

A RESOLUTION AUTHORIZING A LAND EXCHANGE
BETWEEN THE CITY OF COLORADO SPRINGS AND THE
BROADMOOR

WHEREAS, the City of Colorado Springs ("City") holds fee simple title to a 189.5-acre parcel of vacant property, which is situated on North Cheyenne Cañon Park near Mesa Drive and is map depicted on Exhibit B, attached hereto and incorporated herein by reference; and

WHEREAS, the Parks, Recreation and Cultural Services Department is the Controlling Department of the 189.5-acre parcel; and

WHEREAS, the City holds fee simple title to a 0.55-acre parcel of vacant property, which is situated near the Mt. Manitou Incline and is map depicted on Exhibit C, attached hereto and incorporated herein by reference; and

WHEREAS, the Colorado Springs Utilities is the Controlling Department of the 0.55-acre parcel; and

WHEREAS, the 189.5-acre parcel and the 0.55-acre parcel shall be referred to herein as the "City Property"; and

WHEREAS, the Manitou and Pike's Peak Railway Company, COG Land and Development Company, PF, LLC, and The Broadmoor Hotel, Inc., collectively referred to as the "Broadmoor", hold fee simple title to several parcels of land consisting of approximately 371.21 acres, situated near the Mt. Manitou Incline, Bear Creek Regional Park, Seven Falls, and several trail easement connections, which property is map depicted on Exhibits B, C, D, E, and F, attached hereto and incorporated herein by reference (collectively the "Broadmoor Property"); and

WHEREAS, the City desires to acquire the Broadmoor Property; and

WHEREAS, the Broadmoor desires to acquire the City Property; and

WHEREAS, the City recognizes that the City Property has intrinsic value as a public asset beyond the estimated fair market value and, in order to retain that value, will only transfer the City Property to the Broadmoor subject to certain terms, conditions and restrictions as provided in Exhibit A to this Resolution; and

WHEREAS, the Parks, Recreation and Cultural Services Department and Colorado Springs Utilities desire to exchange the City Property for the Broadmoor Property subject to the terms, conditions and restrictions on Exhibit A; and

WHEREAS, an exchange of the City Property for the Broadmoor Property is in the best interest of the City, because the City stands to gain 371.21 acres of property and 115.4 acres of new public trail easements in exchange for its 189.5 acres and the value of the property the City will receive has an estimated fair market value of \$3,609,800 which exceeds the estimated value of the property the City intends to transfer, which is \$2,161,000; and

WHEREAS, pursuant to Sections 4.5 and 5.5 of *The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests* ("RES Manual"), the City may enter into a land exchange upon approval of City Council; and

WHEREAS, each party agrees to pay any expenses that it has incurred or will incur in land surveying and establishing fair market value by its own independent real estate appraiser; and

WHEREAS, the Broadmoor has agreed that if City Council approves the land exchange the Broadmoor will pay any additional transaction costs of the land exchange, including but not limited to closing fees, recording fees, and policies of title insurance; and

WHEREAS, if City Council approves the land exchange, the Broadmoor desires that the City recognize the difference between the value of the Broadmoor Property and the City Property as a donation.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS

Section 1. Pursuant to the RES Manual, Sections 4.5 and 5.5, City Council hereby finds that the proposed land exchange is in the best interest of the City and approves a land exchange with the Broadmoor of the City Property for the Broadmoor Property, subject to the terms, conditions and restrictions set forth in Exhibit A attached hereto and incorporated herein by reference.

Section 2. Pursuant to the RES Manual, Section 2.11, City Council hereby authorizes the City's Real Estate Services Manager to execute all documents necessary to complete the land exchange of the City Property for the Broadmoor Property subject to the terms, restrictions and conditions contained in this Resolution and the attached

Exhibit A, as will be more fully expressed in a Real Estate Land Exchange Agreement, and to obtain the Mayor's signature on the deeds conveying the City Property to the Broadmoor.

Section 3. Pursuant to the RES Manual, Section 4.4 City Council hereby authorizes the acceptance of a donation of the difference in value between the City Property and the Broadmoor Property, if any, as determined by appraisals conducted at the behest and expense of the City and the Broadmoor, respectively.

Section 4. City Council recognizes that significant due diligence activities in the form of environmental studies, survey work, title examination, and other reviews must be completed prior to closing. In the event, the due diligence review identifies a condition of a property or properties that would result in a diminishment to the City of Colorado Springs of two hundred fifty thousand dollars (\$250,000) or more in value, and the condition is not resolved by the current property owner, City staff shall present the information to City Council and seek additional approval in light of the changed circumstances.

DATED at Colorado Springs, Colorado, this ____ day of _____, 2016.

ATTEST:

City Council President

Sarah B. Johnson, City Clerk

EXHIBIT A

Terms, Conditions and Restrictions

I. Broadmoor Property:

a. The Broadmoor shall convey to the City unrestricted fee simple interest in the real property known as El Paso County Tax Schedule Numbers 7406300001 and 8400000003, which is located west of Manitou Springs and includes a portion of the Mt. Manitou Incline and a portion of the Barr Trail, Colorado Springs, CO, and consisting of approximately 74.6 acres and 80 acres respectively, which are map depicted on Exhibit C ("Broadmoor Property 1" and "Broadmoor Property 2"). The exact location will be determined and identified by a licensed land surveyor.

b. The Broadmoor shall grant the City permanent easements consistent with the rights granted to the City in the Grant of Park Trail License and Utility License, dated April 9, 2012, between the City and the Manitou and Pikes Peak Railway Company in connection with public access and use of the Mt. Manitou Incline and make any other amendments to the license necessary to carry out the purposes and intents of the land exchange.

c. The Broadmoor shall grant the City one (1) public permanent trail easement upon a portion of real property known as El Paso County Tax Schedule Number: 7400000003, located west of Manitou Springs, Colorado Springs, CO, which is map depicted on Exhibit C, ("Broadmoor Property 3") for the purpose of the Barr Trail connection. The exact location and size will be determined and identified by a licensed land surveyor.

d. The Broadmoor shall convey the real property known as El Paso County Tax Schedule Numbers: 7423400006 and 7423400005, located south and adjacent to Bear Creek Regional Park, Colorado Springs, CO, and consisting of approximately 3.26 acres and 5.35 acres respectively, which is map depicted on Exhibit D, ("Broadmoor Property 4" and "Broadmoor Property 5") to the City. After the conveyance, the City will impose a land use restriction on the title to Broadmoor Property 4 and Broadmoor Property 5 that restricts future commercial and residential development and only permits public park uses, as defined and allowed by the City of Colorado Springs "PK" zoned.

e. The Broadmoor shall convey to the City unrestricted fee simple interest in the real property known as El Paso County Tax Schedule Number 7500000263, located west of Seven Falls, Colorado Springs, CO, and consisting of approximately 208 acres, which is map depicted on Exhibit E, ("Broadmoor Property 6"). The exact location and size will be determined and identified by a licensed land surveyor.

f. The Broadmoor shall grant to the City a public permanent trail easement upon a portion of real property known as El Paso County Tax Schedule Numbers: 7502301005 and 7500000230, located east of the Will Rogers Shrine, Colorado Springs, CO, and consisting of approximately 4.4 acres, which is map depicted on Exhibit F, ("Broadmoor Property 7" and "Broadmoor Property 8") for the purpose of trail alignment for the Chamberlain Trail. The exact location and size will be determined and identified by a licensed land surveyor.

g. The Broadmoor shall grant to the City a public permanent trail easement upon a portion of real property known as El Paso County Tax Schedule Number: 75000000303, located east of Cloud Camp, Colorado Springs, CO, and consisting of

approximately 74.1 acres, which is map depicted on Exhibit F, (“Broadmoor Property 9”) for the purpose of trail alignment for the Chamberlain Trail. The exact location and size will be determined and identified by a licensed land surveyor.

h. The Broadmoor shall grant to the City a public access easement across the Broadmoor real property known as El Paso County Tax Schedule Numbers 7400000326 and 74300000329, which is map depicted on Exhibit B, to provide the public with emergency access to/from the Hully Gully Ice Climbing area. The exact location of the easement shall be determined by a licensed Land Surveyor.

i. The Broadmoor shall grant to the City a utility and access easement for the purpose of access across the Broadmoor real property known as El Paso County Tax Schedule Number 740643005, which is map depicted on Exhibit C, to allow utilities, ingress and egress to the Colorado Springs Utilities Hydroelectric plant that is located adjacent to City Property 3, as defined below.

j. The existing Revocable License For Parking Area, dated April 9, 2009, between the City and Manitou and Pikes Peak Railway Company shall be terminated upon the closing of the land exchange.

II. City Owned Property:

a. The City shall convey to the Broadmoor the real property known as El Paso County Tax Schedule Numbers 7400000211, and 7400000327, located east of Seven Falls, Colorado Springs, CO, consisting of approximately 189.5 acres, and known as a portion of North Cheyenne Canon Park, which is map depicted on Exhibit B, (“City Property 1” and “City Property 2”) subject to the following:

1. Easements.

A. The City shall obtain three (3) permanent public trail easements for the purpose of maintaining the connection with the proposed alignment of the Chamberlain Trail, maintaining the connection of the South Canon Trail, and maintaining the connection of Hully Gully Trail. The exact location of the trail easements shall be determined by a licensed land surveyor.

B. The City shall obtain four (4) permanent public utility easements. The exact location of the utility easements shall be determined by a licensed land surveyor.

C. The City shall obtain an easement in the location of Old Stage Road for the purpose of public access and right of way and the right for present and future public utility easements. The exact location and size of the easement area shall be determined and identified by a licensed land surveyor.

2. Use. The City's conveyance of City Property 1 and City Property 2 to the Broadmoor shall include a deed restriction that will restrict the land use and zoning of City Property 1 and City Property 2 to "PK" zone, and any and all uses shall be consistent with the City's PK zone, and the City's Park Development Review process.

3. Right of First Refusal. The City shall retain a right of first refusal to acquire City Property 1 and City Property 2 upon the following terms and conditions:

A. Neither Broadmoor, nor any of its heirs, successors, or assigns, shall sell, convey, assign or transfer title, ownership or possession of City Property 1 or City Property 2, or any portion thereof, including but not limited to through a sale, an exchange or any other transfer of an interest in City Property 1 or City Property 2, without first offering the City Property 1 and City Property 2 to the City, for the agreed purchase price of \$1,581,000.

B. Broadmoor shall notify the City of its right to exercise its first right of refusal, and the City agrees that within ninety (90) days after receipt of a written notice from Broadmoor, to give Broadmoor a written statement of rejection or acceptance by the City.

4. Conservation Easement. The Broadmoor, at its own expense, shall be required to convey at the time of closing, a Conservation Easement covering the entire City Property 1 and City Property 2, to an appropriate certified conservation easement holder to preserve and protect the conservation values, and such Conservation Easement shall be recorded with the El Paso County Clerk and Recorder's office. The Conservation Easement shall identify a "Building Envelope" that is no greater than 8.5 acres and is in a location that is consistent with the area set forth in the map depictions on Exhibit B. The exact location and size of the Building Envelope shall be determined and identified by a licensed land surveyor. A Building Envelope concept plan to be further refined as part of the master plan process is depicted on Exhibit G.

A. Conservation Easement shall include the following

Prohibited Uses:

- i. New structures (outside of building envelope)
- ii. Subdivision of the Property
- iii. Commercial Timber Harvesting
- iv. Mining
- v. Road Construction and/or Paving (outside of building envelope)
- vi. Trash and Dumping
- vii. Transfer of Water Rights
- viii. Alteration of Watercourses and Topography (outside of building envelope)
- ix. Water Pollution
- x. Industrial Activity
- xi. Motor Vehicle Use (outside of building envelope)
- xii. Billboards
- xiii. Hazardous Materials
- xiv. Wind and Solar Energy Generation
- xv. Feedlots
- xvi. Grazing
- xvii. Active Recreation
- xviii. Cell Phone Towers/ Transmission Towers
- xix. Residential Development
- xx. Commercial Development (except within building envelope associated with PK uses)

B. Conservation Easement shall include the following Allowable

Uses:

- i. Public recreation – specifically walking, hiking, mountain biking, horseback riding, picnicking, environmental education and other passive recreation uses
- ii. Forestry and open space management activities
- iii. Build and maintain trail system
- iv. Install minor improvements such as wayfinding signage, interpretive signage, benches
- v. Control soil erosion
- vi. Invasive weed control
- vii. Maintenance, repair, relocation, undergrounding, and replacement of existing utilities
- viii. New utilities (within the building envelope) to serve the Broadmoor's buildings

- ix. New utilities within pre-identified utility corridors
- x. Bury existing 3-phase overhead electric lines
- xi. 8.5 acre building envelope limited to park uses (PK Zone)
- xii. Public access, parking, utilities, and improvements on Old Stage Road

5. Public Access to Property. Broadmoor shall allow free and open public access to all of City Property 1 and City Property 2 except the building envelope.

6. Fencing and Trail Corridor. No perimeter fence shall be installed or constructed on City Property 1 and City Property 2, except within the building envelope. The Broadmoor agrees to work with the Parks Department to identify trail corridors outside of the building envelope as part of the master plan process.

7. Property Management.

a. Broadmoor shall have the right to manage City Property 1 and City Property 2, including but not limited to promulgating rules and regulations and enforcing such rules and regulations for the protection of natural resources and to deter inappropriate and illegal behavior.

b. As a component of the master plan process, The Broadmoor will submit a five (5) year plan to address erosion control on City Properties 1 and 2.

b. The City shall convey to the Broadmoor the real property known as El Paso County Tax Schedule Number: 7106301002, located adjacent to the Cog Rail Road site, and the Colorado Springs Utilities Hydroelectric site, Manitou Springs, CO, and known as a portion of the Cog parking lot, which is map depicted on Exhibit C, ("City Property 3"), subject to:

1. The City shall obtain a public utility easement in the form substantially similar to the current Colorado Springs Utilities public utility easement on the entire City Property 3;
2. The City shall obtain an access easement that allows vehicular access for all sizes of vehicles, cranes, trucks, trailers and other equipment;
3. The City shall obtain the right of the City to use the City Property 3 on an as needed basis for temporary staging of vehicles, equipment and construction equipment related to Colorado Springs Utilities activities in the area for maintenance, reconstruction and construction;
4. The City shall obtain the obligation of the Broadmoor to release, hold harmless and indemnify the City for any damage to the surface (whether paved or unimproved) of the City Property 3 that results from City's use; and
5. A deed restriction that prohibits the construction of any structures on the City Property 3; provided however, that paving, building of retaining walls, landscaping and similar activities that are consistent with the City's rights under the above described easements shall be allowed.

III. Additional Conditions:

a. As additional consideration, the Broadmoor shall provide the City with the following:

1. The Broadmoor will allow free public access to the Green Settlement and Greenwood Park historic homestead sites, which are located south of Daniels Pass on the Broadmoor real property known as El Paso County Tax Schedule Number 7500000263.

2. The Broadmoor will coordinate with the City's Parks, Recreation and Cultural Services Department to provide use of the group picnic facility for two (2) annual fundraising events free of rental charge and provide free food and nonalcoholic beverage for up to 100 guests for the benefit of the City Parks system, to groups such as Parks Friends groups and Parks related nonprofit organizations.

3. The Broadmoor will provide 25% of the Seven Falls gross tram fees to the City North Cheyenne Cañon Gift Trust annually to assist with the City Park Ambassadors program. City Park Ambassadors will assist in providing a presence on the City Property 1 and City Property 2 trails.

4. As a component of the master plan process, The Broadmoor will submit a five (5) year plan to address erosion control on City Properties 1 and 2.

Exhibit B

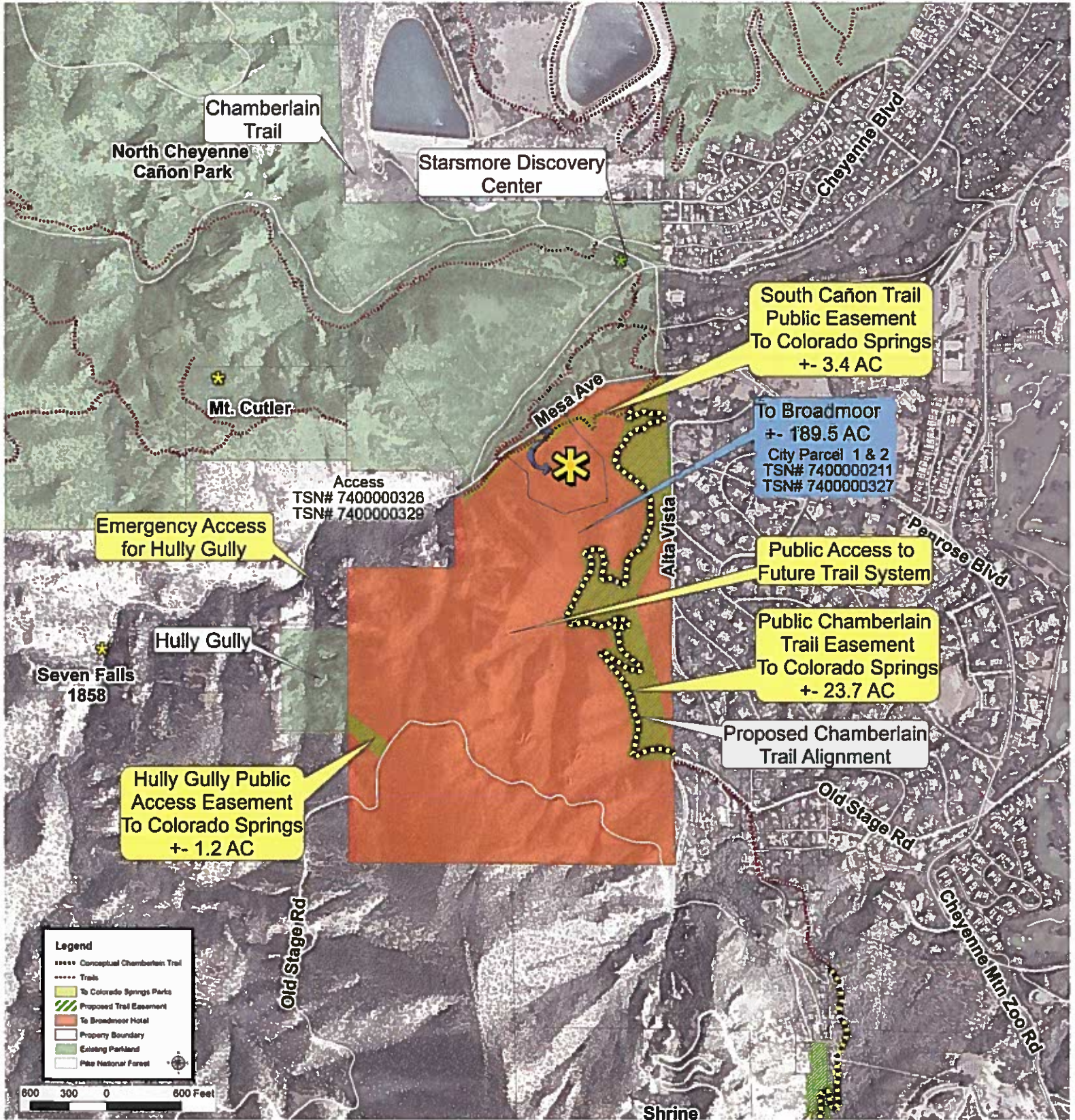


Exhibit C

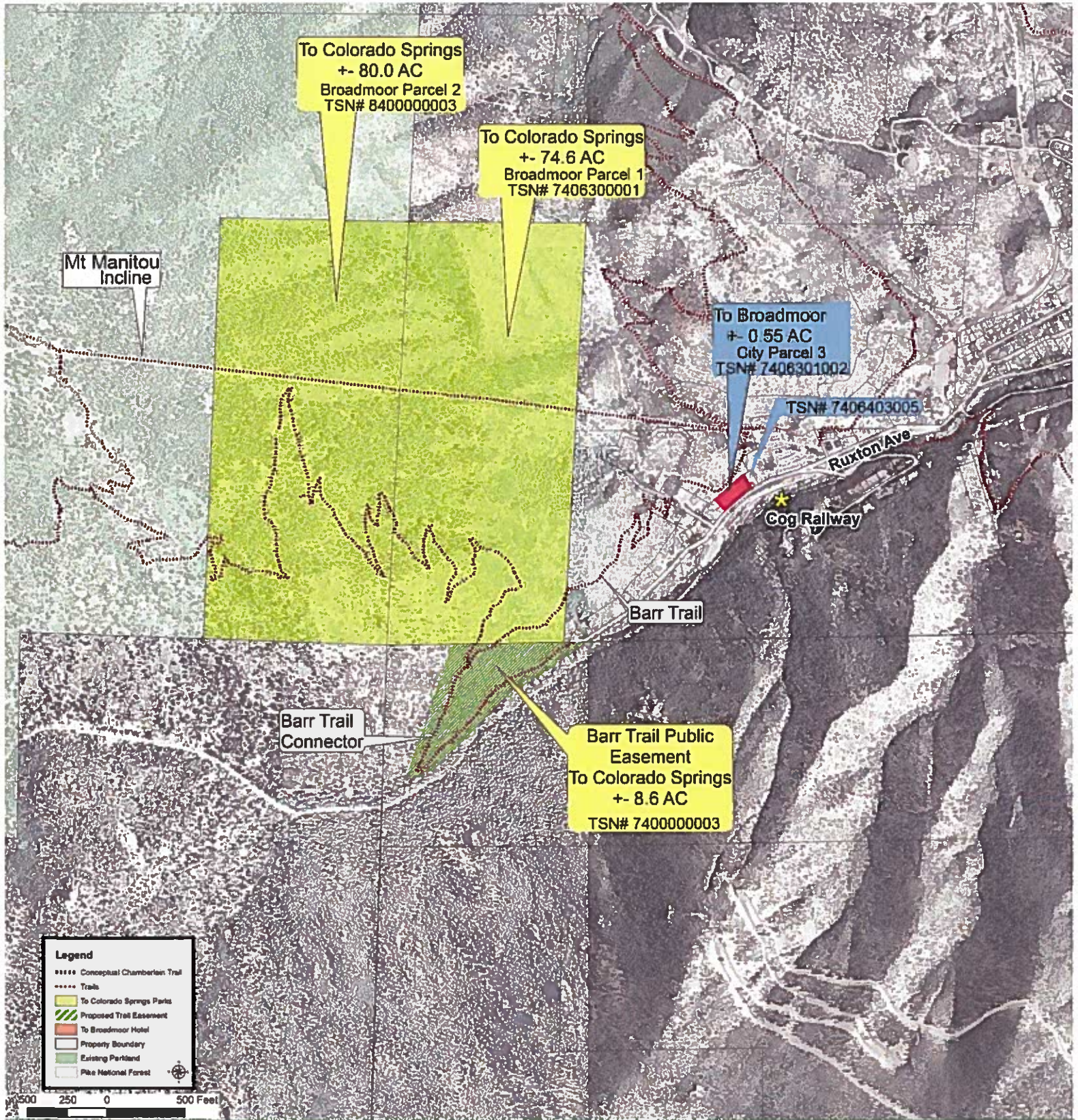


Exhibit D

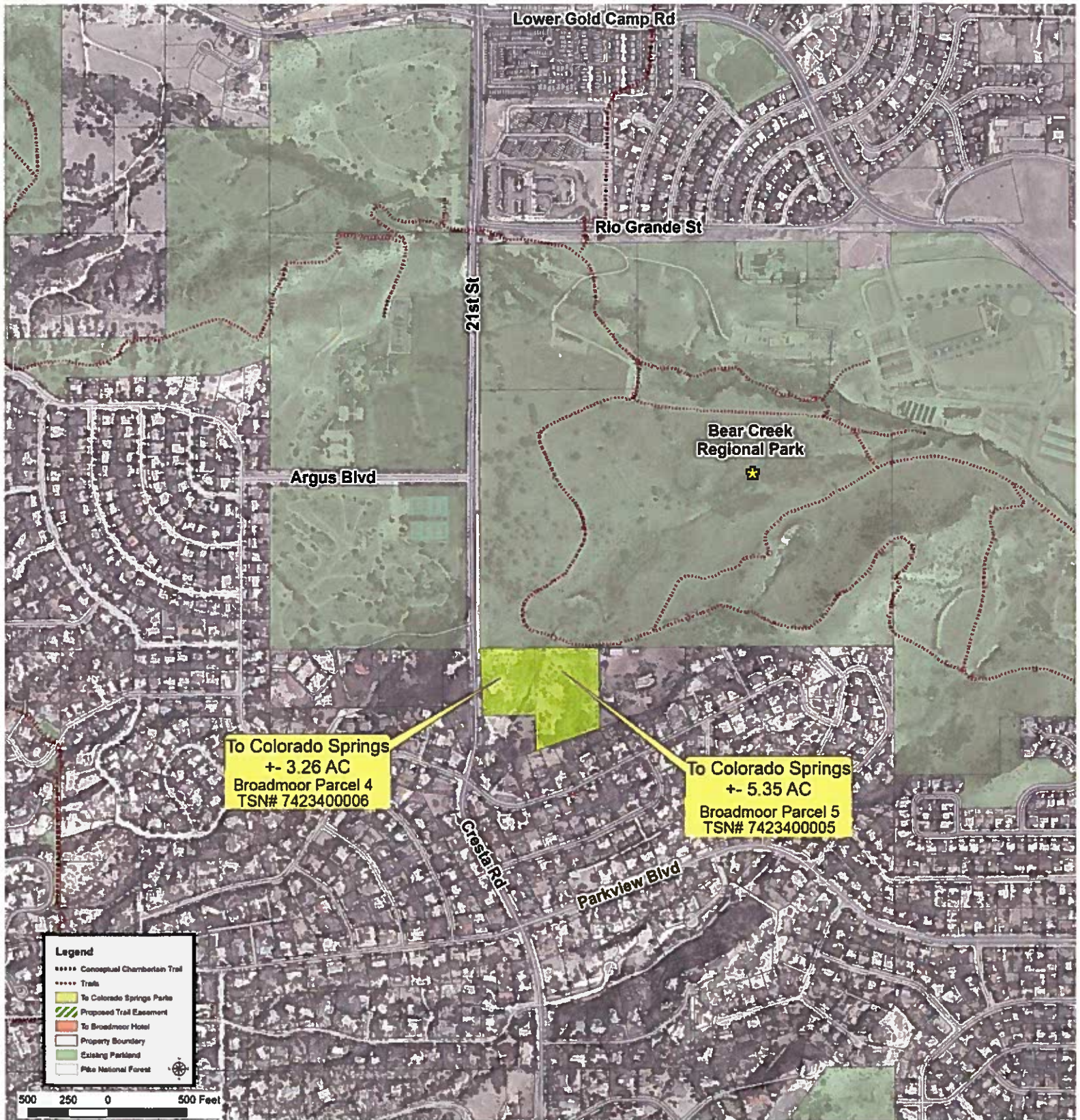


Exhibit E

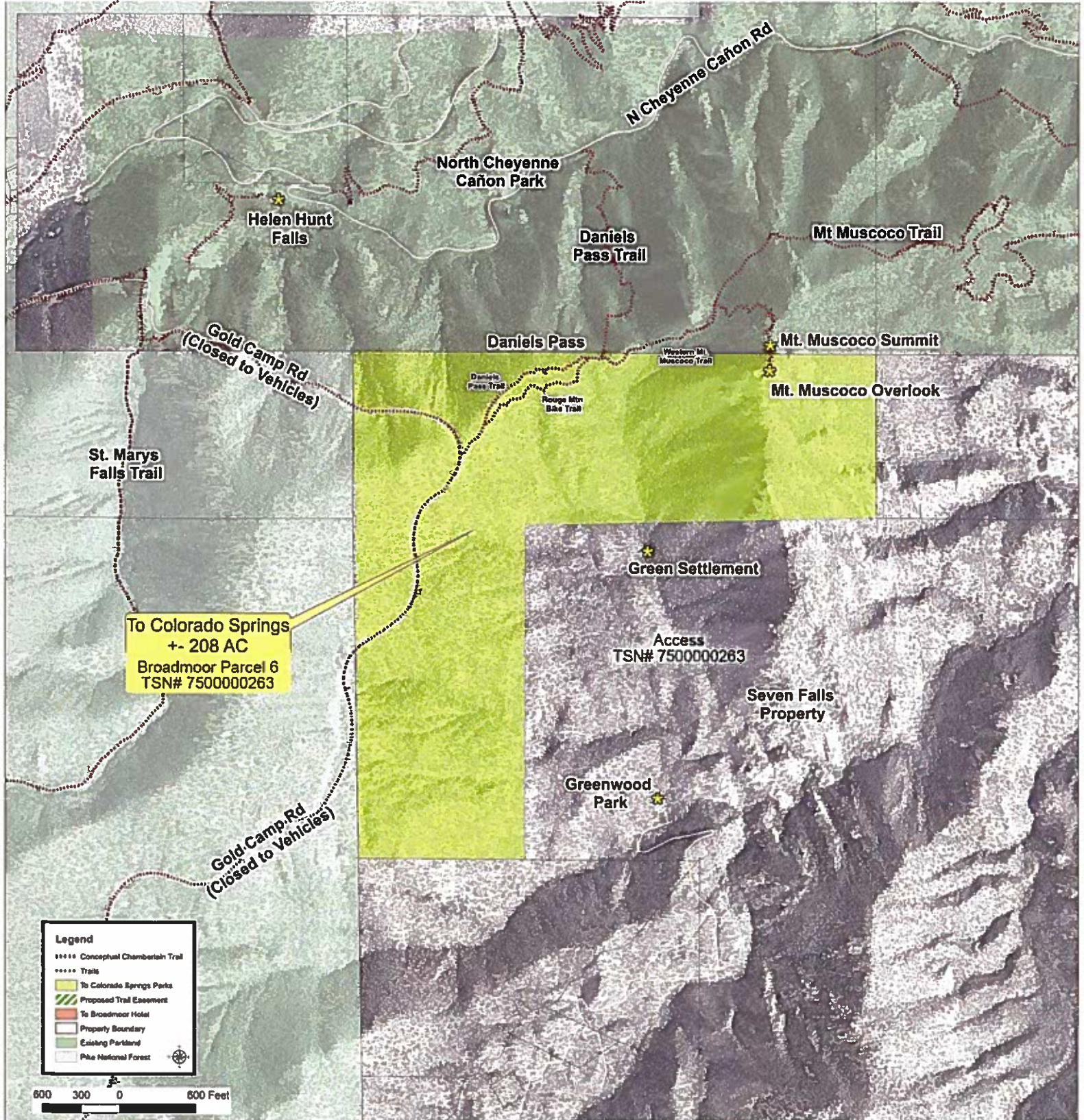


Exhibit F

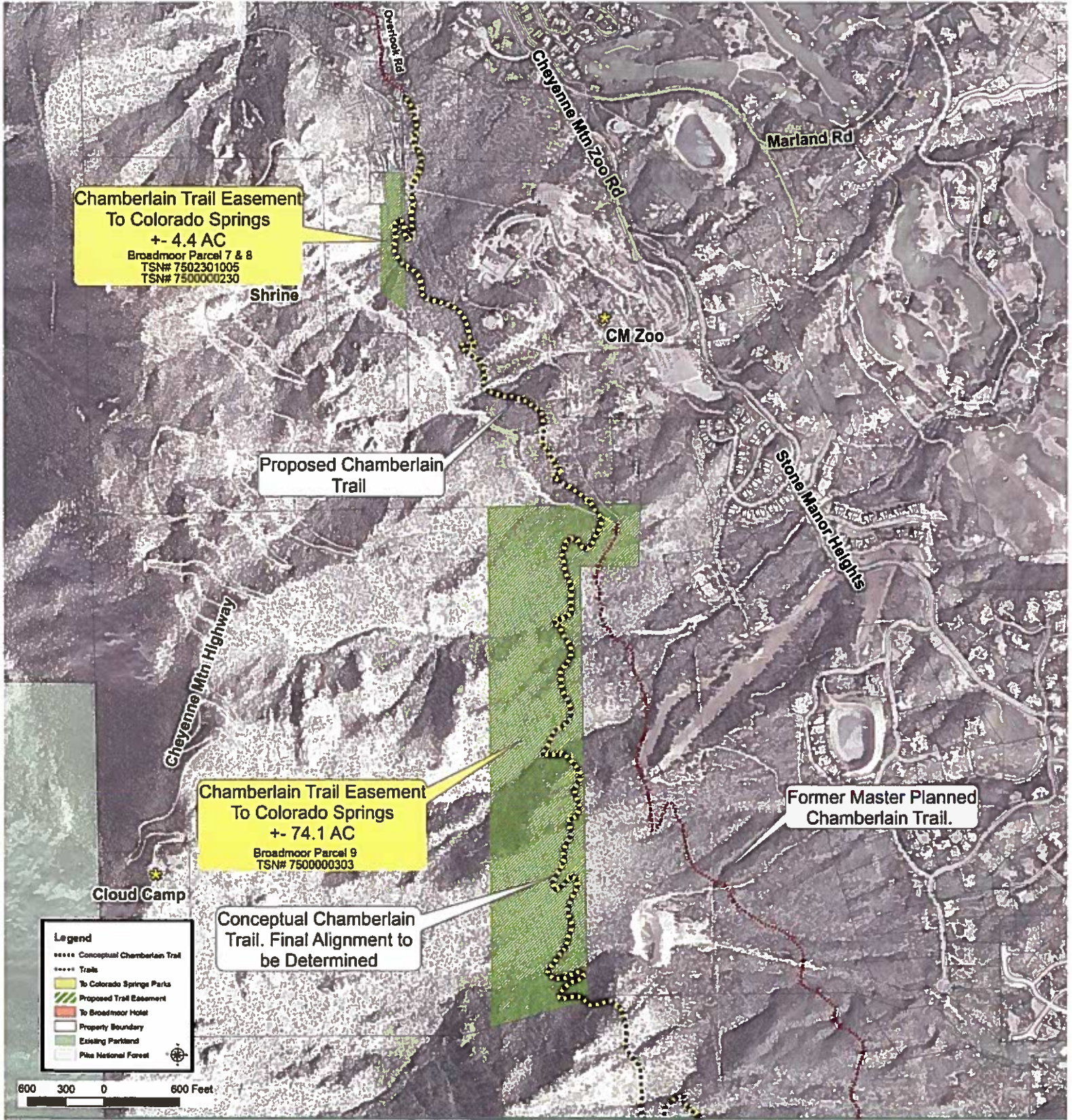


Exhibit G

Building Envelope Concept Plan

