



COTTONWOOD HEIGHTS PLANNING COMMISSION MEETING AGENDA

Notice is hereby given that the Cottonwood Heights Planning Commission will hold a **Work Session Meeting** (suite 250, City Council Conference Room) beginning at **5:00 p.m.** and a **Business Meeting** (suite 300, Council chambers) beginning at **6:00 p.m. on Wednesday, April 6, 2016**, located at 1265 E. Fort Union Blvd., Cottonwood Heights, Utah.

5:00 p.m. WORK SESSION (suite 250)

1.0 Review Business Meeting Agenda

(The Commission will review and discuss agenda items.)

2.0 Discussion Items

(The Commission will review and discuss a City-initiated proposal to adopt a Bicycle and Urban Trails Master Plan as an addendum to the Cottonwood Heights General Plan and a request for a conditional use permit for Canyon Centre Phase III, Bambu Restaurant, located at 7350 South Canyon Centre Drive. The Commission may also discuss the status of other pending applications and matters before the Commission and new applications and matters that may be considered by the Commission in the future.)

6:00 p.m. BUSINESS MEETING (suite 300)

1.0 WELCOME/ACKNOWLEDGEMENTS – Commissioner Guymon

2.0 CITIZEN COMMENTS

(Please note: In order to be considerate of everyone attending the meeting and to more closely follow the published agenda times, public comments will be limited to three minutes per person per item. A spokesperson who has been asked by a group that is present to summarize their concerns will be allowed five minutes to speak. Comments which cannot be made within these limits should be submitted in writing to the City Planner prior to noon the day before the meeting.)

3.0 PUBLIC HEARINGS

3.1 (Project #HOC-16-001) Public comment on a request from Jonathan and Dana Middlemiss for a conditional use permit to operate a home preschool at 3571 East Summer Hill Drive.

(Public comment will be taken on a request from Jonathan and Dana Middlemiss for a conditional use permit to operate a home preschool at 3571 E Summer Hill Drive)

3.2 (Project #ZMA-15-003) Public comment on a request from Grant Kesler for a general plan amendment, zone map amendment and development agreement on approximately 15 acres of land located at 9361 South North Little Cottonwood Canyon Road. (Continued from March 2nd meeting.)

(The Commission will take public comment on a request from Grant Kesler for a general plan amendment, zone map amendment and development agreement on approximately 15 acres of land located at 9361 South North Little Cottonwood Canyon Road.)

3.3 (Project #ZMA-15-004) Public comment on a request from Rola V, LLC for a general plan amendment, zone map amendment and development agreement on approximately 11.54 acres of land located at 3801 East North Little Cottonwood Canyon Road.

(The Commission will take public comment on a request from Rola V, LC for a general plan amendment, zone map amendment and development agreement on approximately 11.5 acres of land located at 3801 East North Little Cottonwood Canyon Road.)

4.0 ACTION ITEMS

4.1 (Project #GPA-16-001) Action on a City-initiated proposal to adopt a Bicycle and Urban Trails Master Plan as an addendum to the Cottonwood Heights General Plan

(The Commission will take action on the Bicycle and Urban Trails Master Plan, which is an amendment to the General Plan)

4.2 (Project #CUP-16-002) Action on a request by Kenney Nichols for a conditional use permit for Canyon Centre Phase III, Bambu Restaurant, located at 7350 South Canyon Centre Drive

(The Planning Commission will take action on a request by Kenney Nichols for approval of a conditional use permit for the Canyon Centre Phase III, Bambu Restaurant, located at 7350 Canyon Centre Drive)

4.3 Approval of Minutes for March 2, 2016

5.0 ADJOURNMENT

On Thursday, March 24, 2016, at 6:00 p.m. a copy of the foregoing notice was posted in conspicuous view in the front foyer of the Cottonwood Heights City Offices, Cottonwood Heights, Utah. A copy of this notice was emailed to the Salt Lake Tribune and Deseret News, newspapers of general circulation in the City by the Office of the City Recorder. The Agenda was also posted on the City's website at www.cottonwoodheights.utah.gov and the State Public Meeting Notice website at <http://pmn.utah.gov>

DATED THIS 24th DAY OF MARCH 2016

Linda Dunlavy, City Recorder

Planning Commissioners may participate in the meeting via telephonic communication. If a Commissioner does participate via telephonic communication, the Commissioner will be on speakerphone. The speakerphone will be amplified so that the other Commissioners and all other persons present in the room will be able to hear all discussions. In compliance with the Americans with Disabilities Act, individuals needing special accommodations or assistance during this meeting shall notify the City Recorder at 801)944-7020 at least 24 hours prior to the meeting. TDD number is (801)270-2425 or call Relay Utah at #711. If you would like to submit written comments on any agenda item they should be received by the Planning Division no later than Tuesday at noon. Comments can be emailed to bberndt@ch.utah.gov.



Planning Commission
Meeting Date: April 6th, 2016

**FILE NUMBER/
PROJECT NAME:** HOC 16-001 Mrs. Dana's Preschool

LOCATION: 3571 East Summer Hill Drive

REQUEST: Conditional use approval to operate a home preschool

OWNER: Jonathan and Dana Middlemiss; 801-450-1547

APPLICANT: Dana Middlemiss; 801-450-1547

STAFF

RECOMMENDATION: APPROVE, pursuant to attached conditions of approval

APPLICANT'S PROPOSAL

The applicant is proposing to operate a home-based preschool for children ages 3 to 5, with no more than 12 children per class sessions. The applicant's proposed hours of operation are as follows:

- Session 1: Mondays, Wednesdays and Fridays from 9:00 a.m. to 11:45 a.m.
- Sessions 2 & 3: Tuesdays and Thursdays, either 9:00 a.m. to 11:45 a.m. or 12:15 p.m. to 3:00 p.m.

BACKGROUND

Zoning

The zoning designation of the property is R-1-8 (Single-Family Residential). Home occupations are listed as a conditional use in the R-1-8 zone, as referenced in 19.26.030.E. Home occupations are allowed if the proposed business is clearly secondary and incidental to the primary use of the property as a single-family residence.

Further requirements for home preschools are set forth in chapter 19.76 ("Supplementary and Qualifying Rules and Regulations"). 19.76.040(E) states the following:

E. Home Day care/preschool. "Home day care/preschool" means the keeping for care and/or preschool instruction of 12 or fewer children including the caregiver's own children age six or under and not yet in full day school within an occupied dwelling and yard. A home day care/preschool may be approved by the planning commission if it meets all of the following standards:

- 1. There may be a maximum of 12 children on premises at any time, including the caregiver's own children under the age of six and not yet in full day school.*
- 2. There shall be no more than one employee present at any one time who does not reside in the dwelling.*

3. *The home day care/preschool caregiver shall comply with all applicable licensing requirements under title 5 of this code.*
4. *The use shall comply with all applicable noise regulations.*
5. *The play yard shall not be located in the front yard and only shall be used between 8:00 a.m. and 7:00 p.m.*
6. *The lot shall contain one available on-site parking space not required for use of the dwelling, and an additional available on-site parking space not required for use of the dwelling for any employee not residing in the dwelling. The location of the parking shall be approved by the director to insure that the parking is functional and does not change the residential character of the lot.*
7. *No signs shall be allowed on the dwelling or lot except a nameplate sign.*
8. *The use shall comply with all local, state and federal laws and regulations.*
9. *Upon complaint that any of the requirements of this section or any other city ordinance are being violated by a home day care/preschool caregiver, the city shall review the complaint and, if substantiated, may*
 - (a) Set a hearing before the planning commission to revoke any conditional use permit, and/or*
 - (b) Institute a license revocation proceeding under title 5 of this code.*
10. *All property owners within a 500 foot radius of the caregiver's property shall be mailed notice of any hearing to grant or revoke any conditional use permit at least ten days prior to the date of the hearing; provided, however, that provision of such notice shall not be a conditional precedent to the legality of any such hearing, and no hearing or action taken thereon shall be deemed invalid or illegal because of any failure to mail such notice.*

Staff Analysis: The proposed residential preschool conforms to the requirements (listed above) in the zoning ordinance. Further, the above criteria will be incorporated as conditions requisite for approval and are required to be followed in perpetuity.

Noticing

Property owners within 1000 feet of the subject property have been mailed notices. Notices were sent on March 24th, 2016.

Public Comment

At the time the staff report was written, staff has received inquiries from approximately 20 residents. These inquiries have ranged from general questions about the application to expressed concern over the traffic impact this proposal will have on the neighborhood, to positive support for the application. Any subsequent written comments received will be presented to the planning commission at the April 6th meeting.

IMPACT ANALYSIS

Off-Site Parking

The applicant's driveway is able to accommodate up to four vehicles to be used as off-street parking. The applicant's narrative states that any volunteers, as well as the one allowed non-resident employee will be required to park on the driveway.

Drop Off / Pick Up

The applicant is proposing for drop-off and pick-up to occur in a 15-minute window before and after each preschool session. The applicant's proposal is to require parents to line up only on the side of the road directly adjacent to the subject property, and requires that each child enter and exit the vehicle from the right rear passenger side of each parent or guardian's vehicle. Further, the applicant's proposal will prohibit parents and guardians from blocking the driveway of any adjacent property.

Staff Analysis: The curb-to-curb distance of Summer Hill Drive was measured to be approximately 28'. Summer Hill Drive is a public right of way in Cottonwood Heights. Staff has incorporated the applicant's drop-off and pick-up regulations as proposed conditions of approval in an attempt to mitigate traffic concerns, limiting such activity to the applicant's side of the street and requiring students to load and unload from the right rear passenger door of each vehicle.

Play Area

The applicant is proposing to use her rear yard as the preschool's outdoor play area. The rear yard is fenced on all sides, preventing children from accessing the front yard or public street in front of the subject property.

Staff Analysis: The proposal for the play area meets all city requirements.

ATTACHMENTS

- 1. Conditions of Approval & Findings**
- 2. Context Aerial**
- 3. Context Zoning**
- 4. Applicant's Narrative**
- 5. Sample Motions**

CONDITIONS OF APPROVAL

1. There shall be a maximum of 12 children on the premises at any time, including the caregiver's own children under the age of six and not yet in full day school (19.76.040.E.1);
2. There shall be no more than one employee present at any one time who does not reside in the dwelling (19.76.040.E.2);
3. The home preschool caregiver shall comply with all applicable licensing requirements under Title 5 ("Business Licensing") of the Cottonwood Heights Municipal Code (19.76.404.E.3);
4. The use shall comply with all applicable noise regulations (19.76.040.E.4);
5. The play yard shall not be located in the front yard and only shall be used between 8:00 a.m. and 7:00 p.m. (19.76.040.E.5);
6. The lot shall contain one available on-site parking space not required for use of the dwelling for any employee not residing in the dwelling (19.76.040.E.6);
7. No signs shall be allowed on the dwelling or lot except a nameplate sign (19.76.040.E.7);
8. The use shall comply with all local, state and federal laws and regulations (19.76.040.E.8) including but not limited to all applicable requirements of the Utah Department of Health's Bureau of Child Development;
9. The applicant and all employees shall provide a copy of all licenses and permits required by the State of Utah;
10. The applicant shall adhere to the hours and days of operation as described in the written narrative submitted as part of the project application;
11. The applicant shall adhere to the drop-off and pick-up times and methods as described in the written narrative submitted as part of the project application.

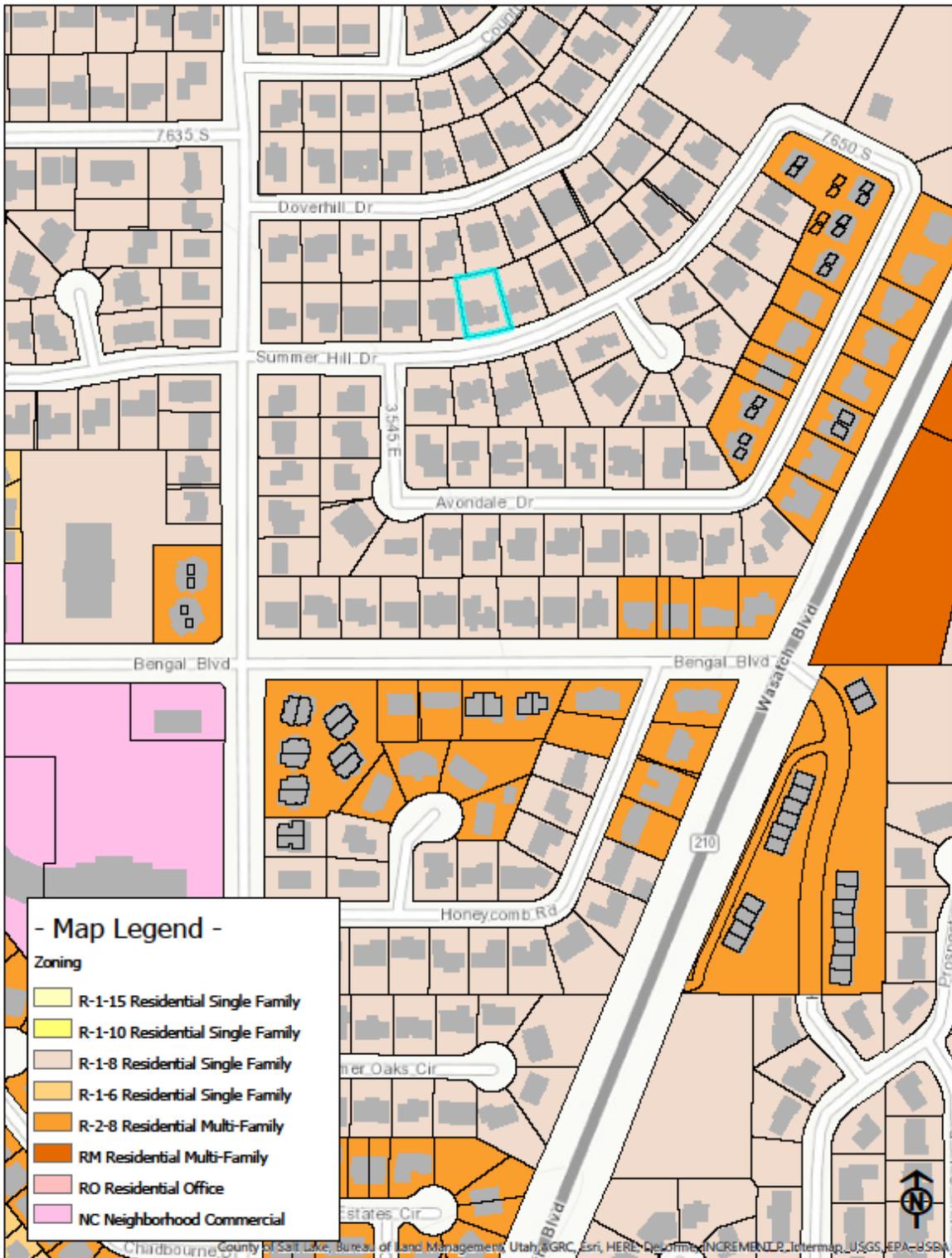
FINDINGS FOR APPROVAL

1. The proposed home preschool conforms to applicable home occupation and home preschool requirements, as found in the Cottonwood Heights Zoning Ordinance (Title 19) and Business License Ordinance (Title 5);
2. The proposed home preschool is clearly secondary and incidental to the primary use of the property as a single-family residence;
3. The proposed conditions of approval act to mitigate any perceived negative impacts created by the applicant's proposal.

CONTEXT AERIAL



CONTEXT ZONING



APPLICANT'S NARRATIVE

Business Description for

Mrs. Dana's Preschool

Objective: To Teach Preschool to children ages, 3 to 4 and 4 to 5. The children will learn the letters of the alphabet, the numbers 1-20, colors, shapes, words and more through using Language Arts, Science, Music, Math, Art, Health and much more.

My Business Plan:

Number of Students in each session:

My goal is to have no more than 12 children in each preschool session.

Hours of Operation:

Each session will be 2 ¾ hours in length. My hope is to work toward doing morning and afternoon sessions. But to start out with I will hope and plan to do (that is if I get enough children signed up):

Session 1: Monday, Wednesday, Friday—9:00am -11:45am or Tuesday, Wednesday, Thursday

Session 2 & 3: Tuesday, Thursday—Either 9:00am-11:45am or 12:15pm-3:00pm

Recess/Free time: The children will have either recess (outside play) or free time (inside) for 15 minutes, depending on the schedule of that day or bad weather.

Traffic Flow:

Drop Off/Pick Up—Parents/guardians will drop off and pick up their children one at a time. There will be a 15-minute window prior to the start and after the ending of preschool that parents can drop off and pick up their child. Each Parent needs to be on the right side of the road (if they are in a vehicle) and line up and wait their turn to be in the front and drop off/pick up their child. Additionally, when parents are waiting in the line of cars they cannot block any person's driveway. The child will need to exit and enter into their parent's/guardian's vehicle on the back passenger side to avoid the dangers of the road and also to give me a peace of mind.

Parking Spaces:

There are 4 parking spaces on the driveway, which will be used for any person(s)/individual who is volunteering his or her time during the preschool session and the individual who will be my helper.

Entering and Exiting the preschool:

Children will enter/exit the preschool through the front door.

MODEL MOTIONS

Model Motion for Approval

"I move that we approve HOC-16-001, a request from Dana Middlemiss, for a conditional use permit to operate a home preschool on the property located at 3571 East Summer Hill Drive, subject to the conditions of approval and based on the findings listed in the staff report dated April 6th, 2016.

- List any additional conditions of approval...
- List any additional findings...

Model Motion for Denial

"I move that we deny application HOC-16-001, a request from Dana Middlemiss, for a conditional use permit to operate a home preschool on the property located at 3571 East Summer Hill Drive, based on the following findings:

- List findings for denial...

Planning Commission

MEETING DATE: March 2, 2016

MEETING TYPE: Public Hearing



STAFF REPORT

FILE NUMBER/

PROJECT NAME: ZMA 15-003 Kesler General Plan and Zone Map Amendment

LOCATION: 9361 South North Little Cottonwood Canyon Road

REQUEST: General Plan Amendment to Rural Residential and Rezone of 15 acres from F-20 to RR-1-21

APPLICANT: Grant Kesler

STAFF RECOMMENDATION: Recommend approval to the City Council finding that:

1. The zone map/change is consistent with the Granite Community General Plan; and
2. The required public hearing has been held.

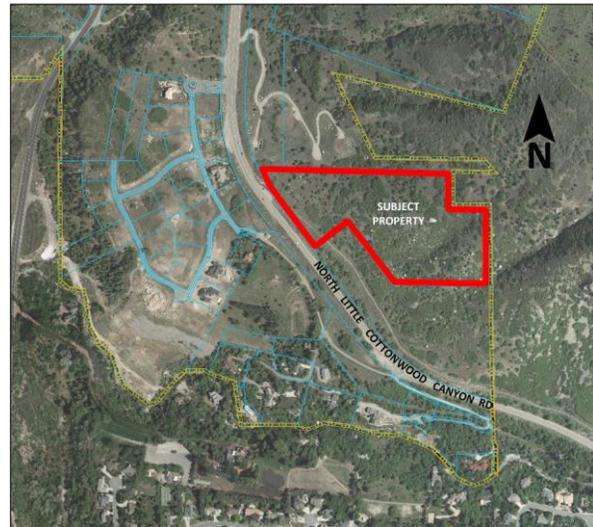
APPLICANT'S PROPOSAL

The proposal is to amend the general plan from Foothill Recreation to Rural Residential and to rezone 15 acres from F-20 to RR-1-21 on the east side of North Little Cottonwood Canyon Road at 9361 South, and have approved a development agreement limiting the potential development to a specified number of lots on a certain portion of the property.

BACKGROUND

General Plan

The subject property was part of an annexation by Cottonwood Heights that was part of unincorporated Salt Lake County that took effect on January 1, 2015. Upon annexation, the City adopted land use and zoning commensurate with the zoning designation applied by Salt Lake County, of F-20, Foothill Recreation. Because the General Plan was adopted based on the County Zoning, and not the County Land Use Plan for this area, the land use for this property, which includes consideration of the county land use plan, is being considered with this application. The Salt Lake County designation for this property was "Residential – Primarily Low Density Estates (less than 2 units per acre)," and "Forest Service / Open Space (possible limited residential)." The proposal is to amend the plan to show this property as "Rural Residential" which is a "very-low



density” designation that calls for “no more than 2 units per acre.” The proposed land use is the closest match that the city has to the county designation.

Zoning

The proposed zoning of Rural Residential, one-half acre is commensurate with the general plan designation that was assigned to this property for years prior to annexation in 2015. Of the total 15 acres, approximately 4.3 acres is less than 30% slope. This would limit the amount of developable land to the 4.3 acres plus 30% of the undevelopable area could be considered for the density calculation. The request is for the entire 15 acres to be rezoned, and not to bisect the property where no property lines exist into two zoning categories.

Development Agreement

This application was previously considered by the planning commission and a negative recommendation was made, citing concern for the future potential of a Planned Unit Development being proposed which could request to utilize up to 30% of the non-buildable area (areas with 30% slope or greater) to calculate density. The commission opposed the use of any portion of that steeply-sloped property being used for density. The applicants indicated that they did not intend to use the property for that purpose and asked to pursue a means whereby the use of steeply-sloped areas for additional density calculation was prohibited. The means by which this can be achieved is through the use of a development agreement. The city attorney, working with the applicant has drafted a development agreement which describes a set number of maximum lots which can be developed. In this case, seven lots. Meaning that if through the development process limitations on development are discovered, such as sensitive lands, seismic, traffic or other issues which limit approvable lots to less than seven, that limited amount could only be approved. The agreement also delineates the general location of the development area. Because the proposed concept plan shows lots which all meet minimum lot standards of the RR-1-21 zone, a future application for a PUD becomes unnecessary, and the agreement eliminates the ability for a PUD to be applied for. The agreement runs with the land, so any future owners, successors or assigns will be subject to the stipulations of the agreement. The agreement also has a sunset clause, providing that, if in two years’ time, no development has begun as detailed in the concept plan, the city can choose to rezone the property, reverting back to the F-20 zone. Staff finds this development agreement offers adequate protections for the surrounding residents, as well as the predictability of a concept plan which must be adhered to.

Traffic

As determined by the city engineer, the road servicing this property has sufficient capacity to handle the potential number of homes associated with this site. A traffic analysis will be required with future development proposal.

Adjacent Zoning:

- North: F-20 (Forestry Recreation)
- South: F-20 (Forestry Recreation) – (also proposed for RR-1-21)
- East: Forest Service Property
- West: R-1-15 Residential

Process

19.90.010 Amendment procedure.

- A. *The city council may, from time to time, amend the number, shape, boundaries or area of any zone or any regulation within any zone or any other provisions of the zoning ordinance. The city council may not make any amendment authorized by this section unless the amendment was proposed by the planning commission or was first submitted to the planning commission for its recommendation. To become effective, zoning amendment applications which have received the positive recommendation of the planning commission must first receive the favorable vote of not less than a majority of the entire membership of the city council.*
- B. *Zoning amendment applications which receive a recommendation of denial by the planning commission shall thereafter be considered by the city council as provided in section 19.90.030.*

19.90.030 Determination of city council.

The city council, after review of the recommendation of the planning commission, may affirm, reverse, alter or remand for further review and consideration any recommendation made by the planning commission.

Notice

Noticing procedure for zone amendments in Cottonwood Heights defers to state law. The public hearing was noticed as required. In addition property owners within 1,000 feet were mailed individual notices of the time and date of the public hearing. See Utah Code Ann. 10-9a-205.

Possible Motions

Sample Motion for a Positive Recommendation – “I move we forward a positive recommendation to the City Council for the Kesler General Plan and Zone Map Amendment Request by Grant Kesler, application ZMA 15-003, based on the findings listed in the Staff Report dated August 31, 2015 and as modified by the conditions below:”

1. List any additional findings...

Sample Motion for a Negative Recommendation – “I move we forward a negative recommendation to the City Council for the Kesler General Plan and Zone Map Amendment Request by Grant Kesler, application ZMA 15-003, based on the findings listed in the Staff Report dated April 8, 2014 and as modified by the conditions below:”

1. List any additional findings...

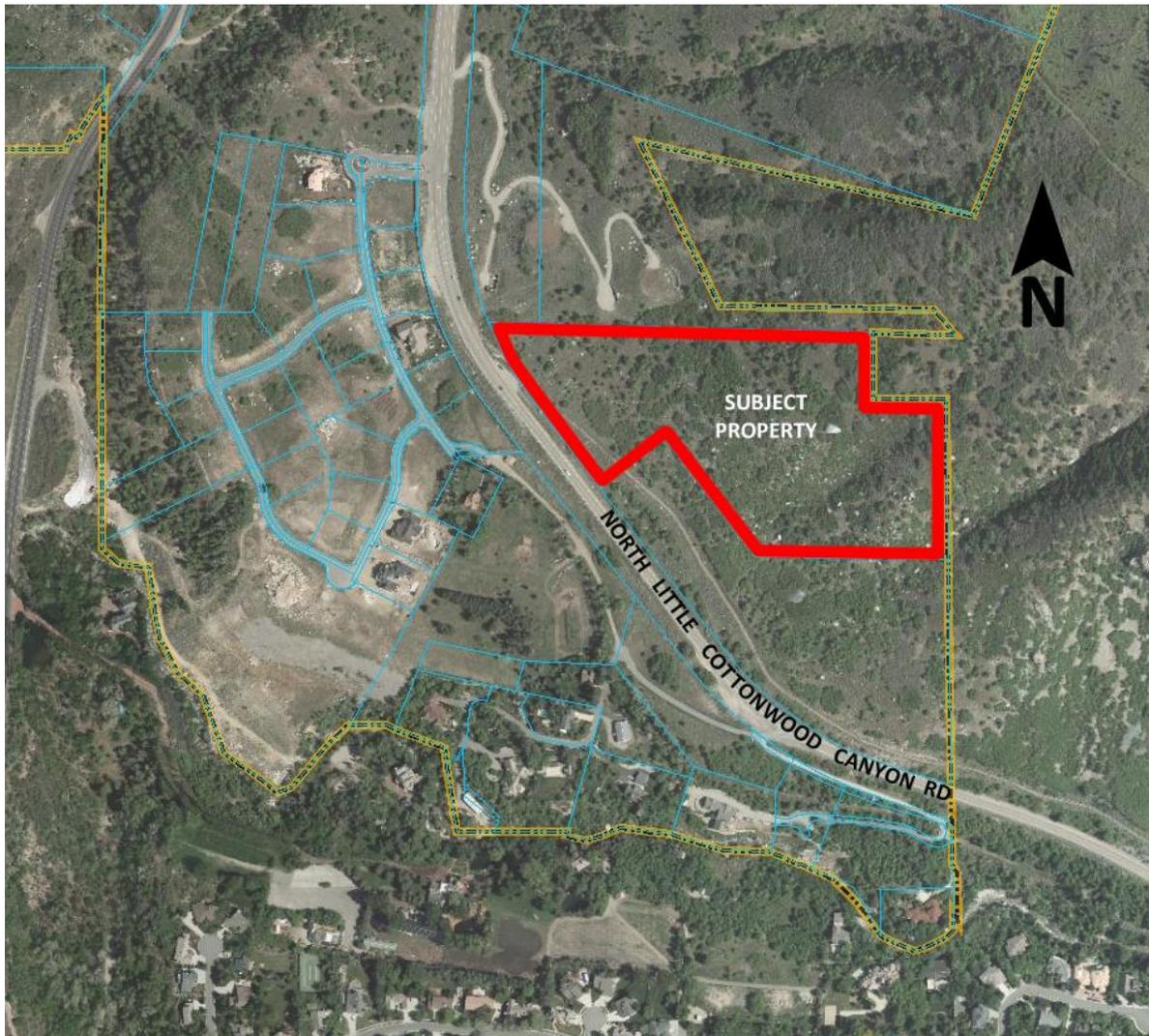
Staff:

Glen Goins

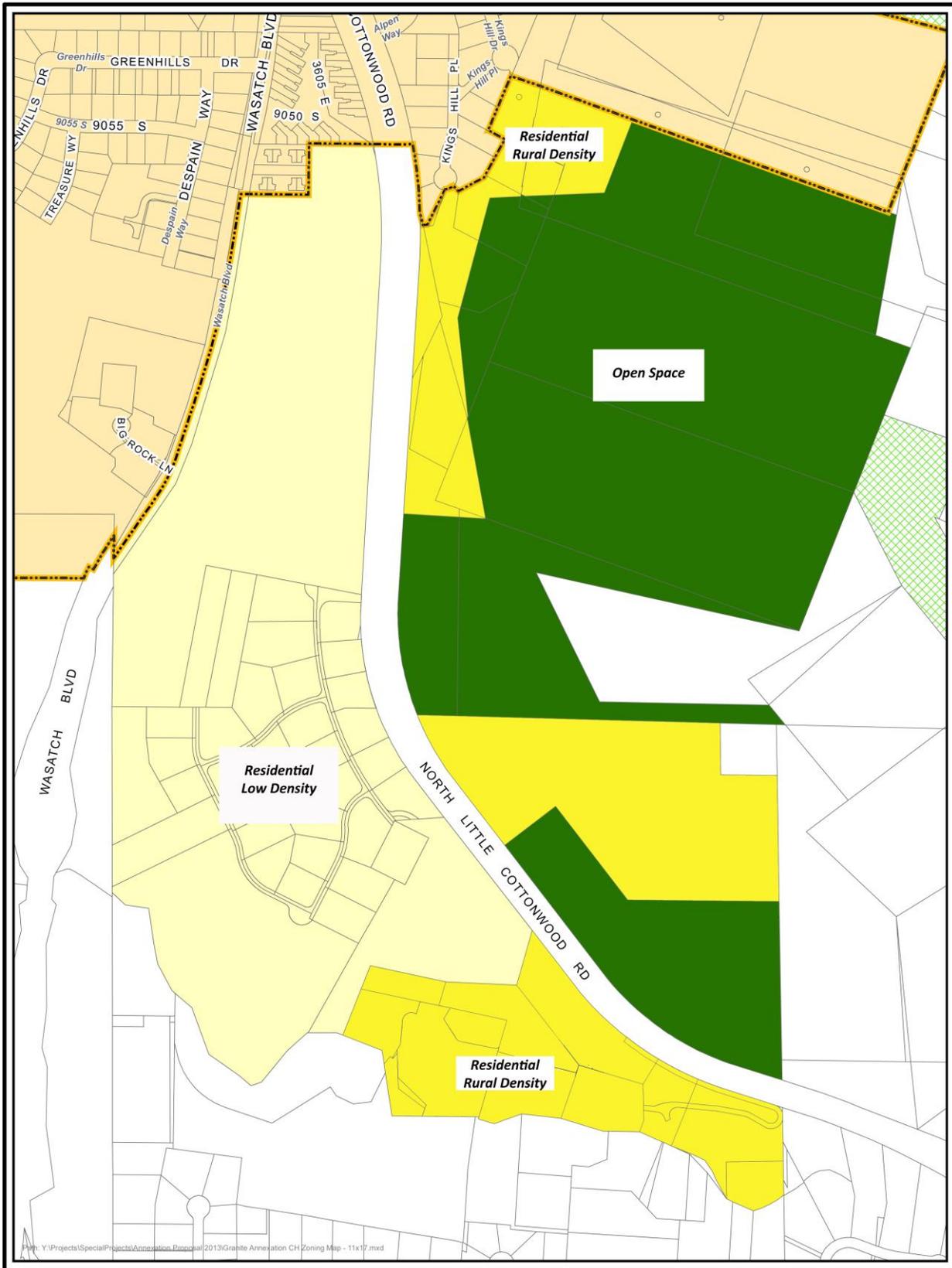
Community and Economic Development Department

801-944-7065

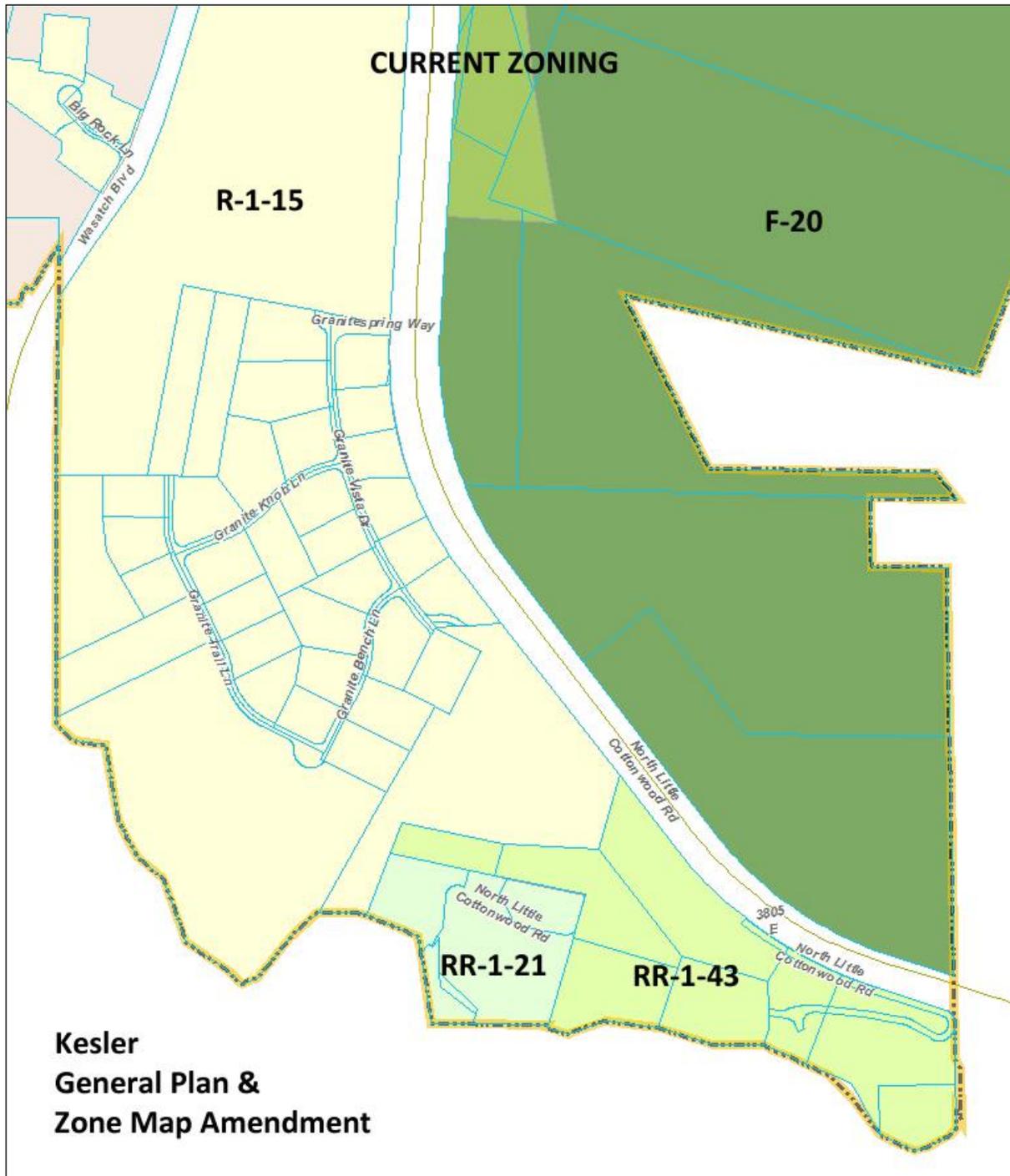
Context Aerial



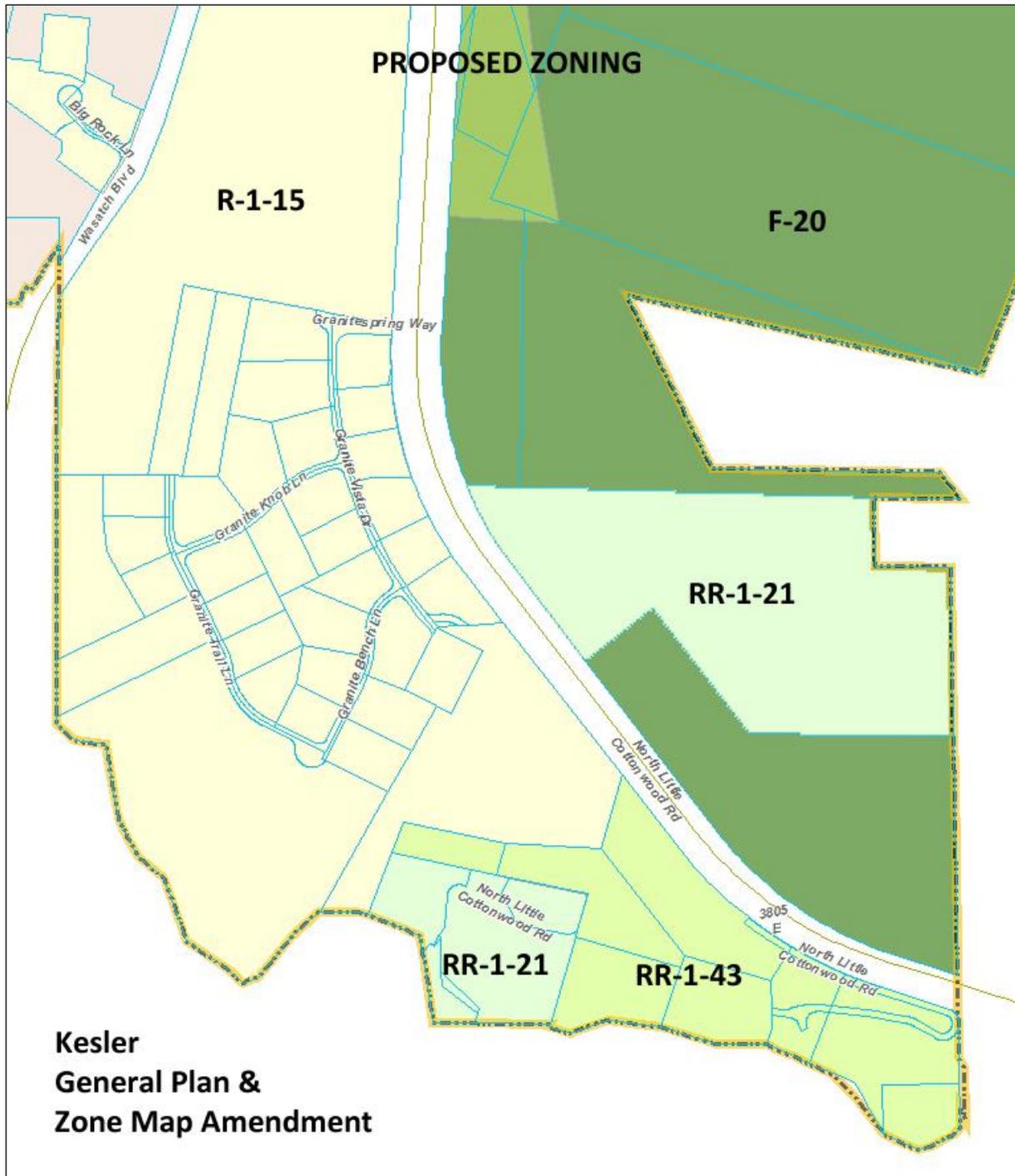
Proposed Land Use Plan



Current Zoning Map



Proposed Zoning



WHEN RECORDED RETURN TO:

COTTONWOOD HEIGHTS
Attn: Linda Dunlavy, City Recorder
1265 East Fort Union Blvd., Suite 250
Cottonwood Heights, UT 84047

Development Agreement
(15.365 Acres--9361 South North Little Cottonwood Canyon Road)

THIS DEVELOPMENT AGREEMENT (this “*Agreement*”) is entered into effective _____ 2016 by and among **LC CANYON PARTNERS, LLC**, a Utah limited liability company whose address is 3739 Brighton Point Drive, Cottonwood Heights, UT 84121 (“*Developer*”); and the city of **COTTONWOOD HEIGHTS**, a municipality and political subdivision of the State of Utah whose address until 1 September 2016 is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047, and whose address after 1 September 2016 is 2277 East Bengal Blvd., Cottonwood Heights, UT 84121 (“*City*”). Developer and City are hereinafter sometimes referred to individually as a “*Party*” or collectively as the “*Parties*.”

RECITALS:

A. Developer owns approximately 15.365 acres of real property located near 9361 South North Little Cottonwood Canyon Road within City's boundaries (the “*Property*”). The legal description of the Property is set forth on Exhibit "A" annexed hereto.

B. The Property currently is zoned F-20, which allows as a conditional use one residence per 20 acres of land. Further, the Property is located on a hillside and most of the Property consists of slopes exceeding 30% (collectively, the “*30% Slope*”), which are deemed undevelopable under Title 19 of City's code of ordinances (the “*Code*”).

C. Developer has made application to City for a general plan map amendment and rezone or map amendment necessary to assign an RR-1-21 zoning designation to the Property in anticipation of developing the Property as residential subdivision (the “*Project*”) containing seven buildable lots (“*Lots*”) comprising approximately 4.428 acres and two undevelopable parcels comprising approximately 10.937 acres and containing most of the 30% Slope (“*30% Slope Parcels*”).

D. The intent of this Agreement is to facilitate development of the Project in accordance with the Code and the site-specific land uses and development standards specified in this Agreement in order to provide for a creative development with unique and unusual characteristics for the benefit of all Parties.

E. City, acting pursuant to its authority under UTAH CODE ANN. §§ 10-9a-101, *et seq.* (“*LUDMA*”) has made certain determinations with respect to the Property and the proposed Project, and, in the exercise of its legislative discretion, has elected to process and approve this Agreement after all necessary public hearings and procedures have been conducted.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Incorporation of Recitals; Entire Agreement.** The above recitals and the exhibits referenced in this Agreement are hereby incorporated by reference as part of this Agreement. This Agreement integrates and constitutes all of the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements, or previous agreements between the Parties hereto with respect to such subject matter.

2. **Condition Precedent.** This Agreement is contingent upon and shall only become effective at such time, and in the event that, the Cottonwood Heights City Council (the “*Council*”), in the independent, unfettered exercise of its legislative discretion, elects to approve the proposed rezoning of the Property to the RR-1-21 zoning designation. This Agreement is not intended to and does not affect or in any way bind or supersede the independent exercise of legislative discretion by the Council in deciding whether to approve or deny the application for the rezoning of the Property. If any such rezoning occurs by legislative action of the Council but subsequently is reversed or revoked by any means other than legislative action of the Council, then this Agreement shall be deemed void *ab initio*.

3. **Plan.** Subject to Section 4.2, below, a plan (the “*Plan*”) depicting the permissible lots, building envelopes, street(s) and certain other dimensions and physical attributes of the Project is attached hereto as Exhibit B and is incorporated herein by this reference. The Project shall be limited to a maximum of seven Lots, which shall be exclusively used for single family residential purposes and shall be configured and located substantially as shown on the Plan. The approval of the Plan as part of this Agreement satisfies any Code requirement for a site plan, development plan or similar for the Project, provided that the Plan shall not constitute a preliminary or final subdivision plat for the Project.

4. **Project-Specific Development Standards.**

4.1. **Site Standards.** By this Agreement, the Parties intend to limit the uses, development standards and other regulations otherwise applicable to the Property under the RR-1-21 zoning designation as described in Code Chapter 19.20 in order to promote the efficient and creative development of the Property, which has unique or unusual characteristics. The specific allowed land uses, development standards and regulations for the Project that are to be used in substitution for the uses, development standards and other regulations contained in Code Chapter 19.20 are attached hereto as Exhibit C (the “*Site Standards*”) and incorporated herein by this reference. Developer shall develop the Project in accordance with the Plan (subject to Section 4.2) and in full compliance with the Site Standards and the Code.

4.2. **Amendments to Plan.** The Plan is a general depiction of locations and dimensions of Lots, building envelopes, streets, and certain other dimensional development attributes of the proposed Project. If required by the Code or the Site Standards, more detailed and specific site plans, subdivision plats and similar shall be submitted for approval before any actual construction may begin on any portion of the Property. Actual development of the Project

may deviate or vary slightly or in ways that are irrelevant to planning considerations from what is depicted on the Plan or which represent logical development of the details depicted on the Plan, provided that:

4.2.1. City reserves the right to require modifications of the Plan as reasonably necessary to assure Code compliance, including reducing the number of Lots to fewer than seven based on geotechnical considerations or other Code requirements.

4.2.2. The number of Lots on the Property may not exceed seven absent a subsequent legislative decision to the contrary by the Council in its sole, unfettered discretion. Developer otherwise irrevocably waives any right to seek to increase the number of Lots on the Property, including, without limitation, pursuant to any "density credit" applicable to the 30% Slope portion of the Property under Code Section 19.72.040(A), as amended.

4.2.3. Except as provided below in this subsection 4.2.3, Developer irrevocably waives any right to seek, through a conditional use or other administrative (non-legislative) process, to modify the size or location of Lots, building envelopes, streets, or other development attributes of the Property as shown on the Plan except as follows:

(a) If Developer desires to reduce the number of Lots to fewer than seven, Developer may administratively seek related increases in the size of, and the location of building envelopes on, the remaining Lots; and

(b) If Developer desires to seek modifications to the Plan which neither increase the number of Lots; cause any of the Lots to further impinge on the 30% Slope portion of the Property; materially change the road alignment or the sizes or locations of Lots or building envelopes, setbacks or other dimensional attributes of the Plan; nor change the Site Standards, then Developer shall submit a detailed request to City's community development director (the "*Director*"), who may administratively approve minor modifications to the Plan under the foregoing standards.

Any other modifications to the Plan or the Site Standards desired by Developer are subject to approval or disapproval by the Council in the independent, unfettered exercise of its legislative discretion following public hearing before, and recommendation by, the Commission.

4.3. Appeals. Any decision of the Director (a) approving or denying a request for a minor modification to the Plan, or (b) as to whether a proposed modification is a major amendment to the Plan that requires Council approval, is an administrative decision of City staff that may be appealed to City's appeal authority as provided in the Code. Any decision of the Council concerning a proposed major amendment to the Plan, or any amendment to the Site Standards, is a legislative decision that may be appealed to court as provided in LUDMA.

5. **Approval Process for Development Applications**. City shall process applications for development of the Project in accordance with the Code. Nothing in this Agreement shall be deemed to relieve Developer of the obligation to comply with all of the applicable requirements for approval of preliminary and final subdivision plats, or preliminary and final site plans, as applicable, for the proposed development of the Project consistent with the terms and conditions of this Agreement and the applicable provisions of the Code.

6. **Phasing.** Developer shall proceed with construction of the Project with reasonable diligence once construction commences. Developer may develop the Project in several phases as market conditions dictate so long as each phase provides for the logical extension of infrastructure and utilities as approved by City and in compliance with the terms of this Agreement and the applicable provisions of the Code. All phasing decisions for the Project shall constitute minor modifications subject to approval by the Director.

7. **Payment of Fees.**

7.1. *Development Application and Review Fees.* Developer shall pay to City all fees imposed by City (including, without limitation, application fees, impact fees and connection fees) for review and approval of development of any and all phases of the Project in the amounts set forth in City's Consolidated Fee Schedule from time to time. The Council hereby determines that there is a prevailing public interest in allowing deferral of the payment of fees for final subdivision and final site plan approval on a phase by phase basis for the Project.

7.2. *Other Fees.* City may charge other fees in existence from time to time during development of the Project, including, without limitation, standard building permit review and inspection fees for improvements to be constructed on the Property that are generally applicable to other developments within City.

7.3. *Reservation of Right to Challenge Fees.* Notwithstanding any provision of this Agreement, the Developer does not waive Developer's rights under any applicable law to challenge the reasonableness or legality of the amount or imposition of any fees.

8. **Vested Rights.**

8.1. *Vested Rights.* Developer shall have the vested right to have preliminary and final subdivision plats, or preliminary and final site plans, as applicable, approved and to develop and construct the Project, all in accordance with and subject to compliance with the terms and conditions of this Agreement and applicable provisions of the Code. If no substantial construction has been initiated as part of the Project within three years from the date of this Agreement plus any period of force majeure, City may rezone the Property back to the F-20 zoning district that existed prior to the Council's approval of the RR-1-21 zoning designation, in which event this Agreement shall be deemed terminated. To the extent that there is any conflict between the main body (text portion) of this Agreement and the exhibits to this Agreement, the more specific language or description, as the case may be, shall control. Where any conflict or ambiguity exists between the provisions of the Code and this Agreement (including the exhibits to this Agreement), this Agreement shall govern. Notwithstanding the foregoing, however, the rights vested as provided in this Agreement are not exempt from the application of the Code and to subsequently enacted ordinances to the extent such exemption would impair City's reserved legislative powers under Section 8.2, below.

8.2. *Reserved Legislative Powers.* The Parties acknowledge that City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to City those police powers that cannot be so limited. Notwithstanding the retained power of City to enact such legislation under the police powers, such legislation shall only be applied to modify any development standards that are applicable to the Project under the terms of this Agreement based upon the

policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine of the State of Utah. Any such proposed legislative changes shall be of general application to all development activity in City. Unless City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed change and its applicability to the Project under the compelling, countervailing public interest exception to the vested rights doctrine.

9. **Infrastructure and the Provision of Municipal Services.**

9.1. *Construction of Necessary Infrastructure.* Developer shall have the obligation to construct or cause to be constructed and installed all of the public or private infrastructure which are located on and/or necessary to service any portion of the Property, including, without limitation, roads, utilities and any off-site improvements necessary to connect to existing utilities.

9.2. *Third Party Service Providers.* City will only be the service provider of the public roads and public storm drainage facilities to service the Project. Developer shall be responsible to obtain the approval and incur the costs of constructing any off-site and on-site infrastructure and improvements from third party service providers (including, but not limited to, Rocky Mountain Power, Questar Gas and the Cottonwood Improvement District) that are necessary to service any portion of the Property. City shall reasonably cooperate, as necessary, in seeking approval and permits from such third party service providers.

9.3. *Maintenance of Private Roads and Improvements.* Developer shall have the duty to maintain all private roads and areas designated as such on subdivision plats that are located on the Property; provided, however, that responsibility for such maintenance may be assigned to an association of Lot owners (the "HOA") pursuant to covenants, conditions and restrictions recorded against the Property.

10. **Term of Agreement.** The term of this Agreement (the "Term") shall be for a period of 20 years following the effective date specified above, unless it is terminated earlier or its Term is modified by written amendment to this Agreement; provided that this Agreement shall continue to be effective perpetually as to applications that have been submitted and development that has occurred within the Project notwithstanding the termination of this Agreement.

11. **Assignment.** Subject to Section 13 below, Developer may not assign its rights or delegate its duties under this Agreement to any third party without City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that no such assignment shall relieve Developer from the obligation to assure the full and timely payment and performance of all of its duties under this Agreement.

12. **Default.**

12.1. *Notice.* If a Party fails to timely perform its obligations hereunder or to comply with the terms hereof, the Party believing that a default has occurred shall provide written notice (a "Notice of Default") to the defaulting Party as provided herein.

12.2. *Contents of the Notice of Default.* The Notice of Default shall:

12.2.1. Claim of Default. Specify the claimed event of default;

12.2.2. Identification of Provisions. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in default;

12.2.3. Specify Materiality. Identify why the default is claimed to be material; and

12.2.4. Optional Proposed Cure. In connection with an alleged default by Developer, a Notice of Default from City may also propose a method and time for Developer to cure the default.

12.3. Meet and Confer. Upon the issuance of a Notice of Default, the Parties shall meet within ten business days and confer in an attempt to resolve the issues that are the subject matter of the Notice of Default.

12.4. Remedies. If, after meeting and conferring, the Parties are not able to resolve the default, then the Parties shall have the following remedies:

12.4.1. Legal Remedies. The rights and remedies available at law and in equity including, without limitation, injunctive relief, specific performance and termination, but not including compensatory damages, punitive damages or attorney's fees.

12.4.2. Enforcement of Security. City shall have the right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular default.

12.4.3. Withholding Further Development Approvals. City shall have the right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Property; provided, however, that City shall not have such right with respect to any Lot that is not the subject of the Notice of Default but has been previously sold to an unrelated third party for purposes of construction of a single-family residence thereon.

12.5. Public Meeting. Before any remedy in Section 12.4 may be imposed by City, the party allegedly in default shall be afforded the right to attend a public meeting before the Council and address the Council regarding the claimed default.

12.6. Emergency Defaults. Anything in this Agreement notwithstanding, if the Council finds on the record that a default materially impairs a compelling, countervailing interest of City and that any delays in imposing such a default would also impair a compelling, countervailing interest of City, then City may impose the remedies of Section 12.4 without meeting the requirements of Section 12.5. City shall give written notice to the defaulting party of any public meeting at which an emergency default is to be considered and the defaulting party may address the Council at that meeting regarding the claimed emergency default.

12.7. Extended Cure Period. Any applicable cure period may be extended as needed by agreement of the Parties for good cause shown, so long as the defaulting party is pursuing a cure with reasonable diligence.

12.8. Cumulative Rights. The rights and remedies set forth herein shall be cumulative.

12.9. Waiver of Jury Trial. **Each of the Parties hereby irrevocably waives, to the fullest extent possible under applicable law, the right to request or obtain a trial by jury in connection with any lawsuit between the Parties arising from or related to this Agreement.**

13. Covenants Run with Land; Recording. This Agreement shall (a) create an equitable servitude on the Property in favor of City; (b) constitute a covenant running with the land; (c) bind every person having any fee, leasehold or other interest in any portion of the Property at any time or from time to time; and (d) inure to the benefit of and be binding upon Developer, City and their respective successors and assigns. City may record this Agreement in the office of the Salt Lake County Recorder so long as City records a termination of this Agreement contemporaneously with any termination of this Agreement due to failure of a condition precedent under Section 2, above.

14. Dedication/Conservation of 30% Slope Parcels. Developer believes that preservation and conservation of the 30% Slope Parcels as unbuildable open space will enhance the desirability and market value of the Lots, and City believes that such preservation and conservation of the 30% Slope Parcels will constitute a public benefit. Consequently, pursuant to the final subdivision plat for the Project, Developer shall (a) dedicate the 30% Slope Parcels to City for open space purposes; (b) create an open space or conservation easement on the 30% Slope Parcels in favor of City; or (c) otherwise act in similar fashion to perpetually preserve and conserve the 30% Slope Parcels as undevelopable open space, all as reasonably directed by City and utilizing such documents, instruments and agreements as City reasonably may require, such as, for example, a recordable general warranty deed effecting or affirming conveyance to City of unencumbered legal title to the 30% Slope Parcels for open space purposes; provided that such title may be subject to easements, rights of way, the lien of current year taxes (which shall be prorated as of the date of conveyance) and similar non-financial encumbrances acceptable to City in its reasonable judgment. City shall cooperate, without cost or liability, with Developer's reasonable efforts under applicable tax law to structure such conveyance as a donation to City.

15. General Provisions. The following provisions are also integral parts of this Agreement:

15.1. Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

15.2. Captions. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

15.3. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

15.4. Severability. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

15.5. Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement.

15.6. Cumulative Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law.

15.7. Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

15.8. Time of Essence. Time is the essence of this Agreement.

15.9. Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

15.10 Notice. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within three (3) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the parties at their respective addresses set forth above. Any Party may change its address or notice by giving written notice to the other Parties in accordance with the provisions of this Subsection.

15.11. Force Majeure. Neither party shall be responsible for delays or failure in performance resulting from acts beyond the control of such party, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, fire, communication line failures, power surges or failures, earthquakes, unseasonably severe weather conditions, or any other disasters or unusual and reasonably unforeseeable events beyond the reasonable control of the party required to perform, so long as the party charged with performance in that situation diligently pursues such performance. Force majeure events exclude, however, those arising from the financial condition of Developer or its successors.

15.12. Non-Liability of City Officials or Employees. No officer, representative, agent, or employee of City shall be personally liable to Developer, or any owner, officer, representative, agent, employee, successor-in-interest or assignee of Developer, in the event of any default or breach by City or for any amount which may become due to Developer or such related parties of Developer for any obligation arising pursuant to this Agreement.

15.13. No Third-Party Rights. The obligations of the Parties set forth in this Agreement shall not create any rights in or obligations to any persons or parties other than to City, Developer and their permitted successors and assigns. City and Developer, and their permitted successors and assigns, alone shall be entitled to enforce or waive any provisions of this Agreement to the extent that such provisions are for their benefit.

15.14. *Survival*. All agreements, covenants, representations, and warranties contained herein shall survive the execution and delivery of this Agreement and shall continue in full force and effect throughout the term of this Agreement.

15.15. *Public Information*. The Parties acknowledge that this Agreement and all documents and instruments related to this Agreement will be public records as provided in the Utah Government Records Access and Management Act, UTAH CODE ANN. § 63G-2-101, *et seq.*

[Signature pages follow]

DEVELOPER:

LC CANYON PARTNERS, LLC,
a Utah limited liability company

By: _____
Grant S. Kesler, Managing Member

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On __ _____ 2016, personally appeared before me **Grant S. Kesler**, who duly acknowledged to me that he executed the foregoing document as the managing member of **LC CANYON PARTNERS, LLC**, a Utah limited liability company.

Notary Public

Exhibit “A” to
Development Agreement

LEGAL DESCRIPTION OF THE PROPERTY:

(Insert legal description of Property)

Exhibit “B” to Development Agreement

(Attach Plan Showing Project with Lot Lines, Building Envelopes, Roads, Etc.)

Exhibit “C” to Development Agreement

To be used in substitution for Code Chapter 19.20 (RR-1-21, Rural Residential Zone), as amended:

Section 1. **Purpose.** The purpose of this project (this "*Project*") is to provide for low density rural residential development.

Section 2. **Permitted uses.** Permitted uses in the Project are limited to the following:

- (a) Single family detached dwellings; and
- (b) Accessory buildings customarily incidental to permitted uses.

Section 3. **Conditional uses.** There are no conditional uses in the Project except home occupations without customers/visitors.

Section 4. **Lot area.** The minimum lot size for any use in the Project is 21,780 square feet.

Section 5. **Lot width.** The minimum width of any lot in the Project is 80 feet measured 20 feet from the front lot line.

Section 6. **Front yard.** The minimum depth of the front yard for main buildings and for private garages which have a minimum side yard of eight feet shall be 30 feet. All accessory buildings, other than private garages which have a side yard of at least eight feet, shall be located at least six feet in the rear of the main building.

Section 7. **Side yard.**

(a) The minimum side yard for any dwelling shall be ten feet, and the total width of the two required side yards shall be not less than 20 feet.

(b) The minimum side yard for a private garage shall be eight feet, except that detached private garages and other accessory buildings located in the rear yard and at least six feet away from the main building shall maintain a minimum side yard of not less than five feet.

(c) On corner lots, the side yard which faces on a street for both main and accessory buildings shall be not less than 20 feet.

Section 8. **Rear yard.** The minimum depth of the rear yard for any main building shall be 30 feet, and for accessory buildings five feet; provided, that on corner lots which rear upon the side yard of another lot, accessory buildings shall be located not closer than ten feet to such side yard.

Section 9. **Maximum height of structures.** The maximum structure height shall be 30 feet.

Section 10. **Accessory buildings.**

(a) Accessory buildings in the Project shall maintain a minimum distance from property lines as follows:

(i) Front. Accessory buildings, including detached garages, shall maintain a setback of at least six feet from the main building in the rear yard of the particular property.

(ii) Sides. Five feet on interior lots; 20 feet on the street side of corner lots.

(iii) Rear. Five feet on interior lots; 20 feet on the street side of corner lots;

(b) Attached garages shall conform to the rear and side yard requirements of main buildings.

(c) No detached accessory structure shall exceed 20 feet in height. For each foot of height over 14 feet, a detached accessory structure shall be set back from property lines an additional foot from the minimum setback.

Section 11. Maximum lot coverage. The maximum lot coverage in the Project is 30%, which includes all structures.

Section 12. Open space requirement. The minimum open space requirement is 10% for a standard subdivision.

Planning Commission

MEETING DATE: April 6, 2016

MEETING TYPE: Public Hearing



STAFF REPORT

FILE NUMBER/

PROJECT NAME: ZMA 15-004 ROLA V LLC General Plan and Zone Map Amendment

LOCATION: 3801 East North Little Cottonwood Canyon Road

REQUEST: General Plan Amendment to Rural Residential and Rezone of 11.54 acres from F-20 to RR-1-21

APPLICANT: ROLA V LLC

STAFF RECOMMENDATION: Recommend approval to the City Council finding that:

1. The zone map/change is consistent with the Granite Community General Plan; and
2. The required public hearing has been held.

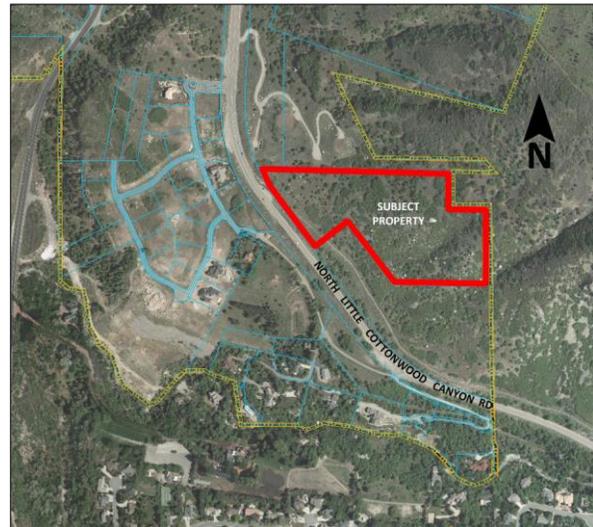
APPLICANT'S PROPOSAL

The proposal is to amend the general plan from Foothill Recreation to Rural Residential and to rezone 15 acres from F-20 to RR-1-21 on the east side of North Little Cottonwood Canyon Road at 3801 East, and have approved a development agreement limiting the potential development to a specified number of lots on a certain portion of the property.

BACKGROUND

General Plan

The subject property was part of an annexation by Cottonwood Heights that was part of unincorporated Salt Lake County that took effect on January 1, 2015. Upon annexation, the City adopted land use and zoning commensurate with the zoning designation applied by Salt Lake County, of F-20, Foothill Recreation. Because the General Plan was adopted based on the County Zoning, and not the County Land Use Plan for this area, the land use for this property, which includes consideration of the county land use plan, is being considered with this application. The Salt Lake County designation for this property was "Residential – Primarily Low Density Estates (less than 2 units per acre)," and "Forest Service / Open Space (possible limited residential)." The proposal is to amend the plan to show this property as "Rural Residential" which is a "very-low



density” designation that calls for “no more than 2 units per acre.” The proposed land use is the closest match that the city has to the county designation.

Zoning

The proposed zoning of Rural Residential, one-half acre is commensurate with the general plan designation that was assigned to this property for years prior to annexation in 2015. Of the total 11.54 acres, approximately 3.1 acres is less than 30% slope. This would limit the amount of developable land to the 3.1 acres, plus 30% of the undevelopable area could normally be considered for the density calculation in conjunction with a PUD. The proposed development agreement however, restricts the use of 30% slope are for density calculation. The request is for the entire 11.54 acres to be rezoned to RR-1-21.

Development Agreement

This application was previously considered by the planning commission and a negative recommendation was made, citing concern for the future potential of a Planned Unit Development being proposed which could request to utilize up to 30% of the non-buildable area (areas with 30% slope or greater) to calculate density, as mentioned above. The commission opposed the use of any portion of that steeply-sloped property being used for density. The applicants indicated that they did not intend to use the property for that purpose and asked to pursue a means whereby the use of steeply-sloped areas for additional density calculation was prohibited. The means by which this can be achieved is through the use of a development agreement. The city attorney, working with the applicant has drafted a development agreement which describes a set number of maximum lots which can be developed. In this case, six lots. Meaning that if through the development process limitations on development are discovered, such as sensitive lands, seismic, traffic or other issues which limit approvable lots to less than six, that limited amount could only be approved. The agreement also delineates the general location of the development area. Because the proposed concept plan shows lots which all meet minimum lot standards of the RR-1-21 zone, a future application for a PUD becomes unnecessary, and the agreement eliminates the ability for a PUD to be applied for. The agreement runs with the land, so any future owners, successors or assigns will be subject to the stipulations of the agreement. The agreement also has a sunset clause, providing that, if in two years’ time, no development has begun as detailed in the concept plan, the city can choose to rezone the property, reverting back to the F-20 zone. Staff finds this development agreement offers adequate protections for the surrounding residents, as well as the predictability of a concept plan which must be adhered to.

Traffic

As determined by the city engineer, the road servicing this property has sufficient capacity to handle the potential number of homes associated with this site. A traffic analysis will be required with future development proposal.

Adjacent Zoning:

- North: F-20 (Forestry Recreation) – (also proposed for RR-1-21)
- South: RR-1-43 (Rural Residential)
- East: Forest Service Property
- West: R-1-15 Residential

Process

19.90.010 Amendment procedure.

- A. *The city council may, from time to time, amend the number, shape, boundaries or area of any zone or any regulation within any zone or any other provisions of the zoning ordinance. The city council may not make any amendment authorized by this section unless the amendment was proposed by the planning commission or was first submitted to the planning commission for its recommendation. To become effective, zoning amendment applications which have received the positive recommendation of the planning commission must first receive the favorable vote of not less than a majority of the entire membership of the city council.*
- B. *Zoning amendment applications which receive a recommendation of denial by the planning commission shall thereafter be considered by the city council as provided in section 19.90.030.*

19.90.030 Determination of city council.

The city council, after review of the recommendation of the planning commission, may affirm, reverse, alter or remand for further review and consideration any recommendation made by the planning commission.

Notice

Noticing procedure for zone amendments in Cottonwood Heights defers to state law. The public hearing was noticed as required. In addition property owners within 1,000 feet were mailed individual notices of the time and date of the public hearing. See Utah Code Ann. 10-9a-205.

Possible Motions

Sample Motion for a Positive Recommendation – “I move we forward a positive recommendation to the City Council for the Kesler General Plan and Zone Map Amendment Request by ROLA V LLC, application ZMA 15-004, based on the findings listed in the Staff Report dated April 6, 2016 and as modified by the conditions below:”

1. List any additional findings...

Sample Motion for a Negative Recommendation – “I move we forward a negative recommendation to the City Council for the Kesler General Plan and Zone Map Amendment Request by ROLA V LLC, application ZMA 15-004, based on the findings listed in the Staff Report dated April 6, 2016 and as modified by the conditions below:”

1. List any additional findings...

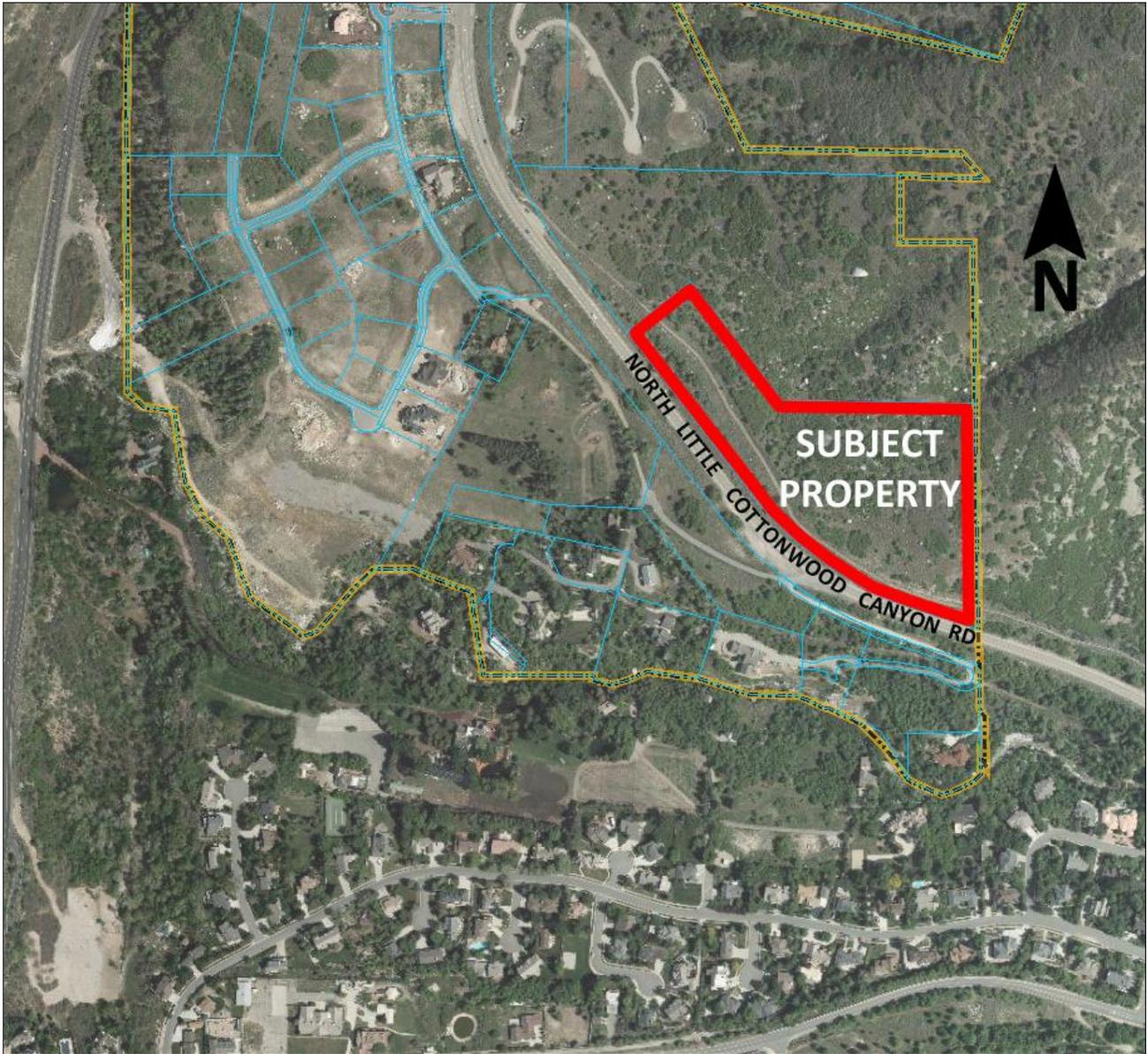
Staff:

Glen Goins

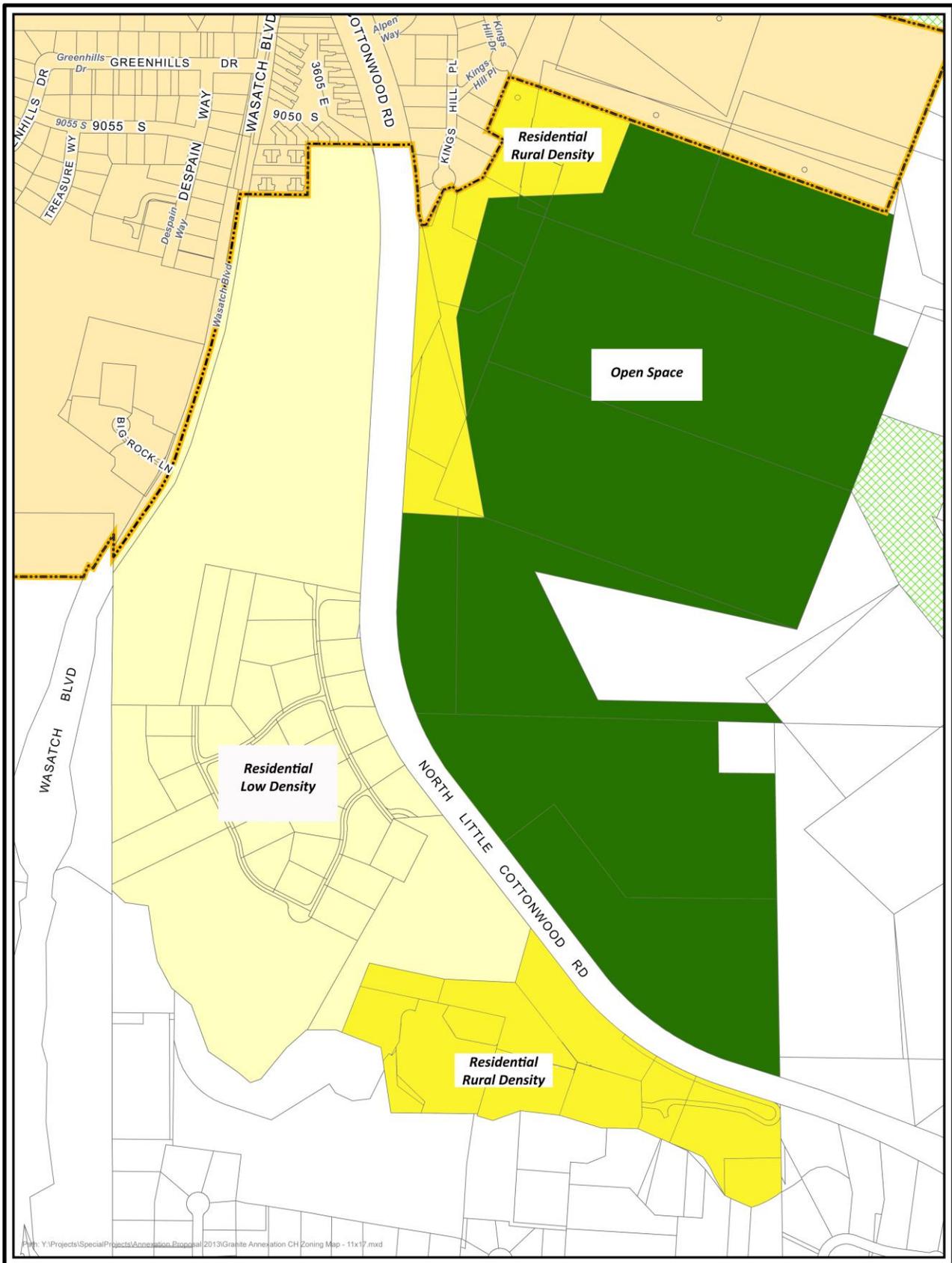
Community and Economic Development Department

801-944-7065

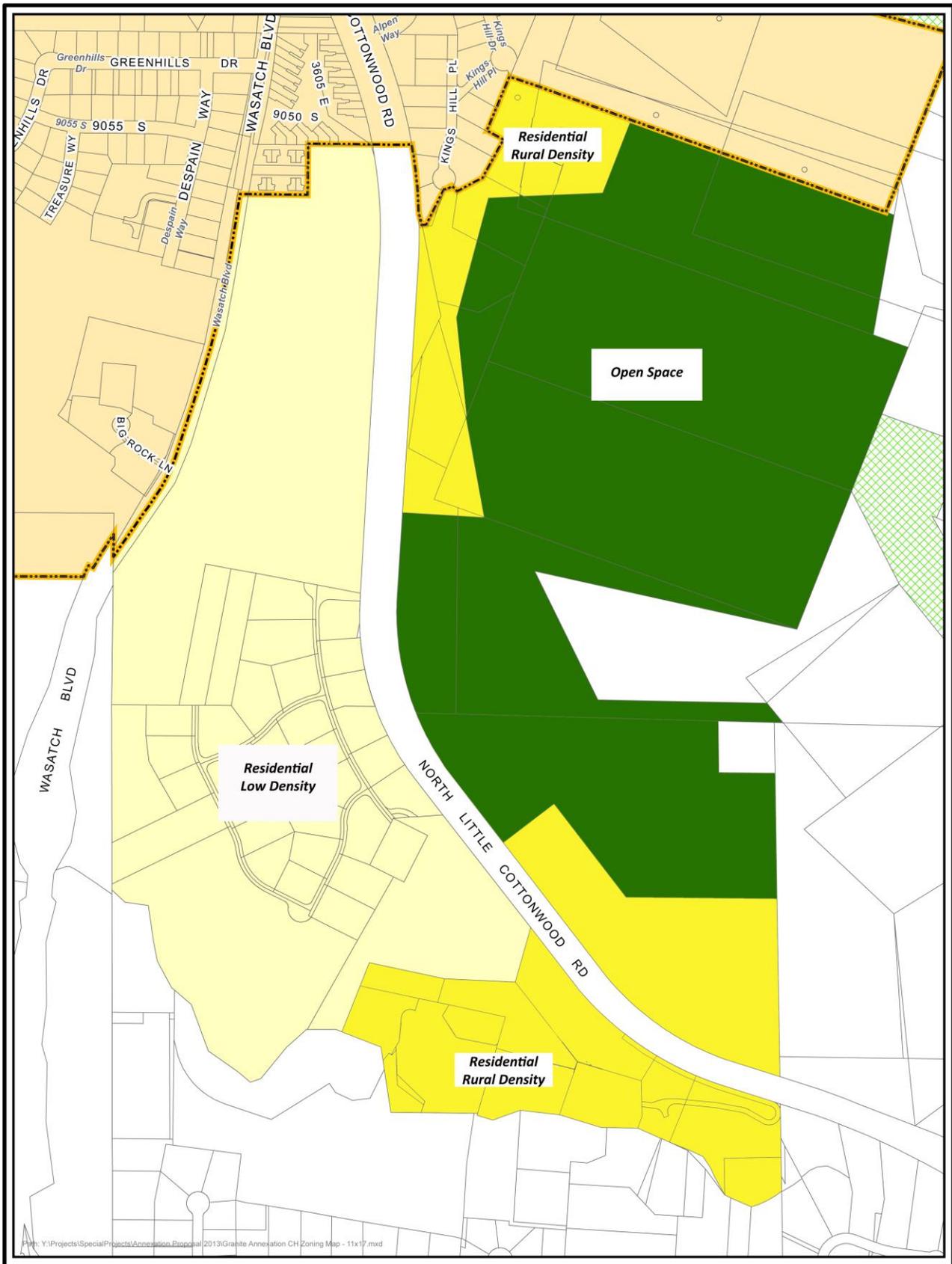
Context Aerial



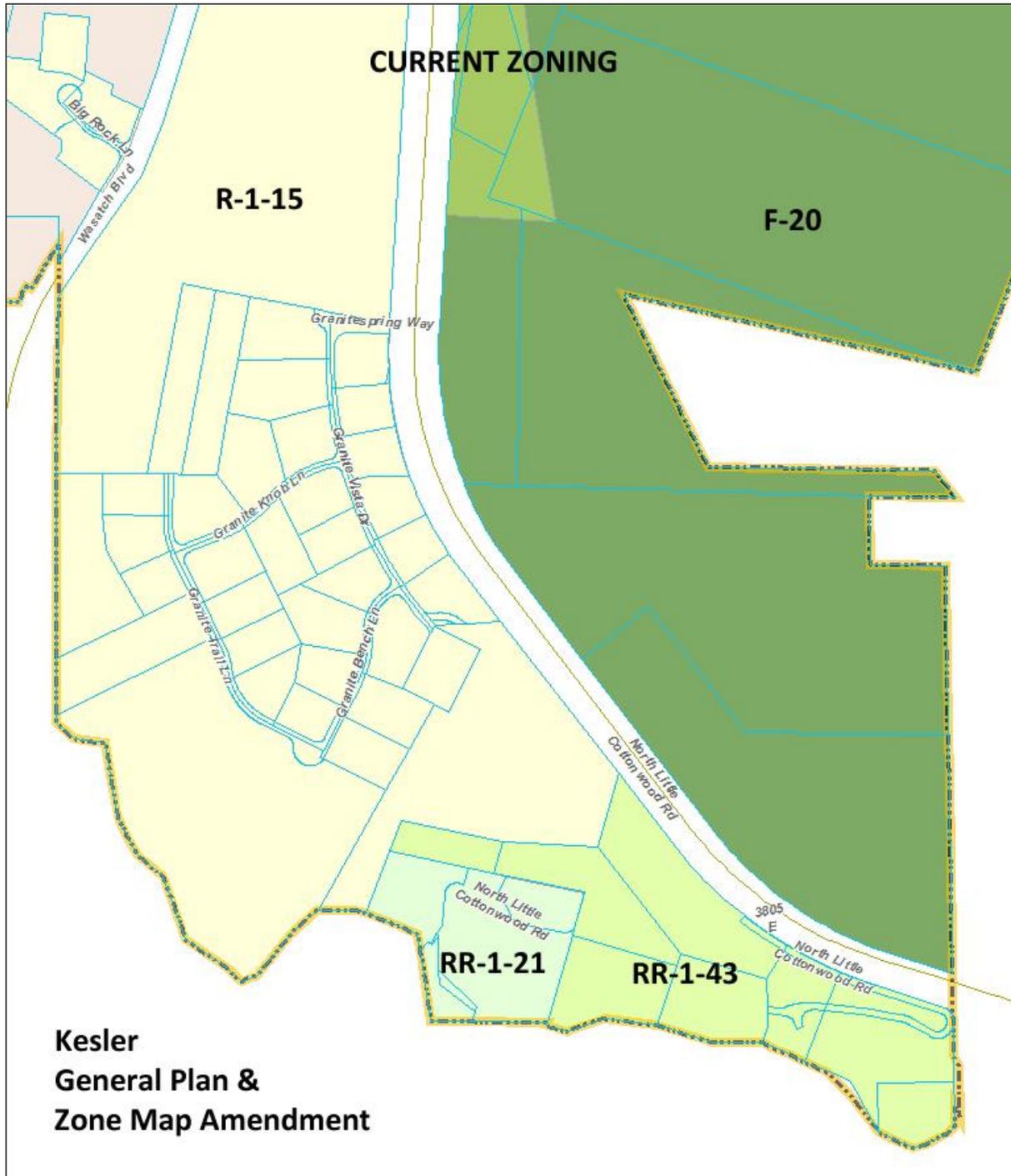
Current Land Use Plan



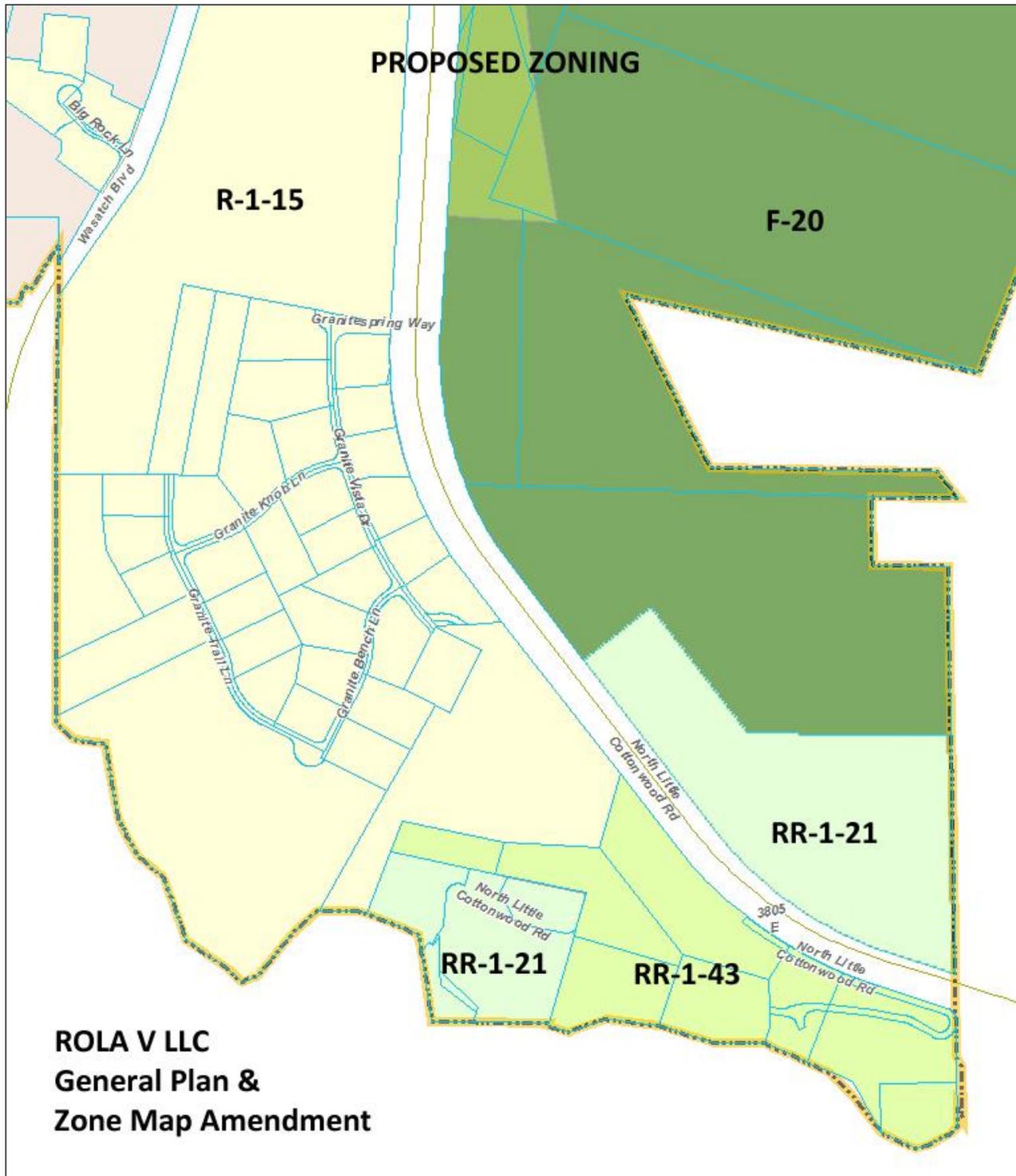
Proposed Land Use Plan



Current Zoning Map



Proposed Cottonwood Heights Zoning Map



WHEN RECORDED RETURN TO:

COTTONWOOD HEIGHTS
Attn: Linda Dunlavy, City Recorder
1265 East Fort Union Blvd., Suite 250
Cottonwood Heights, UT 84047

Development Agreement
(11.54 Acres--3801 East North Little Cottonwood Canyon Road)

THIS DEVELOPMENT AGREEMENT (this "*Agreement*") is entered into effective _____ 2016 by and among **ROLA V, LLC**, a Utah limited liability company f/k/a **ROLA V, LTD.**, **DAVID L. DESPAIN** and **OLSON FAMILY LIMITED PARTNERSHIP**, an Idaho limited partnership, whose joint address is c/o 3802 East North Little Cottonwood Canyon Road, Sandy, UT 84092 (collectively, "*Developer*"); and the city of **COTTONWOOD HEIGHTS**, a municipality and political subdivision of the State of Utah whose address until 1 September 2016 is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047, and whose address after 1 September 2016 is 2277 East Bengal Blvd., Cottonwood Heights, UT 84121 ("*City*"). Developer and City are hereinafter sometimes referred to individually as a "*Party*" or collectively as the "*Parties*."

RECITALS:

A. Developer owns approximately 11.54 acres of real property located near 3801 East North Little Cottonwood Canyon Road within City's boundaries (the "*Property*"). The legal description of the Property is set forth on Exhibit "A" annexed hereto.

B. The Property currently is zoned F-20, which allows as a conditional use one residence per 20 acres of land. Further, the Property is located on a hillside and most of the Property consists of slopes exceeding 30% (collectively, the "*30% Slope*"), which are deemed undevelopable under Title 19 of City's code of ordinances (the "*Code*").

C. Developer has made application to City for a general plan map amendment and rezone or map amendment necessary to assign an RR-1-21 zoning designation to the Property in anticipation of developing the Property as residential subdivision (the "*Project*") containing six buildable lots ("*Lots*") comprising approximately 3.11 acres and three undevelopable parcels comprising approximately 8.43 acres and containing most of the 30% Slope ("*30% Slope Parcels*").

D. The intent of this Agreement is to facilitate development of the Project in accordance with the Code and the site-specific land uses and development standards specified in this Agreement in order to provide for a creative development with unique and unusual characteristics for the benefit of all Parties.

E. City, acting pursuant to its authority under UTAH CODE ANN. §§ 10-9a-101, *et seq.* ("*LUDMA*") has made certain determinations with respect to the Property and the proposed Project, and, in the exercise of its legislative discretion, has elected to process and approve this Agreement after all necessary public hearings and procedures have been conducted.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Incorporation of Recitals; Entire Agreement.** The above recitals and the exhibits referenced in this Agreement are hereby incorporated by reference as part of this Agreement. This Agreement integrates and constitutes all of the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements, or previous agreements between the Parties hereto with respect to such subject matter.

2. **Condition Precedent.** This Agreement is contingent upon and shall only become effective at such time, and in the event that, the Cottonwood Heights City Council (the "*Council*"), in the independent, unfettered exercise of its legislative discretion, elects to approve the proposed rezoning of the Property to the RR-1-21 zoning designation. This Agreement is not intended to and does not affect or in any way bind or supersede the independent exercise of legislative discretion by the Council in deciding whether to approve or deny the application for the rezoning of the Property. If any such rezoning occurs by legislative action of the Council but subsequently is reversed or revoked by any means other than legislative action of the Council, then this Agreement shall be deemed void *ab initio*.

3. **Plan.** Subject to Section 4.2, below, a plan (the "*Plan*") depicting the permissible lots, building envelopes, street(s) and certain other dimensions and physical attributes of the Project is attached hereto as Exhibit B and is incorporated herein by this reference. The Project shall be limited to a maximum of six Lots, which shall be exclusively used for single family residential purposes and shall be configured and located substantially as shown on the Plan. The approval of the Plan as part of this Agreement satisfies any Code requirement for a site plan, development plan or similar for the Project, provided that the Plan shall not constitute a preliminary or final subdivision plat for the Project.

4. **Project-Specific Development Standards.**

4.1. **Site Standards.** By this Agreement, the Parties intend to limit the uses, development standards and other regulations otherwise applicable to the Property under the RR-1-21 zoning designation as described in Code Chapter 19.20 in order to promote the efficient and creative development of the Property, which has unique or unusual characteristics. The specific allowed land uses, development standards and regulations for the Project that are to be used in substitution for the uses, development standards and other regulations contained in Code Chapter 19.20 are attached hereto as Exhibit C (the "*Site Standards*") and incorporated herein by this reference. Developer shall develop the Project in accordance with the Plan (subject to Section 4.2) and in full compliance with the Site Standards and the Code.

4.2. **Amendments to Plan.** The Plan is a general depiction of locations and dimensions of Lots, building envelopes, streets, and certain other dimensional development attributes of the proposed Project. If required by the Code or the Site Standards, more detailed and specific site plans, subdivision plats and similar shall be submitted for approval before any actual construction may begin on any portion of the Property. Actual development of the Project

may deviate or vary slightly or in ways that are irrelevant to planning considerations from what is depicted on the Plan or which represent logical development of the details depicted on the Plan, provided that:

4.2.1. City reserves the right to require modifications of the Plan as reasonably necessary to assure Code compliance, including reducing the number of Lots to fewer than six based on geotechnical considerations or other Code requirements.

4.2.2. The number of Lots on the Property may not exceed six absent a subsequent legislative decision to the contrary by the Council in its sole, unfettered discretion. Developer otherwise irrevocably waives any right to seek to increase the number of Lots on the Property, including, without limitation, pursuant to any "density credit" applicable to the 30% Slope portion of the Property under Code Section 19.72.040(A), as amended.

4.2.3. Except as provided below in this subsection 4.2.3, Developer irrevocably waives any right to seek, through a conditional use or other administrative (non-legislative) process, to modify the size or location of Lots, building envelopes, streets, or other development attributes of the Property as shown on the Plan except as follows:

(a) If Developer desires to reduce the number of Lots to fewer than six, Developer may administratively seek related increases in the size of, and the location of building envelopes on, the remaining Lots; and

(b) If Developer desires to seek minor modifications to the Plan which neither increase the number of Lots; cause any of the Lots to further impinge on the 30% Slope portion of the Property; materially change the road alignment or the sizes or locations of Lots or building envelopes, setbacks and other dimensional attributes of the Plan; nor change the Site Standards, then Developer shall submit a detailed request to City's community development director (the "*Director*"), who may administratively approve minor modifications to the Plan under the foregoing standards.

Any other modifications to the Plan or the Site Standards desired by Developer are subject to approval or disapproval by the Council in the independent, unfettered exercise of its legislative discretion following public hearing before, and recommendation by, the Commission.

4.3. Appeals. Any decision of the Director (a) approving or denying a request for a minor modification to the Plan, or (b) as to whether a proposed modification is a major amendment to the Plan that requires Council approval, is an administrative decision of City staff that may be appealed to City's appeal authority as provided in the Code. Any decision of the Council concerning a proposed major amendment to the Plan, or any amendment to the Site Standards, is a legislative decision that may be appealed to court as provided in LUDMA.

5. **Approval Process for Development Applications**. City shall process applications for development of the Project in accordance with the Code. Nothing in this Agreement shall be deemed to relieve Developer of the obligation to comply with all of the applicable requirements for approval of preliminary and final subdivision plats, or preliminary and final site plans, as applicable, for the proposed development of the Project consistent with the terms and conditions of this Agreement and the applicable provisions of the Code.

6. **Phasing.** Developer shall proceed with construction of the Project with reasonable diligence once construction commences. Developer may develop the Project in several phases as market conditions dictate so long as each phase provides for the logical extension of infrastructure and utilities as approved by City and in compliance with the terms of this Agreement and the applicable provisions of the Code. All phasing decisions for the Project shall constitute minor modifications subject to approval by the Director.

7. **Payment of Fees.**

7.1. *Development Application and Review Fees.* Developer shall pay to City all fees imposed by City (including, without limitation, application fees, impact fees and connection fees) for review and approval of development of any and all phases of the Project in the amounts set forth in City's Consolidated Fee Schedule from time to time. The Council hereby determines that there is a prevailing public interest in allowing deferral of the payment of fees for final subdivision and final site plan approval on a phase by phase basis for the Project.

7.2. *Other Fees.* City may charge other fees in existence from time to time during development of the Project, including, without limitation, standard building permit review and inspection fees for improvements to be constructed on the Property that are generally applicable to other developments within City.

7.3. *Reservation of Right to Challenge Fees.* Notwithstanding any provision of this Agreement, the Developer does not waive Developer's rights under any applicable law to challenge the reasonableness or legality of the amount or imposition of any fees.

8. **Vested Rights.**

8.1. *Vested Rights.* Developer shall have the vested right to have preliminary and final subdivision plats, or preliminary and final site plans, as applicable, approved and to develop and construct the Project in accordance with and subject to compliance with the terms and conditions of this Agreement and applicable provisions of the Code. If no substantial construction has been initiated as part of the Project within three years from the date of this Agreement plus any period of force majeure, City may rezone the Property back to the F-20 zoning district that existed prior to the Council's approval of the RR-1-21 zoning designation, in which event this Agreement shall be deemed terminated. To the extent that there is any conflict between the main body (text portion) of this Agreement and the exhibits to this Agreement, the more specific language or description, as the case may be, shall control. Where any conflict or ambiguity exists between the provisions of the Code and this Agreement (including the exhibits to this Agreement), this Agreement shall govern. Notwithstanding the foregoing, however, the rights vested as provided in this Agreement are not exempt from the application of the Code and to subsequently enacted ordinances to the extent such exemption would impair City's reserved legislative powers under Section 8.2, below.

8.2. *Reserved Legislative Powers.* The Parties acknowledge that City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to City those police powers that cannot be so limited. Notwithstanding the retained power of City to enact such legislation under the police powers, such legislation shall only be applied to modify any development standards that are applicable to the Project under the terms of this Agreement based upon the

policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine of the State of Utah. Any such proposed legislative changes shall be of general application to all development activity in City. Unless City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed change and its applicability to the Project under the compelling, countervailing public interest exception to the vested rights doctrine.

9. **Infrastructure and the Provision of Municipal Services.**

9.1. *Construction of Necessary Infrastructure.* Developer shall have the obligation to construct or cause to be constructed and installed all of the public or private infrastructure which are located on and/or necessary to service any portion of the Property, including, without limitation, roads, utilities and any off-site improvements necessary to connect to existing utilities.

9.2. *Third Party Service Providers.* City will only be the service provider of the public roads and storm drainage facilities to service the Project. Developer shall be responsible to obtain the approval and incur the costs of constructing any off-site and on-site infrastructure and improvements from third party service providers (including, but not limited to, Rocky Mountain Power, Questar Gas and the Cottonwood Improvement District) that are necessary to service any portion of the Property. City shall reasonably cooperate, as necessary, in seeking approval and permits from such third party service providers.

9.3. *Maintenance of Private Roads and Improvements.* Developer shall have the duty to maintain all private roads and areas designated as such on subdivision plats that are located on the Property; provided, however, that responsibility for such maintenance may be assigned to an association of Lot owners (the "HOA") pursuant to covenants, conditions and restrictions recorded against the Property.

10. **Term of Agreement.** The term of this Agreement (the "Term") shall be for a period of 20 years following the effective date specified above, unless it is terminated earlier or its Term is modified by written amendment to this Agreement; provided that this Agreement shall continue to be effective perpetually as to applications that have been submitted and development that has occurred within the Project notwithstanding the termination of this Agreement.

11. **Assignment.** Subject to Section 13 below, Developer may not assign its rights or delegate its duties under this Agreement to any third party without City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that no such assignment shall relieve Developer from the obligation to assure the full and timely payment and performance of all of its duties under this Agreement.

12. **Default.**

12.1. *Notice.* If a Party fails to timely perform its obligations hereunder or to comply with the terms hereof, the Party believing that a default has occurred shall provide written notice (a "Notice of Default") to the defaulting Party as provided herein.

12.2. *Contents of the Notice of Default.* The Notice of Default shall:

12.2.1. Claim of Default. Specify the claimed event of default;

12.2.2. Identification of Provisions. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in default;

12.2.3. Specify Materiality. Identify why the default is claimed to be material; and

12.2.4. Optional Proposed Cure. In connection with an alleged default by Developer, a Notice of Default from City may also propose a method and time for Developer to cure the default.

12.3. Meet and Confer. Upon the issuance of a Notice of Default, the Parties shall meet within ten business days and confer in an attempt to resolve the issues that are the subject matter of the Notice of Default.

12.4. Remedies. If, after meeting and conferring, the Parties are not able to resolve the default, then the Parties shall have the following remedies:

12.4.1. Legal Remedies. The rights and remedies available at law and in equity including, without limitation, injunctive relief, specific performance and termination, but not including compensatory damages, punitive damages or attorney's fees.

12.4.2. Enforcement of Security. City shall have the right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular default.

12.4.3. Withholding Further Development Approvals. City shall have the right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Property; provided, however, that City shall not have such right with respect to any Lot that is not the subject of the Notice of Default but has been previously sold to an unrelated third party for purposes of construction of a single-family residence thereon.

12.5. Public Meeting. Before any remedy in Section 12.4 may be imposed by City, the party allegedly in default shall be afforded the right to attend a public meeting before the Council and address the Council regarding the claimed default.

12.6. Emergency Defaults. Anything in this Agreement notwithstanding, if the Council finds on the record that a default materially impairs a compelling, countervailing interest of City and that any delays in imposing such a default would also impair a compelling, countervailing interest of City, then City may impose the remedies of Section 12.4 without meeting the requirements of Section 12.5. City shall give written notice to the defaulting party of any public meeting at which an emergency default is to be considered and the defaulting party may address the Council at that meeting regarding the claimed emergency default.

12.7. Extended Cure Period. Any applicable cure period may be extended as needed by agreement of the Parties for good cause shown, so long as the defaulting party is pursuing a cure with reasonable diligence.

12.8. Cumulative Rights. The rights and remedies set forth herein shall be cumulative.

12.9. Waiver of Jury Trial. **Each of the Parties hereby irrevocably waives, to the fullest extent possible under applicable law, the right to request or obtain a trial by jury in connection with any lawsuit between the Parties arising from or related to this Agreement.**

13. Covenants Run with Land; Recording. This Agreement shall (a) create an equitable servitude on the Property in favor of City; (b) constitute a covenant running with the land; (c) bind every person having any fee, leasehold or other interest in any portion of the Property at any time or from time to time; and (d) inure to the benefit of and be binding upon Developer, City and their respective successors and assigns. City may record this Agreement in the office of the Salt Lake County Recorder so long as City records a termination of this Agreement contemporaneously with any termination of this Agreement due to failure of a condition precedent under Section 2, above.

14. Dedication/Conservation of 30% Slope Parcels. Developer believes that preservation and conservation of the 30% Slope Parcels as unbuildable open space will enhance the desirability and market value of the Lots, and City believes that such preservation and conservation of the 30% Slope Parcels will constitute a public benefit. Consequently, pursuant to the final subdivision plat for the Project, Developer shall (a) dedicate the 30% Slope Parcels to City or its designee for open space purposes; (b) create an open space or conservation easement on the 30% Slope Parcels in favor of City or its designee; or (c) otherwise act in a similar fashion to perpetually preserve and conserve the 30% Slope Parcels as undevelopable open space, all as reasonably directed by City and utilizing such documents, instruments and agreements as City reasonably may require, such as, for example, a recordable general warranty deed effecting or affirming conveyance to City or its designee of unencumbered legal title to the 30% Slope Parcels for open space purposes; provided that such title may be subject to easements, rights of way, the lien of current year taxes (which shall be prorated as of the date of conveyance) and similar non-financial encumbrances acceptable to City in its reasonable judgment. City shall cooperate, without cost or liability, with Developer's reasonable efforts under applicable tax law to structure such conveyance as a donation to City. Notwithstanding the foregoing, however, if City desires to be conveyed legal title to the 30% Slope Parcels (designated as Parcels A, B and C on the Plan), Developer may, at its option, elect to not convey legal title to Parcel A and/or Parcel B but instead to retain (or have the HOA retain) title to Parcels A and/or B as landscaped, but otherwise undeveloped, amenities of the Project maintained at Developer's or the HOA's cost, so long as such parcel(s) are perpetually preserved as open space through an express easement or similar legal mechanism as reasonably directed by City utilizing such documents, instruments and agreements as City or its designee may require.

15. General Provisions. The following provisions are also integral parts of this Agreement:

15.1. Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

15.2. Captions. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

15.3. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

15.4. Severability. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

15.5. Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement.

15.6. Cumulative Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law.

15.7. Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

15.8. Time of Essence. Time is the essence of this Agreement.

15.9. Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

15.10 Notice. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within three (3) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the parties at their respective addresses set forth above. Any Party may change its address or notice by giving written notice to the other Parties in accordance with the provisions of this Subsection.

15.11. Force Majeure. Neither party shall be responsible for delays or failure in performance resulting from acts beyond the control of such party, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, fire, communication line failures, power surges or failures, earthquakes, unseasonably severe weather conditions, or any other disasters or unusual and reasonably unforeseeable events beyond the reasonable control of the party required to perform, so long as the party charged with performance in that situation diligently pursues such performance. Force majeure events exclude, however, those arising from the financial condition of Developer or its successors.

15.12. Non-Liability of City Officials or Employees. No officer, representative, agent, or employee of City shall be personally liable to Developer, or any owner, officer, representative, agent, employee, successor-in-interest or assignee of Developer, in the event of

any default or breach by City or for any amount which may become due to Developer or such related parties of Developer for any obligation arising pursuant to this Agreement.

15.13. No Third-Party Rights. The obligations of the Parties set forth in this Agreement shall not create any rights in or obligations to any persons or parties other than to City, Developer and their permitted successors and assigns. City and Developer, and their permitted successors and assigns, alone shall be entitled to enforce or waive any provisions of this Agreement to the extent that such provisions are for their benefit.

15.14. Survival. All agreements, covenants, representations, and warranties contained herein shall survive the execution and delivery of this Agreement and shall continue in full force and effect throughout the term of this Agreement.

15.15. Public Information. The Parties acknowledge that this Agreement and all documents and instruments related to this Agreement will be public records as provided in the Utah Government Records Access and Management Act, UTAH CODE ANN. § 63G-2-101, *et seq.*

[Signature pages follow]

DEVELOPER:

OLSON FAMILY LIMITED PARTNERSHIP,
an Idaho limited partnership

By: _____
_____, General Partner

DAVID L. DESPAIN

ROLA V, LLC, a Utah limited liability company
f/k/a **ROLA V, LTD.**, a Utah limited partnership

By: _____
Susan Despain, Manager

By: _____
Shane P. Nielsen, Manager

By: _____
Eric M. Despain, Manager

STATE OF _____)
: ss.
COUNTY OF _____)

On __ _____ 2016, personally appeared before me _____, who
duly acknowledged to me that he executed the foregoing document as the general partner of
OLSON FAMILY LIMITED PARTNERSHIP, an Idaho limited partnership.

Notary Public

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On ___ _____ 2016, personally appeared before me **DAVID L. DESPAIN**, who duly acknowledged to me that he executed the foregoing document.

Notary Public

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On ___ _____ 2016, personally appeared before me **Susan Despain, Shane P. Nielsen** and **Eric M. Despain**, who duly acknowledged to me that they executed the foregoing document as the managers of **ROLA V, LLC**, a Utah limited liability company.

Notary Public

Exhibit "A" to Development Agreement

LEGAL DESCRIPTION OF THE PROPERTY:

Beginning at a point which is South 1°27'58" East 690 feet from the North 1/4 corner of Section 12, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence South 1°27'58" East 696.41 feet to the Northeasterly line of North Little Cottonwood Road; thence North 73°05'42" West 220.72 feet; thence Northwesterly along the arc of a 956.60 foot radius curve to the right (center bears North 16°54'18" East and long chord bears North 55°36'42" West 574.78 feet) along the Northeasterly line of said road; thence North 38°07'42" West 655.84 feet along the Northeasterly line of said road; thence North 51°52'18" East 250 feet; thence South 38°07'42" East 461.33 feet; thence East 591.13 feet to the point of beginning.

Exhibit “B” to Development Agreement

(Attach Plan Showing Project with Lot Lines, Building Envelopes, Roads, Etc.)

Exhibit “C” to Development Agreement

To be used in substitution for Code Chapter 19.20 (RR-1-21, Rural Residential Zone), as amended:

Section 1. **Purpose.** The purpose of this project (this "*Project*") is to provide for low density rural residential development.

Section 2. **Permitted uses.** Permitted uses in the Project are limited to the following:
(a) Single family detached dwellings; and
(b) Accessory buildings customarily incidental to permitted uses.

Section 3. **Conditional uses.** There are no conditional uses in the Project except home occupations without customers/visitors.

Section 4. **Lot area.** The minimum lot size for any use in the Project is 21,780 square feet.

Section 5. **Lot width.** The minimum width of any lot in the Project is 80 feet measured 20 feet from the front lot line.

Section 6. **Front yard.** The minimum depth of the front yard for main buildings and for private garages which have a minimum side yard of eight feet shall be 30 feet. All accessory buildings, other than private garages which have a side yard of at least eight feet, shall be located at least six feet in the rear of the main building.

Section 7. **Side yard.**
(a) The minimum side yard for any dwelling shall be ten feet, and the total width of the two required side yards shall be not less than 20 feet.
(b) The minimum side yard for a private garage shall be eight feet, except that detached private garages and other accessory buildings located in the rear yard and at least six feet away from the main building shall maintain a minimum side yard of not less than five feet.
(c) On corner lots, the side yard which faces on a street for both main and accessory buildings shall be not less than 20 feet.

Section 8. **Rear yard.** The minimum depth of the rear yard for any main building shall be 30 feet, and for accessory buildings five feet; provided, that on corner lots which rear upon the side yard of another lot, accessory buildings shall be located not closer than ten feet to such side yard.

Section 9. **Maximum height of structures.** The maximum structure height shall be 30 feet.

Section 10. **Accessory buildings.**
(a) Accessory buildings in the Project shall maintain a minimum distance from property lines as follows:

(i) Front. Accessory buildings, including detached garages, shall maintain a setback of at least six feet from the main building in the rear yard of the particular property.

(ii) Sides. Five feet on interior lots; 20 feet on the street side of corner lots.

(iii) Rear. Five feet on interior lots; 20 feet on the street side of corner lots;

(b) Attached garages shall conform to the rear and side yard requirements of main buildings.

(c) No detached accessory structure shall exceed 20 feet in height. For each foot of height over 14 feet, a detached accessory structure shall be set back from property lines an additional foot from the minimum setback.

Section 11. Maximum lot coverage. The maximum lot coverage in the Project is 30%, which includes all structures.

Section 12. Open space requirement. The minimum open space requirement is 10% for a standard subdivision.

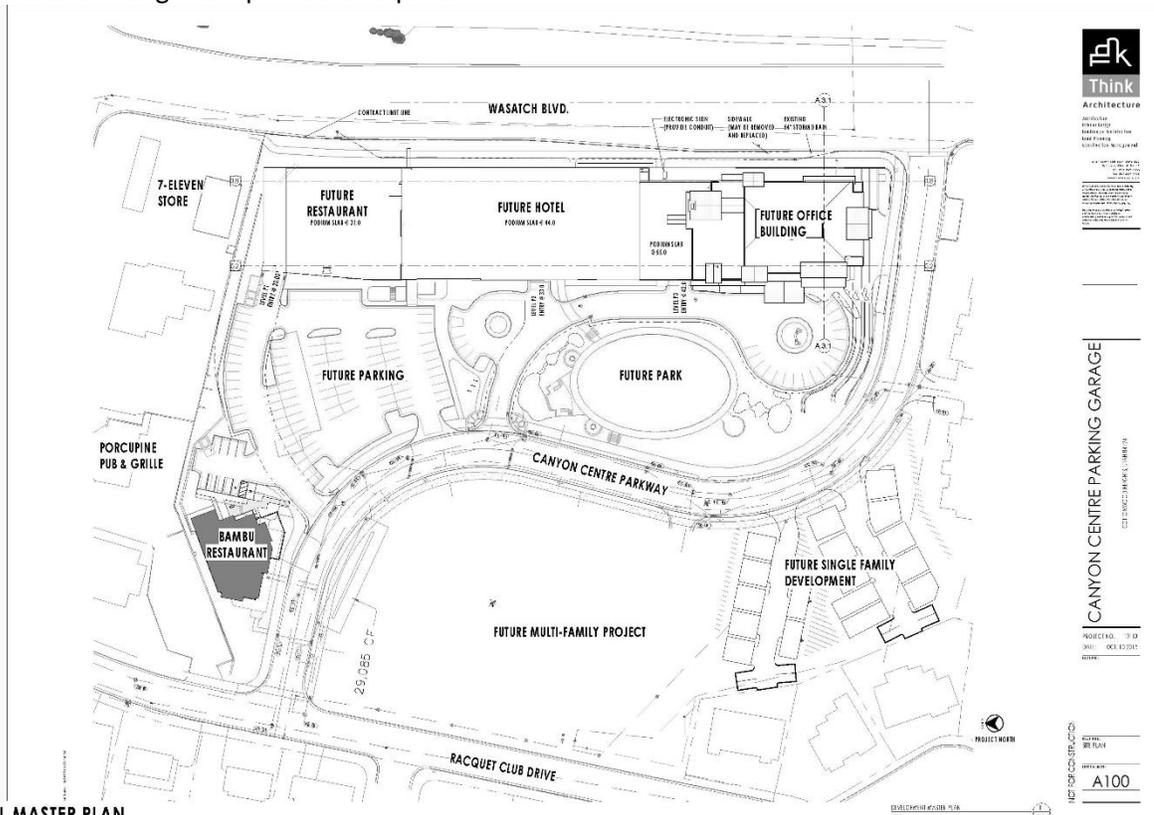
Planning Commission
Meeting Date: March 2, 2016



FILE NUMBER/
PROJECT NAME: CUP-16-002 Canyon Centre Phase III
LOCATION: 7350 S Wasatch Boulevard
REQUEST: Approval of Conditional Use Permit for phase III site plan approval for a restaurant approximately 4,800 s.f. in size on 0.78 acres.
OWNER: Canyon Centre Capital LLC – 801-984-5770
ARCHITECT/
DESIGNER: Think Architecture – Kenney Nichols – 801-269-0055
APPLICANT: Think Architecture – Kenney Nichols – 801-269-0055
RECOMMENDATION: APPROVAL subject to conditions of approval

APPLICANT'S PROPOSAL

The applicant is requesting conditional use approval of the Canyon Centre Phase III site plan for a new restaurant, as part of the overall Canyon Centre mixed-use project on 10.85 acres at 7359 S Wasatch Boulevard. The restaurant use is a conditional use in the Mixed Use zone. Because this property lies within the Gateway Overlay zone, approval from the Architectural Review Commission, and issuance of a Certificate of Design Compliance is required.



OVERALL MASTER PLAN



BAMBU RESTAURANT

CANYON CENTRE



Architecture
1000 S. MAIN ST. SUITE 200
SALT LAKE CITY, UT 84143
PHONE: 801-269-0055
WWW.THINKARCHITECTURE.COM

CANYON CENTRE PARKING GARAGE

PROJECT NO. 100
DATE: 06/15/2015

PROJECT NO. 100
DATE: 06/15/2015
A100

BACKGROUND

ZONING

The property is located in the city's Mixed Use (MU) zone. Per Zoning Ordinance chapter 19.36.010, the purpose of the MU zone is as follows:

*"A) The purposes of the MU zone are to provide areas in the city primarily for medium to high density residential mixed-use developments, with commercial, institutional, office and service uses apportioned on-site in a manner sensitive to the street environment and adjacent residential areas; to support an urban village where amenities are focused on a local main street; and to enhance the accessibility of the Fort Union area and the Gateway Overlay District.
B) The MU zone is intended to achieve cohabitation of uses, while ensuring that negative impacts on residents are minimized. The spaces created in the MU zone are intended to encourage a diminished need for motorized travel and shall possess characteristics (accomplished through roads, passages and sidewalks) that serve the needs of pedestrians, bicyclists and motor vehicle users while still allowing casual encounters of human beings at an intimate, or pedestrian, scale."*

The site is also located in the city's Gateway Overlay District zone. The purpose of the Gateway Overlay District is as follows, per 19.49.010:

"[The Gateway Overlay District] sets forth standards for development, redevelopment, and changes in land use along streets designated in as Gateway Overlay Districts on the city's zoning map, to promote design compatibility for all permitted and conditional uses in the underlying districts."

The primary additional requirement of being located in the Gateway Overlay District is that it requires review by the city's Architectural Review Commission (ARC), and that prior to construction the applicant obtain a Certificate of Design Compliance. This Certificate is granted upon a favorable recommendation of site and architectural design by the ARC. The code states, "A certificate of design compliance issued by the ARC shall be required before proceeding with any new development or changes to existing development in a Gateway Overlay District" (19.49.060(C)).

GENERAL PLAN

The General Plan Land Use Map designates the property as Mixed Use. This designation includes mixed use areas that contain a mix of land uses, such as residential, commercial and office within the same area. Land uses in the Mixed Use classification are encouraged to be varied either vertically or horizontally. Additionally, the General Plan references this area as a *Canyon Gateway*. In this designated area (at the base of Big Cottonwood Canyon), special enhancements and efforts to preserve open spaces should be considered as part of any project. The overall master plan, in general, maintains significant open spaces in the center of the project. Phase III on its own, includes more than twice the 15% amount of required landscaping/open space, by providing 35% landscaping/open space for the site.

SITE AND AREA CONTEXT

The property is located on the west side of Wasatch Boulevard, just south of Fort Union Boulevard, directly south of commercial property fronting on Fort Union Boulevard. The property is 10.85 acres. The east side of the property is adjacent to Wasatch Boulevard, and the west side of the property is

adjacent to Racquet Club Drive. The site is surrounded by commercial and office uses to the north, by single-family residential neighborhoods to the west, by vacant property in the city's Public Facilities (PF) zone to the east (across Wasatch Blvd), and by multi-family residential housing to the south.

ADJACENT USES

- North: retail commercial and office buildings – Regional Commercial (CR) zone
- South: multi-family residential units – Residential Multi-Family (RM) zone
- East: vacant – Public Facilities (PF) zone
- West: single-family residential neighborhood – Residential Single Family (R-1-8) zone

SITE HISTORY

The subject property was used as the Canyon Racquet Club prior to the site being razed in 2008. Since that time, the property has been vacant. The applicant and the city's redevelopment agency (CDRA) have established a Community Development Area (CDA) on the site in 2011 that allows the developer to use tax increment financing to help fund the public improvements of the project. In 2013, the city granted conditional use approval of Phase I of the Canyon Centre project, which consisted of the construction of a parking garage on the east side of the property and an office building located on top of the parking garage at the southeast corner of the property. The approval of phase I was appealed to and upheld by the Cottonwood Heights Board of Adjustment. The project was further appealed to District Court and the appeal was subsequently dismissed.

DEVELOPMENT INFORMATION SUMMARY

BAMBU RESTAURANT:

- Existing Use: Vacant
- Proposed Use: Restaurant
- Parcel Size: 33,907 square feet
- Building Size: Approximately 4,829 square feet
- Building Height Allowed: Two stories, or 35' from historic grade, whichever is less (the planning commission)
- Building Height Provided: 25' to the tallest building form, with a 4' chimney extension.
- Parking Required: 33 stalls
- Parking Provided: 33 stalls
- Landscaping Required: 15% (5,086 square feet)
- Landscaping Provided: Excess of 35% (11,880 square feet)
- Front Yard Setback Required: 20 feet
- Front Yard Setback Provided: 20 feet
- Side Yard Setback Required: 10 feet
- Side Yard Setback Provided: 90 feet±
- Rear Setback Required: 10 feet
- Rear Setback Provided: 10 feet

ARCHITECTURE REVIEW COMMISSION (ARC)

The ARC reviewed all three components of this application at its meeting on February 24, 2016. The commission discussed site layout, architecture and landscaping. The ARC recommended approval of the

project to the planning commission and issued a Certificate of Design Compliance for the project, subject to the following conditions of approval:

1. Ensure that architecture style remains consistent with architecture approved with the overall master plan
2. Ensure that landscaping remains consistent with landscaping approved with the overall master plan

IMPACT ANALYSIS

STRUCTURE HEIGHT

Per the Cottonwood Heights zoning ordinance chapter 19.76.030.D, structure height is measured as follows:

D. Structure height – Vertical measurement

1. Structure height shall be measured by taking the average vertical distance measured at the four corners of the main structure. This measurement shall be taken from the original natural grade of the lot to the highest point of the roof structure. In cases where the four corners of the structure are not explicitly clear, the city's building official and the director shall designate the four corners of the structure.

3. Original ground surface shall be the elevation of the ground surface in its natural state before any manmade alterations such as, without limitation, grading, excavation or filling, excluding improvements required by zoning or subdivision ordinances. When the elevation of the original ground surface is not readily apparent because of previous manmade alterations, the elevation of the original grade shall be determined by the director using the best information available.

Consistent with Phase I of the Canyon Centre project, historic grade was determined by to be the previous approved site grading of the last use on the property (i.e. Canyon Racquet Club).

In the MU zone, building/structure height is limited as follows, per 19.36.050:

19.36.050 Maximum height of structures

Structures in an MU zone shall not exceed a height of two stories, or 35 feet, whichever is less.

The planning commission, after receiving favorable recommendation from the DRC, may increase the maximum height of a structure in an MU zone to no more than three stories, upon a finding that such increased height will not adversely affect the public health, safety or welfare.

Since the property is located in the Gateway Overlay Zoning as well, further restriction on structure height is made in 19.49.060.F, which states, "In no case shall structure height exceed 45 feet in the Gateway Overlay District."

The proposed development is located on a lot that contains a relatively flat building envelope. The existing grade has been established and height will be measured from that point. The proposed restaurant is a single-story structure, with only architectural elements that extend above that first story. The highest point of the main part of that structure is 25 feet, with the chimney extending an additional 4 feet. No portion of the building, or appurtenances, will reach or exceed the allowed height of 35 feet.

TRAFFIC

The proposed Phase III use is accessed from Canyon Centre Parkway, a two-lane road with landscaping along each side. This site was considered as part of the study of the overall master plan, and is not anticipated to exceed the expected overall trip generation of the site from the originally approved traffic study.

PARKING

The total number of required parking stalls for this development is calculated using the 3rd Edition ITE Parking Generation manual. Using the requirement of .33 stalls per seat, a total of 33 stalls is required. The proposal includes 33 stalls, all contained on site as surface parking.

FIRE

As part of final approval, Unified Fire Authority (UFA) has reviewed the preliminary plans, made recommendations included in this report, and will review the final plans and work with the applicant and city staff to ensure compliance with the International Fire Code. All building permits will be reviewed by UFA officials for code compliance.

ATTACHMENTS

1. Conditions of Approval
2. Context Aerial
3. Land Use Map
4. Zoning Map
5. Site / Landscape Plan
6. Elevations
7. Sample Motions

STAFF: Glen Goins, Senior Planner, 801-944-7065

CONDITIONS OF APPROVAL

Staff recommends APPROVAL, subject to the following conditions:

Engineering

1. Planning Set is incomplete and a full construction plan set must be submitted for city review.
 2. Plans must include a site plan showing all existing features on site. Include existing concrete wall and any other existing features.
 3. Documentation about the existing storm water treatment system and design treatment rate must be submitted to the city engineer for review and approval. Documentation about existing and future storm water flow entering treatment system from all Canyon Centre phases must also be submitted.
 4. Proposed roadway improvements including ADA ramps, Curb & Gutter, sidewalk, fencing, and all other improvements must be labelled. Include detail sheets for all proposed improvements.
 5. An ADA Ramp at Racquet Club Drive and Canyon Centre Intersection must be included.
 6. Detailed elevation data including RIM/INV elevation for all proposed storm drain facilities must be provided.
 7. Size of proposed inlets boxes and reference details must be labelled.
 8. Tie-in elevations for all curb & gutter matching the existing TBC must be shown.
 9. ADA ramps and detectable warnings at all proposed intersections must be labelled.
 10. Construction details for all proposed improvements, including, sidewalk, ADA Ramps, driveways, street lights, landscaping, storm drain improvements, and all other improvements must be submitted. All proposed improvements must meet APWA 2012 standards.
 11. All on-site parking lot striping and drive approaches must be labelled.
 12. A 2 % grade away from all proposed building in all directions must be maintained.
 13. The system must be designed to prevent cumulative aggregation of storm water flows between lot lines and adjacent properties.
 14. Saw cut boundaries and pavement design for utility installation on Canyon Centre Parkway must be shown, matching existing asphalt thickness on Canyon Centre.
 15. Storm drain calculations using NOAA IDF Curve – Cottonwood Weir, Utah (42-1759) from NOAA Atlas 14 must be submitted.
- Identify all drainage areas that will contribute to storm water flows, both on-site and off-site.
 - Show all upstream contributing basin areas, including calculations and analysis for the peak runoff entering the site.
 - Storm water detention shall be designed to detain a 100-year 24-hour storm event. Design detention pond with a controlled release of storm water into city approved drainage facilities at a rate no greater than 0.2 cubic feet per second per developed acre outside of sensitive lands overlay zone, and 0.1 cubic feet per second per developed acre inside sensitive lands overlay zone. Provide calculations for detention storage.
 - Submit calculations for sizing of orifice.
 - Submit calculations for storm water treatment sizing.

16. A Storm Water Pollution Prevention Plan per the Utah Department of Environmental Quality Template must be submitted.
 - a. Include an erosion control plan with BMP's that best address sediment and erosion control (i.e. inlet protection, concrete washout, silt fences, stabilized entrance, temporary sedimentation pond).
 - b. Complete and submit a notice of intent (NOI) to the Utah Division of Water Quality, prior to commencement of construction activities. Please submit a copy of the NOI to Cottonwood Heights.
 - c. Provide SWPPP details on erosion control plan including an inspection schedule. Show inspections must occur after every major storm event and on a weekly basis.
17. The developer shall provide letters of approval from the following:
 - a. Salt Lake City Department of Public Utilities
 - b. Cottonwood Improvement Sewer District
18. A construction cost estimate breakdown for the bond for public improvements that will be dedicated to the city shall be prepared and submitted.

Submit the following for all retaining walls greater than four feet in exposed height:

1. Label each retaining wall on site plan for reference to retaining wall calculations and submittals.
2. Material strength parameters used in the design of the retaining wall must be based on separate geotechnical report.
3. Tiered retaining walls are considered a single structural unit unless the tiered walls are horizontally offset by a minimum distance of two times the exposed wall height of the lower wall. Show horizontal distance between the tiered retaining walls.
4. Submit cross-sectional drawings including surface grades and structures located in front of and behind the retaining wall. If the wall is supporting a slope, then the cross-section shall include the entire slope plus surface grades and structures within a horizontal distance equivalent to one times the height of the slope.
5. Include drainage design, including a free-draining gravel layer wrapped in filter fabric located behind the retaining wall with drain pipe day-lighting to a proper outlet or weep holes placed through the base of the wall.
6. Submit design calculations ensuring stability against overturning, base sliding, excessive foundation settlement, bearing capacity, and internal shear and global stability as follows:
 - a. If geogrids are used, additional calculations for pullout, tensile overstress, internal sliding, facing connection and bulging shall be completed, and other calculations used to meet design standards for that particular material are required;
 - b. The design engineer shall indicate the design standard used and supply a printout of the input and output of the files in an appendix;
 - c. Calculations shall include analysis under static and seismic loads, which shall be based on the characteristic earthquake or maximum credible earthquake (MCE), with spectral acceleration factored for site conditions in accordance with the IBC;
 - d. Rock walls shall be designed in general accordance with the 2006 FHWA- CFL/TD-06-006 "Rockery Design and Construction Guidelines;" and

- e. Concrete cantilever walls shall be designed in general accordance with specifications provided in current American Concrete Institute or American Society of Civil Engineers publications;
- f. A global stability analysis demonstrating minimum factors of safety of a least 1.50 under static conditions and at least 1.1 under seismic loading.

Fire

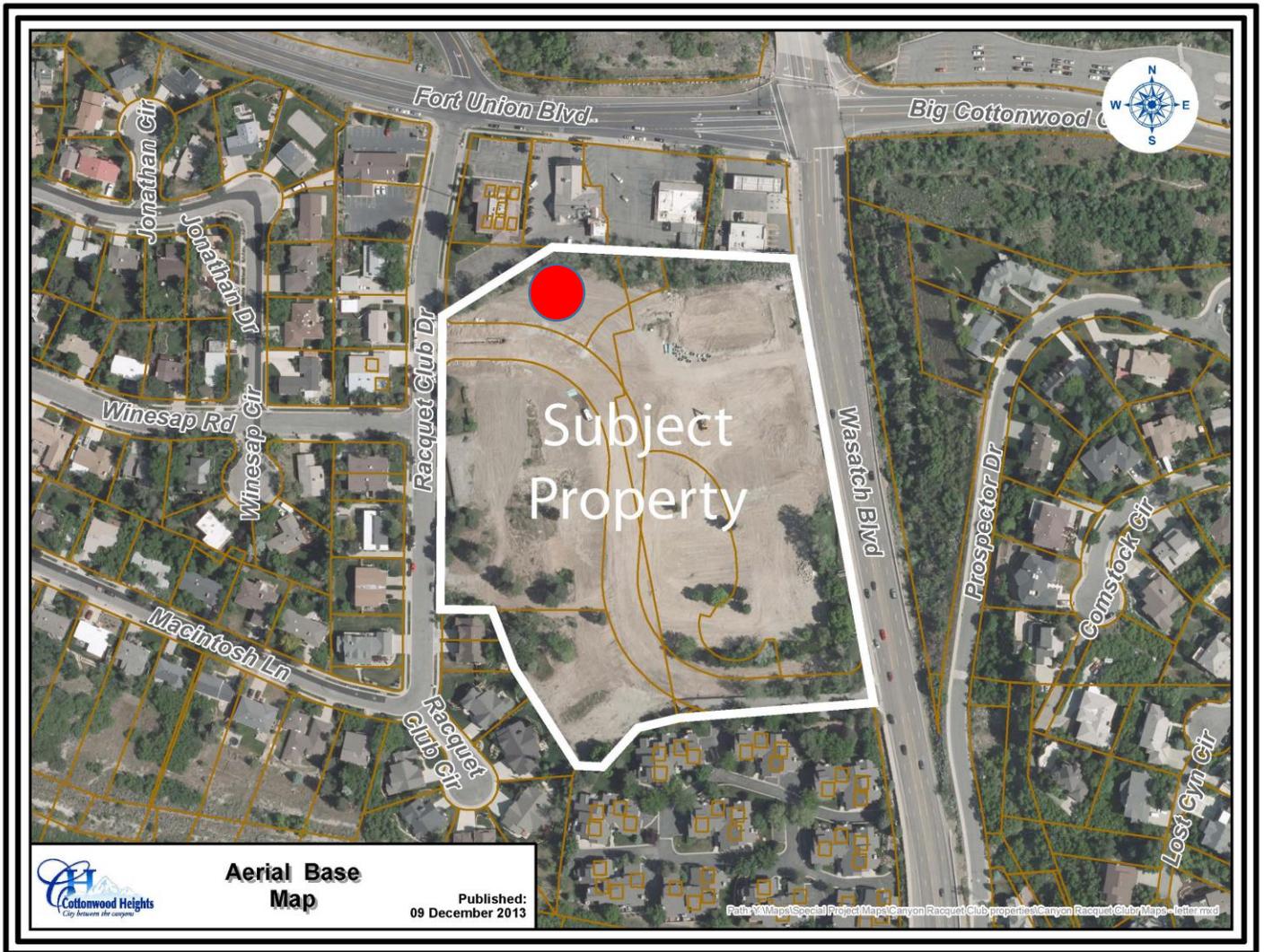
1. If the structure is over 5,000 square feet or occupant load is 100 or more, an Automatic Fire Sprinkler System shall be installed. If an Automatic Fire Sprinkler System is installed a fire hydrant is required to be within 100 feet of FDC.
2. Fire flow verification is required.

FINDINGS

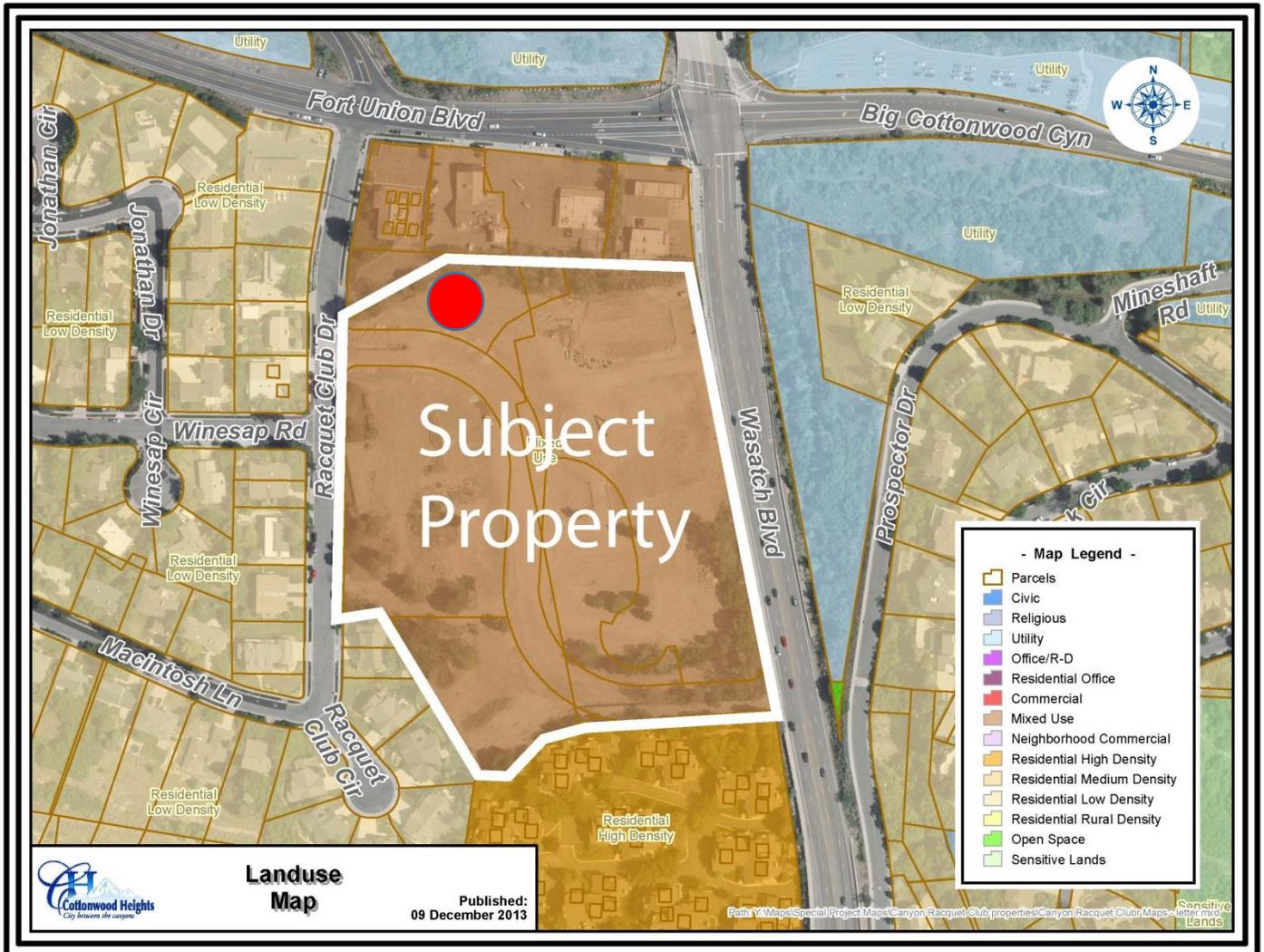
Approval of Canyon Centre Phase II, application CUP 16-002 is based on the following findings:

1. The Bambu restaurant building is appropriate in size, design and scale, with the conditions proposed.
2. The use of the restaurant is compatible with the Canyon Centre project and surrounding area, given the proximity of another restaurant directly adjacent to the north of the subject property, adequacy of on-site parking, and the proposed building entrance orientation, facing Canyon Centre Parkway.
3. The uses proposed in the project are consistent with those allowed in the Mixed Use Zone.
4. The uses will not, under the circumstances of the particular case, be detrimental to the health, safety, comfort, order or general welfare of persons residing or working in the vicinity;
5. That the use will comply with the intent, spirit, and regulations of this title and will be compatible with and implement the planning goals and objectives of the city;
6. That the use will be harmonious with the neighboring uses in the zoning district in which it is to be located;
7. That nuisances which would not be in harmony with the neighboring uses, will be abated by the conditions imposed;
8. That protection of property values, the environment, and the tax base for the city will be assured;
9. That the use will comply with the city's general plan;
10. That some form of a guaranty assuring compliance to all imposed conditions will be imposed on the applicant or owner;
11. That the internal circulation system of the proposed development is properly designed;
12. That existing and proposed utility services will be adequate for the proposed development;
13. That appropriate buffering will be provided to protect adjacent land uses from light, noise and visual impacts;
14. That architecture and building materials are consistent with the development and surrounding uses, and otherwise compatible with the city's general plan, subdivision ordinance, land use ordinance, and any applicable design standards;
15. That landscaping appropriate for the scale of the development and surrounding uses will be installed in compliance with all applicable ordinances.
16. That the proposed use preserves historical, architectural and environmental features of the property; and
17. That operating and delivery hours will be compatible with adjacent land uses.

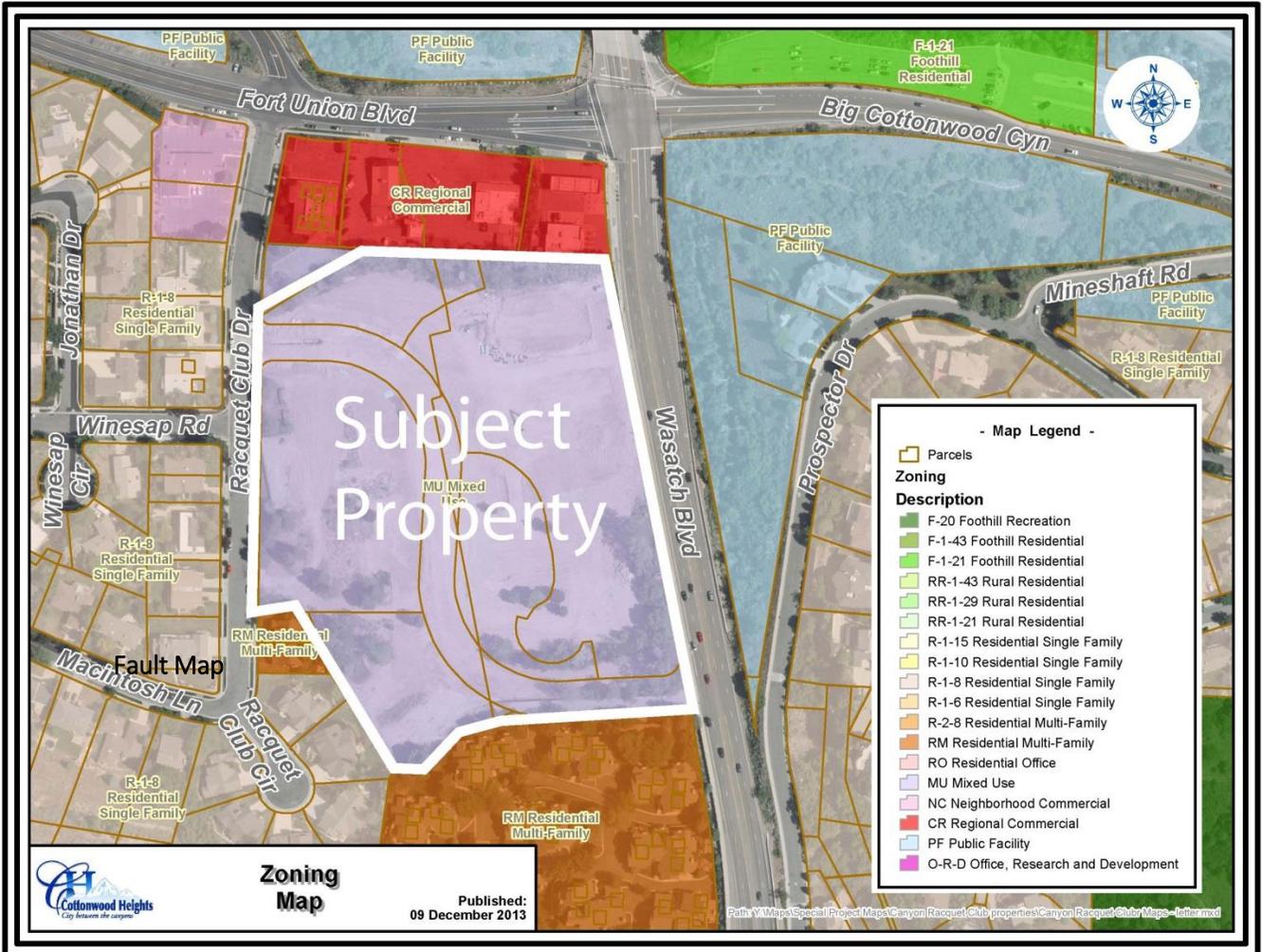
CONTEXT AERIAL



LAND USE MAP



ZONING MAP



ELEVATIONS



SAMPLE MOTIONS

Approval

I recommend approval of CUP-16-002, application for site plan and conditional use approval of Canyon Centre Phase III, a mixed-use project located at 7350 S Wasatch Boulevard. I recommend conditional use approval of the restaurant, subject to the following additional conditions:

- List additional conditions of approval and findings.

Denial

I recommend denial of CUP-16-002, application for site plan and conditional use approval of Canyon Centre Phase III, a mixed-use project located at 7350 S Wasatch Boulevard, based on the following findings:

- List findings for denial.