

## CONSERVATION MITIGATION DEVELOPMENT AGREEMENT

This Conservation Mitigation Development Agreement (the "Development Agreement" or "Agreement") dated as of \_\_\_\_\_ is between Duckels Construction, Inc. ("Landowner") and Routt County, Colorado ("County"), acting by and through its Board of County Commissioners ("Board"). Duckels Construction, Inc., ("Permit Holder"), a Colorado corporation consents to this Development Agreement.

### RECITALS:

A. Landowner owns the real property described on Exhibit A attached hereto (the "Land"). Landowner owns additional real property and improvements adjacent to the Land that are not subject to this Development Agreement.

B. The County has approved Routt County Special Use Permit 2012-044 (the "Permit") authorizing Permit Holder and its successors to operate a gravel pit and engage in related activities on the property described on Exhibit B attached hereto ("Permit Site").

C. Pursuant to Section 9.4.1 D. of the Routt County Zoning Regulations, the Board included Specific Condition 28 as a condition of the issuance of the Amendment. Specific Condition 28 provides:

*Prior to Phase 2 mining, permittee shall enter into an agreement with Routt County to protect from any future residential or commercial development on a 0.7 acre parcel of land within five miles of the subject site.*

D. Permit Holder and Landowner have proposed to satisfy Specific Condition 28 by subjecting 0.7 acres of the northeast portion of the Land to the terms of a development agreement, and the County has agreed that this Development Agreement will satisfy Specific Condition 28.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants, terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landowner and County, pursuant to the Routt County Zoning Regulations, hereby agree to the terms, conditions and restrictions set forth below.

## **TERMS AND CONDITIONS**

1. The real property subject to the terms and conditions of this Development Agreement is 0.7 acres of the northeast portion the Land, as described in Exhibit A attached hereto.
2. From the date of this Development Agreement and in perpetuity thereafter, no residential or commercial development of the Land shall be permitted or suffered by the Landowner and its successors in title to the Land. Without limitation, this restriction shall include the following:
  - (a.) Landowner shall not construct any Dwelling Unit on the Land and shall not use any existing structure on the Land as a Dwelling Unit, nor shall Landowner erect, construct or allow any residential or commercial structures or improvements on the Land except as permitted in Section 3 below.
  - (b.) Landowner shall not use the Land for any commercial purpose except for Section 3, below.
  - (c.) This Development Agreement shall not eliminate the need to obtain any necessary County permit or approval that would otherwise be required to make any desired use of the Land.
3. Subject to the limitations, restrictions and conditions in 2(a), (b) and (c) above, the Land may be used for any purpose permitted as a use by right in the Mixed Use Commercial and Residential Zone District.
4. The Landowner, may, in its sole subjective discretion, determine to substitute a different site ("New Restricted Property") for the Land encumbered hereby, so long as the New Restricted Property has the same acreage as the Land and is on parcel number 933313001, in which case the County will release the Land from the restrictions herein and the Landowner will record a new agreement in the exact same form as this Agreement, encumbering the New Restricted Property.

5. Except as provided hereinabove, it is the intent of the parties that the residential and commercial development rights attached to the Land shall be extinguished and such rights are hereby extinguished and the Land shall not be used in any way to support the transfer of development rights to other land.

6. All capitalized terms in this Development Agreement not otherwise defined herein shall have the definitions assigned to them in the currently effective Routt County Zoning Resolution and Routt County Subdivision Regulations.

7. The purpose of Specific Condition 28 and this Development Agreement is to mitigate the impacts of the expansion of gravel mining and related activities authorized by the permit by preserving the Land from residential or commercial development in perpetuity and this Development Agreement shall be construed and interpreted as a conservation easement in gross as permitted by C.R.S. Section 38-30.5-101 *et seq.*

8. If Landowner breaches this Development Agreement, Landowner agrees that (1) immediate irreparable injury will result from any breach, (2) such injury can be prevented by injunctive relief, (3) the County lacks a plain, speedy and adequate remedy at law, (4) money damages are inadequate to remedy the injury or threatened injury, and (5) injunctive relief preserving the status quo will not disserve the public interest.

9. If either the Landowner, its successors or assigns, or the County brings suit to enforce or interpret any portion of this Agreement, the substantially prevailing party in such action shall be entitled to recover all costs incurred in such action, including without limitation reasonable attorney fees.

10. This Development Agreement shall run with the Land and shall be a perpetual burden on the Land as provided herein. This Development Agreement shall be enforceable only by the County, Landowner and subsequent owners of the Land, Permit Holder and subsequent holders of the Permit, and Site Owner and subsequent owners of the Permit Site, provided that Permit Holder, Site Owner or their

successors may enforce this Development Agreement only during the period the Permit is in effect and mining operations are being conducted at the Permit Site. This Development Agreement shall not be enforceable by any other party or third party, including without limitation any successor in title to any portion of the Permit Site after mining operations at the Permit Site have been terminated.

11. This Agreement shall be recorded in the records of the Office of the Clerk and Recorder of Routt County, Colorado.

12. This Agreement shall be enforceable in perpetuity.

13. The rights of the County pursuant to this Agreement shall be automatically transferred to any successor governmental entity with authority to regulate the subdivision or zoning of the Land.

14. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Colorado without reference to choice of laws rules.

15. Landowner agrees that venue for any action on this Agreement shall be in the Colorado judicial district in which Routt County, Colorado is located at the time of such action.

LANDOWNER AND PERMIT HOLDER:  
Duckels Construction, Inc.

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ROUTT COUNTY COMMISSIONERS  
ROUTT COUNTY COLORADO

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## EXHIBIT A



N↑ **Proposed Conservation Mitigation Parcel** 0.7 acres\* Open Space/Wildlife Conservation

\*per SUP Permit # 28

TR IN SW4SW4 SEC 31-7-84 TOTAL 12.19A

Account Number: R4818171

Parcel ID: 933313001

Owner Name: DUCKELS, FRED A.

**Owner Mailing Address:** 3500 DUCKELS CT , STEAMBOAT SPRINGS, CO 80487

**Legal Description:** TR IN SW4SW4 SEC 31-7-84 TOTAL 12.19A

**Physical Address:** 3500 DUCKELS CT

**Account:** RealAccount

**Account Type:** COMM

**Property Use:** Mixed-Use\_Comm.& Res

**Tax Area:** 27X

**Block:**

**Lot:**

**Section 31 , Township 7 Range 84**

**Square Feet:** 6,988

**Total Acres:** 12.19

**Subdivision:**

**Residential or Commercial**

**Building Count:** 2

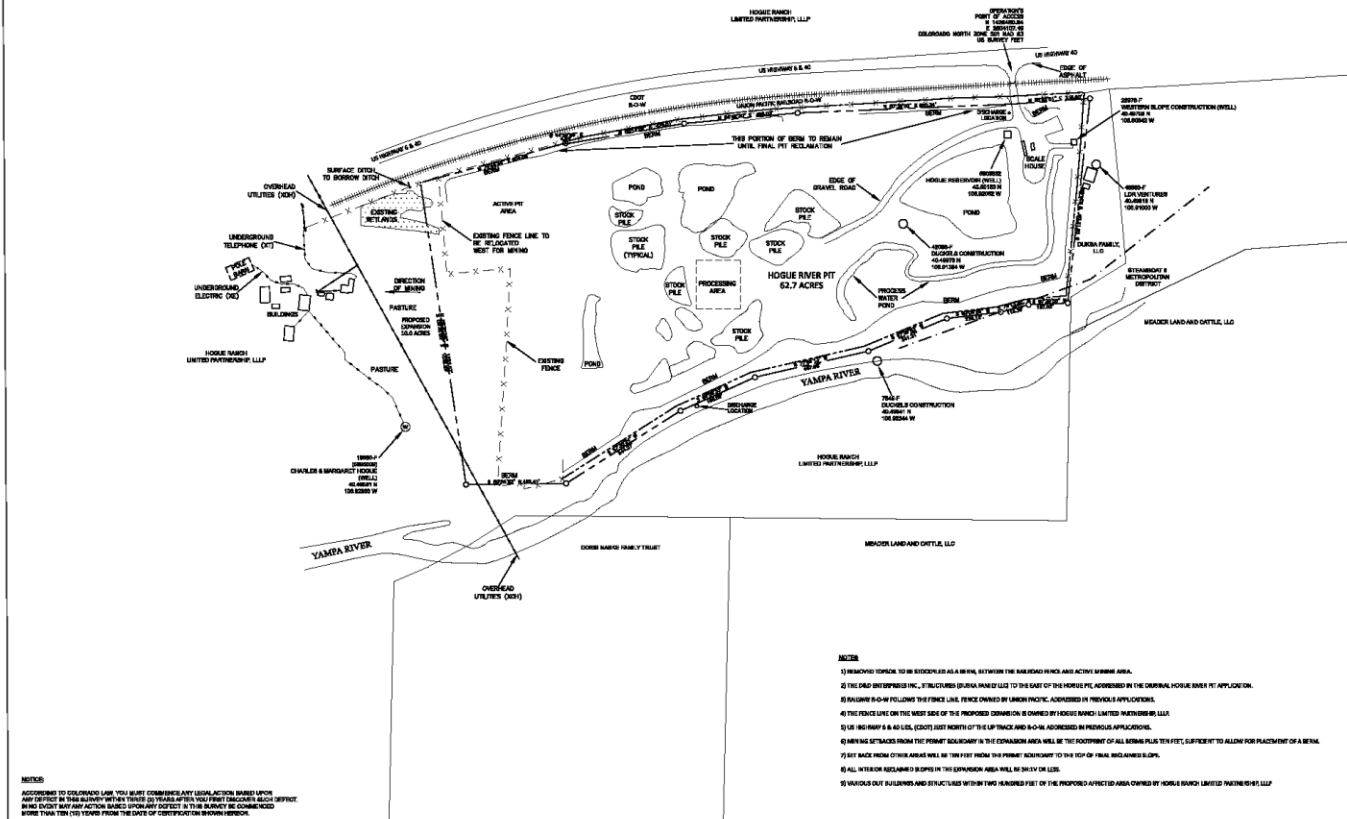
**Improvements Assessed:** \$82,960.00

**Improvements Value:** \$398,130.00

**Land Assessed:** \$150,320.00

**Land Value:** \$678,000.00

## **EXHIBIT B**



NOTES:  
 1. THIS SURVEY IS FOR INFORMATIONAL PURPOSES ONLY. IT DOES NOT CONSTITUTE A GUARANTEE OF ANY KIND.  
 2. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE AREA SHOWN ON THIS SURVEY.  
 3. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE AREA SHOWN ON THIS SURVEY.  
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 9. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE AREA SHOWN ON THIS SURVEY.  
 10. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE AREA SHOWN ON THIS SURVEY.

- NOTES:
- 1) REMOVED TOPSOIL TO BE REDEPOSITED AS A MOUND, WITHIN THE BARRAGED HOGUE RIVER PIT AREA.
  - 2) THE DEAD ENTERPRISE INC., STRUCTURES (BARRAGED HOGUE RIVER PIT) TO THE EAST OF THE HOGUE RIVER PIT, ARE OWNED BY THE HOGUE RIVER PIT, AND ARE NOT TO BE REMOVED.
  - 3) BARRAGED HOGUE RIVER PIT, ARE OWNED BY THE HOGUE RIVER PIT, AND ARE NOT TO BE REMOVED.
  - 4) THE FENCE LINE ON THE WEST SIDE OF THE PROPOSED BARRAGED HOGUE RIVER PIT, IS OWNED BY THE HOGUE RIVER PIT, AND IS NOT TO BE REMOVED.
  - 5) THE HOGUE RIVER PIT, IS OWNED BY THE HOGUE RIVER PIT, AND IS NOT TO BE REMOVED.
  - 6) THE HOGUE RIVER PIT, IS OWNED BY THE HOGUE RIVER PIT, AND IS NOT TO BE REMOVED.
  - 7) THE HOGUE RIVER PIT, IS OWNED BY THE HOGUE RIVER PIT, AND IS NOT TO BE REMOVED.
  - 8) THE HOGUE RIVER PIT, IS OWNED BY THE HOGUE RIVER PIT, AND IS NOT TO BE REMOVED.
  - 9) THE HOGUE RIVER PIT, IS OWNED BY THE HOGUE RIVER PIT, AND IS NOT TO BE REMOVED.
  - 10) THE HOGUE RIVER PIT, IS OWNED BY THE HOGUE RIVER PIT, AND IS NOT TO BE REMOVED.

DATE: 03/13/22	HOGUE PIT
DRAWN: WTW	
SCALE: 1" = 200'	
	HOGUE PIT MINING AREA EXPANSION
	WHELAN LAND SURVEYS
	2740 Ace Lane, Suite 206 Steamboat Springs, CO 80487 (970) 846-6264
SHEET 1 OF 3	PROJECT NO. 18050