MINUTES

SUMMIT COUNTY
BOARD OF COUNTY COUNCIL
WEDNESDAY, JULY 10, 2019
SHELDON RICHINS BUILDING
PARK CITY, UTAH

PRESENT:

Roger Armstrong, Council Chair
Doug Clyde, Council Vice-Chair
Chris Robinson, Council Member
Kim Carson, Council Member
Glenn Wright, Council Member

Tom Fisher, Manager
Janna Young, Deputy Manager
Dave Thomas, Chief Civil Deputy
Margaret Olson, Attorney
Kent Jones, Clerk

The Council was called to order at 2:00 p.m.

Closed Session – Personnel, Litigation, and Property Acquisition

Council Member Robinson made a motion to convene in closed session to discuss personnel. The motion was seconded by Council Member Wright and passed unanimously, 5 to 0.

The Summit County Council met in closed session from 2:03 p.m. to 3:28 p.m. to discuss personnel. Those in attendance were:

Roger Armstrong, Council Chair
Doug Clyde, Council Vice-Chair
Chris Robinson, Council Member
Kim Carson, Council Member
Glenn Wright, Council Member

Tom Fisher, Manager
Janna Young, Deputy Manager
Dave Thomas, Chief Civil Deputy
Margaret Olson, Attorney
Brian Bellamy, Personnel Director
Matt Leavitt, Finance Officer

Council Member Carson made a motion to leave session to discuss personnel and convene in closed session to discuss litigation. Council Member Robinson seconded with all voting in favor, 5-0.

The Summit County Council met in closed session from 3:28 p.m. to 3:47 p.m. to discuss litigation. Those in attendance were:
Council Member Clyde made a motion to leave session to discuss litigation and convene in closed session to discuss property acquisition. Council Member Robinson seconded and all voted in favor, 5-0.

The Summit County Council met in closed session from 3:47 p.m. to 3:55 p.m. to discuss property acquisition. Those in attendance were:

Roger Armstrong, Council Chair
Doug Clyde, Council Vice-Chair
Chris Robinson, Council Member
Kim Carson, Council Member
Glenn Wright, Council Member

Janna Young, Deputy Manager
Annette Singleton, Executive Assistant
Margaret Olson, Attorney

Council Member Wright made a motion to dismiss from closed session to discuss property acquisition and convene in open session. Council Member Clyde seconded with all voting in favor, 5-0.

Work Session

Pledge of Allegiance

Unveil the redesigned Summit County website and acknowledge winners of the photography contest, Ron Bover and Krachel Murdock

Ron Bover, IT Director, and Krachel Murdock, Public and Community Affairs Coordinator, reviewed the following presentation regarding the redesigned County website and photo contest winners.
Process

- Survey of users and focus group of employees
- Photo, branding, and color selections
- Engaged a Navigation Consultant from CivicPlus
  - Reviewed website analytics
  - Conducted consulting sessions with individual departments
What’s Changed

- Quick Link buttons on home page
  - Payments, Property, & Jobs are new
  - Notify Me -> difference between emergency and county notice

- Emphasis on reducing size of menus and improving search results
  - Reduced mega menus from 4 to 3
  - Made search button more prominent

- Gave home page space to Council Strategic Plan & Goals
Photography Contest: Courtney Geary

Courtney Geary, Captured by Court, has deep Summit County roots. Her father was raised in Echo and her grandma still lives there. Another grandma lives in Coalville. Courtney loves exploring the County on her RZR and capturing great photos along the way.
Photography Contest:
Tom Lebsack

Tom Lebsack of MOT Photography is a renowned world-traveler who has made Summit County his home. He says "Being outdoors is incredibly important," and as such he feels Summit County is an excellent community to be in. Learn more at motphotography.com.
Discussion regarding Summit County Public Lands Initiative; Janna Young

Janna Young, Deputy County Manager, reviewed the following staff report regarding the Public Lands Initiative and asked the Council for direction moving forward.

**STAFF REPORT**

To: Summit County Council  
From: Janna Young, Deputy County Manager  
Date of Meeting: July 10, 2019  
Type of Item: Work Session  
Subject: Consideration of a Federal Legislative or Funding Effort for Public Lands in the High Uinta Mountains

**Requested Council Action:**
Direct Staff to work on one of three options:

   a. Devote time and budget to the lobbying and stakeholder efforts.  
   b. Rebalance the 2019 Work Plan to create staff capacity for this effort.

   Or,

2. Pursue federal funding for forest management projects to protect watershed and mitigate catastrophic fire.  
   a. Build coalition with water districts and NGOs.  
   b. Devote time and budget to state and federal lobbying efforts.  
   c. Rebalance the 2019 Work Plan to create staff capacity for this effort.

   Or,

3. Do not pursue any action in this area in 2019 and postpone federal public lands legislation or watershed protection efforts to future work plans.

**INTRODUCTION**

Recently, several members of the Summit County Council have expressed an interest in pursuing a Summit County public lands bill modeled after the compromise proposal the County submitted for Congressman Bishop’s Public Lands Initiative (PLI) in 2015 (see attached).

Staff was tasked with gauging interest for engaging in this effort among the Utah Congressional delegation and stakeholders, and determining the staff resources needed to carry this initiative in order to decide if the County pursues it this year.
In the process of gathering the information to help Council make this decision, Councilmember Kim Carson and County Staff met with the Forest Supervisors of the Ashley and Uinta-Wasatch-Cache National Forests and learned that a more impactful approach to protecting watershed and mitigating catastrophic fire is to focus on securing funding for shovel-ready forest management projects in these areas. Staff is now recommending that the Council postpone the federal legislative effort and instead, focus resources on securing funding for watershed protection.

In compliance with the review process outlined in the Council-Manager compact signed on March 6, 2019 (see attached), if the Council chooses to pursue either one of these options, they, in collaboration with the County Manager, shall decide how the effort fits into the 2019 Work Plan and what project comes off the list in order to free up Staff and budget capacity to work on it.

BACKGROUND
In December 2014, Summit County was asked to participate in the PLI spearheaded by Congressman Rob Bishop that attempted to address many long-standing federal land disputes across Utah. Our section of the initiative covered United States Forest Service (USFS) lands in the High Uintas.

Summit County formed an Advisory Group to consider specific requests to include in the PLI that would best serve the County. The Group was comprised of County Council members, mayors, ranchers, grazing experts, land owners, state employees, USDA representatives, wildlife experts, fire chiefs, environmentalists, and concerned citizens.

The primary focus of the Advisory Group was to inventory the landscape and identify what lands should be protected and why; evaluate cost/benefit of various land management designations; determine what should happen to County-owned parcels near the area; and make land management recommendations to the Council that would ensure a healthy forest, grazing, and protection of big horn sheep.

This group committed a huge amount of time and effort into developing a compromise and consensus proposal that was submitted to Cong. Bishop, and was ultimately included in the overall PLI. Unfortunately, the proposal was altered significantly when included in the actual bill that Summit County and the Advisory Group felt compelled to oppose the overall legislation and asked to be removed from it.
While the PLI saw some action in the U.S. House of Representatives, it did not end up going anywhere and the effort was dropped.

In 2017, Cong. Bishop’s office met with Summit County, and separately with the other counties involved in the original PLI, to gauge interest in reviving the bill and participating again. However, no significant action occurred on the initiative.

Late February, 2019, Congress passed a sweeping public lands bill, the Natural Resources Management Act, which President Trump signed into law in March. This bill, sponsored by Senator Lisa Murkowski of Alaska, was comprised of four major pieces of legislation (including Emery County’s public lands bill), along with 100 or so minor bills, designating more than one million acres of wilderness for environmental protection and permanently reauthorizing the Land and Water Conservation Fund (LWCF), a federal program that uses oil and gas drilling royalties to pay for land and water conservation measures.

This bill included a large amount of items for Utah, many of the issues Cong. Bishop was attempting to address with his PLI.

CURRENT STATUS
On May 14, 2019, Summit County convened a stakeholder meeting involving individuals from the 2015 PLI effort to gauge interest among the body in pursuing a separate PLI based on the 2015 Summit County proposal. The discussion also involved a review of the proposal to determine if everyone still agreed with it or if revisions, deletions, additions, or updates were needed.

Essentially, the group expressed a general interest in picking up the PLI again and working to get the Summit County proposal through the US Congress. We identified individuals missing from the discussion that should be brought in and agreed the group should tour the lands contained in the proposal again. The group also wanted an update from the Forest Supervisor, Rick Schuler on the areas the proposal would designate as “Watershed Protection Areas,” which would be a new federal designation established by the legislation, to learn about projects that have occurred on those lands over the last four years and anything that was planned for them in the near future in order to determine if the PLI proposal was still relevant.

Additionally, the group also wanted an update from the state wildlife experts on what has occurred on the big horn sheep issues to once again determine if what was suggested in the proposal was still appropriate. If the Council
decides to go forward with a bill this year, Staff will schedule the tour of the lands and the updates requested from the stakeholders.

On May 23, 2019, Staff met with Emery County to discuss their experience in successfully passing a public lands bill this past February and learned that it was a 10-year effort. Additionally, Emery County had a few factors working in their favor, which Summit County would not necessarily have. For one, they received strong support from Senator Hatch who utilized his upcoming retirement to get one more thing passed for Utah. In addition, Cong. Bishop was instrumental in helping Emery County jump through hoops with the Utah State Legislature. Emery County confirmed the extensive level of effort it took to get a bill passed and shared that they had a full-time Director dedicated to this issue who was supported by a stakeholder Council. They also worked closely with a lobbyist to get the bill passed and traveled often to Washington, DC to meet with lawmakers.

In June 2019, Staff reached out to the legislative personnel from both Senator Romney and Congressman Bishop’s offices to see if they would be interested and willing to sponsor a public lands bill for Summit County. Two of Senator Romney’s top priorities are forest health and catastrophic wildfire mitigation. His staff committed to discussing the bill with the Senator and his Legislative Director but have yet to get back to us with a final decision. They cautioned us that since Senator Romney represents the entire state, it is possible as other counties get wind of the effort, they will want to insert their own public lands issues into the bill. County Staff is still waiting on a response from Cong. Bishop’s office.

On June 24, 2019, Councilmember Kim Carson and County Staff discussed the PLI consensus proposal with the two Forest Supervisors for the Ashley and Uinta-Wasatch-Cache National Forests and what might be the most useful to them in terms of watershed protection and catastrophic fire mitigation. The Supervisors were aware of the County’s proposal and indicated the wilderness and watershed protection area designations would be helpful to them. However, the USFS’s current focus is on “shared stewardship,” and as such, a more helpful strategy to them would be to secure county, state and federal funding for watershed and timber projects outside of the federal appropriations process, specifically, ongoing, multi-year funding (ideally, a budget of $10 - $12 million).

We also discussed the need for a coalition of county officials, watershed stakeholders, including the water districts, and NGOs to bring attention and importance to this issue among state and federal lawmakers. We talked about convening a meeting mid-August to better understand the current
limitations of the USFS, state, county and NGOs, and our joint, long-term
vision and strategy for these national forest areas.

CONSIDERATIONS FOR PURSUING A BILL THIS YEAR
Getting a bill passed through the U.S. Congress is an extremely heavy lift
and will require extensive time and effort from both Summit County Council
members and County Staff. Even with support from stakeholders and
national groups, like the Wilderness Society, and a hired federal lobbyist,
which is highly recommended, it will require the County laying the
groundwork with stakeholders and pushing for the bill with lawmakers.

Several considerations to keep in mind while deciding whether or not to
pursue federal legislation this year:
- Only three months ago, Congress approved a sweeping public lands
  bill; most likely there is not a strong appetite for adopting state-
  specific lands initiatives
- Cong. Bishop is expected to retire at the end of this term, meaning his
  willingness to put forward political capital to get a bill passed this year,
  and definitely next year, is unlikely
- On the other hand, advancing a bill this year, while potentially not
  successful, starts the conversation and lays the groundwork for a
  successful attempt in subsequent years
- To be successful, our congressional sponsors need to make the bill
  their number one priority and commit to utilizing political capital with
  congressional leadership to get it done. It will take a large ground-
  level effort to convince them to do this and stay on it
- The Council should seriously consider retaining federal representation
  and a lobbying team
- Even with federal representation, the Council will need to carry a large
  portion of the work – the congressional offices will want to see their
  constituents and will be more committed to it if elected officials are
  leading the effort as opposed to Staff
- Most likely, the Council will need to commit multiple years to this effort

CONSIDERATIONS FOR PURSUING FEDERAL FUNDING THIS YEAR
- Similarly to the federal legislation option, this effort will require a large
  amount of work in building a coalition around watershed protection to
  convince lawmakers and appropriators to devote a large budget to the
  PLI areas in Summit County
- To be successful, the Council should consider retaining a lobbying
  team to identify and secure ongoing funding opportunities at the state
  and federal levels for watershed protection and catastrophic fire
  mitigation projects
• The tangible outcome of a successful funding effort is greater than passing federal legislation in the short-term because several shovel-ready projects for watershed protection that have already gone through the NEPA process could get underway as soon as funding is secured.
• The Forest Supervisors have indicated that the lack of funding is their largest barrier currently in the national forest areas of Summit County.
• Due to the recent catastrophic wildfires in California and other states, attention from the U.S. Congress on the health of our national forests and preventing wildfires presents new opportunities to Summit County that did not exist previously.
  o For example, typically every 5-10 years, the U.S. Congress reauthorizes a major infrastructure bill; in addition to roads and bridges, the Congress is now also talking about our “natural infrastructure,” which includes watershed and forest health.

2019 WORKPLAN CONSIDERATIONS
The 2019 Work Plan (attached) does not include either option discussed in this staff report – i.e. pursing federal public lands legislation or funding for watershed protection and catastrophic fire mitigation. This Work Plan allocates staff resources and budget to specific priorities. In compliance with the Council-Manager Compact signed this past March (also attached), if the Council adds a new priority to the work plan mid-year, the County Manager and full Council shall engage in a public discussion about the item and how to rebalance the Work Plan in order to free up Staff and budget capacity to work on it.

In addition to Council member time, we anticipate either initiative to take resources primarily from County Administration but also from the Community Development Department and IT Department. In order to obligate those resources, the Council needs to discuss what item(s) come off the 2019 Work Plan.

IN SUMMARY
Staff seeks direction from Council on the following questions:
  1. Should Summit County pursue either, federal public lands legislation or funding for forest health and watershed protection projects this year? If yes:
     a. What projects do we remove or shift in order to rebalance the 2019 Work Plan?
     b. Do Council members commit to devoting time to the lobbying and stakeholder/coalition building efforts?
     c. Does Council approve budget to be spent on federal representation?
d. Is the Council committed to working on the effort for multiple years?

Or,

2. Should Summit County focus on the items already included and approved in the Work Plan for 2019 and postpone both federal legislation and funding opportunities for a future work plan?
SUMMIT COUNTY PROPOSAL FOR THE PUBLIC LANDS INITIATIVE

Summit County has developed a proposal for the expansion of the High Uintas Wilderness, along with the creation of Watershed Management Areas and a Special Management Area, with the goal of improving the overall health and particularly the watershed of the north slope of the Uinta Mountains, and improving management of bighorn sheep. This proposal is the outcome of a stakeholder-driven process to thoroughly study the needs of the forest and potential effects of expanding the wilderness area. The map of the proposed area is the result of a consensus process with all parties supporting the final version. The Summit County Council supports this plan, and respectfully submits it for consideration as part of Congressman Bishop’s Public Lands Initiative.

WATERSHED MANAGEMENT AREAS

- Establish the Widdop Mountain Watershed Management Area, comprised of approximately 8,025 acres, and the East Fork Smiths Fork Watershed Management Area, comprised of approximately 3,178 acres, as generally shown on the map.
- The watershed management areas will be managed to protect water quality, while allowing people to continue to enjoy the area. Only such uses as are consistent with the purposes of the watershed management areas will be permitted.
- Fuel reduction and forest health management treatments to reduce the risk of uncharacteristic wildfire effects will be permitted only where necessary to protect or improve water quality or to maintain or restore the characteristics of ecosystem composition and structure.
- Roads:
  - Construction of permanent roads will be prohibited.
  - Construction of temporary roads will be permitted if necessary for fuel reduction projects, but any temporary road must be decommissioned within three years of project completion.
- Federal lands within the watershed management areas will be withdrawn from disposal and mineral entry.
- Existing grazing will continue to be permitted, consistent with applicable laws and regulations.
- There will be no Federal reserved water rights, nor any impacts on existing water rights.

LITTLE WEST FORK BLACKS SPECIAL MANAGEMENT AREA

- Reclassify the Little West Fork Blacks as a Special Management Area, comprised of approximately 8,231 acres, as generally shown on the map.
- The special management area will be managed to maintain and restore watershed and ecosystem function and aquatic habitat (consistent with the purposes and conditions set forth in 2003 Wasatch-Cache National Forest Plan Revision, or any future revision of that plan).
- Only such uses as are consistent with the purposes of the special management area will be permitted.
- Fuel reduction and forest health management treatments will be permitted within the special management area to (1) restore watershed and ecosystem function; (2) reduce hazardous fuels; and (3) protect property in the wildland urban interface.
LITTLE WEST FORK BLACKS SPECIAL MANAGEMENT AREA (CONTINUED)

- Temporary road construction will be permitted where necessary to fulfill the purposes of the special management area, including for fuel reduction and forest health management treatments (including prescribed burns).
- Federal lands within the special management area will be withdrawn from disposal and mineral entry.
- Existing grazing will continue to be permitted, consistent with applicable laws and regulations.
- The special management area designation will not preclude road construction within the special management area to provide reasonable access to private land.
- There will be no Federal reserved water rights, nor any impacts on existing water rights.

WILDERNESS

- An addition to the High Uintas Wilderness will be designated, totaling approximately 23,903 acres, as generally shown on the map.
- Spirit Lake Lodge and approximately 476 acres surrounding the Lodge will be excluded from the boundaries of the wilderness addition.
- Wilderness management will be in accordance with the Wilderness Act.
- The proposed wilderness was determined based on current and historic uses, natural boundaries such as streams, reservoirs, lakes and ridges, and need for additional watershed management in specified areas.
- There will be no Federal reserved water rights, nor any impacts on existing water rights.
- No reservoirs or canals are included in proposed wilderness. Wilderness boundaries are a minimum of 300 feet from any reservoir and 150 feet from any canal, diversion ditches or streams used for irrigation.
- No roads or motor vehicle routes are included in proposed wilderness. Wilderness boundaries are a minimum of 300 feet from the center line of the North Slope Road and Middle Beaver Road, and 30 feet from any other road.

BIGHORN SHEEP MANAGEMENT

- Ranchers, conservation groups, and other involved stakeholders shall work cooperatively with the Utah Division of Wildlife Resources (UDWR) and United States Forest Service to achieve bighorn sheep management in the Uinta Mountains that is consistent with the following principles:
  - Bighorn sheep populations east of the ridge running northeast from Gilbert Peak, as shown on the map, will be maintained.
  - Bighorn sheep will not be reintroduced west of the ridge.
  - If bighorn sheep migrate west of the ridge, UDWR will determine whether the sheep are threatened with disease transmission through interaction with domestic livestock. If no threat exists, the bighorn sheep will be permitted to remain west of the ridge, and if threat of disease transmission does exist, UDWR may relocate the bighorn sheep back to the east side of the ridge and/or issue depredation tag(s).
ADDITIONAL CONSIDERATIONS

- Ranchers, conservation groups, and other involved stakeholders shall work cooperatively with the United States Forest Service to ensure that the agency is adequately clearing trails and authorizing the maintenance of fence lines and other facilities in the proposed and existing wilderness, including the use of chainsaws as appropriate and necessary.
- Ranchers, conservation groups, and other involved stakeholders shall work cooperatively with the Utah Division of Wildlife Resources and United States Forest Service to support the reintroduction of beavers in appropriate locations on the north slope of the Uinta Mountains.
- Ranchers, conservation groups, and other involved stakeholders shall work cooperatively with the United States Forest Service to ensure that the agency is adequately restoring watershed health in areas damaged or threatened by insects or disease.
- Summit County recognizes the importance of livestock grazing to local communities, and the states of Utah and Wyoming, and therefore supports continued livestock grazing in the Uinta Mountains at levels currently authorized by existing grazing permits. Summit County supports continuing the current allotments, grazing levels, and seasons of use. To the maximum extent practicable, Summit County recommends that conflicts between livestock and wildlife be resolved in a manner that maintains existing livestock grazing levels and does not result in cancellation of existing permits.

LAND EXCHANGE

- Summit County requests the conveyance of BLM parcel located in the Snyderville Basin (NW ¼ of the NE ¼ of Section 14, Township 1 South, Range 4 East of the Salt Lake Basin Meridian).
- Park City Municipal Corporation requests the conveyance of BLM parcel located within Park City Limits (Lot 28 of Section 15, Township 2 South, Range 4 East of the Salt Lake Basin Meridian).
- Park City Municipal Corporation requests the conveyance of BLM parcel located within Park City Limits (Lot 14 of Section 15, Township 2 South, Range 4 East of the Salt Lake Basin Meridian).
- Park City Municipal Corporation requests the conveyance of BLM parcel located within Park City Limits (Lot 29 of Section 22, Township 2 South, Range 4 East of the Salt Lake Basin Meridian).
Council-Manager Compact for Achievement
Summit County
2019 Fiscal Year
[Adopted 03/06/2019]

The Summit County Council and County Manager agree that this compact outlines the County’s 2019 Work Plan and how the Council, Manager, and Staff will share the responsibility for advancing the County’s strategic priorities. It also describes the Council’s and Manager’s respective roles and responsibilities in directing staff to work on special projects, and a commitment to considering Staff resources and County budget when revising the Work Plan.

RATIONALE FOR COMPACT
- To have clear, well-defined and achievable accomplishments for Summit County.
- To communicate expectations clearly to the community, down to the specific project level.
- To consider Staff resources and budget when committing to projects, work, and activities.
- To better align the budget to the County’s work.
- To focus on the projects/work that most significantly advance or set the foundation to advance the Council’s strategic priorities within the limits of the County’s resources.
- To more effectively plan for future (multi-year) tasks, projects, budget and resources and follow up on strategic priorities.
- To facilitate the Council thinking and performing at a strategic, big-picture level, setting direction for the County and empowering Staff to figure out and implement the details.

JOINTLY DEVELOPED

The Council, Manager and Staff of Summit County partnered together to develop this Council-Manager compact for achievement. The Council set the strategic priorities, the Manager worked with Staff to add projects to advance each strategic priority, and Staff provided input on the types of support they needed and data on the capacity of their departments to complete special projects. All parties partnered together to define their roles and responsibilities and came to agreement on how decisions will be made regarding the Work Plan and how it is revised. The Council and Manager will review this compact annually in January and make suggested revisions based on an evaluation of the needs of the community and feedback received from Staff and the community.

For this compact to be successful, it is first important to understand the Council’s and Manager’s goals for achievement:
COUNCIL’S GOALS:

- Provide excellent, ethical and efficient services that ensure quality of life for present and future generations.
- Regional collaboration.
- Take action in a timely manner, meeting the needs of citizens.
- Preserve our air, water, land and culture.
- Show leadership, motivating others to collaboratively achieve goals.
- Stay focused on the tasks outlined in the Work Plan and be deliberate about new initiatives that may arise.

MANAGER’S GOALS:

- Recruit and retain talented employees with expertise within their given field.
- Avoid employee burnout.
- Have tangible, meaningful accomplishments that best serve the residents of Summit County.
- Avoid constant changes in direction to Staff and to the organization.
- Provide Staff with focus-specific tasks that can be achieved in a reasonable amount of time.
- Stay focused on the tasks outlined in the Work Plan and be deliberate about new initiatives that may arise.

To meet these goals, the Council and Manager will work together to:

- Support Staff and lean on their expertise to facilitate tangible accomplishments.
- Focus on priorities and communicate frequently.
- Schedule Council work sessions to facilitate planning, discussion, and resources (budget and staff) around projects included in the Work Plan.
- Align budget and Staff resources with expectations involving projects and workload.
- Collaborate with Staff and the community on setting priorities and setting up the Work Plan.

The Council, Manager, and Staff commit to:

COUNCIL’S RESPONSIBILITIES:

1. Think and perform at a strategic level, collaborating and giving direction to County Manager and Staff on projects to advance the Council’s strategic priorities; empowering Staff to figure out the implementation details.
2. Respect County Manager and Staff process without unilateral redirection by individual Council members.
3. Align the strategic priorities with the County budget.
4. Go to the Manager with requests that require Staff resources, rather than directly to Staff.
5. Before going to the Manager with a project request or work order, have a discussion on the issue with the full Council in a public meeting to confirm commitment of resources.
6. Initiate a joint conversation with the full Council and Manager, as priorities change or new ones arise, about any revisions to the Work Plan outside the annual review, so resources and budget can be evaluated and a decision made about which project to remove from the Work Plan to accommodate the new work.
MANGER'S RESPONSIBILITIES:

(1) Direct and monitor Staff on projects, process, and progress.
(2) Help Staff figure out the "weeds" and implementation strategies as appropriate.
(3) Respond to Council requests.
(4) Communicate frequently with Council on progress made on projects and strategic priorities.
(5) Address barriers and challenges with the Council and Staff as barriers and challenges surface, impacting progress made on projects and strategic priorities.
(7) Engage in a joint conversation with the full Council, as priorities change or new ones arise, about any revisions to the Work Plan outside the annual review, so resources and budget can be evaluated and a decision made about which project to remove from the Work Plan to accommodate the new work.
(6) Remove a project from the Work Plan if a decision is made to add a new priority or project outside of the annual review.

STAFF RESPONSIBILITIES:

(1) Communicate to the Manager a change in capacity or resources that would impact progress made on agreed projects in the Work Plan.
(2) Provide quarterly updates to the Council on actions completed on projects.
(3) Communicate to the Manager progress made on projects and strategic priorities and any barriers or challenges encountered impacting that progress.
(4) Inform the Manager of any requests received from the Council or community.
(5) Help the Council and Manager communicate the Work Plan and progress made to the community.
(6) Provide feedback to the Council and Manager at the annual review of this compact and the Work Plan.

COMMUNICATION ABOUT THE WORK PLAN:
Council and Manager are committed to frequent two-way communication with each other, Staff and the community about the County's strategic priorities and Work Plan. Some examples of how the parties will communicate are:

- Meetings
- Emails
- Strategic Plan portal/SharePoint sites
- Public meetings
- County website
- Newsletter to employees and the community
- Employee town halls
- Social Media
- Other
THE 2019 WORK PLAN:

The County’s Strategic Priorities are:

- **Transportation and Congestion:** The County will plan for and make improvements to our transportation and transit systems to reduce traffic congestion and to enhance multimodal mobility for residents, employees, and visitors.

- **Workforce Housing:** The County will facilitate efforts to significantly decrease the deficit in workforce/affordable housing in order to have more community members who work and live in our County.

- **Environmental Stewardship:** Through environmental stewardship and leadership, the County will implement plans and policies to protect and conserve our climate, water, land and air quality for the present and future.

- **Refine County General Plans and Development Codes:** The County will review and refine the General Plans and Development Codes focusing on improving and connecting the region’s physical, natural, and economic environments and communities.

- **Mental Health/Substance Abuse Issues:** The County, in collaboration with the Board of Health and the Summit County Mental Wellness Alliance, will promote community awareness of mental wellness and substance abuse issues, and increased access to effective treatment and prevention services and programs within Summit County.

See attached spreadsheet for the 2019 Work Plan Project List.

County Council Signatures:

- [Signature]
  - Date: 3/13/19
  - [Signature]
  - Date: 3/13/19
  - [Signature]
  - Date: 3/13/19

County Manager Signature:

- [Signature]
  - Date: 3/13/19
<table>
<thead>
<tr>
<th>Category/Theme</th>
<th>Proposal</th>
<th>Description</th>
<th>Lead Department</th>
<th>Other Departments Involved in Project</th>
<th>LOE</th>
<th>Budget</th>
<th>Carry Over in Subsequent Years</th>
<th>Priority by Department</th>
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<tbody>
<tr>
<td>Refine County General Plans &amp; Development Codes</td>
<td>Update Eastern Summit County General Plan and Sydnerville Basin Development Codes: includes watershed protection, zoning districts and uses, Master Planned Development Process; engineering standards, exterior lighting, accessory buildings, sustainability.</td>
<td>CDD</td>
<td>Engineering; Legal; Health; Rural Affairs; Economic Development; Sustainability; Transportation Planning; Public Works</td>
<td>High</td>
<td>Yes</td>
<td>1</td>
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<td>Refine County General Plans &amp; Development Codes</td>
<td>Adoption of Kimball Junction Neighborhood General Plan Amendments</td>
<td>CDD</td>
<td>Economic Development; Transportation Planning; Public Works; Administration</td>
<td>High</td>
<td>Yes</td>
<td>2</td>
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<tr>
<td>Refine County General Plans &amp; Development Codes</td>
<td>MS4 Regulations and engineered plan for new construction.</td>
<td>CDD</td>
<td>High</td>
<td>No</td>
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<td>Workforce Housing</td>
<td>Affordable Housing: Bear Hollow Purchase/Resale Program; facilitate &amp; monitor affordable housing agreements between County and Silvercreek Village, Utah Olympic Park, Canyon's Village Master Plan and (potentially) Kimball Junction Neighborhood Plan developments; Moderate Income Housing Plan(s); Housing Nexus Study; Summit County Needs Assessment; Administration of Mountainlakes Community Housing Trust Contract (monitoring)</td>
<td>Economic Development</td>
<td>CDD; Finance, Legal, County Council, Administration, Sustainability</td>
<td>High</td>
<td>Yes</td>
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<td>Environmental Stewardship</td>
<td>Water/Air quality: Work with state Legislature on bill to make it easier to set up involuntary assessment districts to address failing septic systems; and adopt source protection ordinance.</td>
<td>Health Department</td>
<td>Sustainability</td>
<td>Medium</td>
<td>Yes</td>
<td>2</td>
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<tr>
<td>Mental Health/Substance Abuse</td>
<td>Mental Wellness Projects: Complete RFP process and select contractor for new behavioral health provider in Summit County; work on state legislation re suicide prevention and other mental wellness efforts; and monitor all the Alliance partners.</td>
<td>Health Department</td>
<td>Communities that Care/Sheriff/CAO/Non Profit Community</td>
<td>Medium</td>
<td>Yes</td>
<td>1</td>
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<tr>
<td>Transportation and Congestion</td>
<td>Jeremy Ranch Interchange Project</td>
<td>Public Works</td>
<td>Communications, Administration, Transportation Planning, Special Events/Art Board</td>
<td>High</td>
<td>No</td>
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<td>Transportation and Congestion</td>
<td>Ecker Hill Park and Ride: Complete canopies, electrical, and landscaping</td>
<td>Public Works</td>
<td>IT, Sustainability</td>
<td>Medium</td>
<td>No</td>
<td>2</td>
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<td>Transportation and Congestion</td>
<td>Eastside Infrastructure study</td>
<td>Public Works</td>
<td>Rural Affairs</td>
<td>Medium</td>
<td>Yes</td>
<td>3</td>
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<td>Transportation and Congestion</td>
<td>Bitner/Silver Creek Connection (Alignment, Environmental, Property)</td>
<td>Public Works-Engineering</td>
<td>CDD</td>
<td>High</td>
<td>Yes</td>
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<td>Environmental Stewardship</td>
<td>Solid Waste Master Plan: Commercial cardboard recycling pilot</td>
<td>Public Works-Landfill</td>
<td>RU, Businesses</td>
<td>High</td>
<td>Maybe</td>
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<td>Environmental Stewardship</td>
<td>Solid Waste Master Plan: Commercial composting pilot RFP</td>
<td>Public Works-Landfill</td>
<td></td>
<td>Medium</td>
<td>No</td>
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<td>Environmental Stewardship</td>
<td>Projects to meet 2040 goal of 80% GHG emissions reduction in county operations (including special service districts), countywide by 2050: Seek funding sources and obtain grants for purchase of electric vehicles; analyze CNG refueling at Public Works; seek funding sources, obtain funds, and budget for 2020; If feasible; and research vehicles, participate in fleet review committee, and provide guidance toward alternative fuels and EVs for County fleet. Execute wattSmart Community Energy Plan adopted by Council Resolution on 9/19/2018. Overseer SCPW Program delivery.</td>
<td>Sustainability</td>
<td>Facilities, Purchasing, Public Works, Administration, CDD, Communications, Transportation Planning, Finance, Health, Special Service Districts</td>
<td>High</td>
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<td>Economic Development</td>
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<td>low</td>
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</table>

**2019 Summit County Work Plan**
<p>| GOED/edc/TAH Programs - ongoing business attraction efforts responding to RIFs | Economic Development | Council, IT | High | Yes | 6 |
| Facilities Security | Facilities | IT, Sheriff's Office, Administration | Medium | Yes | 1 |
| Complete 2018 &amp; 2019 facilities budgeted items | Facilities | Public Works | High | No | 2 |
| Prepare and adopt 2020 Budget | Finance | All departments | High | No | 1 |
| CAPR and external audit | Finance | Auditor's Office, Administration, Treasurer | High | No | 2 |
| Bond Capital Planning | Finance | Administration, Public Works, Facilities | Low | Yes | 3 |
| Delivery on Public Health Emergency Response grant requirements | Health Dept | Emergency Management, Sheriff's Office | High | Yes | 1 |
| Medical Cannabis | Health Dept | Attorney's Office, Sheriff's Office, Facilities | Medium | Yes | 2 |
| Strengthening East Summit County Wastewater District | Health Dept | Finance | Medium | Yes | 3 |
| Complete Fairgrounds Phase 1 project | IT | Facilities, Public Works, Special Events, Administration | Medium | No | 1 |
| Website redesign | IT | Administration, Communications, Treasurer, CCD, Recorder, Public Works, Transportation Planning | High | No | 2 |
| Master Planning - audit of technology systems | IT | Administration | High | No | 3 |
| ADP Implementation | Personnel | IT, Auditor's Office | High | No | 1 |
| Special Service District/County Consolidated Services | Personnel | Administration | Low | No | 2 |
| Hoysville Bridge (Complete Construction) | Public Works | Communications | Low | No | 1 |
| 2019 capital and road maintenance projects | Public Works | Communications | Medium | No | 2 |
| Implementing portions of the solid waste master plan (collections study, long-term sustainable funding discussion, improvements to 3 mile land fill (leachate mg system, wastewater management, new cell) | Public Works | Finance; Facilities; Administration; Sustainability | Medium | Yes | 3 |
| Eastside relationships/sponsorships &amp; parity in terms of resource allocations | Rural Affairs | Finance, Administration | High | Yes | 1 |
| Start work on RAP Tax Reauthorization | Rural Affairs | Finance, Administration, Communications | Low | Yes | 2 |
| Golden Spike Events | Rural Affairs | Historical Department, Fair/Special Events, Communications | High | No | 3 |
| Administering County grant programs | Rural Affairs | Finance, IT, Administration | Med-High | Yes | 4 |
| Eastside Agricultural Preservation and Open Space (ESAP) Master Plan (include funding source for open space) | Rural Affairs | USU, Environmental Health, CCD, Economic Development | Medium | No | 5 |
| Countywide event management - permitting and impact mitigation (film, celebrations, sports, arts, tourism) | Special Events | Building, Engineering, Community Development, Transportation, Sheriff's Office, Health Dept, Legal, Clerk's Office, Basin Rec., Fire Districts, other gov. agencies, Administration | High | Yes | 1 |
| Annual County Fair | Special Events | Facilities, Public Works, IT, Treasurers' Office, Purchasing, Auditor's Office, USU Extension, Communications, Administration | High | Yes | 2 |
| Public Art and Community Engagement: Jeremy Ranch Roundabouts Public Art Project | Special Events | Public Works, Procurement, Communications, Administration | Med-High | No | 3 |
| Programming of Ledges Event Center | Special Events | Facilities, Administration, Communications | Medium | Yes | 4 |
| Conduct GHG emissions inventory of County operations and annual sustainability report | Sustainability | Facilities, Transportation Planning, Public Works | Medium | Yes | 1 |</p>
<table>
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<tr>
<th>#</th>
<th>Yes/No</th>
<th>Action</th>
<th>Sustainability</th>
<th>Community Wealth/Equity Plan (CWEP)</th>
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<td>1</td>
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<td>Increase public works, finance</td>
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<td>Yes</td>
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2019 Summit County Work Plan
Chair Armstrong stated water quality is the first priority, with wildfire concerns nearly as important. He is concerned about the funds needed and staff time it would take to pursue any action to a conclusion. He was interested if some of the studies and impacts have already been identified in other parts of the country that could have similar problem solutions for us regarding protection of streamflow and forest health.

Federal funding through grants could be applied for and stakeholders should be formed to create a plan. The budget process will include discussion about what funding may be provided. Janna will return with a plan for moving forward.

**Convene as the Governing Board of Mountain Regional Water Special Service District**

Council Member Clyde made a motion to convene as the Governing Board of the Mountain Regional Water Special Service District. Council Member Robinson seconded the motion with all voting in favor, 5-0.

**Discussion and possible approval of Certification of Liens for the Past Due Fees and Charges for 2019 for Mountain Regional Water Special Service District; Marti Gee**

Scott Morrison, Manager of the Mountain Regional Water Special Service District, presented the following request to attach notices of certification and lien of past due fees and charges delinquent for 2019.

July 3, 2019

Corrie Forsling  
Summit County Treasurer  
Summit County Courthouse  
P.O. Box 128  
Coalville, UT 84017

**Re: Certification of Past Due Fees and Charges for 2019**

Dear Ms. Forsling:

Attached are Notices of Certification and Lien.

Pursuant to and in conformance with the provisions of Section 17B -1-902, U.C.A., 2008 (the “Statute”), Mountain Regional Water Special Service District (the “District”), hereby certifies the past due fees and charges set forth in the attached Notices of Certification and Lien to you, as the Treasurer of Summit County, for collection. As set forth in the Statute, upon this certification, these past due fees and charges become a lien on the delinquent customer’s property to which water service from the District has been provided, on a parity with and collectible at the same time and in the same manner as general property taxes that are a lien on the property.

The District hereby requests that you take appropriate action to collect the amounts due pursuant to your authority as set forth in the Statute.

Respectfully,

Mountain Regional Water Special Service District
<table>
<thead>
<tr>
<th>Number</th>
<th>Name</th>
<th>Parcel ID</th>
<th>Service Address</th>
<th>Legal Description</th>
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<td>1014.2</td>
<td>KUBIK LEE B</td>
<td>SU-A-14</td>
<td>280 ASPEN DR</td>
<td>SUBJ SUMMIT PARK PLAT A SUBD &amp; AMENDED BLOCK: 0 LOT: 14 PLAT: A0009 T 15 R 3E 14</td>
<td>$451.98</td>
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<td>2010.1</td>
<td>WINKLE WILLIAM</td>
<td>SU-B-10</td>
<td>315 WOODLAND DRIVE</td>
<td>LOT 20 SUMMIT PARK SUBDIVISION PLAT B CONT 0.96 AC M2 219 1306</td>
<td>$464.47</td>
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<td>3001.1</td>
<td>FOLEY MARIE</td>
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<td>275 PARKVIEW DR</td>
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<td>FOSTER ANDREW</td>
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<td>169 PARKVIEW DRIVE</td>
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<td>RICHARDS GLEN</td>
<td>SU-J-57</td>
<td>655 PARKVIEW DR</td>
<td>LOT 57 PLAT J SUMMIT PARK SUBDIVISION CONT 0.34 AC</td>
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<td>AMSBURY BRENT</td>
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<td>STANWORTH DANIEL LEE</td>
<td>SU-M-2-81</td>
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<td>SUMMIT PARK PLAT M2 SUBD &amp; AMENDED LOT 81 PLAT M2 SUMMIT PARK SUBDIVISION CONT 0.63 AC</td>
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<td>WANGERIN STEVE</td>
<td>SU-M-2-136</td>
<td>15 MATTERHORN TERRACE</td>
<td>SUMMIT PARK PLAT M2 SUBD &amp; AMENDED LOT 136</td>
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<td>HATCH JERSON</td>
<td>SU-M-2-138</td>
<td>415 MATTERHORN DRIVE</td>
<td>SUBJ SUMMIT PARK PLAT M2 SUBD &amp; AMENDED LOT: 140 PLAT: M2 BUILDING: 0.00 LOT 140 PLAT M2 SUMMIT PARK SUBDIVISION CONT 1.04 AC M184-97</td>
<td>$206.05</td>
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<td>BLUTH OSCAR</td>
<td>SU-M-2-140</td>
<td>385 MATTERHORN DRIVE</td>
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<td>96000.1</td>
<td>VILLAGE DEVELOPMENT GROUP INC</td>
<td>SCVC-5-OS-1</td>
<td>SILVER CREEK LOTS 6 &amp; 7</td>
<td>LOT 5 SUBDIVISION; ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE SUMMIT COUNTY RECORDE...</td>
<td>$6,116.78</td>
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<td>435302.3</td>
<td>OGBURN MARTY</td>
<td>TL-3-A-302</td>
<td>4908 W PONDEROSA DR</td>
<td>LOT 302 TIMBERLINE #9 SUBDIVISION AMENDED CONT 3.25 AC M46-322 M141-620 M198-620 M262-616 M341-616 1629-769 2197-1940</td>
<td>$463.80</td>
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<td>500715.2</td>
<td>GREEN VAL &amp; ELIZABETH</td>
<td>CDW-15</td>
<td>4660 MCKINNEY CT</td>
<td>LOT 15 CLEAR DRAW SUBDIVISION; ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE SUMMIT COUNTY RECORDE...</td>
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<td>MYERS DUNMORE HOMES</td>
<td>WDCS-F-TV</td>
<td>3920 VOELKER CT</td>
<td>WILLOW DRAW COTTAGES AT SUN PEAK PLAT F LOT TV OCABLE TV HEADEND SITE WILLOW DRAW COTTAGES AT SUN PEAK PLAT F ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE SUMMIT COUNTY RECORDE...</td>
<td>$464.47</td>
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<td>612022.2</td>
<td>MOORE RYAN</td>
<td>PNE-22</td>
<td>165 W RIDGE CREST DR</td>
<td>SUBD: PARK RIDGE ESTATES SUBD LOT 225 20.7 T 15 R 4E LOT 22 PARK RIDGE ESTATES SUBDIVISION IN SEC 20 T15S R4E SLBM CONT 49 633 SQ FT</td>
<td>$410.20</td>
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<td>613519.3</td>
<td>KNOWLES THOMAS &amp; JESSIE ANN</td>
<td>SSS-4-519</td>
<td>5651 N ASPENLEAF DR</td>
<td>LOT 519 SILVER SUMMIT SUBDIVISION PHASE 4; ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE SUMMIT COUNTY RECORDERS OFFICE CONT 6787 SQ FT OR 0.16 AC 1399-82 1415-1255 1431-1077 1914-338 1977-94 2139-1301 2190-945</td>
<td>$311.29</td>
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<td>669039.1</td>
<td>BRAD MAY</td>
<td>HSD-39</td>
<td>2373 E WEST VIEW TRAIL</td>
<td>SUBD: HOMESTEADS THE LOT: 38LOT 38 THE HOMESTEADS SUBDIVISION;</td>
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<td>671059.3</td>
<td>ROSE DAVID P TRUSTEE</td>
<td>PALSDS-59</td>
<td>6871 CODY TRAIL</td>
<td>ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE SUMMIT COUNTY RECORDERS OFFICE CONT 60,168 SQ FT OR 1.38 AC TOGETHER WITH AN EQUAL % INT IN THE COMMON AREA 1782 2250-1445 2410-1019 BANK OF UTAH TRUSTEE OF THE ZACHARY SMITH 2017 TRUST DATED FEB 17 2017 2410-1019</td>
<td>$580.44</td>
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<td>GABIOLA JIM A T/C</td>
<td>BB-12</td>
<td>2485 SADDLEHORN DRIVE</td>
<td>LOT 12 BROWN BEAK SUBDIVISION; ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE SUMMIT COUNTY RECORDERS OFFICE CONT 38,627 SQ FT OR 0.89 AC TOGETHER WITH AN EQUAL % INT IN THE COMMON AREA 1755-1383-1384</td>
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<td>NEDAKOVIC SABINA</td>
<td>BB-48</td>
<td>2148 SADDLEHORN DRIVE</td>
<td>ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE SUMMIT COUNTY RECORDERS OFFICE CONT 30,871 SQ FT OR 0.71 AC TOGETHER WITH AN EQUAL % INT IN THE COMMON AREA 1750-1274 1910-1140 1999-1315-1899 2160-63 2209-551</td>
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<td>LABERTEW MICHAEL</td>
<td>BB-51</td>
<td>2295 SADDLEHORN DRIVE</td>
<td>LOT 31 RUSSEL SUBDIVISION; ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE SUMMIT COUNTY RECORDERS OFFICE CONT 42,147 SQ FT OR 0.97 AC TOGETHER WITH AN EQUAL % INT IN THE COMMON AREA 1749. 1526</td>
<td>$ 310.61</td>
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<tr>
<td>6770264</td>
<td>ANDERSON BRENT L</td>
<td>NGC-26</td>
<td>9233 SPOTTED OWL COURT</td>
<td>LOT 26 NORTHGATE CANYON SUBDIVISION; ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE SUMMIT COUNTY RECORDERS OFFICE CONT 49,067 SQ FT OR 1.13 AC 1894-1006-1007-2027-953-2076-980</td>
<td>$ 283.13</td>
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<td>677034.4</td>
<td>NELSON STEVEN</td>
<td>NGC-34</td>
<td>1169 CANYON GATE ROAD</td>
<td>SUBD: NORTHGATE CANYON SUBDIVISION LOT 34 BUILDING 0.00 LOT 34 NORTHGATE CANYON SUBDIVISION; ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE SUMMIT COUNTY RECORDERS OFFICE CONT 44,962 SQ FT OR 1.03 AC 1895-415 2010-1825</td>
<td>$ 464.47</td>
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<td>677038.3</td>
<td>MATTHEWS CORBIN</td>
<td>NGC-38</td>
<td>1007 CANYON GATE ROAD</td>
<td>SUBD: NORTHGATE CANYON SUBDIVISION LOT 38 NORTHGATE CANYON SUBDIVISION; ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE SUMMIT COUNTY RECORDERS OFFICE CONT 50,685 SQ FT OR 1.16 AC 1800-927-2000 1924</td>
<td>$ 315.03</td>
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<td>677070.2</td>
<td>ASHFORD VILLAS LLC</td>
<td>NGC-70</td>
<td>557 CANYON GATE ROAD</td>
<td>LOT 64 SPRING CREEK SUBDIVISION; PLAT A IN SECS 18 &amp; 19 T15S R19E CONT 0.527 AC TOGETHER WITH COMMON AREA INTEREST 685-266 717-737 1034. 1526</td>
<td>$ 464.47</td>
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<td>700064.1</td>
<td>FUNDERS TOM &amp; KRISTIN</td>
<td>SPC-A-64</td>
<td>1318 W PHEASANT WAY</td>
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<td>711099.3</td>
<td>Dyer Mountain</td>
<td>GWLD-99</td>
<td>7225 Lupine Dr</td>
<td>LOT 99 Glenwild Phase I Subdivision; According to the Official Plat on file in the Summit County Recorders Office Cont 1.75 AC Together with a Proportionate Interest in the Common Area (Note: See QCD-1338-910 Grayhawk/Park City LLC to Glenwild Community Association Inc Purports to Convey Common Area) 1626-1708 1707-1230 1779-1838 1954-447 2176-1793 2177-1266 2233-461 2362-1941</td>
<td>521.26</td>
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<td>711121.4</td>
<td>Barmoral Properties</td>
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**TOTALS**  
$33,952.93  
$800.00  
$34,752.93
Council Member Carson made a motion to approve the Certification of Liens for the past due fees and charges for 2019 for Mountain Regional Water Special Service District as recommended. Council Member Clyde seconded and all voted in favor, 5-0.

Dismiss as the Governing Board of Mountain Regional Water Special Service District

Council Member Clyde made a motion to dismiss as the Governing Board of the Mountain Regional Water Special Service District and reconvene as the Board of County Council. Council Member Robinson seconded and all voted in favor, 5-0.

Continued discussion and possible action regarding appeal of County Manager’s determination on The Trails at Jeremy Ranch

The Council continued discussion from the June 19, 2019 meeting regarding possible action of the appeal to the Manager’s determination regarding the gate at the Trails at Jeremy Ranch. The following Supplemental Legal Memorandum was presented as requested by the Council.
Supplemental Legal Memorandum

To: County Council

From: David L. Thomas, Chief Civil Deputy

Date: July 2, 2019

Re: Trails at Jeremy Ranch Gate Appeal

1. Introduction.

The Chair of the Council has requested that the parties address "use" under the 1994 Snyderville Basin Development Code (the "1994 Code") and the approval of a "vehicle control gate" at Moose Hollow. We have been provided a copy of the 1994 Code and a copy of the Moose Hollow planning file by Margaret Olson, Summit County Attorney, to assist us in our arguments.

2. "Use" is defined broadly in the 1994 Code and includes a Vehicle Control Gate.

The 1994 Code, Section 2.2 defines "use" as follows:

The purpose or purposes for which land or a building is occupied, maintained, arranged, designed, or intended. (emphasis added).¹

This definition is plainly broad in scope.²

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¹ See Evansville Outdoor Advertising, Inc. v. Board of Zoning Appeals of Evansville and Vanderburgh County, 757 N.E.2d 151, 159 (Indiana App. 2001) ("The term "use," as employed in the context of zoning, is generally described as a word of art denoting the purpose for which a parcel of land or building is utilized. "Both zoning in general and "uses" in particular focus on how a building or parcel of land is utilized, not upon who receives the benefit from that use," citations omitted); Mayor and City Council of Baltimore v. Bruce, 420 A.2d 1272, 1277 (Maryland App. 1980) ("We agree with the trial judge that the Board erred in selecting the meaning of the word "use" which appeared to it to be most reasonable under the circumstances. In the light of the clear and unequivocal definition of "use" set out in the zoning ordinance, the Board was bound to accept that definition as the intended meaning of that word." citations omitted).

² Record at 000833.
"Vehicle control gate" is not a defined term within the 1994 Code. In fact, a vehicle control gate is never mentioned anywhere in that code, and not because there are no natural locations wherein references to such mechanisms could have been found. A natural location would be in Section 5.5(d)(1)(c), which discusses "Traffic Control." The mechanisms mentioned to control traffic include "Stop signs," "Yield signs," and other "Road signs," but not vehicle control gates.  

Consequently, the best definition of a vehicle control gate is found in Summit County Code, Section 10-11-1:

Any gate, barrier, or other mechanism to limit vehicular access on or across the street.

The vehicle control gate is "designed and intended" to prevent vehicular access across a roadway. It controls traffic. That is the purpose for which the land is "occupied, maintained, arranged, designed or intended." This is also the intent of the vehicle control gate proposed by the original developer. His stated intent was to control vehicular access to the subdivision. The application of the factual predicate (purposeful traffic control) to the definition of "use" under the 1994 Code, results in a finding that such vehicle control gate is indeed a "use."

Appellants argued at the June 19th hearing that a vehicle control gate was a "feature," not a "use," asserting that the two were distinct and separate in nature. However, "the function, rather than the form of a structure," is most relevant in defining a use under the 1994 Code. Consequently, under the broad definition of "use" in the 1994 Code, a feature can also be a use.

3. Record at 000926.

4. See Record at 000442, Legal Memorandum of County Manager, Exhibit C, Summit County Planning Commission meeting minutes, March 21, 1995, pp. 8 (Developer Ceccarelli testified: "A private road had been planned with the desire to have a gated community which would control motorized traffic.").

5. Boehm v. Town of Sullivan’s Island Board of Zoning Appeals, 813 S.E.2d 874, 882 (South Carolina App. 2018) (“A use in the zoning context is the purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained... A determination by a zoning board that a particular purpose or activity does or does not constitute a “use” is a finding of fact.”) (internal citations and quotation marks omitted). But see Rangely Crossroads Coalition v. Land Use Regulation Commission, 955 A.2d 223, 227 (Maine 2008) (“Whether a proposed use falls within a given category contained in a zoning ordinance is a question of law.”); Southco, Inc. v. Concord Tp., 713 A.2d 607, 609 (Penn 1998) (“Whether a proposed use, as factually described in an application or in testimony, falls within a given category specified in a zoning ordinance is a question of law.”).

6. Fritts v. Carolinas Cement Co., GP, 551 S.E.2d 336, 339 (Virginia 2001) (“We agree with the trial court’s analysis that, generally, the function, rather than the form of a structure, is relevant to defining the use under the zoning ordinance.”) (emphasis added). See also Moyer v. Board of Zoning Appeals, 233 A.2d 311, 318 (Maine 1967) (“The name by which a building or use is designated or called has some evidentiary value but is not of controlling importance in determining whether such a building or use is within one of the permitted institutions or types of operations under the zoning ordinance involved. It is rather the nature of the activities or the character of the business or service to be carried on which will settle the construction to be given to the legislative language.”) (citation omitted) (emphasis added).
The evaluation of such looks to its function, not simply to the name of the physical structure. This is seen throughout the 1994 Code, Section 3.6, Schedule of Uses (the “Use Table”). For example, the Use Table lists “Local Utility Facilities”8 and then defines it in Section 2.2 as “minor utility structures, such as lines and poles, which are necessary to support principal development.”9 In this example, a telephone pole is both a feature and a use. The same can be said of “Communication Facilities” within the Use Table, which expressly includes “antennae,” “satellite dish antennae,” and “communications tower.”10 Again, “antennae” is a defined term in Section 2.2, “a device for sending and/or receiving radio, television or similar communication signals.”11 A device is certainly a feature, but it’s also a use in the Use Table. Yet another example is “Base Area Lifts” in the Use Table.12 Section 2.2 defines that as “any passenger tramway which skiers ordinarily use without first using some other passenger tramway.”13 Again, it’s a piece of mechanical equipment, which is both a feature and a use. “Trails” are a use, but they are also most definitely a feature. It’s a constructed artifice. One could assert that it is an “Outdoor Recreation” use in the Use Table,14 but it is listed as a distinct use, separate and apart from “Outdoor Recreation.”15 All of these uses speak to a broad interpretation of the definition, which is tied to function and activity. Consequently, a vehicle control gate is defined by its function, which is to control access to the subdivision—that is its use.16

Further, in Crist v. Bishop, 520 P.2d 196, 198 (Utah 1974), the Utah Supreme Court dealt with the interpretation of a “use” within a Use Table. Said the Court, “where there is doubt or uncertainty as to the meaning of terms, they should be analyzed in the light of the total context of

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7. Record at 000844 – 000849.
8. Record at 000845.
9. Record at 000833.
10. Record at 000845.
11. Record at 000788.
12. Record at 000848.
13. Record at 000790.
14. Record at 000849.
15. Record at 000849.
16. The 1994 Code combines features and uses in other sections as well. Section 3.9 discusses “Special Standards Applicable to Particular Uses,” and then delineates those uses to include: (a) “Signs,” including billboards, (b) “Manufactured Housing,” (c) “Accessory buildings,” inclusive of “Patios and decks,” “Private swimming pools,” “Outdoor storage sheds,” and “Trash dumpsters,” and (d) “Recreational Vehicles.” All references to these types of uses relate to their status as both features (physical structures) as well as uses. See Record at 000856 – 000885.

While the 1994 Code Section 5.10(c) does discuss privacy fences for screening and buffering purposes, such relates either to (a) the screening of incompatible uses (nonresidential from multifamily) or (b) the fencing of property lines between residential lots. (See Record at 000941 – 000943). They do not relate to a vehicle control gate.
the ordinance (or statute or instrument); and also in relation to the purpose, and the background circumstances, in which they are used.” Ultimately, the Court interpreted a “school” use in Crist broadly. Here, the statutory scheme used by the County Commission is clear. “Uses shall be limited to those identified in the Schedule of Uses as a Permitted Use or Conditional Use.” To make sure there was no ambiguity, the 1994 Code went on to clarify “any use category not expressly permitted or conditional shall be deemed prohibited...” This type of land use scheme is not unusual. The 1994 Code then provided a method by which an applicant could obtain a “use determination” for uses that did not appear in the Use Table, as an alternative to the use simply being prohibited. That is embodied within the 1994 Code, Section 3.3(b). Such a land use scheme is also not unusual. These provisions comprise the plain language of the 1994 Code. There is no ambiguity. The statutory scheme in Summit County provides an unambiguous standard and a procedural mechanism designed to assist applicants through the process. The definition of “use” was intentionally broad in its scope. Specified uses within the Use Table are both expansive (“Resource Extraction”) and specific (“Base Area Lifts”). Anything outside the Use Table was prohibited. A vehicle control gate is a use, which was prohibited under the 1994 Code. As a matter of law, such a vehicle control gate erected prior to 2006 cannot be a legal nonconforming use.

17. Record at 000842, 1994 Code, Section 3.5(d).

18. Id.

19. See City of Stamford v. Ten Rugby Street, LLC, 137 A.3d 781, 787 (Conn. Appeal 2016) (“Where the regulations are permissive in character . . . the uses which are permitted in each type of zone are spelled out. Any use that is not permitted is automatically excluded.”) (internal citation and quotation marks omitted); People’s Counsel for Baltimore County v. Surina, 929 A.2d 899, 914 (Maryland App. 2007) (“It must be conceded, as general rule, that, when a zoning ordinance enumerates specifically the permitted uses within a particular zone, the ordinance “establish[es] that the only uses permitted in the [] zone are those designated as uses permitted as of right and uses permitted by special exception. Any use other than those permitted and being carried on as of right or by special exception is prohibited.”) (citations omitted); Board of Supervisors of Fairfax County v. Board of Zoning Appeals of Fairfax County, 626 S.E.2d 374, 382 (Virginia 2006) (“The 1941 Ordinance was a permissive zoning ordinance. Under such an ordinance “only those uses which are specifically named are permitted, and so the burden is on the property owner to show that the use he proposes is one that is included or permitted.”) (citations omitted); Wright v. County of Du Page, 736 N.E.2d 650, 658 (Illinois App. 2000) (“Generally, a zoning ordinance that specifies numerous permissible uses and was intended to be specific with respect to such uses will be construed to not permit uses that are not specified in the ordinance.”) (citations omitted); Lex v. Zoning Hearing Bd. of Hampton Tp., 725 A.2d 236, 238 (Commonwealth Court of Pennsylvania 1999) (“Where a local ordinance enumerates permitted uses, all uses not expressly permitted are excluded by implication.”) (citations omitted).

20. Record at 000840 - 000841.

21. See Shamrock-Shamrock, Inc. v. City of Daytona Beach, 169 So.3d 1253, (Florida App. 2015) (“A “catchall” or “similar use” provision in an ordinance allows certain uses that are not otherwise delineated in the comprehensive zoning ordinance; however, the “catch all” or “similar use” provision should not be used where, like here, the particular use is described elsewhere in the LDC.”) (internal citation omitted).

22. Rogers v. West Valley City, 142 P.3d 554, 556 - 557 (Utah App. 2006) (“To guide our interpretation on this issue, we first turn to the ordinance’s plain language and need not consult legislative history to determine legislative intent unless the ordinance is ambiguous.”).
3. There is no evidence of an approval of a vehicle control gate in the Moose Hollow planning file.

There is no express approval of a vehicle control gate within the Moose Hollow planning file. Further, there is no reference to a vehicle control gate in the CC&Rs for the Moose Hollow development, which CC&Rs were contained within the Moose Hollow planning file. The CC&Rs were contemporaneous with the approval of the subdivision plat and very detailed, but contained no reference to a vehicle control gate. Further, the vehicle control gate is not contained on the subdivision plat in the Moose Hollow planning file, nor was it ever discussed by either the planning commission or the county commission.

In fact, Planning Commissioner Hillyard, who was opposed to the vehicle control gate here and voted against it at the planning commission, had no opposition to the Moose Hollow development a year earlier in 1994. It is a reasonable conclusion that had there been a proposed vehicle control gate, Planning Commissioner Hillyard would have voiced opposition to such and voted in opposition, just as he did with the present case.

The most that can be said of a vehicle control gate was made in a one-off comment not by the developer, but by the Park City Fire Service District (the “Fire District”) in its letter to the County, dated March 3, 1994, wherein the fire chief stated:

The Fire District requests that before any entry control devices are installed which may or may not impede emergency services response to Moose Hollow, that the Fire District be involved in the review and selection of such devices.

Consequently, it appears quite clearly that no vehicle control gate had been approved by the Fire District. In fact, the Fire District placed Moose Hollow on advanced notice that if it proposes in the future a vehicle control gate, said gate must be reviewed and approved by the Fire District. Notwithstanding this comment by the Fire District, there is nothing in the actual County approval which references such a gate or excuses Moose Hollow from obtaining proper permits for such through the County.

23. Record at 000568 - 000770.

24. Record at 000575 - 000610.

25. Record at 000611 - 000616; 000683; 000698; 000758 - 000759.

26. Record at 000684 - 000724; 000727 - 000759.

27. Record at 000713.

4. Conclusion.

The 1994 Code is unambiguous. Uses that are not listed on the Use Table are prohibited. The definition of “use” within the 1994 Code is broad. It encompasses features which are also uses. A vehicle control gate is both a feature and a use. That the County would view it as such is clear by the plain language of the 1994 Code and by subsequent action of the County in 2006 when it officially inserted vehicle control gate into the Use Table as a conditional use. In 1994, a vehicle control gate was not listed in the Use Table. Consequently, in 1995 and 1997, a vehicle control gate was a prohibited use. It could not legally have been approved by the County Commission through a preliminary subdivision plat in 1995 or a final subdivision plat in 1997.

Further, there is no precedent for the County approving a similar vehicle control gate in 1994 at Moose Hollow. The absence of any type of approval for a gate at Moose Hollow is clear from the Moose Hollow planning file.

For these reasons, and those set forth in the Manager’s Legal Memorandum, dated May 1, 2019 (the “Legal Memorandum”), and the Manager’s Determination of Legal Nonconforming Use, dated March 1, 2018 (the “Manager’s Decision”), the Council should deny the Appeal (defined in the Legal Memorandum) and affirm the Manager’s Decision.

Attorney Justin Matkin reviewed his argument and definition of use and use categories as defined by the County. He feels the reasonable conclusion at the time of construction was the gate was not a use but an amenity and should not be denied now after the fact. He submitted the following information.
July 5, 2019

Via Email Transmittal

Summit County Council:
Kim Carlson (kcarson@summitcounty.org)
Roger Armstrong (rarmstrong@summitcounty.org)
Chris Robinson (crobinson@summitcounty.org)
Doug Clyde (dclyde@summitcounty.org)
Glenn Wright (gwright@summitcounty.org)

Summit County Manager:
Tom Fisher (tfisher@summitcounty.org)

with copies to:

Summit County Attorney’s Office:
Jami Brackin (jbrackin@summitcounty.org)
Christa Hortin (chortin@summitcounty.org)
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Pat Putt (pputt@summitcounty.org)
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Robert C. Keller, Esq.
Snow Christensen & Martineau
rck@scmlaw.com

Re: Supplemental Legal Memorandum Regarding Appeal of the County Manager’s Determination of Nonconforming Use Regarding a Vehicle Control Gate at The Trails at Jeremy Ranch

Dear Council:

The Trails at Jeremy Ranch (the “Trails”) respectfully submits this supplemental legal memorandum as requested at the hearing held on June 19, 2019 wherein the Summit County Council (“Council”), sitting as the appeal authority, requested additional evidence and briefing regarding the 1994 Syderville Basin Development Code (the “1994 Code”) and the Moose Hollow planning file and related documents. After argument and discussion at the hearing on
June 19, 2019, the hearing and matter was continued until July 10, 2019 so that additional evidence could be gathered. The additional evidence requested by the Council is relevant to whether a gate restricting access to private roads in the Trails was expressly prohibited by the 1994 Code and whether the County engaged in a similar approval process for the gate installed at the Moose Hollow subdivision. The Trails also raises objections to this process and submits that the County should also consider additional relevant information relating to the County's past interpretation of this issue.

A. THE 1994 CODE DOES NOT DEFINE OR RESTRICT A GATE ON PRIVATE ROADS NOR IS A GATE APPROPRIATELY CLASSIFIED AS EITHER A "USE CATEGORY" OR A "LAND USE" THEREIN.

The County Manager relies upon Section 3.5(d) as the basis for its position that the Trails' gate (the "Gate") is expressly prohibited by the 1994 Code. See County Manager Memorandum, May 1, 2019 at pg. 3, ¶3. Section 3.5(d) provides in relevant part as follows:

"Limitation on Uses. Uses shall be limited to those identified in the Schedule of Uses as a Permitted or Conditional Use. In addition to those uses expressly prohibited within a zoning district, any use category not expressly permitted or conditional shall be deemed prohibited . . . ." (emphasis added). R. at 000842.

The County’s argument has focused on whether the “Gate” is a “use”, but the correct question is whether the Gate is a “use category.” Section 3.5(d) only prohibits “uses expressly prohibited within a zoning district” or a “use category” not expressly permitted. The Manager, as he must, relies upon the “not expressly permitted” language because a gate is not a “use” that is “expressly prohibited.” Section 2.2 (61) of 1994 Code defines a “Land use Category” as “the applicable land use categories as set forth in the Land Use Element of the General Plan, as follows:

- Critical/Sensitive Lands
- Country Side
- East Canyon Creek Conservancy Corridor
- Enhancement Corridors
- Low Density Residential
- Medium Density Residential
- High Density Residential
- Special Residential
- Neighborhood Commercial
- Service Commercials
- Resort Commercial
- Light Industrial"

The “use categories” defined by the 1994 Code are broad categories of land uses, not

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1 In order for the County Manager to overcome the presumption in favor of the Gate, “that presumption can only be rebutted by a regulation which plainly restricts the land use.” See County Legal Memorandum, May 1, 2019 at pg. 2, ¶1.
specific or narrowly defined “uses”. The Manager does not even attempt to argue that a gate located on a private road is a “use category” as referenced in Section 3.5(d) or defined by Section 2.2(61). Consequently, according to the plain language of the 1994 Code, the Gate would only be prohibited if it qualified as an unlisted “use category” (which it is not) or a “use expressly prohibited within a zoning district” (which it is not). Said another way, “uses” are only prohibited if expressly prohibited, but “use categories” are prohibited unless specifically permitted. Because the Gate is not “plainly restricted” by the 1994 Code, the Manager has failed to overcome the presumption in favor of the Trail’s Gate.

Moreover, even if the Manager was correct that Section 3.5(d) of the 1994 Code expressly prohibits “uses” that are not “expressly permitted” and not just “use categories” (which it does not), the Gate is not a use similar to those uses identified in Section 3.6 - Schedule of Uses and Bulk Regulations by Zoning District. See R. 000842-849. The Schedule of Uses contains uses consistent with implementing the land use policies of the General Plan and Land Use Element - such as in a Low Density Residential Zoning District, denying hotels, mixed use retail, ski runs, and base area lifts, for instance. These uses regulate activities, operations, or purposes that are appropriate in a particular parcel or tract of land and ensure that a low density residential district is not used for commercial uses and maintains the characteristics of a low density zone. Installing the Gate on the Trails’ private road does not change the “use category” or “use” as the prohibited uses would. Moreover, nowhere does Section 3.6 prohibit installation of a gate on a private road within a residential zone. Therefore, the 1994 Code did not require a use determination process in accordance with Section 3.3(b) because only those uses expressly prohibited within a zoning district require such a determination.

Similarly, comparing the “Low Density Residential Permitted and Conditional Uses” chart in the 1994 Code (the Appendix (R. 001020)) reinforces the conclusion that a gate is not the type of “use” that was considered to be a “use” for which the “purpose of land” was “occupied, maintained, arranged, designed or intended.” See R. 000833.

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2 The 1994 Code defines “Use” as “[t]he purpose or purposes for which land or a building is occupied, maintained, arranged, designed, or intended.” R. 00833. The “use” for which the Trails subdivision is occupied is for low density residential use. A gate does not change that use. While a “gate” is not defined in the 1994 Code, a “fence” is defined as “[a] man-made barrier of any material or combination of materials erected to enclose or screen areas of land.” R. 000800. But fences are not identified as a permitted use within a low-density residential zone. If the Manager’s argument was consistent, he must conclude that all fences in low density residential zones are prohibited because they are not expressly permitted.

3 While the 1994 Code regulates the types of barriers and traffic control devices that can be installed on public roads, there is no regulation on erecting a gate on a private road. See R. 000926.

Parr Brown Gee & Loveless, A Professional Corporation
www.parrbrown.com
LOW DENSITY RESIDENTIAL
PERMITTED AND CONDITIONAL USES

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R. 001020.

The only reasonable interpretation of the 1994 Code that harmonizes all of its provisions and explains the silence from the County staff during the Trails’ approval process is that the Gate is a feature or an amenity to the Trails’ subdivision – not a separate “use” distinct from the low density residential use for which it was designated.\(^4\)

During the Trails and Moose Hollow review and approval process, there is nothing in the record to suggest that County staff ever raised the issue of an entry gate being a land use that would have triggered a use determination pursuant to Section 3.3(b). If it was so clear that entry gates were prohibited by the 1994 Code as the Manager now asserts, surely one of the County staff or attorneys who reviewed the application and participated in the process would have raised it.

This interpretation has also been adopted by the County Attorneys’ office as recently as 2013. In 2013, the Red Hawk development made a vested rights argument under a consent agreement as to why it should be allowed a gate. The question of whether a gate qualified as a “use” was opined upon by Ms. Jami Brackin. The exchange is recorded as follows in April 21, 2013 BCC minutes:

Deputy County Attorney Jami Brackin explained that the Snyder Grove Development Code does define “use” as the purpose or purposes for which land or a building is occupied, maintained, arranged, designed, or intended. She disagreed with Mr. Tesch’s representation that a gate is a use, as it does not meet the definition. She believed a gate is an amenity, which is not necessarily vested under the provisions in the consent agreement. She confirmed that the uses are vested under the conditions of the consent agreement, and that is why the agreement is written as it is. She noted that the consent agreement says that nothing in the agreement shall limit the future exercise of police powers and change of the laws. It specifically states that the County can change the laws as they may apply to the agreement and especially after the expiration of the agreement, that would allow the County to use its police powers to make the rules over gates and say whether they are allowed or not, which is not in conflict with vesting. She noted that gates were not allowed, except by specific provision, until 2006. (emphasis added).

While these minutes were provided in an email to the Council on June 20, 2019, Roger Armstrong requested that all of the communications by both counsel that day be stricken. The Council should consider these minutes as they are clearly relevant to the County’s prior interpretation of the same “use” definition as it applies to a gate and it is within the Council’s authority to request and consider additional documentation that is relevant to the question at hand. The County Attorney’s office cannot be the final arbiter of what evidence the Council reviews and considers especially when it involves contradictory positions of this very issue.

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Finally, there is nothing in the 1994 Code requiring the BCC, as part of the preliminary subdivision plat review or final approval process, to address or comment on concerns raised by County staff. Further, there is no requirement that discussions must be documented in detail. In the June 26, 1995 Preliminary Subdivision Plat presentation to the BCC there were five issues the staff recommended BCC discuss. There is no documentation that any of these five issues were discussed. According to the Manager’s position, unless there is affirmative evidence in the record that the BCC actually discussed and rendered a decision on an issue raised by the staff, that issue must have been rejected. Instead, it is clear from the minutes that the BCC approved the Preliminary Subdivision Plat on June 26, 1995 on condition that the project comply with all of the conditions of approval as forwarded by the Planning Commission (March 21, 1995) wherein the Planning Commission specifically discussed and voted to remove the gate restriction. R. 000055-56.

B. THE MOOSE HOLLOW SUBDIVISION APPROVAL PROCESS PROVES THAT THE COUNTY DID NOT CONSIDER A GATE TO BE A LAND USE OR NECESSITATING A LAND USE DETERMINATION.

The Moose Hollow file requested by the Council has no discussion in either the Planning Commission or the BCC with respect to a private entry gate. The word “gate” does not even appear in the file or in the drawings produced for Moose Hollow. The absence of any substantive discussion in the planning file for the Moose Hollow subdivision proves that a private entry gate was not a prohibited land use at the time, otherwise the staff would have surely noted the use determination process and the need to document the approval process for an entry gate. Instead, nowhere in the Moose Hollow file is there any discussion about whether a private entry gate is an appropriate land use or any type of “use determination” the Manager asserts would have been necessary. However, we know that an entry gate was approved and installed by Moose Hollow, because the Fire District issued a request to be consulted on the entry control device. R. 000646 (Fire District Letter to County, March 3, 1994). The Moose Hollow gate was also referenced in the discussion at the Planning Commission for the Trails’ application on March 21, 1995. R. 00034. (“It was noted that Moose Hollow was also approved to be a gate community...”) The minutes of the Planning Commission discussion regarding the Trails’ Gate also questioned why a gate would be appropriate in Moose Hollow and not the Trails. R. 000036. The lack of a specific, documented approval process for the Moose Hollow gate proves beyond any reasonable doubt that the Trails’ approval was consistent with the process in place at the time, the staff’s understanding and interpretation of the 1994 Code, and level of input that would have been expected by the Fire District. R. 00036 (March 21, 1995 Planning Commission Minutes) (“Staff explained that they were not aware of a clear reason why the Fire District supported private gates in Moose Hollow but not in this development. The applicant felt he had alleviated many of the Fire District’s concerns”)

Finally, no building permits were included in the Moose Hollow file for the construction of its entry gate. Consequently, to avoid any doubt, the Trails filed a GRAMA request with the County on Thursday, June 20, 2019 (15 days ago) requesting any building permits issued to Moose Hollow for the construction of its gate. As of the date of this filing, the County has not responded to the Trails’ GRAMA request. Either no building permit was ever approved by the County because it was not required at the time, or the permit has been lost. The absence of
a building permit for the Moose Hollow gate does prove, however, that lack of a structural building permit for the Trails' Gate should not guide this Council's decision. The inability of the County to locate a structural building permit is not proof that the gate was illegally installed especially given the existence and issuance of at least one building permit for the Trails' Gate. Rather, the lack of any building permit for the Moose Hollow gate is evidence that it was either not required at the time because a gate was not considered a "structure" or a building permit was applied for and issued but it cannot be found.

C. THE TRAILS IS ENTITLED TO HAVE A FAIR HEARING WITH ITS DUE PROCESS RIGHTS PROTECTED.

This is a quasi-judicial proceeding where the Council has designated itself as an appeal authority. Procedural due process requires that the Trails' be given a fair hearing. See Utah Code Ann. 17-27a-706(2) ("Each appeal authority shall respect the due process rights of each of the participants."); Utah Const. art. 1, §7. ("No person shall be deprived of life, liberty or property without due process of law."); Dairy Product Services v. City of Wellsville, 13 P.3d 581, 593 (2000) (owner entitled to due process protections, including a fair hearing by an impartial decision maker); V-1 Oil Co., v. Dept of Env. Quality, 939 P.2d 1192, 1197-98 ("procedural due process applies to adjudicative government decisions").

Mr. Thomas has at times during the proceeding provided not only legal argument on behalf of the Manager, but also purported to provide factual testimony. For instance, Mr. Thomas stated that he began working at the County in 1996 while the Trails' application was still pending and explained to the Council how the County interpreted and handled matters during relevant periods. Mr. Thomas also explained to the Council that he was one of the persons who signed the Trails' subdivision plat and at one point he instructed the staff to not take enforcement action because of what he concluded was a statute of limitations issue. R. 000108 (November 13, 2012 Minutes). He was also one of the attendees at the final BCC meeting on April 21, 1997 where the minutes reflect that the BCC reviewed construction drawings and stated that all documents have been reviewed and approved by the County Engineer and all requirements of Synderville Basin Dev. Code have been met. R. 000058-60. Mr. Thomas, however, cannot answer questions about what was said at that hearing or what was discussed at the County level about this application or the Gate, because he cannot act as both a fact witness and legal counsel in this case. See Rules of Professional Conduct, 3.7 ("A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness . . . unless the testimony relates to an uncontested matter . . .")

In addition to being a material and necessary fact witness on contested matters, Mr. Thomas also has an established attorney client relationship with the Council. Consequently, the Council looks to Mr. Thomas for legal advice and representation in other matters. See, e.g., Citizens for Alignment vs. Summit County Council, Case No. 110500840 (Mr. Thomas representing the Council). The Trails is entitled to have the appeal authority who does not present a significant risk of impermissible bias. Here the risk is substantial because the Council is hearing legal argument from its own attorney. See V-1 Oil, at 1197 ("Scholars and judges consistently characterize provision of a neutral decisionmaker as one of the three or four core requirements of a system of fair adjudicatory decision making.")
The problem is highlighted by the email exchange on June 20, 2019 when an objection was raised to Mr. Thomas providing the Council with factual testimony. Mr. Thomas responded by accusing counsel of impugning his integrity. To be clear, there was absolutely no intention to attack Mr. Thomas' integrity. Mr. Thomas is a fine lawyer and represents the County well. Nevertheless, the Trails concluded that it needed to raise an objection out of fairness and for a potential appeal to Third District Court. Regardless, some members of the Council likely do not appreciate what Mr. Thomas described as an attack on his integrity because he has a long-standing attorney client relationship with the Council. Normally this type of objection would have no impact on the decision maker because he or she does not have an existing attorney client relationship with the counsel appearing before them. In this case, however, the impartiality of the decision maker is reasonably called into question because of an existing attorney client relationship and the likelihood that some members of the Council (even if unintentionally or subconsciously) may be more inclined to accept arguments advanced by their own attorney.

The Trails submits that given the continued involvement of Mr. Thomas in these proceedings its due process rights have been violated because of the likelihood of prejudice and impermissible bias. The Council should recuse itself and designate a separate appeal authority to decide this matter.

CONCLUSION

Unless the Council determines that it will recuse itself as the appeal authority, the Trails respectfully requests that the Council find that the Gate is a legal nonconforming use, or alternatively that the County is estopped by virtue of the equitable doctrines of estoppel and/or laches.

/s/ Justin P. Matkin
Justin P. Matkin
Parr Brown Gee & Loveless
Counsel for The Trails at Jeremy Ranch Home
Owners Association

Chair Armstrong and Council Member Clyde disagreed that the gate was formally approved by the Commission at the time.

Council Member Carson referred to a March 4, 1994 letter that conflicts stating a Fire District approval spoke of an unobstructed road access.

Dave Thomas read the following in response to Mr. Matkins interpretation of Rule 3.7 and due process.
Disqualification

- Under Mr. Matkin’s interpretation of Rule 3.7 and due process, the County Manager is apparently not entitled to legal representation from the County Attorney’s Office. All of the County Attorneys within the office have represented the County Council at some point. Therefore, all have the same alleged disqualification. Of course the problem with this line of reasoning is that it is inconsistent with the Utah Supreme Court in Salt Lake County Commission v. Short, 985 P.2d 899 (Utah 1999), where the Court has ruled that the County Attorney (and by extension all her deputies) are the legal advisors to the “County as an entity,” and have no attorney client relationship with the county commission, county manager, county council or any members thereof.

- Further, Mr. Matkin would restrict my arguments such that I would be prevented from commenting upon the record because I was present at the proceedings wherein they occurred. Such is ridiculous. No such rule applies to attorneys. On appeals before the District Court or Court of Appeals, County Attorneys comment on the record in which they were present on a fairly regular basis.

- Further, Rule 3.7 applies to trial proceedings, not to administrative adjudicatory proceedings. In addition, the limitation only applies where the attorney is a “necessary witness.” A “necessary witness” is one where the facts can only be obtained from the attorney, not some other party. Rupp v. Transcon. Ins. Co., 2008 U.S. Dist. LEXIS 50791 (D. Utah July 2, 2008). Common practice in administrative proceedings before the County Council is for the attorneys to be given latitude in making factual proffers to the Council. The opposing attorney is expected to make contemporaneous objections if he does not agree with the proffered facts. Then the attorney who made the proffer is required to provide evidence of the fact in the form of documents or by witnesses. Mr. Matkin made numerous such factual proffers during the last hearing in June and has done so again in his supplemental brief, asserting (1) a fire in the planning department burned up the building permits pertaining to the vehicle control gate, (2) that his client made various GRAMA requests and received various responses thereto from the County or the Fire District, (3) that the County Commission read the 1995 planning commission meeting minutes and/or that Commissioner Schifferli discussed such with his fellow commissioners, (4) that a building permit was not required for the Moose Hollow gate; and (5) that there is precedent from the Red Hawk Consent Agreement hearing that a gate is not a use. I made my objections known at the time and proffered facts to rebut Mr. Matkin’s proffers; Mr. Matkin did not timely object to my factual proffers on the County Commission’s general practice in 1995-1997 or to the fire. Thus, he waived any objection. Had he objected, I would have had Kent Jones, the County Clerk, testify about the County Commission practices and the fire; thus further demonstrating that I was not a “necessary witness.” As noted, the only reason this became an issue in the first place is because of Mr. Matkin, for the first time during the hearing and without prior notice, made a series of fantastical factual proffers about the fire and the planning commission meeting minutes. My proffer was in rebuttal to his.

- Neither myself, nor Mr. Matkin are witnesses, nor are we “necessary witnesses.” To the extent that the Council is no longer allowing for proffers of fact in its administrative hearings, I would request that the Council disregard all such factual proffers made by both Mr. Matkin and myself. This should fully resolve any perceived issue with Rule 3.7.
Mr. Matkin has further dressed in the clothing of “due process” his argument to allow for new evidence in violation of the procedural rules governing this proceeding. Each party had the opportunity to submit evidence to the Council. In fact, Mr. Matkin had two opportunities to do so (he went first and had rebuttal, both in submissions and argument). I had but one. After the close of evidence, Mr. Matkin has now attempted to augment the record twice. I have timely objected to such attempts. Due process is not invaded by prohibiting the inclusion of additional evidence after-the-fact. It is ludicrous to suggest otherwise. There are numerous additional evidentiary facts that I would like to have the Council consider, including the testimony of the Fire District, but the evidentiary portion of the hearing was closed by the Council. Hence, I did not submit additional evidence. I would also have evidence rebutting portions of Mr. Matkin’s factual proffers about the GRAMA requests of his client. Again, I did not submit additional evidence. The Council closed the evidentiary record. We must play by the same rules. That is what due process requires. That is not what Mr. Matkin is proposing. His is a one sided view of due process where he is able to spin the evidence, propose new facts through self-serving proffers, getting a third or fourth bite at the proverbial apple, while prohibiting equal access to the evidentiary process for the County Manager, and requiring that the County Manager be left without legal representation.

It has not gone unnoticed that Mr. Matkin’s attack on me with respect to Rule 3.7 and his due process claims that the County Attorney’s Office cannot represent the County Manager, did not occur until after I had timely objected to his attempt to skirt the procedural rules of this proceeding; thus appearing to be nothing more than an attempt at retribution for my making appropriate objections to his new evidence.

Use

Section 3.5 of the 1994 Code does not speak of “land use categories,” but rather of uses and, generically, as use categories, where only use is a defined term. Use categories is not a defined term. Mr. Matkin’s suggestion that the defined “land use categories” be inserted here as a replacement for the generic and undefined use category is nonsensical because land use categories are simply another name for zoning districts in Section 3.1 of the Code. A new zone district under Section 3.5 cannot be established by a use determination process as contemplated by the Code. Such would be inconsistent not only with the County Land Use Development and Management Act, but it would also be internally inconsistent with Section 4.4 of the 1994 Code. Further, the Section 3.6 Use Table does not use “land use categories,” but rather it uses “Zoning District” in its heading. For uses and use categories it utilizes “use classification.” Mr. Matkin’s argument attempts to twist and confuse the plain meaning of the 1994 Code and turn it on its head.

Mr. Matkin also appears to be shifting his argument from the June hearing, wherein he asserted that the vehicle control gate could not be a feature and a use, it could only be a feature. Given the County Manager’s Supplemental Memorandum, which puts such an argument to rest, the Appellants have moved on to a new theory.

Now Mr. Matkin asserts that if the planning staff really believed a vehicle control gate was prohibited, they would have said as much to the planning commission or county commission in 1995 or 1997. Perhaps they should have. It is just as plausible that they finally let the subject drop because they realized that the gate was prohibited anyway under the 1994 Code so further
discussion was unnecessary. Whatever the reasoning, such is not in play here because it was not part of the record before the County Commission. We don’t know what the planning staff was or was not thinking. For that matter, we don’t know what the County Commission was thinking either. No proffers of fact can change that.

**Moose Hollow**

- Mr. Matkin has had to admit that there was no approval or even discussion of a vehicle control gate by the planning commission, county planning staff, or county commission in 1994.
- His new argument is that silence is tantamount to approval. However, there is no support for such in the record, nor would it have made logical sense.
- Certainly the Fire District thought that some type of approval in 1994 was necessary for a vehicle control gate. There is no evidence in the record of such an approval having been made.

Mr. Thomas restated his position that the vehicle control gate is plainly restricted.

The Council took the matter under advisement and will reschedule for a decision.

**Public Input**

Bev Harrison noted July 11th is the deadline for feedback to UDOT regarding SR248 proposed road improvements. She agrees with Council Member Wright that concerns include more traffic and pollution. She will submit her letter. She is also concerned about workforce housing. She suggested that regular apartments could serve a portion of the population that is looking for places to live that can’t afford down payments on loans.

The public comment was closed.
Council Comments

- Council Member Carson attended the Board of Health meeting discussion the health assessment. More information will come before the Council

- Council Member Robinson stated he and Council Member Clyde attended a state town hall meeting regarding tax reform. The task force heard many opinions of what changes could be considered. It will be a very complicated process

- Council Member Clyde stated a joint resolution with Park City will come before the Council for consideration regarding UDOT plans for SR248

- Council Member Wright stated the Council may want to draft a letter in response to the tax reform discussions regarding concerns or issues
- Met with North Summit Fire
- The League of Women Voters have ideas in support of census gathering information
- He is on the Land Use Subcommittee of NACo. There are several resolutions proposed for consideration at the National Convention
- He attended a climate meeting with the Park City Foundation discussing environmental issues of the west

- Chair Armstrong attended a meeting regarding affordable housing
- Reported fundraising efforts for the Children's Justice Center has resulted in approximately $63K new dollars

Manager Comments

- Manager Fisher stated he will be out of town three days next week
- He asked the Council to review calendars and notify Annette if any would be absent from meetings in the next few months

Council Minutes dated June 19, 2019

Council Member Robinson made a motion to approve the minutes of June 19, 2019 with corrections noted. Council Member Wright seconded and all voted in favor, 5-0.

Joint meeting between Council and Snyderville Basin Planning Commission; Pat Putt

The Council met with Pat Putt, Community Development Director, and members of the Snyderville Basin Planning Commission, Malena Stevens, Canice Harte, Joel Fine, and Thomas Cooke, for a work session and update of the Snyderville Basin Development Code Amendments. The following staff report was reviewed.
A work session has been scheduled for Wednesday evening to allow time for the Staff and the Snyderville Basin Planning Commission to update Council on the progress made thus far on developing proposed amendments to the Snyderville Basin Development Code.

The Snyderville Basin Planning Commission’s efforts to date have focused on:

Chapter 1: Title, Purpose, Authority, and Applicability – Positive Recommendation received from Planning Commission on October 9, 2018

Chapter 2: User Guide - Positive Recommendation received from Planning Commission on October 9, 2019

Chapter 3: Zone Districts, Specifically RR, HS, and MR – Snyderville Basin Planning Commission Subcommittee has met to discuss the uses and has completed their review. Work Session with the entire Commission scheduled on July 23rd.

Chapter 3: Zone Districts, Specifically NC, CC, and SC – Subcommittee to start reviewing uses on July 9th. We will also discuss a priority list for future Code Amendments.

Topics for Council and Planning Commission Discussions include, but are not limited to:

- Kimball Junction Neighborhood Plan Implementation Tools
  - Creation of new Neighborhood Mixed Use Zone(s) vs. revised Community Commercial Zone
- Consideration of a Master Planned Development Process (similar to the process developed for the Eastern Summit County Planning District)
- Site Coverage/Accessory Building Size regulations in the Rural Residential, Hillside Stewardship, and Mountain Remote Zones
- Sustainability Initiatives
- Public Engagement
- Timeline Moving Forward
The meeting adjourned at 8:05 p.m.

Roger Armstrong, Chair

Kent Jones, Clerk