101 Midland Avenue, Basalt, CO 81621

Meeting Date: January 26, 2016 **Time: 6:00 p.m.**
Location: Town Council Chambers

TOWN COUNCIL MEETING AGENDA

5:00 PM Council Worksession: Whitewater Park and River Recreation Plan

6:00 PM Open the Joint Worksession: Pitkin County Commissioners

- **Basalt Students of the Month**
- **Discussion – Whitewater Park and Recycle**

7:00 1. Call to Order (Mayor Whitsitt)

7:32 2. Roll Call (Pam Schilling)

7:33 3. Consent Agenda (Mayor Whitsitt)

3A. Minutes: January 12, 2016
3B. Manager's Contract

Motion to Consider:
Mayor, I move that the Town Council approve the Consent Agenda, items 3A and 3B as published.

7:34 4. Council Comments, Reports, Disclosures
SGM – Engineer's Report (Louis Meyer)

7:37 5. Citizen Comments: for Items Not on the Agenda and Items Added to the Agenda After the Deadline

7:40 6. FIRST READING OF CITIZEN PROPOSED ORDINANCES:

Mayor to open items 6Aand 6B simultaneously.

6A. First Reading of Ordinance No. 04 Series of 2016: An Initiated Ordinance of the Town of Basalt, Colorado, Calling an Election on April 5, 2016, to Approve this

Ordinance and to Authorize and Direct the Town Council to Enter into a Contract for the Purchase of Land for Public Park and Community Serving Uses, and Establishing Principles for the Future Use and Operation of Said Land; and Setting the Ballot Title and Ballot Question for the Foregoing.

Motion to Consider:
Mayor, I move that the Town Council Approve Ordinance No. 04, Series of 2016, and set the public hearing and second reading for February9, 2016.

6B. First Reading of Ordinance No. 05, Series of 2016: An Initiated Ordinance of the Town of Basalt, Colorado, Calling an Election on April 5, 2016, To Approve This Ordinance, to Authorize and Direct the Incurrence of General Obligation Indebtedness by the Town, and To Authorize and Direct the Levy of Ad Valorem Property Taxes to Pay for Such General Obligation Indebtedness and Setting the Ballot Title and Ballot Question for the Foregoing.

Motion to Consider:
Mayor, I move that the Town Council Approve Ordinance No. 05, Series of 2016, and set the public hearing and second reading for February 9, 2016.

8:40 7. SECOND READING OF ORDINANCES:

7A. Public Hearing and Second Reading of Ordinance No. 01, Series 2016: An Ordinance Authorizing the Execution and Delivery of a Contract to Buy and Sell Real Estate Between the Roaring Fork Conservancy and the Town of Basalt, Colorado, and Providing Other Matters Properly Relating Thereto (Susan Philp)

Motion to Consider:
Mayor, I move that the Town Council Approve Ordinance No. 01, Series of 2016 on second reading.

7B. Public Hearing and Second Reading of Ordinance No. 02, Series 2016: An Ordinance of the Town Council of Basalt, Colorado, Approving a Lease Agreement for Construction and Occupancy of a River Center at 22826 Two Rivers Road on Property to be Owned by the Town (Susan Philp)

Motion to Consider:
Mayor, I move that the Town Council Approve Ordinance No. 02, Series of 2016 on second reading.

7C. Public Hearing and Second Reading of Ordinance No. 03, Series of 2016: An Ordinance of the Town Council of Basalt, Colorado, Amending Chapter 4, Revenue and Finance, of the Basalt Municipal Code to Add a New Article VIII Establishing a One Percent for the Arts Program (Susan Philp)

Motion to Consider:
Mayor, I move that the Town Council Approve Ordinance No. 03, Series of 2016 on second reading.

8:50 8. RESOLUTIONS

8A. Resolution No. 01, Series of 2016: A Resolution of the Town Council of Basalt, Colorado, Approving a Pre-Development Agreement with DavidCo LLC Regarding the Basalt Mini-Storage Expansion

Motion to Consider:
Mayor, I move that the Town Council Approve Resolution No. 01, Series of 2016

8B. Resolution No. 02, Series of 2016: A Resolution of the Town Council of Basalt, Colorado, Finding the Petition for Annexation for the Property Known as the DavidCo LLC Annexation Property for the Basalt Mini-Storage Expansion in Substantial Compliance with the Requirements of the Municipal Annexation Act and Setting the Date of the Annexation Eligibility Hearing

Motion to Consider:
Mayor, I move that the Town Council Approve Resolution No. 02, Series of 2016

8C. Resolution No. 03, Series of 2016: A Resolution of the Town Council of Basalt, Colorado, Directing Staff to Move Forward and Establish We-Cycle in Basalt in 2016

Motion to Consider:
Mayor, I move that the Town Council Approve Resolution No.03, Series of 2016

9:00 9. FIRST READINGS OF TOWN ORDINANCES:

9A. First Reading of Ordinance No. 06, Series 2016: An Ordinance of the Town Council of Basalt, Colorado, Granting Special Review Approval, a Condominium Amendment, and Historic Incentives for the Conversion of Unit 202 Into a Residential Unit at 104 Midland Avenue (Little Snell Building) Basalt, Colorado

Motion to Consider:
Mayor, I move that the Town Council Approve Ordinance No. 06, Series of 2016, on first reading and set the public hearing and second reading for February 23, 2016.

9:10 Council Worksession: Two Rivers Road Greenway Plan

10. INFORMATION AND CORRESPONDENCE:

NO ACTION REQUIRED BY THE TOWN COUNCIL

a. Accounts Payable
b. Advance Agendas
c. Correspondence to the Town

11. ADJOURNMENT

TOWN OF BASALT Worksession	**Date:** January 26, 2016 **From:** Susan Philp, Town Planner

SUBJECT: Worksession on Whitewater Park and River Recreation Plan

RECOMMENDATION: Council discussion and direction

DETAILS:

The purpose of this item is for the Council to prepare for its discussion with the Pitkin County Commissioners which follows this item and for further direction to Staff as we refine the Town's 2016 Work Plan.

The Council approved Pitkin County's proposal for a Whitewater Park in September of 2015.

The focus of this Worksession includes:

1. The conditions related to the above-stream improvement to be completed adjacent to the Whitewater Park (immediate and longer view)
2. Conditions related to the River Recreation Plan – Ordinance anticipated completion in 2016

Pitkin County Healthy Rivers and Streams held an Open House in early December at the Basalt Library. Pitkin County sought public input at the meeting and also encouraged public input through their website, www.pitkincountyrivers.com (web comments closed January 22nd). They are holding an additional open house at Basalt Town Hall on Monday, February 1st. Two Loris plans for Two Rivers Road in this area were displayed for the public's review (the one included in the Town's September approval of the Whitewater park and a refined version of that plan). Those plans received positive comments at the December open house.

Basalt Staff asked River Restoration to look at additional opportunities and constraints for river recreation from the Wingo Bridge down to Hooks Spur (attached). Those drawings were also presented at the Open House and are on the Town's Our Town Planning website.

Staff felt that it would be helpful to the Basalt/Pitkin County conversation to ensure that the Council was aware of the more current work on these items and to discuss the timing and partnerships that might be necessary to meet both the goals of both entities.

Related Town Statute and or Town Actions: Town Master Plan; Two River's Greenway Master Plan Update; Ordinance No. 18, Series of 2015, approving the Whitewater Park

Line Item Code & Description: 2016 and future budget implications.

Attachments: Excerpt from Ordinance No. 18 approving Whitewater Park; diagram showing Town's conditions for Ordinance No. 18; Opportunities and Constraints for River Recreation Plan from River Restoration

Excerpt from Ord. 18 approving Whitewater Park

Minor Amendments:

19. The Town Planner may review and approve of minor amendments to the approval documents necessary to effectuate the intent of the final development approvals. The Applicant shall have the ability to appeal a Town Planner decision on a minor amendment to the Town Council at a public meeting in which (15) days written notice of the public meeting has been provided to the appellants.

Vested Rights:

20. The vested rights for the approvals granted for the Whitewater Park shall be valid for three (3) years from the effective date of the approval ordinance. If the Applicant does not construct the approved improvements within three (3) years from the effective date of the ordinance, the approvals shall be null and void.

Two Rivers Road Master Plan:

21. In the agreement referred to in Condition No. 11 above, language shall be included indicating that the County will work with the Town to maintain use of the Whitewater Park and implement any other improvements that might be necessary to manage the Park.

22. In the agreement referred to in Condition No. 11 above or as a separate agreement, language shall be included indicating that the County and Town will work together on a schedule and scope for a River Recreation Plan for the Planning Area described as the stretch of the Roaring Fork River from the Upper By-pass Bridge on SH 82 to the Midland Avenue Bridge and land immediately adjacent. The River Recreation Plan will include the following components:

River Recreation Plan

    a. The Town will use best efforts to complete the plan by the end of 2016.

    b. The scope shall include at least three public open houses or public hearings conducted jointly by Pitkin County and the Town of Basalt and held in East Basalt.

    c. The Town and Pitkin County will contact Eagle County to invite Eagle County to participate in the River Recreation Plan.

    d. The purpose of the plan is to focus on the instream and above-stream

improvements associated with recreation opportunities within and adjacent to the river in the planning area.

e. A funding plan and schedule for the construction activities included in the River Recreation Plan.

f. The lead will be the Town of Basalt. Pitkin County will share equally with the Town in the costs for the preparation of the Plan unless Eagle County participates and then the costs will be distributed proportionally.

g. The Town of Basalt is currently undertaking a Two Rivers Road Master Plan Update which may or may not integrate with the improvements included in the Recreation Plan. The Town reserves the right to merge the plans together. Also, the Town may include improvements, e.g. parking and viewing areas, in the plan for which the Town would request funding from Pitkin County.

Miscellaneous:

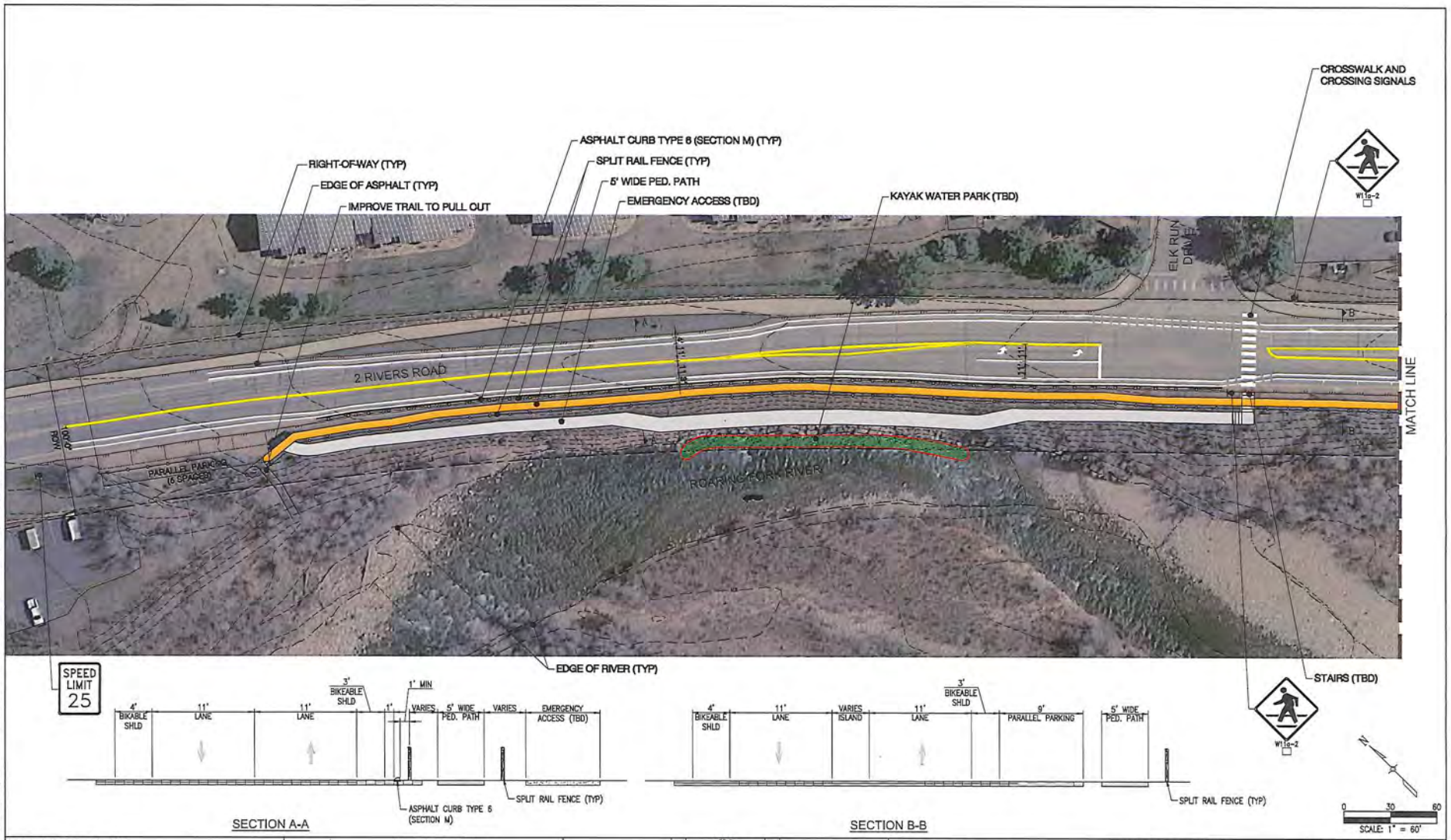
23. In the event that the improvements included herein are not completed prior to May 1st following the installation of the Whitewater Park or required maintenance as outlined in Condition No. 11, the Town Manager may direct the Town Police Department to close use of the Whitewater Park water features until such time as the above improvements or necessary maintenance are completed to the satisfaction of the Town Manager.

24. This Ordinance, after fully executed, shall be recorded in the office of the Clerk and Recorder of Pitkin County, Colorado.

25. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON September 29, 2015, by a vote of 7 to 0 on September 8, 2015.

Sept 29 Cross Section



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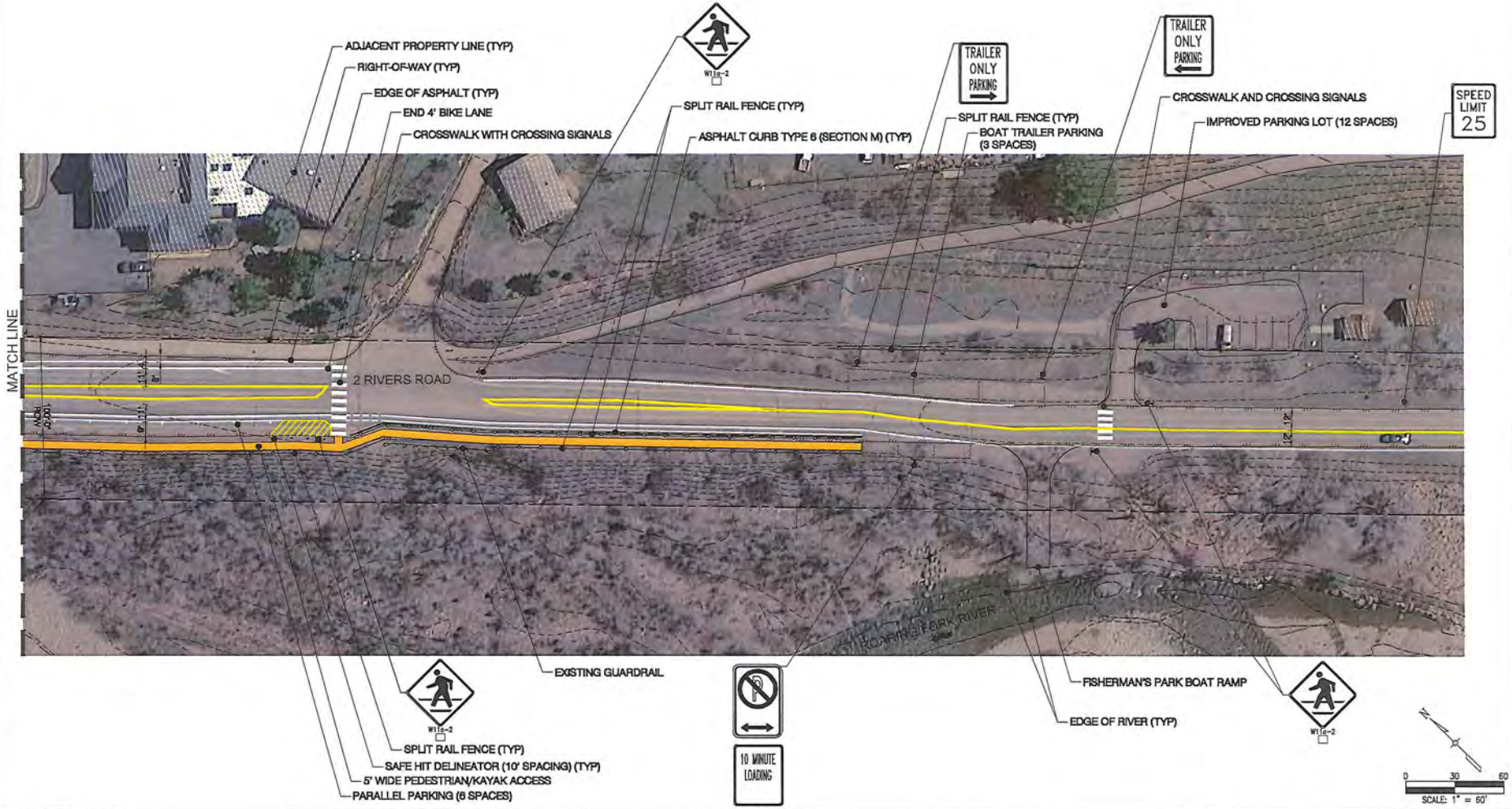
Sept 1 of 2



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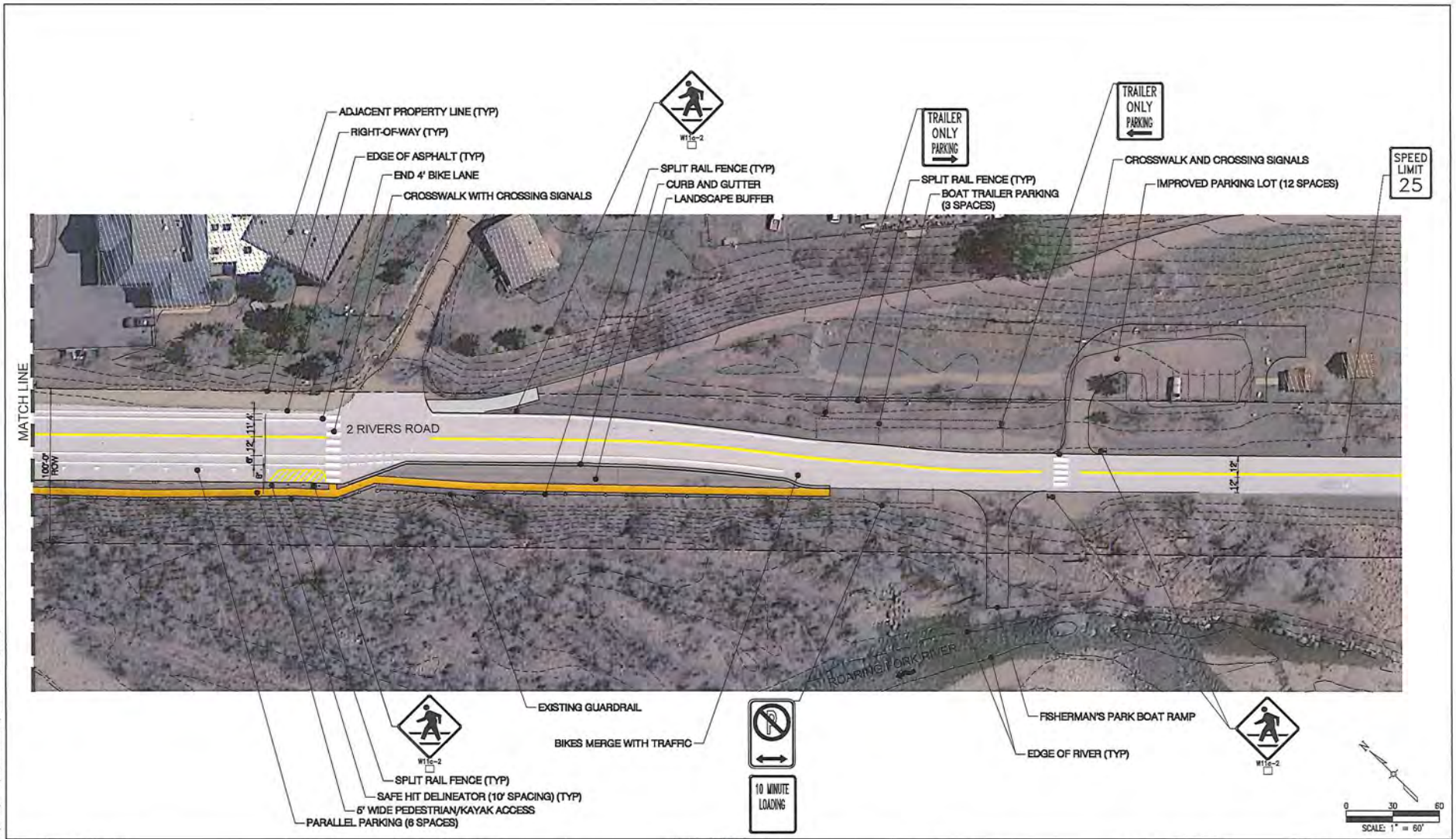
Unit Information Unit Leader Initials				Void:	Detailer: CWM	
					Sheet Subset: Subset Sheets:	Sheet Number –

Loris and Associates, Inc.
818 W. South Boulder Road, Suite 200
Louisville, Colorado 80027
303.444.2073
www.LorisandAssociates.com

TOWN OF BASALT 1901

Sept
2 of 2

Dec 2 Cross-Section



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TOWN OF BASALT 1901

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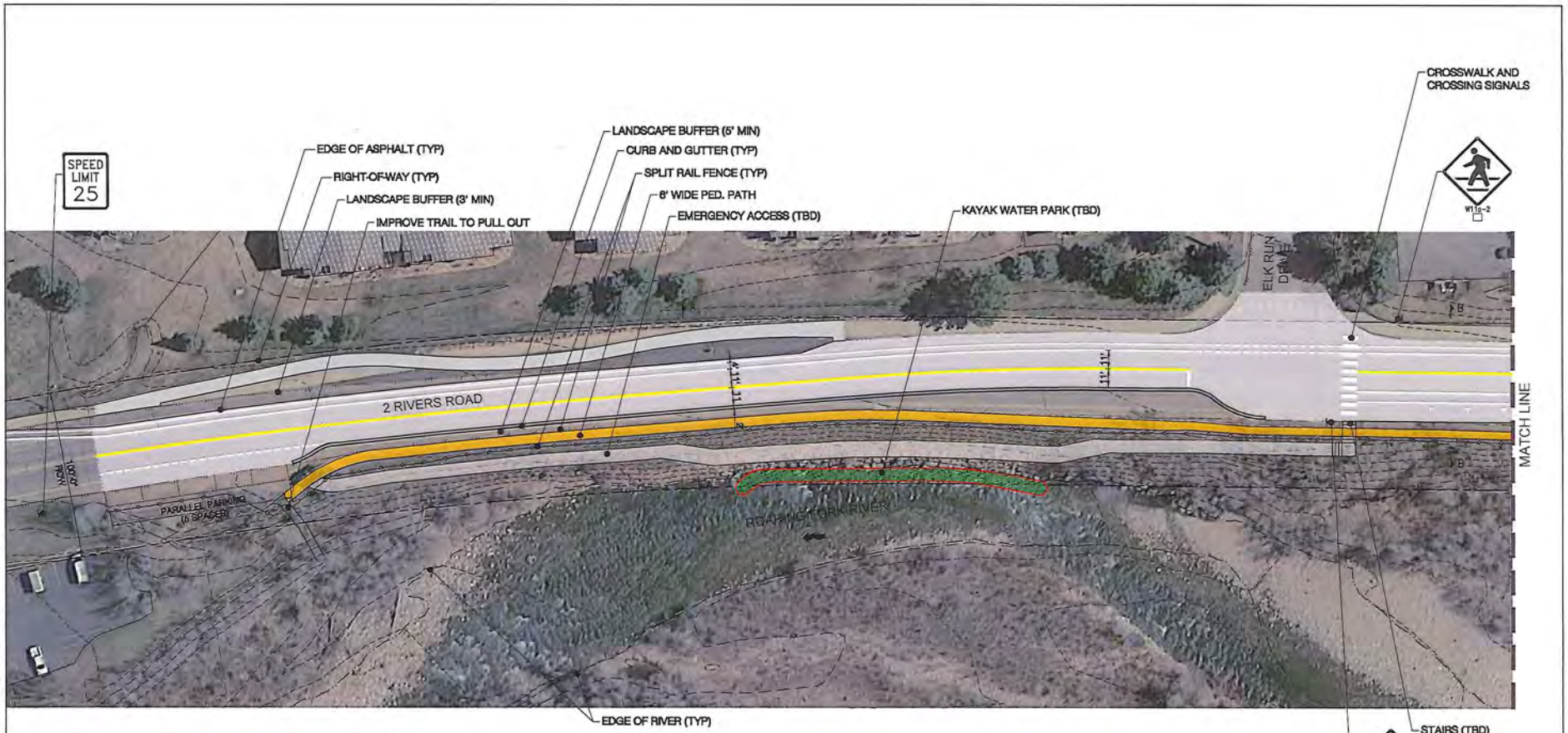
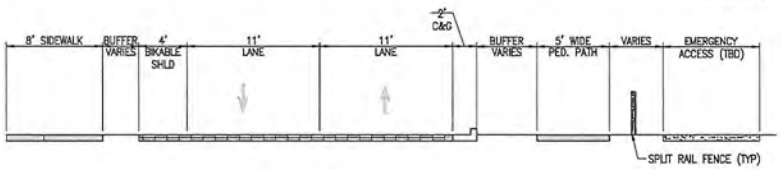
Dec 1 of 2





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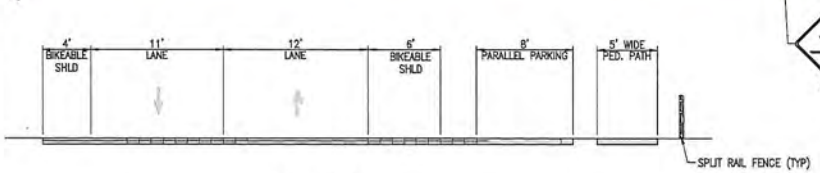

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TOWN OF BASALT 1901

As Constructed	2 RIVERS ROAD - BASALT, CO CONCEPTUAL DESIGN		Project No./Code
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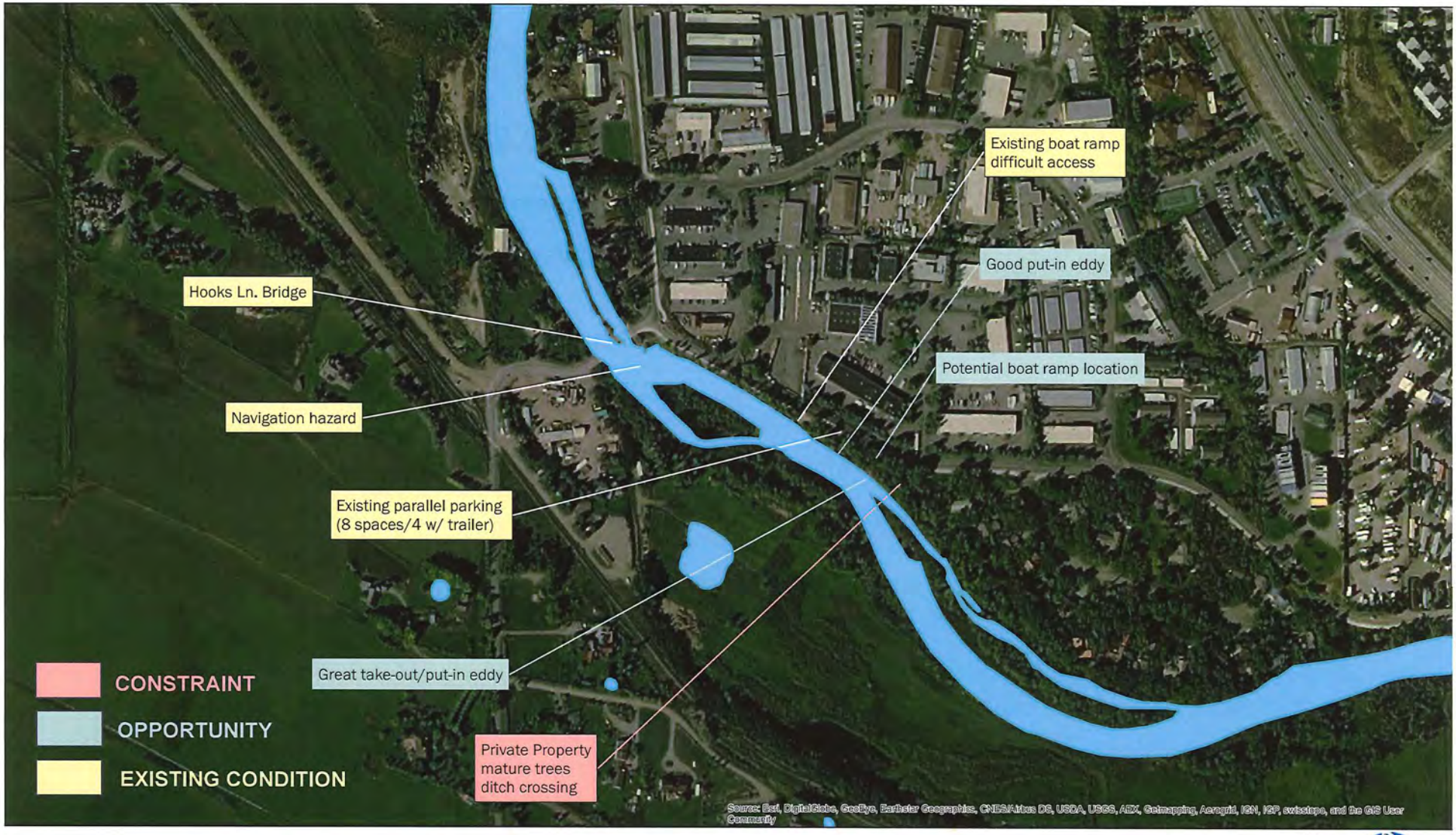
Dec 2012

Opportunities and constraints presented at December Open House
Prepared by River Restoration for River Recreation Plan



Town of Basalt: River Opportunities and Constraints Fig.1

Please give us your thoughts on these conceptual ideas

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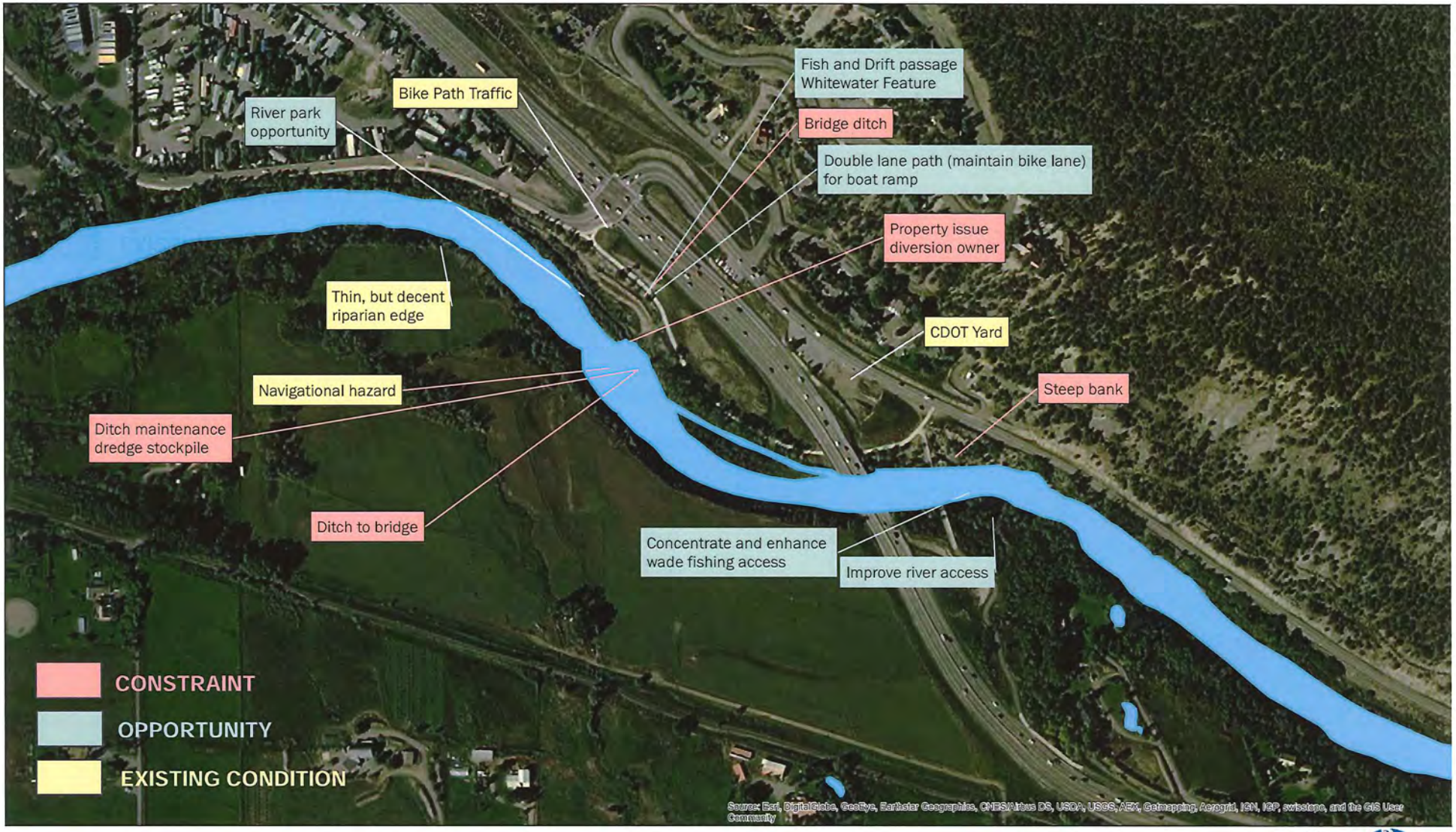

Town of Basalt: River Opportunities and Constraints Fig.2

Please give us your thoughts on these conceptual ideas

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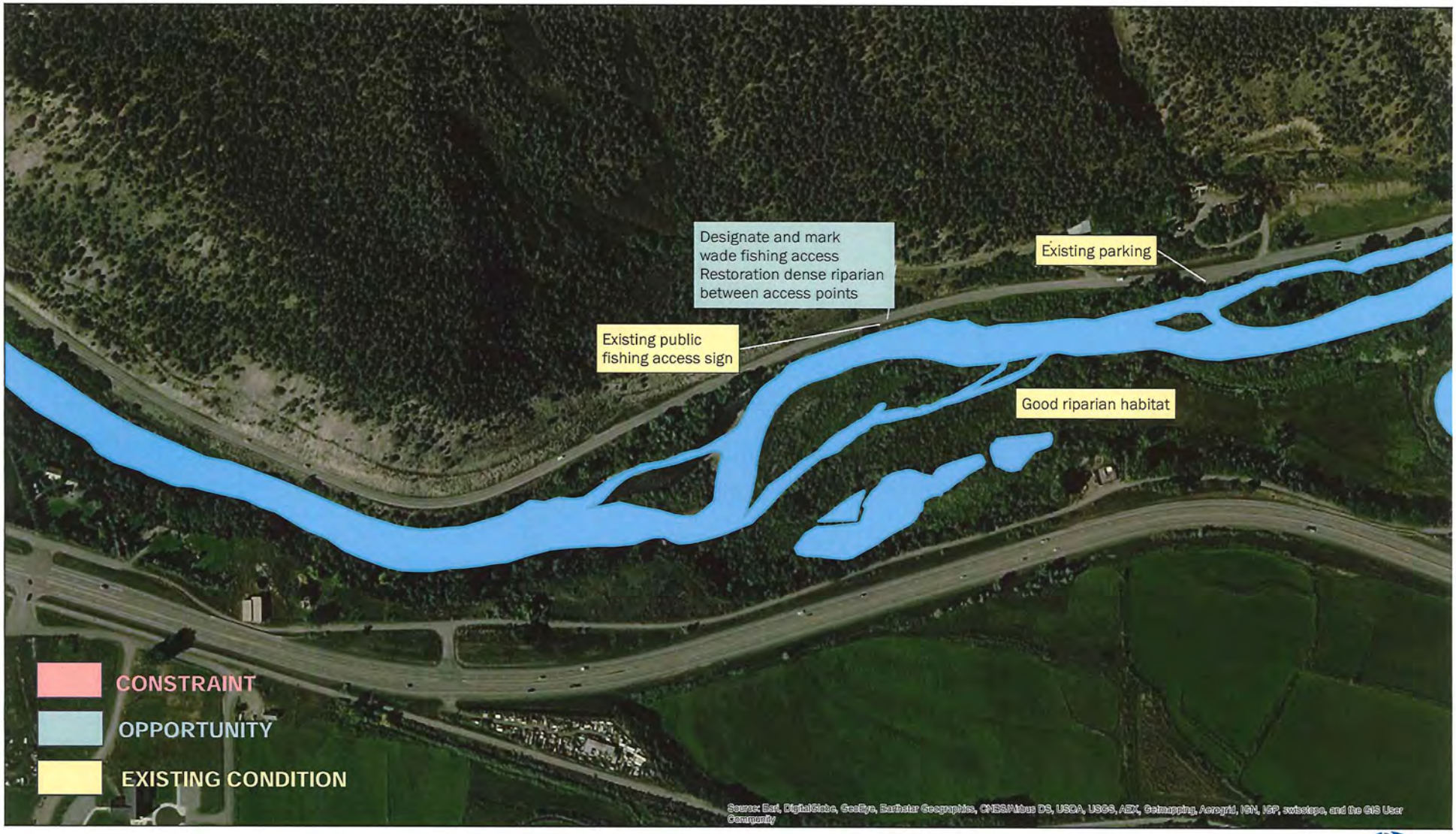

Town of Basalt: River Opportunities and Constraints Fig.3

Please give us your thoughts on these conceptual ideas

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Town of Basalt: River Opportunities and Constraints Fig. 4

Please give us your thoughts on these conceptual ideas

0 0.05 0.1 0.2 Miles

N

RIVER

Town of Basalt: River Opportunities and Constraints Fig.5

Please give us your thoughts on these conceptual ideas

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N

Town of Basalt: River Opportunities and Constraints Fig.6

Please give us your thoughts on these conceptual ideas

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RIVER RESTORATION.ORG

Town of Basalt: River Opporunities and Constraints Fig. 7

Please give us your thoughts on these conceptual ideas

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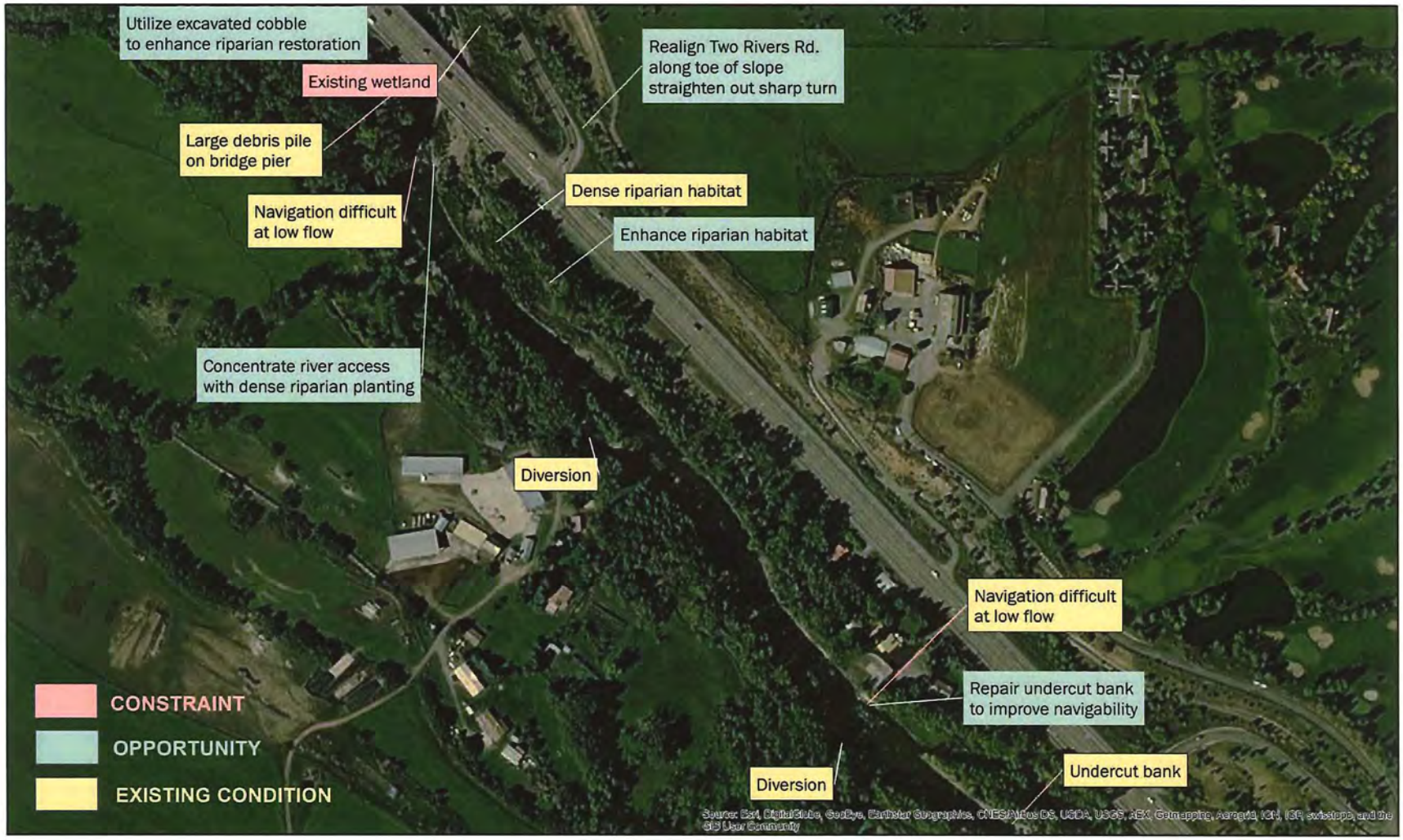

Town of Basalt: River Opporunities and Constraints Fig. 8

Please give us your thoughts on these conceptual ideas

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Town of Basalt: River Opporunities and Constraints Fig. 9

Please give us your thoughts on these conceptual ideas

0 0.05 0.1 0.2 Miles

N

Town of Basalt: River Opporunities and Constraints Fig. 10

Please give us your thoughts on these conceptual ideas

0 0.05 0.1 0.2 Miles

N

Town of Basalt: River Opporunities and Constraints Fig. 11

Please give us your thoughts on these conceptual ideas

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Memorandum

TO: Mayor Whitsitt and Town Council
FROM: Pamela Schilling, Town Clerk
DATE: January 26, 2016
RE: Student Citizens of the Month -- January

We are pleased to acknowledge the Student Citizens of the Month from the Basalt public schools. The awards are based on the Six Pillars of Character.

January: *Fairness*

- Play by the rules.
- Take turns and share.
- Be open-minded, listen to others.
- Do not take advantage of others.
- Do not blame others carelessly.

January's Student Citizens are:

BASALT ELEMENTARY:

Jacqueline Northrup
Oliver Fox-Rubin

BASALT MIDDLE SCHOOL

Leon Reilly
Esther Mercado Martinez

BASALT HIGH SCHOOL:

(as of the printing of the agenda, we had not received any high school students for the Students of the Month)

3A

101 Midland Avenue, Basalt, CO 81621

Meeting Date: January 12, 2016 **Time: 6:00 p.m.**
Location: Town Council Chambers

TOWN COUNCIL MEETING MINUTES

1. Call to Order (Mayor Whitsitt)

The regular meeting of the Basalt Town Council was called to order at 6:01 PM on Tuesday, January 12, 2016 by Mayor Jacque Whitsitt.

2. Roll Call (Pam Schilling)

Council members present were Herschel Ross, Bernie Grauer, Rick Stevens, Mark Kittle, Gary Tennenbaum and Rob Leavitt.

3. Consent Agenda (Mayor Whitsitt)

3A. Minutes: December 8, 2015

M/S COUNCILORS ROSS AND GRAUER TO APPROVE THE CONSENT AGENDA AS PUBLISHED. THE MOTION CARRIED 7-0.

4. Council Comments, Reports, Disclosures

Rick Stevens discussed an upcoming Cradle to Career initiative meeting on January 20 of the elected officials from Eagle, Pitkin and Town of Basalt to help figure out how to provide affordable day care and early childhood education, and continue that through to the child's college or work path. The number of children waiting to get into Blue Lake preschool is167.

Bernie had received a few complaints about the traffic curb bulb-out in front of the RMI building and wondered if it was due to be made more visible to traffic.

Herschel Ross said the mayor took a council member to task for asking staff to do a bunch of work between first and second reading, Herschel said he supported the established protocol for first and second readings. He felt staff had done an amazing job presenting objective and thorough presentations at first reading of ordinances; and council is then supposed to take additional requests for information to staff as a group, not an individual.

Herschel Ross asked if other council members would be interested in a worksession with the Town Attorney for a brush-up on open meeting laws, ex-parte communications, etc.

Herschel Ross also recognized Scott Condon as a reporter who does his homework and comes to the meetings. He appreciated Scott and the effort he put in.

Council consensus was to have a worksession on open meetings meeting with Town Attorney Tom Smith at their February 9 meeting.

5. Citizen Comments: for Items Not on the Agenda and Items Added to the Agenda After the Deadline

Cathy Click, representing Pan and Fork River Park Citizen's Committee named the Committee members and submitted additional signatures debt and land initiative petitions. Cathy spoke on behalf of the group, requesting the issue be put forth at the April 5 election. A letter was submitted from Attorney Dave Myler explaining that the Council could on their own, forward the Ordinances to a public vote

Mark Harvey spoke to the matter of the Ordinances requesting they go before Council at the January 26 meeting. He said some saw this as a once in a lifetime opportunity for the Town and needed to be done right; this was an opportunity to make the town come alive. This group has obtained more than 300 signatures in the past week. Mark said the petition was reasonable and allowed for some development and some real green space and allowed for lots of creative ideas to flourish.

Cathy Click said it has been an amazing conversation, and thought people really enjoyed the conversation and taking it further. About 50 people signed who are part of the greater Basalt, who agreed they'd like to see mostly park and half an acre of development on the park. People were eager to add to the parkland we already own and were excited about the Our Town Planning process for an active urban river park at the entrance to Basalt. They want a chance to vote on what happens at the Pan and Fork property. Cathy invited everyone to another community bonfire where this issue could be further discussed.

Parker Maddux, 350 Riverside Drive, speaking on behalf of his wife and himself, said he withdrew his name from the petition understanding that the proposal was something different than what it was. He felt the proposal for nothing other than a park, was unwise. He expressed concern for the number of empty spaces in the downtown area already, and the huge financial cost.

Doug MacDonald, said that what was being proposed by the petition did include a reasonable amount of development; they were not advocating an all park solution.

Steve Chase said the format of his letter to the editor, which was 'What questions should I ask before I sign a petition', was a challenge to his neighbors and community to do the same thing. Steve Chase expressed concern with the cost of the property and the use of property which would be limited to only 5 months a year.

Rob Hollis quoted philosopher Roger Scruton and Oscar Wilde about buildings and their beauty and utility. Rob spoke of the needs of a community in terms of environmental design, and the social, economic and environmental needs this type of design fulfills. He supported additional subsidy for bus systems for local feeder routes. He talked about architecture and art as the usefulness of beauty. Mr. Hollis though we needed to focus on developing beautiful things and not just useful things.

Gerry Terwilliger, Homestead Drive, wanted to address the problems Steve Chase raised. Gerry said that if this goes to a vote, everybody will have a chance to ask and answer the questions Steve raised. Gerry said he circulated some of the petitions and 2 people signed who were dead set against the park, but they signed because they wanted to get it to the people and let the people decide so we can move forward.

Mayor Whitsitt noted that Council would be deliberating this question again before deciding what they would do with the petitions.

6. SECOND READING OF ORDINANCES:

Mayor Whitsitt opened all 3 ordinances (6A, 6B, 6C) at one time by reading the titles:

6A. Public Hearing and Second Reading of Ordinance No. 26, Series of 2015: An Ordinance of the Town Council of Basalt, Colorado, Amending Chapter 4, Revenue and Finance, of the Basalt Municipal Code Concerning the Town's Sales Tax, By Providing for a Sales Tax Credit Against Certain Public Improvement Fees Paid at Willits Town Center, Basalt, Colorado

6B. Public Hearing and Second Reading of Ordinance No. 27, Series of 2015: An Ordinance of the Town Council of Basalt, Colorado, Approving a Public Financing Agreement with Willits Town Center, LLC, Regarding the Financing of Public Improvements at Willits Town Center

6C. Public Hearing and Second Reading of Ordinance No. 28, Series of 20O15: An Ordinance of the Town Council of Basalt, Colorado, Approving Amendments to the Approval Documents for the Willits Town Center PUD and Authorizing Transfer of Property Interests From the Town to the Willits Town Center (WTC) Developer

Town Manager Mike Scanlon recused himself from the meeting.

Evan Welsh of Mariner, Tim Belinski of INDVentures and David Warner of Lipkin Warner were present, representing the applicant.

After a presentation by staff and the applicant, the public hearing was opened by Mayor Whitsitt at 7:35 PM.

Citizens speaking at the public hearing were:

Jennifer Riffle, Sopris Drive; Edward Troy, Riverside Drive, Mark Kkwiecienski, Diana Sirko – Superintendent of the Roaring Fork School District and resident of Evans Court, Royal Laybourn, Bill McEnteer – Evans Court, Amanda Poindexter - resident of Aspen/Basalt campground, Friederike French Willits resident, Carol Hawk Willits resident, Mark Kuhl resident of Willits, Ted Guy, Emily Ransford – Missouri Heights residents, Craig Scott Willits resident, Scott Condon Aspen Time reporter and neighbor of the development, Patti Lecht, Robin Waters on behalf of the Board of Directors of the Basalt Chamber of Commerce (a written letter), Temple Glassier, Katie Schwoerer – Willits residents, Bill Infante and Joel Mischke Willits business owner and resident.

The public hearing was closed at 8:33 PM.

Council comments and discussion followed.

Vote on Ordinance No. 26, 2016:

M/S COUNCILORS ROSS AND STEVENS THAT THE TOWN COUNCIL APPROVE ORDINANCE NO. 26, SERIES OF 2015 ON SECOND READING. THE MOTION FAILED 3-4 WITH COUNCILORS TENNENBAUM, KITTLE, LEAVITT AND MAYOR WHITSITT OPPOSED.

Vote on Ordinance No. 27, 2016:

M/S COUNCILORS GRAUER AND ROSS THAT THE TOWN COUNCIL APPROVE ORDINANCE NO. 27, SERIES OF 2016 ON SECOND READING.

An Amendment to the motion was offered:

M/S COUNCILORS GRAUER AND STEVENS TO AMEND ORDINANCE NO. 27, SERIES OF 2016, TO REDUCE THE CREDIT PIF TO $4 MILLION.

THE AMENDED MOTION FAILED 2 – 5 WITH COUNCILORS LEAVITT, ROSS, KITTLE, TENNENBAUM AND MAYOR WHITSITT OPPOSED.

The original motion was called:

M/S COUNCILORS GRAUER AND ROSS THAT THE TOWN COUNCIL APPROVE ORDINANCE NO. 27, SERIES OF 2016 ON SECOND READING. THE MOTION FAILED 3-4 WITH COUNCILORS LEAVITT, WHITSITT, KITTLE AND TENNENBAUM OPPOSED.

M/S COUNCILORS ROSS AND STEVENS TO APPROVE ORDINANCE NO. 28, SERIES OF 2016 ON SECOND READING WITH THE AMENDMENTS THAT WERE DISTRIBUTED AT THE MEETING ON THE YELLOW SHEET (AMENDING CONDITION NO. 7, OF EXHIBIT A TO ORDINANCE 28, RELATING TO THE DEVELOPER'S OBLIGATION TO DESIGN, ENGINEER, AND CONSTRUCT A 1,200 SQUARE FOOT BUILDING ON BLOCK 8 OF THE WTC; AND AN AMENDMENT TO THE PARKING GARAGE AGREEMENT , EXHIBIT TO ORDINANCE 28, 2016, PARAGRAPH 3(A) AMENDED TO INCLUDE LANGUAGE THAT THE LOSSES ARE FOR THE PARKING GARAGE.) THE MOTION CARRIED 5 – 2 WITH COUNCILOR TENNENBAUM AND MAYOR WHITSITT OPPOSED.

7. FIRST READINGS OF ORDINANCES:

Mayor Whitsitt opened Ordinances 7A and 7B together by reading the titles as follows:

7A. First Reading of Ordinance No. 01, Series 2016: An Ordinance Authorizing the Execution and Delivery of a Contract to Buy and Sell Real Estate Between the Roaring Fork Conservancy and the Town of Basalt, Colorado, and Providing Other Matters Properly Relating Thereto

7B. First Reading of Ordinance No. 02, Series 2016: An Ordinance of the Town Council of Basalt, Colorado, Approving a Lease Agreement for Construction and Occupancy of a River Center at 22826 Two Rivers Road on Property to be Owned by the Town

Rick Lofaro and Larry Yaw were present with a few slides of the proposed project.

Motion on 7A:

M/S COUNCILORS ROSS AND STEVENS THAT THE TOWN COUNCIL APPROVE ORDINANCE NO. 01, SERIES OF 2016, ON FIRST READING AND SET THE PUBLIC HEARING AND SECOND READING FOR JANUARY 26, 2016. THE MOTION CARRIED 7-0.

Motion on 7B:

M/S COUNCILORS ROSS AND LEAVITT THAT THE TOWN COUNCIL APPROVE ORDINANCE NO. 02, SERIES OF 2016, ON FIRST READING AND SET THE PUBLIC HEARING AND SECOND READING FOR JANUARY 26, 2016. THE MOTION CARRIED 7-0.

7C. First Reading of Ordinance No. 03, Series of 2016: An Ordinance of the Town of Basalt, Colorado, Amending Chapter 4, Revenue and Finance, of the Basalt Municipal Code to Add a New Article VIII Establishing a One Percent for the Arts Program

Nancy Lovendahl was present representing this issue for the Public Arts Council for a brief Power Point presentation.

M/S COUNCILORS ROSS AND TENNENBAUM THAT THE TOWN COUNCIL APPROVE ORDINANCE NO. 03, SERIES OF 2016, ON FIRST READING AND SET THE PUBLIC HEARING AND SECOND READING FOR JANUARY 26, 2016. THE MOTION CARRIED 7-0.

Mayor Whitsitt noted that a draft of upcoming worksession and meeting items had been included in the packet.

8. INFORMATION AND CORRESPONDENCE:

NO ACTION REQUIRED BY THE TOWN COUNCIL

8A. Accounts Payable for 12/22/15 and 01/12/16
8B. Advance Agendas
8C. Correspondence to the Town
8D. Town Clerk Administrative Liquor Actions
8E. RFTA Budget Presentation

9. ADJOURNMENT

M/S COUNCILORS ROSS AND GRAUER TO ADJOURN THE MEETING AT 10:17 PM.

The minutes of the January 12, 2016 meeting were read and approved this, 26th day of January, 2016.

BASALT TOWN COUNCIL: **ATTEST:**

By:_____ _____
Jacque Whitsitt, Mayor Pamela Schilling, Town Clerk

SGM

MEMORANDUM

TO: **Basalt Council**

FROM: **Louis Meyer PE**

DATE: **January 21, 2016**

RE: **Update from Town Engineer**

This memo will summarize items worked on or issues to be aware.

1. Flood Plain Issues

1. The Letter of Map Revision from CDOT and their consultant AECOM was submitted to The Federal Emergency Management Agency (FEMA) in late December of 2015. FEMA has done a completeness analysis and has requested additional information before the application is processed and reviewed. That information was sent to CDOT on January 11th. CDOT and their consultant AECOM are in the process of preparing the additional information requested by FEMA. That information should be submitted by the end of January. Once that information is submitted The Town of Basalt will work with CDOT, AECOM, Pitkin County and Eagle County to begin the public notification process for impacted property owners.

2. The Town held a meeting with the Basalt Business Center Business Owners who are most impacted by the change in Floodway Boundaries. It was agreed to in that meeting that SGM and Sopris Engineering (representing the BBCA) would work together to make recommendation to the Town to revise the Town's current Flood Plain Building Regulations (Article XVII – Flood Damage Prevention) to be consistent with the new mapping and floodplain/floodway boundaries.

118 W. 6th St, Ste 200 Glenwood Springs, CO 81601 Phone: 970-945-1004 Fax: 970-945-5948

2.0 Basalt Underpass

SGM is working with Town Staff on the rebidding process for the Basalt Avenue Underpass. In December, SGM held a forum with interested contractors through Colorado Contractors Association to discuss value engineering concerns from Contractors. The memo that follows summarizes the meeting:

SGM

PROJECT MEMO

TO:	**Mike Scanlon** **Judi Tippetts** **Boyd Bierbaum**
FROM:	**Mike Fowler, John Partch, Richard Nash, Louis Meyer, Bill Swigert**
DATE:	**December 16, 2015**
SUBJECT:	**Basalt Avenue Underpass (SGM Project # 2014-435.001)** **Project Re-bid**

As a part of the effort to re-bid the Underpass Project, SGM facilitated a Constructability Review process available through the Colorado Contractor's Association, by which the design team was able to solicit comments from interested contractors on how the Project might reduce costs and streamline the schedule. On Tuesday December 15, a meeting was held at the Garfield County Library in Glenwood Springs, which was attended by nine construction firms, two of which were bidders during the August bid process, Boyd Bierbaum, and SGM staff.

SGM design team noted all comments, then met afterwards and developed a list of design issues to consider when developing the re-bid plan set. The following is a list of the issues, which include those the design team developed after reviewing the initial bids:

Waterproofing

1. Review system (vendor) originally specified. Allow wider variety of vendors.
2. Review waterproof details. Consider increasing base slab thickness, and eliminate mud slab. Eliminate membrane under base slab; consider replacing with waterproofing concrete admixture (Xypex or similar)
   Review barrier wall system. Consider eliminating barrier walls, and replace with exterior waterproof system plus waterproofing concrete admixture (Xypex or similar).

Dewatering

3. Town to consider performing pump testing prior to bid, which would reduce unknowns in pumping rates.
4. Facilitate groundwater handling. Consider designating temporary groundwater storage or discharge location, such as holding pond, ditch, or field.
5. Modification of Groundwater Bid Item. Consider multiple items allowing for both installation and operation of dewatering system.

6. Share information the Town of Basalt may have with regards to groundwater discharge standards on local projects. For example, make available ACC's dewatering permit from the Pan and Fork project.
7. Review current design basis of maximum high groundwater level of 6197 ft.
8. Obtain additional monitoring well water elevation data from this fall and winter.

General

9. Veneer system. Review system as specified to reduce complexity and/or allow wider variety of systems and vendors.
10. Consider changing the facing from the gabions to a stone masonry veneer.
11. DBE Goal. Currently 7%. Investigate reducing, which would provide General Contractor more control over personnel, which can result in more control over project schedule. This will require approval from CDOT Civil Rights office.
12. Consider eliminating Public Information requirement from bid schedule, and assign task to Town/SGM staff.
13. Consider eliminating Partnering requirement from Bid Schedule.
14. Consider allowing Contractor flexibility in over 40 hour week schedule.
15. Consider Early Project Completion Incentive.

3.0 Underpass Schedule

SGM is now proceeding with the following schedule to rebid the project:

The anticipated schedule is as follows:

February 1, 2016	Design Revisions complete
February 1 to 12, 2016	CDOT Review
February 18, 2016	Ad for Bid; Plans available
March 11, 2016	Bids Due
March 11 to 18, 2016	Evaluation of Bids
March 22, 2016	Presentation of Bids to Town Council
March 31, 2016	Bid Award

4.0 Myers Access Road

SGM is working with RFTA, Sopris Engineering, CDOT, Bob Myers and Town Staff on the design and permitting for a secondary access road to Myers Metal, that was a stipulation in the condemnation hearing between RFTA and Myers Metal. The ongoing work consists of the following tasks:

1. Construction drawings addressing all of RFTA's review comments
2. Construction specifications to CDOT format
3. Updated Construction Cost Estimate
4. Updated quantity takeoff
5. Easement documents are completed just need to be signed and recorded.
6. Agreements/permitting with CDOT, Ditch Company, Bob Myers and Comcast need to be completed.
7. Bid package is scheduled to be completed by 2/1/16

5.0 Southside Traffic Study

SGM has been working with Town Staff on a traffic study that evaluates impacts from future development on the Southside. The following memo from traffic engineer Lee Barger summarizes the status of that work to date:

I've made progress on the Basalt Southside 5-year Traffic Study which evaluates buildout of the Aspen Skiing Company housing project on Southside Drive, among other 5-year development proposals. I am currently developing and analyzing three alternatives that could improve access and queuing concerns that exist on Basalt Avenue at Cody Lane, which is most evident during the peak hours. I am finding that the 5-year Southside development plan causes the signal to approach capacity during peak hours, so the 20-year plan is likely to require another access to the Southside from the highway or from Midland Avenue to handle the increased traffic demand. My analysis will be complete this week and I will send a draft report to Susan and James early next week for their input before finalizing. This report will provide several future opportunities to improve access to and from the southside which the Town should consider as they move forward with development proposals from this area of Town

TOWN OF BASALT AGENDA ITEM SUMMARY	**Item Number: 6A and 6B** **Date: January 26, 2016** **From:** Pamela Schilling, Town Clerk

SUBJECT: Petitions for Adoption of Ordinances

DETAILS:

On January 12, 2016, I was presented with two petitions for adoption of ordinances by initiative or referendum, along with a letter from David J. Myler, dated January 11, 2016. By letter dated January 4, 2016, with the advice of the Town Attorney, I previously determined that these petitions violated Art. V, Sect 1(9) of the Colorado Constitution, which provides that only legislative matters are subject to initiative and referendum. Both petitions would request the approval by the electorate of a Contract for Sale of Vacant Land between the roaring fork Community Development Corporation and the Town of Basalt. Contracts are administrative matters not subject to initiative and referendum.

Section 5.3 of the Basalt Home Rule Charter states that when a petition with sufficient signatures is filed within the time allowed, the Town Clerk shall present the petition to the Council at its next regular meeting. While my position as stated in the letter dated January 4, 2016, has not changed, at the request of Mr. Myler and at the direction of the Town Attorney, I am presenting these petitions to you.

I did certify 329 (out of 412) signatures on the Land petitions; and 327 (out of 409) on the Debt petitions.

Related Town Statute and or Town Actions:
Basalt Home Rule Charter – Article V and Colorado Revised Statutes (C.R.S) 31-11-106

Budget: N/A

Attachments: Memorandum from Town Attorney with 7 exhibits including Proposed Ordinances as set forth in Petitions, Correspondence from Cathy Click to Council with newly Proposed Ordinance for the Purchase of Land and General Obligation Indebtedness

TOWN OF BASALT, COLORADO
ORDINANCE NO. 04, SERIES OF 2016

AN INITIATED ORDINANCE OF THE TOWN OF BASALT, COLORADO CALLING AN ELECTION ON APRIL 5, 2016, TO APPROVE THIS ORDINANCE, AND TO AUTHORIZE AND DIRECT THE TOWN COUNCIL TO ENTER INTO A CONTRACT FOR THE PURCHASE OF LAND FOR PUBLIC PARK AND COMMUNITY SERVING USES, AND ESTABLISHING PRINCIPLES FOR THE FUTURE USE AND OPERATION OF SAID LAND; AND SETTING THE BALLOT TITLE AND BALLOT QUESTION FOR THE FOREGOING.

RECITALS

WHEREAS, the Town of Basalt, Colorado (the "Town") is a home rule municipality duly organized and existing under the Constitution and laws of the State of Colorado and its Home Rule Charter (the "Charter"); and

WHEREAS, Article V of the Charter provides that an ordinance may be submitted by petition signed by qualified electors of the Town equal in number to ten percent of the number of persons who were registered electors of the Town as of the date of the last general election; and

WHEREAS, upon the Town Clerk's determination that sufficient signatures have been filed within the time allowed by Section 5.4 of the Charter, the Town Clerk is required to present the petition to the Town Council of the Town (the "Council") at its next regular meeting; and

WHEREAS, this Ordinance authorizes and directs the Council, in order to accomplish long term community objectives and to assure the long term use and operation of the CDC Parcel (defined below) for park and community serving uses consistent with Town policies, to enter into a Contract for the purpose of acquiring a 2.317-acre parcel of real property located along Two Rivers Road in the Town which is described in **Exhibit A** (the "CDC Parcel") under the terms of a Contract for Sale of Vacant Land between Roaring Fork Community Development Corporation ("RFCDC") and the Town, a copy of which is attached hereto as **Exhibit B**, (the "Purchase Contract"): and

WHEREAS, the acquisition and use of the CDC Parcel for park and community serving uses, as provided herein, is consistent with the 2007 Town of Basalt Master Plan, including the Our Town Subarea Plan, as amended, and will promote and satisfy key objectives and recommendations of the Our Town Planning Area; and

WHEREAS, the long term public policies and objectives relating to the CDC Parcel can only be achieved if the Town acquires such Parcel; and

WHEREAS, the actions authorized and directed by this Ordinance are legislative in character and not administrative since they direct the Town Council to establish new public policies and standards relating to permanent permitted and prohibited uses and activities on the CDC Parcel that can only be applied if the Town acquires it, and that make the anticipated river park on the CDC Parcel eligible for public open space funding by Pitkin County, Eagle County and other third parties; and

WHEREAS, the total $3,000,000 purchase price for the CDC Parcel, as stated in the Purchase Contract, is supported by competent and reliable valuation analyses and represents the fair market value of the CDC Parcel.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO AS FOLLOWS:

1. **Approval of Purchase Contract**. The Purchase Contract attached hereto as Exhibit B is approved and the Mayor and Council are authorized and directed to sign such Purchase Contract on behalf of the Town and deliver same to RFCDC. The Mayor and Town Manager are further authorized and directed to take all actions reasonably necessary in order to complete the purchase of the CDC Parcel as provided in and subject to the contingencies and other provisions of the Purchase Contract, including payment of the purchase price.

2. **Uses and Operating Principles**.

a. General Principles. The CDC Parcel shall be utilized in a manner that is consistent with the 2007 Town of Basalt Master Plan, including the Our Town Subarea Plan, as amended, and that will maximize benefits to the Basalt community at large as well as the businesses operating within the historic downtown commercial areas.

b. Park Area. At least 1.817 acres of the CDC Parcel (the "Park Area") shall be improved, managed and utilized only for public park purposes, including passive use by residents and visitors and such active community uses, including events and performances, as the Council may determine from time to time, provided that the Park Area shall always be used in a manner that maintains its eligibility for public open space funding.

c. Community Serving Uses. Up to, but not exceeding, 0.50 acres of the CDC Parcel, which may consist of one or more separate parcels provided that the total does not exceed 0.50 acres, located within the "Community Serving Use Area" as described on **Exhibit C** may either be improved, managed and utilized for the same public park purposes as would be allowed on the Park Area, or may be developed and utilized for such community serving commercial, civic and public uses, including housing for public service employees (police, firefighters, teachers and the like), as the Town Council may determine pursuant to a public planning and land use review process. The nature and extent of that process shall be determined by the Council, and shall be sufficient to afford all interested parties with a reasonable opportunity to participate in public hearings and offer comments on an appropriate mix of uses, appropriate limitations on floor area and height, and related issues. The mix and character of such uses shall be consistent with the 2007 Town of Basalt Master Plan, including the Our Town Subarea Plan, as amended.

3. **Town Council Authority**. Except for the provisions of Section 2 (Uses and Operating Principals), nothing herein shall limit or restrict the authority and discretion of the Council to subdivide, rezone, sell, lease or convey all or any portion of the Community Serving Use Area, pursuant to the applicable land use regulations of the Town, in order to achieve the objectives set forth in this Ordinance. The Council shall not manage, operate or convey the Park Area in a manner which would be inconsistent with the terms and conditions of public open space funding.

4. **Funding**.

a. Public Sources. The Council shall use its best efforts to obtain funds for acquisition of the CDC Parcel from the Pitkin County Open Space and Trails Program, the Eagle County Open Space Program, Great Outdoors Colorado and any other similar sources.

b. Town Funds. The Council may, in its sole discretion, use Town General Funds for any portion of the purchase price.

5. **Ballot Question.** Unless this Ordinance is adopted by the Town Council in accordance with Section 5.5 of the Charter, the Council hereby authorizes and directs the officers of the Town to certify the following question in substantially the form hereinafter set forth, in accordance with TABOR and other applicable election laws. Such question shall be submitted to the eligible electors of the Town at the Election:

SHALL TOWN OF BASALT, COLORADO ENTER INTO A CONTRACT FOR THE PURPOSE OF ACQUIRING A 2.317-ACRE PARCEL OF LAND, FOR PARK AND COMMUNITY SERVING PURPOSES, PURSUANT TO A CONTRACT FOR SALE OF VACANT LAND BETWEEN ROARING FORK COMMUNITY DEVELOPMENT CORPORATION AND THE TOWN; AND SHALL THE INITIATED ORDINANCE AUTHORIZING AND DIRECTING THE ACQUISITION OF THE LAND BE APPROVED.

If a majority of the votes cast on foregoing question shall be in favor of such question, the Town acting through the Council is authorized and directed to proceed with the necessary action to complete the acquisition of the CDC Parcel pursuant to the Purchase Contract.

6. **Miscellaneous**.

a. Pursuant to Section 1-11-203.5, C.R.S., any election contest arising out of a ballot issue or ballot question election concerning the order of the ballot or the form or content of the ballot title shall be commenced by petition filed with the proper court within five days after the title of the ballot issue or ballot question is set.

b. The Town Clerk, as well as the appropriate officers and employees of the Town are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance. The Mayor is hereby authorized to execute this Ordinance on behalf of the Council, and the Town Clerk is hereby authorized to attest to such execution by the Mayor.

c. All ordinances, orders, bylaws and resolutions, or parts thereof, in conflict with this Ordinance, are hereby repealed.

d. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

[This Space Intentionally Left Blank.]

Read on First Reading, Ordered Published and set for Public Hearing to be held on the ____ day of _____ 2016 by a vote of ____ to _____ on the ___ day of _____ 2016.

Read on Second Reading and Adopted by a vote of _____ to _____ on the ____ day of _____ 2016.

OR Adopted this ____ day of _____, 2016 by a majority vote of the electorate at the Initiative Election held on the ____ day of _____ 2016.

TOWN OF BASALT

By: _____
Mayor

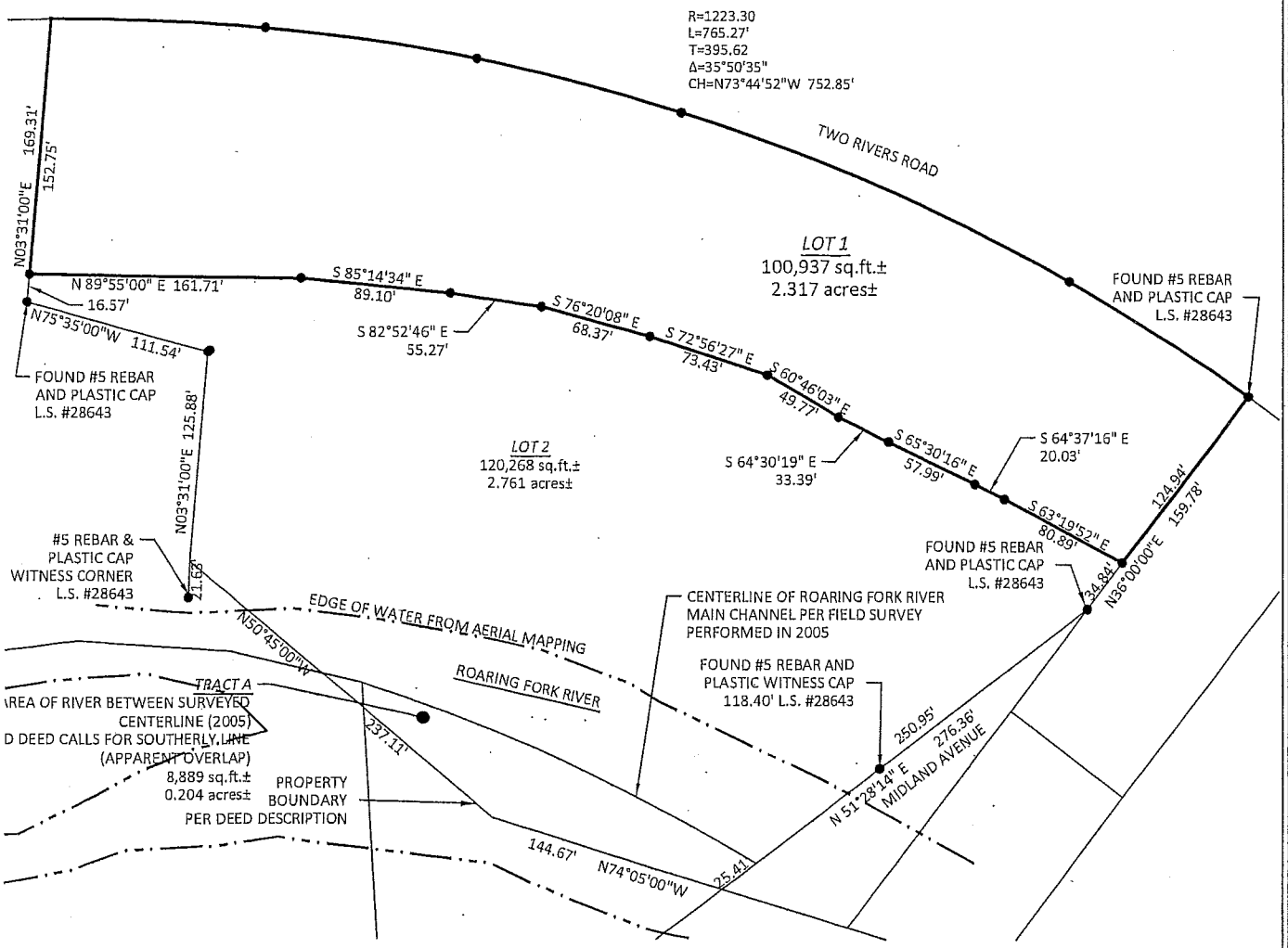
ATTEST:

_____
Town Clerk

EXHIBIT A

CDC PARCEL

A PARCEL OF LAND SITUATED IN TRACT 45
TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6th P.M.
TOWN OF BASALT, COUNTY OF EAGLE, STATE OF COLORADO
SHEET 1 OF 1



DRAWING SCALE
1"=100'

SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311

15004.01 cl 12/14/2015 M:\3500dwgs\15004\15004 COMMUNITY EXHIBITS 2015-12-08.dwg

EXHIBIT B

CONTRACT FOR SALE OF VACANT LAND

THIS CONTRACT FOR SALE OF VACANT LAND (the "**Contract**") is entered into as of the Effective Date (defined below) by and between Roaring Fork Community Development Corporation (the "**Seller**") and Town of Basalt, a Colorado home rule municipality (the "**Buyer**").

RECITALS:

A. Seller is the owner of real property commonly known as the CDC Parcel (the "Land") comprising approximately 2.3 acres which is located in the Town of Basalt and the County of Eagle, as described on **Exhibit A.**

B. Seller desires to sell and Buyer desires to purchase the Land pursuant to the terms of this Contract.

AGREEMENT

1. PURCHASE AND SALE OF THE LAND. Seller agrees to sell and Buyer agrees to purchase the Land on the terms conditions set forth in this Contract.

2. PURCHASE PRICE. The purchase price for the Land, including earnest money, shall be Three Million and no/100s Dollars ($3,000,000.00) (the **Purchase Price**"). The Purchase Price shall be allocated as follows: Two Million Two Hundred Fifty Thousand and no/100 Dollars ($2,250,000.00) for the Park Area, and Seven Hundred Fifty Thousand and no/100 ($750,000.00) for the Community Serving Use Area. The Purchase Price shall be paid by Buyer to Seller as follows:

a. EARNEST MONEY. Buyer shall tender to Land Title Guaranty Company ("the Title Company") earnest money in the amount of $25,000.00 at the time it delivers a fully signed copy of this Contract to Seller. Any and all monies paid by Buyer prior to closing shall be placed in an insured, interest bearing money market-type account with a local commercial bank with all interest thereon to accrue for the benefit of Buyer. If Buyer shall ever be in default under this Contract resulting in a forfeiture of its earnest money, Seller shall be entitled, as its sole and separate property, all interest earned on said earnest money.

b. CLOSING FUNDS. At closing, the balance of the Purchase Price shall be paid to Seller in cash, certified funds, by wire transfer or other immediately available funds.

3. CLOSING. The closing of the transaction contemplated hereunder (the "**Closing**") shall be held at the office of the Title Company within ten days after satisfaction of the Contract Contingency as described in Paragraph 10, below, and upon issuance of bonds or other debt instruments and the funding thereof, but not later than July 5, 2016, unless this date is extended by mutual consent. At Closing, Seller shall execute and deliver to Buyer a special warranty deed conveying the Land, free and clear of all liens, encumbrances and other exceptions, except such easements, restrictions and other exceptions as are of record and are approved by Buyer during the Title Inspection Period and such other Closing documents as are normal and customary for the transaction described herein.

4. INSPECTION AND REVIEW.

a. EVIDENCE OF TITLE.

(i) Title Commitment. Seller shall cause to be furnished to Buyer, at Buyer's expense, a current commitment for owner's title insurance policy ("Title Commitment") in an amount equal to the Purchase Price no later than ten (10) days after full execution of this Contract. At Buyer's expense, Seller shall cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing. If a Title Commitment is furnished, it shall commit to delete or insure over the standard exceptions which relate to:

(1) parties in possession,
(2) unrecorded easements,
(3) survey matters,
(4) any unrecorded mechanic's liens,
(5) gap period (effective date of commitment to date deed is recorded),
(6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing.

Any additional premium expense to obtain this additional coverage shall be paid by Buyer.

(ii) Copies of Exceptions. Seller, at Buyer's expense, shall furnish to Buyer:

(1) a copy of any plats, declarations, covenants, conditions and restrictions burdening the Land
(2) a copy of all documents listed in the schedule of exception. This requirement shall pertain only to documents as shown of record in the offices of the clerk and recorder. The Title Commitment, together with any copies or summaries of such documents furnished pursuant to this section, constitute the title documents (Title Documents).

(iii) Survey. Seller shall provide Buyer and the Title Company, a current **Improvement Survey Plat** no later than three (3) days after full execution of this Contract.

b. TITLE AND SURVEY REVIEW.

(i) Title Review. Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title, form or content of Title Commitment or of any other unsatisfactory title condition shown by the Title Documents shall be signed by or on behalf of Buyer and given to Seller on or before **April 25, 2016** or within five (5) calendar days after receipt by Buyer of any change to the Title Documents or endorsement to the Title Commitment together with a copy of the document adding any new Exception to title. If Seller does not receive Buyer's notice by the date specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

(ii) Matters not Shown by the Public Records. Seller shall deliver to Buyer, within ten (10) days of full execution of this Contract, true copies of all leases or other unrecorded documents in Seller's possession pertaining to the Land and shall disclose to Buyer all easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first refusal, and options) not shown by the public records of which Seller has actual knowledge. Buyer shall have the right to inspect the Land to determine if any third party has any right in the Land not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition disclosed by Seller or revealed by such inspection shall be signed by or on behalf of Buyer and given to Seller on or before **April 25, 2016**. If Seller does not receive Buyer's notice by said date, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

(iii) Survey and Plat Review. Buyer shall have the right to inspect Survey. The Improvement Survey shall be in a form and content sufficient to cause the title company to issue an endorsement to its title commitment agreeing to delete from Schedule B (Section 2) of its to-be-issued title policy standard printed exception Nos. 1-3 at no cost to Buyer. Buyer has the right to review and object to the Survey. Buyer has the Right to Terminate under subparagraph (iv) if the Improvement Survey is not timely received by Buyer. In the event the Improvement Survey discloses matters which constitute defects in the merchantability of Seller's title, Buyer must give Seller written notice of such unsatisfactory title condition(s) no later than **April 25, 2016**. If Buyer in fact gives such notice to Seller in a timely manner, the provisions of subparagraph (iv) below shall apply thereto. If no such notice is timely

given, Buyer shall be deemed to have waived any objections to matters shown on the Improvement Survey.

(iv) Right to Object, Cure. If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition or commitment terms as provided in subsections i, ii, and iii above, Seller may use reasonable efforts to correct said items and bear any nominal expense to correct the same prior to Closing. If any unsatisfactory title condition is not corrected to Buyer's reasonable satisfaction on or before Closing, this Contract shall then terminate; provided, however, Buyer may, by written notice received by Seller on or before Closing, waive objection to such items.

c. INCLUSIONS. Seller shall assign to Buyer, at Closing, any and all water and sewer taps which are owned by Seller.

d. CONDITION OF LAND, REPRESENTATIONS. Buyer represents that it sufficiently familiar with the physical condition of the Land, including the location of utilities, that an inspection contingency is not required. As of the date of this Contract and the date of Closing, Seller warrants and represents the following:

(i) Seller is the record owner of the Land.

(ii) There are no actions, suits, proceedings or investigations pending or, to Seller's knowledge threatened, against or affecting the Land, or arising out of Seller's conduct on the Land.

(iii) To Seller's actual knowledge, Seller is in substantial compliance with the laws, orders, and regulations of each governmental department, commission, board, or agency having jurisdiction over the Land in those cases where noncompliance would have a material adverse effect on the Land.

(iv) Other than this Contract and for the 2008 Easement Contract between Buyer and Seller, as amended, Seller is neither party to nor subject to or bound by any agreement, contract or lease of any kind relating to the Land, and no person has a right to possession of the Land or holds an option or right of first refusal or a right of access across the Land other than as disclosed in the exceptions noted on Schedule B-2 of the Title Commitment.

(v) The Land, to the best of Seller's actual knowledge, is not in violation of any federal, state or local law, ordinance or regulation relating to environmental conditions on, under or about the Land, including, but not limited to, soil and groundwater conditions. Neither Seller, nor to the best of Seller's actual knowledge any third party, has used, generated, manufactured, refined, produced, processed, stored or disposed of on, or under the Land or transported to or from the Land any Hazardous Materials nor does Seller intend to use the Land

prior to closing date for the purpose of generating manufacturing, refining, producing, storing, handling, transferring, processing or transporting Hazardous Materials. For the purposes hereof, "Hazardous Materials" does not mean any typical agricultural chemicals such as herbicides and pesticides utilized on properties of this type in Eagle and Pitkin Counties, provided that all such chemicals are used in accordance with applicable laws and manufacturer's specifications; but shall mean any flammable explosives, radioactive materials, asbestos, , organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances", "hazardous material" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq., or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or other requirement of governmental authority regulating, relating to or imposing liability or standard of conduct concerning any hazardous, toxic or dangerous substance or material, as now or at any time hereafter in effect, and in the regulations adopted, published and/or promulgated pursuant to said laws. To the best of Seller's actual knowledge and except as disclosed herein, there are no other underground storage tanks situated in the Land.

(vi) No representation, warranty, or statement made herein by Seller contains any untrue statement of any material fact or omits to state any material fact necessary in order to make such representation, warranty, or statement not misleading.

5. **TAXES.** Seller shall pay all general taxes and assessments and all sale, excise, and transfer for the Land for the current year and all years prior to Closing.

6. **PRESERVATION OF LAND; RISK OF LOSS.** Except as otherwise set forth herein, Seller agrees that the Land shall remain as it now is until Closing, and that Seller agrees that it shall neither use nor consent to any use of the Land for any purpose or in any manner which would adversely affect Buyer's intended acquisition.

7. **COSTS AND FEES.** Closing fees shall be one half each by the Buyer and the Seller. The premium for the title insurance policy described above shall be paid by Seller.

8. **LIQUIDATED DAMAGES; DEFAULT.**

a. **SELLER'S REMEDIES.** In the event that (a) all of the conditions to this Contract for the benefit of Buyer shall have been satisfied, or waived by Buyer, (b) Seller shall have fully performed or tendered performance of its obligations under this Contract, and (c) Buyer shall be unable or shall fail to perform its obligations

under this Contract, then the entire amount of the earnest money plus all accrued interest thereon may be retained by Seller as liquidated damages under this Contract, and Buyer shall have no further liability to Seller. Buyer and Seller hereby acknowledge and agree that Seller's damages would be difficult or impossible to determine and that the amount of earnest money is the parties' best and most accurate estimate of the damages Seller would suffer in the event the transaction provided for in this Contract fails to close, and is reasonable under the circumstances existing as of the date of this Contract. In the alternative, Seller expressly retains the remedies of specific performance and additional damages.

b. BUYER'S REMEDIES. If Seller shall fail to consummate the transaction contemplated hereunder for any reason, or if such transaction shall fail to close for any reason other than default by Buyer, Buyer may elect, at Buyer's sole option: (i) To terminate this Contract and be released from its obligations hereunder, in which event the earnest money shall be returned to Buyer; or (ii) To proceed against Seller for specific performance of this Contract. In the event the transaction contemplated by this Contract fails to close as a result of Seller's default in the performance of its obligations established in this Contract, the above remedies shall be the sole remedies of Buyer.

9. NOTICES. All notices required or permitted hereunder will be deemed to have been delivered only upon actual delivery thereof. All notices required or permitted hereunder shall be given by hand delivery, or sent by telecopier, or sent by Federal Express or other courier for delivery at the soonest possible time offered by such courier, directed as follows:

If to Seller:

Roaring Fork Community Development Corporation
PO Box 1582
Carbondale, CO 81623

With a copy to:

David J. Myler.
The Myler Law Firm P.C.
211 Midland Ave., Ste 201
Basalt, CO 81621
Phone 970-927-0456
Fax 970-927-0374
Email dmyler@mylerlawpc.com

If to Buyer:

Town of Basalt, Colorado
Attn: _____

101 Midland Avenue
Basalt, CO 81621

with a copy to:

Thomas F. Smith, Town Attorney
600 E. Hopkins #205
Aspen, CO 81611
Phone: 970-925-2600
Email: tsmith@aps-pc.com

10. CONTRACT CONTINGENCY. The obligations of Buyer and Seller are specifically contingent upon the adoption of an Initiated Ordinance authorizing and directing the incurrence of general obligation indebtedness by the Town of Basalt, Colorado, authorizing and directing the levy of ad-valorem property taxes to pay for such general obligation indebtedness and authorizing and directing the Town Council to enter into this Contract.

11. MISCELLANEOUS.

a. BROKER'S COMMISSION. Seller and Buyer each represents to the other that they have not contracted with any broker or finder with regard to this transaction.

b. CERTIFICATE. Seller hereby declares and represents to Buyer that it is not a "foreign person" for purposes of withholding of federal tax as described in such Certificate. At or prior to Closing, Seller shall furnish to Buyer a duly executed Certificate of Non-Foreign Status.

c. ASSIGNMENT. This Contract shall not be assignable by either party without the prior written consent of the other.

d. BINDING EFFECT. The terms and conditions of this Contract shall be binding upon and shall inure to the benefit of the parties' heirs, executors, administrators, successors and assigns.

e. COUNTERPARTS; FACSIMILE SIGNATURES. This Contract may be executed in counterparts, all of which shall constitute one agreement which shall be binding on all of the parties, notwithstanding that all of the parties are not signatories to the original or the same counterpart. Signatures may be evidenced by facsimile transmission and at the request of any party documents with original signatures shall be provided to the other party.

f. SEVERABILITY. Provided each party receives the substantial benefit of the bargain memorialized in this Contract, if any provision of this Contract shall be held invalid, the other provisions hereof shall not be affected thereby and shall remain in full force and effect.

g. ENTIRE CONTRACT. This Contract represents the entire agreement of the parties and may not be amended except by a writing signed by each party thereto.

h. AUTHORITY. Each party to this Contract warrants to the other that the respective signatories have full right and authority to enter into and consummate this Contract and all related documents.

i. FURTHER ACTIONS. Each party shall execute and deliver or cause to be executed and delivered any and all instruments reasonably required to convey the Land to Buyer and to vest in each party all rights, interests and benefits intended to be conferred by this Contract.

j. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the laws of the State of Colorado.

k. OFFER. When signed and delivered to the Buyer by Seller, this Contract will constitute an offer to the Buyer that can be accepted only by the Byer signing and delivering to Seller an executed original of this Contract. Buyer may withdraw such offer in writing at any time prior to its acceptance.

l. LABOR AND MATERIAL. Seller shall deliver to Buyer at Closing an affidavit, on a form acceptable to Buyer, signed by Seller that no labor or materials have been furnished to the Land within the statutory period for the filing of mechanics' or materialmen's liens against the Land, or, if labor or materials have been furnished during the statutory period, Seller shall deliver to Buyer and Title Company, such material(s) as may be required for the deletion of Schedule B standard title exceptions paragraph #4 (any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records) related to work done on the Land.

m. MEDIATION. If a dispute arises relating to this Contract, prior to or after closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is sent by one party to the other at the party's last known address.

This section shall not alter any date in this Contract, unless otherwise agreed.

n. COST AND EXPENSES. ATTORNEYS' FEES. In the event of any mediation or litigation relating to this Contract, the mediator shall resolve or court shall award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.

o. SATURDAYS, SUNDAYS, HOLIDAYS. If the final date of any time period of limitation set out in any provision of this Contract falls on a Saturday, Sunday or a legal holiday under the laws of the State of Colorado, then the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

p. INDEMNIFICATION. Buyer shall indemnify and hold Seller harmless from and against any and all liens, claims, causes of action, damages, liabilities and expenses (including reasonable attorneys' fees) arising out of Buyer's inspections or tests permitted under this Contract, provided, however, the indemnity shall not extend to protect Seller from any pre-existing liabilities for matters merely discovered by Buyer (i.e., latent environmental contamination) so long as Buyer's actions do not aggravate any pre-existing liability of Seller. Buyer's obligations under this Subsection p. shall survive the termination of this Contract and shall survive the Closing.

q. TIME OF ESSENCE, DEFAULT AND REMEDIES. Time is of the essence hereof. If any check received as earnest money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, remedies shall be limited to those described in Section 8 above.

r. EARNEST MONEY DISPUTE. In the event of any controversy regarding the earnest money and things of value (notwithstanding any termination of this Contract or mutual written instructions), earnest money Holder shall not be required to take any action. Earnest money holder may await any proceeding, or at its option and sole discretion, interplead all parties and deposit any money or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney and legal fees.

s. TERMINATION. In the event this Contract is terminated, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder.

12. EFFECTIVE DATE. The Effective Date of this Agreement shall be the last date signed by either party.

13. NOTICE OF ACCEPTANCE, COUNTERPARTS. This proposal shall expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the Seller receives a signed counterpart of this Contract on or

before April 15, 2015. If Seller receives a signed counterpart within said time period, this document shall become a Contract between Seller and Buyer.

[This Space Intentionally Left Blank. Signatures on the Following Page.]

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the dates below.

SELLER:

ROARING FORK COMMUNITY DEVELOPMENT CORPORATION

By: _____ Date: _____
_____, its _____

BUYER:

TOWN OF BASALT, a Colorado home rule municipality

By: _____ Date: _____
_____, its _____

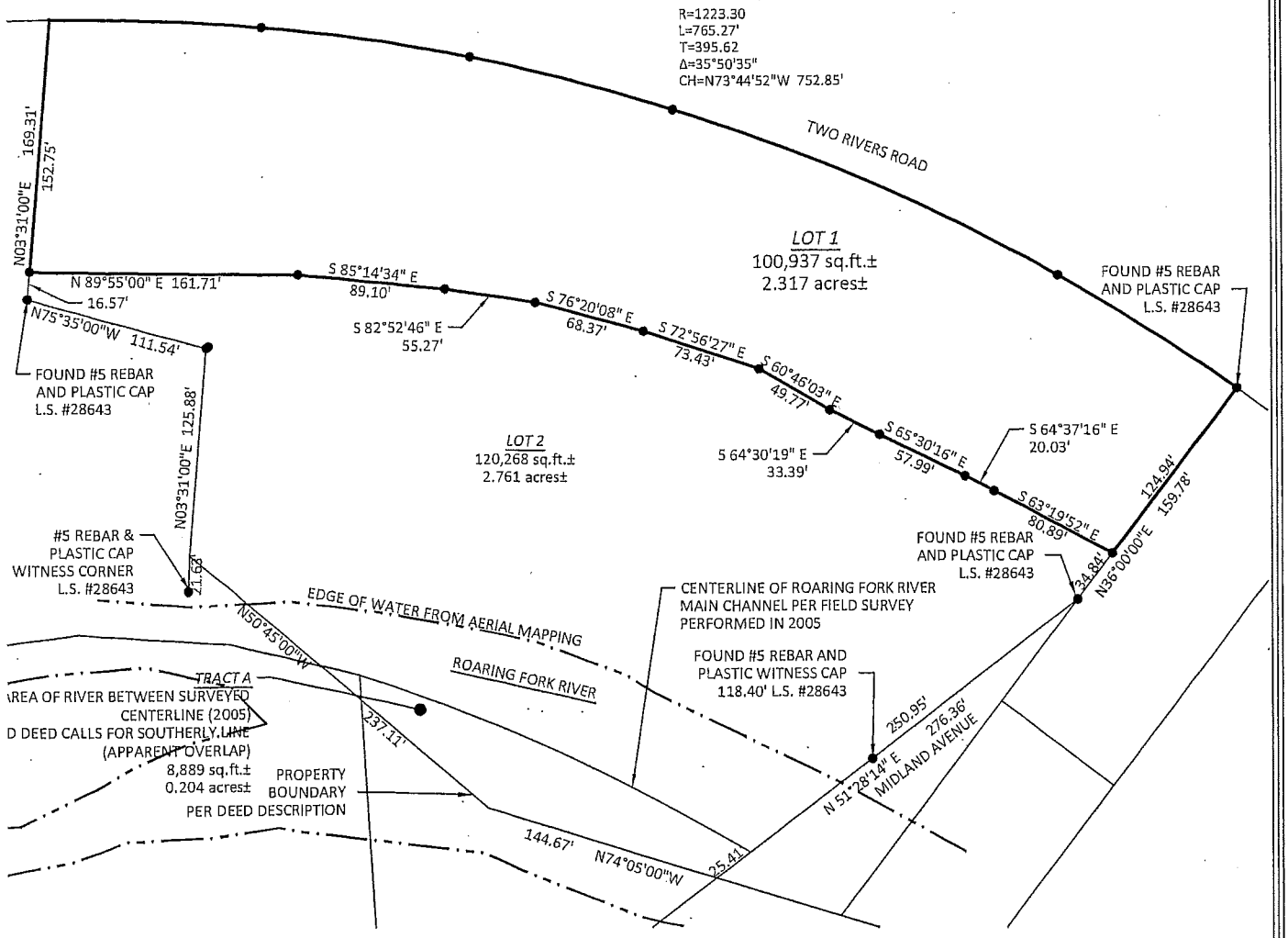
ATTEST:

_____
Town Clerk

EXHIBIT A

CDC PARCEL

A PARCEL OF LAND SITUATED IN TRACT 45
TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6th P.M.
TOWN OF BASALT, COUNTY OF EAGLE, STATE OF COLORADO
SHEET 1 OF 1



DRAWING SCALE
1"=100'

SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311

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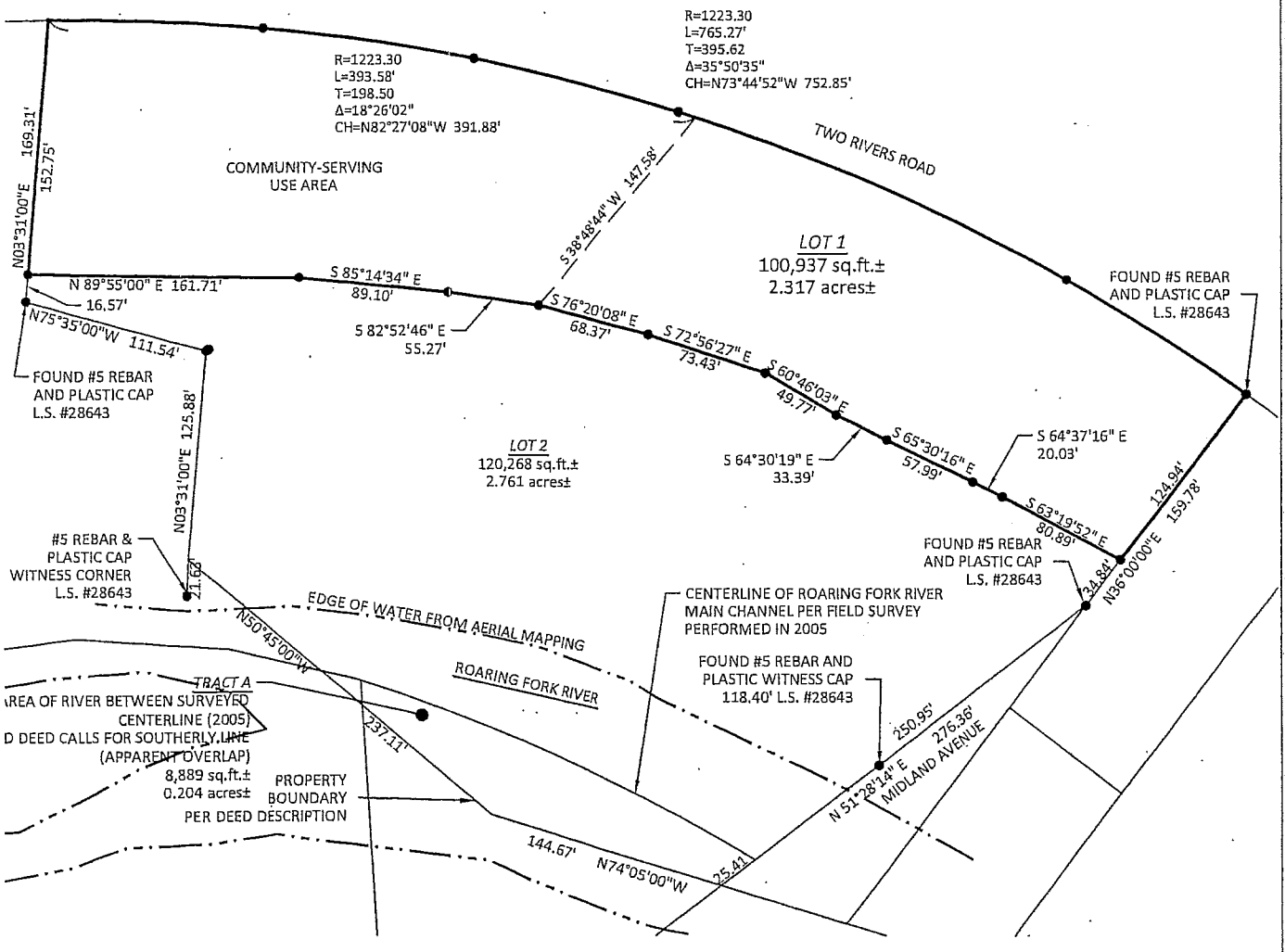
EXHIBIT C

CDC PARCEL

A PARCEL OF LAND SITUATED IN TRACT 45
TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6th P.M.
TOWN OF BASALT, COUNTY OF EAGLE, STATE OF COLORADO
SHEET 1 OF 1



DRAWING
SCALE
1"=100'

SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311

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TOWN OF BASALT, COLORADO
ORDINANCE NO. 05, SERIES OF 2016

AN INITIATED ORDINANCE OF THE TOWN OF BASALT, COLORADO CALLING AN ELECTION ON APRIL 5, 2016, TO APPROVE THIS ORDINANCE, TO AUTHORIZE AND DIRECT THE INCURRENCE OF GENERAL OBLIGATION INDEBTEDNESS BY THE TOWN, AND TO AUTHORIZE AND DIRECT THE LEVY OF AD VALOREM PROPERTY TAXES TO PAY FOR SUCH GENERAL OBLIGATION INDEBTEDNESS; AND SETTING THE BALLOT TITLE AND BALLOT QUESTION FOR THE FOREGOING.

RECITALS

WHEREAS, the Town of Basalt, Colorado (the "Town") is a home rule municipality duly organized and existing under the Constitution and laws of the State of Colorado and its Home Rule Charter (the "Charter"); and

WHEREAS, Article V of the Charter provides that an ordinance may be submitted by petition signed by qualified electors of the Town equal in number to ten percent of the number of persons who were registered electors of the Town as of the date of the last general election; and

WHEREAS, upon the Town Clerk's determination that sufficient signatures have been filed within the time allowed by Section 5.4 of the Charter, the Town Clerk is required to present the petition to the Town Council of the Town (the "Council") at its next regular meeting; and

WHEREAS, upon presentation of an initiative petition requiring voter approval in advance pursuant to Article X, Section 20 of the Colorado Constitution ("TABOR"), the Council is required to submit the proposal provided for in the petition to the electors; and

WHEREAS, this Ordinance authorizes and directs the Council, upon satisfaction of the conditions described above, to incur general obligation indebtedness of the Town and levy ad valorem property taxes to pay for such indebtedness for the purpose of acquiring a 2.317-acre parcel of real property located along Two Rivers Road in the Town which is described in **Exhibit A** to this Ordinance (the "CDC Parcel") under the terms of a Contract for Sale of Vacant Land between Roaring Fork Community Development Corporation ("RFCDC") and the Town, a copy of which is attached hereto as **Exhibit B**, (the "Purchase Contract") as provided below: and

WHEREAS, TABOR requires voter approval for any new tax, the creation of any debt and for spending certain moneys above limits established by TABOR; and

WHEREAS, TABOR requires the submission of ballot issues (as defined in TABOR) to the Town's electors on limited election days before action can be taken on such ballot issues; and

WHEREAS, April 5, 2016, is one of the election dates at which ballot issues may be submitted to the eligible electors of the Town pursuant to TABOR; and

WHEREAS, Section 2.1 of the Charter states that elections of the Town shall be governed by the Colorado Municipal Election Code under the Colorado Revised Statutes ("CRS"), except as otherwise provided in the Charter or as the Council may otherwise provide by ordinance; and

WHEREAS, upon satisfaction of the conditions described above, it shall be necessary to submit to the eligible electors of the Town, at the April 5, 2016 election (the "Election"), the proposition of directing the acquisition of the CDC Parcel, creating general obligation indebtedness in the aggregate principal amount of not to exceed $3,000,000 to finance the acquisition of the CDC Parcel and increasing taxes to pay such debt; and

WHEREAS, the acquisition of the CDC Parcel, primarily for park purposes, but also reserving a portion for community serving uses, will result in substantial community and economic benefits for the residents and the business owners of the Town; and

WHEREAS, the acquisition and use of the CDC Parcel for park and community serving uses, as provided herein, is consistent with the 2007 Town of Basalt Master Plan, including the Our Town Subarea Plan, as amended, and will promote and satisfy key objectives and recommendations of the Our Town Planning Area; and

WHEREAS, the total $3,000,000 purchase price for the CDC Parcel, as stated in the Purchase Contract, is supported by competent and reliable valuation analyses and represents the fair market value of the CDC Parcel.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO AS FOLLOWS:

1. **Authorization for Debt and Taxation**.

a. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Town and the officers thereof, directed towards the Election and the objects and purposes herein stated and the question set forth herein are, ratified, approved and confirmed.

b. Pursuant to TABOR and applicable Colorado election law, the Town hereby determines that the Election shall be held on April 5, 2016, and that there shall be submitted to the eligible electors of the Town the question set forth herein.

c. The total aggregate principal amount of the indebtedness to be incurred for the acquisition of the CDC Parcel shall not exceed the sum of $3,000,000.

d. The Council hereby authorizes and directs the officers of the Town to certify the following question in substantially the form hereinafter set forth herein, as required under TABOR and other applicable election laws. Such question shall be submitted to the eligible electors of the Town at the Election:

SHALL TOWN OF BASALT, COLORADO DEBT BE INCREASED UP TO $3,000,000 WITH A REPAYMENT COST OF UP TO $3,733,451, AND SHALL THE TOWN BE AUTHORIZED TO COLLECT TAXES SUFFICIENT TO PAY SUCH DEBT BUT NOT EXCEEDING $376,225.00 ANNUALLY; AND SHALL SUCH DEBT BE A GENERAL OBLIGATION OF THE TOWN PAYABLE FROM A MILL LEVY THAT MAY BE INCREASED IN ANY YEAR WITHOUT LIMITATION AS TO RATE BUT ONLY IN AN AMOUNT SUFFICIENT TO PAY THE PRINCIPAL OF AND PREMIUM, IF ANY, AND INTEREST ON SUCH DEBT OR ANY DEBT ISSUED TO REFINANCE SUCH DEBT (OR TO CREATE A RESERVE FOR SUCH PAYMENT); AND SHALL SUCH DEBT BE ISSUED FOR THE PURPOSE OF ACQUIRING A 2.317-ACRE PARCEL OF LAND PURSUANT TO A CONTRACT FOR SALE OF VACANT LAND BETWEEN ROARING FORK COMMUNITY DEVELOPMENT CORPORATION AND THE TOWN; AND SHALL SUCH DEBT BE SOLD IN ONE SERIES OR MORE, FOR A PRICE ABOVE OR BELOW THE PRINCIPAL AMOUNT OF SUCH SERIES, ON TERMS AND CONDITIONS AND WITH SUCH MATURITIES AS PERMITTED BY LAW, INCLUDING PROVISIONS FOR REDEMPTION OF THE BONDS PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF THE PREMIUM OF NOT TO EXCEED ONE PERCENT; AND SHALL THE TOWN BE AUTHORIZED TO ISSUE DEBT TO REFUND THE DEBT AUTHORIZED IN THIS QUESTION, PROVIDED THAT AFTER THE ISSUANCE OF SUCH REFUNDING DEBT THE TOTAL OUTSTANDING PRINCIPAL AMOUNT OF ALL DEBT ISSUED PURSUANT TO THIS QUESTION DOES NOT EXCEED THE MAXIMUM PRINCIPAL AMOUNT SET FORTH ABOVE, AND PROVIDED FURTHER THAT ALL DEBT ISSUED BY THE TOWN PURSUANT TO THIS QUESTION IS ISSUED ON TERMS THAT DO NOT EXCEED THE REPAYMENT COSTS AUTHORIZED IN THIS QUESTION; AND SHALL SUCH TAX REVENUES AND THE EARNINGS FROM THE INVESTMENT OF SUCH BOND PROCEEDS AND TAX REVENUES BE COLLECTED, RETAINED AND SPENT AS A VOTER APPROVED REVENUE CHANGE AND AN EXCEPTION TO THE LIMITS WHICH WOULD

OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW; AND SHALL THE INITIATED ORDINANCE AUTHORIZING AND DIRECTING THE DEBT AND AD VALOREM TAXES BE APPROVED.

e. If a majority of the votes cast on the question to authorize general obligation indebtedness and the levy of ad valorem property taxes submitted at the Election shall be in favor of incurring general obligation indebtedness and levying ad valorem property taxes as provided in such question, the Town acting through the Council is authorized and directed to proceed with the necessary action to incur general obligation indebtedness and levy ad valorem property taxes in accordance with such question and the Purchase Contract.

Any authority to contract general obligation indebtedness or to levy ad valorem property taxes, if conferred by the results of the Election, shall be deemed and considered a continuing authority to contract the general obligation indebtedness and levy the ad valorem taxes so authorized at any one time, or from time to time, and neither the partial exercise of the authority so conferred, nor any lapse of time, shall be considered as exhausting or limiting the full authority so conferred.

f. If a majority of the votes cast on the question authorize the issuance of bonds as described in the bond question set forth above, the Town is directed to issue such bonds no later than June 5, 2016 in an aggregate principal amount of $3,000,000 or such lesser amount required to acquire the CDC Parcel, including the reimbursement of certain costs incurred by the Town prior to the execution and delivery of such bonds, upon terms consistent with the Purchase Contract and to take all further action which is necessary or desirable in connection therewith. The officers, employees and agents of the Town shall take all action necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated hereby and shall take all action necessary or desirable to finance the acquisition of the CDC Parcel and to otherwise carry out the transactions contemplated by this Ordinance and the Purchase Contract. The Town shall not use reimbursed moneys for purposes prohibited by Treasury Regulation §1.150-2(h). This Ordinance is intended to be a declaration of "official intent" to reimburse expenditures within the meaning of Treasury Regulation §1.150-2.

2. **Miscellaneous**.

a. Pursuant to Section 1-11-203.5, C.R.S., any election contest arising out of a ballot issue or ballot question election concerning the order of the ballot or the form or content of the

ballot title shall be commenced by petition filed with the proper court within five days after the title of the ballot issue or ballot question is set.

b. The Town Clerk, as well as the appropriate officers and employees of the Town are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance. The Mayor is hereby authorized to execute this Ordinance on behalf of the Council, and the Town Clerk is hereby authorized to attest to such execution by the Mayor.

c. All ordinances, orders, bylaws and resolutions, or parts thereof, in conflict with this Ordinance, are hereby repealed.

d. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Read on First Reading, Ordered Published and set for Public Hearing to be held on the ____ day of _____ 2016 by a vote of ____ to _____ on the ___ day of _____ 2016.

Read on Second Reading and Adopted by a vote of _____ to _____ on the ____ day of _____ 2016.

OR Adopted this ____ day of _____, 2016 by a majority vote of the electorate at the Initiative Election held on the ____ day of _____ 2016.

TOWN OF BASALT

By: _____
Mayor

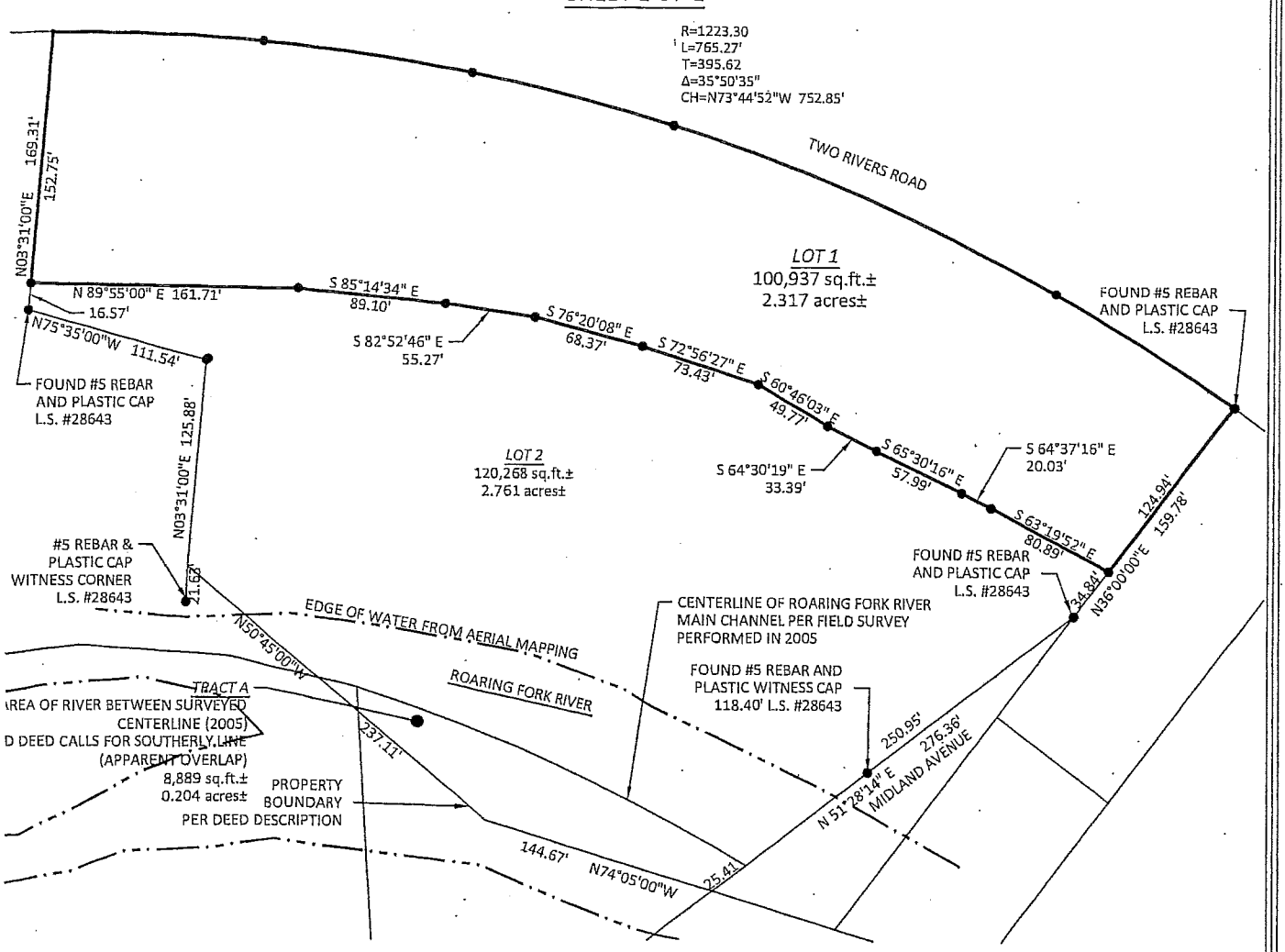
ATTEST:

_____
Town Clerk

EXHIBIT A

CDC PARCEL

A PARCEL OF LAND SITUATED IN TRACT 45
TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6th P.M.
TOWN OF BASALT, COUNTY OF EAGLE, STATE OF COLORADO
SHEET 1 OF 1



DRAWING SCALE
1"=100'

SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311

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EXHIBIT B

CONTRACT FOR SALE OF VACANT LAND

THIS CONTRACT FOR SALE OF VACANT LAND (the "**Contract**") is entered into as of the Effective Date (defined below) by and between Roaring Fork Community Development Corporation (the "**Seller**") and Town of Basalt, a Colorado home rule municipality (the "**Buyer**").

RECITALS:

A. Seller is the owner of real property commonly known as the CDC Parcel (the "Land") comprising approximately 2.3 acres which is located in the Town of Basalt and the County of Eagle, as described on **Exhibit A**.

B. Seller desires to sell and Buyer desires to purchase the Land pursuant to the terms of this Contract.

AGREEMENT

1. PURCHASE AND SALE OF THE LAND. Seller agrees to sell and Buyer agrees to purchase the Land on the terms conditions set forth in this Contract.

2. PURCHASE PRICE. The purchase price for the Land, including earnest money, shall be Three Million and no/100s Dollars ($3,000,000.00) (the **Purchase Price**"). The Purchase Price shall be allocated as follows: Two Million Two Hundred Fifty Thousand and no/100 Dollars ($2,250,000.00) for the Park Area, and Seven Hundred Fifty Thousand and no/100 ($750,000.00) for the Community Serving Use Area. The Purchase Price shall be paid by Buyer to Seller as follows:

a. EARNEST MONEY. Buyer shall tender to Land Title Guaranty Company ("the Title Company") earnest money in the amount of $25,000.00 at the time it delivers a fully signed copy of this Contract to Seller. Any and all monies paid by Buyer prior to closing shall be placed in an insured, interest bearing money market-type account with a local commercial bank with all interest thereon to accrue for the benefit of Buyer. If Buyer shall ever be in default under this Contract resulting in a forfeiture of its earnest money, Seller shall be entitled, as its sole and separate property, all interest earned on said earnest money.

b. CLOSING FUNDS. At closing, the balance of the Purchase Price shall be paid to Seller in cash, certified funds, by wire transfer or other immediately available funds.

3. CLOSING. The closing of the transaction contemplated hereunder (the "**Closing**") shall be held at the office of the Title Company within ten days after satisfaction of the Contract Contingency as described in Paragraph 10, below, and upon issuance of bonds or other debt instruments and the funding thereof, but not later than July 5, 2016, unless this date is extended by mutual consent. At Closing, Seller shall execute and deliver to Buyer a special warranty deed conveying the Land, free and clear of all liens, encumbrances and other exceptions, except such easements, restrictions and other exceptions as are of record and are approved by Buyer during the Title Inspection Period and such other Closing documents as are normal and customary for the transaction described herein.

4. INSPECTION AND REVIEW.

a. EVIDENCE OF TITLE.

(i) Title Commitment. Seller shall cause to be furnished to Buyer, at Buyer's expense, a current commitment for owner's title insurance policy ("Title Commitment") in an amount equal to the Purchase Price no later than ten (10) days after full execution of this Contract. At Buyer's expense, Seller shall cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing. If a Title Commitment is furnished, it shall commit to delete or insure over the standard exceptions which relate to:

(1) parties in possession,
(2) unrecorded easements,
(3) survey matters,
(4) any unrecorded mechanic's liens,
(5) gap period (effective date of commitment to date deed is recorded),
(6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing.

Any additional premium expense to obtain this additional coverage shall be paid by Buyer.

(ii) Copies of Exceptions. Seller, at Buyer's expense, shall furnish to Buyer:

(1) a copy of any plats, declarations, covenants, conditions and restrictions burdening the Land
(2) a copy of all documents listed in the schedule of exception. This requirement shall pertain only to documents as shown of record in the offices of the clerk and recorder. The Title Commitment, together with any copies or summaries of such documents furnished pursuant to this section, constitute the title documents (Title Documents).

(iii) Survey. Seller shall provide Buyer and the Title Company, a current **Improvement Survey Plat** no later than three (3) days after full execution of this Contract.

b. TITLE AND SURVEY REVIEW.

(i) Title Review. Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title, form or content of Title Commitment or of any other unsatisfactory title condition shown by the Title Documents shall be signed by or on behalf of Buyer and given to Seller on or before **April 25, 2016** or within five (5) calendar days after receipt by Buyer of any change to the Title Documents or endorsement to the Title Commitment together with a copy of the document adding any new Exception to title. If Seller does not receive Buyer's notice by the date specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

(ii) Matters not Shown by the Public Records. Seller shall deliver to Buyer, within ten (10) days of full execution of this Contract, true copies of all leases or other unrecorded documents in Seller's possession pertaining to the Land and shall disclose to Buyer all easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first refusal, and options) not shown by the public records of which Seller has actual knowledge. Buyer shall have the right to inspect the Land to determine if any third party has any right in the Land not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition disclosed by Seller or revealed by such inspection shall be signed by or on behalf of Buyer and given to Seller on or before **April 25, 2016**. If Seller does not receive Buyer's notice by said date, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

(iii) Survey and Plat Review. Buyer shall have the right to inspect Survey. The Improvement Survey shall be in a form and content sufficient to cause the title company to issue an endorsement to its title commitment agreeing to delete from Schedule B (Section 2) of its to-be-issued title policy standard printed exception Nos. 1-3 at no cost to Buyer. Buyer has the right to review and object to the Survey. Buyer has the Right to Terminate under subparagraph (iv) if the Improvement Survey is not timely received by Buyer. In the event the Improvement Survey discloses matters which constitute defects in the merchantability of Seller's title, Buyer must give Seller written notice of such unsatisfactory title condition(s) no later than **April 25, 2016**. If Buyer in fact gives such notice to Seller in a timely manner, the provisions of subparagraph (iv) below shall apply thereto. If no such notice is timely

given, Buyer shall be deemed to have waived any objections to matters shown on the Improvement Survey.

(iv) Right to Object, Cure. If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition or commitment terms as provided in subsections i, ii, and iii above, Seller may use reasonable efforts to correct said items and bear any nominal expense to correct the same prior to Closing. If any unsatisfactory title condition is not corrected to Buyer's reasonable satisfaction on or before Closing, this Contract shall then terminate; provided, however, Buyer may, by written notice received by Seller on or before Closing, waive objection to such items.

c. INCLUSIONS. Seller shall assign to Buyer, at Closing, any and all water and sewer taps which are owned by Seller.

d. CONDITION OF LAND, REPRESENTATIONS. Buyer represents that it sufficiently familiar with the physical condition of the Land, including the location of utilities, that an inspection contingency is not required. As of the date of this Contract and the date of Closing, Seller warrants and represents the following:

(i) Seller is the record owner of the Land.

(ii) There are no actions, suits, proceedings or investigations pending or, to Seller's knowledge threatened, against or affecting the Land, or arising out of Seller's conduct on the Land.

(iii) To Seller's actual knowledge, Seller is in substantial compliance with the laws, orders, and regulations of each governmental department, commission, board, or agency having jurisdiction over the Land in those cases where noncompliance would have a material adverse effect on the Land.

(iv) Other than this Contract and for the 2008 Easement Contract between Buyer and Seller, as amended, Seller is neither party to nor subject to or bound by any agreement, contract or lease of any kind relating to the Land, and no person has a right to possession of the Land or holds an option or right of first refusal or a right of access across the Land other than as disclosed in the exceptions noted on Schedule B-2 of the Title Commitment.

(v) The Land, to the best of Seller's actual knowledge, is not in violation of any federal, state or local law, ordinance or regulation relating to environmental conditions on, under or about the Land, including, but not limited to, soil and groundwater conditions. Neither Seller, nor to the best of Seller's actual knowledge any third party, has used, generated, manufactured, refined, produced, processed, stored or disposed of on, or under the Land or transported to or from the Land any Hazardous Materials nor does Seller intend to use the Land

prior to closing date for the purpose of generating manufacturing, refining, producing, storing, handling, transferring, processing or transporting Hazardous Materials. For the purposes hereof, "Hazardous Materials" does not mean any typical agricultural chemicals such as herbicides and pesticides utilized on properties of this type in Eagle and Pitkin Counties, provided that all such chemicals are used in accordance with applicable laws and manufacturer's specifications; but shall mean any flammable explosives, radioactive materials, asbestos, , organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances", "hazardous material" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq., or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or other requirement of governmental authority regulating, relating to or imposing liability or standard of conduct concerning any hazardous, toxic or dangerous substance or material, as now or at any time hereafter in effect, and in the regulations adopted, published and/or promulgated pursuant to said laws. To the best of Seller's actual knowledge and except as disclosed herein, there are no other underground storage tanks situated in the Land.

(vi) No representation, warranty, or statement made herein by Seller contains any untrue statement of any material fact or omits to state any material fact necessary in order to make such representation, warranty, or statement not misleading.

5. **TAXES.** Seller shall pay all general taxes and assessments and all sale, excise, and transfer for the Land for the current year and all years prior to Closing.

6. **PRESERVATION OF LAND; RISK OF LOSS.** Except as otherwise set forth herein, Seller agrees that the Land shall remain as it now is until Closing, and that Seller agrees that it shall neither use nor consent to any use of the Land for any purpose or in any manner which would adversely affect Buyer's intended acquisition.

7. **COSTS AND FEES.** Closing fees shall be one half each by the Buyer and the Seller. The premium for the title insurance policy described above shall be paid by Seller.

8. **LIQUIDATED DAMAGES; DEFAULT.**

a. **SELLER'S REMEDIES.** In the event that (a) all of the conditions to this Contract for the benefit of Buyer shall have been satisfied, or waived by Buyer, (b) Seller shall have fully performed or tendered performance of its obligations under this Contract, and (c) Buyer shall be unable or shall fail to perform its obligations

under this Contract, then the entire amount of the earnest money plus all accrued interest thereon may be retained by Seller as liquidated damages under this Contract, and Buyer shall have no further liability to Seller. Buyer and Seller hereby acknowledge and agree that Seller's damages would be difficult or impossible to determine and that the amount of earnest money is the parties' best and most accurate estimate of the damages Seller would suffer in the event the transaction provided for in this Contract fails to close, and is reasonable under the circumstances existing as of the date of this Contract. In the alternative, Seller expressly retains the remedies of specific performance and additional damages.

b. **BUYER'S REMEDIES.** If Seller shall fail to consummate the transaction contemplated hereunder for any reason, or if such transaction shall fail to close for any reason other than default by Buyer, Buyer may elect, at Buyer's sole option: (i) To terminate this Contract and be released from its obligations hereunder, in which event the earnest money shall be returned to Buyer; or (ii) To proceed against Seller for specific performance of this Contract. In the event the transaction contemplated by this Contract fails to close as a result of Seller's default in the performance of its obligations established in this Contract, the above remedies shall be the sole remedies of Buyer.

9. **NOTICES.** All notices required or permitted hereunder will be deemed to have been delivered only upon actual delivery thereof. All notices required or permitted hereunder shall be given by hand delivery, or sent by telecopier, or sent by Federal Express or other courier for delivery at the soonest possible time offered by such courier, directed as follows:

If to Seller:

Roaring Fork Community Development Corporation
PO Box 1582
Carbondale, CO 81623

With a copy to:

David J. Myler.
The Myler Law Firm P.C.
211 Midland Ave., Ste 201
Basalt, CO 81621
Phone 970-927-0456
Fax 970-927-0374
Email dmyler@mylerlawpc.com

If to Buyer:

Town of Basalt, Colorado
Attn: _____

101 Midland Avenue
Basalt, CO 81621

with a copy to:

Thomas F. Smith, Town Attorney
600 E. Hopkins #205
Aspen, CO 81611
Phone: 970-925-2600
Email: tsmith@aps-pc.com

10. CONTRACT CONTINGENCY. The obligations of Buyer and Seller are specifically contingent upon the adoption of an Initiated Ordinance authorizing and directing the incurrence of general obligation indebtedness by the Town of Basalt, Colorado, authorizing and directing the levy of ad-valorem property taxes to pay for such general obligation indebtedness and authorizing and directing the Town Council to enter into this Contract.

11. MISCELLANEOUS.

a. BROKER'S COMMISSION. Seller and Buyer each represents to the other that they have not contracted with any broker or finder with regard to this transaction.

b. CERTIFICATE. Seller hereby declares and represents to Buyer that it is not a "foreign person" for purposes of withholding of federal tax as described in such Certificate. At or prior to Closing, Seller shall furnish to Buyer a duly executed Certificate of Non-Foreign Status.

c. ASSIGNMENT. This Contract shall not be assignable by either party without the prior written consent of the other.

d. BINDING EFFECT. The terms and conditions of this Contract shall be binding upon and shall inure to the benefit of the parties' heirs, executors, administrators, successors and assigns.

e. COUNTERPARTS; FACSIMILE SIGNATURES. This Contract may be executed in counterparts, all of which shall constitute one agreement which shall be binding on all of the parties, notwithstanding that all of the parties are not signatories to the original or the same counterpart. Signatures may be evidenced by facsimile transmission and at the request of any party documents with original signatures shall be provided to the other party.

f. SEVERABILITY. Provided each party receives the substantial benefit of the bargain memorialized in this Contract, if any provision of this Contract shall be held invalid, the other provisions hereof shall not be affected thereby and shall remain in full force and effect.

g. ENTIRE CONTRACT. This Contract represents the entire agreement of the parties and may not be amended except by a writing signed by each party thereto.

h. AUTHORITY. Each party to this Contract warrants to the other that the respective signatories have full right and authority to enter into and consummate this Contract and all related documents.

i. FURTHER ACTIONS. Each party shall execute and deliver or cause to be executed and delivered any and all instruments reasonably required to convey the Land to Buyer and to vest in each party all rights, interests and benefits intended to be conferred by this Contract.

j. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the laws of the State of Colorado.

k. OFFER. When signed and delivered to the Buyer by Seller, this Contract will constitute an offer to the Buyer that can be accepted only by the Byer signing and delivering to Seller an executed original of this Contract. Buyer may withdraw such offer in writing at any time prior to its acceptance.

l. LABOR AND MATERIAL. Seller shall deliver to Buyer at Closing an affidavit, on a form acceptable to Buyer, signed by Seller that no labor or materials have been furnished to the Land within the statutory period for the filing of mechanics' or materialmen's liens against the Land, or, if labor or materials have been furnished during the statutory period, Seller shall deliver to Buyer and Title Company, such material(s) as may be required for the deletion of Schedule B standard title exceptions paragraph #4 (any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records) related to work done on the Land.

m. MEDIATION. If a dispute arises relating to this Contract, prior to or after closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is sent by one party to the other at the party's last known address.

This section shall not alter any date in this Contract, unless otherwise agreed.

n. COST AND EXPENSES. ATTORNEYS' FEES. In the event of any mediation or litigation relating to this Contract, the mediator shall resolve or court shall award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.

o. SATURDAYS, SUNDAYS, HOLIDAYS. If the final date of any time period of limitation set out in any provision of this Contract falls on a Saturday, Sunday or a legal holiday under the laws of the State of Colorado, then the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

p. INDEMNIFICATION. Buyer shall indemnify and hold Seller harmless from and against any and all liens, claims, causes of action, damages, liabilities and expenses (including reasonable attorneys' fees) arising out of Buyer's inspections or tests permitted under this Contract, provided, however, the indemnity shall not extend to protect Seller from any pre-existing liabilities for matters merely discovered by Buyer (i.e., latent environmental contamination) so long as Buyer's actions do not aggravate any pre-existing liability of Seller. Buyer's obligations under this Subsection p. shall survive the termination of this Contract and shall survive the Closing.

q. TIME OF ESSENCE, DEFAULT AND REMEDIES. Time is of the essence hereof. If any check received as earnest money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, remedies shall be limited to those described in Section 8 above.

r. EARNEST MONEY DISPUTE. In the event of any controversy regarding the earnest money and things of value (notwithstanding any termination of this Contract or mutual written instructions), earnest money Holder shall not be required to take any action. Earnest money holder may await any proceeding, or at its option and sole discretion, interplead all parties and deposit any money or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney and legal fees.

s. TERMINATION. In the event this Contract is terminated, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder.

12. EFFECTIVE DATE. The Effective Date of this Agreement shall be the last date signed by either party.

13. NOTICE OF ACCEPTANCE, COUNTERPARTS. This proposal shall expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the Seller receives a signed counterpart of this Contract on or

before April 15, 2015. If Seller receives a signed counterpart within said time period, this document shall become a Contract between Seller and Buyer.

[This Space Intentionally Left Blank. Signatures on the Following Page.]

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the dates below.

SELLER:

ROARING FORK COMMUNITY DEVELOPMENT CORPORATION

By: _____ Date: _____
_____, its _____

BUYER:

TOWN OF BASALT, a Colorado home rule municipality

By: _____ Date: _____
_____, its _____

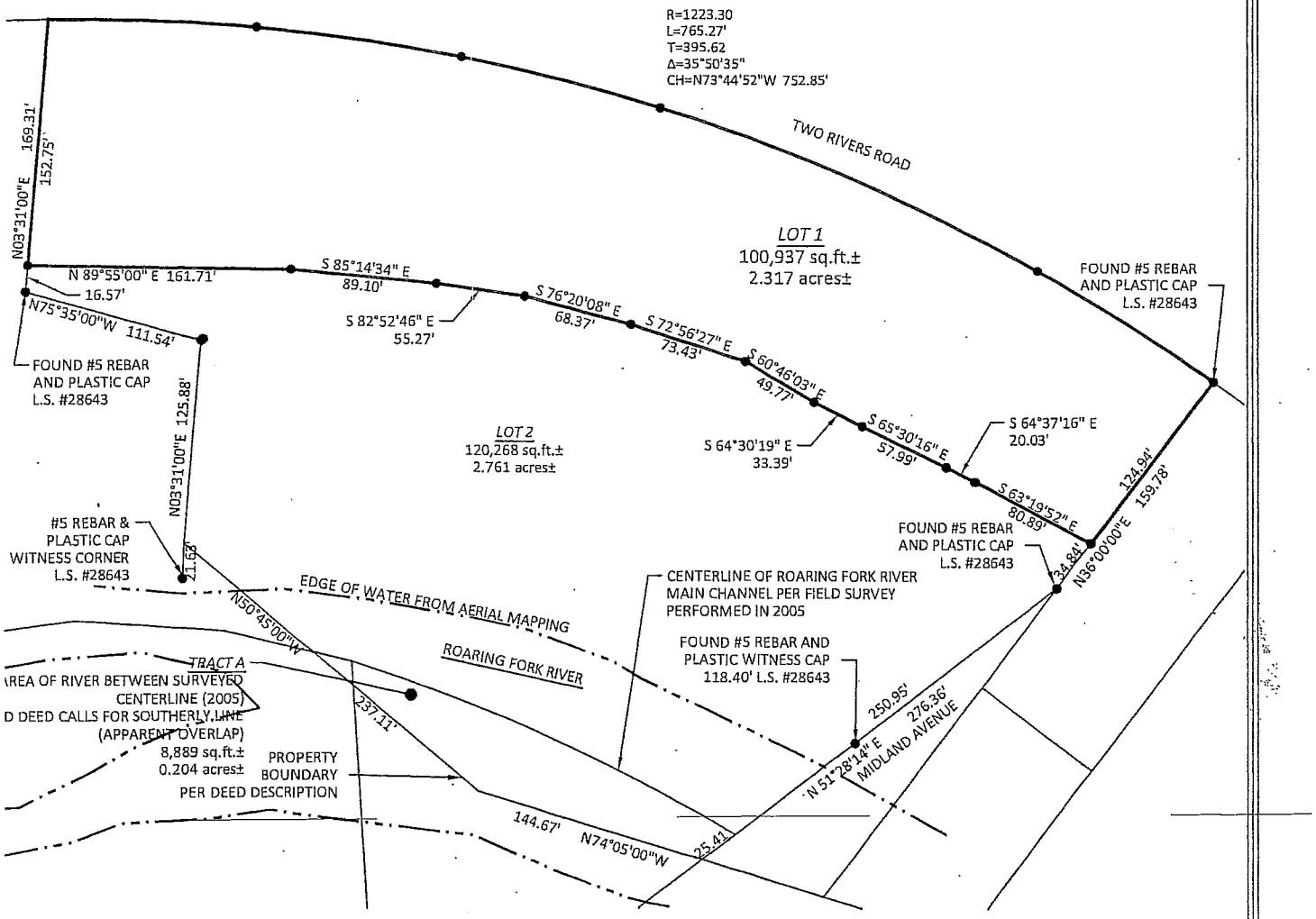
ATTEST:

_____
Town Clerk

EXHIBIT A

CDC PARCEL

A PARCEL OF LAND SITUATED IN TRACT 45
TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6th P.M.
TOWN OF BASALT, COUNTY OF EAGLE, STATE OF COLORADO
SHEET 1 OF 1



DRAWING SCALE
1"=100'

SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311

15004.01 cl 12/14/2015 M:\3500dwgs\15004\15004 COMMUNITY EXHIBITS 2015-12-08.dwg

MEMORANDUM

SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

TO: **BASALT TOWN COUNCIL**

FROM: **THOMAS FENTON SMITH**
BASALT TOWN ATTORNEY

SUBJECT: **INITIATIVE AND REFERENDUM PETITIONS RE: ACQUISITION OF ROARING FORK COMMUNITY DEVELOPMENT CORPORATION PROPERTY**

DATE: **JANUARY 19, 2016**

I. FACTUAL BACKGROUND

On January 12, 2016, Pam Schilling, the Basalt Town Clerk, was presented with two petitions for adoption of ordinances by initiative or referendum, attached hereto as Exhibits 1 and 2. The two petitions were accompanied by a letter from attorney David J. Myler, dated January 11, 2016, on behalf of Cathy Click and the committee circulating the initiative petitions for signatures. (Exhibit 3).

Exhibit 1 is a petition for adoption of an ordinance authorizing debt and tax increases as a general obligation of the Town for the purpose of purchasing property located in the Town of Basalt owned by the Roaring Fork Community Development Corporation ("the RFCDC Property"). The proposed ballot question contained in the ordinance asks if the proposed debt should be issued for the purpose of acquiring the RFCDC property "pursuant to a contract for sale between Roaring Fork Community Development Corporation and the Town." The contract is attached to the proposed ordinance as Exhibit B. That contract includes the specific terms of a purchase and sale of the RFCDC Property to the Town, including a price of $3,000,000.

The proposed ordinance attached to Exhibit 1 states that "the officers, employees and agents of the Town shall take all action necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated hereby and shall take all action necessary or desirable to finance the acquisition of the CDC Parcel and to otherwise carry out the transactions contemplated by this Ordinance and the Purchase Contract." In other words, the specific terms of the purchase and sale of the RFCDC Property contained in Exhibit B would be binding upon the Town upon approval of the ballot question by the electorate.

Exhibit 2 is a petition for adoption of another ordinance requiring the Town to enter into the same contract for the purchase and sale of the RFCDC Property that is attached to Exhibit 1. The summary of this second petition asks if 1.817 acres of the 2.317 acre RFCDC Parcel shall be

improved and utilized only for public park purposes, and up to .50 acres improved and utilized for "park, commercial, civic, housing and other public uses as described in the proposed ordinance." The title of the second proposed ordinance states that its purpose is to call for an election "to authorize and direct the Town Council to enter into a contract" for the purchase and sale of the RFCDC Property" "for public park and community serving uses." The ballot question attached to Exhibit 2 asks if the Town shall "enter into a contract" for the purpose of acquiring the RFCDC Property.

The ordinance attached to Exhibit 2 states that "the Purchase Contract attached hereto as Exhibit B is approved and the Mayor and Council are authorized and directed to sign the Purchase Contract on behalf of the Town and deliver same to RFCDC." As with the Ordinance proposed by Exhibit 1, this petition would require the Town to execute the Purchase Contract on the terms stated therein.

The Myler letter (Exhibit 3) requests that the Town Clerk present the two petitions to the Town Council for consideration of approval if they are determined to have enough qualified signatures. Mr. Myler argues that any additional requirements of state statutes do not apply. In the alternative, the Myler letter requests that, in accordance with C.R.S. 31-11-111(2), the Town Council refer the proposed ordinances to the electorate on the Town Council's own motion.

By way of further background, on December 21, 2015, Cathy Click as the designated applicant and point of contact submitted one petition for adoption of an ordinance, attached hereto as Exhibit 4. By letter dated December 23, 2015, copy attached as Exhibit 5, the Town Clerk rejected the petition for the reasons stated therein. Subsequently, on December 30, 2015, Cathy Click submitted two petitions in the same form as Exhibits 1 and 2. By letter dated January 4, 2016, copy attached as Exhibit 6, the Town Clerk rejected both petitions for the reasons stated therein.

The current petitions were not submitted to the Town Clerk for approval prior to circulation for signatures. They have been submitted directly to the Town for approval as described in the petitions. They are being submitted by the Town Clerk to the Town Council based solely on the determination that they contain sufficient signatures as required by Section 5.3 of the Home Rule Charter.

In response to this third submission of the petitions, it is necessary for the Town Council to determine if they comply with applicable laws in order for the proposed ordinances to be approved and to be referred to a vote of the electorate. That is the subject of this opinion.

II. WHAT LAW APPLIES TO DETERMINE IF THE PETITIONS COMPLY WITH STATE LAW?

As identified in Exhibits 3, 5 and 6, there are a number of issues relating to whether the petitions comply with Colorado statutes specifying initiative and referendum procedural requirements. These include whether the Town Clerk must approve the petitions prior to circulation as to both form and content, whether warning and summary requirements apply, whether the single subject requirement applies, and whether the protest procedures apply.

These issues involve difficult questions as to the respective jurisdictions of the Sate and a home rule municipality in matters relating to initiative and referendum. Generally, the Charter overrides conflicting state law procedural requirements. However, the Basalt Home Rule Charter does not address certain procedures contained in state statutes which are not inconsistent with the Charter. It is unclear whether state laws apply where the Charter is silent.

It is clear, however, that both the Colorado Constitution and the Basalt Home Charter apply to these determinations. Home rule municipalities may exercise only those powers granted by the State Constitution and not restricted by its Charter. *City and County of Denver By and Through Board of Water Commissioners v. Colorado River Water Conservation District,* 696 P.2d 730, 740 (Colo. 1985).

Since the applicable provisions of the Colorado Constitution and the Basalt Home Rule Charter are determinative of the question of whether the two pending petitions qualify for approval and submission to the electorate, it is unnecessary for the Town Council to resolve those questions which involve the applicability of state statutes to the petitions and compliance with those requirements. Therefore, the balance of this opinion addresses only the requirements of the Colorado Constitution and the Basalt Home Rule Charter.

III. DO THE PETITIONS ADDRESS LEGISLATIVE OR ADMINISTRATIVE MATTERS, AND ARE ADMINISTRATIVE MATTERS SUBJECT TO INITIATIVE AND REFERENDUM?

Art. XX, Sections 5 and 6, of the Colorado Constitution, identify the powers of home rule municipalities. Article V, Section 1, of the Constitution governs the right of initiative and referendum. A number of Colorado cases have addressed the scope of the right of initiative and referendum. The Colorado Supreme Court has determined that this right applies only to legislative matters. It has also determined that the contracts of a municipality are administrative in nature and that they are not subject to initiative and referendum. Based on these cases, it is my opinion that both of the pending petitions involve administrative matters and not legislation, that only legislation is subject to initiative and referendum, and that the petitions should be rejected by the Town Council and not referred to the electorate. In view of the controversy surrounding these petitions, I am providing you with summaries of the specific cases addressing these issues so that you can fully understand the basis for this opinion.

In *Speer v. People ex rel. Rush,* 122 P. 768, 769 (Colo. 1912), the Supreme Court held that the power granted to the citizens of a home rule municipality by Art. XX, See. 5 of the Constitution, "is a legislative one... The power thus granted is plainly not executive nor judicial. It is a power to make laws, to legislate, and cannot be other than legislative."

At issue in *City of Aurora v. Zwerglinger,* 571, P.2d 1074 (Colo. 1977) was a referendum petition demanding the repeal of a utility rate ordinance. The city charter provided for the right of referendum "to all ordinances." Citing Art. V, Sec. 1 of the Colorado Constitution, the Court held that the intention of the Constitution "is to vest only legislative power directly in the

people." The Court also interpreted the city charter provision which stated that all ordinances passed by the council were subject to referendum as applying only to ordinances which are legislative in character. The Court cited with approval this language from another case addressing this same issue:

> "The rule that only acts legislative in their nature are subject to referendum is particularly applicable in the field of municipal corporations. The legislative body of a municipality, whether it be designated a city council, board of aldermen, or otherwise is frequently called upon to act in an administrative as well as a legislative capacity by the passage of ordinances and resolutions. From an early date in the history of the right of referendum it has been recognized that to subject to referendum any ordinance adopted by a city council, whether administrative or legislative, could result in chaos and the bringing of the machinery of government to a halt..."

Holding that utility rate ordinances are administrative in character and not subject to referendum, the Court quoted another case in which it was stated that "the successful operation of a public utility is a business proposition involving the exercise of discretion and good judgment." Referring to the financial considerations at issue with rate setting ordinances, the court stated that it was "impractical, if not impossible, for the general public to appraise them in the absence of specific data, facts and information necessary to arrive at a fair and accurate judgment upon the subject."

In *McKee v. City of Louisville,* 616 P.2d 969 (Colo. 1980), the petitioners sought a referendum on the adoption of an annexation ordinance. Applying Art. V, Sec 1 of the Colorado Constitution, the Court held that the right of initiative and referendum was applicable because of "its clearly legislative character."

In *Margolis v. District Court,* 638 P.2d 297 (Colo. 1981), the Supreme Court addressed the question of whether zoning and rezoning ordinances were subject to initiative and referendum. The Court held that while for purposes of C.R.C.P. 106(a)(4) judicial review such actions were quasi-judicial in nature, where the right of initiative and referendum is at issue, such ordinances are legislative in nature and subject to referendum and initiative because they are "of a general and permanent character and involve(s) a general rule or policy."

In *Witcher v. Canon City,* 716 P.2d 445 (Colo. 1986), petitioners sought a referendum on a lease approved by the City Council. Citing its prior decisions on this issue, the Court held that the right of initiative and referendum applies only to legislative actions. Holding that the approval of the lease was an administrative function and not legislative, and that "to subject each such decision to referendum would result in chaos and bring the machinery of government to a halt," the Court referred to the lease as being:

> "the same as that of any other spending decision by the Council, whether for a contract for professional services or for a roof on a police station. It is the administrative task of elected municipal officials to, among other

things, collect and expend monies for the protection or enhancement of public properties. As such, the amendment is administrative in character."

The Court further stated that "The question of approval of the specific terms and conditions of the lease is not a matter of public policy. The negotiation of the leases and the amendments thereto are administrative acts..."

In *City of Idaho Springs v. Blackwell,* 731 P. 2d 1250 (Colo. 1987), the Supreme Court reviewed proposed petitions for initiated ordinances regarding the selection of the site and structure for a city hall, including a prohibition on the purchase of a specific property. After first holding that a pre-election determination of this issue was proper, the Court held that the petitions "related to administrative matters and were invalid attempts to exercise the right of initiative or referendum." The Court distinguished between "a permanent rule of government" and "acts necessary to carry out existing legislative policies and purposes," which are properly characterized as executive and administrative. The Court viewed the prohibition on the purchase of a specific property as administrative.

Finally, in *Vagneur v. City of Aspen,* 232 P.3d 222 (Colo. App. 2009), the petitioners proposed ordinances setting forth proposals for the construction of the entrance to Aspen. The City Clerk approved the petitions as to form only, and upon submittal to the City Council three persons filed protest letters pursuant to state statutes. The City Council appointed a hearing officer to consider the protests, who concluded that the petitions concerned administrative matters not subject to election. The Court of Appeals upheld the District Court's decision affirming the hearing officer's decision. The Court reiterated the legal maxim that the initiative power is limited to legislative matters, and that a pre-election judicial review was appropriate to determine if the proposed ordinances were legislative or administrative.

The Court held that the design and construction of a specific highway was administrative and not a declaration of a permanent public policy. Finding that "the proposals would require the City to amend existing contractual obligations," the Court held that "the formulation of contracts by a city... to further its policies are administrative matters not suitable for initiative."

IV. DOES THE BASALT HOME RULE CHARTER PERMIT THE TOWN COUNCIL TO REFER THE PROPOSED ORDINANCES TO THE ELECTORATE?

Attached hereto as Exhibit 7 is Article V of the Basalt Home Rule Charter, regarding Initiative and Referendum. Section 5.2 identifies two exceptions to the right of initiative and referendum. The second exception is for "ordinances *pertaining* to the *appropriation* of funds..." (Emphasis added).

Article I, Section 1.1 of the Charter defines "appropriation" as "The authorized amount of money set aside for expenditures during a specified time for a specific purpose." "Pertain" means "to relate to something."

A contract for the purchase of property, which identifies a specific purchase price, pertains to an appropriation. The Town cannot spend funds it has not identified and appropriated

in accordance with the budget procedures and requirements contained in state law, C.R.S. 29-1-101, *et seq.* the Local Government Budget Law of Colorado.

Therefore, in addition to the limitations of the Colorado Constitution, the proposed ordinances are excluded from initiative and referendum in accordance with Section 5.2 of the Home Rule Charter.

V. CAN THE INVALID PORTIONS OF THE PETITIONS BE SEVERED FROM THE REST?

It may be argued that the Town Council should sever the impermissible portions of the petitions and submit the remaining portions to the electorate.

Severance is appropriate if three requirements are satisfied: 1) standing alone, the remainder can be given legal effect; 2) deleting the impermissible portion would not substantially change the spirit of the measure; and 3) it is evident that the sponsors would prefer the measure to stand as altered. *City of Colorado Springs v. Bull,* 143 P.3d 1127, 1138 (Colo. App. 2006). Assuming that the third requirement may be satisfied, the first and second requirement are not.

Approval of the Purchase Contract, Exhibit B to both proposed ordinances, is essential to both. The purpose of both petitions is to require the Town to approve that contract. As to the first requirement, the first ordinance cannot be given legal effect in the absence of a determination by the Town Council to acquire the RFCDC Property. This is a prerequisite to any question of debt and taxation for a specific purpose. This determination must be made by the Town Council subject to financial analysis, budget considerations, and negotiation of terms, among other factors. The second ordinance, the remaining part of which would identify the property primarily for public park purposes, cannot be given legal effect without acquisition by the Town for these purposes. Therefore neither ordinance can be given legal effect if the Purchase Contract is severed.

As to the second requirement, the first ordinance is meaningless unless and until the Town determines to acquire the RFCDC Property; that is the sole purpose of the debt/tax questions contained in Exhibit 1. The second ordinance specifically asks for the approval of the Purchase Contract, the primary purpose of which is for the Town to acquire 1.817 acres of the 2.317 acres for a public park. Therefore, deleting the request for approval of the Purchase Contract would be contrary to the intent of the ordinance. Accordingly, it is my opinion that severance would not meet the legal requirements and would be inappropriate.

VI. ARE THE TOWN COUNCIL'S ACTIONS ON THE PETITIONS SUBJECT TO JUDICIAL REVIEW, AND WHO WOULD HAVE STANDING TO BRING SUCH AN ACTION?

As the above-referenced cases make clear, the Town Council's actions on the petitions are subject to judicial review. Any individual taxpayer or resident has standing to bring such an action. Both petitions involve debt, taxation and the appropriation of the Town's public funds. Both petitions present constitutional issues. Colorado case law provides broad taxpayer standing

in such cases. There is also standing for persons asserting that governmental action is unconstitutional. See, *e.g., Barber v. Ritter,* 196 P.3d 238 (Colo. 2008); *Ainscough v. Owens,* 90 P.3d 851 (Colo. 2004); and *Nicholl v. E-470 Public Highway authority,* 896 P.2d 859 (Colo. 2004).

VII. CONCLUSION

Based upon the foregoing, my legal opinions are as follows:

1. Both petitions involve the approval of a specific contract on stated terms. The Town's contracts are administrative matters.

2. As administrative matters, the petitions are not subject to initiative and referendum. Only legislative matters are subject to initiative and referendum.

3. The petitions pertain to the appropriation of funds.

4. Ordinances pertaining to the appropriation of funds are not subject to initiative and referendum based upon the provisions of the Basalt Home Rule Charter.

5. Severance of the ordinances is not appropriate because approval of the Purchase Contract, Exhibit B, is the primary purpose of both proposed ordinances.

6. Any taxpayer or resident of the Town has standing to seek judicial review of the Town Council's actions of the petitions.

TOWN OF BASALT, COLORADO
PETITION FOR ADOPTION OF AN ORDINANCE BY INITIATIVE

TO: The Town Council of the Town of Basalt, Colorado:

Pursuant to Article 5 of the Home Rule Charter of the Town of Basalt, Colorado, the undersigned qualified electors hereby petition the Town Council of the Town of Basalt to either adopt the attached Ordinance or submit such Ordinance to the electorate for approval or disapproval. Cathy Click, whose address is 103 Homestead Drive, Basalt, CO 81621, and who may be contacted by telephone at 970-927-3060 or email at cathyclick@me.com is the person designated pursuant to Section 5.3 of the Home Rule Charter for purposes of coordinating procedures and being the primary point of contact for the Town Clerk.

Summary for a Petition for Adoption of an Ordinance authorizing debt and taxes as related to property of the Roaring Fork Community Development Corporation to be purchased by the Town:

1. The petition asks if the debt of the Town of Basalt shall be increased up to $3,000,000, with a repayment cost of $3,733,457, and taxes be increased sufficient to pay such debt, not to exceed $376,225.00 annually, as a general obligation debt of the Town for the purpose of purchasing property located in the Town of Basalt owned by the Roaring Fork Community Development Corporation .

WARNING: IT IS AGAINST THE LAW:
For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR AND ELIGIBLE TO VOTE ON THIS MEASURE. TO BE A REGISTERED ELECTOR, YOU MUST BE A CITIZEN OF COLORADO AND REGISTERED TO VOTE.

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

EXHIBIT
tabbies
1

TOWN OF BASALT, COLORADO
PETITION FOR ADOPTION OF AN ORDINANCE BY INITIATIVE

TO: The Town Council of the Town of Basalt, Colorado:

Pursuant to Article 5 of the Home Rule Charter of the Town of Basalt, Colorado, the undersigned qualified electors hereby petition the Town Council of the Town of Basalt to either adopt the attached Ordinance or submit such Ordinance to the electorate for approval or disapproval. Cathy Click, whose address is 103 Homestead Drive, Basalt, CO 81621, and who may be contacted by telephone at 970-927-3060 or email at cathyclick@me.com is the person designated pursuant to Section 5.3 of the Home Rule Charter for purposes of coordinating procedures and being the primary point of contact for the Town Clerk.

Summary for a Petition for Adoption of an Ordinance authorizing debt and taxes as related to property of the Roaring Fork Community Development Corporation to be purchased by the Town:

1. The petition asks if the debt of the Town of Basalt shall be increased up to $3,000,000, with a repayment cost of $3,733,457, and taxes be increased sufficient to pay such debt, not to exceed $376,225.00 annually, as a general obligation debt of the Town for the purpose of purchasing property located in the Town of Basalt owned by the Roaring Fork Community Development Corporation.

WARNING: IT IS AGAINST THE LAW:
For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR AND ELIGIBLE TO VOTE ON THIS MEASURE. TO BE A REGISTERED ELECTOR, YOU MUST BE A CITIZEN OF COLORADO AND REGISTERED TO VOTE.

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

Date:	Print Name:	Signature:	Address:
1/11/16	Jessica Carpenter	Jessica Carpenter	1300 E. Valley Rd. Basalt CO 8162
1/11/16	[illegible]	[illegible]	1310 E Valley Rd BSH CO 8162
1/11/16	Randall Day	Randall Day	716 Lakeside Dr. Basalt, Co 8162
1/11/16	Steve Alden	Steve Alden	616 Lakeside Dr. Basalt
1/11/16	Ada Christensen	Ada Christensen	618 Lakeside Dr, Basalt CO 8162
1/11/16	STEVEN GONZALES	[illegible]	618 LAKESIDE DR, BASALT, CO 8162
1/11/16	Marguerite B	Marguerite B	516 Lakeside Dr. Basal

AFFIDAVIT OF CIRCULATOR

STATE OF COLORADO)
) ss
COUNTY OF Eagle)

The undersigned, being first duly sworn, states and affirms:

1. I was the circulator of Petition for Adoption of an Ordinance by Initiative to which this Affidavit is attached; and

2. The number of signatures on the attached Petition is 7;

3. Each signature on this Petition is the signature of the person whose name it purports to be and is genuine; and

4. Each signature on this Petition was made in my presence.

Print Name: Perry Allyn Harvey

STATE OF COLORADO)
) ss
COUNTY OF Eagle)

The foregoing Affidavit of Circulator was sworn to and acknowledged before me on the 12th day of January 2016 by Perry Allyn Harvey.

Witness my hand and official seal.

My commission expires: 8-29-2016.

Notary Public

CHER R. VINCENT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20124054464
MY COMMISSION EXPIRES 08/29/2016

TOWN OF BASALT, COLORADO
ORDINANCE NO. _____, SERIES OF 2016

AN INITIATED ORDINANCE OF THE TOWN OF BASALT, COLORADO CALLING AN ELECTION ON APRIL 5, 2016, TO APPROVE THIS ORDINANCE, TO AUTHORIZE AND DIRECT THE INCURRENCE OF GENERAL OBLIGATION INDEBTEDNESS BY THE TOWN, AND TO AUTHORIZE AND DIRECT THE LEVY OF AD VALOREM PROPERTY TAXES TO PAY FOR SUCH GENERAL OBLIGATION INDEBTEDNESS; AND SETTING THE BALLOT TITLE AND BALLOT QUESTION FOR THE FOREGOING.

RECITALS

WHEREAS, the Town of Basalt, Colorado (the "Town") is a home rule municipality duly organized and existing under the Constitution and laws of the State of Colorado and its Home Rule Charter (the "Charter"); and

WHEREAS, Article V of the Charter provides that an ordinance may be submitted by petition signed by qualified electors of the Town equal in number to ten percent of the number of persons who were registered electors of the Town as of the date of the last general election; and

WHEREAS, upon the Town Clerk's determination that sufficient signatures have been filed within the time allowed by Section 5.4 of the Charter, the Town Clerk is required to present the petition to the Town Council of the Town (the "Council") at its next regular meeting; and

WHEREAS, upon presentation of an initiative petition requiring voter approval in advance pursuant to Article X, Section 20 of the Colorado Constitution ("TABOR"), the Council is required to submit the proposal provided for in the petition to the electors; and

WHEREAS, this Ordinance authorizes and directs the Council, upon satisfaction of the conditions described above, to incur general obligation indebtedness of the Town and levy ad valorem property taxes to pay for such indebtedness for the purpose of acquiring a 2.317-acre parcel of real property located along Two Rivers Road in the Town which is described in **Exhibit A** to this Ordinance (the "CDC Parcel") under the terms of a Contract for Sale of Vacant Land between Roaring Fork Community Development Corporation ("RFCDC") and the Town, a copy of which is attached hereto as **Exhibit B**, (the "Purchase Contract") as provided below: and

WHEREAS, TABOR requires voter approval for any new tax, the creation of any debt and for spending certain moneys above limits established by TABOR; and

WHEREAS, TABOR requires the submission of ballot issues (as defined in TABOR) to the Town's electors on limited election days before action can be taken on such ballot issues; and

WHEREAS, April 5, 2016, is one of the election dates at which ballot issues may be submitted to the eligible electors of the Town pursuant to TABOR; and

WHEREAS, Section 2.1 of the Charter states that elections of the Town shall be governed by the Colorado Municipal Election Code under the Colorado Revised Statutes ("CRS"), except as otherwise provided in the Charter or as the Council may otherwise provide by ordinance; and

WHEREAS, upon satisfaction of the conditions described above, it shall be necessary to submit to the eligible electors of the Town, at the April 5, 2016 election (the "Election"), the proposition of directing the acquisition of the CDC Parcel, creating general obligation indebtedness in the aggregate principal amount of not to exceed $3,000,000 to finance the acquisition of the CDC Parcel and increasing taxes to pay such debt; and

WHEREAS, the acquisition of the CDC Parcel, primarily for park purposes, but also reserving a portion for community serving uses, will result in substantial community and economic benefits for the residents and the business owners of the Town; and

WHEREAS, the acquisition and use of the CDC Parcel for park and community serving uses, as provided herein, is consistent with the 2007 Town of Basalt Master Plan, including the Our Town Subarea Plan, as amended, and will promote and satisfy key objectives and recommendations of the Our Town Planning Area; and

WHEREAS, the total $3,000,000 purchase price for the CDC Parcel, as stated in the Purchase Contract, is supported by competent and reliable valuation analyses and represents the fair market value of the CDC Parcel.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO AS FOLLOWS:

1. **Authorization for Debt and Taxation.**

a. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Town and the officers thereof, directed towards the Election and the objects and purposes herein stated and the question set forth herein are, ratified, approved and confirmed.

b. Pursuant to TABOR and applicable Colorado election law, the Town hereby determines that the Election shall be held on April 5, 2016, and that there shall be submitted to the eligible electors of the Town the question set forth herein.

c. The total aggregate principal amount of the indebtedness to be incurred for the acquisition of the CDC Parcel shall not exceed the sum of $3,000,000.

d. The Council hereby authorizes and directs the officers of the Town to certify the following question in substantially the form hereinafter set forth herein, as required under TABOR and other applicable election laws. Such question shall be submitted to the eligible electors of the Town at the Election:

SHALL TOWN OF BASALT, COLORADO DEBT BE INCREASED UP TO $3,000,000 WITH A REPAYMENT COST OF UP TO $3,733,451, AND SHALL THE TOWN BE AUTHORIZED TO COLLECT TAXES SUFFICIENT TO PAY SUCH DEBT BUT NOT EXCEEDING $376,225.00 ANNUALLY; AND SHALL SUCH DEBT BE A GENERAL OBLIGATION OF THE TOWN PAYABLE FROM A MILL LEVY THAT MAY BE INCREASED IN ANY YEAR WITHOUT LIMITATION AS TO RATE BUT ONLY IN AN AMOUNT SUFFICIENT TO PAY THE PRINCIPAL OF AND PREMIUM, IF ANY, AND INTEREST ON SUCH DEBT OR ANY DEBT ISSUED TO REFINANCE SUCH DEBT (OR TO CREATE A RESERVE FOR SUCH PAYMENT); AND SHALL SUCH DEBT BE ISSUED FOR THE PURPOSE OF ACQUIRING A 2.317-ACRE PARCEL OF LAND PURSUANT TO A CONTRACT FOR SALE OF VACANT LAND BETWEEN ROARING FORK COMMUNITY DEVELOPMENT CORPORATION AND THE TOWN; AND SHALL SUCH DEBT BE SOLD IN ONE SERIES OR MORE, FOR A PRICE ABOVE OR BELOW THE PRINCIPAL AMOUNT OF SUCH SERIES, ON TERMS AND CONDITIONS AND WITH SUCH MATURITIES AS PERMITTED BY LAW, INCLUDING PROVISIONS FOR REDEMPTION OF THE BONDS PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF THE PREMIUM OF NOT TO EXCEED ONE PERCENT; AND SHALL THE TOWN BE AUTHORIZED TO ISSUE DEBT TO REFUND THE DEBT AUTHORIZED IN THIS QUESTION, PROVIDED THAT AFTER THE ISSUANCE OF SUCH REFUNDING DEBT THE TOTAL OUTSTANDING PRINCIPAL AMOUNT OF ALL DEBT ISSUED PURSUANT TO THIS QUESTION DOES NOT EXCEED THE MAXIMUM PRINCIPAL AMOUNT SET FORTH ABOVE, AND PROVIDED FURTHER THAT ALL DEBT ISSUED BY THE TOWN PURSUANT TO THIS QUESTION IS ISSUED ON TERMS THAT DO NOT EXCEED THE REPAYMENT COSTS AUTHORIZED IN THIS QUESTION; AND SHALL SUCH TAX REVENUES AND THE EARNINGS FROM THE INVESTMENT OF SUCH BOND PROCEEDS AND TAX REVENUES BE COLLECTED, RETAINED AND SPENT AS A VOTER APPROVED REVENUE CHANGE AND AN EXCEPTION TO THE LIMITS WHICH WOULD

OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW; AND SHALL THE INITIATED ORDINANCE AUTHORIZING AND DIRECTING THE DEBT AND AD VALOREM TAXES BE APPROVED.

e. If a majority of the votes cast on the question to authorize general obligation indebtedness and the levy of ad valorem property taxes submitted at the Election shall be in favor of incurring general obligation indebtedness and levying ad valorem property taxes as provided in such question, the Town acting through the Council is authorized and directed to proceed with the necessary action to incur general obligation indebtedness and levy ad valorem property taxes in accordance with such question and the Purchase Contract.

Any authority to contract general obligation indebtedness or to levy ad valorem property taxes, if conferred by the results of the Election, shall be deemed and considered a continuing authority to contract the general obligation indebtedness and levy the ad valorem taxes so authorized at any one time, or from time to time, and neither the partial exercise of the authority so conferred, nor any lapse of time, shall be considered as exhausting or limiting the full authority so conferred.

f. If a majority of the votes cast on the question authorize the issuance of bonds as described in the bond question set forth above, the Town is directed to issue such bonds no later than June 5, 2016 in an aggregate principal amount of $3,000,000 or such lesser amount required to acquire the CDC Parcel, including the reimbursement of certain costs incurred by the Town prior to the execution and delivery of such bonds, upon terms consistent with the Purchase Contract and to take all further action which is necessary or desirable in connection therewith. The officers, employees and agents of the Town shall take all action necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated hereby and shall take all action necessary or desirable to finance the acquisition of the CDC Parcel and to otherwise carry out the transactions contemplated by this Ordinance and the Purchase Contract. The Town shall not use reimbursed moneys for purposes prohibited by Treasury Regulation §1.150-2(h). This Ordinance is intended to be a declaration of "official intent" to reimburse expenditures within the meaning of Treasury Regulation §1.150-2.

2. **Miscellaneous**.

a. Pursuant to Section 1-11-203.5, C.R.S., any election contest arising out of a ballot issue or ballot question election concerning the order of the ballot or the form or content of the

ballot title shall be commenced by petition filed with the proper court within five days after the title of the ballot issue or ballot question is set.

b. The Town Clerk, as well as the appropriate officers and employees of the Town are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance. The Mayor is hereby authorized to execute this Ordinance on behalf of the Council, and the Town Clerk is hereby authorized to attest to such execution by the Mayor.

c. All ordinances, orders, bylaws and resolutions, or parts thereof, in conflict with this Ordinance, are hereby repealed.

d. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Read on First Reading, Ordered Published and set for Public Hearing to be held on the ____ day of _____ 2016 by a vote of ____ to _____ on the ___ day of _____ 2016.

Read on Second Reading and Adopted by a vote of _____ to _____ on the ____ day of _____ 2016.

OR Adopted this ____ day of _____, 2016 by a majority vote of the electorate at the Initiative Election held on the ____ day of _____ 2016.

TOWN OF BASALT

By: _____
Mayor

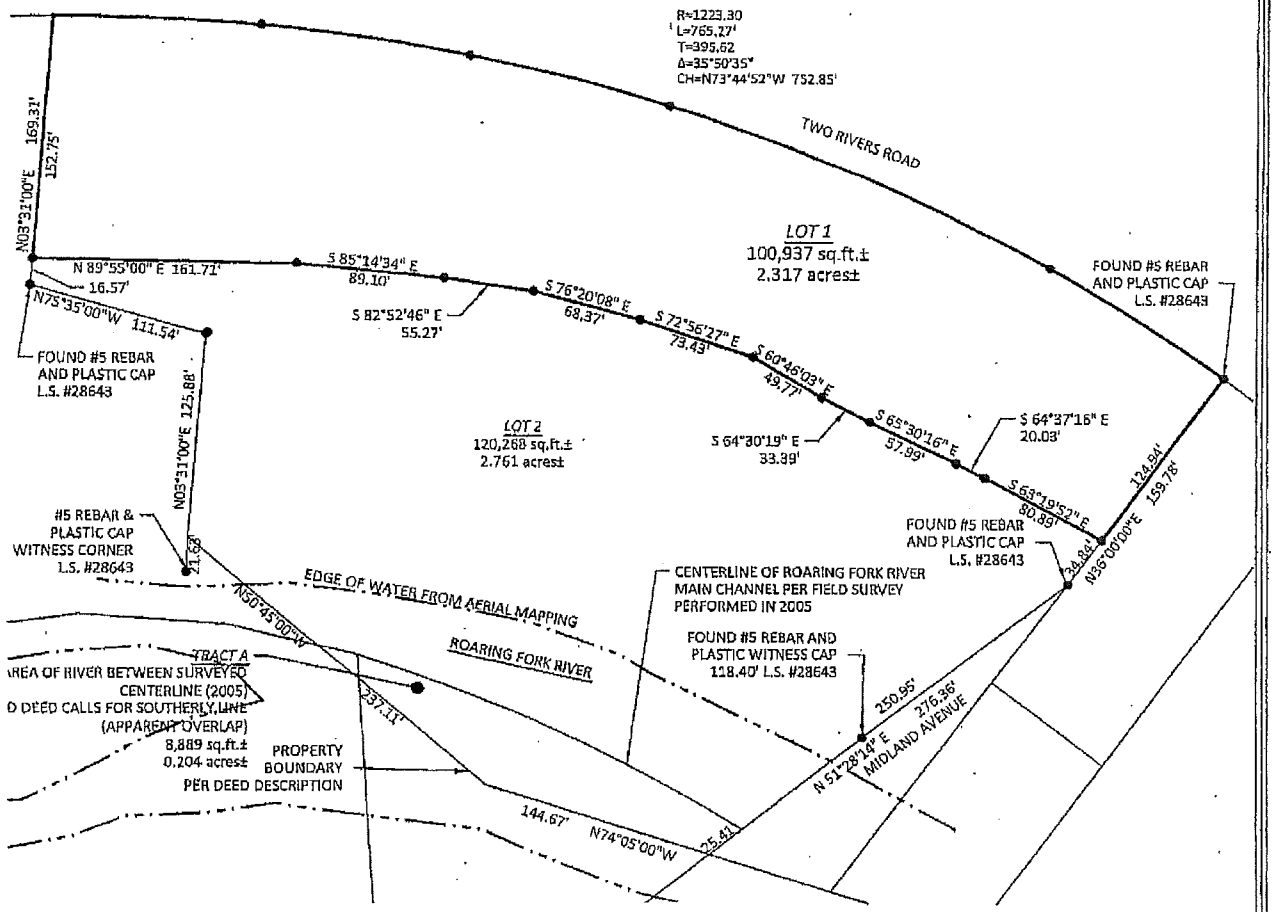
ATTEST:

_____
Town Clerk

EXHIBIT A

CDC PARCEL

A PARCEL OF LAND SITUATED IN TRACT 45
TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6th P.M.
TOWN OF BASALT, COUNTY OF EAGLE, STATE OF COLORADO
SHEET 1 OF 1



DRAWING SCALE
1"=100'

SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311

15004.01 cl 12/14/2015 M:\3500dwgs\15004\15004 COMMUNITY EXHIBITS 2015-12-08.dwg

EXHIBIT B

CONTRACT FOR SALE OF VACANT LAND

THIS CONTRACT FOR SALE OF VACANT LAND (the "**Contract**") is entered into as of the Effective Date (defined below) by and between Roaring Fork Community Development Corporation (the "**Seller**") and Town of Basalt, a Colorado home rule municipality (the "**Buyer**").

RECITALS:

A. Seller is the owner of real property commonly known as the CDC Parcel (the "Land") comprising approximately 2.3 acres which is located in the Town of Basalt and the County of Eagle, as described on **Exhibit A**.

B. Seller desires to sell and Buyer desires to purchase the Land pursuant to the terms of this Contract.

AGREEMENT

1. **PURCHASE AND SALE OF THE LAND.** Seller agrees to sell and Buyer agrees to purchase the Land on the terms conditions set forth in this Contract.

2. **PURCHASE PRICE.** The purchase price for the Land, including earnest money, shall be Three Million and no/100s Dollars ($3,000,000.00) (the **Purchase Price**"). The Purchase Price shall be allocated as follows: Two Million Two Hundred Fifty Thousand and no/100 Dollars ($2,250,000.00) for the Park Area, and Seven Hundred Fifty Thousand and no/100 ($750,000.00) for the Community Serving Use Area. The Purchase Price shall be paid by Buyer to Seller as follows:

a. **EARNEST MONEY.** Buyer shall tender to Land Title Guaranty Company ("the Title Company") earnest money in the amount of $25,000.00 at the time it delivers a fully signed copy of this Contract to Seller. Any and all monies paid by Buyer prior to closing shall be placed in an insured, interest bearing money market-type account with a local commercial bank with all interest thereon to accrue for the benefit of Buyer. If Buyer shall ever be in default under this Contract resulting in a forfeiture of its earnest money, Seller shall be entitled, as its sole and separate property, all interest earned on said earnest money.

b. **CLOSING FUNDS.** At closing, the balance of the Purchase Price shall be paid to Seller in cash, certified funds, by wire transfer or other immediately available funds.

3. **CLOSING.** The closing of the transaction contemplated hereunder (the "**Closing**") shall be held at the office of the Title Company within ten days after satisfaction of the Contract Contingency as described in Paragraph 10, below, and upon issuance of bonds or other debt instruments and the funding thereof, but not later than July 5, 2016, unless this date is extended by mutual consent. At Closing, Seller shall execute and deliver to Buyer a special warranty deed conveying the Land, free and clear of all liens, encumbrances and other exceptions, except such easements, restrictions and other exceptions as are of record and are approved by Buyer during the Title Inspection Period and such other Closing documents as are normal and customary for the transaction described herein.

4. **INSPECTION AND REVIEW.**

a. **EVIDENCE OF TITLE.**

(i) Title Commitment. Seller shall cause to be furnished to Buyer, at Buyer's expense, a current commitment for owner's title insurance policy ("Title Commitment") in an amount equal to the Purchase Price no later than ten (10) days after full execution of this Contract. At Buyer's expense, Seller shall cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing. If a Title Commitment is furnished, it shall commit to delete or insure over the standard exceptions which relate to:

(1) parties in possession,
(2) unrecorded easements,
(3) survey matters,
(4) any unrecorded mechanic's liens,
(5) gap period (effective date of commitment to date deed is recorded),
(6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing.

Any additional premium expense to obtain this additional coverage shall be paid by Buyer.

(ii) Copies of Exceptions. Seller, at Buyer's expense, shall furnish to Buyer:

(1) a copy of any plats, declarations, covenants, conditions and restrictions burdening the Land
(2) a copy of all documents listed in the schedule of exception. This requirement shall pertain only to documents as shown of record in the offices of the clerk and recorder. The Title Commitment, together with any copies or summaries of such documents furnished pursuant to this section, constitute the title documents (Title Documents).

(iii) Survey. Seller shall provide Buyer and the Title Company, a current **Improvement Survey Plat** no later than three (3) days after full execution of this Contract.

b. TITLE AND SURVEY REVIEW.

(i) Title Review. Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title, form or content of Title Commitment or of any other unsatisfactory title condition shown by the Title Documents shall be signed by or on behalf of Buyer and given to Seller on or before **April 25, 2016** or within five (5) calendar days after receipt by Buyer of any change to the Title Documents or endorsement to the Title Commitment together with a copy of the document adding any new Exception to title. If Seller does not receive Buyer's notice by the date specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

(ii) Matters not Shown by the Public Records. Seller shall deliver to Buyer, within ten (10) days of full execution of this Contract, true copies of all leases or other unrecorded documents in Seller's possession pertaining to the Land and shall disclose to Buyer all easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first refusal, and options) not shown by the public records of which Seller has actual knowledge. Buyer shall have the right to inspect the Land to determine if any third party has any right in the Land not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition disclosed by Seller or revealed by such inspection shall be signed by or on behalf of Buyer and given to Seller on or before **April 25, 2016**. If Seller does not receive Buyer's notice by said date, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

(iii) Survey and Plat Review. Buyer shall have the right to inspect Survey. The Improvement Survey shall be in a form and content sufficient to cause the title company to issue an endorsement to its title commitment agreeing to delete from Schedule B (Section 2) of its to-be-issued title policy standard printed exception Nos. 1-3 at no cost to Buyer. Buyer has the right to review and object to the Survey. Buyer has the Right to Terminate under subparagraph (iv) if the Improvement Survey is not timely received by Buyer. In the event the Improvement Survey discloses matters which constitute defects in the merchantability of Seller's title, Buyer must give Seller written notice of such unsatisfactory title condition(s) no later than **April 25, 2016**. If Buyer in fact gives such notice to Seller in a timely manner, the provisions of subparagraph (iv) below shall apply thereto. If no such notice is timely

given, Buyer shall be deemed to have waived any objections to matters shown on the Improvement Survey.

(iv) Right to Object, Cure. If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition or commitment terms as provided in subsections i, ii, and iii above, Seller may use reasonable efforts to correct said items and bear any nominal expense to correct the same prior to Closing. If any unsatisfactory title condition is not corrected to Buyer's reasonable satisfaction on or before Closing, this Contract shall then terminate; provided, however, Buyer may, by written notice received by Seller on or before Closing, waive objection to such items.

c. **INCLUSIONS.** Seller shall assign to Buyer, at Closing, any and all water and sewer taps which are owned by Seller.

d. **CONDITION OF LAND, REPRESENTATIONS.** Buyer represents that it sufficiently familiar with the physical condition of the Land, including the location of utilities, that an inspection contingency is not required. As of the date of this Contract and the date of Closing, Seller warrants and represents the following:

(i) Seller is the record owner of the Land.

(ii) There are no actions, suits, proceedings or investigations pending or, to Seller's knowledge threatened, against or affecting the Land, or arising out of Seller's conduct on the Land.

(iii) To Seller's actual knowledge, Seller is in substantial compliance with the laws, orders, and regulations of each governmental department, commission, board, or agency having jurisdiction over the Land in those cases where noncompliance would have a material adverse effect on the Land.

(iv) Other than this Contract and for the 2008 Easement Contract between Buyer and Seller, as amended, Seller is neither party to nor subject to or bound by any agreement, contract or lease of any kind relating to the Land, and no person has a right to possession of the Land or holds an option or right of first refusal or a right of access across the Land other than as disclosed in the exceptions noted on Schedule B-2 of the Title Commitment.

(v) The Land, to the best of Seller's actual knowledge, is not in violation of any federal, state or local law, ordinance or regulation relating to environmental conditions on, under or about the Land, including, but not limited to, soil and groundwater conditions. Neither Seller, nor to the best of Seller's actual knowledge any third party, has used, generated, manufactured, refined, produced, processed, stored or disposed of on, or under the Land or transported to or from the Land any Hazardous Materials nor does Seller intend to use the Land

prior to closing date for the purpose of generating manufacturing, refining, producing, storing, handling, transferring, processing or transporting Hazardous Materials. For the purposes hereof, "Hazardous Materials" does not mean any typical agricultural chemicals such as herbicides and pesticides utilized on properties of this type in Eagle and Pitkin Counties, provided that all such chemicals are used in accordance with applicable laws and manufacturer's specifications; but shall mean any flammable explosives, radioactive materials, asbestos, , organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances", "hazardous material" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq., or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or other requirement of governmental authority regulating, relating to or imposing liability or standard of conduct concerning any hazardous, toxic or dangerous substance or material, as now or at any time hereafter in effect, and in the regulations adopted, published and/or promulgated pursuant to said laws. To the best of Seller's actual knowledge and except as disclosed herein, there are no other underground storage tanks situated in the Land.

(vi) No representation, warranty, or statement made herein by Seller contains any untrue statement of any material fact or omits to state any material fact necessary in order to make such representation, warranty, or statement not misleading.

5. **TAXES.** Seller shall pay all general taxes and assessments and all sale, excise, and transfer for the Land for the current year and all years prior to Closing.

6. **PRESERVATION OF LAND; RISK OF LOSS.** Except as otherwise set forth herein, Seller agrees that the Land shall remain as it now is until Closing, and that Seller agrees that it shall neither use nor consent to any use of the Land for any purpose or in any manner which would adversely affect Buyer's intended acquisition.

7. **COSTS AND FEES.** Closing fees shall be one half each by the Buyer and the Seller. The premium for the title insurance policy described above shall be paid by Seller.

8. **LIQUIDATED DAMAGES; DEFAULT.**

a. **SELLER'S REMEDIES.** In the event that (a) all of the conditions to this Contract for the benefit of Buyer shall have been satisfied, or waived by Buyer, (b) Seller shall have fully performed or tendered performance of its obligations under this Contract, and (c) Buyer shall be unable or shall fail to perform its obligations

under this Contract, then the entire amount of the earnest money plus all accrued interest thereon may be retained by Seller as liquidated damages under this Contract, and Buyer shall have no further liability to Seller. Buyer and Seller hereby acknowledge and agree that Seller's damages would be difficult or impossible to determine and that the amount of earnest money is the parties' best and most accurate estimate of the damages Seller would suffer in the event the transaction provided for in this Contract fails to close, and is reasonable under the circumstances existing as of the date of this Contract. In the alternative, Seller expressly retains the remedies of specific performance and additional damages.

b. **BUYER'S REMEDIES.** If Seller shall fail to consummate the transaction contemplated hereunder for any reason, or if such transaction shall fail to close for any reason other than default by Buyer, Buyer may elect, at Buyer's sole option: (i) To terminate this Contract and be released from its obligations hereunder, in which event the earnest money shall be returned to Buyer; or (ii) To proceed against Seller for specific performance of this Contract. In the event the transaction contemplated by this Contract fails to close as a result of Seller's default in the performance of its obligations established in this Contract, the above remedies shall be the sole remedies of Buyer.

9. **NOTICES.** All notices required or permitted hereunder will be deemed to have been delivered only upon actual delivery thereof. All notices required or permitted hereunder shall be given by hand delivery, or sent by telecopier, or sent by Federal Express or other courier for delivery at the soonest possible time offered by such courier, directed as follows:

If to Seller:

Roaring Fork Community Development Corporation
PO Box 1582
Carbondale, CO 81623

With a copy to:

David J. Myler.
The Myler Law Firm P.C.
211 Midland Ave., Ste 201
Basalt, CO 81621
Phone 970-927-0456
Fax 970-927-0374
Email dmyler@mylerlawpc.com

If to Buyer:

Town of Basalt, Colorado
Attn: _____

101 Midland Avenue
Basalt, CO 81621

with a copy to:

Thomas F. Smith, Town Attorney
600 E. Hopkins #205
Aspen, CO 81611
Phone: 970-925-2600
Email: tsmith@aps-pc.com

10. CONTRACT CONTINGENCY. The obligations of Buyer and Seller are specifically contingent upon the adoption of an Initiated Ordinance authorizing and directing the incurrence of general obligation indebtedness by the Town of Basalt, Colorado, authorizing and directing the levy of ad-valorem property taxes to pay for such general obligation indebtedness and authorizing and directing the Town Council to enter into this Contract.

11. MISCELLANEOUS.

a. BROKER'S COMMISSION. Seller and Buyer each represents to the other that they have not contracted with any broker or finder with regard to this transaction.

b. CERTIFICATE. Seller hereby declares and represents to Buyer that it is not a "foreign person" for purposes of withholding of federal tax as described in such Certificate. At or prior to Closing, Seller shall furnish to Buyer a duly executed Certificate of Non-Foreign Status.

c. ASSIGNMENT. This Contract shall not be assignable by either party without the prior written consent of the other.

d. BINDING EFFECT. The terms and conditions of this Contract shall be binding upon and shall inure to the benefit of the parties' heirs, executors, administrators, successors and assigns.

e. COUNTERPARTS; FACSIMILE SIGNATURES. This Contract may be executed in counterparts, all of which shall constitute one agreement which shall be binding on all of the parties, notwithstanding that all of the parties are not signatories to the original or the same counterpart. Signatures may be evidenced by facsimile transmission and at the request of any party documents with original signatures shall be provided to the other party.

f. **SEVERABILITY.** Provided each party receives the substantial benefit of the bargain memorialized in this Contract, if any provision of this Contract shall be held invalid, the other provisions hereof shall not be affected thereby and shall remain in full force and effect.

g. **ENTIRE CONTRACT.** This Contract represents the entire agreement of the parties and may not be amended except by a writing signed by each party thereto.

h. **AUTHORITY.** Each party to this Contract warrants to the other that the respective signatories have full right and authority to enter into and consummate this Contract and all related documents.

i. **FURTHER ACTIONS.** Each party shall execute and deliver or cause to be executed and delivered any and all instruments reasonably required to convey the Land to Buyer and to vest in each party all rights, interests and benefits intended to be conferred by this Contract.

j. **GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the laws of the State of Colorado.

k. **OFFER.** When signed and delivered to the Buyer by Seller, this Contract will constitute an offer to the Buyer that can be accepted only by the Byer signing and delivering to Seller an executed original of this Contract. Buyer may withdraw such offer in writing at any time prior to its acceptance.

l. **LABOR AND MATERIAL.** Seller shall deliver to Buyer at Closing an affidavit, on a form acceptable to Buyer, signed by Seller that no labor or materials have been furnished to the Land within the statutory period for the filing of mechanics' or materialmen's liens against the Land, or, if labor or materials have been furnished during the statutory period, Seller shall deliver to Buyer and Title Company, such material(s) as may be required for the deletion of Schedule B standard title exceptions paragraph #4 (any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records) related to work done on the Land.

m. **MEDIATION.** If a dispute arises relating to this Contract, prior to or after closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is sent by one party to the other at the party's last known address.

This section shall not alter any date in this Contract, unless otherwise agreed.

n. **COST AND EXPENSES. ATTORNEYS' FEES.** In the event of any mediation or litigation relating to this Contract, the mediator shall resolve or court shall award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.

o. **SATURDAYS, SUNDAYS, HOLIDAYS.** If the final date of any time period of limitation set out in any provision of this Contract falls on a Saturday, Sunday or a legal holiday under the laws of the State of Colorado, then the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

p. **INDEMNIFICATION.** Buyer shall indemnify and hold Seller harmless from and against any and all liens, claims, causes of action, damages, liabilities and expenses (including reasonable attorneys' fees) arising out of Buyer's inspections or tests permitted under this Contract, provided, however, the indemnity shall not extend to protect Seller from any pre-existing liabilities for matters merely discovered by Buyer (i.e., latent environmental contamination) so long as Buyer's actions do not aggravate any pre-existing liability of Seller. Buyer's obligations under this Subsection p. shall survive the termination of this Contract and shall survive the Closing.

q. **TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence hereof. If any check received as earnest money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, remedies shall be limited to those described in Section 8 above.

r. **EARNEST MONEY DISPUTE.** In the event of any controversy regarding the earnest money and things of value (notwithstanding any termination of this Contract or mutual written instructions), earnest money Holder shall not be required to take any action. Earnest money holder may await any proceeding, or at its option and sole discretion, interplead all parties and deposit any money or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney and legal fees.

s. **TERMINATION.** In the event this Contract is terminated, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder.

12. **EFFECTIVE DATE.** The Effective Date of this Agreement shall be the last date signed by either party.

13. **NOTICE OF ACCEPTANCE, COUNTERPARTS.** This proposal shall expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the Seller receives a signed counterpart of this Contract on or

before April 15, 2015. If Seller receives a signed counterpart within said time period, this document shall become a Contract between Seller and Buyer.

[This Space Intentionally Left Blank. Signatures on the Following Page.]

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the dates below.

SELLER:

ROARING FORK COMMUNITY DEVELOPMENT CORPORATION

By: _____ Date: _____
_____, its _____

BUYER:

TOWN OF BASALT, a Colorado home rule municipality

By: _____ Date: _____
_____, its _____

ATTEST:

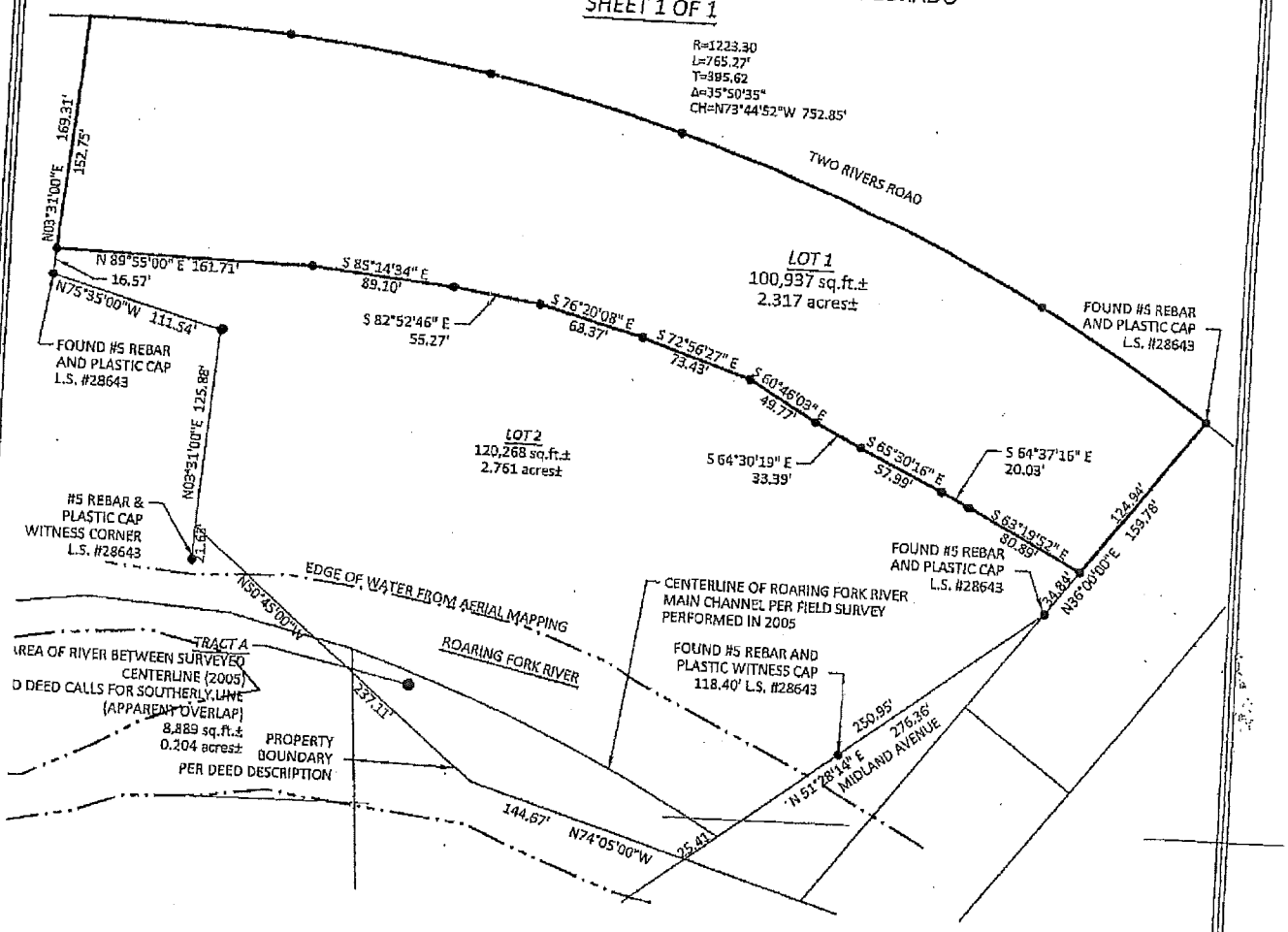
_____
Town Clerk

EXHIBIT A

CDC PARCEL

A PARCEL OF LAND SITUATED IN TRACT 45
TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6th P.M.
TOWN OF BASALT, COUNTY OF EAGLE, STATE OF COLORADO

SHEET 1 OF 1



DRAWING SCALE
1"=100'

SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311

15004.01 cl 12/14/2015 M:\3500dwgs\15004\15004 COMMUNITY EXHIBITS 2015-12-08.dwg

TOWN OF BASALT, COLORADO
PETITION FOR ADOPTION OF AN ORDINANCE BY INITIATIVE

TO: The Town Council of the Town of Basalt, Colorado:
Pursuant to Article 5 of the Home Rule Charter of the Town of Basalt, Colorado, the undersigned qualified electors hereby petition the Town Council of the Town of Basalt to either adopt the attached Ordinance or submit such Ordinance to the electorate for approval or disapproval. Cathy Click, whose address is 103 Homestead Drive, Basalt, CO 81621, and who may be contacted by telephone at 970-927-3060 or email at cathyclick@me.com is the person designated pursuant to Section 5.3 of the Home Rule Charter for purposes of coordinating procedures and being the primary point of contact for the Town Clerk.

Summary for a Petition for Adoption of an Ordinance requiring a purchase contract, and establishing land uses, all as related to the property of the Roaring Fork Community Development Corporation:

1. The petition asks if the Town should be required to enter into a Contract for Sale of Vacant Land, Exhibit B to the proposed ordinance, for the purchase of the land located in the Town of-Basalt owned by the Roaring Fork Community Development Corporation, for the amount of $3,000,000 and on such other terms and conditions as described therein.
2. The proposal asks if 1.817 acres of the property located in the Town of Basalt owned by the Roaring Fork Community Development Corporation shall be improved, managed, and utilized only for public park purposes, and if up to .50 acres of that property shall be improved, managed and utilized for park, commercial, civic, housing and other public uses as described in the proposed ordinance.

WARNING: IT IS AGAINST THE LAW:
For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR AND ELIGIBLE TO VOTE ON THIS MEASURE. TO BE A REGISTERED ELECTOR, YOU MUST BE A CITIZEN OF COLORADO AND REGISTERED TO VOTE.

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

EXHIBIT
tabbies
2

Date:	Print Name:	Signature:	Address:
1/11/15	Jessica Carpenter	Jessica Carpenter	1310 E Valley Rd. Basalt, CO 81621
1/11/15	H. Wha. Margue	H Wha Margue	1310 E Valley Rd Bslt CO 81621
1/11/16	Steve Aldana	Steve Aldana	616 Lakeside Dr. Basalt
1/11/16	Ada Christensen	Ada Christensen	618 Lakeside Dr, Basalt, CO 81621
1/11/16	STEVEN GONZALES	[illegible]	618 LAKESIDE DR. BASALT, CO. 81621
1/11/16	Marguerite B.	Marguerite	516 Lakeside Dr. Basalt

AFFIDAVIT OF CIRCULATOR

STATE OF COLORADO)
) ss
COUNTY OF Eagle)

The undersigned, being first duly sworn, states and affirms:

1. I was the circulator of Petition for Adoption of an Ordinance by Initiative to which this Affidavit is attached; and

2. The number of signatures on the attached Petition is 6;

3. Each signature on this Petition is the signature of the person whose name it purports to be and is genuine; and

4. Each signature on this Petition was made in my presence.

Print Name: Perry Allyn Harvey

STATE OF COLORADO)
) ss
COUNTY OF Eagle)

The foregoing Affidavit of Circulator was sworn to and acknowledged before me on the 5th day of January 2016 by Perry Allyn Harvey.

Witness my hand and official seal.

My commission expires: 8-29-2016

Notary Public

CHER R. VINCENT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20124054464
MY COMMISSION EXPIRES 08/29/2016

TOWN OF BASALT, COLORADO
ORDINANCE NO. _____, SERIES OF 2016

AN INITIATED ORDINANCE OF THE TOWN OF BASALT, COLORADO CALLING AN ELECTION ON APRIL 5, 2016, TO APPROVE THIS ORDINANCE, AND TO AUTHORIZE AND DIRECT THE TOWN COUNCIL TO ENTER INTO A CONTRACT FOR THE PURCHASE OF LAND FOR PUBLIC PARK AND COMMUNITY SERVING USES, AND ESTABLISHING PRINCIPLES FOR THE FUTURE USE AND OPERATION OF SAID LAND; AND SETTING THE BALLOT TITLE AND BALLOT QUESTION FOR THE FOREGOING.

RECITALS

WHEREAS, the Town of Basalt, Colorado (the "Town") is a home rule municipality duly organized and existing under the Constitution and laws of the State of Colorado and its Home Rule Charter (the "Charter"); and

WHEREAS, Article V of the Charter provides that an ordinance may be submitted by petition signed by qualified electors of the Town equal in number to ten percent of the number of persons who were registered electors of the Town as of the date of the last general election; and

WHEREAS, upon the Town Clerk's determination that sufficient signatures have been filed within the time allowed by Section 5.4 of the Charter, the Town Clerk is required to present the petition to the Town Council of the Town (the "Council") at its next regular meeting; and

WHEREAS, this Ordinance authorizes and directs the Council, in order to accomplish long term community objectives and to assure the long term use and operation of the CDC Parcel (defined below) for park and community serving uses consistent with Town policies, to enter into a Contract for the purpose of acquiring a 2.317-acre parcel of real property located along Two Rivers Road in the Town which is described in **Exhibit A** (the "CDC Parcel") under the terms of a Contract for Sale of Vacant Land between Roaring Fork Community Development Corporation ("RFCDC") and the Town, a copy of which is attached hereto as **Exhibit B**, (the "Purchase Contract"); and

WHEREAS, the acquisition and use of the CDC Parcel for park and community serving uses, as provided herein, is consistent with the 2007 Town of Basalt Master Plan, including the Our Town Subarea Plan, as amended, and will promote and satisfy key objectives and recommendations of the Our Town Planning Area; and

WHEREAS, the long term public policies and objectives relating to the CDC Parcel can only be achieved if the Town acquires such Parcel; and

WHEREAS, the actions authorized and directed by this Ordinance are legislative in character and not administrative since they direct the Town Council to establish new public policies and standards relating to permanent permitted and prohibited uses and activities on the CDC Parcel that can only be applied if the Town acquires it, and that make the anticipated river park on the CDC Parcel eligible for public open space funding by Pitkin County, Eagle County and other third parties; and

WHEREAS, the total $3,000,000 purchase price for the CDC Parcel, as stated in the Purchase Contract, is supported by competent and reliable valuation analyses and represents the fair market value of the CDC Parcel.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO AS FOLLOWS:

1. **Approval of Purchase Contract**. The Purchase Contract attached hereto as Exhibit B is approved and the Mayor and Council are authorized and directed to sign such Purchase Contract on behalf of the Town and deliver same to RFCDC. The Mayor and Town Manager are further authorized and directed to take all actions reasonably necessary in order to complete the purchase of the CDC Parcel as provided in and subject to the contingencies and other provisions of the Purchase Contract, including payment of the purchase price.

2. **Uses and Operating Principles**.

a. General Principles. The CDC Parcel shall be utilized in a manner that is consistent with the 2007 Town of Basalt Master Plan, including the Our Town Subarea Plan, as amended, and that will maximize benefits to the Basalt community at large as well as the businesses operating within the historic downtown commercial areas.

b. Park Area. At least 1.817 acres of the CDC Parcel (the "Park Area") shall be improved, managed and utilized only for public park purposes, including passive use by residents and visitors and such active community uses, including events and performances, as the Council may determine from time to time, provided that the Park Area shall always be used in a manner that maintains its eligibility for public open space funding.

c. Community Serving Uses. Up to, but not exceeding, 0.50 acres of the CDC Parcel, which may consist of one or more separate parcels provided that the total does not exceed 0.50 acres, located within the "Community Serving Use Area" as described on **Exhibit C** may either be improved, managed and utilized for the same public park purposes as would be allowed on the Park Area, or may be developed and utilized for such community serving commercial, civic and public uses, including housing for public service employees (police, firefighters, teachers and the like), as the Town Council may determine pursuant to a public planning and land use review process. The nature and extent of that process shall be determined by the Council, and shall be sufficient to afford all interested parties with a reasonable opportunity to participate in public hearings and offer comments on an appropriate mix of uses, appropriate limitations on floor area and height, and related issues. The mix and character of such uses shall be consistent with the 2007 Town of Basalt Master Plan, including the Our Town Subarea Plan, as amended.

3. **Town Council Authority**. Except for the provisions of Section 2 (Uses and Operating Principals), nothing herein shall limit or restrict the authority and discretion of the Council to subdivide, rezone, sell, lease or convey all or any portion of the Community Serving Use Area, pursuant to the applicable land use regulations of the Town, in order to achieve the objectives set forth in this Ordinance. The Council shall not manage, operate or convey the Park Area in a manner which would be inconsistent with the terms and conditions of public open space funding.

4. **Funding**.

a. Public Sources. The Council shall use its best efforts to obtain funds for acquisition of the CDC Parcel from the Pitkin County Open Space and Trails Program, the Eagle County Open Space Program, Great Outdoors Colorado and any other similar sources.

b. Town Funds. The Council may, in its sole discretion, use Town General Funds for any portion of the purchase price.

5. **Ballot Question**. Unless this Ordinance is adopted by the Town Council in accordance with Section 5.5 of the Charter, the Council hereby authorizes and directs the officers of the Town to certify the following question in substantially the form hereinafter set forth, in accordance with TABOR and other applicable election laws. Such question shall be submitted to the eligible electors of the Town at the Election:

SHALL TOWN OF BASALT, COLORADO ENTER INTO A CONTRACT FOR THE PURPOSE OF ACQUIRING A 2.317-ACRE PARCEL OF LAND, FOR PARK AND COMMUNITY SERVING PURPOSES, PURSUANT TO A CONTRACT FOR SALE OF VACANT LAND BETWEEN ROARING FORK COMMUNITY DEVELOPMENT CORPORATION AND THE TOWN; AND SHALL THE INITIATED ORDINANCE AUTHORIZING AND DIRECTING THE ACQUISITION OF THE LAND BE APPROVED.

If a majority of the votes cast on foregoing question shall be in favor of such question, the Town acting through the Council is authorized and directed to proceed with the necessary action to complete the acquisition of the CDC Parcel pursuant to the Purchase Contract.

6. **Miscellaneous**.

a. Pursuant to Section 1-11-203.5, C.R.S., any election contest arising out of a ballot issue or ballot question election concerning the order of the ballot or the form or content of the ballot title shall be commenced by petition filed with the proper court within five days after the title of the ballot issue or ballot question is set.

b. The Town Clerk, as well as the appropriate officers and employees of the Town are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance. The Mayor is hereby authorized to execute this Ordinance on behalf of the Council, and the Town Clerk is hereby authorized to attest to such execution by the Mayor.

c. All ordinances, orders, bylaws and resolutions, or parts thereof, in conflict with this Ordinance, are hereby repealed.

d. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

[This Space Intentionally Left Blank.]

Read on First Reading, Ordered Published and set for Public Hearing to be held on the ____ day of _____ 2016 by a vote of ____ to _____ on the ___ day of _____ 2016.

Read on Second Reading and Adopted by a vote of _____ to _____ on the ____ day of _____ 2016.

OR Adopted this ____ day of _____, 2016 by a majority vote of the electorate at the Initiative Election held on the ____ day of _____ 2016.

TOWN OF BASALT

By: _____
Mayor

ATTEST:

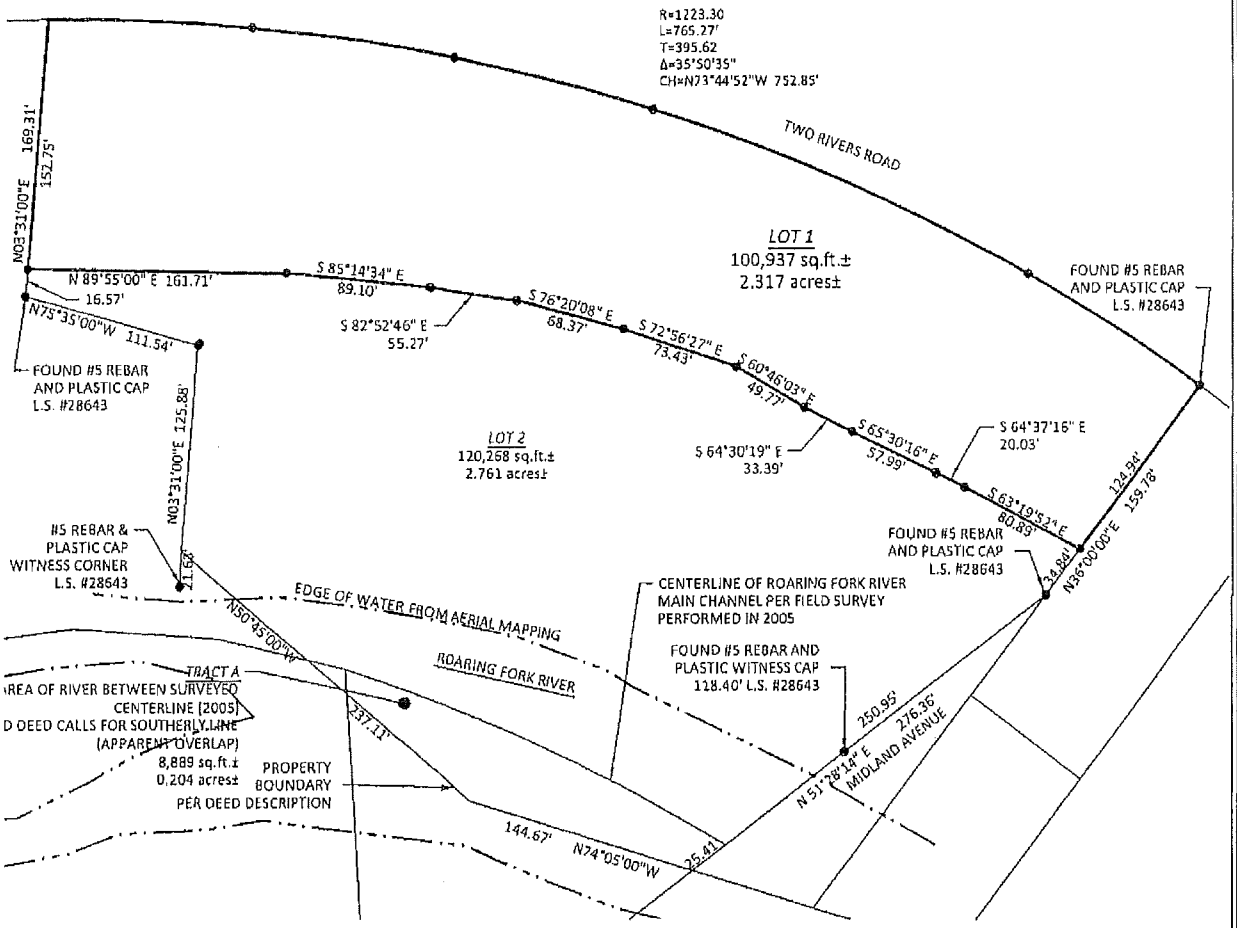
_____
Town Clerk

EXHIBIT A

CDC PARCEL

A PARCEL OF LAND SITUATED IN TRACT 45
TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6th P.M.
TOWN OF BASALT, COUNTY OF EAGLE, STATE OF COLORADO

SHEET 1 OF 1



DRAWING SCALE
1"=100'

SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311

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EXHIBIT B

CONTRACT FOR SALE OF VACANT LAND

THIS CONTRACT FOR SALE OF VACANT LAND (the "**Contract**") is entered into as of the Effective Date (defined below) by and between Roaring Fork Community Development Corporation (the "**Seller**") and Town of Basalt, a Colorado home rule municipality (the "**Buyer**").

RECITALS:

A. Seller is the owner of real property commonly known as the CDC Parcel (the "Land") comprising approximately 2.3 acres which is located in the Town of Basalt and the County of Eagle, as described on **Exhibit A**.

B. Seller desires to sell and Buyer desires to purchase the Land pursuant to the terms of this Contract.

AGREEMENT

1. PURCHASE AND SALE OF THE LAND. Seller agrees to sell and Buyer agrees to purchase the Land on the terms conditions set forth in this Contract.

2. PURCHASE PRICE. The purchase price for the Land, including earnest money, shall be Three Million and no/100s Dollars ($3,000,000.00) (the **Purchase Price**"). The Purchase Price shall be allocated as follows: Two Million Two Hundred Fifty Thousand and no/100 Dollars ($2,250,000.00) for the Park Area, and Seven Hundred Fifty Thousand and no/100 ($750,000.00) for the Community Serving Use Area. The Purchase Price shall be paid by Buyer to Seller as follows:

a. EARNEST MONEY. Buyer shall tender to Land Title Guaranty Company ("the Title Company") earnest money in the amount of $25,000.00 at the time it delivers a fully signed copy of this Contract to Seller. Any and all monies paid by Buyer prior to closing shall be placed in an insured, interest bearing money market-type account with a local commercial bank with all interest thereon to accrue for the benefit of Buyer. If Buyer shall ever be in default under this Contract resulting in a forfeiture of its earnest money, Seller shall be entitled, as its sole and separate property, all interest earned on said earnest money.

b. CLOSING FUNDS. At closing, the balance of the Purchase Price shall be paid to Seller in cash, certified funds, by wire transfer or other immediately available funds.

3. **CLOSING.** The closing of the transaction contemplated hereunder (the "**Closing**") shall be held at the office of the Title Company within ten days after satisfaction of the Contract Contingency as described in Paragraph 10, below, and upon issuance of bonds or other debt instruments and the funding thereof, but not later than July 5, 2016, unless this date is extended by mutual consent. At Closing, Seller shall execute and deliver to Buyer a special warranty deed conveying the Land, free and clear of all liens, encumbrances and other exceptions, except such easements, restrictions and other exceptions as are of record and are approved by Buyer during the Title Inspection Period and such other Closing documents as are normal and customary for the transaction described herein.

4. **INSPECTION AND REVIEW.**

a. **EVIDENCE OF TITLE.**

(i) Title Commitment. Seller shall cause to be furnished to Buyer, at Buyer's expense, a current commitment for owner's title insurance policy ("Title Commitment") in an amount equal to the Purchase Price no later than ten (10) days after full execution of this Contract. At Buyer's expense, Seller shall cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing. If a Title Commitment is furnished, it shall commit to delete or insure over the standard exceptions which relate to:

(1) parties in possession,
(2) unrecorded easements,
(3) survey matters,
(4) any unrecorded mechanic's liens,
(5) gap period (effective date of commitment to date deed is recorded),
(6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing.

Any additional premium expense to obtain this additional coverage shall be paid by Buyer.

(ii) Copies of Exceptions. Seller, at Buyer's expense, shall furnish to Buyer:

(1) a copy of any plats, declarations, covenants, conditions and restrictions burdening the Land
(2) a copy of all documents listed in the schedule of exception. This requirement shall pertain only to documents as shown of record in the offices of the clerk and recorder. The Title Commitment, together with any copies or summaries of such documents furnished pursuant to this section, constitute the title documents (Title Documents).

(iii) Survey. Seller shall provide Buyer and the Title Company, a current **Improvement Survey Plat** no later than three (3) days after full execution of this Contract.

b. TITLE AND SURVEY REVIEW.

(i) Title Review. Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title, form or content of Title Commitment or of any other unsatisfactory title condition shown by the Title Documents shall be signed by or on behalf of Buyer and given to Seller on or before **April 25, 2016** or within five (5) calendar days after receipt by Buyer of any change to the Title Documents or endorsement to the Title Commitment together with a copy of the document adding any new Exception to title. If Seller does not receive Buyer's notice by the date specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

(ii) Matters not Shown by the Public Records. Seller shall deliver to Buyer, within ten (10) days of full execution of this Contract, true copies of all leases or other unrecorded documents in Seller's possession pertaining to the Land and shall disclose to Buyer all easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first refusal, and options) not shown by the public records of which Seller has actual knowledge. Buyer shall have the right to inspect the Land to determine if any third party has any right in the Land not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition disclosed by Seller or revealed by such inspection shall be signed by or on behalf of Buyer and given to Seller on or before **April 25, 2016**. If Seller does not receive Buyer's notice by said date, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

(iii) Survey and Plat Review. Buyer shall have the right to inspect Survey. The Improvement Survey shall be in a form and content sufficient to cause the title company to issue an endorsement to its title commitment agreeing to delete from Schedule B (Section 2) of its to-be-issued title policy standard printed exception Nos. 1-3 at no cost to Buyer. Buyer has the right to review and object to the Survey. Buyer has the Right to Terminate under subparagraph (iv) if the Improvement Survey is not timely received by Buyer. In the event the Improvement Survey discloses matters which constitute defects in the merchantability of Seller's title, Buyer must give Seller written notice of such unsatisfactory title condition(s) no later than **April 25, 2016**. If Buyer in fact gives such notice to Seller in a timely manner, the provisions of subparagraph (iv) below shall apply thereto. If no such notice is timely

given, Buyer shall be deemed to have waived any objections to matters shown on the Improvement Survey.

(iv) Right to Object, Cure. If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition or commitment terms as provided in subsections i, ii, and iii above, Seller may use reasonable efforts to correct said items and bear any nominal expense to correct the same prior to Closing. If any unsatisfactory title condition is not corrected to Buyer's reasonable satisfaction on or before Closing, this Contract shall then terminate; provided, however, Buyer may, by written notice received by Seller on or before Closing, waive objection to such items.

c. INCLUSIONS. Seller shall assign to Buyer, at Closing, any and all water and sewer taps which are owned by Seller.

d. CONDITION OF LAND, REPRESENTATIONS. Buyer represents that it sufficiently familiar with the physical condition of the Land, including the location of utilities, that an inspection contingency is not required. As of the date of this Contract and the date of Closing, Seller warrants and represents the following:

(i) Seller is the record owner of the Land.

(ii) There are no actions, suits, proceedings or investigations pending or, to Seller's knowledge threatened, against or affecting the Land, or arising out of Seller's conduct on the Land.

(iii) To Seller's actual knowledge, Seller is in substantial compliance with the laws, orders, and regulations of each governmental department, commission, board, or agency having jurisdiction over the Land in those cases where noncompliance would have a material adverse effect on the Land.

(iv) Other than this Contract and for the 2008 Easement Contract between Buyer and Seller, as amended, Seller is neither party to nor subject to or bound by any agreement, contract or lease of any kind relating to the Land, and no person has a right to possession of the Land or holds an option or right of first refusal or a right of access across the Land other than as disclosed in the exceptions noted on Schedule B-2 of the Title Commitment.

(v) The Land, to the best of Seller's actual knowledge, is not in violation of any federal, state or local law, ordinance or regulation relating to environmental conditions on, under or about the Land, including, but not limited to, soil and groundwater conditions. Neither Seller, nor to the best of Seller's actual knowledge any third party, has used, generated, manufactured, refined, produced, processed, stored or disposed of on, or under the Land or transported to or from the Land any Hazardous Materials nor does Seller intend to use the Land

prior to closing date for the purpose of generating manufacturing, refining, producing, storing, handling, transferring, processing or transporting Hazardous Materials. For the purposes hereof, "Hazardous Materials" does not mean any typical agricultural chemicals such as herbicides and pesticides utilized on properties of this type in Eagle and Pitkin Counties, provided that all such chemicals are used in accordance with applicable laws and manufacturer's specifications; but shall mean any flammable explosives, radioactive materials, asbestos, , organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances", "hazardous material" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq., or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or other requirement of governmental authority regulating, relating to or imposing liability or standard of conduct concerning any hazardous, toxic or dangerous substance or material, as now or at any time hereafter in effect, and in the regulations adopted, published and/or promulgated pursuant to said laws. To the best of Seller's actual knowledge and except as disclosed herein, there are no other underground storage tanks situated in the Land.

(vi) No representation, warranty, or statement made herein by Seller contains any untrue statement of any material fact or omits to state any material fact necessary in order to make such representation, warranty, or statement not misleading.

5. **TAXES.** Seller shall pay all general taxes and assessments and all sale, excise, and transfer for the Land for the current year and all years prior to Closing.

6. **PRESERVATION OF LAND; RISK OF LOSS.** Except as otherwise set forth herein, Seller agrees that the Land shall remain as it now is until Closing, and that Seller agrees that it shall neither use nor consent to any use of the Land for any purpose or in any manner which would adversely affect Buyer's intended acquisition.

7. **COSTS AND FEES.** Closing fees shall be one half each by the Buyer and the Seller. The premium for the title insurance policy described above shall be paid by Seller.

8. **LIQUIDATED DAMAGES; DEFAULT.**

a. **SELLER'S REMEDIES.** In the event that (a) all of the conditions to this Contract for the benefit of Buyer shall have been satisfied, or waived by Buyer, (b) Seller shall have fully performed or tendered performance of its obligations under this Contract, and (c) Buyer shall be unable or shall fail to perform its obligations

under this Contract, then the entire amount of the earnest money plus all accrued interest thereon may be retained by Seller as liquidated damages under this Contract, and Buyer shall have no further liability to Seller. Buyer and Seller hereby acknowledge and agree that Seller's damages would be difficult or impossible to determine and that the amount of earnest money is the parties' best and most accurate estimate of the damages Seller would suffer in the event the transaction provided for in this Contract fails to close, and is reasonable under the circumstances existing as of the date of this Contract. In the alternative, Seller expressly retains the remedies of specific performance and additional damages.

b. **BUYER'S REMEDIES.** If Seller shall fail to consummate the transaction contemplated hereunder for any reason, or if such transaction shall fail to close for any reason other than default by Buyer, Buyer may elect, at Buyer's sole option: (i) To terminate this Contract and be released from its obligations hereunder, in which event the earnest money shall be returned to Buyer; or (ii) To proceed against Seller for specific performance of this Contract. In the event the transaction contemplated by this Contract fails to close as a result of Seller's default in the performance of its obligations established in this Contract, the above remedies shall be the sole remedies of Buyer.

9. **NOTICES.** All notices required or permitted hereunder will be deemed to have been delivered only upon actual delivery thereof. All notices required or permitted hereunder shall be given by hand delivery, or sent by telecopier, or sent by Federal Express or other courier for delivery at the soonest possible time offered by such courier, directed as follows:

If to Seller:

Roaring Fork Community Development Corporation
PO Box 1582
Carbondale, CO 81623

With a copy to:

David J. Myler,
The Myler Law Firm P.C.
211 Midland Ave., Ste 201
Basalt, CO 81621
Phone 970-927-0456
Fax 970-927-0374
Email dmyler@mylerlawpc.com

If to Buyer:

Town of Basalt, Colorado
Attn: _____

101 Midland Avenue
Basalt, CO 81621

with a copy to:

Thomas F. Smith, Town Attorney
600 E. Hopkins #205
Aspen, CO 81611
Phone: 970-925-2600
Email: tsmith@aps-pc.com

10. **CONTRACT CONTINGENCY.** The obligations of Buyer and Seller are specifically contingent upon the adoption of an Initiated Ordinance authorizing and directing the incurrence of general obligation indebtedness by the Town of Basalt, Colorado, authorizing and directing the levy of ad-valorem property taxes to pay for such general obligation indebtedness and authorizing and directing the Town Council to enter into this Contract.

11. **MISCELLANEOUS.**

a. **BROKER'S COMMISSION.** Seller and Buyer each represents to the other that they have not contracted with any broker or finder with regard to this transaction.

b. **CERTIFICATE.** Seller hereby declares and represents to Buyer that it is not a "foreign person" for purposes of withholding of federal tax as described in such Certificate. At or prior to Closing, Seller shall furnish to Buyer a duly executed Certificate of Non-Foreign Status.

c. **ASSIGNMENT.** This Contract shall not be assignable by either party without the prior written consent of the other.

d. **BINDING EFFECT.** The terms and conditions of this Contract shall be binding upon and shall inure to the benefit of the parties' heirs, executors, administrators, successors and assigns.

e. **COUNTERPARTS; FACSIMILE SIGNATURES.** This Contract may be executed in counterparts, all of which shall constitute one agreement which shall be binding on all of the parties, notwithstanding that all of the parties are not signatories to the original or the same counterpart. Signatures may be evidenced by facsimile transmission and at the request of any party documents with original signatures shall be provided to the other party.

f. **SEVERABILITY.** Provided each party receives the substantial benefit of the bargain memorialized in this Contract, if any provision of this Contract shall be held invalid, the other provisions hereof shall not be affected thereby and shall remain in full force and effect.

g. **ENTIRE CONTRACT.** This Contract represents the entire agreement of the parties and may not be amended except by a writing signed by each party thereto.

h. **AUTHORITY.** Each party to this Contract warrants to the other that the respective signatories have full right and authority to enter into and consummate this Contract and all related documents.

i. **FURTHER ACTIONS.** Each party shall execute and deliver or cause to be executed and delivered any and all instruments reasonably required to convey the Land to Buyer and to vest in each party all rights, interests and benefits intended to be conferred by this Contract.

j. **GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the laws of the State of Colorado.

k. **OFFER.** When signed and delivered to the Buyer by Seller, this Contract will constitute an offer to the Buyer that can be accepted only by the Byer signing and delivering to Seller an executed original of this Contract. Buyer may withdraw such offer in writing at any time prior to its acceptance.

l. **LABOR AND MATERIAL.** Seller shall deliver to Buyer at Closing an affidavit, on a form acceptable to Buyer, signed by Seller that no labor or materials have been furnished to the Land within the statutory period for the filing of mechanics' or materialmen's liens against the Land, or, if labor or materials have been furnished during the statutory period, Seller shall deliver to Buyer and Title Company, such material(s) as may be required for the deletion of Schedule B standard title exceptions paragraph #4 (any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records) related to work done on the Land.

m. **MEDIATION.** If a dispute arises relating to this Contract, prior to or after closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is sent by one party to the other at the party's last known address.

This section shall not alter any date in this Contract, unless otherwise agreed.

n. **COST AND EXPENSES. ATTORNEYS' FEES.** In the event of any mediation or litigation relating to this Contract, the mediator shall resolve or court shall award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.

o. **SATURDAYS, SUNDAYS, HOLIDAYS.** If the final date of any time period of limitation set out in any provision of this Contract falls on a Saturday, Sunday or a legal holiday under the laws of the State of Colorado, then the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

p. **INDEMNIFICATION.** Buyer shall indemnify and hold Seller harmless from and against any and all liens, claims, causes of action, damages, liabilities and expenses (including reasonable attorneys' fees) arising out of Buyer's inspections or tests permitted under this Contract, provided, however, the indemnity shall not extend to protect Seller from any pre-existing liabilities for matters merely discovered by Buyer (i.e., latent environmental contamination) so long as Buyer's actions do not aggravate any pre-existing liability of Seller. Buyer's obligations under this Subsection p. shall survive the termination of this Contract and shall survive the Closing.

q. **TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence hereof. If any check received as earnest money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, remedies shall be limited to those described in Section 8 above.

r. **EARNEST MONEY DISPUTE.** In the event of any controversy regarding the earnest money and things of value (notwithstanding any termination of this Contract or mutual written instructions), earnest money Holder shall not be required to take any action. Earnest money holder may await any proceeding, or at its option and sole discretion, interplead all parties and deposit any money or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney and legal fees.

s. **TERMINATION.** In the event this Contract is terminated, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder.

12. **EFFECTIVE DATE.** The Effective Date of this Agreement shall be the last date signed by either party.

13. **NOTICE OF ACCEPTANCE, COUNTERPARTS.** This proposal shall expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the Seller receives a signed counterpart of this Contract on or

before April 15, 2015. If Seller receives a signed counterpart within said time period, this document shall become a Contract between Seller and Buyer.

[This Space Intentionally Left Blank. Signatures on the Following Page.]

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the dates below.

SELLER:

ROARING FORK COMMUNITY DEVELOPMENT CORPORATION

By: _____ Date: _____
_____, its _____

BUYER:

TOWN OF BASALT, a Colorado home rule municipality

By: _____ Date: _____
_____, its _____

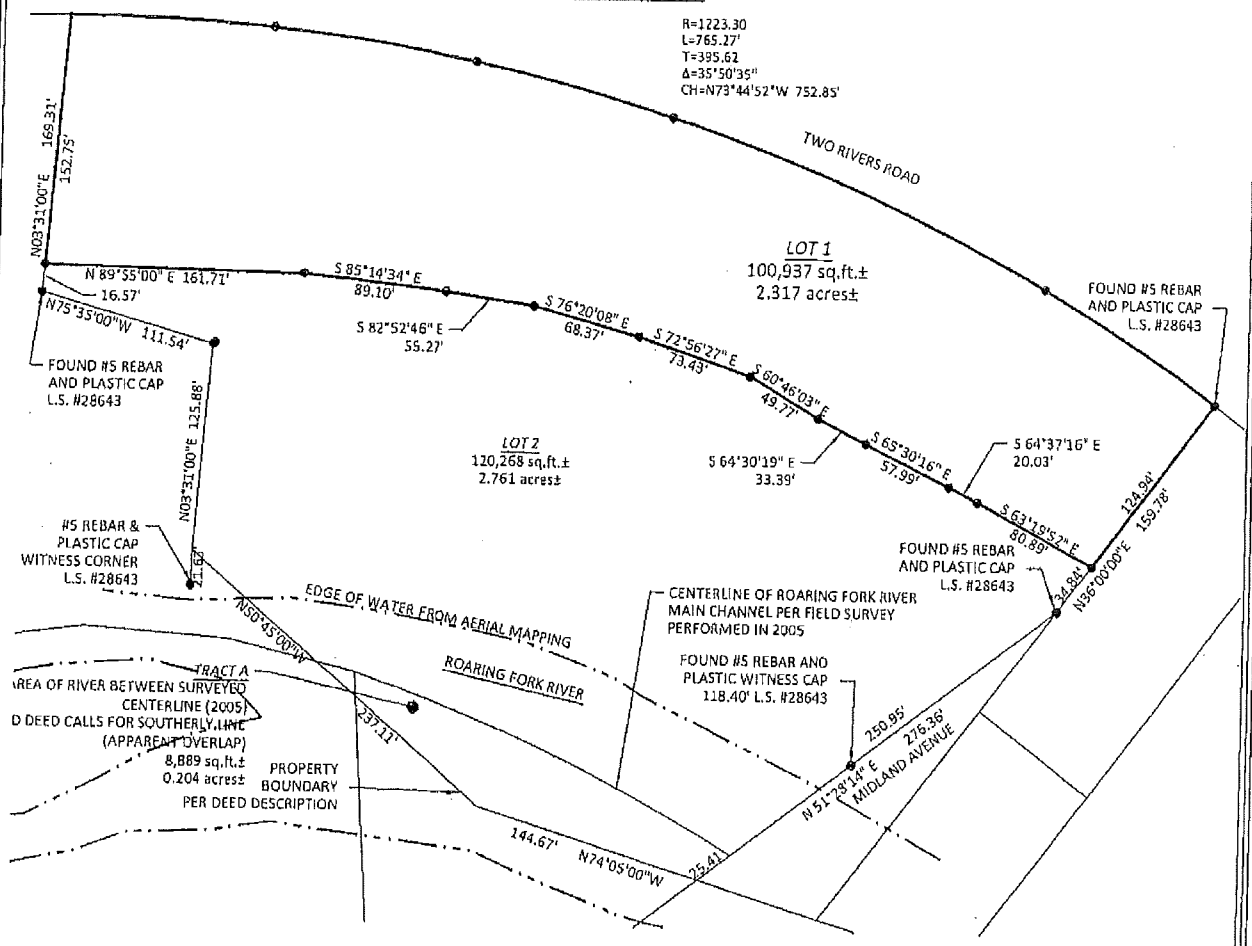
ATTEST:

_____
Town Clerk

EXHIBIT A

CDC PARCEL

A PARCEL OF LAND SITUATED IN TRACT 45
TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6th P.M.
TOWN OF BASALT, COUNTY OF EAGLE, STATE OF COLORADO
SHEET 1 OF 1



DRAWING SCALE
1"=100'

SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311

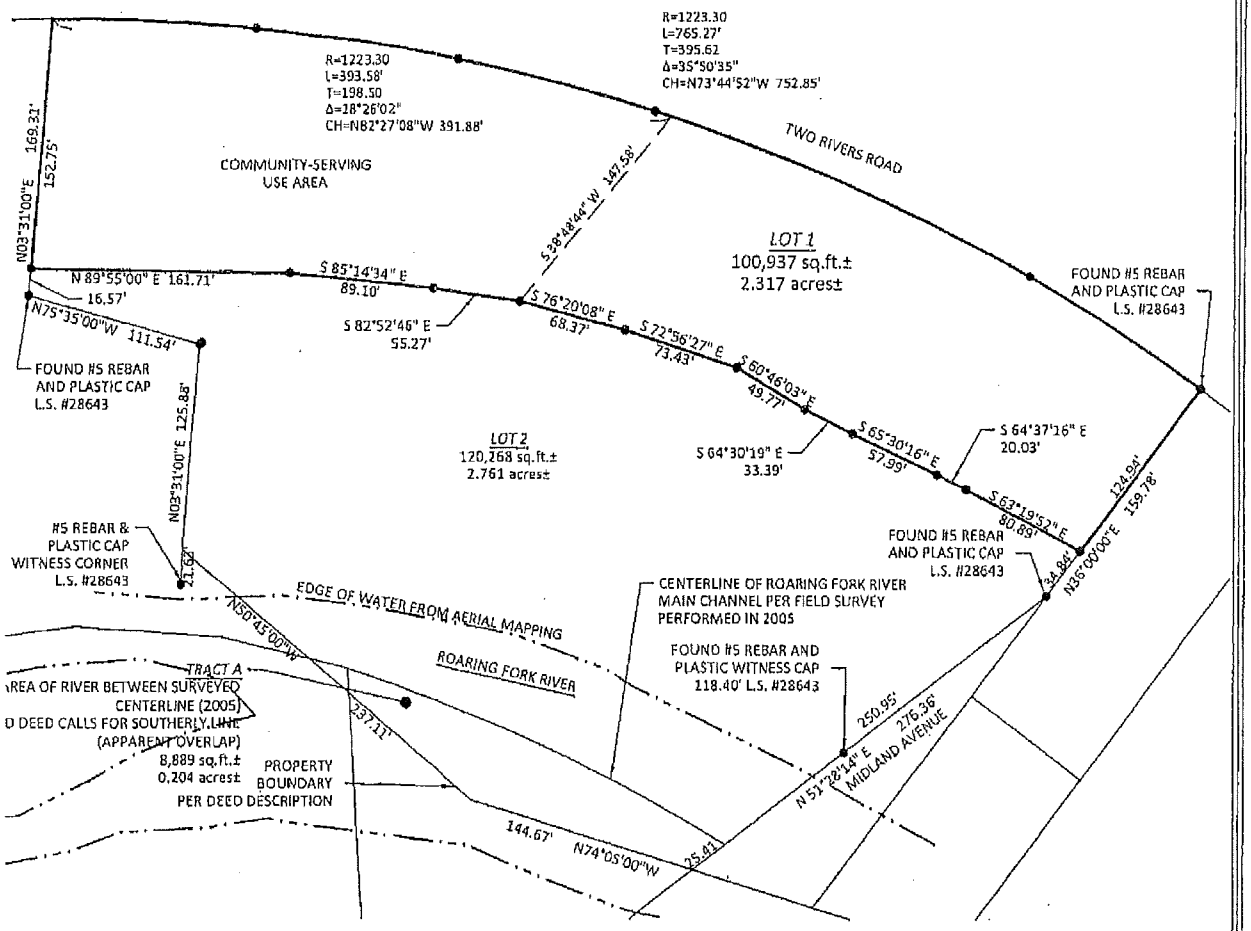
15004.01 cl 12/14/2015 M:\3500dwgs\15004\15004 COMMUNITY EXHIBITS 2015-12-08.dwg

EXHIBIT C

CDC PARCEL

A PARCEL OF LAND SITUATED IN TRACT 45
TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6th P.M.
TOWN OF BASALT, COUNTY OF EAGLE, STATE OF COLORADO

SHEET 1 OF 1



DRAWING SCALE
1"=100'

SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311

15004.01 cl 12/14/2015 M:\3500dwgs\15004\16004 COMMUNITY EXHIBITS 2015-12-08.dwg

THE MYLER LAW FIRM, P.C.
a division of
BALCOMB & GREEN, P.C.

DAVID J. MYLER

CHER VINCENT Paralegal

211 MIDLAND AVENUE
SUITE 201
BASALT, COLORADO 81621

TELEPHONE
(970) 927-0456
FACSIMILE
(970) 927-0574

EMAILS
dmyler@mylerlawpc.com
cvincent@mylerlawpc.com

January 11, 2016

Pamela Schilling, Town Clerk
Town of Basalt
101 Midland Avenue
Basalt, CO 81621

Via email at pams@basalt.net

RE: Riverpark Initiative Petitions

Dear Pam:

I am writing on behalf of Cathy Click and the Committee circulating the above-referenced Initiative Petitions in response to your letter of January 4, 2016. As previously stated, the Committee believes that the provisions of Basalt's Home Rule Charter control the Initiative process and that the provisions of C.R.S. 31-11-101 et.sec. ("Article 11") do not apply in this case. Although we respect your opinion and that of Tom Smith with regard to the sufficiency of those Petitions, we believe that Section 5.3 of the Basalt Charter requires that you present the Petitions to the Town Council if they have enough qualified signatures, even if you and Tom believe that the Petitions are defective for any other reason. The last sentence of Section 5.3 unambiguously provides that "when a petition with sufficient signatures is filed within the time allowed by this Section, the Town Clerk shall present the petition to the Council at the next regular meeting." Upon presentation of the petitions, it would then be up to the Town Council to decide whether or not to accept them and proceed with the Initiative process.

If, contrary to our belief, Article 11 does apply to the Initiative process, I would call your attention to the provisions of Section 31-11-111(2). That subsection specifically authorizes the Town Council to submit any proposed Ordinance to a vote of the registered electors whether or not there is a sufficient petition calling for the adoption of such ordinance by Initiative. In other words, even if the Petitions are deemed to be deficient, the Town Council can, on its own, submit the Ordinances to a vote of the registered electors. We also believe that the Town Council has

EXHIBIT
3

that same authority to submit the proposed Ordinances to the electorate even if Article 11 does not apply.

I anticipate that the Committee will request that the Town Council take such action as may be required to submit the Ordinances which are attached to the Petitions to the voters for their approval or disapproval on April 5, 2016 in order to allow the citizens of Basalt to decide the issues addressed in those Ordinances for themselves. On behalf of the Committee, please circulate this letter to the Town Council.

Very truly yours,

THE MYLER LAW FIRM, P.C.

By: _____
David J. Myler

DJM/ev

cc: Cathy Click (via email)
Jon Fox-Rubin (via email)
Mark Harvey (via email)
Greg Shugars (via email)
Peter McBride (via email)
Bel Carpenter (via email)
Katie Schwoerer (via email)
Doug MacDonald (via email)

TOWN OF BASALT, COLORADO
ORDINANCE NO. _____, SERIES OF 2016

AN INITIATED ORDINANCE OF THE TOWN OF BASALT, COLORADO CALLING AN ELECTION ON APRIL 5, 2016, TO APPROVE THIS ORDINANCE, TO AUTHORIZE AND DIRECT THE INCURRENCE OF GENERAL OBLIGATION INDEBTEDNESS BY THE TOWN, TO AUTHORIZE AND DIRECT THE LEVY OF AD VALOREM PROPERTY TAXES TO PAY FOR SUCH GENERAL OBLIGATION INDEBTEDNESS AND TO AUTHORIZE AND DIRECT THE TOWN COUNCIL TO ENTER INTO A CONTRACT FOR THE PURCHASE OF LAND FOR PUBLIC PARK AND COMMUNITY SERVING USES, AND ESTABLISHING PRINCIPLES FOR THE FUTURE USE AND OPERATION OF SAID LAND; AND SETTING THE BALLOT TITLE AND BALLOT QUESTION FOR THE FOREGOING.

RECITALS

WHEREAS, the Town of Basalt, Colorado (the "Town") is a home rule municipality duly organized and existing under the Constitution and laws of the State of Colorado and its Home Rule Charter (the "Charter"); and

WHEREAS, Article V of the Charter provides that an ordinance may be submitted by petition signed by qualified electors of the Town equal in number to ten percent of the number of persons who were registered electors of the Town as of the date of the last general election; and

WHEREAS, upon the Town Clerk's determination that sufficient signatures have been filed within the time allowed by Section 5.4 of the Charter, the Town Clerk is required to present the petition to the Town Council of the Town (the "Council") at its next regular meeting; and

WHEREAS, upon presentation of an initiative petition requiring voter approval in advance pursuant to Article X, Section 20 of the Colorado Constitution ("TABOR"), the Council is required to submit the proposal provided for in the petition to the electors; and

WHEREAS, this Ordinance authorizes and directs the Council, upon satisfaction of the conditions described above, to incur general obligation indebtedness of the Town and levy ad valorem property taxes to pay for such indebtedness for the purpose of acquiring an a 2.317-acre parcel of real property located along Two Rivers Road in the Town described in **Exhibit A** to this Ordinance (the "CDC Parcel") under the terms of a Contract for Sale of Vacant Land between

EXHIBIT
tabbies
4

Roaring Fork Community Development Corporation ("RFCDC") and the Town, a copy of which is attached hereto as **Exhibit B**, (the "Purchase Contract") as provided below: and

WHEREAS, TABOR requires voter approval for any new tax, the creation of any debt and for spending certain moneys above limits established by TABOR; and

WHEREAS, TABOR requires the submission of ballot issues (as defined in TABOR) to the Town's electors on limited election days before action can be taken on such ballot issues; and

WHEREAS, April 5, 2016, is one of the election dates at which ballot issues may be submitted to the eligible electors of the Town pursuant to TABOR; and

WHEREAS, Section 2.1 of the Charter states that elections of the Town shall be governed by the Colorado Municipal Election Code under the Colorado Revised Statutes ("CRS"), except as otherwise provided in the Charter or as the Council may otherwise provide by ordinance; and

WHEREAS, upon satisfaction of the conditions described above, it shall be necessary to submit to the eligible electors of the Town, at the April 5, 2016 election (the "Election"), the proposition of directing the acquisition of the CDC Parcel, creating general obligation indebtedness in the aggregate principal amount of not to exceed $3,000,000 to finance the acquisition of the CDC Parcel and increasing taxes to pay such debt; and

WHEREAS, the acquisition of the CDC Parcel, primarily for park purposes, but also reserving a portion for community serving uses, will result in substantial community and economic benefits for the residents and the business owners of the Town; and

WHEREAS, the acquisition and use of the CDC Parcel for park and community serving uses, as provided herein, is consistent with the 2007 Town of Basalt Master Plan, including the Our Town Subarea Plan, as amended, and will promote and satisfy key objectives and recommendations of the Our Town Planning Area; and

WHEREAS, the total $3,000,000 purchase price for the CDC Parcel, as stated in the Purchase Contract, is supported by competent and reliable valuation analyses and represents the fair market value of the CDC Parcel.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO AS FOLLOWS:

1. **Approval of Purchase Contract**. The Purchase Contract attached hereto as Exhibit B is approved and the Mayor and Council are authorized and directed to sign such Purchase Contract on behalf of the Town and deliver same to RFCDC. The Mayor and Town Manager are further authorized and directed to take all actions reasonably necessary in order to complete the purchase of the CDC Parcel as provided in and subject to the contingencies and other provisions of the Purchase Contract, including payment of the purchase price.

2. **Uses and Operating Principles**.

a. General Principles. The CDC Parcel shall be utilized in a manner that is consistent with the 2007 Town of Basalt Master Plan, including the Our Town Subarea Plan, as amended, and that will maximize benefits to the Basalt community at large as well as the businesses operating within the historic downtown commercial areas.

b. Park Area. At least 1.817 acres of the CDC Parcel (the "Park Area") shall be improved, managed and utilized only for public park purposes, including passive use by residents and visitors and such active community uses, including events and performances, as the Council may determine from time to time, provided that the Park Area shall always be used in a manner that maintains its eligibility for public open space funding.

c. Community Serving Uses. Up to, but not exceeding, 0.50 acres of the CDC Parcel, which may consist of one or more separate parcels provided that the total does not exceed 0.50 acres, located within the "Community Serving Use Area" as described on **Exhibit C** may either be improved, managed and utilized for the same public park purposes as would be allowed on the Park Area, or may be developed and utilized for such community serving commercial, civic and public uses, including housing for public service employees (police, firefighters, teachers and the like), as the Town Council may determine pursuant to a public planning and land use review process. The nature and extent of that process shall be determined by the Council, and shall be sufficient to afford all interested parties with a reasonable opportunity to participate in public hearings and offer comments on an appropriate mix of uses, appropriate limitations on floor area and height, and related issues. The mix and character of such uses shall be consistent with the 2007 Town of Basalt Master Plan, including the Our Town Subarea Plan, as amended.

3. **Town Council Authority**. Except for the provisions of Section 2 (Uses and Operating Principals), nothing herein shall limit or restrict the authority and discretion of the Council to subdivide, rezone, sell, lease or convey all or any portion of the Community Serving Use Area, pursuant to the applicable land use regulations of the Town, in order to achieve the objectives set forth in this Ordinance. The Council shall not manage, operate or convey the Park Area in a manner which would be inconsistent with the terms and conditions of public open space funding.

4. **Funding**.

a. Public Sources. The Council shall use its best efforts to obtain funds for acquisition of the CDC Parcel from the Pitkin County Open Space and Trails Program, the Eagle County Open Space Program, Great Outdoors Colorado and any other similar sources.

b. Town Funds. The Council may, in its sole discretion, use Town General Funds for any portion of the purchase price.

5. **Debt and Taxation**.

a. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Town and the officers thereof, directed towards the Election and the objects and purposes herein stated and the question set forth herein are, ratified, approved and confirmed.

b. Pursuant to TABOR and applicable Colorado election law, the Town hereby determines that the Election shall be held on April 5, 2016, and that there shall be submitted to the eligible electors of the Town the question set forth herein.

c. The total aggregate principal amount of the indebtedness to be incurred for the acquisition of the CDC Parcel shall not exceed the sum of $3,000,000.

d. The Council hereby authorizes and directs the officers of the Town to certify the following question in substantially the form hereinafter set forth to the County Clerk as required under TABOR and other applicable election laws. Such question shall be submitted to the eligible electors of the Town at the Election:

SHALL TOWN OF BASALT, COLORADO DEBT BE INCREASED UP TO $3,000,000 WITH A REPAYMENT COST OF UP TO $3,733,451, AND SHALL THE TOWN BE AUTHORIZED TO COLLECT TAXES SUFFICIENT TO PAY SUCH DEBT BUT NOT EXCEEDING $376,225.00 ANNUALLY; AND SHALL SUCH DEBT BE A GENERAL OBLIGATION OF THE TOWN PAYABLE FROM A MILL LEVY THAT MAY BE INCREASED IN ANY YEAR WITHOUT LIMITATION AS TO RATE BUT ONLY IN AN AMOUNT SUFFICIENT TO PAY THE PRINCIPAL OF AND PREMIUM, IF ANY, AND INTEREST ON SUCH DEBT OR ANY DEBT

ISSUED TO REFINANCE SUCH DEBT (OR TO CREATE A RESERVE FOR SUCH PAYMENT); AND SHALL SUCH DEBT BE ISSUED FOR THE PURPOSE OF ACQUIRING A 2.317-ACRE PARCEL OF LAND PURSUANT TO A CONTRACT FOR SALE OF VACANT LAND BETWEEN ROARING FORK COMMUNITY DEVELOPMENT CORPORATION AND THE TOWN; AND SHALL SUCH DEBT BE SOLD IN ONE SERIES OR MORE, FOR A PRICE ABOVE OR BELOW THE PRINCIPAL AMOUNT OF SUCH SERIES, ON TERMS AND CONDITIONS AND WITH SUCH MATURITIES AS PERMITTED BY LAW, INCLUDING PROVISIONS FOR REDEMPTION OF THE BONDS PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF THE PREMIUM OF NOT TO EXCEED ONE PERCENT; AND SHALL THE TOWN BE AUTHORIZED TO ISSUE DEBT TO REFUND THE DEBT AUTHORIZED IN THIS QUESTION, PROVIDED THAT AFTER THE ISSUANCE OF SUCH REFUNDING DEBT THE TOTAL OUTSTANDING PRINCIPAL AMOUNT OF ALL DEBT ISSUED PURSUANT TO THIS QUESTION DOES NOT EXCEED THE MAXIMUM PRINCIPAL AMOUNT SET FORTH ABOVE, AND PROVIDED FURTHER THAT ALL DEBT ISSUED BY THE TOWN PURSUANT TO THIS QUESTION IS ISSUED ON TERMS THAT DO NOT EXCEED THE REPAYMENT COSTS AUTHORIZED IN THIS QUESTION; AND SHALL SUCH TAX REVENUES AND THE EARNINGS FROM THE INVESTMENT OF SUCH BOND PROCEEDS AND TAX REVENUES BE COLLECTED, RETAINED AND SPENT AS A VOTER APPROVED REVENUE CHANGE AND AN EXCEPTION TO THE LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW; AND SHALL THE INITIATED ORDINANCE AUTHORIZING AND DIRECTING THE ACQUISITION OF THE LAND, THE DEBT AND AD VALOREM TAXES BE APPROVED.

e. If a majority of the votes cast on the question to authorize general obligation indebtedness and the levy of ad valorem property taxes submitted at the Election shall be in favor of incurring general obligation indebtedness and levying ad valorem property taxes as provided in such question, the Town acting through the Council is authorized and directed to proceed with the necessary action to incur general obligation indebtedness and levy ad valorem property taxes in accordance with such question and the Purchase Contract.

Any authority to contract general obligation indebtedness or to levy ad valorem property taxes, if conferred by the results of the Election, shall be deemed and considered a continuing authority to contract the general obligation indebtedness and levy the ad valorem taxes so authorized at any one time, or from time to time, and neither the partial exercise of the authority so conferred, nor any lapse of time, shall be considered as exhausting or limiting the full authority so conferred.

f. If a majority of the votes cast on the question authorize the issuance of bonds as described in the bond question set forth above, the Town is directed to issue such bonds no later

than June 5, 2016 in an aggregate principal amount of $3,000,000 or such lesser amount required to acquire the CDC Parcel, including the reimbursement of certain costs incurred by the Town prior to the execution and delivery of such bonds, upon terms consistent with the Purchase Contract and to take all further action which is necessary or desirable in connection therewith. The officers, employees and agents of the Town shall take all action necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated hereby and shall take all action necessary or desirable to finance the acquisition of the CDC Parcel and to otherwise carry out the transactions contemplated by this Ordinance and the Purchase Contract. The Town shall not use reimbursed moneys for purposes prohibited by Treasury Regulation §1.150-2(h). This Ordinance is intended to be a declaration of "official intent" to reimburse expenditures within the meaning of Treasury Regulation §1.150-2.

6. **Miscellaneous.**

a. Pursuant to Section 1-11-203.5, C.R.S., any election contest arising out of a ballot issue or ballot question election concerning the order of the ballot or the form or content of the ballot title shall be commenced by petition filed with the proper court within five days after the title of the ballot issue or ballot question is set.

b. The Town Clerk, as well as the appropriate officers and employees of the Town are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance. The Mayor is hereby authorized to execute this Ordinance on behalf of the Council, and the Town Clerk is hereby authorized to attest to such execution by the Mayor.

c. All ordinances, orders, bylaws and resolutions, or parts thereof, in conflict with this Ordinance, are hereby repealed.

d. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

e. This Ordinance is immediately necessary for the preservation of the public peace, health or safety and is therefore pursuant to Sections 4.7 and 3.2 of the Charter excepted from referendum and enacted as an emergency ordinance and shall take effect immediately upon its passage.

Read on First Reading, Ordered Published and set for Public Hearing to be held on the ____ day of _____ 2016 by a vote of ____ to _____ on the ___ day of _____ 2016.

Read on Second Reading and Adopted by a vote of _____ to _____ on the ____ day of _____ 2016.

OR Adopted this ____ day of _____, 2016 by a majority vote of the electorate at the Initiative Election held on the ____ day of _____ 2016.

TOWN OF BASALT

By: _____
Mayor

ATTEST:

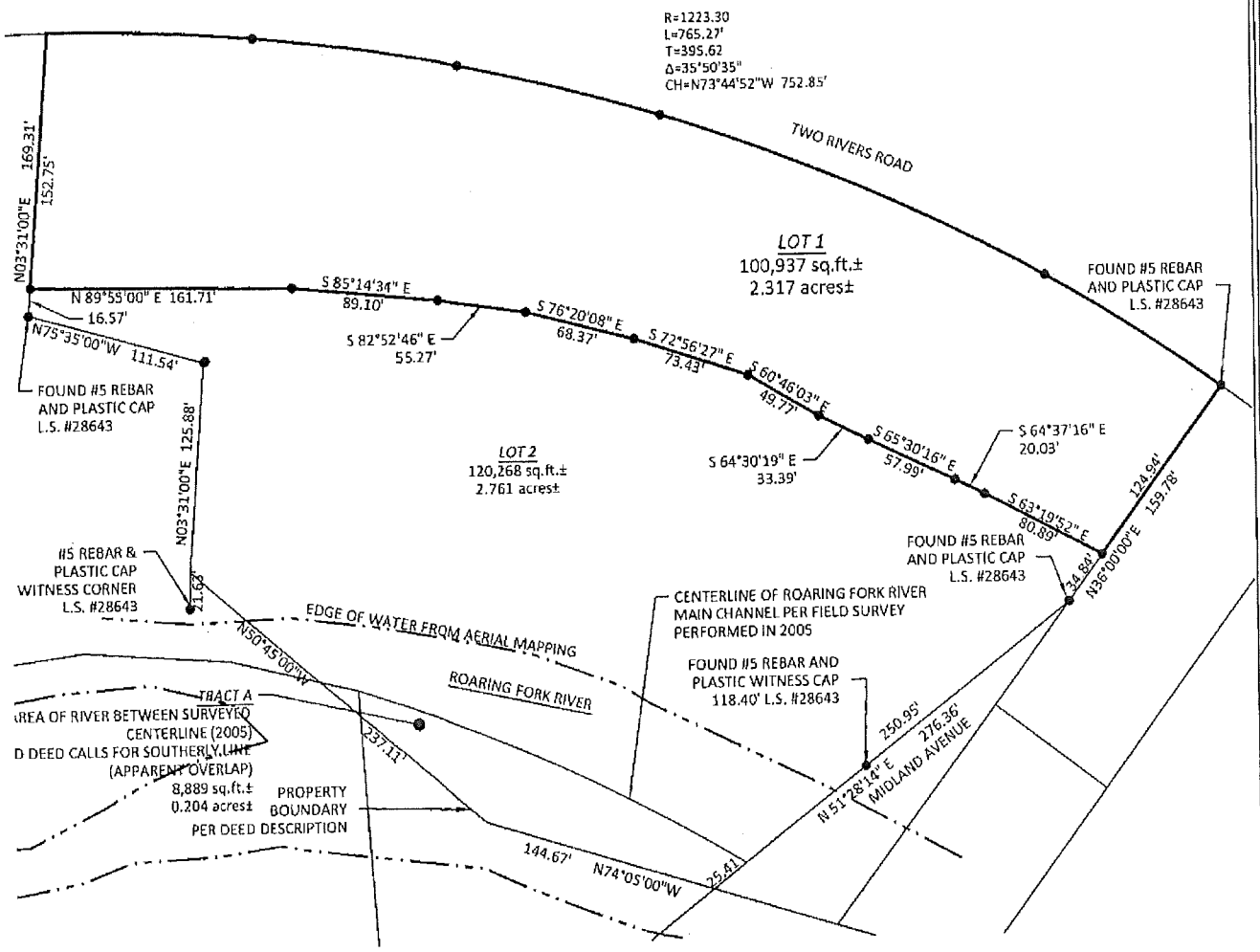
_____
Town Clerk

PUBFIN/1943330.2

EXHIBIT A

CDC PARCEL

A PARCEL OF LAND SITUATED IN TRACT 45
TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6th P.M.
TOWN OF BASALT, COUNTY OF EAGLE, STATE OF COLORADO
SHEET 1 OF 1



DRAWING SCALE
1"=100'

SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311

15004.01 cl 12/14/2015 M:\3500dwgs\15004\15004 COMMUNITY EXHIBITS 2015-12-08.dwg

EXHIBIT B

CONTRACT FOR SALE OF VACANT LAND

THIS CONTRACT FOR SALE OF VACANT LAND (the "**Contract**") is entered into as of the Effective Date (defined below) by and between Roaring Fork Community Development Corporation (the "**Seller**") and Town of Basalt, a Colorado home rule municipality (the "**Buyer**").

RECITALS:

A. Seller is the owner of real property commonly known as the CDC Parcel (the "Land") comprising approximately 2.3 acres which is located in the Town of Basalt and the County of Eagle, as described on **Exhibit A**.

B. Seller desires to sell and Buyer desires to purchase the Land pursuant to the terms of this Contract.

AGREEMENT

1. **PURCHASE AND SALE OF THE LAND.** Seller agrees to sell and Buyer agrees to purchase the Land on the terms conditions set forth in this Contract.

2. **PURCHASE PRICE.** The purchase price for the Land, including earnest money, shall be Three Million and no/100s Dollars ($3,000,000.00) (the **Purchase Price**"). The Purchase Price shall be allocated as follows: Two Million Two Hundred Fifty Thousand and no/100 Dollars ($2,250,000.00) for the Park Area, and Seven Hundred Fifty Thousand and no/100 ($750,000.00) for the Community Serving Use Area. The Purchase Price shall be paid by Buyer to Seller as follows:

a. **EARNEST MONEY.** Buyer shall tender to Land Title Guaranty Company ("the Title Company") earnest money in the amount of $25,000.00 at the time it delivers a fully signed copy of this Contract to Seller. Any and all monies paid by Buyer prior to closing shall be placed in an insured, interest bearing money market-type account with a local commercial bank with all interest thereon to accrue for the benefit of Buyer. If Buyer shall ever be in default under this Contract resulting in a forfeiture of its earnest money, Seller shall be entitled, as its sole and separate property, all interest earned on said earnest money.

b. **CLOSING FUNDS.** At closing, the balance of the Purchase Price shall be paid to Seller in cash, certified funds, by wire transfer or other immediately available funds.

3. CLOSING. The closing of the transaction contemplated hereunder (the "**Closing**") shall be held at the office of the Title Company within ten days after satisfaction of the Contract Contingency as described in Paragraph 10, below, and upon issuance of bonds or other debt instruments and the funding thereof, but not later than July 5, 2016, unless this date is extended by mutual consent. At Closing, Seller shall execute and deliver to Buyer a special warranty deed conveying the Land, free and clear of all liens, encumbrances and other exceptions, except such easements, restrictions and other exceptions as are of record and are approved by Buyer during the Title Inspection Period and such other Closing documents as are normal and customary for the transaction described herein.

4. INSPECTION AND REVIEW.

a. EVIDENCE OF TITLE.

(i) Title Commitment. Seller shall cause to be furnished to Buyer, at Buyer's expense, a current commitment for owner's title insurance policy ("Title Commitment") in an amount equal to the Purchase Price no later than ten (10) days after full execution of this Contract. At Buyer's expense, Seller shall cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing. If a Title Commitment is furnished, it shall commit to delete or insure over the standard exceptions which relate to:

(1) parties in possession,
(2) unrecorded easements,
(3) survey matters,
(4) any unrecorded mechanic's liens,
(5) gap period (effective date of commitment to date deed is recorded),
(6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing.

Any additional premium expense to obtain this additional coverage shall be paid by Buyer.

(ii) Copies of Exceptions. Seller, at Buyer's expense, shall furnish to Buyer:

(1) a copy of any plats, declarations, covenants, conditions and restrictions burdening the Land
(2) a copy of all documents listed in the schedule of exception. This requirement shall pertain only to documents as shown of record in the offices of the clerk and recorder. The Title Commitment, together with any copies or summaries of such documents furnished pursuant to this section, constitute the title documents (Title Documents).

(iii) Survey. Seller shall provide Buyer and the Title Company, a current **Improvement Survey Plat** no later than three (3) days after full execution of this Contract.

b. TITLE AND SURVEY REVIEW.

(i) Title Review. Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title, form or content of Title Commitment or of any other unsatisfactory title condition shown by the Title Documents shall be signed by or on behalf of Buyer and given to Seller on or before **April 25, 2016** or within five (5) calendar days after receipt by Buyer of any change to the Title Documents or endorsement to the Title Commitment together with a copy of the document adding any new Exception to title. If Seller does not receive Buyer's notice by the date specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

(ii) Matters not Shown by the Public Records. Seller shall deliver to Buyer, within ten (10) days of full execution of this Contract, true copies of all leases or other unrecorded documents in Seller's possession pertaining to the Land and shall disclose to Buyer all easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first refusal, and options) not shown by the public records of which Seller has actual knowledge. Buyer shall have the right to inspect the Land to determine if any third party has any right in the Land not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition disclosed by Seller or revealed by such inspection shall be signed by or on behalf of Buyer and given to Seller on or before **April 25, 2016.** If Seller does not receive Buyer's notice by said date, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

(iii) Survey and Plat Review. Buyer shall have the right to inspect Survey. The Improvement Survey shall be in a form and content sufficient to cause the title company to issue an endorsement to its title commitment agreeing to delete from Schedule B (Section 2) of its to-be-issued title policy standard printed exception Nos. 1-3 at no cost to Buyer. Buyer has the right to review and object to the Survey. Buyer has the Right to Terminate under subparagraph (iv) if the Improvement Survey is not timely received by Buyer. In the event the Improvement Survey discloses matters which constitute defects in the merchantability of Seller's title, Buyer must give Seller written notice of such unsatisfactory title condition(s) no later than **April 25, 2016.** If Buyer in fact gives such notice to Seller in a timely manner, the provisions of subparagraph (iv) below shall apply thereto. If no such notice is timely

given, Buyer shall be deemed to have waived any objections to matters shown on the Improvement Survey.

(iv) Right to Object, Cure. If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition or commitment terms as provided in subsections i, ii, and iii above, Seller may use reasonable efforts to correct said items and bear any nominal expense to correct the same prior to Closing. If any unsatisfactory title condition is not corrected to Buyer's reasonable satisfaction on or before Closing, this Contract shall then terminate; provided, however, Buyer may, by written notice received by Seller on or before Closing, waive objection to such items.

c. INCLUSIONS. Seller shall assign to Buyer, at Closing, any and all water and sewer taps which are owned by Seller.

d. CONDITION OF LAND, REPRESENTATIONS. Buyer represents that it sufficiently familiar with the physical condition of the Land, including the location of utilities, that an inspection contingency is not required. As of the date of this Contract and the date of Closing, Seller warrants and represents the following:

(i) Seller is the record owner of the Land.

(ii) There are no actions, suits, proceedings or investigations pending or, to Seller's knowledge threatened, against or affecting the Land, or arising out of Seller's conduct on the Land.

(iii) To Seller's actual knowledge, Seller is in substantial compliance with the laws, orders, and regulations of each governmental department, commission, board, or agency having jurisdiction over the Land in those cases where noncompliance would have a material adverse effect on the Land.

(iv) Other than this Contract and for the 2008 Easement Contract between Buyer and Seller, as amended, Seller is neither party to nor subject to or bound by any agreement, contract or lease of any kind relating to the Land, and no person has a right to possession of the Land or holds an option or right of first refusal or a right of access across the Land other than as disclosed in the exceptions noted on Schedule B-2 of the Title Commitment.

(v) The Land, to the best of Seller's actual knowledge, is not in violation of any federal, state or local law, ordinance or regulation relating to environmental conditions on, under or about the Land, including, but not limited to, soil and groundwater conditions. Neither Seller, nor to the best of Seller's actual knowledge any third party, has used, generated, manufactured, refined, produced, processed, stored or disposed of on, or under the Land or transported to or from the Land any Hazardous Materials nor does Seller intend to use the Land

prior to closing date for the purpose of generating manufacturing, refining, producing, storing, handling, transferring, processing or transporting Hazardous Materials. For the purposes hereof, "Hazardous Materials" does not mean any typical agricultural chemicals such as herbicides and pesticides utilized on properties of this type in Eagle and Pitkin Counties, provided that all such chemicals are used in accordance with applicable laws and manufacturer's specifications; but shall mean any flammable explosives, radioactive materials, asbestos, , organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances", "hazardous material" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq., or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or other requirement of governmental authority regulating, relating to or imposing liability or standard of conduct concerning any hazardous, toxic or dangerous substance or material, as now or at any time hereafter in effect, and in the regulations adopted, published and/or promulgated pursuant to said laws. To the best of Seller's actual knowledge and except as disclosed herein, there are no other underground storage tanks situated in the Land.

(vi) No representation, warranty, or statement made herein by Seller contains any untrue statement of any material fact or omits to state any material fact necessary in order to make such representation, warranty, or statement not misleading.

5. **TAXES.** Seller shall pay all general taxes and assessments and all sale, excise, and transfer for the Land for the current year and all years prior to Closing.

6. **PRESERVATION OF LAND; RISK OF LOSS.** Except as otherwise set forth herein, Seller agrees that the Land shall remain as it now is until Closing, and that Seller agrees that it shall neither use nor consent to any use of the Land for any purpose or in any manner which would adversely affect Buyer's intended acquisition.

7. **COSTS AND FEES.** Closing fees shall be one half each by the Buyer and the Seller. The premium for the title insurance policy described above shall be paid by Seller.

8. **LIQUIDATED DAMAGES; DEFAULT.**

a. **SELLER'S REMEDIES.** In the event that (a) all of the conditions to this Contract for the benefit of Buyer shall have been satisfied, or waived by Buyer, (b) Seller shall have fully performed or tendered performance of its obligations under this Contract, and (c) Buyer shall be unable or shall fail to perform its obligations

under this Contract, then the entire amount of the earnest money plus all accrued interest thereon may be retained by Seller as liquidated damages under this Contract, and Buyer shall have no further liability to Seller. Buyer and Seller hereby acknowledge and agree that Seller's damages would be difficult or impossible to determine and that the amount of earnest money is the parties' best and most accurate estimate of the damages Seller would suffer in the event the transaction provided for in this Contract fails to close, and is reasonable under the circumstances existing as of the date of this Contract. In the alternative, Seller expressly retains the remedies of specific performance and additional damages.

b. **BUYER'S REMEDIES.** If Seller shall fail to consummate the transaction contemplated hereunder for any reason, or if such transaction shall fail to close for any reason other than default by Buyer, Buyer may elect, at Buyer's sole option: (i) To terminate this Contract and be released from its obligations hereunder, in which event the earnest money shall be returned to Buyer; or (ii) To proceed against Seller for specific performance of this Contract. In the event the transaction contemplated by this Contract fails to close as a result of Seller's default in the performance of its obligations established in this Contract, the above remedies shall be the sole remedies of Buyer.

9. **NOTICES.** All notices required or permitted hereunder will be deemed to have been delivered only upon actual delivery thereof. All notices required or permitted hereunder shall be given by hand delivery, or sent by telecopier, or sent by Federal Express or other courier for delivery at the soonest possible time offered by such courier, directed as follows:

If to Seller:

Roaring Fork Community Development Corporation
PO Box 1582
Carbondale, CO 81623

With a copy to:

David J. Myler.
The Myler Law Firm P.C.
211 Midland Ave., Ste 201
Basalt, CO 81621
Phone 970-927-0456
Fax 970-927-0374
Email dmyler@mylerlawpc.com

If to Buyer:

Town of Basalt, Colorado
Attn: _____

101 Midland Avenue
Basalt, CO 81621

with a copy to:

Thomas F. Smith, Town Attorney
600 E. Hopkins #205
Aspen, CO 81611
Phone: 970-925-2600
Email: tsmith@aps-pc.com

10. CONTRACT CONTINGENCY. The obligations of Buyer and Seller are specifically contingent upon the adoption of an Initiated Ordinance authorizing and directing the incurrence of general obligation indebtedness by the Town of Basalt, Colorado, authorizing and directing the levy of ad-valorem property taxes to pay for such general obligation indebtedness and authorizing and directing the Town Council to enter into this Contract.

11. MISCELLANEOUS.

a. BROKER'S COMMISSION. Seller and Buyer each represents to the other that they have not contracted with any broker or finder with regard to this transaction.

b. CERTIFICATE. Seller hereby declares and represents to Buyer that it is not a "foreign person" for purposes of withholding of federal tax as described in such Certificate. At or prior to Closing, Seller shall furnish to Buyer a duly executed Certificate of Non-Foreign Status.

c. ASSIGNMENT. This Contract shall not be assignable by either party without the prior written consent of the other.

d. BINDING EFFECT. The terms and conditions of this Contract shall be binding upon and shall inure to the benefit of the parties' heirs, executors, administrators, successors and assigns.

e. COUNTERPARTS; FACSIMILE SIGNATURES. This Contract may be executed in counterparts, all of which shall constitute one agreement which shall be binding on all of the parties, notwithstanding that all of the parties are not signatories to the original or the same counterpart. Signatures may be evidenced by facsimile transmission and at the request of any party documents with original signatures shall be provided to the other party.

f. **SEVERABILITY.** Provided each party receives the substantial benefit of the bargain memorialized in this Contract, if any provision of this Contract shall be held invalid, the other provisions hereof shall not be affected thereby and shall remain in full force and effect.

g. **ENTIRE CONTRACT.** This Contract represents the entire agreement of the parties and may not be amended except by a writing signed by each party thereto.

h. **AUTHORITY.** Each party to this Contract warrants to the other that the respective signatories have full right and authority to enter into and consummate this Contract and all related documents.

i. **FURTHER ACTIONS.** Each party shall execute and deliver or cause to be executed and delivered any and all instruments reasonably required to convey the Land to Buyer and to vest in each party all rights, interests and benefits intended to be conferred by this Contract.

j. **GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the laws of the State of Colorado.

k. **OFFER.** When signed and delivered to the Buyer by Seller, this Contract will constitute an offer to the Buyer that can be accepted only by the Byer signing and delivering to Seller an executed original of this Contract. Buyer may withdraw such offer in writing at any time prior to its acceptance.

l. **LABOR AND MATERIAL.** Seller shall deliver to Buyer at Closing an affidavit, on a form acceptable to Buyer, signed by Seller that no labor or materials have been furnished to the Land within the statutory period for the filing of mechanics' or materialmen's liens against the Land, or, if labor or materials have been furnished during the statutory period, Seller shall deliver to Buyer and Title Company, such material(s) as may be required for the deletion of Schedule B standard title exceptions paragraph #4 (any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records) related to work done on the Land.

m. **MEDIATION.** If a dispute arises relating to this Contract, prior to or after closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is sent by one party to the other at the party's last known address.

This section shall not alter any date in this Contract, unless otherwise agreed.

n. **COST AND EXPENSES. ATTORNEYS' FEES.** In the event of any mediation or litigation relating to this Contract, the mediator shall resolve or court shall award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.

o. **SATURDAYS, SUNDAYS, HOLIDAYS.** If the final date of any time period of limitation set out in any provision of this Contract falls on a Saturday, Sunday or a legal holiday under the laws of the State of Colorado, then the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

p. **INDEMNIFICATION.** Buyer shall indemnify and hold Seller harmless from and against any and all liens, claims, causes of action, damages, liabilities and expenses (including reasonable attorneys' fees) arising out of Buyer's inspections or tests permitted under this Contract, provided, however, the indemnity shall not extend to protect Seller from any pre-existing liabilities for matters merely discovered by Buyer (i.e., latent environmental contamination) so long as Buyer's actions do not aggravate any pre-existing liability of Seller. Buyer's obligations under this Subsection p. shall survive the termination of this Contract and shall survive the Closing.

q. **TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence hereof. If any check received as earnest money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, remedies shall be limited to those described in Section 8 above.

r. **EARNEST MONEY DISPUTE.** In the event of any controversy regarding the earnest money and things of value (notwithstanding any termination of this Contract or mutual written instructions), earnest money Holder shall not be required to take any action. Earnest money holder may await any proceeding, or at its option and sole discretion, interplead all parties and deposit any money or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney and legal fees.

s. **TERMINATION.** In the event this Contract is terminated, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder.

12. **EFFECTIVE DATE.** The Effective Date of this Agreement shall be the last date signed by either party.

13. **NOTICE OF ACCEPTANCE, COUNTERPARTS.** This proposal shall expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the Seller receives a signed counterpart of this Contract on or

before April 15, 2015. If Seller receives a signed counterpart within said time period, this document shall become a Contract between Seller and Buyer.

[This Space Intentionally Left Blank. Signatures on the Following Page.]

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the dates below.

SELLER:

ROARING FORK COMMUNITY DEVELOPMENT CORPORATION

By: _____ Date: _____
_____, its _____

BUYER:

TOWN OF BASALT, a Colorado home rule municipality

By: _____ Date: _____
_____, its _____

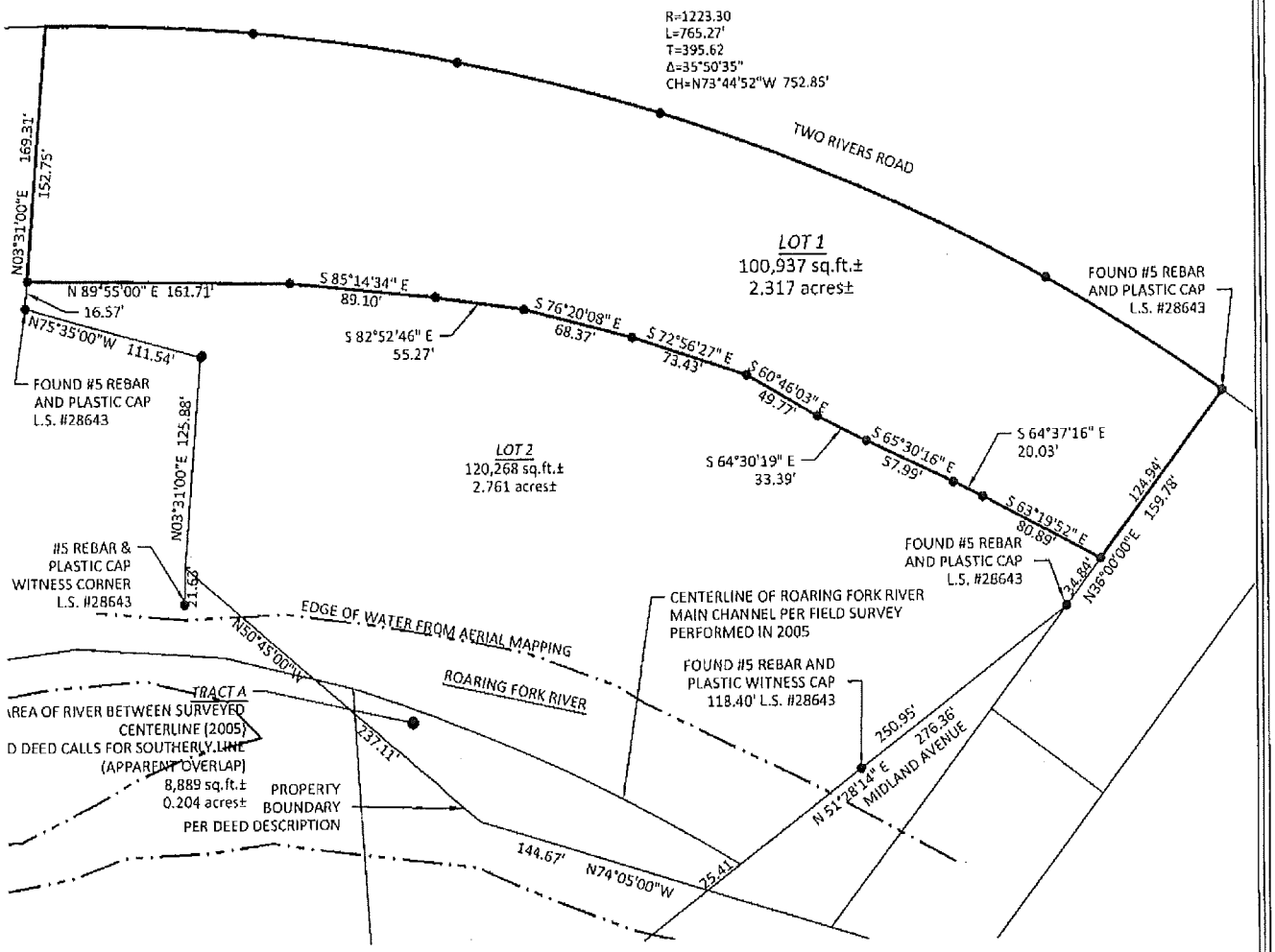
ATTEST:

_____
Town Clerk

EXHIBIT A

CDC PARCEL

A PARCEL OF LAND SITUATED IN TRACT 45
TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6th P.M.
TOWN OF BASALT, COUNTY OF EAGLE, STATE OF COLORADO
SHEET 1 OF 1



DRAWING SCALE
1"=100'

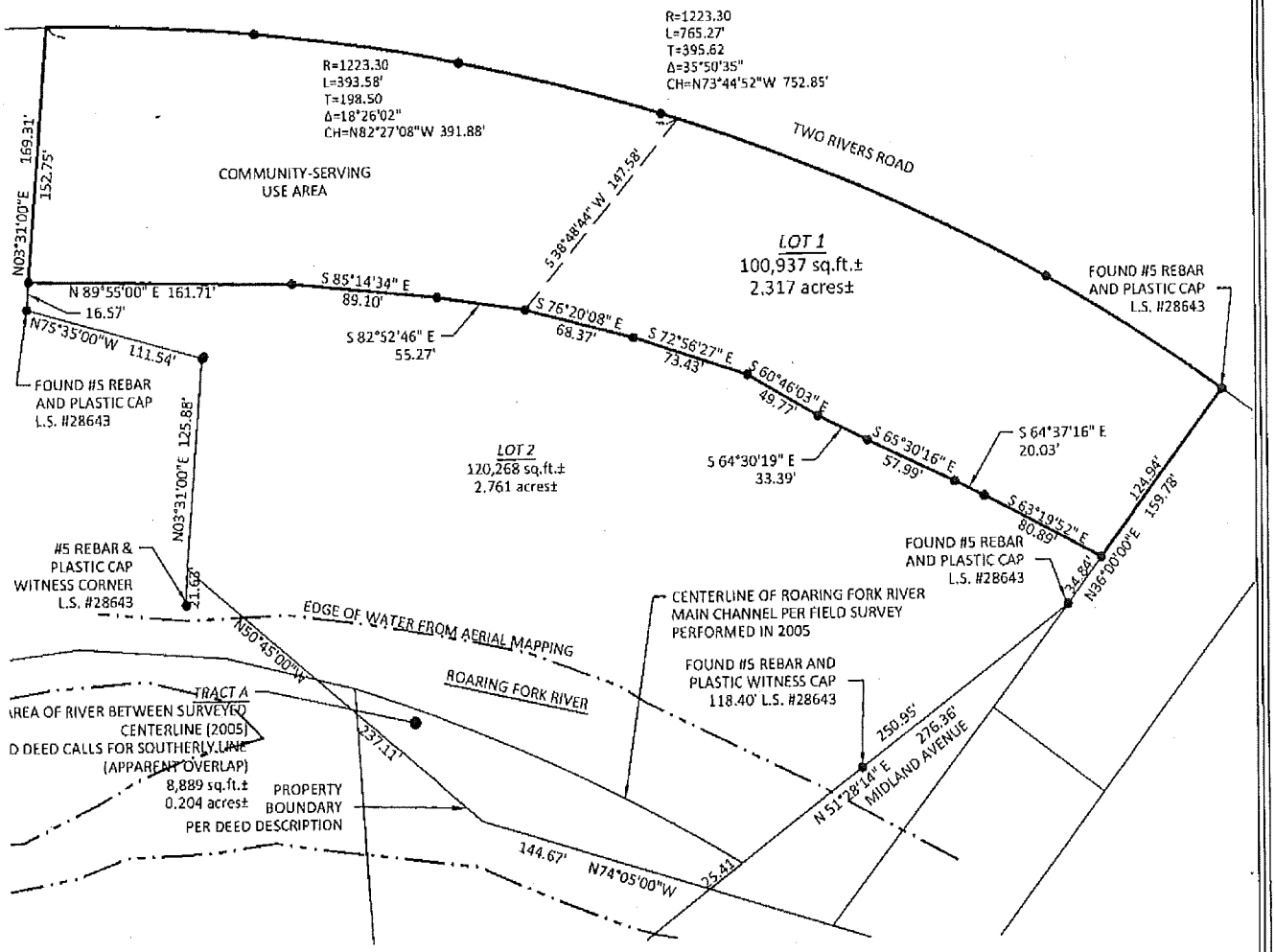
SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311

15004.01 cl 12/14/2015 M:\3500dwgs\15004\15004 COMMUNITY EXHIBITS 2015-12-08.dwg

EXHIBIT C

CDC PARCEL

A PARCEL OF LAND SITUATED IN TRACT 45
TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6th P.M.
TOWN OF BASALT, COUNTY OF EAGLE, STATE OF COLORADO
SHEET 1 OF 1



DRAWING
SCALE
1"=100'

SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311

15004.01 cl 12/14/2015 M:\3500dwgs\15004\15004 COMMUNITY EXHIBITS 2015-12-08.dwg

Tom Smith

From: Pam Schilling <pams@basalt.net>
Sent: Monday, December 21, 2015 2:03 PM
To: Tom Smith
Cc: Mike Scanlon; Judi Tippetts
Subject: FW: Petition for Adoption of an Ordinance Initiative
Attachments: Final Petition Package.pdf

FYI -
Pam

-----Original Message-----
From: Cathy Moffroid [mailto:cathyclick@me.com]
Sent: Monday, December 21, 2015 1:48 PM
To: Pam Schilling
Subject: Petition for Adoption of an Ordinance Initiative

Pam:

As a courtesy, I have attached a Petition for Adoption of an Ordinance by Initiative together with the Initiated Ordinance and its Exhibits. As you can see from the Petition, I am the designated Applicant and Point of Contact. A committee has been formed and will be circulating the Petitions for signature soon. We hope to have the Petitions with adequate signatures submitted to you for review no later than January 19, 2016. Please feel free to call me if you have any questions in the meantime.

TOWN OF BASALT, COLORADO
PETITION FOR ADOPTION OF AN ORDINANCE BY INITIATIVE

TO: The Town Council of the Town of Basalt, Colorado:

Pursuant to Article 5 of the Home Rule Charter of the Town of Basalt, Colorado, the undersigned qualified electors hereby petition the Town Council of the Town of Basalt to either adopt the attached Ordinance or submit such Ordinance to the electorate for approval or disapproval. Cathy Clik, whose address is 103 Homestead Drive, Basalt, CO 81621, and who may be contacted by telephone at 970-927-3060 or email at cathyclik@me.com is the person designated pursuant to Section 5.3 of the Home Rule Charter for purposes of coordinating procedures and being the primary point of contact for the Town Clerk.

Date:	Print Name:	Signature:	Address:

December 23, 2015

Cathy Click
103 Homestead Drive
Basalt, CO 81621

TOWN OF 1901 BASALT

Re: Petition for Adoption of Ordinance authorizing debt and taxes, requiring a purchase contract, and establishing land uses, all as related to the property of the Roaring Fork Community Development Corporation

Dear Cathy:

This letter is submitted to you in accordance with Article V of the Town of Basalt Home Rule Charter and C.R.S. 31-11-106, regarding the above referenced petition.

After consultation with the Town Attorney I have determined to reject the petition for the following reasons:

1. The petition does not include the "Warning" required by C.R.S. 31-11-106(3(a).

2. The petition does not include the summary required by C.R.S. 31-11-106(3)(b). Attached hereto are summaries which I have prepared in order to meet this requirement.

3. That section of the petition requiring the approval of Exhibit B to the proposed ordinance, Contract for Sale of Vacant Land, does not propose municipal legislation pursuant to section 1(9) of article V of the Colorado Constitution. Contracts are administrative matters and, as such, are not subject to initiative or referendum.

4. The petition violates the "single subject requirement" of Colorado law, incorporated into the Basalt Home Rule Charter at Section 5.3. The section of the petition authorizing debt and taxes must be in a separate proposed ordinance from the section of the petition proposing land uses for the Roaring Fork CDC property.

Following our conversation of Monday, December 21, one concern I have is the 40 day protest period which must run after the petition is submitted (C.R.S. 31-11-110). If a protest is filed, a separate time frame begins for that hearing process.

If no protest is filed, the petition can be submitted to the Town Council for review within 30 days. At the time of presentation to Council, the ordinance could be adopted by Council, or submitted to the electors at a regular or a special election. However, if the petition has a TABOR question, it can only be submitted to the electorate at the local biennial municipal election, a state general election, or the first Tuesday in November of odd numbered years.

I am working to process this petition as best I can as required by Statute, though it is highly unlikely this petition will make the April ballot. The petition can still be corrected, and a future special election, or general election if required by TABOR, can be called as per Statute, if we are unable to process it in time for the April election.

Very truly yours,

Pamela Schilling, Town Clerk

EXHIBIT 5

Encs.
Cc: Tom Smith, Town Attorney
Mike Scanlon, Town Manager

Summaries for a Petition for Adoption of an Ordinance authorizing debt and taxes, requiring a purchase contract, and establishing land uses, all as related to the property of the Roaring Fork Community Development Corporation

1. The petition asks if the debt of the Town of Town of Basalt shall be increased up to $3,000,000, with a repayment cost of $3,733,457, and taxes be increased sufficient to pay such debt, not to exceed $376,225.00 annually, as a general obligation debt of the Town for the purpose of purchasing property located in the Town of Basalt owned by the Roaring Fork Community Development Corporation.

2. The petition asks if the Town should be required to enter into a Contract for Sale of Vacant Land, Exhibit B to the proposed ordinance, for the purchase of the land located in the Town of Basalt owned by the Roaring Fork Community Development Corporation, for the amount of $3,000,000 and on such other terms and conditions as described therein.

3. The proposal asks if 1.817 acres of the property located in the Town of Basalt owned by the Roaring Fork Community Development Corporation shall be improved, managed, and utilized only for public park purposes, and if up to .50 acres of that property shall be improved, managed and utilized for park, commercial, civic, housing and other public uses as described in the proposed ordinance.

Attachment to letter to Cathy Click dated 12/23/15
pks

January 4, 2016

Cathy Click
103 Homestead Drive
Basalt, CO 81621

Re: Petitions (2) for Adoption of Ordinances by Initiative

Dear Cathy:

This letter is submitted to you in accordance with Article V of the Town of Basalt Home Rule Charter and C.R.S. 31-11-106, regarding the two initiative petitions submitted on December 30, 2015.

After consultation with the Town Attorney, I have determined that you have addressed some, but not all of the deficiencies identified in my December 23, 2015, letter to you.

In particular, both petitions incorporate and require the approval of the same Exhibit B, a specific contract for Sale of Vacant Land. This violates section 1(9) of article V of the Colorado Constitution. Contracts are administrative matters, and as such are not subject to initiative or referendum.

Accordingly, I have determined to reject both petitions.

Very truly yours,

Pamela Schilling, Town Clerk

Cc: David J. Myler, Esq.
Tom Smith, Town Attorney
Mike Scanlon, Town Manager

EXHIBIT
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101 Midland Ave. • Basalt, CO 81621 • 970-927-4701 • Fax 970-927-4703 • www.basalt.net

(B) No ordinance granting any special privilege, levying taxes, or incurring general obligation indebtedness shall be passed as an emergency ordinance.

Section 4.8 Severability of Ordinances

Unless an ordinance shall expressly provide to the contrary, if any portion of an ordinance or the application thereof to any person or circumstances shall be found to be invalid by a court of competent jurisdiction, such invalidity shall not affect the remaining portions or applications of the ordinance that can be given effect without the invalid portion or application; provided such remaining portions or applications are not determined by the court to be inoperable, and to this end ordinances are declared to be severable.

ARTICLE V
INITIATIVE AND REFERENDUM

Section 5.1 Initiative and Referendum

Except as provided herein, an ordinance may be submitted by petition, or a referendum on an enacted ordinance may be held by petition, or the Council may, on its own motion, submit an ordinance or any other matter to the electorate as hereafter provided.

Section 5.2 Ordinances Excepted from Referendum

Ordinances necessary for the immediate preservation of the public peace, health or safety and ordinances pertaining to the appropriation of funds shall be excepted from the referendum.

Section 5.3 Petition Requirements

An initiative or referendum petition shall designate a resident of the Town as the Applicant for purposes of coordinating procedures and being the primary point of contact with the Town Clerk. The petition shall be signed by qualified electors of the Town equal in number to ten percent (10%) of the number of persons who were registered electors of the Town as of the date of the last general election. All signatures on said petition shall be obtained within ninety (90) days before the date of filing the petition with the Town Clerk. Any such petition shall be addressed to the Council and may be the aggregate of two or more petition papers identical as to content and simultaneously filed by the Applicant. An initiative petition shall set forth in full the ordinance it proposes to initiate, and no petition shall propose to initiate more than one ordinance. A referendum petition shall identify the ordinance or part thereof or code section it proposes to have approved or repealed. Each signer of a petition shall sign his or her name, the date, and his or her place of residence by street and number, or by other customary designation. To each petition paper, there shall be attached a sworn affidavit by the circulator thereof stating the number of signers thereof, that each signature thereon is the genuine signature of the person whose name it purports to be, and that it was made in the presence of the affiant. Such petition shall be filed with the Town Clerk who shall, within five (5) business days, canvass the signatures thereon. If the petition does not contain a sufficient number of signatures of qualified electors of the Town, or if any other error or insufficiency is found in the petition, the Town Clerk shall post a notice in the Town Clerk's office to this effect, and it shall be the Applicant's duty to check with the Town Clerk for such a notice. Three (3) business days from the date of posting of such notice shall be allowed for filing of supplemental or corrected petition papers, and the Town

EXHIBIT
7

Clerk shall canvass the signatures of the corrected or supplemental petition within two (2) business days after receipt. When a petition with sufficient signatures is filed within the time allowed by this Section, the Town Clerk shall present the petition to the Council at the next regular meeting.

Section 5.4 Time for Submission of Referendum Petition — Suspension of Ordinance

Any person seeking a referendum on an enacted ordinance shall submit to the Town Clerk a written notice of intent to circulate a referendum petition within thirteen (13) days after publication of the Second Notice of the ordinance, and the Town Clerk shall promptly transmit same to the Council. The petitioner shall then file the referendum petition with the Town Clerk within fourteen (14) days of submission of the notice of intent to circulate. Upon filing of the notice of intent, the ordinance shall be suspended and shall not go into effect until one of the following has occurred:

(A) Fourteen (14) days have passed since the filing of the notice of intent, and a referendum petition meeting all the requirements of this Charter has not been filed with the Town Clerk; or

(B) The subject ordinance has been approved by the electorate in accordance with the provisions of this Charter.

Section 5.5 Procedure on Petitions

Upon presentation to the Council of an initiative or referendum petition by the Town Clerk, the Council shall, within thirty (30) days, either:

(A) Adopt the ordinance as submitted by an initiative petition, unless the ordinance requires voter approval in advance pursuant to Article X, Section 20(4)(a) of the Constitution; or

(B) Repeal the ordinance, or part thereof, referred by a referendum petition; or

(C) Determine to submit the proposal provided for in the petition to the electors.

No initiated ordinance calling an election on a measure requiring voter approval in advance pursuant to Article X, Section 20(4)(a) of the Constitution shall require both an election as provided in subsection (C) above and also the election required by Article X, Section 20(4)(a) of the Constitution.

If the Council adopts the ordinance, it shall follow the procedures and publication requirements for all other ordinances as provided in Article IV. If the Council submits a proposed ordinance to the electorate, a First Notice of the proposed ordinance shall be published in accordance with Section 4.3 at least thirty days prior to the election. In addition to the matters required by Section 4.3, the First Notice shall state the date, time and place of the election. If approved, the ordinance shall take effect on the first business day following the election.

Section 5.6 Submission of Initiative and Referendum to Electors

Should the Council decide to submit the proposal to the electors, or should they, on their own motion, submit an ordinance or other matter to the electors, the ordinance shall be submitted at the next general election held in the Town for any other purpose, or if not prohibited by Article X, Section 20(3)(a) of the Constitution, in the discretion of the Council at a special election called for that specific purpose. Any petition submitted to the Council less than sixty (60) days prior to the next

scheduled election may, at the discretion of the Council, be held over and submitted at the first election thereafter. In the case of an initiative petition, if no election at which the proposal may be considered is to be held in the Town for any other purpose within one hundred fifty (150) days from the time the petition is submitted to the Council, and it does not enact the ordinance, then the Council shall, if not prohibited by Article X, Section 20(3)(a) of the Constitution, call a special election within ninety (90) days from such date of presentment for the submission of the proposal. The result of all elections held under the provisions of this Section shall be determined by a majority vote of the electors voting thereon.

Section 5.7 Miscellaneous

An ordinance adopted by the electorate may not be amended or repealed for a period of two (2) years after the date of the election at which it was adopted, and an ordinance repealed by the electorate may not be re-enacted for a period of two (2) years after the date of the election at which it was repealed; provided, however, that any ordinance may be adopted, amended, or repealed at any time by appropriate referendum or initiative procedure in accordance with the foregoing provisions of this Charter, or if submitted to the electorate by the Council on its own motion. If two or more ordinances adopted at the same election shall have conflicting provisions, the provisions in the ordinance receiving the highest number of affirmative votes shall govern.

ARTICLE VI
TOWN ADMINISTRATION

Section 6.1 Town Manager

The Council shall appoint a Town Manager, who shall execute the laws and ordinances of the Town, shall have the duty and authority to hire, suspend, transfer and remove any Town Employee except as otherwise provided in this Charter or by ordinance, and other powers and duties as provided by ordinance. If the office of the Town Manager becomes vacant, the Council shall appoint either a temporary or permanent replacement as soon as reasonably possible. The Council shall appoint the Town Manager on the basis of fitness, competency, training and experience. The Town Manager shall serve at the pleasure of the Council and may be removed by the Council at any time with or without cause upon the affirmative vote of a supermajority of the Council.

Section 6.2 Town Clerk

The Town Manager shall appoint a Town Clerk with the approval of the Council. The Town Clerk shall be the custodian of the Town Seal and shall keep records of Council proceedings and record in full all ordinances, motions, and resolutions. The Town Clerk shall have the power to administer oaths and take acknowledgments under the seal of the Town and shall perform such other duties as required by this Charter or the Council.

Section 6.3 Finance Director

The Town Manager shall appoint a Finance Director with the approval of the Town Council. The Finance Director shall have charge of the financial records of the Town and shall collect, receive and disburse all monies belonging to the Town and shall have all other duties required to administer properly the financial affairs of the Town.

Pam Schilling

From: Cathy Moffroid <cathyclick@me.com>
Sent: Friday, January 22, 2016 1:16 PM
To: Pam Schilling
Subject: Fwd: Pan and Fork River Park proposal
Attachments: Mayor and Town Council from Pan and Fork ltr 012116.docx; ATT00001.htm; Ordinance - Town of Basalt - Land Contract - 012116.doc; ATT00002.htm; Ordinance - Town of Basalt - Tax and Debt - 012116.doc; ATT00003.htm

Begin forwarded message:

From: Cathy Moffroid <cathyclick@me.com>
Date: January 22, 2016 at 1:13:28 PM MST
To: Jacque Whitsitt <jacquewhitsitt@comcast.net>
Cc: robleavitt@basalt.net, herschelross@basalt.net, Rick Stevens <rstevens@aspenearthmoving.com>, bernie.grauer@basalt.net, mark.kittle@basalt.net, gary.tennenbaum@basalt.net
Subject: Pan and Fork River Park proposal

TOWN OF BASALT, COLORADO
ORDINANCE NO. _____, SERIES OF 2016

AN ORDINANCE OF THE TOWN OF BASALT, COLORADO CALLING AN ELECTION ON APRIL 5, 2016, TO APPROVE THIS ORDINANCE, AND TO AUTHORIZE AND DIRECT THE TOWN COUNCIL TO ENTER INTO A CONTRACT FOR THE PURCHASE OF LAND FOR PUBLIC PARK AND COMMUNITY SERVING USES, AND ESTABLISHING PRINCIPLES FOR THE FUTURE USE AND OPERATION OF SAID LAND; AND SETTING THE BALLOT TITLE AND BALLOT QUESTION FOR THE FOREGOING.

RECITALS

WHEREAS, the Town of Basalt, Colorado (the "Town") is a home rule municipality duly organized and existing under the Constitution and laws of the State of Colorado and its Home Rule Charter (the "Charter"); and

WHEREAS, C.R.S. 31-11-111(2) authorizes the Town Council to submit any proposed Ordinance to a vote of the registered electors of the municipality and authorizes the Town Council to fix a ballot question for the referred measure; and

WHEREAS, this Ordinance authorizes and directs the Council, in order to accomplish long term community objectives and to assure the long term use and operation of the CDC Parcel (defined below) for park and community serving uses consistent with Town policies, to enter into a Contract for the purpose of acquiring a 2.317-acre parcel of real property located along Two Rivers Road in the Town which is described in **Exhibit A** (the "CDC Parcel") under the terms of a Contract for Sale of Vacant Land between Roaring Fork Community Development Corporation ("RFCDC") and the Town, a copy of which is attached hereto as **Exhibit B**, (the "Purchase Contract"): and

WHEREAS, the acquisition and use of the CDC Parcel for park and community serving uses, as provided herein, is consistent with the 2007 Town of Basalt Master Plan, including the Our Town Subarea Plan, as amended, and will promote and satisfy key objectives and recommendations of the Our Town Planning Area; and

WHEREAS, the long term public policies and objectives relating to the CDC Parcel can only be achieved if the Town acquires such Parcel; and

WHEREAS, the actions authorized and directed by this Ordinance are legislative in character and not administrative since they direct the Town Council to establish new public policies

and standards relating to permanent permitted and prohibited uses and activities on the CDC Parcel that can only be applied if the Town acquires it, and that make the anticipated river park on the CDC Parcel eligible for public open space funding by Pitkin County, Eagle County and other third parties; and

WHEREAS, the total $3,000,000 purchase price for the CDC Parcel, as stated in the Purchase Contract, is supported by competent and reliable valuation analyses and represents the fair market value of the CDC Parcel.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO AS FOLLOWS:

1. **Approval of Purchase Contract**. The Purchase Contract attached hereto as Exhibit B is approved and the Mayor and Council are authorized and directed to sign such Purchase Contract on behalf of the Town and deliver same to RFCDC. The Mayor and Town Manager are further authorized and directed to take all actions reasonably necessary in order to complete the purchase of the CDC Parcel as provided in and subject to the contingencies and other provisions of the Purchase Contract, including payment of the purchase price.

2. **Uses and Operating Principles**.

a. General Principles. The CDC Parcel shall be utilized in a manner that is consistent with the 2007 Town of Basalt Master Plan, including the Our Town Subarea Plan, as amended, and that will maximize benefits to the Basalt community at large as well as the businesses operating within the historic downtown commercial areas.

b. Park Area. At least 1.817 acres of the CDC Parcel (the "Park Area") shall be improved, managed and utilized only for public park purposes, including passive use by residents and visitors and such active community uses, including events and performances, as the Council may determine from time to time, provided that the Park Area shall always be used in a manner that maintains its eligibility for public open space funding.

c. Community Serving Uses. Up to, but not exceeding, 0.50 acres of the CDC Parcel, which may consist of one or more separate parcels provided that the total does not exceed 0.50 acres, located within the "Community Serving Use Area" as described on **Exhibit C** may either be improved, managed and utilized for the same public park purposes as would be allowed on the Park Area, or may be developed and utilized for such community serving commercial, civic and

public uses, including housing for public service employees (police, firefighters, teachers and the like), as the Town Council may determine pursuant to a public planning and land use review process. The nature and extent of that process shall be determined by the Council, and shall be sufficient to afford all interested parties with a reasonable opportunity to participate in public hearings and offer comments on an appropriate mix of uses, appropriate limitations on floor area and height, and related issues. The mix and character of such uses shall be consistent with the 2007 Town of Basalt Master Plan, including the Our Town Subarea Plan, as amended.

3. **Town Council Authority**. Except for the provisions of Section 2 (Uses and Operating Principals), nothing herein shall limit or restrict the authority and discretion of the Council to subdivide, rezone, sell, lease or convey all or any portion of the Community Serving Use Area, pursuant to the applicable land use regulations of the Town, in order to achieve the objectives set forth in this Ordinance. The Council shall not manage, operate or convey the Park Area in a manner which would be inconsistent with the terms and conditions of public open space funding.

4. **Funding**.

a. Public Sources. The Council shall use its best efforts to obtain funds for acquisition of the CDC Parcel from the Pitkin County Open Space and Trails Program, the Eagle County Open Space Program, Great Outdoors Colorado and any other similar sources.

b. Town Funds. The Council may, in its sole discretion, use Town General Funds for any portion of the purchase price.

5. **Ballot Question.** The Council hereby authorizes and directs the officers of the Town to certify the following question in substantially the form hereinafter set forth, in accordance with TABOR and other applicable election laws. Such question shall be submitted to the eligible electors of the Town at the regular municipal election on April 5, 2016 (the "Election"):

SHALL TOWN OF BASALT, COLORADO ENTER INTO A CONTRACT FOR THE PURPOSE OF ACQUIRING A 2.317-ACRE PARCEL OF LAND, FOR PARK AND COMMUNITY SERVING PURPOSES, PURSUANT TO A CONTRACT FOR SALE OF VACANT LAND BETWEEN ROARING FORK COMMUNITY DEVELOPMENT CORPORATION AND THE TOWN; AND SHALL THE ORDINANCE AUTHORIZING AND DIRECTING THE ACQUISITION OF THE LAND BE APPROVED.

If a majority of the votes cast on foregoing question shall be in favor of such question, the Town acting through the Council is authorized and directed to proceed with the necessary action to complete the acquisition of the CDC Parcel pursuant to the Purchase Contract.

6. **Miscellaneous**.

a. Pursuant to Section 1-11-203.5, C.R.S., any election contest arising out of a ballot issue or ballot question election concerning the order of the ballot or the form or content of the ballot title shall be commenced by petition filed with the proper court within five days after the title of the ballot issue or ballot question is set.

b. The Town Clerk, as well as the appropriate officers and employees of the Town are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance. The Mayor is hereby authorized to execute this Ordinance on behalf of the Council, and the Town Clerk is hereby authorized to attest to such execution by the Mayor.

c. All ordinances, orders, bylaws and resolutions, or parts thereof, in conflict with this Ordinance, are hereby repealed.

d. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Adopted this ____ day of _____, 2016 by a majority vote of the electorate at the Election held on the 5th day of April, 2016.

TOWN OF BASALT

By: _____
Mayor

ATTEST:

_____
Town Clerk

TOWN OF BASALT, COLORADO
ORDINANCE NO. _____, SERIES OF 2016

AN ORDINANCE OF THE TOWN OF BASALT, COLORADO CALLING AN ELECTION ON APRIL 5, 2016, TO APPROVE THIS ORDINANCE, TO AUTHORIZE AND DIRECT THE INCURRENCE OF GENERAL OBLIGATION INDEBTEDNESS BY THE TOWN, AND TO AUTHORIZE AND DIRECT THE LEVY OF AD VALOREM PROPERTY TAXES TO PAY FOR SUCH GENERAL OBLIGATION INDEBTEDNESS; AND SETTING THE BALLOT TITLE AND BALLOT QUESTION FOR THE FOREGOING.

RECITALS

WHEREAS, the Town of Basalt, Colorado (the "Town") is a home rule municipality duly organized and existing under the Constitution and laws of the State of Colorado and its Home Rule Charter (the "Charter"); and

WHEREAS, C.R.S. 31-11-111(2) authorizes the Town Council to submit any proposed Ordinance to a vote of the registered electors of the municipality and authorizes the Town Council to fix a ballot question for the referred measure; and

WHEREAS, this Ordinance authorizes and directs the Council to incur general obligation indebtedness of the Town and levy ad valorem property taxes to pay for such indebtedness for the purpose of acquiring a 2.317-acre parcel of real property located along Two Rivers Road in the Town which is described in **Exhibit A** to this Ordinance (the "CDC Parcel") under the terms of a Contract for Sale of Vacant Land between Roaring Fork Community Development Corporation ("RFCDC") and the Town (the "Purchase Contract") as provided below: and

WHEREAS, TABOR requires voter approval for any new tax, the creation of any debt and for spending certain moneys above limits established by TABOR; and

WHEREAS, TABOR requires the submission of ballot issues (as defined in TABOR) to the Town's electors on limited election days before action can be taken on such ballot issues; and

WHEREAS, April 5, 2016, is one of the election dates at which ballot issues may be submitted to the eligible electors of the Town pursuant to TABOR; and

WHEREAS, Section 2.1 of the Charter states that elections of the Town shall be governed by the Colorado Municipal Election Code under the Colorado Revised Statutes ("CRS"),

except as otherwise provided in the Charter or as the Council may otherwise provide by ordinance; and

WHEREAS, upon satisfaction of the conditions described above, it shall be necessary to submit to the eligible electors of the Town, at the April 5, 2016 election (the "Election"), the proposition of directing the acquisition of the CDC Parcel, creating general obligation indebtedness in the aggregate principal amount of not to exceed $3,000,000 to finance the acquisition of the CDC Parcel and increasing taxes to pay such debt; and

WHEREAS, the acquisition of the CDC Parcel, primarily for park purposes, but also reserving a portion for community serving uses, will result in substantial community and economic benefits for the residents and the business owners of the Town; and

WHEREAS, the acquisition and use of the CDC Parcel for park and community serving uses, as provided herein, is consistent with the 2007 Town of Basalt Master Plan, including the Our Town Subarea Plan, as amended, and will promote and satisfy key objectives and recommendations of the Our Town Planning Area; and

WHEREAS, the total $3,000,000 purchase price for the CDC Parcel, as stated in the Purchase Contract, is supported by competent and reliable valuation analyses and represents the fair market value of the CDC Parcel.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO AS FOLLOWS:

1. **Authorization for Debt and Taxation**.

a. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Town and the officers thereof, directed towards the Election and the objects and purposes herein stated and the question set forth herein are, ratified, approved and confirmed.

b. Pursuant to TABOR and applicable Colorado election law, the Town hereby determines that the Election shall be held on April 5, 2016, and that there shall be submitted to the eligible electors of the Town the question set forth herein.

c. The total aggregate principal amount of the indebtedness to be incurred for the acquisition of the CDC Parcel shall not exceed the sum of $3,000,000.

d. The Council hereby authorizes and directs the officers of the Town to certify the following question in substantially the form hereinafter set forth herein, as required under

TABOR and other applicable election laws. Such question shall be submitted to the eligible electors of the Town at the Election:

SHALL TOWN OF BASALT, COLORADO DEBT BE INCREASED UP TO $3,000,000 WITH A REPAYMENT COST OF UP TO $3,733,451, AND SHALL THE TOWN BE AUTHORIZED TO COLLECT TAXES SUFFICIENT TO PAY SUCH DEBT BUT NOT EXCEEDING $376,225.00 ANNUALLY; AND SHALL SUCH DEBT BE A GENERAL OBLIGATION OF THE TOWN PAYABLE FROM A MILL LEVY THAT MAY BE INCREASED IN ANY YEAR WITHOUT LIMITATION AS TO RATE BUT ONLY IN AN AMOUNT SUFFICIENT TO PAY THE PRINCIPAL OF AND PREMIUM, IF ANY, AND INTEREST ON SUCH DEBT OR ANY DEBT ISSUED TO REFINANCE SUCH DEBT (OR TO CREATE A RESERVE FOR SUCH PAYMENT); AND SHALL SUCH DEBT BE ISSUED FOR THE PURPOSE OF ACQUIRING A 2.317-ACRE PARCEL OF LAND PURSUANT TO A CONTRACT FOR SALE OF VACANT LAND BETWEEN ROARING FORK COMMUNITY DEVELOPMENT CORPORATION AND THE TOWN; AND SHALL SUCH DEBT BE SOLD IN ONE SERIES OR MORE, FOR A PRICE ABOVE OR BELOW THE PRINCIPAL AMOUNT OF SUCH SERIES, ON TERMS AND CONDITIONS AND WITH SUCH MATURITIES AS PERMITTED BY LAW, INCLUDING PROVISIONS FOR REDEMPTION OF THE BONDS PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF THE PREMIUM OF NOT TO EXCEED ONE PERCENT; AND SHALL THE TOWN BE AUTHORIZED TO ISSUE DEBT TO REFUND THE DEBT AUTHORIZED IN THIS QUESTION, PROVIDED THAT AFTER THE ISSUANCE OF SUCH REFUNDING DEBT THE TOTAL OUTSTANDING PRINCIPAL AMOUNT OF ALL DEBT ISSUED PURSUANT TO THIS QUESTION DOES NOT EXCEED THE MAXIMUM PRINCIPAL AMOUNT SET FORTH ABOVE, AND PROVIDED FURTHER THAT ALL DEBT ISSUED BY THE TOWN PURSUANT TO THIS QUESTION IS ISSUED ON TERMS THAT DO NOT EXCEED THE REPAYMENT COSTS AUTHORIZED IN THIS QUESTION; AND SHALL SUCH TAX REVENUES AND THE EARNINGS FROM THE INVESTMENT OF SUCH BOND PROCEEDS AND TAX REVENUES BE COLLECTED, RETAINED AND SPENT AS A VOTER APPROVED REVENUE CHANGE AND AN EXCEPTION TO THE LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW; AND SHALL THE ORDINANCE AUTHORIZING AND DIRECTING THE DEBT AND AD VALOREM TAXES BE APPROVED.

e. If a majority of the votes cast on the question to authorize general obligation indebtedness and the levy of ad valorem property taxes submitted at the Election shall be in favor of incurring general obligation indebtedness and levying ad valorem property taxes as provided in such question, the Town acting through the Council is authorized and directed to proceed with the necessary action to incur general obligation indebtedness and levy ad valorem property taxes in accordance with such question and the Purchase Contract.

Any authority to contract general obligation indebtedness or to levy ad valorem property taxes, if conferred by the results of the Election, shall be deemed and considered a

continuing authority to contract the general obligation indebtedness and levy the ad valorem taxes so authorized at any one time, or from time to time, and neither the partial exercise of the authority so conferred, nor any lapse of time, shall be considered as exhausting or limiting the full authority so conferred.

f. If a majority of the votes cast on the question authorize the issuance of bonds as described in the bond question set forth above, the Town is directed to issue such bonds no later than June 5, 2016 in an aggregate principal amount of $3,000,000 or such lesser amount required to acquire the CDC Parcel, including the reimbursement of certain costs incurred by the Town prior to the execution and delivery of such bonds, upon terms consistent with the Purchase Contract and to take all further action which is necessary or desirable in connection therewith. The officers, employees and agents of the Town shall take all action necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated hereby and shall take all action necessary or desirable to finance the acquisition of the CDC Parcel and to otherwise carry out the transactions contemplated by this Ordinance and the Purchase Contract. The Town shall not use reimbursed moneys for purposes prohibited by Treasury Regulation §1.150-2(h). This Ordinance is intended to be a declaration of "official intent" to reimburse expenditures within the meaning of Treasury Regulation §1.150-2.

2. **Miscellaneous**.

a. Pursuant to Section 1-11-203.5, C.R.S., any election contest arising out of a ballot issue or ballot question election concerning the order of the ballot or the form or content of the ballot title shall be commenced by petition filed with the proper court within five days after the title of the ballot issue or ballot question is set.

b. The Town Clerk, as well as the appropriate officers and employees of the Town are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance. The Mayor is hereby authorized to execute this Ordinance on behalf of the Council, and the Town Clerk is hereby authorized to attest to such execution by the Mayor.

c. All ordinances, orders, bylaws and resolutions, or parts thereof, in conflict with this Ordinance, are hereby repealed.

d. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Adopted this ____ day of _____, 2016 by a majority vote of the electorate at the Election held on the 5th day of April, 2016.

TOWN OF BASALT

By: _____
Mayor

ATTEST:

_____
Town Clerk

TOWN OF BASALT ACTION ITEMS	**Date:** January 26, 2016 **From:** Susan Philp AICP, Planning Director

SUBJECT:
7A. Ordinance No. 01 Series of 2016 - Ordinance Approving Contract to Buy and Sell Between Roaring Fork Conservancy and Town of Basalt
7B. Ordinance No. 02. Series of 2016 – Ordinance approving Lease Agreement

RECOMMENDATION:
Approve both ordinances at 2nd Reading

DETAIL:
In its discussions the Council has acknowledged that the Roaring Fork Conservancy River Center proposed adjacent to RMI and the recent River and Old Pond Park improvements are key elements of implementing the Town goals defined in the Our Town Planning Process.
The Roaring Fork Conservancy and the Town entered into a pre-development agreement on August 29, 2014. The purpose of the predevelopment agreement was to establish the framework of how the Town can help the Conservancy through the land use and development process and kick off the construction of the River Center.

The Council subsequently approved Resolution No. 36, Series of 2015. The ultimate strategy as outlined in that resolution was for the Council to purchase back the Roaring Fork Conservancy parcel for $400,000 and then lease the property needed for the River Center back to the Conservancy. In addition the Town would contribute $100,000 toward infrastructure improvements.

The first ordinance (Ordinance No. 01, Series of 2016) authorizes the purchase and sale contract between the Conservancy and the Town of Basalt where the Town would acquire the original .14± acres that the Roaring Fork Conservancy purchased.

The second ordinance (Ordinance No. 02, Series of 2016) authorizes the Town to lease back a portion of the property to the Roaring Fork Conservancy which is to be used for the River Center.

The Town would be responsible for developing the park and trail improvements around the pond. The parties would continue to work together to refine the responsibilities for the wetland being created which is viewed as an educational component so that all ages could experience its value.

Second Reading
Minor changes to Ordinance No. 02 (Lease Ordinance) have been made based on input from the Roaring Fork Conservancy. See margins of the ordinance.

Recommendation From Other Boards: No other boards are required to review the Ordinances

Related Town Statute and or Town Actions Two Rivers Road Greenway Plan, Town's "Fix the Fork" Project, Town's action on RMI approvals, Pre-development Agreement, Resolution No. 36, Series of 2015

Attachments:
Draft Ordinance No. 01, Series of 2016 – Authorizing Purchase and Sale Contract
Draft Ordinance No. 02, Series of 2016 – Authorizing Lease agreement

Town of Basalt, Colorado
Ordinance No. 01
Series of 2016

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTRACT TO BUY AND SELL REAL ESTATE BETWEEN THE ROARING FORK CONSERVANCY AND THE TOWN OF BASALT, COLORADO AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO

RECITALS:

A. There has been presented to the Town Council (the "Council") of the Town of Basalt (the "Town"), at this meeting a form of a Contract to Buy and Sell Real Estate (the "Contract"), between the Roaring Fork Conservancy and the Town.

B. The Town is interested in furthering the development of a River Center and additional park amenities adjacent to Old Pond and to this end entered into a Pre-Development agreement with the Roaring Fork Conservancy on August 29, 2014.

C. The Contract provides for the Roaring Fork Conservancy to sell and the Town to buy approximately 16,000 square feet of land in the property known as Lot 1, of the Basalt Riverfront Park Subdivision.

D. At a public meeting held on January 12, 2016, the Town Council considered approval of the Contract on first reading and scheduled a public hearing and second reading for the ordinance for January 26, 2016, for a meeting beginning no earlier than 6:00 pm at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado.

E. At a public hearing and second reading on January 26, 2016, the Town Council heard evidence and testimony as offered by the Town Staff and members of the public.

F. The Council desires to approve the form of the Contract and authorize the execution thereof.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO AS FOLLOWS:

1. The form of the Contract setting forth *inter alia* the terms, conditions and details of the proposed purchase and sale of approximately 16,000 square feet of

Please return to:
TOWN OF BASALT
101 Midland Avenue
Basalt, CO 81621

land is attached as **Exhibit A** is incorporated herein by reference and is hereby approved; and the Town shall enter into the Contract, and perform its obligations thereunder in substantially the forms presented at this meeting with only such changes as are not inconsistent herewith and as are expressly approved by the Town Attorney to effectuate the intentions of the parties or to comply with applicable law.

2. The Town Council hereby terminates the Declaration of Restrictive Covenant Concerning 22826 Two Rivers Road as recorded as Reception No. 9200207 in the Eagle County Records and the Right of First Refusal recorded as Reception No. 920208 in the Eagle County Records contingent upon the Town taking title to the Property.

3. The Town Council affirms that the Landscape and Improvements Easement Agreement recorded as Reception No. 920206 in the Eagle County Records and the Reciprocal Access Easement Agreement recorded as Reception No. 920205 were vacated by the First Amended Final Plat of Basalt Riverfront Park Subdivision recorded October 2, 2014, as Reception No. 201416919, and no further action is needed to terminate those agreements.

4. The Mayor of the Town is hereby authorized and directed to execute, and the Town Clerk or any deputy Town Clerk are authorized to authenticate and affix the seal of the Town to the Contract, and the Town Manager is further authorized to execute and authenticate such other documents, instruments or certificates as are deemed necessary or desirable in connection therewith. Such documents are to be executed in substantially the form hereinabove approved, provided that such documents may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance. The execution of any instrument by said officials shall be conclusive evidence of the approval by the Town of such instrument in accordance with the terms of such instrument and this Ordinance.

5. The Town Manager is hereby authorized to execute such closing documents as are reasonably required or necessary and convenient to effectuate the purposes and intent of the Contract approved hereby.

6. This Ordinance, after its passage and publication, shall be authenticated by the signature of the Mayor, by the signature of the Town Clerk, and by the Certificate of Publication. This Ordinance shall be effective 14 days after final publication.

7. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON January 26, 2016, by a vote of 7 to 0 on January 12, 2016.

READ ON SECOND READING AND ADOPTED, by a vote of __ to __ on January 26, 2016.

TOWN OF BASALT, COLORADO

By:_____
Jacque R. Whitsitt, Mayor

ATTEST:

_____
Pamela Schilling, Town Clerk

Date of First Publication: Thursday, January 21, 2016
Date of Second Publication: Thursday, _____
Effective Date: Thursday, _____

Exhibit A

CONTRACT TO BUY AND SELL REAL ESTATE

1. **PARTIES AND PROPERTY**. The Town of Basalt, Colorado, a home rule municipality ("Buyer"), agrees to buy, and The Roaring Fork Conservancy, a Colorado nonprofit corporation ("Seller"), agrees to sell, on the terms and conditions set forth in this Contract, the following described real estate in the County of Eagle, Colorado, to wit:

Lot 1, Basalt Riverfront Park Subdivision, according to the Plat thereof recorded January 26, 2005 as Reception No. 904436 of the Eagle County Records ("Plat");

TOGETHER WITH all easements and other appurtenances thereto, all improvements thereon and all attached fixtures thereon, except as herein excluded (collectively the "Property").

2. **PURCHASE PRICE AND TERMS**. The purchase price shall be $400,000.00, payable in U.S. dollars by Buyer at closing as follows:

a. **CASH AT CLOSING**. Purchase price and all closing costs to be paid by Buyer at closing in funds which comply with all applicable Colorado laws, which include cash, electronic transfer funds, certified check, savings and loan teller's check, and cashier's check ("Good Funds").

3. **TITLE COMMITMENT**. Within 10 days ("Title Deadline") of Mutual Execution of this Contract ("MEC"), Seller shall provide Buyer a Commitment for Title Insurance in an amount equal to the Purchase Price ("Title Commitment"). As soon as reasonably practicable after Closing, Seller will cause an Owner's Title Insurance Policy (the "Title Policy") to be issued in accordance with the Title Commitment and delivered to Buyer and Seller shall pay the basic premium thereon. Said Title Policy shall be an approved ALTA form policy and shall show title in the Buyer. Buyer shall not be relieved of Buyer's obligation to close the purchase of the Property by virtue of the existence of lien claims of mechanics and materialmen that Seller disputes in good faith and for the ultimate discharge of which Seller and the Title Company shall remain responsible and will insure over. The Title Policy to be delivered by Seller to Buyer following Closing shall include a deletion of standard preprinted exceptions Nos. 1, 2 and 3. Preprinted exception No. 4 shall be amended to except only for mechanic's liens created by Buyer. No water rights are being transferred hereunder and Preprinted Exception No. 5 will remain unchanged. Preprinted Exception No. 6 shall be amended to except for general taxes for the year of Closing and subsequent years. The Parties will sign any affidavit, indemnity or other agreement required by Title Company to insure against mechanic's liens or provide any of the additional coverage described in the preceding sentences.

4. **TITLE OBJECTIONS**. If title is unmerchantable or otherwise unacceptable to Buyer and written notice of such defects is given to Seller on or before 30 days of MEC, Seller shall have the option, in Seller's sole discretion, to: (i) cause such matters that are the subject of the notice of defects to be removed or remedied prior to Closing and, if necessary, to extend Closing from time to time as necessary to effectuate such removal or remedy or (ii) in the event of monetary claims or

liens, including mechanics liens, obtain an endorsement prior to Closing to the Title Commitment showing the matters that are the subject of the notice of defects to be insured over and Seller shall pay the full premium for such additional insurance or (iii) not remove or remedy the matters which are the subject of Buyer's notice of defects. Seller agrees to advise Buyer in writing within seven (7) days after receipt of any notice of title defects from Buyer as to which of the options set forth in the preceding sentence Seller has elected to follow. In the event Seller shall elect not to remedy or remove any of the matters which are the subject of Buyer's notice of defects, Buyer, as its sole remedy, shall have seven (7) days after receipt of Seller's notice thereof to advise Seller, in writing, as to whether Buyer will either waive the matters which are the subject of Buyer's notice of defects and close on the Property subject thereto or to terminate this Agreement and obtain a refund of all Earnest Money paid. Where Seller has elected to remedy or remove the matters which are the subject of Buyer's notice of defects but is unable to do so by Closing or any extension thereof, Buyer's sole remedy shall be to terminate this Agreement or to waive such matters and close on the purchase of the Property subject thereto. Seller shall have no obligation to remove or remedy any matters which are the subject of Buyer's notice of defects or to expend any monies should Seller elect to remove or remedy any matters which are the subject of Buyer's notice of defects. If Buyer shall fail to timely provide Seller with any notice of title defects within the time period set forth above, Buyer's acceptance and complete satisfaction with regard to the matters set forth in the Title Commitment shall conclusively be deemed given and Buyer shall have waived all further rights (except with respect to any updated Title Commitment as set forth below) to object to any matters set forth in the Title Commitment or that Seller's title to the Property may be unmerchantable. Mineral reservations or exceptions appearing in patents or other documents of record shall not be the subject of any objections to title on the part of Buyer so long as the company issuing the Title Commitment will at the expense of Buyer commit to affirmatively insure over such reservations. There are no water rights to be conveyed with the Property. To the extent any update of the Title Commitment is provided to Buyer and such updated Title Commitment shall disclose any matter of record not disclosed in the original Title Commitment, Buyer shall, within seven (7) days after receipt thereof or prior to Closing, whichever is sooner, have the right (which right, if not timely exercised, shall be deemed waived) to object thereto. Should Buyer timely make such objection, each of Seller and Buyer shall have the same rights set forth above as applied to the original Title Commitment with respect to the remedy or removal thereof. Nothing in this paragraph shall be construed to limit or restrict Buyer's rights pursuant to **paragraph 5** (Buyer's Due Diligence).

5. **BUYER'S DUE DILIGENCE**. Seller agrees to provide Buyer on or before the Title Deadline all instruments, documents, reports, engineering or technical data, maps, drawings, photographs, surveys, improvement location certificates, plats, appraisals, or other documents in existence and in Seller's knowledge, possession or under Seller's control, that are not of public record that may affect or concern the Property. Buyer shall have until 45 days after MEC (the "Due Diligence Period") to satisfy itself as to any matter concerning the Property except for issues related to title, the Plat or the Survey. Any objection to title to the Property, shall be made and resolved in accordance with **paragraph 4** above. Buyer, itself or through its designee(s), shall be entitled to, upon prior notice to Seller and if Seller elects, in the presence of a representative of Seller, enter the Property to conduct inspections of the Property at all reasonable times provided that: (i) Buyer shall indemnify and hold Seller absolutely blameless and harmless from and against any and all loss, injury, damage to person or property, claim, demand, liability or obligation of whatsoever nature resulting from, occasioned by or arising in connection with such investigations and (ii) all such investigations shall be at Buyer's sole cost and expense, shall be undertaken solely at the behest of Buyer as contract vendee, not at the behest of Seller as the owner of the Property and shall not give rise to any lien against the Property. If, within the Due Diligence Period, Buyer advises Seller, in

writing, that it no longer wishes to purchase the Property, for any reason or no reason at all, in Buyer's sole and absolute discretion, this Agreement shall terminate. If Buyer fails timely to give any such notice, then the provisions of this paragraph shall be deemed fully satisfied, and Buyer shall have no further right to terminate this Agreement on the grounds set forth in this paragraph.

6. **WATER RIGHTS**. The purchase price shall not include any water and water rights; ditches and ditch rights; structure rights, rights of way and easements for water right diversion and conveyance structures, including interests in water or ditch companies; and springs, wells and well permits which may be or may have been appurtenant to, adjudicated to, associated with or historically used on or in connection with the Property ("Water Rights").

7. **SELLER'S WARRANTIES**. Seller represents and warrants as of the date hereof and as of closing that the following facts and circumstances are true and correct. Such representations and warranties shall survive closing for a period of one year, and thereafter shall be deemed merged into the deed:

a. This Contract constitutes a legal and binding agreement of the Seller enforceable in accordance with its terms, and there exists no restriction on the right of Seller to transfer, sell, convey and assign the Property except as provided herein.

b. The execution of this Contract and the consummation of the transactions contemplated hereby do not constitute and will not result in any breach or default of the terms or conditions of any lien, license, lease, instrument, or other agreement to which the Property or the Seller is subject.

c. Seller has received no notice of and has no knowledge of any pending or threatened litigation, proceeding, or investigation by any governmental authority, special district, or any other person against or otherwise affecting the Property; and Seller does not know of any grounds for any such litigation, proceeding, or investigation.

d. Seller has not received notice of and does not know of any basis for any special assessment against the whole or any part of the Property other than as disclosed in writing to Buyer.

e. The Property has access to and from a public highway or road.

f. Seller has full power and authority to enter into this Contract and has taken all necessary action to consummate the transaction contemplated hereby.

g. To the best of Seller's knowledge and belief, the Property is not and will not be at the time of closing in violation of any federal, state or local law, ordinance or regulation or requirement, relating to environmental conditions on or under the Property.

h. Until closing, Seller shall be entitled to any reasonable use of the Property

which does not materially affect the usability of the Property to Purchaser.

8. **DATE OF CLOSING**. The date of closing shall be 50 days after MEC or by mutual agreement at an earlier date. The hour and place of closing shall be as designated by the closing agent.

9. **TRANSFER OF TITLE**. Subject to tender or payment at closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient general warranty deed to Buyer, on closing, conveying the Property free and clear of all taxes, except the general taxes for the year of closing. Title shall be conveyed free and clear of all liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not, except (i) those matters reflected by the Title Documents accepted by Buyer in accordance with **paragraph 4**, and (ii) subject to building and zoning regulations.

10. **PAYMENT OF ENCUMBRANCES**. Any encumbrance required to be paid shall be paid at or before closing from the proceeds of this transaction or from any other source.

11. **CLOSING COSTS, DOCUMENTS AND SERVICES**. Buyer and Seller shall pay, in Good Funds, their respective closing costs and all other items required to be paid at closing, except as otherwise provided herein. Buyer and Seller shall sign and complete all customary or required documents at or before closing. Fees for real estate closing services shall not exceed $500.00 and shall be paid at closing one-half by each party.

12. **TAX PRORATIONS**. Buyer is a governmental entity which does not pay real estate taxes. There shall be no proration of taxes, Seller will pay any real estate taxes owed by Seller, if any.

13. **POSSESSION**. Possession of the Property shall be delivered to Buyer at closing. If Seller, after closing, fails to deliver possession on the date herein specified, Seller shall be subject to eviction and shall be additionally liable to Buyer for payment of $100.00 per day from the date of agreed possession until possession is delivered.

14. **CONDITION OF AND DAMAGE TO PROPERTY**. Except as otherwise provided in this Contract, the Property shall be delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted. In the event the Property shall be damaged by fire or other casualty prior to time of closing, in an amount of not more than ten percent of the total purchase price, Seller shall be obligated to repair the same before the date of closing. In the event such damage is not repaired within said time or if the damages exceed such sum, this Contract may be terminated at the option of Buyer. Should Buyer elect to carry out this Contract despite such damage, Buyer shall be entitled to credit for all the insurance proceeds resulting from such damage to the Property, not exceeding, however, the total purchase price.

15. **TIME OF ESSENCE/REMEDIES**. Time is of the essence hereof. If any note or check received as earnest money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

a. **IF BUYER IS IN DEFAULT**. All payments and things of value received hereunder shall be forfeited by Buyer and retained on behalf of Seller and both parties shall thereafter be released from all obligations hereunder. It is agreed that such payments and things of value are LIQUIDATED DAMAGES and (except as provided in **subsection c**) are SELLER'S SOLE AND ONLY REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

b. **IF SELLER IS IN DEFAULT**. Buyer may elect to treat this Contract as cancelled, in which case all payments and things of value received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this Contract as being in full force and effect and Buyer shall have the right to specific performance or damages, or both.

c. **COSTS AND EXPENSES**. Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation arising out of this Contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney fees.

16. **FOREIGN WITHHOLDING**. Seller warrants it is not subject to withholding as defined under Internal Revenue Code Section 1445 (Foreign Person Transferor) and will execute an affidavit, at or prior to closing, to that effect.

17. **COUNTERPARTS**. This Contract may be executed in multiple counterparts, in writing or by legible facsimile copy, each of which shall constitute an original, but all of which, taken together, shall constitute one and the same instrument. If this Contract is executed in facsimile counterparts, the parties agree to circulate promptly hard copies for physical signature to replace, upon full execution of the hard copies by the parties, the facsimile counterparts.

18. **REAL ESTATE BROKERS**. Each party represents to the other that such party has not enlisted the services of a real estate broker in this transaction. In the event any real estate broker shall make a claim for a commission with respect to this transaction, the party whom such real estate broker claims to have represented shall hold harmless and defend the other party from all costs and expenses associated with such claim.

19. **NOTICES**. Any and all notices required or permitted to be given by the terms of this Contract shall be effective: (a) on the date of delivery, if delivered personally; or (b) the day of deposit in the U.S. Mail as certified mail, postage prepaid, addressed as follows.

As to Buyer:	Town Manager Town of Basalt, Colorado 101 Midland Avenue Basalt, Colorado 81621
With copy to:	Thomas Fenton Smith Austin, Peirce & Smith, P.C. 600 E. Hopkins Ave. Aspen, CO 81611
As to Seller:	Director Roaring Fork Conservancy 201 Basalt Center Circle Basalt, Colorado 81621
With copy to:	

Personal delivery shall be deemed to have occurred when any notice is delivered to the offices of the party for whom the delivery is intended or to such address as the parties may from time to time designate in writing with notice as provided herein and may be evidenced by an affidavit of delivery.

20. **MODIFICATION OF CONTRACT; PRIOR AGREEMENTS**. No waiver, amendment or modification of this Contract or any covenant, condition, undertaking or limitation herein contained shall be valid unless in writing and duly executed by the party charged therewith. All prior agreements, written or oral, of the parties are hereby terminated and of no further force or effect and are replaced by this Agreement.

21. **APPLICABLE LAW**. The law applicable to this Contract and its interpretation shall be that of the State of Colorado (regardless of its choice of law provisions), and any litigation arising out of or concerning this Contract shall be commenced and maintained in Eagle County, Colorado. The parties hereby submit to the personal jurisdiction of the Eagle County, Colorado, District Court in connection therewith.

22. **NON-RESIDENT WITHHOLDING REQUIREMENTS**. Seller has been advised that, pursuant to Colorado law, the title insurance company or other entity responsible for handling the closing of the purchase and sale of the Property may be required to withhold Colorado state income tax equal to the lesser of two percent of the sales price or the net proceeds derived from the sale of the Property. This law is applicable to all Colorado non-resident sellers.

23. **NO ASSIGNMENT**. Buyer shall have no right to assign all or any part of its interest in this Contract.

24. **FURTHER ASSURANCES**. The parties agree to execute, acknowledge, deliver, file and record or cause to be executed, acknowledged, delivered or filed and recorded such further instruments and documents and such certificates and to do all things and acts as the other party may reasonably require in order to carry out the intentions of this Contract and the transaction contemplated hereby.

25. **CONSTRUCTION**. No provision of this Contract shall be construed against or interpreted to the disadvantage of any party by reason of such party's having or being deemed to have requested, drafted or acquired or structured such provision. Both parties acknowledge they had the benefit of counsel in reviewing this Contract prior to their execution of this Contract, and it is the intention of the parties that the party who employed the scrivener to prepare this Contract shall not be prejudiced by virtue of such act.

26. **NON-BUSINESS DAYS**. If the closing date or any period of time set forth in this Contract falls on or expires on a holiday, a weekend or other non-business day, that period of time shall be extended to the next business day.

27. **NO WAIVER**. No waiver of any term, provision or condition of this Contract in any one or more instances shall be deemed to be or shall be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Contract.

28. **HEADINGS**. Section headings are inserted only for convenient reference and do not define, limit or prescribe the scope of this Contract or any exhibit attached hereto.

29. **ATTORNEY FEES**. Buyer and Seller shall each bear the cost of their own legal counsel except as provided in this section. In the event of any dispute arising between the parties, which dispute is associated with this Contract, the substantially prevailing party shall be awarded its attorney fees and costs.

IN WITNESS WHEREOF, the parties have executed this Contract on the dates set forth below.

BUYER:

TOWN OF BASALT, COLORADO

By: _____
Jacque R. Whitsitt, Mayor

ATTEST:

By: _____
Pamela K. Schilling, Town Clerk

Date of Buyer's signature: _____, 2016

SELLER:

ROARING FORK CONSERVANCY,
a Colorado nonprofit corporation

By: _____
Pat McMahon

Date of Seller's Signature: _____, 2016

AN ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING A LEASE AGREEMENT FOR CONSTRUCTION AND OCCUPANCY OF A RIVER CENTER AT 22826 TWO RIVERS ROAD ON PROPERTY TO BE OWNED BY THE TOWN

Ordinance No. 02
Series of 2016

RECITALS

1. The Town of Basalt has approved Ordinance No. 01, Series of 2015 approving a contract for the Town to purchase the Roaring Fork Conservancy's interests in Lot 1, Basalt Riverfront Park Subdivision.

2. The Town is interested in furthering the development of a River Center near Old Pond to be constructed by the Roaring Fork Conservancy and to this end entered into a Pre-Development agreement with the Roaring Fork Conservancy on August 29, 2014.

3. In order to help provide funding for the River Center the Town is purchasing the property owned by the Roaring Fork Conservancy and agreeing to construct certain park and trail improvements originally required by the Roaring Fork Conservancy as part of their land use approvals granted by Ordinance No. 08, Series of 2010 as amended by Ordinance No. 07, Series of 2011.

4. The Town Council desires to approve a lease agreement to give the Conservancy time to amend its current approvals, seek remaining funding and construct the River Center.

5. At a public meeting on January 12, 2016 the Basalt Town Council approved this ordinance on first reading and scheduled second reading and public hearing for January 26, 2016, at a meeting beginning no earlier than 6:00 PM at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado. Throughout the meeting, evidence and testimony was offered by the Applicants, Staff and members of the public.

6. At a public hearing on January 26, 2016, the Town Council heard evidence and testimony from the Applicants, Town Staff, and members of the public.

Please return to:
TOWN OF BASALT
101 Midland Avenue
Basalt, CO 81621

7. The Town Council finds and determines it is in the best interests of the Town to approve this Ordinance. Further, the Town Council finds and determines this Ordinance is reasonably necessary to promote the legitimate public purposes of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED by the Basalt Town Council of Basalt, Colorado, as follows:

1. The Roaring Fork Conservancy Lease Agreement, attached hereto as **Exhibit A**, is hereby approved and the Mayor of the Town of Basalt is hereby authorized to execute the Agreement on behalf of the Town Council. The Town further agrees to complete the execution of the lease and record it upon immediately following the Town's closing of the Property the Town is acquiring from the Conservancy as authorized by Ordinance No. 01, Series of 2016. The Town Attorney may make minor modifications to the Lease Agreement before execution which are consistent with the intent of this approval.

Execute Lease after closing

2. The approvals and conditions contained herein shall be binding on and inure to the benefit of the heirs, successors, and assigns of the owners of the Property.

3. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

4. This Ordinance shall be effective 14 days after final publication of the Ordinance in accordance with the Town Home Rule Charter.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR SECOND READING TO BE HELD ON January 26, 2016 by a vote of 7 to 0 on January 12, 2016.

READ ON SECOND READING AND ADOPTED, by a vote of __ to __ on January 26, 2016.

TOWN OF BASALT, COLORADO

By: _____
Jacque R. Whitsitt, Mayor

ATTEST:

By: _____
Pamela K. Schilling, Town Clerk

First Publication: Thursday, January 21, 2016
Final Publication: Thursday, _____
Effective date: Thursday_____

(EXHIBIT A TO ORDINANCE NO. 02, SERIES OF 2016)

TOWN OF BASALT

ROARING FORK CONSERVANCY LEASE AGREEMENT

This LEASE AGREEMENT is made this _____ day of _____, 2016 between the **TOWN OF BASALT**, a home-rule municipality of the State of Colorado, whose address is c/o Town Manager 101 Midland Avenue, Basalt, CO 81621 ("Landlord") and the Roaring Fork Conservancy, whose address is 201 Basalt Center Circle, Basalt, CO 81621 ("Tenant").

WITNESSETH

WHEREAS, Landlord is the owner of the real property known as Lot 1, Basalt Riverfront Park.

WHEREAS, Landlord desires to lease a portion of the Property, consisting of approximately 8568 square feet as delineated on Exhibit A attached hereto and incorporated herein (hereinafter referred to as the Premises" in accordance with the terms and conditions contained in this Lease Agreement;

WHEREAS, Tenant desires to plan, build and construct a River Center on the Premises and desires to lease from the Landlord the Premises in accordance with the terms and conditions contained in this Lease Agreement.

NOW, THEREFORE, for and in consideration of the payments to be made hereunder, and in further consideration of the terms, conditions, covenants and mutual promises contained herein, the parties hereto agree as follows:

1. Premises. The parties agree that this is a land lease only. Landlord does hereby lease Premises to the Tenant and Tenant does hereby rent from Landlord the land area, all in its current condition subject to the covenants and conditions hereinafter contained to wit:

   That portion of the land area located at 22826 Two Rivers Road, delineated and outlined on Exhibit A Attached hereto and incorporated herein, hereinafter referred to as "the Premises."

2. Term. The Lease term shall commence on _____, 2016 and shall end on _____, 2021. The term of the Lease Agreement shall automatically extend to a total 99 years upon a certificate of occupancy for the River Center to be occupied by the Tenant. ← slight change

3. Base Rent. The base rent for the first five years of the term of this Lease, commencing _____, 2016 and terminating _____, 2021 shall be Five dollars ($5.00), payable in annual installments of $1.00 commencing on _____, 2016 and continuing on an annual basis thereafter.

4. Tenant's Acceptance of Premises. Tenant accepts the Premises, together with any and all appurtenances thereto, as is, in its present existing condition. Except as may be specifically stated herein, the parties agree that no representation, statement, express or implied warranty has been made by or on behalf of the Landlord as to the condition of the Premises or its sustainability for the Tenant's use thereof. In no event shall the Landlord be liable for damages resulting from any condition or defect in the condition of the Premises.

5. Use of Premises. The Tenant may use and occupy the Premises for the purpose of building and occupying a River Center. "River Center" means the land uses approved by the Town of Basalt in accordance with the Basalt Municipal Code. No other use of the Premises is permitted without the written consent of the Landlord. Tenant shall not use or permit the use of the Premises for any unlawful purpose. Tenant shall be liable for the actions of its guests and invitees. No hazardous or dangerous activities are permitted on the Premises.

6. Use of Property Outside of Premises. The Tenant may have use of Town Property outside of the Lease Area for Construction of the River Center only and subject to an approved Construction Management Plan and Construction License to be approved by the Town Building Official.

7. Performance Deadlines. The Tenant must satisfy the following requirements. Failure to meet those requirements shall constitute a violation of this lease.

		Performance Requirement
A – Approvals Deadline	April 15, 2017	Applicant must obtain Amended land Use Approvals
B – Building Permit Deadline	April 15, 2019	Applicant must obtain a full building permit for River Center
C – Completed Construction Deadline	April 15, 2021	Applicant must obtain a final certificate of occupancy

A. Deadline A requires the Tenant to obtain all necessary approvals under Sec. 16-28 of the Basalt Municipal Code for the use of the Property as a River Center.

B. Deadline B requires the Tenant to obtain all necessary building permits from the Town of Basalt for the construction of the River Center approved in accordance with Deadline A.

C. Deadline C requires the Tenant to obtain a final Certificate of Occupancy

for the use and occupancy of the River Center built in accordance with Deadline B.

D. The Landlord may, for good cause shown as determined in the discretion of the Landlord, grant extensions of the deadlines referred to in this section.

8. Utilities. Tenant shall pay all utilities for the Premises throughout the term of this Lease, including charges for water, heat, sewer, electricity and light, cable TV, telephone, trash collection, and general maintenance and any other utilities or services desired by Tenant. Procedurally, Tenant shall have the natural gas, water, electricity, telephone, and cable TV, to the extent desired by Tenant, placed in Tenant's name. In addition, Tenant shall contract directly with all utility and service companies.

9. Real Estate Taxes. As the Property is owned by Landlord and the Tenant has provided documentation that it is a 501(C) 3 under Federal Tax Laws, it is anticipated that Tenant will not have to pay real property taxes for its use and occupancy of the Premises. However, any real property taxes that may be levied on the Premises shall be paid by Tenant.

10. Repairs and Maintenance. Tenant shall be solely responsible for the repair and maintenance of the River Center and other improvements it places or constructs on the Premises.

11. Damage to Premises. Tenant shall be solely responsible for damage to the Premises and the improvements located thereon regardless of cause and whether caused intentionally or by negligence of Tenant, its agents, employees, guests and invitees.

12. Snowplowing and Snow Removal/Yard Maintenance. The Town agrees to maintain the Premises until a Development Permit is issued by the Town for a River Center. The boundaries and responsibilities for maintenance between the Roaring Fork Conservancy and the Town of Basalt will be further refined in the River Center's land use approval process.

Update & remove requirements related to bldg.

13. Indemnification. The Tenant agrees to protect, indemnify and hold harmless Landlord, its board members, employees and agents, from and against any loss, damage or claims, including reasonable attorneys' fees and costs, arising out of: (i) the use, including the initial construction, of the License Area by the Tenant or its guests or invitees, which indemnity shall include, but not be limited to, injury or loss to persons or property; (ii) any mechanic lien claims for unpaid labor, services or materials affecting any of the License Area; and (iii) any and all costs associated with removal of improvements located in the License Area upon termination of this License Agreement as further outlined in Section 5. The Tenant shall obtain, at its

expense, and keep in full force and effect throughout the term of this License Agreement, with a reputable insurer, general public liability insurance for the License Area with a limit of not less than $350,000.00 per individual and $1,000,000 per occurrence and, during times of construction of any improvements, repairs or replacements, shall maintain (or cause its contractor to maintain) workmen's compensation and builder's risk insurance in amounts reasonably satisfactory to Landlord; and all said policies shall name Landlord as an additional insured and the Tenant shall provide Landlord with proof of such insurance. Landlord shall have the right to request the Tenant to review and increase the limits of insurance coverage hereunder based on prevailing limits then carried by like or similar risks.

14. Improvements and Alterations. No alterations, additions, or improvements shall be made and no fixtures shall be installed in or attached to the Premises, without the written consent of the Town Manager and approval in accordance with the Basalt Municipal Code.

15. Signs. The Tenant shall not place nor allow to be placed any signs of any kind whatsoever, upon, in or about the said Premises or any part thereof, except as otherwise approved by the Town in accordance with the Town of Basalt's Municipal Code.

16. Alcohol. The Premises shall not be construed as Town Property for the purpose of complying with State and Town of Basalt liquor laws.

17. Compliance with Law. The Tenant shall comply with all laws, ordinance, rules, regulations, requirements, and directives of the federal, state and municipal governments that are applicable to and affecting the said Premises.

18. Quiet Enjoyment. So long as the Tenant is not in default hereunder during the term hereof or any renewal or extension hereof, the Landlord covenants that the Tenant shall peacefully and quietly occupy and enjoy the Premises subject of the terms hereof. The Landlord warrants and agrees to defend the title to the Premises, and Landlord further warrants that it has full power and authority to execute this Lease, be bound by, and perform all its obligations hereunder.

19. Assignment/Sublease. Tenant shall not let, sublet, transfer, assign, or otherwise in any way alienate, encumber or suffer the Premises, or any part of portion thereof, to be used by others.

20. Surrender and Termination. Upon termination of this Lease for any reason, Tenant shall surrender the Premises to Landlord in as good condition as it was at the commencement of this Lease, reasonable use and wear excepted.

21. Compensation for Improvements. Upon termination of this Lease Agreement, whether based upon its expiration, lease violation, abandonment, mutual agreement

or otherwise, all of the improvements located on the Premises shall become the sole property of the Landlord. The Landlord shall at that time pay the Tenant the then-present value of the improvements as determined in accordance with an appraisal to be made by a qualified appraiser selected by agreement of the parties.

22. Re-Entry Upon Tenant Default. If there shall be a default in the performance of Tenant's obligations under this Lease or if there shall be a delinquency by Tenant in the performance of any covenant, agreement, condition, rule or regulation herein contained or hereafter established for more than fourteen (14) days after written notice of such default from Landlord to Tenant, and opportunity to cure during the 14 day period, Landlord or Landlord's agent, at any time thereafter may give written notice to Tenant specifying such event of default and stating that this Lease shall terminate on the date specified in such notice, which shall be at least ten (10) days after the giving of such notice, and upon the date specified in such notice, this Lease and all rights of Tenant hereunder shall terminate.

Upon termination of this Lease pursuant to the preceding subparagraph, Tenant shall peacefully surrender the Premises to Landlord, and Landlord may, upon or at any time after such termination, without further notice, re-enter the Premises and repossess it by force, summary proceedings, ejectment, or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises. Tenant shall be responsible for any and all costs and attorney's fees incurred by Landlord in enforcing the provisions contained in this Section. At any time after such termination, Landlord may relet the Premises or any part thereof, in the name of the Landlord or otherwise for such term (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease) and on such conditions as Landlord, at its discretion, may determine, and may collect and receive the rents therefor.

23. Surrender of Lease Area Upon Termination. At the termination of this Lease, Tenant shall surrender the Premises to Landlord in good condition and repair, excepting for reasonable wear and tear and acts of God. Tenant shall have the right at the end of the term hereof to, and upon demand by Landlord Tenant shall, remove any equipment, furniture, trade fixtures not affixed to the realty, and other personal property placed in the Premises by Tenant and Tenant shall promptly repair any damage to the Premises caused by such removal and Landlord may require removal of attached fixtures at its sole discretion.

24. Attorneys' Fees and Waiver of Right to Jury. In the event of any litigation or other action or proceeding between the parties hereto arising out of the performance or non-performance of this Lease, or enforcement of any rights or remedies hereunder, including any indemnities herein contained, the prevailing party shall be entitled in such litigation, action or proceeding to also recover as part of any judgment, award or other relief, its reasonable attorney's fees and costs incurred. The Landlord and Tenant expressly waive any right which either may have to trial by jury of any

dispute arising under this Lease relating to the issues of termination of this Lease and rights to possession of the Premises.

25. Notices. All notices required under the terms of this Lease shall be given in person or by mailing such notices by certified or registered mail, return receipt requested, to the address of the party as shown at the beginning of this Lease, or to such other address as may be designated in writing, which notice of change of address shall be given in the same manner. If not sooner received, any notice given by mail shall conclusively be deemed received three (3) days after the date of certification or registration. Unless and until otherwise designated, notice shall be given to the Landlord and Tenant as follows:

Landlord:
Town Manager
Town of Basalt
101 Midland Avenue
Basalt, CO 81621

Tenant:
President
River Center Lease
Basalt, CO 81621

26. Enforceability/Attorney's Fees. If either party fails to perform any of its obligations under this Lease Agreement, or if a dispute arises concerning the meaning or interpretation of any provision of this Lease Agreement, then the defaulting party or the party not prevailing in the dispute, as the case may be, must pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under the Lease, including, without limitation, court costs and reasonable attorneys' fees as per §13-40-123, C.R.S.

27. Situs. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Any action commenced to enforce the terms of this agreement shall be brought in the Eagle County Courts and the parties hereto agree that venue for any such action shall be proper in the Eagle County Courts.

28. Enforcement. Time is of the essence herein. If either party hereto must bring suit to enforce any of the provisions of this Agreement, the prevailing party in such action shall be entitled to attorney's fees from the non-prevailing party.

29. Waiver. No assent by Landlord, expressed or implied, with respect to any breach or default of the terms, conditions or covenants contained in this lease agreement shall in any way be construed as a waiver of any succeeding or other breach or default.

30. Entire Lease. This Lease contains the entire contract between the parties and there are no other agreements, understandings, representations, or warranties except as expressly set forth herein. No additions, changes or modifications, renewals or extensions hereof shall be binding unless reduced to writing and signed by the Landlord and Tenant.

31. Binding Effect. All the terms, covenants, and conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties hereto, and their heirs, executors, administrators, personal or legal representatives, successors and assigns respectively.

32. Social Capital and Community Benefits. The Landlord entered into this Lease Agreement with the Tenant as a result of the Social Capital and Community Benefits to be provided to the Basalt Community. In order to further mutual goals, the Tenant agrees to meet with the Landlord at least once a year at the Landlord's request to review how the Tenant is furthering the goals of the Town of Basalt to increase vitality in the downtown area and make the objectives of the River Center available to all citizens and tourists in the Basalt area.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year above first written.

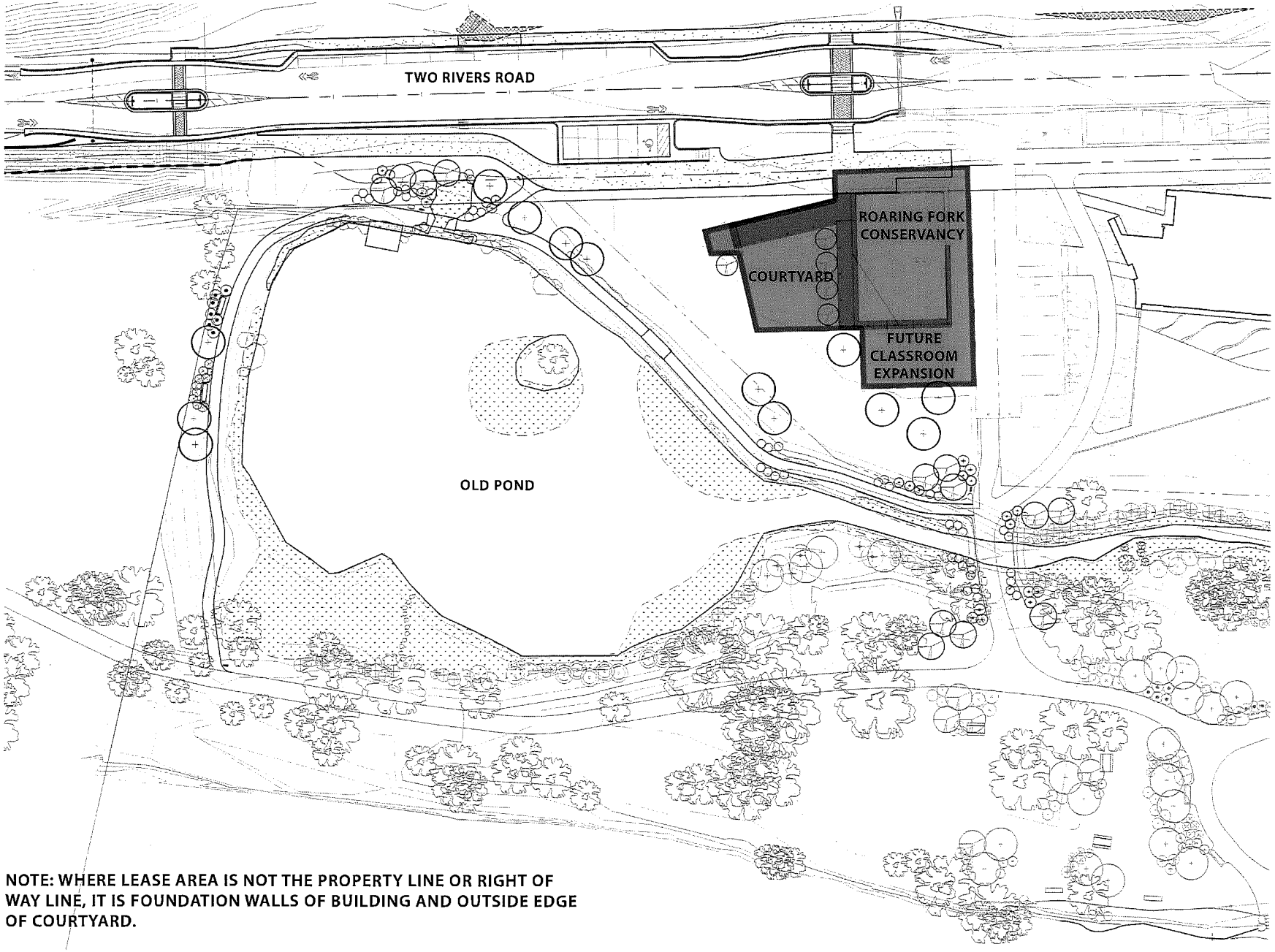
LANDLORD:
TOWN OF BASALT, a Colorado home rule municipality

By: _____
Jacque R. Whitsitt, Mayor

TENANT:
ROARING FORK CONSERVANCY, a Colorado nonprofit corporation

By: _____
Pat McMahon

EXHIBIT A - LEASE AREA



NOTE: WHERE LEASE AREA IS NOT THE PROPERTY LINE OR RIGHT OF WAY LINE, IT IS FOUNDATION WALLS OF BUILDING AND OUTSIDE EDGE OF COURTYARD.

TOWN OF BASALT ACTION ITEM	**Date:** January 26, 2016 **From:** Susan Philp AICP, Planning Director Nicole Levesque from BPAC

SUBJECT:
2nd reading Ordinance No. 03, Series of 2016 Amending Chapter 4, Revenue and Finance, of the Basalt Municipal Code to Add a New Article VIII Establishing a 1% for the Arts Program

RECOMMENDATION:
Approve Ordinance 03, 2016 establishing 1% for the Arts Program on 2nd reading

DETAIL:

Many communities have endorsed the 1% public arts program to support arts initiatives, including the City and County of Denver, Loveland, Carbondale, and other places in the country including the cities of New York, Seattle, Baltimore, Nashville and several states for state projects. Simplistically, under this program 1% of public capital improvement project costs are set aside to be used for public art.

Ordinance No. 05, Series of 2015 established the Basalt Public Arts Commission (BPAC). In Section 2 of that ordinance, the Council asked BPAC to review and make recommendations on financing mechanisms for the development of visual and performing arts.

The BPAC unanimously recommended on October 19, 2015 that the Town Council adopt an ordinance establishing the 1% Public Arts Program.

The ordinance amends Chapter 4 of the Town Code to: allocate one percent (1%) of eligible construction costs of Town capital improvement projects paid wholly or in part by the Town of Basalt to construct or remodel any public or Town building, structure, park or any portion thereof to be allocated for public art. No less than eighty percent (80%) of this one percent (1%) will be used for public art. No more than twenty percent (20%) will be deposited in a public arts trust fund used for maintenance and administration of public art.

Section 4-134 of the new code language describes how the funds will be allocated by the Town Council after advice from BPAC. It describes that the One Percent for Art Program focuses on the outside and the inside of new and remodeled Town owned public spaces. The art may serve a function, express a theme, or commemorate an important person. It may underscore or provide a counterpoint to the architecture and surrounding site. It may serve as a landmark that adds definition to the Town of Basalt.

January 26, 2016 Council Meeting: The Council unanimously voted to recommend approval of the ordinance at 1st reading on January 12th. Staff made one change to the ordinance approved at 1st reading to state that the Council may reduce or eliminate the 1% contribution if in its judgement the capital project would not be feasible with the obligation.

Recommendations by Other Boards: BPAC considered the proposal at several meetings and unanimously endorsed it on October 19, 2015.

Related Town Statute and or Town Actions: 2016 Basalt Town Budget (anticipates that these funds would be available for use); Town of Basalt Master Plan; 2015 Council Work Plan; Ordinance No. 05, Series of 2015 establishing BPAC.

Attachments: Proposed Ordinance

Town of Basalt
Ordinance No. 03
Series of 2016

AN ORDINANCE OF THE TOWN OF BASALT, COLORADO, AMENDING CHAPTER 4, REVENUE AND FINANCE, OF THE BASALT MUNICIPAL CODE TO ADD A NEW ARTICLE VIII ESTABLISHING A ONE PERCENT FOR THE ARTS PROGRAM.

RECITALS:

A. The Town of Basalt recognizes and accepts responsibility for public art in public areas. The Town Council has found that such enhancement adds greatly to the enhancement of the quality of life of Basalt's citizens, attracts tourism, and provides incentives to business to locate in the Town, thereby expanding Basalt's economic base.

B. The Town of Basalt established the Basalt Public Arts Commission in part to help make the case for new resources when necessary to fulfill the goals for public arts within the Town.

C. The Basalt Public Arts Commission unanimously recommended on October 19, 2015 that the Town Council adopt an ordinance establishing the 1% Public Arts Program.

D. Town Council accepts the recommendation of the Basalt Public Arts Commission and supports the imposition of a 1% for Public Art Program.

E. At a public meeting held on January 12, 2016, the Town Council considered the following addition to Chapter 4 of the Municipal Code of the Town on first reading and scheduled a public hearing and second reading for the ordinance for January 26, 2016, at a meeting beginning no earlier than 6:00 pm at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado.

F. At a public hearing and second reading on January 26, 2016, the Town Council heard evidence and testimony as offered by the Town Staff and members of the public.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Basalt, Colorado, as follows:

1. Chapter 4 of the Town of Basalt Municipal Code is amended to add a new Article VIII to read as follows:

ARTICLE VIII

Public Arts Program

Sec 4- 131. Intent.

The purpose of this Article is to establish a public art program, provide for its funding and establish responsibilities relating to administering the Town's public art program.

The Town of Basalt recognizes and accepts responsibility for public art in public areas. The Town Council has found that such enhancement adds greatly to the enhancement of the quality of life of Basalt's citizens, attracts tourism, and provides incentives to business to locate in the Town, thereby expanding Basalt's economic base.

Section 4-132. Definitions.

A. "Public art" includes murals, paintings, glass, fiber, fountains, arches, frescoes, mosaics, mobiles, photographs, drawings, prints, crafts, sculpture, memorials, integrated-architectural or landscape-architectural work, community art, digital new media, and performances and festivals. It can take a wide range of forms, sizes, and scales, and can be temporary or permanent. It may be created in response to this place and community, interpreting the history of the place, its people, and perhaps addressing a social or environmental issue. Free and accessible to everyone, it may be created in collaboration with the community.

B. "Town" is the Town of Basalt.

C. "Construction Cost" is the contracted sum for construction of the designated project including any change orders. Construction costs do not include costs such as professional fees, cost of land, and rights of way.

D. "Construction Project" means any capital improvement project paid wholly or in part by the Town of Basalt to construct or remodel any public or Town building, structure, park or any portion thereof.

E. "Public Art Trust Fund" is a funding mechanism that aggregates portions of the individual private, site-specific One Percent for Art requirement and redistributes these funds to promote, finance and maintain public art projects throughout the Town. This money is limited to not more than twenty percent (20%) of the original one percent (1%) per project allocation unless this is waived by the Town Council for small projects.

F. "Basalt Public Art Commission (PAC)" is a Commission created in 2015 by the Town of Basalt as a standing Town Commission designated to review, advocate and develop public art projects in the public domain for the Town of Basalt. It will develop a formal structure in which to create, develop, acquire, and maintain public art as well as further public accessibility to the arts.

G. "Maintenance" is the periodic work on a facility required to maintain its original functionality.

h.. "Remodel" is work required to substantially change or enhance the functionality of a facility.

Section 4- 133. Imposition of 1% Public Arts Requirement.

It is hereby declared to be the policy of the Town of Basalt to allocate one percent (1%) of eligible construction costs of Town capital improvement projects paid wholly or in part by the Town of Basalt to construct or remodel any public or Town building, structure, park or any portion thereof to be allocated for public art. No less than eighty percent (80%) of this one percent (1%) will be used for public art. No more than twenty percent (20%) will be deposited in a Public Art Trust Fund used for maintenance and administration of public art.

The Town Council may reduce or eliminate the requirement that 1% of eligible construction costs of Town capital improvement projects be allocated for public art when it approves a specific project if the Town Manager demonstrates to the Council's satisfaction that the capital project is only feasible without the set aside or portion thereof. New

Section 4-134. One Percent for Art Program established.

There is hereby established a One Percent for Art Program. The Town Manager is responsible for implementing the program. The Town Council is responsible for appropriating the funds after advice and recommendation from the Basalt Public Arts Commission.

The One Percent for Art Program focuses on the outside and the inside of new and remodeled Town owned public spaces. The art may serve a function, express a theme, or commemorate an important person. It may underscore or provide a counterpoint to the architecture and surrounding site. It may serve as a landmark that adds definition to the Town of Basalt.

The One Percent for Art Program shall be implemented without discrimination based on race, religion, gender, sexual orientation, marital status, color, national origin, ancestry, or creed.

Section 4-135. Exemptions from the One Percent for Art Program.

Public repair and maintenance projects are exempt from the One Percent-for-Art requirements. However, this exemption does not preclude the Town from proposing and including funding for art as part of these types of project.

2. The effective date of this Ordinance shall be 15 days after final publication.

3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions hereof.

INTRODUCED, READ ON FIRST READING, ORDERED PUBLISHED, AND SET FOR PUBLIC HEARING TO BE HELD ON January 26, 2016, by a vote of __ to __, on January 12, 2016.

READ ON SECOND READING AND ADOPTED AFTER PUBLIC HEARING, AND ORDERED PUBLISHED, by a vote of __ to ___, on _____ __, 2016.

TOWN OF BASALT, COLORADO

By_____
Jacque R. Whitsitt, Mayor

ATTEST:

By_____
Pamela K. Schilling, Town Clerk

TOWN OF BASALT Action Item	Date: January 26, 2016 From: James Lindt, Assistant Planning Director

SUBJECT: Consideration of the following items:

8A. Resolution No. 01, Series of 2016- Basalt Mini-Storage Expansion Pre-Development Agreement

8B. Resolution No. 02, Series of 2016- Substantial Compliance Resolution for Basalt Mini-Storage Expansion Annexation

Land Use Actions Requested this meeting: Consideration of Pre-development Agreement, Annexation Substantial Compliance

Associated Land Use Actions to be Considered in Future: Subdivision Sketch Plan Review, Site Plan Review, and Zoning

Proposal: To Expand Basalt Mini-Storage with four 20,400 square foot Storage Buildings, totaling approximately 80,000 square feet.

Related Town Statute and or Town Actions: Town Code Chapter 15, *Annexation,* Article VI, Chapter 16, *Site Plan Review,* Section 16-267, *Official Zoning Map Amendments*, Chapter 17, *Subdivision*

Last Review by Town Council: The Council approved a PUD sketch plan for a mixed use development known as Basalt Design District on the site in 2008 pursuant to Resolution No. 4, Series of 2008. The Basalt Design District Sketch Plan approvals have lapsed.

Financial Implications: Provisions are included in the draft pre-development agreement to require the Applicant to pay for any analysis of the project's fiscal impact on the Town determined necessary by the Town Manager.

TOWN OF BASALT Action Item	Date: January 26, 2016 From: James Lindt AICP, Assistant Planning Director

SUBJECT: Council consideration of Resolution No. 01, Series of 2016, that would approve of a Pre-development Agreement for the proposed expansion to the Basalt Mini-Storage.

RECOMMENDATION: Staff recommends that Council approve the attached resolution.

DETAILS: This is the 1st of 2 items on this agenda related to the proposed Basalt Mini-Storage expansion. The proposed resolution would approve of a pre-development agreement.

Davidco LLC. has submitted a petition for annexation and a corresponding annexation map for approximately 2 acres of the property known as the Basalt Design District property to annex such property for the development of four (4) 20,400 SF storage buildings. Additionally, the Applicant has submitted the necessary Subdivision Sketch Plan and Site Plan Review application materials.

The development application addresses specific items for consideration such as traffic generation and circulation, employee generation and mitigation, and phasing. The development application also proposes that the dedication of the 1.3-acre parcel the Applicant owns adjacent to the Rio Grande Trail not be required to be dedicated to the Town until the remainder of the Basalt Design District Property is proposed for development since this 2 acres subject to this Application is only a small portion of the overall Basalt Design District accumulation of properties.

All portions of the land subject to the Application currently being submitted are in the Urban Growth Boundary (UGB) and are designated as Light Industrial on the Town's Future Land Use Map in the 2007 Basalt Master Plan.

The draft Pre-Development Agreement accomplishes the following:

1) Establishes the Applicant as the Developer of record; and,

2) Establishes that Town Staff and the Applicant will work on establishing a review schedule at the beginning of the review process; and,

3) Establishes that the Town may contract to have a financial analysis completed before finalizing the development review to determine the financial impact of the proposed application on the Town; and,

4) Establishes that the Town has no obligation to approve Application.

5) Acknowledges the Applicant's proposal to delay the Applicant's dedication of the 1.3-acre parcel adjacent to the Rio Grande Trail to satisfy affordable housing and school land dedication requirements until development approvals are granted on the remainder of the Basalt Design District properties as the Applicant will either build affordable housing or pay cash-in-lieu of building affordable housing instead of dedicating the 1.3 acre parcel to satisfy the AH requirements for the mini-storage expansion.

RECOMMENDATIONS FROM OTHER BOARDS: A recommendation from the P&Z is not required prior to the entering into a pre-development agreement.
RELATED TOWN STATUTE AND TOWN ACTIONS: Town Code Chapter 15, *Annexation,* Article VI, Chapter 16, *Site Plan Review,* Section 16-267, *Official Zoning Map Amendments*, Chapter 17, *Subdivision*
ATTACHMENTS: A) Draft Resolution and Pre-development Agreement

A) Draft Reso. + Pre-dev. Agreement

RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING A PRE-DEVELOPMENT AGREEMENT WITH DAVIDCO LLC. REGARDING THE BASALT MINI-STORAGE EXPANSION

Town of Basalt, Colorado
Resolution No. 01
Series of 2016

RECITALS

Whereas, the Town of Basalt is willing to look at annexation and development of an expansion to the Basalt Mini-Storage.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO:

Section 1. The Town Council approves a Pre-Development Agreement with Davidco LLC. related to the Basalt Mini-Storage Expansion Development Application as attached hereto as Exhibit A.

Section 2. The Town Council directs Staff to prepare a schedule that outlines the process of converting the attached Pre-Development Agreement into a Final Development Agreement.

RESOLUTION NO. __, SERIES OF 2016, IS HEREBY ADOPTED by a vote of __ to __, this __ day of _____, 2016.

TOWN OF BASALT, COLORADO

by_____
Jacque R. Whitsitt, Mayor

ATTEST:

_____
Pamela K Schilling, Town Clerk

Please return to:
TOWN OF BASALT
101 Midland Avenue
Basalt, CO 81621

PRE-DEVELOPMENT AGREEMENT
Town of Basalt and Davidco LLC

THIS PRE-ANNEXATION AGREEMENT (this "Agreement") is entered into as of the ___ day of _____, 2016 (the "Effective Date"), between the Town of Basalt, Colorado, a town of the State of Colorado (the "Town"), and **Davidco LLC**, a Colorado limited liability company (the "Developer") (the Town and Developer are herein collectively referred to as the "Parties").

RECITALS

A. Developer is the owner of approximately seven acres of land located along Fiou Lane and Southside Drive. Most of such property is located within Pitkin County, Colorado; however, a portion of such land was previously annexed into the Town for the construction of a mini-storage facility. Developer desires to annex approximately 2.1 additional acres (the "Property") of such land into the Town for expansion of the mini-storage facility.

B. The Parties desire to enter into this Pre-Development Agreement in order to set forth matters intended to be included in any final Development Agreement for the Property.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Town and the Developer agree as follows:

1. **DEVELOPER OF RECORD AND COSTS.** The Developer acknowledges that there are costs of preliminary planning activities and other requirements associated with the preparation of a project plan and annexation for the Town and the Developer. The Town acknowledges that Davidco LLC. is the Developer of Record for the project described in the application. The Developer agrees to pay all costs and fees associated with the annexation and zoning of the Property.

2. **BASIC TERMS OF FINAL DEVELOPMENT AGREEMENT.** The Parties agree that a Final Development Agreement, satisfactory to both Parties in their sole absolute discretion, is required to proceed with development of the final project. The specific terms of such Final Development Agreement must be negotiated between the Parties. The Parties intend that the Final Development Agreement must, at a minimum, address the following matters.

   A. Property. The Developer is owner of the Property which is generally located adjacent to the Town of Basalt, Colorado south of State Highway 82 currently within the unincorporated area of Pitkin County, Colorado, consisting of approximately 2.1 acres as shown on the proposed Annexation Plat of Davidco LLC Serial Annexation Parcels 1 and 2.

B. Schedule. The Parties shall agree on a schedule by which the development of the Property will be undertaken and completed.

C. Zoning. The Property shall be zoned with Town zoning simultaneous with annexation.

D. Agreement on Site Work, Infrastructure and Utilities. The Parties shall agree on how site work, utilities, parking and similar improvements are to be addressed for the development of the Property.

E. Agreement on Plans and Specifications. The Parties shall agree on the plans and specifications of the infrastructure that will serve the Property.

F. Amended and Restated Annexation Agreement for the Midland Addition Subdivision. On October 28, 2005, the Town and Andrewco LLC entered into an Amended and Restated Annexation Agreement for the Midland Addition Subdivision. Paragraph 36. Affordable Housing/School Land Dedication, states the following:

"Any requirements for affordable housing and school land dedication for development of the property owned by Owner (or an affiliated entity of Owner, i.e., Davidco LLC in this case) comprised of 7 acres and located on South Side Drive will be satisfied by a dedication to the Town of the parcel (approximately 1.3 acres) located near the high school and currently owned by Owner which shall be developed by the Town or another entity as community housing. A first priority ownership or occupancy of such housing will be given to teachers and essential community employees".

Because the proposed Annexation and Development only comprises a small portion (2.118 acres) of the 7 acre parcel described above and the fact that the proposed development has virtually no impact on housing, Developer shall not exercise its option to dedicate the 1.3 acre parcel to the Town to satisfy affordable housing and school land dedication requirements of the Town Code. Developer shall satisfy any affordable housing mitigation requirement or school land dedication requirement for the proposed development of the Property by either providing affordable housing or through payment of cash in lieu pursuant to the Town Code.

Nothing herein precludes the Town and Developer from agreeing to further amend such Amended and Restated Annexation Agreement for Midland Addition Subdivision.

G. Financial, Tax and Incentive Impacts. The Parties shall work diligently to define any financial, tax and incentive impacts of the project.

H. Other Matters. The Annexation Agreement shall also address any other matters that the Parties deem appropriate.

3. **OBLIGATION OF THE PARTIES TO PROCEED.**

The obligations of the Parties to proceed beyond this Preliminary Pre-Development Agreement are dependent upon the Parties entering into a Final Development Agreement.

Nothing contained herein shall (i) obligate the Town to create or approve the annexation or the development of the Property (ii) obligate the Town to create or approve a development plan for the Property, or (iii) obligate either party to enter into a final Development Agreement.

4. **MISCELLANEOUS.**

A. Financial Liability. The Town shall not be liable for any expenses or private debt associated with or incurred by the development or marketing of, or future management of the Property.

B. Assignability. Neither party shall assign this Agreement without the written consent of the other party.

C. Financial Investment Costs. Developer agrees to reimburse for any financial analysis of the development project deemed advisable by the Town Manager. Developer agrees to pay $2,500 for a financial analysis regarding the Developer's capability with require written approval by the Developer.

D. Amendments. This Agreement may be supplemented or amended only by written instrument executed by the Parties affected by such supplement or amendment.

E. Applicable Law. The interpretation, enforcement or any other matters relative to this Agreement shall be construed and determined in accordance with the laws of the State of Colorado. The Parties agree that the sole and exclusive jurisdiction and venue for any disputes arising hereunder shall be in any court located in Pitkin County, Colorado to the extent that any of the terms of this agreement may be binding upon the Parties.

F. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Parties.

G. Non-Liability of Town Officials and Employees. No member of the governing body, official, employee, or agent of the Town shall be personally liable to Developer, or any successor in the interest to Developer, pursuant to the provisions of this Agreement, nor for any default or breach of the Agreement by Town.

H. Not a Partnership. The provisions of the Agreement are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Parties.

5. Terms and Termination. This agreement shall remain in effect until December 3, 2016. However, any party may terminate with or without cause upon 60 days prior written notice. In the event, of termination, the Parties shall be responsible for fulfilling all obligations through date of termination.

The Parties have duly executed this Pre-Development Agreement pursuant to all requisite authorizations as of the date first above written.

Town of Basalt, Colorado

By:_____
Jacque R. Whitsitt, Mayor

Developer:
DAVIDCO, LLC, a Colorado limited liability company
By: Basalt Management, Inc., its manager

By: _____
Clay Crossland, President

STATE OF COLORADO)
)ss.
COUNTY OF EAGLE)

Acknowledged before me this _____ day of _____ 20____, by Jacque Whitsitt in her capacity as Mayor of the Town of Basalt.

My commission expires: _____ _____
Notary

STATE OF COLORADO)
)ss.
COUNTY OF EAGLE)

Acknowledged before me this _____ day of _____ 20__, by Clay Crossland in his capacity as President of Basalt Management, Inc., a Colorado corporation, Manager of Davidco, LLC, a Colorado limited liability company.

My commission expires: _____ _____
Notary

TOWN OF BASALT Action Item	Date: January 26, 2016 From: James Lindt AICP, Assistant Planning Director

SUBJECT: Council consideration of Resolution No. 02, Series of 2016, that would find the Basalt Mini-Storage Expansion Annexation petition in compliance with the Municipal Annexation Act and setting the date for the annexation eligibility hearing for March 22, 2016.

RECOMMENDATION: Staff recommends that Council approve the attached resolution.

DETAILS: Davidco LLC. has submitted a petition for annexation and a corresponding annexation map for approximately 2 acres of the property known as the Basalt Design District property to annex such property for the development of four 20,400 square feet storage buildings, totaling approximately 80,000 square feet. Additionally, the Applicant has submitted the necessary Subdivision Sketch Plan and Site Plan Review application materials. At the Town Staff's request, the Applicant has also included the dedication and annexation of a portion of Fiou Lane and Southside Drive that was not previously dedicated or annexed in an effort to clean up the access dedications in Southside.

Consideration of the substantial compliance resolution is the first step in the annexation process as established in the Municipal Annexation Act. The Council must also set a date of the annexation eligibility public hearing, which must not be less 30 days or more than 60 days from the substantial compliance hearing. The Town Council is required to consider whether the annexation petition is complete and compliant with the requirements for filing a petition for annexation, but the substantial compliance hearing is not a substantive review of the associated development application or the annexation proposal. The substantive review of the development application and the annexation will occur at subsequent hearings prior to the Town annexing the property. Additionally, approval of the attached resolution would establish March 22, 2016, as the date of the annexation eligibility hearing, which is the next step in the annexation process.

RECOMMENDATIONS FROM OTHER BOARDS: A recommendation from the P&Z is not required prior to the annexation substantial compliance hearing.

RELATED TOWN STATUTE AND TOWN ACTIONS: Town Code Chapter 15, *Annexations;* Municipal Annexation Act

ATTACHMENTS: A) Draft Resolution B) Annexation Petition and Draft Annexation Map; C) Narrative and Map Describing Development Proposal

A) Draft Reso.

A RESOLUTION OF THE TOWN OF BASALT, COLORADO, FINDING THE PETITION FOR ANNEXATION FOR THE PROPERTY KNOWN AS THE DAVIDCO LLC. ANNEXATION PROPERTY FOR THE BASALT MINISTORAGE EXPANSION IN SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS OF THE MUNICIPAL ANNEXATION ACT AND SETTING THE DATE OF THE ANNEXATION ELIGIBILITY HEARING

Town of Basalt, Colorado
Resolution No. 02
Series of 2016

RECITALS:

A. The Owner's ("Petitioner's") of more than 50% of certain property commonly known as the Davidco LLC Serial Annexation Property and as more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the "Property") filed a Petition on or about December 15, 2015 for Annexation ("Petition") with the Town of Basalt addressed to the Town Clerk and Town Council for the Town of Basalt. The Petition was deemed complete on or about December 18, 2015.

B. The Petition alleges that the requirements of §31-12-104, C.R.S. and §31-12-105, C.R.S. exist or have been met.

C. An Annexation Map has been duly filed along with said Petition as required by §31-12-107(1)(d), C.R.S.

D. Section 31-12-107(1)(g), C.R.S. requires the Town Council to determine whether the Petition is in substantial compliance with the requirements of the Municipal Annexation Act.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO, FINDS AND RESOLVES AS FOLLOWS:

1. Upon examination of the Petition for Annexation and Annexation Map filed with the Town, and having reviewed such Petition and Map and heard comments from Town Staff concerning the adequacy of such Petition, the Town Council finds that the Petition for Annexation is in substantial compliance with the Municipal Annexation Act of 1965, specifically §31-12-107(1)(g), C.R.S.

2. No finding as to the accuracy of the statements made in the Petition or shown on the Annexation Map has been made, and no position is taken with respect to such statements.

Please return to:
TOWN OF BASALT
101 Midland Avenue
Basalt, CO 81621

3. The procedures outlined in §§31-12-108, 31-12-108.5, 31-12-109 and 31-12-110, C.R.S., shall be followed. The Petition for Annexation shall be reviewed and considered on March 22, 2016 during a meeting held at the Basalt Town Hall beginning no earlier than 6:00 pm by the Town Council to determine if the Property is Eligible for annexation. The Town Clerk shall comply with all requirements of the Colorado statutes and Town Code concerning publication of public notice for such hearing.

This Resolution was introduced, read, passed, and adopted by the Town of Basalt Town Council by a vote of __ to __ on _____, 2016.

TOWN OF BASALT, COLORADO

By: _____
Jacque R. Whitsitt, Mayor

ATTEST:

_____
Pamela K. Schilling, Town Clerk

EXHIBIT A

ANNEXATION PARCEL 1

A PARCEL OF LAND SITUATED IN A PORTION OF TRACT 59 IN SECTION 18, TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF PITKIN, STATE OF COLORADO; SAID PARCEL OF LAND ALSO BEING A PORTION OF THAT PROPERTY RECORDED IN BOOK 774 AT PAGE 522-525 IN THE PITKIN COUNTY CLERK AND RECORDER'S OFFICE; SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT ANGLE POINT NO. 3 OF SAID TRACT 59 (WITH ALL BEARINGS HEREIN BEING RELATIVE TO A BEARING OF N.00°48'57"E. BETWEEN ANGLE POINT NO. 7 AND ANGLE POINT NO. 8 OF TRACT 59, BOTH FOUND GLO BRASS CAPS IN PLACE); THENCE N.00°05'50"E. ALONG THE WESTERLY BOUNDARY LINE OF SAID TRACT 59 A DISTANCE OF 1174.50 FEET TO THE SOUTHWEST CORNER OF THAT ANNEXATION PARCEL AS SHOWN ON THE ANNEXATION PLAT OF BASALT BUSINESS CENTER WEST, FILING II ANNEXATION, RECORDED DECEMBER 29, 1997 AS RECEPTION NO. 411948 OF THE PITKIN COUNTY RECORDS, THE TRUE POINT OF BEGINNING; THENCE S.89°03'19"E. ALONG THE SOUTHERLY BOUNDARY LINE OF SAID ANNEXATION PARCEL OF BASALT BUSINESS CENTER WEST A DISTANCE OF 135.01 FEET; THENCE LEAVING SAID SOUTHERLY BOUNDARY LINE S.23°02'06"W. A DISTANCE OF 346.39 FEET TO SAID WESTERLY BOUNDARY LINE OF SAID TRACT 59; THENCE N.00°05'50"E. ALONG SAID WESTERLY BOUNDARY LINE OF SAID TRACT 59 A DISTANCE OF 321.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINING 21,668 SQUARE FEET OR 0.497 ACRES, MORE OR LESS.

ANNEXATION PARCEL 2

A PARCEL OF LAND SITUATED IN A PORTION OF TRACT 59 IN SECTION 18, TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF PITKIN, STATE OF COLORADO; SAID PARCEL OF LAND ALSO BEING A PORTION OF THAT PROPERTY RECORDED IN BOOK 774 AT PAGE 522-525 IN THE PITKIN COUNTY CLERK AND RECORDER'S OFFICE; SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT ANGLE POINT NO. 3 OF SAID TRACT 59 (WITH ALL BEARINGS HEREIN BEING RELATIVE TO A BEARING OF N.00°48'57"E. BETWEEN ANGLE POINT NO. 7 AND ANGLE POINT NO. 8 OF TRACT 59, BOTH FOUND GLO BRASS

CAPS IN PLACE); THENCE N.00°05'50"E. ALONG THE WESTERLY BOUNDARY LINE OF SAID TRACT 59 A DISTANCE OF 853.50 FEET TO THE TRUE POINT OF BEGINNING; THENCE N.23°02'06"E. A DISTANCE OF 346.39 FEET TO A POINT ON THE SOUTHERLY BOUNDARY LINE OF THAT ANNEXATION PARCEL AS SHOWN ON THE ANNEXATION PLAT OF BASALT BUSINESS CENTER WEST, FILING II ANNEXATION, RECORDED DECEMBER 29, 1997 AS RECEPTION NO. 411948 OF THE PITKIN COUNTY RECORDS; THENCE S.00°05'50"W. A DISTANCE OF 682.61 FEET; THENCE N.89°54'10"W. A DISTANCE OF 135.00 FEET TO SAID WESTERLY BOUNDARY LINE OF TRACT 59; THENCE N.00°05'50"E. ALONG SAID WESTERLY BOUNDARY LINE A DISTANCE OF 363.61 FEET TO THE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINING 70,620 SQUARE FEET OR 1.621 ACRES.

ANNEXATION PARCEL 3

A PARCEL OF LAND SITUATED IN A PORTION OF TRACT 59 IN SECTION 18, TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF PITKIN, STATE OF COLORADO; SAID PARCEL OF LAND ALSO BEING A PORTION OF THAT PROPERTY RECORDED IN BOOK 774 AT PAGE 522-525 IN THE PITKIN COUNTY CLERK AND RECORDER'S OFFICE; SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT ANGLE POINT NO. 3 OF SAID TRACT 59 (WITH ALL BEARINGS HEREIN BEING RELATIVE TO A BEARING OF N.00°48'57"E. BETWEEN ANGLE POINT NO. 7 AND ANGLE POINT NO. 8 OF TRACT 59, BOTH FOUND GLO BRASS CAPS IN PLACE); THENCE N.33°35'12"E. A DISTANCE OF 464.43 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF SAID PROPERTY, SAID POINT ALSO BEING ON THE WESTERLY LINE OF AN 80 FOOT WIDE ROAD RIGHT-OF-WAY AS DESCRIBED IN THAT DOCUMENT RECORDED AS RECEPTION NUMBER 379113 OF THE PITKIN COUNTY RECORDS, THE TRUE POINT OF BEGINNING; THENCE N.00°56'41"E. ALONG SAID WESTERLY LINE A DISTANCE OF 1074.12 FEET; THENCE CONTINUING ALONG SAID WESTERLY LINE N.07°40'59"E. A DISTANCE OF 241.68 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF THE FINAL PLAT OF BASALT BUSINESS CENTER WEST RECORDED AS RECEPTION NUMBER 345113 OF THE PITKIN COUNTY RECORDS; THENCE LEAVING SAID WESTERLY LINE S.89°02'08"E. ALONG SAID SOUTHERLY BOUNDARY A DISTANCE OF 305.30 FEET; THENCE LEAVING SAID SOUTHERLY BOUNDARY S.15°02'58"E. ALONG THE WESTERLY BOUNDARY OF THE FINAL PLAT OF BASALT BUSINESS CENTER SOUTH RECORDED AS RECEPTION NUMBER 356525 OF THE PITKIN COUNTY RECORDS A DISTANCE OF 52.02 FEET; THENCE LEAVING SAID WESTERLY BOUNDARY N.89°02'07"W. A DISTANCE OF 244.99 FEET TO A POINT ON THE EASTERLY LINE OF SAID 80 FOOT WIDE ROAD RIGHT-OF-WAY; THENCE S.07°40'59".W ALONG SAID EASTERLY LINE A DISTANCE OF 191.73 FEET TO A POINT ON THE BOUNDARY OF SAID PROPERTY RECORDED IN BOOK 774 AT PAGE 522-525 IN THE PITKIN COUNTY

CLERK AND RECORDER'S OFFICE; THENCE N.89°03'19".W ALONG SAID BOUNDARY LINE A DISTANCE OF 40.46 FEET; THENCE CONTINUING ALONG SAID BOUNDARY LINE S.00°56'41".W A DISTANCE OF 1073.43 FEET; THENCE CONTINUING ALONG SAID BOUNDARY LINE N.89°26'49".W A DISTANCE OF 40.04 FEET TO THE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINING 74,100 SQUARE FEET OR 1.701 ACRES.

B) Annex. Petition + Map

PETITION FOR ANNEXATION

To The Town Board of Trustees of the Town of Basalt, Colorado:

We, the undersigned, constituting and comprising the owners of more than 50% of the property described in Exhibit A attached to and incorporated herein by this reference (the "Property") do hereby petition that the described area be annexed to and become a part of the Town of Basalt ("Town"), Colorado and do represent and state as follows.

1. It is desirable and necessary that the Property be annexed to the Town.

2. The requirements of §§ 31-12-104 and 31-12-105, C.R.S., as amended, exist or have been met as those sections apply to the annexation of the Property.

3. The annexation of the Property complies with Section 30 of Article II of the Colorado Constitution; that is, the Petitioners comprise the owners of more than fifty percent of the Property, exclusive of streets and alleys.

4. The undersigned request that the Town approve the annexation of the Property.

5. Ownership of the Property is as follows: Davidco, LLC, a Colorado limited liability company, owns a 100% undivided interest in the Property; and NorthFork, LLC, a Colorado limited liability company, owns an executory interest pursuant to an agreement under which it holds an option to purchase an undivided 100% interest in the Property.

6. Petitioners reserve the right, at any time prior to final approval of annexation by the Town, to withdraw their signatures, pursuant to § 31-12-107(1)(e), C.R.S., if the Petitioners are not able to obtain approval (which may be contemporaneous with approval of annexation pursuant to § 13-12-155(1), C.R.S.) from the Town of zoning and site plan for the Property acceptable to the Town and Petitioners. Further, this Petition for Annexation is expressly conditioned on Petitioners and Town executing a mutually agreeable Annexation Agreement which may set forth terms and conditions related to annexation of and land use for the Property.

SIGNATURES AND MAILING ADDRESSES OF LANDOWNERS

Mailing Address: P.O. Box 80
Basalt, CO 81621

Davidco, LLC,
a Colorado limited liability company

November 15, 2015

By: Paul G. Adams
Paul G. Adams, Manager

Mailing Address: P.O. Box 710
Basalt, CO 81621

NorthFork, LLC,
a Colorado limited liability company

November 15, 2015

By: Clay Crossland
Clay Crossland, Manager

AFFIDAVIT OF CIRCULATOR
OF PETITION FOR ANNEXATION

STATE OF COLORADO)
) ss
COUNTY OF PITKIN)

The undersigned, being first duly sworn, states and affirms:

1. I was the circulator of Petition for Annexation to which this Affidavit is attached; and

2. Each signature on this Petition for Annexation is the signature of the person whose name it purports to be.

Lori Jewell

STATE OF COLORADO)
) ss
COUNTY OF PITKIN)

The foregoing Affidavit of Circulator was sworn to and acknowledged before me on November 15, 2015, by Lori Jewell .

Witness my hand and official seal.

My commission expires: 8-20-19.

Notary Public

MARY JO HUGHES
NOTARY PUBLIC
STATE OF COLORADO

PETITIONERS' REPRESENTATIVE

The following person is authorized by the Petitioners to process this annexation request. The Town Administration may contact this person regarding this annexation request.

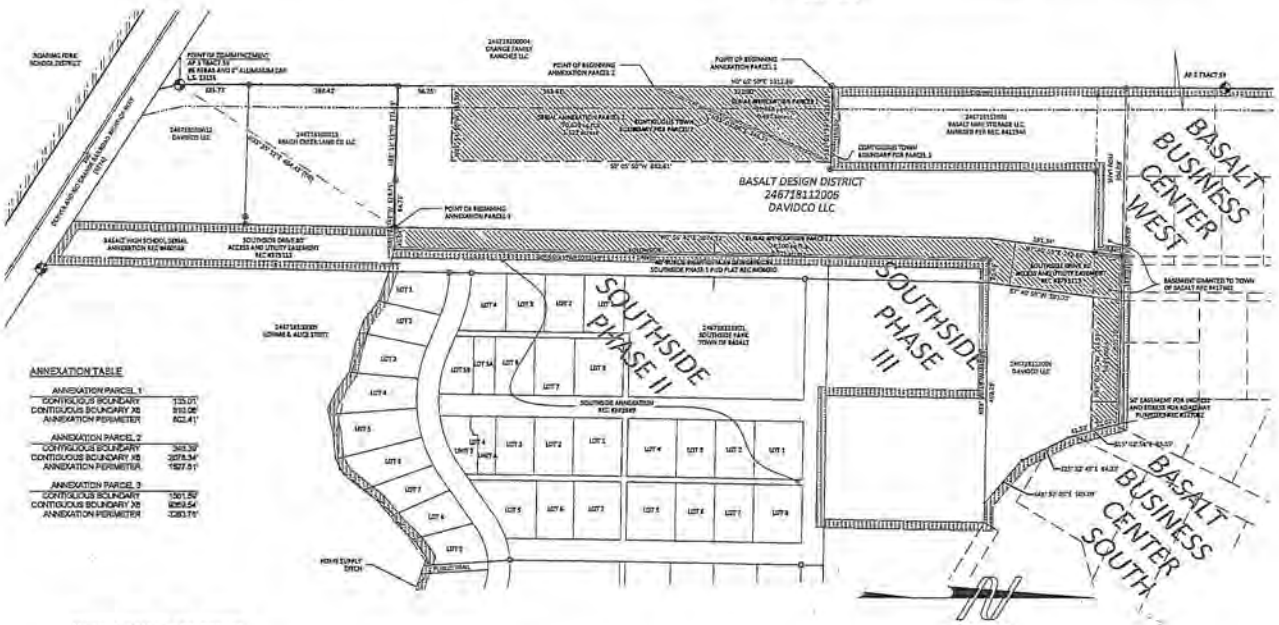
Clay Crossland
400 West Cody Lane
Basalt, CO 81621
Telephone: 970-927-4704
Facsimile: 970-927-4804
Email: crosland@bta.bz

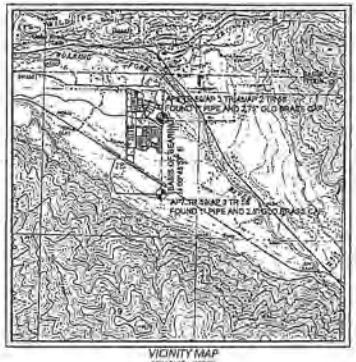
ANNEXATION PLAT OF:

DAVIDCO LLC SERIAL ANNEXATION 1, 2 AND 3

A PARCEL OF LAND SITUATED IN A PORTION OF TRACT 59 IN SECTION 18, TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF PITKIN, STATE OF COLORADO

SHEET 1 OF 1





VICINITY MAP
SCALE: 1" = 2000'

ANNEXATION TABLE

ANNEXATION PARCEL 1	
CONTIGUOUS BOUNDARY	135.01'
CONTIGUOUS BOUNDARY %:	910.06'
ANNEXATION PERIMETER:	822.41'
ANNEXATION PARCEL 2	
CONTIGUOUS BOUNDARY:	340.39'
CONTIGUOUS BOUNDARY %:	2078.34'
ANNEXATION PERIMETER:	1527.51'
ANNEXATION PARCEL 3	
CONTIGUOUS BOUNDARY:	1301.50'
CONTIGUOUS BOUNDARY %:	8269.54'
ANNEXATION PERIMETER:	3283.76'

GRAPHIC SCALE

(IN FEET)
1 inch = [illegible] FEET

MAP NOTES

1) DATE OF PREPARATION: SEPTEMBER - DECEMBER, 2015

2) LINEAR UNITS: THE LINEAR UNIT USED IN THE PREPARATION OF THIS PLAT IS THE U.S. SURVEY FOOT AS DEFINED BY THE UNITED STATES DEPARTMENT OF COMMERCE, NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

3) BASIS OF BEARING: THE 1995 GREENHORNE AND O'HARA, INC. COUNTY OF EAGLE/TOWN OF BASALT CONTROL NETWORK PROJECT DATUM, WHICH IS BASED ON THE COLORADO STATE PLANE COORDINATE SYSTEM-CENTRAL ZONE, LAMBERT CONFORMAL PROJECT [NAD 83/93]. BASALT AREA BEARING BASIS OF N 89°21'11" W BETWEEN NGS STATIONS P-158 AND G-158, WHICH ESTABLISHED A PROJECT BEARING OF N 00°48'07" E BETWEEN ANGLE POINT NO. 7 AND ANGLE POINT NO. 8 OF TRACT 59, BOTH FOUND GLO BRASS CAPS IN PLACE, AS SHOWN.

4) THIS MAP DOES NOT CONSTITUTE A TITLE SEARCH BY SOPRIS ENGINEERING, LLC (SE) TO DETERMINE OWNERSHIP OR EASEMENTS OF RECORD. FOR ALL INFORMATION REGARDING EASEMENTS, RIGHTS OF WAY AND/OR TITLE OF RECORD, SE RELIED UPON THE PLATS AND DOCUMENTS STATED HEREON AND THE TITLE COMMITMENT PREPARED BY LAND TITLE GUARANTEE COMPANY, FILE NO.BAC5400065, EFFECTIVE DATE AUGUST 24, 2015.

5) DEED OF RECORD BEARINGS HAVE BEEN ROTATED CLOCKWISE 00°26'42" TO CONFORM WITH THE BASIS OF BEARING, AS REFERENCED IN NOTE 3 ABOVE.

6) THE PROPERTY IS SUBJECT TO THE ANNEXATION AGREEMENT RECORDED WITH THE CLERK AND RECORDER OF PITKIN COUNTY AS RECEPTION NO._____

ANNEXATION PARCEL DESCRIPTIONS

SERIAL ANNEXATION PARCEL 1

A PARCEL OF LAND SITUATED IN A PORTION OF TRACT 59 IN SECTION 18, TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF PITKIN, STATE OF COLORADO; SAID PARCEL OF LAND ALSO BEING A PORTION OF THAT PROPERTY RECORDED IN BOOK 774 AT PAGE 50-455 IN THE PITKIN COUNTY CLERK AND RECORDER'S OFFICE; SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT ANGLE POINT NO. 3 OF SAID TRACT 59 (WITH ALL BEARINGS HEREIN BEING RELATIVE TO A BEARING OF N 89°W[illegible]", BETWEEN ANGLE POINT NO. 7 AND ANGLE POINT NO. 8 OF TRACT 59, BOTH FOUND GLO BRASS CAPS IN PLACE); THENCE N 89°[illegible]", ALONG THE WESTERLY BOUNDARY LINE OF SAID TRACT 59 A DISTANCE OF 413.10 FEET TO THE SOUTHWEST CORNER OF THAT ANNEXATION PARCEL, AS SHOWN ON THE ANNEXATION PLAT OF BASALT BUSINESS CENTER WEST, FILING I ANNEXATION, RECORDED DECEMBER 26, 1995 AS RECEPTION NO. 411949 OF THE PITKIN COUNTY RECORDS, THE TRUE POINT OF BEGINNING; THENCE S 89°21'11" E, ALONG THE SOUTHERLY BOUNDARY LINE OF SAID ANNEXATION PARCEL OF BASALT BUSINESS CENTER WEST A DISTANCE OF 1301.50 FEET; THENCE LEAVING SAID SOUTHERLY BOUNDARY LINE S 27°00'00" W, A DISTANCE OF 348.24 FEET TO A NON-TANGENT CURVE; THENCE ALONG SAID WESTERLY BOUNDARY LINE OF SAID TRACT 59, THENCE NORTHERLY, ALONG SAID WESTERLY BOUNDARY LINE OF SAID TRACT 59 A DISTANCE OF 321.04 FEET TO THE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINING 21,085 SQUARE FEET OR 0.487 ACRES, MORE OR LESS.

SERIAL ANNEXATION PARCEL 2

A PARCEL OF LAND SITUATED IN A PORTION OF TRACT 59 IN SECTION 18, TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF PITKIN, STATE OF COLORADO; SAID PARCEL OF LAND ALSO BEING A PORTION OF THAT PROPERTY RECORDED IN BOOK 774 AT PAGE 50-455 IN THE PITKIN COUNTY CLERK AND RECORDER'S OFFICE; SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT ANGLE POINT NO. 8 OF SAID TRACT 59 (WITH ALL BEARINGS HEREIN BEING RELATIVE TO A BEARING OF N 00°48'07" E, BETWEEN ANGLE POINT NO. 7 AND ANGLE POINT NO. 8 OF TRACT 59, BOTH FOUND GLO BRASS CAPS IN PLACE); THENCE N 00°48'07" E, ALONG THE WESTERLY BOUNDARY LINE OF SAID TRACT 59 A DISTANCE OF 1034.12 FEET; THENCE CONTINUING ALONG SAID WESTERLY LINE N 27°40'00" E, A DISTANCE OF 24.00 FEET TO A POINT ON THE SOUTHWEST BOUNDARY OF THE FINAL PLAT OF BASALT BUSINESS CENTER WEST RECORDED AS RECEPTION NUMBER 346113 OF THE PITKIN COUNTY RECORDS; THENCE LEAVING SAID WESTERLY LINE S 89°20'00" E, ALONG SAID SOUTHWEST BOUNDARY A DISTANCE OF 340.39 FEET; THENCE LEAVING SAID SOUTHERLY BOUNDARY S 00°20'00" E, ALONG THE WESTERLY BOUNDARY OF THE FINAL PLAT OF BASALT BUSINESS CENTER SOUTH RECORDED AS RECEPTION NUMBER 395625 OF THE PITKIN COUNTY RECORDS A DISTANCE OF 93.00 FEET; THENCE LEAVING SAID WESTERLY BOUNDARY N 89°20'00" W, A DISTANCE OF 244.00 FEET TO A POINT ON THE EASTERLY LINE OF SAID 30 FOOT WIDE ROAD RIGHT-OF-WAY; THENCE S 00°40'00" W ALONG SAID EASTERLY LINE A DISTANCE OF 181.73 FEET TO A POINT ON THE BOUNDARY OF SAID PROPERTY RECORDED IN BOOK 774 AT PAGE 50-455 IN THE PITKIN COUNTY CLERK AND RECORDER'S OFFICE; THENCE N 89°20'00" W ALONG SAID BOUNDARY LINE A DISTANCE OF 40.00 FEET; THENCE CONTINUING ALONG SAID BOUNDARY LINE S 00°40'00" W A DISTANCE OF 675.40 FEET; THENCE CONTINUING ALONG SAID BOUNDARY LINE N 89°20'00" W A DISTANCE OF 48.04 FEET TO THE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINING 71,038 SQUARE FEET OR 1.631 ACRES.

SOURCE DOCUMENTS

- ANNEXATION PLAT OF BASALT BUSINESS CENTER WEST, FILING II ANNEXATION, RECORDED DECEMBER 26, 1995 AS RECEPTION NO. 411949
- US GENERAL LAND OFFICE 1929 SUPPLEMENTAL PLAT OF TOWNSHIP 8 SOUTH RANGE 86 WEST OF THE 6TH P.M.
- ANNEXATION PLAT OF BASALT HIGH SCHOOL SERIAL ANNEXATION RECORDED NOVEMBER 1, 2001 AS RECEPTION NO. 482069
- FINAL PLAT AND FINAL PUD DEVELOPMENT PLAN OF BASALT BUSINESS CENTER WEST, RECORDED MAY 27, 1992 AS RECEPTION NO. 346113
- FINAL PLAT AND FINAL PUD DEVELOPMENT PLAN PHASE I AND RIGHT-OF-WAY DEDICATION WITHIN PHASES II AND III OF SOUTHSIDE PLANNED UNIT DEVELOPMENT, PHASE I, RECORDED MAY 27, 1992 AS RECEPTION NO. 346113
- MAP OF TERRITORIES TO BE ANNEXED TO THE TOWN OF BASALT, RECORDED APRIL 22, 1998 AS RECEPTION NO. 391969
- EASEMENT PLAN & 60 FOOT RIGHT-OF-WAY PREPARED NOVEMBER 13, 1994 BY LOUIS H. SUETTHER (L.S. #31198)
- THAT EASEMENT DEED RECORDED FEBRUARY 17, 1998 AS RECEPTION NO. 379113
- THAT WARRANTY DEED RECORDED FEBRUARY 17, 1998 AS RECEPTION NO. 379117
- FINAL PLAT BASALT BUSINESS CENTER SOUTH RECORDED MAY 4, 1998 AS RECEPTION NO. 395625

CONTIGUOUS TOWN BOUNDARY FOR SERIAL ANNEXATION

CURRENT TOWN OF BASALT BOUNDARY

TOWN COUNCIL CERTIFICATE

THIS ANNEXATION PLAT IS APPROVED FOR FILING WITH THE CLERK AND RECORDER OF PITKIN COUNTY PURSUANT TO ORDINANCE NO. _____, SERIES OF 20__ ON THIS _____ DAY OF _____, 20__.

_____
JACQUI N. WHITSITT, MAYOR

WITNESS MY HAND AND SEAL OF THE TOWN OF BASALT, COLORADO

ATTEST:

_____
PAMELA K. SCHILLING, TOWN CLERK

SURVEYOR'S STATEMENT

I, MARK S. BECKLER, DO HEREBY STATE THAT THIS ANNEXATION PLAT WAS PREPARED BY SOPRIS ENGINEERING, LLC FOR DAVIDCO, LLC., AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

_____
MARK S. BECKLER L.S. NO. 28642

ACCEPTANCE FOR RECORDING

THIS PLAT IS ACCEPTED FOR FILING IN THE OFFICE OF THE CLERK AND RECORDER FOR PITKIN COUNTY, COLORADO, THIS _____ DAY OF _____, 20__, AS RECEPTION NO. _____

_____
CLERK AND RECORDER

SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311 SOPRISENG@SOPRISENG.COM

C) Narrative + Maps

To be filled out by the Town
Filed: ____/____/____
Application Fee: _____
Review Fee: _____
Total Payment Received: _____
Current Reimbursement Agreement: _____

Town of Basalt

Development Application

The Following Must Be Provided Unless the Town Planner Gives Permission to Omit Answer:

TYPE OF APPLICATION FILED: X Annexation X Rezoning ____ESA Environmental ____ESA Floodplain ____Regular Rezoning ____Special Review ____ Special Review for Off-Street Parking ____Variance ____Minor Subdivision ____ Minor Subdivision Condominimization

____Major Subdivision or Replat
- X Sketch Plan
- ____Preliminary Plat
- ____Final Plat

____ Planned Unit Development
- ____Sketch Plan
- ____Master Plan
- ____Preliminary Development Plan
- ____Final Development Plan
- ____TRC Administrative Amendment

Other type of Application. *Not Applicable.*

Brief description of project: *This application by Davidco LLC is a Serial Annexation of Parcels 1,2 and 3 containing approximately 3.819 acres +/- or approximately 166,360 square feet total, see attached.*

Parcels 1 and 2: The Serial Annexation of Parcels 1 and 2 includes approximately 2.118 acres +/- or approximately 92,260 square feet (total) and is proposed to be a second expansion of Basalt Mini Storage and includes a separate zoning and site plan application to construct four (4) separate buildings of approximately 20,400 total square feet on two levels of each building. Said buildings will be phased one at a time.

Parcel 3: The Serial Annexation of Parcel 3 includes approximately 1.701 acres +/- or approximately 74,100 square feet (total) and is made in response to the Town of Basalt's request to annex into the town, at the same time as Parcels 1 and 2, that portion of South Side Drive and Fiou Lane right-of-way that is currently not dedicated or annexed that lies within the remaining portion of Davidco LLC's property. Upon approval of the Serial Annexation of Parcels 1,2 and 3, Davidco LLC shall sale and convey to the Town of Basalt Parcel 3 by executing a Bargain and Sale Deed in the attached form and format. In agreeing to this annexation request, it is expected that the Town will waive any fees and or additional cost associated with this portion of the annexation.

Contact Information

Name of Applicant(s): *Davidco LLC*

Phone number: *970-927-4704*
Fax number: 970-927-4801
E mail (if available): crosland@bta.bz
Address: 400 W. Cody Lane, Basalt, Colorado 81621

Name of Owner(s): *Same as above*

Phone number:
Fax number:
E mail (if available):
Address:

Name of Owner's Representative: Clay Crossland

Phone number: *970-927-4704*
Fax number: 970-927-4801
E mail (if available): crosland@bta.bz

Please attach owner's authorization. *Not Applicable.*

Name of Engineer or Surveyor: *Sopris Engineering, Inc.*

Phone number: *970-704-0311*
Fax number: *970-704-0313*
Email: *ynichol@sopriseng.com*
mbeckler@sopriseng.com

Name of Architect or Planner: *Lipkin Warner Design & Planning LLC,*
Jeffrey Osulak, Architect

Phone number: *970-927-8473*
Fax number: *970-927-8487*

Information on Existing Conditions

Existing Zoning: *Master Plan Industrial* Proposed Zoning: *Industrial*

Total square feet or acreage in application: *Approximately 92,260 square feet of land*

Information on Proposed Development

Total number of dwelling units: *None.*

Total number of Bedrooms: *None.*

Total floor area: *Approximately 81,600 total square feet on 2 levels of 4 separate buildings.*

Proposed gross floor area by use (non-residential development only): *.89:1.0*

Legal Description

Legal Description of property (attach if necessary): *See Attached.*

Reception No. of Deed: *Rec.# is 519602 in Pitkin County, Colorado.*

Davidco LLC

By: Clay Crossland, Member/Manager

SIGNATURE OF OWNER OR OWNER'S REPRESENTATIVE*

* If Owner's Representative files or will represent the application, attach an owner's authorization to represent

Attach appropriate information requested for type of application per the Basalt Town Code and any information requested by Planning Department.

Application – Zoning Map Change

Sec. 16-267. Amendment Procedure

November 17, 2015

To: Susan Philp
Planning Director
Town of Basalt
101 Midland Ave.
Basalt, Colorado 81621

From: Davidco LLC
Property Owner/Applicant
P.O. Box 710
Basalt, Colorado 81621

Re: Application for a Zoning Map Change

Dear Susan:

Introduction:

Pursuant to Section 16-267 of the Town Code, please consider this Application for a Zoning Change to the Town's Zoning Map to be in the Planning and Zoning Commission's requisite format and effective this date to be officially filed with the Town Clerk for processing and review.

Description of Land to be Rezoned:

This Zoning Change application accompanies a petition for a serial annexation totaling approximately 2.118 acres of land located just west of Southside Dr. and South of Fiou Lane but more specifically immediately south of the existing Basalt Mini Storage (BMS). See Tab 8 for a more detailed legal and description of the boundaries of the area requested to be rezoned. Now, go to Appendix Tab 21 for an indication of the existing zoning on all adjacent sides of the area.

Requested New Zoning Classification:

The Applicant, Davidco LLC, seeks to annex the property together with a New Zoning Classification of IND or Light Industrial Zoning, obtain site plan approval to include a phased development schedule to supplement and expand the existing Basalt Mini Storage Complex.

Boundaries of the Requested New Zoning Classification:

See Tab 8.

Existing Zoning on all Sides of the Area:

See Appendix Tab 21.

Statement of Justification:

The Town's 2007 (adopted) Master Plan Map, see Appendix Tab 21, already projects and/or designates the subject area as IND or Light Industrial Zoning. The reasoning behind this designation is quite obvious when one studies the surrounding area's existing zoning and development, i.e., it is estimated that approximately 70% of all the land already annexed and developed between the subject property and Highway 82 has been developed under the IND zoning with a mix of uses. Therefore, Applicant's Rezoning Request is in conformance with the Town's adopted and desired future use, i.e., the Master Plan.

In addition, the subject property's proposed use is adjacent to, contiguous with and an extension of an existing successful business, Basalt Mini Storage. This fact alone makes it peculiarly suitable to the site and use. Allowing an existing low impact and successful business to expand is only smart planning.

Furthermore, the area conditions have changed only in the fact that there is a substantial lack of supply for the proposed use compared to the demand. Moreover, no IN or additional mini storage has been approved or built in the Town or from Aspen to the town limits of Carbondale since the applicant did so back in 1997. To not allow expansion of this use will certainly result in a further shortage resulting in escalated pricing and inconvenience to the general public. Simply stated, this proposed expansion is in the best interest of the community it serves to include businesses as well as individuals.

Finally, all necessary utilities and road structures are in place, available and accessible.

Description Proposed Uses:

The proposed use is a single use proposal for the expansion of the existing and adjacent Basalt Mini Storage with the addition of some climate control or heated space which BMS presently does not offer. The proposed four (4) two story buildings are to be constructed using a steel supper structure, architectural grade metal siding, a metal standing seam and concrete flooring. There will be a designated loading and unloading zone, for each building, conveniently accessible to an elevator for service to the second story (see Tabs 11 & 12).

Surrounding Land and Building Uses:

The subject property is basically part of an undeveloped enclave surrounded on three sides by existing uses already annexed to the Town or permanently dedicated as open space, (see Tab 8).

Immediately to the west is the Grange Ranch, approximately 240 acres, which runs all the way from Highway 82 down to the Basalt High School. This property has a contractual obligation to the Aspen Valley Land Trust and Associates to be designated as a perpetual open space easement limiting its use to agriculture.

Immediately to the north and East of the subject are three different IND (industrial) developments, i.e., BBCW, BBCS and BBCE. Examples of the various uses are; Basalt's Public Works facility at the end of Fiou Lane and only a few hundred feet from the proposed project, multiple buildings that are car oriented, i.e., Big Tires, Quick Lube, The Finishing Touch body shop, Alexander Roofing Co. warehouse, Myers Steel Fabrication, Mountain Greenery nursery, Western Sheet Metal fabrication, Shell fueling station, just to mention a few.

The land across Southside Drive directly to the east of the subject proposal is a residential neighborhood with a variety of densities. Directly adjacent to Southside Drive are the Southside Town homes, a multi-family neighborhood.

Heading south on Southside Drive, Southside Park is adjacent to the street surrounded on the east by a mix of single-family, live-work and multi-family homes. The Park is zoned "Park" and the residential neighborhood to the east of the Park is zoned R3.

Beyond Southside Park traveling south on Southside Drive, the first row of homes along Southside Drive is zoned C3 and are live/work single-family style structures. Five live/work units are located in four separate buildings and two more are located between Meadow Lane and

the Home Supply irrigation ditch. The neighborhood east of the live/work units is single family residential and is zoned R4.

Immediately to the south of the Home Supply ditch and west of Southside Drive and down to the high school, is vacant land that lies within the Basalt Master Plan Growth Boundary and has various mixed use designations, i.e., IND, Medium Density Residential, Public Service and Public Open Space (see Appendix Tab 21).

It is important to point out that all of these multi-use residential and live/work projects occurred after BBCW, BBCE, BBCS and the Town's Master Plan were approved and mostly developed. Suffice to say, these developments were built and sold knowing that it was already heavily developed as IN uses and what one should expect in the future via the Town's Master Plan.

Time or Phasing Schedule:

Our site plan specifically shows four (4) separate buildings (two story) of approximately 20,400 square feet or 10,200 square feet per level for a total of 81,600 square feet. Each building will be developed separately based upon demand and absorption. While rent-up periods vary greatly between facilities and locations, most industry professionals consider a facility has completed its lease up period once it has reached a 70 percent physical occupancy rate. As published in the 2011 Self-Storage Almanac the percent of facilities reaching 70% physical Occupancy that took more than 24 months was 68.48% for those facilities located in the Western Mountain region. This is in line with the national average of 68.47% (see attached).

Based upon our past experience together with the above averages it is estimates that a reasonable absorption rate for the 1st phase would follow the national trends or more than 24 months to obtain 70% physical occupancy. This estimate could be faster for the first phase due to the short supply and the addition of Climate Controlled spaces which does not exist in the valley at this time.

If one were to estimate the remaining three phases using the above assumptions it would be a reasonable projection that it would take a minimum of eight years to complete the project subject to the development of or lack of new facilities.

Justification for Additional IN or Light Industrial Zoning:

Notwithstanding a few lots zoned IN in BBCW, BBCE and BBCS that cannot be developed because of their location within the designated flood plain, there does not exist any developable IN zoned property in the Town of Basalt. This is to say that all existing IN zoned

property is already developed out. Moreover, there is no known property between Aspen and Carbondale that is zoned to accommodate the proposed use. While this application is a single use request, i.e., mini storage, there is a demand for even more property to be zoned IN to accommodate other uses allowed under this category. This fact is obviously acknowledged by the Town since they are designating in their Master Plan a lot more IN property on approximately 5 more acres. The total lack of any developable existing IN zoning within the Town and surrounding communities, is by itself justification for additional IN zoning.

Effect of Zoning on Adjacent Uses:

The very nature of mini storage is very low key, especially when no outside storage is allowed, resulting in an impact that can be considered as low as possible when compared to multi-family, car oriented businesses and other heaver light industrial uses. For instance, Sopris Engineering's engineering report for this project in Paragraph 3.0 quotes that the traffic trip generation numbers obtained from the 9th Edition of the Institute of Traffic Engineers (ITE) Trip Generation Manuals indicates that conservatively, at build out of the project, the Additional Traffic trips per day would be 200 or 2.5 trips per 1,000 square feet per day. Our own traffic counts for the existing Basalt Mini Storage is 56 visits by our customers on two existing sites totaling 70,000 square feet or less than one (1) car per 1,000 square feet (.80 per 1,000 sq/ft). This low traffic impact is almost negligible when compared to residential development.

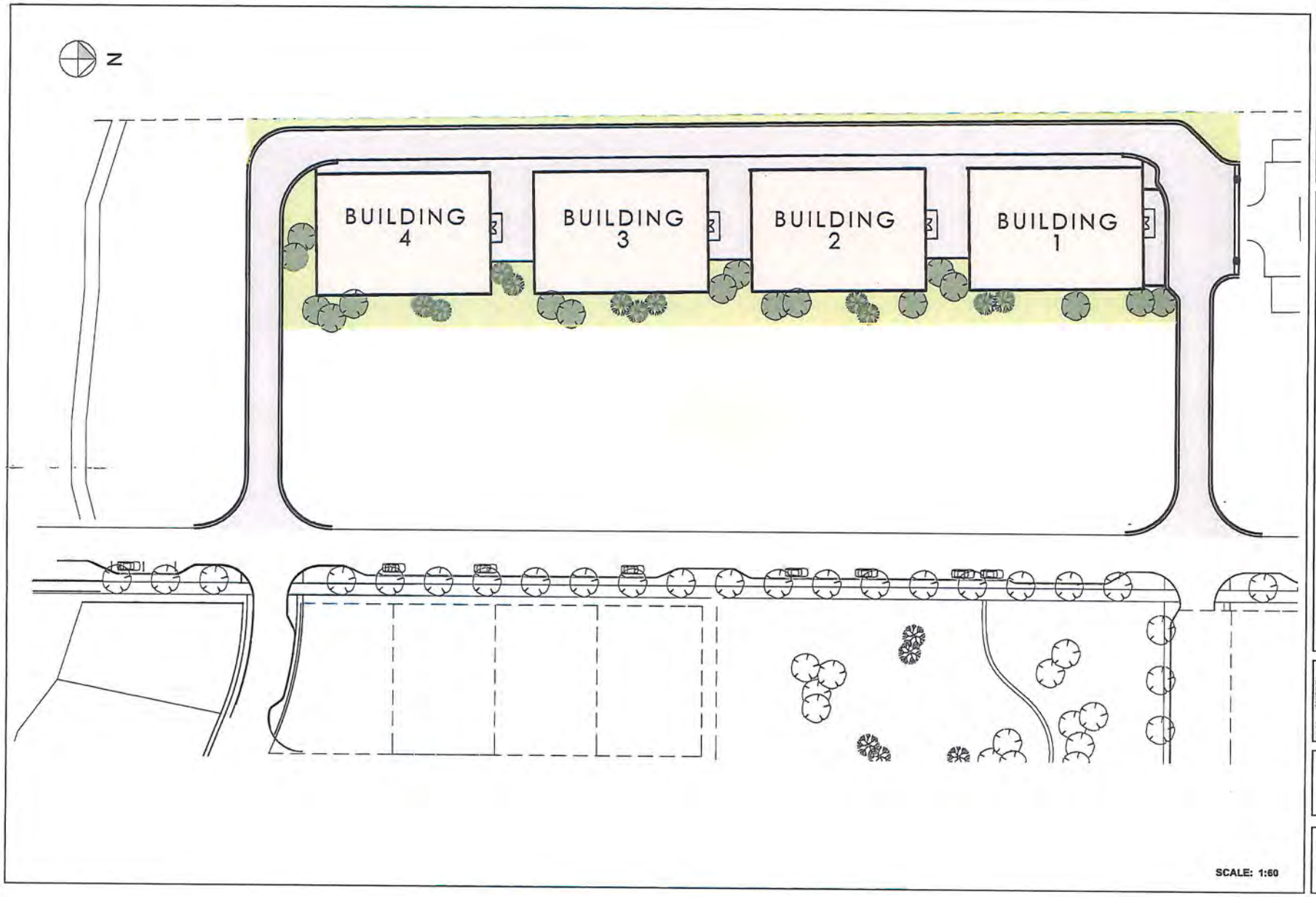
The fact that the project is designed to accommodate all the activity on the west side of the buildings facing the Grange Cattle Ranch goes a long way to limit visibility of the mini storage operation as one drives down Southside Drive or enters Southside from the east.

The positive effects of the project on adjacent uses are; it affords convenient storage to a lot of existing business and residents on both sides of Highway 82, and expansion in this location does not require an office on site since the main office where people come to rent will still be located at the existing BMS office located up next to Highway 82 next to Big "O".

Finally, the biggest positive for the surrounding uses and for the whole Town is the real estate and personal property taxes that will be generated by the expansion of BMS. Going back to the year 2000 and forward to the last real estate tax year of 2014, BMS has paid exactly *$1,561,684.31* in property and personal property tax (see attached). This does not count the money generated from 1992 until year 2000 which we no longer have records. However, conservatively it would have put the number close to *$2,000,000*. The general brake down of the how that $1,561,684.31 was distributed and to whom is as follows:

1.	**Schools:**	
	a. Roaring Fork School District	**48.94%**
	b. Colorado Mountain College	**4.64%**
2.	**Town of Basalt General Fund**	**11.48%**
3.	**Other Town Special Districts**	
	a. Open Space/Trails	
	b. Basalt Fire District	
	c. Basalt Sanitation	
	d. Basalt Library	**24.05%**
4.	**Other Entities**	
	a. Pitkin County General Fund	
	b. County TV&FM Translators	
	c. County Roads and Bridges	
	d. County Human Services	
	e. Healthy Community Fund	**10.89%**
	Total	**100.00%**

In conclusion, once the proposed development is built out there will be well over *$3,000,000* (in today's dollars) in property taxes of which roughly 75% goes to the direct benefit of Basalt and the surrounding community. Just as importantly, there are almost no services, expense or negative impact to the Basalt Community resulting in these tax dollars being almost total net dollars.



LIPKIN WARNER DESIGN & PLANNING
701 EAST VALLEY RD
SUITE 201
BASALT, CO 81621
T: 970.927.8473
F: 970.927.8487
W: lipkinwarner.com

L W
D P

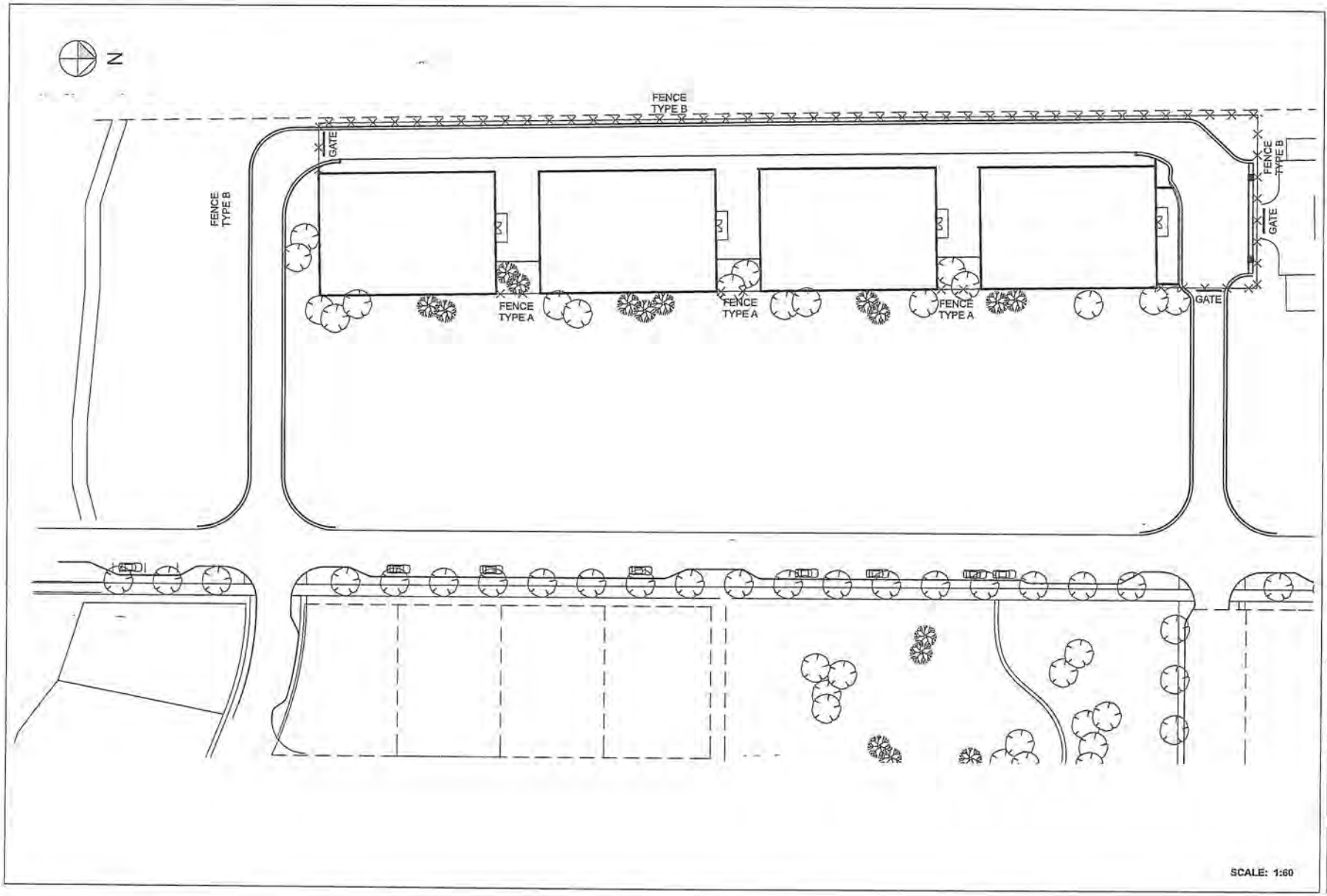
DAVIDCO LLC

BASALT MINI STORAGE EXPANSION
BASALT, CO 81621

DATE ISSUE/REV
11-4-18 SITE PLAN

SITE/ LANDSCAPE PLAN

A-100



LIPKIN WARNER DESIGN & PLANNING

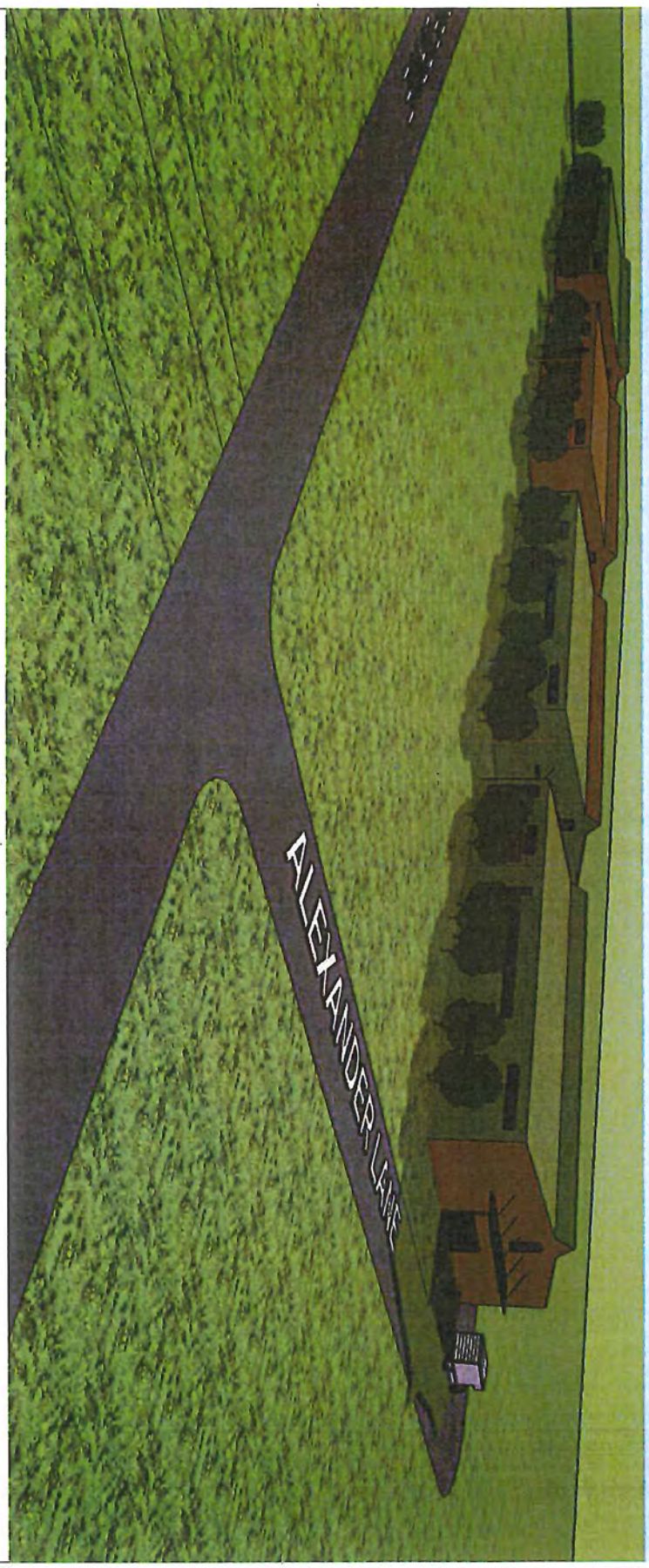
DAVIDCO LLC

BASALT MINI STORAGE EXPANSION
BASALT, CO 81621

DATE ISSUE/REV
12.14.15 RENDERINGS

FENCE LAYOUT

A-102



A-201

NE VIEW

DATE	ISSUE/REV
12.14.16	RENDERINGS

DAVIDCO LLC

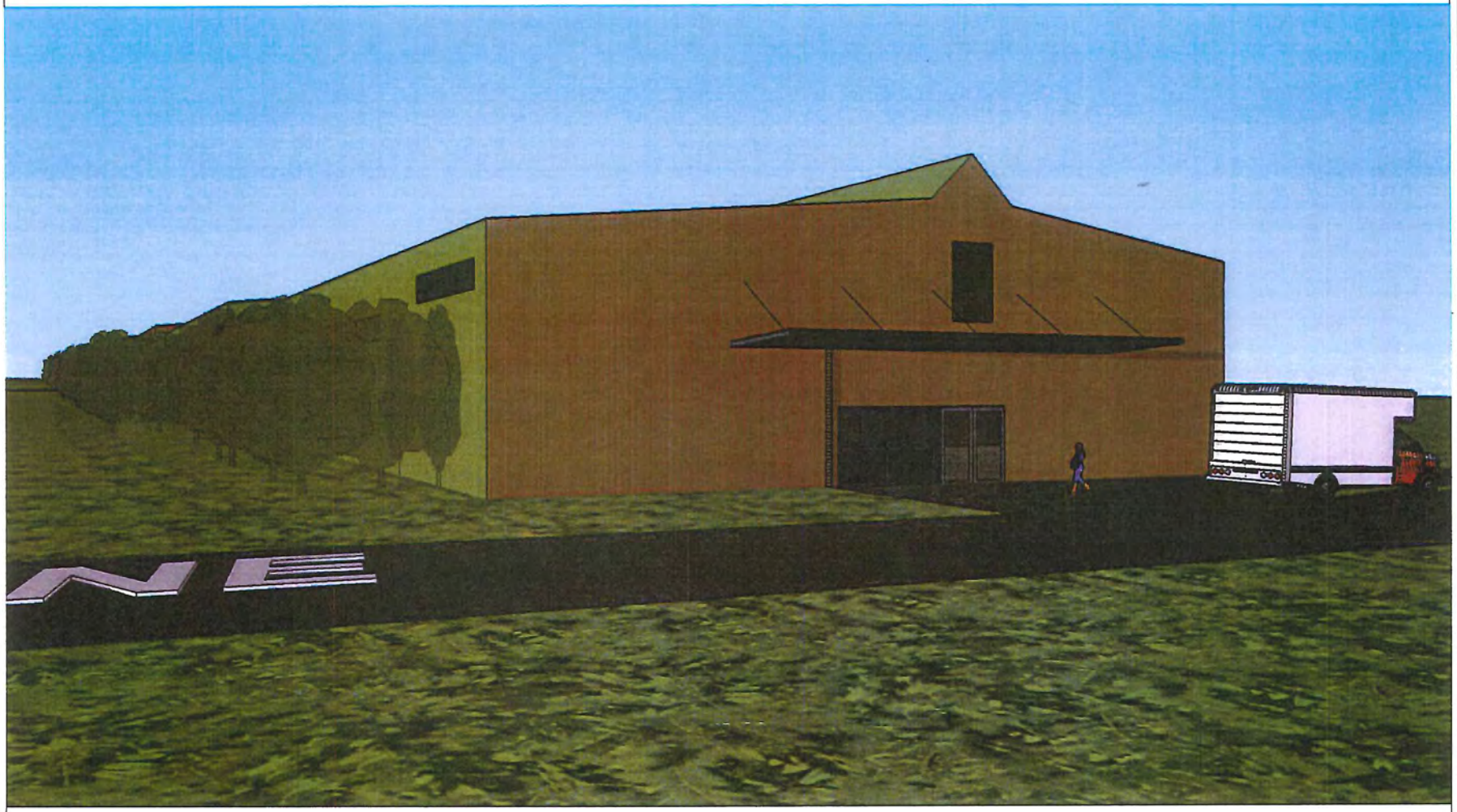
BASALT MINI STORAGE EXPANSION
BASALT, CO 81621

L W
D P

LIPKIN WARNER DESIGN & PLANNING

201 EAST VALLEY RD
SUITE 201
BASALT, CO 81621

T: 970.927.8433
F: 970.927.8487
W: lipkinwarner.com



L W
D P

LIPKIN WARNER DESIGN & PLANNING

701 EAST VALLEY RD
SUITE 201
BASALT, CO 81621

T: 970.927.4173
F: 970.927.4487
W: [illegible]

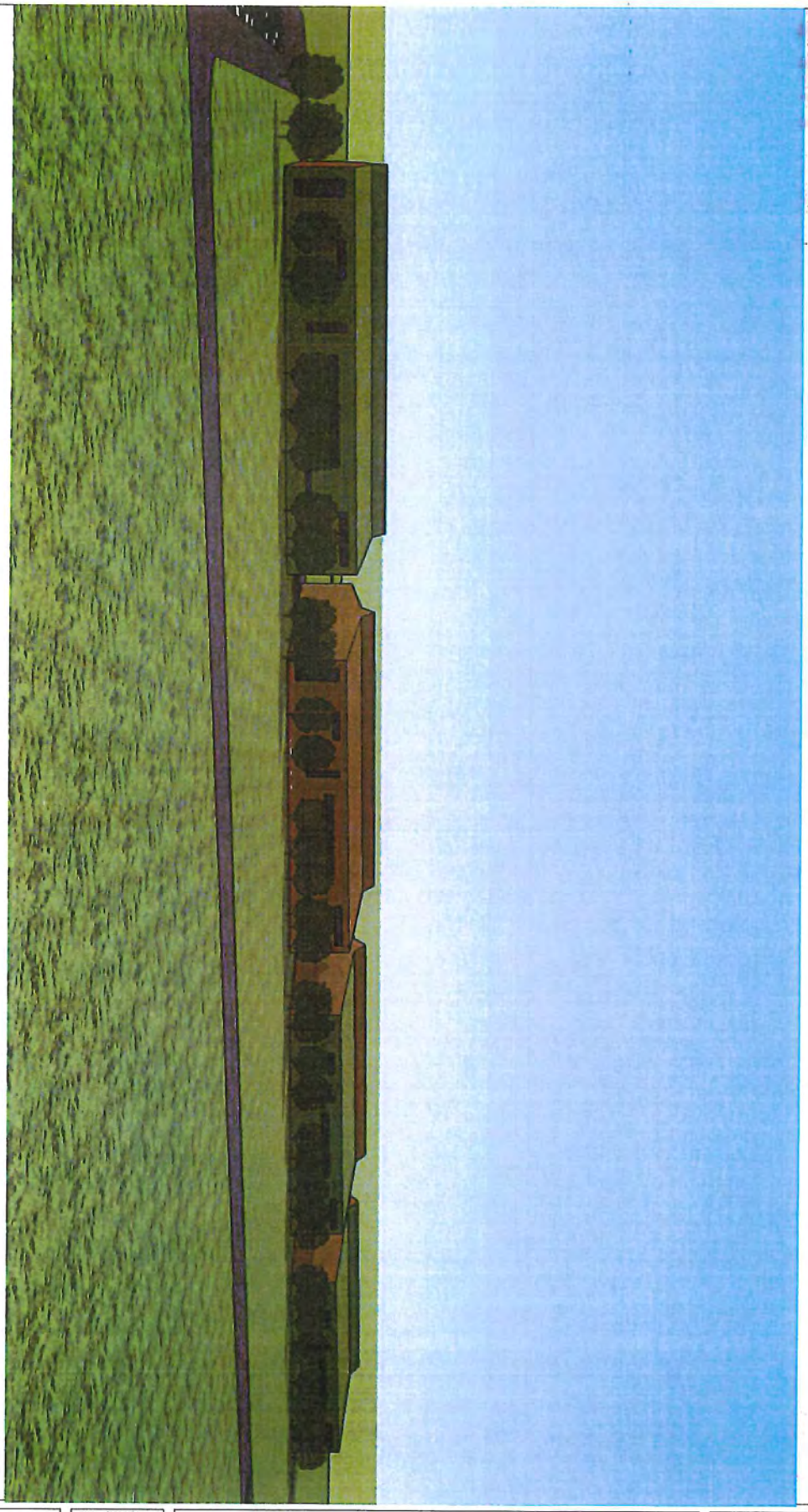
DAVIDCO LLC

BASALT MINI STORAGE EXPANSION
BASALT, CO 81621

DATE ISSUE/REV
12.14.18 RENDERINGS

N VIEW

A-202



A-206

E VIEW

DATE	ISSUE/REV
12.14.16	RENDERINGS

DAVIDCO LLC

BASALT MINI STORAGE EXPANSION
BASALT, CO 81621

L W
D P

LIPKIN WARNER DESIGN & PLANNING

701 EAST VALLEY RD
SUITE 201
BASALT, CO 81621

T: 970.927.8473
F: 970.927.8487
W: lpkinwarner.com

TOWN OF BASALT Action Item	Date: January 26, 2016 From: Susan Philp, Planning Director Mirte Mallory, WE- cycle

SUBJECT: Resolution No. 03, Series of 2016, Approving WE-cycle Installation in 2016

RECOMMENDATION: Approve Resolution.

DETAILS:

The purpose of this item is to have the Council decide whether to move forward with making WE-cycle happen in Basalt in 2016.

The proposed resolution directs Staff to work with WE-cycle to order the capital equipment so that we can have WE-cycle operational by June of this year.

Mirte Mallory, WE-cycle, will be at the Council meeting to summarize where we are in planning and funding for Basalt WE-cycle in 2016. Exhibit A of the resolution shows that currently there is a shortfall of funds for the purchase of a bike share system of sufficient size to serve as a reliable transit option. Exhibit A also shows where we are intending to make up that shortfall. Staff is confident that additional private and public funding will become available to bring Basalt's total obligation within the $100,000 budgeted by the Town for capital and operations in 2016.

Related Town Statute and or Town Actions: Town Master Plan; 2015 Work Program Item for net zero downtown

Line Item Code & Description: 2016 and future budget implications.

Attachment: Draft Resolution

RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, DIRECTING STAFF TO MOVE FORWARD AND ESTABLISH WE-CYCLE IN BASALT IN 2016

Town of Basalt, Colorado
Resolution No. 03
Series of 2016

RECITALS

1. Whereas, the Town Council established a policy and took the initial steps toward implementing WE-cycle in the Town of Basalt last August by approving Resolution No. 46, Series of 2015.

2. Whereas, Resolution No. 46, Series of 2015 supported establishing WE-cycle as Basalt's first public transportation system as it is aligned with Basalt's goals and directed additional steps to install WE-cycle in Basalt in 2016.

3. Whereas, the Council feels that the WE-cycle Team has made progress on planning and establishing the funding for installation of WE-cycle facilities in the Town of Basalt in 2016.

NOW, THEREFORE, BE IT RESOLVED by the Basalt Town Council of Basalt, Colorado, as follows:

Based on the evidence, testimony, exhibits, and comments from the public and Town Staff, the Basalt Town Council hereby:

1. Directs Staff to work with WE-cycle to order the capital equipment necessary to install WE-cycle for use in 2016.

2. Approves spending up to $140,000 in 2016 in addition to the $60,000 for capital currently budgeted for capital outlay based on confidence that additional private and public funding will become available to bring Basalt's obligation within the $100,000 budgeted for this item ($60,000 for capital outlay and $40,000 for operations). This action is necessary so that the equipment may be ordered for WE-cycle to become operational in June of 2016.

3. Directs Staff to bring back a memorandum of understanding with WE-cycle to outline the partnership and operating structure and funding requirements for bringing WE-cycle into the Town of Basalt for future consideration by the Town Council.

4. Directs Staff to work with Ehlers, the Town's Financial Analyst, to develop a financial strategy to build and operate the WE-cycle facilities.

READ AND ADOPTED on January 26, 2016, by a vote of __ to __.

TOWN OF BASALT, COLORADO

By: _____
Jacque R. Whitsitt, Mayor

By: _____
Pam Schilling, Clerk

EXHIBIT A

TO: Basalt Town Council
FROM: Mirte Mallory, WE-cycle, Co-Founder and Director
DATE OF MEETING: January 26, 2016
RE: WE-cycle Funding Update

CAPITAL FUND UPDATE:

WE-cycle is pleased to report that it in just three months it has secured two-thirds of the Capital Funds to purchase the bike share infrastructure for the WE-cycle Basalt System. WE-cycle must place an order for the system by February 1st in order to open in the May/June of 2016. WE-cycle is grateful for the Town of Basalt's tremendous leadership of this initiative to bring bike share to the community in such an expedited timeline. To this end, WE-cycle appreciates the Town of Basalt's intermediary funding support as WE-cycle continues to secure additional financial contributions in advance of the system opening.

The following illustrates the public / private partnership WE-cycle has forged to fund both the Capital Fund and Operating expenses as of January 26, 2016:

WE-cycle BASALT 2016 - Phase 1			
CAPTIAL FUND PARTNERS (Recognized for life of system)	Capital Fund Committed	Operating Funds Committed: Year 1	Notes
Goal	$380,000	$160,000	
Founding Partners: Over $40,000 in Capital			
Roaring Fork Transportation Authority (RFTA)	$ 50,000		Also, granted WE-cycle operating funds for night/weekend service.
Pitkin County	$ 40,000	$ 7,500	
Town of Basalt	$ 60,000	$ 40,000	
Willits Town Center	$ 60,000	$ 10,000	$10,000 to operating committed for 3 years
Valley Settlement Project	IN-KIND		Partnering on Latino Outreach Program
Founding Partners Subtotal	**$ 210,000**		
Launch Partners: $20,000 - $39,999			
Eagle County	$ 20,000		
1 Family Foundation grant submitted			
Ask made to 1 private donor			
Launch Partners Subtotal	**$ 20,000**		
Momentum Partners: $10,000 - $19,999			
Habitat for Humanity	$ 10,000		
1 grant requests submitted, 1 pending			
Asks in process to 5 businesses			
Asks in process to 3 private donors			
Momentum Partners Subtotal	**$ 10,000**		
Advocates: $5,000 - $9,999			
Challenge grant received from 1 Family Foundation			
Asks in process to 6 busineses			
Advocates Subtotal	**$ -**		
Supporters: $1,000 - $4,999			
Holy Cross Round-Up Foundation	$ 1,000		
Supporters Subtotal	**$ 1,000**		
Funds Raised to Date	**$241,000**	**$ 47,500**	
Funds to raise	$ (139,000)	$ (112,500)	
Remainder of Capital Fund to be secured through private/public contributions: businesses, donations, and grants over the coming months.		Remainder of operating funds to be secured through sponsorship (on bikes and at stations), pass sales, and donations. Similar to Aspen model.	

EXHIBIT A

INITIAL STATION SITING: WE-cycle has concluded preliminary station siting of an appropriately-sized system for Phase 1 that is sufficiently-dense to offer convenience, reliability, and enhanced access to the transit corridor for Basalt, Willits, and El Jebel residents.

WE-cycle will conduct exact station siting outreach in the coming months as part of a Neighborhood Participation Process in which the community will be asked to identify the most important locations for WE-cycle stations and service.

Serving the Latino community is a core focus of the WE-cycle Basalt System. To this end, WE-cycle, in partnership with the Valley Settlement Project, has applied for a Better Bike Share Partnership Grant to hire a Latino Outreach Coordinator to provide programming and riding skills to the Latino community. Crawford Properties, LLC., specifically at the El Jebel Mobile Home Park, is a partner of this initiative by providing land and logistical support.

SERVICE AREA: The Phase 1 WE-cycle service area is illustrated below. WE-cycle will serve as a fast, healthy, and car-free way to run errands and conduct business in and around Basalt, Willits, and El Jebel. Another goal of the WE-cycle Basalt System is to provide first/last mile bike access to the transit corridor and to Park & Rides.

EXHIBIT A

we CYCLE
ride the movement™

WE-CYCLE IN WILLITS

Station Siting

- Standard Station with expected number of docking points
- Satellite Station

Neighborhood Satellite Station locations determined by a Neighborhood Participation Process

WE-CYCLE IN EL JEBEL

Station Siting

- Standard Station with expected number of docking points
- Satellite Station

Neighborhood Satellite Station locations determined by a Neighborhood Participation Process

TOWN OF BASALT Action Item	Date: January 26, 2016 From: James Lindt AICP, Assistant Planning Director

SUBJECT: Council consideration of Ordinance No. 06, Series of 2016, on first reading, approving the conversion of Unit 202, at 104 Midland Avenue from office space into a residential unit.

RECOMMENDATION: Staff recommends that Council approve the attached ordinance on first reading, continue and set the public hearing and 2nd reading for February 23, 2016.

DETAILS: Robert and Cindy Perry ("Applicants") are requesting approval of a Special Review for Multi-family dwellings in the C-2 Zone District, a waiver of the private open space requirements, a Condominium Amendment, the waiver of School Land Dedication and Parkland Dedication fees, and the waiver of an off-street parking space to convert Office Unit 202 (at 104 Midland Avenue) into a single residential unit of approximately 1,370 square feet.

The Application is exempt from the Community Priorities Scoring System (CPSS) and the Community Housing Regulations. Staff feels that there is a good amount vacant office space in the downtown area and that the conversion to residential will add people to the downtown core to help support the retail and restaurant businesses in downtown, which is consistent with the policies that have been discussed in the "Our Town" Planning activities.

The original approvals for the building granted a waiver from the commercial and office parking requirements and allowed a reduction in the residential parking requirements due to the historic landmark designation. The Applicants have one parking space designated for the unit. Applying the parking waivers and reductions that are permitted for properties that are historically designated, the proposed conversion to a one-bedroom residential unit would generate a requirement for a portion of a parking space. The Applicants requested a waiver from the need to provide the additional parking space and Staff has recommended that the Applicants be required to pay cash-in-lieu for a portion of a parking space that would amount to approximately $3,000.

Staff and the P&Z support the waiver from the private open space requirements as Staff and P&Z believe that the existing patio area at the back of the proposed residential unit meets the intent of the private open space requirement by providing for a usable outdoor space that is shared with the office unit across the hallway from the proposed residential unit. Finally, the Staff and the P&Z also support a waiver of the land dedication portion of the Parkland fee as is permitted at the discretion of the Town Council for properties that are historically designated. The waiver of the land dedication portion of the Parkland fee would reduce the Parkland fee from approximately $10,000 to approximately $3,000.

The draft conditions are the same as was required of the Hagman conversion of their office to a residential unit across the hall from the subject unit, with the addition of the parking cash-in-lieu requirement outlined above.

RECOMMENDATIONS FROM OTHER BOARDS: The P&Z recommended approval of the Application with the conditions contained in the draft ordinance.
RELATED TOWN STATUTE AND TOWN ACTIONS: Town Code Section 16-29, *C-2 Downtown Business District*; Article III, Chapter 16, *Special Review Application Requirements and Procedures*; Section 16-394, *Historic Preservation Incentives; Section 17-83, Minor Subdivision Procedure*
ATTACHMENTS: A) Draft Ordinance, B) Application, C) January 19th P&Z Memo, D) Draft January 19th P&Z Minutes, E) Referral Comments

A) Draft Ord.

Town of Basalt, Colorado
Ordinance No. 06
Series of 2016

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO, GRANTING SPECIAL REVIEW APPROVAL, A CONDOMINIUM AMENDMENT, AND HISTORIC INCENTIVES FOR THE CONVERSION OF UNIT 202 INTO A RESIDENTIAL UNIT, AT 104 MIDLAND AVENUE (LITTLE SNELL BUILDING), BASALT, COLORADO

RECITALS

A. The Town of Basalt ("Town"), acting by and through its Town Council ("Town Council"), has the power to grant Special Review, a Condominium Amendment, the waiver of private open space, and Historic Incentives for the waiver of Parkland and School Land Dedication requirements, and the waiver of an off-street parking space. Robert and Cindy Perry ("Applicants") submitted an application for Special Review, a Condominium Amendment, and Historic Incentives for the waiver of Parkland and School Land Dedication requirements, and the waiver of an off-street parking space to convert Unit 202 at 104 Midland Avenue into a residential unit of 1,370 square feet. Said application is for property more particularly described in **Exhibit "A"** attached hereto.

B. At a duly-noticed public hearing held on January 19, 2016, the Planning and Zoning Commission considered the application. At the public hearing on January 19, 2016, the Planning and Zoning Commission heard evidence and testimony as offered by the Town Staff, the Applicants, and members of the public. The Planning and Zoning Commission recommended approval subject to conditions.

C. At a public hearing on January 26, 2016, the Town Council approved this Ordinance on first reading, set a public hearing and second reading for this Ordinance for February 23, 2016, for a meeting beginning no earlier than 6:00 pm at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado.

D. At a public hearing and second reading on _____, 2016, the Town Council heard evidence and testimony as offered by the Town Staff, the Applicants, and members of the public.

E. The Town Council finds and determines it is in the best interests of the Town to approve this Ordinance. Further, the Town Council finds and

Please return to:
TOWN OF BASALT
101 Midland Avenue
Basalt, CO 81621

determines this Ordinance is reasonably necessary to promote the legitimate public purposes of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO AS FOLLOWS:

A. FINDINGS. The Town Council hereby incorporates by reference and conclusively makes the following findings:

1. Based on the evidence, testimony, exhibits, and comments from the public, Applicant and Town Staff, the Basalt Town Council finds and determines as follows:

2. The application conforms to the provisions of Chapter 16 and Chapter 17 of the Town Code provided that the conditions contained in this ordinance are satisfied.

3. The application will not have an adverse impact or otherwise be detrimental to the general welfare of the community.

4. Based on the evidence, testimony, exhibits, and comments from the public, Applicant, and Town Staff; the Town Council finds and determines that the proposed application is generally consistent with the 2007 Basalt Master Plan, subject to compliance with the conditions contained herein.

B. APPROVAL AND CONDITIONS OF APPROVAL. The Town Council hereby grants Special Review Approval, a Condominium Amendment, Historic Incentives for the waiver of Parkland and School Land Dedication requirements, and cash-in-lieu of providing a parking space to convert Unit 202 at 104 Midland Avenue into a residential unit of 1,370 square feet, subject to the following conditions:

Representations:

1. The Applicant shall comply with all representations set forth in the Application.
2. The Applicant shall comply with all material representations made in hearings before the Planning and Zoning Commission and Town Council.

Unit Size:

3. The new residential unit shall contain no more than one bedroom.

Private Open Space Waiver:

4. A waiver from the private open space requirement for the new residential unit is hereby recommended for approval to the Town Council.

Residential Renovation:

5. The Applicants shall apply for and obtain a building permit to renovate the existing office space into a residential unit prior to commencing construction and satisfy all applicable Town building, life safety, and sustainable building codes. As part of the building permit review, the Applicants shall demonstrate compliance with the Sound Transmission Class (STC) rating requirements in the Building Code.

Fire District Comments:

6. The Applicants shall demonstrate compliance with Basalt and Rural Fire Protection District's comments dated January 5, 2016, prior to the issuance of a certificate of occupancy on the new residential unit.

Basalt Sanitation District Comments:

7. The Applicants shall demonstrate compliance with Basalt Sanitation District's comments prior to the issuance of a building permit.

Fees:

8. The Applicants shall pay all applicable development review fees as calculated by the Town Planner prior to building permit issuance, with the exception that the School Land Dedication Fee is waived and the Parkland Dedication and Improvement Fee shall be reduced to $3,197. The Applicants shall also pay all applicable building permit fees as calculated by the Town Building Official prior to building permit issuance.

9. The Applicants shall pay a proportional share of the parking fees-in-lieu for one parking space based on there being four (4) residential units in the building. The Applicants shall pay $3,040.85 in fees-in-lieu of parking prior to the issuance of a building permit.

Approval Documents:

10. The Applicants shall prepare an amended condominium map and condominium declaration recognizing office unit 202 as a residential

unit, for review and approval by the Town Planner and Town Attorney. The amended condominium map shall be recorded prior to the issuance of a building permit to convert the space to a residential unit.

11. The Applicants shall prepare and submit any approval documents deemed necessary by the Town Planner and Town Attorney for review and approval. Any such documents shall be executed and recorded prior to the earlier of the issuance of a building permit or 180 days after the effective date of the final approval ordinance.

Vested Rights:

12. Vested property rights shall be granted as approved herein for a period of three (3) years from the effective date of the ordinance approving these land use requests. The Applicants may request an extension of vested rights pursuant to the process for extending vested rights as established in the Town Code. If a building permit to renovate the space to a residential unit is not issued within the three (3) year vested rights period or as it may be extended, the approvals granted for this amendment shall expire.

Insubstantial Amendments:

13. The Town Planner may review and approve minor amendments to this approval to effectuate the intent of the final development approvals. The Applicants shall have the ability to appeal a Town Planner's decision on a minor amendment to the Town Council pursuant to the appeals process established in Town Code Section 16-11, *Procedures for Code Interpretations and Appeals*.

C. The approvals and conditions contained herein shall be binding on and inure to the benefit of the heirs, successors and assigns of the Applicant and the owners of the Property.

D. This Ordinance, after fully executed, shall be recorded in the office of the Eagle County Clerk and Recorder.

E. The effective date of this ordinance shall be fourteen days after the final publication of the ordinance.

F. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON February 23, 2016 by a vote of __ to __ on January 26, 2016.

READ ON SECOND READING AND ADOPTED, by a vote of __ to __ on _____, 2016.

TOWN OF BASALT, COLORADO

By: _____
Jacque R. Whitsitt, Mayor

ATTEST:

_____
Pamela K. Schilling, Town Clerk

Ord__PerryConversion

First Publication: Thursday, _____, 2016
Final Publication: Thursday, _____, 2016
Effective Date: Thursday, _____, 2016

Exhibit "A"

Legal Description

Unit 202, 104 Midland Avenue as shown on the First Amended Plat of the 104 Midland Avenue Planned Community, Basalt, Colorado, recorded at Reception No. 200707088 in the Records of the Eagle County Clerk and Recorder's Office.

B) Application

To be filled out by the Town
Filed: ____/____/____
Application Fee: _____
Review Fee: _____
Total Payment Received: _____
Current Reimbursement Agreement: _____

Town of Basalt

Development Application

The Following Must Be Provided Unless the Town Planner Gives Permission to Omit Answer:

TYPE OF APPLICATION FILED: _____Annexation _____Rezoning _____ESA Environmental ____ESA Floodplain ____ Regular Rezoning X Special Review _____Special Review for Off-Street Parking _____Variance _____Minor Subdivision ____Minor Subdivision Condominimization

_____Major Subdivision or Replat
- _____Sketch Plan
- _____Preliminary Plat
- _____Final Plat

_____Planned Unit Development
- _____Sketch Plan
- _____Master Plan
- _____Preliminary Development Plan
- _____Final Development Plan
- _____ TRC Administrative Amendment

Other type of Application Conversion to residential unit.

Brief description of project: _____

Contact Information

Name of Applicant(s): Robert & Lucinda Perry (Cindy) (home)
Phone number 970-404-1429 / 970-963-1005
Fax number n/a
E mail (if available) irish2lab@yahoo.com
Address 4479 Co. Rd. 108 Carbondale Colo. 81623

Name of Owner(s): Robert & Lucinda Perry
Phone number same
Fax number n/a
E mail (if available) same
Address same

Name of Owner's Representative: n/a
Phone number
Fax number
E mail (if available)

Please attach owner's authorization.

Name of Engineer or Surveyor: n/a
Phone number
Fax number
E mail (if available)

Name of Architect or Planner: Tim Hagman
Phone number 927-3822(off.) 379-5521(cell)
Fax number
E mail (if available) tim@hagmanarchitects.com

Information on Existing Conditions

Existing Zoning: C2 Proposed Zoning: C2

Total square feet or acreage in application

Information on Proposed Development

Total number of dwelling units: 1 Number of bedrooms: 1

Total floor area: 1367

Proposed gross floor area by use (non-residential development only):

Area of open space to be provided:

Legal Description

Legal Description of property (attach if necessary):
Unit 202 104 Midland Ave.
Basalt, Colorado
81621

Reception No. of Deed: 200707398

Lucinda K. Perry

SIGNATURE OF OWNER OR OWNER'S REPRESENTATIVE*

* If Owner's Representative files or will represent the application, attach an owner's authorization to represent

Attach appropriate information requested for type of application per the Basalt Town Code and any information requested by Planning Department.

To whom it may concern

Re: Special Review Application Submitted by Robert and Lucinda Perry

The Perry's request from the Town of Basalt an approval to convert unit 202 at 104 Midland Avenue from commercial use to residential use. The proposed change is in keeping with the current use of other units in the building, including the location and surrounding land uses. There will be 3 existing residential units in the building once the Kovich construction is completed. This unit would add a forth unit.

The proposed unit is less than 1400 square feet and is on the second floor. As such, it would meet the standards for use in the C-2 Zone in which it is located.

At the time of original approval for this development, Ordinance No. 10, Series of 2002, Recorded 797556 on June 3, 2002, the Little Snell Building met the Special Review Requirements. It also received waivers for the parkland and school land dedication requirements. We are requesting that these original waivers be carried forward to include this conversion as the original space and building will not be altered.

We are also requesting that this proposed conversion be exempt from the Community Priorities Scoring System and Community Housing as it involves the creation of less than 5 dwelling units.

Additionally, we request that the Town waive the provision that requires residences to have 50 square feet of private open space. The configuration of the property's open space on the second floor was designed as private for the two units on that floor. The intent was to provide open space in a multi-family multi-use building.

Thank you for your consideration

Unit 202 Residential Conversion Application
Re: Town Code Section 16-394, as concerning 104 Midland Avenue Basalt, Co.

To the Town of Basalt Planning Committee,

It is my understanding that the town of Basalt has some discretion in considering a greater than 30% reduction in parking requirements for Historic Landmarks.

We, the Perry's, along with fellow owners of 104 Midland Avenue, are asking for reexamination of this issue as it greatly concerns the possibility of our conversion being granted. We are asking the Planning Committee to allow for no more than 4 parking spaces, one for each residential unit within the building. Although the parking garage is currently zoned to allow for 5 parking spaces, the owners feel that to park any more than 4 vehicles in the garage creates hardship. The best use of the 5th, very small space, is to house the trash and recycling receptacles, as is currently being done.

Having a 5th parking space in the existing area is simply not feasible. Even a small car parked within the envelope currently occupied by the "recycling center" would make it nearly impossible for other vehicles to enter or exit the parking structure. No one wants to have to execute a 10 point turn upon pulling into or exiting the garage. Having five cars in the parking garage would make it cumbersome for occupants to get in and out of their vehicles and leaves no workable space for housing the trash and recycling.

It is our desire to see the building completely converted into a residential space. This cannot be accomplished by creating parking hardships for the residents.

The owners of 104 Midland Avenue are in agreement regarding the concerns laid out in this letter. I have included the other owners supporting letters. They make additional points that I hope you will consider.

Adding another residential unit in a community that has a housing shortage seems to be a win win for all parties. 104 Midland has a great location within walking distance of transportation and recreation opportunities. Great coffee, and restaurant options are mere steps away. We feel that it could be in the center of a revitalized downtown area.

We are asking you to consider granting a change in the parking requirements, from 5 to 4 parking spaces, with a permanent home for the recycling center using the existing space near the door. Please consider our proposal and concerns carefully.

Thank you,

Cindy Perry (970) 404-1429

September 25, 2015

James Lindt
Assistant Planner
Town of Basalt

I am writing in support of Cindy and Robin Perry's request to the Town of Basalt to convert Unit#202 at The Little Snell building, 104 Midland Avenue, from commercial to residential. My wife, Judy, and I have owned Unit #302 since 2005 when we purchased it new. We are in favor of this conversion under the following conditions:

1.The ceiling is adequately insulated, so as to not cause an unreasonable amount of noise when occupied, since our unit is directly above Unit #202.

2.The Town of Basalt allows this conversion to take place with the one garage parking space owned by the Perrys rather than the two spaces that the Town of Basalt is requesting.

I am in favor of this conversion for the following reasons:

1. I am interested in having the building fully occupied, which I believe would enhance the value of our investment. As you may be aware, the Perrys purchased this space approximately 8 years ago and have not developed it. They have advertised it for sale for approximately 3 years with no success. In my opinion, it is highly unlikely they will be able to sell as unimproved commercial space given the large amount of vacant commercial space in downtown Basalt. Conversely, there is a shortage of residential space for sale in downtown Basalt and I believe **this space would be attractive** to someone seeking to live in downtown.

2.Permanent residents enhance revenue for restaurants and other retail stores and services available downtown. This is sorely needed given the loss of business to the Willits development.

I am **not** in favor of adding a 5th parking space and reconfiguring the location of the trash bins for the following reasons:

1. **Safety**- I know that a plan has been drawn by Tim Hagman and reviewed by Chis Lehrman, the town engineer, which provides for the creation of a 5th parking space where the trash dumpsters currently exist and relocating the dumpsters to the North wall of the garage. I believe the plan is workable in a perfect world but in reality not practical. For those of us that park in the garage, maneuvering is already tight and this plan would make it an even tighter space. Over the years there have been multiple damages to the West wall from large SUV's attempting to back up and turn to clear the car in the next parking space.

2. In reality, when the trash haulers empty the trash bins, they are not always put back in an orderly fashion. This works okay where they are currently located but would not work, in my opinion, on the North wall, unless they were carefully placed each time. Marilyn Harper, owner of the parking space next to the north wall, already has a difficult time backing out with some narrow shelving which exists at the rear of the north wall.

3. Also, I think it would be difficult for a car to consistently park close enough to the wall where the dumpsters currently exist without sometimes partially blocking the entrance to the garage, thus affecting ingress or egress. Furthermore, for this car to exit the garage, it would most likely have to back out raising the risk of property damage or even worse, striking a person or animal in the driveway.

Conclusion:

Three of the four existing parking spaces are dedicated to the owners of the three residential units in the building, allocated one space per unit. This arrangement seems to work well for the current residential owners. I own the largest two bedroom unit and am perfectly satisfied with one parking space, particularly in a heated garage. I don't see why converting Unit #202 to residential with only one bedroom would require more than the one space already owned by the Perrys.

Based on the above, I would like to see the Town make an **exception to** its policy requiring a 5th parking spot as a requirement to approve this conversion.

Please feel free to contact me at richarddubin@earthlink.net or (314)591-1330.

Sincerely,

Richard Dubin

James Lindt
Assistant Planner
Town of Basalt

Dear Sir,

I wholeheartedly support the request made by Cindy and Robin Perry to convert Unit 202, 104 Midland Ave from commercial to residential provided all interests of the current owners are upheld.

First: adequate noise abatement/ insulation needs to be installed.

Second: One garage space per unit assigned as exists currently.

In re parking spaces: There is no alternate acceptable space for the dumpsters that will allow other owners to enter and exit the garage safely. My assigned space is adjacent to the North wall and after taking measurements it is clear that I cannot back out and turn if dumpsters were placed in the NW corner. Also, only a small car will fit where the dumpsters are located and there is no way to insure that future owners would own a suitable vehicle.

Therefore I request that the Town of Basalt approve the conversion application with one parking spot assigned to Unit 202 as is currently the case.

Thank you.
Marilyn Hill Harper
owner unit 301
970-925-3690

September 30, 2015
Mr. James Lindt
Town of Basalt

My friend and fellow owner at 104 Midland Avenue, Richard Dubin, prepared a very concise letter to you regarding the conversion application for Robin and Cindy Perry, noting specific concerns about the parking garage.

To keep it simple and not repeat what Mr. Dubin said, I would like to express my total agreement with all the points he made in his letter of September 25, 2015. I am in favor of the conversion of the unit and not in favor of the parking requirement placed on this application for all the reasons previously stated.

If you would like a more detailed response from me, I will be happy to oblige. I can be reached at (970) 618-0215 or kayhagman@gmail.com.

Thanks for your consideration of our concerns.

Sincerely,

Kay Hagman

I'm sending my request and opinions to you to please pass on to the various governmental entities or any other interested parties as you see fit. Jack and I are totally in favor of your conversion from commercial to residential, I think the Town should release you from their required parking space allotment and allow you (or your residential buyer) to park on the street. We do not want the present parking/garbage container configuration to be altered in The Little Snell building.

My reasoning in favor of your conversion is two fold. First, if the unit remains commercial and you were somehow able to rent it (I think that will never happen with so much vacant commercial on the market in Basalt) you would not only have the people who work for the commercial entity but also the clients visiting the commercial entity parking on the street. If you think back to when Hagman Architecture was in its heyday there were probably 4 or 5 people working in that office with only Tim using a designated space in the garage, all the other 3 or 4 had to park on the street. Then there were the clients, they also had to park on the street. If your unit was converted to residential you would only have 1 person maybe 2 parking on the street but not always at peak hours. If it were a working couple, they would leave in the morning to go to work. If it were a retired couple they most likely would share a car and you would only have one public space taken.

Secondly, think of the big picture. Basalt has taken a hit with the Willits development pulling away most of our downtown commercial. So let's fight back and make all of those vacant, depressing looking, empty spaces into residential. Make Old Basalt the hip place to live Down Valley. Jack & I just rented our unit for the winter to a couple from California who are here to manage the new Elements hotel and although they will be working in Willits, did they want to live there? Hell No! They wanted quaint, pretty historic Basalt, as did Jack & I when we bought, we can't wait to come back next summer and enjoy our purchase. People with the means and money (not obscene money like Aspen) would love to rent residential lofts and reclaimed spaces in Basalt. It could be vibrant and fun again, the "in" place to live Down Valley. Once you had the residential spaces filled, the light commercial would follow, cafes, salons, boutiques, dry-cleaners, banks, maybe an Urgent Care, they would come to service the increased populace. So the upper empty spaces would be filled with residential and lower spaces with commercial and Basalt would no longer look forlorn and orphaned. Making residential conversions easier to obtain would be a win-win for everyone. Tax dollars would increase for the Town making money available for new projects, festivals, etc.

So to conclude, I hope the Town of Basalt will reconsider and let Cindy and Robin Perry convert their unit to residential without the 5th parking space requirement. I also hope the Perry's are only the tip of the iceberg, I would wish the Town would relax their rigid policies and encourage residential downtown development for the future.

Please don't hesitate to contact either Jack or myself if we can be of help in any other way. Thank you.

Lana Kovich
104 Midland, Unit 201

Property Record Card

Eagle County

PERRY, LUCINDA KAY & ROBERT M., III

1274 RED LODGE DR
EVERGREEN , CO 80439-9686

Account: R059616

Tax Area: 003 - - 003

Acres: 0.034

Parcel: 2467-074-54-013

Situs Address:
000104 MIDLAND AVE #202
BASALT AREA, 0

Value Summary

Value By:	Market	Override
Commercial (1)	$288,440	N/A
Land (1)	$0	N/A
Total	**$288,440**	**$288,440**

Legal Description

Subdivision: 104 MIDLAND AVENUE Unit: 202 R200707088 MAP 03-19-07
R200707089 DEC 03-19-07

Public Remarks

Entry Date	Model	Remark
	Commercial Occurrence 1	

Sale Data

Doc. #	Sale Date	Deed Type	Validity	Verified	Sale Price	Ratio	Adj. Price	Ratio	Time Adj. Price	Ratio
200707398	03/20/2007	WD	QV	Y	$609,000	47.36	$609,000	47.36	$609,000	47.36

Commercial Occurrence 1

Abstract Code	2245 - COMMERCIAL CONDO IMP	Percentage	100.0
Use Code	2000 - COMMERCIAL	Neighborhood	9291902 - CC-104 MIDLAND AVENUE
Building Type	224500 - Commercial Condo	Arch Style	102 - CC-OFFICE
Exterior Wall	14 - WOOD SIDNG	Percentage	100.0
Roof Structure	1 - FLAT	Interior Wall	5 - DRYWALL
Percentage	100.0	Floor Cover	14 - CARPET INV
Percentage	100.0	Heating Fuel	3 - GAS

Property Record Card

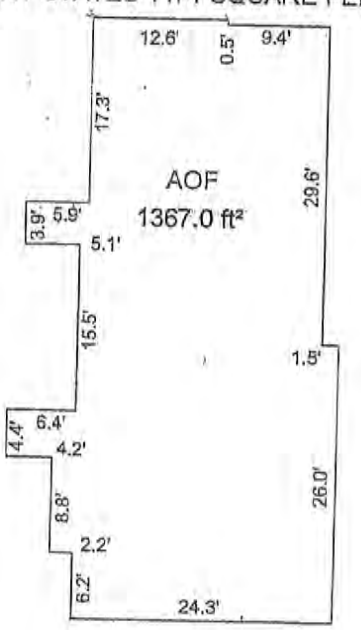
Eagle County

Commercial Occurrence 1

Heating Type	3 - FORCE AIR	Air Conditioning	3 - CENTRAL
Actual Year Built	2004	Construction Quality	4 - AVERAGE
Effective Year Built	2004	Rooms	1
Units	1	Actual Year Built	2004
Effective Year Built	2004	Economic Obsolescence	76
Units	1	Stories	1 - STORIES 1.0
Use Code	2000 - COMMERCIAL		

SubArea	ACTUAL	EFFECTIVE	HEATED	FOOTPRINT
BAS	1367	1367	1367	1367
QO2				
Total	1,367.00	1,367.00	1,367.00	1,367.00
Value	Rate	Rate	Rate	Rate
$288,440	211.00	211.00	211.00	211.00

PLAT STATES 1474 SQUARE FEET



Land Occurrence 1

Abstract Code	2145 - COMMERCIAL CONDO LAND	Percentage	100.0
Use Code	2000 - COMMERCIAL	Neighborhood	9291902 - CC-104 MIDLAND AVENUE
Land Code	9280001 - COMMERCIAL CONDO LAND	Super Neighborhood	2900 - BASALT / EL JEBEL COMMERCIAL
Size	0.034		

SubArea	ACTUAL	EFFECTIVE	HEATED	FOOTPRINT
Land S	1481			
Total	1,481.00			
Value	Rate	Rate	Rate	Rate
$0				

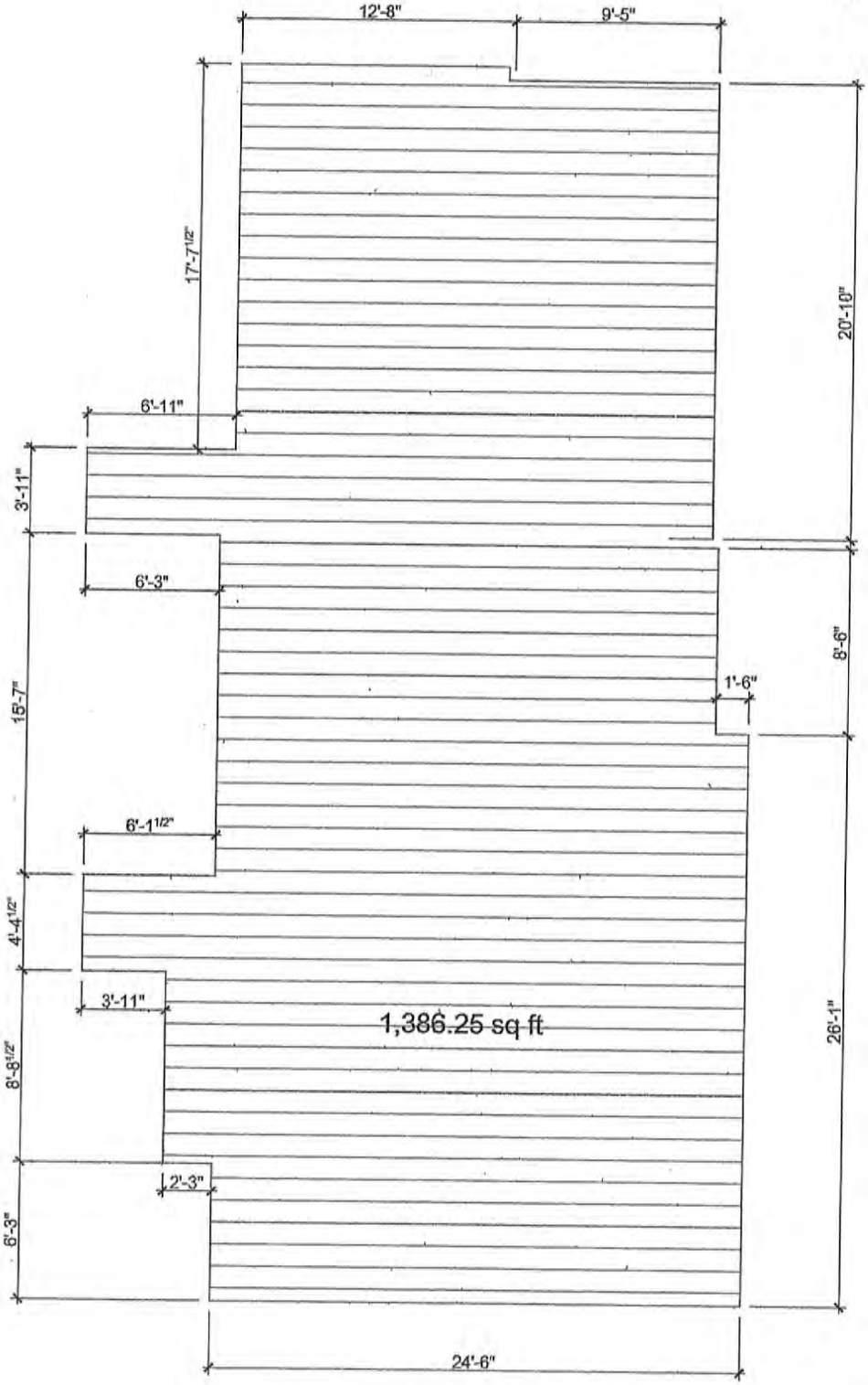
Property Record Card

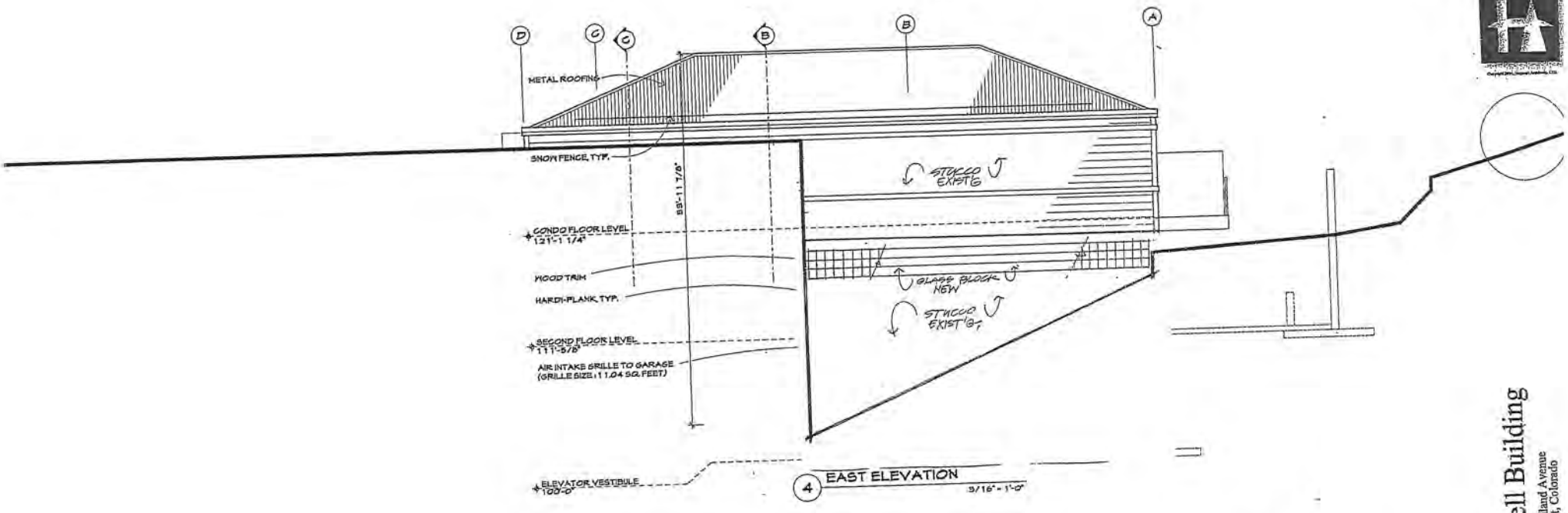
Eagle County

Abstract Summary

Code	Classification	Actual Value	Taxable Value	Actual Override	Taxable Override
2145	COMMERCIAL CONDO- LAND	$0	$0	NA	NA
2245	COMMERCIAL CONDO- IMP	$288,440	$83,650	NA	NA
Total		**$288,440**	**$83,650**	NA	NA

Tim Hagman's Square footage Calculations for Unit 202



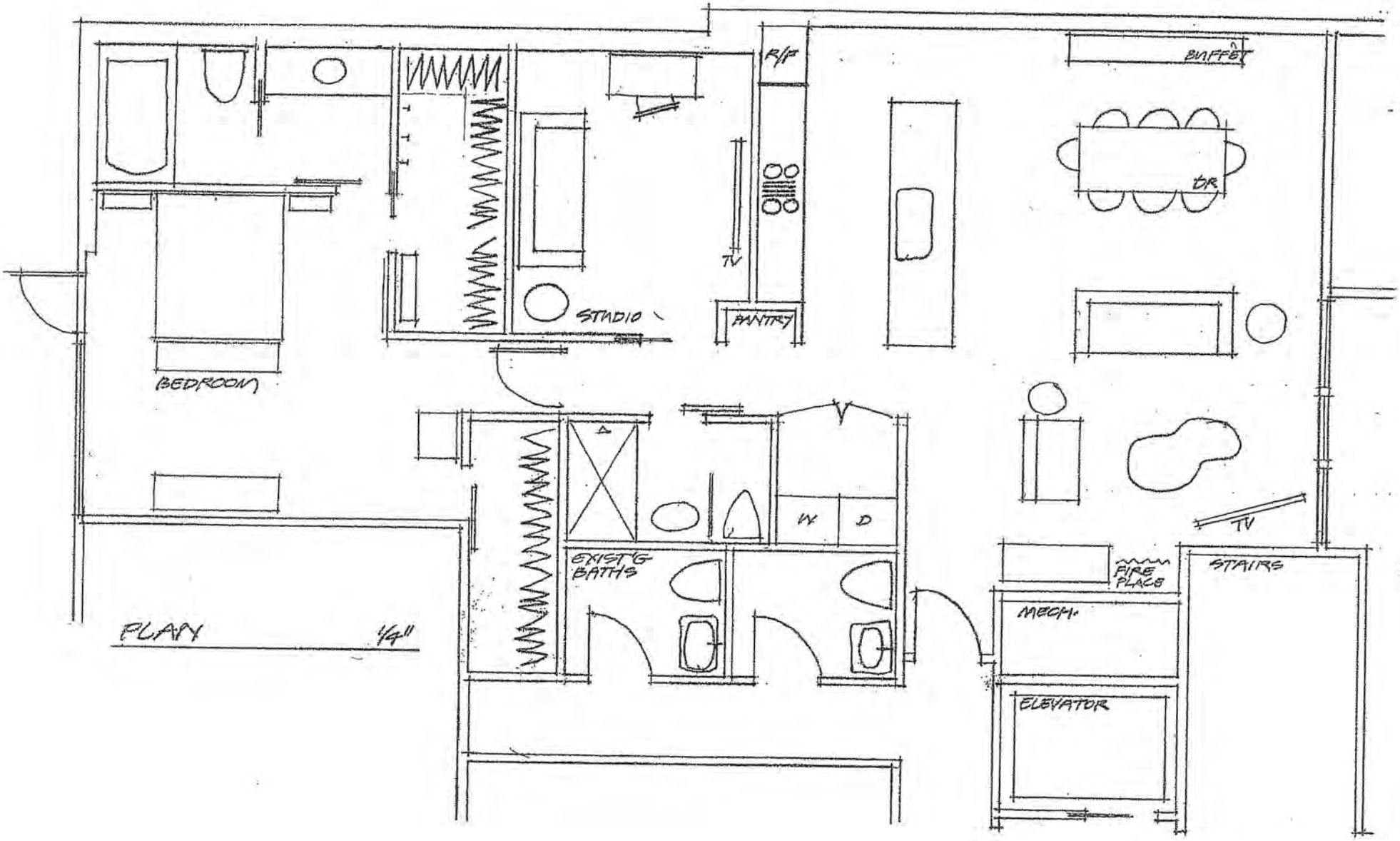


4 EAST ELEVATION
3/16" = 1'-0"

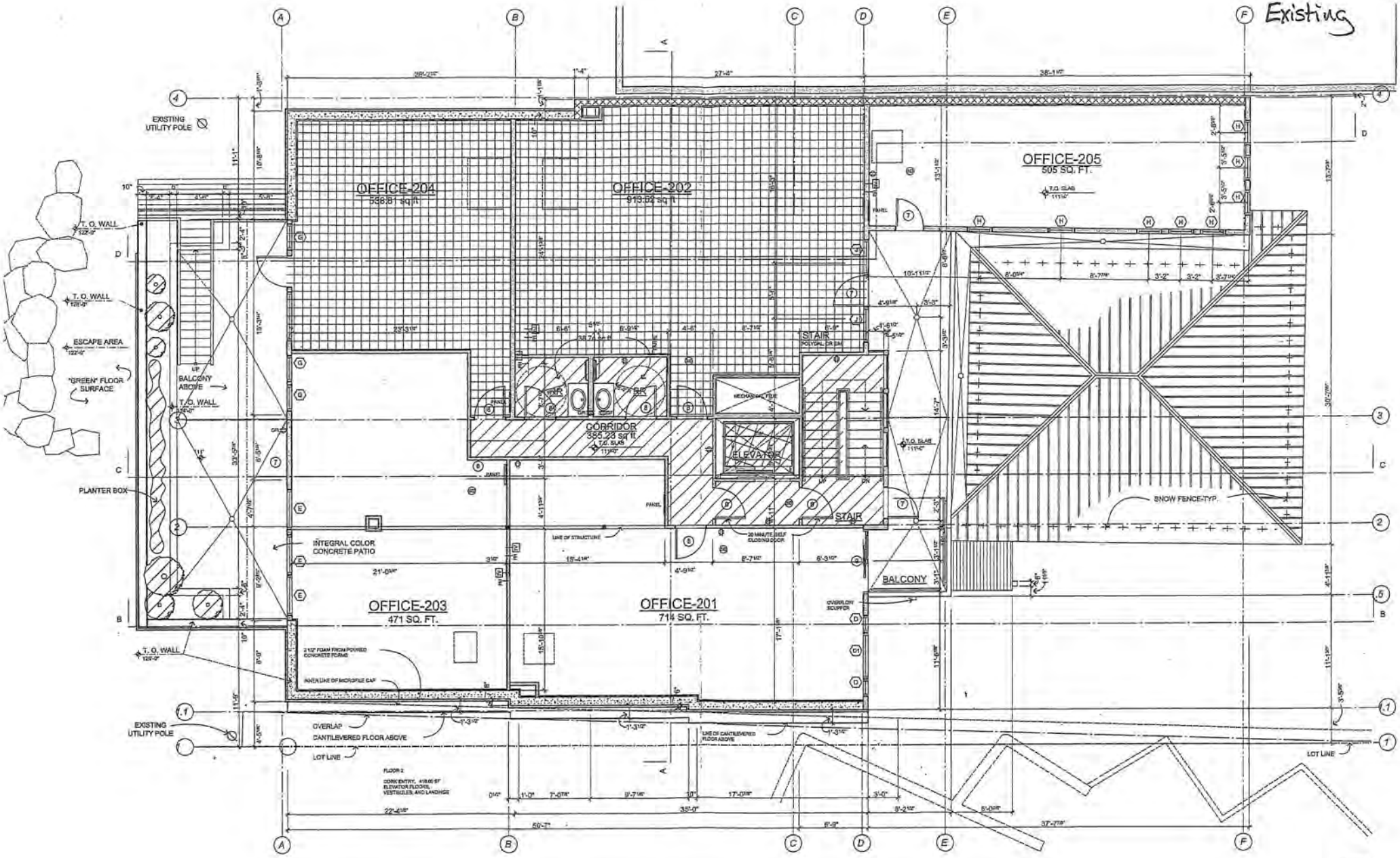
3 NORTH ELEVATION
3/16" = 1'-0"

Little Snell Building
104 Midland Avenue
Basalt, Colorado

A3.2


R/P
BUFFET
DR
TV
STUDIO
PANTRY
BEDROOM
W
D
EXIST'G BATHS
TV
FIRE PLACE
STAIRS
MECH.
ELEVATOR
PLAN
1/4"

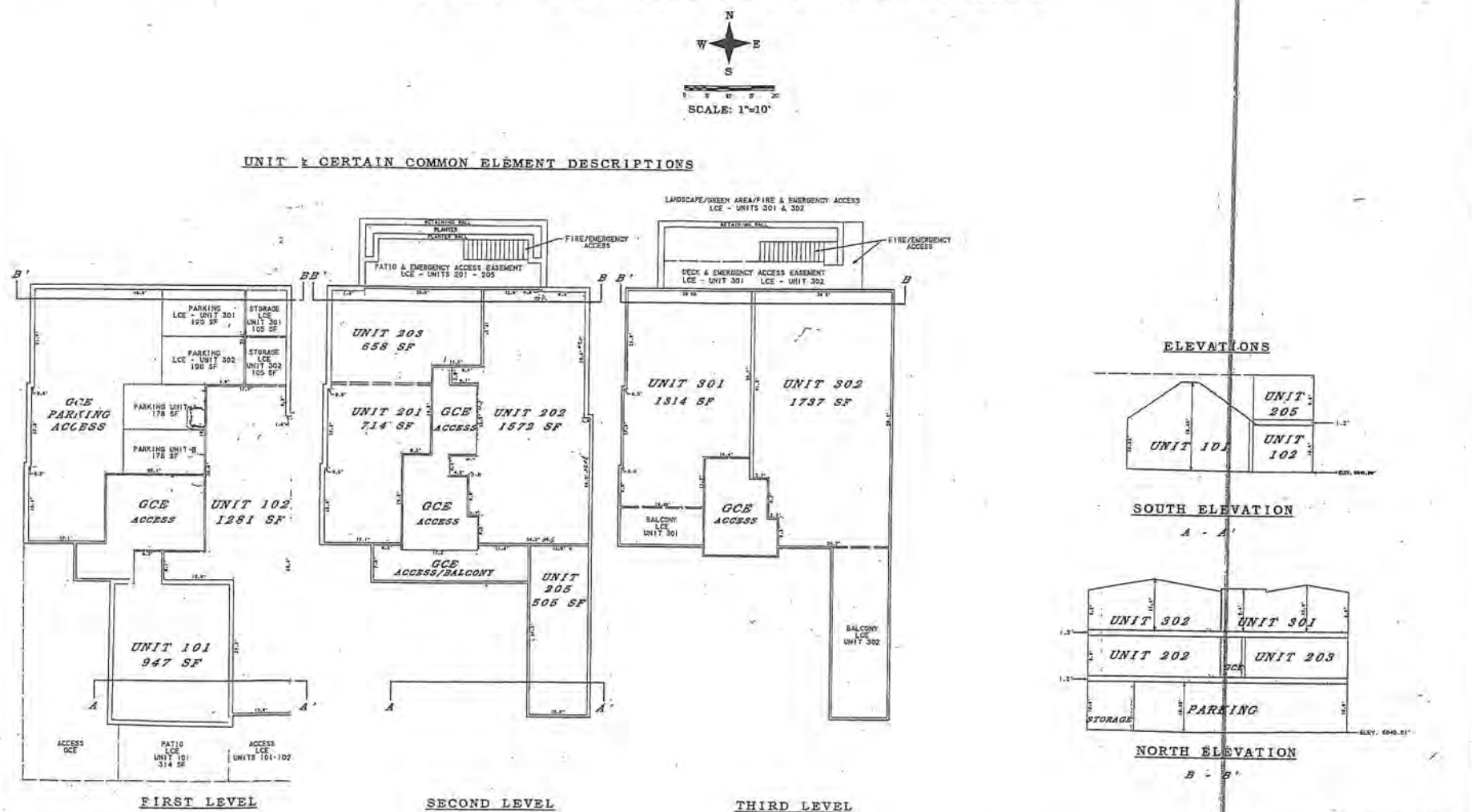
Proposed



SECOND LEVEL PLAN

SCALE 1/4" = 1'-0"

SUPPLEMENTAL PLAT - 104 MIDLAND AVENUE PLANNED COMMUNITY
TOWN OF BASALT, COLORADO



LINES IN SPACE
LAND SURVEYS

NOTES
GCE - GENERAL COMMON ELEMENT
LCE - LIMITED COMMON ELEMENT

SUPPLEMENTAL PLAT
104 MIDLAND AVENUE
PLANNED COMMUNITY
BASALT, COLORADO
BY: LINES IN SPACE
SYDNEY LINCICOME (L.S. 14111)
67 GLENWOOD AVE. CARBONDALE CO. 970-963-3852
SHEET 2 OF 2 DATE: 01/24/02 SCALE: 1" = 10' JOB NO: 200-98

C) P+Z Memo

MEMORANDUM

To: Chairman Johns and Basalt Planning and Zoning Commission

Thru: Susan Philp, AICP Planning Director

From: James Lindt, AICP Assistant Planning Director

Date: January 19, 2016

RE: Public Hearing- 104 Midland Avenue, Unit 202- Special Review, Condominium Amendment, Historic Incentives for Waiver of School Land Dedication and Parkland Dedication Fees, Waiver of Off-Street Parking Space for Conversion to Residential

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I. Purpose

Robert and Cindy Perry ("Applicants") are requesting approval of a Special Review for Multi-family dwellings in the C-2 Zone District, a waiver of the private open space requirements, a Condominium Amendment, the waiver of School Land Dedication and Parkland Dedication fees, and the waiver of an off-street parking space to convert Office Unit 202 (at 104 Midland Avenue) into a single residential unit.

II. Background

Unit 202 at 104 Midland Avenue (also known as the Little Snell Building) was approved as an office unit in the mixed use building that was constructed in conjunction with the restoration of the Little Snell Building that contains Saxy's Coffee Shop. The property is designated historic. Ordinance No. 10, Series of 2002, approved of the development including commercial space in the renovated commercial space that Saxys occupies, a parking garage behind Saxys, office spaces on the second floor, and two (2) residential units on the upper floor. Two of the office spaces on the second floor were approved to convert to a single residential unit in 2015 pursuant to Ordinance No. 40, Series of 2014.

The original approval included the use of several historic designation incentives, including the waiver of commercial and office parking requirements, the waiver of school land dedication and parkland dedication fees, reduced employee housing requirements, and a variance from the height limit at the time.

The Applicants have requested to convert office unit 202 into a single residential unit of approximately 1,370 square feet. The space subject to this application has never been finished and has been vacant since the space was created.

III. Review Process

The P&Z makes a recommendation to the Town Council on the Special Review request for the multi-family dwelling, the waiver of the private open space requirements, and the waiver of an off-street parking space. The P&Z may also provide recommendations to the Town Council on the other land use items being requested.

IV. Discussion Items

Community Housing Exemption: The proposal for the conversion of the office unit to a residential unit is exempt from the Town's community Housing requirements pursuant to Town Code Section 16-416, *Residential Inclusionary Requirements,* as there are three (3) or fewer new residential units on the property and the proposed residential unit will be less than 1,400 square feet, since the proposed unit would only be the second new unit added to the development since it was built.

CPSS Exemption: The proposal for the conversion of the office unit to residential is exempt from the CPSS pursuant to Town Code Section 16-472, *Applicability of Scoring System*, as there are three (3) or fewer new residential units on the property, since the proposed unit would only be the second new unit added to the development since it was built.

Multi-family Residential Use: The proposed conversion to residential requires a Special Review approval as Multi-family dwellings on the upper floors of a building in the C-2 Zone District are a Special Review Use. The C-2 Zone District also requires that multi-family dwellings contain no more than 1,400 total square feet. Given that the proposed residential unit is on an upper floor of the building and will contain less than 1,400 square feet, it is eligible for Special Review. Even with the Aspen Skiing Company's purchase of the Riverside Plaza Building, Staff feels that there is significant vacant office space in the downtown area and that the conversion to residential will add people to the downtown core to help support the retail and restaurant businesses in downtown. Staff believes that this is consistent with the policies being discussed in the "Our Town" Planning activities. Additionally, this is the second conversion to residential on the second floor of this building, so Staff feels that the residential use is compatible with the other units in the building.

Parking: The original approvals for the building granted a waiver from the commercial and office parking requirements and allowed a reduction in the residential parking requirements due to the historic landmark designation. As identified in the Applicants' parking analysis included in the Application, there are two (2) existing 2-bedroom units and one existing 1-bedroom unit and the proposed residential unit would be a one-bedroom unit. Under the parking standards in the Town Code, the residential units would be required to have a total of 7 off-street parking spaces.

Pursuant to Town Code Section 16-394, *Historic Incentives,* at least a 30% reduction in parking is applied to residential units on properties designated historic landmarks, provided each unit has at least one space. The seven (7) spaces required by the standard code requirements are reduced to 4.9 parking spaces when the 30% reduction is applied. There are four (4) viable parking spaces in the garage and another parking space that is being used to accommodate a portion of the trash facilities, which does not have adequate backing radius to act as a viable space. Given that only four (4) of the parking spaces in the building are usable, the Applicants have requested a waiver of the additional parking space required for the conversion of the office to residential. Staff recommends that the Applicants be required to pay cash-in-lieu for their proportional share of the additional required space, which would amount to approximately $3,000 ($12,000 per parking space divided by four (4) residential units in the building).

Waiver of Private Open Space: Each multi-family residential unit requires 50 square feet of private open space as established in the Town Code. However, this private open space requirement may be waived through the Special Review process. The proposed residential unit shares a patio space of greater than 300 square foot at the rear of the building with the other residential unit on the second floor that converted from an office space in 2015. Staff feels that this patio space is quality recreational open space for the proposed residential unit and is consistent with the intent of the private open space requirement even though it technically cannot be counted towards private open space since it is limited common element for multiple units in the building. In other instances, multiple units sharing one private open space has been permitted such as the Kealty Building and the Stutsman units on Park Avenue. Additionally, the office space that was converted to a residential unit across the hall from the proposed conversion also received a waiver from the private open space requirements due to their ability to use the common patio space behind the building.

School Land Dedication and Parkland Dedication and Improvement Fee Waivers: Pursuant to Town Code 16-394, *Incentives,* School Land Dedication fees shall not apply to Historic Landmark Properties and Parkland Dedication fees may be reduced or waived for Historic Landmark Properties by the Town Council. The Parkland Dedication and Improvement Fee for the proposed residential unit would be approximately $10,000 (using a land dedication fee of $8 per square foot and a park improvement fee of $3.67 per square foot). The Town Council typically handles fee waiver requests, but the P&Z may weigh-in on the request if the P&Z desires to do so.

Regarding the Parkland Dedication and improvement Fee waiver request, Staff feels that it is acceptable to waive the parkland dedication fee amount as a historic incentive. Staff also believes that because the unit will be a smaller one bedroom unit, it likely will not have as significant of an impact on the parks as it would if it were a larger unit with the potential for kids and larger families to occupy it. Therefore, Staff is recommending that the Parkland Dedication Fee be waived, but the Parkland Improvement portion of the fee, which equates to $3,197, be applied. Applying only the Parkland Improvement portion of the fee as recommended by Staff is consistent with what was required for the

Hagman Office space that was recently converted to a residential unit. Staff has included a draft condition requiring that the Applicants pay $3,197 in Parkland Improvement Fees.

Condo Amendment: If approved, the Applicants will be required to prepare and record an amended condominium map and declaration recognizing the conversion of the space to residential. Staff has included this requirement as a condition of approval.

V. Technical Issues:

Fire District Requirements:
The Basalt and Rural Fire Protection District (BRFPD) reviewed the proposed application. BRFPD indicated that the proposed conversion to a residential unit is acceptable from a fire safety standpoint. The BRFPD's referral comments are attached. A draft condition of approval has been included requiring that the Applicants comply with the BRFPD's comments.

Basalt Sanitation District:
The Basalt Sanitation District reviewed the proposed application. The Sanitation District verbally indicated that the proposed conversion to a residential unit is acceptable. The Sanitation District's referral comments will be provided at the meeting. A draft condition of approval has been included requiring that the Applicants comply with the Sanitation District's comments.

VI. Recommendation

Staff recommends that the P&Z hear a brief presentation from Staff and the Applicants, consider public comments, and provide Commission discussion. Staff recommends approval, with the following conditions:

Representations:

1. The Applicants shall comply with all representations set forth in the Application.
2. The Applicants shall comply with all material representations made in hearings before the Planning and Zoning Commission and Town Council.

Unit Size:

3. The new residential unit shall contain no more than one bedroom.

Private Open Space Waiver:

4. A waiver from the private open space requirement for the new residential unit is hereby recommended for approval to the Town Council.

Residential Renovation:

5. The Applicants shall apply for and obtain a building permit to renovate the existing office space into a residential unit prior to commencing construction and satisfy all applicable Town building, life safety, and sustainable building codes. As part of the building permit review, the Applicants shall demonstrate compliance with the Sound Transmission Class (STC) rating requirements in the Building Code.

Fire District Comments:

6. The Applicants shall demonstrate compliance with Basalt and Rural Fire Protection District's comments dated January 5, 2016, prior to the issuance of a certificate of occupancy on the new residential unit.

Basalt Sanitation District Comments:

7. The Applicants shall demonstrate compliance with Basalt Sanitation District's comments prior to the issuance of a building permit.

Fees:

8. The Applicants shall pay all applicable development review fees as calculated by the Town Planner prior to building permit issuance, with the exception that the School Land Dedication Fee is waived and the Parkland Dedication and Improvement Fee shall be reduced to $3,197. The Applicants shall also pay all applicable building permit fees as calculated by the Town Building Official prior to building permit issuance.

9. The Applicants shall pay a proportional share of the parking fees-in-lieu for one parking space based on there being four (4) residential units in the building. The Applicants shall pay $3,040.85 in fees-in-lieu of parking prior to the issuance of a building permit.

Approval Documents:

10. The Applicants shall prepare an amended condominium map and condominium declaration recognizing office unit 202 as a residential unit, for review and approval by the Town Planner and Town Attorney. The amended condominium map shall be recorded prior to the issuance of a building permit to convert the space to a residential unit.

11. The Applicants shall prepare and submit any approval documents deemed necessary by the Town Planner and Town Attorney for review and approval. Any such documents shall be executed and recorded prior to the earlier of the issuance of a building permit or 180 days after the effective date of the final approval ordinance.

Vested Rights:

12. Vested property rights shall be granted as approved herein for a period of three (3) years from the effective date of the ordinance approving these land use requests. The Applicants may request an extension of vested rights pursuant to the process for extending vested rights as established in the Town Code. If a building permit to renovate the space to a residential unit is not issued within the three (3) year vested rights period or as it may be extended, the approvals granted for this amendment shall expire.

Insubstantial Amendments:

13. The Town Planner may review and approve minor amendments to this approval to effectuate the intent of the final development approvals. The Applicants shall have the ability to appeal a Town Planner's decision on a minor amendment to the Town Council pursuant to the appeals process established in Town Code Section 16-11, *Procedures for Code Interpretations and Appeals*.

Attachments:
Application
Referral Comments

D) P+Z Minutes

DRAFT

TOWN OF BASALT
PLANNING AND ZONING COMMISSION
REGULAR MEETING
JANUARY 19, 2016

CALL TO ORDER
The meeting was called to order at 6:27 p.m. Commissioners answering roll call were Dylan Johns, Eric Vozick, Leana Fisher and Alternate Tracy Bennett.

Staff present was Susan Philp, Town Planner; James Lindt, Assistant Planning Director; and Denise Tomaskovic, Recorder.

No members of the public signed in on the sign-in sheet that was provided.

APPROVAL
Minutes of November 17, 2015

M/S BENNETT AND VOZICK TO APPROVE THE MINUTES OF NOVEMBER 17, 2015 AS READ. THE MOTION CARRIED BY A VOTE OF 4-0.

AGENDA ITEMS
Public hearing for Perry Special Review Application for Unit 202, 104 Midland Avenue - for the purpose of considering an Application submitted by Robert and Lucinda Perry for Special Review for Multi-family units in the C-2 Zone District for a waiver of the required private open space, Community Priorities Scoring System Exemption, Community Housing Mitigation Exemption, waiver of Parkland fees on a Historically Designated Property, an Off-Street Parking Waiver, and a Condominium Amendment to convert Office Unit 202 at 104 Midland Avenue into a single residential unit of approximately 1,370 square feet.

Lindt began by reviewing the application, providing some background information and noting that the space was never finished after being built. Lindt added that the P&Z previously reviewed a similar request when Tim Hagman converted his office space to a residential unit (Hagman's unit is across the hall from the Perry's unit). Lindt then referred to a posted list of discussion topics as follows:

1. Community Housing Exemption
2. CPSS Exemption
3. Proposed Residential Use
4. Private Open Space
5. Parkland Fee Waivers
6. Parking

Lindt said that Staff has determined that this application meets the exemption requirements for the Community Housing and CPSS exemptions. The proposed residential use is consistent with the ideas that came out of the Our Town Planning activities to promote more residential use downtown and this proposal is similar to what has already been accomplished by Hagman. Regarding private open space, Staff believes that the deck area behind the unit is a quality amenity and meets the intent of the open space requirement. Staff does, however, anticipate impacts on parkland and has suggested a $3,000 improvement fee instead of the full $10,000 dedication and improvement fee. The same concept was applied to the Hagman approval. Regarding parking, Staff agrees with the applicant that there is no place to install another parking space in the building's garage so Staff has recommended that the Perrys pay a fee-in-lieu-of-parking of approximately $3,000 which would qualify as the Perry's proportional share of the cost of an additional parking space.

Lindt noted that the applicants, Mr. and Mrs. Perry, were present and when asked if they had anything further to add, the Perrys declined to comment.

Alternate Bennett asked how the improvement fee would be used. Philp replied that parkland improvement fees are used for capital improvements.

Commissioner Fisher asked if this conversion would make the entire building residential. Lindt replied that there would be two offices remaining, in addition to the commercial use on the main floor. When the original structure received its historic landmark status and the offices were built, the parking requirements didn't take into consideration that the offices might someday be converted to residential uses. The historic landmark incentives do not require office uses to provide parking and residential parking requirements are reduced by 30% under those incentives.

Commissioner Vozick sought clarification that this application is identical to the Hagman proposal. Lindt said that it is, with the addition of the cash-in-lieu requirement for a fraction of a parking space.

Chair Johns asked if there were any historic landmark incentives that differentiated between office and residential uses. Lindt responded that the incentives were more geared toward fee waivers and some setback provisions. Staff thinks that the fee-in-lieu-of for a fraction of a parking space is appropriate through the historic incentives.

Public Hearing
The public hearing was opened at 6:38 p.m.

There were no public comments so the public hearing was closed at 6:38 p.m.

Commissioner Comments
Chair Johns said he understood the desire for the conversion but he hoped that five years down the road we weren't looking for more office space. Alternate Bennett countered that the pendulum seems to swing back and forth between residential and office space needs.

M/S VOZICK AND BENNETT TO APPROVE THE PERRY SPECIAL REVIEW APPLICATION ACCORDING STAFF'S RECOMMENDATIONS FOR APPROVAL. THE MOTION CARRIED BY A VOTE OF 4-0.

Philp noted that the Commissioners needed a motion to adjourn in order to move next door for their work session since the Town Council is meeting in this room at 7:00 p.m.

ADJOURNMENT
M/S FISHER AND VOZICK TO ADJOURN. THE MOTION CARRIED BY A VOTE OF 4-0.

The Planning and Zoning Commission adjourned at 6:41 p.m.

TOWN OF BASALT
PLANNING AND ZONING COMMISSION

By:_____ Attest:_____
Dylan Johns, Co-Chair Denise Tomaskovic, Recorder

E) Referral Comments

Basalt & Rural Fire Protection District

"Protecting Our Community Since 1970"

January 5, 2016

James Lindt, Town Planner
Town of Basalt
101 Midland Avenue

Re: 104 Midland Avenue, Perry Application

James,

The applicant would like to convert unit 202 of the Little Snell Building from commercial to residential. The building is currently sprinkled and monitor for fire alarm. Additional walls and layout of the unit will require the sprinkler system and fire alarm verification for proper coverage by a certified sprinkler and alarm company. Tenant finish permit and plan reviews may be submitted to the Basalt Fire Department. Please have contractors contact us for our new fee schedule.

If the applicant has any further questions or concerns about our requirement, they may contact us at any time.

Sincerely,

Brooke Stott
Assistant Fire Marshal

James Lindt

From:	Denise Diers <dediers1@gmail.com>
Sent:	Tuesday, January 19, 2016 9:25 AM
To:	James Lindt
Cc:	Basalt Sanitation District
Subject:	Re: Town of Basalt Development Review Referral- 104 Midland Avenue, Units 202 Conversion to Residential

The Basalt Sanitation District has no issues with the conversion of the 1367 sq. ft. of commercial space at 104 Midland Ave to a 1 bedroom residential unit.
The owners will be required to purchase .55 EQRs from the District prior to receiving a building permit. The current tap fee is $4900/EQR.

Denise Diers
District Administrator
Basalt Sanitation District

On Tue, Jan 19, 2016 at 1:00 AM, Denise Diers <dediers1@gmail.com> wrote:
James,

A review of the building at 104 midland with the next residential conversion will be short .55 eqrs. The Perry' s 1 bedroom requires .8 eqrs. The last conversion was a 2 bedroom and required 1.0 eqr.

The 2 bedroom was required to purchase an additional .5 eqr. With the way the transition from commercial use to residential, it required a purchase of an additional .55 eqrs for this new conversion. It is a result of the 1 bedroom conversion that these eqrs are needed, but it may be inequitable for all owners - commercial and new residential. The HOA needs to review the final allocation of the Eqrs for the remaining commercial users.

I will set up a meeting with Kay Hagman as I believe she heads up the HOA Board.

Sent from my iPhone

On Jan 12, 2016, at 3:29 PM, James Lindt <james.lindt@basalt.net> wrote:

Sounds good. Thanks.

From: Denise Diers [mailto:dediers1@gmail.com]
Sent: Tuesday, January 12, 2016 3:28 PM
To: James Lindt
Subject: Re: Town of Basalt Development Review Referral- 104 Midland Avenue, Units 202 Conversion to Residential

I haven't lost this - waiting for some clarification from architect.

Town of Basalt
Accounts Payable
January 26, 2016

GENERAL FUND	
Reimbursable	
Total Reimbursable	34,549.95
Non-reimbursable	
Payroll 1/15/16, Plus Health Insurance	145,308.65
Other Expenditures	180,120.69
Sub Total General Fund Non-reimbursable	**325,429.34**
TOTAL GENERAL FUND	**359,979.29**
Bond Fund:	**18,205.98**
Total Bond Fund	**18,205.98**
Conservation Trust Fund:	**0.00**
Total Conservation Trust Fund	**0.00**
Water Fund:	**7,564.01**
Total Water Fund	**7,564.01**
TOTAL ALL FUNDS	**385,749.28**

January 22, 2016

2016 Council Calendar

Potential Upcoming Schedules – Subject to Change

2/9/16 WORKSESSION/LEGISLATIVE

Worksessions

- Worksession – River Park with POST & P&Z
- Worksession – with P&Z: Zoning re. Our Town Planning Properties
- Worksession –TACAW Update
- Worksession – Council Procedures - direction and questions for Staff etc.
- Worksession – 2016 Work Plan

2/23/16 LEGISLATIVE Worksession - BDBA and Chamber discussion

Worksession

- Worksession - BDBA and Chamber
- Worksesson - RFTA

Action Items

- Resolution – Roaring Fork Charity Classic selection
- Resolution – Stott's Mill Annexation Substantial Compliance
- Agreement- 180 Riverside Drive Easement Agreement

3/22/2016

- BDBA and Chamber
- Resolution – Eligibility Annexation Hearing Davidco Application
- Underpass Bids

POTENTIAL LAND USE APPLICATIONS – to be scheduled

Arbaney Kittle PUD Amendment- Pursuant to pre-development agreement
Homestead Property Rezoning and Plan Review
Roaring Fork Conservancy LU – pursuant to pre-development agreement
234 Midland Avenue Amend Approvals

TO BE SCHEDULED

Town Council Policy on Redevelopment
BACH and Affordable Housing Corporation
Adopting the 2016-2020 Capital Improvements Plan
Police Emergency Services Dispatch
Valley Rd/El Jebel Road Alignment
Resolution – Attorney, Judge, Prosecuting Attorney 1st meeting after April Election

M:\Sphilp\Manager Goals\Calendars\160122Calendar.docx

Pam Schilling

From: Patti Beiser <pbeiser@indventures.com>
Sent: Wednesday, January 13, 2016 1:39 PM
To: Susan Philp; Pam Schilling
Subject: FW: Slow Growth Pdf
Attachments: basalt council.pdf

Too late but please keep on file.

thanks

Patti Beiser
IND ventures
970.277.1100 o | 970.309.1805 c
Willits Town Center - Basalt, Colorado
www.DiscoverWillits.com

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From: Michelle Pauline Lowe [mailto:michellepaulinelowe@gmail.com]
Sent: Tuesday, January 12, 2016 7:11 PM
To: Patti Beiser <pbeiser@indventures.com>; Tim Belinski <tbelinski@indventures.com>
Subject: Slow Growth Pdf

TOWN OF BASALT
JAN 13 2016
RECEIVED

12 January, 2016

From: Michelle Pauline Lowe, Corky Woods, The Green Department Store
`Michelle Pauline Design

To: The Basalt Town Council

Re: Slow Growth = Sudden Death

Through actual experience and tremendous financial loss this is written to voice my opinion about "Slow Growth" for the Willits Town Center Development. In 2007 I had a dream which depended on the success of the development in which my husband and I invested our hard earned "nest egg". As a resident of this valley for 26 years I have seen this valley grow. There were, and are needs and wants of local residents as well as for the tourists who support the economy of this community. Willits long term vision was formed from these and the growth continued but came to a screeching halt.

Being the second retailer after Montecito, Corky Woods, a large retail space faced a construction hole and fence for four years waiting for Whole Foods, the anchor, which never came nor did the other retail businesses that were ESSENTIAL for success. Nine years later it is evident Whole Foods has brought the breath of life to Willits. The surrounding retail businesses are now flourishing but the spaces on the outskirts are suffering because the original vision of the whole development has not been fulfilled. Retail shopping and restaurants only work when there is activity; people on the streets; options; Competition..... The project has the ability to be completed and stopping again will create more hardships for businesses that have invested by leaving open holes, construction fences and piles of dirt.

I see nothing to gain by halting the completion and I support the original vision of the Willits Town Center.

TOWN OF BASALT Worksession	**Date:** January 26, 2016 **From:** Susan Philp AICP, Planning Director

SUBJECT Worksession on Two Rivers Road Greenway Plan.

RECOMMENDATION: Council discussion and direction

DETAIL:

The Town adopted the Greenway Master Plan in 2007. The Town prepared the Two River's Greenway Plan to reflect the Town's vision for improvements to the Two Rivers Road corridor. The general goal of the earlier Greenway Plan was to enhance recreational use within the corridor while maintaining two-way vehicular traffic. The 2007 Greenway Plan included a number of improvements including a trail and related pedestrian amenities, additional on-street parking and other amenities such as enhanced river access for fishing and boating. The Greenway Master Plan included several character areas from Midland Avenue to the west intersection of Two Rivers Road/ Highway 82.

The Town Council identified implementing the Two Rivers Road Greenway Plan as one of their top priorities in their 2015 Work Plan. Amending the Two Rivers Greenway Plan was also identified in Our Town Planning Resolution No. 3, Series of 2015 (Exhibit A) as a task to be completed by the POST Committee.

The Town authorized starting an update of the Plan in May of 2015 with Loris and Associates as they led the consultant team for the original plan.

The purpose of the Greenway Plan update is to check in on some of the fundamental elements included in the 2007 Plan to determine if they are still valid and to add additional character areas. A key item was to evaluate the possibility of one-laning Two Rivers Road in order to use the existing roadbed as part of the Trail. A public open house was held by the Town in July. The one-way concept was also reviewed by CDOT, Eagle County, RFTA and the Basalt and Rural Fire District. Fox & Tuttle performed some additional traffic analysis for the one-way concept and other intersections on Two Rivers Road. The initial plans were then reviewed by POST in December. Pitkin County Healthy Rivers and Stream had an open house in December at the library on their Whitewater Park plans, where the two Loris plans for Two Rivers Road in this area were displayed for the public's review (the one included in the Town's September approval of the Whitewater Park and a refined version of that plan). POST is the Town's lead citizen committee on this effort pursuant to Resolution No. 03, Series of 2015 and that committee discussed the character areas and provided direction at the their December 7th meeting. P&Z also had a Worksession in December where they made some additional comments.

The purpose of the Council's Worksession is for Loris to present the work that has been done to date and for the Council to provide direction on key areas. Loris has prepared a handout and diagrams to facilitate that effort.

Related Town Statute and or Town Actions: 2007 Master Plan; Our Town Planning Effort; 2007 Two Rivers Greenway Master Plan; Conceptual Engineering Design Report for Two Rivers Greenway Phase I (Note – the Two Rivers Greenway Master Plan and the Phase I Engineering Design Report can be downloaded from the Planning Department's webpage on the Town's website www.basalt.net)

Attachments: Loris and Associates Handout; correspondence on one-way option

TWO RIVERS ROAD 2015 MASTER PLAN UPDATE
Progress Summary

Introduction

Loris and Associates performed the original Two Rivers Greenway Master Plan (2007 Greenway Plan) in 2007. They are contracted to perform an update to the master plan to account for current development and planning interests in Basalt.

Two Rivers Road One-Way (Figure 1)

When the 2007 Greenway Plan was developed, the idea of making Two Rivers Road one-way to accommodate a trail was broached; however, the one-way option was dismissed because a previous effort to make the road one-way was not successful. With Two Rivers Road as a two-way thoroughfare, the multi-use path selected in the 2007 Greenway Plan required a significant amount of retaining walls and bridges to separate the trail from the roadway on the steep river embankment. Making Two Rivers Road one-way would save between $4 Million and $6 Million in construction costs. In order to reduce costs and speed up implementation of trail development, the idea of the "one-way' was brought up again for reconsideration. The following three options were evaluated conceptually:

1. One-way going Down-Valley
2. One-way going Up-Valley
3. One-way Up-Valley in the morning and one way Down-Valley in the afternoon.

Number 3 was eliminated because of the complicated traffic control required to change the direction of traffic during the day. The other two options were investigated further with the One-Way Up-Valley option appearing to be the most advantageous because it brought vehicles to the Basalt core and because the slip lane non Emma Road could be used to easily convey Down-Valley traffic onto SH 82.

The two options were presented to the following agencies:

1. CDOT – CDOT would accept either one-way option if a traffic study was performed and the results did not adversely affect traffic on SH 82. Fox-Tuttle-Hernandez performed a traffic analysis and determined that there were slight impacts to traffic, but these could be outweighed by the benefits of the Greenway Trail.
2. RFTA – RFTA could accept the one-way; however, in order to do so, local bus service to the Basalt core would be eliminated (because in the time and difficulty of turning around in the core), with buses stopping at the Post Office and not continuing into the core.
3. Basalt Fire – Basalt Fire District objected strongly to the idea of the one-way because of safety concerns in their response time and the one-way would eliminate an emergency by-pass of SH 82.
4. Eagle County – Eagle County also expressed concerns with the one-way.

In addition, the idea of the one-way was brought up at the Two Rivers Road Master Plan public meeting in July 2015, and in general, the idea of a one-way was not favored.

Homestead Drive (Figure 2)

A plan was developed to construct an 8-foot-wide concrete sidewalk from Two Rivers Road to approximately 200 feet east of Wilderness Road, where the single-track path (Gas Line Trail) from Two Rivers Road intersects Homestead Drive. The lower section of sidewalk, from Two Rivers Road to the Lake Christine access, requires a concrete retaining wall to develop the 8-foot sidewalk width. The remainder of the sidewalk can be constructed with little or no retaining walls. POST members would like to further investigate adding green space between the sidewalk and the retaining wall.

Two Rivers Road from Homestead to Midland (Figure 3)

The 2007 Two Rivers Greenway Master Plan was modified to account for current conditions along the road from Homestead Drive to Midland Avenue. The RMI campus has been recently completed and there is a new plan from the Roaring Fork Conservancy parcel that is different than from what was planned in 2007. Modifications to parking and pedestrian crossing islands were made. Additional modifications to parking and bus stop locations are being considered in front of Lions Park.

Basalt Avenue (Figures 4a and 4b)

Two plans for Basalt Avenue from east of the Roaring Fork Bridge to Two Rivers Road have been developed to provide for easier and safer pedestrian and bicycle access from Basalt Avenue to the Basalt core and, Basalt Middle School and Basalt Elementary School. The plan consists of a wider sidewalk on the south side of the bridge and defined sidewalks on the north side of the bridge to connect to Two Rivers Road. Parking on Basalt Avenue has been better designated and driveways to the 7-11 were narrowed to provide for safer pedestrian and bike crossings while allowing for delivery truck access.

The pedestrian crossings of Two Rivers Road are proposed to make the actual crossing distance shorter than they are now, improving pavement markings, and eliminating vegetation that reduces the visibility of pedestrians seeking to cross Two Rivers Road. A mid-block crossing of Two Rivers Road is being considered at the east side of the 7-11 in order to make it safer to access the 7-11 from the schools. Option 4a was initially developed from comments from the Safe Routes to School Coalition and has been reviewed by POST. Option 4b was developed based on comments made by the P&Z who desired to also focus bicycle and pedestrian movement to and from the historic commercial core.

Two Rivers Road at Whitewater Park (Figure 5a and 5b)

In order to provide parking and access to the proposed Whitewater Park, two plans for Two Rivers Road were developed. The first plan (Figure 5a) is a temporary condition to allow minimal construction effort with safe access from the outset. This plan generally keeps the road in its same location, but reduces lane widths and eliminates some turn lanes; includes parallel parking along Two Rivers Road; provides a gravel path with safety railing along the road; improves cross walks; provides bike lanes; and adds parking at Fisherman's Park.

Figure 5b shows a concept similar to 5a; however, the roadway alignment has been shifted to the north to eliminate some of the safety railing by providing a landscaped buffer between traffic and the soft surface path. This plan was presented at the December 7, 2015 Open House sponsored by Pitkin County Healthy Rivers and Streams and was well received.

POST and P&Z

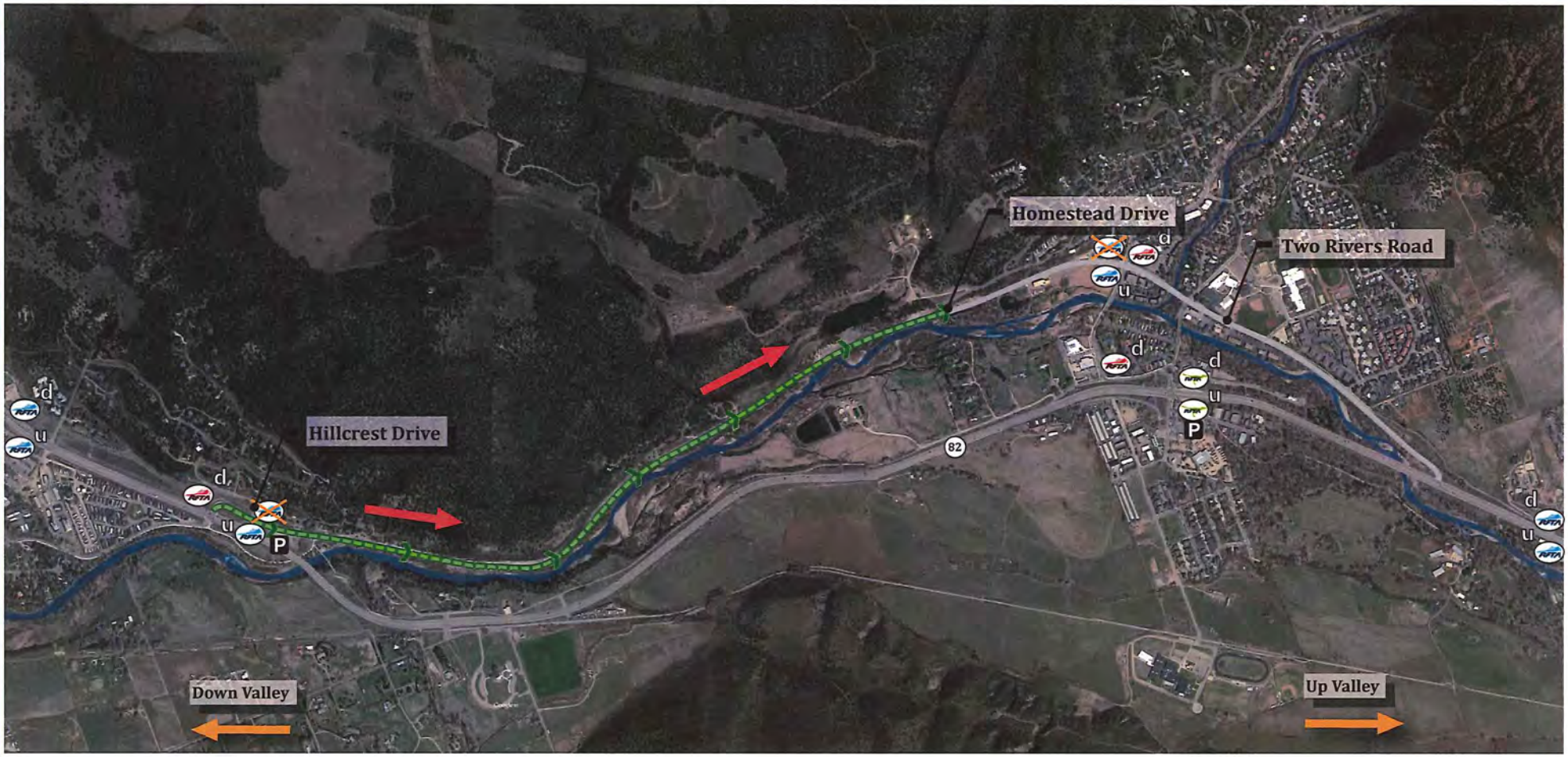
POST reviewed the plans at their December 7th meeting. POST concluded that making Two Rivers Road one-way was not feasible primarily because of the comments made by the reviewing agencies. POST suggested several refinements which will be further developed in the next steps. These refinements include adding pervious and landscaped areas, and adding the pedestrian crossing near 7-11. In addition, the area between Lions Park and the River Park will be further developed.

The Conceptual Plans were presented to the P&Z at their December 15th Worksession and P&Z agreed with the direction that the plans were taking except that they wanted LORIS to study the Basalt Avenue/Two Rivers Road Intersection to help direct pedestrian and bicycle traffic to the historic downtown core.

January 26th Worksession

The purpose of the January 26th meeting is to get Council buy in on the direction the plan is taking and to authorize the next steps. The questions we have for the Council are:

1. Acknowledge the POST decision not to pursue making Two Rivers Road one-way;
2. Confirmation that the Council concurs with the direction that LORIS, POST and P&Z are taking;
3. Direction to proceed with Greenway Master Plan refinement, obtain additional public input, and ask POST to further the Greenway Master Plan amendment process.



Legend

- Two Rivers Road (Portion of One-Way Traffic)
- Proposed Traffic Dirrection
- Parking/Park-n-Ride (Existing)
- VelociRFTA (Existing)
- RFTA Local (Existing)
- RFTA Local (Proposed)
- d / u Down Valley / Up Valley
- RFTA Local (To Be Relocated)

TOWN OF BASALT 1901 LORIS

Two Rivers Road - One-Way Eastbound

Figure 1 (Two Rivers Road One-Way)

Fig 1 1 of 2

Legend

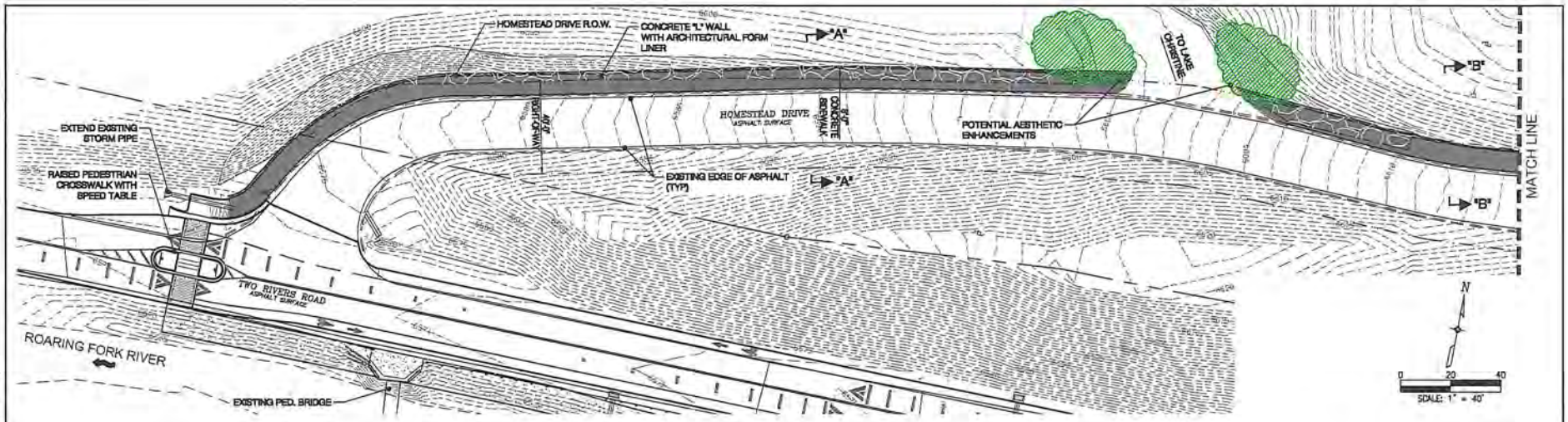
- Two Rivers Road (Portion of One-Way Traffic)
- Proposed Traffic Dirrection
- Parking/Park-n-Ride (Existing)
- VelociRFTA (Existing)
- RFTA Local (Existing)
- RFTA Local (Proposed)
- d / u Down Valley / Up Valley
- RFTA Local (To Be Relocated)

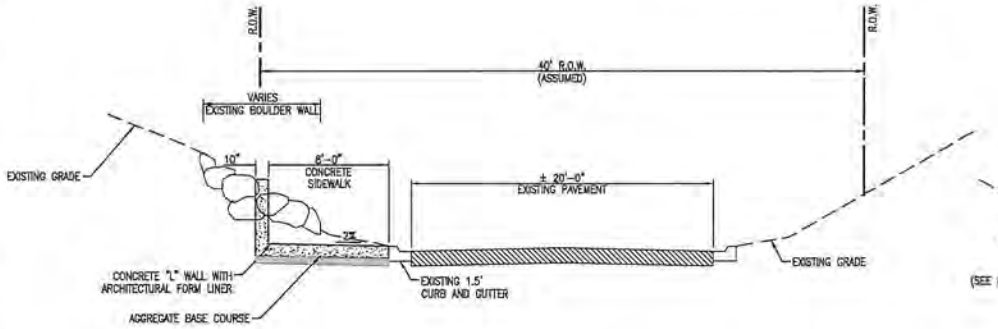
TOWN OF BASALT 1901

LORIS

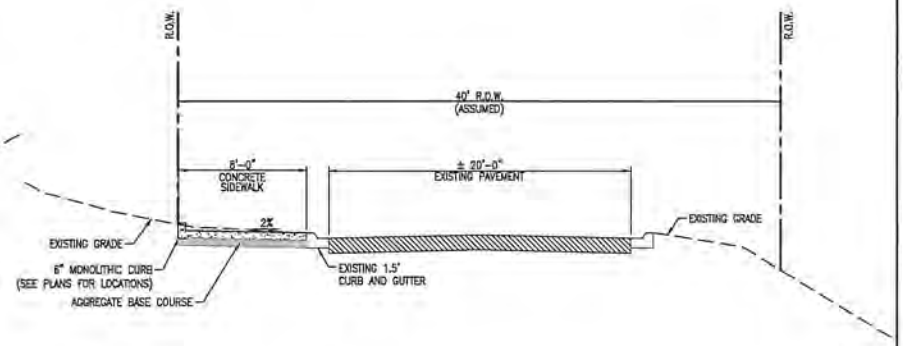
Two Rivers Road - One-Way Westbound

fig 1 2 of 2





TYPICAL SECTION A-A



TYPICAL SECTION B-B

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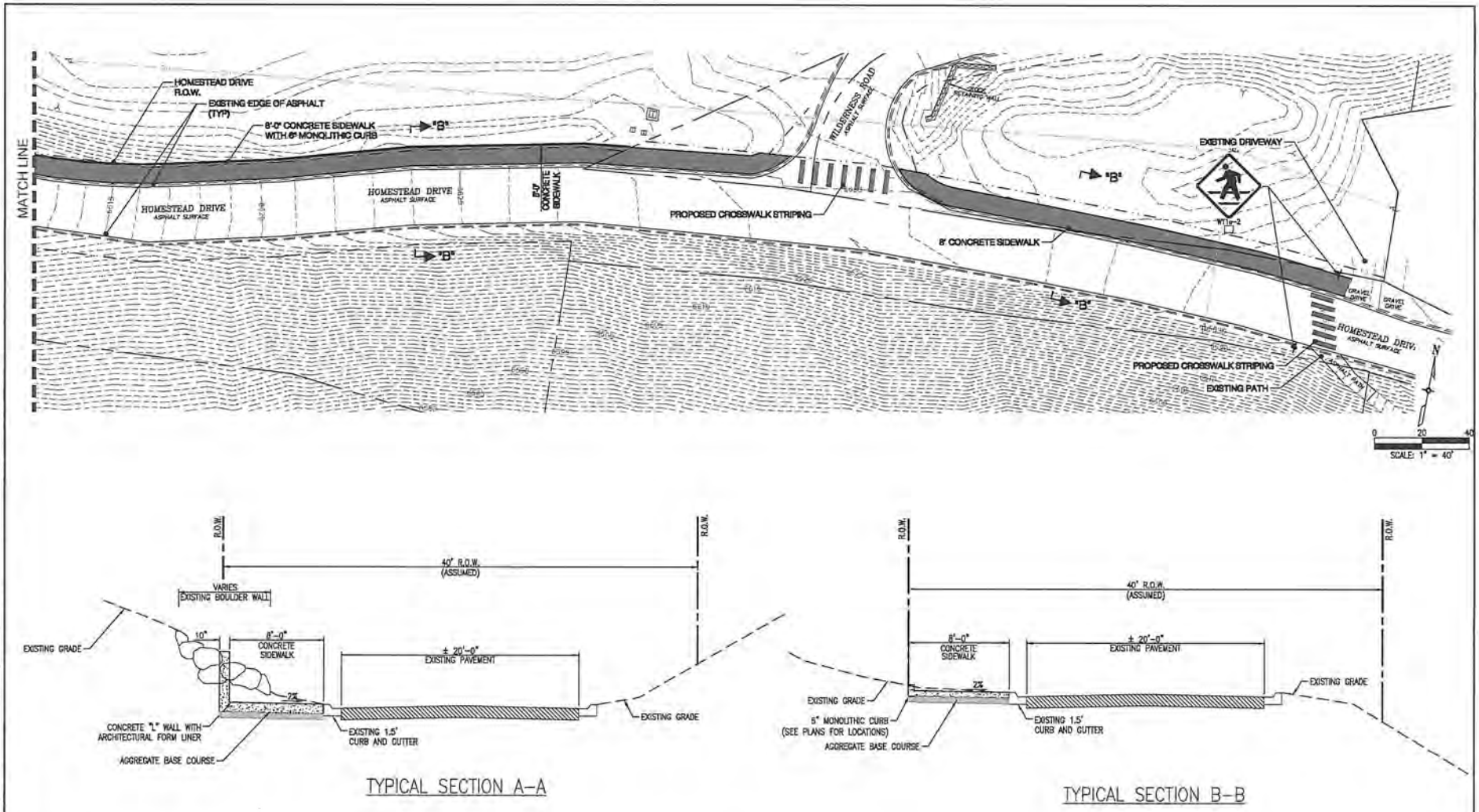
Horiz. Scale: 1:40 Vert. Scale:				Revised:	Designer: PJL Structure Numbers	213 – 15124
Unit Information Unit Leader Initials				Void:	Detailer: CWM	Sheet Number –
					Sheet Subset: Subset Sheets: 1 OF 2	

Lorie and Associates, Inc.

TOWN OF BASALT 1901

Figure 2 - Homestead Dr.

fig 2 1 of 2



Print Date: Oct 22, 2015	Sheet Revisions			Lorie and Associates, Inc.	TOWN OF BASALT 1901	As Constructed
File Name: 15124 - Homestead Sections?-Foot.dwg	Date:	Comments	Init.			No Revisions:
Horiz. Scale: 1:40 Vert. Scale:						Revised:
Unit Information Unit Leader Initials						Void:

2 RIVERS ROAD - BASALT, CO
HOMESTEAD SIDEWALK
CONCEPTUAL DESIGN

Designer:	PJL	Structure Numbers	
Detailer:	CWM		
Sheet Subset:		Subset Sheets: 2 OF 2	

Project No./Code: -
213 - 15124
Sheet Number -

G:\72 Clients\213 - Town Basalt\15124 - Two Rivers 2010 MP\50 DWG\15124 - Homestead Sections?-Foot.dwg Oct 22, 2015 - 3:04pm

Fig 2
2 of 2

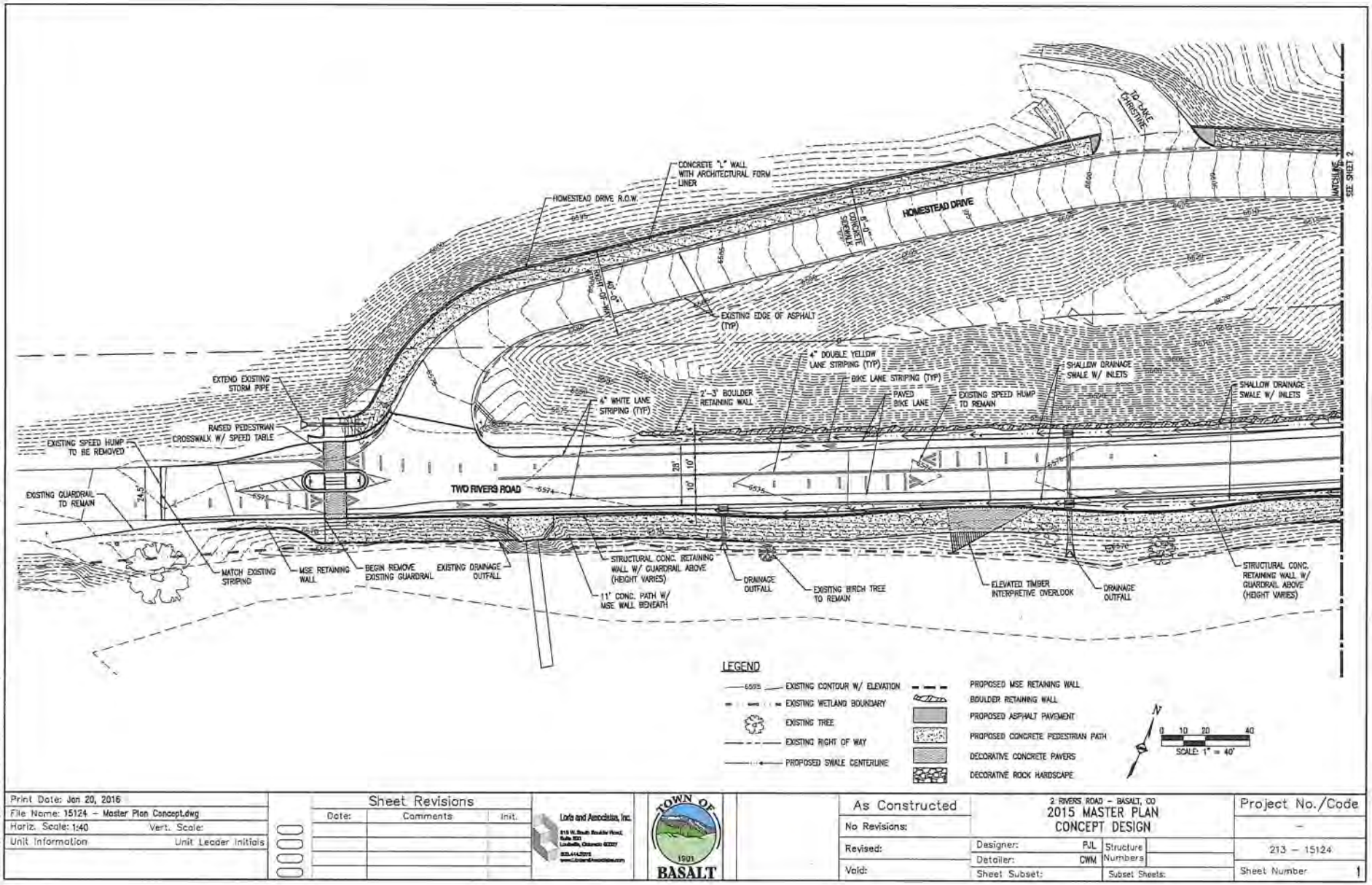
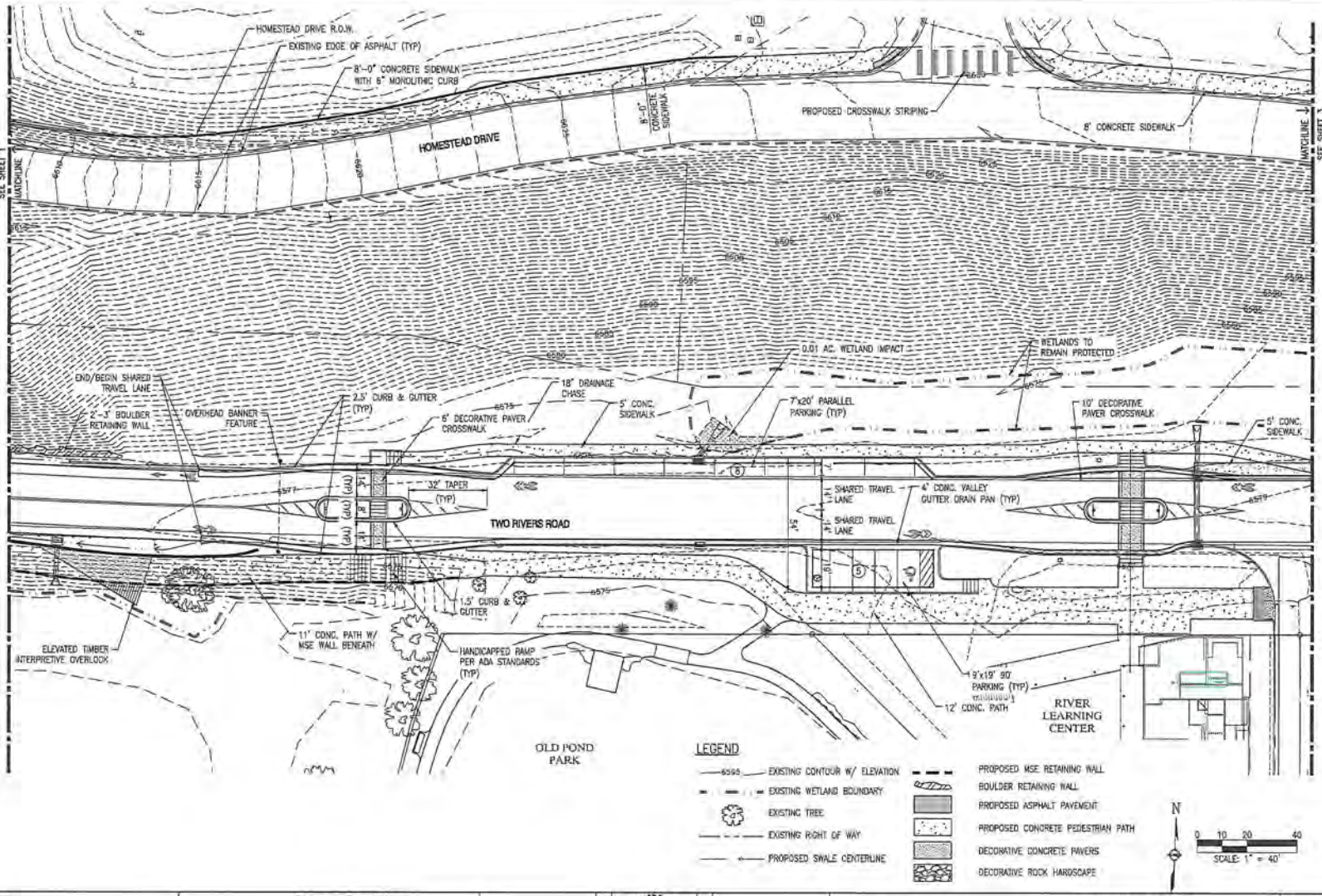


Figure 3 - Two Rivers Road from Homestead Dr. to RMI

Fig 3
1 of 2



Print Date: Jan 20, 2015	Sheet Revisions			As Constructed	2 RIVERS ROAD – BASALT, CO 2015 MASTER PLAN CONCEPT DESIGN	Project No./Code
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Unit Information Unit Leader Initials				Void:	Sheet Subset:	Subset Sheets:	Sheet Number 2

Lorie and Associates, Inc.

TOWN OF BASALT 1901

Fig 3
2 of 2

Print Date: Oct 23, 2015	Sheet Revisions			Loris and Associates, Inc.	TOWN OF BASALT 1901	As Constructed	2 RIVERS ROAD – BASALT, CO	Project No./Code
File Name: 15124 – Basalt Intersection.dwg	Date:	Comments	Init.			No Revisions:		–
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Unit Information Unit Leader Initials						Void:	Sheet Subset:	Subset Sheets:	Sheet Number

Figure 4a - Basalt Avenue

Print Date: Jan 20, 2016	Sheet Revisions			Loris and Associates, Inc.	TOWN OF BASALT 1901	As Constructed	2 RIVERS ROAD – BASALT, CO BASALT AVENUE CONCEPT DESIGN	Project No./Code
File Name: 15124 – Basalt Intersection.dwg	Date:	Comments	Init.			No Revisions:		–
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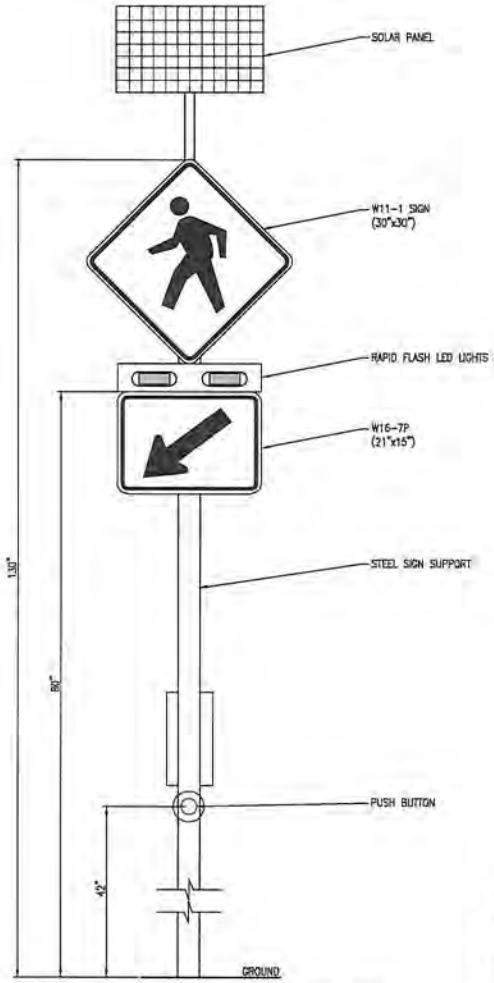
Unit Information Unit Leader Initials						Void:	Detailer: CWM	
							Sheet Subset: Subset Sheets:	Sheet Number 1

Figure 4B - Basalt Ave (option)



PEDESTRIAN CROSSING W/ RAPID FLASHING LEDS

NOTE:

1. W11-2 SIGN INSTALLATIONS WITH FLASHING LEDS AND DOUBLE SIDED ON A SINGLE POST TO BE FACE IN BOTH DIRECTIONS. THE W16-7P PLACARDS NEED TO BE ORIENTED ACCORDINGLY.
2. SIGN POSTS, SIGN PANELS, PEDESTRIAN PUSH BUTTONS, LED'S, SOLAR POWER SYSTEM, WIRELESS COMMUNICATION SYSTEM, SHALL BE PAID FOR AS PEDESTRIAN CROSSING SIGNS WITH RAPID FLASH LEDS (SPECIAL) EACH.
3. VISIT WWW.STOPEXERPTS.COM FOR MORE INFORMATION.

Print Date: Jan 20, 2016	Sheet Revisions			As Constructed	2 RIVERS ROAD – BASALT, CO SIGN DETAIL	Project No./Code
File Name: 15124 – Basalt Intersection.dwg	Date:	Comments	Init.	No Revisions:		–
Horiz. Scale: N/A Vert. Scale:				Revised:	Designer: PJL Detailer: CWM	Structure Numbers	213 – 15124
Unit Information Unit Leader Initials				Void:	Sheet Subset:	Subset Sheets:	Sheet Number 2

Lorie and Associates, Inc.

TOWN OF BASALT 1901

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Traffic Safety Corporation
2708 47th Ave.
Sacramento, CA 95822-3806
Toll Free: 888.446.9255
Tel: 916.394.9884
Fax: 916.394.2809
Email: sales@xwalk.com
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MADE IN USA

TS40
Flashing LED Edge Lit Signs
MUTCD Compliant

How to Specify the TS40

1. Sign Materials - Construction - Compliance

a. Sign reflective sheeting in compliance with current MUTCD requirements for reflectivity, wording, materials and mounting guidelines.
b. Pole mounting requirements per MUTCD guidelines.
c. Sign constructed of .080 aluminum with stainless / aluminum fasteners and weatherproof sealant.
d. All mounting hardware fasteners shall be theft deterrent hardware preferably Tufnut security hardware where applicable.
e. 3/8" x 3" stainless steel tap bolts for standard mounting hardware (other mounting options available).
f. Battery access compartment located at lower portion of sign to allow access to battery compartment for maintenance (field replaceable battery).
g. Solar signs to have a 2" to 4" wide casing, depending on model, between front and rear sign faces to enclose all wiring, battery, PCB and LED light connections. AC powered signs 2" wide casing.
h. Security keyed ON/OFF switch located on side of casing controlling operation.
i. Vented weatherproof casing allowing ambient air to circulate for internal components and prevent condensation and excessive heat buildup.
j. Compression type solar panel connector allowing optimum directional placement of solar collector.
k. Anti-theft placards and decals for theft / vandalism deterrents.
l. Serial # plate with manufacture date for informational and warranty purposes.

2. Battery

	12 Volt 12 Volt 22000mAH SLA	6 Volt 2 - 6 Volt 9000mAh SLA (18 Ah Total)
Dimensions	7.14" x 3.03" x 6.59"	5.95" x 1.34" x 3.70"
Weight	12.74 lb.	3.09 lb.
Terminal Connector	Nut/Bolt	T2 - Spade
Operating Temperature	-40°F to +156°F	-40°F to +156°F
Warranty	1 Year	1 Year

a. Battery mounting with aluminum fasteners and brackets for in-field replacement after life cycle has expired.
b. Battery casing fully sealed in a moisture and corrosion proof casing.
c. Required battery replacement every 18 months from manufacture date.

3. Solar Panel Collector

a. Solar panels to be 6/12 volt 15/20/30 watt collector type depending on type of sign, region, LED light quantities and application uses.

	15 Watt	20 Watt	30 Watt
Max Power	15W	20W	30W
Operating Voltage	8.0V	17.2V	17.4V
Operating Current	1.88A	1.16A	1.73A
Max Voltage	10.8V	21.6V	21.6V
Operating Temperature	-40°C to +85°C	-40°C to +85°C	-40°C to +85°C
Dimensions	16.75" x 14.00" x 1.125"	22.75" x 16.75" x 1.125"	26.5" x 16.75" x 1.125"
Type	Polycrystalline	Polycrystalline	Polycrystalline

b. Solar panel bracket constructed of aluminum alloy.
c. Schedule 40 3/4" aluminum tubing attached to the solar panel bracket to the upper casing of the sign casing. Panel must face south.
d. Angle of panel shall be 45° to 65° depending on region. Special attention required to insure solar collector has good access to solar power with no obstructions for optimum operation.
e. Electrical connectors shall be insulated spade type connectors.
f. Tempered glass solar cell sealer/protector.

4. LED Lights (Light Emitting Diodes)

a. Sign shall have a series of either 4 - 8 LEDs depending on sign size and configuration.
b. All LEDs shall be compliant to MUTCD Section 2A.07 and match colors acceptable to each type of signal per this specification.
c. LED flash rate at 50 to 60 times per minute per MUTCD Section 2A.07 requirements.
d. LED light dimensions: 1/8" Cree LED inside a 1-1/4" diameter lens.
e. 100,000 hour rated LED life (11.415 years).
f. High impact acrylic water/vibration proof housing lens.
g. Completely resin sealed lens.
h. Operating voltage: 6/12 VDC / Amp Draw 85ma.
i. Rubber grommet mounted (for easy in-field replacement) into a 1-1/4" hole.
j. Output power of LEDs approximate 60,000 mcd brightness.
k. LEDs wired in series for simultaneous flash pattern per MUTCD.
l. Wiring completely enclosed in sign casing with access for replacement.

5. Circuitry / LED Lighting Control Unit

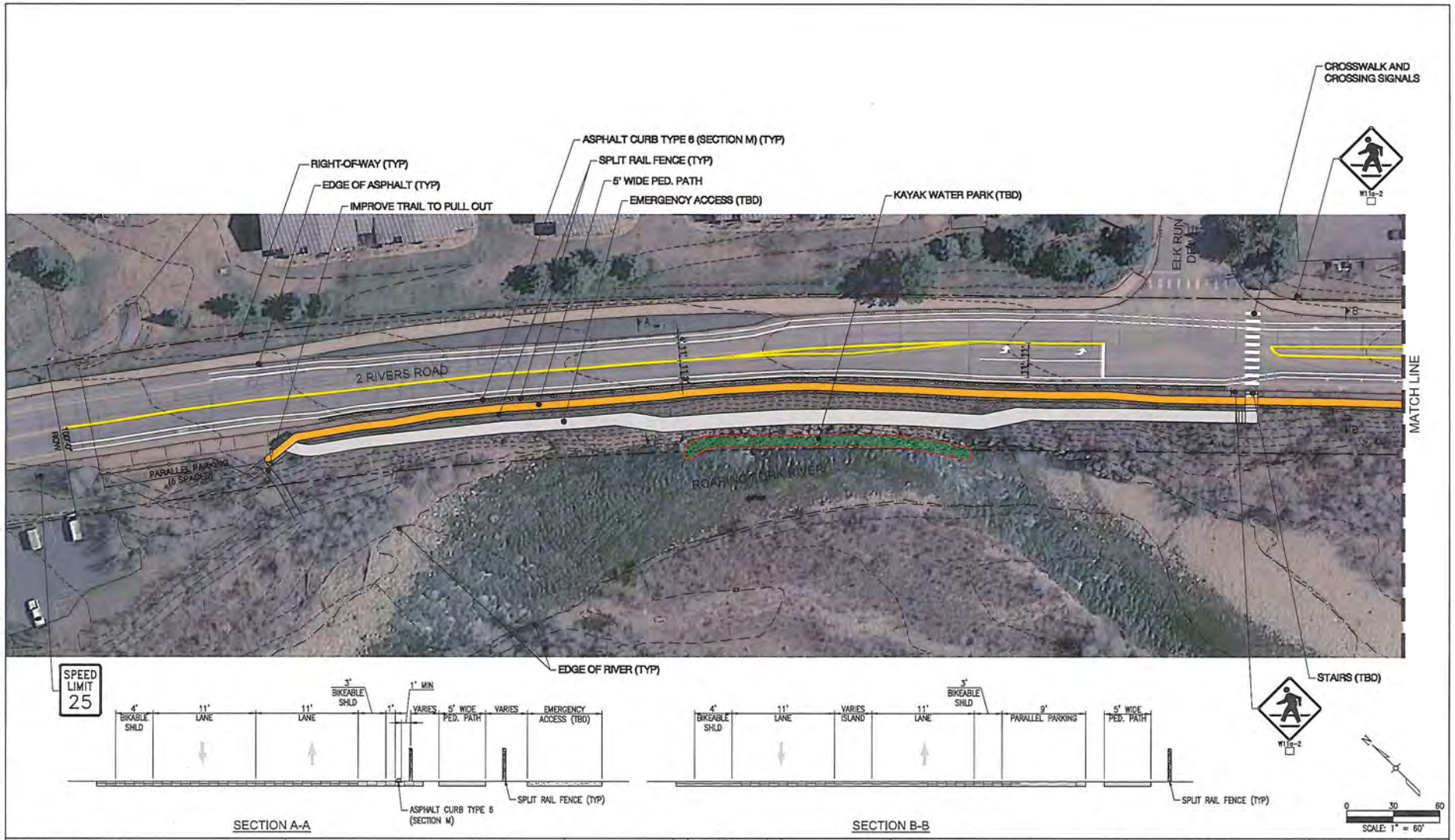
a. Circuit shall have a minimum of 4 output LED light circuits for use.
b. Circuit shall control flash rates at 50 to 60 times per minute.
c. Circuit shall flash 500 milliseconds / 150 milliseconds per flash.
d. Available dusk-to-dawn flash mode.
e. Micro-controller technology.
f. Keyed "ON/OFF" activation for tamper/vandalism protection.
g. Operation of circuit temperatures -40°C to +80°C.
h. Circuit enclosed in weatherproof casing.
i. Low voltage protection program (protecting from total discharge of battery).
j. All wiring connections in accordance to standard wiring protection guidelines.

6. Warranty

- 10 Year Solar Panel
- 5 Year Sign Construction
- 2 Year LED Lights & Circuitry
- 1 Year Battery

Visit our web site: www.xwalk.com

Rev. A, Released 061714



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File Name: 15124 – Concept.dwg	Date: / Comments / Init.	No Revisions:		–
Horiz. Scale: 1:40 Vert. Scale:		Revised:	Designer: PJL / Detailer: CWM / Structure Numbers	213 – 15124
Unit Information Unit Leader Initials		Void:	Sheet Subset: / Subset Sheets:	Sheet Number –

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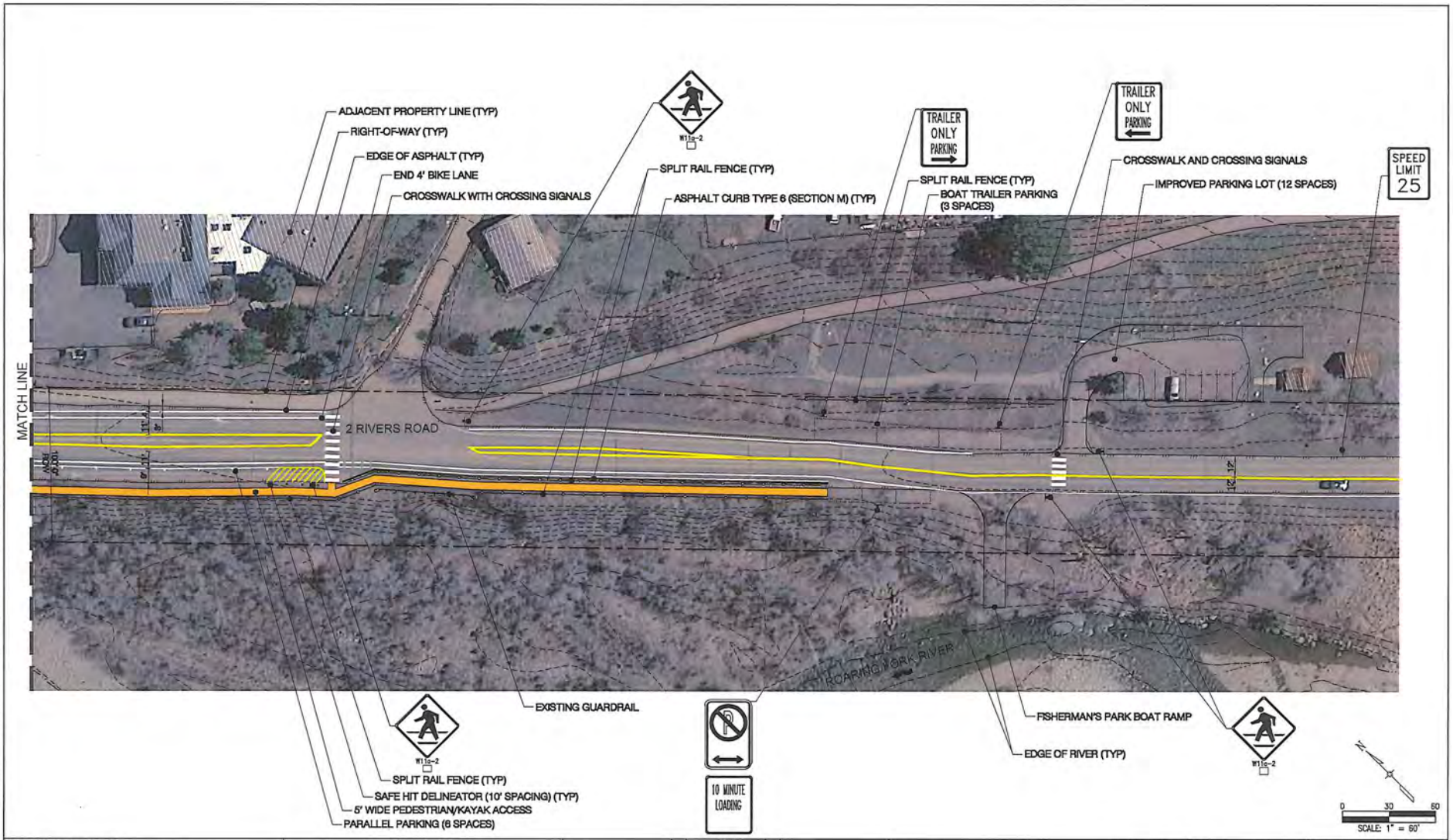
TOWN OF BASALT 1901

Figure 5A - Sept 2015

Fig 5 1 of 2



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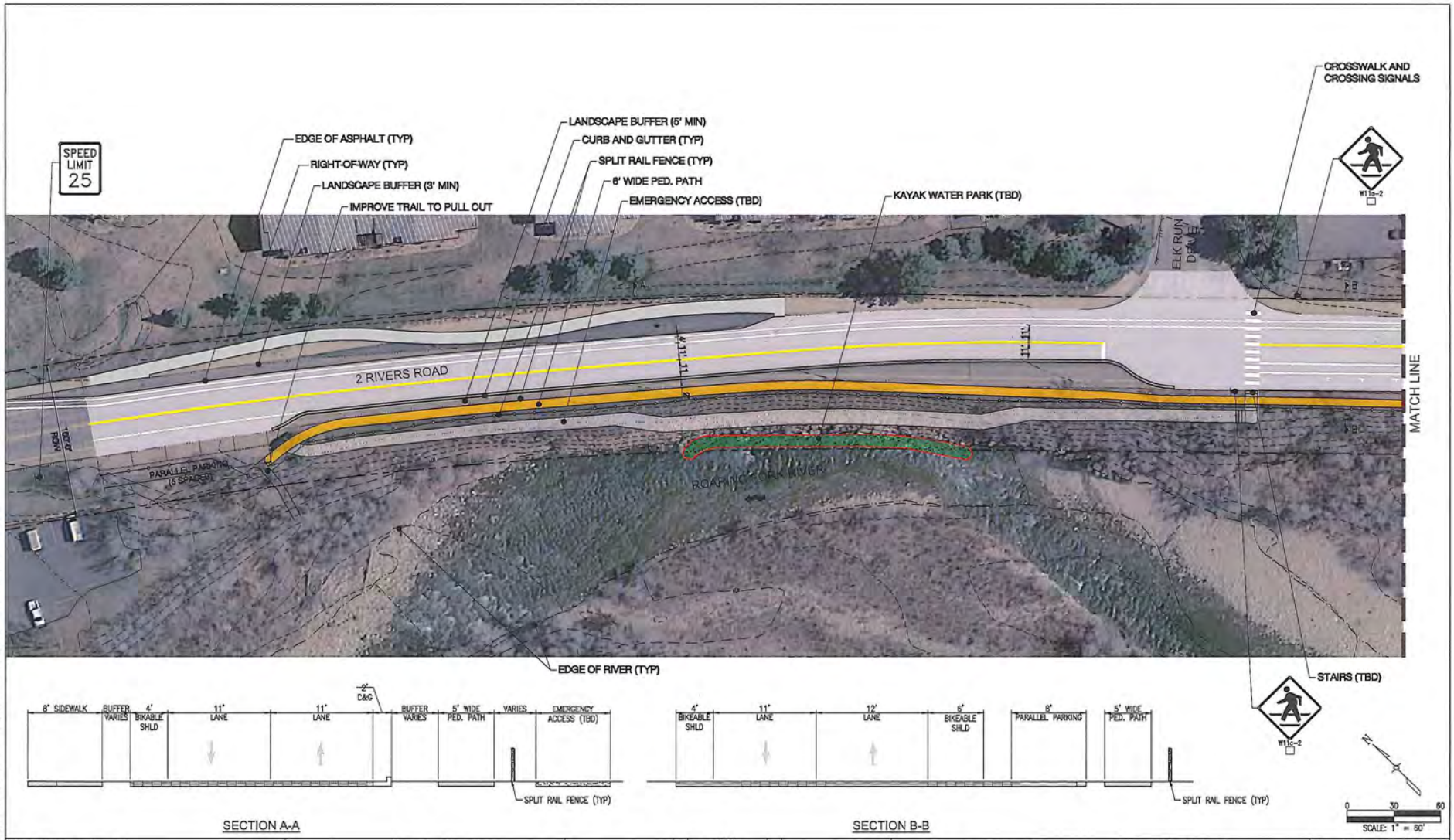
TOWN OF BASALT 1901

Fig 5a
2 of 2



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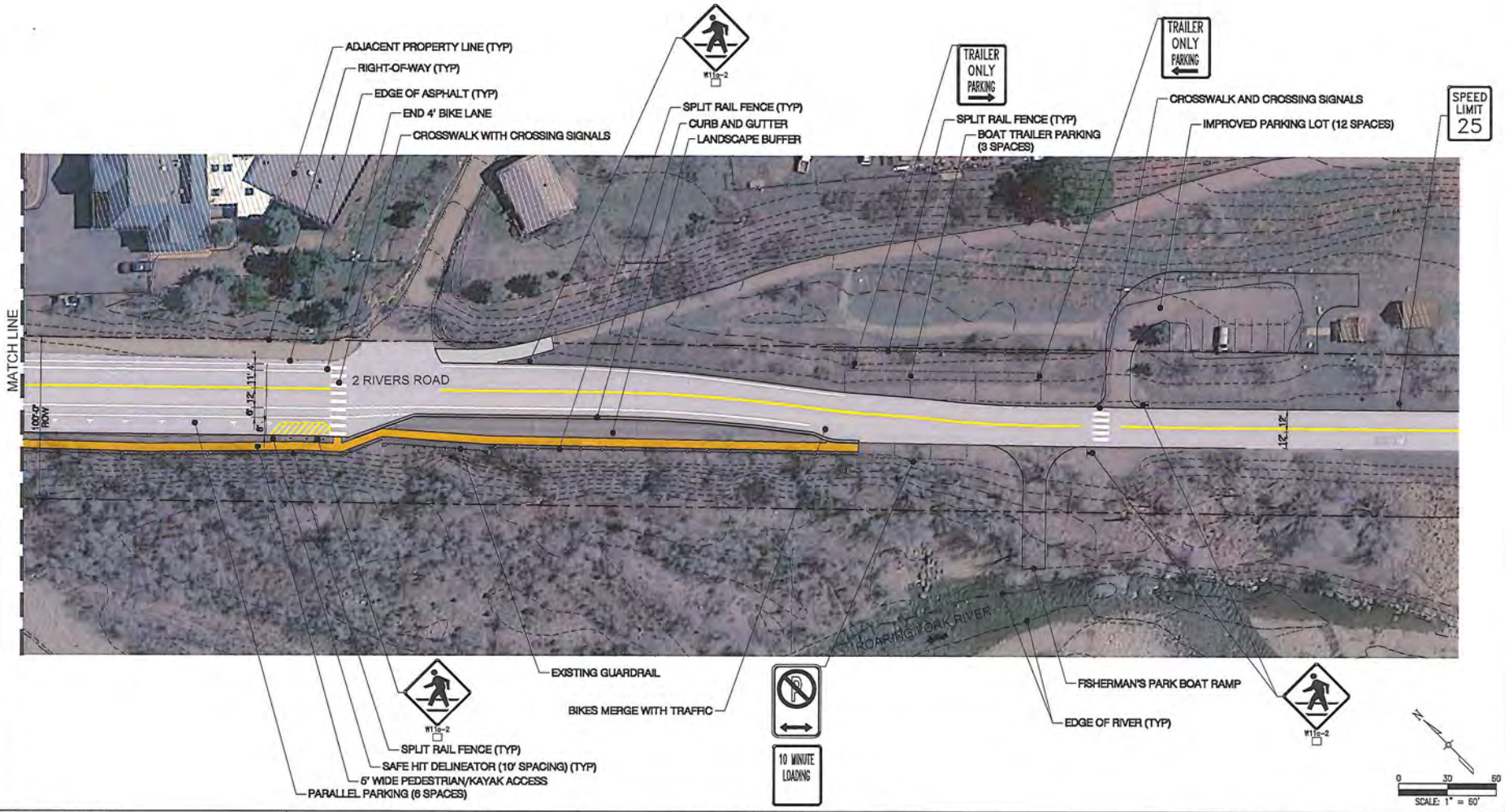
Horiz. Scale: 1:40 Vert. Scale:						Revised:	Designer: PJL Structure Numbers	213 – 15124
Unit Information Unit Leader Initials						Void:	Detailer: CWM Sheet Subset: Subset Sheets:	Sheet Number –

Figure 5b - Dec. Refinement

5B 1 of 2



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Unit Information Unit Leader Initials		Void:	Sheet Subset: / Structure Numbers / Subset Sheets:	Sheet Number –

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Louisville, Colorado 80027
303.444.2073
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TOWN OF BASALT 1901

5B 2 of 2

Fire District's Response

Susan Philp

From:	Scott Thompson <sthompson@basaltfire.org>
Sent:	Tuesday, November 10, 2015 2:46 PM
To:	Peter Loris
Cc:	Bill Harding; Brooke Stott; Christopher Muir; Susan Philp; Mike Scanlon; Pete Bradshaw
Subject:	RE: Two Rivers Greenway

Mr. Loris,

While I have read and agree to many items contained in the Two Rivers Greenway Master Plan, I have serious concerns for life safety and property preservation in regards to fire and emergency service delivery being provided on a one-lane road. One-way of this corridor will create unintended consequences that will compromise life safety in regards to emergency response access capabilities.

The roadway as depicted would be in violation of the adopted fire code of the Town and Fire District: Two Rivers Road is a defined Apparatus Access Road that is strategic for emergency response to and from the Town. To modify in the way described would violate Section 503, Fire Apparatus Access of the fire code. An 11 foot drive lane is too narrow for larger vehicles that maintain urban types of speeds. Because we would be less than 20 feet we lose the ability of vehicles passing one another without traveling into the pedestrian/bike path. From an engineering perspective the minimum street drive lane width for this type of level of service use is 13 feet x2 for a total of 26 feet.

Loss of escape route North Basalt: North Basalt is a serious wildland-urban interface corridor that is already compromised with inadequate access features. One-way would effectively take away the western escape route (West Homestead Two Rivers) and create a bottleneck at East Homestead and Midland as the other escape route.

Two Rivers by Elk Run and Emma Road will have an increased traffic load: During an emergency evacuation of the Town I would expect serious traffic delays that could have horrible results. Since these will be the only way out of Town to the South and West, in consideration of the ensuing traffic we can also anticipate emergency response delays.

Since 2009 Basalt Fire has responded and mitigated 22 emergency calls between Basalt Ave. and the West Two Rivers intersections on Highway 82. Many of these were auto crashes that required rerouting of traffic onto Two Rivers Road. Often law enforcement/fire/EMS reroute traffic for the safety of emergency responders and those involved in these crashes. Without the option of re-routing traffic unto Two Rivers Road we would be placing firefighters, paramedics, law enforcement, tow truck operators and person involved in incidents on the highway in peril of a secondary crash.

Please also take into consideration that Basalt Fire and Ambulance use this route nearly every day for emergency and non-emergency calls for service. During peak periods Highway 82 traffic impedes a speedy response. I feel that by losing this route it will negatively affect our response times to and from Town.

In closing, simply put I don't consider cost savings worth the additional risks of changing the use of this section of roadway.

Regards, Scott

RFTA's

Susan Philp

From: Dan Blankenship <dblankenship@rfta.com>
Sent: Thursday, August 20, 2015 6:46 PM
To: Peter Loris
Cc: Operations; David Johnson; Jason White; Kelley Collier; Susan Philp; Fox, Bill (fox@foxtuttle.com)
Subject: RE: Two Rivers Road Greenway and RFTA Local Service
Attachments: RFTA Responses on Two Rivers Road Greenway Proposal 08 20 15.docx

Peter:

Please see the attached RFTA Operations' responses to the Two Rivers Road Greenway Proposal. I am afraid that RFTA believes one-way travel on lower Two Rivers Road would make it challenging to effectively serve Basalt with local bus service in both directions. Naturally, RFTA is willing to discuss the proposal with you to answer your questions and to explore whether there are any workable alternatives to the current local bus routing to and through Basalt.

Thursday and Friday of next week seem to be days when RFTA staff would be available for a meeting or a call.

Thanks,

Dan

From: Peter Loris [mailto:ploris@lorisandassociates.com]
Sent: Wednesday, August 19, 2015 1:50 PM
To: Dan Blankenship
Cc: Operations; David Johnson; Jason White; Kelley Collier; Susan Philp; Fox, Bill (fox@foxtuttle.com); Peter Loris
Subject: RE: Two Rivers Road Greenway and RFTA Local Service

Dan,

I am checking to see if you are ready to set up a meeting or GoToMeeting to go over possible options. I can work on scheduling the meeting if you think that next week would have given RFTA enough sufficient time to ponder this.

Pete

Peter J. Loris, P.E.
President
~~~~~~~~~~~~~~~~~~~~~~~
L O R I S
Loris and Associates, Inc.
818 W. South Boulder Road, Suite 200
Louisville, CO 80027
Ph: 303.444.2073 x600
Fax: 303.444.0611
http://www.lorisandassociates.com
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RFTA's Response

Two Rivers Road Greenway Proposal

RFTA Operations
August 20, 2015

The Roaring Fork Transportation Authority Operations Department lauds the initiative to create a bike a path – greenway along the Roaring Fork River from downtown Basalt to Aspen Junction. However, RFTA Operations believes there are a number of important considerations and possible alternatives to the current plan.

Consideration One:

Removing a major conduit for motorists to exit downtown Basalt to head downvalley by way of Two Rivers Road, will undoubtedly create a great deal more traffic, congestion and attendant hazards along Midland Avenue by the Post Office. It will also may create a hazardous situation for RFTA buses (as well as other motorists) merging back onto HWY 82 from Basalt on a section of 82 that, during the PM commute, has an extremely high traffic volumes already. We also question eliminating a major, historical and frequently used conduit from a community which helps disperse and separate seemingly ever greater amounts of traffic.

Consideration Two:

With the advent of VelociRFTA Bus Rapid Transit, many riders have become accustomed to getting to HWY 82 to catch a bus. However, there is still significant ridership on our local buses going into and out of Basalt proper. Eliminating Two Rivers Road downvalley and making RFTA local buses use Emma Road to exit Basalt will make it more difficult for the elderly and handicapped that live in Basalt proper to access RFTA. Also increasing the walk for people late at night and during inclement weather might not be favorably received by existing users of the downtown Basalt bus stops.

Consideration Three:

Should the Two Rivers Greenway proposal be adopted, RFTA and the Town of Basalt will have to create two new downvalley local bus stops: One on Emma Road by the Post Office and one on HWY 82 by Aspen Junction. These two stops will need to be ADA accessible. Creating a stop on 82, we believe, will pose some significant challenges – and it will probably necessitate our passengers walking along the shoulder of 82, unless a path is cut across from Highway 82 to the existing up valley bus stop at Aspen Junction. Also, the stop on Emma Road will have to take into account pedestrian safety considerations due to the much higher traffic volumes in that specific area as a result of the closure of downvalley Two Rivers Road. We are struggling to conceive of a good location for a new bus stop along the Emma Road corridor. The existing stop sign configuration at the intersection of Emma Road and Midland will most likely have to be reworked in order for this closure to succeed; perhaps another roundabout will be necessary.

Consideration Four:

As the connectivity of the Roaring Fork Valley increases, in large part because of RFTA services, many tourists are staying in hotels mid valley. From our understanding a new hotel is being planned directly

adjacent to our existing local Basalt bus stops. Rocky Mountain Institute is also about to open their new doors. Tourists and locals new to the system will naturally expect that they will be able to get to the same location where they caught the bus when they are returning. If this proposal goes forward, they will be unable to do so.

Consideration Five:

Bike paths now exist on both sides of HWY 82 from Basalt to Aspen Junction. The path on the Basalt proper side could stand a few fairly minor upgrades but it functions very well and keeps bikes well separated from traffic – a special bridge was erected to enable this path. We propose that if a path gets built along existing Two Rivers Road, that it would be worth considering cantilevering sections where necessary. Our sense is that it would be worth the expenditure to keep Two Rivers Road as a dual direction conduit.

Consideration Six:

All too frequently major accidents occur on HWY 82 near Basalt resulting in closure of the highway. Two Rivers Road serves as a vital alternative to traffic flow when these closures occur. The same principle applies when roadwork on HWY 82 near Basalt is being done. The ability to detour using Two Rivers Road is an essential safety valve for RFTA and all HWY 82 users.

Consideration Seven:

RFTA has developed plans for a future circulator route connecting Basalt and El Jebel. The circulator route that has been developed envisions using Two Rivers Road in both directions.

Consideration Eight:

If more people are forced to use the Basalt Park and Ride as a result of this closure it may not be to the benefit of the Town of Basalt or RFTA in the long term, given that parking at the Basalt Park and Ride facility is constrained and the ability expand it in the future would be challenging.

Consideration Nine:

Lastly, how much usage is the proposed greenway expected to generate from November to April compared to how greatly the roadway is currently used by vehicles on a year-round basis?

Eagle County's Response

MEMORANDUM

EAGLE COUNTY ENGINEERING

TO: Susan Philp, Basalt Planner Director

FROM: Rickie Davies, P.E. Project Engineer
Eagle County Engineering Department

DATE: October 14, 2015

RE: IAR-5819
Basalt Master Plan Amendment

The Eagle County Engineering Department has received the above referenced file dated October 14, 2015, and has the following referral comments.

There is some concern regarding the *"consideration of making Two River's Road a one-way corridor in order to make a less-expensive platform for pedestrians and bicyclists."* Depending upon the termini of the one way restrictions, the implementation of a one way corridor may affect the level of service and capacity of US Highway 82. It may also impact the access of residents and emergency vehicles to homes and calls respectively, in the areas serviced by the Frying Pan Road and Cedar Drive. Careful deliberation should be taken prior to this change. It may be beneficial to determine the increased reaction time for emergency vehicles as a result of this change.

Thank you for the opportunity to review this development file. Please include a written response to all of the above mentioned comments, as this will expedite the review process. The Eagle County Engineering Department reserves the right to offer additional comments as more information is provided. Please feel free to contact me at (970) 328-3567 or Richard.davies@eaglecounty.us, if you have any questions or comments.

# # #

cc: Eva Wilson, County Engineer