



*Critical to our success is an engaged community and knowledgeable and experienced staff.*

**Town Council Values**

- *Preserve our high quality of Life*
- *Resource Efficiency/ Environmental Stewardship*
- *Support a sustainable and healthy business climate*
- *Maintain a “real” community*
- *Fiscally Responsible*
- *Historic Core*

**AGENDA**  
**Town of Crested Butte**  
**Regular Town Council Meeting**  
**Monday, December 15, 2014**  
**Council Chambers, Crested Butte Town Hall**

**6:15 REGULAR COUNCIL MEETING CALLED TO ORDER BY MAYOR OR MAYOR PRO-TEM**

**6:17 APPROVAL OF AGENDA**

**6:20 CONSENT AGENDA**

1) Approval of December 1, 2014 Regular Town Council Meeting Minutes.

**6:22 PUBLIC COMMENT**

*Citizens may make comments on item not scheduled on the agenda. Those commenting should state their name and physical address for the record. Comments may be limited to five minutes.*

**6:30 STAFF UPDATES**

**6:45 NEW BUSINESS**

- 1) Introductions and Opportunity to Ask Questions of Mundus Bishop, Consultant for Big Mine Master Plan.
- 2) Approval of Mayor or Town Manager to Sign Thank You Letter to the Gunnison Valley Housing Foundation.
- 3) Approval of Mayor or Town Manager to Sign Thank You Letter to Town of Mt. Crested Butte.
- 4) Presentation by Chris Larsen of Mountain Express.
- 5) Resolution No. 24, Series 2014 - Resolutions of the Crested Butte Town Council Approving the Final Plat of Redwell Townhouses, Town of Crested Butte, State of Colorado.
- 6) Gravity Groms' Requested Use of the Big Mine Park Ice Rink.
- 7) Review, Discussion and Possible Action Regarding Concept Annexation Request By Cypress Foothills LP for the Slate River Addition Annexation, North of Butte Avenue, County of Gunnison (Continued).

**11:30 LEGAL MATTERS**

**11:35 COUNCIL REPORTS AND COMMITTEE UPDATES**

**11:45 OTHER BUSINESS TO COME BEFORE THE COUNCIL**

**11:50 DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE**

- Wednesday, December 17, 2014 – Council Retreat
- Monday, January 5, 2015 – 6:00PM Work Session – 7:00PM Regular Council
- Monday, January 19, 2015 – 6:00PM Work Session – 7:00PM Regular Council

**12:00 ADJOURNMENT**

**MINUTES**  
**Town of Crested Butte**  
**Regular Town Council Meeting**  
**Monday, December 1, 2014**  
**Council Chambers, Crested Butte Town Hall**

Mayor Huckstep called the meeting to order at 7:06PM.

Council Members Present: Jim Schmidt, Glenn Michel, Roland Mason, Shaun Matusewicz, Skip Berkshire, and Chris Ladoulis

Staff Present: Town Manager Todd Crossett and Town Clerk Lynelle Stanford

Town Planner Michael Yerman, Finance Director Lois Rozman, Building and Zoning Director Bob Gillie, Public Works Director Rodney Due, and Parks and Recreation Director Janna Hansen (all for part of the meeting)

**APPROVAL OF AGENDA**

There was an addition to the agenda, which was to swear in newly appointed council member, Walker “Skip” Berkshire.

Schmidt moved and Michel seconded a motion to approve the agenda as amended. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

Mayor Huckstep swore in Councilman Berkshire with the oath of office.

Town Attorney, John Belkin, requested a clarification on the record stemming from something he said during the Work Session on Annexations in Crested Butte - 101. Belkin stated that Public Works Director, Rodney Due, and Crested Butte News Editor, Mark Reaman, had just shared with Belkin during the break after the work session that they thought they heard Belkin state in the work session that he had not been the Town Attorney at the time of the previous Foothills annexation petition in 2008-09. Town Attorney Belkin asked to be included, in the record, that this was incorrect and wanted clarified for the record that what he said, or meant to say, was that he wasn't here for the prior annexation proposal(s); meaning, prior to the previous Foothills annexation petition in 2008-09 when Belkin was the Town Attorney. Attorney Belkin stated that his answer was in response to Councilman Schmidt who had asked why in previous annexations such as the Verzuh annexation, the Town Council was able to treat the whole process on the annexation proposal as a legislative matter.

**EXECUTIVE SESSSION**

Schmidt moved and Mason seconded a motion to go into Executive Session for a conference with the Town Attorney for the purpose of receiving legal advice on specific

legal questions under C.R.S. Section 24-6-402(4)(b). A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

Council went into executive session at 7:12PM. Council returned to open meeting at 7:50PM. Mayor Huckstep made the required announcement upon returning to the open meeting.

### **CONSENT AGENDA**

Schmidt moved and Mason seconded a motion to approve the consent agenda. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

### **PUBLIC COMMENT**

Margot Levy – Resident of the Town of Crested Butte

- Thanked the Council for taking public comments.
- Said her comment has to do with the annexation process being legislative versus quasi-judicial. Supported the recommendation the entire process be carried on through a quasi-judicial process.
- Transparency was very important to people, and she said business should be carried on in public meetings.
- Wondered what was the public interest or benefit of ex-parte communication. She wanted to know what issues other members of the public raised.
- Important things go on in the public forum.
- She said there was a whole question of timing. Processes go on for months. During that time period, there could be changes with people who are sitting at the Council table. If there were a change of personnel, conversations that were ex-parte would go away with the person.
- Public record or public forum are known and are on the record.
- Asked the Council to take the quasi-judicial approach.

### **STAFF UPDATES**

Janna Hansen

- Department was struggling to get ice at Big Mine due to temperatures.
- Mentioned the initial community sessions for the Big Mine Master Plan are on December 15 and 16. She is still working on the agenda and timing, but she is hoping to finalize by tomorrow.
- Huckstep asked Hansen if the dasher boards were done at Big Mine. Hansen answered, “Yes.”

Michael Yerman

- Hoping to have the grand kick off for the Creative District on January 22.
- Will hold a lottery on December 12 for the property at 818 Teocalli. Said that seven people were qualified to purchase.

Lynelle Stanford

- Mentioned Light Up Night special event being held on December 12.
- Told the Council about the Adopt-a-Family that the staff has organized in past years, and asked the Council members to participate if they desired.

Huckstep mentioned to the Council that Rozman provided an updated sales tax report that showed October sales tax was up 26.9%.

## **PUBLIC HEARING**

### **1) Transfer of East Side Bistro Liquor License, Located at 435 6<sup>th</sup> Street, From East Side Bistro LLC to Birds of Paradise LLC.**

Huckstep confirmed that proper public notice was given, and the public hearing was then opened. Huckstep said the Council had a staff report from Stanford, and he confirmed there were no changes to the staff report. There were no public comments, and the public hearing was closed.

Schmidt moved and Michel seconded a motion to approve the transfer of a Hotel and Restaurant Liquor License for Birds of Paradise LLC DBA Paradise Café located at 435 6<sup>th</sup> Street; Crested Butte, Colorado for the reasons stated in the staff report dated November 25, 2014. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

### **2) Resolution No. 22, Series 2014 – A Resolution to Adopt the Mill Levy for the Town of Crested Butte, Colorado for the Fiscal Year 2015, Beginning the First Day of January 2015 and Ending the Last Day of December 2015.**

Huckstep confirmed that proper public notice was given, and the public hearing was opened. Huckstep confirmed there were no changes to Rozman’s staff report. There were no public comments. The public hearing was closed.

Mason moved and Ladoulis seconded a motion to approve Resolution No. 22, Series 2014. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

### **3) Resolution No. 23, Series 2014 – A Resolution Adopting the Budget and Appropriating Sums of Money for the Town of Crested Butte, Colorado for the Fiscal Year Beginning the First Day of January 2015, and Ending the Last Day of December 2015, Estimating the Amount of Money Necessary to be Derived From Revenue Sources, and Setting Forth the Total Estimated Expenditures for Each Fund.**

Huckstep opened the public hearing. He confirmed there were no changes to either Hansen’s or Rozman’s staff reports. There were no public comments.

Schmidt stated he felt strongly they should deduct \$30K from the capital fund balance. He proposed approval of the resolution, but he would like to revisit the topic of deducting

\$30K at the second meeting in January when they can specifically discuss the cut and implications for the future. He said he was looking to take money from the fund balance, (out of the general capital fund) but rather than drawing out tonight, he would like the discussion to be on the agenda the second meeting in January.

Before Schmidt continued, Huckstep closed the public hearing and opened it to Council discussion.

Schmidt said he realized it was a small cut, but for next summer, he thought they ought to take \$30K out of fund balance to take care of flowers and other services and have the long discussion later. He knew cuts had to come in the future. Laoudlis agreed with the basis of Schmidt's comments. He said he felt like it was wrong to cut \$30K. He was not prepared to approve the budget if it meant there would not be bike racks out in time for Bike Week. Huckstep said they could do a budget amendment after the second meeting in January. Rozman added it was not just the \$30K; it was the projects and desires that Town wouldn't be able to take on and build because they couldn't take care of what they already had. She said the discussion was more rooted in policy and procedure. She suggested the Council see what winter might do. Matusewicz agreed they could pass the budget with \$30K out of reserves. Huckstep said the discussion went well beyond the \$30K. Berkshire saw the value of preserving what Town has and thought it was worth it to take \$30K out of fund balance. Huckstep's concern was that they shuffled the numbers and then didn't have the discussion. Hansen said a significant time constraint was that they needed to place their order for flowers within the next couple of weeks. It was decided to discuss future budget implications the first meeting in January.

Matusewicz moved and Ladoulis seconded a motion to approve Resolution No. 23, Series 2014 with the addition of \$30K to be deducted from fund balance from the general capital fund. A roll call vote was taken. Berkshire, Matusewicz, Ladoulis, and Schmidt voted, "Yes." Mason, Huckstep, and Michel voted, "No." **Motion passed.**

**4) Ordinance No. 13, Series 2014 - An Ordinance Amending Section 13-1-110 of the Crested Butte Municipal Code by Increasing the System Development Fees, Otherwise Known as "Tap-in Fees", to \$8,000 Per EQR for Water and \$9,500 Per EQR for Sewer; Amending Section 13-1-120 of the Code by Increasing the Rates for Water Use Above the "Base Allotment" to \$3.00 Per 1,000 Gallons for the First 5,000 Gallon Block, \$3.25 Per 1,000 Gallons for the Second 5,000 Gallon Block, \$3.50 Per 1,000 Gallons for the Third 5,000 Gallon Block, \$3.75 Per 1,000 Gallons for the Fourth 5,000 Gallon Block, \$4.25 Per 1,000 Gallons for the Fifth 5,000 Gallon Block and \$5.00 Per 1,000 Gallons Thereafter; Amending Section 13-1-150 of the Code by Increasing Sewer Service Rate to \$33.00 Per Month Per EQR.**

The public hearing was opened. Huckstep referred to a staff report from Rozman with a recommendation to approve. There were no public comments, and the public hearing was closed. There was no further Council discussion.

Schmidt moved and Mason seconded a motion to approve Ordinance No. 13, Series 2014. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

**5) Ordinance No. 14, Series 2014 – An Ordinance Adopting Changes and Additions to the 2014 Budget and Appropriations Relative to the Affordable Housing and Sales Tax Fund.**

The public hearing was opened. Huckstep mentioned a staff report from Rozman with a recommendation to approve, and he confirmed there were no changes to the staff report. There were no public comments, and the public hearing was closed. There was no further Council discussion.

Mason moved and Schmidt seconded a motion to approve Ordinance No. 14, Series 2014. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

**6) Ordinance No. 15, Series 2014 – An Ordinance Amending Chapter 6-2 of the Crested Butte Municipal Code Providing for a Temporary Reduction to Certain Portions of the Business and Occupation Licensing Tax for Fiscal and Calendar Year of 2015; and Providing the Automatic Repeal Thereof Effective on the First Day of January, 2015.**

The public hearing was opened. Huckstep mentioned the staff report from Rozman with the recommendation to approve. There were no public comments, and the public hearing was closed. There was no further Council discussion.

Schmidt moved and Ladoulis seconded a motion to approve Ordinance No. 15, Series 2014. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

**NEW BUSINESS**

**1) Discussion and Possible Approval of the Crested Butte Avalanche Center Beacon Brush Up Located at Town Park and Special Event Liquor License Located at 419 6<sup>th</sup> Street on December 7, 2014.**

There was a brief discussion surrounding the timing of the submittal of special event applications and when they are presented to Council. Ladoulis wondered what was being done to discourage late applications. Stanford said there was a \$100 late application fee that has not been strictly enforced. However, Crossett said past direction from the Council was for staff to facilitate special events.

Matusiewicz moved and Ladoulis seconded a motion to approve the Crested Butte Avalanche Center Beacon Brush Up special event application and special event liquor permit. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

## **2) Discussion and Possible Approval of Santa Bingo by Crested Butte Mountain Educational Radio Special Event Permit and Special Event Liquor License Located at 306 Maroon Avenue on December 12, 2014.**

Matusewicz recused himself and left the room because he was involved with the inception of the event.

Schmidt moved and Mason seconded a motion to approve the Santa Bingo special event application and special event liquor permit. A roll call vote was taken with all voting, "Yes." Except Matusewicz, who did not vote. **Motion passed unanimously.**

## **3) Discussion and Approval of the 2014/2015 Snow Plan.**

Schmidt asked Due if the Snow Plan was any different than last year. Due said it was basically the same. There was a person running the night shift, and one person running the day shift. He said it worked out well, and it saved the Town from hiring one seasonal person. Berkshire said he liked Due's staff report, because it called out specifically that they would plow the bus route. However, he said, in the plan it didn't really spell out the bus route. Berkshire would like to see the explicit statement about the bus route being plowed before the first bus, and he would love to see that in the plan. Michel added, from observing the plows working, they push the snow one way, and he wouldn't want to tie the drivers' hands, because it might not be as efficient. Berkshire countered if it was in the staff report that Due intended to plow the bus route, it should be in the plan. Due said he could make it clearer, related to bus routes and emergency routes. Huckstep suggested a change on the Operations Plan, on the list of priorities, to call out the bus routes specifically. Matusewicz wondered about the plowing of snow banks and if it would be done one week before Christmas. He said it seemed like it was done two weeks before Christmas in the past. Due said it has always been done one week before the holiday.

Keith Bauer, Director of the Nordic Center, said the plan didn't mention 1<sup>st</sup> street. He wanted snow to remain on 1<sup>st</sup> Street for their snow cat to travel. Berkshire added that 1<sup>st</sup> Street is also a part of the approved skiing perimeter. Matusewicz said that not scraping 1<sup>st</sup> Street was not in the snow plan. Due said they always try to allow no more than six inches, which includes 1<sup>st</sup> Street. He said it was not written out specifically but it was understood. Due said if they took all the streets down to oil, they would leave 1<sup>st</sup> Street. Michel asked Due if they could still provide essential services to that neighborhood. He wanted to make sure they could uphold the first priority of safety. Due answered, "Yes."

Schmidt moved and Berkshire seconded a motion to approve the Snow Plan with the amendment to the roadway section to specifically call out the bus route. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

## **4) Discussion and Possible Action Regarding Whatever USA Ad Hoc Committee Recommended Allocation and Distribution of Whatever Project Monies.**

Michel asked Huckstep what was the characterization of the committee discussions. Huckstep answered, it was very amicable. Crossett said it was important that everyone could walk out with something they felt good about for both towns. He said the committee felt their decision was defensible, practical, and addressed the needs of both communities. Huckstep listed three priority projects: the rec path extension out to 8<sup>th</sup> Street; \$300,000 for Big Mine Park improvements, which would benefit the Nordic and hockey communities; \$140,000 to Block 79 and 80 infrastructure. Huckstep said with Big Mine, they hoped it would jump start the funding to fulfill the needs. Michel agreed it was a good outcome with all things considered. Matusiewicz said he wanted to wait until the next meeting to take action. He wanted the public to have adequate time. Schmidt said he agreed with Michel, and it was an excellent outcome for the Town of Crested Butte. Bauer, Director of the Nordic Center, wanted to thank the committee. He thought the committee did a great job. He has closely witnessed changes at Big Mine, and the amount of \$300,000 would be great jump-start on funding. With support from the Nordic and hockey communities, he would like to see Big Mine improvements. Schmidt said to also look at this as not just for hockey and Nordic, but it would also benefit the summer events in the building, as it is used more and more. Mason stated the Parks and Rec Master Plan pinpointed Big Mine. He suggested the longer the discussion was drawn out, it could potentially unravel. Ladoulis said they haven't heard from the public. Matusiewicz said there were dozens of letters to the editor suggesting how the money was spent, and he felt they had not received feedback, because people were not aware of it. He further expounded that they were contemplating putting the majority of the funding into a park expansion, and they currently could not pay for the parks. He said it was irresponsible. He felt locker rooms were a good amenity for Town, but a great amenity would be housing for locals. He suggested doing something bigger and better than short-term locker rooms.

Michel moved and Ladoulis seconded a motion to approve the funding recommendations set forth by the committee. A roll call vote was taken with all voting, "Yes", except for Matusiewicz, who voted, "No." **Motion passed.**

##### **5) Presentation by Town Attorney John D. Belkin, and Discussion by Town Council on Legislative and Quasi-judicial Decision Making Processes in Annexation Proceedings.**

Belkin said they were trying to figure out how the Council would treat the concept annexation, assuming it moved forward to a formal petition. The two options were legislative and quasi-judicial. He said it was important to know that Gerald Dahl, special counsel, who joined the meeting via conference call, wrote sections of the state statutes on annexations, and he also helped in writing the Town Code.

Dahl said that Crested Butte had a unique code approach that gave the Town of Crested Butte more flexibility compared to other towns. He explained that with a quasi-judicial process, the Council would act like a judge, and most land use matters were handled this way. The consequences were that notice and a public hearing were required, and Council could not pre-judge the application. They could not have ex parte contacts. Quasi-

judicial was different from legislation. Once the application came in, the curtain came down on outside of the public conversations. Dahl said that in Crested Butte, the article on annexation created a special process ahead of time called the concept annexation request. It was a pre-look for annexation purposes only. He said they could have ex parte contacts. The annexation was not quasi-judicial, yet, because the land use plan had not been submitted to trigger the land use process. Once they've given a head nod, they pre-conditioned the annexor, and the code required that accompanying the Town's quasi-judicial land use process, the curtain had to come down on outside contacts. He said there were benefits to having contacts before the land use application was submitted. The later land use plan has to be consistent with the annexation plan, and they couldn't do a bait and switch. He said the Council had a free early look that was legislative in Crested Butte. Huckstep questioned Dahl if he heard correctly that Crested Butte was the only city or town in the state that had a concept plan. Dahl said he has not heard of anyone else doing it, although it was possible. Huckstep said people would want to talk to Council members, and he asked how they allowed access for public comments outside of a public hearing. Dahl explained there was still a way to operate within the rules. When people send letters to Council, they should give the letters to staff. Staff copied the letter and made it part of the record. Council members should not respond to letters. With emails, forward to other Council members, and include in the packets. Dahl said it was the replies that get a person in trouble. Schmidt said that they cut out the transparency if they couldn't talk freely to constituents, staff, and the attorney. He said once the process was quasi-judicial, he didn't know if it was okay to talk to the attorney or town manager. He further said the Council had to take in what came in front of them, and in the strictest interpretation of quasi-judicial, the Council could not have any real ideas. He doesn't want to say to constituents, "I'm sorry we can't talk to you about that, you must come to a meeting." He said it felt like a courtroom and not a council room. Dahl saw it differently. With quasi-judicial, they must bring it to hearing. Quasi-judicial rules did not prohibit Council from talking to staff or the attorney. However, they can't use staff or the attorney as human telephones. Dahl mentioned the easiest rule: when the land use application was stamped "received", it was quasi-judicial. Ladoulis said he understood and appreciated the spirit of quasi-judicial limitations. However, they struggled with it in a small town. They had limited opportunities, and the quasi-judicial process was limiting when looking at the experience of the Council in contributing to that process. He said to respect the community and make the best decisions for Town, that to defer to staff and not let Council take any input during the process, then they wouldn't get the best outcome, no matter what the law said. Dahl said a big part of his practice was how to make that work in a small community and still follow the law. He said there was a lot of room in the system to do just that. He said there was nothing wrong with having additional meetings that were publically noticed. They could take public comment when everyone was present. They could add hearings. They could add submission requirements on the annexors to give a fuller picture of what they wanted to do as part of the annexation concept request. The line they couldn't cross was to encourage private discussion. He advised they tell the person the whole Council needed to see this, please send this to me in an email. Then, don't reply. Tell them to send an email to the town clerk to put it on the public record. He said they needed to send the message: "Yes, I can hear you. Send it to me in an email, and I'll share it." Huckstep asked Dahl how long the

concept review stage really lasted. He answered they could make it last as long as they would like. Belkin added it was not a prescriptive time frame; it was an organic time frame. He said many things could be front-loaded. Dahl said that as long as they were under concept review, they were under legislative rules, and they could take it as far as possible.

Schmidt said when they get to quasi-judicial, it said to the Council they couldn't think of anything new. He wondered if it prohibited the Council from having any new ideas. Dahl answered they have to make sure their decision had a basis in the record. It was not at all uncommon to say yes with conditions and come up with the fifth, as long as it was a condition that could be justified under the code.

Yerman explained the role of town staff expressly acknowledged that Council could go to staff and have what looked like the conversation they couldn't have with the public. He explained the Council could direct the public to go to staff, and staff could make sure it was a matter on public record.

Belkin talked about front-loading being a slippery slope. It was effectively disregarding the process of the filing of the petition. It was saying they did not really like the code sections they had. Dahl said they had a unique process that front end loads to give them a good look at the application. It was also true that they have a code process that the public expected to have meaning. Schmidt asked that at a certain time the Council said they're ready for a formal application. Dahl confirmed it was up to the Council, not the applicant. Yerman said when the Council approved, they would be giving them permission to move forward.

Huckstep confirmed that changing the code now wouldn't apply to an application they have already received. Dahl said they couldn't change the rules on them in the middle. Belkin wondered what they were trying to inoculate against. Huckstep said there was no technical information on the dump, and Dahl's words said they could require that. He said if they wanted to amend the code, they could do that. Huckstep asked if someone wanted a certain piece of information could they ask for it. Belkin said they could ask for whatever they wanted. Schmidt asked about the necessity of a pre-annexation agreement. Dahl said it was a submission requirement of the annexation petition, and it was submitted with the petition. Berkshire wondered why they couldn't have a pre-annexation agreement that was part of the concept phase. Belkin said they were talking about doing a pre-annexation agreement. The dump would still be addressed when they were in concept review. The annexation concept review did not preclude that annexation agreement. Dahl said the pre-annexation agreement would be around things like the time frame they would agree the concept review would take. He reminded the Council they are never required to say yes to an annexation. He said negotiating the whole deal before they have looked at it didn't serve very well. They were trying to have the chicken and egg at the same time. Berkshire said attributes continued today, and before they were up to their necks, they wanted to make sure there was clear understanding of how they would deal with these attributes. He said they needed to define the potential deal

breakers from the very start. Ladoulis agreed if there were non-starters, and the Council felt strongly about an issue, he didn't want them to go down the road.

**6) Review, Discussion and Possible Action Regarding Concept Annexation Request By Cypress Foothills LP for the Slate River Addition Annexation, North of Butte Avenue, County of Gunnison.**

Cameron Aderhold, Vice-President of Cypress Equities, began by briefly describing the company, including their history and introduction to the property. He went on to describe the property Cypress Equities was proposing to develop. He said they understood that any new annexation must be consistent with the character of Town, and new development in Crested Butte must pay its own way. Aderhold said their proposal for the development was 25% less dense than what was proposed previously. They recognized the delicate balance between maintaining the grid and the natural environment. He wanted to get the Council's input as to what they thought was more important. He said they were aiming to stay consistent with existing zoning classifications. Aderhold addressed the dump and said they had a good idea for the character of the debris that was found there. He said they took an additional step and purchased an environmental insurance policy. He said they could add Town land to the insurance policy, and they would clean up the dump at no cost to the Town. He said they understood the need for affordable housing and would have no problem meeting the guidelines in the code. He said more effective might be for them to build the affordable housing.

Aderhold introduced Tyler Harpel, their engineer from SGM, a local engineering company located in Gunnison. Harpel said they wanted to distinguish themselves from the last applicant. They had the benefit of looking through the last application. One of the issues they were getting feedback from both directions was maintaining the Town grid system while meshing the features with the topography. He said their development would be on the grid system coming off of existing 7<sup>th</sup> and 8<sup>th</sup> Streets, and it would not be a whole bunch of cul de sacs. Harpel said the biggest factors were the wetlands and compatibility with natural features. He said a big natural feature was the river. The FEMA 100 year flood plain was just delineated in 2013, and FEMA's plan was within inches of SGM's plan. On a slide from his presentation, he pointed out the area of the Town landfill. Schmidt asked how much the dump would be lowered. Harpel said in the ballpark it would be lowered about halfway.

Harpel said the big wetlands were: East Wetlands, Cemetery Wetlands, Pond Wetlands along Slate River, and Wetlands D. The biggest differences pertaining to the wetlands started with Road B. The proposed grid plan had Road B with the same spacing as Town grid. With the proposed natural plan, Road B bent down, which would preserve a full 25-foot buffer around the wetlands. The natural plan fit the land topography and did not have the clean feel of a lot line. They would be able to follow the high points and natural drainage topography. Harpel also cited the biggest advantages, which were related to snow plowing and storm water run off. There would be street loaded homes rather than loaded from the alley behind. He said there would be less disturbance. Harpel said the grid plan tried to keep a lot of wetland buffers. They could square up the edges, but they

didn't have a specific 100-foot buffer on everything. The grid plan did allow for more accessory dwelling units, which made them less street loaded. An alley created more disturbance, more storm water run off, but was also the more consistent feel with Town. Harpel said the Town Code was telling them to go both directions. Michel questioned which plan the applicant preferred. Aderhold answered they were trying to create trail connections. Schmidt asked about a walkway to the cemetery. Harpel said they could have a chance to get utilities to the cemetery. Aderhold said the natural plan was their first approach and preference. Harpel said they particularly preferred the natural plan in regards to storm water run off. Citizen Dan Escalante asked if the natural plan was medium density. Harpel answered that how the density flowed throughout the development was about the same, and as they moved out further, it became less dense. Escalante asked if the natural plan could accommodate higher density. Harpel said they were not cutting up lots just yet, but the natural plan didn't mean that it couldn't be denser. Yerman added that attributes for going against the grid plan were when uniform lot styles were created; they could create architectural standards that were uniform. He also said that with the use of the alley, it took away the car as the center of the house. Yerman continued and said it allowed Town to put utilities and better separation of utilities by having an alley. Regardless they would have grading said Yerman. He said the applicants were present to get feedback on both proposals. Due said there would be bulldozing on either one of the proposals. He did not know the difference in bulldozing between the plans, but he didn't think it was a major difference. Harpel estimated about 50 feet of difference. Due did say that alleys kept the water and sewer on the streets. He liked the idea of the grid because of the uniformity of the lots and alleys. Berkshire asked if there was any consideration given to how this annexation integrated with Moon Ridge. Aderhold said the natural plan softened the interface. Michel said the zoning code in the Verzuh provided transition to those lots outside of Town. A citizen, who reported to live on Whiterock Avenue, wondered why they needed to follow the norm. She suggested a car free part of Town. She asked why it had to be the same. She asked why it couldn't be affordable housing. She said to set a different standard. Marcus Lock, attorney for the applicant, said that was what they were trying to talk about tonight. He said they were there to find out how they could make it the best project possible, and they were looking for feedback.

Harpel said that with overall transportation, there were four main access points, including two new ones to connect with Gothic Road and 7<sup>th</sup> and 8<sup>th</sup> Streets. Michel wondered if they were looking at improving the intersection at Road B. Harpel said they hadn't yet done a traffic study. Their traffic plan would be integrated with the traffic studies that were already done over the summer. He said the 8<sup>th</sup> Street connection was really important, and they would be looking at intersections throughout Town. He said it was important to not look at traffic with just this development. Everyone who lived there would have the ability to get on public transit and Town pedestrian infrastructure. They would extend the 8<sup>th</sup> Street concrete sidewalk and then cross the bridge and back over Gothic Road. They would make sure the bridge could have Nordic grooming equipment cross it. He said critical was junction with the rec path. Harpel said that the feedback on trails had been that people wanted this connection to trails and river access. However, the wetlands were a challenge, which was why the feel for the northern park was a more

natural feel. It was related to water and limiting the amount of irrigation. He added that major wetlands had organic soil and were high quality wetlands. They required a larger buffer of 100 feet, instead of the 25-foot buffer required in lower quality wetlands. He said not to look at a 100-foot buffer or a 25-foot buffer. He said to do what made sense, a variable buffer.

Schmidt asked if the transmission lines for the water were adequate to serve the development. Due said they would have to look into further engineering the lines. Harpel said that would be addressed and would have to be analyzed.

Ladoulis was curious if their plan was to build structures themselves or if it was to sell the lots. He asked if they had a vision of the demographic that would buy on the East versus West side of the river. He asked what they would imagine this community to look like. Aderhold said they were open to exploring alternatives. They couldn't control the market, but he saw the desire for a mix that fit in well with Town. He could understand there might be a need for higher density housing. He said they would be able to work through concerns. Michel supported inclusionary zoning, like in the Verzuh. Escalante said he hoped they kept their minds opened to different options. There were a lot of ways it could look. Or, Escalante suggested, the houses built could be required to be 30% more efficient than code.

Attorney Marcus Lock reported to have been working with Cypress Equities for a couple of years. He said in terms of water and wastewater, the Town might be able to use their dollars. The developer understood that development was required to pay its own way, and they would pay for utility infrastructure. All new residents would be paying water and tap fees, including monthly usage fees. He suggested the revenue stream could pay for enhancement to the Town's water and wastewater. He felt the development's usage would represent about 7% of the wastewater treatment capacity. They were undergoing a performance evaluation, and there might be more capacity than what they thought. He suggested it was possible that Town may hit a point where they wanted to start engineering a new treatment facility. He said the development would help address the shortfall. He said they were currently examining where they could best help. He wondered if Town could use irrigation water rights to water parks and playing fields, therefore freeing up the use of treated water. Lock said the goal was to make it the best project possible for Crested Butte.

Lock continued and said there was a lot of detail they still needed to provide, but they wanted to know what the big issues were. Related to the landfill, the applicant wanted to take a different approach from the prior group. They wanted to take responsibility to clean up Cypress's property and Town's property. Lock said they had an environmental engineer, who had knowledge how to do it safely. In addition, they obtained an environmental insurance policy. They would do it the right way with the right people with adequate safe guards. They would ultimately provide federal and state approval. Remediation work would be monitored, and the remediation report would document all activities. The applicant's goal was to provide documented evidence the old Town dump

had been remediated to federal and state standards, and Town property would largely end up being a park.

Paul Casey, Principal Engineer of Casey Resources, a company that does site remediation was introduced. Casey Resources integrated into big projects, and they were the environmental arms. They consulted and planned. They negotiated with regulators and oversaw to ultimately get state and federal approval under a voluntary program. Casey listed successful projects of his company. He further explained that landfills were heterogeneous, which made them interesting and tough. They contained different waste streams. He mentioned that Gunnison accepted asbestos affected waste that would go under a manifest of general construction waste. Casey said a drum oozing waste required its own characterization. It would be treated as hazardous waste, and a treatment disposal option was incineration. Tiering involved leaving deposits in place and then putting in clean fill. They then raised the grade back up and built the roads to be compliant with the local municipality. Casey said that materials were deposited in trench form in Crested Butte. He described his company as glorified traffic cops who work with excavation contractors to make sure material was characterized properly and was going in the right direction. He described the Crested Butte dump as a bonafide project that had a lot of merit. Michel asked Casey, with the location of the dump right next to residential homes, he wondered how they would mitigate the off gassing. Casey said engineering controls would have to be put in place, such as wind fencing and perimeter air monitoring. He said that dust control and policing the contractor were important. Casey said they would see a lot of water because water was the general savior and elixir of remediation. Casey said the good news about this site was that the ground water was clean. He said the landfill contained mostly general refuse. They have seen some lead and metals. He reported they saw asbestos in two out of 102 sites. Oversight and observation were keys. Schmidt asked how deep they dug. Casey said they excavated to native material, but it varied in depth. Schmidt also wondered if they would do dust control with just water. Casey said other surfactants would be used, dependent upon the contractor. Schmidt asked if they filter or just scoop it up and haul it away. Casey said to differentiate one material from another was more expensive. They may run into pockets of asbestos, for example, that may be loaded on a different truck. Schmidt asked if remediation was a phased or open process. Casey said they normally phase it with the contractor's schedule and integrate with the developer's schedule. Schmidt further wondered what kind of timeline they were talking. Casey said with 26,000 cubic yards of landfill, they could probably move the waste in a couple of months with the right contractor. Schmidt asked how many trucks rumbling down the road he could expect per day. Casey estimated five trucks, with two or three round trips per day, which would be about twenty truckloads. Schmidt asked if the Town could determine the timeline of the hauling. Casey said they often work with towns. Huckstep said he was grateful there was no impact to the ground water, but he voiced concern that the excavation could affect the groundwater. Casey said there were varying degrees of groundwater. The landfill has been there since the 70s, and it wouldn't be affected. He said clay was wonderful barrier. In addition, he said that asbestos was not mobile in soils. They did not find volatile organic compounds; they only found semi volatile compounds, which were less mobile.

Lock expounded and said the waste characterization of the dump was subject to the confidentiality agreement between Cypress Equities and the bank. He anticipated having it shortly. He said they wanted the development to be something they could be proud of. They wanted to do it right, in a cooperative partnership. Lock said there would be new parks, clean up of the dump, affordable housing, trails, and he hoped this would be the first step in the process. Huckstep asked Lock what his idea was for a timeline. Lock said if the concept annexation became too lengthy it would be problematic from the legal perspective. He said its purpose was an informal response about the general elements of the plan. He asked to get the deal breakers on the table. Schmidt said the question that loomed on his mind was if they couldn't come to an agreement, what happened to the dump. Lock said the whole goal was the fight related to liability. He said the dump cleaned up is better than the dump just standing there. Town would have to deal with it at some point. Lock said they should figure out a way to take the dump out of the discussion. Huckstep asked Lock if the characterization study was on applicant's property and not on Town's property. Aderhold answered that the prior applicant completed Phase 1 and Phase 2, which was a part of the environmental insurance policy. He said Town could be incorporated into the insurance policy. Ladoulis asked what the term of the policy was. Aderhold said it was a five-year term.

The Council discussed how to handle the process moving forward. Yerman suggested continuing to a date certain. Berkshire asked to see a schedule for the annexation process. Schmidt said he had major problems with some issues he had seen. Berkshire felt it was in their best interest to set out deliberate steps while taking it to conclusion. Belkin suggested they finish this meeting and see where they were on feedback.

Schmidt moved and Mason seconded a motion to continue the annexation agenda item to December 15, 2014. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

#### **7) Discussion and Possible Action Regarding Engagement Agreement with Town Water Counsel Scott Miller with the Law Firm of Patrick, Miller, Kropf & Noto, PC.**

Huckstep confirmed that Belkin's recommendation still held. Schmidt asked about billing rates and wondered if they billed per hour for driving time. Belkin didn't think they would be travelling to Crested Butte.

Matuszewicz moved and Mason seconded a motion to authorize the Mayor to execute the engagement letter for Patrick, Miller, Kropf & Noto, PC, for the Town's use of Scott and his firm as special counsel advising the Town on water matters, both general and specific, under the direction of the Town Attorney. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

#### **LEGAL MATTERS**

None

## **COUNCIL REPORTS AND COMMITTEE UPDATES**

Aaron Huckstep

- Welcomed Berkshire to the Council.
- Mentioned the mayor/manager's meeting on Thursday.
- RTA has a board meeting December 12.

Roland Mason

- Drivers for Mountain Express have requested police presence at Old Town Hall, including riding along the loop. They would especially appreciate a marshal's presence on later busses and during special events.

## **OTHER BUSINESS TO COME BEFORE THE COUNCIL**

Huckstep referred to an email from Jake Jones. Avalanche Awareness Night was granted a \$750 award from the Town, and the location of the event had changed from Crested Butte to Mt. Crested Butte. The Council had no concerns.

Huckstep asked the Council to provide him with their manager review forms. The review is being held on December 17.

Schmidt reminded everyone of the Whatever USA meeting on Wednesday at 6PM.

## **DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE**

- Monday, December 15, 2014 – 6:00PM Work Session – 7:00PM Regular Council
- Wednesday, December 17, 2014 – Council Retreat
- Monday, January 5, 2015 – 6:00PM Work Session – 7:00PM Regular Council

## **ADJOURNMENT**

Mayor Huckstep adjourned the meeting at 12:43AM.

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Aaron J. Huckstep, Mayor

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Lynelle Stanford, Town Clerk (SEAL)

# Town of Crested Butte

P.O. Box 39 Crested Butte, Colorado 81224

*-National Trust for Historic Preservation's 2008 Dozen Distinctive Destinations Award Recipient-*

*-A National Historic District-*

Phone: (970) 349-5338  
FAX: (970) 349-6626  
[www.townofcrestedbutte.com](http://www.townofcrestedbutte.com)

December 11, 2014

Dear Gunnison Valley Housing Foundation,

Thank you for your very generous contribution towards the construction of infrastructure for Blocks 79 and 80 in the Town of Crested Butte. The completion of this project is a key component to providing additional affordable housing in the Town of Crested Butte. Once the infrastructure is complete, the Town and other property owners on these blocks will be able to construct new affordable housing for residents of the Gunnison Valley.

Your contribution helps support the Town's recent application to the Department of Local Affairs ("DOLA") for an Energy and Mineral Impact Grant to help fund this worthwhile project. The Town anticipates a final decision by DOLA on the Grant application in the spring of 2015. It is our hope that this funding will be awarded and the project will begin shortly thereafter.

Irrespective of DOLA's decision, the Town would like to express our gratitude for the Foundation's continued partnership with the Town and our collaborative efforts to provide additional affordable housing opportunities for our community. We look forward to seeing this project completed in the near future with the assistance of the Foundation.

The Towns of Crested Butte and Mt. Crested Butte have also committed funds from the "Whatever USA" event to help this project succeed. The dedication of those funds shows just how important affordable housing is to our entire community. We are happy to have the Foundation as a solid partner in this project, and look forward to future successes working with the Foundation.

Thank you,

Aaron J. Huckstep

Mayor of Crested Butte

# Town of Crested Butte

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[www.townofcrestedbutte.com](http://www.townofcrestedbutte.com)

[DATE]

Town of Mt. Crested Butte  
David Clayton, Mayor  
P.O. Box 5800  
Mt. Crested Butte, CO 81225

Dear David,

On behalf of the Town of Crested Butte, I wish to express deep gratitude and appreciation for your Town Council's recent decision regarding the use of project monies derived from the Whatever, USA event. The projects selected for funding will benefit the greater Crested Butte/Mt. Crested Butte community, including both our residents and visitors, well into the future. In addition, these project monies help to solidify the positive working relationship between our two communities.

Completion of the Recreation Path will ensure that visitors of all ages, all walks of life, and all mechanisms for walking or riding will be able to travel between Crested Butte and Mt. Crested Butte without any impediment. We appreciate your dedication to completing this tangible link between our communities, and look forward to completing this project in 2015.

The Big Mine Arena has continued to outpace all expectations for use of the facility and demand for growth in its comforts. The monies allocated towards Big Mine Park improvements will support the impressive growth of the Crested Butte Nordic Center into the future. The improvements will help ensure that the Nordic Capital of Colorado continues to prosper, thus helping support the winter economy of both our Towns.

The Big Mine Park project will also support the continued growth of hockey programs for our residents, children and visitors. In addition, the monies designated for improvements to Big Mine Park will benefit the multiple nonprofit organizations of our valley that use the arena for fundraising events in the summer. The overall positive impact to the upper valley community from these improvements will be substantial.

Providing affordable housing for our citizens is a critical factor in the economic success of both our Towns. We appreciate your help in addressing this need through the provision of infrastructure to blocks 79 and 80. We also welcome your partnership in future development of affordable housing in these blocks, if and when an opportunity arises. This dedication of funds speaks strongly to the importance of affordable housing for both Crested Butte and Mt. Crested Butte.

As the holiday season approaches, I hope you will join me in giving thanks for the impressive record of cooperative projects undertaken in the past year between our two Towns. We are, collaboratively and collectively, helping to define the future for our greater community. By forging cooperation as the rule, rather than the exception, we are ensuring that we create opportunity from challenge, and redefining the relationship between our Towns.

A sampling of these cooperative efforts include hosting a 2014 stage finish for the USA Pro Cycling Challenge; hosting the massive, never-before-seen marketing effort of Whatever, USA; protecting the Snodgrass Trailhead into perpetuity through financial support of the Crested Butte Land Trust; expanding free public transportation to Crested Butte South; and, most recently, providing new late-night bus service for employees within our valley. On the horizon, one example of an additional opportunity for our communities is expansion of Mountain Express service to the Judd Falls parking lot next summer.

The examples above are just a sampling of the cooperative efforts between our Towns. As you and I know, our elected and administrative leaders and our Towns' respective staff are successfully working together on a nearly constant basis. A daily demonstration of this cooperation can be found in the supportive working relationship between our law enforcement officers. I firmly believe that this cooperation benefits our respective Towns and our citizens in immeasurable ways.

The Town of Crested Butte appreciates your leadership, as well as the leadership of your Council and your staff, in solidifying this cooperative approach to governance. Please convey this appreciation to your Council and staff for not just the Whatever, USA, project monies, but more importantly, for helping to demonstrate that our communities can and do work better when we work together. Happy holidays!

Best Regards,

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Aaron "Huck" Huckstep  
Mayor, Town of Crested Butte



## Staff Report

December 15, 2014

**To:** Mayor and Town Council  
**Thru:** Todd Crossett, Town Manager  
**From:** Lynelle Stanford, Town Clerk  
**Subject:** **Mountain Express Annual Report**  
**Date:** December 11, 2014

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**Summary:** The annual report for Mountain Express is included in the packets. The annual written report is required as a part of the IGA agreement between Mountain Express, the Town of Crested Butte, and the Town of Mt. Crested Butte. It generally describes their operation and specifies areas to be covered by their services.

Annual Report  
Mountain Express  
December 2014

The Intergovernmental Agreement (IGA) between the towns of Crested Butte and Mt Crested Butte establishes Mountain Express (MX) as a separate transportation entity and generally describes its operation. The IGA calls for an annual written report to the two towns and specifies areas to be covered.

**Ridership**

Through October, 2014 MX buses carried 542,500 passengers, an increase of 18% from 2013.

**Route Configuration**

New this ski season will be service to Crested Butte South. Starting on December 15, 2014 and running until April 5, 2015, MX will provide six round trips per day from Crested Butte South to the Mt Crested Butte transit center. There will be three trips in the morning and three trips in the afternoon. MX and Crested Butte South will partner in funding this service.

MX will operate an early winter schedule (town buses run every 15 minutes until 9:00 pm and then every 30 minutes until midnight, condo buses run every 30 minutes until 9:00 pm and then the Condo Express service until midnight) until December 12<sup>th</sup>. Then the schedule changes to the regular winter schedule (town buses run every 15 minutes until 10:00 pm and then every 30 minutes until midnight, condo buses run every 30 minutes until 10:00 pm and then the Condo Express service until midnight).

The summer service which typically ends on Labor Day Weekend will be extended through September 20<sup>th</sup> and buses will be running every 20 minutes until midnight. The “Express Bus” will operate once again from late June through early August from 10:00 am until 6:00 pm. It will run every 20 minutes between the transit center and the 4-Way stop, thereby providing 10 minute service. This service was well received last summer and both passenger ridership and bicycle transportation showed considerable increases.

**Operations**

Employees are a major strength of MX. Employee turnover continues to be low, however six new drivers were hired for the coming ski season. Service to Gothic was continued during the summer. MX also provides and maintains the senior van servicing the north end of Gunnison valley. Special service is provided in addition to scheduled runs as needed and requested by the two towns and activity planners. MX provided 172 hours of extra service carrying 6,200 passengers from 12/31/13 through 10/31/14.

**Fleet status**

As more fully described in the capital plan, the bus fleet is old. At least one bus should be replaced each year, but only five buses have been purchased in the last 6 years due to financial constraints. MX was awarded grants for two buses in 2014 and two buses in 2015 with delivery in late spring 2014 for the first two buses. FTA funding has also been secured to purchase one large and one small bus in late 2015 for delivery by the fall of 2015 and be put into service for the 2015-2016 ski season. Funding has also been secured purchase a new cutaway van in 2016.

**Financial status**

Salaries and wage rates were increased 3% in 2014 and driver wages increased \$1.00 per hour for 2015. Health care costs continue to increase every year even after increases in deductibles and considering other providers. Vehicle repair and fuel costs are difficult to budget and control and continue to increase each year. Projections for 2014 show net income after capital expenditures of \$134,000. The board has set up \$680,000 in operating reserves to provide for emergencies and cash flow delays and capital reserves of \$250,000. Additionally, projections show about \$80,000 in fund balance at December 31, 2014, which may be used for bus purchases if additional capital grants are received.

**Service agreements**

The IGA between the two towns is current through May 31, 2017.

**Recommendations**

The focus of the board is to meet growing service needs and upgrade the bus fleet.



## Staff Report

December 15, 2014

**To:** Mayor and Town Council  
**From:** Todd Crossett, Town Manager, and staff  
**Subject:** Gravity Groms use of Nordic Center and Big Mine Ice Arena 20015

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### **Background:**

Gravity Groms has used the Nordic Center warming house as a base of operations for some number of years. In 2014, Gravity Groms purchased an inflatable bike jump pit that requires a large, level, covered facility. Owner, Doug Hudson, worked with then Parks Director, Jake Jones, and Town Attorney, John Belkin, to conclude a lease agreement for that use.

The agreement commenced on June 1 and approved use through August 31, 2014. The agreement contemplated a term but was not a term agreement. The lease payment for the Big Mine space was set at \$350.00/month. It was an agreement to use the property based on approval on a regular basis by the Town Manager. The agreement was put together in that manner because the Big Mine Arena is a public, multi-use facility, and the various uses of that facility by the community must be balanced and managed by the town staff.

The agreement included a number of provisions, including:

- Keeping the premises neat, sanitary, orderly and broom clean at all times.
- The lessee's property was to be broken down and stowed in a specific location when not in use.
- Lessee's property was to be secured as to avoid any undesired use of such property.
- The premises was not to be used in any way that resulted in physical damage to the premises.
- No animals on premises.
- Compliance with laws, orders and regulations of the Town, county and other applicable governmental authorities in respect to use of the facility.
- Lessee was to have obtained and kept in force all licenses, authorizations and permits necessary to conduct business on the premises.

Although not recorded in the executed agreement, Jake Jones and Doug Hudson had verbally discussed extension of the contract at some future point over the course of the summer to include the month of September so that Gravity Groms could offer an after school program.

When Doug Hudson came in later in the summer to discuss extension of the contract with Parks Director Janna Hanson (who took over for Jake Jones in early July) Western Colorado Events had already begun

discussions with the Town about using that facility as a key component of its proposed Whatever USA event in early September. Janna communicated to Doug that, as a result of the new request, the Big Mine space may not be available in early September.

Gravity Groms operated through the end of their summer session, ending on or about August 22. Town staff then made the Big Mine facility available for Whatever USA set up the following week. Gravity Groms was refunded payment for the last week of August, though their summer program was not displaced as school started that week.

Town staff offered Gravity Groms to recommence use of the Big Mine in mid-September and to continue into October so that it would be available for the entire desired length of the after school program. Doug responded that the offer would not work for Gravity Groms as the after school program would have to be available from the beginning of school in order to compete successfully against other after school options.

It is staff's understanding that Gravity Groms received some financial consideration from the event organizers for Gravity Groms' inability to use that space during the Whatever Event - including set up and tear down. Staff did not require business deals or buy-outs between businesses and the event and does not have information as to any final agreement between the two business entities.

Gravity Groms is making a number of requests relevant to 2015 and ongoing lease arrangements for space at Big Mine and the Nordic Center – *see attached request from Gravity Groms*.

Key points in short include:

- A contractual option to renew leases for each summer or long-term four year lease agreements for the Big Mine and Nordic Center
- Oversight of the agreement changed from Town Manager to the Town Council
- Lease payments for both Big Mine and the Nordic Center waived for year 2015 at \$350/month for the Big Mine and \$1,000/month (based on 2014 rates). At three months for the Nordic Center and four months for the Big Mine, that totals \$4,400. This request is made in response to business lost because the Whatever USA event precluded a contract extension through the first half of September resulting in Gravity Groms inability to operate its jump-bag-based after school program during that time.

### **Recommendations:**

Staff recommends the following relevant to the Gravity Groms' requests and to future agreements with Gravity Groms concerning the Big Mine and Nordic Center. As context, it is the Town's practice generally to make best efforts to support local business and options for recreational and cultural activities for kids, local residents and visitors. It is also the Town's responsibility to steward publicly owned assets in a way that best accommodates shared use and promotes overall community benefit.

### **Recommendations relevant to Gravity Groms requests:**

- *Contractual option to renew yearly or long-term lease.* Staff recommends against this. While it may be possible to conclude an agreement that roles over on its own accord from year-to-year upon the agreement of both parties, it is against the recommendation of the Town attorney to grant option rights or to otherwise contractually commit the Town to an agreement for use of those facilities beyond one year. The Town must balance the use of those facilities between multiple

interests. It is unclear as to what that will look like from year to year. It is also likely that this will be impacted by the Big Mine Master Plan, currently in development, and potential ensuing construction activities.

Staff recommends that the basic premise regarding the use terms in the 2014 agreement be preserved in some manner. This allows the staff to balance competing needs and the overall public interest relevant to this major town facility. Staff recommends that a 2015 agreement include a mechanism through which Gravity Groms must reserve use of the Big Mine on the calendar every two weeks with Town staff and be given approval for such.

- *Oversight of the agreement by the Council.* Staff recommends against this. The agreement itself must be approved by the Council. The Town charter calls for oversight of Town functions by the Town Manager. The request is inconsistent with the Town Charter.
- *Waiver of rent.* Administratively, this is against Town policy. It is within the Council's political purview to consider. However, it is the staff's recommendation that to waive fees is inconsistent with policy as applied to other user groups.

Concerns and further recommendations:

If the Town and Gravity Groms move forward into another agreement for year 2015, staff believes the following concerns must be contractually addressed and enforced.

- **Cleanliness.** During year 2014, the cleanliness provision was not consistently met.
- **Security of equipment, including jump, ladders, tools, etc.** Equipment was not secured against unauthorized use. This is a liability issue. All equipment must be secured so as not to be an attractive nuisance.
- **Take down of equipment.** The 2014 agreement called for take down and securing of equipment nightly. It seems that this is difficult and time consuming. The equipment must either be taken down or secured by some other approved method as per above. It must certainly be taken down ahead of other events or uses and stowed in an approved location.
- **Compliance with building codes.** In 2014, the stairs were not constructed per engineer-stamped plans and were not compliant with building codes. The Town Building Inspector worked out a short-term solution for 2014, but the stairs for year 2015 must be reconstructed to code.
- **Shared use.** Stowage of equipment and clean-up must accommodate other uses. Other users during the 2014 season communicated concern over Big Mine readiness when it came time to set up for their events.
- **Compliance with legal requirements of other agencies.** The USFS has expressed concern that Gravity Groms appears, from promotional materials and photos and videos on its website, to be conducting un-permitted operations on public lands. As Gravity Groms would continue to be headquartered on Town property, staff recommends that any agreement require compliance in good standing with all such legal requirements relevant to its operations.

- Compliance with town ordinances and policies. Town staff has repeatedly requested that Gravity Grom personnel comply with town ordinances, regulations, policies, etc. Issues have included groups continuing to ride in posted no-trespassing zones such as the Public Works Yard, on grass in the Town parks, and against traffic regulations (through stop signs, etc.). Staff recommends that compliance with Town regulations be an enforced requirement.
- Care of bathrooms and sewer facilities. The Nordic Center only has a 4 inch sewer line that requires care. It is prone to clogging if misused. Staff recommends that Gravity Groms be required to monitor bathroom use by its clients in a manner requested by Town staff so as to minimize clogging of pipes. Gravity Groms must also enforce all closures of bathroom facilities by the Town to protect the health and safety of Town staff who may be working on those lines. This is in response to such an incident in 2014.
- Animals in the facility. This term was not complied with in 2014 and would need to be complied with in 2015.

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT**, made and entered into this 5<sup>th</sup> day of May, 2014, by and between the **TOWN OF CRESTED BUTTE**, a Colorado home rule municipality (hereafter referred to as the "Town") and **GRAVITY GROMS LLC**, a Colorado limited liability company (hereafter referred to as the "Lessee") is upon the following terms and conditions:

**WITNESSETH:**

**IN CONSIDERATION** of the keeping and performance of the mutual promises, covenants, and conditions contained herein, the parties agree as follows:

- 1. **TERM:** Subject to Section 5 below as to the times of day when the Premises (as defined below may be used by Lessee, this Lease shall commence as of June 1, 2014, and shall expire on August 31, 2014 (the "Term"). The Term of this lease may be extended only by a writing executed by the parties hereto. The defined word "Term" as used throughout this Lease shall include any extension thereof.
- 2. **LEASE OF PREMISES TO LESSEE:** The Town hereby leases to Lessee, and the Lessee hereby takes and rents from the Town, the following described premises, together with the improvements thereon, situate in the County of Gunnison and State of Colorado, to wit:

An area of space identified on **EXHIBIT A** attached hereto and incorporated herein, located at the Big Mine Park Ice Rink (hereafter, the "Premises").

- 3. **RENT:** The Lessee agrees to pay to Town as rent for the Premises during the Term the sum of \$350.00 per month, payable in advance on or before the first day of each calendar month during the Term. Where the Term commences during any month, the rent shall be prorated for the first month with such amount due upon Lessee's execution of this Lease. All rent and other payments required under this Lease shall be made without offset or deduction and no prior notice from the Town shall be required. Lessee shall pay a \$25.00 late fee and interest at a rate of one and one-half percent (1 ½%) per month (18% per year) on rental or other payments which are not paid when due
- 4. **UTILITIES:** Unless otherwise specified, the Town shall pay for heating, electricity, water and sewer service. Lessee shall cause all refuse generated during Lessee's use of the Premises to be disposed of daily at Lessee's sole cost and expense.
- 5. **CHARACTER OF OCCUPANCY:**
  - (a) The Premises shall be occupied by Lessee for the purpose of conducting its youth camp activities.
  - (b) Lessee shall make no alterations, repairs, or improvements to the Premises, including, without limitation painting the Premises, without the prior written permission of the Town. Lessee shall return the Premises to the Town in good condition and repair, broom cleaned, both at the conclusion of each day that

- the Premises are used by Lessee and at the expiration or earlier termination of this Lease.
- (c) Lessee shall not use the Premises in any fashion that would increase the risk of fire, explosion, or any physical destruction to the Premises or the building in which such Premises are located. Said limitation on use shall specifically include a prohibition on smoking, alcohol consumption, and use of controlled substances within Premises, none of which shall be permitted on the Premises. Further, Lessee shall not use the Premises to further any discrimination based on race, sex, creed, sexual orientation or national origin.
  - (d) Lessee's personal property shall at all times be secured so as to avoid any undesired use of such personal property.
  - (e) All usage of Lessee's personal property on the Premises shall be in the presence and at the direction of only Lessee approved personnel.
  - (f) Lessee's personal property shall be disassembled, broken down, locked down and neatly stored away when not in use on the Premises. The location of such storage is set forth on **EXHIBIT A**.
  - (g) All Lessee personal property shall be identified and signed as being the personal property of Lessee.
  - (h) Lessee's usage of the Premises shall be between the hours 8:00 a.m. and 8:00 p.m. only on those days where such usage has been confirmed five (5) days in advance by the Town Manager. Use shall not be permitted without the Town Manager's prior confirmation. Lessee's personal property set up, disassemble, break down, lock down and storage shall occur between 8:00 a.m. and 8:00 p.m. on permitted days only.
  - (i) All access to the Premises during Lessee's use thereof shall be strictly controlled by Lessee. Only participants and their family members may have access to Premises during Lessee's usage thereof.
  - (j) Vending on the Premises is strictly prohibited.
6. **JANITORIAL:** Lessee agrees to keep and maintain the Premises in a neat, orderly, broom clean and sanitary condition at all times, and to provide such janitorial and other services as may be necessary to do so.
7. **SIGNS:** Lessee shall not be allowed to install any signage on the Premises excepted where approved by the Town in advance in writing.
8. **PARKING:** Lessee is allowed the use of the parking lot at Big Mine Park located to the north of the Premises. Lessee shall not park any vehicles overnight in said parking lot.
9. **ACCESS TO THE PREMISES:** The Town or the Town's authorized representative may enter upon the Premises at any time without notice to inspect and make repairs to the Premises and to inspect Lessee's use of the Premises. The Town or its representative may show the Premises to prospective tenants at any time.
10. **LIENS:** Lessee agrees to keep the Premises free and clear of all liens and encumbrances of any kind, whether caused by the action or inaction of Lessee.

11. **PAYMENT OF INCREASED COSTS:** Lessee agrees to pay to the Town any and all increased costs and expenses attributable to Lessee's occupation of the Premises including but not limited to any insurance increases or taxes that are directly attributable to Lessee's occupancy.
12. **SECURITY DEPOSIT:** Lessee has paid the Town the sum of \$500.00 to be used as security for Lessee's faithful performance of the terms and obligations of this Lease. Said amount shall be paid at the time of Lessee's execution of this Lease. This deposit shall be held by the Town during the term. The security deposit shall not bear interest. The Town shall be entitled to apply any of the security deposit to the repair of damages caused to the Premises by Lessee or on account of Lessee's use thereof, and/or to pay for cleaning of the Premises. In the event the Town determines that it is necessary in its reasonable judgment to have the Premises cleaned or repaired during the Term, or after the expiration or earlier termination of this Lease, such cleaning or repairs shall be performed at Lessee's sole cost and expense. Any amount paid out of the security deposit during the Term shall be reimbursed by the Lessee to the Town within five (5) days. At no point will the security deposit on reserve be less than \$500.00. The security deposit shall not be deemed to be the total amount for which the Lessee shall be responsible to the Town in the event of damages to the Premises. Lessee shall not be entitled to credit any amount of the deposit toward payment of any other obligation owed under this Lease. Within thirty (30) days following the expiration of the Term or sooner termination of this Lease, the Town shall either return the security deposit or, as required by Colorado law, provide Lessee with a written statement, setting forth the reason for the retention of any portion thereof together with the payment of the difference, if any between the amount of the security deposit and the damages claimed by the Town.
13. **TAXES:** Lessee shall pay all sales and uses taxes in connection with its lease and use of the Premises.
14. **ASSUMPTION OF RISK; INDEMNIFICATION; RELEASE OF CLAIMS:** In consideration for the Town leasing the Premises to Lessee, Lessee, its members, managers and officers (collectively, "Releasor/Idemnitor") hereby acknowledge and agree to the following:
- (a) Releasor/Idemnitor hereby assumes all risk of claims, liabilities, injuries, losses, demands or damages, whether related to bodily injury, personal injury, sickness, disease, death, property loss or damage (including attorneys' fees, costs and expenses) (collectively, "Claims") arising out of, directly or indirectly, the use of the Premises, whether or not caused by any act or omission, negligence or other fault of Releasor/Idemnitor and/or Indemnatee its elected officials, officers, employees, agents, insurers, insurance pools, attorneys, representatives, contractors and subcontractors (collectively, "Releasee/Indemnatee");
- (b) Releasor/Idemnitor hereby waives any claims, and hereby releases, Releasee/Indemnatee against and from any and all Claims arising out of, directly or indirectly, the use of the Property, whether or not caused by any act or omission, negligence or other fault of Releasor/Idemnitor and/or Releasee/Indemnatee; and

(c) Releasor/Indemnitor shall indemnify, defend and hold harmless Releasee/Indemnitee from and against any and all Claims of Releasor/Indemnitor, Releasee/Indemnitee or third parties, any of them, including, without limitation, employees, agents and contractors of Releasor/Indemnitor, Releasee/Indemnitee or any of their invitees, guests, trespassers or otherwise on the Subject Property, arising out of, directly or indirectly, the use of the Property, whether or not caused by any act or omission, negligence or other fault of Releasor/Indemnitor, Releasee/Indemnitee or third parties.

15. **EVENT WAIVER:** All participants, staff, volunteers, invitees, licensees and guests for the use of the Property shall execute the attached liability waiver attached hereto as **EXHIBIT B**.

16. **INSURANCE:**

(a) At its sole cost and expense, Tenant shall obtain and keep in force during and through the Term "all-risk" property coverage naming the Town and Tenant as their interests may appear.

(b) At its sole expense, Tenant shall obtain and keep in force during and through the Term commercial general liability insurance with a combined single limit of not less than \$2,000,000.00 for injury to or death of any one person, for injury to or death of any number of persons in one occurrence, and for damage to property, insuring the Town and Tenant, including, without limitation, coverage for contractual liability, broad form property damage and non-owned automobile liability, with respect to the Premises. The insurance shall be noncontributing with any insurance that may be carried by Town and shall contain a provision that Town, although named as an insured, shall nevertheless be entitled to recover under the policy for any loss, injury, cost or damage to Town, or the property of the same.

(c) All insurance required herein and all renewals thereof shall be issued by companies authorized to transact business in the State of Colorado and rated at least A+ Class X by Best's Insurance Reports (property liability) or otherwise approved by Town in writing. All insurance policies shall be subject to approval by Town as to form and substance, shall expressly provide that the policies shall not be canceled without 30 days' prior written notice to Town and shall provide that no act or omission of Town that would otherwise result in forfeiture or reduction of the insurance shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained. Tenant may satisfy its obligation under this Section by appropriate endorsements of its blanket insurance policies.

(d) All policies of liability insurance that Tenant is obligated to maintain according to this Agreement (other than any policy of workmen's compensation insurance) shall name Town as an additional insured. Originals or copies of original policies (together with copies of the endorsements naming Town as an additional insured) and evidence of the payment of all premiums of such policies shall be made available to Town on the date first written above. All public liability, property damage liability and casualty policies maintained by Town shall be written as primary policies, not contributing with and not in excess of coverage that Town may carry.

(e) The parties waive all rights to recover against each other, or against the elected and appointed officials, employees, contractors, agents, advisors, attorneys, insurers, insurance pools, shareholders, directors, members, managers, officers, suppliers, agents or servants of each other, for any loss or damage arising from any cause covered by any insurance required to be carried by each of them pursuant to this Section or any other insurance actually carried by each of them. Tenant shall cause its insurer to issue an appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with Tenant's operations and Town's operations and property.

17. **ASSIGNMENT:** Lessee shall not assign this Lease, and shall not sublet the Premises, or encumber this lease or the Premises in whole or in part, without the prior written consent of the Town, which consent may be withheld in the Town's sole and absolute discretion.
18. **RESTRICTIONS ON USE:** Animals are not allowed within the Premises. Lessee will not construct temporary or permanent structures on the inside or outside of the building for recreational or other purposes. All outside fixtures not provided by the Town including but not limited to bike racks, benches and picnic tables must be approved by the Town. All recreational equipment such as bicycles and skateboards must be removed from the Premises overnight. Indoor furniture such as couches, tables and chairs will not be used or stored inside or outside the Premises at any time.
19. **COMPLIANCE WITH LAWS:** Lessee agrees to comply with all laws, orders and regulations of the Town, the County and any other applicable governmental authority with respect to the Premises and Lessee's use thereof. Lessee has obtained and shall keep in force during the Term, all licenses, authorizations and permits necessary for Lessee to conduct its business operation on the Premises.
20. **DEFAULT:** Except where Lessee fails to timely pay any amount due under this Lease, neither party shall be in default under this Lease unless such party fails to perform any obligation or covenant contained herein and such failure remains uncured for ten (10) days following receipt of written notice from the non-defaulting party. If Lessee is in default under this Lease it is agreed that the Town may (i) retake possession of the Premises upon ten (10) days' written notice to the Lessee without terminating the Lease, (ii) in the event of default in the payment of rent or any other payments due from Lessee, treat this Lease as automatically terminated on the date specified in the Town's three (3)-day notice for payment of the rent or surrender possession of the Premises under Section 13-40-104(d) (1973 C.R.S.) if Lessee fails to pay such rent as demanded in said notice, or (iii) in the event of any other default by Lessee, treat this Lease as automatically terminated on the date specified in the Town's three (3)-day notice thereof under Section 13-40-104(e) (1973 C.R.S.). Upon the termination of this Lease, Lessee shall peacefully surrender the Premises to the Town and the Town, at any time after such termination, may, without further notice, reenter the Premises and repossess it by summary proceedings, ejectment or otherwise and may dispossess Lessee and remove Lessee and all other persons and property from the Premises and may have, hold and enjoy the Premises and the right to receive all rental income therefrom. The Town may also, at the Town's option, and without being liable to Lessee for any damage therefore, remove and store, at Lessee's sole cost and expense, all personal property and effects of Lessee, upon the Premises without responsibility for loss or

damage so long as the Town uses reasonable care in the removal thereof, and the Town shall have a valid lien on such property for any damages due the Town under this Lease and for any reasonable costs incurred by the Town in such removal or storage. The foregoing remedies shall not be exclusive, and the Town may exercise any other remedy available under the laws of the State of Colorado. Upon the termination of this Lease by reason of any default by Lessee in the obligations contained herein, the Town shall have the right to re-let the Premises for and on the account of Lessee and Lessee shall remain liable for the difference, if any, between the full amount of rent reserved hereunder and the amount received by the Town after such re-letting, after having deducted therefrom any reasonable costs and expenses of the Town. Any excess that may be derived shall belong to the Town and Lessee shall have no claim to same. The Town's failure to re-rent the Premises shall not preclude it from being able to seek damages against Lessee for any of the sums reserved hereunder. No right of redemption shall be exercised under any present or future law of the State of Colorado, in case Lessee shall be disposed for any cause, or if the Town shall in any other manner, obtain possession of the Premises in consequence of the violation of any of the covenants and agreements contained herein.

- 21. **SURRENDER OF PREMISES:** Upon the expiration or earlier termination of this Lease, Lessee shall quit and surrender the Premises in as good as state and condition as received, reasonable wear and tear excepted. If after the expiration or earlier termination of the Lease, Lessee remains in possession without written agreement as to such possession, Tenant shall be deemed to hold the Premises as a "Tenant-at-will" and shall be obligated thereon to pay rent for such period in advance at the per diem rate of \$50.00 per day. During such period of time all of the terms and conditions of this Lease shall remain in full force and effect. It shall be Lessee's responsibility to remove all additions, fixtures, or improvements located on the Premises at the time of such expiration, or upon termination of this Lease. In the event of removal of additions, fixtures, or improvements located on the Premises, Lessee shall restore the Premises to its original condition. Lessee shall remove all debris and personal property at its own cost.
  
- 22. **NOTICES:** All notices or deliveries required under this Lease shall either be (i) hand-delivered; (ii) given by certified mail directed to the address of the Town or Lessee set forth below; or (iii) given by overnight courier directed to the address of the Town or Lessee set forth below. All notices so given shall be considered effective (i) if hand-delivered, when received; (ii) if by certified mail, three (3) days after deposit; certified mail postage prepaid, with the United States Postal Service; or (iii) if by overnight courier, one (1) day after deposit with the overnight courier company. Either party may change the address to which future notices shall be sent by notice given in (Facsimile numbers are provided for convenience only.)

TOWN:           Town Manager  
                   Town of Crested Butte  
                   P.O. Box 39  
                   507 Maroon Ave  
                   Crested Butte, CO 81224  
                   Facsimile: (970) 349-6626

LESSEE:       Gravity Groms LLC

PO Box 2147  
Crested Butte, CO 81224

Notice shall be deemed properly given when sent, mailed, or hand delivered to the above addresses. Either party may change its address by giving written notice of the change to the other party.

23. **APPLICABLE LAW; VENUE:** This Lease is entered into in the Town of Crested Butte, Gunnison County, State of Colorado; and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Lease shall be in the County of Gunnison, State of Colorado.
24. **ATTORNEYS' FEES:** It is agreed that if the enforcement, interpretation or construction of this Lease becomes necessary or advisable, the prevailing party in such effort shall be entitled to reasonable attorneys' fees, as well as all related costs and expenses.
25. **NO WAIVER:** The failure of the Town to insist in any one or more instances upon strict compliance of any of the obligations, covenants, and agreements herein contained, or the failure of the Town in any one or more instances to exercise any option, privilege, or right herein contained shall in no way be construed as constituting a waiver of such default or option by the Town.
26. **CAPTIONS:** The captions are inserted only as a matter of convenience for reference and in no way define, limit, or describe the scope of the Lease nor the intent of any provision hereof.
27. **SEVERABILITY:** If any provision, covenant, clause, or agreement contained in the Lease or the application thereof shall be found to be invalid, such invalidity shall not affect the validity of the remaining provisions, covenants, clauses, agreements, or the validity of the Lease as a whole.
28. **BINDING:** This Lease shall be binding upon the parties hereto, their respective permitted heirs, successors and assigns.
29. **ENTIRE AGREEMENT:** This Lease contains the entire agreement between the parties and supersedes all prior understandings, negotiations and representations, written and oral, not contained herein. It may not be amended or modified, except by an agreement in writing signed by both parties hereto.
30. **COUNTERPARTS; FACSIMILE:** For purposes of enforcement of any term or condition of this Lease, facsimile signatures shall be deemed originals. This Lease may be executed in multiple counterparts, each of which, when taken together, shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE(S) TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Lease in duplicate as of the date first set forth above.

TOWN:

TOWN OF CRESTED BUTTE,  
a Colorado home rule municipality

By: [Signature]  
Todd Crossett, Town Manager

ATTEST:

By: [Signature]  
Shelley Jansen, Town Clerk

(SEAL)



LESSEE:

GRAVITY GROMS LLC

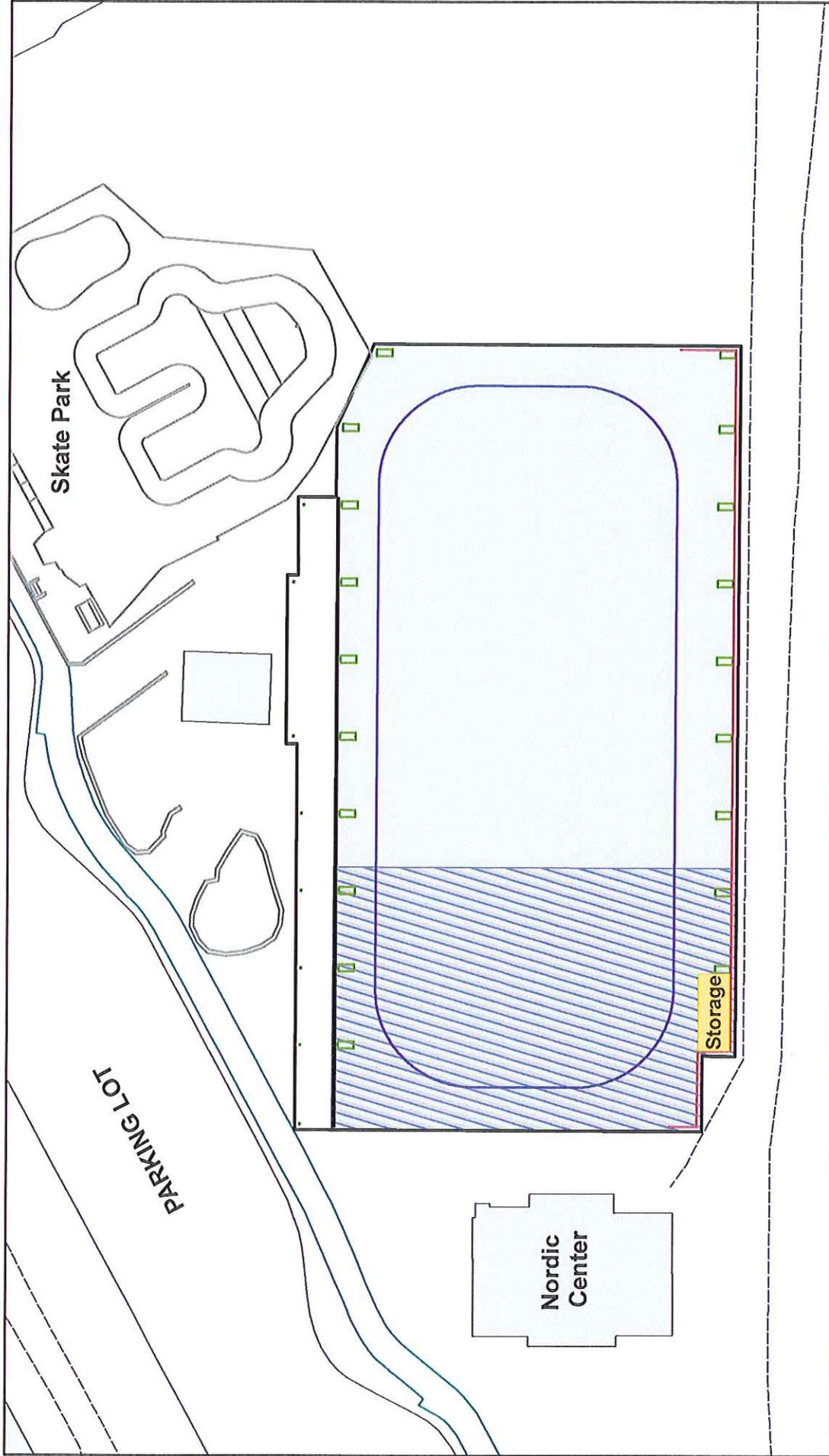
By: [Signature]  
Doug Hudson, Its Owner

**EXHIBIT A**

**Premises**

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# EXHIBIT A



## BIG MINE PARK ICE RINK Crested Butte, Colorado

 Lease Area	 Concrete Wall	 Post	 Ice Rink	 Roof
 Buildings	 Sidewalk	 Paved Roads	 Unpaved Roads	






**EXHIBIT B**

**Waiver**

**WARNING, ASSUMPTION OF RISK, RELEASE OF LIABILITY & INDEMNIFICATION AGREEMENT**  
**PLEASE READ CAREFULLY BEFORE SIGNING. THIS IS A RELEASE OF LIABILITY & WAIVER OF LEGAL RIGHTS.**

**1. Definitions.** The person who is attending or participating in Gravity Groms LLC youth camp activities shall be referred to hereinafter as "Participant". The "Undersigned" means only the Participant when the Participant is age 18 or older OR it means both the Participant and the Participant's parent or legal guardian when the Participant is under the age of 18. "Released Parties" mean Gravity Groms, LLC, Town of Crested Butte, Colorado or any of their respective successors in interest, insurance carriers, insurance pools, attorneys, elected officials, agents, employees, contractors, materials suppliers, representatives, assignees, transferees, officers, directors, members and managers. The "Activity" means taking part in, staffing, working, constructing, managing, spectating and/or otherwise participating in, whether directly or indirectly, Gravity Groms LLC youth camp activities.

**2. Risks of Activity.** The Undersigned agree and understand that the Activity can be HAZARDOUS AND INVOLVES THE RISK OF PHYSICAL INJURY AND/OR DEATH. The Undersigned acknowledge that the Activity is inherently dangerous and fully realize the dangers of the Activity. The risks and dangers of the Activity include, but are not limited to: Travel to and from the Activity; negligent instruction, direction and/or advice; changing surface conditions; surface conditions; medical problems affecting Participant or staff; equipment maintenance; fire; changing weather conditions; debris on venue; negligence on the part of: personnel and/or management, rescue vehicles/equipment, and providers of emergency medical attention; limited access to and/or delay of rescue and medical attention; falling; Participant's improper use of equipment; slick or uneven surfaces; slipping; tripping; loss of balance; debris; marked and unmarked obstacles; varying visibility; unmaintained surfaces; Participant or another acting in a negligent manner that may cause and/or contribute to injury to Participant or others, Participant's failure to comply with signage or directions; collisions with natural, man-made objects; collisions with other individuals or equipment; adverse weather; limited access to and/or delay of rescue and medical attention; mental distress from exposure to any of the above; and negligence of others. THE UNDERSIGNED ACKNOWLEDGE AND UNDERSTAND THAT THE DESCRIPTION OF THE RISKS LISTED ABOVE IS NOT COMPLETE AND THAT PARTICIPATING IN THE ACTIVITY MAY BE DANGEROUS AND MAY INCLUDE OTHER RISKS.

**3. Duties of Participant.** The Participant assumes the responsibility of maintaining control at all times while engaging in the Activity. Participant is responsible for understanding and complying with all signs and instructions.

**4. Release, Indemnification, and Assumption of Risk.** In consideration of the Participant being permitted to participate in the Activity, the Undersigned agree as follows:

(a) Release. THE UNDERSIGNED HEREBY IRREVOCABLY AND UNCONDITIONALLY RELEASE, FOREVER DISCHARGE, AND AGREE NOT TO SUE OR BRING ANY OTHER LEGAL ACTION AGAINST THE RELEASED PARTIES with respect to any and all claims and causes of action of any nature whether currently known or unknown, which the Undersigned, or any of them, have or which could be asserted on behalf of the Undersigned in connection with the Participant's participation or attendance in the Activity, including, but not limited to claims of negligence, breach of warranty, and/or breach of contract.

(b) Indemnification. The Undersigned hereby agree to indemnify, defend and hold harmless the Released Parties from and against any and all liability, cost, expense or damage of any kind or nature whatsoever and from any suits, claims or demands, including legal fees and expenses whether or not in litigation, arising out of, or related to, Participant's participation or attendance in the Activity. Such obligation on the part of the Undersigned shall survive the period of the Participant's participation or attendance in the Activity.

(c) Assumption of Risk. The Undersigned agree and understand that there are dangers and risks associated with the participation in the Activity and that INJURIES AND/OR DEATH may result from participating or attending in the Activity, including, but not limited to the acts, omissions, representations, carelessness, and negligence of the Released Parties. By signing this document, the Undersigned recognize that property loss, injury and death are all possible while participating or attending in the Activity. RECOGNIZING THE RISKS AND DANGERS, THE UNDERSIGNED UNDERSTAND THE NATURE OF THE ACTIVITY AND VOLUNTARILY CHOOSE FOR PARTICIPANT TO PARTICIPATE IN AND EXPRESSLY ASSUME ALL RISKS AND DANGERS OF THE PARTICIPATION IN THE ACTIVITY, WHETHER OR NOT DESCRIBED ABOVE, KNOWN OR UNKNOWN, INHERENT, OR OTHERWISE.

**6. Minor Acknowledgment.** In the case of a minor Participant, the Undersigned parent or legal guardian acknowledges that he/she is not only signing this Agreement on his/her behalf, but that he/she is also signing on behalf of the minor and that the minor shall be bound by all the terms of this Agreement. Additionally, by signing this Agreement as the parent or legal guardian of a minor, the parent or legal guardian understands that he/she is also waiving rights on behalf of the minor that the minor otherwise may have. The Undersigned parent or legal guardian agrees that, but for the foregoing, the minor would not be permitted to participate or attend in the Activity. By signing this Agreement without a parent or legal guardian's signature, Participant, under penalty of fraud, represents that he/she is at least 18 years of age. If signing as the parent or guardian of a minor Participant, signing adults represent that they are a legal parent or guardian of the minor Participant.



Dear Todd-

I am writing you as a citizen and as the former Parks and Recreation Director for the Town of Crested Butte. Doug Hudson of Gravity Groms LLC asked me to reach out to you to provide context to the recent conversations regarding the use of Big Mine Ice Arena during the end of August and the first two weeks of September. As you are aware, I was the liaison between the Town of Crested Butte and Gravity Groms since 2012. I served as the primary negotiator on both the Warming House lease Big Mine Ice Arena lease.

It is important to recognize that the rental rates agreed to between the Town and Groms were considered to be market value. Furthermore, hosting a thriving youth organization in an otherwise underutilized Town building was seen as a win-win for both parties and the community. During the two summer seasons that I served as landlord for Gravity Groms, they were good, if not great tenants. I found Doug and Alexandra to both be very professional and proactive when concerns arose and they were good stewards of town property.

Regarding the use of Big Mine Ice Arena for the airbag park, we negotiated the terms of the lease to only include June, July and August for this first season. From the inception of the airbag park concept, Doug expressed to me the desire to have an option to extend the lease into the month of September in order to host an after school program. In hindsight, we should have included September into the original lease and I can't say why this didn't occur.

Regarding the expectation that Gravity Groms would be allowed to extend their lease into September, I will attempt to be very clear. I stated to Doug, prior to my resignation that I had no reason to believe that the lease wouldn't be extended through the month of September, if so desired by Gravity Groms. Gravity Groms proposed a new amenity that all parties needed to try on for size. It turns out, the amenity fits just right.

While I was in no position to make a "promise" or encumber the Town outside of the contractual process, it was my intention to allow Gravity Groms to extend their lease in the Big Mine Ice Arena into the month of September. When we negotiated the lease, I had no reason to believe a) they wouldn't be exemplary tenants and b) there would be a special event that would occupy the facility for more than a few days. Unless their performance has been unsatisfactory, I would strongly encourage the Town to renew their lease for the airbag park in Big Mine Ice Arena. Furthermore, I would consider the former Parks and Recreation Director's intent to extend their lease when making current and future decisions regarding the use of the Big Mine Ice Arena facility.

Thanks for reading and do not hesitate to contact me with any questions or concerns.

Very Respectfully,



Jake Jones  
970.209.6742  
jakejones808@gmail.com

Cc: Janna Hanson  
Doug Hudson

Doug Hudson  
Gravity Groms LLC  
PO Box 2147  
Crested Butte, CO, 81224  
970 765 6433

Wednesday, December 3, 2014

Dear Town of Crested Butte:

Gravity Groms LLC appreciates and values the partnership with the Town of Crested Butte that has been nurtured since 2008. We sincerely hope to continue to work with and in the Town of Crested Butte but the process leading up to the Whatever USA production has created some massive challenges for us to overcome.

Given the turn of events surrounding the management of the Whatever USA production, Gravity Groms LLC respectfully requests the Town of Crested Butte consider the following:

- A contractual option to renew our leases each summer for the months of June through August in the CB Nordic Center and June through September in the Big Mine Ice Arena - - or –
- Long-term, four year lease agreements with the Town of Crested Butte for the months of June through August in the CB Nordic Center and June through September in the Big Mine Ice Arena beginning June, 2015, and ending September, 2018.
- The 2014 lease agreement for the space in Big Mine Ice Arena states, para 5, line h: “Lessee’s usage of the Premises shall be between the hours of 8:00 am and 8:00 pm only on those days where such usage has been confirmed five (5) days in advance by the Town Manager. Use shall not be permitted without the Town Manager’s prior confirmation.”
  - Gravity Groms LLC has always demonstrated our clear willingness and even enthusiasm for working with the schedules and demands of Special Events that also lease space in Big Mine Ice Arena. Gravity Groms LLC has every intent to continue to follow the spirit of this verbiage.
  - Gravity Groms LLC requests this verbiage be amended to include oversight of the Town Manager’s confirmation of Gravity Groms LLC’s use of the Premises by the Mayor and/or Town Council.
- To offset the financial hardship Gravity Groms LLC realized as a result of the Whatever USA production and to insure Gravity Groms LLC can continue to serve local and visiting children in Crested Butte, Gravity Groms LLC requests the Town of Crested Butte waive lease payments due from Gravity Groms LLC during 2015 for the CB Nordic Ctr and the agreed upon space in Big Mine Ice Rink. This amounts to \$4,400 in consideration (\$1,000 per month for 3 months at CB Nordic Ctr and \$350 per month for 4 months at Big Mine Ice Rink).
- It should be noted that Gravity Groms LLC has been portrayed as being subsidized by the Town of CB. That is *certainly* not true. Gravity Groms LLC pays fair market rates for the spaces we lease from the Town of Crested Butte. Further, **Gravity Groms LLC subsidizes child care for local, working families at an amount of approximately \$10 to \$15 per child per day** (the difference between \$45 and \$55 or \$60 per day). Gravity Groms Camps for Kids Who Rip is available to local children for only \$45 per day. Based on national child care market averages and the nature of the product we offer, this product should cost between \$55 and \$60 per day. We’re proud to support local, working families and encourage local children to get outside and play hard. We sincerely hope to have the opportunity to continue to do so.



**To:** Mayor Huckstep and Town Council  
**From:** Michael Yerman, Town Planner  
**Thru:** Todd Crossett, Town Manager  
**Subject:** **Slate River Annexation Concept Review**  
**Date:** December 15, 2014

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### ***Recap Dec. 1<sup>st</sup>***

On December 1<sup>st</sup> the Council heard a presentation from the applicant and took input from members of the public present at the meeting. The applicant responded to public input and the meeting was continued to December 15<sup>th</sup>. At this time, Town staff would like to engage the Council in a Staff Review and receive feedback for the applicant. The staff report below is intended to help guide the Council in discussing key topics in the applicant's proposal. Items that Council members feel are appropriate that are not addressed in this staff report should be discussed at the end of staff's presentation. I will be prepared to help lead the discussion. Once my review is complete, I will review a summary of the comments and direction that was provided during my review.

The goal tonight is to provide direction to the applicant on the initial application. It is also important that Council collectively engages with the applicant on key issues you feel are important. Staff will assist in this effort and ask the applicant for clarification when needed.

Once Council has had the opportunity to provide informal direction to the applicant, the Council may also seek additional public input if desired. This is not a public hearing and therefore this is not required but Council may at its discretion allow additional input from the public. Staff recommends that Council complete the staff review prior to additional public input.

Council should take the entire application into consideration. Based on the feedback, Council may elect to approve, continue or deny the application. The application can be revised, if necessary, and remanded back to the applicant for revisions.

If the application is approved, staff recommends that a pre-annexation agreement be executed prior to a formal annexation submission by the applicant.

The questions proposed by staff are intended to help Council focus in on relevant issues as identified by senior staff. A paper copy has been provided to you with blanks. I encourage the Council to take a few moments prior to the meeting to fill this out to help keep the discussion focused.

## ***Process***

Concept Review is the first step in the annexation process and is intended to allow the applicant to obtain an informal response from the Town Council on their application prior to the submittal of a formal annexation petition. The code requires the applicant provide detail to three main concepts in their submittal: transportation, land uses, and water and sewer services. The applicant has also provided additional details on several other aspects of the project for the Town Council to consider. It is important to understand that the applicant is not required to submit detailed engineered plans, lot layouts, wetland studies, or other details at the Concept Review stage. While there may be a desire to see additional details, the requirements of the code only require the applicant have a concept for the layout for the property. The concept layout in turn will dictate more detailed plans moving forward.

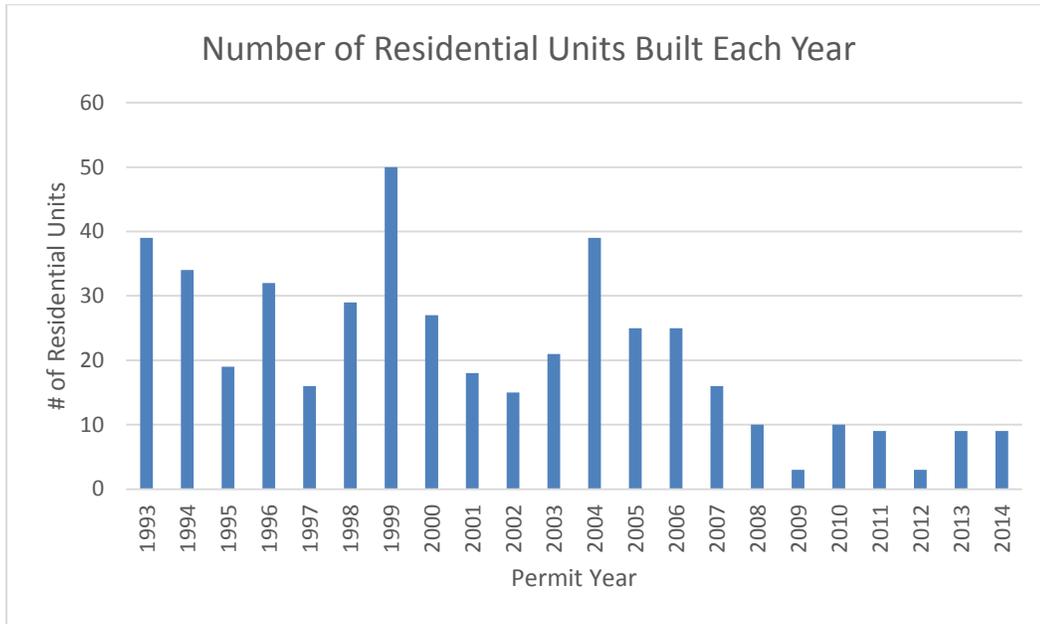
Staff recommends the Council use the following agenda in considering this proposal by the applicant.

1. Presentation of application by applicant
2. Council questions of the applicant
3. Public input
4. Applicant response
5. Staff review
6. Council deliberation and discussion

## ***General Overview***

The Slate River Annexation will annex a 44.5 acre parcel that shares contiguity with the Town Boundary on the northeast side of the Town. The applicant will meet the statutory requirements of the 1/6 contiguity of the Municipal Annexation Act of 1965 with the proposed application. The annexation proposal will create a new neighborhood on the Town's northern gateway and a residential development to the east of the Slate River. There are several unique characteristics of this property including a former town landfill, wetlands, topography, and wildlife habitat. This parcel also shares contiguity with the Town Cemetery.

The application includes a variety of land uses including commercial and mix uses along the Gothic corridor and up to 115 residential units on 75 lots. The Town of Crested Butte currently contains 1,114 residential units. The applicant's proposal at complete build out would add an additional 10% of residential units to the Town. The graph below shows new home startups since 1993. While a complete market study has not been conducted this graph is intended to help illustrate the Town's absorption of new residential units since 1993.



## ***Landfill Remediation***

The applicant is proposing to remediate the old Town landfill through the Voluntary Cleanup and Redevelopment Program. The applicant has also proposed to clean up the portion of the landfill located on the Town's property at no cost to the Town. The applicant has engaged a professional cleanup company Casey Resources to conduct the cleanup of the landfill. Environmental analysis reports have not been reviewed by Town Staff at this time.

### **Key Discussion Points:**

- Does the Town Council want to explore remediation of the landfill?
- Does the Town Council want to allow the applicant to remediate the landfill on the Town's property?
- What other considerations does the Council want staff to explore with applicant in regards to the Landfill remediation?

## ***Land Use Review***

The applicant has proposed a variety of land uses within the development which will create a new neighborhood on the northern edge of the Town. The land uses range from commercial, business, office, and multi-family to single-family residential and new public spaces for parks. The proposal includes areas for affordable housing, civic uses such as a fire station and public works storage facilities, and new parks for the community.

As part of the application, the applicant is proposing including a portion of Town owned land to be incorporated into the development. A majority of the Town owned land will be turned into a park or become right-of-ways for the development's road network.

**Key Discussion Points:**

- Is the Town Council willing to consider allowing the annexation to include a portion of Town owned land as part of the development proposal?

**Commercial, Business, and Professional Services**

The applicant is proposing two blocks of commercial, business, and professional services uses. These uses are located along the Gothic Corridor. These blocks will help provide additional funding within the Street and Alley property tax mill levy to help fund the future maintenance of roads located in the development. While an analysis of tax revenues has not been produced at this point in the application process, commercial property tax rates are three times those of residential and are significant to maintaining the infrastructure in the proposed development.

**Key Discussion Points:**

- Are commercial uses appropriate in the proposed locations?
- How important is it to Town Council that the property tax mill levy will pay for the future maintenance of this development?

**Residential**

The applicant is proposing a variety of residential uses ranging from a large multi-family affordable housing project to single-family homes on the eastern portion of the development. The applicant is proposing 75 lots with up to 115 units. The applicant is proposing densities of 5 units per acre on the west side of the development and 3.5 units per acre on the east side of the development. The applicant is also proposing a mixed-use residential component to the commercial uses.

**Key Discussion Points:**

- Is the proposed density appropriate for this development proposal?
- Are the different housing types proposed suitable for this development?
- Is the low density neighborhood appropriate on the eastern portion of the property?

**Fire Station Relocation**

The applicant is proposing the possibility of relocating the fire station to the northern parcel on this property. The initial conversations with the Crested Butte Fire Protection District have been receptive of the possibility of moving to a new location. Town staff would encourage a dialogue between the Council and the District's Board on the possible relocation of this facility if Concept Review is approved and the application moves forward.

**Key Discussion Points:**

- Does the Town Council want to consider the relocation of this facility to a new location within the development?
- Is the space provided enough room for additional emergencies services to co-locate at this site?

**Public Work Yard**

The proposed development will have significant operational impacts on the Public Works, Parks and Rec, Sewer Plant, and Mt. Express operations. The area to be converted as a new park will remove outdoor storage and the tow lot. As the Town continues to grow we are reducing the space in this location by about 1/4. We are also creating a neighborhood that will surround this vital facility that currently sits on the edge of the Town.

**Key Discussion Points:**

- As the Town grows where will the vital operations of the Town grow?
- Should a facility plan be created to understand the long term needs of the Town's operations?
- What opportunities exist with this proposal to allow responsible growth of this facility?
- What additional mitigation measures can be done to ensure public safety at this existing facility?

**Affordable Housing**

The applicant acknowledges the requirements of the Town code for affordable housing. There are a variety of options for fulfilling the requirements of the code. The applicant has also proposed building a similar project to Anthracite Place to help fulfill the requirements of the code.

**Key Discussion Points:**

- Does the Town Council want to consider allowing the applicant to fulfill the affordable housing requirements by allowing the applicant to construct units?
- Is the Council interested in considering a multi-family rental affordable housing project with this development?
- What are Council's other thoughts on how this requirement might be met by the applicant?
- Will affordable housing in this development receive the 2/3 system development subsidy?

**Parks and Open Space**

The applicant is proposing to leave 70% of the site as open public lands. The applicant is proposing two park facilities and creating a river park trail system. With the inclusion of the alley behind Poverty Gulch there is a possibility of creating a playing field on the eastern proposed park. The northeast park would be a natural park which could be possibly utilized for disc golf and trails.

**Key Discussion Points:**

- Does the Town Council want to consider allowing the applicant to fulfill park requirements on Town owned land?
- What are the Council's thoughts on the applicant's obligations to help construct these park improvements?
- Does the Council feel the park space proposals are adequate to serve the proposed development?
- What will be the ownership structure of the open space areas?

**School Land**

Since the densities in the proposed development will only equal a land dedication of a third of an acre, the applicant is proposing to make a payment in lieu or to provide teacher affordable housing. The School Board will have to weigh in on this proposal as well if concept review is approved.

**Key Discussion Points:**

- Does the Town Council want to consider allowing the applicant to fulfill the school requirement with affordable housing?

## ***Transportation Review***

The applicant has proposed 2 different design layouts that create two different street layouts. Direction is needed by the Town Council on the preferred design layout.

### **Grid Proposal**

Maintaining the grid is essential to the absorption of this development into the Town to help reduce the impacts caused by increased traffic. The grid allows the dilution of traffic by providing additional options to paths of travel. This is particularly important with this development because of its location in respects to the Gothic Corridor.

While both proposals include a grid on the western half of the development, the grid is also maintained on the eastern portion of the property as well with the Grid proposal. The eastern portion of the property is particularly challenging due to the topography and sensitive wetlands. However, either plan will require disturbance to the natural environment of the eastern portion of the property. Maintaining the grid has numerous benefits just as it does in the remainder of the Town. It allows for traditional lot sizes, minimizes front loaded garages, provides for better circulation, will allow for the look and feel of a Town neighborhood, architectural standards will be those of typical Town lots, and provides essential space for utilities in alleys. While the grading for new roads and creating the grid will require additional disturbance the eastern half of the property, there are significant long term benefits to maintaining the traditional neighborhood development over suburban sprawl.

### **Key Discussion Points:**

- Would Town Council be willing to consider reduction in wetland setbacks to maintain the grid on the eastern portion of the property?
- How important is maintaining the grid and the fabric of the Town to the Council?
- Can additional mitigation measures be put in place to protect wetlands in areas where the wetland setbacks are reduced?

### **Natural Proposal**

The natural proposal maintains the grid on the western half of the development which is essential to making connections to 7<sup>th</sup> and 8<sup>th</sup> Street. However, the natural proposal creates an organic street layout to incorporate the proposed residential neighbor. This proposal utilizes topography and respects the required wetland setbacks. However, to construct new roads and install the necessary utilities will still require significant amounts of grading and cut and fill to accomplish this layout. This will also result in odd shaped lots, the loss of the traditional development pattern of the Town and could have long term consequences cause by suburban sprawl.

### **Key Discussion Points:**

- Is the Town Council willing to allow the applicant to deviate from the requirements of maintaining the grid?
- Will this development lose the look and feel of a Town Block and therefor become an exclusive community?
- What will be the long term costs of maintaining the utilities?

### **Gothic Road**

The applicant is proposing two additional access points to Gothic Road which is essential to not creating a bottle neck at new intersections. This will help dilute traffic impacts at each of the proposed

intersections. However, the applicant is proposing the Gothic Road corridor will continue to remain in County and be maintained by the County. While the County has indicated that they may be willing to entertain this proposal, this issue is very important for the Council to consider with this application. Particularly because Gothic Road corridor requires 24 hour snow removal maintenance which the Town cannot absorb without significant long term costs to the Town.

**Key Discussion Points:**

- What improvements should be required of the Gothic Road Corridor? i.e sidewalks, curb and gutter, streetlights?
- What provisions should be considered with the County on future maintenance of this Corridor if this application is approved?
- What improvements will be required of the road surface of Gothic Road?

**Other Roads and Alleys**

The proposal will continue to utilize Town standards for the construction of roads within the development. The applicant is proposing one bridge within the development to access the eastern half of the development. Initial discussions with the Crested Butte Fire Protection District have indicated that one bridge will be suitable for the proposed density on the east side of the development. Staff would like to see 8<sup>th</sup> Street continue to the parcel to the North to make a future connection if this property ever chooses to develop. Also staff would like to see the proposed park expanded over the alley space behind Poverty Gulch to allow additional playing area for this future park.

**Key Discussion Points:**

- Does the proposed street network adequately meet the needs of the proposed development?
- Should 8<sup>th</sup> Street continue north to accommodate future development?
- Is there a need for an alley behind Poverty Gulch or should this area be added to a new park to create enough space for a new playing field?

**Trails**

The applicant is proposing a variety of trails and sidewalks within the development. Overall the proposal makes connections to the critical public uses within the development. This includes extending the 8<sup>th</sup> Street sidewalk connection, extension of sidewalks on Gothic, a Slate River Trail, and an east/west connection to the perimeter trail along Road B.

**Key Discussion Points:**

- Are there any areas that should also be serviced by additional trails?
- Is it appropriate to have a Slate River trail and how will this trail effect wildlife habitat?
- What is Council's vision for the construction and maintenance of these trail surfaces?
- What will be the expectations for the construction and maintenance of the trails within the development?

**Other Transportation Items**

The applicant is proposing a transit stop on the 8<sup>th</sup> Street Corridor. At this time, Mountain Express has not been asked to comment on the application. If approved, they will be asked to comment at the next stage on possible transit facilities.

**Key Discussion Points:**

- What other transportation improvements should be considered with this application?

- Is a stop on the 8<sup>th</sup> Street Corridor the logical spot for transit expansion?  
How would a circulator bus work with this development?

## ***Water and Sewer Services***

As part of annexing new lands into the Town, the applicant is required to discuss how the development will provide additional water and sewer infrastructure. The applicant is also responsible for offsetting the additional demands that are placed on the Town's systems. The applicant will be responsible for installing water and sewer infrastructure for the development. There are a variety of forms this could take including participation in upgrades to the systems, additional water rights, or payments to help offset costs.

At this time the Town's water rights could be sufficient to accommodate the potential growth from this development. However, the Town's water treatment capacity will require system upgrades in the future. Irrigation water for the Town parks also places a large demand on the Town's treatment capacity.

The Town's sewer treatment capacity has reached capacity and Town staff will be performing a performance evaluation to see whether the plant has additional capacity in 2015. However, this development, if approved, will require the Town to begin expensive engineering and upgrades to the Town's plant. The applicant has proposed providing funding for engineering if the application is approved which would require these upgrades.

### **Key Discussion Points:**

- Does the Town Council want explore system upgrades instead of additional water rights with this application?
- Does the Town Council feel system development fees from the proposal are adequate to upgrade the Town's water and sewer plants?
- Is the Council willing to consider allowing the applicant to assist in designing and engineering for the sewer plant if the application is approved and the State requires the Town to begin this process?

## ***Required Action on Application***

Town Council may approve or deny the application. The conceptual review application must be approved to allow the applicant to submit a formal annexation petition and continue the process. The Council may also continue the application to a date certain to allow the applicant to provide additional information.

If the Council desires to approve the application, Town staff would recommend that Council consider the following condition at a minimum:

1. The applicant and Town execute a pre-annexation agreement prior to the submittal of an annexation petition and subdivision application.



# The Slate River Addition Concept Annexation Application October 10, 2014

*PREPARED BY:*

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**Introduction**

Cypress Foothills LP (the “Applicant”) is pleased to present this concept annexation request to the Town of Crested Butte (the “Town”) in accordance with Section 15-1-50 of the Town Code. Applicant looks forward to working cooperatively with the Town, Council, and Staff to develop the best possible project at this unique location.

Applicant has assembled a dynamic team of experienced development professionals, each bringing a breadth of experience and creativity in their own respective disciplines. Together, the team combines world-class expertise with intimate local knowledge that will prove vital to delivering the collective goal: a responsible, sustainable development that not only preserves the unique character of the Town, but further enhances the quality of life for its current and future residents for many years to come. The development team is comprised of:

**Cypress Equities** – founded in 1995 by Chris Maguire, a long-time second homeowner in the Crested Butte community, Cypress Equities companies have acquired and constructed over 18 million square feet of retail, residential, office, and resort projects in markets across the country.

**HKS Architects** – globally recognized as one of the world’s premier architecture firms, with a specialty practice in hospitality and urban design, HKS Architects have envisioned and delivered exceptional spaces for people to live, work and play in nearly 1,500 cities throughout 84 countries.

**SGM Civil Engineers** – one of the top engineering firms on the Western Slope, and undoubtedly a familiar name in the East River Valley, SGM has provided engineering solutions to Colorado communities for decades. SGM’s Tyler Harpel brings a vital familiarity with Town of Crested Butte and an intimate knowledge of the subject property in particular.

**Law of the Rockies** – based in Gunnison and widely respected in the local community, Law of the Rockies has established itself as one of the preeminent legal practices on the Western Slope. Law of the Rockies’ member Marcus Lock is known for crafting creative solutions to complex problems.

The primary goal of this submittal, as stated in section 15-1-50 is “to allow the applicant to obtain an informal response from the town to the general elements of the proposed annexation.” Accordingly, this narrative and the accompanying materials are only intended to introduce the annexation concept consistent with the requirements of Section 15-1-50. Applicant will, of course, provide additional details and specifics, reflecting input from the Town, in the formal annexation petition submitted pursuant to Section 15-1-60 of the Town Code.

This concept annexation request includes the following materials consistent with Section 15-1-50(a) through (d):

- (a) Concept maps showing the lands proposed to be annexed and the method for achieving the one-sixth (1/6) contiguity required by the Municipal Annexation act of 1965;
- (b) A general description of proposed land uses and densities for the lands proposed to be annexed;
- (c) A description of proposed water, sewer and transportation service to the lands proposed to be annexed; and
- (d) A description of proposed roads, sidewalks, and pedestrian access and circulation as they relate to the lands proposed to be annexed.

**Concept Maps (Town Code 15-1-50 1.a)**

For the convenience of the Town, and in order to illustrate the general elements of this annexation concept, Applicant is providing five different maps with this concept annexation request:

- A concept annexation map showing the legal description and boundaries of the property (containing two sheets);
- Two sets of land use maps illustrating alternative proposed layouts of the annexation concept, land uses, and densities. As discussed further below, Applicant and Town Staff identified competing goals with respect to the layout of the proposed annexation. On the one hand, the Town has historically desired to preserve the Town grid to the extent practical. On the other hand, the Town Code seeks to preserve the natural character of the land in various ways. Accordingly, Applicant and Town Staff thought it would be appropriate to present the Town Council with two different layouts, one more grid-like in appearance (the “Grid Plan”), shown on **Exhibits 1** and **2**, and the other more consistent with the natural features of the property (the “Natural Plan”), shown on **Exhibits 3** and **4**. Presentation of both the Grid Plan and the Natural Plan affords the Town Council the opportunity to decide which of these two approaches is more desirable. The differences between these two layouts are further described below.

**General Description of Proposed Land uses and Densities (Town Code 15-1-50 1.b)**

The proposed Slate River Addition is a 44.50-acre parcel of land directly adjacent to and immediately north of Butte Avenue on the northeast side of the Town of Crested Butte. This piece of property was historically owned by the Trampe family, but is no longer viable for ranching and has not been used for active ranching in many years.

The property contained within the proposed Slate River Addition is identified in the Crested Butte Area Plan (the “Area Plan”) as appropriate for transitional density between the denser more urban areas in Town and the lower density residential areas outside of Town.

The majority of the property has relatively mild grades, but there are some areas with highly variable topography. In addition, the Slate River bisects the property, and there are wetlands on the site. Therefore, Applicant acknowledges the need to reach an appropriate balance between respect for the Town grid and preservation of “the natural character of the land” to ensure compatibility with “existing topography, drainage patterns and other natural features” of the property, as required by Section 17-8-20 of the Town Code. Thus, Applicant has prepared two plans exhibiting these competing concepts. Despite their differences, both plans provide the following:

- Public Access to the Slate River, including a proposed river park and trail
- Land for the proposed new fire station (or other civic use)
- Key trail connections, further described herein
- Proposed park space spanning a 325’ x 125’ block
- Large park space in the northeast area of the annexation
- Important 7<sup>th</sup> Street and 8<sup>th</sup> Street connections
- Proposed built affordable housing, to be constructed by Applicant
- Cleanup of the old Town Landfill

Both plans are very similar on the west side of the Slate River, each striving to maintain the Town grid as much as possible near the southwest corner of the property. The only difference is a straightening of “Road B” on the Grid Plan, which encroaches into the wetlands buffer of the Pond Wetlands. As for the east side of the river, the primary differences between these two alternatives are summarized below and illustrated on Exhibits 1-4.

**Exhibit 1: The Grid Plan**

As mentioned above, Road B will impact the existing Pond Wetlands in order to maintain the grid structure and spacing. The combination of the Pond Wetlands, rolling topography, and limited space limit the potential to extend the grid into the area north of Road B in both proposed plans.

The bridge crossing the Slate River is set at the best possible location to:

- limit the overall length of the bridge,

- make the bridge it as perpendicular to the river as possible, and
- establish relatively similar landing-point elevations

On the east side of the river a single block grid structure is set up similar in size to a standard Town block but slightly smaller due to available space. The block is also oriented north to south to best fit the area between two wetlands. Some of the lots will have to encroach into the 100' wetland setbacks from the East Wetlands in order to accommodate the grid. To achieve this configuration, the entire residential area east of the bridge would have to be disturbed and re-graded, which is invasive to the natural topography, inconsistent with natural drainage patterns, and would require significant cut and fill work.

There is an alley in the center of the grid on the east side but the perimeter lots would be front loaded from the street. Adding alleys around the back side of the perimeter lots would not only take up more space but add additional impacts to the wetlands, increase the amount of plowed area and storm water runoff, and increase the area that would need to be maintained.

### **Exhibit 2: Grid Plan Overlay**

Exhibit 2 shows the same proposed Grid Plan layout as Exhibit 1 and overlays the topography, wetlands, wetlands setbacks, Town landfill, and flood plain boundaries.

### **Exhibit 3: The Natural Plan**

Exhibit 3 shows a more natural layout option. This option does not completely abandon the grid concept; adjacent to Butte Avenue it follows the grid format with a transition to a more natural composition as you move to the north and east of the Property. The Road B connection point onto Gothic road and the river crossing are both in the same locations as the Grid layout. However, in this plan, Road B curves to the south near the Pond Wetlands so there is not such an abrupt increase in elevation. More importantly, in this configuration Road B maintains at least a 25' buffer from the Pond Wetland.

A key component of the Natural Plan design is ensuring a 25' buffer from lower quality wetlands, a 100' buffer from higher quality wetlands and a variable buffer based on topography along the Slate River. This layout very strictly follows the wetland buffer setbacks, flood plain setback and tries to follow the natural topography as much as possible. The road follows the higher elevations on the east side of the river, which would be far less invasive to the natural topography, require less cut and fill, and result in shorter roadway length and easier and less expensive future maintenance. This also leads to less area for snow plowing and a lower overall impact of the development due to storm water runoff. The natural drainage paths can also be followed much more closely with this layout, keeping within the open channel flow as much as possible.

In response to preliminary discussions with Town Staff, Applicant has strived to avoid making the east side of the river feel like private neighborhood in this plan, but rather has taken measures to maintain continuity with the character of Town while still providing a transitional connection between the higher density areas in Town and the lower density areas nestled in the rolling foothills and nearby elevated terrain. Accordingly, Applicant has adhered to geometric structures for the roadways in this area to enhance its compatibility and consistency with the existing Town layout while striving to balance this more traditional layout with the natural topography and wetlands located in this area.

**Exhibit 4: Natural Plan Overlay**

Exhibit 4 shows the same natural layout as Exhibit 3, but incorporates topography, wetlands, wetlands setbacks, Town landfill, and flood plain boundaries.

Lots in the eastern portion of the development in both plans will be accessed primarily from street-front driveways. Since this area is proposed to be strictly residential and is not a through area, Applicant does not anticipate any problems associated with street-front access. Other examples of street front access in Town include:

- Portions of the existing blocks between 7<sup>th</sup> Street and 8<sup>th</sup> Street
- Beckwith and Journey's End roads
- The west half of Butte Avenue
- The Kapushion Annexation

Applicant proposes to develop the majority of the land within the annexation area as residential, with two blocks adjacent to Gothic Road set aside for a mix of uses. Applicant understands from Town Staff that there is a need for additional commercial, business and professional space within the Town that may be appropriate at these locations, in addition to residential. The additional tax revenue derived from the proposed commercial space, as compared to that generated by residential property alone, will also provide an increase in long-term funding to support future maintenance and repair of public infrastructure, not only within the proposed development, but off-site as well. Applicant's development concept also provides space adjacent to Gothic Road at the Northwest corner of the annexation parcel that could be used for a new, larger, and more modern fire station.

The residential areas can largely fit within existing residential zoning districts. There will be more R2 and R2A closer to Butte Avenue to provide for some multifamily housing and much-needed deed-restricted affordable housing closer to the Town core with better access to other Town facilities like the school. Various R1 zones will comprise the remainder of the development, from traditional R1 to R1E so that deed restricted units can be mixed in throughout the development, and potentially an R1D zone on the east side of the river to help transition to larger existing lots and open space outside of Town, consistent with the Crested Butte Area Plan.

Applicant anticipates that there will ultimately be approximately 115 units developed on about 75 total lots, though this estimate is subject to revision as Applicant and the Town move through the

annexation process. Consequently, this concept annexation proposal reflects a substantial reduction in density compared to the 155 units proposed for this land by the prior development group. It is also significantly less than the Recommended Maximum Density contemplated for this property in the Area Plan of 180.60 recommended maximum units when applying densities of 5.00 and 3.50 units per acre for the west and east side of the Slate River, respectively.

### **Town Code Review Standards**

After taking into account the park space, public space, and open space being proposed in this annexation concept, developable lots will comprise less than 30% of the land in this proposed annexation, while more than 70% of the overall 44.5 acres of the property will be public.

### **Affordable and Local Housing**

The current Town code requirement in article 17-12 calls for 60% of the overall proposed residential units to be deed-restricted for local housing, and 21% of the overall proposed residential units to be deed-restricted for affordable housing. Section 17-12-20 (3) authorizes adjustments to these percentages if Applicant were to actually construct the local or affordable housing. Applicant is interested in exploring the potential opportunity to design and build local and affordable housing to enhance the entry point to the Town as residents are traveling from the resort area back into the Town of Crested Butte. This would be consistent with the Area Plan's suggestion of enhancing entry points into the Town.

Applicant also proposes screening through berms, natural landscaping, and fencing to further enhance this entry point into the Town, and create a separation between the Public Works yard and the proposed development. Applicant understands the importance of maintaining the functionality of the Public Works facility adjacent to the proposed development and is interested in working with the Town to identify ways to ensure the preservation, or even enhancement of, resources available to the Public Works facility.

Applicant understands from discussions with Town Staff that an urgent need exists for additional multi-family affordable housing rental properties within the Town, and is interested in discussing the potential for building such developments as part of this project.

Applicant also appreciates and acknowledges the substantial time and effort the Town already has dedicated to the important issue of providing viable affordable housing options within Crested Butte. Accordingly, Applicant looks forward to working with the Town to identify and implement the best solution to providing local and affordable housing for the residents of the Town.

### **Public and Park Space**

The exact acreages dedicated for public and park space will change slightly as the specific number of units is finalized during the annexation process. Regardless, Applicant will satisfy these requirements to ensure the character of Town and access to existing amenities are not adversely impacted by the annexation. The proposed land use maps show three parks; one will be a river access park, the second will be a large park space on the northeast area of the annexation, and the third will be a more traditional park located on the west side of the river between 7<sup>th</sup> Street and 8<sup>th</sup> Street.

**River Park:** A major amenity that is not currently available to residents in Town is public access to the Slate River, which would be possible with the addition of this River Park. Applicant proposes a park area on the east side of the river with a paved parking area for visitors to park. A trail will lead from the parking area along the Slate River northward to the bridge, and as suggested by Town Staff, potentially southward along the river as well, across a wetlands area to connect to the Rec Path.

**Northeast Park:** It is important to balance park types with Town needs and to respect the environmental sensitivity of the natural areas adjacent to the cemetery. Accordingly, Applicant believes that this area would be suitable for a more “natural” park setting with trails, benches, and potentially a relocated disk golf course, which would free up much-needed space at Big Mine Park. This would also limit the amount of water being used for irrigation.

**West-End Park:** After remediating the dump area (as further described below), Applicant proposes to incorporate a portion of the remediated dump area currently owned by the Town for purposes of providing a park on the west side of the river spanning nearly an entire 325’ x 125’ block, with the only exception being a small area abutting the Public Works yard designated for other civic use.

Overall the Applicant is proposing potentially more park space than what is required in the Town Code, based on the current proposed lot count. In addition to the park space, Applicant is proposing to set aside a large parcel of land at the northwest corner of the annexation area adjacent to Gothic Road for public civic use. A new fire station is one possible example for this area. This location would provide the Crested Butte Fire Protection District enough room for expanded modern facilities with quick access to both the Town of Crested Butte as well as the Town of Mt. Crested Butte. Conversations with Town Staff suggest that the relocation of the fire station is one subject that may be addressed in a pre-annexation agreement between the Town and Applicant.

Town Staff has also indicated the possible need of additional space for storage buildings near the existing Public Works yard, to offset land being incorporated into the development for park space. Applicant has provided a public parcel along 8<sup>th</sup> Street adjacent to the existing Public Works yard that could be used for enclosed/covered storage of vehicles, or other similar uses.

Additional public space is shown on the proposed land use maps for snow storage. Applicant's goal is to have various snow storage areas spread throughout the annexation, with the total snow storage space being equal to 1/3 the amount of overall plowed road and alley square footage.

### **Trails**

The location of this annexation has the unique opportunity to connect the Town with the existing trail system outside of the Town. The concrete walkway along 8<sup>th</sup> Street is proposed to be extended into the annexation and across the bridge allowing for a seamless connection from the School, past Rainbow Park, and across the river to the existing recreation path. This connection could potentially even tie into the Nordic trail system in the winter. As previously mentioned, a trail along the east side of the river may also connect the Rec Path to the proposed River Park, should Town Council decide to permit the passage across the wetlands area. Accordingly, this project has the potential to greatly enhance the Town's already impressive trail system and recreational facilities.

### **School Land**

Given the relatively low density being proposed, the amount of land the Town Code requires to be dedicated for school purposes is only about a third of an acre. Since this is too small to be usable for a school, Applicant anticipates that the Town would prefer a payment in lieu of such land, or to discuss the possibility for teacher housing. As with the other annexation requirements, Applicant looks forward to discussing these ideas further with the Town Council.

### **Open Space**

The River corridor, including a corresponding wildlife corridor, and the areas in and around the wetlands are all proposed to be preserved as open space totaling approximately 18.7 acres on site or 42% of the total annexation. Applicant acknowledges that the Town Code requires additional open space, that offsite open space is one means of meeting this requirement, and that the Town's preference is preservation of these lands through conservation organizations like the Crested Butte Land Trust. Applicant looks forward to working closely with such organizations to preserve more valuable open space.

### **General Description of Proposed Water and Sewer Services (Town Code 15-1-50 1.c)**

The properties contained within the proposed annexation will be serviced by existing utility infrastructure. Utility infrastructure systems will need to be extended to meet the service requirements of the subdivision.

Although the exact unit count has not been finalized, project design will accommodate anticipated water, sewer, and shallow utility demands. Applicant will contact each utility provider and discuss the ability of these providers to serve the project. Utility providers include

the Town of Crested Butte for water and sanitation, Atmos Energy for natural gas, Gunnison County Electric Association for electricity, and Time Warner for cable.

Both water and sewer distribution systems will connect to the project at multiple points along Butte Avenue at 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> Streets and mostly follow the street layout, being separated by a minimum of 10'. This will allow the water system to be looped through the annexation and minimize dead end lines.

Water will need to be brought across the Slate River. The sewer distribution system on the east side of the river will be independent from the west side. On the east side of the river, a gravity pipe that leads to a lift station will pump wastewater back to the west side where it will be re-incorporated in to the gravity system that will flow to the existing Wastewater Treatment plant. If so desired, this also allows the Town the possibility of providing the cemetery better access to central water and sewer system connections.

The current capacity of the Wastewater Treatment Plant and Water Treatment Plant are 0.60 MGD (million gallons per day) and 1.25 MGD respectively. The Town also has 1.10 MGD of treated water storage capacity. Again, the specifics of the concept annexation have not been finalized, but it is estimated (using approximately 350 GPD per single family home) that the annexation will only use about 30,000 gallons of water/wastewater per day; or 0.03 MGD per day.

As part of the subsequent Sketch Plan submittal, Applicant will prepare a facilities report that will specify anticipated usage requirements and allow Applicant to evaluate the specific impacts the annexation may have on the two treatment facilities. The anticipated usage of 0.03 MGD represents approximately 5% of the existing wastewater treatment facility and 3% of the water treatment and storage facilities.

It is important to note that in addition to Applicant's paying for and installing the new water and wastewater distribution system, the water and sewer connections for each home or business will be paying the appropriate water and sewer tap fees and monthly usage fees, thus providing the Town with a constant revenue stream to cover future water and wastewater costs, and mitigating the initial impact the annexation may have on existing infrastructure and facilities.

The Town's potable water system is comprised of many different components: legal water supply (water rights), physical water supply, raw water storage capacity, water treatment capacity, treated water storage capacity, and distribution system and distribution system capacity. The capacities of certain components of this system are likely to limit the actual potable water supply available to the Town long before others. For instance, the Town is likely to reach its water treatment capacity long before it runs out of legal or physical water. It may be possible to modify or enhance existing infrastructure to "free up" already existing capacity. For example, Applicant understands that the Town is currently using treated water for irrigation purposes while underutilizing certain irrigation water rights owned by the Town. If additional infrastructure would allow irrigation water rights to be used to water parks and playing fields

instead of treated water, this would free up a corresponding amount of treatment capacity at the Town's water treatment facility. There are likely a number of other ideas that would prove to be equally beneficial to the Town's water supply system. Accordingly, Applicant looks forward to working with the Town to determine how it can best contribute to optimizing this multi-faceted system.

Applicant understands that the Town is currently discussing its wastewater treatment system and the capacity thereof with the Colorado Department of Public Health and Environment ("CDPHE"). Applicant further understands that while the Town has budgeted for, and is undertaking, a performance evaluation of its current wastewater treatment system, it does not have available funds for an actual expansion of the wastewater treatment system or the engineering necessary to accomplish such an expansion until 2016. Applicant understands from Town Staff that in the event this annexation process reaches a certain point of maturity, CDPHE may require the Town to commence the engineering work necessary to support an expansion of the wastewater treatment system. If the Town is faced with such a requirement before 2016, it would not have the funds necessary to pay for this engineering. In order to address this problem, Applicant is willing to work with the Town to develop a pre-annexation agreement in which Applicant agrees to provide the means necessary to cover any temporary funding shortfall attributable to the Town's processing of the proposed annexation. In this fashion, the Town can move forward with the annexation process without having to worry that doing so will inadvertently result in a violation of applicable CDPHE requirements.

**General Description of Proposed Transportation, Roads and Pedestrian Access Circulation (Town Code 15-1-50 1.c and 1.d)**

The proposed annexation will connect to the existing Town roadway grid and expand it along Gothic Road with four access points:

- Butte Avenue and 7<sup>th</sup> Street
- Butte Avenue and 8<sup>th</sup> Street
- Gothic Road and Road A
- Gothic Road and Road B

Applicant is proposing right-of-way widths 60 feet in diameter consistent with existing Town right-of-ways. Gothic road itself is not part of the annexation; it will continue to be owned by Gunnison County, which has indicated that it is comfortable with two access points onto Gothic Road in order to help maintain the Town of Crested Butte grid.

The four roadway access points – with two going to the south and two going to the west and north – are very important for dispersing traffic to and from the annexation and relieving pressure from the intersection of Gothic and Butte. This allows traffic traveling up valley to access Gothic Road directly via Road A and Road B at new intersection points proposed. Traffic traveling down valley or into Town will now have the choice of using 6<sup>th</sup>, 7<sup>th</sup> or 8<sup>th</sup> Streets.

The connection to 8<sup>th</sup> Street is critical as it allows:

- Direct connection to the school
- Direct connection to other Town recreation facilities
- The 8' wide pedestrian walkway on 8<sup>th</sup> Street can be extended up to Road B and across the bridge to the east side of the Slate River and to access the river and new park facilities
- Direct connection to the new proposed bus loop along 8<sup>th</sup> Street that can simply continue in to the annexation with a new bus stop at or near 8<sup>th</sup> Street and Road B

Applicant will provide a more detailed traffic study at the appropriate time in the review process that will look not only at the traffic impacts to the adjacent intersections but also other important intersections throughout Town and along 6<sup>th</sup> Street. This traffic study will correspond with and integrate into the current traffic study being produced for the Town by Kimley-Horn.

In addition to the extension of the 8' pedestrian walkway up 8<sup>th</sup> Street and across the bridge, a pedestrian way/trail is proposed to run through the annexation east and west. This will provide a connection to the proposed park areas, and a possible connection to the existing recreation path, all connecting back in at Butte and 6<sup>th</sup> Street. As previously stated, the connection to the existing Rec Path would provide the possibility of connecting to the Nordic Trail system as well.

In order to minimize the impact on the river and wetlands, there is only one proposed bridge (providing both vehicular and pedestrian access) crossing the Slate River corridor. This bridge will be designed to accommodate Nordic skiing and grooming. Applicant respectfully submits that with only approximately 30 single family homes and park access located on the east side of the Slate River, more than one bridge is not necessary. Examples of other areas of the community adequately served by a single bridge include:

- Prospect in Mt. Crested Butte, one intersection and one bridge with 185 lots
- Meridian Lake, one intersection and one bridge with 175 lots
- Trappers Crossing @ Wildcat, one intersection and one bridge 45 lots
- Crested Butte South, two intersections onto Cement Creek Road, one bridge, one intersection with highway, and more than 550 active residential units

### **General Description of Drainage and Floodplain**

The current FEMA 100 year floodplain that was just updated in May of 2013 is shown on the concept annexation map. With the exception of possible river park access, there is no proposed development within the floodplain.

Drainage control features will be utilized throughout the annexation to ensure that historic runoff flow rates and flow paths are maintained while protecting water quality.

**Other Considerations****Wetlands**

Wetlands of varying quality have been identified on site. There have been at least four different wetlands evaluations performed on the site since 1993, all with some level of variation between them. For purposes of this proposal, Applicant is using the most current 2010 Army Corp of Engineers jurisdictional wetlands delineations. There is one exception to this, commonly known as the Pond Wetlands on the west side of the river. In a previous annexation application, the Town's wetlands consultant identified the Pond Wetlands as true functional wetlands, whereas the Army Corp of Engineers in 2010 did not classify this area as jurisdictional wetlands. Applicant is honoring the Town's delineation of this area as wetlands.

Applicant looks forward to working with the Town to determine the size and location of wetlands buffers, taking into account topography and wetlands functionality. The Applicant respectfully submits that whereas in some instances as much as 100' buffers will be appropriate for higher quality wetlands, only 25' buffers will be appropriate for lower quality wetlands, and in some instances an appropriate variable buffer between the 25' and 100' would be most suitable. Additionally, measures can be taken to enhance the wetlands buffer with natural vegetation which would protect the integrity of the wetlands in a shorter-buffered area as effectively as would a larger buffer with no vegetative enhancements.

Applicant acknowledges that the Grid Plan results in encroachments into the wetlands setbacks in various areas and seeks the Town Council's recommendation as to the preference of observing wetlands setbacks proposed in the Town Code (along with Council's desire to avoid invasive "cut and fill" measures) versus preserving the Town grid.

**Town Landfill**

A portion of the annexation contains what was once the old Town Landfill. The Applicant has done extensive environmental testing on the site and proposes to obtain a specialized contractor to clean up the entire dump both on Applicant's land and on Town land at no cost to the Town. In addition, Applicant has obtained an environmental insurance policy to cover the cleanup process.

Applicant intends to contract with an experienced, professional environmental engineering company that specializes in environmental consulting, remediation, and remediation management in order to remediate the entire landfill.

Currently, Applicant is working with Casey Resources, Inc. (“Casey Resources”). Casey Resources is one of Colorado’s top remediation firms. Principal Engineer Paul Casey has been involved in the environmental engineering and remediation industry for over 30 years. His past and present projects include being designated Environmental Program Manager for the following projects:

- Relocation of Elitch Gardens to a 68-acre site in downtown Denver
- Construction of the New Pepsi Center Arena in Denver
- Colorado's Ocean Journey Aquarium in Denver
- Closure of the Robinson Brick Plant and its conversion to a Home Depot store for Home Depot U.S.A in Denver
- The Gold Hill Redevelopment site in Colorado Springs, and
- The Prairie Gateway Development in Commerce City

Mr. Casey is also the Environmental Project Manager for the redevelopment of the former Stapleton International Airport for Forest City. This is the largest urban redevelopment project in the United States. Duties relating to these projects include waste management and site restoration of the subject properties, which have had significant historic industrial operations within the property boundaries. Most of these remedial activities have included or include the characterization, manifesting, transportation, and disposal of hazardous and industrial waste generated at the site and providing appropriate solutions to site remediation.

Applicant and its environmental engineer intend to pursue participation in the CDPHE’s Voluntary Cleanup and Redevelopment Program, which provides both federal and state remedial plan approval. This process includes preparation and submission of the Voluntary Cleanup Plan (“VCUP”) Application, approval of the VCUP, remediation planning, remediation and remediation oversight, and submission of a formal remediation completion report.

During the remediation phase of the project, landfill debris will be removed from the old Town Dump to an alternative, approved location that is authorized and qualified to accept such debris. The remediation work will be monitored by a licensed professional to ensure that all excavated materials are managed according to regulation. Once the remediation field work and any confirmation sampling have been completed, Applicant

and its environmental engineer will submit a formal completion report to CDPHE and request approval of the remediation. This completion report documents all of the activities that took place during the remediation including volumes of materials removed and disposed, discussion of the handling and disposal of specific wastes, and sampling results. In short, through participation in CDPHE's Voluntary Cleanup and Redevelopment Program, Applicant's goal is to provide the Town of Crested Butte with documented evidence that the old Town Dump has been remediated to the satisfaction of both the State and Federal governments. Additional information on CDPHE's Voluntary Cleanup and Redevelopment Program can be found at:

<https://www.colorado.gov/pacific/cdphe/voluntary-cleanup>

Applicant anticipates addressing the cleanup of the old Town Landfill in a pre-annexation agreement with the Town.

### **Conclusion**

Applicant and its team are pleased to present this concept for the Slate River Addition annexation project. Applicant's intent is to develop a project that is consistent with the values of the Town of Crested Butte and its plan for future growth, as reflected in the Crested Butte Area Plan. The team's vision for the Slate River Addition is to further enhance the beauty of the Town of Crested Butte and the quality of life of its residents, while at the same time respecting and preserving the key component of this beauty and quality: the natural environment of the Crested Butte area. The Slate River Addition offers the possibility of new parks, new trails, new public facilities, affordable housing, and new commercial and residential space. But, it also seeks to protect wetlands, natural areas, and the Slate River corridor.

As set forth above, this narrative and the accompanying materials are intended to introduce this annexation concept to the Town and its Staff in accordance with Section 15-1-50 of the Town Code. Applicant recognizes that this submission is just the first step in a process designed to ensure that the Town realizes the multitude of public benefits associated with this project. Applicant shares in this goal. Accordingly, Applicant looks forward to working collaboratively with Town Staff and Council to satisfy the Town's annexation requirements and reach an agreement on a project that best serves the needs of the Town of Crested Butte and its residents.



October 9, 2014

Mr. Michael Yearman  
PO Box 39  
Crested Butte, CO 81224

**Re: General Planning Development Application – Cypress Foothills, LP -  
Designation of Agent Representative**

Dear Mr. Yearman:

Cypress Foothills, LP hereby appoints Marcus J. Lock to be its agent representative in connection with the preliminary planning of the Slate River Addition. Mr. Lock's contact information is listed below:

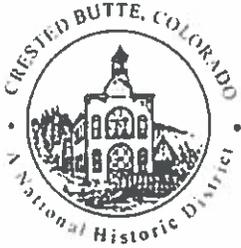
Marcus J. Lock  
**Law of the Rockies**  
525 North Main St.  
Gunnison, CO 81230  
Tel: 970-641-1903 ext. 2  
Fax: 970-641-1943  
[mlock@lawoftherockies.com](mailto:mlock@lawoftherockies.com)

If you have any questions regarding this appointment, please contact me at 214-561-8858.

Sincerely,

Cypress Foothills, L.P.  
By: Cypress Foothills, G.P., L.L.C.  
By: Brian Parro, Vice President

A handwritten signature in blue ink, appearing to read "Brian Parro", is written over a horizontal line.



# PLANNING GENERAL DEVELOPMENT APPLICATION

PO Box 39  
Crested Butte, CO 81224  
Phone: 970-349-5338  
Email: myerman@crestedbutte-co.gov

## 1. TYPE OF APPLICATION (Check-off as appropriate)

- Concept Annexation
- Formal Annexation Petition Review
- Sketch Plan
- Preliminary Plan
- Final Subdivision Plan Review
- Other: \_\_\_\_\_

## 2. GENERAL DATA (To be completed by the applicant)

### A. Applicant Information

Name of Applicant: Cypress Foothills I.P.

Mailing Address: 8343 Douglas Ave, Suite 200

Telephone Number: 214-561-8800 FAX: \_\_\_\_\_

Email Address: Cameron.Aderhold@CypressEquities.com

Power of Attorney/ Authorized Representative: Marcus J. Lock  
(Provide a letter authorizing agent to represent you, include representative's name, street and mailing address, telephone number, and FAX)

### B. Site Data

Name of Development: Slate River Addition

Street Address: n/a

Legal Description: Lot \_\_\_\_\_ Block \_\_\_\_\_ Subdivision \_\_\_\_\_ *(legal description attached)*

Disclosure of Ownership: List all owners' names, mortgages, liens, easements, judgments, contracts and agreements that run with the land. (May be in the form of a current certificate from a title insurance company, deed, ownership and encumbrance report, attorney's opinion, or other documentation acceptable to the Town Attorney)  
  
*(owner's title policy attached)*

I certify that I have read the application form and that the information and exhibits herewith submitted are true and correct to the best of my knowledge.

Signature of applicant/agent \_\_\_\_\_ Date 10/9/2014

Signature of property owner:  
Cypress Foothills, I.P.  
by: Cypress Foothills G.P., I.L.C.  
by: Chris Maguire, President \_\_\_\_\_ Date 10/9/2014

**SLATE RIVER ADDITION  
CONCEPT ANNEXATION MAP**  
Situating in the SW¼ Section 35  
Township 13 South, Range 86 West of the 6th P.M.,  
Gunnison County, Colorado.

**Legal Description:**

Know all persons by these presents that Cypress Foothills L.P. are the sole owner(s), mortgagee(s), or lien holder(s) of all that real property described as follows:

A parcel of land known as Tract Q of Book 516 Page 474, Parcel 13 of Book 552 Page 63, Parcel 1 of Warranty Deed recorded at Reception No. 570819, Parcel 1 of Quitclaim Deed recorded at Reception No.570822, Parcel 1 of the Correction Warranty Deed recorded at Reception No.584439, Parcel 1 of the Special Warranty Deed recorded at Reception No.612899, and the Correction Deed recorded at Reception No.618498 all located in the SW 1/4 of Section 35, Township 13 South, Range 86 W of the Sixth PM, Gunnison County, Colorado being more particularly described as follows:

Beginning at a point on the westerly boundary of Trampe Parcel described in Book 516 Page 494 also being on the easterly right of way line of County Road 317 (Gothic Road) as recorded at Reception No. 00119 and being on the south line of the SW1/4 of said Section 35 from which the southwest corner of said Section 35 bears N89°43'49"W a distance of 130.05 feet; thence S89°43'49"E a distance of 17.52 feet to a point on the westerly line of the Dyer Subdivision as recorded at Reception No.497990; thence along the westerly, northerly and easterly lines of said Dyer Subdivision the following eleven (11) courses: 1) N00°01'42"W a distance of 15.19 feet, 2) N89°58'18"E a distance of 495.36 feet, 3) N00°01'42"W a distance of 226.55 feet, 4) N61°00'00"E a distance of 620.66 feet, 5) S79°30'09"E a distance of 381.57 feet, 6) N61°00'00"E approximately 31.96 feet to the high water line of the Slate River; thence along the high water line of the Slate River approximately 7) S44°00'17"E a distance of 2.43 feet, 8) S61°14'28"E a distance of 180.87 feet, 9) S45°20'59"E a distance of 257.67 feet, 10) S39°16'06"E a distance of 215.58 feet, 11) S50°53'25"E a distance of 97.51 feet to the southerly line of the SW1/4 of said Section 35; thence along said southerly line S89°43'49"E, approximately 506.01 feet to the S1/4 Corner of said Section 35, said corner being a 3 1/4" Aluminum Cap; thence along an existing fence line as it exists in the field and as shown and described in a Boundary Agreement recorded in Book 769 at Page 881 the following three (3) courses: 1) N00°11'53"E a distance of 271.72 feet, 2) N00°50'11"W a distance of 932.90 feet, 3) N01°19'37"W a distance of 346.89 feet to a point on the northerly line of the Trampe Partition Parcel 13 and the southerly line of Spann Parcel 23 as described in Court Decree Amended Order of Partition as recorded in Book 552 at Page 63; thence along the northerly line of said Parcel 13 N90°00'00"W a distance of 570.01 feet to a point on the easterly line of the Town of Crested Butte Cemetery as described in Exhibit A(5) in Court Decree of Partition as recorded in Book 516 at Page 474; thence along the easterly line of said Cemetery Parcel S01°20'33"W a distance of 220.37 feet to the northerly corner of a parcel of land described in Book 518 at Page 403; thence along the northwesterly line of said parcel S29°46'00"W a distance of 470.46 feet to a point on the northerly line of said Trampe Partition Parcel 13, said point also being on the southerly line of said Cemetery Parcel; thence along said northerly line of said Parcel 13 N90°00'00"W a distance of 1116.19 feet to a point on the easterly right of way line of County Road 317 (Gothic Road); thence along said easterly right of way line as described in deeds recorded at Reception No.474960 and 474961 the following five (5) courses: 1) S46°12'21"W a distance of 116.48 feet, 2) S35°50'27"W a distance of 185.49 feet, 3) S35°50'28"W a distance of 88.19 feet, 4) S40°05'13"W a distance of 207.37 feet, 5) S39°55'42"W a distance of 238.91 feet; thence continuing along the easterly line of said right of way and westerly line of said Trampe Partition Parcel 13, 155.77 feet along the arc of a non-tangent curve to the left having a radius of 441.28 feet, a central angle of 20°13'30" and a long chord which bears S16°19'42"W a distance of 154.96 feet to a point which is common to the southwest corner of a parcel of land described in Book 518 at Page 403; thence S00°00'04"W continuing along the easterly right of way of said County Road 317 as recorded at Reception No.00119 and in accordance with Court Decree (Judgment) recorded in Book 516 at Page 494, a distance of 117.72 feet to the Point of Beginning.

Said Parcel as described above contains 44.503 acres, more or less.

That said owners have by these presents caused this annexation as shown hereon and designate the same as the Slate River Addition to the Town of Crested Butte, County of Gunnison, State of Colorado.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2014.

Chris Maguire, C.E.O. Cypress Foothills L.P.

State of Colorado)

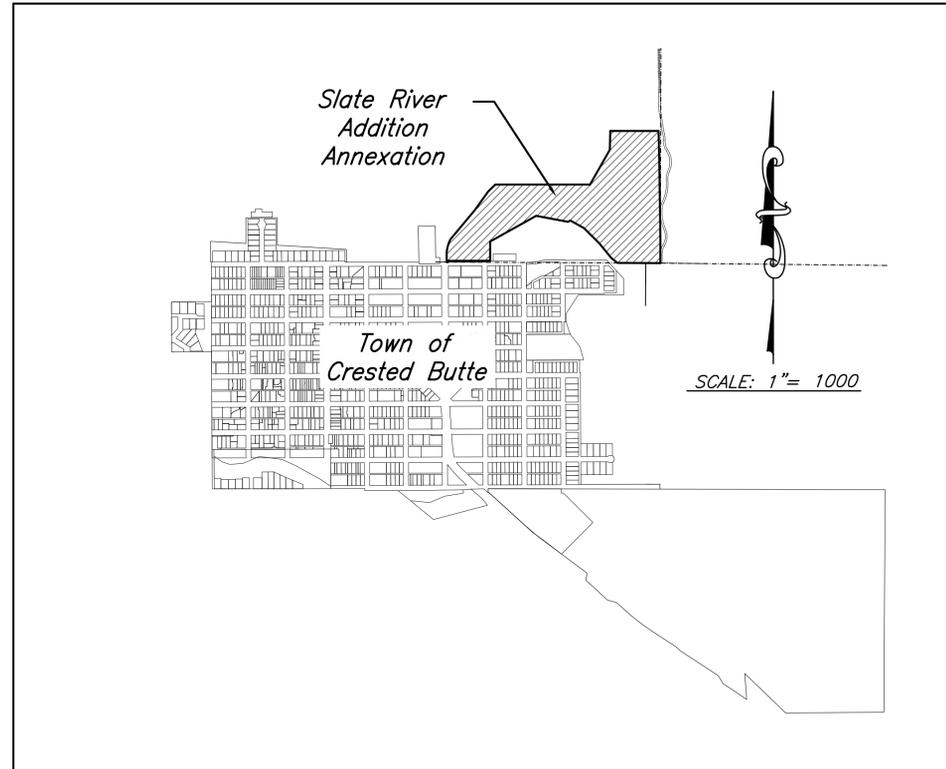
County of Gunnison )

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014 by Cypress Foothills L.P.

Witness my hand and official seal.

My Commission expires: \_\_\_\_\_

Notary Public



VICINITY MAP  
1" = 1000'

**OWNER/APPLICANT:**

Cypress Foothills L.P.  
Chris Maguire, C.E.O.  
8343 Douglas Ave., Suite 200  
Dallas, Texas 75225

**LEGAL COUNSEL:**

Law of the Rockies  
Marcus Lock  
525 North Main Street  
Gunnison, Colorado 81230

**ENGINEER-SURVEYOR**

S.G.M.  
Tyler Harpel, P.E.  
Steve Ehlers P.L.S.  
103 West Tomichi Ave., Suite A  
Gunnison, Colorado 81230

**ARCHITECT PLANNER**

HKS  
John Hessler  
350 North St. Paul Street, Suite 100  
Dallas, Texas 75201-4240

**Gunnison Clerk and Recorder's Acceptance**

This plat was accepted for filing in the office of the Clerk and Recorder of Gunnison County, Colorado, on this \_\_\_\_ day of \_\_\_\_\_, A.D. 201\_\_\_\_, Reception Number \_\_\_\_\_ Time \_\_\_\_\_, Date \_\_\_\_\_.

Gunnison County Clerk and Recorder

**SURVEYOR'S NOTES**

-Legal Description per the Foothills ALTA recorded at Reception No. 628973 of the Gunnison County Clerk and Recorders Office.

-Units of linear measurements are displayed in US Survey Feet.

-Contiguity:

Overall Perimeter of Parcel: 8,087.35 feet

Contiguity (1/6 required by State Statute): 1,347.89 feet

Boundary Contiguous with Town of Crested Butte: 2,876.27 feet

**Town Council Approval Certificate**

The Town Council of the Town of Crested Butte, Colorado, by Resolution No. \_\_\_\_\_, duly adopted on the \_\_\_\_ day of \_\_\_\_\_, 2014, found and determined that annexation of the property designated herein complies with the requirements contained in Article 12, Title 31, C.R.S., as amended, and that said property is eligible for annexation to the Town of Crested Butte.

The Town Council of the Town of Crested Butte, Colorado, by Ordinance No. \_\_\_\_\_, duly adopted on the \_\_\_\_ day of \_\_\_\_\_, 2014, did annex the property herein described to the town of Crested Butte, Colorado

Mayor

**Planning Commission Certificate:**

This map approved by the Town of Crested Butte Commission this \_\_\_\_ day of \_\_\_\_\_, A.D., 2014.

Chairman

**Surveyor's Certificate:**

I, Stephen L. Ehlers, a registered Professional Land Surveyor, licensed under the laws of the State of Colorado, do hereby certify that this annexation map was made under my direct supervision and that the information hereon is correct to the best of my knowledge and belief, and that no less than one-sixth (1/6) of the perimeter of the area as shown hereon is contiguous with the existing boundaries of the Town of Crested Butte, Colorado. I further certify that recent surveys of record referenced hereon indicate that the external boundaries of the property shown on this annexation map have been previously monumented on the ground.

EXECUTED THIS 30TH DAY OF SEPTEMBER, 2014

Stephen L. Ehlers  
Colo. Reg. P.L.S. # 29030  
For, and on  
behalf of SGM

- PRELIMINARY -  
FOR REVIEW ONLY

S:\2012\2012-208-003 Foothills Annexation (map) Foothills-am-2014.dwg

**Notice:**  
According to Colorado Law, you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any legal action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

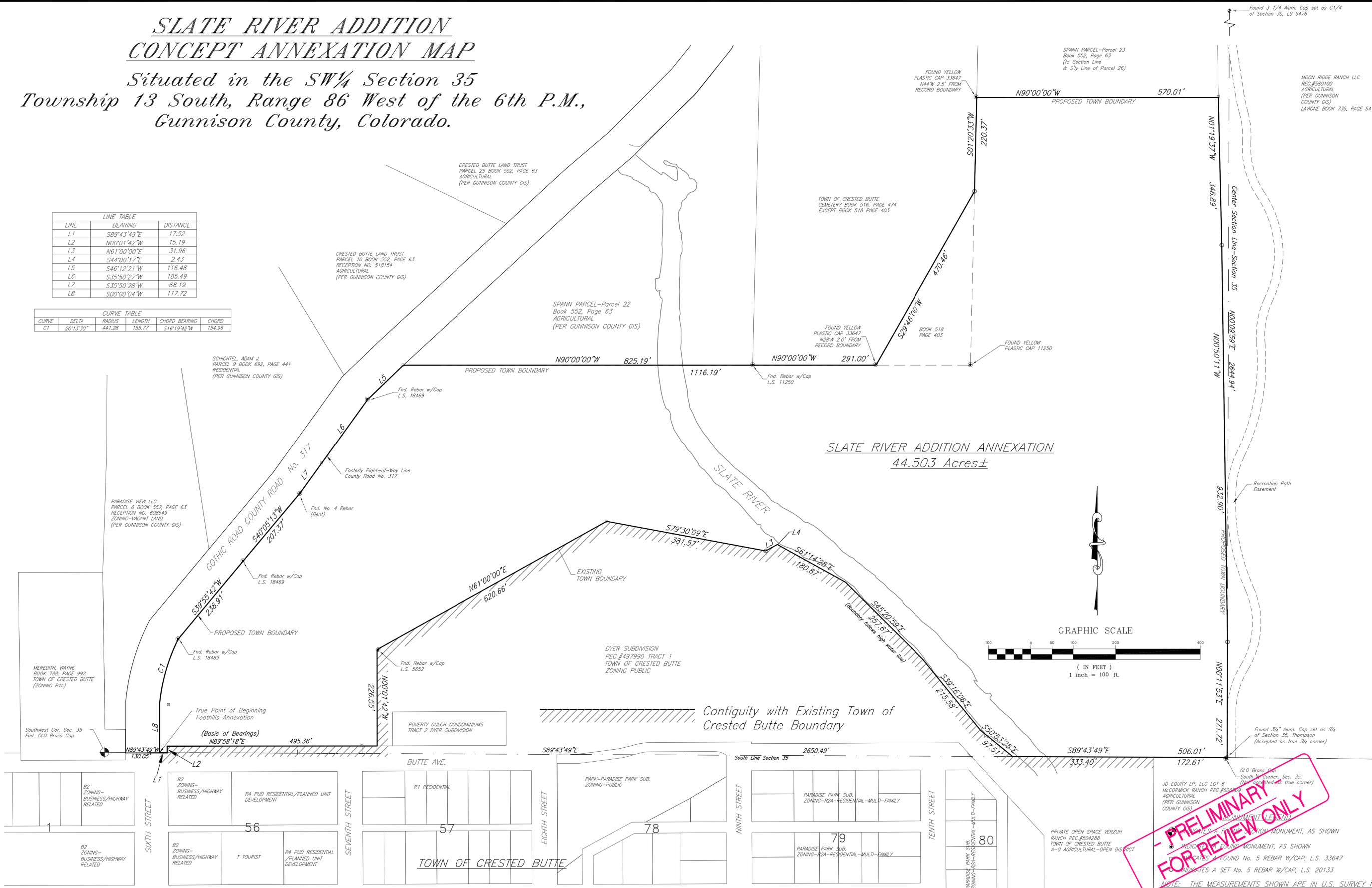
 103 W. Tomichi Ave., Suite A Gunnison, CO 81230 970.641.5355 www.sgm-inc.com	Slate River Addition Town of Crested Butte	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><th>#</th><th>Revision</th><th>Date</th><th>By</th></tr> <tr><td>1</td><td></td><td></td><td></td></tr> <tr><td>2</td><td></td><td></td><td></td></tr> <tr><td>3</td><td></td><td></td><td></td></tr> <tr><td>4</td><td></td><td></td><td></td></tr> <tr><td>5</td><td></td><td></td><td></td></tr> </table>	#	Revision	Date	By	1				2				3				4				5				Concept Annexation Map	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>Job No.</td><td>2012-208.003</td><td rowspan="5" style="text-align: center; vertical-align: middle;">1    2</td></tr> <tr><td>Drawn by:</td><td>EB</td></tr> <tr><td>Date:</td><td>09/30/14</td></tr> <tr><td>Approved:</td><td>SE</td></tr> <tr><td>File:</td><td>Foothills-am-2014</td></tr> </table>	Job No.	2012-208.003	1    2	Drawn by:	EB	Date:	09/30/14	Approved:	SE	File:	Foothills-am-2014
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# SLATE RIVER ADDITION CONCEPT ANNEXATION MAP

Situated in the SW 1/4 Section 35  
Township 13 South, Range 86 West of the 6th P.M.,  
Gunnison County, Colorado.

LINE	BEARING	DISTANCE
L1	S89°43'49"E	17.52
L2	N00°01'42"W	15.19
L3	N61°00'00"E	31.96
L4	S44°00'17"E	2.43
L5	S46°12'21"W	116.48
L6	S35°50'27"W	185.49
L7	S35°50'28"W	88.19
L8	S00°00'04"W	117.72

CURVE	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
C1	201°3'30"	441.28	155.77	S16°19'42"W	154.96



**PRELIMINARY FOR REVIEW ONLY**

JD EQUITY LP, LLC LOT 6  
McCORMACK RANCH REC.#604288  
AGRICULTURAL (PER GUNNISON COUNTY GIS)

INDICATES A FOUND MONUMENT, AS SHOWN

INDICATES A FOUND MONUMENT, AS SHOWN

INDICATES A SET No. 5 REBAR W/CAP, L.S. 20133

NOTE: THE MEASUREMENTS SHOWN ARE IN U.S. SURVEY FEET

**Notice:**  
According to Colorado Law, you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any legal action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

**SGM**  
103 W. Tomichi Ave., Suite A  
Gunnison, CO 81230  
970.641.5355 www.sgm-inc.com

Slate River Addition  
Town of Crested Butte

#	Revision	Date	By
1			
2			
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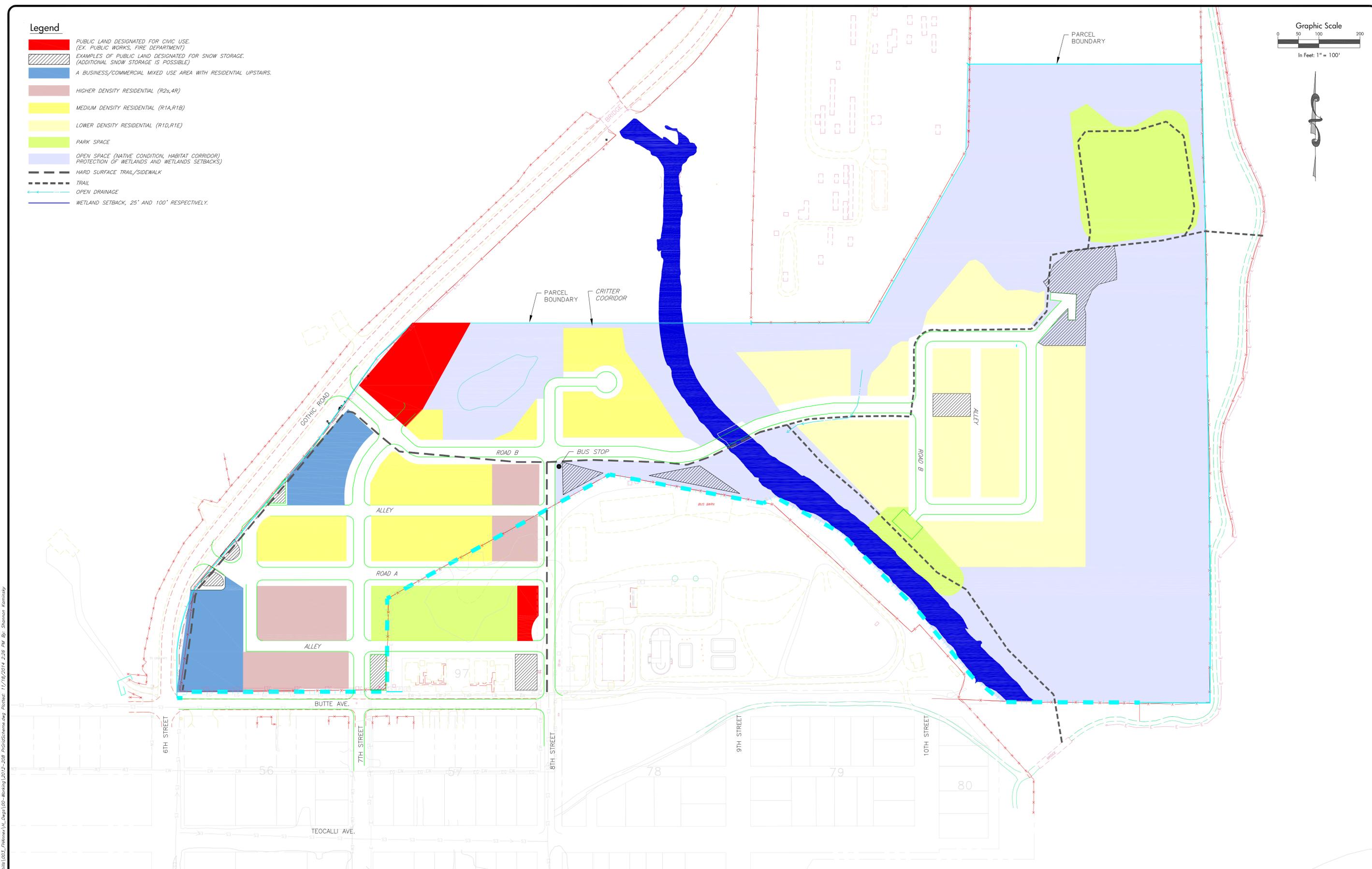
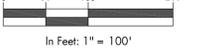
Concept Annexation Map

Job No.	2012-208.003	2
Drawn by:	EB	
Date:	09/30/14	
Approved:	SE	2
File:	Foothills-amx2014	

**Legend**

- PUBLIC LAND DESIGNATED FOR CIVIC USE.  
(EX. PUBLIC WORKS, FIRE DEPARTMENT)
- EXAMPLES OF PUBLIC LAND DESIGNATED FOR SNOW STORAGE.  
(ADDITIONAL SNOW STORAGE IS POSSIBLE)
- A BUSINESS/COMMERCIAL MIXED USE AREA WITH RESIDENTIAL UPSTAIRS.
- HIGHER DENSITY RESIDENTIAL (R2S,4R)
- MEDIUM DENSITY RESIDENTIAL (R1A,R1B)
- LOWER DENSITY RESIDENTIAL (R1D,R1E)
- PARK SPACE
- OPEN SPACE (NATIVE CONDITION, HABITAT CORRIDOR)  
PROTECTION OF WETLANDS AND WETLANDS SETBACKS)
- HARD SURFACE TRAIL/SIDEWALK
- TRAIL
- OPEN DRAINAGE
- WETLAND SETBACK, 25' AND 100' RESPECTIVELY.

Graphic Scale



I:\2012\2012-2018\_Foothills\003\_Foothills\003\_Foothills\003\_Working\2012-2018\_PropGridScheme.dwg Plotter: 11/18/2014 2:26 PM By: Shannon Kominsky

Preliminary  
Not For  
Construction

**SGM**  
 103 W. Tomichi Ave., Suite A  
 Gunnison, CO 81230  
 970.641.5355 www.sgm-inc.com

Slate River Addition  
Cypress Foothills LP

#	Revision	Date	By
1			

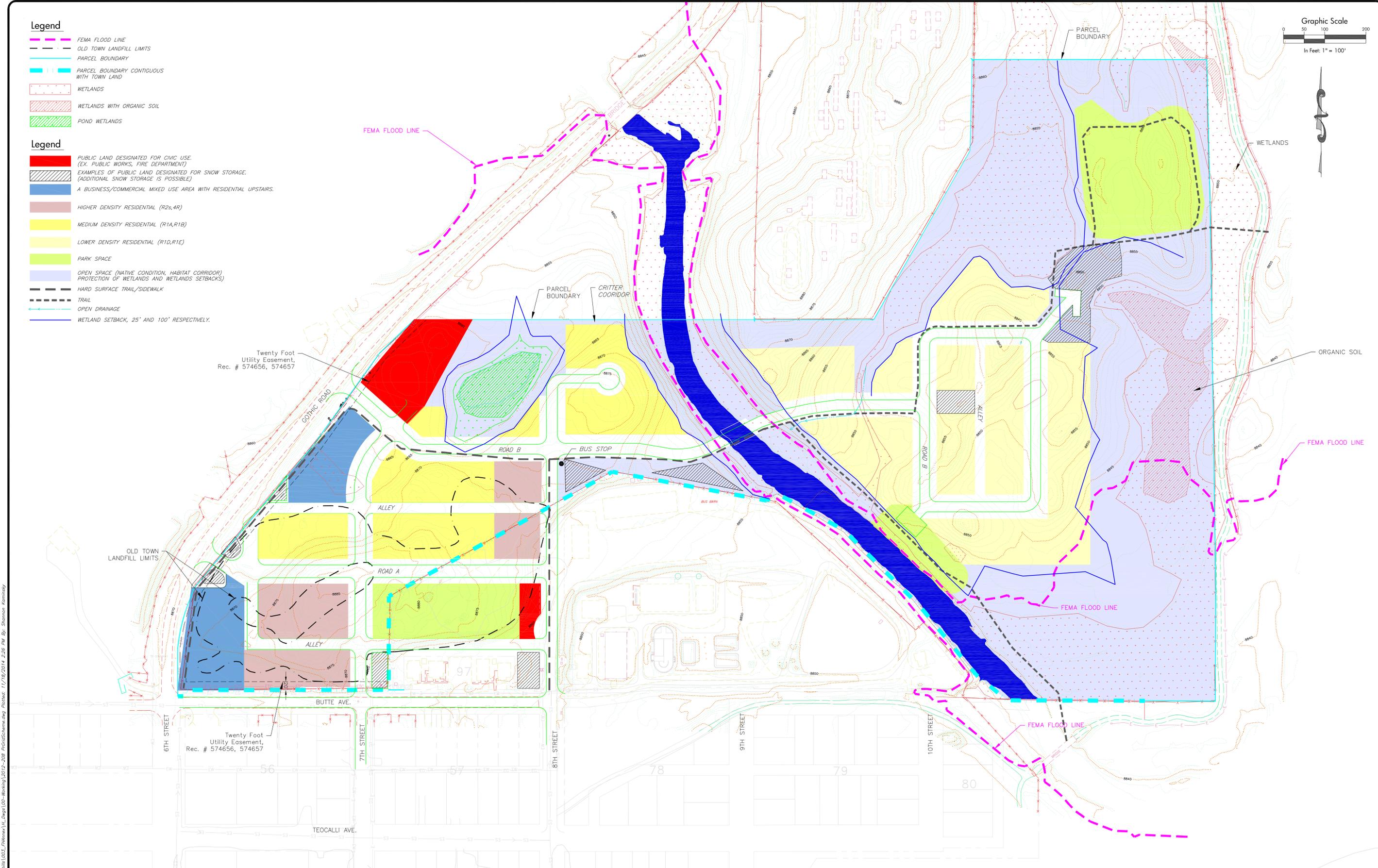
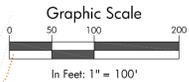
Concept Annexation  
Proposed Grid Scheme

Job No.	2012-208.003
Drawn by:	SK
Date:	11/18/2014
QC:	PE: TJH
File:	2012-208 PrGridScheme

EX 1  
Of 4

- Legend**
- FEMA FLOOD LINE
  - OLD TOWN LANDFILL LIMITS
  - PARCEL BOUNDARY
  - PARCEL BOUNDARY CONTIGUOUS WITH TOWN LAND
  - WETLANDS
  - WETLANDS WITH ORGANIC SOIL
  - POND WETLANDS

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Preliminary  
Not For  
Construction

**SGM**  
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Slate River Addition  
Cypress Foothills LP

#	Revision	Date	By
1			

Concept Annexation  
Proposed Grid Scheme

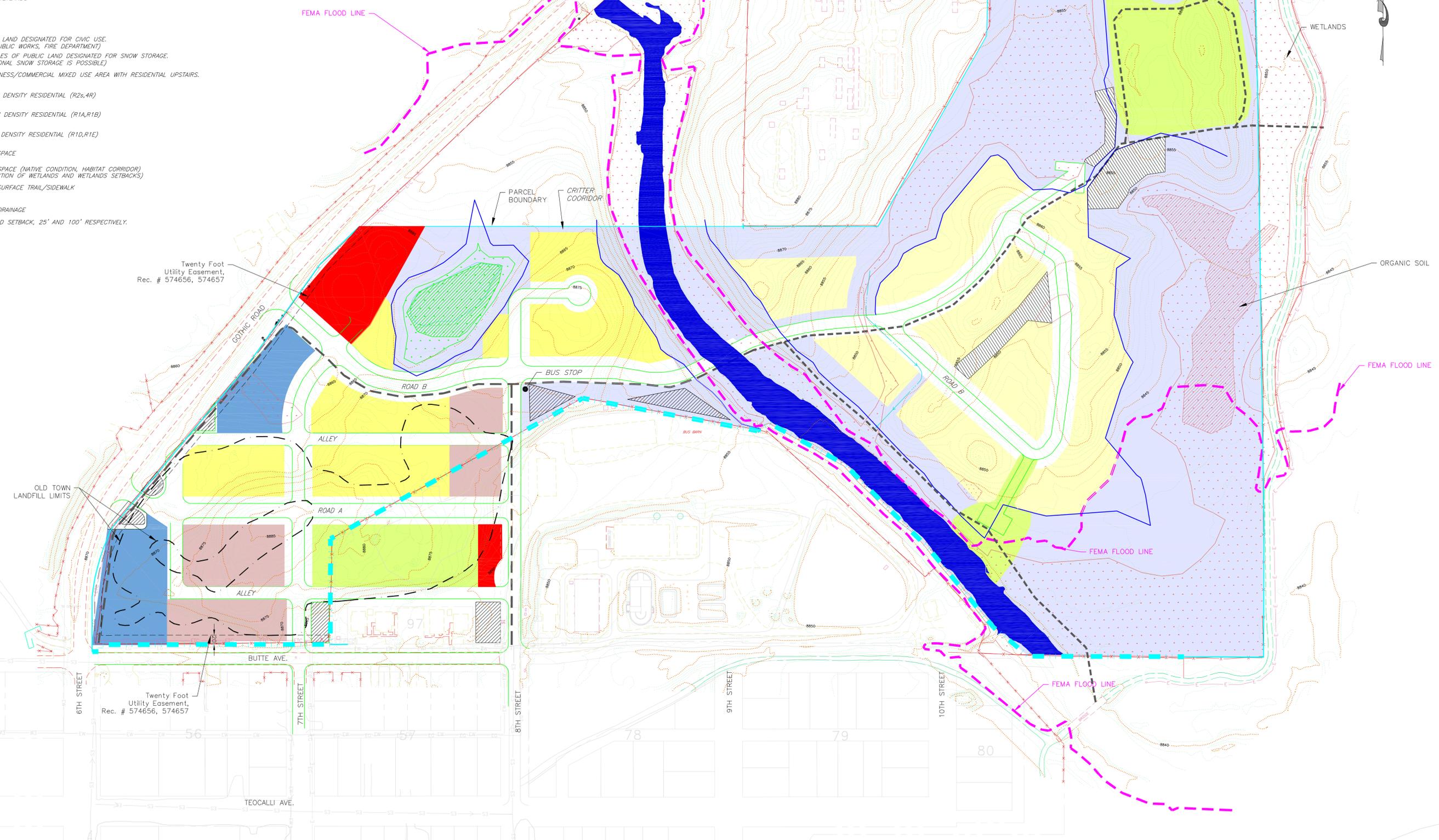
Job No.	2012-208.003
Drawn by:	SK
Date:	11/18/2014
QC:	PE: TJH
File:	2012-208 PrGridScheme

EX 2  
Of 4



- Legend**
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Preliminary  
Not For  
Construction

103 W. Tomichi Ave., Suite A  
Gunnison, CO 81230  
970.641.5355 www.sgm-inc.com

Slate River Addition  
Cypress Foothills LP

#	Revision	Date	By
1			

Concept Annexation  
Proposed Non Grid Scheme

Job No.	2012-208.003
Drawn by:	SK
Date:	11/18/2014
QC:	PE: TJH
File:	2012-208 PftNonGridScheme

EX 4  
Of 4

**Date: April 22, 2014**

**CYPRESS FOOTHILLS, LP, A TEXAS LIMITED PARTNERSHIP  
8343 DOUGLAS AVENUE, SUITE 200  
DALLAS, TX 75225**

**Subject: Attached Title Policy SC87007356  
for 46.16 ACRES VACANT LAND**

**Enclosed please find the Owner's Title Insurance Policy for your purchase of the property listed above.**

**This title policy is the final step in your real estate transaction, and we want to take a moment to remind you of its importance. Please review all information in this document carefully and be sure to safeguard this policy along with your other legal documents.**

**Your owner's policy insures you as long as you own the property and requires no additional premium payments.**

**Please feel free to contact any member of our staff if you have questions or concerns regarding your policy, or you may contact the Final Policy Department directly at 719-634-4821.**

**As a Colorado-owned and operated title company for over 45 years, with offices throughout the state, we take pride in serving our customers one transaction at a time. We sincerely appreciate your business and welcome the opportunity to assist you with any future real estate needs. Not only will Land Title be able to provide you with the title services quickly and professionally, but you may also be entitled to a discount on title premiums if you sell or refinance the property described in the enclosed policy.**

**Thank you for giving us the opportunity to work with you on this transaction. We look forward to serving you again in the future.**

**Sincerely,**

**Land Title Guarantee Company**

# Owner's Policy of Title Insurance

ISSUED BY

## First American Title Insurance Company

ANY NOTICE OF CLAIM AND ANY OTHER NOTICE OR STATEMENT IN WRITING REQUIRED TO BE GIVEN TO THE COMPANY UNDER THIS POLICY MUST BE GIVEN TO THE COMPANY AT THE ADDRESS SHOWN IN SECTION 18 OF THE CONDITIONS.

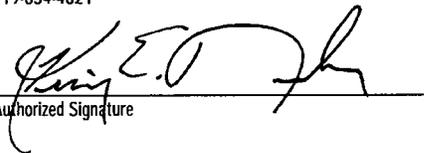
### COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the title; This covered Risk includes but is not limited to insurance against loss from
  - (a) A defect in the Title caused by
    - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
    - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
    - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
    - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
    - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
    - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
    - (vii) a defective judicial or administrative proceeding.
  - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
  - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (a) the occupancy, use or enjoyment of the Land;
  - (b) the character, dimensions, or location of any improvement erected on the Land;
  - (c) the subdivision of land; or
  - (d) environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
  - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
  - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
    - (i) to be timely, or
    - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

Issued through the Office of:  
Land Title Guarantee Company  
1561 OXBOW DR #200  
MONTROSE, CO 81401  
719-634-4821

  
Authorized Signature



FIRST AMERICAN TITLE INSURANCE COMPANY

  
Dennis J. Gilmore  
President

Dennis J. Gilmore  
President

  
Timothy Kemp  
Secretary

Timothy Kemp  
Secretary



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## EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

## CONDITIONS

### 1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Sections 10 and 11 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
  - (i) The term "Insured" also includes
    - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
    - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
    - (C) successors to an Insured by its conversion to another kind of Entity;
    - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
      - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured.
      - (2) if the grantee wholly owns the named Insured.
      - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
      - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
  - (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (e) "Insured Claimant": An Insured claiming loss or damage.
- (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (g) "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, avenue, 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 insured by this policy.
- (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (j) "Title": The estate or interest described in Schedule A.

"Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

### 2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

### 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

### 4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

### 5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

### 6. DUTY OF INSURED CLAIMANT TO COOPERATE

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligation to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

### 7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance.  
To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.  
Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in the subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.
- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.
  - (i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or
  - (ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.  
Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

### 8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of
  - (i) the Amount of Insurance; or
  - (ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,
  - (i) the Amount of Insurance shall be increased by 10%, and
  - (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

## 9. LIMITATION OF LIABILITY

- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

## 10. REDUCTION OF INSURANCE, REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

## 11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

## 12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

## 13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

- (a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.
- (b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

## 14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons, Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

## 15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim or loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.
- (c) Any amendment or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

## 16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

## 17. CHOICE OF LAW; FORUM

- (a) Choice of Law; The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.  
Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.
- (b) Choice of Forum; Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

## 18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at:  
1 First American Way, Santa Ana, CA 92707, Attn: Claims Department

**ANTI-FRAUD STATEMENT: Pursuant to CRS 10-1-128(6)(a), it is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.  
This anti-fraud statement is affixed and made a part of this policy.**

This jacket was created electronically and constitutes on original document

Form AO/FA

**Land Title Guarantee Company  
Representing First American Title Insurance Company**

**Our Order No. SC87007356**

**Schedule A**

**Property Address: 46.16 ACRES VACANT LAND**

**1. Policy Date: March 31, 2014 at 5:00 P.M.**

**2. Name of Insured:**

**CYPRESS FOOTHILLS, LP, A TEXAS LIMITED PARTNERSHIP**

**3. The estate or interest in the Land described or referred to in this Schedule and which is covered by this policy is:**

**A Fee Simple**

**4. Title to the estate or interest covered by this policy at the date hereof is vested in:**

**CYPRESS FOOTHILLS, LP, A TEXAS LIMITED PARTNERSHIP**

**5. The land referred to in this policy is described as follows:**

**SEE ATTACHED "EXHIBIT A" FOR LEGAL DESCRIPTION**

**This Policy valid only if Schedule B is attached.**

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**EXHIBIT "A" LEGAL DESCRIPTION**

A PARCEL OF LAND KNOWN AS TRACT Q OF BOOK 516 PAGE 474, PARCEL 13 OF BOOK 552 PAGE 63, PARCEL 1 OF WARRANTY DEED RECORDED AT RECEPTION NO. 570819, PARCEL 1 OF QUITCLAIM DEED RECORDED AT RECEPTION NO. 570822, PARCEL 1 OF THE CORRECTION WARRANTY DEED RECORDED AT RECEPTION NO. 584439, PARCEL 1 OF THE SPECIAL WARRANTY DEED RECORDED AT RECEPTION NO. 612899, AND THE CORRECTION DEED RECORDED AT RECEPTION NO. 618498 ALL LOCATED IN THE SW 1/4 OF SECTION 35, TOWNSHIP 13 SOUTH, RANGE 86 W OF THE SIXTH PM, GUNNISON COUNTY, COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY BOUNDARY OF TRAMPE PARCEL DESCRIBED IN BOOK 516 PAGE 494 ALSO BEING ON THE EASTERLY RIGHT OF WAY LINE OF COUNTY ROAD 317 (GOTHIC ROAD) AS RECORDED AT RECEPTION NO. 00119 AND BEING ON THE SOUTH LINE OF THE SW1/4 OF SAID SECTION 35 FROM WHICH THE SOUTHWEST CORNER OF SAID SECTION 35 BEARS N89 DEGREES 43 MINUTES 49 SECONDS W A DISTANCE OF 130.05 FEET; THENCE S89 DEGREES 43 MINUTES 49 SECONDS E A DISTANCE OF 17.52 FEET TO A POINT ON THE WESTERLY LINE OF THE DYER SUBDIVISION AS RECORDED AT RECEPTION NO. 497990; THENCE ALONG THE WESTERLY, NORTHERLY AND EASTERLY LINES OF SAID DYER SUBDIVISION THE FOLLOWING ELEVEN(11) COURSES: 1) N00 DEGREES 01 MINUTES 42 SECONDS W A DISTANCE OF 15.19 FEET, 2) N89 DEGREES 58 MINUTES 18 SECONDS E A DISTANCE OF 495.36 FEET, 3) N00 DEGREES 01 MINUTES 42 SECONDS W A DISTANCE OF 226.55 FEET, 4) N61 DEGREES 00 MINUTES 00 SECONDS E A DISTANCE OF 620.66 FEET, 5) S79 DEGREES 30 MINUTES 09 SECONDS E A DISTANCE OF 381.57 FEET, 6) N61 DEGREES 00 MINUTES 00 SECONDS E APPROXIMATELY 31.96 FEET TO THE HIGH WATER LINE OF THE SLATE RIVER; THENCE ALONG THE HIGH WATER LINE OF THE SLATE RIVER APPROXIMATELY 7) S44 DEGREES 00 MINUTES 17 SECONDS E A DISTANCE OF 2.43 FEET, 8) S61 DEGREES 14 MINUTES 28 SECONDS E A DISTANCE OF 180.87 FEET, 9) S45 DEGREES 20 MINUTES 59 SECONDS E A DISTANCE OF 257.67 FEET, 10) S39 DEGREES 16 MINUTES 06 SECONDS E A DISTANCE OF 215.58 FEET, 11) S50 DEGREES 53 MINUTES 25 SECONDS E A DISTANCE OF 97.51 FEET TO THE SOUTHERLY LINE OF THE SW1/4 OF SAID SECTION 35; THENCE ALONG SAID SOUTHERLY LINE S89 DEGREES 43 MINUTES 49 SECONDS E, APPROXIMATELY 506.01 FEET TO THE S1/4 CORNER OF SAID SECTION 35, SAID CORNER BEING A 3 1/4" ALUMINUM CAP; THENCE ALONG AN EXISTING FENCE LINE AS IT EXISTS IN THE FIELD AND AS SHOWN AND DESCRIBED IN A BOUNDARY AGREEMENT RECORDED IN BOOK 769 AT PAGE 881 THE FOLLOWING THREE (3) COURSES: 1) N00 DEGREES 11 MINUTES 53 SECONDS E A DISTANCE OF 271.72 FEET, 2) N00 DEGREES 50 MINUTES 11 SECONDS W A DISTANCE OF 932.90 FEET, 3) N01 DEGREES 19 MINUTES 37 SECONDS W A DISTANCE OF 346.89 FEET TO A POINT ON THE NORTHERLY LINE OF THE TRAMPE PARTITION PARCEL 13 AND THE SOUTHERLY LINE OF SPANN PARCEL 23 AS DESCRIBED IN COURT DECREE AMENDED ORDER OF PARTITION AS RECORDED IN BOOK 552 AT PAGE 63; THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 13 N90 DEGREES 00 MINUTES 00 SECONDS W A DISTANCE OF 570.01 FEET TO A POINT ON THE EASTERLY LINE OF THE TOWN OF CRESTED BUTTE CEMETERY AS DESCRIBED IN EXHIBIT A(5) IN COURT DECREE OF PARTITION AS RECORDED IN BOOK 516 AT PAGE 474; THENCE ALONG THE EASTERLY LINE OF SAID CEMETERY PARCEL S01 DEGREES 20 MINUTES 33 SECONDS W A DISTANCE OF 220.37 FEET TO THE NORTHERLY CORNER OF A PARCEL OF LAND DESCRIBED IN BOOK 518 AT PAGE 403; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL S29 DEGREES 46 MINUTES 00 SECONDS W A DISTANCE OF 470.46 FEET TO A POINT ON THE NORTHERLY LINE OF SAID TRAMPE PARTITION PARCEL 13, SAID POINT ALSO BEING ON THE SOUTHERLY LINE OF SAID CEMETERY PARCEL; THENCE ALONG SAID NORTHERLY LINE OF SAID PARCEL 13 N90 DEGREES 00 MINUTES 00 SECONDS W A DISTANCE OF 1116.19 FEET TO A POINT ON THE

**EXHIBIT "A" LEGAL DESCRIPTION**

EASTERLY RIGHT OF WAY LINE OF COUNTY ROAD 317 (GOTHIC ROAD); THENCE ALONG SAID EASTERLY RIGHT OF WAY LINE AS DESCRIBED IN DEEDS RECORDED AT RECEPTION NO. 474960 AND 474961 THE FOLLOWING FIVE (5) COURSES: 1) S46 DEGREES 12 MINUTES 21 SECONDS W A DISTANCE OF 116.48 FEET, 2) S35 DEGREES 50 MINUTES 27 SECONDS W A DISTANCE OF 185.49 FEET, 3) S35 DEGREES 50 MINUTES 28 SECONDS W A DISTANCE OF 88.19 FEET, 4) S40 DEGREES 05 MINUTES 13 SECONDS W A DISTANCE OF 207.37 FEET, 5) S39 DEGREES 55 MINUTES 42 SECONDS W A DISTANCE OF 238.91 FEET; THENCE CONTINUING ALONG THE EASTERLY LINE OF SAID RIGHT OF WAY AND WESTERLY LINE OF SAID TRAMPE PARTITION PARCEL 13, 155.77 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 441.28 FEET, A CENTRAL ANGLE OF 20 DEGREES 13 MINUTES 30 SECONDS AND A LONG CHORD WHICH BEARS S16 DEGREES 19 MINUTES 42 SECONDS W A DISTANCE OF 154.96 FEET TO A POINT WHICH IS COMMON TO THE SOUTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN BOOK 518 AT PAGE 403; THENCE S00 DEGREES 00 MINUTES 04 SECONDS W CONTINUING ALONG THE EASTERLY RIGHT OF WAY OF SAID COUNTY ROAD 317 AS RECORDED AT RECEPTION NO. 00119 AND IN ACCORDANCE WITH COURT DECREE (JUDGMENT) RECORDED IN BOOK 516 AT PAGE 494, A DISTANCE OF 117.72 FEET TO THE POINT OF BEGINNING.

Form AO/FA

Our Order No. SC87007356

## Schedule B

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

**General Exceptions:**

This policy does not insure against loss or damage by reason of the following:

1. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land of that may asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and 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) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. TAXES AND ASSESSMENTS FOR THE YEAR 2014, NOT YET DUE OR PAYABLE.
7. RIGHT OF THE PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM, SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES HEREBY GRANTED, AND A RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES, AS RESERVED IN UNITED STATES PATENTS RECORDED NOVEMBER 30, 1885 IN BOOK 45 AT PAGE 305 AND APRIL 15, 1886 IN BOOK 45 AT PAGE 314, AS NOTED ON ALTA/ACSM SURVEY (JOB NO. 2012-208.002) PREPARED BY STEPHEN L. EHLERS, PLS NO. 20133 FOR CYPRESS ACQUISITIONS, LLC OR ITS ASSIGNEE, HSUMY INC., LAND TITLE GUARANTEE COMPANY AND FIRST AMERICAN TITLE INSURANCE COMPANY, DATED JANUARY 17, 2014, LAST REVISED JANUARY 17, 2014.
8. ANY RIGHT, TITLE AND INTEREST OF THE UNITED STATES, STATE OF COLORADO OR GENERAL PUBLIC IN THE WATER OF THE SLATE RIVER TRAVERSING A PORTION OF THE SUBJECT PROPERTY, AS NOTED ON ALTA/ACSM SURVEY (JOB NO. 2012-208.002) PREPARED BY STEPHEN L. EHLERS, PLS NO. 20133 FOR CYPRESS ACQUISITIONS, LLC OR ITS ASSIGNEE, HSUMY INC., LAND TITLE GUARANTEE COMPANY AND FIRST AMERICAN TITLE INSURANCE COMPANY, DATED JANUARY 17, 2014, LAST REVISED JANUARY 17, 2014.
9. TERMS, CONDITIONS, RESERVATIONS AND AGREEMENTS REGARDING THE RIGHT OF THE PARTIES TO CONSTRUCT DITCHES REASONABLE NECESSARY TO CONVEY WATER AS

Form AO/FA

Our Order No. SC87007356

## Schedule B

CONTAINED IN THE FINAL PARTITION OF PROPERTY RECORDED JUNE 28, 1978 IN BOOK 516 AT PAGE 474, AS NOTED ON ALTA/ACSM SURVEY (JOB NO. 2012-208.002) PREPARED BY STEPHEN L. EHLERS, PLS NO. 20133 FOR CYPRESS ACQUISITIONS, LLC OR ITS ASSIGNEE, HSUMY INC., LAND TITLE GUARANTEE COMPANY AND FIRST AMERICAN TITLE INSURANCE COMPANY, DATED JANUARY 17, 2014, LAST REVISED JANUARY 17, 2014.

10. THE EFFECT OF INCLUSION OF SUBJECT PROPERTY IN THE CRESTED BUTTE FIRE PROTECTION DISTRICT, AS EVIDENCED BY INSTRUMENTS RECORDED JANUARY 13, 1995, IN BOOK 758 AT PAGE 689 AND RECORDED JANUARY 13, 1995 IN BOOK 758 AT PAGE 694, AS NOTED ON ALTA/ACSM SURVEY (JOB NO. 2012-208.002) PREPARED BY STEPHEN L. EHLERS, PLS NO. 20133 FOR CYPRESS ACQUISITIONS, LLC OR ITS ASSIGNEE, HSUMY INC., LAND TITLE GUARANTEE COMPANY AND FIRST AMERICAN TITLE INSURANCE COMPANY, DATED JANUARY 17, 2014, LAST REVISED JANUARY 17, 2014.
11. RIGHT OF WAY EASEMENT, 20 FEET IN WIDTH, AS GRANTED TO ATMOS ENERGY IN INSTRUMENT RECORDED AUGUST 29, 2005 UNDER RECEPTION NO. 557487, AS SHOWN ON ALTA/ACSM SURVEY (JOB NO. 2012-208.002) PREPARED BY STEPHEN L. EHLERS, PLS NO. 20133 FOR CYPRESS ACQUISITIONS, LLC OR ITS ASSIGNEE, HSUMY INC., LAND TITLE GUARANTEE COMPANY AND FIRST AMERICAN TITLE INSURANCE COMPANY, DATED JANUARY 17, 2014, LAST REVISED JANUARY 17, 2014.
12. TERMS, CONDITIONS, RESTRICTIONS AND AGREEMENTS AS CONTAINED IN ROAD RESTRICTION AGREEMENT RECORDED JULY 12, 2006 UNDER RECEPTION NO. 566803, AS NOTED ON ALTA/ACSM SURVEY (JOB NO. 2012-208.002) PREPARED BY STEPHEN L. EHLERS, PLS NO. 20133 FOR CYPRESS ACQUISITIONS, LLC OR ITS ASSIGNEE, HSUMY INC., LAND TITLE GUARANTEE COMPANY AND FIRST AMERICAN TITLE INSURANCE COMPANY, DATED JANUARY 17, 2014, LAST REVISED JANUARY 17, 2014.
13. RIGHT OF WAY EASEMENT AS GRANTED TO GUNNISON COUNTY ELECTRIC ASSOCIATION, INC. IN INSTRUMENT RECORDED APRIL 26, 2007, UNDER RECEPTION NO. 574656, AS SHOWN ON ALTA/ACSM SURVEY (JOB NO. 2012-208.002) PREPARED BY STEPHEN L. EHLERS, PLS NO. 20133 FOR CYPRESS ACQUISITIONS, LLC OR ITS ASSIGNEE, HSUMY INC., LAND TITLE GUARANTEE COMPANY AND FIRST AMERICAN TITLE INSURANCE COMPANY, DATED JANUARY 17, 2014, LAST REVISED JANUARY 17, 2014.
14. RIGHT OF WAY EASEMENT AS GRANTED TO BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO IN INSTRUMENT RECORDED APRIL 26, 2007, UNDER RECEPTION NO. 574657, AS SHOWN ON ALTA/ACSM SURVEY (JOB NO. 2012-208.002) PREPARED BY STEPHEN L. EHLERS, PLS NO. 20133 FOR CYPRESS ACQUISITIONS, LLC OR ITS ASSIGNEE, HSUMY INC., LAND TITLE GUARANTEE COMPANY AND FIRST AMERICAN TITLE INSURANCE COMPANY, DATED JANUARY 17, 2014, LAST REVISED

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Schedule B

JANUARY 17, 2014.

NOTE: ITEMS 1-3 AND 5(B) OF THE STANDARD EXCEPTIONS ARE HEREBY DELETED.

ITEM NO. 4 OF THE STANDARD EXCEPTIONS IS DELETED AS TO ANY LIENS RESULTING FROM WORK OR MATERIAL CONTRACTED FOR OR FURNISHED AT THE REQUEST OF HSUMY, INC..

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY SHALL HAVE NO LIABILITY FOR ANY LIENS ARISING FROM WORK OR MATERIAL FURNISHED AT THE REQUEST OF CYPRESS FOOTHILLS, LP, A TEXAS LIMITED PARTNERSHIP.

# LAND TITLE GUARANTEE COMPANY

ENDORSEMENT ALTA 25 - 06

Case **SC87007356**  
Policy **TAAH87007356**  
Loan #

*The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified on the survey made by* **STEPHEN L. EHLERS**

*dated* **JANUARY 17, 2014**

*and designated Job No.* **2012-208.002**

*This endorsement is issued as part of the Policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the Policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the Policy and of any prior endorsements.*

Representing First American Title Insurance Company



# Land Title Guarantee Company

Case **SC87007356**  
Policy **TAAH87007356**  
Loan #

**ENDORSEMENT ALTA 18 - 06**  
**TAX PARCEL - 06**

*The Company insures against loss or damage sustained by the Insured by reason of the Land being taxed as part of a larger parcel of land or failing to constitute a separate tax parcel for real estate taxes.*

*This endorsement is issued as part of the Policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the Policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the Policy and of any prior endorsements.*

Representing First American Title Insurance Company



**ENDORSEMENT ALTA 9.1 - 06**  
**Revised 04-02-12**

Case **SC87007356**  
Policy **TAAH87007356**  
Loan #

1. *The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.*
2. *For the purposes of this endorsement only, "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.*
3. *The Company insures against loss or damage sustained by the Insured by reason of:*
  - a. *A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation; or*
  - b. *A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.*
4. *This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:*
  - a. *any Covenant contained in an instrument creating a lease;*
  - b. *any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or*
  - c. *except as provided in Section 3.b. any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.*

*This endorsement is issued as part of the Policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the Policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the Policy and of any prior endorsements.*

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# Land Title Guarantee Company

## ENDORSEMENT ARBITRATION DELETION - 06

Case **SC87007356**  
Policy **TAAH87007356**  
Loan #

*Condition 14 of the Policy, entitled Arbitration, is hereby modified so as to remove the Company's right to demand arbitration.*

*This endorsement is issued as part of the Policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the Policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the Policy and of any prior endorsements.*

Representing First American Title Insurance Company

January 5, 2015

**Work Session 6:00PM**

Upper Gunnison's Presentation on Colorado Water Plan

**Consent Agenda**

Approval of December 15, 2014 Regular Town Council Meeting Minutes

**Public Hearing**

**New Business**

Discussion on Budget Reserve Policy

METSA 911 Emergency Resolution Request

**Future Worksession Items:**

1. Cemetery Committee (Update and planning future work)
2. Camping @ Town Ranch (allow? Not allow? Allow camping in other places?)
3. BLM and OBJ Campground/Seasonal Housing Shortage (this could be combined with others – especially the Affordable Housing item at the bottom of this list)
4. CBMBA and Trail priorities/signage (basically – what is the future plan for new trails/existing trail completion in the valley? What should be our priorities as a Council?)
5. Perimeter Trail – Update, timelines, costs, what does this look like when finished
6. Land Trust and Town Preservation Priorities – basically a joint planning/discussion with the CBLT (maybe in Exec Session if they would like) to confer on the priority parcels identified by the CBLT and the priorities of the Town (for planning future open space acquisitions). Maybe even a discussion about purchasing trail easements.
7. Elk Avenue Rule Set re: Private Clubs – the whole “private clubs on Elk Avenue” concern that was raised when Irwin obtained a private liquor license for the Scarp Ridge Lodge.

8. What do we want to become? – or said differently, follow-up planning process for the Whatever USA
  
9. Affordable Housing/Density/Workforce – Blk 79/80 – Discussion of the question “how do we deal with the shortage of employees from the 2014 summer? What should we expect in 2015 and how will we address another shortage?”