

# Karp Neu Hanlon<sup>PC</sup>

ATTORNEYS AT LAW

[www.mountainlawfirm.com](http://www.mountainlawfirm.com)

Glenwood Springs – Main Office  
201 14<sup>th</sup> Street, Suite 200  
P. O. Drawer 2030  
Glenwood Springs, CO 81602

Aspen  
323 W. Main Street  
Suite 301  
Aspen, CO 81611

Montrose  
1544 Oxbow Drive  
Suite 224  
Montrose, CO 81402

Michael J. Sawyer  
*Partner/Shareholder*

[mjs@mountainlawfirm.com](mailto:mjs@mountainlawfirm.com)

Office: 970.945.2261

Fax: 970.945.7336

*\*Direct Mail to Glenwood Springs*

DATE: April 1, 2024  
TO: Mayor and Minturn Town Council  
FROM: Michael Sawyer, Town Attorney  
Justin Plaskov, Special Litigation Counsel  
RE: Possible Battle Mountain settlement to litigation

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As part of the Settlement Agreement with Battle Mountain, the Town will receive various parcels in fee title, easements for use over certain parcels which Battle Mountain will continue to own, and restrictive covenants over certain parcels to be owned by Battle Mountain prohibiting certain land use activities. Additionally, Battle Mountain will reserve certain easements for its future use over parcels that the Town will acquire in fee title.

The Settlement Agreement divides the land currently owned by Battle Mountain into three categories: Battle Retained Parcels, Town Parcels and Restricted Parcels. The Battle Retained Parcels are lands that Battle Mountain will continue to own which will be subject to future development. The Town Parcels are lands that will be dedicated to Minturn in fee title. The Restricted Parcels are lands that will be owned by Battle Mountain or a successor in interest but be subject to use limitations in the form of recorded covenants.

With regard to the Town Parcels and the Restricted Parcels, the Settlement Agreement provides in Section 2(a):

(i) Town Parcels. Parcels which Battle North will convey to the Town (“**Town Parcels**”), subject to certain Reserved Easements (defined in Section 7(a)) for Battle North’s benefit. The Town Parcels intended to be created are, as conceptually depicted and labeled in the Concept Plan: (A) the Highlands Area; (B) the Reservoir South Area (excluding the Processing Area); (C) the Rec Center Parcels; and (D) the Highway 24 Parcels.

(ii) Restricted Parcels. Parcels which Battle North will own but, subject to certain Reserved Uses (defined in Section 7(b)(i)) for Battle North’s benefit, will be encumbered by Recording certain instruments (“**Restricted Parcel(s)**”) imposing one or more of the following (collectively, and as applicable, “**Restriction(s)**”): (A) a Perpetual Easement (defined in Section 7(b)(i)) granting to the Town the right to undertake a specific scope of uses, on terms the Parties mutually determine appropriate; (B) a Restrictive Covenant (defined in Section 7(b)(ii)) that limits the uses that may be undertaken within such Restricted Parcel, on terms the Parties mutually determine appropriate; and/or (C) with respect to any or all Restricted Parcels requested by the Town at its election, a Purchase Option (defined in Section 7(b)(iii)) granting to the Town an option to purchase such Restricted Parcel(s). The Restrictions will run with title to the Restricted Parcels and will be enforceable by and for the benefit of the Town. Unless Battle North and the Town otherwise mutually agree in writing prior to the Closing Date, the Restricted Parcels intended to be created are, as conceptually depicted and labeled in the Concept Plan: (v) the OTP Area; (w) the Processing Area (being a portion of the Reservoir South Area); (x) the CTP Area (y) the Trestle Area; and (z) the Maloit Wetlands Area.

A map showing the various parcels is attached. For Reference the Town Parcels are: Parcels 1 and 2 – the Highlands Area, Parcel 5 – Reservoir South Area, Parcels 6 and 8 – the Highway 24 Parcels, and Parcel 11 – the Rec Center Parcel. The Restricted Parcels are: Parcel 3 – the OTP, Parcel 4 – the Processing Area, Parcel 10 – the CTP, and Parcel 12 – the Maloit Wetlands Area. The Trestle Area is not a separate parcel but rather a portion of Parcel 9 – which is a Battle Reserved Parcel.

As part of the process laid out in the Settlement Agreement, the Town needs to give input on several issues. Polly Jessen of Kaplan Kirsch & Rockwell has created a chart summarizing various input required under the Settlement Agreement (attached). Issues to consider are:

- A. Whether the Town wants to take property in fee title at the time of Closing or have an option to acquire the property in fee in the future. The Settlement Agreement provides:

(iii) Town’s Right to Convert. By delivery of written notice to Battle prior to expiration of the Diligence Period (defined at Section 5), the Town will have the right to convert one or more of the Town Parcels into a Restricted Parcel and to convert one or more of the Restricted Parcels into a Town Parcel.

(iii) Purchase Options. At the election of the Town, upon such terms and conditions, and utilizing such form(s) as Battle North and the Town may mutually agree during the Diligence Period, certain of the Restricted Parcels may be made subject to Battle North's grant to the Town of an option to acquire fee title to such Restricted Parcel ("Purchase Option"). Each Option will be exercisable by The Town for a period of twenty-five (25) years from the Closing Date and will cost The Town no more than one dollar (\$1.00). As Battle North and the Town may mutually agree during the Diligence Period, the Purchase Option for particular Restricted Parcels may be incorporated into the applicable Perpetual Easement Agreement or may be set forth in a separate instrument. If

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set forth in a separate instrument, such separate instrument will not be Recorded, but Battle North and the Town may Record a mutually agreed upon short form memorandum of Purchase Option as part of the Closing.

The Town proposes to have options to purchase the OTP, the Processing Area, Maloit Park wetlands, and possibly the CTP.

- B. What uses the Town intends to make of both the Town Parcels and the Restricted Parcels. Uses may range from development to passive recreation. For example, the Town proposes to obtain an easement over the CTP for Nordic skiing and trail use. Council should consider future public uses to be made of parcels the Town will not acquire in fee.
- C. What restrictions on land use activities for the Restricted Parcels the Town would like to have in place guaranteed by a restrictive covenant. Remember that the Restricted Parcels are subject to Town Zoning – mostly zoned Open Space. Changes to the zoning would require Town approval. So the covenant restrictions should be for items beyond the zoning requirements. An example is the restriction on the use of the Processing Parcel for uses other than work on Bolts Lake Reservoir.
- D. What permanent easements will both encumber and benefit the Town Parcels. The Settlement Agreement provides:

(i) Perpetual Easements. It is anticipated that each Restricted Parcel will be encumbered by a perpetual easement agreement (“**Perpetual Easement Agreement(s)**”) pursuant to which Battle North will grant to the Town a perpetual non-exclusive easement (“**Perpetual Easement(s)**”) over, across and within such Restricted Parcel, or specified area therein, for the Town’s benefit in order to provide a specific scope of access and/or utility purposes, use, and/or benefit. For the Highlands Parcel, Battle North will grant at Closing to the Town an easement for access and utility purposes across the OTP Area to the Highlands Area at a location and in a size mutually agreeable to the parties. For parcels other than the Highlands Area, such scope may include active or passive non-motorized recreational uses, the provision of legal and physical access to and from other Town Parcels or a public road, and similar matters. The Perpetual Easement Agreements will expressly reserve to Battle North, as grantor, and incorporate Battle North’s general right to use the Restricted Parcels for purposes that do not unreasonably conflict with or impair the Town’s use and enjoyment of the Perpetual Easement(s), including but not limited to construction, ownership, operation, maintenance, repair and replacement of existing and to-be-constructed utilities, roads, pedestrian crossings, sidewalks, bike paths, the Water Distribution System and similar Infrastructure Improvements required or desirable in connection with development of the Battle Retained Parcels (the “**Reserved Uses**”). The infrastructure types, locations and engineering requirements (except the Water Treatment System) of such Reserved Uses and Infrastructure Improvements will be subject, and the final “as-built” locations of the Reserved Uses will be established pursuant, to Town review and approval in connection with approval of preliminary and final plats for development within the Battle Retained Parcels.

Battle Mountain has proposed two easements across the OTP to provide access and utility service to the Highlands Parcels (graphic attached). Battle Mountain has indicated that it may not need easements over the Highlands Parcels, the Reservoir South Area, and the Rec Center Parcel. Tim McGuire from Battle Mountain can provide more information at the Council meeting.

Staff is looking for direction on the above items so that we can negotiate Closing document with Battle Mountain.



