control, or any other manner), shall not encumber any such rights or record this Agreement (or any document or interest related thereto) and shall not delegate any performance under this Agreement, except with prior written consent of City to any of the same. City will not unreasonably withhold written consent to an assignment of this Agreement.

B. Subleasing. With prior written consent of City, Tenant shall have the right to sublease portions of the Premises and Tenant Improvements only for the purposes specified in this Agreement or to store an aircraft. City shall have the right to approve any sublease tenant and sublease agreement. Tenant shall impose on any approved sublease tenant the same terms set forth in this Agreement to provide for the rights and protections afforded to City. Tenant shall reserve the right to amend any sublease to conform to the requirements of this Agreement, and any sublease shall be consistent with and subordinate to this Agreement as it is amended from time to time. Any sublease shall include an agreement that the sublease will attach to and pay rent to City if Tenant ceases to be a party to this Agreement. Tenant shall provide to City a copy of any sublease executed by Tenant. No sublease shall relieve Tenant of any obligations under this Agreement.

9. Damage and Destruction. If any portion of the Premises or the Tenant Improvements is damaged in any manner, Tenant shall promptly remove from the Airport all debris and cause repairs to be made to restore the same to an orderly and safe condition. All work shall be performed in accordance with plans and specifications that are approved by City as being consistent or better than the original improvements. Tenant shall follow City's policies and procedures regarding obtaining building permits as necessary.

10. Default

A. Tenant's Default. Each of the following events shall constitute a default or breach of this Agreement by the Tenant. (i) Tenant fails to timely pay any installment of rent; (ii) Tenant violates any requirement under this Agreement (including, but not limited to, abandonment of the Premises) and fails to cure the same within sixty (60) days after written notice thereof by City to Tenant; (iii) Tenant assigns or encumbers any right in this Agreement, delegates any performance hereunder, or subleases any part of the Premises (except as expressly permitted in this Agreement); (iv) Tenant files a petition in bankruptcy, becomes insolvent, or has a petition filed against Tenant in bankruptcy, insolvency, or for reorganization or appointment of a receiver or trustee which is not dismissed within sixty (60) days; (v) Tenant petitions for or enters into an arrangement for the benefit of creditors, or suffers this Agreement to become subject to a writ of execution and such writ is not released within thirty (30) days; or (vi) Tenant defaults in constructing a Tenant Improvement as provided for in this Agreement.

B. Remedies. Upon default by Tenant under this Agreement, City may (at any time) pursue any or all remedies available to City, including, but not limited to, the following: (i) perform in Tenant's stead any obligation that Tenant has failed to perform, and Tenant shall promptly pay to City all costs incurred by City for such performance; (ii) terminate Tenant's rights under this Agreement upon delivering a written notice of termination; and (iii) re-enter and take possession of the Premises by any lawful means (with or without terminating this Agreement). Tenant shall pay all costs and damages arising out of Tenant's default, including, but not limited to, the cost of recovering possession of the Premises, the cost of improving and re-letting the Premises, and any attorney fees and costs. Notwithstanding any termination or re-entry, Tenant shall remain liable to pay the rent required under this Agreement for the remaining term of this Agreement, and Tenant shall pay City on demand for any deficiency in the same. No action by City or City's Associates shall be construed as an election by City to terminate this Agreement or accept any surrender of the Premises unless City provides Tenant with a written notice expressly stating that City has terminated this Agreement or accepted a surrender of the Premises. Following a default by Tenant under this Agreement, City shall exercise commercially reasonable, good faith efforts to mitigate its damages as required by applicable Utah law.

C. Default by City. City shall not be in default under this Agreement unless City fails to perform an obligation required of City under this Agreement within thirty (30) days after written notice by Tenant to City. If the nature of City's obligation is such that more than thirty (30) days are reasonably required for performance or cure, City shall not be in default if City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In no event may Tenant terminate this Agreement or withhold the payment of rent or other charges provided for in this Agreement as a result of City's default.

D. Survival. The provisions of this Section 10 and the remedies and rights provided in Section 6 shall survive any expiration or termination of this Agreement.

11. Expiration or Termination

A. Disposition of Tenant Improvements. Upon the termination of this Agreement before or on the expiration date, Tenant shall do one of the following at the option of City: (1) surrender the Tenant Improvements to City if City has determined to accept the Tenant Improvements, with Tenant's rights, title, and interests in the Tenant Improvements being deemed transferred to the City upon the City accepting the same or (2) remove all Tenant Improvements from the Premises and Airport at Tenant's sole expense in a manner acceptable

to City (and the obligations of section 6.A. shall apply to such removal). If Tenant fails to remove any Tenant Improvements under subsection (2), City may do so in any manner acceptable to City pursuant to Section 10.B.

B. Holding Over. If Tenant remains in possession of the Premises after any expiration or termination of this Agreement, such occupancy shall not waive any default under this Agreement and City may terminate such occupancy as a tenancy at will in accordance with Utah Law. During such occupancy, Tenant shall comply with all provisions of this Agreement that are applicable to an at-will-tenancy, and Tenant shall pay the following rent: ground rent at the highest rate then charged at the Airport and rent for the Tenant Improvements at fair market value based on City's survey of rent for similarly situated facilities at the Airport and at other western airports.

C. Survival. The provisions of this Section 11 shall survive any expiration or termination of this Agreement.

12. General Provisions

A. No Exclusive Rights. Nothing in this Agreement shall be construed to grant to Tenant any exclusive right or privilege for the conduct of any activity on the Airport (except to lease the Premises for Tenant's exclusive use as provided herein).

B. Agreement Preserves City's Compliance. This Agreement shall be interpreted to preserve City's rights and powers to comply with City's Federal and other governmental obligations.

C. Subordination to City's Government Commitments. This Agreement is subordinate to the provisions of any agreement between City and the United States or other governmental authority (regardless of when made) that affects the Airport, including, but not limited to, agreements governing the expenditure of Federal funds for Airport Improvements. In the event that the Federal Aviation Administration or other governmental authority requires any modification to this Agreement as a condition of City entering any agreement or participating in any program applicable to the Airport, Tenant agrees to consent to any such modification. If a governmental authority determines that any act or omission of Tenant or Tenant's Associates has caused or will cause City to be non-compliant with any of City's government commitments, Tenant shall immediately take such actions that may be necessary to preserve City's compliance with the same.

D. Subordination to Financing and Matters of Record. This Agreement is subordinate to the provisions of any agreements or indentures entered by City (regardless of when entered) in connection with any debt financing applicable to the Airport and is subordinate to any matter of record affecting the real property of the Airport.

E. Force Majeure. No act or event, whether foreseen or unforeseen, shall operate to excuse Tenant from the prompt payment of rent or any other amounts required to be paid under this Agreement. If City (or Tenant in connection with obligations other than payment obligations) is delayed or hindered in any performance under this Agreement by a force majeure event, such performance shall be excused to the extent so delayed or hindered during the time when such force majeure event is in effect, and such performance shall promptly occur or resume thereafter at the expense of the party so delayed or hindered. A "force majeure event" is an act or event, whether foreseen or unforeseen, that prevents a party in whole or in part from

performing as provided in this Agreement, that is beyond the reasonable control of and not the fault of such party, and such party has been unable to avoid or overcome by exercising due diligence, and may include, but is not limited to, acts of nature, war, riots, strikes, accidents, fire, and changes in law.

F. Rights and Remedies. Except as expressly set forth in this Agreement, the rights and remedies set forth in this Agreement are not intended to be exhaustive and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently exist.

G. Attorneys Fees. If any action is brought to recover any rent or other amount under this Agreement because of any default under this Agreement, to enforce or interpret any of the provisions of this Agreement, or for the recovery of possession of the Premises, the party prevailing in such action shall be entitled to recovery from the other party(s) reasonable attorneys fees, court costs, the fees of experts and other professionals, and other costs arising from such action (including those arising from any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered. Tenant shall be responsible for all expenses, including but not limited to, attorney fees incurred by the City in any case or proceeding involving the Tenant or any permitted assignee of Tenant under or related to any bankruptcy or insolvency law. The provisions of this Section 12.G. shall survive any expiration or termination of this Agreement.

H. Governing Law, Venue, and Waiver of Jury Trial. This Agreement and the respective rights and obligations of the parties shall be governed by, interpreted, and enforced in accordance with the Laws of the State of Utah. Venue for any action arising out of or related to this Agreement or actions contemplated hereby may be brought in the United States District Court for Utah or the District Court for the State of Utah sitting in Washington County, Utah so long as one of such courts shall have subject matter jurisdiction over such action or proceeding, and each of the parties hereby irrevocable consents to the jurisdiction of the same and of the appropriate appellate courts there from. Process in any such action may be served on any party anywhere in the world. CITY AND TENANT EACH KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER FOR ALL MATTERS ARISING OUT OF OR RELATING TO THIS LEASE OR ANY USE, OCCUPANCY, OR OPERATIONS AT THE PREMISES OR THE AIRPORT. The provisions of this Section 12.H. shall survive any expiration or termination of this Agreement.

I. Amendments and Waivers. No amendment to this Agreement shall be binding on City or Tenant unless reduced to writing and signed by both parties. No provision of this Agreement may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced.

J. Severability. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect if both the economic and legal substance of the transactions that this Agreement contemplates are not affected in any manner materially adverse to any part. If any provision of this Agreement is held invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes of this Agreement.

K. Merger. This Agreement constitutes the final, complete, and exclusive agreement between the parties on the matters contained in this Agreement. All prior and contemporaneous

negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither party has relied on any statement, representation, warranty, now agreement of the other party except for those expressly contained in this Agreement. Any proposal materials or exhibits submitted by Tenant in response to a solicitation by City, to the extent accepted by City, shall also be incorporated in this Agreement.

L. Confidentiality. Tenant acknowledges that City is subject to legal requirements regarding the public disclosure of records. Tenant shall comply with such laws in connection with making any request that City maintain a record confidentially, and if Tenant complies with the same, Tenant shall have the right to defend any such request for confidentiality at Tenant's expense.

M. Relationship of Parties. This Agreement does not create any partnership, joint venture, employment, or agency relationship between the parties. Nothing in this Agreement shall confer upon any other person or entity any right, benefit, or remedy of any nature.

N. Further Assurances. Each party shall execute any document or take any action that may be necessary or desirable to consummate and make effective a performance that is required under this Agreement.

O. Miscellaneous. The headings in this Agreement are provided for convenience only and do not affect this Agreement's construction or interpretation. All references to Sections are to Sections in this Agreement. Each provision to be performed by Tenant shall be construed as both a covenant and a condition. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the drafting party. If Tenant consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several. References in this Agreement to any period of days shall mean calendar days unless specifically stated otherwise.

P. Time is of the Essence. Time is of the essence in this Agreement.

Q. Notices. Any notice, demand, written consent, or other communication required to be in writing under this Agreement shall be given in writing by personal delivery, express mail (postage prepaid), nationally recognized overnight courier with all fees prepaid (such as, by way of example, Federal Express or UPS), or certified mail (return receipt requested and postage prepaid) when addressed to the respective parties as follows.

If to City:

Hurricane City
City Attorney
147 N. 870 W.
Hurricane, UT 84737

If to Tenant:

Steven D. Young or SD Young Inv LLC
2565 E. 1520 S. Circle
St. George, Utah 84790

Either City or Tenant may change its notice address by giving written notice (as provided herein) of such change to the other party. Any notice, demand, or written consent or communication shall be deemed to have been given, and shall be effective, upon compliance with this Section 12.Q. and delivery to the notice address then in effect for the party to which the notice is directed; provided, however, that such delivery shall not be defeated or delayed by any refusal

to accept delivery or an inability to effect delivery because of an address change that was not properly communicated.

R. Binding Obligation. Tenant warrants and represents that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement as a legal, valid, and binding obligation of Tenant.

S. City Approval and Consent. Wherever in this Agreement it specifies the City must give approval or consent by the terms of this Agreement, such approval or consent shall not be unreasonably withheld. Unless otherwise specified, approval, consent, or action by the City refers to approval or consent by the Hurricane City Council.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

HURRICANE CITY

SD YOUNG INV LLC

Nanette Billings, Mayor

By: Steven D. Young
Its: Manager

Attest:

Steven D. Young

Cindy Beteag, City Recorder

Approved as to form:

Dayton Hall, City Attorney

Date: Oct. 19,2022

To: Mayor Billings and Hurricane City Council

From: Steven D. Young (SD YOUNG INV LLC)

2565 E. 1520 S. Circle

St. George Utah 84790

Ph. 208-312-4404

e-mail. syoung4422@gmail.com

1. Subject: application-approval to build a new Hanger at the Dick Stout Hurricane City Airport
2. Hanger site number: 13 S 5 E (southeast corner of the airport Hangers)
3. Owner of the hanger to be: SD YOUNG INV LLC
4. Use: private, used by me and possibly one or two other individuals for airplane storage and a few personal items
5. Size: wide: 60 ft, depth: 50 ft., side wall: 18 ft. high, roof pitch: 1/12
6. Airplane door: approximately 56 ft wide by 15 ft high-bifold
7. Back door: 14 ft by 14 ft roll up
8. Walk in door: 1, 3' by 6' 8" steel
9. Window: 2-3 ft by 4 ft
10. Heated and cooled by: Ductless mini split air conditioner/heater
11. Material: Concrete floor as specified by GTS, steel structure and steel siding and roof as specified by steel building manufacturers engineer meeting local specifications and requirements
12. Building surrounded by: 4-inch-thick concrete sloped to keep moisture out of building and properly drained as per GTS instructions
13. Insulation: 4" or 6" fiberglass with plastic backing
14. Color: White roof and off-white side walls with blue trim. Inside, white plastic lining from the fiberglass backing with red iron steel frame
15. Restroom: one sink and one toilet, in a small corner room of the Hanger

General contractor will be myself as: SD YOUNG INV LLC

Reference number: 11445164-5501

Contractor with: LRF

Rating: B100 E100

Expiration Date: 11/30/2023

Soil Prep as instructed by Geotechnical Investigation (see attached report) by:

GTS Geological Testing Services Inc,

Christopher G. Dutson, P.E.

Project Engineer

735 E Tabernacle Street,

St. George UT 84770

Thank you for your time and consideration

Sincerely,
Steven D. Young



GEOTECHNICAL TESTING SERVICES, INC.

735 East Tabernacle Street, St. George, UT 84770
(435) 628-9536 admin@gtsstg.com

August 25, 2022

Mr. Steve Young
SD Young Inv., L.L.C.
2565 East 1520 South Circle
St. George, UT 84790

Subject: Geotechnical Investigation
Proposed Aircraft Hangar
Hurricane Airport
800 West 2300 South Street - Hangar Number 13S 4E
Hurricane, Utah
GTS Project Number: 12960

Dear Mr. Young:

This letter presents the results of our geotechnical investigation conducted at the site of the proposed aircraft hangar to be constructed at the above noted address. The purpose of our investigation was to provide information on subsurface soil and groundwater conditions, recommendations for foundation types and depths, soil bearing capacities, anticipated total and differential settlement, and other design and construction considerations influenced by the subsurface conditions. We have previously performed geotechnical investigations other hangars at the Hurricane Airport. Information from the previous investigations was used as part of this report.

We understand that an aircraft hangar is planned for construction on the property. The hangar will likely be a steel frame building constructed at grade. A basement is not planned. Minimal cut and fills are anticipated to bring the site to the proposed grade.

The hangar building pad area is rectangular in shape, and was vacant at the time of our investigation. The ground surface across the building area is level and flat. Surface drainage appeared to be fair. At the time of our investigation, the area was void of vegetation. The site is bound by undeveloped land to the south, by single family residences to the east, and by existing aircraft hangars to the north and west.

To investigate the subsurface soil conditions, one, 21.5-foot deep test hole was drilled near the proposed building area. The location of the test hole, in relation to the property limits, is shown on the Site Plan, Figure 1. The subsurface soils encountered in the test hole consisted of loose to dense, silty, gravelly SAND (SM) to the maximum depth of exploration, 21.5 feet. Groundwater was not encountered in the test hole at the time of our investigation. Please refer to Figure 2 for a detailed description of the soil conditions encountered in the test hole location. Figure 3 is the key to symbols and abbreviations used on our Test Hole Log.

Disturbed and undisturbed samples were collected, and returned to our laboratory for testing, and to confirm field classification. Swell-consolidation test performed on a samples collected from depths of 8.67, 16.17, and 21.17 feet collapsed 0.5, 0.8 and 4.5 percent, respectively, when saturated under a constant load of 1,000 psf. These test results indicate a low to high potential for hydro-collapse. Based on the loose condition and results from previous investigations for nearby hangars, the soils in the upper 5 feet are highly collapsible.

The area under the buildings should be further undercut to allow for a minimum of 5 feet of structural fill below the footings and slab or 6 feet below the existing grade, whichever is greater.

Undercutting should extend a minimum of 5 feet beyond the limits of the footings. Following undercutting, exposed subgrades should be scarified to a depth of 12 inches, moisture conditioned, and compacted to a firm non-yielding surface. Pockets of soft soils detected during the recompaction of subgrade should be removed and replaced with structural fill.

Structural fill should be placed up to required grades in 8-inch maximum loose lifts, at the moisture content optimum for compaction, and compacted to at least 95 percent modified Proctor (ASTM D1557-00) maximum dry density under the building. All structural fill should be observed and tested for compaction in lifts no thicker than 12 inches.

Structural fill should consist of onsite or similar material, free of organics and other deleterious materials, including boulders and old foundation elements greater than 12 inches in diameter. All imported fill should be approved by GTS prior to its delivery to the site. In general, imported fill should contain not less than 25 percent fines (material passing the No. 200 sieve, based on the minus 3/4-inch fraction), should be well graded, and should have a maximum particle size of 1.5 inches. The Plasticity Index of the fines should not exceed 12 and the Liquid Limit should not exceed 30. If native soils are used as structural fill, a shrinkage factor of about 25 percent should be anticipated due to compaction.

Structural fill should provide adequate support for the proposed structure. The following design and construction details should be observed:

1. Spread footings placed on structural fill should be designed for a maximum soil pressure of **1,500 psf**. This pressure may be increased by one-third for short-term transient wind and seismic loads. Under this pressure the total footing settlement is expected to be about 1 inch. The differential settlement between adjacent footings or for a 25-foot span of continuous wall footing should be about 0.5 inch.
2. The footings should be at least 16 inches wide and founded a minimum of 1.5 feet below the lowest adjacent final grade.
3. Footings and foundation walls should be designed by a structural engineer and should be stiff enough to simply support a span of 10 feet with an 800 pound per lineal foot load applied.
4. Footing excavations should be well compacted using a "jumping jack" type compactor prior to pouring concrete. Footing excavations should be inspected by GTS for loose soils and proper compaction.
5. All structural concrete should have a minimum 28 day compressive strength of 4,500 psi.
6. ASCE 7-16 Site Class D.

Concrete slabs-on-grade should be supported on a minimum of 4 inches of free draining gravel. The slabs should be provided with frequent joints to minimize damage due to shrinkage cracking, and they should be adequately reinforced for the loads to be imposed on the gravel. As a guide, reinforcing steel consisting of Number 3 bar spaced at 24 inches on center, or the equivalent weld wire fabric, for slab reinforcement should be adequate. Slab reinforcement should be designed by a registered structural engineer. The slabs should be separated from all bearing walls with a slip joint. Slabs may be poured monolithically with the footings provided that the owner is aware that differential settlement between the footing and the slab may cause cracking of the slab around the perimeter of the residence.

Exterior concrete flatwork, including walkways and driveways, should be supported on a minimum of 2 feet of structural fill. Surface drainage and irrigation should be directed away from these areas. Infiltration of water could cause differential movement and cracking of the slabs.

Adequate surface drainage must be maintained during the course of construction and after construction has been completed. The ground surface surrounding the exterior of the building should be sloped to drain away from the building in all directions. We recommend a minimum slope of 8 inches in the first 10 feet. Roof downspouts should discharge into solid pipes extended to a minimum of 8 feet beyond the building limits, or preferably, to the street or borrow ditch. Irrigation valve boxes should not be allowed within 10 feet of the building and pool. Improper drainage could cause movement of the building and pool large enough to cause distress.

All site grading and fill operations should be observed by a representative of GTS to determine the adequacy of site preparation, removal of all unsuitable material, compliance with compaction requirements, and to insure that the recommendations presented in this report are properly implemented during construction.

It is the responsibility of the owner/contractor to schedule the appropriate amount of observations and testing as outlined in this report. Failure to follow our recommendations could result in additional fees to verify the work that was performed or to provide additional recommendations.

We recommend that one of our engineers review the geotechnical aspects of the project's specifications and plans prior to submission for bids. This review allows us to check whether these documents reflect the intent of our recommendations. In addition, we could possibly identify contractual provisions that present the owner with an elevated risk of geotechnically related construction "extras."

The analysis and recommendations submitted in this report are based upon the data obtained from one test hole drilled, at the location of the proposed structures as indicated on the Site Plan, Figure 1. This report does not reflect any variations which may occur outside the limits of the test hole. The nature and extent of variations may not become evident until the course of construction and are sometimes sufficient to necessitate changes in the designs; thus, it is important that we observe subsurface materials exposed in the excavations to take advantage of all opportunities to recognize differing conditions which would affect the performance of the facility being planned.

Our findings and conclusions have been obtained in accordance with accepted professional engineering practice in the field of foundation engineering and soil mechanics. This warranty is in lieu of all other warranties, expressed or implied.

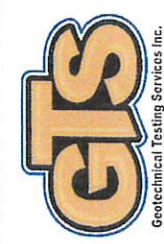
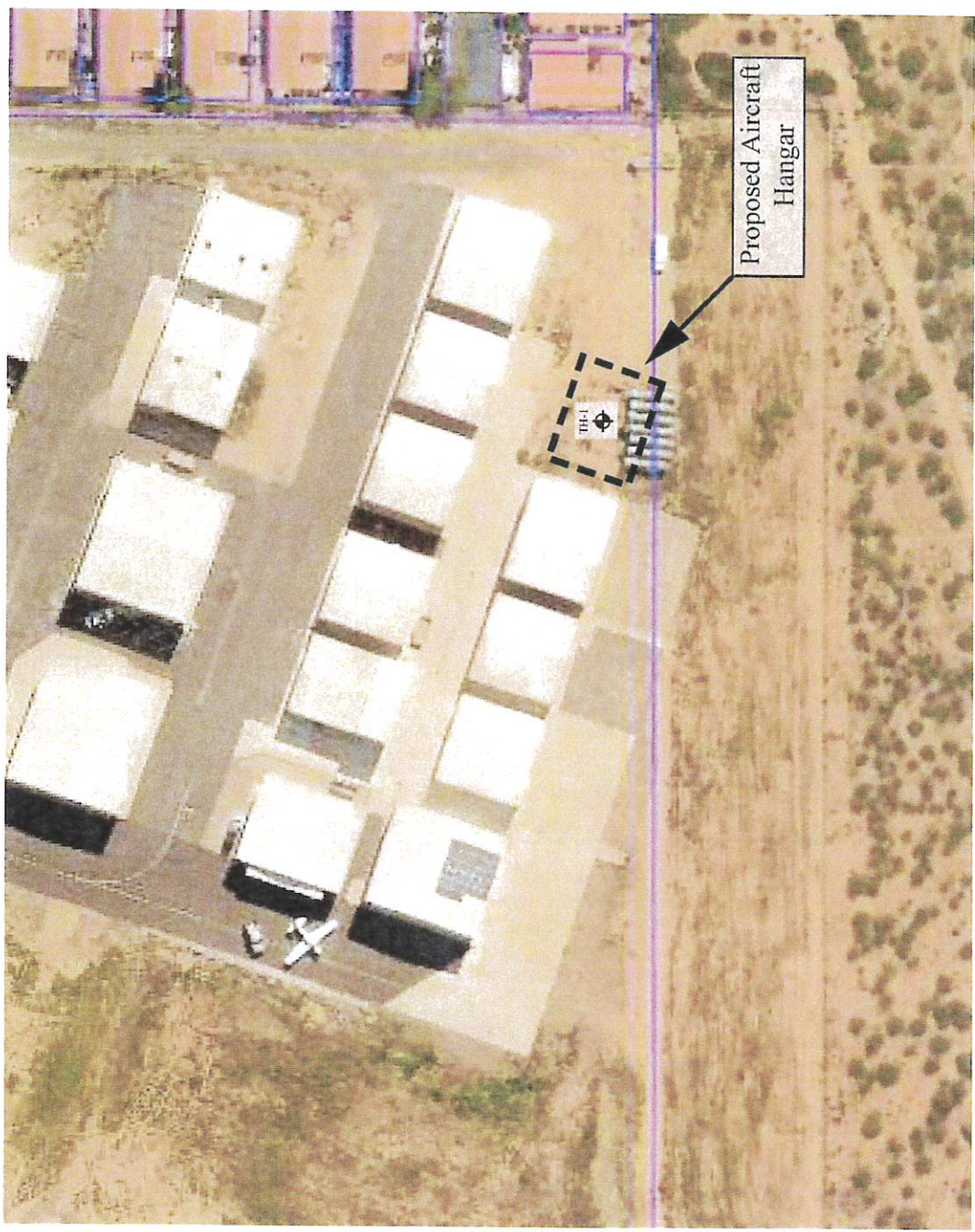
It has been a pleasure to assist you with this project. Please feel free to call us if you have any questions.

Sincerely,
GEOTECHNICAL TESTING SERVICES, INC.

CHRISTOPHER G. DUTSON, P.E.
Project Engineer

12960 - Geotechnical Investigation - Aircraft Hangar - Hurricane Airport - Hurricane UT - Steve young.wpd





*Engineering
Consulting
Testing*

SITE PLAN

Client: SD Young Inv., L.L.C. - Mr. Steve Young
 Project: Hurricane Airport Hangar Pad Number 13S 4E
 Location: Hurricane, Utah
 Number: 12960

Figure 1

LOG OF TEST HOLE NUMBER TH-01

TYPE BORING:

LOCATION: 37.137734 N, -113.303833 W

DEPTH, FT.	SYMBOL	SAMPLES BLOWS PER FOOT	SOIL DESCRIPTION	% PASSING #200 SIEVE	LIQUID LIMIT	PLASTICITY INDEX	MOISTURE CONTENT	UNIT DRY WT. LB./CU FT.	SHEAR STRENGTH IN TSF			OTHER TESTS
									○ HAND PEN ● UNC CMP			
									0.5	1.0	1.5	
			SURF. ELEV.:						PL	WC	LL	
									20	40	60	
			SAND (SM), silty, some gravel, very loose to loose, moist, red.									
		4										
5												
		8	SAND (SM), silty, gravelly, loose, slightly moist, red.									
		10	SAND (SM), silty, gravelly, cobbles, medium dense, slightly moist, red.				3.1	91	X			0.5% Collapse @ 1.0 ksf
10												
		30										
15												
		14					1.6	99	X			0.8% Collapse @ 1.0 ksf
			Boulder									
			SAND (SM), silty, gravelly, cobbles, dense, slightly moist, red.									
20												
		38					2.1	109	X			4.5% Collapse @ 1.0 ksf

GTS TEST HOLE W/O FIGURE A 12960 - GINT - HURRICANE AIRPORT HANGAR GPJ GTS CORP GDT 8/25/22



**Engineering
Consulting
Testing**

COMPLETION DEPTH: 21.5 FEET
DATE: 3/9/22-3/9/22

DEPTH TO WATER: >21.5 FEET
DATE: 3/9/22

Client: SD Young Inv., L.L.C. - Mr. Steve Young
Project: Hurricane Airport Hangar Number 13S 4E
Location: Hurricane, Utah
Number: 12960

AUGER CUTTINGS

DISTURBED SPLIT SPOON, DISTURBED MODIFIED CALIFORNIA, OR GRAB SAMPLE

STRATA CHANGE

UNDISTURBED SPLIT SPOON SAMPLE

MODIFIED CALIFORNIA SAMPLE

CLAY (CL), sandy

STRATUM DESCRIPTION

SAND (SP), dense, moist

WATER ENCOUNTERED DURING EXCAVATION

GROUNDWATER TABLE

END OF TEST HOLE

RELATIVE DENSITY (SAND & SILT)

BLOWS/FOOT

VERY LOOSE	<4
LOOSE	4 - 10
MEDIUM DENSE	10 - 30
DENSE	30 - 50
VERY DENSE	>50

CONSISTENCY (CLAY)

SHEAR STRENGTH
(psf)

BLOWS
/FOOT

VERY SOFT	<250	<2
SOFT	250 - 500	2 - 4
MED. STIFF	500 - 1000	4 - 8
STIFF	1000 - 2000	9 - 15
VERY STIFF	2000 - 4000	16 - 30
HARD	>4000	>30

ABBREVIATIONS

- LL - LIQUID LIMIT (%)
 PI - PLASTIC INDEX (%)
 W - MOISTURE CONTENT (%)
 DD - DRY DENSITY (PCF)
 NP - NONPLASTIC
 -200 - PERCENT PASSING NO. 200 SIEVE
 phi - ANGLE OF INTERNAL FRICTION
 C - COHESION (PSF)
 p - HAND PENETROMETER (TSF)

NOTES:

- The soils have been classified in accordance with the Unified Soil Classification System.
- Strata change lines represent the approximate boundary between soil and rock types. in-situ the transition may be gradual.
- Test Hole 1 was drilled on March 9, 2022, with a truck mounted hollow stem auger operated by Geotechnical Drilling Services L.L.C., of St. George, Utah.
- Groundwater was not encountered in our test hole.

FILL MAN MADE	CONCRETE	ASPHALT	TOPSOIL	ORGANIC SILT (OL)
CLAY PLASTIC (CH)	CLAY (CL)	(CL-ML)	SILT PLASTIC (MH)	SILT (ML)
SAND WELL GRADED (SW)	SAND POORLY GRADED (SP)	SAND CLAYEY (SC)	SAND SILTY (SM)	
SAND (SW-SC)	SAND (SW-SM)	SAND (SP-SC)	SAND (SP-SM)	SAND (SC-SM)
GRAVEL WELL GRADED (GW)	GRAVEL POORLY GRADED (GP)	GRAVEL CLAYEY (GC)	GRAVEL SILTY (GM)	
GRAVEL (GW-GC)	GRAVEL (GW-GM)	GRAVEL (GP-GC)	GRAVEL (GP-GM)	GRAVEL (GC-GM)
CLAY- STONE	SILT- STONE	SAND- STONE	VOL- CANICS	ASH
CLAY- STONE WEATH.	SILT- STONE WEATH.	SAND- STONE WEATH.	GRANITICS	BASALT
CALICHE	BOULDERS AND COBBLES			REFUSAL



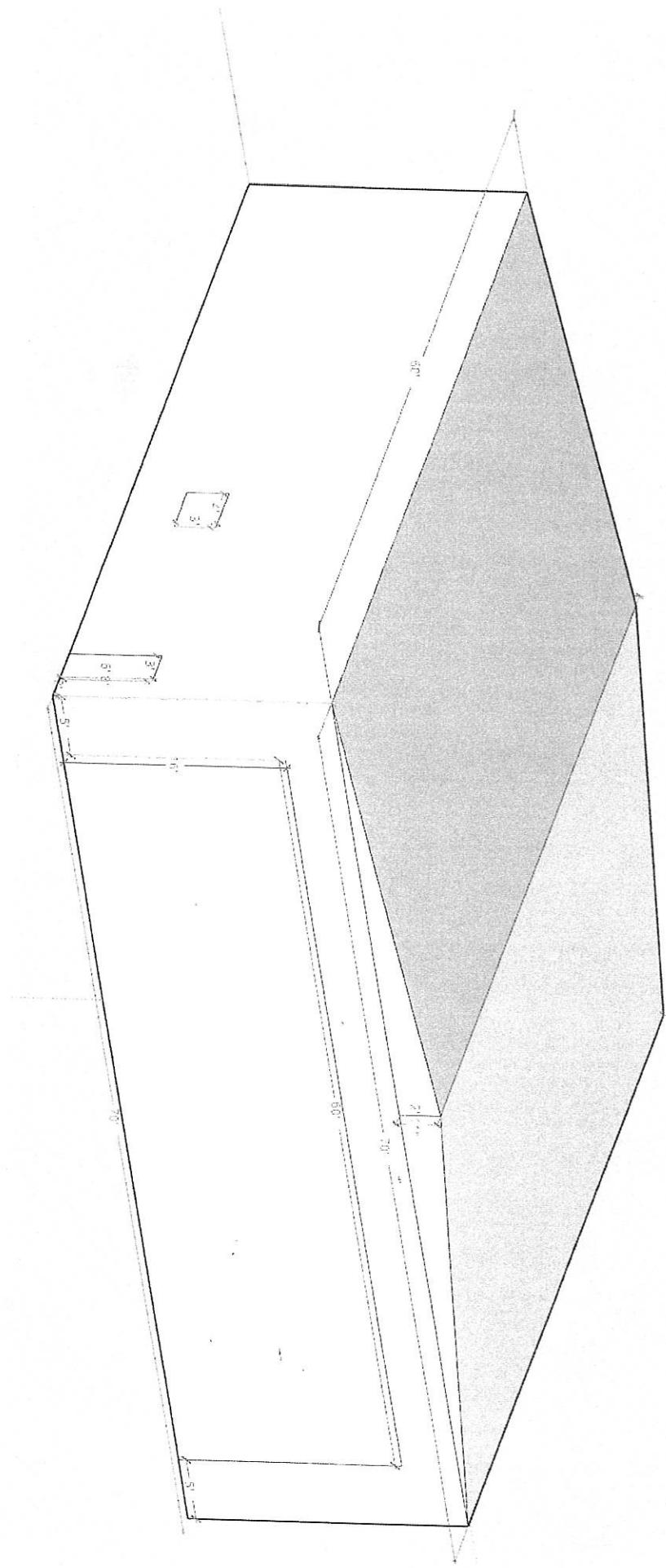
**Engineering
Consulting
Testing**

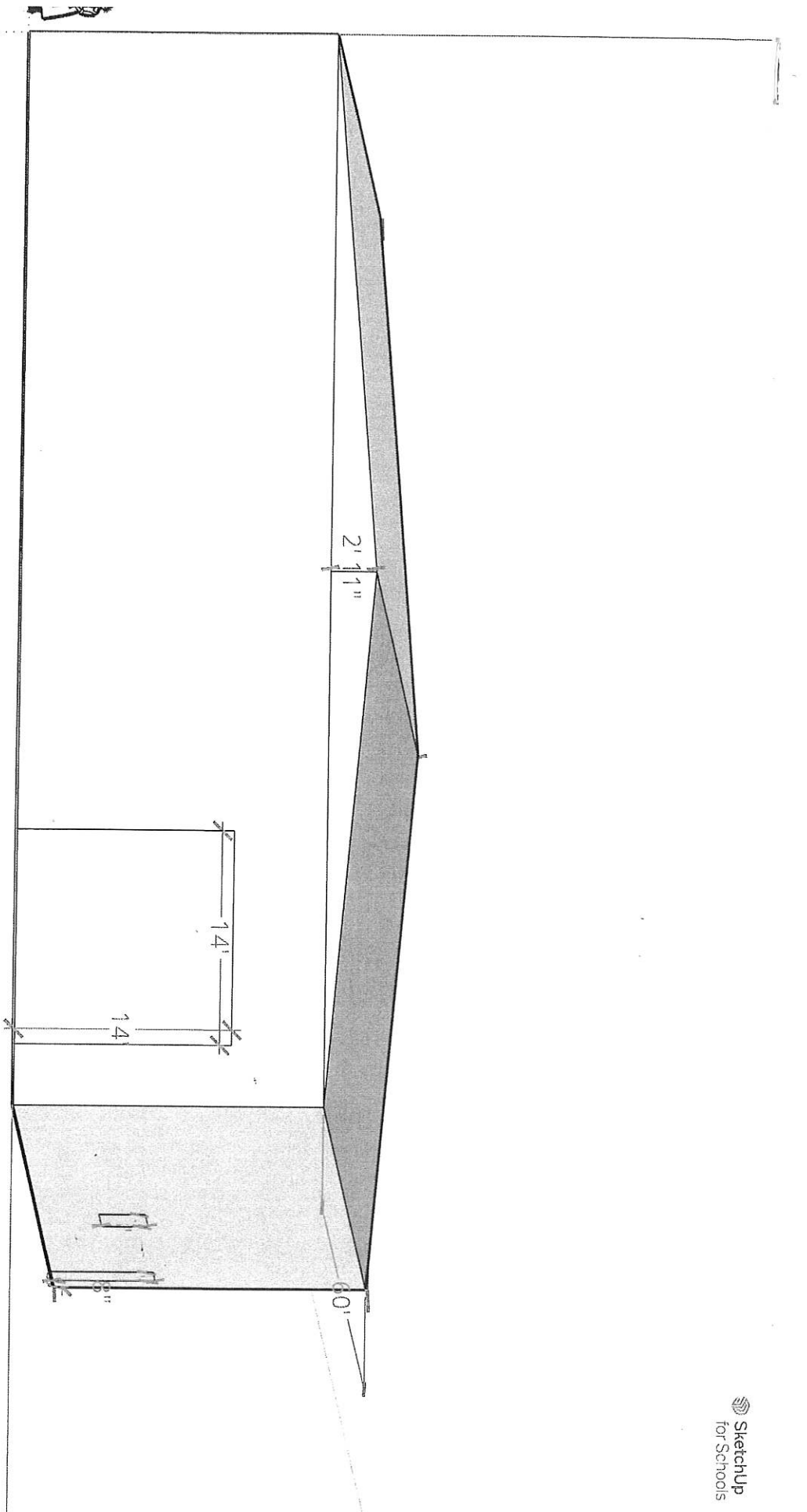
KEY TO TEST HOLES

Client: SD Young Inv., L.L.C. - Mr. Steve Young
 Project: Hurricane Airport Hangar Number 13S 4E
 Location: Hurricane, Utah
 Number: 12960

Figure , 3







STATE OF UTAH
DEPARTMENT OF COMMERCE
ACTIVE LICENSE

SD Young Inv LLC
2565 E 1520 S CIR
ST GEORGE UT 84790

EFFECTIVE
09/26/2019

EXPIRATION
11/30/2023

REFERENCE NUMBER(S), CLASSIFICATION(S) & DETAIL(S)

11445164-5501 Contractor With LRF

B100, E100

DBAs: None Associated

IMPORTANT LICENSURE REMINDERS:

- Your license is valid until the expiration date listed on this form.
- Please note the address listed below. This is your public address of record for the division, and all future correspondence from the division will be mailed to this address. If you move, it is your responsibility to notify us directly of the change. Maintaining your current address with us is the easiest way to ensure continuous licensure.
- This license has been issued to the business entity. Any change in the license's original entity structure requires a new license (i.e. DBA to a Corporation, etc.). Please contact the division before you make such changes.

SD YOUNG INV LLC
2565 E 1520 S CIR
ST GEORGE UT 84790

Please visit our web site at
www.dopl.utah.gov should you have any
questions in the future.

STATE OF UTAH
DEPARTMENT OF COMMERCE
DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
ACTIVE LICENSE

EFFECTIVE DATE: 09/26/2019

EXPIRATION DATE: 11/30/2023

ISSUED TO: **SD Young Inv LLC**
2565 E 1520 S CIR
ST GEORGE UT 84790

REFERENCE NUMBER(S), CLASSIFICATION(S) & DETAIL(S)

11445164-5501 Contractor With LRF DBAs: None Associated

B100, E100





AGENDA ITEM SUMMARY

TO: Hurricane City Council
FROM: Dayton Hall, City Attorney
DATE: November 14, 2022
RE: Stephen Lemmon's/Final Design Group, LLC's Request for a New Lease at the City Airport – Hangar 3S

I. Introduction

Stephen Lemmon purchased hangar 3S, an existing hangar at the City Airport, and is requesting a new lease in the name of the new ownership. The proposed lease is for private use. The proposed lease in the Council's packet is based on the lease template approved by the Council.

II. Authority and Applicable Ordinances

The City owns the land at the City Airport, so the Council has broad discretion on which uses or businesses to allow. Applicants seeking permission for new activities, businesses, or uses at the City Airport do not have a guaranteed "right" to introduce new businesses or uses to the Airport.

Hurricane City Ordinance 2-1-2

It shall be the duty of the [Airport] Board to review and recommend approval or disapproval of any agreement for the lease of property at the airport and the proposed use of each parcel of leased land. Prior to consideration by the City Council, any person or entity desiring to lease property at the airport or otherwise conduct any activity at the airport shall first submit a copy of the proposed lease or description of the activity, accompanied by an architectural drawing of the building or site use proposed, to the airport manager for review by the Board. The Board shall forward its recommendation to the City Council as part of the proposed lease of property.

III. Other Considerations

The former owner of the hangar used hangar 3S for personal use, which is the same use being requested by Mr. Lemmon, so the use of the hangar is not being changed.



HURRICANE CITY
UTAH

PRIVATE HANGAR LEASE AGREEMENT

BETWEEN

HURRICANE CITY, UTAH

AND

STEPHEN W. LEMMON and FINAL DESIGN GROUP, LLC

Effective Date: November 17, 2022

PRIVATE HANGAR LEASE AGREEMENT

THIS PRIVATE HANGAR LEASE AGREEMENT (which, as amended from time to time, is defined herein as the ("Agreement") is entered into as of the 17th day of November, 2022, by and between Hurricane City, Utah, a Utah municipal corporation, (the "City") and Stephen W. Lemmon, an individual, and Final Design Group, LLC, a Utah limited liability company (referred to collectively herein as the "Tenant").

RECITALS

WHEREAS, City owns and operates an airport located at 800 W. 2300 S., Hurricane, Utah 84737 (the "Airport"); and

WHEREAS, City and Tenant desire to accommodate, promote, and enhance general aviation at the Airport; and

WHEREAS, Tenant desires to lease certain real property at the Airport for the purpose of constructing or purchasing a private hangar for aircraft as provided in this Agreement;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Agreement to Lease and Operate Concession

A. Agreement to Lease Premises. City hereby leases to Tenant and Tenant hereby leases from City that certain real property 1,735 square feet in size including five feet beyond the hangar pad on three sides excluding the front and located at the property identified as Lot 3 S on the Airport property (the "Premises"). Tenant agrees to accept the Premises "as is" and City makes no warranty as to the condition of the Premises or its suitability for any particular purpose.

B. Disclosure of Soil Condition. City discloses to Tenant that the soil at the Airport is collapsible and otherwise unstable. Tenant is responsible to obtain appropriate soil evaluation reports, to adhere to the recommendations in the reports, and take whatever action is necessary to mitigate the soil condition on the Premises. Tenant is responsible to construct the hangar at the engineered drainage elevations so the drainage will flow properly. Tenant will maintain and keep the area around the premises clear of debris and obstructions so as not to cause disruption in the expected normal drainage flow.

C. Construction of Tenant Improvements. Tenant shall construct or purchase and maintain continuous improvements on the leased Premises, which shall include a concrete pad, an aircraft hangar, fixtures, and any utilities as may be necessary for the Tenant's aviation related activities (referred to herein as the "Tenant Improvements"). Such Tenant Improvements must meet the Airport's Building Development Standards and any applicable Federal Aviation Administration requirements in effect as of the date of this Agreement. The Tenant agrees to submit plans/drawings of the proposed Tenant Improvements to City within eight (8) months of the execution date of this Agreement. Tenant shall be responsible to obtain and pay for proper building permits for the Tenant Improvements and comply with all the applicable ordinances of the City when planning and constructing the Tenant Improvements. Tenant agrees to complete

construction of the proposed Tenant Improvements within twenty-four (24) months from the date the building permit is issued.

D. Grant of Concession and Purpose of Agreement. Tenant agrees that it shall have the right, privilege, and obligation to use the Premises for the following purposes: The parking, storage, service, repair, light maintenance, operation, and modification or construction (on a noncommercial basis only) of Aircraft, plus incidental activities related to such purposes. An (“Aircraft”) shall be any aircraft that Tenant owns or controls, or that is subject to an authorized sublease, when approved in writing in advance by City. Tenant shall provide to City the make, model, and registration number of any Aircraft owned or controlled by Tenant, or that are subject to an authorized sublease, that are based at the Premises.

E. Access. City agrees that if Tenant is not in breach of this Agreement, Tenant and Tenant’s employees, officers, directors, subtenants that are approved by City pursuant to this Agreement, contractors, subcontractors, suppliers, agents, invitees, and other representatives (“Tenant’s Associates”) may ingress and egress across the Airport in the areas designated by City and as permitted by applicable Laws and Regulations, on a non-exclusive basis and to the extent reasonably necessary for Tenant’s use, occupancy, and operations at the Premises.

F. Right of Flight and Other Reserved Rights. This Agreement conveys only a leasehold interest in the Premises on the terms and for the purposes provided herein, and it conveys no other rights, titles, or interest of any kind. City reserves rights in the Premises including but not limited to, a right of aircraft movement on Airport property, a right of flight for the passage of aircraft in the air, a right to cause such noise as may at any time be inherent in the operation of aircraft, subject to the rules, regulations, and policies as may be adopted from time to time by the City, and rights in water, minerals, oil, and gas.

G. Enjoyments of Rights. Subject to Tenant’s complete performance of the payment and other obligations contained in this Agreement, Tenant shall enjoy the rights, uses, and privileges stated in this Agreement.

2. Term. The term of this Agreement shall commence on the date of execution of this Agreement and shall continue thereafter for a term of twenty (20) years until November 17, 2042, (the “Initial Term”). If the Tenant desires to renew this Agreement, the Tenant must notify the City in writing at least 60 days prior to the expiration of the initial term. Upon such notification, this lease shall renew for an additional five (5) year period at the lease rates stated in Section 3 of this Agreement.

3. Rent

A. Rent. For Tenant’s lease of the Premises, Tenant covenants to pay to City without off-set or deduction the annual ground rent as shown in the table below and commencing on the date of execution of this Agreement. All rent shall be due and payable to the City of Hurricane annually in advance, without notice or demand from City, on the 1st day of August. The first years rent payment will be prorated to the next August 1st payment date.

<u>Years</u>	<u>Rent amount per square foot</u>
2022 – 2027	.15
2028 – 2033	.18
2034 – 2039	.21
2040 – 2045	.24

2046 – 2051	.27
2052 – 2057	.30
2058 – 2063	.33

C. Dishonored Checks. If any check paid on behalf of Tenant is dishonored or returned by a bank for any reason, Tenant shall pay all charges assessed to City by the bank plus a service charge of fifty dollars (\$50.00) per occurrence (or such other amount as City shall implement from time to time) in addition to other sums due under this Agreement.

D. Past Due Amounts. If tenant fails to pay when due any amount required to be paid by Tenant under this Agreement, such unpaid amount shall bear interest at the rate of eighteen percent (18%) from the due date of such amount to the date of payment in full, with interest. In addition, City may charge a sum of five percent (5%) of such unpaid amount as a service fee, which the parties agree is a reasonable amount to cover the additional costs for billing and collecting arising from Tenants failure to make payment in a timely manner. All amounts due under this Agreement are and shall be deemed to be rent, and shall be paid without abatement, deduction, off-set, prior notice, or demand (unless expressly provided by the terms of this Agreement). City's acceptance of any past due amount either full or partial (or its associated interest or service fee) shall not constitute a waiver of any default under this Agreement.

4. Tenant's Use of Premises and Airport

A. No Interference. Tenant and Tenant's Associates shall not use the Premises or the Airport in any manner that interferes with any operation at the Airport or decreases the Airport's effectiveness, as reasonably determined by the City at its sole discretion. Tenant shall promptly notify City of any use that creates such interference or decrease of effectiveness and remedy the same to City's satisfaction.

B. Comply with all Laws and Regulations. Tenant and Tenant's Associates shall comply at all times, at Tenant's sole cost, with any and all laws and regulations (as amended or otherwise modified from time to time) that are applicable to Tenant's use, occupancy, or operations at the Premises or the Airport (the "Laws and Regulations"), which include but are not limited to, the Airport Rules and Regulations, Policies and Procedures, Minimum Standards for Commercial Aeronautical Activities, Utah Code Annotated, the Code of Revised Ordinances of Hurricane City, the Protective Covenants of the Hurricane City Airport, applicable Federal Aviation Regulations, and all lawful, reasonable, and nondiscriminatory Airport policies and other requirements.

C. No Unauthorized Use. Tenant and Tenant's Associates shall use the Premises and the Airport only for purposes that are expressly authorized by this Agreement and shall not engage in any unauthorized use of the same. Unauthorized uses include, but are not limited to, any use that would damage, interfere with, or alter any improvement; restricting access on any road or other area that Tenant does not lease; placing waste materials on the Airport or disposing of such materials in violation of any Laws and Regulations; any use that would constitute a public or private nuisance or a disturbance or annoyance to other Airport users; the use of automobile parking areas in a manner not authorized by City; fueling activities on the Premises or any other area that City has not authorized; commercial activities, aircraft parking, or storage in areas not leased by Tenant, any use unrelated to the purposes of this Agreement; and any use that would be prohibited by or would impair coverage under either party's insurance policies.

D. Permits and Licenses. Tenant shall obtain and maintain in current status all permits and licenses that are required under any Laws and Regulations in connection with Tenant's use, occupancy, or operations at the Premises or the Airport. In the event that Tenant receives notice from any governmental authority that Tenant lacks, or is in violation of, any such permit or license, Tenant shall provide City with timely written notice of the same.

E. Taxes and Liens. Tenant shall pay (before their respective due dates) all taxes, fees, assessments, and levies that relate to Tenant's use, occupancy, or operations at the Premises or the Airport and all other obligations for which a lien may be created relating thereto (including, but not limited to, utility charges and work for the Tenant Improvements). Within ten (10) days of notice of such lien, Tenant shall have the lien removed or deposit with the City cash or other security acceptable to City in an amount sufficient to cover the cost of removing such lien. When contracting for any work in connection with the Premises, Tenant shall include in such contract a provision prohibiting the contractor or any subcontractor or supplier from filing a lien or asserting a claim against City's real property or any interest therein.

F. Damage to Property and Notice of Harm. Tenant, at Tenant's sole cost, shall repair or replace to City's satisfaction any damaged property that belongs to City or City's other Tenants to the extent that such damage arises from or relates to an act or omission of Tenant or Tenant's Associates. Tenant shall promptly notify City of any such property damage. If Tenant discovers any other potential claims or losses that may affect City, Tenant shall promptly notify City of the same.

G. No Alterations or Improvements. Tenant shall not make or cause to be made any alterations or improvements to the Premises or to other areas of the Airport without City's prior written consent.

H. Security. Tenant is responsible to comply, at Tenants sole cost, with all security measures that City, Federal Aviation Administration, the United States Transportation Security Administration or any other governmental authority having jurisdiction may require in connection with the Airport. Tenant shall protect and preserve security at the Airport, including, but not limited to, protecting security information and protecting any access points to the Airport that are maintained by Tenant. Tenant will be vigilant in watching for unusual activity or persons that do not belong at the Airport, and will report such to the Airport Manager or by calling 1-866-GA-SECURE.

I. Removal of Disabled or Derelict Aircraft. Tenant shall promptly remove or cause to be removed from any portion of the Airport not leased by Tenant the Aircraft (or any other aircraft that Tenant owns or controls) if it becomes disabled or derelict. Tenant may store such aircraft within the Tenant Improvements or, with the City's prior written consent, elsewhere at the Airport on terms and conditions established by City. If Tenant fails to comply with this requirement after a written request by City to comply, City may (but is not required to) cause the removal of any such aircraft at Tenant's expense by any means that City determines to be in City's best interests.

J. Maintenance, Repair, Utilities, and Storage. Tenant's use, occupancy, and operations at the Premises shall be without cost or expense to the City. Tenant shall be solely responsible to design and construct the Tenant Improvements and to maintain, repair, reconstruct, and operate the Premises and the Tenant Improvements at Tenant's sole cost and expense, including, but not limited to, all utility services, janitorial services, waste disposal, and ramp repair. Tenant shall at all times maintain the Premises and the Tenant Improvements in a

condition that is clean, safe, sanitary, and in good repair. Tenant shall perform all work in accordance with Laws and Regulations and in a good and workmanlike manner. City has sole discretion to determine the quality of the work. Tenant shall promptly remedy any condition that fails to meet this standard. In addition to other restrictions and requirements contained in this Agreement, Tenant shall not store outside of the Tenant Improvements (aircraft hangar) any inoperable equipment, discarded or unsightly materials, materials likely to create a hazard, trailers (except trailers designed to carry gliders), inoperative motor vehicles, or any other similar items. Tenant is responsible to keep the area five feet out from all four sides of the aircraft hangar clear of weeds and any debris.

K. Operations. Tenant's operations shall comply with the following.

(i) Airport Operations. Tenant shall occupy the Premises and shall operate in a manner that promotes effective Airport operations. Among other things, Tenant shall immediately notify the Airport Manager of any condition observed at the Airport that may create a hazard or disruption; Tenant shall refrain from annoying, disturbing, or impairing Airport customers, tenants, or employees; and Tenant shall promptly respond to City's requests for information and reasonable assistance in connection with planning and other operational matters at the Airport. If City determines for any reason that emergency conditions exist at the Airport, Tenant shall participate in any emergency response as directed by City or other agency in charge and shall operate in a manner that protects safety and the interests of the public.

(ii) Safety. Tenant shall maintain appropriate safety items at the Premises as may be required by the City, Local Fire Authority, or other governmental agency

(iii) Personnel. Tenant shall control the conduct, demeanor, and appearance of its employees and Tenant's Associates so they do not annoy, disturb, or impair Airport customers, tenants, or employees. Tenant shall provide the Airport Manager with the name and contact number of a person who is responsible for and has authority to act on behalf of Tenant.

(iv) Deficiencies. Without limiting or waiving any other remedies available to City, including declaring a breach of this Agreement, City's remedies shall include the following in connection with deficiencies in Tenant's operations.

(a) Propose and Implement Cure. Tenant shall meet with the Airport Manager as he or she may request regarding the quality of Tenant's operations, whether or not in connection with a specific complaint. Tenant shall propose curative measures in response to City's determinations regarding deficiencies in Tenant's operations and shall implement as expeditiously as possible measures that are approved by City.

(b) Remove Employees and Associates. City shall have the right to require Tenant to remove from the Airport any employee or any of Tenant's Associates that City reasonably determines to be in violation of any provision of this Agreement or otherwise detrimental to City's interests at the Airport.

5. City's Rights and Obligations

A. Airport Maintenance. Subject to subparagraph C. of this section, City agrees that as long as the Airport is certified to operate as an airport by the Federal Aviation Administration (or any successor agency), City shall keep the property of the Airport in good repair and free from obstruction in accordance with applicable Federal standards.

B. Access to Premises. City for itself and its employees, officers, directors, agents, and other representatives ("City's Associates") reserves the right to enter the Premises and Tenant Improvements at reasonable times and with reasonable notice for any purpose relating to the Airport including, but not limited to, conducting inspections, determining compliance with this Agreement, conduct Airport work, or for emergency purposes, provided that they shall not unreasonably interfere with Tenant's use of the Premises or Tenant's Improvements.

C. City's Right to Relocate Tenant's Improvements from Premises. It is understood and agreed that as conditions may require, the City has the right to require Tenant to relocate Tenant's Improvements from the Premises to a new location on the Airport property, or to a new location at a new airport if the City elects to relocate the Airport, which would be comparable to Tenant's current leased Premises. Tenant shall bear the costs associated with relocating Tenant's Improvements and property to the new location. City agrees to provide the Tenant with a new Private Hangar Lease Agreement for the new location upon the same terms and conditions as are contained herein for the unexpired term of this Agreement.

D. City Charges. City has the right to impose rates and charges in connection with any matter at the Airport in a manner consistent with Laws and Regulations.

E. City Directives. City is the owner and proprietor of the Airport, and City has the right to issue any lawful, reasonable, and non-discriminatory directive as a landlord and proprietor that City determines to be in City's best interests.

F. Governmental Acts. City is a governmental entity, and City has all rights, powers, immunities, and privileges afforded to it under Laws and Regulations. Tenant agrees that Tenant is subject to any lawful governmental act of City without regard to the provisions of this Agreement.

G. Condemnation. In the event that the demised Premises are condemned by any proper authority, the term of this lease will end on the date that Tenant is required to surrender possession of the Premises. Tenant shall be entitled to that portion of the condemnation proceeds attributable to the fair market value of any Tenant Improvements placed on the Premises by Tenant.

6. Indemnification

A. Indemnity by Tenant. Tenant agrees to indemnify, hold harmless, and defend City and its officers and employees from and against losses of every kind and character (including but not limited to, liabilities, causes of action, losses, claims, costs, fees, attorney fees, expert fees, court of dispute resolution costs, investigation costs, environmental claims, mitigation costs, judgments, settlements, fines, demands, damages, charges, and expenses) that arise out of or relate to: (i) this Agreement; (ii) any use, occupancy, or operations at the Premises or the Airport by Tenant or Tenant's Associates; or (iii) any wrongful, reckless, or negligent act or omission of Tenant or Tenant's Associates. Tenant shall use attorneys, experts, and professionals that are reasonably acceptable to City in carrying out this obligation. This obligation does not require Tenant to indemnify City and its officers and employees against losses (as defined above) that arise solely from the negligent acts or omissions of City and its officers and employees. The obligation stated in this Section 6.A. shall survive the expiration or other termination of this Agreement with respect to matters arising before such expiration or

other termination. These duties shall apply whether or not the allegations made are proven to be true.

B. Waiver. Tenant assumes all risk of the use of the Premises and the Airport, and Tenant hereby knowingly, voluntarily, and intentionally waives any and all losses, liabilities, claims, and causes of action, of every kind and character, that may exist now or in the future (including, but not limited to, claims for business interruption and for damage to any aircraft) against City and its officers, employees, and volunteers arising from or related to Tenant's use, occupancy, or operations at the Premises or the Airport.

7. Hazardous Materials. Tenant shall not cause or permit any Hazardous Materials to be used, produced, stored, transported, brought upon, or released on, under, or about the premises or the Airport by Tenant or Tenant's Associates in violation of applicable Environmental Laws. Tenant is responsible for any such violation as provided by Section 6.A. of this Agreement. Tenant agrees that in the event of a release or threat of release of any Hazardous Material by Tenant or Tenant's Associates at the Airport, Tenant shall provide City with prompt notice of the same. Tenant shall respond to any such release or threat of release in accordance with applicable Laws and Regulations.

8. Assignment and Subleasing

A. Assignment. Tenant shall not assign any of its rights under this Agreement, including, but not limited to, rights in the Tenant Improvements, (whether such assignment is voluntary or involuntary, by merger, consolidation, dissolution, change in control, or any other manner), shall not encumber any such rights or record this Agreement (or any document or interest related thereto) and shall not delegate any performance under this Agreement, except with prior written consent of City to any of the same. City will not unreasonably withhold written consent to an assignment of this Agreement.

B. Subleasing. With prior written consent of City, Tenant shall have the right to sublease portions of the Premises and Tenant Improvements only for the purposes specified in this Agreement or to store an aircraft. City shall have the right to approve any sublease tenant and sublease agreement. Tenant shall impose on any approved sublease tenant the same terms set forth in this Agreement to provide for the rights and protections afforded to City. Tenant shall reserve the right to amend any sublease to conform to the requirements of this Agreement, and any sublease shall be consistent with and subordinate to this Agreement as it is amended from time to time. Any sublease shall include an agreement that the sublease will attach to and pay rent to City if Tenant ceases to be a party to this Agreement. Tenant shall provide to City a copy of any sublease executed by Tenant. No sublease shall relieve Tenant of any obligations under this Agreement.

9. Damage and Destruction. If any portion of the Premises or the Tenant Improvements is damaged in any manner, Tenant shall promptly remove from the Airport all debris and cause repairs to be made to restore the same to an orderly and safe condition. All work shall be performed in accordance with plans and specifications that are approved by City as being consistent or better than the original improvements. Tenant shall follow City's policies and procedures regarding obtaining building permits as necessary.

10. Default

A. Tenant's Default. Each of the following events shall constitute a default or breach of this Agreement by the Tenant. (i) Tenant fails to timely pay any installment of rent; (ii) Tenant violates any requirement under this Agreement (including, but not limited to, abandonment of the Premises) and fails to cure the same within sixty (60) days after written notice thereof by City to Tenant; (iii) Tenant assigns or encumbers any right in this Agreement, delegates any performance hereunder, or subleases any part of the Premises (except as expressly permitted in this Agreement); (iv) Tenant files a petition in bankruptcy, becomes insolvent, or has a petition filed against Tenant in bankruptcy, insolvency, or for reorganization or appointment of a receiver or trustee which is not dismissed within sixty (60) days; (v) Tenant petitions for or enters into an arrangement for the benefit of creditors, or suffers this Agreement to become subject to a writ of execution and such writ is not released within thirty (30) days; or (vi) Tenant defaults in constructing a Tenant Improvement as provided for in this Agreement.

B. Remedies. Upon default by Tenant under this Agreement, City may (at any time) pursue any or all remedies available to City, including, but not limited to, the following: (i) perform in Tenant's stead any obligation that Tenant has failed to perform, and Tenant shall promptly pay to City all costs incurred by City for such performance; (ii) terminate Tenant's rights under this Agreement upon delivering a written notice of termination; and (iii) re-enter and take possession of the Premises by any lawful means (with or without terminating this Agreement). Tenant shall pay all costs and damages arising out of Tenant's default, including, but not limited to, the cost of recovering possession of the Premises, the cost of improving and re-letting the Premises, and any attorney fees and costs. Notwithstanding any termination or re-entry, Tenant shall remain liable to pay the rent required under this Agreement for the remaining term of this Agreement, and Tenant shall pay City on demand for any deficiency in the same. No action by City or City's Associates shall be construed as an election by City to terminate this Agreement or accept any surrender of the Premises unless City provides Tenant with a written notice expressly stating that City has terminated this Agreement or accepted a surrender of the Premises. Following a default by Tenant under this Agreement, City shall exercise commercially reasonable, good faith efforts to mitigate its damages as required by applicable Utah law.

C. Default by City. City shall not be in default under this Agreement unless City fails to perform an obligation required of City under this Agreement within thirty (30) days after written notice by Tenant to City. If the nature of City's obligation is such that more than thirty (30) days are reasonably required for performance or cure, City shall not be in default if City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In no event may Tenant terminate this Agreement or withhold the payment of rent or other charges provided for in this Agreement as a result of City's default.

D. Survival. The provisions of this Section 10 and the remedies and rights provided in Section 6 shall survive any expiration or termination of this Agreement.

11. Expiration or Termination

A. Disposition of Tenant Improvements. Upon the termination of this Agreement before or on the expiration date, Tenant shall do one of the following at the option of City: (1) surrender the Tenant Improvements to City if City has determined to accept the Tenant Improvements, with Tenant's rights, title, and interests in the Tenant's Improvements being deemed transferred to the City upon the City accepting the same or (2) remove all Tenant Improvements from the Premises and Airport at Tenant's sole expense in a manner acceptable

to City (and the obligations of section 6.A. shall apply to such removal). If Tenant fails to remove any Tenant Improvements under subsection (2), City may do so in any manner acceptable to City pursuant to Section 10.B.

B. Holding Over. If Tenant remains in possession of the Premises after any expiration or termination of this Agreement, such occupancy shall not waive any default under this Agreement and City may terminate such occupancy as a tenancy at will in accordance with Utah Law. During such occupancy, Tenant shall comply with all provisions of this Agreement that are applicable to an at-will-tenancy, and Tenant shall pay the following rent: ground rent at the highest rate then charged at the Airport and rent for the Tenant Improvements at fair market value based on City's survey of rent for similarly situated facilities at the Airport and at other western airports.

C. Survival. The provisions of this Section 11 shall survive any expiration or termination of this Agreement.

12. General Provisions

A. No Exclusive Rights. Nothing in this Agreement shall be construed to grant to Tenant any exclusive right or privilege for the conduct of any activity on the Airport (except to lease the Premises for Tenant's exclusive use as provided herein).

B. Agreement Preserves City's Compliance. This Agreement shall be interpreted to preserve City's rights and powers to comply with City's Federal and other governmental obligations.

C. Subordination to City's Government Commitments. This Agreement is subordinate to the provisions of any agreement between City and the United States or other governmental authority (regardless of when made) that affects the Airport, including, but not limited to, agreements governing the expenditure of Federal funds for Airport Improvements. In the event that the Federal Aviation Administration or other governmental authority requires any modification to this Agreement as a condition of City entering any agreement or participating in any program applicable to the Airport, Tenant agrees to consent to any such modification. If a governmental authority determines that any act or omission of Tenant or Tenant's Associates has caused or will cause City to be non-compliant with any of City's government commitments, Tenant shall immediately take such actions that may be necessary to preserve City's compliance with the same.

D. Subordination to Financing and Matters of Record. This Agreement is subordinate to the provisions of any agreements or indentures entered by City (regardless of when entered) in connection with any debt financing applicable to the Airport and is subordinate to any matter of record affecting the real property of the Airport.

E. Force Majeure. No act or event, whether foreseen or unforeseen, shall operate to excuse Tenant from the prompt payment of rent or any other amounts required to be paid under this Agreement. If City (or Tenant in connection with obligations other than payment obligations) is delayed or hindered in any performance under this Agreement by a force majeure event, such performance shall be excused to the extent so delayed or hindered during the time when such force majeure event is in effect, and such performance shall promptly occur or resume thereafter at the expense of the party so delayed or hindered. A "force majeure event" is an act or event, whether foreseen or unforeseen, that prevents a party in whole or in part from

performing as provided in this Agreement, that is beyond the reasonable control of and not the fault of such party, and such party has been unable to avoid or overcome by exercising due diligence, and may include, but is not limited to, acts of nature, war, riots, strikes, accidents, fire, and changes in law.

F. Rights and Remedies. Except as expressly set forth in this Agreement, the rights and remedies set forth in this Agreement are not intended to be exhaustive and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently exist.

G. Attorneys Fees. If any action is brought to recover any rent or other amount under this Agreement because of any default under this Agreement, to enforce or interpret any of the provisions of this Agreement, or for the recovery of possession of the Premises, the party prevailing in such action shall be entitled to recovery from the other party(s) reasonable attorneys fees, court costs, the fees of experts and other professionals, and other costs arising from such action (including those arising from any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered. Tenant shall be responsible for all expenses, including but not limited to, attorney fees incurred by the City in any case or proceeding involving the Tenant or any permitted assignee of Tenant under or related to any bankruptcy or insolvency law. The provisions of this Section 12.G. shall survive any expiration or termination of this Agreement.

H. Governing Law, Venue, and Waiver of Jury Trial. This Agreement and the respective rights and obligations of the parties shall be governed by, interpreted, and enforced in accordance with the Laws of the State of Utah. Venue for any action arising out of or related to this Agreement or actions contemplated hereby may be brought in the United States District Court for Utah or the District Court for the State of Utah sitting in Washington County, Utah so long as one of such courts shall have subject matter jurisdiction over such action or proceeding, and each of the parties hereby irrevocable consents to the jurisdiction of the same and of the appropriate appellate courts there from. Process in any such action may be served on any party anywhere in the world. CITY AND TENANT EACH KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER FOR ALL MATTERS ARISING OUT OF OR RELATING TO THIS LEASE OR ANY USE, OCCUPANCY, OR OPERATIONS AT THE PREMISES OR THE AIRPORT. The provisions of this Section 12.H. shall survive any expiration or termination of this Agreement.

I. Amendments and Waivers. No amendment to this Agreement shall be binding on City or Tenant unless reduced to writing and signed by both parties. No provision of this Agreement may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced.

J. Severability. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect if both the economic and legal substance of the transactions that this Agreement contemplates are not affected in any manner materially adverse to any part. If any provision of this Agreement is held invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes of this Agreement.

K. Merger. This Agreement constitutes the final, complete, and exclusive agreement between the parties on the matters contained in this Agreement. All prior and contemporaneous

negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither party has relied on any statement, representation, warranty, now agreement of the other party except for those expressly contained in this Agreement. Any proposal materials or exhibits submitted by Tenant in response to a solicitation by City, to the extent accepted by City, shall also be incorporated in this Agreement.

L. Confidentiality. Tenant acknowledges that City is subject to legal requirements regarding the public disclosure of records. Tenant shall comply with such laws in connection with making any request that City maintain a record confidentially, and if Tenant complies with the same, Tenant shall have the right to defend any such request for confidentiality at Tenant's expense.

M. Relationship of Parties. This Agreement does not create any partnership, joint venture, employment, or agency relationship between the parties. Nothing in this Agreement shall confer upon any other person or entity any right, benefit, or remedy of any nature.

N. Further Assurances. Each party shall execute any document or take any action that may be necessary or desirable to consummate and make effective a performance that is required under this Agreement.

O. Miscellaneous. The headings in this Agreement are provided for convenience only and do not affect this Agreement's construction or interpretation. All references to Sections are to Sections in this Agreement. Each provision to be performed by Tenant shall be construed as both a covenant and a condition. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the drafting party. If Tenant consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several. References in this Agreement to any period of days shall mean calendar days unless specifically stated otherwise.

P. Time is of the Essence. Time is of the essence in this Agreement.

Q. Notices. Any notice, demand, written consent, or other communication required to be in writing under this Agreement shall be given in writing by personal delivery, express mail (postage prepaid), nationally recognized overnight courier with all fees prepaid (such as, by way of example, Federal Express or UPS), or certified mail (return receipt requested and postage prepaid) when addressed to the respective parties as follows.

If to City:

Hurricane City
City Attorney
147 N. 870 W.
Hurricane, UT 84737

If to Tenant:

Stephen W. Lemmon or Final Design
Group, LLC
PO Box 889
Hurricane, UT 84737

Either City or Tenant may change its notice address by giving written notice (as provided herein) of such change to the other party. Any notice, demand, or written consent or communication shall be deemed to have been given, and shall be effective, upon compliance with this Section 12.Q. and delivery to the notice address then in effect for the party to which the notice is directed; provided, however, that such delivery shall not be defeated or delayed by any refusal

to accept delivery or an inability to effect delivery because of an address change that was not properly communicated.

R. Binding Obligation. Tenant warrants and represents that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement as a legal, valid, and binding obligation of Tenant.

S. City Approval and Consent. Wherever in this Agreement it specifies the City must give approval or consent by the terms of this Agreement, such approval or consent shall not be unreasonably withheld. Unless otherwise specified, approval, consent, or action by the City refers to approval or consent by the Hurricane City Council.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

HURRICANE CITY

FINAL DESIGN GROUP, LLC

Nanette Billings, Mayor

By: Stephen W. Lemmon
Its: Manager

Attest:

Stephen W. Lemmon

Cindy Beteag, City Recorder

Approved as to form:

Dayton Hall, City Attorney



AGENDA ITEM SUMMARY

TO: Hurricane City Council
FROM: Dayton Hall, City Attorney
DATE: November 14, 2022
RE: Stephen Lemmon's/Final Design Group, LLC's Request for a New Lease at the City Airport for all of Plot 47

I. Introduction

Stephen Lemmon is requesting permission to lease all of Plot 47 as shown on the Airport Master Plan. Plot 47 consists of 11 hangar sites and totals 27,250 square feet. Mr. Lemmon is requesting that these hangar sites be used for business/commercial purposes. A summary of the proposed uses, taken from Mr. Lemmon's proposal, follows:

Aviation ground-school training; Operation of flight simulator; Production of aviation and avionics training videos with aircraft housed in the hangar and on the flight simulators; Repair and installation of avionics; Aircraft repair; Aircraft restoration; Custom finish shop providing avionics panel layouts, wood inlay finish work, and custom upholstery; Housing of Tenant's aircraft; Providing oxygen and detailing; Office space for support staff; Long-term subleasing of hangar space; and Hangar rental space for transient aircraft.

Included in your packet for this item are: (1) Airport Master Plan showing Plot 47; (2) Mr. Lemmon's proposal; and (3) a requested, proposed lease for Plot 47 based on the lease template approved by the Council.

II. Authority and Applicable Ordinances

The City owns the land at the City Airport, so the Council has broad discretion on which uses or businesses to allow. Applicants seeking permission for new activities, businesses, or uses at the City Airport do not have a guaranteed "right" to introduce new businesses or uses to the Airport.

Hurricane City Ordinance 2-1-2

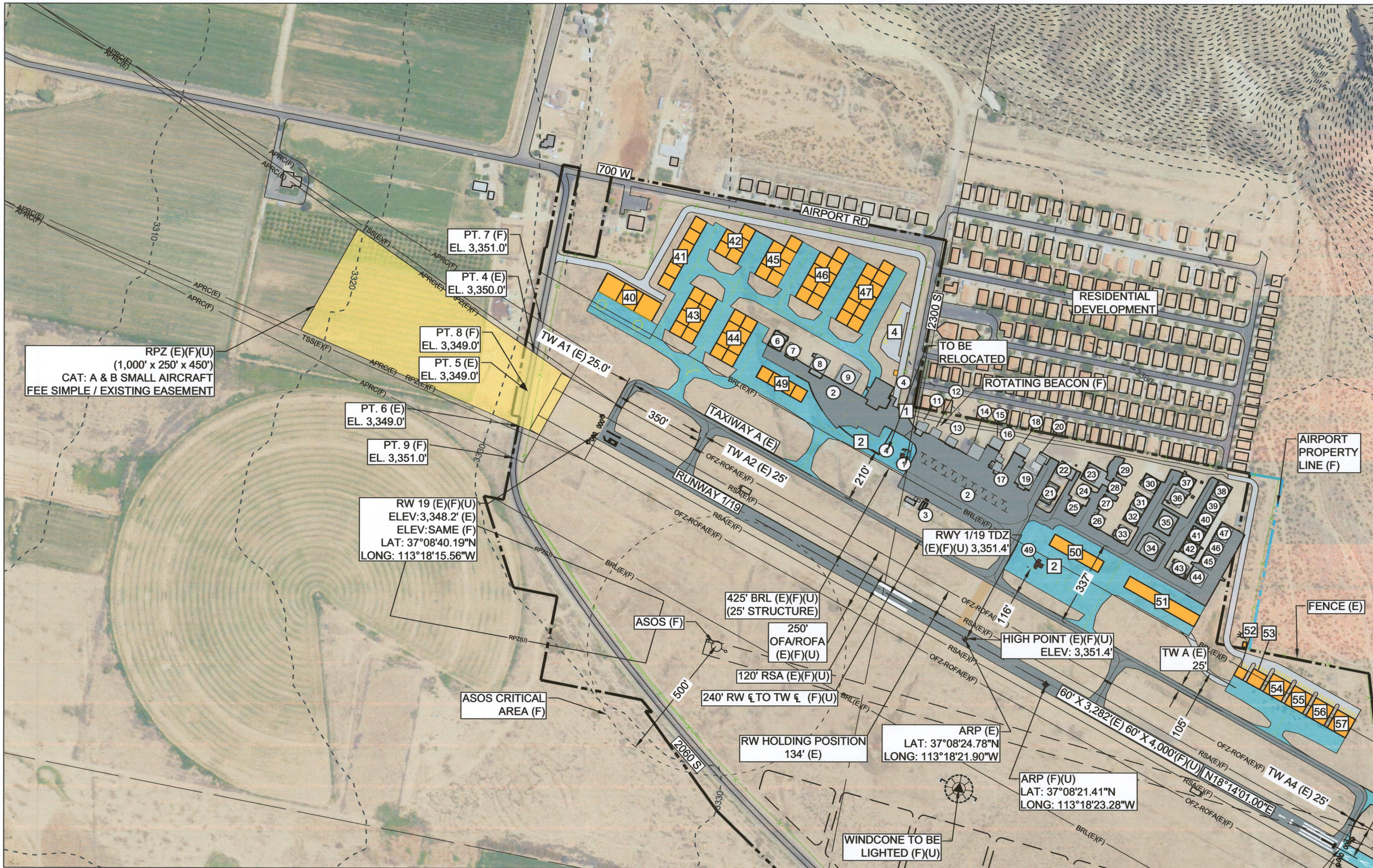
It shall be the duty of the [Airport] Board to review and recommend approval or disapproval of any agreement for the lease of property at the airport and the proposed use of each parcel of leased land. Prior to consideration by the City Council, any person or entity desiring to lease property at the airport or otherwise conduct any activity at the airport shall first submit a copy of the proposed lease or description of the activity, accompanied by an architectural drawing of the building or site use proposed, to the airport manager for review by the Board. The Board shall forward its recommendation to the City Council as part of the proposed lease of property.

III. Airport Board Recommendations

A majority of the Airport Board recommended approval of Mr. Lemmon's proposal. There was one dissenting vote from the Board. The reason given for the dissenting vote was that this new commercial use would result in a change of use and increase of use that would impact neighboring developments and homes.

IV. Other Considerations

The type of commercial complex being proposed by Mr. Lemmon exceeds the commercial nature of other businesses currently being operated at the Airport and is likely to result in a substantial expansion of commercial air traffic.



AIRPORT FACILITIES LIST			
EXISTING	FUTURE	FACILITY DESCRIPTION	TOP ELEVATION (MSL)
1	1	PILOTS LOUNGE/TERMINAL BUILDING	3377'
2	2	TIEDOWNS	-
3		FUEL STORAGE	3366'
4	4	VEHICLE PARKING	-
6		BOX HANGAR	3391'
7		BOX HANGAR	3377'
8		BOX HANGAR	3391'
9		BOX HANGAR	3392'
11		BOX HANGAR	3378'
12		BOX HANGAR	3378'
13		BOX HANGAR	3379'
14		BOX HANGAR	3380'
15		BOX HANGAR	3381'
16		T-HANGAR	3381'
17		T-HANGAR	3380'
18		BOX HANGAR	3381'
19		BOX HANGAR	3380'
20		BOX HANGAR	3381'
21		BOX HANGAR	3380'
22		BOX HANGAR	3382'
23		BOX HANGAR	3383'
24		BOX HANGAR	3382'
25		BOX HANGAR	3381'
26		BOX HANGAR	3381'
27		BOX HANGAR	3382'
28		BOX HANGAR	3383'
29		BOX HANGAR	3383'
30		BOX HANGAR	3384'
31		BOX HANGAR	3383'
32		BOX HANGAR	3382'
33		BOX HANGAR	3381'
34		BOX HANGAR	3381'
35		BOX HANGAR	3383'

36		BOX HANGAR	3383'
37		BOX HANGAR	3384'
38		BOX HANGAR	3385'
39		BOX HANGAR	3385'
40		BOX HANGAR	3384'
41		BOX HANGAR	3383'
42		BOX HANGAR	3382'
43		BOX HANGAR	3382'
44		BOX HANGAR	3382'
45		BOX HANGAR	3382'
46		BOX HANGAR	3383'
47		BOX HANGAR	3383'
48		BOX HANGAR	3383'
49		T-HANGAR	TO BE REMOVED
	40	BOX HANGAR (80' x 80')	3385'
	41	BOX HANGAR (50' x 50')	3370'-3371'
	42	BOX HANGAR (50' x 50')	3362'-3363'
	43	BOX HANGAR (50' x 50')	3361'-3362'
	44	BOX HANGAR (50' x 50')	3361'-3362'
	45	BOX HANGAR (50' x 50')	3364'-3365'
	46	BOX HANGAR (50' x 50')	3366'-3367'
	47	BOX HANGAR (50' x 50')	3364'
	49	BOX HANGAR (50' x 50')	3368'
	50	SHADE/T-HANGARS	3390'
	51	SHADE/T-HANGARS	3389'
	52	BOX HANGAR (40' x 40')	3372'
	53	BOX HANGAR (60' x 60')	3385'
	54	BOX HANGAR (80' x 80')	3385'
	55	BOX HANGAR (80' x 80')	3384'
	56	BOX HANGAR (80' x 80')	3384'
	57	BOX HANGAR (80' x 80')	3383'

LEGEND		
	EXISTING	FUTURE/ULTIMATE
AIRPORT PROPERTY BOUNDARY	---	---
AIRCRAFT PAVEMENT	---	---
AIRPORT PAVEMENT MARKINGS	---	---
ROAD (PAVED/GRAVEL)	---	---
TO BE REMOVED	N/A	---
BUILDING/HANGAR	---	---
RUNWAY PROTECTION ZONE (RPZ)	---	---
BUILDING RESTRICTION LINE (25')	---	---
RUNWAY OBJECT FREE AREA (ROFA)	---	---
RUNWAY SAFETY AREA (RSA)	---	---
RUNWAY OBJECT FREE ZONE (ROFZ)	---	---
THRESHOLD SITING SURFACE (TSS)	---	---
APPROACH SURFACE	---	---
GLIDE/PATH QUALIFICATION SURFACE	N/A	---
FENCE (8' HEIGHT OR LESS)	---	N/A
ROTATING BEACON	N/A	---
PAPI	N/A	---
WINDCONE/SEGMENTED CIRCLE	---	SAME
AIRPORT REFERENCE POINT	---	---
THRESHOLD LIGHTS	N/A	0000 0000
REILS	N/A	---
ASOS	N/A	---

SPONSOR APPROVAL		
No.	Description	Date
*1	UPDATED PER AIP No. 3-49-0012-05 BY JVIATION, INC.	4/27/16
*2	UPDATED PER AIP No. 3-49-0012-05 BY JVIATION, INC.	12/23/2019

- NOTES:
- BUILDING RESTRICTION LINE (BRL) DEPICTS REQUIRED SETBACKS FOR A TYPICAL 35' STRUCTURE. HEIGHTS OF EXISTING AND FUTURE BUILDINGS WITHIN THE BRL REMAIN CLEAR OF THE OFA'S AND AREA BELOW THE 7:1 TRANSITIONAL SURFACE (OR ARE OBSTRUCTION MARKED AND LIGHTED ACCORDINGLY).
 - ALL HANGARS HAVE AN ASSUMED 21' HEIGHT ADDED TO THE GROUND ELEVATION TO OBTAIN TOP ELEVATION.
 - POST PLANNING RUNWAY 17/35 DEPICTED AS PREFERRED LONG-TERM RUNWAY REALIGNMENT OPTION IN ORDER TO PROTECT AND PLAN FUTURE LANDSIDE DEVELOPMENT.
 - PER 14 CFR PART 77, SURFACE TRANSPORTATION ENTITIES' ELEVATION INCLUDE AN ADJUSTMENT FOR OBSTRUCTION ANALYSES PURPOSES (23 FEET FOR RAILWAYS, 17 FEET FOR INTERSTATE HIGHWAYS, AND 15 FEET FOR ALL OTHER PUBLIC ROADS)

- SOURCE:
- THIS EXHIBIT WAS ORIGINALLY CREATED BY ARMSTRONG CONSULTANTS IN NOVEMBER 2012 AND THIS ISSUE REPRESENTS AN UPDATED GEOMETRY BY JVIATION, INC. TO INCLUDE CHANGES TO THE AIRPORT RESULTING FROM DESIGN AND CONSTRUCTION COMPLETED WITHIN AIP NO. 05
 - OBJECT ELEVATIONS ARE ESTIMATED AND NOT BASED ON A SURVEY
 - PAPIS AND RUNWAY LIGHTING TO BE INSTALLED AT AN INTERIM PERIOD, BEFORE RUNWAY EXTENSION

FAA APPROVAL

CONDITIONALLY APPROVED
SUBJECT TO LETTER DATED _____

FEDERAL AVIATION ADMINISTRATION
DENVER AIRPORTS DISTRICT OFFICE

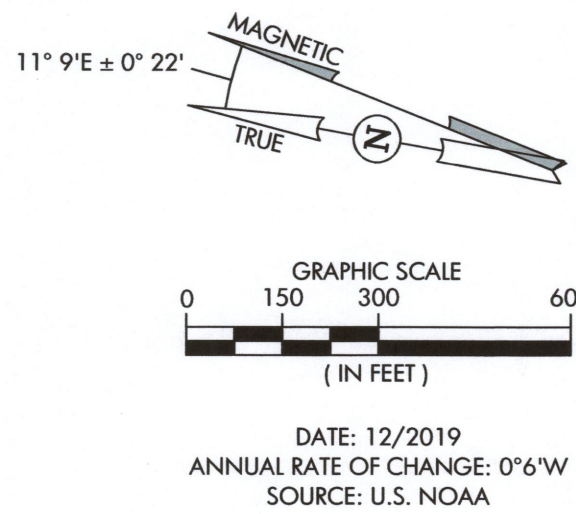
Date _____

CASE NO. _____

SPONSOR APPROVAL

MAYOR, CITY OF HURRICANE _____

DATE _____



ISSUE RECORD			
NO.	BY	DATE	DESCRIPTION
1	S.G.J.	DEC 2019	AS-BUILTS WITH FUTURE EDITS

Hanger Proposal FDG Aviation Group

Land Lease Applicant/ Stephen Lemmon/Final Design Group

Description of the Project

The Aviation Group (hereafter referred to as owners) is asking for the City of Hurricane to approve the lease of the subject property identified as PLOT 47 on the map. The Parcel has already been identified on the City of Hurricane airport map that was prepared and accepted by the Federal Aviation Administration. The Owners are asking for a lease on the 11 pad sites, that are clustered together, for the building of a larger hanger. This hanger facility will accommodate new aviation related businesses for the general aviation community and the City of Hurricane.

The hanger is being built to accommodate the smaller general aviation aircraft because they can currently land on short runways. The hanger is projected to be a low-profile facility with more expensive doors that don't need additional height to reach a fully open position. Doors will range from 12 to 14 feet in height.

Hanger Size

The size of the hanger will be built to fit the size of the plot approved by the FAA and adopted by the City of Hurricane on the published map. The size is 100 feet wide by 250 feet long.

Taxiways

Taxiways to and from the tarmac will need to be installed by the hanger owners.

Utilities

Currently no utilities exist at the pad site so they will need to be brought in by the hanger owners.

Lease

The city of Hurricane will be leasing to the hanger owners the property on an initial lease of 20 years with additional extensions of 5 years. The property lease will be based on all eleven pad sites plus 5 feet extensions on three side for one total lease price paid yearly as spelled out in the new 2022 lease agreement.

Projected uses

This hanger is being built as a commercial aviation project. The hanger will be used to house multiple aircraft owned by both Stephen Lemmon and the Final Design Group LLC. Hangered aircraft will generally see a reduction in the cost of insurance as well as a greater future resale value.

Hanger space may also be rented to other aircraft owners in the surrounding communities that are interested in protecting their investment planes.

Hanger space may be offered overnight transient parking of aircraft flying into the airport and staying overnight for recreation or to conduct business.

The owners will be providing business opportunities for companies seeking to service the light general aviation market. Some of the TARGETED opportunities would be technicians specializing in the repair or installation of Avionics, aircraft repair, restoration, and a finish shop.

The custom finish shop may specialize in avionics panel layout, wood inlay finish work , and custom upholstery. We are exploring the possibilities of custom aircraft covers with embroidered N numbers and Logos. Oxygen and detailing may be provided.

The facility will provide space for aviation ground school training. FDG already owns and will be installing a Federal Aviation Administration approved Redbird TD-2S flight simulator. Talks are also underway for the installation of a CRJ Regional Jet flight simulator.

The facility will provide space for rental aircraft. The owners are exploring the possibilities of a club aircraft that would be hangared.

Both the Air Force and commercial airlines are trying to train more pilots to fill the growing demand. Small airports are where this process starts.

On the fun side of the project, we may install state of the art video walls and sound to be able to open the hanger from time to time for public aviation events or airport gathering. In larger airports in California and Nevada FDG has been apart of the unavailing of new aviation technology. That will never happen here, but those same elements will probably be made available just because we can.

We do expect that our air force and corporate clients would come to the airport where we could have a meeting with them.

FDG has an extensive background in producing training videos. We plan to shoot and edit a series of next generation aviation and avionics training videos with the aircraft housed in the hangar and on the flight simulators.

FDG would plan to put staff in the offices of the hanger to help support the businesses and pilots that are housed there.

Challenges

The airport is built on some of the worst soil in the area and will require a through investigation of the specific pad site before moving forward with the project. The cost of the project is automatically increased because the city currently provides no taxiways or utilities to the identified pad sites. Other airports in the surrounding areas provide sites with access and utilities stubbed in.

Construction

Currently the building is be looked at as an engineered metal building with some architectural appeal. The exploration of a tilt up or block hanger is being reviewed. The soils may just make it to cost prohibitive. Whatever we do we want to have a building that reflects quality.

Construction timeline

The construction timeline is a little uncertain currently due to the national and world economic condition. The owners would start the due diligence portion of the project with soils samples taken soon after the lease is approved. Soils samples could kill the project. City departments would be consulted next to finalize the plans. However, there are very long delays in the supply chain. For this reason, we can not give an accurate timeline for completion at this time.

Weed control

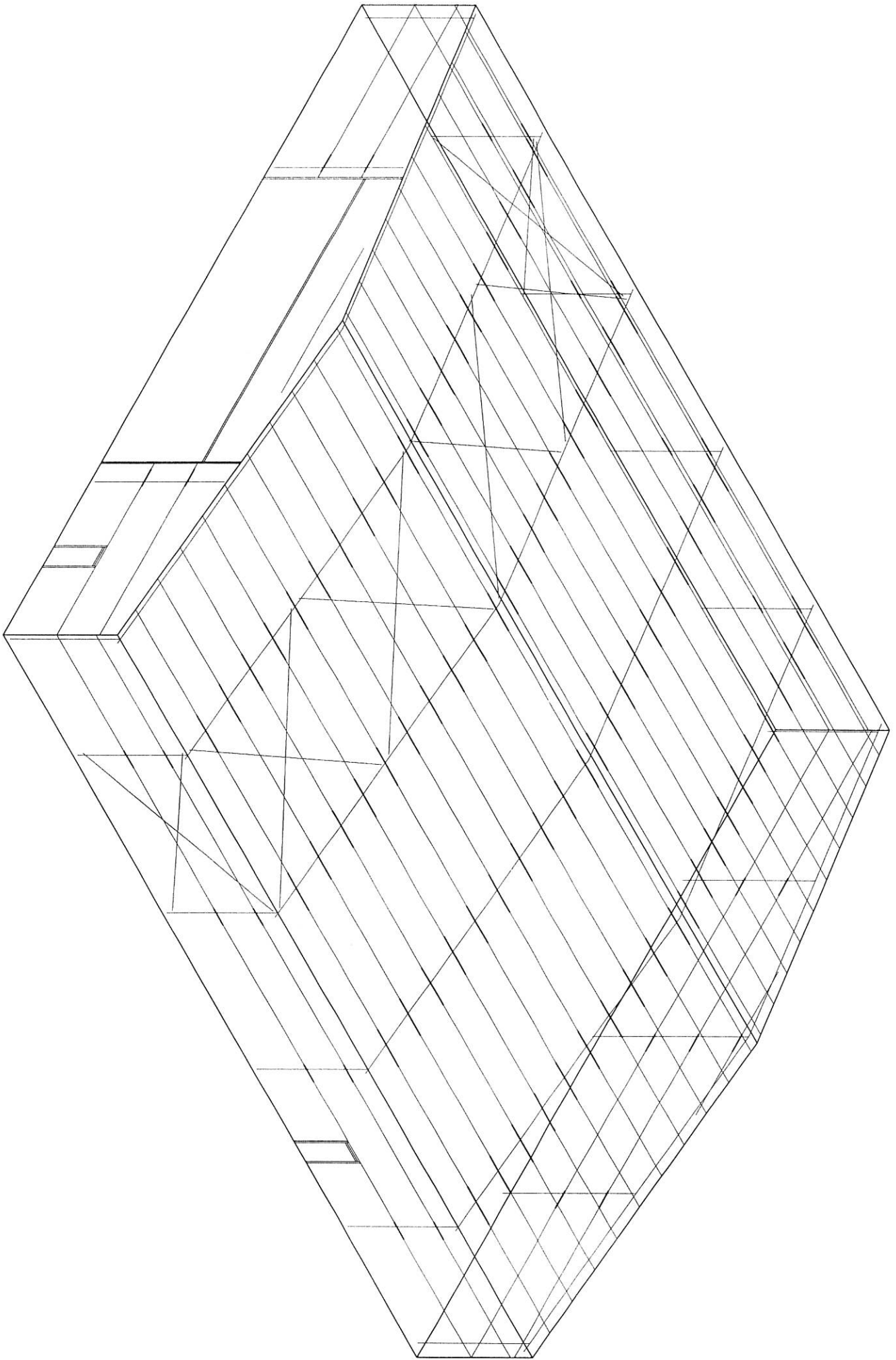
The owners will not be required to maintain the city property around the hanger; however, we would request that we be given permission to try and maintain the weeds around the building for both fire protection and curb appeal. The current plotted map allows for a very large dead zone that we feel will continue to be a weed patch because it is not maintained by the city.

Access

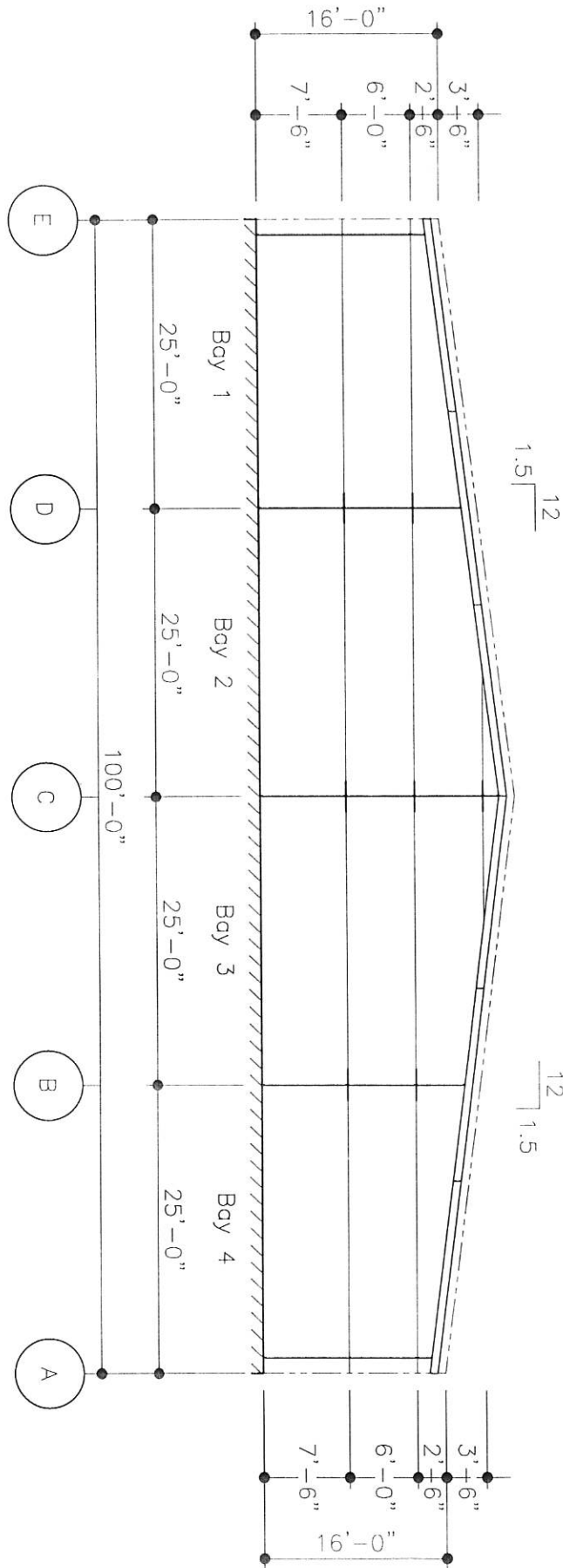
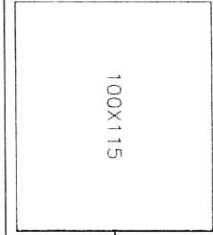
The owners would like to explore and work with the fire department to provide an additional carded access point for this part of the airport for emergency services.

Summary

The owners would like to help bring more business to the City of Hurricane through the municipal airport. This is clearly meant to be a business venture. It is a very bold move because I have been told that no one has built a hanger here in almost two decades. The economy is not good, but, I believe the vision for the project is sound.



KEY PLAN



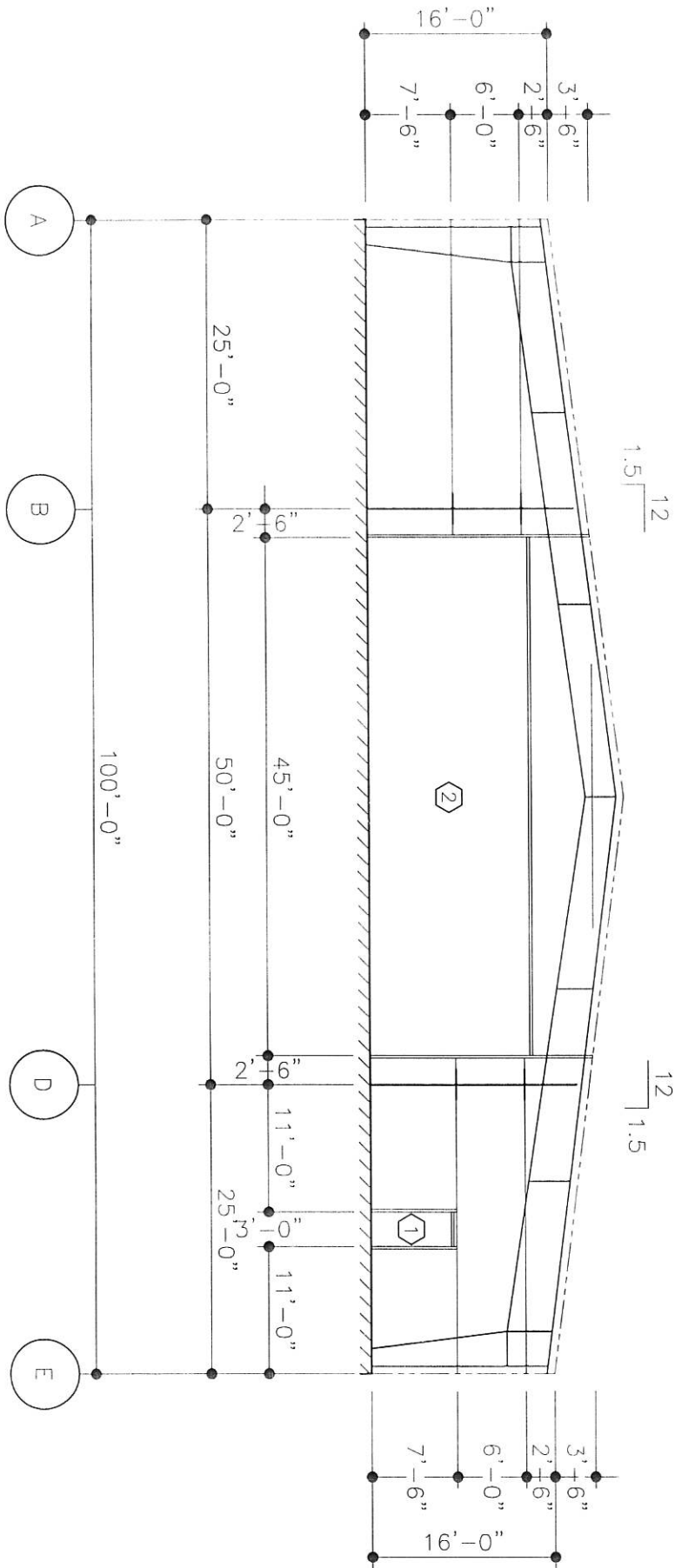
ELEVATION AT LINE 6

KEY PLAN

100X115

FRAMED OPENING SCHEDULE

ID	QTY	WIDTH	HEIGHT	SILL HEIGHT	LOCATED
1	1	3'-0"	7'-0"	0'-0"	FACTORY
2	1	45'-0"	14'-0"	0'-0"	FACTORY



ELEVATION AT LINE 1



HURRICANE CITY
UTAH

SASO OPERATING AND LEASE AGREEMENT
BETWEEN
HURRICANE CITY, UTAH
AND
STEPHEN W. LEMMON and FINAL DESIGN GROUP, LLC

Effective Date: November 17, 2022

SASO OPERATING AND LEASE AGREEMENT

THIS SASO OPERATING AND LEASE AGREEMENT (which, as amended from time to time, is defined herein as the ("Agreement") is entered into as of the 17th day of November, 2022, by and between the Hurricane City, Utah, a Utah municipal corporation, (the "City") and Stephen W. Lemmon, and individual, and Final Design Group, LLC, a Utah limited liability company (referred to collectively herein as the "Tenant").

RECITALS

WHEREAS, City owns and operates an airport located at 800 W. 2300 S., Hurricane, Utah 84737 (the "Airport"); and

WHEREAS, City and Tenant desire to accommodate, promote, and enhance general aviation at the Airport; and

WHEREAS, Tenant is qualified to provide services as a single aeronautical service operator ("SASO") as set forth herein and desires to lease certain real property at the Airport for the purpose of operating a SASO concession on the terms provided in this Agreement;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Agreement to Lease and Operate Concession

A. Agreement to Lease Premises. City hereby leases to Tenant and Tenant hereby leases from City that certain real property 27,250 square feet in size including five feet beyond the hangar pad on three sides excluding the front and located at the property identified on the Airport's approved Master Plan as Plot 47 on the Airport property, with the City determining the exact location of the pads (the "Premises"). Tenant agrees to accept the Premises "as is" and City makes no warranty as to the condition of the Premises or its suitability for any particular purpose.

B. Disclosure of Soil Condition. City discloses to Tenant that the soil at the Airport is collapsible and otherwise unstable. Tenant is responsible to obtain appropriate soil evaluation reports, to adhere to the recommendations in the reports, and take whatever action is necessary to mitigate the soil condition on the Premises. Tenant is responsible to construct the hangar at the engineered drainage elevations so the drainage will flow properly. Tenant will maintain and keep the area around the Premises clear of debris and obstructions so as not to cause disruption in the expected normal drainage flow.

C. Construction of Tenant Improvements. Tenant shall construct or purchase and maintain continuous improvements on the leased Premises, which shall include a concrete pad, an aircraft hangar, fixtures, and any utilities as may be necessary for the Tenant's aviation related activities (referred to herein as the "Tenant Improvements"). Such Tenant Improvements must meet the Airport's Minimum Standards for Commercial Aeronautical Activities and Building Development Standards in effect as of the date of this Agreement. The Tenant agrees to submit plans/drawings of the proposed Tenant Improvements to City within eight (8) months of the execution date of this Agreement. Tenant shall be responsible to obtain and pay for proper building permits for the Tenant Improvements and comply with all the applicable ordinances of

the City when planning and constructing the Tenant Improvements. Tenant agrees to complete construction of the proposed Tenant Improvements within twenty four (24) months from the date the building permit is issued.

D. Grant of Concession and Purpose of Agreement. Tenant agrees that it shall have the right, privilege, and obligation to use the Premises for the following purposes: The non-exclusive operation of a SASO concession providing at a minimum the following services (as they may be more specifically required under the Airport's Minimum Standards for Commercial Aeronautical Activities): Aviation ground-school training; Operation of flight simulator; Production of aviation and avionics training videos with aircraft housed in the hangar and on the flight simulators; Repair and installation of avionics; Aircraft repair; Aircraft restoration; Custom finish shop providing avionics panel layouts, wood inlay finish work, and custom upholstery; Housing of Tenant's aircraft; Providing oxygen and detailing; Office space for support staff; Long-term subleasing of hangar space; and Hangar rental space for transient aircraft.

Tenant shall provide to City the make, model, and registration number of any aircraft owned or controlled by Tenant, or that are subject to an authorized sublease, that are based at the Premises ("Aircraft").

E. Access. City agrees that if Tenant is not in breach of this Agreement, Tenant and Tenant's employees, officers, directors, subtenants that are approved by City pursuant to this Agreement, contractors, subcontractors, suppliers, agents, invitees, and other representatives ("Tenant's Associates") may ingress and egress across the Airport in the areas designated by City and as permitted by applicable Laws and Regulations, on a non-exclusive basis and to the extent reasonably necessary for Tenant's use, occupancy, and operations at the Premises.

F. Right of Flight and Other Reserved Rights. This Agreement conveys only a leasehold interest in the Premises (and grant of concession) on the terms and for the purposes provided herein, and it conveys no other rights, titles, or interest of any kind. City reserves rights in the Premises including but not limited to, a right of aircraft movement on Airport property, a right of flight for the passage of aircraft in the air, a right to cause such noise as may at any time be inherent in the operation of aircraft, subject to the rules, regulations, and policies as may be adopted from time to time by the City, and rights in water, minerals, oil, and gas.

G. Enjoyments of Rights. Subject to Tenant's complete performance of the payment and other obligations contained in this Agreement, Tenant shall enjoy the rights, uses, and privileges stated in this Agreement.

2. Term. The term of this Agreement shall commence on the date of execution of this Agreement and shall continue thereafter for a term of twenty (20) years until November 17, 2022, (the "Initial Term"). If the tenant desires to renew this Agreement, the tenant must notify the City in writing at least 60 days prior to the expiration of the initial term. Upon such notification, this lease shall renew for an additional five (5) year period at the lease rates stated in Section 3 of this Agreement.

3. Rent

A. Rent. For Tenant's lease of the Premises, Tenant covenants to pay to City without off-set or deduction the annual ground as shown in the table below and commencing on the date of execution of this Agreement. All rent shall be due and payable to the City of Hurricane annually in advance, without notice or demand from City, on the 1st day of August. The first years rent payment will be prorated to the next August 1st payment date.

<u>Years</u>	<u>Rent amount per square foot</u>	
2022 – 2027	.15	2058 – 2063 .33
2028 – 2033	.18	
2034 – 2039	.21	
2040 – 2045	.24	
2046 – 2051	.27	
2052 – 2057	.30	

C. Dishonored Checks. If any check paid on behalf of Tenant is dishonored or returned by a bank for any reason, Tenant shall pay all charges assessed to City by the bank plus a service charge of fifty dollars (\$50.00) per occurrence (or such other amount as City shall implement from time to time) in addition to other sums due under this Agreement.

D. Past Due Amounts. If tenant fails to pay when due any amount required to be paid by Tenant under this Agreement, such unpaid amount shall bear interest at the rate of eighteen percent (18%) from the due date of such amount to the date of payment in full, with interest. In addition, City may charge a sum of five percent (5%) of such unpaid amount as a service fee, which the parties agree is a reasonable amount to cover the additional costs for billing and collecting arising from Tenants failure to make payment in a timely manner. All amounts due under this Agreement are and shall be deemed to be rent, and shall be paid without abatement, deduction, off-set, prior notice, or demand (unless expressly provided by the terms of this Agreement). City's acceptance of any past due amount either full or partial (or its associated interest or service fee) shall not constitute a waiver of any default under this Agreement.

4. Tenant's Use of Premises and Airport

A. No Interference. Tenant and Tenant's Associates shall not use the Premises or the Airport in any manner that interferes with any operation at the Airport or decreases the Airport's effectiveness, as reasonably determined by the City at its sole discretion. Tenant shall promptly notify City of any use that creates such interference or decrease of effectiveness and remedy the same to City's satisfaction.

B. Comply with all Laws and Regulations. Tenant and Tenant's Associates shall comply at all times, at Tenant's sole cost, with any and all laws and regulations (as amended or otherwise modified from time to time) that are applicable to Tenant's use, occupancy, or operations at the Premises or the Airport (the "Laws and Regulations"), which include but not limited to, the Airport Rules and Regulations, Policies and Procedures, Minimum Standards for Commercial Aeronautical Activities, Utah Code Annotated, the Code of Revised Ordinances of the Hurricane City, the Protective Covenants of the Hurricane City Airport, applicable Federal Aviation Regulations, and all lawful, reasonable, and nondiscriminatory Airport policies and other requirements.

C. No Unauthorized Use. Tenant and Tenant's Associates shall use the Premises and the Airport only for purposes that are expressly authorized by this Agreement and shall not engage in any unauthorized use of the same. Unauthorized uses include, but are not limited to, any use that would damage, interfere with, or alter any improvement; restricting access on any road or other area that Tenant does not lease; placing waste materials on the Airport or disposing of such materials in violation of any Laws and Regulations; any use that would constitute a public or private nuisance or a disturbance or annoyance to other Airport users; the use of automobile parking areas in a manner not authorized by City; fueling activities on the

Premises or any other area that City has not authorized; commercial activities except those activities authorized herein, aircraft parking, or storage in areas not leased by Tenant, any use unrelated to the purposes of this Agreement; and any use that would be prohibited by or would impair coverage under either party's insurance policies.

D. Permits and Licenses. Tenant shall obtain and maintain in current status all permits and licenses that are required under any Laws and Regulations in connection with Tenant's use, occupancy, or operations at the Premises or the Airport. In the event that Tenant receives notice from any governmental authority that Tenant lacks, or is in violation of, any such permit or license, Tenant shall provide City with timely written notice of the same.

E. Taxes and Liens. Tenant shall pay (before their respective due dates) all taxes, fees, assessments, and levies that relate to Tenant's use, occupancy, or operations at the Premises or the Airport and all other obligations for which a lien may be created relating thereto (including, but not limited to, utility charges and work for the Tenant Improvements). Within ten (10) days of notice of any such lien, Tenant shall have the lien removed or deposit with the City cash or other security acceptable to City in an amount sufficient to cover the cost of removing such lien. When contracting for any work in connection with the Premises, Tenant shall include in such contract a provision prohibiting the contractor or any subcontractor or supplier from filing a lien or asserting a claim against City's real property or any interest therein.

F. Damage to Property and Notice of Harm. Tenant, at Tenant's sole cost, shall repair or replace to City's satisfaction any damaged property that belongs to City or City's other Tenants to the extent that such damage arises from or relates to an act or omission of Tenant or Tenant's Associates. Tenant shall promptly notify City of any such property damage. If Tenant discovers any other potential claims or losses that may affect City, Tenant shall promptly notify City of the same.

G. No Alterations or Improvements. Tenant shall not make or cause to be made any alterations or improvements to the Premises or to other areas of the Airport without City's prior written consent.

H. Security. Tenant is responsible to comply, at Tenants sole cost, with all security measures that City, Federal Aviation Administration, the United States Transportation Security Administration or any other governmental authority having jurisdiction may require in connection with the Airport. Tenant shall protect and preserve security at the Airport, including, but not limited to, protecting security information and protecting any access points to the Airport that are maintained by Tenant. Tenant will be vigilant in watching for unusual activity or persons that do not belong at the Airport, and will report such to the Airport Manager or by calling 1-866-GA-SECURE.

I. Removal of Disabled or Derelict Aircraft. Tenant shall promptly remove or cause to be removed from any portion of the Airport not leased by Tenant the Aircraft (or any other aircraft that Tenant owns or controls) if it becomes disabled or derelict. Tenant may store such aircraft within the Tenant Improvements or, with the City's prior written consent, elsewhere at the Airport on terms and conditions established by City. If Tenant fails to comply with this requirement after a written request by City to comply, City may (but is not required to) cause the removal of any such aircraft at Tenant's expense by any means that City determines to be in City's best interests.

J. Maintenance, Repair, Utilities, and Storage. Tenant's use, occupancy, and operations at the Premises shall be without cost or expense to the City. Tenant shall be solely responsible to design and construct the Tenant Improvements and to maintain, repair, reconstruct, and operate the Premises and the Tenant Improvements at Tenant's sole cost and expense, including, but not limited to, all utility services, janitorial services, waste disposal, and ramp repair. Tenant shall at all times maintain the Premises and the Tenant Improvements in a condition that is clean, safe, sanitary, and in good repair. Tenant shall perform all work in accordance with Laws and Regulations and in a good and workmanlike manner. City has sole discretion to determine the quality of the work. Tenant shall promptly remedy any condition that fails to meet this standard. In addition to other restrictions and requirements contained in this Agreement, Tenant shall not store outside of the Tenant Improvements (aircraft hangar) any inoperable equipment, discarded or unsightly materials, materials likely to create a hazard, trailers (except trailers designed to carry gliders), inoperative motor vehicles, or any other similar items. Tenant is responsible to keep the area five feet out from all four sides of the aircraft hangar clear of weeds and any debris.

K. Operations. Tenant's operations shall comply with the following.

(i) Airport Operations. Tenant shall occupy the Premises and shall operate at a minimum during normal scheduled business hours. Tenant shall operate in a manner that promotes effective Airport operations. Among other things, Tenant shall immediately notify the Airport Manager of any condition observed at the Airport that may create a hazard or disruption; Tenant shall refrain from annoying, disturbing, or impairing Airport customers, tenants, or employees; Tenant shall promptly respond to City's requests for information and reasonable assistance in connection with planning and other operational matters at the Airport; Tenant shall not divert business to off-Airport locations or engage in discriminatory business practices; and Tenant shall promptly respond to City's requests for information and reasonable assistance in connection with planning and other operational matters at the Airport.

(ii) Concession Service Standard. Tenant's concession shall provide high quality services and facilities in a good and proper manner to effectively meet the needs of the public and City. The privilege to operate this concession shall exist only so long as the character of Tenant's facilities and services are consistent with such standard.

(iii) Complaints. Tenant shall respond in a prompt manner to questions and complaints regarding Tenant's operations when raised by Airport users or by City, and Tenant shall provide a timely resolution of such questions and complaints.

(iv) Emergencies. If City determines for any reason that emergency conditions exist at the Airport, Tenant shall participate in any emergency response as directed by City or other agency in charge and shall operate in a manner that protects safety and the interests of the public.

(v) Safety. Tenant shall maintain appropriate safety items at the Premises as may be required by the City, Local Fire Authority, or other governmental agency, and shall ensure that Tenant's personnel are properly trained in the use of such safety items.

(vi) Personnel. Tenant shall control the conduct, demeanor, and appearance of its employees and Tenant's Associates so they do not annoy, disturb, or impair Airport customers,

tenants, or employees. Tenant shall provide the Airport Manager with the name and contact number of a person who is responsible for and has authority to act on behalf of Tenant.

(vii) Deficiencies. Without limiting or waiving any other remedies available to City, including declaring a breach of this Agreement, City's remedies shall include the following in connection with deficiencies in Tenant's operations.

(a) Propose and Implement Cure. Tenant shall meet with the Airport Manager as he or she may request regarding the quality of Tenant's operations, whether or not in connection with a specific complaint. Tenant shall propose curative measures in response to City's determinations regarding deficiencies in Tenant's operations and shall implement as expeditiously as possible measures that are approved by City.

(b) Remove Employees and Associates. City shall have the right to require Tenant to remove from the Airport any employee or any of Tenant's Associates that City reasonably determines to be in violation any provision of this Agreement or otherwise detrimental to City's interests at the Airport.

5. City's Rights and Obligations

A. Airport Maintenance. Subject to subparagraph C. of this section, City agrees that as long as the Airport is certified to operate as an airport by the Federal Aviation Administration (or any successor agency), City shall keep the property of the Airport in good repair and free from obstruction in accordance with applicable Federal standards.

B. Access to Premises. City for itself and its employees, officers, directors, agents, and other representatives ("City's Associates") reserves the right to enter the Premises and Tenant Improvements at reasonable times and with reasonable notice for any purpose relating to the Airport including, but not limited to, conducting inspections, determining compliance with this Agreement, conduct Airport work, or for emergency purposes, provided that they shall not unreasonably interfere with Tenant's use of the Premises or Tenant's Improvements.

C. City's Right to Relocate Tenant's Improvements from Premises. It is understood and agreed that as conditions may require, the City has the right to require Tenant to relocate Tenant's Improvements from the Premises to a new location on the Airport property, or to a new location at a new airport if the City elects to relocate the Airport, which would be comparable to Tenant's current leased Premises. Tenant shall bear the costs associated with relocating Tenant's Improvements and property to the new location. City agrees to provide the Tenant with a new SASO Operating and Lease Agreement for the new location upon the same terms and conditions as are contained herein for the unexpired term of this Agreement.

D. City Charges. City has the right to impose rates and charges in connection with any matter at the Airport in a manner consistent with Laws and Regulations.

E. City Directives. City is the owner and proprietor of the Airport, and City has the right to issue any lawful, reasonable, and non-discriminatory directive as a landlord and proprietor that City determines to be in City's best interests.

F. Governmental Acts. City is a governmental entity, and City has all rights, powers, immunities, and privileges afforded to it under Laws and Regulations. Tenant agrees that

Tenant is subject to any lawful governmental act of City without regard to the provisions of this Agreement.

G. Condemnation. In the event that the demised Premises are condemned by any proper authority, the term of this lease will end on the date that Tenant is required to surrender possession of the Premises. Tenant shall be entitled to that portion of the condemnation proceeds attributable to the fair market value of any Tenant Improvements placed on the Premises by Tenant.

6. Indemnification

A. Indemnity by Tenant. Tenant agrees to indemnify, hold harmless, and defend City and its officers and employees from and against losses of every kind and character (including but not limited to, liabilities, causes of action, losses, claims, costs, fees, attorney fees, expert fees, court of dispute resolution costs, investigation costs, environmental claims, mitigation costs, judgments, settlements, fines, demands, damages, charges, and expenses) that arise out of or relate to: (i) this Agreement; (ii) any use, occupancy, or operations at the Premises or the Airport by Tenant or Tenant's Associates; or (iii) any wrongful, reckless, or negligent act or omission of Tenant or Tenant's Associates. Tenant shall use attorneys, experts, and professionals that are reasonably acceptable to City in carrying out this obligation. This obligation does not require Tenant to indemnify City and its officers and employees against losses (as defined above) that arise solely from the negligent acts or omissions of City and its officers and employees. The obligation stated in this Section 6.A. shall survive the expiration or other termination of this Agreement with respect to matters arising before such expiration or other termination. These duties shall apply whether or not the allegations made are proven to be true.

B. Waiver. Tenant assumes all risk of the use of the Premises and the Airport, and Tenant hereby knowingly, voluntarily, and intentionally waives any and all losses, liabilities, claims, and causes of action, of every kind and character, that may exist now or in the future (including, but not limited to, claims for business interruption and for damage to any aircraft) against City and its officers, employees, and volunteers arising from or related to Tenant's use, occupancy, or operations at the Premises or the Airport.

7. Hazardous Materials. Tenant shall not cause or permit any Hazardous Materials to be used, produced, stored, transported, brought upon, or released on, under, or about the premises or the Airport by Tenant or Tenant's Associates in violation of applicable Environmental Laws. Tenant is responsible for any such violation as provided by Section 6.A. of this Agreement. Tenant agrees that in the event of a release or threat of release of any Hazardous Material by Tenant or Tenant's Associates at the Airport, Tenant shall provide City with prompt notice of the same. Tenant shall respond to any such release or threat of release in accordance with applicable Laws and Regulations.

8. Assignment and Subleasing

A. Assignment. Tenant shall not assign any of its rights under this Agreement, including, but not limited to, rights in the Tenant Improvements, (whether such assignment is voluntary or involuntary, by merger, consolidation, dissolution, change in control, or any other manner), shall not encumber any such rights or record this Agreement (or any document or interest related thereto) and shall not delegate any performance under this Agreement, except

with prior written consent of City to any of the same. City will not unreasonably withhold written consent to an assignment of this Agreement.

B. Subleasing. With prior written consent of City, Tenant shall have the right to sublease portions of the Premises and Tenant Improvements only for the purposes specified in this Agreement or to store an aircraft. City shall have the right to approve any sublease tenant and sublease agreement. Tenant shall impose on any approved sublease tenant the same terms set forth in this Agreement to provide for the rights and protections afforded to City. Tenant shall reserve the right to amend any sublease to conform to the requirements of this Agreement, and any sublease shall be consistent with and subordinate to this Agreement as it is amended from time to time. Any sublease shall include an agreement that the sublease will attach to and pay rent to City if Tenant ceases to be a party to this Agreement. Tenant shall provide to City a copy of any sublease executed by Tenant. No sublease shall relieve Tenant of any obligations under this Agreement.

9. Damage and Destruction. If any portion of the Premises or the Tenant Improvements is damaged in any manner, Tenant shall promptly remove from the Airport all debris and cause repairs to be made to restore the same to an orderly and safe condition. All work shall be performed in accordance with plans and specifications that are approved by City as being consistent or better than the original improvements. Tenant shall follow City's policies and procedures regarding obtaining building permits as necessary.

10. Default

A. Tenant's Default. Each of the following events shall constitute a default or breach of this Agreement by the Tenant. (i) Tenant fails to timely pay any installment of rent; (ii) Tenant violates any requirement under this Agreement (including, but not limited to, abandonment of the Premises) and fails to cure the same within sixty (60) days after written notice thereof by City to Tenant; (iii) Tenant assigns or encumbers any right in this Agreement, delegates any performance hereunder, or subleases any part of the Premises (except as expressly permitted in this Agreement); (iv) Tenant files a petition in bankruptcy, becomes insolvent, or has a petition filed against Tenant in bankruptcy, insolvency, or for reorganization or appointment of a receiver or trustee which is not dismissed within sixty (60) days; (v) Tenant petitions for or enters into an arrangement for the benefit of creditors, or suffers this Agreement to become subject to a writ of execution and such writ is not released within thirty (30) days; or (vi) Tenant defaults in constructing a Tenant Improvement as provided for in this Agreement.

B. Remedies. Upon default by Tenant under this Agreement, City may (at any time) pursue any or all remedies available to City, including, but not limited to, the following: (i) perform in Tenant's stead any obligation that Tenant has failed to perform, and Tenant shall promptly pay to City all costs incurred by City for such performance; (ii) terminate Tenant's rights under this Agreement upon delivering a written notice of termination; and (iii) re-enter and take possession of the Premises by any lawful means (with or without terminating this Agreement). Tenant shall pay all costs and damages arising out of Tenant's default, including, but not limited to, the cost of recovering possession of the Premises, the cost of improving and re-letting the Premises, and any attorney fees and costs. Notwithstanding any termination or re-entry, Tenant shall remain liable to pay the rent required under this Agreement for the remaining term of this Agreement, and Tenant shall pay City on demand for any deficiency in the same. No action by City or City's Associates shall be construed as an election by City to terminate this Agreement or accept any surrender of the Premises unless City provides Tenant with a written notice expressly stating that City has terminated this Agreement or accepted a surrender of the

Premises. Following a default by Tenant under this Agreement, City shall exercise commercially reasonable, good faith efforts to mitigate its damages as required by applicable Utah law.

C. Default by City. City shall not be in default under this Agreement unless City fails to perform an obligation required of City under this Agreement within thirty (30) days after written notice by Tenant to City. If the nature of City's obligation is such that more than thirty (30) days are reasonably required for performance or cure, City shall not be in default if City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In no event may Tenant terminate this Agreement or withhold the payment of rent or other charges provided for in this Agreement as a result of City's default.

D. Survival. The provisions of this Section 10 and the remedies and rights provided in Section 6 shall survive any expiration or termination of this Agreement.

11. Expiration or Termination

A. Disposition of Tenant Improvements. Upon the termination of this Agreement before or on the expiration date, Tenant shall do one of the following at the option of City: (1) surrender the Tenant Improvements to City if City has determined to accept the Tenant Improvements, with Tenant's rights, title, and interests in the Tenants Improvements being deemed transferred to the City upon the City accepting the same or (2) remove all Tenant Improvements from the Premises and Airport at Tenant's sole expense in a manner acceptable to City (and the obligations of section 6.A. shall apply to such removal). If Tenant fails to remove any Tenant Improvements under subsection (2), City may do so in any manner acceptable to City pursuant to Section 10.B.

B. Holding Over. If Tenant remains in possession of the Premises after any expiration or termination of this Agreement, such occupancy shall not waive any default under this Agreement and City may terminate such occupancy as a tenancy at will in accordance with Utah Law. During such occupancy, Tenant shall comply will all provisions of this Agreement that are applicable to an at-will-tenancy, and Tenant shall pay the following rent: ground rent at the highest rate then charged at the Airport and rent for the Tenant Improvements at fair market value based on City's survey of rent for similarly situated facilities at the Airport and at other western airports.

C. Survival. The provisions of this Section 11 shall survive any expiration or termination of this Agreement.

12. General Provisions

A. No Exclusive Rights. Nothing in this Agreement shall be construed to grant to Tenant any exclusive right or privilege for the conduct of any activity on the Airport (except to lease the Premises for Tenant's exclusive use as provided herein).

B. Agreement Preserves City's Compliance. This Agreement shall be interpreted to preserve City's rights and powers to comply with City's Federal and other governmental obligations.

C. Subordination to City's Government Commitments. This Agreement is subordinate to the provisions of any agreement between City and the United States or other governmental authority (regardless of when made) that affects the Airport, including, but not

limited to, agreements governing the expenditure of Federal funds for Airport Improvements. In the event that the Federal Aviation Administration or other governmental authority requires any modification to this Agreement as a condition of City entering any agreement or participating in any program applicable to the Airport, Tenant agrees to consent to any such modification. If a governmental authority determines that any act or omission of Tenant or Tenant's Associates has caused or will cause City to be non-compliant with any of City's government commitments, Tenant shall immediately take such actions that may be necessary to preserve City's compliance with the same.

D. Subordination to Financing and Matters of Record. This Agreement is subordinate to the provisions of any agreements or indentures entered by City (regardless of when entered) in connection with any debt financing applicable to the Airport and is subordinate to any matter of record affecting the real property of the Airport.

E. Force Majeure. No act or event, whether foreseen or unforeseen, shall operate to excuse Tenant from the prompt payment of rent or any other amounts required to be paid under this Agreement. If City (or Tenant in connection with obligations other than payment obligations) is delayed or hindered in any performance under this Agreement by a force majeure event, such performance shall be excused to the extent so delayed or hindered during the time when such force majeure event is in effect, and such performance shall promptly occur or resume thereafter at the expense of the party so delayed or hindered. A "force majeure event" is an act or event, whether foreseen or unforeseen, that prevents a party in whole or in part from performing as provided in this Agreement, that is beyond the reasonable control of and not the fault of such party, and such party has been unable to avoid or overcome by exercising due diligence, and may include, but is not limited to, acts of nature, war, riots, strikes, accidents, fire, and changes in law.

F. Rights and Remedies. Except as expressly set forth in this Agreement, the rights and remedies set forth in this Agreement are not intended to be exhaustive and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently exist.

G. Attorneys Fees. If any action is brought to recover any rent or other amount under this Agreement because of any default under this Agreement, to enforce or interpret any of the provisions of this Agreement, or for the recovery of possession of the Premises, the party prevailing in such action shall be entitled to recovery from the other party(s) reasonable attorneys fees, court costs, the fees of experts and other professionals, and other costs arising from such action (including those arising from any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered. Tenant shall be responsible for all expenses, including but not limited to, attorney fees incurred by the City in any case or proceeding involving the Tenant or any permitted assignee of Tenant under or related to any bankruptcy or insolvency law. The provisions of this Section 12.G. shall survive any expiration or termination of this Agreement.

H. Governing Law, Venue, and Waiver of Jury Trial. This Agreement and the respective rights and obligations of the parties shall be governed by, interpreted, and enforced in accordance with the Laws of the State of Utah. Venue for any action arising out of or related to this Agreement or actions contemplated hereby may be brought in the United States District Court for Utah or the District Court for the State of Utah sitting in Washington County, Utah so long as one of such courts shall have subject matter jurisdiction over such action or proceeding, and each of the parties hereby irrevocable consents to the jurisdiction of the same and of the

appropriate appellate courts there from. Process in any such action may be served on any party anywhere in the world. CITY AND TENANT EACH KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER FOR ALL MATTERS ARISING OUT OF OR RELATING TO THIS LEASE OR ANY USE, OCCUPANCY, OR OPERATIONS AT THE PREMISES OR THE AIRPORT. The provisions of this Section 12.H. shall survive any expiration or termination of this Agreement.

I. Amendments and Waivers. No amendment to this Agreement shall be binding on City or Tenant unless reduced to writing and signed by both parties. No provision of this Agreement may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced.

J. Severability. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect if both the economic and legal substance of the transactions that this Agreement contemplates are not affected in any manner materially adverse to any part. If any provision of this Agreement is held invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes of this Agreement.

K. Merger. This Agreement constitutes the final, complete, and exclusive agreement between the parties on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither party has relied on any statement, representation, warranty, now agreement of the other party except for those expressly contained in this Agreement. Any proposal materials or exhibits submitted by Tenant in response to a solicitation by City, to the extent accepted by City, shall also be incorporated in this Agreement.

L. Confidentiality. Tenant acknowledges that City is subject to legal requirements regarding the public disclosure of records. Tenant shall comply with such laws in connection with making any request that City maintain a record confidentially, and if Tenant complies with the same, Tenant shall have the right to defend any such request for confidentiality at Tenant's expense.

M. Relationship of Parties. This Agreement does not create any partnership, joint venture, employment, or agency relationship between the parties. Nothing in this Agreement shall confer upon any other person or entity any right, benefit, or remedy of any nature.

N. Further Assurances. Each party shall execute any document or take any action that may be necessary or desirable to consummate and make effective a performance that is required under this Agreement.

O. Miscellaneous. The headings in this Agreement are provided for convenience only and do not affect this Agreement's construction or interpretation. All references to Sections are to Sections in this Agreement. Each provision to be performed by Tenant shall be construed as both a covenant and a condition. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the drafting party. If Tenant consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several. References in this Agreement to any period of days shall mean calendar days unless specifically stated otherwise.

P. Time is of the Essence. Time is of the essence in this Agreement.

Q. Notices. Any notice, demand, written consent, or other communication required to be in writing under this Agreement shall be given in writing by personal delivery, express mail (postage prepaid), nationally recognized overnight courier with all fees prepaid (such as, by way of example, Federal Express or UPS), or certified mail (return receipt requested and postage prepaid) when addressed to the respective parties as follows.

If to City:

Hurricane City
City Attorney
147 N. 870 W.
Hurricane, UT 84737

If to Tenant:

Stephen W. Lemmon or Final Design
Group, LLC
PO Box 889
Hurricane, UT 84737

Either City or Tenant may change its notice address by giving written notice (as provided herein) of such change to the other party. Any notice, demand, or written consent or communication shall be deemed to have been given, and shall be effective, upon compliance with this Section 12.Q. and delivery to the notice address then in effect for the party to which the notice is directed; provided, however, that such delivery shall not be defeated or delayed by any refusal to accept delivery or an inability to effect delivery because of an address change that was not properly communicated.

R. Binding Obligation. Tenant warrants and represents that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement as a legal, valid, and binding obligation of Tenant.

S. City Approval and Consent. Wherever in this Agreement it specifies the City must give approval or consent by the terms of this Agreement, such approval or consent shall not be unreasonably withheld. Unless otherwise specified, approval, consent, or action by the City refers to approval or consent by the Hurricane City Council.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

HURRICANE CITY

FINAL DESIGN GROUP, LLC

Nanette Billings, Mayor

By: Stephen W. Lemmon
Its: Manager

Attest:

Stephen W. Lemmon

Cindy Beteag, City Recorder

Approved as to form:

Dayton Hall, City Attorney



STAFF COMMENTS

Public Hearing to take comments on the following:

Discussion:

Findings:

Recommendation:

Attachments:

None



STAFF COMMENTS

A request for disposal of property located along the north side of 3270 South for parcel #H-3395-A-P-2

Discussion:

Findings:

Recommendation:

Attachments:

None



HURRICANE CITY
UTAH

Public Notice

AMENDED date changed from 11/3/22 to 11/17/22

The Hurricane City Council will hold a Public Hearing during their regular meeting at 147 N. 870 West on November 17, 2022, commencing at 6 p.m. to take comments on the following:

1. Increasing the power impact fee recovery rate from 75% to 100%

If you would like to make comments, please plan to attend the meeting, email cindy@cityofhurricane.com, or provide written comments for the City Council's consideration by 3 p.m. the day prior to the meeting.

**AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE, UTAH
APPROVING MODIFICATION OF THE POWER IMPACT FEE RECOVERY RATE**

WHEREAS the City of Council of Hurricane, Utah has by ordinance previously imposed impact fees in order to provide funding for public utilities and services needed to serve property and residents within the City of Hurricane; and

WHEREAS the City has undertaken a study for the purpose of preparing a Capital Facility Plan and Impact Fee Facility Plan for Power in accordance with the Utah Impact Fee Act contained in Utah law which identifies the demands placed upon existing facilities and services by new development activity and the proposed means by which the City will meet those demands; and

WHEREAS said City Council finds and determines that said Impact Fee Facility Plan establishes a need to impose impact fees on development activity in order to achieve an equitable allocation to the costs borne in the past and to be borne in the future; and

WHEREAS the City desires to assess and impose impact fees based upon said Power Impact Fee Facility Plan and the analysis contained therein; and

WHEREAS a public hearing, after public notice as required by law, has been held by the Hurricane City Council on the 17th day of November, 2022 to take comments on modifications to the power impact fee recovery rate from Said Capital Facility Plan and Impact Fee Facility Plan for Power that was first approved on December 20, 2018, a copy of which has been available at the Hurricane City Office and the Hurricane Branch of the Washington County Library for a period of 10 days prior to such public hearing;

NOW, THEREFORE, BE IT HEREBY ORDAINED by the City Council of Hurricane, Utah as follows:

1.. Based upon the analysis set forth in the Plan approved above, the City hereby adopts the Power Impact Fees shown on the attached Exhibit A at the 100% recovery level.

2. 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 Hurricane City Council.

3. 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.

4. The City may grant to a developer who constructs facilities included in the Impact Fee Facilities Plan impact fee credits in accordance with Title 9, Chapter 6 of the Hurricane City Code.

5. The City will respond to a request by a state entity, school district, or charter school for an individualized review of the fees charged to their facilities. Said response shall be completed within 30 days of the request.

6. All fees received by the City pursuant to this Ordinance shall be used, accounted for, and, as appropriate, refunded, in compliance with Utah Code Title 11, Chapter 36, Impact Fees Act, Part 6, Impact Fee proceeds.

7. The City may exempt low income housing development from the imposition of an impact fee based on analysis of the broad public purpose being served by the development.

BE IT FURTHER ORDAINED that this ordinance shall take effect 90 days from the date of adoption, as required by law.

PASSED AND APPROVED THIS 17th DAY OF NOVEMBER 2022.

Nanette Billings, Mayor

ATTEST:

Cindy Beteag, Recorder

The foregoing Ordinance was presented at a regular meeting of the Hurricane City Council held at the Hurricane City Office Building on the 17th day of November 2022. Whereupon a motion to adopt and approve said Resolution was made by _____ and seconded by _____. A roll call vote was then taken with the following results:

	Yea	Nay	Abstain	Absent
Joseph Prete	_____	_____	_____	_____
David Sanders	_____	_____	_____	_____
David Hirschi	_____	_____	_____	_____

Kevin Thomas
Doug Heideman

Cindy Beteag, Recorder

“EXHIBIT A”

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement is made and entered into on November 17, 2022 by and between the Hurricane City Corporation, a Utah municipal corporation, hereinafter referred to as "City", and Victoria Cross LLC, a Utah limited liability company, hereinafter referred to as "Developer", (each of the foregoing individually a "Party" and collectively the "Parties").

Recitals

- A. Developer is constructing project and system improvements associated with the development of a development and subdivision with the City identified as Painted Sands Phase 4.
- B. The City Engineer has reviewed the request and has found that it complies with Hurricane City Code 9-6
- C. To facilitate and further specify the system improvements to be provided by Developer and for which Developer is seeking reimbursement, the Parties desire to enter into this agreement.

Agreement

Now, therefore, in consideration of the premises recited above and the terms set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer hereby agree as follows:

- 1. Developer agrees to dedicate and construct improvements to the City described below:
 - a. A section of the master plan roadway of 600 North directly north of the development.
- 2. The location of the above-described improvements are identified on a detailed plan and attached as Exhibit "A".
- 3. Estimated value of the above-described improvements for the roadway is **\$296,729.84** provided by the engineer's estimate shown in Exhibit "B".
- 4. City agrees to pay Developer for eligible reimbursable costs in the following manner:
 - a. **\$48,174.00** in road impact fee vouchers, a total of 21 Vouchers, to be redeemed with building permits for new construction within the Painted Sands development.
- 5. Maximum reimbursement under this agreement shall be **\$48,174.00**.
- 6. No interest shall be paid on any amount due under the terms of this Agreement.

7. This Agreement shall expire ten (10) years from the date of signature, regardless of the total amount of reimbursement paid by the City to Developer. The term may be extended if agreed upon by both Parties.

IN WITNESS THEREOF, this Agreement has been executed by City and by a duly authorized representative of Developer as of the date first written above.

Hurricane City, a political subdivision of the State of Utah

By: _____
Mayor

ATTEST: _____

Recorder

DEVELOPER – Victoria Cross LLC

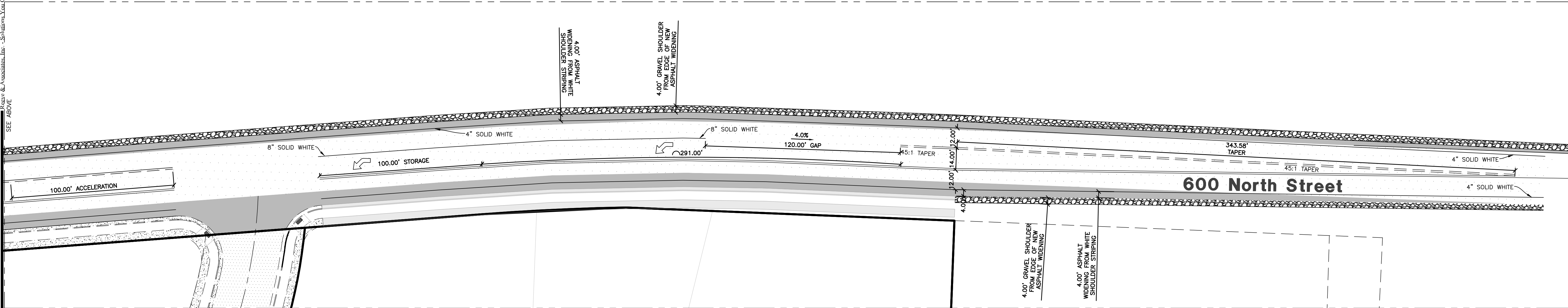
By: Ryan Edwards Wilde
Its: Manager

STATE OF UTAH)
 :SS
COUNTY OF _____)

On the ____ day of _____, 2022, personally appeared before me Ryan Edwards Wilde, who being by me duly sworn, did say that he is the Manager of Victoria Cross LLC and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.

Notary Public

EXHIBIT A
Improvement Plan



Sheet	1
1	Sheets

EXHIBIT B
Approved Cost



PO BOX 9309
OGDEN, UT 84409

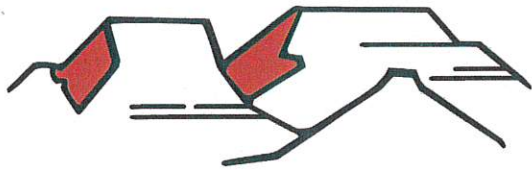
Estimate

DATE	ESTIMATE NO.
8/4/2022	6800

NAME / ADDRESS
VICTORIA CROSS LLC 541 W. 500 S. BOUNTIFUL, UT 84010

		PROJECT	BID AMOUNT	
		PAINTED SANDS PHASE IV		
QTY	ITEM	DESCRIPTION	RATE	TOTAL
		600 NORTH WIDENING:		
1	FLAT RATE	DIG ALONG 600 NORTH AND PLACE BASE	38,640.00	38,640.00
1	FLAT RATE	TRAFFIC CONTROL	14,500.00	14,500.00
245	TONS	1 1/2" GRAVEL ALONG ROAD SIDE	32.00	7,840.00
1	FLAT RATE	STRIPING AND SIGNAGE	16,500.00	16,500.00
1	FLAT RATE	CUT BANK BACK AND HAUL FILL TO PHASE 4	75,675.00	75,675.00
4,407	TONS	ROADBASE	21.00	92,547.00
23,624	SQUARE FEET	PROOF ROLL SUBGRADE	0.38	8,977.12
23,624	SQUARE FEET	PAVE ROADWAY WITH 2 1/2" OF ASPHALT	1.78	42,050.72
ESTIMATOR- KOREY KAP 801-725-2697 KOREY@KAPEXCAVATING.COM			TOTAL	\$296,729.84

Note: Pipe prices are subject to change at time of order. After acceptance, prices will only be guaranteed for 15 days. Asphalt and curb and gutter prices will only be good for 30 days.



PLANNING & ZONING HURRICANE CITY UTAH

147 N 870 W Hurricane UT
PHONE: 435.635.2811 FAX: 435.635.2184

PRELIMINARY PLAT APPLICATION

For office use only. \$150.00 Fee
File No. 2022-PP-26
Receipt No. 8-16-2195

Name: Desert Sky Estates Telephone: 435-773-0707

Address: 2712 Rio Vista Drive, St. George, UT 84790 Fax No. _____

Email: ty@beathomeutah.com Agent Email: bwillits@horrocks.com -or- tcarter@horrocks.com

Agent (If Applicable): Ben Willits & Tony Carter Telephone: Ben: 435-599-7372 Tony: 435-599-7368

Address/Location of Subject Property: South of 2100 W. & 3000 S.

Tax ID of Subject Property: H-3386-B (PARCEL "B") Zone District: R1-10

Proposed Use: (Describe, use extra sheet if necessary. Include total number of lots) The proposed use is for 73 single family residential lots to be constructed on 21.087 acres. The west side of 2100 west will be improved.

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 ½ 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
- ✓ 6. Signed and notarized Acknowledgement Water Supply (see attached)

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) 20 full calendar 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: _____

AFFIDAVIT

PROPERTY OWNER

STATE OF UTAH)

COUNTY OF Washington

:SS

I (we), Tyler Meyers + Del Bently, 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.

Tyler Meyers
(Property Owner)

Del Bently
(Property Owner)

Subscribed and sworn to me this 13 day of SEP 2022

Brendan J. Snow
(Notary Public)

Residing in: St George UT

My Commission Expires: 1/5/23



BRENDAN J. SNOW
Notary Public
State Of Utah
My Commission Expires 01/05/2023
COMMISSION NO. 703540

Agent Authorization

I (we), Tyler Meyers + Del Bently, the owner(s) of the real property described in the attached application, do authorize as my (our) agent(s) BEN WILLIAMS, TONY CORTI 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.

Tyler Meyers
(Property Owner)

Del Bently
(Property Owner)

Subscribed and sworn to me this 13 day of SEP 2022

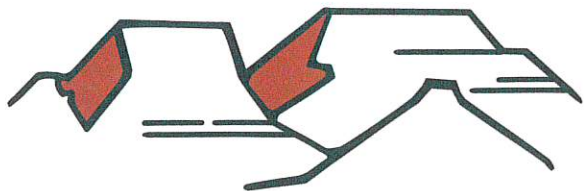
Brendan J. Snow
(Notary Public)

Residing in: St George UT

My Commission Expires: 1/5/23



BRENDAN J. SNOW
Notary Public
State Of Utah
My Commission Expires 01/05/2023
COMMISSION NO. 703540



HURRICANE CITY

UTAH

ACKNOWLEDGEMENT OF WATER SUPPLY

I/We, Tyler Meyers & Del Beatty am/are the applicant(s) of the application known as DESERT SKY ESTATES located on parcel(s) H-3386-B (PARCEL "B") within the City of Hurricane, Washington County, Utah.

By my/our signature(s) below I/we do hereby acknowledge and agree to the following:

1. Neither acceptance nor approval of a development application by Hurricane City shall constitute a guarantee that sufficient water will be available to serve the zone designation, project, or permit for which this application is being submitted; and
2. Prior to receiving final approval for the application, the applicant may be required by Hurricane City to provide a guarantee of water availability which verifies that there is a sufficient water supply; and
3. For any application which may be approved without a guarantee of water availability, the applicant knowingly assumes the entire risk of water availability for the project and/or application; and
4. I/we waive any and all claims against Hurricane City that are in any way related to water availability for any project, permit, or use for which the land use application has been approved.

Dated this 13 day of September, 2022

Applicant Name: TYLER MEYERS & DEL BEATTY

Name of Signer (if different from Applicant Name): _____

Title of Signer: MANAGER

Signature: Tyler Meyers

MANAGER
Del Beatty

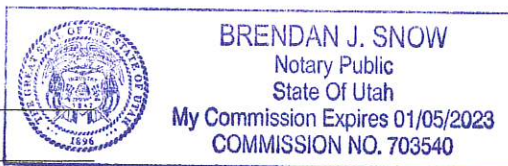
STATE OF Utah

COUNTY OF Washington

On the 13 day of September, 2022, personally appeared before me Tyler Meyers & Del Beatty the signer of the above instrument, who duly acknowledged to me that he/she executed the same in the capacity indicated on behalf of the Applicant.

Notary Public: Brendan J. Snow

My Commission Expires: 11/5/23



PRELIMINARY PLAT APPLICATION page 5 (General Information)

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 ensure 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 discuss 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.



Ash Creek Special Service District

1350 S. Sand Hollow Road

Hurricane, UT 84737

Office: (435) 635-2348 Fax: (435) 635-8550

ashcreek@infowest.com

September 7, 2022

Hurricane City
Stephen Nelson
127 N. 870 W.
Hurricane, UT 84737

RE: Spendlove 21 Acre Subdivision

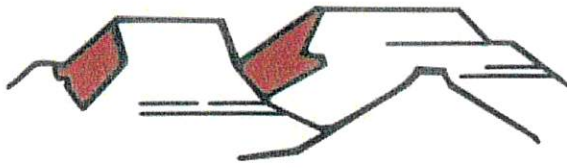
Stephen,

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, P.E.
Engineer
Ash Creek Special Service District



HURRICANE CITY

UTAH

Water Department
Ken Richins, Superintendent

September 7, 2022

To Whom It May Concern:

Titanium Development LLC (the "Developer") has requested a culinary water will serve letter for the subdivision known as **Spendlove 21 Acre**, located at approximately **2100 W 3500 S** in Hurricane, Utah (the "Project").

Infrastructure

The City currently has infrastructure to supply culinary water in the general area of the Project. However, Developer will be responsible to connect the Project to the existing water infrastructure, including the installation of infrastructure in dedicated public streets and as otherwise required to meet City standards. In addition, Developer may be required to obtain and supply a hydraulic water study to ensure the waterline will deliver required fire flows. A looped water system may be required.

Water Supply

As of the date of this letter, the city has adequate water to supply water to **73** residential connections within the Project. However, water within the City is a finite resource with limited supply. The ability of the City to supply water to previously approved projects, as well as continue to serve additional water customers, is contingent on water supplies being available from the Washington County Water Conservancy District (the "Conservancy District"). Therefore, the City's statements in this letter regarding the adequacy of water supply is (1) contingent on water being available from the Conservancy District and (2) shall expire one year from the date of this letter, after which a renewed will serve letter will be required for any property or lot that has not obtained a metered connection to the City's culinary water system. Developer is encouraged to obtain a guarantee of water from the Conservancy District.

General Requirements

In addition to the requirements and limitations described above, Developer shall be required to comply with all applicable laws, ordinances, policies, and construction and design standards. These requirements include, but are not limited to, secondary water system requirements and any obligations described in an applicable development agreement.

Sincerely,

Ken Richins
Water Department Superintendent

Transaction Identification Data for reference only:

Report Number: 225784

Searcher: Jarom Taylor

Searcher Utah License Number: 691339

Searcher Contact: (435) 634-7991 | jarom@sutc.com

**SCHEDULE A**

1. Effective Date: August 26, 2022 at 7:00AM
2. Report: Report prepared for Spendlove Ground in preparation for platting.
3. Title to the Fee Simple estate or interest in the land is at the Effective Date vested in:
Tytanium Development, LLC, a Utah Limited Liability Company, as to 75% interest and Dellionaire Investments, LLC, a Utah Limited Liability Company, as to 25% interest
4. The land referred to in this Report is situated in the County of Washington, State of Utah, and described as follows:
See attached Exhibit A-Legal Description

Southern Utah Title Company

By: Joseph McPhie
Authorized Signatory

EXHIBIT A
Legal Description

PARCEL "A":

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 20, T42S, R13W, SLB&M, RUNNING THENCE N88°49'17"W, 888.26 FEET ALONG THE SECTION LINE TO THE EASTERLY RIGHT OF WAY LINE OF 2100 WEST STREET, A 70.00 FOOT WIDE PUBLIC ROADWAY, DEDICATED BY DOCUMENT NO. 20180050579, AS FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER, SAID POINT BEING ON A 1230.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, RADIUS POINT BEARS S83°44'07"E; THENCE ALONG SAID EASTERLY RIGHT OF WAY LINE THE FOLLOWING THREE (3) COURSES: NORTHEASTERLY 1080.97 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 50°21'14"; THENCE N56°37'07"E, 55.43 FEET TO THE POINT OF CURVE OF AN 800.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHEASTERLY 496.81 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 35°34'52" TO A POINT ON THE 1/16TH LINE; THENCE S88°51'25"E, 13.25 FEET ALONG THE 1/16TH LINE TO THE EAST LINE OF SAID SECTION 20; THENCE S1°02'03"W, 1322.42 FEET ALONG THE SECTION LINE TO THE POINT OF BEGINNING.

PARCEL "B":

BEGINNING AT A POINT N88°49'17"W, 958.53 FEET ALONG THE SECTION LINE FROM THE SOUTHEAST CORNER OF SECTION 20, T42S, R13W, SLB&M, SAID POINT BEING ON THE WESTERLY RIGHT OF WAY LINE OF 2100 WEST STREET, A 70.00 FOOT WIDE PUBLIC ROADWAY DEDICATED BY DOCUMENT NO. 20180050579 AS FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER, RUNNING THENCE N88°49'17"W, 357.43 FEET ALONG THE SECTION LINE TO THE EAST 1/16TH CORNER; THENCE N1°01'36"E, 1321.58 FEET TO A POINT ON THE 1/16TH LINE; THENCE S88°51'25"E, 1227.96 FEET ALONG THE 1/16TH LINE TO SAID WESTERLY RIGHT OF WAY LINE OF 2100 WEST STREET, SAID POINT BEING ON A 730.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, RADIUS POINT BEARS N66°57'41"W; THENCE SOUTHWESTERLY 427.84 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 33°34'48"; THENCE S56°37'07"W, 55.43 FEET TO THE POINT OF CURVE OF A 1300.00 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHWESTERLY 1148.72 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 50°37'41" TO THE POINT OF BEGINNING.

(Preliminary Legal Description Only)

Tax Serial No. H-3386-B

SCHEDULE B
Exceptions

1. Any facts, rights, interests, or claims which are not shown by the public records but which could be by an inspection of the land or which may be asserted by persons in possession, or claiming be in possession, thereof.
2. Easements, liens, encumbrances, or claims thereof, which are not shown by the public records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land, and that is not shown by the Public Records.
4. Any lien, or right to a lien, imposed by law for services, labor, or material heretofore or hereafter furnished, which lien, or right to a lien, is not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) Indian treaty or aboriginal rights, including, but not limited to, easements or equitable servitudes; or, (d) water rights, claims or title to water, whether or not the matters excepted under (a), (b), (c) or (d) are shown by the public records.
6. Taxes or assessments which are not now payable or which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
7. Any service, installation, connection, maintenance or construction charges for sewer, water, electricity, or garbage collection or disposal or other utilities unless shown as an existing lien by the public records.
8. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the records or attaching subsequent to the effective date hereof but prior to the date the proposed acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
9. Claim, right, title or interest to water or water rights whether or not shown by the Public Records.
10. Rights of way for any roads, ditches, canals, or transmission lines now existing over, under, or across said property.
11. Taxes for the current year 2022, which are liens, but not yet due or payable in the estimated amount of \$8,111.61, under Tax Serial No. H-3386-B, Account No. 0163108.
12. Subject to any Reservations, Exceptions and Easements as set forth on Transcript, from the State of Utah, recorded December 2, 1943, as Entry No. [61210](#) , in Book U-10, at Page 329, Official Washington County Records. (Affects this and other property)
13. Subject to any Reservations, Exceptions and Easements as set forth on State of Utah Patent, recorded as Entry No. [62496](#) , in Book U-10, at Page 414, Official Washington County Records. (Affects this and other property)
14. Liability to Assessments levied by the Ash Creek Special Service District, as disclosed by Resolution No. R-2003-857, recorded June 12, 2003, as Entry No. [824223](#) , in Book 1554, at Pages 102-106, Official Washington County Records. (Affects this and other property)

Copyright 2006-2016 American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.

For reference only:

Page 3 | Reference Number: 225784 | Underwriter: First American Title Insurance Company | OS83LzlyLUPD

15. Liability to Assessments levied by the Board of County Commissioners of Washington County, Utah, creating and establishing a Special Service District ("Hurricane Valley Fire Special Service District") to provide for fire protection, paramedic services, and ambulance services, as disclosed by Resolution No. R-2007-1203, recorded December 22, 2009, as Doc. No. [20090048182](#), Official Washington County Records. (Affects this and other property)

A Resolution Amending the Boundary of the Hurricane Valley Fire Special Service District, recorded March 1, 2010, as Doc. No. [20100006648](#), Official Washington County Records.

2nd Amended Hurricane Valley Fire Special Service District, recorded December 30, 2010, as Doc. No. [20100044122](#), Official Washington County Records.

Resolution No. R-2015-1946, A Resolution Amending the Boundary of the Hurricane Valley Fire Special Service District to include the Corporate Limits of the City of Hurricane, recorded November 9, 2015, as Doc. No. [20150039260](#), Official Washington County Records and Hurricane Valley Fire District 3rd Amended, recorded November 9, 2015, as Doc. No. [20150039261](#), Official Washington County Records.

Hurricane Valley Fire District 4th Amended, Extended & Clarified, recorded December 14, 2015, as Doc. No. [20150043173](#), Official Washington County Records.

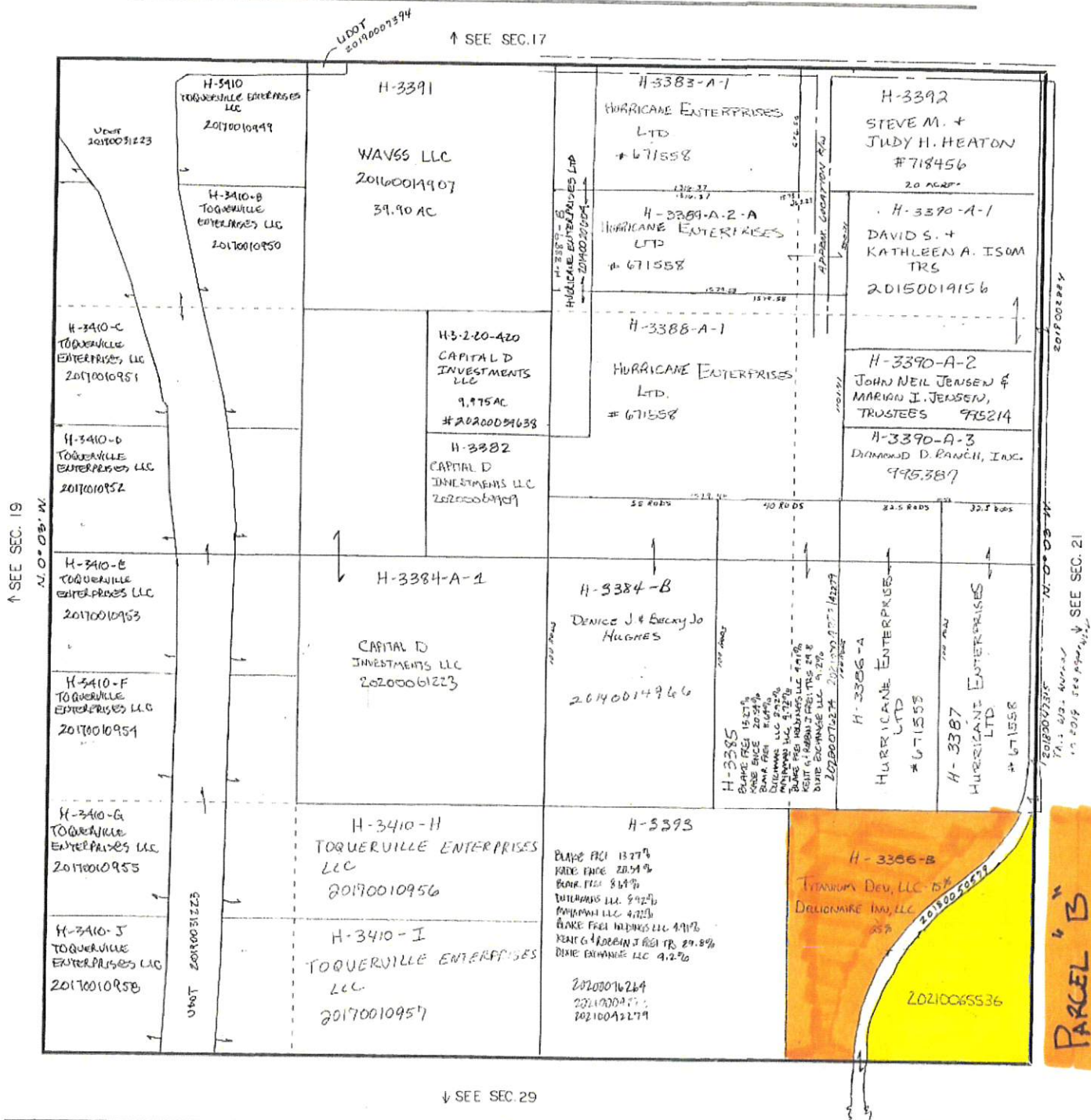
5th Amended & Extended Hurricane Valley Fire District Local Entity Plat, recorded November 8, 2019, as Doc. No. [20190046477](#), Official Washington County Records, A Resolution Amending the Boundary of The Hurricane Valley Fire Special Service District to Include the Area Within the Rockville-Springdale Fire Special Service District, recorded November 8, 2019, as Doc. No. [20190046478](#), Official Washington County Records and Certificate of Boundary Adjustment, with 5th Amended and Extended Hurricane Valley Fire District Local Entity Plat Boundary Description, recorded November 8, 2019, as Doc. No. [20190046479](#), Official Washington County Records.

16. Subject to easements, notes, restrictions, reservations, any and all other matters as set forth and disclosed on the Roadway Dedication Plat for "COPPER ROCK PARKWAY AND 2100 WEST", recorded December 26, 2018 as Doc No. [20180050579](#), Official Washington County Records.
17. Subject to easements, notes, restrictions, reservations, any and all other matters as set forth and disclosed on the Record of Survey prepared by R&B Surveying dated April 5, 2022".
18. We find no Open Deed of Trust/Trust Deed of Record. Require any party with knowledge to the contrary to inform this Office prior to any Final Plat Approval.
19. This Report and the information shown herein is limited to the Record of Survey prepared by R&B Surveying dated April 5, 2022, no information is given or implied beyond this. Upon receipt of a proposed Final Plat additional exceptions may be added.
20. This report is provided for information purposes only and is not intended to be a Commitment to issue Title Insurance.

Note: The names on Schedule A have been checked for judgments and, if any were found, are disclosed on Schedule B of this Report.

WASHINGTON COUNTY, UTAH

This plot is furnished for information only.
No liability is assumed by AISCOR's
Board of Directors for any loss or damage
resulting therefrom.



This map is for information purposes only and is in no way to be incorporated as being part of this Commitment and/or Title Insurance Policy.



GEOTECHNICAL INVESTIGATION

SPENDLOVE 37 ACRE PARCEL

HURRICANE, UTAH

**TYLER MEYERS
348 NORTH BLUFF STREET
ST. GEORGE, UTAH 84770**

PROJECT NO. 2211872

OCTOBER 6, 2021

TABLE OF CONTENTS

SUMMARY	Page 1
SCOPE	Page 2
SITE CONDITIONS	Page 2
FIELD STUDY	Page 3
SUBSURFACE SOIL CONDITIONS	Page 3
SUBSURFACE WATER	Page 4
PROPOSED CONSTRUCTION	Page 4
GEOLOGIC HAZARDS	Page 5
RECOMMENDATIONS	Page 6
A. Site Grading	Page 6
B. Foundations	Page 11
C. Pool Support	Page 12
D. Concrete Slab-on-Grade	Page 13
E. Lateral Earth Pressures	Page 13
F. Seismicity, Liquefaction and Faulting	Page 15
G. Soil Corrosion	Page 16
H. Pavement	Page 17
I. Construction Testing and Observations	Page 19
J. Geotechnical Recommendation Review	Page 19
LIMITATIONS	Page 20
FIGURES AND TABLES	
Vicinity Map	Figure 1
Site Plan	Figure 2
Surface Fault Rupture Hazard Map	Figure 3A
Rock Fall Hazard Map	Figure 3B
Logs of Test Pits	Figure 4
Legend and Notes of Test Pits	Figure 5
Gradation and Moisture-Density Relationship Results	Figure 6
Summary of Laboratory Test Results	Table 1

SUMMARY

1. The subsurface profile observed within the test pits consists of silty sand overlying caliche and sandstone bedrock to the maximum depth investigated, approximately 9 feet below the existing grade. Refusal was encountered on caliche in each of the test pits at depths ranging from 3½ to 9 feet below the existing grade.
2. Subsurface water was not encountered within the test pits to the maximum depth investigated, approximately 9 feet.
3. The on-site soils in their existing condition are not suitable to support the proposed construction. The site is suitable for the proposed construction provided recommendations within this report are followed.
4. The proposed residences may be supported on conventional spread footings bearing on properly compacted structural fill underlain by a properly prepared subgrade as recommended in the Subgrade Preparation section of this report. Specifically, we recommend building pad areas be overexcavated at least 2 to 7½ feet below the existing grade to remove the full depth of the near surface unsuitable soils. The estimated overexcavation depths are shown on Figures 2 and 4.

Basement footings and slabs should extend through the collapsible soils to the underlying caliche. Basement footings may be supported on properly compacted structural fill extending to the caliche or directly on the underlying caliche. Bearing capacities are provided in the Foundations Section of this report.

5. The on-site silty sand, free of organics, debris and material greater than 6 inches in size, is suitable for use as structural fill, site grading fill, wall backfill and utility trench backfill. The on-site caliche is also suitable for use as structural fill, site grading fill, and utility trench backfill provided it is processed such that the maximum particle size is 4 inches and at least 50 percent of the material passes the number 4 sieve. Soil removed during grubbing may be placed in landscaped areas.
6. Detailed recommendations for subgrade preparation, materials, foundations, and drainage are included in the report.
7. The information provided in this summary should not be used independent of that provided within the body of this report.

SCOPE

This report presents the results of a geotechnical investigation for the proposed residential subdivision to be located in Hurricane, Utah, as shown in Figure 1. This report presents the subsurface conditions encountered, laboratory test results, and recommendations for the project.

Field exploration was conducted to obtain information on the subsurface conditions and to obtain samples for laboratory testing. Information obtained from the field and laboratory was used to define conditions at the site and to develop recommendations for the proposed development.

This report has been prepared to summarize the data obtained during the study and to present our conclusions and recommendations based on the proposed construction and the subsurface conditions encountered. Design parameters and a discussion of geotechnical engineering considerations related to construction are included in the report. This report was prepared in general accordance with our proposal for Professional Geotechnical Services under Project No. 2211872, dated July 29, 2021.

SITE CONDITIONS

The project site consists approximately 37 acres of generally undeveloped property that slopes down from the southeast to the northwest. A relatively steep hillside is located on the east portion of the project. A new road with underground utilities bisects the project site, running diagonally from the northeast towards the southwest corners of the project. Vegetation on the site consists of typical desert brush, grass, cactus and occasional creosote trees. The site is bounded on the north, west and south by undeveloped parcels, and on the east by undeveloped hillside.

FIELD STUDY

On August 24, 2021, an engineer from AGECE visited the site and observed the excavation of 9 test pits at the approximate locations shown on the Site Plan, Figure 2. The test pits were excavated with a track mounted excavator. The subsurface soil profile was logged and soil samples were obtained at this time for laboratory testing.

SUBSURFACE SOIL CONDITIONS

The subsurface profile observed within the test pits consists of silty sand overlying caliche and sandstone bedrock to the maximum depth investigated, approximately 9 feet below the existing grade. Refusal was encountered on caliche in each of the test pits at depths ranging from 3½ to 9 feet below the existing grade.

Detailed descriptions of the soil type encountered follow.

Silty Sand - The silty sand is medium dense, dry to slightly moist, contains varied silt content and occasional gravel, and is reddish brown in color. Sandy silt was observed at the surface of Test Pit TP-8.

Laboratory tests conducted on samples of the silty sand and sandy silt indicate in-place moisture contents ranging from less than 1 to 5 percent, in-place dry densities ranging from 89 to 114 pounds per cubic foot (pcf), a gravel content (percent retained on the No. 4 sieve) of 1 percent, and fines contents (percent passing the No. 200 sieve) ranging from 16 to 59 percent. An Atterberg Limits test indicates that the silty sand is not plastic.

A moisture-density relationship (Modified Proctor) test conducted on a sample of the silty sand indicates a maximum dry density of 130.0 pcf and an optimum moisture content of 7.5 percent.

Caliche - The caliche consists of moderately cemented silty sand. It is moderately hard, dry, and reddish white in color.

The Logs of Test Pits are shown on Figure 4. The Legend and Notes of Test Pits are shown on Figure 5. Results of the laboratory tests are also shown on Figure 4 and are summarized in the Summary of Laboratory Test Results, Table 1. The gradation and moisture-density relationship (Modified Proctor) results are shown on Figure 6.

SUBSURFACE WATER

Subsurface water was not encountered within the test pits to the maximum depth investigated, approximately 9 feet. Fluctuations in the groundwater level may occur over time. An evaluation of such fluctuations is beyond the scope of this report.

PROPOSED CONSTRUCTION

The project site is proposed to be developed into lot residential subdivision. Based on the existing topography and the proposed grading plan, we anticipate cuts and fills of approximately 2 to 3 feet to construct the subdivision.

We understand it is proposed to construct single-family residences on the western portion of the site and multi-unit town homes on the eastern portion of the site. The structures will typically consist of single and multi-story slab-on-grade type construction. A portion of the residences may include full depth basements or below grade pools. We anticipate the residences will be constructed using conventional spread footings with slab-on-grade floors. The residences will likely be constructed with wood framing, stucco or rock veneer, and tile roofs.

For design purposes, we have assumed wall loads less than 4 kips per linear foot and column loads less than 50 kips.

As part of the development, we anticipate that interior roadways, utilities and city improvements will also be included. For design purposes, we have utilized a traffic index (TI) of 5 for the interior roadways.

If the proposed construction, or building loads are significantly different from those listed, we should be notified so that we can reevaluate our recommendations.

GEOLOGIC HAZARDS

Based on a review of geologic hazard maps provided by the Utah Geological Survey (UGS) the following geologic hazards are present on the site:

A. Surface-Fault-Rupture-Hazard

A surface-fault-rupture-hazard Special Study Area has been identified near the northwest corner of the project site as shown on Figure 3A. The fault has been defined by the UGS as a well defined fault with unknown activity level. The special-study area for a well-defined fault extends for 500 feet on the down thrown (east) side of the fault and 250 feet on the up thrown (west) side of the fault.

AGEC should provide surface fault rupture hazard study for additional fees if requested. The fault study will determine if a surface fault rupture hazard is present on the site, and will provide setback recommendations for structures.

B. Rock-Fall-Hazard

A moderate rock-fall-hazard Special Study Area has been identified near the northwest corner of the project site as shown on Figure 3B. The rock fall hazard should be further evaluated prior to determining development plans for this area. Typically, a geologist with experience in evaluating rock fall hazards conducts an evaluation which will provides a rock fall run out line. If the run out line extends into a development area, then mitigation measures would be provided. These measures may include rock fall fences, berms, or relocating structures out of the rock fall hazard area. AGECE can provide this study if requested.

RECOMMENDATIONS

Based on our experience in the area, the subsurface conditions encountered, laboratory test results, and the proposed construction, the following recommendations are given:

A. Site Grading

Based on the subsurface conditions and engineering analysis, the following recommendations are provided:

1. Subgrade Preparation

a. *General Subgrade Preparation*

Prior to placing fill or concrete beneath building areas, pavement/flatwork or improvements, the site should be grubbed to remove the existing vegetation and soil containing significant roots and organics. We anticipate that grubbing will extend on the order of 4 inches below the existing grade.

b. *Building Pads*

Prior to placing site grading fill or concrete, the building pads should be overexcavated to remove the full depth of the loose, dry, potentially collapsible soils. We anticipate this will require the overexcavation of approximately 2 to 7½ feet below the existing grade. The estimated depths are shown for each test pit location on Figures 2 and 4.

The limits of overexcavation should extend at least 5 feet beyond the perimeter of the proposed construction. The lateral extent of the overexcavation should be determined by survey and is the responsibility of the owner/contractor.

c. *Pavement, Flatwork and Improvements*

Subsequent to grubbing and prior to placing site grading fill or road base in pavement areas, a portion of the underlying collapsible silty sand soil should be removed. As a minimum, we recommend the exposed subgrade beneath pavement, flatwork and improvement areas be prepared by over excavating a minimum of 2 feet below the existing grade or 2 feet below the proposed subgrade (whichever is greater) prior to placing fill or road base. The removed soil may then be replaced in properly moisture conditioned and compacted lifts.

Subsequent to overexcavation and prior to placing fill, the exposed subgrade should be scarified to a depth of approximately 8 inches, properly moisture conditioned and compacted to meet the recommendations provided in the compaction section of this report.

Consideration should be given to full depth overexcavation to beneath hard surfaces and CMU fences. If the remaining collapsible soils beneath the overexcavated zone are wetted subsequent to construction, settlement of the surface improvement (pavement, flatwork, CMU fence, etc.) may occur. We estimate that on the order of ½ inch of settlement may occur for each foot of remaining collapsible soil left in place below improvements.

2. Excavation

We anticipate that excavation of the soils at the site can be accomplished with typical excavation equipment. Excavations which extend into the underlying caliche may require the use of heavy duty excavation equipment such as a large track mounted excavator equipped with rock teeth or a ripper.

The on-site soil classifies as a Type C soil according to OSHA and temporary excavations should be excavated no steeper than 1 ½:1 (Horizontal:vertical). The caliche classifies as a Type A soil according to OSHA and temporary excavations should be excavated no steeper than ¾:1.

3. Materials

Import materials should be non-expansive, non-gypsiferous, granular soil. Listed below are the materials recommended for imported fill.

Area	Fill Type	Recommendations
Foundations/slabs	Site grading/ structural fill	-200 < 35%, LL < 30% Maximum size: 4 inches Solubility < 1%
Underslab (upper 4 inches)	Base course	-200 < 12% Maximum size: 1 inch Solubility < 1%

-200 = Percent Passing the No. 200 Sieve
LL = Liquid Limit

The on-site silty sand, free of organics, debris and material greater than 6 inches in size, is suitable for use as structural fill, site grading fill, wall backfill and utility trench backfill. The on-site caliche is also suitable for use as structural fill, site grading fill, and utility trench backfill provided it is processed such that the maximum particle size is 4 inches and at least 50 percent of the material passes the number 4 sieve. Soil removed during grubbing may be placed in landscaped areas.

4. Compaction

Compaction of materials placed at the site should equal or exceed the following minimum densities when compared to the maximum dry density as determined by ASTM D-1557:

Area	Percent Compaction
Subgrade	90
Footings/building pad	95
Site grading	95
Utility trenches	95
Wall backfill	95

To facilitate the compaction process, the fill should be moisture conditioned to within 2 percentage points of the optimum moisture content as determined by ASTM D-1557 prior to placement. Fill should be placed in loose lift thicknesses which do not exceed the capacity of the equipment being utilized. Generally, 6 to 8-inch loose lifts are adequate. Lift thicknesses should be reduced to 4-inches for hand compaction equipment.

5. Surface Drainage

Positive site drainage should be maintained during the course of construction. After construction has been completed, positive drainage of the surface water away from the buildings in each direction must be maintained. To reduce infiltration adjacent to foundations we recommend the following:

- a. A minimum slope of 6 inches in the first 10 feet from the perimeters of the structures should be provided.
- b. Roof gutter systems should be installed around the perimeters of the structures. Roof downspouts should discharge away from the buildings so as to prevent ponding adjacent to foundations. We recommend piping roof drains to the curb and gutter downslope from the structures.

- c. Placement of 3 to 4 foot wide concrete aprons around the perimeters of the structures.
- d. Landscaping requiring water should not be placed adjacent to foundations.
- e. Below grade portions of walls/fences which are backfilled with soil should be protected with an impermeable membrane and a subsurface drain. A gravel covered, perforated PVC pipe should also be placed at the base of the wall to carry water to a discharge point. This is intended to reduce the potential for salt weathering and sulfate attack on concrete/masonry.

6. Subsurface Drainage

We recommend placement of a perimeter subdrain around the basement walls in case surface water infiltrates to the basement level. The drain should consist of a 4 inch perforated PVC pipe placed around the perimeter of the of the basement footings. It should be placed such that the bottom of the pipe is at least 12 inches below the finished floor elevation and should slope at a 2% minimum grade to drain to a sump to remove water which may become present in the future. The perforated pipe should be backfilled with 2 feet of 1 inch minus crushed gravel. Prior to backfilling the basement walls with properly compacted fill, Mirafi 140N filter fabric should be placed over the gravel to prevent sand and fines from migrating into the gravel.

B. Foundations

The proposed residences may be supported on conventional spread footings bearing on compacted structural fill underlain by a properly prepared subgrade as recommended in the Subgrade Preparation section of this report. The subgrade should be prepared during site grading by overexcavating and compacting the entire building pad as recommended in the Subgrade Preparation section of this report. Recommendations for design of conventional spread and spot footings are provided below.

1. Bearing Material

Upper level footings should be supported on a zone of properly compacted structural fill extending through the full depth of the collapsible soils with a minimum thickness of one foot. Basement footings should extend through the collapsible soils and should be supported on properly compacted structural fill extending to, or directly on the underlying caliche.

2. Bearing Pressure

Footings bearing on properly compacted structural fill or caliche may be designed for the following net allowable bearing pressures of 2,000 pounds per square foot.

3. Footing Width and Embedment

Footings should have a minimum width of 18 inches and should be embedded at least 12 inches below the lowest adjacent grade.

4. Temporary Loading Conditions

The allowable bearing pressures may be increased by one-half for temporary loading conditions such as wind or seismic loads.

5. Settlement

We estimate that settlement will be approximately 1 inch for footings designed as indicated above due to the load of the structure. Differential settlement is estimated to be approximately ½ inch.

6. Foundation Base

The base of excavations should be cleared of loose or deleterious material prior to placement of fill or concrete.

C. Pool Support

Based on the encountered subsurface conditions, the following recommendations are provided:

1. The pool may be supported on a conventional matt foundation.
2. The pool shell and pool decking should be supported directly on the underlying caliche, or on properly compacted fill extending through the collapsible soil depths shown on Figures 2 and 4.
3. The pool should be excavated with a smooth bladed excavator or a flat shovel prior to construction. Loose or disturbed soil or bedrock should be removed from the bottom of the pool excavation. In no case should any loose or disturbed soil or bedrock remain beneath the pool prior to construction. Alternatively, if the pool is supported on fill, the exposed subgrade should be properly compacted prior to construction.
4. An engineer from AGECH should observe the pool excavation prior to construction to observe subsurface conditions and to verify unsuitable soils or bedrock have been removed.

D. Concrete Slab-on-Grade**1. Slab Support**

Concrete slabs may be supported on a zone of properly prepared (overexcavated) and compacted fill as stated in the Subgrade Preparation section of this report. Fill placed in slab areas should be tested frequently to verify compaction meets the recommendations provided within this report.

2. Underslab Base Course

A 4-inch layer of properly compacted base course should be placed below slabs to provide a firm and consistent subgrade and promote even curing of the concrete.

3. Vapor Barrier

A vapor barrier should be placed below slabs in areas which will receive floor coverings sensitive to moisture or coverings which are impermeable. In addition, a vapor barrier should also be considered beneath the building slab to provide protection from sulfate attack (on the concrete slab) due to the potentially high water soluble sulfates which may exist in the underlying soil.

E. Lateral Earth Pressures**1. Lateral Resistance for Footings**

Lateral resistance for spread footings is controlled by sliding resistance developed between the footing and the subgrade soil. An ultimate friction value of 0.45 may be used in design for ultimate lateral resistance of footings bearing on properly compacted structural fill.

2. Retaining Structures

The following equivalent fluid weights are given for design of subgrade walls and retaining structures. The active condition is where the wall moves away from the soil. The passive condition is where the wall moves into the soil and the at-rest condition is where the wall does not move. We recommend the basement walls be designed in an at-rest condition.

The values listed below assume a horizontal surface adjacent the top and bottom of the wall.

Description	Active	At-Rest	Passive
Imported or on-site granular backfill (sand or processed caliche/sandstone)	35 pcf	55 pcf	325 pcf
Imported or on-site granular backfill - Earth pressure coefficient	0.28	0.44	-

The above values account for the lateral earth pressures due to the soil and level backfill conditions and do not account for hydrostatic pressures or surcharge loads.

Lateral loading should be increased to account for surcharge loading (using the appropriate earth pressure coefficient) and a rectangular distribution if structures are placed above the wall and are within a horizontal distance equal to the height of the wall. If the ground surface slopes up away from the wall, the equivalent fluid weights should also be increased.

Care should be taken to prevent percolation of surface water into the backfill material adjacent to the retaining walls. The risk of hydrostatic buildup can be reduced by placing a subdrain behind the walls consisting of free-draining gravel wrapped in a filter fabric.

3. Seismic Conditions

Under seismic conditions, the equivalent fluid weight should be modified as follows according to the Mononobe-Okabe method assuming a level backfill condition:

Lateral Earth Pressure Condition	Seismic Modification (2% PE in 50 yrs)
	Granular Backfill
Active	9 pcf increase
At-rest	no increase
Passive	23 pcf decrease

The resultant of the seismic increase should be placed at a point equal to 60 percent of the height of the wall.

4. Safety Factors

The values recommended assume mobilization of the soil to achieve the assumed soil strength. Conventional safety factors used for structural analysis for such items as overturning and sliding resistance should be used in design.

F. **Seismicity and Liquefaction**

1. Seismicity

Listed below is a summary of the site parameters as required by the 2018 International Building Code and ASCE 7-16:

Description	Seismic Event - 2% PE in 50 Yrs
	Value
Site Class	C
S_s (0.2 second period)	0.61g
S_1 (1 second period)	0.20g
PGA	0.26g
F_a	1.27
F_v	1.50
F_{PGA}	1.20

The values provided above were generated using the ASCE 7-16 Seismic Hazard Tool. Based on the subsurface conditions anticipated and the seismic parameters mapped for the site as per ASCE 7-16, a ground motion hazard analysis as per ASCE 7-16 is not required by the 2018 International Building Code.

2. Liquefaction

Based on subsurface conditions encountered in the test pits, the subsurface soils observed are non-liquefiable to the depths investigated during a seismic event.

G. Soil Corrosion

Our experience in the area has shown that the on-site soils, caliche, and many imported sources may contain sulfates in sufficient concentration to be corrosive to concrete. Therefore, we recommend concrete elements that will be exposed to the on-site soils be designed in accordance with provisions provided in the American Concrete Institute Manual of Concrete Practice (ACI) 318-14. Tables 19.3.1.1 and 19.3.2.1 of ACI 318-14 should be referenced for design of concrete elements utilizing a Sulfate Exposure Class of S2.

Consideration should also be given to cathodic protection of buried metal pipes. We recommend utilizing PVC pipes where local building codes allow.

H. Pavement

Based on the subsoil conditions encountered and the laboratory test results, the following recommendations are given:

1. Analysis

Asphaltic Concrete: The flexible pavement analysis is based on UDOT and AASHTO design methods and a 20 year design life. The following parameters were considered for our analysis:

- Base course that meets specifications which would correspond to a Structural Coefficient (a_2) of at least 0.12. Asphalt that provides a Structural Coefficient (a_1) of at least 0.40.
- Drainage Coefficient = 1.0.
- The subgrade support soils consist of properly compacted silty sand. A M_R value of 9,000 pounds per square inch (psi) was used for the subgrade based upon an estimated CBR value of 6 percent and the relationship between CBR and Resilient Modulus (M_R).
- Serviceability Index: $P_o = 4.0$, $P_t = 2.5$.
- Reliability of 90 percent.
- Standard Deviation (S_o) = 0.45.

2. Subgrade Support

We anticipate the subgrade materials will consist of compacted on-site silty sand. Our design assumes a properly compacted subgrade. Prior to placing base course or site grading fill, the subgrade should be prepared as recommended in the Subgrade Preparation section of this report.

3. Pavement Thickness

Based on the anticipated traffic, a 20 year design life and AASHTO design methods, the following pavement sections are recommended.

Area	Flexible Pavement	
	Asphaltic concrete (inches)	Base Course (inches)
Interior Roadways (TI = 5)	2½	6
Entrance/Dumpster	3	6

4. Pavement Materials

Flexible Pavement (Asphaltic Concrete)

The pavement materials should meet AASHTO and Hurricane City specifications for gradation and quality. The pavement thicknesses indicated above assume that the base course is high quality material with a CBR of at least 60 percent. Asphalt material should have a Marshall stability of at least 1,800 pounds.

5. Drainage

The collection and diversion of drainage away from the pavement surface is extremely important to the satisfactory performance of the pavement section. Proper drainage should be provided. We further recommend a yearly maintenance program including crack sealing and a surface treatment such as a "slurry seal" to extend the pavement life and reduce water infiltration into the subsurface soils.

I. Construction Testing and Observations

We recommend the following testing and observations be done as a minimum as required by the City of Hurricane.

1. Observe grubbing and verify removal of soil containing roots and organics.
2. Verify that recommended overexcavation depths are achieved in the building pads and beneath roadways. The lateral extent of the building pad should be located by survey (not included in AGECE's Scope of Services) and include the area which extends at least 5 feet beyond the buildable area as per city set-back requirements.
3. Verify that recommended structural fill depths are provided below foundations and slabs.
4. Conduct compaction testing on fill placed below foundations and in building pads. We recommend testing each foot of fill placed.
5. Conduct construction materials testing on city improvements at a frequency which meets or exceeds Hurricane City requirements.

J. Geotechnical Recommendation Review

The client should familiarize themselves with the information contained in this letter. If specific questions arise or if the client does not fully understand the conclusions/recommendations provided, AGECE should be contacted to provide clarification.

LIMITATIONS

This report has been prepared in accordance with generally accepted soil and foundation engineering practices in the area for the use of the client for design purposes. The conclusions and recommendations included within the report are based on the information obtained from the test pits excavated, the data obtained from laboratory testing, our experience in the area and information from the referenced geotechnical investigation. Variations in the subsurface conditions may not become evident until excavation is conducted. If the subsurface conditions or groundwater level are found to be significantly different from those described above, we should be notified to reevaluate our recommendations.

If you have any questions or if we can be of further service please call.

APPLIED GEOTECHNICAL ENGINEERING CONSULTANTS, INC.

Jon Russell Hanson, P.E.

Reviewed by: Arnold DeCastro, P.E.

JRH/sd P:\2021 Project Files\2211800\2211872 - GT - Spendlove 37 Acre Parcel\2211





SPENDLOVE 37 ACRE PARCEL
HURRICANE, UTAH



Not to Scale

SPENDLOVE 37 ACRE PARC
HURRICANE, UTAH

-  Approximate test pit location
- Approximate depth to caliche
-  Approximate limit of investigation



0 150 300 feet

Approximate Scale

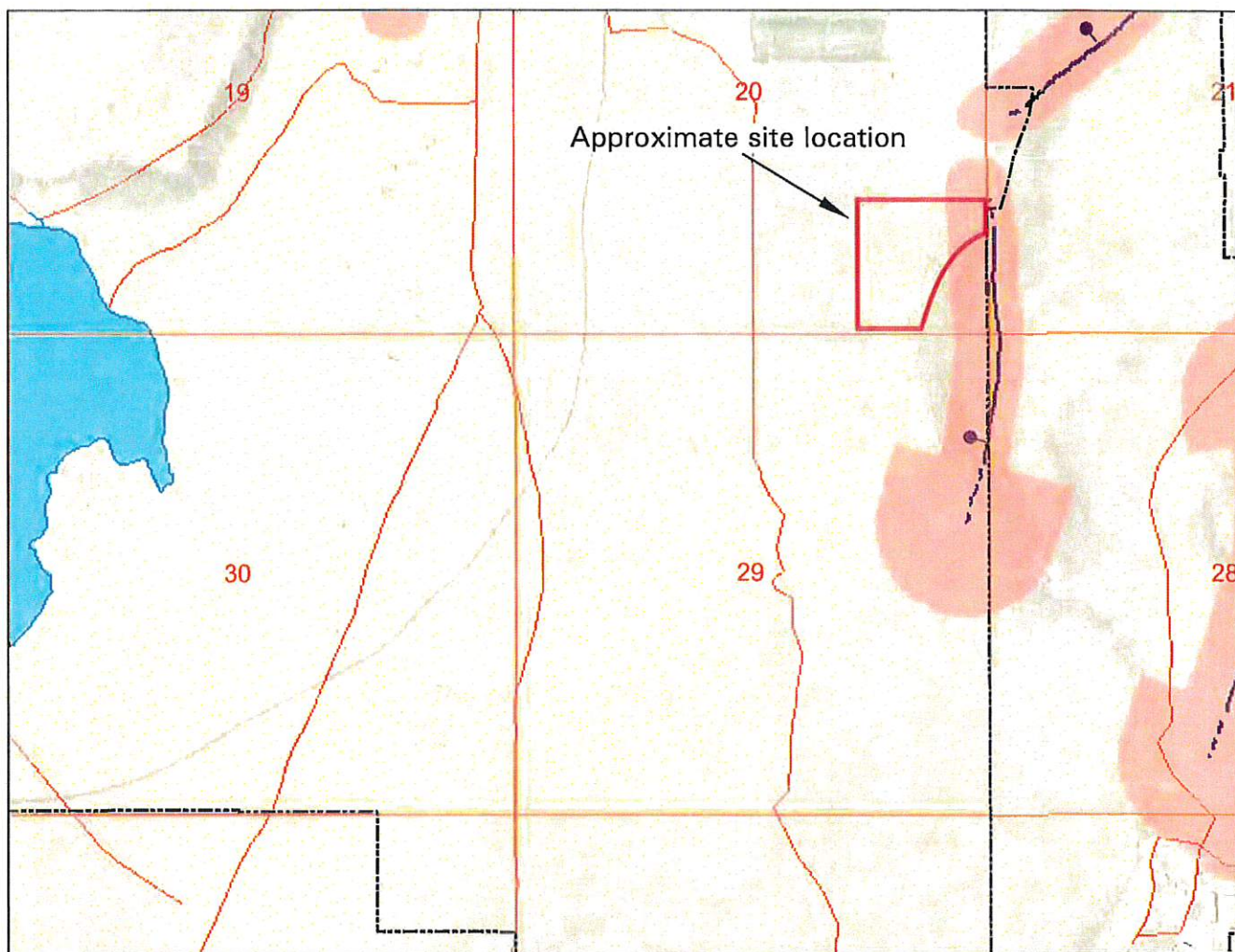


2211872

AGEC

Site

Figure 2



St. George-Hurricane Metropolitan Area, Washington County, Utah, UGS Special Study 127 2008, W.R. Lund, T.R. Knudson, G.S. Vice and L.M. Shaw

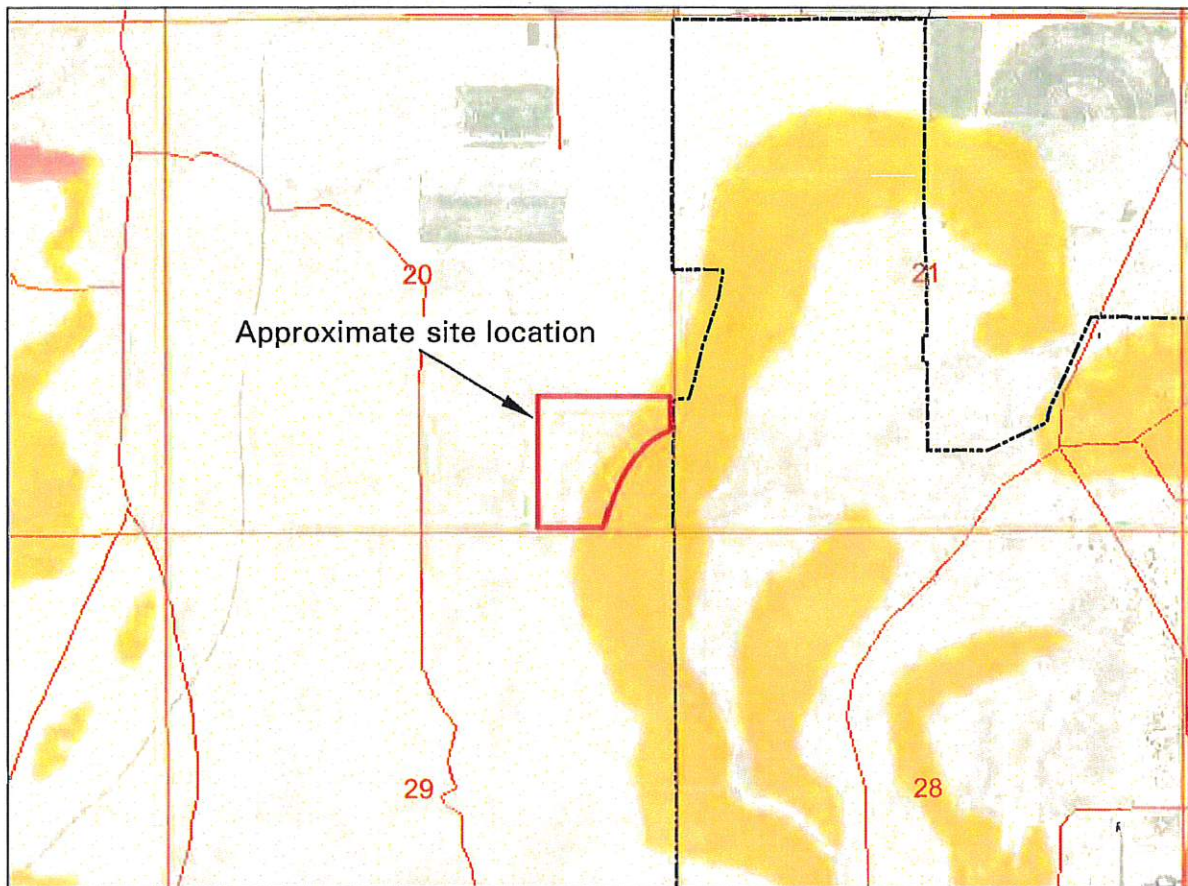
Explanation

- Well-defined fault with unknown activity level: paleoseismic data are lacking, recommend treating as a Holocene fault until proven otherwise.
- - - Buried or approximately located fault with unknown activity level: paleoseismic data are lacking, recommend treating as a Holocene fault until proven otherwise.
- Surface-fault-rupture-hazard special-study area. The special-study areas established for well-defined faults extend for 500 feet on the downthrown side and 250 feet on the upthrown side of each fault. Because their location is uncertain, the special-study areas around buried or approximately located faults are broader, extending 1000 feet on each side of the suspected trace of the faults.



SPENDLOVE 37 ACRE PARCEL
HURRICANE, UTAH

Approximate Scale 1" = 24,000



Rock-Fall Hazard Map for the St. George-Hurricane Metropolitan Area, Washington County, Utah, UGS Special Study 127 2008, W.R. Lund, T.R. Knudson, G.S. Vice and L.M. Shaw

Explanation:

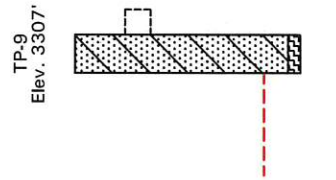
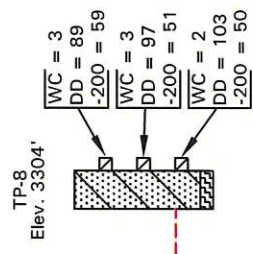
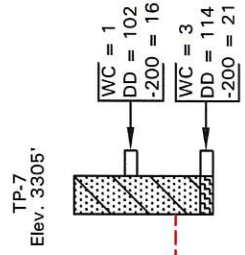
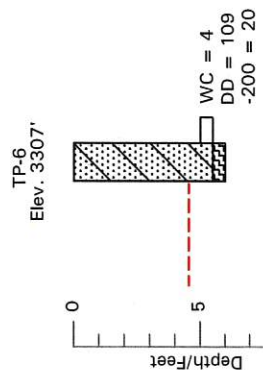
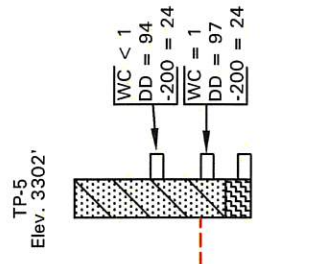
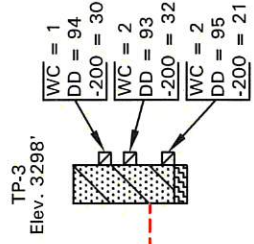
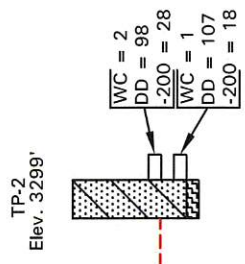
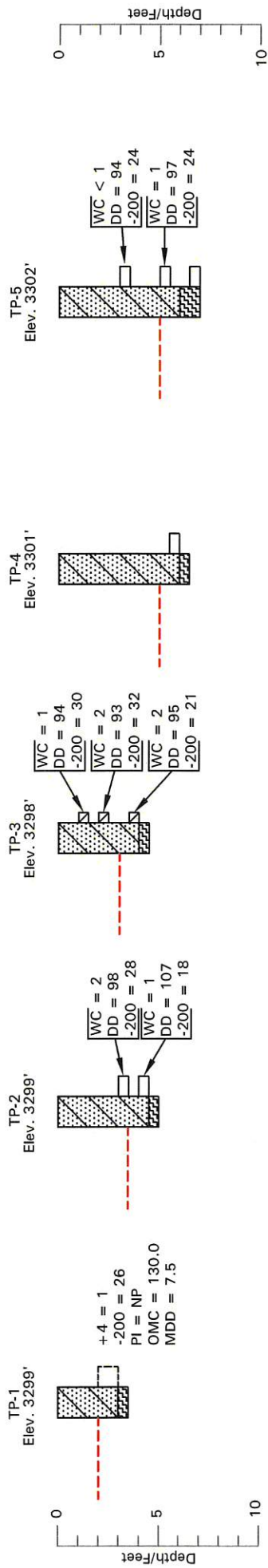


Moderate rock-fall-hazard areas are present where slopes provide sufficient relief to create an acceleration zone, but where only sparse rock-fall debris is present on slopes or in the runoff zone at the base of the slope. Typically rock units in moderate-hazard areas crop out in the slope instead of forming a capping unit, or where a capping unit is present, the resulting rock-fall debris is typically less than 1.5 feet in diameter. Rock units in moderate rock-fall-hazard areas include the Kayenta Formation, Moenave Formation, and portions of the Kaiparowits Formation and Navajo Sandstone.

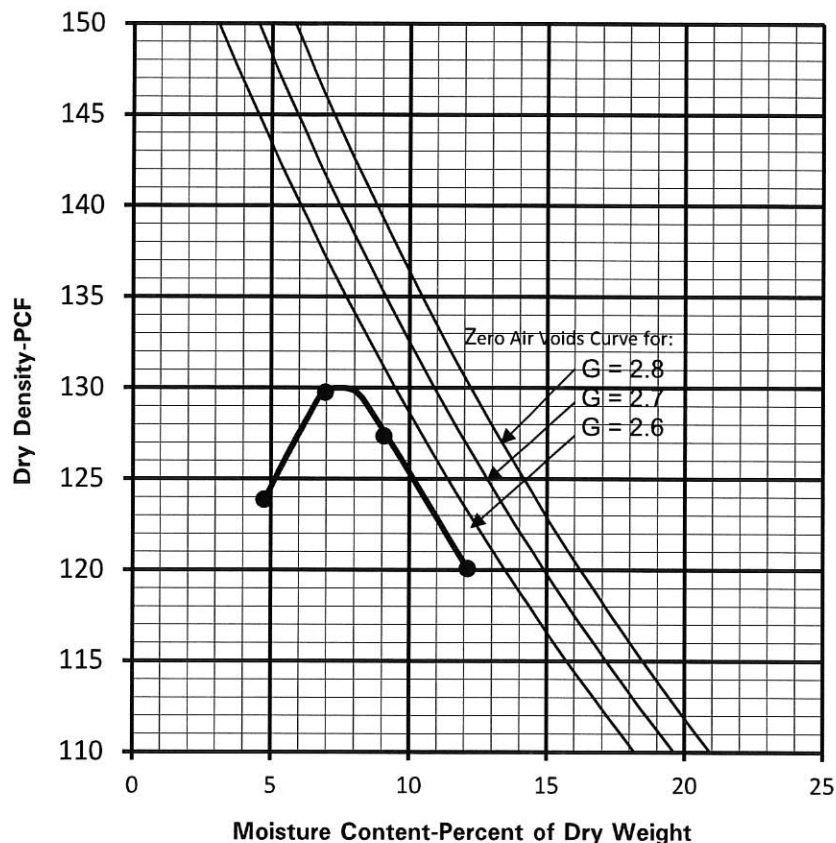


SPENDLOVE 37 ACRE PARCEL
HURRICANE, UTAH

Approximate Scale 1" = 24,000



LEGEND: Silty Sand (SM): medium dense, dry to slightly moist, contains varied silt content and occasional gravel, and is reddish brown in color. Caliche: consists of moderately cemented silty sand. It is moderately hard, dry, and reddish white in color. Indicates relatively undisturbed hand drive sample taken. Indicates relatively undisturbed block sample taken. Indicates disturbed sample taken. Indicates practical backhoe refusal on caliche.	NOTES: - The test pits were excavated on August 24, 2021 with a mini-excavator. - The locations of the test pits were measured by pacing from site features. - The elevations of the test pits were estimated by interpolating between contours on a site plan provided by Desert Shadow Development, dated July 15, 2021. - The test pit locations and elevations should be considered accurate only to the degree implied by the method used. - The lines between the materials shown on the test pit logs represent the approximate boundaries between material types and the transitions may be gradual. - Free water was not encountered in the test pits at the time of excavation. WC = water content (%); DD = dry density (pcf); +4 = percent retained on the No. 4 sieve; -200 = percent passing No. 200 sieve; PI = plasticity index (%); NP = non-plastic; MDD = maximum dry density (pcf); OMC = optimum moisture content (%).
2211872	AGEC Legend and Notes of Test Pits Figure 5



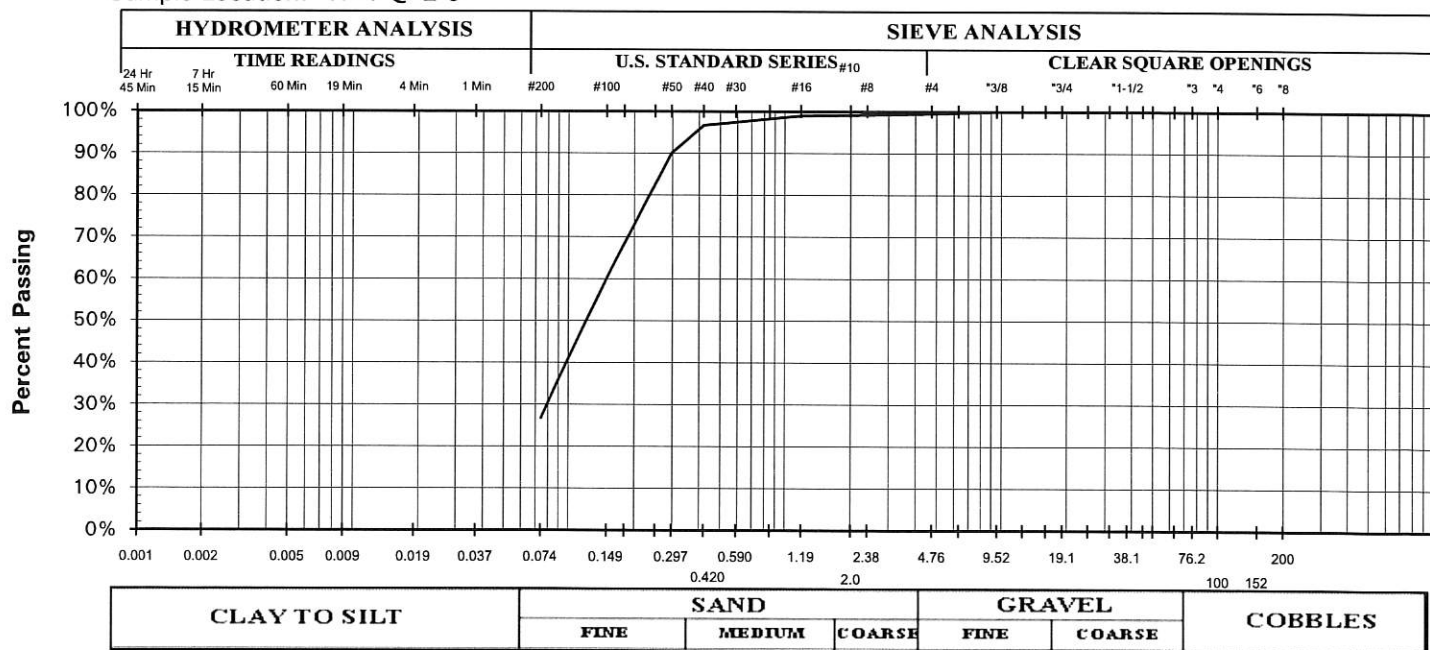
Sample Date: 8/24/21
Sample No. 210825B
Maximum Dry Density: 130.0
Optimum Moisture: 7.5

Atterberg Limits
Liquid Limit:
Plasticity Index: Non-Plastic

Gradation
Gravel: 1%
Sand: 73%
Silt & Clay: 26%

Moisture - Density Relationship Test Procedure: ASTM D-1557 B
 USCS Classification: silty sand (SM)
 AASHTO Classification: A-2-4
 Sample Location: TP-1 @ 2-3'

Reviewed By: TT



GRADATION AND MOISTURE-DENSITY RELATIONSHIP RESULTS

Project No.: 2211872

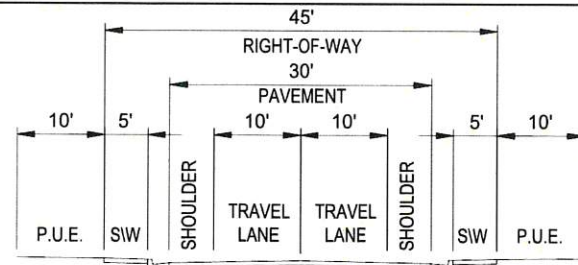
Figure: 6

APPLIED GEOTECHNICAL ENGINEERING CONSULTANTS, INC.

TABLE I
SUMMARY OF LABORATORY TEST RESULTS

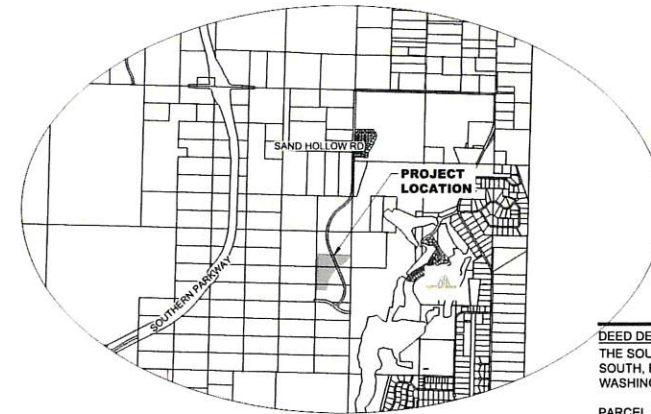
Sample Location		Natural Moisture Content (%)	Natural Dry Density (pcf)	Gradation			Atterberg Limits		Moisture-Density Relationship		Sample Classification
Test Pit No.	Depth (feet)			Gravel (%)	Sand (%)	Silt/clay (%)	Liquid Limit (%)	Plasticity Index (%)	Optimum Moisture Content (%)	Maximum Dry Density (pcf)	
TP-1	2-3			1	73	26		NP	130.0	7.5	Silty Sand (SM)
TP-2	3	2	98			28					Silty Sand (SM)
TP-2	4	1	107			18					Silty Sand (SM)
TP-3	1	1	94			30					Silty Sand (SM)
TP-3	2	2	93			32					Silty Sand (SM)
TP-3	3½	2	95			21					Silty Sand (SM)
TP-5	3	<1	94			24					Silty Sand (SM)
TP-5	5	1	97			24					Silty Sand (SM)
TP-6	5	4	109			20					Silty Sand (SM)
TP-7	2	1	102			16					Silty Sand (SM)
TP-7	5	3	114			21					Silty Sand (SM)
TP-8	1	3	89			59					Sandy Silt (ML)
TP-8	2½	3	97			51					Sandy Silt (ML)
TP-8	4	2	103			50					Silty Sand (SM)

Spendlove 37 Acres Project Number 2211872

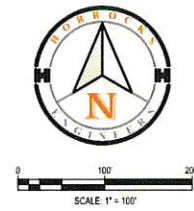


ENGINEER:
HORROCKS ENGINEERS
555 South Bluff St., Suite 101
St. George, UT 84770
(435) 599-7368
CONTACT: TONY CARTER, PE

APPLICANT/OWNER:
TITANIUM DEVELOPMENT, LLC
2712 RIO VISTA DRIVE
ST. GEORGE, UTAH 84790
(435) 773-0707
CONTACT: TY MEYERS



VICINITY MAP



BOUNDARY DESCRIPTIONS

DEED DESCRIPTION (DOC. NO. 20210065536):
THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST OF THE SALT LAKE MERIDIAN, COUNTY OF WASHINGTON

PARCEL "B":
BEGINNING AT A POINT N88°49'17"W, 958.53 FEET ALONG THE SECTION LINE FROM THE SOUTHEAST CORNER OF SECTION 20, T42S, R13W, SLB&M, SAID POINT BEING ON THE WESTERLY RIGHT OF WAY LINE OF 2100 WEST STREET, A 70.00 FOOT WIDE PUBLIC ROADWAY DEDICATED BY DOCUMENT NO. 20180050579 AS FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER, RUNNING THENCE N88°49'17"W, 357.43 FEET ALONG THE SECTION LINE TO THE EAST 1/16TH CORNER; THENCE N1°01'38"E, 1321.58 FEET TO A POINT ON THE 1/16TH LINE; THENCE S88°51'25"E, 1227.96 FEET ALONG THE 1/16TH LINE TO SAID WESTERLY RIGHT OF WAY LINE OF 2100 WEST STREET, SAID POINT BEING ON A 730.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, RADIUS POINT BEARS N66°57'41"W, THENCE SOUTHWESTERLY 427.84 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 33°34'48"; THENCE S56°37'07"W, 55.43 FEET TO THE POINT OF CURVE OF A 1300.00 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHWESTERLY 1148.72 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 50°37'41" TO THE POINT OF BEGINNING.

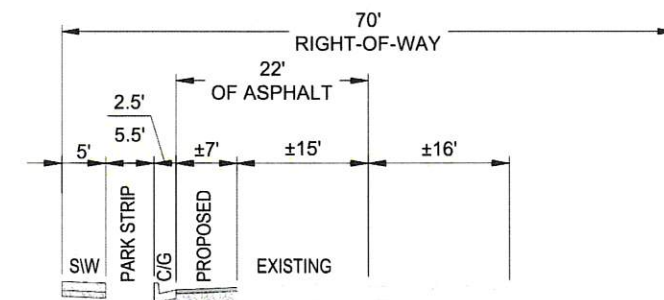
CONTAINING 21.087 ACRES

BASIS OF BEARING

THE BASIS OF BEARING FOR THIS SURVEY IS N88°49'17"W ALONG THE SECTION LINE BETWEEN THE SOUTHEAST CORNER AND THE SOUTH QUARTER OF SECTION 20, T42S, R13W, SLB&M AS SHOWN AND NOTED HEREON.

LEGEND:

- EXISTING 8" SANITARY SEWER
- EXISTING 8" WATER
- EXISTING SEWER MANHOLE
- EXISTING WATER VALVE
- EXISTING FIRE HYDRANT
- PROPOSED STORM DRAIN INLET
- PROPOSED STORM DRAIN
- SECTION LINE
- FOUND SECTION CORNER
- LOT LINE
- PHASE LINE
- EXISTING STORM DRAIN
- PROPERTY BOUNDARY
- PROPOSED 8" SANITARY SEWER
- PROPOSED 8" WATER
- PROPOSED SEWER MANHOLE
- PROPOSED WATER/IRRIGATION VALVE
- PROPOSED FIRE HYDRANT
- PROPOSED CURB & GUTTER
- EXISTING MAJOR CONTOURS
- EXISTING MINOR CONTOURS
- PROPOSED DETENTION POND
- PROPOSED ROADWAY PAVEMENT



**2100 WEST STREET
MAJOR COLLECTOR (PUBLIC)**

WARNING
IF THIS BAR DOES NOT
MEASURE 2" THEN
DRAWING IS NOT TO SCALE

DRAWING INFO	REV #	DATE
DESIGNED	TC	08/31/2022
DRAWN	CC	
CHECKED	TC	
PROJECT		UT-671-22



DESERT SKY ESTATES

HURRICANE CITY, UTAH

PRELIMINARY PLAT

R-1-10 SINGLE FAMILY SUBDIVISION

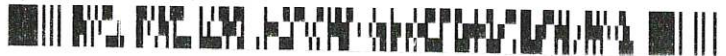


PP-01

Recording Requested By, and
Return Recorded Document To:
Hurricane City
147 N 870 W
Hurricane, UT 84737

DOC # 20220044210

Agreement Page 1 of 26
Gary Christensen Washington County Recorder
09/23/2022 03:11:11 PM Fee \$ 0.00
By HURRICANE CITY



DEVELOPMENT AGREEMENT FOR SPENDLOVE 37 PDO

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the 9th day of September, 2022 (the "Effective Date"), by and between HURRICANE CITY, a Utah municipal corporation (hereinafter referred to as "City") and Louise P. Spendlove, Trustee of The Paul and Louise Spendlove Family Trust Dated March 26, 1993, Tytanium Development, LLC a Utah Limited Liability Company, and Dellionaire Investments, LLC a Utah Limited Liability Company (hereinafter referred to collectively as "Developer"). The City and Developer are hereinafter collectively referred to as "Parties."

RECITALS

A. Developer is the owner of approximately 37.37 acres of land located within the City of Hurricane as is more particularly described on EXHIBIT A, attached hereto and incorporated herein by reference (the "Property").

B. On November 18, 2021, the City Council approved a zone change subject to and conditioned upon the terms and conditions of this Agreement, as set forth in the Hurricane City Council Meeting Minutes for November 18, 2021, attached as EXHIBIT B.

C. Developer has proposed, and City has approved, a Preliminary Site Plan attached hereto and incorporated herein as EXHIBIT C.

D. Developer is willing to design and construct the Project in accordance with the preliminary site plan and in a manner that is in harmony with and intended to promote the long-range policies, goals, and objectives of the City's general plan, zoning and development regulations in order to receive the benefit of vesting for certain uses and zoning designations under the terms of this Agreement as more fully set forth below.

E. The City Council has accepted Developer's proffer to enter into this Agreement to memorialize the intent of Developer and City and decreed that the effective date of the vesting for the zoning and other Developer rights associated with the Property be the date this Agreement is recorded with the Washington County Recorder's Office.

F. The City Council has further authorized the Mayor of the City to execute

and deliver this Agreement on behalf of the City.

G. The City has the authority to enter into this Agreement pursuant to Utah Code Section 10-9a-102(2) and relevant municipal ordinances, and desires to enter into this Agreement with the Developer for the purpose of guiding the development of the Property in accordance with the terms and conditions of this Agreement and in accordance with applicable City Ordinances.

H. This Agreement is generally consistent with, and all preliminary and final plats within the Property are subject to and shall conform with, the City's General Plan, Zoning Ordinances, and Subdivision Ordinances, and any permits issued by the City pursuant to City Ordinances and regulations.

I. The Parties desire to enter into this Agreement to specify the rights and responsibilities of the Developer to develop the Property as expressed in this Agreement and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this Agreement.

J. The Parties understand and intend that this Agreement is a "development agreement" within the meaning of, and entered into pursuant to, the terms of Utah Code Ann., §10-9a-102.

K. The Parties intend to be bound by the terms of this Agreement as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Developer hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement, as a substantive part hereof.

2. Zoning. The Property shall be developed in accordance with (i) the requirements of the underlying zone as shown on EXHIBIT C, (ii) all other features as generally shown on the Preliminary Site Plan, and (iii) this Agreement. Except as otherwise approved in writing by City, the Developer shall not develop the Property in a manner that deviates materially from the attached Preliminary Site Plan in EXHIBIT C and as permitted by the aforementioned zoning designation for the Property.

3. Governing Standards. The Preliminary Site Plan, the record of the City Council meeting, and this Agreement (together the "Approval Documents") establish the development rights for the Project, including the use, maximum density, intensity and general configuration for the Project. The Project shall be developed by the Developer in accordance with the Approval Documents. All Developer submittals must comply generally with the

Approval Documents. Non-material variations to the Preliminary Site Plan, as defined and approved by the City's Zoning Administrator, such as exact building locations, location of local roadways, exact locations of open space and parking may be varied by the Developer without official City Council or Planning Commission approval. Such variations however shall in no way change the maximum density, use and intensity of the development of the Project.

4. Additional Specific Developer Obligations. As an integral part of the consideration for this agreement, the Developer voluntarily agrees as follows:

- a. Guaranteed Density and Uses. City specifically acknowledges that at build-out Developer shall be entitled to a total overall density of 3.45 ERUs per acre within the Project, which density equals approximately 129 residential units for the entire Property. Further, the Parties acknowledge that actual densities on certain acreage will exceed 3.45 units per acre because several acres of the Property will be (a) set aside as open space and (b) larger lots. For each phase of development of the Property, the Developer shall provide a table on the preliminary plat setting out the total number of ERUs that were included in previous phases, the number of ERUs proposed in the instant phase, and the number of approved ERUs remaining available for development in future phases.

5. Construction Standards and Requirements. All construction on the Property at the direction of the Developer shall be conducted and completed in accordance with the City Ordinances and Design Standards, including, but not limited to infrastructure construction, setback requirements, minimum lot sizes, building height requirements, lot coverage requirements, requirements arising from Public Infrastructure Districts in the vicinity, and all other zoning and development requirements.

- a. Developer understands, acknowledges and specifically agrees that: (a) power, water, and other utility services to the Property are not currently available and have not been extended to the Property, (b) the granting of this zone change does not in any way guarantee or warrant the availability and extension of power and water utility services to the Property, (c) no application for any permit requiring the availability or extension of power or water service, and no other request requiring the availability and extension of power or water services, shall be filed or made until such time that such services are available and have been extended to the Property, and (d) Developer assumes all risk and liability associated with any development activity on the Property, including but not limited to all costs incurred for engineering, feasibility studies, etc., in the event that such services do not become available and are not extended to the Property.
- b. Adequate Public Facilities. The City may deny any land use application

for any development on the Property, including but not limited to preliminary plats, building permits, zone changes, and preliminary site plans by finding that utilities and roadways are (1) inadequate to support the proposed development or (2) services are not in the vicinity of the proposed application. The City may consider approval of a project if the applicant can show that current utility and roadway systems are adequate to meet the demand for the project and the applicant can provide a plan on how to reasonably connect utilities and roadways to the proposed development according to Hurricane City standards.

- c. Acceptance of Improvements. The City shall accept all improvements which are intended for public use and which have been constructed by Developer or its agents in accordance with the City's standards and as shown on the approved construction drawings. Prior to the construction of any road, utility, or public improvements within the Project, the City shall review proposed construction drawings and require adjustments or changes to meet the requirements of this Agreement and applicable City standards. The City shall cooperate and allow Developer to construct the Offsite Improvements, and the City shall accept Developer's dedication of the Offsite Improvements. The City shall only accept improvements once improvements have been installed, inspected by the City or its representative, a warranty bond has been provided by Developer, and all other conditions for acceptance set out in Hurricane City's Ordinances and standards are satisfied.
- d. Unless otherwise specifically approved by the City Council and clearly labeled on the final subdivision plat, all roads within the Project shall be public roads. Upon final acceptance of such roads as having been constructed in conformity with all approved plans and City standards, City shall be responsible for maintenance of the roads at the same level of maintenance applicable to other similar roads within the City. City shall not be responsible for maintenance of any private road within the Project.

6. Vested Rights and Reserved Legislative Powers.

- a. Vested Rights. As of the Effective Date, Developer shall have the vested right to develop and construct the Project in accordance with the uses, maximum permissible densities, intensities, and general configuration of development established in the Approval Documents, subject to compliance with the City Ordinances in existence on the Effective Date. The Parties intend that the rights granted to Developer under this Agreement are contractual and also those rights that exist under statute, common law and at equity. The Parties specifically intend that this Agreement grants to Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann., §10-9a-509.

i. Examples of Exceptions to Vested Rights. Notwithstanding the foregoing, the Parties understand and agree that the Project will be required to comply with future changes to City Laws that do not limit or interfere with the vested rights granted pursuant to the terms of this Agreement. The following are examples for illustrative purposes of a non-exhaustive list of the type of future laws that may be enacted by the City that would be applicable to the Project:

1. Developer Agreement. Future laws that Developer agrees in writing to the application thereof to the Project;
2. Compliance with State and Federal Laws. Future laws which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;
3. Safety Code Updates. Future laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare; or,
4. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated.
5. Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law.
6. Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, imposed and collected.

b. Reserved Legislative Powers. The Developer acknowledges that the City

is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation of the police powers, such legislation shall not modify the Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Section 10-9a-509 of the Municipal Land Use, Development, and Management Act, as adopted on the Effective Date, *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law. Notwithstanding the foregoing, the City reserves the right to enact an ordinance in accordance with Utah Code Ann. §10-9a-504 establishing a temporary land use regulation for any part or all of the area within the municipality, including area within the Project, which prohibits or regulates issuance of any building permit or the erection, construction, reconstruction or alteration of any building or structure or any subdivision approval if the City Council makes a finding of compelling countervailing public interest in accordance with Utah and federal law after notice to Developer and an opportunity to be heard.

7. Default. An "Event of Default" shall occur under this Agreement if any party fails to perform its obligations hereunder when due and the defaulting party has not performed the delinquent obligations within sixty (60) days following delivery to the delinquent party of written notice of such delinquency. Notwithstanding the foregoing, if the default cannot reasonably be cured within that 60-day period, a party shall not be in default so long as that party commences to cure the default within that 60-day period and diligently continues such cure in good faith until complete.

8. Default and Remedies. Failure of a party to perform any of the Party's obligations under this Agreement within a thirty (30) day period (the "**Cure Period**") after written notice thereof from the other party shall constitute a default ("**Default**") by such failing party under this Agreement; provided, however, that if the failure cannot reasonably be cured within thirty (30) days, the Cure Period shall be extended for the time period reasonably required to cure such failure so long as the failing party commences its efforts to cure within the initial thirty (30) day period and thereafter diligently proceeds to complete the cure. Such notice shall specify the nature of the alleged Default and the manner in which such Default may be satisfactorily cured, if possible. If the Default is cured, then no Default shall exist and the noticing Party shall take no further action.

- a. In the event of an uncured Default, the non-defaulting party shall, in addition to any other remedy allowed by law, be entitled to the court's imposition of specific performance and /or injunctive relief, but not monetary damages. All rights and remedies under this Agreement, and /or statute or common law shall be deemed cumulative and the selection of one of the rights or remedies shall not be deemed a waiver of any other

right or remedy.

- b. If City elects to consider terminating this Agreement due to a Default by Developer, then City shall give to Developer written notice of City's intent to terminate this Agreement and the matter shall be scheduled for consideration and review by City's legislative body at a duly noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If City's legislative body determines that a material uncured Default has occurred and is continuing, City may thereafter pursue the remedy of termination through an appropriate judicial proceeding.

9. Specific Acts of Default. The Parties hereto agree that any of the following occurrences, acts or failure to act shall constitute a Default by Developer, for which City may elect to terminate the agreement in accordance with Section 8 above: (a) the filing of a petition in bankruptcy by Developer, (b) foreclosure on any portion of the Property which has the effect of creating an unapproved or illegal subdivision under Utah law or City ordinances, (c) the Developer's failure to comply with the requirements of any Section above, or (d) Developer's failure, without good cause as determined in good faith by City, for a period of five (5) years to commence construction of improvements in any new development phase or new Development Parcel. Upon such termination, all approvals or development rights granted hereunder to Developer shall lapse and all obligations of City hereunder shall cease.

10. Notices. Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

To the Developer: Tytanium Dev. LLC
 3439 S. Barcelona Dr. #46
 St. George, Utah 84790

To the City: Hurricane City
 Attn: Dayton Hall, City Attorney
 147 N. 870 W.
 Hurricane, UT 84737

11. General Term and Conditions.

a. Headings. The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

b. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and

assigns (to the extent that assignment is permitted). Without limiting the generality of the foregoing, a "successor" includes a party that succeeds to the rights and interests of the Developer as evidenced by, among other things, such party's submission of land use applications to the City relating to the Property or the Project.

c. Non Liability of City Officials and Employees. No officer, representative, consultant, attorney, agent or employee of the City shall be personally liable to the Developer, or any successor in interest or assignee of the Developer, for any default or breach by the City, or for any amount which may become due to the Developer, or its successors or assignees, or for any obligation arising under the terms of this Agreement. Nothing herein will release any person from personal liability for their own individual acts or omissions.

d. Third Party Rights. Except for the Developer, the City and other parties that may succeed the Developer on title to any portion of the Property, all of whom are express intended beneficiaries of this Agreement, this Agreement shall not create any rights in and/or obligations to any other persons or parties. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for, or duty to any third parties concerning any improvements to the Property unless the City has accepted the dedication of such improvements

e. Further Documentation. This Agreement is entered into by the Parties with the recognition and anticipation that subsequent agreements, plans, profiles, engineering and other documentation implementing and carrying out the provisions of this Agreement may be necessary. The Parties agree to negotiate and act in good faith with respect to all such future items.

f. Relationship of Parties. This Agreement does not create any joint venture, partnership, undertaking, business arrangement or fiduciary relationship between the City and the Developer.

g. Agreement to Run With the Land. This Agreement shall be recorded in the Office of the Washington County Recorder against the Property and is intended to and shall be deemed to run with the land, and shall be binding on and shall benefit all successors in the ownership of any portion of the Property.

h. Performance. Each party, person and/or entity governed by this Agreement shall perform its respective obligations under this Agreement in a manner that will not unreasonably or materially delay, disrupt or inconvenience any other party, person and/or entity governed by this Agreement, the development of any portion of the Property or the issuance

of final plats, certificates of occupancy or other approvals associated therewith.

i. Applicable Law. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Utah.

j. Construction. This Agreement has been reviewed and revised by legal counsel for both the City and the Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

k. Consents and Approvals. Except as expressly stated in this Agreement, the consent, approval, permit, license or other authorization of any party under this Agreement shall be given in a prompt and timely manner and shall not be unreasonably withheld, conditioned or delayed. Any consent, approval, permit, license or other authorization required hereunder from the City shall be given or withheld by the City in compliance with this Agreement and the City Ordinances.

l. Approval and Authority to Execute. Each of the Parties represents and warrants as of the Effective Date this Agreement, it/he/she has all requisite power and authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.

m. Termination.

i. Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the final plat for any portion of the Property has not been recorded in the Office of the Washington County Recorder within five (5) years from the date of this Agreement (the "Term"), or upon the occurrence of an event of default of this Agreement that is not cured, the City shall have the right, but not the obligation, at the sole discretion of the City Council, to terminate this Agreement as to the defaulting party (*i.e.*, the Developer). The Term may be extended by mutual agreement of the Parties.

ii. Upon termination of this Agreement for the reasons set forth herein, following the notice and process required hereby, the obligations of the City and the defaulting party to each other hereunder shall terminate and the zoning that existed prior to the zone change that was conditioned on this Agreement shall be reinstated on all property for which a final plat has not been recorded, but none of the licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or

termination of this Agreement shall be rescinded or limited in any manner.

12. Assignability. The rights and responsibilities of Developer under this Agreement may be assigned in whole or in part by Developer with the consent of the City as provided herein.

- a. Notice. Developer shall give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee.
- b. Partial Assignment. If any proposed assignment is for less than all of Developer's rights and responsibilities, then the assignee shall be responsible for the performance of each of the obligations contained in this Agreement to which the assignee succeeds. Upon any such approved partial assignment, Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.
- c. Grounds for Denying Assignment. The City may only withhold its consent if the City is not reasonably satisfied of the assignee's reasonable financial ability to perform the obligations of Developer proposed to be assigned.
- d. Assignee Bound by this Agreement. Any assignee shall consent in writing to be bound by the assigned terms and conditions of this Agreement as a condition precedent to the effectiveness of the assignment.

13. Sale or Conveyance. If Developer sells or conveys parcels of land within the Property, the lands so sold and conveyed shall bear the same rights, privileges, restrictions, limitations, intended uses, configurations, and density as applicable to such parcel and be subject to the same limitations and rights of the City as when owned by Developer and as set forth in this Agreement without any required approval, review, or consent by the City except as otherwise provided herein.

14. No Waiver. Any party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

15. Severability. If any portion of this Agreement is held to be unenforceable for any reason, the remaining provisions shall continue in full force and effect.

16. Force Majeure. Except for termination of this agreement due to Developer's failure to record a final plat on the Property within five (5) years of the date of this Agreement, any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars, civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

17. Amendment. This Agreement may be amended only in writing signed by the Parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first hereinabove written.

CITY:

Hurricane City

By: Nanette Billings
Mayor Nanette Billings

DEVELOPER:

The Paul and Louise Spendlove Family Trust Dated March 26, 1993

By: Louise P. Spendlove, Trustee
Name: Louise P. Spendlove
Title: Trustee

Tytanium Development, LLC a Utah Limited Liability Company

By: Tyler Meyers
Name: Tyler Meyers
Title: Manager

Dellionaire Investments, LLC a Utah Limited Liability Company

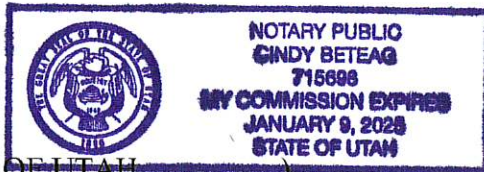
By: DeLiberty
Name: DELIBERTY
Title: Manager

STATE OF UTAH)

:SS

COUNTY OF WASHINGTON)

On the 15th day of September, 2022, personally appeared before me **Nanette Billings**, who being by me duly sworn, did say that she is the Mayor of Hurricane City, a Utah municipal corporation, and that the within and foregoing instrument was signed on behalf of said corporation with proper authority and duly acknowledged to me that she executed the same.



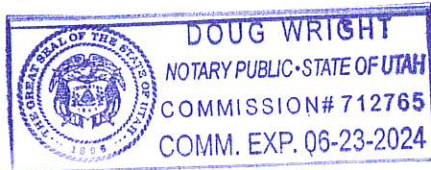
Cindy Bettag
Notary Public

STATE OF UTAH)

:SS

COUNTY OF UTAH)

On the 9th day of September, 2022, personally appeared before me **Louise P. Spendlove**, who being by me duly sworn, did say that she is the duly authorized Trustee of **The Paul and Louise Spendlove Family Trust Dated March 26, 1993**, that the within and foregoing instrument was signed on behalf of said Trust with proper authority, and did duly acknowledge to me that she executed the same.



[Signature]
Notary Public

STATE OF UTAH)

:SS

COUNTY OF ~~UTAH~~ Washington

On the 13 day of September, 2022, personally appeared before me Tyler Meyers, who being by me duly sworn, did say that s/he is the Manager of **Tythanium Develoment, LLC a Utah Limited Liability Company**, that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority, and did duly acknowledge to me that s/he executed the same.



Brendan J. Snow
Notary Public

STATE OF UTAH)
COUNTY OF Washington :SS
UTAH pd

On the 13 day of September, 2022, personally appeared before me
Del Beatty, who being by me duly sworn, did say that s/he is the Manager of
Dellionaire Investments, LLC a Utah Limited Liability Company, that the within and
foregoing instrument was signed on behalf of said limited liability company with proper
authority, and did duly acknowledge to me that s/he executed the same.



Brendan J. Snow
Notary Public

EXHIBIT A
Legal Description of Property:

The following tract of land in Washington County, State of Utah:

The Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 20, Township 42 South, Range 13 West of the Salt Lake Meridian, County of Washington.

EXHIBIT B

Hurricane City Council Meeting Minutes for November 18, 2021

Minutes of the Hurricane City Council meeting held on November 18, 2021, in the Council Chambers at 147 North 870 West, Hurricane, Utah, at 4:00 p.m.

Council Members: Nanette Billings, Darin Larson, Joseph Prete, Dave Sanders, and Kevin Tervort. Mayor John Bramall excused.

Also Present: City Manager Kaden DeMille, City Attorney Fay Reber, Lieutenant Jerod Brisk, Power Superintendent Scott Hughes, Public Works Director Mike Vercimack, Planning Director Stephen Nelson, Recreation Director Kole Staheli, City Recorder Cindy Beteag, and Fire Chief Tom Kuhlman.

AGENDA

4:00 p.m. Consideration and possible decision regarding economic impacts to the City

Kaden DeMille presented wage information. The information included an option to increase wages by two percent and three percent. He reported that other municipalities in the County are also looking at wage increases. He is not confident that the economy will not change; he recommends a bonus rather than a wage increase. He would like to look at increasing wages in January to align with the timing of wage increases in other municipalities. Mr. DeMille noted that forty-five applicants applied for the utility clerk position. Ten candidates were selected for interviews. Three candidates did not attend the interview, and several more terminated their applications. Councilwoman Billings noted that the City increased wages by two percent in February, three percent in July, and another three percent increase for the Police Department in September. She suggested a Christmas bonus of one percent of the employee's wages. She feels a lump sum is more beneficial than a slight pay increase. Councilman Sanders does not think employees will remember the Christmas bonus when wages are discussed next year.

Councilman Prete feels that the City does need to do its best to keep up morale. However, considering the drastically changing economy, it is important to know whether the City can sustain the wage increase. Councilman Tervort agrees that an increase needs to happen, but he is concerned about postponing capital projects to compensate for the wage increase. Mr. DeMille noted that the revenue generated from property and sales tax goes to the General Fund, and the revenue from sales tax has increased by five percent. Councilman Larson suggests a two percent increase and a medium size bonus starting now. He explained that hiring an employee to replace a key employee will cost more than this wage increase.

Scott Hughes reported that the City will lose valuable employees if this is not addressed. Mr. DeMille is working to change the culture in the office and make the City an enjoyable place to work, and he is asking departments to do the same thing. Councilman Sanders agrees with Councilman Larson's suggested wage increase and bonus. Councilman Prete agrees that an increase may be necessary to stay competitive and alleviate the burden of inflation.

The City Council discussed a two percent wage increase to each department's budget to be allocated by the department head with a three hundred and fifty dollar bonus for full-time employees and a one hundred dollar bonus for part-time employees.

Nanette Billings motioned to move this to the end of the meeting as item 11. Seconded by Joseph Prete. Darin Larson, Dave Sanders, Kevin Tervort, Nanette Billings and Joseph Prete, voting aye. Motion carried unanimously.

5:00 p.m. Pre-meeting - Discussion of Agenda Items, Department Reports

Discussion regarding development of all abilities park on City land at 1410 W 650 South-Art in the Park Committee.

Sarah Jackman is representing Art in the Park. She explained that Art in the Park has placed several sculptures in Hurricane City. The committee wants to create a place for people to connect with art, neighbors, and themselves. Mental and physical health is an essential aspect of life, and they feel this can be accomplished by creating an interactive art park. The idea for the park is to have areas representing the national parks, sculptures, mosaics, rock climbing, yoga, a building for art classes, and a children's play area. The location they are considering is a gravel pit owned by the City. Ms. Jackman noted that they have not researched costs yet. Stephen Nelson reported that there is a master planned roadway through the gravel pit. Councilman Prete thinks this will be a unique park that can serve the entire region. There may be grant funds available to fund the park.

Mike Vercimack thinks it is innovative, but this location is not ideal. The property would have to be filled in when the roadway is built, and the planned roadway will consume a large portion of the property. Mr. Nelson stated that other cities have added interactive art in downtown areas, and he plans to incorporate some of these ideas into the downtown master plan.

Councilwoman Billings suggested meeting with the parks and other departments to get ideas. Councilman Larson stated that the Rotary Club plans to do an all-abilities park in Hurricane City, and the club is farther along in the planning process. He thinks these two parks could be incorporated together.

Chief Kuhlman reported that Fire Academy starts on January 24th. They are planning to hire thirty employees in the next year. Mr. Kuhlman presented the recruiting video, and the application is open to the public. He explained that the department funds the expensive cost of training new employees. However, the employee is required to pay back the cost of their training if they do not stay with the department for forty-eight months.

Jared Brisk reported that the Police Department is busy. Two officers are out with COVID.

Kole Staheli reported that the annual Christmas Tree Lighting/Festival is on November 29th. There is a large lineup of Christmas concerts at the fine arts facility. Arthur LeBaron and Darren Barney are excited about the property near Quail Lake, and he is hopeful that the Water Conservancy District will lease the property to Hurricane City. There are nearly nine acres that can be used for recreational purposes. The walls for the bell tower are going up today.

Mike Vercimack reported that the City is staying remarkably busy. Many commercial developments are coming in, and development continues to be the driving force. The Planning Commission has recommended approval for zoning on 2800 West. Half of the owners have signed a right of occupancy, and the right of way and power lines easement needs to be finalized.

Stephen Nelson reported that thirty-four responses were received during the downtown walking survey. Most of the concerns received involved SR-9. He will prepare the information to present to the City Council and the Utah Department of Transportation. There were twenty-two applications at the last Planning Commission meeting. The final site plan was approved for Intermountain Health Care. The Water Conservancy District submitted a zone change application for 3,200 acres. The Planning Commission tabled the item so they can hold a work meeting with the City Council in January. The holiday dinner for the boards and commission is planned for December 13th.

6:00 p.m. - Call to Order –

Kevin Tervort welcomed everyone to the meeting.

Pledge: Darin Larson

Prayer: Joseph Prete

Approval of Minutes: July 15, 2021

Nanette Billings motioned to approve the Minutes of the regular City Council Meeting on July 15, 2021. Seconded by Dave Sanders. Darin Larson, Nanette Billings, Dave Sanders, and Kevin Tervort, voting aye. Joseph Prete abstained. Motion carried.

Public Forum – Comments From Public

Lily McEntire lives in Ivy Wood. She is a mother of six children, and four attend Valley Academy. They walk or ride their bike to school. Traffic has increased in this area, and many children walk along 400 North. She thinks a second crosswalk is necessary on 870 West and 400 North. She

reported that three hundred and eighty-five community members signed the petition supporting another crosswalk.

OLD BUSINESS

1. Consideration and possible approval of a **proposed code amendment to Hurricane City Code 10-26**. Hurricane City Planning Applicant.

Stephen Nelson explained that this ordinance defines the City's recreational resort development standards. With guidance from the Council, the Planning Commission made some changes to the ordinance. These changes clarify required amenities, parking, and additional consideration for zone changes. The verbiage for the onsite management requirement was edited for clarity. Councilman Prete suggested adding verbiage to note that onsite management is required from the beginning and suggested requiring completion of the pool and clubhouse within one year of starting the project. He questioned what "other amenities shall be phased proportionately" means in the last sentence. Mr. Nelson explained that this prevents developers from postponing major improvements. Councilman Prete suggested adding "construction of other amenities" to the sentence. Councilwoman Billings confirmed that this applies to developments zoned for recreation resorts that do not have an approved preliminary plat.

Joseph Prete motioned to approve the proposed code amendment to Hurricane City Code 10-26 subject to the changes discussed and final legal review. Seconded by Nanette Billings. Darin Larson, Dave Sanders, Kevin Tervort, Nanette Billings, and Joseph Prete, voting aye. Motion carried unanimously.

2. Consideration and possible approval of a proposed **zone change amendment request on 327 acres from RA-1, residential agriculture one unit per acre, to R1-10, residential one unit per 10,000 square feet. Parcel ID's H-3402 and H-3401-A**. Silver Flats LLC/ Duane Fielding Applicant, Jon Jensen Agent.

The applicant is not present.

Nanette Billings motioned to table approval of a proposed zone change amendment request on 327 acres from RA-1, residential agriculture one unit per acre, to R1-10, residential one unit per 10,000 square feet. Parcel ID's H-3402 and H-3401-A. Seconded by Joseph Prete. Darin Larson, Dave Sanders, Kevin Tervort, Nanette Billings, and Joseph Prete, voting aye. Motion carried unanimously.

3. Consideration and possible approval **for a Zone Change and preliminary site plan request on 37 acres from RA-1, residential agriculture 1 unit per acre, to R1-8,**

residential 1 unit per 8,0000 square feet, with a PDO, planned development overlay.
Parcel H-3386-B. Louise P Spendlove Applicant. Tyler Meyers Agent.

Tyler Meyers reported that the applicants understand the utility issues. They likely will not be ready to start building for a year or more, and they are okay with a development agreement noting that building permits will not be issued until they have adequate utilities. Stephen Nelson reported that this agreement is similar to the Balance of Nature development agreement. The Planning Commission gave a positive recommendation. The applicant will have to present a sensitive land application for the south and east side of the property with the preliminary plat. Councilwoman Billings confirmed that the proposed units per acre are 3.45 with an R1-8 underlying zone.

Nanette Billings motioned to approve the Zone Change and preliminary site plan request on 37 acres from RA-1, residential agriculture 1 unit per acre, to R1-8, residential 1 unit per 8,0000 square feet, with a PDO, planned development overlay with 3.45 units per acre based on it is harmounious with the surrounding properties. Approval is subject to the development agreement. Seconded by Darin Larson. Dave Sanders, Kevin Tervort, Darin Larson, and Nanette Billings, voting aye. Joseph Prete voting nay. Motion carried.

NEW BUSINESS

- 1. Consideration and possible approval of Resolution 2021-29 to update the Zion Regional Collaborative Independent Contractor Agreement - Stephen Nelson**

Stephen Nelson reported that Zion Regional Collaborative hired an independent contractor last year. Mr. Nelson feels this is an excellent organization that helps coordinate regional projects. This is the same contract as last year. Hurricane City has budgeted \$10,000 for this year's contract. However, other participating cities have increased their contribution by ten percent.

Nanette Billings motioned to approve Resolution 2021-29 to update the Zion Regional Collaborative Independent Contractor Agreement. In the budgeted amount of \$10,000. Seconded by Dave Sanders. Darin Larson, Kevin Tervort, Joseph Prete, Dave Sanders, and Nanette Billings, voting aye. Motion carried unanimously

Councilman Prete advocated hiring a grant writer.

- 2. Public Hearing to take comments on the following.**

Nanette Billings motioned to go into a public hearing. Seconded by Darin Larson. Kevin Tervort, Joseph Prete, Darin Larson, Dave Sanders, and Nanette Billings, voting aye. Motion carried unanimously.

- a. A sensitive land application for Sand Cove located at 3350 W 500 North**

No comments

Nanette Billings motioned to go out of the public hearing. Seconded by Darin Larson. Kevin Tervort, Joseph Prete, Darin Larson, Dave Sanders, and Nanette Billings, voting aye. Motion carried unanimously

3. Consideration and possible approval of a **preliminary plat and sensitive land application for a proposed single-family subdivision located at approximately 3350 W and 500 N.** Mortar & Beam Applicant, Jim Lyman Agent.

Jim Lyman explained that three lots had a thirteen percent slope. After meeting with the Council and Planning Commission, the applicant swapped land with the City to accommodate the park. This creates better access, and the walkway was continued from Coronado Ridge to access the park. Stephen Nelson noted that there are other lots exceeding ten percent. The Planning Commission recommended approval because grading the lots will minimize the slope's impact. The Parks Department has reviewed and supports the park plan. Mr. Lyman stated that a portion of the 1.92-acre park will be preserved as open space. Mr. Nelson reported that Arthur LeBaron made the recommendation that the three lots by the parking lot need to have garages on the main street. Mr. Lyman noted that the City Engineer is willing to make an exception for the intersection length connecting to Shoshone Land Company's property. Councilman Sanders asked if there are plans to address the drainage on 3400 West. Mike Vercimack reported that any development on 600 North is required to make improvements along 600 North, and there is a planned drainage basin.

Dave Sanders motioned to approve the preliminary plat and sensitive land application for a proposed single-family subdivision located at approximately 3350 W and 500 N subject to Arthur LeBaron approving the road that exceeds eight hundred feet. Seconded by Nanette Billings. Kevin Tervort, Joseph Prete, Darin Larson, Dave Sanders, and Nanette Billings, voting aye. Motion carried unanimously

4. Discussion regarding the additional of a **crosswalk at Hurricane Elementary** -Jenny Chamberlain

Jenny Chamberlain is the President of the Community Council of Hurricane Elementary School. This Council includes principals, teachers, and parents. The Community Council has been discussing the ongoing safety concerns regarding the lack of a crosswalk on 870 W and 400 North. She explained that the previous traffic study did not find that this location warranted a crosswalk. She asked the Council to consider having a new traffic study because the density has significantly increased. Ms. Chamberlain reviewed events that take place during the school year. Jerod Brisk reported that the road is going to get busier. The crosswalk will have no impact without a crossing guard. Mike Vercimack noted that a simple, immediate solution is to erect a

crosswalk sign and paint a crosswalk. He will check with Arthur LeBaron to see if a crossing guard is required at a crosswalk. Councilman Sanders explained that completing 700 West will eliminate much of the problem. Becky is concerned that painting a crosswalk without a crossing guard will encourage children to cross without help. Councilwoman Billings asked if teachers could help by explaining to the student that they can't cross there.

Maggie Maxfield reported that the new section of 700 West has eliminated some traffic. She has witnessed teachers telling students not to cross, only to have the parents tell them to cross there. Ms. Chamberlain read the petition to the City Council. Derek's son was hit at this intersection. He explained that there is limited visibility, and the school zone signs only meet the minimum requirements.

5. Consideration and possible approval of an **amended final plat for Hinton Home Estates Subdivision: Partial Amendment A (Lots 2 & 3)**, located at 754 W 1130 S. Ryan and Chantel Reeve Applicants, Ben Syphus Agent.

The Planning Commission unanimously recommended approval. The applicant wants to combine two lots to build a pool and a pool house.

Dave Sanders motioned to approve the amended final plat for Hinton Home Estates Subdivision subject to the staff and JUC comments. Seconded by Joseph Prete. Kevin Tervort, Joseph Prete, Darin Larson, Dave Sanders, and Nanette Billings, voting aye. Motion carried unanimously.

6. Consideration and possible approval on a **final plat for Canyons RV Resort Amended and Extended. Located at 100 N and 2800 W.** Western Commercial Real Estate, PLLC Applicant. Joseph Venuti Applicant.

Joby Venuti explained that this amendment addresses the problems with the sewer. Stephen Nelson reported that the open space was approved in the initial development agreement, and the Homeowner's Association does not plan to do anything with the land. They have entered a preliminary agreement with Ash Creek Sewer District based on this approval. The Planning Commission unanimously recommended approval.

Joseph Prete motioned to approve the final plat for Canyons RV Resort Amended and Extended. Located at 100 N and 2800 W subject to staff and JUC comments. Seconded by Nanette Billings. Kevin Tervort, Joseph Prete, Darin Larson, Dave Sanders, and Nanette Billings, voting aye. Motion carried unanimously.

7. Consideration and possible approval of a **preliminary plat for Red Cliff Preliminary Plat, a 31 lot duplex development, located at 2170 W 600 N.** Jay Rice- Red Cliff Development Applicant. Jared Madsen- Alpha Engineering Agent.

The applicant nor the agent are present.

Joseph Prete motioned to continue approval of a preliminary plat for Red Cliff Preliminary Plat, a 31 lot duplex development, located at 2170 W 600 N. Seconded by Nanette Billings. Kevin Tervort, Joseph Prete, Darin Larson, Dave Sanders, and Nanette Billings, voting aye. Motion carried unanimously.

8. Discussion regarding the Memorandum of Understanding with SUU

Councilwoman Billings, Kaden DeMille, the City Attorney, and SUU held a conference call last week. SUU originally proposed limiting the flights to three per day with two helicopters. The drafted MOU listed five flights per day, and the group compromised on four flights per day. Scott Freeman would like to add verbiage that defines four flight groups per day with a thirty-minute time limit per flight group. Exhibit A was not available for review. The Airport Board suggested implementing an ordinance instead of having multiple MOUs with multiple entities. The Board also wants the MOU to note that there are six patterns, and no run-on landing is allowed at our airport. Councilman Sanders suggested updating the MOU for the attorney to review and present to SUU.

9. Consideration and possible approval of waiving the power impact fees for the bell tower power source

Nanette Billings motioned to waive the power impact fees for the bell tower power source. Seconded by Joseph Prete. Kevin Tervort, Joseph Prete, Darin Larson, Dave Sanders, and Nanette Billings, voting aye. Motion carried unanimously.

10. Consideration and possible approval to change 5140 West to Pecan Valley Road - Chris Wyler

Councilwoman Billings prefers the grid address system because it is challenging to navigate if a street is only marked with a name. Stephen Nelson reported that the grid number cannot be replaced on the signage, but a street name can be added.

Dave Sanders motioned to add Pecan Valley Road with 5140 West to meet the standard. Seconded by Nanette Billings. Kevin Tervort, Joseph Prete, Darin Larson, Dave Sanders, and Nanette Billings, voting aye. Motion carried unanimously.

Mayor and Council reports

Mayor Bramall	Airport, Administration, Police, Animal Control, School Crossing Guards, Victim Services, Public Works, Engineering -
---------------	---

Nanette Billings	Parks & Cemetery, Appeals Board, Airport, Historical Preservation, Solid Waste District, and Youth Council -
Darin Larson	Planning Commission, Economic Development, Planning Department, Power, and Swimming Pool -
Joseph Prete	Court, Water, Recreation, Tree Board, and Beautification Committee -
Dave Sanders	Emergency Management, Streets & Drainage, Prosecutor's Office, Code Enforcement, and Building and Inspections – asked if impact fees could be reviewed.
Kevin Tervort	Ash Creek Special Service District, Golf Course, Industrial Park, Mosquito Abatement, Fire District -
Kaden DeMille	City Administration – asked about PID. Not until it is certified.

11. Consideration and possible decisions regarding economic impacts to the City

Councilman Larson thinks bonuses are a morale booster, but a wage increase will eliminate future issues with competing cities. Councilwoman Billings stated that while the budget is open, the Council should consider hiring an assistant for Kaden DeMille, a Human Resource Director, and a full-time City Attorney. Mr. DeMille explained that there had been many changes in the administration office, and he would like more time to gauge these changes before hiring a Human Resource Director. He agrees that an assistant will be helpful. Councilman Larson feels it is important to hire a Human Resource Director, and he would like that to be considered in the next fiscal year.

Darin Larson motioned to approve a wage increase of two percent allocated per department in January plus a bonus of three hundred fifty dollars for full-time employees and a one-hundred-dollar bonus for part-time employees. Seconded by Dave Sanders. Kevin Tervort, Joseph Prete, Darin Larson, Dave Sanders, and Nanette Billings, voting aye. Motion carried unanimously.

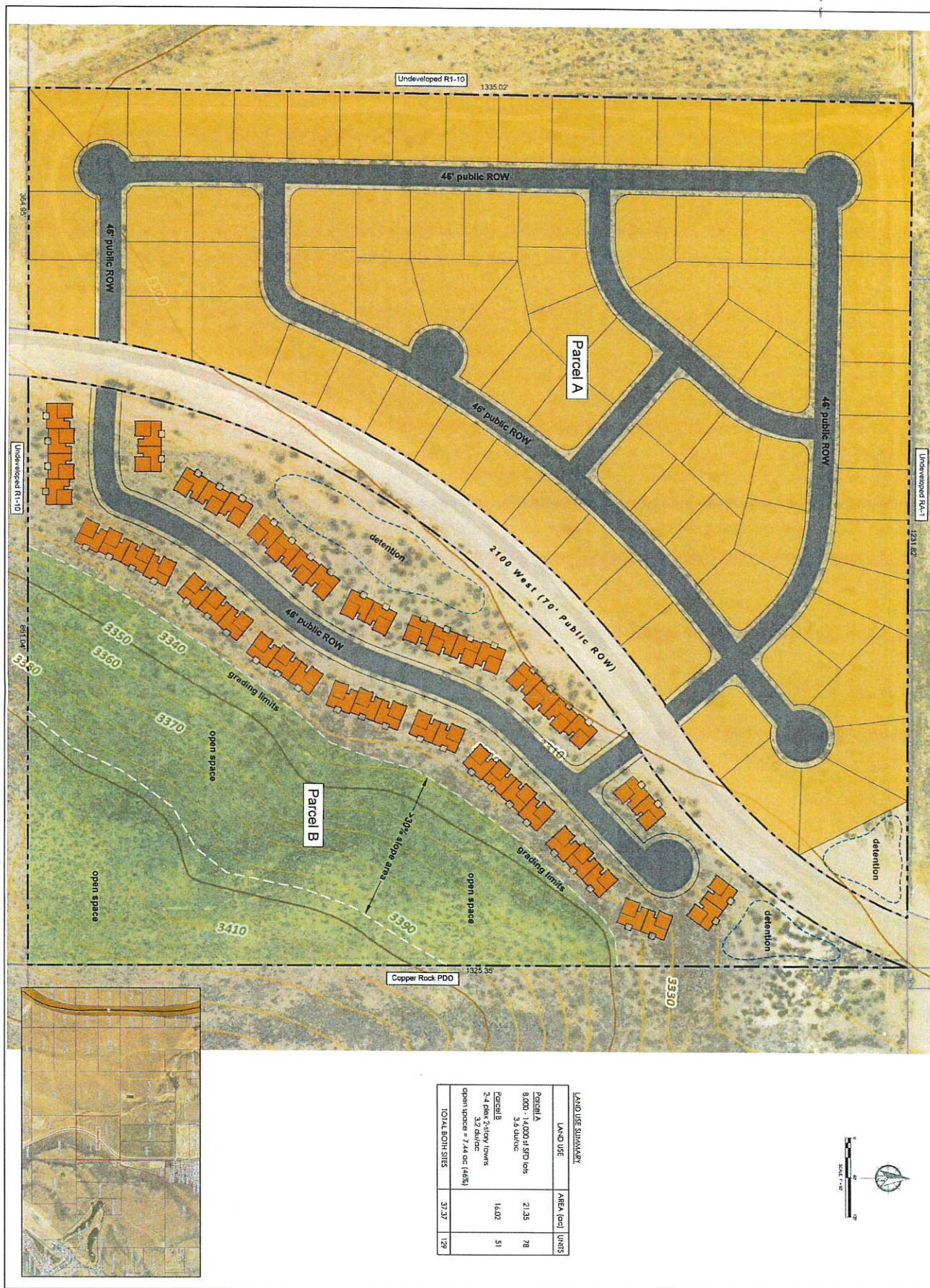
Closed Session:

Nanette Billings motioned to go into a closed session. Seconded by Dave Sanders. Kevin Tervort, Joseph Prete, Darin Larson, Dave Sanders, and Nanette Billings, voting aye. Motion carried unanimously.

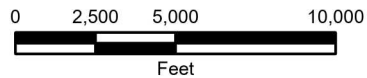
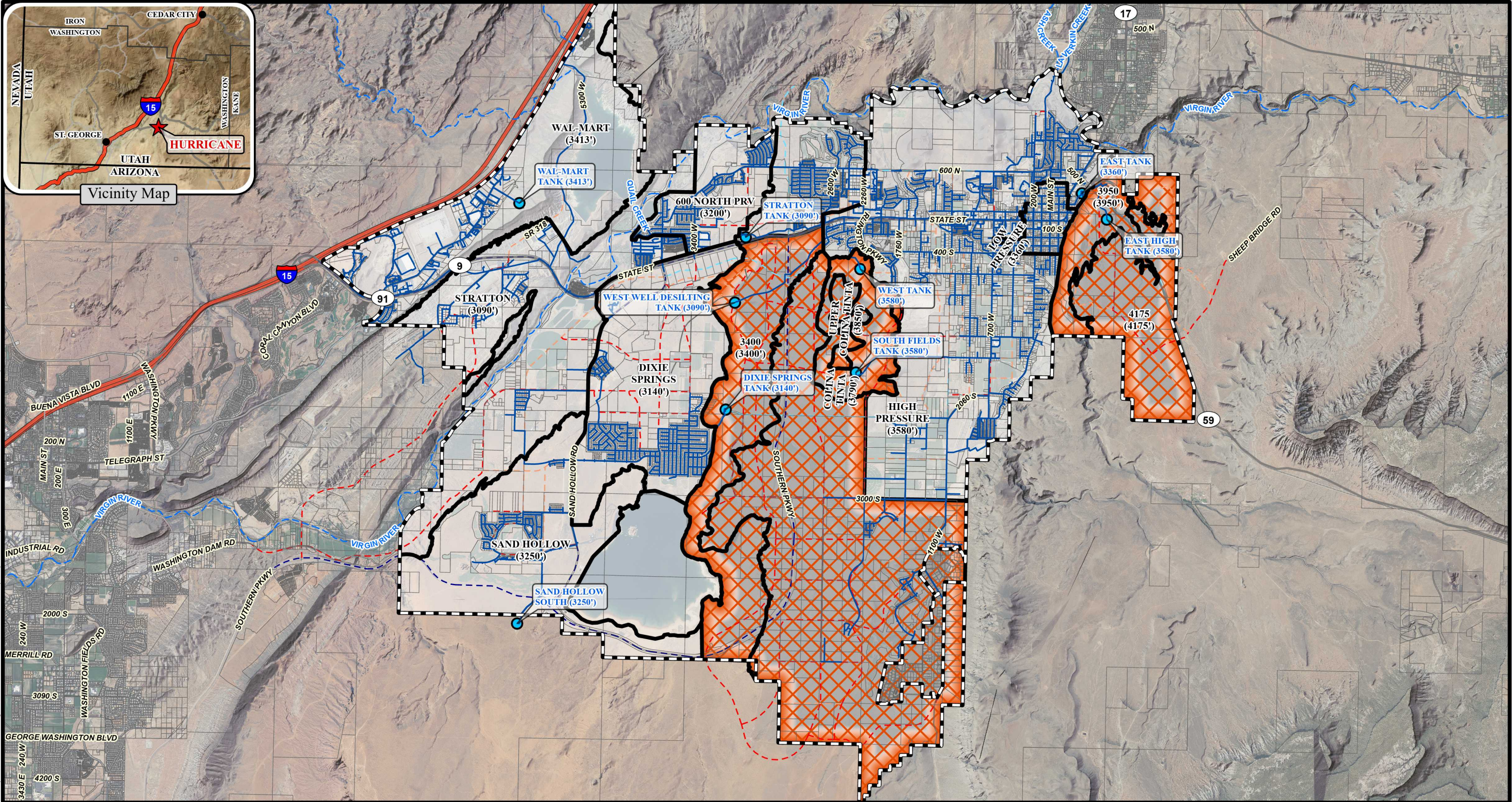
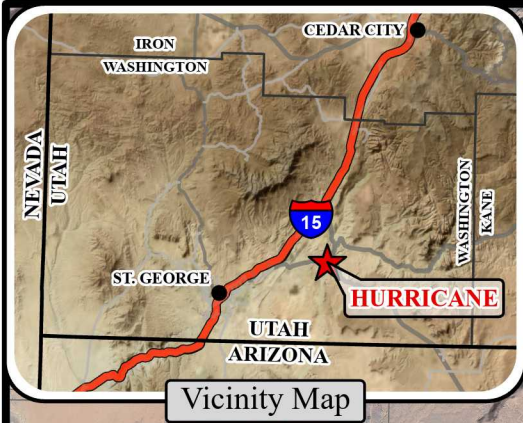
Adjournment: 8:42 p.m.

EXHIBIT C

Preliminary Site Plan



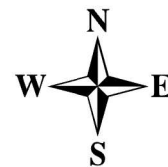
A EXHIBIT	Spendlove 37 ac. Parcel		PRELIMINARY SITE PLAN REVIEW	Conceptual Land Use Plan		
	DATE: 07/15/2021	APPROVED BY:		APN: H-3386-B Hurricane, UT		
	DRAWN BY: BW	PERSON/DATE:				
	CHECKED BY: TM					



Legend

- Hurricane Municipal Boundary
- Washington County Parcels
- Pressure Zone Boundaries
- Approximate Extent of Limit Culinary Distribution
- Existing Culinary Water

- Existing Tank
- Master Planned Roads
 - Major Arterial (106' ROW)
 - Minor Arterial (90' ROW)
 - Major Collector (70' ROW)
 - Minor Collector (60' ROW)



1 of 1

Approximate Areas of Limited Distribution Capacity

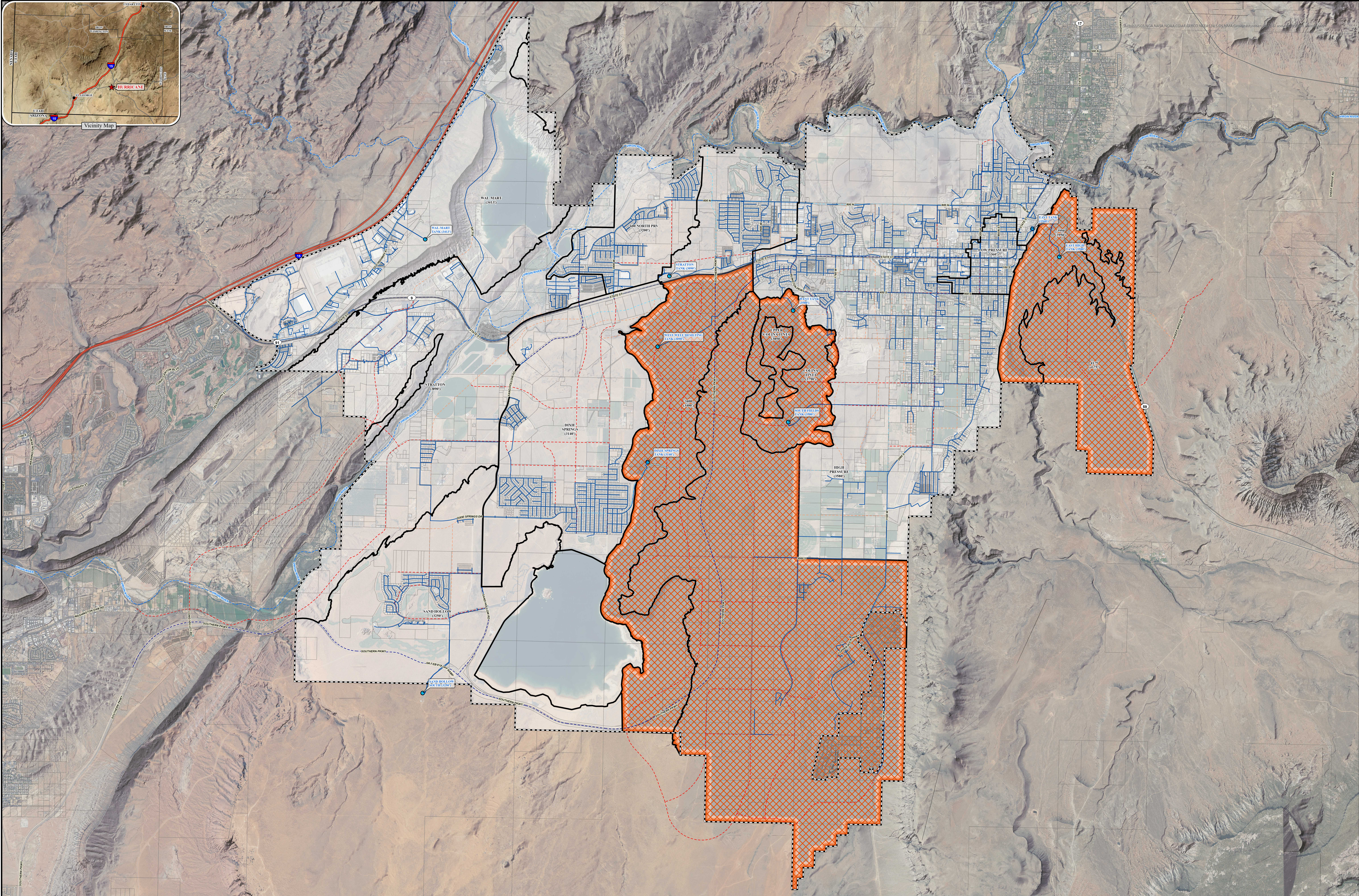
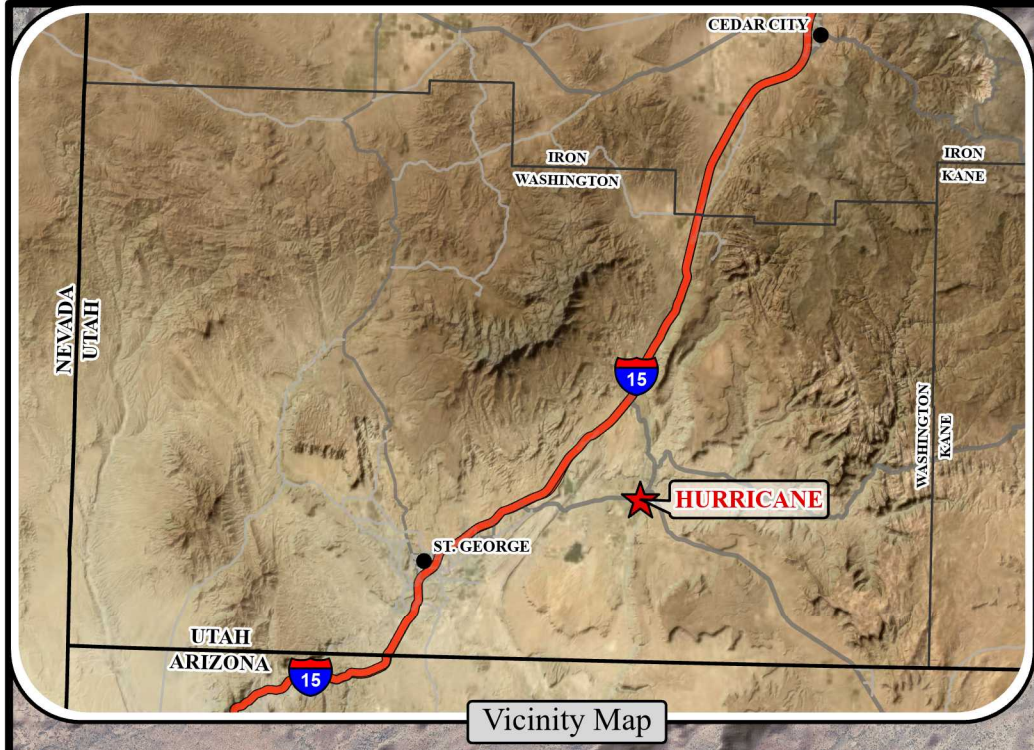
Hurricane, Utah

Spatial Reference: Utah State Plane NAD 83, feet

Drawn By: JRH

Scale: 1" = 6,000 feet

Date: October 2022



0 1,000 2,000 4,000
Feet

ALPHA ENGINEERING
43 South 100 East, Suite 100 • St. George, Utah 84770
T: 435.628.6500 • F: 435.628.6553 • alphaengineering.com

Legend

- Hurricane Municipal Boundary
- Washington County Parcels
- Pressure Zone Boundaries
- Approximate Extent of Limit Culinary Distribution
- Existing Culinary Water
- Existing Tank
- Master Planned Roads
 - Major Arterial (106' ROW)
 - Minor Arterial (90' ROW)
 - Major Collector (70' ROW)
 - Minor Collector (60' ROW)

1 of 1

**Approximate Areas of Limited Distribution Capacity
Hurricane, Utah**

Spatial Reference: Utah State Plane NAD 83, feet

Drawn By: JRH

Scale: 1" = 2,000 feet

Date: October 2022



STAFF COMMENTS

Agenda Date:	11/17/2022
Application Number:	2022-PP-26
Type of Application:	Preliminary Plat Application
Action Type:	Administrative
Applicant:	Desert Sky Estates
Agent:	Ben Willits and Tony Carter
Request:	Approval of a Preliminary Plat
Location:	South of 2100 W and 3000 S
Zoning:	R1-8 PDO ¹
General Plan Map:	Planned Community

Planning Commission Recommendation

The Planning Commission recommended denying the preliminary plat because of limited facilities in area, namely limited power and water.

Discussion: The applicant is proposing a 73 lot single family subdivision located along 2100 West. The zone change for this property was approved in 2021 under the name “Spendlove 37 PDO” conditioned on a development agreement being signed that limits their unit count and ability to move forward until utilities are available to the site. This development agreement has been recently signed by the applicant and recorded with the county recorder on September 23, 2022.

¹ The Zone Map shows this as property as R1-10. This is an error per the November 18, 2021, Hurricane City Council minutes

construction application and meet with the power department before proceeding to JUC. Overhead powerline on 2100 West will need to be upgraded and moved to the west side of the road at developers' cost. Necessary easements must be obtained by the developer.

Sewer: Sewer is in 2100 West and will need to be stubbed to the next property over on the southern roadway.

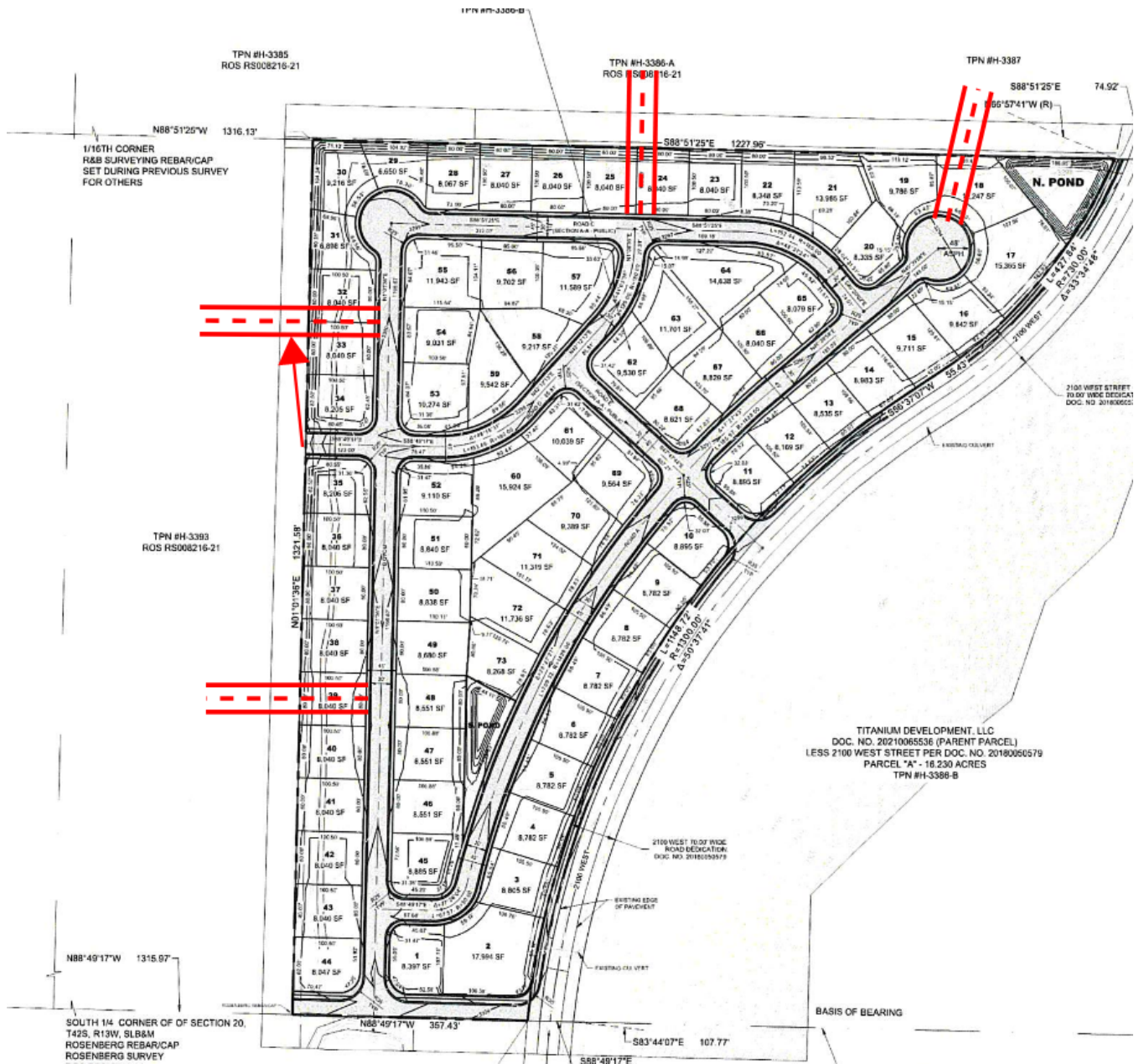
Engineering: Where will the proposed basin outlet to? An open storm drain channel is shown crossing the property on page 36 of the Hurricane Storm Drain Master Plan. It appears stormwater is semi-channelised by existing conditions near the property's southwest corner. 2100 W is a planned 77' ROW with a 12' trail on the west side. It appears the developer will need to transfer an additional 7' wide strip along 2100 W to the City after providing curb, gutter and trail improvements. Full movement intersections on 2100 W and the other master planned road (3500 S?) must be separated 250' or offset 200' minimum. Stormwater from existing culverts must be conveyed to the next logical outfall. Southern roadway is a master planned major collector with a 12' sidepath on both sides. Storm drain between lots should be protected by a public ROW or common area. It appears the proposed road network is inconsistent with design standards 3.2.4.2.E and 3.2.4.2.F. A roadway should be stubbed to the northern property.

Streets: Improvements on 2100 West. Are detention ponds sufficient for this size of development?

Fire: Need second access.

Staff Comments: Preliminary Plat

1. **Density:** The applicant is proposing 73 units over 21.087 acres for a density of 3.46 units per acre. The development agreement guarantees a total of 129 units for the development. This will leave a total of 56 units remaining, which is planned to be townhomes located to the east of 2100 West.
2. **Connectivity:** Hurricane City Code states:
 - a. *Sec. 10-39-11. - Subdivision streets and fencing.*
 - b. *Relation to adjoining street systems.*
 - i. *The arrangements of streets in new subdivisions shall make provision for the continuation of the existing streets to adjoining areas insofar as such may be deemed necessary by the Planning Commission for public requirements. New streets within subdivisions shall not preclude future access to adjoining properties.*
 - c. Staff recommends the Planning Commission require additional roadway connections to the property to the west and any connection to the property to the north. Where there are no proposed developments to the north or west, putting in appropriate and well-spaced street connections is vital for future development in this area. Engineering has provided an example of possible alignments that comply with block length below.
 - d. The block length on Road B and Road A appears to be over 800'. The block length on Road A may be acceptable to Engineering to limit access on 2100 W.



3. **Second access:** The requirement for developments to have a second access if they have more than 30 units is adjudicated by the Hurricane Valley Fire District. The plan shows all of the property's access being off 2100 W. At this time there are almost no other roadways in the area. Cordero has put in 2600 W up to 3000 S for their fire access and this may be usable for this development as well and needs additional review by the fire marshal.
4. Hurricane City Code 10-37-4 states:
 - a. *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.

- b. The Power Department has indicated that there is no more power capacity for additional units in this area in light of other developments that have already obtained signed construction drawings. There is also a question regarding the sufficiency of water in the area.
5. Will serve letters have been provided from the culinary and sanitary water providers
6. A note has not been added to the plat indicating whether the property is in a tortoise take area
7. The Development Agreement governing the property includes the following language:
 - a. Developer understands, acknowledges and specifically agrees that: (a) power, water, and other utility services to the Property are not currently available and have not been extended to the Property, (b) the granting of this zone change does not in any way guarantee or warrant the availability and extension of power and water utility services to the Property, (c) **no application** for any permit **requiring the availability or extension of power or water service**, and no other request requiring the availability and extension of power or water services, **shall be filed or made until such time that such services are available and have been extended to the Property**, and (d) Developer assumes all risk and liability associated with any development activity on the Property, including but not limited to all costs incurred for engineering, feasibility studies, etc., in the event that such services do not become available and are not extended to the Property.
 - b. Adequate Public Facilities. The City may deny any land use application for any development on the Property, including but not limited to preliminary plats, building permits, zone changes, and preliminary site plans by finding that utilities and roadways are (1) inadequate to support the proposed development or (2) services are not in the vicinity of the proposed application. The City may consider approval of a project if the applicant can show that current utility and roadway systems are adequate to meet the demand for the project and the applicant can provide a plan on how to reasonably connect utilities and roadways to the proposed development according to Hurricane City standards.

The development agreement prohibits the filing of an application that requires the availability power until the services are available.

Recommendation: Staff recommends the City Council review this application based on standards within the Hurricane City Code and the terms listed within the Development Agreement. Staff recommends that the application for a preliminary plat be denied for the reasons listed in this report, including:

1. Lack of required second access.
2. Lack of adequate public facilities and infrastructure, including power capacity.
3. Failure to comply with the terms of the development agreement governing the development of this property.
4. Failure to provide connectivity to adjoining properties.
5. Failure to comply with 800' maximum block length requirement.



STAFF COMMENTS

2022-ZC-36: Consideration and possible approval on a **Zone Change Amendment request located at the first bend headed south on Sand Hollow Road** to alter the zoning boundaries between RR, recreation resort, and RM-3, multifamily 15 units per acre, to align with the new road, Resort Drive, as well as RR, recreation resort, and GC, general commercial, to allow for the realignment of Sand Hollow Road.

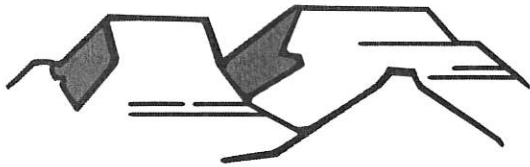
Discussion:

Findings:

Recommendation:

Attachments:

1. Gateway To Sand Hollow ZC App
2. 2022-ZC-36 GATEWAY TO SAND HOLLOW REPORT
3. 336-005 PID 3 ZONE CHANGE MA 10-13 P-ZONE MAP (2)
4. Copy of Copy of Elim Valley 12-5-2019
5. 336-004 PID SAND HOLLOW ROAD-Model UPDATED ROUNDABOUT



PLANNING & ZONING
HURRICANE CITY
UTAH

147 N 870 W Hurricane UT
PHONE: 435.635.2811 FAX: 435.635.2184

ZONE CHANGE APPLICATION

For office use only: \$500.00 Fee

File No. 2022-2C-36

Receipt No. 8162447

Name: SEE ATTACHED SHEET Telephone: _____

Address: SEE ATTACHED SHEET Fax No. _____

Email: _____ Agent Email: enhancedhomesofutah@gmail.com

Agent (If Applicable): BRENT MOSER Telephone: 801-793-0346

Address/Location of Subject Property: Located on the south half of section 1 T42S R14W

Tax ID of Subject Property: SEE ATTACHED SHEET Existing Zone District: SEE ATTACHED SHEET

Proposed Zoning District and reason for the request (Describe, use extra sheet if necessary) SEE ATTACHED SHEET

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 11 x 17-inch 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 wastewater 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.

<u>NAME & ADDRESS</u>	<u>TAX ID OF SUBJECT PROPERTY</u>	<u>CURRENT ZONE</u>	<u>PROPOSED ZONING</u>
WESTERN MTG & REALTY CO 6610 W COURT ST PASCO, WA 99301	PARCELS: H-4-2-1-1112-GS1 H-4-2-1-1111-GS1	RR, RM-3, R1-6 RM-3	Readjust lot lines to proposed property lines.
SH GATEWAY 2 LLC 3351 S SAND HOLLOW RD HURRICANE, UT 84737	PARCEL: H-4-2-1-235-GS1	RM-3	Readjust lot lines to proposed property lines.
SH GATEWAY 2 LLC, LARSON THOMAS GUY & SUEANN 3351 S SAND HOLLOW RD HURRICANE, UT 84737	PARCEL: H-4-2-1-236-GS1	RR	Readjust lot lines to proposed property lines.
GATEWAY RESORT AT SAND HOLLOW LLC 2572 W 280 N HURRICANE, UT 84737	PARCEL: 4-2-1-234-GS1	RR	Readjust lot lines to proposed property lines.
SMF EASEMENT LLC 3051 W MAPLE LOOP DR #325 LEHI, UT 84043	PARCEL: H-4-2-1-1108-GS1	RR	Readjust lot lines to proposed property lines.

AFFIDAVIT
PROPERTY OWNER

STATE OF UTAH)

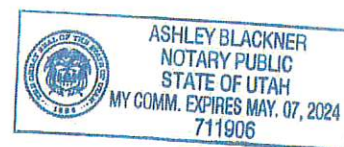
COUNTY OF Washington :ss

I (we), Western Mortgage + Realty Company, 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] Vice President
(Property Owner)

Subscribed and sworn to me this 13th day of May 2024.
[Signature]
(Notary Public)

Residing in: Hurricane, UT
My Commission Expires: 5/7/2024



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: _____

AFFIDAVIT
PROPERTY OWNER

STATE OF UTAH)

:SS

COUNTY OF)

I (we), Anthony M. Larson 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.

Anthony M. Larson
(Property Owner)

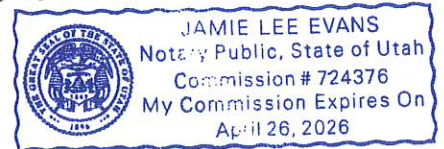
Gateway Resort at Sand Hollow
(Property Owner)

Subscribed and sworn to me this 27th day of September 2022.

Jamie C.
(Notary Public)

Residing in: St George, Utah

My Commission Expires: 04/26/26



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: _____

AFFIDAVIT
PROPERTY OWNER

STATE OF UTAH)

:SS

COUNTY OF)

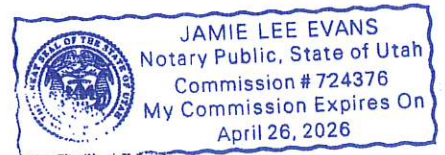
I (we), Anthony M Larson, being duly sworn, depose and say that I (we) am (are) the owner(s) of the property identified in the attached application and that the statements herein contained and the information provided identified in the attached plans and other exhibits are in all respects true and correct 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.

Anthony M Larson
(Property Owner)

SH Gateway LLC
(Property Owner)

Subscribed and sworn to me this 27th day of September 2022

Jamie A
(Notary Public)



Residing in: St George, Utah

My Commission Expires: 04/26/24

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: _____

AFFIDAVIT
PROPERTY OWNER

STATE OF UTAH)

:SS

COUNTY OF)

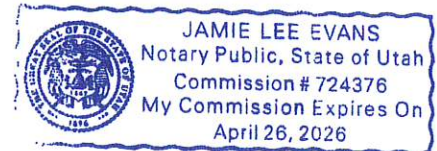
I (we), Anthony M. Larson, being duly sworn, depose and say that I (we) am (are) the owner(s) of the property identified in the attached application and that the statements herein contained and the information provided identified in the attached plans and other exhibits are in all respects true and correct 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.

Anthony M. Larson
(Property Owner)

SMF Fascinant
(Property Owner)

Subscribed and sworn to me this 27th day of September 2022

Jamie C
(Notary Public)



Residing in: St George, Utah

My Commission Expires: 04/26/26

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: _____



STAFF COMMENTS

Agenda Date:	11/17/2022
Application Number:	2022-ZC-36
Type of Application:	Zone Change
Action Type:	Legislative
Applicant:	
Agent:	Brent Moser
Request:	A Zone Change Request from General Commercial (GC) and RM-3 to Recreation Resort (RR)
Location:	Approximately Sand Hollow Road and West of 3700 W.
Zoning:	GC, RM-3 and RR
General Plan Map:	Planned Community

Planning Commission Recommendation

The Planning Commission recommended denying the application but also recommended that the City Council consider realigning 10 acres to RM-3 to the southern boundary to keep the RR the same density but allow for useable RM-3 area.

Discussion:

The applicant is seeking a zone change to align the zone boundaries with the proposed master planned roadways (Resort Blvd and Sand Hollow Road) adjacent to the proposed Gateway Resort. The request would expand the resort zoning about 6.77 acres to the west and 3.79 acre to the north, a total of 10.56 acres. This area was part of the Elim Valley Master Plan Community, and the the zoning was assigned as part of dissolving of the old Development Agreement. The Total Recreation Resort area that was assigned was 59 acres for this area as part of that agreement.

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 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 whole area's zoning was negotiated by the City and the property owners to decided zoning. The area was planned with a mixture of commercial and multiple residential zones. At the time, the City selected two main areas for resort zoning, this area and one to southwest along Sand Hollow Road.

2. Is the proposed amendment harmonious with the overall character of existing development in the subject property's vicinity?

Response: There are currently 59 acres of resort, with RM-3 (15 units an acre of long term residential) and commercial areas surrounding this proposed expansion.

3. Will the proposed amendment affect the adjacent property?

Response: The expansion of the resort will have an impact, and could lead to an additional 158 units at max density (15 units an acre). The preliminary plat that has been submitted dose not show a full density usage of the property, but closer to around 13 units an acre. 6.77 acres of the proposed zone change would be from RM-3 which also allows 15 units an acre. However, resort units tend to have a higher impact in usage and traffic when occupied.

4. Are public facilities and services adequate to serve the subject property?

Response: This development is highly reliant on the Sand Hollow Gateway PID for services, utilities, and roadways to be brought to the development. The City has approved several sets of construction drawing for master plan roadways, but are still working with the PID about Sand Hollow Roadway.

Recreation Resort Zone Change Consideration

Hurricane City Code now requires that the City consider an additional five factors when considering the zoning for a Recreation Resort Zoning Application

Recreation resort zoning shall contain a minimum of five acres.

B. In addition to the items required by [section 10-7-7](#), the City shall consider the following criteria in assessing any zone change application.

1. General plan map. Recreation resort zoning shall be located in commercial, planned community, mixed use, or multi-family areas as labeled by the general plan map.

Response: The location is within Planned Community.

2. Recreation resort zoning shall avoid clustering in a single location, and should be limited in size relative to the commercial or multi-family zoned area. Only in rare cases should a recreation resort zone exceed 20 acres.

Response: The site is currently well over the 20 acre in size, is about the same size of the multi-family and commercially zone areas around the project. With this zone change application, the total area would equal about 70 acres.

3. Recreation resort zoning should only be located adjacent to major collectors, minor arterials, or major arterial roads.

Response: The resort area is adjacent to master planned roadway system, namely Sand Hollow Road and 3700 W, and near a future interchange with SR-9.

4. Recreation resort zoning should help add to the commercial viability of an area within commercial areas listed in the general plan map. It may do this by adding commercial amenities, tourism, or renewed development of an area.

Response: The development of this resort would likely help facilitate additional commercial growth in the area. There is a total of 253 acres of commercial use to the north of the project, and several future commercial areas to the south along Sand Hollow Road.

5. Recreation resort zoning should not conflict with long term housing and moderate income housing needs of an area. Recreation resort zoning should not be located in places where multi-family housing could be built that would have easy access to public amenities and services, such as schools, parks, and utilities.

Response: The applicant is proposing to lessen the RM-3 zoning to the west by 6.77 acres. This would be limited the area of potential long term housing options that would likely be more affordable than other housing in the area.

JUC Comments

1. **Public Works:** Consider relocation of Sand Hollow Road
2. **Power:** "Okay"
3. **Water:** No Comments
4. **Streets:** No Issues with Zone Change
5. **Sewer:** No comments on Zone Change
6. **Engineering:** It appears the alignment of Sand Hollow Road with Sand Hollow Road East will effect the north zone change boundary. The zone boundary hasn't been described. County Reports H-4-2-1-235-GS1 is .094 acres. The account for H-4-2-1-1111-GS1 specifies the parcel

is 105.28 acres. It appears parcel #h-4-2-1-111-GSI is used to identify six (b) differnd parcels of land. County reports H-4-2-1-234-GS1 is 40.20 acres.

7. **Fire:** No Comments
8. **Gas/Cable/Water Conservancy:** No concerns.

Other Considerations:

The City has a several resort areas that have gained approval within the City in one form or another. This has lead to around of 5,214 approved resort units. The City has recently adopted changes to the Recreation Resort Zoning to slow the expansion of resorts within the City. Resorts and Short Term Rental units do have some benefits to the City by providing economic development opportunities, increased tax revenues (both in property, hospitality, and sales tax), and tourism within the City. However, these also come at the cost of additional impact to City services, limiting the supply of long-term housing, change in the type of community character, and increased traffic and uses of public areas in and around the City. The City should take an expansion of Recreation Resorts seriously.

Staff would also recommend that the City take into consideration the layout of the proposed roadways. Staff believes that having a mixture of long-term housing and short-term housing is not ideal as it would be difficult to enforce where the boundaries are.

Staff believes it is worth considering what the City required of the Elim Valley Zone Change to the west of the project. That applicant requested adjusting their RM-3 zoning boundaries to align with the roadways, which would overall expand the RM-3 area. The City adjusted the zone boundary to match the roadways but required a development agreement to hold the applicant at the original density of the approved zone map as part of the Elim Valley dissolvment. This would be a total of 885 units for the original 59 acres. An action like this may be appropriate for this application.

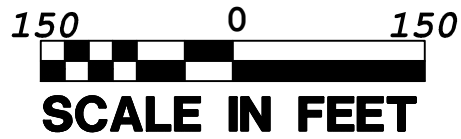
Findings

Staff makes the following findings:

1. The proposed amendment is generally compatible with the current General Plan's map with the area designated as Planned Community.
2. The proposed amendment is generally in harmony with the overall character of the existing development around it.
3. The proposed amendment will have an impact on the area
4. Services are currently not fully available, but there are approved construction drawings and plans that are being worked on that would provide services to the property through the Sand Hollow Gateway PID.
5. Site already exceeds 20 acres, the max recommended by Hurricane City Code. The proposal would provided additional 10.56 acres of resort zoning.
6. The resort would likely have a positive effect on the commercial property around the area, however a few acres of General Commercial zoning would be lost, but mostly from the realignment of Sand Hollow Road.
7. The expansion of the resort zoning is exchanging some property from RM-3 to RR, which would limit some of the possible long term housing units.

Recommendation: Staff recommends the Planning Commission review this application and the zone change based on standards and considers residents' comments. Staff generally does not support the large expansion of RR Zoning and that RR Zoning should be limited in size and scope. Staff would also encourage the City Council to consider the recommendation of the Planning Commission.

**LOCATED ON SAND HOLLOW RD, HURRICANE
WASHINGTON COUNTY, UTAH**



LEGAL DESCRIPTION PARCEL # H-4-2-1-1111-GS1

LEGAL DESCRIPTION PARCEL # H-4-2-1-234-GS1

AREA CONTAINS 3241259 SQUARE FEET OR 74.409 ACRES.

THIS ZONE ADJUSTMENT ALTERS THE ZONE BETWEEN RR AND RM-3 TO ALIGN WITH THE NEW ROAD, RESORT DRIVE. THE NEW ROADWAY PLANNED TO MEET WITH EXISTING UTILITIES AT SAND HOLLOW ROAD.

ZONE CHANGE MAP

SHEET NO.

3 NO.

ALE: 1' = 150'

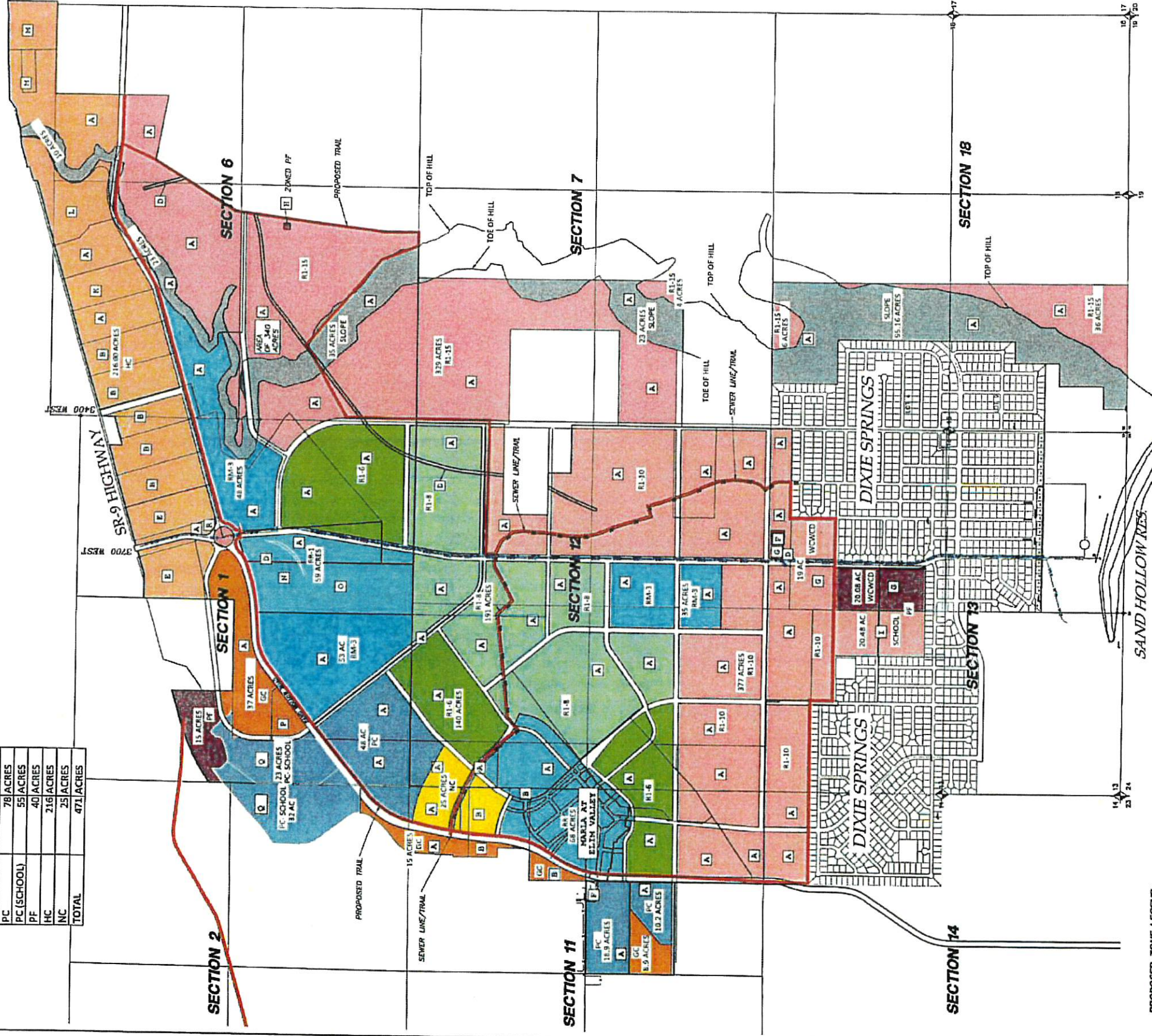
20 South 850 West, Suite 1
Hurricane City, Utah 84737
Phone: (435) 668-8307

COPYRIGHT © 2013 PROVALUE ENGINEERING INC.

DENSITY CALCULATION:

ZONE	ACRES	UNITS
RR-1	59	885
RR-MARLA	68	387
RM-3	139	2085
R1-6	140	813
R1-8	191	832
R1-10	363	1265
R1-15	375	870
TOTAL	1335	7137
GC	57	ACRES
PC	78	ACRES
PC (SCHOOL)	55	ACRES
PF	40	ACRES
HC	216	ACRES
NC	25	ACRES
TOTAL	471	ACRES

ZONE CHANGE MAP FOR:
ELIM VALLEY
LOCATED ON SAND HOLLOW RD, HURRICANE
WASHINGTON COUNTY, UTAH

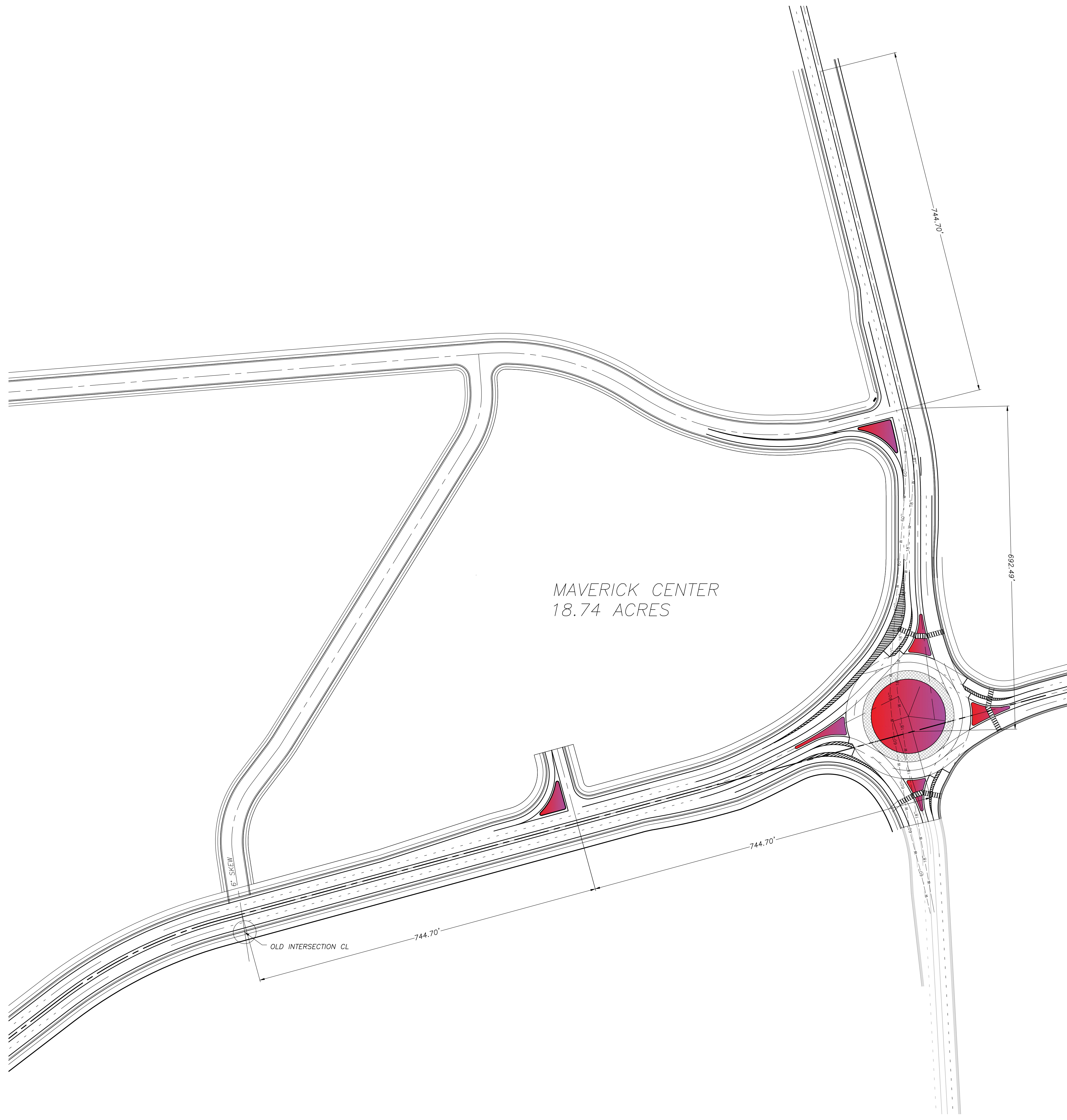


PROPOSED ZONE LEGEND:

RR	RECREATIONAL RESORT ZONE
OS	OPEN SPACE
R1-15	RESIDENTIAL - 1 UNIT PER 15,000 SQ. FT.
R1-10	RESIDENTIAL - 1 UNIT PER 10,000 SQ. FT.
R1-8	RESIDENTIAL - 1 UNIT PER 8,000 SQ. FT.
R1-6	RESIDENTIAL - 1 UNIT PER 6,000 SQ. FT.
RM-3	MULTI-FAMILY - 15 UNITS PER ACRE
GC	GENERAL COMMERCIAL
NC	NEIGHBORHOOD COMMERCIAL
HC	HIGHWAY COMMERCIAL
M-1	PLANNED INDUSTRIAL
PC	PUBLIC FACILITY (SCHOOL) W/ R1-10 ZONING
PF	PUBLIC FACILITY (SCHOOL) W/ R1-10 ZONING
WVCD/DINE REA/HURRICANE CITY (PUBLIC FACILITIES)	
PROPOSED TRAIL	

OWNERS LEGEND:

WESTERN MORTGAGE & REALTY CO. PARCELS:
H-4-2-1-1103
H-4-2-1-1104
H-4-2-1-1105
H-4-2-1-1106
H-4-2-1-1107
H-4-2-1-1108
H-4-2-1-1109
H-4-2-1-1110
H-4-2-1-1111
H-4-2-1-1112
H-4-2-1-1113
H-4-2-1-1114
H-4-2-1-1115
H-4-2-1-1116
H-4-2-1-1117
H-4-2-1-1118
H-4-2-1-1119
H-4-2-1-1120
H-4-2-1-1121
H-4-2-1-1122
H-4-2-1-1123
H-4-2-1-1124
H-4-2-1-1125
H-4-2-1-1126
H-4-2-1-1127
H-4-2-1-1128
H-4-2-1-1129
H-4-2-1-1130
H-4-2-1-1131
H-4-2-1-1132
H-4-2-1-1133
H-4-2-1-1134
H-4-2-1-1135
H-4-2-1-1136
H-4-2-1-1137
H-4-2-1-1138
H-4-2-1-1139
H-4-2-1-1140
H-4-2-1-1141
H-4-2-1-1142
H-4-2-1-1143
H-4-2-1-1144
H-4-2-1-1145
H-4-2-1-1146
H-4-2-1-1147
H-4-2-1-1148
H-4-2-1-1149
H-4-2-1-1150
H-4-2-1-1151
H-4-2-1-1152
H-4-2-1-1153
H-4-2-1-1154
H-4-2-1-1155
H-4-2-1-1156
H-4-2-1-1157
H-4-2-1-1158
H-4-2-1-1159
H-4-2-1-1160
H-4-2-1-1161
H-4-2-1-1162
H-4-2-1-1163
H-4-2-1-1164
H-4-2-1-1165
H-4-2-1-1166
H-4-2-1-1167
H-4-2-1-1168
H-4-2-1-1169
H-4-2-1-1170
H-4-2-1-1171
H-4-2-1-1172
H-4-2-1-1173
H-4-2-1-1174
H-4-2-1-1175
H-4-2-1-1176
H-4-2-1-1177
H-4-2-1-1178
H-4-2-1-1179
H-4-2-1-1180
H-4-2-1-1181
H-4-2-1-1182
H-4-2-1-1183
H-4-2-1-1184
H-4-2-1-1185
H-4-2-1-1186
H-4-2-1-1187
H-4-2-1-1188
H-4-2-1-1189
H-4-2-1-1190
H-4-2-1-1191
H-4-2-1-1192
H-4-2-1-1193
H-4-2-1-1194
H-4-2-1-1195
H-4-2-1-1196
H-4-2-1-1197
H-4-2-1-1198
H-4-2-1-1199
H-4-2-1-1200
H-4-2-1-1201
H-4-2-1-1202
H-4-2-1-1203
H-4-2-1-1204
H-4-2-1-1205
H-4-2-1-1206
H-4-2-1-1207
H-4-2-1-1208
H-4-2-1-1209
H-4-2-1-1210
H-4-2-1-1211
H-4-2-1-1212
H-4-2-1-1213
H-4-2-1-1214
H-4-2-1-1215
H-4-2-1-1216
H-4-2-1-1217
H-4-2-1-1218
H-4-2-1-1219
H-4-2-1-1220
H-4-2-1-1221
H-4-2-1-1222
H-4-2-1-1223
H-4-2-1-1224
H-4-2-1-1225
H-4-2-1-1226
H-4-2-1-1227
H-4-2-1-1228
H-4-2-1-1229
H-4-2-1-1230
H-4-2-1-1231
H-4-2-1-1232
H-4-2-1-1233
H-4-2-1-1234
H-4-2-1-1235
H-4-2-1-1236
H-4-2-1-1237
H-4-2-1-1238
H-4-2-1-1239
H-4-2-1-1240
H-4-2-1-1241
H-4-2-1-1242
H-4-2-1-1243
H-4-2-1-1244
H-4-2-1-1245
H-4-2-1-1246
H-4-2-1-1247
H-4-2-1-1248
H-4-2-1-1249
H-4-2-1-1250
H-4-2-1-1251
H-4-2-1-1252
H-4-2-1-1253
H-4-2-1-1254
H-4-2-1-1255
H-4-2-1-1256
H-4-2-1-1257
H-4-2-1-1258
H-4-2-1-1259
H-4-2-1-1260
H-4-2-1-1261
H-4-2-1-1262
H-4-2-1-1263
H-4-2-1-1264
H-4-2-1-1265
H-4-2-1-1266
H-4-2-1-1267
H-4-2-1-1268
H-4-2-1-1269
H-4-2-1-1270
H-4-2-1-1271
H-4-2-1-1272
H-4-2-1-1273
H-4-2-1-1274
H-4-2-1-1275
H-4-2-1-1276
H-4-2-1-1277
H-4-2-1-1278
H-4-2-1-1279
H-4-2-1-1280
H-4-2-1-1281
H-4-2-1-1282
H-4-2-1-1283
H-4-2-1-1284
H-4-2-1-1285
H-4-2-1-1286
H-4-2-1-1287
H-4-2-1-1288
H-4-2-1-1289
H-4-2-1-1290
H-4-2-1-1291
H-4-2-1-1292
H-4-2-1-1293
H-4-2-1-1294
H-4-2-1-1295
H-4-2-1-1296
H-4-2-1-1297
H-4-2-1-1298
H-4-2-1-1299
H-4-2-1-1300
H-4-2-1-1301
H-4-2-1-1302
H-4-2-1-1303
H-4-2-1-1304
H-4-2-1-1305
H-4-2-1-1306
H-4-2-1-1307
H-4-2-1-1308
H-4-2-1-1309
H-4-2-1-1310
H-4-2-1-1311
H-4-2-1-1312
H-4-2-1-1313
H-4-2-1-1314
H-4-2-1-1315
H-4-2-1-1316
H-4-2-1-1317
H-4-2-1-1318
H-4-2-1-1319
H-4-2-1-1320
H-4-2-1-1321
H-4-2-1-1322
H-4-2-1-1323
H-4-2-1-1324
H-4-2-1-1325
H-4-2-1-1326
H-4-2-1-1327
H-4-2-1-1328
H-4-2-1-1329
H-4-2-1-1330
H-4-2-1-1331
H-4-2-1-1332
H-4-2-1-1333
H-4-2-1-1334
H-4-2-1-1335
H-4-2-1-1336
H-4-2-1-1337
H-4-2-1-1338
H-4-2-1-1339
H-4-2-1-1340
H-4-2-1-1341
H-4-2-1-1342
H-4-2-1-1343
H-4-2-1-1344
H-4-2-1-1345
H-4-2-1-1346
H-4-2-1-1347
H-4-2-1-1348
H-4-2-1-1349
H-4-2-1-1350
H-4-2-1-1351
H-4-2-1-1352
H-4-2-1-1353
H-4-2-1-1354
H-4-2-1-1355
H-4-2-1-1356
H-4-2-1-1357
H-4-2-1-1358
H-4-2-1-1359
H-4-2-1-1360
H-4-2-1-1361
H-4-2-1-1362
H-4-2-1-1363
H-4-2-1-1364
H-4-2-1-1365
H-4-2-1-1366
H-4-2-1-1367
H-4-2-1-1368
H-4-2-1-1369
H-4-2-1-1370
H-4-2-1-1371
H-4-2-1-1372
H-4-2-1-1373
H-4-2-1-1374
H-4-2-1-1375
H-4-2-1-1376
H-4-2-1-1377
H-4-2-1-1378
H-4-2-1-1379
H-4-2-1-1380
H-4-2-1-1381
H-4-2-1-1382
H-4-2-1-1383
H-4-2-1-1384
H-4-2-1-1385
H-4-2-1-1386
H-4-2-1-1387
H-4-2-1-1388
H-4-2-1-1389
H-4-2-1-1390
H-4-2-1-1391
H-4-2-1-1392
H-4-2-1-1393
H-4-2-1-1394
H-4-2-1-1395
H-4-2-1-1396
H-4-2-1-1397
H-4-2-1-1398
H-4-2-1-1399
H-4-2-1-1400
H-4-2-1-1401
H-4-2-1-1402
H-4-2-1-1403
H-4-2-1-1404
H-4-2-1-1405
H-4-2-1-1406
H-4-2-1-1407
H-4-2-1-1408
H-4-2-1-1409
H-4-2-1-1410
H-4-2-1-1411
H-4-2-1-1412
H-4-2-1-1413
H-4-2-1-1414
H-4-2-1-1415
H-4-2-1-1416
H-4-2-1-1417
H-4-2-1-1418
H-4-2-1-1419
H-4-2-1-1420
H-4-2-1-1421
H-4-2-1-1422
H-4-2-1-1423
H-4-2-1-1424
H-4-2-1-1425
H-4-2-1-1426
H-4-2-1-1427
H-4-2-1-1428
H-4-2-1-1429
H-4-2-1-1430
H-4-2-1-1431
H-4-2-1-1432
H-4-2-1-1433
H-4-2-1-1434
H-4-2-1-1435
H-4-2-1-1436
H-4-2-1-1437
H-4-2-1-1438
H-4-2-1-1439
H-4-2-1-1440
H-4-2-1-1441
H-4-2-1-1442
H-4-2-1-1443
H-4-2-1-1444
H-4-2-1-1445
H-4-2-1-1446
H-4-2-1-1447
H-4-2-1-1448
H-4-2-1-1449
H-4-2-1-1450
H-4-2-1-1451
H-4-2-1-1452
H-4-2-1-1453
H-4-2-1-1454
H-4-2-1-1455
H-4-2-1-1456
H-4-2-1-1457
H-4-2-1-1458
H-4-2-1-1459
H-4-2-1-1460
H-4-2-1-1461
H-4-2-1-1462
H-4-2-1-1463
H-4-2-1-1464
H-4-2-1-1465
H-4-2-1-1466
H-4-2-1-1467
H-4-2-1-1468
H-4-2-1-1469
H-4-2-1-1470
H-4-2-1-1471
H-4-2-1-1472
H-4-2-1-1473
H-4-2-1-1474
H-4-2-1-1475
H-4-2-1-1476
H-4-2-1-1477
H-4-2-1-1478
H-4-2-1-1479
H-4-2-1-1480
H-4-2-1-1481
H-4-2-1-1482
H-4-2-1-1483
H-4-2-1-1484
H-4-2-1-1485
H-4-2-1-1486
H-4-2-1-1487
H-4-2-1-1488
H-4-2-1-1489
H-4-2-1-1490
H-4-2-1-1491
H-4-2-1-1492
H-4-2-1-1493
H-4-2-1-1494
H-4-2-1-1495
H-4-2-1-1496
H-4-2-1-1497
H-4-2-1-1498
H-4-2-1-1499
H-4-2-1-1500
H-4-2-1-1501
H-4-2-1-1502
H-4-2-1-1503
H-4-2-1-1504
H-4-2-1-1505
H-4-2-1-1506
H-4-2-1-1507
H-4-2-1-1508
H-4-2-1-1509
H-4-2-1-1510
H-4-2-1-1511
H-4-2-1-1512
H-4-2-1-1513
H-4-2-1-1514
H-4-2-1-1515
H-4-2-1-1516
H-4-2-1-1517
H-4-2-1-1518
H-4-2-1-1519
H-4-2-1-1520
H-4-2-1-1521
H-4-2-1-1522
H-4-2-1-1523
H-4-2-1-1524
H-4-2-1-1525
H-4-2-1-1526
H-4-2-1-1527
H-4-2-1-1528
H-4-2-1-1529
H-4-2-1-1530
H-4-2-1-1531
H-4-2-1-1532
H-4-2-1-1533
H-4-2-1-1534
H-4-2-1-1535
H-4-2-1-1536
H-4-2-1-1537
H-4-2-1-1538
H-4-2-1-1539
H-4-2-1-1540
H-4-2-1-1541
H-4-2-1-1542
H-4-2-1-1543
H-4-2-1-1544
H-4-2-1-1545
H-4-2-1-1546
H-4-2-1-1547
H-4-2-1-1548
H-4-2-1-1549
H-4-2-1-1550
H-4-2-1-1551
H-4-2-1-1552
H-4-2-1-1553
H-4-2-1-1554
H-4-2-1-1555
H-4-2-1-1556
H-4-2-1-1557
H-4-2-1-1558
H-4-2-1-1559
H-4-2-1-1560
H-4-2-1-1561
H-4-2-1-1562
H-4-2-1-1563
H-4-2-1-1564
H-4-2-1-1565
H-4-2-1-1566
H-4-2-1-1567
H-4-2-1-1568
H-4-2-1-1569
H-4-2-1-1570
H-4-2-1-1571
H-4-2-1-1572
H-4-2-1-1573
H-4-2-1-1574
H-4-2-1-1575
H-4-2-1-1576
H-4-2-1-1577
H-4-2-1-1578
H-4-2-1-1579
H-4-2-1-1580
H-4-2-1-1581
H-4-2-1-1582
H-4-2-1-1583
H-4-2-1-1584
H-4-2-1-1585
H-4-2-1-1586
H-4-2-1-1587
H-4-2-1-1588
H-4-2-1-1589
H-4-2-1-1590
H-4-2-1-1591
H-4-2-1-1592
H-4-2-1-1593
H-4-2-1-1594
H-4-2-1-1595
H-4-2-1-1596
H-4-2-1-1597
H-4-2-1-1598
H-4-2-1-1599
H-4-2-1-1600
H-4-2-1-1601
H-4-2-1-1602
H-4-2-1-1603
H-4-2-1-1604
H-4-2-1-1605
H-4-2-1-1606
H-4-2-1-1607
H-4-2-1-1608
H-4-2-1-1609
H-4-2-1-1610
H-4-2-1-1611
H-4-2-1-1612
H-4-2-1-1613
H-4-2-1-1614
H-4-2-1-1615
H-4-2-1-1616
H-4-2-1-1617
H-4-2-1-1618
H-4-2-1-1619
H-4-2-1-1620
H-4-2-1-1621
H-4-2-1-1622
H-4-2-1-1623
H-4-2-1-1624
H-4-2-1-1625
H-4-2-1-1626
H-4-2-1-1627
H-4-2-1-1628
H-4-2-1-1629
H-4-2-1-1630
H-4-2-1-1631
H-4-2-1-1632
H-4-2-1-1633
H-4-2-1-1634
H-4-2-1-1635
H-4-2-1-1636
H-4-2-1-1637
H-4-2-1-1638
H-4-2-1-1639
H-4-2-1-1640
H-4-2-1-1641
H-4-2-1-1642
H-4-2-1-1643
H-4-2-1-1644
H-4-2-1-1645
H-4-2-1-1646
H-4-2-1-1647
H-4-2-1-1648
H-4-2-1-16





STAFF COMMENTS

2022-ZC-37: Consideration and possible approval on a **Zone Change Amendment request located at 677 N State St from M-1, light industrial, to HC, highway commercial.** Myka Desormier Applicant. Dennis Parker Agent.

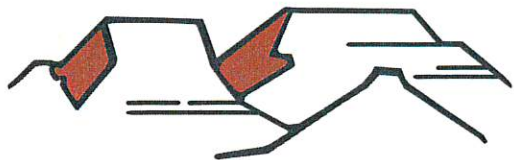
Discussion:

Findings:

Recommendation:

Attachments:

1. Gypsy Emporium ZC App
2. 2022-ZC-37 GYPSY EMPORIUM
3. Gypsy Emporium PSP Plat



PLANNING & ZONING
HURRICANE CITY
UTAH

147 N 870 W Hurricane UT
PHONE: 435.635.2811 FAX: 435.635.2184

ZONE CHANGE APPLICATION

For office use only: \$500.00 Fee
File No. 2022-ZC-37
Receipt No. 8162668

Name: Myka Desormier Telephone: 435-559-0724

Address: 25 E State Street Fax No. _____

Email: uathmercantile@gmail.com Agent Email: _____

Agent (If Applicable): Dennis Parker NorthRock Technology Telephone: 435 467 3391

Address/Location of Subject Property: 677 N State Street

Tax ID of Subject Property: H-316-A-1-B Existing Zone District: M-1

Proposed Zoning District and reason for the request (Describe, use extra sheet if necessary) _____

HC - commercial areas.

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 11 x 17-inch 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: _____

Mapsullivan dawn
Mapsullivan rotate

Gypsy Emporium
25 E State Street
Hurricane, Ut 84737
435-635-0263
gypsyemporiumantiques@gmail.com

instagram:
@gypsyemporiumantiques

Store Hours



Brienna Spencer
HURRICANE CITY Planning Technician
UTAH

Office 435-635-2811 x112
Fax 435-635-2184
brienna@cityofhurricane.com

City of Hurricane
147 N 870 W
Hurricane, Utah 84737
www.cityofhurricane.com

633 N
Main Street
Andrews
435-319-9253

AFFIDAVIT
PROPERTY OWNER

STATE OF UTAH)

COUNTY OF)

:SS

I (we), Myka L Desormier 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.

Myka L Desormier
(Property Owner)

[Signature]
(Property Owner)

Subscribed and sworn to me this 12 day of Sept ~~SEP~~ 2022

[Signature]
(Notary Public)

Residing in: Hurricane Utah

My Commission Expires: July 31, 2023



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: _____

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 wastewater 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.

COBURN JAYDEN TROY
H-313
366 E 600 N
HURRICANE, UT 84737

STOCK JENNIE LYNN & EVELYN MAY
H-316-B-1-A
355 E 600 N
HURRICANE, UT 84737-1727

BALLARD RALPH T & RUTH M TRS
H-315-A-2-N
94 W 650 N
HURRICANE, UT 84737

BALLARD RALPH T & RUTH M TRS
H-314-A-1
94 W 650 N
HURRICANE, UT 84737-1755

SIVILS ALBERT D & KAREN TRS
H-303-A-2-A
565 N STATE ST
HURRICANE, UT 84737

FAWCETT ALBERT LANCE & JILLNITA EVE TRS
H-BDH-23
670 N 325 E
HURRICANE, UT 84737

HURRICANE CITY
H-303-H
147 N 870 W
HURRICANE, UT 84737

BALLARD JOAN W TR
H-BDH-26
614 N 325 E
HURRICANE, UT 84737

ECHOLS ROY SCOTT & KATRESA J
H-BDH-24
652 N 325 E
HURRICANE, UT 84737

BALLARD RALPH T & RUTH M TRS
H-303-A-2-C
94 W 650 N
HURRICANE, UT 84737-1755

DESORMIER MYKA L
H-316-A-1-B
25 E STATE ST
HURRICANE, UT 84737

BALLARD RALPH T & RUTH M TRS
H-315-B-1-N
94 W 650 N
HURRICANE, UT 84737

HURRICANE CITY
H-316-C
147 N 870 W
HURRICANE, UT 84737

BALLARD DAVID RAY & KARI K TRS
H-BDH-21
237 W 100 S
HURRICANE, UT 84737

EL INDUSTRIAL L C
H-316-A-1-F
356 W 850 N
LA VERKIN, UT 84745

DEL TORO DUSTIN
H-314-P
53 S 200 W
WASHINGTON, UT 84780

BLENDERMAN MICHAEL P
H-BDH-20
726 N 325 E
HURRICANE, UT 84737

BALLARD DAVID RAY & KARI K TRS
H-316-A-1-C
237 W 100 S
HURRICANE, UT 84737-1923

BALLARD RALPH T & RUTH M TRS
H-317-A-2
94 W 650 N
HURRICANE, UT 84737-1755

BALLARD RALPH T & RUTH M TRS
H-317-B-1
94 W 650 N
HURRICANE, UT 84737-1755

JIMS TOWN LLC
H-317-A-1-A-1
3545 N COVERED WAGON DR
ENOCH, UT 84721

SKINNER NELSON & SHEILA TRS
H-BDH-22
688 N 325 E
HURRICANE, UT 84737

SKY HOMES LLC
H-314-N
945 E VIEW DR
ALPINE, UT 84004

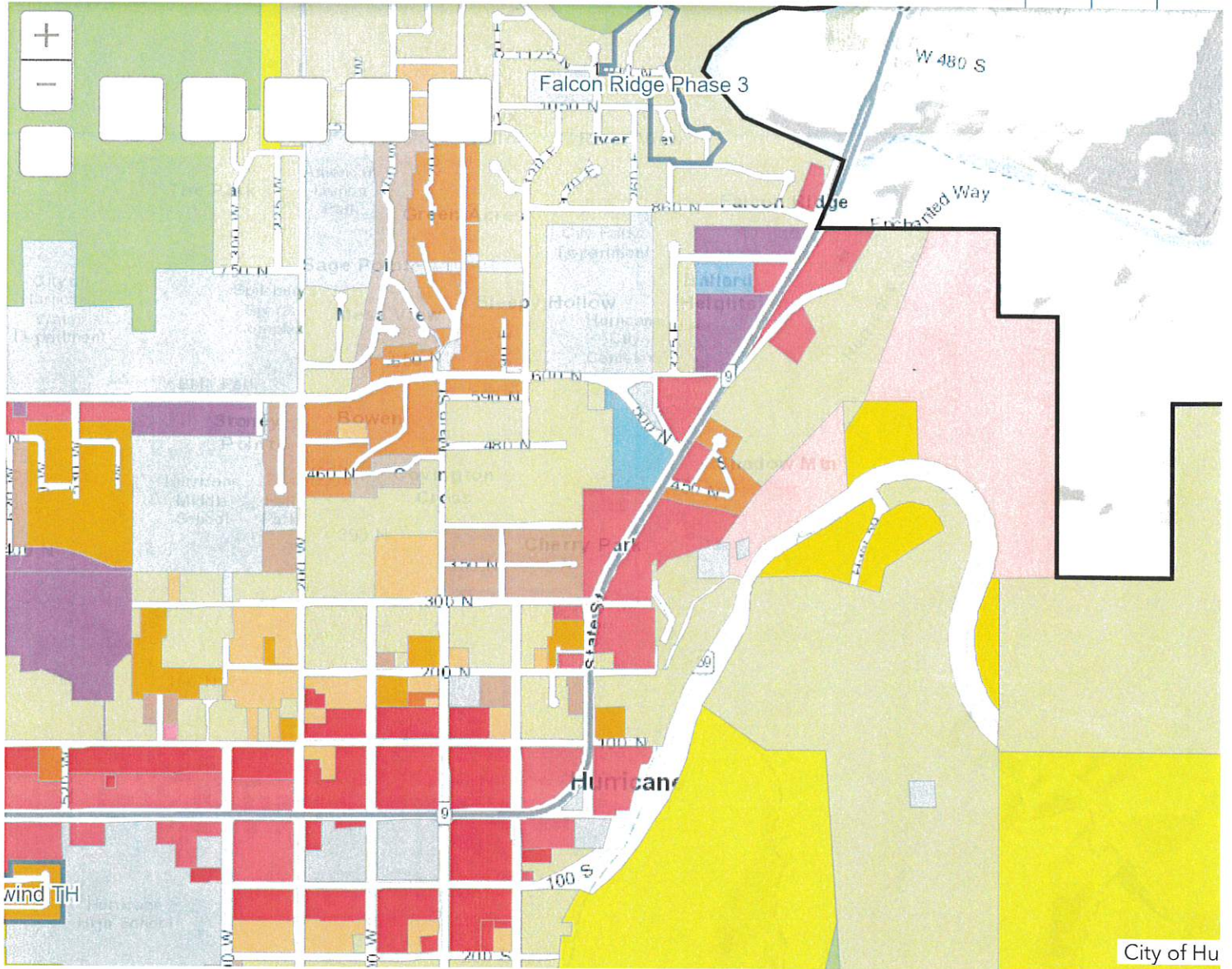
BALLARD RALPH T & RUTH M TRS
H-303-D
94 W 650 N
HURRICANE, UT 84737

BALLARD RALPH T & RUTH M TRS
H-317-B-2
94 W 650 N
HURRICANE, UT 84737-1755

SKY HOMES LLC
H-314-N
945 E VIEW DR
ALPINE, UT 84004

TUCKER TERRY G & KAREN B TRS
H-BDH-25
634 N 325 E
HURRICANE, UT 84737

R&B YOUNG LLC
H-317-A-1-A-G
PO BOX 731
HURRICANE, UT 84737



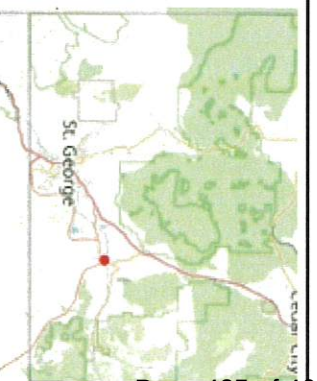
App State

Click to restore the map extent and layers visibility where you left off.



376.2 Feet

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.



Parcels

- Parcels**

Ownership

 - U.S. Forest Service
 - U.S. Forest Service Wilderness
 - Bureau of Land Management
 - Bureau of Land Management Wildlife
 - National Park Service
 - Shivwits 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

Agenda Date:	11/17/2022
Application Number:	2022-ZC-37
Type of Application:	Zone Change
Action Type:	Legislative
Applicant:	Myka Desormier
Agent:	Dennis Parker (North Rock Technology)
Request:	A Zone Change Request from M-1 (Light Industrial) to HC (Highway Commercial)
Location:	Approximately 677 N State Street
Zoning:	HC and RA-1
General Plan Map:	Commercial

Planning Commission Recommendation

The Planning Commission recommended approval of the proposed zone change subjected to staff comments.

Discussion:

The applicant is seeking a zone change for 1.615 Acres from M-1 to HC. The applicant has supplied a preliminary site plan concept, though no site plan application has been filed at this time.

	Zoning	Adjacent Land Use
North	M-1	Ballad's Nursery and other commercial and industrial development
East	HC and R1-10	A Mobile Home Park and Ballard Wreking Yard

2. Is the proposed amendment harmonious with the overall character of existing development in the subject property's vicinity?

Response: Yes. Most of the surrounding property has some form of commercial use, or is zoned for future commercial use.

3. Will the proposed amendment affect the adjacent property?

Response: Any new development on the property will likely have some impact on the surrounding property. Some of the impacts will be positive by bringing more customers to the area, but it will also extend commercial use where currently there is a single family home.

4. Are public facilities and services adequate to serve the subject property?

Response: Yes, there are currently services to the property.

JUC Comments

The JUC received a copy of the Preliminary Site Plan and Zone Change. Many of the comments below refer to the preliminary site plan.

1. **Public Works:** No comments.
2. **Power:** Fill out pre construction application. Need to meet with power department. Need to know voltage and amperage. Design Fee \$150 to be paid before actual design. Three phase required to be built to the property.
3. **Water:** No comments at this time. Water stubbed on 200 South.
4. **Streets:** No issues with zone change. Access may be an issues. Only access to SR-9.
5. **Sewer:** Property has an 8" line sewer stub. Existing home has a septic system. Home should connect to the sewer with a 15' easement through the commercial lot.
6. **Engineering:** It appears the 10' landscape strip will influence the site layout/ Drive aisles and parking stalls must meet minimums widths and lengths. Should ADA parking be against the buildings? Where possible, new driveways for commercial uses shall be a minimum of 200' apart (Hurricane City Code 10-35-4 (B)(6). 5% max grade for driveway reg'd by design standards 3.2.4.16. 50' min throat length for driveway per access management. Unused drive approaches must be removed and replaced with typical curb, gutter and sidewalk. If used, must be reconstructed with curb returns and 8' water way (HCC 10-35-4 (B)(2). 600 N is a 28' wide public right-of-way. 41' is the standard minimum width of a public right-of-way and standard 3.2.4.5 specifies no road shall be ended without a properly designed cul-de-sac turnaround unless approved by City Engineer. It appears five parcels use this segment of 600 N. What is the anticipated use of the existing building? A rehabilitation/treatment facility is the only permitted residential use. Washington county records indicate the home is 4 bed/3 baths. Due to codified definitions lodging type uses seem limited.
7. **Fire:** No concerns.
8. **Gas:** 3/4" gas service will need to be relocated for new building to be built. ROW/PUE also required for gas line to cross multiple properties.
9. **Cable/Water Conservancy:** No concerns.

Other Considerations:

1. Staff has only done a preliminary review of the site plan since it is not part of the application. Some of the key things that the applicant should consider:

- Access. The property has an existing access point off of SR-9 and 600 N. Moving the current access on SR-9 will be problematic with how close it will be to Ballard's Nursey Access point. However, moving the access would likely allow left-hand turns onto the property. The access on 600 N will need some additional review to ensure proper fire turnaround is provided.
- The applicant will need to provide a 10' landscape buffer along the highway.
- The Existing Home: The property's current use is residential, which is a legally nonconforming use. Once the use is changed, the applicant can't go back to residential use.
- Will need to work with the different utility departments and organizations to get proper connections.

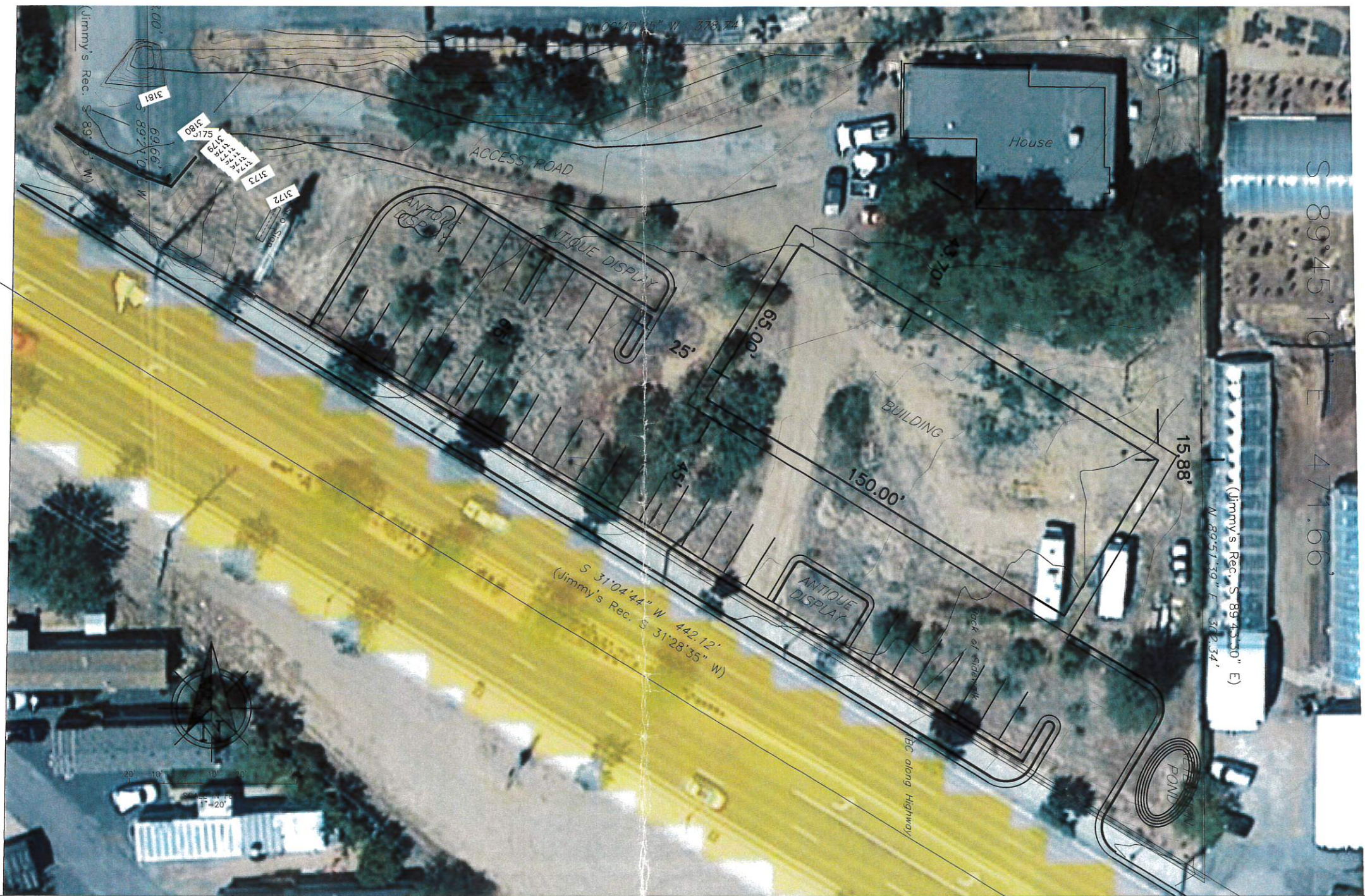
Findings:

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 existing development around it.
3. The proposed amendment does not have significant different impact from current zoning.
4. Services are currently available.

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's findings.

GYPSY EMPORIUM
PRELIMINARY SITE PLAN



5			
4			
3			
2			
1			
NO.	REVISIONS	BY	DATE

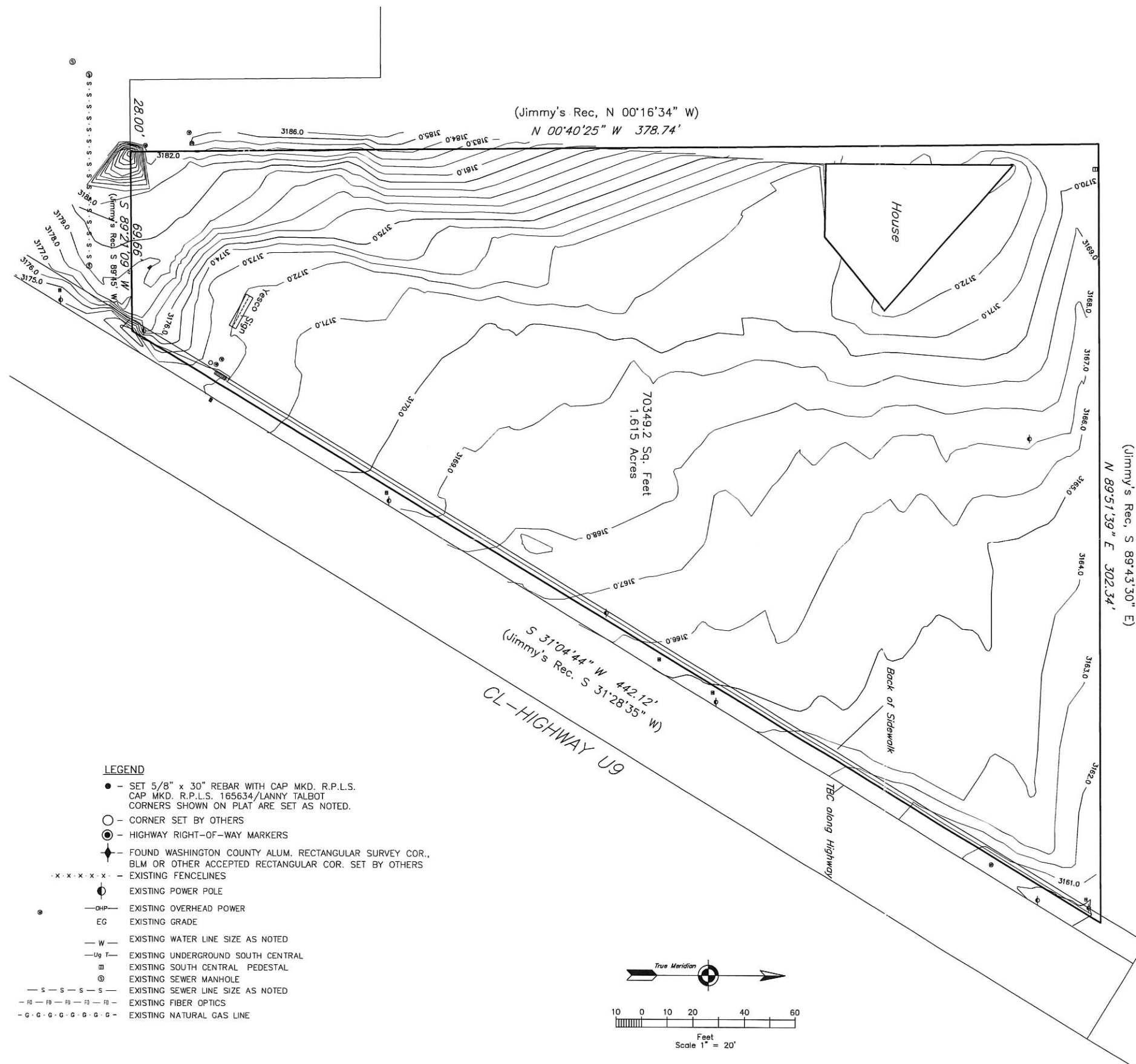
GYPSY EMPORIUM

PRELIMINARY SITE PLAN
HURRICANE, UTAH

JOB NO.
3-16-045
SHEET NO.
2

RECORD OF SURVEY OF MYKA DESORMIER PROPERTY

DEPENDENT RESURVEY AND SUBDIVISION OF A PORTION OF SECTION 26, TOWNSHIP 41 SOUTH, RANGE 11 WEST, S.L.B. & M., UTAH



LEGAL DESCRIPTION

PARCEL A Myka Desormier Parcel H-316-A-1-B

Base of Bearings are taken along the South Section Line of Section 26, Township 41 South, Range 13 West, SLB&M, between the Southwest Corner and the South 1/4, the bearing being South 89°45'10" East.

Commencing at the South 1/4 Corner of said Section 26; and running thence North 00°14'50" East 608.97 feet; to the TRUE POINT OF BEGINNING; thence North 89°51'39" East 302.34 feet to the westerly right-of-way line of Highway U-9; thence South 31°04'44" West along said westerly right-of-way line, 442.12 feet; thence South 89°21'09" West leaving said right-of-way line, 69.66 feet; thence North 00°40'25" West 378.74 feet to the point of beginning containing 1.615 acres.

SURVEYOR'S CERTIFICATE

I Lanny K. Talbot, do hereby certify that I am a Registered Professional Land Surveyor, and that I hold Certificate No. 165634, in accordance with Title 58, Chapter 22, Professional Engineers and Land Surveyors Licensing Act. I further certify that I have made a survey of the hereon described property and that this is a true and correct representation of said survey

Lanny K. Talbot
Lanny K. Talbot RPLS No. 165634

Date January 24, 2022



RECORD OF SURVEY

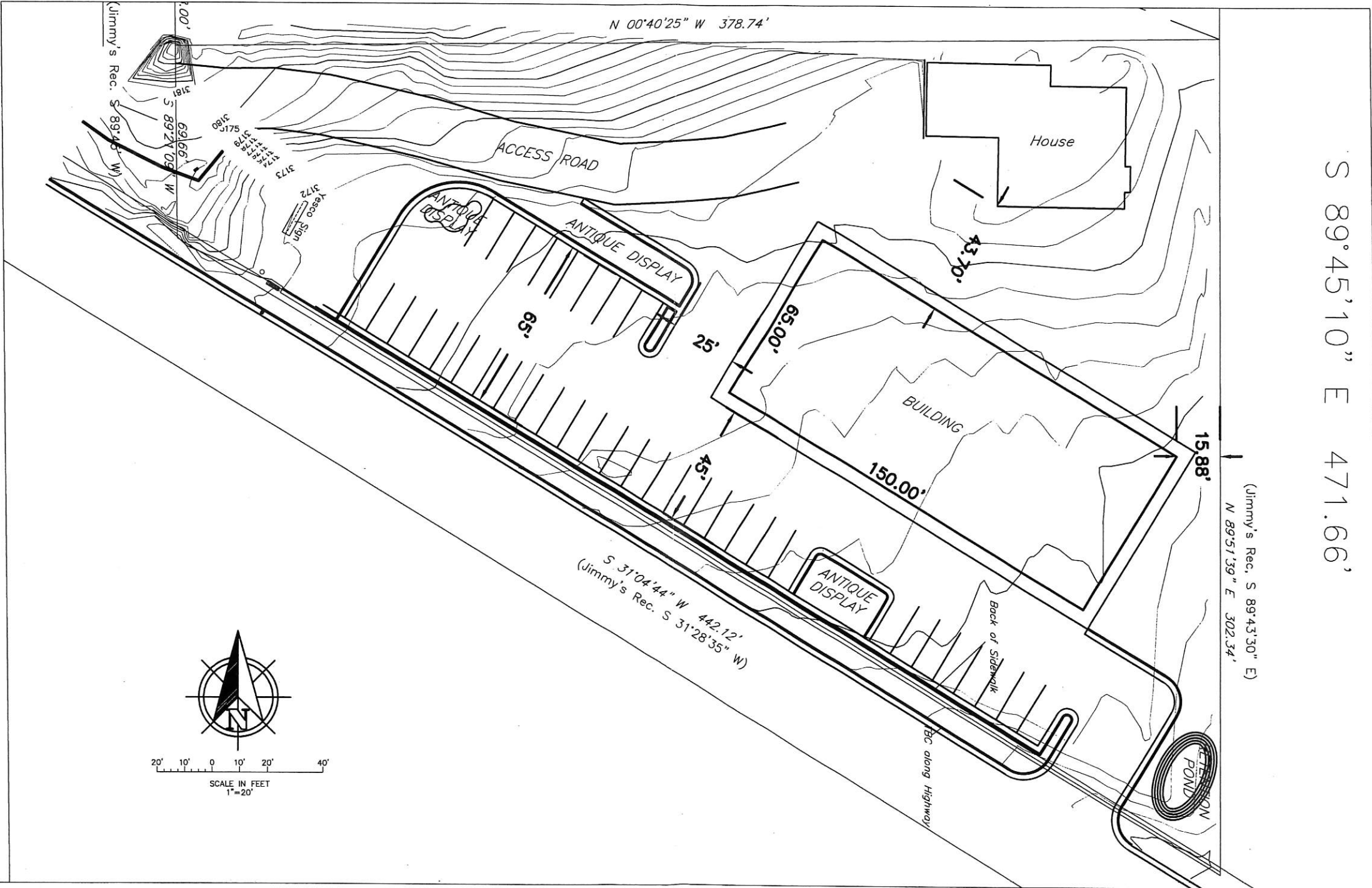
RECORD OF SURVEY

MYKA DESORMIER
PROPERTY
LOCATED IN
SECTION 28,
T. 34 S., R. 5 W., S.L.B.&M., UTAH

TALBOT LAND SURVEYORS
663 S. MAIN/P.O. BOX 1193, PANGUITCH, UT
PHONE: (435) 876-8018 84759

CREATED	MODIFIED	L. TALBOT	SCALE 1" = 20'
DATE	DRAWN	CAD Consulting - LT	SHEET
1/02/2022			
DWG. No.			SHEET
Myka Desormier.dwg			1 of 1

GYPSY EMPORIUM PRELIMINARY SITE PLAN



5			
4			
3			
2			
1			
NO.	REVISIONS	BY	DATE

GYPSY EMPORIUM

PRELIMINARY SITE PLAN
HURRICANE, UTAH

JOB NO.
3-16-045
SHEET NO.
2



STAFF COMMENTS

Consideration and possible approval of **disposing of property located along the north side of 3270 South** for parcel #H-3395-A-P-2

Discussion:

The applicant is seeking to record their final plat (Rock View Estates), but in the process, the applicant and staff realized that the property listed on the preliminary plat was never disposed of. During the preliminary plat process, the City and the developer negotiated and agreed to an exchange of property. The applicant would dedicate and improve a drive and parking area that would have access to BLM land to the east of the project (about .54 acres) in exchange for the City giving about .4 acres along 3270 S to the developer. The applicant has developed the open space and provided the parking area as agreed on.

The Resolution in front of the City Council today is official approval for the City to sign a quit claim deed to the applicant for the property.

Findings:

Recommendation:

Attachments:

1. 1322-01 Preliminary Plat 5-18-20
2. 1322-01 Preliminary Plat Narrative
3. IMG_7627
4. IMG_7629
5. IMG_7630
6. Resolution 2022-50 disposal of H-3395-A-P-2

December 31, 2019

Toni Foran
City of Hurricane Planning and Zoning Director
147 North 870 West
Hurricane, Utah 84737

RE: Rock View Estates Subdivision Revised Preliminary Plat

Dear Toni:

We are providing this narrative to accompany the revised Preliminary Plat being submitted for the proposed Rock View Estates Subdivision. There are a couple items that have come up in the preliminary planning stages that we felt it would be beneficial to mention in conjunction with submitting the revised Preliminary Plat for City Council approval.

- The Preliminary Plat being submitted for approval does not include a City-standard right-of-way section. The Developer would like to pursue this item with City staff and Council to see if they would agree that a section without curb, gutter and sidewalk is more conducive to the area and that it would be desired not only by prospective residents of the proposed subdivision but also by existing residents of the adjacent Cliffdwellers Subdivision to the south. Accordingly, we are requested a variance to the Code in this regard. We will work with City staff to make sure drainage and asphalt width requirements are met and comply with City standards. The proposed sections are shown on the Preliminary Plat.
- After discussing the ownership/maintenance of the roundabout landscaping area and the detention basin area with the Developer, they have conceded to form a Homeowners Association to own and maintain these areas. These areas have been noted and shown on the Preliminary Plat.
- We understand the sliver of properties on the south edge of the subdivision that are currently owned by the City will be deeded over to the Developer as part of the proposed subdivision. These areas have been noted and shown on the Preliminary Plat.
- The Developer agrees to dedicate property to the City and to provide a 20-foot all-weather access with a small level all-weather parking area as a trailhead to the adjacent hiking trail. This area is shown and noted on the Preliminary Plat.
- A Hillside Review Application and Conceptual Development Plan is being submitted with the Preliminary Plat as we feel this information is useful in the approval of the Preliminary Plat. Since we are in preliminary stages and do not know the outcome of the Preliminary Plat approval, the application is incomplete and is not intended to be taken through the approval process at this time. The remaining items are pending and will be submitted with a complete application as we get further into the design of the project.
- We have looked at providing water, sewer and power utilities to the subdivision. The public utility easement fronting each lot is shown on the Preliminary Plat. Additional coordination

through the City joint-utility committee will ensue as we proceed beyond the Preliminary Plat and into the construction drawing phase of this project.

- o Water has been verified to be available along 1100 West. The water design will include looping the proposed subdivision into the Hurricane City Water system—and not the Washington County Water Conservancy District system, which is nearby. We will prepare a formal hydraulic analysis in the later stages of design where we will verify pressures and availability to comply with local and state water code requirements throughout the subdivision.
- o Sewer is not yet available to the site, but we understand that prior to approval of construction, a sewer design that extends service from the existing ACSSD sewer infrastructure will need to be in place as septic systems will not be allowed for these lots. The current plan is to install a new sewer main line north along 1100 West to tie into the new sewer line that is currently under construction by ACSSD in 3000 South. We have also begun coordination with Copper Rock, who will be participating in the sewer extension along 1100 West.
- o We have discussed the power service availability with Brian Anderson (Hurricane City Power Department). The proposed subdivision is on the outskirts of their service area, but he has indicated that we will be able to extend service to this subdivision. We do not anticipate pulling power from Rocky Mountain Power, which is the power provider for subdivisions to the south of our proposed subdivision.
- All other design elements, including lot sizes, are incorporated into the Preliminary Plat and are intended to be standard for subdivisions and consistent with the governing ordinances for the proposed property and its zoning.

If you have any questions regarding this letter or if you need additional information through your review of the Preliminary Plat, let me know. Thanks.

Sincerely,



Jared Madsen, P.E.
ALPHA ENGINEERING COMPANY

ENCL: Preliminary Plat, dated 12/31/19
 Conceptual Development Plan, dated 12/31/19







**A RESOLUTION OF THE CITY COUNCIL OF HURRICANE, UTAH,
APPROVING THE DISPOSAL OF PARCEL H-3395-A-P-2**

WHEREAS, Hurricane City Code 1-10 allows the City to dispose of surplus property that is deemed unusable or surplus; and

WHEREAS, B&W DEV LLC, an owner of land adjacent to Parcel Number H-3395-A-P-2, has petitioned the City Council to dispose of the parcel as part of B&W DEV LLC's development of the Rock View Estates Subdivision in exchange for B&W DEV LLC dedicating a different portion of the Rock View Estates Subdivision to the City to provide access to the BLM Land; and

WHEREAS, the Developer has built the access road to the BLM land as requested by the City; and

WHEREAS, Parcel H-33-95-A-P-2 is surplus and the property in consideration of exchange will provide a greater benefit to the public by providing access to BLM Land; and

WHEREAS, the City has held a public hearing and provided notice as required in Utah Code 1-10-4 Disposal of Real Property, and

WHEREAS, the proposed disposal has been presented to the Hurricane Joint Utility Committee, and no objections were raised; and

WHEREAS, the disposal will not negatively affect adjacent property owners.

BE IT HEREBY RESOLVED by the City Council of Hurricane, Utah that Parcel H-3395-A-P-2 be disposed of to B&W DEV LLC and that the Mayor shall be authorized by the City Council to sign a quit claim deed disposing of the property subject to the following conditions:

1. That the B&W DEV LLC dedicate to Hurricane City the property shown as Open Space on Rock View Estates Final Plat application and proposal.
2. That the signing and recording of the quit claim deed shall take place only after the City has received a mylar for Rock View Estates Subdivision that meet the terms of this

resolution and is recorded at a time determined by the City Attorney to ensure all terms are met.

DATED this 17th day of November, 2022.

Nanette Billings, Mayor

Attest:

Cindy Beteag, Recorder

The foregoing Resolution was presented at a regular meeting of the Hurricane City Council held at the Hurricane City Office Building on the 7th day of October, 2021. Whereupon a motion to adopt and approve said Resolution was made by _____ and seconded by _____. A roll call vote was then taken with the following results:

	Yea	Nay	Abstain	Absent
David Hirschi	_____	_____	_____	_____
Kevin Thomas	_____	_____	_____	_____
Joseph Prete	_____	_____	_____	_____
Dave Sanders	_____	_____	_____	_____
Doug Heideman	_____	_____	_____	_____

Cindy Beteag

Mayor
Nanette Billings

City Manager
Kaden C. DeMille



City Council
Joseph Prete
David Sanders
David Hirschi
Kevin Thomas
Doug Heideman

October 24, 2022

Las Juntas Autos LLC
55 E 630 North
Laverkin, UT 84745

Ms. Preciado,

A letter was sent to you on October 6, 2022, regarding the revocation hearing for Las Juntas Autos. The previously scheduled hearing was scheduled for November 3, 2022; however, that meeting has been canceled.

Therefore, this notice is to inform you that a hearing before the City Council has been scheduled to consider revocation of the business license **UNLESS** a State license and Hurricane sales tax number is provided by November 10, 2022, at noon. This hearing is scheduled for Thursday, November 17, 2022, at 6:00 pm, or as soon thereafter as the matter can be heard, during the regular City Council meeting. The hearing will be held at the City Office located at 147 North 870 West, Hurricane. You have the right to appear at this hearing, to be represented by counsel, to hear the evidence against you, to cross examine witnesses, and to present evidence as to why the license should not be revoked.

We look forward to working with you to amicably resolve the matter outlined in this letter. If you have any questions or concerns, please do not hesitate to contact me at 435-635-2811 x106.

Sincerely,

Cindy Beteag

Cindy Beteag
City Recorder

Cc: Dayton Hall, City Attorney

7009 1410 0000 0527 1610

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 7.82
Postmark Here	
Sent To Las Juntas	
Street, Apt. No., or PO Box No. meeting canceled	
City, State, ZIP+4	
PS Form 3800, August 2006 See Reverse for Instructions	

Mayor
Nanette Billings

City Manager
Kaden C. DeMille



City Council
Joseph Prete
David Sanders
David Hirschi
Kevin Thomas
Doug Heideman

October 6, 2022

Las Juntas Autos LLC
55 E 630 North
Laverkin, UT 84745

Ms. Preciado,

A business license for Las Juntas Autos LLC was issued on August 4, 2022, with a condition that the license from the Department of Motor Vehicles and an active sales tax number Hurricane must be received within sixty (60) days. As of today's date, a State license or Hurricane sales tax number cannot be verified.

Therefore, this notice is to inform you that a hearing before the City Council has been scheduled to consider revocation of the business license **UNLESS** a State license and Hurricane sales tax number is provided by October 28, 2022, at noon. This hearing is scheduled for Thursday, November 3, 2022, at 6:00 pm, or as soon thereafter as the matter can be heard, during the regular City Council meeting. The hearing will be held at the City Office located at 147 North 870 West, Hurricane. You have the right to appear at this hearing, to be represented by counsel, to hear the evidence against you, to cross examine witnesses, and to present evidence as to why the license should not be revoked.

We look forward to working with you to amicably resolve the matter. If you have any questions or concerns, please do not hesitate to contact me at 435-635-2811.

Sincerely,

Cindy Beteag

Cindy Beteag
City Recorder

Cc: Dayton Hall, City Attorney

7009 1410 0000 0527 1597

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 7.82
Sent To: Las Juntas Auto	
Street, Apt. No., or PO Box No.	
City, State, ZIP+4	
PS Form 3800, August 2006	
See Reverse for Instructions	



PAID

Date of Application

7/01/2022

License Fee \$50.00
Application Fee \$25.00
Total Due \$75.00

NEW BUSINESS ☒
NEW OWNER ☐
RE-APPLY ☐

147 N 870 WEST, HURRICANE, UTAH 84737
PHONE: 435-635-2811 FAX: 435-635-2184
www.cityofhurricane.com

7.696902
\$75.00

7/1/2020

◆ BUSINESS LICENSE APPLICATION ◆

NOTICE: Please complete each statement below. Incomplete applications will not be accepted.

SECTION A — BUSINESS INFORMATION

Name of Business: Las Juntas Autos LLC
Business Phone: 435-688-2004 Fax Number: _____
Business Address: 4 South 2600 West suite #2 Hurricane Utah 84737
(Street Number) (Suite) (City) (State) (Zip)
Mailing Address (if different): 55 E 630 N La Verkin Utah 84745
(Street Number) (City) (State) (Zip)
State Sales Tax Number (if applicable): 88-2581597 Dept. of Commerce Entity #: 12879679-0160
Professional License # (if applicable): _____ Federal Identification #: 88-258-1597
Website: _____ E-Mail Address: lasjuntasautos@gmail.com

Description of Business: Automobile Sales

Business Type (check one): Proprietorship ☐ Partnership ☐ Corporation ☐
Will there be any building or remodeling: Yes ☐ No ☐ Will the business be located in a newly constructed building: Yes ☐ No ☐
Commercial License - Property Owner Written Approval: Yes ☐ No ☐ Are you a Sexually Oriented Business: Yes ☐ No ☐
Does your business sell alcohol: Yes ☐ No ☐ Does your business sell tobacco products: Yes ☐ No ☐
Does Your Business Have an Alarm: Yes ☐ No ☐ Business Hours: _____

PART B — HOME OCCUPATION APPLICANTS ONLY

• Will customers visit the home..... Yes ☐ No ☐
• Will display or stock of merchandise be at home Yes ☐ No ☐
• Will employees be at the house..... Yes ☐ No ☐
• Any unusual traffic be created in neighborhood..... Yes ☐ No ☐
• Will parking on roadside be needed..... Yes ☐ No ☐
• Will flammable, toxic or poisonous materials be kept at the home Yes ☐ No ☐
• Will there be any disposal of material into the septic or sewer system?..... Yes ☐ No ☐
• What portion of home is to be used for business (25% total structure area).....

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: Ofelia Mendoza Preciado Title: Owner

Home Address: _____
(Street Number) (City) (State) (Zip)

Social Security Number: _____ Date of Birth: _____

Home Phone: _____ Cell Phone: 435 _____

Please add any additional owners/partners on a separate piece of paper and attach.

➤ **This form is an application for a business license. The receipt for payment of license fees thereof does not constitute being approved to operate a business.** The actual license will be issued only when all inspections are completed and signed off by the various City departments and approval is given by the Business License Office. **To open and/or operate a business without final approval is a Class B Misdemeanor and punishable by law.**

Manager (if different): Same

Home Address: _____
(Street Number) (City) (State) (Zip)

Home Phone: _____ Cell Phone: _____

Social Security Number: _____ Date of Birth: _____

LIST TWO RESPONSIBLE / AVAILABLE EMERGENCY CONTACTS:

Name: Louie C. Lundin
Address: _____
Phone: _____

Name: Araceli Mendoza
Address: _____
Phone: _____

PART D — HURRICANE VALLEY FIRE DISTRICT

All businesses licensed in Hurricane City must be in compliance with applicable fire codes and regulations at all times. New businesses may be required to pass a fire inspection prior to issuance of a business license. Fire inspections encompass, but are not limited to: fire equipment such as extinguishers, exits and aisles, electrical equipment, storage, and fire protection systems. Inspections may include additional areas of concern specific to particular business activities and/or locations. The licensing clerk will inform new applicants whether an initial inspection is required.

☐ **Inspection Required. Contact the Fire Dept at 435-635-9562 to schedule a fire inspection.**

☐ **No Inspection required at this time.**

I understand that compliance with applicable fire codes and regulations is required for all businesses licensed in Hurricane City. I understand that a fire inspection of my business may be required in the future and would be conducted by Hurricane City Fire Department personnel. I understand that failure to comply with applicable fire codes and regulations may be grounds for revocation of my business license.

[Signature]
Applicant's Signature

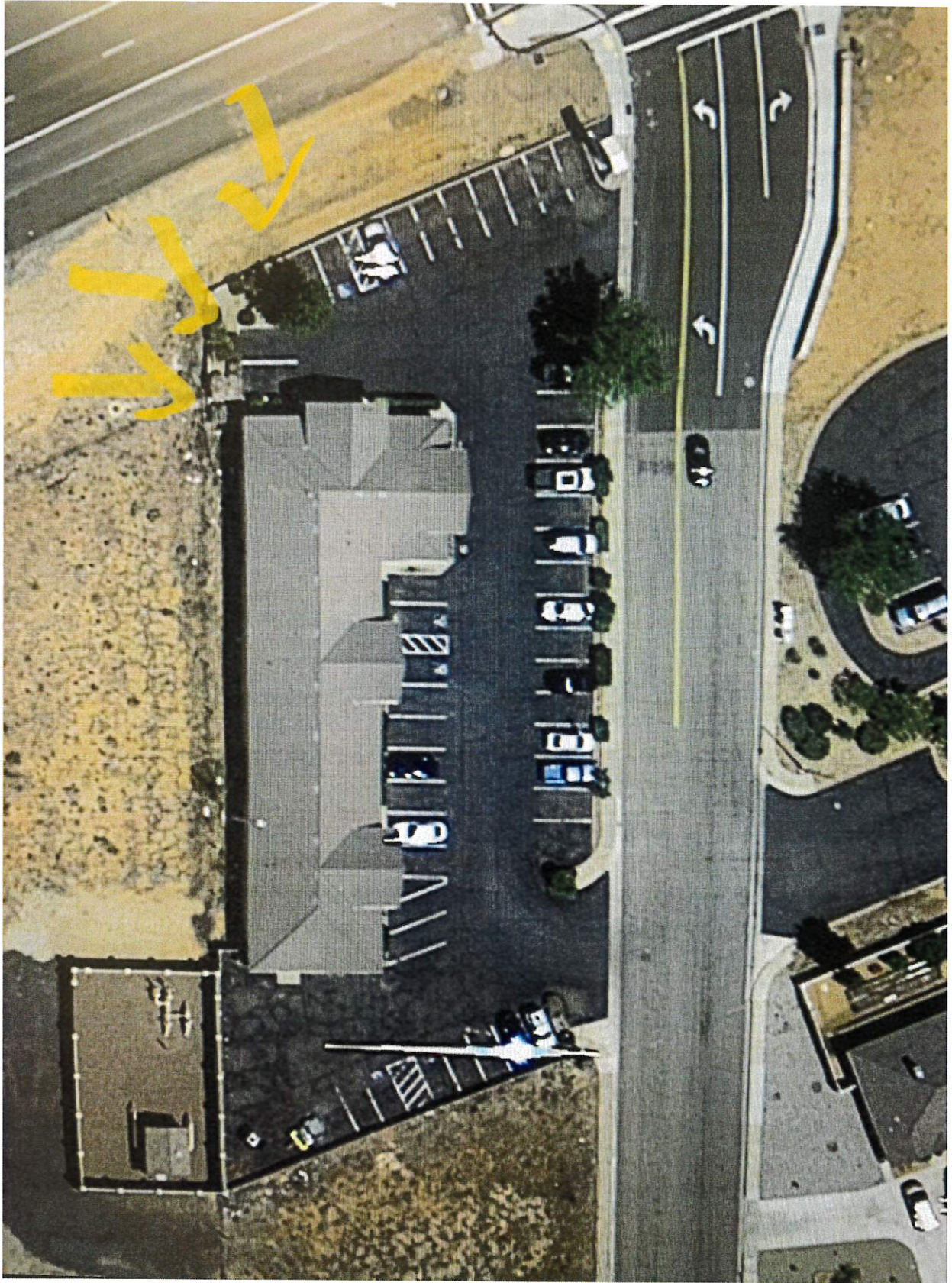
7/01/2022
Date

I UNDERSTAND AND AGREE to comply with all regulations of Title 3 Business License Regulations. **I UNDERSTAND that business shall not commence at this location without first obtaining an official copy of the business license**, and that inspections of the City Building, Zoning, Fire Officials, and the County Health Officials must first be completed and the building approved by these officials for business activities.

[Signature]
Applicant's Signature

7/01/2022
Date

TOTAL FEES \$ <u>75</u>	Office Use Only	AMOUNT PAID \$ <u>75</u>
DATE <u>7/1/22</u>	RECEIPT # <u>7.696902</u>	
CITY LICENSE NUMBER <u>10433</u>		
Home Occupation: yes / no <u>no</u>	Zone: <u>HC</u>	Permitted Use: yes / no <u>no</u>
Planning Commission Approval Required: yes / no <u>no</u>	If yes, which approval: site plan / conditional use	
Planning Commission approval date: <u>N/A</u>	Zoning approval/date: <u>HC 7.1.22</u>	
New Construction: yes / no <u>no</u>	Remodel: yes / no <u>no</u>	Building Permit: yes / no <u>no</u>
Certificate of Occupancy or Tenant Improvement inspection required: yes / no <u>no</u>		



Mayor
Nanette Billings

City Manager
Kaden C. DeMille



City Council
Joseph Prete
David Sanders
David Hirschi
Kevin Thomas
Doug Heideman

July 21, 2022

Juntas
Las Juntas Autos LLC
55 E 630 North
LaVerkin, UT 84745

Re: Application Pending

To Whom It May Concern:

Your application for Las Juntas Autos LLC was received by the Hurricane City Business Licensing Department on July 1, 2022. This application has been reviewed but cannot be issued until the following items are received: 1. ~~A sales tax number for Hurricane~~ 2. A state license from The Department of Motor Vehicles and 3. Clarification on if this is an online business as there is not enough parking for this type of business at this location. Failure to complete these requirements will result in denial of the business license application. A business license application that has not had all required items submitted and approved and the license issued within six (6) months of application date shall be considered void and a new application and fee will be required.

A business license is required before beginning any business operations within Hurricane City. Operating without a license may result in a citation. If you have any questions regarding the licensing process, please feel free to contact the Business License Office at 435-635-2811 x106.

Sincerely,

Cindy Beteag

Cindy Beteag
City Recorder



Stak wants City approval first.
- Stephen wants site plan showing parking
7/22 - Christy will provide only moving vehicles @ a time

Mayor
Nanette Billings

City Manager
Kaden C. DeMille



City Council
Joseph Prete
David Sanders
David Hirschi
Kevin Thomas
Doug Heideman

August 4, 2022

Las Juntas Autos LLC
55 E 630 North
LaVerkin, UT 84745

To Whom It May Concern:

You should find enclosed the business license for Las Juntas Autos LLC. This license indicates City approval of your business license application. Please be advised that State approval from Department of Motor Vehicles and an active sales tax number for Hurricane must be received within 60 days of this letter. Failure to follow these conditions may result in your license being revoked.

If you have any questions or concerns regarding this matter, please feel free to contact my office at 635-2811 x 106.

Sincerely,

Cindy Beteag

Cindy Beteag
City Recorder

EASEMENT AGREEMENT

This EASEMENT AGREEMENT is made and entered into on this ____ day of _____, _____, by and between **Hurricane City**, Utah, a municipal corporation of the State of Utah (hereinafter referred to as “City”), and **Biggin Enterprises, LLC**, a Limited Liability Company of Utah, of St. George, County of Washington, State of Utah, Scott Gibson, President (hereinafter referred to as “Biggin”), collectively referred to as “the Parties.”

Recitals:

- A. Biggin is the owner of record of a parcel of property designated as Parcel No.H-3-1-34-3217 in the records of the Washington County Recorder in St. George, Utah (hereinafter referred to as “the Biggin Property”), and more particularly described as follows:

Hurricane Field Survey Block 14, Lot 16. Beginning at a point on the south block line of Highway U-9 at the intersection of the East line of Lot 16, Block 14, Hurricane field survey and running thence South 128 feet, thence West 178.57 feet, thence North 128.00 feet, thence East 178.57 feet to the point of beginning. Less any portion falling within the constructed roadway known as 700 West.

- B. City is the owner of record of a parcel immediately adjacent to the Biggin Property which is designated as Parcels No. H-HVHC-1 through 5 in the records of the Washington County Recorder in St. George, Utah (hereinafter referred to as the “City Property”), and more particularly described as follows:

Hurricane Valley Health Center Lots 1-5.

- C. Biggin has historically gained access into the Biggin Property pursuant to a previous easement agreement recorded on March 2, 2022, per document 20220012339 (hereinafter referred to as the “Old Agreement”) for the purpose of gaining access for ingress and egress to the Biggin Property.
- D. The Parties desire to formally abolish and abandon the Old Agreement by way of this document and enter into a new formal written agreement allowing Biggin, his heirs, successors and assigns the continued right to access the Biggin Property by crossing over a portion of the City Property.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and obligations contained herein, the Parties hereto agree as follows:

1. Recitals A through D are hereby incorporated herein as if fully set forth herein.
2. Subject to the terms and conditions stated herein, City hereby grants to Biggin, his heirs, successors and assigns a non-exclusive easement across the City Property for the purpose of gaining access for ingress and egress to the Biggin Enterprises Property. This easement is described as follows and shown on Exhibit A:

The northern 53.62 feet of Hurricane Valley Health Center Lots 1-5, less the eastern 127.00 feet of the northern 29.12 feet.

Contains 4,982 square feet, more or less.

3. Biggin's access across the City Property for ingress and egress to the Biggin Property shall be limited to the easement granted herein.
4. Biggin shall exercise its right of ingress and egress in such a manner so as to:
 - a. Not interfere with City's use and enjoyment of the easement property or City's remaining property, and
 - b. Not cause any unreasonable damage to the easement property or the remaining property of the City. In the event of such damage, Biggin shall, at its expense, be required to promptly repair or restore the easement property or remaining property of City to its condition prior to such damage.
5. The Parties acknowledge and agree that future development on either the City Property or Biggin Property may require relocation or enhancement of the easement granted hereby and the Parties agree to negotiate in good faith such relocation or enhancement, provided that all costs and expenses associated with such relocation or enhancement shall be paid by the party requesting the same.
6. Biggin agrees to indemnify, defend, and hold harmless the City, its officers, employees, and agents from and against any and all claims, demands or causes of action which may be asserted against the City as a result of or which is in any way connected to Biggin's use of the easement granted hereby.
7. Failure by either Party to comply with any obligations or term contained herein shall be deemed to be in breach of the terms of this agreement and shall constitute a default under the terms hereof. In the event of such default by either Party, the Party not in default shall have the right to terminate the grant of easement agreement by sending thirty (30) days written notice to the Party in default of such election to terminate or pursue any other

remedy that may be available at law or equity to enforce compliance with the terms of this agreement.

8. This agreement shall run with the land and be binding upon and shall inure to the benefit of the heirs, successors and assigns of the Parties.
9. This agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, all prior negotiations, correspondence or understandings having been merged herein.
10. This agreement shall not be modified except in writing signed by both Parties hereto.
11. This agreement shall be construed under the laws of the State of Utah.

IN WITNESS WHEREOF, the Parties hereto have executed this Easement Agreement on the date first above written.

HURRICANE CITY

By: Nanette Billings, Mayor

On this _____ day of _____, 2022, personally appeared before me NANETTE BILLINGS, who being by me duly sworn, did say and acknowledge that she is the MAYOR of HURRICANE CITY, and that she executed the foregoing document on behalf of said City by authority of its City Council and that she executed the same for the uses and purposes stated herein.

WITNESS my hand and official seal.

Notary Public

My Commission Expires:

Attest:

By: Cindy Beteag, City Recorder

BIGGIN ENTERPRISES, LLC.

By: Scott Gibson, President

STATE OF _____)

)ss.

COUNTY OF _____)

On this _____ day of _____, 2022, personally appeared before me SCOTT GIBSON, who being by me duly sworn, did say and acknowledge that he is the PRESIDENT of BIGGIN ENTERPRISES, LLC, and that he executed the foregoing document on behalf of said limited liability company by authority of its Operating Agreement and that he executed the same for the uses and purposes stated herein.

WITNESS my hand and official seal.

Notary Public

My Commission Expires:

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made and entered into on this 17th day of November, 2022 by and between Ash Creek Special Service District, a special service district created under the laws of the State of Utah (hereinafter referred to as “Ash Creek”), and Hurricane City, a municipal corporation of the State of Utah (hereinafter referred as Hurricane), collectively referred to as the Parties.

Recitals:

- A. Ash Creek is the owner and operator of a wastewater collection and treatment system serving the residents of Hurricane, LaVerkin, Toquerville, Apple Valley and other unincorporated areas of Washington County, Utah.
- B. Pursuant to a verbal agreement, Ash Creek historically has not charged monthly sewer service fees or sewer impact fees for any property owned by each of said municipalities, including Hurricane, which is not used for commercial purposes.
- C. Pursuant to a verbal agreement, each of said municipalities, including Hurricane, historically has not charged monthly water service fees or water impact fees for any property owned by Ash Creek which is not used for commercial purposes.
- D. The Parties now desire to enter into a formal written agreement memorializing the understanding and agreement of the Parties.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and agreements contained herein, the Parties hereto agree as follows:

- 1. Ash Creek shall not charge monthly sewer service fees or sewer impact fees for any property owned by Hurricane City which is not used for commercial purposes.
- 2. Hurricane shall not charge monthly water service fees or water impact fees for any property owned by Ash Creek which is not used for commercial purposes.
- 3. This agreement shall continue in effect until terminated by either party’s sending 90 days written notice to the other party of its intent to terminate the agreement.

IN WITNESS WHEREOF the Parties hereto have affixed their signatures and seals as of the date first stated above.

Ash Creek Special Service District

Kelly Wilson, Chairman

Attest:

Darrel Humphries, Secretary

Hurricane City

Nanette Billings, Mayor

Attest:

Cindy Beteag, City Recorder

POLICY GOVERNING THE HURRICANE AMERICAN LEGION EQUESTRIAN PARK

This Policy, adopted by the Hurricane City Council on November 17, 2022, governs the Hurricane American Legion Equestrian Park located at 2518 South 630 West, Hurricane, Utah.

SCHEDULE OF FEES

<u>Description</u>	<u>Rental Fee</u>	<u>Ticketed Events</u>	<u>Over Hours Fee</u>
Main Arena ¹	\$250/day (8 hrs.) ²	\$1,000/day (8 hrs.)	\$32/hr.
Practice Arena	Open to the Public – Not Available for Reservation ³		
Lighting	\$20/hour for lighting Main Arena, Practice Arena, and spectator area; \$10/hr. for Main Arena lighting only; \$5/hr. for Practice Arena lighting only; \$5/hr. for spectator area lighting only.		
Ticket/Concession Building	\$75/day (8 hrs.)	\$75/day (8 hrs.)	\$10/hr.
Additional Arena Grooming	\$10/grooming. ⁴		
Food Truck Hookups	\$100/day (8 hrs.)		
Livestock Pens	\$4/night or \$20/week (per pen) ⁵		
Water Truck Rate	\$56/hr. (Does not include Staffing Rate for operator)		
Tractor Rate	\$35/hr.		
Staffing Rate	\$34/hr.		

RULES, REGULATIONS, AND TERMS OF USE

1. Rental Terms. The Schedule of Fees applies to any rental of the Main Arena. Rental of the Main Arena includes the initial grooming and watering down of the Main Arena, Practice Arena, and parking areas as needed. Rental of the Main Arena includes use of the spectator area/grandstands.
2. Discount. A 50% discount off the daily rental fee for the Main Arena is available for local (Washington County) non-profits, schools, churches, cities, and organizations that are not charging an entry or admission fee to participate in the event. Discount is only available for weekday rentals—holidays are excluded. City-sponsored events are not subject to fees.
3. Practice Arena. The Practice Arena is open to the public for personal, non-commercial equestrian use at no charge. It is not available for reservation, and commercial activities or events may not be held there unless the event is sponsored by the City. When the Main Arena has been rented for an event,

¹ May be partitioned into two arenas with available temporary fence. Hourly Staff Rate and Tractor Rate will apply for set up or takedown of temporary fence.

² Discount available for some organizations. See Rules, Regulations, and Terms of Use.

³ See Rules, Regulations, and Terms of Use.

⁴ Arrangements for additional arena grooming must be made at the time of booking.

⁵ See Rules, Regulations, and Terms of Use.

participants in the event may use the Practice Arena to warm up and practice in conjunction with the event, but members of the public may not be excluded from the Practice Arena. Members of the public must pay the established hourly rate for lighting if lighting is desired.

4. Public's Use of Main Arena. The Main Arena may only be reserved upon the payment of the appropriate rental fee. During periods that the Main Arena is not reserved, members of the public may use the Main Arena for personal, non-commercial equestrian purposes. Members of the public must pay the established hourly rate for lighting if lighting is desired. The City may exclude the public from the Main Arena in preparation for a reservation.
5. Hours of Operation. Lighting at the Equestrian Park shall be turned off by 12 am and no PA systems or speakers shall be used between the hours of 11 pm and 6 am.
6. Use of Livestock Pens Overnight. The housing of horses in the livestock pens is prohibited. Pens may be rented for the overnight housing of cattle at the established daily and weekly rates. The owner of the cattle shall be solely responsible for the cattle's feed, water, and wellbeing. Hurricane City is not liable for any damage, injury, or death of livestock housed or used at the Equestrian Park, and the owner of the livestock housed at the Equestrian Park shall indemnify and defend Hurricane City from any damage, injury, or death resulting from or in any way relating to the livestock housed at the Equestrian Park. Cattle housed at the Equestrian Park must regularly be used in conjunction with the facilities. The City may require that livestock housed at the Equestrian Park be removed immediately from the Park if the City Staff determine, at Staff's sole discretion, that the livestock are a danger to themselves or others, are not being adequately cared for, or that the livestock are not regularly being used in conjunction with the Park. If the Main Arena is rented and the livestock pens are needed for the event, the owner of the cattle must remove the cattle from the livestock pens with 72 hours' notice from the City. Hurricane City shall have a lien on livestock housed at the Equestrian Park as allowed by Utah Code section 38-2-1.
7. Lighting. The lighting at the Equestrian Park is available in three different areas: (1) the Main Arena; (2) the Practice Arena; and (3) the spectator area/grand stands. These areas may be lighted in exchange for payment at the established rates. Payment for lighting by a member of the public using the Park for personal, non-commercial use does not permit the exclusion of other members of the public.
8. Ticketed Events. Events for which spectators are charged admission must obtain an Event Permit as required by Hurricane City Code, Title 7, Chapter 7.
9. Playground Area. A playground area is located at the entrance to the Equestrian Park. The public shall have continuous access to this area regardless of events scheduled at the Park.
10. Non-Equestrian Activities. The Equestrian Park is primarily for equestrian use, but non-equestrian events may be permitted upon City staff's determination that the event will not damage the facility or interfere with the equestrian nature of the Park. Events such as mud bogging that may affect the arenas' topsoil are prohibited.
11. Damage and Repair Costs. Any individuals using the Equestrian Park are responsible to pay to repair any damage they cause to the Park facilities other than normal wear and tear.
12. Inherent Risk. Any individual using the Equestrian Park agrees that Hurricane City and other equine or livestock activity sponsors are not liable for the inherent risks associated with these activities, as set forth in Utah Code sections 78B-4-201, 203.

PASS THROUGH FUNDS AGREEMENT

THIS PASS THROUGH FUNDS AGREEMENT is entered into as of December 1, 2021 between the Utah Department of Transportation (“UDOT”), an agency of the State of Utah, and Hurricane City, a political subdivision of the State of Utah, hereinafter referred to as the “**Local Agency**.”

RECITALS

WHEREAS, under HB3 and HB 409, which was adopted pursuant the Budgetary Procedures Act of Utah Code Title 63J, Chapter 1, the Utah State Legislature allocated for UDOT’s use or administration a one-time total of \$40,000,000.00 for the state’s Transportation Investment Fund for fiscal year 2023 (the “Appropriation”), and the Appropriation must be used for paved pedestrian or pave non-motorized transportation projects, contingent on the political subdivision where a project takes place providing a contribution equal to or greater than twenty percent of the costs needed for construction, reconstruction, or renovation of such projects; and

WHEREAS, Local Agency has proposed to use \$2,185,920.00 of the Appropriation for a local active transportation project to construct a multi-use trail along 600 North from 3700 West to 200 West in Hurricane Utah.

WHEREAS, UDOT desires to pass the Funds through to **Local Agency** under the terms required by the Appropriation and state code so **Local Agency** can construct the Project, and Utah Code Section 63J-1-220(2) mandates that UDOT may not provide **Local Agency** with state pass through funding unless an agreement is executed. In addition, such agreement must require **Local Agency** to provide a written description and itemized report at least annually detailing the expenditure of the Funds, or the intended expenditure of any Funds that have not been spent, and a final written itemized report when all the Funds are spent; and

WHEREAS, Utah Code Section 63J-1-903 requires specific performance measures for the Funds that are spent to meet UDOT’s reporting obligations to the Governor’s Office of Management and Budget and the Office of Legislative Fiscal Analyst.

AGREEMENT

THEREFORE, in consideration of the foregoing recitals (which by this reference are incorporated herein) and the mutual promises set forth herein, the parties hereto agree as follows:

1. Objective and Payment Schedule. **Local Agency** will use the Funds for the purposes stated in HB3 and HB 409. UDOT will transfer the Funds to Hurricane City in the following manner: The **Local Agency** will send monthly/quarterly invoices to UDOT. UDOT will reimburse the Local Agency for 80% of the project costs not to exceed \$2,185,920.00. The Local Agency’s match of 20% will be deducted from each payment request (the total 20% local match is \$546,480.00). Any charges exceeding the overall project value of \$2,732,400.00 will be the responsibility of the Local Agency.

2. Key Activities. **Local Agency** will use the Funds as described in this Agreement to meet the following performance measures:

- a. **Local Agency** will spend 100% of the Funds by no later than December 31, 2024.
- b. The Funds will be used to construct a multi-use trail along 600 North from 3700 West to 200 West in Hurricane Utah.
- c. **Local Agency** will provide to UDOT a written report of the status of the Project by no later than the Friday at the end of the last full week of April, 2023, and will provide other reports as stated in this Agreement.

3. Budget and Deliverables. **Local Agency** will maintain documents that show all projected and actual spending for the activities described herein, including all funding sources and itemized Project costs. **Local Agency** agrees that from time-to-time **Local Agency** (and UDOT) may be responsible to submit reports or respond to inquiries for the Utah State Legislature and the Utah Governor's Office, and to comply with other reporting rules or audit requirements in connection with the Funds. **Local Agency** will promptly respond to UDOT's reasonable requests for information concerning the Funds. Upon spending all of the Funds, **Local Agency** will provide UDOT with a final written itemized report detailing where the Funds have been spent and also showing all funding sources and total Project costs. For all Funds that are not spent during the state's FY 2023-2024, **Local Agency** will provide a written description and an itemized report at least annually detailing the expenditure of the Funds, or the intended expenditure of any Funds that have not been spent, and will provide the final written itemized report described above upon exhausting the Funds. Reporting requirements are further described in Exhibit A attached hereto and made a part hereof.

4. Limitation. **Local Agency** agrees that it will only spend the Funds for the purposes and activities that are expressly described this Agreement. If **Local Agency** misapplies any Funds, it shall promptly notify UDOT and remove such expenditure from the budget so such expenditure is not paid by the Funds. If **Local Agency** fails to correct any misapplication of the Funds within 30 days of discovering such misapplication, **Local Agency** agrees that it shall no longer have the right to possess the Funds and that all unspent and misapplied Funds shall at that time be immediately due and payable to UDOT so UDOT can return them to the state of Utah in the manner determined by the Utah Governor's Office or the Utah State Legislature or otherwise make use of them as provided by applicable law.

5. UDOT's Role. **Local Agency** agrees that UDOT is a pass-through administrator only for the Funds and that UDOT does not have any role in the use of the Funds. **Local Agency** agrees that UDOT shall not be liable for any claim or cost, of any kind whatsoever, in connection with the Funds, and **Local Agency** hereby releases UDOT from all of the same, regardless of when the same may arise. **Local Agency** further agrees to indemnify, hold harmless and defend UDOT from any claim or cost, of any kind whatsoever, in connection with the Funds, except when caused by UDOT's sole negligence or malfeasance. This indemnity obligation shall not be construed to violate Utah's Governmental Immunity Act to the extent that such Act is applicable to a claim or

cost. UDOT has all remedies available by law in addition to those stated in this Agreement, and UDOT's remedies are not limited by the terms of this Agreement.

6. Further Assurances. Each party to this Agreement agrees to undertake and perform all further acts that are reasonably necessary to carry out the intent and purposes of this Agreement and to obtain compliance with the laws or federal obligations that apply to either party, and either party may notify the other party of a need for such further acts.

7. Modifications. The failure of either party to insist upon strict compliance with any of the terms and conditions of this Agreement, or failure or delay by either party to exercise any rights or remedies provided in this Agreement or by law, will not release either party from any obligations arising under this Agreement. This Agreement may not be modified except by a written document signed by an authorized individual representing each of the respective parties.

8. Miscellaneous. This Agreement is binding upon and inures to the benefit of the parties and it does not inure to the benefit of any third party. No party shall assign or transfer any rights, or delegate any duties hereunder, without the other party's prior written consent, and any such attempted assignment, transfer or delegation is void. The parties agree to work cooperatively and in good faith. Before taking any legal action in connection with this Agreement, each party agrees to first advise the other of a dispute and to meet in good faith in an effort to resolve it. If any notice is required in connection with this Agreement, each party shall send a written notice to the other party's chief financial officer using a manner that can reasonably assure a timely and accurate delivery. This Agreement does not create any partnership, joint venture, or agency relationship.

9. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations, verbal or written.

10. Signatures. Each party represents that it has the authority to enter into this Agreement and has signed below by an authorized representative. This Agreement may be signed in counterparts.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

LOCAL GOVERNMENT

By: _____ (Nanette Billings)
Title: Hurricane City Mayor
Date: _____

Approved as to form:

UTAH DEPARTMENT OF TRANSPORTATION

By: _____ (Monte Aldridge)

Title: Region 4 Director

Date: _____

EXHIBIT A

1. **Performance Measures.** The Parties agree that Funds will be applied to an approved scope of work for the project described in this Agreement and that the work will meet the performance measures provided by the recipient of the Funds.
2. **Public Funds Compliance.** The recipient of the Funds shall comply with applicable state statutes on the reporting and expenditure of public funds. In particular, Utah Code Annotated 63J-1-220(2)(b) requires recipients to provide UDOT with reports as provided therein and in this Agreement. The recipient of the Funds shall provide regular update reports to UDOT as frequently as UDOT may reasonably direct (but not more frequently than once each quarter). Each year, on the Friday at the end of the last full week of April, the recipient of the Funds will provide an annual report to UDOT that includes, at a minimum, the following (in the order specified):
 - a. An itemized account of amounts spent and the dates when spent (noting any items outside the approved scope of work, if any). The account will include all sources of funding and a statement of all remaining unspent Funds. This information is used to assess accuracy.
 - b. The projected spending that will be incurred before the applicable fiscal year's end (June 30 of each year).
 - c. The difference between the appropriated amount of Funds and the actual amount used.
 - d. A brief explanation of why the Funds were requested or granted, and how Fund expenditures solved or were expected to solve or ameliorate an issue.
 - e. An assessment of implementation which includes: (i) what month and year the Project, program, or bill was fully implemented; (ii) whether the Project or program encountered any factors that caused a delay in implementation and an explanation of those factors; and (iii) whether the Project or program encountered any factors that caused a change in scope and an explanation of those factors
 - f. An assessment of performance which includes: (i) how the success of the Project or program is being measured, and (ii) how successful the Project or program has been according to those metrics.
 - g. Upcoming Project milestone dates and the anticipated date of project completion.
3. **Final Report.** Within thirty (30) days after all Funds have been expended, the recipient of the Funds shall submit a Final Report to UDOT. The Final Report must address the following:
 - a. Each topic outlined in the scope of work.
 - b. The information required under Exhibit A, paragraph 2.
 - c. The date when the Project or program was completed.
4. **Certification.** For all information submitted, the recipient of the Funds must certify that it has provided accurate information and used the funds as required by this Agreement.



STAFF COMMENTS

Closed Meeting held pursuant to Utah Code section 52-4-205, upon request

Discussion:

Findings:

Recommendation:

Attachments:

None