



4:45 p.m.

Workshop in the County Council Chambers

5:30 p.m.

Call to order

Opening remarks/Pledge – Brady Christensen

Review and approval of agenda

Review and approval of the minutes of the 4 April 2019 meeting

5:35 p.m.

Consent Items

- 1. West Bench Vista Subdivision 1st Amendment** – A request to amend the boundaries between Lots 2 & 3 in an existing 8-lot subdivision located at 6909 & 7005 West 2500 North, near Mendon, in the Agricultural (A10) Zone.
- 2. Pisgah Limestone Conditional Use Permit 2nd Amendment** – A request for a 6-month extension of the effective period of approval for an amended conditional use permit to operate a mineral extraction operation on approximately 938 acres located at approximately 9800 South 3500 West, Wellsville Canyon, in the Mineral Extraction (ME) Overlay Zone

Regular Action Items

- 3. Advanced Shoring Conditional Use Permit** – A request for approval of a conditional use permit to operate a storage and warehousing use (Use Type 3400) on 10 acres located at 4350 South 1500 West, near Hyrum, in the Industrial (I) Zone.
- ~~**4. Kurtis E. Falslev Conditional Use Permit** – A request for approval of a conditional use permit to operate an agricultural manufacturing use (Use Type 2210) that will receive and slaughter weanling pigs, on 1.62 acres located at 4490 North 3880 West, Benson, in the Agricultural (A10) Zone. *Additional Information Required*~~
- 5. Holyoak Airport Conditional Use Permit** – A revocation review of a previously approved Conditional Use Permit to operate a private airport (previously Use Type 6310, now Use Type 5810) located at 6523 West 400 South, near Mendon, in the Agricultural (A10) Zone.
- 6. Public Hearing (6:15 p.m.) – Hawkes Rezone RU5** – A request for a recommendation of approval to the County Council for a rezone of 19.92 acres located at 8300 South 4000 West, near Wellsville, from the Agricultural (A10) Zone to the Rural 5 (RU5) Zone
- 7. Public Hearing (6:25 p.m.) – Applewood Hollow RU5 Rezone** – A request for a recommendation of approval to the County Council for a rezone of two parcels totaling 22.76 acres, located at 4642 Hollow Road, near Nibley, from the Agricultural (A10) Zone to the Rural 5 (RU5) Zone.

Board Member Reports

Staff reports

Adjourn

PUBLIC PARTICIPATION GUIDE: PLANNING COMMISSION

This document is intended to guide citizens who would like to participate in a public meeting by providing information about how to effectively express your opinion on a particular matter and the general powers and limitations of the Planning Commission.

WHEN SPEAKING ON AN AGENDA ITEM

Once the Commission opens the public hearing or invites the public to comment on a public meeting agenda item, approach the podium to comment. Comments are limited to 3 minutes per person, unless extended by the Chair of the Planning Commission.

When it is your turn to speak:

1. State your name and address and the organization you represent, if applicable.
2. Indicate whether you are for or against the proposal.
3. Make your statement.
 - a. Include all pertinent facts within your knowledge;
 - b. Avoid gossip, emotion, and repetition;
 - c. Comments should be addressed to the Commission and not to individuals in the audience; the Commission will not allow discussion of complaints directed at specific individuals;
 - d. A clear, concise argument should focus on those matters related to the proposal with the facts directly tied to the decision you wish the Commission to make without repeating yourself or others who have spoken prior to your statement.

LEGISLATIVE (PUBLIC HEARING) VS. ADMINISTRATIVE (PUBLIC MEETING) FUNCTIONS

The Planning Commission has two roles: as a recommending body for items that proceed to the County Council for final action (legislative) and as a land use authority for other items that do not proceed to the County Council (administrative).

When acting in their legislative capacity, the Planning Commission has broad discretion in what their recommendation to the County Council will be and conducts a public hearing to listen to the public's opinion on the request before forwarding the item to the County Council for the final decision. Applications in this category include: Rezones & Ordinance Amendments.

When acting in their administrative capacity, the Planning Commission has little discretion and must determine whether or not the landowner's application complies with the County Code. If the application complies with the Code, the Commission must approve it regardless of their personal opinions. The Commission considers these applications during a public meeting and can decide whether to invite comment from the public, but, since it is an administrative action not a legislative one, they are not required to open it to public comment. Applications in this category include: Conditional Use Permits, Subdivisions, & Subdivision Amendments.

LIMITS OF JURISDICTION

The Planning Commission reviews land use applications for compliance with the ordinances of the County Land Use Code. Issues related to water quality, air quality, and the like are within the jurisdiction of the State and Federal government. The Commission does not have authority to alter, change, or otherwise act on issues outside of the County Land Use Code.



Item

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Consent Agenda Items

- 1. Richmond Valley Subdivision 3rd Amendment 2

Regular Action Items

- 2. Hills of Home Subdivision 2
- 3. Specific Criteria for Rural 2 & Rural 5 Zone Rezone Requests 3

Present: Angie Zetterquist, Josh Runhaar, Lane Parker, Brady Christensen, Nolan Gunnell, Chris Sands

Start Time: 05:30:00

1 **Christensen** welcomed and **Parker** gave opening remarks.

2 **05:31:00**

3 **Agenda**

4 Approved with no changes.

5 **05:36:00**

6 **Minutes**

7 ***Gunnell** motioned to approve the minutes from March 7, 2019; **Parker** seconded; **Passed 4, 0.***

8 **05:33:00**

9 **Consent Items**

10 **#1 Richmond Valley Subdivision 3rd Amendment**

11 ***Sands** motioned to approve the Richmond Valley Subdivision 3rd Amendment with the stated findings of*
12 *fact, seven conditions, and two conclusions as written; **Parker** seconded; **Passed 4, 0.***

13 **05:34:00**

14 **Regular Action Items**

15 **#2 Hills of Home Subdivision**

16 **Zetterquist** reviewed the staff report for the Hills of Home Subdivision.

17 **Staff** and **Commissioners** discussed the Conditional Use Permit (CUP), and needed road improvements.

18 **Lee Nelson** commented on the contract with Johnson's and the existing gravel pit, the bridge and signage
19 for weight limits, and the need for grading on the road.

20 **Gunnell** and **Parker** asked about reclamation for the gravel pit.

21 **Mr. Nelson** responded about the plans for reclamation of the gravel pit.

22 **Staff** and **Commission** discussed the reclamation and how much of the gravel pit will be left open for
23 personal use.

24 **Christensen** asked about the contract on the gravel pit.

1 **Mr. Nelson** responded they are working on ending the contract.
2 **Staff** and **Commission** discussed the contract and CUP for the gravel pit, and when reclamation would
3 start.
4 **Gunnell** motioned to approve the Hills of Home Subdivision with the stated findings of fact, six
5 conditions, and one conclusion as written; **Sands** seconded; **Passed 4, 0.**

6 **05:50:00**

7 **#3 Specific Criteria for Rural 2 and Rural 5 Zone Rezone Requests**

8 **Zetterquist** reviewed the information for the Rural 2 (RU 2) and Rural 5 (RU5) Zone rezone requests.
9 **Staff** and **Commission** discussed the specific criteria for RU 2 and RU 5 zone rezone requests. Staff
10 reports will contain more information to help answer the questions regarding criteria. Density, size of
11 rezones, and noticing were also discussed.

12 **06:15:00**

13 **Gunnell** motioned to recommend the Rural 2 and Rural 5 Zone Rezone options to the County Council;
14 **Sands** seconded; **Passed 4, 0.**

15 **Cheryl Burgess** asked what defines a small rezone?

16 **Runhaar** responded a small rezone is fewer than 3 lots created.

17 **Sands** stated that is not a set-in-stone definition.

18 **Christensen** commented that this is a concession.

19 **Ms. Burgess** commented against not having stricter criteria for rezones and that developers should be
20 held to a higher standard.

21 **Runhaar** commented that the issues with private and public roads are being addressed currently.

22 **Christensen** stated some of the concerns Ms. Burgess has raised regarding developers and how they
23 develop is out of the control of the Planning Commission.

24 **Ms. Burgess** asked if the Planning Commission could set standards for a single home owner and a set of
25 standards for a developer.

26 **Runhaar** responded that there cannot be one set of standards for a single home owner and one set of
27 standards for a developer. The standards legally have to be the same.

28 **Ms. Burgess** commented that developers are causing problems by hanging onto land that would be
29 developed once the initial development is annexed into a city.

30 **Runhaar** responded to Ms. Burgess about annexation and a subdivision amendment.

- 1 **Ms. Burgess** asked about the exception 960 West on Hwy 218 for a fourth home.
- 2 **Zetterquist** stated the developer had obtained a design exception for four homes on a private road instead
3 of the maximum three; it was not an exception for a fourth lot.
- 4 **Ms. Burgess** commented on the needed infrastructure for development, specifically water.
- 5 **Christensen** commented that water is the developer or property owner's risk.
- 6 **Sands** stated that the Planning Commission has no jurisdiction over water.
- 7 **Runhaar** stated the only thing the Planning Commission and Planning and Zoning can confirm is that
8 they have a water right. Water rights and wells are overseen by the state.
- 9 **Christensen** responded that it would be beneficial for Ms. Burgess to discuss water concerns with the
10 state water engineer.
- 11 **Ms. Burgess** responded she had. There are problems with developers who develop on the edge of the
12 city.
- 13 **Mr. Burgess** asked about the master plan that is being developed and if that will have public comment.
- 14 **Runhaar** responded that there would be a series of public hearing.
- 15 **Mr. Burgess** stated he wants to remain agricultural and with the changes to the RU2 and RU5,
16 agriculture is going to disappear, as well as water.
- 17 **6:03:00**
- 18 **Adjourned**

STAFF REPORT: WEST BENCH VISTA SUBDIVISION 1ST AMENDMENT

6 JUNE 2019

This staff report is an analysis of the application based on adopted county documents, standard county development practices, and available information. The report is to be used to review and consider the merits of the application. Additional information may be provided that supplements or amends this staff report.

Agent: Benjamin D. Jensen

Parcel ID#: 12-021-0042, -0043

Staff Determination: Approval with conditions

Type of Action: Administrative

Land Use Authority: Planning Commission

LOCATION

Reviewed by Angie Zetterquist

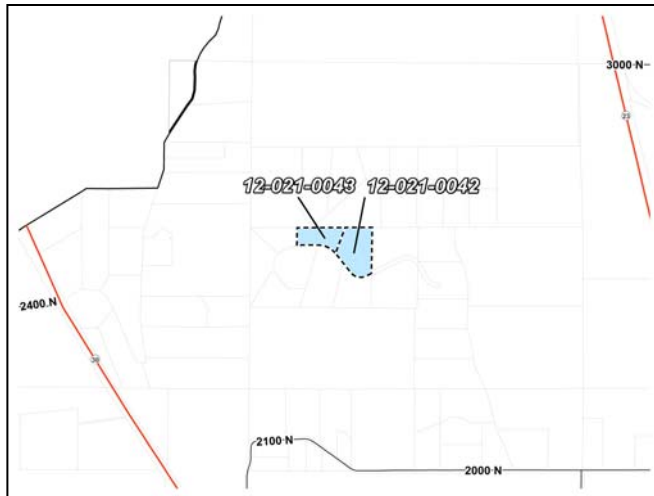
Project Address:

6909 & 7005 West 2500 North
Mendon

Current Zoning: Agricultural (A10) **Acres:** 14.11 acres

Surrounding Uses:

North – Agricultural/Residential
South – Agricultural/Residential
East – Agricultural/Residential
West – Agricultural/Residential



FINDINGS OF FACT (19)

A. Request description

1. The West Bench Vista Subdivision 1st Amendment is a request to adjust the boundary lines between Lots 2 & 3 of the existing 8-lot subdivision with an agricultural remainder. The boundary line adjustment will decrease Lot 2 from 8.83 acres to 7.82 acres and Lot 3 will increase from 5.28 acres to 5.77 acres.

B. Parcel legality

2. The original subdivision was approved in July 2010. The original plat indicated that Lot 2 was 8.57 acres and Lot 3 was 5.02 acres, but, in 2014, an adjustment was done to add the portion of the private road that lies within the lot to its acreage resulting in an increase to the lots' current size of 8.83 acres and 5.28 acres, respectively. The adjustment was not done through a

subdivision amendment process, however, given the nature of the adjustment to clarify the ownership of the private road, the properties are not restricted.

C. Authority

3. §17.02.030 [E] Authority for Land Use Actions – The Planning Commission is authorized to act as the Land Use Authority for subdivision amendments. *See conclusion #1.*

D. Culinary water, septic system, and storm water

4. §16.04.080 [A] Water Requirements – As no new lots are being created as part of the subdivision amendment, a domestic, approved water right is not required. However, there are existing single-family dwellings on both Lot 2 & 3 with existing approved domestic water rights (i.e., 25-11052/a36822 and 25-10776/a42717).
5. §16.04.080 [B] Sewage Requirements – As no new lots are being proposed, the applicant is not required to provide a septic system feasibility letter for this subdivision.
6. §16.04.070 Storm Drainage Requirements – A Land Disturbance Permit is required for any future development. *See condition #1*

E. Access

7. §16.04.040 [A] Roads – All roads must be designed and constructed in accordance with Title 12 of the County Code.
8. §12.02.010 Roadway Standards – Requirements for roadway improvement are provided in the current Manual of Roadway Design and Construction Standards (Road Manual).
9. §16.04.080 [E] Roads and Access – A basic road review is required and must consider:
 - a. The layout of proposed roads;
 - b. An analysis of existing roadway compliance with the Road Manual requirements;
 - c. Existing maintenance;
 - d. And any additional impacts to the proposed development access roads.
10. The Road Manual specifies the following:
 - a. §2.1-A-5 Private Road, Table 2.2 - Roadway Typical Sections: Roads with up to 30 Average Daily Traffic (ADT). This includes roadways that have the capacity for moderate to low speeds and low volumes. This category provides access to farms, other agricultural uses, and dispersed rural residences. These roads are not typically through roads providing public access to points beyond the areas the road is intended to serve.
 - b. Table 2.2 Roadway Typical Sections: Private roads must meet the minimum standards of a 33-foot-wide right-of-way, two 10-foot-wide gravel travel lanes for a total width of 20 feet.
 - c. §2.4-A-1-c: Development on inadequate roadways is not allowed, and any substandard sections of roadway access must be improved to meet the minimum standards specified in the Road Manual.
11. A basic review of the access to the existing lots identifies the following:
 - a. Primary access to the West Bench Vista Subdivision is 2500 North, a private road, that connects to 6750 West, another private road that provides access to the Hawks Ridge Subdivision as well as the Eagle Rock and Eagle Rock Phase 2 Subdivisions.
 - b. 2500 North:
 - i. Is an existing private facility that provides access to the West Bench Vista Subdivision.
 - ii. Consists of an average 22-foot chip seal road with 4-foot gravel shoulders.
 - iii. Has an unknown depth and type of material.
 - iv. Is privately maintained year round.

F. Service Provision

12. §16.04.080 [C] Fire Control – The County Fire District did not have any comment or concerns about the proposed boundary line adjustment.

13. §16.04.080 [F] Solid Waste Disposal – Logan City Environmental had no comments on the proposed subdivision amendment. Service is provided along 6750 West, not 2500 North, for Monday collection.

G. Sensitive Areas

14. §17.08.040 General Definitions, Sensitive Area; §17.18 Sensitive Area

- a. Portions of the two lots have areas of moderate and steep slopes. Structures are not permitted in areas with steep slopes, and any structures proposed in the moderate slope area will require a geotechnical report. *See condition #2*
- b. A canal runs through the east side of the subdivision.

H. Public Notice and Comment—§17.02.040 Notice of Meetings

15. Public notice was posted online to the Utah Public Notice Website on 22 May 2019.

16. Notice was published in the Herald Journal on 25 May 2019.

17. Notices were posted in three public places on 22 May 2019.

18. Notices were mailed to all property owners within 300 feet and cities within 1-mile of the subject property on 23 May 2019.

19. At this time, no written public comment regarding this proposal has been received by the Development Services Office.

CONDITIONS (2)

Based on the Cache County Subdivision and Land Use Ordinances, Road Manual, and on the findings of fact as noted herein, staff recommends the following conditions:

1. A Land Disturbance Permit is required for any future development. (*See D-6*)
2. Any future development located within sensitive areas may require further analysis. (*See G-14*)

CONCLUSIONS (1)

Based on the findings of fact and conditions noted herein, staff recommends approval of the West Bench Vista Subdivision 1st Amendment as:

1. It has been reviewed by the Planning Commission in conformance with, and meets the requirements of, the Cache County Subdivision and Land Use Ordinances.

OWNER DEDICATION
KNOW ALL MEN BY THESE PRESENTS THAT WE THE UNDERSIGNED OWNERS OF THE TRACT OF LAND DESCRIBED AND SHOWN HEREON HAVE HEREBY VOLUNTARILY AND UNREVOCABLY AGREE TO DEED AND CONVEY TO THE CACHE COUNTY PLANNING COMMISSION AND TO THE CACHE COUNTY COUNCIL FOR THE USE AND BENEFIT OF THE PUBLIC THE TRACT OF LAND SHOWN AND DESCRIBED HEREON HAVING CAUSED THE SAME TO BE SURVEYED INTO LOTS, THE WHOLE TO BE HEREINAFTER KNOWN AS "WEST BENCH VISTA AMENDED". THIS PLAT IS CHANGING THE PROPERTY LINE BETWEEN LOT 2 AND LOT 3.

ACKNOWLEDGEMENT
STATE OF UTAH
COUNTY OF CACHE
I, _____, COUNTY ENGINEER, DO HEREBY CERTIFY THAT THE UNDERSIGNED NOTARY PUBLIC HAS PERSONALLY APPEARED TO ALL THE UNDERSIGNED NOTARY PUBLICS OF THE OWNERS' DECLARATION, 2 IN NUMBER, WHO DULY SIGNED AND SUBSCRIBED THE FOREGOING INSTRUMENT, IT FREELY AND VOLUNTARILY AND FOR THE PURPOSES THEREIN MENTIONED.

ACKNOWLEDGEMENT
STATE OF UTAH
COUNTY OF CACHE
I, _____, COUNTY ATTORNEY APPROVAL, DO HEREBY CERTIFY THAT I HAVE EXAMINED THIS PLAT AND FIND THAT IT IS CORRECT AND IN ACCORDANCE WITH THE INFORMATION ON FILE IN THIS OFFICE.

ACKNOWLEDGEMENT
STATE OF UTAH
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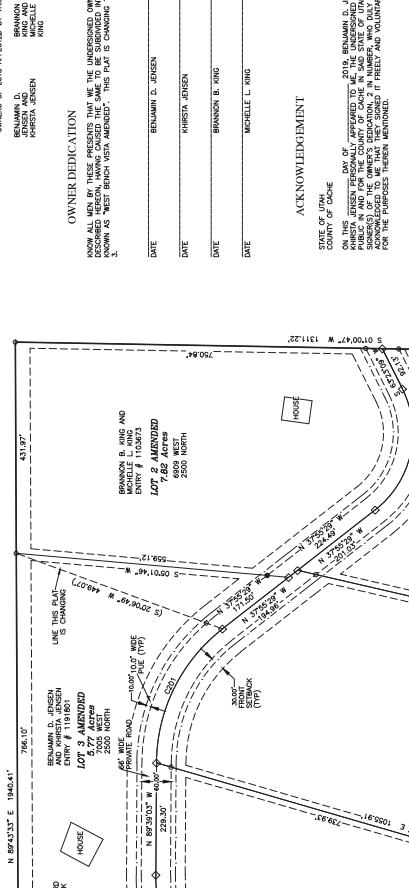
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- NOTES:
1. THE CURRENT AND PROPOSED PUBLIC UTILITY RIGHTS ARE BEING ABANDONED AND THE ASSOCIATION WITH THE UTILITY RIGHTS IS BEING TERMINATED. THE UTILITY RIGHTS WILL REMAIN IN PLACE TO THE EXTENT OF ANY EXISTING RECORDS OR INSTRUMENTS. THE ASSOCIATION WITH THE UTILITY RIGHTS IS BEING TERMINATED AND THE UTILITY RIGHTS WILL REMAIN IN PLACE TO THE EXTENT OF ANY EXISTING RECORDS OR INSTRUMENTS.
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LEGAL DESCRIPTION
A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 12 NORTH RANGE 1 WEST SALT LAKE BASE AND MERIDIAN, CACHE COUNTY, UTAH, WHICH WAS DESCRIBED AS LOTS 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, BEING PART OF THE WEST BENCH VISTA SUBDIVISION, AS SHOWN ON A FINAL PLAT OF SAID SUBDIVISION RECORDED AS DEED RECORD NO. 27931, IN VOLUME 638, OF THE OFFICIAL RECORDS OF THE COUNTY OF CACHE, UTAH, IS HEREBY BEING REDESIGNATED AS LOTS 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, BEING PART OF THE WEST BENCH VISTA SUBDIVISION, AS SHOWN ON THIS PLAT, CONTAINING 0.78 ACRES OF LAND.

MEMORANDUM

6 JUNE 2019

To: Planning Commission

Subject: Extension request for the Pisgah Limestone Conditional Use Permit 2nd Amendment

A request has been made by Lance Anderson of Cache Landmark Engineering, the agent for the Pisgah Limestone Conditional Use Permit 2nd Amendment (CUP) for a 6-month extension of the effective period of approval for the mineral extraction facility located at 9800 South 3500 West, Wellsville Canyon, in the Forest Recreation (FR40) and Mineral Extraction (ME) Overlay Zones (Attachment A).

The CUP amendment was approved by the Planning Commission on 14 June 2018. The effective approval date for a CUP approval is one year; subsequently, the current expiration date for the approval is 14 June 2019. If the permit for the CUP is not recorded by the expiration date, the approval is void and the file closed.

Before a CUP permit can be recorded, all conditions of approval must be met or, as necessary, an improvement agreement for required infrastructure must be in place. As of this date, the applicant still has outstanding conditions of approval. The applicant is still in the process of completing the required road and access improvements for the County and UDOT, and finalizing the Reclamation Agreement requirement and sign issue.

In 2018, §17.02.050, Effective Period of Land Use Authority Approval, was amended to allow an approval of an administrative land use decision to be extended up to six (6) months at the discretion of the land use authority (§17.02.050(F)). The same code update to Title 17.02 also changed the land use authority for subdivision approvals from the County Council to the Planning Commission in §17.02.030 (Establishing Land Use Authority Duties, Authorities, and Powers). Consequently, the Planning Commission is the land use authority with the power to consider this extension request.

Section 17.02.050(F)(2), specifies that the applicant bears the burden of proving the conditions justifying an extension have been met and the land use authority may approve an extension request only if:

- a. The reason for the request is not economic.
- b. The applicant has shown a clear pattern of working to record the plat or permit throughout the entirety of the approval period.”

The submitted request for a time extension lists the required conditions and the status of each item. The applicant has shown a clear pattern of working to record the permit and has worked consistently with staff to resolve outstanding issues. The remaining conditions are in process but cannot be completed prior to the expiration date.

Staff recommends that the Planning Commission approve this request to extend the effective date of approval to **14 December 2019**, the full 6-month time extension allowed per code, as:

1. The request for a time extension complies with the requirements of §17.02.050(F) and the applicant has shown a clear pattern of working to record the plat through the approval period.

STAFF REPORT: ADVANCED SHORING CUP

6 June 2019

This staff report is an analysis of the application based on adopted county documents, standard county development practices, and available information. The report is to be used to review and consider the merits of the application. Additional information may be provided that supplements or amends this staff report.

Agent: Per-Ole Danfors, Danfors Brothers, LLC

Parcel ID#: 03-058-0022

Staff Determination: Approval with conditions

Type of Action: Administrative

Land Use Authority: Planning Commission

LOCATION

Reviewed by Angie Zetterquist

Project Address:

4350 South 1500 West

North of Hyrum

Current Zoning:

Industrial (I) Zone

Acres: 10.0

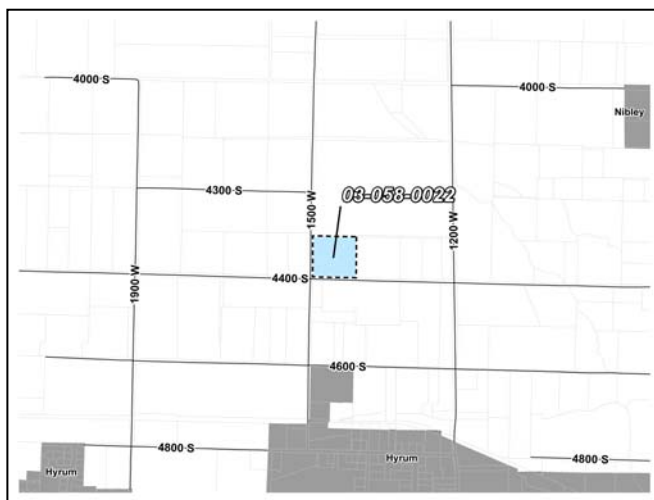
Surrounding Uses:

North – Agricultural/Public Infrastructure

South – Agricultural/Hyrum City

East – Agricultural

West – Agricultural



FINDINGS OF FACT (34)

A. Request description

1. The Advanced Shoring Conditional Use Permit (CUP) is a request to operate a storage and warehousing facility (Use Type 3400) on a 10.0 acre parcel located in the Industrial (I) Zone.
2. The County Council approved a rezone of the subject property from Agricultural (A10) to Industrial (I) in 2018 and the applicant is now seeking to establish a storage and warehousing facility on the parcel.
3. Per the Letter of Intent (Attachment A), the applicant is proposing to operate a housing construction company, which will use the southwest portion of the property for storing and refurbishing construction equipment. The applicant is also proposing to operate an open-air RV and boat storage on the northwest portion of the property, but anticipates that use will begin operation in approximately three years. *See condition #1*

a. Construction

- i.** The subject property has three existing buildings on-site, located in the southwest area of the property. The applicant describes the structures as wood-framed with metal exteriors and an open floor plan. Per the Letter of Intent, the buildings will be used for the housing construction company including the storing and refurbishing of construction equipment. *See condition #2*
- ii.** The property and existing structures were previously used as a hog farm and the structures constructed for agricultural use. The buildings were originally constructed without a building permit prior to 1984. In 2017, the previous owners of the property, Richard and Marcena Walker, obtained approvals on a zoning clearance and building permits to legalize the buildings as accessory structures with the use identified as agricultural. The building permits show a total square footage for the three buildings as 9,478 square feet, but the applicant stated in the Letter of Intent that the structures have a combined floor area of 8,460 square feet. The applicant must work with the Building Department to clarify the square footage and determine if the current occupancy designation of the structures allows for the proposed industrial use or if improvements need to be made to accommodate the new use. All improvements/upgrades required by the Building Department must be completed prior to recording the permit and beginning operations. *See condition #2*
- iii.** Per the Letter of Intent, no new construction is planned with the exception of relocating existing fencing and adding fencing and gates for the proposed RV and boat storage facility. *See condition #1*
- iv.** Also located on the property is a manmade lagoon that was constructed for the hog farm. The applicant must provide the Department of Development Services information on what the plan is for the lagoon (e.g., drain and fill, utilize for the new use, etc.) and obtain any necessary approvals required. *See condition #3*

b. Operation

- i.** The applicant states that the housing construction company will use the south west area of the property for storing and refurbishing construction equipment. The Letter of Intent identifies the type of equipment that will be used on-site as mainly forklifts, backhoes, and cranes with various types of foundation construction equipment such as drilling rigs and concrete pumps stored on the property as well as construction materials. *See condition #4*
- ii.** In the letter of intent, the applicant states there will be 5-10 employees working on the site at any one time. Hours of operation will be Monday through Friday and some Saturdays from 7:00 AM to 7:00 PM. The facility will not operate on Sundays.
- iii.** The applicant indicates in the Letter of Intent that access to the property will be from the southern gate along 1500 West for the housing construction company. To accommodate the use of the access point, the applicant is proposing moving part of the existing fence and gate back 20-30 feet along 1500 West to provide more room for trucks and traffic to turn through the gate. All parking and loading/unloading of trucks will occur on the property inside the fenced area. The applicant states up to ten (10) passenger vehicles such as cars and pickup trucks will enter the property daily and 1-to-2 semi-trucks on a weekly basis. *See condition #5 & #6*

- iv. Utilities will be installed including water and septic systems and power is currently in place at the existing structures. A fire dry hydrant storage tank will be installed to meet Fire Code. *See condition #7*
- v. Signage is proposed for the south entrance gate that will display the address and company name. *See condition #8*
- vi. Waste will be collected in a commercial dumpster and collected by Logan Environmental Services.
- vii. The proposed secondary use of the property as an open-air RV and boat storage yard would be located in the northwest portion of the property. Access to this area will be from the north gate along 1500 West with fencing and gates installed for the proposed use. The applicant anticipates that the use will begin operating in about three years. *See condition #1 & #5*

B. Conditional Uses *See conclusion #1*

- 4. §17.06.050-B, Conditional Uses, directs the Land Use Authority to review conditional use permit (CUP) requests based on the standards and criteria that are defined therein and include:
 - a. Compliance with law;
 - b. Health, safety, and welfare;
 - c. Adequate service provision;
 - d. Impacts and mitigation.

C. Compliance with law *See conclusion #1*

- 5. The County Land Use Ordinance stipulates that:
 - a. The proposed conditional use must comply with the regulations and conditions specified in the County Code and other applicable agency standards for such use. *See conclusion #1*
 - b. The proposed conditional use must be consistent with the intent, function, and policies of the Cache County General Plan, Ordinance(s), and land use, and/or compatible with existing uses in the immediate vicinity. *See conclusion #1*
- 6. §17.02.060, Establishment of Land Use Authority, authorizes the Planning Commission to act as a Land Use Authority for a CUP. *See conclusion #1*
- 7. The subject property has not changed size or configuration since August 8, 2006 and is a legal parcel. There are existing structures on the property initially built for a hog farm.
- 8. §17.07.030, Use Related Definitions defines this use as “3400 Storage and Warehousing, and also specifically as #1. Storage Yard.”
- 9. §17.07.040, Definitions, defines “3400 Storage and Warehousing” as, “A structure(s) containing storage space(s) of varying sizes that are affiliated with a commercial or industrial uses. Such facilities are to be used for dead storage only. No business activities may be conducted from a storage facility other than those that are clearly ancillary to the primary business.”
 - a. Item #1 “Storage Yard” is further defined as, “The storage of large equipment and vehicles (either construction or transport); bulk construction materials (soil and rock products or building materials); and buildings or structures for uses such as offices or repair facilities.”
- 10. §17.09.030, Schedule of Uses by Zoning District, permits this use as a CUP in the Industrial (I) Zone only if reviewed and approved in accordance with the conditional use review procedures of §17.06 Uses as noted.

11. §17.10.040 Site Development Standards – The required setback from the property line in the Industrial (I) Zone is 30'. The storage of material or placement of structures within the setback area is not permitted. *See condition #4*

D. Health, safety, and welfare *See conclusion #1*

12. The County Land Use Ordinance stipulates that:
 - a. Proposed CUP's must not be detrimental to the public health, safety and welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity. A conditional use shall be considered detrimental if:
 - i. It causes unreasonable risks to the safety of persons or property because of vehicular traffic or parking, or other similar risks, and/or;
 - ii. It unreasonably interferes with the lawful use of surrounding property.
13. The primary activity of the proposed use is a storage and warehousing use/storage yard for a home construction company. A secondary use will be a RV and boat storage yard.
14. As discussed previously, the existing structures were built for a hog farm/agricultural use and may not meet the requirements for a commercial/industrial use. The applicant must work with the Building Department to ensure all improvements and modifications necessary are completed prior to recordation of the CUP. *See condition #2*
15. The proposed use will be located on the 10-acre property and is surrounded by a water filtration plant infrastructure and agricultural uses. Within a mile of the subject property there are only 4 parcels, of a total of 225, with a home located on it. At the time of the rezone request, the City Administrator for Hyrum City was contacted as the property is located within the City's future annexation area. The City Administrator stated that the future land use plan for that area is industrial and agricultural.

E. Adequate service provision *See conclusion #1*

16. The County Land Use Ordinance stipulates that:
 - a. The proposed conditional use must not result in a situation that creates a need for essential services that cannot be reasonably met by local service providers, including but not limited to: Roads and year round access for emergency vehicles and residents, fire protection, law enforcement protection, schools and school busing, potable water, septic/sewer, storm water drainage, and garbage removal.
17. The subject property has frontage along 1500 West and 4400 South, both county roads.
18. §12.02.010 adopts the Manual of Roadway Design and Construction Standards (Road Manual) for roadway improvement requirements.
19. The Road Manual specifies the following:
 - a. Table 2.2 – Roadway Typical Sections, Footnote #6 indicates that development of a commercial or industrial nature must meet the minimum requirements of a local road.
 - b. §2.1-A-4 Local Road, Table 2.2 Roadway Typical Sections: Roads with approximately 40 to 1500 Average Daily Traffic (ADT). This includes roadways that have the capacity for moderate to low speeds and moderate volumes. This category provides a balance between through traffic movements and direct access. These facilities move both regional and local rural traffic with emphasis on local movements.
 - c. Table 2.2 Roadway Typical Sections: Local roads must meet the minimum standards of a 66-foot wide right-of-way, two 10-foot wide paved travel lanes with 2-foot wide shoulders (1-foot-wide gravel and 1-foot-wide paved) for a total width of 24 feet.

- d. §2.4-A-1-c: Development on inadequate roadways is not allowed, and any substandard sections of roadway access must be improved to meet the minimum standards specified in the Road Manual.
 - e. Table A-8 Typical Cross Section Structural Values: The minimum structural composition for paved roads requires gravel roads requires 14” depth of granular borrow and 6” depth of road base.
20. A basic analysis of 1500 West is as follows:
- a. Is an existing county facility that provides access to the general public.
 - b. Currently provides access to multiple vacant and agricultural parcels.
 - c. Consists of an average 21-foot paved width with 4-foot wide gravel shoulders.
 - d. Does not appear to have the full 66-foot right-of-way dedicated to the County.
 - e. Has an unknown depth and type of material under the surface.
 - a. Is maintained year round. *See condition #9 & #13*
21. A basic analysis of 4400 South is as follows:
- a. Is an existing county facility that provides access to the general public.
 - b. Currently provides access to multiple vacant and agricultural parcels.
 - c. Consists of an average 23-foot paved width with 4-foot wide gravel shoulders.
 - d. Does not appear to have the full 66-foot right-of-way dedicated to the County.
 - e. Has an unknown depth and type of material under the surface.
 - f. Is maintained year round. *See condition #9 & #13*
22. Parking:
- a. §17.22 Off Street Parking Standards – All uses included under Use Index 3000 require a minimum of one parking space per 250 square feet, or a Parking Analysis conforming to §17.07.040 General Definitions and §17.22 Off Street Parking Standards. *See condition #10*
 - b. According to the building permits for the three existing structures, the total square footage is 9,478, which at one parking space per 250 square feet, would require 38 parking spaces. Additionally, an area for truck loading and unloading and turn arounds should be designated on a site plan to confirm the required parking does not conflict with other uses on the property. *See condition #10*
23. Refuse: Logan City Environment Department, Solid Waste Collection, reviewed the proposed use and confirmed that the facility will use a commercial front-load dumpster.
24. Fire: §16.04.080 [C] Fire Control – The County Fire District visited the site and reviewed the Letter of Intent. The Fire District confirmed that a water supply on site is required as well as a 20-foot wide fire department access road to any structures on site. *See condition #7*
25. Water: The applicant is planning on installing facilities that will require a culinary water right. There are currently two water rights associated with this property: #25-8024 & #25-11551. The water rights include a domestic culinary water share for a small shop with about 10 occupants as well as irrigation and stock water rights.
26. Septic: If individual buildings add restrooms, the Bear River Health Department will review them when a Zoning Clearance application has been submitted.

F. Impacts and mitigation *See conclusion #1*

27. Utah Code Annotated §17-27a-506, Conditional uses, item 2-a specifies that “A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.”

28. The County Land Use Ordinance stipulates that:
- a. Reasonably anticipated detrimental effects of the proposed conditional use must be substantially mitigated by the proposal or by the imposition of reasonable conditions to achieve compliance with applicable standards.
 - b. Examples of potential negative impacts include but are not limited to odor, vibration, light, dust, smoke, noise, impacts on sensitive areas as defined by the Code, and/or disruption of agricultural practices.
29. Known or reasonably anticipated detrimental effects of the use are as follows:
- a. Noise: Hours of operation for the use are between 7:00 AM and 7:00 PM Monday through Friday and some Saturdays according to the Letter of Intent. The uses on site have the potential to create detrimental amounts of noise including the refurbishing and repairing of construction equipment. However, given the location of the site and the surrounding agricultural and industrial uses it is not anticipated that the proposed use would create detrimental amounts of noise to neighboring properties.
 - b. Traffic: Due to the type of business, number of employees, and truck deliveries, an increase in traffic has the potential to create detrimental impacts. The applicant must work with the County Engineer to confirm that the existing road meets the minimum standards to meet the local road standards. Additionally, a detailed site plan is required to confirm access is sufficient and located to ensure the traffic entering and existing the proposed facility does not create conflicts with other users on the county roads. *See conditions #1, 6, 9, 10*
 - c. Potential contamination: Repairing construction equipment and storage of RVs and boat has the potential to have detrimental effects on the soil and groundwater if the equipment or vehicles have leaks that are not prevented from entering the permeable surface. Applicant must provide a plan for containment of potential leaks to the Department of Development Services and indicate any areas on the site that will be improved with impermeable surfaces for the proposed uses. *See condition #11*
 - d. Visual: The storage of equipment, construction materials, and RVs and boats may negatively impact the views from the surrounding roads and properties. A detailed site plan with locations identified for storage as well the height and materials of any existing or proposed fences will aid in determining whether screening will be required. *See condition #14*
 - e. Sensitive Areas:
 - i. Based on USFWS identified Wetlands mapping that identified possible wetlands present on a portion of the subject property, a wetland delineation will be required if any development is proposed in this area and the applicant must work the Army Corps of Engineers to secure required permits and approvals to develop in the wetland areas. *See condition #12*
 - ii. A canal runs along the property line parallel to 4400 South, the applicant must ensure development in the area does not impact the canal and obtain any required permission from the canal company prior to doing work in this area.

G. Public Notice and Comment—§17.02.040 Notice of Meetings

30. Public notice was posted online to the Utah Public Notice Website on 22 May 2019.
31. Notice was published in the Herald Journal on 25 May 2019.
32. Notices were posted in three public places on 22 May 2019.
33. Notices were mailed to all property owners within 300 feet of the subject property and cities within 1-mile on 23 May 2019.

34. At this time, no written public comment regarding this proposal has been received by the Development Services Office.

CONDITIONS (14)

Based on the Cache County Subdivision and Land Use Ordinances, Road Manual, and on the findings of fact as noted herein, staff recommends the following conditions:

1. Prior to recordation, the applicant must provide a detailed site plan and construction specifications to the Cache County Development Services Office that reflects the information as contained in the Letter of Intent and meets the minimum Code requirements. Any expansion or modification of the proposed use must obtain the approval of the Land Use Authority. (*See A-3, A-3-a-iii, F-29-b*)
2. Prior to recordation, any structures to be used as part of this permit must meet all zoning and building code requirements for a storage and warehousing facility. Written confirmation from the County Building Division must be provided to the Planning and Zoning Division to confirm code compliance. (*A-3-a-i, A-3-a-ii, D-14*)
3. Prior to recordation, the applicant must provide the Department of Development Services a written description of the plan for the manmade lagoon on the property and obtain any required permits/approvals for the work. (*A-3-a-iv*)
4. The required setback from the property line in the Industrial (I) Zone is 30'. The storage of material or placement of structures within the setback area is not permitted. Proposed storage areas must be shown on the required site plan. (*See A-3-b-I, C-11*)
5. Prior to recordation, the applicant must obtain an address off of 1500 West with the Records Office. (*A-3-b-iii, A-3-b-iv*)
6. Prior to recordation, the applicant must obtain approval for the location of the two access points along 1500 West from the County Engineer to ensure they meet distancing and safety requirements. Any work done in the county right-of-way requires approval of an Encroachment Permit prior to the work being done. (*See A-3-b-iii, F-29-b*)
7. Prior to recordation, the applicant must obtain approval from the Fire Department for the required dry hydrant storage tank. A copy of the approval must be provided to the Department of Development Services. Future development on the property requires preliminary plan review by the County Fire District. Any future development must be evaluated and may require improvements based on the location and type of proposed development. (*A-3-b-iv, E-24*)
8. Any proposed signage must obtain approval of a Zoning Clearance and, if necessary, a building permit prior to installation. (*A-3-b-v*)
9. Prior to recordation, the applicant must work with the County Engineer to determine if the depth and type of material on both 1500 West and 4400 South meets the requirements of the Road Manual. If the depth and type of materials does not meet the requirements, the applicant must work with the County Engineer to make the necessary road improvements or submit a request for and obtain approval of a design exception. Confirmation from the County Engineer will be required to ensure issues with the roads have been resolved prior to recordation. The proponent must pay all engineering costs associated with the road review. (*E-20, E-21, F-29-b*)
10. Prior to recordation, a site plan detailing the location of the required parking must be submitted to and approved by the Department of Development Services Office. Alternatively, a Parking Analysis as defined by the Cache County Land Use Ordinance may be submitted to the Development Services Office for the review and approval of the Director to determine the number of parking spaces needed for the facility. Evidence of professional licensure in the State of Utah

must also be provided by the person preparing the analysis. The proponent must pay all engineering costs associated with the review of the Parking Analysis. *(E-22-a, E-22-b, F-29-b)*

11. Prior to recordation, the applicant must provide a plan to the Department of Development Services for the prevention and containment of potential leaks from equipment and vehicles related to the proposed uses. Additionally, a description regarding the disposal of non-hazardous waste must be provided to the Development Services Department. *(F-29-c)*
12. Prior to recording the permit, a copy of the approved state and federal permits must be provided to the Development Services Department for any proposed development action to be taken in the identified wetland areas. *(F-29-e)*
13. Prior to recordation, must dedicate the portion of property within the 33-foot right-of-way from the centerline of 1500 West and 4400 South to the County. *(E-20, E-21)*
14. Prior to recordation and upon review and approval of the required site plan, the Director will determine whether additional screening is required to mitigate any detrimental visual impacts related to the proposed use. *(F-29-d)*

CONCLUSIONS (2)

Based on the findings of fact and conditions noted herein, staff recommends approval of the Advanced Shoring Conditional Use Permit as:

1. It has been reviewed by the Planning Commission in conformance with, and meets the requirements of, the Cache County Land Use Ordinance, and; *(See C, D, E, F)*
2. As per §17.02.060, Establishment of Land Use Authority, the Planning Commission is authorized to act as the Land Use Authority for this CUP request, and; *(See C-10)*

April 11, 2019

Parcel ID#: 03-058-0022

Address: 1500 West 4350 South, Nibley, Utah 84321

Letter of Intent (CUP):

The subject property consists of a flat, square shaped 10 acre zoned industrial (I) lot. It was previously zoned A-10 and at one point of time and a pig farm was operating on the property. There has been at least a decade since any sort of business has been operating on the land. The property is surrounded by a water treatment plant to the North and agricultural fields to the South, West and East sides of the property which are owned mostly by Earnest Miller.

Currently the property has 3 buildings with a combined floor area of 8,460 sf (3,000, 1400 and 4060 sf). The buildings are open inside and are wood framed with metal exteriors. The buildings are furnished with power. The buildings are located in the Southwest portion of the property.

The property has a 5 ft tall fence along the West and South sides and access to the property is from the West along 1500 West through 3 swinging gates. One of these will allow a semi truck and trailer to enter.

An active well is located on the property. Currently a water use permit for business activities (regular office use) is approved by Utah State Division of Water rights.

The planned main use of the property is housing a construction company which will use the Southwest quarter of the property for storing and refurbishing construction equipment. The plan is to use the existing structures for this purpose with some modifications to the structures to better adapt to the planned use. Utilities will be installed such as water and septic system to the buildings. Power is already in place. A fire dry hydrant storage tank will be installed as well to meet the fire code.

The number of employees working on the property will be between 5 and 10. Operation will be ongoing generally between 7 am and 7 pm on weekdays with some Saturdays included. No work planned on Sundays.

Access to the property will be improved by moving part of the fence and the Southern gate back 20-30 feet along 1500 West and provide more room for trucks and traffic to turn through the gate. All parking and loading/unloading of trucks will be performed inside the fence and on the Southwest corner of the lot. Up to 10 passenger vehicles such as cars and pickup trucks are expected to enter the property every day and one to two semi trucks per week at the most. Ample space is available for parking on the premises and will be concentrated to around the South and middle buildings. Truck turnaround will be available on the South West side of the property.

April 11, 2019

Parcel ID#: 03-058-0022

Address: 1500 West 4350 South, Nibley, Utah 84321

Letter of Intent (CUP):

The subject property consists of a flat, square shaped 10 acre zoned industrial (I) lot. It was previously zoned A-10 and at one point of time and a pig farm was operating on the property. There has been at least a decade since any sort of business has been operating on the land. The property is surrounded by a water treatment plant to the North and agricultural fields to the South, West and East sides of the property which are owned mostly by Earnest Miller.

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FINDINGS OF FACT

A. Purpose

1. The purpose of this review is to allow the Planning Commission to either revoke the existing Holyoak Airport Conditional Use Permit (CUP) or allow it to continue. This review does not provide the Planning Commission the opportunity to amend the approved, recorded CUP and associated conditions.

B. Ordinance

2. Section 17.06.050, item E, of the Cache County Land Use Ordinance (Land Use Code) states, “If there is cause to believe that grounds exist for revocation of an approved Conditional Use Permit, the Land Use Authority shall schedule the item for consideration at a public meeting. A minimum notice of thirty (30) days prior to the meeting shall be provided to the property owner at the location of the approved Conditional Use Permit.
 1. A Conditional Use Permit may be revoked by the Land Use Authority if the Land Use Authority finds that one or more of the following conditions exist:
 - a. The Conditional Use Permit was obtained in a fraudulent manner.
 - b. The use for which the Conditional Use Permit was granted has ceased for a minimum of twelve (12) consecutive calendar months.
 - c. The nature of the use for which the Conditional Use Permit was granted has changed or the intensity of use has increased beyond that originally approved.
 - d. The use constitutes a nuisance as defined by County Code.
 - e. One or more of the conditions of the Conditional Use Permit have not been met.”

C. Summary

3. Staff has reviewed the existing CUP based on the conditions of the approved, recorded CUP and the Land Use Code.
4. The CUP for the Holyoak Airport was approved by the Planning Commission May 5, 2016, and recorded on May 4, 2017 as a Private Airport and has been included and Attachment A. The approved layout of the landing area and associated zones and areas has also been included as part of Attachment A.
5. The continued validity of this CUP has been questioned by the neighboring properties through their legal counsel, and their complaint has been included as Attachment B. The intent of this staff report is to address the code requirements as detailed under section B above; it is not a response to the questions posed in Attachment B.
6. The CUP includes an expiration condition, and specifically item #3, that, “This conditional use permit shall expire and be null and void twelve (12) months after the approval date unless...Substantial work shall have been accomplished towards the completion of the approved project.”

The word “substantial” is not defined by the Land Use Code and is therefore open to a broad interpretation that could possibly include any work the proponent has done. Staff does not recommend the pursuit of this option to void the permit.

7. As required, the property owner has been noticed of the meeting for revocation review more than 30 days prior to the meeting.

D. Review

8. Staff has reviewed the CUP against the requirements of the CUP, and the Land Use Code conditions as noted in section B-2 of this document. Staff’s review is as follows:
 - a. Was the CUP obtained in a fraudulent manner?
 - i. No.
 - b. Has the use for which the CUP was granted ceased for a minimum of twelve (12) consecutive calendar months?
 - i. No. While the Holyoak Airport landing area has not been operational, the Holyoak’s have been operating through the FAA process from the time of Land Use Authority approval to obtain the proper authorization for the airport. The FAA has provided a notice and email regarding the Holyoak Airport and that has been included as Attachment C.
 - c. Has the nature of the use for which the CUP was granted changed, or has the intensity of use increased beyond that originally approved?
 - i. No.
 - d. Does the use constitute a nuisance as defined by County Code?
 - i. No. Staff has no evidence to substantiate that the use is a nuisance.
 - ii. Within the purview of the Planning Commission, the County Land Use Ordinance defines nuisance as:
“Any use or activity which emits noise, smoke, dust, odor, or vibration in amounts sufficient to substantially depreciate values of surrounding buildings or lands, or a use or activity which substantially deprives the owners of adjoining property of a property right.”
Chapter 8.24 Nuisances from the County Code also addresses nuisances. Any complaint made under this chapter must be addressed to the County Fire Chief and is outside the purview of the Planning Commission.
 - e. Have all the conditions of the Conditional Use Permit been met?
 - i. Yes.

CONCLUSIONS

Based on the noted findings from staff’s review, staff recommends that the Holyoak CUP for a Private Airport not be revoked, but remain as follows:

1. A condition as listed in the Land Use Code that may support the revocation of the CUP does not exist, and the Holyoak Airport proponent has been in the process of completing the FAA requirements since the time of Land Use Authority approval.


DEVELOPMENT SERVICES DEPARTMENT

BUILDING | SURVEYING | ENGINEERING | GIS | PLANNING & ZONING | ROADS | WEEDS

CONDITIONAL USE PERMIT (This permit does not give clearance for a Building Permit.)

 Ent 1171175 Bk 1949 Pg 1272
 Date: 4-May-2017 04:10 PM Fee \$12.00
 Cache County, UT
 Michael Gleed, Rec. - Filed By JA
 For RACHEL HOLYOAK

LEGAL DESCRIPTION(S) ATTACHED
PURPOSE

The construction and operation of a private airport as per County Land Use Code § 17.07.030, land use index 6310 Private Airport.

PROJECT NAME: Holyoak Airport

APPROVAL DATE: 5 May 2016

PROJECT ADDRESS: 6523 West 400 South
 Mendon, Utah 84325

TAX #: 11-014-0023

ZONE: Agricultural (A10)

OWNER NAME: Nathan and Rachel Holyoak

ACRES: 19.74

CONDITIONS OF APPROVAL (8)

1. The proponent must meet all applicable standards of the Cache County Code.
2. Prior to recordation, the applicant must provide a revised runway layout and design compliant with the runway design standards in FAA Advisory Circular AC 150/5300-13A.
3. The proponent must follow the site plans and letter of intent submitted to the Cache County Development Services Office, except as conditioned by the Cache County Planning Commission herein.
4. If the existing landing strip is amended in the future and results in more than 5,000 square feet land disturbance, the applicant must meet the minimum storm water requirements in place at that time. Best Management Practices (BMP's) must then include and define how storm water will be controlled on-site.
5. In order to provide for the public safety in the form of fire and emergency medical service to the proposed airstrip, the access road to the airstrip must be a minimum of 12 feet wide and provide an all-weather surface for emergency vehicle access.
6. A copy of the Airport Master Record must be provided to the Development Services Department once the airport is in operation.
7. Any further expansion or modification of the facility or site must obtain the approval of the designated Land Use Authority.
8. If any structures are built within the noted runway areas and zones, the Holyoak Airport Conditional Use Permit must be reconsidered by the Cache County Land Use Authority.

Expiration: This conditional use permit shall expire and be null and void twelve (12) months after the approval date unless:

1. A County Building Permit has been issued and remains in force until the completion of the approved project, or;
2. A County Business License is issued and remains current for an approved commercial business, or;
3. Substantial work shall have been accomplished towards the completion of the approved project.

If at any time any specific condition is not fully complied with, the Planning Commission may revoke the conditional use permit upon a 30-day notice to the applicant/property owner and following a public meeting.



Director of Development Services

3/21/2017

Date

Ent 1171175 Bk 1949 Pg 1273

AGREEMENT OF ACCEPTANCE

I have read, understand and agree to comply with the Land Use Ordinance and the terms of this permit. I realize that in order to do any construction on the property, I will be required to obtain a County Building Permit and that I will need to meet the standards of Cache County for any improvements. I agree to reimburse Cache County for any costs of enforcement including reasonable attorney fees, and/or any other costs of enforcement incurred by Cache County resulting from my failure to comply with the Land Use Ordinance and the terms of this conditional use permit.



Agent or Property Owner

5/4/2017

Date

STATE OF UTAH)
)
COUNTY OF CACHE)

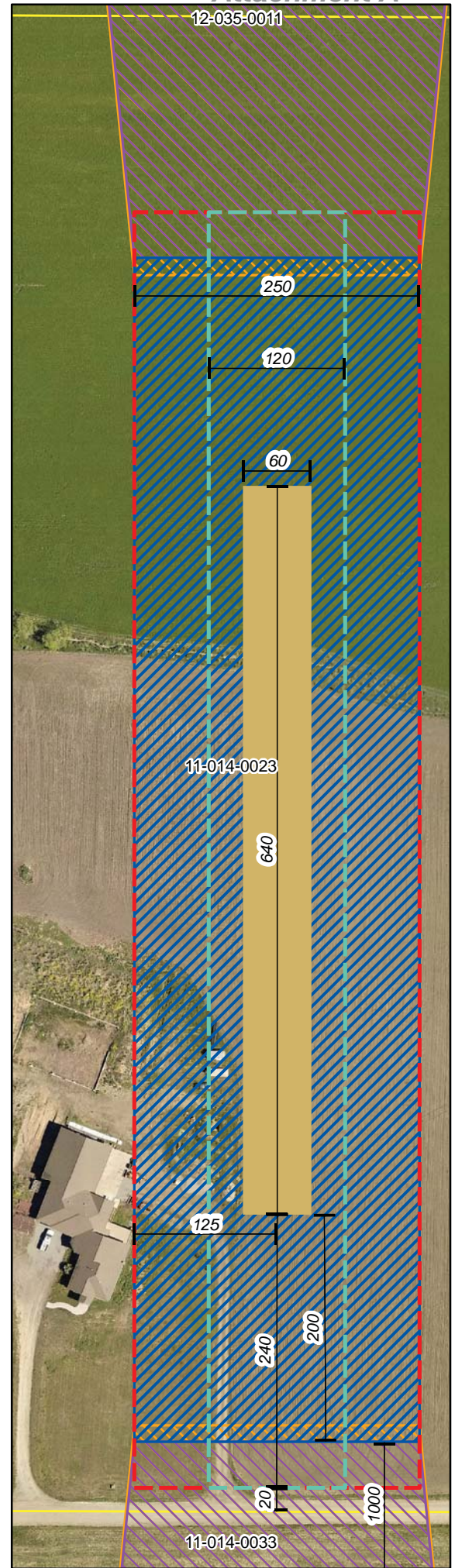
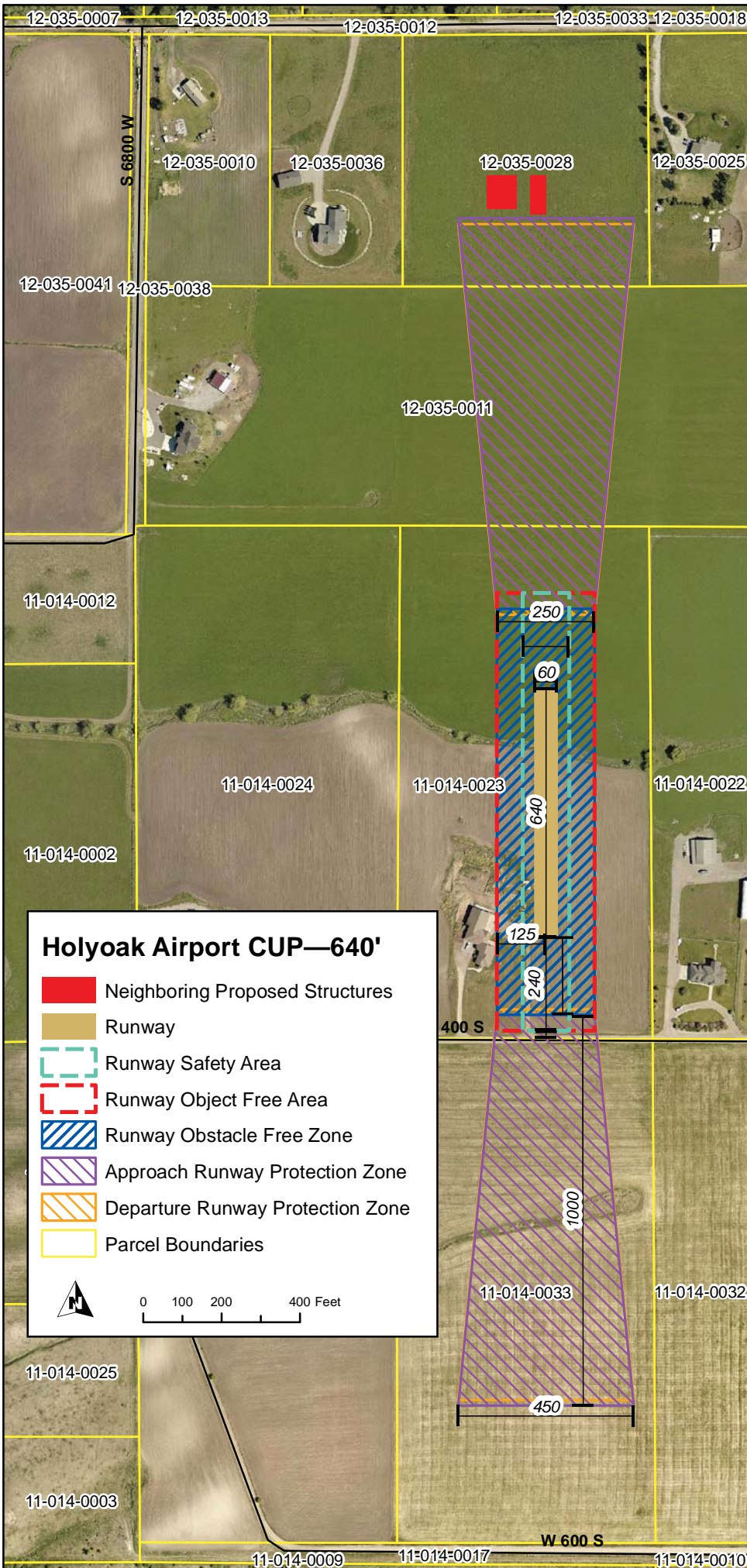


Sworn to and subscribed to before me this
04 day of May, 2017.

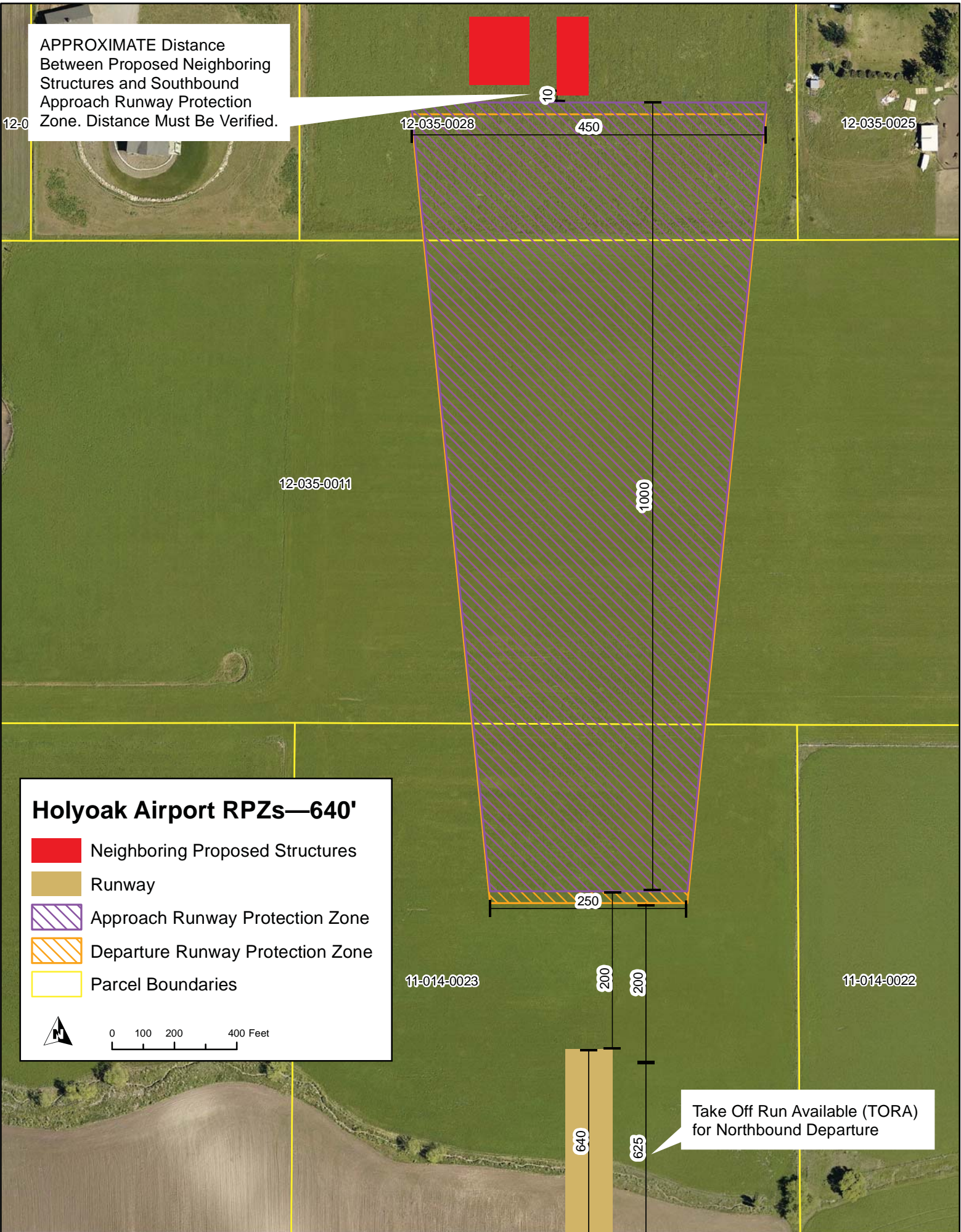

Notary Public

LEGAL DESCRIPTION(S)






11-014-0023:
LOT 3 PHEASANT RIDGE SUBDIVISION CONT 19.74 AC

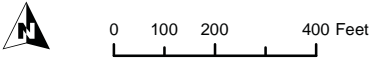


APPROXIMATE Distance Between Proposed Neighboring Structures and Southbound Approach Runway Protection Zone. Distance Must Be Verified.

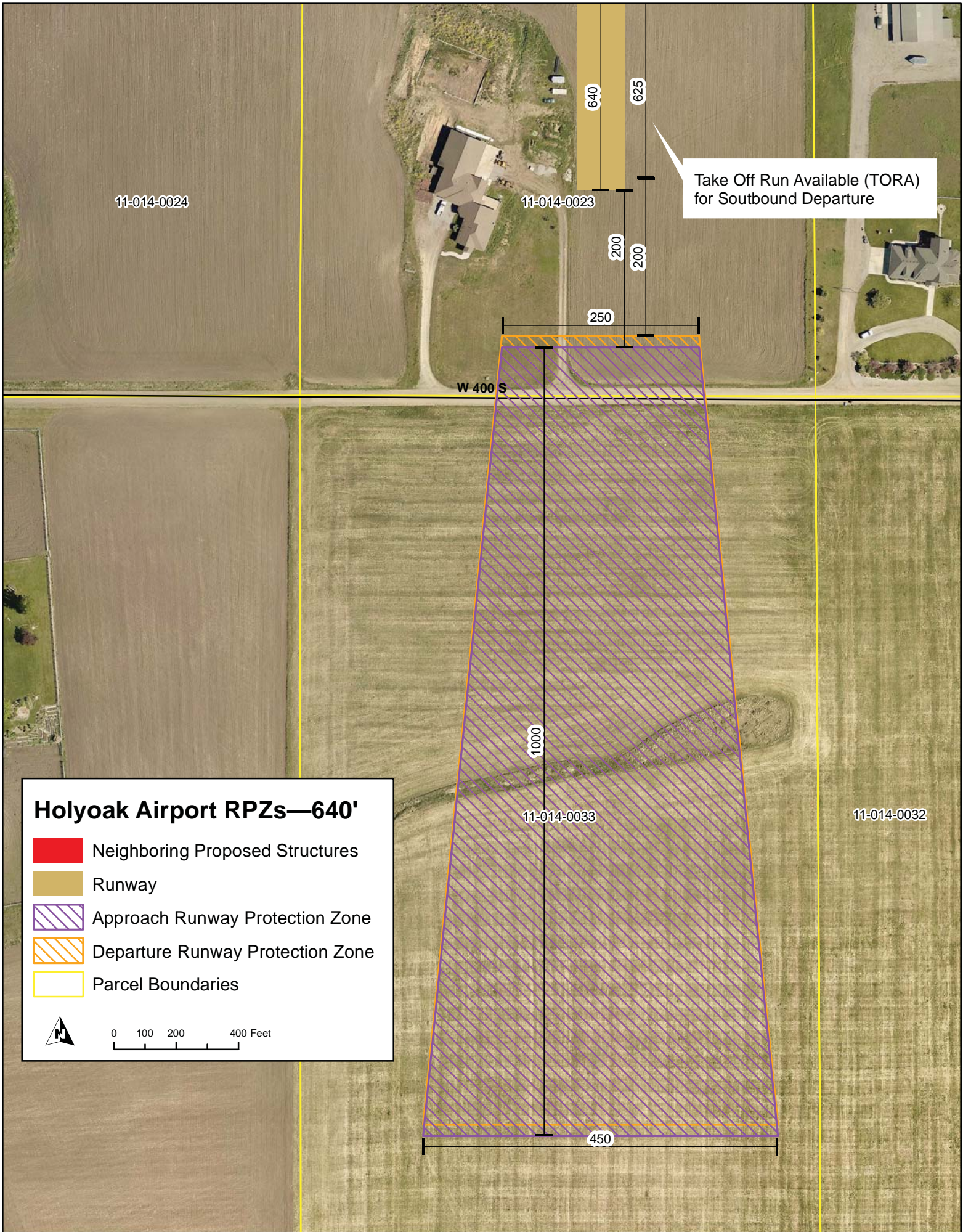


Holyoak Airport RPZs—640'

-  Neighboring Proposed Structures
-  Runway
-  Approach Runway Protection Zone
-  Departure Runway Protection Zone
-  Parcel Boundaries



Take Off Run Available (TORA) for Northbound Departure



Holyoak Airport RPZs—640'

- Neighboring Proposed Structures
- Runway
- Approach Runway Protection Zone
- Departure Runway Protection Zone
- Parcel Boundaries

0 100 200 400 Feet



LAW OFFICE OF DANIEL K. DYGERT, ESQ.

November 29, 2018

VIA HAND DELIVERY

Cache County Planning Commission
179 North Main, Suite 305
Logan, UT 84321

Re: **REQUEST TO CONFIRM EXPIRATION OF THE HOLYOAK AIRPORT CONDITIONAL USE PERMIT OR, IN THE ALTERNATIVE, TO REVOKE THE HOLYOAK AIRPORT CONDITIONAL USE PERMIT**
PROJECT NAME: Holyoak Airport
PROJECT ADDRESS: 6523 West 400 South, Mendon, Utah 84325
OWNER NAME: Nathan and Rachel Holyoak

Cache County Planning Commission:

I represent Dirk and Tina Howard, Kookie Tanner, Brian and Debbie Gudmundson, and Nate and Sharalen Benson (hereinafter, the "Affected Property Owners"), in connection with the Holyoak Airport Conditional Use Permit (the "Holyoak Airport CUP" or the "Permit"). The purpose of this Request is to seek confirmation that the Permit has expired or, in the alternative, to seek revocation of the Permit, on the following bases:

- I. **THE HOLYOAK AIRPORT CUP EXPIRED IN ACCORDANCE WITH ITS TERMS ON MAY 5, 2017, AND IS NULL AND VOID.**
- II. **PURSUANT TO CACHE COUNTY CODE § 17.06.050(E), THERE IS CAUSE TO BELIEVE THAT GROUNDS EXIST FOR REVOCATION OF THE HOLYOAK AIRPORT CUP.** These grounds include the following:
 - A. One or more of the conditions of the Holyoak Airport CUP have not been met.
 - B. The use for which the Holyoak Airport CUP was granted has ceased for more than twelve (12) consecutive calendar months.
 - C. The use constitutes a "nuisance" as defined the Cache County Code.
- III. **THE HOLYOAK AIRPORT CUP SHOULD BE REVOKED BECAUSE IT WAS RECORDED UNDER FALSE PRETENSES.**

I. **THE HOLYOAK AIRPORT CUP HAS EXPIRED AND IS NULL AND VOID IN ACCORDANCE WITH ITS TERMS**

The Holyoak Airport CUP expressly provides that it:

"shall expire and be null and void twelve (12) months after the approval date unless:

1. A County Building Permit has been issued and remains in force until the completion of the approved project, or;
2. A County Business License is issued and remains current for an approved commercial business, or;
3. Substantial work shall have been accomplished towards the completion of the approved project."

Over two and a half years have passed since the approval date, and none of the three requirements set forth above have been satisfied. At no time have the applicants obtained either a County Building Permit or a County Business License for the Holyoak Airport (which was confirmed by the Cache County Building Department and the Cache County Clerk's Office, respectively, on November 7, 2018), nor has any substantial work been accomplished towards the completion of the project. Attached as Exhibit A hereto is a satellite image dated September 14, 2018, which clearly shows that no substantial work on the airport has been completed. Specifically, (1) there is no land disturbance for the construction of any part of a dirt or grass airstrip as contemplated by the Permit application, and (2) there are no improvements or any other work to bridge Spring Creek for the completion of the airstrip. There is simply nothing to indicate that any work, let alone substantial work, has been completed toward the construction of an airport. *In light of the foregoing, the Holyoak Airport CUP has expired, and is null and void in accordance with its terms.*

II. **THERE IS CAUSE TO BELIEVE THAT GROUNDS EXIST FOR REVOCATION OF THE HOLYOAK AIRPORT CUP**

A. **One or More of the Conditions of the Holyoak Airport CUP Have Not Been Met**

The Holyoak Airport CUP includes the following conditions:

- "2. Prior to recordation, the applicant must provide a revised runway layout and design compliant with the runway design standards in FAA Circular AC 150/5300-13A. . . .

3. The proponent must follow the site plans and letter of intent submitted to the Cache County Development Services Office, except as conditioned by the Cache County Planning Commission herein.
8. If any structures are built within the noted runway areas and zones, the Holyoak Airport Conditional Use Permit must be reconsidered by the Cache County Land Use Authority."

In the summer of 2017, a new residence was built on Parcel No. 12-035-0028 squarely within the Runway Protection Zone ("RPZ") as depicted on the Staff Report. See Exhibit B hereto. This should have triggered Condition 8 of the Permit and initiated a reconsideration of the Permit by the Land Use Authority/Planning Commission, yet the runway was simply redesigned in clear violation of Condition 3. The purpose of the redesign was made clear by Ms. Holyoak in a May 2, 2017, email to Chris Harrild in which she stated, "we feel the easiest way to finalize the permit is to shorten the runway to avoid the proposed structures" Accordingly, they reduced the runway dimensions so as to shift the RPZ to the south such that its northern boundary would be ten (10) feet from the new residence and associated buildings. See Exhibit C hereto. *As a result, Condition 3 was violated and Condition 8 was nullified by administratively making significant and material changes to the Permit with no public notice or opportunity for the public to be heard, and without the required reconsideration by the Land Use Authority/Planning Commission.* It is notable that these changes were made and incorporated a mere three (3) days before the deadline for recording the Permit.

The changes to the runway design approved by Mr. Harrild make it clear why reconsideration by the Land use Authority was so critical. The changes are clearly not compliant with the runway design standards in FAA Circular AC 150/5300-13A and create a serious risk to persons and property in the vicinity of the airport. Perhaps the most basic and critical requirement imposed by AC 150/5300-13A is set forth in Para. 302(a), which states, "The runway should be long enough to accommodate landing and departures for the design aircraft." In this case, the design aircraft is a Cessna 182.¹ A key component of the justification for the Permit application was that "the take-off and landing distances (625 ft and 590 ft) of the Cessna 182 are well below the proposed airstrip (~1300 feet)," which created a reasonable safety margin. As adjusted, the proposed runway would be 640 feet long, leaving a safety margin of only 15 feet on take-off and a mere 50 feet on landing.

The applicants must have been aware that their redesign is unsafe and unreasonable. Specifically, the applicants failed to disclose that the performance data for the aircraft are based on standard atmospheric conditions, level hard-surface dry runways and no wind, and that performance will vary with individual airplanes and numerous other factors affecting flight operations. "Standard

¹ The Permit application does not specify the model year of Cessna 182. Depending on the year of production, the required distances for take-off could be as great as 795 feet or more.

atmospheric conditions" in this context means an altimeter setting of 29.92 in/Hg at sea level with a temperature of 59^o Fahrenheit. Aircraft performance in a normally aspirated aircraft like a Cessna 182 declines significantly with increased altitude and this runway would be located at an elevation of 4,565 feet. On a typical summer day at standard barometric pressure, a temperature of 90^o F, and a dew point of 56^o F, the density altitude (i.e., the effective altitude at which the aircraft is operating) rises to 7,733 feet. As stated by the Aircraft Owners and Pilots Association, at a higher density altitude, "the aircraft will accelerate more slowly down the runway, will need to move faster to attain the same lift, and will climb more slowly. The less dense the air, the less lift, the more lackluster the climb, and the longer the distance needed for takeoff and landing." None of these factors have been taken into account with respect to the redesign of the Holyoak Airport.

In addition, due to rolling resistance, the take-off distance is significantly increased on a grass strip, and it could easily surpass the proposed 640-foot runway, even under otherwise ideal conditions. The same is true for landings, where grass strips, especially when wet, do not allow for the same landing distances as a hard runway, and where something as minor as too much airspeed on approach or a wind gust can easily consume the 50-foot safety margin. Simply put, no reasonable pilot would take off or land on a 640-foot grass strip in a Cessna 182 under any but the most ideal conditions (i.e., dry runway, low density altitude, light weight, and with a solid headwind).

It should also be noted that the FAA Determination of no objection dated March 16, 2016, expired effective March 31, 2017, because the runway had not become operational. Furthermore, this determination was based on the runway length and configuration as stated in the original Permit application (i.e., 1300' x 50') and specifically addressed the "safety of persons and property on the ground." There is currently no FAA Determination in effect, and the reduction of the runway length by more than 50% clearly places persons and property on the ground at significant risk.

B. THE USE FOR WHICH THE HOLYOAK AIRPORT CUP WAS GRANTED HAS CEASED FOR MORE THAN TWELVE (12) CONSECUTIVE CALENDAR MONTHS

During the twelve (12) month period immediately preceding the submission of this Request, there has been no use of the Holyoak property for any purpose contemplated by the Permit. See *Dirk Howard Decl., Exhibit D* hereto; *Tina Howard Decl., Exhibit E* hereto; *Declaration of Nathan Benson*, attached as *Exhibit F* hereto; and *Declaration of Sharalen Benson*, attached as *Exhibit G* hereto. The lack of use of the Holyoak property for any purpose contemplated by the Permit is further attested by the lack of any improvements on the Holyoak property that would support its use as an airport for small aircraft.

C. THE USE CONTEMPLATED BY THE HOLYOAK AIRPORT CUP CONSTITUTES A NUISANCE

Pursuant to Cache County Code § 17.07.040, a "nuisance" is defined as "Any use or activity which emits noise, smoke, dust, odor, or vibration in amounts sufficient to substantially depreciate values of surrounding buildings or lands, or a use or activity which substantially deprives the owners of adjoining property of a property right."

The operation of the Holyoak Airport in close proximity to properties owned by the Affected Property Owners would clearly constitute a nuisance due to the noise, smoke, dust and vibration it creates. The Howards' home is a mere 300 feet from the proposed runway. According to a 2010 Department of Transportation noise study,² a Cessna 182 has an "effective perceived noise level"³ of 96.2 to 97.3 decibels at 400 feet to 102.7 to 103.8 decibels at a distance of 200 feet. These noise levels are considered "uncomfortably loud" and are equivalent to a jackhammer.

In addition, where the Runway Safety Area, Runway Object Free Area, Runway Obstacle Free Zone and Runway Protection Zone located south of the runway are located entirely on Ms. Tanner's property (Parcel No. 11-014-0033), her property has been encumbered by the airport and she has been deprived of substantial property rights. Indeed, if this were a public airport, the governing authority would be entitled to acquire Ms. Tanner's property by eminent domain, and FAA design criteria state that "the airport owner must have sufficient interest in the Runway Protection Zones to protect the Runway Protection Zones from **both** obstructions and incompatible land use." See *FAA Airport Division – Runway Protection Zones*, attached as Exhibit H hereto (emphasis in original); see also, *FAA Advisory Circular 150/5300-13A, para. 105(f)*, which states, "**At a minimum for new runways, land acquisition should include Object Free Areas (OFAs) and Runway Protection Zones (RPZs).**" (Emphasis added). In this case, the Holyoaks have absolutely no interest whatsoever in Ms. Tanner's property, yet they have encumbered her property with the Runway Safety Area, the Object Free Area, the Obstacle Free Zone, and the Runway Protection Zone.

That the airport substantially depreciates values of surrounding lands is conclusively established by the fact that Ms. Tanner lost a sale of her property directly as a result of the proposed airport. See *Declaration of Ellyn Tanner*, attached as Exhibit I hereto.

² Aircraft Source Noise Measurement Studies, October 2010 Final Report, U.S. Department of Transportation.

³ The means of calculating the "effective perceived noise level" is set forth in 14 CFR Part 36, Appendix A, Section A36.4.

III. THE HOLYOAK CUP WAS RECORDED UNDER FALSE PRETENSES

The Holyoak Airport CUP was recorded by the applicants on May 4, 2017, under false pretenses. The May 9, 2016, letter from Development Services Department to the Holyoaks specifically stated:

"The airport may not be constructed or begin operation until conditions are met and the permit is recorded. **Once the conditions are met, you may sign and record your permit in the County Recorder's Office.**" (Emphasis added).

This was reiterated in an April 18, 2017, letter to the applicants from Senior Planner Chris Harrild:

The conditional use permit for the Holyoak Airport has not been recorded. The Cache County Land Use Ordinance requires that if a conditional use permit is not recorded within one year of the Land Use Authority approval, said approval is void. **All conditions must be met before the permit is recorded.**" (Emphasis added).

The applicants knew that the conditions had not been met, yet they still recorded the Permit on May 4, 2017, for the sole purpose of meeting the May 5, 2017, deadline. They also knew that the Permit would be null and void as of May 5, 2017, because they had not obtained a business license or building permit, nor had they done any work at all on the project.

CONCLUSION

In light of the foregoing, the Affected Property Owners respectfully request that the Land Use Authority publicly confirm that the Holyoak Airport CUP expired on May 5, 2017, in accordance with its terms. Alternatively, the Affected Property Owners respectfully request that the Land Use Authority revoke the Holyoak Airport CUP for the reasons stated above.

Sincerely yours,



Daniel K. Dygert

cc: Dirk and Tina Howard (via Email)
Kookie Tanner (via Email)
Brian and Debbie Gudmundson (via Email)
Nate and Sharalen Benson (via Email)
Nathan and Rachel Holyoak (via Certified Mail – Return receipt requested)

EXHIBIT A

Holyoak Property – September 14, 2018



Holyoak Property - September 14, 2018

Legend
Untitled Path

Google Earth

900 ft

EXHIBIT B

Original RPZ from May 2016 Staff Report

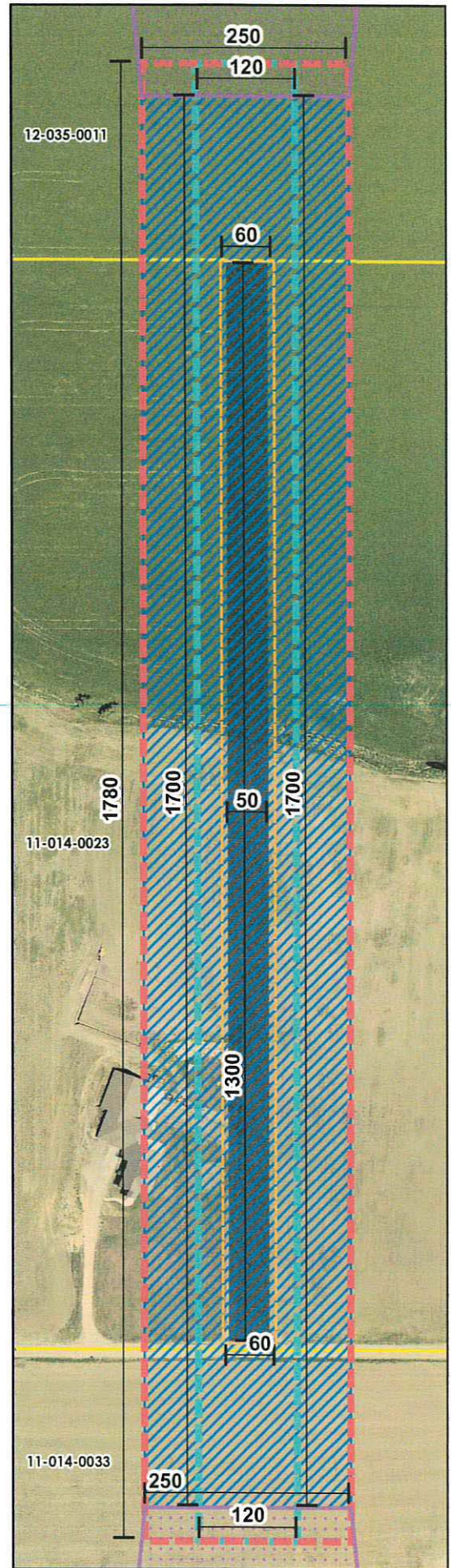
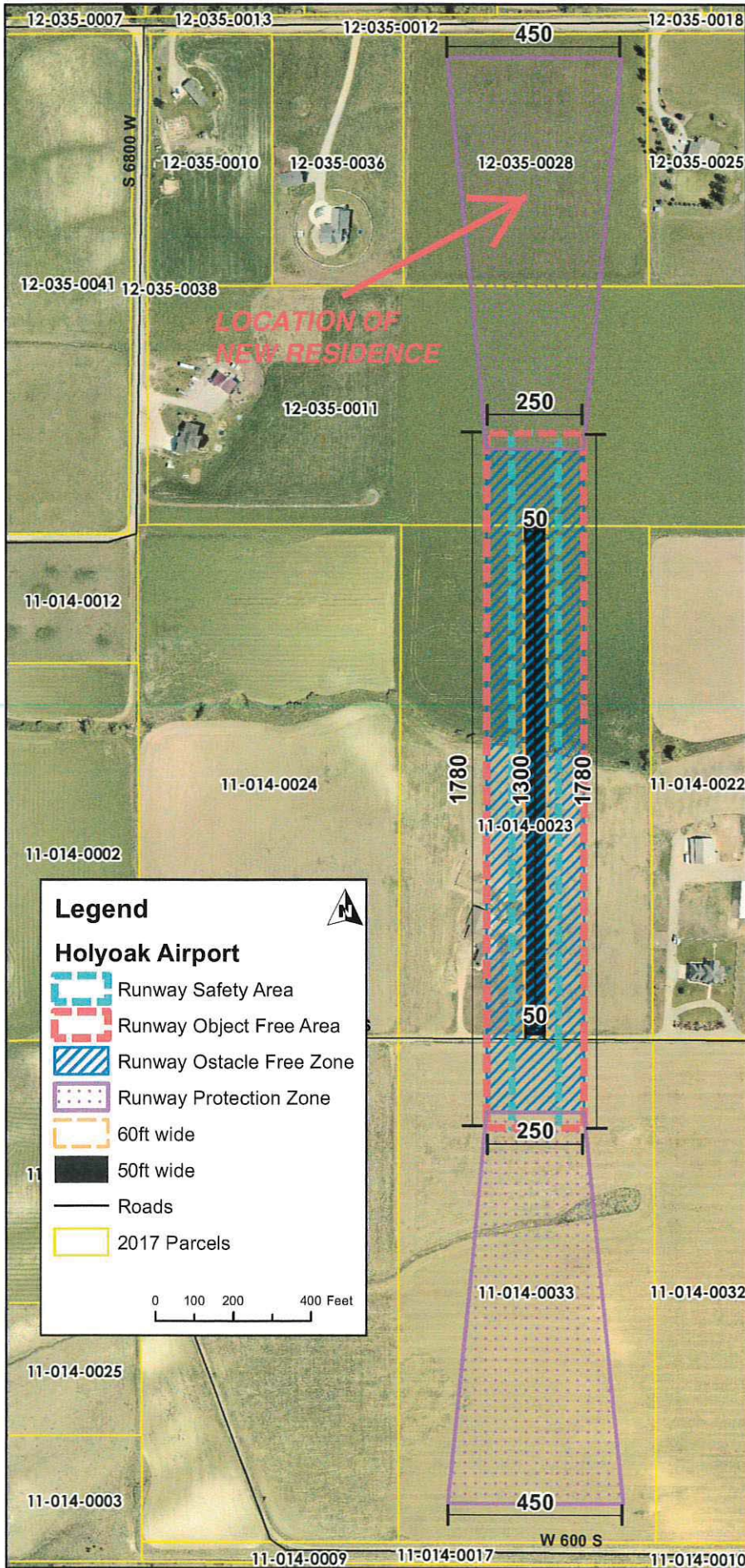


EXHIBIT C

Revised RPZ to Avoid Condition 8

APPROXIMATE Distance Between Proposed Neighboring Structures and Southbound Approach Runway Protection Zone. Distance Must Be Verified.



10

12-035-0028

450

12-035-0025

12-035-0011

1000

Holyoak Airport RPZs—640'

- Neighboring Proposed Structures
- Runway
- Approach Runway Protection Zone
- Departure Runway Protection Zone
- Parcel Boundaries



0 100 200 400 Feet

11-014-0023

11-014-0022

250

200

200

640

625

Take Off Run Available (TORA) for Northbound Departure

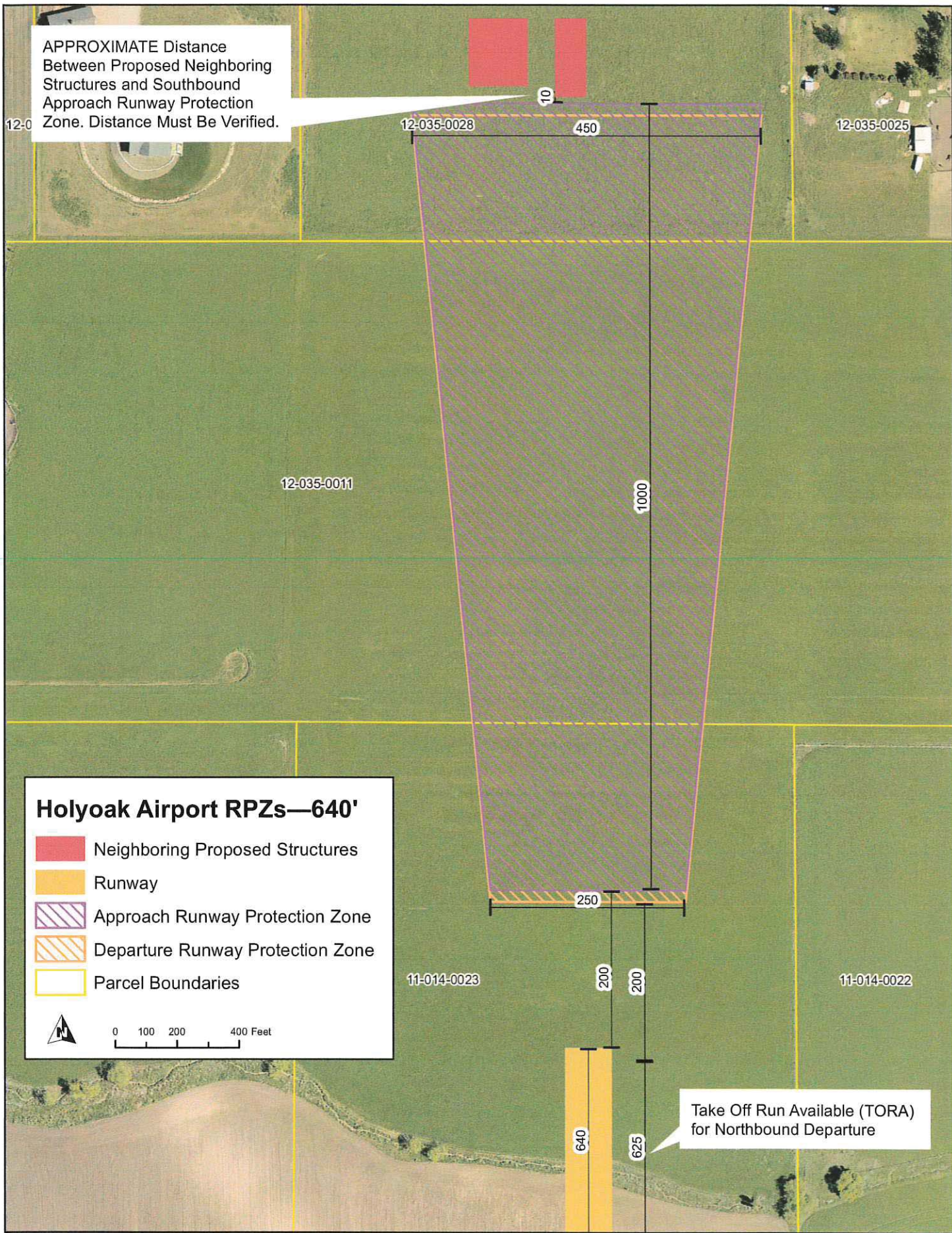


EXHIBIT D

Dirk Howard Declaration

DECLARATION OF DIRK HOWARD

Pursuant to Utah Code Ann. § 78B-18a-101 et. seq., DIRK HOWARD declares that the following facts are true and correct:

1. I am a resident of Utah, over the age of 21 years, and am competent by personal knowledge to declare the things hereinafter stated.

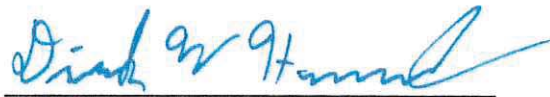
2. I currently reside at 6473 W. 400 S., Mendon, UT 84325 (the "Howard Property"), and have continuously resided at such location since July 2016.

3. The Howard Property is directly adjacent to the property located at 6523 West 400 South, Mendon, UT 84325 (the "Holyoak Property"). My residence is located approximately 300 feet to the east of the proposed runway as contemplated in the Holyoak Airport Conditional Use Permit that was approved on May 5, 2016.

4. During the twelve (12) month period immediately preceding the date of this Declaration, I have not observed any portion of the Holyoak Property being used as an airstrip or runway.

I declare under criminal penalty under the law of Utah that the foregoing is true and correct.

Signed on the 19th day of November, 2018, at Mendon, Utah.



Dirk Howard

EXHIBIT E

Tina Howard Declaration

DECLARATION OF TINA HOWARD

Pursuant to Utah Code Ann. § 78B-18a-101 et. seq., TINA HOWARD declares that the following facts are true and correct:

1. I am a resident of Utah, over the age of 21 years, and am competent by personal knowledge to declare the things hereinafter stated.

2. I currently reside at 6473 W. 400 S., Mendon, UT 84325 (the "Howard Property"), and have continuously resided at such location since July 2016.

3. The Howard Property is directly adjacent to the property located at 6523 West 400 South, Mendon, UT 84325 (the "Holyoak Property"). My residence is located approximately 300 feet to the east of the proposed runway as contemplated in the Holyoak Airport Conditional Use Permit that was approved on May 5, 2016.

4. During the twelve (12) month period immediately preceding the date of this Declaration, I have not observed any portion of the Holyoak Property being used as an airstrip or runway.

I declare under criminal penalty under the law of Utah that the foregoing is true and correct.

Signed on the 19th day of November, 2018, at Mendon, Utah.



Tina Howard

EXHIBIT F

Nathan Benson Declaration

DECLARATION OF NATHAN BENSON

Pursuant to Utah Code Ann. § 78B-18a-101 et. seq., NATHAN BENSON declares that the following facts are true and correct:

1. I am a resident of Utah, over the age of 21 years, and am competent by personal knowledge to declare the things hereinafter stated.
2. I currently reside at 6427 W. 400 S., Mendon, UT 84325 (the "Benson Residence").
3. The Benson Residence is located approximately 630 feet to the east of the property located at 6523 West 400 South, Mendon, UT 84325 (the "Holyoak Property"). The Benson Residence and the Holyoak Property are both located in the Pheasant Ridge Subdivision.
4. During the twelve (12) month period immediately preceding the date of this Declaration, I have not observed any portion of the Holyoak Property being used as an airstrip or runway.

I declare under criminal penalty under the law of Utah that the foregoing is true and correct.

Signed on 11/28/2018 7:20:28 PM PST, at Mendon, Utah.

DocuSigned by
Nathan W. Benson
Nathan Benson

EXHIBIT G

Sharalen Benson Declaration

DECLARATION OF SHARALEN BENSON

Pursuant to Utah Code Ann. § 78B-18a-101 et. seq., SHARALEN BENSON declares that the following facts are true and correct:

1. I am a resident of Utah, over the age of 21 years, and am competent by personal knowledge to declare the things hereinafter stated.

2. I currently reside at 6427 W. 400 S., Mendon, UT 84325 (the "Benson Residence").

3. The Benson Residence is located approximately 630 feet to the east of the property located at 6523 West 400 South, Mendon, UT 84325 (the "Holyoak Property"). The Benson Residence and the Holyoak Property are both located in the Pheasant Ridge Subdivision.

4. During the twelve (12) month period immediately preceding the date of this Declaration, I have not observed any portion of the Holyoak Property being used as an airstrip or runway.

I declare under criminal penalty under the law of Utah that the foregoing is true and correct.

Signed on the 11/27/2018 12:39:51 PM PST, 2018, at Mendon, Utah.

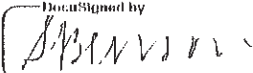
DocuSigned by

Sharalen Benson

EXHIBIT H

FAA Guidance on RPZ's

FAA Airport Division – Runway Protection Zones

550 - Runway Protection Zones

Overview

Runway protection zones are a trapezoidal area “off the end of the runway end that serves to enhance the protection of people and property on the ground” in the event an aircraft lands or crashes beyond the runway end. Runway Protection Zones underlie a portion of the approach closest to the airport.

Many people have confused the RPZ with the need for Object Free Areas (OFA), Obstacle Free Zones (OFZ), Object clearing criteria, and Part 77 requirements. Each of these serves distinct purposes and are not all coincident.

While the RPZ also has limitations on obstructions (because it lies below the approach surface and because it includes safety areas and obstacle free areas), the primary purpose of the RPZ is the protection of people and property on the ground.

Airport Property and the RPZ

Under FAA design criteria (which applies to all obligated airports), the airport must own the landing area.

Secondly the airport owner must have sufficient interest in the Runway Protection Zones to protect the Runway Protection Zones from **both** obstructions and incompatible land use.

Finally the airport owner must strive to attain compatible zoning around the airport in order to prevent incompatible land uses that:

- Could cause sufficient conflict that endangers the airport
- Cause it to be closed or
- Require substantial remedial investment to purchase conflicting developed property.

Sponsor may attain sufficient interest in the Runway Protection Zones in three primary ways.

- (1) The first and the preferred method is for the airport to purchase the approach areas in fee. Ownership in fee is preferred because it provides maximum control for the airport.
- (2) The second is through purchase of an easement (or a combination of easement and zoning).
- (3) The third alternative is to rely upon adequate zoning which should be enacted even if fee or easement ownership is in place.

FAA Advisory Circular 150/5300-13 states this ownership policy as follows:

“All ... existing and planned airport elements including the following should be on airport property. (A) Object Free areas, (B) **Runway Protection Zones** (C) Areas under ...Part 77 ... imaginary surfaces out where the surfaces obtain a height of at least 35 feet above the primary surface; and (d) Areas, other than those which can be adequately controlled by zoning, easements, or other means to mitigate potential incompatible uses...Such control includes clearing RPZ areas (and maintaining them clear) of incompatible uses and activities.”

Through experience we have learned that it is usually less expensive in the long run to acquire the RPZ in fee rather than acquiring an easement. This is because an easement must be very restrictive in order to provide adequate control unless zoning is also very restrictive.

Compatible Land Use

Compatible land use within the RPZ is generally restricted to such land uses as agricultural, golf course, and similar uses that do not involve congregations of people or construction of buildings or other improvements that may be obstructions.

"The following land use criteria apply within the RPZ: (a) While it is desirable to clear all objects from the RPZ, some uses are permitted, provided they do not attract wildlife, are outside the Runway OFA, and do not interfere with navigational aids. Automobile parking facilities, although discouraged, may be permitted, provided the parking facilities and any associated appurtenances, in addition to meeting all of the preceding conditions, are located outside of the object free area extension. **(B) Land uses prohibited from the RPZ are: residences and places of public assembly. (Churches, schools, hospitals, office buildings, shopping centers, and other uses with similar concentrations of persons typify places of public assembly.)"**

In cases where the land is already developed and it would be too expensive to acquire the existing development, this policy is a recommendation to the landowner i.e. it is a notice to the landowner that the FAA considers such uses incompatible.

"Where it is determined to be impractical for the airport owner to acquire and plan the land uses within the entire RPZ, the RPZ land use standards have recommendation status for that portion of the RPZ not controlled by the airport owner."

Where such land is vacant, it is rarely impractical to acquire the land in the RPZ. Even if the cost of the land seems to be prohibitive the airport owner is expected to exercise sufficient control through zoning or easements to prevent prohibited land uses.

It is FAA policy to object to incompatible land uses that are proposed for property within the RPZ whether or not the airport owns the land and such objection should be anticipated. In particular when we receive a proposal for an airspace study under Part 157 for the RPZ **we will object when that proposal conflicts with an airport planning or design standard or recommendation.**

FAA Recommendation

We recommend that Airport owners and managers review the Airport Layout Plan for conformity with the above statement. Airports that do not own the entire RPZ should consider the need to acquire such land if there is any possibility that incompatible land uses could occur within the RPZ. In particular easements should be reviewed to ensure that land uses are restricted not just obstructions. Where necessary, requests should be made to the appropriate zoning authority to rezone such land to prevent future incompatible use. Where neither zoning nor easements are adequate the RPZ should be acquired in fee. Airport layout plans should be revised if necessary to show such future land acquisition so that it is eligible under the Airport Improvement Program. An airport can acquire such land and be reimbursed at a later date from a future AIP grant, if funds become available, such land acquisition is shown on an approved ALP, and the FAA determines that such land is eligible.

RESOURCES Advisory Circulars

- **AC 150/5300-13 Airport Design**

EXHIBIT I

Declaration of Ellyn Tanner

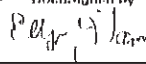
DECLARATION OF ELLYN TANNER

Pursuant to Utah Code Ann. § 78B-18a-101 et. seq., ELLYN TANNER declares that the following facts are true and correct:

1. I am a resident of Utah, over the age of 21 years, and am competent by personal knowledge to declare the things hereinafter stated.
2. Through Tanner's Overlook, LLC, I currently own property located on 400 South in Mendon, Utah, Parcel No. 11-014-0033 (the "Tanner Property").
3. The Tanner Property is located adjacent to and south of the property located at 6523 West 400 South, Mendon, UT 84325 (the "Holyoak Property").
4. On February 21, 2018, Tanner's Overlook, LLC, entered into a Real Estate Purchase Contract for the sale of the Tanner Property (the "REPC").
5. After an extension of the due diligence deadline, it was communicated to me that the buyers were informed of the Holyoak Airport and its impact on the Tanner Property, and they decided to cancel the REPC and not purchase the Tanner Property.

I declare under criminal penalty under the law of Utah that the foregoing is true and correct.

Signed on the 11/21/2018 ^{9:43:52 AM, PST} day of November, 2018, at Mendon, Utah.

DocuSigned by

Ellyn Tanner

LAW OFFICE OF DANIEL K. DYGERT, ESQ.

January 4, 2019

VIA FIRST CLASS MAIL

Chris Harrild, Planning Manager
Cache County Planning Commission
179 North Main, Suite 305
Logan, UT 84321

Re: **REQUEST TO CONFIRM EXPIRATION OF THE HOLYOAK AIRPORT CONDITIONAL USE PERMIT OR, IN THE ALTERNATIVE, TO REVOKE THE HOLYOAK AIRPORT CONDITIONAL USE PERMIT**
PROJECT NAME: Holyoak Airport
PROJECT ADDRESS: 6523 West 400 South, Mendon, Utah 84325
OWNER NAME: Nathan and Rachel Holyoak

Mr. Harrild:

As you are aware, I represent Dirk and Tina Howard, Kookie Tanner, Brian and Debbie Gudmundson, and Nate and Sharalen Benson, in connection with the Holyoak Airport Conditional Use Permit (the "Holyoak Airport CUP" or the "Permit"). The purpose of this letter is to follow up on our Request to Confirm Expiration of the Holyoak Airport Conditional Use Permit or, in the Alternative, to Revoke the Holyoak Airport Conditional Use Permit (the "Request"), which was submitted to your office on November 29, 2018.

When the Request was submitted, I was informed that it would be scheduled for the January 3, 2019, Planning Commission meeting. Nevertheless, when I recently called your office to obtain information on the status of the Request, I was informed that it would not be on the agenda for the January 3 meeting, and that it was being investigated by staff for possible violations with no estimate on the timeline. No communication was made with me or my clients indicating that it would not be on the January 3 agenda, and it does not appear that your office has taken any action to address the issue.

My clients have suffered and continue to suffer harm as a result of the cloud that the Holyoak Airport CUP has created on their properties and they are not willing to postpone the resolution of this issue for an indefinite period of time. Accordingly, we intend to proceed as follows with respect to each of the bases for termination we have identified:

I. THE HOLYOAK AIRPORT CUP EXPIRED IN ACCORDANCE WITH ITS TERMS ON MAY 5, 2017, AND IS NULL AND VOID

It is our position that the Permit is self-executing, and that it has already become null and void in accordance with its terms with no further action by the Planning Commission or Planning Commission staff required. Irrefutable evidence has been provided to your office establishing that as of May 5, 2017: (1) a County Building Permit had not been issued, (2) a County Business License had not been issued, and (3) substantial work had not been accomplished towards the completion of the approved project. You have already had over a month to address this issue, and there is no reason for the Planning Commission staff to refuse to provide the requested confirmation. Accordingly, if confirmation that the Permit has expired and is null and void has not been provided by February 8, 2019, we will move forward with obtaining a judicial declaration in order to clear the cloud on my clients' properties.

II. THERE IS CAUSE TO BELIEVE THAT GROUNDS EXIST FOR REVOCATION OF THE HOLYOAK AIRPORT CUP

We recognize that revoking the Permit under Cache County Code § 17.06.050(E) requires investigation by Planning Commission staff, consideration of the matter at a public meeting and notice to the Permit holders at least thirty (30) days prior to the meeting. Nevertheless, over two months should be plenty of time to investigate the straightforward issues we have identified (Permit conditions have not been met, Permit use has ceased for at least 12 months, and Permit use constitutes a nuisance). Accordingly, if a notice of potential revocation has not been issued to the Permit holders by February 5, 2019, with the matter to be considered at the March 7, 2019, Planning Commission meeting, we will assume that Planning Commission staff does not intend to pursue revocation of the Permit and will proceed accordingly. Obviously, this issue will become moot if the Permit is determined to have expired.

III. THE HOLYOAK AIRPORT CUP SHOULD BE REVOKED BECAUSE IT WAS RECORDED UNDER FALSE PRETENSES

As with *Item I* above, no public meetings or notices are required for the Planning Commission to determine that the Holyoak Airport CUP was recorded under false pretenses and terminate it on that basis. As you correctly stated in your April 18, 2017, letter to the Holyoaks, if the CUP is not recorded within one (1) year, "said approval is void." Where the Holyoak Airport CUP was recorded under false pretenses, the Permit holders have failed to satisfy this requirement and the Permit is now void. If confirmation that the Permit is void for failure to properly record it has not been provided by February 8, 2019, we will move forward with obtaining a judicial declaration of such fact.

Please address any questions or correspondence regarding this issue to the undersigned at the address set forth below.

Sincerely yours,



Daniel K. Dygert

cc: Cache County Attorneys' Office (via First Class Mail)
Nathan and Rachel Holyoak (via First Class Mail)
Dirk and Tina Howard (via Email)
Kookie Tanner (via Email)
Brian and Debbie Gudmundson (via Email)
Nate and Sharalen Benson (via Email)

Chris Harrild - Violation Complaint

From: Website <cachecounty@gmail.com>
To: Chris Harrild <chris.harrild@cachecounty.org>
Date: 4/22/2019 1:42 PM
Subject: Violation Complaint
Attachments: Holyoak property_2019-04-22 13.35.png

Name: Daniel K. Dygert

Contact Info: dan@dygert-law.com

Location: 6523 West 400 South, Mendon, Utah 84325

Description: The property owner is constructing a runway without a valid conditional use permit. The conditional use permit that obtained for the project in May 2016 expired and became null and void in accordance with its terms on May 5, 2017.

There may be an attachment to this email containing images of the violation.



Chris Harrild - RE: Fw: Airport 5010 Record for Holyoak Airstrip

From: "Sweeney, John (FAA)" <John.Sweeney@faa.gov>
To: Chris Harrild <Chris.Harrild@cachecounty.org>
Date: 5/29/2019 9:22 AM
Subject: RE: Fw: Airport 5010 Record for Holyoak Airstrip

Chris,

I spoke with Rachel and she confirm that the airstrip is operational. The attached form is the completed 5010 and that is what we need to complete our activation package. I will submit that information to the office that updates the FAA publications and databases that will reflect this site as an active airport. I told Rachel that we would follow up with her once it has been completed.

Let me know if you have any other questions.

Thanks,

John

From: Chris Harrild <Chris.Harrild@cachecounty.org>
Sent: Wednesday, May 29, 2019 8:26 AM
To: Sweeney, John (FAA) <John.Sweeney@faa.gov>
Subject: Fwd: Fw: Airport 5010 Record for Holyoak Airstrip

John,

I'm forwarding you the email Rachel Holyoak sent to me yesterday after speaking with you. Please take a look and let me know if Rachel's understanding of what you discussed and what the FAA requires is consistent with your understanding.

Thanks,
Chris



Chris Harrild, AICP

Planning Manager

Development Services

179 North Main, Suite 305

Logan, UT 84321

[435-755-1640](tel:435-755-1640)

chris.harrild@cachecounty.org

>>> Rachel Holyoak <racheljholyoak@yahoo.com> 5/28/2019 5:48 PM >>>
Chris,

Just an update, I talked to John Sweeney at the FAA today, and my understanding was correct, a new airport master record is not required. There is an approval process with the FAA that can take some time (weeks to months). He will let me know when that is complete. That is the approval process I was still waiting for in 2018 but unaware that it was not started due to the retirement of Marsha Hofer and lost records of the extension on the FAA's part.

I expect this will be my latest status before the June 6 meeting.

-Rachel

----- Forwarded Message -----

From: Rachel Holyoak <racheljholyoak@yahoo.com>
To: john.sweeney@faa.gov <john.sweeney@faa.gov>
Cc: Nathan Holyoak <nathanholyoak@yahoo.com>; Colin, Delilah (FAA) <delilah.colin@faa.gov>
Sent: Tuesday, May 28, 2019, 5:42:05 PM MDT
Subject: Airport 5010 Record for Holyoak Airstrip

John,

Thank you again for taking my call today. This email is to confirm that the Airport 5010 record we signed and filed on December 27, 2017 is still complete and accurate. (Copy attached again for reference). The landing strip is as complete as we intended at this time and includes a portion of the width required by the county that has been landed on for over a decade by the previous owner. We would appreciate if you would finalize the approval package and submit it to the additional entities. Once all the paperwork, with all agencies coordinated by the FAA, is complete, please notify me so I can complete my final action with Cache County. Per our phone conversation, I recognize that it may be a few months before I hear from you as that process takes time. Let me know if you need anything else.

Thanks!

-Rachel Holyoak

AIRPORT MASTER RECORD

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

>1 ASSOC. CITY: Mendon 4. STATE: VT LOC ID: _____ FAA SITE NR: _____
 >2 AIRPORT NAME: Holyoak Private Airport 5 COUNTY: CACHE
 3 CBD TO AIRPORT (NM): 1.1 SE 6 REGION/ADO: ANM/DEN 7 SECT AERO CHT: _____

GENERAL

10 OWNERSHIP: Private **SERVICES** **BASED AIRCRAFT**
 11 OWNER: Nathan and Rachel Holyoak >70 FUEL: _____
 12 ADDRESS: PO Box 4927
 Logan, VT, 84323
 13 PHONE NR: (435) 752-2778 90 SINGLE ENG: 1
 14 MANAGER: Nathan Holyoak 91 MULTI ENG: 0
 15 ADDRESS: PO Box 4927 92 JET: 0
 Logan VT, 84323 TOTAL: 1
 16 PHONE NR: (435) 752-2778 93 HELICOPTERS: 0
 17 ATTENDANCE SCHEDULE: None 94 GLIDERS: 0
 None 95 MILITARY: 0
 None 96 ULTRA-LIGHT: 0

MONTHS

18 AIRPORT USE: Private
 19 ARPT LAT: 41° 43' 29"
 20 ARPT LON: 111° 59' 40"
 21 ARPT ELEV: 4710
 22 ACREAGE: 20
 >23 RIGHT TRAFFIC: None
 24 NON-COMM LANDING: _____

DAYS

17 ATTENDANCE SCHEDULE: None
 18 AIRPORT USE: Private
 19 ARPT LAT: 41° 43' 29"
 20 ARPT LON: 111° 59' 40"
 21 ARPT ELEV: 4710
 22 ACREAGE: 20
 >23 RIGHT TRAFFIC: None
 24 NON-COMM LANDING: _____

HOURS

>80 ARPT BCN: _____
 >81 ARPT LGT SKED: _____
 >82 UNICOM: _____
 83 WIND INDICATOR: Yes
 84 SEGMENTED CIRCLE: _____
 85 CONTROL TWR: _____
 86 FSS: _____
 87 FSS ON ARPT: _____
 88 FSS PHONE NR: _____
 89 TOLL FREE NR: _____

RUNWAY DATA

>80 RUNWAY IDENT: 18/36
 >81 LENGTH: 640'
 >82 WIDTH: 60'
 33 SURF TYPE-COND: Dirt/Grass

LIGHTING/APCH AIDS

>40 EDGE INTENSITY: _____
 >42 RWY MARK TYPE-NTSD
 COND: _____
 NTSD

OBSTRUCTION DATA

50 PART 77 CATEGORY: _____
 51 DISPLACED THLD: _____
 52 CTLG OBSTN: _____
 53 OBSTN MARKED/LGTD: _____
 54 HGT ABOVE RWY END: _____
 55 DIST FROM RWY END: _____

A (V) / A (V)
 NONE / NONE
 BUILDING / NONE
 NONE /
 25 /
 800 /

/ / / / / /
 / / / / / /
 / / / / / /
 / / / / / /
 / / / / / /
 / / / / / /

Do you request charting?

Yes _____ No
 (Charting dependent on chart clutter)

(>) ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY>

>110 REMARKS:

Personal use airport, please see line 18. Authorization from owner or manager (see line 11 and/or 14) must be obtained prior to landing.

111 OWNER/MANAGER SIGNATURE: _____
 FAA Form 5010-5 (4986) SUPERSEDES PREVIOUS EDITION



113 DATE: 12/27/2017



Federal Aviation Administration

26805 East 68th Ave., Suite 224

Denver, CO 80249

March 05, 2019

TO:

Nathan & Rachel Holyoak

P.O. Box 4927

6523 West 400 South

Logan, UT 84323

racheljholyoak@yahoo.com

**NOTICE OF AIRPORT AIRSPACE ANALYSIS DETERMINATION
ESTABLISH PRIVATE USE AIRPORT**

****NO OBJECTION/NO OBJECTION WITH CONDITIONS****

The Federal Aviation Administration (FAA) has conducted an aeronautical study under the provisions of Title 14 of the Code of Federal Regulations, Part 157, concerning:

RE: *(See attached Table 1 for referenced case(s))*

Table 1 - Letter Referenced Case(s)

ASN	Prior ASN	Airport Name	Description	Location	Latitude (NAD83)	Longitude (NAD83)	Airport Elevation (feet)
2019-ANM-301-NRA	2016-ANM-128-NRA	HOLYOAK	Private use turf airstrip	MENDON, UT	41-43-29.00N	111-59-40.00W	4752

Description: Private use turf airstrip

We have completed an airspace analysis of the proposed private use airport. As studied, the location is approximately 3 nautical miles NW of MENDON, UT.

We do not object to the construction described in this proposal provided you agree to the following:

It is recommended that your airport be constructed to the standards identified in FAA Advisory Circular (AC) 150/5300-13, Airport Design (current version). Also, a clear approach slope, as identified in (AC) 150/5300-13 Table 3-2 Approach/Departure Standards, should be established at each runway end. If there are other obstructions that penetrate the approach surface, they should be removed or lowered. If the penetrating obstructions cannot be removed or lowered, we recommend that the thresholds be displaced and appropriately marked, so as to provide a clear approach slope surface to each runway end. Please note that roads are defined as obstructions by 14 CFR Part 77. Private roads are the greater of a 10 foot vertical obstruction or the highest mobile object that normally traverses the road. Public roads are considered a 15 foot obstruction, interstate highways are a 17 foot obstruction, railroads are 23 foot obstructions and waterways are the highest mobile object that traverses the waterway.

Be advised, in accordance with 14 CFR Part 157, any construction, alteration to or abandonment of the subject airport requires notice to the FAA for aeronautical review. Notice for these actions can be given using FAA

Attachment C
Form 7480-1, "Notice for Construction, Alteration and Deactivation of Airports". Please refer to Form 7480-1 for triggering events that will require notice.

Our aeronautical study has determined that the establishment of the private use airport will not adversely affect the safe and efficient use of airspace by aircraft. We have no objection to this proposal.

This determination does not constitute FAA approval or disapproval of the physical development involved in the proposal. It is a determination with respect to the safe and efficient use of navigable airspace by aircraft and with respect to the safety of persons and property on the ground. In making the determination, the FAA has considered matters such as the effects the proposal would have on existing or planned traffic patterns of neighboring airports, the effects it would have on the existing airspace structure and projected programs of the FAA, the effects it would have on the safety of persons and property on the ground, and the effects that existing or proposed manmade objects (on file with the FAA) and known natural objects within the affected area would have on the airport proposal.

The FAA cannot prevent the construction of structures near an airport. The airport environment can only be protected through such means as local zoning ordinances, acquisitions of property in fee title or aviation easements, letters of agreements, or other means. This determination in no way preempts or waives any ordinances, laws, or regulations of any government body or agency.

Fifteen (15) days prior to completion, please complete, sign, date, and return the enclosed Airport Master Record 5010-5 Form. This action will ensure your airport is activated and assigned/secured a private use location identifier. Please indicate on the Airport Master Record Form if you desire to have your airport charted. Please be advised that charting of private use airports is not guaranteed. Additionally, if charted, there is no guarantee your airport will remain on FAA published charts. Charting of private use airports relies heavily on landmark value and chart clutter. The inclusion on a chart may take several charting cycles and does not coincide with the issuance of a location identifier. Instructions for completion of the 5010-5 Form can be found online at <https://www.faa.gov> in Advisory Circular (AC) 150/5200-35, "Submitting the Airport Master Record in Order to Activate a New Airport".

Please complete, sign and date the enclosed Airport Master Record Form and return it to my attention. HOLYOAK is activated and assigned/secured a private use location identifier. Please indicate on the Airport Master Record Form if you desire to have your airport charted. Please be advised that charting of private use airports is not guaranteed. Additionally, if charted, there is no guarantee your airport will remain on FAA published charts. Charting of private use airports relies heavily on landmark value and chart clutter. The inclusion on a chart may take several charting cycles and does not coincide with the issuance of a location identifier. Instructions for completion of the 5010-5 Form can be found online at <https://www.faa.gov> in Advisory Circular (AC) 150/5200-35, "Submitting the Airport Master Record in Order to Activate a New Airport".

In order to avoid placing any unfair restrictions on users of the navigable airspace, this determination is valid until 08/05/2020. Should the airport not be established and the Airport Master Record 5010-5 Form not returned by 06/05/2020, an extension of our determination should be requested in writing by 06/05/2020. Should you not elect to establish the airport, please notify the FAA in writing by 06/05/2020.

If you have any questions concerning this determination, please contact me at delilah.colin@faa.gov or at (303) 342-1254.

Sincerely,

Delilah Colin

ADO

Signature Control No: 396548578-398742234

Attachment: Airport Master Record 5010 Form



> 1 ASSOC CITY: MENDON	4 STATE: UT	LOC ID:	FAA SITE NR: 0.0
> 2 AIRPORT NAME: HOLYOAK		5 COUNTY: Cache	
3 CBD TO AIRPORT (NM): 3 NW	6 REGION/ADO: ANM/DEN	7 SECT AERO CHT: SALT LAKE CITY	

<u>GENERAL</u>	<u>SERVICES</u>	<u>BASED AIRCRAFT</u>
10 OWNERSHIP: PR	70 FUEL:	90 SINGLE ENG: 0
11 OWNER:		91 MULTI ENG: 0
12 ADDRESS:		92 JET: 0
13 PHONE NR:		TOTAL: 0
14 MANAGER:		93 HELICOPTERS: 0
15 ADDRESS:		94 GLIDERS: 0
16 PHONE NR:		95 MILITARY: 0
17 ATTENDANCE SCHEDULE:		96 ULTRA-LIGHT: 0

MONTHS DAYS HOURS

<u>GENERAL</u>	<u>FACILITIES</u>
18 AIRPORT USE: Private	> 80 ARPT BCN:
19 ARPT LAT: 41-43-29.0000N	> 81 ARPT LGT SKED:
20 ARPT LONG: 111-59-40.0000W	> 82 UNICOM: 0.0
21 ARPT ELEV: 4710.0	83 WIND INDICATOR:
22 ACREAGE: 0	84 SEGMENTED CIRCLE:
> 23 RIGHT TRAFFIC:	85 CONTROL TWR: NO
24 NON-COMM LANDING:	86 FSS:
	87 FSS ON ARPT: NO
	88 FSS PHONE NR:
	89 TOLL FREE NR:

RUNWAY DATA

> 30 RUNWAY IDENT:	18/36
> 31 LENGTH:	1414
> 32 WIDTH:	50
> 33 SURF TYPE-COND:	TURF

LIGHTING/APCH AIDS

> 40 EDGE INTENSITY:	
> 42 RWY MARK TYPE-COND:	/

OBSTRUCTION DATA

50 FAR 77 CATEGORY:	A(V) / A(V)
51 DISPLACED THR:	0 / 0
52 CTLG OBSTN:	/
53 OBSTN MARKED/LGTD:	/
54 HGT ABOVE RWY END:	/
55 DIST FROM RWY END:	/

(>) ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY >

111 OWNER/MANAGER SIGNATURE 113 DATE:

STAFF REPORT: HAWKES REZONE RU5

6 June 2019

This staff report is an analysis of the application based on adopted county documents, standard county development practices, and available information. The report is to be used to review and consider the merits of the application. Additional information may be provided that supplements or amends this staff report.

Agent: Christina Hallam & Bruce Leishman
Staff Recommendation: Denial
Type of Action: Legislative
Land Use Authority: Cache County Council

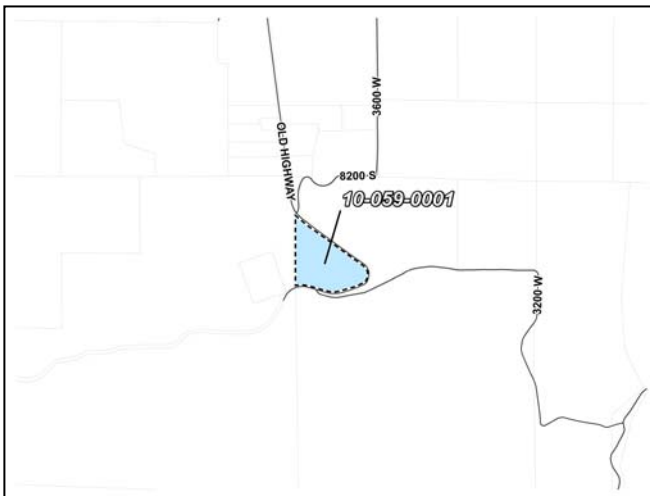
Parcel ID#: 10-059-0001

LOCATION

Reviewed by Angie Zetterquist

Project Address: 8300 South 4000 West
Wellsville
Current Zoning: Agricultural (A10)
Proposed Zoning: Rural 5 (RU5)

Surrounding Uses:
 North – Forest Recreation/Agricultural/Residential
 South – Forest Recreation
 East – Forest Recreation
 West – Forest Recreation



FINDINGS OF FACT (16)

A. Request description

1. A request to rezone a 19.92 acre parcel from the Agricultural (A10) Zone to the Rural 5 (RU5) Zone.
2. This rezone may allow the parcel to be legally divided into a maximum of three (3) separate lots as part of a subdivision process.
3. Staff has identified general information as pertains to the subject property to assist the Planning Commission and County Council in arriving at a decision. This information is reflected in the attached map (Attachment A) and in the following text:
 - a. Land Use Context:
 - i. Parcel status: In 2015, the County Council approved a rezone request for the subject property to the Agricultural (A10) Zone from the Forest Recreation (FR40) Zone.

The findings of fact that allowed for the rezone from FR40 to A10 included that the subject property was compatible with the purpose of the A10 zone and the historic and current use of the property is agricultural and as such was suitable for development in the A10 zone without increasing the need for variances or special exceptions. There are no existing structures on the property.

The current acreage listed on the County GIS map indicates the parcel is 20.18 acres. However, a survey was recently conducted to determine the actual developable acreage of the parcel as the size indicated on GIS was close to falling below the minimum acreage needed to divide the property per the requirements of the A10 zone. The survey found the lot size was 19.92 acres, not enough to divide under the requirements of 1 lot per 10 acres requirement of the A10 Zone.

- ii. Average Lot Size: Of the parcels immediately adjacent to the subject property, including the subject property, there are no parcels with a home and the average lot size of the five (5) parcels immediately adjacent with no home is 211.1 acres.

Within a ¼ mile of the proposed rezone the average size of parcels (6 parcels) with a dwelling is 7.8 acres; the average size of parcels (7 parcels) without a dwelling is 171.0 acres.

When the buffer is expanded to a ½ mile of the proposed rezone, the average size of parcels with a home (10 parcels) is 22.0 acres and without a home is 124.0 acres (13 parcels). (Attachment A)

The proposed RU5 zone allows a maximum density of 1 lot for every 5 acres, whereas the current A10 zone allows a maximum density of 1 lot for every 10 acres. With approximately 19.92 acres of property, the subject parcel cannot be divided into any additional lots under the current A10 Zone; a rezone to RU5 may allow up to three buildable lots.

- iii. Schedule of Zoning Uses: Under the current County Land Use Ordinance, the RU5 Zone is more restrictive in the uses allowed when compared to the Agricultural (A10) Zone. There are no uses that are allowed as a permitted or conditional use within the RU5 Zone that are not allowed as a permitted or conditional use within the A10 Zone. The following uses are conditional uses in the A10 Zone but are not allowed in the RU5 Zone:

- Agricultural Manufacturing
- Recreational Facility
- Cemetery
- Private Airport
- Concentrated Animal Feed Operation
- Livestock Auction Facility
- Topsoil Extraction

- iv. Adjacent uses: The properties adjacent to the subject property are primarily used for forest recreation and agricultural with some single family dwellings to the north.

- v. Annexation Areas: The subject property is located in Wellsville City's future annexation area. However, as the property is not immediately adjacent to the boundary of Wellsville, the applicant was not required to provide a letter from the city regarding possible annexation. The closest point from the subject property to a city boundary is approximately 1.73 miles north.

- vi. Zone Placement: As identified by the Planning Commission and the County Council at the time the RU5 Zone was adopted, the intended/anticipated placement of this zone was in areas of the unincorporated county adjacent to municipalities. As

mentioned previously, the closest point to a municipal boundary is 1.73 miles north of the subject property.

The nearest RU5 zone is over five-miles away from the subject property by the most direct road route (i.e., View of the Valley Subdivision). However, the boundary of Wellsville City is approximately 1.73 acres to the north.

B. Ordinance—§12.02.010, §17.02.060; §17.08.030 [C]

4. As per §17.02.060, Establishment of Land Use Authority, the County Council is authorized to act as the Land Use Authority for this application.
5. The current County Land Use Ordinance does not specify appropriate locations for the Rural 5 (RU5) Zone but does contain possible guidelines for its implementation. County Land Use Ordinance §17.08.030 [B] [1] identifies the purpose of the RU5 Zone and includes the following:
 - a. “To allow for residential development in a low density pattern that can allow for rural subdivisions and smaller scale agricultural uses. This type of development should be located and designed to not unreasonably impede adjacent agricultural uses, nor to unreasonably conflict with the development standards of adjacent municipalities.
 - b. To implement the policies of the Cache Countywide Comprehensive Plan, including those regarding agricultural promotion, prime farmlands, improved roadways, density based residential standards, clustering, moderate income housing and municipality standards.
 - c. This zone must be appropriately served by suitable public roads, have access to the necessary water and utilities, and have adequate provision of public services.”
6. Consideration of impacts related to uses allowed within the RU5 Zone will be addressed as part of each respective approval process required prior to site development activities.

C. Access—16.04.040 [A], 16.04.080 [E], Road Manual

7. The Road Manual specifies the following:
 - a. Local Road: Roads with approximately 40 to 1500 Average Daily Traffic (ADT). This includes roadways that have the capacity for moderate to low speeds and moderate volumes. This category provides a balance between through traffic movements and direct access. These facilities move both regional and local rural traffic with emphasis on local movements.
 - b. Local Roads must meet the minimum standard of two, 10-foot wide paved travel lanes with 2-foot wide shoulders: 1-foot paved, 1-foot gravel (24 feet total width), 14-inches depth of granular borrow, a 6-inches depth of road base, 2.5-inches of bituminous surface course (asphalt), and a 66-foot wide right-of-way (ROW).
 - c. Rural Road: Roads with up to 30 ADT. This includes roadways that have the capacity for moderate to low speeds and low volumes. This category provides access to farms, other agricultural uses, and dispersed rural residences. Gravel or chip & seal road surfacing is typically acceptable and must meet the minimum standard of two, 10-foot wide gravel travel lanes with 2-foot wide gravel shoulders (24-foot total width), 14-inches depth of granular borrow, and a 6-inches depth of road base.
8. A basic review of the access to the subject property identifies the following:
 - a. The subject property has frontage on the Old Highway, a county road, which is identified as 4000 West north of the property.
9. 4000 West/Old Highway:
 - a. Is an existing county facility that provides access to the general public.

- b. Currently provides access to multiple residential and agricultural parcels north of the subject property.
- c. Consists of an average 21-foot paved width with 4-foot wide gravel shoulders.
- d. Has an unknown depth and type of material under the surface.
- e. Is maintained year around but the maintenance ends at the northern most point of the subject property. The portion of the Old Highway that runs around the eastern and southern property lines is not maintained. Any future access to the property must be from the north end and continue onto the property from a private driveway.
- f. Resolution No. 2015-20 – In August 2015, the Cache County Council reviewed the impact of new development along unimproved roadways on the safety and welfare of citizens of Cache County. Further, the Council determined that given the existing budget constraints there is not funding sufficient for the existing roadways to be properly maintained. Consequently, the Council adopted Resolution No. 2015-20 limiting expansion of road services on substandard roads including no expansion of winter maintenance and no acceptance of new roadways, gravel or paved. Constructing a new public road to potentially service this development is inconsistent with the County Resolution.

D. Service Provisions:

- 10. §16.04.080 [C] Fire Control – The County Fire District evaluated the access road to the subject property and had no issues with the rezone request.
- 11. §16.04.080 [F] Solid Waste Disposal – Logan City Environmental did not have any comments on the rezone request, but did clarify that collection service ends at the turnaround located at approximately 8200 South Old Sardine Highway north of the subject property; service further south will not be provided.

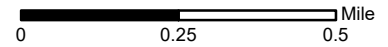
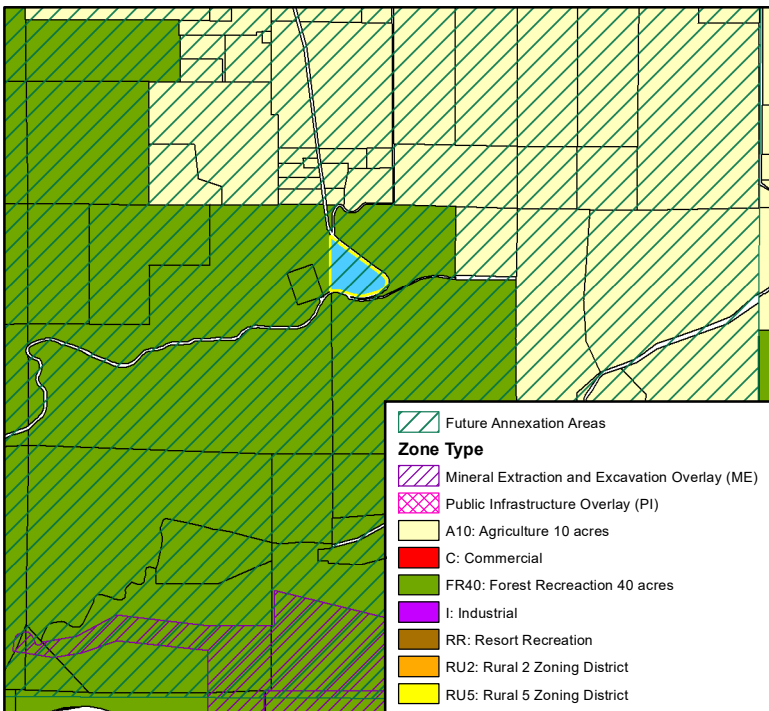
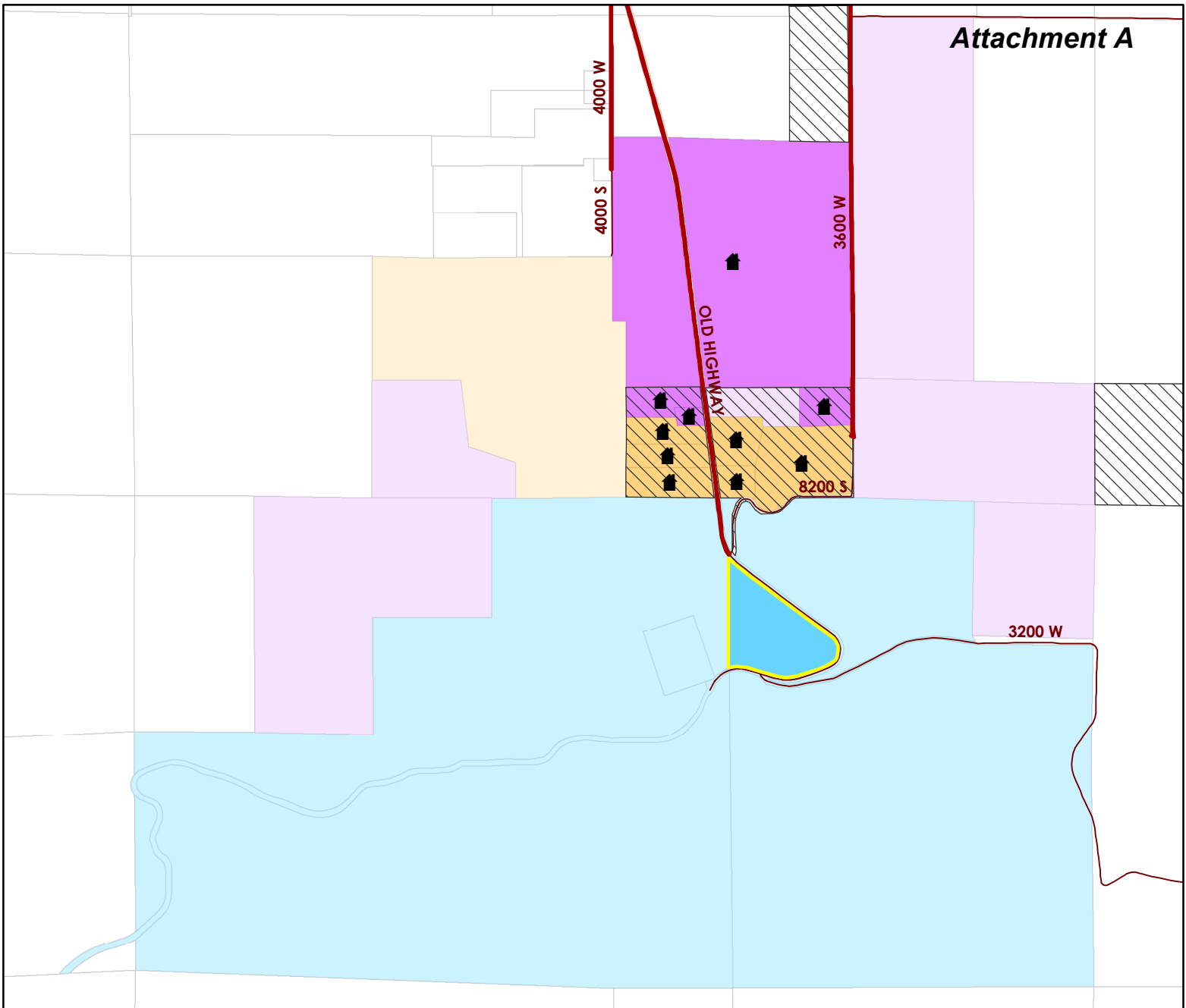
E. Public Notice and Comment—§17.02.040 Notice of Meetings

- 12. Public notice was posted online to the Utah Public Notice Website on 22 May 2019.
- 13. Notice was published in the Herald Journal on 25 May 2019.
- 14. Notices were posted in three public places on 22 May 2019.
- 15. Notices were mailed to all property owners within 300 feet on 23 May 2019.
- 16. At this time, no written public comment regarding this proposal has been received by the Development Services Office.

CONCLUSIONS (3)

Based on the findings of fact noted herein, the Hawkes Rezone RU5 is hereby recommended for denial to the County Council as follows:

- 1. The location of the proposed rezone is not in close proximity to an adjacent municipality where a higher density development is more appropriate.
- 2. The location of the proposed rezone would set a precedent for increased density and development along this corridor and has minimal access to a maintained county road.
- 3. The Cache County Comprehensive Plan does not specifically address the Rural 5 (RU5) Zone and does not make recommendations as to where the zone should be located. An update to the County’s General Plan is necessary to better determine appropriate locations for this higher density zone in unincorporated county areas not adjacent to a municipality.



Legend

- Proposed Rezone
- Winter Maintenance
- Municipal Boundaries
- County Roads
- Subdivisions
- Highways
- Parcels

Average Parcel Size

Adjacent Parcels	Without a Home: 211.1 Acres (5 Parcels)
1/4 Mile Buffer	With a Home: 7.8 Acres (6 Parcels)
	Without a Home: 171 Acres (7 Parcels)
1/2 Mile Buffer	With a Home: 22 Acres (10 Parcels)
	Without a Home: 124 Acres (13 Parcels)



STAFF REPORT: APPLEWOOD HOLLOW RU5 REZONE

6 June 2019

This staff report is an analysis of the application based on adopted county documents, standard county development practices, and available information. The report is to be used to review and consider the merits of the application. Additional information may be provided that supplements or amends this staff report.

Agent: George Daines

Parcel ID#: 03-066-0017, -0033

Staff Recommendation: Denial

Type of Action: Legislative

Land Use Authority: Cache County Council

LOCATION

Reviewed by Angie Zetterquist

Project Address:

4642 Hollow Road

Nibley

Current Zoning:

Agricultural (A10)

Acres: 22.76

Proposed Zoning:

Rural 5 (RU5)

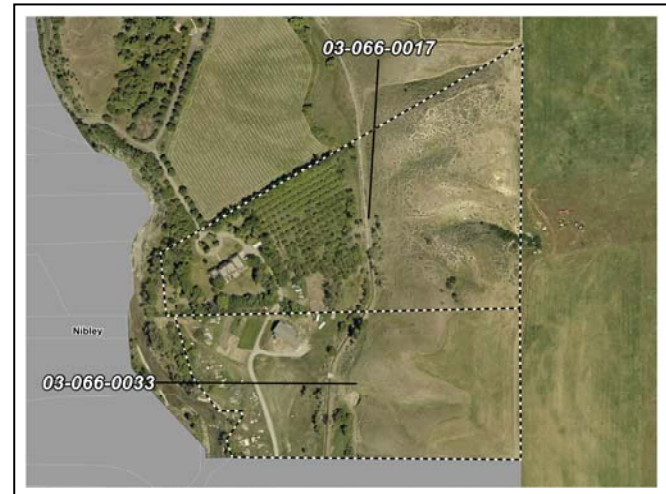
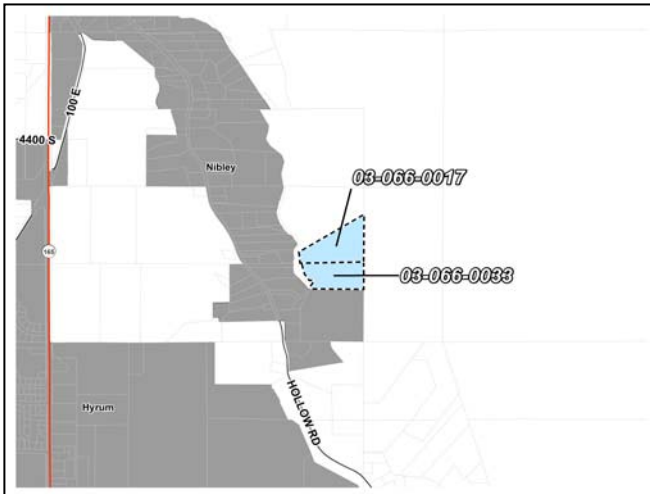
Surrounding Uses:

North – Agricultural/ Residential

South – Agricultural/ Residential

East – Agricultural/Forest Recreation

West – Blacksmith Fork River/Nibley City



FINDINGS OF FACT (16)

A. Request description

1. A request to rezone two parcels totaling 22.76 acres from the Agricultural (A10) Zone to the Rural 5 (RU5) Zone. An application was previously submitted on parcel #03-066-0017 for a rezone to the Rural 2 (RU2) Zone, but the application was withdrawn prior to the July 2018 Planning Commission meeting.

In August 2018, another rezone application was filed on the same parcel #03-066-0017 for the Rural 5 (RU5) Zone. After a 90 day continuance, granted to allow the applicant time to discuss issues raised by Nibley City, the Planning Commission recommended that the County Council deny the request. The application was withdrawn in February 2019 when it was determined that there was not enough developable acreage to divide the property even if the County Council approved the rezone request.

This current request involves two parcels to ensure there is enough developable acreage to divide if a rezone to the RU5 zone is approved.

2. This rezone may allow the parcel to be legally divided into a maximum of four (4) separate lots as part of a subdivision process, but with the presence of sensitive areas (i.e., steep slopes) the net developable areas will likely yield only three (3) separate lots, including the two existing. A survey will be required to determine the actual developable acreage for the two subject properties prior to a subdivision process.
3. Staff has identified general information as pertains to the subject property to assist the Planning Commission and County Council in arriving at a decision. This information is reflected in the attached map (Attachment A) and in the following text:

a. Land Use Context:

- i. **Parcel status:** A building permit was issued for parcel 03-066-0017 in August 1977 for a single-family residence on 10.0 acres. In January 1992, a boundary line adjustment was done between parcel 03-066-0017 and 03-066-0025 with a recorded deed. At that time, parcel 03-066-0017 increased from 10.0 acres to 12.5 acres, and as no additional parcels were created, the property is considered a legal parcel. A Zoning Clearance and building permit were issued in 2008 for a single-family residence on parcel 03-066-0033 on 10.26 acres; the parcel remains in the same size and configuration and is a legal parcel.

- ii. **Average Lot Size:** Of the parcels immediately adjacent to the subject properties, including the subject properties, there are three (3) parcels in the unincorporated County with a home and an average lot size of 16.1 acres. There are 10 parcels immediately adjacent to subject properties that are located within Nibley City with an average lot size of 2.5 acres. There are also six (6) parcels immediately adjacent without homes, three in the County and three in the City, with the average lot size of 80 acres in the County and 7.5 acres in the City.

Within a $\frac{1}{4}$ mile of the proposed rezone, including the parcels immediately adjacent to the subject properties, the average size of unincorporated county parcels (8 parcels) with a dwelling is 14.5 acres; the average size of parcels (7 parcels) without a dwelling is 114.0 acres. The portions of Nibley City that lie within $\frac{1}{4}$ mile of the proposed rezone have an average size of a 2.5 acres on the 21 parcels with a home and 5 acres for the 10 parcels without a home.

When the buffer is expanded to a $\frac{1}{2}$ mile of the proposed rezone, the average size of parcels in unincorporated county with a home (13 parcels) is 11.8 acres and without a home is 52.0 acres (19 parcels). The $\frac{1}{2}$ mile buffer includes portions of Hyrum City in addition to Nibley. For parcels within the cities with a home(34 parcels) the average lot size is 2.7 acres and the average size without a home is 7.4 acres (15 parcels). (Attachment A)

The proposed RU5 zone allows a maximum density of 1 lot for every 5 acres, whereas the current A10 zone allows a maximum density of 1 lot for every 10 acres. With approximately 22.76 acres of property, the subject parcel cannot be divided into any additional lots under the current A10 Zone; a rezone to RU5 may allow one additional buildable lot in addition to the existing lots.

- iii. **Schedule of Zoning Uses:** Under the current County Land Use Ordinance, the RU5 Zone is more restrictive in the uses allowed when compared to the Agricultural (A10) Zone. There are no uses that are allowed as a permitted or conditional use within the RU5 Zone that are not allowed as a permitted or conditional use within the A10 Zone.

The following uses are conditional uses in the A10 Zone but are not allowed in the RU5 Zone:

- Agricultural Manufacturing
 - Recreational Facility
 - Cemetery
 - Private Airport
 - Concentrated Animal Feed Operation
 - Livestock Auction Facility
 - Topsoil Extraction
- iv. Adjacent uses: The properties adjacent to the subject properties are primarily used for agricultural and single family dwellings.
- v. Annexation Areas: The subject properties are located immediately adjacent to Nibley City and are included in the city's future annexation area. The applicant provided a email from the Nibley City indicating the city does not force annexations but may consider it if the property owners approached the City and wanted to connect to City utilities. However, Nibley City also has concerns about the possible rezone; those concerns are addressed more fully in *C-8-b* below.
- vi. Zone Placement: As identified by the Planning Commission and the County Council at the time the RU5 Zone was adopted, the intended/anticipated placement of this zone was in areas of the unincorporated county adjacent to municipalities. The western boundary of the proposed rezone borders Nibley City. There are no other RU5 zones within a five-mile radius of the subject properties. However, the boundaries of multiple incorporated areas are located to the north, south, and west of the properties including Millville, Nibley, and Hyrum cities. Properties to the east are primarily located in the Forest Recreation (FR40) Zone. The portion of Nibley City that border the subject properties to the west is zoned Rural Estate (RE) with a minimum required lot area of 2 acres.

B. Ordinance—§12.02.010, §17.02.060; §17.08.030 [C]

4. As per §17.02.060, Establishment of Land Use Authority, the County Council is authorized to act as the Land Use Authority for this application.
5. The current County Land Use Ordinance does not specify appropriate locations for the Rural 5 (RU5) Zone but does contain possible guidelines for its implementation. County Land Use Ordinance §17.08.030 [B] [1] identifies the purpose of the RU5 Zone and includes the following:
 - a. “To allow for residential development in a low density pattern that can allow for rural subdivisions and smaller scale agricultural uses. This type of development should be located and designed to not unreasonably impede adjacent agricultural uses, nor to unreasonably conflict with the development standards of adjacent municipalities.
 - b. To implement the policies of the Cache Countywide Comprehensive Plan, including those regarding agricultural promotion, prime farmlands, improved roadways, density based residential standards, clustering, moderate income housing and municipality standards.
 - c. This zone must be appropriately served by suitable public roads, have access to the necessary water and utilities, and have adequate provision of public services.”
6. Consideration of impacts related to uses allowed within the RU5 Zone will be addressed as part of each respective approval process required prior to site development activities.

C. Access—16.04.040 [A], 16.04.080 [E], Road Manual

7. A basic review of the access to the existing subdivision identifies the following:
 - a. The existing lots do not have frontage on a county road and the properties are accessed from a private road that connects to Hollow Road, a Nibley City road.
8. Hollow Road:
 - a. Is a Nibley City road.
 - b. At the time of the initial rezone request, the Mayor of Nibley City, Shaun Dustin, provided staff with a letter dated July 10, 2018, detailing the City's concerns about the possible rezone to RU2 (Attachment B). With the submittal of the August 2018 rezone request and the current request, Nibley City acknowledged that a lower density (i.e., RU5 instead of RU2) mitigates some impacts, but reiterated that their concerns in the July 10, 2018 letter remain, as follows:
 - i. The parcel is currently accessed only by private roads, which already have more than the legal number of houses being accessed from them,
 - ii. There are unanswered questions about legal access to the parcel,
 - iii. There are significant challenges related to providing utilities to the site, and
 - iv. There is a risk of septic tanks contaminating Nibley's Source Water Protection Zone.
 - c. If the rezone is approved, any future application for a subdivision that proposes access off this portion of Hollow Road must provide express written approval from Nibley City allowing development to access Hollow Road.
9. Private Access Road:
 - a. Is a private road that connects to Hollow Road in Nibley City at two points: at approximately 4900 Hollow Road to the south and 4700 Hollow Road to the north. The distance between these two points is approximately 0.75 miles and crosses the Blacksmith Fork twice over two bridges. The condition of the bridges is unknown.
 - b. The private road crosses multiple private properties and is split between the jurisdiction of Nibley City and the County.
 - c. An initial review of the private access road from the south entry off of Hollow Road to the subject property shows the road varies in width from 12-to-19 feet and the surface material appears to be primarily dirt with gravel in places. The northern portion of the private road from the subject property to 4700 Hollow Road including the north bridge has not been reviewed.
 - d. The road provides access to multiple properties both in the county and Nibley City.
 - e. The County Road Manual does not permit private roads to provide access to more than three single-family dwellings. There are currently seven (7) homes that take access off the road.
 - f. Additionally, per the definition in the Manual, private roads are not intended to be through roads. The County does not maintain private roads
 - g. Exceptions have been allowed for previous requests to allow private roads that serve more than three single-family dwellings. However, the County Road Department has discouraged the continuance of this practice, and roads serving more than 3 single-family dwellings must be on public roads.
 - h. Resolution No. 2015-20 – In August 2015, the Cache County Council reviewed the impact of new development along unimproved roadways on the safety and welfare of citizens of Cache County. Further, the Council determined that given the existing budget constraints there is not funding sufficient for the existing roadways to be properly maintained. Consequently, the Council adopted Resolution No. 2015-20 limiting expansion of road services on substandard roads including no expansion of winter maintenance and no

acceptance of new roadways, gravel or paved. Constructing a new public road to potentially service these developments is inconsistent with the County Resolution.

D. Service Provisions:

10. §16.04.080 [C] Fire Control – The County Fire District evaluated the access road to the lots and determined that the access road does not meet fire code. The access road, including bridges, must be improved to Fire Department standards during the subdivision process if the rezone is approved. Water supply for fire suppression is provided by the Hyrum City Fire Department.
11. §16.04.080 [F] Solid Waste Disposal – Logan City Environmental does not provide service on the private road. Containers must be placed on Hollow Road for Wednesday collection.

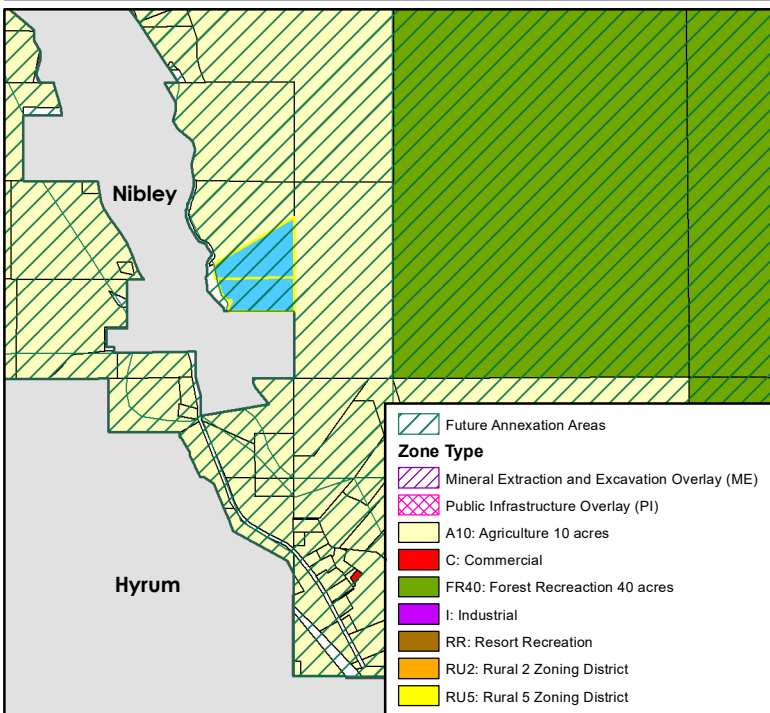
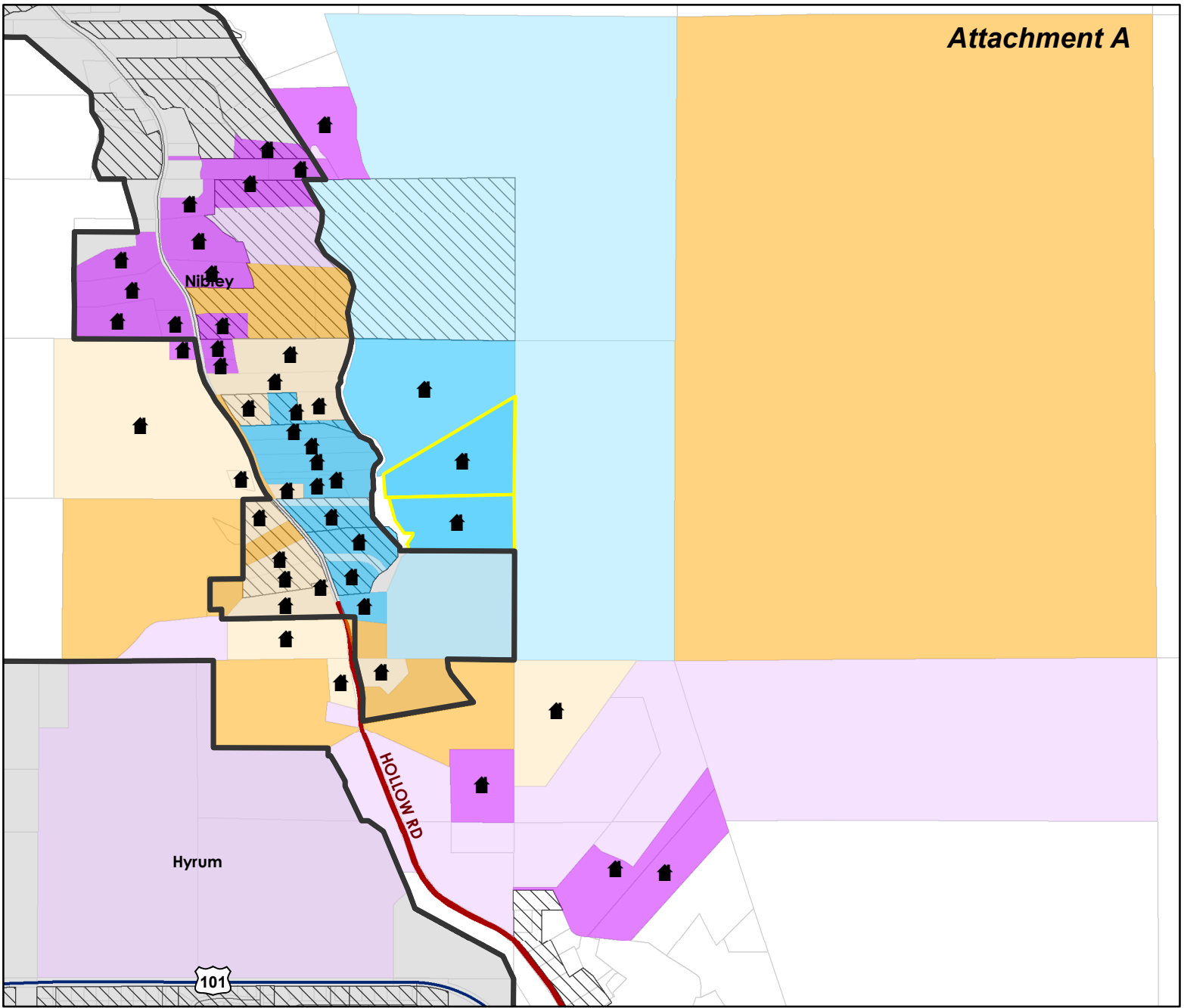
E. Public Notice and Comment—§17.02.040 Notice of Meetings

12. Public notice was posted online to the Utah Public Notice Website on 22 May 2019.
13. Notice was published in the Herald Journal on 25 May 2019.
14. Notices were posted in three public places on 22 May 2019.
15. Notices were mailed to all property owners within 300 feet and cities within 1-mile on 23 May 2019.
16. At this time, no written public comment regarding this proposal has been received by the Development Services Office.

CONCLUSIONS (3)

Based on the findings of fact noted herein, the Applewood Hollow Rezone is hereby recommended for denial to the County Council as follows:

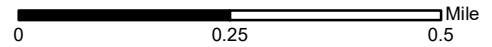
1. The property lacks adequate provision of public services including emergency access, refuse collection, and public infrastructure.
2. The existing, substandard private access road currently exceeds the number of single-family dwellings allowed on a private road per the Road Manual.
3. The access is from a Nibley City road and given the location of the property, the issues with infrastructure would be better addressed as part of a Nibley City development, not a county development on a municipal road.



- Zone Type**
- Future Annexation Areas
 - Mineral Extraction and Excavation Overlay (ME)
 - Public Infrastructure Overlay (PI)
 - A10: Agriculture 10 acres
 - C: Commercial
 - FR40: Forest Recreation 40 acres
 - I: Industrial
 - RR: Resort Recreation
 - RU2: Rural 2 Zoning District
 - RU5: Rural 5 Zoning District

Legend

- Proposed Rezone
- Winter Maintenance
- Municipal Boundaries
- County Roads
- Subdivision
- Highways
- Parcels



Average Parcel Size

Adjacent Parcels	With a Home: 16.1 Acres (3 Parcels)
	With a Home in Nibley City: 2.5 Acres (10 Parcels)
	Without a Home: 80 Acres (3 Parcels)
	Without a Home in Nibley: 7.5 Acres (3 Parcel)
1/4 Mile Buffer	With a Home: 14.5 Acres (8 Parcels)
	With a Home in Nibley City: 2.5 Acres (21 Parcels)
	Without a Home: 114 Acres (7 Parcels) Without a Home in Nibley City: 5 Acres (10 Parcels)
1/2 Mile Buffer	With a Home: 11.8 Acres (13 Parcels)
	With a Home in Nibley City: 2.7 Acres (34 Parcels)
	Without a Home: 52 (19 Parcels) Without a Home in a City: 7.4 Acres (15 Parcels)



Mayor
Shaun Dustin



Council Members
Tim Ramirez
Norman Larsen
Larry Jacobsen
Kathryn Beus
Tom Bernhardt

July 10, 2018

Cache County Planning Commission
Via Email

RE: Daines Property Rezone Request for Parcel #: 03-066-0017

Dear Cache County Council and Planning Commission,

This letter is regarding the request before you to rezone parcel 03-066-0017 from Agricultural (A10) to Rural 2 (RU2). As mentioned in the Cache County Planning Commission staff report, this rezone would have the greatest impact on Nibley City. Nibley City has several concerns with this proposal, which are summarized here and detailed below:

1. The parcel is currently accessed only by private roads, which already have more than the legal number of houses being accessed from them,
2. There are unanswered questions about legal access to the parcel,
3. There are significant challenges related to providing utilities to the site, and
4. There is a risk of septic tanks contaminating Nibley's Source Water Protection Zone.

Our first concern is related to access to the property. The only way to access this property is from Hollow Road, which is a Nibley City road. Also, portions of the private roads used to access the parcel are within Nibley City boundary. Nibley is concerned that these private roads are inadequate to serve development on the parcel. In addition, these private roads already serve more homes than Nibley City Code allows.

Nibley City's Subdivision Ordinance, §11-5-5 (G), states the following about road development within Subdivisions:

1. Private roads are allowed for areas of three (3) lots or less. The cross section of the road shall include: twenty feet (20') of asphalt, two feet (2') of shoulder on each side and four (4) to six feet (6') (each side) for stormwater swale. These roads shall be built to the standards of the Nibley City design standards and specifications and shall include five foot (5') sidewalks where required by City ordinance.
2. Developments of four (4) to seven (7) lots shall have a publicly dedicated roadway with a fifty foot (50') cross section as follows: twenty five feet (25') of asphalt, and the following on each side of the road: 2.5 feet of curb and gutter, four feet (4') of planting strip, five foot (5') sidewalk and one foot (1') strip to property line. These roads shall be built to the standards of the Nibley City design standards and specifications.
3. All other developments shall have roadways that conform to this section.

Nibley is concerned that, if the property owner were to be granted a rezone, that could result in potentially a half dozen more homes using a private access road. There are already at least nine lots total that have access to the private roads at 4700 S and 4900 S on Hollow Road, about half of which are currently in the unincorporated area and need to cross one of the two private bridges. Both of these roads and bridges would need major improvements before they could be dedicated as public roads. If the applicant were to annex into the City to do a subdivision, they would need to improve at least one of the private roads to public standards, including a bridge.

Nibley's second concern is related to legal access to the property. Since there are so many lots that currently access from the private roads that are used to access this parcel, it is questionable whether or not those roads and the attached easements would allow expanded impact, or if the owners of those roads would agree to the expanded impact. Before any rezone, Nibley City would like for those questions to be answered before any approval of a change of land use.

Nibley's third concern is about the utility services for the area. Nibley City code does not allow the City to provide utility services beyond city limits. Even if the applicant were to petition for annexation into Nibley, there would be some significant physical and financial barriers to connecting to the City's utility systems. Specifically, the property is located at a higher elevation than the water lines, the property is located several hundred feet away from the utility lines, there is no clear right-of-way dedicated for the utility connection, and the utilities would have to be brought across the Blacksmith Fork River.

In addition, if sewer lines were not extended to the property and septic tanks were considered as an option, Nibley City would have grave concerns with the installation of septic tanks in this area. This parcel is located in the City's Source Water Protection Zone for one of Nibley's culinary water wells.

We thank you for considering our concerns in regard to the Daines' rezone request, and we support the staff recommendation of denying the rezone request.

Sincerely,



Shaun Dustin
Mayor