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**PARK COUNTY, COLORADO
BOARD OF COUNTY COMMISSIONERS
Resolution No. 2018- 03**

**A RESOLUTION CONDITIONALLY APPROVING THE
APPLICATION OF SOUTH PLATTE PROSPECTS, LLC, FOR A
PLANNED UNIT DEVELOPMENT (PUD) AMENDMENT.**

WHEREAS, the Applicant, South Platte Prospects, LLC, has applied to amend the Planned Unit Development (PUD) zoning applicable to the real property described herein to allow the development of a rental storage facility; and

WHEREAS, at a regularly scheduled public meeting of the Park County Board of County Commissioners, preceded by the required public notice, the Board of County Commissioners conducted a public hearing on the application at which it reviewed the application and all supporting documentation, the recommendations of the Planning Department and the Park County Planning Commission, and considered the testimony of the Applicant and patrons; and

WHEREAS, based on the testimony and evidence presented at the public hearing the Board of County Commissioner determines and finds that compliance with the standards for approval of a PUD amendment as set forth in Section 5-313 of the Park County Land Use Regulations has been demonstrated by clear and convincing evidence.

BACKGROUND AND PROCEDURAL HISTORY

1. The Applicant, South Platte Prospects, LLC, is the owner of an undeveloped 2.16 acre parcel located in the Northeast ¼ of Section 23, Township 8 South, Range 76 West, commonly known and numbered as 34881 Highway 285, Park County, Colorado (the "Property").

2. The Property is one of five adjacent parcels that were zoned Planned Unit Development (PUD) by Park County in the original County zoning of 1975.

3. In March of 1971, the original owner of the Property bought the patent from the State of Colorado for the Northeast ¼ of the Northeast ¼ of Section 23, Township 8 South, Range 76 West, and the part of the Southeast ¼ of the Northeast ¼ lying north of Highway 285.

4. In June of 1971, that owner began splitting out four small parcels that exist today and which are shown on the Zoning Map, Vicinity Map, Aerial Map and Wildlife Impact Map collectively attached hereto as **Exhibit A**.

5. Park County records are unclear as to why the area was zoned PUD in the initial County zoning process. Nor do the County's records contain an approved PUD Plan for the five parcels included in the PUD.

6. To address the lack of an approved PUD Plan for its Property, the Applicant, after consulting with County Planning Staff, applied for a PUD amendment to obtain approval for the use of the Property as a rental storage facility. Park County's Land Use Regulations (LURs) state that a change in the type of use in a PUD is a Major Amendment to the PUD. LURs § 5-313.G.1.¹ Since no uses were apparently designated for the Property due to the lack of an approved PUD Plan this application has been treated as a Major Amendment.

7. A public hearing on this Application, preceded by the required notice, was held before the Park County Planning Commission on September 12, 2017. At the conclusion of that hearing the Planning Commission unanimously recommended approval of the PUD Amendment.

8. A public hearing on the Application, preceded by the required notice, was then held before the Board of County Commissioners (the "BOCC") on September 28, 2017. Several witnesses who had not appeared before the Planning Commission presented extensive testimony at the BOCC hearing. The BOCC ultimately concluded that this evidence should be made available to the Planning Commission in order to allow the Planning Commission to make a meaningful and informed recommendation to the BOCC. The matter was therefore remanded to the Planning Commission for additional proceedings and consideration.

9. A second hearing, preceded by the required notice, was held before the Planning Commission on November 14, 2017. At the conclusion of that hearing the Planning Commission recommended denial of the PUD Amendment Application by a 4-1 vote.

10. Following the required notice, a hearing on the Application was then held before the BOCC on December 7, 2017.

11. The evidence introduced at the September 28, 2017 and November 14, 2017 BOCC hearings is made a part of the record of this proceeding.

FINDINGS AND CONCLUSIONS

1. Opponents to the Application argue that the Application must be denied "as a matter of law." They contend that the lack of an approved PUD Plan prevents a PUD amendment and that a PUD amendment applicable to only one ownership tract is impermissible. The BOCC disagrees.

¹ References to the LURs shall be by Section or Subsection number, i.e "Section 5-313.G.1."

2. It is unknown whether the PUD Plan applicable to the Property has been misplaced at some point during the four decades since the Property was originally zoned, or whether no PUD Plan was ever approved in the first instance. It makes little difference. The use of the Major Amendment procedure to determine the allowed uses on the portion of the PUD owned by the Applicant is reasonable and is not, as the opponents argue, disallowed by the language of Section 5-313 of the LURs. The Board notes that this procedure would also be available to the other owners of property within the PUD. The opponents have cited to no Colorado law that would explicitly or implicitly prohibit a PUD amendment changing the allowed uses in one ownership tract within a PUD nor is there anything in the LURs suggesting that owners of property within a PUD have a veto over amendments to the PUD applicable to property other than their own.

3. Opponents argue, quite correctly, that the BOCC must consider the PUD as a whole. This does not mean, however, that any amendment to the PUD must affect all properties within the PUD. As required by Section 5-313.G.1., the BOCC has considered and hereby finds that the amendment is consistent with the efficient development and preservation of the entire PUD. The BOCC notes in this regard that another property one lot over from the subject Property is already used for commercial purposes similar to those proposed by the Applicant.

4. Section 5.313.B.5 states that the "PUD is subject to the rezoning standards of approval as described in Article V, Division 2, Section 5-203. The BOCC makes the following findings as to those standards based on clear and convincing evidence in the record:

- a. **The property possesses geological, physical, and other environmental conditions that are compatible with the potential uses permitted in the proposed zone district.** The subject Property is flat grassland. It has no identified geological, physical, or other environmental conditions that would prevent or be incompatible with the proposed use.
- b. **The property has a reasonably certain right of permanent legal access permitting vehicular ingress and egress from the property to the public thoroughfare.** The Property is directly adjacent to Highway 285 and has an access permit issued by the Colorado Department of Transportation (CDOT). One opponent has argued that the future possibility of restricting turning movements at the property to right-in-right-out deprives the Property of access. No authority was offered for this proposition and the BOCC rejects it.
- c. **Access to the property from the public thoroughfare reasonably meets County street, road, or driveway standards or, if the property is undeveloped, such access will be established prior to issuance of a building permit.** The Property is undeveloped. Compliance with County driveway standards will be required as a condition of development and issuance of building permits.

- d. **The potential uses of the property within the proposed zone district are compatible with other properties within the immediately surrounding area.** The Commissioners do not agree on the application of this criteria. Two of the Commissioners find and conclude that the proposed use of the Property is compatible with surrounding uses given the commercial use of property in the immediate vicinity and the fact that the surrounding Agricultural zone district allows structures similar in size, scale and appearance to the ones proposed by the Applicant.
- e. **And at least one of the following:**
 - i. **The rezoning, as proposed is consistent with the advisory provisions of the Park County Strategic Master Plan; or**
 - ii. **The rezoning, as proposed, is supported by circumstances and conditions within the immediate area which have changes since the adoption of the Park County Strategic Master Plan; or**
 - iii. **The rezoning, as proposed, is to a Planned Unit Development.** The Property will remain zoned PUD and, as discussed below, is consistent with the advisory provisions of the Park County Strategic Master Plan.

5. Section 5-313.F.7. provides the standards of approval and criteria specific to PUDs. The BOCC makes the following findings as to those standards based on clear and convincing evidence in the record:

- a. **The final PUD Plan and Plat is consistent with the approved Preliminary PUD Plan and Plat.** This criterion is inapplicable since this is a PUD amendment. The BOCC finds, however, as required by Section 5-313.G.1., that the amendment is consistent with the efficient development and preservation of the entire PUD.
- b. **The Final PUD Plan and Plat substantially conforms to the goals and policies of the Park County Strategic Master Plan.** The BOCC has considered all of the recommendations of the Strategic Master Plan. The proposed PUD Plan works toward Goal 6, *Evolve and Expand Tourism*, by providing a place for vacant land owners and seasonal visitors to store boats and campers and belongings; thus improving recreational opportunities. The proposed use also works toward Goal 7, *Diversify the Economy*, by providing a needed service otherwise unavailable in the area, i.e. rental unit storage. The Property is located in the “Highest Visibility, Highest Scenic Quality” Road Corridor View. The BOCC finds, however, that the scale size and color of the proposed units will not be significantly different from agricultural structures already existing or currently allowed in the vicinity and will not significantly affect the view corridor.

- c. **Includes all revisions and conditions imposed by the Board of County Commissioners during their approval of the Preliminary PUD Plan and Plat.** Not applicable since this is a PUD Amendment.
- d. **Has addressed all professionally identified concerns regarding potential wildlife impact, water quantity and quality, wastewater treatment, traffic, utilities, drainage, and geology.**
 - The Property is in a “Moderate Wildlife Impact Zone.” The Colorado Division of Parks and Wildlife stated, by letter dated February 15, 2017, that “CPE finds that rezoning the 2.16 acres from Residential to Commercial will have minimal impact on Wildlife due to small acreage and the neighboring lots already being disturbed and built on.” Thus, there is no significant potential wildlife impact.”
 - Water quantity, quality and wastewater treatment will be addressed, if necessary, through the County’s existing regulations and the Individual Sewage Disposal System regulations and the State system regulating water wells.
 - As discussed above, CDOT has issued an access permit for this location addressing traffic concerns.
 - By letter dated September 27, 2017, IREA has approved the proposed development with certain requirements regarding its easement.
 - In the conditions below, the County will require a Drainage, Erosion and Sedimentation Control Plan prior to the issuance of any building permits.

The BOCC finds that the Application has addressed all professionally identified concerns regarding potential wildlife impact, water quantity and quality, wastewater treatment, traffic, utilities, drainage, and geology.

- e. **Where public improvements are proposed, has had a subdivision agreement approved as to form and legality by the County Attorney and executed by the applicant in order to secure the timely and complete construction of the public improvements.** No public improvements are proposed or required. This criterion is inapplicable.
- f. **Will result in a substantial benefit to the County, compared to what could have been accomplished through strict application of otherwise applicable base zoning district standards.** If the Property was not zoned PUD, the Applicant would have requested a rezoning to Commercial. If approved, the applicant would have the opportunity to develop any of the permitted uses listed in the Commercial Zone District schedule of uses. The benefit provided to the County provided by the PUD amendment is that only one use will be allowed and that any change in that use will require additional County approval in the form of a PUD amendment. In other words, this is the “custom zoning” contemplated by the PUD process.

- g. **Complies with the intent of the PUD zoning district as described in Section 5-313.** The BOCC has considered the purposes of the PUD zone district as described in Section 5-313.A. These purposes are not, as the opponents seem to suggest, approval criteria or standards each of which must be satisfied in order to approve this Application. Instead, the stated purposes inform the BOCC's decision-making in a general sense. The BOCC finds and concludes that this PUD Amendment complies with the intent of the PUD zoning district.
- h. **Is in the best interest of the health, safety and welfare of County residents.** The BOCC finds that the granting of this Application promotes and is in the best interest of the health, safety and welfare of County residents. It will provide needed storage facilities with the likely result of improving the appearance of the County and limiting the accumulation and proliferation of outside storage of personal property, junk and debris which has plagued the County in recent years.

6. Facilities and services will be available to serve the subject Property while maintaining adequate levels of service to existing development.

NOW THEREFORE, BE IT RESOLVED THAT:

The Application to amend the Planned Unit Development (PUD) zoning applicable to the real property described herein is approved subject to the following conditions:

- 1. A Drainage, Erosion and Sedimentation Report and Plan will be required prior to issuance of the first building permit.
- 2. Applicant shall confer with, and obtain approval from, the Planning Department on color of buildings prior to obtaining a building permits and ordering the building(s) from the manufacturer. No change in color shall be allowed without Planning Department approval.
- 3. Signage shall be governed by Section 5 Division 8 of the Park County Land Use Regulations as they apply to the Commercial zone district. No vehicles may be used as signs.
- 4. No outside storage of vehicles, equipment, trailers, or other personal property is allowed.
- 5. All statements and representations made by the Applicant, in the Application or during the public hearing on the application, are incorporated herein and made a condition of the PUD Amendment. Any failure by the Applicant to perform or comply with such representations or any other condition set forth herein shall be a violation of the Land Use Regulations.

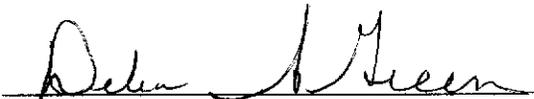
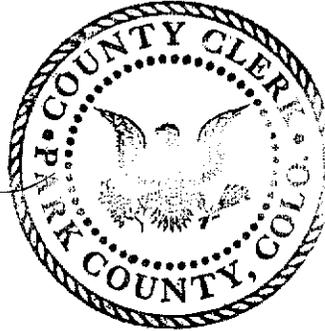
Moved, seconded, and passed this ___th day of January, 2018.

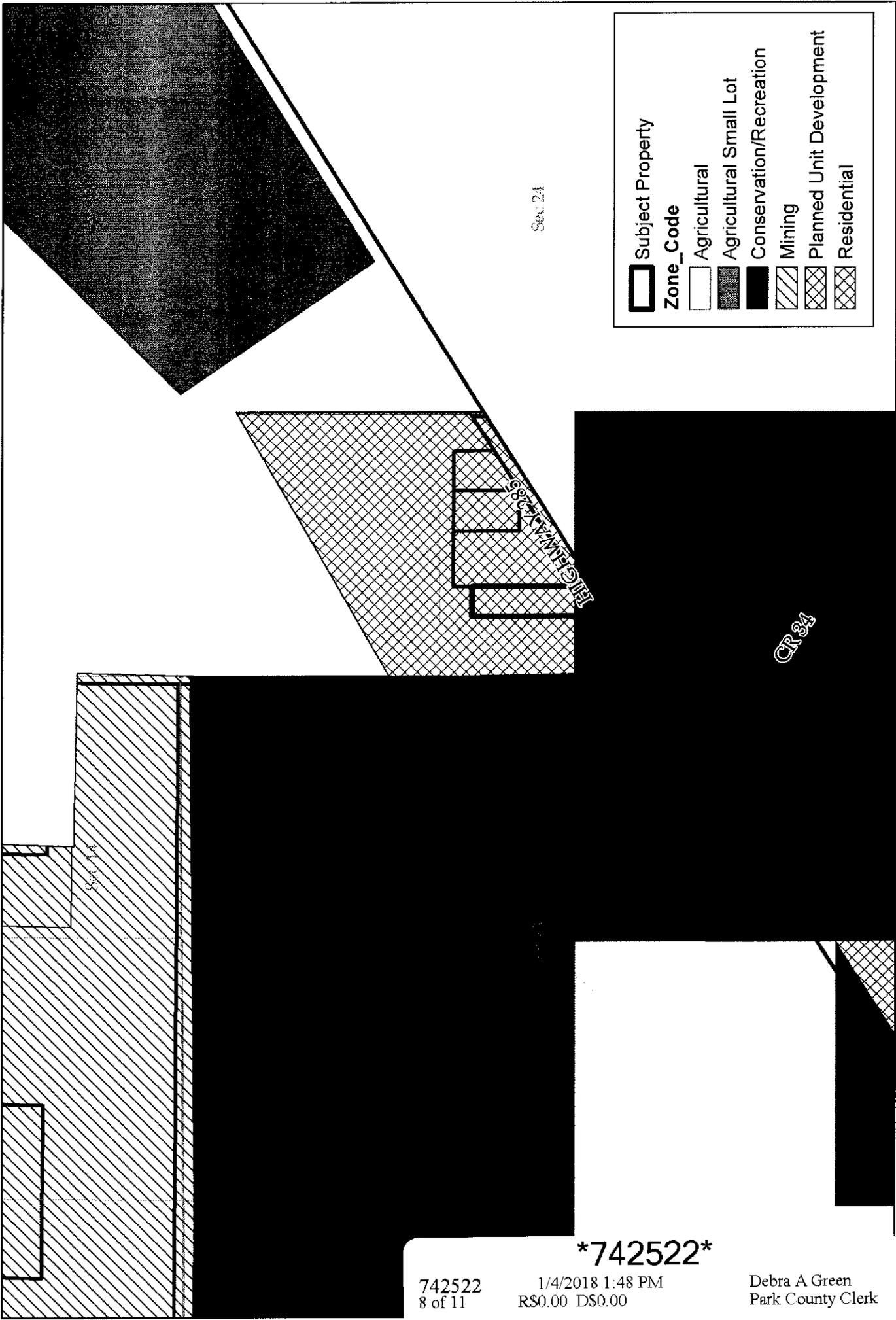
PARK COUNTY BOARD OF COUNTY COMMISSIONERS



Mike Brazell, Chairperson

ATTEST:


County Clerk



	Subject Property
Zone_Code	
	Agricultural
	Agricultural Small Lot
	Conservation/Recreation
	Mining
	Planned Unit Development
	Residential



Park County Planning Department

Attachment 1 Zoning Map

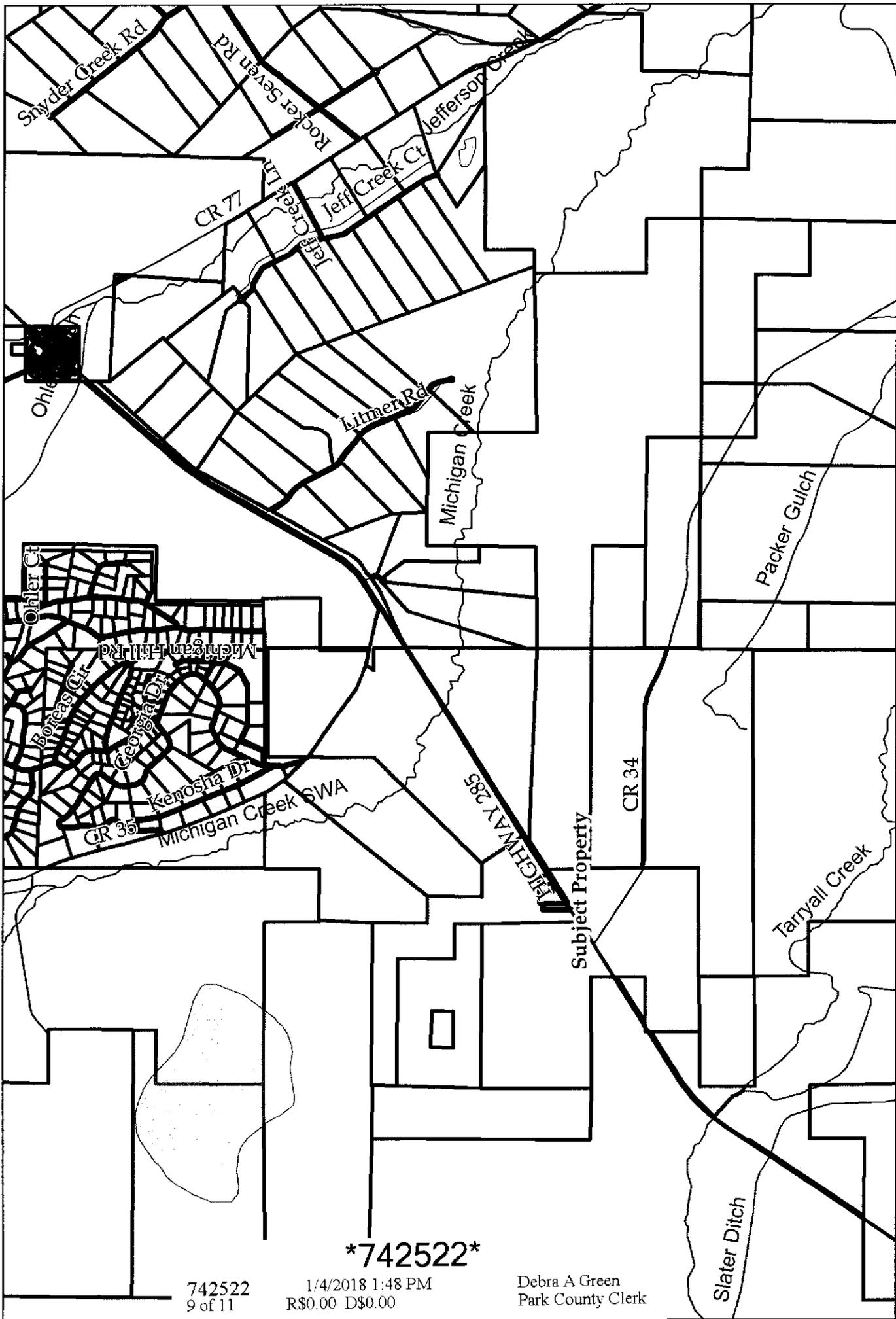


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Debra A Green
Park County Clerk



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Park County Planning Department

Attachment 2 Vicinity Map



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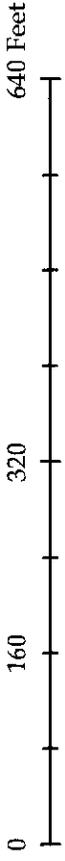
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Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aergrid, IGN, IGP, swisstopo, and the GIS User Community



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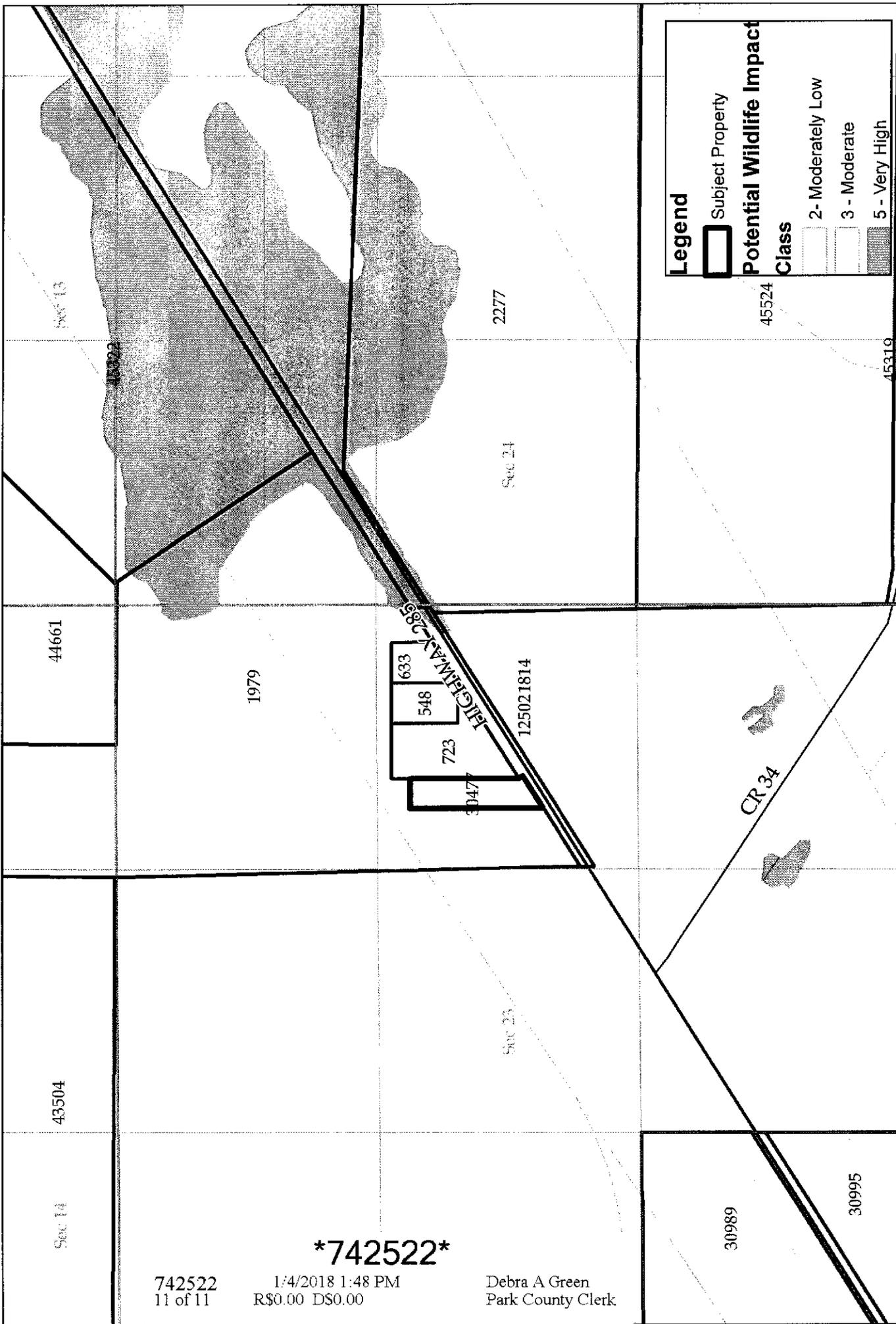
Attachment 3

Aerial Map



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Legend

Subject Property

Potential Wildlife Impact

Class

- 2 - Moderately Low
- 3 - Moderate
- 5 - Very High



Park County Planning Department

Attachment 4 Wildlife Impact



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