

Understanding Conservation Easements as a Planning Tool

APA Convention, Ogden
Friday September 29th 2023



Presentation Goals

- Describe what conservation easements are and the conservation values they protect
- Walk through examples of three different kinds of easements – donations, bargain-sales and easements linked to new developments
- Discuss how planning actions and public entities shape land conservation

A Conservation Easement is...

A binding, perpetual agreement between a landowner and a conservation easement holder to protect conservation values.

A Conservation Easement Holder is...

A non-profit 501(c)3 organization,
government agency, county or
municipality

Conservation Easement Act (Title 57-18-1-7)

Conservation Easement Myths

"If I put my land under conservation easement, I have to allow public access."

"If it put my land under conservation easement, the government can make me change what I do with it."

"A conservation easement is a government taking, by eminent domain."

What are Conservation Values?

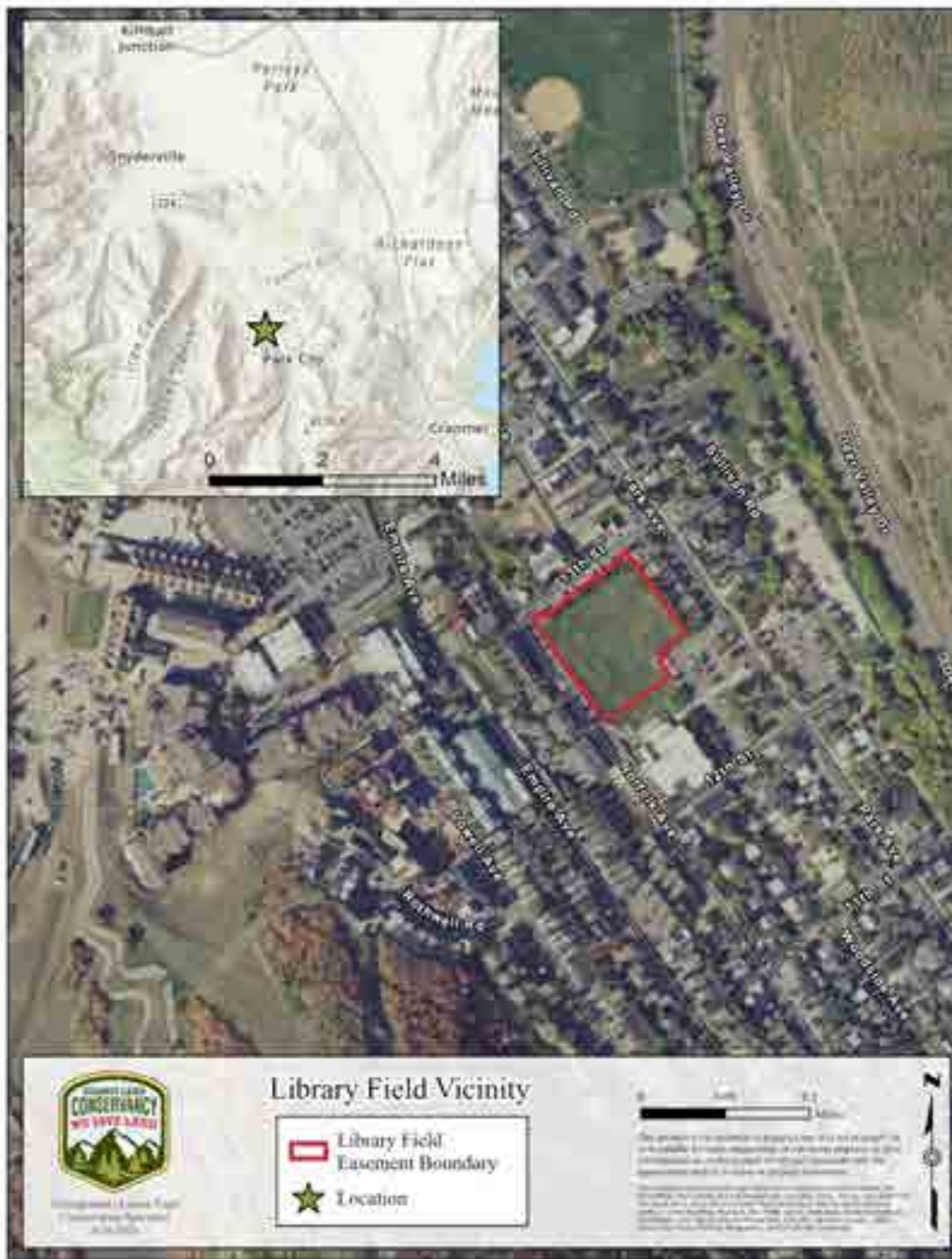
- Wildlife Habitat (aquatic and terrestrial)
- Water Quality
- Agricultural Productivity
- Scenic View Sheds
- Public Recreation
- Historic Value



SILVER CREEK ESTATES UNIT 'D'

A PART OF 1977 REG. NO. 108 IN
TOWNSHIP 68N, RANGE 140E, COUNTY OF
SAGRE, STATE OF MONTANA





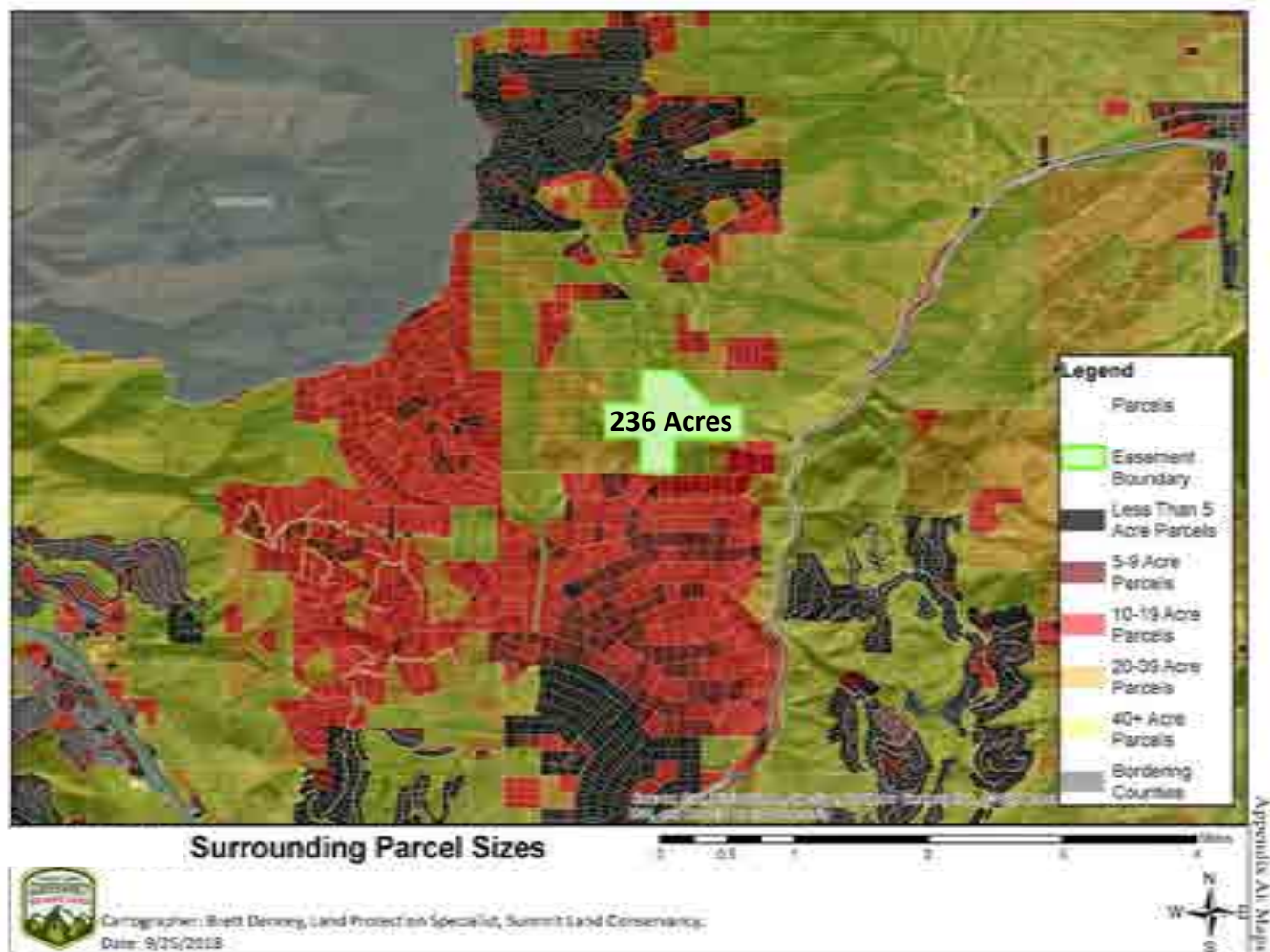
Summit Land Conservancy

- First Easement closed in 2002
- Total Easements: 49
- Acreage protected over 14,000
- Agricultural land Easements purchased: 10
- Easements with municipalities: 21
- Private land Easement donations: 4
- Fee Title acquisitions: 2
- Easement Value: \$101,842,899

Types of Conservation Easements

- Donation
- Bargain Sale
- Donation Linked to a New Development
- CE Protection Linked to a New Development

DONATION



Public Influences:

- IRS Regulations
- LTA Standards and Practices
- Internal Conservancy standards

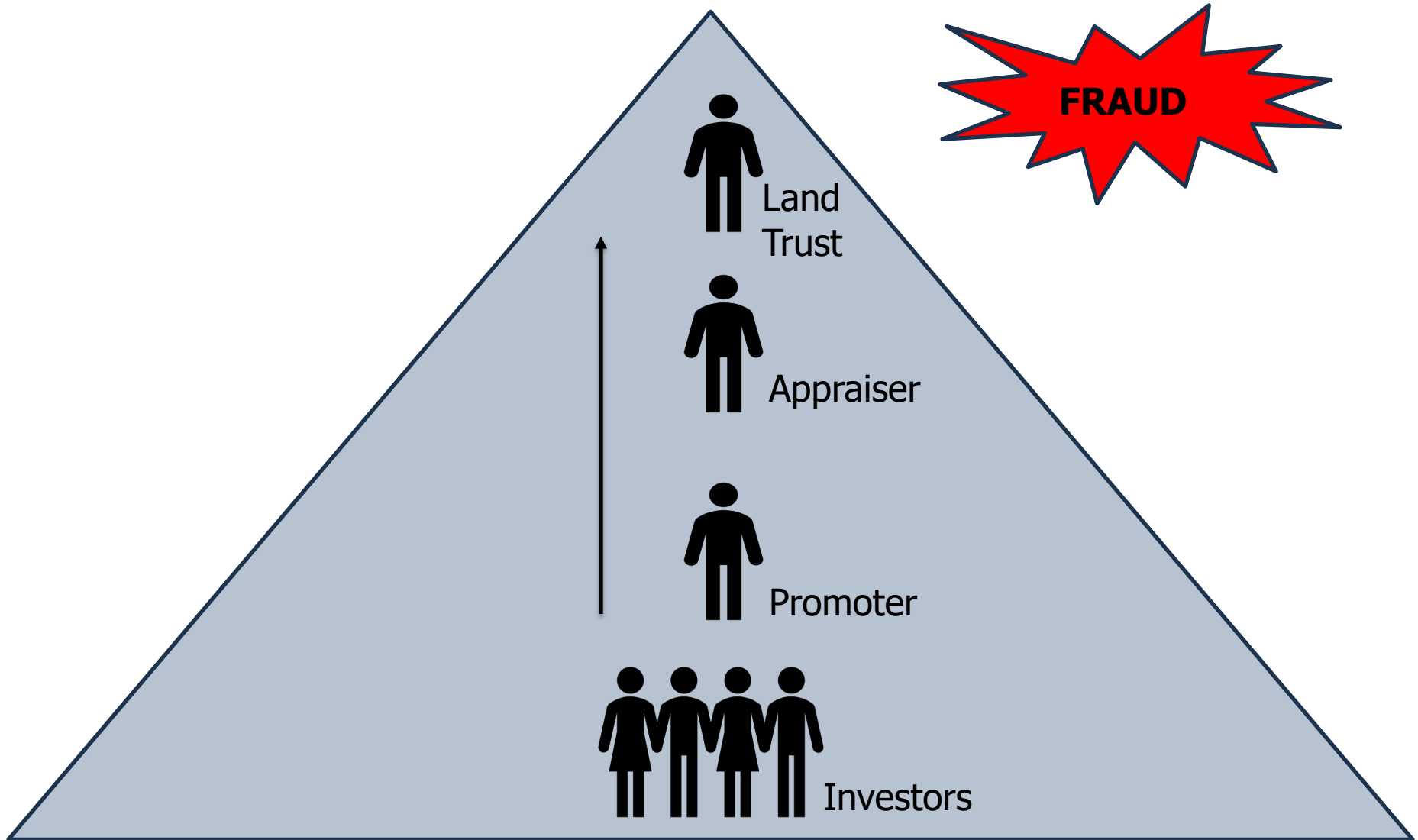
Planning:

- Determination of zoning and property valuation

Four Kinds of Conservation Values

- Conservation purposes under IRS § 170(h)(4)(A) are
- (1) preserving land for outdoor recreational use by, or education of, the general public;
- (2) protecting relatively natural habitats of fish, wildlife or plants;
- (3) preserving open space (including farmland or forest space) for scenic enjoyment of the general public or under a governmental conservation policy yielding significant public benefit; and
- (4) preserving a historically important land area or a certified historic structure.

SYNDICATED DONATION



Our North Star



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WHAT WE DO

WHAT YOU CAN DO

ISSUES & ACTION

FOR LAND TRUSTS

MEMBERSHIP

GIVING

DONATE

for land trusts

Adopt Land Trust Standards and Practices

Implement Land Trust Standards and Practices

Land Trust Standards and Practices FAQs

Land Trust Standards and Practices

MORE TITLES ▾

A Commitment to Excellence

The land trust community is committed to excellence in our work. We're committed to upholding the public's confidence in land conservation. And we support each other in that commitment.

Together, land trusts have established a set of guidelines for how to run a land trust responsibly: *Land Trust Standards and Practices*® (the Standards). These guidelines describe how to operate a land trust legally, ethically and in the public interest, with a sound program of land transactions and land stewardship. All Land Trust Alliance member land trusts must adopt the Standards as their guiding principles.

Land trusts developed the first Standards in 1989 and revised them most recently in 2016-2017. Hundreds of conservation leaders contributed to the 2017 revisions, so these guidelines represent the experience of diverse land trusts from across the country. More than 1,000 land trusts have adopted the Standards.

★ Baselines

★ Monitoring

★ Easement Content

★ Enforcement

★ IRS Fraud Prevention

BARGAIN SALE TRANSACTION



USING THE CONSERVATION TAX INCENTIVE

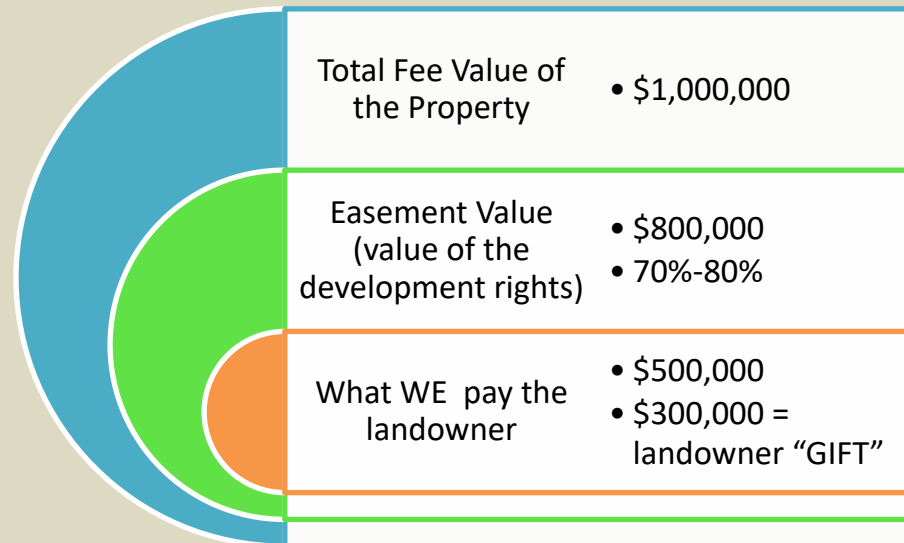
In 2015 Congress enacted one of the most powerful conservation measures in decades: the enhanced federal tax incentive for conservation easement donations.

The permanent conservation easement tax incentive is a powerful tool that helps Americans conserve their land voluntarily.

For land trusts across the country, the permanent incentive represents newly increased opportunities to protect the special places in their widely varied communities.

If you own land with important natural, agricultural or historic resources, donating a conservation easement can be a prudent way to both love the land you love forever and to realize significant federal tax savings.

This short brochure summarizes the conservation easement tax incentive and provides answers to some frequently asked questions. For the latest information and for guidance on individual properties, please contact your local land trust, which can be found at www.firdlandtrust.org.



BARGAIN SALE

Public Influences:

- NRCS – Agricultural Land Easement Program
- State Conservation Fund
- UT Division of Water Quality
- County Open Space Bond
- Donors
- IRS Regulations
- Conservancy and Land Trust Alliance Standards

Planning:

- Determination of Zoning and Property valuation
- Local Government Plans
- Government Agency Plans

Conservation Values based on soil health and agricultural productivity

Required Minimum Deed Terms

AGRICULTURAL CONSERVATION EASEMENT PROGRAM (ACEP)
AGRICULTURAL LAND EASEMENT (ALE)
MINIMUM DEED TERMS FOR THE PROTECTION OF AGRICULTURAL USE

INSTRUCTIONS FOR APPENDIX: When these terms are appended to an exhibit to the Agricultural Land Easement deed, an appendix to being incorporated directly into an Agricultural Land Easement deed, the following requirements must be met: (1) The Agricultural Land Easement deed must be an enforceable real property interest that runs with the land in perpetuity or for the maximum term allowed under State law and protects the agricultural use and future viability, and related conservation values of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values or prevent grazing uses and related conservation values by restoring or conserving eligible land. (2) A complete copy of the exhibit form must be attached to the Agricultural Land Easement deed at the time of closing and recordation. (3) The following paragraph must be inserted at the end of the body of the Agricultural Land Easement deed.

This [INSERT DEFINED TERM FOR AGRICULTURAL LAND EASEMENT] is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP). The EXHIBIT is attached hereto and incorporated hereto by reference and will run with the land [SELECT ONE: in perpetuity OR for the maximum duration allowed under applicable State law]. As required by 16 U.S.C. Section 3803 et seq. and 7 CFR Part 1484, and in accordance with existing ACEP funds, all present and future uses of the Protected Property identified in EXHIBIT (and description or survey) to be met will comply with the terms and conditions described in EXHIBIT (insert "Minimum Deed Terms For The Protection Of Agricultural Use" that is appended to and made a part of this easement deed).

INSTRUCTIONS FOR INCORPORATION: When these terms are incorporated directly into an Agricultural Land Easement deed the following three paragraphs must be included in the Agricultural Land Easement deed's opening clause and recitals. The terms in Section 1 are to be incorporated into the body of the Exhibit (which is Agricultural Land Easement deed) unmodified except for appropriate formatting changes, selecting options, removing unnecessary provisions, and substituting, as needed, the defined terms for the Agricultural Land Easement Deed (Baseline Documentation Report, Protected Property, and the Parties). Please note, the language contained below "Table 1" and "Section 1" is not for use with this deed.

[Include in Granting Clause after Grantor and Grantee]

and with a right of enforcement to the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA)/Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC)

[Include in Recitals]

This [INSERT DEFINED TERM FOR AGRICULTURAL LAND EASEMENT] is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP) of U.S.C. Section 3803 et seq. and 7 CFR Part 1484 for the purpose of [SELECT BASED ON ENROLLMENT TYPE:

(FARMLAND) protecting the agricultural use and future viability, and related conservation values by limiting nonagricultural uses that negatively affect the agricultural uses and conservation values of the

Instruction Page 1

The terms and conditions of the ALE Deed run with the land and on binding upon the Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them, any and all of whom must comply with all terms and conditions of this ALE Deed, including the following:

1. Limitation on Impervious Surfaces. Impervious surfaces will not exceed _____ percent/annum approved impervious surface percentage. Notes of greater than 2 percent, a written waiver from the Chief of NRCS or the Chief of NRCS's authorized designees is required. (1) of the Protected Property, including NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or rock. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this ALE Deed.

[Include the following if limited subdivision is allowed below. In the event the Protected Property is subdivided as provided for in Section 1, Paragraph (2)(A), the total cumulative impervious surface of the subdivided parcels must not exceed the impervious surface limitation referenced above. The Grantee, with Grantee approval, will allocate the impervious surface limit among the subdivided parcels and ensure said impervious surface limitation is clearly defined in each subdivided parcel's recorded instrument.]

2. Limitations on Nonagricultural Uses. Any activities inconsistent with the Purpose of the ALE are prohibited. (Note: The term "ALE granted easement" refers to both general ALE grazing use easements or ACEP-ALE-GSI easements. Also include the following sentence for ALE granted easements: The provisions of this ALE Deed limit the types of agricultural operations that can occur on the Protected Property to those that promote the Purpose of the ALE.) The following activities are inconsistent with the Purpose of the ALE and are specifically prohibited, subject to the qualifications stated below:

(A) Subdivision - (Select Option 1, 2, or 3). [Additionally, where required by State law the following may be inserted at the end of the subchapter option: Notwithstanding the foregoing, subdivision of the Protected Property is permissible when necessary to comply with State or local regulations that explicitly require subdivision to construct residences for employees working on the Protected Property. Grantee must provide written notice and evidence of such requirements to Grantee and the Chief of NRCS, or the Chief of NRCS's authorized designees (Chief of NRCS), prior to division of the Protected Property in accordance with such State or local regulations.]

(Option 1) Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited.

(Option 2) The Protected Property must not be divided or subdivided into, or separately conveyed as, more than _____ separate parcels (i.e., divisions allowed), the boundaries and the allocation of the impervious surface limitation of which have been identified in EXHIBIT (which is appended to and made a part of this ALE Deed). To protect the Purpose of the ALE, the boundaries of such divisions have been progressed in writing by Grantee and the Chief of NRCS, or the Chief of NRCS's authorized designees (Chief of NRCS). Deviations from the identified boundaries will not be allowed. Grantee must give Grantee and the Chief of NRCS written notice prior to subdividing, dividing, or separately conveying a parcel of the Protected Property.

(Option 3) The Protected Property must not be divided or subdivided into, or separately conveyed as,

An EXHIBIT which is appended to and made a part of the ALE deed OR (EIGHTING) OPTION of which there shall be no more than _____ and notes. The Grantee must receive prior written approval of the location and boundaries of the Building Easement from the Grantee and the Chief of NRCS, following which the Grantee and Grantee shall amend this ALE Deed to add an exhibit that describes the approved boundaries and locations of the Building Easement(s).

[Alternatively, if the Protected Property will have no building envelopes, replace the preceding sentence with the following: Except as otherwise permitted in this Section 1, Paragraph (2)(C), no structures or improvements, whether existing or in the future, may be constructed, repaired, or altered on the Protected Property.]

[Include the following subparagraph if future adjustments to approved building envelopes may be considered: The identified boundaries and locations of the approved Building Easement(s) may be adjusted only with prior written approval from the Grantee and the Chief of NRCS. The adjusted Building Easement(s) may not be larger than the approved Building Easement(s) and must provide equal or greater protection of the Purpose of the ALE. Following receipt of written approval to adjust identified Building Easement(s), the Grantee and Grantee shall amend this ALE Deed to add an exhibit that describes the subsequently approved boundaries and locations of the Building Easement(s).

Agricultural structures and utilities to serve approved buildings or structures, including on-site energy structures allowed under Section 1, Paragraph (2)(B)(ii) and in this Section 1, Paragraph (2)(C) that neither individually nor collectively have an adverse impact on the Purpose of the ALE, may be located outside of the Building Easement(s) with prior written approval of the Grantee.

New roads may be constructed if they are approved in advance by Grantee, within impervious surface limits, and are necessary to carry out the agricultural operations or other allowed uses on the Protected Property. [Add the following sentence for ALE-GSI easements: Any new roads may be constructed at a location and manner that is consistent with the Purpose of the ALE and will not negatively impact the habitat, species, or sensitive natural resources identified for protection in the Baseline Documentation Report.]

Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Fences may be maintained and replaced, and new fences installed if they are necessary for agricultural operations or other allowed uses on the Protected Property or to mark boundaries of the Protected Property. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the Purpose of the ALE [Add the following sentence for ALE-GSI easements and do not negatively impact the habitat, species, or sensitive natural resources identified for protection in the Baseline Documentation Report.]

(iii) Granting of Easements for Utilities and Roads - The granting or modification of easements for utility and roads is prohibited when the utility or road will adversely impact the Purpose of the ALE as determined by the Grantee in consultation with the Chief of NRCS.

- 1. The ALE Deed shall be enforceable by the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA)/Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC).
- 2. The ALE Deed shall be enforceable by the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA)/Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC).
- 3. The ALE Deed shall be enforceable by the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA)/Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC).
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- 8. The ALE Deed shall be enforceable by the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA)/Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC).
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- 10. The ALE Deed shall be enforceable by the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA)/Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC).

[If the ALE Deed is for a Protected Property that is not a farm, insert the following sentence: The ALE Deed shall be enforceable by the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA)/Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC).

[If the ALE Deed is for a Protected Property that is a farm, insert the following sentence: The ALE Deed shall be enforceable by the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA)/Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC).

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(B) Forest Management and Timber Harvest - Forest management and timber harvesting are allowed, provided such activities are carried out, in the stream protection, in accordance with current, generally accepted best management practices for the site, with, and within of the Protected Property [Insert if a forest management plan is included in Section 1, Paragraph 4; and in accordance with a written forest management plan as described in Section 1, Paragraph 4].

(C) On-Farm Energy Production - Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewables energy systems must be built and maintained within impervious surface limits and consistent with the Purpose of the ALE.

[Include the following paragraph only when the property is in a grazing use that is considered during existing and selection, is an ALE granted easement, or located for conservation purposes that include outcropping or remaining grazed uses or grazed dependent species (B) Grazed Uses of the Protected Property - Grantee, as allowed in grazing, use, harvest for hay and silage and production, use, control fire fuels, conduct fire suppression and rehabilitation activities, and conduct custom grazing practices, including cultural practices, consistent with the Purpose of the ALE Deed and the Purpose of the ALE. The term "custom grazing practice" means practices that are conducted in the region where the Protected Property is located to include grazing, brush management, and management of infrastructure related to conduct livestock grazing on the Protected Property. Grantee must not set, burn, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline. Disruption of birds whose populations are in significant decline, nesting season for such birds, and the areas of the Protected Property affected by the restriction will be set forth within [Select All that apply] the Baseline Documentation Report, the ALE Plan, and the grazing management plan described in Section 1, Paragraph 4.]

[Include the following paragraph and each applicable choice if the Protected Property contains highly erodible soil(s) or is an ACEP-ALE-GSI parcel as provided on an FY 2009 ALE agreement, and for each agricultural land easement plan the entity has otherwise agreed to:

4. Agricultural Land Easement Plan. The Grantee shall prepare an agricultural land easement plan (the "ALE Plan") in consultation with the Grantee and as needed NRCS. The Grantee agrees to update the ALE Plan in consultation with the Grantee and as needed NRCS, in the event the agricultural uses or ownership of the Protected Property change. A copy of the current ALE Plan is kept on file with the Grantee.

[INCLUDE THE FOLLOWING ONLY IF EXISTING OR TO BE A GENERAL ALE PLAN: The ALE Plan shall describe the farm or ranch management system, describe the natural resource concerns on the Protected Property, describe the conservation measures and practices that may be implemented to address the identified resource concerns, and promote the long-term viability of the land to meet the Purpose of the ALE.]

[INCLUDE THE FOLLOWING IF PARCEL CONTAINS HIGHLY ERODIBLE SOIL(S): The ALE Plan shall include a conservation plan that complies with 7 CFR Part 12 pertaining to all highly erodible soil(s) on the Protected Property. If the NRCS considers and specifications for highly erodible soil(s) are revised after the date of this ALE Deed based on an Act of Congress, NRCS will work cooperatively with the Grantee and Grantee to develop and implement a revised conservation plan.]

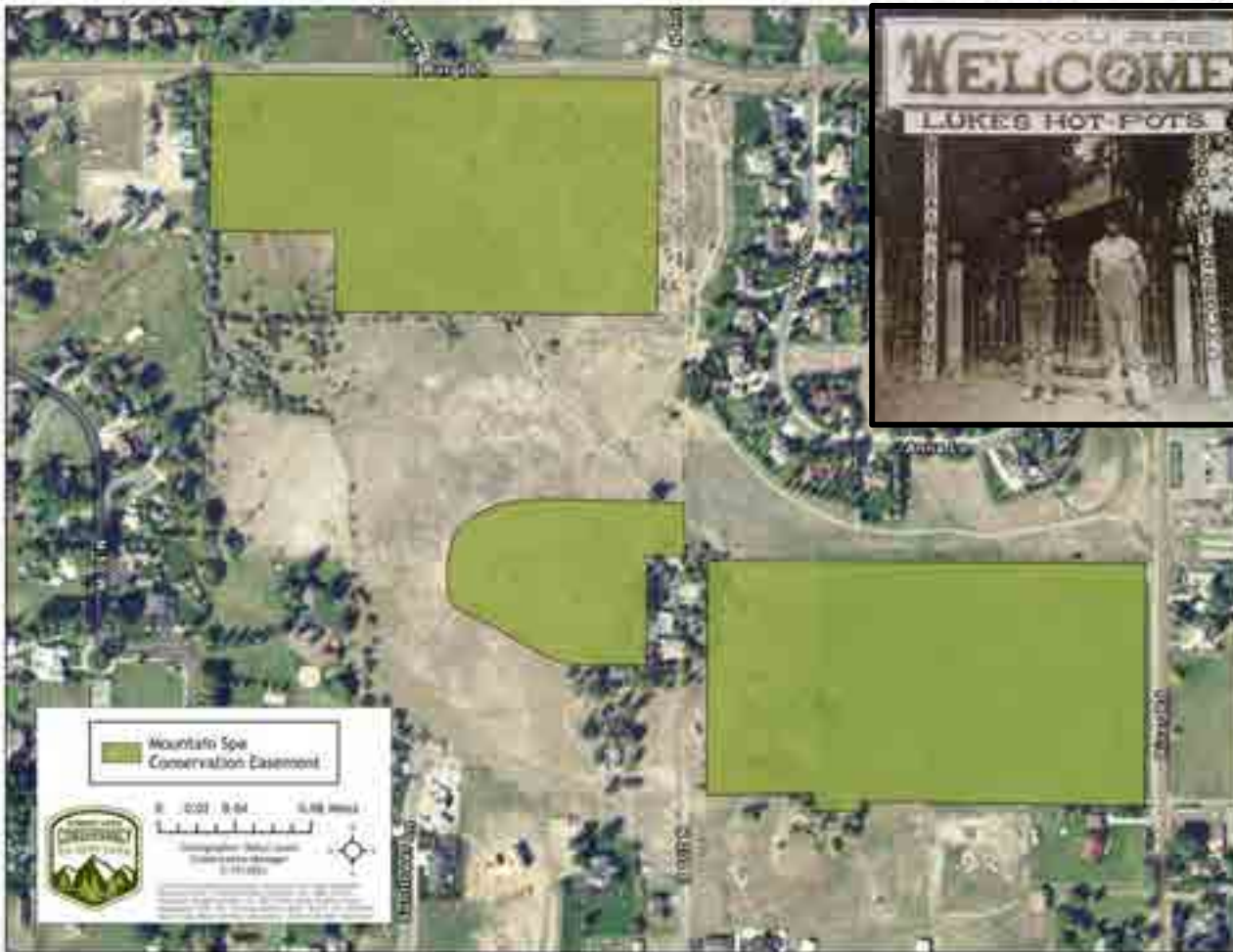
[INCLUDE THE FOLLOWING FOR ALL ACEP-ALE-GSI PARCELS OR IF ANY ALE AGREEMENTS OR IF THE ENTITY HAS ACCEPTED TO HAVE A GRASSLAND MANAGEMENT PLAN: The ALE Plan shall include a grazing management plan that describes the grazing

DONATION Linked to New Development

Scenario:

- An urban property has vested development rights, established by an old plat and planning approval
- It has natural vegetation and public recreational trails, adjacent to other open land and a dense neighborhood with steep and narrow streets.
- Development of the whole property (as platted) would have negative long and short-term community impacts (scenic view, wildlife, trail use, watershed function, construction staging, traffic, utilities, emergency services).
- The development proposal is for a significantly less units and clustered. The land to be left undisturbed has conservation values (as determined by the IRS (170)(h)).

CE Protection Linked to New Development



Public Influences:

- Open space bonds
- County and/or municipal approval
- Internal Conservancy Standards

Planning:

- Local planning approval
- Conservation conditions
- Site planning


Why do we need the extra wheel?



**Protected by a
Development
Agreement?**



Protected by a Deed Restriction?


HIGH COUNTRY TITLE

MAIL TAX NOTICE TO:
C/O BANCORP
P.O. Box 1480
Park City, UT 84302
22466

WARRANTY DEED

Jane Ellen Stewart, Inest Byron Westworth, Kirk Chapman Westworth and Mark McCune White, grantors
of Elk Cove, County of Summit State of California, hereby CONVEY(S) and WARRANTI(Y) to:

Park City Municipal Corporation, a municipal corporation, and political subdivision of the State of Utah, grantee(s).

of Park City, Summit County, State of Utah for the sum of TEN DOLLARS and other good and valuable consideration, the following described tract of land in Summit County, State of Utah, to wit:

As undivided one-fourth interest in and to the following described property:

Utah Mining District - Summit County, Utah

00721904 8/11/2010 P011003-0402
ALAN SPRIDGE- SUPPLY CO RECORDER
2305 JRM ST 16102 PH 303 432.00
REGISTER HIGH COUNTRY TITLE

The Emily Patented Lode Mining Claim, Lot No. 686, on the same is more particularly described in that certain Patent recorded December 6, 1910 as Entry No. 20518 in Book F of Mining Deeds at Page 35 of the official records in the office of the Summit County Recorder.

The Hope Patented Lode Mining Claim, Lot No. 687, on the same is more particularly described in that certain Patent recorded December 6, 1910 as Entry No. 20518 in Book F of Mining Deeds at Page 35 of the official records in the office of the Summit County Recorder.

The Alvina Patented Lode Mining Claim, Lot No. 688, on the same is more particularly described in that certain Patent recorded December 6, 1910 as Entry No. 20518 in Book F of Mining Deeds at Page 35 of the official records in the office of the Summit County Recorder.

The Hope No. 2 Patented Lode Mining Claim, Lot No. 3282, as the same is more particularly described in that certain Patent recorded January 11, 1911 as Entry No. 20627 in Book F of Mining Deeds at Page 34 of the official records in the office of the Summit County Recorder.

The Emily No. 2 Patented Lode Mining Claim, Lot No. 3282, as the same is more particularly described in that certain Patent recorded January 11, 1911 as Entry No. 20627 in Book F of Mining Deeds at Page 34 of the official records in the office of the Summit County Recorder.

The Emma Patented Lode Mining Claim, Lot No. 3282, as the same is more particularly described in that certain Patent recorded January 11, 1911 as Entry No. 20627 in Book F of Mining Deeds at Page 34 of the official records in the office of the Summit County Recorder.

Summit County Tax Serial No's: SA-6-33 and SA-5-31

The above described property is conveyed subject to a restrictive covenant effective as of the date of this Warranty Deed, that said property shall be maintained in perpetuity as open space, in perpetuity as an undeveloped park and recreational land, that no improvements be placed on the property except those which are consistent with the preservation and protection of the natural amenities, and that the conditions of the above-stated restrictions may be enforced by any person or organization consistent with the maintenance of open space and the objectives set out in this restrictive covenant.

Subject to relevant general laws, assessments, restrictions, and rights of way of record.

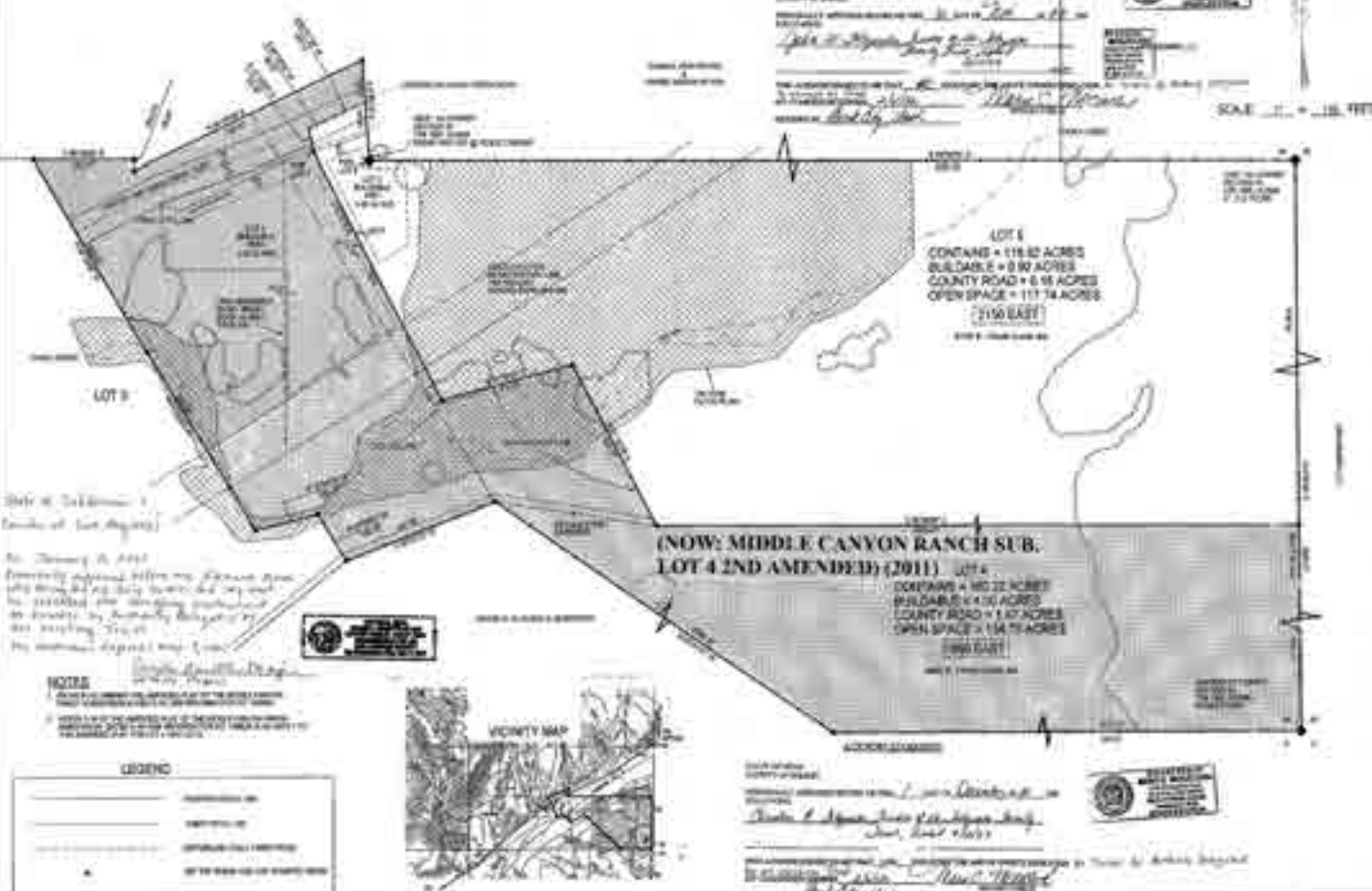
RESTRICTIVE COVENANT!



Protected By A Plat

AMENDED MIDDLE CANYON RANCH SUBDIVISION, LOT 4 AND LOT 5

SHEET 1 OF 1 LOCATED IN SECTION 33 & 34, TOWNSHIP 3 NORTH, RANGE 6 EAST, SALT LAKE BASE & MERIDIAN
SUMMIT COUNTY, UTAH



SUBDIVISION CERTIFICATE

STATE OF UTAH
SUMMIT COUNTY

PLAT DESCRIPTION

DS 4

LOT 4

LOT 5

OWNER'S DEDICATION

ACKNOWLEDGMENT

COUNCIL TO RECORD

<p>PREPARED BY:</p> <p>W&A LAND SURVEYING, INC. 1290 S. BOYTSVILLE ROAD BOYTSVILLE, UT 84017 (435) 336-4210</p>	<p>COUNTY ENGINEER</p> <p>Approved and accepted by the Summit County Engineering Department on <u>11/11/11</u> at <u>10:00 AM</u>.</p> <p><i>[Signature]</i> COUNTY ENGINEER</p>	<p>COUNTY COMMISSION</p> <p>Approved and accepted by the Summit County Commission on <u>11/11/11</u> at <u>10:00 AM</u>.</p> <p><i>[Signature]</i></p>	<p>COUNTY PLANNING COMMISSION</p> <p>Approved and accepted by the Summit County Planning Commission on <u>11/11/11</u> at <u>10:00 AM</u>.</p> <p><i>[Signature]</i></p>	<p>APPROVAL AS TO FORM</p> <p>Approved as to form by <u>[Signature]</u> on <u>11/11/11</u>.</p> <p>COUNTY ATTORNEY</p> <p><i>[Signature]</i></p>	<p>COUNTY RECORDER</p> <p>STATE OF UTAH COUNTY OF SUMMIT</p> <p>Recorded and filed in the office of <u>[Signature]</u> on <u>11/11/11</u> at <u>10:00 AM</u>.</p> <p>COUNTY RECORDER</p>
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Protected by a Land Trust

Stewardship is an ongoing relationship with the land and the landowner. Every time we accept a new easement we accept a permanent responsibility. We monitor all easement properties at least annually and are prepared to enforce easement terms.



Thank you

Kate Sattelmeier
Summit Land Conservancy
Wesaveland.org
kate@wesaveland.org

Shanna Francis
Ogden Valley Land Trust
Ogdenvalleylandtrust.org
slfrancis@digis.net