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DATE: May 10, 2024
TO: Planning & Zoning Commission
FROM: Karp Neu Hanlon, P.C.
RE: Battle Mountain letter agreement

Section 2(a)(ii) if the Settlement Agreement with Battle Mountain discusses the creation of Restricted Parcels over which the Town could obtain an easement or option for purchase. Looking at the last sentence of that paragraph (below), it included a reference to the “Trestle Area” among other named 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.

The Trestle Area is not a parcel of land that is being created by exemption plat, or upon which the Town will receive an easement or option to purchase. The Trestle Area is located below the future dam for Bolts Lake reservoir and will remain property owned by Battle North. In the numerous discussions between the Town and Battle North, I do not recall that transfer or encumbrance of this area was ever contemplated by the parties. Instead, it appears to be an accidental insert into the Settlement Agreement. To that end, the staff supports approval of the letter agreement with Battle Mountain clarifying that the Trestle Area is not a restricted parcel as defined in that document.