



HURRICANE CITY UTAH

Mayor

Nanette Billings

City Manager

Kaden DeMille

City Council

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

Hurricane City Council Meeting Agenda

February 3, 2022
3:00 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 to 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.

3:00 pm Work Meeting - PID dicussion

5:00 p.m. Pre-meeting

6:00 p.m. - Call to Order

Recognition and thanks to Former Mayor John Bramall

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 Modified Agreement between Hurricane City and Stratton Brothers Partnership-Fay Reber**

NEW BUSINESS

1. Consideration and possible approval of an **MOU agreement with 501C3 to host youth football-Cory Ashbey**
2. Consideration and possible approval of a **proposal to seek sponsorship aid in using the school district buses for a private event - Dehn Craig**

3. Consideration and possible approval of **local consent for Washington County Fair-Susi Lafaele**
4. Consideration and possible approval of **local consent for LPGA Epson Tour-Copper Rock Championship-David Viverios**
5. Consideration and possible approval of a **reduction in park and road impact fees for an apartment complex located at approximately 6129 W 100 South H-4-2-4-3211 - Kyle Arbizu**
6. Consideration and possible approval of **awarding a contract to construct 2800 West - Arthur LeBaron**
7. Consideration and possible approval of **updating the Water Board Term Schedule and appointing Lea Thompson-Nanette Billings**
8. Discussion **regarding vacation rentals-** Jacquie Slade
9. Consideration and possible approval of a **Reimbursement Agreement for Zion Tiny RV Park-Stephen Nelson**
10. **Public Hearing** to comments on the following:
 - a. **A Sensitive Land application on The Ridge at Zion Vista Ph 2**, a 19-lot subdivision, located at 840 South 1850 West
11. Consideration and possible approval of a **sensitive land application and preliminary plat on The Ridge @ Zion Vista Ph 2**, a 19-lot subdivision, located at **840 S 1850 West** - Rich Hansen applicant
12. Consideration and possible approval of a proposed **zone change located at 4700 S and 2600 W from RA-1, residential agriculture one unit per acre, to R1-10**, residential one unit per 10,000 square feet. Parcel numbers: H-3-2-32-330 and H-3-2-32-321. Calypso Ridge Properties Applicant. Karl Rasmussen Agent.
13. Consideration and possible approval on a **Zone Change Request located at approximately 4800 S and 1500 W from RA-1, residential agriculture one unit per acre, to R1-10, residential one unit per 10,000 square feet, with a PDO**, planned development overlay, to add to the existing Solaroca PDO. Parcel numbers: H-3403-E-1, H-3403-E-3, H-3403-H, H-3403-A. The Will Group Applicant. Tyson Williamson Agent.
14. Consideration and possible approval on a **Zone Change request located at approximately 3300 W and 600 N from R1-6, residential one unit per 6,000 square feet, to R1-6 with a PDO**, planned development overlay. Parcel numbers: H-3-1-30-320 and H-3-1-30-321. Perry Development, LLC Applicant. Greg Sant Agent.
15. Consideration and possible approval of an **updated preliminary plat for Peregrine Point West Phase 1-4 Amended**, located at 600 N and 3100 W. Perry Development Applicant, Greg Sant Agent.
16. Consideration and possible approval of a **Resolution declaring parents are the primary stakeholders in their child's life-Nanette Billings**

17. Consideration and possible approval of a **Resolution regarding Freedom and Liberties given to all by the constitution**-Nanette Billings
18. Consideration and possible approval of a **Resolution appointing Nanette Billings to the Washington County Water Conservancy Board**
19. Consideration and possible approval of **appointing Doug Heideman to the Airport Board, Beautification Board, Appeals Board, and Tourism Board**
20. Consideration and possible **approval of a new position** - Nanette Billings
21. Consideration and possible approval for the **City Council and Mayor to be part of fund URS from Stipend** - Nanette Billings
22. Consideration and possible approval of **appointing the Mayor Pro Tempore**

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

PC 11/19/21

SNOW JENSEN & REECE
A PROFESSIONAL LAW CORPORATION

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CURTIS M. JENSEN
LEWIS P. REECE
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OFFICES IN ST. GEORGE, CEDAR CITY AND KANAB

*Licensed in Utah and Nevada

November 19, 2021

***Via email kaden@cityofhurricane.com
And Hand Delivery***

City of Hurricane
District Advisory Committee
c/o Kaden C. Demille, City Manager
147 N. 870 W.
Hurricane, UT 84737

Re: *Amended* Letter of Intent for Creation of
Sand Hollow Mesa Public Infrastructure District Nos. 1-3

To Whom It May Concern:

This letter sets forth certain proposed terms for the approval by Hurricane, Utah (the "City") of certain Public Infrastructure Districts (the "Districts") on behalf of RG Sand Hollow, LLC (the "Developer"), and in connection with the Sand Hollow Mesa development (the "Development").

Developer is a subsidiary of The Romney Group. The Romney Group, founded in 2007, has actively developed residential, industrial, commercial and office properties throughout the Utah market. Its principal owners each have over twenty-five years of real estate experience.

The Romney Group has entitled and developed over 9,000 residential lots in the Utah market, including five master planned communities of over 1,000 units. It has partnered with many of the largest builders in the state to build a wide mix of residential communities, from high end to affordable.

The Romney Group has developed extensive industrial properties, including one of the largest sites in Utah history, a 1,700-acre rail served site in Grantsville, UT. In addition, they have multiple office, retail and multifamily holdings throughout the state.

Developer requests that the City approve the creation of three new Districts in the boundaries of the City as more particularly set forth herein. This letter constitutes a Letter of Intent in compliance with Section I.A. of the City's Policy Statement on the establishment of Public Infrastructure Districts, as follows:

1. **DESCRIPTION OF DISTRICT AREA.** The Districts are proposed as follows:

- a. *Size of area included in Districts:* The initial boundaries of the Districts are proposed as follows: District No. 1, approximately 324.385 acres; District No. 2 approximately 251.409 acres; and District No. 3 approximately 353.423 acres. In addition, the Developer is requesting that the boundaries of the District be permitted to be adjusted between District Nos. 1-3 to match final phasing and development plans. This adjustment would be accomplished by one District annexing property from one or both of the other Districts. Therefore, the total annexation area is the area of all three Districts, or approximately 929.217 acres, but the Annexation Area for each of the Districts is the entire area of the other two Districts, all to be set forth in the Governing Document of each respective District.
- b. *Location of Districts:* The proposed District will cover and include several County parcel numbers as listed in Exhibit A and depicted in Exhibit B. Furthermore, and in accordance with Utah Code § 17B-2a-1204, the Developer is requesting that the City authorize annexation of certain parcels into the District boundaries without further legislative action of the City Council, upon the occurrence of certain requirements such as written petition by the owner of such parcels, as will be established in the Governing Document. Such annexation parcels are also shown described in Exhibit A and depicted in Exhibit B.
- c. *Area context:* The area of the Development and the proposed Districts is in the southern portion of the City, south of 3000 South Street, to the east of Sand Hollow Reservoir and to the west of Copper Rock Golf Course. The Southern Parkway passes through the western and northwestern portions of the Development.
- d. *Development history:* The property proposed to be included in the Districts has little to no significant previous development history and is largely unimproved. The extension of the Southern Parkway through the property and anticipated extension of several other improved public roadways to the area of the property has only recently made large-scale development of the property feasible.
- e. *Proposed development:* See section 2 below.

2. **DESCRIPTION OF PROPOSED DEVELOPMENT.** The Developer intends to construct master planned roads, an interchange at 3700 South Street, parks/trails, and utility

mains complete with new public infrastructure within the proposed District, in order to support the following proposed development.

- a. *General distribution of land uses:* Approximately 3,660 residential units and 130.6 acres of commercial development.
- b. *Densities and phasing of development:* Phasing is anticipated to take place in three phases, generally as follows: PID No. 1 approximately 324.385 acres; PID No. 2 approximately 251.409 acres; and PID No. 3 approximately 353.423 acres. A map of these phases and legal descriptions of each phase are included in Exhibit A. The following is the anticipated portions of the property that will be developed by phase and a list of dwelling units and commercial for each neighborhood:

		<u>D.U.=DWELLING UNITS S.F.=COMMERCIAL</u>		
Phase 1	Neighborhood	4	312 d.u.	59,000 s.f.
		5	446 d.u.	60,000 s.f.
		6	352 d.u.	26,000 s.f.
	<i>Subtotals</i>		<i>1,110 d.u.</i>	<i>145,000 s.f.</i>
Phase 2	Neighborhood	7	407 d.u.	20,000 s.f.
		8	332 d.u.	22,000 s.f.
		10	113 d.u.	17,000 s.f.
	<i>Subtotals</i>		<i>852 d.u.</i>	<i>59,000 s.f.</i>
Phase 3	Neighborhood	1	667 d.u.	58,000 s.f.
		2	373 d.u.	27,000 s.f.
		3	388 d.u.	36,000 s.f.
		9	269 d.u.	18,000 s.f.
	<i>Subtotals</i>		<i>1,697 d.u.</i>	<i>139,000 s.f.</i>

3. SUMMARY OF NEEDED INFRASTRUCTURE, SERVICES AND FACILITIES.

The Developer envisions the proposed District being utilized for the following development, infrastructure, services and facilities:

- a. *Currently expected development scenario:* See section 2 above.
- b. *Required local and regional infrastructure and facilities for the Development:* The Development will require all local and regional infrastructure which is required by City ordinances.

- c. *Regional and local infrastructure the proposed Districts are to provide:* The Districts will provide regional and connector roads, including water, including an interchange at 3700 South Street and the Southern Parkway, and park and trail improvements. The Developer will provide regional water and sewer improvements and all required local improvements.
- d. *Estimated construction costs for the improvements by the proposed Districts:* Approximately \$123,288,000.
- e. *General description of phasing of construction based on development projections:* Phase 1 construction is set to begin shortly. Phase 2 anticipated to commence in approximately three to five years. Phase 3 is anticipated to commence after development of Phase 2.
- f. *Anticipated maximum mill levy required to meet debt service of the Districts:* Developer is requesting the City authorize the Districts to impose a mill levy of not to exceed 0.0045 per dollar of taxable value of taxable property in the Districts (the "Mill Levy").
- g. *Analysis of proposed mill levies in light of outstanding debt and mill levies of other taxing entities affecting the area:* No other mill levies are currently affecting or anticipated in the area of the proposed Districts aside from those generally applicable to all other areas of the City.
- h. *Sample plan for finance depicting possible sources and uses of funds for the Districts:*
 - i. Developer proposes the maximum Mill Levy described in section 3.f. above. The actual Mill Levy may be less than the maximum, depending on the terms of financing which can be obtained. Furthermore, the later addition of properties to the District through annexation is anticipated to reduce the actual Mill Levy required to service the District bonds. The Mill Levy is proposed to be the only source of revenue for the Districts.
 - ii. The proposed District will issue bonds repayable from revenues generated by the Mill Levy.
 - iii. The primary use of the bond proceeds will be for the construction of the regional and local infrastructure described in section 3.c. above, plus customary and appropriate costs of financing and administrative costs.

iv. District revenues will be applied first to service bond payments, before any other obligations of the Districts. Developer will be responsible for all administrative costs of the Districts until such time as the revenue of the Districts is sufficient to both service the bonds and pay District costs.

4. **PROPOSED TIMELINE FOR DISTRICT CREATION:** Developer anticipates creating the Districts by December 1, 2021.
5. **DEVELOPER'S ACKNOWLEDGEMENTS:** Developer hereby acknowledges that a consent must be signed prior to the hearing date for the governing document by all property owners and registered voters, if any, within the proposed District boundaries, which signed consent approves of the creation of the proposed District and the issuance of debt in an amount sufficient for the proposed plan of financing.
6. **CONFLICTS OF INTEREST:** Developer is presently unaware of any conflicts of interest existing between Developer and any employees or officers of the City.
7. **PROFESSIONAL ENGAGEMENT:** Developer has retained Snow Jensen & Reece, PC, as legal counsel for creation of the proposed Districts and negotiation and preparation of the governing documents. A copy of a signed engagement letter in which Developer has agreed to pay the fees and costs associated with the same can be provided upon request.
8. **ADDITIONAL SUPPLEMENTAL INFORMATION REQUESTED BY CITY:** This additional section is added to provide additional supplemental information requested by the City on Thursday, November 18, 2021.
 - a. *Application fee.* An application fee of \$2,000 is included with the hand delivery of this Amended Letter of Intent and the Amended Petition.
 - b. *Detailed plan of the improvements showing commercial areas, parks, trails, amenities, etc.* A copy of the Sand Hollow Mesa Master Plan / PDO Concept previously approved by the City is submitted with this Amended Letter of Intent and the Amended Petition. Commercial areas, parks, trails, amenities, etc. are all depicted in the approved Master Plan.
 - c. *A cost break down of what items would be paid for by District bond proceeds.* The estimated cost breakdown is provided in a new Exhibit C to this Amended Letter of Intent. Note that all costs are estimates.
 - d. *Exhibits for improvements/amenities that the District will fund.* See Exhibit C attached, and the approved Master Plan submitted herewith, for additional details regarding improvements/amenities anticipated to be funded by the District.

- e. *List what improvements/amenities would not be included in the project if the District is not approved.* The Development requires a large amount of infrastructure be paid for and constructed before any significant development can take place, including but not limited to the water mains, sewer mains, power lines, roads, and the planned 3700 South interchange. Without the financing that can be provided by the District, Developer will not be able to pay for all of these improvements. This would severely and adversely impact the master planned scope of the Development, for which Developer has already received approval by the City. For example, without the means to pay for the 3700 South interchange, the development of the planned 400,000 square feet of commercial space is not possible or feasible. The overall success of the Development is closely tied to the ability of Developer to obtain this public improvement financing, and particularly if the City is not interested in financing such public improvements itself.

Very truly yours,

SNOW JENSEN & REECE, PC



Matthew J. Ence

Signed as duly authorized by Developer, and on its behalf

Enclosures

cc: Cindy Beteag, Hurricane City Recorder

EXHIBIT A
To Letter of Intent

Parcels Proposed For Inclusion In Initial District Boundaries
Proposed Annexation Parcels

SAND HOLLOW MESA P.I.D. DISTRICT 1 LEGAL DESCRIPTION

BEGINNING AT THE EAST QUARTER CORNER OF SECTION 29, TOWNSHIP SOUTH,
RANGE 13 WEST, SALT LAKE BASE & MERIDIAN;
THENCE N88°55'38"W 2644.29 FEET; THENCE N88°55'38"W 1316.41 FEET;
THENCE S32°42'08"W 564.20 FEET; THENCE S53°27'03"W 632.02 FEET;
THENCE N43°01'57"W 119.55 FEET; THENCE N50°51'31"W 1147.90 FEET TO THE
EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY 7;
THENCE ALONG SAID LINE THE FOLLOWING TWELVE (12) COURSES:
N38°56'24"E 771.59 FEET; THENCE N54°53'00"E 182.00 FEET;
THENCE N32°26'53"E 459.99 FEET; THENCE N21°43'12"E 217.45 FEET;
THENCE NORTHERLY ALONG THE ARC OF A 3150.00 FOOT RADIUS NON-TANGENT
CURVE TO THE LEFT (LONG CHORD BEARS: N17°23'49"E 1704.73 FEET), CENTER
POINT LIES N56°54'13"W THROUGH A CENTRAL ANGLE OF 31°23'56" A DISTANCE
OF 1726.25 FEET;
THENCE N01°41'50"E 2354.30 FEET; THENCE NORTHERLY ALONG THE ARC OF A
4150.00 FOOT RADIUS CURVE TO THE LEFT (LONG CHORD BEARS: N07°24'37"W
1313.79 FEET), CENTER POINT LIES N88°18'10"W THROUGH A CENTRAL ANGLE OF
18°12'54" A DISTANCE OF 1319.34 FEET;
THENCE N11°26'26"W 783.27 FEET; THENCE N01°59'36"W 516.62 FEET;
THENCE N53°53'15"E 78.08 FEET; THENCE S88°57'52"E 324.73 FEET;
THENCE N89°28'28"E 335.12 FEET; THENCE S01°01'07"W 2588.88 FEET;
THENCE S00°54'40"W 1320.29 FEET; THENCE S88°52'15"E 1313.68 FEET;
THENCE S01°01'38"W 1320.77 FEET; THENCE S00°55'44"W 1318.21 FEET;
THENCE S88°52'39"E 2638.18 FEET; THENCE S00°39'45"W 1315.42 FEET TO THE POINT
OF BEGINNING.

AREA CONTAINS 14,130,219 SQUARE FEET OR 324.385 ACRES.

SAND HOLLOW MESA P.I.D. DISTRICT 2 LEGAL DESCRIPTION

BEGINNING AT THE CENTER QUARTER CORNER OF SECTION 29, TOWNSHIP SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN;
THENCE S00°55'44"W 1318.48 FEET; THENCE N88°56'29"W 1317.35 FEET;
THENCE S00°58'12"W 1318.53 FEET; THENCE N88°56'37"W 1318.30 FEET;
THENCE S00°54'56"W 1312.19 FEET; THENCE N88°57'41"W 1322.27 FEET;
THENCE N00°57'56"E 1313.59 FEET; THENCE N88°54'03"W 1321.13 FEET;
THENCE N00°59'47"E 1017.22 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY 7;
THENCE ALONG SAID LINE THE FOLLOWING FOUR (4) COURSES: N62°49'28"E 959.14 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF A 4195.84 FOOT RADIUS CURVE TO THE LEFT (LONG CHORD BEARS: N56°45'12"E 886.60 FEET), CENTER POINT LIES N27°10'55"W THROUGH A CENTRAL ANGLE OF 12°07'46" A DISTANCE OF 888.26 FEET;
THENCE N60°44'58"E 106.64 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF A 4199.99 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (LONG CHORD BEARS: N44°10'55"E 738.36 FEET), CENTER POINT LIES N40°46'31"W THROUGH A CENTRAL ANGLE OF 10°05'08" A DISTANCE OF 739.32 FEET;
THENCE S50°51'31"E 1147.90 FEET; THENCE S43°01'57"E 119.55 FEET;
THENCE N53°27'03"E 632.02 FEET; THENCE N32°42'08"E 564.20 FEET;
THENCE S88°55'38"E 1316.41 FEET TO THE POINT OF BEGINNING.

AREA CONTAINS 10,951,391 SQUARE FEET OR 251.409 ACRES.

SAND HOLLOW MESA P.I.D. DISTRICT 3 LEGAL DESCRIPTION

BEGINNING AT THE NORTH QUARTER CORNER OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN; THENCE S89°00'06"E ALONG THE NORTH SECTION LINE, 1644.21 FEET TO THE WEST RIGHT-OF-WAY LINE OF HIGHWAY 7; THENCE ALONG SAID LINE THE FOLLOWING TWENTY THREE (23) COURSES: THENCE S00°59'31"W 45.11 FEET; THENCE S84°58'13"E 426.06 FEET; THENCE S89°00'29"E 400.00 FEET; THENCE S48°03'50"E 71.88 FEET; THENCE S14°16'38"E 250.20 FEET; THENCE S27°52'40"E 203.96 FEET; THENCE S40°47'44"E 219.32 FEET; THENCE S20°46'56"E 476.29 FEET; THENCE S16°34'05"E 351.50 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 3825.00 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS: S13°53'35"E 357.03 FEET), CENTER POINT LIES S73°25'55"W THROUGH A CENTRAL ANGLE OF 05°21'00" A DISTANCE OF 357.15 FEET; THENCE S38°23'13"E 54.09 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 3858.80 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (LONG CHORD BEARS: S04°24'08"E 818.17 FEET), CENTER POINT LIES S79°30'44"W THROUGH A CENTRAL ANGLE OF 12°10'16" A DISTANCE OF 819.71 FEET; THENCE S01°41'50"W 2354.29 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 2850.52 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS: S13°05'55"W 1126.85 FEET), CENTER POINT LIES N88°18'06"W THROUGH A CENTRAL ANGLE OF 22°48'00" A DISTANCE OF 1134.32 FEET; THENCE S32°05'57"W 378.86 FEET; THENCE S41°23'40"W 353.78 FEET; THENCE S38°56'26"W 125.00 FEET; THENCE S22°14'29"W 208.81 FEET; THENCE S38°56'26"W 931.87 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF A 3854.71 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS: S44°47'34"W 786.07 FEET), CENTER POINT LIES N51°03'34"W THROUGH A CENTRAL ANGLE OF 11°42'16" A DISTANCE OF 787.44 FEET; THENCE S66°32'48"W 294.49 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF A 3780.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (LONG CHORD BEARS: S58°53'35"W 519.33 FEET), CENTER POINT LIES N35°02'45"W THROUGH A CENTRAL ANGLE OF 07°52'41" A DISTANCE OF 519.74 FEET; THENCE S62°49'55"W 744.90 FEET; THENCE N00°59'27"E 1165.97 FEET; THENCE S88°55'00"E 1321.47 FEET; THENCE N00°58'28"E 660.13 FEET; THENCE N00°58'28"E 660.13 FEET; THENCE N00°58'28"E 659.98 FEET; THENCE N01°00'55"E 3297.46 FEET; THENCE S88°58'31"E 329.89 FEET; THENCE N01°01'40"E 329.70 FEET; THENCE N88°58'43"W 329.86 FEET; THENCE N01°01'53"E 989.05 FEET; THENCE S88°59'18"E 659.61 FEET; THENCE N00°59'11"E 659.40 FEET; THENCE N88°59'32"W 988.85 FEET; THENCE S01°02'06"W 659.33 FEET; THENCE N88°59'18"W 989.41 FEET; THENCE N01°02'44"E 659.22 FEET; THENCE N01°02'44"E 659.22 FEET TO THE POINT OF BEGINNING.

AREA CONTAINS 15,395,115 SQUARE FEET OR 353.423 ACRES.

LEGAL DESCRIPTIONS BY PARCEL:

SAND HOLLOW MESA PARCELS NO. 1-42 AND 44-63: (LABELED AS SUCH FOR REFERENCE PURPOSES ONLY)

PARCEL 1 (H-3400-A): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 2 (H-3400-D): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 3 (H-3400-E): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 4 (H-3400-H): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 5 (H-3421-C): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 6 (H-3421-D): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 7 (H-3421-E): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 8 (H-3421-F): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 9 (H-3421-H): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 10 (H-3421-G): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 11 (H-3421-I): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 12 (H-3409-B-2): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 13 (H-3410): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 14 (H-3410-B): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 15 (H-3410-C): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 16 (H-3410-D): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20 TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 17 (H-3410-E): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 18 (H-3410-F): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 19 (H-3410-G): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 20 (H-3410-J): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

LESS AND EXCEPTING FROM PARCELS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, THAT PORTION STIPULATED IN THAT ORDER OF OCCUPANCY RECORDED AUGUST 6, 2019, AS DOC. NO. 20190031223, OFFICIAL WASHINGTON COUNTY RECORDS.

PARCEL 21 (H-3399-B): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 22 (H-3399-I): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 23 (H-3399-D): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

LESS AND EXCEPTING FROM PARCELS 21, 22, 23 AND 24, COPPER ROCK PARKWAY AND 2100 WEST ROADWAY DEDICATION, RECORDED DECEMBER 26, 2018, AS DOC. NO. 2018005057.9, OFFICIAL WASHINGTON COUNTY RECORDS.

PARCEL 25 (H-3400-I): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 26 (H-3400-L): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 27 (H-3400-M): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 28 (H-3400-P): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 29 (H-3400-B): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 30 (H-3400-C): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 31 (H-3400-F): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 32 (H-3400-G): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 33 (H-3400-J): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 34 (H-3400-K): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 37 (H-3399-A): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 44 (H-3421-A): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 45 (H-3421): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 46 (H-3421-J): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 47 (H-3421-K): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 48 (H-3421-L): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 49 (H-3422): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 31, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 50 (H-3422-B): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 31, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 51 (H-3409): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 52 (H-3409-C-2): THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4; AND THE WEST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 53 (H-3409-D): THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 54 (H-3409-E): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 55 (H-3409-F): THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4; THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4; THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4; AND THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 56 (H-3409-G): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 57 (H-3409-H): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 58 (H-3409-I): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 59 (H-3409-J): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 60 (H-3410-H): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 61 (H-3410-I): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

COMBINED ANNEXATION AREA LEGAL DESCRIPTION:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION (THE COMMON CORNER TO SECTIONS 29, 30, 31 & 32), TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN; THENCE S00°54'56"W, ALONG THE EAST SECTION LINE OF SECTION 31, 1312.19 FEET TO THE 1/16 CORNER OF SAID SECTION 31; THENCE N88°57'41"W, ALONG THE 1/16TH LINE, 1322.27 FEET TO THE NORTH-SOUTH 1/16TH LINE; THENCE N00°57'56"E, ALONG THE 1/16TH LINE, 1313.59 FEET TO THE 1/16TH CORNER ON THE SOUTH SECTION LINE OF SECTION 30; THENCE N88°53'33"W, ALONG THE SOUTH SECTION LINE, 1321.14 FEET TO THE SOUTH 1/4 CORNER OF SECTION 30; THENCE N00°59'47"E, ALONG THE 1/4 SECTION LINE, 2636.98 FEET TO THE CENTER QUARTER CORNER OF SECTION 30; THENCE S88°55'00"E, ALONG THE 1/4 SECTION LINE, 1321.47 FEET TO THE 1/16TH CORNER; THENCE N00°58'28"E, ALONG THE NORTH-SOUTH 1/16TH LINE, 2640.21 FEET TO THE 1/16TH CORNER ON THE SOUTH SECTION LINE OF SECTION 19; THENCE N01°01'32"E, ALONG THE NORTH-SOUTH 1/16TH LINE, 2637.48 FEET TO THE 1/16TH CORNER IN SECTION 19; THENCE S88°58'31"E, ALONG THE 1/4 SECTION LINE, 329.89 FEET; THENCE N01°01'40"E 329.70 FEET; THENCE N88°58'43"W 329.86 FEET TO THE NORTH-SOUTH 1/16TH LINE; THENCE N01°01'53"E, ALONG THE 1/16TH LINE, 989.05 FEET TO THE 1/16TH CORNER; THENCE S88°59'18"E, ALONG THE EAST-WEST 1/16TH LINE, 659.61 FEET; THENCE N01°01'27"E 659.45 FEET; THENCE N88°59'42"W 989.29 FEET; THENCE S01°02'06"W 659.33 FEET TO THE EAST-WEST 1/16TH LINE; THENCE N88°59'18"W, ALONG THE 1/16TH LINE, 989.41 FEET TO THE 1/4 SECTION LINE; THENCE N01°02'44"E, ALONG THE 1/4 SECTION LINE, 1318.43 FEET TO THE NORTH QUARTER CORNER OF SECTION 19; THENCE S89°00'06"E, ALONG THE NORTH SECTION LINE OF SECTION 19, 2637.77 FEET TO THE COMMON CORNER OF SECTION 17, 18, 19, 20 (NORTHEAST CORNER OF SECTION 19); THENCE S88°57'52"E, ALONG THE NORTH SECTION LINE OF SECTION 20, 1316.43 FEET TO THE 1/16TH CORNER; THENCE S01°01'06"W, ALONG THE 1/16TH LINE, 2639.62 FEET; THENCE S01°00'58"W, ALONG THE 1/16TH LINE, 1319.92 FEET TO THE 1/16TH CORNER; THENCE S88°51'19"E, ALONG THE 1/16TH LINE, 1316.11 FEET TO THE 1/4 SECTION LINE OF SECTION 20; THENCE S01°01'38"W, ALONG THE 1/4 SECTION LINE, 1320.77 FEET TO THE SOUTH 1/4 CORNER OF SECTION 20, ALSO THE NORTH 1/4 CORNER OF SECTION 29; THENCE S00°55'44"W, ALONG THE 1/4 SECTION LINE IN SECTION 29, 1318.21 FEET TO THE 1/16TH CORNER; THENCE S88°52'39"E, ALONG THE 1/16TH LINE, 2638.18 FEET TO THE EAST SECTION LINE; THENCE S00°39'45"W, ALONG THE EAST SECTION LINE, 1315.42 FEET TO THE EAST 1/4 CORNER OF SECTION 29; THENCE N88°55'38"W, ALONG THE 1/4 SECTION LINE, 2644.29 FEET TO THE NORTH-SOUTH 1/4 SECTION LINE; THENCE S0°55'44"W, ALONG THE 1/4 SECTION LINE, 1318.48 FEET TO THE 1/16TH LINE; THENCE N88°56'29"W, ALONG THE EAST-WEST 1/16TH LINE, 1317.35 FEET TO THE NORTH-SOUTH 1/16TH LINE; THENCE S0°58'12"W, ALONG THE

1/16TH LINE, 1318.53 FEET TO THE SOUTH SECTION LINE; THENCE N88°56'37"W
ALONG SAID LINE, 1318.30 FEET TO THE POINT OF BEGINNING.
AREA CONTAINS 44,450,513 SQUARE FEET OR 1020.443 ACRES.

LEGAL DESCRIPTION INCLUDES 91.24 ACRES FOR THE SR-7 HIGHWAY AND 5.63
ACRES FOR COPPER ROCK PARKWAY AND 2100 WEST ROAD.

EXHIBIT B **To Letter of Intent**

Map of District Boundaries and Annexation Area **SAND HOLLOW MESA P.I.D. MAP**

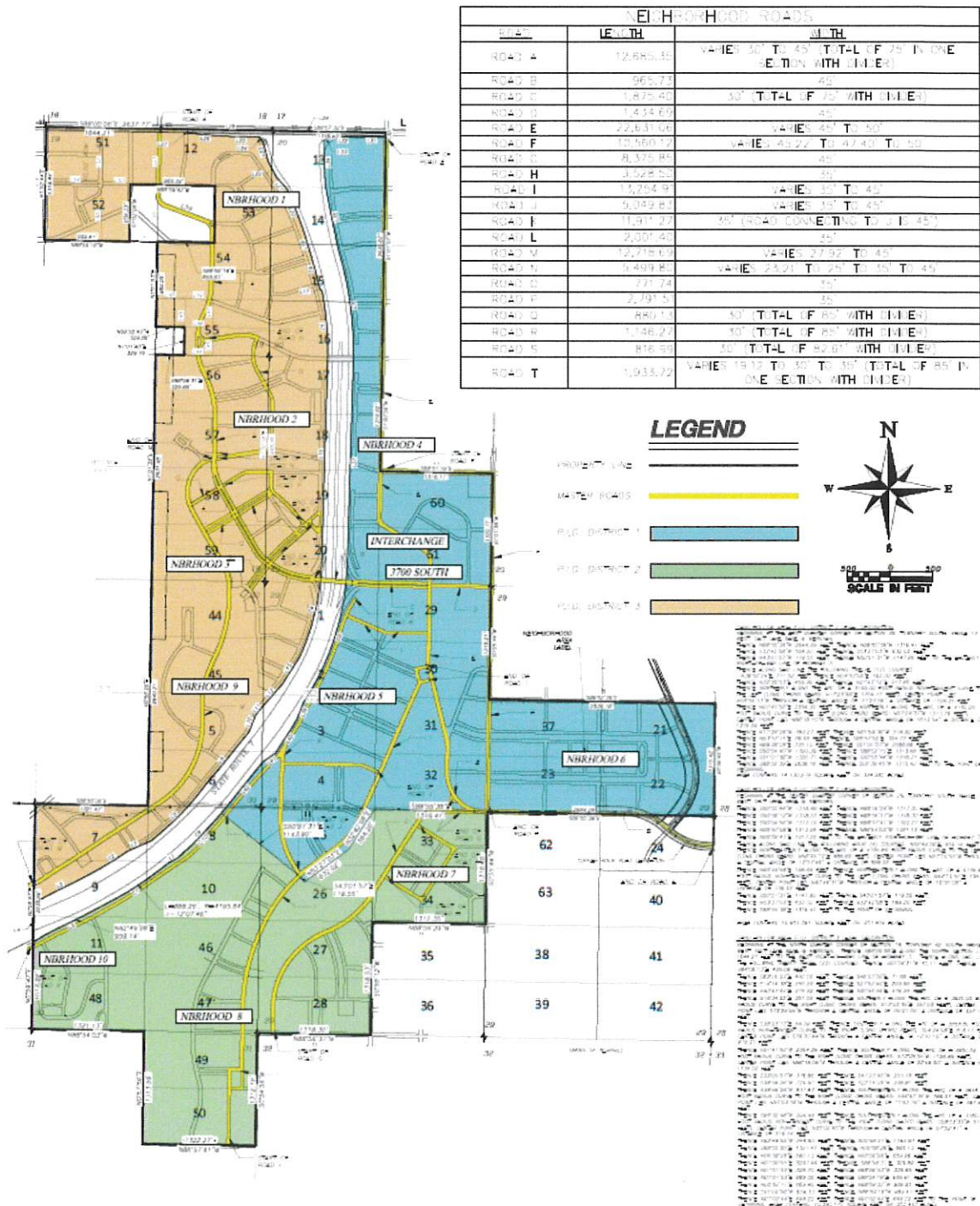


EXHIBIT C
To Letter of Intent

Improvements/Amenities to be Financed by the Districts

SAND HOLLOW MESA PID ROAD ESTIMATES

Date: 10/8/2021 (updated Nov. 19, 2021)

			SAND HOLLOW MESA		
			PUBLIC IMPROVEMENT DISTRICT		
			TOTAL ESTIMATE		
ITEM No.	ITEM DESCRIPTION	UNIT PRICE Dollars & Cents	QUANTITY	UNITS	ITEM PRICE Dollars & Cents
P.I.D. ITEMS					
1	MASTER PLANNED ROADS	\$ 950.00	80,000	LF	\$ 76,000,000.00
2	3700 SOUTH INTERCHANGE	\$ 8,500,000.00	1	LS	\$ 8,500,000.00
3	OPEN SPACE/ PARKS	\$ 150,000.00	72	ACRES	\$ 10,800,000.00
4	TRAILS	\$ 800,000.00	9.3	MILES	\$ 7,440,000.00
TOTAL of BID SCHEDULE A (Items 1 thru 39) =					\$ 102,740,000.00
S.H. MESA TOTAL		\$ 102,740,000.00			
ENGINEERING, CONST MGMT, AND TESTING		\$ 10,274,000.00			
CONTINGENCY		\$ 10,274,000.00			
GRAND TOTAL		\$ 123,288,000.00			

ITEMS INCLUDED IN THE MASTER PLANNED ROADS

Includes water mains, sewer mains, power, excavation, base course, asphalt pavement, curb & gutter, sidewalks.

ITEMS INCLUDED IN THE 3700 SOUTH INTERCHANGE

Includes overpass bridge, on & off ramps, roadway improvements, utility work, lights, and trail route.

ITEMS INCLUDED IN THE PARKS

Includes amenities for City parks/ open space improvements that include green fields, trees, xeriscaping, restrooms and parking lots for users of the trails and parks.

ITEMS INCLUDED IN THE TRAILS

Includes pavement, utilities and amenities for City trail improvements to the City recommended 12 foot wide trail system that will be throughout Sand Hollow Mesa and tie into adjacent trails that lead to Sand Hollow State Park.

***AMENDED* PETITION REQUESTING THE CREATION OF PUBLIC
INFRASTRUCTURE DISTRICT NOS. 1-3 IN THE CITY OF HURRICANE, UTAH**

November 19, 2021

City of Hurricane
Cindy Beteag, City Recorder
147 N. 870 W.
Hurricane, UT 84737

The undersigned (the “Petitioner”) hereby requests that the City of Hurricane, Utah (the “City”) create three (3) public infrastructure districts (the “Districts”) pursuant to the Local District Act, Title 17B, Chapter 1, Utah Code Annotated 1953 and the Public Infrastructure District Act, Title 17B, Chapter 2a, Utah Code Annotated 1953 (collectively, the “Act”). The Petitioner requests the Districts in order to assist in the financing of public infrastructure to service and benefit the proposed area of the Districts and the Annexation Areas as described herein.

This Amended Petition has been submitted to supplement the original Petition with modifications and additional information requested by the City on Thursday, November 18, 2021.

I. Petitioners

RG Sand Hollow LLC
2265 E. Murray Holladay Rd.
Holladay, UT 84117
(801) 953-1110

Western States Ventures SG LLC
2265 E. Murray Holladay Rd.
Holladay, UT 84117
(801) 953-1110

Toquerville Enterprises, LLC
770 Porto Mio Way
Las Vegas, NV 89138

RG Sand Hollow LLC is designated as a sponsor of this petition, and as the contact sponsor. There are no registered voters residing within the proposed District boundaries.

II. Proposed District Boundaries

The Petitioners request that the initial District boundaries (the “District Boundaries”) for each of the three proposed Districts be as particularly described on Exhibit A. A map of the proposed District Boundaries is provided as Exhibit B. Each of the three Districts will have the right to annex property from the other two Districts in order to adjust the boundaries between the

Districts, with the consent of the affected property owners, and the consent of the other District if the annexed property is to be withdrawn from the other District; therefore, the Annexation Area for each of the Districts shall be comprised of all of the property within each of the other two Districts.

III. Requested Service

The Petitioners request the Districts be created for the purpose of financing the construction of public infrastructure relating to the Development, as permitted under the Act; specifically, the construction of regional and connector roads, including an interchange at 3700 South Street and the Southern Parkway, and park and trail improvements to service and benefit the Districts, as shall be further described in the governing documents relating to the Districts and the Annexation Areas.

IV. Board of Trustees

The Petitioners propose that the Board of Trustees for each of the Districts be initially composed of three members appointed by the City Council who are property owners, their agents, or officers, as follows:

(a) Josh Romney

RG Sand Hollow, LLC
2265 E. Murray Holladay Rd.
Holladay, UT 84117

(b) Anthon Stauffer

RG Sand Hollow, LLC
2265 E. Murray Holladay Rd.
Holladay, UT 84117

(c) Nate Brockbank

RG Sand Hollow, LLC
2265 E. Murray Holladay Rd.
Holladay, UT 84117

V. Petitioner Representations

The Petitioner hereby represents and warrants that:

- (a) Those signing on behalf of entity owners are authorized to do so;
- (b) The Petitioners are the sole owners of the real property included within each of the District Boundaries;
- (c) This Petition is signed by 100% of the surface property owners of real property within each of the District Boundaries;
- (d) The Petitioners will not include any portion of the Annexation Area (if any) into any of the Districts without the consent of 100% of the surface property owners thereof and registered voters, if any, residing within such area;

- (e) There are no registered voters residing within any of the District Boundaries; and
- (f) The proposed Trustees listed above are registered voters at their primary residence and are either a property owner or the agent or officer of a property owner.

VI. Petitioner Consent

The Petitioners hereby consent to:

- (a) The creation of a public infrastructure district with each of the respective District Boundaries described herein;
- (b) The annexation of any portion of the Annexation Area (if any) into any of the Districts upon petition by the owner of such portion and any registered voters residing thereon;
- (c) A waiver of the residency requirement for members of the Boards of Trustees of the Districts as permitted under Section 17B-2a-1205(3)(a) of the Act;
- (d) A waiver of the entirety of the protest period described in Section 17B-1-213 of the Act pursuant to Section 17B-2a-1204(2)(b) of the Act;
- (e) The recording of a notice as required under Section 17B-2a-1209(3)(a) of the Act, which will apply to all real property within the District Boundaries;
- (f) The Districts levying a property tax of up to \$0.0045 per dollar of taxable value of taxable property within the respective District Boundaries, specifically including the properties of the Petitioners; and
- (g) The issuance by the Districts of bonds repayable through property taxes.

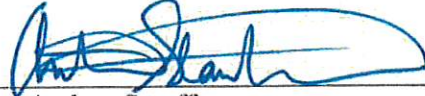
VII. Electronic Means; Counterparts

This Petition may be circulated by electronic means and executed in several counterparts, including by electronic signature, all or any of which may be treated for all purposes as an original and shall constitute and be one and the same document.

IN WITNESS WHEREOF, the Petitioners have each executed this Petition as of the date indicated above.

(signature pages to follow)

RG SAND HOLLOW, LLC, a Utah
limited liability company



By: Anthon Stauffer
Its: Authorized Signer

STATE OF UTAH)
 SS:
COUNTY OF Salt Lake)

On this 3 day of November, 2021, personally appeared before me Anthon Stauffer, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn did say that he is an Authorized Signer for RG Sand Hollow, LLC, that he was duly authorized by said company to sign this Petition, and that he acknowledged to me that said company executed the same for the uses and purposes set forth herein.




NOTARY PUBLIC

**WESTERN STATES VENTURES SG
LLC, a Utah limited liability company**

By: Josh Romney
Its: Authorized Signer

STATE OF UTAH)
 SS:
COUNTY OF Salt Lake)

On this 19 day of November, 2021, personally appeared before me Josh Romney, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn did say that he is an Authorized Signer for Western States Ventures SG LLC, that he was duly authorized by said company to sign this Petition, and that he acknowledged to me that said company executed the same for the uses and purposes set forth herein.



Jennifer Young
NOTARY PUBLIC

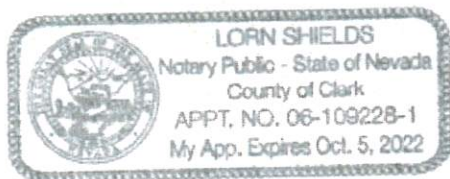
TOQUERVILLE ENTERPRISES, LLC,
a Nevada limited liability company


By: Vyonne S. Mendenhall
Its: Manager

By: Jerald M. Spilsbury
Its: Manager

STATE OF Nevada)
SS:
COUNTY OF Clark)

On this 3rd day of November, 2021, personally appeared before me Vyonne S. Mendenhall, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn did say that she is a Manager of Toquerville Enterprises, LLC, that she was duly authorized by said company to sign this Petition, and that she acknowledged to me that said company executed the same for the uses and purposes set forth herein.





NOTARY PUBLIC

STATE OF _____)
SS:
COUNTY OF _____)

On this ____ day of _____, 2021, personally appeared before me Jerald M. Spilsbury, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn did say that he is a Manager of Toquerville Enterprises, LLC, that he was duly authorized by said company to sign this Petition, and that he acknowledged to me that said company executed the same for the uses and purposes set forth herein.

NOTARY PUBLIC

TOQUERVILLE ENTERPRISES, LLC,
a Nevada limited liability company

By: Vyonne S. Mendenhall
Its: Manager

By: Gerald M. Spilsbury
Its: Manager

STATE OF _____)
COUNTY OF _____) ss:

On this ____ day of _____, 2021, personally appeared before me Vyonne S. Mendenhall, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn did say that she is a Manager of Toquerville Enterprises, LLC, that she was duly authorized by said company to sign this Petition, and that she acknowledged to me that said company executed the same for the uses and purposes set forth herein.

NOTARY PUBLIC

STATE OF UTAH)
COUNTY OF Washington)
SS:

On this 3rd day of November, 2021, personally appeared before me Jerald M. Spilsbury, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn did say that he is a Manager of Toquerville Enterprises, LLC, that he was duly authorized by said company to sign this Petition, and that he acknowledged to me that said company executed the same for the uses and purposes set forth herein.



Bacchiocchi
NOTARY PUBLIC

EXHIBIT A

To Petition for Creation of Public Infrastructure Districts

Legal Description of District Boundaries

SAND HOLLOW MESA P.I.D. DISTRICT 1 LEGAL DESCRIPTION

BEGINNING AT THE EAST QUARTER CORNER OF SECTION 29, TOWNSHIP SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN;
THENCE N88°55'38"W 2644.29 FEET; THENCE N88°55'38"W 1316.41 FEET;
THENCE S32°42'08"W 564.20 FEET; THENCE S53°27'03"W 632.02 FEET;
THENCE N43°01'57"W 119.55 FEET; THENCE N50°51'31"W 1147.90 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY 7;
THENCE ALONG SAID LINE THE FOLLOWING TWELVE (12) COURSES:
N38°56'24"E 771.59 FEET; THENCE N54°53'00"E 182.00 FEET;
THENCE N32°26'53"E 459.99 FEET; THENCE N21°43'12"E 217.45 FEET;
THENCE NORTHERLY ALONG THE ARC OF A 3150.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (LONG CHORD BEARS: N17°23'49"E 1704.73 FEET), CENTER POINT LIES N56°54'13"W THROUGH A CENTRAL ANGLE OF 31°23'56" A DISTANCE OF 1726.25 FEET;
THENCE N01°41'50"E 2354.30 FEET; THENCE NORTHERLY ALONG THE ARC OF A 4150.00 FOOT RADIUS CURVE TO THE LEFT (LONG CHORD BEARS: N07°24'37"W 1313.79 FEET), CENTER POINT LIES N88°18'10"W THROUGH A CENTRAL ANGLE OF 18°12'54" A DISTANCE OF 1319.34 FEET;
THENCE N11°26'26"W 783.27 FEET; THENCE N01°59'36"W 516.62 FEET;
THENCE N53°53'15"E 78.08 FEET; THENCE S88°57'52"E 324.73 FEET;
THENCE N89°28'28"E 335.12 FEET; THENCE S01°01'07"W 2588.88 FEET;
THENCE S00°54'40"W 1320.29 FEET; THENCE S88°52'15"E 1313.68 FEET;
THENCE S01°01'38"W 1320.77 FEET; THENCE S00°55'44"W 1318.21 FEET;
THENCE S88°52'39"E 2638.18 FEET; THENCE S00°39'45"W 1315.42 FEET TO THE POINT OF BEGINNING.

AREA CONTAINS 14,130,219 SQUARE FEET OR 324.385 ACRES.

SAND HOLLOW MESA P.I.D. DISTRICT 2 LEGAL DESCRIPTION

BEGINNING AT THE CENTER QUARTER CORNER OF SECTION 29, TOWNSHIP SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN;
THENCE S00°55'44"W 1318.48 FEET; THENCE N88°56'29"W 1317.35 FEET;
THENCE S00°58'12"W 1318.53 FEET; THENCE N88°56'37"W 1318.30 FEET;
THENCE S00°54'56"W 1312.19 FEET; THENCE N88°57'41"W 1322.27 FEET;
THENCE N00°57'56"E 1313.59 FEET; THENCE N88°54'03"W 1321.13 FEET;
THENCE N00°59'47"E 1017.22 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY 7;
THENCE ALONG SAID LINE THE FOLLOWING FOUR (4) COURSES: N62°49'28"E 959.14 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF A 4195.84 FOOT RADIUS CURVE TO THE LEFT (LONG CHORD BEARS: N56°45'12"E 886.60 FEET), CENTER POINT LIES N27°10'55"W THROUGH A CENTRAL ANGLE OF 12°07'46" A DISTANCE OF 888.26 FEET;
THENCE N60°44'58"E 106.64 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF A 4199.99 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (LONG CHORD BEARS: N44°10'55"E 738.36 FEET), CENTER POINT LIES N40°46'31"W THROUGH A CENTRAL ANGLE OF 10°05'08" A DISTANCE OF 739.32 FEET;
THENCE S50°51'31"E 1147.90 FEET; THENCE S43°01'57"E 119.55 FEET;
THENCE N53°27'03"E 632.02 FEET; THENCE N32°42'08"E 564.20 FEET;
THENCE S88°55'38"E 1316.41 FEET TO THE POINT OF BEGINNING.

AREA CONTAINS 10,951,391 SQUARE FEET OR 251.409 ACRES.

SAND HOLLOW MESA P.I.D. DISTRICT 3 LEGAL DESCRIPTION

BEGINNING AT THE NORTH QUARTER CORNER OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN; THENCE S89°00'06"E ALONG THE NORTH SECTION LINE, 1644.21 FEET TO THE WEST RIGHT-OF-WAY LINE OF HIGHWAY 7; THENCE ALONG SAID LINE THE FOLLOWING TWENTY THREE (23) COURSES: THENCE S00°59'31"W 45.11 FEET; THENCE S84°58'13"E 426.06 FEET; THENCE S89°00'29"E 400.00 FEET; THENCE S48°03'50"E 71.88 FEET; THENCE S14°16'38"E 250.20 FEET; THENCE S27°52'40"E 203.96 FEET; THENCE S40°47'44"E 219.32 FEET; THENCE S20°46'56"E 476.29 FEET; THENCE S16°34'05"E 351.50 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 3825.00 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS: S13°53'35"E 357.03 FEET), CENTER POINT LIES S73°25'55"W THROUGH A CENTRAL ANGLE OF 05°21'00" A DISTANCE OF 357.15 FEET; THENCE S38°23'13"E 54.09 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 3858.80 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (LONG CHORD BEARS: S04°24'08"E 818.17 FEET), CENTER POINT LIES S79°30'44"W THROUGH A CENTRAL ANGLE OF 12°10'16" A DISTANCE OF 819.71 FEET; THENCE S01°41'50"W 2354.29 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 2850.52 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS: S13°05'55"W 1126.85 FEET), CENTER POINT LIES N88°18'06"W THROUGH A CENTRAL ANGLE OF 22°48'00" A DISTANCE OF 1134.32 FEET; THENCE S32°05'57"W 378.86 FEET; THENCE S41°23'40"W 353.78 FEET; THENCE S38°56'26"W 125.00 FEET; THENCE S22°14'29"W 208.81 FEET; THENCE S38°56'26"W 931.87 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF A 3854.71 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS: S44°47'34"W 786.07 FEET), CENTER POINT LIES N51°03'34"W THROUGH A CENTRAL ANGLE OF 11°42'16" A DISTANCE OF 787.44 FEET; THENCE S66°32'48"W 294.49 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF A 3780.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (LONG CHORD BEARS: S58°53'35"W 519.33 FEET), CENTER POINT LIES N35°02'45"W THROUGH A CENTRAL ANGLE OF 07°52'41" A DISTANCE OF 519.74 FEET; THENCE S62°49'55"W 744.90 FEET; THENCE N00°59'27"E 1165.97 FEET; THENCE S88°55'00"E 1321.47 FEET; THENCE N00°58'28"E 660.13 FEET; THENCE N00°58'28"E 660.13 FEET; THENCE N00°58'28"E 659.98 FEET; THENCE N01°00'55"E 3297.46 FEET; THENCE S88°58'31"E 329.89 FEET; THENCE N01°01'40"E 329.70 FEET; THENCE N88°58'43"W 329.86 FEET; THENCE N01°01'53"E 989.05 FEET; THENCE S88°59'18"E 659.61 FEET; THENCE N00°59'11"E 659.40 FEET; THENCE N88°59'32"W 988.85 FEET; THENCE S01°02'06"W 659.33 FEET; THENCE N88°59'18"W 989.41 FEET; THENCE N01°02'44"E 659.22 FEET; THENCE N01°02'44"E 659.22 FEET TO THE POINT OF BEGINNING.

AREA CONTAINS 15,395,115 SQUARE FEET OR 353.423 ACRES.

LEGAL DESCRIPTIONS BY PARCEL:

SAND HOLLOW MESA PARCELS NO. 1-42 AND 44-63: (LABELED AS SUCH FOR REFERENCE PURPOSES ONLY)

PARCEL 1 (H-3400-A): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 2 (H-3400-D): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 3 (H-3400-E): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 4 (H-3400-H): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 5 (H-3421-C): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 6 (H-3421-D): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 7 (H-3421-E): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 8 (H-3421-F): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 9 (H-3421-H): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 10 (H-3421-G): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 11 (H-3421-I): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 12 (H-3409-B-2): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 13 (H-3410): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 14 (H-3410-B): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 15 (H-3410-C): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 16 (H-3410-D): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20 TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 17 (H-3410-E): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 18 (H-3410-F): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 19 (H-3410-G): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 20 (H-3410-J): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

LESS AND EXCEPTING FROM PARCELS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, THAT PORTION STIPULATED IN THAT ORDER OF OCCUPANCY RECORDED AUGUST 6, 2019, AS DOC. NO. 20190031223, OFFICIAL WASHINGTON COUNTY RECORDS.

PARCEL 21 (H-3399-B): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 22 (H-3399-I): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 23 (H-3399-D): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

LESS AND EXCEPTING FROM PARCELS 21, 22, 23 AND 24, COPPER ROCK PARKWAY AND 2100 WEST ROADWAY DEDICATION, RECORDED DECEMBER 26, 2018, AS DOC. NO. 2018005057.9, OFFICIAL WASHINGTON COUNTY RECORDS.

PARCEL 25 (H-3400-I): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 26 (H-3400-L): THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 27 (H-3400-M): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 28 (H-3400-P): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 29 (H-3400-B): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 30 (H-3400-C): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 31 (H-3400-F): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 32 (H-3400-G): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 33 (H-3400-J): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 34 (H-3400-K): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 37 (H-3399-A): THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 44 (H-3421-A): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 45 (H-3421): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 46 (H-3421-J): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 47 (H-3421-K): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 48 (H-3421-L): THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 49 (H-3422): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 31, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 50 (H-3422-B): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 31, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 51 (H-3409): THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 52 (H-3409-C-2): THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4; AND THE WEST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 53 (H-3409-D): THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 54 (H-3409-E): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 55 (H-3409-F): THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4; THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4; THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4; AND THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 56 (H-3409-G): THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 57 (H-3409-H): THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 58 (H-3409-I): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 59 (H-3409-J): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 60 (H-3410-H): THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

PARCEL 61 (H-3410-I): THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE & MERIDIAN.

COMBINED ANNEXATION AREA LEGAL DESCRIPTION:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION (THE COMMON CORNER TO SECTIONS 29, 30, 31 & 32), TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN; THENCE S00°54'56"W, ALONG THE EAST SECTION LINE OF SECTION 31, 1312.19 FEET TO THE 1/16 CORNER OF SAID SECTION 31; THENCE N88°57'41"W, ALONG THE 1/16TH LINE, 1322.27 FEET TO THE NORTH-SOUTH 1/16TH LINE; THENCE N00°57'56"E, ALONG THE 1/16TH LINE, 1313.59 FEET TO THE 1/16TH CORNER ON THE SOUTH SECTION LINE OF SECTION 30; THENCE N88°53'33"W, ALONG THE SOUTH SECTION LINE, 1321.14 FEET TO THE SOUTH 1/4 CORNER OF SECTION 30; THENCE N00°59'47"E, ALONG THE 1/4 SECTION LINE, 2636.98 FEET TO THE CENTER QUARTER CORNER OF SECTION 30; THENCE S88°55'00"E, ALONG THE 1/4 SECTION LINE, 1321.47 FEET TO THE 1/16TH CORNER; THENCE N00°58'28"E, ALONG THE NORTH-SOUTH 1/16TH LINE, 2640.21 FEET TO THE 1/16TH CORNER ON THE SOUTH SECTION LINE OF SECTION 19; THENCE N01°01'32"E, ALONG THE NORTH-SOUTH 1/16TH LINE, 2637.48 FEET TO THE 1/16TH CORNER IN SECTION 19; THENCE S88°58'31"E, ALONG THE 1/4 SECTION LINE, 329.89 FEET; THENCE N01°01'40"E 329.70 FEET; THENCE N88°58'43"W 329.86 FEET TO THE NORTH-SOUTH 1/16TH LINE; THENCE N01°01'53"E, ALONG THE 1/16TH LINE, 989.05 FEET TO THE 1/16TH CORNER; THENCE S88°59'18"E, ALONG THE EAST-WEST 1/16TH LINE, 659.61 FEET; THENCE N01°01'27"E 659.45 FEET; THENCE N88°59'42"W 989.29 FEET; THENCE S01°02'06"W 659.33 FEET TO THE EAST-WEST 1/16TH LINE; THENCE N88°59'18"W, ALONG THE 1/16TH LINE, 989.41 FEET TO THE 1/4 SECTION LINE; THENCE N01°02'44"E, ALONG THE 1/4 SECTION LINE, 1318.43 FEET TO THE NORTH QUARTER CORNER OF SECTION 19; THENCE S89°00'06"E, ALONG THE NORTH SECTION LINE OF SECTION 19, 2637.77 FEET TO THE COMMON CORNER OF SECTION 17, 18, 19, 20 (NORTHEAST CORNER OF SECTION 19); THENCE S88°57'52"E, ALONG THE NORTH SECTION LINE OF SECTION 20, 1316.43 FEET TO THE 1/16TH CORNER; THENCE S01°01'06"W, ALONG THE 1/16TH LINE, 2639.62 FEET; THENCE S01°00'58"W, ALONG THE 1/16TH LINE, 1319.92 FEET TO THE 1/16TH CORNER; THENCE S88°51'19"E, ALONG THE 1/16TH LINE, 1316.11 FEET TO THE 1/4 SECTION LINE OF SECTION 20; THENCE S01°01'38"W, ALONG THE 1/4 SECTION LINE, 1320.77 FEET TO THE SOUTH 1/4 CORNER OF SECTION 20, ALSO THE NORTH 1/4 CORNER OF SECTION 29; THENCE S00°55'44"W, ALONG THE 1/4 SECTION LINE IN SECTION 29, 1318.21 FEET TO THE 1/16TH CORNER; THENCE S88°52'39"E, ALONG THE 1/16TH LINE, 2638.18 FEET TO THE EAST SECTION LINE; THENCE S00°39'45"W, ALONG THE EAST SECTION LINE, 1315.42 FEET TO THE EAST 1/4 CORNER OF SECTION 29; THENCE N88°55'38"W, ALONG THE 1/4 SECTION LINE, 2644.29 FEET TO THE NORTH-SOUTH 1/4 SECTION LINE; THENCE S0°55'44"W, ALONG THE 1/4 SECTION LINE, 1318.48 FEET TO THE 1/16TH LINE; THENCE N88°56'29"W, ALONG THE EAST-WEST 1/16TH LINE, 1317.35 FEET TO THE NORTH-SOUTH 1/16TH LINE; THENCE S0°58'12"W, ALONG THE

1/16TH LINE, 1318.53 FEET TO THE SOUTH SECTION LINE; THENCE N88°56'37"W
ALONG SAID LINE, 1318.30 FEET TO THE POINT OF BEGINNING.
AREA CONTAINS 44,450,513 SQUARE FEET OR 1020.443 ACRES.

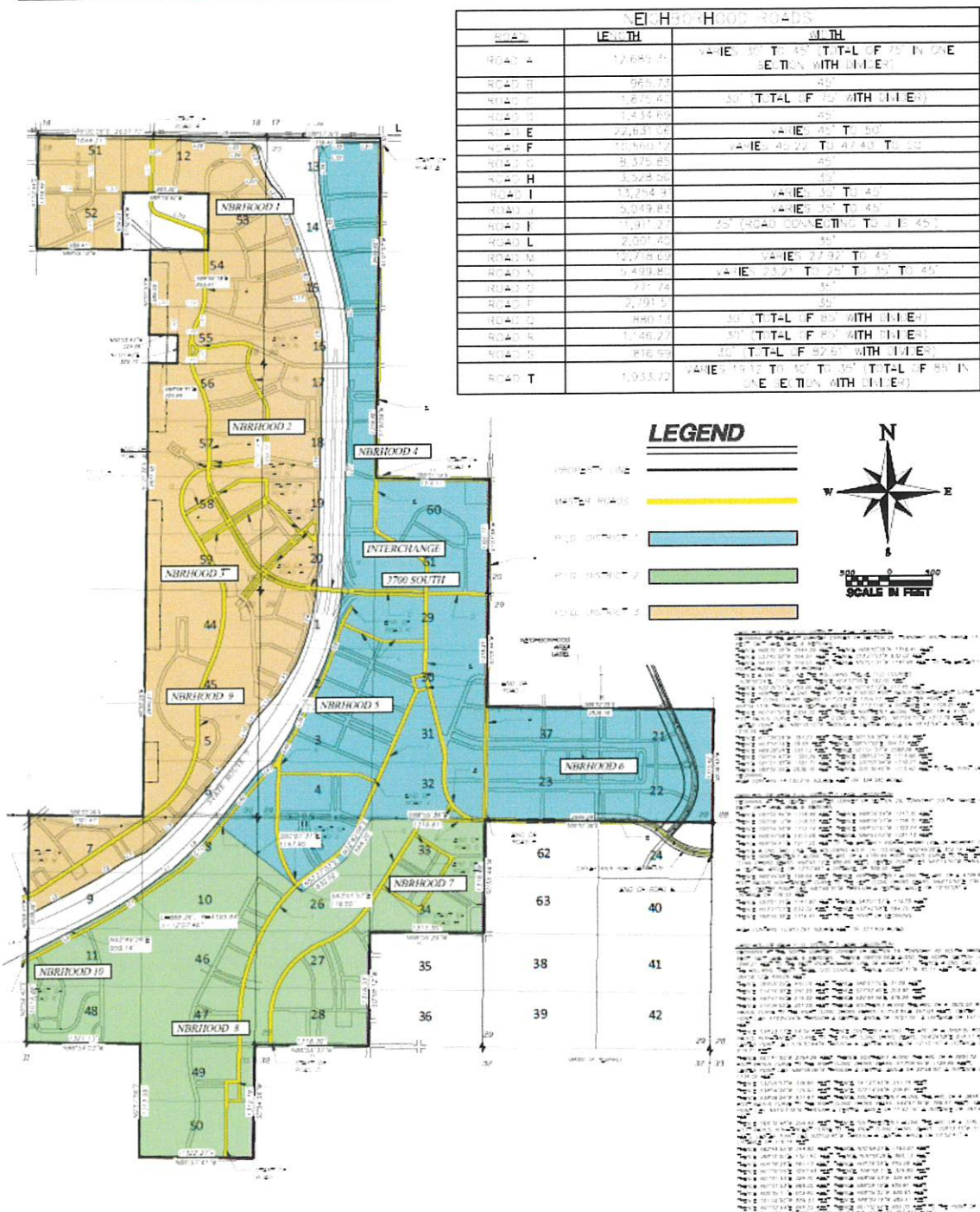
LEGAL DESCRIPTION INCLUDES 91.24 ACRES FOR THE SR-7 HIGHWAY AND 5.63
ACRES FOR COPPER ROCK PARKWAY AND 2100 WEST ROAD.

EXHIBIT B

To Petition for Creation of Public Infrastructure District

Map of District Boundaries and Annexation Area

SAND HOLLOW MESA P.I.D. MAP



**GOVERNING DOCUMENT
FOR
SAND HOLLOW MESA PUBLIC INFRASTRUCTURE DISTRICT NO. 1
HURRICANE CITY, UTAH
[Approval Date], 2021**

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EXHIBIT C	Initial District and Annexation Area Boundary Map
EXHIBIT D	Interlocal Agreement between the District and Hurricane City

I. INTRODUCTION

A. Purpose and Intent.

The District is an independent unit of local government, separate and distinct from the City, and, except as may otherwise be provided for by State or local law or this Governing Document, its activities are subject to review by the City only insofar as they may deviate in a material matter from the requirements of the Governing Document. It is intended that the District will provide a part or all of the Public Improvements for the use and benefit of all anticipated inhabitants and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements. The District is not being created to provide any ongoing operations and maintenance services.

B. Need for the District.

There are currently no other governmental entities, including the City, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction installation, relocation, redevelopment, and financing of the Public Improvements needed for the Project. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.

C. Objective of the City Regarding District's Governing Document.

The City's objective in approving the Governing Document for the District is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by the District. All Debt is expected to be repaid by taxes imposed and collected for no longer than the Maximum Debt Mill Levy Imposition Term and at a tax mill levy no higher than the Maximum Debt Mill Levy for all commercial and residential properties, and/or repaid by Assessments. Debt which is issued within these parameters and, as further described in the Financial Plan, will insulate property owners from excessive tax burdens to support the servicing of the Debt and will result in a timely and reasonable discharge of the Debt.

This Governing Document is intended to establish a limited purpose for the District and explicit financial constraints that are not to be violated under any circumstances. The primary purpose is to provide for the Public Improvements associated with development and regional needs. Although the District has authority to directly provide public improvements, the District also has the authority to pledge tax revenues to an interlocal entity that provides public improvements.

It is the intent of the District to dissolve upon payment or defeasance of all Debt incurred or upon a determination that adequate provision has been made for the payment of all Debt.

The District shall be authorized to finance the Public Improvements that can be funded from Debt to be repaid from Assessments or from tax revenues collected from a mill levy

which shall not exceed the Maximum Debt Mill Levy on taxable properties and which shall not exceed the Maximum Debt Mill Levy Imposition Term on taxable properties. It is the intent of this Governing Document to assure to the extent possible that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy in amount and that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy Imposition Term in duration even under bankruptcy or other unusual situations. Generally, the cost of Public Improvements that cannot be funded within these parameters are not costs to be paid by the District.

II. DEFINITIONS

In this Governing Document, the following terms shall have the meanings indicated below, unless the context hereof clearly requires otherwise:

Annexation Area Boundaries: means the boundaries of the area described in the Annexation Area Boundary Map which have been approved by the City for annexation or withdrawal from or into one of the Districts upon the meeting of certain requirements.

Annexation Area Boundary Map: means the map attached hereto as **Exhibit C**, describing the property proposed for annexation within the District.

Approved Development Plan: means a Preliminary Development Plan or other process established by the City for identifying, among other things, Public Improvements necessary for facilitating development for property within the District Area as approved by the City pursuant to the City Code and as amended pursuant to the City Code from time to time. For purposes of this Governing Document, **the Ordinance Amending the Zoning Map for the Project approved on _____, 2021** shall constitute an Approved Development Plan.

Assessment: means assessments levied in an assessment area created within the District.

Board: means the board of trustees of the District.

Bond, Bonds or Debt: means bonds or other obligations, including loans of any property owner, for the payment of which the District has promised to impose an ad valorem property tax mill levy, and/or collect Assessments.

City: means Hurricane City, Utah.

City Code: means the City Code of Hurricane City, Utah.

City Council: means the City Council of Hurricane City, Utah.

District: means the Sand Hollow Mesa Public Infrastructure District No. 1.

District Area: means the property within the Initial District Boundary Map and the Annexation Area Boundary Map.

Districts: means collectively, the District, Sand Hollow Mesa Public Infrastructure District No. 2, and Sand Hollow Mesa Public Infrastructure District No. 3, contemplated to be created contemporaneously with one another.

End User: means any owner, or tenant of any owner, of any taxable improvement within the District, who is intended to become burdened by the imposition of ad valorem property taxes subject to the Maximum Debt Mill Levy. By way of illustration, a resident homeowner, renter, commercial property owner, or commercial tenant is an End User. The business entity that constructs homes or commercial structures is not an End User.

Fees: means any fee imposed by the District for administrative services provided by the District.

Financial Plan: means the Financial Plan described in Section VIII which describes (i) the potential means whereby the Public Improvements may be financed; (ii) how the Debt is expected to be incurred; and (iii) the estimated operating revenue derived from property taxes for the first budget year.

General Obligation Debt: means a Debt that is directly payable from and secured by ad valorem property taxes that are levied by the District and does not include Limited Tax Debt.

Governing Document: means this Governing Document for the District approved by the City Council.

Governing Document Amendment: means an amendment to the Governing Document approved by the City Council in accordance with the City's ordinance and the applicable state law and approved by the Board in accordance with applicable state law.

Initial District Boundaries: means the boundaries of the area described in the Initial District Boundary Map.

Initial District Boundary Map: means the map attached hereto as **Exhibit C**, describing the District's initial boundaries.

Limited Tax Debt: means a debt that is directly payable from and secured by ad valorem property taxes that are levied by the District which may not exceed the Maximum Debt Mill Levy.

Local District Act: means Title 17B of the Utah Code, as amended from time to time.

Maximum Debt Mill Levy: means the maximum mill levy the District is permitted to impose for payment of Debt as set forth in Section VIII.C below.

Maximum Debt Mill Levy Imposition Term: means the maximum term for imposition of a mill levy for any given series of bonds as set forth in Section VIII.D below.

Municipal Advisor: means a consultant that: (i) advises Utah governmental entities on matters relating to the issuance of securities by Utah governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (ii) shall be an individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place; and (iii) is not an officer or employee of the District.

Project: means the development or property commonly referred to as the Sand Hollow Mesa Project.

PID Act: means Title 17D, Chapter 4 of the Utah Code, as amended from time to time and any successor statute thereto.

Public Improvements: means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as generally described in the Local District Act, except as specifically limited in Section V below to serve the future taxpayers and inhabitants of the District Area as determined by the Board.

Regional Improvements: means Public Improvements and facilities that benefit the District Area and which are to be financed pursuant to Section VII below.

State: means the State of Utah.

Taxable Property: means real or personal property within the District Area subject to ad valorem taxes imposed by the District.

Trustee: means a member of the Board.

Utah Code: means the Utah Code Annotated 1953, as amended.

III. BOUNDARIES

The area of the Initial District Boundaries includes approximately three hundred twenty-four (324.285) acres and the total area proposed to be included in the Annexation Area Boundaries is approximately nine hundred twenty-nine (929.217) acres and includes all property within the District as well as an additional approximately six hundred four (604.832) acres. A legal description of the Initial District Boundaries and the Annexation Area Boundaries is attached hereto as **Exhibit A**. A vicinity map is attached hereto as **Exhibit B**. A map of the Initial District Boundaries and Annexation Area Boundaries is attached hereto as **Exhibit C**. It is anticipated that the District's boundaries may change from time to time as it undergoes annexations and withdrawals pursuant to Section 17B-4-201, Utah Code, subject to Article V below.

IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION

The District Area consists of approximately nine hundred twenty-nine (929.217) acres of mostly undeveloped land. The current assessed valuation of the District Area at build out, is

expected to be sufficient to reasonably discharge the Debt under the Financial Plan. The population of the District Area at build-out is estimated to be approximately 7,500 people.

Approval of this Governing Document by the City does not imply approval of the development of a specific area within the District, nor does it imply approval of the number of residential units or the total site/floor area of commercial or industrial buildings identified in this Governing Document or any of the exhibits attached thereto, unless the same is contained within an Approved Development Plan.

V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES

A. Powers of the District and Governing Document Amendment.

The District shall have the power and authority to provide the Public Improvements within and without the boundaries of the District as such power and authority is described in the Local District Act, and other applicable statutes, common law and the Constitution, subject to the limitations set forth herein.

1. Improvements. The District shall have authority to provide for the planning, design, acquisition, construction, installation, and dedication to the City of the Public Improvements within and without the boundaries of the District. Prior to or contemporaneous with providing the foregoing for any other Public Improvements, the District must have arranged for the financing of the following improvements (the “Pre-Requisite Improvements”), as generally depicted in or required by the Approved Development Plan:

(a) 9.2 miles of public trails, trailheads, parking and restrooms with drinking facilities. The main trails connecting the Project to adjacent properties and trail systems would be 12' wide.

(b) A UDOT approved and designed interchange including two trails, one 12' and one 5', and two separate bike lanes.

(c) Dedications and improvements related to public utilities within the property.

(d) Dedication of land for a public power substation.

(e) Dedication and improvement of city parks and open spaces of at least 72 acres of the 279 acres of open space planned for the project. The 72 acres will be of developable land, and 51 of the 72 acres will be improved as active or programmable park spaces (the remaining approximately 21 acres would be passive park space). Conditioned on availability of required permits, one of the city parks will include a public fishing pond (we would need the city to help coordinate permitting approval of the pond). Other improvements to programmable park space will be as proposed by developer and approved by City staff.

(f) \$4,000,000 to be allocated to the construction by the City of a public safety building to house fire and/or police services located within the Project.

(g) Dedications and improvements required for a secondary irrigation system that would meet Governor Cox's proposed water conservation plan to utilize as little water as possible in public spaces throughout the property.

(h) All master planned public roadways depicted on the City's most recent master road plan, including sidewalks and curb/gutter as required by City standards.

The Pre-Requisite Improvements may be funded either through issuance of bonds or other sources of funds (such as developer contributions), but must be fully funded before other non-Pre-Requisite Improvements are financed through the District.

Any impact fee reimbursements or credits which become available due to the financing of public improvements by the Districts shall be for the benefit of the Districts and not any developer.

2. Operations and Maintenance Limitation. The purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The District shall dedicate the Public Improvements to the City or other appropriate public entity or owners association in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. Trails which are interconnected with a city or regional trail system shall be open to the public free of charge and on the same basis as residents and owners of taxable property within the District.

3. Improvements Limitation. Notwithstanding the provisions of Section V.A.1 and 2 above, without written authorization of the City, the District shall not be authorized to finance the costs of any improvements or facilities which are to be ultimately owned by one of the Districts.

4. Construction Standards Limitation. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

5. Procurement. The District shall be subject to the Utah Procurement Code, Title 63G, Chapter 6a.

6. Privately Placed Debt Limitation. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District's Governing Document.

We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

7. Annexation and Withdrawal.

(a) The District shall not include within any of its boundaries any property outside the District Area without the prior written consent of the City. The City, by resolution and this Governing Document, has consented to the annexation of any area within the Annexation Area Boundaries into the District. Such area may only be annexed upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be annexed and the passage of a resolution of the Board approving such annexation.

(b) The City, by resolution and this Governing Document, has consented to the withdrawal of any area within the District Boundaries from the District. Such area may only be withdrawn upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be withdrawn and the passage of a resolution of the Board approving such annexation.

(c) Any annexation or withdrawal shall be in accordance with the requirements of the PID Act.

(d) Upon any annexation or withdrawal, the District shall provide the City a description of the revised District Boundaries.

(e) Annexation or withdrawal of any area in accordance with V.A.6(a) and (b) shall not constitute an amendment of this Governing Document.

8. Overlap Limitation. The District shall not impose aggregate mill levy for payment of Debt that exceeds the Maximum Debt Mill Levy of the District. The District shall not consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the District unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Debt Mill Levy of the District, or unless such other district is approved by the City.

9. Initial Debt Limitation. On or before the effective date of approval by the City of an Approved Development Plan, the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (c) impose and collect any Assessments used for the purpose of repayment of Debt.

10. Total Debt Issuance Limitation. The Districts shall not issue Debt in excess of an aggregate amount of **One Hundred Twenty-five Million Dollars (\$125,000,000)**. This amount excludes any portion of bonds issued to refund a prior issuance of debt by any of the Districts. In addition, the Total Debt Issuance Limitation does not apply to the District's pledge of its property tax revenues to the Debt of one of the other Districts. In the event two or more Districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each District.

11. Bankruptcy Limitation. All of the limitations contained in this Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term and the Fees have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(5), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the "political or governmental powers" reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the "regulatory or electoral approval necessary under applicable nonbankruptcy law" as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

12. Governing Document Amendment Requirement.

(a) This Governing Document has been designed with sufficient flexibility to enable the District to provide required facilities under evolving circumstances without the need for numerous amendments. Actions of the District which violate the limitations set forth in V.A.1-9 above or in VIII.B-G. shall be deemed to be material modifications to this Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

(b) Subject to the limitations and exceptions contained herein, this Governing Document may be amended by passage of a resolutions of the City and the District approving such amendment.

B. Preliminary Engineering Survey.

The District shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, maintenance, and financing of the Public Improvements within and without the boundaries of the District, to be more specifically defined in an Approved Development Plan. An estimate of the costs of the Public Improvements which

may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, maintained or financed was prepared based upon a preliminary engineering survey and estimates derived from the zoning on the property in the District Area and is approximately **One Hundred Twenty-Five Million Dollars (\$125,000,000)**.

All of the Public Improvements will be designed in such a way as to assure that the Public Improvements standards will be compatible with those of the City and/or any other applicable public entity and shall be in accordance with the requirements of the Approved Development Plan. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

VI. THE BOARD OF TRUSTEES

A. Board Composition. The Board shall be composed of 3 Trustees who shall be appointed by the City Council pursuant to the PID Act. Trustees 1, 2, and 3 shall initially be at large. Trustee terms shall be staggered with initial terms as follows: Trustee 2 shall serve an initial term of 4 years; Trustees 1 and 3 shall serve an initial term of 6 years. All terms shall commence on the date of issuance of a certificate of creation by the Office of the Lieutenant Governor of the State of Utah. In accordance with the PID Act, appointed Trustees shall not be required to be residents of the District.

B. Transition to Elected Board. Respective board seats shall transition from appointed to elected seats according to the following milestones:

1. Trustee 1. Trustee 1 shall transition to an elected seat upon **1,000** registered voters residing within the District.

2. Trustee 2. Trustee 2 shall transition to an elected seat upon **1,250** registered voters residing within the District.

3. Trustee 3. Trustee 3 shall transition to an elected seat upon **1,500** registered voters residing within the District.

Notwithstanding the foregoing, any board seats which have not yet transitioned to an elected seat shall transition after twelve (12) years have passed from the date of issuance of a certificate of creation for the District. No transition pursuant to this Section shall become effective until the next scheduled regular election of the District. Registered voters within this Section shall mean voters whose “principal place of residence,” as that term is defined under Utah Code 20A-2-105(1)(a), is within the District.

C. Reelection and Reappointment. Upon the expiration of a Trustee’s respective term, any seat which has not transitioned to an elected seat shall be appointed by the City Council pursuant to the PID Act and any seat which has transitioned to an elected seat shall be elected pursuant to an election held for such purpose. In the event that no qualified candidate files to be considered for appointment or files a declaration of candidacy for a seat, such seat may be filled in accordance with the Local District Act.

D. Vacancy. Any vacancy on the Board shall be filled pursuant to the Local District Act.

E. Compensation. Only Trustees who are residents of the District may be compensated for services as Trustee. Such compensation shall be in accordance with State Law.

F. Conflicts of Interest. Trustees shall disclose all conflicts of interest. Any Trustee who discloses such conflicts in accordance with 17D-4-202 and 67-16-9, Utah Code, shall be entitled to vote on such matters.

VII. REGIONAL IMPROVEMENTS

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements. Regional Improvements may include, and may not be limited to, regional and connector roads; water, sewer and other utilities installed in said roads; an interchange at 3700 South Street and the Southern Parkway, and park and trail improvements.

Nothing herein shall prevent the City from financing and completing, or authorizing the finance and completion by another district, of other local or regional improvements not listed above, or approving other mill levies to facilitate the financing of the same.

VIII. FINANCIAL PLAN

A. General.

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment of the Public Improvements from its revenues and by and through the proceeds of Debt to be issued by the District. In addition, the District shall be permitted to finance the prepayment of impact fees for the Project. The Financial Plan for the District shall be to issue such Debt as the District can reasonably pay within the Maximum Debt Mill Levy Imposition Term from revenues derived from the Maximum Debt Mill Levy, Assessments and other legally available revenues. The total Debt that the Districts shall be permitted to issue shall not exceed One Hundred Twenty-five Million Dollars (\$125,000,000) and shall be permitted to be issued on a schedule and in such year or years as the Districts determine shall meet the needs of the Financial Plan referenced above and phased to serve development as it occurs. Any portion of bonds issued to refund a prior issuance of debt by the District shall not count against the permitted total Debt. The Total Debt Issuance Limitation shall not apply to the District's pledge of its property tax revenues to the Debt of one of the other Districts. In the event two or more Districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each District. All bonds and other Debt issued by the District may be payable from any and all legally available revenues of the District, including general ad valorem taxes to be imposed upon all Taxable Property within the District and Assessments. The District will also rely upon various other revenue sources authorized by law. These will include the power to assess

Fees, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time.

B. Maximum Interest Rate and Maximum Underwriting Discount.

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. In the event of a default, the proposed maximum interest rate on any Debt is not expected to exceed fifteen percent (15%). The proposed maximum underwriting discount will be five percent (5%). Debt, when issued, will comply with all relevant requirements of this Governing Document, State law and Federal law as then applicable to the issuance of public securities.

C. Maximum Debt Mill Levy.

(a) The “Maximum Debt Mill Levy” shall be the maximum mill levy the District is permitted to impose in upon the taxable property within the District for payment of Limited Tax Debt, and shall be 0.0045 per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code. Such Maximum Debt Mill Levy may also be used to pay administrative expenses of the District. Further, the Districts may not impose mill levies which in aggregate exceed 0.0045 per dollar of taxable value of taxable property in the District Area; provided that such levies shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code.

(b) Such Maximum Debt Mill Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202, Utah Code.

(c) Any other mill levy imposed by any other district with the authorization of the City shall not be applied toward the calculation of the Maximum Debt Mill Levy.

D. Maximum Debt Mill Levy Imposition Term.

Each bond issued by the District shall mature within Thirty-One (31) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of a series of bonds after a period exceeding forty (40) years from the first date of imposition of the mill levy for such bond (the “Maximum Debt Mill Levy Imposition Term”).

E. Debt Repayment Sources.

The District may impose a mill levy on taxable property within its boundaries as a primary source of revenue for repayment of debt service. The District may also rely upon various other revenue sources authorized by law. At the District’s discretion, these may include the power to assess Assessments, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time. Except as described in Section VIII.C(a), the debt service mill levy in the District shall not exceed the Maximum Debt Mill Levy or, the Maximum Debt Mill Levy Imposition Term, except for repayment of General Obligation Debt.

The District shall not be permitted to charge an End User the costs of any portion of a Public Improvement for which such End User has already paid or is presently obligated to pay through any combination of mill levy, Assessment, or impact fee. This provision shall not prohibit the division of costs between mill levies, Assessments, or impact fees, but is intended to prevent double taxation of End Users for the costs of Public Improvements.

F. Debt Instrument Disclosure Requirement.

In the text of each Bond and any other instrument representing and constituting Debt, the District shall set forth a statement in substantially the following form:

By acceptance of this instrument, the owner of this Bond agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this Bond contained herein, in the resolution of the District authorizing the issuance of this Bond and in the Governing Document for creation of the District.

Similar language describing the limitations in respect of the payment of the principal of and interest on Debt set forth in this Governing Document shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a developer of property within the boundaries of the District.

G. Security for Debt.

The District shall not pledge any revenue or property of the City as security for the indebtedness set forth in this Governing Document. Approval of this Governing Document shall not be construed as a guarantee by the City of payment of any of the District's obligations; nor shall anything in the Governing Document be construed so as to create any responsibility or liability on the part of the City in the event of default by the District in the payment of any such obligation.

H. District's Operating Costs.

The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the District's organization and initial operations, are anticipated to be Seventy-Five Thousand Dollars (\$75,000), which will be eligible for reimbursement from Debt proceeds.

In addition to the capital costs of the Public Improvements, the District will require operating funds for administration and to plan and cause the Public Improvements to be constructed. The first year's administrative operating budget is estimated to be approximately Fifty Thousand Dollars (\$50,000) which is anticipated to be borne by developer(s) until such time a reimbursement can be derived from property taxes and other revenues, pursuant to a reimbursement agreement between the District and developers.

I. Bond and Disclosure Counsel.

It is the intent of the City that the District shall use competent and nationally recognized bond and disclosure counsel and Municipal Advisor with respect to District Bonds to ensure proper issuance and compliance with this Governing Document. The District has agreed to utilize the City's counsel, Gilmore & Bell, P.C., as bond and disclosure counsel and Zions Public Finance, Inc., as Municipal Advisor with respect to District Bonds as permitted by law. The foregoing requirement may be waived by vote of the City Council.

IX. ANNUAL REPORT

A. General.

The District shall be responsible for submitting an annual report to the City Manager's Office no later than 180 days following the end of the District's fiscal year.

B. Reporting of Significant Events.

The annual report shall include information as to any of the following:

1. Boundary changes made or proposed to the District's boundary as of December 31 of the prior year.
2. List of current interlocal agreements, if changed (to be delivered to the City upon request);
3. Names and terms of Board members and officers and progress towards milestones required for transition to elected Board;
4. District office contact information;
5. Rules and regulations of the District regarding bidding, conflict of interest, contracting, and other governance matters, if changed;
6. A summary of any litigation which involves the District Public Improvements as of the last day of the prior fiscal year;
7. Status of the District's construction of the Public Improvements as of last day of the prior fiscal year and listing all facilities and improvements constructed by the District that have been dedicated to and accepted by the City as of the last day of the prior fiscal year;
8. A table summarizing total debt authorized and total debt issued by the District as well as any presently planned debt issuances;
9. Official statements of current outstanding bonded indebtedness, if not previously provided to the City;
10. Current year budget including a description of the Public Improvements to be constructed in such year;

11. The District's financial statements, for the previous fiscal year, such statements shall be audited if required pursuant to State law or relevant bond documents (such statements shall be submitted within 30 days of completion if completed after 180 days following the end of the fiscal year);

12. Notice of any uncured events of default by the District, which continue beyond a 90 day period, under any Debt instrument; and

13. Any inability of the District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a 90 day period.

X. DISSOLUTION

Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of its outstanding indebtedness and other financial obligations as required pursuant to State statutes.

XI. DISCLOSURE TO PURCHASERS

Within thirty (30) days of the City adopting a resolution creating the District, the Board shall record a notice with the recorder of Washington County. Such notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the District; and (d) if applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion. Such notice shall further be filled with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, homebuilders, commercial developers, and commercial lessors, as applicable, disclose the following information to initial resident homeowners, renters, commercial property owners, and/or commercial tenants:

- (1) All of the information in the first paragraph of this XI;
- (2) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, **for every \$100,000 of taxable value**, there would be an **additional annual property tax of \$450** for the duration of the District's Bonds.”
- (3) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

XII. INTERLOCAL AGREEMENT

The form of the Interlocal Agreement required by the City Code, relating to the limitations imposed on the District's activities, is attached hereto as **Exhibit D**. The District shall approve the Interlocal Agreement in the form attached as **Exhibit D** at its first Board meeting after its organization. Failure of the District to execute the Interlocal Agreement as required herein shall constitute a material modification and shall require a Governing Document Amendment. The City Council shall approve the Interlocal Agreement in the form attached as **Exhibit D** at the public hearing approving the Governing Document.

EXHIBIT A

Legal Descriptions

DISTRICT NO. 1 INITIAL BOUNDARY LEGAL DESCRIPTION

BEGINNING AT THE EAST QUARTER CORNER OF SECTION 29, TOWNSHIP SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN;
THENCE N88°55'38"W 2644.29 FEET; THENCE N88°55'38"W 1316.41 FEET;
THENCE S32°42'08"W 564.20 FEET; THENCE S53°27'03"W 632.02 FEET;
THENCE N43°01'57"W 119.55 FEET; THENCE N50°51'31"W 1147.90 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY 7;
THENCE ALONG SAID LINE THE FOLLOWING TWELVE (12) COURSES:
N38°56'24"E 771.59 FEET; THENCE N54°53'00"E 182.00 FEET;
THENCE N32°26'53"E 459.99 FEET; THENCE N21°43'12"E 217.45 FEET;
THENCE NORTHERLY ALONG THE ARC OF A 3150.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (LONG CHORD BEARS: N17°23'49"E 1704.73 FEET), CENTER POINT LIES N56°54'13"W THROUGH A CENTRAL ANGLE OF 31°23'56" A DISTANCE OF 1726.25 FEET;
THENCE N01°41'50"E 2354.30 FEET; THENCE NORTHERLY ALONG THE ARC OF A 4150.00 FOOT RADIUS CURVE TO THE LEFT (LONG CHORD BEARS: N07°24'37"W 1313.79 FEET), CENTER POINT LIES N88°18'10"W THROUGH A CENTRAL ANGLE OF 18°12'54" A DISTANCE OF 1319.34 FEET;
THENCE N11°26'26"W 783.27 FEET; THENCE N01°59'36"W 516.62 FEET;
THENCE N53°53'15"E 78.08 FEET; THENCE S88°57'52"E 324.73 FEET;
THENCE N89°28'28"E 335.12 FEET; THENCE S01°01'07"W 2588.88 FEET;
THENCE S00°54'40"W 1320.29 FEET; THENCE S88°52'15"E 1313.68 FEET;
THENCE S01°01'38"W 1320.77 FEET; THENCE S00°55'44"W 1318.21 FEET;
THENCE S88°52'39"E 2638.18 FEET; THENCE S00°39'45"W 1315.42 FEET TO THE POINT OF BEGINNING.

AREA CONTAINS 14,130,219 SQUARE FEET OR 324.385 ACRES.

Annexation Area Boundaries

The Annexation Area shall be comprised of the Initial District Boundaries of the District as well as the following:

SAND HOLLOW MESA P.I.D. DISTRICT 2 LEGAL DESCRIPTION

BEGINNING AT THE CENTER QUARTER CORNER OF SECTION 29, TOWNSHIP SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN;
THENCE S00°55'44"W 1318.48 FEET; THENCE N88°56'29"W 1317.35 FEET;
THENCE S00°58'12"W 1318.53 FEET; THENCE N88°56'37"W 1318.30 FEET;
THENCE S00°54'56"W 1312.19 FEET; THENCE N88°57'41"W 1322.27 FEET;
THENCE N00°57'56"E 1313.59 FEET; THENCE N88°54'03"W 1321.13 FEET;
THENCE N00°59'47"E 1017.22 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY 7;
THENCE ALONG SAID LINE THE FOLLOWING FOUR (4) COURSES: N62°49'28"E 959.14 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF A 4195.84 FOOT RADIUS CURVE TO THE LEFT (LONG CHORD BEARS: N56°45'12"E 886.60 FEET), CENTER POINT LIES N27°10'55"W THROUGH A CENTRAL ANGLE OF 12°07'46" A DISTANCE OF 888.26 FEET;
THENCE N60°44'58"E 106.64 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF A 4199.99 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (LONG CHORD BEARS: N44°10'55"E 738.36 FEET), CENTER POINT LIES N40°46'31"W THROUGH A CENTRAL ANGLE OF 10°05'08" A DISTANCE OF 739.32 FEET;
THENCE S50°51'31"E 1147.90 FEET; THENCE S43°01'57"E 119.55 FEET;
THENCE N53°27'03"E 632.02 FEET; THENCE N32°42'08"E 564.20 FEET;
THENCE S88°55'38"E 1316.41 FEET TO THE POINT OF BEGINNING.

AREA CONTAINS 10,951,391 SQUARE FEET OR 251.409 ACRES.

SAND HOLLOW MESA P.I.D. DISTRICT 3 LEGAL DESCRIPTION

BEGINNING AT THE NORTH QUARTER CORNER OF SECTION 19, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN; THENCE S89°00'06"E ALONG THE NORTH SECTION LINE, 1644.21 FEET TO THE WEST RIGHT-OF-WAY LINE OF HIGHWAY 7; THENCE ALONG SAID LINE THE FOLLOWING TWENTY THREE (23) COURSES: THENCE S00°59'31"W 45.11 FEET; THENCE S84°58'13"E 426.06 FEET; THENCE S89°00'29"E 400.00 FEET; THENCE S48°03'50"E 71.88 FEET; THENCE S14°16'38"E 250.20 FEET; THENCE S27°52'40"E 203.96 FEET; THENCE S40°47'44"E 219.32 FEET; THENCE S20°46'56"E 476.29 FEET; THENCE S16°34'05"E 351.50 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 3825.00 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS: S13°53'35"E 357.03 FEET), CENTER POINT LIES S73°25'55"W THROUGH A CENTRAL ANGLE OF 05°21'00" A DISTANCE OF 357.15 FEET;
THENCE S38°23'13"E 54.09 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 3858.80 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (LONG CHORD

BEARS: S04°24'08"E 818.17 FEET), CENTER POINT LIES S79°30'44"W THROUGH A CENTRAL ANGLE OF 12°10'16" A DISTANCE OF 819.71 FEET;
THENCE S01°41'50"W 2354.29 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 2850.52 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS: S13°05'55"W 1126.85 FEET), CENTER POINT LIES N88°18'06"W THROUGH A CENTRAL ANGLE OF 22°48'00" A DISTANCE OF 1134.32 FEET;
THENCE S32°05'57"W 378.86 FEET; THENCE S41°23'40"W 353.78 FEET;
THENCE S38°56'26"W 125.00 FEET; THENCE S22°14'29"W 208.81 FEET;
THENCE S38°56'26"W 931.87 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF A 3854.71 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS: S44°47'34"W 786.07 FEET), CENTER POINT LIES N51°03'34"W THROUGH A CENTRAL ANGLE OF 11°42'16" A DISTANCE OF 787.44 FEET;
THENCE S66°32'48"W 294.49 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF A 3780.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (LONG CHORD BEARS: S58°53'35"W 519.33 FEET), CENTER POINT LIES N35°02'45"W THROUGH A CENTRAL ANGLE OF 07°52'41" A DISTANCE OF 519.74 FEET;
THENCE S62°49'55"W 744.90 FEET; THENCE N00°59'27"E 1165.97 FEET;
THENCE S88°55'00"E 1321.47 FEET; THENCE N00°58'28"E 660.13 FEET;
THENCE N00°58'28"E 660.13 FEET; THENCE N00°58'28"E 659.98 FEET;
THENCE N01°00'55"E 3297.46 FEET; THENCE S88°58'31"E 329.89 FEET;
THENCE N01°01'40"E 329.70 FEET; THENCE N88°58'43"W 329.86 FEET;
THENCE N01°01'53"E 989.05 FEET; THENCE S88°59'18"E 659.61 FEET;
THENCE N00°59'11"E 659.40 FEET; THENCE N88°59'32"W 988.85 FEET;
THENCE S01°02'06"W 659.33 FEET; THENCE N88°59'18"W 989.41 FEET;
THENCE N01°02'44"E 659.22 FEET; THENCE N01°02'44"E 659.22 FEET TO THE POINT OF BEGINNING.

AREA CONTAINS 15,395,115 SQUARE FEET OR 353.423 ACRES.

EXHIBIT B

Hurricane City Vicinity Map

EXHIBIT D

INTERLOCAL AGREEMENT BETWEEN

HURRICANE CITY, UTAH

AND

SAND HOLLOW MESA PUBLIC INFRASTRUCTURE DISTRICT NO. 1

THIS AGREEMENT is made and entered into as of this ____ day of _____, _____, by and between HURRICANE CITY, a home-rule municipal corporation of the State of Utah (“City”), and SAND HOLLOW MESA PUBLIC INFRASTRUCTURE DISTRICT NO. 1, a political subdivision of the State of Utah (the “District”). The City and the District are collectively referred to as the Parties.

RECITALS

WHEREAS, the District was organized to provide to exercise powers as are more specifically set forth in the District’s Governing Document approved by the City on [Approval Date], 2021 (“Governing Document”); and

WHEREAS, the Governing Document makes reference to the execution of an Interlocal Agreement between the City and the District; and

WHEREAS, the City and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Interlocal Agreement (“Agreement”).

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

COVENANTS AND AGREEMENTS

1. Operations and Maintenance. The District shall dedicate the Public Improvements (as defined in the Governing Document) to the City or other appropriate jurisdiction in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. The District shall be authorized, but not obligated, to own Public Improvements not otherwise required to be dedicated to the City or other public entity, and all necessary equipment and appurtenances incident thereto. Trails which are interconnected with a city or regional trail system shall be open to the public free of charge and on the same basis as residents and owners of taxable property within the District.

2. Improvements Limitation. Without written authorization of the City, the District shall not be authorized to finance the costs of any improvements or facilities which are to be ultimately owned by one of the Districts.

Construction Standards. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction, as applicable. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work. The District may satisfy any City requirements for guaranty of performance of infrastructure completion by delivering to the City documentation evidencing the funds available to the District for such infrastructure as a result of the bonds issued by the District.

3. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District's Governing Document.

We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

4. Inclusion Limitation. The District shall not include within any of their boundaries any property outside the District Area without the prior written consent of the City. By the Governing Document, the City has consented to the annexation or withdrawal of any area within the Annexation Area into or from the District Boundaries. The District shall not include within any of its boundaries any property inside the inclusion area boundaries without the prior written consent of the City except upon petition of the surface property owners of 100 percent of such property and/or 100 percent of registered voters within the area to be included, as applicable, as provided in Section 17D-4-201(3), Utah Code.

5. Overlap Limitation. The Districts shall not impose an aggregate mill levy for payment of Debt that exceeds the Maximum Debt Mill Levy of the Districts. It is anticipated that one or more of the Districts may overlap with the Bench Lake Public Improvement District ("BLPID"), given that the improvements proposed to be financed by BLPID shall also benefit the area of the Districts; however, each of the Districts and BLPID are forbidden from levying an aggregate mill levy in the overlap area which exceeds 0.0045, the Maximum Debt Mill Levy of the Districts. The Districts shall not, without the prior authorization of the City Council, consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the Districts.

6. Initial Debt. On or before the effective date of approval by the City of an Approved Development Plan (as defined in the Governing Document), the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of

funds from the operating fund to the Debt service funds; nor (c) impose and collect any fees used for the purpose of repayment of Debt.

7. Total Debt Issuance. The Districts shall not issue Debt in excess of an aggregate amount of **One Hundred Twenty-five Million Dollars (\$125,000,000)**. This amount excludes any portion of bonds issued to refund a prior issuance of debt by any of the Districts. In addition, the Total Debt Issuance Limitation does not apply to the District's pledge of its property tax revenues to the Debt of one of the other Districts. In the event two or more Districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each District.

8. Bankruptcy. All of the limitations contained in this Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(4), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the "political or governmental powers" reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the "regulatory or electoral approval necessary under applicable nonbankruptcy law" as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

9. Dissolution. Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes.

10. Disclosure to Purchasers. Within thirty (30) days of the City adopting a resolution creating the District, the Board shall record a notice with the recorder of Washington County, Utah. Such notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the District; and (d) if applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion. Such notice shall further be filed with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, homebuilders, commercial developers, and commercial lessors, as applicable, disclose the following information to initial resident homeowners, renters, commercial property owners, and/or commercial tenants:

- (a) All of the information in the first paragraph of 11 of this Agreement;
- (b) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, **for every \$100,000 of taxable value**, there would be an **additional annual property tax of \$450** for the duration of the District’s Bonds.”

- (c) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

11. Governing Document Amendment Requirement. Actions of the District which violate the limitations set forth in V.A.1-9 or VIII.B-G of the Governing Document shall be deemed to be material modifications to the Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

12. Annual Report. The District shall be responsible for submitting an annual report to the City Manager’s Office no later than 180 days following the closing of the District’s fiscal year, containing the information set forth in Section VIII of the Governing Document.

13. Regional Improvements. The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements.

14. Maximum Debt Mill Levy.

(a) The “Maximum Debt Mill Levy” shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District for payment of Limited Tax Debt shall be **0.0045** per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8). Such Maximum Debt Mill Levy may also be used to pay administrative expenses of the District. Further, the Districts may not impose mill levies which aggregate in excess of **0.0045** per dollar of taxable value of taxable property in the District; provided that such levies shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code.

(b) Such Maximum Debt Mill Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202.

(c) Any other mill levy imposed by any other district with the authorization of the City shall not be applied toward the calculation of the Maximum Debt Mill Levy.

15. Maximum Debt Mill Levy Imposition Term. Each bond issued by the District shall mature within thirty-one (31) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of a series of bonds after a period exceeding forty (40) years from the first date of imposition of the mill levy for such bond (the “Maximum Debt Mill Levy Imposition Term”).

16. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: Sand Hollow Mesa Public Infrastructure District
No. 1
c/o Snow Jensen & Reece, PC
912 West 1600 South, Ste. B200
St. George, UT 84770
Attn: Matthew J. Ence
Phone: (435) 628-3688

To the City: Hurricane City
147 N 870 W
Hurricane, UT 84737
Attn: City Manager
Phone: (435) 635-2811

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

17. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties hereto and without amendment to the Governing Document.

18. Assignment. Neither Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

19. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party

in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

20. Term. This Agreement shall terminate upon the earlier to occur of dissolution of the District or fifty (50) years from the date hereof.

21. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Utah.

22. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

23. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

24. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the City any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the City shall be for the sole and exclusive benefit of the District and the City.

25. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

27. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

28. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Governing Document.

[SIGNATURE PAGE TO INTERLOCAL AGREEMENT]

SAND HOLLOW MESA PUBLIC
INFRASTRUCTURE DISTRICT NO. 1

By: _____
President

Attest:

Secretary

APPROVED AS TO FORM: _____

HURRICANE CITY, UTAH

By: _____
Mayor

Attest:

By: _____
Its: _____

APPROVED AS TO FORM: _____

SNOW JENSEN & REECE

A PROFESSIONAL LAW CORPORATION

V. LOWRY SNOW
 CURTIS M. JENSEN
 LEWIS P. REECE
 J. GREGORY HARDMAN
 MATTHEW J. ENCE*
 CAMERON M. MORBY*
 JONATHAN P. WENTZ
 JEFF R. MILES
 SEAN J. ROMNEY
 DEVON J. HERRMANN
 VICTORIA CARLTON
 KATHRYN LUSTY
 TYLER KING*

912 WEST 1600 SOUTH, SUITE B-200
 ST. GEORGE, UTAH 84770

TELEPHONE (435) 628-3688
 FACSIMILE (435) 628-3275
 E-MAIL: sjlw@snowjensen.com
 WEBSITE: www.snowjensen.com

OFFICES IN ST. GEORGE, CEDAR CITY AND KANAB

*Licensed in Utah and Nevada

November 23, 2021

Via email only kaden@cityofhurricane.com

City of Hurricane
 District Advisory Committee
 c/o Kaden C. Demille, City Manager
 147 N. 870 W.
 Hurricane, UT 84737

Re: *Amended* Letter of Intent for Creation of
 Bench Lake Public Infrastructure District

To Whom It May Concern:

This letter sets forth certain proposed terms for the approval by Hurricane, Utah (the "City") of a Public Infrastructure District (the "District") on behalf of Calypso Ridge Properties, LLC (the "Developer"), and in connection with the Calypso Ridge development (the "Development"). The Calypso Ridge development recently received a zone change approval from the City Council for residential development as discussed in more detail below. This letter is intended to supplement the previous Letter of Intent dated November 17, 2021.

Developer is an affiliate of the Lowe Companies, LLC, principal Matt Lowe. The Lowe Companies is a family company which brings over twenty years of development experience to the Development, with a focus on single-family lots and homes. Recent development projects by the Lowe Companies across the state of Utah include a 1290-unit residential/mixed use project in Park City; an 87-lot residential subdivision in Fruit Heights; and an 180-lot residential subdivision in Washington City.

Developer requests that the City approve the creation of a new District in the boundaries of the City as more particularly set forth herein. This letter constitutes a Letter of Intent in compliance with Section I.A. of the City's Policy Statement on the establishment of Public Infrastructure Districts, as follows:

1. **DESCRIPTION OF DISTRICT AREA.** The District is proposed as follows:

- a. *Size of area included in District:* The initial boundaries of the District is proposed as including the Developer property of approximately 149 acres. In addition, the Developer is requesting that a large annexation area be authorized in order to facilitate the future addition of other properties to the District which will also benefit from the public improvements to be financed with the District, as discussed further below. The total annexation area is approximately 4,914.13 acres.

The Annexation Area is an area of the city in which multiple property owners and developers are seeking to develop property, some of whom have approved development plans but no means for bringing necessary infrastructure to their properties. The proposed District, through the mechanism of annexing properties in this large Annexation Area, can help finance needed public improvements and alleviate the City's burden for finding a way to pay for needed improvements. Annexation of additional properties has the secondary effect of lowering the effective mill rate for all properties ultimately included in the District. We are currently working with other property owners in the Annexation who we believe will join their properties to the District once its creation is approved by the City.

- b. *Location of District:* The proposed District will cover and include the several county parcel numbers currently owned by Developer, as listed in Exhibit A and depicted in Exhibit B. Furthermore, and in accordance with Utah Code § 17B-2a-1204, the Developer is requesting that the City authorize annexation of certain parcels into the District boundaries without further legislative action of the City Council, upon the occurrence of certain requirements such as written petition by the owner of such parcels, as will be established in the Governing Document. A legal description of the Annexation Area is set forth in Exhibit A and the annexation area is depicted in Exhibit B.
- c. *Area context:* The area of the Development and the proposed initial District boundary is in the southern portion of the City, at approximately 4700 South and 2600 West. The proposed Annexation Area is a much larger area, including many properties which are anticipated to benefit from the public improvements sought to be financed by the District.
- d. *Development history:* The property proposed to be included in the initial District boundary was recently approved by the City Council for a zone change from RA-1 to R1-10. Developer plans to develop the property as a residential community.
- e. *Proposed development:* See section 2 below.

2. **DESCRIPTION OF PROPOSED DEVELOPMENT.** The Developer intends to construct master planned roads and utility mains complete with new public infrastructure within the proposed District, in order to support the following proposed development. This description is limited to the Development within the initial District boundaries; however, through annexation the District may be expanded so that other properties may benefit from the public improvements to be financed by the District, while also reducing the effective mill rate for all properties ultimately included in the District.
 - a. *General distribution of land uses:* Approximately 450 single-family residential units, on 10,000 square foot minimum lots, consistent with the approved zoning.
 - b. *Densities and phasing of development:* Phasing is anticipated to take place in one to two phases of 60-80 lots each per year. Developer anticipates that development of the first phase will begin early in 2022.
3. **SUMMARY OF NEEDED INFRASTRUCTURE, SERVICES AND FACILITIES.** The Developer envisions the proposed District being utilized for the following development, infrastructure, services and facilities:
 - a. *Currently expected development scenario:* See section 2 above.
 - b. *Required local and regional infrastructure and facilities for the Development:* The Development will require all local and regional infrastructure which is required by City ordinances.
 - c. *Regional and local infrastructure the proposed District are to provide:* The infrastructure to be provided by the District will change depending on whether the District boundaries remain limited to the Developer's property, or whether a number of other property owners agree to annexation into the District, thus increasing the District's financing capacity and spreading the cost of improvements across multiple projects.

In the event that the District remains limited to the Developer's property, the District is anticipated to finance a proportionate share of the following improvements: a master planned road providing primary access to the Development, two culinary water tanks, a water well, and power infrastructure to the water well, all for the benefit of the Development. This financing and infrastructure is described more particularly in Exhibit C1 to this Letter of Intent. *In this scenario, other sources of public or private funding would need to be identified in order to fully pay for the required infrastructure.*

In the event that the District is able to annex sufficient additional property to increase its financing capacity, then the District will be able to finance the entire cost of the same improvements: a master planned road providing primary access to the Development, two culinary water tanks, a water well, and power infrastructure to the water well. This

financing and infrastructure is described more particularly in Exhibit C2 to this Letter of Intent. *In this scenario, the identified infrastructure could be fully financed by the District without other sources of public or private funding.*

We are currently in contact with multiple property owners who are interested in joining the proposed District, and we believe that most developers within the proposed Annexation Area will desire to annex their property into the District in order to assist with the financing of the required infrastructure, because the District would provide a clear benefit and a defined mechanism for such financing. We proceeded with this application with Lowe Companies because it was most prepared to move forward, and willing to assume the burden of being the trailblazer on this application, in order to make possible future annexations by other property owners.

Because all of the proposed infrastructure will be dedicated to the City when completed to City standards, the City could also require other property owners to be annexed into the District as a condition of receiving development entitlements and connecting to the financed improvements. As mentioned above, the more property owners are annexed into the District, the greater the District's financing capacity, and the lower the mill rate required to service bond obligations would be for all property in the District.

Under either alternative scenario described above, the Developer will provide all other regional and local improvements required by its Development.

- d. *Estimated construction costs for the improvements by the proposed District:* Approximately \$4,480,000 would Developer's pro-rata share of improvement costs, under the scenario described in Exhibit C1. The total estimated cost of all improvements financed under the scenario described in Exhibit C2 would be \$54,280,000.
- e. *General description of phasing of construction based on development projections:* Phase 1 construction is set to begin in early 2022. Developer anticipates constructing all necessary public improvements for Phase 1 as soon as funding is available through the District (and other sources if required).
- f. *Anticipated maximum mill levy required to meet debt service of the District:* Developer is requesting the City authorize the District to impose a mill levy of not to exceed 0.003 per dollar of taxable value of taxable property in the District (the "Mill Levy").
- g. *Analysis of proposed mill levies in light of outstanding debt and mill levies of other taxing entities affecting the area:* No other mill levies are currently affecting or anticipated in the area of the proposed District aside from those generally applicable to all other areas of the City.
- h. *Sample plan for finance depicting possible sources and uses of funds for the District:*

- i. Developer proposes the maximum Mill Levy described in section 3.f. above. The actual Mill Levy may be less than the maximum, depending on the terms of financing which can be obtained. Furthermore, the later addition of properties to the District through annexation is anticipated to reduce the actual Mill Levy required to service the District bonds. The Mill Levy is proposed to be the only source of revenue for the District.
 - ii. The proposed District will issue bonds repayable from revenues generated by the Mill Levy.
 - iii. The primary use of the bond proceeds will be for the construction of the regional and local infrastructure described in section 3.c. above, plus customary and appropriate costs of financing and administrative costs.
 - iv. District revenues will be applied first to service bond payments, before any other obligations of the District. Developer will be responsible for all administrative costs of the District until such time as the revenue of the District is sufficient to both service the bonds and pay District costs.
4. **PROPOSED TIMELINE FOR DISTRICT CREATION:** Developer anticipates creating the District by January 1, 2021.
5. **DEVELOPER'S ACKNOWLEDGEMENTS:** Developer hereby acknowledges that a consent must be signed prior to the hearing date for the governing document by all property owners and registered voters, if any, within the proposed District boundaries, which signed consent approves of the creation of the proposed District and the issuance of debt in an amount sufficient for the proposed plan of financing.
6. **CONFLICTS OF INTEREST:** Developer is presently unaware of any conflicts of interest existing between Developer and any employees or officers of the City.
7. **PROFESSIONAL ENGAGEMENT:** Developer has retained Snow Jensen & Reece, PC, as legal counsel for creation of the proposed District and negotiation and preparation of the governing documents. A copy of a signed engagement letter in which Developer has agreed to pay the fees and costs associated with the same can be provided upon request.
8. **ADDITIONAL SUPPLEMENTAL INFORMATION:** This additional section is added to provide additional supplemental information.
 - a. *Application fee.* The application fee of \$2,000 was hand delivered to the City last week.
 - b. *Detailed plan of the improvements showing commercial areas, parks, trails, amenities, etc.* Developer has not yet prepared a layout of the Development; however, the entire Development comprising the initial boundary of the District is planned to be single family

lots consistent with zoning. There are no commercial areas, parks, trails, or special amenities planned or required by applicable zoning.

The details plans of improvements to other properties which are located in the Annexation Area and which may be annexed into the District are dependent on the plans of those other property owners and their respective development approvals from the City.

- c. *A cost break down of what items would be paid for by District bond proceeds.* The estimated cost breakdowns under the two alternative scenarios described in section 3.c. above are set forth in Exhibit C1 and Exhibit C2 to this Amended Letter of Intent. Note that all costs are estimates. (Please see section 3.c. above for a description of the alternative scenarios.)
- d. *Exhibits for improvements/amenities that the District will fund.* See Exhibits C1 and C2 attached for additional details regarding improvements/amenities anticipated to be funded by the District. (Please see section 3.c. above for a description of the alternative scenarios.)
- e. *List what improvements/amenities would not be included in the project if the District is not approved.* The Development requires a large amount of infrastructure be paid for and constructed before any significant development can take place, including but not limited to road improvements, water tanks, a water well, and power improvements. Without the financing that can be provided by the District, Developer does not have the financing capacity to pay for all these improvements. Furthermore, these improvements will all be to the benefit of many other property owners in the area. This is why the Developer is proposing a large Annexation Area, within which properties can be added to the District. Creation of the District opens the door to property owners, by annexation to the District, having the means to finance the public improvements required for development of their properties, and relieves the City from the burden of having to pay for such improvements directly.

Very truly yours,

SNOW JENSEN & REECE, PC



Matthew J. Ence

Signed as duly authorized by Developer, and on its behalf

cc: Cindy Beteag, Hurricane City Recorder

EXHIBIT A
To Letter of Intent

Parcels Proposed For Inclusion In Initial District Boundaries
Proposed Annexation Area

BENCH LAKE P.I.D. LEGAL DESCRIPTION:

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 32, TOWNSHIP 42 SOUTH, OF THE SALT LAKE BASE & MERIDIAN; THENCE S00°54'55"W 135.16 FEET TO THE POINT OF BEGINNING;
THENCE S88°57'51"E 2571.55 FEET; THENCE S00°45'51"W 2522.35 FEET FEET;
N88°49'06"W 2578.24 FEET TO THE WEST SECTION LINE;
THENCE N00°54'56"E ALONG THE WEST SECTION LINE, 2515.75 FEET TO THE POINT OF BEGINNING.
AREA CONTAINS 6,486,199 SQUARE FEET OR 148.903 ACRES.

LEGAL DESCRIPTIONS BY PARCEL:

Parcel Number H-3-2-32-330

Acres 19.96

Legal S: 32 T: 42S R: 13W BEGINNING AT THE SOUTHWEST CORNER OF SECTION 32, T42S, R13W, SLB&M, RUNNING THENCE N1°08'24"E, 760.52 FEET ALONG THE SECTION LINE; THENCE S88°59'25"E, 1143.20 FEET; THENCE S1°06'01"W, 760.52 FEET TO A POINT ON THE SOUTH LINE OF SECTION 32; THENCE N88°59'25"W, 1143.73 FEET ALONG THE SECTION LINE TO THE POINT OF BEGINNING.
TOG W/ & SUBJ TO ACCESS EASEMENT

Parcel Number H-3-2-32-320

Acres 47.70

Legal S: 32 T: 42S R: 13W BEGINNING AT A POINT S1°08'24"W, 1083.52 FEET ALONG THE SECTION LINE FROM THE WEST 1/4 CORNER OF SECTION 32, T42S, R13W, SLB&M, RUNNING THENCE S88°59'25"E, 2574.03 FEET; THENCE S0°59'20"W, 806.87 FEET; THENCE N88°59'25"W, 2576.16 FEET TO A POINT ON THE WEST LINE OF SECTION 32 THENCE N1°08'24"E, 806.87 FEET TO THE POINT OF BEGINNING.

Parcel Number H-3-2-32-321

Acres 25.03

Legal S: 32 T: 42S R: 13W BEGINNING AT A POINT N88°59'25"W, 62.00 FEET FROM THE SOUTH 1/4 CORNER OF SECTION 32, T42S, R13W, SLB&M, RUNNING THENCE N88°59'25"W, 1434.44 FEET ALONG THE SECTION LINE; THENCE N1°06'01"E, 760.52 FEET; THENCE S88°59'25"E, 1432.96 FEET; THENCE S0°59'20"W, 760.52 FEET TO THE POINT OF BEGINNING.
TOG W/ & SUBJ TO ACCESS EASEMENT

Parcel Number H-3-2-32-310

Acres 55.68

Legal S: 32 T: 42S R: 13W BEGINNING AT A POINT S1*08'24"W, 135.16 FEET ALONG THE SECTION LINE FROM THE WEST 1/4 CORNER OF SECTION 32, T42S, R13W, SLB&M, RUNNING THENCE S88*44'22"E, 2571.55 FEET; THENCE S0*59'20"W, 937.11 FEET; THENCE N88*59'25"W, 2574.03 FEET TO A POINT ON THE WEST LINE OF SECTION 32; THENCE N1*08'24"E, 948.38 FEET ALONG THE SECTION LINE TO THE POINT OF BEGINNING. TOG & SUBJ TO ROW

ANNEXATION AREA LEGAL DESCRIPTION:

BEGINNING AT THE SOUTH QUARTER CORNER OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN;
THENCE N00°59'39"E ALONG THE QUARTER SECTION LINE, 2638.58 FEET;
THENCE S88°53'37"E ALONG THE QUARTER SECTION LINE, 1319.53 FEET;
THENCE N00°59'56"E ALONG THE SIXTEENTH SECTION LINE, 2638.18 FEET;
THENCE N01°00'48"E ALONG THE SIXTEENTH SECTION LINE, 2638.00 FEET;
THENCE S89°15'50"E 330.11 FEET; THENCE N01°01'40"E 329.70 FEET;
THENCE N88°58'43"W 329.86 FEET; THENCE N01°01'10"E ALONG THE SIXTEENTH SECTION LINE, 987.99 FEET; THENCE S89°04'52"E 659.81 FEET;
THENCE N01°02'54"E 657.94 FEET; THENCE N88°54'27"W 989.57 FEET;
THENCE S01°02'06"W 659.33 FEET; THENCE N89°02'02"W 988.36 FEET;
THENCE N01°00'00"E ALONG THE QUARTER SECTION LINE, 1319.22 FEET TO THE NORTH QUARTER CORNER OF SECTION 19;
THENCE S89°00'06"E ALONG THE NORTH SECTION LINE OF SECTION 19, 2637.77 FEET;
THENCE N00°59'56"E 2642.84 FEET TO THE WEST QUARTER CORNER OF SECTION 17;
THENCE N01°01'19"E ALONG THE QUARTER SECTION LINE, 2646.04 FEET TO THE NORTHWEST CORNER OF SECTION 17;
THENCE S88°56'36"E ALONG THE NORTH SECTION LINE OF SECTION 17, 2639.07 FEET TO THE SOUTH QUARTER CORNER OF SECTION 8;
THENCE N01°08'26"E ALONG THE QUARTER SECTION LINE, 2634.49 FEET;
THENCE S89°05'17"E ALONG THE QUARTER SECTION LINE, 2624.43 FEET TO THE WEST QUARTER CORNER OF SECTION 9;
THENCE N01°15'31"E ALONG THE WEST SECTION LINE, 2634.75 FEET TO THE NORTH QUARTER CORNER OF SECTION 9;
THENCE S88°57'34"E ALONG THE NORTH SECTION LINE, 1318.05 FEET;
THENCE S01°09'04"W ALONG THE SIXTEENTH LINE, 2635.56 FEET;
THENCE S01°02'29"W ALONG THE SIXTEENTH LINE, 2642.72 FEET TO THE NORTH SECTION LINE OF SECTION 16;
THENCE S01°04'38"W ALONG THE SIXTEENTH LINE, 2641.78 FEET;
THENCE S01°04'47"W ALONG THE SIXTEENTH LINE, 2642.03 FEET TO THE NORTH SECTION LINE OF SECTION 21;
THENCE S88°59'31"E ALONG THE NORTH SECTION LINE, 1319.05 FEET TO THE NORTH QUARTER CORNER OF SECTION 21;
THENCE S00°52'39"W ALONG THE QUARTER SECTION LINE, 2642.99 FEET;
THENCE S00°52'39"W ALONG THE QUARTER SECTION LINE, 1854.13 FEET;
THENCE S89°03'17"E 651.20 FEET; THENCE N67°32'58"E 719.36 FEET TO THE BOUNDARY LINE OF 1100 WEST STREET;

THENCE ALONG SAID BOUNDARY, SOUTHERLY ALONG THE ARC OF A 777.03 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (LONG CHORD BEARS: S01°38'47"E 225.81 FEET), CENTER POINT LIES S83°17'30"E THROUGH A CENTRAL ANGLE OF 16°42'34" A DISTANCE OF 226.61 FEET; THENCE S06°55'26"W 79.06 FEET; THENCE ALONG THE BOUNDARY LINE OF HURRICANE CITY LIMITS THE FOLLOWING 50 (FIFTY) COURSES:
 WESTERLY ALONG THE ARC OF A 867.74 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (LONG CHORD BEARS: S74°01'54"W 176.73 FEET), CENTER POINT LIES S10°07'24"E THROUGH A CENTRAL ANGLE OF 11°41'23" A DISTANCE OF 177.04 FEET; THENCE S67°43'07"W 88.69 FEET; THENCE S05°49'49"W 293.40 FEET; THENCE S38°27'57"E 1605.65 FEET; THENCE N59°19'35"E 220.30 FEET; THENCE S30°40'12"E 50.00 FEET; THENCE S59°19'36"W 387.01 FEET; THENCE S01°09'10"W 662.01 FEET; THENCE N88°52'02"W 174.68 FEET; THENCE S04°34'12"E 999.91 FEET; THENCE N88°55'56"W 544.40 FEET; THENCE S01°06'55"W 1294.29 FEET; THENCE N89°02'59"W 1314.41 FEET; THENCE S00°59'24"W 1344.50 FEET; THENCE N88°56'46"W 1024.84 FEET; THENCE S13°20'01"W 1418.06 FEET; THENCE S13°36'52"W 965.73 FEET; THENCE S00°29'25"W 322.11 FEET; THENCE S89°02'20"E 883.29 FEET; THENCE N00°44'59"E 165.09 FEET; THENCE S89°14'21"E 652.10 FEET; THENCE N01°03'34"E 1131.45 FEET; THENCE S89°03'52"E 1283.66 FEET; THENCE S01°04'46"W 903.92 FEET; THENCE S88°56'08"E 925.91 FEET; THENCE S62°32'21"E 92.88 FEET; THENCE N28°23'08"E 749.41 FEET TO THE EAST SECTION LINE OF SECTION 33; THENCE S01°02'35"W ALONG THE EAST SECTION LINE, 1008.75 FEET; THENCE S01°02'35"W ALONG THE EAST SECTION LINE, 2641.06 FEET TO THE SOUTHEAST CORNER OF SECTION 33; THENCE N89°03'44"W ALONG THE SOUTH SECTION LINE OF SECTION 33, 1977.18 FEET; THENCE S00°35'14"W 640.63 FEET; THENCE N89°59'21"W 674.29 FEET; THENCE S00°21'51"W 680.07 FEET; THENCE N89°08'18"W 641.92 FEET; THENCE S00°18'23"W 309.88 FEET; THENCE N88°43'13"W 670.71 FEET; THENCE S01°46'31"W 995.60 FEET; THENCE N88°41'06"W 653.96 FEET; THENCE S00°36'32"W 641.91 FEET; THENCE N89°25'30"W 340.95 FEET; THENCE S00°31'00"W 639.64 FEET; THENCE N88°42'54"W 331.07 FEET; THENCE N01°05'58"E 3911.16 FEET TO THE SOUTHEAST CORNER OF SECTION 32; THENCE N88°49'06"W ALONG THE SOUTH SECTION LINE, FEET, 2635.09 FEET; THENCE N88°49'06"W ALONG THE SOUTH SECTION LINE, FEET, 2635.08 FEET TO THE SOUTHWEST CORNER OF SECTION 32; THENCE N00°54'56"E ALONG THE WEST SECTION LINE, 2650.91 FEET TO THE WEST QUARTER CORNER OF SECTION 32; THENCE N00°54'56"E ALONG THE WEST SECTION LINE, 1312.19 FEET; THENCE N88°57'41"W 1322.27 FEET; THENCE N00°56'43"E 1312.26 FEET TO THE SOUTH SECTION LINE OF SECTION 30; THENCE N88°53'48"W ALONG THE SOUTH SECTION LINE, FEET, 1319.40 FEET TO THE POINT OF BEGINNING.
 AREA CONTAINS 214,059,689 SQUARE FEET OR 4914.134 ACRES.

Map of District Boundaries and Annexation Area

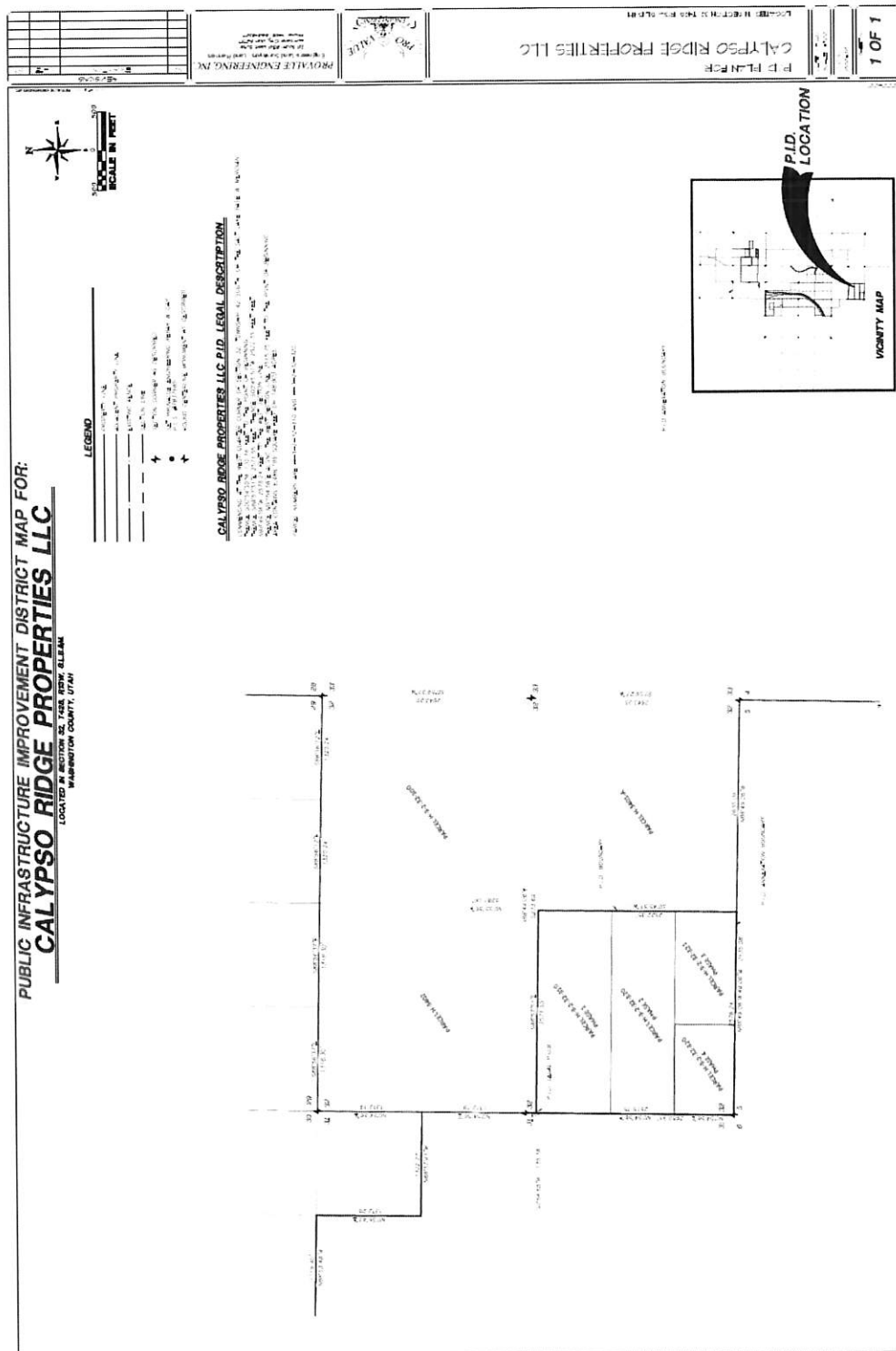


EXHIBIT C1
To Letter of Intent

Improvements/Amenities to be Financed by the District
Scenario #1 – No Annexation (See section 3.c. of Letter of Intent)

CALYPSO AREA WITHIN THE BENCH LAKE P.I.D.

Date: 22-Nov-21

ACREAGE=148.9 ACRES

			BENCH LAKE - CALYPSO PROPERTY		
			PUBLIC IMPROVEMENT DISTRICT		
			TOTAL ESTIMATE		
ITEM No.	ITEM DESCRIPTION	UNIT PRICE Dollars & Cents	QUANTITY	UNITS	ITEM PRICE Dollars & Cents
P.I.D. ITEMS					
1	MASTER PLANNED ROAD W/ 18" WATER MAIN	\$ 1,000.00	4,000	LF	\$ 4,000,000.00
2	CULINARY WATER TANK - PORTION OF 3%	\$ 12,000,000.00	3.0%	LS	\$ 360,000.00
3	CULINARY WATER TANK (8 MILLION GALLONS) @ 3%	\$ 3,000,000.00	3.0%	LS	\$ 90,000.00
4	POWER TO WELL - PORTION OF 3%	\$ 1,000,000.00	3.0%	LS	\$ 30,000.00
TOTAL of P.I.D. ITEMS (Items 1 thru 4) =					\$ 4,480,000.00
S.H. MESA TOTAL		\$ 4,480,000.00			
ENGINEERING, CONST MGMT, AND TESTING		\$ 448,000.00			
CONTINGENCY		\$ 448,000.00			
GRAND TOTAL		\$ 5,376,000.00			

ITEMS INCLUDED IN THE MASTER PLANNED ROADS

Includes 18" water main, sewer mains, power, excavation, base course, asphalt pavement, curb & gutter, sidewalks.

ITEMS INCLUDED IN THE WATER TANK

Includes excavation, (2) 4 million gallon concrete tanks, pipe, fittings and appurtenances.

ITEMS INCLUDED IN THE WATER WELL

Includes drilling, casing and equipping two wells at 500 to 1000 gallon per minute per well.

ITEMS INCLUDED IN THE POWER

Includes power poles, buried power conduits and energized power lines from 1300 South to new well location.

NOTE:

CALYPSO CONTAINS 148.9 ACRES (519 UNITS)
THE BENCH LAKE P.I.D CONTAINS 4914 ACRES
PERCENTAGE OF PARTICIPATION = 3.0%

EXHIBIT C2
To Letter of Intent

Improvements/Amenities to be Financed by the District
Scenario #2 – Additional Annexation of Properties (See section 3.c. of Letter of Intent)

BENCH LAKE MESA PID WATER, POWER, ROAD ESTIMATES

Date: 22-Nov-21

ACREAGE= 4914 ACRES

			BENCH LAKE		
			PUBLIC IMPROVEMENT DISTRICT		
			TOTAL ESTIMATE		
ITEM No.	ITEM DESCRIPTION	UNIT PRICE Dollars & Cents	QUANTITY	UNITS	ITEM PRICE Dollars & Cents
P.I.D. ITEMS					
1	MASTER PLANNED ROAD W/ 18" WATER MAIN	\$ 1,000.00	38,280	LF	\$ 38,280,000.00
2	CULINARY WATER TANK (8 MILLION GALLONS)	\$ 12,000,000.00	1	LS	\$ 12,000,000.00
3	CULINARY WATER WELL	\$ 3,000,000.00	1	LS	\$ 3,000,000.00
4	POWER TO WELL	\$ 1,000,000.00	1	LS	\$ 1,000,000.00
TOTAL of P.I.D. ITEMS (Items 1 thru 4) =					\$ 54,280,000.00
S.H. MESA TOTAL		\$ 54,280,000.00			
ENGINEERING, CONST MGMT, AND TESTING		\$ 5,428,000.00			
CONTINGENCY		\$ 5,428,000.00			
GRAND TOTAL		\$ 65,136,000.00			

ITEMS INCLUDED IN THE MASTER PLANNED ROADS

Includes 14" OR 18" water main, sewer mains, power, excavation, base course, asphalt pavement, curb & gutter, sidewalks.

ITEMS INCLUDED IN THE WATER TANK

Includes excavation, (2) 4 million gallon concrete tanks, pipe, fittings and appurtenances.

ITEMS INCLUDED IN THE WATER WELL

Includes drilling, casing and equpping two wells at 500 to 1000 gallon per minute per well.

ITEMS INCLUDED IN THE POWER

Includes power poles, buried power conduits and energized power lines from 1300 South to new well location.

**PETITION REQUESTING THE CREATION OF BENCH LAKE PUBLIC
INFRASTRUCTURE DISTRICT IN THE CITY OF HURRICANE, UTAH**

November 17, 2021

City of Hurricane
Cindy Beteag, City Recorder
147 N. 870 W.
Hurricane, UT 84737

The undersigned (the "Petitioner") hereby requests that the City of Hurricane, Utah (the "City") create a public infrastructure district (the "District") pursuant to the Local District Act, Title 17B, Chapter 1, Utah Code Annotated 1953 and the Public Infrastructure District Act, Title 17B, Chapter 2a, Utah Code Annotated 1953 (collectively, the "Act"). The Petitioner requests the District in order to assist in the financing of public infrastructure to service and benefit the proposed area of the District and the Annexation Area as described herein.

I. Petitioner

Calypso Ridge Properties, LLC
5500 South Holladay Blvd.
Holladay, UT 84117
(801) 648-8229

Calypso Ridge Properties, LLC is designated as a sponsor of this petition, and as the contact sponsor. There are no registered voters residing within the proposed District boundary.

II. Proposed District Boundaries

The Petitioners request that the initial District boundary (the "District Boundary") be as particularly described on Exhibit A. A map of the proposed District Boundary is provided as Exhibit B. The District will have the right to annex property from the Annexation Area, with the consent of the affected property owners.

III. Requested Service

The Petitioners request the District be created for the purpose of financing the construction of public infrastructure relating to the Development, as permitted under the Act; specifically, the construction of regional and local water and power infrastructure, as shall be further described in the governing documents relating to the District and the Annexation Area.

IV. Board of Trustees

The Petitioners propose that the Board of Trustees for the District be initially composed of three members appointed by the City Council who are property owners, their agents, or officers, as follows:

(a) Matt Lowe

Calypso Ridge Properties, LLC
5500 South Holladay Blvd.
Holladay, UT 84117

(b) John Lowe

Calypso Ridge Properties, LLC
5500 South Holladay Blvd.
Holladay, UT 84117

(c) Zachary Lowe

Calypso Ridge Properties, LLC
5500 South Holladay Blvd.
Holladay, UT 84117

V. Petitioner Representations

The Petitioner hereby represents and warrants that:

- (a) Those signing on behalf of entity owners are authorized to do so;
- (b) The Petitioner is the sole owner of the real property included within the District Boundary;
- (c) This Petition is signed by 100% of the surface property owners of real property within the District Boundary;
- (d) The Petitioner will not include any portion of the Annexation Area (if any) into the District without the consent of 100% of the surface property owners thereof and registered voters, if any, residing within such area;
- (e) There are no registered voters residing within any of the District Boundaries; and
- (f) The proposed Trustees listed above are registered voters at their primary residence and are either a property owner or the agent or officer of a property owner.

VI. Petitioner Consent

The Petitioners hereby consent to:

- (a) The creation of a public infrastructure district with the District Boundary described herein;
- (b) The annexation of any portion of the Annexation Area (if any) into the District upon petition by the owner of such portion and any registered voters residing thereon;
- (c) A waiver of the residency requirement for members of the Board of Trustees of the District as permitted under Section 17B-2a-1205(3)(a) of the Act;
- (d) A waiver of the entirety of the protest period described in Section 17B-1-213 of the Act pursuant to Section 17B-2a-1204(2)(b) of the Act;
- (e) The recording of a notice as required under Section 17B-2a-1209(3)(a) of the Act, which will apply to all real property within the District Boundaries;
- (f) The District levying a property tax of up to \$0.003 per dollar of taxable value of taxable property within the District Boundary, specifically including the properties of the Petitioner; and
- (g) The issuance by the District of bonds repayable through property taxes.

VII. Electronic Means; Counterparts

This Petition may be circulated by electronic means and executed in several counterparts, including by electronic signature, all or any of which may be treated for all purposes as an original and shall constitute and be one and the same document.

IN WITNESS WHEREOF, the Petitioners have each executed this Petition as of the date indicated above.

(signature pages to follow)

Page 85 of 724

**Bench Lake PID Petition rev 111721 mje.pdf**

DocVerify ID: 3FE4C550-49B3-42E3-A6B6-166E3ACA6F7F
Created: November 17, 2021 08:15:16 -7:00
Pages: 6
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E-Signature Summary**E-Signature 1: Matthew John Lowe (MJL)**

November 17, 2021 09:36:22 -7:00 [B1526EBF5D81] [136.36.237.151]
matt@lowecompanies.com (Principal) (ID Verified)

E-Signature Notary: R A Killpack (rak)

November 17, 2021 09:36:22 -7:00 [1E03C85546A4] [208.117.120.90]
rkillpack@snowjensen.com

I, R A Killpack, did witness the participants named above electronically sign this document.



EXHIBIT A

To Petition for Creation of Public Infrastructure District

Legal Description of District Boundaries

BENCH LAKE P.I.D. LEGAL DESCRIPTION:

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 32, TOWNSHIP 42 SOUTH, OF THE SALT LAKE BASE & MERIDIAN; THENCE S00°54'55"W 135.16 FEET TO THE POINT OF BEGINNING;
THENCE S88°57'51"E 2571.55 FEET; THENCE S00°45'51"W 2522.35 FEET FEET;
N88°49'06"W 2578.24 FEET TO THE WEST SECTION LINE;
THENCE N00°54'56"E ALONG THE WEST SECTION LINE, 2515.75 FEET TO THE POINT OF BEGINNING.
AREA CONTAINS 6,486,199 SQUARE FEET OR 148.903 ACRES.

✓LEGAL DESCRIPTIONS BY PARCEL:

Parcel Number H-3-2-32-330

Acres 19.96

Legal S: 32 T: 42S R: 13W BEGINNING AT THE SOUTHWEST CORNER OF SECTION 32, T42S, R13W, SLB&M, RUNNING THENCE N1°08'24"E, 760.52 FEET ALONG THE SECTION LINE; THENCE S88°59'25"E, 1143.20 FEET; THENCE S1°06'01"W, 760.52 FEET TO A POINT ON THE SOUTH LINE OF SECTION 32; THENCE N88°59'25"W, 1143.73 FEET ALONG THE SECTION LINE TO THE POINT OF BEGINNING.
TOG W/ & SUBJ TO ACCESS EASEMENT

✓ Parcel Number H-3-2-32-320

Acres 47.70

Legal S: 32 T: 42S R: 13W BEGINNING AT A POINT S1°08'24"W, 1083.52 FEET ALONG THE SECTION LINE FROM THE WEST 1/4 CORNER OF SECTION 32, T42S, R13W, SLB&M, RUNNING THENCE S88°59'25"E, 2574.03 FEET; THENCE S0°59'20"W, 806.87 FEET; THENCE N88°59'25"W, 2576.16 FEET TO A POINT ON THE WEST LINE OF SECTION 32 THENCE N1°08'24"E, 806.87 FEET TO THE POINT OF BEGINNING.

✓ Parcel Number H-3-2-32-321

Acres 25.03

Legal S: 32 T: 42S R: 13W BEGINNING AT A POINT N88°59'25"W, 62.00 FEET FROM THE SOUTH 1/4 CORNER OF SECTION 32, T42S, R13W, SLB&M, RUNNING THENCE N88°59'25"W, 1434.44 FEET ALONG THE SECTION LINE; THENCE N1°06'01"E, 760.52 FEET; THENCE S88°59'25"E, 1432.96 FEET; THENCE S0°59'20"W, 760.52 FEET TO THE POINT OF BEGINNING.
TOG W/ & SUBJ TO ACCESS EASEMENT

✓ Parcel Number H-3-2-32-310

Acres 55.68

Legal S: 32 T: 42S R: 13W BEGINNING AT A POINT S1°08'24"W, 135.16 FEET ALONG THE SECTION LINE FROM THE WEST 1/4 CORNER OF SECTION 32, T42S, R13W, SLB&M, RUNNING THENCE S88°44'22"E, 2571.55 FEET; THENCE S0°59'20"W, 937.11 FEET; THENCE N88°59'25"W, 2574.03 FEET TO A POINT ON THE WEST LINE OF SECTION 32; THENCE N1°08'24"E, 948.38 FEET ALONG THE SECTION LINE TO THE POINT OF BEGINNING. TOG & SUBJ TO ROW

ANNEXATION AREA LEGAL DESCRIPTION:

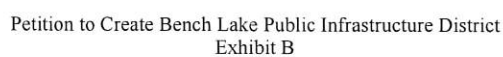
BEGINNING AT THE SOUTH QUARTER CORNER OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN;
THENCE N00°59'39"E ALONG THE QUARTER SECTION LINE, 2638.58 FEET;
THENCE S88°53'37"E ALONG THE QUARTER SECTION LINE, 1319.53 FEET;
THENCE N00°59'56"E ALONG THE SIXTEENTH SECTION LINE, 2638.18 FEET;
THENCE N01°00'48"E ALONG THE SIXTEENTH SECTION LINE, 2638.00 FEET;
THENCE S89°15'50"E 330.11 FEET; THENCE N01°01'40"E 329.70 FEET;
THENCE N88°58'43"W 329.86 FEET; THENCE N01°01'10"E ALONG THE SIXTEENTH SECTION LINE, 987.99 FEET; THENCE S89°04'52"E 659.81 FEET;
THENCE N01°02'54"E 657.94 FEET; THENCE N88°54'27"W 989.57 FEET;
THENCE S01°02'06"W 659.33 FEET; THENCE N89°02'02"W 988.36 FEET;
THENCE N01°00'00"E ALONG THE QUARTER SECTION LINE, 1319.22 FEET TO THE NORTH QUARTER CORNER OF SECTION 19;
THENCE S89°00'06"E ALONG THE NORTH SECTION LINE OF SECTION 19, 2637.77 FEET;
THENCE N00°59'56"E 2642.84 FEET TO THE WEST QUARTER CORNER OF SECTION 17;
THENCE N01°01'19"E ALONG THE QUARTER SECTION LINE, 2646.04 FEET TO THE NORTHWEST CORNER OF SECTION 17;
THENCE S88°56'36"E ALONG THE NORTH SECTION LINE OF SECTION 17, 2639.07 FEET TO THE SOUTH QUARTER CORNER OF SECTION 8;
THENCE N01°08'26"E ALONG THE QUARTER SECTION LINE, 2634.49 FEET;
THENCE S89°05'17"E ALONG THE QUARTER SECTION LINE, 2624.43 FEET TO THE WEST QUARTER CORNER OF SECTION 9;
THENCE N01°15'31"E ALONG THE WEST SECTION LINE, 2634.75 FEET TO THE NORTH QUARTER CORNER OF SECTION 9;
THENCE S88°57'34"E ALONG THE NORTH SECTION LINE, 1318.05 FEET;
THENCE S01°09'04"W ALONG THE SIXTEENTH LINE, 2635.56 FEET;
THENCE S01°02'29"W ALONG THE SIXTEENTH LINE, 2642.72 FEET TO THE NORTH SECTION LINE OF SECTION 16;
THENCE S01°04'38"W ALONG THE SIXTEENTH LINE, 2641.78 FEET;
THENCE S01°04'47"W ALONG THE SIXTEENTH LINE, 2642.03 FEET TO THE NORTH SECTION LINE OF SECTION 21;
THENCE S88°59'31"E ALONG THE NORTH SECTION LINE, 1319.05 FEET TO THE NORTH QUARTER CORNER OF SECTION 21;
THENCE S00°52'39"W ALONG THE QUARTER SECTION LINE, 2642.99 FEET;
THENCE S00°52'39"W ALONG THE QUARTER SECTION LINE, 1854.13 FEET;
THENCE S89°03'17"E 651.20 FEET; THENCE N67°32'58"E 719.36 FEET TO THE BOUNDARY LINE OF 1100 WEST STREET;
THENCE ALONG SAID BOUNDARY, SOUTHERLY ALONG THE ARC OF A 777.03 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (LONG CHORD BEARS: S01°38'47"E 225.81

FEET), CENTER POINT LIES S83°17'30"E THROUGH A CENTRAL ANGLE OF 16°42'34" A DISTANCE OF 226.61 FEET; THENCE S06°55'26"W 79.06 FEET; THENCE ALONG THE BOUNDARY LINE OF HURRICANE CITY LIMITS THE FOLLOWING 50 (FIFTY) COURSES:

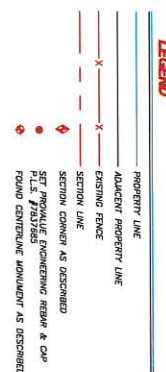
WESTERLY ALONG THE ARC OF A 867.74 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (LONG CHORD BEARS: S74°01'54"W 176.73 FEET), CENTER POINT LIES S10°07'24"E THROUGH A CENTRAL ANGLE OF 11°41'23" A DISTANCE OF 177.04 FEET; THENCE S67°43'07"W 88.69 FEET; THENCE S05°49'49"W 293.40 FEET; THENCE S38°27'57"E 1605.65 FEET; THENCE N59°19'35"E 220.30 FEET; THENCE S30°40'12"E 50.00 FEET; THENCE S59°19'36"W 387.01 FEET; THENCE S01°09'10"W 662.01 FEET; THENCE N88°52'02"W 174.68 FEET; THENCE S04°34'12"E 999.91 FEET; THENCE N88°55'56"W 544.40 FEET; THENCE S01°06'55"W 1294.29 FEET; THENCE N89°02'59"W 1314.41 FEET; THENCE S00°59'24"W 1344.50 FEET; THENCE N88°56'46"W 1024.84 FEET; THENCE S13°20'01"W 1418.06 FEET; THENCE S13°36'52"W 965.73 FEET; THENCE S00°29'25"W 322.11 FEET; THENCE S89°02'20"E 883.29 FEET; THENCE N00°44'59"E 165.09 FEET; THENCE S89°14'21"E 652.10 FEET; THENCE N01°03'34"E 1131.45 FEET; THENCE S89°03'52"E 1283.66 FEET; THENCE S01°04'46"W 903.92 FEET; THENCE S88°56'08"E 925.91 FEET; THENCE S62°32'21"E 92.88 FEET; THENCE N28°23'08"E 749.41 FEET TO THE EAST SECTION LINE OF SECTION 33; THENCE S01°02'35"W ALONG THE EAST SECTION LINE, 1008.75 FEET; THENCE S01°02'35"W ALONG THE EAST SECTION LINE, 2641.06 FEET TO THE SOUTHEAST CORNER OF SECTION 33; THENCE N89°03'44"W ALONG THE SOUTH SECTION LINE OF SECTION 33, 1977.18 FEET; THENCE S00°35'14"W 640.63 FEET; THENCE N89°59'21"W 674.29 FEET; THENCE S00°21'51"W 680.07 FEET; THENCE N89°08'18"W 641.92 FEET; THENCE S00°18'23"W 309.88 FEET; THENCE N88°43'13"W 670.71 FEET; THENCE S01°46'31"W 995.60 FEET; THENCE N88°41'06"W 653.96 FEET; THENCE S00°36'32"W 641.91 FEET; THENCE N89°25'30"W 340.95 FEET; THENCE S00°31'00"W 639.64 FEET; THENCE N88°42'54"W 331.07 FEET; THENCE N01°05'58"E 3911.16 FEET TO THE SOUTHEAST CORNER OF SECTION 32; THENCE N88°49'06"W ALONG THE SOUTH SECTION LINE, FEET, 2635.09 FEET; THENCE N88°49'06"W ALONG THE SOUTH SECTION LINE, FEET, 2635.08 FEET TO THE SOUTHWEST CORNER OF SECTION 32; THENCE N00°54'56"E ALONG THE WEST SECTION LINE, 2650.91 FEET TO THE WEST QUARTER CORNER OF SECTION 32; THENCE N00°54'56"E ALONG THE WEST SECTION LINE, 1312.19 FEET; THENCE N88°57'41"W 1322.27 FEET; THENCE N00°56'43"E 1312.26 FEET TO THE SOUTH SECTION LINE OF SECTION 30; THENCE N88°53'48"W ALONG THE SOUTH SECTION LINE, FEET, 1319.40 FEET TO THE POINT OF BEGINNING.
AREA CONTAINS 214,059,689 SQUARE FEET OR 4914.134 ACRES.

To Petition for Creation of Public Infrastructure District

Map of District Boundaries and Annexation Area



**LOCATED IN SECTION 32, T42S, R7W, S16E,
WASHINGTON COUNTY, UTAH**

[illegible]

PROVALUE ENGINEERING, INC.
Engineers - Land Surveyors - Land Planners
20 South 2500 West, Suite 7
Hurricane City, Utah 84737
Phone: (435) 648-8367



PUBLIC INFRASTRUCTURE IMPROVEMENT DISTRICT MAP FOR: BENCH LAKE ANNEXATION BOUNDARY

SHEET NO
1 OF 4

LOCATED IN SECTION 32, T42S, R13W, S11BAM
WASHINGTON COUNTY, UTAH

Page 94 of 724

PARCEL SUMMARY FOR:
BENCH LAKE ANNEXATION BOUNDARY

LOCATED IN SECTION 32, T42S, R31W, S12.4E
WASHINGTON COUNTY, UTAH

K	H-3400-H	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3400-I	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3400-J	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3400-K	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3400-L	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3400-M	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3400-N	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3400-O	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3400-P	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3400-S	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3400-T	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3409	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3409-B-2	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3409-C-2	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3409-D	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3409-E	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3409-F	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3409-G	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3409-H	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3409-I	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3409-J	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3410	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3410-B	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3410-C	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3410-D	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3410-E	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3410-F	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3410-G	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3410-H	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3410-I	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3410-J	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3421	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3421-A	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3421-C	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3421-D	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3421-E	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3421-F	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3421-G	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3421-H	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3421-I	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3421-J	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3421-K	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3421-L	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3422	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
K	H-3422-B	TOQUERVILLE ENTERPRISES L C	770 PORTO MIO WAY LAS VEGAS, NV 89138
KK	H-3403-E-3	FOISY STEVE E	2105 S BALBOA WAY # 8 SAINT GEORGE, UT 84770
L	H-3391	WAVSS LLC	2514 W SPILSBURY CT HURRICANE, UT 84737

NO.	DESCRIPTION	DATE	BY

PROVALUE ENGINEERING, INC.
30 South 200 West, Suite 1
American Fork, Utah 84403
Phone: (801) 444-8877
Fax: (801) 444-8878
www.provalue.com



PARCEL SUMMARY SHEET FOR:
BENCH LAKE ANNEXATION BOUNDARY
LOCATED IN SECTION 32, T42S, R31W, S12.4E

DATE: 7-17-2021
SCALE: N/A
SHEET NO.
3 OF 4

LOCATED IN SECTION 32, T42S, R13W, S12E, 4M.
WASHINGTON COUNTY, UTAH

[illegible]

INC.

ROYALTY ENGINEERING, INC.
Fig. 1000's - Land Sweeper - Land Raiser
20 South 200 West, Suite 1
Hurricane City, Utah 84757
Phone (435) 886-8007



BENCH LAKE ANNEXATION BOUNDARY

DATE: 11-11-2021
SCALE: N/A

650-659
JON BOR

SHEET NO. 4 OF 4

**GOVERNING DOCUMENT
FOR
BENCH LAKE PUBLIC INFRASTRUCTURE DISTRICT
HURRICANE CITY, UTAH**

[Approval Date], 2021

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LIST OF EXHIBITS

EXHIBIT A	Legal Descriptions
EXHIBIT B	Hurricane City Vicinity Map
EXHIBIT C	Initial District and Annexation Area Boundary Map
EXHIBIT D	Interlocal Agreement between the District and Hurricane City

I. INTRODUCTION

A. Purpose and Intent.

The District is an independent unit of local government, separate and distinct from the City, and, except as may otherwise be provided for by State or local law or this Governing Document, its activities are subject to review by the City only insofar as they may deviate in a material matter from the requirements of the Governing Document. It is intended that the District will provide a part or all of the Public Improvements for the use and benefit of all anticipated inhabitants and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements. The District is not being created to provide any ongoing operations and maintenance services.

B. Need for the District.

There are currently no other governmental entities, including the City, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction installation, relocation, redevelopment, and financing of the Public Improvements needed for the Project. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.

C. Objective of the City Regarding District's Governing Document.

The City's objective in approving the Governing Document for the District is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by the District. All Debt is expected to be repaid by taxes imposed and collected for no longer than the Maximum Debt Mill Levy Imposition Term and at a tax mill levy no higher than the Maximum Debt Mill Levy for all commercial and residential properties, and/or repaid by Assessments. Debt which is issued within these parameters and, as further described in the Financial Plan, will insulate property owners from excessive tax burdens to support the servicing of the Debt and will result in a timely and reasonable discharge of the Debt.

This Governing Document is intended to establish a limited purpose for the District and explicit financial constraints that are not to be violated under any circumstances. The primary purpose is to provide for the Public Improvements associated with development and regional needs. Although the District has authority to directly provide public improvements, the District also has the authority to pledge tax revenues to an interlocal entity that provides public improvements.

It is the intent of the District to dissolve upon payment or defeasance of all Debt incurred or upon a determination that adequate provision has been made for the payment of all Debt.

The District shall be authorized to finance the Public Improvements that can be funded from Debt to be repaid from Assessments or from tax revenues collected from a mill levy

which shall not exceed the Maximum Debt Mill Levy on taxable properties and which shall not exceed the Maximum Debt Mill Levy Imposition Term on taxable properties. It is the intent of this Governing Document to assure to the extent possible that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy in amount and that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy Imposition Term in duration even under bankruptcy or other unusual situations. Generally, the cost of Public Improvements that cannot be funded within these parameters are not costs to be paid by the District.

II. DEFINITIONS

In this Governing Document, the following terms shall have the meanings indicated below, unless the context hereof clearly requires otherwise:

Annexation Area Boundaries: means the boundaries of the area described in the Annexation Area Boundary Map which have been approved by the City for annexation or withdrawal from or into the District upon the meeting of certain requirements.

Annexation Area Boundary Map: means the map attached hereto as **Exhibit C**, describing the property proposed for annexation within the District.

Approved Development Plan: means a Preliminary Development Plan or other process established by the City for identifying, among other things, Public Improvements necessary for facilitating development for property within the District Area as approved by the City pursuant to the City Code and as amended pursuant to the City Code from time to time. For purposes of this Governing Document, **the Ordinance Amending the Zoning Map for the Project approved on _____, 2021** shall constitute an Approved Development Plan.

Assessment: means assessments levied in an assessment area created within the District.

Board: means the board of trustees of the District.

Bond, Bonds or Debt: means bonds or other obligations, including loans of any property owner, for the payment of which the District has promised to impose an ad valorem property tax mill levy, and/or collect Assessments.

City: means Hurricane City, Utah.

City Code: means the City Code of Hurricane City, Utah.

City Council: means the City Council of Hurricane City, Utah.

District: means the Bench Lake Public Infrastructure District.

District Area: means the property within the Initial District Boundary Map and the Annexation Area Boundary Map.

End User: means any owner, or tenant of any owner, of any taxable improvement within the District, who is intended to become burdened by the imposition of ad valorem property taxes subject to the Maximum Debt Mill Levy. By way of illustration, a resident homeowner, renter, commercial property owner, or commercial tenant is an End User. The business entity that constructs homes or commercial structures is not an End User.

Fees: means any fee imposed by the District for administrative services provided by the District.

Financial Plan: means the Financial Plan described in Section VIII which describes (i) the potential means whereby the Public Improvements may be financed; (ii) how the Debt is expected to be incurred; and (iii) the estimated operating revenue derived from property taxes for the first budget year.

General Obligation Debt: means a Debt that is directly payable from and secured by ad valorem property taxes that are levied by the District and does not include Limited Tax Debt.

Governing Document: means this Governing Document for the District approved by the City Council.

Governing Document Amendment: means an amendment to the Governing Document approved by the City Council in accordance with the City's ordinance and the applicable state law and approved by the Board in accordance with applicable state law.

Initial District Boundaries: means the boundaries of the area described in the Initial District Boundary Map.

Initial District Boundary Map: means the map attached hereto as **Exhibit C**, describing the District's initial boundaries.

Limited Tax Debt: means a debt that is directly payable from and secured by ad valorem property taxes that are levied by the District which may not exceed the Maximum Debt Mill Levy.

Local District Act: means Title 17B of the Utah Code, as amended from time to time.

Maximum Debt Mill Levy: means the maximum mill levy the District is permitted to impose for payment of Debt as set forth in Section VIII.C below.

Maximum Debt Mill Levy Imposition Term: means the maximum term for imposition of a mill levy for any given series of bonds as set forth in Section VIII.D below.

Municipal Advisor: means a consultant that: (i) advises Utah governmental entities on matters relating to the issuance of securities by Utah governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (ii) shall be

an individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place; and (iii) is not an officer or employee of the District.

Project: means the development or property commonly referred to as the Bench Lake Project.

PID Act: means Title 17D, Chapter 4 of the Utah Code, as amended from time to time and any successor statute thereto.

Public Improvements: means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as generally described in the Local District Act, except as specifically limited in Section V below to serve the future taxpayers and inhabitants of the District Area as determined by the Board.

Regional Improvements: means Public Improvements and facilities that benefit the District Area and which are to be financed pursuant to Section VII below.

State: means the State of Utah.

Taxable Property: means real or personal property within the District Area subject to ad valorem taxes imposed by the District.

Trustee: means a member of the Board.

Utah Code: means the Utah Code Annotated 1953, as amended.

III. BOUNDARIES

The area of the Initial District Boundaries includes approximately one hundred forty-eight (148.903) acres and the total area proposed to be included in the Annexation Area Boundaries is approximately four thousand nine hundred fourteen (4,914.134) acres and includes all property within the District. A legal description of the Initial District Boundaries and the Annexation Area Boundaries is attached hereto as **Exhibit A**. A vicinity map is attached hereto as **Exhibit B**. A map of the Initial District Boundaries and Annexation Area Boundaries is attached hereto as **Exhibit C**. It is anticipated that the District's boundaries may change from time to time as it undergoes annexations and withdrawals pursuant to Section 17B-4-201, Utah Code, subject to Article V below.

IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION

The District Area consists of approximately four thousand nine hundred fourteen (4,914.134) acres of mostly undeveloped land. The current assessed valuation of the District Area at build out, is expected to be sufficient to reasonably discharge the Debt under the Financial Plan. The population of the initial District Boundary at build-out is estimated to be approximately 1,000 people; the population of the entire District Area is anticipated to be much larger, and highly dependent on approved development plans upon each given property in the District Area.

Approval of this Governing Document by the City does not imply approval of the development of a specific area within the District, nor does it imply approval of the number of residential units or the total site/floor area of commercial or industrial buildings identified in this Governing Document or any of the exhibits attached thereto, unless the same is contained within an Approved Development Plan.

V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES

A. Powers of the District and Governing Document Amendment.

The District shall have the power and authority to provide the Public Improvements within and without the boundaries of the District as such power and authority is described in the Local District Act, and other applicable statutes, common law and the Constitution, subject to the limitations set forth herein.

1. Improvements. The District shall have authority to provide for the planning, design, acquisition, construction, installation, and dedication to the City or other appropriate public agencies of the Public Improvements within and without the boundaries of the District. Prior to or contemporaneous with providing the foregoing for any other Public Improvements, the District must have arranged for the financing of the following improvements (the “Pre-Requisite Improvements”), as generally depicted in or required by the Approved Development Plan:

(a) Regional master planned roads and public utilities connecting the Project (including 14” or 18” water mains, sewer mains, excavation, base course, asphalt pavement, curb & gutter, and sidewalks) all to City standards.

(b) Regional water storage improvements, including excavation, two (2) 4 million gallon concrete tanks, pipe, fittings and appurtenances.

(c) Regional water wells, including drilling, casing and equipping two wells at 500 to 1000 gallon per minute per well.

(d) Power improvements consisting of a main transmission line from the 1300 South Substation to the substations at Balance of Nature and Sand Hollow Mesa along 2100 West and 2600 West Streets. A main power feed will be installed from the 2600 West – Sand Hollow Mesa Substation and will feed the new wells and new tanks power down 2600 West and to the east on the southeastern tip of Hurricane City.

In order to finance all of the Pre-Requisite Improvements, the District will be required to annex significant additional property into the initial District boundaries. In the event that the financing capacity of the District, including all property annexed therein, is not sufficient to fully finance all of the Pre-Requisite Improvements, then the District will obtain what financing it can for the Pre-Requisite Improvements, and with said financing will either (a) complete such Pre-Requisite Improvements as can be completed with available financing, as said improvements are prioritized by the City; (b) dedicate the

funds obtained by said financing toward the cost of completion of the Pre-Requisite Improvements by the City or other appropriate public utility agency(ies); or (c) some combination of (a) and (b), as agreed by the City.

The Pre-Requisite Improvements may be funded either through issuance of bonds or other sources of funds (such as developer contributions), but must be fully funded before other non-Pre-Requisite Improvements are financed through the District.

2. Operations and Maintenance Limitation. The purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The District shall dedicate the Public Improvements to the City or other appropriate public entity or owners association in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. Trails which are interconnected with a city or regional trail system shall be open to the public free of charge and on the same basis as residents and owners of taxable property within the District.

3. Improvements Limitation. Notwithstanding the provisions of Section V.A.1 or 2 above, without written authorization of the City, the District shall not be authorized to finance the costs of any improvements or facilities which are to be ultimately owned by the District.

4. Construction Standards Limitation. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

5. Procurement. The District shall be subject to the Utah Procurement Code, Title 63G, Chapter 6a.

6. Privately Placed Debt Limitation. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District's Governing Document.

We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

7. Annexation and Withdrawal.

(a) The District shall not include within any of its boundaries any property outside the District Area without the prior written consent of the City. The City, by resolution and this Governing Document, has consented to the annexation of any area within the Annexation Area Boundaries into the District. Such area may only be annexed upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be annexed and the passage of a resolution of the Board approving such annexation.

(b) The City, by resolution and this Governing Document, has consented to the withdrawal of any area within the District Boundaries from the District. Such area may only be withdrawn upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be withdrawn and the passage of a resolution of the Board approving such annexation.

(c) Any annexation or withdrawal shall be in accordance with the requirements of the PID Act.

(d) Upon any annexation or withdrawal, the District shall provide the City a description of the revised District Boundaries.

(e) Annexation or withdrawal of any area in accordance with V.A.6(a) and (b) shall not constitute an amendment of this Governing Document.

8. Overlap Limitation. The District shall not impose aggregate mill levy for payment of Debt that exceeds the Maximum Debt Mill Levy of the District. The District shall not consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the District unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Debt Mill Levy of the District, or unless such other district is approved by the City.

9. Initial Debt Limitation. On or before the effective date of approval by the City of an Approved Development Plan, the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (c) impose and collect any Assessments used for the purpose of repayment of Debt.

10. Total Debt Issuance Limitation. The District shall not issue Debt in excess of an aggregate amount of **Fifty-five Million Dollars (\$55,000,000)**. This amount excludes any portion of bonds issued to refund a prior issuance of debt by the District. In the event two or more districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each district.

11. Bankruptcy Limitation. All of the limitations contained in this Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term and the Fees have been established under the authority

of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(5), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable nonbankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

12. Governing Document Amendment Requirement.

(a) This Governing Document has been designed with sufficient flexibility to enable the District to provide required facilities under evolving circumstances without the need for numerous amendments. Actions of the District which violate the limitations set forth in V.A.1-9 above or in VIII.B-G. shall be deemed to be material modifications to this Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

(b) Subject to the limitations and exceptions contained herein, this Governing Document may be amended by passage of a resolutions of the City and the District approving such amendment.

B. Preliminary Engineering Survey.

The District shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, maintenance, and financing of the Public Improvements within and without the boundaries of the District, to be more specifically defined in an Approved Development Plan. An estimate of the costs of the Public Improvements which may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, maintained or financed was prepared based upon a preliminary engineering survey and estimates derived from the zoning on the property in the District Area and is approximately **Fifty-five Million Dollars (\$55,000,000).**

All of the Public Improvements will be designed in such a way as to assure that the Public Improvements standards will be compatible with those of the City and/or any other applicable public entity and shall be in accordance with the requirements of the Approved Development Plan. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

VI. THE BOARD OF TRUSTEES

A. Board Composition. The Board shall be composed of 3 Trustees who shall be appointed by the City Council pursuant to the PID Act. Trustees 1, 2, and 3 shall initially be at large. Trustee terms shall be staggered with initial terms as follows: Trustee 2 shall serve an initial term of 4 years; Trustees 1 and 3 shall serve an initial term of 6 years. All terms shall commence on the date of issuance of a certificate of creation by the Office of the Lieutenant Governor of the State of Utah. In accordance with the PID Act, appointed Trustees shall not be required to be residents of the District.

B. Transition to Elected Board. Respective board seats shall transition from appointed to elected seats according to the following milestones:

1. Trustee 1. Trustee 1 shall transition to an elected seat upon 2,500 registered voters residing within the District.

2. Trustee 2. Trustee 2 shall transition to an elected seat upon 5,000 registered voters residing within the District.

3. Trustee 3. Trustee 3 shall transition to an elected seat upon 7,500 registered voters residing within the District.

Notwithstanding the foregoing, any board seats which have not yet transitioned to an elected seat shall transition after twelve (12) years have passed from the date of issuance of a certificate of creation for the District. No transition pursuant to this Section shall become effective until the next scheduled regular election of the District. Registered voters within this Section shall mean voters whose “principal place of residence,” as that term is defined under Utah Code 20A-2-105(1)(a), is within the District.

C. Reelection and Reappointment. Upon the expiration of a Trustee’s respective term, any seat which has not transitioned to an elected seat shall be appointed by the City Council pursuant to the PID Act and any seat which has transitioned to an elected seat shall be elected pursuant to an election held for such purpose. In the event that no qualified candidate files to be considered for appointment or files a declaration of candidacy for a seat, such seat may be filled in accordance with the Local District Act.

D. Vacancy. Any vacancy on the Board shall be filled pursuant to the Local District Act.

E. Compensation. Only Trustees who are residents of the District may be compensated for services as Trustee. Such compensation shall be in accordance with State Law.

F. Conflicts of Interest. Trustees shall disclose all conflicts of interest. Any Trustee who discloses such conflicts in accordance with 17D-4-202 and 67-16-9, Utah Code, shall be entitled to vote on such matters.

VII. REGIONAL IMPROVEMENTS

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements. Regional Improvements may include, and may not be limited to, a master planned road providing primary access to the Development, two culinary water tanks, a water well, and power infrastructure to the water well. The extent to which the District will be able to finance these Improvements will depend primarily on how many additional properties in the Annexation Area are annexed into the District.

Nothing herein shall prevent the City from financing and completing, or authorizing the finance and completion by another district, of other local or regional improvements not listed above, or approving other mill levies to facilitate the financing of the same.

VIII. FINANCIAL PLAN

A. General.

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment of the Public Improvements from its revenues and by and through the proceeds of Debt to be issued by the District. In addition, the District shall be permitted to finance the prepayment of impact fees for the Project. The Financial Plan for the District shall be to issue such Debt as the District can reasonably pay within the Maximum Debt Mill Levy Imposition Term from revenues derived from the Maximum Debt Mill Levy, Assessments and other legally available revenues. The total Debt that the District shall be permitted to issue shall not exceed Fifty-five Million Dollars (\$55,000,000) and shall be permitted to be issued on a schedule and in such year or years as the District determines shall meet the needs of the Financial Plan referenced above and phased to serve development as it occurs. Any portion of bonds issued to refund a prior issuance of debt by the District shall not count against the permitted total Debt. In the event two or more districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each district. All bonds and other Debt issued by the District may be payable from any and all legally available revenues of the District, including general ad valorem taxes to be imposed upon all Taxable Property within the District and Assessments. The District will also rely upon various other revenue sources authorized by law. These will include the power to assess Fees, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time.

B. Maximum Interest Rate and Maximum Underwriting Discount.

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. In the event of a default, the proposed maximum interest rate on any Debt is not expected to exceed fifteen percent (15%). The proposed maximum underwriting discount will be five percent (5%). Debt, when issued, will comply with all relevant requirements of this Governing Document, State law and Federal law as then applicable to the issuance of public securities.

C. Maximum Debt Mill Levy.

(a) The “Maximum Debt Mill Levy” shall be the maximum mill levy the District is permitted to impose in upon the taxable property within the District for payment of Limited Tax Debt, and shall be 0.003 per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code. Such Maximum Debt Mill Levy may also be used to pay administrative expenses of the District.

(b) Such Maximum Debt Mill Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202, Utah Code.

(c) Any other mill levy imposed by any other district with the authorization of the City shall not be applied toward the calculation of the Maximum Debt Mill Levy.

D. Maximum Debt Mill Levy Imposition Term.

Each bond issued by the District shall mature within Thirty-One (31) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of a series of bonds after a period exceeding forty (40) years from the first date of imposition of the mill levy for such bond (the “Maximum Debt Mill Levy Imposition Term”).

E. Debt Repayment Sources.

The District may impose a mill levy on taxable property within its boundaries as a primary source of revenue for repayment of debt service. The District may also rely upon various other revenue sources authorized by law. At the District’s discretion, these may include the power to assess Assessments, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time. Except as described in Section VIII.C(a), the debt service mill levy in the District shall not exceed the Maximum Debt Mill Levy or, the Maximum Debt Mill Levy Imposition Term, except for repayment of General Obligation Debt.

The District shall not be permitted to charge an End User the costs of any portion of a Public Improvement for which such End User has already paid or is presently obligated to pay through any combination of mill levy, Assessment, or impact fee. This provision shall not prohibit the division of costs between mill levies, Assessments, or impact fees, but is intended to prevent double taxation of End Users for the costs of Public Improvements.

F. Debt Instrument Disclosure Requirement.

In the text of each Bond and any other instrument representing and constituting Debt, the District shall set forth a statement in substantially the following form:

By acceptance of this instrument, the owner of this Bond agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this Bond contained herein, in the

resolution of the District authorizing the issuance of this Bond and in the Governing Document for creation of the District.

Similar language describing the limitations in respect of the payment of the principal of and interest on Debt set forth in this Governing Document shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a developer of property within the boundaries of the District.

G. Security for Debt.

The District shall not pledge any revenue or property of the City as security for the indebtedness set forth in this Governing Document. Approval of this Governing Document shall not be construed as a guarantee by the City of payment of any of the District's obligations; nor shall anything in the Governing Document be construed so as to create any responsibility or liability on the part of the City in the event of default by the District in the payment of any such obligation.

H. District's Operating Costs.

The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the District's organization and initial operations, are anticipated to be Seventy-Five Thousand Dollars (\$75,000), which will be eligible for reimbursement from Debt proceeds.

In addition to the capital costs of the Public Improvements, the District will require operating funds for administration and to plan and cause the Public Improvements to be constructed. The first year's administrative operating budget is estimated to be approximately Fifty Thousand Dollars (\$50,000) which is anticipated to be borne by developer(s) until such time a reimbursement can be derived from property taxes and other revenues, pursuant to a reimbursement agreement between the District and developers.

I. Bond and Disclosure Counsel.

It is the intent of the City that the District shall use competent and nationally recognized bond and disclosure counsel and Municipal Advisor with respect to District Bonds to ensure proper issuance and compliance with this Governing Document. The District has agreed to utilize the City's counsel, Gilmore & Bell, P.C., as bond and disclosure counsel and Zions Public Finance, Inc., as Municipal Advisor with respect to District Bonds as permitted by law. The foregoing requirement may be waived by vote of the City Council.

IX. ANNUAL REPORT

A. General.

The District shall be responsible for submitting an annual report to the City Manager's Office no later than 180 days following the end of the District's fiscal year.

B. Reporting of Significant Events.

The annual report shall include information as to any of the following:

1. Boundary changes made or proposed to the District's boundary as of December 31 of the prior year.
2. List of current interlocal agreements, if changed (to be delivered to the City upon request);
3. Names and terms of Board members and officers and progress towards milestones required for transition to elected Board;
4. District office contact information;
5. Rules and regulations of the District regarding bidding, conflict of interest, contracting, and other governance matters, if changed;
6. A summary of any litigation which involves the District Public Improvements as of the last day of the prior fiscal year;
7. Status of the District's construction of the Public Improvements as of last day of the prior fiscal year and listing all facilities and improvements constructed by the District that have been dedicated to and accepted by the City as of the last day of the prior fiscal year;
8. A table summarizing total debt authorized and total debt issued by the District as well as any presently planned debt issuances;
9. Official statements of current outstanding bonded indebtedness, if not previously provided to the City;
10. Current year budget including a description of the Public Improvements to be constructed in such year;
11. The District's financial statements, for the previous fiscal year, such statements shall be audited if required pursuant to State law or relevant bond documents (such statements shall be submitted within 30 days of completion if completed after 180 days following the end of the fiscal year);
12. Notice of any uncured events of default by the District, which continue beyond a 90 day period, under any Debt instrument; and
13. Any inability of the District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a 90 day period.

X. DISSOLUTION

Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has

provided for the payment or discharge of all of its outstanding indebtedness and other financial obligations as required pursuant to State statutes.

XI. DISCLOSURE TO PURCHASERS

Within thirty (30) days of the City adopting a resolution creating the District, the Board shall record a notice with the recorder of Washington County. Such notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the District; and (d) if applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion. Such notice shall further be filled with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, homebuilders, commercial developers, and commercial lessors, as applicable, disclose the following information to initial resident homeowners, renters, commercial property owners, and/or commercial tenants:

- (1) All of the information in the first paragraph of this XI;
- (2) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, **for every \$100,000 of taxable value**, there would be an **additional annual property tax of \$300** for the duration of the District’s Bonds.”
- (3) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

XII. INTERLOCAL AGREEMENT

The form of the Interlocal Agreement required by the City Code, relating to the limitations imposed on the District’s activities, is attached hereto as **Exhibit D**. The District shall approve the Interlocal Agreement in the form attached as **Exhibit D** at its first Board meeting after its organization. Failure of the District to execute the Interlocal Agreement as required herein shall constitute a material modification and shall require a Governing Document Amendment. The City Council shall approve the Interlocal Agreement in the form attached as **Exhibit D** at the public hearing approving the Governing Document.

EXHIBIT A

Legal Descriptions

DISTRICT INITIAL BOUNDARY LEGAL DESCRIPTION

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 32, TOWNSHIP 42 SOUTH, OF THE SALT LAKE BASE & MERIDIAN; THENCE S00°54'55"W 135.16 FEET TO THE POINT OF BEGINNING;
THENCE S88°57'51"E 2571.55 FEET; THENCE S00°45'51"W 2522.35 FEET FEET;
N88°49'06"W 2578.24 FEET TO THE WEST SECTION LINE;
THENCE N00°54'56"E ALONG THE WEST SECTION LINE, 2515.75 FEET TO THE POINT OF BEGINNING.

AREA CONTAINS 6,486,199 SQUARE FEET OR 148.903 ACRES.

Annexation Area Boundaries

The Annexation Area shall be comprised of the Initial District Boundaries of the District as well as the following:

BEGINNING AT THE SOUTH QUARTER CORNER OF SECTION 30, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN;
THENCE N00°59'39"E ALONG THE QUARTER SECTION LINE, 2638.58 FEET;
THENCE S88°53'37"E ALONG THE QUARTER SECTION LINE, 1319.53 FEET;
THENCE N00°59'56"E ALONG THE SIXTEENTH SECTION LINE, 2638.18 FEET;
THENCE N01°00'48"E ALONG THE SIXTEENTH SECTION LINE, 2638.00 FEET;
THENCE S89°15'50"E 330.11 FEET; THENCE N01°01'40"E 329.70 FEET;
THENCE N88°58'43"W 329.86 FEET; THENCE N01°01'10"E ALONG THE SIXTEENTH SECTION LINE, 987.99 FEET; THENCE S89°04'52"E 659.81 FEET;
THENCE N01°02'54"E 657.94 FEET; THENCE N88°54'27"W 989.57 FEET;
THENCE S01°02'06"W 659.33 FEET; THENCE N89°02'02"W 988.36 FEET;
THENCE N01°00'00"E ALONG THE QUARTER SECTION LINE, 1319.22 FEET TO THE NORTH QUARTER CORNER OF SECTION 19;
THENCE S89°00'06"E ALONG THE NORTH SECTION LINE OF SECTION 19, 2637.77 FEET;
THENCE N00°59'56"E 2642.84 FEET TO THE WEST QUARTER CORNER OF SECTION 17;
THENCE N01°01'19"E ALONG THE QUARTER SECTION LINE, 2646.04 FEET TO THE NORTHWEST CORNER OF SECTION 17;
THENCE S88°56'36"E ALONG THE NORTH SECTION LINE OF SECTION 17, 2639.07 FEET TO THE SOUTH QUARTER CORNER OF SECTION 8;
THENCE N01°08'26"E ALONG THE QUARTER SECTION LINE, 2634.49 FEET;
THENCE S89°05'17"E ALONG THE QUARTER SECTION LINE, 2624.43 FEET TO THE WEST QUARTER CORNER OF SECTION 9;
THENCE N01°15'31"E ALONG THE WEST SECTION LINE, 2634.75 FEET TO THE NORTH QUARTER CORNER OF SECTION 9;
THENCE S88°57'34"E ALONG THE NORTH SECTION LINE, 1318.05 FEET;
THENCE S01°09'04"W ALONG THE SIXTEENTH LINE, 2635.56 FEET;

THENCE S01°02'29"W ALONG THE SIXTEENTH LINE, 2642.72 FEET TO THE NORTH
 SECTION LINE OF SECTION 16;
 THENCE S01°04'38"W ALONG THE SIXTEENTH LINE, 2641.78 FEET;
 THENCE S01°04'47"W ALONG THE SIXTEENTH LINE, 2642.03 FEET TO THE NORTH
 SECTION LINE OF SECTION 21;
 THENCE S88°59'31"E ALONG THE NORTH SECTION LINE, 1319.05 FEET TO THE NORTH
 QUARTER CORNER OF SECTION 21;
 THENCE S00°52'39"W ALONG THE QUARTER SECTION LINE, 2642.99 FEET;
 THENCE S00°52'39"W ALONG THE QUARTER SECTION LINE, 1854.13 FEET;
 THENCE S89°03'17"E 651.20 FEET; THENCE N67°32'58"E 719.36 FEET TO THE BOUNDARY
 LINE OF 1100 WEST STREET;
 THENCE ALONG SAID BOUNDARY, SOUTHERLY ALONG THE ARC OF A 777.03 FOOT
 RADIUS NON-TANGENT CURVE TO THE LEFT (LONG CHORD BEARS: S01°38'47"E 225.81
 FEET), CENTER POINT LIES S83°17'30"E THROUGH A CENTRAL ANGLE OF 16°42'34" A
 DISTANCE OF 226.61 FEET; THENCE S06°55'26"W 79.06 FEET;
 THENCE ALONG THE BOUNDARY LINE OF HURRICANE CITY LIMITS THE FOLLOWING
 50 (FIFTY) COURSES:
 WESTERLY ALONG THE ARC OF A 867.74 FOOT RADIUS NON-TANGENT CURVE TO
 THE LEFT (LONG CHORD BEARS: S74°01'54"W 176.73 FEET), CENTER POINT LIES
 S10°07'24"E THROUGH A CENTRAL ANGLE OF 11°41'23" A DISTANCE OF 177.04 FEET;
 THENCE S67°43'07"W 88.69 FEET; THENCE S05°49'49"W 293.40 FEET;
 THENCE S38°27'57"E 1605.65 FEET; THENCE N59°19'35"E 220.30 FEET;
 THENCE S30°40'12"E 50.00 FEET; THENCE S59°19'36"W 387.01 FEET;
 THENCE S01°09'10"W 662.01 FEET; THENCE N88°52'02"W 174.68 FEET;
 THENCE S04°34'12"E 999.91 FEET; THENCE N88°55'56"W 544.40 FEET;
 THENCE S01°06'55"W 1294.29 FEET; THENCE N89°02'59"W 1314.41 FEET;
 THENCE S00°59'24"W 1344.50 FEET; THENCE N88°56'46"W 1024.84 FEET;
 THENCE S13°20'01"W 1418.06 FEET; THENCE S13°36'52"W 965.73 FEET;
 THENCE S00°29'25"W 322.11 FEET; THENCE S89°02'20"E 883.29 FEET;
 THENCE N00°44'59"E 165.09 FEET; THENCE S89°14'21"E 652.10 FEET;
 THENCE N01°03'34"E 1131.45 FEET; THENCE S89°03'52"E 1283.66 FEET;
 THENCE S01°04'46"W 903.92 FEET; THENCE S88°56'08"E 925.91 FEET;
 THENCE S62°32'21"E 92.88 FEET; THENCE N28°23'08"E 749.41 FEET TO THE EAST
 SECTION LINE OF SECTION 33;
 THENCE S01°02'35"W ALONG THE EAST SECTION LINE, 1008.75 FEET;
 THENCE S01°02'35"W ALONG THE EAST SECTION LINE, 2641.06 FEET TO THE
 SOUTHEAST CORNER OF SECTION 33;
 THENCE N89°03'44"W ALONG THE SOUTH SECTION LINE OF SECTION 33, 1977.18 FEET;
 THENCE S00°35'14"W 640.63 FEET; THENCE N89°59'21"W 674.29 FEET;
 THENCE S00°21'51"W 680.07 FEET; THENCE N89°08'18"W 641.92 FEET;
 THENCE S00°18'23"W 309.88 FEET; THENCE N88°43'13"W 670.71 FEET;
 THENCE S01°46'31"W 995.60 FEET; THENCE N88°41'06"W 653.96 FEET;
 THENCE S00°36'32"W 641.91 FEET; THENCE N89°25'30"W 340.95 FEET;
 THENCE S00°31'00"W 639.64 FEET; THENCE N88°42'54"W 331.07 FEET;
 THENCE N01°05'58"E 3911.16 FEET TO THE SOUTHEAST CORNER OF SECTION 32;
 THENCE N88°49'06"W ALONG THE SOUTH SECTION LINE, FEET, 2635.09 FEET;
 THENCE N88°49'06"W ALONG THE SOUTH SECTION LINE, FEET, 2635.08 FEET TO THE
 SOUTHWEST CORNER OF SECTION 32;

THENCE N00°54'56"E ALONG THE WEST SECTION LINE, 2650.91 FEET TO THE WEST
QUARTER CORNER OF SECTION 32;
THENCE N00°54'56"E ALONG THE WEST SECTION LINE, 1312.19 FEET;
THENCE N88°57'41"W 1322.27 FEET; THENCE N00°56'43"E 1312.26 FEET TO THE SOUTH
SECTION LINE OF SECTION 30;
THENCE N88°53'48"W ALONG THE SOUTH SECTION LINE, FEET, 1319.40 FEET TO THE
POINT OF BEGINNING.

AREA CONTAINS 214,059,689 SQUARE FEET OR 4914.134 ACRES.

EXHIBIT B

Hurricane City Vicinity Map

Initial District and Annexation Area Boundary Map

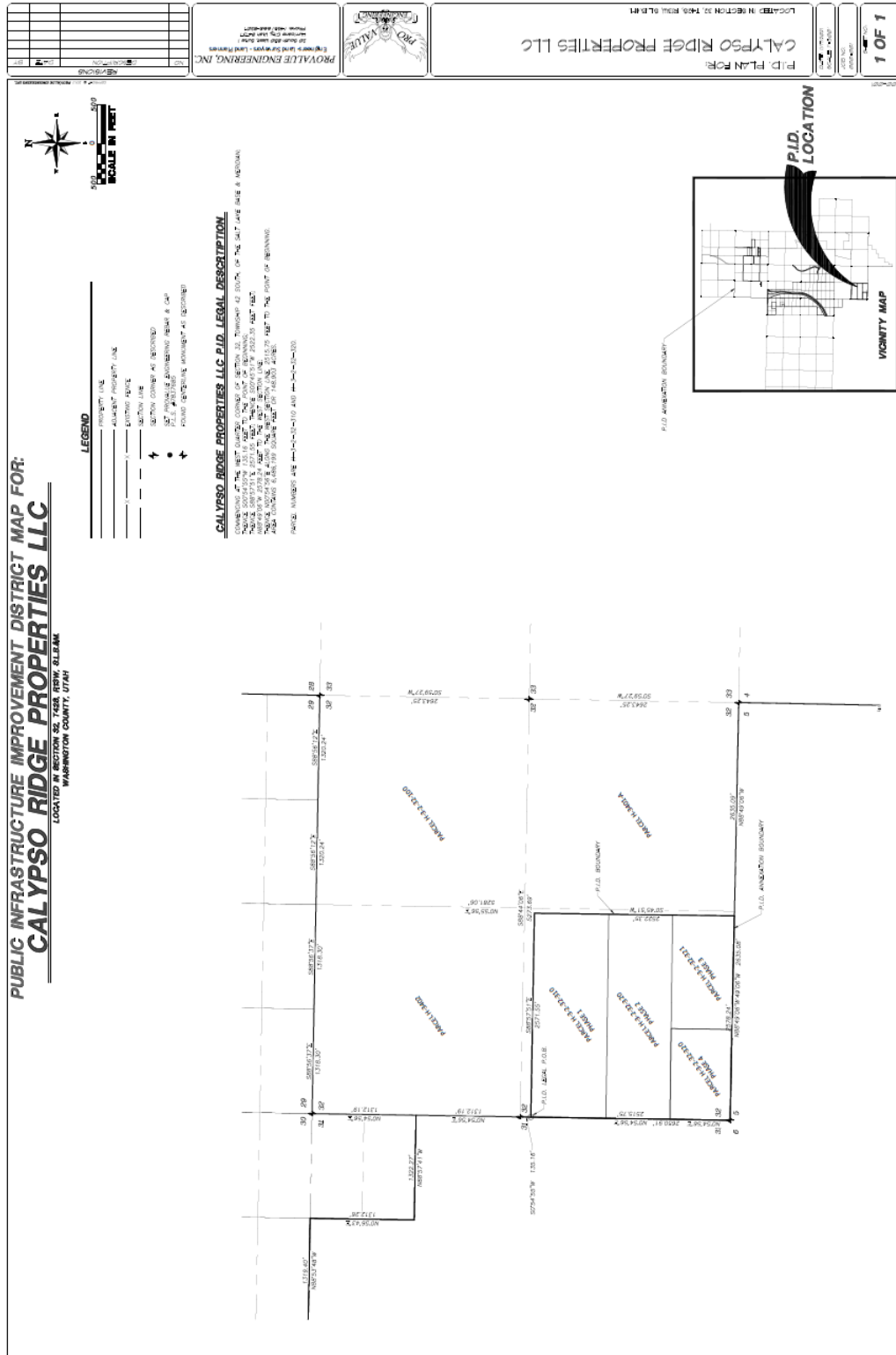


EXHIBIT D

INTERLOCAL AGREEMENT BETWEEN HURRICANE CITY, UTAH AND BENCH LAKE PUBLIC INFRASTRUCTURE DISTRICT

THIS AGREEMENT is made and entered into as of this ____ day of _____, _____, by and between HURRICANE CITY, a home-rule municipal corporation of the State of Utah (“City”), and BENCH LAKE PUBLIC INFRASTRUCTURE DISTRICT, a political subdivision of the State of Utah (the “District”). The City and the District are collectively referred to as the Parties.

RECITALS

WHEREAS, the District was organized to provide to exercise powers as are more specifically set forth in the District’s Governing Document approved by the City on [Approval Date], 2021 (“Governing Document”); and

WHEREAS, the Governing Document makes reference to the execution of an Interlocal Agreement between the City and the District; and

WHEREAS, the City and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Interlocal Agreement (“Agreement”).

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

COVENANTS AND AGREEMENTS

1. Operations and Maintenance. The District shall dedicate the Public Improvements (as defined in the Governing Document) to the City or other appropriate jurisdiction in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. The District shall be authorized, but not obligated, to own Public Improvements not otherwise required to be dedicated to the City or other public entity, and all necessary equipment and appurtenances incident thereto. Trails which are interconnected with a city or regional trail system shall be open to the public free of charge and on the same basis as residents and owners of taxable property within the District.

2. Improvements Limitation. Without written authorization of the City, the District shall not be authorized to finance the costs of any improvements or facilities which are to be ultimately owned by the District.

3. Construction Standards. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction, as applicable. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work. The District may satisfy any City requirements for guaranty of performance of infrastructure completion by delivering to the City documentation evidencing the funds available to the District for such infrastructure as a result of the bonds issued by the District.

4. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District's Governing Document.

We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

5. Inclusion Limitation. The District shall not include within any of their boundaries any property outside the District Area without the prior written consent of the City. By the Governing Document, the City has consented to the annexation or withdrawal of any area within the Annexation Area into or from the District Boundaries. The District shall not include within any of its boundaries any property inside the inclusion area boundaries without the prior written consent of the City except upon petition of the surface property owners of 100 percent of such property and/or 100 percent of registered voters within the area to be included, as applicable, as provided in Section 17D-4-201(3), Utah Code.

6. Overlap Limitation. It is anticipated that the District may overlap with one or more of the Sand Hollow Mesa Public Improvement Districts ("SHMPIDs"), given that the improvements proposed to be financed by the District shall also benefit the area of the SHMPIDs; however, each of the District and the SHMPIDs are forbidden from levying an aggregate mill levy in the overlap area which exceeds 0.0045, which is the Maximum Debt Mill Levy of the SHMPIDs. The District shall not, without the prior authorization of the City Council, consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the District.

7. Initial Debt. On or before the effective date of approval by the City of an Approved Development Plan (as defined in the Governing Document), the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (c) impose and collect any fees used for the purpose of repayment of Debt.

8. Total Debt Issuance. The District shall not issue Debt in excess of an aggregate amount of **Fifty-five Million Dollars (\$55,000,000)**. This amount excludes any portion of bonds issued to refund a prior issuance of debt by any of the District. In the event two or more districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each district.

9. Bankruptcy. All of the limitations contained in this Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(4), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable nonbankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

10. Dissolution. Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes.

11. Disclosure to Purchasers. Within thirty (30) days of the City adopting a resolution creating the District, the Board shall record a notice with the recorder of Washington County, Utah. Such notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the District; and (d) if applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion. Such notice shall further be filed with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, homebuilders, commercial developers, and commercial lessors, as applicable, disclose the following information to initial resident homeowners, renters, commercial property owners, and/or commercial tenants:

(a) All of the information in the first paragraph of 11 of this Agreement;

(b) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, **for every \$100,000 of taxable value**, there would be an **additional annual property tax of \$300** for the duration of the District’s Bonds.”

(c) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

12. Governing Document Amendment Requirement. Actions of the District which violate the limitations set forth in V.A.1-9 or VIII.B-G of the Governing Document shall be deemed to be material modifications to the Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

13. Annual Report. The District shall be responsible for submitting an annual report to the City Manager’s Office no later than 180 days following the closing of the District’s fiscal year, containing the information set forth in Section VIII of the Governing Document.

14. Regional Improvements. The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements.

15. Maximum Debt Mill Levy.

(a) The “Maximum Debt Mill Levy” shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District for payment of Limited Tax Debt shall be **0.003** per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8). Such Maximum Debt Mill Levy may also be used to pay administrative expenses of the District.

(b) Such Maximum Debt Mill Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202.

(c) Any other mill levy imposed by any other district with the authorization of the City shall not be applied toward the calculation of the Maximum Debt Mill Levy.

16. Maximum Debt Mill Levy Imposition Term. Each bond issued by the District shall mature within thirty-one (31) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of a series of bonds after a period exceeding forty (40) years from the first date of imposition of the mill levy for such bond (the “Maximum Debt Mill Levy Imposition Term”).

17. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery,

via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: Bench Lake Public Infrastructure District
 c/o Snow Jensen & Reece, PC
 912 West 1600 South, Ste. B200
 St. George, UT 84770
 Attn: Matthew J. Ence
 Phone: (435) 628-3688

To the City: Hurricane City
 147 N 870 W
 Hurricane, UT 84737
 Attn: City Manager
 Phone: (435) 635-2811

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

18. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties hereto and without amendment to the Governing Document.

19. Assignment. Neither Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

20. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

21. Term. This Agreement shall terminate upon the earlier to occur of dissolution of the District or fifty (50) years from the date hereof.

22. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Utah.

23. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

24. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

25. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the City any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the City shall be for the sole and exclusive benefit of the District and the City.

26. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

27. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

28. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

29. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Governing Document.

[SIGNATURE PAGE TO INTERLOCAL AGREEMENT]

BENCH LAKE PUBLIC
INFRASTRUCTURE DISTRICT

By: _____
President

Attest:

Secretary

APPROVED AS TO FORM: _____

HURRICANE CITY, UTAH

By: _____
Mayor

Attest:

By: _____
Its: _____

APPROVED AS TO FORM: _____

PETITION REQUESTING THE CREATION OF A PUBLIC INFRASTRUCTURE DISTRICT IN HURRICANE, UTAH

December 1, 2021

City of Hurricane, Utah
Attn: Cindy Beteag
147 N 870 W
Hurricane, Utah 84737

The undersigned (the "Petitioners") hereby request Hurricane, Utah (the "City") create a public infrastructure district (the "District") pursuant to the Local District Act, Title 17B, Chapter 1, Utah Code Annotated 1953 and the Public Infrastructure District Act, Title 17B, Chapter 2a, Utah Code Annotated 1953 (collectively, the "Act"). The Petitioners request the District in order to assist in the financing of public infrastructure relating to the construction of the Kachina Ridge (collectively, the "Development"). For additional information regarding the District and this request, please see the Letter of Intent sent to the City on November 29, 2021.

Petitioners:

Ted Fullerton
DayStar Holdings, LLC
782 S River Rd
289
St George Utah, 84790

Parcel Numbers: H-3-1-25-331, H-348-B-1-A, H-3-1-36-440, H-312-A, H-348-B-1-B Each Petitioner constitutes a sponsor, with Ted Fullerton designated as the contact sponsor. There are no registered voters residing within the proposed District boundaries or the annexation area. A title report of the District Boundaries demonstrating that the Petitioners are the owners of such parcels is attached as Exhibit A.

I. Proposed District Boundaries

The Petitioners request the District be comprised of Washington County Parcel Numbers H-3-1-25-331, H-348-B-1-A, H-3-1-36-440, H-312-A, H-348-B-1-B (the "District Boundaries"). Additionally, in accordance Section 17B-2a-1204(3) of the Act, the Petitioners request the City approve the annexation of all or a portion of Washington County Parcel Numbers. H-296-B-1-A, a Portion of 3407-HV, 3407-B-1-HV, H-351-A-N, H-348-B-2-A, H-349-A-1-B, H-3313-A, H-3437-A, H-3313-A-NP, H-3437-B, 3437-TR-HV, H-351-A-1-A, H-352-N, H-3331-A, H-3313-C, H-3437-C, H-3313-D, H-3313-1-NP, H-3-2-1-310, 3313-1-NP-HV, H-348-C, H-348-D, H-296-B-1-C-1, H-348-F, H-348-B-2-M, H-348-B-2-L, H-296-B-1-B, H-296-B-1-D, H-348-B-2-C, H-348-B-2-D, H-348-B-2-B, H-348-B-2-E, H-348-B-2-F, H-348-

B-2-G, H-348-B-2-G, H-348-B-2-K, H-348-B-2-H-1, (the "Annexation Area") into the District upon conveyance, if any, of such parcel or a portion thereof to a Petitioner or a related party. See Exhibit A for a map of the proposed District Boundaries, and the Annexation Area.

II. Requested Service

The Petitioners request the District be created for the purpose of financing the construction of public infrastructure relating to the Development, as permitted under the Act, including, but not limited to the construction of a right-of-way, all as shall be further described in a governing document relating to the District.

III. Board of Trustees

The Petitioners propose that the Board of Trustees for the District be initially composed of 3 members appointed by the City Council and comprising of property owners, their agents, or officers, as follows:

(a) Ted Fullerton
782 S. River Rd. # 289 St. George, Utah 84790

(b) Walter McMurrin Fullerton
2367 S 2250 E St George Utah 84790

(c) Leann Lechtenberg
193 Sugar Leo Rd. St. George Utah 84790

IV. Petitioner Representations

The Petitioners hereby represent and warrant that:

- (a) Ted Fullerton is authorized to sign on behalf of the Petitioners;
- (b) The Petitioners are the sole owners of the real property included within the District Boundaries;
- (c) This Petition is signed by 100% of the surface property owners of real property within the District Boundaries;
- (d) The Petitioners will not include any portion of the Annexation Area into the District without the consent of 100% of the surface property owners thereof and registered voters, if any, residing within such area;
- (e) There are no registered voters residing within the District Boundaries.; and
- (f) The proposed Trustees listed above are registered voters at their primary residence and are either a property owner or the agent or officer of a property owner.

V. Petitioner Consent

The Petitioners hereby consent to:

- a) The creation of a public infrastructure district within the District Boundaries;
- b) The annexation of the Annexation Area into the District upon the conveyance, if any, of any portion of such area;
- c) A waiver of the residency requirement for members of the Board of Trustees of the District as permitted under Section 17B-2a-1205(3)(a) of the Act;
- d) A waiver of the entirety of the protest period described in Section 17B-1-213 of the Act pursuant to Section 17B-2a-1204(2)(b) of the Act;
- e) The District levying a property tax of .015 per dollar of taxable value of taxable property within the District, and acknowledge that the properties of the Petitioners will be subject to such tax; and
- f) The issuance by the District of bonds repayable through property taxes.

VI. Electronic Means; Counterparts

This Petition may be conducted by electronic means and executed in several counterparts, including by electronic signature, all or any of which may be treated for all purposes as an original and shall constitute and be one and the same instrument.

IN WITNESS WHEREOF, the Petitioners have each executed this Petition as of the date indicated above.

Petitioners:

Ted Fullerton as property owner of Parcel Numbers H-3-1-25-331, H-348-B-1-A, H-3-1-36-440, H-312-A, H-348-B-1-B



By: **Ted Fullerton**

STATE OF UTAH)

SS:

COUNTY OF WASHINGTON

The foregoing instrument was acknowledged before me this 29th day of November, 2021, by Ted Fullerton



NOTARY PUBLIC

Residing at: St. George, UT

My Commission Expires: 9/1/2025

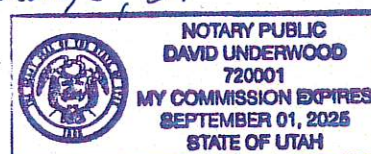


EXHIBIT A
Initial District Boundary Legal Description

TAX ID: H-312-A

S: 26 T: 41S R: 13W BEG AT PT W 64 RDS
FM SE COR SEC 26 T41S R13W; TH E 64 RDS;
TH N 80 RDS; TH W 28 RDS; TH SWLY TO POB.

Tax ID: H-3-1-25-331

S: 25 T: 41S R: 13W BEG AT PT N 660 FT
FM SW COR OF SEC 25 T41S R13W; TH E 1980
FT; TH AT RGT ANG N 1980 FT, M/L TO PT
VIRGIN RIVER INTSEC E & W C LN SD SEC; TH
NELY ALG MIDDLE OF SD RIVER TO PT 231 FT
W OF PT N 706.20 FT FM CTR SEC 25; TH E 231
FT; TH S 3346.2 FT TO S1/4 COR OF SD SEC 25;
TH W 2640 FT M/L TO SW COR OF SD SEC 25;
TH N 660 FT M/L TO POB.LESS: POR TO
OVANDO GUBLER & HORATIO GUBLER BY
QUIT CLAIM DEED REC JUNE 27, 1962. LESS:
LAND IN UNINCORPORATED COUNTY

TAX ID: H-348-B-1-A

S: 35 T: 41S R: 13W POR OF NE1/4 NE1/4
OF SEC 35 T41S R13W LYING NLY HWY U-59.
LESS: W 10 AC

TAX ID: H-3-1-36-440

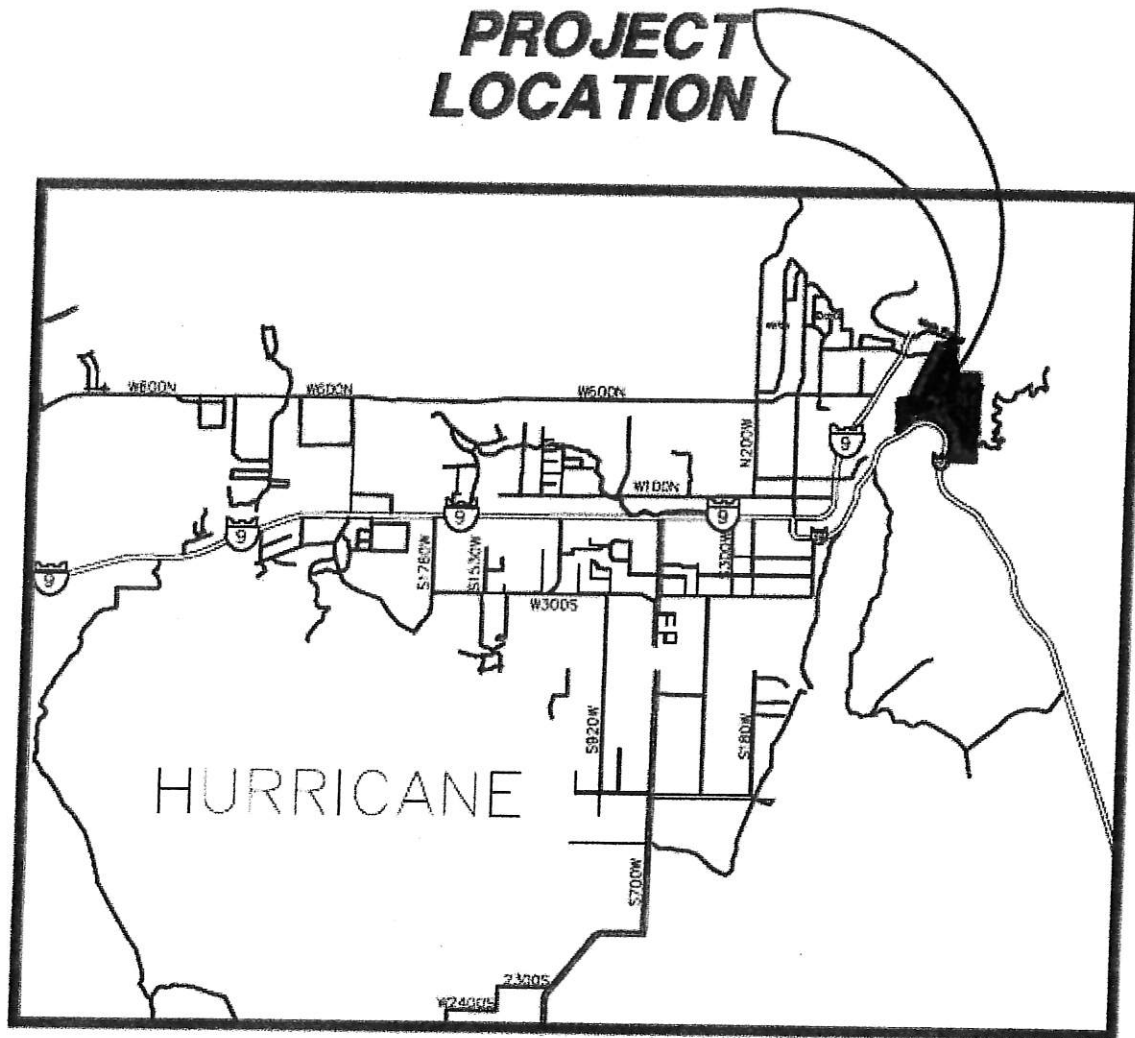
S: 36 T: 41S R: 13W NW1/4 NW1/4 OF SEC
36 T41S R13W. LESS LAND IN
UNINCORPORATED COUNTY

TAX ID: H-348-B-1-B

S: 35 T: 41S R: 13W W 10 AC NE1/4 NE1/4
SEC 35 T41S R13W LYING NLY HWY U-59

EXHIBIT B

AREA: 2,645,834.40 SQUARE FEET OR 60.74 ACRES.



Vicinity Map of Initial District Boundary Area

EXHIBIT C
Exhibit C-1
INITIAL DISTRICT BOUNDARY MAP

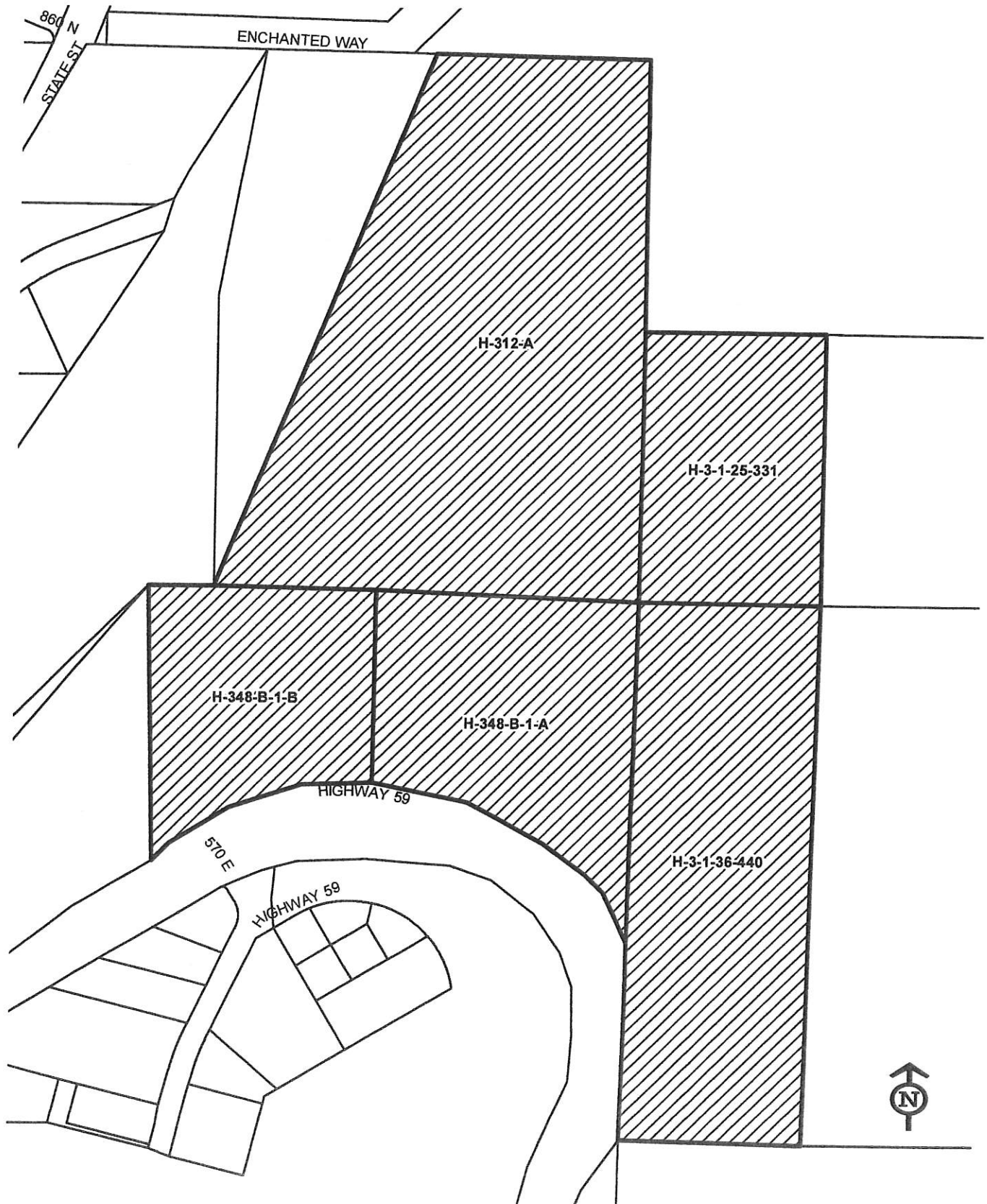


EXHIBIT C-2
ANNEXATION AREA MAP

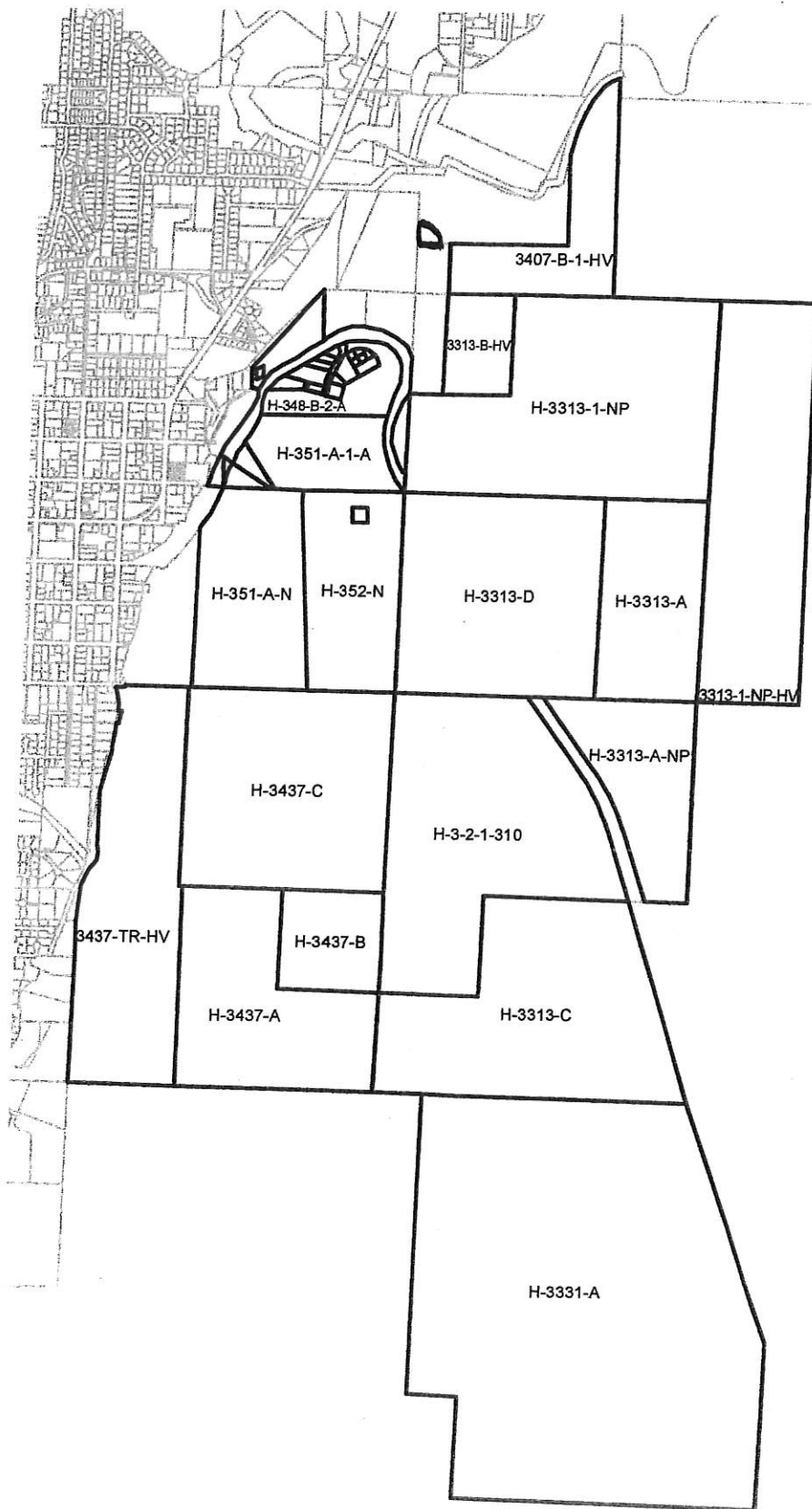


EXHIBIT C-2
Pg 2
ANNEXATION AREA LEGAL DESCRIPTION
HURRICANE, UTAH

Approximately 2401.42 Acres – 104,605,855 sq ft

A PARCEL OF LAND LOCATED IN SECTIONS 25, 26, 35 AND 36, TOWNSHIP 41 SOUTH, RANGE 13 WEST, AND SECTIONS 1, 2 AND 12, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN, WASHINGTON COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 12, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN;

THENCE N.87°58'38"W. A DISTANCE OF 2,634.48 FEET ALONG THE SECTION LINE TO THE SOUTH QUARTER CORNER OF SAID SECTION 12; THENCE N.87°58'38"W. A DISTANCE OF 1,317.23 FEET ALONG THE SECTION LINE; THENCE N.01°34'49"E. A DISTANCE OF 1,330.22 FEET; THENCE N.88°00'59"W. A DISTANCE OF 660.03 FEET; THENCE N.01°31'09"E. A DISTANCE OF 1,330.74 FEET; THENCE N.01°51'24"E. A DISTANCE OF 2,656.24 FEET TO A POINT ON THE SOUTH LINE OF SECTION 1, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN; THENCE N.88°07'20"W. A DISTANCE OF 659.07 FEET ALONG SAID SECTION LINE TO THE SOUTHWEST CORNER OF SECTION 1, SAID TOWNSHIP AND RANGE; THENCE N.88°33'19"W. A DISTANCE OF 2,526.48 FEET ALONG THE SECTION LINE TO THE SOUTH QUARTER CORNER OF SECTION 2 OF SAID TOWNSHIP AND RANGE; THENCE N.89°49'53"W. A DISTANCE OF 1,337.48 FEET ALONG THE SECTION LINE OF SAID SECTION 2; THENCE N.00°08'25"E. A DISTANCE OF 2,471.71 FEET TO THE EASTERLY RIGHT OF WAY OF THE HURRICANE CANAL; THENCE N.29°07'35"E. A DISTANCE OF 287.01 FEET ALONG THE EASTERLY RIGHT OF WAY OF SAID CANAL; THENCE N.42°27'22"E. A DISTANCE OF 196.36 FEET ALONG THE EASTERLY RIGHT OF WAY OF SAID CANAL; THENCE N.00°10'04"W. A DISTANCE OF 949.62 FEET ALONG THE EASTERLY RIGHT OF WAY OF SAID CANAL; THENCE N.16°28'36"E. A DISTANCE OF 425.65 FEET ALONG THE EASTERLY RIGHT OF WAY OF SAID CANAL; THENCE N.05°30'39"E. A DISTANCE OF 411.68 FEET ALONG THE EASTERLY RIGHT OF WAY OF SAID CANAL; THENCE N.90°00'00"E. A DISTANCE OF 60.46 FEET; THENCE N.02°29'29"E. A DISTANCE OF 191.84 FEET; THENCE S.89°13'50"W. A DISTANCE OF 43.83 FEET; THENCE N.00°46'10"W. A DISTANCE OF 146.83 FEET; THENCE N.14°02'44"W. A DISTANCE OF 163.64 FEET; THENCE N.90°00'00"E. A DISTANCE OF 133.20 FEET; THENCE N.00°00'00"E. A DISTANCE OF 26.60 FEET; THENCE N.90°00'00"E. A DISTANCE OF 835.85 FEET; THENCE N.00°50'16"E. A DISTANCE OF 2,178.86 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF HIGHWAY 59 AND TO A POINT OF CURVATURE OF A 2,045.92-FOOT RADIUS NON-TANGENT CURVE TO THE LEFT; THENCE NORTH EASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 591.68 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 16°34'12" AND A CHORD THAT BEARS N.26°43'57"E. A DISTANCE OF

EXHIBIT C-2

Pg 3

589.62 FEET TO A POINT OF CURVATURE OF A 4,024.66-FOOT RADIUS TANGENT REVERSE CURVE TO THE RIGHT ALONG SAID RIGHT OF WAY; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 682.98 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF $9^{\circ}43'23''$ AND A CHORD THAT BEARS $N.23^{\circ}18'33''E$. A DISTANCE OF 682.16 FEET ALONG SAID RIGHT OF WAY; THENCE $N.27^{\circ}05'23''E$. A DISTANCE OF 396.25 FEET ALONG SAID RIGHT OF WAY; THENCE $N.00^{\circ}00'00''E$. A DISTANCE OF 299.74 FEET TO THE NORTHERLY RIGHT OF WAY OF HIGHWAY 59 AND TO A POINT OF CURVATURE OF A 1,759.02-FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 622.23 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF $20^{\circ}16'04''$ AND A CHORD THAT BEARS $N.53^{\circ}05'24''E$. A DISTANCE OF 619.00 FEET ALONG SAID RIGHT OF WAY; THENCE $N.61^{\circ}42'32''E$. A DISTANCE OF 269.58 FEET ALONG SAID RIGHT OF WAY; THENCE $N.01^{\circ}04'13''E$. A DISTANCE OF 687.11 FEET; THENCE $S.88^{\circ}51'49''E$. A DISTANCE OF 262.69 FEET; THENCE $N.25^{\circ}33'51''E$. A DISTANCE OF 1,444.00 FEET; THENCE $S.88^{\circ}52'39''E$. A DISTANCE OF 462.00 FEET; THENCE $S.00^{\circ}20'58''W$. A DISTANCE OF 425.41 FEET; THENCE $S.85^{\circ}49'37''E$. A DISTANCE OF 213.68 FEET; THENCE $S.53^{\circ}35'26''E$. A DISTANCE OF 54.08 FEET; THENCE $S.34^{\circ}22'42''E$. A DISTANCE OF 79.59 FEET; THENCE $S.00^{\circ}45'17''E$. A DISTANCE OF 52.46 FEET; THENCE $S.15^{\circ}44'43''E$. A DISTANCE OF 78.46 FEET; THENCE $S.89^{\circ}39'02''E$. A DISTANCE OF 203.94 FEET; THENCE $N.89^{\circ}27'36''E$. A DISTANCE OF 1,420.08 FEET; THENCE $N.02^{\circ}09'29''E$. A DISTANCE OF 1,359.39 FEET; THENCE $N.14^{\circ}14'10''E$. A DISTANCE OF 61.28 FEET; THENCE $N.15^{\circ}04'23''E$. A DISTANCE OF 79.82 FEET; THENCE $N.21^{\circ}00'23''E$. A DISTANCE OF 120.50 FEET; THENCE $N.23^{\circ}04'52''E$. A DISTANCE OF 133.50 FEET; THENCE $N.25^{\circ}50'41''E$. A DISTANCE OF 158.82 FEET; THENCE $N.29^{\circ}15'12''E$. A DISTANCE OF 82.74 FEET; THENCE $N.38^{\circ}21'19''E$. A DISTANCE OF 169.23 FEET; THENCE $N.48^{\circ}57'14''E$. A DISTANCE OF 108.22 FEET; THENCE $N.24^{\circ}41'49''W$. A DISTANCE OF 15.00 FEET; THENCE $N.65^{\circ}18'11''E$. A DISTANCE OF 132.62 FEET TO A POINT ON THE NORTH-SOUTH QUARTER SECTION LINE OF SECTION 25, TOWNSHIP 41 SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN; THENCE $S.01^{\circ}12'57''E$. A DISTANCE OF 2853.60 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 25; THENCE $N.89^{\circ}27'36''E$. A DISTANCE OF 2,629.77 FEET ALONG THE SECTION LINE OF SAID SECTION 25 TO THE SOUTHEAST CORNER OF SAID SECTION 25; THENCE $S.01^{\circ}40'46''W$. A DISTANCE OF 5,280.00 FEET ALONG THE SECTION LINE TO THE SOUTHEAST CORNER OF SECTION 36, SAID TOWNSHIP AND RANGE; THENCE $N.88^{\circ}34'38''W$. A DISTANCE OF 1,326.60 FEET; THENCE $S.01^{\circ}40'46''W$. A DISTANCE OF 2,646.66 FEET; THENCE $N.88^{\circ}26'53''W$. A DISTANCE OF 738.80 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY OF HIGHWAY 59; THENCE $S.17^{\circ}49'54''E$. A DISTANCE OF 6,138.97 FEET ALONG SAID WESTERLY RIGHT OF WAY TO A POINT ON THE EAST SECTION LINE OF SECTION 12, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN; THENCE $S.01^{\circ}43'48''W$. A DISTANCE OF 2,205.65 FEET ALONG SAID SECTION LINE TO THE POINT OF BEGINNING. CONTAINING 2,401.42 ACRES

Cindy Beteag

From: Fullerton T <fullerton.t@gmail.com>
Sent: Thursday, December 09, 2021 9:51 AM
To: Cindy Beteag
Cc: Wade, Aaron (G&B); Kaden DeMille
Subject: Re: Kachina Ridge PID Petition Certified
Attachments: Kachina Ridge Desert Waterways PID Estimates (2).pdf; Kachina Ridge Governing Document.docx

Cindy

Please find attached the Governing Document and the construction estimates you requested.

As for the property in the Annexation Area that is outside Hurricane City Limits. I assume you are referring to the Lee and Lowney LLC parcels? Since they are contiguous with the Kachina Ridge parcels, I assumed they were also in the City. If we include those, it will most likely be open space, trails etc. with little to no development. We understand we need to go through the County if we go forward with those at some point.

The Governing Document deviates from the previously submitted Petition and LOI by moving the Mil Rate up to 3 from 2.80 and lowering the debt limit to \$120M. The change results from the decision to include only debt from Limited Tax Bonds.

The Exhibits, Initial Boundary District, Annexation Area, remain consistent.

Thank you for your help.

Best
Ted Fullerton
801 319 7907

On Wed, Dec 8, 2021 at 3:51 PM Cindy Beteag <cindy@cityofhurricane.com> wrote:

Mr. Fullerton,

Hurricane City received your corrected Petition and Letter of Intent for Kachina Ridge on December 1, 2021. This email serves as notice that this petition has been certified. At this point, the District Advisory Committee (DAC) will review all documents.

In order to move forward this application we will need the governing document. Since some of the parcels listed are not in the Hurricane City limits, language will need to be included in the document that they cannot be annexed unless 1) approved by the County Commission or 2) the underlying property is annexed into the City.

KACHINA RIDGE / DESERT WATERWAYS PID

Date: 12/8/2021

			KACHINA RIDGE / DESERT		
			PUBLIC IMPROVEMENT DISTRICT		
			TOTAL ESTIMATE		
ITEM No.	ITEM DESCRIPTION	UNIT PRICE Dollars & Cents	QUANTITY	UNITS	UNIT PRICE Dollars & Cents
P.I.D. ITEMS					
1	MASTER PLANNED ROADS	\$ 950.00	60,000	LF	\$ 57,000,000.00
2	HIGHWAY 59 INTERCHANGE	\$ 4,000,000.00	2	PROJECT	\$ 8,000,000.00
3	OPEN SPACE / PARKS	\$ 7,000,000.00	1	PROJECT	\$ 7,000,000.00
4	TRAILS	\$ 800,000.00	10	MILES	\$ 8,000,000.00
5	CULINARY WATER TANK AND DISTRIBUTION	\$ 7,000,000.00	1	PROJECT	\$ 7,000,000.00
6	POWER AND SEWER PACKAGE PLANT AND DISTRIBUTION	\$ 6,000,000.00	1	PROJECT	\$ 6,000,000.00
TOTAL of BID SCHEDULE					\$ 93,000,000.00
KACHINA / DESERT TOTAL		\$ 93,000,000.00			
ENGINEERING, CONST MGMT, AND TESTING		\$ 9,300,000.00			
CONTINGENCY		\$ 9,300,000.00			
GRAND TOTAL		\$ 111,600,000.00			

ITEMS INCLUDED IN THE MASTER PLANNED ROADS

Includes water mains, sewer mains, power, excavation, base course, asphalt pavement, curb & gutter, sidewalks.

ITEMS INCLUDED IN THE HIGHWAY 59 INTERCHANGE

Includes design build.

ITEMS INCLUDED IN THE PARKS

Includes amenities for City parks / open space improvements that include fields, trees, xeriscaping, restrooms, canals, restrooms, and parking lots for users of the trails and parks.

ITEMS INCLUDED IN THE TRAILS

Includes pavement, utilities and amenities for City trail improvements to the City recommended 12 foot wide trail system that will be throughout Kachina / Desert and tie into adjacent trails.

**GOVERNING DOCUMENT
FOR
KACHINA RIDGE PUBLIC INFRASTRUCTURE DISTRICT NO. 1
HURRICANE CITY, UTAH**

December 9, 2021

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LIST OF EXHIBITS

EXHIBIT A	Legal Descriptions
EXHIBIT B	Hurricane City Vicinity Map
EXHIBIT C	Initial District and Annexation Area Boundary Map
EXHIBIT D	Interlocal Agreement between the District and Hurricane City

I. INTRODUCTION

A. Purpose and Intent.

The District is an independent unit of local government, separate and distinct from the City, and, except as may otherwise be provided for by State or local law or this Governing Document, its activities are subject to review by the City only insofar as they may deviate in a material matter from the requirements of the Governing Document. It is intended that the District will provide a part or all of the Public Improvements for the use and benefit of all anticipated inhabitants and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements. The District is not being created to provide any ongoing operations and maintenance services.

B. Need for the District.

There are currently no other governmental entities, including the City, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction installation, relocation, redevelopment, and financing of the Public Improvements needed for the Project. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.

C. Objective of the City Regarding District's Governing Document.

The City's objective in approving the Governing Document for the District is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by the District. All Debt is expected to be repaid by taxes imposed and collected for no longer than the Maximum Debt Mill Levy Imposition Term for residential properties and at a tax mill levy no higher than the Maximum Debt Mill Levy for commercial and residential properties, and/or repaid by Assessments. Debt which is issued within these parameters and, as further described in the Financial Plan, will insulate property owners from excessive tax burdens to support the servicing of the Debt and will result in a timely and reasonable discharge of the Debt.

This Governing Document is intended to establish a limited purpose for the District and explicit financial constraints that are not to be violated under any circumstances. The primary purpose is to provide for the Public Improvements associated with development and regional needs. Although the District has authority to directly provide public improvements, the District also has the authority to pledge tax revenues to an interlocal entity that provides public improvements.

It is the intent of the District to dissolve upon payment or defeasance of all Debt incurred or upon a determination that adequate provision has been made for the payment of all Debt.

The District shall be authorized to finance the Public Improvements that can be funded from Debt to be repaid from Assessments or from tax revenues collected from a mill levy

which shall not exceed the Maximum Debt Mill Levy on taxable properties and which shall not exceed the Maximum Debt Mill Levy Imposition Term on taxable properties. It is the intent of this Governing Document to assure to the extent possible that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy in amount and that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy Imposition Term in duration even under bankruptcy or other unusual situations. Generally, the cost of Public Improvements that cannot be funded within these parameters are not costs to be paid by the District.

II. DEFINITIONS

In this Governing Document, the following terms shall have the meanings indicated below, unless the context hereof clearly requires otherwise:

Annexation Area Boundaries: means the boundaries of the area described in the Annexation Area Boundary Map which have been approved by the City for annexation or withdrawal from or into one of the Districts upon the meeting of certain requirements.

Annexation Area Boundary Map: means the map attached hereto as **Exhibit C-2**, describing the property proposed for annexation within the District.

Approved Development Plan: means a Preliminary Development Plan or other process established by the City for identifying, among other things, Public Improvements necessary for facilitating development for property within the District Area as approved by the City pursuant to the City Code and as amended pursuant to the City Code from time to time. For purposes of this Governing Document, the Ordinance Amending the Zoning Map for the Project approved on October 1, 2020 shall constitute an Approved Development Plan.

Assessment: means assessments levied in an assessment area created within the District.

Board: means the board of trustees of the District.

Bond, Bonds or Debt: means bonds or other obligations, including loans of any property owner, for the payment of which the District has promised to impose an *ad valorem* property tax mill levy, and/or collect Assessments.

City: means Hurricane City, Utah.

City Code: means the City Code of Hurricane City, Utah.

City Council: means the City Council of Hurricane City, Utah.

District: means the Gateway at Sand Hollow Public Infrastructure District.

District Area: means the property within the Initial District Boundary Map and the Annexation Area Boundary Map.

Districts: means collectively, the District, Kachina Ridge Public Infrastructure District No. 2, and Kachina Ridge Infrastructure District No. 3, contemplated to be created contemporaneously with one another.

End User: means any owner, or tenant of any owner, of any taxable improvement within the District, who is intended to become burdened by the imposition of ad valorem property taxes subject to the Maximum Debt Mill Levy. By way of illustration, a resident homeowner, renter, commercial property owner, or commercial tenant is an End User. The business entity that constructs homes or commercial structures is not an End User.

Fees: means any fee imposed by the District for administrative services provided by the District.

Financial Plan: means the Financial Plan described in Section VIII which describes (i) the potential means whereby the Public Improvements may be financed; (ii) how the Debt is expected to be incurred; and (iii) the estimated operating revenue derived from property taxes for the first budget year.

General Obligation Debt: means a Debt that is directly payable from and secured by ad valorem property taxes that are levied by the District and does not include Limited Tax Debt.

Governing Document: means this Governing Document for the District approved by the City Council.

Governing Document Amendment: means an amendment to the Governing Document approved by the City Council in accordance with the City's ordinance and the applicable state law and approved by the Board in accordance with applicable state law.

Initial District Boundaries: means the boundaries of the area described in the Initial District Boundary Map.

Initial District Boundary Map: means the map attached hereto as **Exhibit C**, describing the District's initial boundaries.

Limited Tax Debt: means a debt that is directly payable from and secured by ad valorem property taxes that are levied by the District which may not exceed the Maximum Debt Mill Levy.

Local District Act: means Title 17B of the Utah Code, as amended from time to time.

Maximum Debt Mill Levy: means the maximum mill levy the District is permitted to impose for payment of Debt as set forth in Section VIII.C below.

Maximum Debt Mill Levy Imposition Term: means the maximum term for imposition of a mill levy for any given series of bonds as set forth in Section VIII.D below.

Municipal Advisor: means a consultant that: (i) advises Utah governmental entities on matters relating to the issuance of securities by Utah governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (ii) shall be an individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place; and (iii) is not an officer or employee of the District.

Project: means the development or property commonly referred to as the Gateway at Sand Hollow.

PID Act: means Title 17D, Chapter 4 of the Utah Code, as amended from time to time and any successor statute thereto (**references to the PID Act herein are as shall become effective on December 16, 2021**).

Public Improvements: means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as generally described in the Local District Act, except as specifically limited in Section V below to serve the future taxpayers and inhabitants of the District Area as determined by the Board.

Regional Improvements: means Public Improvements and facilities that benefit the District Area and which are to be financed pursuant to Section VII below.

State: means the State of Utah.

Taxable Property: means real or personal property within the District Area subject to ad valorem taxes imposed by the District.

Trustee: means a member of the Board.

Utah Code: means the Utah Code Annotated 1953, as amended.

III. BOUNDARIES

The area of the Initial District Boundaries includes approximately **Sixty & Seventy Four/100 (60.74) acres** and the total area proposed to be included in the Annexation Area Boundaries is approximately **Two Thousand Four Hundred Three and Twenty One /100 (2,403.21 acres)**.

A legal description of the Initial District Boundaries, and the Annexation Area Boundaries, is attached hereto as **Exhibit A**. A vicinity map is attached hereto as **Exhibit B**. A map of the Initial District Boundaries is attached hereto as **Exhibit C-1**, and a map of the Annexation Area Boundaries is attached hereto as **Exhibit C-2**. It is anticipated that the District's boundaries may change from time to time as it undergoes annexations and withdrawals pursuant to Section 17B-2a-1204, Utah Code, subject to Article V below.

IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION

The Initial District Area consists of approximately Sixty & Seventy Four /100 (60.74) acres of undeveloped land. The current assessed valuation of the Initial District Area is \$283,500 taxable value and \$ 2,722.20 total tax for 2021. The Annexation Area consists of approximately Two Thousand Four Hundred Three and Twenty One /100 (2,403.21 acres). The current assessed valuation of the Annexation Area is \$4,595,870 taxable value and \$ 22,613.32 total tax for 2021. For purposes of this Governing Document and, at build out, is expected to be sufficient to reasonably discharge the Debt under the Financial Plan.

The population of the Initial District at build-out is estimated to be approximately One Thousand One Hundred Four (1,104) people in private residences and Six Hundred Fifty-Seven (657) people in nightly rentals and the hotel. The population of the Annexation Area at build out is projected to be approximately Nine Thousand Six Hundred Thirty-Eight (9,638) in private residences and approximately Eleven Thousand Five Hundred Sixty-Four (11,564) in nightly rentals.

Approval of this Governing Document by the City does not imply approval of the development of a specific area within the District, nor does it imply approval of the number of residential units or the total site/floor area of commercial or industrial buildings identified in this Governing Document or any of the exhibits attached thereto, unless the same is contained within an Approved Development Plan.

V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES

A. Powers of the District and Governing Document Amendment.

The District shall have the power and authority to provide the Public Improvements within and without the boundaries of the District as such power and authority is described in the Local District Act, and other applicable statutes, common law and the Constitution, subject to the limitations set forth herein.

1. Operations and Maintenance Limitation. The purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The District shall dedicate the Public Improvements to the City or other appropriate public entity or owners association in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. Trails which are interconnected with a city or regional trail system shall be open to the public free of charge and on the same basis as residents and owners of taxable property within the District.

2. Improvements Limitation. Notwithstanding the provisions of Section V.A.1 above, without written authorization of the City, the District shall not be authorized to

finance the costs of any improvements or facilities which are to be ultimately owned by one of the Districts.

3. Construction Standards Limitation. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

4. Procurement. The District shall be subject to the Utah Procurement Code, Title 63G, Chapter 6a. Notwithstanding this requirement, the District may acquire completed or partially completed improvements for fair market value as reasonably determined by a surveyor or engineer that the City employs or engages.

5. Privately Placed Debt Limitation. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District's Governing Document.

We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

6. Annexation and Withdrawal.

(a) The District shall not include within any of their boundaries any property outside the District Area without the prior written consent of the City. The City, by resolution and this Governing Document, has consented to the annexation of any area within the Annexation Area Boundaries into the District. Such area may only be annexed upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be annexed and the passage of a resolution of the Board approving such annexation.

(b) The City, by resolution and this Governing Document, has consented to the withdrawal of any area within the District Boundaries from the District. Such area may only be withdrawn upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be withdrawn and the passage of a resolution of the Board approving such annexation.

(c) Any annexation or withdrawal shall be in accordance with the requirements of the PID Act.

(d) Upon any annexation or withdrawal, the District shall provide the City a description of the revised District Boundaries.

(e) Annexation or withdrawal of any area in accordance with V.A.6(a) and (b) shall not constitute an amendment of this Governing Document.

7. Overlap Limitation. The Districts shall not impose aggregate mill levy for payment of Debt that exceeds the Maximum Debt Mill Levy of the District. The District shall not consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the District unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Debt Mill Levy of the District.

8. Initial Debt Limitation. On or before the effective date of approval by the City of an Approved Development Plan, the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds.

In addition, the District shall not be permitted to issue any Debt unless such initial Debt makes provision for the financing of park improvements in an amount of \$15,000,000 (representing 110% of the anticipated costs of the park improvements) of such Debt are used for park improvements. Such amount shall be required to be held separate from other proceeds of such Debt and released only upon sign off by the City. Upon completion of the park improvements to the satisfaction of the City, any funds being held for park improvements will be released to the District to pay costs of Public Improvements. The foregoing requirements may be met by any one of the Districts and upon the financing of at least \$13,500,000 in park improvements, such requirement shall no longer apply to the Debt of any District. The foregoing requirements may be waived or amended by express written confirmation by the City.

9. Total Debt Issuance Limitation. The Districts shall not issue Debt in excess of an aggregate amount of **One Hundred Twenty Million Dollars (\$120,000,000)**. This amount excludes any portion of bonds issued to refund a prior issuance of debt by any of the Districts. The Total Debt Issuance Limitation does not apply to debt that is retired prior to the transfer of title to a homeowner or business and does not increase the mill rate of the property tax. In addition, the Total Debt Issuance Limitation does not apply to the District's pledge of its property tax revenues to the Debt of one of the other Districts. In the event two or more Districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each District.

10. Bankruptcy Limitation. All of the limitations contained in this Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term and the Fees have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(5), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable non-bankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

11. Governing Document Amendment Requirement.

(a) This Governing Document has been designed with sufficient flexibility to enable the District to provide required facilities under evolving circumstances without the need for numerous amendments. Actions of the District which violate the limitations set forth in V.A.1-9 above or in VIII.B-G. shall be deemed to be material modifications to this Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

(b) Subject to the limitations and exceptions contained herein, this Governing Document may be amended by passage of a resolutions of the City and the District approving such amendment.

B. Preliminary Engineering Survey.

The District shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, maintenance, and financing of the Public Improvements within and without the boundaries of the District, to be more specifically defined in an Approved Development Plan. An estimate of the costs of the Public Improvements which may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, maintained or financed was prepared based upon a preliminary engineering survey and estimates derived from the zoning on the property in the District Area and is approximately **Ninety Six Million Dollars (\$ 96,000,000).**

All of the Public Improvements will be designed in such a way as to assure that the Public Improvements standards will be compatible with those of the City and/or any other applicable public entity and shall be in accordance with the requirements of the Approved Development Plan. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

VI. THE BOARD OF TRUSTEES

A. Board Composition. The Board shall be composed of 3 Trustees who shall be appointed by the City Council pursuant to the PID Act. Trustees 1, 2, and 3 shall initially be at large. Trustee terms shall be staggered with initial terms as follows: Trustee 2 shall serve an initial term of 4 years; Trustees 1 and 3 shall serve an initial term of 6 years. All terms shall commence

on the date of issuance of a certificate of creation by the Office of the Lieutenant Governor of the State of Utah. In accordance with the PID Act, appointed Trustees shall not be required to be residents of the District.

B. Transition to Elected Board. Respective board seats shall transition from appointed to elected seats according to the following milestones:

1. Trustee 1. Trustee 1 shall transition to an elected seat upon 1,200 registered voters residing within the District.

2. Trustee 2. Trustee 2 shall transition to an elected seat upon 1,800 registered voters residing within the District.

3. Trustee 3. Trustee 3 shall transition to an elected seat upon 2,400 registered voters residing within the District.

No transition pursuant to this Section shall become effective until the next scheduled regular election of the District. Registered voters within this Section shall mean voters whose “principal place of residence,” as that term is defined under Utah Code 20A-2-105(1)(a), is within the District.

C. Reelection and Reappointment. Upon the expiration of a Trustee’s respective term, any seat which has not transitioned to an elected seat shall be appointed by the City Council pursuant to the PID Act and any seat which has transitioned to an elected seat shall be elected pursuant to an election held for such purpose. In the event that no qualified candidate files to be considered for appointment or files a declaration of candidacy for a seat, such seat may be filled in accordance with the Local District Act.

D. Vacancy. Any vacancy on the Board shall be filled pursuant to the Local District Act.

E. Compensation. Only Trustees who are residents of the District may be compensated for services as Trustee. Such compensation shall be in accordance with State Law.

F. Conflicts of Interest. Trustees shall disclose all conflicts of interest. Any Trustee who discloses such conflicts in accordance with 17D-4-202 and 67-16-9, Utah Code, shall be entitled to vote on such matters.

VII. REGIONAL IMPROVEMENTS

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements.

VIII. FINANCIAL PLAN

A. General.

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment of the Public Improvements from its revenues and by and through the proceeds of Debt to be issued by the District. In addition, the District shall be permitted to finance the prepayment of impact fees for the Project. The Financial Plan for the District shall be to issue such Debt as the District can reasonably pay within the Maximum Debt Mill Levy Imposition Term from revenues derived from the Maximum Debt Mill Levy, Assessments and other legally available revenues. The total Debt that the Districts shall be permitted to issue shall not exceed **One Hundred Twenty Million Dollars (\$120,000,000)** and shall be permitted to be issued on a schedule and in such year or years as the District determine shall meet the needs of the Financial Plan referenced above and phased to serve development as it occurs. Any portion of bonds issued to refund a prior issuance of debt by the District shall not count against the permitted total Debt. The Total Debt Issuance Limitation shall not apply to the District's pledge of its property tax revenues to the Debt of one of the other Districts. In the event two or more Districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each District. All bonds and other Debt issued by the District may be payable from any and all legally available revenues of the District, including general ad valorem taxes to be imposed upon all Taxable Property within the District and Assessments. The District will also rely upon various other revenue sources authorized by law. These will include the power to assess Fees, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time.

B. Maximum Interest Rate and Maximum Underwriting Discount.

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. In the event of a default, the proposed maximum interest rate on any Debt is not expected to exceed fifteen percent (15%). The proposed maximum underwriting discount will be five percent (5%). Debt, when issued, will comply with all relevant requirements of this Governing Document, State law and Federal law as then applicable to the issuance of public securities.

C. Maximum Debt Mill Levy.

(a) The "Maximum Debt Mill Levy" shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District for payment of Limited Tax Debt shall be **0.00300** per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code. Further, the Districts may not impose mill levies which aggregate in excess of **0.00300** per dollar of taxable value of taxable property in the District; provided that such levies shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code.

(b) Such Maximum Debt Mill Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202, Utah Code.

D. Maximum Debt Mill Levy Imposition Term.

Each bond issued by the District shall mature within Thirty-One (31) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of

a series of bonds after a period exceeding forty (40) years from the first date of imposition of the mill levy for such bond (the "Maximum Debt Mill Levy Imposition Term").

E. Debt Repayment Sources.

The District may impose a mill levy on taxable property within its boundaries as a primary source of revenue for repayment of debt service. The District may also rely upon various other revenue sources authorized by law. At the District's discretion, these may include the power to assess Assessments, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time. Except as described in Section VIII.C(a), the debt service mill levy in the District shall not exceed the Maximum Debt Mill Levy or, the Maximum Debt Mill Levy Imposition Term, except for repayment of General Obligation Debt.

The District shall not be permitted to charge an End User the costs of any portion of a Public Improvement for which such End User has already paid or is presently obligated to pay through any combination of mill levy, Assessment, or impact fee. This provision shall not prohibit the division of costs between mill levies, Assessments, or impact fees, but is intended to prevent double taxation of End Users for the costs of Public Improvements.

F. Debt Instrument Disclosure Requirement.

In the text of each Bond and any other instrument representing and constituting Debt, the District shall set forth a statement in substantially the following form:

By acceptance of this instrument, the owner of this Bond agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this Bond contained herein, in the resolution of the District authorizing the issuance of this Bond and in the Governing Document for creation of the District.

Similar language describing the limitations in respect of the payment of the principal of and interest on Debt set forth in this Governing Document shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a developer of property within the boundaries of the District.

G. Security for Debt.

The District shall not pledge any revenue or property of the City as security for the indebtedness set forth in this Governing Document. Approval of this Governing Document shall not be construed as a guarantee by the City of payment of any of the District's obligations; nor shall anything in the Governing Document be construed so as to create any responsibility or liability on the part of the City in the event of default by the District in the payment of any such obligation.

H. District's Operating Costs.

The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the District's organization and initial operations, are anticipated to be **One Hundred Thousand Dollars (\$100,000)**, which will be eligible for reimbursement from Debt proceeds.

In addition to the capital costs of the Public Improvements, the District will require operating funds for administration and to plan and cause the Public Improvements to be constructed. The first year's operating budget is estimated to be approximately **Fifty Thousand Dollars (\$50,000)** which is anticipated to be derived from property taxes and other revenues.

I. Bond and Disclosure Counsel.

It is the intent of the City that the District shall use competent and nationally recognized bond and disclosure counsel with respect to District Bonds to ensure proper issuance and compliance with this Governing Document. The District has agreed to utilize the City's counsel, Gilmore & Bell, P.C., as bond and disclosure counsel with respect to District Bonds.

IX. ANNUAL REPORT

A. General.

The District shall be responsible for submitting an annual report to the City Manager's Office no later than 180 days following the end of the District's fiscal year.

B. Reporting of Significant Events.

The annual report shall include information as to any of the following:

1. Boundary changes made or proposed to the District's boundary as of December 31 of the prior year.
2. List of current interlocal agreements, if changed (to be delivered to the City upon request);
3. Names and terms of Board members and officers and progress towards milestones required for transition to elected Board;
4. District office contact information;
5. Rules and regulations of the District regarding bidding, conflict of interest, contracting, and other governance matters, if changed;
6. A summary of any litigation which involves the District Public Improvements as of the last day of the prior fiscal year;
7. Status of the District's construction of the Public Improvements as of last day of the prior fiscal year and listing all facilities and improvements constructed by the District that have been dedicated to and accepted by the City as of the last day of the prior fiscal year;

8. A table summarizing total debt authorized and total debt issued by the District as well as any presently planned debt issuances;

9. Official statements of current outstanding bonded indebtedness, if not previously provided to the City;

10. Current year budget including a description of the Public Improvements to be constructed in such year;

11. The District's financial statements, for the previous fiscal year, such statements shall be audited if required pursuant to State law or relevant bond documents (such statements shall be submitted within 30 days of completion if completed after 180 days following the end of the fiscal year);

12. Notice of any uncured events of default by the District, which continue beyond a 90 day period, under any Debt instrument; and

13. Any inability of the District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a 90 day period.

X. DISSOLUTION

Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes.

XI. DISCLOSURE TO PURCHASERS

Within thirty (30) days of the City adopting a resolution creating the District, the Board shall record a notice with the recorder of Washington County. Such notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the District; and (d) if applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion. Such notice shall further be filed with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, homebuilders, commercial developers, and commercial lessors, as applicable, disclose the following information to initial resident homeowners, renters, commercial property owners, and/or commercial tenants:

- (1) All of the information in the first paragraph of this XI;
- (2) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, **for every \$100,000 of taxable value**, there would be an **additional annual property tax of \$300** for the duration of the District’s Bonds.”

- (3) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

XII. INTERLOCAL AGREEMENT

The form of the Interlocal Agreement required by the City Code, relating to the limitations imposed on the District’s activities, is attached hereto as **Exhibit D**. The District shall approve the Interlocal Agreement in the form attached as **Exhibit D** at its first Board meeting after its organization. Failure of the District to execute the Interlocal Agreement as required herein shall constitute a material modification and shall require a Governing Document Amendment. The City Council shall approve the Interlocal Agreement in the form attached as **Exhibit D** at the public hearing approving the Governing Document.

EXHIBIT A

Legal Descriptions

INITIAL BOUNDARY LEGAL DESCRIPTION

TAX ID: H-312-A

S: 26 T: 41S R: 13W BEG AT PT W 64 RDS
FM SE COR SEC 26 T41S R13W; TH E 64 RDS;
TH N 80 RDS; TH W 28 RDS; TH SWLY TO POB.

Tax ID: H-3-1-25-331

S: 25 T: 41S R: 13W BEG AT PT N 660 FT
FM SW COR OF SEC 25 T41S R13W; TH E 1980
FT; TH AT RGT ANG N 1980 FT, M/L TO PT
VIRGIN RIVER INTSEC E & W C LN SD SEC; TH
NELY ALG MIDDLE OF SD RIVER TO PT 231 FT
W OF PT N 706.20 FT FM CTR SEC 25; TH E 231
FT; TH S 3346.2 FT TO S1/4 COR OF SD SEC 25;
TH W 2640 FT M/L TO SW COR OF SD SEC 25;
TH N 660 FT M/L TO POB.LESS: POR TO
OVANDO GUBLER & HORATIO GUBLER BY
QUIT CLAIM DEED REC JUNE 27, 1962. LESS:
LAND IN UNINCORPORATED COUNTY

TAX ID: H-348-B-1-A

S: 35 T: 41S R: 13W POR OF NE1/4 NE1/4
OF SEC 35 T41S R13W LYING NLY HWY U-59.
LESS: W 10 AC

TAX ID: H-3-1-36-440

S: 36 T: 41S R: 13W NW1/4 NW1/4 OF SEC
36 T41S R13W. LESS LAND IN
UNINCORPORATED COUNTY

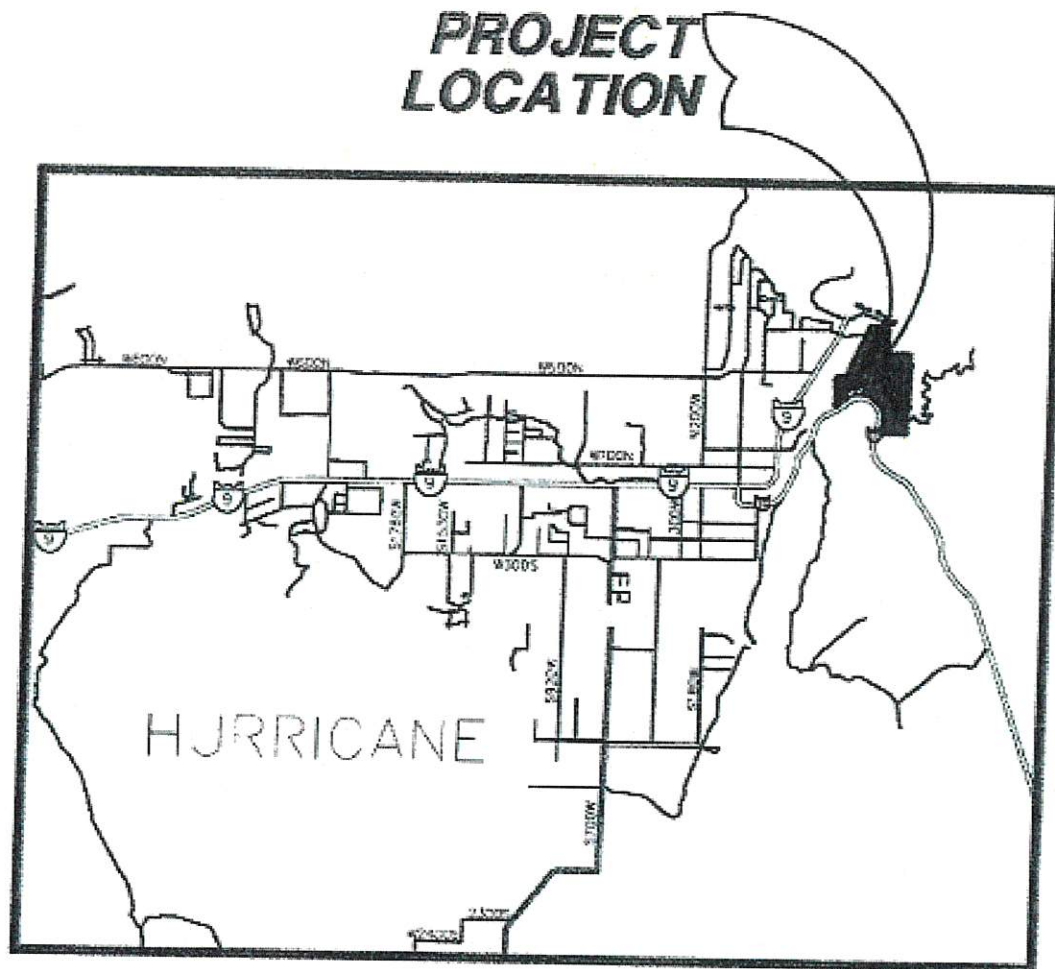
TAX ID: H-348-B-1-B

S: 35 T: 41S R: 13W W 10 AC NE1/4 NE1/4
SEC 35 T41S R13W LYING NLY HWY U-59

EXHIBIT B

Initial District Boundary Vicinity Map

AREA: 2,645,834.40 SQUARE FEET OR 60.74 ACRES.



Vicinity Map of Initial District Boundary Area

EXHIBIT C
Initial Boundary Area Map

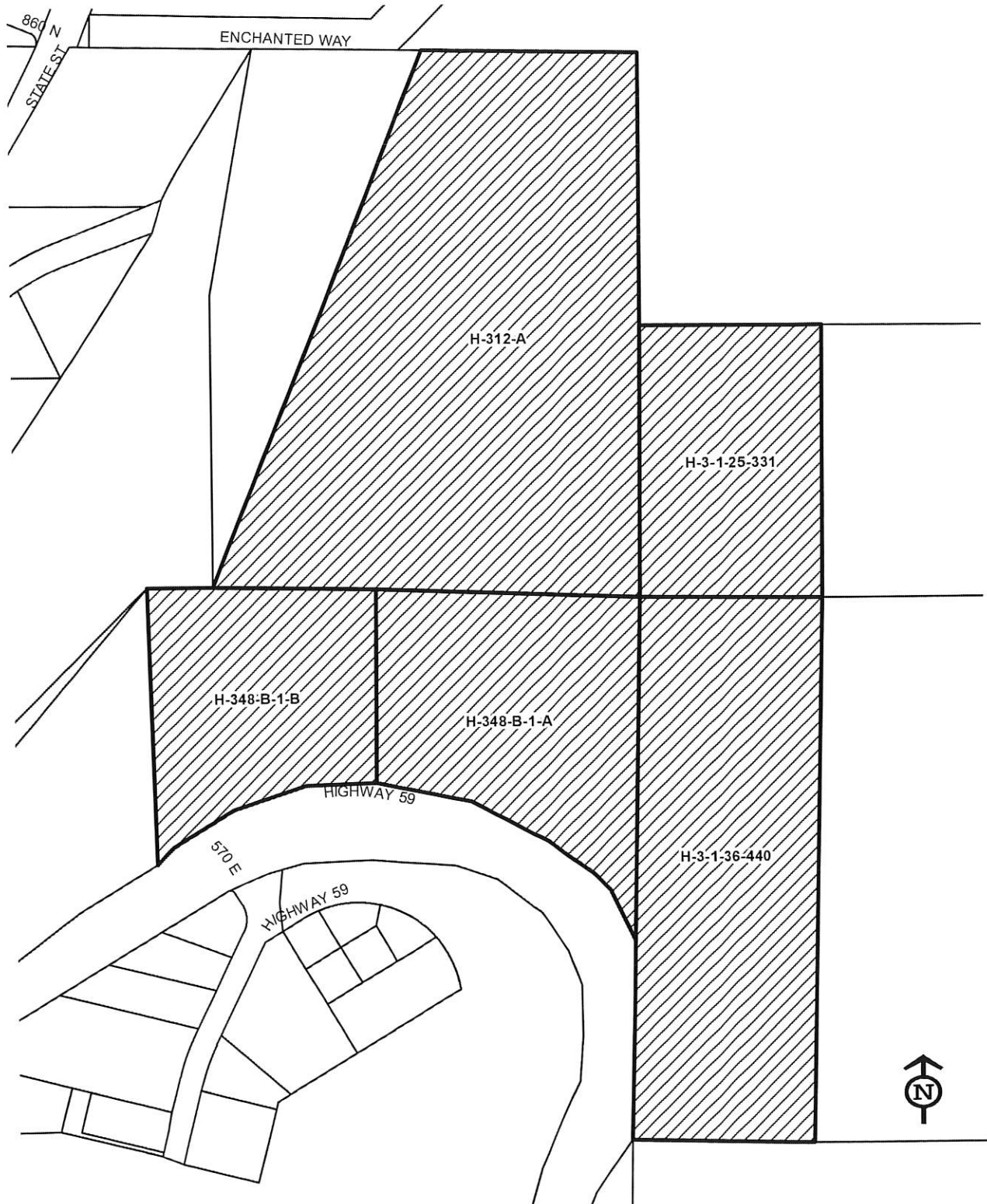


EXHIBIT C-2

ANNEXATION AREA MAP

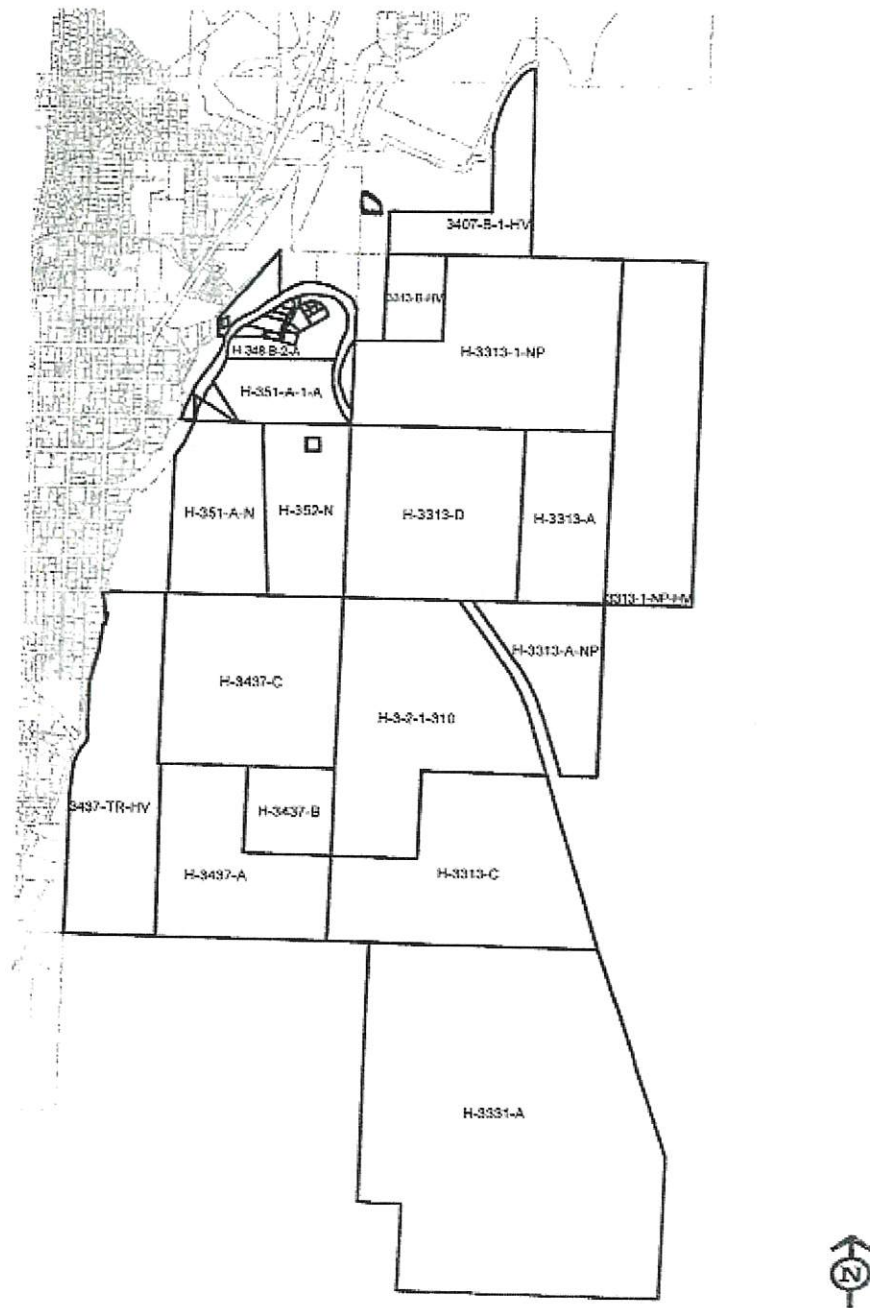


EXHIBIT C-2
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ANNEXATION AREA LEGAL DESCRIPTION
HURRICANE, UTAH

Approximately 2401 42 Acres 104,605,855 sq.ft

A PARCEL OF LAND LOCATED IN SECTIONS 25, 26, 35 AND 36, TOWNSHIP 41 SOUTH, RANGE 13 WEST, AND SECTIONS 1, 2 AND 12, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN, WASHINGTON COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 12, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN;

THENCE N.87°58'38"W. A DISTANCE OF 2,634.48 FEET ALONG THE SECTION LINE TO THE SOUTH QUARTER CORNER OF SAID SECTION 12; THENCE N.87°58'38"W. A DISTANCE OF 1,317.23 FEET ALONG THE SECTION LINE; THENCE N.01°34'49"E. A DISTANCE OF 1,330.22 FEET, THENCE N.88°00'59"W. A DISTANCE OF 660.03 FEET; THENCE N.01°31'09"E. A DISTANCE OF 1,330.74 FEET, THENCE N.01°51'24"E. A DISTANCE OF 2,656.24 FEET TO A POINT ON THE SOUTH LINE OF SECTION 1, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN; THENCE N.88°07'20"W. A DISTANCE OF 659.07 FEET ALONG SAID SECTION LINE TO THE SOUTHWEST CORNER OF SECTION 1, SAID TOWNSHIP AND RANGE; THENCE N.88°33'19"W. A DISTANCE OF 2,526.48 FEET ALONG THE SECTION LINE TO THE SOUTH QUARTER CORNER OF SECTION 2 OF SAID TOWNSHIP AND RANGE; THENCE N.89°49'53"W. A DISTANCE OF 1,337.48 FEET ALONG THE SECTION LINE OF SAID SECTION 2; THENCE N.00°08'25"E. A DISTANCE OF 2,471.71 FEET TO THE EASTERLY RIGHT OF WAY OF THE HURRICANE CANAL; THENCE N.29°07'35"E. A DISTANCE OF 287.01 FEET ALONG THE EASTERLY RIGHT OF WAY OF SAID CANAL; THENCE N.42°27'22"E. A DISTANCE OF 196.36 FEET ALONG THE EASTERLY RIGHT OF WAY OF SAID CANAL; THENCE N.00°10'04"W. A DISTANCE OF 949.62 FEET ALONG THE EASTERLY RIGHT OF WAY OF SAID CANAL; THENCE N.16°28'36"E. A DISTANCE OF 425.65 FEET ALONG THE EASTERLY RIGHT OF WAY OF SAID CANAL; THENCE N.05°30'39"E. A DISTANCE OF 411.68 FEET ALONG THE EASTERLY RIGHT OF WAY OF SAID CANAL; THENCE N.90°00'00"E. A DISTANCE OF 60.46 FEET; THENCE N.02°29'29"E. A DISTANCE OF 191.84 FEET, THENCE S.89°13'50"W. A DISTANCE OF 43.83 FEET; THENCE N.00°46'10"W. A DISTANCE OF 146.83 FEET; THENCE N.14°02'44"W. A DISTANCE OF 163.64 FEET; THENCE N.90°00'00"E. A DISTANCE OF 133.20 FEET, THENCE N.00°00'00"E. A DISTANCE OF 26.60 FEET, THENCE N.90°00'00"E. A DISTANCE OF 835.85 FEET; THENCE N.00°50'16"E. A DISTANCE OF 2,178.86 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF HIGHWAY 59 AND TO A POINT OF CURVATURE OF A 2,045.92-FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, THENCE NORTH EASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 591.68 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 16°34'12" AND A CHORD THAT BEARS N.26°43'57"E. A DISTANCE OF

EXHIBIT C-2

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589.62 FEET TO A POINT OF CURVATURE OF A 4,024.66-FOOT RADIUS TANGENT REVERSE CURVE TO THE RIGHT ALONG SAID RIGHT OF WAY; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 682.98 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF $9^{\circ}43'23''$ AND A CHORD THAT BEARS $N.23^{\circ}18'33''E.$ A DISTANCE OF 682.16 FEET ALONG SAID RIGHT OF WAY; THENCE $N.27^{\circ}05'23''E.$ A DISTANCE OF 396.25 FEET ALONG SAID RIGHT OF WAY; THENCE $N.00^{\circ}00'00''E.$ A DISTANCE OF 299.74 FEET TO THE NORTHERLY RIGHT OF WAY OF HIGHWAY 59 AND TO A POINT OF CURVATURE OF A 1,759.02-FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 622.23 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF $20^{\circ}16'04''$ AND A CHORD THAT BEARS $N.53^{\circ}05'24''E.$ A DISTANCE OF 619.00 FEET ALONG SAID RIGHT OF WAY; THENCE $N.61^{\circ}42'32''E.$ A DISTANCE OF 269.58 FEET ALONG SAID RIGHT OF WAY; THENCE $N.01^{\circ}04'13''E.$ A DISTANCE OF 687.11 FEET; THENCE $S.88^{\circ}51'49''E.$ A DISTANCE OF 262.69 FEET; THENCE $N.25^{\circ}33'51''E.$ A DISTANCE OF 1,444.00 FEET; THENCE $S.88^{\circ}52'39''E.$ A DISTANCE OF 462.00 FEET; THENCE $S.00^{\circ}20'58''W.$ A DISTANCE OF 425.41 FEET; THENCE $S.85^{\circ}49'37''E.$ A DISTANCE OF 213.68 FEET; THENCE $S.53^{\circ}35'26''E.$ A DISTANCE OF 54.08 FEET; THENCE $S.34^{\circ}22'42''E.$ A DISTANCE OF 79.59 FEET; THENCE $S.00^{\circ}45'17''E.$ A DISTANCE OF 52.46 FEET; THENCE $S.15^{\circ}44'43''E.$ A DISTANCE OF 78.46 FEET; THENCE $S.89^{\circ}39'02''E.$ A DISTANCE OF 203.94 FEET; THENCE $N.89^{\circ}27'36''E.$ A DISTANCE OF 1,420.08 FEET; THENCE $N.02^{\circ}09'29''E.$ A DISTANCE OF 1,359.39 FEET; THENCE $N.14^{\circ}14'10''E.$ A DISTANCE OF 61.28 FEET; THENCE $N.15^{\circ}04'23''E.$ A DISTANCE OF 79.82 FEET; THENCE $N.21^{\circ}00'23''E.$ A DISTANCE OF 120.50 FEET; THENCE $N.23^{\circ}04'52''E.$ A DISTANCE OF 133.50 FEET; THENCE $N.25^{\circ}50'41''E.$ A DISTANCE OF 158.82 FEET; THENCE $N.29^{\circ}15'12''E.$ A DISTANCE OF 82.74 FEET; THENCE $N.38^{\circ}21'19''E.$ A DISTANCE OF 169.23 FEET; THENCE $N.48^{\circ}57'14''E.$ A DISTANCE OF 108.22 FEET; THENCE $N.24^{\circ}41'49''W.$ A DISTANCE OF 15.00 FEET; THENCE $N.65^{\circ}18'11''E.$ A DISTANCE OF 132.62 FEET TO A POINT ON THE NORTH-SOUTH QUARTER SECTION LINE OF SECTION 25, TOWNSHIP 41 SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN; THENCE $S.01^{\circ}12'57''E.$ A DISTANCE OF 2853.60 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 25; THENCE $N.89^{\circ}27'36''E.$ A DISTANCE OF 2,629.77 FEET ALONG THE SECTION LINE OF SAID SECTION 25 TO THE SOUTHEAST CORNER OF SAID SECTION 25; THENCE $S.01^{\circ}40'46''W.$ A DISTANCE OF 5,280.00 FEET ALONG THE SECTION LINE TO THE SOUTHEAST CORNER OF SECTION 36, SAID TOWNSHIP AND RANGE; THENCE $N.88^{\circ}34'38''W.$ A DISTANCE OF 1,326.60 FEET; THENCE $S.01^{\circ}40'46''W.$ A DISTANCE OF 2,646.66 FEET; THENCE $N.88^{\circ}26'53''W.$ A DISTANCE OF 738.80 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY OF HIGHWAY 59; THENCE $S.17^{\circ}49'54''E.$ A DISTANCE OF 6,138.97 FEET ALONG SAID WESTERLY RIGHT OF WAY TO A POINT ON THE EAST SECTION LINE OF SECTION 12, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN; THENCE $S.01^{\circ}43'48''W.$ A DISTANCE OF 2,205.65 FEET ALONG SAID SECTION LINE TO THE POINT OF BEGINNING CONTAINING 2,401.42 ACRES

EXHIBIT D

INTERLOCAL AGREEMENT BETWEEN

THE HURRICANE CITY, UTAH AND

KACHINA RIDGE PUBLIC INFRASTRUCTURE DISTRICT NO. 1

THIS AGREEMENT is made and entered into as of this ____ day of _____, _____, by and between the HURRICANE CITY, a home-rule municipal corporation of the State of Utah (“City”), and KACHINA RIDGE PUBLIC INFRASTRUCTURE DISTRICT NO. 1, a political subdivision of the State of Utah (the “District”). The City and the District are collectively referred to as the Parties.

RECITALS

WHEREAS, the District was organized to provide to exercise powers as are more specifically set forth in the District’s Governing Document approved by the City on **December 16, 2021** (“Governing Document”); and

WHEREAS, the Governing Document makes reference to the execution of an Interlocal Agreement between the City and the District; and

WHEREAS, the City and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Interlocal Agreement (“Agreement”).

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

COVENANTS AND AGREEMENTS

1. **Operations and Maintenance.** The District shall dedicate the Public Improvements (as defined in the Governing Document) to the City or other appropriate jurisdiction in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. The District shall be authorized, but not obligated, to own Public Improvements not otherwise required to be dedicated to the City or other public entity, and all necessary equipment and appurtenances incident thereto. Trails which are interconnected with a city or regional trail system shall be open to the public free of charge and on the same basis as residents and owners of taxable property within the District.

2. **Improvements Limitation.** Without written authorization of the City, the District shall not be authorized to finance the costs of any improvements or facilities which are to be ultimately owned by one of the Districts.

3. Construction Standards. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction, as applicable. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

4. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District's Governing Document.

We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

5. Inclusion Limitation. The District shall not include within any of their boundaries any property outside the District Area without the prior written consent of the City. By the Governing Document, the City has consented to the annexation or withdrawal of any area within the Annexation Area into or from the District Boundaries. The District shall not include within any of its boundaries any property inside the inclusion area boundaries without the prior written consent of the City except upon petition of the surface property owners of 100 percent of such property and/or 100 percent of registered voters within the area to be included, as applicable, as provided in Section 17D-4-201(3), Utah Code.

6. Overlap Limitation. The Districts shall not impose aggregate mill levy for payment of Debt that exceeds the Maximum Debt Mill Levy of the District. The District shall not consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the District unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Debt Mill Levy of the District.

7. Initial Debt. On or before the effective date of approval by the City of an Approved Development Plan (as defined in the Governing Document), the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (c) impose and collect any fees used for the purpose of repayment of Debt.

8. Total Debt Issuance. The Districts shall not issue Debt in excess of an aggregate amount of **One Hundred Twenty Million Dollars (\$120,000,000)**. The Total Debt Issuance Limitation does not apply to debt that is retired prior to the transfer of title to a homeowner or business and does not increase the mill rate of the property tax. This amount excludes any portion

of bonds issued to refund a prior issuance of debt by any of the Districts. In addition, the Total Debt Issuance Limitation does not apply to the District's pledge of its property tax revenues to the Debt of one of the other Districts. In the event two or more Districts create an interlocal agency to issue debt, only the par amount issued by such agency shall count against the Total Debt Issuance Limitation rather than the individual amounts pledged by each District.

9. Bankruptcy. All of the limitations contained in this Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(4), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the "political or governmental powers" reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the "regulatory or electoral approval necessary under applicable non-bankruptcy law" as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

10. Dissolution. Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes.

11. Disclosure to Purchasers. Within thirty (30) days of the City adopting a resolution creating the District, the Board shall record a notice with the recorder of Washington County, Utah. Such notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the District; and (d) if applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion. Such notice shall further be filed with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, homebuilders, commercial developers, and commercial lessors, as applicable, disclose the following information to initial resident homeowners, renters, commercial property owners, and/or commercial tenants:

(a) All of the information in the first paragraph of 11 of this Agreement;

(b) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, **for every \$100,000 of taxable value**, there would be an **additional annual property tax of \$300** for the duration of the District’s Bonds.”

(c) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

12. Governing Document Amendment Requirement. Actions of the District which violate the limitations set forth in V.A.1-9 or VIII.B-G of the Governing Document shall be deemed to be material modifications to the Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

13. Annual Report. The District shall be responsible for submitting an annual report to the City Manager’s Office no later than 180 days following the closing of the District’s fiscal year, containing the information set forth in Section VIII of the Governing Document.

14. Regional Improvements. The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements.

15. Maximum Debt Mill Levy.

(a) The “Maximum Debt Mill Levy” shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District for payment of Limited Tax Debt shall be 0.00300 per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8). Further, the Districts may not impose mill levies which aggregate in excess of 0.00300 per dollar of taxable value of taxable property in the District; provided that such levies shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code.

(b) Such Maximum Debt Mill Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202.

16. Maximum Debt Mill Levy Imposition Term. Each bond issued by the District shall mature within thirty-one (31) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of a series of bonds after a period exceeding forty (40) years from the first date of imposition of the mill levy for such bond (the “Maximum Debt Mill Levy Imposition Term”).

17. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery,

via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: Kachina Ridge Public Infrastructure District
782 S River Rd #289
St George, UT 84790
Attn: Ted Fullerton
Phone: 801 319 7907

To the City: Hurricane City
147 N 870 W
Hurricane, UT 84737
Attn: City Manager
Phone: (435) 635-2811

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

18. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties hereto and without amendment to the Governing Document.

19. Assignment. Neither Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

20. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

21. Term. This Agreement shall terminate upon the earlier to occur of dissolution of the District or fifty (50) years from the date hereof.

22. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Utah.

23. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

24. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

25. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the City any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the City shall be for the sole and exclusive benefit of the District and the City.

26. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

27. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

28. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

29. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Governing Document.

[SIGNATURE PAGE TO INTERLOCAL AGREEMENT]

KACHINA RIDGE PUBLIC
INFRASTRUCTURE DISTRICT NO. 1

By: _____
President

Attest:

Secretary

APPROVED AS TO FORM: _____

HURRICANE CITY, UTAH

By: _____
Mayor

Attest:

By: _____
Its: _____

APPROVED AS TO FORM: _____

January 25, 2022

Hurricane, Utah

Re: Letter of Intent to Approve Public Infrastructure District

To Whom It May Concern:

This letter sets forth certain proposed terms for the approval by Hurricane, Utah (the “City”) of a Public Infrastructure District (the “PID”) in DayStar Holdings, LLC (“Developer”), and in connection with Kachina Ridge (the “Development”).

This letter constitutes a letter of intent from Developer to request approval by the City of a new PID as follows:

1. **CREATION OF PID.** Developer requests that the City approve the creation of a new PID in the boundaries of the City as more particularly set forth herein.
2. **DESCRIPTION OF PID.** The proposed PID shall be as follows:
 - a. Size of area included in PID: Approximately 60.74 acres for the Initial PID boundaries, with an additional 2,403.21 acres proposed to be annexed in accordance with the Governing Document at a future date, as described herein.
 - b. Location of PID: The proposed Initial District Boundary of the PID will cover and include Washington County parcel numbers H-312-A, H-3-1-25-331, H-348-B-1-A, H-3-1-36-440, H-348-B-1-B
 - c. Proposed use of area within PID: The Developer intends to construct Townhouses, Condominiums, Apartments, Short Term Stay Vacation Rentals, Restaurants, Wellness Spa/Resort, Hot Springs, Athletic Club, Hotels, Convenience Stores, Retail/Professional Space, Parks, Sports Fields, Golf Course, Lagoons, Surf Pools, Water Parks complete with new public infrastructure within the proposed PID.
 - d. Development history: Land is currently undeveloped within the Initial District Boundary. Some portions of the Annexation Area have existing residences.
 - e. Annexation Area Boundaries: In accordance with Section 17B-2a-1204, the Developer is requesting that the City authorize inclusion approximately 2403.21 acres contiguous with the current proposed PID property owned by Tac Holdings, LLC,- the Washington County Water Conservancy District as part of a parcel # 3407 HV - Lee & Lowney, LLC - Stanworth Dell TR, ET AL, Utah State - JDL, Inv Inc. – Utah Dept of Transportation – Zion Park Estates Inc – Hansen Jonathan M, ET AL - Utah State - SR59 Investments, ET AL – Trail Blazer Dev LLC ET AL – Utah State School & Trust Lands – Scherbarth John F & Christine A TRS – Jacobson Daniel & Cindy P - Jameson Daniel & LILA – Lavelle David & Kristenea M – Hutchings Larry & Susan – Wilson W Kent & Vandyne S TRS - Fisk Donald W & Patricia R TRS – Antes Kirk G TR – McLeod Gareth - listed below into the PID boundaries without further legislative action of the City Council upon the occurrence of certain requirements, as will be established in the Governing Document, including ownership of such parcel by the

Developer or a related party. Such parcel is Washington County parcel numbers: H-296-B-1-A, a Portion of 3407-HV, 3407-B-1-HV, H-351-A-N, H-348-B-2-A, H-349-A-1-B, H-3313-A, H-3437-A, H-3313-A-NP, H-3437-B, 3437-TR-HV, H-351-A-1-A, H-352-N, H-3331-A, H-3313-C, H-3437-C, H-3313-D, H-3313-1-NP, H-3-2-1-310, 3313-1-NP-HV, H-348-C, H-348-D, H-296-B-1-C-1, H-348-F, H-348-B-2-M, H-348-B-2-L, H-296-B-1-B, H-296-B-1-D, H-348-B-2-C, H-348-B-2-D, H-348-B-2-B, H-348-B-2-E, H-348-B-2-F, H-348-B-2-G, H-348-B-2-G, H-348-B-2-K, H-348-B-2-H-1

3. **SUMMARY OF NEEDED INFRASTRUCTURE, SERVICES AND FACILITIES.**

The Developer envisions the proposed PID being utilized for the following development, infrastructure, services and facilities:

a. Current proposed development of PID area: As described in paragraph 2 c. and 3 c.

b. Local infrastructure and facilities to be provided by Developer:

c. Local infrastructure and facilities to be provided by PID: Additional lanes and underpass, modification of Hwy 59 in proximity to 600 E. Water pipes and lift station South of Hwy 59 run under the Hwy to new water storage tank to be constructed North of Hwy on the project site and on other parcels in the Annexation Area. Power run from South to North of Hwy. Sewer lift station on North of property and run down north Hwy right of way to sewer station at foot of the ridge. Sewer package stations on the plateau. Hurricane City Water Tank on City Leased area on BLM property near Apple Valley. Wells, streets, streetlights, sidewalks, utilities, clubhouse, recreational areas, pave hiking biking trails, landscaping for public recreational areas.

d. Estimated construction costs for the improvements by the proposed PID: Approximately **Ninety Six Million Dollars (\$ 96,000,000)** from the Limited Tax Bond.

e. Construction phasing based on current development plan:

f. Plan for finance depicting possible sources and uses of PID funds:

i. Developer is requesting the City authorize the PID to impose a mill levy of not to exceed .00300 per dollar of taxable value of taxable property in the PID (the "Mill Levy").

ii. The proposed PID will issue bonds repayable from revenues generated by the Mill Levy.

iii. The primary use of the bond proceeds will be for Infrastructure.

4. **PROPOSED TIMELINE FOR PID CREATION:** Developer anticipates creating the PID by March 3, 2022.

5. **DEVELOPER'S ACKNOWLEDGEMENTS:** Developer hereby acknowledges that a consent must be signed prior to the hearing date for the approval of the PID by all property owners

and registered voters, if any, within the proposed PID, which signed consent approves of the creation of the proposed PID and the issuance of debt in an amount sufficient for the proposed plan of financing.

6. **CONFLICTS OF INTEREST:** Developer is presently unaware of any conflicts of interest existing between Developer and any employees or officers of the City.

7. **ATTORNEY FEES:** Developer has entered into, or shall soon enter into, an agreement with the law offices of Gilmore & Bell, P.C. for the payment of legal fees incurred by the firm on the City's behalf for the review of this letter and negotiation and preparation of the Definitive Documents (defined below).

Best regards,
Ted Fullerton
Managing Member
DayStar Holding, LLC

By _____
Ted Fullerton

**TELECOMMUNICATIONS FRANCHISE AGREEMENT
BETWEEN THE CITY OF HURRICANE UTAH
AND INFOWEST, INC**

THIS TELECOMMUNICATIONS FRANCHISE AGREEMENT (this “Agreement”) is entered into this _____ day of _____, 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 **InfoWest Inc,** 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, 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. This franchise grants to the Provider the right to use City poles, conduit, or other facilities. Provider must work with the city for approval of such use.

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 at the rate of **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.

2.2 Equal Treatment. The City hereby agrees that if any service forming part of the base for calculating the Franchise Fee under this Agreement is, or becomes, subject to competition from a third party, the City will either impose and collect from any such third party a fee or tax on gross revenues from such competing service in the same percentage identified herein, plus the percentage specified as a utility revenue tax or license fee in the then-current ordinances of the City, or to waive collection of the fee(s) provided for herein that are subject to such competition.

ARTICLE III TERM AND RENEWAL

3.1 Term and Renewal. The franchise granted to the Provider herein shall be for a period of twenty (20) years commencing on the Effective Date first set forth above in this Agreement unless this Agreement is terminated sooner as provided herein. At the end of the initial twenty (20) year term of this Agreement, the franchise granted herein may be renewed by the City and the Provider upon the same terms and conditions as contained in this Agreement for an additional ten (10) year term, by the Provider providing to the City's representative designated herein written notice of the Provider's intent to renew not less than ninety (90) calendar days before the expiration of the initial franchise term.

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; 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. In the event the City has required the Provider to relocate its facilities to accommodate a private third party, the City shall use good faith to require such third party to pay the costs of any such relocation. 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 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 eighteen (18) 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. 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 (\$2,000,000) 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. 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 Councils written consent for such a proposed assignment or transfer. The City shall not unreasonably withhold its consent to such an assignment or transfer. However, in making such a determination, the City Council may consider the following:

a. Experience of the proposed assignee or transferee (including conducting an investigation of the proposed assignee or transferee's service record in other communities);

- b. Qualifications of the proposed assignee or transferee;
- c. Legal integrity of the proposed assignee or transferee;
- d. Financial ability and stability of the proposed assignee or transferee;
- e. The corporate connection, if any, between the Provider and the proposed assignee or transferee; and
- f. Any other aspect of the proposed assignee's or transferee's background which could affect the health, safety and welfare of the citizenry of the City as it relates to the operation of a telecommunication network.

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 GENERAL PROVISIONS

12.1 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.

12.2 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.

12.3 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.

12.4 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.

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

HURRICANE CITY, UTAH

John Bramall, MAYOR
Hurricane City Corporation

Date: _____

ATTEST:

, CITY RECORDER

STATE OF UTAH)

: Ss.

COUNTY OF WASHINGTON)

This is to certify that on the ____ day of _____, 2022, before me, the undersigned, a Notary Public, in and for the State of Utah, duly commissioned and sworn as such, personally appeared John Bramall, known to me to be the Mayor of Hurricane City Corporation, and _____ known to me to be the City Recorder of Hurricane City Corporation, and acknowledged to me that he the said John Bramall and She the said _____ executed the foregoing instrument as a free and voluntary act and deed of said corporation, for the uses and purposes therein, and on oath state that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove written.

NOTARY PUBLIC

By: _____

Titles: _____

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.

NOTARY PUBLIC

Title 13 - FRANCHISES

CHAPTER 1. - VIDEO SERVICES FRANCHISE

Sec. 13-1-1. - Title.

This chapter shall be known as the Video Services Franchise Ordinance.

Sec. 13-1-2. - Definitions.

For purposes of this chapter, the following terms, phrases, words and their derivatives shall have the meanings set forth in this section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall have the same meanings as the terms used in title 7, chapters 8 and 11 of this Code, and if not defined there, their common and ordinary meaning.

Basic service means any service tier that includes the retransmission of local television broadcast signals.

Cable act means Title VI of the Communications Act of 1934, as amended, 47 USC section 151 et seq., and all other provisions of the Cable Communications Policy Act of 1984, codified at 47 USC section 521 et seq., and the Cable Television Consumer Protection and Competition Act of 1992 as codified at 47 USC section 543 et seq.

Cable service means:

- A. The one-way transmission to subscribers of:
 - 1. Video programming; or
 - 2. Other programming service; and
- B. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

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 franchise to provide video services will be exercised.

Grantee means any person, firm or corporation granted a franchise by the City.

Gross revenues means:

- A. All revenues derived by a grantee, or an affiliate of grantee in connection with its provision of video services in the City via a video service system including, but not limited to:
 - 1. Revenue from any video service which generates revenue of any type whatsoever and which is offered to the subscribers by means of a video services system, including, but not limited to, leased access fees and advertising revenues.
 - 2. Revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the video services.
 - 3. Grantee's pro rata portion of any revenues derived from any other person or source and attributable to

grantee's provision of video services in the service area via a video services system, to which the City is authorized to apply a franchise fee under the cable act, state or local law as it may exist from time to time during the term of the franchise agreement.

- B. For the purpose of calculating franchise fees, the following shall not be included in the definition of gross revenue:
1. State or local taxes, such as sales taxes, imposed upon an end user where the grantee acts as a collection agent for the state or local taxing authority.
 2. Bad debt, to the extent it is not collected.
 3. Affiliate revenues are not counted as gross revenues of the grantee where that would result in a double count of the same revenues for purpose of calculating the franchise fee owed.

Service area means the geographic area in which a grantee is authorized to provide video services.

Subscriber means any person or entity lawfully receiving video service from grantee or an affiliate of grantee.

Transfer means any transaction subject to review under section 13-1-17 of this chapter.

Video service system means a communications system that is designed to be used, or is used to provide video services.

Sec. 13-1-3. - Application for franchise agreement.

- A. *Information required.* All initial franchise applications to construct, operate or maintain any communications system for the purpose of providing video services, or to provide video services via a communications system in this City shall be filed with the City Recorder-Clerk, and each such application shall set forth, contain or be accompanied by the following in addition to the information required by title 7, chapter 8 of this Code:
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 or the video service system that will be used by applicant, along with a description of the nature of the responsibilities of such entity.
 - d. A description of the previous experience of the applicant in providing video services and constructing systems used to provide video services; and an identification of all communities in the state where applicant, or any affiliate, provides video services.
 - e. Information regarding the legal, financial, technical and character qualifications of the applicant.
 - f. Whether grantee is filing the application as a cable operator of a cable system within the meaning of the cable act.
 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 of a scale not less than one inch equaling one hundred feet (1" = 100') showing the precise geographic area for which applicant seeks a franchise agreement.
 - b. Plans showing any existing location of the communications system that will be used to provide video services; and, unless the communications system is fully constructed except for drops to subscribers, a plan for system construction, containing at least the information required by subsection 13-1-6C of this chapter.
4. A copy of the form of any agreement, undertaking or other instrument proposed to be entered into between the applicant and any subscriber.
- B. *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 an application.
- C. *Time for review.* An initial application for a franchise shall be reviewed promptly by the City. The City may grant or deny the application, or grant it subject to conditions. To the extent that the federal communications commission requires the City to take a final action on a completed application by a date certain, a completed application for a franchise shall be deemed denied by final action of the City if the City has not adopted an ordinance granting a franchise to the applicant prior to the deadline, unless the applicable deadline has been lawfully extended.
- D. *Time for denial.* Unless the FCC alters the deadlines, the date on which the application shall be deemed denied for purposes of subsection C of this section shall be:
1. Ninety days after the filing of a completed application by an entity for an initial cable franchise that already has a communications system in the rights of way;
 2. One hundred eighty days after the filing of a completed application by any other entity.
 3. Provided that, where an application is submitted in connection with a transfer, the deadlines in section 13-1-17 of this chapter shall apply.
- 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. 13-1-4. - Grant and acceptance of franchise.

- A. *Acceptance required.* No franchise agreement shall become effective for any purpose unless and until an ordinance is passed by the City approving the franchise agreement. No franchise shall be effective until accepted unconditionally by the grantee. Grantee shall be deemed to have unconditionally accepted a franchise by signing a franchise agreement countersigned by the City.
- B. *Subject to general ordinance provisions.* Any franchise agreement granted is hereby made subject to the general ordinance provisions of this chapter and title 7, chapters 4 and 8 of this Code.
- C. *Right of police power.* Grantee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. Grantee shall comply with all laws and ordinances enacted by the City pursuant to that power. No franchise shall be interpreted in a manner that limits a grantee's obligations under this section.

Sec. 13-1-5. - Additional conditions of street occupancy.

- A. *City use of pole and conduits in rights-of-way.* Subject to any applicable state or federal regulations or tariffs, the City, after giving written notice, have the right, without cost, to make use of any poles or conduits controlled or maintained by the grantee, that are located in any public way. Such use by the City shall not interfere with current or future use of the grantee, that are located in any public way. Such use by the City shall not interfere with current or future use by the grantee.
- B. *Use by others of poles.* In cases where access to a grantee'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 grantee within streets; and
 - 2. The City finds that such use would enhance the public convenience and would not unduly interfere with the grantee'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.

Sec. 13-1-6. - Extension of service; duty to serve.

- 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, as it existed as of the effective date of the franchise. 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:
 - 1. To an open video system;
 - 2. To a video service provider offering services via an infrastructure system, where infrastructure provider agrees to terms and conditions for system build out, or agrees to make payments to support build out of systems used by others to provide video services, that the City accepts in satisfaction of obligations of video service providers who use such infrastructure system; or
 - 3. 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 video service provider.
- B. *Time to provide service.* A video service 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 video service 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 video service system first franchised to serve the City; and
 - 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. *Density requirements.* A grantee 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 grantee shall provide video service to any person that requests it at its normal connection fee; provided, that grantee is able to reasonably obtain all easements or permissions, if any, which are necessary to extend service relating thereto. Provided that, where the distance from the curb to the demarcation point on the potential subscriber's premises is greater than 150 feet, a grantee may charge an additional fee to recover the costs of extending the system the additional distance.
 2. In areas with less than five residential units per linear quarter mile, a grantee shall offer a cost sharing arrangement with residents desiring video service wherein each will bear their proportionate share of construction costs. For example, if there are four dwelling units per linear quarter mile grantee must extend service if the potential subscribers are willing to pay one-fifth of the cost of extending the system to pass by the dwelling units, and the grantee must bear four-fifths of the construction cost. Should additional residents actually subscribe to video 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, and the amounts paid in construction costs thereafter shall be credited to the plant account of grantee.
 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.

Sec. 13-1-7. - Community access services.

A. *Requirement to provide access channels.*

1. For any franchise effective after the effective date hereof, each grantee shall at a minimum provide the greater of:
 - a. Two activated channels for public, educational, or government use; or
 - b. The greatest number of channels being provided under any video service franchise for the City.
2. For any franchise effective after the effective date hereof, the City may require activated additional channels for public, educational or government use as necessary to satisfy the needs and interests of the community as determined at the time an applicant seeks a renewal, extension or initial issuance of a franchise. Each franchise shall require the grantee to provide additional channels based on usage.
3. For any franchise granted prior to the effective date hereof, a grantee shall provide access channels and support for access channels as required by its franchise, and by this section as the same was in effect on January 1, 2009, until it ceases to operate under the terms and conditions of that franchise.
4. The City may designate itself or another entity to manage the channels, and may designate the purposes for

which the channels may be used, consistent with applicable law.

5. The City may establish rules and procedures for the use of the channels, or authorize its designee to establish rules and procedures for the use of the channels.
- B. *Channel assignments.* Access channel assignments shall be made by a grantee in consultation with the City and shall be uniform on that grantee's system throughout the City. Unless it is technically infeasible to do so, a grantee shall place PEG channels at the same channel locations as are being used by a video service system in the City designated by the City. Each grantee's system shall, insofar as technically and economically feasible, be compatible with and able to tie into all other franchised video service systems providing video services within and adjacent to the City so as to enable each system to carry and cablecast the public, educational and governmental access programming of the other systems. The City may require a grantee to interconnect its system with other franchised video service providers.
- C. *Minimum requirements for channels.* Access channels shall be carried on the basic service tier, and shall be available to every subscriber without any additional charges for equipment beyond the charges for equipment the subscriber pays to receive the commercial services to which the subscriber subscribes. Access channels shall be of the same quality, have the same features and functionality as the primary broadcast signals carried by the grantee. The channels shall be selectable from the same menus used to access other commercial programming, shall be as prominently featured as other channels, and if the information is provided to grantee, shall contain the same type of information as is carried with respect to commercial programming. Each grantee must pass through the full PEG signal to subscribers, including information equivalent to that carried in the vertical blanking interval.
- D. *Extension of system.* Each grantee is responsible for extending its system to points from which it can pick up the access channels at no cost to the City or to the persons programming the channels, which extension may be direct, through an interconnection or by other reasonable technical means.

Sec. 13-1-8. - Rates.

- A. The City expressly reserves the right to regulate the rates which a grantee charges its subscribers for basic service and for such other services and equipment as the City is now, or may hereafter be, permitted to regulate consistent with applicable law. A grantee shall not deny, delay, interrupt or terminate cable service or the use of cable television system facilities to subscribers because of an action by the City related to its regulation of the rates; provided, however, that nothing herein shall be construed to limit a grantee's right to seek judicial review of such action. The City may from time to time adopt rules and procedures for the regulation of rates.
- B. Each video service provider shall provide notice of rate changes to the City and to subscribers as if it were a cable operator subject to the notice rules established by the Federal Communications Commission.

Sec. 13-1-9. - Customer service standards.

- A. *Minimum standards.* Each grantee under this chapter shall satisfy the customer service standards established by the FCC pursuant to 47 USC section 552 as if it were a cable operator, and such additional or stricter customer service or consumer protection requirements as are included in this Code, or as the City may adopt from time to time by resolution, or as may apply under applicable law.
- B. *Waiver of standards.* Customer service standards and reporting requirements may be waived by the City Manager where:

1. A grantee shows the standard as applied to it is too burdensome; and
 2. The grantee proposes an alternative standard that the City Manager determines will reasonably protect subscribers in light of the customer service record of the grantee requesting the waiver.
 3. The waiver shall expire in 90 days unless a longer period is approved by the City Council. The City Council may revoke a waiver at any time, upon 60 days' notice.
- C. *Opportunity for comment.* After the effective date hereof, before adopting any additional video service specific customer service standards, the City shall provide grantees an opportunity to comment on the proposed standards before they are adopted.
- D. *Billing practices.*
1. *Failure to pay.* The due date for a bill may be no earlier than 15 days after a bill is mailed. No penalty or late fee may be assessed until five days after the due date. A payment is made as of the earlier of the date it is received, or the date a payment by mail is postmarked.
 2. *Return of deposits.* If the grantee collects a deposit or advance charge on any service or equipment requested by a subscriber, the grantee shall provide such service or equipment within 30 days of the collection of the deposit or charge or it shall refund such deposit or charge by mail postmarked within seven working days thereafter. Nothing in this section shall be construed to limit the grantee's liability for damages because of its failure to provide the service for which the deposit or charge was made.
 3. *Pro rata refunds.* In the event that a subscriber terminates service prior to the end of a prepaid period, the pro rata portion of any prepaid subscriber fee which represents payment for services which are no longer to be rendered shall be refunded promptly, but in no case more than 30 days after receipt of the request of termination.
 4. *Security deposits.* Security deposits may not be levied on a discriminatory basis. A grantee shall not charge an equipment security deposit greater than the equipment's actual cost to the grantee. Any equipment security deposit collected by the grantee shall be returned to the subscriber no later than the earlier of:
 - a. Twelve months after its collection, if the deposit was collected from a person that is still a subscriber; or
 - b. Within 30 days of return of such equipment undamaged, with allowance for reasonable wear and tear, and payment of any outstanding balance due and payable for lease of the equipment.
- E. *Time for installation completion.*
1. Subject to subsection E2 of this section, standard subscriber installations shall be completed within seven business days (unless the subscriber requests a later date). A standard installation is an installation where distance from the curb to the demarcation point on the potential subscriber's premises is 150 feet or less. During normal operating conditions, this standard will be met 95 percent of the time, measured on a quarterly basis.
 2. Upgrades or reconnections of service by a grantee shall be performed and completed within seven working days of a subscriber requesting such upgrade or reconnection. During normal operating conditions, this standard will be met 95 percent of the time, measured on a quarterly basis.
 3. For nonstandard installations, or where a system extension is required, work must be completed promptly, and no later than 60 days after the extension request, unless the City grants an extension of the time. The City shall not unreasonably deny a request for an extension where proper engineering, planning and construction require more time.

- F. *Missing appointments.* If the grantee fails to meet an appointment, the grantee shall in the case of an installation, reconnection or upgrade, at a minimum, waive all charges for installation, reconnection or upgrade applicable to the customer whose appointment was missed. If the grantee fails to meet a service or repair appointment, the grantee at a minimum, waive all repair charges, if any are applicable to the customer whose appointment was missed, and credit the account of the customer whose appointment was missed an amount of no less than \$20.00, in addition to automatically providing credits for the period during which service was lost.
- G. *Credit for outage, interruption.* A grantee shall provide a subscriber with credit for a signal or service interruption exceeding four hours in duration. The credits provided herein need be given only upon request made by a subscriber. The request may be made at the time a subscriber calls to report a signal or service interruption, whether or not the four hours has elapsed at the time the call is made; and may be requested up to 60 days after the signal or service interruption occurs. A "signal or service interruption" refers to the loss of sound or picture on any channel, or the significant deterioration of the same on any channel.
- H. *Records maintained.* Grantee shall maintain a record or "log" of signal or service interruptions; and customer complaints describing the date and nature of the interruption or complaint, and the date and nature of the action taken by grantee. These records shall be kept at grantee's local office for a period of three years. Each grantee shall collect information, and shall maintain records to show its performance with respect to all applicable customer service standards.

Sec. 13-1-10. - Disconnections; voluntary and involuntary.

- A. *Involuntary disconnection.* Before an involuntary disconnection of a subscriber's service takes place, the following must occur:
 - 1. The subscriber shall in fact be delinquent in payment at least 45 days after the posting of the bill before notice of disconnection may be given;
 - 2. Notice shall be by separate written advice of impending disconnection that may be mailed or personally served upon the subscriber before disconnection;
 - 3. If notice is given by personal service, at least five days must elapse before disconnection after the subscriber has either signed for or refused to accept personally served written notice of impending disconnection;
 - 4. If notice is given by mail, at least ten days shall be elapsed after the date of mailing such notice before disconnection.
- B. *Notice of disconnection.* The written notice of disconnection must expressly and clearly state the amount that is owed by the subscriber to the grantee, the minimum amount required to be paid to avoid disconnection, and the date and place where such payment must be made. Disconnection of service and retrieval of equipment must occur both on a normal service day and within normal business hours of grantee. Receipt of a "bad check" from a subscriber, in response to a written notice of disconnection, does not constitute payment, and the affected grantee need not give the subscriber further notice prior to disconnection of service. A grantee may add a reasonable collection charge to a subscriber's bill.

Sec. 13-1-11. - Resolution of complaints.

- A. Each grantee shall maintain a comprehensive complaint resolution policy that is in writing, and such policy shall be provided to persons at the time of initial subscription and whenever amended; it shall be available, upon request, to any person.

- B. A grantee may not disconnect a subscriber if the subscriber files a complaint with a grantee prior to the scheduled disconnection, disputing charges owed, until the complaint is addressed in writing by the grantee.
- C. The City may adopt procedures for complaint resolution if it determines that the grantee's complaint resolution process is unfair to subscribers, or if a grantee fails to comply with its obligations under this section.

Sec. 13-1-12. - Books and records.

- A. *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. 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 (the "act"), and other applicable law permits, the City may agree in a franchise agreement that information contained within the books and records of grantee provided to the City shall be kept confidential by the City, and may agree to provide grantee reasonable notice of any request received by the City for disclosure of any books and records requested by grantee to remain confidential, so that the grantee may take appropriate action to protect confidential information from disclosure.
- B. *Prompt response required.* Grantee shall promptly respond to requests for information from the City related to a franchise agreement or grantee's compliance with applicable law. Provided that, nothing herein shall require a grantee to disclose personally identifiable information it is prohibited from disclosing under privacy laws; and provided that, a grantee shall redact any such information if it is contained in information requested by the City.
- C. *Audit.* In addition to its rights under subsection A of 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 agree 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, it being agreed that the City may accept any amount offered by the provider, 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. 13-1-13. - Reporting requirements.

- A. Each grantee shall prepare reports as the City may reasonably request to monitor compliance with the terms hereof and of the grantee's franchise.
- B. By January 31 of each year, each grantee shall provide the City with a detailed statement of revenues derived in connection with the provision of video services in the City, sworn as accurate by an officer of the grantee, 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 (as may be the case with regional advertising revenues), the total revenues, and the manner in which the revenues were allocated.
- C. The report shall be in a form the City prescribes, or if there is no form, in a form consistent with the manner in which grantee maintains its books and records.

Sec. 13-1-14. - Fines and penalties.

Subject to the provisions of section 7-8-8 of this Code, the City may impose a civil penalty on a grantee not to exceed the following amounts per day, or any part thereof, for the occurrence or continuation of any of the following violations:

- A. \$200.00 for any failure to complete system construction in accordance with a grantee's construction obligations contained in this chapter or grantee's franchise agreement.
- B. \$100.00 for any failure to provide data, documents, reports or information to the City.
- C. \$75.00 for any failure to comply with any of the provisions of this chapter for which penalty is not otherwise specifically provided, including customer service violations.

Each day that any of the above violations shall continue shall be considered a separate violation for which said penalties can be assessed.

Sec. 13-1-15. - Franchise fee.

- A. *Specified; terms of payment.* Each grantee shall pay a franchise fee in connection with provision of video services in an amount equal to five percent per year of the grantee's annual gross revenue. Said fees shall be paid quarterly, not later than 60 days after the end of the preceding three-month period ending, respectively, June 30, September 30, December 31 and March 31. Not later than the date of each payment, each grantee shall file with the City a written statement signed under penalty of perjury by an officer of the grantee during a quarter for which payment is made. 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 the maximum legal rate until paid.
- B. *Increase.* If the FCC, congress or other governmental entity with authority over video service providers allow a franchising authority to increase the franchise fee beyond five percent, then the City may increase the franchise fee paid by grantees holding franchises to the maximum permitted amount, but no more than six percent of gross revenues prior to the scheduled expiration date of the franchise, or the date the franchise terminates, whichever is earlier; and the City may require any grantee issued a new or renewed franchise after such change to pay the maximum amount permitted by law as a condition of the grant of the franchise. Payment of a franchise fee pursuant to the provisions of this chapter shall be considered to be an addition to, and exclusive of, any and all authorized taxes, business license fees or other fees and assessments presently in effect or adopted subsequent hereto.

Sec. 13-1-16. - Term of franchise.

A franchise granted hereunder shall be for a term established in the franchise agreement. In no event shall any franchise term exceed 15 years.

- A. *Consent of City required.* Unless specifically provided in the franchise agreement, a franchise or video service 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 grantee 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 grantee 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 grantee, 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 grantee.
- C. *Considerations of City.* At least 120 days before a proposed sale, assignment, transfer or conveyance of a grantee's franchise is scheduled to become effective, such grantee 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 grantee 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 grantee 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 grantee within 120 days following receipt of the petition for consent to the proposed sale, transfer or assignment, unless the City and grantee agree to an extension of this period, subject to the following conditions:
1. Transferee shall assume all obligations and liability of the former grantee, known and unknown.
 2. An approval without response is not a representation, express or implied, that the grantee is in compliance with the franchise.
 3. A sale, assignment or transfer shall not relieve the former grantee of its liabilities under this chapter until the sale, assignment or transfer actually takes place unless otherwise specifically relieved by the City.
- E. *Assignment for creditors.* Notwithstanding any other provision of this chapter or a franchise agreement:
1. A video services 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

video services franchise and has executed an agreement, approved by a court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of the video services franchise and this chapter.

F. *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 grantee's video system or associated property, the City may revoke the video services franchise at a public hearing before the City Council, by serving notice upon the grantee and the successful bidder at the sale.
2. The video services franchise shall terminate 30 calendar days after serving such notice, unless:
 - a. The City approves the transfer of the video services 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 video services franchise and applicable law.

G. *Transfer limitation.* The provisions of this section are not in lieu of transfer approvals that may be required, including approvals required under title 7, chapters 10 and 11 of this Code.

Sec. 13-1-18. - Continuity upon termination or transfer.

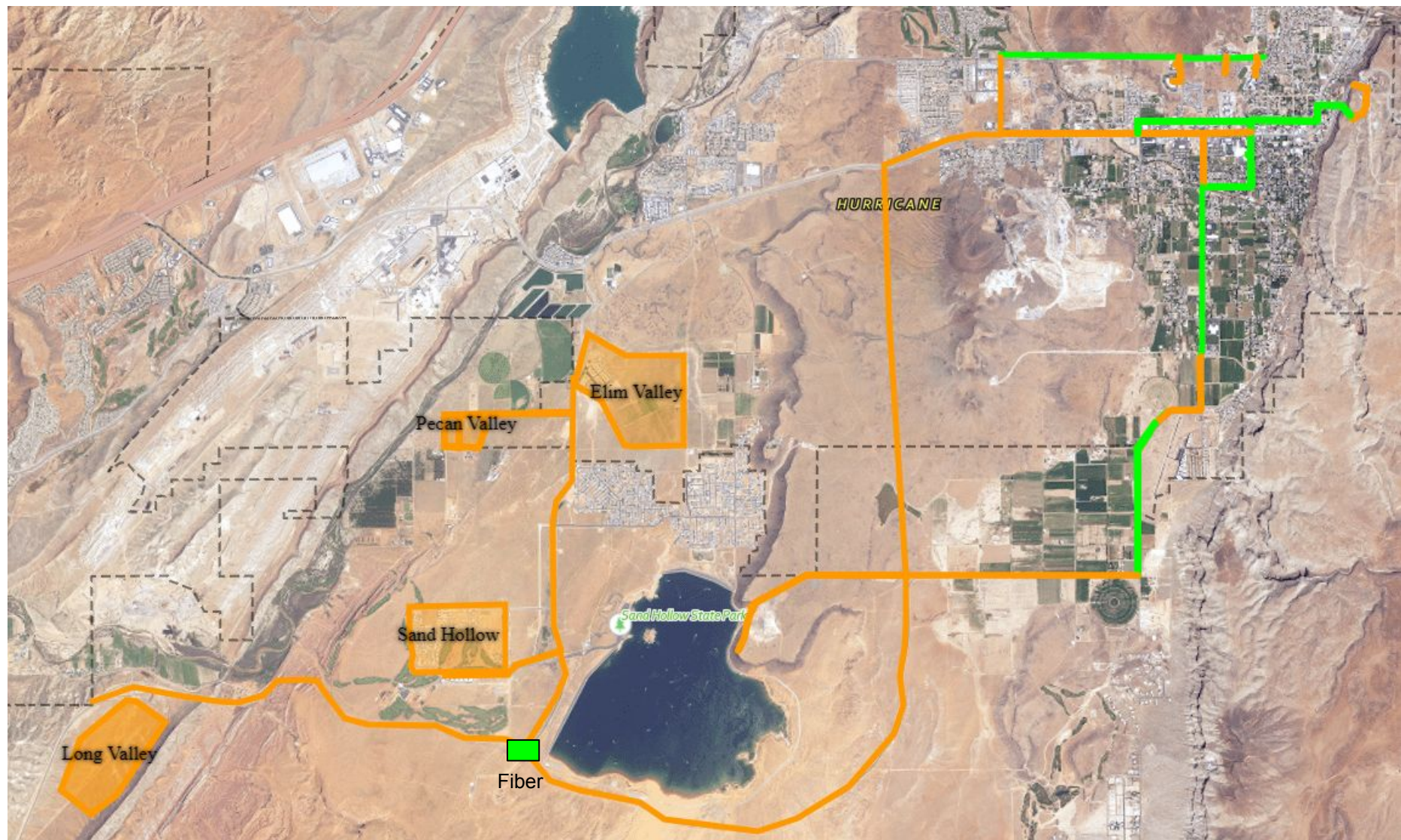
In the event of a termination, revocation, or transfer of grantee's franchise for whatever reason, grantee shall ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances. At the City's request, grantee shall cooperate with the City to operate grantee's video service 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 video service system shall be operated as if the terms and conditions of this chapter and franchise agreement continue to apply.

Sec. 13-1-19. - Application to persons holding franchise.

The revisions to this chapter adopted by the ordinance codified herein do not relieve a cable services franchisee of any obligations that were included in its franchise by reference. To the extent that the revisions establish additional obligations for such franchisee, they shall be enforceable against it to the maximum extent permitted by law.

Sec. 13-1-20. - Relation to infrastructure provider franchise.

In lieu of requiring a video services franchise for a video services provider offering services via an infrastructure system the City may choose to enter into agreements with the infrastructure provider and the video service provider with respect to the provision of video services, so long as the benefits that could be obtained through a franchise are obtained and enforceable through those agreements.



InfoWest, Inc.

– Sec. 13-1-3 Application for Franchise Agreement

A.

1. InfoWest, Inc – 435 E Tabernacle, St. George, Utah 84770

2. Business Entity

a. List of Shareholders – InfoWest

InfoWest List of Shareholders

<u>Shareholders</u>	<u>Address</u>	<u>Phone</u>
Kelly Nyberg	207 Shadow Point Drive St. George, Utah 84770	435-229-2713 – Cell
Randy Cosby	290 S Marble Canyon Cir Cedar City, Utah 84720	435-862-4562 – Cell
Aaron Gifford	293 N. 2790 E. St. George, Utah 84790	435-229-2745 – Cell 435-215-1000 – Home
Eric Pedersen	646 E. 1100 S. St. George, Utah 84790	435-229-5444 – Cell
Gary Koeven	163 N. Main Washington, Utah 84780	435-680-7240 – Cell 435-628-7240 - Home
Cassidy Larson	947 S. White Sands Dr. Washington, Utah 84780	435-229-2717 – Cell
Mark Shumate	657 S Main Street Ivins, Utah 84738	435-229-2722 – Cell
Jackie Dearden	1164 Wesley Powell Dr. St. George, Utah 84790	435-313-2154 – Cell
Pete Larsen	586 W 300 S PO Box 480 Fountain Green, Utah 84632	435-590-6763 – Cell
Ryon Bowler	776 Diagonal #20 St. George, Utah 84770	435-862-1331 – Cell
Adam Hardy	3710 Skyline PO Box 113 Logandale, Nevada 89021	702-496-7736 – Cell
Jeff Knight	177 N. Roundabout Way Cedar City, Utah 84720	435-531-9533 - Cell

b. Refer to 2(a). as this is a complete list of all InfoWest Shareholders.

c. N/A

d. N/A – InfoWest is not a video provider.

e. InfoWest has been in the ISP business for 28 years. InfoWest was the very first Internet Provider in Southern Utah and has extensive knowledge of providing Internet Service. InfoWest is also a medium to large company with nearly 100 employees and over 20,000 customers on it's network. InfoWest has the expertise to provide state-of-the-art telecommunication services to the Hurricane Valley.

f. InfoWest/Grantee is NOT filing as a cable operator.

3. InfoWest currently has an extensive wireless network which covers 100% of the Hurricane Valley with thousands of customers located in the valley and in other parts of Southern Utah. InfoWest is currently expanding it's fiber infrastructure which currently runs past the Sand Hollow reservoir on SR7 connecting into SR9. InfoWest would like to extend it's fiber network down into the heart of Hurricane city and build a ring to create redundancy. The obvious benefits for the expansion of InfoWest's fiber network into Hurricane city are increased competition, better rates and faster speeds for the residents and businesses of Hurricane City. InfoWest is looking to invest millions of dollars into areas of Southern Utah and has targeted the Hurricane Valley as one of those areas.

MODIFIED AGREEMENT

THIS AGREEMENT is made and entered into on this _____ day of _____, 1996, by and between the CITY OF HURRICANE, UTAH, a municipal corporation of the State of Utah, hereinafter referred to as "city", and BRIAN JAMES STRATTON, TRACEY LEE STRATTON DONALD NEIL STRATTON, JOYCE STRATTON GORMAN, DIANE STRATTON NAY, CRAIG STRATTON STEVEN STRATTON, LAYNE STRATTON and LINDA STRAON PEARSON, hereinafter collectively referred to as "The Strattons."

RECITALS:

- A. City and Stratton Brothers, a Utah General Partnership, have previously entered into an Agreement dated the 17th day of August 1979 (hereinafter referred to as the "1979 Agreement"), a copy of which is attached hereto as Exhibit A and incorporated herein as if fully set for and an agreement dated the 6th day of June 1996
- B. Brian James Stratton, Tracey Lee Stratton, Donald Neil Stratton, Joyce Stratton Gorman, Diane Stratton Nay, Craig Stratton, Steven Stratton, Layne Stratton, and Linda Stratton Pearson are the assignees of all of Stratton Brothers partnership's right, title and interest in and to the 1979 Agreement.
- C. Since the execution of the 1996 agreement, Stratton's have discovered two water rights which they believe should have been added to the agreement and are referred to as 81-1108 representing 21.72-acre feet and 81-1202 which represents 1.06-acre feet of water.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and obligations contained herein, the parties hereto agree as follows:

- 1. City is duly organized and validly existing under the laws of the State of Utah, and has full governmental powers to execute, deliver and perform its obligations under the terms of this agreement.
- 2. The Stratton's represent, covenant and warrant that they are the sole holders/owners of record, free and clear of any liens, claims or encumbrances of the following described water right:
 - (a) Water right # 81-1202 with a diversion limit of 1.064-acre feet, as filed at the office Water right # 81-1202 with a diversion limit of 1.064-acre feet, as filed at the office of the State Water Engineer in Cedar City, Utah of the State Water Engineer in Cedar City, Utah and
 - (b) Water right # 81-1108 with a diversion limit of 21.72-acre feet, as filed at the office of the State Water Engineer in Cedar City, Utah
- 3. The Strattons hereby agree to sell, transfer and convey to City all of their right, title and interest in and to the above described water right and, immediately upon execution of this agreement, to execute and deliver to City all deeds, certificates or other documents as may be deemed necessary for the transfer and conveyance to City of said water rights.

4. The Stratton's, their successors and assigns shall be entitled to receive an additional 24 fully pre-paid residential water connections, in accordance with the following:
 - (a) For purposes of this paragraph, the term "fully prepaid" shall include all fees or charges commonly referred to or included within the term "water impact fee", including water acquisition fees, etc., excepting only the cost of the water meter and the cost of the installation thereof.
 - (b) The cost of said residential connections may also be used or applied towards the cost of a commercial connection, provided that the value of any residential connection or commercial connection shall be determined at the time of connection to the water system.
 - (c) Said water connections may be used at any time during the term hereof at any location within the corporate limits of City, subject to all other applicable rules, regulations, or ordinances of City.
 - (d) City shall be responsible for maintaining adequate books and records for the purpose of keeping a running account of all transactions involving said residential water connections and shall provide Strattons, upon written request, an annual review and accounting showing the status of water connections unused by Strattons.
5. The term of this amendment to agreement shall be for a period of (50) years.
6. In the event of a breach of any term or condition of hereof, the party in breach shall be liable to the other party for all damages, fees, costs and expenses incurred as a result of said breach, including all costs of court and a reasonable attorney's fee incurred as a result of the commencement or maintenance of any legal action to enforce the terms and conditions hereof.
7. This agreement constitutes the entire understanding and agreement of the parties, all prior negotiations and discussions having been merged herein, and shall not be altered or modified except in writing signed by the parties hereto.
8. This agreement shall be construed under the laws of the State of Utah.
9. This agreement is binding on the parties heirs and assigns.



Washington County School
District
121 West Tabernacle Street
Saint George, Utah 84770
435-673-3553

District Policy 5200

Community Use of Facilities including Buildings and Grounds

Buildings, Grounds, Equipment Washington County School District - Adopted 8-79; Revised 9-80 (Ref. 53-21-4 and 5); Revised 5-13-14

(Utah Code §53A-3-413 et seq and §20A-8-404)

1. Purpose:

The Washington County School District Board of Education believes that school facilities are owned by the public and should therefore be made available for any and all public uses of an educational, cultural, recreational or community well being nature whenever such an event(s) does not interfere with the regular school program or school activities.

2. Policy:

- 2.1. Public school grounds and buildings are deemed to be "civic centers" and may be used subject to the requirements and restrictions set forth herein.
- 2.2. Principals or designees are responsible for facility use. Facility supervision is required in all cases. Responsible adult leadership (age 21 and over) must always be provided by the group using the facility.
- 2.3. The District retains the right to refuse or terminate facility usage if use is disruptive to school operations, counter to District policies, damaging to District property, discriminatory under federal or state laws, demeaning or degrading to District employees or other persons, or otherwise inappropriate for District facility use.

3. Procedure:

- 3.1. **Applications, payment and proof of insurance** must be completed and submitted to the principal or designee 14 days (two weeks) prior to the activity or event. A renter may schedule multiple day events or multiple activities throughout the year based on availability. The school or District reserves the right to determine availability. The school or District may deny applications or

cancel rentals if the activity interferes with a school function or purpose. (Utah Code 53A-3-414)

School administrators (principals or designee) do not have the authority, ability, or approval to negotiate any rates different from those approved by the Board.

3.2. Rentals on non school days, i.e. Saturdays, Sundays and major holidays will incur a facility impact fee of \$25 per hour not to exceed \$125 a day.

3.3. Refunds may include a 10% fee for the time required to coordinate and process the rental request and the refund. Refunds may be transferred to another rental within the same year, up to the time of the rental. Fees are not transferable to another school year. Rental "no shows" are not eligible for refunds.

3.4. No key will be issued to rental groups. An administrator, custodian or school employee must open the buildings and/or rooms.

3.5. The following categories correspond to the Rental Fee Schedule and represent the order of priority the school/District will use when considering rental applications.

3.5.1. **Category 1** - District or school sponsored events or activities. These activities include, but are not limited to the following:

3.5.1.1. District or school sponsored staff and student groups.

3.5.1.2. School or student approved clubs.

3.5.1.3. District or school sponsored athletic teams.

3.5.1.4. District or school approved camp/clinics.

3.5.1.5. District or school approved fundraisers.

3.5.1.6. Activities, events, inservice, training and programs sponsored by the Washington County School District.

3.5.1.7. Activities and programs sponsored by the Washington County Education Foundation.

3.5.1.8. Official school class reunions.

3.5.1.9. School PTSA/PTSO sponsored functions.

3.5.1.10. Activities and programs sponsored by Washington County Community Education program.

3.5.2. **Category 2** - Interlocal Agreement use (MOU): This applies to cities, county, state or other governmental entities desiring to use school facilities. Terms, conditions, stipulations and fees are set forth in a written agreement between the School District and government entity.

3.5.3. Political Parties. The District shall make all meeting facilities available in buildings under its control to registered political parties, without discrimination to be used for political party activities, subject to the terms and conditions outlined in Utah Code Ann. 20A-8-404.

(see footnote below**)

3.5.4. **Category 3** - Non-Profit or Non-Commercial

3.5.4.1. Organizations renting facilities under this category must provide evidence of non-profit status (501(c)(3)) and the official address of the organization.

3.5.5. Category 4 - Commercial - Rentals used to gain profit or generate income are deemed to be commercial.

3.6. Use of auditoriums require authorized light, sound and other technicians to be assigned and additional hourly wages will be charged. (See fee schedule for current rates)

3.7. Payment of Personnel - District personnel who provide approved services or supervision outside regular work hours shall be paid through the District Payroll Department. Custodial staff will be paid on time and attendance. Exempt employees will be paid through District Payroll Department. Cost for supervision or other personnel can be negotiated separately with interlocal agreements and Community Education programs.

3.8. All school facilities close at 11:00 p.m. and all grounds close at 10:00 p.m.

3.9. The District Food Service Coordinator must approve all kitchen facility rentals.

3.10. School equipment will NOT be available for rental. (i.e. overhead projectors, VCR/DVD players, etc.)

3.11. Schools will be reimbursed eighty percent (80%) of all rental income. The District will retain twenty percent (20%) to cover utility expenses.

****20A-8-404.** Use of public meeting buildings by political parties. (1) The legislative body of a county, municipality, or school district shall make all meeting facilities in buildings under its control available to registered political parties, without discrimination, to be used for political party activities if: (a) the political party requests the use of the meeting facility at least 30 calendar days before the day on which the use by the political party will take place; and (b) the meeting facility is not already scheduled for another purpose at the time of the proposed use. (2) Subject to the requirements of Subsection (3), when a legislative body makes a meeting facility available under Subsection (1), it may establish terms and conditions for use of that meeting facility. (3) The charge imposed for the use of a meeting facility described in Subsection (1) by a registered political party may not exceed the actual cost of: (a) custodial services for cleaning the meeting facility after the use by the political party; and (b) any service requested by the political party and provided by the meeting facility. (4) An entity described in Subsection (1) shall, to the extent possible, avoid scheduling an event in a government building for the same evening as an announced party caucus meeting. (5) This section does not apply to a publicly owned or operated convention center, sports arena, or other facility at which conventions, conferences, and other gatherings are held and whose primary business or function is to host such conventions, conferences, and other gatherings.

Attachments:

[Request for Use of School Facilities Agreement](#)

Washington County School District Facility Rental Fees

Facility	Category 1	Category 2	Category 3/Maximum	Category 4/Maximum
Classroom	No Charge	No Charge	\$10 per hour/\$100	\$30 per hour/\$300
Lecture Hall	No Charge	No Charge	\$25 per hour/\$250	\$100 per hour/\$1000
Auditorium	No Charge	By Agreement**	\$100 per hour**/\$1000	\$300 per hour**/\$3000
Elementary Gym	No Charge	No Charge	\$25 per hour/\$250	\$100 per hour/\$1000
Intermediate Gym	No Charge	No Charge	\$50 per hour/\$500	\$200 per hour/\$2000
Middle Gym	No Charge	No Charge	\$50 per hour/\$500	\$200 per hour/\$2000
HS Auxiliary Gym	No Charge	No Charge	\$50 per hour/\$500	\$200 per hour/\$2000
HS Main Gym	No Charge	No Charge	\$75 per hour/\$750	\$250 per hour/\$2500
Tennis Court	No Charge	No Charge	\$10 per hour/\$100	\$50 per hour/\$500
Practice Field	No Charge	No Charge	\$25 per hour/\$250	\$100 per hour/\$1000
Football Field (Turf)	No Charge	No Charge	\$100 per hour/\$1000	\$350 per hour/\$3500
HS Baseball Field	No Charge	No Charge	\$40 per hour/\$400	\$150 per hour/\$1500
HS Softball Field	No Charge	No Charge	\$25 per hour/\$250	\$100 per hour/\$1000
HS Track	No Charge	No Charge	\$15 per hour/\$150	\$50 per hour/\$500

Required to hire district staff to rent facility to run necessary equipment.				
Personnel	By Agreement	\$40 per hour	\$40 per hour	\$40 per hour
Student Helper(s)	By Agreement	\$15 per hour	\$15 per hour	\$15 per hour

Revised 3/27/2015

Request for Use of School Facilities

AGREEMENT

In consideration of the permission and license to use the school facilities set forth in the attached ***Request for Use of School Facilities***, the applicant hereby agrees to pay in advance the total rental fee and total staff charge set forth in the attached Request for Use of School Facilities for the amount of time during which the school facilities are actually used. A 10% processing fee will be retained for broken or cancelled contracts where which the balance may be refunded pending circumstances of time spent by the district/school in support of the requested rental.

It is expressly agreed and understood that all applicable government laws and ordinances and all rules and regulations of the Board of Education of the Washington County School District shall be complied with fully and strictly by applicant and by all persons attending the function, meeting or activity for which the attached Request for Use of School Facilities is made, and that applicant shall exercise all necessary supervision to assure compliance with such governmental laws and ordinances and all rules and regulations of the Board of Education of the Washington County School District, and that the ***use of alcohol, tobacco or illegal drugs in any form WILL NOT BE PERMITTED on the school facilities***; and that the applicant and all persons attending the function, meeting or activity for which the attached Request for Use of School Facilities is made shall confine themselves to the area and the school facilities specified in the Request for Use of School Facilities. Applicant expressly agrees and understands that it shall not sell any food or refreshments on the school facilities or on property appurtenant to the school facilities without the prior express written permission of the Board of Education on the Washington County School District.

The Board of Education of the Washington County School District and its members, officers, employees, and agents assume no liability arising out of the rental or use of the school facilities by applicant or by the parties for whom the Request for Use of School Facilities is made, or by any persons attending the function, meeting or activity, nor for any failure of such party or parties to obtain the necessary licenses or permits, nor for any violation of any such party or parties of any applicable laws and ordinances. The applicant and all of applicant's officers, directors, employees and associates agree to assume full and complete responsibility and liability for any meeting, function or activity conducted on the school facilities pursuant to this Request for Use of School Facilities. The Board of Education of the Washington County School District and its members, officers, employees and agents shall not be liable for any damage or injury to any person or property occurring during the use of school facilities under this application. ***The applicant agrees to have an active liability insurance policy. \$1,000,000.00 PRIMARY per occurrence and \$2,000,000.00 AGGREGATE LIABILITY insurance is required. "School Name" and "Washington County School District" should be listed as "Additional Insured" on a primary/non-contributory basis.*** The applicant and its officers, directors, and employees agree to protect, indemnify and HOLD the Board of Education of the Washington County School District, together with its officers, directors, employees, representatives and agents, FREE AND HARMLESS FROM AND AGAINST ANY AND ALL losses, claims, liens, demands and causes of action of every kind and character arising in favor of any third party, including government agencies or bodies, on account of claims, debts, personal injuries, death or damages to property (including property of the Board of Education to the Washington County School District).

The applicant and its officers, directors, employees and associates hereby agree to promptly pay to the Board of Education of the Washington County School District just compensation for any damage, injury or destruction to any school property, including the school facilities, caused by applicant or any of applicant's officers, directors, employees, representatives and agents or by any person or persons attending the meeting, function or activity for which this request for Use of School Facilities is made.

By: _____

Name of applicant: _____

Title: _____

3. Consideration and possible approval of a proposal to seek sponsorship aid in using the school district buses for a private event – Dehn Craig

Dehn Craig with Vacation Races is seeking sponsorship aid for the Zion Half Marathon to be held on February 29, 2020. This is their 8th year of operation. Vacation Races is asking Council to request the use of school buses on its behalf in order to shuttle runners and spectators on race day. Vacation Races will cover any incurred costs for the use of buses as well as driver payments. They will shuttle all runners from the Springdale, La Verkin and Hurricane areas to the race start line. Shuttles departing to the start line and returning from the finish line will position Hurricane as being a convenient place to stay in terms of race logistics. This sponsorship will also allow Vacation Races to aggressively promote Hurricane as a lodging destination for runners on race weekend. Last year, the average night stay was 3.6 nights and Hurricane was the second most popular location for runners to stay with 33% of runners staying here. Mr. Craig stated in previous years they had to charter buses to shuttle racers. These buses wouldn't show up until the morning of the race and there was always a high level of confusion and miscommunications on race day. Using local buses will reduce the chaos making for a better event for everyone.

Dave Sanders made a motion to approve the sponsorship aid in using the school district buses for this private event. Seconded by Joseph Prete. Motion approved with Darin Larson, Joseph Prete and Dave Sanders voting aye.

4. Consideration and possible approval of Land Use Code Amendments clarifying the time frame for recording final plats and a time extension process – Toni Foran

Toni Foran explained that this section of the code was not changed when the code was updated to change final plats to an administrative process that is approved by staff. The proposed changes are intended to clarify how and when extensions are granted by staff.

Councilman Prete expressed concerns regarding the proposed language "If developer is actively pursuing completion of improvements before recording, Final Plat Approval Staff may grant a single extension of time to record of up to 12 month if developer applies for an extension before one year from the date of original approval. Any approval for any final plat not recorded within said period or extended period shall be deemed to have been revoked and any such plat shall require new preliminary plat approval before applying for new final plat approval." He suggested redefining "actively" and possibly softening the language to allow more flexibility for the developer after the 12 month extension. Due to these concerns, he would like this item continued until the next Council meeting to allow time to modify the proposed language.

Joseph Prete made a motion to continue the Land Use Code Amendment clarifying the time frame for recording final plats and a time extension process until the February 6, 2020 Council meeting. Seconded by Darin Larson. Motion approved with Darin Larson, Joseph Prete and Dave Sanders voting aye.

Cindy Beteag

From: Kole Staheli
Sent: Wednesday, January 26, 2022 4:59 PM
To: Nanette Billings; Kaden DeMille; Cindy Beteag
Subject: Sponsorship Request from Vacation Races

Mayor Billings, Kaden, and Cindy,

I have had some questions regarding the recent sponsorship request from Vacation Races, so I have been doing a little research. It is important that I gather and provide accurate information as it pertains to this matter. With that in mind, this afternoon I spoke directly with the Washington County School District (WCSD) Transportation Director, Lane Hadlock. We had a very productive conversation, and Lane was happy to answer each question that I asked, as well as share some of his own thoughts. He has 34 years of experience in the capacity of school bus transportation, so he is very knowledgeable and familiar with policy and procedure.

Initially, I explained the request received by Hurricane City from Vacation Races regarding their upcoming event. I told Lane that it was important to our city leaders that they have the information needed to make a logical decision. He shared that the primary role of the school district is to provide transportation services to all youth in Washington County for educational purposes, not only during the school day, but also in support of extracurricular activities on a regular basis. Then, they strive to support city and county events as they are able. He was insistent that their role is not designed to support the private sector, and in many instances, Vacation Races and similar groups have found a “loophole” and are taking advantage of cities for personal and financial gain. Lane even went so far as to call this practice unethical. He continued to share some thoughts and stated that this is not common practice in Northern Utah where he worked for many years. Perhaps of greatest importance during our discussion today is the fact that the WCSD Transportation Department is currently understaffed, and therefore, would deny any request – even from Hurricane City. They are desperately trying to hire Bus Drivers, and they are offering a very high entry level wage, along with bonuses and incentives, to attract new employees.

On as side note, several days ago I spoke with a Race Director from another city in our Washington County, and they plan to discontinue this type of sponsorship. They have come to recognize it has not been a good partnership.

As a department head, I feel it is my obligation to provide a staff recommendation to our city leaders, so I am recommending that we not approve the request from Vacation Races. I would welcome the opportunity to discuss this matter further if you choose.

Kole

From: [Cindy Beteag](#)
To: [Dehn Craig](#)
Cc: lyle@vacationraces.com; anna@vacationraces.com; [Kaden DeMille](#); [Nanette Billings](#); [Kole Staheli](#)
Subject: RE: FW: Upcoming City Council Meeting
Date: Wednesday, January 26, 2022 10:31:00 AM

Dehn,

Our Mayor has approved your request to be on the agenda. The meeting will be on February 3rd @ 6:00 p.m.

Thanks,

Cindy Beteag

Cindy Beteag
City Recorder
Hurricane City
Office 435-635-2811 x 106

From: Dehn Craig <dehn@vacationraces.com>
Sent: Friday, January 21, 2022 1:07 AM
To: Cindy Beteag <cindy@cityofhurricane.com>
Cc: lyle@vacationraces.com; anna@vacationraces.com; Kaden DeMille <kaden@cityofhurricane.com>; Nanette Billings <billings@cityofhurricane.com>; Kole Staheli <kole@cityofhurricane.com>
Subject: Re: FW: Upcoming City Council Meeting

Thank you, Cindy.

I just want to be sure I am reading your email response clearly.

Are you saying that we are being denied the opportunity to appear in front of the City Council to make our request?

Your second paragraph in part took my explanation of why we were seeking city support or sponsorship and repeated it back to me as reason for NOT sponsoring the event. So I am still a little confused. I am very sensitive to the problems a small community like Hurricane has in trying to do what is best for its citizens and to protect the community from being exploited and overrun. I do not envy the job that city council men and women and the Mayor have to navigate the different policies and voices of business and citizens alike. I am grateful for the time of everyone in public service. That being said, this is not an instance of a private company just looking to exploit your public services in an attempt to maximize profits. This event has a significant economic impact on the city of Hurricane. It brings thousands of people to town who will stay in your hotels, eat in your restaurants, visit your shops, etc. It employs mostly locals! We are not asking for sponsorship to close roads, use public works, public safety, parks and rec, etc. We are not asking for any favors or to utilize any city services. We are simply asking for a sponsorship in order to secure school buses (which we intend to

pay for). This is a very common practice all across the country - for a town to sponsor an event in order to secure school buses for transportation - since that is how many school districts are set up to only take the request and insurance of the city. We mitigate that risk by adding the city as additionally insured on our event insurance policy. This was approved just two years ago. You can see how our request is in fact very in line with the guidelines you set forth and has a positive impact on the town and is not a drain on its resources. I understand this might sound like a headache you don't want to deal with (a new administration likely has a hundred things on its plate and this might seem like a distraction), but it is a very standard and simple request I would hope we might be able to make to the City Council and those who have say over it.

Please let me know how we should proceed.

Thank you,

Dehn Craig

On Tue, Jan 18, 2022 at 5:22 PM Cindy Beteag <cindy@cityofhurricane.com> wrote:

Sorry for the delay.

Hurricane City conducts a variety of annual events and activities throughout the year that are planned, prepared, and executed by city employees and volunteers. Also, several non-profit Hurricane Valley civic groups (Chamber of Commerce, Rotary Club, Lions Club, etc.) conduct several events annually with the support of city employees. Each of these events benefit our local citizens and provide a quality recreational experience for all that choose to participate.

In the case of special event requests from outside, private groups (primarily for profit), Hurricane City isn't able to keep up with the demand in a rapidly growing community. These events place an additional strain on our departments to include Public Safety (Police and Fire), Streets, Parks and Recreation. Many private groups seek sponsorship from the city with the sole purpose to obtain privileges such as city resources or venues at little or no cost, which allows them to benefit financially. Furthermore, some groups seek city sponsorship for insurance purposes. As a result, Hurricane City then accepts the risk and liability in the event of an accident, incident, and/or injury in some instances.

The direction Council gave staff was to stay within the guidelines above as far as sponsoring. I hope this helps.

Thank you.

Cindy Beteag

Cindy Beteag
City Recorder
Hurricane City
Office 435-635-2811 x 106

From: Dehn Craig <dehn@vacationraces.com>
Sent: Friday, January 14, 2022 1:50 PM
To: Cindy Beteag <cindy@cityofhurricane.com>
Cc: lyle@vacationraces.com; anna@vacationraces.com; Kaden DeMille <kaden@cityofhurricane.com>; Nanette Billings <billings@cityofhurricane.com>
Subject: Re: FW: Upcoming City Council Meeting

Thanks for the response. That is certainly the direction things are going and I understand the challenge the city has. As an event that has been around for 10 years, operated by a company whose employees are all local to Hurricane and St George, and which has significant economic impact to the town each year, I would hope that we would be given consideration - or at least the opportunity to make our case and discuss it. Can you explain what the changes are that are being made? Is the town refusing to sponsor ANY special events in this way, or is there a criteria or process for determining which events to sponsor? We would like to better understand this so we can at least see how we do or do not qualify for the support from the city.

Thank you,

Dehn Craig

On Fri, Jan 14, 2022 at 12:33 PM Cindy Beteag <cindy@cityofhurricane.com> wrote:

Good Afternoon Dehn,

Staff met to discuss this request further and there are some concerns with sponsoring the event. Due to the rising amount of events that are coming to our town and the want for all of them to be sponsored by Hurricane City, we have to make some changes. Due to these changes, we will not be able to sponsor this event. We are truly sorry for any inconvenience this may cause you and thank you in advance for your understanding.

We wish you great success in the event. Should you have any questions, please reach out to myself or Mayor Billings.

Thank you,

Cindy Beteag

Cindy Beteag
City Recorder
Hurricane City
Office 435-635-2811 x 106

From: Dehn Craig <dehn@vacationraces.com>
Sent: Monday, January 10, 2022 12:56 PM
To: Cindy Beteag <cindy@cityofhurricane.com>

Cc: lyle@vacationraces.com; anna@vacationraces.com

Subject: Re: FW: Upcoming City Council Meeting

Hello Cindy! Thanks for getting back to me.

We do not need a city permit, but as I understand it we would need the city to "sponsor" the event in order for us to use the school buses. How it has been explained to me is that the school district will only allow the use of buses if the request comes through the city - they will only accept the city insurance, not ours. However, we can add the City of Hurricane as additionally insured on our event insurance.

Does that answer your question? Please let me know if there is anything else I can do for you. Thanks!

Dehn

On Mon, Jan 10, 2022 at 9:14 AM Cindy Beteag <cindy@cityofhurricane.com> wrote:

Good Morning Craig,

I am happy to put you on the next City Council agenda but our Mayor has a couple questions (see below). I have pulled up the minutes from last time you were here and I will provide them to the Council beforehand. Can you explain why Hurricane City would need to give approval for the use of buses? Would your company provide insurance on the buses?

Thank you,

Cindy Beteag

Cindy Beteag
City Recorder
Hurricane City
Office 435-635-2811 x 106

From: Nanette Billings <billings@cityofhurricane.com>

Sent: Friday, January 07, 2022 9:35 AM

To: Cindy Beteag <cindy@cityofhurricane.com>

Subject: Fwd: Upcoming City Council Meeting

Cindy,

Will you contact Dehn and ask him to send us the information he had from 2020 so we know what exactly was approved before. I don't know why he needs our approval for the use of busses. Does he need an event permit? I am fine with him being on the council agenda if he can answer those questions and provide the previous information so we have something to reference. Thanks,

Nanette Billings
billings@cityofhurricane.com
435-680-2757

Begin forwarded message:

From: Dehn Craig <dehn@vacationraces.com>
Subject: Upcoming City Council Meeting
Date: January 7, 2022 at 8:33:44 AM MST
To: council@cityofhurricane.com, "kaden@cityofhurricane.com"
<kaden@cityofhurricane.com>
Cc: Lyle Anderson <lyle@vacationraces.com>, Anna Basso
<anna@vacationraces.com>

Hello Kaden! My name is Dehn Craig. I reached out to Kevin Tervort, but he informed me he is no longer on the City Council and suggested I reach out to you. I work with Lyle Anderson, we put on the Zion Half Marathon every year. Previously (January 2020) we were approved by the Hurricane city council to use school buses for our event, but we were never able to coordinate the use of those buses in time. Our event is upcoming and before we try to coordinate that with the school district and the appropriate parties involved, we were hoping to attend the upcoming city council meeting (3rd Thursday since we just missed yesterday's) to request the city council approve our use of the buses again for this year.

Who would be the right person to talk to to make sure we were able to steal a few minutes of the council's time and be put on the agenda of the upcoming meeting?

Thanks for your help!

Dehn
775-544-1139

--

dehn@vacationraces.com | 775.544.1139

--

dehn@vacationraces.com | 775.544.1139

--

dehn@vacationraces.com | 775.544.1139

--

dehn@vacationraces.com | 775.544.1139



147 N 870 WEST, HURRICANE, UTAH 84737
PHONE: 435-635-2811 FAX: 435-635-2184
www.cityofhurricane.com

Date of Application _____

Permit Fee	\$250.00
Application Fee	\$50.00
Total Due	\$300.00

SINGLE EVENT BEER PERMIT

NOTICE: Please complete each statement below. Incomplete applications will not be accepted.

SECTION A — BUSINESS INFORMATION

Name of Business: Washington County Fair

Business Phone: 435-922-2766 Fax Number: _____

Contact Person: Susi Lafaele

Business Address: 5500 W. 700 S. Hurricane UT 84737
(Street Number) (Suite) (City) (State) (Zip)

Mailing Address (if different): 197 E. Tabernacle Street St. George UT 84770
(Street Number) (City) (State) (Zip)

State Sales Tax Number: 12125513 002 STC Does this business have a current DABC license: No

Business Type (check one):

Proprietorship ☐ Partnership ☐ Corporation ☐ Religious Organization ☐ Non-profit Corporation ☐

SECTION B — EVENT INFORMATION

Event Name: Washington County Fair

Event Venue: Washington County Legacy Park

5500 W. 700 S. Hurricane UT 84737
(Street Number) (Suite) (City) (State) (Zip)

Date (s) of the event: April 15-23 Alcohol Service hours: 2p To 11:30p

Type of Event: Community

Will food be available? Yes Full Meals? Yes Will minors attend the event? Yes

PART C — BUSINESS OWNER INFORMATION

A list of all corporate officers or partners must be included. This list must include name, home address, and phone number.

Owner's Name: _____ Title: _____

Home Address: _____
(Street Number) (City) (State) (Zip)

Home Phone: _____ Cell Phone: _____

Please add any additional owners/partners on a separate piece of paper and attach.

APPLICATION MUST INCLUDE A DETAILED PLAN ON AN 8 1/2" X 11" SHEET OF PAPER
SHOWING ALL CONTROL MEASURES.

STATE OF UTAH)

: ss.

COUNTY OF WASHINGTON)

I, Victor Iverson, being first duly sworn, depose and say as follows:

1. The foregoing Application and Questionnaire is in all respects true and correct, to the best of my knowledge and belief and
2. I am the applicant above-named and have not leased, assigned or entered into a profit-sharing arrangement of any type with any other person for operation of the above-named business except as disclosed herein; and
3. I have received and read the beer/alcoholic beverage license ordinance of the City of Hurricane, and believe that this application in all respects conforms to the requirements thereof and
4. I consent to the entry in or upon the business premises by City employees or representatives at reasonable times for the purpose of inspecting the event premises to insure compliance with applicable laws, ordinances, rules and regulation; and
5. I understand and agree that any false information contained in this application shall be grounds for denial of this application and shall constitute perjury.

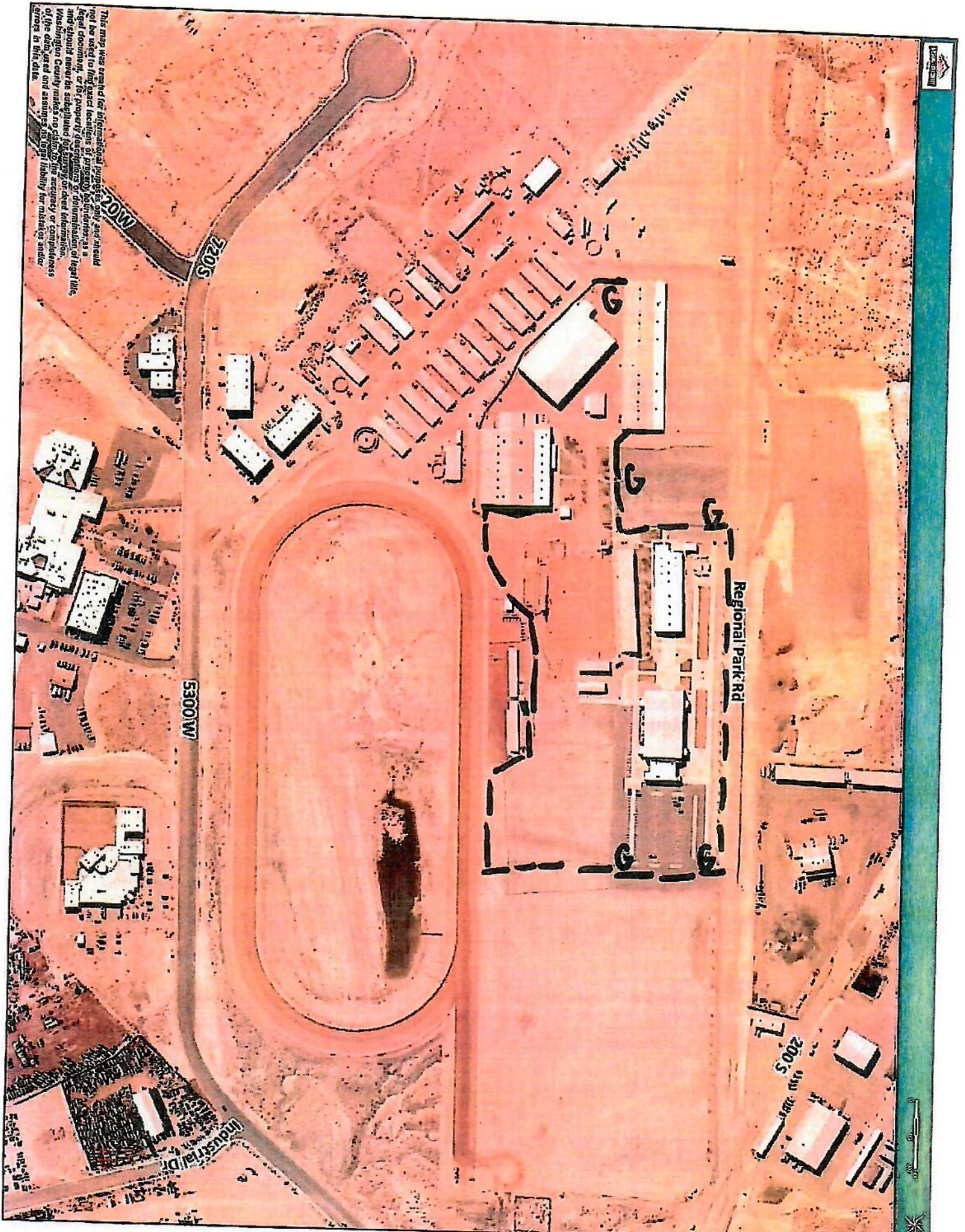
SUBSCRIBED AND SWORN TO before me this 19 day of January, 2022



CHEYENNE W. BENTLEY
Notary Public, State of Utah
Commission # 712341
My Commission Expires
July 03, 2024

Victor Iverson
Applicant
Cheyenne W. Bentley
(NOTARY PUBLIC OR CITY LICENSE
OFFICER)

Office Use Only	
TOTAL FEES \$ _____	AMOUNT PAID \$ _____
DATE _____	RECEIPT # _____
CITY LICENSE NUMBER: _____	
DATE APPLICATION WENT TO CITY COUNCIL: _____	
DATE OF APPROVAL FROM STATE: _____	



Washington County Fair Beer Control Measures

- * I.D. Station Separated from Alcohol Sales
- * Wristband
- * Trained I.D. Personnel
- * Food and Alcohol Separate
- * Required Number of Trained Servers
- * Alcohol Beverages in Readily Identifiable Containers
- * One alcohol beverage at a time per patron; limit 4
- * Security provided by Washington County Sheriff's Office
- * Beer will be in original container with a blue Washington County Fair koozie



147 N 870 WEST, HURRICANE, UTAH 84737
 PHONE: 435-635-2811 FAX: 435-635-2184
www.cityofhurricane.com

Date of Application 01.21.2022

Permit Fee	\$250.00
Application Fee	\$50.00
Total Due	\$300.00

◆ SINGLE EVENT BEER PERMIT ◆

NOTICE: Please complete each statement below. Incomplete applications will not be accepted.

SECTION A — BUSINESS INFORMATION

Name of Business: Copper Rock Golf Course

Business Phone: 435-215-4845 Fax Number: 435-359-5232

Contact Person: David Viverios / Darcy Horman

Business Address: 1567 W. Copper Rock Parkway, Hurricane, UT 84737
(Street Number) (Suite) (City) (State) (Zip)

Mailing Address (if different): same
(Street Number) (City) (State) (Zip)

State Sales Tax Number: 14999393-003-STC Does this business have a current DABC license: BE02702

Business Type (check one):

Proprietorship ☒ Partnership ☐ Corporation ☐ Religious Organization ☐ Non-profit Corporation ☐

SECTION B — EVENT INFORMATION

Event Name: LPGA EPSON TOUR - COPPER ROCK CHAMPIONSHIP

Event Venue: COPPER ROCK GC
1567 W. COPPER ROCK PARKWAY - Hurricane, UT 84737
(Street Number) (Suite) (City) (State) (Zip)

Date (s) of the event: April 18-23, 2022 Alcohol Service hours: 11am to 8pm

Type of Event: Professional Women's Golf Tour

Will food be available? yes Full Meals? yes Will minors attend the event? yes

PART C — BUSINESS OWNER INFORMATION

A list of all corporate officers or partners must be included. This list must include name, home address, and phone number.

Owner's Name: Vanderford Reality (see attached) Title: _____

Home Address: _____
(Street Number) (City) (State) (Zip)

Home Phone: _____ Cell Phone: _____

Please add any additional owners/partners on a separate piece of paper and attach.

APPLICATION MUST INCLUDE A DETAILED PLAN ON AN 8 1/2" X 11" SHEET OF PAPER SHOWING ALL CONTROL MEASURES.

STATE OF UTAH)

: ss.

COUNTY OF WASHINGTON)

I, DAVID VIVCIROS, being first duly sworn, depose and say as follows:

1. The foregoing Application and Questionnaire is in all respects true and correct, to the best of my knowledge and belief and
2. I am the applicant above-named and have not leased, assigned or entered into a profit-sharing arrangement of any type with any other person for operation of the above-named business except as disclosed herein; and
3. I have received and read the beer/alcoholic beverage license ordinance of the City of Hurricane, and believe that this application in all respects conforms to the requirements thereof and
4. I consent to the entry in or upon the business premises by City employees or representatives at reasonable times for the purpose of inspecting the event premises to insure compliance with applicable laws, ordinances, rules and regulation; and
5. I understand and agree that any false information contained in this application shall be grounds for denial of this application and shall constitute perjury.

David Vivciros

SUBSCRIBED AND SWORN TO before me this 27th day of January, 20 22



PENNY R JAMES-GARCIA
Notary Public, State of Utah
Commission # 703166
My Commission Expires On
December 18, 2022

Applicant
Penny R James-Garcia
(NOTARY PUBLIC OR CITY LICENSE
OFFICER)

TOTAL FEES \$	<u>300.00</u>	Office Use Only	AMOUNT PAID \$	<u>300.00</u>
DATE	<u>1/28/22</u>	RECEIPT #	<u>8.155227</u>	
CITY LICENSE NUMBER: _____				
DATE APPLICATION WENT TO CITY COUNCIL: <u>2/3/22</u>				
DATE OF APPROVAL FROM STATE: _____				

KNUDSON FAMILY TRUST

Carla Burton, Trustee

(Joseph Knudson, 100% Beneficiary)

Owns 100% of

The Vanderford Company, Inc.

A Nevada Corporation

Kenneth C. Knudson, President/Director

Joseph Knudson, Secretary/Director

Which Owns 100% of

Vanderford Realty, Inc.

A Nevada Corporation

Kenneth C. Knudson, President/Director

Joseph Knudson, Secretary/Director

Which Owns 100% of

Copper Rock Group Course, LC

A Utah Limited Liability Company

Kenneth C. Knudson, Manager

Operator of Golf Course in Hurricane [Washington County], Utah

LPGA EPSON Tour
Copper Rock Championship

Date: April 18-23, 2022
Tournament: April 21-23

Event permit for alcohol during the tournament aspect of the Copper Rock Championship.
The professional tournament will be April 21-23, 2022 (Thursday-Saturday)

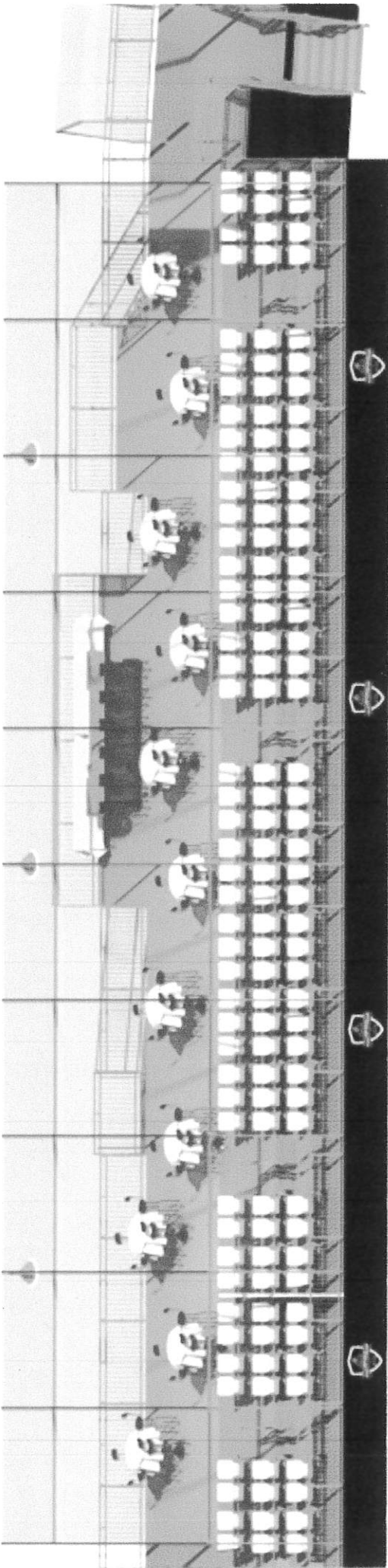
Copper Rock Golf Club currently has a beer/alcohol license to sell from the Copper Rock Golf Clubhouse. The purpose of this document is to receive permits for an event alcohol license that will allow else to sell alcohol from the VIP Hospitality Club located on the 18th green.

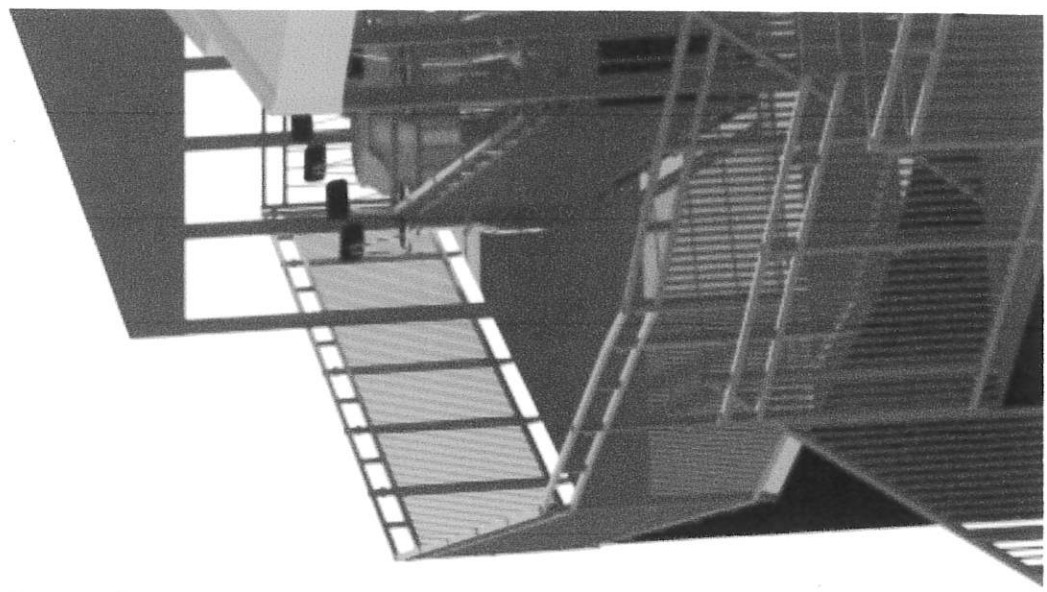
Attached to this document are renderings of our VIP Hospitality Club, where we plan to sell alcohol, access points to the area and our security.

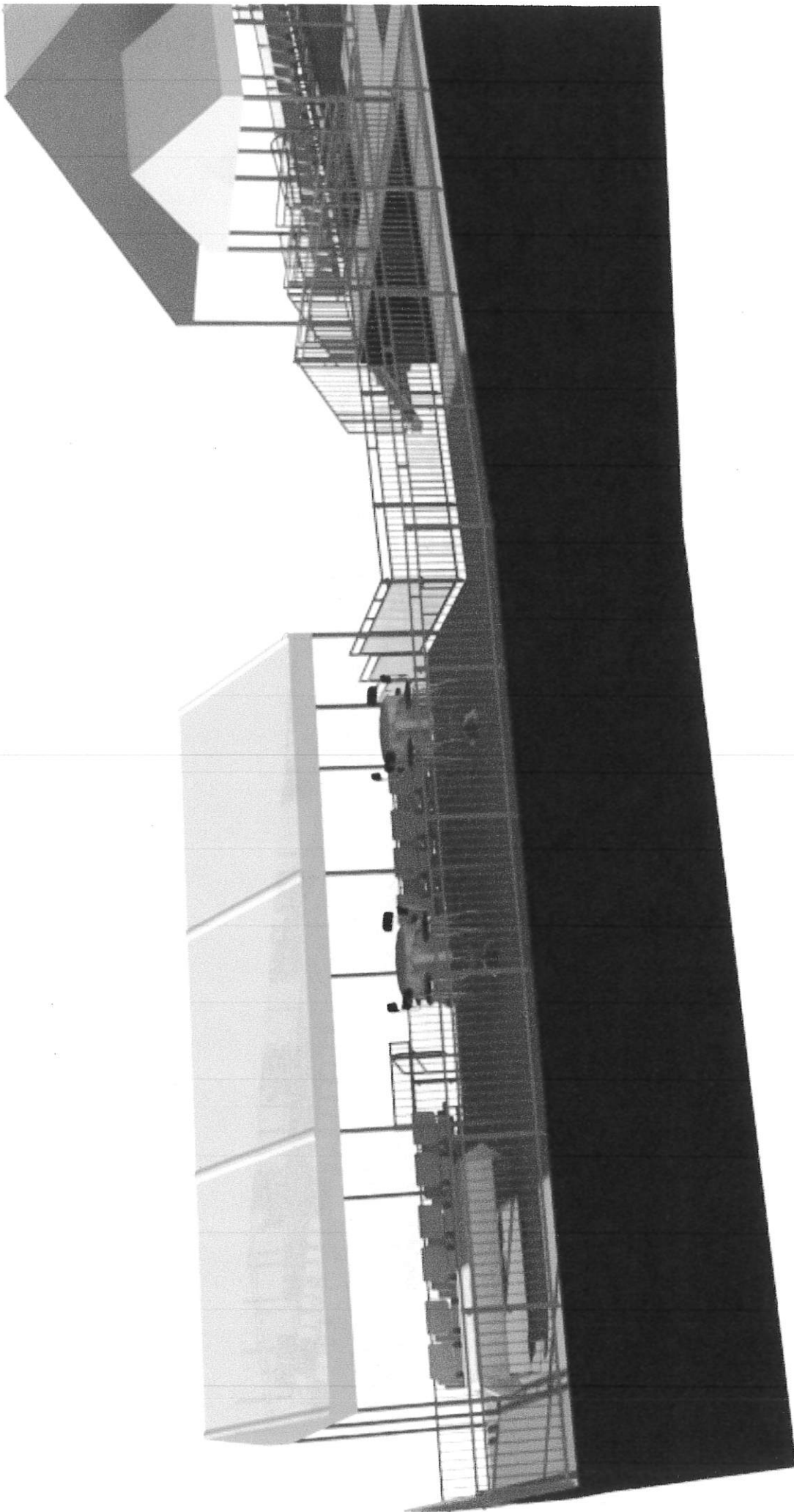
Hospitality Club Access Points

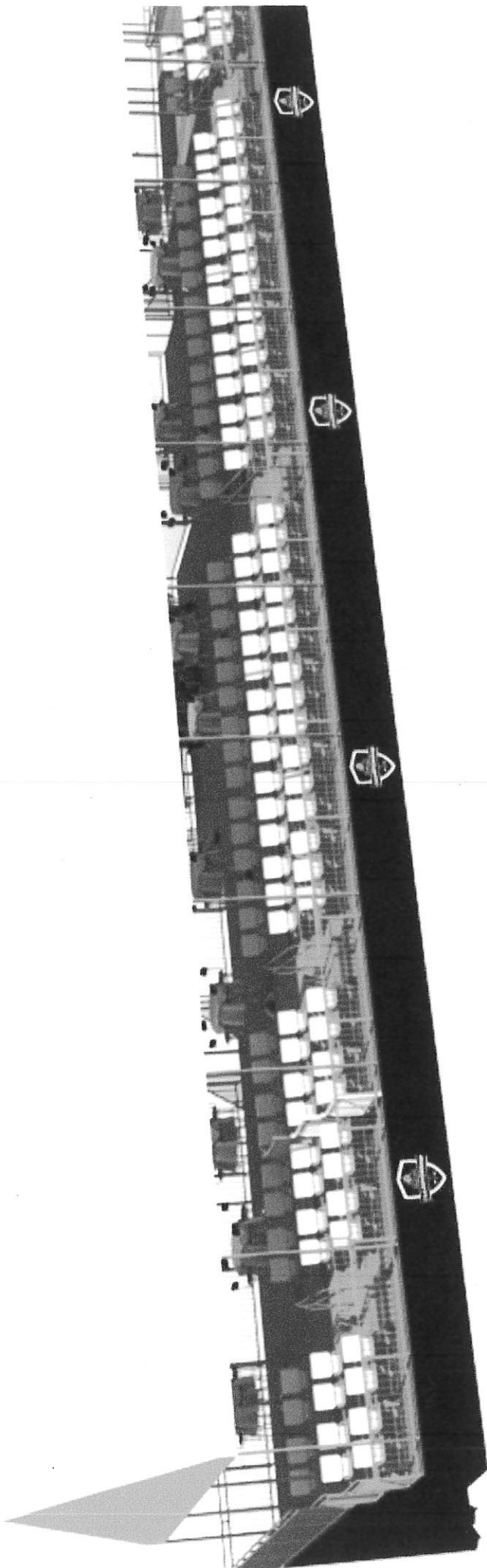
There are three access points to the VIP Tent

1. An ADA ramp that is accessed on the back of the tent
2. A staircase adjacent to the ADA ramp, again located at the back of the tent
3. A staircase on the far end of the VIP tent, this tent is where the alcohol will be sold for those who want to purchase beer.
 - a. There will be a white picket fence area that potential patrons have to pass through before entering the access point
 - b. There will be a volunteer marshall who will check tournament badges before entering this area
4. The VIP Tent area will have at least 6-8 volunteer marshalls inside the tent each day of the tournament (Thursday-Saturday)
5. Onsite Security will have ten (10) security personnel onsite during the tournament. They will pass through this area hourly during the tournament.











STAFF COMMENTS

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

Discussion:

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

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

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

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

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

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

Findings:

The application is currently under review.

Recommendation:

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

Attachments:

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

Impact Fees & Housing Affordability

A Guide for Practitioners



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IMPACT FEES AND HOUSING AFFORDABILITY

A Guidebook for Practitioners

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

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About the Guidebook

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

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

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

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NOTICE

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Executive Summary

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

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

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

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

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

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

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

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

Designing More Equitable Fees

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

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

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

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

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

Additional Resources

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

Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 1 - Impact Fees - Past, Present and Future

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

The Need for Infrastructure Financing Tools

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

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

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

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

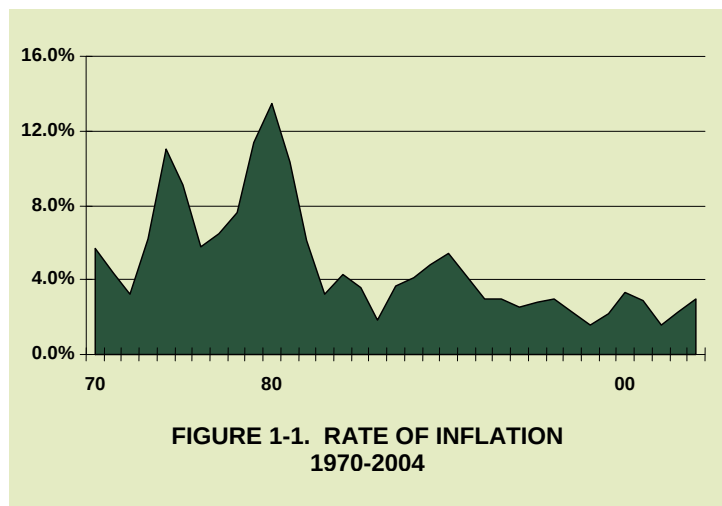
¹³ In 1920 the urban population first equalled the non-urban population in the U.S. Since then urbanization has grown to reach over 80 percent by the year 2000.

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

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

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

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



¹⁴ Nostalgia notwithstanding.

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

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

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

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

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

Local governments were faced with conflicting demands:

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

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

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

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

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

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

²⁰ *Ibid.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Proliferation of Impact Fees

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

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

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

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

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

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

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

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

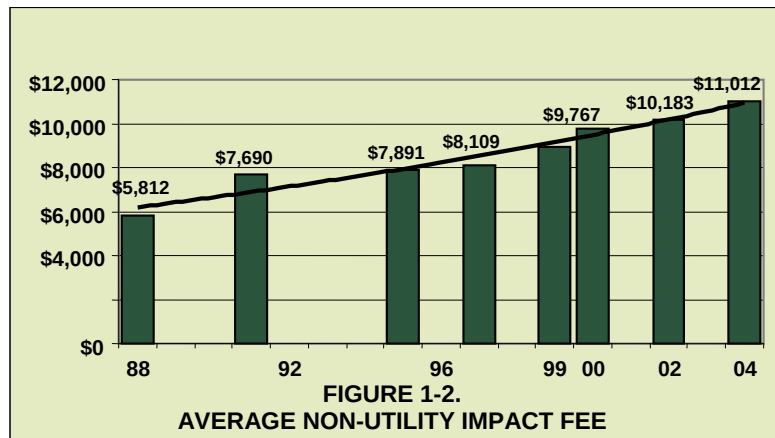
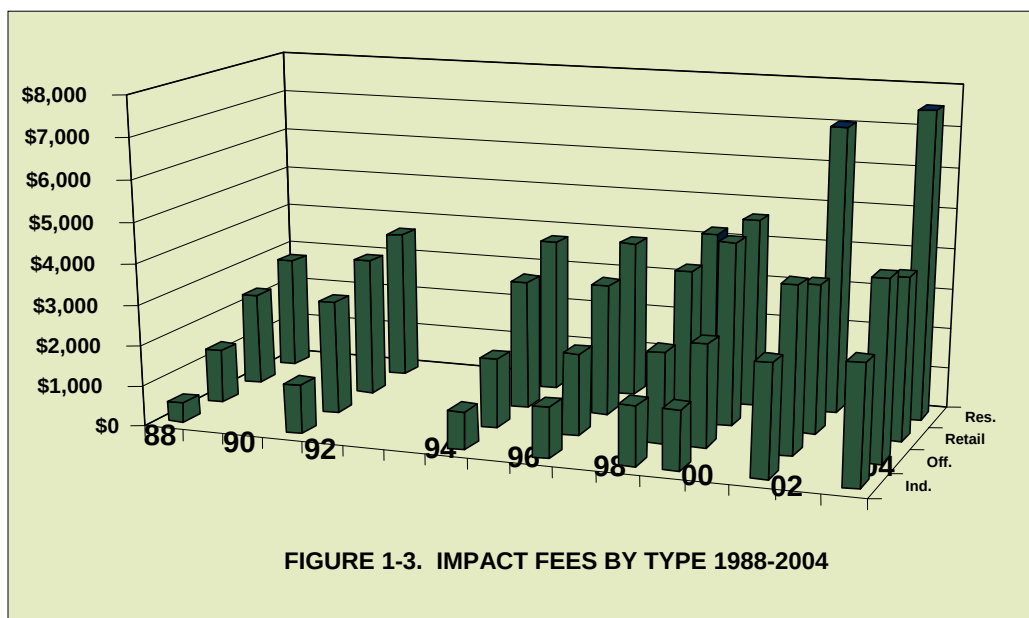


TABLE 1-4. CONSTANT SAMPLE IMPACT FEE 1988 – 2004			
	1988	2004	Avg. Annual % Increase
Residence	\$2,782	\$7,564	10.7%
Industrial	\$481	\$2,913	31.6%
Office	\$1,316	\$4,518	15.2%
Retail	\$2,277	\$3,978	4.7%



General Trends in Impact Fees

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

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

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

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

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

³⁰ 329 So. 2d 314.

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

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

³³ 311 So.2d 371.

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

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

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

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

Regressivity and the Impact on Affordable Housing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 2 - Capital Facility and Infrastructure Financing Options

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

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

Principles of Efficient Facility Pricing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

General Financing Options

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

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

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

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

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

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

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

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

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

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

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

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

Principal Revenue Methods

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

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

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

Developer Exactions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Special Assessment Districts

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

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

TABLE 2-3. GOVERNMENT UNITS: 1972 - 2002⁴⁰

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

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

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

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

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

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

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

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

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

Impact Assessments

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

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

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

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

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

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

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

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

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

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

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

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

Policy-Making Criteria

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

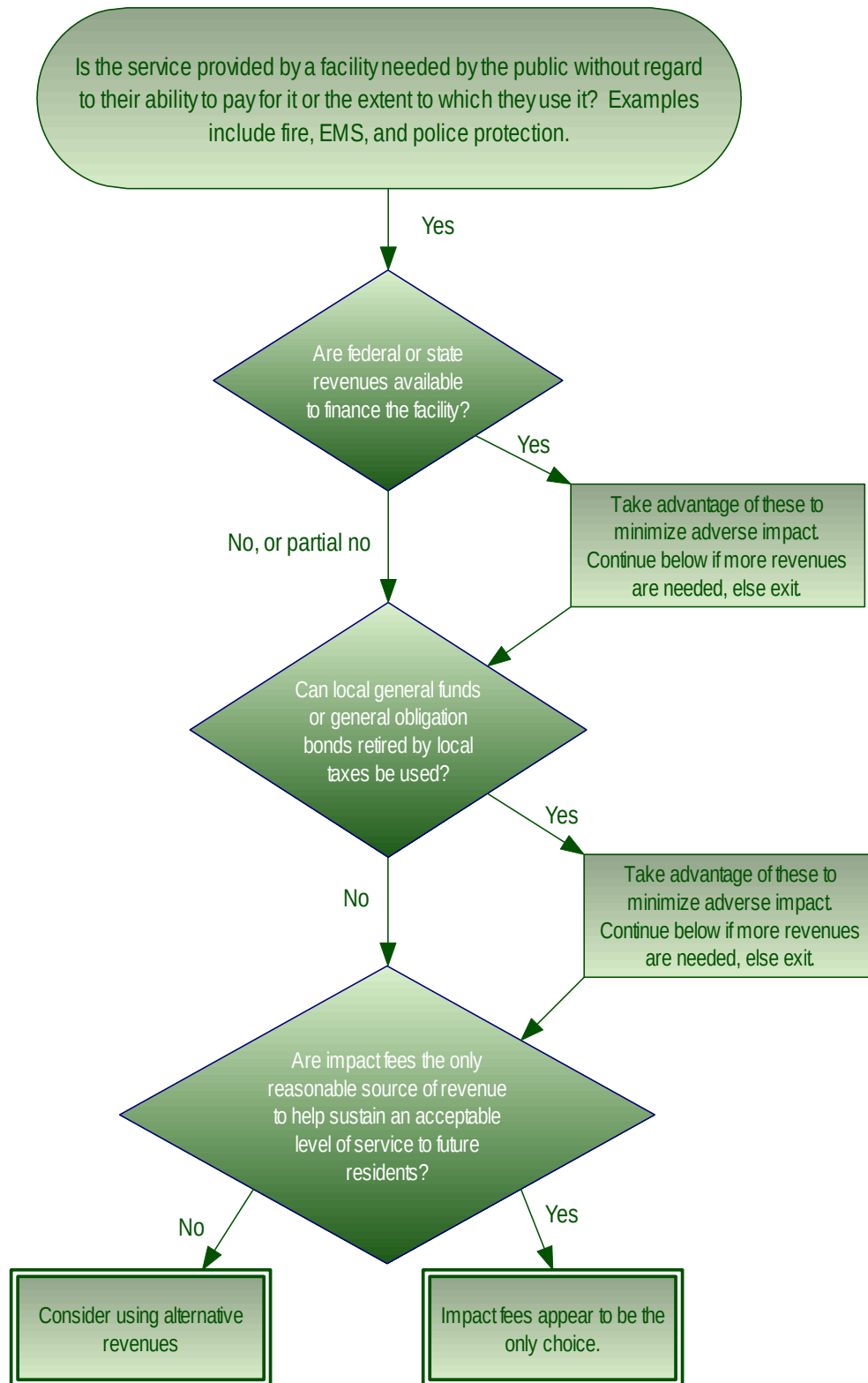
TABLE 2-4. SUMMARIZING THE POLICY-MAKING ISSUES OF ALTERNATIVE FINANCING MECHANISMS

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

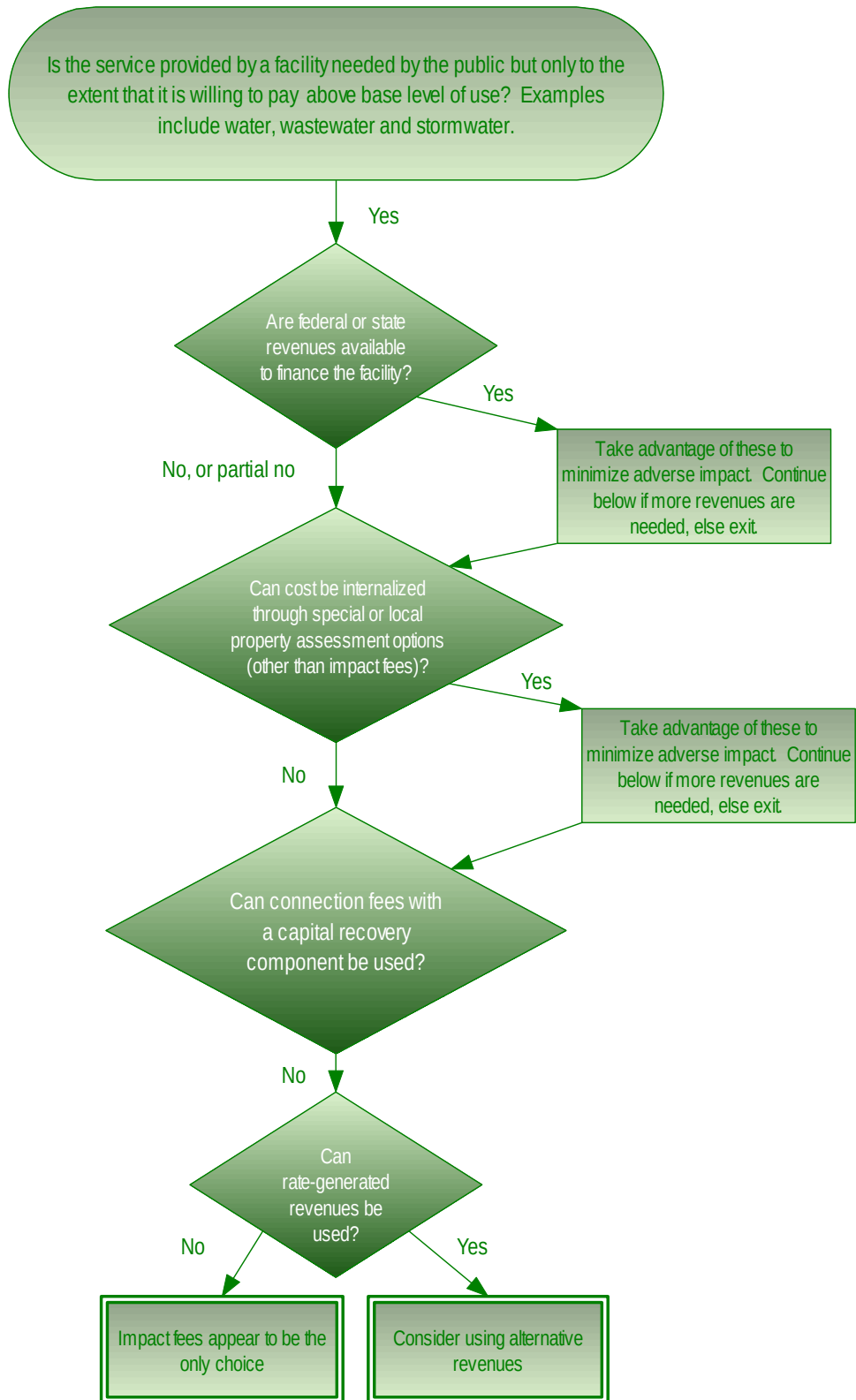
Alternative Funding Decision Charts

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

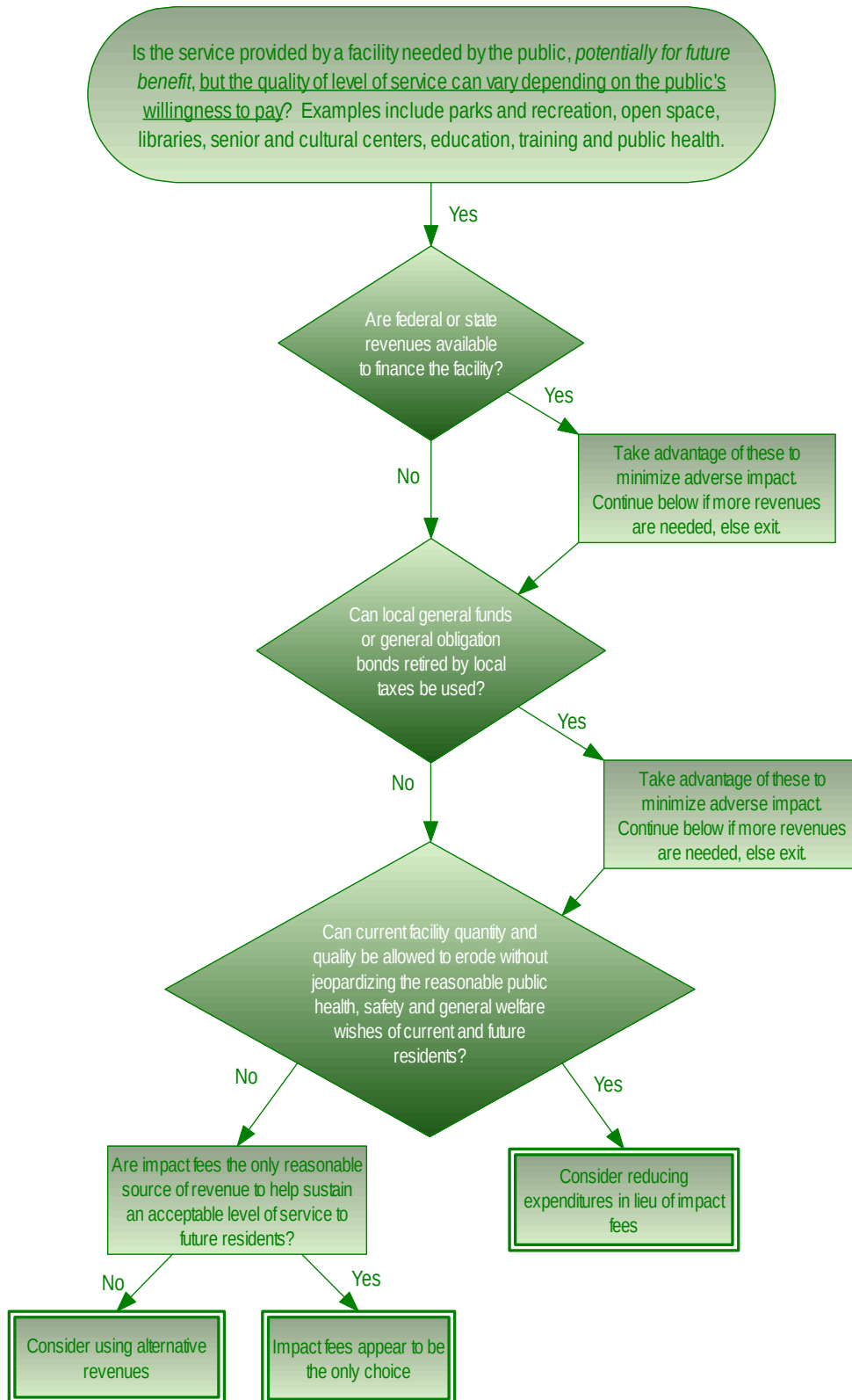
Decision Chart 2.1 Public Safety Facilities



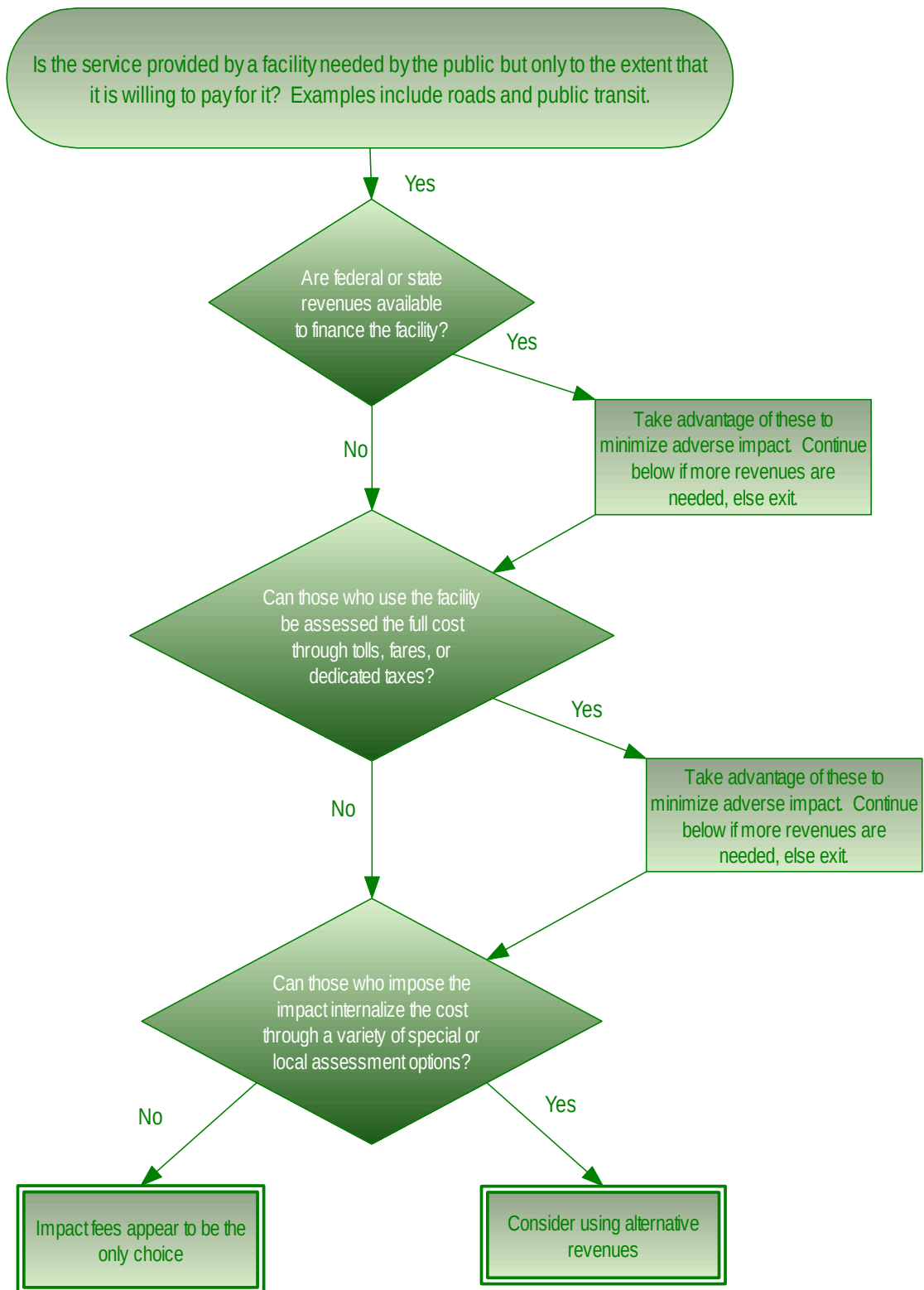
Decision Chart 2.2 Water-Based Utilities



Decision Chart 2.3 Public Amenity Facilities



Decision Chart 2.4 Transportation



Chapter 3 - The Role of the State

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

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



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

FIGURE 3-1. STATES WITH IMPACT FEE ACTS

Review of State Enabling Acts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TABLE 3-2. SELECTED IMPACT FEE PROVISIONS

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

Impact Fee Statutes and Affordable Housing

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

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

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

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

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

Chapter 4 - Impact Fees and Housing Affordability

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

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

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

Review of Impact Fee Cost Variables

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

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

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

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

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

TABLE 4-1 PERSONS PER 1,000 SQUARE FEET

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

Source: Compendium of studies conducted by the authors.

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

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

where:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Detached Units

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

Attached Units

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

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

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

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

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

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

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

Description of Square Footage Valuations Using Impact Fees

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

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

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

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

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

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

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

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

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

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

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

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

Example:

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

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

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

Example:

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

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

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

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

Example:

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

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

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

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

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

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

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

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

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

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

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

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

TABLE 4-5. VEHICLE TRIPS BY HOUSEHOLD SIZE

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

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

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

Example:

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

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

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

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

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

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

Example:

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

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

Summary

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

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

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

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

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

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

Elements of Program Design

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

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

Designing Service Areas

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

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

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

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

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

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

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

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

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

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

Level of Service Standards

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

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

Situation-Specific Reductions

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

Atlanta, Georgia: An Innovative Approach to Affordability

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Source: Duncan Associates.

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

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

Source: Denver Water.

Revenue Credits

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

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

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

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

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

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

Broadest Reasonable Base

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

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

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

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

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

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

Timing of Payments

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

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

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

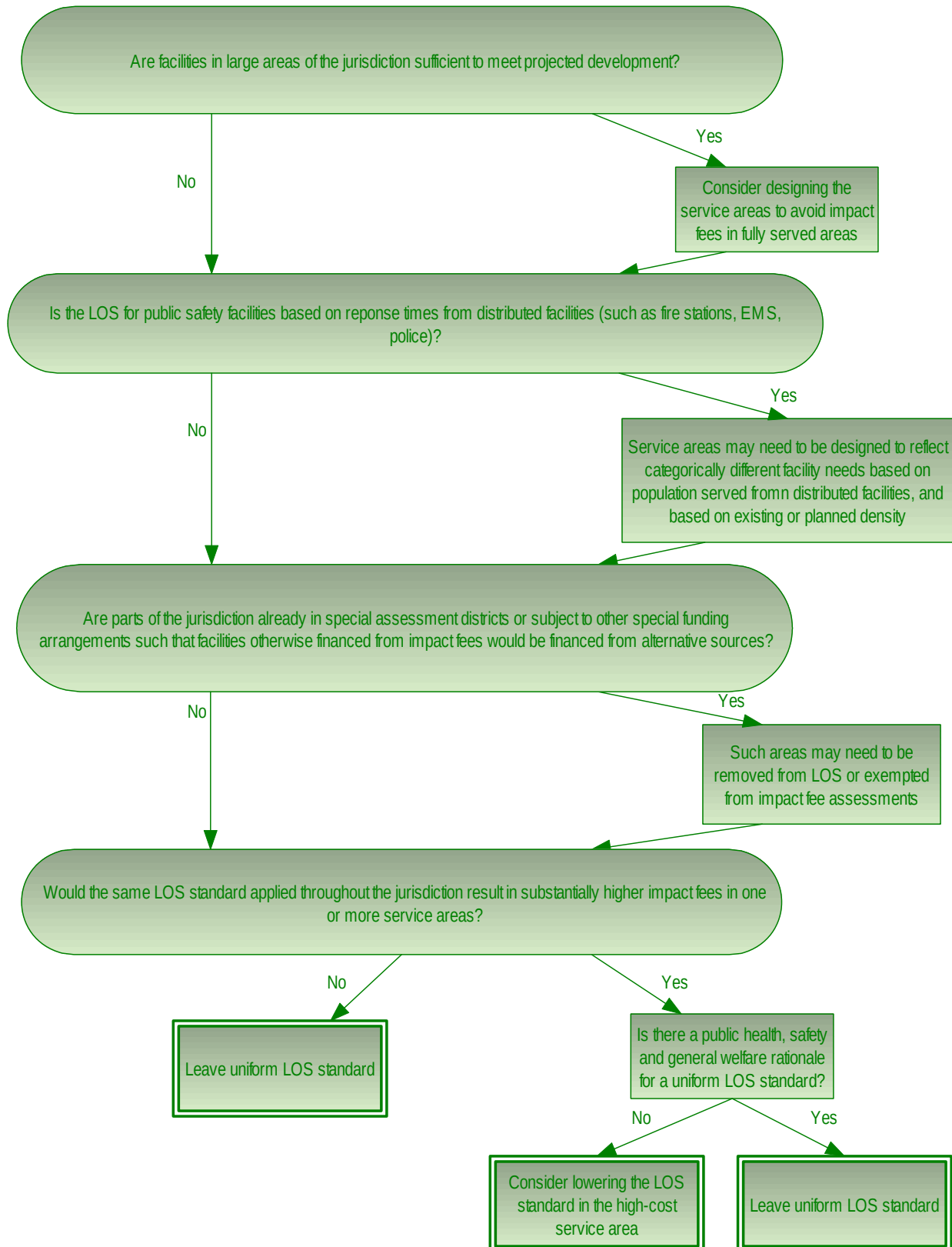
⁵⁰ Richard Florida, *The Flight of the Creative Class*, 2005, Collins (New York); *Cities and the Creative Class*, 2005, Routledge (London); *The Rise of the Creative Class*, 2004, Basic Books (New York).

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

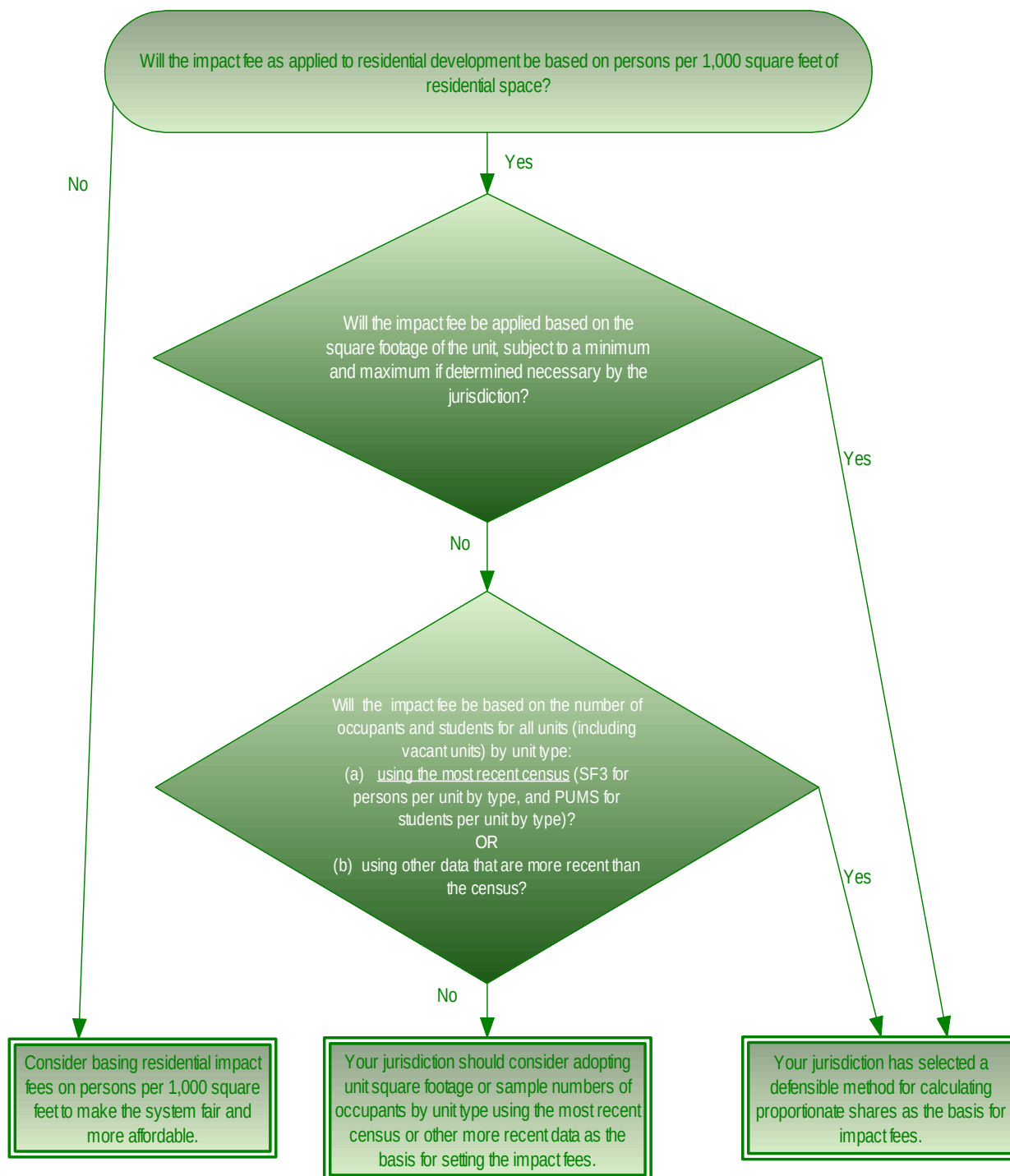
Impact Fee Decision Charts

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

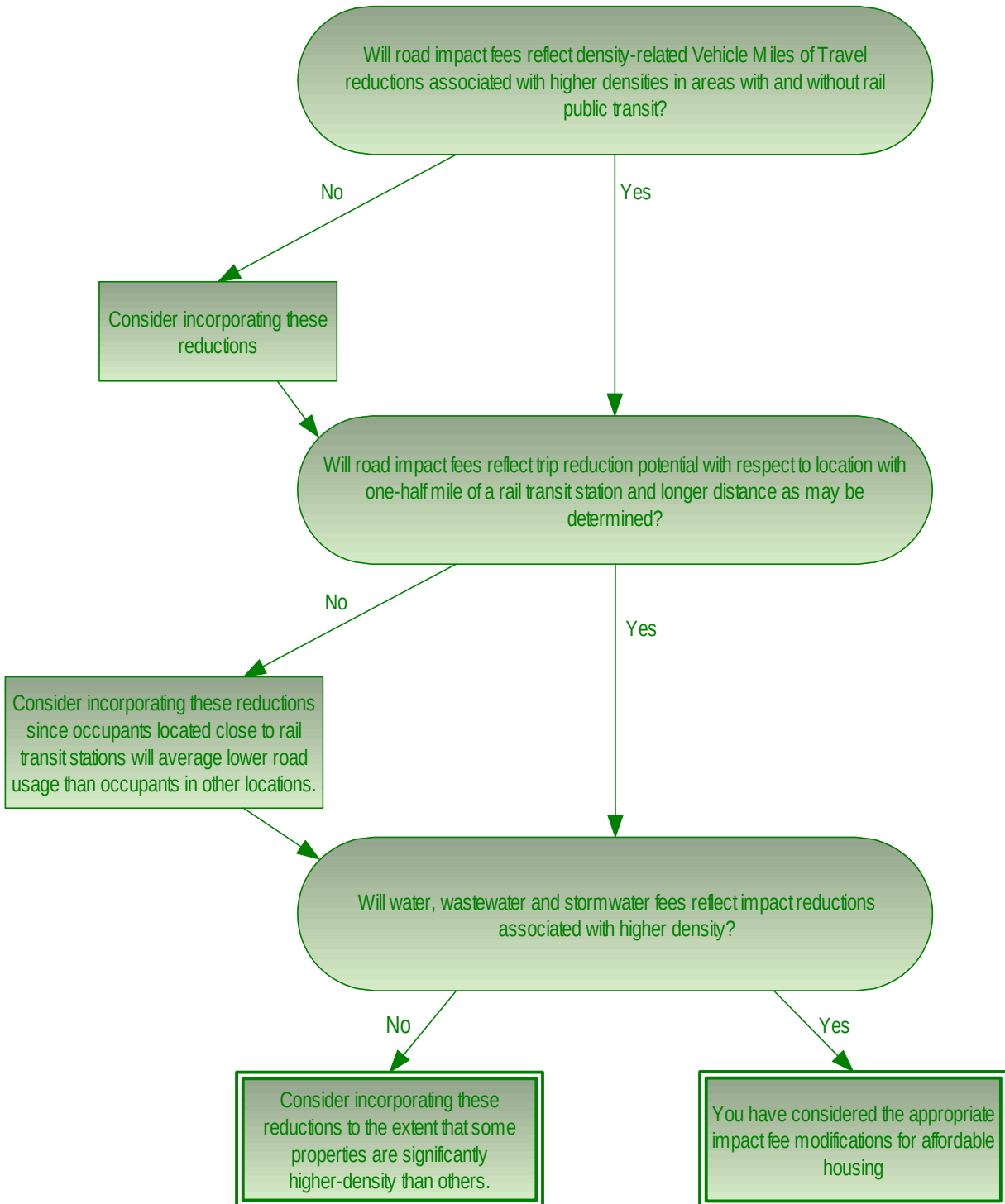
Decision Chart 4.1 Designing a Level of Service (LOS) Area



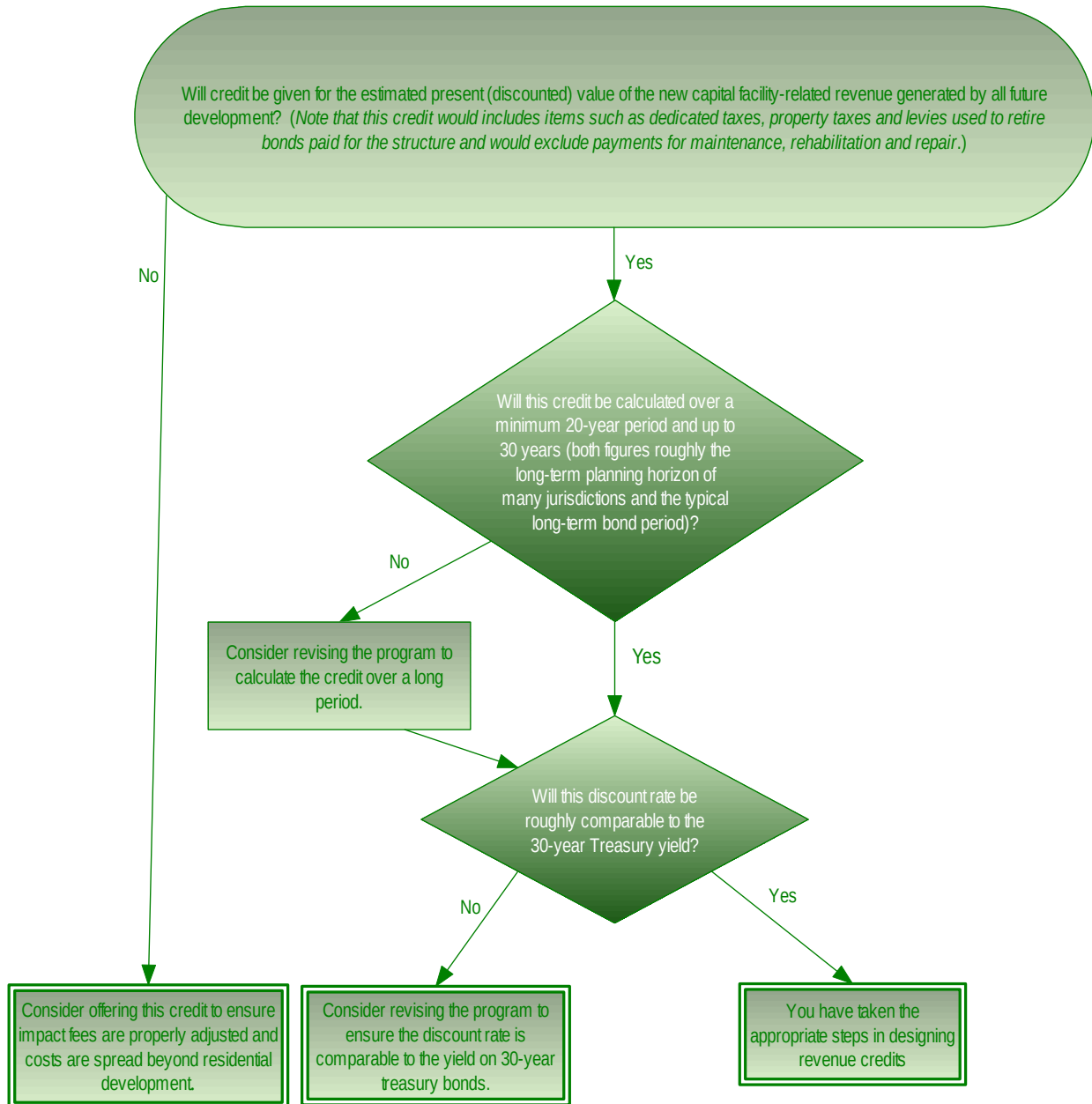
Decision Chart 4.2 Designing for Affordable Housing



Decision Chart 4.3 Including Situation Specific Reductions



Decision Chart 4.4 Assessing Appropriate Revenue Credits



Specific Housing Affordability Measures as Part of Impact Fee Policy

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

Exemptions

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

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

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

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

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

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

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

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

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

Exclusions

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

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

Waivers

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

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

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

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

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

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

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

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

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

Forgivable Downpayment Loans

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

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

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

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

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

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

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

Deferred Impact Fee Payment

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

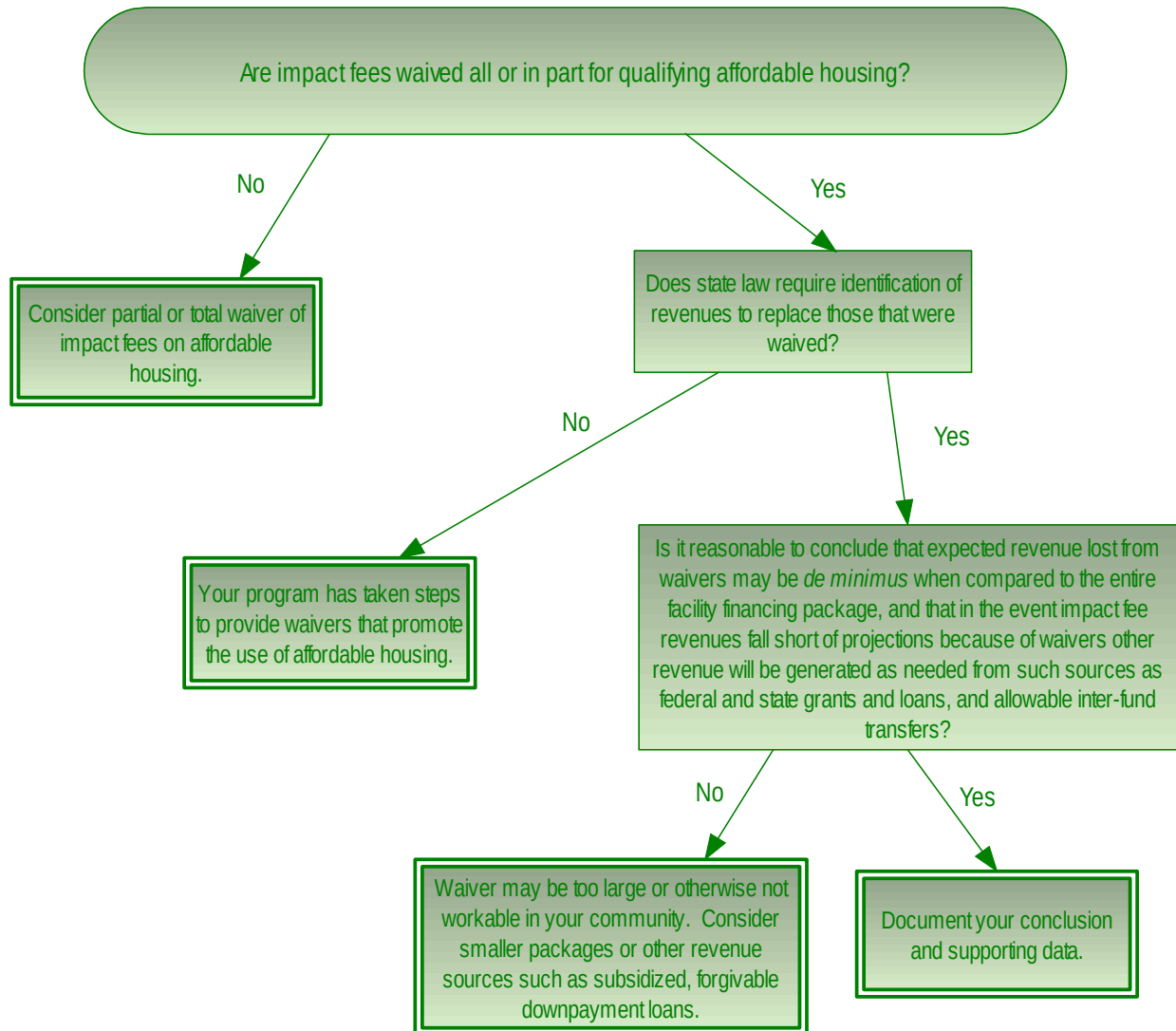
- Buyers of very low and low income housing may apply for a loan from the County for 100 percent of the impact fees assessed on very low and low income housing as defined in the Martin County Comprehensive Plan. Repayment is due upon sale or transfer of the affected property, or at the end of 15 years,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

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

Housing Affordability Questions to Consider

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

Decision Chart 4.5 Affordable Housing



Chapter 5 - Case Studies

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

Atlanta, Georgia

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



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

Enabling Legislation for Atlanta

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

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

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

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

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

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

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

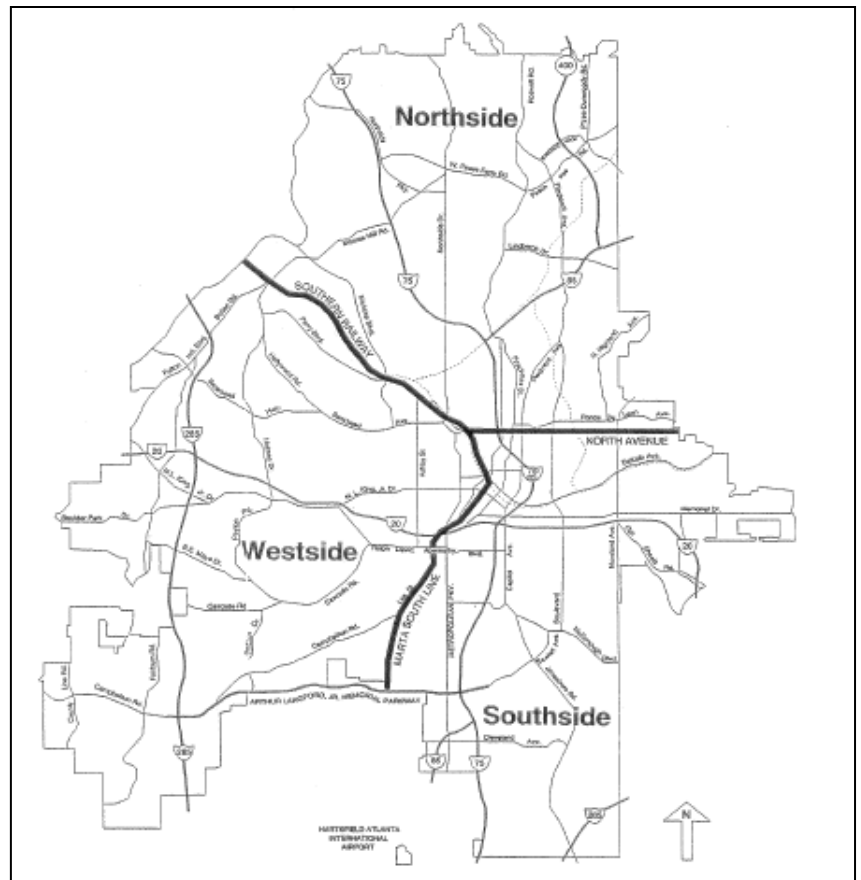


FIGURE 5-1. ATLANTA PARKS AND RECREATION SERVICE AREAS

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

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

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

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

TABLE 5-1. ATLANTA IMPACT FEE CALCULATIONS

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

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

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

TABLE 5-2. ATLANTA FEE SCHEDULES

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

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

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

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

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

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

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

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

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

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

Lessons from Atlanta

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

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

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

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

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

Legal Issues for Atlanta

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

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

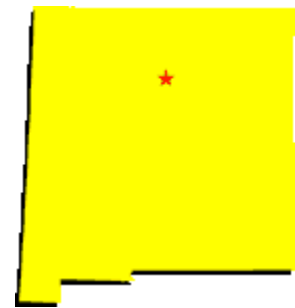
most were used to improve sidewalks in the south so that workers living in the south could get to their jobs in the north – consistent with the city’s strong city-wide north-south travel pattern.

Next Steps for Atlanta

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

Albuquerque, New Mexico

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



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

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

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

The fees went into effect on July 1, 2005.

Enabling Legislation for Albuquerque

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

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

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

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

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

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

better serve existing development..."

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

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

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

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

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

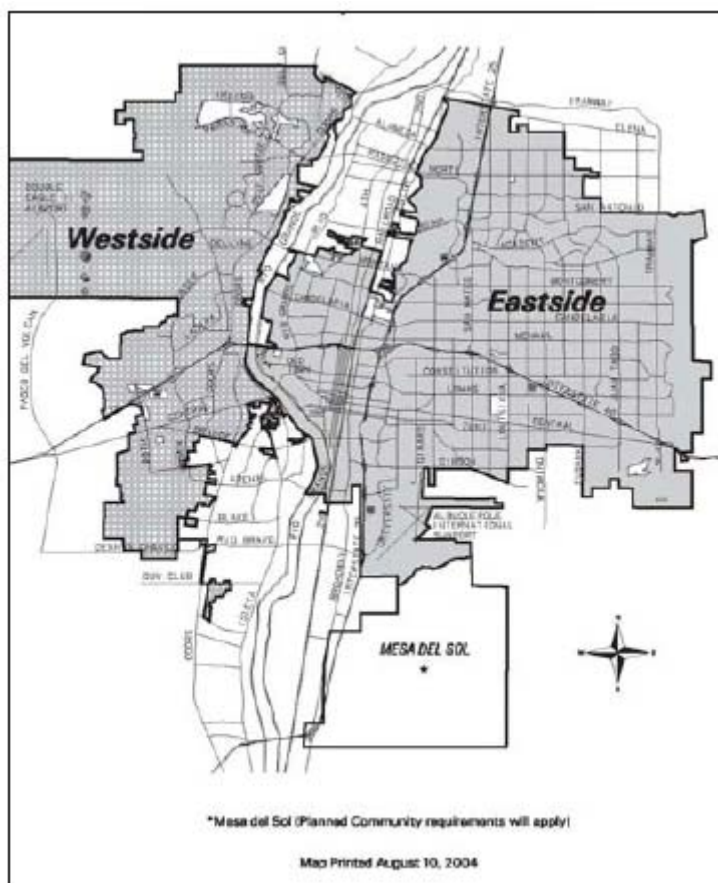


FIGURE 5-2. PUBLIC SAFETY SERVICE AREA

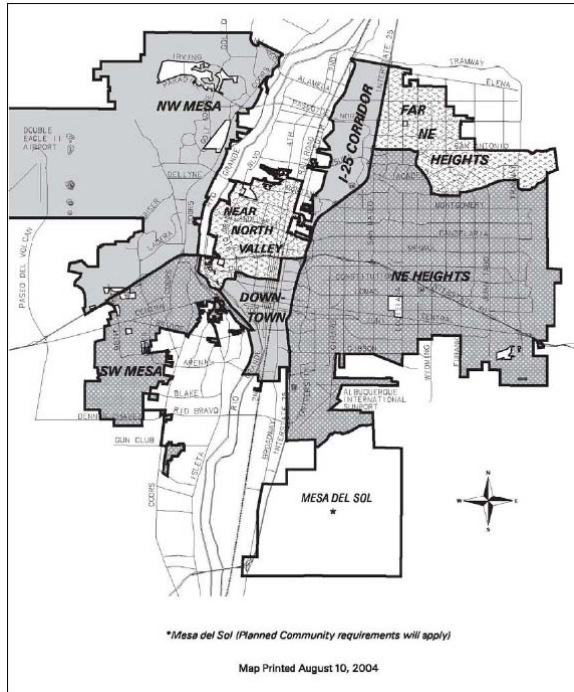


FIGURE 5-3. PARKS, RECREATION FACILITIES AND OPEN SPACE SERVICE AREAS

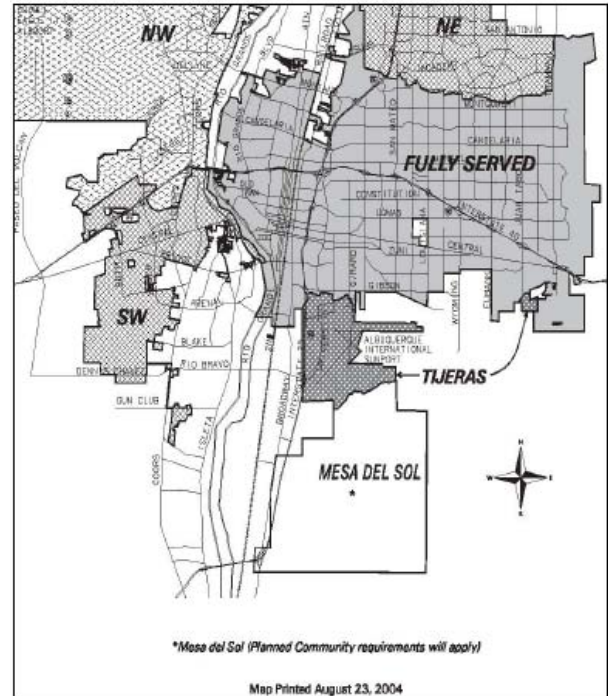


FIGURE 5-4. DRAINAGE FACILITY SERVICE AREAS

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

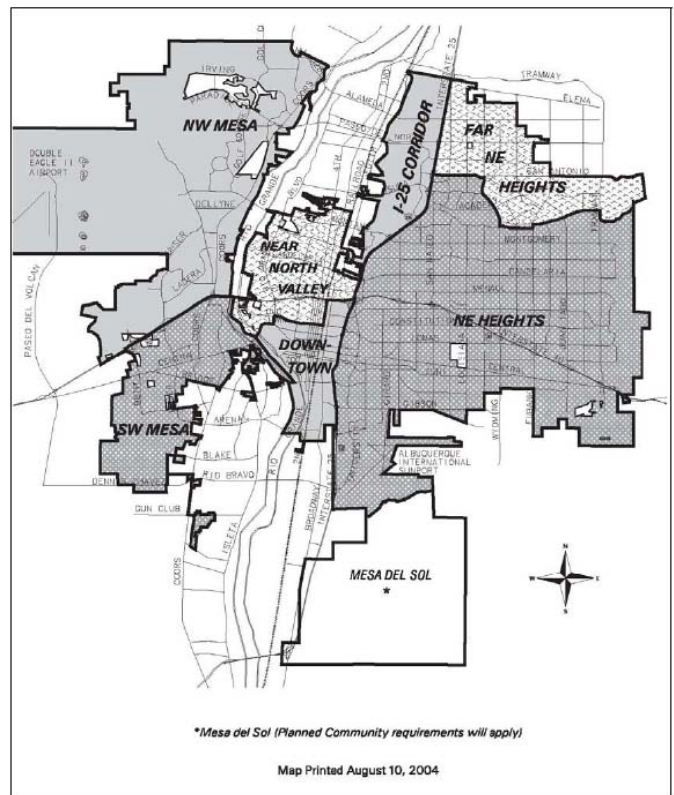


FIGURE 5-5. ROAD FACILITY SERVICE AREAS

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

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

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

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

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

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

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

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

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

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

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

Special Affordable Housing Provisions for Albuquerque

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

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

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

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

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

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

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

Legal Issues for Albuquerque

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

Lessons from Albuquerque

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

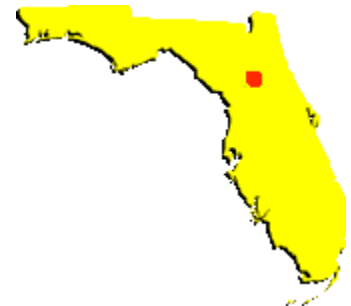
areas too small, however, as this may reduce revenue to levels below those needed to actually make facility investments.

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

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

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

Alachua County, Florida



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

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

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

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

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

Enabling Legislation for Alachua County

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

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

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

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

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

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

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

Impact Fees in Alachua County

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

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

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

TABLE 5-7. LAND USE ASSUMPTIONS

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

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

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

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

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

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

Affordable Housing Impact Fee Relief Program for Alachua County

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

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

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

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

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

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

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

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

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

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

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

Lessons from the Case Studies

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

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

Chapter 6 - Summary and Conclusions

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

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

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

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

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

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

APPENDICES

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

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

Impact Fees and Planning

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

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

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

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

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

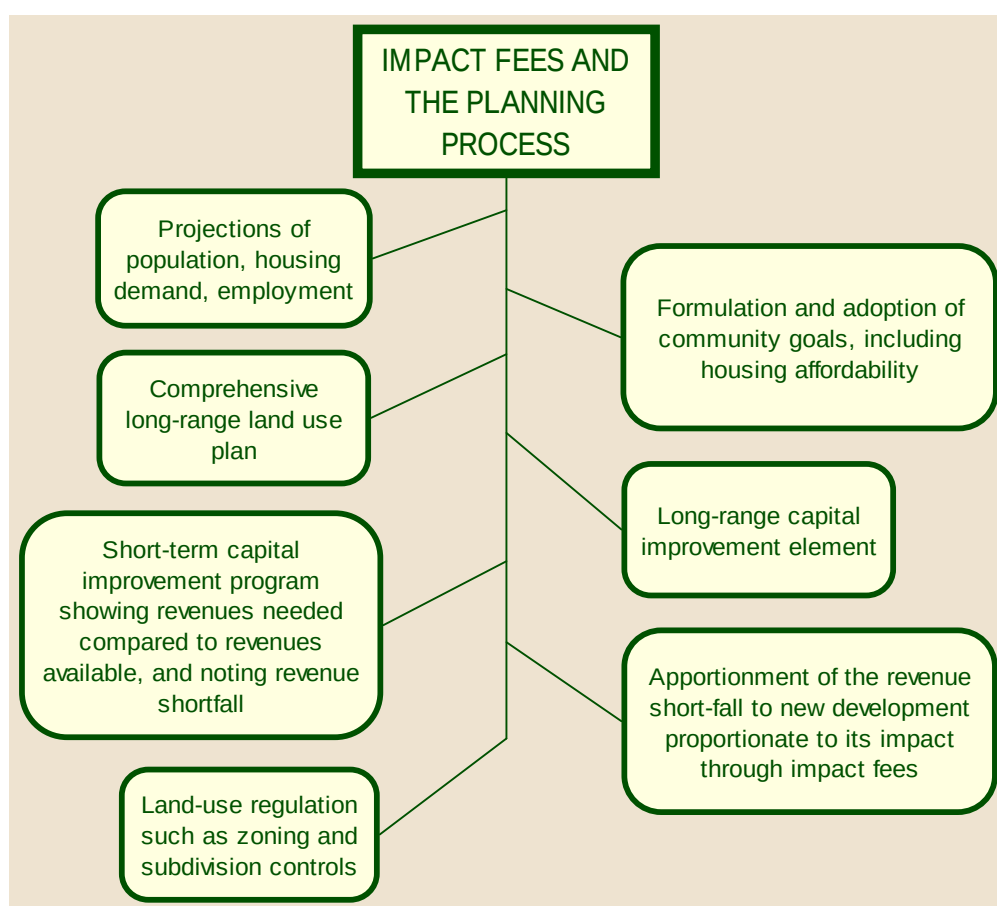
The Capital Improvement Element is implemented by a capital improvement program (CIP) which in Georgia is typically five to 10 years. This is the fifth step. In the case of parks, it shows the park land and acquisition improvement projects needed over that period to accommodate new development. Costs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

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

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

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

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



Impact Fees and Exactions

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

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

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

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

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

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

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

Appendix B. Special Assessment Districts

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

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

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

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

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

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

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

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

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

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

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

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

Appendix D. Proportionate Share Impact Fees and Housing Affordability

Introduction and Overview

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

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

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

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

Equity Basics

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

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

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

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

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

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

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

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

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

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

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

Source: Adapted from American Housing Survey 2001.

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

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

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

Source: Adapted from American Housing Survey 2001.

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

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

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

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

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

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

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

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

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

Impact Variations by Housing Type

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

Table 4. Five Housing Prototypes

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

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

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

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

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

Schools	9.3%
Average	17.3%
Any Facility	33.9%

Source: Duncan Associates, national survey, February 2005.

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

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

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

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

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

Variation Based on House Size and Type

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

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

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

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

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

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

Source: Calculations by authors.

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

Impact Variation Based on Density

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

⁶⁹ Water and wastewater charges based on average daily demand.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Source: Calculated by authors.

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

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

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

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

Source: Calculated by authors.

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

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

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

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

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

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

Table 14. Trip Distribution by Density, 2001

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

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

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

Table 15. Road Impact Fees Per Person by Density Category

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

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

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

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

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

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

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

Table 17. Impact Fees By Unit Type by Density

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

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

Variation in Location

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

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

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

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

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

Table 18. Road Reduction Factor for Core Residential Development

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

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

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

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

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

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

Variation in Configuration

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

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

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

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

Applications of Proportionate Share Impact Fee Variations in Practice

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

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

Table 20. Assessment Basis for Florida School Impact Fees

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

Source: Survey by Duncan Associates, July 2002.

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

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

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

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

Table 21. Vehicle Trips by Household Size

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

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

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

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

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

Table 22. Average Household Size by Rooms and Bedrooms

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

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

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

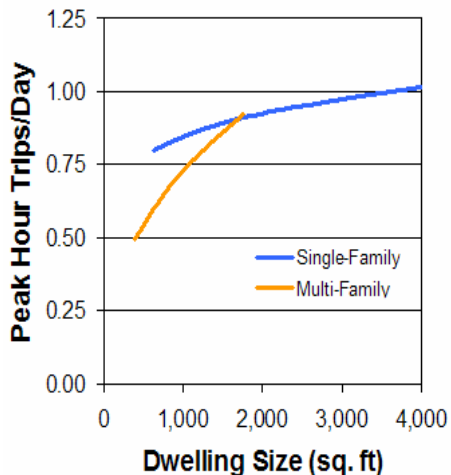
Table 23. Peak Hour Trips by Rooms and Bedrooms

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

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

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

Figure 1. Relationship of Trips to Size



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

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

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

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

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

Table 24. Residential Road Impact Fees by Size Category

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

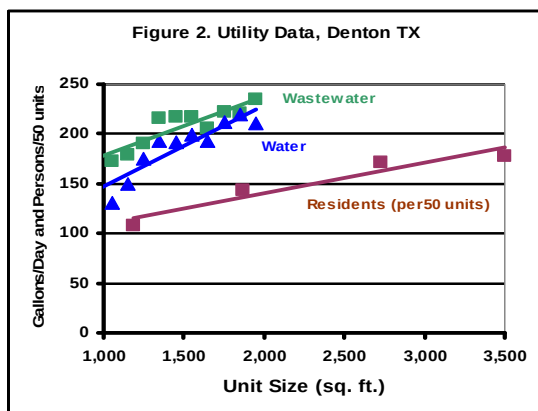
Source: Duncan Associates and Dr. James C. Nicholas, *Road and Park Impact Fee Study for the City of Tucson*, June 2004.

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

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

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

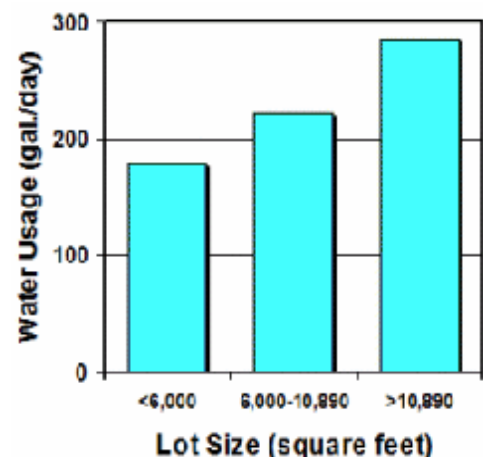
The Denton Municipal Water Utility provided data on water and wastewater demand for single-family units between 1,000 and 2,000 square feet in 100-square-foot blocks for the years 1998 and 1999. Census data information was available for



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

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

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



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

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

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

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

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

Figure 4. Calculated Fire Fees, Santa Fe, NM

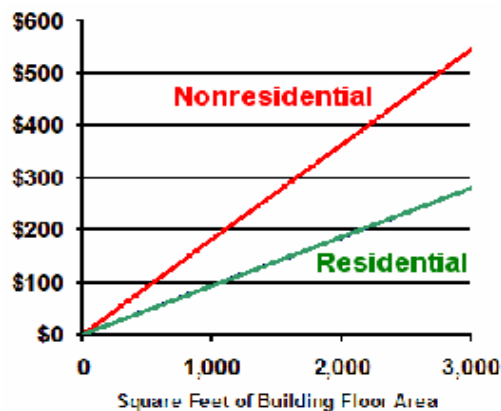
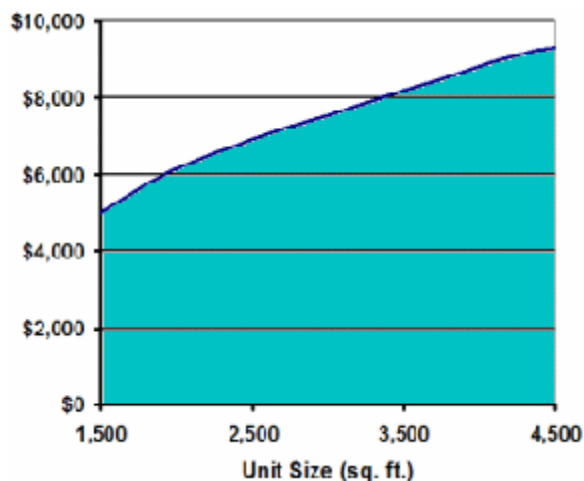


Figure 5. Sum of Fees in Santa Fe, NM



Conclusion: Moving Toward Truly Proportionate Impact Fees

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

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

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

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



IMPACT FEE HANDBOOK

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Impact Fee Handbook

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

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CHAPTER 1

Introduction

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

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

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

The Impact Fee Handbook includes the following sections:

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

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

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

What Are Impact Fees?



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

Typically, impact fees are:

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

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

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

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

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

Why Do We Have Impact Fees?

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

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

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

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

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

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

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

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

Local Government Fiscal Stress and the Rise of Impact Fees

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

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

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

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

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

Rising Service Demands

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

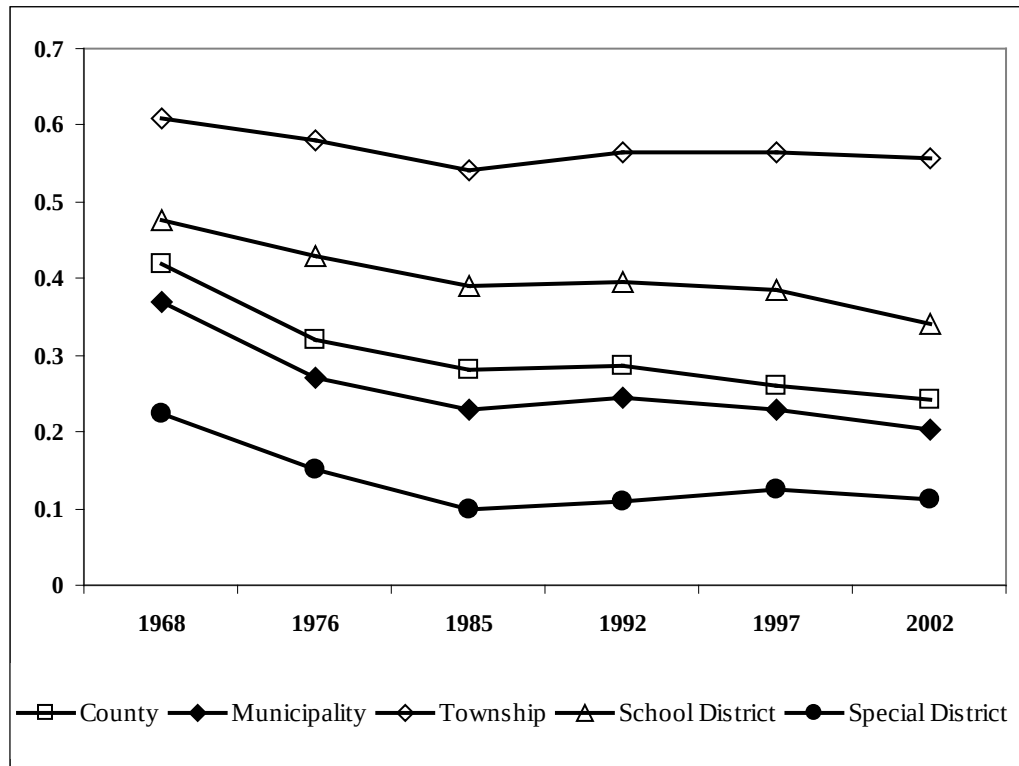
Another source of pressure on local governments for increased public services comes from higher levels of government. Since the mid-1960s, both federal and state governments have increasingly turned to mandates on local government to provide for increased levels of environmental protection, increased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

Revenue Constraints

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

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

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



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

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

Declining Federal and State Aid

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

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

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

Local Government Response to Fiscal Stress

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

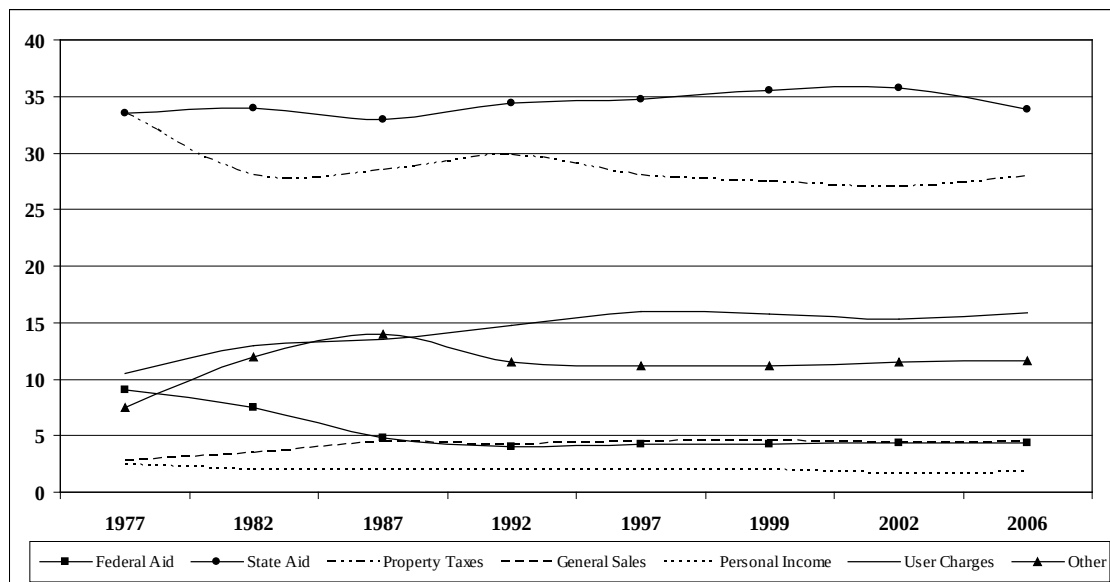
The deadly collapse of the I-35W Bridge in Minneapolis in 2007, and the catastrophic failure in 2005 of the levees in New Orleans following Hurricane Katrina punctuate the nation's current infrastructure maintenance crisis. These failures are a symptom of the nation's systemic neglect of infrastructure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

Revenue Diversification

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

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

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

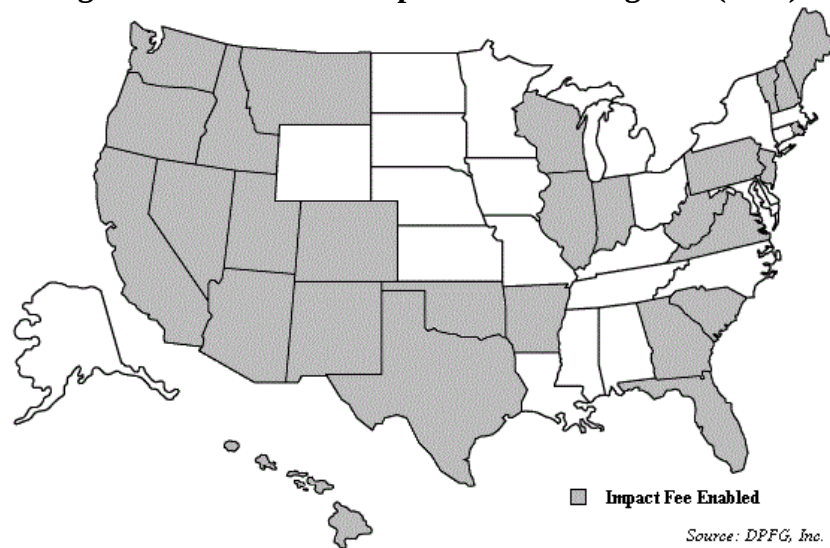


Source: Robert Tannenwald, Are State and Local Revenue Systems becoming Obsolete?, National Tax Journal, Sept. 2002.
U.S. Census Bureau. Census of the Governments: 1977, 1982, 1987, 1992, 1997, 1999. www.census.gov/govs/www/. 2002, 2006 data updated utilizing the same source.
Footnote: "Other" category consists of: selective sales, corporate income, motor vehicle license tax, other taxes, and miscellaneous general revenue.

Impact Fee Usage

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

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



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

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

Conclusion

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

Endnotes

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2. Gordon Shuford and Richard D. Young, *A report on Local Government Funding: An Overview of National Issues and Trends*, Institute of Public Affairs – Center for Governance University of South Carolina, 2000.
3. Alan A. Altshuler and Jose A. Gomez-Ibanez, *Regulation for Revenue: The Political Economy of Land Use Exactions* (Washington, DC: The Brookings Institution, 1993).
4. During this period, the federal government and many state governments began to either partially or fully index their individual income tax codes to moderate the adverse effects of inflation on family income tax burdens.
5. *State and Local Finances Under Pressure*, Edited by David L. Sjoquist, Studies in fiscal federalism and state-local finance, 2003.
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7. Bruce A. Wallin, *Budgeting for Basics: The Changing Landscape of City Finances* (Washington, DC: The Brookings Institution Metropolitan Policy Program, 2005).
8. ULI—the Urban Land Institute and Ernst & Young. *Infrastructure 2007: A Global Perspective*.
9. Robert Tannenwald, *Are State and Local Revenue Systems becoming Obsolete?*, *National Tax Journal*, Sept. 2002.
10. General Accountability Office, *Local Growth Issues—Federal Opportunities and Challenges*, GAO/RCED-00-178 (September 2000).
11. Thomas P. Snyder and Michael A. Stegman, *Paying for Growth: Using Development Impact Fees to Finance Infrastructure* (Chapel Hill, NC: Urban Land Institute, 1986).
12. Clancy Mullen, *National Impact Fee Survey: 2012 & 2015*, Duncan Associates.

CHAPTER 2

Legal Concepts of Impact Fees

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

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

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

Authority to Impose Impact Fees

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

Enabling Legislation

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

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

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

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

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

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

Implied Authority

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

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

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

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

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

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

Impact Fees As Unlawful Taxes

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

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

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

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

Federal and State Constitutional Issues

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

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

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

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

Due Process

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

Substantive Due Process

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

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

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

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

Procedural Due Process

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

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

Equal Protection

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

The use of a classification of development, resulting in different treatment for each group, does not necessarily result in a violation of the equal protection clause of the United States Constitution. Equal protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made. Unless a case involves a "suspect classification," which includes treating groups of people differently based on race, national origin, religion, or alienage, the law merely requires that classifications be rationally related to legitimate governmental purposes.

When an ordinance does not expressly use classifications for the purposes for imposing exactions on developers, the ordinance may still be subject to an equal protection challenge if the ordinance is discriminatory in its application.

In most cases, it is difficult to successfully challenge a zoning ordinance on equal protection grounds because the ordinance only needs to be rationally related to legitimate government purpose and the challenger must rebut a presumption that the ordinance (a legislative act) is constitutional and valid.

Violations of the 5th Amendment—Impact Fees as Unconstitutional Exactions

The Fifth Amendment to the U.S. Constitution requires that private property shall not be taken for public use without just compensation. Traditionally, a taking occurs when the government physically invades private property or requires the dedication of a piece of property to the state. Second, a government *regulation*, as opposed to a physical intrusion, can also be a basis for a takings lawsuit. Finally, the U.S. Supreme Court has also recognized that the Fifth Amendment is implicated when the government places conditions on a development applicant in return for a development permit (i.e. exactions). Unfortunately, the Supreme Court’s jurisprudence is limited to cases where the government has conditioned a development approval on a case-by-case (also called *ad hoc*) basis, and it is an open question as to whether legislatively-imposed impact fees are subject to the same analysis. Nevertheless, NAHB consistently argues that legislatively-imposed exactions and *ad hoc* exactions must both meet the same constitutional requirements. Specifically, NAHB argues that the Court’s decisions in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994) instruct municipalities regarding the appropriate level of and purposes for the exaction.

In *Nollan*, the Court explained that *there must be an “essential nexus” between the development condition and the anticipated impacts of the development. Without this connection, the condition could result in a violation of the Fifth Amendment.*

In *Dolan*, the Court discussed what constitutes a reasonable level of a development condition. The Court held that *development conditions must bear a “rough proportionality” to the development’s impact on existing infrastructure.* In order to meet this proportionality requirement, municipalities must make an individualized determination that the impact of proposed development warrants the exaction. “No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.” *Dolan* at 391.

Where a condition of development approval is not in proportion with the development’s anticipated impact, the *Dolan* rough proportionality test is not met and the government has violated the Fifth Amendment. This violation occurs regardless of whether the imposition by the government is for a dedication of land or for a monetary payment. *Koontz v. St. Johns River Water Management District*, 133 S.Ct. 2586 (2013).

Several courts have directly applied the heightened scrutiny standard in *Nollan* and *Dolan* to impact fees.⁶ The California Supreme Court, for example, stated that a municipality must account for the actual impact of a proposed development, as well as any relative benefit the project will contribute, before imposing a fee. *Ehrlich v. City of Culver City*, 911 P.2d 429 (Cal. 1996).

Other courts have refused to extend this standard to monetary conditions like impact fees.⁷ Courts in this camp frequently distinguish *Nollan* and *Dolan* from legislatively-imposed conditions. These courts usually explain that “the two-pronged heightened scrutiny that the Court adopted in *Dolan* was animated by the Court’s particular concern with the sort of governmental leveraging that can arise in case-by case . . . imposition of development conditions.” *Rogers Machinery, Inc. v. Washington County*, 45 P.3d 966 (Or. Ct. App. 2002). In other words, because impact fees apply generally to all developers, the heightened scrutiny test does not apply.

States with express enabling authority for impact fees usually include the standards for nexus and proportionality within the text of the statute itself.⁸ *Otherwise, three general tests have emerged among the state courts to determine the constitutionality of impact fees (1) the reasonable relationship test, (2) the dual rational nexus test, and the (3) specifically and uniquely attributable test. These state tests stem from either state enabling statutes or case law.*

The first test is the least restrictive, and only requires a reasonable relationship between the fee and the new development’s impact on public facilities.⁹ This test is the most favorable to government, as it is fairly easily satisfied.

The dual rational nexus test has two components, which both must be satisfied in order for an impact fee to be constitutional. First, the impact fee must be reasonably attributable to new development’s impact on the municipality’s infrastructure. Second, the funds from the fee must be used to benefit the new development itself.¹⁰

In *Upton v. Town of Hopkinton*, 945 A.2d 670 (N.H. 2008), the Supreme Court of New Hampshire recently explained the dual rational nexus test this way:

[A]n impact fee must be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee.

Resolution of the dual rational nexus test is dependent on the facts of each individual case. A court will analyze the methodology used to calculate a development’s impact and whether capital improvements actually benefit the development that is required to pay the fee. If this methodology is sound, a court is likely to find the impact fee to be constitutional.¹¹

The most restrictive test, and therefore the most favorable to development, is the specifically and uniquely attributable test. ‘Specifically and uniquely attributable’ means that a new development creates the need, or an identifiable portion of the need, for additional capacity to be provided by the required improvement or facility. Illinois is the author and primary user of the specifically and uniquely attributable test although a few states have applied it as well. *Pioneer Trust & Sav. Bank v. Village of Mt. Prospect*, 176 N.E.2d 799 (Ill. 1961). The principal challenge developers can bring against impact fees in these states is whether the new development is the sole cause of the allegedly needed capital facilities.

Standing

The party challenging an impact fee ordinance must have “standing” before bringing a claim in court. Essentially, this means that the party must have suffered a tangible injury as a result of the impact fee. For a builder or developer, this standing is based on payment of the fee. However, for an organization, such as a homebuilder’s association, standing tends to occur more often.

Generally, an organization can have standing on behalf of its members if it meets the following requirements: “(1) [it] has suffered an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” When the plaintiff is not the object of the government action, standing is not precluded, but it is “substantially more difficult” to establish. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-62, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

In the context of impact fees, courts will likely find that an organization has standing when one of its members has had to pay the fee. For example, in *Charleston Trident Home Builders, Inc. v. Town Council*, 632 S.E.2d 864 (S.C. 2006), the Supreme Court of South Carolina held that the home builders association had standing because there was evidence that its president had paid more than \$100,000 worth of impact fees since the ordinance was enacted. *While it may be possible for an organization to establish standing for the future payment of impact fees, it will be difficult to establish that an injury is imminent and not speculative.*¹²

Organizations generally claim declaratory or injunctive relief, rather than monetary damages, because courts are unlikely to find that all members have suffered identical damages.

Endnotes

1. Dillon's rule is named for John Forrest Dillon, a 19th Century judge who determined that, under the 10th Amendment to the U.S. Constitution, local governments are mere political subdivisions of the state when exercising their powers.
2. *Durham Land Owners Ass'n v. County of Durham*, 630 S.E.2d 200 (N.C. Ct. App. 2006).
3. See, e.g. *McCarthy v. City of Leawood*, 894 P.2d 836 (Kan. 1995); *HBA of Dayton & Miami Valley v. City of Beavercreek*, 729 N.E.2d 349 (Ohio 2000).
4. See, e.g. *Twin City Fire Ins. Co. v. City of Madison*, 309 F.3d 901 (5th Cir. 2002).
5. *Eastern Diversified Properties, Inc. v. Montgomery County*, 570 A.2d 850 (Md. 1990); *Home Builders Ass'n of Greater Des Moines v. City of West Des-Moines*, 644 N.W.2d 339 (Iowa 2002).
6. *N. Ill. Home Builders Ass'n v. County of Dupage*, 649 N.E.2d 384 (Ill. 1995); *Town of Flower Mound v. Stafford Estates Ltd. P'ship*, 135 S.W.3d 620 (Tex. 2004); *Benchmark Land Co. v. City of Battle Ground*, 14 P.3d 172 (Wash. Ct. App. 2000).
7. *San Remo Hotel L.P. v. S.F. City & County*, 364 F.3d 1088 (9th Cir. 2004); *Clajon Prod. Corp. v. Petera*, 70 F.3d 1566 (10th Cir. 1995); *Home Builders Ass'n of Cent. Ariz. v. City of Scottsdale*, 930 P.2d 993 (Ariz. 1997); *Krupp v. Breckenridge Sanitation Dist.*, 19 P.3d 687 (Colo. 2001); *McCarthy v. City of Leawood*, 894 P.2d 836 (Kan. 1995); *Waters Landing Ltd.P'ship v. Montgomery County*, 650 A.2d 712 (Md. 1994).
8. See, e.g. Ariz. Rev. Stat. § 9-463.05; Ark. Code Ann. § 14-56-103; Me. Rev. Stat. Ann. tit 30-A § 4354; Mont. Code Ann. § 7-6-1601 – 1604.
9. Cal. Gov't Code § 66001 (B) (2007).
10. *Banberry Dev. Corp. v. South Jordan City*, 631 P.2d 899 (Utah 1981);
11. *HBA of Dayton & Miami Valley v. City of Beavercreek*, 729 N.E.2d 349 (Ohio 2000).
12. *Newton County Home Builders Ass'n v. Newton County*, 648 S.E.2d 420 (Ga. Ct. App. 2007).

CHAPTER 3

Economic Implications of Impact Fees

- *Introduction*
- *Who Ultimately Pays an Impact Fee?*
- *Implications of Higher House Prices*
- *Are Impact Fees Really Necessary?*
- *Conclusion*

Impact fees on new residential development are a form of market intervention. In the absence of an intervention, the economic forces of supply and demand will bring about an unconstrained outcome to the interactions among consumers and producers of housing, and the suppliers of inputs (such as land, labor, building materials, and the entrepreneurial skill to consummate the process) utilized to build the housing. Impact fees unquestionably change the outcome. The questions remain: In what ways do impact fees affect the economic forces of supply and demand and by how much.

Part of the unconstrained outcome of supply and demand within a local housing market is a set of pricing components for new housing units and each of the inputs that comprise the building of a home. Such pricing components may include, but not be limited to: land, labor, building materials and profit. In this framework, profit is considered a price paid to developers to induce them to risk capital and apply entrepreneurial skill to residential development projects. The imposition of an impact fee influences at least one of these prices. If the pricing components for a project remain unchanged, and an impact fee is imposed, the price of housing increases. In short, someone has to pay the fee. Chapter 3 explains why, in the typical case, pricing components are unlikely to decrease, meaning the home buyer is ultimately the party who pays the impact fee.

Chapter 3 also demonstrates that the imposition of impact fees may cause home prices to increase by more than the amount of the impact fee. Such a scenario occurs primarily because development costs, such as financing charges and broker commissions, are often calculated as a percentage of other costs. To illustrate the effect that impact fees passed on to home buyers may have on housing affordability, the number of households “priced out” of the market as a result of the impact fee is described and estimated. For purposes of the chapter, priced out is defined as households able to qualify for a mortgage on a median-priced home prior to the imposition of the impact fee, but not afterward.

This leads naturally to the question of whether or not impact fees are really necessary. Chapter 3 demonstrates that, given existing fees and taxes within a typical metropolitan area, the economic activity generated and supported by home building may, after some

time, result in enough additional local government revenue to cover current expenses plus the cost of providing infrastructure. In this sense, new housing can be said to pay for itself.

Who Ultimately Pays an Impact Fee?

From the perspective that developers and home builders are the ones that provide the cash outlay for impact fees, it may be said that they pay the impact fees. However, similar to any tax or other costs imposed on businesses, the ultimate burden of payment will, to varying degrees, be passed to new home buyers in the form of higher house prices¹ (or, equivalently, smaller houses with fewer amenities), or come from suppliers of products and services utilized to build and deliver the home in the form of lower prices paid for those products and services.

To put this argument in perspective, Figure 3.1 identifies the components that comprise the price of a typical single family home.

**Figure 3.1 Sale Price Breakdown
For an Average Single-Family Home in 2013**

Average Lot Size: 14,359 sq. ft.
Average Finished Area: 2,607 sq. ft.

Description	Average	Share of Price
Finished Lot Cost (including financing cost)	\$74,509	18.60%
Total Construction Cost	\$246,453	61.70%
Financing Cost	\$5,479	1.40%
Overhead and General Expenses	\$17,340	4.30%
Marketing Cost	\$4,260	1.10%
Sales Commission	\$14,235	3.60%
Profit	\$37,255	9.30%
Total Sales Price	\$399,532	100%

The cost of an impact fee is fully passed on to the home buyer, unless any of the seven line items in Figure 3.1 are reduced. Theoretically, it is possible that the ultimate effect of impact fees is to reduce demand for these inputs and drive down the price of the items. The question is how likely this is to happen in practice for a particular item.

Impact fees, building permit fees, and water and sewer fees fall within the total construction cost figure. In most cases, permit and other fees imposed by local governments on new construction, will most likely not decrease over time as reason for imposing a fee on the construction of a home is to raise revenue, it makes little sense for the local jurisdiction to simultaneously relinquish that revenue through a concomitant reduction in fees on the same home.

In order for a reduction in the cost of labor per home to occur, wage rates for local construction workers must decline. For a significant wage decline to occur in response to an impact fee on new residential construction, new residential construction within the jurisdiction must account for a large proportion of the demand for local construction labor and construction workers building the homes must have relatively few opportunities for work on new residential construction in neighboring jurisdictions, on non-residential new construction, or on remodeling.

If a residential impact fee is imposed across all jurisdictions in a market area, including potential development sites on the fringes, it, by definition, removes the option for local workers to construct new homes that are not subject to the impact fee. On the other hand, to the extent that such a broadly imposed fee inhibits new construction, it could be discerned that the replacement of existing structures would be delayed, which may result in an increase in the demand for remodeling work.

A similar argument applies to overhead and general expenses. New home construction typically represents a minor part of a local economy that a change in impact fees would not change demand enough to generate noticeable declines in prices paid for general overhead expenses. In the short run, if impact fees inhibit new construction, the effect may be to increase overhead costs per unit, as overhead would then need to be allocated across fewer units of production.

It seems even more obvious that conditions in a single local market will have no significant impact on the cost of building materials. Markets for building materials are regional, if not national and may even be international, in scope. The effect of one local market on demand for building materials is typically negligible and imposing a fee on construction in one jurisdiction will not generally result in the builders paying less for lumber, wall board, or other building products.

Credit markets are also national or international in scope, making it difficult for local action to have an effect on financing costs. Locally imposed impact fees will not reduce the interest rates or improve the terms builders and developers can obtain on acquisition, development, and construction loans.

At first, it may seem reasonable to assume that, because the builders and developers write the checks, the impact fee is deducted from the profit. Such a scenario would not be true in a competitive market, however, as profits to home building must remain competitive with home building in nearby areas and returns available in other, similar industries with a corresponding level of risk. Otherwise, builders would be better off constructing homes elsewhere, pursuing a different business, or investing resources in alternative investment options. In short, a competitive rate of return is required in order to keep local builders in business in the long run.

Home building is widely recognized as a competitive industry. According to a 2003 monograph by the American Real Estate and Urban Economics Association, "In the United States, as in most countries, the market for housing services per se can be

approximated by a competitive market... Few landlords or developers are large enough to exert significant market power.”²

A competitive housing market is defined as large numbers of consumers and producers acting independently to make market decisions. The firms in the market are competing against one another, and there are no barriers to entry: whenever firms are earning excess profits, these are competed away by other firms who enter the industry, increase supply, and compete away the excess.

The most complicated item to analyze is the raw land cost. It is conceivable that an impact fee imposed on local construction to some extent inhibits demand for raw land and places downward pressure on the price. The extent to which this happens depends on local housing market conditions, other local land use policies—including policies of other local governments in the surrounding area—and the time frame being considered.

If impact fees are imposed in one jurisdiction but land is readily available in a surrounding market area that does not impose impact fees, builders may choose not to purchase land in the jurisdiction that imposes the fee unless owners of land within the jurisdiction are willing to take a reduction in price that fully compensates for the fee.

However, there are realistic scenarios under which land in surrounding jurisdictions may not be readily available. One scenario may be that surrounding jurisdictions are unwilling to change zoning or accelerate approval of residential building permits to accommodate construction activity that would otherwise spill over into their areas from the jurisdiction imposing the impact fee.

Even if home building is largely confined to the area over which the fee is imposed or land is already owned by builders, the willingness of land owners to sell at a lower price depends upon economic conditions and other land use policies within that jurisdiction. If other profitable uses for the land are available, and local jurisdictions readily change zoning to allow land to be utilized for those purposes, the owner of the land has no reason to accept a lower price for a residential use. Notwithstanding current zoning restrictions, the owner may be unwilling to sell land at a price that offsets the impact fee, if he or she reasonably expects zoning restrictions to change in the future.

Given the local nature of land use decisions, the types of restrictions often imposed, and the role of expectations, a reasonable working assumption is that nationwide residential developers will have difficulty passing impact fees to land owners in the form of lower land prices, and will therefore tend to pass them on instead to home buyers in the form of higher house prices.

From the perspective of new home buyers, the price of the home to the buyer may increase by more than the impact fee amount. One may ask, how can this scenario be possible? Payment of an impact fee typically occurs during development. An impact fee paid early in the production process has associated carrying costs and can substantially increase the costs builders and developers pay. In a typical case, NAHB

estimates that total developer and builder costs will increase by 137 percent of the impact fee.

NAHB research shows that, on average, regulations imposed by government at all level account for 25 percent of the final price of a new single family home built for sale¹. Every time a local or regional government raises construction costs by, for example, increasing the price of construction permits or impact fees, the cost of building a house rises. In fact, the final price of the home to the buyers will usually go up by more than the increase in the government fee. This is because each time construction costs increase other costs such as commissions and financing charges automatically rise as well. As a result, most cost increases are passed on to the buyers with additional charges. The size of these charges depends both on the type of fee/cost increase and when it is imposed in the development/construction process. NAHB estimates that the add-on charges range from 0 percent if a fee is imposed directly on buyers to 39 percent if cost is incurred when applying for site development approval (see Figure 3.2). So that for every \$1 increase in fees incurred, for example, when acquiring a building permit, the final price of a new home to its final customer rises by \$1.20. Alternatively, every \$833 increase in fees imposed at the time of the building permit results in a \$1,000 increase in house prices.

Figure 3.2 Impact Fee Effect on Sale Price

<u>Description</u>	<u>Time (months)</u>
Length of time:	
Permit to Start	0.8
Start to Construction Completion	6.2
<u>Construction Completion to Home Sale</u>	<u>4.8</u>
Total	<u>11.8</u>

<u>Building Costs/Fees</u>	<u>Add-on Charges</u>
Imposed directly on buyer	0%
During construction	16%
At start of construction	18%
When building permit acquired	20%
During development	37%
When applying for site development approval	39%

The bottom line is that a \$1,000 impact fee imposed at the time of development approval will typically increase the costs to builders and developers to at least \$1,390. Most if not all of the price increase is likely to be passed on to home buyers. In some cases, depending on particular local conditions, the price increase may be partially

¹ See P. Emrath "How Government Regulation Affects the Price of a New Home", Housing Economics Online, July 2011

offset by falling land prices. In rare circumstances, depending on local conditions, the price increase may be partially offset by declining wages for construction workers.

Impact fees on rental housing units would have similar effects on prospective tenants. Impact fees would tend to increase rents in new units to cover higher development costs.

Implications of Higher House Prices ⁵

When an impact fee is passed to the buyer, what are the implications? Obviously, one is an adverse effect on housing affordability. One way to illustrate the potential extent of the adverse effect is to apply national mortgage underwriting standards to estimate the households that qualified for a mortgage before a house price increase, but no longer qualify for a mortgage afterwards. Households that no longer qualify for a mortgage following the price increase are referred to as being “priced out” of the market for the home.

Applying this approach to the U.S. as a whole reveals that in 2014—utilizing typical assumptions about the mortgage, down payment, property taxes and property insurance, a \$1,000 impact fee which increases the price of a median-priced new home by \$1,370, prices out about 282,588 households as illustrated below in Figure 3.3.

Figure 3.3 US Households Priced Out of the Market by Impact Fees, 2014

Description	Mortgage Rate	House Price	Monthly Mortgage Payment	Taxes and Insurance	Minimum Income Needed	Households That Can Afford House
Without Fee	4.50%	\$275,000	\$1,321	\$391	\$73,382	41,959,112
With Fee	4.50%	\$276,370	\$1,328	\$393	\$73,748	41,676,524
Difference		\$ 1,37	\$ 7	\$ 2	\$ 366	- 282,588

* Calculations assume a 10% down payment and a 45 basis point fee for private mortgage insurance. A Household Qualifies for a Mortgage if Mortgage Payments, Taxes, and Insurance are 28% of Income.

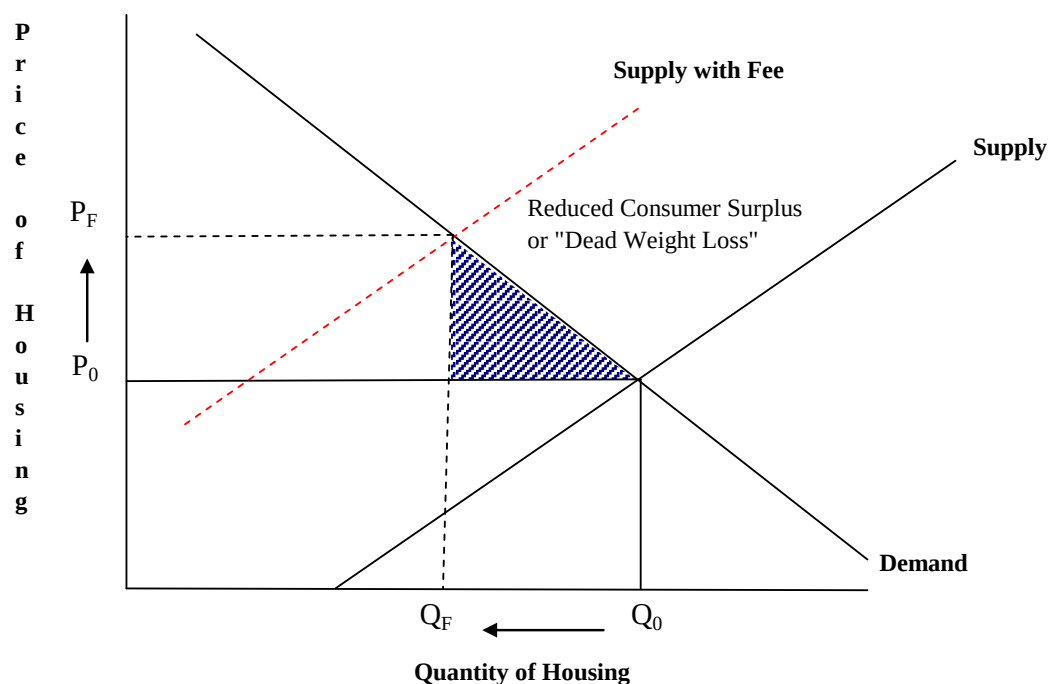
The priced-out calculation requires an income distribution as illustrated in Figure 3.3, and assumptions about mortgages, property taxes and property insurance. The income distribution, taxes and insurance rates are based largely on data from the Census Bureau’s American Community Survey (ACS). Given appropriate information about housing prices, income distributions, taxes and insurance rates, it’s possible to apply the priced-out analysis to local housing markets.

NAHB estimated new house prices for 357 Metropolitan Statistical Areas (MSAs).⁶ Household income distributions, as well as information about real estate taxes and insurance, are available for MSAs from the ACS.⁷ The priced-out analysis based on these data for 357 MSAs are illustrated in [Exhibit A](#) located at the end of this chapter.

The number of households priced out of the market by a \$1,000 impact fee (resulting in a \$1,370 price increase) ranges from a low of 19 in the Napa, CA, MSA and 30 in the Carson City, NV, MSA, to a high of 5,742 in the New York, Northern New Jersey, Long Island NY-NJ MSA. The MSA with second largest number of priced-out households is the Chicago, Joliet, Naperville IL-IN-WI MSA, with 5,325 households priced out as the result of the imposition of an impact fee.

The priced-out results do not provide a specific answer to the extent of the impact on new construction (that would require a complicated economic model that includes estimates of the willingness of households to buy smaller houses, older houses, or houses with fewer amenities; interrelationships between different segments of the local housing market; and adjustments made by home builders and surrounding local governments). It is possible, however, to indicate the general effects impact fees have on new construction on a graph of supply and demand in a local housing market as illustrated in Figure 3.4 below.

Figure 3.4 Supply and Demand in a Local Housing Market



The imposition of an impact fee translates into an increase in the cost to produce a home. On Figure 3.4, the imposition of an impact fee is equivalent to shifting the supply curve up and to the left. The effect of the impact fee on consumers of new homes is thus some combination of a price increase and reduction in quantity of housing produced.

The area below the demand curve but above the market price is called a “consumer surplus,” because all consumers pay the same, market-clearing price for housing although many of them may be willing to pay more. When the imposition of an impact fee shifts the supply curve, the consumer surplus is reduced. Consumers are made worse off because they are both consuming less housing and paying a higher price for housing. The lost surplus is called a “dead weight loss” and is illustrated as the area of the shaded triangle in Figure 3.4.

Note that, although local builders maintain a normal profit margin in this scenario, total profits are reduced, as the same per unit profit margin is earned on fewer units of production.

Existing homes in the area will also be affected by this scenario, because they are substitutes for new housing. As impact fees raise the prices of new homes and prospective buyers view existing homes as an alternative, upward pressure is placed on the prices of existing homes. Empirical research supports the argument that impact fees raise the price of existing homes as well as new homes.⁸ This research finds that existing homes are relatively close substitutes for new homes in particular impact-fee-imposing jurisdictions.

Similarly, prospective renters are likely to consider existing rental units as substitutes for new rental units, placing upward pressure on rental rates for existing housing. The combination of rising prices for existing homes and rental rates in existing rental units results in “windfall” gains to current owners of housing units. The opposite is true for current tenants in existing rental units as they are doubly squeezed by impact fees. The ability of current tenants to purchase a home or move to a newer rental unit is hampered by higher housing prices and tenants may be forced to pay higher rents for their current residence.

To the extent that impact fees raise the price of all homes in a given community, the affordability of housing in that area is reduced. A reduction in housing affordability will have a negative effect on attracting and retaining workers and will have a direct impact on local governments as police officers, firefighters, teachers, and other public sector workers are heavily impacted when home prices rise. In addition, the shortage of affordable housing will make it difficult for the community to retain its own sons and daughters as they leave their parents’ homes and look for affordable first homes of their own.

Are Impact Fees Really Necessary?

The premise underlying the use of impact fees is that development, especially residential development, does not pay for its fair share of the burden imposed upon the local government as new development requires the expansion of public infrastructure as well as the hiring of additional public sector workers.

NAHB has developed a model to estimate the costs to local governments for the additional public infrastructure and public sector workers that are attributable to new growth. Detail on the methodology is available in the report *The Local Impact of Home Building in a Typical Metropolitan Area: Comparing Costs to Revenues for Local Governments*:

http://www.nahb.org/fileUpload_details.aspx?contentTypeID=3&contentID=35601&subContentID=119792.

The general approach of the model is to assume local jurisdictions supply residents of new homes with the same levels of services that they currently provide, on average, to occupants of existing structures. The amount spent by jurisdictions to provide public services is available to the public from the Census of Governments, where all units of government in the U.S. report line item expenses, revenues, and intergovernmental transfers once every five years to the Governments Division of the U.S. Census Bureau. The Census of Governments accounts can be aggregated for every local government in a typical metropolitan area and then used to estimate total annual expenses per 100 single family and 100 multifamily housing units.

Local taxes and government spending patterns vary considerably by jurisdiction across the U.S., so defining averages for a typical metropolitan area is not completely straightforward. The figures presented in Figure 3.5 were calculated by aggregating data from the majority of the roughly 88,000 local governments in the U.S. and scaling them to the number of housing units. Areas in which revenues collected by local jurisdictions exceed 15 percent of personal income were excluded in order to exclude extreme values from cases where significant local government activity exists without substantial housing markets (for example, mining communities).

**Figure 3.5 Current Expenses for Local Governments
per 100 Housing Units**

Description	Single Family	Multifamily
Education	\$ 142,000	\$ 82,000
Police Protection	45,000	33,000
Fire Protection	20,000	15,000
Corrections	14,000	11,000
Streets and Highways	6,000	4,000
Water Supply	15,000	8,000
Sewerage	8,000	4,000
Health	19,000	14,000
Recreation and Culture	21,000	16,000
Other General Government	69,000	51,000
Electric Utilities	15,000	11,000
Gas Utilities	2,000	1,000
Public Transit	1,000	1,000
Other Government Functions	1,000	-
Total	\$ 378,000	\$ 251,000

Source: NAHB calculations based on data from the Census of Governments, U.S. Census Bureau.

In addition to current expenses, providing services to residents requires local governments to make capital expenditures for items such as schools and other buildings, equipment, roads, and other structures.

Estimating capital expenditures for schools, roads and other structures is more complicated than estimating current expenses. The process is to estimate a traditional economic model, where expenditures are a function of labor and capital, with state level data, for which information about the capital stock can be derived.⁹ The results are then applied to the typical metropolitan area, where capital required per housing unit can be computed as a residual. The results for 100 single family and 100 multifamily housing units are illustrated in Figure 3.6.

Figure 3.6 Capital Needed by Local Governments to Support 100 Housing Units (in \$ Thousand)

Description	Single Family	Multifamily
Schools	\$ 759,000	\$ 442,000
Hospitals	83,000	61,000
Other buildings	241,000	179,000
Highways & streets	150,000	104,000
Conservation & development	5,000	4,000
Sewer systems	189,000	99,000
Water supply	249,000	130,000
Other structures	241,000	179,000
Total	\$ 1,917,000	\$ 1,198,000

Source: results from NAHB "local impact of home building" model that estimates capital owned and maintained by local governments:
http://www.nahb.org/fileUpload_details.aspx?contentTypeID=3&contentID=35601&subContentID=10018

If, in the estimation of local policy makers, the increase in property tax revenues generated by development would not be sufficient to cover the increases in debt service and other costs of providing public services, local governments may decide to impose impact fees on new growth in order to maintain property tax rates at the current level. Often omitted from policy makers' estimates are the long-term economic and fiscal benefits of growth.

NAHB has also developed a model to estimate the total economic benefits of home building. The model captures the effect of the construction activity itself (Phase I), the ripple impact that occurs when income earned from construction activity is spent and recycled in the local economy (Phase II) and the ongoing impact from new homes occupied by residents who pay taxes and purchase locally produced goods and services (Phase III). In order to accurately capture the positive impact residential construction has on a community, it's important to include the ripple effects and the ongoing benefits.

In each phase, the expanded economic activity results in additional revenue for local governments in the area. In Phase I, even without impact fees, local government

revenue is generated by local sales taxes on materials, and a variety of other taxes and fees paid by the local businesses that participate in the process of building, marketing, and selling the home. In Phase II, as the income earned in Phase I is spent, local government revenue is generated by sales taxes, other taxes and fees paid by local consumers and businesses resulting from the expanded economic activity, and revenue for government-owned utilities and other local government enterprises. In Phase III, the residents of the new homes spend money locally and generate taxes, fees, and revenue for local government much as in Phase II—with the exception that the revenue is recurring, and also includes the increase in local property taxes that normally results from the development of residential properties.

Results of the revenue generated in each phase for a typical metropolitan area can be found in the report *The Local Impact of Home Building in a Typical Metropolitan Area: Income, Jobs, and Taxes Generated*:

http://www.nahb.org/fileUpload_details.aspx?contentTypeID=3&contentID=35601&subContentID=28002.¹⁰ Results in the report assume an average impact fee (broadly defined to include permits, hook-up charges, etc.) of \$7,008 per single family and \$2,762 per multifamily housing unit.

In order to judge whether or not impact fees are necessary, the results are recalculated under the alternative assumption that home builders and developers pay **no impact or other fees of any kind to local governments**. These results are summarized in Figure 3.7.

Figure 3.7 Revenue Generated for Local Governments per 100 Housing Units

Description	One-Time Effect				Ongoing, Annual	
	Phase I		Phase II		Phase III	
	Single Family	Multi-Family	Single Family	Multi-Family	Single Family	Multi-Family
Business Property Taxes	\$ 163,000	\$ 54,000	\$ 140,000	\$ 61,000	\$ 90,000	\$ 100,000
Residential Property Taxes	-	-	-	-	270,000	107,000
General Sales Taxes	125,000	46,000	45,000	20,000	29,000	32,000
Specific Excise Taxes	22,000	7,000	19,000	8,000	12,000	14,000
Income Taxes	23,000	10,000	12,000	5,000	8,000	8,000
Licenses Taxes	1,000	1,000	1,000	-	1,000	1,000
Other Taxes	21,000	7,000	18,000	8,000	11,000	13,000
Residential Permit/Impact Fees	-	-	-	-	-	-
Utilities & Other Govt. Enterprises	88,000	38,000	106,000	46,000	134,000	97,000
Hospital Charges	45,000	20,000	20,000	9,000	42,000	40,000
Transportation Charges	19,000	8,000	9,000	4,000	6,000	6,000
Education Charges	20,000	9,000	9,000	4,000	6,000	6,000
Other Fees and Charges	86,000	32,000	57,000	25,000	39,000	37,000
Total	\$ 613,000	\$ 232,000	\$ 436,000	\$ 190,000	\$ 648,000	\$ 461,000

Source: results from NAHB "local impact of home building" model that estimates the economic benefits of new construction. Technical documentation available from the NAHB Housing Policy Department.

The next issue to address is whether the generated revenues are sufficient to cover all costs listed in Figures 3.5 and 3.6, employing several conservative assumptions to avoid understating costs. For example, it is assumed that demand for public capital facilities generated by the new housing units cannot be met through current excess capacity. Instead, local governments invest in new structures and equipment at the start of the first year, prior to the construction of any homes. To the extent that neither assumption

is true, interest costs would be somewhat lower than reported in the following discussion.

To compare the streams of revenues and expenditures over time, it is assumed that half of the current expenses and half of the ongoing, annual revenues are realized in the first year. This would be the case if construction and occupancy took place at an even rate throughout the year.

The difference between revenues and current expenses in a given year is an operating surplus. At the beginning of the first year, capital investment is financed through debt by borrowing at the current municipal bond interest rate, with the interest accruing throughout the year. Each year following the first year, the operating surplus is first utilized to pay the interest on the debt, then to pay off the debt at the end of the year. Results are illustrated for the 100 single family homes in Figure 3.8 and 100 multifamily units in Figure 3.9.

Figure 3.8 Costs and Revenue for Local Governments Generated by 100 Single Family Units in a Typical Metropolitan Area With No Impact Fees

Year	Current Expenses	Revenue	Operating Surplus	Capital Investment Start of Year	Debt Outstanding End of Year	Interest on Debt	Net Income
1	\$ 189,000	\$ 1,372,681	\$ 1,183,681	\$ 1,917,000	\$ 820,824	\$ 87,505	\$ (820,824)
2	378,000	647,748	269,748	-	588,545	37,468	232,280
3	378,000	647,748	269,748	-	345,662	26,865	242,883
4	378,000	647,748	269,748	-	91,692	15,778	253,970
5	378,000	647,748	269,748	-	-	4,185	265,563
6	378,000	647,748	269,748	-	-	-	269,748
7	378,000	647,748	269,748	-	-	-	269,748
8	378,000	647,748	269,748	-	-	-	269,748
9	378,000	647,748	269,748	-	-	-	269,748
10	378,000	647,748	269,748	-	-	-	269,748
11	378,000	647,748	269,748	19,000	-	-	250,748
12	378,000	647,748	269,748	-	-	-	269,748
13	378,000	647,748	269,748	-	-	-	269,748
14	378,000	647,748	269,748	-	-	-	269,748
15	378,000	647,748	269,748	-	-	-	269,748

Source: results from NAHB "local impact of home building" models.

Figure 3.9 Costs and Revenue for Local Governments Generated by 100 Multifamily Housing Units in a Typical Metropolitan Area With No Impact Fees

Year	Current Expenses	Revenue	Operating Surplus	Capital Investment Start of Year	Debt Outstanding End of Year	Interest on Debt	Net Income
1	\$ 125,500	\$ 652,645	\$ 527,145	\$ 1,198,000	\$ 725,540	\$ 54,685	\$ (725,540)
2	251,000	460,846	209,846	-	548,813	33,119	176,728
3	251,000	460,846	209,846	-	364,018	25,052	184,795
4	251,000	460,846	209,846	-	170,788	16,616	193,230
5	251,000	460,846	209,846	-	-	7,796	202,050
6	251,000	460,846	209,846	-	-	-	209,846
7	251,000	460,846	209,846	-	-	-	209,846
8	251,000	460,846	209,846	-	-	-	209,846
9	251,000	460,846	209,846	-	-	-	209,846
10	251,000	460,846	209,846	-	-	-	209,846
11	251,000	460,846	209,846	14,000	-	-	195,846
12	251,000	460,846	209,846	-	-	-	209,846
13	251,000	460,846	209,846	-	-	-	209,846
14	251,000	460,846	209,846	-	-	-	209,846
15	251,000	460,846	209,846	-	-	-	209,846

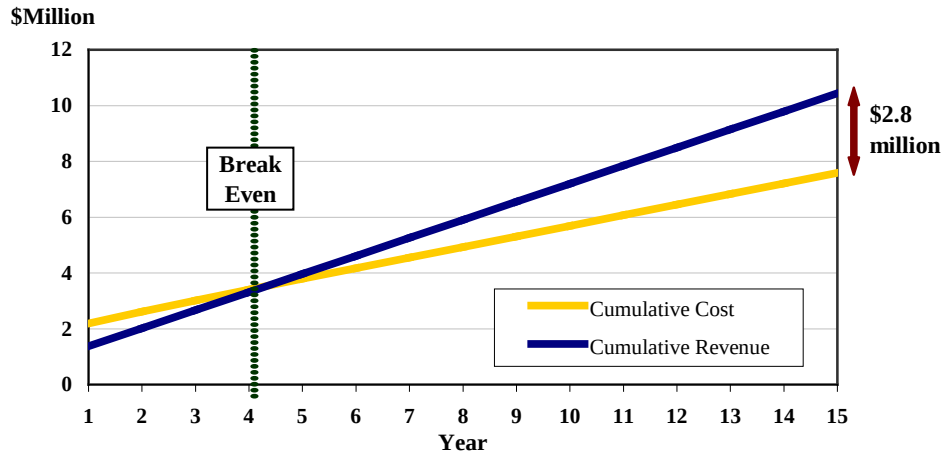
Source: results from NAHB "local impact of home building" models.

As Figure 3.8 illustrates, in the first year without the imposition of impact fees, 100 average single family homes constructed in the typical metropolitan area, generate an estimated \$1.4 million in tax and other revenue for local governments. 100 average single-family homes also generate \$189,000 in current expenditures to the local government for providing public services to the net new households at current levels, and \$1.9 million in capital investment for new infrastructure and equipment necessary to serve the needs of new residents. The analysis assumes that local governments finance the capital investment by borrowing at the current municipal bond rate.

In a typical year after the first, the 100 single-family homes result in \$648,000 in recurring tax and other revenue for local governments, and \$378,000 in local government expenditures needed to continue providing services at current levels.

After 15 years, the homes will generate a cumulative \$10.4 million in revenue for local governments compared to only \$7.6 million in expenditures, including annual current expenses, capital investment, and interest on debt as illustrated in Figure 3.10.

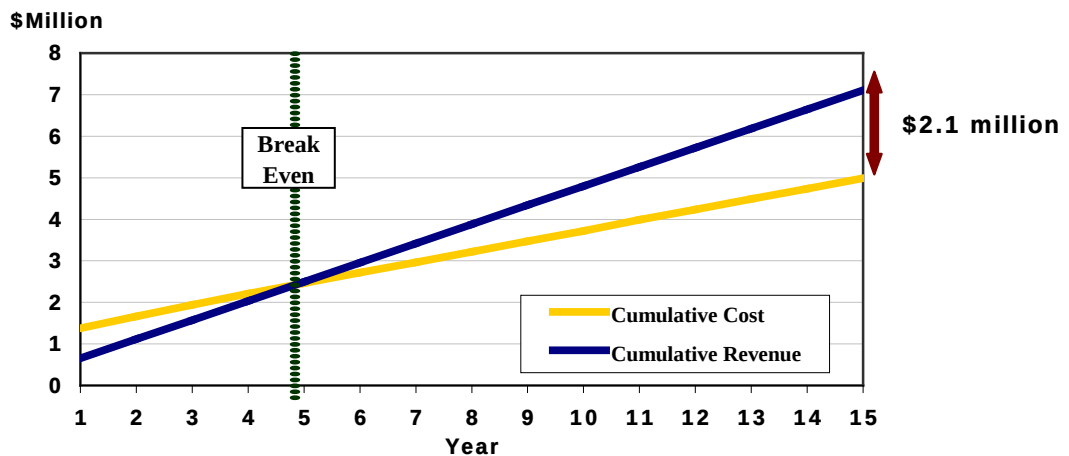
Figure 3.10. Costs Compared to Revenue: 100 Single Family Homes with No Impact Fees



Similarly, in the first year without the use of impact fees, 100 average multifamily housing units constructed in a typical metropolitan area, generate an estimated \$653,000 in taxes and other revenue for local governments while requiring approximately \$126,000 in current expenditures for local governments to provide public services at current levels to the net new households, and \$1.2 million in capital investment for new structures and equipment necessary to serve the needs of new residents. Again, it was assumed that local governments finance the capital investment by borrowing at the current municipal bond rate.

In a typical year after the first, the 100 multifamily housing units result in an additional \$461,000 in tax and other revenue for local governments, and \$251,000 in local government expenditures needed to continue providing services at current levels. After 15 years, the homes will generate a cumulative \$7.1 million in revenue compared to \$5.0 million in costs (Figure 3.11).

Figure 3.11 Costs Compared to Revenue: 100 Multifamily Units with No Impact Fees



In *The Local Impact of Home Building in a Typical Metropolitan Area: Income, Jobs, and Taxes Generated*, NAHB showed that, in an average revenue structure (including average impact fees), an average single family house will pay for itself (from the standpoint of local governments in the area) in four years, and an average multifamily housing unit will pay for itself in approximately five years.

Figures 3.10 and 3.11 illustrate that, impact and other construction-related fees are eliminated, the revenues attributable to new growth that remain from Figure 3.7 are sufficient enough for the average single-family and multifamily housing units to pay for themselves within a five-year timeframe. After a breakeven point at approximately five (5) years, the average single-family and multifamily unit begins generating excess revenue that local governments may use to reduce taxes or finance other projects, including the expansion of services to other residents in the area.

Many revenue items in Figure 3.7 result from general expansion of the local economy of a metropolitan area and cannot be assigned with certainty to a particular jurisdiction. This creates fiscal challenges, as many costs (such as those associated with primary and secondary education) are borne entirely by the jurisdiction in which a home is constructed. However, if each jurisdiction ignores the economics of the broader housing and labor market in which it is situated, and considers only revenues that can be documented with certainty when making decisions regarding impact fee policies or other measures with the potential to restrict the supply of housing, the result will be a general shortage of housing that will stifle business growth and create housing affordability problems. The purpose of this chapter was not to trivialize the significant fiscal challenges many local jurisdictions face, but to document the net economic benefits jurisdictions in a market area may realize if they allow an adequate supply of housing to be constructed.

Conclusion

The information presented in this chapter has illustrated how a \$1,000 impact fee will typically be passed to the ultimate buyer of the home; how the buyer often ends up paying more than \$1,000 extra for the home; and how the increase in the price of the home will create housing affordability issues by reducing consumption of housing in addition to increasing prices for the housing buyers do consume.

Moreover, given the tax and fee structures that prevail throughout the United States, the expanded economic activity resulting from residential construction generates considerable revenue for local governments in the area. In the typical case, after the initial five (5) year period following construction, revenues from various sources, excluding impact fees (or permit, or hook-up, or other construction-related), are adequate to extend existing level of public services the new residences.

Endnotes

1. Higher prices include the case of a house that may sell for the same price but is smaller, on smaller lot, or includes fewer amenities. In this case the buyer may be paying the same price but getting less housing in return, an effective price increase. For simplicity, this chapter describes primarily the case where the characteristics of the house remain constant while the price changes.
2. Richard Greene and Stephen Malpezzi. A Primer on U.S. Housing Markets and Housing Policy. AREUEA Monograph Series No. 3, The Urban Institute Press, Washington (2003). Richard Greene is currently Associate Dean for Graduate Programs and Oliver T. Carr, Jr. Chair of Real Estate Finance at George Washington University. Stephen Malpezzi is Professor, and Lorin and Marjorie Tiefenthaler Distinguished Chair in Real Estate at the University of Wisconsin-Madison.
3. U.S Census Bureau. Houses Sold and for Sale by Stage of Construction and Median Number of Months on Sales Market: <http://www.census.gov/const/stageann.pdf>, and Length of Time for New Residential Construction: <http://www.census.gov/const/www/lengthoftimeindex.html>.
4. NAHB, 2006 Cost of Doing Business Study.
5. A substantial portion of the material in this section is adapted from “Metro Area House Prices and Affordability” by Elliot Eisenberg in Housing Economics, July 2007.
<http://www.nahb.org/generic.aspx?sectionID=734&genericContentID=79606&channelID=311>
6. “New Home Prices by State and Metro Areas” by Paul Emrath and Helen Fei Liu in Housing Economics, June 2007:
<http://www.nahb.org/generic.aspx?sectionID=734&genericContentID=78655&channelID=311>
7. “Residential Real Estate Tax Rates in the American Community Survey” by Natalia Siniavskaia in Housing Economics, May 2007:
<http://www.nahb.org/generic.aspx?sectionID=734&genericContentID=76984&channelID=311>
8. See for example "An Empirical Examination of the Effect of Impact Fees on the Housing Market," by Larry D. Singell and Jane H. Lilleydahl in Land Economics, February 1990; "Pricing Implications of Development Exactions on the Existing Housing Stock," by Charles Delaney and Marc Smith in Growth and Change, Fall 1989; or “Do Impact Fees Raise the Price of Existing Housing” by Shishir Mathur in Housing Policy Debate, 2007 (Issue 4).
9. The procedure is explained in detail in the technical appendix to The Local Impact of Home Building in a Typical Metropolitan Area: Comparing Costs to Revenues for Local Governments.
10. Details of the model used to estimate the results are available in NAHB’s Local Impact of Home Building Model: Technical Appendix. The document is too large to be downloaded over the internet but can be obtained by contacting NAHB’s Housing Policy Department.

Exhibit A

NATIONAL ASSOCIATION OF HOME BUILDERS
Households Priced Out of the Market by a \$1,000 Price Increase, 2014

Metropolitan Statistical Area	Median New Home Price	Income Needed to Qualify	Households		
			All	Percent that Can Afford	Priced Out
Abilene, TX MSA	240,384	71,059	62,311	25%	144
Akron, OH MSA	269,153	75,822	293,691	29%	407
Albany, GA MSA	140,973	38,181	56,249	45%	160
Albany-Schenectady-Troy, NY MSA	401,105	117,214	336,867	19%	369
Albuquerque, NM MSA	225,407	57,214	344,294	43%	659
Alexandria, LA MSA	207,636	51,993	69,543	37%	178
Allentown-Bethlehem-Easton, PA-NJ MSA	307,829	87,794	318,081	29%	513
Altoona, PA MSA	349,984	92,322	48,629	17%	44
Amarillo, TX MSA	272,883	83,203	94,499	29%	142
Ames, IA MSA	284,375	78,675	37,083	30%	53
Anchorage, AK MSA	373,186	98,659	131,380	35%	192
Anderson, IN MSA	259,819	70,209	47,967	24%	105
Anderson, SC MSA	230,499	56,789	71,988	39%	110
Ann Arbor, MI MSA	270,400	78,181	143,994	41%	233
Anniston-Oxford, AL MSA	171,771	43,116	48,622	50%	117
Appleton, WI MSA	251,328	72,245	87,202	38%	212
Asheville, NC MSA	240,017	58,015	173,969	40%	333
Athens-Clarke County, GA MSA	228,491	58,608	70,685	35%	128
Atlanta-Sandy Springs-Marietta, GA MSA	221,742	56,955	1,980,222	48%	4,135
Atlantic City-Hammonton, NJ MSA	299,539	90,537	100,674	28%	136
Auburn-Opelika, AL MSA	314,741	78,066	54,042	25%	74
Augusta-Richmond County, GA-SC MSA	208,798	52,477	198,133	44%	407
Austin-Round Rock-San Marcos, TX MSA	232,454	69,043	667,355	45%	1,285
Bakersfield-Delano, CA MSA	241,976	62,459	258,396	40%	479
Baltimore-Towson, MD MSA	228,013	57,989	1,060,179	56%	2,014
Barnstable Town, MA MSA	616,381	151,432	80,879	11%	24
Baton Rouge, LA MSA	226,874	56,548	306,517	48%	530
Battle Creek, MI MSA	241,340	72,350	56,027	26%	114
Bay City, MI MSA	240,615	70,478	45,788	28%	79
Beaumont-Port Arthur, TX MSA	183,574	55,775	142,970	39%	349
Bellingham, WA MSA	293,969	72,746	77,203	35%	145
Bend, OR MSA	326,459	81,842	68,995	31%	101
Billings, MT MSA	247,752	63,972	67,882	35%	153
Binghamton, NY MSA	255,988	82,431	103,527	26%	164
Birmingham-Hoover, AL MSA	263,064	64,348	447,016	38%	681
Blacksburg-Christiansburg-Radford, VA MSA	210,790	52,204	67,158	52%	141
Bloomington, IN MSA	205,783	51,066	77,320	42%	147
Bloomington-Normal, IL MSA	207,654	62,994	71,053	51%	172
Boise City-Nampa, ID MSA	269,591	66,056	239,837	33%	474
Boston-Cambridge-Quincy, MA-NH MSA	430,296	111,855	1,749,426	32%	1,829
Boulder, CO MSA	310,031	74,378	128,370	47%	191
Bowling Green, KY MSA	202,515	52,107	53,579	40%	93
Bremerton-Silverdale, WA MSA	293,074	74,090	90,100	41%	167
Bridgeport-Stamford-Norwalk, CT MSA	878,625	240,996	339,772	1%	186
Brownsville-Harlingen, TX MSA	116,704	35,831	126,119	47%	478
Brunswick, GA MSA	289,183	73,721	40,866	29%	59
Buffalo-Niagara Falls, NY MSA	395,105	128,302	469,199	10%	266

NATIONAL ASSOCIATION OF HOME BUILDERS
Households Priced Out of the Market by a \$1,000 Price Increase, 2014

Metropolitan Statistical Area	Median New Home Price	Income Needed to Qualify	Households		
			All	Percent that Can Afford	Priced Out
Burlington, NC MSA	155,202	38,966	56,995	54%	154
Canton-Massillon, OH MSA	220,267	60,406	165,387	35%	326
Cape Coral-Fort Myers, FL MSA	292,932	80,100	259,094	26%	279
Carson City, NV MSA	343,367	84,201	22,243	34%	30
Cedar Rapids, IA MSA	146,885	41,106	99,047	64%	218
Champaign-Urbana, IL MSA	254,760	76,429	93,065	29%	141
Charleston-North Charleston-Summerville, SC MSA	288,677	72,424	269,643	34%	491
Charlotte-Gastonia-Rock Hill, NC-SC MSA	243,499	62,366	683,782	43%	1,181
Charlottesville, VA MSA	262,901	63,558	78,144	51%	128
Chattanooga, TN-GA MSA	182,679	46,376	210,567	46%	510
Chicago-Joliet-Naperville, IL-IN-WI MSA	308,424	92,108	3,473,022	31%	5,325
Chico, CA MSA	274,636	67,806	89,007	31%	128
Cincinnati-Middletown, OH-KY-IN MSA	244,344	66,318	865,663	41%	1,623
Clarksville, TN-KY MSA	140,513	35,802	103,093	64%	306
Cleveland, TN MSA	159,148	39,165	49,234	56%	138
Cleveland-Elyria-Mentor, OH MSA	272,149	79,010	830,043	28%	1,103
Coeur d'Alene, ID MSA	250,758	60,527	55,100	37%	100
College Station-Bryan, TX MSA	192,998	56,025	88,453	36%	198
Columbia, MO MSA	214,130	54,865	76,589	42%	128
Columbia, SC MSA	213,026	52,771	291,253	44%	670
Columbus, GA-AL MSA	188,924	47,549	114,070	43%	247
Columbus, IN MSA	270,724	69,587	30,780	41%	66
Columbus, OH MSA	254,712	72,249	725,749	38%	1,452
Corpus Christi, TX MSA	192,237	59,548	163,365	38%	405
Dallas-Fort Worth-Arlington, TX MSA	289,824	89,627	2,412,714	31%	3,676
Dalton, GA MSA	168,738	42,291	48,593	40%	122
Danville, IL MSA	130,985	39,651	32,323	54%	106
Danville, VA MSA	167,278	41,519	49,204	42%	168
Davenport-Moline-Rock Island, IA-IL MSA	220,693	64,422	158,920	38%	363
Dayton, OH MSA	291,432	84,249	333,881	24%	411
Decatur, AL MSA	179,407	45,017	61,915	50%	106
Decatur, IL MSA	225,354	69,191	52,324	37%	109
Deltona-Daytona Beach-Ormond Beach, FL MSA	357,650	96,058	213,555	15%	214
Denver-Aurora-Broomfield, CO MSA	306,315	74,688	1,049,652	42%	1,791
Des Moines-West Des Moines, IA MSA	269,083	76,308	245,972	40%	507
Detroit-Warren-Livonia, MI MSA	294,783	91,235	1,666,009	26%	2,434
Dothan, AL MSA	238,111	58,693	53,913	34%	93
Dover, DE MSA	158,002	37,589	65,290	67%	148
Duluth, MN-WI MSA	214,426	56,782	117,200	44%	287
Durham-Chapel Hill, NC MSA	252,354	65,845	216,839	40%	353
Eau Claire, WI MSA	223,405	63,094	64,452	39%	158
El Centro, CA MSA	234,495	59,418	42,914	32%	68
El Paso, TX MSA	171,999	51,310	267,497	39%	694
Elizabethtown, KY MSA	178,046	45,538	48,608	53%	175
Elkhart-Goshen, IN MSA	218,863	57,199	70,981	44%	161
Erie, PA MSA	300,781	88,158	111,662	17%	188
Eugene-Springfield, OR MSA	286,284	73,007	147,425	28%	227

Households Priced Out of the Market by a \$1,000 Price Increase, 2014

Metropolitan Statistical Area	Median New Home Price	Income Needed to Qualify	Households		
			All	Percent that Can Afford	Priced Out
Evansville, IN-KY MSA	183,817	47,332	149,798	49%	256
Fairbanks, AK MSA	228,035	61,929	33,892	47%	98
Fargo, ND-MN MSA	223,606	62,807	91,187	41%	195
Farmington, NM MSA	254,662	62,485	35,965	47%	90
Fayetteville, NC MSA	203,097	53,953	147,433	42%	393
Fayetteville-Springdale-Rogers, AR-MO MSA	271,763	67,378	182,509	35%	276
Flagstaff, AZ MSA	229,039	54,724	49,607	43%	94
Flint, MI MSA	225,094	71,795	171,869	26%	342
Florence-Muscle Shoals, AL MSA	138,411	34,354	54,083	56%	175
Fond du Lac, WI MSA	244,900	71,637	41,020	38%	105
Fort Collins-Loveland, CO MSA	289,367	70,156	128,382	39%	199
Fort Smith, AR-OK MSA	190,863	48,139	124,807	39%	289
Fort Wayne, IN MSA	238,403	62,176	167,061	38%	338
Fresno, CA MSA	293,061	73,897	304,713	30%	456
Gadsden, AL MSA	170,888	43,165	36,353	43%	62
Gainesville, FL MSA	202,516	53,567	94,526	43%	184
Gainesville, GA MSA	207,524	51,934	61,424	47%	152
Glens Falls, NY MSA	269,828	77,148	51,033	30%	75
Goldsboro, NC MSA	188,687	49,767	45,559	40%	106
Grand Junction, CO MSA	258,995	60,551	56,846	43%	88
Grand Rapids-Wyoming, MI MSA	253,115	71,378	297,890	34%	641
Greeley, CO MSA	269,681	64,966	96,568	40%	189
Green Bay, WI MSA	231,028	65,732	124,309	40%	224
Greensboro-High Point, NC MSA	288,492	74,552	295,059	28%	445
Greenville, NC MSA	184,839	48,872	90,674	44%	204
Greenville-Mauldin-Easley, SC MSA	277,468	67,903	254,703	34%	380
Gulfport-Biloxi, MS MSA	162,576	44,342	108,125	48%	270
Hagerstown-Martinsburg, MD-WV MSA	206,117	51,465	106,312	55%	238
Hanford-Corcoran, CA MSA	189,803	47,603	39,541	55%	114
Harrisburg-Carlisle, PA MSA	323,166	87,531	219,380	30%	310
Harrisonburg, VA MSA	175,588	41,958	47,538	54%	122
Hartford-West Hartford-East Hartford, CT MSA	319,298	91,708	477,064	37%	723
Hattiesburg, MS MSA	243,791	64,017	52,169	34%	88
Hickory-Lenoir-Morganton, NC MSA	252,219	62,967	150,672	27%	276
Holland-Grand Haven, MI MSA	247,807	67,911	97,057	42%	222
Honolulu, HI MSA	393,669	87,662	307,228	40%	420
Hot Springs, AR MSA	262,134	65,875	46,326	27%	66
Houma-Bayou Cane-Thibodaux, LA MSA	271,420	69,031	72,220	35%	115
Houston-Sugar Land-Baytown, TX MSA	195,144	60,997	2,167,245	47%	4,234
Huntsville, AL MSA	165,823	40,142	171,081	62%	384
Idaho Falls, ID MSA	161,729	40,306	41,575	60%	108
Indianapolis-Carmel, IN MSA	260,699	67,557	697,114	38%	1,312
Iowa City, IA MSA	271,832	76,239	67,287	36%	132
Ithaca, NY MSA	280,564	89,282	36,575	30%	40
Jackson, MI MSA	188,708	52,506	63,934	44%	190

NATIONAL ASSOCIATION OF HOME BUILDERS
Households Priced Out of the Market by a \$1,000 Price Increase, 2014

Metropolitan Statistical Area	Median New Home Price	Income Needed to Qualify	Households		
			All	Percent that Can Afford	Priced Out
Jackson, MS MSA	244,997	63,545	192,760	38%	370
Jackson, TN MSA	193,808	49,633	47,158	37%	84
Jacksonville, FL MSA	280,185	73,490	508,999	34%	856
Jacksonville, NC MSA	148,170	37,704	66,124	66%	233
Janesville, WI MSA	213,437	64,369	62,636	38%	152
Jefferson City, MO MSA	224,583	57,677	59,464	46%	126
Johnson City, TN MSA	163,973	40,268	83,177	50%	239
Johnstown, PA MSA	301,932	84,153	60,029	19%	66
Joplin, MO MSA	144,861	37,416	72,896	55%	245
Kalamazoo-Portage, MI MSA	254,025	72,309	135,068	29%	243
Kankakee-Bradley, IL MSA	191,793	58,765	41,504	35%	111
Kansas City, MO-KS MSA	292,243	80,318	814,964	33%	1,194
Kennewick-Pasco-Richland, WA MSA	328,527	85,647	92,841	32%	129
Killeen-Temple-Fort Hood, TX MSA	169,434	50,058	146,822	51%	367
Kingsport-Bristol-Bristol, TN-VA MSA	179,999	45,171	122,105	43%	323
Kingston, NY MSA	377,249	114,249	72,871	19%	74
Knoxville, TN MSA	213,424	52,723	294,901	44%	537
Kokomo, IN MSA	215,884	54,403	39,545	41%	70
La Crosse, WI-MN MSA	219,155	62,946	57,652	37%	92
Lafayette, IN MSA	231,863	58,658	80,628	39%	156
Lafayette, LA MSA	187,491	47,716	110,350	52%	217
Lake Charles, LA MSA	234,773	60,482	81,131	36%	147
Lakeland-Winter Haven, FL MSA	236,300	64,659	235,702	30%	358
Lancaster, PA MSA	269,950	74,049	196,147	35%	413
Lansing-East Lansing, MI MSA	254,683	75,840	184,760	30%	390
Laredo, TX MSA	164,186	50,884	72,117	36%	196
Las Cruces, NM MSA	231,803	57,551	71,069	34%	130
Las Vegas-Paradise, NV MSA	182,564	46,013	755,412	55%	2,044
Lebanon, PA MSA	262,028	71,597	53,811	35%	115
Lewiston, ID-WA MSA	255,924	65,790	26,662	31%	59
Lexington-Fayette, KY MSA	175,954	44,491	194,617	55%	509
Lima, OH MSA	213,974	58,512	40,561	38%	100
Lincoln, NE MSA	229,995	66,939	123,808	38%	266
Little Rock-North Little Rock-Conway, AR MSA	207,826	52,753	283,816	46%	636
Logan, UT-ID MSA	223,458	53,659	42,138	46%	82
Longview, TX MSA	155,971	44,591	72,341	50%	218
Longview, WA MSA	246,663	65,225	35,426	32%	77
Los Angeles-Long Beach-Santa Ana, CA MSA	445,105	107,294	4,292,536	22%	3,813
Louisville/Jefferson County, KY-IN MSA	229,997	59,226	533,456	44%	1,140
Lubbock, TX MSA	250,013	76,069	111,958	29%	173
Lynchburg, VA MSA	223,782	54,240	102,347	43%	196
Macon, GA MSA	198,624	52,472	84,446	39%	169
Madera-Chowchilla, CA MSA	271,959	67,513	41,538	36%	73
Madison, WI MSA	293,258	83,743	244,625	35%	381
Manchester-Nashua, NH MSA	323,009	95,042	159,493	28%	230
Mansfield, OH MSA	222,557	61,861	48,355	33%	103
McAllen-Edinburg-Mission, TX MSA	137,758	42,748	237,476	40%	656
Medford, OR MSA	272,536	69,332	74,464	26%	156
Memphis, TN-MS-AR MSA	194,193	52,811	493,575	45%	1,183

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Medford, OR MSA	272,536	69,332	74,464	26%	156
Memphis, TN-MS-AR MSA	194,193	52,811	493,575	45%	1,183
Merced, CA MSA	351,321	88,213	79,793	16%	92
Miami-Fort Lauderdale-Pompano Beach, FL	342,099	97,050	2,058,718	17%	1,953
Midland, TX MSA	240,632	69,973	51,972	45%	111
Milwaukee-Waukesha-West Allis, WI MSA	346,831	100,111	641,192	22%	943
Minneapolis-St. Paul-Bloomington, MN-WI	336,496	89,372	1,327,842	36%	2,009
Mobile, AL MSA	163,596	42,440	154,719	50%	327
Modesto, CA MSA	255,320	64,669	166,773	37%	281
Monroe, LA MSA	196,501	50,170	70,146	37%	106
Monroe, MI MSA	227,025	62,366	57,536	42%	106
Montgomery, AL MSA	199,530	48,515	150,721	49%	276
Morgantown, WV MSA	208,761	51,142	51,113	42%	107
Morristown, TN MSA	203,473	50,167	50,289	38%	100
Mount Vernon-Anacortes, WA MSA	245,286	62,316	42,494	45%	77
Muncie, IN MSA	208,458	55,525	48,842	33%	103
Muskegon-Norton Shores, MI MSA	205,803	60,633	65,952	32%	129
Myrtle Beach-North Myrtle Beach-Conway	203,843	50,379	137,484	41%	283
Napa, CA MSA	580,197	142,369	44,979	13%	19
Naples-Marco Island, FL MSA	413,389	105,952	123,245	22%	75
Nashville-Davidson--Murfreesboro--Franklin	261,290	65,354	622,873	40%	1,096
New Haven-Milford, CT MSA	318,180	93,482	337,231	29%	514
New Orleans-Metairie-Kenner, LA MSA	248,612	65,357	476,731	36%	750
New York-Northern New Jersey-Long Island	407,805	113,408	7,040,717	19%	5,742
Niles-Benton Harbor, MI MSA	355,099	96,306	67,997	17%	80
North Port-Bradenton-Sarasota, FL MSA	290,155	78,160	294,796	27%	371
Ocala, FL MSA	226,250	60,413	134,869	28%	333
Ocean City, NJ MSA	448,406	118,716	39,273	18%	35
Odessa, TX MSA	216,022	62,359	48,352	41%	108
Ogden-Clearfield, UT MSA	285,382	69,601	182,900	45%	391
Oklahoma City, OK MSA	230,816	63,382	487,440	38%	935
Olympia, WA MSA	290,425	74,854	103,069	42%	207
Omaha-Council Bluffs, NE-IA MSA	219,334	65,366	356,329	44%	731
Orlando-Kissimmee-Sanford, FL MSA	323,141	85,927	805,830	23%	955
Oshkosh-Neenah, WI MSA	249,872	72,679	66,752	34%	154
Oxnard-Thousand Oaks-Ventura, CA MSA	391,706	94,599	272,711	41%	343
Palm Bay-Melbourne-Titusville, FL MSA	359,862	98,315	221,973	19%	257
Panama City-Lynn Haven-Panama City Beach	187,641	48,955	66,256	51%	123
Pascagoula, MS MSA	162,073	44,932	55,327	49%	161
Pensacola-Ferry Pass-Brent, FL MSA	171,995	45,705	187,473	53%	489
Peoria, IL MSA	279,063	83,796	154,710	26%	283
Philadelphia-Camden-Wilmington, PA-NJ-DE	270,854	75,346	2,240,167	41%	3,914
Phoenix-Mesa-Glendale, AZ MSA	299,444	74,110	1,594,811	34%	2,670

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Pittsburgh, PA MSA	383,844	110,558	1,012,323	16%	934
Port St. Lucie, FL MSA	346,618	99,486	183,423	21%	199
Portland-South Portland-Biddeford, ME MSA	321,500	84,074	218,046	34%	281
Portland-Vancouver-Hillsboro, OR-WA MSA	324,988	83,386	873,789	33%	1,190
Poughkeepsie-Newburgh-Middletown, NY MSA	315,346	93,615	231,194	35%	383
Prescott, AZ MSA	271,476	65,766	98,451	33%	184
Providence-New Bedford-Fall River, RI-MA MSA	314,448	84,389	623,169	32%	805
Provo-Orem, UT MSA	289,202	68,850	149,368	41%	309
Pueblo, CO MSA	212,056	54,060	62,804	42%	182
Punta Gorda, FL MSA	255,458	72,257	79,495	25%	189
Racine, WI MSA	283,360	83,396	75,451	32%	110
Raleigh-Cary, NC MSA	239,300	60,054	477,113	51%	986
Reading, PA MSA	255,169	74,361	143,350	35%	309
Redding, CA MSA	242,398	60,089	66,329	36%	109
Reno-Sparks, NV MSA	302,827	75,485	173,013	32%	295
Richmond, VA MSA	220,984	54,604	481,937	54%	1,003
Riverside-San Bernardino-Ontario, CA MSA	294,917	74,642	1,269,021	36%	2,050
Roanoke, VA MSA	247,589	61,709	138,319	40%	310
Rochester, MN MSA	289,029	76,208	74,890	46%	139
Rochester, NY MSA	363,279	119,792	421,843	15%	418
Rockford, IL MSA	161,275	52,310	132,629	45%	402
Rocky Mount, NC MSA	197,825	52,868	52,983	38%	107
Rome, GA MSA	233,496	60,762	33,306	34%	73
Sacramento--Arden-Arcade--Roseville, CA MSA	368,853	92,854	796,644	29%	1,004
Saginaw-Saginaw Township North, MI MSA	220,475	64,958	81,456	31%	155
Salem, OR MSA	278,962	72,881	149,861	29%	271
Salinas, CA MSA	336,843	81,481	125,003	32%	156
Salisbury, MD MSA	172,707	43,739	44,757	51%	78
Salt Lake City, UT MSA	286,243	69,358	389,439	42%	777
San Antonio-New Braunfels, TX MSA	227,539	68,643	774,537	36%	1,712
San Diego-Carlsbad-San Marcos, CA MSA	443,256	106,876	1,117,831	27%	912
San Francisco-Oakland-Fremont, CA MSA	441,837	106,571	1,665,167	39%	1,597
San Jose-Sunnyvale-Santa Clara, CA MSA	447,432	107,821	647,818	42%	729
San Luis Obispo-Paso Robles, CA MSA	419,878	100,466	103,348	29%	137
Sandusky, OH MSA	243,727	66,843	32,955	32%	68
Santa Barbara-Santa Maria-Goleta, CA MSA	427,335	101,612	143,151	28%	120
Santa Cruz-Watsonville, CA MSA	287,744	68,260	90,282	47%	151
Santa Fe, NM MSA	180,544	42,743	65,157	62%	119
Santa Rosa-Petaluma, CA MSA	325,692	79,106	191,860	43%	262
Savannah, GA MSA	205,157	53,207	139,421	44%	311
Scranton--Wilkes-Barre, PA MSA	345,255	96,513	222,523	18%	274
Seattle-Tacoma-Bellevue, WA MSA	368,710	94,273	1,397,266	38%	1,775
Sebastian-Vero Beach, FL MSA	433,676	117,492	61,928	11%	37

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			All	Percent that Can Afford	Priced Out
Sheboygan, WI MSA	295,862	85,947	48,035	23%	79
Shreveport-Bossier City, LA MSA	199,792	51,275	151,106	48%	284
Sioux City, IA-NE-SD MSA	269,059	78,691	50,974	26%	72
Sioux Falls, SD MSA	180,932	49,784	89,630	56%	283
South Bend-Mishawaka, IN-MI MSA	275,678	72,826	119,914	27%	222
Spartanburg, SC MSA	169,499	42,354	115,152	52%	317
Spokane, WA MSA	358,134	93,874	192,335	21%	244
Springfield, IL MSA	248,178	74,317	87,129	35%	142
Springfield, MA MSA	357,528	97,210	259,426	23%	343
Springfield, MO MSA	210,300	53,752	184,137	39%	450
Springfield, OH MSA	245,947	68,424	53,722	27%	95
St. Cloud, MN MSA	238,803	62,543	71,849	44%	136
St. George, UT MSA	218,646	52,782	52,381	43%	121
St. Joseph, MO-KS MSA	212,137	55,439	50,925	39%	103
St. Louis, MO-IL MSA	263,137	72,040	1,115,669	36%	2,071
State College, PA MSA	261,048	69,018	53,699	44%	88
Stockton, CA MSA	311,589	78,983	219,842	32%	252
Sumter, SC MSA	131,871	33,549	38,919	65%	124
Syracuse, NY MSA	299,007	95,900	268,267	23%	387
Tallahassee, FL MSA	220,666	56,798	137,300	42%	279
Tampa-St. Petersburg-Clearwater, FL MSA	376,565	103,652	1,177,086	17%	842
Terre Haute, IN MSA	203,506	54,299	73,531	42%	173
Toledo, OH MSA	255,682	73,852	260,186	26%	362
Topeka, KS MSA	216,320	62,215	91,646	40%	221
Trenton-Ewing, NJ MSA	446,961	136,243	134,536	23%	88
Tucson, AZ MSA	287,021	73,702	399,026	29%	660
Tulsa, OK MSA	223,880	60,536	375,628	40%	867
Tuscaloosa, AL MSA	248,394	59,158	79,981	37%	120
Tyler, TX MSA	232,175	65,966	74,360	33%	129
Utica-Rome, NY MSA	298,972	94,627	118,949	17%	169
Valdosta, GA MSA	137,268	35,630	54,958	49%	196
Vallejo-Fairfield, CA MSA	255,570	64,307	143,461	53%	259
Vineland-Millville-Bridgeton, NJ MSA	177,370	55,125	50,779	44%	104
Virginia Beach-Norfolk-Newport News, VA-NC	234,587	59,056	648,268	50%	1,370
Visalia-Porterville, CA MSA	253,824	63,209	134,074	33%	272
Waco, TX MSA	201,313	60,613	87,319	33%	163
Warner Robins, GA MSA	232,089	60,349	53,293	43%	116
Waterloo-Cedar Falls, IA MSA	232,706	64,308	65,726	37%	166
Wausau, WI MSA	243,269	70,353	49,835	39%	111
Wenatchee-East Wenatchee, WA MSA	239,422	60,552	42,564	42%	94
Wichita Falls, TX MSA	223,899	70,763	64,542	30%	159
Wichita, KS MSA	226,945	64,818	245,039	41%	586
Williamsport, PA MSA	289,987	79,994	43,826	22%	70
Wilmington, NC MSA	266,712	66,865	152,944	35%	282
Winchester, VA-WV MSA	233,050	56,203	51,402	41%	62
Winston-Salem, NC MSA	189,420	48,459	201,425	46%	445
Worcester, MA MSA	296,995	79,168	307,142	40%	428
Yakima, WA MSA	276,602	72,065	75,369	26%	135
York-Hanover, PA MSA	265,832	74,801	170,288	37%	352
Youngstown-Warren-Boardman, OH-PA MSA	232,467	65,474	224,983	30%	405
Yuba City, CA MSA	246,352	63,666	57,492	35%	115
Yuma, AZ MSA	178,173	46,100	69,720	45%	187

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A Closer Look at Impact Fee Technical Studies

- *Methodology*
- *Population and Land Use Assumptions*
- *Levels of Service*
- *Credits*
- *Construction and Land Costs*
- *Offsets*
- *Credits*
- *Service Areas*
- *Transportation-Related Issues*
- *Legitimacy of Growth-Related Costs*
- *Proportionate-Share Impact Fees*
- *Discount Impact Fee Schedules*
- *Commonly Found Errors*
- *Revising State Statutes to Address Jurisdictional Overreach*
- *Conclusion*

When local governments decide to implement impact fees, they will commonly direct either their staff or a consultant to prepare a document that, among other things, analyzes the public costs of constructing capital facilities, calculates the share that is needed to serve new development, and determines the portion of that share which will not be paid from other fees and taxes on new development. This study is called a technical memorandum, fee calculation study, public facility needs assessment, nexus report, or some such similar name (herein termed “technical study”).

The technical study is important because it is needed to demonstrate that the impact fees are logically related to a need created by new development and that the amount charged is proportional to the cost of providing public facilities. The technical study is not part of the impact fee ordinance itself but it provides the necessary background and is the source for the schedule of impact fees contained in the ordinance.

In order to determine the fairness and legality of any impact fee charge, it is necessary to illustrate how the impact fees were calculated. The local government should always make the technical study available prior to a public hearing on an impact fee ordinance or at any time after adoption. In rare cases, the technical study is not available or was

never prepared. In these instances, the local government is susceptible to legal challenges on the basis that the impact fee schedule was established arbitrarily. It should be emphasized that impact fee calculation is a complex and subtle matter and even experienced impact fee consultants make errors that can potentially result in overcharges (see Chapter 2, pp. 15-18).

Some state impact fee laws specifically require a technical study and mention particular aspects of the study which must be present. *Technical studies prepared by or for local governments should always be checked against applicable state statutes in order to verify that all requirements of the applicable state statutes have been addressed.* Even in the absence of pertinent state laws, a sound impact fee technical study is essential to establish the validity of impact fees (see Chapter 2, pp. 15-18). This chapter will discuss various technical issues that should be addressed in impact fee studies and point out some common errors made in impact fee methodologies and calculations.

Methodology

The preparation of an impact fee technical study has much in common with the preparation of a fiscal impact study except that the former considers only capital costs, not operating costs. The fiscal consequences of new development must be accounted for because, unless it can be shown that the public cost of providing capital facilities for new development exceeds the amount of revenue generated by new development for capital construction purposes, then impact fees cannot be justified.

Just as there are several different approaches to fiscal impact analysis, there are several different methodologies that may be used to estimate impact fees. The different approaches can produce different results and it can be argued that some are more accurate than others. These methods are referred to by various names, but there are three essential types: the *incremental expansion approach*, the *buy-in approach*, and the *plan-based approach*. All three approaches are commonly employed in the United States.

Incremental Expansion Approach

The key operating assumption in impact fee technical studies that use the incremental expansion approach is that future development will require the same types of capital facilities at existing levels of service and current replacement costs as those capital facilities currently being utilized by existing development.

The incremental expansion approach documents the current level of service using either quantitative or qualitative measures. The incremental expansion approach examines the replacement cost of existing capital facilities within a proposed impact fee category and divides this cost by the population served to produce a figure that is the average cost per capita for a particular type of facility. It is assumed that future costs per capita will maintain existing levels of service and will approximate the current replacement

costs of providing these facilities. Figure 4.1 provides an example of how a fire impact fee may be established utilizing the incremental expansion approach.

Figure 4.1: Sample Impact Fee Calculation Utilizing the Incremental Expansion Approach

Description	Calculation	Amount
Replacement Cost of Fire Station	A	\$ 2,000,000
Population Served by Existing Station	B	10,000
Average Replacement Cost per Person	$(A / B) = C$	\$ 200
Persons per Household	D	2.2
Impact Fee per Household	$C * D = E$	\$ 440

Assuming the cost of maintaining existing levels of service follows current patterns, the incremental expansion approach may give a reasonable approximation of the costs necessary to serve new development. This approach also requires minimal planning on the part of the local community, and is easiest to execute in a technical study.

However, the incremental expansion approach has a serious flaw. It assumes that the cost to provide facilities throughout the community is the same in any particular part of the community. But costs in a particular location depend on local conditions. Using the fire facility fee as an example, the cost of providing fire facilities for a property within the response radius of an existing station will differ substantially from the cost of providing new facilities for properties beyond the reach of existing stations. Properties that can be served by existing fire facilities will not require the expenditure of additional capital funds. The incremental expansion approach makes no distinction between properties that require additional capital spending and properties that don't.

Buy-In Approach

A variation on the incremental expansion approach has been devised which is sometimes referred to as a buy-in approach. The buy-in approach seeks to recoup from new development the cost of the excess capacity present in existing facilities which is available to serve new development. The buy-in approach utilizes the actual cost of the facility when it was constructed. Rather than dividing by the population presently served by the facility, the denominator includes present population plus projected future population of the service area which can be served by the facility in question without additional capital improvements. In this way the government recovers from new development an amount determined to be its fair share of the cost of previously constructed facilities. The rationale for the buy-in approach is that new development will pay its fair share of the remaining capacity of completed facilities.

Plan-Based Approach

The key operating assumption of the plan-based approach is that future development will follow adopted community plans, and future capital facilities needs and costs will vary based on location and types of new development.

The plan-based approach differs from the incremental expansion approach and buy-in approach as it does not rely on replacement costs or the actual costs, respectively, averaged over the entire community's population but rather the plan-based approach relies on specific planned facilities and the populations projected to be served by them. Again using fire facilities as an example, the plan-based approach would begin with the community's comprehensive plan or capital facilities plan to find how many new fire stations were planned for future populations to provide a specified level of service (e.g., minimum response time). The service area of each station would be examined to determine planned densities, land uses, and populations. The cost of providing service in each service area would be obtained from the same kind of engineering cost estimates used to prepare the capital budget (or from the capital budget itself ¹). Presumably, there would be differences in the costs from station-to-station, reflecting differences in equipment needed to address different fire risks associated with the specific mix of land uses in each station's service area. The impact fee calculation would involve dividing the capital cost for each station by the number of units served (dwellings, increments of nonresidential space) and/or projected to occupy each service area.

The technical study may use different unit types for determining impact fees depending upon the infrastructure system in question, such as gallons of demand for water systems or trips generated for roadway systems. The plan-based approach is more time consuming (therefore more expensive) but is thought to be more realistic as it examines individual service areas and their public facility requirements in detail. It should be noted, however, that this approach may drastically over or underestimate service demands for plans with long planning horizons (i.e. a 20-year plan). As such, the plan-based approach is best utilized with a three- to five-year planning horizon.

Special attention must be paid to ensuring that the capital facilities plan maintains a level of service that is consistent with the community's existing levels of service. If higher levels of service are being implemented the technical study must allocate a portion of the costs associated with the higher level of service to existing development and indicate what alternative funding sources will be used by the community (excluding impact fees) to upgrade existing facilities to meet the new proposed increased levels of service (see Level of Service section below).

If a jurisdiction is attempting to implement levels of service that are higher than their current service standards, the jurisdiction must fund the costs associated with increasing the existing level of service with funding sources other than impact fees before it can begin to levy and collect impact fees at the higher level of service. In such situations, the jurisdiction will often designate a funding source for increasing the existing level of service. *In such a situation, care should be taken in subsequent technical study reviews to verify that the jurisdiction did provide the designated funding to finance the higher levels of service.* Past experience has shown that often times the jurisdiction never provided the designated funding to increase the levels of service although they imposed impact fees based upon the higher level of service.

Hybrid or Ad-hoc Approaches

Some communities utilize a hybrid or ad-hoc methodology that combines elements of all of the impact fee approaches. The most important consideration when evaluating a hybrid or ad-hoc approach is whether the state statute is followed. Further, it is important to consider the strengths and weaknesses of the approach utilized compared to other more conventional approaches.

Population and Land Use Assumptions

Many state impact fees enabling laws require the community to specify the population and land use assumptions upon which the impact fee calculation will be based. This is important because the plan-based approach and buy-in methods rely on projections of future population and land use. However, the incremental expansion approach is not typically reliant on these assumptions. Normally, the community's comprehensive plan would be the source for these assumptions and projections. If the community has no comprehensive plan, or is out of date, a separate study may be used. Communities unwilling or unable to commission a comprehensive plan or special study sometimes ignore the issue of growth assumptions by using the incremental expansion approach.

The population and land use assumptions are worth examining in detail because the amount of the impact fee will depend on the number of persons, dwellings, and nonresidential land uses that will share responsibility for capital costs. *A common error in impact fee studies is inadequate consideration of household size trends or failure to consider and evaluate household size and trends at all.* Household size is important because a small change in the average household size can create substantial changes in overall population or in demand for housing. Many studies only consider the community's household size as reported in the most recent census and assume that future families will share the same characteristics as existing families. There is no valid reason to make this assumption. Census data show that household size has been decreasing over time for the U.S. as a whole. NAHB studies indicate that this trend is reflected in many local areas as well. The census data also show that families which have recently moved (the source of most local population growth) have a smaller household size than the national average. This trend has the following implications for impact fee calculations: fewer persons in each household means that the marginal impact of each additional dwelling unit is less; furthermore, a greater number of dwelling units will be needed to house an equivalent population, thus sharing costs over a greater number of units and reducing the per-unit impact fee amount. This is especially true given current demographic trends associated with aging baby boomers who are downsizing and/or Millennials who tend to remain single much longer than previous generations.

Land use assumptions also need to take account of demand from nonresidential land uses in order to avoid over-counting the demands and costs related to population and housing. For example, police and fire capital facilities will be sized to serve both

residential and nonresidential development, so costs should be spread over both types in proportion to the demand generated by each.

Levels of Service

Level of service is a concept for defining the quantity of public facilities that must be provided in order to adequately satisfy citizens' demands for capital facilities. For example, the number of public park acres per capita is a measure of the level of service for park facilities and the average response time is a measure of the level of fire, emergency medical, and police services. When calculating the amount of public facilities that will be required to serve new growth, one must select a specific level of service in order to quantify the required investment. For example, if the selected level of service for park facilities is 0.03 acres per capita and the projected population increase is 10,000 persons, then the required investment is 300 ($10,000 \times 0.03$) additional acres. *Many communities assume, wrongly, that they are free to select the level of service of public facilities for new development.*

A community may not require new development to fund a higher level of service that it did not require for existing development. The only level of service that may be used to quantify the public facility requirements of new development is the level of service currently provided in the community. There is one exception, however: a community may require higher levels of service for new development if it is concurrently implementing a plan to raise the level of service for existing development and is funding the plan with revenues other than impact fees on new development.

If a community plans to increase its levels of service and has indicated in the technical study the source from which the funding will be derived to accomplish this, it is important to periodically verify that the community has in fact utilized those funding sources rather than impact fees to meet this end.

All technical memoranda should address the issue of levels of service explicitly. Many address levels of service implicitly, inappropriately, or not at all. Additionally, many state statutes require that levels of service be disclosed and to the extent that a technical study does not address the levels of service, such a technical study may not be compliant with state statutes leaving the community open to potential legal challenges.

Construction and Land Costs

Replacement costs as utilized in the incremental expansion or plan-based approaches should be based on estimates prepared by qualified state license engineers, actual bids, or data provided by a costing service such as Marshall & Swifts or RS Means. Land values should be supported by recent comparable land sales occurring within the immediate area over the last 6-month period. More times than not, replacement cost estimates lack the supporting documentation necessary to determine the reasonableness of the cost. To the extent that replacement costs are inflated, new growth will fund facility costs in excess of existing levels of service.

If the buy in approach is utilized to estimate impact fees, the actual costs of the facilities should be used as opposed to their current replacement costs. In the *Boa v. Seattle* (Washington 1965)² case, the court held that the “value” of facilities must be based on the historical cost rather than the inflated replacement cost of the facility, thereby rejecting a buy-in fee based on the purported replacement cost of the facilities rather than the much lower historical costs. If for whatever reason the replacement cost is utilized in the buy-in approach, allowance for depreciation should be taken to reduce the costs to more closely align with historic costs.

Offsets

Certain state enabling acts, such as Utah and Arizona, require impact fees to be reduced based upon future cash flows generated from new development, including but not limited to: property taxes, construction sales taxes, gas taxes, state shared revenue and other revenue sources that will be utilized to pay for capital facilities (offsets). *The impact fee amount is established to cover the cost of capital facilities less these other revenue collections.*

An equitable impact fee methodology will take offsets into account when estimating impact fee amounts. Technical studies that include offsets recognize that new development provides financial contributions other than impact fees to fund capital facilities. In essence, offsets protect home builders and homebuyers from double-paying for the same capital facilities. Potential offsets include:

- Grants;
- Gasoline taxes;
- Sales taxes;
- User fees;
- Bond repayments (i.e. through property taxes);
- Property taxes dedicated to fund capital facilities;
- Transfer taxes; and,
- State shared revenues.

Credits

An impact fee payer is entitled to a reduction in the amount of the impact fee (a credit) to compensate for contributions he or she has made or will make toward the cost of capital facilities. It is essential that the technical study and/or impact fee ordinance provide developers and builders with a mechanism to receive credits if they are due. *Many technical studies ignore the methodologies of how impact fee credits are to be calculated thus leading to inconsistent impact fee credit calculations.*

There are three key types of credits:

- 1) *In-Lieu of Impact Fee Credits*: credits provided to developers or home builders in exchange for the construction and/or dedication of infrastructure items that would otherwise be funded through impact fees. For example, a developer should receive credit equal to the cost of constructing and dedicating a sewer treatment plant if a portion of the local community's sewer impact fee is normally utilized to pay for sewer treatment facilities.
- 2) *Excess Capacity Impact Fee Credits*: credits for dedication of public facilities that provide excess capacity beyond what is required by a particular project that would otherwise be funded by impact fees. For example, a local community may request that a developer build and dedicate a new sewer treatment plant with enough capacity to serve the project in question but also other neighboring projects that will be completed in the future. In this case, the developer is not only given impact fee credits for the developer's immediate project; the developer is also given impact fee credits for the costs of the excess capacity. These excess capacity impact fee credits are the personal property of the developer and may be applied to the developer's future projects or sold to other developers with development projects located within the service area.
- 3) *Land Use Credits*: credit for a change in land use that results in less impact than the previous land use. Credits are generally addressed in the impact fee ordinance itself. For example, when a large portion of the community's general plan is amended from residential to industrial uses, adjustments to the impact fee ordinance are required.

Consideration should also be given to the interaction between impact fee credits and alternative infrastructure financing tools such as special taxing districts. Special taxing districts in most cases are separate political subdivisions established for the purpose of issuing tax exempt bonds to fund public infrastructure. Special taxing districts vary from state-to-state and are called: Community Facilities Districts (California, Hawaii and Arizona), Municipal Utility Districts (Texas), Community Development Districts (Florida), Public Improvement Districts (Texas, New Mexico) and Special Improvement Districts and General Improvements Districts (Nevada). (See Chapter 6 for more information on this topic). Because special taxing districts are used to finance public infrastructure, to the extent that a special taxing district is financing capital improvements that would otherwise be funded through impact fees, impact fee credits must be given for the cost of the capital improvements funded through the special taxing district.

As a side note, the use of special taxing districts by developers and communities is a very effective way of having growth pay for growth. The use of special taxing districts may dramatically reduce the amount of impact fees required by a community. For more information on the use of special taxing districts as an alternative to impact fees see Chapter 6. Additionally, the NAHB has published a handbook specifically dedicated to

special purpose taxing districts entitled, [An Overview of Special Purpose Taxing Districts](http://www.nahb.org/en/research/nahb-priorities/land-development/special-purpose-taxing-districts.aspx). The publication may be found on the NAHB website at <http://www.nahb.org/en/research/nahb-priorities/land-development/special-purpose-taxing-districts.aspx>.

If an ordinance/technical study does not adequately address the issue of impact fee credits, developers and/or home builders may wish to include impact fee credit provisions in their development agreement(s) with the applicable community documenting the understanding of the parties in relation to how impact fee credits will be calculated and administered.

Service Areas

Generally defined, a service area is a geographic area that is served by a public facility. For example, the service area of a neighborhood park is the residential community near the park where the users of the park live. Service areas are generally defined by proximity and accessibility (i.e., areas within the service area are closer to the facility and/or have easier access to the facility than areas outside the service area). The concept of service area does not mean that the facility is reserved exclusively for service area residents or that the facility never provides services to those outside the service area. It means, rather, that the facility was designed and intended primarily to serve a given area.

From the standpoint of fairness and equity, the use of service areas are preferred if a community is implementing or updating an impact fee program. *Service areas allow impact fees to be more closely linked to the actual cost of providing capital facilities in a given service area.*

Service areas are important for a number of reasons. The capacity of existing public facilities is usually inconsistent across a community. Some service areas will have capacity to serve additional development, others will not. Land use, density, topography, and access will vary from one service area to another and this will cause the expense of providing needed capital facilities for new development to vary from one area to another.

Because many states require that impact fees be roughly proportional to capital costs imposed by development, each service area should be examined to determine the capital cost implications of development in that specific area. The capital cost calculations should also take into account the existing levels of service provided in individual service areas. In the administration of the impact fee ordinance, it will be easier to show that impact fees collected from a property are spent to benefit that property if impact fees collected in a service area are placed in an account dedicated exclusively to spending for capital facilities in that service area.

Many communities designate the entire community as a single service area on the theory that individual capital facilities are part of a system, such as the park system, road system, or school system. According to this view, impact fees collected in one area

may be spent on any other part of the system because improvements anywhere in the system benefit the entire system. Communities prefer this method as it also provides them with greater flexibility in spending impact fees. Also, fewer service areas reduce the administrative burden of tracking impact fee revenue and expenditures.

There are several problems caused by communities using just one service area. In general, the benefits of a public facility diminish with distance from it. Therefore, if impact fees collected in one local area are spent to construct a facility in a different area, the area where the fees were paid will not be the principal beneficiary of that capital spending. For example, it is difficult to see the rational nexus between park impact fees collected on the west side of town and a new neighborhood park constructed with those fees on the east side of town. *Courts and State legislatures in some states have determined that new development, though it need not be the sole beneficiary of impact fee spending, must benefit more than other property from spending of the impact fees it has paid.* Unless impact fees are accounted for and spent within the local service area where they are collected, it is difficult to demonstrate the legally required rational nexus (see Chapter 2, pp. 15-16).

If a "systems approach" to impact fee spending is taken, then a new method of impact fee calculation is required. Since new facilities constructed with impact fee revenues are assumed to improve the "system" for the benefit of all system users, impact fee calculations must account for the fact that the majority of system users are existing residents. In other words, new development must not be asked to pay more than its pro rata fair share for system improvements. Given that in any year the amount of new development is a small fraction of the amount of existing development, new development therefore must pay only a fraction of the cost of new capital facilities.

Transportation-Related Issues

There are a number of technical issues related to the calculation of traffic or road impact fees that do not apply to other types of impact fees. These have to do with peak versus average daily traffic volumes, trip diversion, trip substitution, and sources of trip generation data.

Peak Traffic versus Average Daily Traffic

Different land uses generate traffic at different rates. Road impact fee formulas should take this into account by making use of local trip generation studies or data from national sources such as the Institute of Transportation Engineers (ITE). The results of trip generation studies are reported as the number of trip ends generated by an increment of land use (dwelling unit, 1,000 square feet of retail space, number of hospital beds, etc.) expressed as the average number of trips in a 24-hour period and/or the average number of trips during the peak hour(s). Some communities base impact fee calculations on average daily traffic (ADT) and others on peak hour trips. For example, a number of Florida cities and counties use ADT, whereas a number of California and Illinois communities use peak hour traffic as the basis for calculations.

Whether ADT or peak hour traffic should be the basis for road impact fee calculations can be debated. A case can be made, however, that not every trip generated by new development creates a need for additional roadway capacity. Trips added to adjacent roads during off-peak hours in most cases will not add significantly to congestion on those roads. For example, a nightclub that opens at 9:00 p.m. and closes at 2:00 a.m. will add trips to the adjacent roads at a time when roads have more than enough available capacity to absorb these trips. It would be difficult to justify road impact fees for this nightclub use because it does not create a need for additional lane capacity. Road impact fees are justified, however, when trips are added during times when the road is already operating at or near capacity (i.e., peak hours) such that the level of service will be decreased unless additional capacity is added. Most land uses generate traffic throughout the day, but it is the traffic they generate during peak hours, when adjacent roads are least able to accommodate additional trips, that is critical to determining the demand for additional road capacity created by new development for which an impact fee will be charged. Trips generated during off-peak hours, when capacity is ample, have little impact, create no need for additional capital improvements, and should not enter the calculation of road impact fees.

It should be noted that the concepts related to peak versus average daily demand also apply to water and wastewater impact fees.

Trip Diversions

A common but not universal practice is to apply a trip diversion factor in the calculation of road impact fees. This factor accounts for the fact that some trips to a land use are not separate, single-purpose trips but, instead, are diverted from the stream of traffic passing by. For example, the trip diversion factor for a convenience store is high because visits to the store frequently occur while the driver is pursuing another trip purpose, such as returning from work. If the work trip and the store trip were counted separately, over counting would occur. The diversion factor for doctors' offices is low because such trips are usually planned in advance rather than impulsively combined with another trip purpose. The diversion factor is applied as a percentage by which the trips generated by a land use are reduced.

Trip Substitution

Not all trips generated by new development are net new trips. Some trips to a new land use replace existing trips. For example, when a neighborhood convenience store opens, some longer trips to a highway shopping center are replaced by shorter trips to the convenience store. The net result is actually a lower impact on the road system because the new trips are shorter. In general, when new retail uses are added to a saturated market, there is not a proportionate increase in shopping trips. Instead, trip destinations shift from one area to another.

Because of trip diversion and trip substitution effects, at least one locality, Los Angeles, exempts certain land uses from road impact fees. The exempt land uses are generators of local short-distance trips including car washes, gasoline stations, automotive repair shops, walk-in or drive-through banks, convenience stores, free-standing supermarkets, storage facilities, convalescent hospitals, and restaurants. These land uses are not thought to substantially affect the region's transportation infrastructure.³

Sources of Trip Generation Data

The best data source for trip generation is a properly conducted study carried out in the community that imposes the impact fees. Such studies can be expensive, so many communities use data derived from studies in other communities such as the Institute of Transportation Engineers (ITE) manual, *Trip Generation*. Use of data from the ITE manual is legitimate, provided the limitations of the data are well understood. The ITE manual compiles trip generation data on a wide variety of different land uses based on local studies conducted throughout the United States. For some land uses, the data is derived from a large number of studies covering a broad range of the independent variables (e.g., number of employees, leasable area, etc.). More confidence can be placed in this data than in the data for other land uses which may be derived from only two or three local studies. Indeed *Trip Generation* contains caveats and warnings about data limitations. While the ITE is certainly a reputable organization, it would be a mistake to uncritically accept their published data. Impact fee payers would be well advised to carefully consider the source and reliability of the trip generation rates on which impact fee schedules are based. In some cases, the commissioning of an independent fee calculation study may result in considerable impact fee savings.

Legitimacy of Growth-Related Costs

An essential part of impact fee calculations is the determination of the cost of capital facilities that new development will require. In an ideal world, the capital facility needs of new growth are set out in a well-considered and duly-approved long-range comprehensive plan. Every year the five-year capital improvement plan that identifies the cost and source of funds for capital projects is updated and adopted. In the real world, however, impact fee ordinances are frequently adopted in the absence of either comprehensive planning or capital improvement planning. In these cases, capital facility cost data may be found in the appendices of impact fee technical memoranda, in separate engineering cost estimates, in consultant reports, or elsewhere. *Like every other aspect of impact fee calculation, cost data should be examined critically.*

Each item that is proposed to be funded with impact fees should be examined to determine if it meets the definition of capital costs for which impact fees may be charged. If state statutes apply, there will be a specific description of legitimate capital costs in the law. The local ordinance itself should contain a definition of "capital cost" or "capital facility." For example, the definition may include buildings, but not furniture, books, computers, or nondurable items with a useful life of three years or less. Generally, some "soft costs" such as legal and engineering costs may be permitted, but

these may be limited.⁴ Other noncapital costs such as "contingencies," "administrative costs," and "interest" are questionable. Operating costs, maintenance, repairs, salaries, and other recurring costs should not be included.

Next, it should be determined if the facilities are intended to serve new development, if they will correct an existing deficiency, or if they will principally benefit existing development. A simple test is to assume that there will be no new growth and determine if the facility will still be needed. If the facility is still needed, then it is obviously intended to benefit existing residents and may not be funded with impact fees paid by new development. The capital improvement plan or other documents may provide details that indicate who the principal beneficiaries will be. For example, the budget documents may state that the purpose is to correct a deficiency, or they may indicate that the facility will be located in a developed part of the community, or that it improves or replaces an existing facility. In cases where the principal beneficiary of the facility is existing development, its cost should not be included in impact fee calculations.

Having determined that a capital facility is a type that qualifies for impact fee funding under state and local law and that the principal beneficiary will be new development, the next question concerns whether the amount of spending proposed is commensurate with needs and conforms to existing levels of service in the community. For example, if existing neighborhood parks are less than 10 acres in size, a proposal for a new 35-acre neighborhood park should be questioned. Likewise, a proposal to purchase a ladder truck for a fire station that serves low-density residential land use should raise a red flag.

Unlike general obligation bond issues, which must be approved by taxpayers at referendum, the political threshold for impact fee spending is very low. As a result, there is not as much pressure on the community to contain costs. Under this relaxed spending discipline, municipal departments have a tendency to "gold-plate" their capital requests. This danger is magnified when there is no comprehensive planning or capital budgeting process that requires department managers to justify their capital requests to the legislative body in a public hearing.

Proportionate-Share Impact Fees

At times a jurisdiction may use proportionate-share impact fees. The rationale behind proportionate-share impact fees is that impact fees for new residential units are "proportionate" to unit size. The idea being that larger units have more people with higher incomes who generate greater impacts on public facilities. Accordingly, larger units should pay higher impact fees than smaller units. However, the argument for impact fees graduated by unit size is not convincing and in fact is counterproductive to housing affordability.⁵ The more straightforward and cost-effective way to promote affordable housing is to charge one flat impact fee for all housing units and to apply waivers selectively for affordable housing units.

Practitioners who believe impact fees should vary by unit size attempt to calculate impact fees precisely. But impact fees, as opposed to taxes, tend to be regressive. Methodologies designed to establish progressive impact fee structures may undermine their legitimacy as fees; such calculations are not legally mandated. The courts have rarely commented on methodology unless the resulting fee differences were extreme.

In fact, Dolan simply requires “rough proportionality” in setting impact fees that reflect the public facility costs of new residential development. Rough proportionality can be satisfied with the calculation of one impact fee for all residential units. This position is supported by the finding that the difference in persons per household is less than one person in comparing units of less than 1,000 square feet with units of up to 3,000 square feet.⁵ Local jurisdictions that develop more complicated methods in an attempt to calculate proportionate-share impact fees will find the resulting fee schedules more difficult to defend and more costly to calculate, and more time consuming to administer, as well as exceeding the “rough proportionality” requirements of Dolan.

If proportionate-share impact fees are used, they should employ the most relevant demand generator to estimate facility impacts, but population (including school-aged children) is the best indicator only in limited applications. Furthermore, the drivers of demand used in public facility planning and capital improvements programming should correspond to the demand generators employed in impact fee calculations. Since impact fees based on unit size reflect needs generated by population (or number of children) but are calculated on the basis of housing characteristics, local jurisdictions would have to reconcile these relationships.

When graduated impact fees for residential units are considered instead of one flat impact fee, one should verify that the best unit characteristic is being utilized. The choices are typically unit type, unit size, or number of bedrooms. Of these factors, unit type is by far the most widely used. Data on single family, multifamily/apartments, and other unit types are publicly available for most local jurisdictions, and practitioners usually can generate defensible impact fees that are specific to housing unit type. Practitioners who prefer unit size to type are more likely to use data on number of bedrooms, because these data are more readily available and accessible than data on unit size. If unit size data is also available, practitioners should select the factor that predicts occupancy most consistently.

One often hears the argument that one level impact fee is inferior to impact fees graduated by unit size. Static impact fees are assumed to be regressive, whereas impact fees graduated by unit size are progressive. Thus, graduated fees are assumed to mitigate the negative impacts of impact fees on affordable housing. This argument ignores four advantages of level impact fees, the most important of

which is that they are inherently progressive. As such, when making a case against proportionate-share impact fees one may want to employ the following arguments.

Household Size – Homes in any size/cost range that pay the same impact fees are occupied by households of different sizes. Smaller households would tend to be more affluent than larger households purchasing houses in the same size cohort. Thus, with the same impact fee charged for these housing units, higher-income households with fewer occupants would overpay whereas lower-income households with more occupants would underpay relative to facility impacts.

Housing Affordability - Although the claim is made that graduated impact fees improve housing affordability, this approach is very crude. Affluent households that opt to purchase smaller units would receive the same benefit as lower-income households occupying units in the same size range.

Impact Fee Sensitivity - Static or flat impact fees are less sensitive to the vagaries of the market than variable fees. Revenues from graduated fees will be more difficult to predict than revenues from flat fees.

Ease of Calculation - Static impact fees require less detailed calculations of revenue credits than graduated impact fees. When unit size is the attribute used to estimate proportionate demand for graduated impact fees, practitioners are obligated to calculate multiple revenue credit streams that relate unit size to revenue generation. With variable fees, ad valorem-based revenue credits must correspond to residential segments of the tax base that pay the taxes. Similarly, sales tax-related credits must be proportionate to taxable spending driven primarily by household income.

Even if there was a flawless logic to justify impact fee calculations based on unit size, the feasibility of the approach has to be evaluated in every case. We have assessed the tasks and questions local practitioners would need to resolve to impose defensible impact fees based on unit size. We found that the amount of data need to do such a calculation properly is voluminous and will be more expensive to implement than a static impact fee calculation.

Additionally, when reviewing proportionate-share impact fee technical studies, one must keep in mind Dolan's rough proportionality test and not ignore the proportionate treatment of revenue credits to ensure that fundamentals of cost accounting as well as the logic of fiscal impact analysis are taken into account. When impact fees are used to raise revenues needed for public facilities, flat residential impact fees can minimize the potentially negative influences on housing affordability. Compared with impact fees graduated by unit size, flat fees are straightforward to estimate, easy to administer, and actually more progressive when revenue credits are taken into account.

For more detailed information related to proportionate-share impact fees see the NAHB's publication [Proportionate-Share Impact Fees](http://www.nahb.org) on the NAHB's website at www.nahb.org.

Discounted Impact Fee Schedules

After calculating the impact fee amount according to a formula that will vary for each type of impact fee, many communities discount this nominal fee amount by a certain percentage. The nominal impact fee amount represents the highest amount that can be legally charged. There are technical, administrative, and political reasons for discounting this fee amount. Impact fee calculation is a complex technical exercise that often requires expert judgment. As a result, technical and judgmental errors are common. To protect a community from liability in the event of a legal challenge to its ordinance, the fee amounts are sometimes discounted to account for the possibility of overcharges due to technical errors. Impact fee ordinances are easier to administer if fee payers accept a simple flat fee rather than insisting on their right to individual fee determinations. Fee schedules will therefore be discounted as an incentive to avoid time-consuming individual fee calculations. For political reasons, such as keeping fees in line with those charged by other communities, a community may decide to charge less than the calculated fee.

Commonly Found Errors

Figure 4.2 on the following page illustrates some of the most common errors found in technical studies relating to the calculation of impact fees.

Figure 4.2: Common Errors with Impact Fee Technical Studies

	Error	Explanation	Example
1	Construction Cost Estimate and Adopted Capital Improvements Plan Inconsistencies	Cost estimates utilized in the technical study do not agree to the costs identified in the community budget, capital improvement plan or recently completed projects. In order to verify the reasonableness of costs utilized in the technical study, such costs should be compared to costs from the community budget, capital improvement plan or recently completed projects.	In one community, there was a discrepancy of 24% between school construction costs identified in the technical study and costs identified in the capital improvement plan.
2	Current Levels of Service Not Properly Documented and/or Applied	Some communities fail to assess the current levels of service enjoyed by existing residents and do not use the current levels of service as a standard to which new development must be held. As a result, development fee studies may tend to require new development to pay for and operate at higher levels of service than existing residents.	A recent review of impact fees in a community in Virginia revealed that new development was being required to provide a higher level of service for parks than was currently being enjoyed by existing residents. The level of service established as the guideline from which to calculate the park impact fees was 13.8 acres of park land for every 1,000 residents of the county. In reality, the current level of service for park land for the county was found to be 8.8 acres of parkland for every 1,000 county residents.
3	Funding Offsets Ignored or Improperly Applied	Technical studies may ignore additional funding sources attributable to new development. Additional funding sources that would offset impact fees must be considered and may include: i) gasoline taxes; ii) sales taxes; iii) user fees; iv) bond repayments (i.e. through property taxes); v) property taxes dedicated to fund capital facilities; and vi) transfer taxes.	A community in Oregon applied a credit for future debt payments that was discounted to arrive at the offset utilized to reduce the fees. The community chose to discount future debt repayments, however, did not discount the cost of infrastructure to be installed in the future. Discounting the future debt repayments and not discounting the infrastructure costs resulted in a decrease in the offsets being applied and consequently an inaccurate increase in the system development charge (impact fee).
4	Inflated Land and Building Cost Estimates	Cost estimates for buildings and land utilized in technical studies often do not correspond with construction or land cost indices. Communities may inflate construction and land costs by using cost estimates derived during periods of dramatic growth and increased demand for construction materials and land.	During the boom, Arizona experienced a period of dramatic growth and escalation in land prices. A comparison of land costs in technical studies adopted by an Arizona community revealed an unrealistic increase in the land cost per acre from \$76,800 to \$370,424 in a four year period and the technical study provided no support for the increase.

	Error	Explanation	Example
5	Math Errors	Technical studies often include numerous math errors which affect the final assessed impact fee amount.	One community in Arizona inadvertently doubled the construction cost of a roadway improvement from \$25 million to \$50 million, resulting in a substantial increase in the impact fees required by the community.
6	Correcting Existing Deficiencies	Impact fees must only be established to finance the public infrastructure required to service new development, not to repair or improve the public facilities that provide service to existing residents.	A review of a technical study in one community found that \$108 million in sidewalk improvements were to be financed with impact fees in developed areas of the community to make the city compliant with the American with Disabilities Act. This was a clear violation of using impact fees to correct existing deficiencies.
7	Impact Fee Alternatives Not Considered	Community officials may be unaware of alternatives that exist to finance public infrastructure. Special taxing districts represent one alternative to the use of impact fees and allow growth to pay for growth. In some states, special taxing districts may be allowed to finance a broader array of eligible infrastructure than the eligible infrastructure that can be financed through development impact fees.	A California community formed a special taxing district, known as a community facilities district (CFD), in response to a public safety funding crisis resulting from rapid growth in residential construction and lagging retail sales. It was determined there would be revenue shortfall in providing police and fire services to accommodate the community's need for the services. Through the use of a CFD, the community was able to ensure the necessary services were provided to its residents while at the same time allowing growth to pay for growth.
8	State Statute Compliance	Oftentimes, communities fail to fully conform to the guidelines stipulated in the state enabling impact fee statutes. A review of the requirements of the state statute is important to ensure that they are being met.	An impact fee review for a Montana community found that of the approximately 23 items required by the state statute to be addressed in a technical study, the community failed to fully comply with 6 items.

	Error	Explanation	Example
9	Misappropriation of Impact Fees	Impact fees are collected for specific public infrastructure items (e.g. water resources, water transmission lines) and the impact fees can only be spent on the facilities for which the impact fee are collected. Audits of impact fee accounts indicate that jurisdictions often comingle funds and do not spend the impact fees on the infrastructure for which they were collected.	A 2016 audit of a community's impact fee accounts revealed that while the City's impact fee study indicated that the City was supposed to be utilizing 49% of its sewer impact fee collections for water reclamation facilities and 51% for sewer collection lines; the City had expended 91% of its sewer impact fee collections for the water reclamation facilities and only 9% for the collection system.

Revising State Statutes to Address Jurisdictional Overreach

Background

Reviewing impact fee technical studies leads to many questions and concerns related to the assumptions utilized in the technical study. In practice, it is common to meet with the jurisdiction's staff to discuss and hopefully resolve concerns related to the technical study. Often, however, it is not unusual for a jurisdiction to ignore the home building industry's concerns related to a technical study, especially if the changes result in a decrease of impact fees. In such a situation, the builders and/or the local home building association either need to let the issue go unresolved, litigate the issue, or alternatively, revise the state's impact fee enabling legislation.

For example, after years of conflict with Arizona municipalities in relation to the calculation of impact fees, in May 2011, the home builders of Arizona, working through their respective home builders associations (collectively, the HBA), were successful in passing Senate Bill 1525 (SB1525) that made sweeping changes to the way Arizona municipalities must calculate and collect impact fees.

SB1525 was an outgrowth of the HBA attempting to work with Arizona jurisdictions over a number of years to modify their aggressive tactics when estimating impact fees. Some of the challenges that the HBA found when reviewing the jurisdictional impact fee technical studies encompassed all of the challenges outlined in Figure 4.2. More specifically, the HBA was concerned with:

1. Growth paying for non-growth related public improvements (e.g. performing arts centers, town lakes)
2. Construction cost estimates provided by unqualified municipal staff (e.g. a fire chief preparing cost estimates for a fire station).
3. The non-use of service areas to determine levels of service and to estimate infrastructure costs and the impact fees necessary to provide services to new growth at existing service levels.
4. Funding levels of service that are in excess of existing service levels.
5. Challenges with the proportionality of the impact fees versus benefits received.
6. Lack of transparency in the impact fee process.

Key provisions of SB1525

To address the aforementioned challenges with jurisdictional technical studies, SB1525 included the following key provisions:

1. Provided jurisdictions with the ability to continue to collect current impact fee schedules to pay debt service on existing bonds for public improvements either constructed or underway, even if the impact fee would no longer be allowed after the effective date of the Bill, which was January 1, 2012.

2. Introduced the phrase "necessary public services." This is a new definition that narrowed the use of impact fees to address home builder concerns about the improper use of impact fees for general government purposes and certain public facilities, such as public parks over 30 acres or libraries over 10,000 square feet.
3. Limited impact fees to the proportional share of the cost of new infrastructure that is attributable to new development only, and prohibited increasing the level of service that is provided to existing residents.
4. Clarified that offsets against impact fees need only be provided for taxes that are applied to capital costs of infrastructure.
5. Made clear that credits against impact fees are only due when a developer pays for, or is required to provide, infrastructure in an infrastructure-improvements plan (IIP) for which impact fees were assessed.
6. Created new public notice and hearing procedures for assessing, adopting, and amending development fees. Existing fee studies and plans were to be replaced using the new system outlined under SB1525 no later than August 1, 2014, or the municipality would be prohibited from collecting impact fees.
7. Required IIPs to: (i) identify all capital projects that are the subject of impact fees; (ii) disclose existing facilities; (iii) disclose costs to existing facilities not associated with new development; (iv) identify offsets to public infrastructure costs financed by impact fees; and, (v) require construction costs estimates be prepared by Arizona state licensed professionals.
8. Mandated a refund to current property owners of certain impact fees if the infrastructure that is the subject of a impact fee is not built within 10 years or the time identified in the IIP, or 15 years for water and wastewater projects.
9. Required creation of either an advisory committee to provide input on adoption and administration of impact fees or a biennial audit of a municipality's impact fee program.

For more details on SB1525 and to find the complete version of Arizona's impact fee statute, refer to Appendix D.

Other states with favorable impact fee statutes include Montana and Texas. Montana's impact fee statute is fairly succinct yet it requires jurisdictions to adhere to common impact fee practices that lead to fair and equitable impact fees. Texas' statute, while more in depth than Montana's is fairly comprehensive in its scope. Both the Montana and Texas statutes have been included as part of Appendix D.

Conclusion

Local governments are attracted to impact fees because of their potential to generate revenue at a lower political cost than some other measures such as jurisdictional general obligation bond elections. There is a cost to be paid, however, which is related to the greater complexity and difficulty of setting a truly fair and legal impact fee amount. Unlike taxes which may be set at arbitrary levels, impact fees must be proportional to the actual cost of providing capital facilities. Making these calculations, as the above discussion points out, is neither simple nor straightforward. It is also easy to make mistakes. As a result, the community imposing the fee pays a price in the form of higher administrative costs, consultant fees, and legal fees when the methodology is challenged.

Endnotes

1. For this reason, some state impact fee laws require that the community adopt a capital budget before implementing impact fee legislation.
2. *Boe v. Seattle*, 66 Wa.2d 152 (Wash. 1965)
3. As reported in *Waukesha County Impact Fee Study* by Barton-Aschman Associates, Inc., Vandewalle & Associates, Whyte Hirschboeck Dudek S.C., Siemon, Larsen & Marsh.
4. The Wisconsin law limits such costs to 10 percent.
5. Emil Malizia and Lucy Gallo, *Proportionate-Share Impact Fees*, (National Association of Home Builders, October 2009)

CHAPTER 5

Administrative Issues

- *Definition of Capital Costs*
- *The Use of Impact Fees to Pay Interest Costs*
- *The Comprehensive Plan and Capital Improvement Plan*
- *Independent Fee Calculation Study*
- *When Fees Are Due*
- *Accounting*
- *Refunds*
- *Advisory Panels*
- *Appeals*
- *Credits and Reimbursements*
- *Exemptions*
- *Grandfathering*
- *Conclusion*

The local impact fee ordinance is the legal document that establishes a community or county's impact fee program. It should also establish the administrative procedures by which the program will be implemented and cover such issues as when impact fees are paid, how they will be accounted for and spent, independent fee calculation procedures, refunds of fees collected but not spent, administrative appeals, etc. Together with technically correct impact fee calculations, proper administration of the impact fee program is necessary to establish the constitutionality and legality of the impact fee program.

In states where the legislature has enacted impact fee enabling laws, local impact fee ordinances must comply with specific administrative requirements. Whether there are state enabling statutes or not, court decisions may establish requirements that local ordinances must address and adhere to. This chapter will cover administrative aspects of impact fee programs with emphasis on areas where many local ordinances could be improved. Unlike taxes and other revenue sources, local governments do not have as much discretion in the handling of impact fee revenues. Particular care and attention are required in the administration of impact fees to assure fairness and legal sufficiency.

Definition of Capital Costs

The local ordinance should contain a precise definition of the kinds of capital costs that qualify for impact fee funding. If state impact fee laws apply, the local ordinance may



*Are the
allowed
uses of
impact
fees
defined in
the state
enabling
statute?*

be more restrictive but may not include a broader range of cost items than the state law permits. Generally acceptable cost items include land, buildings, durable equipment and machinery, grading, paving, landscaping, and associated engineering costs. Items that would generally not be considered as capital costs include recurring expenses such as those for consumable supplies, salaries, training, maintenance, repairs, administrative costs, program operating costs, nondurable equipment (less than three years useful life), and the like.

Some items of moderate durability such as vehicles, books, computers, and furniture are questionable as capital expenses. The problem with these items is that they are not fixed in location and are hard to track. For example, computers purchased with impact fee funds and placed in a school serving new development one year may end up in a different school the next year. The portability of these items makes it difficult to assure, or even sometimes to tell, that impact fees are being used to benefit the development that paid the fees.

The Use of Impact Fees to Pay Interest Costs

The use of impact fees to pay the interest portion of debt service for capital facilities is controversial. Unlike taxpayers who pay for capital facilities on the installment plan through bond financing, the impact fee payer pays for his share of needed infrastructure all at once in a lump sum. Many times this payment is made years before the facilities are provided, particularly because the impact fee payer has no control over when facilities are constructed. The impact fee payer starts off with a capital facility principal account balance of zero. In these cases, the impact fee payer is in essence double paying for the infrastructure—first through impact fees, and again through other taxes, i.e. property taxes, which are used to retire debt on the same infrastructure. It is difficult to understand, therefore, how interest on debt can be justified as a capital cost for which impact fees may be expended when the fee payer has paid his share of the principal in full before receiving a building permit. In those situations where a local government has issued ad valorem debt to fund the construction of capital improvements, it is necessary to review the impact fee calculation to determine that a reduction in the impact fee has been made for interest on debt service to avoid the potential of double charging.

The Comprehensive Plan and Capital Improvement Plan



*Has a comp
plan or
capital
improvement
plan been
prepared?*

In examining an impact fee ordinance, a fundamental question arises as to the source of the assessment of public facility needs which is the basis for the impact fees. The public facility needs assessment should not be a "wish list." The capital facility requirements should be based on a thorough analysis of future growth and appropriate levels of service for each type of facility that establishes a clear and logical connection (rational nexus) between anticipated growth and the type and amount of capital spending that growth will require. It should be emphasized that demonstration of a rational nexus is not merely desirable but is essential to establishing the legality of the ordinance. In some states a report providing the rational nexus is also a statutory requirement (see Chapter 2, pp. 15-18).

The comprehensive plan is the benchmark by which nexus is measured. This plan should include population and land use projections, establish appropriate levels of service for public facilities, examine existing service levels and deficiencies, and identify the capital facilities that will be needed because of new growth.

The capital improvement plan (CIP) or capital budget will attach a cost to the facilities identified in the comprehensive plan and match the facility to an appropriate funding source. The CIP usually covers a five-year period and is updated and approved every year. Other documents may be relied on to provide a public facility needs assessment, but the comprehensive plan and CIP have the advantage and added weight of being officially adopted by the legislative body after a public hearing process.

Some communities have no comprehensive plan (or none that is up-to-date), CIP, or formal capital budgeting process. This has not deterred them from imposing impact fees. Such communities run the risk of having their ordinances overturned because they are not able to document that the fees they charge are rationally related and proportional to the capital costs occasioned by new development.

The impact fee study, capital improvement program, and comprehensive plan must account for differences between the levels-of-service currently provided to existing residents and the levels-of-service proposed for facilities to be financed with impact fees. If current levels-of-service are deemed deficient, then funding sources (other than impact fees) to correct these deficiencies must be identified and detailed to prevent new development from bearing the financial burden of improving service levels for the benefit of existing residents. Annual monitoring is crucial to assure that upgraded levels-of-service enjoyed by existing residents is not financed by impact fee payers, but by other means that assign costs to those who benefit from the improvements.

Independent Fee Calculation Study

?

Does the impact fee ordinance specify how the independent fee study must be conducted?

The impact fee ordinance should outline the process for developers and builders to obtain variances that would reduce or eliminate their need to pay impact fees so as to allow flexibility in cases involving special circumstances. A community should also offer a variance process when the applicant believes that the schedule of fees in the ordinance does not reflect the actual monetary impact of a particular project (many already do this). This is usually accomplished through an independent fee calculation study. Under these procedures the applicant commissions and pays for a study which may entitle the applicant to a reduction in impact fees if it convincingly shows that the project will require less public capital expense than assumed in the impact fee study. For example, a road impact fee may be based on trip generation figures from the Institute of Traffic Engineer (ITE) Trip Generation Handbook. An applicant for a convenience store may question the ITE trip rates for this use because they are based on only a few studies and the range of rates varies widely. An independent study of trip generation specifically targeting the

particular market in question may find lower trip generation rates and justify reduced impact fees.

Some ordinances specify exactly how an independent fee study must be conducted and some even require that the government hire a consultant to conduct an independent impact fee study, although the applicant must pay the consultant's fees. In fairness to the applicant, there should be few restrictions on the methods used to conduct the study. The applicant should be free to present their case in his or her own way. In the end the independent fee study must stand or fall on its own merits. A rigorously logical and competent study based on a defensible methodology should be acceptable to any reasonable person. The applicant should also be free to hire the consultant of his choice. Only the applicant has an incentive to control the cost of the study, and the interposition of the government between the applicant and the consultant would make cost control impossible.

When Fees Are Due

The most convenient way to administer an impact fee program is to withhold some permit or approval needed for development or occupancy until the impact fee is paid. Impact fee payment can therefore be made a condition of plat approval, of issuance of a building permit, or of a certificate of occupancy. Probably the most common practice is to make impact fees due at the time the building permit is issued. *From the building industry's point of view, it is preferable for the impact fee amount to be determined at the earliest possible time (i.e. development agreement or plat map recordation) but to fall due and payable at the latest possible time (i.e., certificate of occupancy).*

The earlier a developer or builder knows what his project's impact fee liability will be, the easier it will be to make adjustments. If this information is known too late, it may be impossible to adjust the product or the price to compete in the marketplace. If the ordinance relies on a schedule of standard impact fee charges, then the information can be obtained at any time. If, however, impact fees are determined on a case-by-case basis, or if calculations of credits are involved, then these calculations should be performed well in advance of the time that the fee amounts are actually due, say, at the time of plat approval.

Because development does not actually cause impacts until a land use commences or a building is occupied, the fees should not be payable until as close to the time that a use or occupancy begins. A more practical reason is that a builder must carry the financial burden of the impact fee from the time of payment until closing, incurring finance charges during this period which are passed on in the form of higher home prices. If impact fees were paid at time of issuance of the certificate of occupancy (if applicable) or at settlement, carrying costs would ordinarily be minimized.

Accounting

Unlike tax revenues, which are deposited in a general fund to be spent with broad discretion, impact fees must be separately accounted for and expended for the specific purposes for which they were collected. Impact fees must not be freely transferred to other accounts to be spent for other purposes. For example, a park impact fee should be credited to a park capital improvement account in a subaccount for the particular park service area where it was collected. Interest earned on impact fee funds should be credited to the proper accounts. In general, impact fees must be spent for the intended purpose within a definite period of time or else be refunded to the fee payer. Therefore, records must be kept of the amounts paid, the identity of the fee payers, the dates the fees are paid into the accounts, and the dates the fees are spent. A frequently established rule is that fees are spent in the same order that they were deposited in the account.

The government has little discretion in disposing of the funds in impact fee accounts. The funds must be spent for the particular capital facilities listed in the capital improvement plan which formed the basis for the fee calculations, or they must be refunded to the fee payers. Over the years, accounting for impact fees and their expenditure has become an essential topic, with the payers of impact fees wanting assurances that impact fees are being expended for their intended purpose. The state of Arizona has even gone so far as to require a biennial audit of the impact fee accounts to ensure that impact fees are being properly utilized.

Refunds

?

Does the state enabling statute require impact fees to be refunded with interest if not used within a reasonable timeframe?

When the government collects an impact fee for a specific purpose but does not spend it for that purpose, it has no choice but to refund the fee because it may not be used for any other purpose. Therefore, all impact fee ordinances should contain refund provisions. Most ordinances permit impact fees to be held for five to ten years before they are eligible to be refunded. We would argue that, since most capital improvement plans cover a five-year period, any impact fees not spent in one five-year capital budget cycle should be refunded. It hardly needs to be mentioned that impact fees should be refunded with interest. The interest rate should be the same as that which the government receives on its long-term deposits.

The fact that a refund is due indicates that the government erred in collecting the impact fee. Therefore, the government has an affirmative obligation to identify the impact fee payers who are due a refund and to make the refunds promptly. Unfortunately, most impact fee ordinances put the burden on the impact fee payers to prove to the government that they are owed refunds. Few ordinances address the issue of unclaimed or undeliverable refunds. These should probably remain in the original impact fee account for the class of infrastructure to which they were originally dedicated rather than be transferred to the general fund.

Some ordinances impose an administrative fee that is deducted from refunds. Given that the government erred in collecting the fee or in failing to spend funds in a timely manner, the fee payer should not be charged for the government's errors. In addition, expending impact fee dollars on administration violates the principle that impact fees must not be used for operating expenses but only for the capital facilities for which they were collected.

Advisory Panels

To ensure fairness in the administration of the impact fee program, oversight should be provided by an independent, objective citizen advisory panel. This is needed because government has a vested interest in the revenue produced by the program and therefore cannot provide objective and unbiased oversight. This panel should be composed of citizens appointed by the legislative body, and at least 40 percent of its members should represent those most affected by the program, including builders, developers, real estate agents, architects, engineers, etc. No elected or hired official of the local government should sit on the panel.

The panel should conduct an annual audit of impact fee accounts, review the administration of the program, and assess impact fee calculations and fee schedules annually. The panel should advise the legislative body on the operation of the impact fee program by publishing an annual report. The advisory panel can also play a role in the appeals process by hearing appeals in the first instance and issuing a nonbinding, advisory opinion.

Participation in an advisory panel provides an important opportunity to voice issues and concerns related to the planning and/or implementation of impact fees.

Appeals

An impact fee payer who believes he or she has been unfairly treated should have access to an appeals process. The ordinance should provide the impact fee payer the opportunity to seek relief by submitting alternative fee calculation studies or other evidence to the agency administering the fee program. The administrative agency's decision could be appealed to the citizen advisory panel or (if established) a hearing examiner or board of administrative appeals. From this point, further appeals could be taken to the local legislative body or, if still unresolved, to the courts. Alternatively, some states are exploring whether disputes over impact fees should be resolved by an arbitration panel that is independent of the courts. The reasoning behind this strategy is that an arbitration panel provides the opportunity to resolve conflict much more quickly and with fewer legal costs than the court system.

Credits and Reimbursements

In most cases the impact fee amount due can be determined from schedules in the ordinance. In some instances, however, adjustments will need to be made on an

individual basis. For example, a developer may agree to provide land or to construct facilities of the type for which impact fees would be charged. In such cases the developer is entitled to receive a credit or reimbursement equal to the market value of the land or facilities provided which is subtracted from his impact fee bill. In cases where the value of land or facilities exceeds the amount of impact fees due, the developer might receive the difference in cash or in the form of transferable credit against future impact fee liabilities. The latter could be limited to apply only to the specific category of fees for which credit was originally granted.

However, many ordinances do not address credits or reimbursements. In all cases, developers and builders should attempt to include language in their development agreements with the community's charging impact fees that provide for credits and/or reimbursements as a safeguard.

Credits should also apply when there is a change in existing land use. For example, if a land use is changed from residential to commercial, there will be an impact due to increased traffic. But the impact fees should not be based on the total number of trips generated by the commercial use but on the *net increase in* trips. The residential trips that were taken off the roads by the change of land use are the basis for the credit.

Sometimes land use changes from a more intense use to a less intense use. The reduction of impact on public infrastructure is thus a benefit to the community. A case can be made that, if developers whose actions increase the impact on infrastructure must pay a fee for that impact, then developers whose actions reduce impacts should receive something (a reverse impact fee) from the government. Government may resist making cash payments in such cases but transferable impact fee credits are certainly appropriate.

Exemptions

For reasons of public policy, government may wish to make some uses exempt from the payment of impact fees. One example of exempt land use might be affordable housing for low- and moderate-income households. It would not be fair, however, to burden new development with increased fees because some categories are exempt. Capital facilities for exempt land uses should be funded from a source of revenue other than impact fees on new development.

Exemptions can raise constitutional concerns about equal protection because some properties are charged impact fees and some are not. A valid public purpose can justify unequal treatment but some communities take the extra step of establishing administrative procedures whereby impact fees are paid on behalf of exempt categories by general revenues passed through a nonprofit organization (see Chapter 2, pp. 15-18).

Grandfathering

When first implementing an impact fee program the question arises about which properties, if any, should be grandfathered, i.e., deemed to have established a prior right to proceed with development without paying impact fees. For example, on the effective date of the impact fee ordinance there may be projects in the approval pipeline which were accepted for processing or for which development agreements have been reached before an impact fee program was either contemplated or announced and whose feasibility relies on financial assumptions that did not include payment of impact fees. Depending on the fee levels, these projects may fail if required to pay impact fees. In fairness, projects accepted for processing before announcement of an impact fee requirement should be grandfathered. Some states such as Texas have strong vesting statutes. Verify state and local laws regarding vesting when addressing grandfathering issues.

Conclusion

Just as an impact fee is difficult to correctly calculate, impact fee programs are difficult to design and administer so that all legal criteria are met. Unlike the administration of programs funded by general revenues, administration of impact fee programs is complicated by the fact that impact fee revenue accounts have many strings attached. Bureaucrats accustomed to exercising broad discretion over general funds may not fully appreciate that they have practically no discretion over the disposition of impact fee revenues. For this reason, it is important that impact fee ordinances be very carefully drafted to provide strict control of impact fee accounts.

Alternatives to Impact Fees

- *Infrastructure Financing Objectives*
- *Methods of Financing Infrastructure*
- *Alternatives to Impact Fees*

The United States is presently confronting an infrastructure crisis of historic proportions. While the problems related to infrastructure finance have grown, the creative application of appropriate financing vehicles has not. Impact fees are viewed by many local communities as an inevitable solution to finance infrastructure due to the declining availability of state, federal, and local general fund revenues. In truth, the United States' use of impact fees is relatively young—and cannot be viewed as a “one size fits all” solution. There are viable alternatives to impact fees that may, in some cases, offer a more fair, equitable, expedient or politically viable mechanism to address a community's infrastructure deficits.

This section outlines the different methods of public and private financing of new infrastructure, describes the equity and efficiency attributes of each, and poses possible alternatives to impact fees.

Infrastructure Financing Objectives

The fundamental purpose of any infrastructure financing vehicle is to enable local governments to deliver infrastructure that is needed to serve new demand. However, every infrastructure financing vehicle presents some tradeoffs as there are multiple and sometimes conflicting objectives that must be weighed as well.

Comparisons of different methods of financing new infrastructure inevitably involve discussions of achieving expediency, equity, economic efficiency, ease of administration, and political acceptability. There is no ideal method for all possible scenarios because each method involves trade-offs between these objectives.¹

Expediency

Since the basic purpose of infrastructure improvements is to meet the demand of existing and new users, infrastructure improvements should be constructed prior to or concurrent with new development. Achieving this important objective ensures that existing infrastructure systems are not overwhelmed by new demand. Further, this is one objective that all major stakeholders (local governments, residents and homebuilders) can agree is important.

Economic Efficiency

An infrastructure financing vehicle is “economically efficient” when the capacity of public facilities is expanded up to the point where the cost of increasing the capacity to produce one more unit of service (marginal cost) is equal to the cost to the user for using an additional unit of service (price of the service). Efficiency criteria also imply that the method(s) employed to finance new infrastructure promote efficiency in housing production and consumption, and orderly development. It is generally assumed that residential housing is competitively produced and, therefore, infrastructure financing should not unduly distort the decisions of housing consumers regarding the size and type of house desired nor unduly interfere with home builders' methods of production. New development should be located near already developed land to minimize the cost of providing additional public services if near-in locations offer residents similar benefits in terms of comparable housing and other amenities. If new residents have strong preferences for locations away from existing development, are willing to pay the additional cost of being provided with public services, and are charged the additional cost, remote development can be considered orderly and economically efficient.

Equity

Equity considerations in public service provision revolve around two principles: the benefits principle and the ability-to-pay principle (or vertical equity principle). The benefits principle requires that those who benefit from a public service should be the ones who pay for the service. In this regard, the benefits principle is analogous to the efficiency criterion of public service provision. This principle can be best applied to cases where it is important to conserve resources (e.g., water), access to the service is not considered a basic need (e.g., a municipal golf course, performing arts center, equestrian center, town lake, etc.), and it is administratively feasible to charge users directly.

In cases where it is not feasible to charge users directly (e.g., local streets) or the service is considered a basic need (e.g., police and fire protection), the cost of providing for these services has generally been allocated to the members of the community according to their ability to pay. That is, higher-income or wealthier individuals, the most commonly used measures of ability-to-pay, pay more toward the cost of providing public services than do poorer individuals.² The decision to finance public services according to ability-to-pay or benefits received is difficult when it is possible to charge users of the service directly but the service is considered to be so important that access to the service cannot be based on ability to pay. Public elementary and secondary education are examples of services that are provided through the tax system (ability-to-pay principle) but could hypothetically be financed by charging registration fees or tuition to families with children in the public school system.

Ease of Administration

All public infrastructure financing solutions require some form of public administration. Potentially, the administration of a financing vehicle that fully meets all of the other objectives might be so administratively burdensome to the local community that it would be impractical. Alternatively, it is conceivable that an infrastructure financing vehicle would be structured to facilitate ease of administration at the cost of expediency, equity, and efficiency.

Political Acceptability

Local communities usually must weigh conflicting public interests when making policy decisions related to infrastructure finance. Sometimes existing residents view their interests and needs as at odds with those of new residents. Policymakers should look to find solutions that offer broad political acceptability, while providing equal protection to minority members of the community such as new entrants.

Methods of Financing Infrastructure

Methods of financing new infrastructure may be classified as either public or private. The more traditional or public method consists of the local (or state) government issuing bonds to finance the construction and installation of the infrastructure and then using a portion of the locality's revenues to service the debt (i.e., pay interest to bondholders and amortize the principal). Another method, although not always feasible or desirable, is to charge the users of the infrastructure directly through tolls, user fees, or other charges. In some instances, the fees can be set high enough to cover the debt service and current operating and maintenance costs. Under public financing methods, the entire community pays something toward the use of new capital facilities. Under private financing methods, the cost of providing new capital facilities is borne by those individuals and businesses that benefit directly, or are considered the underlying cause of the need for new capital. Impact fees are one form of private financing of new infrastructure, although in some aspects they are similar to property taxes.³

The following provides a description of infrastructure financing methods that may be used as alternatives to impact fees. These descriptions are general in nature. The tools summarized in this chapter may vary widely from state-to-state in terms of their applicability and even the terminology used to describe them.

Table 6.1: Summary of Alternatives to Impact Fees

	Expediency	Efficiency	Equity	Administration	Political Acceptability
Taxes	○	○	●	●	○
General Obligation Bonds	●	○	●	●	○
Revenue Bonds	●	○	●	●	○
User Fees	●	●	-	○	-
Special Taxing Districts	●	●	●	-	●
Local Improvement Districts	●	●	●	-	-
Special Service Districts	-	-	-	○	-
Tax Increment Financing	-	●	●	○	○
Private Exactions (Including Impact Fees)	-	-	-	-	-

Key:

- Inferior to Impact Fees
- Neutral/Varies
- Superior to Impact Fees

Taxes

Property taxes, general sales taxes, and personal income taxes are traditionally the major sources of revenues for local governments to directly finance additions to infrastructure, or to service general obligation bonds.

Expediency

Property taxes, general sales taxes, and personal income taxes are typically collected in annually recurring increments. These revenue sources are usually dependent on having development in place to provide a tax base. Therefore, these revenue sources do not provide an extremely expedient funding source for infrastructure in advance of new development; however, if sufficient tax revenue sources are available, they can be a more expedient method of constructing public infrastructure than that of impact fees.

Efficiency

Because these tax revenues are derived from the public at large, there is no direct link or sometimes even no link at all, between those who pay for the infrastructure and those who use it.⁴

Although they are considered two distinct forms of revenues, there are instances in which taxes can behave like user fees. For example, special excise taxes such as motor fuels taxes, hotel/motel room occupancy taxes, motor vehicle registration fees, and other specific taxes are similar to user fees if they are dedicated to restricted uses rather than placed in the community's general fund. For example, gasoline taxes and motor vehicle registration fees dedicated to funding transit and road construction and improvements act like user fees insofar as they attempt to charge only the users of certain publicly provided services.

Equity

There are cases where it is not feasible to charge individual users directly for their use of the public service (e.g., police and fire protection, local streets), thus tax financing is the only feasible method of providing these services. In contrast, services such as public schools, libraries, and parks can be financed by charging the users directly for their use of the services, but it is considered poor social policy to deny anyone access to these services because of their inability to pay. For these types of services, equity considerations usually outweigh efficiency considerations, and thus the services and their underlying infrastructure are generally tax-financed.

Administration

Virtually all local and state communities already have the administrative capacity to manage taxes.

Political Acceptability

The use of taxes to fund infrastructure offers important advantages to local communities and homebuilders, when compared to impact fees. Because taxes are generally collected from a broad-base of the citizenry, they are an appropriate source of funding for infrastructure that provides a broad benefit. However, the public is often resistant to new taxes and there are often statutory limitations that cripple a local community's ability to use them to advance major capital programs.

General Obligation Bonds

Another traditional method of financing new public infrastructure is for the local government to issue general obligation (GO) bonds and to service the debt from local general revenue sources. GO bonds are backed by the "full faith and credit" of the issuing locality and serviced by local general revenues, usually tax revenues and sometimes from grants from higher levels of government. GO bondholders are guaranteed that the locality will use any general revenue source available to pay the interest due and to repay principal on maturing bonds. These bonds usually carry the lowest rate of interest because of these guarantees.

Expediency

GO bonds allow a local community to spend money on infrastructure by borrowing against future revenues of the community. This provides communities with an expedient mechanism to implement new infrastructure that will attract new development and thereby increase the overall tax base available to repay bonds in the future.

Efficiency

The efficiency of GO bonds depends on infrastructure being paid for with the bonds providing an equal benefit to everybody paying taxes into the community that issues them. For example, if a city issued GO bonds that were only used to pay for a neighborhood park benefiting a small area, it would not be considered efficient, because residents outside of the area would not be equally responsible for paying debt service but would not receive benefits. Alternatively, if the GO bonds were used to make improvements to a regional or community park that provided an equal benefit to all residents, then their use would be considered efficient.

Equity

In contrast to impact fees, new development is not singled out to pay for infrastructure and, therefore, GO bonds would be considered more equitable if they provide a broad community-wide benefit.

Administration

GO bonds are different from impact fees in that their use is not subject to the same constitutional and statutory protections given to homebuilders. It is not necessary for a community to establish rational nexus or fulfill many of the administrative or technical burdens of impact fees (i.e. an impact fee technical study would not be required). However, most states have adopted limitations on the amount of bonded indebtedness that may be created, and on the types of infrastructure that GO bond debt may be used for.

Political Acceptability

In order for GO bonds to be backed by the "full faith and credit" of the issuing locality, the locality must have sufficient taxing authority to service the debt. To ensure that localities can indeed back their GO bonds, most states restrict the issuance of GO bonds. A frequent restriction imposed by states is limiting the bonded indebtedness of any locality to a set proportion of the locality's assessed property value.

There is great variation among the states concerning which types of local governments must obtain voter approval (e.g., cities, counties, townships, school districts) and the majority needed to obtain approval (i.e., a simple majority or a super majority).

GO bonds can be difficult to implement as they must typically be voted on by the qualified electors of a community. *Since they are backed by the full faith and credit of that community, GO bonds must provide a direct and tangible benefit to existing residents if they are to pass the election.*

GO bonds carry lower interest rates than revenue bonds and are, therefore, the least costly to the locality. Governments are bound by constitutional and statutory imposed limits on the maximum GO bond amounts allowed to be issued. These limits are often expressed as a percentage of the value of the property within the community.⁵

Revenue Bonds

Revenue bonds are an infrastructure financing vehicle that has also traditionally been used by local communities. *Revenue bonds are public indebtedness that is serviced from specific revenue streams such as a certain percentage of the revenues from property taxes, sales taxes, income taxes, or through user fees.* Because the dedicated revenue streams are not as constant or predictable as the total stream of general revenues, they usually carry a higher rate of interest than GO bonds to compensate the bondholders for the higher risk.

Revenue bonds carry fewer restrictions regarding the volume of indebtedness a locality may incur because they are not backed by the "full faith and credit" of the issuing locality. These instruments are more flexible than GO bonds in financing public infrastructure because they can be used to publicly finance capital expenditures when they

are backed by tax revenues and to privately finance capital expenditures when they are backed by user charges, special assessments, tax increments, and, in some instances, impact fees.

Revenue bonds offer similar advantages and disadvantages as GO bonds when compared to impact fees (see above).

User Fees

*User fees are direct charges to infrastructure users related to the amount of services used. They can be used for a type of infrastructure that can be metered such as water, sewer, gas, electricity, and telecommunications systems. The most common forms of general user charges for local governments are hospital room charges, school lunch sales, parking fees, and sewer fees.*⁶

Expediency

User fees are commonly used in combination with revenue bonds, providing an expedient source of revenues that can be used for infrastructure improvements.

Efficiency

Properly structured, user charges are an efficient method of servicing revenue bonds and paying for the operating and maintenance costs of certain public services. Because users of public services are faced with the cost of using the service, user fees promote more efficient use of the public capital stock than do taxes.⁷

Equity

User charges may violate some people's concept of equity because access to public services is limited by an individual's ability to pay. Despite the possibility of inequitable treatment of some individuals, user charges are appropriate where the cost of administering the system is low relative to total revenues and where conservation of resources and alleviation of congestion is of paramount importance. The use of user charges to service revenue bonds for toll roads, municipal golf courses, water treatment plants, and sewer systems is usually considered appropriate.

Administration

Depending on the service, user fees can be more difficult and costly to administer than impact fees as the local community or other infrastructure operators must regularly meter infrastructure use and collect revenues.

Political Acceptability

The political acceptability of implementing user fees generally depends on the infrastructure type that fees are being proposed. Most citizens will balance questions of efficiency and equity in determining whether to support user fees. As mentioned earlier, primary and secondary school education is seen as too important for children to be subject to user fees when some families may not be able to afford to pay them. Alternatively, most households inherently recognize the appropriateness of paying only for the water or electricity used – giving them the flexibility to use more if they can afford it and protecting them from their neighbors’ excessive use.

Special Taxing Districts

A special taxing district is typically a separate political subdivision separate and distinct from the county or community that established it. *The sole purpose of special taxing districts is to finance, construct and/or acquire public improvements through the use of tax-exempt bonds, user fees, and property tax levies, special tax levies, etc.* Depending on the state statute, these districts may utilize tax-exempt special assessment bonds, GO bonds, or revenue bonds. Bonds are typically repaid over a 20 to 30 year period by property owners, residing within the boundaries of the special taxing district, making special assessment or ad valorem property tax payments—rather than as upfront impact fees paid by the homebuilder.

Special taxing districts are established over areas which benefit from the public improvements constructed, and usually require a vote or petition of land owners and/or resident electors. Currently, 21 states allow special taxing districts.⁸ Examples of special taxing districts include:

- Community Development Districts (Florida)
- Community Facilities Districts (Arizona, California, Hawaii)
- Community Infrastructure Districts (Idaho)
- General Improvement Districts (Nevada)
- Metropolitan Districts (Colorado)
- Municipal Utility Districts (Texas)
- Public Infrastructure Districts (New Mexico, Texas)
- Special Improvement Districts (Nevada)
- Special Service Districts (Utah)

A map of the United States where states are shaded gray if they allow Special Taxing Districts. The shaded states include Washington, Oregon, California, Nevada, Arizona, New Mexico, Texas, Louisiana, Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, Pennsylvania, New Jersey, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Maine, Alaska, and Hawaii. Unshaded states include Idaho, Montana, Wyoming, Utah, Colorado, Kansas, Nebraska, Oklahoma, Missouri, Arkansas, Mississippi, Alabama, Tennessee, Kentucky, West Virginia, Ohio, Michigan, Indiana, Illinois, Wisconsin, Minnesota, Iowa, and North Dakota. A legend at the bottom right shows a gray square next to the text "Allow Special Taxing Districts".

Allow Special Taxing Districts

Source: DPGF, Inc.

Expediency

Efficiency

Special taxing districts are more economically efficient than impact fees because only those public improvements that specifically benefit the residents residing within the boundaries of the special taxing districts can be financed. Additionally, public infrastructure constructed by a special taxing district is funded utilizing tax-exempt bonds that carry a lower cost of financing than that of private debt and/or equity as is typically the case with impact fees, thereby potentially resulting in lower home prices and/or carrying costs for homeowners.

Equity

The use of special taxing districts is considered very equitable as the public improvements being demanded by the residents residing within the boundaries of the special taxing district are being funded and paid for by these residents. Often, impact fees may be utilized to fund public improvements for which residents receive little or no perceived benefit.

Administration

Special taxing districts create some administrative challenges because a new political subdivision of the state must be established and organized in order to use this financing vehicle. However, property tax levies or special assessments are typically collected via the county treasurer which poses few administrative challenges. In addition, most states allow special taxing districts to collect a special administrative tax levy to compensate for these costs, thus, special taxing districts become fully self-sustaining.

Special taxing districts are not necessarily more complicated to administer compared to impact fees. For example, it is not necessary to establish level-of-service standards or complete a defensible impact study in order to use this financing vehicle.

Political Acceptability

Special taxing districts are frequently used because they are more acceptable to both the developer and the public at large. *Obligations of a special taxing district are non-contingent liabilities to the local community. Therefore, the local community may be more willing to establish a special taxing district than other mechanisms that may require the community to pledge its full faith and credit.*

In addition, only new and future residents in a special taxing district must pay for the infrastructure constructed or acquired by the district; therefore existing residents would not have to pay higher taxes as a result of new development.

For more information on special purpose taxing districts, go to the NAHB's website and download NAHB's publication at <http://www.nahb.org/en/research/nahb-priorities/land-development/special-purpose-taxing-districts.aspx>.

Local Improvement Districts

Local Improvement Districts (LIDs) are special purpose districts created by communities and/or counties to allow for the imposition of special assessments or property tax levies in a specific area. These funds may be used to pay for infrastructure that provides a direct benefit to the area or as debt payment for special assessment or GO bonds. Depending on the state, the debt of a LID may be secured by the underlying land within the district or by the full faith and credit of the local community that formed it.

LIDs have many applications. *They are commonly used to complete infrastructure improvements in an area that has fragmented property ownership.* For example, a LID could be formed in a rural community to pave a gravel road that would provide service to several individual farm owners. Alternatively, LIDs have been used to construct streetcar improvements benefiting dozens of individual property owners in an urban community.

Typically, LIDs require a petition or election of property owners within the district before the governing body of the local community can establish them.

The key distinction between a LID and a special taxing district is that LIDs are typically formed and controlled by the community or county in which they are formed, while the establishment of special taxing districts is initiated by property owners and are usually overseen by a governing board.

LIDs generally offer similar advantages and disadvantages when compared to impact fees as special taxing districts. The only key differentiation is in states where the debt of a LID is a contingent liability of the local community, in which case it may be more difficult to attain political acceptance.

Special Service Districts

Another method of financing infrastructure and providing public services is the creation of special service districts. These are autonomous units of government, created by local governments, with the permission of state governments to provide a single or very narrow range of related public services. *The key distinction between special service districts and special taxing districts is that special service districts have an ongoing role in maintaining and operating infrastructure facilities, while special taxing districts typically finance, construct and/or acquire the public improvements and then dedicate the public improvements to other public entities for ongoing operations and maintenance.* Within the limits set by the state enabling provisions, these units of local government can issue debt and levy taxes, or impose user charges to service the debt and to finance current operations without the interference of other local governments. The most common form of independent district is the school district. Other special service districts include mass transit, roads, water supply and treatment, and other public utilities. Special service districts have also been created to provide police and/or fire protection, health care, and housing. In 2007 there were 13,051 independent school districts and 37,381 other special service districts.⁹

The boundaries of special service districts may coincide with the boundaries of the local government that created them, or, in the case of areas with many small local governments, the special district boundaries may include a number of small local units of general governments.

Special service districts may utilize impact fees to raise revenues for new infrastructure construction.

There are vast differences in the types and organizational structures of special service districts. Therefore, it is difficult to make general comparisons between this method of infrastructure financing and impact fees.

Equity

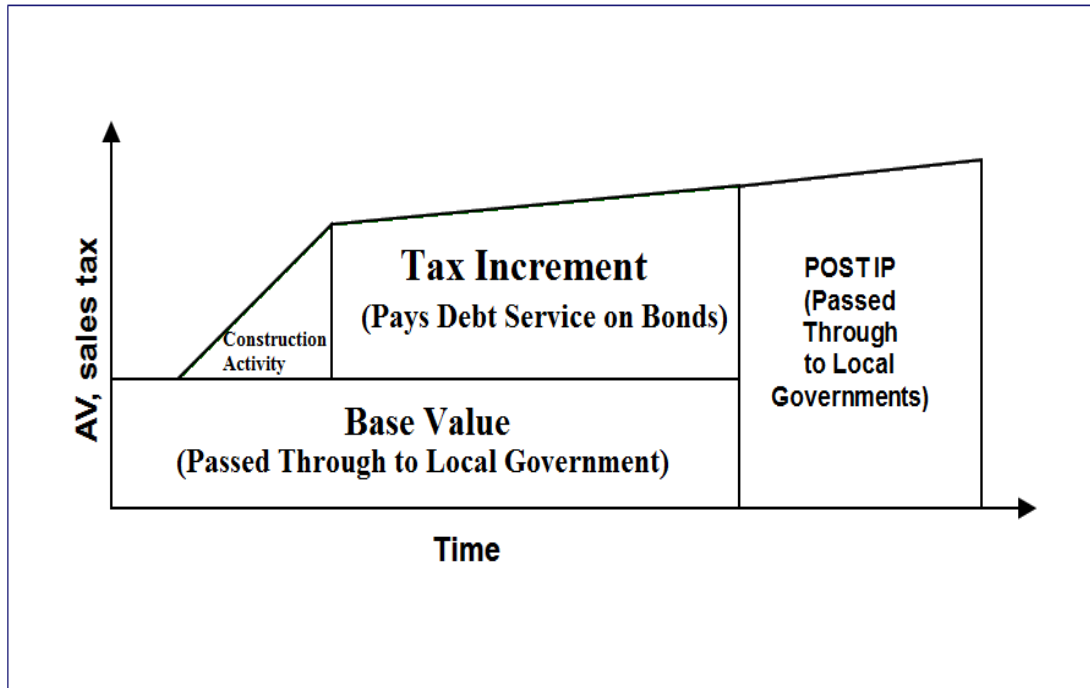
It should be noted, however, that one of the benefits of large special districts is that the financial and other costs associated with rapid population growth and commercial and industrial development are spread over a large population base and geographic area, rather than concentrated in small areas where the burdens of growth can be overwhelming.

Administration

Local governments may, at times, be reluctant to create special service districts because of potential administrative difficulties. The major disadvantage is that creation of too many special service districts fragments decision making and coordination among local governments.

Tax Increment Financing

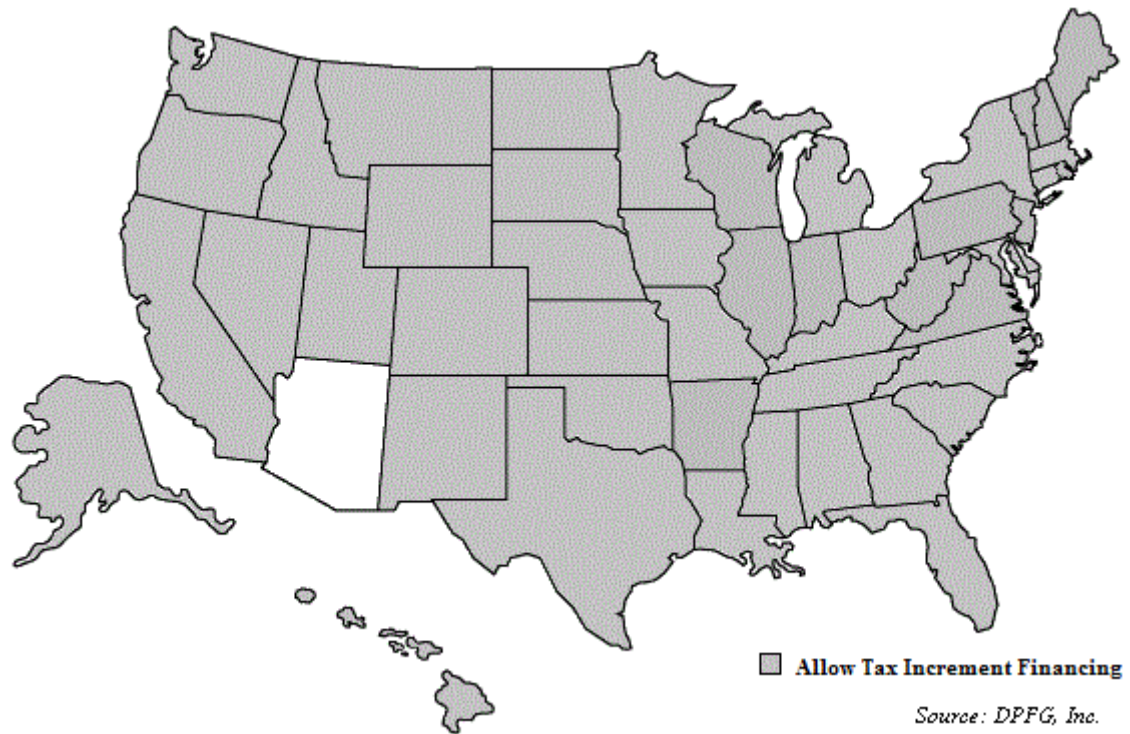
Tax Increment Financing Districts (TIF) capture the tax increment resulting from the increase in the assessed valuation as the result of new development activities or property appreciation for the purpose of making local public infrastructure improvements. The tax increment is the difference between total tax revenues after development and an established "baseline" level of tax revenues prior to development. The tax increment, or a portion of the increment, is diverted from general fund revenues to service revenue bonds issued by the parent community to finance new capital investment and/or provide increased services within the district.¹⁰ Once the tax increment period (IP) has expired, all revenues are returned to the appropriate agencies. A diagram of a typical TIF is shown below:



Most often, TIF is utilized in conjunction with redevelopment and as such boundaries of TIF districts mirror those of redevelopment areas designated by the community. One exception to this rule is New Mexico, which allows the creation of a Tax Increment Development District (TIDD) to be used to capture the incremental sales tax and property tax revenues within a TIDD to finance the construction and/or acquisition of public improvements related to Greenfield development provided the TIDD will create jobs and utilize sustainable development techniques.

Forty-nine states and the District of Columbia allow the use of tax increment financing as a vehicle to finance public infrastructure. Only Arizona does not allow tax increment financing.¹¹

Figure 6.2: States that Allow Tax Increment Financing



Expediency

As TIF financing is reliant upon an increase in property tax revenues from new development, TIF financing is on par with that of impact fees related to expediency.

Efficiency

TIF tends to be more efficient than impact fees because those who are bearing the cost of the infrastructure investment, new and current owners in the financing district, have a voice in determining the service levels they want and therefore the amount of new capital needed.

Equity

The use of TIF supports the objective of inter- generational equity. Because tax bases and rates are uniform throughout the community, new entrants and established residents are treated identically.¹² If impact fees are set on a uniform basis, or if impact fees or special assessments are based on physical characteristics of the properties, then TIF would also be superior to those financing mechanisms according to the ability-to-pay principle. However, impact fee financing, may be superior to TIF according to the benefit principle. With impact fee financing, there is a linkage, however tenuous, between the cost to an individual and the benefits received.

Administration

TIF tends to be fairly complicated from an administrative standpoint, because the local government has to complete complex technical studies when establishing a TIF district. Additionally, the local government has to participate in the on-going administration of a district.

Political Acceptability

While TIF is currently allowed in the majority of states, the use of this financing mechanism has increasingly come under political fire. For many, TIF is inexorably linked to the unpopular use of eminent domain—though it need not be. TIF may also spur battles among local units of government, who may object to the establishment of a TIF district because of the fiscal stress caused by reduced tax revenues captured by the district combined with increased service demands. However, this issue has been resolved in some states which require that a fiscal impact analysis is completed in tandem with the TIF financial study. The fiscal impact analysis is completed to identify what mitigation measures would be necessary to ensure that public services will be fully funded in the future.

Private Exactions

The most direct forms of private infrastructure finance are locally imposed exactions on builders and developers, either to directly construct and install infrastructure, or to dedicate land for the construction of infrastructure. Impact fees are a form of exaction in which the developer pays a fee to the locality and the locality uses the proceeds to construct and install the infrastructure. The builder or developer must borrow to finance land development, construction, and new capital facilities. The developers or builders will, to the extent possible, pass all costs forward to the ultimate buyer or backward to landowners. As a result of the added costs of developer-financed infrastructure, the ultimate purchaser must put up more cash for closing and borrow more to purchase the property (see Chapter 3).

Expediency

Private exactions may or may not be expedient depending on how they are implemented. A local community will often require an exaction to be complete in advance of new development in order to ensure that adequate facilities are available. Alternatively, impact fees are technically a form of exaction and are not expedient given that they are collected in arrears.

Efficiency

Private financing of infrastructure is more costly than public financing because private borrowers almost invariably bear higher interest rates than public borrowers, especially if the public authority issues debt with interest that is exempt from federal

(and possibly state) income taxes. Because mortgage interest payments are deductible from federal, and possibly state, income taxes, the difference in *effective* interest rates paid by private borrowers and public borrowers is not as great as the difference in nominal interest rates. However, not all private borrowers can take full advantage of the mortgage interest deduction; itemized deductions for mortgage interest are of full value only if other tax deductions, including real estate property taxes, are at least equal to the standard deduction (\$12,600 for married couples filing joint returns and \$6,300 for single individuals in 2016).¹³

Despite the higher cost of private borrowing versus public borrowing, it may be argued that exactions on developers and builders are efficient. Downing and McCaleb (1987, p. 53) argue that sophisticated exactions (including impact fees) *do* possess the attributes of efficient prices because those who are considered to be the proximate cause of the need for new infrastructure, or are the primary beneficiaries, pay the cost of the facilities.¹⁴ Conversely, Snyder and Stegman (1986, p. 31) argue that development fees and other forms of private financing of public capital facilities, where exclusion is possible, promote inefficiency in the use of public facilities by reducing user fees and charges to cover only short-run costs rather than long-run costs. Furthermore, Snyder and Stegman argue that development fees *do not* promote efficiency because the ultimate payers do not determine what they pay for, or the size and amount of infrastructure that is to be built.¹⁵ In addition, if impact fees are set on a uniform basis and therefore do not reflect the actual cost to the locality for providing public services, the fees may encourage inefficient development if new development occurs at locations that are not near existing development.¹⁶ Impact fees that are based on the number of bedrooms, acreage, or front-footage are another source of inefficiency in that they force builders, in their attempt to minimize fees, to produce housing units that are not the ones most desired by home buyers.¹⁷

Equity

A key issue with exactions is that they are often implemented by local communities on an ad-hoc basis. Further, exactions may violate the ability-to-pay concept of equity. Lower-income households pay more, relative to their income, than do higher-income households for the same capital facilities. Exactions are particularly burdensome to buyers of low-income households if they are used to finance infrastructure for roads, police and fire protection, schools, libraries, parks, or other public services from which it is either difficult or impossible to exclude anyone, or which are deemed so socially important that no one should be excluded on the basis of the ability-to-pay.

Private financing of new infrastructure and public financing of replacement infrastructure, often based on ability to pay, involve a double standard in the treatment of new entrants compared to the treatment of established residents. Although current residents may believe it is fair to force new entrants to privately finance new infrastructure and to publicly finance replacement infrastructure, there may be a downside for current residents if new entrants can thwart moves to publicly finance

replacement infrastructure (e.g., refurbishing and modernizing older schools) that primarily benefit established residents.¹⁸

Administration

The use of exactions, including impact fees, can be challenging for local communities to administer. Specifically, all development projects have different impacts on public infrastructure systems. Administering a fair and balanced exaction or impact fee program is difficult when there are so many nuances in various development projects. Chapter 5 of this handbook includes a detailed description of the challenges related to impact fee programs, which can be broadly understood to relate to exactions in general.

Political Acceptability

While the use of exactions and impact fees may be more politically acceptable than other forms of infrastructure financing to existing residents—it does pose some complicated political questions for local communities regarding their fairness to new residents. Chapter 7 of this Handbook includes a detailed discussion of political issues associated with impact fees, which can be understood to broadly address all forms of exactions.

Endnotes

1. A complete presentation of equity, efficiency, administrative, and political criteria for infrastructure finance can be found in Snyder and Stegman, *Paying for Growth*, pp. 27-38.
2. Wealth is usually measured by the amount of assessed real property owned by an individual.
3. Paul P. Downing and Thomas S. McCaleb, "The Economics of Development Exactions," in Nelson, ed., *Development Exactions*, 1988, p. 53, *op. cit.*
4. T.R. Lakshmanan, P. Nijkamp, E.T. Verhoef and P. Rietveld, *Benefits and Costs of Transport, Classification, Methodologies and Policies*, 2001.
5. David R. Berman, *Local Government and the States: Autonomy, Politics, and Policy*, 2003.
6. U.S. Bureau of the Census, *Total State and Local Government Finances in 1992-93*, pp. 1, 2.
7. Thomas P. Snyder and Michael A Stegman, 1986, p. 31.
8. National Association of Home Builders, *Infrastructure Series: Part II: Infrastructure Finance, Does your state encourage innovation?*
9. U.S. Bureau of the Census, *Statistical Abstract of the United States 2007*.
10. Opponents of tax increment financing argue that these programs may require cost subsidization from taxpayers outside of the tax increment district. David B. Lawrence and Susan C. Stephenson, "The Economics and Politics of Tax Increment Financing," *Growth and Change* (Winter 1995), p. 106.
11. National Association of Home Builders, *Infrastructure Series: Part II: Infrastructure Finance, Does your state encourage innovation?*
12. National League of Cities, *Financing Infrastructure: Innovations at the Local Level* (Washington, DC, 1987).

13. Commerce Clearing House, 1996 *U.S. Master Tax Guide*, p. 85. For a discussion of the interaction between the standard deduction and the mortgage interest deduction, see Paul Emrath, "Cost of Finance and Taxes for New and Old Homes," *Housing Economics* (September 1993), pp. 5-8. Internal Revenue Service for 2016 Standard Deduction Amounts.
14. Paul P. Downing and Thomas S. McCaleb, "The Economics of Development Exactions," in Nelson, ed., *Development Exactions*, 1987.
15. Thomas P. Snyder and Michael A. Stegman, *op. cit.*
16. *Ibid.*
17. *Ibid.*
18. Thomas P. Snyder and Michael A. Stegman, *op. cit.*, p. 30.

Public Affairs Strategies

- *Arguments and Strategies to be Utilized to Defeat Fee Proposals*
- *What to do if an Impact Fee Seems Inevitable*
- *Groups Likely to Support the Home Builders Association Position*
- *Groups Likely to Oppose the Home Builders Association Position*

A sound public affairs strategy which is carried out in a successful manner will benefit the home builders association by influencing legislation and public actions. As the implementation of impact fees and impact fee increases are typically the result of political rather than economic motivations, home builder associations may successfully address these issues through a solid public affairs strategy.

HBAs must adopt a strategy to influence impact fee public policy. If impact fees are not currently being discussed in your community, it may only be a matter of time before they are considered as a method to finance new or expand existing infrastructure. Impact fee use has steadily increased across the country since originating in Florida and California decades ago and impact fee enabling legislation has now been adopted in 28 states.

Chapter 7 focuses on identifying key policy issues that should be considered by governments when creating or increasing impact fees. The chapter outlines arguments and strategies that rely on these policy issues and have been successful in defeating or modifying impact fees.

Additionally, a list of provisions HBAs should urge governments to consider for inclusion in impact fee legislation and ordinances is included in this chapter. The protections and provisions found within impact fee ordinances play an important role in ensuring that the money collected for a purpose is actually spent on that project or service. Certain provisions, if included in the impact fee legislation or ordinance, not only protect the home builder but also the home buyer, local government and existing tax payers. Examples of what issues should be considered in an impact fee have stature has been included as Appendix C. Arizona's impact fee statute has been included as Appendix D. The Arizona Statute was updated in 2011 to address the continued challenges that the Arizona HBAs were experiencing with jurisdictional technical studies and the public sector's reluctance to address the HBA's concerns. The resulting legislation is one of the most comprehensive impact fee statutes in the country and one that other HBAs may want to consider utilizing in whole or in part to prevent jurisdictional overreach. The Montana and Texas impact fee statutes have also been included as additional impact fee statutes that provide many of the checks noted within this publication to prevent jurisdictional abuses.

As HBAs work to defeat or negotiate an impact fee, it is always best to form a coalition which supports the HBA's position. A sound strategy may include building a coalition with mutual interest groups, e.g., business, labor, civil rights, and housing organizations. Prepare materials that may be provided to the media and other key decision makers that detail the economic and social costs of impact fees. Be sure to meet with the media throughout the process to advance their understanding of this financing mechanism.

Arguments and Strategies to Utilize to Defeat Fee Proposals

Impact fees are proposed in a community for many reasons. A HBA's public affairs strategy should be dynamic enough to address the varied reasons for using the impact fee as a tool to finance infrastructure and public services.

Cost of Infrastructure

Many communities simply lack the funds or think they lack the funds to finance infrastructure improvements and expand services. Often, the lack of financing is caused by either a cap imposed upon property taxes or voter resistance to increased taxes. In these cases, it is essential to identify the economic sensitivity of impact fees as an infrastructure finance mechanism. And HBAs should always examine their community's budget to check the validity of the budget shortfall or limitations. Many local jurisdictions try to make up for seriously deferred maintenance of existing infrastructure by charging fees to new growth. HBA's should be prepared to challenge this practice when encountered as discussed in earlier chapters.

The cyclical nature of housing construction makes impact fees an unreliable revenue source. The amount of revenue generated through assessment and collection of impact fees may fluctuate dramatically during times of high and low growth, making fiscal planning based on impact fee revenues unpredictable and difficult. Additionally, the goal of raising additional revenue through impact fees may be attained only in the short term in a growing community. The use of impact fees may result in stifled economic development and limited growth.

If growth is limited by impact fees, the direct and indirect benefits of growth—such as a larger property tax base, increased employment opportunities, increased disposable income, increased sales and other tax revenues—will also be limited. And in regions where communities are competing for growth, impact fees can push to the growth to other areas if the fees are high enough and the market is sensitive.

In communities that are suffering from declining new home construction, impact fees are a naïve way to address the community's infrastructure needs. To the extent that the community is financing the construction of infrastructure through bonds supported by impact fees, the community will not likely receive the funds necessary to retire the bonds as impact fee financing depends on a reliable source of revenue.

If the cost to construct public infrastructure or provide public services is a challenge faced in a community then the following arguments may be useful:

- Ensure the community has explored all of the alternative financing mechanisms available such as its statutory bonding capacity, special taxing districts, tax increment financing, public/private partnerships, grants, etc. Information relating to infrastructure finance solutions may be found in the NAHB's three part series available at www.nahb.org/infrastructurefinance. These publications are:
 - *Building for Tomorrow: Innovative Infrastructure Solutions* (2003): This is a 32-page report that explains more than 20 innovative financing and delivery mechanisms and presents case studies on how those tools have been applied successfully.
 - *Infrastructure Solutions—Best Practices from Results-Oriented States* (2007), features research from the NCSL regarding the best state enabling legislation for some of 11 infrastructure finance alternatives. NCSL looked at statutory language from all the states authorizing the use of these finance tools and highlighted the best-written laws – those that showed the most promise for helping local governments make effective use of those tools.
 - *Infrastructure Finance: Does Your State Encourage Innovation?* (Updated 2012) features a matrix of all 50 states, showing which states authorize the use of the 12 most commonly used infrastructure finance tools discussed in *Building for Tomorrow*. It highlights a more in-depth research report written by the National Conference of State Legislatures (NCSL) that summarizes state enabling authority for these tools and includes links to the relevant statutes.
 - *An Overview of Special Purpose Taxing Districts* (2014) features an in-depth study of the benefits of special purpose taxing districts and how the districts may be used to finance public infrastructure in advance of growth.
- Identify the economic sensitivity of impact fees as an infrastructure financing mechanism.
- Describe the long term impacts on housing affordability and economic development (more detail under “slow growth or no growth”).

Slow Growth or No Growth

Oftentimes communities propose impact fees aiming to discourage or prevent growth. Housing affordability is not considered an issue when no-growth is the goal as the policy makers intend to create barriers to housing construction.

If the slow growth or no growth argument is at the forefront of impact fee issues, or even masquerading behind them, then an HBA should consider making the following points:

- **Create a constituency for affordable housing.** Note that impact fees are included within the sale price of new homes and thus are amortized over the life of the mortgage. Amortizing impact fees significantly adds to the cost of the home, which decreases the ability of many people to purchase a home. For example, as a point of reference, a \$6,000 impact fee on a \$275,000 home, with a 4.50 percent 30-year mortgage, increases the total closing and financing costs of the home by \$8,220. If fewer people can afford to buy new homes, then fewer new homes will be built; if housing is limited, so too will be the property tax base—and as such impact fee revenues. Please refer back to Chapter 3 for more information on NAHB's priced-out model.
- **Impact fees place a disproportionate burden on lower-income households.** For example, suppose a household with an annual income of \$48,000 is buying a \$200,000 house with a \$180,000 mortgage at 5.0 percent. A \$5,000 increase in house price due to an impact fee would require an increase of 2.5 percent in down payment and \$325 more annually in house payments, which is 0.7 percent of the family's income. In a household with an income of \$69,000 buying a \$300,000 house with the same mortgage terms, the same rise in price would cause the same increase in annual payments, an increase equaling only 0.5 percent of that family's income.
- **Argue the equity issue.** Costs for the construction of infrastructure has traditionally been paid from general revenues of the community. When a local government is benefiting from a budget surplus, there is little justification for turning to new revenue sources such as impact fees. Why should a builder or home buyer pay for the basic needs of a community when the community itself can afford them?
- **Check the motives of the impact fee proponents.** Ensure impact fees are being assessed as a means of raising needed revenue and not for exclusionary purposes.
- **Identify the negative effect impact fees will have on a community.** If your community is competing for new or expanded businesses with neighboring communities that have no such fees, the economic development and growth will simply move next door.
- ***Impact fees not only lead to an increase in the price of new homes but also an increase in the prices of existing homes, as both new and existing homes are close substitutes.*** If the cost for new homes is more expensive than existing homes, demand for existing homes will increase, resulting in an increase in existing home prices. The increase in home values will make housing less

affordable for existing homes at the expense of buyers of both new and existing homes.

- **Advocate paying the impact fee at the latest point in the construction process.** The later the impact fee is paid, the lower the impact on the housing price. One suggestion is to pay the impact fee upon the receipt of the certificate of occupancy. Alternatively, in some communities, impact fees have been financed as an annual special assessment amortized over a twenty year period.

Political Expediency/No New Taxes

Elected community officials may utilize impact fees as a method to address infrastructure issues without raising taxes. Due to the long build-out schedule for constructing public infrastructure, it is incumbent upon successors to manage the tax decisions made by current elected community officials if impact fee revenues fail to meet growth projections. Residents of new construction are a constituency of the future and are often only represented by the HBA.

For communities utilizing impact fees as a way to hide the real costs of infrastructure, you may want to influence community officials with the following arguments:

- **Provide alternative mechanisms for the financing of public infrastructure.** This is outlined in more detail in Chapter 6.
- ***Verify that impact fees represent only the actual costs of providing public services to the new home buyer.*** It is also important to make sure that the community is capable of maintaining the facility (or service) after the facility is constructed. In the future, a fiscal crisis may occur and the community may find that revenue funds are insufficient to operate and maintain the facilities.
- **Argue that a majority of new homes are purchased by the existing residents who have already been financing infrastructure through property taxes, etc.** These new home owners are already living in the community and create no new burden on the public infrastructure of the community.

Equity Issue/Growth Pays for Itself

In many communities, elected community officials and residents believe that it is fair for new growth to pay for itself. If a community believes that growth should always pay its own way, the following arguments for opposing impact fees may be helpful:

- **Impact fees imposed for public infrastructure services that benefit and serve both new and existing residents are discriminatory if they are levied only on new homeowners.** Alternative sources of funding, such as gasoline taxes to pay for roads, are available and more fairly distribute the cost of services among those who use them.

- **When impact fees are designated to pay for the construction of future planned facilities, the buyer is paying not just for available facilities, but also for projected infrastructure.** Impact fees are often collected from a constituency that may not enjoy the benefits for which the impact fee paid. The average turnover in home ownership is six years. Many times it takes longer than six years to build infrastructure and develop services.
- **Make sure that impact fees earmarked for building certain infrastructure are used for that purpose and in the community or service area they were intended to support.** Impact fee monies should not be commingled with the funds in the general fund, and to the extent that impact fees are not expended for their intended use over a reasonable time period, they should be returned to the homeowners.
- *Impact fees may result in "double taxation" of buyers of new housing as new residents may be charged twice for a portion of the public infrastructure; once through the payment of an impact fee and second through the repayment of bonds.*

What to do if an Impact Fee Seems Inevitable

If it is apparent that an impact fee proposal will be approved, there are several options that may minimize the effect of the fees and ensure they are being spent for the purpose they were collected:

- Work to establish specific procedures for enacting local fee ordinances, including requirements for public hearings and legal notice.
- Suggest alternative mechanisms for the financing of public infrastructure (Chapter 6).
- Review the impact fee study to ensure that: (i) the impact fee study is compliant with the requirements of the impact fee statute; (ii) the impact fee study is mathematically accurate; (iii) the impact fee study is in agreement with supporting documents and studies (e.g. CIP); (iv) the impact fee study allocated costs to multiple service areas; (v) the impact fee study is supported by reasonable growth estimates; (vi) construction costs are provided by licensed professionals; (vii) impact fees are reduced by funding offsets; and (viii) the impact fee study is based on existing levels of service..
- Provide economic data to demonstrate the influence that impact fees have on housing affordability in an effort to lower the impact fee and/or transfer the timing of the payment of the impact fee further in the development and building process.

- *Conduct a detailed legal and technical review of the ordinance or statute especially the portion that applies to the rational nexus test. Ensure the assessment of the impact fees conforms to the requirements of the ordinance or statute.* NAHB's Land Use & Design Department provides technical and policy assistance through its ordinance reviews. NAHB's Legal Services can provide assistance and advice on legal issues with the ordinance or statute.
- In the case where a state does not currently regulate impact fees, make sure the community has established administrative guidelines. Many communities fail to comply with the administrative requirements and accounting that must occur when utilizing impact fees as a method of financing public infrastructure.
- HBAs in states with adopted impact fee statutes must be knowledgeable of the provisions contained therein. Most state statutes have specific requirements for communities to follow when adopting impact fees. Make sure the local ordinance is in compliance with the requirements of the impact fee statute. In communities where no state statute has been adopted, confirm the impact fee is in line with established criteria as outlined in other chapters of this handbook.
- Certify that the community commits to conducting an annual capital project update. Doing so will help eliminate completed projects from the impact fee schedule, add new projects if needed and document expenditures for constructed facilities. The purpose of the annual capital project update is to ensure the home buyer receives the infrastructure and services for which the impact fees were paid and that the community is both planning ahead and being accountable.
- *Ensure the ordinance requires the community to perform a periodic update of the impact fee program. Provisions in many state statutes have a schedule for periodic impact fee program updates. The goal of these updates is to make sure that the plans and fees for new infrastructure and services are realistic and accurately represent the burden imposed by new development.*
- As an integral component of the fee program update, communities must also include a timeframe to update development projections. A sound ordinance should require the community to regularly update the base year and planning horizon as well as provide a new analysis of facility standards and needs (since these can change over time) and, most importantly, provide updated and realistic facility costs. Material cost fluctuations may greatly impact the construction costs of capital facilities.
- Ensure that credits and reimbursements are part of a consistent documentation process. HBAs can add significant value to the building and development community in this field. It is prudent to ensure the community is required to adequately track fee payments and projects so that in the event impact fee funds are not spent, refunds can be made. Credits should also be given in the case of changes in land use that reduce demands on infrastructure.

- Communities assessing impact fees must properly account for the fees received from new development. Ensure the community ordinance requires funds for fee programs to be deposited into separate interest-bearing accounts. The accounts typically should also use multiple categories for fees and projects. And a public accounting of how the funds were spent needs to be a requirement for the local jurisdiction.
- Push to have impact fees paid as late in the homebuilding process as possible, such as the receipt of the certificate of occupancy
- Suggest a gradual phasing of the bill's fee requirements. Phasing in the assessment of impact fees results in a less abrupt change in the functioning of builders, developers, and consumers.

Groups Likely to Support the Home Builders Association Position

As stated earlier, HBAs have a stronger ability to influence impact fee legislation when part of a broader coalition. As such, it is important to garner support through communication with other organizations early on regarding the provisions of the impact fee proposal. It may also be advantageous to proactively communicate with business clubs, labor, housing, civil rights, and property owner groups. Local commercial and residential homebuilders and developers may also be a source of support.

Enlisting the support of recent and potential new home buyers will likely play an important role in challenging impact fee proposals. Home buyers elect the officials of the governing body and may represent a powerful source of support as decreasing the affordability of housing will likely be important to home buyers.

Maintain an open line of communication with support groups and ensure that efforts to challenge impact fee proposals are coordinated. Effectively challenging impact fee proposals requires a consistent coordination of efforts between supportive groups.

Groups Likely to Oppose the Home Builders Association Position

While some groups will support the position of HBAs, there will also be groups in support of the impact fee proposals. Communicating with groups that may not share the same perspective on impact fees can be an effective way to learn how to formulate a strategy and arguments that would be tenable to all parties and for the HBA to be viewed as an effective advocate for rational development.

As impact fees represent an additional revenue source to communities, the imposition or increase of impact fees will likely be supported by community officials. It becomes increasingly difficult to effectively influence the implementation of impact fees as the capital budgeting and planning processes progress. Whenever possible, early

involvement in the budgeting and capital planning processes of the community will provide the best opportunity for HBAs to influence the impact fees being proposed.

It is likely that in an effort to discourage or limit community growth, antidevelopment organizations and groups may strongly oppose the efforts of HBAs. It is prudent to stay abreast of the current events of these groups and communicate periodically with the leaders of antidevelopment groups.

Conclusion

Developing a political and public relations strategy to affect an impact fee proposal is essential to building broad-based support in the community that will give additional weight to the building industry's position. Garnering the support of community organizations, professional groups and potential home buyers early in the capital budgeting and planning process will provide a better opportunity to effectively influence the implementation of the proposed impact fees. Following public hearings and the adoption of the fee ordinance, successfully challenging the impact fees without litigation becomes increasingly difficult.

APPENDICES

A Case Studies

B State Impact Fee Enabling Legislation Summary Chart

C General Impact Fee Statute Considerations

D Arizona, Montana, and Texas Impact Fee Statutes

E Resources

APPENDIX A

Case Studies

Home Builders Associations (HBAs) throughout the United States continue to experience challenges related to jurisdictions’ implementation of development impact fees. In order to show case the actions a number of HBAs have taken in relation to such challenges, case studies have been included that include dealing with issues of: (i) changing impact fee consultants; (ii) statutory authority to implement Fees; (iii) the timed payment of Fees; (iv) the misappropriation of Fees; and (v) levels of service. Although some of the case studies may be dated, the logic and approach of the actions taken by the HBAs is still relevant today.

I. CHANGING IMPACT FEE CONSULTANTS AND UNINTENDED CONSEQUENCES

(Note: For political sensitivity, the names of the county and the consultants in question have been omitted.)

BACKGROUND

ABC County’s (County) Impact Fee Ordinance (Ordinance) requires impact fees to be used only for capital facility costs for which the impact fees are levied and that add capacity needed to serve new development. Furthermore, the Ordinance requires the County to encumber the impact fees six years from the date the impact fees are paid and spend the impact fee within nine years from the date the fees are paid. Otherwise, the fee payer is entitled to a refund.

The County’s impact fees have been updated on a biennial basis since 1994. Consultant A prepared the 2012 update and for many years prior, and Consultant B prepared the 2014 update. Consultant A and Consultant B are credentialed impact fee consulting firms. Both firms calculated the fees using the consumption-based methodology.

Although the overall methodology did not change, the 2014 update recommended a \$15,888 (or 384 percent) increase in impact fees for a single-family detached, 2,000 square foot home. This case study explores how underlying approaches used by impact fee consultants can affect the fee calculations.

2012 and 2014 Impact Fee Comparison

Single Family (Detached) 2,000 sq ft	2012	2014	\$ Increase	% Increase
Schools	\$ 1,964	\$ 15,305	\$ 13,341	679%
Parks & Recreation	905	2,418	1,513	167%
Public Libraries	309	289	(20)	-6%
Fire & Rescue	-	324	324	N/A
Law Enforcement	135	192	57	42%
Public Buildings	826	1,499	673	81%
Total	\$ 4,139	\$ 20,027	\$ 15,888	384%

Schools

As described in the 2012 update, the School District has been implementing an aggressive capital improvement program resulting in marginal additions to existing schools rather than constructing new schools to meet enrollment demand. No capacity-adding projects were included in the School District's current Five-Year Work Plan.

The capital cost per student station of \$11,170 in the 2012 update was based on the marginal cost of expanding capacity in existing schools. In the 2014 update, the capital cost per student station of \$39,846 was assumed, which reflects the cost of building new schools.

Differences in the application of the consumption-based (e.g. incremental expansion) methodology and interpretation of the County's Ordinance in determining the capital cost per student station were key factors in the \$13,341 increase in school impact fees.

Parks and Recreation

In the 2012 Study, the cost of park land was excluded from the Parks and Recreation impact fee calculation because at that time and for the foreseeable future, the County had no plans to increase its inventory of park land. Instead, the County will be developing park land that is already in inventory.

The 2014 Study included calculations demonstrating how the County's achieved level of service for park land exceeded the adopted level of service, consistent with findings in the 2012 Study. The County still has no plans to acquire additional park land. However, the 2014 Study included the cost of park land, at achieved levels of service, in the cost component of the impact fee calculation. Park land accounts for 52 percent of the 2014 impact fee cost component, with park land improvements and facilities accounting for the remainder.

Differences in the application of the consumption-based methodology and interpretation of the County's Ordinance in determining the capital cost for parks and recreation were key factors in the \$1,513 increase in parks and recreation impact fees.

Fire and Rescue

The 2012 Study recommended the Fire and Rescue Fee be set at zero as the County's Capital Improvement Plan (CIP) did not propose any capacity-adding improvements. However, the 2014 Study noted three new stations have been included in the current CIP, so a Fire and Rescue impact fee was recommended for adoption.

Initially, the 2014 Study included a \$14.6 million Training and Administrative Facility in the land and buildings inventory used in calculating the cost component of the fee. However at the County's request, the cost of this facility was later removed, as there is no need for a similar facility in the future.

Law Enforcement

The 2012 Study allocated capital costs on a per call basis² and used the existing inventory of vehicles and equipment in determining the cost component of the law enforcement impact fee. The 2014 Study allocated costs on a functional population basis and used a flat capital cost per officer based on information obtained from other jurisdictions. The level of service in the 2014 Study was based on the number of officers per 1,000 functional residents.

A comparison of the two approaches, calculated on a per capita basis, highlights certain anomalies between the two approaches. For example, the overall capital cost was \$10.8 million less in 2014 compared to 2012, and the service area population increased by 86,318 persons (or 12 percent) from 2012 to 2014. In total, the per capita cost declined by \$25.50 per person over the biennial period.

2012 and 2014 Law Enforcement Capital Cost Comparison

Description	Figure
<i>2014 Law Enforcement Impact Fee Study</i>	
Service Area Functional Population	699,882
Cost per Functional Resident	\$ 106.50
Total Equipment and Vehicle Value	\$ 74,537,433
Service Area Peak Population	818,439
Per Capita Cost	\$ 91.07
<i>2012 Law Enforcement Impact Fee Study</i>	
Total Equipment and Vehicle Value	\$ 85,341,771
Unincorporated Peak Population Served	732,121
Per Capita Cost	\$ 116.57

In spite of the decreases noted above, the 2014 Law Enforcement impact fee increased significantly across all land uses, as illustrated below.

- Office (50,000 sq. ft. and less) increased 1,325 percent
- Retail (50,000 sq. ft. and less) increased 335 percent
- Fast Food Restaurant increased 1,480 percent

Persons per housing unit increased slightly in 2014, which affected the residential land use fees, but different approaches in calculating functional population in the 2012 and 2014 studies accounts for the majority of the nonresidential land use increases.

For example, the peak population in the 2014 study was 1,443,996; however, the peak population in the 2012 study was 1,640,084—a decrease of 196,088. The primary difference appears to be in the transient population assumption, which affects the Parks & Recreation, Fire and Rescue, Law Enforcement and Public Building impact fee calculations.

¹ The 2012 Study also included the Law Enforcement impact fee calculated on a per capita basis.

Furthermore, the functional population coefficient for many nonresidential land uses differed in the 2014 Study compared to the 2012 Study due to methodologies developed and applied by the two consulting firms.

2012 and 2014 Functional Population Coefficient Comparison

Land Use	Functional Population Coefficient Per 1,000 Sq Ft	
Drive-in Bank	1.815	2.280
Quality Restaurant	2.231	6.820
High Turnover Sit-Down Restaurant	2.375	6.780
Office (<= 50,000 sq ft)	0.801	1.410
Retail (<= 50,000 sq ft)	2.050	2.450
Fast Food Restaurant	3.699	8.900

Public Buildings

A significant amount of debt associated with existing public buildings was paid off between 2012 and 2014, which decreased the credit component in the 2014 Study. However, the increase in Public Building impact fees was also affected by the differences in functional population and functional population coefficients described above.

OUTCOME

Because impact fees are not subject to a regulatory body that establishes standardization in practice, a wide variety of approaches are used even when applying the primary methodologies: plan-based (or improvements-driven) and standards-based (or incremental expansion or consumption-based). It is important for local governments to fully understand the assumptions and methodologies included in the impact fee study and to take the steps necessary to limit inequitable (and unintended) inconsistencies that may arise with a change in the impact fee preparer.

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II. STATUTORY AUTHORITY LAWSUIT

Bozeman, Montana

BACKGROUND

In December of 1995, the City of Bozeman (City) voted to adopt fees for streets, fire, water and wastewater, without permission through state enabling legislation. The fees voted upon became effective March 23, 1996. At this time, the City only had “general governing powers” not “self-governing powers” and as such, would need state legislation to pass ordinances. Self-governing power, which is the power to enact any measure not expressly forbidden by state laws, was granted to the City in July 2001.

In 1998, following the narrow approval of Initiative 19 by voters, the City sought to substantially increase the existing amounts being assessed for fees. The fee schedule increase was enough for members of the Southwest Montana Building Industry Association (SWMBIA) to begin questioning the authority of the City to collect fees. The local building industry (Building Industry) and the SWMBIA formed a coalition to fight the implementation of the increased fees. In 1999, the City and the SWMBIA entered a lawsuit relating to the City’s fee ordinance on the grounds that the City did not have statutory authority to impose fees. The lawsuit was later certified as a class action lawsuit in 2000. The SWMBIA and its members were highly involved in all aspects of the lawsuit and formed a committee of builders to administer and oversee the lawsuit and to keep the SWMBIA informed of the status and progress, including fundraising, identifying necessary plaintiffs, and overall supervision as the lawsuit progressed.

Prior to and at the time of the fee issue, the state of Montana had not enacted state-enabling legislation for the implementation of fee programs. As state-enabling legislation had not been given, the SWMBIA believed the City had no authority to impose fees, to say nothing of the authority to collect or arbitrarily increase the unfounded fees without industry input or the preparation of a technical fee study. A highly important factor that contributed to the substantiality of the SWMBIA’s case was not straying from the central argument that the city lacked the statutory authority to impose the fees. Years later in 2005, the passing of State Bill 185 allowed jurisdictions to implement fee programs on the legal basis of Montana Code 7-6-1601 et. seq.

City officials and other supporters for higher fees consistently used media channels to purport that any and all infrastructure problems or deficiencies were the result of the Building Industry’s pursuing litigation over fees. Accordingly, the SWMBIA routinely used the local media to combat the misinformation and mischaracterization of the Building Industry and focused the public relations effort on educating the public about the SWMBIA’s position and the importance of challenging the City’s existing fee study. Allies of the SWMBIA included numerous members of the local and state building associations as well as state and local realtors. Efforts were focused on educating allies of the need for litigation and formally requesting their financial support to challenge the fees. By maintaining open lines of communication with allies throughout the process, the SWMBIA was able to receive additional funding when necessary.

OUTCOME

In February 2001, the lawsuit was settled and the City agreed to:

- Return a total of \$5.1 million to approximately 1,000 fee payers resulting in a refund of approximately \$5,000 per residential dwelling.

Bozeman Fee Refund	
Fee Category	Amount Refunded
Street and Fire	\$ 2,231,410
Water	1,293,369
Sewer	1,606,555
Total	<u>\$ 5,131,334</u>
Residential Dwellings ⁽¹⁾	1,000
Refund per Residential Dwelling	<u>\$ 5,131</u>

Footnote:

(1) Figure is approximate.

- Reduce the existing fee schedule by 10 percent until a new study could be completed.
- Allow local builders reasonable participation in the preparation of the new fee study.

After settlement was reached, the SWMBIA continued its public relations approach by providing the public with detailed information about the settlement and the parties eligible to receive fee refunds. The SWMBIA and the class were very pleased with the outcome of the lawsuit, however, the reasonable participation in the preparation of the new fee studies never really materialized.

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III. TIME PAYMENT OF FEES

Hillsborough County, Florida

BACKGROUND

The water and sewer systems for Hillsborough County, Florida (County) had substantial excess capacity within certain service areas caused by a combination of overly optimistic population projections, housing market down turns, down planning, and reluctance on the part of the County to approve rezonings involving higher residential densities.

The County was having difficulty meeting its bond payment obligations, and bond rating agencies threatened to downgrade the County to “junk bond” status. The reclassification would make it difficult for the County to successfully finance any future capital improvements through the issuance of bonds.

The water and sewer development impact fees (fees) in the County were structured to meet the needs of providing necessary capital infrastructure and were some of the highest utility fees in Florida. At the time of receiving certificate of occupancy, homebuilders paid fees of \$3,665 per single family residence for water and sewer.

As a means of generating revenue, the County sought to implement a “stand-by” charge, which the Tampa Bay Builders Association (TBBA) felt was arbitrarily chosen and did not meet the provisions of rational nexus tests. As such, the TBBA threatened legal action.

The TBBA participated in a task force offering suggestions on how to increase revenues and cut expenses and suggested allowing the County to adopt the stand-by charge as a way to raise revenue and to allow the stand-by charge and fees to be financed by home buyers over a period of time. As a result of the concept of allowing the homebuilder to finance both the stand-by charge as well as the Fees through the use of special assessment bonds was created. The goal of the time payment of fees program was to accelerate the collection of funds by the County and to shift the burden of fees from the home builder to the home buyer and to protect the County’s bonding ability and rating.

To accomplish the implementation of a time payment system, the County proposed a new fee, called the Accrued Guarantee Revenue Fee (AGRF), to reimburse the cost of the unused water and wastewater capacity in the utility system. Following extensive discussion, it was agreed that the County would adopt an AGRF of \$445 for water and \$645 for wastewater for a total AGRF of \$1,090. Fees now due for water and wastewater were increased from the average of \$3,665 per single family residence to a total of \$4,755. The fee increase is illustrated in the table on the following page.

County Water and Wastewater Fees	
Description of Fee	Amount
AGRF ⁽¹⁾	\$ 1,090
Average Fee	3,665
Total Fee	\$ 4,755

Footnote:

(1) The acronym represents the Accrued Guarantee Revenue Fee.

By participating in the time payment program, the home builder paid \$2,500 known as the Builder Payment. The time payment fee is paid prior to the issuance of a certificate of occupancy while the home buyer, as part of their property tax bill, pays the remaining \$2,255 over 20 years, amounting to approximately \$230 per year.

Time Payment of Fees Example		
Fee Breakdown	Amount	When Paid
Homebuilder	\$ 2,500	Certificate of Occupancy
Homebuyer	2,255	Amortized over 20 years.
Total	<u>\$ 4,755</u>	

Participation in the time payment system is voluntary and home builders have the option to participate in the time payment program or to pay the fees themselves and include them in the cost of the home. Home buyers who purchase homes participating in the time payment system have the option to pay the annual assessments or to prepay the fees at any time without penalty.

OUTCOME

The time payment program of water and sewer fees has been in effect since 1997 and has been beneficial to the county government as well as the building industry. Following the adoption of the initial program, the County performed a rate/services study that concluded additional funds would be necessary to support the time payment system. The County agreed to maintain the builder fee at \$2,500 but increase the AGRF to \$5,865, with the home buyer paying \$3,365 over 20 years.

Since the adoption of the time payment system, several rate adjustments have been made based on the results of annual studies conducted by the County. In 2002, the home builder payment was **reduced** to \$2,170, and the total fees for a single family residence were \$5,495, with home buyers financing \$3,325 over 20 years. Without the implementation of the time payment program, home builders in the County would pay a total of \$5,495 in water and sewer Fees. The time payment system reduces the Fees paid by the home builder by \$3,325 per single family residence and allows the home buyer to finance the balance through a tax assessment, potentially at lower interest rates than conventional home mortgages.

The development of the time payment system offers the following benefits:

- * Reduces home builder's direct costs.
- * Passes some fees to the home buyer and potentially at lower interest rates.
- * Provides an alternative to conventional fees.

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IV. LEVELS OF SERVICE

Yuba City, California

BACKGROUND

In October 2006, the North State Building Industry Association (BIA), working with an outside consulting firm, began reviewing the proposed development impact fees (fees) prepared by consultants on behalf of the City of Yuba City, California (City). As the City offered a variety of public services, the fees and nexus studies covered the following categories:

- 1) Community Services (police, fire, corporation yard and city hall)
- 2) Roads
- 3) Parks & Recreation
- 4) Library
- 5) Levee
- 6) Sewer
- 7) Water
- 8) Storm Drainage

The initial fees circulated by the City had increased the single-family rate from \$24,270 to \$64,193.

Fees within the State of California are controlled by Government Code 66000-6605 (Mitigation Fee Act) which was adopted in 1987 as AB 1600. The power to collect fees is contained in the city's police powers to protect the public health, safety and welfare of the citizens. Section 66001(a) of the Government Code requires any imposition of a Fee as part condition of development must show the following nexus:

- Identify the purpose of the fee;
- Identify how the fee is to be used;
- Determine how a reasonable relationship exists between the fee's use and the type of development project on which the fee is imposed;
- Determine how a reasonable relationship exists between the need for the public facility and the type of development project on which the Fee is imposed.

The nexus findings are typically made in a fee program's corresponding fee study (Nexus Study) or must be made in the ordinance that establishes the fee program. Additionally, AB 2751 created Section 66001(g) in 2007, which clearly states new development is not responsible for curing any existing deficiency in the current fee program. Understanding AB 1600 and the nexus requirements are critical in negotiating with any jurisdiction regarding fees.

As such, the BIA and their outside consultant focused on the following key assumptions: population build-out, interest rates, existing deficiencies, level of service standards, residential equivalency rates

and construction cost contingencies. For example, the City had originally estimated design, engineering and construction contingency as 65 percent of the hard construction costs. This is 30 to 40 higher than most jurisdictions typically estimate in any fee program. Additionally, the City utilized the fee program to increase the de-facto level of standard from 4.06 acres per 1,000 residents to 10.0 acres per 1,000 residents. Adjustments made to these two assumptions reduced the proposed fees by more than \$15,000 per residential unit.

The goal was to ensure that development paid its fair share of future infrastructure needs, recognizing the temporal economic conditions currently facing business interest in the City. In addition to negotiating with key the City staff members, an Ad Hoc committee was created which included two members of the City council to provide input on key level of service standards, existing deficiencies and interest rate assumptions associated with financing infrastructure improvements. Through this process the BIA and their outside consulting group were able to significantly reduce the fees to be paid by new development.

OUTCOME

In September 2007, the City council adopted revised fees that were substantially reduced from the originally proposed fees proposed in October 2006. The revised fees reflect a position that provides for development paying its fair share of future infrastructure cost and ensures that the proposed fees are justifiable under state guidelines while meeting the City's desired level of service standards. The table below illustrates the results realized by the BIA working with their outside consultants upon the completion of the fee review and subsequent adoption by the City:

Yuba City Fee Update									
Fee Category	September			Numerical Variance			Percentage Variance		
	Existing Fee	Oct 2006	2007 Adopted	Existing - Proposed	Proposed - Adopted	Existing - Adopted	Existing - Proposed	Proposed - Adopted	Existing - Adopted
		Proposed Fee	Fee						
Police	\$ 593	\$ 1,876	\$ 1,196	\$ 1,283	\$ (680)	\$ 603	216%	-36%	102%
Fire	749	1,587	1,361	838	(226)	612	112%	-14%	82%
Roads	3,583	14,117	9,094	10,534	(5,023)	5,511	294%	-36%	154%
Corporation Yard	-	934	814	934	(120)	814	0%	-13%	0%
Parks & Recreation	2,692	9,320	6,160	6,628	(3,160)	3,468	246%	-34%	129%
Library	954	1,082	912	128	(170)	(42)	13%	-16%	-4%
Levee	-	5,366	2,874	5,366	(2,492)	2,874	0%	-46%	0%
City Hall	-	667	516	667	(151)	516	0%	-23%	0%
Sewer	4,990	7,826	5,261	2,836	(2,565)	271	57%	-33%	5%
Drainage	-	6,575	3,061	6,575	(3,514)	3,061	0%	-53%	0%
Water	7,209	10,644	5,796	3,435	(4,848)	(1,413)	48%	-46%	-20%
Administration	-	699	496	699	(203)	496	0%	-29%	0%
Affordable Housing	3,500	3,500	1,750	-	(1,750)	(1,750)	0%	-50%	-50%
Total	\$ 24,270	\$ 64,193	\$ 39,291	\$ 39,923	\$ (24,902)	\$ 15,021			

When there are substantial increases in fees, there is a good chance that a jurisdiction may be attempting to increase its levels of service standards or to remedy existing deficiencies with Fee revenues generated by new growth. Special attention needs to be placed on construction cost estimates, as these costs are often times significantly higher than those currently being experienced in the market place. Lastly, consideration should be given to bringing in outside fee consultants who work solely for the private sector to augment the BIA review team.

V. SIZE-BASED RESIDENTIAL FEE ASSESSMENTS

BACKGROUND

It is common among jurisdictions to assess fees for residential dwellings based upon unit type. For example, a flat fee is charged for all single family residences, without taking into consideration the size of the residence. In recent years, the notion of assessing residential fees based upon the size of the unit (square footage or the number of bedrooms) has become popular throughout jurisdictions in the United States. Several communities, such as Missoula, Montana; Baton Rouge, Louisiana; Palo Alto, California; Burlington, Vermont; and Hillsborough and Manatee County, Florida, have adopted size-based residential fee programs.

For example, the Manatee County, Florida impact fee schedule for single-family detached homes is presented below.² Except for public education, the fees are based on unit size. The square footage ranges for most categories are minor (300 to 500 square feet); however, the methodology assumes demand for public facilities, other than schools, is homogenous for all homes greater than 2,200 square feet.

Single-Family Detached	Law Enforcement	Libraries	Multi-Modal Transportation				Parks & Natural Resources	Public Safety	Public Education	Admin Surcharge
			NE District	NW District	SE District	SW District				
1,000 sq ft or less	\$ 178	\$ 95	\$ 2,290	\$ 2,185	\$ 1,686	\$ 1,335	\$ 430	\$ 96	\$ 3,238	\$ 44
1001 - 1300 sq ft	\$ 276	\$ 148	\$ 3,564	\$ 3,400	\$ 2,623	\$ 2,078	\$ 669	\$ 149	\$ 3,238	\$ 69
1301 - 1700 sq ft	\$ 378	\$ 202	\$ 4,874	\$ 4,650	\$ 3,588	\$ 2,833	\$ 915	\$ 204	\$ 3,238	\$ 94
1701- 2200 sq ft	\$ 477	\$ 255	\$ 6,126	\$ 5,843	\$ 4,509	\$ 3,560	\$ 1,154	\$ 257	\$ 3,238	\$ 119
2201 or more sq ft	\$ 595	\$ 319	\$ 7,633	\$ 7,282	\$ 5,619	\$ 4,434	\$ 1,441	\$ 321	\$ 3,238	\$ 149

Total Single-Family Fee	NE District	NW District	SE District	SW District
1,000 sq ft or less	\$ 6,371	\$ 6,266	\$ 5,767	\$ 5,416
1001 - 1300 sq ft	\$ 8,113	\$ 7,949	\$ 7,172	\$ 6,627
1301 - 1700 sq ft	\$ 9,905	\$ 9,681	\$ 8,619	\$ 7,864
1701- 2200 sq ft	\$ 11,626	\$ 11,343	\$ 10,009	\$ 9,060
2201 or more sq ft	\$ 13,696	\$ 13,345	\$ 11,682	\$ 10,497

An impetus to the emergence of this approach to assessing fees is the argument revolving around the regressive nature of impact fees. Fees that are regressive increase as a percentage of residential dwelling size as the residential dwelling size decreases. Therefore, the fee remains the same without regard to the size of the unit.

The purpose of this discussion is to emphasize the primary arguments of proponents and opponents to this method of calculating residential fees.

PROPOSERS

Proponents of square foot and number of bedroom based residential fee assessments argue that assessing fees based on unit size provides a more equitable assessment of fees as smaller residences are not paying a proportionately higher share of fees compared to larger residences. Basing the

assessment of fees on the size of a residential dwelling or the number of bedrooms in that dwelling makes the fee less regressive than assessing fees based upon unit type.¹

The central premise of the argument is that, in general, larger residences house more people, and with a greater number of people, there results a greater demand for public services. On the other hand, small residences house fewer people and as such would require fewer public services. It is argued that the dwelling does not have an impact on the demand for public services, but it is the people residing in the dwelling that have the impact, and assessing fees based upon housing size proportionately places the burden of paying the fees on those who create the greatest demand for public infrastructure and services.

OPPONENTS

Opponents to the assessment of residential fees based upon square footage and number of bedrooms argue that it is not feasible to transform fees from something regressive to something that is not regressive.

The difficulty in assessing residential fees based upon unit size is that the assumption that larger residences house a greater number of people does not always follow the aspects of the argument set forth by proponents of this approach. As a simple example, some households nearing retirement or with fewer dependents may purchase housing that is much larger than is necessary to provide space for visiting relatives or entertaining guests. Additionally, the definition of what constitutes a “bedroom” varies from source to source. A room may be defined as a “den” to one person, while the very same room may be considered a “bedroom” by another.

It is important that home builder associations stay abreast of the developments in this approach as it is likely that this method of calculating residential fees will become more common in the future.³

For further information on recent fee trends and ways to deal with fee proposals, it may be helpful to work with the NAHB to ascertain how HBAs in other parts of the United States manage impact fees.

Endnote

1. Nicholas, James C. 1992. “On the Progression of Impact Fees,” *Journal of the American Planning Association* 58: 517–525
2. This schedule reflects impact fees in effect for the period April 18, 2016 to April 17, 2017.
3. National Association of Home Builders, *Proportionate-Share Impact Fees*

APPENDIX B

State Impact Fee Summary Chart

		Fees May Be Imposed For											Requirements					
State	Legislative Reference	Roads	Water	Sewer	Storm Water	Parks	Fire	Police	Library	Solid Waste	School	Utilities	Improvements Plan	Interest Bearing Account	Spend Within "X" Years	Waiver for Affordable Housing	Advisory Committee	Stage for Payment (1)
Alabama																		
Alaska																		Anytime
Arizona (Cities)	AZ Rev. Stat. Ann., § 9-463.05	X	X	X	X	X	X	X	X				X	X	10		X	BP/CO
Arizona (Counties)	AZ Rev. Stat. Ann., § 11-1102 et seq.	X	X	X	X	X	X	X					X	X	10		X	BP/CO
Arkansas	AK Code, § 14-56-103 (cities only)	X	X	X	X	X	X	X	X				X	X	7			CO
California	CA Gov't Code, § 66000 et seq. (mitigation fee act); § 66477 (Quinby Act for park dedication/fee-in-lieu); § 17620 et. seq. (school fees)	X	X	X	X	X	X	X	X	X	X	X	Yes		6			Certificate of occupancy
Colorado	CO Rev. Stat., § 29-20-104.5; § 29-1-801804 (earmarking requirements); § 22-54-102 (school fee prohibition)	X	X	X	X	X	X	X	X	X		X		X		X		
Connecticut																		
Delaware																		
Florida	FL Stat., § 163.31801	X	X	X	X	X	X	X	X	X	X	X						Anytime
Georgia	GA Code Ann., § 36-71-1 et seq.	X	X	X	X	X	X	X	X	X			X	X	6	X	X	BP
Hawaii	HI Rev. Stat., § 46-141 et seq.; § 264-121 et seq.	X	X	X	X	X	X	X	X	X	X	Yes	X	X	6			BP
Idaho	ID Code, § 67-8201 et seq.	X	X	X	X	X	X	X					X	X	8 (2)	X	X	BP
Illinois	605 Ill. Comp. Stat. Ann., § 5/5-901 et seq.	X											X	X	5		X	BP/CO
Indiana	ID Code Ann., § 36-7-4-1300 et seq.	X	X	X	X	X							X	X	6	X	X	BP
Iowa																		
Kansas																		
Kentucky																		
Louisiana																		
Maine	ME Rev. State. Ann., Title 30-A, § 4354	X	X	X		X	X			X			X					
Maryland	MD Code, Art. 25B, § 13D	X	X	X	X	X	X	X	X	X	X							
Massachusetts																		
Michigan																		
Minnesota																		
Mississippi																		
Missouri																		
Montana	MT Code Annotated, Title 7, Chapter 6, Part 16	X	X	X	X	X	X	X	X	X	X	X	X	X			X	BP
Nebraska																		
Nevada	NV Rev. Stat., § 278B	X	X	X	X	X	X	X					X	X	10		X	BP/CO
New Hampshire	NH Rev. Stat. Ann., § 674:21	X	X	X	X	X	X	X	X	X	X		X		6			CO
New Jersey	NJ Perm. Stat., § 27:1C-1 et seq.; § 40:55D-42	X	X	X	X								Yes					BP
New Mexico	NM. Stat. Ann., § 5-8-1 et seq.	X	X	X	X	X	X	X					X	X	7	X	X	BP
New York																		
North Carolina																		
North Dakota																		
Ohio																		
Oklahoma	OK Statutes, § 62-895	X	X	X	X	X	X	X		X								
Oregon	OR Rev. State, § 223.297 et seq.	X	X	X	X	X							X					
Pennsylvania	PA Stat. Ann., Title 53, § 10502-A et seq.	X											Yes			Yes		BP
Rhode Island	General Laws of RI, §45-22.4	X	X	X	X	X	X	X	X	X	X			X	8			CO
South Carolina	Code of Laws of SC, § 6-1-910 et seq.	X	X	X	X	X	X	X					X	X	3	X		BP
South Dakota																		
Tennessee																		
Texas	TX Local Gov't Code Ann., Title 12, § 395.001 et seq.	X	X	X	X								X	X	10	X	X	BP/CO
Utah	UT Code, § 11-36-101 et. seq.	X	X	X	X	X	X	X				X	X (3)	X	6	X		
Vermont	VT Stat. Ann., Title 24, § 5200 et seq.	X	X	X	X	X	X	X	X	X	X	X	X		6	X		
Virginia	VA Code Ann., § 15.2-2317 et seq.	X											X	X	15		X	CO
Washington	WA Rev. Code Ann., § 82.02.050 et seq.	X				X	X				X		X	X	6	X		
West Virginia	WV Code, § 7-20-1 et seq.	X	X	X	X	X	X	X			X		X	X	6	X		
Wisconsin	WI Stats., § 66.0617	X	X	X	X	X	X	X	X	X			X	X	7	X		BP/CO
Wyoming																		

Source: National Impact Fee Survey, 2015

Footnotes:

- (1) BP = Building Permit; CO = Certificate of Occupancy.
- (2) Idaho - 20 years for wastewater and drainage.
- (3) Political Subdivisions serving populations under 5,000 as of the last federal census need not comply with the capital facilities plan requirements.

APPENDIX C

General Impact Fee Statute Considerations

The following document aims to serve as a reference for homebuilders to review common issues discussed in impact fee statutes. While all state impact fee statutes are unique, the majority of impact fee statutes share the following common characteristics.

- Definitions
- Minimum Standards for Development Impact Fee Ordinances
- Advisory Committee
- Service Areas
- Imposition of Development Impact Fees
- Proportionate Share of Improvement Costs Determination
- Capital Improvements Plan
- Credits
- Accounting for Collected Development Impact Fees
- Refunds
- Collection

A thorough discussion about the characteristics outlined above can be found in its respective section below.

DEFINITIONS

- The definitions section should include a detailed list of the public facilities for which impact fees are assessed.
- Examples of public facilities may include: Water supply production, treatment, storage and distribution facilities, wastewater collection, treatment and disposal facilities roads, streets and bridges, including rights-of-way, traffic signals, storm water collection, retention, detention, treatment and disposal facilities, flood control facilities, parks, open space and recreation areas, public safety facilities, including law enforcement, fire, emergency medical and rescue and street lighting facilities.

MINIMUM STANDARDS FOR DEVELOPMENT IMPACT FEES ORDINANCES

Minimum standard requirements for development impact fee ordinances may include:

- Should be based upon the proportionate share of the cost of system improvements. Development impact fees shall be based on actual system improvement costs or reasonable estimates of such costs.

- Should be calculated on the basis of levels of service for public facilities in the development impact fee applicable to existing development as well as new growth and development. The construction, improvement, expansion or enlargement of new or existing public facilities for which a development impact fee is imposed must be attributable to the capacity demands generated by the new development.
- Should specify the time in the development process at which the development impact fee is to be collected. Times for the collection of the development impact fee may include: (i) the commencement of construction of the development, (ii) the issuance of a building permit or (iii) as may be agreed by the developer and the governmental entity.
- Should include a provision for credits in accordance with the requirements of the “Credits” section.
- Should include a provision prohibiting the expenditure of development impact fees except in accordance with the requirements of the “Earmarking and Expenditure of Collected Development Impact Fees” section.
- Should make a determination as to whether one service area or more than one service area is necessary to establish a correlation between impact fees and benefits.
- May exempt all or part of a particular development project from development impact fees provided that such project is determined to create affordable housing.
- Should provide that development impact fees shall only be spent for the category of system improvements for which the fees were collected and either within or for the benefit of the service area in which the project is located.
- Should provide for a refund of development impact fees in accordance with the requirements of the “Refunds” section.
- Should provide for appeals regarding development impact fees in accordance with the requirements of the “Appeals” section.
- Should provide a detailed description of the methodology by which costs per service unit are determined.
- Should include a schedule of development impact fees for various land uses per unit of development.
- Should not subject any development to double payment of impact fees. (i.e. Homebuilder should not be responsible to pay impact fees and also pay to retire the debt to pay for the infrastructure)
- May exempt from development impact fees for the following activities:
 - (i) Rebuilding the same amount of floor space of a structure, which was destroyed by fire or other catastrophe, providing the structure is rebuilt and ready for occupancy within two (2) years of its destruction;
 - (ii) Remodeling or repairing a structure which does not increase the number of service units;
- Should include a description of acceptable levels of service for system improvements.

DEVELOPMENT IMPACT FEE ADVISORY COMMITTEE

- The governmental entity should establish a development impact fee advisory committee.
- The composition of the advisory committee should have representatives from the home building community. It would be wise to have no less than 40% of the committee members

selected from the building community. An example composition may include a total of five (5) members appointed by the governing authority of the governmental entity, where two (2) or more members are active in development, building or real estate and are not employees of the governmental entity.

- The advisory committee should:
 - (i) Monitor and evaluate implementation of the capital improvements plan;
 - (ii) Recommend to the governmental entity that the capital improvements plan and development impact fees be updated or revised periodically.

SERVICE AREAS

- Service areas are defined as geographic areas identified by a governmental entity or by intergovernmental agreement in which specific public facilities provide service to development within the area. An important note on service areas is that impact fees collected for the intent to be spent on public facilities located within a specific service area should be separately accounted for to ensure that the impact fees are appropriately spent on public facilities located within the service area.

IMPOSITION OF DEVELOPMENT IMPACT FEES

- The advisory committee should be consulted on the development of the capital improvements plan.
- The public should be notified, through a public hearing, of any changes to be made to the capital improvements plan. Notification should be made by circulation in a recognized county newspaper.
- The public should be notified, through a public hearing, of the governmental entity's intent to consider adoption of an ordinance for the imposition of development impact fees.

PROPORTIONATE SHARE OF IMPROVEMENT COSTS DETERMINATION

- The impact fees should be based on a reasonable and fair formula or method, so that the impact fees do not exceed a proportionate share of the costs of the improvements to serve the new development.
- The following should be considered in the determination of proportionate share and accounted for in the calculation of the impact fee:
 - (i) Any offsets, credits, contribution of money, dedication of land, or construction of system improvements;
 - (ii) Payments anticipated to be made in the form of user fees and debt service payments;
 - (iii) The portion of general taxes or other revenues allocated to system improvements;
 - (iv) The cost of existing system improvements within the service area or areas;
 - (v) The extent to which new development will contribute to the cost of system improvements through taxation, assessment, or developer or landowner contributions, or has previously contributed to the cost of system improvements through developer or landowner contributions.
 - (vi) The extent to which the new development is required to contribute to the cost of existing system improvements in the future.

- (vii) The extent to which the new development should be credited for providing system improvements, without charge to other properties within the service area or areas;
- (viii) The availability of other sources of funding system improvements. (user charges, general tax levies, intergovernmental transfers, and special taxation)

CAPITAL IMPROVEMENTS PLAN

It is recommended that a capital improvements plan be prepared and that it be included as an element of the comprehensive plan. The capital improvements plan may contain the following:

- (i) A general description of all existing public facility deficiencies within the service area or areas and a reasonable estimate of all costs and a plan to develop the funding resources related to curing the existing deficiencies.
 - (ii) Means by which the governmental entity will use revenue sources other than impact fees to cure existing system deficiencies.
 - (iii) An analysis of the total capacity, the level of current usage, and commitments for usage of capacity of existing capital improvements to ascertain the current level of service.
 - (iv) The capital improvements plan should provide a table establishing the specific level or quantity of use of a service unit for each category of system improvements as well as an equivalency ratio of a service unit to various types of land uses, including residential, commercial, agricultural and industrial.
 - (v) A description of all system improvements and their costs necessitated by new development in the service area, to provide a level of service not to exceed the level of service adopted in the development impact fee ordinance.
 - (vi) The total number of service units necessitated by and attributable to new development within the service area.
 - (vii) The projected demand for system improvements required by new service units projected over a reasonable period of time. (The longer the timeframe, the less accurate the projected demand)
 - (viii) Identification of all sources available to the governmental entity for the financing of the system improvements.
 - (ix) A schedule setting forth estimated dates for commencing and completing construction of all improvements identified in the capital improvements plan.
- There should be a provision that the capital improvements plan will be periodically updated.

CREDITS

Provisions for impact fee credits may include:

- A credit or reimbursement for the present value of any construction of system improvements or contribution or dedication of land or money.
- Amount of Credit or the amount, time and form of reimbursement.
- A credit on future impact fees or reimbursement at the developer's choice for excess construction, funding or contribution from development impact fees.
- A credit on future impact fees for the amount in excess of the development's proportionate share.

ACCOUNTING/EXPENDITURE OF COLLECTED DEVELOPMENT IMPACT FEES

Suggestions for the allocation and expenditure of collected impact fees can be found below:

- Impact fees should be maintained in interest-bearing accounts. This could be further delineated by category of system improvements and the service area in which the fees are collected.
- Interest earned should be considered funds of the account, and should be subject to all restrictions placed on the use of development impact fees.
- Expenditures of development impact fees should be made only for the category of system improvements of the service area shown in the capital improvements plan.
- Annual reports should be produced that describe the amount of all development impact fees collected, or spent during the preceding year delineated by category of public facility and service area.
- A timeframe for the expenditure of development impact fees that have been collected should be specified. If the funds are not expended within the prescribed timeframe they should be refunded.

REFUNDS

Suggestions for impact fee refund language:

- Development impact fees that have been paid should be refunded if:
 - (i) The governmental entity, has failed to appropriate and expend the collected development impact fees.
 - (ii) The impact fees are paid under protest and a review of the fee paid determines that it exceeded the proportionate share.
- Refunds should be sent to the owner of record within a specified timeframe after it is determined that a refund is due.
- Interest accrued from the date on which the fee was originally paid should also be refunded.

COLLECTION

The collection of development impact fees primarily occurs at one of the following two stages in the construction process:

- (i) The issuance of a building permit; or
- (ii) The issuance of a certificate of occupancy.

For an example of how many of the aforementioned concepts were implemented into law by the home builders of Arizona, See Arizona's Impact Fee Statute included as Appendix D.

APPENDIX D

Arizona, Montana, and Texas Impact Fee Statutes

ARIZONA

Arizona's Response to Development Impact Fee Abuses

In 2011, after years of being on the receiving end of abusive development impact fee ordinances imposed by some of the rapidly growing cities in Arizona, the home building industry in Arizona, led by the Home Builders Association of Central Arizona, drafted Senate Bill 1525 (SB1525). This bill not only addressed these abuses but enacted comprehensive requirements for municipalities in Arizona that charge impact fees.

Background

During the housing boom years some of the fastest growing communities in Arizona began enacting development impact fee ordinances based on development impact fee studies that were lacking in many respects. Some of the more common challenges with these impact fees studies included:

- Inclusion of non-essential public improvements (e.g. cultural centers) in eligible costs;
- No delineation of service areas;
- Incomplete analysis of existing levels of service;
- Use of inconsistent levels of service;
- Using development fees to address existing infrastructure deficiencies;
- No consideration of funding offsets, or credits;
- Inaccurate cost estimates, and
- Logic and mathematical errors.

The result of these errors was to force new growth to fund more than its proportionate share of the public infrastructure burden.

SB 1525

As a result, the building industry drafted, lobbied for, and passed SB1525 in 2011. Among other things, this bill:

- Immediately required municipalities to remove “unnecessary public services” from their impact fee programs;
- Required existing municipal impact fee programs to be replaced with impact fees estimated pursuant to the tenets of SB 1525;

- Established strict deadlines for the adoption of impact fees which, if not met, required municipalities to stop collecting impact fees;
- Adopted constitutional “proportionality” requirements based on standardized service units;
- Required use of service areas in which there is a “substantial nexus” between public services and demand;
- Necessitated the preparation of infrastructure improvement plans by Arizona licensed engineers pursuant to approved land use assumptions;
- Required a detailed existing level of service analysis;
- Defined “necessary public services” and the facilities that would be eligible for funding through development impact fees;
- Required an offset to public service costs for other fees and taxes paid by new growth which will be used by the jurisdiction to fund public infrastructure costs, including but not limited to construction sales taxes, state shared revenues, existing municipal general obligation bonds, grants, etc.;
- Increased the amount of time and frequency of public hearings and industry input into the impact fee process; and
- Required a bi-annual audit of the impact fee program if the jurisdictions did not work with an impact fee advisory panel during the preparation of the impact fee program.

Result

As result of the enactment of SB1525, many jurisdictions’ impact fees were reduced by as much as 20 percent as they were forced to remove “unnecessary public services” from their impact fee calculations. Other jurisdictions decided to abandon their impact fee programs altogether given the amount of time and cost involved in revising the fees to be compliant with SB1525. Still other municipalities followed the tenets of SB1525, which led to a much more transparent and reasonable allocation of public service costs to new growth. In all, SB1525 was a huge success in reining in the jurisdictional abuses related to impact fee calculations and serves as a good model for other state impact fee statutes. Arizona’s full impact fee statute follows.

9-463.05. Development fees; imposition by cities and towns; infrastructure improvements plan; annual report; advisory committee; limitation on actions; definitions

- A. A municipality may assess development fees to offset costs to the municipality associated with providing necessary public services to a development, including the costs of infrastructure, improvements, real property, engineering and architectural services, financing and professional services required for the preparation or revision of a development fee pursuant to this section, including the relevant portion of the infrastructure improvements plan.
- B. Development fees assessed by a municipality under this section are subject to the following requirements:
1. Development fees shall result in a beneficial use to the development.
 2. The municipality shall calculate the development fee based on the infrastructure improvements plan adopted pursuant to this section.

3. The development fee shall not exceed a proportionate share of the cost of necessary public services, based on service units, needed to provide necessary public services to the development.
4. Costs for necessary public services made necessary by new development shall be based on the same level of service provided to existing development in the service area.
5. Development fees may not be used for any of the following:
 - a) Construction, acquisition or expansion of public facilities or assets other than necessary public services or facility expansions identified in the infrastructure improvements plan.
 - b) Repair, operation or maintenance of existing or new necessary public services or facility expansions.
 - c) Upgrading, updating, expanding, correcting or replacing existing necessary public services to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards.
 - d) Upgrading, updating, expanding, correcting or replacing existing necessary public services to provide a higher level of service to existing development.
 - e) Administrative, maintenance or operating costs of the municipality.
6. Any development for which a development fee has been paid is entitled to the use and benefit of the services for which the fee was imposed and is entitled to receive immediate service from any existing facility with available capacity to serve the new service units if the available capacity has not been reserved or pledged in connection with the construction or financing of the facility.
7. Development fees may be collected if any of the following occurs:
 - a) The collection is made to pay for a necessary public service or facility expansion that is identified in the infrastructure improvements plan and the municipality plans to complete construction and to have the service available within the time period established in the infrastructure improvement plan, but in no event longer than the time period provided in subsection H, paragraph 3 of this section.
 - b) The municipality reserves in the infrastructure improvements plan adopted pursuant to this section or otherwise agrees to reserve capacity to serve future development.
 - c) The municipality requires or agrees to allow the owner of a development to construct or finance the necessary public service or facility expansion and any of the following apply:
 - i. The costs incurred or money advanced are credited against or reimbursed from the development fees otherwise due from a development.

- ii. The municipality reimburses the owner for those costs from the development fees paid from all developments that will use those necessary public services or facility expansions.
 - iii. For those costs incurred the municipality allows the owner to assign the credits or reimbursement rights from the development fees otherwise due from a development to other developments for the same category of necessary public services in the same service area.
- 8. Projected interest charges and other finance costs may be included in determining the amount of development fees only if the monies are used for the payment of principal and interest on the portion of the bonds, notes or other obligations issued to finance construction of necessary public services or facility expansions identified in the infrastructure improvements plan.
- 9. Monies received from development fees assessed pursuant to this section shall be placed in a separate fund and accounted for separately and may only be used for the purposes authorized by this section. Monies received from a development fee identified in an infrastructure improvements plan adopted or updated pursuant to subsection D of this section shall be used to provide the same category of necessary public services or facility expansions for which the development fee was assessed and for the benefit of the same service area, as defined in the infrastructure improvements plan, in which the development fee was assessed. Interest earned on monies in the separate fund shall be credited to the fund.
- 10. The schedule for payment of fees shall be provided by the municipality. Based on the cost identified in the infrastructure improvements plan, the municipality shall provide a credit toward the payment of a development fee for the required or agreed to dedication of public sites, improvements and other necessary public services or facility expansions included in the infrastructure improvements plan and for which a development fee is assessed, to the extent the public sites, improvements and necessary public services or facility expansions are provided by the developer. The developer of residential dwelling units shall be required to pay development fees when construction permits for the dwelling units are issued, or at a later time if specified in a development agreement pursuant to section 9-500.05. If a development agreement provides for fees to be paid at a time later than the issuance of construction permits, the deferred fees shall be paid no later than fifteen days after the issuance of a certificate of occupancy. The development agreement shall provide for the value of any deferred fees to be supported by appropriate security, including a surety bond, letter of credit or cash bond.
- 11. If a municipality requires as a condition of development approval the construction or improvement of, contributions to or dedication of any facilities that were not included in a previously adopted infrastructure improvements plan, the municipality shall cause the infrastructure improvements plan to be amended to include the facilities and shall provide a credit toward the payment of a development fee for the construction, improvement, contribution or dedication of the facilities to the extent that the facilities

will substitute for or otherwise reduce the need for other similar facilities in the infrastructure improvements plan for which development fees were assessed.

12. The municipality shall forecast the contribution to be made in the future in cash or by taxes, fees, assessments or other sources of revenue derived from the property owner towards the capital costs of the necessary public service covered by the development fee and shall include these contributions in determining the extent of the burden imposed by the development. Beginning August 1, 2014, for purposes of calculating the required offset to development fees pursuant to this subsection, if a municipality imposes a construction contracting or similar excise tax rate in excess of the percentage amount of the transaction privilege tax rate imposed on the majority of other transaction privilege tax classifications, the entire excess portion of the construction contracting or similar excise tax shall be treated as a contribution to the capital costs of necessary public services provided to development for which development fees are assessed, unless the excess portion was already taken into account for such purpose pursuant to this subsection.
 13. If development fees are assessed by a municipality, the fees shall be assessed against commercial, residential and industrial development, except that the municipality may distinguish between different categories of residential, commercial and industrial development in assessing the costs to the municipality of providing necessary public services to new development and in determining the amount of the development fee applicable to the category of development. If a municipality agrees to waive any of the development fees assessed on a development, the municipality shall reimburse the appropriate development fee accounts for the amount that was waived. The municipality shall provide notice of any such waiver to the advisory committee established pursuant to subsection G of this section within thirty days.
 14. In determining and assessing a development fee applying to land in a community facilities district established under title 48, chapter 4, article 6, the municipality shall take into account all public infrastructure provided by the district and capital costs paid by the district for necessary public services and shall not assess a portion of the development fee based on the infrastructure or costs.
- C. A municipality shall give at least thirty days' advance notice of intention to assess a development fee and shall release to the public and post on its website or the website of an association of cities and towns if a municipality does not have a website a written report of the land use assumptions and infrastructure improvements plan adopted pursuant to subsection D of this section. The municipality shall conduct a public hearing on the proposed development fee at any time after the expiration of the thirty day notice of intention to assess a development fee and at least thirty days before the scheduled date of adoption of the fee by the governing body. Within sixty days after the date of the public hearing on the proposed development fee, a municipality shall approve or disapprove the imposition of the development fee. A municipality shall not adopt an ordinance, order or resolution approving a development fee as an emergency measure. A development fee assessed pursuant to this section shall not be effective until seventy-five days after its formal

adoption by the governing body of the municipality. Nothing in this subsection shall affect any development fee adopted before July 24, 1982.

D. Before the adoption or amendment of a development fee, the governing body of the municipality shall adopt or update the land use assumptions and infrastructure improvements plan for the designated service area. The municipality shall conduct a public hearing on the land use assumptions and infrastructure improvements plan at least thirty days before the adoption or update of the plan. The municipality shall release the plan to the public, post the plan on its website or the website of an association of cities and towns if the municipality does not have a website, including in the posting its land use assumptions, the time period of the projections, a description of the necessary public services included in the infrastructure improvements plan and a map of the service area to which the land use assumptions apply, make available to the public the documents used to prepare the assumptions and plan and provide public notice at least sixty days before the public hearing, subject to the following:

1. The land use assumptions and infrastructure improvements plan shall be approved or disapproved within sixty days after the public hearing on the land use assumptions and infrastructure improvements plan and at least thirty days before the public hearing on the report required by subsection C of this section. A municipality shall not adopt an ordinance, order or resolution approving the land use assumptions or infrastructure improvements plan as an emergency measure.
2. An infrastructure improvements plan shall be developed by qualified professionals using generally accepted engineering and planning practices pursuant to subsection E of this section.
3. A municipality shall update the land use assumptions and infrastructure improvements plan at least every five years. The initial five year period begins on the day the infrastructure improvements plan is adopted. The municipality shall review and evaluate its current land use assumptions and shall cause an update of the infrastructure improvements plan to be prepared pursuant to this section.
4. Within sixty days after completion of the updated land use assumptions and infrastructure improvements plan, the municipality shall schedule and provide notice of a public hearing to discuss and review the update and shall determine whether to amend the assumptions and plan.
5. A municipality shall hold a public hearing to discuss the proposed amendments to the land use assumptions, the infrastructure improvements plan or the development fee. The land use assumptions and the infrastructure improvements plan, including the amount of any proposed changes to the development fee per service unit, shall be made available to the public on or before the date of the first publication of the notice of the hearing on the amendments.
6. The notice and hearing procedures prescribed in paragraph 1 of this subsection apply to a hearing on the amendment of land use assumptions, an infrastructure improvements

plan or a development fee. Within sixty days after the date of the public hearing on the amendments, a municipality shall approve or disapprove the amendments to the land use assumptions, infrastructure improvements plan or development fee. A municipality shall not adopt an ordinance, order or resolution approving the amended land use assumptions, infrastructure improvements plan or development fee as an emergency measure.

7. The advisory committee established under subsection G of this section shall file its written comments on any proposed or updated land use assumptions, infrastructure improvements plan and development fees before the fifth business day before the date of the public hearing on the proposed or updated assumptions, plan and fees.
8. If, at the time an update as prescribed in paragraph 3 of this subsection is required, the municipality determines that no changes to the land use assumptions, infrastructure improvements plan or development fees are needed, the municipality may as an alternative to the updating requirements of this subsection publish notice of its determination on its website and include the following:
 - a) A statement that the municipality has determined that no change to the land use assumptions, infrastructure improvements plan or development fee is necessary.
 - b) A description and map of the service area in which an update has been determined to be unnecessary.
 - c) A statement that by a specified date, which shall be at least sixty days after the date of publication of the first notice, a person may make a written request to the municipality requesting that the land use assumptions, infrastructure improvements plan or development fee be updated.
 - d) A statement identifying the person or entity to whom the written request for an update should be sent.
9. If, by the date specified pursuant to paragraph 8 of this subsection, a person requests in writing that the land use assumptions, infrastructure improvements plan or development fee be updated, the municipality shall cause, accept or reject an update of the assumptions and plan to be prepared pursuant to this subsection.
10. Notwithstanding the notice and hearing requirements for adoption of an infrastructure improvements plan, a municipality may amend an infrastructure improvements plan adopted pursuant to this section without a public hearing if the amendment addresses only elements of necessary public services in the existing infrastructure improvements plan and the changes to the plan will not, individually or cumulatively with other amendments adopted pursuant to this subsection, increase the level of service in the service area or cause a development fee increase of greater than five per cent when a new or modified development fee is assessed pursuant to this section. The municipality shall provide notice of any such amendment at least thirty days before adoption, shall post the amendment on its website or on the website of an association of cities and towns if the municipality does not have a website and shall provide notice to the

advisory committee established pursuant to subsection G of this section that the amendment complies with this subsection.

E. For each necessary public service that is the subject of a development fee, the infrastructure improvements plan shall include:

1. A description of the existing necessary public services in the service area and the costs to upgrade, update, improve, expand, correct or replace those necessary public services to meet existing needs and usage and stricter safety, efficiency, environmental or regulatory standards, which shall be prepared by qualified professionals licensed in this state, as applicable.
2. An analysis of the total capacity, the level of current usage and commitments for usage of capacity of the existing necessary public services, which shall be prepared by qualified professionals licensed in this state, as applicable.
3. A description of all or the parts of the necessary public services or facility expansions and their costs necessitated by and attributable to development in the service area based on the approved land use assumptions, including a forecast of the costs of infrastructure, improvements, real property, financing, engineering and architectural services, which shall be prepared by qualified professionals licensed in this state, as applicable.
4. A table establishing the specific level or quantity of use, consumption, generation or discharge of a service unit for each category of necessary public services or facility expansions and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial and industrial.
5. The total number of projected service units necessitated by and attributable to new development in the service area based on the approved land use assumptions and calculated pursuant to generally accepted engineering and planning criteria.
6. The projected demand for necessary public services or facility expansions required by new service units for a period not to exceed ten years.
7. A forecast of revenues generated by new service units other than development fees, which shall include estimated state-shared revenue, highway users revenue, federal revenue, ad valorem property taxes, construction contracting or similar excise taxes and the capital recovery portion of utility fees attributable to development based on the approved land use assumptions, and a plan to include these contributions in determining the extent of the burden imposed by the development as required in subsection B, paragraph 12 of this section.

F. A municipality's development fee ordinance shall provide that a new development fee or an increased portion of a modified development fee shall not be assessed against a development for twenty-four months after the date that the municipality issues the final approval for a commercial, industrial or multifamily development or the date that the first building permit is issued for a

residential development pursuant to an approved site plan or subdivision plat, provided that no subsequent changes are made to the approved site plan or subdivision plat that would increase the number of service units. If the number of service units increases, the new or increased portion of a modified development fee shall be limited to the amount attributable to the additional service units. The twenty-four month period shall not be extended by a renewal or amendment of the site plan or the final subdivision plat that was the subject of the final approval. The municipality shall issue, on request, a written statement of the development fee schedule applicable to the development. If, after the date of the municipality's final approval of a development, the municipality reduces the development fee assessed on development, the reduced fee shall apply to the development.

G. A municipality shall do one of the following:

1. Before the adoption of proposed or updated land use assumptions, infrastructure improvements plan and development fees as prescribed in subsection D of this section, the municipality shall appoint an infrastructure improvements advisory committee, subject to the following requirements:
 - a) The advisory committee shall be composed of at least five members who are appointed by the governing body of the municipality. At least fifty per cent of the members of the advisory committee must be representatives of the real estate, development or building industries, of which at least one member of the committee must be from the home building industry. Members shall not be employees or officials of the municipality.
 - b) The advisory committee shall serve in an advisory capacity and shall:
 - i. Advise the municipality in adopting land use assumptions and in determining whether the assumptions are in conformance with the general plan of the municipality.
 - ii. Review the infrastructure improvements plan and file written comments.
 - iii. Monitor and evaluate implementation of the infrastructure improvements plan.
 - iv. Every year file reports with respect to the progress of the infrastructure improvements plan and the collection and expenditures of development fees and report to the municipality any perceived inequities in implementing the plan or imposing the development fee.
 - v. Advise the municipality of the need to update or revise the land use assumptions, infrastructure improvements plan and development fee.
 - c) The municipality shall make available to the advisory committee any professional reports with respect to developing and implementing the infrastructure improvements plan.
 - d) The municipality shall adopt procedural rules for the advisory committee to follow in carrying out the committee's duties.

2. In lieu of creating an advisory committee pursuant to paragraph 1 of this subsection, provide for a biennial certified audit of the municipality's land use assumptions, infrastructure improvements plan and development fees. An audit pursuant to this paragraph shall be conducted by one or more qualified professionals who are not employees or officials of the municipality and who did not prepare the infrastructure improvements plan. The audit shall review the progress of the infrastructure improvements plan, including the collection and expenditures of development fees for each project in the plan, and evaluate any inequities in implementing the plan or imposing the development fee. The municipality shall post the findings of the audit on the municipality's website or the website of an association of cities and towns if the municipality does not have a website and shall conduct a public hearing on the audit within sixty days of the release of the audit to the public.
- H. On written request, an owner of real property for which a development fee has been paid after July 31, 2014 is entitled to a refund of a development fee or any part of a development fee if:
1. Pursuant to subsection B, paragraph 6 of this section, existing facilities are available and service is not provided.
 2. The municipality has, after collecting the fee to construct a facility when service is not available, failed to complete construction within the time period identified in the infrastructure improvements plan, but in no event later than the time period specified in paragraph 3 of this subsection.
 3. For a development fee other than a development fee for water or wastewater facilities, any part of the development fee is not spent as authorized by this section within ten years after the fee has been paid or, for a development fee for water or wastewater facilities, any part of the development fee is not spent as authorized by this section within fifteen years after the fee has been paid.
- I. If the development fee was collected for the construction of all or a portion of a specific item of infrastructure, and on completion of the infrastructure the municipality determines that the actual cost of construction was less than the forecasted cost of construction on which the development fee was based and the difference between the actual and estimated cost is greater than ten per cent, the current owner may receive a refund of the portion of the development fee equal to the difference between the development fee paid and the development fee that would have been due if the development fee had been calculated at the actual construction cost.
- J. A refund shall include any interest earned by the municipality from the date of collection to the date of refund on the amount of the refunded fee. All refunds shall be made to the record owner of the property at the time the refund is paid. If the development fee is paid by a governmental entity, the refund shall be paid to the governmental entity.
- K. A development fee that was adopted before January 1, 2012 may continue to be assessed only to the extent that it will be used to provide a necessary public service for which development fees can

be assessed pursuant to this section and shall be replaced by a development fee imposed under this section on or before August 1, 2014. Any municipality having a development fee that has not been replaced under this section on or before August 1, 2014 shall not collect development fees until the development fee has been replaced with a fee that complies with this section. Any development fee monies collected before January 1, 2012 remaining in a development fee account:

1. Shall be used towards the same category of necessary public services as authorized by this section.
 2. If development fees were collected for a purpose not authorized by this section, shall be used for the purpose for which they were collected on or before January 1, 2020, and after which, if not spent, shall be distributed equally among the categories of necessary public services authorized by this section.
- L. A moratorium shall not be placed on development for the sole purpose of awaiting completion of all or any part of the process necessary to develop, adopt or update development fees.
- M. In any judicial action interpreting this section, all powers conferred on municipal governments in this section shall be narrowly construed to ensure that development fees are not used to impose on new residents a burden all taxpayers of a municipality should bear equally.
- N. Each municipality that assesses development fees shall submit an annual report accounting for the collection and use of the fees for each service area. The annual report shall include the following:
1. The amount assessed by the municipality for each type of development fee.
 2. The balance of each fund maintained for each type of development fee assessed as of the beginning and end of the fiscal year.
 3. The amount of interest or other earnings on the monies in each fund as of the end of the fiscal year.
 4. The amount of development fee monies used to repay:
 - a) Bonds issued by the municipality to pay the cost of a capital improvement project that is the subject of a development fee assessment, including the amount needed to repay the debt service obligations on each facility for which development fees have been identified as the source of funding and the time frames in which the debt service will be repaid.
 - b) Monies advanced by the municipality from funds other than the funds established for development fees in order to pay the cost of a capital improvement project that is the subject of a development fee assessment, the total amount advanced by the municipality for each facility, the source of the monies advanced and the terms under which the monies will be repaid to the municipality.

5. The amount of development fee monies spent on each capital improvement project that is the subject of a development fee assessment and the physical location of each capital improvement project.
 6. The amount of development fee monies spent for each purpose other than a capital improvement project that is the subject of a development fee assessment.
- O. Within ninety days following the end of each fiscal year, each municipality shall submit a copy of the annual report to the city clerk and post the report on the municipality's website or the website of an association of cities and towns if the municipality does not have a website. Copies shall be made available to the public on request. The annual report may contain financial information that has not been audited.
- P. A municipality that fails to file the report and post the report on the municipality's website or the website of an association of cities and towns if the municipality does not have a website as required by this section shall not collect development fees until the report is filed and posted.
- Q. Any action to collect a development fee shall be commenced within two years after the obligation to pay the fee accrues.
- R. A municipality may continue to assess a development fee adopted before January 1, 2012 for any facility that was financed before June 1, 2011 if:
1. Development fees were pledged to repay debt service obligations related to the construction of the facility.
 2. After August 1, 2014, any development fees collected under this subsection are used solely for the payment of principal and interest on the portion of the bonds, notes or other debt service obligations issued before June 1, 2011 to finance construction of the facility.
- S. Through August 1, 2014, a development fee adopted before January 1, 2012 may be used to finance construction of a facility and may be pledged to repay debt service obligations if:
1. The facility that is being financed is a facility that is described under subsection T, paragraph 7, subdivisions (a) through (g) of this section.
 2. The facility was included in an infrastructure improvements plan adopted before June 1, 2011.
 3. The development fees are used for the payment of principal and interest on the portion of the bonds, notes or other debt service obligations issued to finance construction of the necessary public services or facility expansions identified in the infrastructure improvement plan.
- T. For the purposes of this section:
1. "Dedication" means the actual conveyance date or the date an improvement, facility or real or personal property is placed into service, whichever occurs first.

2. "Development" means:
 - a) The subdivision of land.
 - b) The construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure that adds or increases the number of service units.
 - c) Any use or extension of the use of land that increases the number of service units.
3. "Facility expansion" means the expansion of the capacity of an existing facility that serves the same function as an otherwise new necessary public service in order that the existing facility may serve new development. Facility expansion does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development.
4. "Final approval" means:
 - a) For a nonresidential or multifamily development, the approval of a site plan or, if no site plan is submitted for the development, the approval of a final subdivision plat.
 - b) For a single family residential development, the approval of a final subdivision plat.
5. "Infrastructure improvements plan" means a written plan that identifies each necessary public service or facility expansion that is proposed to be the subject of a development fee and otherwise complies with the requirements of this section, and may be the municipality's capital improvements plan.
6. "Land use assumptions" means projections of changes in land uses, densities, intensities and population for a specified service area over a period of at least ten years and pursuant to the general plan of the municipality.
7. "Necessary public service" means any of the following facilities that have a life expectancy of three or more years and that are owned and operated by or on behalf of the municipality:
 - a) Water facilities, including the supply, transportation, treatment, purification and distribution of water, and any appurtenances for those facilities.
 - b) Wastewater facilities, including collection, interception, transportation, treatment and disposal of wastewater, and any appurtenances for those facilities.
 - c) Storm water, drainage and flood control facilities, including any appurtenances for those facilities.
 - d) Library facilities of up to ten thousand square feet that provide a direct benefit to development, not including equipment, vehicles or appurtenances.
 - e) Street facilities located in the service area, including arterial or collector streets or roads that have been designated on an officially adopted plan of the municipality, traffic signals and rights-of-way and improvements thereon.
 - f) Fire and police facilities, including all appurtenances, equipment and vehicles. Fire and police facilities do not include a facility or portion of a facility that is used to replace services that were once provided elsewhere in the municipality, vehicles and equipment used to provide administrative services, helicopters or airplanes or a facility that is used for training firefighters or officers from more than one station or substation.

- g) Neighborhood parks and recreational facilities on real property up to thirty acres in area, or parks and recreational facilities larger than thirty acres if the facilities provide a direct benefit to the development. Park and recreational facilities do not include vehicles, equipment or that portion of any facility that is used for amusement parks, aquariums, aquatic centers, auditoriums, arenas, arts and cultural facilities, bandstand and orchestra facilities, bathhouses, boathouses, clubhouses, community centers greater than three thousand square feet in floor area, environmental education centers, equestrian facilities, golf course facilities, greenhouses, lakes, museums, theme parks, water reclamation or riparian areas, wetlands, zoo facilities or similar recreational facilities, but may include swimming pools.
 - h) Any facility that was financed and that meets all of the requirements prescribed in subsection R of this section.
- 8. "Qualified professional" means a professional engineer, surveyor, financial analyst or planner providing services within the scope of the person's license, education or experience.
 - 9. "Service area" means any specified area within the boundaries of a municipality in which development will be served by necessary public services or facility expansions and within which a substantial nexus exists between the necessary public services or facility expansions and the development being served as prescribed in the infrastructure improvements plan.
 - 10. "Service unit" means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated pursuant to generally accepted engineering or planning standards for a particular category of necessary public services or facility expansions.

Montana Impact Fee Statute

7-6-1601. Definitions. As used in this part, the following definitions apply:

- (1) (a) "Capital improvements" means improvements, land, and equipment with a useful life of 10 years or more that increase or improve the service capacity of a public facility.

(b) The term does not include consumable supplies.
- (2) "Connection charge" means the actual cost of connecting a property to a public utility system and is limited to the labor, materials, and overhead involved in making connections and installing meters.
- (3) "Development" means construction, renovation, or installation of a building or structure, a change in use of a building or structure, or a change in the use of land when the construction, installation, or other action creates additional demand for public facilities.
- (4) "Governmental entity" means a county, city, town, or consolidated government.

(5) (a) "Impact fee" means any charge imposed upon development by a governmental entity as part of the development approval process to fund the additional service capacity required by the development from which it is collected. An impact fee may include a fee for the administration of the impact fee not to exceed 5% of the total impact fee collected.

(b) The term does not include:

- (i) a charge or fee to pay for administration, plan review, or inspection costs associated with a permit required for development;
- (ii) a connection charge;
- (iii) any other fee authorized by law, including but not limited to user fees, special improvement district assessments, fees authorized under Title 7 for county, municipal, and consolidated government sewer and water districts and systems, and costs of ongoing maintenance; or
- (iv) onsite or offsite improvements necessary for new development to meet the safety, level of service, and other minimum development standards that have been adopted by the governmental entity.

(6) "Proportionate share" means that portion of the cost of capital system improvements that reasonably relates to the service demands and needs of the project. A proportionate share must take into account the limitations provided in 7-6-1602.

(7) "Public facilities" means:

- (a) a water supply production, treatment, storage, or distribution facility;
- (b) a wastewater collection, treatment, or disposal facility;
- (c) a transportation facility, including roads, streets, bridges, rights-of-way, traffic signals, and landscaping;
- (d) a storm water collection, retention, detention, treatment, or disposal facility or a flood control facility;
- (e) a police, emergency medical rescue, or fire protection facility; and
- (f) other facilities for which documentation is prepared as provided in 7-6-1602 that have been approved as part of an impact fee ordinance or resolution by:
 - (i) a two-thirds majority of the governing body of an incorporated city, town, or consolidated local government; or
 - (ii) a unanimous vote of the board of county commissioners of a county government

7-6-1602. Calculation of impact fees -- documentation required -- ordinance or resolution -- requirements for impact fees.

(1) For each public facility for which an impact fee is imposed, the governmental entity shall prepare and approve a service area report.

(2) The service area report is a written analysis that must:

- (a) describe existing conditions of the facility;
- (b) establish level-of-service standards;
- (c) forecast future additional needs for service for a defined period of time;
- (d) identify capital improvements necessary to meet future needs for service;
- (e) identify those capital improvements needed for continued operation and maintenance of the facility;
- (f) make a determination as to whether one service area or more than one service area is necessary to establish a correlation between impact fees and benefits;
- (g) make a determination as to whether one service area or more than one service area for transportation facilities is needed to establish a correlation between impact fees and benefits;
- (h) establish the methodology and time period over which the governmental entity will assign the proportionate share of capital costs for expansion of the facility to provide service to new development within each service area;
- (i) establish the methodology that the governmental entity will use to exclude operations and maintenance costs and correction of existing deficiencies from the impact fee;
- (j) establish the amount of the impact fee that will be imposed for each unit of increased service demand; and
- (k) have a component of the budget of the governmental entity that:
 - (i) schedules construction of public facility capital improvements to serve projected growth;
 - (ii) projects costs of the capital improvements;
 - (iii) allocates collected impact fees for construction of the capital improvements; and
 - (iv) covers at least a 5-year period and is reviewed and updated at least every 5 years.

(3) The service area report is a written analysis that must contain documentation of sources and methodology used for purposes of subsection (2) and must document how each impact fee meets the requirements of subsection (7).

(4) The service area report that supports adoption and calculation of an impact fee must be available to the public upon request.

(5) The amount of each impact fee imposed must be based upon the actual cost of public facility expansion or improvements or reasonable estimates of the cost to be incurred by the governmental entity as a result of new development. The calculation of each impact fee must be in accordance with generally accepted accounting principles.

(6) The ordinance or resolution adopting the impact fee must include a time schedule for periodically updating the documentation required under subsection (2).

(7) An impact fee must meet the following requirements:

(a) The amount of the impact fee must be reasonably related to and reasonably attributable to the development's share of the cost of infrastructure improvements made necessary by the new development.

(b) The impact fees imposed may not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in accommodating the development. The following factors must be considered in determining a proportionate share of public facilities capital improvements costs:

(i) the need for public facilities capital improvements required to serve new development; and

(ii) consideration of payments for system improvements reasonably anticipated to be made by or as a result of the development in the form of user fees, debt service payments, taxes, and other available sources of funding the system improvements.

(c) Costs for correction of existing deficiencies in a public facility may not be included in the impact fee.

(d) New development may not be held to a higher level of service than existing users unless there is a mechanism in place for the existing users to make improvements to the existing system to match the higher level of service.

(e) Impact fees may not include expenses for operations and maintenance of the facility.

7-6-1603. Collection and expenditure of impact fees -- refunds or credits -- mechanism for appeal required.

(1) The collection and expenditure of impact fees must comply with this part. The collection and expenditure of impact fees must be reasonably related to the benefits accruing to the development paying the impact fees. The ordinance or resolution adopted by the governmental entity must include the following requirements:

(a) Upon collection, impact fees must be deposited in a special proprietary fund, which must be invested with all interest accruing to the fund.

(b) A governmental entity may impose impact fees on behalf of local districts.

(c) If the impact fees are not collected or spent in accordance with the impact fee ordinance or resolution or in accordance with 7-6-1602, any impact fees that were collected must be refunded to the person who owned the property at the time that the refund was due.

(2) All impact fees imposed pursuant to the authority granted in this part must be paid no earlier than the date of issuance of a building permit if a building permit is required for the development or no earlier than the time of wastewater or water service connection or well or septic permitting.

(3) A governmental entity may recoup costs of excess capacity in existing capital facilities, when the excess capacity has been provided in anticipation of the needs of new development, by requiring impact fees for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been documented pursuant to 7-6-1602 in a manner that demonstrates the need for the excess capacity. This part does not prevent a governmental entity from continuing to assess an impact fee that recoups costs for excess capacity in an existing facility. The impact fees imposed to recoup the costs to provide the excess capacity must be based on the governmental entity's actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity.

(4) Governmental entities may accept the dedication of land or the construction of public facilities in lieu of payment of impact fees if:

(a) the need for the dedication or construction is clearly documented pursuant to 7-6-1602;

(b) the land proposed for dedication for the public facilities to be constructed is determined to be appropriate for the proposed use by the governmental entity;

(c) formulas or procedures for determining the worth of proposed dedications or constructions are established as part of the impact fee ordinance or resolution; and

(d) a means to establish credits against future impact fee revenue has been created as part of the adopting ordinance or resolution if the dedication of land or construction of public facilities is of worth in excess of the impact fee due from an individual development.

(5) Impact fees may not be imposed for remodeling, rehabilitation, or other improvements to an existing structure or for rebuilding a damaged structure unless there is an increase in units that increase service demand as described in 7-6-1602(2)(j). If impact fees are imposed for remodeling, rehabilitation, or other improvements to an existing structure or use, only the net increase between the old and new demand may be imposed.

(6) This part does not prevent a governmental entity from granting refunds or credits:

(a) that it considers appropriate and that are consistent with the provisions of 7-6-1602 and this chapter; or

(b) in accordance with a voluntary agreement, consistent with the provisions of 7-6-1602 and this chapter, between the governmental entity and the individual or entity being assessed the impact fees.

(7) An impact fee represents a fee for service payable by all users creating additional demand on the facility.

(8) An impact fee ordinance or resolution must include a mechanism whereby a person charged an impact fee may appeal the charge if the person believes an error has been made.

7-6-1604. Impact fee advisory committee.

(1) A governmental entity that intends to propose an impact fee ordinance or resolution shall establish an impact fee advisory committee.

(2) An impact fee advisory committee must include at least one representative of the development community. The committee shall review and monitor the process of calculating, assessing, and spending impact fees.

(3) The impact fee advisory committee shall serve in an advisory capacity to the governing body of the governmental entity.

Texas Impact Fee Statute

Sec. 395.001. DEFINITIONS.

In this chapter:

(1) "Capital improvement" means any of the following facilities that have a life expectancy of three or more years and are owned and operated by or on behalf of a political subdivision:

(A) water supply, treatment, and distribution facilities; wastewater collection and treatment facilities; and storm water, drainage, and flood control facilities; whether or not they are located within the service area; and

(B) roadway facilities.

(2) "Capital improvements plan" means a plan required by this chapter that identifies capital improvements or facility expansions for which impact fees may be assessed.

(3) "Facility expansion" means the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization, or expansion of an existing facility to better serve existing development.

(4) "Impact fee" means a charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, and any other fee that functions as described by this definition. The term does not include:

(A) dedication of land for public parks or payment in lieu of the dedication to serve park needs;

(B) dedication of rights-of-way or easements or construction or dedication of on-site or off-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks, or curbs if the dedication or construction is required by a valid ordinance and is necessitated by and attributable to the new development;

(C) lot or acreage fees to be placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or sewer mains or lines; or

(D) other pro rata fees for reimbursement of water or sewer mains or lines extended by the political subdivision.

However, an item included in the capital improvements plan may not be required to be constructed except in accordance with Section 395.019(2), and an owner may not be required to construct or dedicate facilities and to pay impact fees for those facilities.

(5) "Land use assumptions" includes a description of the service area and projections of changes in land uses, densities, intensities, and population in the service area over at least a 10-year period.

(6) "New development" means the subdivision of land; the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units.

(7) "Political subdivision" means a municipality, a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, or, for the purposes set forth by Section 395.079, certain counties described by that section.

(8) "Roadway facilities" means arterial or collector streets or roads that have been designated on an officially adopted roadway plan of the political subdivision, together with all necessary appurtenances. The term includes the political subdivision's share of costs for roadways and associated improvements designated on the federal or Texas highway system, including local matching funds and costs related to utility line relocation and the establishment of curbs, gutters, sidewalks, drainage appurtenances, and rights-of-way.

(9) "Service area" means the area within the corporate boundaries or extraterritorial jurisdiction, as determined under Chapter 42, of the political subdivision to be served by the capital improvements or facilities expansions specified in the capital improvements plan, except roadway facilities and storm water, drainage, and flood control facilities. The service area, for the purposes of this chapter, may include all or part of the land within the political subdivision or its extraterritorial jurisdiction, except for roadway facilities and storm water, drainage, and flood control facilities. For roadway facilities, the service area is limited to an area within the corporate boundaries of the political subdivision and shall not exceed six miles. For storm water, drainage, and flood control facilities, the service area may include all or part of the land within the political subdivision or its extraterritorial jurisdiction, but shall not exceed the area actually served by the storm water, drainage, and flood control facilities designated in the capital improvements plan and shall not extend across watershed boundaries.

(10) "Service unit" means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards and based on historical data and trends applicable to the political subdivision in which the individual unit of development is located during the previous 10 years.

SUBCHAPTER B. AUTHORIZATION OF IMPACT FEE

Sec. 395.011. AUTHORIZATION OF FEE.

(a) Unless otherwise specifically authorized by state law or this chapter, a governmental entity or political subdivision may not enact or impose an impact fee.

(b) Political subdivisions may enact or impose impact fees on land within their corporate boundaries or extraterritorial jurisdictions only by complying with this chapter, except that impact fees may not be enacted or imposed in the extraterritorial jurisdiction for roadway facilities.

(c) A municipality may contract to provide capital improvements, except roadway facilities, to an area outside its corporate boundaries and extraterritorial jurisdiction and may charge an impact fee under the contract, but if an impact fee is charged in that area, the municipality must comply with this chapter.

Sec. 395.012. ITEMS PAYABLE BY FEE.

(a) An impact fee may be imposed only to pay the costs of constructing capital improvements or facility expansions, including and limited to the:

- (1) construction contract price;
- (2) surveying and engineering fees;
- (3) land acquisition costs, including land purchases, court awards and costs, attorney 's fees, and expert witness fees; and
- (4) fees actually paid or contracted to be paid to an independent qualified engineer or financial consultant preparing or updating the capital improvements plan who is not an employee of the political subdivision.

(b) Projected interest charges and other finance costs may be included in determining the amount of impact fees only if the impact fees are used for the payment of principal and interest on bonds, notes, or other obligations issued by or on behalf of the political subdivision to finance the capital improvements or facility expansions identified in the capital improvements plan and are not used to reimburse bond funds expended for facilities that are not identified in the capital improvements plan.

(c) Notwithstanding any other provision of this chapter, the Edwards Underground Water District or a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may use impact fees to pay a staff engineer who prepares or updates a capital improvements plan under this chapter.

(d) A municipality may pledge an impact fee as security for the payment of debt service on a bond, note, or other obligation issued to finance a capital improvement or public facility expansion if:

- (1) the improvement or expansion is identified in a capital improvements plan; and
- (2) at the time of the pledge, the governing body of the municipality certifies in a written order, ordinance, or resolution that none of the impact fee will be used or expended for an improvement or expansion not identified in the plan.

(e) A certification under Subsection (d)(2) is sufficient evidence that an impact fee pledged will not be used or expended for an improvement or expansion that is not identified in the capital improvements plan.

Sec. 395.013. ITEMS NOT PAYABLE BY FEE.

Impact fees may not be adopted or used to pay for:

- (1) construction, acquisition, or expansion of public facilities or assets other than capital improvements or facility expansions identified in the capital improvements plan;
- (2) repair, operation, or maintenance of existing or new capital improvements or facility expansions;
- (3) upgrading, updating, expanding, or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental, or regulatory standards;
- (4) upgrading, updating, expanding, or replacing existing capital improvements to provide better service to existing development;
- (5) administrative and operating costs of the political subdivision, except the Edwards Underground Water District or a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may use impact fees to pay its administrative and operating costs;
- (6) principal payments and interest or other finance charges on bonds or other indebtedness, except as allowed by Section 395.012.

Sec. 395.014. CAPITAL IMPROVEMENTS PLAN.

(a) The political subdivision shall use qualified professionals to prepare the capital improvements plan and to calculate the impact fee. The capital improvements plan must contain specific enumeration of the following items:

- (1) a description of the existing capital improvements within the service area and the costs to upgrade, update, improve, expand, or replace the improvements to meet existing needs and usage and stricter safety, efficiency, environmental, or regulatory standards, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;
- (2) an analysis of the total capacity, the level of current usage, and commitments for usage of capacity of the existing capital improvements, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;
- (3) a description of all or the parts of the capital improvements or facility expansions and their costs necessitated by and attributable to new development in the service area based on the approved land use assumptions, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;
- (4) a definitive table establishing the specific level or quantity of use, consumption, generation, or discharge of a service unit for each category of capital improvements or facility expansions and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial, and industrial;

(5) the total number of projected service units necessitated by and attributable to new development within the service area based on the approved land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;

(6) the projected demand for capital improvements or facility expansions required by new service units projected over a reasonable period of time, not to exceed 10 years; and

(7) a plan for awarding:

(A) a credit for the portion of ad valorem tax and utility service revenues generated by new service units during the program period that is used for the payment of improvements, including the payment of debt, that are included in the capital improvements plan; or

(B) in the alternative, a credit equal to 50 percent of the total projected cost of implementing the capital improvements plan.

(b) The analysis required by Subsection (a)(3) may be prepared on a system-wide basis within the service area for each major category of capital improvement or facility expansion for the designated service area.

(c) The governing body of the political subdivision is responsible for supervising the implementation of the capital improvements plan in a timely manner.

Sec. 395.015. MAXIMUM FEE PER SERVICE UNIT.

(a) The impact fee per service unit may not exceed the amount determined by subtracting the amount in Section 395.014(a)(7) from the costs of the capital improvements described by Section 395.014(a)(3) and dividing that amount by the total number of projected service units described by Section 395.014(a)(5).

(b) If the number of new service units projected over a reasonable period of time is less than the total number of new service units shown by the approved land use assumptions at full development of the service area, the maximum impact fee per service unit shall be calculated by dividing the costs of the part of the capital improvements necessitated by and attributable to projected new service units described by Section 395.014(a)(6) by the projected new service units described in that section.

Sec. 395.016. TIME FOR ASSESSMENT AND COLLECTION OF FEE.

(a) This subsection applies only to impact fees adopted and land platted before June 20, 1987. For land that has been platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision before June 20, 1987, or land on which new development occurs or is proposed without platting, the political subdivision may assess the impact fees at any time during the development approval and building process. Except as provided by Section 395.019, the political subdivision may collect the fees at either the time of recordation of the subdivision plat or connection

to the political subdivision 's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.

(b) This subsection applies only to impact fees adopted before June 20, 1987, and land platted after that date. For new development which is platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision after June 20, 1987, the political subdivision may assess the impact fees before or at the time of recordation. Except as provided by Section 395.019, the political subdivision may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision 's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.

(c) This subsection applies only to impact fees adopted after June 20, 1987. For new development which is platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision before the adoption of an impact fee, an impact fee may not be collected on any service unit for which a valid building permit is issued within one year after the date of adoption of the impact fee.

(d) This subsection applies only to land platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision after adoption of an impact fee adopted after June 20, 1987. The political subdivision shall assess the impact fees before or at the time of recordation of a subdivision plat or other plat under Subchapter A, Chapter 212, or the subdivision or platting ordinance or procedures of any political subdivision in the official records of the county clerk of the county in which the tract is located. Except as provided by Section 395.019, if the political subdivision has water and wastewater capacity available:

(1) the political subdivision shall collect the fees at the time the political subdivision issues a building permit;

(2) for land platted outside the corporate boundaries of a municipality, the municipality shall collect the fees at the time an application for an individual meter connection to the municipality 's water or wastewater system is filed; or

(3) a political subdivision that lacks authority to issue building permits in the area where the impact fee applies shall collect the fees at the time an application is filed for an individual meter connection to the political subdivision 's water or wastewater system.

(e) For land on which new development occurs or is proposed to occur without platting, the political subdivision may assess the impact fees at any time during the development and building process and may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.

(f) An "assessment" means a determination of the amount of the impact fee in effect on the date or occurrence provided in this section and is the maximum amount that can be charged per service unit of such development. No specific act by the political subdivision is required.

(g) Notwithstanding Subsections (a)-(e) and Section 395.017, the political subdivision may reduce or waive an impact fee for any service unit that would qualify as affordable housing under 42 U.S.C. Section 12745, as amended, once the service unit is constructed. If affordable housing as defined by 42 U.S.C. Section 12745, as amended, is not constructed, the political subdivision may reverse its decision to waive or reduce the impact fee, and the political subdivision may assess an impact fee at any time during the development approval or building process or after the building process if an impact fee was not already assessed.

Sec. 395.017. ADDITIONAL FEE PROHIBITED; EXCEPTION.

After assessment of the impact fees attributable to the new development or execution of an agreement for payment of impact fees, additional impact fees or increases in fees may not be assessed against the tract for any reason unless the number of service units to be developed on the tract increases. In the event of the increase in the number of service units, the impact fees to be imposed are limited to the amount attributable to the additional service units.

Sec. 395.018. AGREEMENT WITH OWNER REGARDING PAYMENT.

A political subdivision is authorized to enter into an agreement with the owner of a tract of land for which the plat has been recorded providing for the time and method of payment of the impact fees.

Sec. 395.019. COLLECTION OF FEES IF SERVICES NOT AVAILABLE.

Except for roadway facilities, impact fees may be assessed but may not be collected in areas where services are not currently available, unless:

- (1) the collection is made to pay for a capital improvement or facility expansion that has been identified in the capital improvements plan and the political subdivision commits to commence construction within two years, under duly awarded and executed contracts or commitments of staff time covering substantially all of the work required to provide service, and to have the service available within a reasonable period of time considering the type of capital improvement or facility expansion to be constructed, but in no event longer than five years;
- (2) the political subdivision agrees that the owner of a new development may construct or finance the capital improvements or facility expansions and agrees that the costs incurred or funds advanced will be credited against the impact fees otherwise due from the new development or agrees to reimburse the owner for such costs from impact fees paid from other new developments that will use such capital improvements or facility expansions, which fees shall be collected and reimbursed to the owner at the time the other new development records its plat; or
- (3) an owner voluntarily requests the political subdivision to reserve capacity to serve future development, and the political subdivision and owner enter into a valid written agreement.

Sec. 395.020. ENTITLEMENT TO SERVICES.

Any new development for which an impact fee has been paid is entitled to the permanent use and benefit of the services for which the fee was exacted and is entitled to receive immediate service from any existing facilities with actual capacity to serve the new service units, subject to compliance with other valid regulations.

Sec. 395.021. AUTHORITY OF POLITICAL SUBDIVISIONS TO SPEND FUNDS TO REDUCE FEES.

Political subdivisions may spend funds from any lawful source to pay for all or a part of the capital improvements or facility expansions to reduce the amount of impact fees.

Sec. 395.022. AUTHORITY OF POLITICAL SUBDIVISION TO PAY FEES.

Political subdivisions and other governmental entities may pay impact fees imposed under this chapter.

Sec. 395.023. CREDITS AGAINST ROADWAY FACILITIES FEES.

Any construction of, contributions to, or dedications of off-site roadway facilities agreed to or required by a political subdivision as a condition of development approval shall be credited against roadway facilities impact fees otherwise due from the development.

Sec. 395.024. ACCOUNTING FOR FEES AND INTEREST.

(a) The order, ordinance, or resolution levying an impact fee must provide that all funds collected through the adoption of an impact fee shall be deposited in interest-bearing accounts clearly identifying the category of capital improvements or facility expansions within the service area for which the fee was adopted.

(b) Interest earned on impact fees is considered funds of the account on which it is earned and is subject to all restrictions placed on use of impact fees under this chapter.

(c) Impact fee funds may be spent only for the purposes for which the impact fee was imposed as shown by the capital improvements plan and as authorized by this chapter.

(d) The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours.

Sec. 395.025. REFUNDS.

(a) On the request of an owner of the property on which an impact fee has been paid, the political subdivision shall refund the impact fee if existing facilities are available and service is denied or the political subdivision has, after collecting the fee when service was not available, failed to commence construction within two years or service is not available within a reasonable period considering the

type of capital improvement or facility expansion to be constructed, but in no event later than five years from the date of payment under Section 395.019(1).

(b) Repealed by Acts 2001, 77th Leg., ch. 345, Sec. 9, eff. Sept. 1, 2001.

(c) The political subdivision shall refund any impact fee or part of it that is not spent as authorized by this chapter within 10 years after the date of payment.

(d) Any refund shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Section 302.002, Finance Code, or its successor statute.

(e) All refunds shall be made to the record owner of the property at the time the refund is paid. However, if the impact fees were paid by another political subdivision or governmental entity, payment shall be made to the political subdivision or governmental entity.

(f) The owner of the property on which an impact fee has been paid or another political subdivision or governmental entity that paid the impact fee has standing to sue for a refund under this section.

SUBCHAPTER C. PROCEDURES FOR ADOPTION OF IMPACT FEE

Sec. 395.041. COMPLIANCE WITH PROCEDURES REQUIRED.

Except as otherwise provided by this chapter, a political subdivision must comply with this subchapter to levy an impact fee.

Sec. 395.0411. CAPITAL IMPROVEMENTS PLAN.

The political subdivision shall provide for a capital improvements plan to be developed by qualified professionals using generally accepted engineering and planning practices in accordance with Section 395.014.

Sec. 395.042. HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN.

To impose an impact fee, a political subdivision must adopt an order, ordinance, or resolution establishing a public hearing date to consider the land use assumptions and capital improvements plan for the designated service area.

Sec. 395.043. INFORMATION ABOUT LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN AVAILABLE TO PUBLIC.

On or before the date of the first publication of the notice of the hearing on the land use assumptions and capital improvements plan, the political subdivision shall make available to the public its land use assumptions, the time period of the projections, and a description of the capital improvement facilities that may be proposed.

Sec. 395.044. NOTICE OF HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN.

(a) Before the 30th day before the date of the hearing on the land use assumptions and capital improvements plan, the political subdivision shall send a notice of the hearing by certified mail to any person who has given written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice of the hearing within two years preceding the date of adoption of the order, ordinance, or resolution setting the public hearing.

(b) The political subdivision shall publish notice of the hearing before the 30th day before the date set for the hearing, in one or more newspapers of general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies.

(c) The notice must contain:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN RELATING TO POSSIBLE ADOPTION OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the land use assumptions and capital improvements plan under which an impact fee may be imposed; and

(4) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the land use assumptions and capital improvements plan.

Sec. 395.045. APPROVAL OF LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN REQUIRED.

(a) After the public hearing on the land use assumptions and capital improvements plan, the political subdivision shall determine whether to adopt or reject an ordinance, order, or resolution approving the land use assumptions and capital improvements plan.

(b) The political subdivision, within 30 days after the date of the public hearing, shall approve or disapprove the land use assumptions and capital improvements plan.

(c) An ordinance, order, or resolution approving the land use assumptions and capital improvements plan may not be adopted as an emergency measure.

Sec. 395.0455. SYSTEMWIDE LAND USE ASSUMPTIONS.

(a) In lieu of adopting land use assumptions for each service area, a political subdivision may, except for storm water, drainage, flood control, and roadway facilities, adopt system-wide land use

assumptions, which cover all of the area subject to the jurisdiction of the political subdivision for the purpose of imposing impact fees under this chapter.

(b) Prior to adopting system-wide land use assumptions, a political subdivision shall follow the public notice, hearing, and other requirements for adopting land use assumptions.

(c) After adoption of system-wide land use assumptions, a political subdivision is not required to adopt additional land use assumptions for a service area for water supply, treatment, and distribution facilities or wastewater collection and treatment facilities as a prerequisite to the adoption of a capital improvements plan or impact fee, provided the capital improvements plan and impact fee are consistent with the system-wide land use assumptions.

Sec. 395.047. HEARING ON IMPACT FEE.

On adoption of the land use assumptions and capital improvements plan, the governing body shall adopt an order or resolution setting a public hearing to discuss the imposition of the impact fee. The public hearing must be held by the governing body of the political subdivision to discuss the proposed ordinance, order, or resolution imposing an impact fee.

Sec. 395.049. NOTICE OF HEARING ON IMPACT FEE.

(a) Before the 30th day before the date of the hearing on the imposition of an impact fee, the political subdivision shall send a notice of the hearing by certified mail to any person who has given written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice of the hearing within two years preceding the date of adoption of the order or resolution setting the public hearing.

(b) The political subdivision shall publish notice of the hearing before the 30th day before the date set for the hearing, in one or more newspapers of general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies.

(c) The notice must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON ADOPTION OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the adoption of an impact fee;

(4) the amount of the proposed impact fee per service unit; and

(5) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the plan and proposed fee.

Sec. 395.050. ADVISORY COMMITTEE COMMENTS ON IMPACT FEES.

The advisory committee created under Section 395.058 shall file its written comments on the proposed impact fees before the fifth business day before the date of the public hearing on the imposition of the fees.

Sec. 395.051. APPROVAL OF IMPACT FEE REQUIRED.

(a) The political subdivision, within 30 days after the date of the public hearing on the imposition of an impact fee, shall approve or disapprove the imposition of an impact fee.

(b) An ordinance, order, or resolution approving the imposition of an impact fee may not be adopted as an emergency measure.

Sec. 395.052. PERIODIC UPDATE OF LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN REQUIRED.

(a) A political subdivision imposing an impact fee shall update the land use assumptions and capital improvements plan at least every five years. The initial five-year period begins on the day the capital improvements plan is adopted.

(b) The political subdivision shall review and evaluate its current land use assumptions and shall cause an update of the capital improvements plan to be prepared in accordance with Subchapter B.

Sec. 395.053. HEARING ON UPDATED LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN.

The governing body of the political subdivision shall, within 60 days after the date it receives the update of the land use assumptions and the capital improvements plan, adopt an order setting a public hearing to discuss and review the update and shall determine whether to amend the plan.

Sec. 395.054. HEARING ON AMENDMENTS TO LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN, OR IMPACT FEE.

A public hearing must be held by the governing body of the political subdivision to discuss the proposed ordinance, order, or resolution amending land use assumptions, the capital improvements plan, or the impact fee. On or before the date of the first publication of the notice of the hearing on the amendments, the land use assumptions and the capital improvements plan, including the amount of any proposed amended impact fee per service unit, shall be made available to the public.

Sec. 395.055. NOTICE OF HEARING ON AMENDMENTS TO LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN, OR IMPACT FEE.

(a) The notice and hearing procedures prescribed by Sections 395.044(a) and

(b) apply to a hearing on the amendment of land use assumptions, a capital improvements plan, or an impact fee.

(c) The notice of a hearing under this section must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON AMENDMENT OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the amendment of land use assumptions and a capital improvements plan and the imposition of an impact fee; and

(4) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the update.

Sec. 395.056. ADVISORY COMMITTEE COMMENTS ON AMENDMENTS.

The advisory committee created under Section 395.058 shall file its written comments on the proposed amendments to the land use assumptions, capital improvements plan, and impact fee before the fifth business day before the date of the public hearing on the amendments.

Sec. 395.057. APPROVAL OF AMENDMENTS REQUIRED.

(a) The political subdivision, within 30 days after the date of the public hearing on the amendments, shall approve or disapprove the amendments of the land use assumptions and the capital improvements plan and modification of an impact fee.

(b) An ordinance, order, or resolution approving the amendments to the land use assumptions, the capital improvements plan, and imposition of an impact fee may not be adopted as an emergency measure.

Sec. 395.0575. DETERMINATION THAT NO UPDATE OF LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN OR IMPACT FEES IS NEEDED.

(a) If, at the time an update under Section 395.052 is required, the governing body determines that no change to the land use assumptions, capital improvements plan, or impact fee is needed, it may, as an alternative to the updating requirements of Sections 395.052-395.057, do the following:

(1) The governing body of the political subdivision shall, upon determining that an update is unnecessary and 60 days before publishing the final notice under this section, send notice of its determination not to update the land use assumptions, capital improvements plan, and impact fee by certified mail to any person who has, within two years preceding the date that the final notice of this matter is to be published, give written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice

of hearings related to impact fees. The notice must contain the information in Subsections (b)(2)-(5).

(2) The political subdivision shall publish notice of its determination once a week for three consecutive weeks in one or more newspapers with general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies. The notice of public hearing may not be in the part of the paper in which legal notices and classified ads appear and may not be smaller than one-quarter page of a standard-size or tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type.

(b) The notice must contain the following:

(1) a headline to read as follows: "NOTICE OF DETERMINATION NOT TO UPDATE LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN, OR IMPACT FEES";

(2) a statement that the governing body of the political subdivision has determined that no change to the land use assumptions, capital improvements plan, or impact fee is necessary;

(3) an easily understandable description and a map of the service area in which the updating has been determined to be unnecessary;

(4) a statement that if, within a specified date, which date shall be at least 60 days after publication of the first notice, a person makes a written request to the designated official of the political subdivision requesting that the land use assumptions, capital improvements plan, or impact fee be updated, the governing body must comply with the request by following the requirements of Sections 395.052-395.057; and

(5) a statement identifying the name and mailing address of the official of the political subdivision to whom a request for an update should be sent.

(c) The advisory committee shall file its written comments on the need for updating the land use assumptions, capital improvements plans, and impact fee before the fifth business day before the earliest notice of the government's decision that no update is necessary is mailed or published.

(d) If, by the date specified in Subsection (b)(4), a person requests in writing that the land use assumptions, capital improvements plan, or impact fee be updated, the governing body shall cause an update of the land use assumptions and capital improvements plan to be prepared in accordance with Sections 395.052-395.057.

(e) An ordinance, order, or resolution determining the need for updating land use assumptions, a capital improvements plan, or an impact fee may not be adopted as an emergency measure.

Sec. 395.058. ADVISORY COMMITTEE.

(a) On or before the date on which the order, ordinance, or resolution is adopted under Section 395.042, the political subdivision shall appoint a capital improvements advisory committee.

(b) The advisory committee is composed of not less than five members who shall be appointed by a majority vote of the governing body of the political subdivision. Not less than 40 percent of the membership of the advisory committee must be representatives of the real estate, development, or building industries who are not employees or officials of a political subdivision or governmental entity. If the political subdivision has a planning and zoning commission, the commission may act as the advisory committee if the commission includes at least one representative of the real estate, development, or building industry who is not an employee or official of a political subdivision or governmental entity. If no such representative is a member of the planning and zoning commission, the commission may still act as the advisory committee if at least one such representative is appointed by the political subdivision as an ad hoc voting member of the planning and zoning commission when it acts as the advisory committee. If the impact fee is to be applied in the extraterritorial jurisdiction of the political subdivision, the membership must include a representative from that area.

(c) The advisory committee serves in an advisory capacity and is established to:

- (1) advise and assist the political subdivision in adopting land use assumptions;
- (2) review the capital improvements plan and file written comments;
- (3) monitor and evaluate implementation of the capital improvements plan;
- (4) file semiannual reports with respect to the progress of the capital improvements plan and report to the political subdivision any perceived inequities in implementing the plan or imposing the impact fee; and
- (5) advise the political subdivision of the need to update or revise the land use assumptions, capital improvements plan, and impact fee.

(d) The political subdivision shall make available to the advisory committee any professional reports with respect to developing and implementing the capital improvements plan.

(e) The governing body of the political subdivision shall adopt procedural rules for the advisory committee to follow in carrying out its duties.

SUBCHAPTER D. OTHER PROVISIONS

Sec. 395.071. DUTIES TO BE PERFORMED WITHIN TIME LIMITS.

If the governing body of the political subdivision does not perform a duty imposed under this chapter within the prescribed period, a person who has paid an impact fee or an owner of land on which an impact fee has been paid has the right to present a written request to the governing body of the

political subdivision stating the nature of the unperformed duty and requesting that it be performed within 60 days after the date of the request. If the governing body of the political subdivision finds that the duty is required under this chapter and is late in being performed, it shall cause the duty to commence within 60 days after the date of the request and continue until completion.

Sec. 395.072. RECORDS OF HEARINGS.

A record must be made of any public hearing provided for by this chapter. The record shall be maintained and be made available for public inspection by the political subdivision for at least 10 years after the date of the hearing.

Sec. 395.073. CUMULATIVE EFFECT OF STATE AND LOCAL RESTRICTIONS.

Any state or local restrictions that apply to the imposition of an impact fee in a political subdivision where an impact fee is proposed are cumulative with the restrictions in this chapter.

Sec. 395.074. PRIOR IMPACT FEES REPLACED BY FEES UNDER THIS CHAPTER.

An impact fee that is in place on June 20, 1987, must be replaced by an impact fee made under this chapter on or before June 20, 1990. However, any political subdivision having an impact fee that has not been replaced under this chapter on or before June 20, 1988, is liable to any party who, after June 20, 1988, pays an impact fee that exceeds the maximum permitted under Subchapter B by more than 10 percent for an amount equal to two times the difference between the maximum impact fee allowed and the actual impact fee imposed, plus reasonable attorney's fees and court costs.

Sec. 395.075. NO EFFECT ON TAXES OR OTHER CHARGES.

This chapter does not prohibit, affect, or regulate any tax, fee, charge, or assessment specifically authorized by state law.

Sec. 395.076. MORATORIUM ON DEVELOPMENT PROHIBITED.

A moratorium may not be placed on new development for the purpose of awaiting the completion of all or any part of the process necessary to develop, adopt, or update land use assumptions, a capital improvements plan, or an impact fee.

Sec. 395.077. APPEALS.

(a) A person who has exhausted all administrative remedies within the political subdivision and who is aggrieved by a final decision is entitled to trial de novo under this chapter.

(b) A suit to contest an impact fee must be filed within 90 days after the date of adoption of the ordinance, order, or resolution establishing the impact fee.

(c) Except for roadway facilities, a person who has paid an impact fee or an owner of property on which an impact fee has been paid is entitled to specific performance of the services by the political subdivision for which the fee was paid.

(d) This section does not require construction of a specific facility to provide the services.

(e) Any suit must be filed in the county in which the major part of the land area of the political subdivision is located. A successful litigant shall be entitled to recover reasonable attorney's fees and court costs.

Sec. 395.078. SUBSTANTIAL COMPLIANCE WITH NOTICE REQUIREMENTS.

An impact fee may not be held invalid because the public notice requirements were not complied with if compliance was substantial and in good faith.

Sec. 395.079. IMPACT FEE FOR STORM WATER, DRAINAGE, AND FLOOD CONTROL IN POPULOUS COUNTY.

(a) Any county that has a population of 3.3 million or more or that borders a county with a population of 3.3 million or more, and any district or authority created under Article XVI, Section 59, of the Texas Constitution within any such county that is authorized to provide storm water, drainage, and flood control facilities, is authorized to impose impact fees to provide storm water, drainage, and flood control improvements necessary to accommodate new development.

(b) The imposition of impact fees authorized by Subsection (a) is exempt from the requirements of Sections 395.025, 395.052-395.057, and 395.074 unless the political subdivision proposes to increase the impact fee.

(c) Any political subdivision described by Subsection (a) is authorized to pledge or otherwise contractually obligate all or part of the impact fees to the payment of principal and interest on bonds, notes, or other obligations issued or incurred by or on behalf of the political subdivision and to the payment of any other contractual obligations.

(d) An impact fee adopted by a political subdivision under Subsection (a) may not be reduced if:

(1) the political subdivision has pledged or otherwise contractually obligated all or part of the impact fees to the payment of principal and interest on bonds, notes, or other obligations issued by or on behalf of the political subdivision; and

(2) the political subdivision agrees in the pledge or contract not to reduce the impact fees during the term of the bonds, notes, or other contractual obligations.

Sec. 395.080. CHAPTER NOT APPLICABLE TO CERTAIN WATER-RELATED SPECIAL DISTRICTS.

(a) This chapter does not apply to impact fees, charges, fees, assessments, or contributions:

(1) paid by or charged to a district created under Article XVI, Section 59, of the Texas Constitution to another district created under that constitutional provision if both districts are required by law to obtain approval of their bonds by the Texas Natural Resource Conservation Commission; or

(2) charged by an entity if the impact fees, charges, fees, assessments, or contributions are approved by the Texas Natural Resource Conservation Commission.

(b) Any district created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution may petition the Texas Natural Resource Conservation Commission for approval of any proposed impact fees, charges, fees, assessments, or contributions. The commission shall adopt rules for reviewing the petition and may charge the petitioner fees adequate to cover the cost of processing and considering the petition. The rules shall require notice substantially the same as that required by this chapter for the adoption of impact fees and shall afford opportunity for all affected parties to participate.

Sec. 395.081. FEES FOR ADJOINING LANDOWNERS IN CERTAIN MUNICIPALITIES.

(a) This section applies only to a municipality with a population of 105,000 or less that constitutes more than three-fourths of the population of the county in which the majority of the area of the municipality is located.

(b) A municipality that has not adopted an impact fee under this chapter that is constructing a capital improvement, including sewer or waterline or drainage or roadway facilities, from the municipality to a development located within or outside the municipality's boundaries, in its discretion, may allow a landowner whose land adjoins the capital improvement or is within a specified distance from the capital improvement, as determined by the governing body of the municipality, to connect to the capital improvement if:

(1) the governing body of the municipality has adopted a finding under Subsection (c); and

(2) the landowner agrees to pay a proportional share of the cost of the capital improvement as determined by the governing body of the municipality and agreed to by the landowner.

(c) Before a municipality may allow a landowner to connect to a capital improvement under Subsection (b), the municipality shall adopt a finding that the municipality will benefit from allowing the landowner to connect to the capital improvement. The finding shall describe the benefit to be received by the municipality.

(d) A determination of the governing body of a municipality, or its officers or employees, under this section is a discretionary function of the municipality and the municipality and its officers or employees are not liable for a determination made under this section.

Sec. 395.082. CERTIFICATION OF COMPLIANCE REQUIRED.

- (a) A political subdivision that imposes an impact fee shall submit a written certification verifying compliance with this chapter to the attorney general each year not later than the last day of the political subdivision's fiscal year.
- (b) The certification must be signed by the presiding officer of the governing body of a political subdivision and include a statement that reads substantially similar to the following: "This statement certifies compliance with Chapter 395, Local Government Code."
- (c) A political subdivision that fails to submit a certification as required by this section is liable to the state for a civil penalty in an amount equal to 10 percent of the amount of the impact fees erroneously charged. The attorney general shall collect the civil penalty and deposit the amount collected to the credit of the housing trust fund.

APPENDIX E

Resources

Web Resources

Impact Fees

NAHB www.nahb.org/infrastructurefinance

Impact Fees.com (Duncan and Associates) www.impactfees.com

National Impact Fee Roundtable www.impactfees.org

National Association of REALTORS <http://www.realtor.org/library/library/fg805>

American Planning Association <http://www.planning.org/policyguides/impactfees.html>

HUD <http://www.huduser.org/publications/affhsg/impactfees.html>

School Impact Fees

National Clearinghouse for Educational Facilities www.edfacilities.org/rl/impact_fees.cfm

Infrastructure Finance Alternatives

Council of Development Finance Agencies www.cdfa.net

National Conference of State Legislatures www.ncsl.org

NAHB PUBLISHED RESOURCES

[An Overview of Special Purpose Taxing Districts Proportionate-Share Impact Fees](#)

[Building for Tomorrow: Innovative Infrastructure Solutions](#)

[Infrastructure Finance: Does Your State Encourage Innovation](#)

[Infrastructure Solutions – Best Practices from Solution Oriented States](#)

AGENDA FORM

Date of City Council meeting: February 3rd

Name of Person Making Presentation: Kyle Arbizu

Address: PO BOX 727
Santa Clara, Utah 84765

Contact #:

Phone: 435-632-1493

e-mail: karbizu@pprmco.com

Approximate length of discussion: 10 Minutes may depend on council's questions

Description of item to be discussed: See explanation at the bottom of the page

If this is a complaint issue:

Have you tried to resolve the issue with staff? yes x no

If yes, with whom? _____

If you have a power point presentation, we would encourage you to keep it under 10 minutes. All other items discussed will be done as quickly and as efficiently as possible.

We appreciate the time and consideration of the Hurricane City Council considering this request. Between construction costs, inflation, and higher interest rates, it's become challenging to bring medium to high-density projects to fruition. We feel that these types of projects fill a necessary gap in the housing market. Not all person(s) moving to Southern Utah are looking to buy a home. It also provides additional housing to those person(s) just starting out, relocating, or experiencing changes in their living circumstances.

We're constructing 18 apartments on parcel H-4-2-4-3211. Our project contains only four two-bedrooms, six one-bedrooms, and eight studio apartments. This project site requires little to no additional work from the City for roads, and any new parking and roads for this project are being paid for, maintained, and installed by the developer. The estimate for our project that was provided by the City is \$41,292. We're seeking a reduction of 60% or \$24,775.20 so the project would still be paying \$16,516.80.

Lastly, we believe that City parks and trails are an essential part of the feel of Southern Utah. That being said, due to our unit sizing and the fact that the apartments will house fewer citizens than most homes and townhomes. Our estimate that was provided has Park and Recreation for the project at \$55,962. We're seeking a 50% reduction or \$27,981. This still leaves this single project contributing over \$27,981 to parks and trails or \$1,554.50 per residence.

Thank you for your time and consideration.

Estimate Fees

↳ Multi-Family

First, complete the information below. Then, click the "Estimate" button on the bottom of the page.

Fee Based Occupancies

:: use numbers only

ICC R-2 Residential Multiple Family 5B Garage Area (remove)

Square Feet: 2430

Declared Value: \$30,000.00

Calculated Value: \$60,750.00 ← selected

ICC R-2 Residential Multiple Family 5B Living Area (remove)

Square Feet: 11920

Declared Value: \$500,000.00

Calculated Value: \$679,440.00 ← selected

Fee Based Information

:: use numbers only

☒ Number of Units

18

Project Fees

:: use numbers only

☐ GROUP > 120/240 - Single Phase

☐	Clean Up Deposit Commercial	1 @	\$1,500.00 +	
☒	Habitat Fee - Multifamily	1 @	(0.2% x selected occupancy types)	*
☒	Multi-Family Permit Fee	1 @	(Table 1-A based on selected occupancy types)	*
☒	Multi-Family State Tax Fee	1 @	(1% x Multi-Family Permit Fee)	*
☒	i Park & Rec	1 @	(\$3,109.00 per Number of Units)	
☐	Parks-MultiFamily Adjusted	1 @	\$3109.00	
☒	i Plan Review	1 @	\$2846.00	
☐	Plan Review Deposit	1 @	\$1,000.00	
☐	Plan Review-Multi Family	1 @	\$1000.00	
☒	Power Conn-Multi Family-Adjusted	1 @	\$4503.00	
☐	Power Conn. - Residential Underground (New)	1 @	\$237.00	
☐	i Power Impact - Residential 200 AMP	1 @	(\$1,946.00 per Number of Units)	
☒	Power Impact 200 amp-Multi Family-Adjusted	1 @	\$36974.00	

Your Fee Estimate

Based On Your Selection

FEES

>
\$173,030.67

Habitat Fee - Multifamily	\$1,480.38
Multi-Family Permit Fee	\$4,378.50
Multi-Family State Tax Fee	\$43.79
Park & Rec	\$55,962.00
Plan Review	\$2,846.00
Power Conn-Multi Family-Adjusted	\$4,503.00
Power Impact 200 amp-Multi Family-Adjusted	\$36,974.00
Public Safety-Multi Family	\$4,626.00
Streets Impact - Residential	\$41,292.00
Water Connection 2"	\$5,483.00
Water Impact Fee 2"	\$15,442.00

Questions

For questions, use this contact information.

Tami Jones
Building
(435) 635-2811 x122 Ph.
(435) 635-2184 Fax
tami@cityofhurricane.com
www.cityofhurricane.com

Mailing Address

147 N 870 W
Hurricane, UT 84737

Physical Address

147 N 870 W
Hurricane, UT 84737
(view map)

☐	Power Impact-Residential 125 amp	1 @ \$0
☐ 	Public Safety Impact - Residential	1 @ (\$421.00 per Number of Units)
☒	Public Safety-Multi Family	1 @ (\$257.00 per Number of Units)
☐	Public Safety-Multi Family- Adjusted	1 @ \$257.00
☒ 	Streets Impact - Residential	1 @ (\$2,294.00 per Number of Units)
☐	Streets-MultiFamily Adjusted	1 @ \$2294.00
☐	Water Connection 1"	1 @ \$1,315.00
☐	Water Connection 1.5"	1 @ \$2,924.00
☒	Water Connection 2"	1 @ \$5,483.00
☐	Water Connection 3/4"	1 @ \$731.00
☐ 	Water Connection 5/8"	1 @ (\$550.00 per Number of Units)
☐	Water Impact 1"-New	1 @ \$3,860.00
☐ 	Water Impact 5/8"	1 @ (\$884.00 per Number of Units)
☐	Water Impact 5/8"-New	1 @ \$1,508.00
☐	Water Impact Fee 1.5"	1 @ \$5,092.00
☒	Water Impact Fee 2"	1 @ \$15,442.00
☐	Water Impact Fee 3/4"	1 @ \$1,273.00

Disclaimer

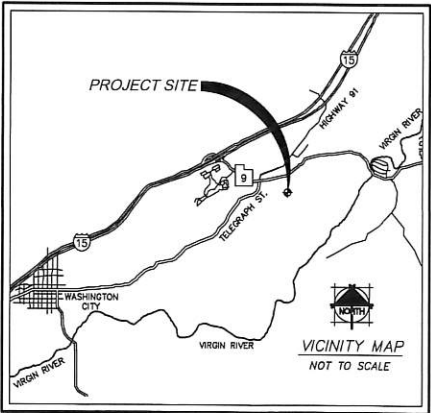
This information is to give you a general idea of permit fees and is subject to change.

CURTIS ANDERSON SHADOW RIDGE APARTMENTS

LOCATED IN SECTION 4, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SLB&M

GENERAL NOTES:

1. ALL CONSTRUCTION AND MATERIALS SHALL BE IN ACCORDANCE WITH THE CITY OF HURRICANE AND ASH CREEK SPECIAL SERVICE DISTRICT "STANDARD SPECIFICATIONS FOR DESIGN AND CONSTRUCTION".
2. THE CONTRACTOR SHALL TAKE ALL PRECAUTIONARY MEASURES NECESSARY TO PROTECT EXISTING IMPROVEMENTS WHICH ARE TO REMAIN IN PLACE. ANY AND ALL IMPROVEMENTS OR STRUCTURES WHICH ARE DAMAGED BY THE CONTRACTOR'S OPERATIONS SHALL BE REPAIRED OR RECONSTRUCTED SATISFACTORY TO THE CITY OF HURRICANE AND THE OWNER AT THE EXPENSE OF THE CONTRACTOR.
3. THE CONTRACTOR SHALL NOT BACKFILL ANY UTILITY OR DRAINAGE TRENCHES UNTIL THEY HAVE BEEN INSPECTED AND APPROVED BY THE CITY OF HURRICANE AND ASH CREEK SPECIAL SERVICE DISTRICT. THE CITY AND ASH CREEK SPECIAL SERVICE DISTRICT SHALL BE NOTIFIED AT LEAST 1 WORKING DAY IN ADVANCE OF ALL CONSTRUCTION.
4. ALL CONSTRUCTION SHALL BE AS SHOWN ON THESE PLANS, ANY ALTERATIONS SHALL HAVE THE PRIOR WRITTEN APPROVAL OF THE ENGINEER AND THE CITY OF HURRICANE.
5. THE CONTRACTOR SHALL, AT HIS OWN EXPENSE, LOCATE ALL OVERHEAD INTERFERENCE WHICH MAY AFFECT HIS OPERATION DURING CONSTRUCTION AND SHALL TAKE ALL NECESSARY PRECAUTIONS TO AVOID DAMAGE TO SAME. THE CONTRACTOR SHALL USE EXTREME CAUTION WHEN WORKING NEAR OVERHEAD OR UNDERGROUND POWER, TELEPHONE, GAS AND OTHER UTILITIES FOR THE SAFETY OF ALL PERSONNEL AND EQUIPMENT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL COSTS AND LIABILITY IN CONNECTION THEREWITH.
6. AN ENCROACHMENT PERMIT IS REQUIRED FOR WORK IN THE PUBLIC RIGHT OF WAY, THE CONTRACTOR SHALL SECURE ALL PERMITS AND INSPECTIONS REQUIRED FOR THIS CONSTRUCTION.
7. HANDICAP RAMPS SHALL BE CONSTRUCTED IN EACH QUADRANT OF AN INTERSECTION AS PER THE CITY STANDARD DRAWINGS (SEE ADOPTED DETAIL ON DETAIL SHEET). EXACT LOCATION OF RAMPS MAY BE ADJUSTED IN THE FIELD BY A CITY ENGINEER.
8. CONTRACTOR SHALL PROVIDE ALL NECESSARY HORIZONTAL AND VERTICAL TRANSITIONS BETWEEN NEW CONSTRUCTION AND EXISTING SURFACES TO PROVIDE FOR PROPER DRAINAGE AND FOR INGRESS AND EGRESS TO SAID CONSTRUCTION. THE EXTENT OF TRANSITIONS TO BE AS SHOWN ON PLANS.
9. THE CONTRACTOR SHALL TAKE ALL PRECAUTIONS NECESSARY TO PROTECT EXISTING PERMANENT SURVEY MONUMENTS. ANY MONUMENTS DISTURBED SHALL BE REPLACED AT THE EXPENSE OF THE CONTRACTOR BY A REGISTERED LAND SURVEYOR.
10. BEFORE ANY WORK IS STARTED IN THE RIGHT OF WAY, THE CONTRACTOR SHALL INSTALL CONSTRUCTION ZONE SIGNING AS REQUIRED BY THE "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES-LATEST EDITION".
11. ALL CONSTRUCTION SIGNING, BARRICADING AND TRAFFIC DELINEATION SHALL CONFORM TO THE "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES-LATEST EDITION".
12. FINAL SURVEY MONUMENTS TO BE INSTALLED AS PER HURRICANE CITY ADOPTED DRAWING AND LOCATION TO BE AS PER THE FINAL PLAT.
13. THE CONTRACTOR SHALL PROVIDE EROSION CONTROL. BEST MANAGEMENT PRACTICES TO LIMIT ON SITE EROSION AND SEDIMENT FROM LEAVING THE SITE. ALL BEST MANAGEMENT PRACTICES WILL BE APPROVED BY THE ENGINEER AND THE CITY OF HURRICANE.
14. ALL WORK SHALL BE CONTAINED ON SITE.
15. A TEMPORARY TRASH ENCLOSURE SHALL BE PROVIDED.
16. DUST CONTROL SHALL BE MAINTAINED; CONTRACTOR SHALL USE A WATER TRUCK DURING ALL EARTH MOVING ACTIVITIES.
17. PROJECTS SHALL INSTALL AN INFORMATIONAL SIGN ON SITE BEFORE CONSTRUCTION BEGINS. THIS SIGN WILL HAVE A MINIMUM SIZE, PLACEMENT LOCATION AND CONTENT INFORMATION WITH THE COMPANY NAME, PHONE CONTACT & GRADING PERMIT NUMBER.
18. PROJECTS SHALL SUBMIT A DUST CONTROL PLAN WITH DETAILS ON EQUIPMENT, SCHEDULING AND REPORTING OF DUST CONTROL ACTIVITIES.
19. A MANDATORY PRE-CONSTRUCTION MEETING WILL BE REQUIRED ON ALL PROJECTS PRIOR TO ANY GRUBBING, GRADING, OR CONSTRUCTION ACTIVITIES. THE PERMIT HOLDER WILL BE REQUIRED TO NOTIFY ALL DEVELOPMENT SERVICES INSPECTORS.
20. ALL LANDSCAPING TO BE MAINTAINED BY PROPERTY OWNER (CITY WILL NOT MAINTAIN).
21. A SPECIAL INSPECTOR FOR PAVING WILL BE REQUIRED (COST BORNE BY DEVELOPER).

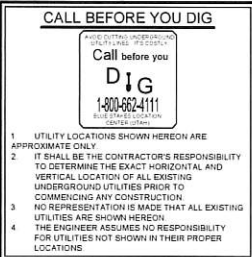


SHEET INDEX

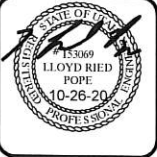
C0.00	TITLE SHEET
C1.00	SITE PLAN
C2.00	UTILITY PLAN
C3.00	GRADING & DRAINAGE PLAN
C4.00	LIFE SAFETY PLAN
C5.00	EROSION PLAN
C6.00	LANDSCAPE PLAN
C10.00	DETAIL SHEET

APPROVAL

ASH CREEK SEWER DISTRICT	DATE:
DOMINION ENERGY	DATE:
TDS COMMUNICATIONS	DATE:
CENTURYLINK	DATE:
WASHINGTON COUNTY WATER CONSERVANCY DISTRICT	DATE:
HURRICANE POWER DEPARTMENT	DATE:
HURRICANE PARKS DEPARTMENT	DATE:
HURRICANE VALLEY FIRE DISTRICT	DATE:
HURRICANE WATER DEPARTMENT	DATE:
HURRICANE STREETS DEPARTMENT	DATE:
HURRICANE PLANNING DEPARTMENT	DATE:
HURRICANE CITY ENGINEER	DATE:
HURRICANE PUBLIC WORKS DEPARTMENT	DATE:
HURRICANE CITY GIS	DATE:



NO.	DATE	BY	APPVD	REVISION DESCRIPTION

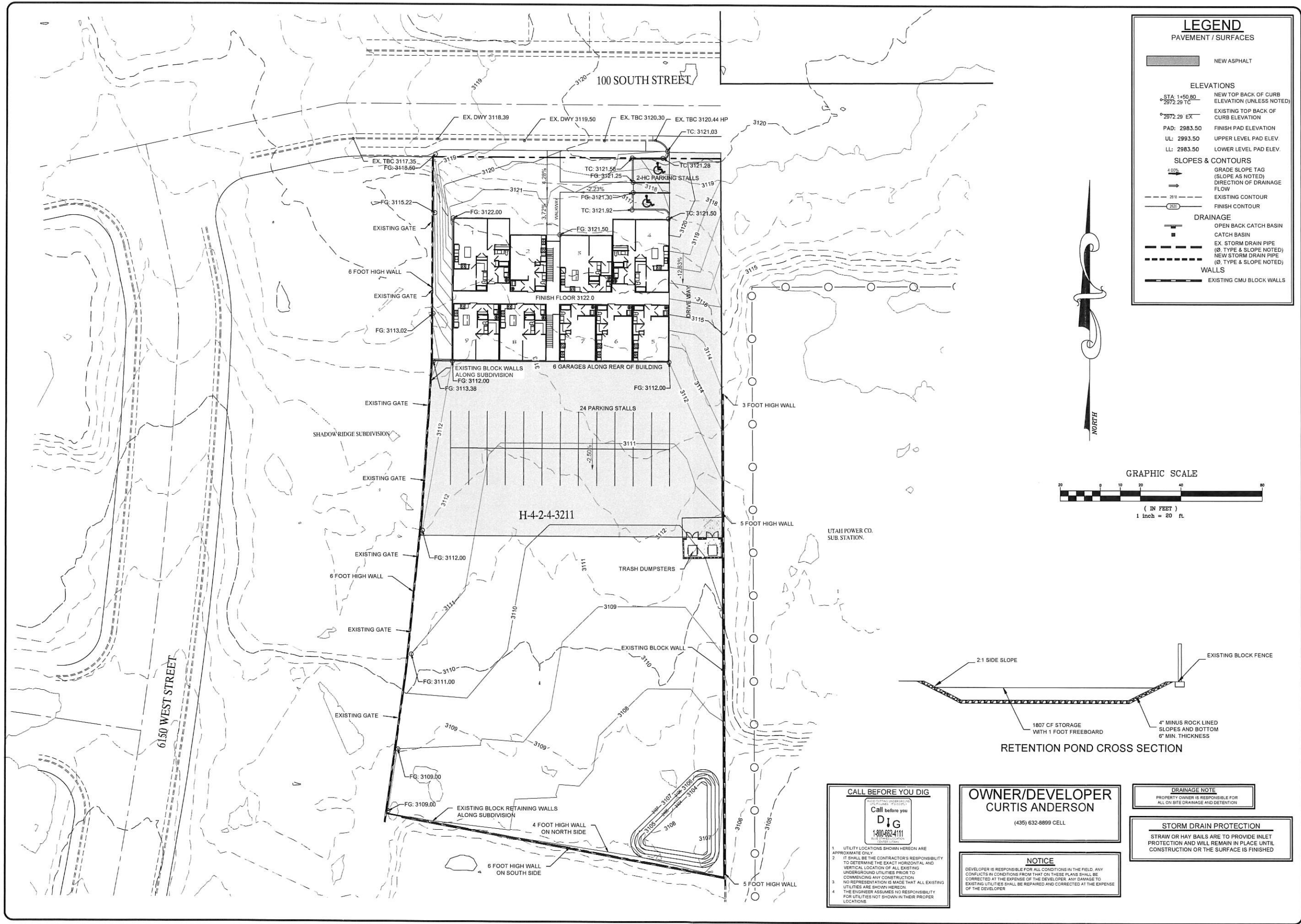


CURTIS ANDERSON
SHADOW RIDGE APARTMENTS
TITLE SHEET

LOCATED IN SECTION 4, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SLB&M

DESIGN BY
LRP
DATE
10-26-20
FILE NAME
CURTIS ANDERSON

24" x 36"
SCALE 1" = 1"
12" x 18"
SCALE 1" = 1"
SHEET NUMBER
C0.00



LEGEND
PAVEMENT / SURFACES

NEW ASPHALT

ELEVATIONS

STA: 1+50.80
2972.29 TC
2972.29 EX
PAD: 2983.50
UL: 2993.50
LL: 2983.50

NEW TOP BACK OF CURB ELEVATION (UNLESS NOTED)
EXISTING TOP BACK OF CURB ELEVATION
FINISH PAD ELEVATION
UPPER LEVEL PAD ELEV.
LOWER LEVEL PAD ELEV.

SLOPES & CONTOURS

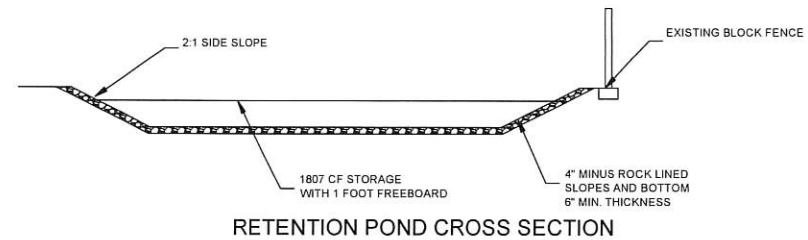
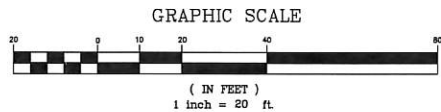
GRADE SLOPE TAG (SLOPE AS NOTED)
DIRECTION OF DRAINAGE FLOW
EXISTING CONTOUR
FINISH CONTOUR

DRAINAGE

OPEN BACK CATCH BASIN
CATCH BASIN
EX. STORM DRAIN PIPE (Ø, TYPE & SLOPE NOTED)
NEW STORM DRAIN PIPE (Ø, TYPE & SLOPE NOTED)

WALLS

EXISTING CMU BLOCK WALLS



CALL BEFORE YOU DIG

Call before you Dig
1-800-662-4111
UTAH POWER CO. (800) 662-4111

1. UTILITY LOCATIONS SHOWN HEREON ARE APPROXIMATE ONLY.
2. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO DETERMINE THE EXACT HORIZONTAL AND VERTICAL LOCATION OF ALL EXISTING UNDERGROUND UTILITIES PRIOR TO COMMENCING ANY CONSTRUCTION.
3. NO REPRESENTATION IS MADE THAT ALL EXISTING UTILITIES ARE SHOWN HEREON.
4. THE ENGINEER ASSUMES NO RESPONSIBILITY FOR UTILITIES NOT SHOWN IN THEIR PROPER LOCATIONS.

OWNER/DEVELOPER
CURTIS ANDERSON
(435) 632-8899 CELL

NOTICE

DEVELOPER IS RESPONSIBLE FOR ALL CONDITIONS IN THE FIELD. ANY CONFLICTS IN CONDITIONS FROM THAT ON THESE PLANS SHALL BE CORRECTED AT THE EXPENSE OF THE DEVELOPER. ANY DAMAGE TO EXISTING UTILITIES SHALL BE REPAIRED AND CORRECTED AT THE EXPENSE OF THE DEVELOPER.

DRAINAGE NOTE

PROPERTY OWNER IS RESPONSIBLE FOR ALL ON SITE DRAINAGE AND DETENTION

STORM DRAIN PROTECTION

STRAW OR HAY BAILS ARE TO PROVIDE INLET PROTECTION AND WILL REMAIN IN PLACE UNTIL CONSTRUCTION OR THE SURFACE IS FINISHED

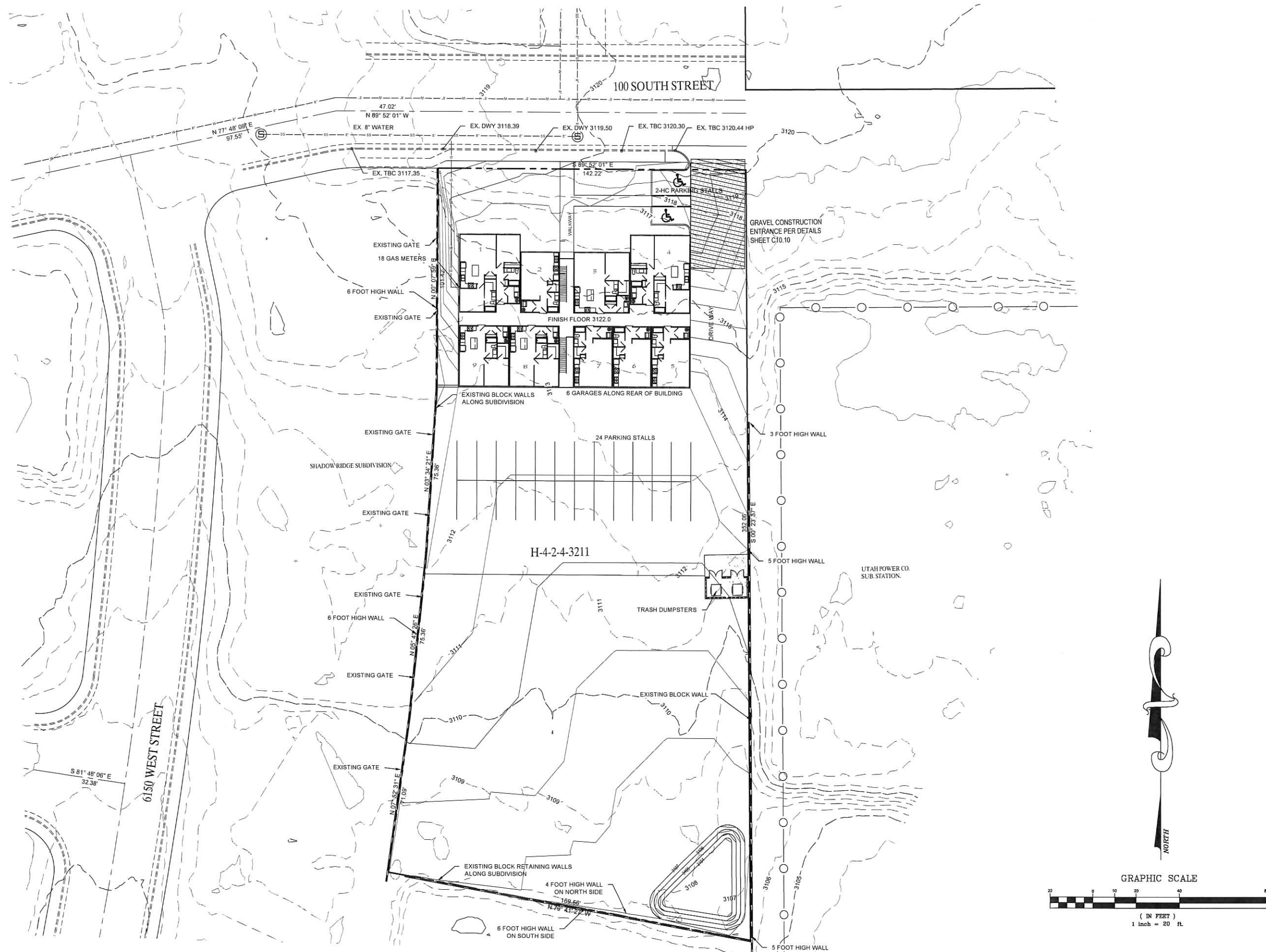
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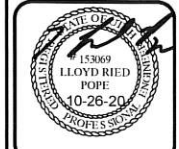
LRP
L. R. POPE ENGINEERING INC.
STRUCTURAL, CIVIL, MECHANICAL & ELECTRICAL
1600 W. 1000 N. SUITE 100
ST. GEORGE, UT 84770
(PHONE) 435-424-4476
(FAX) 435-424-4478
lrop@lrpe.com

CURTIS ANDERSON
SHADOW RIDGE APARTMENTS
GRADING AND DRAINAGE PLAN
LOCATED IN SECTION 4, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SLB&M

DESIGN BY LRP
DATE 10-26-20
FILE NAME CURTIS ANDERSON
24" x 36" SCALE 1" = 20'
12" x 18" SCALE 1" = 40'
SHEET NUMBER C3.00



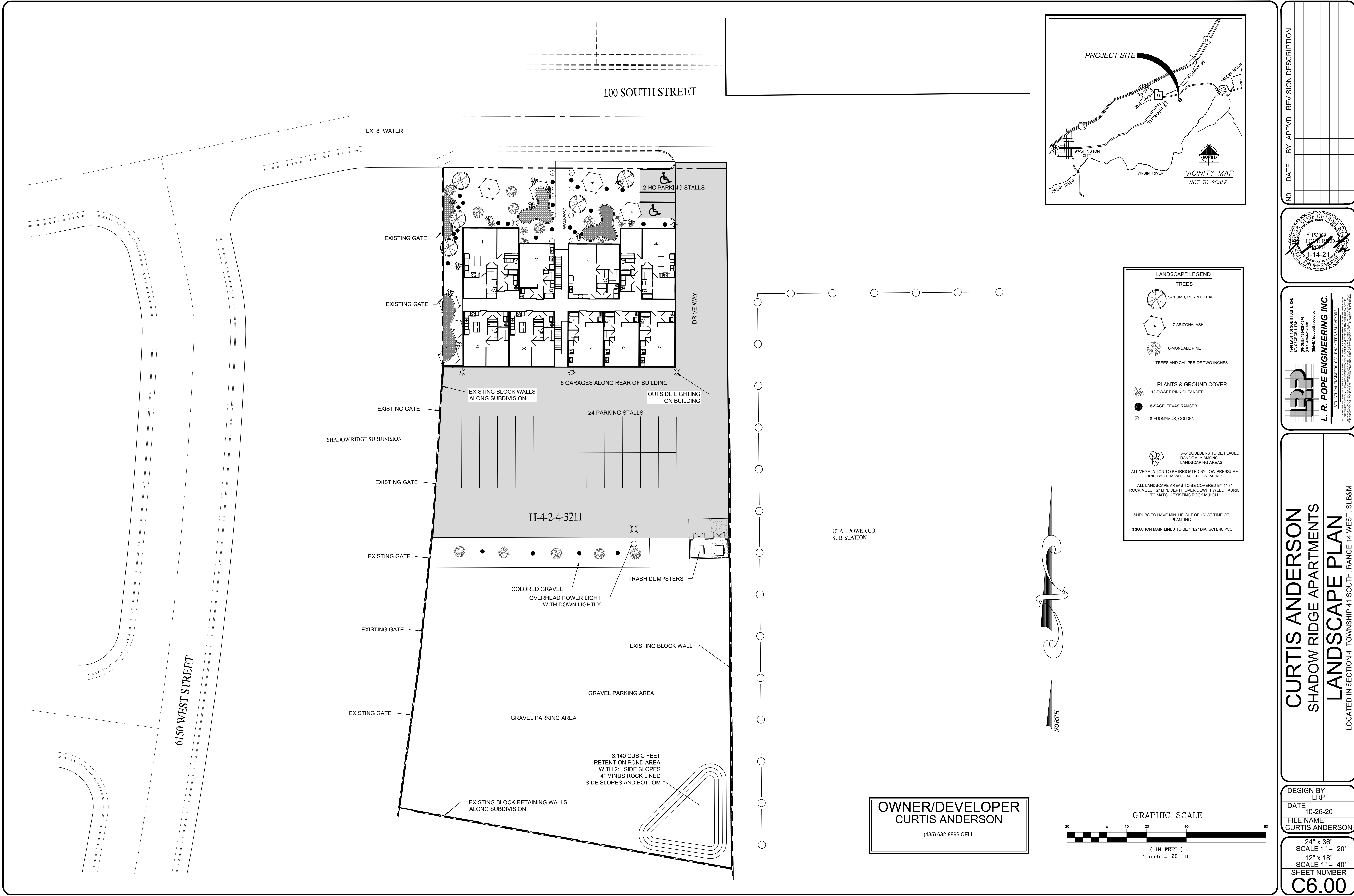
NO.	DATE	BY	APPVD	REVISION DESCRIPTION



**L.R. POPE ENGINEERING INC.**
STRUCTURAL, MECHANICAL, CIVIL, ELECTRICAL & SANITARY
1245 EAST 400 SOUTH, SUITE 150
ST. GEORGE, UTAH 84770
PHONE: (435) 634-1776
FAX: (435) 634-1778
EMAIL: lrp@lrpe.com

CURTIS ANDERSON
SHADOW RIDGE APARTMENTS
EROSION PLAN
LOCATED IN SECTION 4, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SLB&M

DESIGN BY
LRP
DATE
10-26-20
FILE NAME
CURTIS ANDERSON
24" x 36"
SCALE 1" = 20'
12" x 18"
SCALE 1" = 40'
SHEET NUMBER
C5.00



From: [Kyle Arbizu](#)
To: [Cindy Beteag](#)
Cc: [Landon A](#)
Subject: Re: agenda form
Date: Wednesday, January 26, 2022 11:08:12 AM
Attachments: [impactfees.pdf](#)
[impact-fee-handbook.pdf](#)

Cindy,

I've attached two studies on impact fees, one by HUD and one by The National Association of Home Builders. I'd put in our narrative that the location of this project requires little to no spending for street and parking infrastructure. We believe these costs should be reduced, so they commiserate with costs the City would incur. The other request was the reduction in Park fees which the proposed reduction we believe is still a large sum and pays for a good portion of a new park or would cover a long extension of walking or biking paths.

Kyle Arbizu
ARM®, HCCP®, CPM® Candidate
Managing Partner
Parkplace Residential, AMO®
[560 South Valley View Drive #3](#)
[Saint George, Utah 84770](#)
Office: [\(435\) 656-0770](#)
Mobile: [\(435\) 632-1493](#)
Fax: [\(844\) 672-5753](#)

Mailing
[PO BOX 727](#)
[Santa Clara, Utah 84765](#)
<https://www.pprmco.com>



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From: Cindy Beteag <cindy@cityofhurricane.com>
Date: Wednesday, January 26, 2022 at 10:21 AM
To: Kyle Arbizu <karbizu@pprmco.com>

Cc: Landon A <andersonlandon06@gmail.com>

Subject: RE: agenda form

Kyle,

You have been added to the agenda. This is how our code reads for adjustment requests:

• **Sec. 9-2-5. - Adjustments.**

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

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

Do you have any other supporting documents or studies that you want to include with your request?

Thank you,

Cindy Beteag

Cindy Beteag
City Recorder
Hurricane City
Office 435-635-2811 x 106

From: Kyle Arbizu <karbizu@pprmco.com>

Sent: Tuesday, January 25, 2022 10:25 AM

To: Cindy Beteag <cindy@cityofhurricane.com>

Cc: Landon A <andersonlandon06@gmail.com>

Subject: Re: agenda form

Cindy,

See completed form that has been attached. Please let us know if we can make it for the February 3rd agenda.

Thanks,

Kyle Arbizu
ARM®, HCCP®, CPM® Candidate
Managing Partner
Parkplace Residential, AMO®
560 South Valley View Drive #3
Saint George, Utah 84770
Office: (435) 656-0770
Mobile: (435) 632-1493
Fax: (844) 672-5753

Mailing
PO BOX 727
Santa Clara, Utah 84765
<https://www.pprmco.com>



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From: Cindy Beteag <cindy@cityofhurricane.com>

Date: Tuesday, January 25, 2022 at 9:46 AM

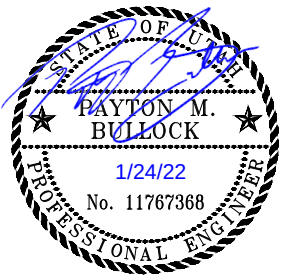
To: Kyle Arbizu <karbizu@pprmco.com>

Subject: agenda form

Cindy Beteag

Cindy Beteag
City Recorder
Hurricane City
Office 435-635-2811 x 106

City of Hurricane
2800 West Roadway, 100 N to 600 N
Bid Opening Date:
Thursday, January 20, 2022 @ 2:00 PM



BID TABULATION

ITEM NO.	ITEM DESCRIPTION	QTY	UNIT	JP Excavating, Inc.		Interstate Rock Products, Inc.		Whitaker Construction Company, Inc.	
				Unit Cost	Amount	Unit Cost	Amount	Unit Cost	Amount
1	Mobilization & Demobilization	1	LS	\$	145,000.00	\$	145,000.00	\$	90,300.00
2	Traffic Control	1	LS	\$	11,000.00	\$	11,000.00	\$	13,700.00
3	Site Clearing	12	AC	\$	525.00	\$	6,300.00	\$	12,840.00
4	Remove Fence	1,745	LF	\$	2.00	\$	3,490.00	\$	3,926.25
5	Remove Asphalt, Sidewalk, Curb & Gutter	1,350	SF	\$	4.00	\$	5,400.00	\$	2,835.00
6	Roadway Excavation (Plan Quantity)	78,970	CY	\$	11.00	\$	868,670.00	\$	1,066,095.00
7	Untreated Base Course (Plan Quantity)	5,670	CY	\$	32.00	\$	181,440.00	\$	230,769.00
8	Hot Mix Asphalt 1/2 Inch, AC-30	4,006	TON	\$	90.00	\$	360,540.00	\$	354,130.40
9	Voidless Hot Mix Asphalt 1/2 Inch, AC-30	427	TON	\$	95.00	\$	40,565.00	\$	45,262.00
10	Standard Curb & Gutter Type HB30-7 W/ Base	2,020	LF	\$	22.00	\$	44,440.00	\$	43,834.00
11	Standard Corner Pedestrian Ramp W/ Base	3	EA	\$	3,200.00	\$	9,600.00	\$	9,315.00
12	Standard Concrete Sidewalk W/ Base	1,560	SF	\$	7.90	\$	12,324.00	\$	9,204.00
13	15" HP Drainage Pipe	401	LF	\$	51.00	\$	20,451.00	\$	33,603.80
14	18" HP Drainage Pipe	1,012	LF	\$	54.00	\$	54,648.00	\$	105,248.00
15	24" HP Drainage Pipe	617	LF	\$	78.00	\$	48,126.00	\$	67,870.00
16	30" HP Drainage Pipe	308	LF	\$	112.00	\$	34,496.00	\$	32,648.00
17	18" Culvert Concrete End Section	1	EA	\$	2,100.00	\$	2,100.00	\$	1,660.00
18	24" Culvert Concrete End Section	8	EA	\$	2,300.00	\$	18,400.00	\$	13,040.00
19	30" Culvert Concrete End Section	1	EA	\$	2,700.00	\$	2,700.00	\$	1,870.00
20	3'X3' Concrete Drainage Structure W/ Grate/Inlet	6	EA	\$	3,700.00	\$	22,200.00	\$	19,530.00
21	3'X2' Concrete Drainage Structure W/ Grate/Inlet	6	EA	\$	3,500.00	\$	21,000.00	\$	20,460.00
22	4'X4' Concrete Drainage Structure W/ Grate	1	EA	\$	9,100.00	\$	9,100.00	\$	9,285.00
23	6'X3' Concrete Drainage Structure W/ Double Inlet	1	EA	\$	5,800.00	\$	5,800.00	\$	5,555.00
24	8' Diameter Standard Manhole	1	EA	\$	8,700.00	\$	8,700.00	\$	8,805.00
25	8' Standard Cross Gutter W/ Base	1	EA	\$	6,300.00	\$	6,300.00	\$	6,890.00
26	6" Loose Placed Riprap	1,070	CY	\$	42.00	\$	44,940.00	\$	60,348.00
27	12" Loose Placed Riprap	30	CY	\$	42.00	\$	1,260.00	\$	1,692.00
28	8" PVC C-900 Waterline	3,373	LF	\$	65.00	\$	219,245.00	\$	182,479.30
29	8" Waterline Connection	2	EA	\$	5,300.00	\$	10,600.00	\$	6,540.00
30	12" Waterline Connection	1	EA	\$	12,000.00	\$	12,000.00	\$	15,850.00
31	2" Standard Air Vac W/ Blowoff	1	LS	\$	7,000.00	\$	7,000.00	\$	6,505.00
32	6" Fire Hydrant Assembly	4	EA	\$	6,800.00	\$	27,200.00	\$	6,930.00
33	2'x6" C-900 Stub W/ Cap	1	EA	\$	2,500.00	\$	2,500.00	\$	1,005.00
34	8" SDR35 PVC Gravity Sewer Line	195	LF	\$	71.00	\$	13,845.00	\$	88.10
35	5' Diameter Standard Sewer Manhole	1	EA	\$	6,800.00	\$	6,800.00	\$	5,840.00
36	8" Existing Sewer Manhole Tie-In	1	EA	\$	2,700.00	\$	2,700.00	\$	2,910.00
37	JUC Trench & 1D Conduit (City Furnished)	3,290	LF	\$	21.00	\$	69,090.00	\$	21.60
38	(6) 2" Conduits W/ Detectable Pull Tape	340	LF	\$	73.00	\$	24,820.00	\$	14.80
39	2'x3' Polymer Concrete Junction Box	6	EA	\$	2,400.00	\$	14,400.00	\$	2,505.00
40	Pavement Marking Paint	26,530	LF	\$	0.38	\$	10,081.40	\$	0.37
41	Pavement Message Paint	16	EA	\$	70.00	\$	1,120.00	\$	72.80
42	Sign Panel	68	SF	\$	40.00	\$	2,720.00	\$	37.30
43	2" Sign Sign Post	6	EA	\$	85.00	\$	510.00	\$	112.00
44	2 1/2" Square Sign Anchor	6	EA	\$	50.00	\$	300.00	\$	46.60
45	8" Purple C-900 PVC Irrigation Line	3,370	LF	\$	70.00	\$	235,900.00	\$	61.00

TOTAL				TOTAL \$	2,649,821.40	TOTAL \$	2,940,599.15	TOTAL \$	3,719,547.50
Represents Bid Error & Correction									

BIDDER REVIEW

ITEM DESCRIPTION	FORM / REQUIREMENT	JP Excavating, Inc.		Interstate Rock Products, Inc.		Whitaker Construction Company, Inc.	
			SUBMITTED / COMMENT		SUBMITTED / COMMENT		SUBMITTED / COMMENT
BIDDERS GENERAL INFORMATION	Contractor Information	x	Complete	x	Complete	x	Complete
	Contractor Licenses Primary Classification	x	E100, S310 #344332-5501	x	B100, E00 #227139-5501	-	Not included
	WIP (Limit, Status)	x	WIP Limit: 60,000,000.00 Current: \$18,750,000.00	x	WIP Limit: \$40,000,000.00 Current: \$15,300,000.00	-	Not included
Qualifications (Category #1) 25 Points	*Experience to similar Project Scope	x	Roadway & Mass Grading, 25 Years; Utility & Pipe Installation, 25 Years	x	Included	x	Included
	*Past Performance	x	Commerce Drive, RD Extension; 2000 South Roadway; Kenworth Astragalus Dr. Roadway	x	Resumes Included	x	Included
	*References	x	Included	x	Included	x	Included
	*Equipment	x	Included	x	Included	-	-
	*Subcontractor/Subcontract work list	x	Included	-	-	x	Included
Project Approach (Category #2) 25 Points	*Approach Covering Work Operations	x	Included - Section 5 of Submittal	x	Included	-	Not included
	*Schedule (Proposed Start Date and Completion Date)	x	Procurement: 2/4/22 - 6/3/22 Construction: 6/6/22 - 11/11/22	x	Construction: April 4, 2022 - March 31, 2023	x	Construction: April 18, 2022 - Nov 10, 2022
	*Maintenance of Traffic	x	Plan to be submitted prior to Construction	x	Described	-	Not included
	*Access Accommodations	-	-	x	Included, described	-	Not included
	*Public Involvement (Agent, Qualifications, Etc.)	x	JP Management Team	x	IRP Plan Description	-	Not included
BID SCHEDULE (form) (Category #3) 50 Points	Bid Form (Amended Bid Form when Applicable)	x	Complete	x	Complete	x	Complete
	Addendum Acknowledged	x	Addendum #1 Acknowledged (1/18/22)	x	Addendum #1 Acknowledged (1/18/22)	x	Addendum #1 Acknowledged (1/18/22)
	Bid Schedule Complete (Amended when Applicable), Correct Math *Bid Price	x	Amended Bid Schedule Correct, Math Checked: \$2,649,821.40	x	Amended Bid Schedule Correct, Math Checked: \$2,940,599.15	x	Amended Bid Schedule Correct, Math Checked: \$3,719,547.50
	No significant unbalances.	x	-	x	-	x	-
Bonding	Bid Bond	x	Great American Insurance Company (5% Retained)	x	Travelers Casualty & Surety Company of America (5% Retained)	x	Western Surety Company (5%)
	Bonding Capacity	-	-	-	-	-	-

*Indicates Point Ranking Category used by the City of Hurricane

January 24, 2022

Arthur LeBaron
City of Hurricane
147 N. 870 W.
Hurricane, UT 84737

RE: Engineer's Recommendation for Award of Bid – Bid Schedule (Contractor)
2800 West Roadway, 100 N to 600 N

Dear Mr. LeBaron,

After reviewing the Bids received on January 20, 2022, for the **2800 West Roadway, 100 N to 600 N** it was determined that **JP Excavating Inc.** was the low responsible, responsive Bidder for the Project per the Information to Bidders. We therefore recommend award of the Project to **JP Excavating Inc.** in the amount of **\$2,649,821.40** as Contractor for the subject Project.

I have attached the Bid Tabulation, an evaluation of the Bidder's Documents, and a Notice of Award, as outlined in the Contract Documents for the Project.

If the City of Hurricane chooses to accept our recommendation, please execute copies of the Notice of Award and we will forward them to **JP Excavating Inc** for acknowledgement.

Please let me know if you have any questions or concerns.

Respectfully,



Payton M. Bullock, P.E.
Project Engineer
Civil Science

NOTICE OF INTENT TO AWARD

TO: JP Excavating, Inc.
4102 S 1440 E Circle
St. George, UT 84790

Project: **2800 West Roadway Construction Project; 100 N to 600 N**

The OWNER has considered the Bid submitted by you for the above described Work in response to its Advertisement for Bids called: **2800 West Roadway Construction Project; 100 N to 600 N**

You are hereby notified that your Bid has been accepted for items in the amount of:

\$ 2,649,821.40 .

You are required to return an acknowledged copy of this Notice of Intent to Award to the OWNER.

Dated this ____ day of _____, 20__.

OWNER: City of Hurricane

By: _____

Title: _____

ACCEPTANCE OF AWARD

Receipt of the above Notice of Intent to Award is hereby acknowledged on

this ____ day of _____, 20__.

By: _____

Title: _____

City of Hurricane
2800 West Roadway, 100 N to 600 N
Bid Opening Date:
Thursday, January 20, 2022 @ 2:00 PM



BID TABULATION

ITEM NO.	ITEM DESCRIPTION	QTY	UNIT	JP Excavating, Inc.		Interstate Rock Products, Inc.		Whitaker Construction Company, Inc.		AVERAGE					
				Unit Cost	Amount	Unit Cost	Amount	Unit Cost	Amount	UNIT COSTS	% BELOW/ABOVE				
1	Mobilization & Demobilization	1	LS	\$	145,000.00	\$	145,000.00	\$	173,500.00	\$	90,300.00	\$	102,200.00	42%	
2	Traffic Control	1	LS	\$	11,000.00	\$	11,000.00	\$	16,650.00	\$	13,700.00	\$	10,337.50	6%	
3	Site Clearing	12	AC	\$	525.00	\$	6,300.00	\$	1,070.00	\$	12,840.00	\$	4,060.00	-63%	
4	Remove Fence	1,745	LF	\$	2.00	\$	3,490.00	\$	2.25	\$	3,926.25	\$	3.50	3%	
5	Remove Asphalt, Sidewalk, Curb & Gutter	1,350	SF	\$	4.00	\$	5,400.00	\$	2.10	\$	2,835.00	\$	1.30	116%	
6	Roadway Excavation (Plan Quantity)	78,970	CY	\$	11.00	\$	868,670.00	\$	13.50	\$	1,066,095.00	\$	20.50	-2%	
7	Untreated Base Course (Plan Quantity)	5,670	CY	\$	32.00	\$	181,440.00	\$	40.70	\$	230,769.00	\$	41.00	13%	
8	Hot Mix Asphalt 1/2 Inch, AC-30	4,006	TON	\$	90.00	\$	360,540.00	\$	88.40	\$	354,130.40	\$	93.00	33%	
9	Voidless Hot Mix Asphalt 1/2 Inch, AC-30	427	TON	\$	95.00	\$	40,565.00	\$	106.00	\$	45,262.00	\$	98.00	27%	
10	Standard Curb & Gutter Type HB30-7 W/ Base	2,020	LF	\$	22.00	\$	44,440.00	\$	21.70	\$	43,834.00	\$	25.00	28%	
11	Standard Corner Pedestrian Ramp W/ Base	3	EA	\$	3,200.00	\$	9,600.00	\$	3,105.00	\$	9,315.00	\$	4,070.00	23%	
12	Standard Concrete Sidewalk W/ Base	1,560	SF	\$	7.90	\$	12,324.00	\$	5.90	\$	9,204.00	\$	9.30	37%	
13	15" HP Drainage Pipe	401	LF	\$	51.00	\$	20,451.00	\$	83.80	\$	33,603.80	\$	88.50	-9%	
14	18" HP Drainage Pipe	1,012	LF	\$	54.00	\$	54,648.00	\$	104.00	\$	105,248.00	\$	115.00	-21%	
15	24" HP Drainage Pipe	617	LF	\$	78.00	\$	48,126.00	\$	110.00	\$	67,870.00	\$	150.00	-8%	
16	30" HP Drainage Pipe	308	LF	\$	112.00	\$	34,496.00	\$	106.00	\$	32,648.00	\$	205.00	6%	
17	18" Culvert Concrete End Section	1	EA	\$	2,100.00	\$	2,100.00	\$	1,660.00	\$	1,660.00	\$	1,520.00	59%	
18	24" Culvert Concrete End Section	8	EA	\$	2,300.00	\$	18,400.00	\$	1,630.00	\$	13,040.00	\$	3,480.00	24%	
19	30" Culvert Concrete End Section	1	EA	\$	2,700.00	\$	2,700.00	\$	1,870.00	\$	1,870.00	\$	2,300.00	57%	
20	3'X3' Concrete Drainage Structure W/ Grate/Inlet	6	EA	\$	3,700.00	\$	22,200.00	\$	3,255.00	\$	19,530.00	\$	4,980.00	24%	
21	3'X2' Concrete Drainage Structure W/ Grate/Inlet	6	EA	\$	3,500.00	\$	21,000.00	\$	3,410.00	\$	20,460.00	\$	5,130.00	16%	
22	4'X4' Concrete Drainage Structure W/ Grate	1	EA	\$	9,100.00	\$	9,100.00	\$	9,285.00	\$	9,285.00	\$	11,000.00	24%	
23	6'X3' Concrete Drainage Structure W/ Double Inlet	1	EA	\$	5,800.00	\$	5,800.00	\$	5,555.00	\$	5,555.00	\$	7,820.00	21%	
24	8' Diameter Standard Manhole	1	EA	\$	8,700.00	\$	8,700.00	\$	8,805.00	\$	8,805.00	\$	13,400.00	13%	
25	8' Standard Cross Gutter W/ Base	1	EA	\$	6,300.00	\$	6,300.00	\$	6,890.00	\$	6,890.00	\$	8,680.00	15%	
26	6" Loose Placed Riprap	1,070	CY	\$	42.00	\$	44,940.00	\$	56.40	\$	60,348.00	\$	89.50	-11%	
27	12" Loose Placed Riprap	30	CY	\$	42.00	\$	1,260.00	\$	56.40	\$	1,692.00	\$	110.00	-19%	
28	8" PVC C-900 Waterline	3,373	LF	\$	65.00	\$	219,245.00	\$	54.10	\$	182,479.30	\$	70.00	37%	
29	8" Waterline Connection	2	EA	\$	5,300.00	\$	10,600.00	\$	6,540.00	\$	13,080.00	\$	3,010.00	43%	
30	12" Waterline Connection	1	EA	\$	12,000.00	\$	12,000.00	\$	15,850.00	\$	15,850.00	\$	16,800.00	8%	
31	2" Standard Air Vac W/ Blowoff	1	LS	\$	7,000.00	\$	7,000.00	\$	6,505.00	\$	6,505.00	\$	7,020.00	36%	
32	6" Fire Hydrant Assembly	4	EA	\$	6,800.00	\$	27,200.00	\$	6,930.00	\$	27,720.00	\$	9,700.00	16%	
33	2'x6" C-900 Stub W/ Cap	1	EA	\$	2,500.00	\$	2,500.00	\$	1,005.00	\$	1,005.00	\$	330.00	161%	
34	8" SDR35 PVC Gravity Sewer Line	195	LF	\$	71.00	\$	13,845.00	\$	88.10	\$	17,179.50	\$	115.00	4%	
35	5' Diameter Standard Sewer Manhole	1	EA	\$	6,800.00	\$	6,800.00	\$	5,840.00	\$	5,840.00	\$	8,390.00	29%	
36	8" Existing Sewer Manhole Tie-In	1	EA	\$	2,700.00	\$	2,700.00	\$	2,910.00	\$	2,910.00	\$	2,140.00	39%	
37	JUC Trench & 1D Conduit (City Furnished)	3,290	LF	\$	21.00	\$	69,090.00	\$	21.60	\$	71,064.00	\$	21.00	32%	
38	(6) 2" Conduits W/ Detectable Pull Tape	340	LF	\$	73.00	\$	24,820.00	\$	14.80	\$	5,032.00	\$	74.00	80%	
39	2'x3' Polymer Concrete Junction Box	6	EA	\$	2,400.00	\$	14,400.00	\$	2,505.00	\$	15,030.00	\$	2,450.00	31%	
40	Pavement Marking Paint	26,530	LF	\$	0.38	\$	10,081.40	\$	0.37	\$	9,816.10	\$	0.35	38%	
41	Pavement Message Paint	16	EA	\$	70.00	\$	1,120.00	\$	72.80	\$	1,164.80	\$	68.50	33%	
42	Sign Panel	68	SF	\$	40.00	\$	2,720.00	\$	37.30	\$	2,536.40	\$	34.00	44%	
43	2" Sign Sign Post	6	EA	\$	85.00	\$	510.00	\$	112.00	\$	672.00	\$	85.50	20%	
44	2 ½" Square Sign Anchor	6	EA	\$	50.00	\$	300.00	\$	46.60	\$	279.60	\$	45.50	41%	
45	8" Purple C-900 PVC Irrigation Line	3,370	LF	\$	70.00	\$	235,900.00	\$	61.00	\$	205,570.00	\$	64.00	44%	
TOTAL					TOTAL \$	2,649,821.40		TOTAL \$	2,940,599.15		TOTAL \$	3,719,547.50	\$	3,103,322.68	-15%
Represents Bid Error & Correction															

8-1-2: WATER BOARD:

A. Created: There is hereby created and established a water board (hereafter referred to as "board"), which shall function in an advisory capacity to the city council on all issues with respect to the supply of and demand for culinary and irrigation water within the city limits. Specifically, the board shall be responsible for reviewing the city's water supply and distribution system in view of current and projected growth, investigating additional sources of water and the cost of acquisition and development thereof, and making recommendations to the city council with respect to acquisition and development of additional sources of water or water facilities, and review of any other matter relating to the supply of water as may be requested from time to time by the city council. (1998 Code § 14-113-1)

B. Organization; Term; Appointment; Vacancies:

1. Organization; Term; Appointment: The board shall consist of nine (9) members, one of whom shall be an elected official from the city council, one of whom shall be the water superintendent, one of whom shall be the street superintendent, and one of whom shall be an appointed member of city staff. The remaining members shall be appointed by the mayor with the advice and consent of a majority of the remaining members of the city council at any meeting at which a quorum is present. The first members of the board, except for said elected official and city staff, shall be appointed to serve terms of four (4), three (3), two (2) and one years, respectively, beginning on the first Monday of February 1994. The term of the elected official and city staff shall coincide with the term of elected office or employment. Upon the expiration of the term of any board member, a successor shall be appointed in the same manner for a term of four (4) years, unless said member shall be removed from office as provided herein. Any member may be reappointed by the mayor with the consent and approval of the city council. (Ord. 2007-8, 4-5-2007)

2. Vacancies: Vacancies on the board shall be promptly filled by the mayor with the consent and approval of the city council for the unexpired term. No vacancy on the board shall impair the right of the remaining members to exercise all the powers of the board. Except for the initial board, and except for vacancies, any appointment or reappointment to the board shall be done in the January preceding the expiration of the term of the member being replaced or reappointed. (1998 Code § 14-113-2)

C. Qualifications Of Members: To be appointed to the board, a person must be a resident of the city and shall be eighteen (18) years or older. Each member shall serve the appointed term and may be removed from office prior to the expiration of his appointed term if such removal is deemed to be in the best interest of the city, as determined by the mayor with the consent of the city council. (1998 Code § 14-113-3)

D. Meetings: The board shall meet monthly at such time and place as determined by said board. All board meetings shall be open to the public, but inasmuch as the board shall have no authority to make any decision or take any action except as authorized by the city council, the board shall not be required to comply with the requirements of the Utah open meeting law. The board shall by majority vote elect from among its members a chairman who shall preside over the meetings of the board, and a vice chairman who shall act for the chairman during his absence. Election of officers of the board shall be held at the first regular meeting at which all members are present following the appointment of a new member for a full term, but not later than the fourth meeting following the appointment. The board shall adopt rules for the conduct of its meetings. (1998 Code § 14-113-4)

E. Authority Of Board: The water board created hereby shall operate solely as an advisory board to the city council and shall have no power or authority to take any action or make any decision which would, or which may have the effect of creating a liability for the city. (1998 Code § 14-113-5)

WATER BOARD ORGANIZATION

Consist of 9 members

- 1 elected official from the city
- Water Superintendent
- Street superintendent
- An appointed member of the city staff

The remaining members shall be appointed by the mayor with the advice and consent of the of the remaining members of the City Council.

Current members from city staff – 4 total

David Hirschi

Ken Richins

Stephen Nelson

Mike Vercimak

Citizen Members – 5 total

John Slack

Kelby Iverson

Mac J Hall

Troy Gubler

Lea Thompson – replacing Dr Last, we want to thank Dr Last for the 12 years of service on the Water Board he will be missed.

A RESOLUTION OF THE CITY COUNCIL OF HURRICANE, UTAH, APPROVING
THE WATER BOARD TERMS.

WHEREAS, Hurricane City has adopted Hurricane City Code 8-1-2: Water Board; and

WHEREAS, Hurricane City code requires the City Council to appoint a Water Board “consisting of nine members”, one of whom shall be an elected official from the city council, one of whom shall be the water superintendent, one of whom shall be the street superintendent, and one of whom shall be an appointed member of city staff. The remaining members shall be appointed by the mayor with the advice and consent of a majority of the remaining members of the city council at any meeting at which a quorum is present. The term of the elected official and city staff shall coincide with the term of elected office or employment; and

WHEREAS, the terms “of Water Board members shall begin on the first Monday in February of each year”; and

WHEREAS, the Mayor, with advice and consent of the City Council, may reappoint current Water Board member to service for successive terms.

BE IT HEREBY RESOLVED by the Hurricane City Council that the following table shall be adopted as the terms of each Water Board member:

Water Board Terms:

Name	Term ends date
John Slack	<i>February 6, 2023</i>
Kelby Iverson	<i>February 5, 2024</i>
Troy Gubler	<i>February 5, 2024</i>
Mac J Hall	<i>February 5, 2026</i>
Lea Thompson	<i>February 5, 2026</i>
David Hirschi	Council
Ken Richins	Staff
Stephen Nelson	Staff
Mike Vercimak	Staff

BE IT HEREBY RESOLVED that Lea Thompson shall be appointed to fill the Water Board terms that expire on February 2, 2026.

BE IT HEREBY RESOLVED that the City Council express their gratitude for the service Dr. Greg Last for his years of service render on the Water Board on behalf of the citizens of Hurricane City.

PASSED AND APPROVED the 3rd day of February 2022.

Nanette Billings, Mayor

Attest:

Cindy Beteag, City Recorder

Cindy Beteag

From: Stephen Nelson
Sent: Friday, January 28, 2022 3:55 PM
To: Cindy Beteag
Subject: Fwd: Reimbursement Agreement

Can we put this on the agenda?

Get [Outlook for iOS](#)

From: Kevin Kennedy <kevin140@yahoo.com>
Sent: Friday, January 28, 2022 2:49:27 PM
To: Arthur Lebaron <arthur@cityofhurricane.com>
Cc: Stephen Nelson <stephen@cityofhurricane.com>
Subject: Re: Reimbursement Agreement

Looks great. I agree with conclusion. Thanks for your work on this. Let me know if we get on agenda with city council.
Thanks
Kevin Kennedy

On Jan 28, 2022, at 2:42 PM, Arthur Lebaron <arthur@cityofhurricane.com> wrote:

Kevin,

After much deliberation and review, Stephen and I have produced what we feel is consistent and reasonable for reimbursement. Here is a summary:

1. The impact fee for lodging is \$1,609 per unit. 46 units x \$1,609 = \$74,014.
2. Your reported cost of land and improvements = \$93,095.15
3. Frontage improvements (asphalt widening, curb & gutter, sidewalk) and land for widening along master planned streets is generally a cost that is not reimbursable. However, in this case we reasoned that since the roadway was not completely necessary for you to obtain a 2nd access, but still an obligation as a condition for developing, we are recommending that the City reimburse you for the land and the pavement costs, which add up to **\$69,624.45**.
4. The remaining impact fee would be \$4,389.55.

We would propose that a reimbursement agreement be drafted to reimburse you for **\$69,624.45** and be placed before the City Council for approval as soon as possible. Please let me know how you would like to proceed.

Sincerely,

Arthur LeBaron, PE, PLS, CFM
City Engineer
147 North 870 West
Hurricane, UT 84737
435-635-2811 x113

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement is made and entered into on February 3, 2022 by and between the Hurricane City Corporation, a Utah municipal corporation, hereinafter referred to as "City", and _____, a Utah Corporation, 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 Zion Tiny RVs.
- B. 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 100 S directly south of the development.
2. Location of 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 \$93,095.15 provided by engineer's estimate shown in exhibit "B".
4. City agrees to pay Developer for eligible reimbursable costs in the following manner:
 - a. **\$69,624.45** in road impact fee vouchers to be redeemed with building permits for new construction within the Zion's Tiny RV development.
5. Maximum reimbursement under this agreement shall be **\$69,624.45**.
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 City to Developer. 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,

By: _____

Notary:

STATE OF UTAH)
 :ss
COUNTY OF UTAH)

On the ____ day of _____, 2020, personally appeared before me _____, who being by me duly sworn, did say that he is the _____ of _____ 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
Residing at:

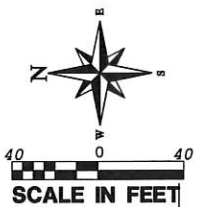
Exhibit A

Exhibit B

Improvement	Improvement Calculations	Total
5140 W 8" to 12"	$(\$67.90 - \$26.20) \times 2,770 =$	\$115,509
Dixie Springs Dr 10" to 12"	$(\$67.90 - \$55.70) \times 3,200 =$	\$39,040
Total		\$154,549

SITE PLAN FOR:
ZION TINY RVs

LOCATED AT 1481 WEST STATE STREET
LOCATED IN SECTION 33, T14S, R13W, SLB.4M.
HURRICANE, WASHINGTON COUNTY, UTAH



REVISIONS		
NO	DESCRIPTION	DATE BY

PROVALUE ENGINEERING, INC.
Engineers - Land Surveyors - Land Planners
20 South 850 West, Suite 1
Hurricane City, Utah 84431
Phone: (435) 886-5581

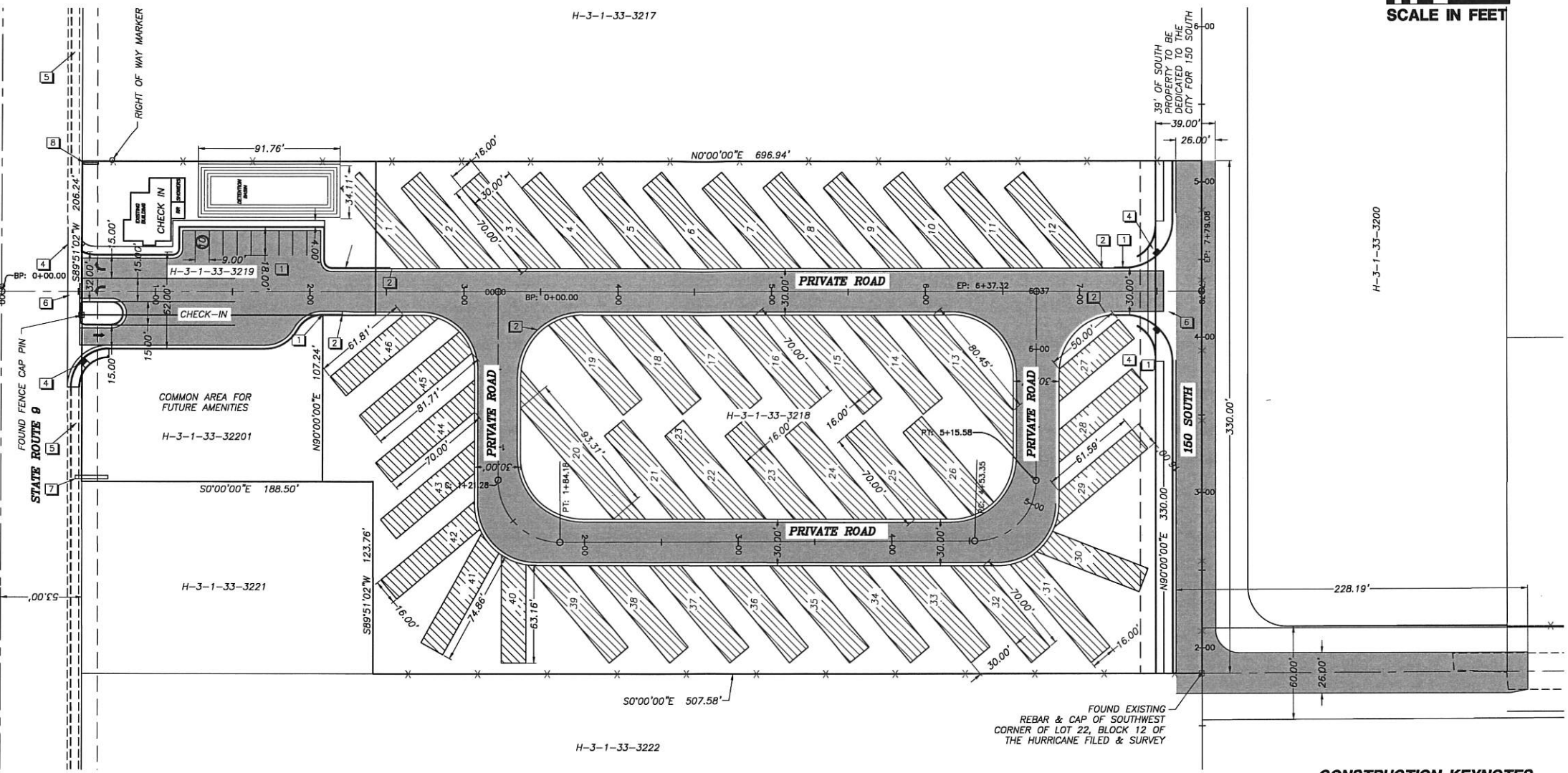


SITE PLAN FOR:
ZION TINY RVs
1481 WEST STATE STREET
LOCATED IN SECTION 33, T14S, R13W, SLB.4M.
HURRICANE, WASHINGTON COUNTY, UTAH

DATE: 10/28/2020
SCALE: 1"=40'

JOB NO.
507-001

SHEET NO.
C2



LEGEND

—	PROPERTY LINE
—	ADJACENT PROPERTY LINE
-X-	EXISTING FENCE
- - -	EASEMENT
- - -	EXISTING CURB AND SIDEWALK
■	PROPOSED PAVEMENT

LEGAL DESCRIPTION
COMMENCING AT THE SOUTHWEST CORNER OF LOT 22, BLOCK 12 OF THE HURRICANE FIELD AND SURVEY; THENCE N 30.00' FT TO THE POINT OF BEGINNING; THENCE N 507.58' FT; THENCE N89°51'02"E 123.76' FT; THENCE N 188.50' FT; THENCE N89°51'02"E 206.24' FT; THENCE S 696.94' FT; THENCE W 330.00' FT TO THE POINT OF BEGINNING.
TOTAL SQUARE FEET 217,800
TOTAL ACREAGE: 5 ACRES

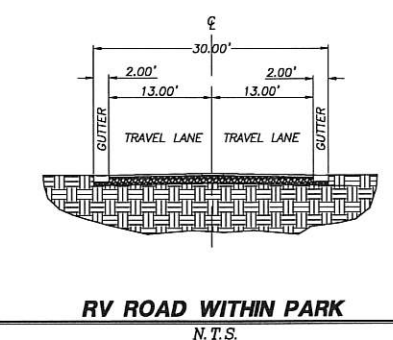
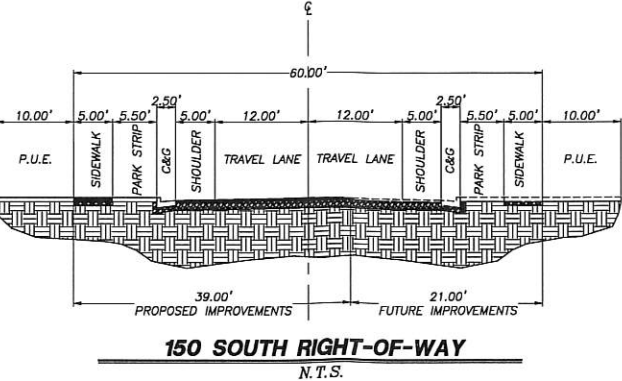
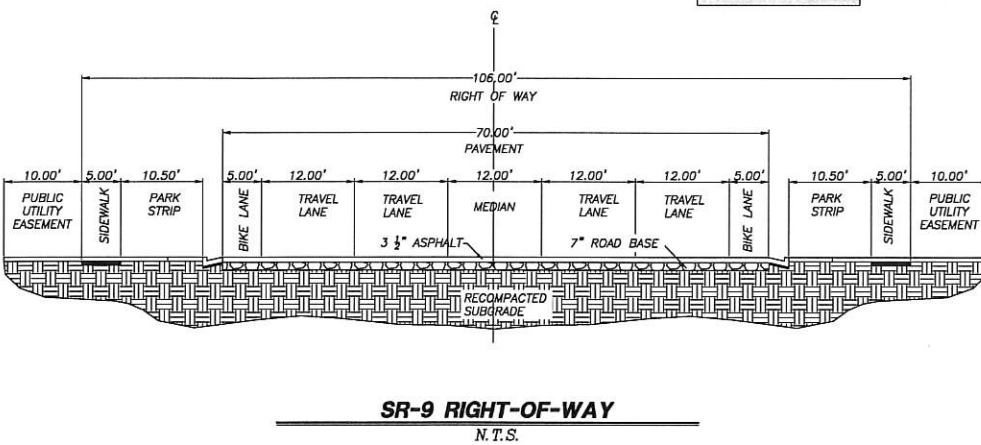
- CONSTRUCTION KEYNOTES**
1. INSTALL NEW CURB - TYPE A (DETAIL D/SHEET D1)
 2. INSTALL NEW CURB - TYPE B (DETAIL D/SHEET D1)
 3. INSTALL 5.5' PARKING STRIP
 4. INSTALL NEW ADA RAMP
 5. EXISTING SIDEWALK
 6. INSTALL 8" WATERWAY
 7. INSTALL LARGE BUSINESS SIGN
 8. INSTALL SMALLER BUSINESS SIGN PER CITY APPROVAL

TOTAL GROSS ACREAGE: 217,800 SQ.FT
SQ.FT OF STREET R-O-W: 42,004.57 SQ.FT.
NUMBER OF PARKING SPACES: 56

NARRATIVE
RV 70' X 30' UNITS = 46
HIGHWAY COMMERCIAL = 189,812 SQ. FT. (21 UNITS)
PARKING STALLS = 10 STALLS

Keep spot below.
Call 811 before you dig.

NOTICE!
THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION, PROTECTION, AND RESTORATION OF ALL BURIED OR ABOVE-GROUND UTILITIES, SHOWN OR NOT SHOWN ON THE PLANS.



SEWER & WATER PLAN FOR:
ZION TINY RVs

LOCATED AT 1481 WEST STATE STREET
LOCATED IN SECTION 33, T14S, R13W, S.L.B.&M.
HURRICANE, WASHINGTON COUNTY, UTAH



LEGEND

- PROPERTY LINE
- ADJACENT PROPERTY LINE
- PUBLIC UTILITY EASEMENT
- EXISTING SIDEWALK AND CURB
- EXISTING WATER LINE
- PROPOSED WATER LINE (SIZE SHOWN)
- EXISTING SEWER
- PROPOSED SEWER (SIZE SHOWN)
- EXISTING FENCE
- WATER METER
- PROPOSED FIRE HYDRANT
- SEWER CLEANOUT
- SEWER MANHOLE
- NEW WATER VALVE (SIZE SHOWN)
- PROPOSED PAVEMENT

CONSTRUCTION KEYNOTES

SEWER (1-10):

- EXISTING SEWER MANHOLE
- INSTALL NEW SEWER MANHOLE (SIZE SHOWN)
- EXISTING 8" SEWER MAIN
- INSTALL NEW 8" SEWER MAIN
- NOT USED
- CONNECT SEWER LINE TO EXISTING 8" STUB
- EXISTING 4" SEWER CLEANOUT AND SERVICE LATERAL

WATER (11-20):

- EXISTING WATER METER FOR 3/4" WATER SERVICE LATERAL & METER
- EXISTING 8" WATER LINE
- INSTALL NEW C-900 WATER LINE (SIZE SHOWN)
- INSTALL NEW FIRE HYDRANT PER HURRICANE CITY STANDARDS
- INSTALL 3/4" ANTI-FREEZE WATER CONNECTION
- INSTALL NEW 6" GATE VALVE
- INSTALL 3-WAY 8" VALVE
- STUB WATER LINE FOR FUTURE
- CONNECT 8" WATER LINE TO EXISTING 8" WATERLINE
- INSTALL NEW WATER METER FOR 3/4" WATER SERVICE LATERAL & METER

ASH CREEK SEWER DISTRICT NOTES:

- CONTRACTOR IS RESPONSIBLE FOR ANY DAMAGE TO SEWER LINES AND LATERALS. IF DAMAGED, CALL ASH CREEK SPECIAL SERVICE DISTRICT AT 435-365-2348 AND GARY WILCOX AT 435-680-3565
- BASEMENTS WILL HAVE TO PUMP SEWER, IF SEWER MAIN IS NOT DEEP ENOUGH TO DRAIN GRAVITY.
- SEWER TO MEET ASH CREEK SPECIAL SERVICE DISTRICT CONSTRUCTION STANDARD

CITY WATER NOTES:

- ALL VALVING MUST BE THREE-WAY.
- 12" MUST BE BUTTERFLY VALVES.
- 6" & 8" MUST BE GATE VALVES.
- ANY QUESTIONS CONCERNING WATER LINE INFRASTRUCTURE CONTACT DALLAN WITH HURRICANE CITY 435-632-5843

HURRICANE VALLEY FIRE DISTRICT NOTES:

- PLACEMENT OF FIRE HYDRANTS MUST MEET IFC-2012
- BURNING OF CONSTRUCTION MATERIAL OR DEBRIS IS STRICTLY PROHIBITED.
- CONSTRUCTION OF ROADS MUST BE COMPLETE WITH ALL WEATHER SURFACE BEFORE HOMES ARE PERMITTED TO BE BUILT.
- HYDRANT SPACING IS ACCEPTABLE AS LONG AS ALL DRIVEWAYS FACE 920 SOUTH.

REVISIONS		DATE	BY
NO	DESCRIPTION		

PROVALUE ENGINEERING, INC.
Engineers - Land Surveyors - Land Planners
20 South 850 West, Suite 1
Hurricane City, Utah 84737
Phone: (435) 646-4507



SEWER & WATER PLAN FOR:
ZION TINY RVs
LOCATED AT 1481 WEST STATE STREET
LOCATED IN SECTION 33, T14S, R13W, S.L.B.&M.
HURRICANE, WASHINGTON COUNTY, UTAH

DATE: 10/28/2020
SCALE: 1"=40'

JOB NO.
507-001

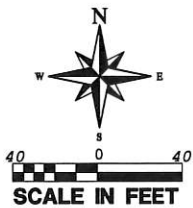
SHEET NO.
C3



NOTICE!
THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION, PROTECTION, AND RESTORATION OF ALL BURIED OR ABOVE-GROUND UTILITIES, SHOWN OR NOT SHOWN ON THE PLANS.

ELECTRICAL, GAS & COMMUNICATION PLAN FOR:
ZION TINY RVs

LOCATED AT 1481 WEST STATE STREET
LOCATED IN SECTION 33, T14S, R13W, S.L.B.&M.
HURRICANE, WASHINGTON COUNTY, UTAH



LEGEND

---	PROPERTY LINE
---	ADJACENT PROPERTY LINE
---	PUBLIC UTILITY EASEMENT
-X-	EXISTING FENCE
- - - - -	EXISTING SIDEWALK AND CURB
---OHP---OHP---OHP---	EXISTING OVERHEAD POWER
---P---P---P---	PROPOSED POWER
---	EXISTING GAS LINE
---	EXISTING COMMUNICATION LINE
---	PROPOSED PAVEMENT

CONSTRUCTION KEYNOTES

POWER (1-20):

- (OPTIONAL SERVICE UP-GRADE FROM OVERHEAD TO UNDERGROUND) INSTALL 2" PVC WITH 4/0 TRIPLEX AND CHANGE OUT METER BASE.
- EXISTING OVERHEAD POWER SERVICE.
- INSTALL 2 1/2" PVC WITH 1/0 15kv
- INSTALL RV POWER 50 AMP CONNECTION
- INSTALL 3" PVC WITH 500 MCM TRIPLEX
- INSTALL 4" PVC WITH 4/0 15kv THREE PHASE.
- INSTALL 4" FOR FUTURE.
- INSTALL THREE PHASE VAULT.
- INSTALL 50kva TRANSFORMER.
- INSTALL 400-AMP 120/208 VOLT METER PEDESTAL WITH LEVER BY-PASS.
- INSTALL 2 1/2" PVC FOR FUTURE.
- EXISTING UTILITY POLE

GAS (21-30):

- EXISTING GAS LINE
- EXISTING GAS SERVICE LINE

COMMUNICATION (31-40):

- EXISTING COMMUNICATION LINE
- EXISTING COMMUNICATION SERVICE LINE

POWER NOTES FOR ZION TINY RV:

- DEVELOPER RESPONSIBLE FOR ALL COSTS, UNLESS OTHERWISE STATED ON PRINT.
- ONLY A CONTRACTOR PRE-APPROVED BY HURRICANE POWER DEPARTMENT CAN WORK ON AND INSTALL ANY PART OF THE HIGH-VOLTAGE ELECTRICAL SYSTEM.
- PRE-APPROVED CONTRACTOR TO GO OVER PRINTS WITH HURRICANE POWER BEFORE BEGINNING WORK. CONTACT HURRICANE POWER FOR AN APPOINTMENT. (435) 635-5536
- LINES ARE FOR SCHEMATIC PURPOSES ONLY. ALL EQUIPMENT AND PLACEMENT OF, TO BE TO HURRICANE POWER SPECS.
- EASEMENTS TO BE SIGNED OVER TO HURRICANE CITY. IT IS THE DEVELOPER'S RESPONSIBILITY TO MAKE SURE EASEMENTS ARE OBTAINED FROM ANY PROPERTIES THAT MAY BE AFFECTED.
- NO RETAINING WALLS TO RUN INTO UTILITY EASEMENTS.
- ALL CONDUITS TO BE FENCED. ANY EMPTY STUB OUTS TO HAVE TEMPORARY PLUG INSTALLED.
- ANY CHANGES TO THE SIGNED SET OF PLANS MUST BE APPROVED BY HURRICANE POWER.
- THE ENTIRE JUC TRENCH MUST BE BACKFILLED WITH 1" MINUS FROM THE BOTTOM TO THE TOP OF THE TRENCH. ALSO AROUND ELECTRICAL BOXES AND EQUIPMENT.
- IMPACT FEES TO BE COLLECTED BY BUILDING DEPARTMENT. IMPACT FEES TO BE CHARGED BY SERVICE MAIN BREAKER SIZE.
- METERS SHALL NOT BE LOCATED IN FENCE AREAS. METERS SHALL BE KEPT ACCESSIBLE AT ALL TIMES.
- DEVELOPER WILL BE BILLED FOR ALL PRIMARY ELBOW TERMINATIONS. CHARGE WILL BE \$99.00 PER ELBOW.
- DEVELOPER WILL BE BILLED A \$2,447.00 THREE PHASE RISER FEE.
- ALL POWER TO EACH RV SPACE WILL FEED FROM ONE OF THE 400-AMP METER BASES AND WILL BE DESIGNED AND INSTALLED BY THE ELECTRICAL CONTRACTOR. ALSO NOTE THAT EVERYTHING ON THE LOAD SIDE OF THE METER BASE WILL BE THE OWNER'S RESPONSIBILITY TO MAINTAIN.

CENTURYLINK PHONE NOTES:

- DEVELOPER TO PROVIDE ALL TRENCH, BACKFILL, AND ROAD CROSSINGS. CENTURYLINK SUB CONTRACTOR (NEILS FUGAL) WILL PLACE CONDUIT IN TRENCH. CALL 435-632-6553 15 DAYS PRIOR TO REQUIRING CONDUIT TO SCHEDULE DELIVERY.
- ANY BREAKS/BLOCKAGES IN CONDUIT RESULTING FROM IMPROPER BACKFILL OR OTHER CONSTRUCTION/UTILITY PLACEMENT ARE THE DEVELOPER RESPONSIBILITY TO REPAIR AND MAY RESULT IN DELAY OF SERVICE.
- CONTACT CENTURYLINK ENGINEER AT 435-884-7920 WITH ANY QUESTIONS OR CHANGES TO JUC PLANS.
- ANY CENTURYLINK FACILITY RELOCATIONS ASSOCIATED WITH PROJECT WILL BE BILLABLE 100% TO OWNER/DEVELOPER AND MUST BE SCHEDULED A MINIMUM OF 45 DAYS IN ADVANCE.

TDS BROADBAND NOTES:

- THE DEVELOPER WILL PROVIDE ALL REQUIRED TRENCH WITHIN THE PROJECT. ANY MODIFICATIONS ALONG THE PERIPHERY TO FEED THIS PROJECT WILL BE BILLED TO THE DEVELOPER.
- TDS WILL PROVIDE CONDUITS. PLEASE CONTACT DAVID AT 435-703-8932 AT LEAST 3 WEEKS PRIOR TO OPENING TRENCH TO SCHEDULE WORK.
- ANY QUESTIONS REGARDING CONSTRUCTION OF SERVICE SHOULD BE DIRECTED TO DAVID TRAUTNVEIN WITH TDS AT 435-703-8932
- RELOCATION OF NEW OR EXISTING TDS FACILITIES WILL BE BILLABLE TO THE DEVELOPER/CONTRACTOR
- ANY MODIFICATIONS AFTER CONDUIT/CABLE PLACEMENT WILL BE BILLABLE TO THE DEVELOPER/CONTRACTOR AS WILL DAMAGES CAUSED BY OTHER CONTRACTORS WORKING FOR THE DEVELOPER ON THIS PROJECT.



NOTICE!
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ELECTRICAL, GAS & COMMUNICATION PLAN FOR:

ZION TINY RVs

1481 WEST STATE STREET
LOCATED IN SECTION 33, T14S, R13W, S.L.B.&M.
HURRICANE, WASHINGTON COUNTY, UTAH

DATE: 10/28/2010
SCALE: 1"=40'

JOB NO.
501-001

SHEET NO.
C4

DESIGNED BY: J. BRADLEY RASMUSSEN

CHECKED BY: J. BRADLEY RASMUSSEN

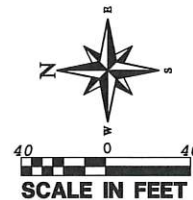
PROVALUE ENGINEERING, INC.
Engineers - Land Surveyors - Land Planners
20 South 800 West, Suite 1
Hurricane City, Utah 84701
Phone: (435) 660-6061



UTILITY PLAN

GRADING PLAN FOR: ZION TINY RVs

LOCATED AT 1481 WEST STATE STREET
LOCATED IN SECTION 33, T14S, R13W, S.L.B.#4
HURRICANE, WASHINGTON COUNTY, UTAH



LEGEND

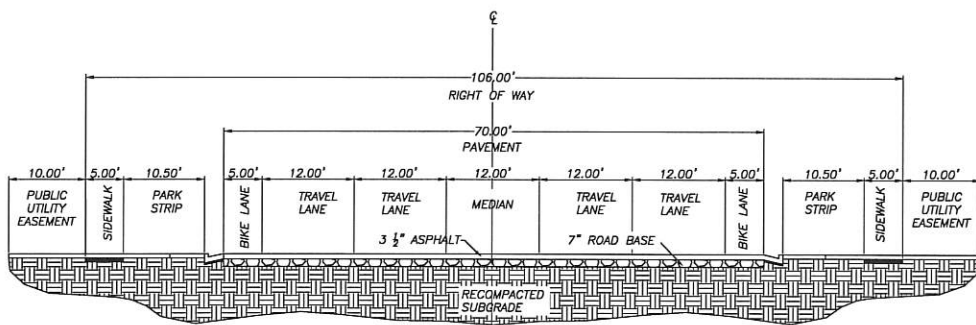
- EXISTING 10' CONTOUR
- EXISTING 2' CONTOUR
- PROPOSED 5' CONTOUR (MAJOR)
- PROPOSED 1' CONTOUR (MINOR)
- PROPOSED STORM DRAIN LINE (SIZE SHOWN)
- 3X3 INLET BOX
- SINGLE CURB INLET
- METAL END SECTION (M.E.S.) 15"
- PHASE LINE
- PROPOSED PAVEMENT

GRADING KEYNOTES

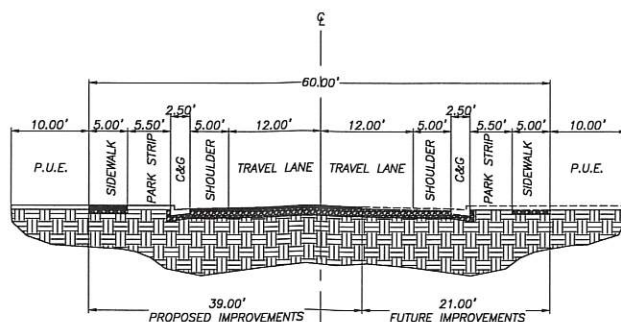
- INSTALL NEW ADA RAMP
- INSTALL NEW 3X3 INLET BOX
- INSTALL NEW CURB SINGLE INLET BOX
- INSTALL NEW STORM PIPE (SIZE SHOWN)
- INSTALL NEW TYPE A CURB (SEE DETAIL D SHEET D1)
- INSTALL NEW TYPE B CURB (SEE DETAIL D SHEET D1)
- MATCH ANY REPLACED PAVEMENT TO MATCH EXISTING
- INSTALL NEW SIDEWALK SCUPPER TO DRAIN DETENTION POND
- EXISTING CURB AND SIDEWALK
- INSTALL NEW METAL END SECTION (SIZE SHOWN)
- INSTALL RIP RAP (SIZE D50=24")
- ADJUST WEST WALL OF EXISTING RETAINING WALL TO RETAIN SOIL AGAINST NEW SIDEWALK
- INSTALL NEW INLET BOX WITH A 4" ORIFICE OUTLET
- INSTALL NEW DETENTION POND (SEE DETAIL SHEET)
- INSTALL 18" STORM PIPE TO MAINTAIN EXISTING DITCH FLOW
- TAPER NEW PAVEMENT TO MATCH EXISTING PAVEMENT
- INSTALL 8' WATERWAY

Cut/Fill Summary

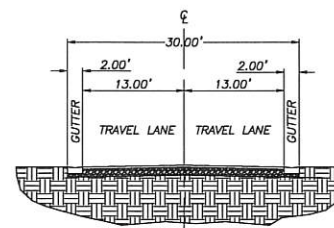
Name	Cut Factor	Fill Factor	2d Area	Cut	Fill	Net
EG VS FG	1.000	1.000	218815 Sq. Ft.	6993.99 Cu. Yd.	4248.13 Cu. Yd.	2745.86 Cu. Yd.<Cut>
Totals			218815 Sq. Ft.	6993.99 Cu. Yd.	4248.13 Cu. Yd.	2745.86 Cu. Yd.<Cut>



SR-9 RIGHT-OF-WAY
N.T.S.



150 SOUTH RIGHT-OF-WAY
N.T.S.



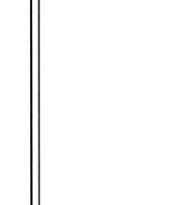
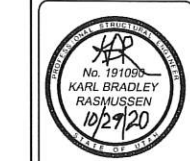
PRIVATE DRIVE
N.T.S.



NOTICE!
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NO.	DESCRIPTION	DATE	BY

PROVALUE ENGINEERING, INC.
Engineers - Land Surveyors - Land Planners
20 South 850 West, Suite 1
Hurricane, Utah 84757
Phone: (435) 646-8807



GRADING PLAN FOR:
ZION TINY RVs
1481 WEST STATE STREET
LOCATED IN SECTION 33, T14S, R13W, S.L.B.#4
HURRICANE, WASHINGTON COUNTY, UTAH

DATE: 10/08/2020
SCALE: 1"=40'

JOB NO.
5071-001

SHEET NO.
C5

LANDSCAPE PLAN FOR:
ZION TINY RVs

LOCATED AT 1481 WEST STATE STREET
LOCATED IN SECTION 33, T14S, R13W, S14B.4M.
HURRICANE, WASHINGTON COUNTY, UTAH

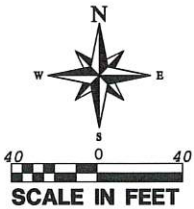
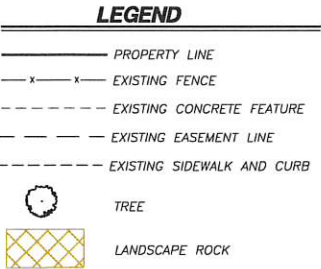
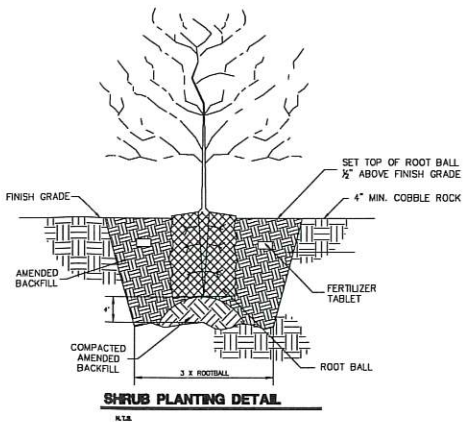
LANDSCAPE NOTES

- 1: VERIFY LOCATION OF ALL UTILITIES PRIOR TO CONSTRUCTION.
- 2: ALL PLANT MATERIAL SHALL BE HEALTHY STOCK, FREE FROM DISEASE AND DISFIGUREMENT, HAVING FULL NATURAL SHAPES.
- 3: PLANT MATERIAL SHALL BE THE SAME SPECIES AND SIZE (OR LARGER) AS DESCRIBED IN THE PLANT SCHEDULE.
- 4: ALL TREES AND SHRUBS TO BE PLANTED ACCORDING TO DETAILS.
- 5: THE IRRIGATION CONTRACTOR SHALL PROVIDE AN IRRIGATION SYSTEM SHOP DRAWING SUBMITTAL FOR REVIEW AND APPROVAL BY THE LANDSCAPE ARCHITECT, AND HURRICANE CITY PERSONNEL BEFORE INSTALLATION COMMENCES. THIS DRAWING SHALL ILLUSTRATE THE PIPING CIRCUIT DRIP SYSTEM LAYOUT, AND VALVING FROM THE EXISTING IRRIG. POINT OF CONNECTION. THIS SHOP DRAWING MUST BE PREPARED BY A QUALIFIED PERSON.
- 6: ALL LANDSCAPE AREAS TO BE IRRIGATED WITH AN AUTOMATED IRRIGATION SYSTEM THAT MEETS CITY CODES, TREES AND SHRUBS TO BE IRRIGATED WITH A DRIP SYSTEM.
- 7: PROVIDE TOPSOIL FOR ALL TREE AREAS AND SHRUB AREAS AS NEEDED TO PROVIDE PROPER GROWTH CONDITIONS FOR THE PLANT MATERIALS.

PLANT LEGEND:

	TYPE	QUANTITY	SIZE
	NATIVE TREE TO BE SELECTED BY LANDSCAPER	45	2" CAL MIN
	PALM TREE TO BE SELECTED BY LANDSCAPER	5	6" CAL MIN
	NATIVE SHRUB TO BE SELECTED BY LANDSCAPER	22	5 GAL
	NATIVE SHRUB TO BE SELECTED BY LANDSCAPER	51	1 GAL

NOTE: LANDSCAPE CONTRACTOR TO INSTALL WATER-WISE IRRIGATION SYSTEM TO ADEQUATELY AND SUSTAINABLE CARE FOR PLANT MATERIAL

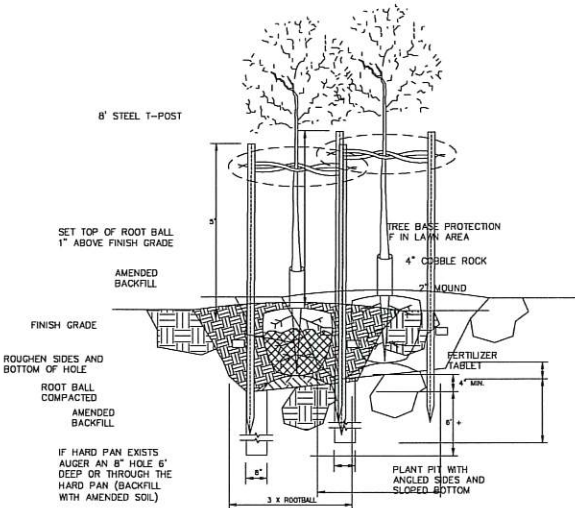
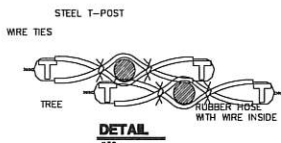


HURRICANE CITY PARK NOTES:

ANY LANDSCAPING INCLUDING STREET LANDSCAPE STRIPS AND/OR MEDIANS AND ASSOCIATED IRRIGATION, SHALL BE INSTALLED BY DEVELOPER/OWNER(S) AND IS NOT THE RESPONSIBILITY OF HURRICANE CITY PARKS DEPARTMENT TO MAINTAIN.

LANDSCAPE AREA

DESCRIPTION	AREA
TOTAL BUILDING FOOTPRINT	1,033 SQ. FT.
HARDSCAPE AREA	107,069.6 SQ. FT.
LANDSCAPE AREA	87,643.6 SQ.FT.



DECIDUOUS TREE PLANTING DETAIL



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LANDSCAPE PLAN FOR:

ZION TINY RVs

LOCATED AT 1481 WEST STATE STREET
LOCATED IN SECTION 33, T14S, R13W, S14B.4M.
HURRICANE, WASHINGTON COUNTY, UTAH

DATE: 10/28/2020
SCALE: 1"=40'

JOB NO:
807-001

SHEET NO:

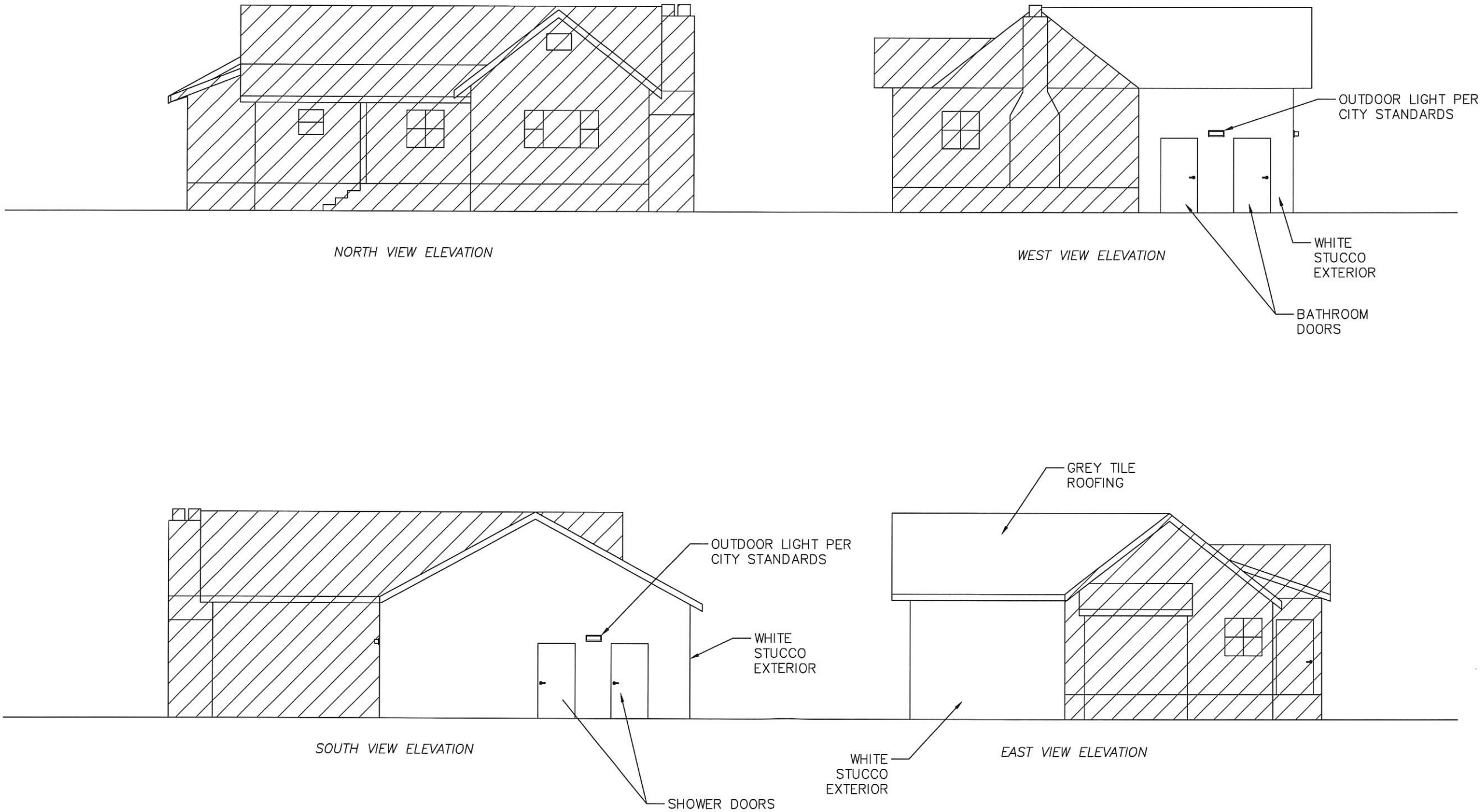
C6

EXISTING BUILDING ADDITION ELEVATIONS FOR:
ZION TINY RVs

LOCATED AT 1481 WEST STATE STREET
LOCATED IN SECTION 33, T14S, R13W, S1B.M.
HURRICANE, WASHINGTON COUNTY, UTAH

LEGEND

EXISTING BUILDING



REVISIONS

NO	DESCRIPTION	DATE	BY

PROVALUE ENGINEERING, INC.
Engineers - Land Surveyors - Land Planners
20 South 800 West, Suite 1
Hurricane City, Utah 84737
Phone: (435) 846-0001



EXISTING BUILDING ADDITION ELEVATIONS FOR:
ZION TINY RVs
1481 WEST STATE STREET
LOCATED IN SECTION 33, T14S, R13W, S1B.M.
HURRICANE, WASHINGTON COUNTY, UTAH

DATE: 10/28/2020
SCALE: N/A
JOB NO.
501-001

SHEET NO.
1 OF 1

From: Arthur Lebaron
Sent: Friday, January 28, 2022 2:43 PM
To: Kevin Kennedy
Cc: Stephen Nelson
Subject: Reimbursement Agreement

Kevin,

After much deliberation and review, Stephen and I have produced what we feel is consistent and reasonable for reimbursement. Here is a summary:

1. The impact fee for lodging is \$1,609 per unit. 46 units x \$1,609 = \$74,014.
2. Your reported cost of land and improvements = \$93,095.15
3. Frontage improvements (asphalt widening, curb & gutter, sidewalk) and land for widening along master planned streets is generally a cost that is not reimbursable. However, in this case we reasoned that since the roadway was not completely necessary for you to obtain a 2nd access, but still an obligation as a condition for developing, we are recommending that the City reimburse you for the land and the pavement costs, which add up to **\$69,624.45**.
4. The remaining impact fee would be \$4,389.55.

We would propose that a reimbursement agreement be drafted to reimburse you for **\$69,624.45** and be placed before the City Council for approval as soon as possible. Please let me know how you would like to proceed.

Sincerely,

Arthur LeBaron, PE, PLS, CFM
City Engineer
147 North 870 West
Hurricane, UT 84737
435-635-2811 x113
arthur@cityofhurricane.com

From: Arthur Lebaron
Sent: Wednesday, January 19, 2022 3:59 PM
To: kevin kennedy
Cc: Stephen Nelson
Subject: RE: Impact fee voucher for city council

Kevin,

Reimbursement is required of the City when a developer puts in a system improvement. The roadway and improvements that you have constructed provide the minimum access and utility connectivity required for your project, so in this case would not be considered a system improvement, but rather, a project improvement. I would be happy to go over this with you in person if you like.

Thanks,

Arthur LeBaron, PE, PLS, CFM
City Engineer
147 North 870 West
Hurricane, UT 84737
435-635-2811 x113
arthur@cityofhurricane.com

From: kevin kennedy <kevin140@yahoo.com>
Sent: Wednesday, January 19, 2022 1:47 PM
To: Arthur Lebaron <arthur@cityofhurricane.com>
Subject: Impact fee voucher for city council

Arthur,
Met with Stephen. He mentioned I need your help with his report for city council concerning the number to request.

The Deed of Dedication for part of 150 south Street is 9877 square feet or .227 acres. I paid 720k for land so that portion is \$34,560.

Interstate has provided the following improvements below on the .227 acres.

Here is the break down for the costs associated with the 150 South road improvements.

- Asphalt and Roadbase \$30,202.95
- Concrete waterway \$5,754.50
- Curb and Gutter \$6,035.70
- Sidewalk \$7,986.00
- ADA Ramps \$3,694.50
- Roadway Excavation \$4,861.50

Let me know if this break down works for you or if you need more information.

Thanks,

PLEASE NOTE THE NEW EMAIL ADDRESS BELOW

BURT VINCELETTE

INTERSTATE ROCK PRODUCTS

PROJECT MANAGER/ESTIMATOR

OFFICE 435-635-2628

CELL 435-680-2131

burt.vincelette@interstaterock.com

Thanks

Kevin Kennedy 208-573-6710

3411 W 2530 S Hurricane, UT 84737



STAFF COMMENTS

Public Hearing to comments on the following:

Discussion:

Findings:

Recommendation:

Attachments:

None



STAFF COMMENTS

A **Sensitive Land application on The Ridge at Zion Vista Ph 2**, a 19-lot subdivision, located at 840 South 1850 West

Discussion:

Findings:

Recommendation:

Attachments:

None



STAFF COMMENTS

Consideration and possible approval of a **sensitive land application and preliminary plat on The Ridge @ Zion Vista Ph 2, a 19-lot subdivision, located at 840 S 1850 West** - Rich Hansen applicant

Discussion:

Findings:

Recommendation:

Attachments:

1. 10211195-2021-PP-35 Map
2. ColinaTinta Pre Site Plan
3. Peregrine Point West (Old)
4. Sensitive Lands The Ridge App
5. The Ridge at Zion Vista App
6. 2021-PP-35 Checklist
7. 2021-PP-35 Ridge at Zion Vista Phase 2
8. 10211194-2021-PP-35 App

THE RIDGE AT ZION VISTA

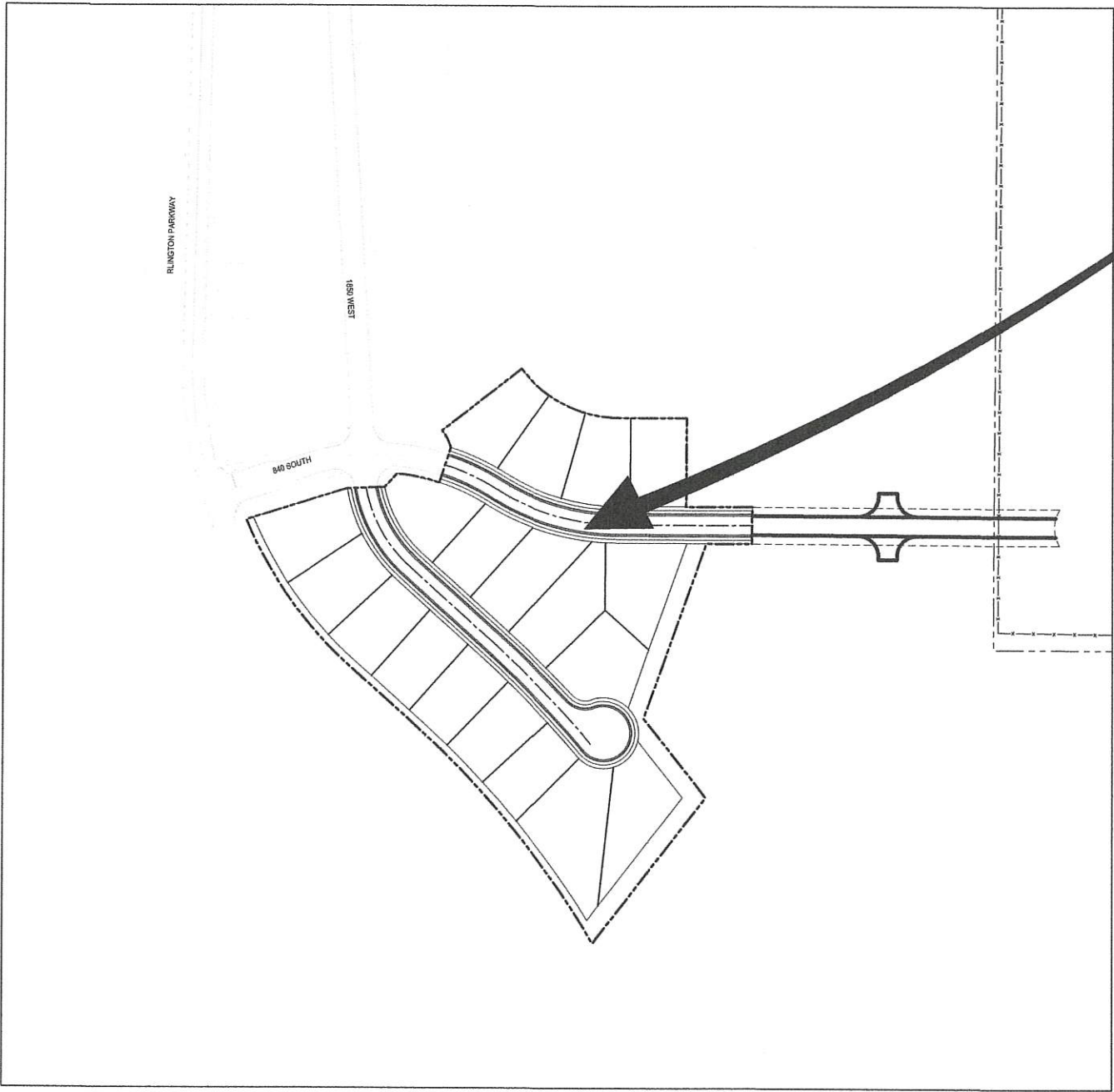
PHASE 2

PRELIMINARY PLAT REVIEW

LOCATED IN SECTION 4, TOWNSHIP 42 SOUTH, RANGE 13 WEST
SALT LAKE BASE AND MERIDIAN
IN THE CITY OF HURRICANE, WASHINGTON COUNTY, UTAH



VICINITY MAP
NOT TO SCALE



PROJECT MAP
NOT TO SCALE



DEVELOPER:
RR PANGA
3507 KIRK CIRCLE
SALT LAKE CITY, UT 84106

CIVIL ENGINEER:
PSOMAS
4179 RIVERBOAT ROAD, SUITE 200
SALT LAKE CITY, UT 84106

SITE DATA :
ZION VISTA PHASE 2
TOTAL GROSS ACRES: 11.79
TOTAL ROAD R.O.W.: 98,328 SQ. FT.
BUILDING PAD AREA: 37 UNITS-301,641 SQ. FT.
DENSITY: 3.1 UNITS/ACRE

PSOMAS
Balancing the Natural and Built Environment
4179 Riverboat Road, Suite 200
Salt Lake City, UT 84123
(801) 270-5777 (801) 270-5782 fax
www.psomas.com

PROJECT NUMBER: 88CLO10300

THE RIDGE AT ZION VISTA
PHASE 2
HURRICANE, UT

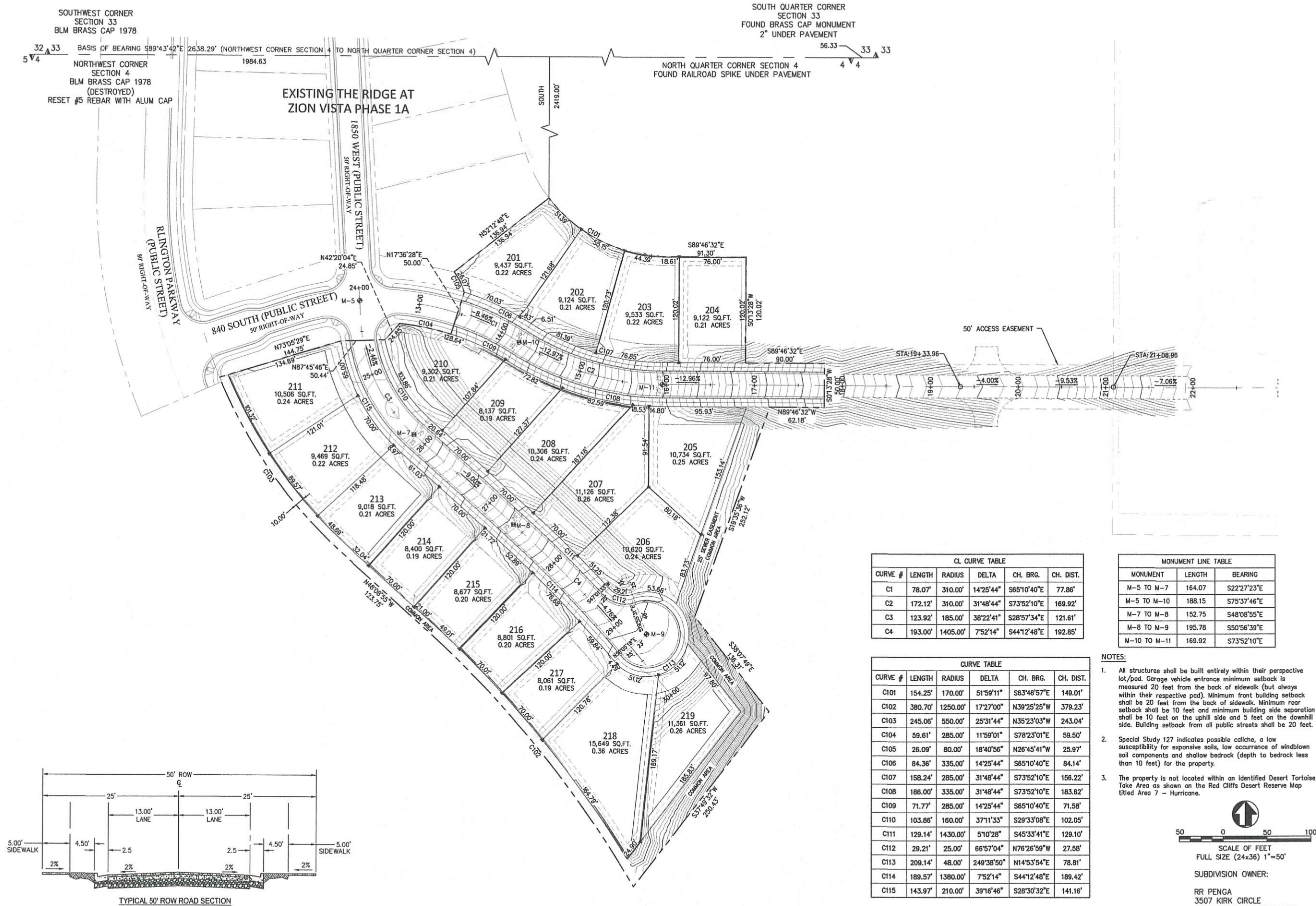
COVER

SHEET
OF

1

3

NO.	REVISION DESCRIPTION	DATE



DATE	REVISION DESCRIPTION	NO.

PROFESSIONAL ENGINEER
No. 177050
STUART J. ADAMS
STATE OF UTAH
11/2/21

SUBMITTAL	MWC	DG	SA	PLOT DATE
DRAWN BY:				11/2/21
CHECKED BY:				
APPROVED BY:				

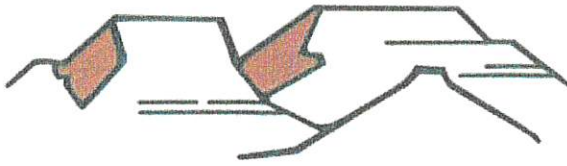
PSOMAS
Balancing the Natural and Built Environment
4179 Riverboat Road, Suite 200
Salt Lake City, UT 84123
(801) 270-5777 (801) 270-5782 fax
www.psomas.com

PROJECT NUMBER: BBL010300

THE RIDGE AT ZION VISTA
PHASE 2
HURRICANE, UT

PROPOSED PLAN

SHEET	3
OF	3



HURRICANE CITY

UTAH

Water Department
Ken Richins, Superintendent

November 22, 2021

To Whom It May Concern:

A will serve letter has been requested for Zion Vista Phase 2 located at approximately 1850 W 840 S in Hurricane, Utah.

Yes, we do have culinary water in the area of 1850 W 840 S in Hurricane, Utah.

A hydraulic water study may be required to ensure the waterline will deliver the required fire flows. A looped water system may be required

Sincerely,

Hurricane City Water – Dallan Wadsworth



Ash Creek Special Service District

1350 S. Sand Hollow Road

Hurricane, UT 84737

Office: (435) 635-2348 Fax: (435) 635-8550

ashcreek@infowest.com

November 23, 2021

Hurricane City
Stephen Nelson
127 N. 870 W.
Hurricane, UT 84737

RE: Zion Vista Phase 2 – approximately 840 S 1850 W

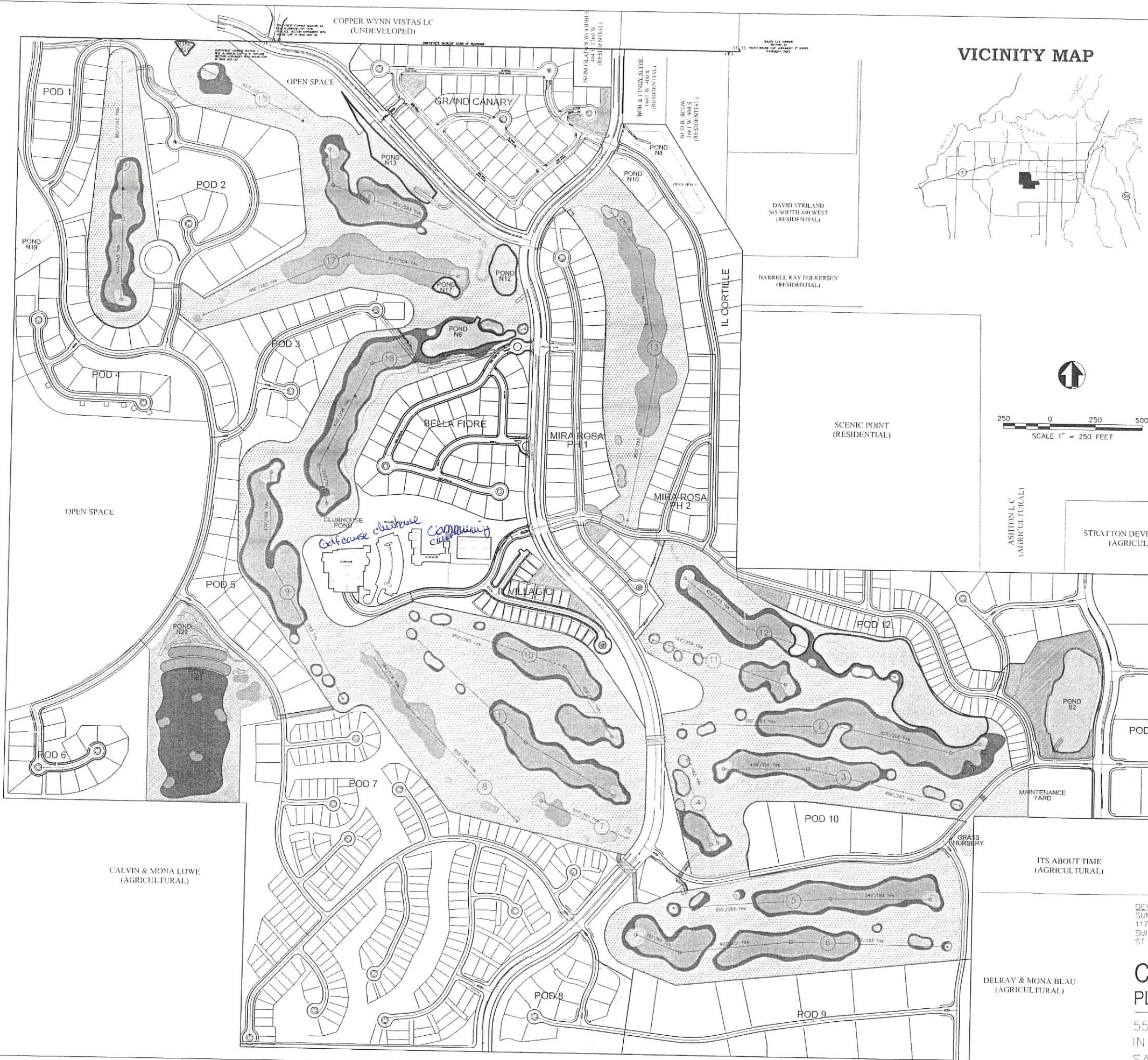
Stephen,

There is sewer capacity for this project. The developers understand and agree that they will need to get plan approval for the sewer system.

After approval they agree to pay all costs associated with construction and impact fees. Please let us know if you have any questions.

Sincerely,

Amber Gillette
Engineering Tech
Ash Creek Special Service District



VICINITY MAP



COLLINA TINTA

Collina Tinta Land Use Table				
Total Project Area		24,379,912 S.F. / 560 Acres		
Name	Size (ac.)	# of Units	Type	
Grande Canary	20.35	79	Single Family	
Mira Rosa Phase 1	12.05	37	Single Family	
Mira Rosa Phase 2	11.43	33	Single Family	
Il Cortile	13.82	54	Multi Family	Resort Rental
Bella Fiore	14.49	47	Single Family	Gated Rental
Il Villaggio	4.28	24	Single Family	Resort Rental
Pod 1	9.2	15	Single Family	
Pod 2	24.9	34	Single Family	
Pod 3	11.1	19	Single Family	Gated
Pod 4	10.1	18	Single Family	Gated
Pod 5	9.1	16	Single Family	
Pod 6	11.5	36	Multi Family	Gated
Pod 7	59.0	231	Single Family	Gated/Rental*
Pod 8	8.1	33	Multi Family	
Pod 9	19.6	431	Multi Family	
Pod 10	7.7	169	Multi Family	Resort Rental
Pod 11	25.2	540	Multi Family	
Pod 12	11.3	70	Single Family	
Total	283.2	1886		

*Only portions of pod 7 will be Gated and/or Resort Rental

Collina Tinta Land Use Summary		
	Size (ac.)	# of Units
Total Single Family	197.3	623
Total Multi Family	85.9	1263
Clubhouse	12.4	
Commercial	1.0	
		% of Total Site
Total Open Space	262.4	47%
Golf Course	202.2	36%
Trails	16.5	3%
Parks and Lake	6.0	1%
Other Open Space	37.7	7%



DATE	JAN 2008
SCALE	1"=250'-(24X36)
PROJECT NUMBER	85DM010100
APPROVAL	
ADDENDUM	

COLLINA TINTA
EXHIBIT
COLLINA TINTA
SITE PLAN
HURRICANE, UTAH

PSOMAS

1173 SOUTH 250 WEST, SUITE 308
ST. GEORGE, UTAH, 84770
(435) 628-6912 (435) 674-0236 (FAX)

DESIGNED	JCD
DRAWN	JCD
CHECKED	JCD
SHEET	1
OF	1

DEVELOPER:
SUMMIT-HURRICANE
1173 SOUTH 250 WEST
SUITE 310
ST. GEORGE, UTAH 84770

CIVIL ENGINEERS:
PSOMAS
1173 SOUTH 250 WEST
SUITE 308
ST. GEORGE, UTAH 84770
(435) 628-6912

COLLINA TINTA
PLANNED DEVELOPMENT OVERLAY

559.68 ACRES
IN SEC. 4 & 5, T. 32 S., R. 13 W.,
SALT LAKE BASE AND MERIDIAN.

PEREGRINE POINT WEST: PHASES 1 - 3 PRELIMINARY PLAT

LOCATED IN SECTION 30, TOWNSHIP 41 SOUTH, RANGE 13 WEST
OF THE SALT LAKE BASE AND MERIDIAN
IN THE CITY OF HURRICANE, WASHINGTON COUNTY, UTAH.
DEVELOPED BY: PERRY HOMES UTAH, INC.

EXISTING
PEREGRINE POINT EAST

EXISTING
MONUMENT

EXISTING
55 MH
(DIA: 60")
STA: 6+06.07
OFF: 0.6728' R
RM: 3057.85
INV IN: 3054.42 8" PVC
INV OUT: 3054.22 8" PVC

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LEGEND

- 2' CONTOUR - EX
- 10' CONTOUR - EX
- 2' CONTOUR - PRO
- 10' CONTOUR - PRO
- TOP BACK CURB - EX
- FLOWLINE CURB - EX
- TOP BACK CURB - PRO
- FLOWLINE CURB - PRO
- WATER LINE - EX
- SEWER LINE - EX
- WATER LINE - PRO
- SEWER LINE - PRO
- OVERHEAD POWER LINE - EX
- OVERHEAD POWER LINE - PRO
- FLOWLINE/DRAINAGE SHALE - EX
- FLOWLINE/DRAINAGE SHALE - PRO
- PROPERTY LINE - EX
- PROPERTY LINE - PRO
- FIRE HYDRANT - EX
- FIRE HYDRANT - PRO
- SEWER MANHOLE - EX
- SEWER MANHOLE - PRO
- WATER VALVE - EX
- WATER VALVE - PRO
- STORM DRAIN CURB INLET - EX
- STORM DRAIN CURB INLET - PRO
- ASPHALT PAVEMENT - EX
- ASPHALT PAVEMENT - PRO
- CONCRETE PAD - EX
- CONCRETE PAD - PRO
- SURFACE FLOW DIRECTION - EX
- SURFACE FLOW DIRECTION - PRO
- CLASS II MONUMENT - EX
- POWER POLE - EX
- POWER POLE - PRO

ZONER1-6

AVERAGE LOT AREA: 6,000 SQ.FT.
MIN. LOT AREA: 4,800 SQ.FT.
MIN. FRONTAGE: 60'

RESIDENTIAL SETBACKS:
FRONT: 25'
REAR: 10'
SIDE: 8'
STREETSIDE: 20'

SITE INFORMATION:

CURRENT ZONE: R1-6 (PHASES 1-3)
TOTAL AREA: 18.20 AC (788,940 SQ.FT.)
RESIDENTIAL UNITS: 14
TOTAL RESIDENTIAL UNITS (14) AREA: 12.30 AC
(532,041 SQ.FT.) = 61.50%
TOTAL OPEN SPACE AREA: 0.80 AC
(34,779 SQ.FT.) = 4.40%
TOTAL PUBLIC STREET (R.O.W.) AREA: 5.10 AC
(222,154 SQ.FT.) = 29.02%

AVERAGE RESIDENTIAL LOT SIZE: 532,041/14 = 1,140 SQ.FT.
DENSITY, UNITS/ACRES = 14/18.20 = 4.01 UNITS PER ACRE

OWNER/DEVELOPER/CONTACT

THE DEVELOPER FOR THIS PROJECT IS
PERRY HOMES UTAH, INC.
CONTACT: GREG SANT
2250 NORTH CORAL CANYON BOULEVARD, SUITE 215
WASHINGTON, UTAH 84180 (435) 251-1040 (OFFICE)

PROJECT ENGINEER

THE ENGINEER FOR THIS PROJECT IS:
ROSENBERG ASSOCIATES
CONTACT: ROB REID
352 EAST RIVERSIDE DRIVE, SUITE A2
ST. GEORGE, UTAH 84190 (435) 613-8586

GEOTECHNICAL ENGINEER

THE GEOTECHNICAL ENGINEER FOR THIS PROJECT IS:
LANDMARK TESTING & ENGINEERING
195 EAST FACTORY DRIVE
ST. GEORGE, UT 84190 (435) 986-0566

DATE: 02/26/2021
JOB NO.: 11430-20
DESIGNED BY: DSH
CHECKED BY: RAR
DWG: Preliminary Plat

REVISIONS

ROSENBERG
A S S O C I A T E S
CIVIL ENGINEERS • LAND SURVEYORS

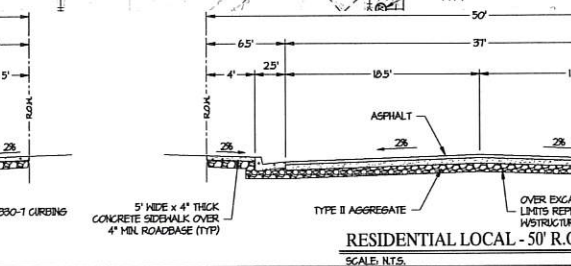
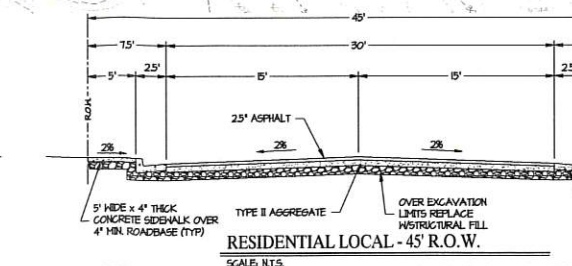
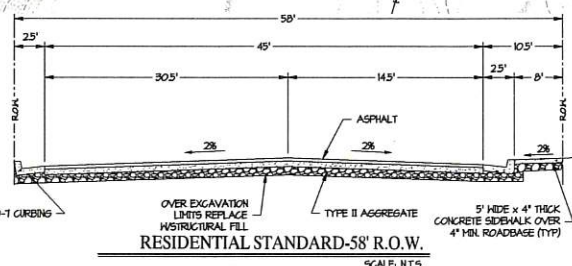
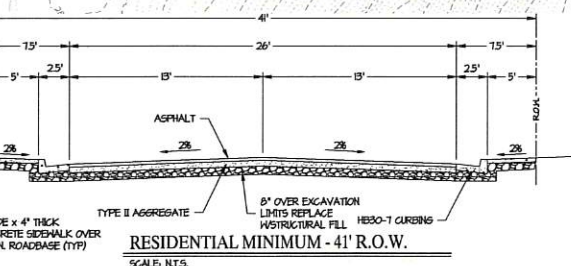
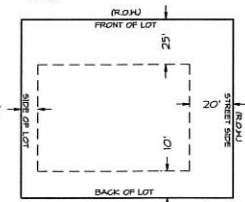
352 East Riverside Drive
Suite A-2
St. George, Utah 84190
Ph (435) 673-8586 Fax (435) 673-8397
www.rasoc.com

PRELIMINARY PLAT
FOR
PEREGRINE POINT WEST: PHASES 1-3
3000 WEST 600 NORTH
HURRICANE, UTAH

STATE OF UTAH
COUNTY OF WASHINGTON
ROBERT A. REID
REGISTERED PROFESSIONAL ENGINEER

SHEET
C1.0
1 OF 1 SHEETS

TYPICAL LOT SETBACKS:
N.T.S.



Z:\1100-11990-11930-20 Peregrine Point West\DWG\11930-20 Preliminary Plat.dwg, Preliminary Plat, 2/26/2021, 12:29:49 PM, dsh

SENSITIVE LANDS APPLICATION

City of Hurricane
147 North 870 West
Hurricane, UT 84737
(435) 635-2811
FAX (435) 635-2184

Fee: \$

For Office Use Only:
File No. 2021-HIL-07
Receipt No. _____

Name: Rich Hansen Telephone: 801-631-4998

Address: 3507 Kirk Circle, SLC UT 84106 Fax No. _____

Agent (If Applicable): _____ Telephone: _____

Email: rhmail@comcast.net Agent Email: _____

Address/Location of Subject Property: _____

Tax ID of Subject Property: H-3-2-4-133 Zone District: R1-10 / PDO

Proposed Use: (Describe, use extra sheet if necessary) _____

Nineteen Residential Lots / Roads and Open Space

Other companion application submitted with the Development Plan:

- ☒ Preliminary Plat
- ☐ Site Plan Review
- ☐ Conditional Use Permit
- ☐ Rezone
- ☐ Other

Submittal Requirements:

Please review the attached Supplemental Information to determine additional information that must be submitted with this application.

(Office Use Only)

Date Received: _____ Application Complete: YES ☐ NO ☐

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

DEVELOPMENT PLAN SUBMITTAL REQUIREMENTS

Development Plan Submittal: The following information shall be submitted with the application for Development Plan approval, and may be in addition to information required for a companion application being processed concurrently with the Development Plan:

- ✓ 1. Development plan: The development plan shall clearly show:
 - ✓ a. Two (2) foot contours. The contour map shall be prepared and certified by a licensed professional civil engineer or surveyor drawn at a scale no smaller than one (1) inch equals one hundred (100) feet. Contour maps based on interpolation of maps with larger contour intervals are not acceptable.
 - N/A b. Field surveys may be required of the applicant by the City to verify the accuracy of the contour lines shown on the contour map.)
 - ✓ c. Slopes having grades of 10-29 percent and natural slopes of thirty (30) percent or greater shall be color shaded clearly showing the difference between the two categories. This contour information shall either be computer based, or based on profile lines drawn perpendicular to contours at intervals no less than one hundred fifty (150') feet apart, nor greater than seventy-five (75') feet from an existing or proposed property line. Grades shall then be determined by calculating the slope along one hundred (100) foot segments of the profile. (See Appendix Diagram-A of the Land Use Ordinance)
 - ✓ d. To determine required minimum lot size (Section 10-24-6B of the Sensitive Land Ordinance), the average natural grade on each proposed parcel shall be calculated and indicated on the development plan. The average grade is determined by calculating the grade of the natural slope between two opposing property lines, based on profiles taken perpendicular to the contours, no less than one hundred fifty (150) feet apart, nor greater than seventy-five (75) feet from an existing or proposed property line.
 - ✓ e. The proposed development layout of lots, roads, proposed road grades, open space, area of disturbances, and existing native vegetation.
- _____ 2. Soils Investigation Report: A soils investigation report which contains the following information:
 - _____ a. Nature, distribution and classification (Unified Soil Classification) of existing soils to the appropriate depth of influence by the proposed development, but not less than ten (10) feet deeper than the proposed excavations or to bedrock.
 - _____ b. Strength of existing soils, bearing capacity of supporting soils, settlement estimates, collapse and shrink-swell characteristics, lateral pressures and trench excavation limitations.
 - _____ c. Ground water levels that may affect development and estimated elevation of high ground water levels.
 - _____ d. Appropriate laboratory testing for classification, consistency, strength and consolidation conditions.
 - _____ e. Slope stability.
 - _____ f. A written statement by the persons or firm preparing the soils report describing the general suitability of the site for the owner=s intended use.
- _____ 3. Geotechnical Report: A geotechnical and geological report shall be prepared by a geologist licensed to practice in the State of Utah, whenever a proposed building permit or development project:
 - a. Is located within one thousand (1,000) feet of an identified fault; or
 - b. Is located on slopes estimated to be twenty (20) percent or greater; or
 - c. Is determined to have potential hazards by the City Engineer, County Geologist or State Geologist.

The geotechnical and geological report when required above shall include:

- _____ a. A geologic map showing topography, surface and subsurface geologic features and any geologic limitations to the proposed use;
- _____ b. Depth to bedrock;
- _____ c. Subsurface investigative logs and reports;
- _____ d. Identification of all geologic hazards; and
- _____ e. Measures to mitigate or eliminate geologic hazards and problems.



4. Grading and Drainage Plan: A grading and drainage plan report which includes storm water management, erosion, and grading plans describing the methods by which surface water, natural drainages, flooding (including identification of 100 year flood where applicable), erosion and sedimentation loss, and hydrologic hazards will be controlled during and after construction. The plan shall include the following information:



a. The grading plan shall show present topography, including the location and depth of all proposed fills and cuts of finished earth surfaces, and/or use of retaining walls including height, using a contour interval of two (2) foot when grades are 0-29% and five (5) foot contours when grades 30% and over.



b. The proposed area to be graded shall be clearly delineated on the plan.



c. Preliminary street grades shall be identified on the plan.

See Drainage
Report

d. All calculations and proposed details used for design and construction of debris basins, impoundments, diversions, dikes, waterways, drains, culverts and other water management or soil erosion control measures shall be shown. Drainage calculations shall determine runoff volume and peak discharge using the "Rational Method," "SCS Curve Number Method," or appropriate equivalent. Data provided should include:

- (1) Rainfall depth, duration and distribution;
- (2) Watershed slope and drainage area delineation;
- (3) Land condition of watershed surface;
- (4) Topography of drainage area; and
- (5) Soil Descriptions in Watershed. Erosion calculations shall employ predictions of soil loss sheet erosion using the Universal Soil Loss Equation or equivalent. Data to be provided should include factors of:
 - (a) Rainfall intensity and duration;
 - (b) Soil erodability;
 - (c) Land slope and length of slope or topography;
 - (d) Condition the soil surface and land management practices in use; and
 - (e) Surface cover, grass, pavements, etc.

5. License Required: All required reports shall be prepared by persons licensed to practice their specialty or expertise in the State of Utah, if such license for practice is required.

6. Expert Advice: In reviewing technical reports, calculations, and plans which may be required, the City staff or City Engineer may find it necessary to obtain the advice of other experts regarding the adequacy of the reports submitted, and the validity of the conclusions and recommendations reached in the reports. In such cases the City staff or City Engineer may consult with such experts, with the reasonable costs of these consultations to be borne by the developer prior to any public hearing. The Planning Commission or City Council may require payment by the developer of the costs of such consultations as a condition of preliminary or final plat approval.

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. Call the Planning Department to determine the submittal deadline.

PROJECTS SUBJECT TO SENSITIVE LANDS REQUIREMENTS

The following projects are subject to Sensitive Land requirements:

1. All preliminary plats, planned developments, site plan reviews, conditional use permits and any other land use development permits authorized by City Codes when they are:
 - (a) Located on lands defined in Section 10-24-2 of the Land Use Code or identified as sensitive lands on the General Plan Sensitive Lands Map;
 - (b) Located within one thousand (1000) feet of a fault identified on a published geologic map.
 - (c) Located within one hundred (100) feet, measured perpendicularly from a fault identified as a result of on-site investigation by a registered geologist.
 - (d) Hillside and ridge and bluff areas (as set forth in section 10-24-5A of the Land Use Ordinance.).
2. Any grading on sensitive land not associated with an approved project of the types listed in subsection 1 above, when such grading will:
 - a. Disturb ten thousand (10,000) square feet or more of land area;
 - b. Create a cut or fill over three (3) feet in height; or
 - c. Create trenching over two hundred (200) feet in length.(A development plan is not required, however sufficient information must be submitted to determine compliance with Chapter 24, Sensitive Lands)
3. All building permits, including grading on vacant lots or parcels not previously processed in accordance with the provisions of this Chapter 24 of the Land Use Ordinance. (A development plan is not required, however sufficient information must be submitted to determine compliance with Chapter 24, Sensitive Lands)

PROJECT REVIEW PROCEDURE

When a preliminary plat, site plan, planned development or conditional use permit or other application is located on sensitive lands, the Development Plan application is submitted as a companion application and processed concurrently. The Planning Commission will review the application(s) and on conditional use permits and site plan reviews they will approve, approve with conditions or deny the Development Plan application. On preliminary plats, or zone changes, the Planning Commission will forward a recommendation to the City Council. Following receipt of a recommendation from the Planning Commission, or on appeal, the City Council will hold a public hearing on the application and approve, approve with conditions, or deny the proposed Development Plan.

NOTE: To fully understand the requirements for projects on sensitive lands, you should request a copy of Chapter 24 of the Land Use Ordinance from the City of Hurricane Planning Department.

THE RIDGE AT ZION VISTA

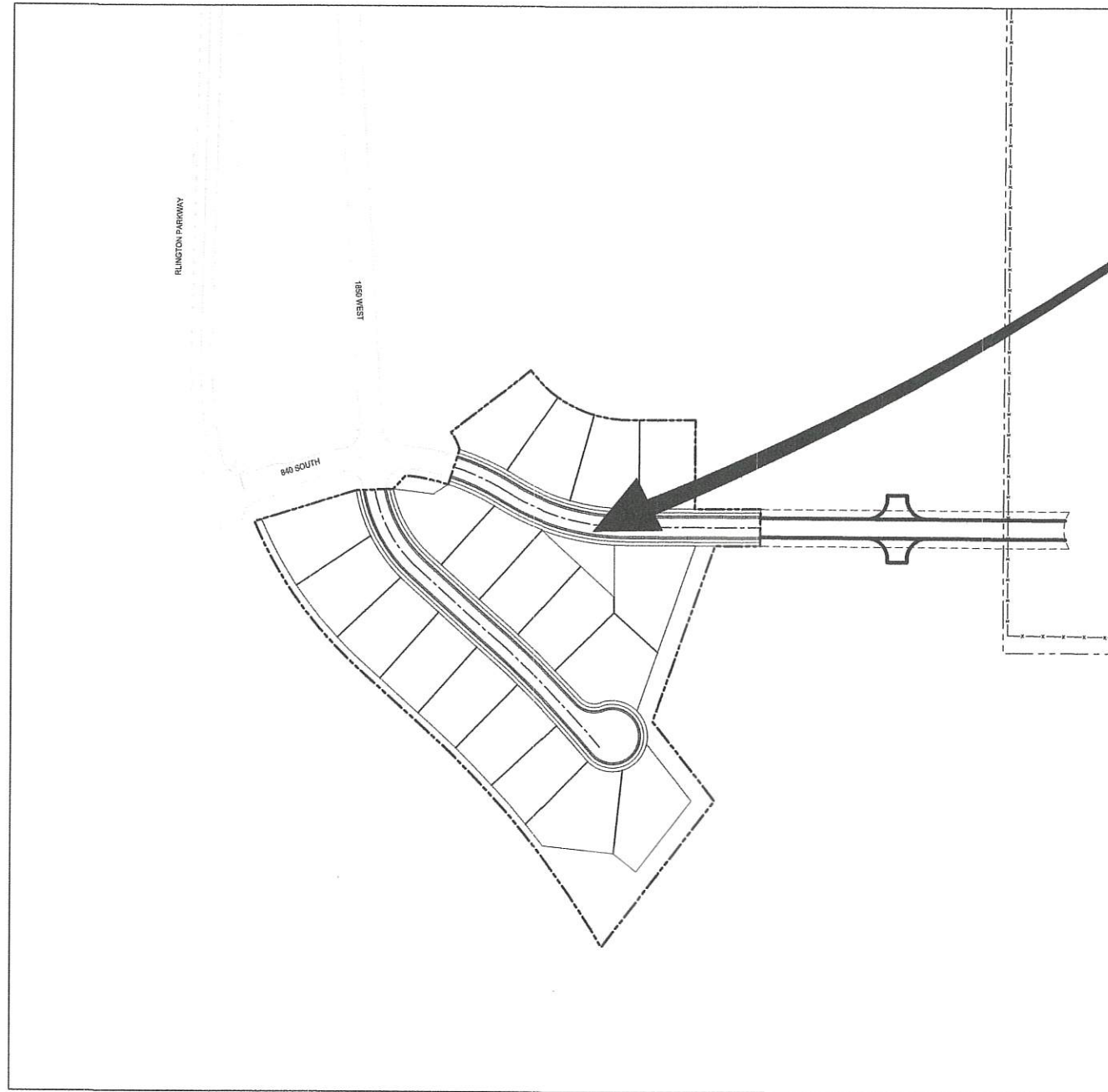
PHASE 2

PRELIMINARY PLAT REVIEW

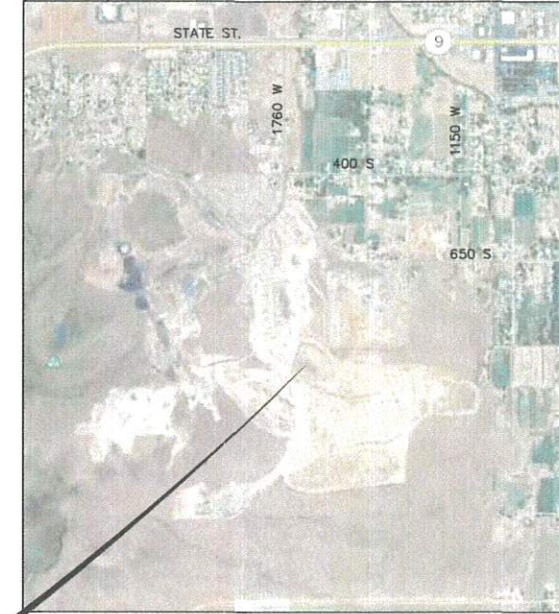
LOCATED IN SECTION 4, TOWNSHIP 42 SOUTH, RANGE 13 WEST

SALT LAKE BASE AND MERIDIAN

IN THE CITY OF HURRICANE, WASHINGTON COUNTY, UTAH



PROJECT MAP
NOT TO SCALE



VICINITY MAP

NOT TO SCALE



SUBMITTAL	-----
DRAWN BY:	MWC
CHECKED BY:	DG
APPROVED BY:	SA
PLOT DATE:	1/5/22

PSOMAS
Balancing the Natural and Built Environment

4179 Riverboat Road, Suite 200
Salt Lake City, UT 84123
(801) 270-5777 (801) 270-5782 fax
www.psomas.com

PROJECT NUMBER: BECL010300

THE RIDGE AT ZION VISTA
PHASE 2
HURRICANE, UT

SHEET 1
OF 3

COVER

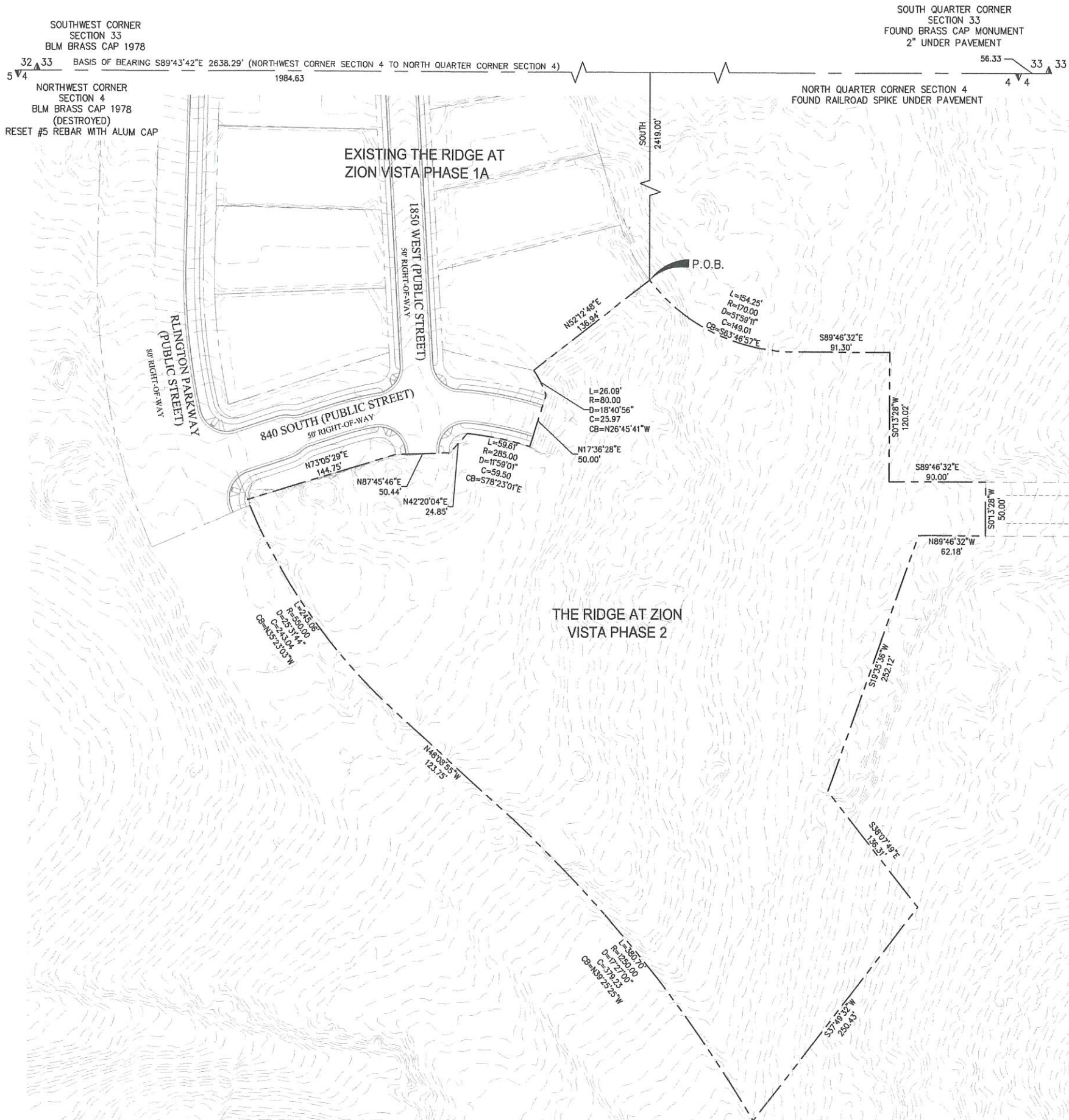


DEVELOPER:
RR PANGA
3507 KIRK CIRCLE
SALT LAKE CITY, UT 84106

CIVIL ENGINEER:
PSOMAS
4179 RIVERBOAT ROAD, SUITE 200
SALT LAKE CITY, UT 84106

SITE DATA :
ZION VISTA PHASE 2
TOTAL GROSS ACRES: 11.79
TOTAL ROAD R.O.W.: 98,328 SQ. FT
BUILDING PAD AREA: 37 UNITS-301,641 SQ. FT.
DENSITY: 3.1 UNITS/ACRE

1/5/2022 2:10 PM U:\BBL010200\SURVEY\DRAWINGS\PHASE 2\PRELIMINARY PLAT - THE RIDGE AT ZION VISTA PHASE 2.DWG MICHAEL COOK



BOUNDARY DESCRIPTION

Beginning at a point South 89°43'42" East along the Section line 1984.63 feet and South 2419.00 feet from the Northwest Corner of Section 4, Township 42 South, Range 13 West, Salt Lake base and Meridian and running thence along a 170 foot radius curve to the left 154.25 feet (chord bears South 63°46'57" East 149.01 feet); thence South 89°46'32" East 91.30 feet; thence South 01°13'28" West 120.02 feet; thence South 89°46'32" East 90.00 feet; thence South 01°13'28" West 50.00 feet; thence North 89°46'32" West 62.18 feet; thence South 19°35'36" West 252.12 feet; thence South 38°07'49" East 136.31 feet; thence South 37°49'32" West 250.43 feet to a point on a non-tangent 1259.00 radius curve to the left; thence along said curve 380.70 feet (chord bears North 39°25'25" West 379.23 feet); thence North 48°08'55" West 123.75 feet to a point on a 550.00 radius curve to the right; thence along said curve 245.06 feet (chord bears North 35°23'03" West 243.04 feet); thence North 73°05'29" East 144.75 feet; thence North 87°45'46" East 50.44 feet; thence North 42°20'04" East 24.85 feet to a point on a non-tangent 285.00 foot radius curve to the right; thence along said curve 59.61 feet (chord bears South 78°23'01" East 59.50 feet); thence North 17°36'28" East 50.00 feet to a point on a non-tangent 80 foot curve to the left; thence along said curve 26.09 feet (chord bears North 26°45'41" West 25.97 feet); thence North 52°12'48" East 136.94 feet to the point of beginning.

Contains 260,340 Square Feet or 5.98 Acres

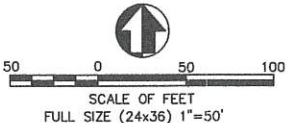
ACCESS EASEMENT DESCRIPTION

Beginning at a point South 89°43'42" East along the Section line 2299.02 feet and South 2604.07 feet from the Northwest Corner of Section 4, Township 42 South, Range 13 West, Salt Lake base and Meridian and running thence South 01°13'28" West 50.00 feet; thence South 89°46'32" East 418.60 feet to a point on a non-tangent 48.00 radius curve to the right; thence along said curve 50.00 feet (chord bears North 01°13'28" East 50.00 feet); thence North 89°46'32" West 418.60 feet to the point of beginning.

Contains 20,692.21 Square Feet or 0.475 Acres

NOTES:

- All structures shall be built entirely within their perspective lot/pad. Garage vehicle entrance minimum setback is measured 20 feet from the back of sidewalk (but always within their respective pad). Minimum front building setback shall be 20 feet from the back of sidewalk. Minimum rear setback shall be 10 feet and minimum building side separation shall be 10 feet on the uphill side and 5 feet on the downhill side. Building setback from all public streets shall be 20 feet.
- Special Study 127 indicates possible caliche, a low susceptibility for expansive soils, low occurrence of windblown soil components and shallow bedrock (depth to bedrock less than 10 feet) for the property.
- The property is not located within an identified Desert Tortoise Take Area as shown on the Red Cliffs Desert Reserve Map titled Area 7 - Hurricane.



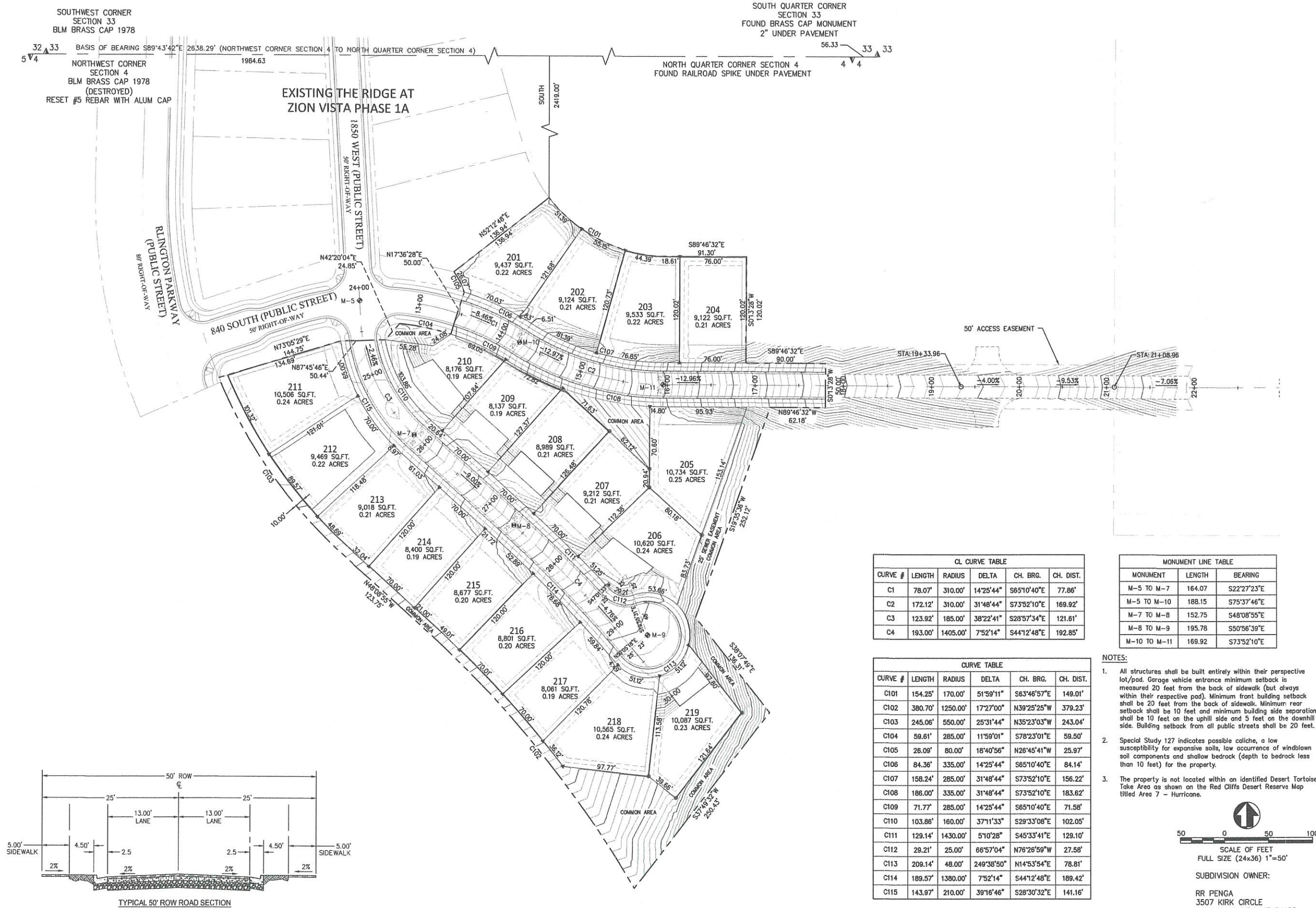
SUBDIVISION OWNER:

RR PENG
3507 KIRK CIRCLE
SLAT LAKE CITY, UT 84106

The Ridge at Zion Vista Phase 2

LOCATED IN THE NORTHWEST QUARTER OF
SECTION 4, TOWNSHIP 42 SOUTH, RANGE 13
WEST, SALT LAKE BASE AND MERIDIAN
HURRICANE, UTAH WASHINGTON COUNTY

REVISION DESCRIPTION		DATE
NO.		
SUBMITTAL		1/5/22
DRAWN BY:	MWC	
CHECKED BY:	DG	
APPROVED BY:	SA	
PLOT DATE:		1/5/22
PSOMAS Balancing the Natural and Built Environment 4179 Riverboat Road, Suite 200 Salt Lake City, UT 84123 (801) 270-5777 (801) 270-5782 fax www.psomas.com		
PROJECT NUMBER: BBCL010300		
THE RIDGE AT ZION VISTA PHASE 2 HURRICANE, UT		
PRELIMINARY PLAT		
SHEET	2	
OF	3	



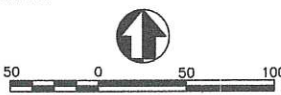
CL CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CH. BRG.	CH. DIST.
C1	78.07'	310.00'	14°25'44"	S65°10'40"E	77.86'
C2	172.12'	310.00'	31°48'44"	S73°52'10"E	169.92'
C3	123.92'	185.00'	38°22'41"	S28°57'34"E	121.61'
C4	193.00'	1405.00'	7°52'14"	S44°12'48"E	192.85'

MONUMENT LINE TABLE		
MONUMENT	LENGTH	BEARING
M-5 TO M-7	164.07	S22°27'23"E
M-5 TO M-10	188.15	S75°37'46"E
M-7 TO M-8	152.75	S48°08'55"E
M-8 TO M-9	195.78	S50°56'39"E
M-10 TO M-11	169.92	S73°52'10"E

CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CH. BRG.	CH. DIST.
C101	154.25'	170.00'	51°59'11"	S63°46'57"E	149.01'
C102	380.70'	1250.00'	17°27'00"	N39°25'25"W	379.23'
C103	245.06'	550.00'	25°31'44"	N35°23'03"W	243.04'
C104	59.61'	285.00'	11°59'01"	S78°23'01"E	59.50'
C105	28.09'	80.00'	18°40'56"	N26°45'41"W	25.97'
C106	84.38'	335.00'	14°25'44"	S65°10'40"E	84.14'
C107	158.24'	285.00'	31°48'44"	S73°52'10"E	156.22'
C108	186.00'	335.00'	31°48'44"	S73°52'10"E	183.62'
C109	71.77'	285.00'	14°25'44"	S65°10'40"E	71.58'
C110	103.86'	160.00'	37°11'33"	S29°33'08"E	102.05'
C111	129.14'	1430.00'	5°10'28"	S45°33'41"E	129.10'
C112	29.21'	25.00'	66°57'04"	N76°26'59"W	27.58'
C113	209.14'	48.00'	249°38'50"	N14°53'54"E	78.81'
C114	189.57'	1380.00'	7°52'14"	S44°12'48"E	189.42'
C115	143.97'	210.00'	39°16'46"	S28°30'32"E	141.16'

NOTES:

- All structures shall be built entirely within their perspective lot/pod. Garage vehicle entrance minimum setback is measured 20 feet from the back of sidewalk (but always within their respective pad). Minimum front building setback shall be 20 feet from the back of sidewalk. Minimum rear setback shall be 10 feet and minimum building side separation shall be 10 feet on the uphill side and 5 feet on the downhill side. Building setback from all public streets shall be 20 feet.
- Special Study 127 indicates possible caliche, a low susceptibility for expansive soils, low occurrence of windblown soil components and shallow bedrock (depth to bedrock less than 10 feet) for the property.
- The property is not located within an identified Desert Tortoise Take Area as shown on the Red Cliffs Desert Reserve Map titled Area 7 - Hurricane.



SUBDIVISION OWNER:

RR PANGA
3507 KIRK CIRCLE
SALT LAKE CITY, UT 84106

The Ridge at Zion Vista Phase 2
LOCATED IN THE NORTHWEST QUARTER OF
SECTION 4, TOWNSHIP 42 SOUTH, RANGE 13
WEST, SALT LAKE BASE AND MERIDIAN
HURRICANE, UTAH WASHINGTON COUNTY

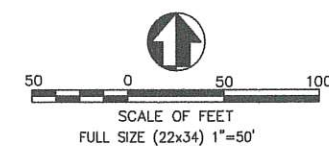
DATE	
REVISION DESCRIPTION	
NO.	
SUBMITTAL	1/5/22
DRAWN BY: MWC	
CHECKED BY: DG	
APPROVED BY: SA	
PLOT DATE:	1/5/22
PROJECT NUMBER: BBCL010300	
THE RIDGE AT ZION VISTA PHASE 2 HURRICANE, UT	
PROPOSED PLAN	
SHEET	3
OF	3

U:\BBL010200\ENGR\DRAWINGS\PHASE 2\EXHIBITS\2021-12-22 OPEN SPACE EXHIBIT.DWG MICHAEL COOK
1/5/2022 2:18 PM



OPEN SPACE CALCULATIONS:	
PHASE 1A/B (FROM OLD COLLINA TINTA SET) =	53,637.38 SQ. FT.
PHASE 2 (FROM OLD COLLINA TINTA SET) =	35,142.69 SQ. FT.
OLD TOTAL =	88,780.07 SQ. FT.
PHASE 1A/B (CURRENT) =	55,797.72 SQ. FT.
PHASE 2 (CURRENT) =	22,315.50 SQ. FT.
CURRENT TOTAL =	78,113.22 SQ. FT.
OPEN SPACE DEFICIT =	10,666.85 SQ. FT.
ADJUSTED TOTALS	
CURRENT TOTAL =	78,113.22 SQ. FT.
ADDITIONAL OPEN SPACE 1 =	+(1,126.32 SQ. FT.)
ADDITIONAL OPEN SPACE 2 =	+(3,232.36 SQ. FT.)
ADDITIONAL OPEN SPACE 3 =	+(6,341.23 SQ. FT.)
NEW CURRENT TOTAL =	88,813.13 SQ. FT.

PROPOSED ADDITIONAL OPEN SPACE EXHIBIT



PSOMAS
4179 S. Riverboat Rd., Suite 200
Salt Lake City, UT 84123
(801) 270-5777



PLANNING & ZONING
HURRICANE CITY
UTAH

Preliminary Plat Check List

Application Name:	Ridge at Zion Vista Phase 2
Review Date:	12/1/2021
Reviewed By:	Fred Resch III

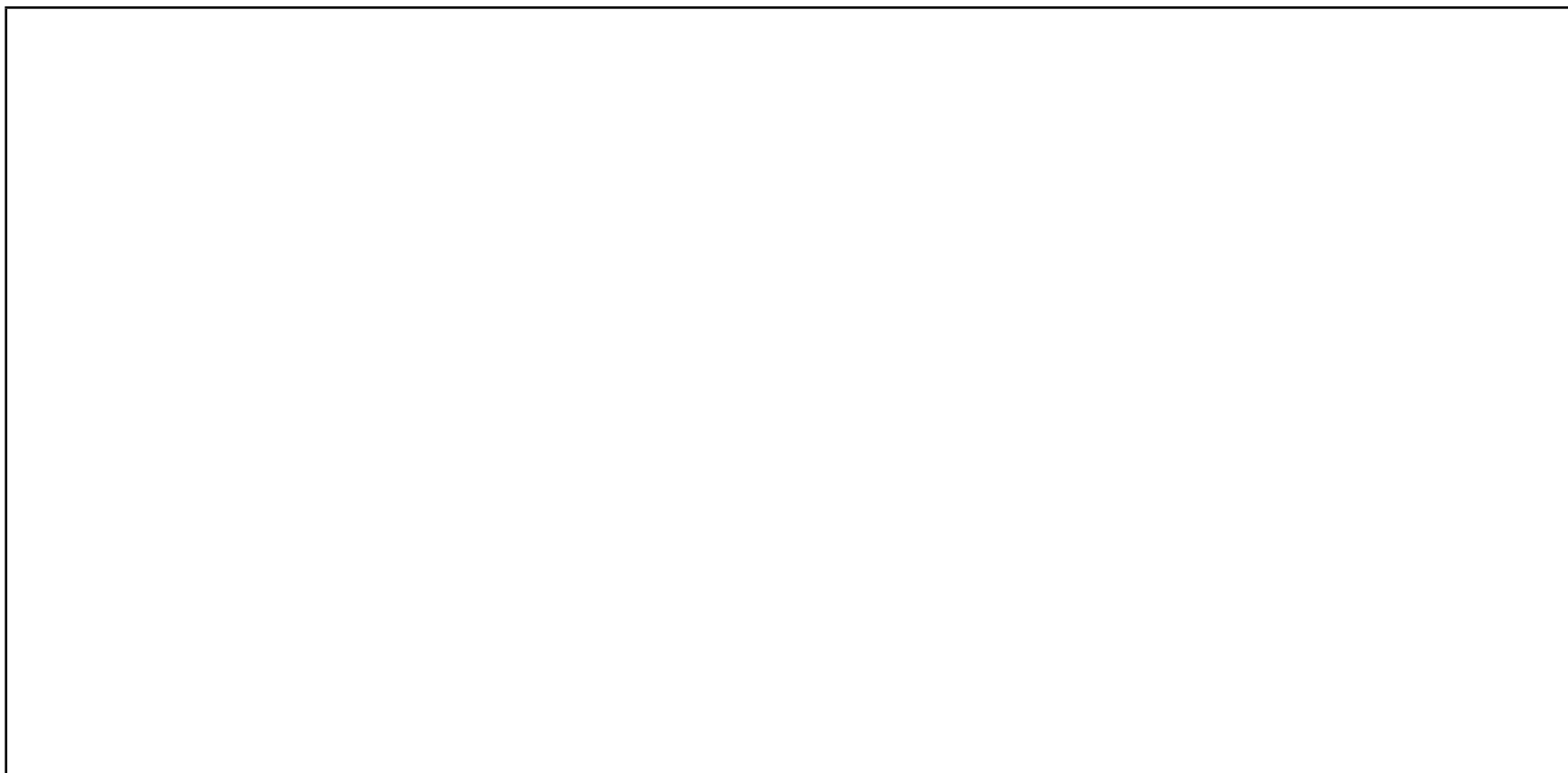
Complete	Requirement	Note
x	Each Lot Complies with zoning lot size requirements	
x	Each lot complies with zoning lot frontage	
x	A. Description: In a title block located in the lower right hand corner of the sheet the following is required: 1. The proposed name of the subdivision. 2. The location of the subdivision, including the address and the section, township and range. 3. The names and addresses of the owner or subdivider if other than the owner. 4. Date of preparation and north point. 5. Scale shall be of sufficient size to adequately describe in legible form all required elements.	

x	The location of the nearest monument.	
x	The boundary of the proposed subdivision and the acreage included.	
x	All property contiguous to the property to be subdivided and 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.) And all property contiguous to the proposed subdivision.	
x	The location, width and names/numbers of all existing streets within two hundred feet (200') of the subdivision and of all prior streets or other public ways, easements, utility rights of way, parks and other public open spaces, within and adjacent to the tract.	
NA	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.	
NA	Existing ditches, canals, natural drainage channels and open waterways and proposed realignments.	
x	Contours at vertical intervals not greater than five feet (5').	
x	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 ground water, and windblown sand) and recommendations for their mitigation.	
x	The layout of streets, showing location, widths and other dimensions of proposed streets, crosswalks, alleys and easements.	

x	The layout, numbers and typical dimensions of lots. Designation of buildable area is required for each lot.	
x	Parcels of land intended to be dedicated or temporarily reserved for public use or set aside for use of property owners in the subdivision.	
x	Easements for water, sewers, drainage, utilities, lines and other purposes.	
x	Typical street cross sections and street grades where required by the planning commission.	
x	A tentative plan or method by which the subdivider proposes to handle the stormwater drainage for the subdivision.	
x	Approximate radius of all centerline curves on highways or streets.	
x	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.)	
x	All remnants of lots below minimum size left over after subdividing of a larger tract shall be added to adjacent lots or common areas, rather than allowed to remain as unusable parcels.	
x	Where necessary, copies of any agreements with adjacent property owners relevant to the proposed subdivision shall be presented to the planning commission.	
x	A letter from both the local sanitary sewer provider and culinary water provider indicating availability of service.	
x	If the subdivision is to be built in phases, the plat shall show possible phasing lines.	

x	A tentative plan or method for providing nondiscriminatory access to the subdivision for purposes of placement of communications infrastructure, and for purposes of placement of utility infrastructure.	
x	The Plan complies with Master Transportation Plans	
x	The Plan complies with the Master Active Transportation Plan	
x	The Plan provides proper transportation and utility connections to adjacent properties. No land locked lots are being created.	
x	The Plan has been reviewed by the JUC	
x	Engineering has had a chance to review the plat.	

Notes





STAFF COMMENTS

Agenda Date:	02/03/2022
Application Number:	2021-PP-35 and 2021-HIL-07
Type of Application:	Preliminary Plat Application
Action Type:	Administrative
Applicant:	Rich Hansen
Agent:	
Request:	Approval of a Preliminary Plat
Location:	840 S 1850 W
Zoning:	R1-10 PDO
General Plan Map:	Planned Community

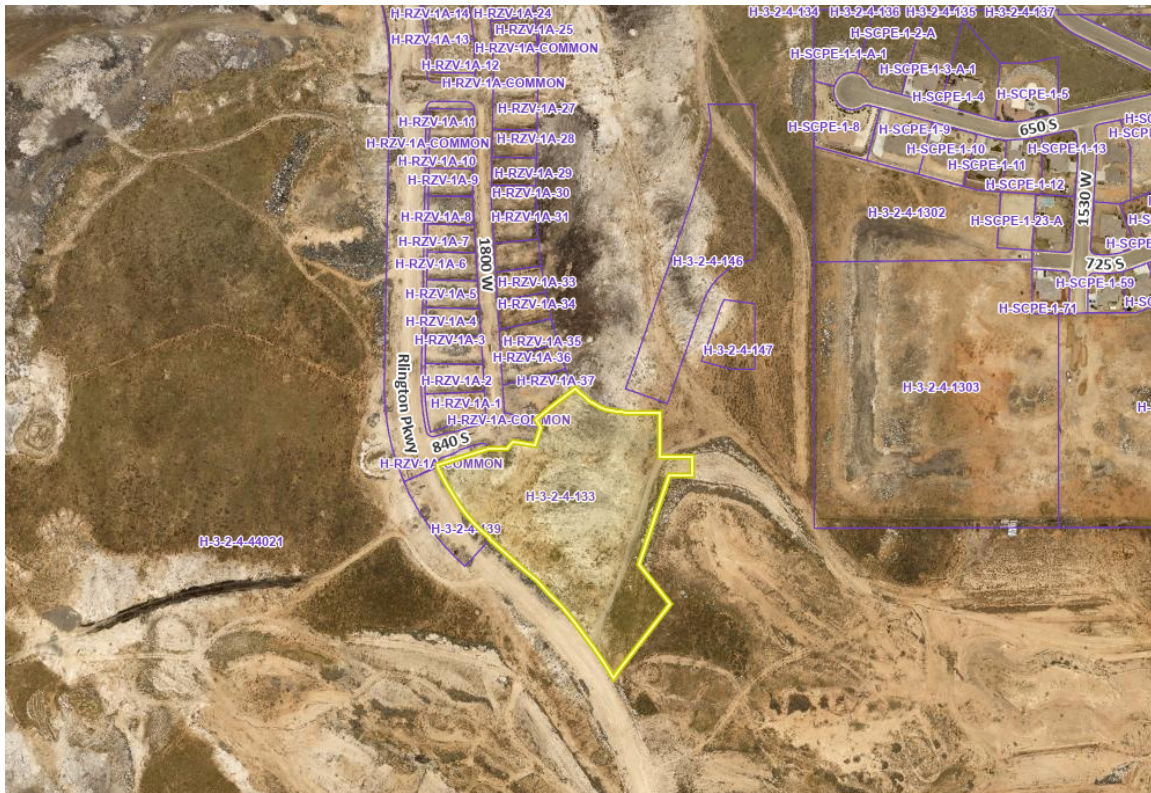
Planning Commission Recommendation

Recommend approval subject to staff and JUC comments, including removal of the four lots on the north end.

The Planning Commission was okay with the roadways as shown on the plat.

Discussion:

The applicant has filed a preliminary plat for Phase 2 of the Ridge at Zion Vista consisting of 19 lots, roads, and common area. This property is within the Painted Hills Collina Tinta area and is governed by that development agreement. The preliminary plat is for the Mira Rosa section within the Collina Tinta project. The Developer has developed the first half of the first phase of Mira Rosa. The city and owners have expressed interest in revising parts of that development agreement, first signed in 2006, to better fit the city's current needs; but there has been no progress on that lately.



JUC Comments

The following items will need to be addressed:

1. **Power:** Will be able to connect through the previous phase
2. **Sewer:** In the area
3. **Street:** No comments.
4. **Water:** Need a looped system. Utility easement on the southern side should be in a roadway. Need a water model for the entire development, not just this phase.
5. **Engineering:** Need water loop and second access. Rlington Parkway needs improvements and extended utilities. 13% grade on 840 S means houses need to be sprinkled and needs city engineer approval.
6. **Fire:** Seconded the water and engineering departments comments. Make sure it meets fire code
7. **Cable:** Good
8. **Gas:** Good.
9. **Water Conservancy:** No comments

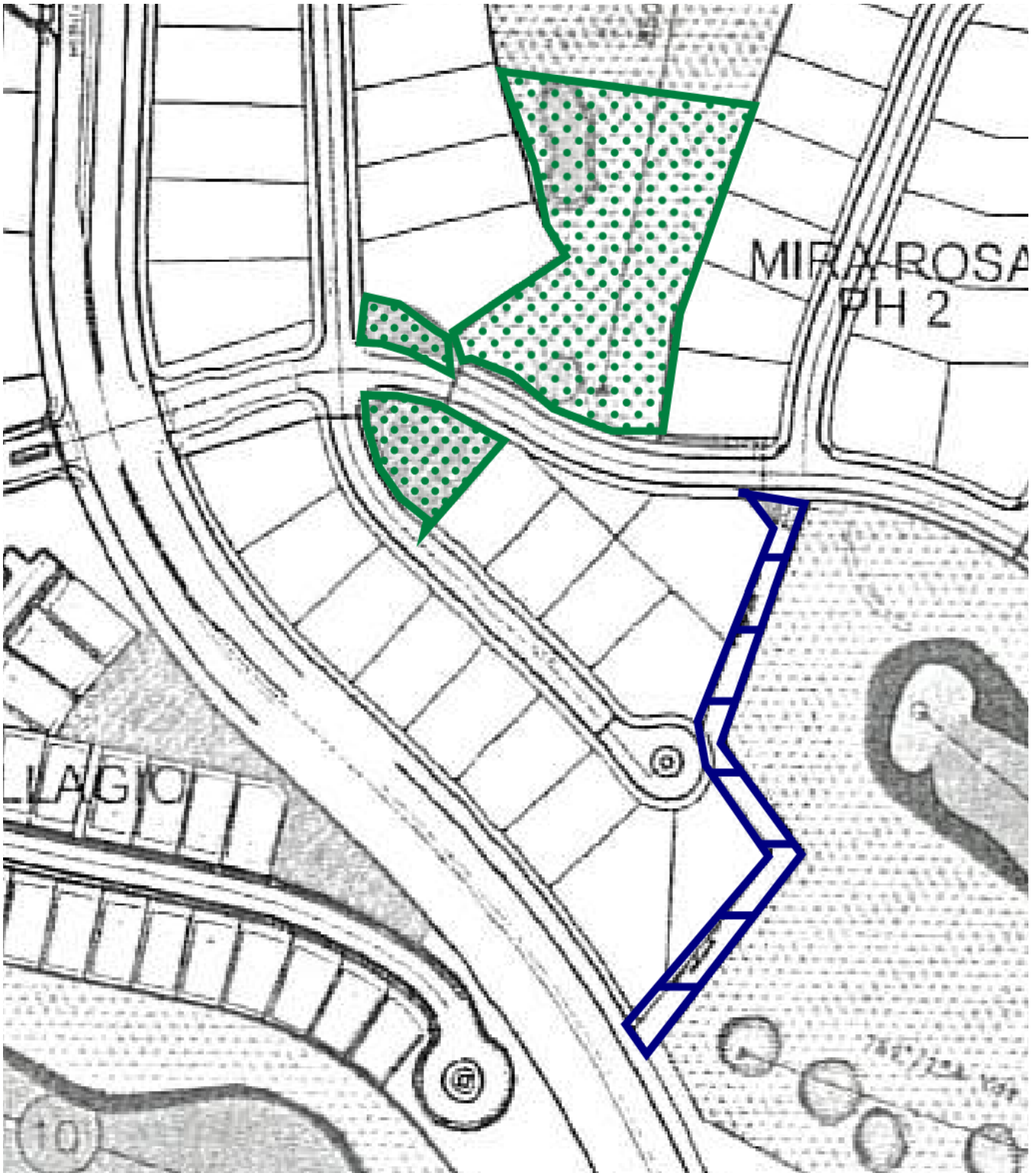
Staff Comments: Preliminary Plat

1. **Number of Lots:** The proposed subdivision has 19 proposed lots. In the master plan this area has 15 lots. The extra lots are located on the north end of the phase, 201-204. Typically, additional lots in one phase would be allowed knowing that lots will be removed from a latter phase to not exceed the overall density. Because this project is under a couple of owners, staff would like to know more information from the applicant about the plan with the shifted density for this phase.

2. Plat shows the north-south road as 1850 W. Ridge at Zion Vista Phase 1 shows this road as 1800 W. This discrepancy should be resolved
3. Plat intends for 840 S to tie into the neighboring Scenic Pointe development. This should be indicated on the plat. Construction will have to wait until that road is in for fire access
4. The steep hill on 840 S exceeds 12% grading. This makes it difficult for fire trucks to get up that hill so houses along 840 S that will use it as a primary access will need to be sprinkled. There is also concerns about roadways that exceed 12%, addressed below.
5. Open Space: The open space layout is different from the original site plan as shown below:



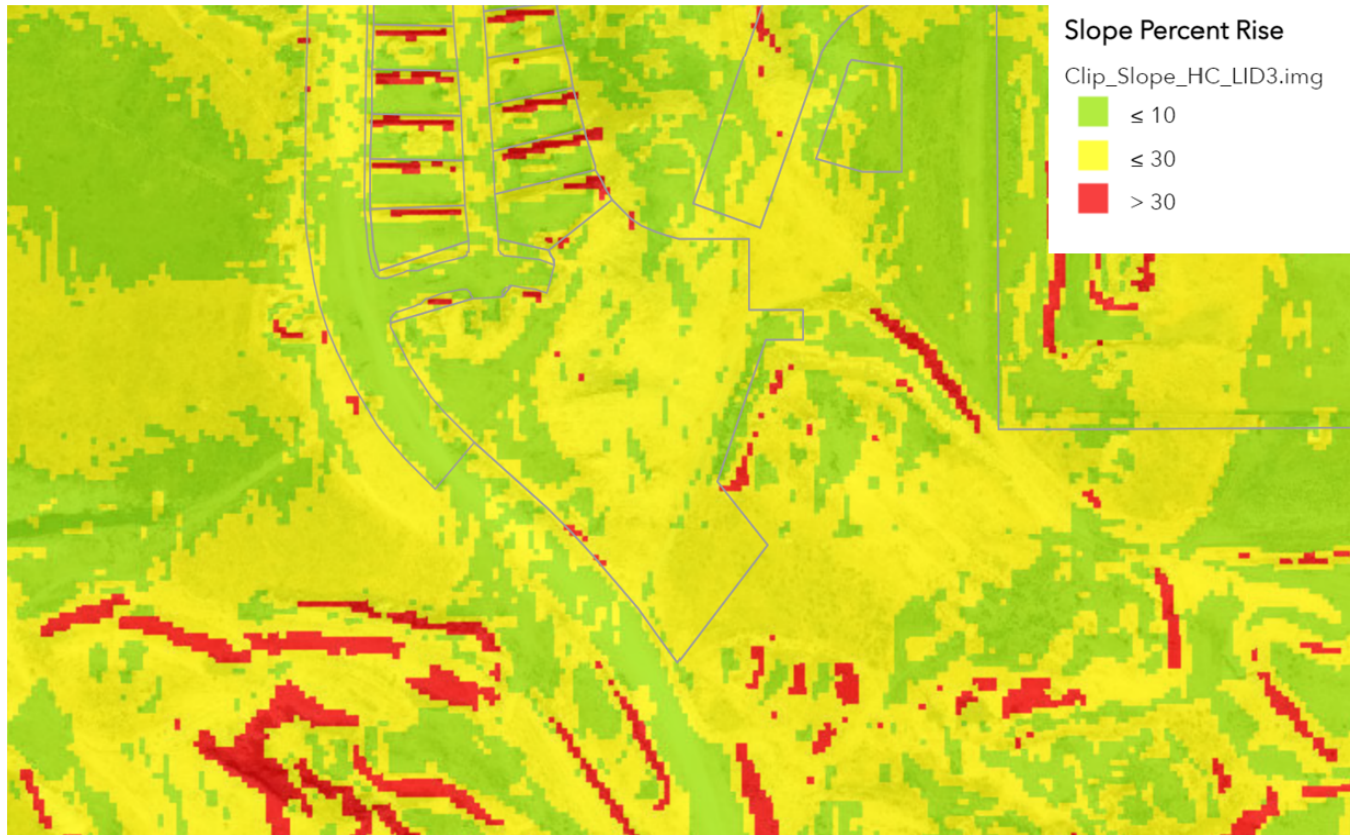
Plat Proposed



Approved Site Plan

As shown in the pictures above, the open space layout has changed. The applicant has indicated that the site reorganization of the open space has not removed any of the overall open space. According to the table listed within their application, they show that the amount of open space is

remaining the same, just moved to different locations. Staff's main concern is about the very northern lots, 201-204. These lots are positioned where the planned golf green is to be located. It is likely in the future that the current development agreement will be renegotiated and the open space repurposed within the Colina Tinta PDO. However, that has not occurred at this point and the current layout does conflict with the master plan.



Sensitive Lands:

1. Because of the hillside of the project, a sensitive lands application has been required. The following has been required:

10-24-5: HILLSIDES AND RIDGE AREAS:

A. Applicability: The following procedures, submittal requirements and standards shall apply to those projects located on lands identified as having at least one of the following characteristics:

1. *Slopes over ten percent (10%) which are:*

a. Identified through computer generated programs capable of calculating slopes on topographic maps prepared with two foot (2') contour interval accuracy; or

b. Established by profile lines drawn perpendicular to contour lines at intervals no greater than one hundred fifty feet (150') apart, when the slope, measured along any one hundred foot (100') segment

of the profile line is ten percent (10%) or greater. (See section 10-24-9, appendix diagram A, of this chapter.)

c. A slope shall be subject to this chapter only when a contiguous identified area of ten percent (10%) or greater exceeds two (2) acres, or if the site is less than one acre and the entire site is ten percent (10%) or greater.

2. Soils Investigation Report: A soils investigation report which contains the following information:

a. Nature, distribution and classification (unified soil classification) of existing soils to the appropriate depth of influence by the proposed development, but not less than ten feet (10') deeper than the proposed excavations or to bedrock.

b. Strength of existing soils, bearing capacity of supporting soils, settlement estimates, collapse and shrink-swell characteristics, lateral pressures and trench excavation limitations.

c. Groundwater levels that may affect development and estimated elevation of high groundwater levels.

d. Appropriate laboratory testing for classification, consistency, strength and consolidation conditions.

e. Slope stability.

f. A written statement by the geotechnical engineer, civil engineer, or geologist preparing the soils report describing the general suitability of the site for the owner's intended use. The report shall identify soil constraints to development and shall state the professional opinion of the author as to whether the proposed development plan will mitigate and/or eliminate said constraints in a manner as to prevent hazard to life, hazard to property, and adverse effects. If the soil report prepared for a subdivision shows the presence of critically expansive soils, high water table, organic soils, liquefiable soils, collapsible soils, or other soil problems which, if not corrected, would lead to structural defects of the proposed buildings, damage to the building from the water, or premature deterioration of the public improvements, a soil investigation of each lot in the subdivision shall be required by the city.

3. Geotechnical Report: A geotechnical and geological report subject to the standards and requirements provided therein.

4. Grading And Drainage Plan: A grading and drainage plan report which includes stormwater management, erosion, and grading plans describing the methods by which surface water, natural drainage, erosion and sedimentation loss, and hydrologic hazards that will be controlled during and after construction. The plan shall include the following information:

a. The grading plan shall show present topography, including the location and depth of all proposed fills and cuts of finished earth surfaces, and/or use of retaining walls including height, using a contour interval of two feet (2') when grades are zero to twenty nine percent (0 - 29%) and five foot (5') contours when grades thirty percent (30%) and over.

b. The proposed area to be graded shall be clearly delineated on the plan.

c. All calculations and proposed details used for design and construction of debris basins, impoundments, diversions, dikes, waterways, drains, culverts and other water management or soil erosion control measures shall be shown. Drainage calculations shall determine runoff volume and peak discharge using the "rational method", "SCS curve number method", or appropriate equivalent. Data provided should include:

(1) Rainfall depth, duration and distribution;

(2) Watershed slope and drainage area delineation;

(3) Land condition of watershed surface;

(4) Topography of drainage area; and

(5) Soil descriptions in watershed. Erosion calculations shall employ predictions of soil loss sheet erosion using the universal soil loss equation or equivalent. Data to be provided should include factors of:

(A) Rainfall intensity and duration;

(B) Soil erodibility;

(C) Land slope and length of slope or topography;

(D) Condition of the soil surface and land management practices in use; and

(E) Surface cover, grass, pavements, etc.

2. The applicant has provided the proper reports, initial grading plan, and other required documents. The lots do not generally comply with the sizing table listed within the Sensitive Lands Code, however, based on their zoning approval, the applicant is entitled to the general layout of the development. Staff would recommend that the Planning Commission review the sloping and grading plan to ensure that proper steps are being taken to ensure that lots are being constructed and laid out in a safe manner. The average slope of the project is around 10-15%, with some spots with steeper slopes and some sections with less. Generally speaking, anything 10%-20% (sometimes 15%) is considered moderate slopes.

3. Grading Plan: The applicant has submitted a grading plan, and intentions to have most lots flat, and then separated by retaining walls. This is allowed, as long as the walls do not exceed 16' in height over 50 linear feet. The homes on roads that are over 10% slope will need to be sprinkled. Some sections of roadway are over 12%. According to Hurricane City Code, 12% is the maximum grade allowed for a Hurricane City street. Staff is consulting with Engineering and Fire for their opinion on the matter. Those sections of road will likely need to be leveled in order to meet Hurricane's standard. The link is essential to the development and deserves some consideration.

10-24-8: GRADING, DRAINAGE AND STREET DEVELOPMENT STANDARDS:

D. Streets And Rights Of Way: The following street standards shall apply:

1. The city's street standards and specifications shall apply to all development, except where conditions related to proper development of sensitive land areas necessitate altering these standards as described below and elsewhere in this chapter and as may be otherwise approved by the city.

2. Street grade requirements:

	<i>Normal</i>	<i>Permissible Exception</i>
<i>Maximum grade</i>	<i>8 percent</i>	<i>12 percent</i>
<i>Maximum grade street intersections</i>	<i>5 percent</i>	<i>As determined by the planning commission</i>

4. Exceptions can be approved by the City Council with a recommendation from the Planning Commission as listed in 10-24-3:

G. Exceptions: Exceptions to the provisions of this chapter may be granted by the city council upon recommendation from the planning commission when:

1. An alternative solution is proposed for the protection of the sensitive land, based on sound and generally accepted engineering and land development principles, and said alternative

will result in equal or better protection than development under the standards of this chapter; and is consistent with the purposes of this chapter. The alternative shall also be consistent with the general plan policies affecting sensitive lands;

2. The size of the parcel existing before the effective date of the adoption of this chapter is determined by the planning commission to be too small to effectively apply the provisions of this chapter, and conditions can be added to the project to minimize safety and general welfare concerns.

3. The parcel is zoned for a nonresidential use and the planning commission determines the site requires grading inconsistent with the provisions of this chapter, and conditions can be added to the project to minimize safety and general welfare concerns. (Ord. 2014-6, 5-1-2014)

Recommendation: Staff recommends the City Council review this application based on standards with Hurricane City Code. Before the City Council moves to approve the application, the applicant will need to address the following to the City Council's satisfaction:

1. Density and the additional units.
2. Roadways that are over 12% grade.
3. The golf course open space.

PRELIMINARY PLAT APPLICATION

City of Hurricane
147 North 870 West
Hurricane, UT 84737
(435) 635-2811
FAX (435) 635-2184

Fee: \$150.00

For Office Use Only:
File No. 2021-PP-35
Receipt No. 8453757

Name: Rich Hansen - R.R. Penga LLC Telephone: 801-631-4998

Address: 3507 Kirk Circle, Salt Lake City, UT 84106 Fax No. _____

Email: rhmail@comcast.net Agent Email: _____

Agent (If Applicable): _____ Telephone: _____

Address/Location of Subject Property: 840 South 1850 West

Tax ID of Subject Property: H-3-2-4-133 Zone District: R1-10 with PDO

Proposed Use: (Describe, use extra sheet if necessary. Include total number of lots) 19 lots, roads, and common area.

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

NOTE: It is important that all applicable information noted above is submitted with the application. An incomplete application will not be scheduled for Planning Commission consideration. A deadline missed due to an incomplete application, could result in a month's delay. Planning Commission meetings are held on the second Thursday and fourth Wednesday of each month at 6:00 p.m. The deadline to submit an application to be placed on an agenda is no later than 12:00 noon 10 full business days before the Planning Commission meeting at which you plan for your application to be heard.

(Office Use Only)

Date Received: _____ Application Complete: YES ☐ NO ☐

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

PURPOSE

The preliminary plat application is the first step in land development process in those instances where land is divided for eventual sale. The process is established to insure that all proposed divisions of land conform to the City General Plan and to adopted development standards of the Land Use Ordinance.

WHEN REQUIRED

The preliminary plat is required any time land is to be divided, re-subdivided or proposed to be divided into two (2) or more lots, parcels, sites, units, plots or other division of land for the purpose, whether immediate or future, for offer, sale, lease or development either on installment plan or upon any and all other plans, terms and conditions. It is not required on agricultural divisions where the agricultural parcel is divided to be combined with another agricultural parcel, nor is it required when two un-subdivided properties are merged, or where the boundary between two un-subdivided properties are adjusted.

The preliminary plat must be approved before a final plat can be processed and recorded.

Subdivision approval process:

- Determine current zoning for property.
- If zoning fits desired subdivision, meet with Planning staff to discussed the proposed project.
- Obtain a preliminary plat application form and complete the application and have a plat prepared by an engineer to meet the requirements on the preliminary plat application.
- Submit completed application, preliminary plat, and required \$150 fee to Planning Department before noon on the Wednesday two weeks before desired Planning Commission meeting. (see submittal dates sheet)
- Appear at the scheduled Planning Commission meeting to discuss preliminary plat, hear comments, answer questions, and receive recommendation of approval or disapproval from Planning Commission.
- Appear at the next scheduled City Council meeting that occurs after the Planning Commission meeting at which a recommendation was received. Hear City Council comments, answer questions, and receive City Council decision. City Council can approve the plat with conditions, recommend changes and send it back to the Planning Commission, or deny the plat.

If the preliminary plat is approved, have construction drawings for utilities and streets prepared by an engineer according to Hurricane City standards. Construction drawings must be approved by both the Hurricane Joint Utilities Committee and the Ash Creek Special Service District. Approval means changes are made and all required signatures are obtained.

Once the preliminary plat is approved by the City Council, the applicant has one year after receiving approval of the preliminary plat to submit the final plat to the Planning Commission for action. The Planning Commission may authorize a one-year time extension, provided the extension request is made before the one year time limit is reached. The Planning Commission will review and make recommendation to the City Council on the final plat when submitted. The City Council will typically review the Planning Commission recommendation within 1-2 weeks after the Commission action on the final plat.

APPEALS

The Planning Commission makes a recommendation to the City Council, so there is no appeal. The City Council's action on a preliminary plat is final unless appealed to the appropriate court.

STATE OF UTAH)
)
) ss
COUNTY OF)

TITLE REPORT
PROVIDED
IN LIEU OF
AFFIDAVIT

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: _____

Transaction Identification Data for reference only:

Commitment Number: 221858

Searcher: Jarom Taylor

Searcher Utah License Number: 691339

Searcher Contact: (435) 634-7991 | jarom@sutc.com



SCHEDULE A

1. Effective Date: November 1, 2021 at 7:00AM
2. Report: SUBDIVISION REPORT PREPARED FOR "THE RIDGE AT ZION VISTA PHASE 2 SUBDIVISION" A PROPOSED SUBDIVISION
3. Title to the FEE SIMPLE estate or interest in the land is at the Effective Date vested in:
RR Penga, LLC, as to that portion within proposed THE RIDGE AT ZION VISTA PHASE 2; and
WPP Hurricane Land, LLC, a Utah limited liability company, as to that portion within the proposed ACCESS EASEMENT
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: _____

A handwritten signature in black ink, appearing to be 'JTB' or similar, written over a horizontal line.

Authorized Signatory

EXHIBIT A
Legal Description

Beginning at a point South 89°43'42" East along the section line 1984.63 feet and South 2419.00 feet from the Northwest corner of Section 4, Township 42 South, Range 13 West, Salt Lake Base and Meridian and running thence along a 170 foot radius curve to the Left 154.25 feet (chord bears South 63°46'57" East 149.01 feet); thence South 89°46'32" East 91.30 feet; thence South 01°13'28" West 120.02 feet; thence South 89°46'32" East 90.00 feet; thence South 01°13'28" West 50.00 feet; thence North 89°46'32" West 62.18 feet; thence South 19°35'36" West 252.12 feet; thence South 38°07'49" East 136.31 feet; thence South 37°49'32" West 250.43 feet to a point on a non-tangent 1259.00 radius curve to the Left; thence along said curve 380.70 feet (chord bears North 39°25'25" West 379.23 feet); thence North 48°08'55" West 123.75 feet to a point on a 550.00 radius curve to the Right; thence along said curve 245.06 feet (chord bears North 35°23'03" West 243.04 feet); thence North 73°05'29" East 144.75 feet; thence North 87°45'46" East 50.44 feet; thence North 42°20'04" East 24.85 feet to a point on a non-tangent 285.00 foot radius curve to the Right; thence along said curve 59.61 feet (chord bears South 78°23'01" East 59.50 feet); thence North 17°36'23" East 50.00 feet to a point on a non-tangent 80 foot curve to the Left; thence along said curve 26.09 feet (chord bears North 26°45'41" West 25.97 feet); thence North 52°12'48" East 136.94 feet to the point of beginning.

Proposed "THE RIDGE AT ZION VISTA PHASE 2"

Tax Serial No. H-3-2-4-133

Beginning at a point South 89°43'42" East along the Section line 2299.02 feet and South 2604.07 feet from the Northwest corner of Section 4, Township 42 South, Range 13 West, Salt Lake Base and Meridian and running thence South 01°13'28" West 50.00 feet; thence South 89°46'32" East 418.60 feet to a point on a non-tangent 48.00 radius curve to the Right; thence along said curve 50.00 feet (chord bears North 01°13'28" East 50.00 feet); thence North 89°46'32" West 418.60 feet to the point of beginning.

"ACCESS EASEMENT DESCRIPTION"

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. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey of the land would disclose, and which are 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 year 2021, in the following amount(s), which are liens, now due and payable, but will not become delinquent until December 1, 2021: (For a current payoff contact the Washington County Treasurer's Office at #435-634-5711)

\$1,579.79 under Tax Serial No. H-3-2-4-133, Account No. 0988918(Affects all of proposed THE RIDGE AT ZION VISTA PHASE 2 SUBDIVISION);

\$0.22 under Tax Serial No. H-3-2-4-4221, Account No. 0827774 (Affects the proposed ACCESS EASEMENT);
12. Subject to any Reservations, Exceptions and Easements as set forth on Patent No. 829716, from The United States of America, recorded May 13, 1922, as Entry No. [22302](#) , in Book U-5, at Pages 176-177, Official Washington County Records.(Affects this and other property)
13. Subject to Right of Way Easement, in favor of HURRICANE CITY, for the construction, operation and continued maintenance, repair, alteration, inspection, relocation and replacement of electric transmission, distribution and communications circuits, and rights incidental thereto, by Instrument recorded June 27, 1967, as Entry No. [430310](#) , in Book S-68, at Pages 117-118, Official Washington County Records.

14. Subject to a Development Agreement for Painted Hills Collina Tinta, executed by and between Summit-Hurricane Development, Inc., a Nevada Corporation, Toquerville Enterprises, LLC, a Nevada Limited Liability Company and City of Hurricane, a municipal corporation and political subdivision of the State of Utah, recorded October 24, 2006, as Doc. No. [20060049271](#) , Official Washington County Records.

First Amendment to Development Agreement for Painted Hills Collina Tinta, dated January 3, 2008, executed by and between Summit-Hurricane Development, Inc., a Nevada Corporation, Toquerville Enterprises, LLC, a Nevada Limited Liability Company and the City of Hurricane, a Municipal Corporation and political subdivision of the State of Utah, recorded February 6, 2008, as Doc. No. [20080004968](#) , Official Washington County Records.

Second Amendment to Development Agreement for Painted Hills Collina Tinta, dated May 22, 2008, executed by and between Summit-Hurricane Development, Inc., a Nevada Corporation, Toquerville Enterprises, LLC, a Nevada Limited Liability Company and the City of Hurricane, a Municipal Corporation and political subdivision of the State of Utah, recorded May 28, 2008, as Doc. No. [20080021728](#) , Official Washington County Records.

Third Amendment to Development Agreement for Painted Hills Collina Tinta, dated June 7, 2018, executed by and between Summit-Hurricane Development, Inc., a Nevada Corporation, Toquerville Enterprises, LLC, a Nevada Limited Liability Company, RR Penga, LLC, a Utah Limited Liability Company and the City of Hurricane, a Municipal Corporation and political subdivision of the State of Utah, recorded June 25, 2018, as Doc. No. [20180026189](#) , Official Washington County Records.

Fourth Amendment to Development Agreement for Painted Hills Collina Tinta, recorded October 19, 2021, as Doc No. [20210067753](#) , Official Washington County Records.

15. Subject to a Water Supply Agreement, executed by and between Hurricane City, a Utah Municipal Corporation, Toquerville Enterprises, LLC, a Nevada Limited Liability Company and Summit-Hurricane Development, Inc., a Nevada Corporation, recorded July 20, 2007, as Doc. No. [20070037256](#) , Official Washington County Records. (Affects this and other property)
16. Subject to a Grant of Temporary Access and Construction Easement Agreement, dated November 21, 2007, executed by and between Toquerville Enterprises, LLC, a Nevada Limited Liability Company, MARLOWE'S PARADISE, LLC, a Utah Limited Liability Company and SUMMIT-HURRICANE DEVELOPMENT, INC., a Nevada Corporation, recorded November 30, 2007, as Doc. No. [20070056952](#) , Official Washington County Records. (Affects a portion of this and other property)

17. 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.

18. Subject to easements, notes, restrictions, reservations, any and all other matters as set forth and disclosed on the Proposed Plat of "THE RIDGE AT ZION VISTA PHASE 2 SUBDIVISION".
19. 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.
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.

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.

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.

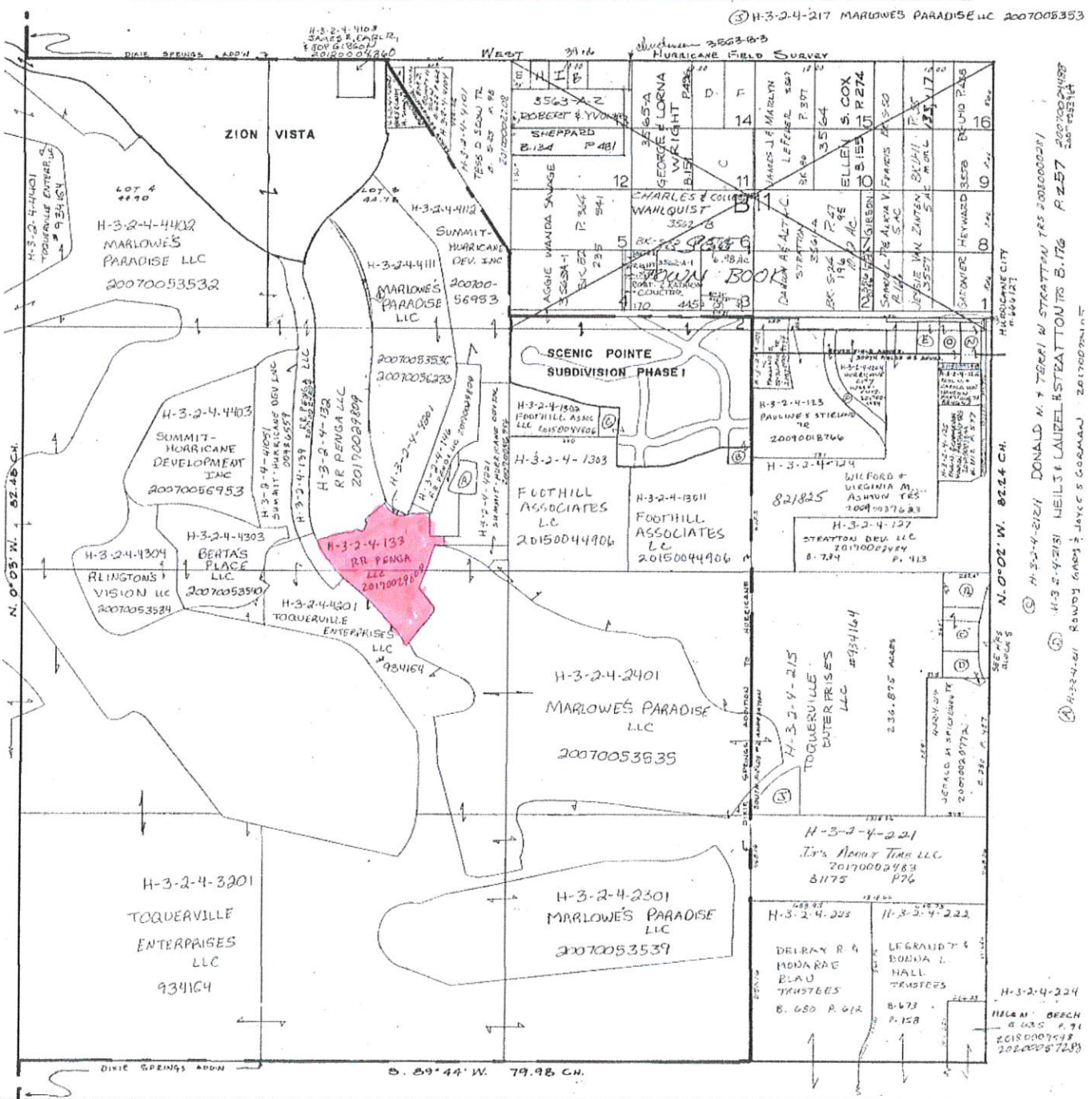
- H-3-2-4-4114 TOQUERVILLE ENT. LLC #20070021195
- H-3-2-4-4115 TOQUERVILLE ENT. LLC #20090021195
- H-3-2-4-128 ELBERT M. + SHANNA C. DANSIE #20170036458
- H-3-2-4-131 ELIZABETH + THOMAS F. DANSIE #20150010767
- H-3-2-4-1103 HURRICANE CITY 20170104335

SECTION 4
T42 S --- R13 W
BALT LAKE BASE & MERIDIAN
SCALE: ONE INCH=400 FEET
WASHINGTON COUNTY, UTAH

H-3-2-4-147 RR PENGA LLC 20070025809
H-3-2-4-149 DENNIS V. + DEBRA J. BACKUS 20170033615
H-3-2-4-123A SCOTT W. + TERRI MILLER TRS 20170034782
H-3-2-4-124 BOB D. + WELFAY K. BRINCHMIST 2017002291

This plat is furnished for information only. No liability is assumed by Assure's or Recorder's Office as to correctness of

Washington County Records



H-3-2-4-217 MARLOWES PARADISE LLC 2007005353
H-3-2-4-215 TOQUERVILLE ENTERPRISES LLC #934164
H-3-2-4-221 TRS ABOUT TOWN LLC 20170002483
H-3-2-4-223 DELRAY R. + MONARAE BLAU TRUSTEES B. 650 P. 612
H-3-2-4-224 HILLMAN BRECH 8.035 P. 71 20150007498 201500057283
H-3-2-4-224 DONALD M. + TERRI W. STRATTON TRS 20080000051
H-3-2-4-225 HEILIG LAUZEL + STRATTON TRS B. 176 P. 257 20070004958 20070004958
H-3-2-4-221 RANDY GARDY + JAYCE S. GOODMAN 20170007011

When Recorded Return To:

RR Penga
Attn: Rich Hansen
3507 Kirk Circle
Salt Lake City, Utah 84106

Space above for County Recorder's Use

PARCEL I.D. #: See Attached

**FIFTH AMENDMENT TO DEVELOPMENT AGREEMENT
FOR PAINTED HILLS COLLINA TINTA**

THIS FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT FOR PAINTED HILLS COLLINA TINTA ("Amendment") is made to be effective as of _____, 2021 (the "Effective Date"), by and among Collina Tinta Holdings, LLC ("Collina"), a Utah limited liability company ("Developer"), RR Penga, LLC, a Utah limited liability company ("Penga"), Interstate Homes LLC, a Utah limited liability company ("Interstate"), and the City of Hurricane, a municipal corporation and political subdivision of the State of Utah ("City") (individually a "Party" and collectively the "Parties").

RECITALS

A. Summit-Hurricane Development, Inc, a Nevada corporation ("Summit"), Toquerville Enterprises, a Utah limited liability company, (Toquerville") and City entered into that certain Development Agreement for Painted Hills Collina Tinta dated September 7, 2006, and recorded in the Official Records of Washington County, Utah on October 24, 2006, as Document No. 20060049271 (the "Agreement") for the development of approximately 560 acres of land located in Hurricane, Utah (the "Project").

B. Summit, Toquerville and City entered into the First Amendment to the Agreement, dated January 2, 2008, and recorded in the Official Records of Washington County, Utah on February 6, 2008, as Document No. 20080004968.

Signature Page

COLLINA:

Collina Tinta Holdings, LLC, a Utah
limited liability company

By: _____

Print Name: _____

Title: _____

INTERSTATE

Interstate Homes LLC, a Utah limited
liability company

By: _____

Print Name: _____

Title: _____

PENGA:

RR Penga, a Utah limited liability
company

By: _____

Print Name: _____

Title: _____

CITY:

Hurricane City, a municipal
corporation and political subdivision
of the State of Utah

By: _____

Print Name: _____

Title: _____

STATE OF)
 : ss.
COUNTY OF)

On the _____ day of _____, 2021 personally appeared before me _____ and _____, who, being by me duly sworn, did say that he/she/they is/are the _____ of Collina Tinta Holdings, LLC, a Utah limited liability company, and said person acknowledged to that said company executed the same.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

STATE OF)
 : ss.
COUNTY OF)

On the _____ day of _____, 2021 personally appeared before me _____, who, being by me duly sworn, did say that he/she is the _____ of RR Penga, LLC., a Utah limited liability company, and said person acknowledged to that said company executed the same.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

STATE OF)
 : ss.
COUNTY OF)

On the ____ day of _____, 2021 personally appeared before me _____, who, being by me duly sworn, did say that he/she is the _____ of Interstate Homes LLC, a Utah limited liability company, and said person acknowledged to that said company executed the same.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

STATE OF)
 : ss.
COUNTY OF)

On the ____ day of _____, 2021 personally appeared before me _____, who, being by me duly sworn, did say that he/she is the _____ of Hurricane City, a municipal corporation and political subdivision of the State of Utah, and said person acknowledged to that said company executed the same.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

Exhibit A
**Landscape Plan for Rlington Parkway and
The Ridge at Zion Vista**



Legal Description:

BEGINNING AT THE NORTHWEST CORNER OF SECTION 4, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE ALONG THE SECTION LINE SOUTH 89°43'42"EAST 1,688.58 FEET; THENCE SOUTH 00°01'00"WEST 208.71FEET; THENCE SOUTH 89°43'42"EAST 208.71 FEET; THENCE NORTH 00°01'00"EAST 208.71 FEET TO THE NORTH SECTION OF SAID SECTION 4; THENCE ALONG SAID SECTION LINE SOUTH 89°43'42"EAST 65.85 FEET; THENCE SOUTH 00°00'05"EAST 405.02 FEET; THENCE NORTH 89°59'55"EAST 236.70 FEET; THENCE SOUTH 32°44'48"EAST 802.71 FEET; THENCE SOUTH 00°13'28" WEST 1,718.18 FEET; THENCE SOUTH 89°S2'53" EAST 2,392.27 FEET; THENCE SOUTH 00°17'42" WEST 560.86 FEET; THENCE SOUTH 89°50'57" EAST 247.50 FEET TO THE EAST SECTION LINE OF SAID SECTION 4; THENCE ALONG SAID SECTION LINE SOUTH 00°17'41" WEST 757.13 FEET NORTH 89°50'57" WEST 1319.08 FEET; THENCE SOUTH 00°15'32" WEST 1318.25 FEET TO THE SOUTH SECTION LINE OF SAID SECTION 4; THENCE ALONG THE SECTION LINE NORTH 89°49'00" WEST 1318.50 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 4; THENCE ALONG THE SECTION LINE NORTH 89°49'00" WEST 2,636.30 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 4; THENCE ALONG THE SECTION LINE NORTH 00°14'51" EAST 1,316.02 FEET; THENCE NORTH 89°45'29" EAST 1,321.80 FEET; THENCE NORTH 00°14'51" EAST 1,317.75 FEET; THENCE NORTH 00°11'38" EAST 2,800.60 FEET TO THE NORTH SECTION LINE OF SECTION 5, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE ALONG SAID SECTION LINE SOUTH 89°46'40"EAST 1320.18 FEET TO THE POINT OF BEGINNING. CONTAINS 24,379,912 SQUARE FEET OR 559.68 ACRES

Parcel ID#'s:

H-3-2-5-1101	H-3-2-4-4215
H-3-2-5-1103	H-3-2-4-217
H-3-2-5-1101	H-3-2-4-4304
H-3-2-4-4401	H-3-2-4-2301
H-3-2-4-4402	
H-3-2-4-3201	
H-3-2-4-139	
H-3-2-4-148	
H-3-2-4-4112	
H-3-2-4-4111	
H-3-2-4-4114	
H-3-2-4-41051	
H-3-2-4-132	
H-3-2-4-4105	
H-3-2-4-146	
H-3-2-4-4221	
H-3-2-4-4201	
H-3-2-4-133	
H-3-2-4-4303	

November 10, 2022

Stephen,

Enclosed is the Preliminary Plat Application for the Ridge @ Zion Vista Phase 2.

Also enclosed is the Title Report and the application fee of 150.00.

I have also included a copy of the "Fifth Amendment to the Development Agreement for Painted Hills Collina Tinta".

Dannie Green from Psomas should be dropping of the Preliminary Plat together with will serve letters.

Please let me know of any thing else that might be needed.

Regards,

A handwritten signature in blue ink that reads "Rich Hansen". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Rich Hansen

ZONE CHANGE APPLICATION

City of Hurricane
147 North 870 West
Hurricane, UT 84737
(435) 635-2811
FAX (435) 635-2184

Fee: \$500.00

For Office Use Only:

File No. 2022-ZC-01

Receipt No. 8-154844

Name: Calypso Ridge Properties Telephone: 801-648-8229

Address: 5500 S Holiday Blvd, Holladay, UT 84117 Fax No. _____

Agent (If Applicable): Karl Rasmussen Telephone: 435-668-8307

Email: matt@lowe.companies.com Agent Email: Karl@pv-eng.com

Address/Location of Subject Property: Approx. 4700 S + 2600 W

Tax ID of Subject Property: H-3-2-32-320 Existing Zone District: RA-1

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

To change zoning to R1-10 to build a residential neighborhood

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

- ☒ a. The name and address of every person or company the applicant represents;
- ☒ b. An accurate property map showing the existing and proposed zoning classifications;
- ☒ c. All abutting properties showing present zoning classifications;
- ☒ d. An accurate legal description of the property to be rezoned;
- ☒ e. Stamped envelopes with the names and addresses of all property owners within 250 feet of the boundaries of the property proposed for rezoning.
- ☒ f. Warranty deed or preliminary title report or other document (see attached Affidavit) showing evidence that the applicant has control of the property

Note: It is important that all applicable information noted above along with the fee is submitted with the application. An incomplete application will not be scheduled for Planning Commission consideration. Planning Commission meetings are held on the second Thursday and fourth Wednesday of each month at 6:00 p.m. Contact the Planning Department for the deadline date for submissions. Once your application is deemed complete, it will be put on the agenda for the next Planning Commission meeting. A deadline missed or an incomplete application could result in a month's delay.

(Office Use Only)

Date Received: _____ Application Complete: YES ☐ NO ☐

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

ZONE CHANGE APPLICATION (General Information)

PURPOSE

All lands within the City are zoned for a specific type of land use (single family residential, multi-family, commercial, industrial, etc). Zoning occurs as a means to provide for a relationship between various types of land uses which promotes the health, safety, welfare, order, economics, and aesthetics of the community. Zoning is one of the main tools used to implement the City's General Plan.

WHEN REQUIRED

A zone change request is required any time a property owner desires to make a significant change to the use of his/her land. The change may be from one zone density (say 1 acre lots) to smaller lots (10,000 square foot lots). Or, it may be to an entirely different type of use, such as a change from single family zoning to multiple family or commercial zoning. Since the zone applied to your land limits what you can do, a rezoning application is typically the first step toward a change.

REQUIRED CONSIDERATIONS TO APPROVE A ZONE CHANGE

When approving a zone change the following factors should be considered by the Planning Commission and City Council:

1. Whether the proposed amendment is consistent with the Goals, Objectives and Policies of the City's General Plan;
2. Whether the proposed amendment is harmonious with the overall character of existing development in the vicinity of the subject property;
3. The extent to which the proposed amendment may adversely affect adjacent property; and
4. The adequacy of facilities and services intended to serve the subject property, including, but not limited to roadways, parks and recreation facilities, police and fire protection, schools, storm water drainage systems, water supplies, and waste water and refuse collection.

PROCESS

Contact the Planning Department for when the deadline for submission is. After it is deemed complete, staff will review the request, and prepare a report and recommendation for the Planning Commission. This will be reviewed at a public hearing where the applicant should attend, present the project, and respond to questions from the Planning Commission. Since it is a public hearing, members of the public may also have questions or comments. At the public hearing the Planning Commission will review the application and staff's report, and forward a recommendation to the City Council of approval, approval with modifications, or denial the zone change application.

Upon receipt of the Planning Commission recommendation, typically 1-2 weeks after the Planning Commission action, the City Council will consider and act on the Commission's recommendation. The action of the City Council is final. If denied, a similar application generally cannot be heard for a year.

AFFIDAVIT
PROPERTY OWNER

STATE OF UTAH)
)
COUNTY OF)

I (we), Math Lowe, 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.

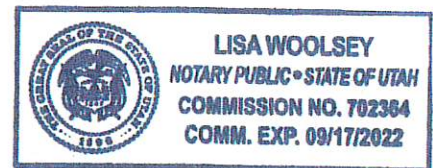
Calypso Ridge Properties LLC
(Property Owner)

Subscribed and sworn to me this 1st day of Sept 2021.

Lisa Woolsey
(Notary Public)

Residing in: Morgan, UT

My Commission Expires: 9/17/2022



Agent Authorization

I (we), Math Lowe, the owner(s) of the real property described in the attached application, do authorize as my (our) agent(s) Karl Rasmussen 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.

Calypso Ridge Properties LLC
(Property Owner)

(Property Owner)

Subscribed and sworn to me this 1st day of Sept 2021.

Lisa Woolsey
(Notary Public)

Residing in: Morgan, UT

My Commission Expires: 9/17/2022

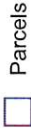




Calypso Ridge Zone Change



Legend



Ownership

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

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.



WGS_1984_Web_Mercator_Auxiliary_Sphere

ZONE CHANGE FOR:
CALYPSO RIDGE PROPERTIES

LOCATED IN SECTION 32, T42S, R13W, S.L.B.&M.
WASHINGTON COUNTY, UTAH

LEGEND

PROPERTY LINE

RA-1: RESIDENTIAL AGRICULTURAL - 1 UNIT PER ACRE
(PROPOSED ZONE CHANGE FROM RA-1 TO R1-10)
R1-10: RESIDENTIAL - 1 UNIT PER 10,000 SQ. FT

A CALYPSO RIDGE PROPERTIES LLC - PARCEL: H-3-2-32-310
B CALYPSO RIDGE PROPERTIES LLC - PARCEL: H-3-2-32-320
C CALYPSO RIDGE PROPERTIES LLC - PARCEL: H-3-2-32-330
D CALYPSO RIDGE PROPERTIES LLC - PARCEL: H-3-2-32-321
E TWIN VENTURES LLC - PARCEL: H-3401-A
F COPPER ROCK PROPERTIES LC - PARCELS: H-3-2-32-100
G FIREBIRD LLC - PARCEL: H-3402

NARRATIVE

THE PURPOSE OF THIS ZONE CHANGE IS TO CHANGE PARCELS H-3-2-32-310 & H-3-2-32-320 FROM ZONE RA-1 TO ZONE R1-10.

H-3-2-32-310 DESCRIPTION

BEGINNING AT A POINT S1°08'24"W, 135.16 FEET ALONG THE SECTION LINE FROM THE WEST 1/4 CORNER OF SECTION 32, T42S, R13W, SLB&M, RUNNING THENCE S88°44'22"E, 2571.55 FEET; THENCE S0°59'20"W, 937.11 FEET; THENCE N88°59'25"W, 2574.03 FEET TO A POINT ON THE WEST LINE OF SECTION 32; THENCE N1°08'24"E, 948.38 FEET ALONG THE SECTION LINE TO THE POINT OF BEGINNING.

CONTAINING 2,409,010.99 SQ. FT. OR 55.68 ACRE.

REFERENCED FROM WARRANTY DEED, DATED 9/03/2021, PARCEL H-3-2-32-310, FILE 20210058835

ZONE CHANGE IS REQUESTED BY CALYPSO RIDGE PROPERTIES TO BE REZONED FROM RA-1 (RESIDENTIAL AGRICULTURAL-1 UNIT PER ACRE) TO R1-10 (RESIDENTIAL-1 UNIT PER 10,000 SQ. FT).

H-3-2-32-320 DESCRIPTION

BEGINNING AT A POINT S1°08'24"W, 1083.52 FEET ALONG THE SECTION LINE FROM THE WEST 1/4 CORNER OF SECTION 32, T42S, R13W, SLB&M, RUNNING THENCE S88°59'25"E, 2574.03 FEET; THENCE S0°59'20"W, 806.87 FEET; THENCE N88°59'25"W, 2576.16 FEET TO A POINT ON THE WEST LINE OF SECTION 32; THENCE N1°08'24"E, 806.87 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,077,812 SQ. FT. OR 47.70 ACRE.

REFERENCED FROM WARRANTY DEED, DATED 8/31/2021, PARCEL H-3-2-32-320, FILE 20210057877

ZONE CHANGE IS REQUESTED BY CALYPSO RIDGE PROPERTIES TO BE REZONED FROM RA-1 (RESIDENTIAL AGRICULTURAL-1 UNIT PER ACRE) TO R1-10 (RESIDENTIAL-1 UNIT PER 10,000 SQ. FT).

H-3-2-32-330 DESCRIPTION

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 32, T42S, R13W, SLB&M, RUNNING THENCE N1°08'24"E, 760.52 FEET ALONG THE SECTION LINE; THENCE S88°59'25"E, 1143.20 FEET; THENCE S1°06'01"W, 760.52 FEET TO A POINT ON THE SOUTH LINE OF SECTION 32; THENCE N88°59'25"W, 1143.73 FEET ALONG THE SECTION LINE TO THE POINT OF BEGINNING.

CONTAINING 869,457 SQ. FT. OR 19.96 ACRE.

REFERENCED FROM WARRANTY DEED, DATED 9/7/2021, PARCEL H-3-2-32-330, FILE 20210059119

ZONE CHANGE IS REQUESTED BY CALYPSO RIDGE PROPERTIES TO BE REZONED FROM RA-1 (RESIDENTIAL AGRICULTURAL-1 UNIT PER ACRE) TO R1-10 (RESIDENTIAL-1 UNIT PER 10,000 SQ. FT).

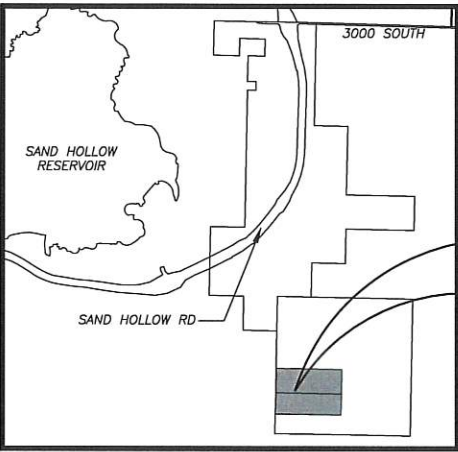
H-3-2-32-321 DESCRIPTION

BEGINNING AT A POINT N88°59'25"W, 62.00 FEET FROM THE SOUTH 1/4 CORNER OF SECTION 32, T42S, R13W, SLB&M, RUNNING THENCE N88°59'25"W, 1434.44 FEET ALONG THE SECTION LINE; THENCE N1°06'01"E, 760.52 FEET; THENCE S88°59'25"E, 1432.96 FEET; THENCE S0°59'20"W, 760.52 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,077,812 SQ. FT. OR 47.70 ACRE.

REFERENCED FROM WARRANTY DEED, DATED 9/3/2021, PARCEL H-3-2-32-321, FILE 20210058815

ZONE CHANGE IS REQUESTED BY CALYPSO RIDGE PROPERTIES TO BE REZONED FROM RA-1 (RESIDENTIAL AGRICULTURAL-1 UNIT PER ACRE) TO R1-10 (RESIDENTIAL-1 UNIT PER 10,000 SQ. FT).



PROJECT
LOCATION

REVISIONS		
NO	DESCRIPTION	DATE

PROVALUE ENGINEERING, INC.
Engineers - Land Surveyors - Land Planners
20 South 800 West, Suite 1
Provo, UT 84601
Phone: (435) 668-5301



ZONE CHANGE FOR:
CALYPSO RIDGE PROPERTIES
5500 S HOLIDAY BLVD, HOLLADAY, UT 84117
LOCATED IN SECTION 32, T42S, R13W, S.L.B.&M.

DATE: 8-18-2021
SCALE: 1"=500'
JOB NO.
642-003
SHEET NO.
1

**DEVELOPMENT AGREEMENT
FOR
CALYPSO RIDGE ZONE CHANGE**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into as of the ____ day of _____, 2021 (the “Effective Date”), by and between the CITY OF HURRICANE, a Utah municipal corporation, hereinafter referred to as “City,” and Calypso Ridge Properties, a Utah limited liability company, hereinafter referred to as “Developer.” The City and Developer are hereinafter collectively referred to as “Parties.”

RECITALS

A. Developer is the owner of approximately 103.38 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 4, 2021, the City Council approved a zone change as shown in Exhibit B with the conditions laid out within this agreement.

C. Developer is willing to design and construct the Project 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.

D. The City Council 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 be the date of the execution and delivery of this Agreement and the recording thereof as a public record on title of the Property in the office of the Washington County Recorder.

E. The City Council further authorized the Mayor of the City to execute and deliver this Agreement on behalf of the City.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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 an underlying zone of shown on EXHIBIT B and (ii) this Agreement. The Developer shall not seek to develop the Property in a manner that deviates from the zoning approved in EXHIBIT B as permitted by the aforementioned zoning designations for the Property. Except as otherwise approved in writing by City.

3. 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 and all other zoning requirements.

- a. Owner/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 and extension of power or water service, and no other request requiring the availability and extension of power and water services, shall be filed or made until such time that such services are available and have been extended to the Property, and (d) Owner/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, and a warrantee bond has been provided by Developer.
- 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.

4. Reimbursement for Improvements. Developer and Hurricane City may enter into an agreement whereby the developer is reimbursed by the City for the cost of constructing eligible public facilities. All reimbursement agreements shall comply with Hurricane City Code 9-6.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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:

To the City: City of Hurricane
 Attention: Fay Reber, City Attorney
 68 S. 700 W.
 Hurricane, UT 84737

10. 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 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, 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.

11. 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.

12. Sale or Conveyance. If Developer sells or conveys parcels of land, the lands so sold and conveyed shall bear the same rights, privileges, 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.

13. 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.

14. 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.

15. Force Majeure. 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.

16. 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:

CITY OF HURRICANE

ATTEST:

By: _____
City Recorder

By: _____
Mayor

DEVELOPER:

By: _____
Name: _____
Title: _____

STATE OF UTAH)
 :SS
COUNTY OF UTAH)

On the ____ day of _____, 202_, personally appeared before me _____, who being by me duly sworn, did say that he is the _____ of _____, a Utah limited liability company, 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
Residing at:

EXHIBIT A
Legal Description Parcel:

EXHIBIT B
Zoning Amendment



STAFF COMMENTS

Agenda Date:	02/3/2022
Application Number:	2022-ZC-01
Type of Application:	Zone Change
Action Type:	Legislative
Applicant:	Calypso Ridge Properties
Agent:	Karl Rasmussen
Request:	A Zone Change Request from RA-1 to an R1-10 Zone.
Location:	4700 S and 2600 W
Zoning:	RA-1
General Plan Map:	Single-Family

Planning Commission Recommendation

The Planning Commission gave a positive recommendation on the proposed zone subject to comments from JUC and staff and the conditions as contained within the attached development agreement. This motion was approved five to two.

A dissenting opinion has been submitted by Dayton Hall, the Chair of the Planning Commission. It has been attached to this report.

Discussion:

The applicant is seeking a zone change on 45 acres from RA-1 zoning to R1-10 zoning. The applicant came in last year to get a zone change on the two parcels immediately to the north from RA-1 to R1-10 subject to a development agreement that limits the applicant's ability to develop the project until utilities are available on the property; this would be an addition to that development. This would bring the Calypso Ridge development from 103 acres to 148 acres.

	Zoning	Adjacent Land Use
North	R1-10 and R1-10 PDO	Undeveloped. Calypso Ridge and Silver Flats are planned to the north. Sand Hollow Mesa further north and to the west
East	R1-10 and R1-10 PDO	Undeveloped. Silver Flats and Solaroca planned.
South	None	Outside of city limits. Undeveloped BLM Land
West	None	Outside of city limits. Undeveloped BLM Land

Zone Change Consideration

02/03/2022

2022-ZC-01

To change the zoning on any parcel of land within the City of Hurricane, the following questions need to be addressed:

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.*

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

Response: The [General Plan Map](#) shows this area as a future Single Family Residential:

Residential neighborhoods characterized by single-family homes. 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 is proposing an R1-10 zone, which complies with the General Plan Map. There are limited utilities and other “supporting community uses” in the area that are planned to be brought in with other phases of the development.

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

Response: Most of the area is undeveloped, but most of the surrounding area is planned for developments of similar density and nature including the development to the north that this is a planned addition to.

3. Will the proposed amendment affect the adjacent property?

Response: Yes, it will have some impact on the area. However, the planned impact will be minimal compared to the impacts of the other developments in the area including the other parts of this development.

4. Are public facilities and services adequate to serve the subject property?

Response: There are currently almost no services in the area. Several larger developers in the area, including Calypso Ridge, have a number of plans for getting utilities into this area. Staff would recommend that the previously approved Calypso Ridge Development Agreement be updated to include these parcels.

JUC Comments:

1. **Power:** Limited power in the area and this will add on to it. No lines in the area
2. **Water:** No water in the area. Might depend on PID
3. **Streets:** No access currently
4. **Sewer:** No lines in the area
5. **Engineer:** Property lines do not match other property lines in the area, possible illegal subdivision
6. **Fire:** No access, need roadways, water etc.
7. **Phone:** No comments
8. **Water Conservancy:** No comments

Findings:

Staff makes the following findings:

1. The proposed amendment is generally compatible with the current General Plan's map for future use, but any development on the property would not be located around supporting use for a few years.
2. The proposed amendment is generally in harmony with the overall character of the proposed surrounding development, but right now there is almost no development adjacent to the property.
3. The proposed amendment will have an impact on the area, but the City has anticipated about 4 units an acre in the area.
4. The services are currently not adequate for the development, and would only become adequate after surrounding properties, including the earlier approved parts of this development, install and construct significant offsite improvements.

Recommendation: Staff recommends the City Council review this application and the zone change based on standards and consider residents' comments. Staff would recommend the city approve this zone change with the condition the Calypso Ridge Development Agreement is amended to include these parcels.

ORDINANCE NO 2021-01

AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE APPROVING THE REZONE
FOR PARCELS H-3-2-32-330 AND H-3-2-32-321 FROM RA-1 TO R1-10

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 Planning Commission gave a positive recommendation subject to the approval of a development agreement to mitigate utility concerns.

BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF HURRICANE CITY THAT:

1. That H-3-2-32-330 and H-3-2-32-321 be rezoned to R1-10 as shown in the following attachments
2. That the property zone change is subject to the attached Development Agreement and that the zone change does not take place until the Development Agreement has been signed by both the City and Developer and recorded at the County Records Office.

PASSED AND APPROVED on this 3rd day of February 2022.

Hurricane City

Mayor

Attest:

Cindy Beteag, City Recorder

**DISSENTING RECOMMENDATION OF THE HURRICANE CITY PLANNING
COMMISSION TO THE HURRICANE CITY COUNCIL**

RE: **Calypso Ridge Development;
Application No. 2022-ZC-01;
Zone change request from RA-1 to R1-10 located at approximately
4700 South and 2600 West;
Parcels H-3-2-32-330, H-3-2-32-321.**

DATE: **January 26, 2022**

DISSENTING RECOMMENDATION

The Planning Commission recommended approval of the zone change request on a 5 to 2 split vote. This dissenting recommendation recommends that the City Council DENY the proposed zone change amendment based on the findings set forth below.

FINDINGS

1. Public facilities and services are not adequate to serve the subject property.
 - a. One of the four required considerations for a zone change is the “adequacy of facilities and services intended to serve the property, including, but not limited to, roadways, parks and recreation facilities, police and fire protections, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection.”
 - b. The City’s staff report on the application notes that: “There are currently almost no services in the area.”
 - c. The City’s Joint Utility Commission (“JUC”) made the following comments regarding the application:
 - i. Power: Limited power in the area and this will add on to it (the issue with limited power). No lines in the area.
 - ii. Water: There is no water in the area.
 - iii. Streets: There is no access currently.
 - iv. Fire: There is no access—need roadways, water, ect.
 - d. The north-south corridors between the subject property and the City center are inadequate to support additional traffic that will result from increased density. Specifically, the most direct route between the subject property and the City center includes 700 West and 1100 West, both of which include large sections that are narrow and lack walking space and normal right-of-way improvements to accommodate the increased traffic.
 - e. Continuing to grant zone changes for properties that lack adequate services and infrastructure—and which will likely result in future increased costs to the City’s taxpayers—is not a wise policy decision.

///

2. A development agreement is insufficient to replace the zone change ordinance requirements because development agreements generally do not address police protection, fire protection, and roadways outside of the subject property.
 - a. The prior City Council was open to granting zone changes subject to a development agreement that required certain utilities to be in place before development. Although this approach is somewhat better than granting a zone change with no conditions, it is inadequate to fully address the considerations required by the zone change ordinance, as explained further below.
 - b. The zone change ordinance requires consideration of the adequacy of not only water and power, but also roadways and police and fire protection. The remote location of the property makes emergency response times a concern. If the City approves these higher density developments in this remote location, it will soon face pressure to increase and expand its emergency response capabilities for this area, which will increase the cost to the City and its taxpayers.
 - c. If the Council wishes to circumvent the zone change ordinance with a development agreement, then the agreement should require that no development can occur until the Council is satisfied and has voted (after a recommendation from the fire district and the police department) that the services and emergency response times are adequate for this remote area.
 - d. Also, the lack of adequate roads is a concern. A development agreement generally will not require a developer to improve roadways outside of the proposed development, but these are some of the roadways that are lacking as discussed above. If the City approves these higher densities, the City will soon face pressure to improve the roadways to access the developments, with the taxpayers bearing this cost.
 - e. Of course, these technical contractual issues in a development agreement could be avoided if the City Council would apply the zone change ordinance as it presently exists and decline to grant zone changes for additional density until adequate services and roads exist to service the property.
3. A course correction is necessary at this time.
 - a. It is recognized that other properties in the area south of 3000 South have received zone changes over the last few years. However, as a result of recent zone changes and resulting development, facilities and services are now inadequate to support additional density in the area until the City's electrical grid, roadways, emergency response services, and other City services are improved and expanded.
 - b. Each request for a zone change should be evaluated on its own merits.
 - c. Prior zone changes should not be used to justify additional zone changes; rather, as a result of prior zone changes and resulting development, future zone changes south of 3000 South should be denied until the City's infrastructure service capabilities can catch up to the development and the remaining criteria for a zone change can be met.

APPROVAL

This Dissenting Recommendation is made by Commissioner Dayton Hall.

ZONE CHANGE APPLICATION

City of Hurricane
147 North 870 West
Hurricane, UT 84737
(435) 635-2811
FAX (435) 635-2184

Fee: \$500.00

For Office Use Only:

File No. 2022-2C-02

Receipt No. 8

Name: The Will Group Telephone: 801-210-0370

Address: 1780 W. 700 N. Ste. 40 Lindon, UT 84042 Fax No. _____

Agent (If Applicable): Tyson Williamson Telephone: 801-786-9809

Email: tyson@thewillgroup.us Agent Email: _____

Address/Location of Subject Property: Appox. 4800 S. and 1500 W

Tax ID of Subject Property: H-3403-E-1, H-3403-E-3,
H-3403-H, H-3403-A Existing Zone District: RA-1

Proposed Zoning District and reason for the request (Describe, use extra sheet if necessary)

See attached.

Submittal Requirements: The zone change application shall provide the following:

- ☒ a. The name and address of every person or company the applicant represents;
- ☒ b. An accurate property map showing the existing and proposed zoning classifications;
- ☒ c. All abutting properties showing present zoning classifications;
- ☒ d. An accurate legal description of the property to be rezoned;
- ☒ e. Stamped envelopes with the names and addresses of all property owners within 250 feet of the boundaries of the property proposed for rezoning.
- ☒ f. Warranty deed or preliminary title report or other document (see attached Affidavit) showing evidence that the applicant has control of the property

Note: It is important that all applicable information noted above along with the fee is submitted with the application. An incomplete application will not be scheduled for Planning Commission consideration. Planning Commission meetings are held on the second Thursday and fourth Wednesday of each month at 6:00 p.m. Contact the Planning Department for the deadline date for submissions. Once your application is deemed complete, it will be put on the agenda for the next Planning Commission meeting. A deadline missed or an incomplete application could result in a month's delay.

(Office Use Only)

Date Received: _____ Application Complete: YES ☐ NO ☐

Date application deemed to be complete: _____ Completion determination made by: _____

ZONE CHANGE APPLICATION (General Information)

PURPOSE

All lands within the City are zoned for a specific type of land use (single family residential, multi-family, commercial, industrial, etc). Zoning occurs as a means to provide for a relationship between various types of land uses which promotes the health, safety, welfare, order, economics, and aesthetics of the community. Zoning is one of the main tools used to implement the City's General Plan.

WHEN REQUIRED

A zone change request is required any time a property owner desires to make a significant change to the use of his/her land. The change may be from one zone density (say 1 acre lots) to smaller lots (10,000 square foot lots). Or, it may be to an entirely different type of use, such as a change from single family zoning to multiple family or commercial zoning. Since the zone applied to your land limits what you can do, a rezoning application is typically the first step toward a change.

REQUIRED CONSIDERATIONS TO APPROVE A ZONE CHANGE

When approving a zone change the following factors should be considered by the Planning Commission and City Council:

1. Whether the proposed amendment is consistent with the Goals, Objectives and Policies of the City's General Plan;
2. Whether the proposed amendment is harmonious with the overall character of existing development in the vicinity of the subject property;
3. The extent to which the proposed amendment may adversely affect adjacent property; and
4. The adequacy of facilities and services intended to serve the subject property, including, but not limited to roadways, parks and recreation facilities, police and fire protection, schools, storm water drainage systems, water supplies, and waste water and refuse collection.

PROCESS

Contact the Planning Department for when the deadline for submission is. After it is deemed complete, staff will review the request, and prepare a report and recommendation for the Planning Commission. This will be reviewed at a public hearing where the applicant should attend, present the project, and respond to questions from the Planning Commission. Since it is a public hearing, members of the public may also have questions or comments. At the public hearing the Planning Commission will review the application and staff's report, and forward a recommendation to the City Council of approval, approval with modifications, or denial the zone change application.

Upon receipt of the Planning Commission recommendation, typically 1-2 weeks after the Planning Commission action, the City Council will consider and act on the Commission's recommendation. The action of the City Council is final. If denied, a similar application generally cannot be heard for a year.

Proposed Zoning District and Reason for the Request

We are presenting a zone change request to Hurricane City for the properties shown in the attached Zone Change Application. The parcels H-3403-E-1, H-3403-E-3, H-3403-H, and H-3403-A are currently zoned as RA-1. The request is for these four parcels to be rezoned as an R1-10 zone with a Planned Development Overlay (PDO).

On October 21, 2021, we received an approval from Hurricane City Council for three adjacent parcels to be rezoned to an R1-10 (PDO). These parcels are H-3403-U, H-3403-X, and H-3403-W.

See the attached documents for further explanation.

Legal Descriptions

Parcel: H-3403-E-1

S: 33 T: 42S R: 13W NW1/4 NW1/4 SE1/4 SEC 33 T42S R13W

Parcel: H-3403-E-3

S: 33 T: 42S R: 13W NE1/4 NW1/4 SE1/4 SEC 33 T42S R13W

Parcel: H-3403-H

S: 33 T: 42S R: 13W SW1/4 NW1/4 SE1/4 SEC 33 T42S R13W

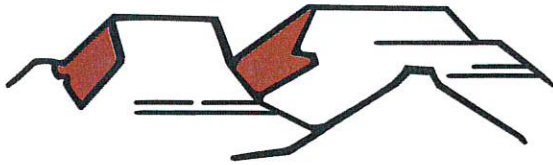
Parcel: H-3403-A

S: 33 T: 42S R: 13W S1/2 NW1/4 SE1/4 SEC 33 T42S R13W

Abutting Property Zoning/Uses

	Abutting Property Zoning	Abutting Property Use
North	R1-10 (Copper Rock) RA-1 (Sky Ranch)	Single Family Homes and Recreation Resort
West	R1-10	Recently rezoned. Future Master Planned Community.
South	R1-10	Recently rezoned. Future Master Planned Community.
East	R1-10	Recently rezoned. Future Master Planned Community.





PLANNING & ZONING
HURRICANE CITY
UTAH

Stephen Nelson, Planning Director
Fred Resch, Assistant Planner/Code Enforcement
Brienna Spencer, Planning Technician

January 14, 2022

Dear property owner,

The Hurricane City Planning Commission will hold a Public Hearing during its regular meeting on January 26, 2022 commencing at 6 p.m. to take comments on a zone change amendment request located at approx. 4800 South and 1500 West from RA-1, residential agriculture one unit per acre, to R1-10, residential one unit per 10,000 square feet, to contain a PDO, planned development overlay. Parcel numbers H-3403-E-1, H-3403-E-3, H-3403-H, and H-3403-A. A map showing the proposal is included with this mailing.

If you would like to make comments, please plan to attend the meeting, or provide written comments for the Planning Commission's consideration by 3 p.m. the day of the meeting.

If you are a property owner within the zone change area, you may access the City's land use code providing information on the specific zone to be applied to your property via the city's website, cityofhurricane.com, under the Planning and Zoning link. The land use code is Title 10 the zone included in this zone change request is located in Chapter 23. The purpose statement for each zone may be found in Chapter 11.

If you are a property owner within the zone change area you may, no later than 10 days after the day of the first public hearing, file a written object to the inclusion of your property in the proposed zoning map amendment. Send any such objection to the Planning Department at 147 N. 870 West, Hurricane, UT 84737. A copy of any and all objections will be provided to the City Council for their consideration during the decision-making process for the zone map amendment.

Please contact me at 435-635-2811 X 118 or email publiccomment@cityofhurricane.com if you have any questions or concerns.

Sincerely,

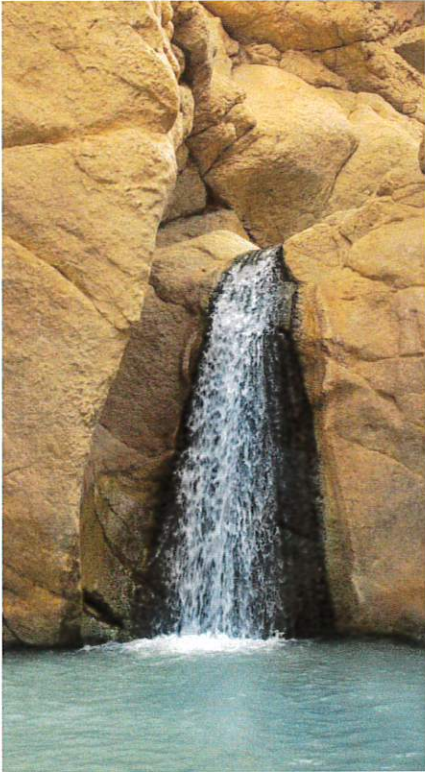
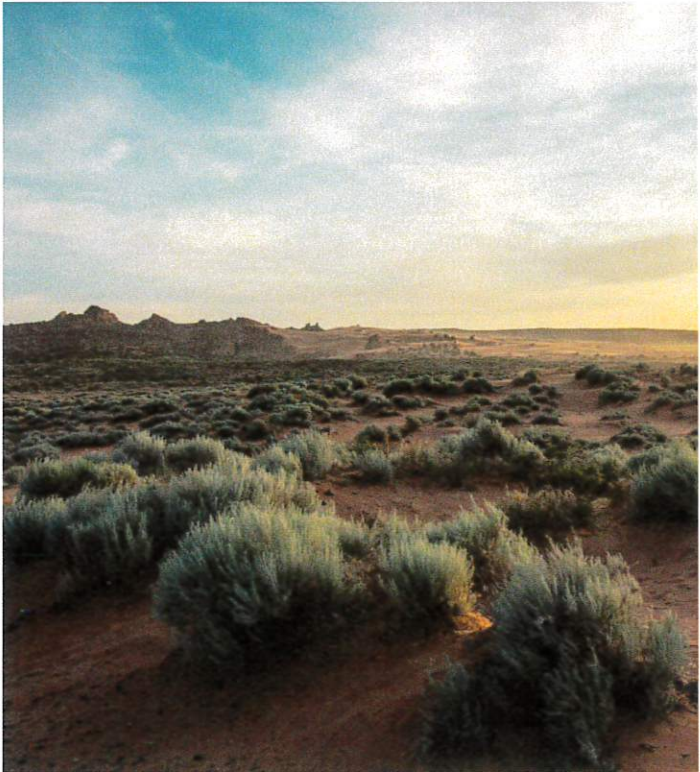
Stephen Nelson

Stephen Nelson, Planning Director

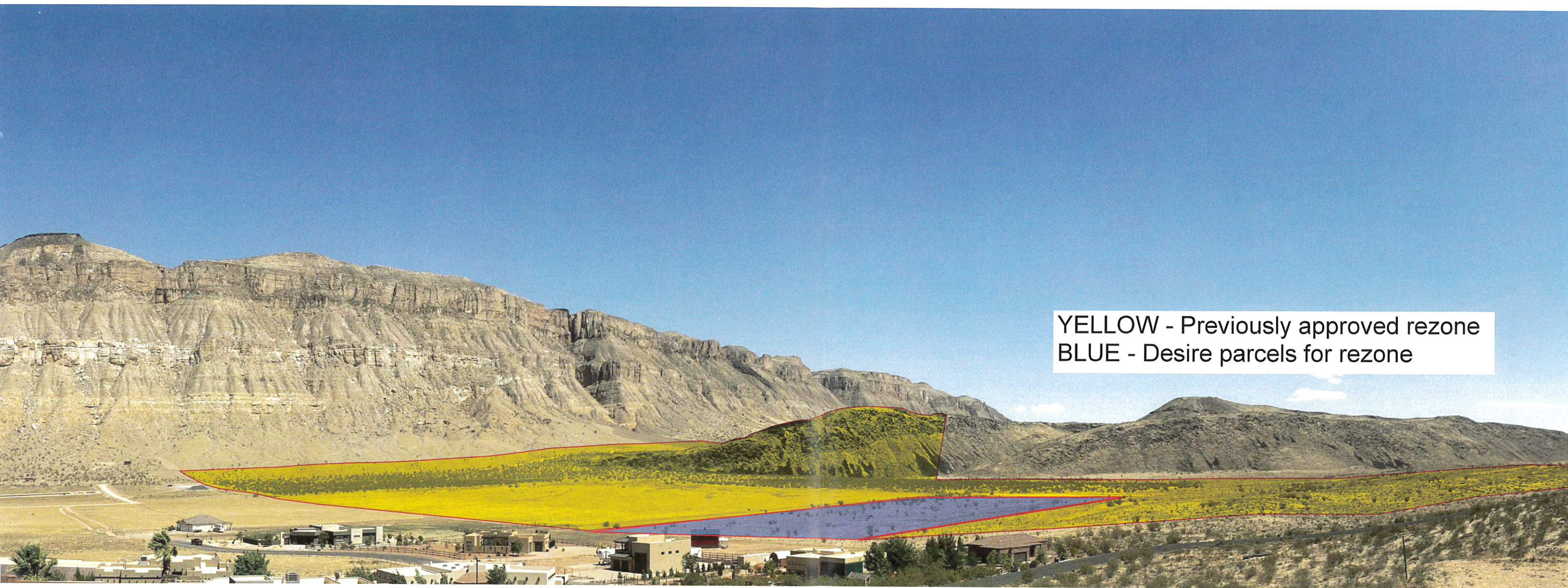
solaroca

Rezoning Application

January 5, 2022



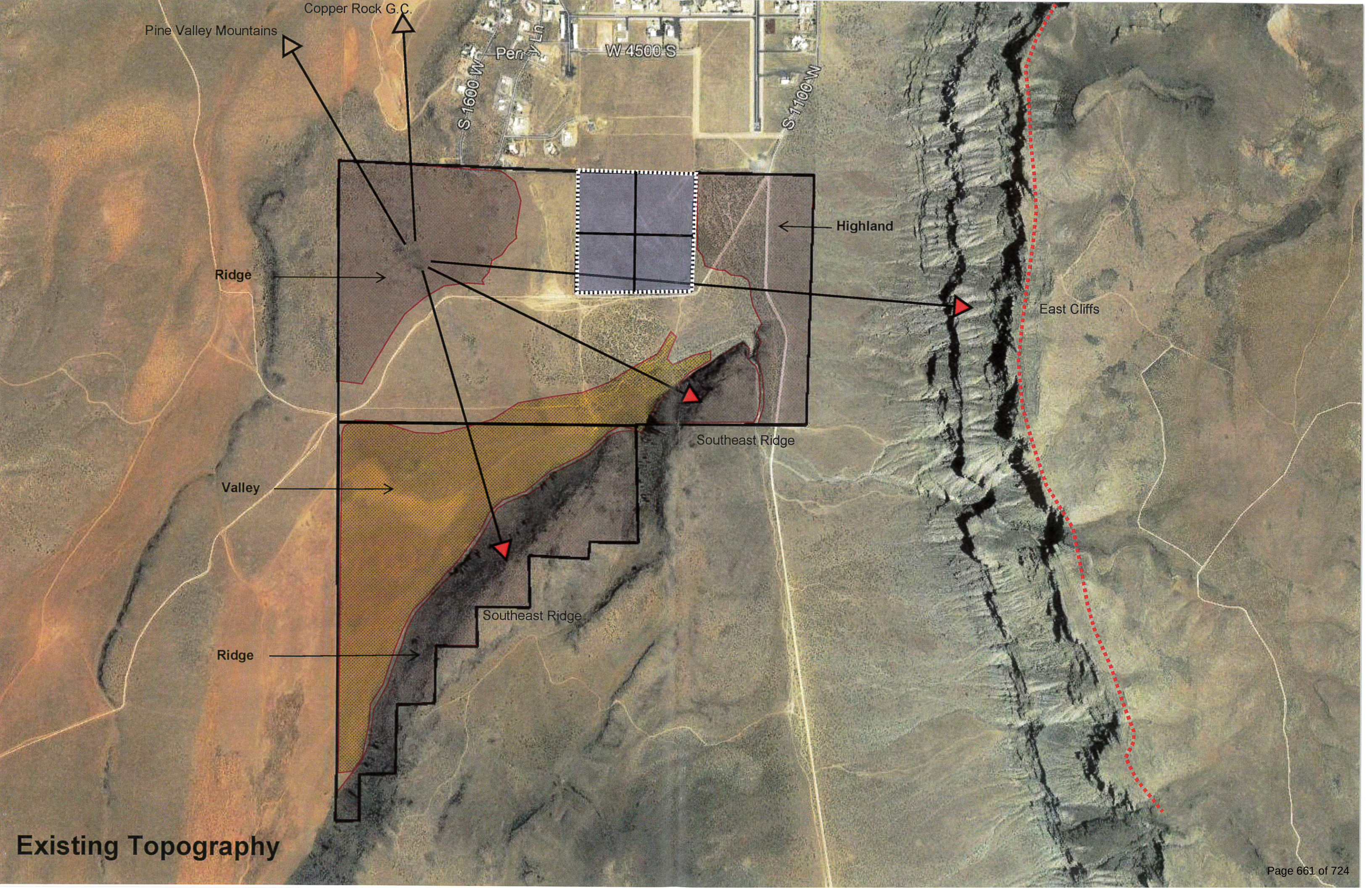
THE
WILL
GROUP
methodstudio



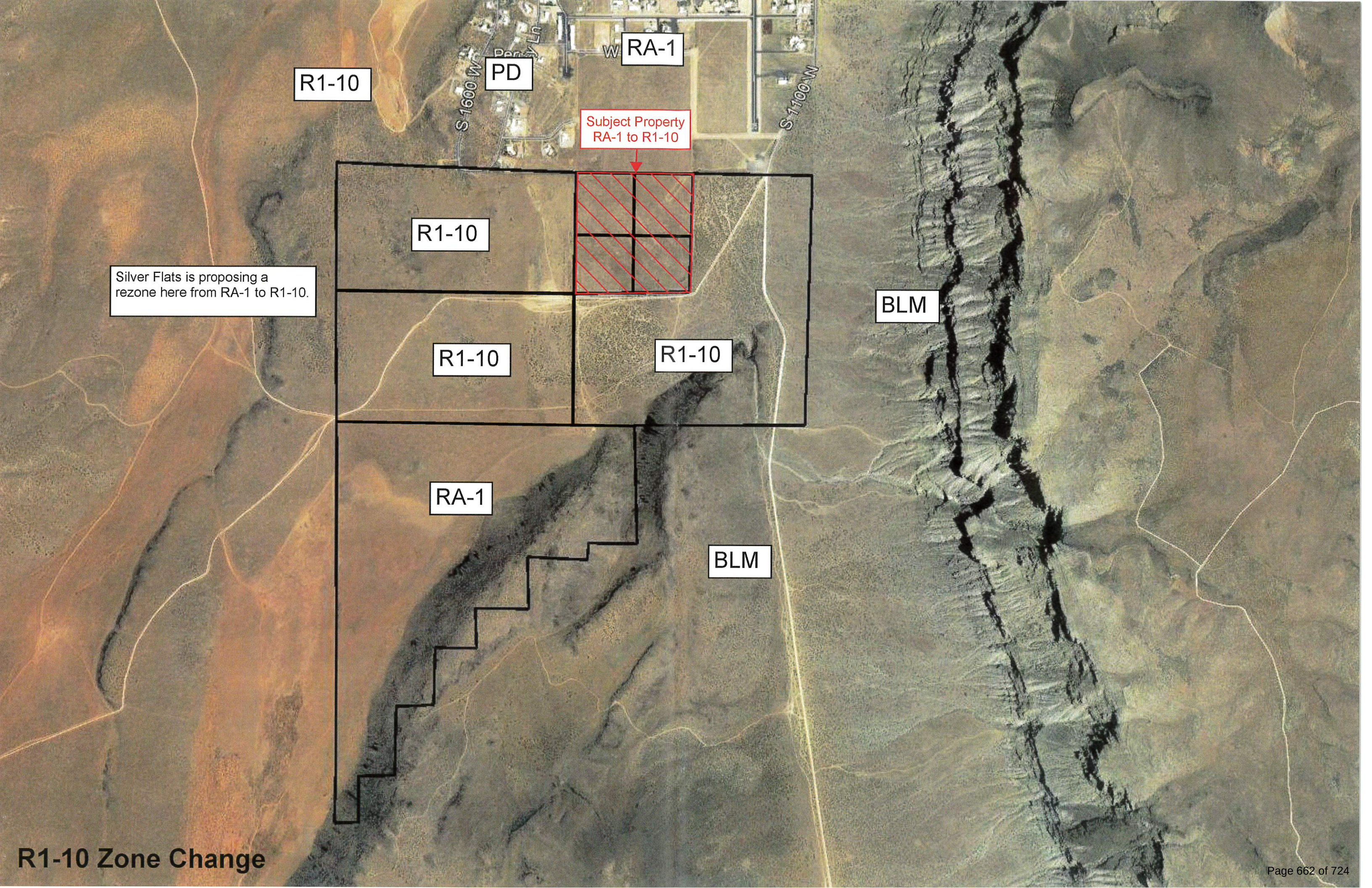
YELLOW - Previously approved rezone
BLUE - Desire parcels for rezone

inherent characteristics

the ideals for the new development are rooted in the natural elements defining the landscape. Natural light, views, textures and colors are examined to understand the visual nature surrounding the building sight. By taking the time to understand the character of the surrounding site, we take the first step at enhancing the sense of place



Existing Topography

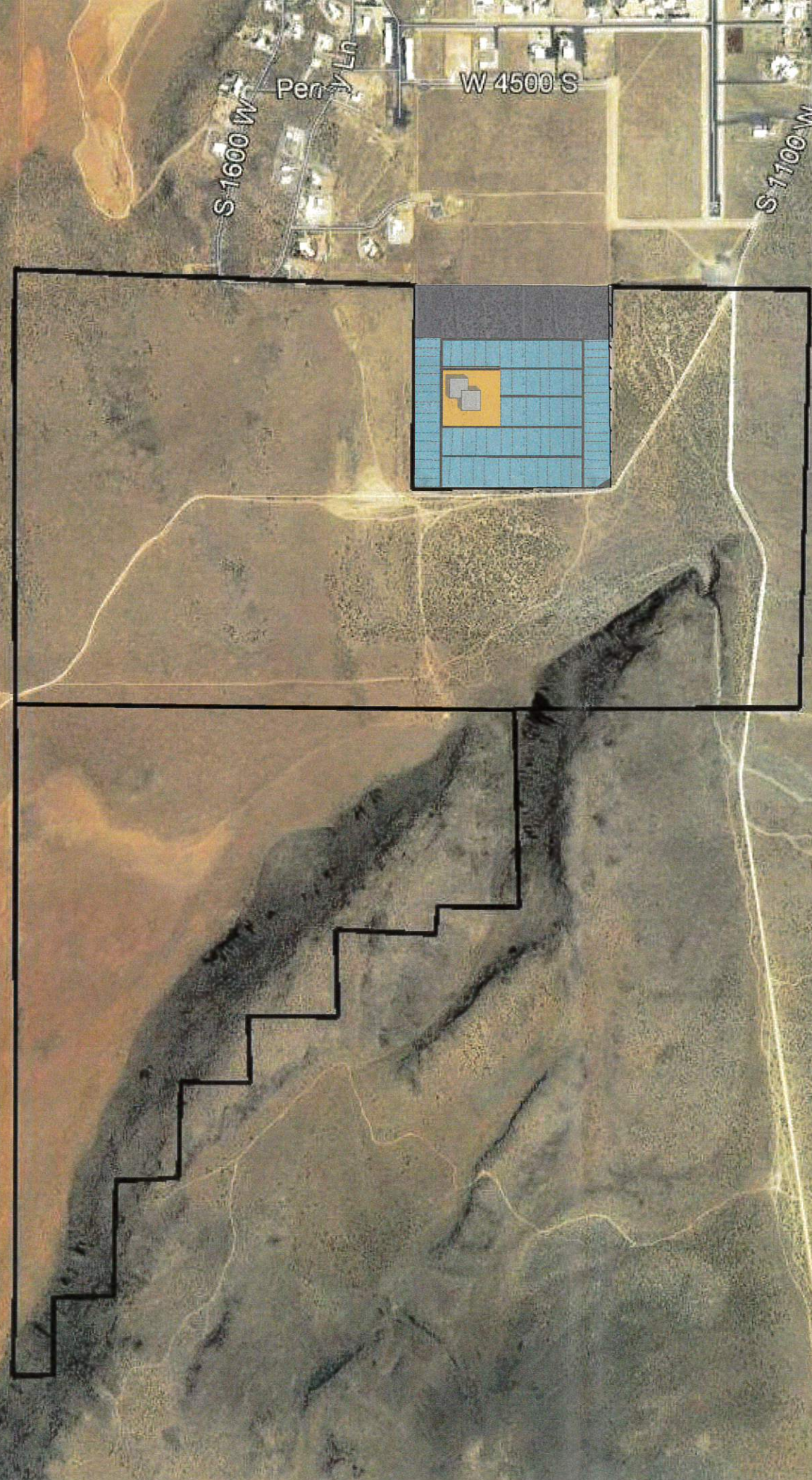


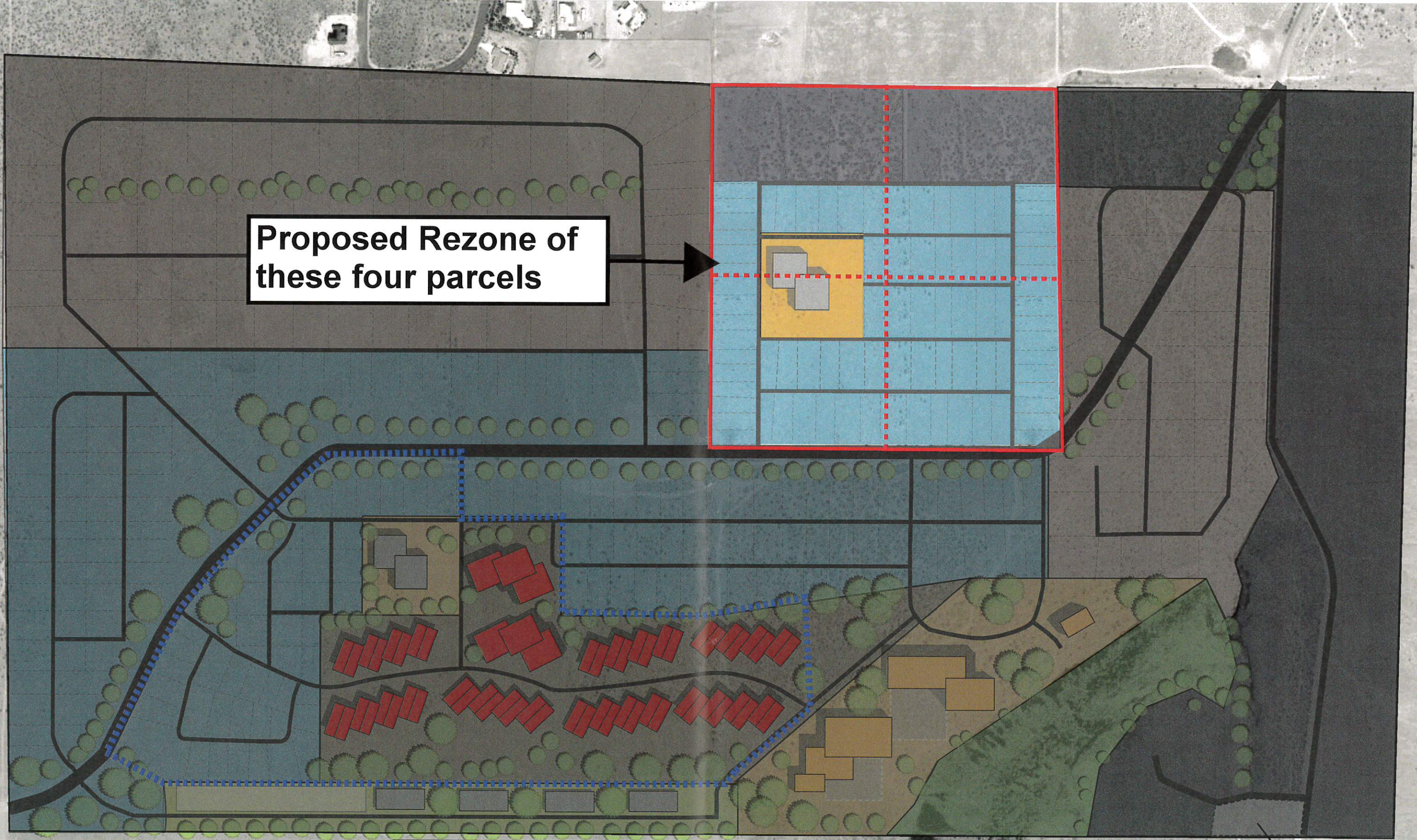
Silver Flats is proposing a rezone here from RA-1 to R1-10.

Subject Property
RA-1 to R1-10

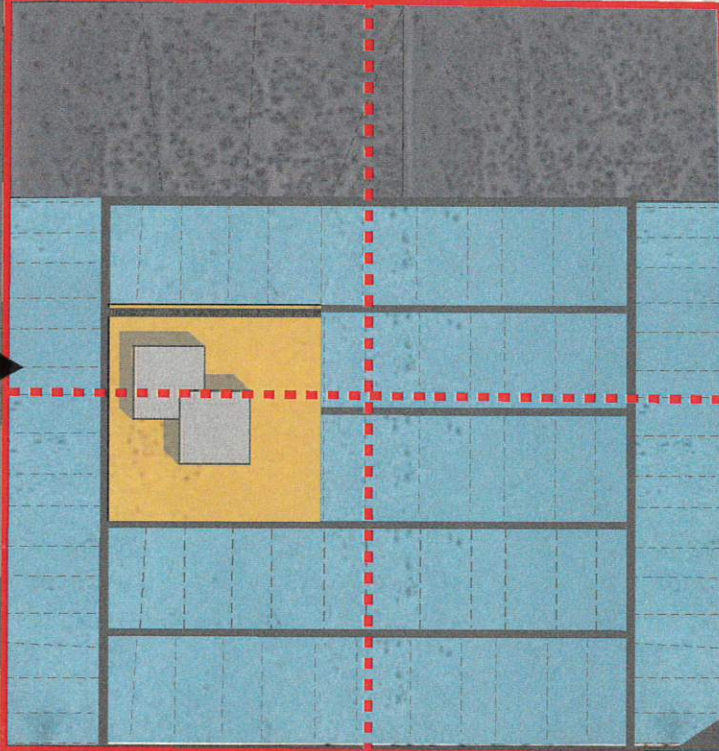
R1-10 Proposed Density

**40 TOTAL ACRES
Approx 2.5 LOTS/ACRE**





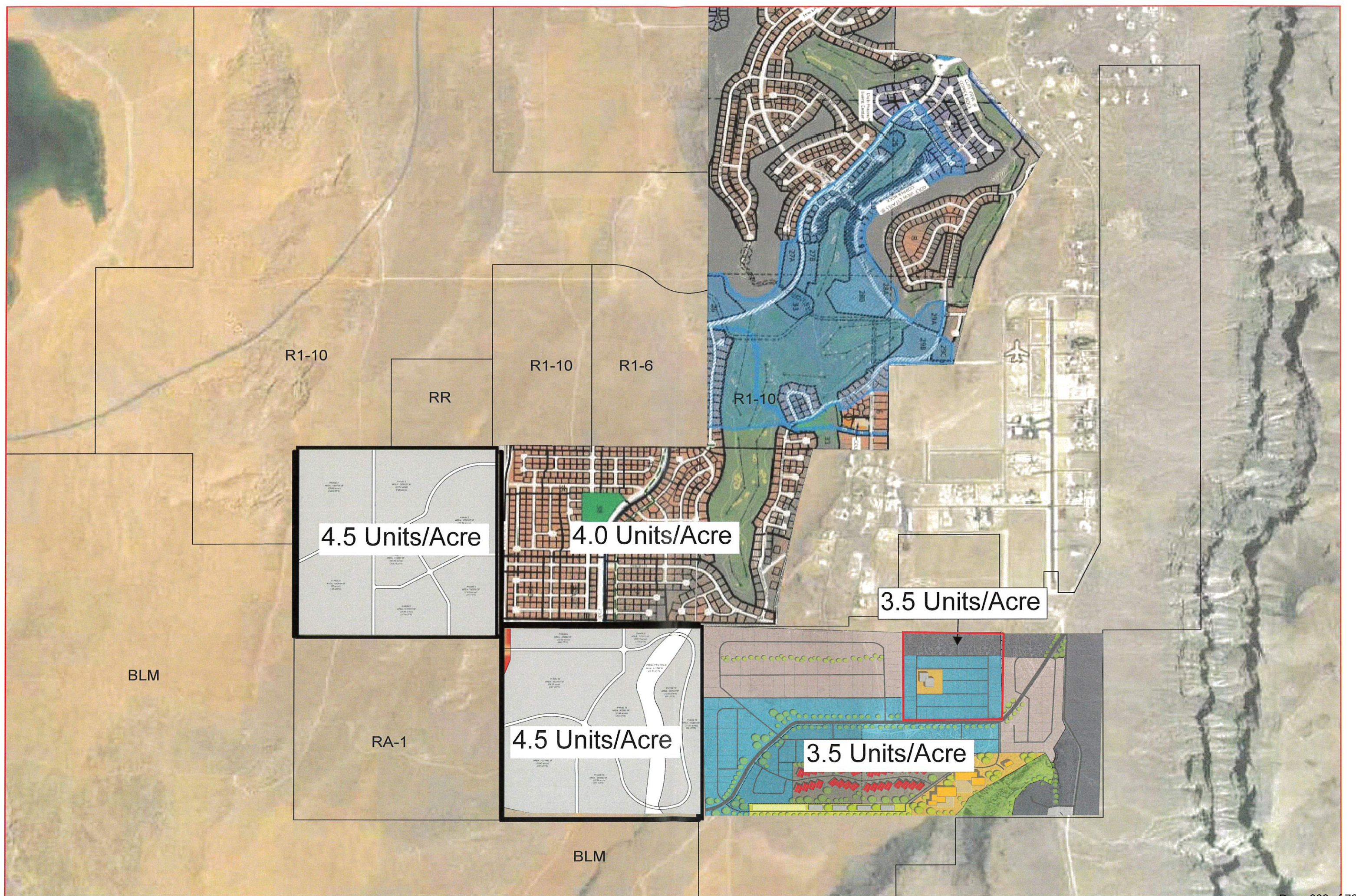
Proposed Rezone of these four parcels



- open space
 - amenity zone
 - storage zone
 - multi family zone
 - 1/4 acre zone
 - 1/2 acre zone
 - 1 acre zone
- 2.5 units per acre
- Nightly rental zone. One property management through Solaroca. Portion will be held by Solaroca and some will be sold.

The cluster of four parcels would follow the same rezone procedure as previously submitted and approved by Hurricane City on 10/21/21.

ATV/UTV parking



Planning Commission
147 N. 870 W.
Hurricane, UT 84737

RE: Zoning Change for H-3403-E-1, H-3403-E-3, H-3403-H, and 3403-A

Dear Commission:

Hurricane City has a unique and different feel to it than St. George and other cities in Washington County. Hurricane Fields area and the larger lots going out to Warner Valley capture the rural, agricultural, and ranch history of this area. So much has been turned into quarter acre lots already I feel it is important to preserve what gives Hurricane it's unique identity before it's too late.

I am also concerned about the city's ability to keep up with the amazing growth and the developments that are already approved. Water must be an issue.

Please preserve some areas that our citizens can have horses or other animals and/or raise crops. The next generation that want the life style they grew up with need a place they can continue their dreams. This area close to BLM is a perfect area for that.

Thank you for your time and consideration.

Sincerely,



Merri Ann Perkins
H-3403-F (Our horse/barn property)
AD-122 (Home)



Johanna L. Hevelone
H-3403-E-2 (Home)



STAFF COMMENTS

Agenda Date:	02/03/2022
Application Number:	2022-ZC-02
Type of Application:	Zone Change and PDO
Action Type:	Legislative
Applicant:	The Will Group
Agent:	Tyson Williamson
Request:	A Zone Change Request from RA-1 to an R1-10 PDO Zone.
Location:	4800 South and 1500 West
Zoning:	RA-1
General Plan Map:	Rural Residential

Planning Commission

The Planning Commission gave a recommendation of approval subject to JUC and staff comments, with a max density of 2.5 units an acre with a development agreement similar to other properties in the area.

A dissenting opinion has been submitted by Dayton Hall, the Chair of the Planning Commission. It has been attached to this report.

Discussion:

The applicant is seeking zone change on 40 acres from RA-1 to R1-10 PDO to add to the already approved Solaroca PDO. On October 21, 2021 the Hurricane City Council approved a zone change for 280 acres to the south, east, and west of this property, and this zone change would add to that. This would change the Solaroca PDO from 280 acres and approximately 700 units to 320 acres and approximately 800 units.

	Zoning	Adjacent Land Use
North	RA-1 and County	Undeveloped and Sky Ranch
East	R1-10 PDO	Already approved Solaroca PDO
South	R1-10 PDO	Already approved Solaroca PDO
West	R1-10 PDO	Already approved Solaroca PDO

Preliminary Site Plan

A separate preliminary site plan application was not submitted. Due to one being submitted already for the rest of the development, and based on the information provided, this requirement has been waived and analyzed as if one had.

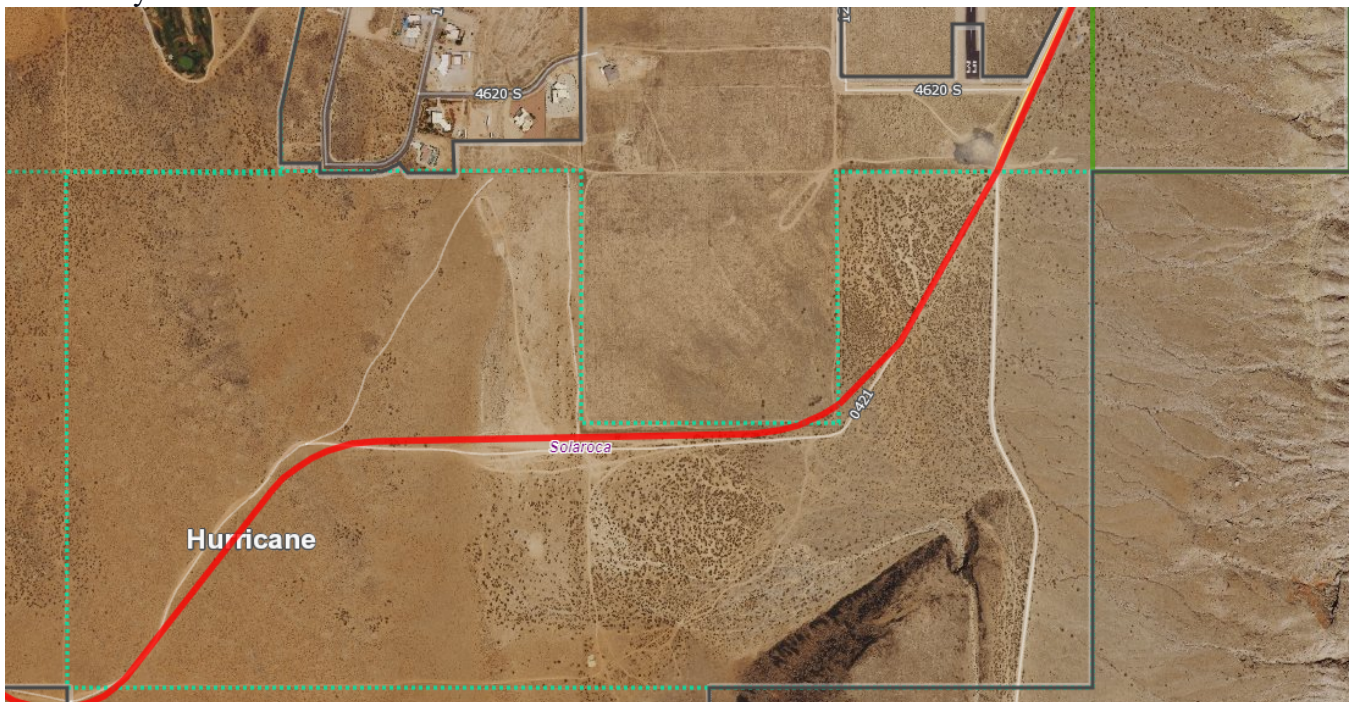
JUC Comments

1. **Power:** Limited power in the area. Less units the better until more power can be brought in.
2. **Water:** Nothing in the area. Future water tank planned in the area, have had some discussions with the applicant
3. **Streets:** Limited access
4. **Engineering:** Needs to build Transportation Master Planned roads. 1100 W has some traffic concerns that are better addressed now than later. Limited infrastructure to deal with drainage but not a big concern in this area.
5. **Fire:** Good when water and access are there
6. **Phone:** No comments
7. **WCWCD:** No comments

Staff Comments

1. Applicant is asking for an R1-10 PDO on an additional 40 acres. The applicant in August filed a zone change and PDO application on the property for an R1-10 PDO. On the September 9th, 2021 Planning Commission meeting the Commission voted to table this item until the applicant feels appropriate. The main concerns were the density of the property and the lack of utilities in the area. The applicant then resubmitted this proposal, originally to rezone the area to RA-1 to R1-10 with a PDO, to rezone this area from RA-1 to R1-15 with a PDO. They lowered the density from 3.5 units an acre to 2.5 units an acre for a total of approximately 700 units. Though the request changed based on the feedback from the Planning Commission, the official advertisement remained the same. The Planning Commission made a positive recommendation on the lower density of 2.5 units an acre. The City Council, on October 21, 2021, approved an R1-10 PDO with a max density of 2.5 units an acre.
2. **Density:** The site plan provided says 40 acres at 2.5 units an acre for a total of 100 new units. The site plan appears to show 86. The site plan shows the majority of the area in question will be quarter-acre lots with one-acre lots on the northern section.
 - a. Their applicant has conflicting densities listed. One section of the application states that the application is seeking 2.5 units an acre, but another sheet states that they are asking

- for 3.5 units an acre. This needs to be corrected to ensure there is no conflicting information. At the time of this report, an updated site plan has not been submitted.
3. An amenity area is proposed in the middle of the addition.
 4. There are some inconsistencies on the site plan with regards to the previously approved portion of this development
 - a. The approved density for the development was approximately 2.5 units an acre
 - i. It should be noted the layout appears unchanged from the approved version.
 - b. Vacation rentals are not an approved use in their planned development. The applicant's current site plan shows a short-term rental area, but this has not been approved and was not part of this application. The applicant may propose a change to their PDO and Site Plan in the future.
 5. There is a Transportation Master Planned Road along the southern boundary of this property. During the approval of the rest of the development, the applicant did agree to build the road to city standards.



6. There are a couple of items missing from the preliminary site plan as follows:
 - a. Topography showing 2' contours, identification of 30% or greater slopes:
 - b. Preliminary utility plan, including water, sewer, and storm drainage plans, and including access points to utilities
 - c. A phased development plan

1. Is the proposed amendment consistent with the City's General Plan's goals, objectives, and policies?

Response: The [General Plan Map](#) shows this area as a future Rural Residential:

Serves as transition from agricultural to traditional neighborhoods or commercial uses. Appropriate densities for this land use include from one unit/40 acres to RA-.5 and RA-1.

2.5 units per acre is a bit denser than intended for Rural Residential, however, the City Council approved the other portions of the development at the same density as this is considered a transition zone into the BLM areas to the south. 2.5 units an acre is also less dense than most of the other developments approved in that part of town.

2. Is the proposed amendment harmonious with the overall character of existing development in the subject property's vicinity?

Response: Most of the area is currently undeveloped. Almost the entirety of the surrounding property has received zone changes to similar zoning and is planned to be similar developments.

3. Will the proposed amendment affect the adjacent property?

Response: Yes, it will have some impact on the area. Utilities in the area are sparse and the area is currently undeveloped however, this is an addition to an already approved development that will have a larger overall impact on the character of the area.

4. Are public facilities and services adequate to serve the subject property?

Response: There are currently almost no services in the area. Copper Rock, Romney Group, and Cordero are working to bring services to the area through a PID, but staff anticipates that it may be a number of years until services are adequate to serve the proposed development. Hurricane City code states the following:

10-37-4: ADEQUATE PUBLIC FACILITIES:

Land shall be developed only where existing infrastructure is in place or will be timely provided to service proposed development. The city may require an analysis to be completed to determine whether adequate public facilities are available to service a development and whether such development will change existing levels of service or will create a demand which exceeds acceptable levels of service for roadways, intersections, bridges, storm drainage facilities, water lines, water pressure, sewer lines, fire and emergency response times, and other similar public services. The city may disapprove a proposed development if demand for public services exceeds accepted levels of service. No subsequent approval of such development shall be given until either the developer or the city installs improvements calculated to raise service levels to the standard adopted by the City. (Ord. 03-5-1, 5-1-2003, eff. 6-1-2003)

The City has generally interpreted this statement to not apply to zone change applications, but then require a more detailed plan with subdivision plats. The City did require the Romney Group with Sand Hollow Mesa to provide more detailed utility information for their PDO zone change. With this development's proximity to Sky Ranch and Copper Rock utilities are closer for this property than some of the other approved developments in the area.

Their proposed road alignments generally match the transportation master plan, which they will need to comply with.

Findings:

Staff makes the following findings:

1. The proposed amendment is not generally compatible with the current General Plan's map and goals but it is very close to it.
2. The proposed amendment is generally in harmony with the overall character of the proposed development in the area.
3. The proposed amendment will have an impact on the area, however on a smaller scale than already approved development in the area.
4. The services are currently not adequate for the development, and would only become adequate after surrounding properties develop or the applicant install and construct significant offsite improvements.
5. There are a couple of items missing from the preliminary site plan, as listed above.

Recommendation: Staff recommends the City Council review this application and the zone change based on standards and consider residents' comments. Though the application does not meet the general standard within the General Plan for overall density, the City found that the layout of the original application, by providing larger lots along the outside of the development, met the spirit of the general plan. This addition generally follows the same pattern.

ORDINANCE NO 2021-02

AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE APPROVING THE REZONE FOR PARCELS H-3403-E-1, H-3403-E-3, H-3403-H, AND H-3403-A FROM RA-1 TO R1-10 PDO.

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 Planning Commission gave a positive recommendation subject to the approval of a development agreement to mitigate utility concerns.

BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF HURRICANE CITY THAT:

1. That H-3403-E-1, H-3403-E-3, H-3403-H, H-3403-A be rezoned to R1-10 PDO as shown in the following attachments.
2. The project be limited to 2.5 units an acre.
3. That the property zone change is subject to the attached Development Agreement and that the zone change does not take place until the Development Agreement has been signed by both the City and Developer and recorded at the County Records Office.

PASSED AND APPROVED on this 3rd day of February 2022.

Hurricane City

Mayor

Attest:

Cindy Beteag, City Recorder

Planning Commission
147 N. 870 W.
Hurricane, UT 84737

RE: Zoning Change for H-3403-E-1, H-3403-E-3, H-3403-H, and 3403-A

Dear Commission:

Hurricane City has a unique and different feel to it than St. George and other cities in Washington County. Hurricane Fields area and the larger lots going out to Warner Valley capture the rural, agricultural, and ranch history of this area. So much has been turned into quarter acre lots already I feel it is important to preserve what gives Hurricane it's unique identity before it's too late.

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Thank you for your time and consideration.

Sincerely,



Merri Ann Perkins
H-3403-F (Our horse/barn property)
AD-122 (Home)



Johanna L. Hevelone
H-3403-E-2 (Home)

**DISSENTING RECOMMENDATION OF THE HURRICANE CITY PLANNING
COMMISSION TO THE HURRICANE CITY COUNCIL**

RE: **Solaroco Development;
Application No. 2022-ZC-02;
Zone change request from RA-1 to R1-10 located at approximately
4800 South and 1500 West;
Parcels H-3403-E-1, H-3403-E-3, H-3403-H, H-3403-A.**

DATE: **January 26, 2022**

DISSENTING RECOMMENDATION

The Planning Commission recommended approval of the zone change request on a 4 to 3 split vote. This dissenting recommendation recommends that the City Council DENY the proposed zone change amendment based on the findings set forth below.

FINDINGS

1. The proposed zone change does not comply with the General Plan.
 - a. One of the four required considerations for a zone change is whether the requested zone is consistent with the City's General Plan.
 - b. The General Plan designates the area of the subject property as "Rural Residential," which allows for a range of densities from 40 acres per lot down to zones of Residential Agriculture 1 acre or .5 acre lots.
 - c. The proposed zone does not comply with the General Plan for two reasons:
 - i. First, the applicant is seeking density higher than .5 acres per lot.
 - ii. Second, the applicant is seeking a zoning category not permitted by the General Plan designation for the area. The Rural Residential classification in the General Plan does not allow for the residential lots requested by the applicant, but requires "Residential Agriculture" lots. This is a key distinction because agricultural activities, including keeping farm animals, is expressly permitted in Residential Agriculture ("RA") zones, but it is not generally permitted in the standard residential ("R"), zones which is the zone the applicant is requesting. Owners that purchase a property zoned simple Residential will have a different expectation regarding the sights, sounds, and smells of agricultural activities than owners that purchase property zoned as Residential Agricultural. As such, the Council should not confuse a large lot Residential zoning designation with a Residential Agricultural zoning designation set out in the General Plan.
 - d. The current RA-1 zoning for this property is consistent with the General Plan and is harmonious with the existing Sky Ranch development adjacent to the property, as discussed more below in paragraph 3. As such, the zoning of the property should remain RA-1 as currently designated.

2. Public facilities and services are not adequate to serve the subject property.
 - a. One of the four required considerations for a zone change is the “adequacy of facilities and services intended to serve the property, including, but not limited to, roadways, parks and recreation facilities, police and fire protections, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection.”
 - b. The City’s staff report on the application notes that:
 - i. “There are currently almost no services in the area. Copper Rock, Romney Group, and Cordero are working to bring services to the area through a PID, but staff anticipates that it may be a number of years until services are adequate to serve the proposed development.”
 - c. The City’s Joint Utility Commission (“JUC”) made the following comments regarding the application:
 - i. Power: There is limited power in the area. The less units the better until more power can be brought in.
 - ii. Water: There is no water in the area.
 - iii. Streets: There is limited access.
 - iv. Engineering: 1100 West has some traffic concerns that are better addressed now, and there is limited infrastructure to deal with drainage.
 - d. The north-south corridors between the subject property and the City center are inadequate to support additional traffic that will result from increased density. Specifically, the most direct route between the subject property and the City center includes 700 West and 1100 West, both of which include large sections that are narrow and lack walking space and normal right-of-way improvements to accommodate the increased traffic.
 - e. Continuing to grant zone changes for properties that lack adequate services and infrastructure—and which will likely result in future increased costs to the City’s taxpayers—is not a wise policy decision.
3. The proposal is not harmonious with the overall character of existing development in the vicinity of the property.
 - a. One of the four required considerations for a zone change is whether the requested zone is harmonious with the overall character of existing development in the subject property’s vicinity.
 - b. North of the subject property is the Sky Ranch development, which consists of large lots that expressly permit livestock.
 - c. The smaller, residential lots zoned R1-10 that are requested by the applicant will not permit livestock and will be inharmonious with the existing development.
 - d. The subject property’s current zoning of RA-1 is harmonious with the existing development in the area.
4. A development agreement is insufficient to replace the zone change ordinance requirements because development agreements generally do not address police protection, fire protection, and roadways outside of the subject property.
 - a. The prior City Council was open to granting zone changes subject to a development agreement that required certain utilities to be in place before

development. Although this approach is somewhat better than granting a zone change with no conditions, it is inadequate to fully address the considerations required by the zone change ordinance.

- b. The zone change ordinance requires consideration of the adequacy of not only water and power, but also roadways and police and fire protection. The remote location of the property makes emergency response times a concern. If the City approves these higher density developments in this remote location, it will soon face pressure to increase and expand its emergency response capabilities for this area, which will increase the cost to the City.
 - c. If the Council wishes to circumvent the zone change ordinance with a development agreement, then the agreement should require that no development can occur until the Council is satisfied and has voted (after a recommendation from the fire district and the police department) that the services and emergency response times are adequate for this remote area.
 - d. Also, the lack of adequate roads is a concern. A development agreement generally will not require a developer to improve roadways outside of the proposed development, but these are some of the roadways that are lacking as discussed above. If the City approves these higher densities, the City will soon face pressure to improve the roadways to access the developments, with the taxpayers bearing this cost.
 - e. Of course, these technical contractual issues in a development agreement could be avoided if the City Council would apply the zone change ordinance as it presently exists and decline to grant zone changes for additional density until adequate services and roads exist to service the property.
5. A course correction is necessary at this time.
- a. It is recognized that other properties in the area south of 3000 South have received zone changes over the last few years. However, as a result of recent zone changes and resulting development, facilities and services are now inadequate to support additional density in the area until the City's electrical grid, roadways, emergency response services, and other City services are improved and expanded.
 - b. Each request for a zone change should be evaluated on its own merits.
 - c. Prior zone changes should not be used to justify additional zone changes; rather, as a result of prior zone changes and resulting development, future zone changes south of 3000 South should be denied until the City's infrastructure service capabilities can catch up to the development and the remaining criteria for a zone change can be met.

APPROVAL

This Dissenting Recommendation is made by Commissioner Dayton Hall.

ZONE CHANGE APPLICATION

City of Hurricane
147 North 870 West
Hurricane, UT 84737
(435) 635-2811
FAX (435) 635-2184

Fee: \$500.00

For Office Use Only:
File No. 2022-ZC-03
Receipt No. _____

Name: Perry Development, LLC Telephone: 435-251-9090

Address: 2250 N Coral Canyon Blvd #215, Washington, 84780 Fax No. N/A

Agent (If Applicable): Greg Sant - Perry Homes Utah Telephone: 435-414-4444

Email: greg.perryhomesutah@gmail.com Agent Email: greg.perryhomesutah@gmail.com

Address/Location of Subject Property: Approximately 3300 West 600 North

Tax ID of Subject Property: H-3-1-30-320 and H-3-1-30-321 Existing Zone District: M-1 and R-1-6

Proposed Zoning District and reason for the request (Describe, use extra sheet if necessary)

We are requesting a PDO Zone over the existing zoning. The purpose for this is to change the setbacks to match to those that are in Peregrine Pointe phases 1-4. Those setbacks would be 7.5 ft. on sides, 10 ft. on the rear and 19 ft. from the garage door.

Submittal Requirements: The zone change application shall provide the following:

- _____ a. The name and address of every person or company the applicant represents;
- _____ b. An accurate property map showing the existing and proposed zoning classifications;
- _____ c. All abutting properties showing present zoning classifications;
- _____ d. An accurate legal description of the property to be rezoned;
- _____ e. Stamped envelopes with the names and addresses of all property owners within 250 feet of the boundaries of the property proposed for rezoning.
- _____ f. Warranty deed or preliminary title report or other document (see attached Affidavit) showing evidence that the applicant has control of the property

Note: It is important that all applicable information noted above along with the fee is submitted with the application. An incomplete application will not be scheduled for Planning Commission consideration. Planning Commission meetings are held on the second Thursday and fourth Wednesday of each month at 6:00 p.m. Contact the Planning Department for the deadline date for submissions. Once your application is deemed complete, it will be put on the agenda for the next Planning Commission meeting. A deadline missed or an incomplete application could result in a month's delay.

(Office Use Only)

Date Received: _____ Application Complete: YES ☐ NO ☐

Date application deemed to be complete: _____ Completion determination made by: _____

ZONE CHANGE APPLICATION (General Information)

PURPOSE

All lands within the City are zoned for a specific type of land use (single family residential, multi-family, commercial, industrial, etc). Zoning occurs as a means to provide for a relationship between various types of land uses which promotes the health, safety, welfare, order, economics, and aesthetics of the community. Zoning is one of the main tools used to implement the City's General Plan.

WHEN REQUIRED

A zone change request is required any time a property owner desires to make a significant change to the use of his/her land. The change may be from one zone density (say 1 acre lots) to smaller lots (10,000 square foot lots). Or, it may be to an entirely different type of use, such as a change from single family zoning to multiple family or commercial zoning. Since the zone applied to your land limits what you can do, a rezoning application is typically the first step toward a change.

REQUIRED CONSIDERATIONS TO APPROVE A ZONE CHANGE

When approving a zone change the following factors should be considered by the Planning Commission and City Council:

1. Whether the proposed amendment is consistent with the Goals, Objectives and Policies of the City's General Plan;
2. Whether the proposed amendment is harmonious with the overall character of existing development in the vicinity of the subject property;
3. The extent to which the proposed amendment may adversely affect adjacent property; and
4. The adequacy of facilities and services intended to serve the subject property, including, but not limited to roadways, parks and recreation facilities, police and fire protection, schools, storm water drainage systems, water supplies, and waste water and refuse collection.

PROCESS

Contact the Planning Department for when the deadline for submission is. After it is deemed complete, staff will review the request, and prepare a report and recommendation for the Planning Commission. This will be reviewed at a public hearing where the applicant should attend, present the project, and respond to questions from the Planning Commission. Since it is a public hearing, members of the public may also have questions or comments. At the public hearing the Planning Commission will review the application and staff's report, and forward a recommendation to the City Council of approval, approval with modifications, or denial the zone change application.

Upon receipt of the Planning Commission recommendation, typically 1-2 weeks after the Planning Commission action, the City Council will consider and act on the Commission's recommendation. The action of the City Council is final. If denied, a similar application generally cannot be heard for a year.

STATE OF UTAH)
)
) :SS
COUNTY OF)

I (we), Perry Development, 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.

PERRY DEVELOPMENT, LLC
(Property Owner)
[Signature]
(Property Owner)

Subscribed and sworn to me this _____ day of _____ 20____

(Notary Public)

Residing in: _____

My Commission Expires: _____

Agent Authorization

I (we), _____, the owner(s) of the real property described in the attached application, do authorize as my (our) agent(s) _____ to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the City considering this application and to act in all respects as our agent in matters pertaining to the attached application.

(Property Owner)

(Property Owner)

Subscribed and sworn to me this _____ day of _____ 20____.

(Notary Public)

Residing in: _____

My Commission Expires: _____

Exhibit "A"

Beginning at a point on the north line of 600 North Street, said point being on the center section line, said point also being North 00°55'03" East 40.00 feet along the center section line from the Center Quarter Corner of Section 30, Township 41 South, Range 13 West, Salt Lake Base & Meridian, and running;

thence North 88°49'06" West 749.82 feet;
thence North 01°10'54" East 1,128.90 feet;
thence North 42°55'20" East 90.54 feet;
thence South 86°05'49" East 160.29 feet;
thence North 77°17'27" East 119.23 feet;
thence North 70°58'50" East 107.36 feet;
thence South 89°08'44" East 45.34 feet;
thence North 83°09'11" East 130.57 feet;
thence North 65°46'01" East 146.30 feet to said center section line;
thence South 00°55'03" West 56.23 feet along said center section line to the Center Quarter Corner Section 30, Township 41 South, Range 13 West, Salt Lake Base & Meridian;
thence South 88°57'56" East 203.59 feet along the center section line;
thence South 01°15'55" West 260.32 feet to the northerly line of Cliffhanger Drive;
thence southerly the following (3) courses along said Cliffhanger Drive;
thence West 37.69 feet along an arc of a 467.00-foot radius curve to the right (center bears North 11°56'13" West, long chord bears South 80°22'31" West 37.68 feet with a central angle of 04°37'26");
thence South 82°41'14" West 62.62 feet;
thence South 82°41'14" West 62.62 feet;
thence West 32.45 feet along an arc of a 333.00 foot radius curve to the left (center bears South 07°18'46" East, long chord bears South 79°53'44" West 32.44 feet with a central angle of 05°35'00") to the northwest Corner of Peregrine Pointe Phase 1A;
thence southerly the following (10) courses along the westerly line of Peregrine Pointe Phase 1A;
thence South 12°53'46" East 58.00 feet;
thence South 17°43'13" East 100.50 feet;
thence South 30°03'45" East 88.51 feet;
thence South 37°35'11" East 67.12 feet;
thence South 27°40'51" East 70.43 feet;
thence South 15°02'54" East 70.43 feet;
thence South 02°14'04" East 70.13 feet;
thence South 01°15'47" West 389.06 feet;
thence South 88°44'15" East 4.00 feet;
thence South 01°15'34" West 119.74 feet to the northerly line of said 600 North Street;
thence North 88°56'30" West 200.38 feet along said northerly line of 600 North Street to the Point of Beginning.

Containing 1,132,050 square feet or 25.99 acres.



September 14, 2020

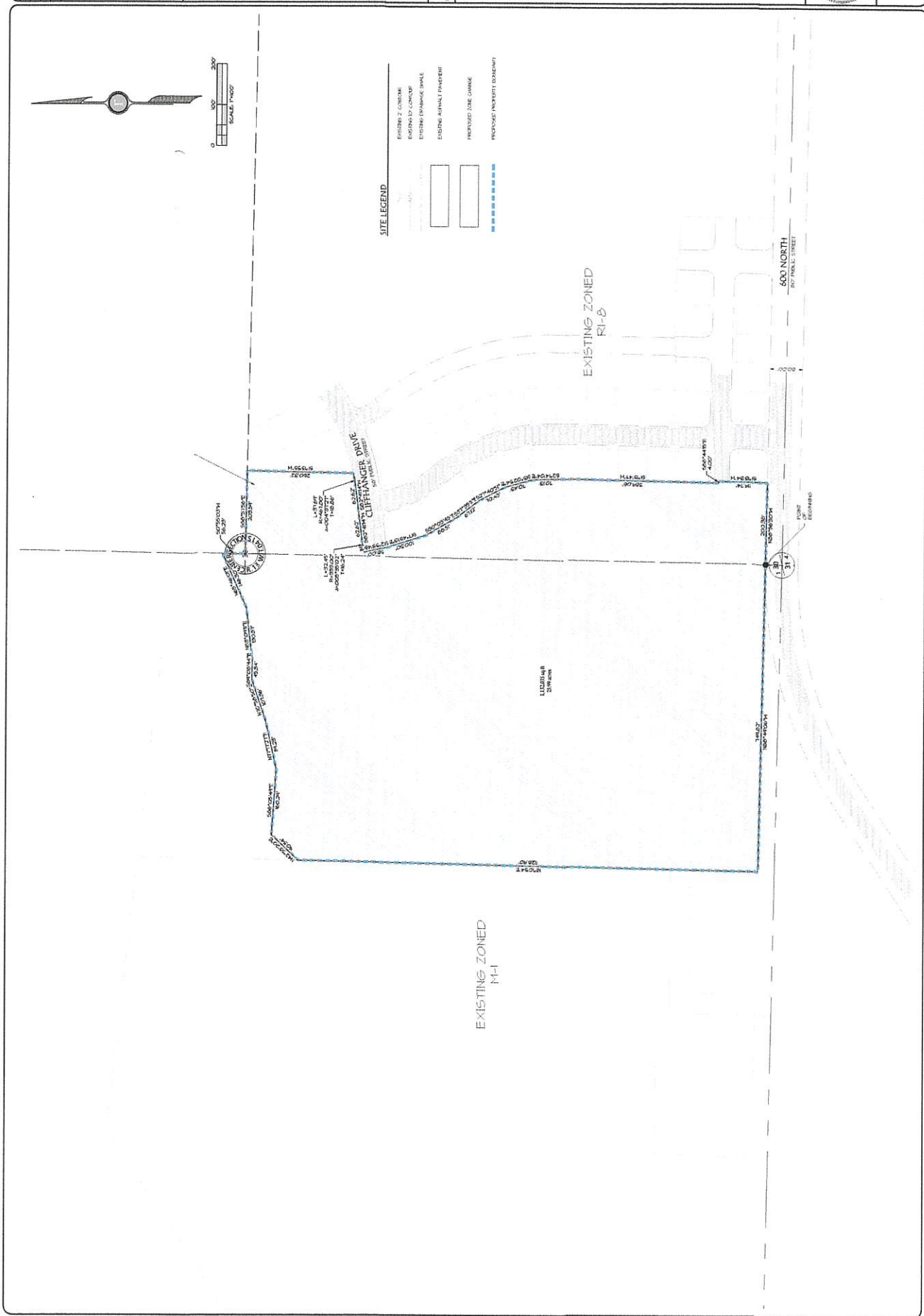


ZONE CHANGE MAP
FOR
PEREGRINE POINT WEST
HURRICANE
UTAH

ROSENBERG
ASSOCIATES
CIVIL ENGINEERS • LAND SURVEYORS



DATE	12/24/2020
BY	BSJ-JC
CHECKED BY	JSC
DATE	12/24/2020
PROJECT	PEREGRINE POINT WEST
ZONE	RI-8
SCALE	1"=100'
DATE	
BY	
CHECKED BY	
DATE	



Meridian

Title Company
"We Do Good Deeds"

MTC File No. 306594

558 E Riverside Drive, Suite
205
Saint George, UT 84790

ESCROW OFFICER:
Jerrod Phillips
License Number: 282808

Ph. (435)319-8022
Fax (801)288-3773
jerrod@mtcutah.com

SUBJECT PROPERTY ADDRESS: Peregrine Pointe West Hurricane, UT 84737	BUYER/BORROWER(S): Perry Development, LLC, a Utah limited liability company
--	--

LOAN OFFICER: Attn:	LOAN PROCESSOR: Attn:
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files online!

**Independently
Owned and
Operated
Since 1980**



ALTA Commitment for Title Insurance

Issued By Old Republic National Title Insurance Company

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 EXTRACONTRACTUAL 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, Old Republic National Title Insurance Company, a Florida 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 6 months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

This page is only a part of a 2016 ALTA Commitment for Title Insurance. 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.

Issued through the Office of

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

Authorized Signatory

ORT Form 4690 6/06 Rev. 8-1-16
ALTA Commitment for Title Insurance

By

President

Attest

Secretary

COMMITMENT CONDITIONS

1. DEFINITIONS

- (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
 - (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
 - (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
 - (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
 - (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
 - (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
 - (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
 - (h) "Title": The estate or interest described in Schedule A.
2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.
3. The Company's liability and obligation is limited by and this Commitment is not valid without:
- (a) the Notice;
 - (b) the Commitment to Issue Policy;
 - (c) the Commitment Conditions;
 - (d) Schedule A;
 - (e) Schedule B, Part I—Requirements;
 - (f) Schedule B, Part II—Exceptions; and
 - (g) a counter-signature by the Company or its issuing agent that may be in electronic form.

4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY

- (a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
 - (i) comply with the Schedule B, Part I—Requirements;
 - (ii) eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
 - (iii) acquire the Title or create the Mortgage covered by this Commitment.
- (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.

This page is only a part of a 2016 ALTA Commitment for Title Insurance. 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.

- (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. 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.

SCHEDULE A

Commitment No. 306594

1. Commitment Date: January 6, 2022 8:00AM (1st Amended)

Amount

2. Policy or Policies to be issued:

A.

Premium \$0.00

Proposed Insured: Lender with contractual obligations under a loan agreement with the vested owner identified at Item 4 below.

B. Endorsements:

\$0.00

3. The estate or interest in the land described or referred to in this Commitment is FEE SIMPLE

4. Title to the FEE SIMPLE estate or interest in the Land is at the Commitment Date vested in:

Perry Development, LLC, a Utah limited liability company

5. The land referred to in this commitment is situated in the County of Washington, State of Utah, and described as follows:

Beginning at a point on the north line of 600 North Street, said point being on the center section line, said point also being North 00°55'03" East 40.00 feet along the center section line from the South Quarter Corner of Section 30, Township 41 South, Range 13 West, Salt Lake Base & Meridian, and running; thence North 88°49'06" West 749.82 feet; thence North 01°10'54" East 1,201.13 feet; thence South 88°49'06" East 57.53 feet; thence South 85°50'49" East 139.08 feet; thence North 83°08'51" East 104.60 feet; thence North 77°17'27" East 37.22 feet; thence North 70°58'50" East 25.31 feet; thence North 70°58'50" East 64.13 feet; thence North 70°58'50" East 17.92 feet; thence South 89°08'44" East 45.34 feet; thence North 83°09'11" East 25.59 feet; thence North 83°09'11" East 104.98 feet; thence North 65°46'01" East 146.30 feet to said center section line; thence South 00°55'03" West 310.64 feet along said center section line; thence South 12°53'46" East 96.46 feet to and along the Westerly line of Peregrine Point East Phase 1A; thence along the said Westerly line of said Peregrine Point East Phase 1A the following (9) courses; thence South 17°43'13" East 100.50 feet; thence South 30°03'45" East 88.51 feet; thence South 37°35'11" East 67.12 feet; thence South 27°40'51" East 70.43 feet; thence South 15°02'54" East 70.43 feet; thence South 02°14'04" East 70.13 feet; thence South 01°15'47" West 389.06 feet; thence South 88°44'15" East 4.00 feet; thence South 01°15'34" West 119.74 feet to the northerly line of said 600 North Street; thence North 88°56'30" West 200.38 feet along said northerly line of 600 North Street to the Point of Beginning.

Address: Peregrine Pointe West, Hurricane, UT 84737

Escrow Officer: Jerrod Phillips

Old Republic National Title Insurance Company

Counter Signed



Authorized Officer or Agent

SCHEDULE B - PART I
Requirements

File Number: 306594

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 amounts for the estate or interest to be insured.
3. Pay us the premiums, fees and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.

SCHEDULE B, PART II
Exceptions

File Number: 306594

This commitment does not republish any covenant, condition, restriction, or limitation contained in any document referred to in this commitment to the extent that the specific covenant, condition, restriction, or limitation violates state or federal law based on race, color, religion, sex, sexual orientation, gender identity, handicap, familial status, or national origin.

This policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession, or claiming to be in possession, thereof.
2. Easements, liens, encumbrances, or claims thereof, which are not shown by the public records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey of the land would disclose, and which are not shown by the public records.
4. Any lien, or right to a lien, imposed by the law for services, labor, or material heretofore or hereafter furnished, which lien, or right to a lien, is not shown by the public record.
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. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.
9. Taxes for the year 2022 are now a lien not yet due and payable. Taxes for the year 2021 have been paid in the amount of \$6,256.57. Property I.D. No. H-3-1-30-320.

Taxes for the year 2022 are now a lien not yet due and payable. Taxes for the year 2021 have been paid in the amount of \$466.06. Property I.D. No. H-3-1-30-321.

10. Said property is located within the boundaries of HURRICANE and is subject to the charges and assessments levied thereunder.
11. Rights of Way, Easements, Ditches, Canals or any other adverse matters which may be disclosed by Inspection or Survey of said Property.
12. An Easement including its terms, covenants and provisions as disclosed by instrument;
To: Ash Creek Special Service District
Purpose: a perpetual easement to use, operate, inspect, repair, maintain, replace and remove a sewer pipeline and roadway over, across and through
Recorded: July 1, 1981 as Entry No. [228706](#) in Book 291 at Page 975 of Official Records.

Affects: See document for full particulars
13. An Easement including its terms, covenants and provisions as disclosed by instrument;
To: Washington County Water Conservancy District
Purpose: a perpetual easement to use, operate, inspect, repair, maintain, replace and remove a water pipeline over, across and through
Recorded: September 8, 1983 as Entry No. [253144](#) in Book 334 at Page 871 of Official Records.

Affects: See document for full particulars
14. An Easement including its terms, covenants and provisions as disclosed by instrument;
To: Utah Associated Municipal Power Systems
Purpose: a perpetual easement, right of way and right on, over, under above and across a strip of land 60 feet in width
Recorded: January 13, 1995 as Entry No. [489475](#) in Book 879 at Page 432 of Official Records.

Affects: See document for full particulars
15. The terms, covenants and conditions of that certain Easement Agreement;
Recorded: September 11, 2000 as Entry No. [696150](#) in Book 1379 at Page 2063 of Official Records.
16. Materials or labor liens created or authorized by law of which no notice is of record. Including, but not limited to, the State Construction Registry.

NOTE: Upon full and satisfactory compliance with all underwriting requirements, including but not limited to, the requirements set forth in Schedule B-1, and payment of all applicable charges, exceptions 1-8 may be omitted from the policy or policies to be issued hereunder.

NOTE: Judgments have been searched in the names of Perry Development, LLC, a Utah limited liability company for the past eight years and none were found of record except as shown above.

NOTE: A cancellation fee of \$250.00 will be billed for this commitment if a Policy of Title Insurance is not issued within 120 days.

NOTE: The policy to be issued contains an arbitration clause. Any matter in dispute between you and the Company may be subject to arbitration as an alternative to court action. You may review a copy of the arbitration rules at <http://www.alta.org>. Any decision reached by arbitration shall be binding upon both you and the Company. The arbitration award may include attorney's fees, if allowed by state law, and may be entered as a judgment in any court of proper jurisdiction.

NOTE: This file was examined by Sean Newell (801) 264-8888.

CHAIN OF TITLE

Order Number: 306594

THIS IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT MADE A PART OF ANY COMMITMENT FOR TITLE INSURANCE PRODUCED BY MERIDIAN TITLE COMPANY.

According to 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, except as follows:

Deed Type: Warranty Deed

Grantors: Lagom LLC, a Utah limited liability company

Grantees: Perry Development, LLC, a Utah limited liability company

Dated: April 22, 2021

Recorded Date: April 30, 2021

Instrument: 20210031202

Book:

Page:



Privacy Policy Notice

PURPOSE OF THIS NOTICE

Title V of the Gramm-Leach-Bliley Act (GLBA) generally prohibits any financial institution, directly or through its affiliates, from sharing nonpublic personal information about you with a nonaffiliated third party unless the institution provides you with a notice of its privacy policies and practices, such as the type of information that it collects about you and the categories of persons or entities to whom it may be disclosed. In compliance with the GLBA, we are providing you with this document, which notifies you of the privacy policies and practices of Old Republic National Title Insurance Company and Meridian Title Company.

We may collect nonpublic personal information about you from the following sources:

Information we receive from you such as on applications or other forms.

Information about your transactions we secure from our files, or from [our affiliates or] others.

Information we receive from a consumer reporting agency.

Information that we receive from others involved in your transaction, such as the real estate agent or lender.

Unless it is specifically stated otherwise in an amended Privacy Policy Notice, no additional nonpublic personal information will be collected about you.

We may disclose any of the above information that we collect about our customers or former customers to our affiliates or to nonaffiliated third parties as permitted by law.

We also may disclose this information about our customers or former customers to the following types of nonaffiliated companies that perform services on our behalf or with whom we have joint marketing agreements:

Financial service providers such as companies engaged in banking, consumer finance, securities and insurance.

Non-financial companies such as envelope stuffers and other fulfillment service providers.

WE DO NOT DISCLOSE ANY NONPUBLIC PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT SPECIFICALLY PERMITTED BY LAW.

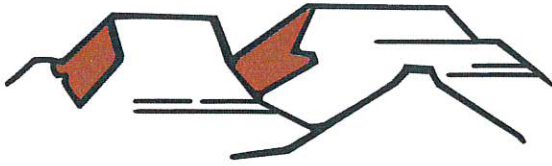
We restrict access to nonpublic personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

(Revised February 5, 2016)



- | | |
|-------------------------------------|--|
| U.S. Forest Service | |
| U.S. Forest Service Wilderness | |
| Bureau of Land Management | |
| Bureau of Land Management Wildlife | |
| National Park Service | |
| Shiwiwi 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 | |

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.



PLANNING & ZONING HURRICANE CITY UTAH

*Stephen Nelson, Planning Director
Fred Resch, Assistant Planner/Code Enforcement
Brienna Spencer, Planning Technician*

January 14, 2022

Dear property owner,

The Hurricane City Planning Commission will hold a Public Hearing during its regular meeting on January 26, 2022 commencing at 6 p.m. to take comments on a zone change amendment request located at approx. 3300 West and 600 North to contain a PDO, planned development overlay, to match the existing overlay zone for Peregrine Pointe Ph 1-4. Parcel numbers H-3-1-30-320 and H-3-1-30-321. A map showing the proposal is included with this mailing.

If you would like to make comments, please plan to attend the meeting, or provide written comments for the Planning Commission's consideration by 3 p.m. the day of the meeting.

If you are a property owner within the zone change area, you may access the City's land use code providing information on the specific zone to be applied to your property via the city's website, cityofhurricane.com, under the Planning and Zoning link. The land use code is Title 10 the zone included in this zone change request is located in Chapter 23. The purpose statement for each zone may be found in Chapter 11.

If you are a property owner within the zone change area you may, no later than 10 days after the day of the first public hearing, file a written object to the inclusion of your property in the proposed zoning map amendment. Send any such objection to the Planning Department at 147 N. 870 West, Hurricane, UT 84737. A copy of any and all objections will be provided to the City Council for their consideration during the decision-making process for the zone map amendment.

Please contact me at 435-635-2811 X 118 or email publiccomment@cityofhurricane.com if you have any questions or concerns.

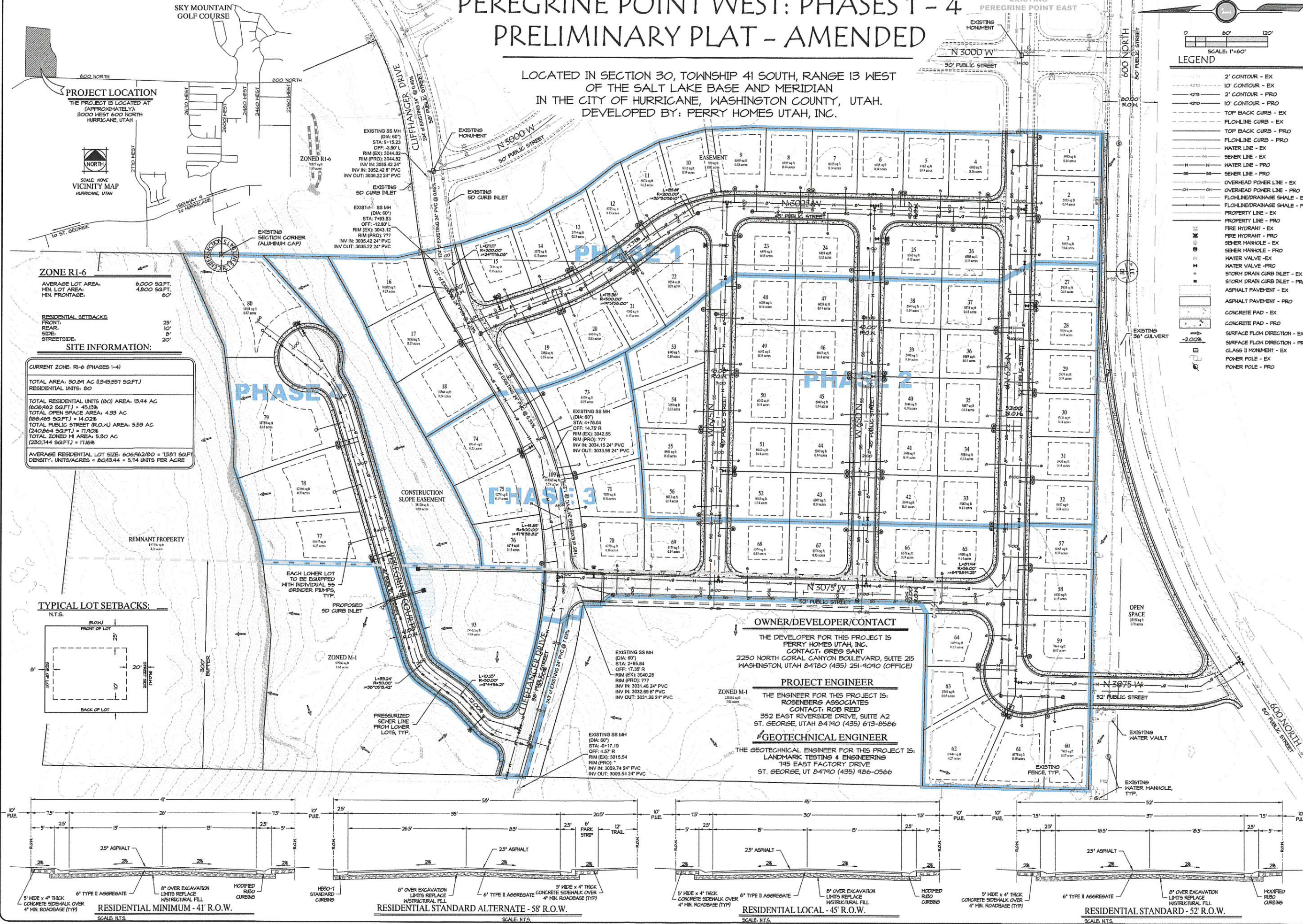
Sincerely,

Stephen Nelson

Stephen Nelson, Planning Director

PEREGRINE POINT WEST: PHASES 1 - 4 PRELIMINARY PLAT - AMENDED

LOCATED IN SECTION 30, TOWNSHIP 41 SOUTH, RANGE 13 WEST
OF THE SALT LAKE BASE AND MERIDIAN
IN THE CITY OF HURRICANE, WASHINGTON COUNTY, UTAH.
DEVELOPED BY: PERRY HOMES UTAH, INC.



DATE: 01/12/2022
JOB NO.: 11430-20
DESIGNED BY: DSH
CHECKED BY: RAR
DWG: Preliminary Plat

REVISIONS

ROSENBERG ASSOCIATES
CIVIL ENGINEERS • LAND SURVEYORS
352 East Riverside Drive
Suite A-2
St. George, Utah 84790
Ph (435) 673-8506 • Fax (435) 673-8507
www.rachul.com

PRELIMINARY PLAT - AMENDED
FOR
PEREGRINE POINT WEST: PHASES 1-4
3000 WEST 600 NORTH
HURRICANE, UTAH

STATE OF UTAH
ROBERT A. REID
REGISTERED PROFESSIONAL ENGINEER

SHEET
1.0
1 OF 1 SHEETS
Page 698 of 724

January 24, 2022

Dear Members of the Planning Commission of the City of Hurricane, Utah:

I am Eric Sorenson, Vice President of the Peregrine Point subdivision, located on the north side of 600 North, between approximately 2800 West and 3000 West. I am writing to you in regard to the Peregrine Point North subdivision development at approximately 3300 W, 600 North, Hurricane, Utah.

My address is 778 N 2840 W, Hurricane, Utah, 84737.

On this date, the developer, Perry Homes, is bringing before you a request for a Planned Development Overlay for this property at approximately 3300 W, 600 North, which I am not opposed to. However, there are a number of things I would like to make you aware of, and ask for your help to improve.

- 1) The elevation of the property directly behind the homes on 3000 West seems to be inconsistent with my understanding of the grading that is considered appropriate between houses. The homeowners on the west side of 3000 West, around 700 North to 800 North, e.g.: 749 North, 765 North, and some homes on either side of these addresses, now have mountains of dirt behind (on the west side of) their homes, as building pads, where the ground used to slope gently up to the west. The highest of these building pads appear to be approximately 7 feet above existing building pads without plans for a physical retaining wall between the new building pads and existing homeowner's block walls. The existing block walls are only about 5 feet high and are NOT retaining walls. I have looked at and tried to interpret the subdivision plan and believe the elevations were presented to you without information about the elevations of the existing properties on the north side of 3000 North. Please see pictures here:



I see problems with this in terms of soil stability and flash flood erosion.

- 2) I would like to suggest that the developer not be allowed to use the existing block wall as retaining walls, but provide a drainage system for the south side of their development property to include a concrete drainage ditch along the existing block wall that is below the level of the bottom of that block wall.
- 3) I talked with the city engineer about using boulders on a properly graded slope to prevent flood erosion from excessive rain water and ground and soil wasting.
- 4) The plans I looked at show a continuation of the path or breezeway that runs through the existing neighborhood, continuing north through the Peregrine Point North subdivision. The information I have been able to collect indicates this as an ADA (Americans with Disabilities accessible) pathway. I view this as a good thing and would really like to see that pathway built, but hope that water runoff from the new subdivision be channeled so as to NOT bring mud and debris down onto either the new path or the existing path.

- 5) I would like to know who will maintain the path through the new subdivision to control weeds and debris, and take care of any other issues that might occur.
- 6) I would like to see a path or trail going from the north-west area of the new subdivision going down to the trails below the lava bluff that our subdivisions are built on, to the next lower level, since there are trails in this area that lead down to the Virgin River. There has been what I would call an ad-hoc trail doing this from the north-west corner of the property under development.
- 7) Is there any chance the first, south-most row of houses up on these elevated building pads of the Peregrine Point West subdivision could be single level, to be more consistent with the existing subdivision housing elevations?
- 8) The continuation of Cliffhanger Drive and 625 North into the new subdivision line up nicely with the existing road elevations. This is good. I have taken a couple of pictures from the south, looking north, and the north, looking south, that show building pad elevations close to these two roads is very comfortable, but the building pads closer to the middle of the subdivision climb in elevation away from these roads that might be at an acceptable progression but don't have a nice progression away from the block walls on the east side of that development.

I would appreciate any help you can provide homeowners in our little subdivision who are facing the potential of floods and erosion that would endanger their property.



I will not be able to attend the public comment portion of your meeting but hope to be able to join you later in the evening.

Thank you for your consideration.

Eric Sorenson



STAFF COMMENTS

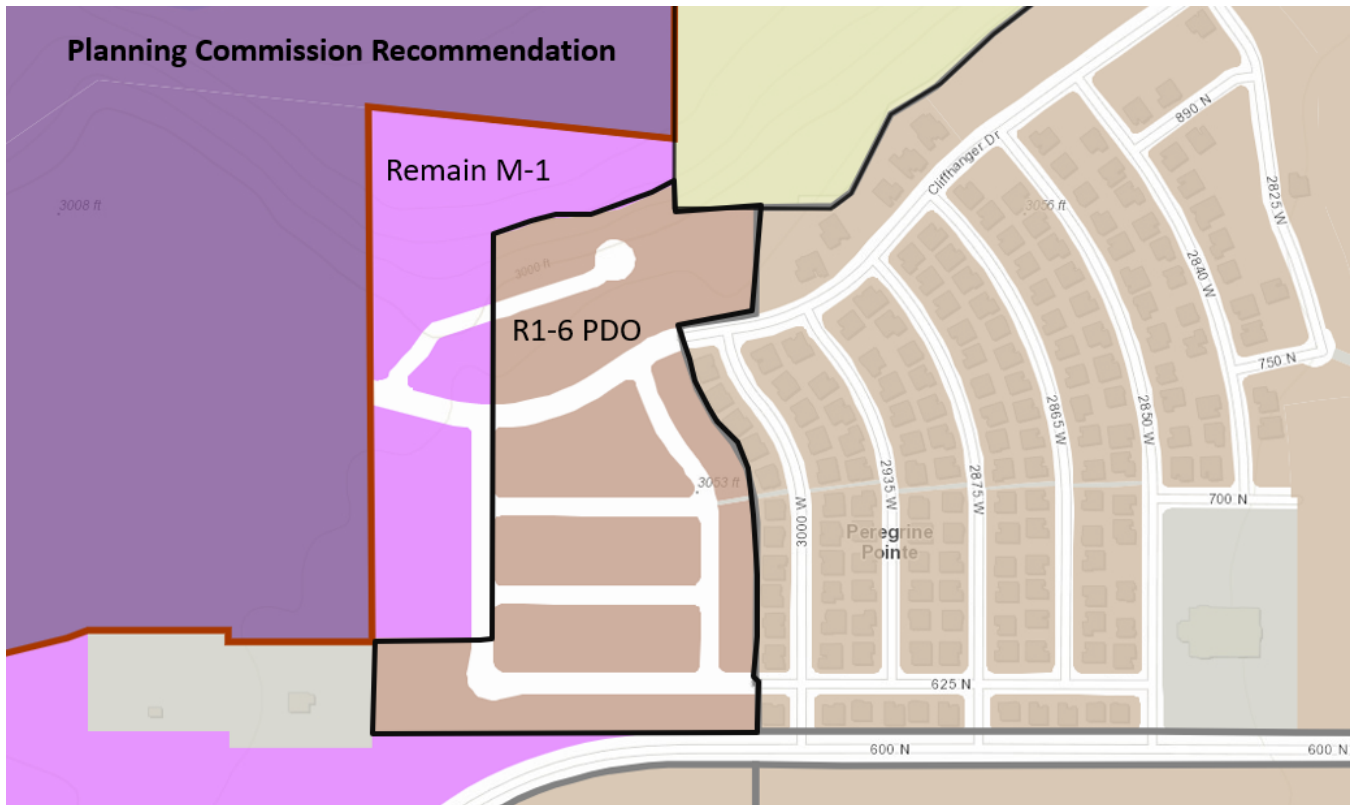
Agenda Date:	02/03/2022
Application Number:	2022-ZC-03
Type of Application:	Zone Change
Action Type:	Legislative
Applicant:	Perry Development LLC
Agent:	Greg Sant
Request:	A zone change from R1-6 to R1-6 with a PDO
Location:	Approximately 3300 W and 600 N
Zoning:	R1-6
General Plan Map:	Single-Family

Planning Commission

The Planning Commission recommended approval of the PDO Zone Change request, but to only apply to the current R1-6 area contained within the lot (as shown below) and that the zone change should be conditioned on a resolution of the powerline easement.

Discussion:

This area was approved for a zone change in December 2020 to R1-6. As the applicant has been working on their plans they decided to request a Planned Development Overlay, like the other portions of Peregrine Pointe, in order to reduce the front setbacks so slightly larger homes can be built. Setbacks in R1-6 are 25 feet from the front, 10 feet from the rear, and 8 feet on the side. In a PDO the setbacks are 19 feet from the back of the curb (14 feet from the back of the property line in this development) for the house and 20 feet from the back of the sidewalk for the garage, and 15 feet total on the sides. This would also allow the homes along the southern boundary to be slightly farther away from the overhead power lines. The applicant is proposing 80 units on 30.89 acres.



	Zoning	Adjacent Land Use
North	M-1 and M-2	Open Space and mining operations
East	R1-8 PDO	Single Family Homes (Peregrine Pointe)
South	R1-8 PDO	Sky Valley Townhomes
West	M-1 and M-2	Open Space and mining operations

To change the zoning on any parcel of land within the City of Hurricane, the following questions need to be addressed:

3. **Streets:** No concerns
4. **Water:** No concerns
5. **Engineering:** Setbacks from the garage should be 25 feet, concerns about 20 feet. Rear setback along 600 N needs to be addressed.
6. **Fire:** Needs to meet fire code
7. **Gas:** Nothing in the area
8. **WCWCD:** Concerned about access to line along 600 N

Items to Consider

The following are key items to consider:

- At the previous Planning Commission meeting, the Commission looked at and recommended approval to the City Council of a preliminary plat for the property. The applicant has requested that the application be tabled while this application moves forward and negotiations continue with the power department.
- While a PDO would grant the applicant greater flexibility regarding housing types and lot sizes, the applicant has submitted the current preliminary plat as the PDO site plan, except for the reduced setbacks, the applicant has proposed no changes.
- There is an overhead power line that runs along 600 N and the southern boundary of this property. Hurricane City Power has some concerns about access when homes are being built so close to the power lines. The applicant believes that reducing the front setbacks so homes can be built farther away from the poles will help that situation. The applicant is in negotiations with Hurricane City Power over the situation.

Findings:

Staff makes the following findings:

1. The proposed zone change is generally compatible with the current General Plan Map and goals.
2. The proposed zone change is generally in harmony with the overall character of the existing development, as growth continues in this area that will be even more true.
3. The proposed zone change will not have an impact on the area if this current plan is followed.
4. The services are adequate for the development.

Recommendation: Staff recommends the City Council review this application and the zone change based on standards and consider residents' comments. Staff recommends approval of this zone change subject to Planning Commission's recommendation; staff and JUC comments; and subject to the issue of the power lines along 600 N being resolved

ORDINANCE NO 2021-03

AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE APPROVING THE REZONE
FOR PARCELS H-3-1-30-320 and H-3-1-30-321 FROM R1-6 TO R1-6 PDO.

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 Planning Commission gave a positive recommendation for the zone change subject that zone change only applies to the current R1-6 Area and that the applicant and City resolve the power line easement issue on the southern border of the project.

BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF HURRICANE CITY THAT:

1. That portions of H-3-1-30-320 and H-3-1-30-321 be rezoned to R1-6 PDO as shown in the following legal description attached in Exhibit A. The rezone shall only apply to the current R1-6 Area contained within those parcels and the M-1 zoning shall remain M-1.

PASSED AND APPROVED on this 3rd day of February 2022.

Hurricane City

Mayor

Attest:

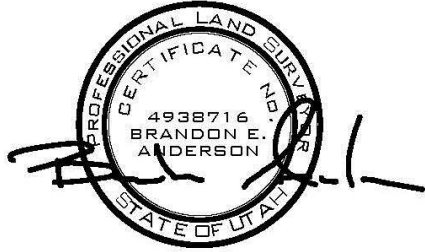
Cindy Beteag, City Recorder

Exhibit "A"

Beginning at a point on the north line of 600 North Street, said point being on the center section line, said point also being North 00°55'03" East 40.00 feet along the center section line from the Center Quarter Corner of Section 30, Township 41 South, Range 13 West, Salt Lake Base & Meridian, and running;

thence North 88°49'06" West 749.82 feet;
thence North 01°10'54" East 180.47 feet;
thence South 88°47'25" East 26.00 feet;
thence North 01°10'54" East 60.46 feet;
thence South 88°45'48" East 223.00 feet;
thence North 01°10'54" East 496.97 feet;
thence North 5.21 feet along an arc of a 20.00 foot radius curve to the left (center bears North 88°49'06" West, long chord bears North 06°16'41" West 5.19 feet with a central angle of 14°55'09");
thence West 18.61 feet along an arc of a 529.00 foot radius curve to the right (center bears North 05°44'19" East, long chord bears North 83°15'13" West 18.61 feet with a central angle of 02°00'58");
thence North 07°45'16" East 58.00 feet;
thence East 63.68 feet along an arc of a 471.00 foot radius curve to the left (center bears North 07°45'16" East, long chord bears South 86°07'07" East 63.63 feet with a central angle of 07°44'47");
thence North 01°10'54" East 409.30 feet;
thence North 77°17'27" East 37.22 feet;
thence North 70°58'50" East 107.36 feet;
thence South 89°08'44" East 45.34 feet;
thence North 83°09'11" East 130.57 feet;
thence North 65°46'01" East 146.30 feet to said center section line;
thence South 00°55'03" West 310.64 feet along the center section line;
thence South 12°53'46" East 96.46 feet to and along the westerly line of Peregrine Pointe Phase 1A;
thence southerly the following (9) courses along the westerly line of Peregrine Pointe Phase 1A;
thence South 17°43'13" East 100.50 feet;
thence South 30°03'45" East 88.51 feet;
thence South 37°35'11" East 67.12 feet;
thence South 27°40'51" East 70.43 feet;
thence South 15°02'54" East 70.43 feet;
thence South 02°14'04" East 70.13 feet;
thence South 01°15'47" West 389.06 feet;
thence South 88°44'15" East 4.00 feet;
thence South 01°15'10" West 120.15 feet;
thence North 88°49'32" West 200.39 feet to the Point of Beginning.

Containing 819,793 square feet or 18.82 acres.

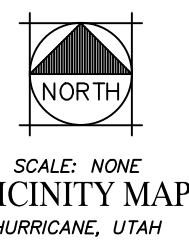


February 2, 2022

LOCATED IN SECTION 30, TOWNSHIP 41 SOUTH, RANGE 13 WEST
OF THE SALT LAKE BASE AND MERIDIAN
IN THE CITY OF HURRICANE, WASHINGTON COUNTY, UTAH.
DEVELOPED BY: PERRY HOMES UTAH, INC.

LOCATED IN SECTION 30, TOWNSHIP 41 SOUTH, RANGE 13 WEST
OF THE SALT LAKE BASE AND MERIDIAN
IN THE CITY OF HURRICANE, WASHINGTON COUNTY, UTAH.
DEVELOPED BY: PERRY HOMES UTAH, INC.

THE PROJECT IS LOCATED AT
(APPROXIMATELY):
3000 WEST 600 NORTH
HURRICANE, UTAH.



AVERAGE LOT AREA:	6,000 SQ.FT.
MIN. LOT AREA:	4,800 SQ.FT.
MIN. FRONTAGE:	60'

RESIDENTIAL SETBACKS:
FRONT:
REAR:
SIDE:
STREETSIDE:

SITE INFORMATION:

CURRENT ZONE: RI-6 (PHASES 1-4)

TOTAL AREA: 30.84 AC (1,345,357 SQ.FT.)
RESIDENTIAL UNITS: 80

TOTAL RESIDENTIAL UNITS (80) AREA: 13.94 AC
(606,962 SQ.FT.) = 45.13%

TOTAL OPEN SPACE AREA: 4.33 AC
(180,465 SQ.FT.) = 14.02%

TOTAL PUBLIC STREET (20X) AREA: 5.53 AC
(240,864 SQ.FT.) = 17.90%

TOTAL ZONED MI AREA: 5.30 AC
(230,144 SQ.FT.) = 17.16%

AVERAGE RESIDENTIAL LOT SIZE: 606,962/80 = 7587 SQ.FT.
DENSITY: UNITS/ACRES = 80/3.94 = 5.74 UNITS PER ACRE

TYPICAL LOT SETBACKS:

The diagram shows a rectangular lot with the following dimensions and setbacks:

- Overall Dimensions:** 20' (Front Side) by 25' (Side Side).
- Setbacks:**
 - Front of Lot: 5' (indicated by a dashed line and arrow).
 - Side of Lot: 5' (indicated by a dashed line and arrow).
 - Back of Lot: 10' (indicated by a dashed line and arrow).
- Internal Dimensions:** The dashed lines indicate the internal dimensions of the lot, which are 15' (Front Side) and 20' (Side Side).

OWNER/DEVELOPER/CONTACT

THE DEVELOPER FOR THIS PROJECT IS
PERRY HOMES UTAH, INC.
CONTACT: GREG SAINT
2250 NORTH CORAL CANYON BOULEVARD, SUITE 215
WASHINGTON, UTAH 84780 (435) 251-0090 (OFFICE)

PROJECT ENGINEER

THE ENGINEER FOR THIS PROJECT IS:
ROSENBERG ASSOCIATES
CONTACT: ROB REID
352 EAST RIVERSIDE DRIVE, SUITE A2
ST. GEORGE, UTAH 84790 (435) 673-8586

TECHNICAL ENGINEER

THE GEOTECHNICAL ENGINEER FOR THIS PROJECT IS:
LANDMARK TESTING & ENGINEERING
795 EAST FACTORY DRIVE
ST. GEORGE, UT 84790 (435) 986-0566

RESIDENTIAL MINIMUM - 41' R.O.W.

RESIDENTIAL STANDARD ALTERNATE - 58' R.O.W.

RESIDENTIAL LOCAL - 45' R.O.W.

RESIDENTIAL STANDARD - 52' R.O.W.

ROSENBERG
A S S O C I A T E S
CIVIL ENGINEERS • LAND SURVEYORS



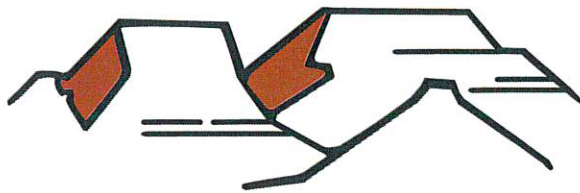
352 East Riverside Drive
Suite A-2
St. George, Utah 84790
Ph (435) 673-8866 • Fx (435) 673-8866
www.racivil.com

PRELIMINARY PLAT - AMENDED
FOR
PEREGRINE POINT WEST: PHASES 1-4
3000 WEST 600 NORTH



STATE OF UTAH
Robert A. Reid
No. 189106
REID
02/01/22
LICENSED PROFESSIONAL ENGINEER

SHEET
1.0
1 OF 1 SHEET



PLANNING & ZONING
HURRICANE CITY
UTAH

Amended Final Plat Application

Date: 01/03/2022 Permit #: 77

Applicant / Owner

Applicant Name: Greg Sant - Perry Development
LLC
Address: 2250 N Coral Canyon Blvd Ste
215
City, State, Zip: Washington
Phone: 4352519090
Email: greg.perryhomesutah@gmail.com

Owner Name: Perry Development LLC
Address: 2250 N Coral Canyon Blvd Ste
215
City, State, Zip: Washington
Phone: 4352519090
Email: greg.perryhomesutah@gmail.com

Property / Agent

Property Address:
City, State, Zip: ,
Tax ID: H-3-1-130-320
Number of Lots: 80
Subdivision:
Phase: Phases 3 and 4

Agent Name: Greg Sant
Address: 2250 N Coral Canyon Blvd Ste
215
City, State, Zip: Washington
Phone: 4352519090
Email: greg.perryhomesutah@gmail.com

I do hereby certify that the information contained herein is true and correct.

Greg Sant
Name

2022-01-03
Date



STAFF COMMENTS

Agenda Date:	01/20/22
Application Number:	2022-PP-02
Type of Application:	Preliminary Plat Application
Action Type:	Administrative
Applicant:	Greg Sant- Perry Development LLC
Agent:	
Request:	Preliminary Plat Application
Location:	600 N and 3100 W
Zoning:	R1-6
General Plan Map:	Single Family Residential

Planning Commission Recommendation

The Planning Commission gave a positive recommendation on the preliminary plat with the following conditions:

- The plat complies with Staff comments including for transportation connection and active transportation.
- That the City and the applicant is able to reach an agreement about access to the power lines that run along the south of the property.

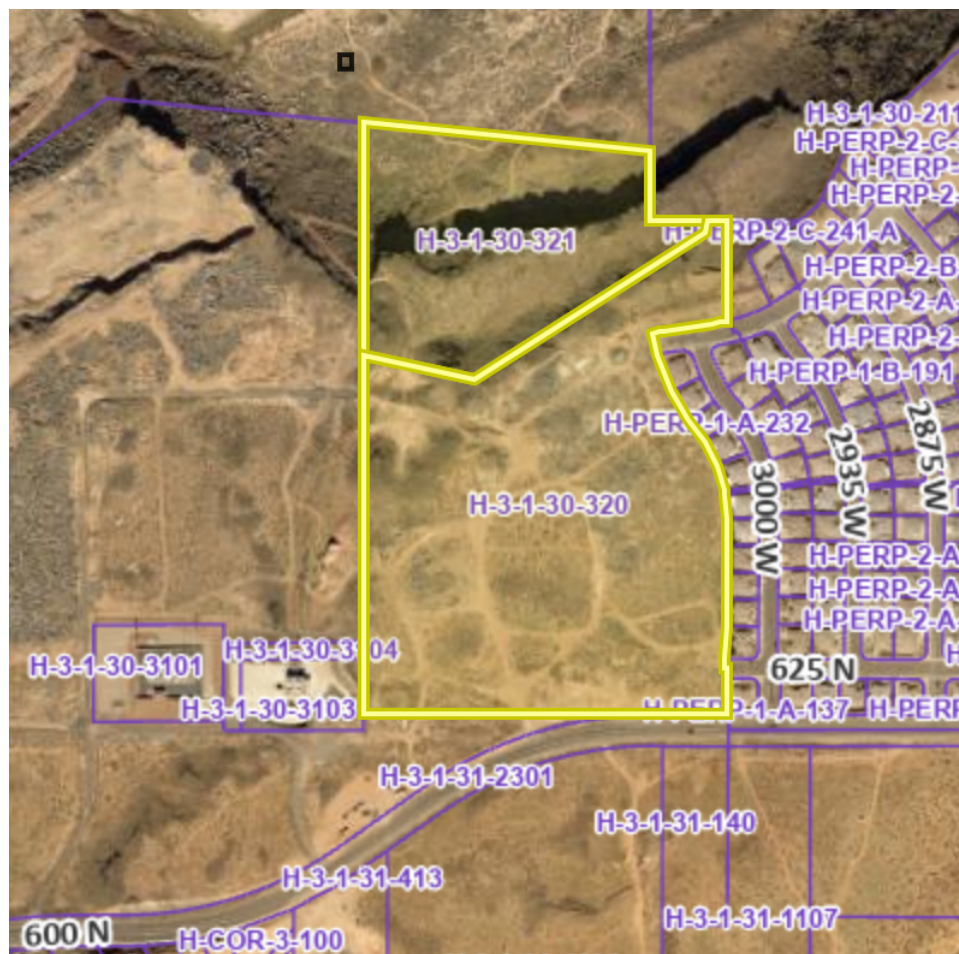
Discussion: The applicant is seeking a preliminary plat for an 18.24 acre 80 lot preliminary plat located just west of Peregrine Point. The applicant has received preliminary approval for the majority of the development and has begun construction. The applicant is seeking an update to allow for the following changes:

1. Adding a roadway and connection with an additional six lots on the southwest corner of the project.
2. Changing the hammerhead in the north to a cul-de-sac.
3. The phase lines have been changed, from four phases to three.

JUC Comments

Construction Drawings have been approved and construction has begun on the project. However, the JUC had the following comments on the updated layout:

1. **Power:** Overhead power in the area along the southern boundary. Not okay with Phase 3 cul-de-sac (now shown as a roadway stubbed to the south).
2. **Water:** Make sure looping is fine
3. **Streets:** Want to see it connect through Interstate Rock's property to the south
4. **Sewer:** No concerns
5. **Engineering:** Access to overhead power lines along the southern boundary is vital. There needs to be additional access to 600 N and through to the south.
6. **Fire:** No fire hydrants in the bulbs of cul-de-sacs. Needs to be on the flats
7. **Water Conservancy:** Line runs along the southern boundary. Lot 61 is placed on their box and thus cannot have structures there.



Staff Comments:

1. The minimum lot size in an R1-6 zone is 4,800 sq. ft. with an average of 6,000 sq. ft. The development meets these standards.
2. The applicant has shown the typical cross-sections for the roads on the plat except for a 58' section for Cliff Hanger Drive. On Cliff Hanger Drive, instead of providing a sidewalk on both sides of the roadway, is providing a 12' sidewalk (trail) on the south side of the road. This is to match Hurricane's Active Transportation Plan and will connect to other trails in the area.

3. The applicant has provided a tentative plan or method by which the subdivider proposes to handle the stormwater drainage for the subdivision.
4. **Roadway Connections:** The applicant is providing a direct connection to the development to the east. These roadway connections are sufficient for the development. One of the main reasons that the project left the southwest section off the original drawings was that the City recommended that the applicant work with Interstate Rock to the south to bend the road and align an intersection with Sky Valley Townhomes on 600 N. Staff would still make that recommendation with this application. The applicant updated the plat last week and presented that update to the Planning Commission including the section to the south. The updated plat addresses staff concerns, but staff is reviewing the alignment.
5. The project is in a tortoise take area. Therefore, the applicant will need to fill out an applicant with the Red Rock Reserve (attached for reference) and clear the property of any desert tortoises before any construction may begin. This has taken place.
6. The plat does not note a list of preliminary Geologic Hazard reports as required. However, the applicant has submitted a full geologic study that has been reviewed and approved by City staff.
7. **Power:** There is a major and historic power line that runs along the south of the boundary. Power has expressed concerns about long-term access to this line without a proper easement and access corridor. During the original review of the plat and construction drawings for this development, an easement was not required. However, since construction has begun, concerns have been raised by the power department. Power is currently performing a title search to see if there are any old easements and setbacks that have been recorded, but at the time of this report, none are known. Power and city staff recommend that the City and applicant come to an agreement about securing access to these lines as part of this amended preliminary plat. The powerline and the approved lot layout is shown below.



8. **Three Rivers Trail:** The City has planned a 12' wide trail in the area. Below is a picture of the main alignment and the alternative alignment (the alternative alignment approximate and exact layout has not been approved). Both trails are on the new Active Transportation Master Plan



Recommendation: Staff recommends the City Council review this application based on standards with Hurricane City Code. Staff would recommend approval with the following conditions:

- That the updated Active Transportation Master Plan is followed
- That the applicant provides a roadway stub south to align with Sky Valley Townhomes
- That the applicant complies with other JUC and staff comments.
- That the City and the applicant resolve the concerns about access to the power line the runs along the south of the property.

PEREGRINE POINT WEST: PHASES 1 - 3 PRELIMINARY PLAT

LOCATED IN SECTION 30, TOWNSHIP 41 SOUTH, RANGE 13 WEST
OF THE SALT LAKE BASE AND MERIDIAN
IN THE CITY OF HURRICANE, WASHINGTON COUNTY, UTAH.
DEVELOPED BY: PERRY HOMES UTAH, INC.

EXISTING
PEREGRINE POINT EAST

EXISTING
MONUMENT

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OFF: 0.6728' R
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LEGEND

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- 10' CONTOUR - EX
- 2' CONTOUR - PRO
- 10' CONTOUR - PRO
- TOP BACK CURB - EX
- FLOWLINE CURB - EX
- TOP BACK CURB - PRO
- FLOWLINE CURB - PRO
- WATER LINE - EX
- SEWER LINE - EX
- WATER LINE - PRO
- SEWER LINE - PRO
- OVERHEAD POWER LINE - EX
- OVERHEAD POWER LINE - PRO
- FLOWLINE/DRAINAGE SHALE - EX
- FLOWLINE/DRAINAGE SHALE - PRO
- PROPERTY LINE - EX
- PROPERTY LINE - PRO
- FIRE HYDRANT - EX
- FIRE HYDRANT - PRO
- SEWER MANHOLE - EX
- SEWER MANHOLE - PRO
- WATER VALVE - EX
- WATER VALVE - PRO
- STORM DRAIN CURB INLET - EX
- STORM DRAIN CURB INLET - PRO
- ASPHALT PAVEMENT - EX
- ASPHALT PAVEMENT - PRO
- CONCRETE PAD - EX
- CONCRETE PAD - PRO
- SURFACE FLOW DIRECTION - EX
- SURFACE FLOW DIRECTION - PRO
- CLASS II MONUMENT - EX
- POWER POLE - EX
- POWER POLE - PRO

ZONER1-6

AVERAGE LOT AREA: 6,000 SQ.FT.
MIN. LOT AREA: 4,800 SQ.FT.
MIN. FRONTAGE: 60'

RESIDENTIAL SETBACKS:
FRONT: 25'
REAR: 10'
SIDE: 8'
STREETSIDE: 20'

SITE INFORMATION:

CURRENT ZONE: R1-6 (PHASES 1-3)
TOTAL AREA: 18.20 AC (188,940 SQ.FT.)
RESIDENTIAL UNITS: 14
TOTAL RESIDENTIAL UNITS (14) AREA: 12.30 AC
(132,041 SQ.FT.) = 67.50%
TOTAL OPEN SPACE AREA: 0.80 AC
(8,479 SQ.FT.) = 4.40%
TOTAL PUBLIC STREET (R.O.W.) AREA: 5.10 AC
(222,154 SQ.FT.) = 29.02%
AVERAGE RESIDENTIAL LOT SIZE: 532,041/14 = 1,140 SQ.FT.
DENSITY, UNITS/ACRES = 14/18.20 = 4.01 UNITS PER ACRE

OWNER/DEVELOPER/CONTACT

THE DEVELOPER FOR THIS PROJECT IS
PERRY HOMES UTAH, INC.
CONTACT: GREG SANT
2250 NORTH CORAL CANYON BOULEVARD, SUITE 215
WASHINGTON, UTAH 84180 (435) 251-1040 (OFFICE)

PROJECT ENGINEER

THE ENGINEER FOR THIS PROJECT IS:
ROSENBERG ASSOCIATES
CONTACT: ROB REID
352 EAST RIVERSIDE DRIVE, SUITE A2
ST. GEORGE, UTAH 84190 (435) 613-8586

GEOTECHNICAL ENGINEER

THE GEOTECHNICAL ENGINEER FOR THIS PROJECT IS:
LANDMARK TESTING & ENGINEERING
195 EAST FACTORY DRIVE
ST. GEORGE, UT 84190 (435) 986-0566

DATE: 02/26/2021
JOB NO.: 11430-20
DESIGNED BY: DSH
CHECKED BY: RAR
DWG: Preliminary Plat

REVISIONS

ROSENBERG
A S S O C I A T E S
CIVIL ENGINEERS • LAND SURVEYORS

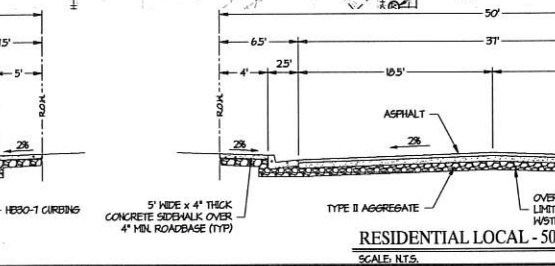
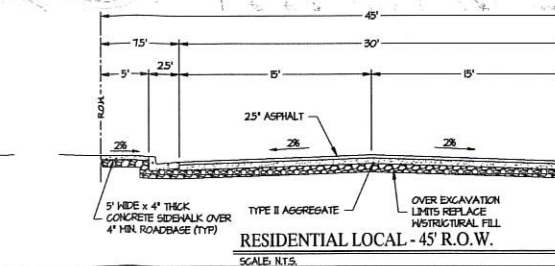
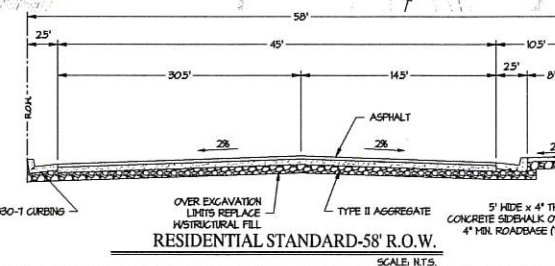
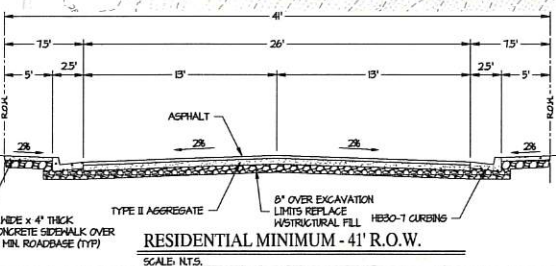
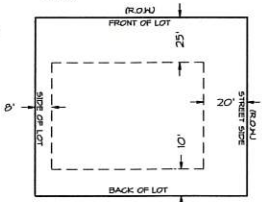
352 East Riverside Drive
Suite A-2
St. George, Utah 84190
Ph (435) 673-8586 Fax (435) 673-8397
www.rasoc.com

PRELIMINARY PLAT
FOR
PEREGRINE POINT WEST: PHASES 1-3
3000 WEST 600 NORTH
HURRICANE, UTAH

STATE OF UTAH
COUNTY OF WASHINGTON
ROBERT A. REID
REGISTERED PROFESSIONAL ENGINEER

SHEET
C1.0
1 OF 1 SHEETS

TYPICAL LOT SETBACKS:
N.T.S.



Z:\1100-11990\11930-20 Peregrine Point West\DWG\11930-20 Preliminary Plat.dwg, Preliminary Plat, 2/26/2021, 12:29:49 PM, dsh

PEREGRINE POINT WEST: PHASES 1 - 4 PRELIMINARY PLAT - AMENDED

LOCATED IN SECTION 30, TOWNSHIP 41 SOUTH, RANGE 13 WEST
OF THE SALT LAKE BASE AND MERIDIAN
IN THE CITY OF HURRICANE, WASHINGTON COUNTY, UTAH.
DEVELOPED BY: PERRY HOMES UTAH, INC.

LEGEND

- 2' CONTOUR - EX
- 10' CONTOUR - EX
- 4275' CONTOUR - PRO
- 4270' CONTOUR - PRO
- TOP BACK CURB - EX
- FLOWLINE CURB - EX
- TOP BACK CURB - PRO
- FLOWLINE CURB - PRO
- WATER LINE - EX
- SEWER LINE - EX
- WATER LINE - PRO
- SEWER LINE - PRO
- OVERHEAD POWER LINE - EX
- OVERHEAD POWER LINE - PRO
- FLOWLINE/DRAINAGE SHALE - EX
- FLOWLINE/DRAINAGE SHALE - PRO
- PROPERTY LINE - EX
- PROPERTY LINE - PRO
- FIRE HYDRANT - EX
- FIRE HYDRANT - PRO
- SEWER MANHOLE - EX
- SEWER MANHOLE - PRO
- WATER VALVE - EX
- WATER VALVE - PRO
- STORM DRAIN CURB INLET - EX
- STORM DRAIN CURB INLET - PRO
- ASPHALT PAVEMENT - EX
- ASPHALT PAVEMENT - PRO
- CONCRETE PAD - EX
- CONCRETE PAD - PRO
- SURFACE FLOW DIRECTION - EX
- SURFACE FLOW DIRECTION - PRO
- CLASS II MONUMENT - EX
- POWER POLE - EX
- POWER POLE - PRO

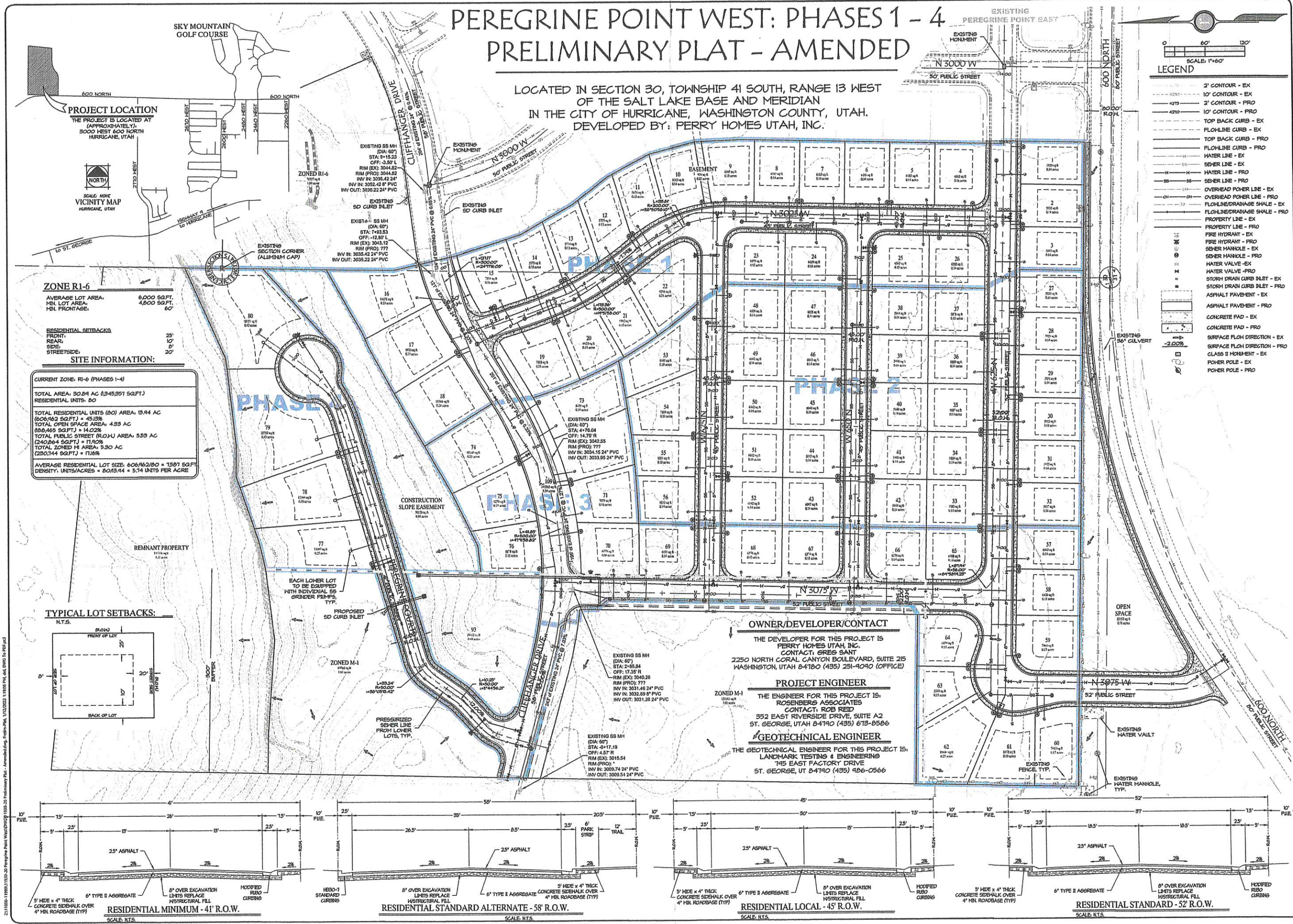
ROSENBERG
ASSOCIATES
CIVIL ENGINEERS • LAND SURVEYORS

352 East Riverside Drive
Suite A-2
St. George, Utah 84790
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www.rosenb.com

PRELIMINARY PLAT - AMENDED
FOR
PEREGRINE POINT WEST: PHASES 1-4
3000 WEST 600 NORTH
HURRICANE, UTAH

STATE OF UTAH
No. 18104
ROBERT A. REID
PROFESSIONAL ENGINEER

SHEET
1.0
1 OF 1 SHEETS



A RESOLUTION OF THE HURRICANE CITY COUNCIL OF HURRICANE, UTAH,
RECOGNIZING PARENTS' RIGHTS, STAKEHOLDER AUTHORITY, AND POLITICAL
PARTICIPATION.

WHEREAS, on October 22nd, 2021, the National School Board Association (NSBA) apologized exclusively to its policy of this state that a parent retains the fundamental right and duty to exercise primary control over the care, 30-5a-103 6 and 62A-4a-201, it is the public supervision, upbringing, and education of the parent's children," and association members, and

WHEREAS, on November 16th, 2021, a FBI whistleblower disclosed evidence of Federal Counter-Terrorism tools being used to target parents, based upon U.S. AG Garland's October 4th directive to FBI detachments, and directly contradicting U.S. AG's October 21st Congressional testimony that (1) the NSBA letter inspired his directive and (2) counter-terrorism tools were not being used against parents, and

WHEREAS, on November 16th, 2021, a FBI SWAT team broke into a home with children present, in Grand Junction, Colorado to arrest a parent whose political activities included attending school board meetings, supporting school board candidates, and organizing parents, and

WHEREAS, as of December 8th, 2021, twenty-seven (27) States have repudiated the repercussions of the NSBA letter and eighteen (18) States have rescinded their membership with NSBA, and

WHEREAS, as of January 28, 2022, the Utah School Directors Association has (1) not repudiated the NSBA's September 29th, 2021 'domestic terrorism' letter or (2) withdrawn its NSBA membership from NSBA, and

WHEREAS, the Utah State Legislature is the primary stakeholder in the establishment, maintenance, and success of the State's entire Education system, including, but not limited to public, charter, private, and home-based education sub-systems, and

WHEREAS, "The Utah State recognizes that: The State's role is secondary and supportive to the primary role of a parent," and

WHEREAS, The Utah State has legally stated, "A fundamentally fair process must be provided to parents if The State moves to challenge or interfere with parental rights. Utah State supports any actions or allegations made in opposition to the rights and desires of a parent regarding the parent's children by sufficient evidence to satisfy a parent's constitutional entitlement to heightened protection against government interference with the parent's fundamental rights and liberty interests and, concomitantly, the right of the child to be reared by the child's natural parent."

WHEREAS, Parents are the primary stakeholders in their children's upbringing, and

WHEREAS, as stakeholders, Parents are responsible for what and how their children are taught, and

WHEREAS being responsible, Parents have the unalienable right to participate in the political process on behalf of their children, and

WHEREAS, both Parents, the Utah State Legislature, and the Utah Board of Education, as Primary Stakeholders in their respective areas of education, should seek joint partnership in ensuring the success of Utah State's children and the entire Education System, therefore

BE IT RESOLVED that based on Utah State code Hurricane City Council and Mayor affirms that parents are the PRIMARY stakeholders in their children's upbringing and PRIMARY political participants on behalf of their children.

BE IT FURTHER RESOLVED that Hurricane City Council and Mayor agree by the clearly define law that terrorism and domestic terrorism in Utah State code and distinguish it from criminal activity to ensure due process for all Utahans.

BE IT FINALLY RESOLVED that this resolution will be forwarded to The Washington County School District, Washington County School Board, Utah State School Board, and Utah State Board of Education showing support from The Hurricane City Council and Mayor, who recognizing parents' rights, stakeholder authority, and political participation.

DATED this 3rd day of February 2022.

Nanette Billings, Mayor

Attest:

Cindy Beteag, City Recorder

A RESOLUTION OF THE CITY COUNCIL OF HURRICANE, UTAH REGARDING RIGHTS AND LIBERTY.

WHEREAS the City of Hurricane employs hundreds of individuals and wishes to avoid situations in which City employees, officers, or elected officials are unaware of the City's commitment to and understanding of liberty and individual rights; and

WHEREAS the Constitution of the United States and Bill of Rights protect fundamental rights and liberty endowed by our Creator; and

WHEREAS the Constitution of the State of Utah establishes that all people have inherent and inalienable rights to enjoy and defend their lives and liberties; and to acquire, possess and protect property; and to worship according to the dictates of their consciences; and to assemble peaceably; and

WHEREAS the separation of powers set forth in the Constitutions of the United States and State of Utah are to assure the preservation of liberty; and

WHEREAS the United States and the State of Utah derives its just powers from the consent of the governed to secure the rights and blessings of life, liberty, and the pursuit of happiness; and

WHEREAS civil liberties face grave dangers of curtailment when governments declare indefinite or repeated states of emergency; and

WHEREAS nationwide and within the State of Utah governmental agencies are imposing mask and vaccine rules and or mandates; and

WHEREAS Hurricane City Mayor and Council members have taken an oath to obey, defend, and protect the Constitution; and

WHEREAS the Mayor and City Council support the principles upon which the United States was founded, namely the separation of powers, individual rights and liberties, and the rule of law.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the City Council of Hurricane, Utah affirms and expresses its support for individual choice in health care decisions.

DATED this ____ day of February, 2022.

City of Hurricane

Nanette Billings, Mayor

Attest:

Cindy Beteag, City Recorder

WHEREUPON, a motion to approve this resolution was made by _____ and seconded by _____ . A roll call vote was then taken with the following results:

<u>COUNCILMEMBER</u>	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Nanette Billings	_____	_____	_____	_____
Darin Larson	_____	_____	_____	_____
Joseph Prete	_____	_____	_____	_____
Dave Sanders	_____	_____	_____	_____
Kevin Tervort	_____	_____	_____	_____

RECORDED this 3rd day of February 2022.

Cindy Beteag

A RESOLUTION OF THE HURRICANE CITY COUNCIL OF HURRICANE, UTAH,
APPROVING THE DESIGNATION AND APPOINTMENT OF A REPRESENTATIVE TO
SERVE ON THE WASHINGTON COUNTY WATER CONSERVANCY DISTRICT BOARD
FOR THE CALENDAR YEAR 2022 AND FOR SUCH TIME THEREAFTER UNTIL A
SUCCESSOR HAS BEEN DESIGNATED AND APPOINTED.

WHEREAS, Washington County Water Conservancy District Board was created by the Washington County Commission for the purpose of providing water services for residents throughout Washington County, and

WHEREAS, said District is governed by an administrative control board made up of representatives designated by the cities/towns in Washington County, who are thereafter approved and formally appointed by the Washington County Commission; and

WHEREAS, Hurricane City desires to designate a person to serve on said administrative control board as the representative for Hurricane City during the calendar year 2022 and for such time thereafter until a successor has been appointed; and

WHEREAS, all legal requirements pertaining to the designation of said representatives have been met; and

WHEREAS, said Hurricane City Council deems it necessary and desirable for the preservation of the public health, safety and welfare,

BE IT HEREBY RESOLVED by the Hurricane City Council of Hurricane, Utah that Nanette Billings, a member of the Hurricane City Council, shall be, and is hereby, designated to serve as the representative for Hurricane City on the Washington County Water Conservancy District Board for the calendar year 2022 and for such time thereafter until a successor has been designated and appointed.

DATED this 3rd day of February, 2022.

Nanette Billings, Mayor

Attest:

Cindy Beteag, City Recorder



STAFF COMMENTS

Consideration and possible approval of **appointing Doug Heideman to the Airport Board, Beautification Board, Appeals Board, and Tourism Board**

Discussion:

Findings:

Recommendation:

Attachments:

None



STAFF COMMENTS

Consideration and possible **approval of a new position** - Nanette Billings

Discussion:

Findings:

Recommendation:

Attachments:

None



STAFF COMMENTS

Consideration and possible approval for the **City Council and Mayor to be part of fund URS from Stipend** - Nanette Billings

Discussion:

Findings:

Recommendation:

Attachments:

None



STAFF COMMENTS

Consideration and possible approval of **appointing the Mayor Pro Tempore**

Discussion:

Findings:

Recommendation:

Attachments:

None