



## Weber County Planning Division

### MEMORANDUM

To: County Commission  
From: Steve Burton, Planning  
Date: October 14, 2021  
Subject: Powder Mountain Open Space Easement

Commissioners,

Attached to this memo is a resolution for the approval of a conservation open space easement between SMHG Landco LLC, the Ogden Valley Land Trust, and Weber County. Weber County and the Ogden Valley Land Trust are Grantees and are given rights under this easement to preserve and protect the subject property, as open space in perpetuity. The property area is 877 acres, on which the easement allows the public and Grantor (SMHG) to use for passive recreational activities. The document describes other uses including wildlife habitat improvement, ski and snow cat trails, temporary use of yurts, and trail maintenance that may be conducted by the Grantor with the consent of the Grantees.

The requirement for open space dedication comes from the DRR-1 zoning requirement at Powder Mountain, which requires 60 percent of the resort's net developable acreage to be designated as open space. 30 percent of the resort's net developable acreage must be reserved as conservation open space. Currently the resort has developed 434 acres and is required to dedicate at least 434 acres of open space. The amount of open space that will be under this conservation easement will be 877 acres.

Please feel free to contact me with any questions.

Best,

Steve Burton  
801-399-8766  
Weber County Planning Division

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION APPROVING AND ACCEPTING DEED OF IRREVOCABLE  
CONSERVATION OPEN SPACE EASEMENT**

**WHEREAS**, the developers of certain properties in and around the Summit Powder Mountain Resort entered into a development agreement with Weber County in or about 2015, under which the County agreed to rezone those properties to the DRR-1 zone; and

**WHEREAS**, under Weber County Code § 104-29-2(i), resort developers in the DRR-1 zone must designate at least 30% of the resort's net developable acreage as conservation open space, encumbered by an irrevocable conservation easement that meets requirements outlined in Weber County Code § 104-29-6 and Utah Code Ann. chapter 57-18; and

**WHEREAS**, under Weber County Code § 104-29-2(i), "The minimum number of acres encumbered by each easement shall be equal to or greater than the number of acres involved in each subdivision phase until the total number, of required conservation open space acres, is met"; and

**WHEREAS**, under Weber County Code § 104-29-6, the conservation easement must be granted to both the County and "one other qualified conservation organization" that is approved by the County and that meets the requirements of Utah Code Ann. § 57-18-3; and

**WHEREAS**, the Ogden Valley Land Trust meets the requirements of Utah Code Ann. § 57-18-3; and

**WHEREAS**, as of the date of this resolution, the Summit Powder Mountain Resort project has platted 434 acres, meaning the developers are required to dedicate 434 acres as conservation open space under Section 104-29-2(i) of the Weber County Code; and

**WHEREAS**, the developers of the Summit Powder Mountain Resort have agreed to grant and convey approximately 877 acres to Weber County and the Ogden Valley Land Trust, pursuant to the terms of the attached Deed of Irrevocable Conservation Open Space Easement ("Easement"), to satisfy the DRR-1 zone requirements and to ensure that the conservation values listed in the Easement are forever preserved on the 877 acres; and

**WHEREAS**, the 877 acres exceeds the required 434 acres, and the excess shall be credited against future dedication requirements within the DRR-1 zone; and

**WHEREAS**, the County has reviewed the Easement and finds that it satisfies all applicable legal requirements and will fulfill the purpose and intent of the required open space dedication, as described in chapter 104-29 of the Weber County Code;

**NOW THEREFORE**, the Board of County Commissioners of Weber County hereby resolves and takes action as follows:

1. Weber County, as a grantee, approves and accepts the attached Deed of Irrevocable Conservation Open Space Easement, and agrees to the terms of the Easement.
2. Weber County approves the Ogden Valley Land Trust as a co-grantee of the Easement.
3. The chair of the Board of County Commissioners is authorized and directed to sign the Easement on behalf of the County.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

BOARD OF COUNTY COMMISSIONERS  
OF WEBER COUNTY

By \_\_\_\_\_  
James H. "Jim" Harvey, Chair

Commissioner Froerer voted \_\_\_\_\_  
Commissioner Harvey voted \_\_\_\_\_  
Commissioner Jenkins voted \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Ricky Hatch, CPA  
Weber County Clerk/Auditor

Resolution No. \_\_\_\_\_  
Approving and Accepting Deed of  
Irrevocable Conservation Open Space Easement

**FINAL 10/12/21**

Recording Requested By:

Parcel Identification Number: Parcel #22-006-0005

Space above this line for Recorder's use

**DEED OF IRREVOCABLE  
CONSERVATION OPEN SPACE EASEMENT**

This Deed of Irrevocable Conservation Open Space Easement (“**Conservation Easement**” or “**Easement**”) is made this \_\_\_ day of \_\_\_\_\_, by SMHG Landco LLC, a Delaware limited liability company (“**Grantor**”) to Ogden Valley Land Trust, Inc., a Utah non-profit corporation (“**the Trust**”) and Weber County, a political subdivision of the State of Utah (“**County**” and collectively with the Trust, “**Grantees**”), as tenants in common, in perpetuity and as holders of the Easement pursuant to Utah Code Annotated Chapter 57-18-1 et seq. (“**Utah Land Conservation Easement Act**”) and the Ogden Valley Destination and Recreation Resort Zone DRR-1 (“**Resort Zoning Regulation**”) (collectively, “the Parties”) in consideration of the following:

**WITNESSETH:**

**WHEREAS**, Grantor is the sole owner in fee simple of that certain real property comprising approximately eight hundred seventy-seven (877) acres, located in Weber County, Utah (the “**Property**”), more particularly described on Exhibit “A” (“**Legal Description**”) and on a Map contained in Exhibit “B”, both of which are attached and hereby incorporated into this Easement; and

**WHEREAS**, Grantor took title to the Property by virtue of a Deed dated June 19, 2014 and recorded at the Office of the Weber County Recorder on June 20, 2014 at Entry Number 2691509 and owns the fee title to the Property; and

**WHEREAS**, the Property possesses significant natural, ecological, scenic, wildlife, agricultural and open space values, including value to water quality as recognized in the Utah Land Conservation Easement Act (Utah Code Ann. § 57-18-1 et seq.) (collectively, the “Conservation Values”) and the Grantor intends to convey this Conservation Easement under the statutory provisions of that Act and other applicable provisions of Utah and Weber County regulatory, statutory and common law; and

**WHEREAS**, the purpose of this Conservation Easement is to forever protect the Conservation Values, as more particularly described and defined in Section I below and in the Baseline Inventory, defined and described in Section VI below, which protection will yield a significant public benefit and is of great importance to the Trust, as well as the people of Weber County, the State of Utah, and the United States of America; and

**WHEREAS**, the Property is located on the northeast side of the Ogden Valley, is currently natural open space land, provides for riparian and critical wildlife habitat for seasonal deer, elk, and moose and other wildlife and is located within the Powder Mountain Cooperative Wildlife Management Unit; and

**WHEREAS**, wildlife that may be found on the Property includes black bear, blue grouse, California quail, Rocky Mountain elk, Shiras moose, mule deer and ruffed grouse and provides potential habitat for several Utah Sensitive Species, including the Northern leopard frog, boreal western toad, golden eagle, Lewis woodpecker, various waterfowl, American three-toed

woodpecker, northern pygmy owl, Townsend's big-eared bat, little brown myotis, lyrate mountain snail, Deseret Mountain snail, Utah milksnake and Bonneville cutthroat trout; and

**WHEREAS**, views of the Property can be seen from State Route 158 (the Powder Mountain Road) and from other vantage points in Ogden Valley and, therefore, this Conservation Easement protects unique scenic resources for the residents of the Ogden Valley and the State of Utah; and

**WHEREAS**, The Trust has documented and established an inventory of the Conservation Values and the current condition of the Property in the Baseline Inventory pursuant to Section VI, which is attached and incorporated into this Easement as Exhibit "C"; and

**WHEREAS**, the Ogden Valley Resort Zoning Regulation is intended to provide flexible development standards to resorts that are dedicated to preserving open space and recreational resort opportunities while promoting the goals and objectives of the Ogden Valley General Plan; and

**WHEREAS**, the County and Summit Mountain Holding Group, L.L.C., a Utah limited liability company and an affiliate of Grantor, entered into a Zoning Development Agreement (the "**Zoning Agreement**") recorded in the Office of the Recorder of the County on January 14, 2015 as Entry No. 2717835 whereby the County agreed to rezone Summit Powder Mountain property ("**Summit Powder Mountain Resort**") to DRR-1 as more particularly described in the Zoning Agreement under the circumstances and conditions set forth in the Zoning Agreement; and

**WHEREAS**, Section 104-29-2(i) of the Resort Zoning Regulation mandates a minimum of thirty percent of the Summit Powder Mountain Resort net developable acreage be dedicated as conservation open space and encumbered by an irrevocable conservation easement that meets the requirements described in Section 104-29-6 of the Resort Zoning Regulation. The minimum number of acres encumbered by each easement is required to be equal to or greater than the number

of acres involved in each project phase until the total number of acres required for conservation open space under the Zoning Agreement is met; and

**WHEREAS**, the net developable acreage for the Summit Powder Mountain Resort zoned DRR-1 pursuant to the Zoning Agreement is approximately 4,060 acres. Accordingly, thirty percent of the net developable acreage required to be dedicated as conservation open space if and when the project is fully developed under the current DRR-1 will be approximately 1,218 acres; and

**WHEREAS**, as of the date of this Easement, the Summit Powder Mountain Resort project has platted 434 acres. Therefore, Grantor is required to dedicate 434 acres as conservation open space under Section 104-29-2(i) of the Resort Zoning Regulation. However, 877 acres will be dedicated under this Easement; and

**WHEREAS**, Section 104-29-6 of the Resort Zoning Regulation mandates the conservation open space easement to be granted to: (i) the County; and (ii) a qualified conservation organization that meets the requirements of Section 57-18-3 of the Utah Code and that is also approved by the County. The Trust is a qualified conservation organization that meets the requirements of Section 57-18-3, and the County has approved the Trust as a Grantee of the Easement by Resolution dated **October 19, 2021**; and

**WHEREAS**, County has duly adopted a Resolution approving its acceptance and future enforcement of this Easement on the Property on **October 19, 2021**; and

**WHEREAS**, under the Zoning Agreement and the current Weber County planning and zoning ordinances for the area in which the Property is located, Grantor has the right to build multiple structures and to engage in other development of the Property in locations that would detrimentally impact the Conservation Values and Grantor, subject to those certain development

rights reserved in Section III, wishes to relinquish and forever forfeit for itself and its successors, the right to engage in further additional development that would impair the Conservation Values; and

**WHEREAS**, the flexibility reserved and retained by Grantor for the future use of the Property in Section III below( the Consistent Permitted Uses and Practices Section) is intended to allow for future development consistent with this Easement, including the specific uses set forth in Section III(F); and

**WHEREAS**, Grantor desires and intends that the Conservation Values of the Property be conserved and maintained by permitting and allowing only those uses and activities on the Property that will not impair or interfere with the Conservation Values in accordance with the terms of this Easement; and

**WHEREAS**, Grantor, as the fee owner of the Property, holds the right to identify, conserve, enhance, and protect the Conservation Values of the Property in perpetuity; and

**WHEREAS**, Grantor values the undeveloped aspects of the property and intends that the Conservation Values be preserved and maintained by permitting only those uses on the Property that are hereby retained and reserved and that do not or will not impair or interfere with the Conservation Values in a manner consistent with the terms of this Easement; and

**WHEREAS**, Grantor further intends by executing this Easement to convey to the Trust and Weber County the right to preserve and protect the Conservation Values of the Property in perpetuity consistent with the terms of this Easement; and

**WHEREAS**, the Trust's mission is to conserve and protect open space and natural areas for ecological, scientific, historic, recreational, and educational purposes; and the Trust is a publicly supported, tax exempt non-profit organization under Section 501(c)(3) of the Internal



Revenue Code, and a qualified conservation easement holder under Utah Code Ann. § 57-18-1 et seq.; and the Trust is a qualified organization under Section 170(h)(3) of the Internal Revenue Code entitled to receive and hold conservation easements in perpetuity under the terms and conditions of those regulations; and

**WHEREAS**, the Trust agrees by accepting the Easement to honor the intentions of the Grantor and to preserve and protect the Conservation Values of the Property in perpetuity for the benefit of this generation and generations to come consistent with the terms of this Easement; and

**WHEREAS**, the Board of Trustees of the Trust has duly adopted a Resolution approving the Trust's acceptance, and enforcement of this Easement on the Property; and

**WHEREAS**, consistent with the foregoing laws, regulations, ordinances and agreements, and subject to the specific terms of this Easement, the Grantor and Grantees, respectively, desire to irrevocably dedicate and accept the Property as conservation open space, which dedication shall run with the land and bind the Property in perpetuity; and

**WHEREAS**, the recordation of this Easement satisfies Grantor's current and potential future obligations to dedicate 877 acres as conservation open space under Section 104-29-2(i) of the Resort Zoning Regulation in support of the Summit Powder Mountain Resort project.

**NOW, THEREFORE**, in consideration of the recitals set forth above, and the covenants, terms and conditions and restrictions contained in this Easement, which the Parties agree constitute adequate consideration, and pursuant to the laws of Weber County, in particular Section 104-29-6 of the Resort Zoning Regulations and the laws of the State of Utah, in particular Utah Code Ann. § 57-18-1 et seq., and with the intention of creating an irrevocable Conservation Easement, the Trust and County agree to accept this Deed of Irrevocable Conservation Open Space Easement. In consideration of the Trust's and County's execution and acceptance of this Deed of Irrevocable Conservation Open Space Easement, and in consideration of the Trust's, County's and Grantor's

agreement to abide by the terms and conditions of this Easement, Grantor voluntarily grants and conveys to the Trust and County and the Trust and County accept this Deed of Irrevocable Conservation Open Space Easement in perpetuity on, over and across all of the Property, to preserve and protect the Conservation Values of the Property as set forth in this Easement, to ensure the Property will be retained predominantly in a condition that protects and enhances the Conservation Values and such other uses as are specifically provided for in this Easement and to prevent the Property from deteriorating from its present condition as evidenced by the Baseline Inventory, which Conservation Easement shall bind Grantor and Grantor's successor(s) in ownership of the Property in perpetuity.

#### **SECTION I - PURPOSE - CONSERVATION VALUES.**

This section describes the Purpose of the Conservation Easement and it is intended as a substantive provision of the Easement. Any ambiguity or uncertainty regarding the application of the terms of the Easement will be resolved to further this Purpose.

This Conservation Easement is granted to preserve, protect and enhance the following values (the "Conservation Values"):

- A. **Water Resources.** To maintain and improve the quality of water resources, both surface and groundwater, within, around and downstream of the Property.
- B. **Wildlife.** To maintain and allow improvement of the quality of wildlife habitat to protect breeding sites, to promote biodiversity and native species, to preserve the existing areas of wildlife habitat, and to secure and protect migration corridors.
- C. **Open Space.** To conserve the open space values of the Property in its natural condition, subject to the uses allowed in Section III.

D. **Scenic Resources.** To preserve the existence of scenic resources within the Property, to preserve the relationship of those resources with the natural and scenic resources in surrounding properties and to protect scenic vistas visible from public rights-of-way and other public access points located in the vicinity of the Property and across the Ogden Valley.

E. **Dark Skies.** To protect and preserve natural dark skies and a natural nighttime environment on the Property.

F. **Protection in Perpetuity.** This Conservation Easement shall run with the land and encumber the title to the Property in perpetuity and shall bind the Grantor and all future owners, assignees, tenants, licensees, occupants and users of the Property. The Easement shall not be terminated or extinguished unless required by law and may only be extinguished by a valid order of a court having proper jurisdiction and authority.

## **SECTION II - RIGHTS CONVEYED BY THIS CONSERVATION EASEMENT TO**

### **GRANTEES**

The rights conveyed to Grantees under this Easement include the following:

A. To preserve and protect in perpetuity the Conservation Values of this Property, subject to the terms of the grant of this Easement.

B. To enforce the terms of the Easement by entering the Property, provided that Grantees shall provide twenty four hour (24) advance notice to Grantor, for the purpose of inspecting the Property for suspected or reported violations. In addition, Grantees shall have the right to enter the Property once a year, at a mutually agreed time, for the purpose of inspection and compliance monitoring, regardless of whether Grantees have reason to

believe a violation of the Easement exists. In so doing, Grantees may inspect, observe, study, and make scientific observations of the Property, all in a manner that will not unreasonably interfere with the proper uses being made of the Property at the time of such entry. To assist Grantees in the exercise of these enforcement rights, Grantor shall provide the Baseline Documentation described in Section VI of this Easement to Grantee. Grantor also expressly grants a right of immediate entry on the Property should the Trust or the County, in their sole individual discretion, determine such immediate entry is necessary to prevent or halt damage to or destruction of the Conservation Values, in which event the Trust or the County shall notify Grantor as soon thereafter as is reasonably practicable. Aside from the rights of access granted by this Paragraph and in Section III below, this Easement does not grant to Grantees or the public the rights to enter on the Property.

C. To obtain injunctive and other equitable relief, including restoration of the Property to its prior condition, against any persons who perform activities on or make any use of the Property that is inconsistent with the Conservation Values (it being agreed that Grantees will have no adequate remedy at law);

D. To enforce this Easement in the case of breaches by Grantor or by third persons (whether or not claiming by, through or under Grantor) by appropriate legal proceedings, after providing Grantor with reasonable notice and a reasonable opportunity to cure. Grantees agree to jointly cooperate in good faith to address any breaches that may occur and any damages, issues or claims that may arise with respect to the Property and further agree to fairly allocate all costs and expenses between them for such efforts.

E. In a reasonable manner and at reasonable times and in accordance with Section III(B) hereof, to periodically place signs on the Property enforcing the hunting

provisions of this Easement, to prevent trespass and to accomplish any other purpose of this Easement. No billboard signs of any type may be constructed or placed on the Property, but Grantees rights in this regard shall include the placement of small signs regarding the existence of the Easement and the fact that it is held by the Trust and the County.

### **SECTION III - CONSISTENT PERMITTED USES AND PRACTICES.**

Grantor retains all ownership rights not expressly or by necessary implication restricted by this Easement. In particular, Grantor retains the right to sell, mortgage, bequeath, or donate the Property. Notwithstanding the foregoing, however, any conveyance of the Property will remain subject to the terms of this Easement and any subsequent owner or successor in interest to the Property shall be bound by the obligations of this Easement and by any limitations and restrictions set forth in the documents conveying the Property to the transferee together with any such limitations and restrictions to which the transferee is subject in its governing documents. The following consistent and permitted uses and practices (the "Consistent Permitted Uses"), although merely demonstrative and not exhaustive, allow uses and practices that are performed in a manner consistent with the Conservation Values and prohibit uses or practices that are inconsistent with the Conservation Values as specified in this Easement or may result in significant injury or destruction of a Conservation Value:

- A. **Use of the Property.** Subject to the permitted uses set forth below, Grantor intends that the Easement shall restrict the use and development of the Property to uses that preserve its Conservation Values and are not specifically prohibited in this Easement. Grantor's retained rights must be exercised consistent with applicable zoning regulations

governing the Property. The Property and any portion may be leased, subject to the terms and conditions of this Easement.

B. **Passive Recreational Activities.** The Property may be used by the public and Grantor for passive and low impact uses, which consist solely of activities that require minor alterations to the natural condition of the Property. Such activities shall include, but are not limited to, hiking, cross-country, back-country skiing and skiing where the Property is otherwise accessed by ski lifts or cat operations located on adjacent parcels and/or the Snow Cat Corridor, low-impact camping, snowshoeing and horseback riding. No biking shall be allowed, except on existing roads and trails and terrain that has a slope of five degrees or less. Minor alterations to the Property may be undertaken for the purpose of facilitating these passive recreational uses. Such alterations may include construction of sensitively sited new trails, trail modifications, trail clearing, removal and trimming of vegetation, fire mitigation and other vegetation management to preserve the natural condition of the property, and the placement of directional signs. To the extent reasonably possible in furthering such uses: (i) all trails, signs, water bars, stream crossings or other structures shall be constructed with natural, indigenous materials so as to maintain the harmony of the trails with their natural surroundings; and (ii) all trails shall be located so as to avoid noticeable visual impacts to the natural appearance of the Property from adjoining properties and/or from the surrounding area. Proposed alternatives and improvements for trails, ski corridors and low-impact camping improvements or alternatives that may materially impact the Conservation Values shall require prior written permission of Grantees under Section V, which permission shall not be unreasonably withheld, conditioned or

delayed. Notice to and consultation with Grantees shall be required prior to proceeding with perceived minor impacts from these activities to ensure the impacts will not be material.

C. **Wildlife Habitat Improvement.** Wildlife habitat improvement is permitted with the prior written permission of Grantees, which permission shall not be unreasonably withheld, conditioned, or delayed. Any wildlife habitat plan approved by the Utah Division of Wildlife Resources or a Trust-approved qualified biologist shall be acceptable to Grantees upon written notification to Grantees;

D. **Fences.** Replacement of currently existing fencing shall be allowed. Fencing shall be allowed on the Property along the perimeter of the Property to protect the boundary and inside the property to prevent wildlife degradation of vegetation within the perimeter, or to provide necessary demarcation of recreational areas and to facilitate other permitted uses on the property. As current fences are replaced, they shall be replaced with wildlife-friendly fencing that allows for the free and injury-free movement of moose, elk, deer and other wildlife;

E. **Public Access.** Public Access shall be allowed from May 1 to October 31 and may be allowed in Grantor's discretion from November 1 to April 30 ("the winter months"). Grantor reserves the right to provide private guided over snow vehicle tours during the winter months. For public hunting access, the provisions of Section III(F)(3) shall govern;

F. **Other Permitted Uses.** Other uses consistent with the Conservation Values of this Easement are permitted without the prior written permission of Grantees. Other uses

inconsistent with or significantly detrimental to the Conservation Values of this Easement are prohibited. Other permitted uses shall include:

1. The ability to access, maintain and repair the service road and trail that traverses the property.
2. The use of over-snow vehicles during the winter months.
3. Hunting within the purview of the allowable purposes of the existing and/or any future Cooperative Wildlife Management Unit ("CWMU"), as controlled by Grantor and authorized by the Utah Division of Wildlife Resources. So long as such actions will not materially impair the Conservation Values under the Conservation Easement, Grantees agree to cooperate with Grantor and to consent to any amendments to the existing CWMU and the implementation of any new, revised or amended or replacement CMWU under existing regulations or similar regulations that may be adopted by any governmental or regulatory agency that governs the Property in the future.
4. The ability to access, maintain and repair all existing utilities within the existing Utility Corridor on the Property (See Map in Exhibit "B") after notice to and consultation with Grantees.
5. The ability to add new, or to improve existing utilities within the existing Utility Corridor after written Notice to and consultation with Grantees, so long as the emplacement, maintenance and operation of these utilities will not materially impair the Conservation Values located outside of the Utility Corridor.
6. The ability to add consistent minor, rustic infrastructure, such as shelters, benches and directional signs, to support the passive recreational uses.



7. The ability to construct, use, maintain and repair a groomed ski and snow cat trail, 24 feet in width as shown in Exhibit "B" hereto which location may be modified by Grantor during the design and construction of the snow cat trail (the "Snow Cat Corridor"). This Snow Cat Corridor shall include and allow a maximum disturbed area of 45 feet of width, shall primarily be for winter use and shall be constructed, operated and maintained in a manner that does not materially impair the Conservation Values located outside of this Corridor. This Corridor may be used in the Summer for maintenance purposes, together with passive hiking and biking access. Notwithstanding the foregoing, Grantor may disturb such portion of the area adjacent to the Snow Cat Trail that is reasonably necessary to support the slope with downhill fill. When the design for this Corridor is completed, consultation with and written consent from Grantees shall be required pursuant to Section V hereof. Likewise, consultation and written consent pursuant to that Section shall be required for the initial operation and maintenance plans, as well as all future changes thereto.

8. The ability to cut, trim, and/or remove trees and vegetation to preserve and maintain the safety of existing ski trails, hiking trails, and other recreational uses existing as of the date of this Easement.

9. The ability to install signage on Grantor's Property for the benefit of motorists along Powder Mountain Road (highway 158) for wayfinding, safety, and informational purposes.

10. A temporary seasonal yurt may be emplaced from November 1 to April 15 of each year on a thirty foot footprint in one of the two locations shown on the Map in Exhibit "B," after approval of this single location by Grantees pursuant to

Section V. The yurt shall be removed and the site restored after each Winter Season Use.

**SECTION IV - INCONSISTENT AND PROHIBITED USES AND PRACTICES**

Grantor voluntarily relinquishes the right to engage in uses and practices prohibited by this Section IV. The absence of a use or practice from this Section IV does not mean the use or practice is permitted.

A. **Subdivision.** Any division or de facto division of the Property is prohibited.

None of the parcels comprising the Property may be subdivided or transferred separately from the remainder of the Property;

B. **Recreational Uses.** Passive commercial recreational use of the Property as previously set forth in Section III by Grantor or others with Grantor's permission is permitted. No ski lifts or other winter ski resort amenities may be placed on this property, with the exception of signage necessary to direct the passive recreational users on, off and through the property and for safety purposes and rustic infrastructure otherwise allowable under Section III F(6).

C. **Mining and Industrial Use.** Dredging, mining, excavation, or the exploration for, extraction or processing of oil and gas or minerals, or the removal or processing of rock, sand, gravel, or soils is prohibited. Industrial use of the Property is also prohibited. The Mineral Estate was reserved to the Union Pacific. The Remoteness Letter prepared by Loughlin and Associates and attached hereto as Exhibit "E" reveals that the potential existence of economically exploitable minerals on the Property is so remote as to be negligible.

D. **Wildlife Harassment and Hunting.** Subject to the provisions of Section III(F)(3), hunting, harassment of wildlife or interfering with animal migration routes that cross the Property, other than existing recreational uses otherwise permitted in Section III are prohibited without the prior written permission of Grantees (e.g. in accordance with Trust approved wildlife habitat improvement), which permission may be withheld in the absolute discretion of either of the Grantees;

E. **Vegetation Removal.** Vegetation removal is prohibited except that the cutting, burning, trimming, or removing of trees and vegetation is permitted: (i) when clearly incidental to another activity permitted by a subparagraph of this Section III (for example, preservation of water drainage following damage from natural causes or for emergencies, e.g. firefighting); and/or (ii) to preserve the existing recreational uses on the Property including maintaining existing ski trails and/or hiking trails in accordance with Section III (8). "Existing" shall mean in existence at the time this Conservation Easement is recorded. The eradication of Utah State-listed invasive and noxious weeds and trees is permitted and encouraged in keeping with state law

F. **Dumping and Storage.** Dumping or storage of ashes, trash, garbage, junk, grass and limb cuttings, or other unsightly or offensive materials is prohibited on the Property;

G. **Roads and Trails.** New road and trail construction not included in Section III is prohibited on the Property with the exception of roads and trails necessary or appropriate for the retained passive recreational uses and others as approved by written consent of Grantees, which consent may not be unreasonably withheld, conditioned or delayed;

H. **Motorized Use.** Subject to the provisions of Section III, motorized vehicle usage (including, but not limited to, ATVs and snowmobiles) on the Property is prohibited, except with prior written permission of the Grantees and as necessary for road and trail construction and maintenance and emergency vehicle movement. Specific written permission to allow ATV and snowmobile access and use for other purposes may also be requested of Grantees, which permission shall not be unreasonably conditioned, withheld, or denied so long as such uses do not interfere with the wildlife or other Conservation Values on the property.

I. **Clearing and Grading.** Clearing and grading or other movements of the natural topography of the Property is prohibited except for: (1) activities approved by Grantees in connection with wildlife habitat improvements; (2) clearing approved by Grantees for safety purposes (e.g. deadfall, water drainage, avalanche control); or (3) any other use authorized in Section III or with the written permission of Grantees consistent with this Easement;

J. **Illegal activities.** Illegal activities per local, state, or federal law are prohibited on the Property, including violations of applicable zoning regulations;

#### **SECTION V - PRIOR APPROVAL**

If any provision of this Conservation Easement requires Grantor to obtain the approval of Grantees prior to performing any act or undertaking any enterprise, Grantor shall not perform that act or undertake that enterprise until the notice and approval provisions of this Section V have been fully satisfied, except as may be required in the case of emergencies and/or to protect health and welfare. Nothing in this Section shall in any way prohibit or limit the ability of

Grantees to obtain writs or injunctive relief relating to any violation of this Conservation Easement.

A. Grantor's Written Notice. Prior to the commencement of any activity, use, or enterprise that requires approval by or consent from Grantees, Grantor will first notify Grantees in writing of the proposed activity, use, or enterprise. The Notice must reasonably inform Grantees of all material aspects of the proposed activity, use or enterprise. Grantor will send such Notices to the Trust by registered or certified mail, return receipt requested, addressed to Ogden Valley Land Trust, Inc., P.O. Box 412, Huntsville, Utah 84317, Attention: Board of Trustees, or to such other address as the Trust may designate in writing. Grantor will send such Notices to the County by registered or certified mail, return receipt requested, addressed to Weber County Planning Division, 2380 Washington Blvd. Ste. 240, Ogden, UT 84401, Attention: Planning Director, or to such other address as the County may designate in writing.

B. Response by Grantees. Grantees shall have thirty (30) days from the date such Notice is received (as indicated by the registered or certified return receipt) to review the request for the proposed activity, use, or enterprise and to notify Grantor of any objections they may have to the activity, use, or enterprise. The objections, if any, shall be based upon the Trust's or County's opinion that the proposed activity, use or enterprise is likely to cause material damage to the Property's Conservation Values or is otherwise inconsistent with the purpose and/or provisions of this Easement. If, in the Trust's or County's reasonable judgment, the proposal presented by Grantor can be modified to avoid material damage to the Conservation Values and otherwise comply with the purpose and provisions of this Easement, then the response shall inform Grantor

how the proposed activity, use or enterprise may be modified to conform with this Easement. Grantor may commence the proposed activity, use, or enterprise only after it receives express written approval from Grantees, and only in the manner explicitly proposed by the Grantor and approved by Grantees. Should a response not be received within the thirty (30) day period, the request shall be deemed denied. Grantees will send such response to Grantor by registered or certified mail, return receipt requested, addressed to Grantor at Grantor's address as set forth on page one, or to such other address as Grantor may designate in writing.

This denial shall be deemed procedural and not substantive. Should a denial occur, nothing shall prevent Grantor from submitting an additional Notice or requesting reconsideration of the denial. Grantor or Grantee shall each have the option to engage a mediator to resolve any outstanding issues regarding such denial and, if the denial remains unresolved, submit the matter to the appropriate District Court of the State of Utah.

#### **SECTION VI - BASELINE INVENTORY**

An assemblage of inventory baseline data ("Baseline Documentation"), completed prior to the signing of this Easement, is attached hereto as Exhibit "C". The parties acknowledge this collection of baseline data, which inventories, graphically demonstrates, and photo-documents relevant features and the existing condition of the Property, contains an accurate representation of the Property's condition and its natural resources as of the date of the execution of this Easement in accordance with Treasury Regulation 1.170A-14(g)(5)(1). The parties acknowledge that an inventory of baseline data relating to the Property has been completed by competent professionals familiar with the Property dated \_\_\_\_\_, 2021 and completed by the persons set forth therein. The Baseline Documentation will be used by

Grantees to ensure that any future changes in the use of the Property will be consistent with the terms of this Conservation Easement. The parties further agree that subsequent updates to the Baseline Documentation will be signed by both Grantees and Grantor. Copies of the inventory of baseline data and subsequent updates to the Baseline Documentation are on file in the Trust's offices.

Notwithstanding the foregoing, should a future controversy arise over the biological and/or physical condition of the Property, the parties may use all relevant documents, surveys, reports and other information to assist in resolving the controversy.

#### **SECTION VII - BREACH, RESTORATION, AND REMEDIES**

To correct any violation, condition, or circumstance that is inconsistent with the terms of this Easement, Grantees or their assigns may, at their discretion, use any available legal or equitable remedy to secure and restore compliance with the standards set forth in this Easement. The following provisions govern this right:

A. **Breach and Restoration.** Where the Trust or the County becomes aware of a violation or potential violation of any restriction contained in this Conservation Easement, or becomes aware of any damage or potential damage to the Conservation Values associated with the Property, whether precipitated by Grantor or by a third party, the Trust or the County may notify Grantor in writing of such violation, potential violation, damage or potential damage.

If the Notice relates to Grantor's actions or failure to act, then upon Grantor's receipt of such Notice, Grantor agrees to immediately take action to prevent or cease the activity caused by Grantor which may potentially violate, or actually violates, the terms

or intent of this Easement. Grantor shall have thirty (30) days after receipt of such Notice to undertake actions, including restoration of the Property, that are reasonably calculated to swiftly correct the conditions caused by Grantor's violation. If Grantor fails to take such corrective action, the Trust or the County may undertake appropriate action, including legal action, to effect such corrections. Grantor shall pay the cost of such corrections, including the Trust's or County's expenses, court costs, and attorney's fees if the violation is found to have been caused by Grantor.

The Parties agree to jointly cooperate in good faith to address third party damages, issues or claims with respect to the defense of the Property and agree to fairly allocate all costs and expenses of such efforts.

B. **Injunctive and Other Relief.** In the event Grantor undertakes or causes to be undertaken any activity on the Property that requires Grantees' prior approval and such approval is not obtained consistent with Section V of this Easement, or where Grantor undertakes or causes to be undertaken any activity in violation or potential violation of the terms of this Easement, then the Trust and the County shall have the right to obtain injunctive relief or writs from courts of competent jurisdiction to enjoin any unauthorized activities and/or force the restoration of that portion of the Property affected by such activity to a similar or equivalent condition that existed prior to the unauthorized activity. Such restoration may include, but is not limited to, restoring soils, replanting suitable native vegetation, and/or taking such other action deemed necessary to achieve restoration. If an injunction is entered, the costs of restoration caused by a violation by Grantor and litigation, including reasonable attorney's fees, shall be borne by Grantor or



those of its successors or assigns against whom a judgment is entered. This provision shall be reciprocal to Grantor, should Grantor prevail in any litigation with Grantees.

C. **Actual or Threatened Non-Compliance.** Grantor acknowledges that actual or threatened instances of non-compliance under this Conservation Easement constitute immediate and irreparable harm. Grantees are entitled to invoke the equitable jurisdiction of any court to enforce this Conservation Easement.

D. **Cumulative Remedies.** Grantees' remedies set forth in this Easement are cumulative. Any, or all, of the remedies may be invoked by the Trust or the County if there is a violation or threatened violation of this Conservation Easement.

E. **Delay in Enforcement.** A delay in enforcement shall not be construed as a waiver of the Trust's or the County's right to enforce the terms of this Conservation Easement.

#### **SECTION VIII – DUTIES AND WARRANTIES OF GRANTOR**

A. **Change of Ownership.** In order to provide Grantees with Notice of a change in ownership or other transfer of an interest in the Property, Grantor agrees to notify Grantees in writing of the names and addresses of any party to whom the Property, or any part thereof, is transferred. Grantor, its personal representatives, heirs, successors and assigns, further agrees to make specific reference to this Conservation Easement in a separate paragraph of any subsequent deed or other legal instrument by which any interest in the Property is conveyed.

B. **Superiority of Easement.** Any mortgage, trust deed, lien, judgment, or other financial interest executed or entered against the Property hereafter shall be

subordinate to this Conservation Easement and will in no way enable the holder of such interest or their successor(s) in interest to breach the terms of this Easement or otherwise compromise the Conservation Values protected thereby.

C. **Cost, Taxes and Fees.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including responsibility for the control of noxious weeds in accordance with all applicable Utah laws. As between Grantor and Grantees, Grantor agrees to bear all costs of operation, upkeep and maintenance, and improvements on the Property, and agrees to reimburse Grantees and their successors and assigns for all claims and obligations arising from the operation, upkeep, and maintenance of the property. As between Grantor and Grantees, Grantor shall pay any and all lawful taxes, assessments, fees, and charges levied by competent authority.

D. **Notice of Transfer of Property.** Grantor agrees to timely notify Grantees of any transfer, deed, sale or other conveyance of any of the Property covered by this Easement.

E. **Title Warranties.** The Grantor who signed this Conservation Easement on the date set forth above (“Original Grantor”) is the sole owner of the Property in fee simple and has the right and ability to convey this Easement to Grantees. The Original Grantor warrants that the Property is free and clear of all rights, restrictions, and encumbrances, other than those subordinated to this Conservation Easement or disclosed in the title report dated as of September 15, 2021 and those otherwise agreed to in writing by Grantees, all of which are attached to this Easement as Exhibit “D” (the “Title Report”). The Original Grantor warrants that it has no actual knowledge of any use or

release of hazardous waste or toxic substances on the Property that is in violation of a federal, state, or local environmental law and will defend, indemnify, and hold Grantees harmless against any claims of contamination from such substances.

F. **Continuing Duties of Grantor.** For purposes of this Conservation Easement, "Grantor" shall mean only, at any given time, the then-current fee simple owner of the Property and shall (at any time after the Original Grantor has transferred ownership of the Property) not include the Original Grantor or other successor owners preceding the then-current fee simple owner(s) of the Property, except that if any such preceding owners have violated any term of this Easement, they shall continue to be liable therefor.

#### **SECTION IX – AMENDMENTS**

A. **Amendments.** Grantor and Grantees intend that the Conservation Values of the Property and the Conservation Purpose of this Conservation Easement will be protected in perpetuity by the Conservation Easement. While Grantor and Grantees have endeavored to foresee all possible threats to the perpetual protection of the Conservation Values of the Property and the Conservation Purpose of the Conservation Easement, there may come a time when the Conservation Easement should be amended to correct an error, to eliminate or reduce reserved rights, to clarify an ambiguity, or to otherwise enhance the protection of the Conservation Values of the Property. To that end, Grantor and Grantees have the right to agree to amendments to this Conservation Easement, provided, however, that any amendment must comply with each of the following requirements.

1. Only the following types of amendment are permitted:

a. Amendments that are technical in nature (such as correcting a scrivener's error).

b. Amendments that eliminate or reduce one or more of Grantor's reserved rights.

c. Amendments that add property to the Conservation Easement or enhance the protection of one or more of the Conservation Values of the Property and are not detrimental to or inconsistent with the Conservation Purpose or other Conservation Values of this Conservation Easement.

2. An amendment may not materially injure or destroy any of the Conservation Values of the Property or be detrimental to or inconsistent with the Conservation Purposes or Conservation Values of this Conservation Easement. For example, this requirement prohibits "trade-off" amendments that would both materially negatively impact and arguably further the protection of the Conservation Values of the Property. Thus, for example, an amendment that would involve the relaxation or elimination of a restriction or other conservation protection in this Conservation Easement in exchange for the addition of land to this Conservation Easement is prohibited.

3. An amendment must not limit or otherwise alter the perpetual duration of this Conservation Easement.

4. An amendment must not adversely affect the status of the Trust as a qualified organization, eligible donee, or eligible holder of this Conservation Easement under any applicable laws.

5. An amendment must not result in private inurement or confer impermissible private benefit.

6. An amendment must be in writing, duly signed, and promptly recorded in the appropriate location for public land records, and Grantees must document the amendment's compliance with the requirements of this Section in writing.

B. Nothing in this Section shall require Grantees to agree to any amendment or to consult or negotiate regarding any amendment.

#### **SECTION X - ASSIGNMENT OF EASEMENT**

The Trust may not transfer or assign its interest in the Property created by this Easement except to a "qualified organization" (within the meaning of Section 170(h) (3) of the Internal Revenue Code) which is organized or operated primarily or substantially for one or more of the conservation purposes specified in Section 170(h) (4) (a) of said Code. Any such qualified organization shall agree to enforce the Values protected by this Easement. The Trust may not transfer its rights under this Easement, in whole or in part, without the prior written consent of Grantor and the County, which consent shall not be unreasonably withheld.

#### **SECTION XI - SUBSEQUENT SALE, EXCHANGE,**

#### **OR INVOLUNTARY CONVERSION**

Grantor and Grantees agree that the conveyance of this Conservation Easement creates property rights immediately vested in Grantees as well as a public trust vested in Grantees. Grantees' property rights in this Conservation Easement shall be based on the condition and improvements on the Property at the time the Conservation Easement is established, and this

condition shall be documented as referred to in Section VI, above. For purposes of this Section, the property right of the Trust shall be deemed to have a fair market value at least equal to the proportionate value this Easement bears to the entire value of the Property as a whole at the time of its creation in accordance with the Qualified Appraisal secured for Grantor's purposes. That proportionate value of the Trust's property rights shall remain constant. Should a change in conditions give rise to the extinguishment of this Conservation Easement, as provided in Treasury Regulation Section 1.170A-14(g)(6)(I) or any subsequent revision to that section of the IRS Code, or extinguishment of a portion of the Trust's rights under this Conservation Easement, the Trust on a subsequent sale, exchange, conveyance, or involuntary conversion of the Property or a portion of the Property shall be entitled to a portion of the proceeds at least equal to such proportionate value of this Conservation Easement as established at the time of its creation. All interpretations of the Trust's property rights shall follow Treasury Regulation Section 1.170.

Grantor agrees that reference to this Conservation Easement, along with its perpetual nature and the fact that it runs with the land, will be made in any subsequent deed, or other legal instrument, by means of which any interest in the Property (including any leasehold interest) is conveyed, and that a copy of this Easement will be attached thereto. Grantor agrees to encumber and convey title to the Property so that ownership of the Property never vests in more than one entity at any single point in time, this restriction to run with the Property in perpetuity. Grantees' acceptance of this Conservation Easement is contingent upon Grantor's placement of such encumbrance on title of the Property. Grantor will notify Grantees in writing of any conveyance of interest by sending written notice to Grantees as provided in Section V, Subsection A. Grantor agrees to provide notice of this Conservation Easement to all successors in interest, and to any potential purchasers or subsequent owners. In the event Grantor elects to sell the

Property, Grantor agrees to provide notice of this Conservation Easement in any sale or solicitation materials or information. Any failure to comply with the terms of this paragraph shall in no manner render this Conservation Easement or any provisions of this Conservation Easement unenforceable.

## **SECTION XII – MISCELLANEOUS PROVISIONS**

A. **Payment of Costs, Taxes, and Assessments.** Grantor or Grantor's successors in interest shall bear all costs of operation, upkeep, maintenance, and taxes of or relating to the Property, and Grantor agrees to indemnify Grantees therefrom.

B. **Conservation Easement Granted in Perpetuity.** This Conservation Easement shall be a burden upon and shall run with the Property in perpetuity and shall bind Grantor and Grantor's successors in ownership, interest and/or use of the Property forever.

C. **Acknowledgment of Donation.** The Trust acknowledges that no goods or services were received in consideration of this Conservation Easement.

D. **No Representation of Tax Benefits.** Grantor represents, warrants and covenants with Grantees that: (i) Grantor has not relied upon any information or analyses furnished by Grantees with respect to either the availability, amount or effect of any deduction, credit or other benefit to Grantor under applicable law; or the value of the Conservation Easement or the Property; (ii) Grantor has relied solely upon its own judgment and/or professional advice furnished by the appraiser and legal, financial and accounting professionals engaged by Grantor; (iii) if any Person providing services in connection with this Conservation Easement or the Property was recommended by

Grantees, Grantor acknowledges that Grantees are not responsible in any way for the performance of services by such Persons; and (iv) this Conservation Easement is not conditioned upon the availability or amount of any deduction, credit or other benefit under applicable law.

E. **Notice to Trust.** Grantor agrees, for itself and its successors in interest, to notify the Trust and the County in writing before: (a) exercising any reserved right that may have an adverse impact on the Conservation Values associated with the Property; and (b) transferring the Property or any interest therein to any other person, including the names, addresses, and telephone numbers of such person.

F. **Severability.** If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of this Easement and the application of such provisions to persons or circumstances other than those to which the provisions or application is found to be invalid shall not be affected.

G. **Reference in Subsequent Documents.** Any subsequent deed or other legal instrument by which any interest (including a leasehold interest) in the Property is conveyed shall specifically refer to this Conservation Easement, including the recording data of this Easement, in a separate paragraph thereof. Failure to comply with this requirement shall not adversely affect Grantees' rights under this Easement in any way.

H. **No Third-Party Beneficiaries.** Nothing in this Easement shall be interpreted or construed to confer any right or remedy upon, or any duty, standard of care, liability or inference of liability to or with reference to, any Person other than the Parties and their respective successors and permitted assigns.



I. **Governing Law.** This Easement shall be governed by and construed in accordance with the domestic laws of the State of Utah without giving effect to any choice or conflict of law provision or rule (whether of the State of Utah or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Utah.

J. **Interpretation.** In the event an ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Easement. The paragraph headings contained herein are for purposes of reference only and shall not limit, expand, or otherwise affect the interpretation of any provision hereof. Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include the masculine, feminine and neuter gender.

K. **Incorporation of Recitals and Exhibits.** The recitals and exhibits referred to in this Easement are incorporated herein by reference and made a part hereof.

L. **Waiver.** No failure or delay in exercising any right, power or privilege under this Easement, whether intentional or not, shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of a right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

M. **Relationship of Parties.** Nothing contained in this Easement shall be interpreted or construed to create an agency relationship, association, joint venture, trust or partnership, or impose any trust or partnership covenant, obligation or liability on or

with regard to any Party. No Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, any other Party.

N. **Succession and Assignment.** This Easement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Easement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Parties, which approval may not be unreasonably withheld, conditioned or delayed.

O. **Further Acts.** The Parties hereby agree for themselves, and for their successors and assigns, to execute any instruments and to perform any act which may be necessary or proper to carry out the purposes of this Easement.

P. **Integration.** This Easement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and all prior negotiations, correspondence, proposals, discussions, understandings, representations, inducements and agreements, whether oral or written and whether made by a Party hereto or by any one acting on behalf of a Party, shall be deemed to be merged in and superseded by this Easement and shall be of no further force or effect. There are no representations, warranties, or agreements, whether express or implied, or oral or written, with respect to the subject matter hereof, except as set forth herein, and no Party has relied upon any representation, promise, assurance, covenant, omission or agreement not included in the terms hereof in making the decision to enter into this Easement. This Easement may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements among or between the Parties.

Q. **Expenses of Enforcement.** In any proceeding to enforce, interpret, rescind or terminate this Easement or in pursuing any remedy provided hereunder or by applicable law, the prevailing Party shall be entitled to recover from the other Party all costs and expenses, including a reasonable attorney's fee, whether such proceeding or remedy is pursued by filing suit or otherwise, and regardless of whether such costs, fees and/or expenses are incurred in connection with any bankruptcy proceeding. For purposes hereof, the term "prevailing Party" shall include, without limitation, a Party who agrees to dismiss an action or proceeding upon the other's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought. The provisions set forth in this paragraph shall survive the merger of these provisions into any judgment.

R. **Authority of Signatories.** Each person executing this Easement certifies that he or she is duly authorized to execute this Easement on behalf of the Party for which he or she is signing, and that he or she has the authority to bind said Party to the terms of this Easement.

S. **Notice to Parties.** Notice shall be provided to Grantor and Grantees as set forth below:

**If to Grantor:**

Attn: General Counsel  
P.O. Box 1119  
3923 N. Wolf Creek Drive  
Eden, Utah 84310  
Tel: (801) 675-8796  
Email: notices@powdermountain.com

**If to County:**

Attn: Planning Director  
Weber County Planning Division  
2380 Washington Blvd., Ste. 240  
Ogden, UT 84401

**If to the Trust:**

Ogden Valley Land Trust, Inc.  
Attn: Board Chair,  
P.O. Box 412  
Huntsville, Utah 84317

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Notice shall be deemed to be duly given under this subsection when personally delivered to an officer of the recipient party, via email, or three days after being deposited in the United States mail, by certified or registered mail, return receipt requested, postage prepaid. Either party may change the address to which notices are to be sent by complying with the notice requirements of this section.

**[Signature Page Follows]**

1546955

WHEREFORE, this Easement is executed to be effective as of the Effective Date.

**GRANTOR:**

**SMHG LANDCO LLC, a Delaware limited liability company**

**BY: SMHG INVESTMENTS LLC, a Delaware limited liability company, its Sole Member**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its Authorized Signatory

**GRANTEES:**

**WEBER COUNTY CORPORATION**

By: \_\_\_\_\_

Name:

Title:

**OGDEN VALLEY LAND TRUST**

By: \_\_\_\_\_

Name:

Title:

TO HAVE AND TO HOLD unto Grantees, their successors and assigns forever.

IN WITNESS WHEREOF Grantor and Grantees have set their hands on the day and year first above written.

**GRANTOR:**

By \_\_\_\_\_

STATE OF UTAH                    )  
  )ss.  
COUNTY OF WEBER            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of SMHG Landco LLC and executed the within and forgoing instrument on behalf of said SMHG Landco LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
Printed Name:

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Utah, residing at \_\_\_\_\_, My Commission

Expires: \_\_\_\_\_

**ACCEPTED BY WEBER COUNTY**

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF UTAH            )  
  )ss.  
COUNTY OF WEBER        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me personally  
appeared \_\_\_\_\_, the \_\_\_\_\_ of  
Weber County and executed the within and forgoing instrument on behalf of said Weber  
County.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official  
seal the day and year first above written.

\_\_\_\_\_  
Printed Name:

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Utah, residing at \_\_\_\_\_  
My Commission

Expires: \_\_\_\_\_

1556860

**ACCEPTED BY OGDEN VALLEY LAND TRUST**

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF UTAH            )  
  )ss.  
COUNTY OF WEBER        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me personally  
appeared \_\_\_\_\_, the \_\_\_\_\_ of  
Ogden Valley Land Trust and executed the within and forgoing instrument on behalf of  
said Ogden Valley Land Trust.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official  
seal the day and year first above written.

\_\_\_\_\_  
Printed Name:

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Utah, residing at \_\_\_\_\_,  
My Commission

Expires: \_\_\_\_\_



## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

#### Parcel #22-006-0005

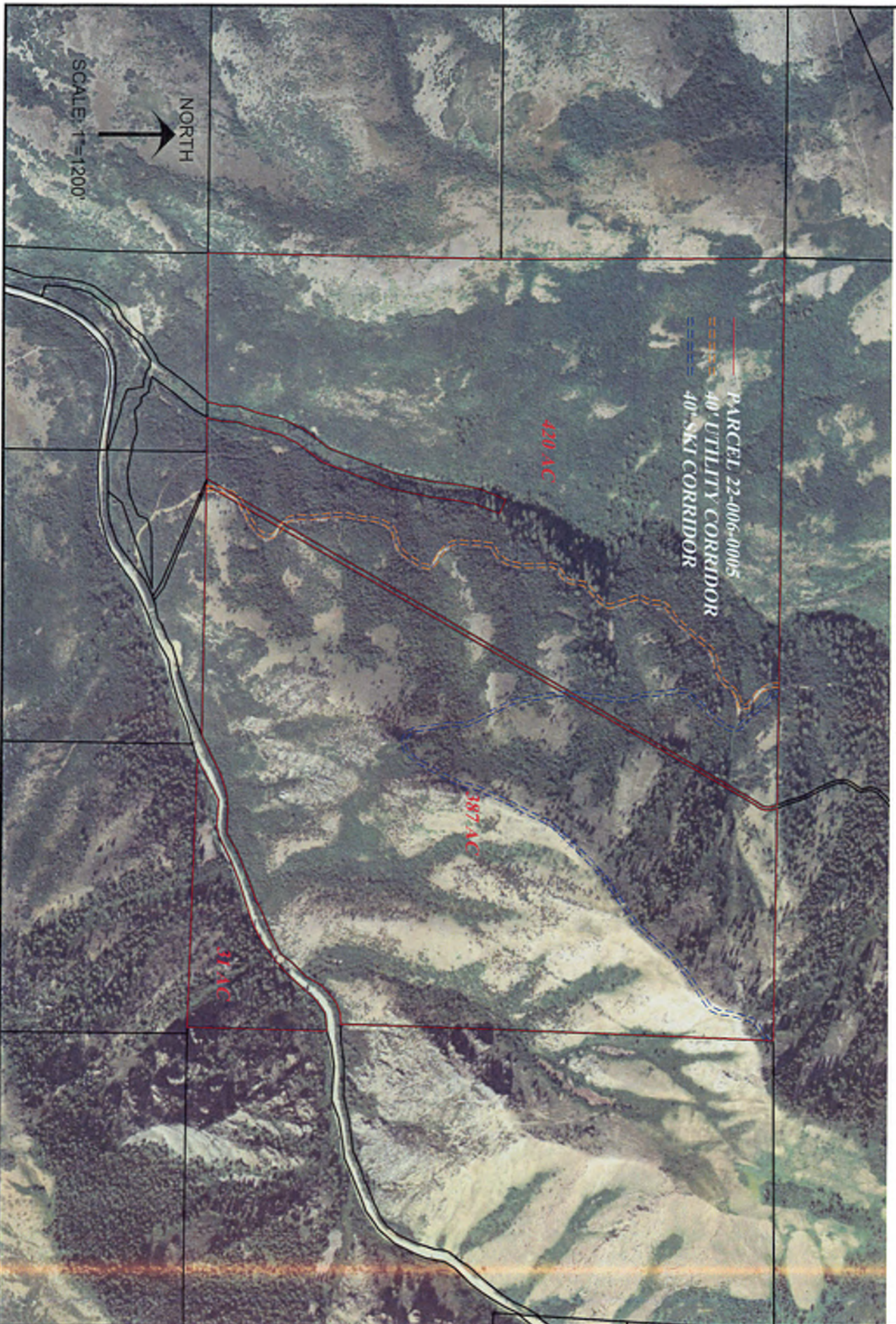
ALL OF SECTION 11, TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, AND PART OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN, DESCRIBED AS FOLLOWS BEGINNING AT THE WEST QUARTER CORNER OF SAID SECTION 10, RUNNING THENCE SOUTH 89°32'53" EAST 3142.32 FEET, THENCE NORTH 3°52'25" EAST TO THE NORTH LINE OF SAID SECTION, THENCE EASTERLY ALONG THE SECTION LINE TO THE NORTHEAST CORNER OF SAID SECTION, THENCE SOUTHERLY ALONG THE SECTION LINE TO THE SOUTHEAST CORNER OF SAID SECTION, THENCE WESTERLY ALONG SAID SECTION LINE TO THE SOUTHWEST CORNER OF SAID SECTION, THENCE NORTHERLY ALONG SAID SECTION LINE TO THE POINT OF BEGINNING. EXCEPT COUNTY ROAD (906-117) AND A 30 FOOT RIGHT OF WAY FOR PUBLIC USE (1002-488). EXCEPT SNOWFLAKE SUBDIVISION PHASE 3 OPEN SPACE (BOOK 54 PAGE 73). ALSO EXCEPTING ANY PORTION OF THE FOLLOWING WITHIN SAID SECTION 10, PART OF SECTIONS 10 AND 15, TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN, U.S. SURVEY AND DESCRIBED AS FOLLOWS: BEGINNING AT THE WEST 1/4 CORNER OF SAID SECTION 10, RUNNING THENCE SOUTH 89°32'53" EAST 3142.32 FEET, THENCE SOUTH 5790 FEET, MORE OR LESS, TO A POINT INTERSECTING THE NORTH LINE OF COUNTY ROAD (220060012) THENCE IN A NORTHEASTERLY DIRECTION ALONG THE NORTH LINE OF SAID ROAD TO THE INTERSECTION OF THE EAST LINE OF SECTION 15 AND THE NORTH LINE OF SAID ROAD, THENCE SOUTH ALONG THE EAST LINE OF SECTION 15, 4426.25 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SECTION 15, THENCE WEST 2780.80 FEET, MORE OR LESS, TO THE EAST LINE OF SNOWFLAKE SUBDIVISION NO. 2, THENCE NORTH 33°21'37" EAST ALONG THE EAST LINE OF SAID SUBDIVISION 448.00 FEET, THENCE NORTH 28°47'14" EAST 212.18 FEET, THENCE NORTH 07°18'56" EAST 174.75 FEET, THENCE NORTH 01°02'19" EAST 93.65 FEET, THENCE NORTH 43°57'41" WEST 91.06 FEET, THENCE NORTH 46°02'19" EAST 60 FEET, THENCE WESTERLY ALONG THE NORTH SIDE OF A ROAD 16.70 FEET, THENCE NORTH 17°29'55" EAST 205.94 FEET, THENCE NORTH 00°35'18" EAST 175 FEET TO THE SOUTH LINE OF THE DICKENS PROPERTY (220060017) THENCE EAST ALONG SAID SOUTH LINE 1058.25 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SAID DICKENS PROPERTY, THENCE NORTH 660 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF SAID DICKENS PROPERTY THENCE WEST 1320 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF SAID DICKENS PROPERTY THENCE SOUTH 660.00 FEET, MORE OR LESS, TO THE NORTH LINE OF SNOWFLAKE SUBDIVISION NO. 2, THENCE NORTH 77°43'19" WEST 396.99 FEET, THENCE SOUTH 14°43'12" EAST 201 FEET TO THE NORTH LINE OF SNOWFLAKE SUBDIVISION NO. 3, THENCE SOUTH 83°13'57" WEST 761.53 FEET TO THE EAST LINE OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 15 (220060019), THENCE NORTH ALONG SAID EAST LINE 1531.23 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF SAID WEST 1/2 OF SAID SOUTHWEST 1/4, THENCE WEST 1845 FEET, MORE OR LESS, TO THE WEST LINE OF SECTION 15, THENCE NORTH ALONG SAID WEST LINE 5280 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

CONTAINING APPROXIMATELY 877 ACRES

**EXHIBIT B**

**UTILITY CORRIDOR, CAT TRACK,  
AND YURT LOCATIONS**

# EXHIBIT B



# Open Space Dedication



- Legend**
- Existing Trail/Cat Track
  - Proposed Lift
  - Proposed Cat Track
  - Proposed Lifts
  - West Creek Open Space Dedication
  - Yart - Location 1
  - Yart - Location 2

1000 ft



Google Earth

**EXHIBIT C**

**BASELINE DESCRIPTION OF THE PROTECTED PROPERTY**

Ogden Valley Summit Open Space  
Eden, Utah

**CONSERVATION EASEMENT  
BASELINE DOCUMENTATION REPORT**



Prepared by:  
Utah Open Lands Conservation Association  
1488 South Main Street  
Salt Lake City, UT 84115  
(801) 463-6156

November \_\_, 2020



## Property Summary

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**Easement Name:** Ogden Valley Summit Open Space  
**Acreage:** 877-acres  
**Location:** 4100 N 4175 E, Weber County, UT 84310  
**Municipality:** Eden City  
**County:** Weber County  
**Easement Grantors:** SMHG Landco LLC  
**Easement Holder:** Ogden Valley Land Trust  
**Current Owner:** SMHG Landco LLC  
**Directions:** From Salt Lake City, Utah follow I-15 N 46 miles to exit 349. Follow 2700 N, then turn left onto 1050 east. Turn right onto N Ogden Canyon Road and follow this to 4100 N 4175 E, Weber County, UT 84310.

**Acknowledgements and Certifications**

This baseline documentation report (consisting of 52 pages including a table of contents, narrative descriptions, 16 maps, 15 photographs and attachments) was prepared on \_\_\_\_\_, 2020 to document the present condition of the Ogden Valley Summit Open Space and is to be used for the purpose of monitoring and enforcement of the Ogden Valley Summit Open Space Conservation Easement.

**Grantor Certification of Accuracy and Acceptance**

This statement certifies that We, SMHG Landco LLC are the Grantors and current owners of the Ogden Valley Summit Open Space subject to the Conservation Easement conveyed to Ogden Valley Land Trust and recorded in the official records of Weber County, Utah. We have read and independently reviewed this baseline documentation report and declare that this report accurately describes the status of the physical features and uses of the Conservation Easement Property.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Land Trust Certification of Accuracy and Acceptance**

As Chair Member of Ogden Valley Land Trust I, Gail Meakins declare that Ogden Valley Land Trust has relied upon and will rely upon the information contained in this report which describes the current conditions of the Ogden Valley Summit Open Space at the time of the signing of the Conservation Easement. Further, I certify that the preparation of this document complies with our general policy and procedures for creating and maintaining business records and specifically with our policy and procedures for baseline documentation reports and recordkeeping. This document was created in the regular course of our business for the purpose of monitoring this Conservation Easement and along with the language contained within the Conservation Easement aids our enforcement of the conservation values attendant to the land.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

GAIL MEAKINS, Chair Member, Ogden Valley Summit Open Space

**Grantee Certification of Accuracy and Acceptance**

This statement certifies that I, \_\_\_\_\_ (name, title), represent Weber County as the Grantee, along with Ogden Valley Land Trust, of this Conservation Easement Property. I declare that Weber County will rely upon the information contained in this report which describes the current conditions of the Ogden Valley Summit Open Space at the time of the signing of the Conservation Easement.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_ (name, title), Weber County



**Preparers Certification and Qualifications:**

This statement certifies that I, Seychelle Marcus prepared this Ogden Valley Summit Open Space Baseline Documentation Report through research and review of publicly accessible data and personal interviews. The Utah Division of Wildlife Resources conducted a site visit to the property, prepared a Wildlife and Habitat Summary and provided information which is referenced in this document. Seychelle Marcus has been with Utah Open Lands since 2018, has been trained in the procedures for the production of Baseline Documentation Reports, and is qualified to author such a report in accordance with Utah Open Lands' Baseline Documentation Policy. All photographs provided in this report were taken by Gail Meakins, Chair Member of Ogden Valley Summit Open Space.

Signature:

Date:

SEYCHELLE MARCUS, Stewardship Coordinator, Utah Open Lands Conservation Association

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### ***Introduction:***

This purpose of this document is to describe the condition and provide an accurate representation at the time of the grant of the Conservation Easement on Ogden Valley Summit Open Space (The Property), an approximately 877-acre property located 4100 N 4175 E, Weber County, Utah 84310. The Ogden Valley Summit Open Space Conservation Easement was conveyed to Ogden Valley Land Trust and Weber County ("Grantees") by SMHG Lanco LLC ("Grantor" and "Summit"). This baseline documentation report was assembled to aid in the enforcement of the Conservation Easement.

The Grantees accepted this Conservation Easement to forever conserve the Protected Property and to provide a significant public benefit for the following conservation purposes:

*The Purpose of this Conservation Easement is to preserve, protect and enhance the conservation values of wildlife habitat, water resources, open space and scenic viewshed.*

### ***Property Location and Access:***

The Protected Property consists of 1 parcel totaling approximately 877 acres of undeveloped land located at 4100 N 4175 E Weber County, UT 84310. As of the writing of this report this parcel is identified as 22-006-0005. Access to the Protected Property is via N Ogden Canyon Road.

### ***Ownership:***

The property is owned by SMHG Lanco LLC.

### ***Stewardship and Management:***

*Stewardship Responsibility:* Day to day management of the property is the responsibility of the landowners. The Conservation Easement Grantees (Ogden Valley Land Trust and Weber County) have the responsibility to monitor and enforce terms of the Conservation Easement.

### ***Property Boundary:***

Property boundaries appear unmarked, there is no property survey although there is a plat map recorded by Weber County.

### ***Description of Property and Current Uses:***

The Property consists of approximately 877 acres of primarily natural lands. The present uses are low impact recreation, wildlife habitat improvement, winter over snow access for ski resort purposes, hunting and scenic viewshed. The property is located within the Powder Mountain Cooperative Wildlife Management Unit and contains a Utility Corridor, a Ski Corridor and service road that may remain into the future.

**Conservation Values:**

1. *Wildlife Habitat:* The Property provides riparian and critical wildlife habitat for black bear, blue grouse, California quail, elk, moose, mule deer, ruffed grouse and snowshoe hare among others. The property consists of an extensive amount of land totaling approximately 877 acres and is surrounded by Wasatch Cache National Forest and in close proximity to Middle Fork State Wildlife Area and Ogden Valley Summit Land Trust Conservation Easement properties. The prevalent expanse of protected land provides continuous riparian, wildlife and natural habitat areas.
2. *Water Resource Enhancement and Protection:* The Property is part of the Ogden River watershed drainage and contains Wolf Creek and Wolf Creek South Fork. These creeks provide riparian and wetland habitat areas necessary for fish, avian and wildlife population survival.
3. *Open Space:* The 877-acres of the Property in addition to the surrounding protected areas provides a great expanse of Open Space. In a rapidly developing society the conservation of Open Space is vital in the providence of wildlife and natural habitats, scenic viewshed areas, dark skies and an escape from society.
4. *Scenic Viewshed:* The Property provides a scenic viewshed from State Route 58 in close proximity to the Ogden Valley.

**Threats to Conservation Values:**

1. *Maintenance:* While maintenance of the Property is necessary to keep it safe and to protect the conservation values, some maintenance decisions could also degrade conservation values of the Property. For example, unchecked chemical control of noxious weeds could kill desirable plants. Conversely, inappropriately relaxed monitoring and enforcement of necessary restrictions may result in unsafe and unsightly conditions.
2. *Invasive Species:* Invasive plants and animals pose threats to the ecological integrity of the natural area. Effective management will encourage a diversity of healthy native plant and animal species. Consistent control of vanguard individual invasive plants will be necessary to prevent establishment and spread of invasive plant populations on the Property. Control of invasive species on the Property should be a priority.
3. *Habitat Loss or Degradation:* Plants and animals on the Property interact to maintain ecological functions and structures. Considerations for potential habitat alterations (including ecological restoration) should include habitat requirements for listed priority species, as well as other vulnerable species, such as nesting neo-tropical migrant birds and small reptiles. Some general habitat conservation choices have the greatest potential to benefit desirable wildlife species. Emphasis should be put on conserving key habitats for wildlife in Utah. These habitats are considered key in part because they support a variety of desirable wildlife species. Artificial habitat fragmentation (i.e., breaking of habitat patches into smaller parts by roads, trails, including rogue trails, usage patterns, or structures that present unnatural obstacles to wildlife

movement) is viewed as a form of habitat degradation on the Property. Other threats and suggestions listed in this section also relate to wildlife habitat.

4. *Pest control:* Some plants and animals on the Property may be undesirable; however, the designation of an organism as a pest and attempts to control these pests may introduce the potential for harm to the conservation values of the Property. Some organisms may simply be perceived as pests, while actually presenting little or no threat and great benefits (e.g., bats). Many wild animals have the potential to present problems for humans (e.g., coyotes, deer, mountain lions, wasps, mosquitoes), but solving these problems does not always require complete local eradication of the wild animals. Chemicals used to control nuisance plants and animals on the Property have the potential to do collateral damage; therefore, physical and mechanical control options are encouraged whenever possible. Before control is attempted, consequences to the conservation values should be carefully considered. In some cases the use of chemical herbicides and or biological controls (i.e., introducing other organisms) may be required and desirable, but should be considered carefully due to the potential for substantial negative consequences.
5. *Domestic animals:* Domestic dogs may pose threats to the conservation values of the Property, particularly if dogs are allowed to roam and or are aggressive toward wild animals. Dogs on the Property should be reasonably controlled to prevent harm to wild animals such as nesting birds and young animals. Feral and loose domestic cats present predation threats to wild animals including small mammals and birds. Some birds native to the Property are ground-nesters and are therefore particularly vulnerable to domestic (or feral) animals. Feral cat feeding or sheltering should not occur on the Property.
6. *Ecological Isolation:* Management of surrounding lands may isolate the Property so that natural movements of plants, animals, and material are hindered or prevented; this will degrade ecological processes that help maintain the scenic and ecological values. Part of the value of the Property as open space comes from its proximity to other open space. Protection of connections to nearby natural areas and preservation of water flows will be valuable. To prevent isolation of the Property, outreach will probably be needed as well as conservation of adjacent open space. Human aid may also be or become desirable for some historically natural processes, such as dispersing native plant seeds on the Property.
7. *Residential or commercial development of the adjacent land:* Development of adjacent land poses a threat to the conservation values of the Property. Impacts of nearby development may include: introducing disturbances (e.g., noise, lights, and pets), changing hydrologic processes (through water use and construction of impervious landcover), increasing the risk of hazardous materials entering the easement Property, and focusing wildlife use on a smaller area.
8. *Fire:* Historically, fires were probably important for maintaining healthy ecosystems in the area that includes the Property. However, uncontrolled fire on the Property can now threaten the safety of people. Care should be taken to preserve appropriate habitat conditions, including particularly habitat complexity associated with the near-stream riparian area. If grazing is

considered for reducing fuels that are in the form of grasses and forbs, it should be carefully planned and monitored to provide data needed for evaluation and adaptation.

### ***Existing Structures:***

No known structures exist on property.

### ***Roads, Trails and Corridors:***

The Property contains 1 County Road, 1 Utility Corridor containing a dirt road, 1 Ski Corridor, 1 dirt trail and 1 inholding.

- The County Road, also known as Powder Mountain Road and State Route 158, lies within a 100' wide Weber County right of way. State Route 158 passes through the southeastern corner of the property separating approximately 35-40 acres on the southeast side from the rest of the property.
- The dirt road is approximately 12' wide and located within a 30' Right of Way held by Weber County and the 40' wide Utility Corridor. This road is north-south oriented, bisects the parcel, and is open to public ingress and egress usage. A fiber optic line has recently been placed within this 30' Right of Way/40' Utility Corridor.
- The Ski Corridor is within a 45' width, and is a reserved right permitting the ability to construct, use and maintain a groomed ski and snow cat trail 24' in width for winter use only.
- The dirt trail is approximately 3' wide, located directly east of the Snowflake Subdivision Phase 3 Open Space inholding, and is oriented north-south on the property.
- The inholding is held by Snowflake Subdivision Phase 3 Open Space and is located west of the 30' Weber County right of way.

### ***Adjacent Land:***

The Protected Property is bordered on the north, east, south and west by Wasatch Cache National Forest.

Northern boundary:

- Additional lands owned by Grantor and zoned DRR-1 (Destination Recreation and Resort Zone) for the Powder Mountain Ski Resort.

Southern boundary:

- Wasatch Cache National Forest.
- Wasatch Cache National Forest owned by the U.S. Forest Service (F-40 zone)
- Broadmouth Investments, LLC.

Eastern boundary:

- Wasatch Cache National Forest owned the U.S. Forest Service (F-40 zone).

Western boundary:

- Lands owned by an Eden Heights, LLC (F-40 zone)
- Land owned by Broadmouth Canyon Ranch, LLC.
- The Bluebell CWMU that is managed for mule deer (F-40 zone)

South-east boundary:

- The south-east property corner is adjacent to the 15,000+acre Middle Fork Wildlife Management Area (WMA) which is jointly owned and managed by the Utah Division of Wildlife Resources and the United States Forest Service. The habitat on the WMA is primarily managed for wildlife populations, specifically big game animals. Secondly the WMA is managed for public recreation opportunities that do not affect or disturb wildlife.

Additional land information:

- A linear, north-south oriented inholding is located along Wolf Creek in the western 1/3 of the property. Weber County land ownership records identify this property as owned by an investment/development company and the parcel is open space associated with the Snowflake Subdivision, Phase 3.
- A parking lot is located south of the property at the trailhead on land owned by the investment/development company.

**Ecology:**

*Ecoregion:* Wasatch Hinterlands  
*Subregion:* Middle Rocky Mountains

**Climate:**

*(Taken from Exchange Application E5382 Powder Mountain Aquifer Test and Monitoring Report, 2015, prepared by Loughlin Water Associates LLC)*

There are seven climate stations in this area, as shown on the attached map. They are Little Bear, Ben Lomond Trail, Ben Lomond Peak, Dry Bread Pond, Eden, Powder Mountain Temporary and Powder Mountain UTPW2.

**Soil Types:**

The following information is published by the United States Department of Agriculture in the "Custom Soil Resource Report for Morgan Area, Utah – Morgan County and Part of Weber County Summit Parcel" which accounts for 840.2 acres of the Property. None of the soils found on the Property are prime agricultural soils if irrigated. The following soil types are found on the Property:

Natural Community Type	ACRES	%
Foxol-Durfee complex, 30 to 70 percent slopes	179.3	21.3%
Foxol-Rock outcrop complex, 40 to 70 percent slopes	15.4	1.8%
Poleline stony loam, 40 to 70 percent slopes	243.7	29.0%
Smarts loam, 40 to 60 percent slopes	289.8	34.5%
Yeates Hollow Smarts complex, 30 to 70 percent slopes	111.9	13.3%
TOTAL	840.2	100%

**Geology:**

No known published geology report has been created for the Property. Geologic units in the area range from Proterozoic Y to Proterozoic Z, early to middle Cambrian and Quaternary. Proterozoic Y to Proterozoic Z rock type consists of medium-grained mixed clastic, early to middle Cambrian rock type



consists of arenite and conglomerate, and Quaternary rock type consists of alluvium, colluvium, clay/mud and sand. A Report prepared by Loughlin Water Associates LLC for the Conservation Easement dated September 11, 2019 concluded the "potential for the development of the minerals underlying the Parcel is so remote as to be negligible."

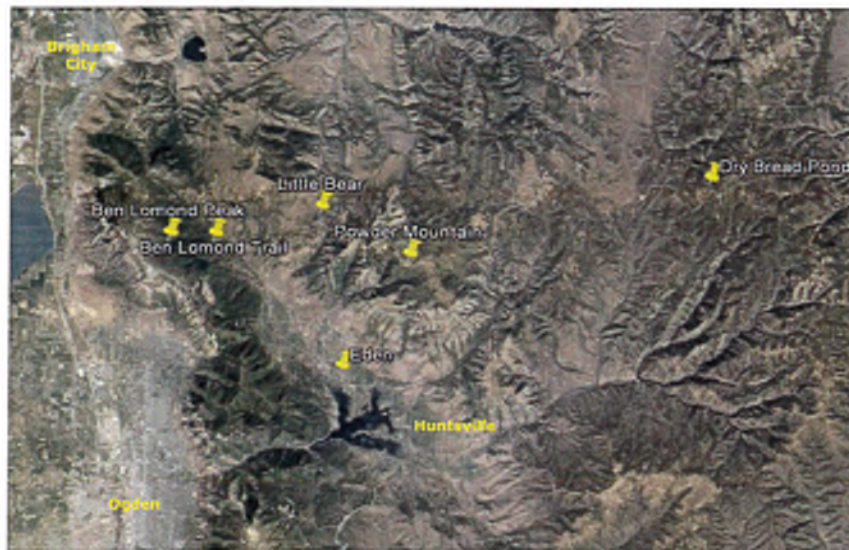
Tbl-04-Precip-stations.xlsx

**Table 4**  
**Climate Stations in Powder Mountain Region**

<u>Site Name</u>	<u>Latitude</u>	<u>Longitude</u>	<u>Elevation (feet)</u>	<u>Record Begins</u>	<u>Source</u>	<u>Average Annual Precipitation (inch)</u>
Little Bear	41° 24'	111° 50'	8544	10/1/1978	SNOTEL	35.1
Ben Lomond Trail	41° 23'	111° 55'	5829	6/3/1980	SNOTEL	43.2
Ben Lomond Peak	41° 23'	111° 57'	8000	10/1/1978	SNOTEL	61.1
Dry Bread Pond	41° 25'	111° 32'	8350	10/1/1978	SNOTEL	31.3
Eden	41° 18'	111° 49'	4947	6/13/2009	UCC	*
Powder Mountain Temporary	41° 22'	111° 47'	8250	11/11/2014	Powder Mountain	*
Powder Mountain UTPW2	41° 22'	111° 46'	8460	11/7/2015	MesoWest	*

\* Insufficient or much missing data

**Climate Station Location Map**



Annual precipitation ranges from 31.3 inches to 61.1 inches.

## **Hydrology:**

### ***(taken from Exchange Application E5382 Powder Mountain Aquifer Test and Monitoring Report, 2015)***

The hydrogeology of the Powder Mountain area is described in a number of published and unpublished reports including King (2004), Loughlin Water (2013a, 2014a and 2019a). Powder Mountain straddles a high ridge that forms the drainage divide between the Ogden River drainage system (to the south) and the Bear River drainage system (to the north), as shown on Figure 1. The divide also is the boundary between Weber County (to the south) and Cache County (to the north).

Bedrock in the Powder Mountain area is composed of highly deformed Paleozoic and Precambrian sedimentary and metamorphic rocks. These rocks have been chopped up by low-angle thrust faults and squeezed into large folds, including the Powder Mountain syncline that plunges to the north, toward Cache Valley, at about 10 to 30 degrees. These very ancient rocks are covered in places with up to more than 1000 feet of the Tertiary-age Wasatch Formation.

Uplift and erosion have left mountains, wide valleys and narrow canyons. Thin soils cover the mountain slopes and thin alluvial deposits occur in the bottom of mountain canyons. Relatively thick unconsolidated valley-fill deposits underlie Ogden Valley.

Paleozoic and older limestone and dolomite (carbonate) rocks and, to a lesser degree, quartzite rocks are the primary aquifers and potential sources of groundwater for Powder Mountain. The Tertiary Wasatch Formation and thin Quaternary unconsolidated deposits are present at the ground surface over much of the area but are not considered to be significant aquifers. The Paleozoic and older shale and similar low-permeability rock are considered to be aquitards (confining layers). The aquitards divide the aquifers into separate stratigraphic groundwater compartments (King, 2004).

Groundwater in the Powder Mountain vicinity is recharged primarily from infiltration of snowmelt. Recharge moves vertically downward through aquifers and among aquitards and laterally along higher permeability strata. Although locally unsaturated, the Wasatch Formation is believed to accept considerable recharge and to transmit groundwater to deeper formations. Along with several springs, infiltration of precipitation in soils and the more permeable near-surface rock in canyon slopes eventually discharges to provide base flow of streams.

## **Watershed:**

*Watershed:* The property lies in the Ogden River drainage.

## **Water Resources:**

*Surface Water:* Two streams associated with Wolf Creek and the South Fork of Wolf Creek are located on the property. Both have stable, well defined channels and support populations of Bonneville Cutthroat Trout.

*Ground Water:* See hydrogeology notes above. There are no water rights associated with this property.

## Vegetation:

The following natural community types occur on the Property: Rocky Mountain Gambel Oak-Mixed Montane Shrubland, Rocky Mountain Bigtooth Maple Ravine Woodland, Rocky Mountain Aspen Forest and Woodland, Inter Mountain Basins Montane Sagebrush Steppe, Southern Rocky Mountain Dry-Mesic, Montane Mixed Conifer Forest and Woodland, Rocky Mountain Cliff, Canyon and massive Bedrock, Inter-Mountain Basins Curl-leaf Mountain Mahogany Woodland and Shrubland, Southern, Rocky Mountain-Subalpine and Grassland, Colorado Plateau Pinyon-Juniper Woodland, Southern Rocky Mountain Mesic Montane Mixed Conifer and Forest and Woodland, Rocky Mountain Lower Montane Riparian Woodland and Shrubland. Refer to the Landcover Map for location reference of natural community types.

The following wildlife habitat information was prepared by the Utah Division of Wildlife Resources in August of 2019:

### Sagebrush

Sagebrush habitats are found along the southern slopes, with small pockets of sagebrush scattered over the hillsides and ridgelines on the eastern portion of the property.

### Scrub-Shrub Riparian Habitats

There are two forested riparian habitats on the property associated with Wolf Creek and the South Fork of Wolf Creek. The riparian vegetation along these creeks provides important nesting and foraging habitat for a wide range of songbirds.

The main stem of Wolf Creek is located in the western 1/3 of the property. The lower portion of the creek is dominated by a cottonwood/willow plant community, with the cottonwood population declining and the willow population increasing as the stream slope increases upstream. The upstream sections of the creek are dominated by a scrub-shrub community with sparse amounts of willow and other riparian vegetation such as rose, dogwood, and currant. Some small amount of floodplain is present.

The South Fork of Wolf Creek is located immediately east of Highway 158 which has been re-aligned to accommodate the road. This realignment has contributed to an incised channel in some areas, along with the reduction or elimination of the adjacent floodplain areas. Given these impacts, the riparian vegetation found along the creek has been degraded and is a sparse community of shrubby willows.

### Mountain Brush

A majority of the lower portion of the property supports a dense mountain brush community dominated by oakbrush, maple and chokecherry. These areas support a good population of ruffed grouse. This habitat is important to deer and elk as "transitional" areas as the animals move between summer and winter habitats. Moose are found in these areas yearlong.

### Conifer Forest

The higher elevation portions of the property are dominated by a patchy Douglas Fir community. This community provides big game thermal cover, and nesting and foraging habitat for dense woodland songbirds and flying squirrels. Although not observed on the property, small pockets of aspen undoubtedly occur. Aspen communities support some of the most wildlife species of any other terrestrial habitat type in Utah.

#### Talus Slopes and Rocky Outcrops

Talus slopes and rocky outcrops can be found scattered through the property. Raptors may use these outcrops for hunting and nesting.

*Plant Species Listed as Special Concern for Conservation:* No known threatened, endangered, or sensitive plant species were observed on the Property during the baseline observations although a botanical inventory was not conducted.

#### **Wildlife:**

The property supports valuable wildlife habitat that provides year-round food, water and homing resources. The Property provides potential and occupied habitat for black bear, blue grouse, California quail, Rocky Mountain elk, Shiras moose, mule deer, ruffed grouse and snowshoe hare. The property is within Powder Mountain Cooperative Wildlife Management Unit.

The following information was prepared by the Utah Division of Wildlife Resources (UDWR) in August of 2019 following a request from the Ogden Valley Land Trust for information on the wildlife values of the Ogden Valley Summit Open Space property.

#### Big Game:

The southern, south-facing slopes of the 877-acre property provide important deer, elk and moose winter range habitats. Moose are common throughout the area and use the property as yearlong habitat. Well-worn big game trails are observed on the southeastern facing slopes on the western 1/3 of the property.

#### SGCN/Utah State Sensitive Species of 2017

Ogden Valley Summit Open Space provides potential habitat for several SGCN/Utah State Sensitive species. These species include the Northern leopard frog, boreal western toad, golden eagle, Lewis woodpecker, flammulated owl, American three-toed woodpecker, northern pygmy owl, Townsend's big-eared bat, little brown myotis, lyrate mountain snail, Deseret mountain snail and Utah milksnake. Bonneville cutthroat trout have been documented in both Wolf Creek and North Fork of Wolf Creek.

## ***Conservation Easement Covenants & Restrictions and Observed Conditions:***

### **SECTION IV - INCONSISTENT AND PROHIBITED USES AND PRACTICES**

Grantor voluntarily relinquishes the right to engage in uses and practices prohibited by this Section

IV. The absence of a use or practice from this Section IV does not mean the use or practice is permitted.

A. **Subdivision.** Any division or de facto division of the Property is prohibited. None of the parcels comprising the Property may be subdivided or transferred separately from the remainder of the Property;

**Observed Conditions: The property is currently one parcel as shown on the Weber County tax maps and no further subdivision or additional division was observed.**

B. **Recreational Uses.** Passive commercial recreational use of the Property by Grantor or others with Grantor's permission is permitted. No ski lifts or other winter ski resort amenities may be placed on this property, with the exception of signage necessary to direct the passive recreational users on, off and through the property and for safety purposes.

**Observed Conditions: No recreational activity observed on the property visit, although there are recreational allowances for the Property, specified in the Conservation Easement.**

C. **Mining and Industrial Use.** Dredging, mining, excavation, or the exploration for, extraction or processing of oil and gas or minerals, or the removal or processing of rock, sand, gravel, or soils is prohibited. Industrial use of the Property is also prohibited. The Mineral Estate was reserved to the Union Pacific. The Remoteness Letter prepared by Loughlin and Associates and attached hereto as Exhibit "D" reveals that the potential existence of economically exploitable minerals on the Property is so remote as to be negligible.

**Observed Conditions: No exploration or extraction of oil, gas, rock, gravel, sand, minerals, artifacts, or other materials was observed.**

D. **Wildlife Harassment and Hunting.** Subject to the provisions of Section III(F)(3), hunting, harassment of wildlife or interfering with animal migration routes that cross the Property, other than existing recreational uses otherwise permitted in Section III, are prohibited without the prior written permission of Grantees (e.g. in accordance with Trust approved wildlife habitat improvement), which permission may be withheld in the absolute discretion of either of the Grantees;

**Observed Conditions: No harassment of wildlife by people, vehicles or domestic animals was observed. No taking, removal, translocation or captivity of wildlife was observed. No hunting was observed on property visit, but is permitted as per Utah state code.**

E. **Vegetation Removal.** Vegetation removal is prohibited except that the cutting, burning, trimming, or removing of trees and vegetation is permitted when clearly incidental to another activity permitted by a subparagraph of this Section III (for example, preservation of water drainage following damage from natural causes or for emergencies, e.g. firefighting). The eradication of Utah State-listed invasive and noxious weeds and trees is permitted and encouraged in keeping with state law;

**Observed Conditions: Apparent mowing or vegetation control along the Weber County ROW and dirt trail, appears as maintenance of Property.**

F. **Dumping and Storage.** Dumping or storage of ashes, trash, garbage, junk, grass and limb cuttings, or other unsightly or offensive materials is prohibited on the Property;

**Observed Conditions: No dumping was observed on Property.**

G. **Roads and Trails.** New road and trail construction not included in Section III is prohibited on the Property with the exception of roads and trails necessary or appropriate for the

retained passive recreational uses and others as approved by written consent of Grantees, which consent may not be unreasonably withheld, conditioned or delayed;

**Observed Conditions: Powder Mountain Road/State Route 158 and a 12' wide dirt road lie within Weber County ROWs located on the Property. There is a 3' wide trail located directly east of the Snowflake Subdivision inholding. No other roads or trails are noted on the Property.**

H. **Motorized Use.** Subject to the provisions of Section III(F)(2, 4 and 5), motorized vehicle usage (including, but not limited to, ATVs and snowmobiles) on the Property is prohibited, except with prior written permission of the Grantees and as necessary for road and trail construction and maintenance and emergency vehicle movement. Specific written permission to allow ATV and snowmobile access and use for other purposes may also be requested of Grantees, which permission shall not be unreasonably conditioned, withheld, or denied so long as such uses do not interfere with the wildlife or other Conservation Values on the property.

**Observed Conditions: Vehicle use was observed on State Route 158.**

I. **Clearing and Grading.** Clearing and grading or other movements of the natural topography of the Property is prohibited except for: (1) activities approved by Grantees in connection with wildlife habitat improvements; (2) clearing approved by Grantees for safety purposes (e.g. deadfall, water drainage, avalanche control); or (3) any other use authorized in this Section III or with the written permission of Grantees consistent with this Agreement;

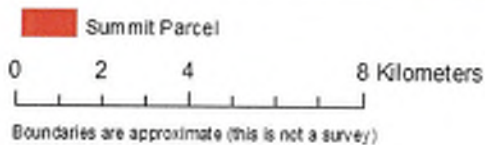
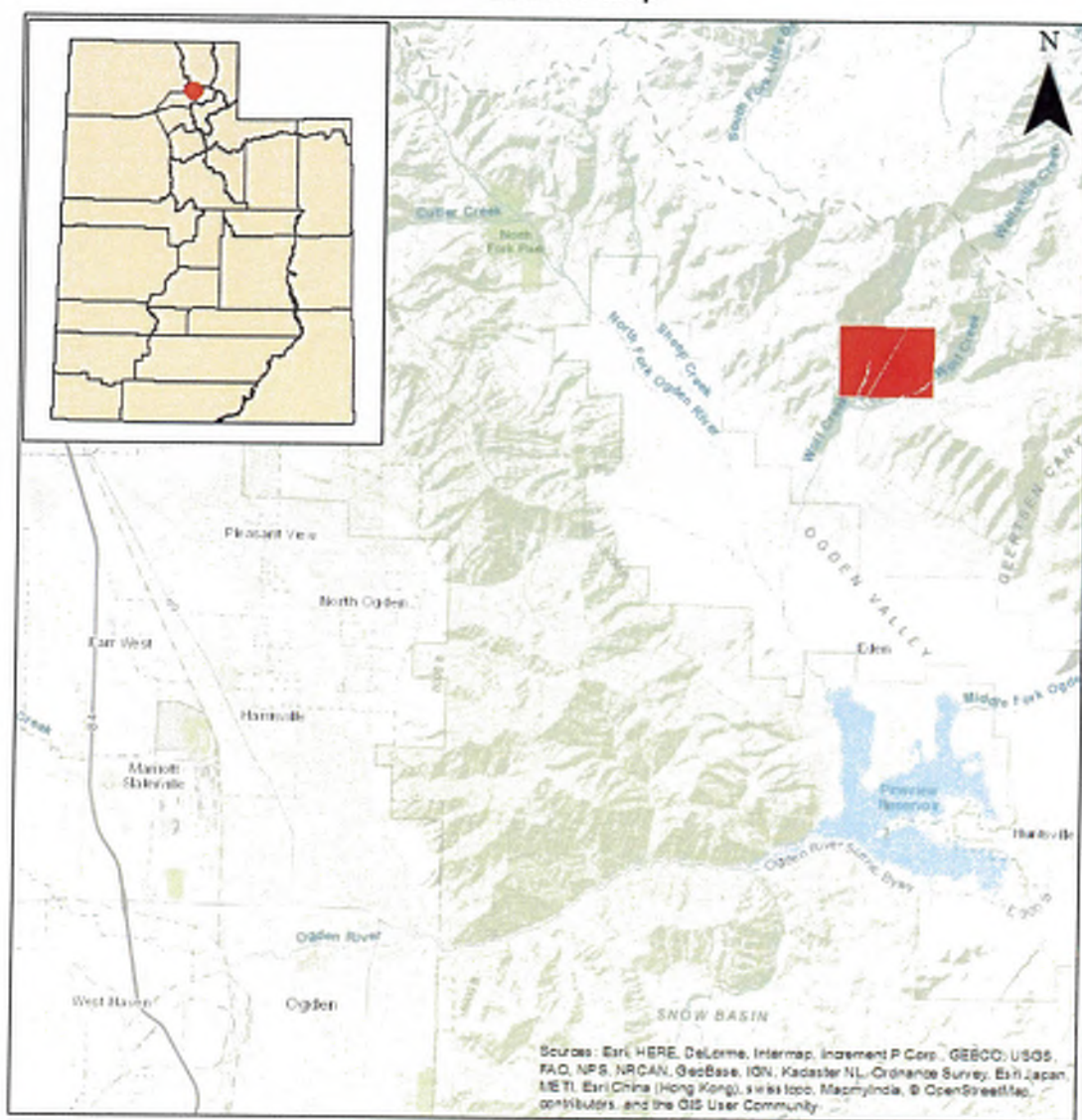
**Observed Conditions: Apparent grading along dirt trail and State Route 158 of the Property. No other grading or clearing observed on the Property.**

J. **Illegal activities.** Illegal activities per local, state, or federal law are prohibited on the Property, including violations of applicable zoning regulations;

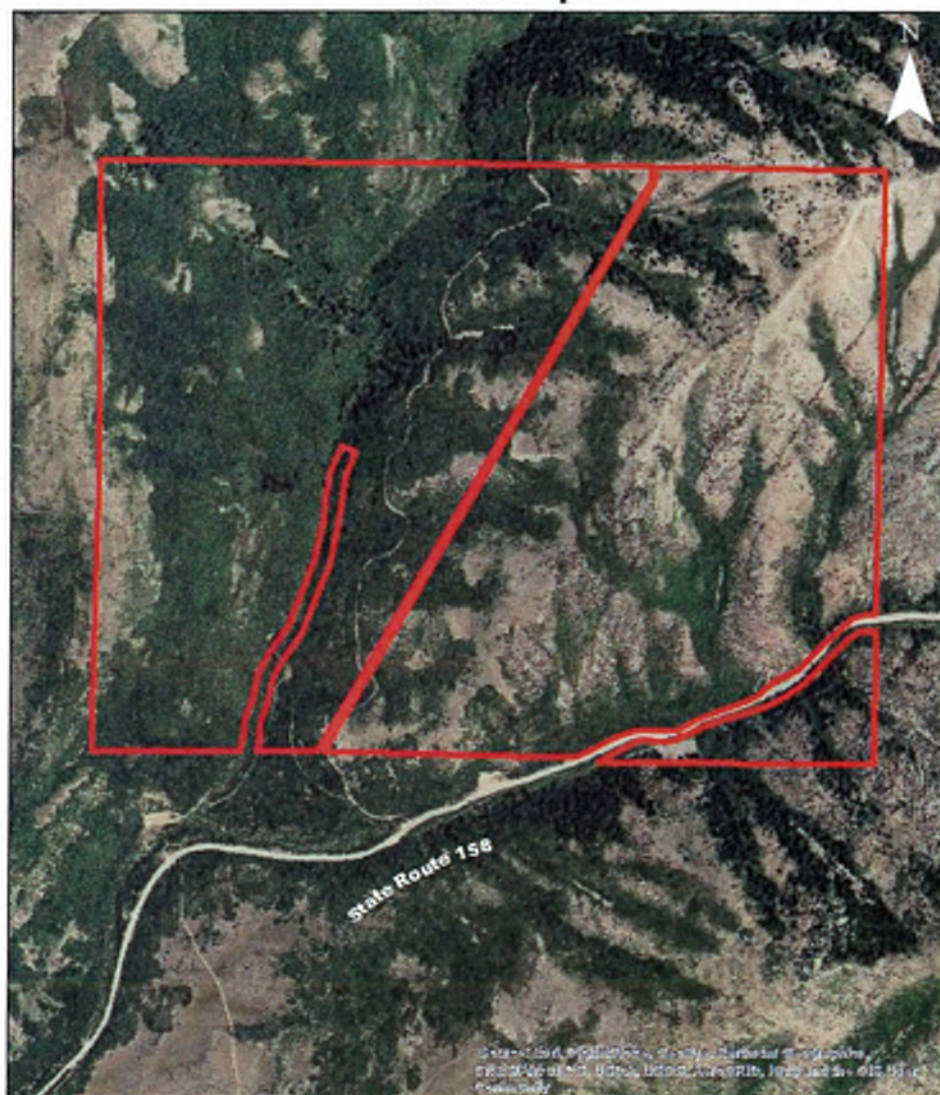
**Observed Conditions: No illegal activities observed on Property.**




## Maps:

Ogden Valley Summit Open Space  
Locator Map

### Ogden Valley Summit Open Space Aerial Map



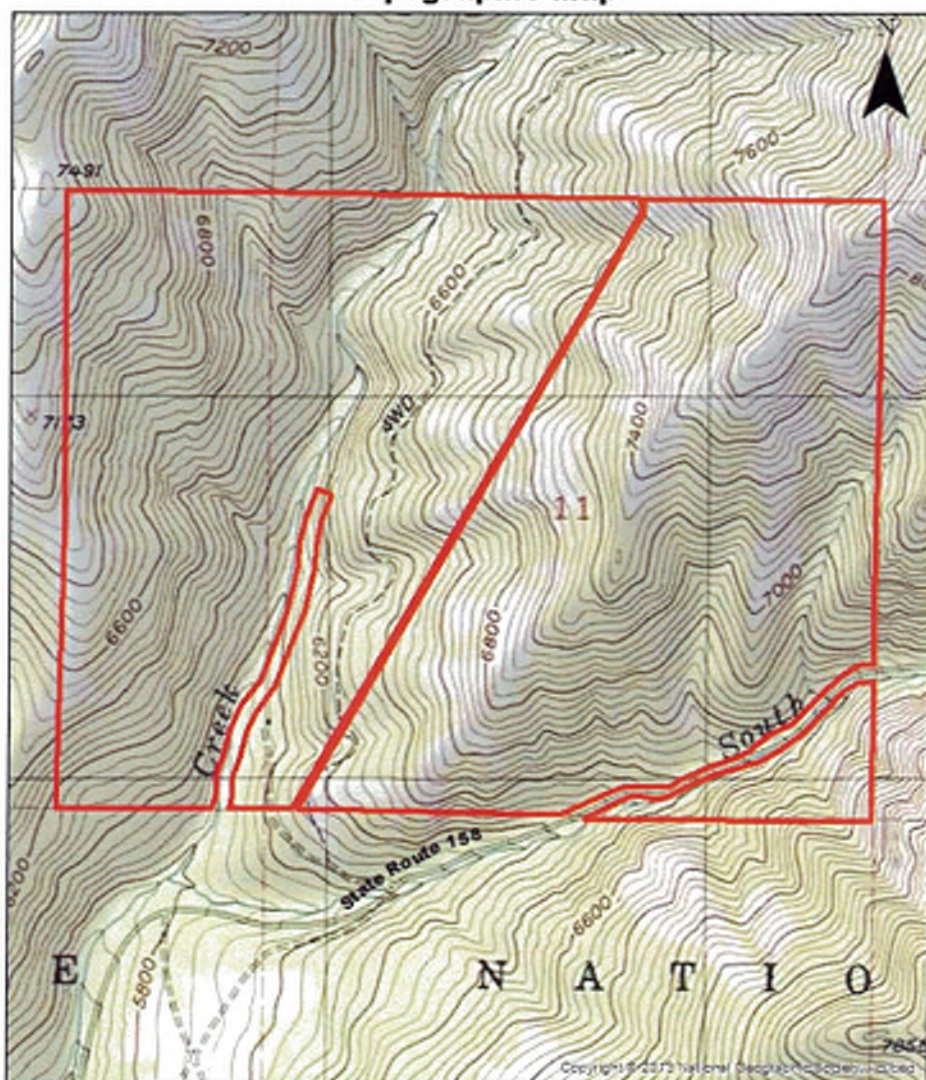
 Summit Parcel


0 0.1 0.2 0.4 Miles

Boundaries are approximate (this is not a survey)



### Ogden Valley Summit Open Space Topographic Map



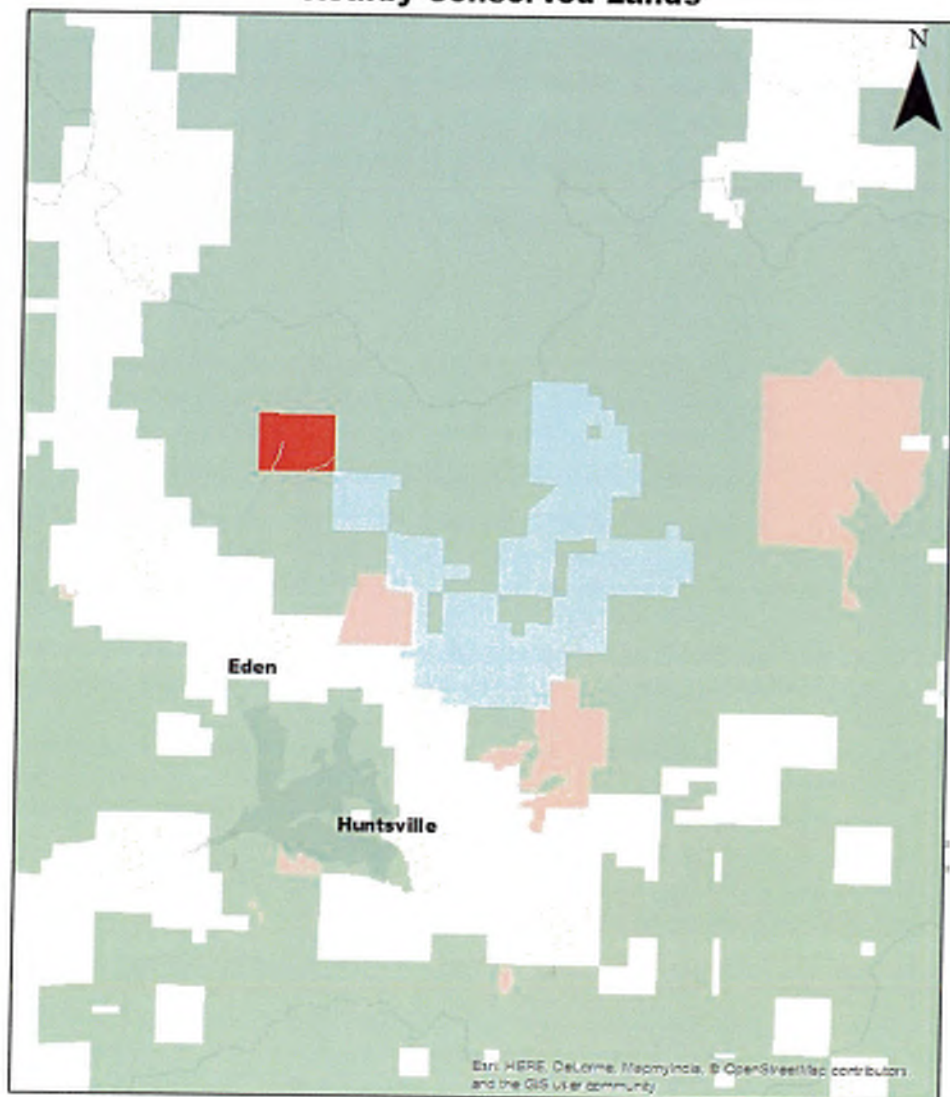
 Summit Parcel





0 0.15 0.3 0.6 Miles

Boundaries are approximate (this is not a survey)



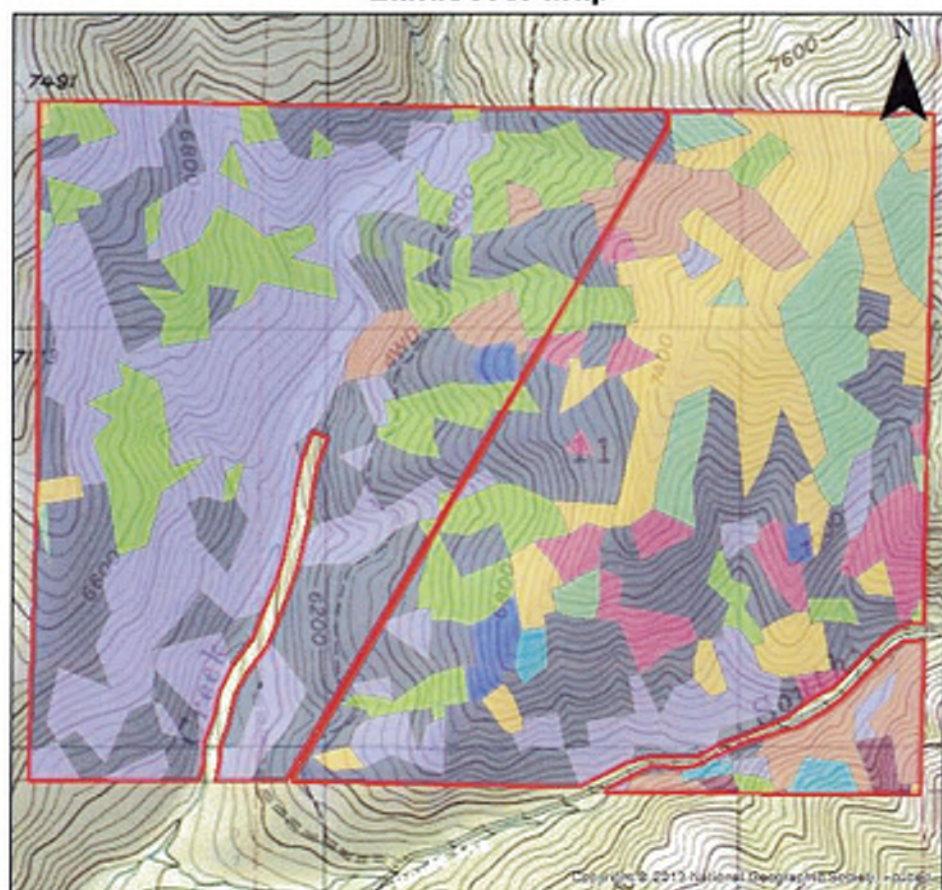
### Ogden Valley Summit Open Space Nearby Conserved Lands



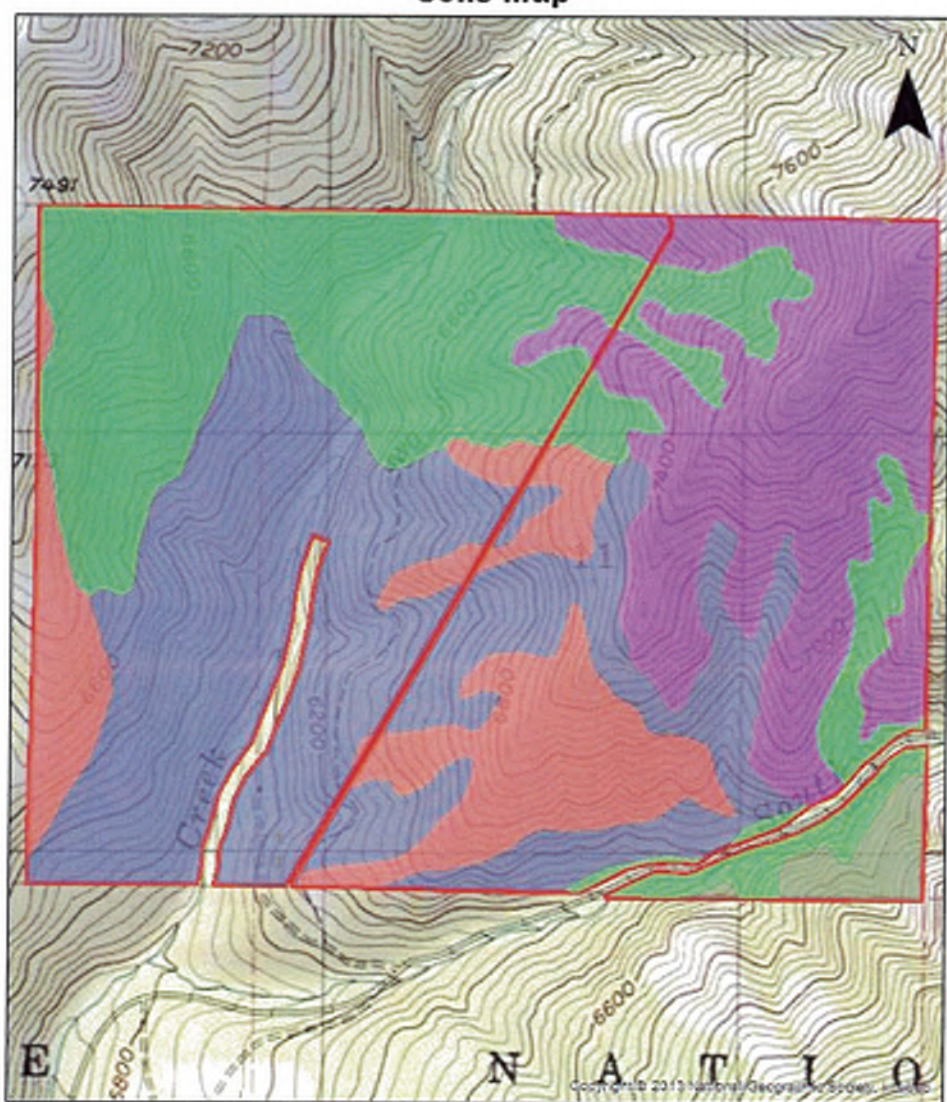
-  Summit Parcel
  -  Current Conservation Easements
  -  Wasatch Cache National Forest
  -  Middle Fork State Wildlife Area
- 0 1.5 3 6 Miles
- Boundaries are approximate (this is not a survey)



### Ogden Valley Summit Open Space Landcover Map



### Ogden Valley Summit Open Space Soils Map



- Summit Parcel
- FOXLOL-DURFEE COMPLEX, 30 TO 70 PERCENT SLOPES
- FOXLOL-ROCK OUTCROP COMPLEX, 40 TO 70 PERCENT SLOPES
- POLELINE STONY LOAM, 40 TO 70 PERCENT SLOPES
- SMARTS LOAM, 40 TO 60 PERCENT SLOPES
- YEATES HOLLOW-SMARTS COMPLEX, 30 TO 70 PERCENT SLOPES

0 0.125 0.25 0.5 Miles

Boundaries are approximate (this is not a survey)



**OGDEN VALLEY LAND TRUST**

RESTORATION • PROTECTION • STEWARDSHIP

### Ogden Valley Summit Open Space Geological Map



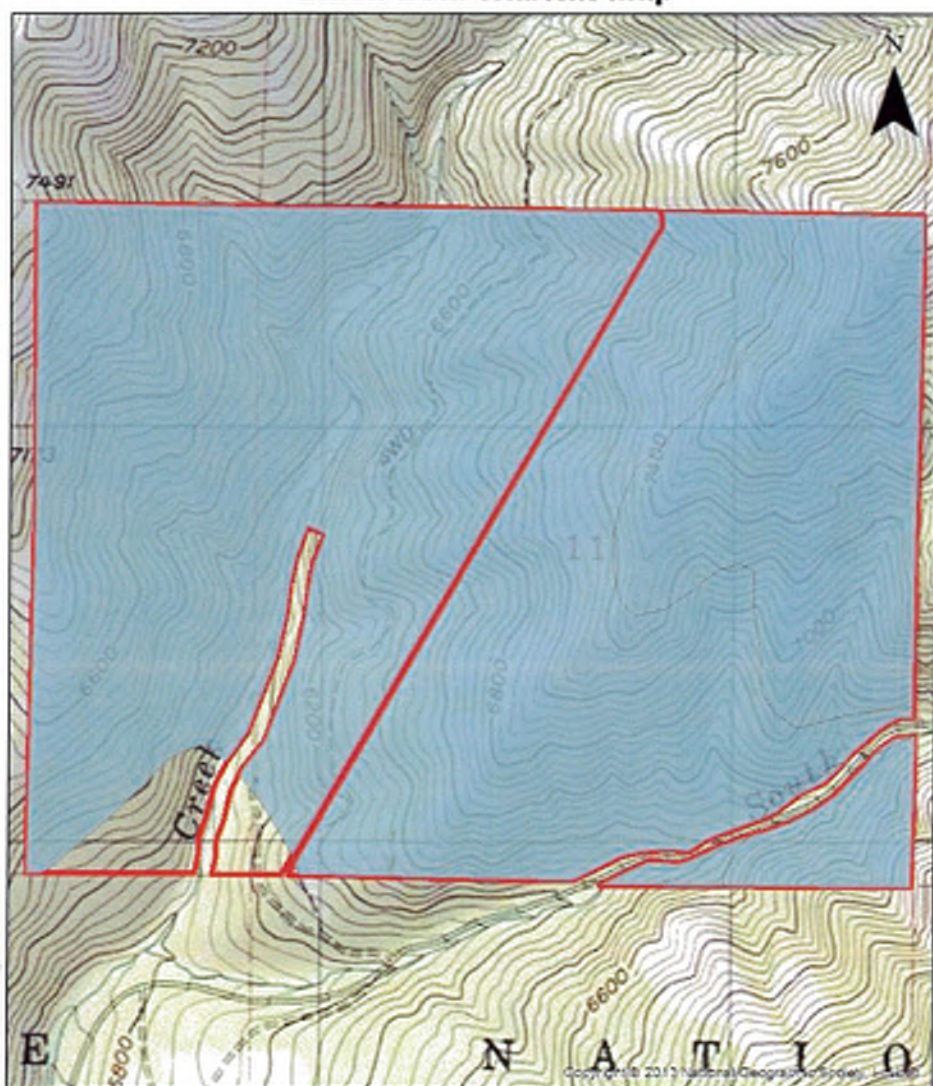
- Summit Parcel
- Proterozoic Y to Proterozoic Z - medium-grained mixed clastic
- Quaternary - Alluvium
- Early to Middle Cambrian - Arenite
- Quaternary - Clay or mud

0 0.1 0.2 0.4 Miles

Boundaries are approximate (this is not a survey)



### Ogden Valley Summit Open Space Black Bear Habitat Map



- Summit Parcel
- Year-long Black Bear Habitat

0 0.1 0.2 0.4 Miles

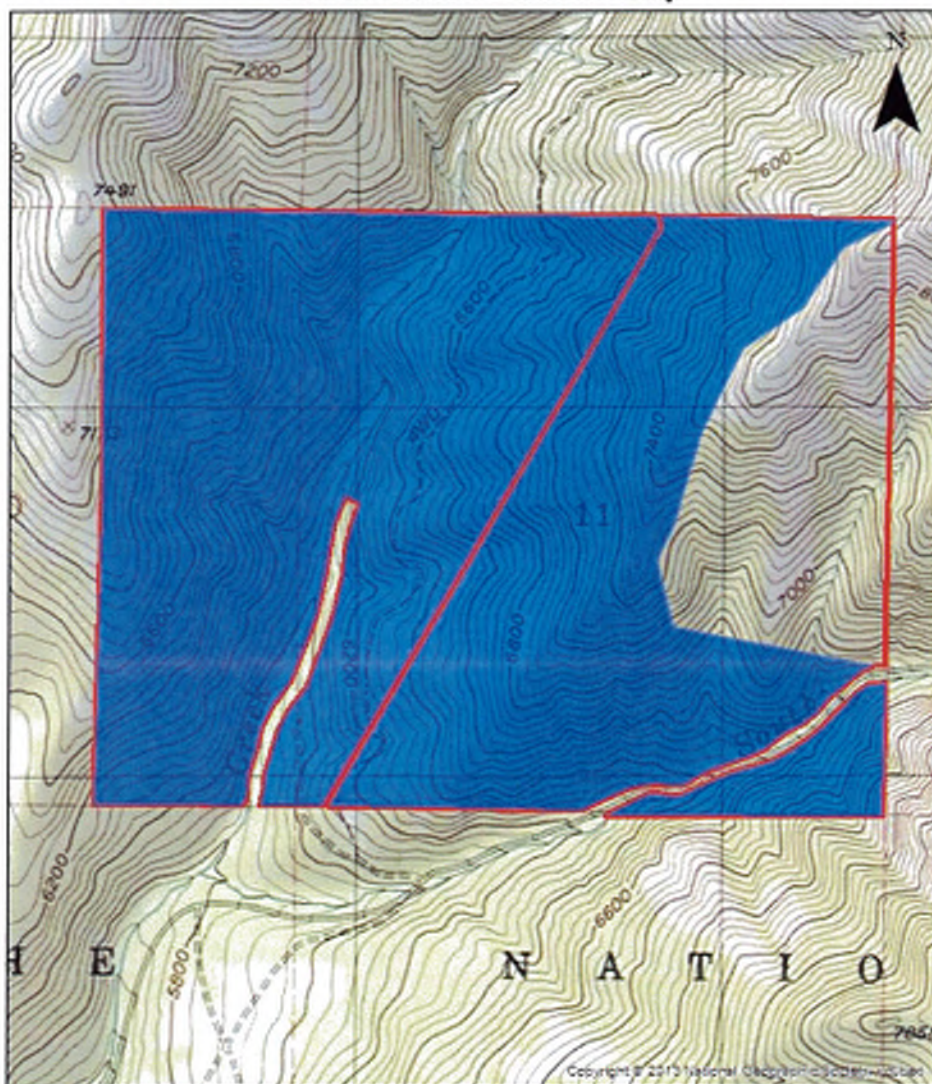
Boundaries are approximate (this is not a survey)



**OGDEN VALLEY LAND TRUST**  
PRESERVATION • PROTECTION • STEWARDSHIP



### Ogden Valley Summit Open Space Blue Grouse Habitat Map



- Summit Parcel
- Blue Grouse Habitat

0 0.125 0.25 0.5 Miles

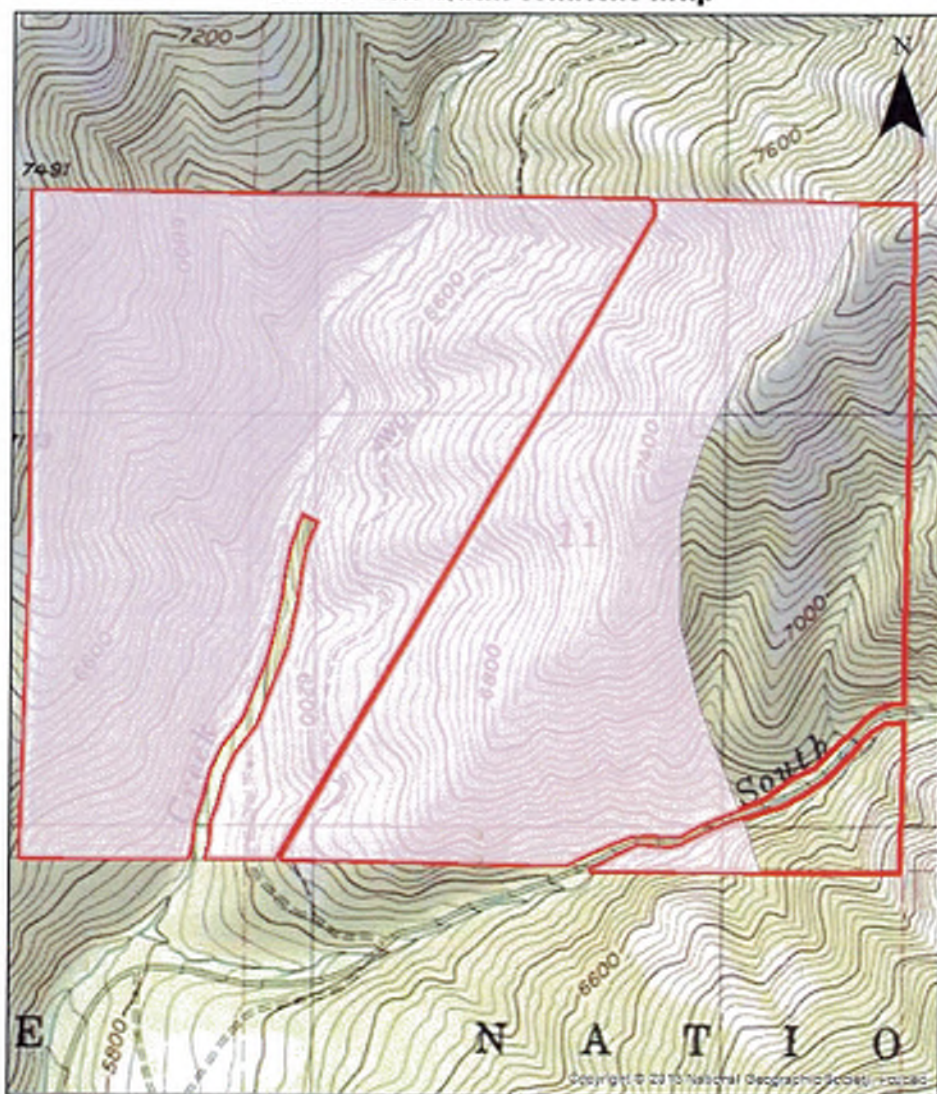
Boundaries are approximate (this is not a survey)



**OGDEN VALLEY LAND TRUST**

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### Ogden Valley Summit Open Space California Quail Habitat Map



- Summit Parcel
- California Quail Habitat Map

0 0.1 0.2 0.4 Miles

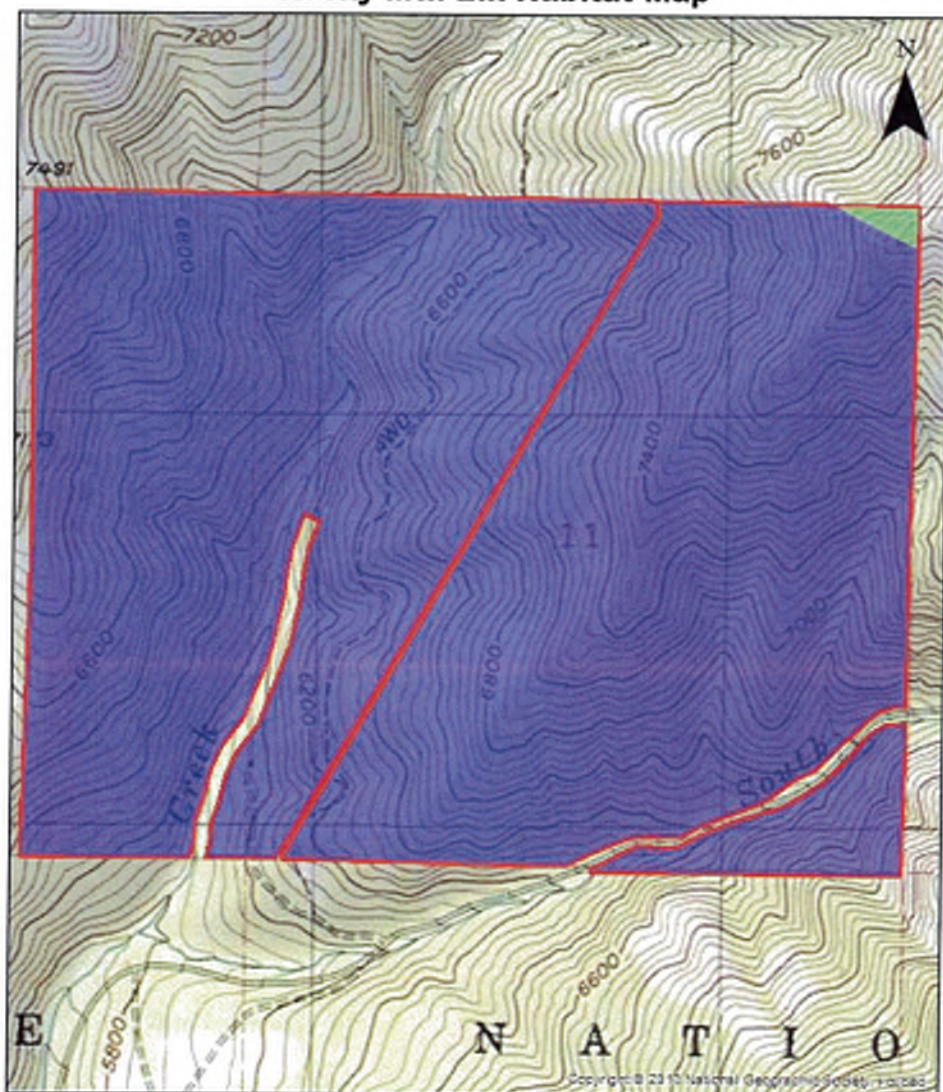
Boundaries are approximate (this is not a survey)



**OGDEN VALLEY LAND TRUST**

PRESERVATION • PROTECTION • STEWARDSHIP

### Ogden Valley Summit Open Space Rocky Mtn Elk Habitat Map



- Summit Parcel
- Summer Rocky Mtn Elk Habitat
- Winter Rocky Mtn Elk Habitat

0 0.1 0.2 0.4 Miles

Boundaries are approximate (this is not a survey)



### Ogden Valley Summit Open Space Moose Habitat Map



- Summit Parcel
- Summer Moose Habitat
- Winter Moose Habitat

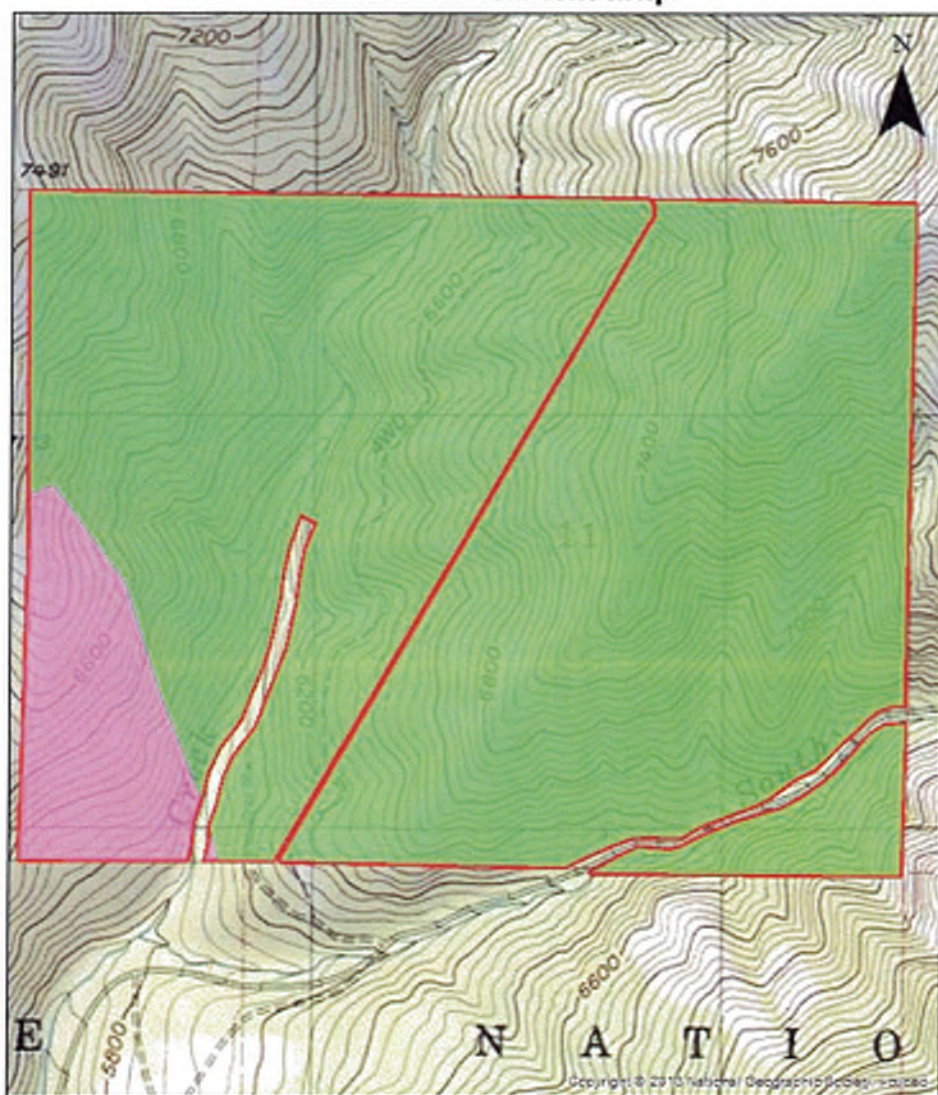
0 0.1 0.2 0.4 Miles

Boundaries are approximate (this is not a survey)



**OGDEN VALLEY LAND TRUST**  
PRESERVATION · PROTECTION · STEWARDSHIP

### Ogden Valley Summit Open Space Mule Deer Habitat Map



- Summit Parcel
- Summer Mule deer Habitat
- Winter Mule deer Habitat



Boundaries are approximate (this is not a survey)



**OGDEN VALLEY LAND TRUST**

PRESERVATION · PROTECTION · STEWARDSHIP

### Ogden Valley Summit Open Space Ruffed Grouse Habitat Map



- Summit Parcel
- Habitat Ruffed Grouse

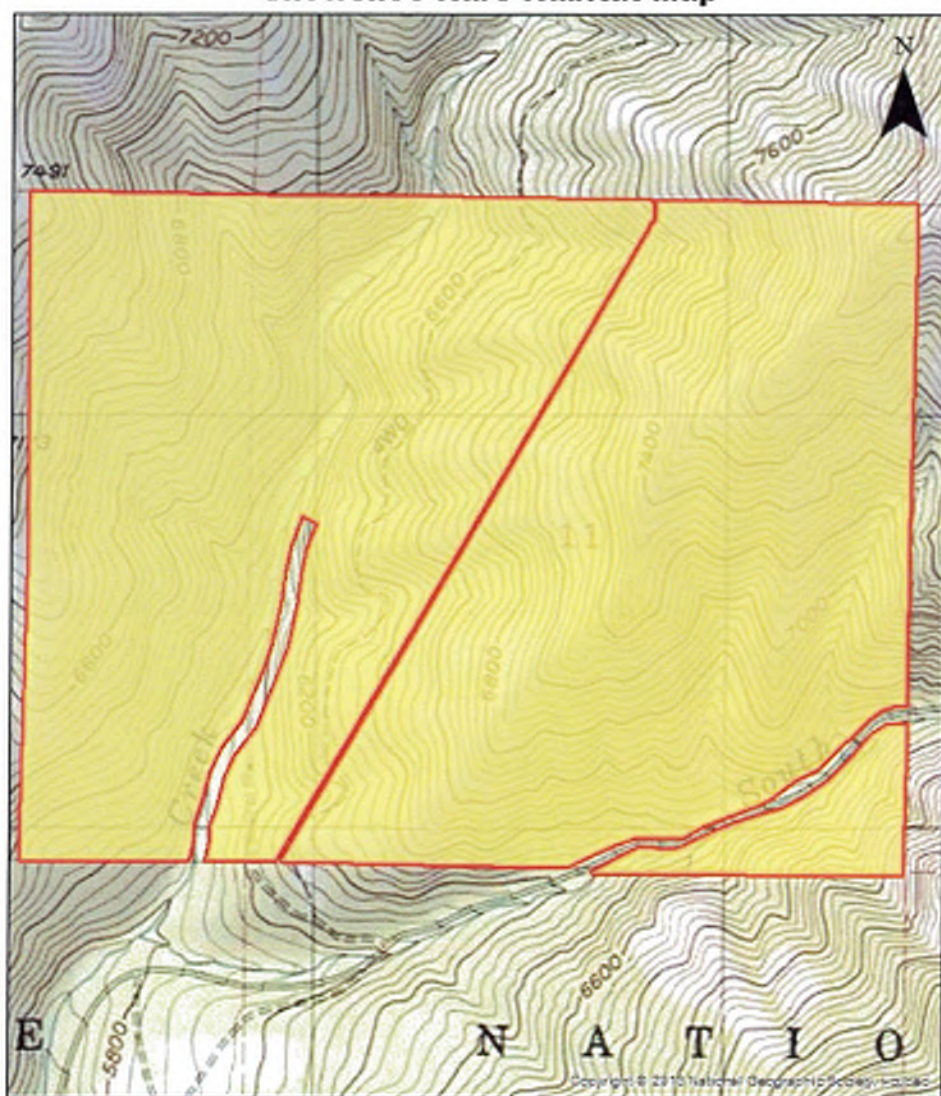
0 0.1 0.2 0.4 Miles


Boundaries are approximate (this is not a survey)



**OGDEN VALLEY LAND TRUST**  
PRESERVATION • PROTECTION • STEWARDSHIP

### Ogden Valley Summit Open Space Snowshoe Hare Habitat Map



 Summit Parcel

 Snowshoe Hare Habitat

0 0.1 0.2 0.4 Miles

Boundaries are approximate (this is not a survey)



**OGDEN VALLEY LAND TRUST**

PRESERVATION • PROTECTION • STEWARDSHIP





**Photographs (correspond to the Photolog and Photopoint Map)**



Photo 1: View along dirt road located in 30' Weber County ROW and 40' Utility Corridor looking south-east. Note erosion on east side of dirt road.



Photo 2: Drainage slope seen from dirt road located in Weber County ROW/Utility Corridor, looking east.



Photo 3: View of Conservation Easement property seen from dirt road located in 30' Weber County ROW/ 40' Utility Corridor looking south-east.



Photo 4: View of trail on Conservation Easement property looking north from southern property boundary.



Photo 5: View from trail located on Conservation Easement property looking south-west.



Photo 6: View of trail and Conservation Easement property looking north. Note Snowflake Subdivision inholding is located west of photograph location.



Photo 7: View of trail and Conservation Easement property looking south-east. Note Snowflake Subdivision inholding is located west of photograph location.



Photo 8: View along trail on Conservation Easement property. Note Snowflake Subdivision inholding located west of photograph location.





Photo 9: Pond located on Conservation Easement Property looking south-west.



Photo 10: View of trail located on Conservation Easement property looking south-west. Note Snowflake Subdivision inholding is located west of photograph location.



Photo 11: View from State Route 158, located on Weber County 100' ROW, looking south-east.



Photo 12: View from State Route 158, located on Weber County 100' ROW, looking south-east at Conservation Easement property.



Photo 13: View of Conservation Easement property seen from State Route 158, located on Weber County 100' ROW, looking north-west.



Photo 14: View from State Route 158, located on Weber County 100' ROW, looking south-east at Conservation Easement property.



Photo 15: View from State Route 158, located on 100' Weber County ROW, looking south at Conservation Easement property.

Baseline Photolog					
Photo #	Description	Photo Direction	Image File Name	Photographer Name	Date Taken
1	View along dirt road located within 30' Weber County ROW/40' Utility Corridor on Property looking south-east. Note erosion on east side of dirt road.	E	2	Gail Meakins	August 26, 2019
2	Drainage slope seen from dirt road located in Weber County ROW/Utility Corridor, looking east.	E	3	Gail Meakins	August 26, 2019
3	View of Conservation Easement property seen from dirt road located in 30' Weber County ROW/40' Utility Corridor looking south-east.	SE	3	Gail Meakins	October 2, 2019
4	View of trail on Conservation Easement property looking north from southern property boundary.	N	4	Gail Meakins	October 2, 2019
5	View from trail looking south-west.	SW	5	Gail Meakins	October 2, 2019
6	View of trail and Conservation Easement property looking south-east. Note Snowflake Subdivision inholding located west of photograph location.	N	6	Gail Meakins	October 2, 2019
7	View of trail and Conservation Easement property looking south-east. Note Snowflake Subdivision inholding is located west of photograph location.	SE	7	Gail Meakins	October 2, 2019



## Ogden Valley Summit Open Space Baseline Documentation

November 2020

8	View along trail on Conservation Easement property. Note Snowflake Subdivision inholding, located west of photograph location.	SW	8	Gail Meakins	October 2, 2019
9	Pond located on Conservation Easement Property looking south-west.	SW	9	Gail Meakins	October 2, 2019
10	View of trail located on Conservation Easement property looking south-west. Note Snowflake Subdivision inholding located west of photograph location.	SW	10	Gail Meakins	October 2, 2019
11	View from State Route 158, located on Weber County 100' ROW, looking south-east.	SE	11	Gail Meakins	October 2, 2019
12	View from State Route 158, located on Weber County 100' ROW, looking south-east at Conservation Easement property.	SE	12	Gail Meakins	October 2, 2019
13	View of Conservation Easement property seen from State Route 158, located on Weber County 100' ROW, looking north-west.	NW	13	Gail Meakins	August 26, 2019
14	View from State Route 158, located on Weber County 100' ROW, looking south-east at Conservation Easement property.	SE	14	Gail Meakins	October 2, 2019
15	View from State Route 158, located on 100' Weber County ROW, looking south at Conservation Easement property.	S	15	Gail Meakins	October 2, 2019

### ***Baseline Documentation Methods:***

The field work for the Protected Property was completed in August 26, 2019 by Gail Meakins, Ogden Valley Summit Open Space Chair Member. Seychelle Marcus, Stewardship Coordinator for Utah Open Lands, Alison Weyher, former Board Member for Utah Open Lands prepared this baseline documentation report which was completed on November 11, 2019.

### ***Qualifications and Experience of Baseline Documentation Report Preparers:***

**Seychelle Marcus** is the Stewardship Coordinator at Utah Open Lands, where she began working in June of 2018. Her experience includes preparation of baseline documentation, monitoring and stewardship of Conservation Easements and fee-title acquisitions. Seychelle holds her B.S. in Biology with a minor in Chemistry from the University of Utah. She is attending graduate school at Utah State University for a Masters of Natural Resources. She began working in conservation as an AmeriCorps Conservation Team Member, gaining experience with sustainable trail work and invasive vegetation mitigation.

**Alison Weyer** is a former local government official with experience in planning, land use and development. Alison is a current member of Utah Open Lands Advisory Council, a former member of the Board of Directors. Alison currently assists with the preparation of baseline documentation and land campaigns.

**Utah Division of Wildlife Resources (UDWR)** is part of the Utah Department of Natural Resources. UDWR protects Utah's wildlife and manages hunting and fishing within the state.

**Gail Meakins** is the current Chair of Ogden Valley Summit Open Space and has been a member since 2015. Gail holds a Masters in Urban Planning and a PhD (ABD) in Metropolitan Planning, Policy, and Design both from the University of Utah. She also holds a certificate in Historic Preservation. Gail's work is focused on Public Health and the built environment. She worked as a Research Assistant at the University of Utah Department of Planning and Architecture, where her work involved data collection and analysis using GIS and statistical methodology.

Utah Open Lands  
1488 S. Main St.  
Salt Lake City, UT, 84115  
Phone: (801) 463-6156

**EXHIBIT D**

**TITLE REPORT**

# ALTA Commitment for Title Insurance

 <b>First American</b>	<b>GRIFFITHS &amp; TURNER</b>  <b>GT TITLE</b> SERVICES INC.
ISSUED BY <b>First American Title Insurance Company</b>	ISSUED THROUGH THE OFFICE OF <b>Griffiths &amp; Turner / GT Title Services Inc.</b>

## NOTICE

**IMPORTANT—READ CAREFULLY:** THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRA CONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

## COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I — Requirements; Schedule B, Part II — Exceptions; and the Commitment Conditions, First American Title Insurance Company, a Nebraska Corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I — Requirements have not been met within 6 months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

*This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I — Requirements; and Schedule B, Part II — Exceptions.*

### First American Title Insurance Company



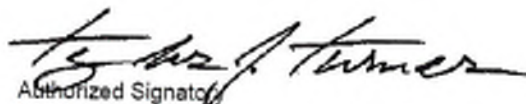
Dennis J. Gilmore  
President



Jeffrey S. Robinson  
Secretary

### Griffiths & Turner / GT Title Services Inc.

a Utah Licensed Title Insurance Agency  
5295 So. Commerce Dr., Ste. 150, SLC, UT 84107  
P: 801-327-0222 | F: 801-327-0221 | www.GTtitle.com

  
Authorized Signatory

GT File No.: SL25578PM  
ALTA Commitment for Title Insurance (8-1-16)

**COMMITMENT CONDITIONS****1. DEFINITIONS**

- (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
- (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
- (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
- (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
- (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
- (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
- (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
- (h) "Title": The estate or interest described in Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.

3. The Company's liability and obligation is limited by and this Commitment is not valid without:

- (a) the Notice;
- (b) the Commitment to Issue Policy;
- (c) the Commitment Conditions;
- (d) Schedule A;
- (e) Schedule B, Part I—Requirements;
- (f) Schedule B, Part II—Exceptions; and
- (g) a counter-signature by the Company or its issuing agent that may be in electronic form.

**4. COMPANY'S RIGHT TO AMEND**

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

**5. LIMITATIONS OF LIABILITY**

- (a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
  - (i) comply with the Schedule B, Part I—Requirements;
  - (ii) eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
  - (iii) acquire the Title or create the Mortgage covered by this Commitment.
- (b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- (c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
- (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
- (g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

*This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I – Requirements; and Schedule B, Part II – Exceptions.*

**COMMITMENT CONDITIONS - Continued**

**6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT.**

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II-Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

**7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT**

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

**8. PRO-FORMA POLICY**

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

**9. ARBITRATION**

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.

*This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I - Requirements; and Schedule B, Part II - Exceptions.*



## SCHEDULE A

### ALTA Commitment for Title Insurance

1. Commitment Date: **September 15, 2021, 7:59 AM**
2. Policy or Policies to be issued: Amount Premium

***No insurance policy to be issued. For informational purposes only.***

***Please contact the company/agency to determine the availability of title insurance if such is required and to obtain a quote.***

3. The estate or interest in the Land described or referred to in this Commitment is fee simple.

4. Title to the estate or interest in the Land is at the Commitment Date vested in:

**SMHG LANDCO LLC, A DELAWARE LIMITED LIABILITY COMPANY**

5. The Land is located in **WEBER** County, State of Utah and is described as follows:

**See Attached Exhibit "A"**

Tax ID No. (for reference purposes only): **22-006-0005**

Purported Address (for reference purposes only):

**VACANT LAND, EDEN, UT 84310**

*This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I – Requirements; and Schedule B, Part II – Exceptions.*

**GT File Number: SL25578PM**

**EXHIBIT "A"**

PARCEL W-7: (For Reference Only: 22-006-0005)

ALL OF SECTION 11, TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, AND PART OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST QUARTER CORNER OF SAID SECTION 10, RUNNING THENCE SOUTH 89°32'53" EAST 3142.32 FEET, THENCE NORTH 3°52'25" EAST TO THE NORTH LINE OF SAID SECTION, THENCE EASTERLY ALONG THE SECTION LINE TO THE NORTHEAST CORNER OF SAID SECTION, THENCE SOUTHERLY ALONG THE SECTION LINE TO THE SOUTHEAST CORNER OF SAID SECTION, THENCE WESTERLY ALONG SAID SECTION LINE TO THE SOUTHWEST CORNER OF SAID SECTION, THENCE NORTHERLY ALONG SAID SECTION LINE TO THE POINT OF BEGINNING.

LESS AND EXCEPTING COUNTY ROAD RECORDED AT BOOK-PAGE 906-117; AND A 30 FOOT RIGHT OF WAY FOR PUBLIC USE RECORDED AT BOOK-PAGE 1002-488.

ALSO LESS AND EXCEPTING SNOWFLAKE SUBDIVISION PHASE 3 OPEN SPACE RECORDED AT BOOK-PAGE 54-73.

ALSO LESS AND EXCEPTING ANY PORTION OF THE FOLLOWING WITHIN SAID SECTION 10, PART OF SECTIONS 10 AND 15, TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN, U.S. SURVEY AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST QUARTER CORNER OF SAID SECTION 10, RUNNING THENCE SOUTH 89°32'53" EAST 3142.32 FEET, THENCE SOUTH 5790 FEET, MORE OR LESS, TO A POINT INTERSECTING THE NORTH LINE OF COUNTY ROAD (220060012) THENCE IN A NORTHEASTERLY DIRECTION ALONG THE NORTH LINE OF SAID ROAD TO THE INTERSECTION OF THE EAST LINE OF SECTION 15 AND THE NORTH LINE OF SAID ROAD, THENCE SOUTH ALONG THE EAST LINE OF SECTION 15, 4426.25 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SECTION 15, THENCE WEST 2780.80 FEET, MORE OR LESS, TO THE EAST LINE OF SNOWFLAKE SUBDIVISION NO. 2, THENCE NORTH 33°21'37" EAST ALONG THE EAST LINE OF SAID SUBDIVISION 448.00 FEET, THENCE NORTH 28°47'14" EAST 212.18 FEET, THENCE NORTH 07°18'56" EAST 174.75 FEET, THENCE NORTH 01°02'19" EAST 93.65 FEET, THENCE NORTH 43°57'41" WEST 91.06 FEET, THENCE NORTH 46°2'19" EAST 60 FEET, THENCE WESTERLY ALONG THE NORTH SIDE OF A ROAD 16.70 FEET, THENCE NORTH 17°29'55" EAST 205.94 FEET, THENCE NORTH 00°35'18" EAST 175 FEET TO THE SOUTH LINE OF THE DICKENS PROPERTY (220060017), THENCE EAST ALONG SAID SOUTH LINE 1058.25 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SAID DICKENS PROPERTY, THENCE NORTH 660 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF SAID DICKENS PROPERTY, THENCE WEST 1320 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF SAID DICKENS PROPERTY, THENCE SOUTH 660.00 FEET, MORE OR LESS, TO THE NORTH LINE OF SNOWFLAKE SUBDIVISION NO. 2, THENCE NORTH 77°43'19" WEST 396.99 FEET, THENCE SOUTH 14°43'12" EAST 201 FEET TO THE NORTH LINE OF SNOWFLAKE SUBDIVISION NO. 3, THENCE SOUTH 83°13'57" WEST 761.53 FEET TO THE EAST LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 15 (220060019), THENCE NORTH ALONG SAID EAST LINE 1531.23 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF SAID WEST HALF OF SAID SOUTHWEST IN, THENCE WEST 1845 FEET, MORE OR LESS, TO THE WEST LINE OF SECTION 15, THENCE NORTH ALONG SAID WEST LINE 5280 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

Tax ID No. (For Reference Purposes Only): **22-006-0005**



**SCHEDULE B-I**  
ALTA Commitment for Title Insurance  
**REQUIREMENTS**

All of the following Requirements must be met:

- A. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
- B. Pay the agreed amount for the estate or interest to be insured.
- C. Pay the premiums, fees, and charges for the Policy to the Company. NOTE: In the event, the transaction, for which this commitment is furnished, cancels, the minimum cancellation fee will be \$200.00.
- D. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.

NOTE: If Griffiths & Turner / GT Title Services Inc. is named as Trustee of a Deed of Trust, the correct name and address is:

GRIFFITHS & TURNER / GT TITLE SERVICES INC.  
5295 S. Commerce Dr., Suite 150  
Salt Lake City, UT 84107

- E. In transactions where construction is contemplated or the status of construction is unknown, the Company requires the owner and any previous owners within the last 6 months to sign a statement that no recent construction has taken place. If recent construction has taken place, additional requirements may be added.

**SCHEDULE B-II**  
ALTA Commitment for Title Insurance

**EXCEPTIONS**

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I -- Requirements are met.
2. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
3. Any facts, rights, interest or claims which are not shown by the Public Records, but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
4. Easements, claims of easements or encumbrances which are not shown by the Public Records.
5. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the Land, and that are not shown in the Public Records.
6. 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.
7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

**NOTE:** Upon compliance with underwriting requirements, Exceptions 1-7 will be omitted from any Extended or Expanded Loan Policy to be issued hereunder.

8. Taxes for the present year and thereafter. Taxes for the year **2020 were PAID in the amount of \$123.24** Taxes for the year **2021** are due and payable on or before Nov 30 in the amount of **\$113.19**. Tax ID No. **22-006-0005**
9. Said property is within the boundaries of WEBER COUNTY, UTAH and is therein located within Tax District 488, Weber County School District, Weber Basin Water Conservancy District, Weber County Mosquito Abatement District, Eden Cemetery Maintenance District, Weber Fire District, Weber Area Dispatch 911 and Emergency Services District, Weber Fire District, Powder Mountain Water and Sewer Improvement District, Wolf Creek Sewer Improvement District, Ogden Valley Transmitter/Recreation Special Service District, Northern Utah Environmental Resource Agency, Ogden Valley Parks Services Area, and is subject to any charges and assessments levied thereunder. Related charges and/or assessments are paid current none is due, payable or delinquent.

(Continued)

**SCHEDULE B-II**  
ALTA Commitment for Title Insurance

**EXCEPTIONS - Continued**

10. The effects of easements, restrictions, covenants, conditions, notes, building set-back lines, and rights of ways for roads, ditches, canals, streams, rivers, telephones and transmission lines, drainage, utilities or other incidental purposes, over, under or across the Land, which are of record or which may be ascertained by an inspection or accurate survey, including, without limitation, any easements, notes, restrictions, building site requirements, setback lines, or rights of way provided for in the official plat map.
11. Any water rights, claims or title to water in or under the Land.
12. Any and all outstanding oil and gas, mining and mineral rights, etc., including but not limited to the right of the proprietor of a vein or lode to extract his ore therefrom should the same be found to penetrate or intersect the premises, and the right of ingress and egress for the use of said rights.
13. The terms and conditions of that certain Lease Agreement for a microwave station executed by and between Western American Development Corporation Inc. and R.W. Davis Livestock Company and Utah Power and Light Company recorded May 9, 1974 in Book 1053 at Page 229 in the office of the Weber County Recorder.
14. The terms and conditions of that certain contract between Weber Basin Water Conservancy District and Powder Mountain Inc., for the sale and use of untreated water, recorded as Entry No. 775338 in Book 1300 at Page 289 of Official Records. Affects Weber County Parcels only.
15. The effects of that certain Contract by and between Weber Basin Water Conservancy District and Western America Holding, LLC for the sale and use of untreated water recorded April 6, 2007 as Entry No. 2171767 in Weber County Records and recorded April 10, 2006 as Entry No. 913952 in Cache County records.  
  
An Amendment to the Contract between Weber Basin Water Conservancy District and Western America Holding, LLC was recorded June 17, 2011 as Entry No. 2531006 in Weber County and June 21, 2011 as Entry No. 1045335 in Cache County.  
  
An Assignment of Contract was recorded October 23, 2013 as Entry No. 2661030 in Weber county and November 19, 2013 as Entry No. 1098557 in Cache County by and between Western America Holding, LLC and Summit Mountain Holding Group, LLC.
16. The effects of that certain Resolution No. 27-2012 confirming the tax to be levied for Municipal Services provided to the unincorporated area of Weber County and describing the Services to be provided therein, recorded December 13, 2012, as Entry No. 2610456.
17. Intentionally Removed (Easement Agreement 2631963).
18. The effects of that certain Weber County Ordinance 2013-28, recorded October 13, 2013, in Weber County as Entry No. 2661052.
19. The effects of that certain Notice of Adoption of Community Development Project Area Plan recorded October 25, 2013 as Entry No. 2661594.

(Continued)

**SCHEDULE B-II**  
ALTA Commitment for Title Insurance

**EXCEPTIONS - Continued**

20. The terms, conditions and effects of those certain Weber County Zoning Development Agreements and Amendments recorded November 29, 2012 as Entry No. 2607988, January 14, 2015 as Entry No. 2717835, and July 12, 2019, as Entry No. 2990685.

21. Subject to any **Rollback Tax Assessment** which may be levied pursuant to the 1969 Farmland Assessment Act as evidenced by that certain Application for Assessment and Taxation of Agricultural Land recorded May 1, 2015 as Entry No. 2733517.

**22. Intentionally Removed. (Deed of Trust)**

23. The terms, conditions, and effects of the certain **Notice(s) of Preliminary Mechanic's Lien(s)** filed with the Utah State Construction Registry. *(Contact the Company for copies of said Notices).*

**NOTE ON JUDGMENTS:** We have checked the county land records for outstanding judgment liens entered against the relevant parties. Except as may otherwise be stated herein, no unsatisfied judgment liens appear of record that would affect the priority of the proposed insured lien or interest.

**NOTE ON CHAIN OF TITLE:** FOR INFORMATIONAL PURPOSES ONLY, the following is a list of recorded deed(s) purporting to convey or transfer ownership of the Land within the last **24 months: NONE**

(Continued)

**SCHEDULE B-II**  
ALTA Commitment for Title Insurance

**EXCEPTIONS - Continued**

NOTE: In the event matters are discovered during the closing process which would otherwise be insured by the covered risks included in the Policy, the Company may limit or delete insurance provided by the affected covered risk. In such event, a supplemental report may be issued prior to closing.

NOTE: The Owner's Policy of title insurance committed for in this commitment, if any, shall contain, in addition to the items set forth in Schedule B-Section 2, the following items: (1) The Deed of Trust, if any, required under Schedule B-Section 1, Item (b); (2) Unpatented mining claims, reservations or exceptions in patents or in Acts authorizing the issuance thereof, water rights, claims or title to water; minerals, oil and gas; and (3) Any and all unpaid taxes, assessments and unredeemed tax sales.

NOTE: The map attached or included herewith, if any, may or may not be a survey of the Land referred to herein. The Company expressly disclaims any liability for loss or damage which may result from reliance on said map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the Policy (and endorsement(s), if any) to which this map is attached.

**EXHIBIT E**

**REMOTENESS LETTER**



September 11, 2019

Summit Powder Mountain

**Attn: Anne C. Winston, Assoc. General Counsel**

3623 Wolf Creek Drive

Eden, Utah 84310

Subject: Assessment of Potential to Develop Reserved Minerals  
Parcel 22-006-0005 Conservation Easement  
Powder Mountain Area, Weber County, Utah  
**For Summit Powder Mountain**

Dear Anne:

This report presents our professional opinion of the potential to develop reserved minerals on a proposed conservation easement covering Parcel 22-006-0005 (the Parcel) at Powder Mountain, Weber County, Utah for Summit Powder Mountain. Figure 1 shows the general location of the Parcel and Powder Mountain. Figure 2 is a topographic map that shows the location of the Parcel and nearby features.

#### EXECUTIVE SUMMARY

In our opinion, the potential for the development of the minerals underlying the Parcel is so remote as to be negligible. There are no economic deposits of reserved minerals of base metals, precious metals, uranium, oil, gas, coal, tar sands, oil shale, uranium, cement rock, building stone, sand and gravel or other non-metallic minerals, or high-temperature geothermal resources within the Parcel based on our review of publications and databases, and our personal knowledge of the geology and site conditions.

#### INTRODUCTION

This report presents our professional opinion of the potential to develop reserved minerals on Parcel 22-006-0005 (the Parcel) at Powder Mountain, Utah. Figure 1 shows the approximate location the Parcel at Powder Mountain, which is about 11 miles northeast of Ogden and 6 miles north of Huntsville, Utah.

The Parcel is approximately 877 acres in size and occupies most of Section 11 and a part of Section 10, Township 7 North, Range 1 East, Salt Lake Base and Meridian (SLB&M). Figure 2 is a topographic map that shows the location of the Parcel and nearby

features. Figure 2 does not show rights-of-way or other properties (such as Highway 158) within the outline of the Parcel location. The Parcel is entirely within Weber County.

The objectives of our assessment are (1) to provide our opinion of the potential for economic deposits of oil, gas, coal, metals, and other reserved minerals within the Parcel and (2) if present, then to provide our professional opinion of the viability of developing deposits as compared to other deposits of these resources in the region. We based our assessment on published geologic and mineral resource reports, review of federal and state mineral resource databases, and our personal knowledge of the geology and site conditions.

### **SITE SETTING**

Figure 2 is a topographic map that shows the location of the Parcel and nearby features. The Parcel is on rugged, steep topography, with elevations ranging from about 5900 to 8200 feet above sea level. The canyon of Wolf Creek cuts north to south through the west side of Parcel and the South Fork of Wolf Creek cuts across the southeast corner of the Parcel. Vegetation consists of grasses, scrub oak and pine trees.

### **GEOLOGY**

This section describes the regional and local geology on and near the Parcel. Figure 3 is a geologic map of the same area that is covered by Figure 2, modified from Coogan and King (2016). Figure 4 presents a stratigraphic column of geologic units in the area. Table 1 provides (1) a key to the geologic unit symbols used on Figures 3 and 4 and (2) descriptions and thicknesses of the geologic units.

Bedrock in the vicinity is mainly Cambrian and Neoproterozoic (pre-Cambrian) in age (500 million to 800 million years old) and consists primarily of quartzite, argillite, limestone, and dolomite. There are also some Precambrian meta-volcanic rocks. Thin, young (Quaternary) unconsolidated deposits mantle bedrock in some locations. Figure 4 illustrates and Table 1 summarizes descriptions and thicknesses of the rock formations in the area.

Bedrock in the Powder Mountain area has been squeezed and bent into large folds and chopped up by low-angle thrust faults and high-angle normal faults. Regional compression formed folds and thrust faults during the Sevier Orogeny (about 65 to 100 million years ago) that (1) pushed older rocks eastward over younger rocks in regional- and local-scale, approximately north-to-south trending, thrust sheets and (2) created large-scale folds with north-to-south-trending axes. Powder Mountain is on the upper plate of the regional-scale Willard Thrust sheet.



Table 1 - Descriptions of Geologic Units <sup>a</sup>

Period (age)	Unit (symbol)	Thickness (feet)	Description
Cenozoic / Quaternary	Alluvium and Colluvium (Qal, Qac, Qaf, QTcg)	0 to 20	Stream and fan alluvium, colluvium, and, at some locations, mass-movement deposits.
	Colluvium (Qc)	0 to 20	Slopewash and soil creep; composition depends on local bedrock.
	Mass- movement Deposits (Qm)	0 to 40	Slides, slumps, and flows, as well as colluvium, talus, and alluvial fans.
	Landslide and Slump Deposits (Qms)	Highly variable	Poorly sorted clay- to boulder-sized material derived from steep local source terrain; locally includes flow deposits; hummocky, head and internal scarps, and chaotic bedding in displaced blocks.
	Talus Deposits (Qmt)	0 to 30	Angular debris at the base of and on steep slopes.
	Glacial Till and outwash (Qg)	0 to 150	Non-stratified, poorly sorted clay, silt, sand and gravel, and boulder-size till.
Cenozoic / Tertiary	Wasatch Formation (Tw)	0 to 1600+ feet	Red sandstone, siltstone, mudstone, and conglomerate with minor gray limestone. Conglomerate may contain boulders and other hard rocks.
Paleozoic / Ordovician	Garden City Formation (Ogc)	1160 to 1390	Gray- to tan-weathering, ridge forming silty limestone, locally argillaceous; interformational flat pebble-conglomerate in the lower half; black chert in upper part.
	St. Charles Formation (Csc)	970 to 1075	Gray to tan-weathering, mostly dark-gray, medium- to thick-bedded limestone and dolomite; light gray, tannish-gray weathering, thin-bedded silty limestone in lower part
Paleozoic / Cambrian	Csc – Worm Creek Quartzite Member (Csc, Csw)	0 to 145	Thin-bedded limestone, shale, sandy dolomite, and siltstone, not always containing a quartzite.
	Nounan Formation (Cn)	655 to 1145	Medium-gray, thick-bedded dolomite with subordinate dark-gray, medium- to thick-bedded dolomite that weathers very dark gray with medium-gray crude laminae.
	Calls Fort Shale Member of Bloomington Formation (Cbc)	215-400	Olive-gray to tan-gray, thin-bedded, micaceous shale and argillite with minor, thin-bedded, dark-gray, silty limestone.
	Middle Limestone Member of Bloomington Formation (Cbm)	470 to 710	Dark-gray, thick- to thin-bedded dolomite and limestone with tan-yellow-, and red-weathering, wavy, silt layers; contains subordinate olive-gray and tan-gray, thin-bedded, micaceous shale and argillite.

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Period (age)	Unit (symbol)	Thickness (feet)	Description
Paleozoic / Cambrian	Hodges Shale Member of Bloomington Formation (Cbh)	170 to 390	Olive-gray to tan-gray, thin bedded micaceous shale and argillite and thin- to thick-bedded, dark-gray limestone with tan-, yellow-, and red-weathering, wavy, silt layers.
	Blacksmith Dolomite (Cbl)	250 to 800	Medium-gray, very thick- to thick-bedded, coarsely crystalline dolomite that weathers to a lighter gray.
	Ute Formation (Cu)	750 to 1150	Gray, thick-bedded limestone and minor medium-bedded, gray to light-gray dolomite above and below interbedded, thin-bedded, gray to dark-gray limestone and olive-gray to tan-gray, thin-bedded, micaceous shale and argillite.
	Langston Dolomite (Cl)	270 to 400	Brown-weathering, gray, dark-gray, and gray-brown thin- to thick-bedded sandy limestone and dolomite in upper part and green-gray, red-weathering shale and tan dolomitic sandstone in lower part.
	Geertsen Canyon Quartzite – Undivided (Cgc)	4200±	Mostly buff quartzite, some brown-weathering argillite; weather quartzite darker than fresh surfaces.
	Geertsen Canyon Quartzite – Upper Member (Cgu)	2400 to 2700	Coarse-grained thick-bedded quartzite.
	Geertsen Canyon Quartzite – Lower Member (Cgl)	1600	White quartzite with interbeds of red and green argillite.
Precambrian / Neoproterozoic	Browns Hole Formation (Zb)	160 to 745	Upper part quartzite, lower part meta-volcanic.
	Mutual Formation (Zm)	2600±	Purple, thick- to very thick-bedded quartzite with conglomerate lenses, locally arkosic.
	Inkom Formation (Zi)	16 to 450	Argillite to psammite (meta-sandstone over meta-siltstone) with basal meta-tuff lenses.
	Caddy Canyon Quartzite (Zcc)	1000 to 2500	Mostly vitreous, almost white, quartzite.
	Kelley Canyon Formation (Zkc)	1000 to 2000	Gray to black, argillite to phyllite.
	Maple Canyon Formation (Zmcg, Zmcc)	1000+	Green to gray, feldspathic quartzite to meta-conglomerate, meta-sandstone, argillite, quartzite and meta-limestone.

<sup>a</sup> Descriptions and thicknesses are modified from Crittenden (1972), Sorensen and Crittenden (1979), and Coogan and King (2016).

## **Loughlin Water Associates, LLC**

Relaxation of the compressional forces helped to create northwest- to northeast-trending high-angle normal faults. Uplift and erosion from about 60 to 30 million years ago, truncated the folded, faulted, and steeply dipping Paleozoic and older rocks and deposited the overlying Tertiary-age Wasatch Formation.

Basin and Range extension (pulling apart of the earth's crust) began about 15 million years ago. Extension created numerous regional north-to-south trending high-angle normal faults, including the Wasatch Fault. Subsidence on the hanging wall side of normal faults created basins, such as the Salt Lake Valley. Uplift on the footwall side of faults created mountain ranges, such as the Wasatch Mountains. Ogden Valley, to the south of Powder Mountain, is a down-dropped block of earth bounded by north-to-south-trending normal faults along its east and west margins.

Continued uplift and erosion, including glaciation, during Pleistocene (about 2.6 million to 10,000 years ago) and Holocene time (10,000 years ago to present) created the highly dissected terrain, including the steep canyons, that is present at Powder Mountain today. Relatively thin (generally less than 30 to 40 feet thick) unconsolidated alluvial, alluvial fan, mass movement (landslide), and glacial deposits overlie bedrock throughout much of Powder Mountain.

### **MINERAL ASSESSMENT REVIEW**

We searched mineral resource databases and publications for the known or likely presence of minerals including precious and base metals (such as gold, silver, copper, lead and zinc), iron, radioactive minerals (uranium, thorium), vanadium, miscellaneous metallics (antimony, beryllium, bismuth, manganese, mercury, molybdenum, and tungsten), industrial and non-metallic minerals (phosphate, potash, clay, barite, fluor spar, alunite, sulfur, salines, gypsum, anhydrite, limestone, cement rock, silica sand, building stone), oil, gas, coal, tar sands, oil shale, geothermal springs/wells, sand and gravel. We assessed the likelihood that economic deposits of reserved mineral might be present within the Parcel. We reviewed air photos (Google images) of the parcel and vicinity.

Note that ownership of the mineral rights may or may not be legally severed from surface ownership (that is, the minerals may or may not be "*reserved minerals*"). Although we provide our opinion concerning whether economic mineral resources are present, we do not address whether the mineral rights are in fact reserved, which is a legal question.

### **PAST OR PRESENT MINERAL ACTIVITIES IN VICINITY OF THE PROPERTY**

We have identified no past or present mineral development activities on the Parcel or in the vicinity.

We searched the Utah Geological Survey (UGS) mineral occurrence database (UGS, 2019a), the Utah Division of Oil, Gas and Mining (DOG M) database (DOG M, 2019a; 2019b), Bon and Wakefield (2006; 2008), Doelling and Tooker (1983), Krahulec (2018), Sprinkel (1999), and Weber County Recorder's Office (2019) records.

## **POTENTIAL FOR UNDISCOVERED ECONOMIC DEPOSITS OF MINERALS**

In our opinion, there are no economic deposits of reserved minerals, including precious and base metals, iron, radioactive minerals, vanadium, miscellaneous metallics, industrial and non-metallic minerals, oil, gas, coal, tar sands, oil shale, and geothermal springs/wells on the Parcel. There is small potential for sand and gravel or common earth materials; however, because these materials are common, low-value materials that belong to the surface owner, we understand that such materials are not reserved minerals and potential mining of these materials can be prevented by the conservation easement.

We believe the potential for development of reserved minerals within the Parcel is so remote as to be negligible. The basis for this opinion is presented in the following sections.

### **METALLIC MINERALS**

The Utah mineral occurrence system (UMOS) database (UGS, 2019a) lists no metallic mineral prospects, nor does the small-scale map in Sprinkle (1999).

Bon and Wakefield (2006; 2008) show no small or large mines in the vicinity. Utah Division of Oil, Gas and Mining (DOGGM, 2019a) minerals program database shows no active or retired metals mines or exploration activities in the vicinity. Krahulec (2018) shows no mining district in the vicinity.

### **NON-METALLIC MINERALS**

Neither Doelling (1983) nor Sprinkle (1999) show any favorable areas or occurrences of phosphate, potash, clay, cement rock, barite, fluor spar, alunite, sulfur, gypsum, anhydrite, salines, limestone, cement rock, and silica sand in the vicinity.

### **COAL**

The small-scale map in Sprinkle (1999) shows no coal, oil, gas, or geothermal resources in the vicinity. Tabet and Wakefield (2006) show no past or present coal mines and indicate that there are no coal-bearing rocks in the vicinity.

### **OIL AND GAS**

The DOGM (2019) oil and gas information system database shows no oil and gas wells (including exploration wells) drilled in the vicinity. Wood and Chidsey (2015) show no oil or gas fields. Schamel (2005; 2006; 2015) shows no favorable shale gas or shale oil resources. Vanden Berg and others (2006) and Vanden Berg (2011) show no oil shale deposits. Ritzma (1973) shows no tar sand deposits (oil-impregnated sandstones) in the vicinity.

## **GEOHERMAL RESOURCES**

Blackett (2009) and UGS (2019b) show no geothermal sources in the vicinity.

## **URANIUM AND VANADIUM**

Neither Gloyn and others (2005), Doelling and Tooker (1983), nor Smith and Milligan (1999) show any uranium or vanadium deposits or prospects in the vicinity.

## **SAND, GRAVEL AND OTHER COMMON, LOW VALUE MATERIALS**

No sand and gravel, stone or quarry operations or occurrences are listed in the Utah Geological Survey (UGS) mineral occurrence database (UGS, 2019a), the Utah Division of Oil, Gas and Mining (DOG M) database (DOG M, 2019a); nor in Sprinkel (1999). There is small potential for sand and gravel or common earth materials; however, because these materials are common, low-value materials that belong to the surface owner, we understand that such materials are not reserved minerals and potential mining of these materials can be prevented by the conservation easement.

## **CONCLUSIONS**

In our opinion, there are no economic deposits of precious and base metals (such as gold, silver, copper, lead and zinc), iron, radioactive minerals (uranium, thorium), vanadium, miscellaneous metallics (such as antimony, beryllium, bismuth, manganese, mercury, molybdenum, and tungsten), industrial and non-metallic minerals (such as phosphate, potash, clay, barite, fluorspar, alunite, sulfur, salines, gypsum, anhydrite, limestone, cement rock, silica sand, building stone), oil, gas, coal, tar sands, oil shale, geothermal springs/wells on Parcel 22-006-0005. We believe the potential for development of reserved minerals on the Parcel is so remote as to be negligible.

**Loughlin Water Associates, LLC**



If you have any questions or need more information, please do not hesitate to call us at (435) 649-4005 (office) or George at (435) 659-1753 (mobile).

Very truly yours,

**Loughlin Water Associates, LLC**

George W. Condrat, P.E.  
Senior Engineer



William D. Loughlin, P.G.  
Manager, Principal Hydrogeologist



**Attachments:**

- Location Map
- Vicinity Map
- Geology Map
- Stratigraphic Column

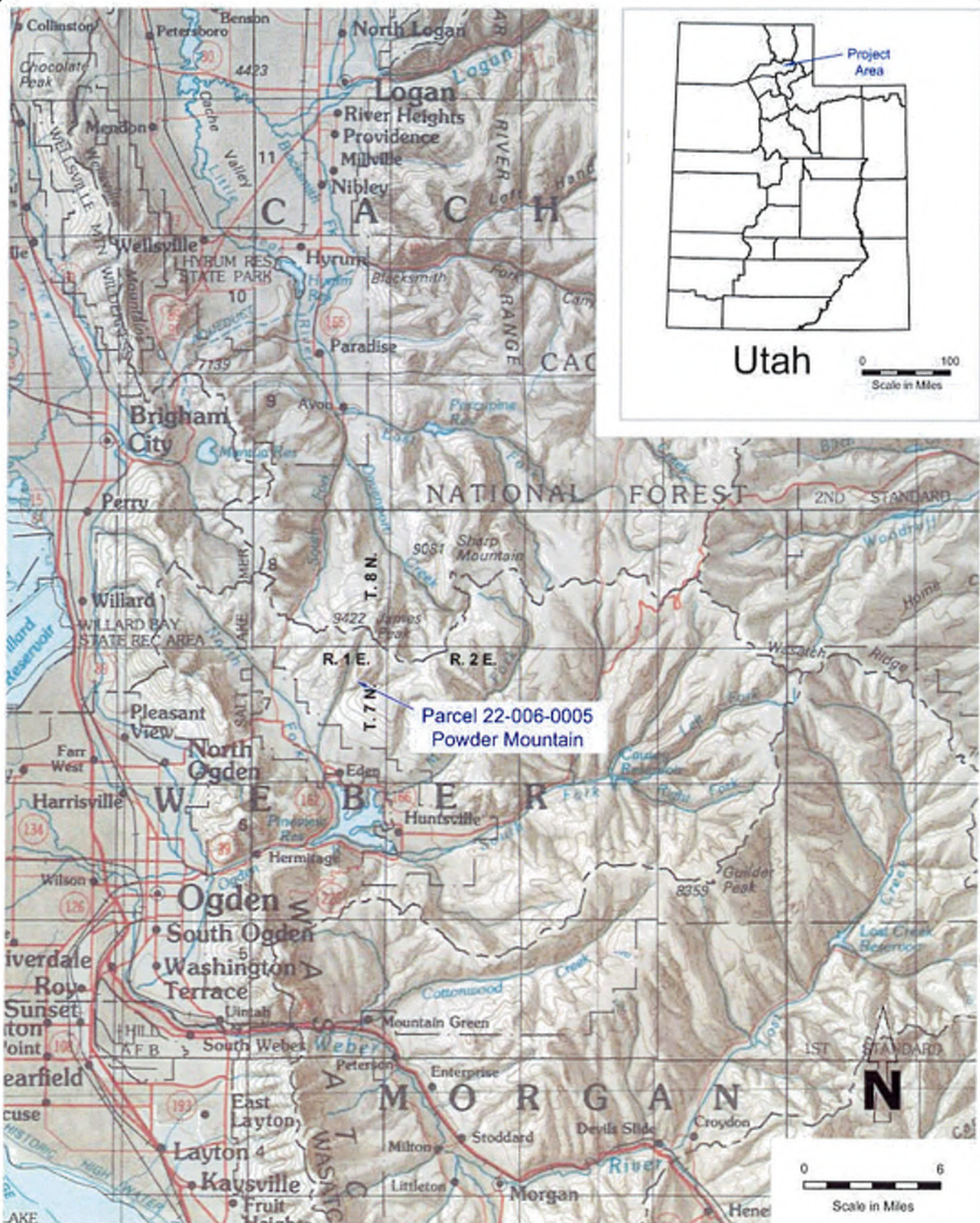
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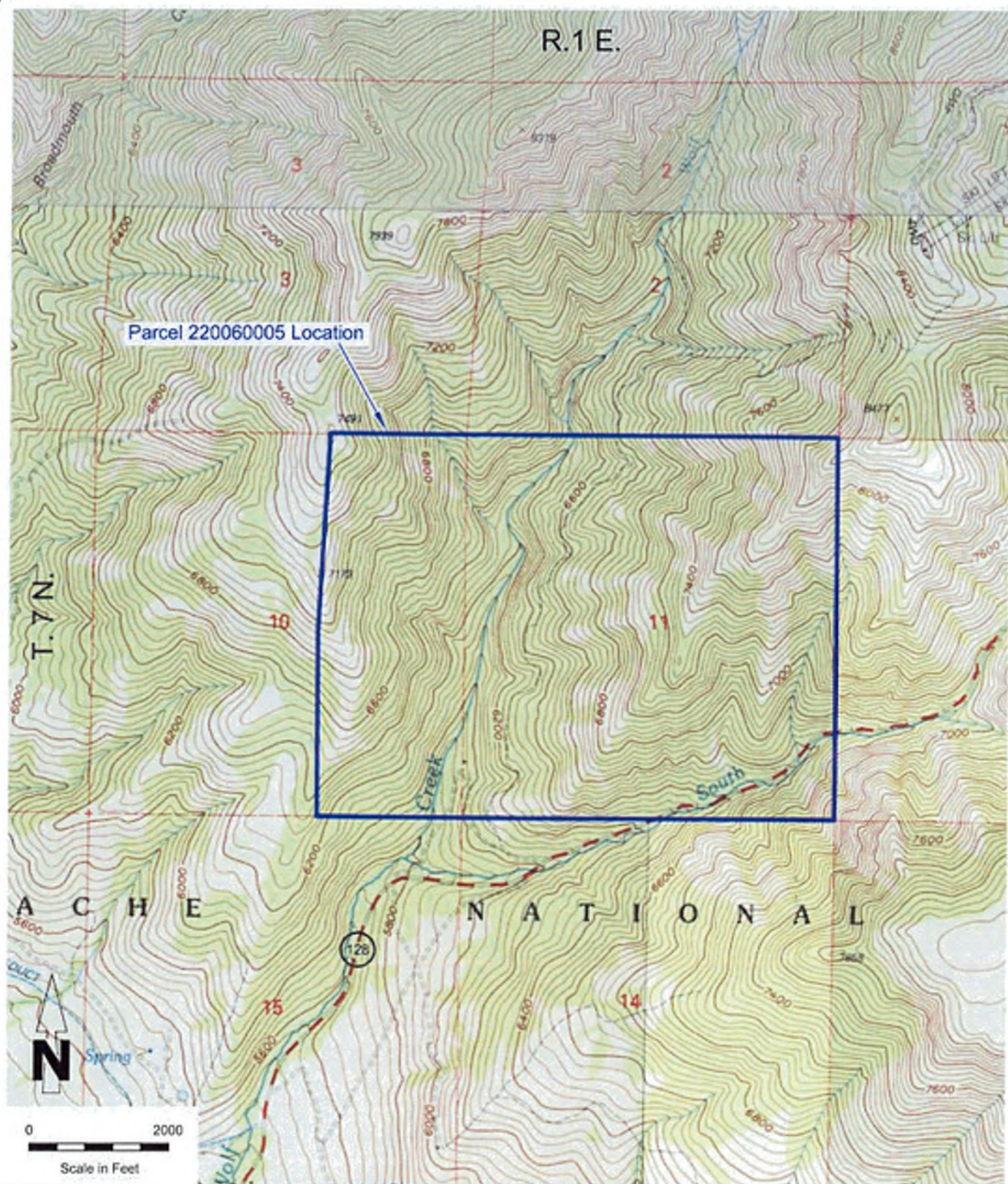
## **Loughlin Water Associates, LLC**

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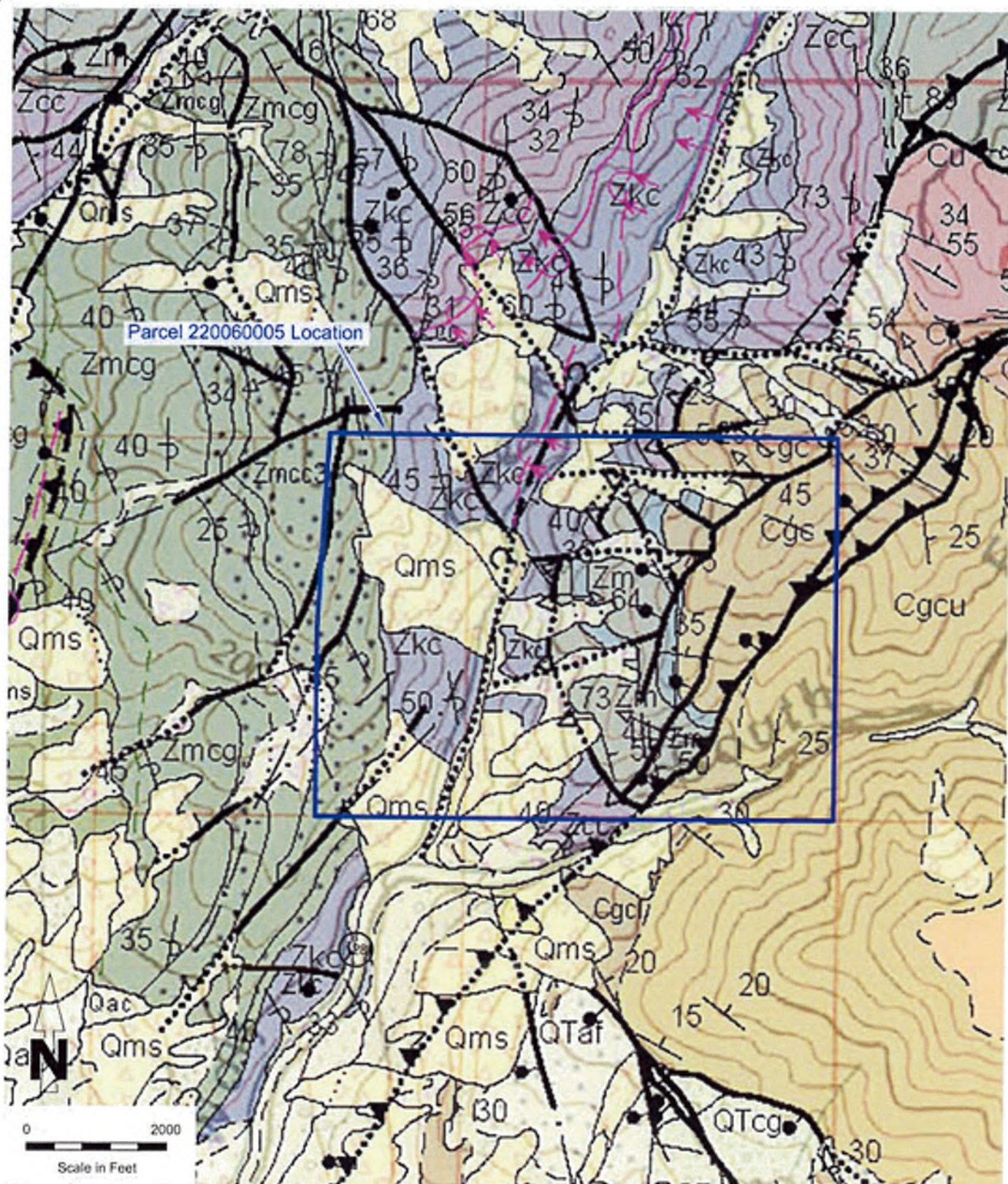




Base map: "State of Utah Shaded Relief Map".  
U.S. Geological Survey (1988).  
Contour interval 500 feet.



Base maps: USGS 1:24000-scale topographic maps "Huntsville, UT (1998)" and "James Peak, UT (1988)"



Base map: Coogan and King (2016)  
 See Table 1 for key to lithologic symbols and description of units.

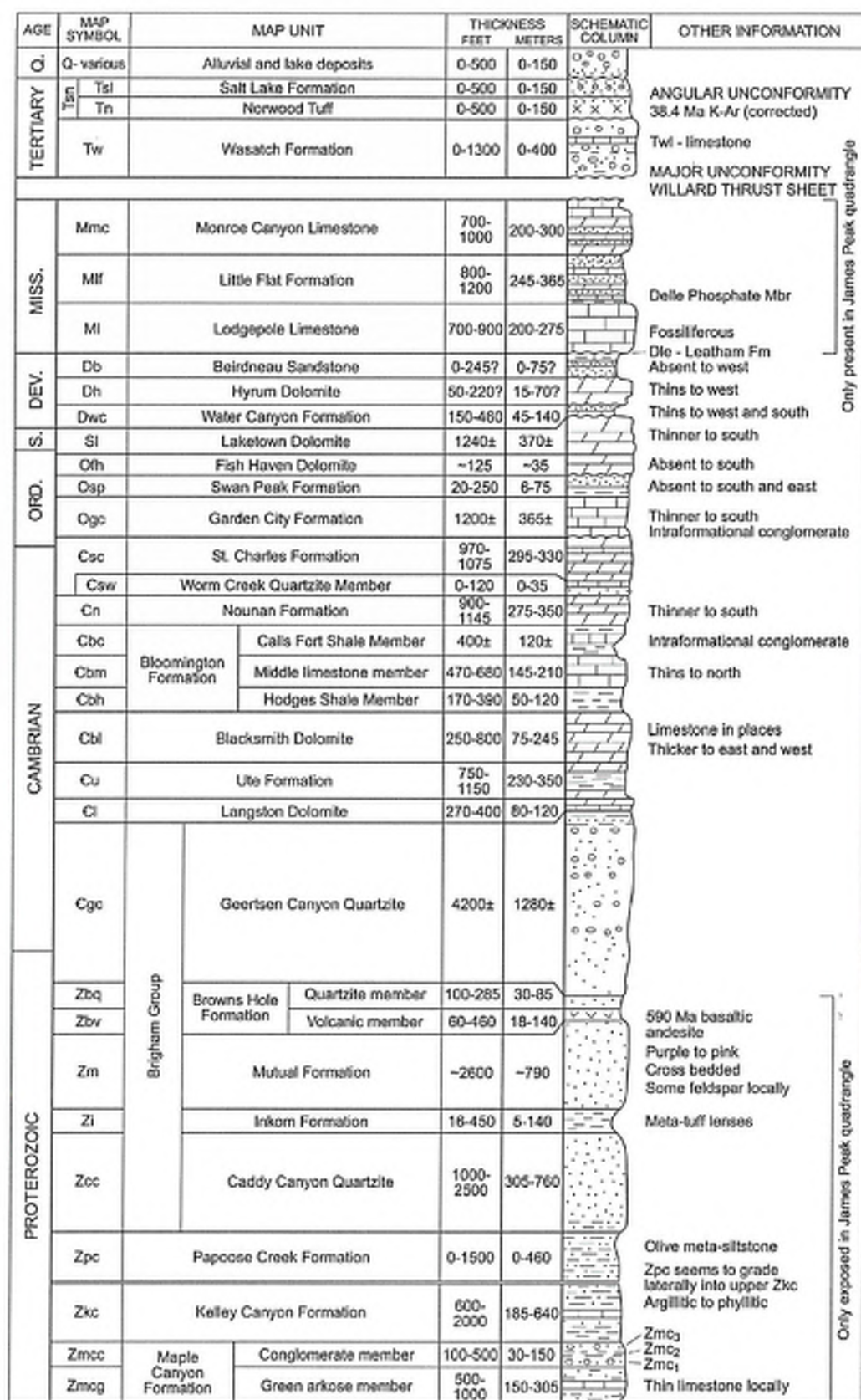


Diagram is schematic—no fixed thickness scale

Modified from Coogan and King (2007)

Summit Powder Mountain  
Stratigraphic Column  
Figure 4