

DATE: February 27, 2025
TO: New Castle Town Council
FROM: Karp Neu Hanlon, P.C.
RE: Open Space Dedication

At the February 18 Council meeting, Councilperson Riddle asked about the dedication of open space areas that are part of the 9 Wildhorse subdivision. The open space is designated to be dedicated to the Homeowners Association, and not to the Town.

In follow up, I spoke with the developer's attorney Chad Lee about the question of ownership of the open space parcels that are part of the 9 North Wildhorse subdivision (Parcels 1 and 2 on the Final Plat). Chad explained that during the preliminary plan submittal, there was a discussion that the open space would be owned by the Homeowners Association. I have some recollection of this and the conveyance of the open space to the Homeowners Association has been included in the Subdivision Improvements Agreement draft for some time.

Chad explained that the open space is viewed as an amenity for the multifamily development to be used for passive open space. This development, while subdivided into 3 Lots and 2 open space Parcels, will be owned by one owner. The developer wants the Homeowners Association to have control over the open space in order to ensure that it is not used for more intensive purposes. This also includes an interest in ensuring that the Homeowners Association can prevent trespass outside of the designated trail corridors (e.g. camping which a government may have trouble controlling). Finally, the open space is a location where some amounts of fill pursuant to the grading plan will be deposited. Similarly, drainage and utilities run across portions of the open space and would need to be formalized into easements if Parcels 1 and 2 are conveyed to the Town. The developer would prefer that the open space be owned by the Homeowners Association subject to the trail easements. They are prepared to discuss this point in more detail at the council meeting.

By way of background, portions of the property subject to the 9 North Wildhorse plat are zoned under the CVR PUD as open space.

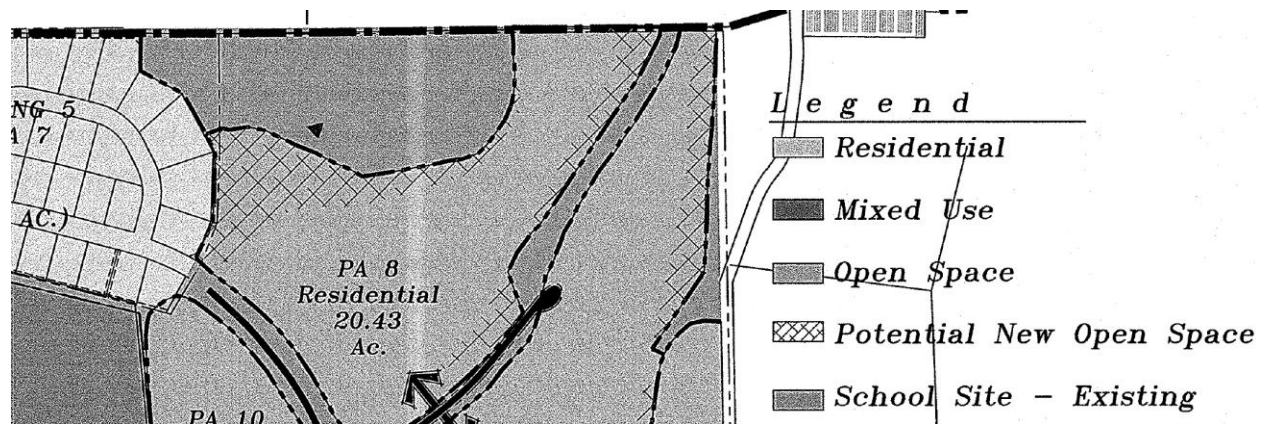
Mail to:

Glenwood Springs
201 14th Street
Suite 200
Glenwood Springs, CO 81602

Aspen
0133 Prospector Road
Suite 4102-J
Aspen, CO 81611

Basalt
200 Basalt Center
Suite 200
Basalt, CO 81621

Ridgway
565 Sherman Street
Suite 6
Ridgway, CO 81432



In reviewing the County GIS, it appears that other areas within CVR that were zoned open space were subsequently dedicated to the Town at times that development plats were approved. Provisions in the Second Amended CVR Annexation Agreement and Site Specific Development Plan Agreement (Second ADA) and Ordinance No. 2002-2 dealing with open space include:

The amended PUD zoning.

(3) **Open Space and Parks**

- (a) **OS/P:** Open space and parks district providing recreation and open space opportunities to the community of Castle Valley Ranch and the Town of New Castle.

Section 7.a. of the Second ADA.

- a. **Land Dedication.** Developer shall dedicate to the Town not less than 10% of the acreage of the PUD for public purposes as defined in Section 16.16.160(a)(1) of Ordinance No. 262, and Developer has agreed to dedicate or donate (as chosen by LDI in its sole discretion) to the Town additional acreage within the PUD as generally shown on the Updated Master Plan Map. All dedications shall be free and clear of any liens or encumbrances that would interfere with the intended uses of such open space. In order to ensure compliance with this provision, for each and every dedication of real property to the Town within the PUD, Developer agrees to provide the Town, at Developer's sole expense, a policy of title insurance in a form acceptable to the Town as reasonably determined by the Town Attorney. No final plat shall be approved with land dedication of less than 10% of the land contained within such final plat unless, at the time of approval, the total acreage of all publicly-dedicated lands within all approved final plats of the PUD would amount to 10% or more of the total acreage of all such platted lands. Any dedication of land having a slope of 35% grade or more shall not count towards satisfaction of any open space dedication requirements.

The Town's position on the CVR dedications is that the "total acreage of all publicly-dedicated lands within all approved final plats of the PUD [...] amount to 10% or more of the total acreage of all such platted lands." In other words, the total required dedications in aggregate have already been met. We worked with Craven on this a couple years ago in relation to the CVRI application. The agreement does provide that the Developer will dedicate additional acreage in the PUD as shown on the exhibit (a portion of which is depicted above).

c. Maintenance. The parties shall have the following obligations for maintenance of parks, open space and multi-use open space parcels with the PUD.

i. Town Maintenance Responsibilities. The Town agrees to maintain those portions of the Dedicated Public Open Space which are commonly accessed by and provide a benefit to the Town's community as a whole and to replace any improvements that become damaged. Those portions are identified in green as "Town of New Castle" areas on the map of CVR attached hereto as Exhibit B. In the event the Town fails to perform its maintenance responsibilities, LDI is hereby granted a license to enter upon the Town of New Castle areas designated on Exhibit B in order to undertake and complete the Town's maintenance responsibilities. Prior to undertaking any of the Town's maintenance responsibilities as defined in this provision, LDI shall give fifteen (15) days written notice to the Town of its intent to undertake and complete such maintenance if not undertaken and completed by the Town within the fifteen (15) days.

Staff believes that the 10% open space dedication has been met but that the additional dedications identified in the Second Amended ADA could include the open space areas identified on the zoning map. That said, Staff is comfortable with the Developer proposal of having open space owned by the Homeowners Association with dedicated trail easements as shown on the plat. Staff does not recommend having the trail areas dedicated in fee title because that would create a number of small parcels. If Council decides to require the open space to be dedicated to the Town, staff recommends giving the applicant time to update the plat to reserve applicable easements and to make modifications to the subdivision improvements agreement.