

Mapleton City Planning Commission Staff Report

Meeting Date: November 13, 2014

Item: 5

Applicant: L. Douglas Smoot and M. Duane Horton

Location: 750 N 1600 E (parcel #'s 26:068:0022, 0023, 0029, & 0109)

Prepared by: Sean Conroy, Community Development Director

Public Hearing Item: Yes

Zone: CE-1, A-2

REQUEST

Consideration of recommendations to the City Council on a request to amend the General Plan and rezone approximately 60 acres of land from A-2 to RA-1, to place a Conservation Easement on approximately 18 acres and to approve a Concept Plan and Development Agreement for a 53 unit development. The applicants are L. Douglas Smoot and M. Duane Horton.

BACKGROUND AND PROJECT DESCRIPTION.

The project site includes approximately 18 acres in the Critical Environment (CE-1) Zone and approximately 60 acres in the Agricultural-Residential (A-2) Zone for a total project area of approximately 78 undeveloped acres. Most of the site is located in the 500 year floodplain with a portion of the site also in the 100 year floodplain.

On April 3, 2012 the City Council held a work session with the applicant to discuss a variety of rezone options for the property including a TDR Sending Site (no longer an option), Residential Agricultural (RA-1), and Planned Residential Community (PRC). The Council expressed some potential support for the RA-1 option if a development agreement were included. The Planning Commission also reviewed a project concept on January 10, 2013. The main topic of discussion was whether protecting the 18 acres in the CE-1 zone was important enough to warrant a rezone of the 60 acres to from A-2 to RA-1. The Commission was generally supportive of the potential rezone request (see attached minutes).

The applicant is now proposing the following:

- Place the 18 acres in the CE-1 zone into a conservation easement that precludes development in perpetuity.
- A General Plan Amendment from Rural Residential to Low Density Residential for approximately 60 acres.
- A Zoning Map Amendment from A-2 to RA-1 for approximately 60 acres.
- Approval of a development concept plan that would allow for the clustering of approximately 53 residential units with lot sizes ranging from .5 acre to 2.5 acres.
- The concept plan also includes approximately 10 acres of open space in addition to the 18 acres being placed in a conservation easement.

EVALUATION

Process: Amendments to the general plan and the zoning map and adoption of a development agreement require review by the Planning Commission and final approval by the City Council. Upon approval, the applicant could then submit a formal subdivision application at their convenience for all or portions of the project. Upon final plat approvals, construction could then begin.

General Plan/Zoning Amendment Decision Standard: Mapleton City Code (MCC) Chapter 18.12.010 states the following regarding zoning amendments:

“For the purpose of establishing and maintaining sound, stable, and desirable development within the city, it is declared to be the public policy that amendments shall not be made to the planning and zoning title and map except to promote more fully the intent of this title and the Mapleton City general plan or to correct manifest errors.”

This sets a high standard when considering rezone requests. The Commission should use the goals and policies of the general plan to help inform its recommendation to the City Council. Staff has outlined several key goals and policies below from the general plan that are applicable to this request, and has included a brief response.

Goal #3: Preserve the integrity of the Land Use Element by requiring all developments and zone changes to be consistent with the General Plan.

Policy B: If a development or zone change is found to be beneficial to the community by the Planning Commission, the Planning Commission will recommend that the General Plan and Land Use Element be amended, through proper procedure, prior to approval of the development or zone change.

Response: The Commission should determine whether the proposed project is a benefit to the community and whether general plan and zoning amendments are appropriate. Some of the key benefits could include:

- Protection of the CE-1 hillside;
- A variety of lot sizes;
- Inclusion of a public trail;
- Protection of the 100 year flood plain; and
- The provision of additional open space.

Goal #5: Encourage the transfer of TDR’s off of the mountainsides.

Response: The TDR program was designed primarily to protect the Mapleton Bench. The program largely succeeded in protecting the bench as numerous properties have either been deeded to the City or have been placed into a conservation easement. However, there are some properties that did not take advantage of the TDR program. These properties are no longer eligible to receive TDRs and the ordinance discontinued the creation of TDR sending sites on December 31, 2010.

While the applicant is not eligible to create a TDR sending site, the proposal to place the 18 acres into a conservation easement in exchange for a zone change on the 60 acres would meet the same goal as the TDR program to preserve the hillside. Again, the Commission should determine whether the protection of the 18 acres is a sufficient enough incentive to allow for a zone change.

Goal #7: Preserve a peaceful, country, rural atmosphere.

Policy B: Locate development in configurations and in areas that will preserve and enhance open space character and a rural, agricultural atmosphere in the community.

Policy C: All development within Mapleton City should recognize the open view amenities of Mapleton and should not degrade public views and vistas.

Response: The applicant is proposing to place 18 acres into a conservation easement. This would protect the open view amenities that all Mapleton residents enjoy of a largely undeveloped hillside. The concept plan also includes additional open space areas that likely would not be provided if the property was developed as individual two acre lots.

Goal #9: *Encourage the clustered concept of city planning and development.*

Policy F: *Encourage clustering of residential units on non-environmentally sensitive portions of parcels and the use of dedications, transfer of development rights, and money-in-lieu of dedication to achieve on-and off-site environmental, open space, corridor and conservancy objectives.*

Response: The applicant is proposing to utilize the clustered concept of development to allow for the protection of the 100 year flood plan and protection of the bench. This is consistent with the general plan's goal.

Density: The following are some development scenarios with and without the requested rezone of the property.

- 1) No Zoning Amendment, no use of TDRs: 60 acres (A-2) = 30 units + 18 acres (CE-1) = 6 units for a total of **36 units**.
- 2) No Zoning Amendment, use of TDRs in A-2: 60 acres (A-2) = 60 units + 18 acres (CE-1) = 6 units for a total of **66 units**.
- 3) Rezone A-2 to RA-1 = 60 units + 18 acres (CE-1) = 6 units for a total of **66 units**.
- 4) Rezone A-2 to RA-1, conservation easement on CE-1 property and a development agreement, as proposed = **53 units**.

Development Agreement: MCC Chapter 18.84.400 outlines the criteria for the approval of a development agreement. The criteria includes the following:

- Property must be at least 10 acres in size;
- Proposed development has a potentially significant impact on the community (positive or negative); and
- Proposed development will be consistent with the general plan.

Provided the general plan amendment is approved, the project will be consistent with these criteria.

STAFF RECCOMENDATION:

Recommend approval of the project to the City Council.

ATTACHMENTS:

1. Application information.
2. Draft Development Agreement.
3. PC minutes dated 1/10/13.

PROPOSAL TO MAPLETON CITY

A. Proposal

The property owners (Duane Horton, Doug Smoot) jointly own about 78 acres of property (east of 1600 East to Forest Service boundary line on the foothill, between about 400 North and 900 North). We propose to place a permanent conservation easement on 18 acres of hillside property (CE-1 zone), stretching more than 2300 feet from north to south along the foothills. In exchange, we request that Mapleton City re-zone the balance of the property (60 acres) below the foothills from A-2 Zone to RA-1 Zone with clustering.

B. Property Description

The property owners purchased eight parcels of contiguous property (Tax No.'s 26:068:0022, 23, 29, 33, 34, 36, 44,109), totaling about 78 acres between 1972 and 1979. This property has been farmed on green belt since that time. Chad Warren is the farmer. Growing alfalfa and grain and grazing are the most common uses.

Challenging characteristics of the property include:

1. Infrequent flooding potential from spring run off (a portion of the lower acreage is classified as flood plain).
2. An overflow stream bed in the SW area for spring run off.
3. An open, concrete-lined irrigation canal that traverses the property from north to south.
4. High-voltage power lines that traverse the property from north to south, just below the foothills.
5. A dirt road that traverses the property and provides an alternative access to the abandoned home on the hillside knoll to the north.
6. A CE-1 zone of 18 acres on the foothills.
7. A city water-line that traverses the property south to north.
8. A short city right-of-way for a road extending north from the north end of 2000 East.

C. Evaluation of Zoning Options

The owners (Horton, Smoot) have evaluated the available zoning options for application to this property. A summary follows:

1. TDR Zoning Option.

In the late fall of 2010, the approaching deadline (31 December 2010) for the TDR option prompted the owners to evaluate the potential of this option for application to this property. We met frequently with Cory Branch, Planning Director, and submitted an application to Mapleton City for this TDR program. We subsequently developed a conceptual plan to evaluate this option. After many months of work, we determined that the TDR option lacked the flexibility to accommodate the challenges identified above.

Major problems with the TDR option were:

- a. No clustering flexibility to accommodate the optimum arrangement of lots.
- b. A large minimum lot size (1 acre with full TDR application).
- c. Necessity to purchase a substantial number of additional TDR units to make optimum use of the property.

- d. Utah County requirement to pay roll-back taxes on CE-1 hillside property.
- e. The maximum number of lots under this Ordinance with application of TDR's to every 2-acre lot would be about 54 one acre lots.
- f. Lack of flexibility to accommodate open spaces in flood plain and other areas.

2. PRC Zone Option.

Subsequently, we evaluated the Planned Residential Community (PRC) zone ordinance. It provided useful flexibility with clustering and varied lot sizes.

However, disadvantages of PRC requirements include:

- a. A two-acre average lot size (without TDR).
- b. A detailed final development plan with firm schedule.

These requirements are not compatible with the owner's plans.

3. RA-1 Zone Option.

We next evaluated the RA-1 Zone with clustering. Among the requirements for the RA-1 zone were:

- a. Average lot size of one acre.
- b. Minimum lot size of less than one-half acre.
- c. Clustering and use of open spaces to accommodate property characteristics.
- d. The maximum number of authorized lots would be 53 lots.

This option has been evaluated and a conceptual plan has been developed by Brown Engineering Company.

The RA-1 option with clustering appears to be an acceptable alternative for the owners. We have met with Mapleton's Planning Director, first Cory Branch and then Sean Conroy, on many occasions over the past four years. We have previously informally presented our plan for rezoning to the Planning Commission and the City Council with generally positive feedback. Also, we met informally with the mayor. We have acted on the recommendations of the Mapleton City Officials and are now formally seeking city approval for our rezoning proposal.

D. Conceptual Plan Development

The property owners (Horton and Smoot) have worked with Brown Engineering Co., Orem, Utah for over three years on the development of a conceptual plan for this property conceptual plan. Figure 1 shows the conceptual plan of this property, with the CE-1 zone (18 acres) to be placed in a permanent conservation easement and the remaining property (ca. 60 acres) being a residential development. Figure 2 shows an aerial view of the property with the CE-1 zone and the proposed development parcel outlined. This plan shows (a) 53 lots, (b) 6.6 acres of roads and paths, (c) adjoining of the north-south road to the west with the Taylor road development, (d) a link to the Sheranian property on the north-south road on the east side, (e) adjoining of the path with the Taylor development on the north and 2000 east street on the south, (f) a 4.5 acre open-space park in the critical zone of the hundred year flood plain, (g) a one-acre average lot size including open space, (h) the conceptual plan also contains two other flood water detention easements and an open space through which the drainage ditch passes, totaling 1.65 acres, (i) the total open property is ca. 25 acres and would likely be maintained by an association of the 53 home owners.

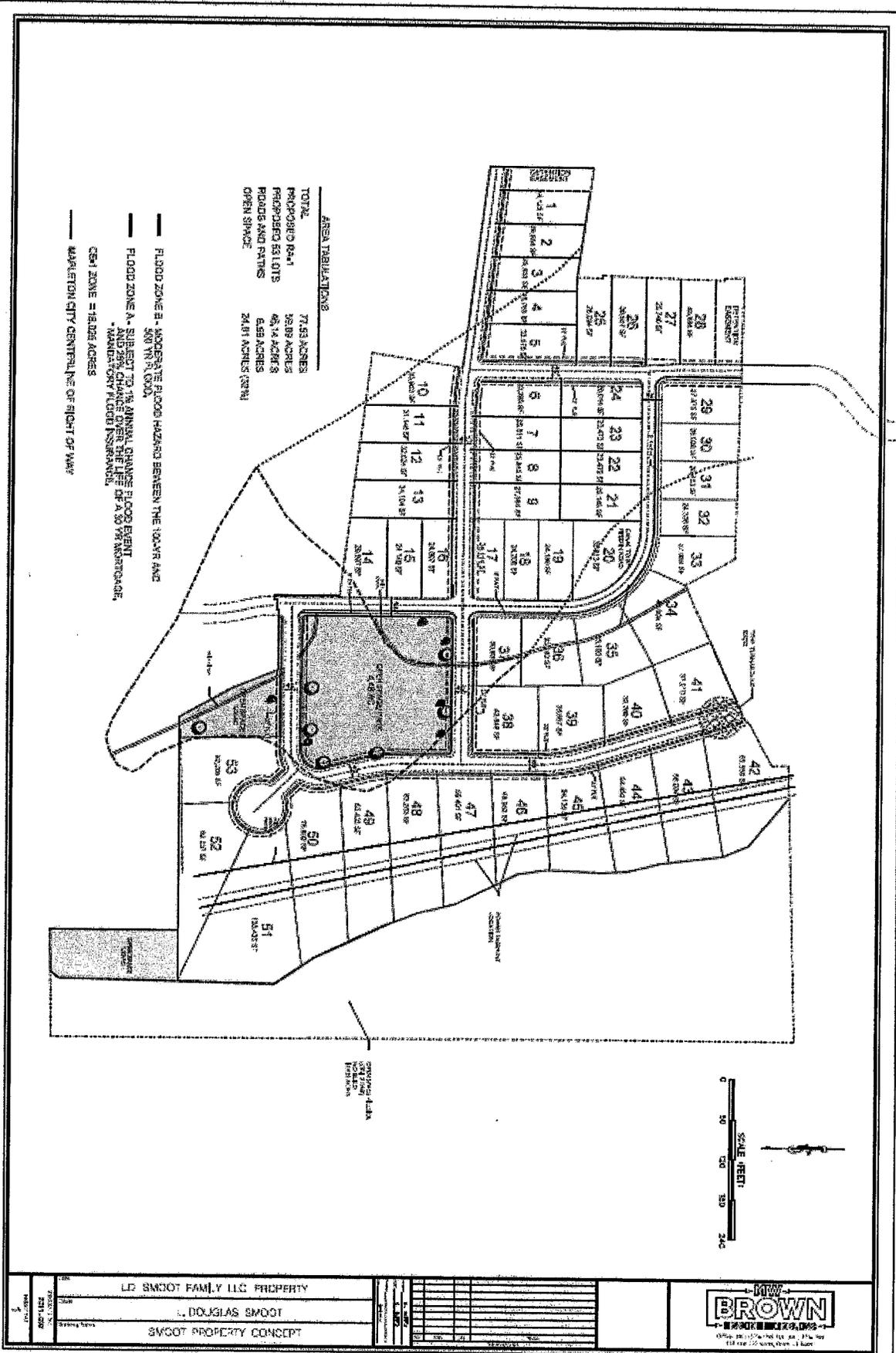


Figure 1. Proposed Property Concept Plan

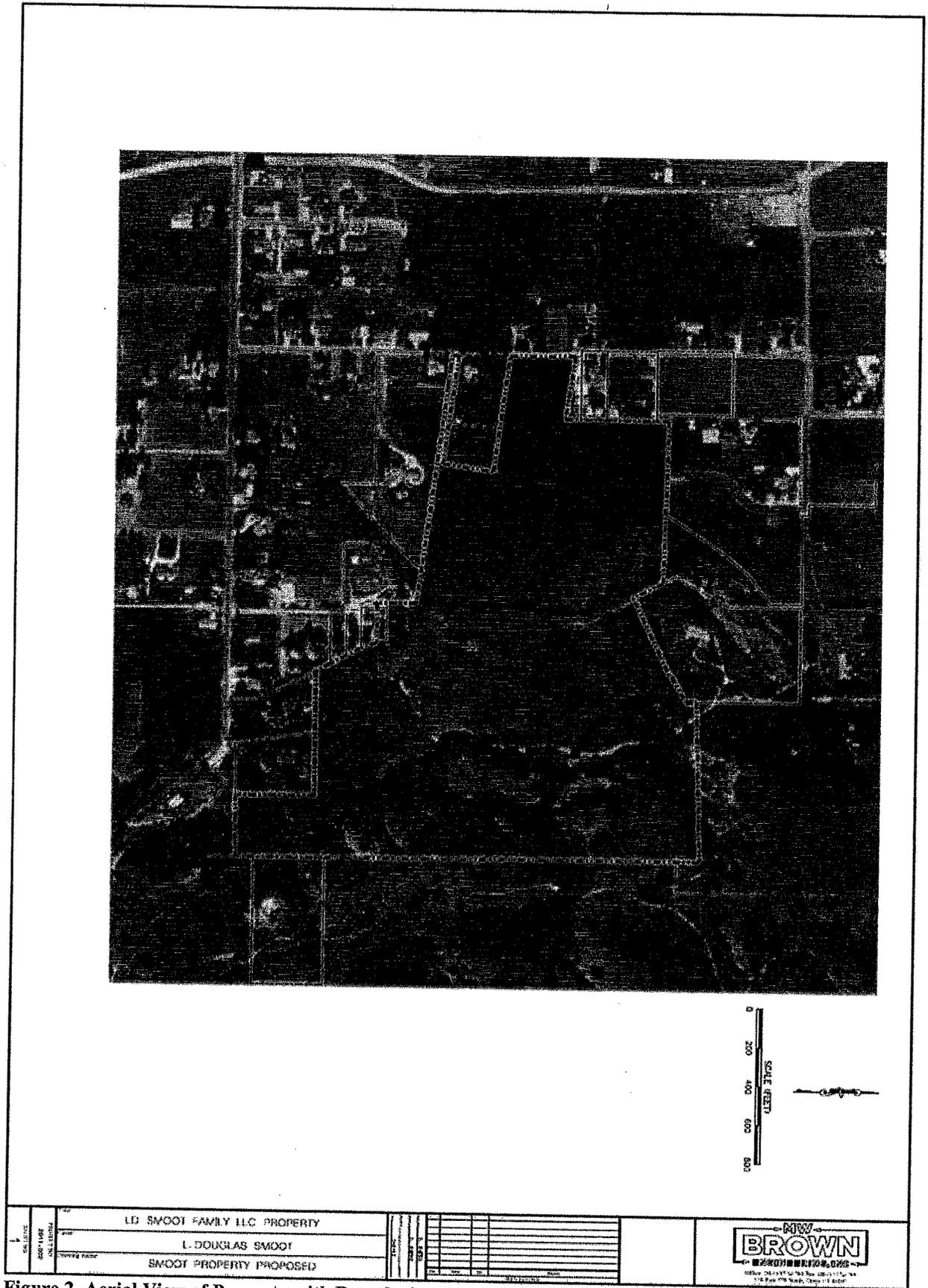


Figure 2. Aerial View of Property with Boundaries Shown

E. Geotechnical Analysis

Earthtec Engineering Co. was retained by the property owners to conduct a feasibility study for property development based on the conceptual plan of Figure 1. This report, dated 17 February 2014, is attached to this proposal. Earthtec examined soil characteristics, ground water conditions, faulting, liquefaction potential, and flooding. The report concludes that the development of the property concept plan appears to be feasible, while recommending specific geotech testing work prior to development.

F. Request

The owners request that the Planning Commission and the City Council approve the re-zoning of the A-2 zone to RA-1 zone with clustering. The owners will place a permanent, no-build conservation easement on the 18 foothill acres in CE-1 zone property. The proposed Deed of Conservation Easement is attached hereto.

Advantages of this proposal include:

- a. Conversion of a large section (18 acres, over 2300 ft long) of foothill property to open, natural space with a permanent conservation easement, from near the mouth of Mapleton Canyon on the south and abutting to the Sheranian hillside property on the north.
- b. Total open-space is about 25 acres (32%), to accommodate property characteristics and zoning requirements.
- c. Continued green-belt farming of the RA-1 zone property until development.
- d. Proposed pathway across the property on one side of the road, adjoining the Taylor property on the north and connecting to 2000 East Street on the south property line.
- e. Attractive conceptual design, while accommodating property challenges.
- f. Clustering options to address property development challenges.
- g. Variable lot sizes and sufficient density for profitable development.

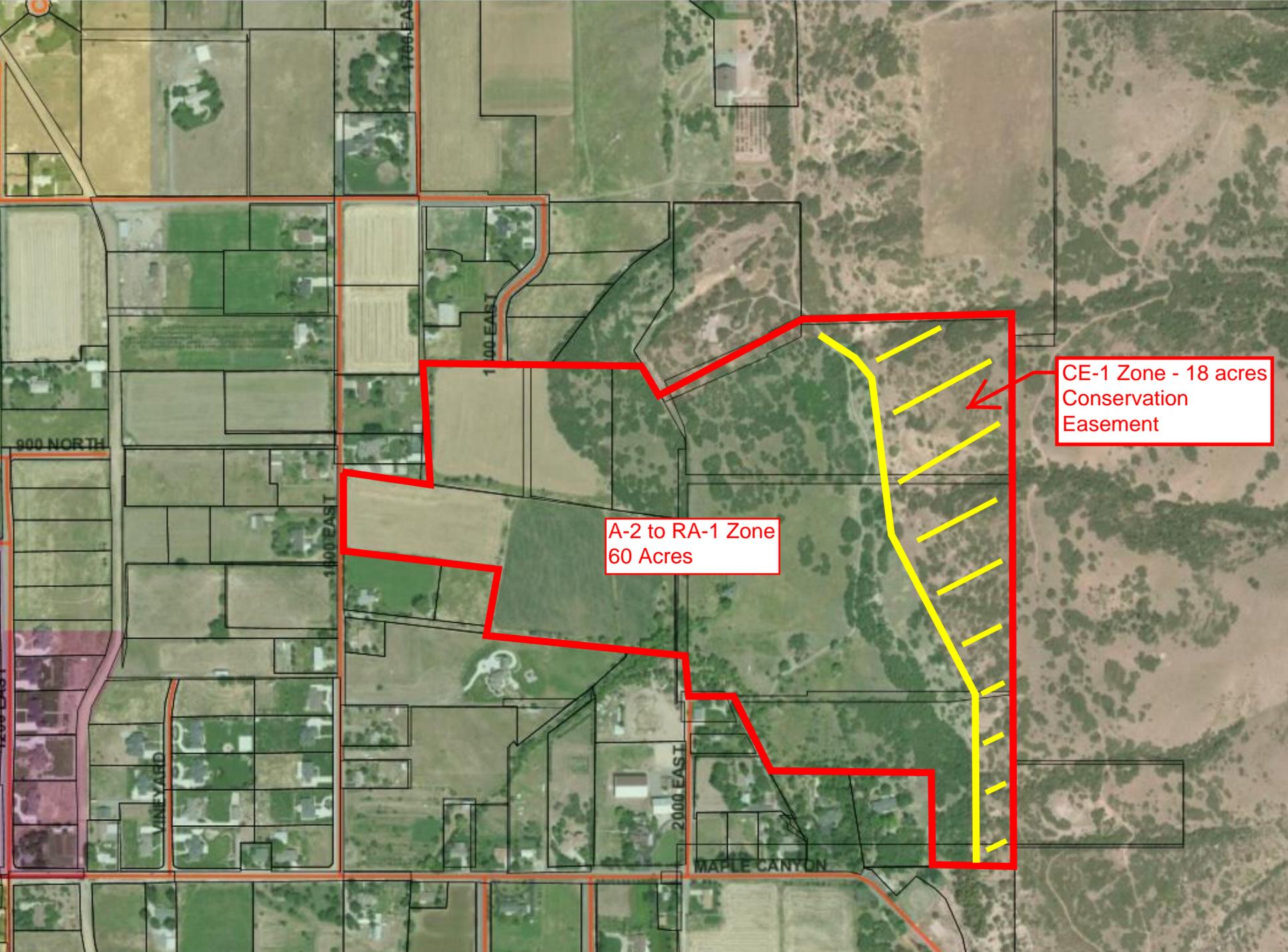
G. Conclusions

1. Concept Plan

- a. The number of lots in the concept plan designed by WW Brown Engineering Co. and meeting all Mapleton requirements is 53 lots.
- b. Based on Mapleton City requests, the following has already been accomplished in the concept plan:
 - (1) A path on the east side of the (N-S) road has been included. It ties into the Taylor path on the north and to the 2000 East road on the south.
 - (2) A North-South road extends north and stubs to the 26:068:0030 parcel per the City's transportation plan.
 - (3) All boundary overlays have been identified and ready solutions proposed following rezoning.
 - (4) Two final property descriptions for the 18 acre CE-1 zone and the RA-1 zone will be provided, following rezoning.
 - (5) All roads with sidewalks are per city specification.
 - (6) Open space including two detention easements, and totaling 6.6 acres, is provided in the conceptual design to accommodate run-off/flood issues and also provide open space for residents.

August 1, 2014

- c. Both the no-build CE-1 zone conservation easement and the rezone of the balance to RA-1 are to continue through any change of property ownership, and changes in Mapleton electoral officials.
- d. The city agrees to vacate its right-of-way (See B 8 above) to be consistent with the concept plan.



A-2 to RA-1 Zone
60 Acres

CE-1 Zone - 18 acres
Conservation
Easement

900 NORTH

1700 EAST

1100 EAST

1800 EAST

2000 EAST

VINEYARD

MAPLE CANYON

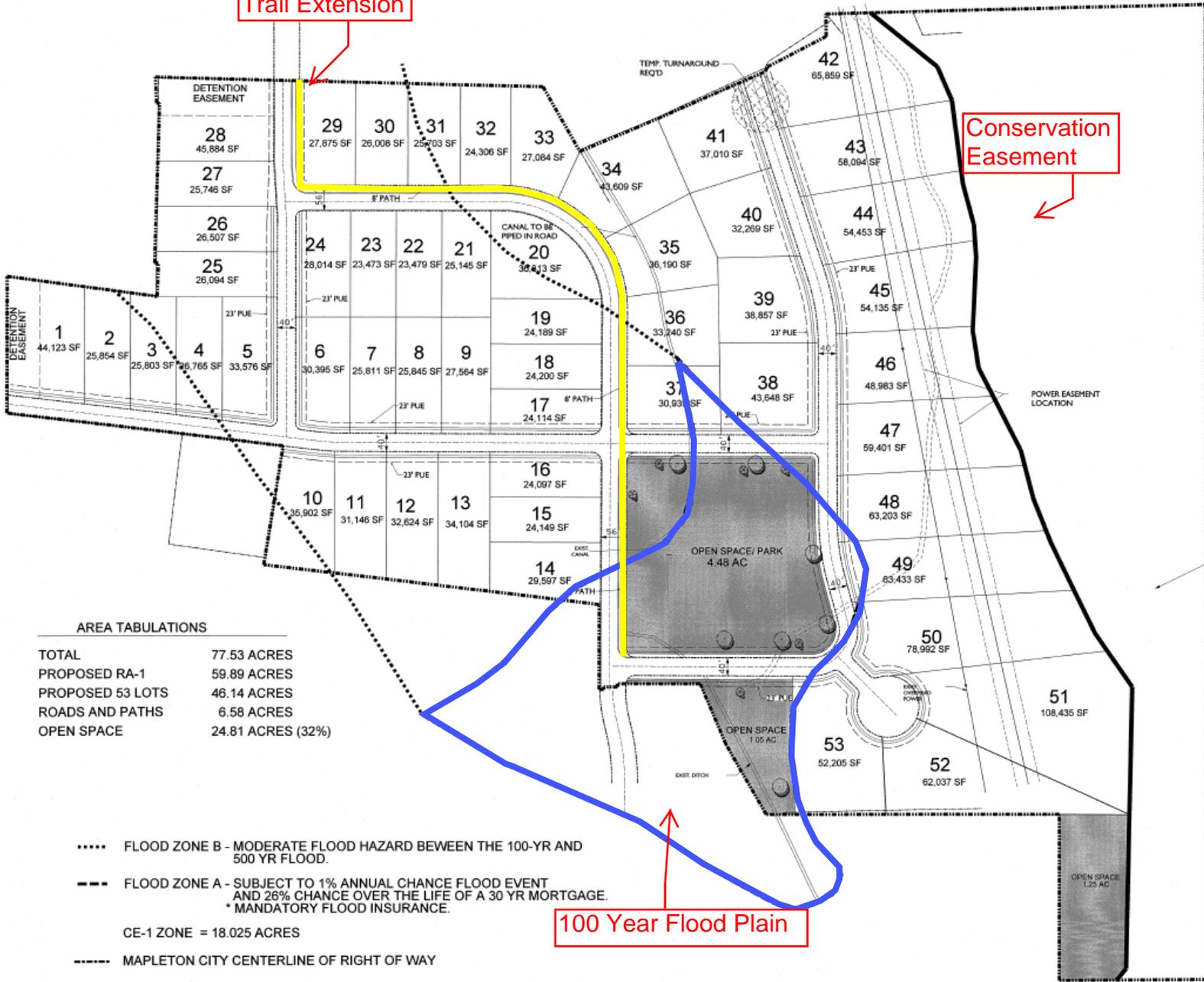
Looking east from 1600 E



Trail Extension

Conservation Easement

100 Year Flood Plain



AREA TABULATIONS

TOTAL	77.53 ACRES
PROPOSED RA-1	59.89 ACRES
PROPOSED 53 LOTS	46.14 ACRES
ROADS AND PATHS	6.58 ACRES
OPEN SPACE	24.81 ACRES (32%)

- FLOOD ZONE B - MODERATE FLOOD HAZARD BETWEEN THE 100-YR AND 500 YR FLOOD.
- FLOOD ZONE A - SUBJECT TO 1% ANNUAL CHANCE FLOOD EVENT AND 26% CHANCE OVER THE LIFE OF A 30 YR MORTGAGE. * MANDATORY FLOOD INSURANCE.
- CE-1 ZONE = 18.025 ACRES
- MAPLETON CITY CENTERLINE OF RIGHT OF WAY

OPEN SPACE HILLSIDE (CE-1 ZONE) NO BUILD 18.025 ACRES

Attachment "2"
Development Agreement

Draft

**Smoot/Horton
DEVELOPMENT AGREEMENT**

Project Name
DEVELOPMENT AGREEMENT

This development agreement (the "Agreement") is made and entered into on ____, 2014, by and between the Mapleton City Corporation, a Utah Municipal Corporation hereinafter referred to as the "City", and, LD SMOOT FAMILY LLC (ET AL), hereinafter referred to as the "Developer".

RECITALS

A. Pursuant to enabling authority set forth in the Municipal Land Use Development and Management Act, City amended its General Plan and enacted Chapter 18.84.400 of the Mapleton City Code to authorize the City Council to enter into development agreements for projects that have the potential of significant community impacts.

B. Developer owns or controls property located generally at location in Mapleton, Utah, and which is legally described in Exhibit "A" (the "Property") attached hereto and made a part of this Agreement. The property includes 18.025 acres in the Critical Environmental (CE-1) zone and 59.9 acres in the Agricultural Residential (A-2) zone.

C. Developer desires to place the 18.025 acres in the CE-1 zone into a conservation easement in exchange for rezoning the 59.9 acres in the A-2 zone to Residential Agricultural (RA-1) as illustrated in the Exhibit "B" ("Concept Plan") attached hereto and made a part of this Agreement.

D. To assist City in its review and approval of the Project and to assure development of the Project in accordance with Developer's representations to City, Developer and City desire to enter into this Agreement which sets forth the conditions, terms, restrictions and requirements whereby Developer may develop the Project.

E. To allow development of the Property for the benefit of Developer, to ensure City that a conservation easement will be applied to the 18.025 acres of property in the CE-1 zone, and to ensure conformance with applicable City policies, Developer and City desire to enter into this Agreement and are each willing to abide by the terms and conditions set forth herein. Developer and City each acknowledge that development of the Project will result in significant planning, economic and other benefits to each party.

F. Acting pursuant to its legislative authority under Utah Code Annotated §§ 10-9-101, et seq., and after all required public notice and execution of this Agreement by Developer, the City Council of City, in exercising its legislative discretion, has determined that entering into this Agreement furthers the purposes of the Utah Municipal Land Development and Management Act, City's General Plan, and Chapter 18.90 of the

Mapleton City Code (collectively, the “Public Purposes”). As a result of such determination, the City has elected to consider the Project and the development authorized hereunder in accordance with the provisions of this Agreement.

AGREEMENT

Now, therefore, in consideration of the premises recited above and the terms, conditions and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer hereby agree as follows:

1. Term. The term of this Agreement shall commence on, and the effective date of this Agreement shall be, the effective date of City action approving this Agreement. This Agreement shall terminate when a certificate of occupancy has been issued for every building included in the Project and any bonds associated with the Project, including durability bonds, have been released by City.

2. Agricultural Use To Remain in Undeveloped Areas - Irrigation Ditches. Any portion of the Property for which a plat has not been recorded shall be maintained in agricultural use. Agricultural use need not be maintained for any portion of the Property which is subject to a recorded plat. Irrigation ditches on the Property shall be maintained as at present unless the ditch owner in consultation with the applicable irrigation company approves piping, realignment, abandonment, or otherwise authorizes a change in the configuration or use of a ditch.

4. Conditions Precedent. Developer's obligations under this Agreement shall be subject to completion of the Specific conditions (the "Conditions Precedent") set forth in Exhibit "C" attached hereto and made a part of this Agreement. Upon fulfillment of the Conditions Precedent and City approval of the Project pursuant to applicable requirements of the Mapleton City Code and this Agreement, development of the Property shall be subject to the terms and conditions of this Agreement. In the event City disapproves the Project this Agreement shall be null and void and neither Developer nor City shall have any obligation hereunder.

5. Zoning Classification - Allowed Uses - Concept Plan. Subject to the terms of this Agreement, the zoning classification on the Property shall be the Residential Agricultural (RA-1) zone (59.9 acres) and Critical Environmental (CE-1) zone (18.025 acres). Refer to Exhibits A & B, which specifies the Legal Description of the land and proposed Concept Plan for the layout of the lots.

6. Applicable Code Provisions. All provisions of the Mapleton City Code and Utah Code § 10-9a-509, as constituted on the effective date of this Agreement shall be applicable to the project proposed on the Property except as expressly modified by this Agreement. The parties acknowledge that in order to proceed with development of the

Property, Developer shall comply with the requirements of this Agreement and other requirements generally applicable to development in Mapleton City and this Agreement satisfies the legal requirement for the developer's rights to vest. The developer acknowledges the requirement to install all necessary infrastructure as stated in Mapleton City Code Chapter 17.16, at their own expense.

7. Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police powers of City in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation and other land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of City to enact such legislation under its police power, such legislation shall not modify Developer's rights as set forth herein unless facts and circumstances are present which meet the compelling, countervailing public interest exception to the vested rights doctrine as set forth in **Utah Code Annotated § 10-9a-509(1)(a)(i)** or successor case law. Any such proposed change affecting Developer's rights 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 the proposed change and its applicability to the Project.

8. Subdivision Plat Approval. In the event City approves the Project, Developer shall prepare Preliminary and Final Plats for approval consistent with Mapleton City Code Title 17. Developer shall ensure the Project is constructed in compliance with the plat(s) and any other lawful requirement imposed on the Project. No subdivision plat shall be recorded until either:

- A. The required improvements have been completed in accordance with Mapleton City Code Chapter 17.16.010; or
- B. A performance guarantee and a durability bond have been submitted in accordance with Mapleton City Code Chapter 17.20.

9. Fees. All applicable impacts fees shall be paid prior to plat recording and prior to building permit issuance as outlined in the impact fee schedule that is in place at the time of the plat approvals.

10. Water Shares. The Developer shall transfer to the City water shares in a manner consistent with the City's adopted requirements at the time of plat recording.

11. Standard for Approval of Project Plans and Subdivision Plats. All Project and Subdivision Plans must be approved by the Development Review Committee, Planning Commission and City Council. Project Plans and Subdivision Plats must conform to applicable requirements of the Mapleton City Code, State and Federal Law, and this Agreement.

12. Commencement of Site Preparation. Developer shall not commence site preparation or construction of any Project improvement on the Property until such time as

Project Plans have been approved by City in accordance with the terms and conditions of this Agreement and all Land Disturbance and Storm Water Pollution Prevention Plans have been approved.

13. Project Phasing and Timing. Project phasing and timing of construction shall be determined through the Preliminary and Final Plat review process.

14. Changes to Project. No material modifications to the Concept Plan, shall be made after approval by City without City Council's written approval of such modification. Developer may request approval of material modifications from time to time as Developer may determine necessary or appropriate. For purposes of this Agreement, a material modification shall mean any modification which changes the functional design of the Project in such a way that materially affects traffic, drainage, or other design characteristics. Modifications to the Project Plans which do not constitute material modifications may be made without the consent of City Council. In the event of a dispute between Developer and City as to the meaning of "material modification," no modification shall be made without express City Council approval. Modifications shall be approved by the City Council if such proposed modifications are consistent with City's then-applicable rules and regulations and are consistent with the standard for approval set forth in this Agreement.

15. Time of Approval. Any approval required by this Agreement shall not be unreasonably withheld or delayed and shall be made in accordance with applicable procedures set forth in the Mapleton City Code.

16. Successors and Assigns. This Agreement shall be binding on the successors and assigns of Developer. Notwithstanding the foregoing, a purchaser of the Project or any portion thereof shall be responsible for performance of Developer's obligations hereunder as to any portion of the Project so transferred. In the event of a sale or transfer of the Project, or any portion thereof, the seller or transferor and the buyer or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such transfer an agreement satisfactory to City, delineating and allocating between Developer and transferee the various rights and obligations of Developer under this Agreement, has been approved by City.

17. Default.

A. Events of Default. Upon the happening of one or more of the following events or conditions Developer or City, as applicable, shall be in default ("Default") under this Agreement:

(1) A warranty, representation or statement made or furnished by Developer under this Agreement is intentionally false or misleading in any material respect when it was made.

(2) A determination made upon the basis of substantial evidence that Developer or City has not complied in good faith with one or more of the material terms or conditions of this Agreement.

(3) Any other event, condition, act or omission, either by City or Developer, (i) violates the terms of, or (ii) materially interferes with the intent and objectives of this Agreement.

B. Procedure Upon Default.

(1) Upon the occurrence of Default, the non-defaulting party shall give the other party thirty (30) days written notice specifying the nature of the alleged default and, when appropriate, the manner in which said Default must be satisfactorily cured. In the event that the Default cannot reasonably be cured within thirty (30) days, the defaulting party shall have such additional time as may be necessary to cure such default so long as the defaulting party takes action to begin curing such default within such thirty (30) day period and thereafter proceeds diligently to cure the default. After proper notice and expiration of said thirty (30) day or other appropriate cure period without cure, the non-defaulting party may declare the other party to be in breach of this Agreement and may take the action specified in Paragraph C herein. Failure or delay in giving notice of default shall not constitute a waiver of any default.

(2) Any Default or inability to cure a Default caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to the period during which any such event prevented, delayed or stopped any required performance or effort to cure a Default.

C. Breach of Agreement. Upon Default as set forth in Paragraphs A and B above, City may declare Developer to be in breach of this Agreement and City (i) may withhold approval of any or all building permits or certificates of occupancy applied for in the Project, but not yet issued; and (ii) shall be under no obligation to approve or to issue any additional building permits or certificates of zoning compliance for any building within the Project until the breach has been corrected by Developer. In addition to such remedies, either City or Developer (in the case of a default by the City) may pursue whatever additional remedies it may have at law or in equity, including injunctive and other equitable relief.

D. Institution of Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements

set forth in this Agreement or to enjoin any threatened or attempted violation of this Agreement; or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Fourth District Court, State of Utah, or in the Federal District Court for the District of Utah. The option to institute legal action, at least in the case of defaults, is available only after the cure provisions are complied with.

18. General Terms and Conditions. The parties agree, intend and understand that the obligations imposed by this Agreement are only such, as are consistent with local, state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with local, state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with local, state or federal law, as the case may be, and the balance of this Agreement shall remain in full force and effect.

A. Recording of Agreement. In the event City approves the Project and all Conditions Precedent have been met, this Agreement shall be recorded as a covenant running with the Property herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

B. Severability. Each and every provision of this Agreement shall be separate, several and distinct from each other provision hereof, and the invalidity, unenforceability, or illegality of any such provision shall not affect the enforceability of any other provision hereof.

C. Time of Performance. Time shall be of the essence with respect to the duties imposed on the parties under this Agreement. Unless a time limit is specified for the performance of such duties each party shall commence and perform its duties in a diligent manner in order to complete the same as soon as reasonably practicable.

D. Construction of Agreement. This Agreement shall be construed so as to effectuate its public purpose of ensuring the Property is developed as set forth herein to protect health, safety, and welfare of the citizens of City.

E. State and Federal Law. The parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect. If City's approval of the Project is held

invalid by a court of competent jurisdiction, this agreement shall be null and void.

F. Enforcement. The parties to this Agreement recognize that City has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance. In the event Developer violates the rules, policies, regulations or ordinances of City or violates the terms of this Agreement, City may, without declaring a Default hereunder or electing to seek an injunction, and after thirty (30) days written notice to correct the violation (or such longer period as may be established in the discretion of City or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such thirty (30) days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been rectified by Developer.

G. No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the City Council of City, taken with the same formality as the vote approving this agreement, no officer, official or agent of City has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind City by making any promise or representation not contained herein.

H. Entire Agreement. This Agreement shall supersede all prior agreements with respect to the subject matter hereof, not incorporated herein, and all prior agreements and understandings are merged herein. This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the parties.

I. Attorneys Fees. Should any party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearings, and whether or not an action has actually commenced, the prevailing party shall be entitled to receive from the other party thereto reimbursement for all attorneys' fees and all costs and expenses. Should any judgment or final order be issued in any proceeding, said reimbursement shall be specified therein.

J. Notices. Any notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally, or

four (4) days after being sent by registered or certified mail, properly addressed to the parties as follows:

To the Developer: LD SMOOT FAMILY LLC (ET AL),
1811 N 1500 E
PROVO, UT 84604-5749

To the City: MAPLETON CITY ATTORNEY
125 W 400 N
MAPLETON, UTAH 84664

K. Applicable Law. This Agreement and the construction thereof, and the rights, remedies, duties, and obligations of the parties which arise hereunder are to be construed and enforced in accordance with the laws of the State of Utah.

L. Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other party within seven (7) days of receipt of said facsimile copy.

M. Hold Harmless. Developer shall hold City, its officers, agents, employees, consultants, special counsel, and representatives harmless from liability for damages or equitable relief arising out of claims for personal injury or property damage arising from direct or indirect operations of Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf, in connection with the Project.

(1) The agreements of Developer in Paragraph M shall not be applicable to (i) any claim arising by reason of the negligence or intentional actions of City, or (ii) attorneys' fees under Paragraph I herein.

(2) City shall give written notice of any claim, demand, action or proceeding which is the subject of Developer's hold harmless agreement as soon as practicable but not later than thirty (30) days after the assertion or commencement of the claim, demand, action or proceeding. If any such notice is given, Developer shall be entitled to participate in the defense of such claim. Each party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.

N. Relationship of Parties. This Agreement is not intended to create any partnership, joint venture or other arrangement between City and Developer. This Agreement is not intended to create any third party beneficiary rights for any person or entity not a party to this Agreement. It

is specifically understood by the parties that: (i) all rights of action and enforcement of the terms and conditions of this Agreement shall be reserved to City and Developer, (ii) the Project is a private development; (iii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property; and (iv) Developer shall have the full power and exclusive control of the Property subject to the obligations of Developer set forth in this Agreement.

O. Title and Authority. Developer expressly warrants and represents to City that it is a limited liability company in good standing and that such company owns or controls all right, title and interest in and to the Property and that no portion of the Property, or any right, title or interest therein has been sold, assigned or otherwise transferred to any other entity or individual. Developer further warrants and represents that no portion of the Property is subject to any lawsuit or pending legal claim of any kind. Developer warrants that the undersigned individual has full power and authority to enter into this Agreement on behalf of Developer. Developer understands that City is relying on such representations and warranties in executing this Agreement.

P. Headings for Convenience. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.

Q. Exhibits. All exhibits referred to herein are made a part of this Agreement as incorporated by reference date.

[signature page follows]

This Development Agreement has been executed by City, acting by and through its City Council, pursuant to a City Council motion authorizing such execution, and by a duly authorized representative of Developer as of the date first written above.

Attest:

Mapleton City, a Utah municipal corporation

Mayor

By: _____
City Recorder

By:

STATE OF UTAH
COUNTY OF UTAH

The foregoing instrument was acknowledged before me on this _____ day of _____ by Cory Andersen, of Silver Leafe, LLC, a Utah limited liability company on behalf of such company.

NOTARY PUBLIC

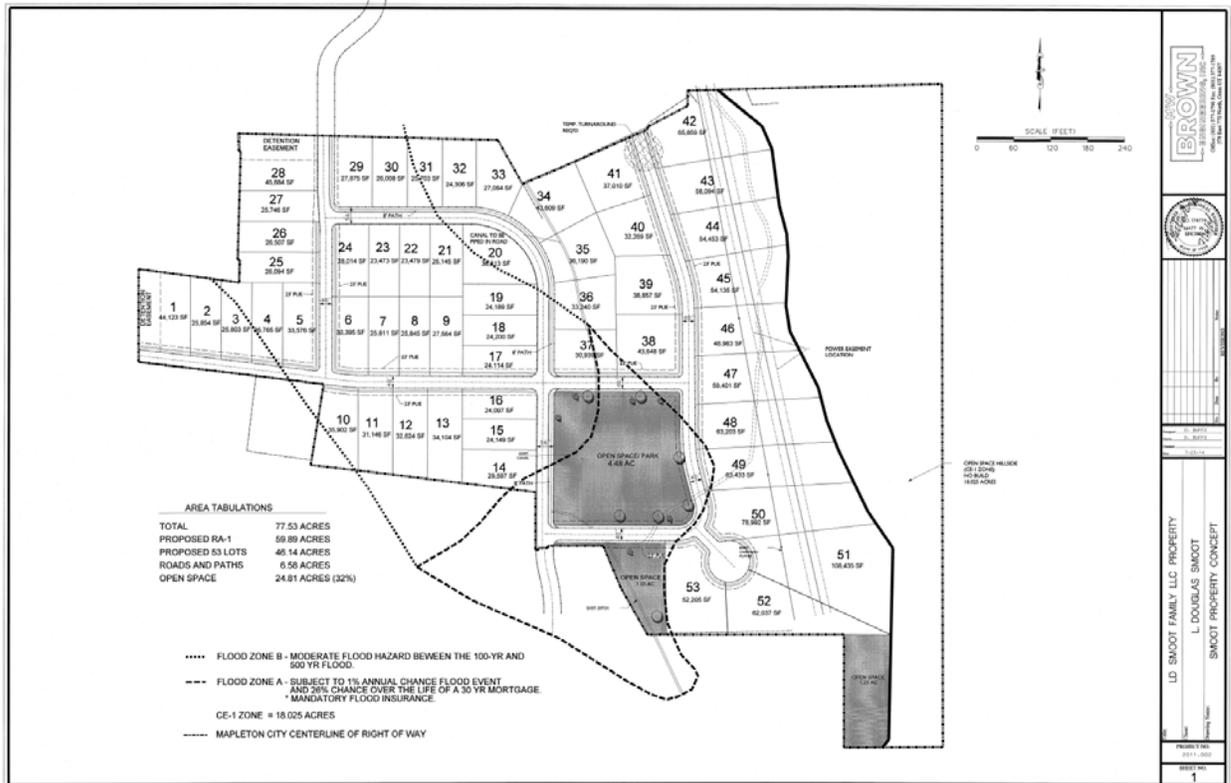
My commission expires:

Exhibit "A"
Legal Description
Project Name
Planned Residential Community Development
Project Area

DEVELOPABLE (REZONE) AREA
DESCRIPTION

Beginning at a point in a fence line which point is South 00°32'14" East along the Section line 41.46 feet and East 26.84 feet from the West Quarter corner of Section 12, Township 8 South, Range 3 East, Salt Lake Base and Meridian; thence North along said fence line 302.52 feet; thence South 82°09'27" East along a fence line and along the southerly line of the Ben and Katherine Gardner property according to the Warranty Deed Entry Number 102608 on file with the Utah County Recorder's Office 330.51 feet; thence North 01°27'18" East along the easterly line of said Gardner Property 73.81 feet; thence West 7.80 feet; thence North 01°39'00" East along the easterly line of said Gardner property and the Claude and Shirlene Rominger property (Warranty Deed Entry Number 95451) 352.48 feet; thence West 6.41 feet; thence North 02°47'40" West 57.32 feet to a fence line; thence South 88°42'47" East along the south line of the Maple Glen Subdivision Plat "A" and its line extended, along a fence line and along the south line of the ER Farm LLC property (Warranty Deed Entry 77216-2007) 846.36 feet to the Steele Investments LLC (Warranty Deed Entry 38197-2000 Number) southwesterly property line; thence along said Steele Investments deed line the following six (6) courses: (1) South 29°19'30" East 164.08 feet; (2) North 66°52'30" East 131.33 feet; (3) North 66°06'30" East 309.99 feet; (4) North 25°43'50" East 11.66 feet; (5) North 62°17'50" East 144.34 feet; (6) North 01°04'26" West 49.40 feet; thence North 88°26'23" East along the southerly line of said ER Farm LLC property 97.55 feet to the CE-1 Zone boundary line; thence along said CE-1 Zone line the following fourteen (14) courses: (1) South 50°51'25" East 188.00 feet; (2) South 23°23'07" East 80.64 feet; (3) South 07°23'28" East 186.59 feet; (4) South 14°55'53" East 93.17 feet; (5) South 03°58'20" East 72.19 feet; (6) South 02°27'36" West 163.19 feet; (7) South 08°54'06" East 84.03 feet; (8) South 26°49'00" East 203.98 feet; (9) South 14°32'04" East 111.60 feet; (10) South 21°23'34" East 104.20 feet; (11) South 25°49'34" East 222.71 feet; (12) South 34°33'51" East 142.81 feet; (13) South 01°11'46" West 623.28 feet; (14) South 38°59'48" West 32.73 feet to the north line of the Mapleton City property (Quit Claim Deed Entry Number 119781-2005); thence South 89°27'32" West along said north line 125.34 feet; thence North along the Charles Neaman east property line (Special Warranty Deed Entry 32116-2002) 367.24 feet; thence South 89°59'59" West along the Neaman north line and the Ann Yuill (Warranty Deed Entry 48788-2005) north line 638.89 feet; thence North 29°36'18" West 178.59 feet; thence North 22°40'25" West 145.07 feet; thence West 180.37 feet; thence South 00°11'40" West 7.20 feet; thence North 89°48'20" West 30.23 feet to the east line of the IDL Company property east line (Warranty Deed Entry 40315-2000; thence along the IDL Company deed lines the following three (3) courses: (1) South 00°10'19" West 5.75 feet; (2) West 10.09 feet; (3) North 187.66 feet; thence North 82°52'15" West 191.10 feet; thence North 83°11'55" West along the northerly line to the Lisbeth Edmunds property (Deed of Trust Entry 61208-2012) 950.15 feet; thence North 82°58'12" West 159.98 feet; thence North 01°15'49" West 29.48 feet; thence South 83°12'00" East 569.07 feet; thence North 09°05'00" East 236.22 feet; thence North 83°06'15" West 607.01 feet to the point of beginning. Area = 59.894 Acres

Exhibit "B" Concept Plan



BROWN
ENGINEERS & ARCHITECTS
1000 N. 17TH ST., SUITE 100
DENVER, CO 80202
TEL: 303.733.1100
WWW.BROWNEA.COM



Project No.	10000
Sheet No.	1
Date	10/1/00
Scale	AS SHOWN

L.D. SMOOT FAMILY LLC PROPERTY
L. DOUGLAS SMOOT
SMOOT PROPERTY CONCEPT



OPEN SPACE VALUE
25-1 ZONE
HORIZONTAL
1/4" = 1'-0"

Exhibit “C”

Conditions Precedent

- (1) Within thirty (30) days of rezone approval of the 59.9 acres from A-2 to RA-1, Developer shall record a conservation easement covering the 18.025 acres of land located in the CE-1 Zone.
- (2) The maximum density of the project shall be 53 lots. No lot shall be smaller than 21,000 square feet in size. Prior to final plat approval for any phase, a geotechnical report shall be prepared. Based on the results of the geotechnical report, the overall lot density may be reduced.
- (3) In order to ensure the entire Project has a consistent, quality design, Developer shall prepare Project Design Criteria or CC&R’s as part of final plat approval.
- (4) With the recording of the first phase of the development the developer will provide to the City evidence of incorporation of a homeowners association with authority to regulate common and limited common elements of the project. The homeowners association shall be responsible for all common element maintenance, including the park, and shall enforce the CC&R’s.
- (5) Developer shall install an eight foot (8’) wide trail, as depicted on the Concept Plan, connecting with the existing trail at 1800 East and running south through the project site. The material of the trail shall be approved by the City Engineer. The trail may be installed in phases as the project develops.
- (6) Developer shall be subject to all applicable impact fees that are in place at the time of plat recording and at the time of the issuance of individual building permits.
- (7) The project site includes areas in the 100 year and 500 year floodplains as designated by the Federal Environmental Management Agency (FEMA). All construction shall comply with applicable local, state and federal floodplain requirements.
- (8) Prior to the approval of the first plat of the project, Developer shall submit a final park and open space plan detailing how the park and open space will be developed and what amenities will be included.
- (9) Prior to the issuance of a building permit for the thirty-fifth (35th) lot of the project, Developer shall fully develop all park and open space areas in accordance with the approved park and open space plan.
- (10) The right-of-way cross sections including paving width, curb, gutter and sidewalk shall be established and approved with each plat approval.

- (11) All lots shall maintain a minimum of 100 feet of frontage on an approved public street.

MAPLETON CITY
PLANNING COMMISSION MINUTES
January 10, 2013

PRESIDING AND CONDUCTING: Jared Bringham

Commissioners in Attendance: John Gappymayer
Rich Lewis
Thomas Quist – Arrived at 6:45pm
Keith Stirling
Mike Tippetts

Staff in Attendance: Sean Conroy, Community Development Director

Minutes Taken by: April Houser, Executive Secretary

Chairman Bringham called the meeting to order at 6:30pm. Mike Tippetts gave the invocation and Rich Lewis led the Pledge.

Items are not necessarily heard in the order listed below.

Item 3. Consideration of a request for input on a preliminary proposal for a General Plan Amendment from Rural Residential to Low Density Residential and to rezone approximately 60 acres of land from A-2 to RA-1.

Sean Conroy, Community Development Director, went over the Staff Report for those in attendance. On the eastern slope of the property there is approximately 18 acres in the CE-1 Zone. There are a few areas on the property that are located in the 100 and 500 year flood planes. They are currently proposing to have 56 units with 10 acres of open space. There was a concept plan shown as part of the Staff Report for this evening. With a clustering approach to the zoning it would give the applicants more flexibility to leave those areas in the flood plane out of the lot layouts.

L. Douglas Smoot and M. Duane Horton, applicants, gave a presentation for those in attendance. Mr. Smoot stated that he has a lot of friends here in Mapleton, and has a wonderful appreciation for the City. These parcels of land were purchased between the years of 1972-1979 by the applicants. The property has remained on green belt with Utah County since the time it was purchased. The irrigation canal runs over this property, along with high volt power poles. Currently the property is zoned A-2 and CE-1. When they took into consideration all of the different types of terrain and infrastructure on their property they determined a clustering option would be the most beneficial in laying out the lots within the development. This development will abut the Maple Glen Subdivision, connecting to the street in that development. They plan to leave the power lines where they are. This is part of the reason for desiring the clustering option, leaving the lots in these areas larger allowing homes to be built where there are no overhead power lines above them. The density the project could have under its current zoning is not so different than what they are proposing with the possible rezone. Their current intent is to leave the property as is, but with the expiration of the Transferable Development Right Sending Site (TDR-S) Ordinance it required they move forward with a small portion of the rezone and development process. 35% of the property would remain in open space. If the property is rezoned, they still anticipate that it will continue being farmed and all of the parcels will be combined into one. The 18 acres would remain

in the CE-1 Zone with a Conservation Easement recorded on the property preventing it from ever being developed.

Chairman Bringhurst opened the Public Hearing. No comments were given and the Public Hearing was closed. **Commissioner Stirling** feels that the intent of the Master Plan was to keep the open space feeling in this area with the A-2 Zoning. He feels this proposal is possibly a higher density and wonders what this type of development may do to our east bench area. Chairman Bringhurst feels that this proposal would be a safer development, keeping the homes out of the flood plane area. **Commissioner Gappmayer** stated that the lot sizes decrease as it gets towards the bench areas. He feels this proposal would still meet the spirit the city wanted when creating the TDR Ordinance. Commissioner Stirling wanted to reiterate his concern with preserving the hillside land throughout the City.

- Motion:** Commissioner Tippetts gave directive to Staff that the Planning Commission is in support of the RA-1-C Zoning with the Conservation Easement on the property that is located in the current CE-1 Zone.
- Second:** Commissioner Lewis
- Vote:** Unanimous