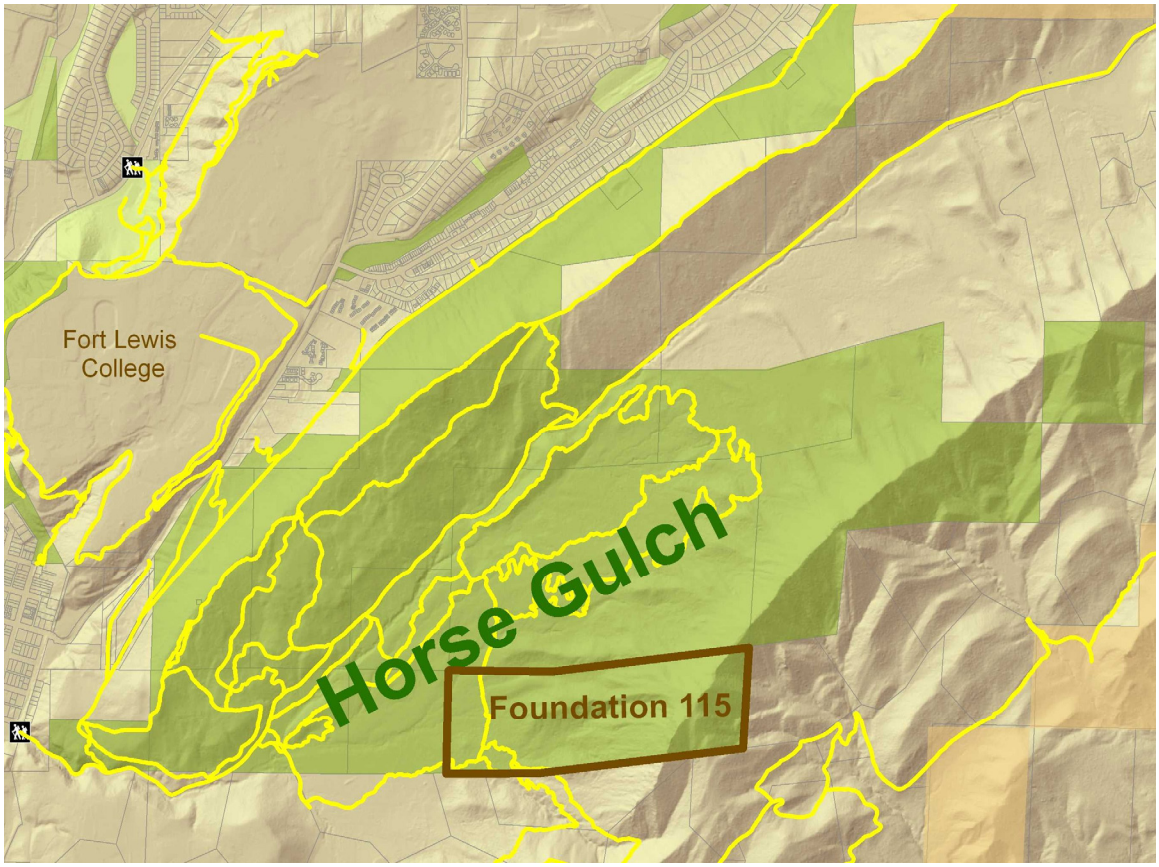
Horse Gulch: Foundation 115
Baseline Documentation



CITY of DURANGO

La Plata Open Space Conservancy

Conservation Easement Baseline Documentation

Horse Gulch Open Space FLC Foundation 115

June 2010

Contents:

Conservation Easement Narrative Report

Attachments

1. Deed to Property
2. Title Commitment and Legal Description
3. Vicinity Map
4. Topographic Map
5. Confirmation of Conservation Values
6. Assessment of Impact of Mineral Development
7. Environmental Hazard Assessment
8. Draft of Horse Gulch Open Space Management Plan
9. Boundary Map Showing Natural Features, Improvements, Photo Points
10. Photos from Designated Photo Points
11. Aerial Photo
12. Deed of Conservation Easement

La Plata Open Space Conservancy
Conservation Easement Narrative Report

Horse Gulch Open Space FLC 115 Foundation Conservation Easement
June 2010

Introduction:
This report documents the conservation values and existing conditions of the City of Durango Horse Gulch Open Space FLC Foundation 115 Conservation Easement property (hereafter referred to as the "Property") totaling approximately 115 acres in La Plata County, Colorado. This report accompanies the conveyance of a Deed of Conservation Easement from the property owner, the City of Durango, a Municipal Home-Rule Corporation, to La Plata Open Space Conservancy (LPOSC), an IRS-qualified 501(c)(3) nonprofit land trust. The City of Durango is donating the conservation easement to meet the requirements of Great Outdoors Colorado, a funding partner in the Property's acquisition. The purpose of the conservation easement is to protect the following conservation values on the Property in perpetuity:

1. Natural habitat for wildlife and plants – including summer and winter range; severe winter range; summer and fall concentration area; migration area; and/or overall range for a variety of species of game and nongame wildlife.
2. Recreational trails that can be enjoyed by the public.
3. Natural, scenic open space that can be enjoyed by the public, and that adjoins and buffers other protected private and public lands.

Grantor(s):	City of Durango	**Location:**	Sec. 27 & 28 T35N, R9W
Address:	949 E Second Avenue Durango, CO 81301	**Road:**	Off County Road 237
		Town:	Durango
Telephone:	(970) 375-7315	**County:**	La Plata

Total # Acres: 115
% Steep Forested Slopes 30% **% Moderate Forested Slopes & Open Meadows** 70%

Description of Property and Conservation Values:
The Property has significant Conservation Values, and the Parties intend that the Conservation Easement provide significant public benefit as defined in Treasury Regulations ("Treas. Reg.") Section 1. 170A-14(d)(3) and (4).

The Property contains approximately 115 acres in the Horse Gulch meadow and abutting the Grandview Ridge northeast of Durango, Colorado. Elevations range from just under 7,000 feet in Horse Gulch in the western portion to nearly 8,000 feet at the highest point on the ridge in the eastern portion of the Property. The land slopes steeply from the top of the ridge to the west. The steeper slopes are rocky and vegetated with pinon, juniper and gambel oak, with an understory of sagebrush, rabbitbrush and other shrubs. There are some ponderosa pines on the Property as well. Various grasses and forbs, including western wheatgrass, Indian ricegrass, broom

snakeweed and yarrow, provide groundcover among these trees and shrubs. The western two thirds of the property is a more moderately sloping area of open meadows and gambel oak forest.

The Property is bordered by City-owned and City/County-owned lands to the west and north, and by private land to the south and east. The private land has been divided into 35-acre parcels, but has not yet been developed.

There are currently no improvements on the Property other than pedestrian/bicycle trails within the western half. There is no improved vehicular access to the Property from Horse Gulch Road (County Road 237).

The Grandview Ridge was formed from Lewis Shale capped by Pictured Cliffs Sandstone, and the Property's soils consist of Quaternary colluvial deposits of boulder, cobble, pebble, sand and silt derived from these formations. The Natural Resource Conservation Service has mapped the soils on the majority (71%) of the Property as Zyme-Rock outcrop complex, 12 to 65 percent slopes. About 15% of the land area is rock outcrop, and the remainder is composed of Arboles Clay. None of these soils is associated with prime farmland, but they do produce nutritious forage for a variety of wildlife.

The Property is a natural area which qualifies as a "relatively natural habitat of fish, wildlife, or plants, or similar ecosystem", as that phrase is used in the Internal Revenue Code of 1986, as amended, (the "Code") Section 170(h)(4)(A)(ii). The Colorado Division of Wildlife has identified loss of habitat as the single greatest threat to wildlife species. The Property contains important overall range, summer range, winter range, severe winter range, concentration area, and/or migration area for a variety of wildlife, including big game animals; black bear and mountain lion; small predators such as coyote, red and grey fox and bobcat; neotropical songbirds such as Dusky Flycatcher, Virginia's Warbler and Western Tanager; and birds of prey. The Property has been mapped by the Colorado Division of Wildlife as 1) a summer and fall concentration area for black bear; 2) summer range, winter range, severe winter range, and a winter concentration area for elk; 3) summer range, winter range, and a winter concentration area for mule deer; 4) overall range for mountain lion (that follow the deer herds); 5) overall range for wild turkey; and 6) winter range for bald eagle, a state-listed threatened species. A recent Colorado Division of Wildlife radio telemetry study confirmed that the area is a critical migration corridor for big game animas moving between summer range on Missionary Ridge and winter range in the Grandview and Sale Barn Canyon areas. The Property is within a very large area mapped by the Colorado Natural Heritage Program as the Animas City Mountain Potential Conservation Area (PCA), which includes the entire City of Durango, all of Horse Gulch, as well as properties north, east and west of the City. The PCA was established as a result of known breeding occurrences of American peregrine falcon, a globally vulnerable subspecies, directly west of the City.

The CDOW and La Plata Open Space Conservancy have developed a scoring system to help prioritize properties for conservation of wildlife habitat. The scoring is based on parcel size, types of habitat, proximity to public and protected lands, mapped attributes, types of species, and species diversity. Using this system, LPOSC scored the Easement Property at 96, placing it in the highest range of properties prioritized for habitat protection. (Properties that score in the lower range - below 60 - must exhibit additional significant conservation values in order to be

considered by LPOSC for conservation easement protection.) Protection of the Property and prevention of residential development from occurring on the Property will result in protection of valuable habitat.

The Property has long been used by hikers, bicyclists and birdwatchers enjoying Horse Gulch area open space, athletes in training, and Fort Lewis College student and faculty researchers.

The Property contains natural, scenic open space that can be viewed and enjoyed by the public by way of a well-established and maintained trail system that passes through Horse Gulch and the western half of the Property. Additionally, the Property is bordered on the west and north by public land that is owned by the City of Durango and/or jointly by the City and La Plata County. The Property also adjoins the 223-acre City-owned Crader Conservation Easement property. These bordering lands are all managed by the City as public open space for trail-oriented recreation and education. Restricting residential development of the Property will provide an effective buffer to these protected parcels.

The Property is in the Horse Gulch area adjacent to the City of Durango. Horse Gulch is an area of large public and private open parcels that have been enjoyed for years by Durango residents and visitors alike. The City of Durango has been working to acquire privately owned parcels in Horse Gulch to expand and ensure continued public use and enjoyment of this open space. The Easement Property contains critical habitat, the protection of which will help ensure continuing viability of wildlife species. Protection of this property from residential development may encourage protection of other remaining larger parcels in the area.

Background Information:
The Property was owned by the Fort Lewis College Foundation, and was used for public recreation, research and education. The City of Durango purchased the Property in June 2010, to complement its other adjacent and nearby parcels that comprise the Horse Gulch Open Space Area. Preservation of Horse Gulch has been envisioned by the City of Durango and other entities for many years due to the extensive recreational values associated with the comprehensive trail system that is established in and passes through the Gulch. The *City of Durango Parks, Open Space, Trails and Recreation Master Plan*, an element of the *City of Durango Comprehensive Plan*, identifies Horse Gulch as a priority conservation area. The City secured partial funding from Great Outdoors Colorado, and negotiated a purchase agreement with the FLC Foundation to purchase the property on June 4, 2010. Great Outdoors Colorado's support for the project was largely based on the diversity of public uses, both recreational and educational, that occur in Horse Gulch, as well as the Property's impact on the community viewshed and its importance for wildlife habitat.

Legal Information:
The Property, identified in La Plata County Assessor's records as Parcel #566527300105, is owned by the City of Durango. It is within Tax District 1219 and is classified as tax exempt "State College Land."

The Property is within the City of Durango's land use planning area, although it is not within the City Limits. La Plata County is not zoned; therefore the Property is not currently subject to zoning regulations, and could, theoretically, be developed for residential and/or commercial uses.

Mineral interests have been severed from the surface estate. An assessment of mineral resource development potential conducted by a professional geologist indicates that, with the exception of a small area in the southeastern portion of the Property, the possibility of any mineral development on the Property is remote, because minerals are lacking in the Property's rock types and structures, or they would be unprofitable to develop, or both. An approximately seven-acre area in the southeastern corner of the Property does have coal resource potential. However, it is the geologist's opinion that there is little possibility of developing this resource, as it would be cost prohibitive due to limited volume of the reserve, topography, poor access, and land use regulations.

There are no irrigation water rights appurtenant to the Property, and there are no water wells on the Property

Structures and Improvements on Property:
Currently there are no structures or improvements on the property other than pedestrian/bicycle trails in the western portion. The City of Durango reserves the right to formalize, improve and expand the trail system, and to place or construct trailhead improvements, in accordance with the management plan to be developed for the area.

Condition of Land:
The property is in a largely undisturbed, natural state. Most of the property is open meadow area vegetated in native grasses and forbs, with sagebrush and other shrubs and stands of gambel oak. The steeper slopes consist of gambel oak/mountain shrub and pinon/juniper forest. There appear to be few weeds and no weed infestations. The only disturbance to the land appears to be the trail system that occurs primarily in the western half of the Property.

Archaeology/History:
LPOSC has not surveyed the Property for archaeological sites and is not aware of any archaeological sites on the property, although many such sites exist in the general area. The property has been historically used as a hunting ground.

Environmental Inspection/Assessment: The Easement Property and adjoining land have been visually inspected for evidence of hazardous materials contamination. No signs of stained or disturbed soils, vegetative damage, oily or discolored surface waters, unusual odors, above or underground storage containers, legal or illegal dumping of hazardous materials, or other evidence of the presence of hazardous materials contamination have been observed. Reviews of deeds and title policy, and the property's history of uses, do not indicate a need for additional inspection.

Future Management of Property:
The Property will be managed by the City of Durango in accordance with a land management plan, which will be reviewed and updated as needed, but not less than once every five years. The

Horse Gulch Open Space Management Plan will be developed to maintain and manage the Property in a way that meets the City's objectives and the purposes of the conservation easement. As part of its *Stewardship Plan for the Horse Gulch Open Space FLC Foundation 115 Conservation Easement*, La Plata Open Space Conservancy will participate in all management plan revisions.

Probable and Possible Impacts and Considerations:
Protection of the Horse Gulch Open Space FLC Foundation 115 Property will ensure that a unique and valuable resource will always be available for the public to enjoy. It will ensure wildlife habitat and critical migration area for a variety of species and will buffer other public lands that have been set aside for wildlife and for passive recreation on established trails. Additionally, protection of this property will ensure unspoiled scenic open space that can be viewed from Horse Gulch and other locations around the City of Durango. Protection of this Property may precipitate protection of other private lands in the vicinity, which would result in even greater public benefits.

Conservation Easement Summary:
The Horse Gulch Open Space FLC Foundation 115 Conservation Easement is designed to protect significant wildlife habitat, natural scenic open space and public recreation and education opportunities on approximately 115 acres of open meadows and forested hillsides in La Plata County, Colorado. The land will be used for public nonmotorized recreation and open space, which uses are compatible with the Property's conservation values.

Report Preparer(s), Procedures:
This report was prepared by La Plata Open Space Conservancy Executive Director, Katharine Roser. Ms. Roser has a bachelor's degree in geography with a minor in geology, and 33 years' experience in areas of land use and research, including 20 years preparing conservation easements and baseline reports in her capacity as Director of La Plata Open Space Conservancy. LPOSC utilized site visits and interviews with the property owners; on-site digital photos mapped with a Global Positioning System (GPS); topographic mapping and aerial photos from the US Geological Survey, the Bureau of Land Management, La Plata County GIS, and City of Durango GIS; habitat evaluation and species mapping from the Colorado Division of Wildlife and the Colorado Natural Heritage Program; digital soils mapping and data from the Natural Resource Conservation Service; and assessment of mineral development potential from Plateau Environmental Services, Michael Matheson, Geologist.

In compliance with Section 1.170A-14(g)(5) of the federal tax regulations, this natural resources inventory is an accurate representation of the Property at the time of the conservation easement donation.

City of Durango
Grantor

By

6/8/10
Date

La Plata Open Space Conservancy
Grantee

By

6/8/10
Date

Attachments:

1. Deed to Property
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Deed to Property

Linda Daley Page: 1 of 1
Laplata County Clerk
Recorded: 6/8/2010 2:51 PM
WD Rec Fee:$6.00 Doc Fee:$51.50
Reception No: 1015192

exempt

WARRANTY DEED

THIS DEED, Made this 8th day of ***June, 2010,*** between

THE FORT LEWIS COLLEGE FOUNDATION, a Colorado non-profit corporation,

of the County of ***La Plata*** and State of Colorado, grantor(s), and

THE CITY OF DURANGO, COLORADO, a Municipal Home-Rule Corporation,

whose legal address is ***949 East 2nd Avenue***
Durango, Colorado 81301

of the County of ***La Plata*** and State of Colorado, grantee(s):

WITNESSETH, That the grantor(s), for and in consideration of the sum of ***FIVE HUNDRED FITEEN THOUSAND and 00/100 DOLLARS ($515,000.00) AND OTHER GOOD AND VALUABLE CONSIDERATION,*** the receipt and sufficiency of which is hereby acknowledged, ***has*** granted, bargained, sold and conveyed, and by these presents, ***does*** grant, bargain, sell, convey and confirm unto the grantee(s), ***its successors*** and assigns forever, all the real property, together with improvements, if any, situate lying and being in the County of ***La Plata,*** State of Colorado, described as follows:

Township 35 North, Range 9 West, N.M.P.M., La Plata County, Colorado:
Section 28: SE¼SE¼
Section 27: S½SW¼

also known by street and number as ***N/A***

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the grantor(s), either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the grantee(s), ***its successors*** and assigns forever. And the grantor(s), for ***itself, its successors and assigns does*** covenant, grant, bargain and agree to and with the grantee(s), ***its successors and*** assigns, that at the time of the ensealing and delivery of these presents ***it is*** well seized of the premises above conveyed, ***has*** good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and ***has*** good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature soever, except ***unpatented mining claims; patent reservations; ditches and ditch rights, water rights, claims or title to water; prior reservations of all interests in oil, gas, coal and other mineral rights and any and all assignments thereof or interests therein; right of way for ditches or canals constructed by authority of the United States, all coal and the right to prospect for, mine and remove coal upon compliance with the conditions of and subject to the limitations of Act of June 22, 1910 (36l Stat. 583), as reserved in United States Patent of record; right of way for ditches or canals constructed by authority of the United States, and all uranium, thorium or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, and the right to prospect for, mine and remove upon compliance with the conditions of and subject to the limitations of the Act of August 1, 1946 (60 Stat. 755), as reserved in United States Patent of record; right-of-way conveyed to Colorado Telephone Company as set forth in deed recorded February 3, 1942 in Book 240 at Pate 39; easement for ingress and egress for the purpose of trash disposal granted by deed recorded May 21, 1955, in Book 345 at page 73; all oil, gas and other minerals as reserved in deed recorded December 31, 1982 as Reception No. 477925, and any and all assignments thereof or interests therein; roadway and utility purposes easement as reserved in deed recorded December 31, 1982 as Reception No. 477925; and lack of right of access from the land to any open public road, street or highway.***

The grantor(s) shall and will WARRANT AND FOREVER DEFEND the above-bargained premises in the quiet and peaceable possession of the grantee(s), ***its, successors*** and assigns, against all and every person or persons lawfully claiming the whole or any part thereof.

IN WITNESS WHEREOF the grantor(s) ***has*** executed this deed on the date set forth above.

THE FORT LEWIS COLLEGE FOUNDATION, a Colorado Non-Profit Corporation

James H. Foster, President

Attest:

Debra Parmenter

STATE OF COLORADO)
) ss.
County of ***La Plata***)

COLORADO LAND TITLE CO.
970 Main Ave. P.O. Box 3389
Durango, Colorado 81302
(970) 247-5464

L-546109-E

The foregoing instrument was acknowledged before me this 8th day of ***June, 2010, by James H. Foster, as President, and by*** Debra Parmenter, as member ***of The Fort Lewis College Foundation, a Colorado Non-Profit Corporation.***

My commission expires 8/10/2013 ~~20~~ . Witness my hand and official seal.

JANICE SUE PUCKETT
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 08/10/2013

Notary Public

The portions of this form that are not in bold italics have been approved by the Colorado Real Estate Commission (Form 932. Rev.3-85)

Title Commitment and Legal Description

COLORADO LAND TITLE CO. LLC

970 Main Avenue
P. O. Box 3389
Durango, CO 81302
PHONE: (970) 247-5464
FAX: (970)-247-0105

CITY OF DURANGO
949 E. 2nd Avenue
Durango, CO 81301

Attn: Kevin Hall

Re: Order No. L-546109

Dear Mr Hall,

Enclosed please find the Owner's Title Insurance Policy issued in connection with the above captioned order.

In accordance with the Financial Services Modernization Act, also known as the Gramm-Leach-Bliley Act, effective July 1, 2001, it is our policy that we will not reveal nonpublic personal customer information to any external non-affiliated organization unless we have been authorized by the customer, or are required by law.

We thank you for this opportunity of serving you. If you should have any questions or require further assistance, please do not hesitate to call on us.

Sincerely,

COLORADO LAND TITLE COMPANY LLC

6-23-10

Policy Department

jlg

FIRST AMERICAN TITLE INSURANCE COMPANY

SCHEDULE A

Order No.: **L-546109**
Policy No.: **1002024-1019016**
Sheet 1 of 2

Date of Policy: **June 8, 2010 at 2:54 PM**
Amount of Insurance: **$515,000.00**
Premium: **$1,400.00**

1. Name of Insured:

   THE CITY OF DURANGO, COLORADO, A MUNICIPAL HOME-RULE CORPORATION

2. The estate or interest in the land described herein and which is covered by this policy is:

   FEE SIMPLE

3. The estate or interest referred to herein is at Date of Policy vested in:

   THE CITY OF DURANGO, COLORADO, A MUNICIPAL HOME-RULE CORPORATION

4. The land referred to in this policy located in the State of Colorado, County of **LA PLATA** is described as follows:

   S1/2SW1/4 of Section 27 and SE1/4SE1/4 of Section 28, Township 35 North, Range 9 West, N.M.P.M.

SCHEDULE B

EXCEPTIONS

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Any facts, rights, interests or claims which are not shown by the public records, but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.

2. Easements, or claims of easements, not shown by the public records.

3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the land would disclose, and which are not shown by the public records.

4. Any lien, or right to a lien, for services, labor or materials heretofore or hereafter furnished, imposed by law and not shown by the public records.

5. Any and all unpaid taxes, assessments and unredeemed tax sales. **Taxes for the year 2009 are paid. Taxes for the year 2010 are not yet due or payable.**

6. Assessments, taxes, fees or charges arising pursuant to the inclusion of the land in one or more special districts or municipalities.

7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water; (d) all interest in oil, gas, coal and other mineral rights severed by predecessors in title and any and all assignments thereof or interests therein; whether or not the matters excepted under (a), (b), (c) or (d) are shown by the public records.

8. Right of way for ditches or canals constructed by the authority of the United States, and all coal, and the right to prospect for, mine, and remove coal upon compliance with the conditions of and subject to the limitations of the Act of June 22, 1910 (36 Stat., 583), as reserved in United States Patent of record.

9. Right of way for ditches or canals constructed by the authority of the United States, and all uranium, thorium or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, and the right to prospect for, mine, and remove upon compliance with the conditions of and subject to the limitations of the Act of August 1, 1946 (60 Stat., 755), as reserved in United States Patent of record.

10. Right of way conveyed to Colorado Telephone Company as set forth in Deed from The Porter Fuel Company to W. D. Ewing recorded February 3, 1942 in Book 240 at Page 39.

11. Easement for ingress and egress for the purpose of garbage and trash disposal as granted to the City of Durango by W. D. Ewing in deed recorded May 21, 1955 in Book 345 at Page 73.

12. All oil, gas and other minerals as reserved by William D. Ewing, Jr., also known as William Dudley Ewing, Jr. in Deed to The Fort Lewis College Foundation, recorded December 31, 1982 as Reception No. 477925, and any and all assignments thereof or interests therein.

13. Roadway and utility purposes easement as reserved in Deed from William D. Ewing, Jr., also known as William Dudley Ewing, Jr. to The Fort Lewis College Foundation, recorded December 31, 1982 as Reception No. 477925.

14. Lack of a right of access from the land to any open public road, street or highway.

ENDORSEMENT
Issued by

FIRST AMERICAN TITLE INSURANCE COMPANY

Said Policy is hereby amended by deleting paragraph 4 of Schedule B.

The total liability of the Company under said policy and any Endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This Endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

This Endorsement is not to be construed as insuring the title to said estate or interest as of any later date than the date of said policy, except as herein expressly provided as to the subject matter hereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

Authorized Countersignature

Colorado Form 110.1

Order No. **L-546109**
Policy No. **1002024-1019016**
Insured: **THE CITY OF DURANGO, COLORADO, A MUNICIPAL HOME-RULE CORPORATION**

OWNER'S POLICY OF TITLE INSURANCE

ISSUED BY

First American Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
   (a) A defect in the Title caused by
      (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
      (ii) failure of any person or Entity to have authorized a transfer or conveyance;
      (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
      (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
      (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
      (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
      (vii) a defective judicial or administrative proceeding.
   (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
   (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (a) the occupancy, use, or enjoyment of the Land;
   (b) the character, dimensions, or location of any improvement erected on the Land;
   (c) the subdivision of land; or
   (d) environmental protection
   if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
   (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
   (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
      (i) to be timely, or
      (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this policy, but only to the extent provided in the Conditions.

First American Title Insurance Company

BY [signature] PRESIDENT

ATTEST [signature] SECRETARY

FIRST AMERICAN TITLE INSURANCE COMPANY INCORPORATED SEPTEMBER 24, 1958 CALIFORNIA

1002024-1019016

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (i) the occupancy, use, or enjoyment of the Land;
   (ii) the character, dimensions, or location of any improvement erected on the Land;
   (iii) the subdivision of land; or
   (iv) environmental protection;

   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
   (a) created, suffered, assumed, or agreed to by the Insured Claimant,
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risks 9 and 10); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
   (a) a fraudulent conveyance or fraudulent transfer, or
   (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.

(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.

(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) "Insured": The Insured named in Schedule A.

(i) The term "Insured" also includes

(A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;

(B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(C) successors to an Insured by its conversion to another kind of Entity;

(D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,

(2) if the grantee wholly owns the named Insured,

(3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or

(4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

(ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.

(e) "Insured Claimant": An Insured claiming loss or damage.

(f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(j) "Title": The estate or interest described in Schedule A.

(k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained

Section 7 of these Conditions, at its own cost, is ...
or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or

(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these

rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at 1 First American Way, Santa Ana, CA 92707, Attn: Claims Department.

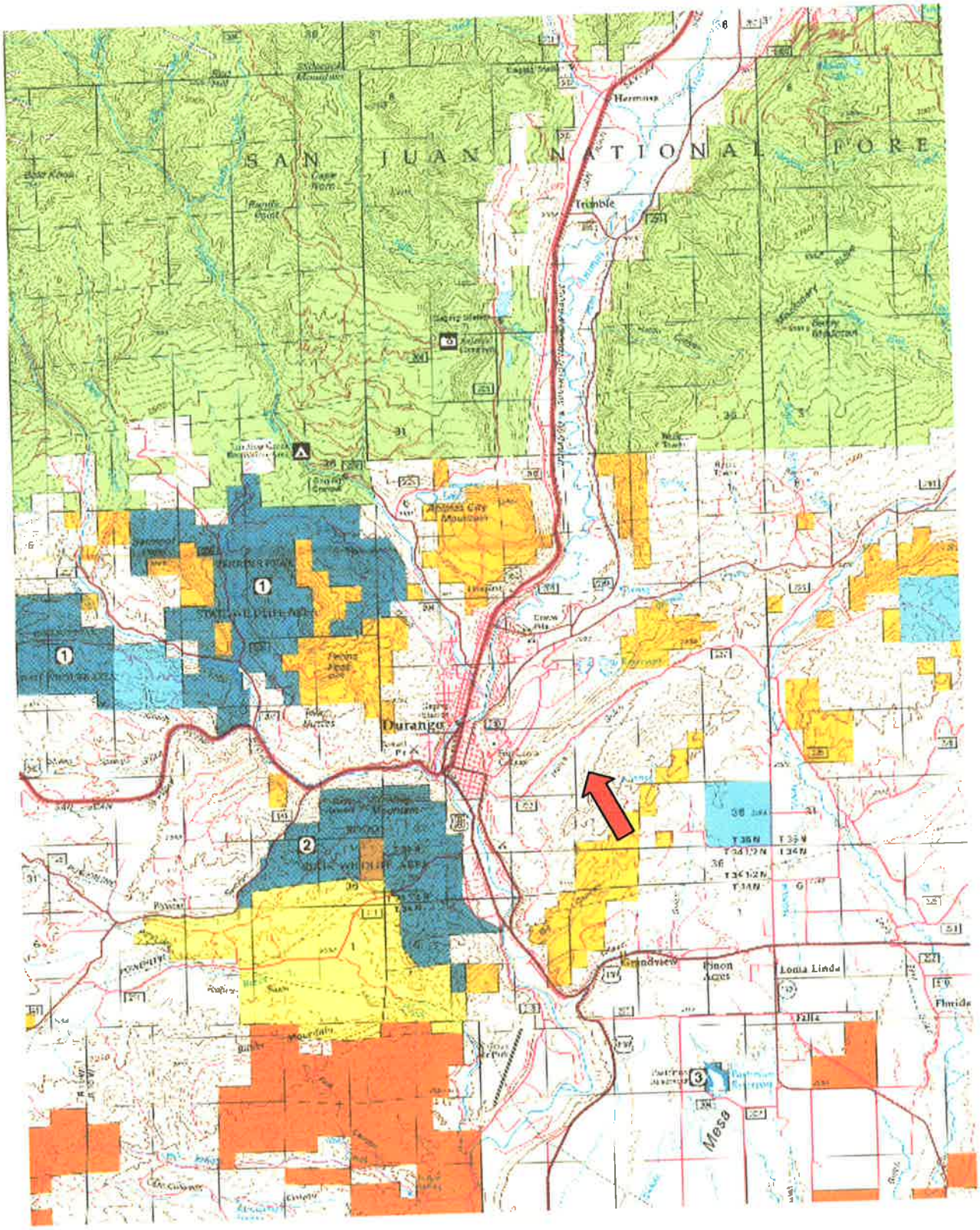
POLICY OF TITLE INSURANCE

Colorado Land Title Company
970 Main Avenue (P.O. Box 3389)
Durango, CO 81302
Phone: (970) 247-5464
Fax: (970) 247-0105

A Policy-Issuing Agent of First American Title Insurance Company

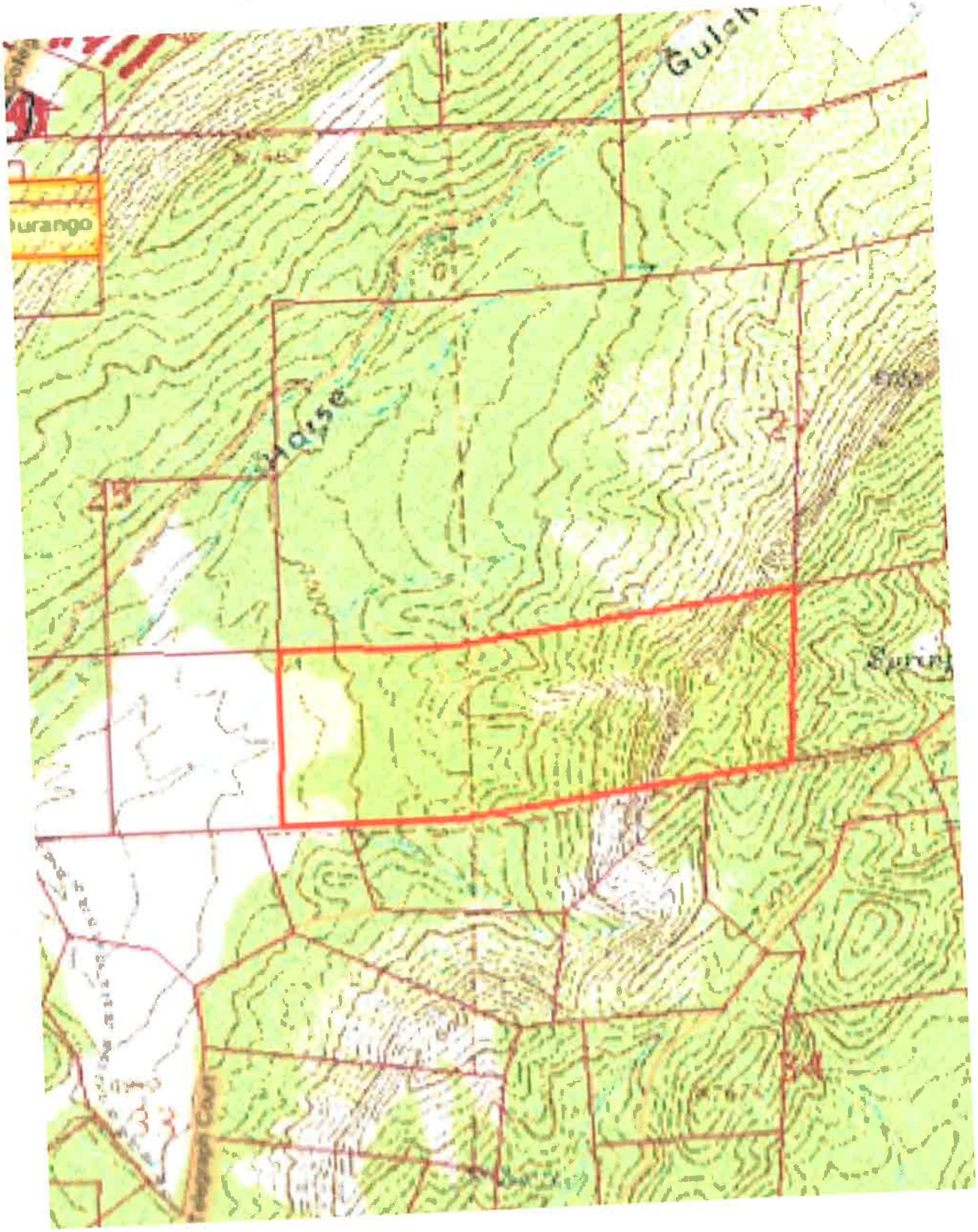
Vicinity Map

Vicinity Map
Horse Gulch Open Space
FLC Foundation 115 Conservation Easement



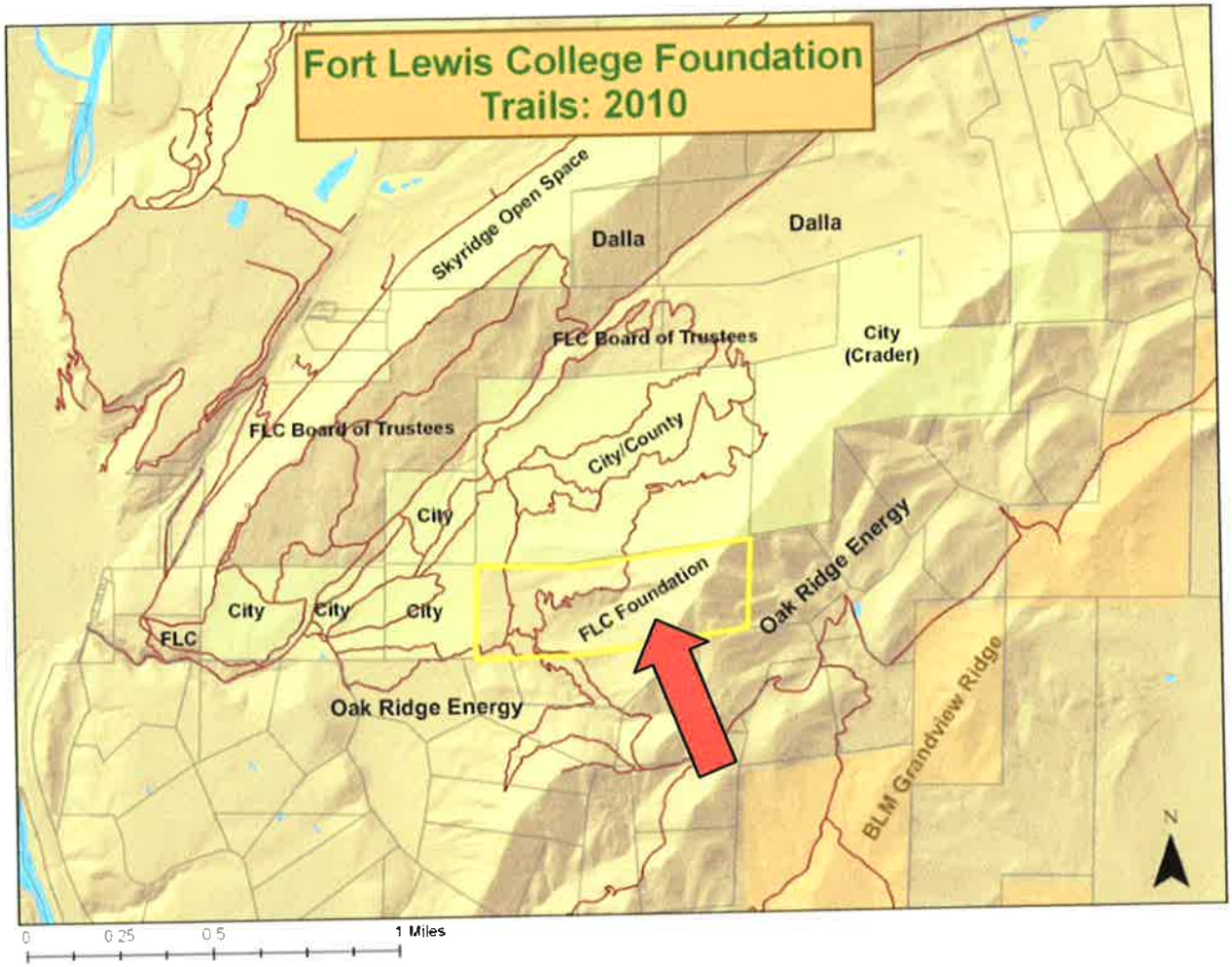
Topographic Map

Topographic Map
Horse Gulch Open Space
FLC Foundation 115 Conservation Easement



Confirmation of Conservation Values

Trail System
Horse Gulch Open Space FLC Foundation 115 Conservation Easement



STATE OF COLORADO

Bill Ritter, Jr., Governor
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WILDLIFE
AN EQUAL OPPORTUNITY EMPLOYER

Thomas E. Remington, Director
6060 Broadway
Denver, Colorado 80216
Telephone: (303) 297-1192
wildlife.state.co.us

For Wildlife-
For People

9 June 2010

151 E. 16th Street
Durango, CO 81301

Ms. Katherine Roser, Executive Director
La Plata Open Space Conservancy
P.O. Box 1651
Durango, Co. 81302

Dear Kathy:

The Colorado Division of Wildlife (CDOW) staff reviewed the proposed **FLC FOUNDATION GOCO EASEMENT IN HORSE GULCH** and offers the following comments.

Several years ago the CDOW completed an elk radio telemetry study in the Highway 160 corridor between Bayfield and Durango. This study confirmed that the Horse Gulch area is critical winter range and migration corridor habitat for big game animals. Elk and deer herds that utilize the Missionary Ridge area during summer months, travel south through Horse Gulch to access critical winter range in the Grandview and Sale Barn Canyon region each year. These observations are confirmed each year when large numbers of deer and elk are classified, from the air, by CDOW biologists.

The BLM land in the area currently has a conditions-based closure to human traffic to protect these wintering herds during severe winters. The amount of development that is occurring in, and around, these prime wintering areas will eventually have a cumulative and detrimental impact on these migrating herds. Any effort to protect this corridor and allow the animals' ingress and egress to these areas will benefit big game populations.

The vast expanses of Gambel oak habitat also represent critical fall feeding areas for the black bear population in the area. The acorn crop produced by these scrub oak areas is extremely important in the black bears' fall diet. Because of the abundance of mule deer in the area, mountain lions are also common and dependent on this food supply. Many smaller predators such as coyote, red and grey fox and bobcat also utilize these areas and are expected here. Several species of Neotropical songbirds such as Dusky Flycatcher, Virginia's Warbler and Western Tanager, to name a few, are also important species and dependent upon oak and ponderosa pine habitats.

In closing, a conservation easement on this property would benefit many wildlife species and the people of the state of Colorado, especially considered in combination with the many other easements already in place on adjoining properties. If you have any additional questions or require further information, please call District Wildlife Manager Cary Carron at 970-247-0855.

Sincerely,

Patt Dorsey
Area Wildlife Manager, Durango

xc: Field Ops Branch, Spezze, Area File, DWM

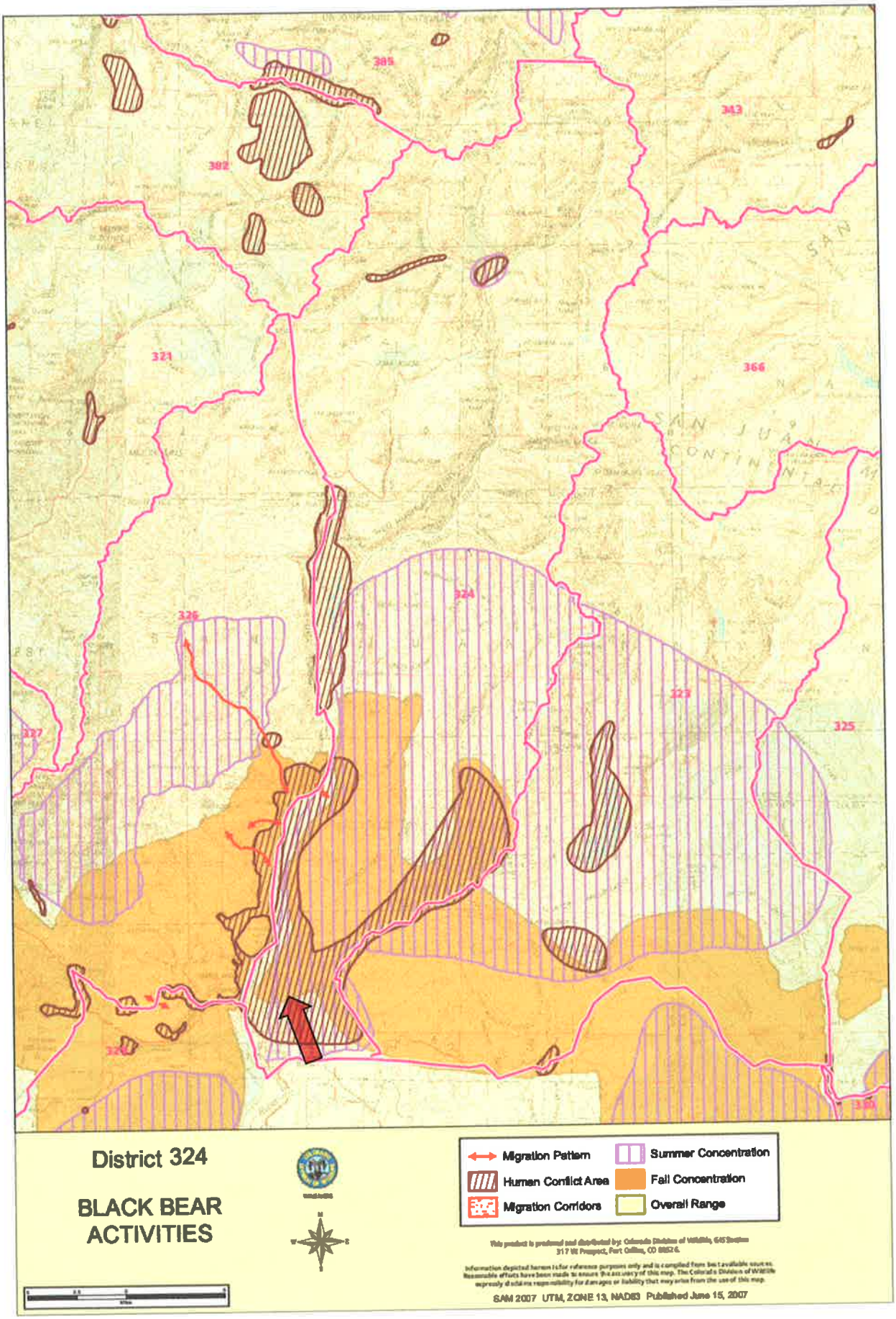
DEPARTMENT OF NATURAL RESOURCES, Mike King, Executive Director
WILDLIFE COMMISSION, Tim Glenn, Chair • Robert Streeter, Vice Chair • Mark Smith, Secretary
Members, David R. Brougham • Dennis Buechler • Dorothea Farris • Allan Jones • John Singletary • Dean Wingfield
Ex Officio Members, Mike King and John Stulp

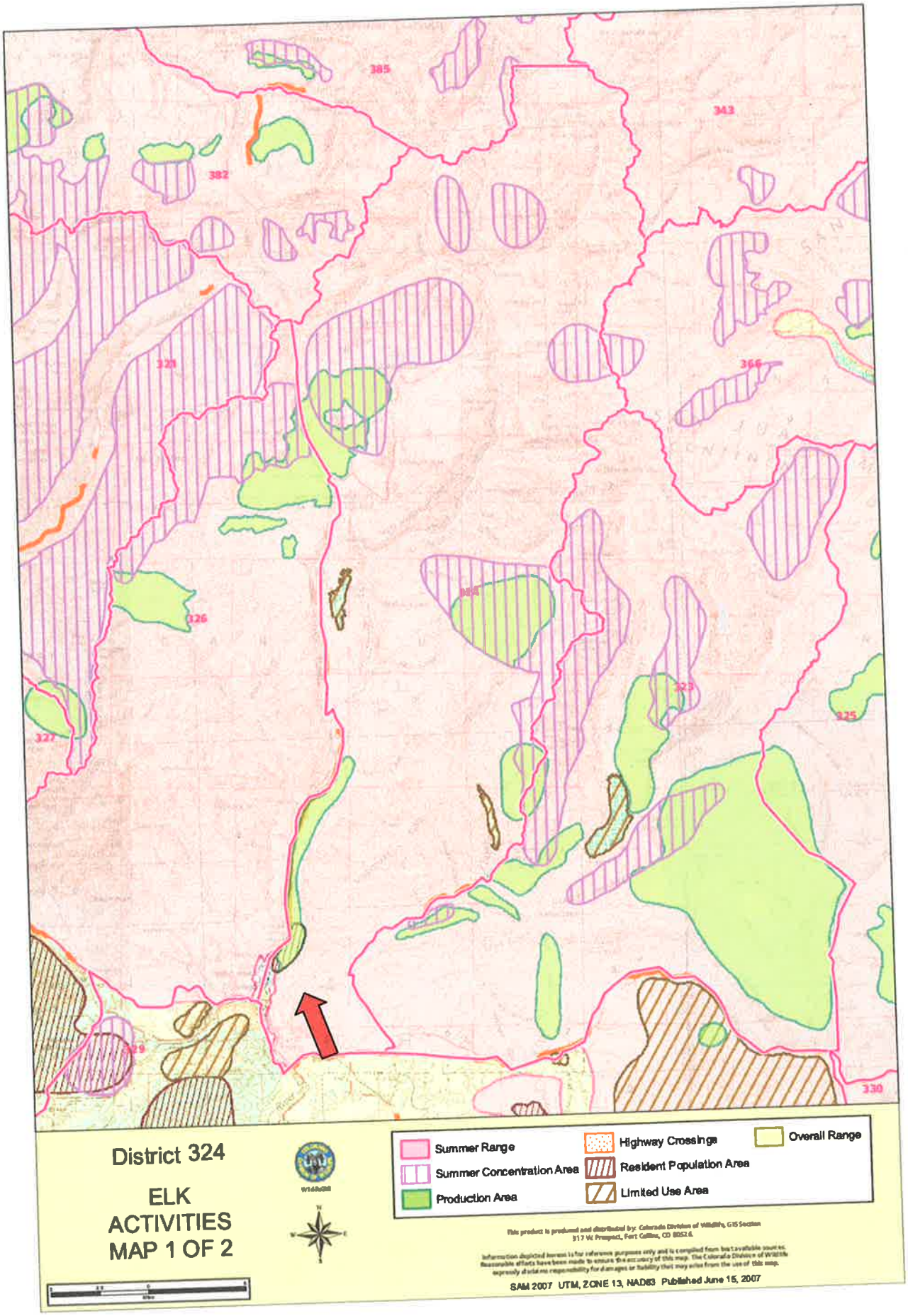
LPOSC/CDOW
Wildlife Habitat Scorecard
Horse Gulch Open Space FLC Foundation 115 Conservation Easement

Property: Horse Gulch Open Space FLC 115	Date: May 28, 2010
Evaluated by: Katharine Roser (LPOSC), Cary Carron (CDOW)	

Criteria		Point Value		Weight Value			Score
Parcel Size- AFTER Development	0-35 acres	1	3	X	4	=	12
	35.01-60 acres	2					
	60.01-120 acres	3					
	120.01-640 acres	4					
	>640 acres	5					
Habitat type- Most Valuable or Most Dominant	riparian	5	4	X	5	=	20
	farmed agricultural	2					
	pasture agricultural	2					
	sagebrush	3					
	pinyon-juniper	2					
	mountain shrub	4					
	Ponderosa Pine	3					
	Aspen	4					
	Douglas-fir	1					
	Spruce-fir	1					
Number of Habitat types	1	1	4	X	4	=	16
	2	2					
	3	3					
	4	4					
	5 or more	5					
Proximity to Public land	<1 mile	5	5	X	1	=	5
	1-2 miles	3					
	> 2 miles	1					
Proximity to Protected land	<1 mile	4	4	X	1		4
	> 2 miles	1					
Part of identified corridor or easement	Yes	5	5	X	3	=	15
	No	0					
Mapped attributes:	Severe Winter Range	5	5	X	3	=	15
	Production Area	5					
	Winter Range	2					
	Winter Concentration Area	3					
Wildlife species	T/E/S	5	3	X	2	=	6
	Economic	3					
Wildlife diversity	Great	4	3	X	1	=	3
	Moderate	3					
	Low	1					
Score							96
Wildlife Value Demerits-adjacent to highway, intensive recreational use, etc			subtract 15%				

FINAL SCORE	96


District 324
BLACK BEAR ACTIVITIES
Migration Pattern
Human Conflict Area
Migration Corridors
Summer Concentration
Fall Concentration
Overall Range
SAM 2007 UTM, ZONE 13, NAD83 Published June 15, 2007


District 324
ELK
ACTIVITIES
MAP 1 OF 2
Summer Range
Summer Concentration Area
Production Area
Highway Crossings
Resident Population Area
Limited Use Area
Overall Range
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SAM 2007 UTM, ZONE 13, NAD83 Published June 15, 2007
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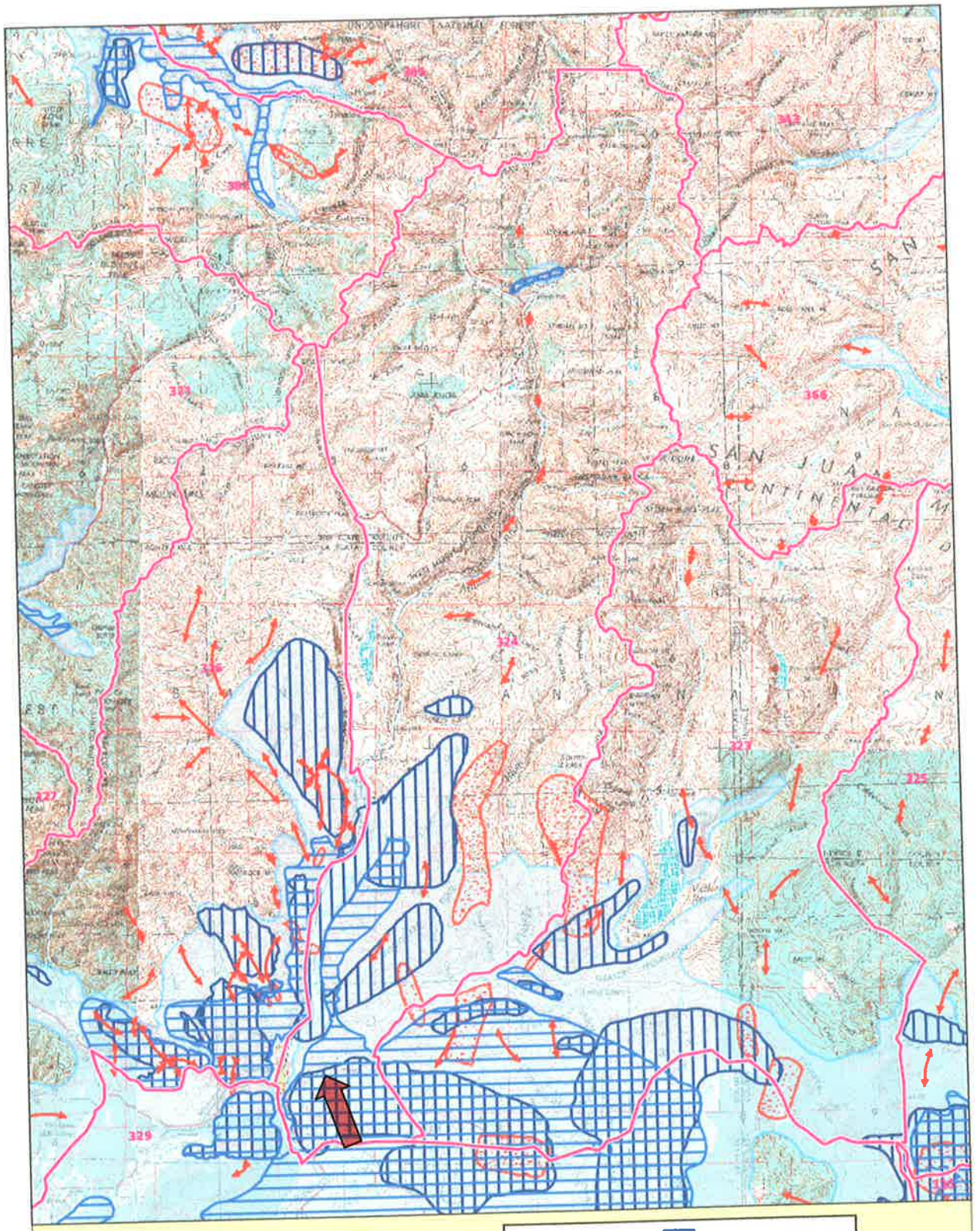

District 324

ELK ACTIVITIES MAP 2 OF 2

Migration Patterns
Migration Corridors
Winter Range
Winter Concentration Area
Severe Winter Range

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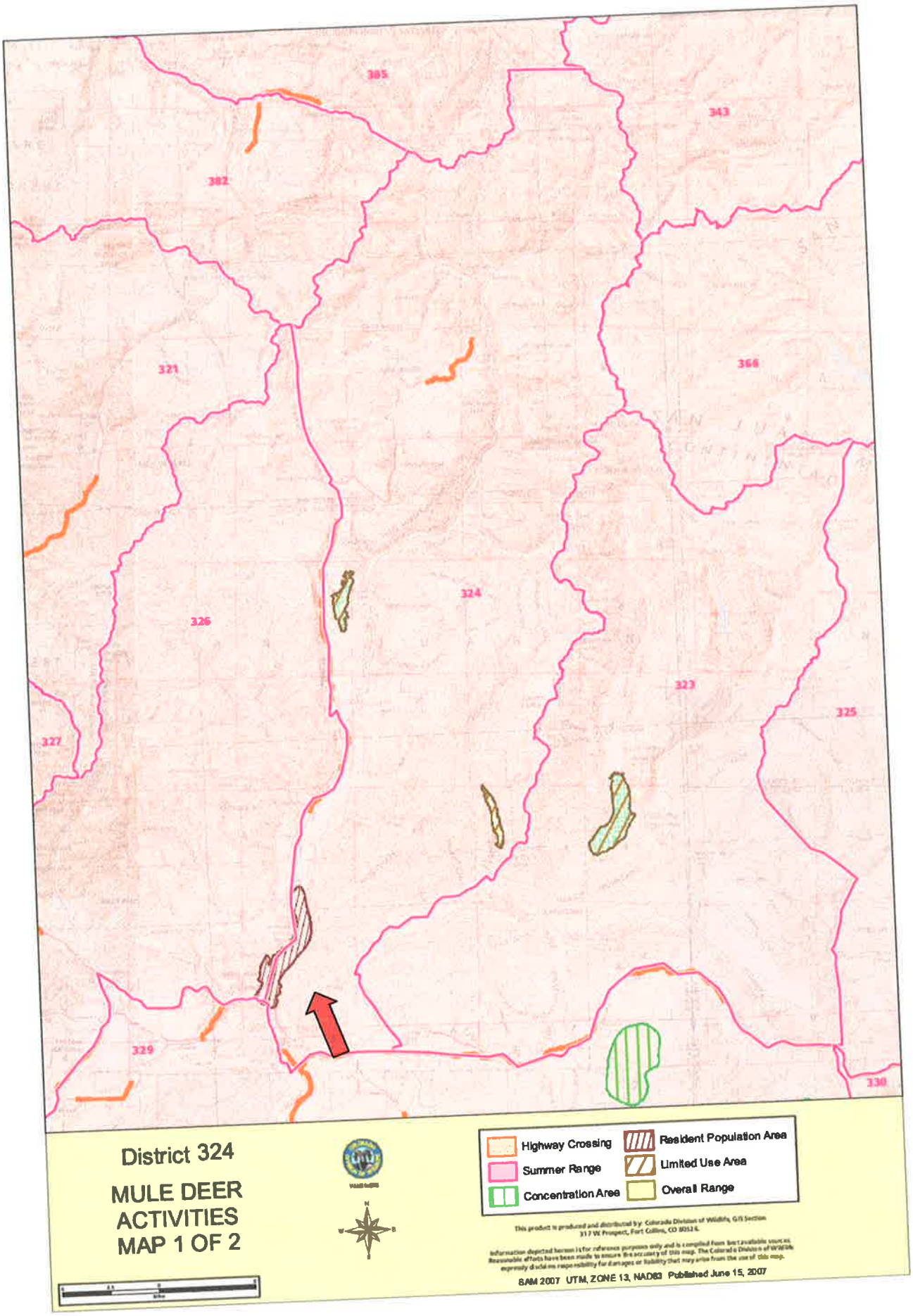
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District 324
MULE DEER
ACTIVITIES
MAP 1 OF 2
Highway Crossing
Summer Range
Concentration Area
Resident Population Area
Limited Use Area
Overall Range
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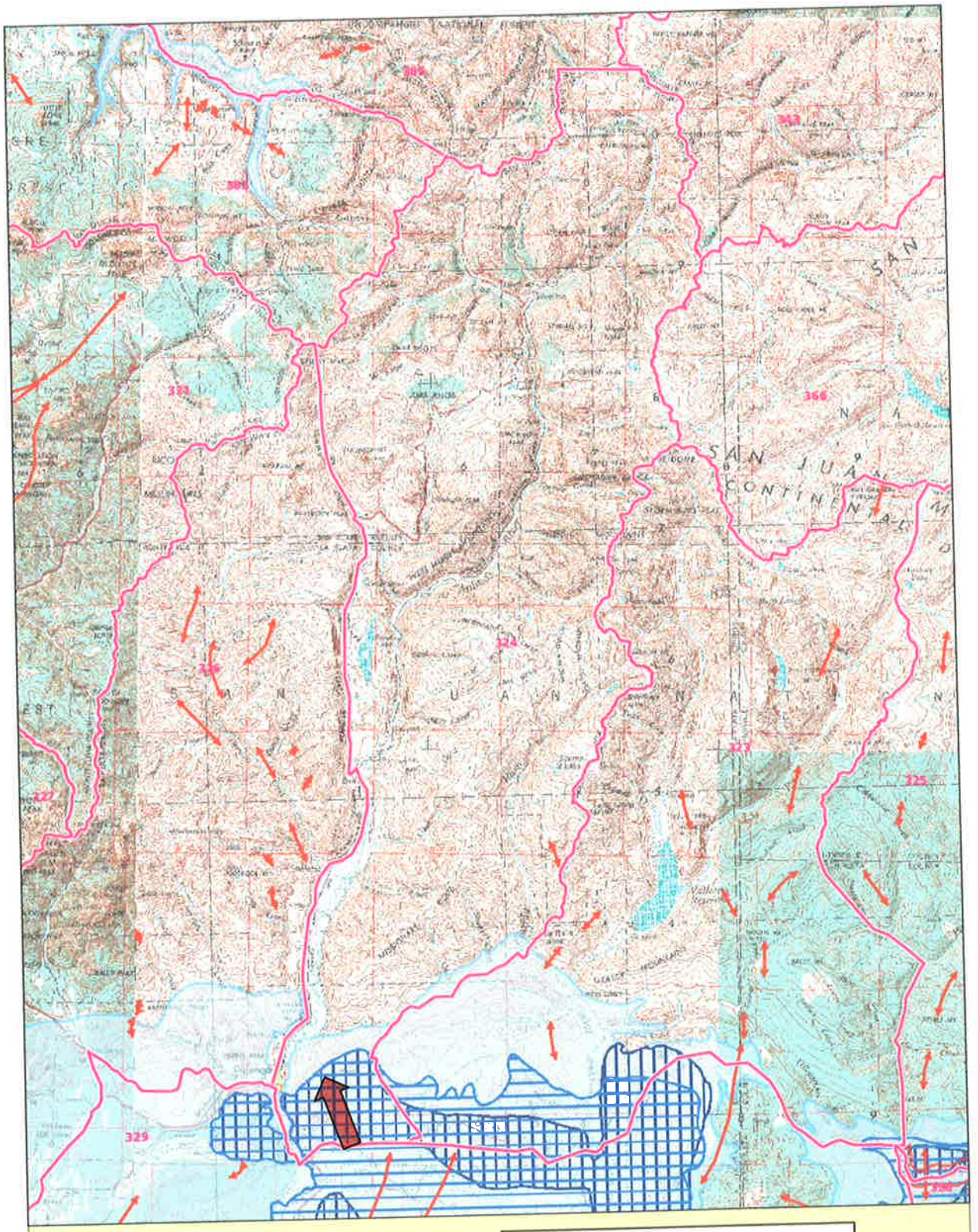

District 324

MULE DEER ACTIVITIES MAP 2 OF 2

Migration Patterns
Migration Corridors
Winter Range
Winter Concentration Area
Severe Winter Range

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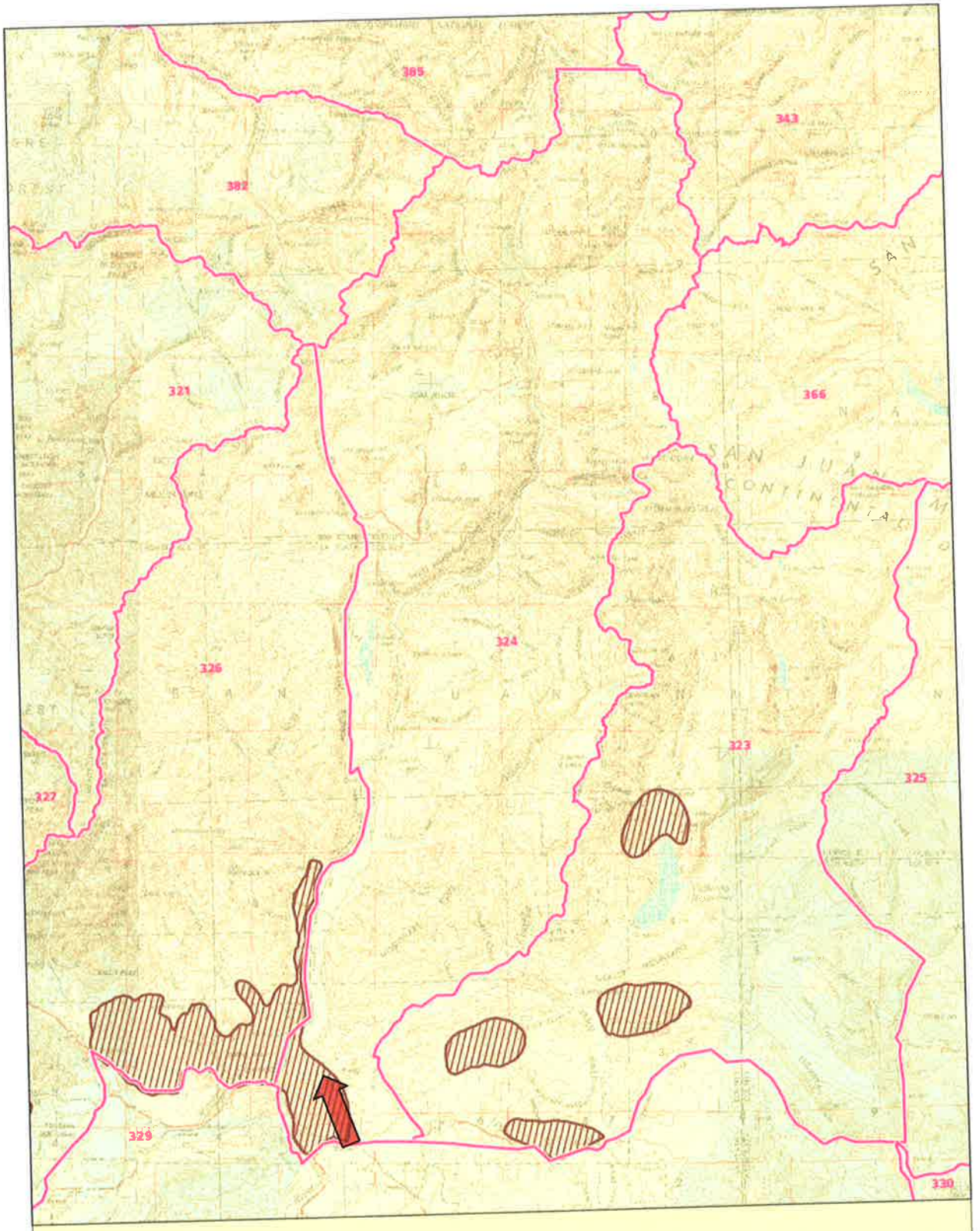

District 324

MOUNTAIN LION ACTIVITIES

Human Conflict Area | Peripheral Range | Overall Range

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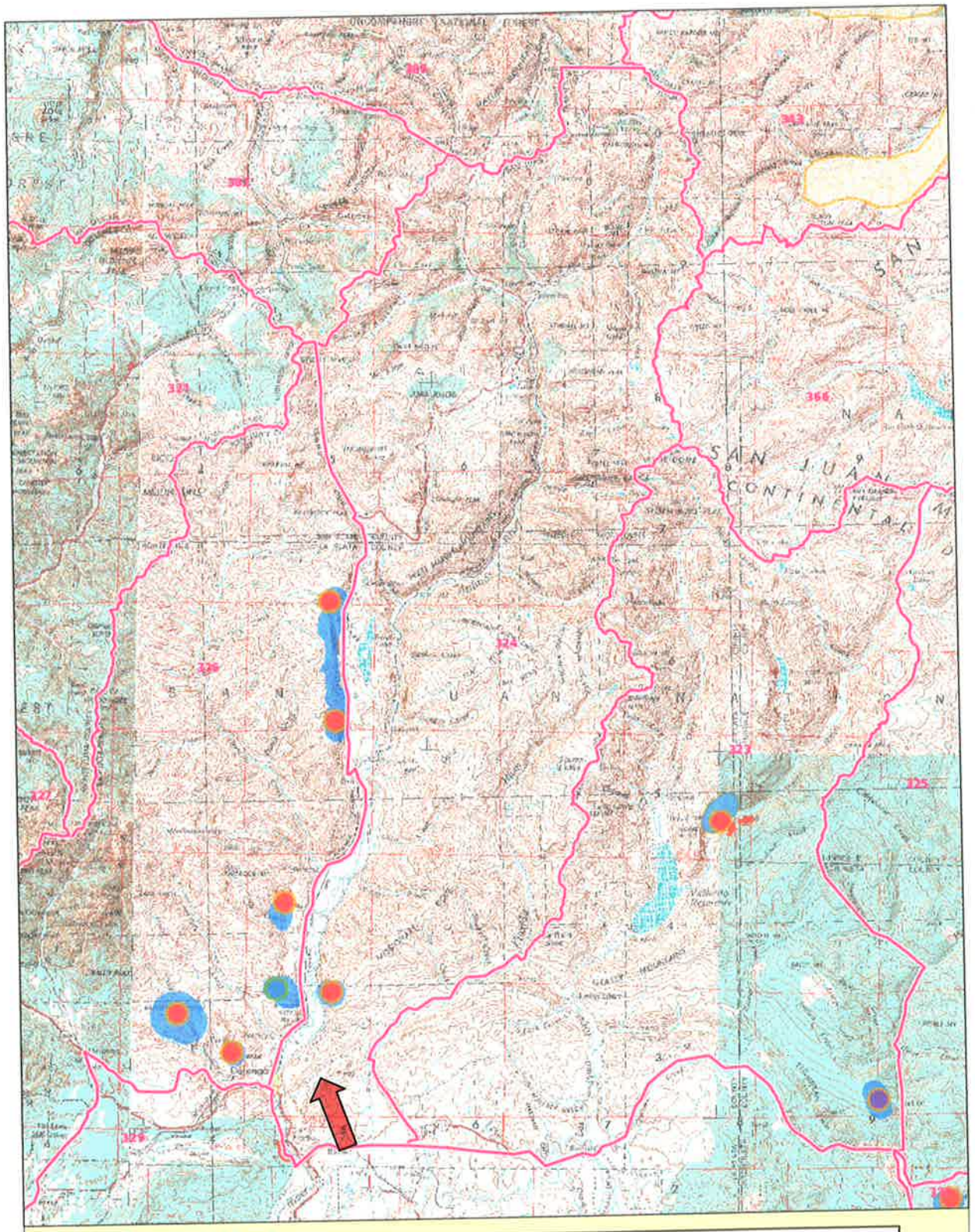
SAM 2007 UTM, ZONE 13, NAD83 Published June 15, 2007



District 324

PEREGRINE FALCON ACTIVITIES

ACTIVE
INACTIVE
UNKNOWN
Nesting Area
Potential Nesting
Foraging Area
Migratory Hunting Habitat

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317 W Prospect, Fort Collins, CO 80526

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SAM 2007 UTM, ZONE 13, NAD83 Published June 15, 2007

District 324

WILD TURKEY ACTIVITIES

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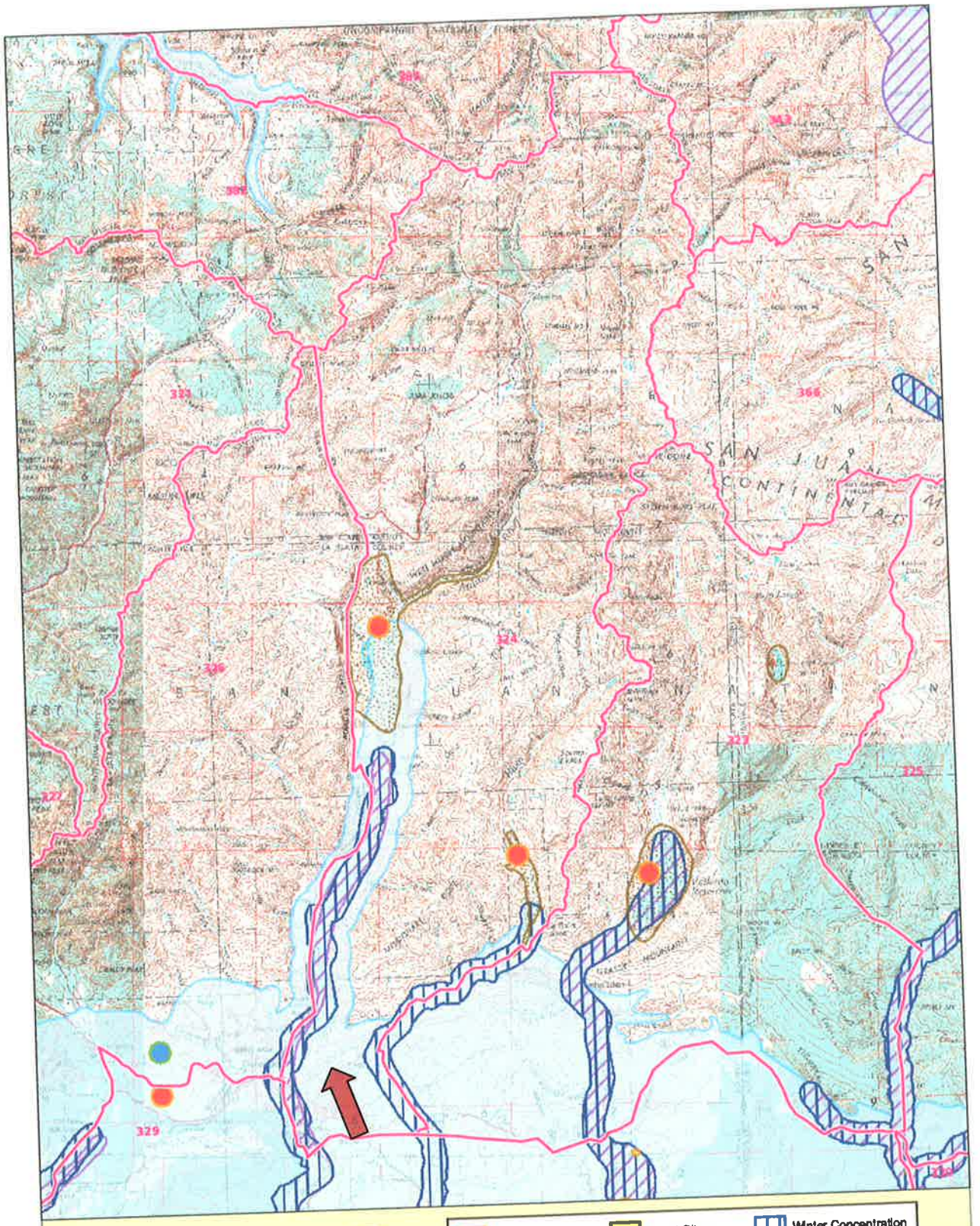
SAM 2007 UTM, ZONE 13, NAD83 Published June 15, 2007



District 324

BALD EAGLE ACTIVITIES

- Active Nest Sites
- Inactive Nest Sites
- Unknown Nest Sites
- Roost Sites
- Communal Roosts
- Summer Forage
- Winter Concentration
- Winter Forage
- Winter Range

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SAM 2007 UTM, ZONE 13, NAD83 Published June 15, 2007

Animas City Mountain PCA

Biodiversity Rank: B5: General biodiversity significance. The PCA supports unranked breeding occurrences of American peregrine falcon, a globally vulnerable subspecies.

Protection Urgency Rank: P4: No protection actions are needed in the foreseeable future.

Management Urgency Rank: M4: Current management seems to favor the persistence of the elements in the PCA, but management actions may be needed in the future to maintain the quality of the element occurrences.

Location: Animas City Mountain PCA is bisected by Highway 550, and surrounds the city of Durango in La Plata County.

U.S.G.S. 7.5-min. quadrangles: Durango West
Legal Description: T35N R10W Sections 1-4, 9-16, 23, 24; T35N R9W Sections 2-24, 26-30, 32-34; T36N R8W Sections 19, 30, 33; T36N R10W Section 12-14, 22, 24, 26, 27, 34-36; T36N R9W Sections 1-12, 19-35; T37N R9W Sections 33, 34.

Elevation: 6420 to 9722 feet

Size: Approximately 48,978 acres

General Description: The PCA lies between Buck Creek to the north and the city of Durango to the south, and extends east to west from Missionary Ridge to Lightner Creek. Because of its large size the PCA includes a diverse array of topography including gentle to steep slopes, vertical cliffs and the valley floor along the Animas River. The PCA is within a large area that includes ponderosa pine (*Pinus ponderosa*) with an understory of Gambel oak (*Quercus gambellii*), conifers and aspen occupy narrow drainages, and a diverse number of grasses and forbs are found throughout the PCA. The five peregrine falcon nests occupy vertical rock cliffs, some of light colored sandstone, that occur throughout the PCA. A CNHP zoologist observed two falcons at one aerie in July, 2003. Nesting was verified at most of the other aeries as recently as 2001 during monitoring by the Colorado Division of Wildlife.

Biodiversity Rank Justification: The PCA includes five nesting sites of Peregrine Falcons, a subspecies that is globally vulnerable (T3) and for which breeding populations are rare in Colorado (S2B). All five Peregrine Falcon sites were active when last monitored in 2001 (Bibles 2004).

Table #. Natural Heritage element occurrences at Animas City Mountain PCA.
Elements in bold are those upon which the PCA's B-rank is based.

Scientific Name	Common Name	Global Rank	State Rank	Federal and State Status	EO* Rank
Animals					
Falco peregrinus anatum	**Peregrine falcon**	**G4T3**	**S2B, SZN**	**FS/BLM**	**E**

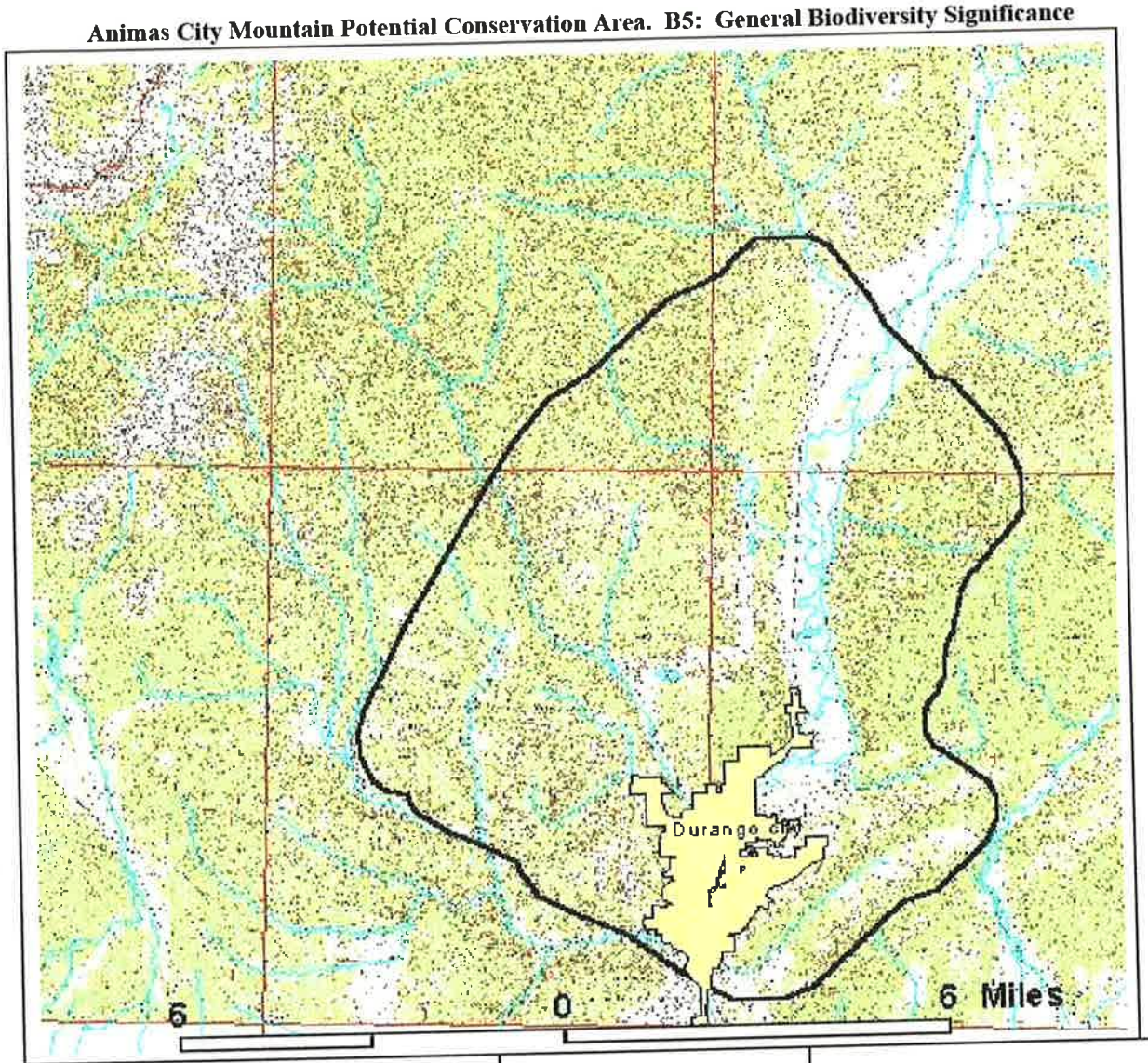
*EO=Element Occurrence. Multiple listings represent separate locations.

Boundary Justification: The boundary of this PCA is designed to conserve the nesting aeries and not to include the full extent of the foraging area required to maintain the viability of the peregrine population. The boundary is drawn to encompass all five active peregrine falcon nests and includes additional areas to disguise the exact locale of each aerie. The added areas do supply foraging habitat for the peregrines, but the boundary accommodates only a small percentage of the foraging area required to support all five nesting pairs.

Protection Comments: The site has mixed ownership, consisting of part of the Perins Peak State Wildlife Area, San Juan National Forest, BLM land and private lands.

Management Comments: The State Wildlife Area, west of the Dry Fork Road, is closed to all visitors from November to July, to protect breeding wildlife. Limiting direct disturbance is critical to nesting success of the falcons.

Animas City Mountain Potential Conservation Area. B5: General Biodiversity Significance



Colorado Natural Heritage Program

Colorado State University
College of Natural Resources
8002 Campus Delivery
Fort Collins CO 80523-8002

Disclaimer

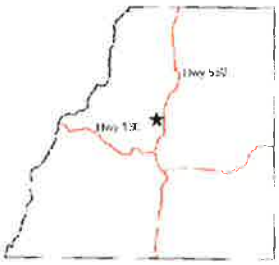
Data are provided on an as-is, as-available basis without warranties of any kind, expressed or implied, including (but not limited to) warranties of merchantability, fitness for a particular purpose, and non-infringement. CNHP, Colorado State University and the State of Colorado further expressly disclaim any warranty that the data are error-free or current as of the date supplied.

PCA Boundary
Durango West 37107-C8
Durango East 37107-C7
Monument Hill 37107-D8
Hermosa 37107-D7

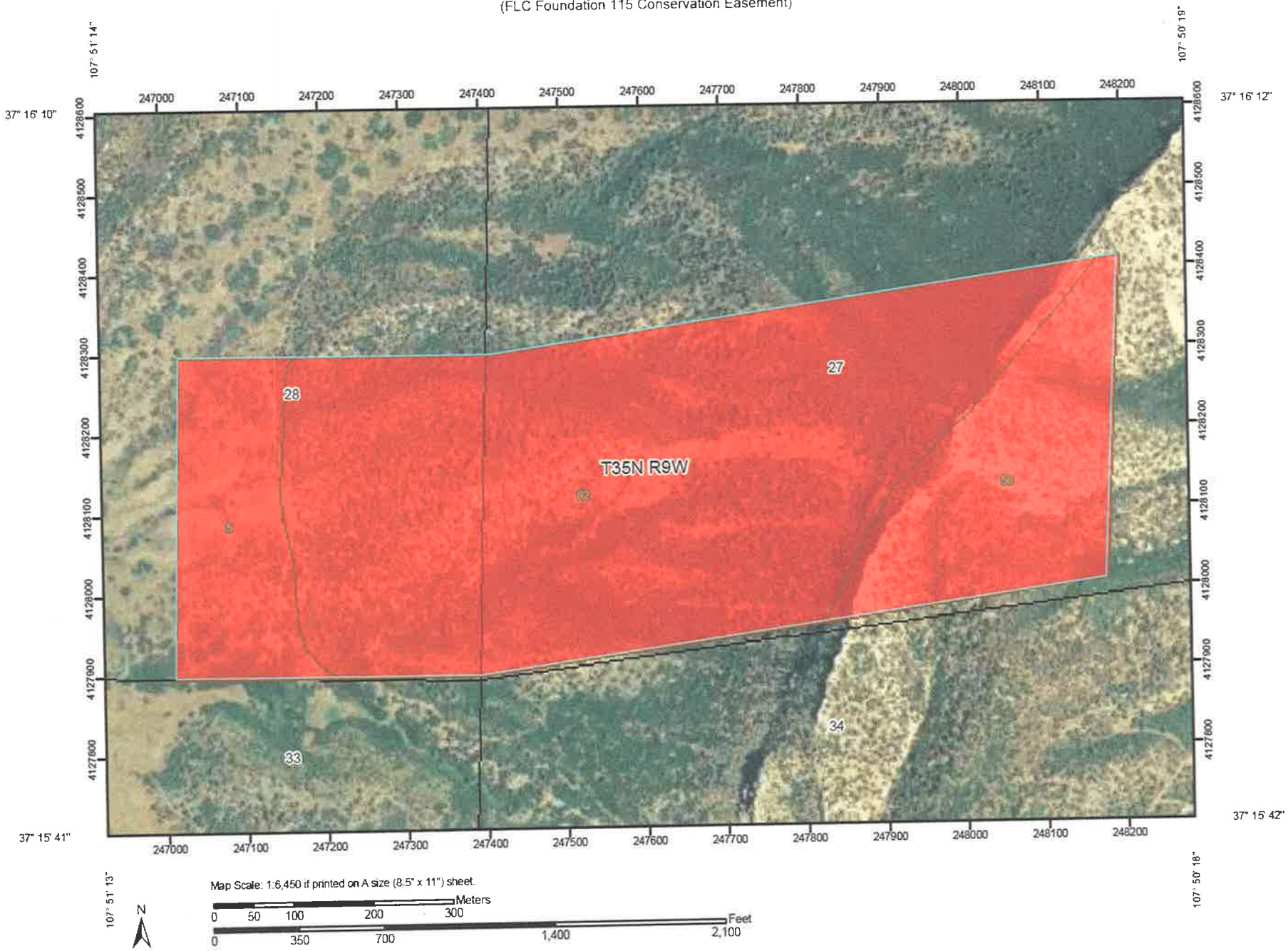
7.5 Minute Series

Digital Raster Graphics
Produced by the U. S. Geological Survey
Map created 10 April 2004

Location in Study Area



Farmland Classification—La Plata County Area, Colorado
(FLC Foundation 115 Conservation Easement)



USDA Natural Resources Conservation Service

Web Soil Survey
National Cooperative Soil Survey

MAP LEGEND

Area of Interest (AOI)

- Area of Interest (AOI)

Soils

- Soil Map Units

Soil Ratings

- Not prime farmland
- All areas are prime farmland
- Prime farmland if drained
- Prime farmland if protected from flooding or not frequently flooded during the growing season
- Prime farmland if irrigated
- Prime farmland if drained and either protected from flooding or not frequently flooded during the growing season
- Prime farmland if irrigated and drained
- Prime farmland if irrigated and either protected from flooding or not frequently flooded during the growing season
- Prime farmland if subsoiled, completely removing the root inhibiting soil layer
- Prime farmland if irrigated and the product of I (soil erodibility) x C (climate factor) does not exceed 60
- Prime farmland if irrigated and reclaimed of excess salts and sodium
- Farmland of statewide importance
- Farmland of local importance
- Farmland of unique importance
- Not rated or not available

Political Features

- Cities
- PLSS Township and Range
- PLSS Section

Water Features

- Oceans
- Streams and Canals

Transportation

- Rails
- Interstate Highways
- US Routes
- Major Roads
- Local Roads

MAP INFORMATION

Map Scale: 1:6,450 if printed on A size (8.5" × 11") sheet.

The soil surveys that comprise your AOI were mapped at 1:24,000.

Please rely on the bar scale on each map sheet for accurate map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL: http://websoilsurvey.nrcs.usda.gov
Coordinate System: UTM Zone 13N NAD83

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: La Plata County Area, Colorado
Survey Area Data: Version 10, Mar 25, 2008

Date(s) aerial images were photographed: 7/19/2005

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Farmland Classification

Farmland Classification— Summary by Map Unit — La Plata County Area, Colorado				
Map unit symbol	**Map unit name**	**Rating**	**Acres in AOI**	**Percent of AOI**
5	Arboles clay, 3 to 12 percent slopes	Not prime farmland	14.0	12.1%
58	Rock outcrop	Not prime farmland	20.8	18.0%
82	Zyme-Rock outcrop complex, 12 to 65 percent slopes	Not prime farmland	80.7	69.9%
Totals for Area of Interest			**115.5**	**100.0%**

Description

Farmland classification identifies map units as prime farmland, farmland of statewide importance, farmland of local importance, or unique farmland. It identifies the location and extent of the soils that are best suited to food, feed, fiber, forage, and oilseed crops. NRCS policy and procedures on prime and unique farmlands are published in the "Federal Register," Vol. 43, No. 21, January 31, 1978.

Rating Options

Aggregation Method: No Aggregation Necessary

Tie-break Rule: Lower

Assessment of Impact of Mineral Development

Mineral Assessment Report
for the
Fort Lewis College Foundation Property
Parcel # 566527300105
La Plata County, Colorado

May 24, 2010

Prepared for:
La Plata Open Space Conservancy
and
The City of Durango

Prepared by:
Michael J. Matheson, P.G.
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PLATEAU
ENVIRONMENTAL
SERVICES

MINERAL ASSESSMENT REPORT
FORT LEWIS COLLEGE FOUNDATION PROPERTY
LA PLATA COUNTY PARCEL # 566527300105
HORSE GULCH
DURANGO, COLORADO

TABLE OF CONTENTS

Report	Page
Executive Summary	2
Basic Information	2
Title Investigation	3
Description of Geologic Setting	3
Resource Potential	5
Statement of Remoteness	6
Statement of Non-Remoteness	8
Documentation of Conservation Values	8
References	8
Report Preparer Information	9

Appendices	
Appendix A:	Figures
Appendix B:	Title Report and Attachments

Figures	
Figure 1:	Site Topographic Location Map
Figure 2:	Site Aerial Photograph
Figure 3:	Site Geologic Map

Executive Summary

This report has been prepared to discuss the mineral resource development potential for the 115 acre Fort Lewis College Foundation property. This property is located east of Durango in Horse Gulch. Geologic units present on the property include Cretaceous age sandstones and shales with some Quaternary age alluvial and colluvial deposits. There has been historical coal mining near the subject property. Current gas extraction activities occur several miles from the subject property, but site geology and current regulations prevent gas development on the subject property in a known gas productive zone. The Quaternary alluvial and colluvial deposits on the property could be exploited for sand, gravel, and aggregate materials. However, the difficulty accessing the property and the poor quality and volume of the aggregate materials would make extraction of these mineral resources uneconomical and outside typical material specifications. The probability of extraction or removal of minerals by any surface or subsurface mining method is so remote as to be negligible except for an approximate 7 acre area at the southeast corner of the property.

Basic Information

Property Name	Fort Lewis College Foundation Property	
County	La Plata	
Parcel Number	566527300105	
Property Address / Location	In and adjacent to Horse Gulch, immediately east of Durango, Colorado	
Township	35 North	
Range	9 East	
Section(s)	27	28
Quarter/Quarter/Quarter	S ½of the SW ¼	SE ¼ of the SE ¼
Datum	New Mexico Principal Meridian (NMPM)	
Acreage of Land Covered by Conservation Easement	Approximately 115	
Name, Address, Phone Number of CE Donor(s)	City of Durango intends to purchase property and may grant a CE in the future.	
Date of On-Site Inspection	Not Conducted; See Below	

This report has been prepared to discuss the mineral resource development potential for the FLC Foundation property. This property may be put into a conservation easement (CE) in the future. Mr. Michael Matheson, a Registered Professional Geologist with over 25 years of professional experience prepared this report for the La Plata Open Space Conservancy.

An onsite inspection was not conducted for this property. This property is located approximately one mile east of the town of Durango. Sufficient information is known about the property from publicly available information and general knowledge of the geology of this area.

Investigation methods used by Mr. Matheson include evaluation of the topographic and geologic maps of the property, aerial photographs, Bureau of Land Management interactive web mapping program, Colorado Division of Reclamation and Mining Safety, U.S. Geological Survey Geologic Map Database on line publications and maps, and Colorado Oil and Gas Conservation Commission interactive web mapping program. Details can be found in the references section of this report.

The property is located east of the town of Durango. Access to the property is from the eastern end of 3rd Street; which turns into County Road 237 (Horse Gulch Road). The property is located east of Horse Gulch, a northeast/southwest trending valley which lies in between two prominent ridges. The property is a popular location for public recreational activities close to the town of Durango, primarily hiking, mountain biking, and wildlife viewing. There is no current motor vehicle access to the property. Additionally, the area provides habitat and migration routes for elk, mule deer, bear, mountain lion, and other birds and animals. The CE will preserve the open space character, wildlife habitat, and public recreation values of the property.

Title Investigation

Schedule B – Section 2 – Exceptions to the Title was provided by La Plata Open Space Conservancy and reviewed. This document can be found in Appendix B. According to this document, the following are mineral-related exceptions to the Title:

- Unpatented mining claims.
- All interest in oil, gas, coal and other mineral rights severed by predecessors in title and any and all assignments thereof or interests therein.
- All uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials (reserved to the United States).
- All coal (reserved to the United States).
- Oil and gas as reserved by William D. Ewing in a deed to the Fort Lewis College Foundation recorded December 31, 1982 Reception No. 477925, and any and all assignments thereof or interests therein.

Mineral interests have been severed from the surface estate.

Description of Geological Setting

The property is located immediately east of the town of Durango, Colorado; which is southwest of the San Juan Mountains. The San Juan Mountains were raised during a period of tectonic uplifting between 75 and 40 million years ago. During this period, previously deposited sediments were folded and warped.

Portions of the property are bisected by the Hogback Monocline. The Hogback Monocline is a prominent geologic feature of the region. It is the surface expression of the northern edge of the San Juan Basin, a structural depression located in the east-

central portion of the Colorado Plateau (Craigg, 2001). The beds forming the monocline dip steeply into the San Juan Basin in this area (Craigg, 2001).

The property is primarily a northwestern sloping ridge. The ridge is formed by the Cretaceous age Lewis Shale capped by the Cretaceous Age Pictured Cliffs Sandstone. The Lewis Shale is a dark grey shale deposited in a deep marine environment. It has few, thin sandstone beds at the top. The thickness of this unit averages approximately 1,800 feet in the Durango area, and dips at 23 degrees to the southeast through the eastern portion of the property (Carroll et al, 1999). This unit is exposed along the western portion of the property and is overlain by multiple Quaternary age colluvial deposits. The Pictured Cliffs Sandstone was formed in a shallow-marine environment as a shoreface deposit (Carroll et al, 1999). This unit averages approximately 265 feet thick in the area, and dips to the southeast at approximately 30 degrees in the southeast corner of the property (Carroll et al, 1999). Thick, sandstone blocks on elevated ridges can pose a hazard due to rockfall, however, none are known recently.

The property lies immediately west of the contact between the Cretaceous age Fruitland Formation and the Cretaceous age Pictured Cliffs. The Fruitland Formation Tongue bisects the property from northeast to the southwest in an approximate 7 acre area at the southeast corner of the property. The Fruitland Formation Tongue is part of the basal Fruitland Formation coal that overrides a tongue of Pictured Cliffs Sandstone locally (Carroll et al, 1999). This unit is primarily subbituminous coal, carbonaceous shale, and altered volcanic ash (Carroll et al, 1999). This unit produced 21,000 tons of coal during recent mining activities at the Carbon Junction strip mine, until it ceased operations in 1988 (Carroll et al, 1999). The topographic map for the property indicates a historic mine ¼ mile east of the property.

The Quaternary age colluvial deposits overly the Lewis Shale on the subject property. These deposits include a variety of primarily unsorted to poorly sorted, clast-supported boulder, cobble, and pebble gravel in a sandy or silty matrix (Carroll et al, 1999). The material is derived from weathered bedrock (sandstone). Units tend to vary in thickness up to a maximum of approximately 40 feet (Carroll et al, 1999).

The Fruitland Formation, which outcrops on a small portion of the southeast section of the property produces coal bed methane (CBM) and contains coal beds. CBM is currently extensively produced from the San Juan Basin, southeast of the subject property. However, there is a buffer zone where no drilling is allowed within 1½ miles of the outcrop of the Fruitland Formation. Except for a small outcrop in the southeastern section, the property is outside both the Fruitland Formation and the buffer zone.

Approximately one mile to the west/northwest of the subject property, the Cretaceous age Menefee formation outcrops. The Menefee formation contains coal beds, which have been historically mined in the vicinity of the FLC Foundation property. There are

no Menefee coal mines on the subject property, and the nearest Menefee coal mine is at least ½ mile from the subject property.

There is no current or past aggregate, coal, uranium, geothermal, oil, gas, metals, solar, or wind production on the subject property. Other than the Menefee and Fruitland coal beds and the Fruitland CBM, no other known potential mineral bearing formations occur on or near the property.

Resource Potential

Potential Locatable/Metal Mineral Resources
Locatable minerals include all minerals subject to exploration, development and production under the 1872 Mining Law. This includes most metals such as gold, silver, lead, zinc, copper, and industrial metals. Ore bodies that contain veins or lodes contain locatable mineral resources.

There are no potential locatable or metal mineral resources on the subject property. The geology present on the property is not favorable for these types of mineral resources. It is not likely the conditions on and/or under the property would lead to surface or subsurface mining.

Potential Leasable/Energy Resources
Leasable minerals are those regulated by the Mining Leasing Act of 1920, which excluded them from the General Mining Law of 1872. Geothermal energy was added to the list of leasable minerals by the Geothermal Steam Act of 1970. Leasable minerals include oil, gas, oil shale, potash, native asphalt, bituminous rocks, and phosphate coal.

There are known and proven potential leasable energy resources on the subject property. The topography present on the property is not favorable for development of coal resources along the Fruitland Formation Tongue outcrop. The area is steep and contains less than 7 acres where coal may be present. However, a historic mine is indicated on the USGS topographic map approximately ¼ mile east of the property. There is insufficient level area of Fruitland Formation on the property to allow surface development of a gas production facility. The Fruitland Tongue coal reserve has been mined extensively approximately one mile south of the subject property.

Potential Salable/Industrial Mineral Resources
Salable minerals on federal lands must be purchased from the U.S. Government, and are regulated by the Federal Materials Act of 1947 and the Multiple Surface Use Act of 1955 except where mineral rights are privately owned. Most salable minerals have low unit values per short ton and require easy access to transportation and local markets to be profitably exploited. Examples of salable minerals include sand, gravel, aggregate, dimensional stone, some industrial and construction materials.

The Quaternary alluvial and colluvial deposits on the property could be exploited for sand, gravel, and aggregate materials. Additionally, the outcrops of Pictured Cliffs Sandstone could be a source of dimensional stone. However, the difficulty accessing the property and the poor quality and volume of the aggregate materials would make extraction of these mineral resources uneconomical and outside typical material specifications. The surface owner controls the Quaternary alluvial and colluvial deposits. Once the property is easement protected, exploitation of these minerals will be prohibited.

Summary of Mineral/Mining Potential

The following table is derived from the Colorado Geological Survey to rank mineral and mining potential for the subject property.

Metallic	Coal	Oil & Gas	Industrial Minerals/ Construction Materials
Rating: 0.1 Little or No Potential Lacks the rock types or structures that may contain metallic minerals. No igneous or metamorphic rocks are present on site. There are no ore bodies with veins or loads containing locatable mineral resources present on the property.	Rating: 3 Moderate Potential The property contains strata (Fruitland Formation Tongue) that may contain coal.	Rating: 0.1 Little or No Potential Lacks all the essential elements of hydrocarbon accumulation. Additionally, administrative regulations preclude exploration or drilling near the Fruitland Formation outcrop.	Rating: 1 Poor Potential The property contains deposits comprised of sand, gravel, aggregate, and dimensional stone. However, none of these materials have been identified as a resource and access to the property and the deposits would deem these resources unprofitable to develop.

Statement of Remoteness

From Surface Mining

The mineral interests of the property are not known at this time. Mineral rights appear severed from the surface estate, however they appear to be unleased. Potential extraction of minerals by surface mining methods cannot be completely excluded.

Based on the evaluation of resource potential, the probability of surface mining on the subject property is so remote as to be negligible except as noted in the Statement of Non-Remoteness. The following facts are used to draw this conclusion:

- Bedrock present on the subject property is sedimentary in origin and lacks the rock types or structures that may contain metallic minerals.
- Any coal beds present on site in the Fruitland Formation Tongue would likely be cost prohibitive to develop to due the limited volume of reserve, topography, poor access and land use regulations. No coal has been produced from nearby Fruitland Formation Tongue mines for over 20 years. The portion of the property that may contain a coal resource comprises less than 7 acres of the 115 acre tract.
- Local government regulations would be restrictive of surface mining in the area.
- The site lacks the essential elements for hydrocarbon accumulation. The geology on site is not sufficient to form any type of hydrocarbon reservoir; other than tight shale gas in Lewis Shale, which is unexplored and unproven in this area.
- The site contains Quaternary alluvial and colluvial deposits comprised of sand and gravel. These deposits are difficult to access, of limited aerial extent, and poor quality. The U.S. Geological Survey has not identified these units as favorable for mineral development (USGS, 1997). It is not likely these minerals would be profitable to develop.

<u>From Subsurface Mining</u>

The mineral interests of the property are not known at this time. Mineral rights appear severed from the surface estate, however they appear to be unleased. Potential extraction of minerals by subsurface mining methods cannot be completely excluded.

Based on the evaluation of resource potential, the probability of subsurface mining on the subject property is so remote as to be negligible except as noted in the Statement of Non-Remoteness. The following facts are used to draw this conclusion:

- Bedrock present on the subject property is sedimentary in origin and lacks the rock types or structures that may contain metallic minerals.
- Any coal beds present on site in the Fruitland Formation Tongue would likely be cost prohibitive to develop. No coal has been produced from nearby Fruitland Formation Tongue mines for over 20 years. Development of a subsurface coal mine on the 7 acres of land potentially containing coal outcrop would be cost prohibitive.
- The site lacks the essential elements for hydrocarbon accumulation. The geology on site is not sufficient to form any type of hydrocarbon reservoir; other than tight shale gas, which is unexplored and unproven in this area.

Statement of Non-Remoteness

Non-remoteness from surface mining and/or subsurface mining has not been found for the subject property except for an approximate seven acre area in the southeast portion of the property (see Figures 1, 2 & 3). This portion of the property may have a non-negligible, but probably still remote (in my opinion), possibility for development of a coal resource. This portion of the property may be considered for exclusion from tax benefits associated with the CE.

Documentation of Conservation Values

The conservation values applicable to the FLC Foundation property are wildlife habitat, open space, and public recreation. These values are documented in a separate report.

References

Brooks, Tom, 1985, Hydrology of Coal-Lease Areas Near Durango, Colorado: U.S. Geological Survey Water-Resources Investigations Report 85-4125, p. 10-15.

Bureau of Land Management GeoCommunicator internet mapping program http://www.geocommunicator.gov/blmMap

Carroll, Christopher J., Gillam, Mary L., Ruf, Jason C., Loseke, Travis D., and Kirkham, Robert M., 1999, Geologic Map of the Durango East Quadrangle, La Plata County, Colorado: Colorado Geological Survey, 45 pages

Colorado Coalition of Land Trusts, 2008, Mineral Development and Land Conservation, A Handbook for Conservation Professionals, 130 pages.

Colorado Division of Reclamation Mining and Safety internet mapping program http://mining.state.co.us

Colorado Oil and Gas Conservation Commission internet mapping program http://oil-gas.state.co.us

Craigg, Steven D., 2001, Geologic Framework of the San Juan Structural Basin of New Mexico, Colorado, Arizona, and Utah, with Emphasis on Triassic Through Tertiary Rocks: U.S. Geological Survey Professional Paper 1420, p. 1-44.

Hall, Kevin, March 17, 2009, City of Durango, Discussion and Possible Action Concerning Approval of a Contract to Acquire the "First Presbyterian Church Property Interest": Agenda Documentation 12.1.1, 2 pages.

La Plata County internet mapping program

http://co.laplata.co.us

Raby, Andrew G., and Dersch, John S, 1997, Mineral Resource Potential and Geology of the San Juan National Forest, Colorado: U.S. Geological Survey Bulletin 2127.

Scott, Glenn R., and Moore, David W., 2007, Pliocene and Quaternary Deposits in the Northern Part of the San Juan Basin in Southwestern Colorado and Northwestern New Mexico: U.S. Geological Survey Scientific Investigations Report 2007-5006, p. 1-11.

Sullivan, Kathleen A., and Jochim, Candace L., 1984, Inactive Coal Mine Data and Subsidence Information, Durango and Pagosa Springs Coal Fields: Colorado Geological Survey, 25pages.

Report Preparer Information

This report was prepared by Mr. Michael Matheson, PG. Mr. Matheson is a registered professional geologist in the State of Arizona and is a certified environmental scientist in the State of Colorado. Mr. Matheson has a Bachelor of Science degree in Geology and over 25 years of professional experience as a geologist. Mr. Matheson can be reached at the following:

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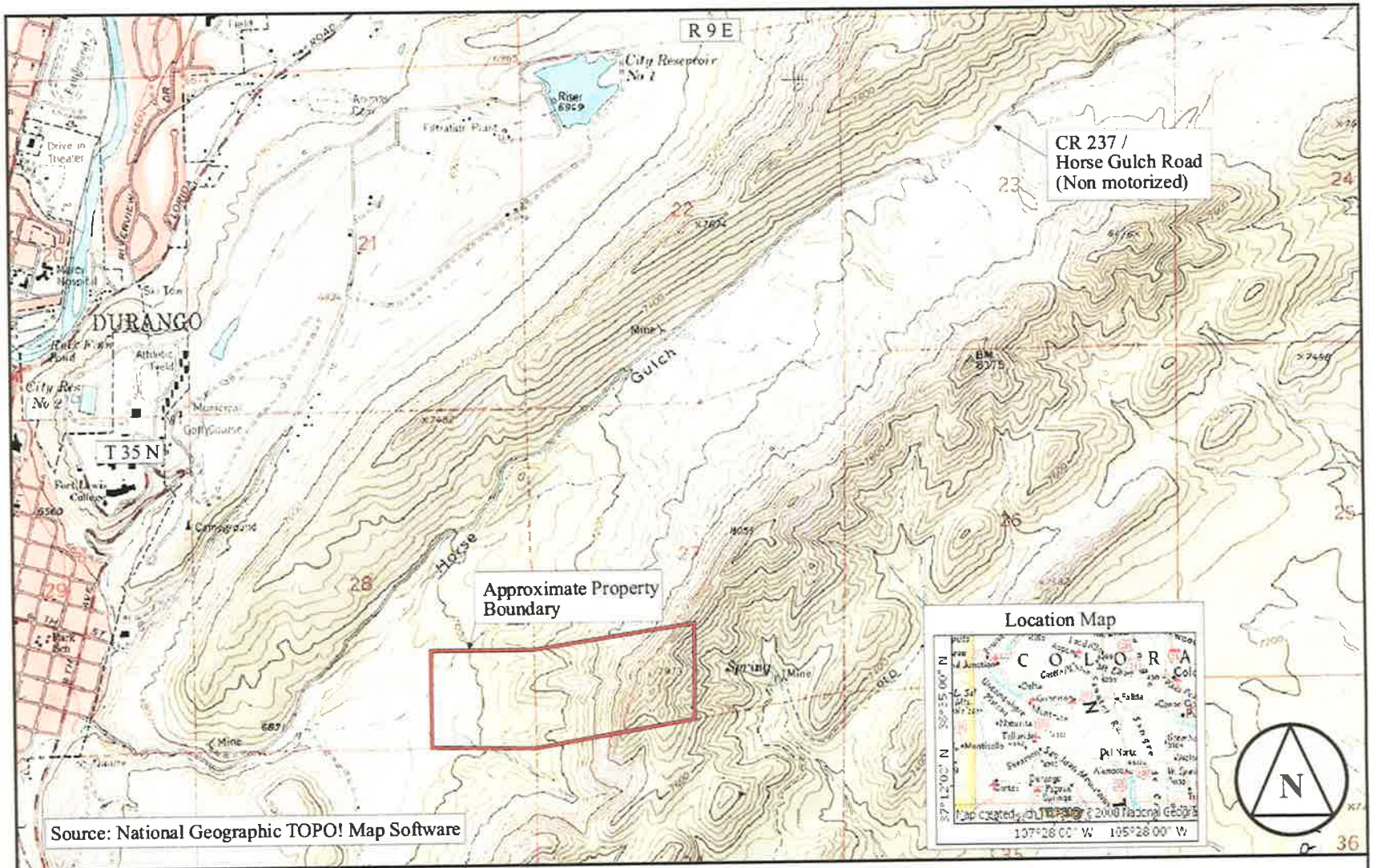
3238 E. Fifth Avenue
Durango, Colorado 81301
(970) 247-9200
mmatheson@plateauenvironmental.com

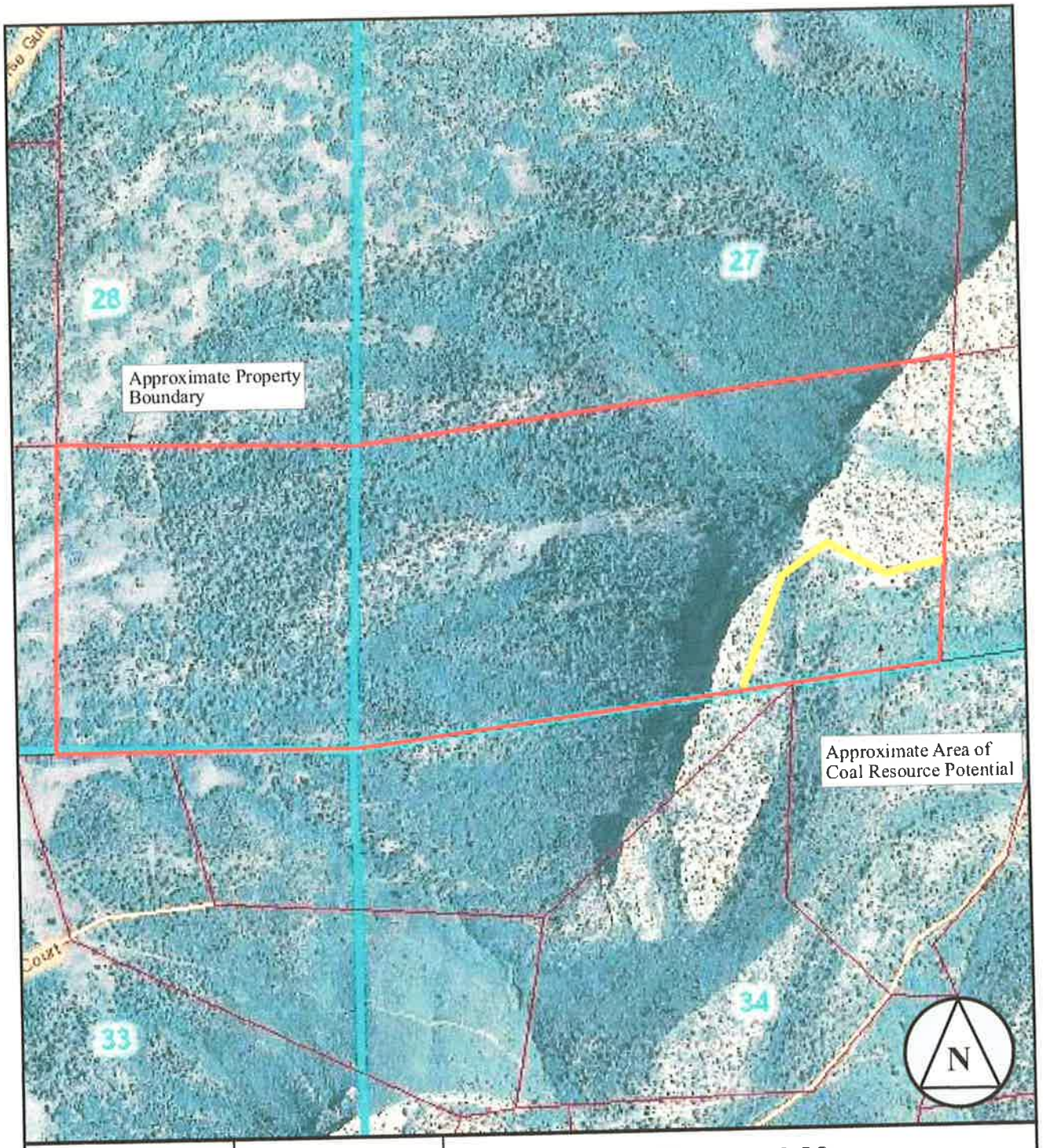
Signature:

Date Signed: May 24, 2010

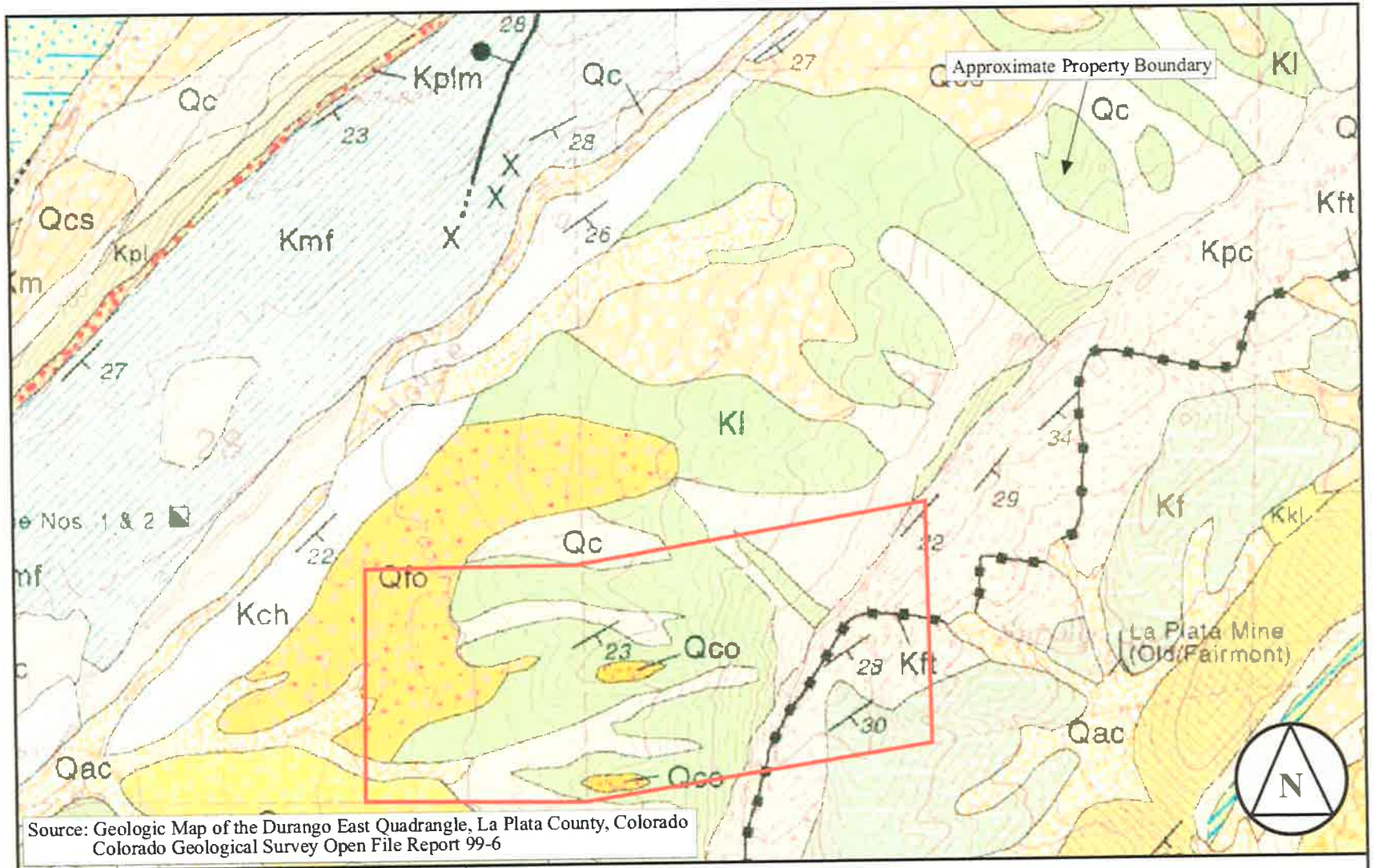
Appendix A
Figures



Project #: LPOSC.027	Date: May 24, 2010	**Figure 1 - Location & Topographic Map** **FLC Foundation Property Mineral Assessment**
Scale: ——— = 0.10 Mi	Drawn By: M. Matheson	
PLATEAU ENVIRONMENTAL SERVICES, INC. 3238 East 5th Avenue Durango, Colorado 81301		Key: Approximate Property Boundary



Scale: 1" = 800'	Date: May 24, 2010	**Figure 2 - Aerial Photograph Map FLC Foundation Property Mineral Assessment**
Prepared By: MJM	Job: LPOSC.027	
Plateau Environmental Services, Inc. 3238 East 5th Avenue Durango, Colorado 81301		



Project #: LPOSC.027	Date: May 24, 2010	**Figure 3 - Geologic Map** **FLC Foundation Property Mineral Assessment**
Scale: Not to Scale	Drawn By: M. Matheson	
PLATEAU ENVIRONMENTAL SERVICES, INC. 3238 East 5th Avenue Durango, Colorado 81301		Qc: Quaternary Colluvium Qto: Colluvium and Sheetwash Deposits Kpc: Cretaceous Pictured Cliffs Kl: Cretaceous Lewis Shale Kf: Cretaceous Fruitland Formation Kft: Cretaceous Fruitland Formation Tongue

Appendix B
Title Report and Related Documents

PLATEAU
ENVIRONMENTAL
SERVICES

SCHEDULE B - SECTION 2
EXCEPTIONS

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction:

1. Any facts, rights, interests or claims which are not shown by the public records, but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.

2. Easements or claims of easements, not shown by the public records.

3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the land would disclose, and which are not shown by the public records.

4. Any lien, or right to a lien, for services, labor or materials heretofore or hereafter furnished, imposed by law and not shown by the public records. In addition, any defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.

5. Any and all unpaid taxes, assessments and unredeemed tax sales.

6. Assessments, taxes, fees or charges arising pursuant to the inclusion of the land in one or more special districts or municipalities.

7. (a) Unpatented mining claims, (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) ditches and ditch rights; water rights, claims or title to water; (d) all interest in oil, gas, coal and other mineral rights severed by precedessors in title and any and all assignments thereof or interests therein, whether or not the matters excepted under (a), (b), (c) or (d) are shown by the public records.

8. Right of way for ditches or canals constructed by the authority of the United States, and all coal, and the right to prospect for, mine and remove coal upon compliance with the conditions of and subject to the limitations of the Act of June 22, 1910 (36 Stat., 583), as reserved in United States Patent of record.

9. Right of way for ditches or canals constructed by the authority of the United States, and all uranium, thorium or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, and the right to prospect for, mine, and remove upon compliance with the conditions of and subject to the limitations of the Act of August 1, 1946 (60 Stat., 755), as reserved in United States Patent of record.

10. Right of way conveyed to Colorado Telephone Company as set forth in Deed from The Porter Fuel Company to W. D. Ewing recorded February 3, 1942 in Book 240 at Page 39.

11. Easement for ingress and egress for the purpose of garbage and trash disposal as granted to the City of Durango by W. D. Ewing in deed recorded May 21, 1955 in Book 345 at Page 73.

12. All oil, gas and other minerals as reserved by William D. Ewing, Jr., also known as William Dudley Ewing, Jr. in Deed to The Fort Lewis College Foundation, recorded December 31, 1987 as Reception No. 477925, and any and all assignments thereof or interests therein.

13. Roadway and utility purposes easement as reserved in Deed from William D. Ewing, Jr., also known as William Dudley Ewing, Jr. to The Fort Lewis College Foundation, recorded December 31, 1982 as Reception No. 477925.

14. Lack of a right of access from the land to any open public road, street or highway.

    NOTE: This exception is necessary because it does not appear from the instruments of record in the office of the County Clerk and Recorder in which subject property is situate that any right of access exists to an open public roadway.

Note 1: Colorado Division of Insurance Regulations 3-5-1, Paragraph C of Article VII, requires that: "Every title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed." (Gap Protection)

Note 2: Exception No. 4 of Schedule B, Section 2 of this Commitment may be deleted from the Owner's Policy to be issued hereunder upon compliance with the following conditions:

A. The land described in Schedule A of this commitment must be a single family residence, which includes a condominium or townhouse unit.

B. No labor or materials may have been furnished by mechanics or materialmen for purpose of construction on the land described in Schedule A of this Commitment within the past 13 months.

C. The Company must receive an appropriate affidavit indemnifying the Company against unfiled mechanic's and materialmen's liens.

D. Any deviation from conditions A though C above is subject to such additional requirements or information as the Company may deem necessary, or, at its option, the Company may refuse to delete the exception.

E. Payment of the premium for said coverage.

Note 3: The following disclosures are hereby made pursuant to §10-11-122 C.R.S.:

(i) The subject real property may be located in a special taxing district;

(ii) A certificate of taxes due listing each taxing jurisdiction shall be obtained from the County Treasurer or the County Treasurer's authorized agent; and

(iii) Information regarding special districts and the boundaries of such districts may be obtained from the County Commissioners, the County Clerk and Recorder, or the County Assessor.

Note 4: If the sales price of the subject property exceeds $100,000.00, the seller shall be required to comply with the disclosure or withholding provisions of C.R.S. §39-22-604.5 (Non-resident withholding)

Note 5: Pursuant to CRS 10-11-123 Notice is hereby given:

(a) If there is recorded evidence that a mineral estate has been severed, leased or otherwise conveyed from the surface estate then there is a substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and

(b) That such mineral estate may include the right to enter and use the property without the surface owner's permission.

Note 6: Effective September 1, 1997, C.R.S. 30-10-406 requires that all documents received for recording or filing in the clerk and recorder's office shall contain a top margin of at least one inch and a left, right and bottom margin of at least one-half inch. The clerk and recorder may refuse to record or file any document that does not conform.

Note 7: Our Privacy Policy. We will not reveal nonpublic personal customer information to any external non affiliated organization unless we have been authorized by the customer, or are required by law.

No. 168954

BOOK 240
PAGE 389

THE PORTER FUEL COMPANY, a corporation organized under the laws of the State of Colorado, with its principal place of business at Los Angeles, California, in consideration of two thousand and no/100 dollars, to it in hand paid, receipt of which is hereby acknowledged, does hereby REMISE, RELEASE AND QUITCLAIM to W. D. EVINS, whose permanent address is Durango, Colorado, the real property in the County of La Plata, State of Colorado, described as:

	Sec.	Twp.	Rng.	Acres
E½ of SW¼	19	35-N	8-W	80.00
W½ of SW¼	20	"	"	80.00
Lot 2, NE¼, NW¼ of SW¼, except R/W 200' wide conveyed to Denver & Rio Grande Rwy. Co. by deed dated 7-8-31	4	34-N	9-W	319.72
S½ of NW¼, except 0.77 acres conveyed by the Durango Land and Coal Co., to The Denver Rio Grande R. R. by deed dated 6-14-05 recorded in Book 105, Page 885 Records of La Plata Co., Colo. and subject to R/W 60' wide for public road to La Plata County 6-11-36, except R/W 200' wide conveyed to Denver & Rio Grande Rwy. Co. by deed dated 7-8-31.	5	"	"	39.23
Part of Lots 1, 8 and 9 lying west of the Animas River, according to plat of U. S. survey approved 12-22-91, subject to R/W 60' wide for road to La Plata Co., 6-11-36; except R/W 200' wide for D. & R. G. Ry.,	32	34½	9-W	86.66
Lots 1, 2, 3, 6, E½ of SE¼	33	"	"	241.30
Lots 3 and 4.	34	"	"	3.49
NE¼ of NE¼, SW¼ of NE¼, NE¼ of SW¼, SW¼ of SW¼, also except R 3/4 W 100' wide to La Plata R. R. Co. 3-11-90, also exc. R/W 200' wide conveyed to D. & R. G. Rwy. Co. by deed dated 7-8-81.	26	35-N	9-W	160.00
Lot 16, except R/W 100' wide to La Plata R. R. Co., 3-11-90.	27	"	"	18.59
Lots 9,10,15,16, subj. to R/W conveyed to Colo. Tel. Co., 11-23-03.	28	"	"	160.47
Lots 2,3,4,5,6,7,8,10,11,13,14,15,16, 17,18,19, exc. R/W 200' wide conveyed to D. & R. G. Rwy. Co. 7-8-81.	33	"	"	419.25
Lots 1,2,3,5,6,7,10,11,12, exc. R/W 200' wide conveyed to D. & R. G. Ry. Co. 7-8-81, also exc. R/W 100' wide conveyed to La Plata R. R. Co., 3-31-90	34	"	"	297.84
Lots 1,2,7,8,9	32	"	"	220.21
		Total acreage		2075.85

I. R. S.
$2.20

In Witness Whereof, said Corporation has caused its corporate name and seal to be affixed hereto and this instrument to be executed by its President and Secretary thereunto duly authorized, this 26th day of December, 1941.

Recorder Stamps and Documentary Transmittal or

Corporate Seal

THE PORTER FUEL COMPANY

By Robert A. Rowan
President

By George D. Rowan
Secretary

STATE OF CALIFORNIA
County of Los Angeles } ss.

On this 26th day of December, 1941, before me, Lyle C. Newcomer, Jr., a Notary Public in and for said County, personally appeared Robert A. Rowan and George D. Rowan, known to me to be the President and known to me to be the Secretary of The Porter Fuel Company, the corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

Notarial Seal

WITNESS my hand and official seal.

My Commission expires Dec. 18, 1943

Lyle C. Newcomer, Jr.
Notary Public in and for said County and State

Filed for record the 31st day of Feb. A. D. 1942, at 1:30 o'clock P. M.

Seth G. Kiel
By Lois B. Lund

BOOK 345
PAGE 1

EASEMENT

THIS INDENTURE, made this 16th day of January, 1954, between W. D. Ewing of La Plata County, Colorado, herein called the Grantor, and the City of Durango, a municipal corporation of the State of Colorado, herein called the Grantee, WITNESSETH:

For and in consideration of the sum of One Dollar ($1.00) in hand paid and other good, valuable and sufficient consideration, the receipt whereof is hereby confessed and acknowledged, the Grantor has granted, bargained, sold and conveyed, and does hereby grant, bargain sell and convey until the Grantee, an easement and right to use for purposes hereinafter set out, the following described property, situate, lying and being in La Plata County, Colorado, to-wit:

The South half of the Southwest quarter (S½ SW¼) and the Southeast quarter (SE¼) of Section Twenty-eight (28), Township Thirty-five (35) North, Range Nine (9) West, N.M.P.M.

Said Grantee shall have the right of ingress and egress to and from said property for the purpose of garbage and trash disposal. All garbage, trash, however, to be placed and disposed of as suggested by Soil Conservation Service.

This easement shall continue until mutually terminated.

W. D. Ewing
W. D. Ewing

STATE OF COLORADO)
) ss
COUNTY OF LA PLATA)

The foregoing instrument was acknowledged before me this 16th day of January, 1954 by W. D. Ewing.

Margaret Lingford
Notary Public

My commission expires: My [illegible] 1, 1958

3.-

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO

Name

Street Address

City & State

MAIL TAX STATEMENTS TO

Name

Street Address

City & State

477925

RECEPTION # 477925 Lois Sauer, Recorder

Recorded at 12:29 o'clock A.M. Dec. 31, 1982

State of Colorado La Plata County

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CAT. NO. KN00586
TO 1972 CA (7-67)

Individual Quitclaim Deed

THIS FORM FURNISHED BY TICOR TITLE INSURANCE

The undersigned grantor(s) declare(s):
Documentary transfer tax is $ _____
( ) computed on full value of property conveyed, or
( ) computed on full value less value of liens and encumbrances remaining at time of sale.
( ) Unincorporated area: [ ] City of _____, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

WILLIAM D. EWING, JR., also known as WILLIAM DUDLEY EWING, JR.

hereby REMISES, RELEASES AND QUITCLAIMS to

THE FORT LEWIS COLLEGE FOUNDATION

the following described real property in the County of La Plata, State of Colorado

The South 1/2 of the Southwest 1/4 of Section 27, Township 35 North, Range 9 West, N.M.P.M. and the South 1/2 of the Southeast 1/4 of Section 28, Township 35, Range 9 West, N.M.P.M.

Subject to patent reservations, easements and restrictions of record as they may exist on the ground.

Further, reserving to grantor all oil, gas and other minerals lying in, on or under the above-described real property, or that may be produced from them;

FURTHER RESERVING to grantor an easement 60 feet in width for roadway and utility purposes, running in a generally easterly direction from the county road to other lands owned by grantor or his heirs at law.

Dated: December 29, 1982

William D. Ewing Jr.

WILLIAM D. EWING, JR.

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO } ss.

On December 29, 1982 before me, the undersigned, a Notary Public in and for said State, personally appeared WILLIAM D. EWING JR.

personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.
WITNESS my hand and official seal.

Signature Paula Unger

OFFICIAL SEAL
PAULA UNGER

(This area for official notarial seal)

Environmental Hazard Assessment

SUGNET & MOORE ENVIRONMENTAL, INC.

555 Rivergate Lane, B1-101
Durango, Colorado 81301
(p) 970.259.9595 • (f) 970.259.0050
www.sugnetmoore.com

Memo

To: Kevin Hall (City of Durango)

From: Sean Moore (Sugnet & Moore Environmental, Inc.)

Date: April 12, 2010

Re: Phase I Environmental Site Assessment for the 115 Foundation Parcel

---

In May 2009, a *Phase I Environmental Site Assessment* (*ESA*) was completed for the "Horse Gulch properties", located outside the City of Durango, Colorado. Specifically, the property under investigation consisted of La Plata County Parcel # 566527300106 and # 566526200033, which together total approximately 463 acres (Appendix I, Figure 1 of the referenced report). This *Phase I ESA* was completed on behalf of the City of Durango by Sugnet & Moore Environmental, Inc. (SME) under authorization from the property owners [Kim Crader (parcel # 566526200033) and the First Presbyterian Church (parcel # 566527300106)] for a potential property transaction involving the subject site (Figure 3 of the referenced report).

The Scope for the *Phase I ESA* was based on the ASTM Practices E 1527-05 guidance and included the following:

- Review of an Environmental Data Resources, Inc. (EDR) report on information in U.S. Environmental Protection Agency (USEPA) and state databases for the subject site and surrounding properties.
- Review current and historical *aerial photographs* to obtain information on the subject site and adjacent properties land-use and indicators of *recognized environmental conditions*.
- Review of U.S. Geological Survey (USGS) Topographic Maps to obtain information relative to the site and adjacent properties physical setting.
- Review available Sanborn fire insurance maps, and La Plata County Assessor's Office records for the site and surrounding properties dating back to 50 years (if possible) to obtain property use information.
- Interviews with individuals, including local environmental authorities, knowledgeable about the site and surrounding properties.
- Reconnaissance of the subject site and adjacent properties to obtain information indicating the presence of *recognized environmental conditions* with the site (if any).

The *Phase 1 ESA* included research and review of available public records and reports concerning the history of the site and area development, a review of pertinent regulatory agency files to identify potential environmental problems or concerns on the subject property or in the adjacent area, and a detailed site inspection. The site inspection was conducted by SME staff on May 5, 2009 and May 12, 2009. Additionally, a driving reconnaissance of the adjacent area within a three-mile radius of the properties centroid location was completed to observe and record information regarding local environmental conditions or concerns that could adversely affect the subject property. The *Phase 1 ESA* revealed no evidence of *recognized environmental conditions* (REC) in connection with the subject property.

In May 2010, SME was contacted by the City of Durango to prepare an amendment to the previous report to document a parcel referred to as the "115 Foundation" parcel that is located to the southeast of the

previous subject property. The 115 Foundation parcel will be purchased under the same grant funding as the previously studied parcels to the north. Though this memorandum, documenting the site investigation and findings for the 115 Foundation parcel, does not qualify as a *Phase I ESA* report, it is tiered to the previous *Phase I ESA* and is based on the ASTM Practices E 1527-05 guidance but does not fulfill the requirements to be AAI or ASTM E1527-05 compliant. This memorandum was prepared at the request of the City of Durango.

Summary of Findings

The scope of this memorandum involved a multi-task investigation to establish current and historical environmental conditions on the property. The specific findings of this environmental investigation are as follows.

A site visit of the "115 Foundation" Parcel was conducted on May 20, 2010. The majority of the subject property and surrounding area consists of open space. Mountain biking trails and hiking trails are in the general vicinity of the subject property. Several small washes flow across the subject property and into Horse Gulch drainage, which trends from northeast to southwest before entering the Animas River. A site map is included as Figure 1.

Dominant vegetation on the subject property generally consists of piñon pine and Utah juniper in the overstory with an understory dominated by big sagebrush and rubber rabbitbrush. A variety of grasses and forbs provide groundcover among these trees and shrubs, including: western wheatgrass, Indian ricegrass, broom snakeweed and yarrow.

There are no registered water wells on the site. Groundwater within the subject property is believed to migrate down-gradient, relative to ground surface contours towards Horse Gulch drainage and the Animas River. Groundwater flow direction can be influenced locally and regionally by recharge and discharge areas, inconsistencies in subsurface soil and bedrock features, and proximity to water wells. Confirmation of specific factors affecting groundwater flow beneath the property is beyond the scope of a *Phase I ESA* and this memorandum.

During this site visit a survey was performed on mountain bike and on foot. The majority of the trails were surveyed on a mountain bike and the drainages on the subject property were traversed on foot. The purpose of the visit was to look for *obvious* visual and physical (smell) indications of historical or current operations that may have resulted in possible soil and/or groundwater contamination. The site visit included a systematic visual evaluation of the grounds for *obvious* indications of hazardous waste storage and disposal areas, storm drainages, underground and aboveground storage tank locations, and hazardous material storage and use areas.

The subject site was generally inspected for evidence of *hazardous materials* and/or *petroleum product* contamination of surface soils. During the site visit, the subject site and relevant adjoining properties were observed and photographed. Photographs taken at the time of the site visit are included as Attachment 3. These photographs document the conditions observed at the time of the *site reconnaissance* and provide future reference for site identification.

From the previous *Phase 1 ESA*, fourteen sites were analyzed for the likelihood to affect the project area off-site (Figure 2 of the referenced report). None of these sites appear to pose a significant environmental concern to "115 Foundation" Parcel. During the site visit, a fire pit with miscellaneous debris and a historic telegragh alignment were observed. The fire pit and debris is considered de minimus and is not a *recognized environmental condition.* No transformers or other *hazardous materials* were observed in association with the historic telegraph alignment and it is not considered a *recognized environmental condition.*

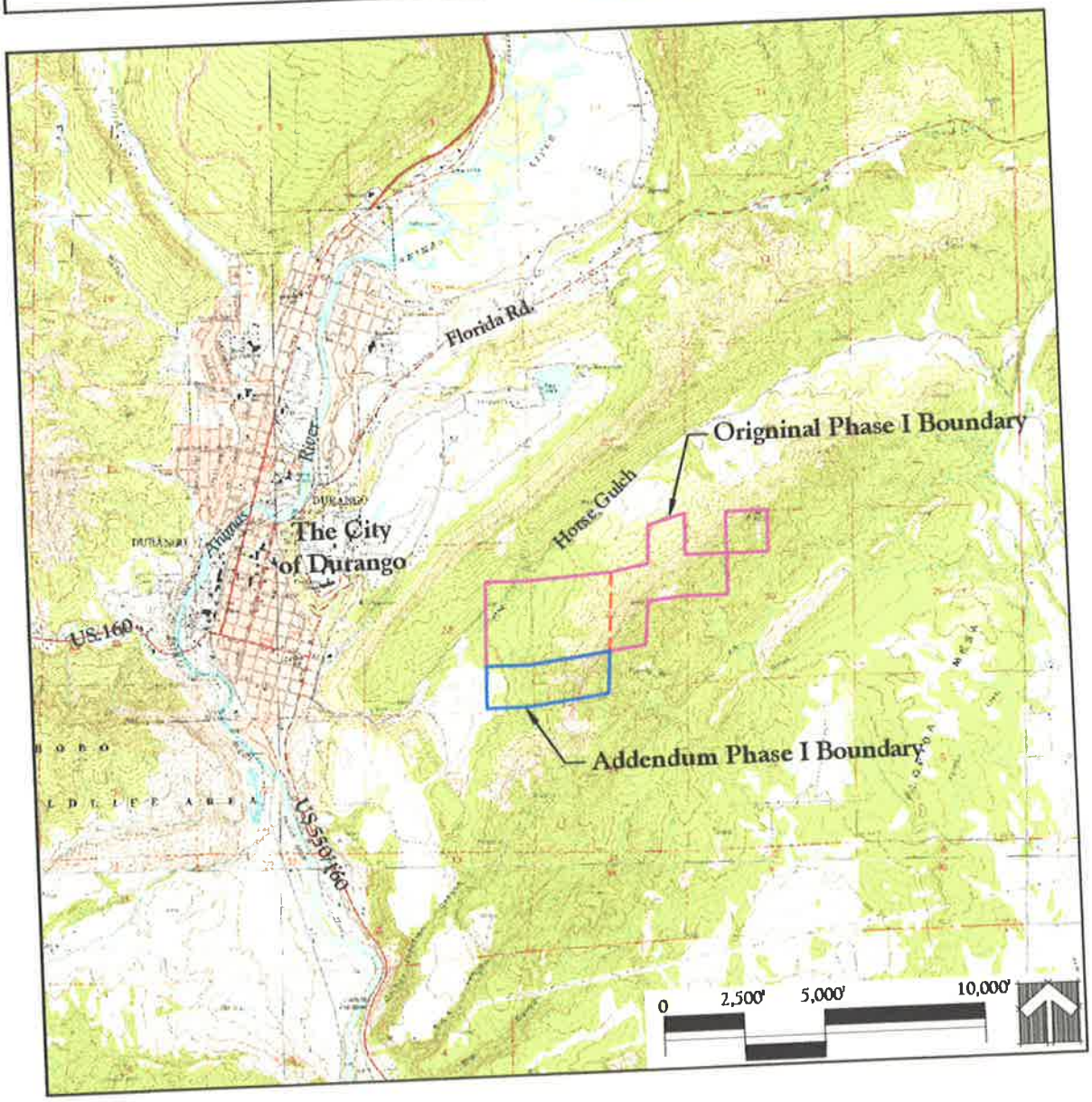
Based on the site visit and the information from the previous *Phase 1 ESA*, the "115 Foundation" Parcel has no *recognized environmental concerns.*

ADDENDUM PROJECT LOCATION:

Township 35 North, Range 09 West, Sections 27 & 28.
New Mexico Principal Meridian,
La Plata County, Colorado.

ADDENDUM CENTROID LOCATION:

Latitude: 37° 15' 55"
Longitude: -107° 50' 47"



SME
SUBNET & MOORE ENVIRONMENTAL, INC.

PROJECT LOCATION	FIGURE 1
HORSE GULCH : PHASE I ADDENDUM ENVIRONMENTAL SITE ASSESSMENT	*Source: Durango East & Durango West Colo. 7.5' USGS Quadrangles*

ATTACHMENT A
HORSE GULCH "FOUNDATION 115" PARCEL SITE PHOTOS

Historic Telegraph Alignment
Looking: East

Miscellaneous Debris and Fire Pit
Looking: Down

General Site Characteristics
Looking: North

General Site Characteristics
Looking: East

Draft of Horse Gulch Open Space Management Plan

Boundary Map Showing Natural Features, Improvements, Photo Points

Boundary Map Showing Natural Features, Improvements, Photo Points
Horse Gulch Open Space FLC Foundation 115 Conservation Easement

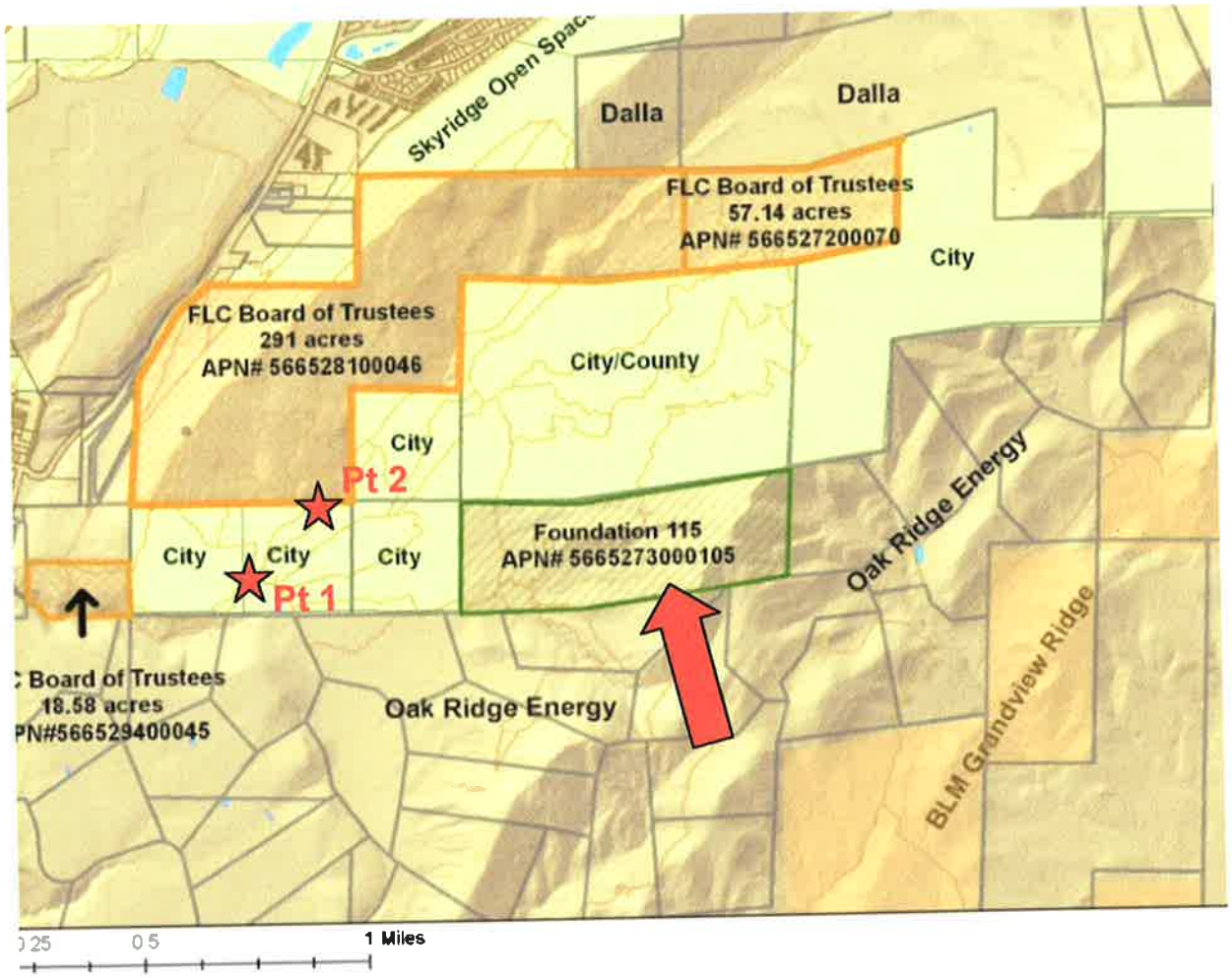


Photo Pt 1 N37 15.841, W107 51.687
Photo Pt 2 N37 15.901, W107 51.545

Photos from Designated Photo Points

FLC Foundation 115 Conservation Easement

Baseline Documentation

May 28, 2010

About this book

Baseline photos for the FLC Foundation 115 Conservation Easement in the Horse Gulch Open Space Area were taken May 28, 2010 from vantage points on City of Durango-owned property to the west of the subject property. These photos show natural features of the Property and the general condition of the Property at the time of the grant of conservation easement.

Photo Pt 1A

N37 15.841, W107 51.687, 170 Degrees

View to southeast from point on trail on City-owned land west of Property.

Photo Pt 1B

N37 15.841, W107 51.687, 125 Degrees

View to southeast from point on trail on City-owned land west of Property.

Photo Pt 1C

N37 15.841, W107 51.687, 91 Degrees

View to east along trail from point on trail on City-owned land west of Property.

Photo Pt 1D

N37 15.841, W107 51.687, 26 Degrees

View to northeast from point on on trail on City-owned land west of Property.

Photo Pt 1E

N37 15.841, W107 51.687, 146 Degrees

View to southeast from point on trail on City-owned land west of Property.

Photo Pt 2A

N37 15.901, W107 51.545, 127 Degrees

View to southeast from point on hill on City-owned land west of Property.

Photo Pt 2B

N37 15.901, W107 51.545, 98 Degrees

View to southeast from point on hill on City-owned land west of Property.

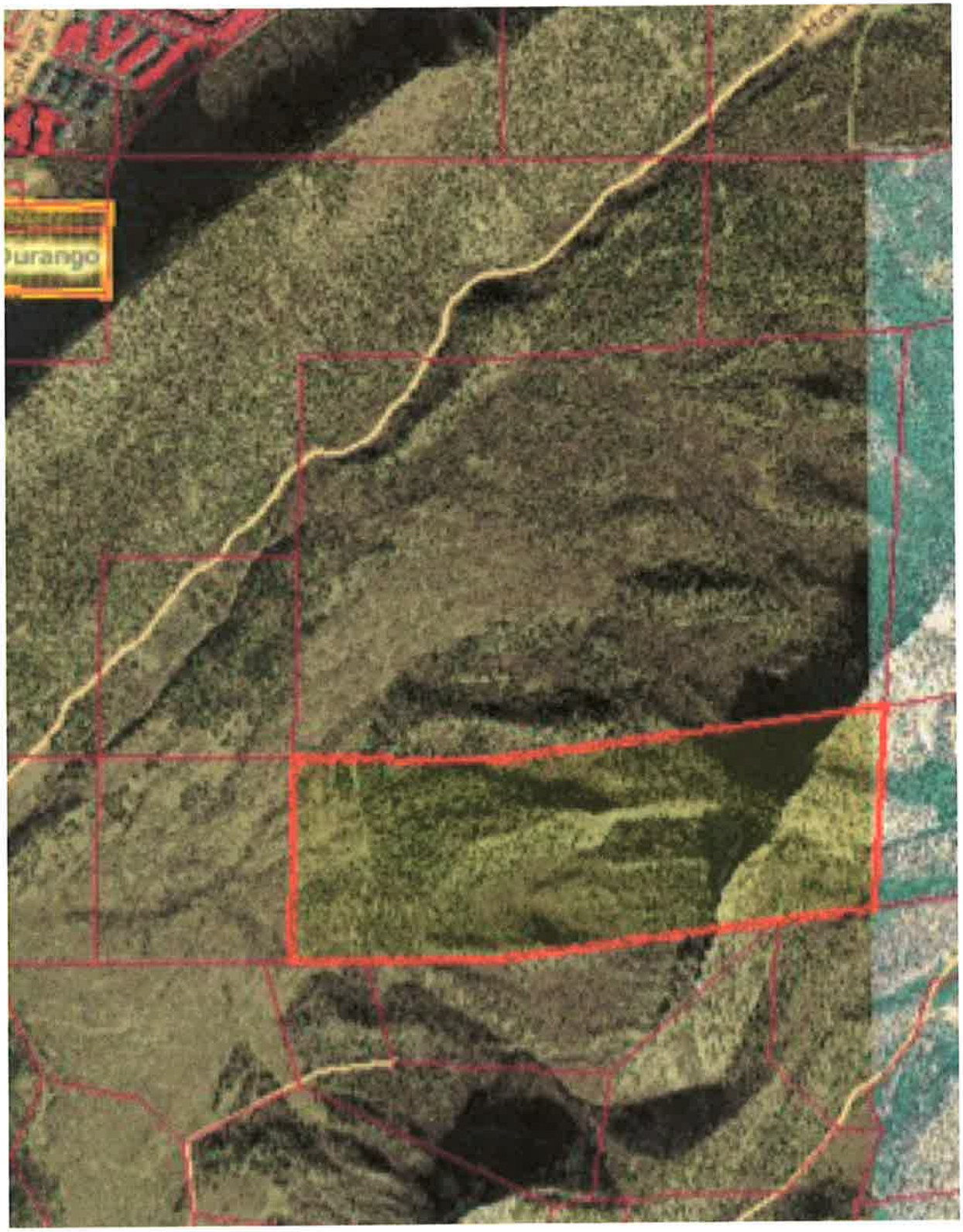
Photo Pt 2C

N37 15.901, W107 51.545, 76 Degrees

View to northeast from point on hill on City-owned land west of Property.

Aerial Photo

Aerial Photo
Horse Gulch Open Space
FLC Foundation 115 Conservation Easement



Deed of Conservation Easement

E RECORDED DATE 6-8-10
COUNTY La Plata
REC. NO. 1015193

AFTER RECORDING RETURN TO:
La Plata Open Space Conservancy
PO Box 1651, Durango, CO 81302

Deed of Conservation Easement

NOTICE: THIS PROPERTY INTEREST HAS BEEN ACQUIRED IN PART WITH GRANT #10010 ("GRANT") FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND ("BOARD"). THIS DEED OF CONSERVATION EASEMENT CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY WHICH ARE INTENDED TO PROTECT ITS OPEN SPACE AND OTHER CONSERVATION VALUES. THE BOARD HAS FOUND THAT THIS DEED OF CONSERVATION EASEMENT PROVIDES BENEFITS THAT ARE IN THE PUBLIC INTEREST.

THIS DEED OF CONSERVATION EASEMENT (the "Conservation Easement") is made this 8th day of June, 2010 by the City of Durango, Colorado, a Municipal Home-Rule Corporation, having its address at 949 East Second Avenue, Durango, CO 81301 ("Grantor"), in favor of La Plata Open Space Conservancy, a nonprofit Colorado corporation qualified to do business in Colorado, having its address at P.O. Box 1651, Durango, CO 81302 ("Grantee").

RECITALS:

A. Grantor is the sole owner in fee simple of approximately 115 acres of real property located in Sections 27 and 28, Township 35 North, Range 9 West, N.M.P.M. in La Plata County, Colorado, more particularly described in Exhibit A and generally depicted on the map attached hereto as Exhibit B, both of which are attached hereto and incorporated by this reference (the "Property").

B. The Property possesses natural, wildlife, scenic, open space, educational, and recreational values (collectively "Conservation Values") of great importance to Grantor, the people of La Plata County and the people of the State of Colorado. In particular, the Property contains the following characteristics which are also included within the definition of Conservation Values:

(1) The Property consists of approximately 115 acres of mixed terrain, including open meadows and steep forested slopes. The Property is identified in the 2010 City of Durango Parks, Open Space, Trails and Recreation Master Plan as an area for potential open space protection.

(2) The Property provides forage and cover for many species of wildlife, including large and small mammals and birds, and it has been mapped by the Colorado Division of Wildlife as a summer and fall concentration area for black bear; summer range, winter range, severe winter range, and a winter concentration area for elk; summer range, winter range, and a winter concentration area for mule deer; overall range for mountain lion; overall range for wild turkey; and winter range for bald eagle, a state-listed threatened species. The Colorado Division of Wildlife has confirmed that the Property is within a critical migration corridor for big game animals moving between summer range on Missionary Ridge and winter range in the Grandview and Sale Barn Canyon areas. The Colorado Natural Heritage Program has mapped a large area, which includes the Property, as the Animas City Mountain Potential Conservation Area, for its breeding occurrences of American peregrine falcon, a globally vulnerable subspecies.

(3) The Property is bordered on the northeast, north and west by public lands managed by the City of Durango for wildlife habitat and recreation. Protection of the Property will help buffer

these protected lands from development that may occur on private lands to the south and east of the Property

(4) The Property's existing trails are conducive to public recreation including walking, hiking, bicycling, wildlife watching, and enjoying the outdoors.

The foregoing Conservation Values are confirmed in Exhibit C (Confirmation of Conservation Values) attached hereto.

C. The conservation values of the Property to be protected by this Deed are recognized by the following clearly delineated governmental conservation policies:

(1) City of Durango Parks, Open Space, Trails and Recreation Master Plan, an element of the City of Durango Comprehensive Plan, providing for the protection and preservation of open and natural lands for viewshed, habitat and recreation.

(2) Colorado Revised Statutes §§ 38-30.5-101, et seq., providing for the establishment of conservation easements to maintain land "in a natural, scenic or open condition, or for wildlife habitat, or for agricultural...or other use or condition consistent with the protection of open land, environmental quality or life sustaining ecological diversity."

(3) The Colorado Wildlife and Parks and Outdoor Recreation statutes, Colorado Revised Statutes § 33-1-101 and § 33-10-101which provide that "it is the policy of the state of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors" and that "it is the policy of the state of Colorado that the natural, scenic, scientific, and outdoor recreation areas of this state are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and visitors of this state."

(4) The voters of the State of Colorado by adoption of Article XXVII to the Constitution of the State of Colorado, the legislature of the State of Colorado by adoption of enabling legislation, and the Board, by adopting and administering competitive grants application and rigorous due diligence review processes, have established that it is the policy of the State of Colorado and its people to preserve, protect, enhance and manage the state's wildlife, park, river, trail and open space heritage, to protect critical wildlife habitats through the acquisition of lands, leases or easements, and to acquire and manage unique open space and natural areas of statewide significance.

D. The parties acknowledge that a written Baseline Documentation Report has been prepared, reviewed, and approved by both parties, which documents the Property's condition as of the conveyance date of this Easement (the "Baseline Report"). A copy of the Baseline Report shall be kept on file with both parties and by this reference made a part hereof. The parties acknowledge that the Baseline Report is intended to establish the condition of the Property as of the conveyance date of this Easement, and both parties have acknowledged the same in a signed statement, a copy of which is attached hereto as Exhibit D. The parties further agree that the existence of the Baseline Report shall in no way limit the parties' ability to use other pertinent information in resolving any controversy that may arise with respect to the condition of the Property as of the conveyance date of this Easement.

E. Grantor intends that the Conservation Values of the Property be preserved and protected, and that any uses be prohibited that would substantially diminish or impair the Conservation Values or that otherwise would be inconsistent with the Purpose of this Easement, as defined in paragraph 1 below. The parties acknowledge and agree that uses expressly permitted by this Easement and the current land use patterns, including, without limitation, those relating to passive public recreation, and maintaining natural

open space and wildlife habitat existing at the time of this grant, do not significantly impair or interfere with the Conservation Values and are consistent with the Purpose of the Easement.

F. Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity.

G. Grantee is a publicly supported, tax-exempt nonprofit organization and qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto, whose primary purpose is to permanently protect open lands that have significant agricultural, wildlife habitat, open space, recreational and/or historical/archaeological resources, for the benefit of the community and the general public.

H. Grantee is also a charitable organization as required under C.R.S. Section 38-30.5-101 et seq., which provides for conservation easements to maintain land and water in a natural, scenic or open space condition, for wildlife habitat, or for agricultural and other uses or conditions consistent with the protection of open land in Colorado.

I. Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this and future generations.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the law of Colorado and in particular C.R.S. Section 38-30.5-101, et seq., Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in gross in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement").

1. **Purpose**. The purpose of this Easement is to ensure that the Conservation Values are preserved and protected in perpetuity ("Purpose"). This Purpose is in accordance with Sec. 170(h) of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto. To effectuate the Purpose of this Easement, Grantor and Grantee intend to preserve the open space character, wildlife habitat, and scenic and recreational qualities of the Property, and permit only uses of the Property that do not substantially diminish or impair the Conservation Values and to prevent any use of the Property that will substantially diminish or impair the Conservation Values. Notwithstanding the foregoing, nothing in this Easement is intended to compel a specific use of the Property, other than the preservation and protection of the Conservation Values.

2. **Rights of Grantee.** To accomplish the Purpose of this Easement, the following rights are conveyed to Grantee:

(a) To preserve and protect the Conservation Values of the Property;
(b) To enter upon the Property at reasonable times to monitor Grantor's compliance with, and, if necessary, to enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor;
(c) To prevent any activity on or use of the Property that is inconsistent with the Purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent use.

3. **Prohibited and Restricted Uses.** Any activity on or use of the Property inconsistent with the Purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted as set forth below:

(a) The division, subdivision or de facto subdivision of the Property into more than the two parcels existing at the time of this grant, whether by physical or legal process, and including but not limited to the partition of undivided interests. The parcel may be legally consolidated at any time with other conservation-easement-protected properties under the same ownership, and once consolidated, may not be re-divided.

(b) The dumping or uncontained accumulation of trash or refuse on the Property; and/or the depositing or dumping of hazardous or toxic waste upon the Property except for incidental and environmentally de minimis leachate from any restroom facilities permitted under Paragraph 4(f), in accordance with all applicable laws, rules and regulations of La Plata County and the State of Colorado and the United States.

(c) Any commercial or industrial uses of or activities on the Property, except as provided in paragraph 4(d) of this Easement.

(d) The establishment or maintenance of any commercial feedlot, which is defined for the purposes of this Easement as a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Property for feeding and fattening for market.

(e) The placement or construction of any buildings, structures, or improvements of any kind (including without limitation, fences, roads, and parking lots) other than those which are expressly permitted in paragraph 4.

(f) The placement of any signs or billboards on the Property except that signs whose placement, number, size, and design do not significantly diminish the conservation values of the Property may be displayed to control unauthorized entry or use, to provide trail directions and state rules for public use of the Property, to designate the Property as a conservation easement-protected property, and to recognize the property's history. Grantor shall erect one or more signs visible from the nearest public roadway, or from an alternative location approved by the Board, identifying the Board's Grant and investment in this Property to the public.

(g) The use of motorized vehicles except for emergency or maintenance purposes or other uses permitted in paragraph 4 of this Easement.

(h) The paving or otherwise covering of any portion of the Property with concrete, asphalt, or any other paving material, or the construction of any trail or other access to the Property that is not expressly permitted in paragraph 4 of this Easement, without prior written approval of Grantee in accordance with paragraph 5 of this Easement.

(i) The surface disturbance, to the extent to which Grantor can control such disturbance, for commercial exploration for and/or development and extraction of sand and gravel, minerals and hydrocarbons. As of the date of this Conservation Easement, Grantor does not own all of the mineral rights located on, under, or in the Property or otherwise associated with the Property. For this reason, a mineral assessment report dated May 24, 2010 has been completed by Plateau Environmental Services, in compliance with Internal Revenue Code Section 170(h) and related Treasury Regulations, which report concludes that the probability of surface mining occurring on the Property is largely remote. Grantor's current or future ownership of any mineral rights associated with the Property shall be subject to the provisions of this paragraph. With regard to mineral rights currently owned by or any mineral rights later acquired by Grantor, Grantor shall not permit any filling, excavating, dredging, mining, drilling, or exploration for or commercial extraction of any minerals, hydrocarbons, coalbed methane, soils, sand, gravel, rock or other materials on, under, or in the Property by any surface mining method, nor shall Grantor transfer, lease or otherwise separate any mineral rights from the surface of the Property, unless such instrument references this Conservation Easement, summarizes the Conservation Values and the provisions of this paragraph, and

specifically requires compliance with all terms and conditions of this Conservation Easement. Prior to the execution of any such instrument, Grantor shall provide a copy to Grantee for Grantee's review and approval in accordance with this Conservation Easement. Grantor shall notify Grantee of negotiations with any mineral lessee for any surface use of the Property, and Grantee may participate in such negotiations in order to protect the Conservation Values of the Property.

4. **Reserved Rights.** Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in, or permit or invite others to engage in all uses of the Property that are not expressly prohibited or restricted herein and that do not substantially diminish or impair the Conservation Values. Without limiting the generality of the foregoing, and subject to the terms of paragraph 3, the following rights are expressly reserved:

(a) To operate and manage the Property in accordance with a land stewardship plan to be included in the overall management plan for Horse Gulch, prepared and accepted with the mutual consent of Grantor and Grantee, which plan shall be reviewed and considered for update no less frequently than every five years.

(b) To engage in wildlife habitat improvements and accepted wildlife management practices for the benefit of resident and migratory wildlife species, and including but not limited to food planting, shrub and tree thinning, shrub and tree planting, and placement of nesting structures.

(c) To control noxious weeds in a manner required by governmental law or regulation.

(d) To permit public non-motorized recreational uses of the Property including activities such as walking, hiking, bicycling, rock climbing, skiing, snowshoeing, wildlife watching, and enjoying the outdoors, provided such activities are in no way commercial (except as provided in this paragraph 4(d.)), are not detrimental to the Conservation Values as determined by Grantee, and require no surface alteration or development of the land, other than pedestrian and handicapped-accessible trails and other minimal improvements permitted in this Easement and in accordance with the open space management plan for the property. Grantor shall retain the right to permit special outdoor recreation events which utilize the existing trail system. This may include non-motorized activities such as foot, bicycle, snowshoe, ski, equestrian and other like events. City-permitted commercial uses of the existing trail system are allowed, as long as they are part of a City-permitted special outdoor recreation event, are conducted in a manner that is consistent with Sec. 170(h) of the Internal Revenue Code and the Treasury Regulations adopted pursuant thereto, are consistent with the purposes and terms of this Easement, and do not substantially diminish or impair the Conservation Values.

(e) To formalize, improve and maintain the existing trail system and to construct new trails on the Property, in accordance with the open space management plan for the property, provided that improvements or additions to the trail system are not detrimental to the Conservation Values, as determined by Grantee. Grantor shall notify Grantee in accordance with paragraph 5 of this Easement prior to undertaking construction of new trails.

(f) To construct or place public facilities and improvements such as trails and trailheads; picnic and restroom facilities; and fencing and signage provided that the installation of such facilities and improvements minimizes disturbance to existing vegetation, and is not detrimental to the Conservation Values as determined by Grantee. Grantor shall notify Grantee in accordance with paragraph 5 of this Easement prior to constructing or placing public facilities and improvements.

(g) To harvest appropriate timber for wildfire hazard control, for general forest health, and/or to prevent personal injury or property damage in accordance with a recommendation of the Colorado State Forest Service or other appropriate entity, provided such harvesting is in no way commercial, does not impair wildlife habitat, and does not impair the Conservation Values. Grantor shall notify Grantee in accordance with paragraph 5 of this Easement prior to undertaking any such timber harvesting activities.

(h) To close the Property to public use from time to time, as may be appropriate to protect the Conservation Values or the health and safety of the public.

5. **Notice and Approval.**

5.1 **Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required as referenced in paragraph 4 (e), (f) and (g), Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose of this Easement.

5.2 **Grantee's Approval.** Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request thereof and submittal of sufficient supporting details as described above. Grantee's approval may be withheld only upon Grantee's reasonable determination that the activity as proposed would substantially diminish or impair the Conservation Values or would be inconsistent with the purpose of this Easement.

6. **Grantee's Remedies.**

6.1 **Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor and the Board of such violation and demand corrective action of Grantor sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

6.2 **Injunctive Relief.** If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury. The parties shall inform the Board of any actions taken, and shall provide the Board with copies of any notices or complaints filed under, this paragraph 6.2.

6.3 **Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic or environmental values. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

6.4 **Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this paragraph 6 without prior notice to Grantor or without waiting for the period provided for cure to expire.

6.5 **Scope of Relief.** Grantee's rights under this paragraph 6 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in paragraph 6.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph 6 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6.6 **Costs of Enforcement.** All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantor; provided, however, that in the event that a court or other decision-maker chosen by the mutual consent of the parties determines that this Easement has not been violated, and that Grantee initiated the enforcement action frivolously or without reasonable belief that the Easement was violated or in bad faith, Grantee will reimburse Grantor for reasonable costs of defense, including reasonable attorney's fees.

6.7 **Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

6.8 **Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription, including any defenses available under C.R.S. Section 38-41-119, et seq.

6.9 **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Notwithstanding the foregoing, Grantor shall be responsible for preventing activities by third parties on or affecting the Property that may violate the terms of this Easement.

7. **Access.** The general public shall have access to the Property, subject to any regulations by Grantor necessary and appropriate to protect public health and safety.

8. **Costs, Liabilities, Taxes, and Environmental Compliance.**

8.1 **Costs, Legal Requirements, and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including weed control and eradication and including the maintenance of adequate comprehensive general liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all

applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

8.2 **Taxes**. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

8.3 **Representations and Warranties.** Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

(a) No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, or across the Property;
(b) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;
(c) Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;
(d) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and
(e) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

8.4 **Remediation**. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

8.5 **Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and corresponding state statute. Nothing in this Easement shall be construed as giving rise to any right or ability in the Board, nor shall the Board have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of CERCLA.

8.6 **Hold Harmless.** Subject to the statutory protections and monetary limits afforded Grantor under the Colorado Governmental Immunity Act (C.R.S. Section 24-10-101, *et seq.*), as now enacted or hereafter amended, Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and the Board and the members, directors, officers, employees, agents, and contractors representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and corresponding state statute, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; (3) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused by any of the Indemnified Parties; and (4) the obligations, covenants, representations, and warranties of paragraphs 8.1 through 8.5.

8.6.1 **Grantee's Hold Harmless.** Grantee shall hold harmless, indemnify, and defend Grantor and its employees, agents, and contractors, and the heirs, personal representatives, successors, and assigns of each of them (collectively, "Grantor's Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, related to the presence of Grantee and its members, directors, officers, employees, agents and contractors on the Property, resulting from any act, omission, condition, or other matter related to or occurring in, on, or about the Property, regardless of cause, unless due to the negligence of any of Grantor's Indemnified Parties.

8.7 **Development Rights..** To fulfill the Purpose of this Easement, Grantor hereby conveys to Grantee all development rights deriving from, based upon or attributable to the Property in any way ("Grantee's Development Rights"), except those expressly reserved by Grantor herein, and the parties agree that Grantee's Development Rights shall be held by Grantee in perpetuity in order to fulfill the Purpose of this Easement, and to ensure that such rights are forever released, terminated and extinguished as to Grantor, and may not be used on or transferred off of the Property to any other property or used for the purpose of calculating permissible lot yield of the Property or any other property.

9. Extinguishment and Condemnation.

9.1 **Extinguishment and Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, or if circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each party shall promptly notify the other party and the Board in writing when it first learns of such circumstances. Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking, in lieu purchase or other termination, and all direct or incidental damages resulting there from. All expenses reasonably incurred by Grantor and Grantee in connection with the taking, in lieu purchase or other termination shall be paid out of the amount recovered. Grantee's

compensation shall be an amount at least equal to the Easement Value Ratio set forth in paragraph 9.2, multiplied by the value of the unencumbered fee simple interest in the portion of the Property that will no longer be encumbered by this Easement as a result of the taking, in lieu purchase or other termination, subject to paragraph 9.3.

9.2 **Valuation.** This Easement constitutes a real property interest immediately vested in the Grantee, the value of which has not been determined as of this date. Should the Easement be taken for public use or otherwise terminated according to paragraph 9.1, Grantee shall be entitled to compensation for its interest, which shall be determined by a qualified appraisal that establishes the ratio of the value of the Easement interest to the value of the fee simple interest in the Property as of the date of the taking or termination (the "Easement Value Ratio"). The Easement Value Ratio shall be used to determine the Grantee's compensation, subject to paragraph 9.3.

9.3 **Application of Proceeds.** The Board of Great Outdoors Colorado's Grant constitutes 48.5% of the purchase price of Grantor's fee title interest in the Property. Therefore, the parties and the Board stipulate that the Board shall be entitled to 48.5% of any proceeds recovered as a result of a taking, in lieu purchase or other termination of this Easement. The Grantor shall promptly remit the Board's share of proceeds to the Board. The total value of all remaining recovered proceeds shall be pooled by Grantor and Grantee and used to acquire or preserve another open space parcel consistent with the goals of the City of Durango open space preservation program.

9.4 **Additional Board Refund.** The Board's Grant has provided partial consideration for Grantor's acquisition of fee title to the Property; therefore, any voluntary sale, conveyance, transfer, or other disposal of all or any portion of Grantor's fee-title interest in the Property ("Sale"), excluding any lease of the Property to a third party in the ordinary course of using the Property for permitted purposes, shall constitute a material change to the Grant that shall require prior written Board approval and may require a separate refund to the Board of an amount to compensate the Board for use of the Board's Grant, plus administrative costs (the "Additional Board Refund"), in addition to any payment that the Board may be entitled to receive under paragraph 9.3 above, or under paragraphs 11 and 12 below.

9.4.1. **Amount.** The amount of the Additional Board Refund shall be based upon a percentage of Grantor's net proceeds from the Sale, which shall be defined as the fair market value of the property being sold in the Sale, minus direct transaction costs ("Net Proceeds"). The Additional Board Refund shall be determined by: a) multiplying 48.5% (the Board's ratio of Grantor's fee-title purchase price) by the Net Proceeds; and b) adding interest figured from the Grant payment date at the Prime Rate listed by the Federal Reserve Bank of Kansas City, Missouri that is most current on the effective date of the Sale. The Board may, in its sole discretion, waive the requirement for payment of interest or reduce the amount of interest due at the time of the Sale. The Additional Board Refund shall be paid to the Board in cash or certified funds on or before the effective date of the Sale.

9.4.2. **Possible Exception to Refund Requirement**. If a Sale occurs to a third party which is eligible to receive open space funding from the Board, and the Board has provided written confirmation of the third party's eligibility, Grantor shall not be required to pay the Board an Additional Board Refund, unless the Board determines in its sole discretion that one or more aspects of the Grant have changed that reduce the Grant project's scope from that of the original Grant as approved by the Board. (For example, if the Grantor proposed that the Grant project would include public access to the Property, and the Sale will result in substantially the same amount and type of public access, the Board will deem that a material change in the Grant project's scope has not occurred, and Grantor shall not be required to pay the Board an Additional Board Refund, unless another aspect of the Grant project has changed that reduces the Grant project's scope from that of the original Grant as approved by the Board.)

10. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement or any of its exhibits would be appropriate, Grantor and Grantee may jointly amend this Easement so long as the amendment (a) is consistent with the Conservation Values and Purpose of this Easement, (b) does not affect the perpetual duration of the restrictions contained in this Easement, (c) does not affect the qualifications of this Easement under any applicable laws, (d) complies with Grantee's and the Board's procedures and standards for amendments (as such procedures and standards may be amended from time to time) and (e) receives the Board's prior written approval in its sole discretion. Any amendment must be in writing, signed by both parties, and recorded in the records of the Clerk and Recorder of the county or counties in which the Property is located. In order to preserve the Easement's priority, the Board may require that the Grantee obtain subordinations of any liens, mortgages, easements, or other encumbrances. For the purposes of the Board's approval under item (e) above, the term "amendment" means any instrument that purports to alter in any way any provision of or exhibit to this Easement. Nothing in this paragraph shall be construed as requiring Grantee or the Board to agree to any particular proposed amendment.

11. **Assignment.**

a. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that:

(1) is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder;

(2) is authorized to acquire and hold conservation easements under Colorado law;

(3) agrees in writing to assume the responsibilities imposed on Grantee by this Easement; and

(4) is approved in writing as a transferee by the Board in its sole and absolute discretion. Grantee shall provide the Board with a written request to assign the Easement at least forty-five (45) days prior to the date proposed for the assignment transaction.

b. The Board shall have the right to require Grantee to assign its rights and obligations under this Easement to a different organization if Grantee ceases to exist; is unwilling, unable, or unqualified to enforce the terms and provisions of this Easement; or is unwilling or unable to effectively monitor the Property for compliance with this Easement at least once every calendar year. Prior to any assignment under this Paragraph 11.b, the Board shall consult with Grantee and provide Grantee an opportunity to address the Board's concerns. If the Board's concerns are not addressed to its satisfaction, the Board may require that Grantee assign this Easement to an organization designated by the Board that complies with Paragraph 11.a.(1), (2), and (3) above.

c. If Grantee desires to transfer this Easement to a qualified organization having similar purposes as Grantee, but Grantor or the Board has refused to approve the transfer, a court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibility imposed on Grantee by this Easement, provided that Grantor and the Board shall have adequate notice of and an opportunity to participate in the court proceeding leading to the court's decision on the matter.

d. Upon compliance with the applicable portions of this Paragraph 11, the parties shall record an instrument completing the assignment in the records of the county or counties in which the Property is located. Assignment of the Easement shall not be construed as affecting the Easement's perpetual duration and shall not affect the Easement's priority against any intervening liens, mortgages, easements, or other encumbrances.

12. **Subsequent Transfers.** Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee and to the Board of the transfer of any interest at least forty-five (45) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

13. **Estoppel Certificates.** Upon request by Grantor, Grantee shall within twenty (20) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantor's compliance with any obligation of Grantor contained in this Easement or otherwise evidences the status of this Easement. Such certificates shall be limited to the condition of the Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense within thirty (30) days of receipt of Grantor's written request therefore.

14. **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:	City Manager City of Durango 949 East Second Avenue Durango, CO 81301
To Grantee:	La Plata Open Space Conservancy P.O. Box 1651 Durango, CO 81302
To Board:	Executive Director Great Outdoors Colorado Trust Fund 1600 Broadway, #1650 Denver, CO 80202

or to such other address as either party from time to time shall designate by written notice to the other.

15. **Recordation.** Grantee shall record this instrument in timely fashion in the official records of La Plata County, Colorado, and may rerecord it at any time as may be required to preserve its rights in this Easement.

16. **General Provisions.**

16.1 **Grantor's Title Warranty.** Grantor warrants that Grantor has good and sufficient title to the Property and hereby promises to defend the same against all claims from persons claiming by, through, or under Grantor.

16.2 **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado.

16.3 **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of Colorado Revised Statutes §§ 38-30.5-101, et seq.. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

16.5 **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph 10.

16.6 **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

16.7 **Non-Merger.** If Grantee wishes to acquire fee title to the Property or any additional interest in the Property (such as a leasehold), Grantee must first obtain the written approval of the Board. As a condition of such approval, the Board may require that the Grantee first transfer the Easement to another qualified organization consistent with Paragraph 18 above.

16.8 **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and its successors, and assigns, and the above-named Grantee and its successors and assigns.

16.9 **Termination of Rights and Obligations.** Provided that a transfer is permitted by this Easement, a party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

16.10 **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

16.11 **No Third Party Beneficiaries.** This Easement is entered into by and between Grantor and Grantee, and is solely for the benefit of Grantor, Grantee, and the Board and their respective successors and assigns for the purposes set forth herein, and does not create rights or responsibilities in any third parties beyond Grantor, Grantee, and the Board.

16.12 **Change of Conditions.** A change in the potential economic value of any use that is prohibited by or inconsistent with this Easement, or a change in any current of future uses of neighboring properties, shall not constitute a change in conditions that makes it impossible or impractical for

continued use of the Property for conservation purposes and shall not constitute grounds for terminating the Easement.

16.13 **Termination of the Board.** In the event that Article XXVII of the Colorado Constitution, which established the State Board of the Great Outdoors Colorado Trust Fund, is amended or repealed to terminate the Board or merge the Board into another entity, the rights and obligations of the Board hereunder shall be assigned to and assumed by such other entity as provided by law, but in the absence of such direction, by the Colorado Department of Natural Resources or its successor.

16.14 **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

17. **Authority to Execute.** Each party represents to the other that such party has full power and authority to execute, deliver, and perform this Deed, that the individual executing this Deed on behalf of said party is fully empowered and authorized to do so, and that this Deed constitutes a valid and legally binding obligation of said party enforceable against said party in accordance with its terms.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have executed this Deed of Conservation Easement on the day and year first written above.

CITY OF DURANGO, Colorado, a Municipal Home-Rule Corporation, Grantor

Ron LeBlanc

By Ron LeBlanc, City Manager

STATE OF COLORADO)
)ss.
COUNTY OF LA PLATA)

The foregoing instrument was signed and acknowledged before me this 8th day of June, 2010 by Ron LeBlanc, City Manager of the City of Durango, Colorado, a Municipal Home-Rule Corporation, as Grantor.

Witness my hand and official seal.

My Commission Expires 8/10/2013

Janice Sue Puckett

JANICE SUE PUCKETT
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires 08/10/2013

Notary Public

LA PLATA OPEN SPACE CONSERVANCY,
Grantee

By Gerald P. Zink, President

STATE OF COLORADO)
)ss.
COUNTY OF LA PLATA)

The foregoing instrument was signed and acknowledged before me this 8th day of June, 2010 by Gerald P. Zink as President of the La Plata Open Space Conservancy.

Witness my hand and official seal.

My Commission Expires

8/10/2013

JANICE SUE PUCKETT
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 08/10/2013

Notary Public

Attachments:
Exhibit A - Legal Description
Exhibit B – Map of Property
Exhibit C – Confirmation of Conservation Values
Exhibit D – Acknowledgement of Baseline Documentation Report

Exhibit A
Legal Description
Horse Gulch Open Space FLC Foundation 115 Conservation Easement

A conservation easement over approximately 115 acres of real property located in La Plata County, Colorado, more particularly described as follows:

The S1/2SW1/4 of Section 27 and SE1/4SE1/4 of Section 28, Township 35 North, Range 9 West, N.M.P.M.

Exhibit B
Map of Property
Horse Gulch Open Space FLC Foundation 115 Conservation Easement

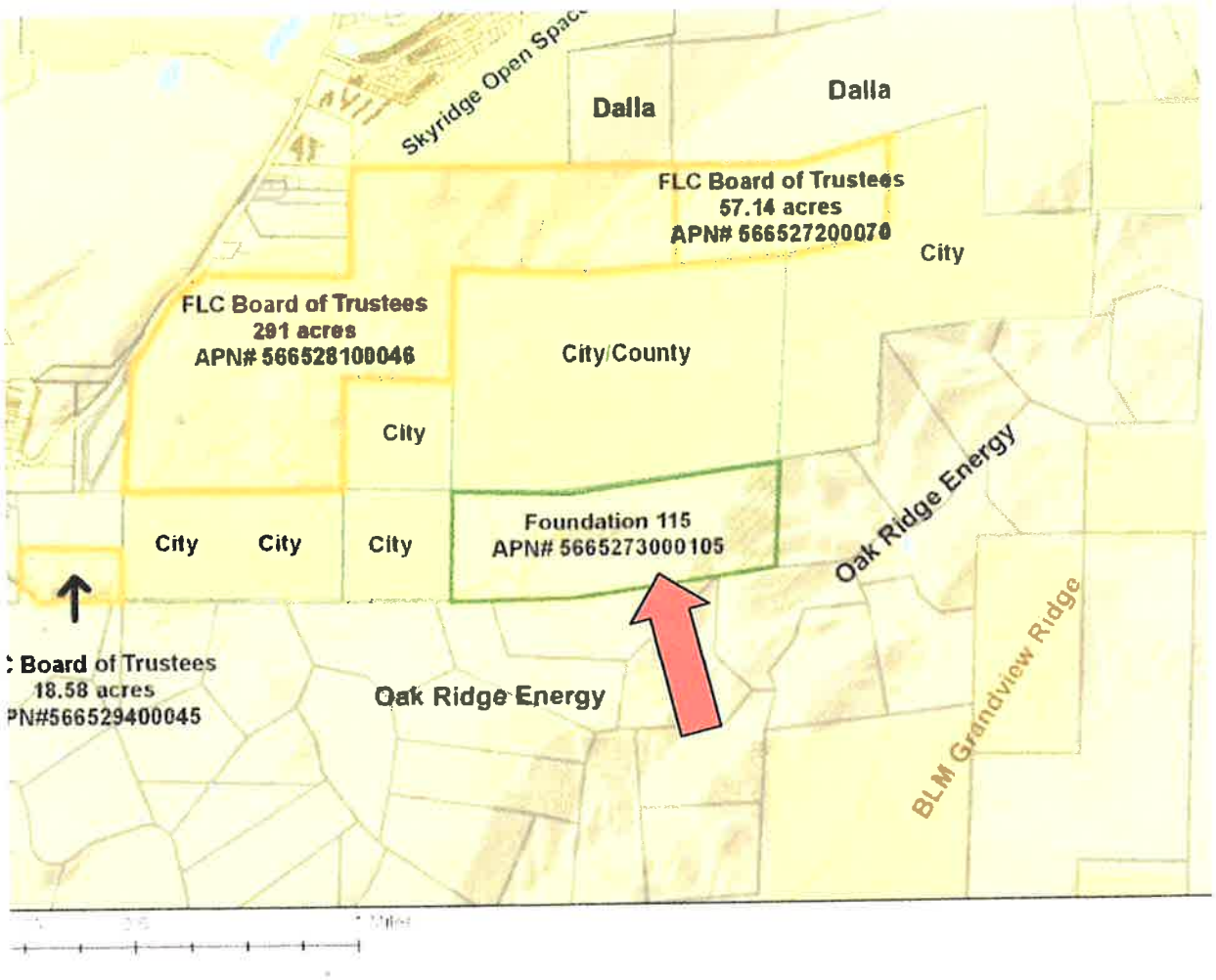
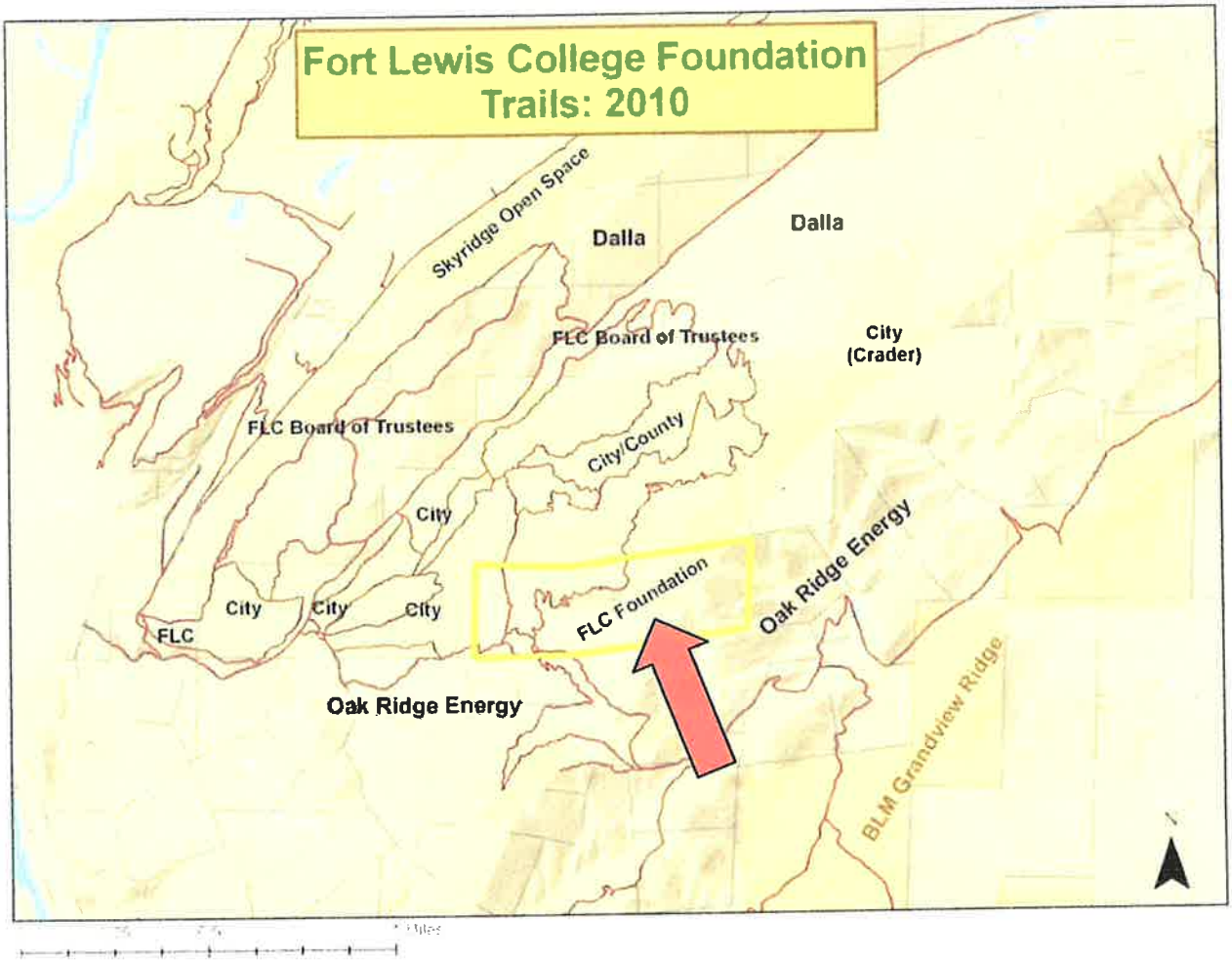


Exhibit C
Confirmation of Conservation Values
Horse Gulch Open Space FLC Foundation 115 Conservation Easement



LPOSC/CDOW
Wildlife Habitat Scorecard
Horse Gulch Open Space FLC Foundation 115 Conservation Easement

Property: Horse Gulch Open Space FLC 115	Date: May 28, 2010
Evaluated by: Katharine Roser (LPOSC), Cary Carron (CDOW)	

Criteria		Point Value			Weight Value		Score
Parcel Size- AFTER Development	0-35 acres 35.01-60 acres 60.01-120 acres 120.01-640 acres >640 acres	1 2 3 4 5	3	X	4	=	12
Habitat type- Most Valuable or Most Dominant	riparian farmed agricultural pasture agricultural sagebrush pinyon-juniper mountain shrub Ponderosa Pine Aspen Douglas-fir Spruce-fir	5 2 2 3 2 4 3 4 1 1	4	X	5	=	20
Number of Habitat types	1 2 3 4 5 or more	1 2 3 4 5	4	X	4	=	16
Proximity to Public land	<1 mile 1-2 miles > 2 miles	5 3 1	5	X	1	=	5
Proximity to Protected land	<1 mile > 2 miles	4 1	4	X	1		4
Part of identified corridor or easement	Yes No	5 0	5	X	3	=	15
Mapped attributes:	Severe Winter Range Production Area Winter Range Winter Concentration Area	5 5 2 3	5	X	3	=	15
Wildlife species	T/E/S Economic	5 3	3	X	2	=	6
Wildlife diversity	Great Moderate Low	4 3 1	3	X	1	=	3
Score							96
Wildlife Value Demerits-adjacent to highway, intensive recreational use, etc			subtract 15%				

FINAL SCORE	96

Exhibit D
Acknowledgement of Baseline Documentation Report
Horse Gulch Open Space FLC Foundation 115 Conservation Easement

In compliance with Section 1.170A-14(g)(5) of the federal tax regulations, this natural resources inventory is an accurate representation of the Property at the time of the conservation easement donation.

City of Durango
Grantor

By

6/8/10
Date

La Plata Open Space Conservancy
Grantee

By

6/8/10
Date

Attachments:

1. Deed to Property
2. Title Commitment and Legal Description
3. Vicinity Map
4. Topographic Map
5. Confirmation of Conservation Values
6. Assessment of Impact of Mineral Development
7. Environmental Hazard Assessment
8. Draft of Horse Gulch Open Space Management Plan
9. Boundary Map Showing Natural Features, Improvements, Photo Points
10. Photos from Designated Photo Points
11. Aerial Photo
12. Deed of Conservation Easement