

ORDINANCE NO. 11

SERIES 2007

AN ORDINANCE AUTHORIZING THE AMENDMENT OF THE DEED OF CONSERVATION EASEMENT GIVEN BY THE CRESTED BUTTE LAND TRUST TO THE TOWN AND DATED JANUARY 21, 1998 FOR THE ROBINSON PARCEL TO PERMIT THE INSTALLATION OF POWER, TELEPHONE AND CABLE UTILITIES THROUGH THE EASEMENT AREA

WHEREAS, the Town of Crested Butte, Colorado (the "Town") is a home rule municipality duly and regularly organized and validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado;

WHEREAS, the Town holds a conservation easement (the "CE") given to it by the Crested Butte Land Trust ("CBLT") pursuant to a certain Deed of Conservation Easement for the Robinson Parcel dated January 21, 1998 (the "Deed of CE") covering certain property commonly known as the Robinson Parcel and as more particularly described in said Deed of CE;

WHEREAS, CBLT, as the owner of the property encumbered by the CE, has entered into certain Underground Utility Right-of-Way Easements with the Board of County Commissioners of the County of Gunnison, Colorado (the "BOCC") and Gunnison County Electric Association, Inc. ("GCEA"; together with the BOCC, collectively the "Easement Grantees") conveying to the Easement Grantee's utility right-of-way easements for the Easement Grantees' installation, operation and maintenance of underground power, telephone, cable utilities and associated facilities through the CE area;

WHEREAS, the granting by CBLT of the utility right-of-way easements through the CE area requires that the Deed of CE be amended by CBLT and the Town to permit the Easement Grantees to install, operate and maintain underground power, telephone, cable utilities and associated facilities through the CE area;

WHEREAS, CBLT's grant of the utility and right or way easements to the Easement Grantees is a key component of a larger arrangement between the Town, CBLT, the Easement Grantees, GCEA and other persons to relocate and bury certain overhead transmission power-lines in the upper East River Valley; more specifically, between the Town and the Town of Mt. Crested Butte;

WHEREAS, such arrangement to relocate and bury said overhead transmission power-lines is in the best interest of the health, safety and general welfare of the residents and visitors of the Town; and

WHEREAS, due to the fact that the burial of said overhead transmission power-lines through the CE area requires that CBLT grant the utility and right-of-way easements to the Easement Grantees, and that CBLT's grant of said easements requires that CBLT and the Town amend the Deed of CE, the Town Council finds that the amendments to the Deed of CE set forth below are in the best interest of the health, safety and general welfare of the residents and visitors of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,

Section 1. Acceptance of Amendment to Deed of Conservation Easement. The Town Council hereby accepts the Amendment to Deed of Conservation Easement attached hereto as **Appendix "A"** (the "**Amendment**") and agrees to all the terms and conditions set forth therein.

Section 2. Authorization for Execution. The Town Council hereby authorizes the Mayor, Mayor Pro Tem, Town Clerk and any other appropriate Town officials to execute any and all documents necessary and convenient for purposes of accepting and consummating the transactions contemplated in the Amendment.

Section 3. Severability. If any section, sentence, clause, phrase, word or other provision of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this Ordinance as an entirety, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 4. Savings Clause. Except as hereby amended, the Code shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this Ordinance is hereby repealed as of the enforcement date hereof.

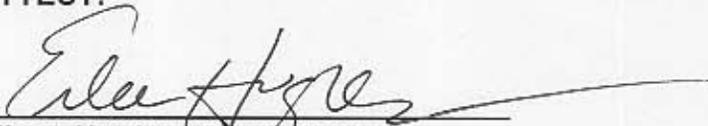
INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 7 DAY OF MAY, 2007.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 21 DAY OF MAY, 2007.

TOWN OF CRESTED BUTTE, COLORADO

By: 
Alan Bernholtz, Mayor

ATTEST:



Eileen Hughes

Eileen Hughes, Town Clerk

(SEAL)



APPENDIX "A"

Amendment to Deed of Conservation Easement

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AMENDMENT TO DEED OF CONSERVATION EASEMENT

THIS AMENDMENT TO DEED OF CONSERVATION EASEMENT is made this ___ day of _____, 2007, by the Crested Butte Land Trust, a Colorado nonprofit corporation, having an address of P.O. Box 2244, Crested Butte, Colorado ("Grantor"), and the Town of Crested Butte, a Colorado home rule municipality, having an address at P.O. Box 39, Crested Butte, Colorado 81224 ("Grantee"), upon the following terms and conditions.

RECITALS:

- A. Grantor and Grantee entered into that certain Deed of Conservation Easement recorded March 13, 1998 at Reception No. 482330 of the official records of Gunnison County, Colorado (the "The Deed of Conservation Easement"). It encumbers the real property described on **EXHIBIT A** attached hereto and incorporated herein by reference (the "Robinson Parcel").
- B. Gunnison County, Crested Butte, Mt. Crested Butte, the Crested Butte Land Trust and private property owners have been working for over two years to bury all overhead power lines and other transmission lines between Crested Butte and Mt. Crested Butte, including overhead lines on the Robinson Parcel, to enhance the scenic qualities of the corridor between the towns and to enhance the conservation values of the Robinson Parcel.
- C. The parties have determined that it would be in the public interest to amend the Deed of Conservation Easement to allow for the removal of the existing utility lines and poles and for a buried electrical power line, a buried fiber optic line and a buried cable television line within the property encumbered by the Deed of Conservation Easement.
- D. The parties have determined that the conservation values of the Robinson Parcel will be enhanced by burying the power and other transmission lines and adding other transmission line surface infrastructure such as surface mounted manholes and pad mounted switch gear boxes.
- E. The State Board of the Great Outdoors Colorado Trust Fund, a funding entity for the purchase of the property encumbered by the Deed of Conservation Easement, has agreed to the below amendment.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, the parties agree as follows:

1. Amendment.

Paragraph 3.B. "Construction of Buildings and Other Structures" of the Deed of Conservation Easement is hereby amended by adding the following after the existing paragraph 3.B.:

"Notwithstanding the above paragraph or any other provisions of this Conservation Easement, electrical power lines, fiber optic lines and cable television lines may be buried, and excavation for such line burials may occur, in the easement legally described in **EXHIBIT B**, and as illustrated in the drawing in **EXHIBIT C**, attached hereto and incorporated herein by reference. Manholes for access to such lines, that are flush with the mounded surface of the ground, may also be located within the easement. Two above ground, pad mounted switch gear electrical boxes, no larger than seven feet high by seven wide by seven feet deep, may also be located in the easement. Any excavation to install such power, fiber optic, or cable lines shall be promptly reclaimed to at least as good a condition as existed prior to such excavation and to preserve the conservation values of the Property. Additionally, the existing overhead utility lines and poles shall be removed from the Property and the disturbed land promptly reclaimed. Prior to any excavation or installation of structures as contemplated by this paragraph, Grantee shall (a) ensure that appropriate permits or approvals (if any) have been obtained from the appropriate authorities and (b) approve the reclamation plans.

2. Paragraph 35.H. "Amendment" of the Deed of Conservation Easement is hereby amended by deleting it in its entirety and replacing it with the following:

"35.H. Amendment. If circumstances arise under which an amendment to or modification of this instrument would be appropriate, Grantor and Grantee are free to jointly amend this instrument; provided that no amendment shall be allowed that will affect the qualifications of this instrument under any applicable laws; and provided, further, that the prior written approval of the Board shall be required. An amendment must be consistent with the conservation purpose of this instrument and may not affect its perpetual duration. Any amendment must be in writing, signed by both parties, and recorded in the records of the Clerk and Recorder of Gunnison County."

3. Continued Effect. Except as amended hereby, the original covenants, terms conditions and restrictions of the Deed of Conservation Easement shall remain in full force and effect.
4. Recording. Grantee shall record this instrument in a timely fashion in the official records of Gunnison County, Colorado.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Amendment to Deed of Conservation Easement to be effective the day and year first above written.

GRANTOR:

CRESTED BUTTE LAND TRUST,
a Colorado nonprofit corporation

By: _____

ATTEST:

(SEAL)

(SEAL)

GRANTEE:

TOWN OF CRESTED BUTTE,
a Colorado home rule
municipal corporation

By:  _____

ATTEST:

STATE OF COLORADO)
) ss
COUNTY OF GUNNISON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2007, by Sandra Allen Leinsdorf as President, and James H. Starr as Secretary of the Crested Butte Land Trust, a Colorado nonprofit corporation.

Witness my hand and official seal

(SEAL)

Notary Public
My Commission expires: _____

STATE OF COLORADO)
) ss
COUNTY OF GUNNISON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2007, by Alan Bernholtz as Mayor, and Eileen Hughes as Town Clerk of the Town of Crested Butte, a Colorado home rule municipal corporation.

Witness my hand and official seal

(SEAL)

Notary Public
My Commission expires: _____

AS PROVIDED IN SECTION 35.H OF THE DEED OF CONSERVATION EASEMENT, THE EXECUTIVE DIRECTOR OF THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND (THE "BOARD") IS EXECUTING THIS AMENDMENT TO DEED OF CONSERVATION EASEMENT (THE "DEED") TO EVIDENCE THE BOARD'S APPROVAL OF THIS DEED AS IT AMENDS THE DEED OF CONSERVATION EASEMENT.

BOARD:

STATE BOARD OF THE GREAT
OUTDOORS COLORADO TRUST FUND

BY: _____
John Swartout, Executive Director

After Recording Please Return To:
James H. Starr
Starr & Associates, P.C.
P.O. Box 1167
Crested Butte, CO 81224

EXHIBIT A

LEGAL DESCRIPTION OF THE ROBINSON PARCEL

All that portion of the following described property lying and situate East of the easterly boundary line of the Crested Butte-Gothic County Public Road:

Township 13 South, Range 86 West, 6th P.M.

Section 26: SW1/4SE1/4, S1/2SW1/4

Section 35: S1/2NE1/4, NW1/4NE1/4, N1/2 NW1/4

EXCEPTING from the SW1/4SE1/4, said Section 26, the following described tract of land as conveyed to Crested Butte Development Corporation, a Colorado corporation to John L. Rozman in the Deed recorded August 28, 1972 in Book 443 at Page 74:

A tract of land 60 feet in width described as follows:

BEGINNING at a point on the North line of the SW1/4 of the SE1/4 of said Section 26 from whence the NE corner of the SW1/4 of the SE1/4 of Section 26 bears N 89°27'35" E a distance of 242.839 feet; thence S 21°15'00" W a distance of 173.61 feet to a point of curvature; thence on a curve to the left a distance of 259.18 feet, said curve having a radius of 200.00 feet and a chord which bears S 15°52'30" E a distance of 241.42 feet; thence S 53°00'00" E a distance of 329.50 feet to a point on the East line of the SW1/4 of the SE1/4 of said Section 26; thence N 02°15'26" W along said East line a distance of 77.49 feet; thence N 53°00'00" W a distance of 280.46 feet to a point of curvature; thence on a curve to the right a distance of 181.426 feet, said curve having a radius of 140.00 feet and a chord which bears N 15°52'30" W a distance of 169.00 feet; thence N 21°15'00" E a distance of 197.59 feet to a point on the north line of the SW1/4 of the SE1/4 of said Section 26; thence S 89°27'35" W a distance of 64.61 feet to the point of beginning.

ALSO EXCEPTING THEREFROM that portion thereof conveyed to Crested Butte Development Corporation, a Colorado corporation by Jerry B. Robinson by Deed recorded February 25, 1974 in Book 465 at Page 427, and by McCoy Enterprises, Inc., a Colorado corporation by Deed recorded February 26, 1974 in Book 465 at Page 429.

ALSO EXCEPTING THEREFROM that portion thereof conveyed to John L. Rozman and Mary A. Roomful by Jerry B. Robinson by Deed recorded February 2, 1978 in Book 512 at Page 171.

AND FURTHER EXCEPTING THERFROM that portion conveyed to The Board of County Commissioners of Gunnison County located in the SW1/4SE1/4 of Section 26 in Deed recorded August 29, 1983 in Book 596 at Page 92.

AND FURTHER EXCEPTING THEREFROM a parcel of land located in the SW1/4SE1/4 of Section 26, Township 13 South, Range 86 West, 6th P.M., as set forth in Partial Release of Deed of Trust recorded June 20, 1994 in Book 755 at Page 686, more particularly described as follows: Beginning at the SE1/16 corner of said Section 26; thence S 89°36'06" W a distance of 735.00

feet along the north boundary of said SW1/4SE1/4; thence S $01^{\circ}46'06''$ W a distance of 370.00 feet; thence S $39^{\circ}43'54''$ E a distance of 434.00 feet; thence S $50^{\circ}28'54''$ E a distance of 127.07 feet to a point on the east boundary of said SW1/4SE1/4; thence N $02^{\circ}11'48''$ W along said east boundary a distance of 1211.64 feet to the POINT OF BEGINNING.

AND FURTHER EXCEPTING 'IHEREFROM a tract of land within the NW1/4NE1/4 of Section 35, Township 13 South, Range 86 West, Sixth Principal Meridian, Gunnison County, Colorado; said tract being more particularly described as follows:

Commencing at the North Quarter corner of said Section 35 (as marked by a USGLO Brass Cap); thence North $89^{\circ}40'46''$ East 230.87 feet along the North line of said Section 35 to a point on the westerly boundary of the land conveyed by deed from Jerry Robinson to Crested Butte Land Trust, said deed recorded in Gunnison County under reception no. 478002, said point being the POINT OF BEGINNING for the herein described tract; thence the following courses around said tracts:

1. South $00^{\circ}12'49''$ West 635.03 feet along said westerly boundary;
2. North $89^{\circ}40'46''$ East 532.02 feet;
3. North $00^{\circ}12'49''$ East 254.06 feet;
4. North $58^{\circ}50'11''$ West 55.92 feet;
5. Along the arc of a curve to the RIGHT a distance of 216.56 feet said curve having a radius of 93.23 feet and a long chord of North $07^{\circ}42'20''$ East 171.06 feet;
6. Along the arc of a curve to the LEFT a distance of 102.10 feet said curve having a radius of 47.22 feet and a long chord of North $12^{\circ}16'22''$ East 83.34 feet;
7. North $49^{\circ}40'24''$ West 155.09 feet to a point on the North line of said Section 35;
8. South $89^{\circ}40'46''$ West 405.17 feet along said North line to the POINT OF BEGINNING of the herein described tract,

County of Gunnison, State of Colorado

EXHIBIT B

Legal Description of Easements

PARCEL A:

That parcel of land also identified by Gunnison County as Parcel No: 3177-351-00-005.

Easement 1:

A perpetual easement under, over and across the real property described in the General Warranty Deed recorded under Reception No: 478002 of the records of the Clerk and Recorder of Gunnison County, Colorado (the "Real Property").

The easement shall be a continuous strip of land uniform in width of twenty (20) feet. The easement shall be parallel to the Real Property's western boundary and twenty three (23) feet east of the eastern boundary of the gas line easements as identified at Reception No: 545442 and Reception No: 545441 of the records of the Clerk and Recorder of Gunnison County, Colorado, beginning at the southern boundary line of the Real Property and extending northerly to the Gothic Road right-of-way; then parallel to, adjacent to and on the east side of the western boundary line of the Real Property and extending to the southern boundary line of that property identified in Book 722 at page 715 of the records of the Clerk and Recorder of Gunnison County, Colorado; and then continuing on the east side of the western boundary line of the Real Property and extending from the northern boundary line of the property identified in Book 722 at page 715 of the records of the Clerk and Recorder of Gunnison County, Colorado to the southern boundary line of the property identified at Reception No: 562543,

County of Gunnison,
State of Colorado.

Easement 2:

A perpetual easement under, over and across the real property described in the General Warranty Deed recorded under Reception No: 478002 of the records of the Clerk and Recorder of Gunnison County, Colorado (the "Real Property").

The easement shall be a continuous strip of land uniform in width of twenty (20) feet. The easement shall be parallel to, adjacent to and on the south side of the northern boundary of Lot 4 as identified on the plat titled "Three Valleys Subdivision Within The S1/2NW1/4 And The N1/2SW1/4 of Section 35, Township 13 South, Range 86 West, 6th P.M. Gunnison County, Colorado", recorded under Reception No: 541522 of the records of the Clerk and Recorder of Gunnison County, Colorado, then extending easterly, beginning at the western boundary line of the Real Property and extending easterly sixty five (65) feet from the eastern boundary of the gas line easement as identified at Reception No: 545442 of the records of the Clerk and Recorder of Gunnison County, Colorado,

County of Gunnison,
State of Colorado.

PARCEL B:

That parcel of land also identified by Gunnison County as Parcel No: 3177-264-00-052.

Easement 1:

A perpetual easement under, over and across the real property described in the General Warranty Deed recorded under Reception No: 478002 of the records of the Clerk and Recorder of Gunnison County, Colorado (the "Real Property").

The easement shall be a continuous strip of land uniform in width of twenty (20) feet. The western boundary of the easement shall be parallel to, adjacent to and on the east side of the western boundary line of the Real Property, beginning at the southwestern corner of the Real Property and extending to the northwestern corner of the Real Property,

County of Gunnison,
State of Colorado.

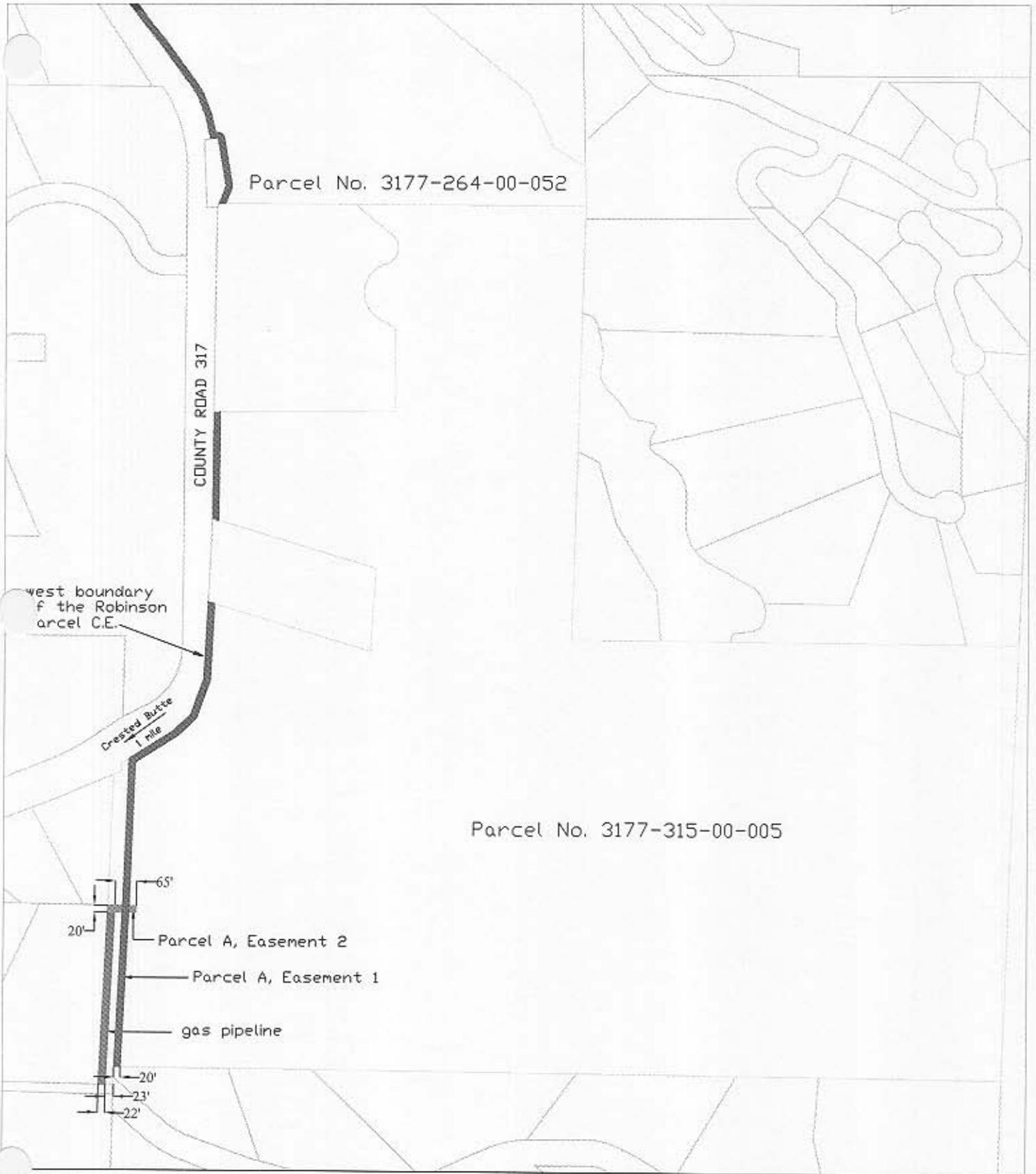
Easement 2:

A perpetual easement under, over and across the real property described in the General Warranty Deed recorded under Reception No: 478002 of the records of the Clerk and Recorder of Gunnison County, Colorado (the "Real Property").

The easement shall be a continuous strip of land uniform in width of twenty (20) feet. The easement shall be in a location to be agreed upon by Grantor and Grantee no later than August 1, 2007, and generally shall begin at the eastern boundary line of the easement described above as Parcel B: Easement 1 and extending northeasterly to the northern boundary line of the Real Property, generally as illustrated in **Exhibit C**, attached hereto and incorporated herein.

County of Gunnison,
State of Colorado.

EXHIBIT C - pg. 1/2



Utility Easement on the Robinson Parcel Conservation Easement

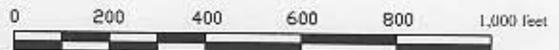
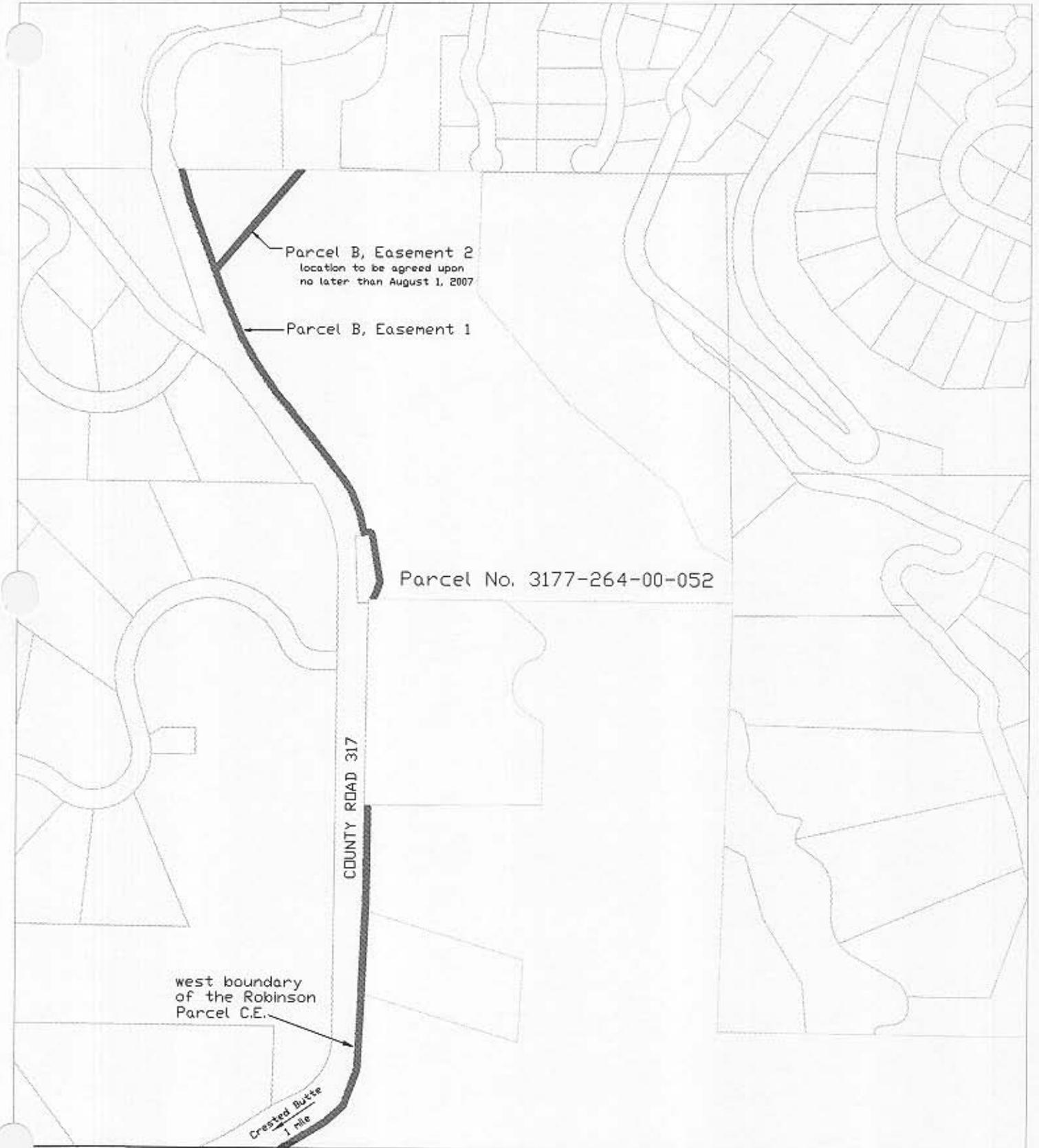


EXHIBIT C - pg. 2/2



Utility Easement on the Robinson Parcel Conservation Easement

