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# FEASIBILITY STUDY OF THE PROPOSED “FRONT RANGE DUAL- SERVICE RAIL PARK OF SOUTHERN COLORADO”

**A public/private partnership which will  
both improve Fort Carson’s rapid  
deployment capability and foster  
economic growth in the region through  
development of a 2,000 acre heavy  
industrial rail park in Fountain,  
Colorado**



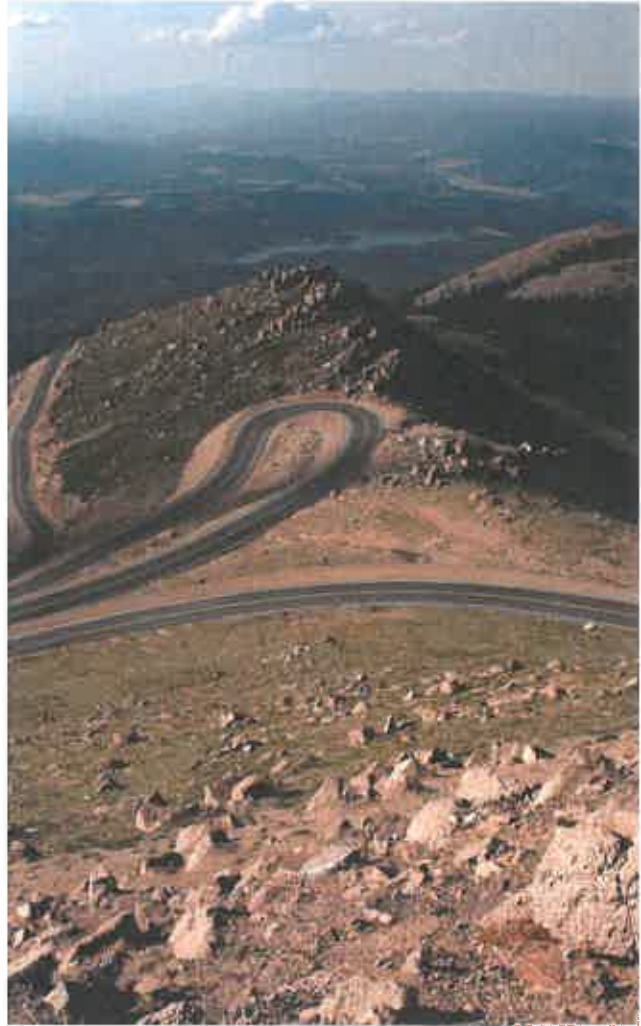
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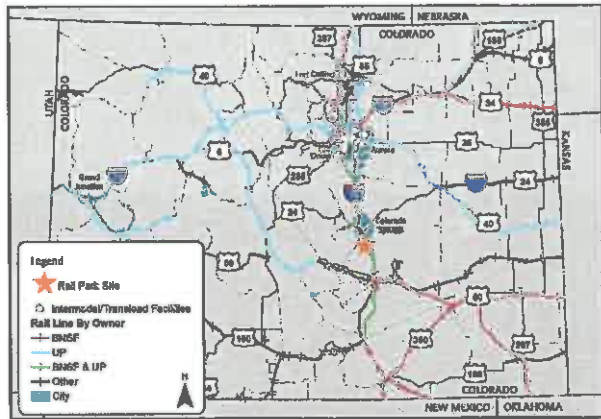
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## 1 Executive Summary

**This feasibility study confirms the technical viability of a dual-service, heavy industrial rail park in Fountain, Colorado.**

Beyond addressing zoning, environmental, utilities, and related site condition issues, the feasibility study also highlights a specific rail alignment across the development site to Fort Carson that has been conceptually approved by leadership of Colorado Springs Utilities, the entity that controls the existing rail access for coal delivery to CSU's Nixon power plant. Providing a second, secure rail connection to Fort Carson is both a critical element and primary benefit of the project. This southerly route will enhance the Army's rail-based rapid deployment capability by eliminating multiple points of vulnerability that exist on the current northerly route. The proponents of the public/private partnership sponsoring the project also anticipate that the rail extension will facilitate the development of a 2,000 acre rail-served industrial park. The project will offer heavy industrial users a premier site with competitive (dual) rail service from BNSF and UPRR, as well as easy truck access to Interstate 25 via the improved Charter Oak Ranch Road interchange.





## 2 Background

This Feasibility Study is the result of collaboration between El Paso County, the City of Fountain, the City of Colorado Springs, Colorado Springs Chamber of Commerce and Economic Development Corporation, Colorado Springs Utilities, and private property owner the Edw. C. Levy Co. Based on a 2015 Proof of Concept Report, these parties formed a public/private partnership in 2018 to fund the Feasibility Study by executing a Memorandum of Understanding<sup>1</sup> ("MOU"). The MOU established an Oversight Committee to manage the project and designated the Colorado Springs Chamber of Commerce and Economic Development Corporation as the Fiscal Agent.

One primary objective of the Feasibility Study was to evaluate rail access to Fort Carson across private land via an existing rail spur that services the Ray Nixon Power Plant ("Nixon"). Fort Carson has expressed for over a decade their desire for a second rail access from the south<sup>2</sup>. Nixon, owned and operated by Colorado Springs Utilities ("CSU"), is a coal-fired power plant that

serves the region and is less than 2 miles east of the western boundary of the Fort.

The existing spur is served by both Burlington Northern Santa Fe (BNSF) and Union Pacific Railroad (UPRR) main tracks, and is located on the south side of Colorado Springs and adjacent to the City of Fountain, Colorado. Any extension of the rail spur to Fort Carson must minimize any impact on both operations and security at the Nixon facility. The plant is subject to the North American Electric Reliability Corporation Critical Infrastructure Protection Standards and the Department of Homeland Security Chemical Facility Anti-Terrorism Standards. This Study summarizes the rail-extension options from both a construction and operational prospective.

HDR Engineering was engaged in July 2018 to identify options for track configuration, evaluate the suitability of the Levy parcel for industrial/intermodal rail development and interface with CSU's engineering staff to fully mitigate impacts to CSU's Nixon power generation capacity. The Oversight Committee members contributed \$125,000 (see MOU) and engaged HDR in July of 2018 to complete the study.

<sup>1</sup> Attachment 1 Memorandum of Understanding for Rail-Served Economic Development Initiative executed May 3, 2018.

<sup>2</sup> Attachment 2: Letter from Col. Ronald P. Fitch, Jr.,

Garrison Commander, Fort Carson to Mr. Scott Trainor, City Manager, Fountain, Colorado, dated April 27, 2018.



### 3 Subject Property

The future rail-served site is located southwest of the City of Fountain and west of Interstate 25 in El Paso County, Colorado on Fort Carson's eastern boundary. The property is within Sections 18, 19, 20 and 30, Township 16 South, Range 65 West (**Fig. 1**).

The site is bounded to the east by the Ray Nixon Power Plant, owned by the City of Colorado Springs, and a tract owned by the City of Fountain. Charter Oak Ranch Road is the northern boundary, with Fort Carson Military Reservation on the west and south. The subject property owner is the Edw. C. Levy Co., with 5 small inholding properties. Overall, the project site encompasses 3,875 acres.

#### 3.1 Current Land Use

The Subject Parcel is primarily vacant land, with a 400-acre sand and gravel mining operation in the northeast corner of the site. The mining is operated by Schmidt Construction Company, a wholly-owned subsidiary of the Edw. C. Levy Co. The Levy property is within the urban growth boundary of the City of Fountain. Fountain is a member of the Oversight Committee and has taken positive steps in anticipation of annexation of the site into the City limits, including:

- **Identification in the Gateway Master Plan (**Fig. 2**);**
- **Qualifications for future financing incentive programs;**
- **Zoning Flexibility; and**
- **Supportive infrastructure development**



FIGURE 1

#### 3.2 Current Ownership

The property owner, the Edw. C. Levy Co., has initiated a preliminary exploration of annexation with staff of the City of Fountain. The Subject is located within Fountain's Urban Growth Boundary and designated as heavy industrial in the City's Comprehensive Plan.

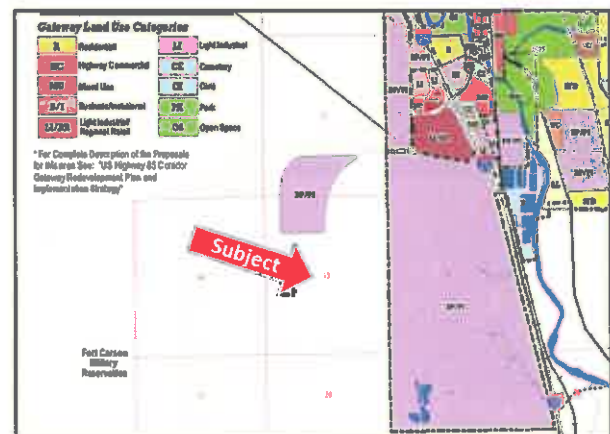


FIGURE 2

### 3.3 Current El Paso County Zoning

Current zoning is Agricultural with rural residential tracts that have not been through a subdivision process. The Subject is within an El Paso County Enterprise Zone (Fig. 3).

### 3.4 Regional Accessibility

The study area is well located with highway and rail access to multiple hub locations throughout the central United States. Interstate 25 is located on the east side of the study area and Interstates 70 and 80 are located approximately 90 and 200 miles to the north. U.S. Highway 50 is approximately 25 miles south. Distances and highway travel times to various United States cities is shown below (Fig. 4).

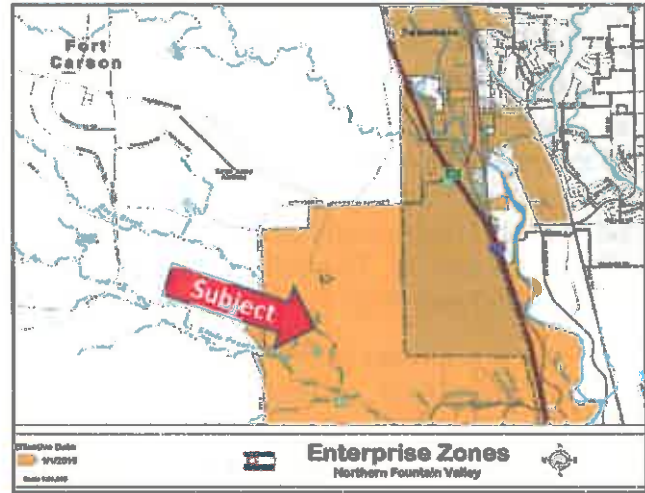


FIGURE 3

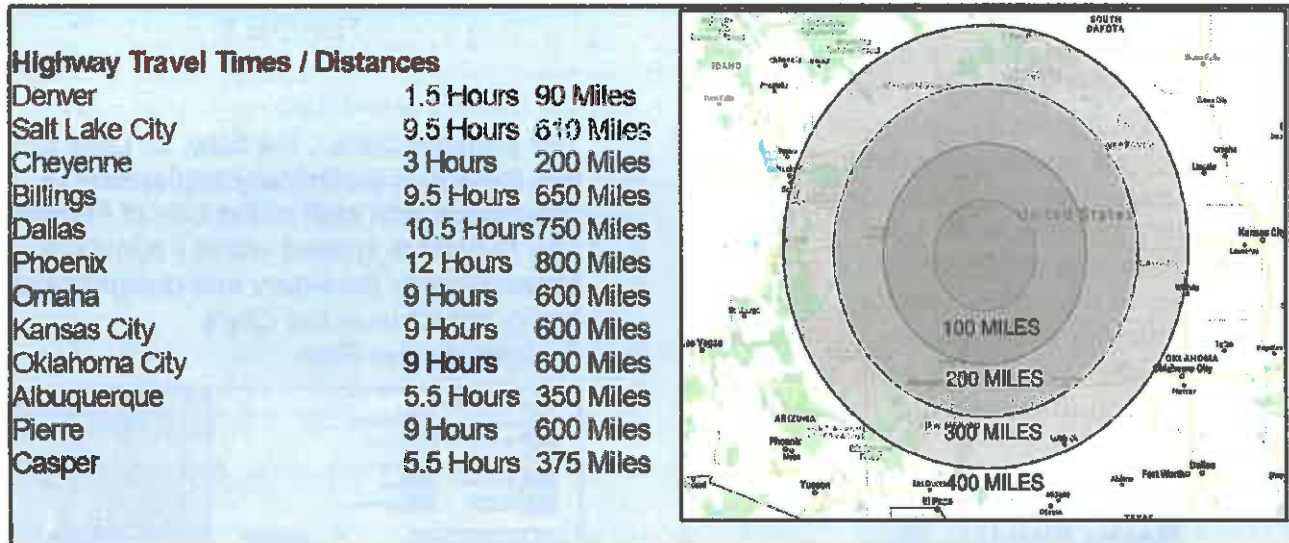


FIGURE 4

### 3.5 Class One Railroad Accessibility

BNSF's Powder River Subdivision and UPRR's Pikes Peak Subdivision are located to the east of the subject with a constructed spur and dual-service to the Nixon coal-powered generation facility. The two Class One railroads access Denver with a joint trackage arrangement (Fig. 5). From the subject property, with access via the Nixon spur, rail shipments can be interchanged to other railroads or continue on BNSF's and UPRR's systems that serve the western two-thirds of the United States. Access via BNSF's Intermodal System offers delivery from the Levy property to major ports and transportation hubs throughout the United States (Fig. 6). The availability of dual service provides a highly competitive environment for heavy users of rail.



FIGURE 5

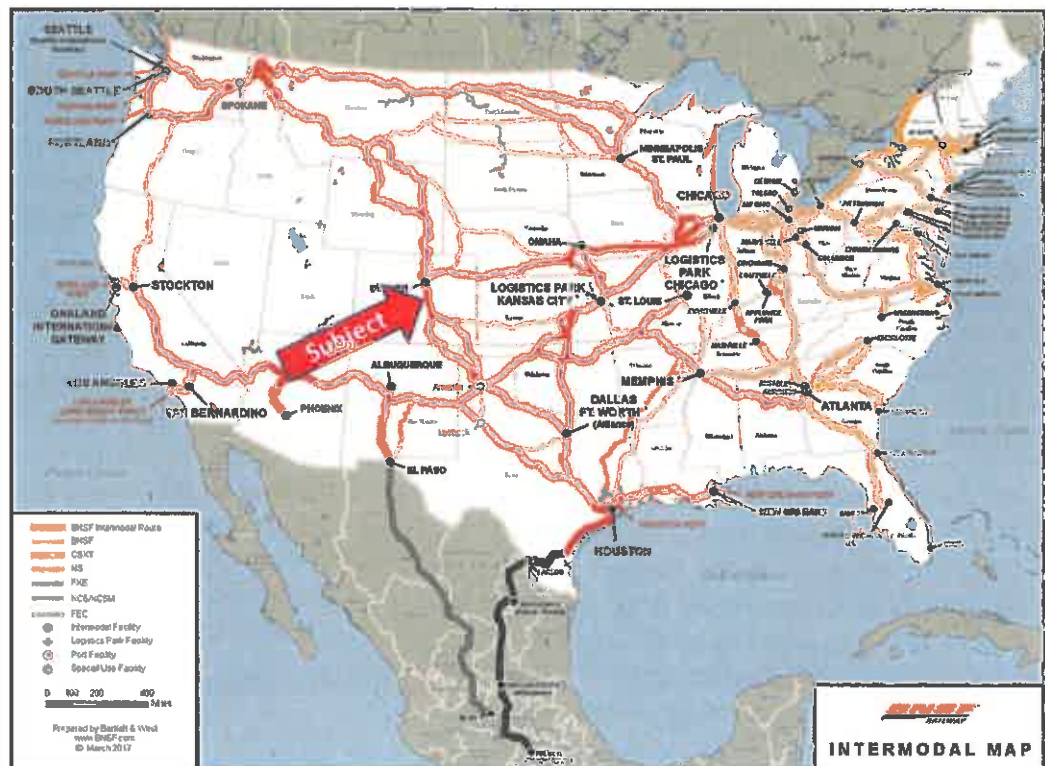


FIGURE 6



## 4 Existing Site Conditions

The site topography slopes down in a southeast direction at approximately 2% to Little Fountain Creek. Little Fountain Creek flows in a southeast direction, with the southwest portion of the site sloping into the creek at approximately 5% slope in a northeast direction. The southwest corner of the project site sits at 5,620 feet of elevation, and slopes down to Little Fountain Creek at approximately 5,500 feet of elevation. The northwest corner of the site sits at approximately 5,740 feet of elevation, sloping to the creek. The northeast portion of the site sits on a flatter area at 5,680 feet of elevation. Rock Creek is a smaller stream and crosses into the site from the northwest, but does not have a published floodplain. There are steeply sloping areas adjacent to Little Fountain Creek. The site is generally well-suited (topographically) for rail-served development.

### 4.1 Environmental Review

An Environmental Review and a Phase I Environmental Site Assessment were completed in October 2018 for the study area. The Project Area is defined as an approximate 3,100 acre area of land located southwest of downtown Fountain, Colorado, west of Interstate 25, within Sections 18, 19, 20, and 30; Township 16 South, Range 65 West.

#### 4.1.1 Historical and Current Land Usage

The Project Area is mostly vacant land. Near the entrance to the Project Area off of Charter Oak Ranch Road is an area that is currently being used to store crushed asphalt and concrete based fill. To the east of the piles of fill is an area of low land that is presently being filled in with top soil to even out the elevation of the area. The top soil fill is being imported from Fort Carson.

Southeast of the fill area is an active mining pit operated by Schmidt Construction. Southwest of the mining pit are three active ranches located off of Charter Oak Ranch Road and Millrose Road. Adjacent to the north of the northernmost ranch is a private small arms shooting range. The three ranches and the shooting range are excluded from the Project Area. South of the ranches, Charter Oak Ranch Road leads to an abandoned historic ranch located in the central portion of the Project Area. To the west of the ranch is a small pond with a well, pump, and pole-mounted electrical transformer that are used by Schmidt Construction. Little Fountain Creek is located directly south of the ranch and runs northwest to southeast across the Project Area. The remainder of the Project Area is mostly vacant land covered with thick grasses and cactus.

Adjacent to the north, west, and south of the Project Area is Fort Carson. To the east is a water treatment plant, a radio transmission tower and an active mine pit operated by Martin Marietta, all contained within land owned by the City of Fountain. The Nixon facility lies to the east and includes the existing rail connection to BNSF and UPRR.

#### 4.1.2 Sites with Recognized Environmental Conditions (RECs)

A REC is defined as the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: (1) due to release to the environment, (2) under conditions indicative of a release to the environment, or (3) under conditions that pose a material threat of a future release to the environment.

The following potential REC was identified:

Near the entrance to the Project Area from Charter Oak Ranch Road is an area of low land that is presently being filled in with top



soil to even out the elevation of the area. Schmidt Construction provided documentation showing the soil has been tested for contaminants. Therefore, the fill material identified at the time of the site visit as "unknown" is not a REC. No Controlled RECs (CREC) or Historical RECs (HREC) were identified.

#### 4.1.4 Floodplains

Several jurisdictional streams were observed during the site visit but no data on OHWM was collected. Little Fountain Creek is an intermittent creek that occurs on the southern end of the project area and drains into Fountain Creek. Fountain Creek is a stream that originates in [Woodland Park](#) in [Teller County](#) and flows through [El Paso County](#) to its confluence with the [Arkansas River](#) near [Pueblo](#) in [Pueblo County, Colorado](#). Rock Creek is an intermittent creek that crosses under Millbrose Road in a culvert and drains into Little Fountain Creek ([Fig. 7](#)). Several other small drainages occur in the project area but are not likely jurisdictional. During the site reconnaissance Little Fountain Creek was observed to be dry with very steep sides and was approximately 20 feet deep and 20 feet wide.

#### 4.1.5 Wetlands

No wetland delineation was conducted in the project area during the September 2018 site visit. However, several areas that are likely wetlands were observed during the site visit including one cattail marsh located along Rock Creek near the old homestead and a dried up freshwater pond west of Millbrose Road ([Fig. 7](#)). National Wetlands Inventory data classifies the freshwater pond as wetland and shows a few small freshwater emergent wetlands in the vicinity (USFWS 2014). See attached for possible wetland locations.

#### 4.1.6 Threatened and Endangered Species

None of the nine USFWS federally-listed species have the potential to occur in the project area and, therefore, are not discussed further. However, the USFWS online IPaC System list is only valid for 90 days; therefore, the accuracy of this species list should be verified after 90 days. The USFWS recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information.

State-listed species that could potentially occur in the project area include bald eagle, burrowing owl, ferruginous hawk, and American peregrine falcon. Birds protected by the MBTA that could potentially occur in the project area include lark bunting, golden eagle, and willow flycatcher.

The potential exists for breeding birds protected by the MBTA to occur within the project area. Several of the state-listed and BCC species listed in Table 1 are ground-nesting migratory birds that may nest in grasslands and shrub vegetation. However, the project site is disturbed because of heavy industrial activity adjacent to the area as well as grazing activity and, therefore, may only provide limited habitat for ground-nesting birds. Ground-nesting migratory birds are generally active April 1 through August 31.

Large cottonwood and Siberian elm trees that could support nesting raptors occur adjacent to Little Fountain Creek and near the old homesteads in the project area. Two inactive raptor nests (possibly red-tailed hawk) are located within the project area ([Fig. 7](#)). The grasslands in the project area provide good habitat for raptors and the presence of prairie dogs provides a source of prey.

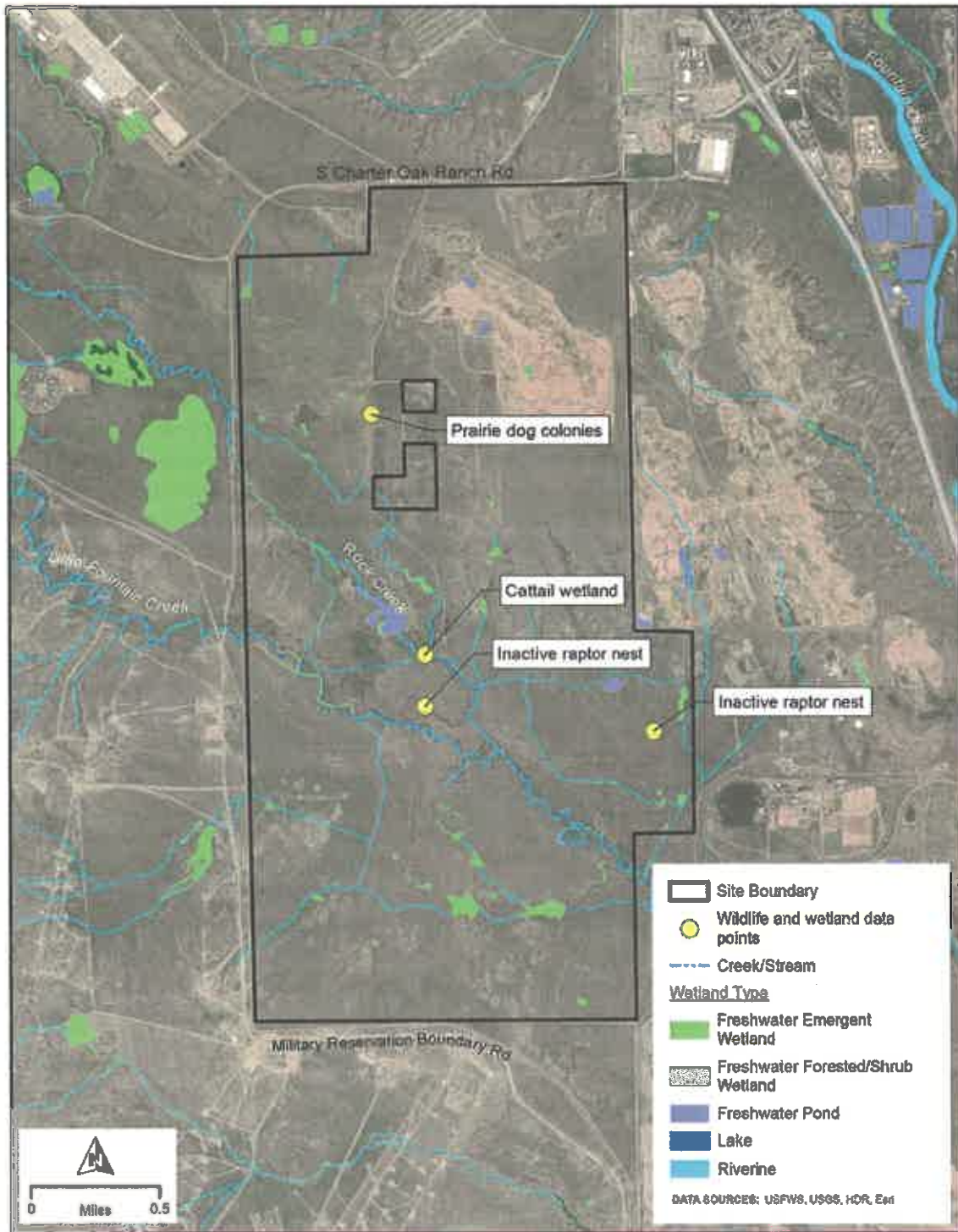


FIGURE 7

#### 4.1.7 Cultural Resources / Register of Historic Places

The project area has not been surveyed for cultural resources. The map and assessor record review has identified two historical building complexes, five historic reservoirs and a network of historic roads in the project area. In addition, at least five historic structures/complexes are no longer standing and likely manifest as archaeological sites. There is also the potential for unmapped historical irrigation features associated with the reservoir network. Based on surrounding surveyed areas there is a moderate potential for prehistoric archaeological sites within the project area.

As there is not currently a federal nexus requiring a cultural resource survey of the project area, such an effort would be considered due diligence on the part of the client. If a federal nexus is identified at a later point HDR recommends the project area be surveyed to OAHF Class III cultural resource survey guidelines for architectural and archaeological resources. Such a survey would also include the determination of project effects on all sites eligible for inclusion in the NRHP, needing additional data before a recommendation of NRHP eligibility can be made, or unevaluated for NRHP eligibility.

#### 4.1.8 Environmental Review-Other

No parks, recreation areas, trails, conservations areas, or cemeteries exist or are currently planned within the study area.

### 4.2 Class One Railroad Accessibility

According to Colorado Geologic Map Data from the USGS, the geology of the Project Area consists of Cretaceous Age Pierre-Shale Middle Unit and Quaternary Age Modern Alluvium (USGS, 1992).

According to the United States Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS) web soil survey, the Project Area contains 14 soil types; however, the majority of the Project Area consists of the following five main soil types (USDA, 2018):

- Heldt Clay Loam, 0-3% slopes (24% of Project Area), found on alluvial fans and stream terraces, well drained, with low runoff.
- Razor-Midway Complex (11.7% of Project Area), found on hills, well drained, with medium runoff.
- Schamber-Razor Complex, 8-50% slopes (13.3% of Project Area), found on breaks, well drained, with medium runoff.
- Fort Loam, 1-5% slopes, cool (20.4% of Project Area), found on interfluvies and fans, well drained with low runoff.
- Manzanola Silt Clay Loam, saline, 0-2% slopes (10.4% of Project Area); found on fan remnants, interfluvies, terraces, and drainage ways; and well drained.

One small pond is located in the central western portion of the Project Area that is used by Schmidt Construction to pump water to the mining pit. Little Fountain Creek cuts through the Project Area from northwest to southeast in the central to southern portion of the Project Area.

## 5 Utilities

The Site is either currently served or can easily be accessed by all major utilities, including electric, broadband communications, natural gas, sanitary sewer, and potable water. Storm sewer systems will be defined by a detailed design of the rail infrastructure in the design development phase of project. Dialogue with CSU suggests a collaborative storm water design would benefit both the developed rail site and the future development of Nixon. A concept overview of the site utilities is shown below (Fig. 8).

### 5.1 Electric

The Subject Property is within the electrical service area of the City of Fountain. Fountain is constructing a utilities headquarters substation and water treatment plant on its land adjacent to the developable property on the east. The substation will be serviced by a 115 KVA transmission line with redundancy from a north and south connection to the local grid.

### 5.2 Communications

In the November 2018 election cycle, the City of Fountain authorized the Fountain Utilities Enterprise Broadband Initiative. High-speed internet will be available to the site.

### 5.3 Natural Gas

Natural gas is available to the site.

### 5.4 Sanitary Sewer

Sanitary sewer service is provided by the Fountain Sanitation District. The District has sufficient capacity to serve the subject property to buildout. Specific design will

proceed during the Design Development phase.

### 5.5 Water

The City of Fountain provides potable water to the site. The mining operation has a raw water service provided by CSU via a pipeline from the Nixon property.

### 5.6 Steam

The coal fired generation plant on the Nixon property uses a cooling tower to recapture the water exiting the turbines. Early discussions with CSU in the project's concept phase indicate that steam could be made available for industrial users of the rail-served property.



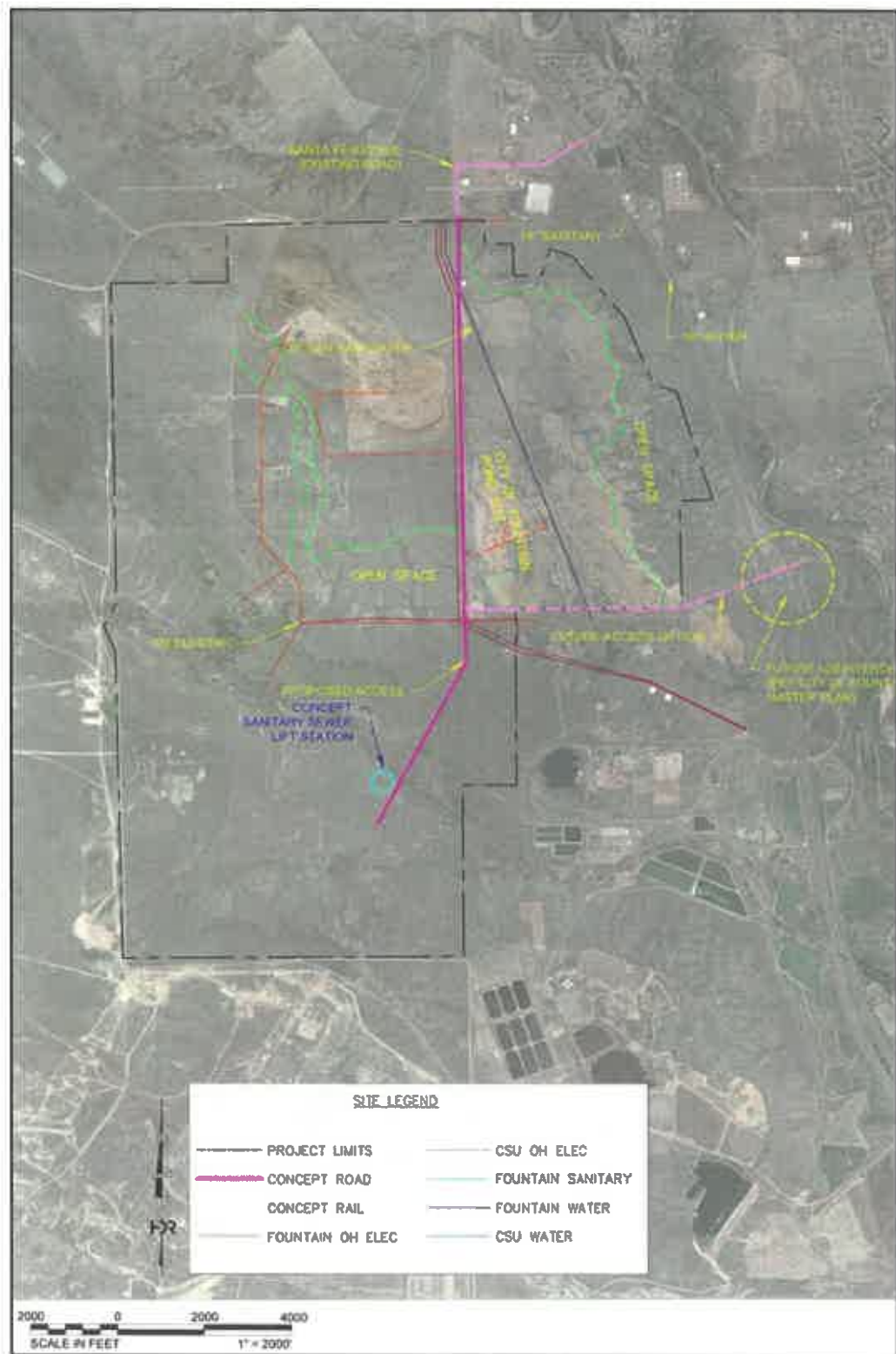


FIGURE 8

## 6 Rail Service

The existing rail spur which services the Nixon property provides access to the mainline railroad tracks of BNSF and UPRR. Extension of this "dual service"<sup>3</sup> to Fort Carson's boundary requires both a modification to the current rail configuration on CSU's Nixon property as well as construction of new rail infrastructure across the Levy property. In a working dialogue with CSU leadership and senior staff, the schematic layout shown in the Proof of Concept Report<sup>4</sup> (Fig. 9) dated September 2015 has evolved into a workable rail configuration.

### 6.1 Access

Rail access to the Nixon Power Plant from the east side of I-25 is through an existing Railroad Underpass structure over the highway. The rail lines east of I-25 are part of the consolidated mainline operated by both UPRR and BNSF, with the southbound track owned by BNSF and, further east, a northbound track owned by UPRR. Both lines access the power plant via two spurs connecting the mainline track to a bridge over the highway. The power plant's teardrop loop track provides unloading capacity for the coal. However, a modern unit train  $\pm 7,000$  ft. in length will definitely block the bridge in the process of unloading.

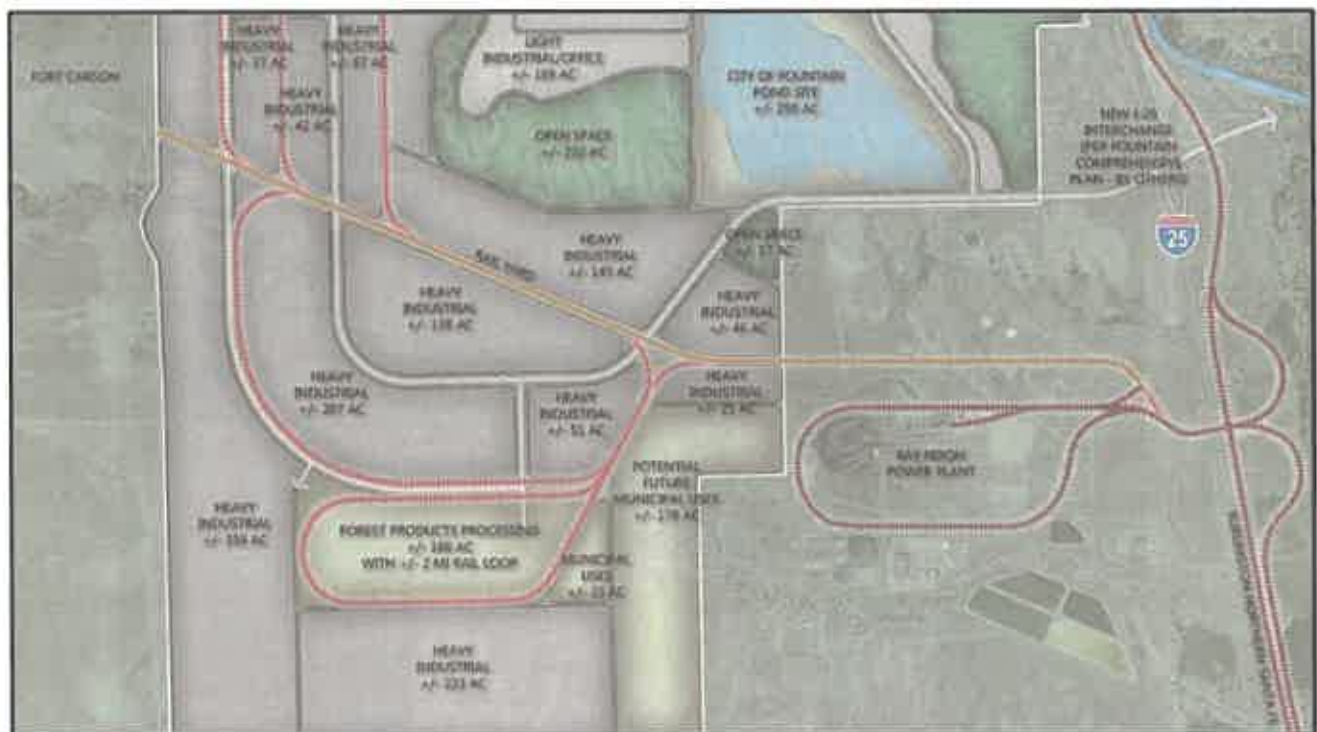


FIGURE 9

<sup>3</sup> Attachment 3: Letter from Ms. Susan Odom, Manager Contracts and Joint Facilities, BNSF Railway to Ms. Kimberly Bailey, Economic Development Manager, City of Fountain dated July 7, 2017.

<sup>4</sup> Attachment 4: Proof of Concept Report: A Rail-Served Industrial Park, Southern El Paso County dated September 18, 2015

The first issue was to address the blockage of the underpass during unloading. Although this conflict only occurs 2 to 3 times per week, it would block access to/from both Fort Carson and the Levy parcel. Enhancing the power plant's tear drop loop into a true loop track design, so all unloading would be maintained on the loop track, was proposed in September 2018. This preliminary design activity, and feedback from CSU, took place over many months and meetings. Concerns over the first proposed configuration are shown below (**Fig. 10**).

HDR met with CSU to discuss options for the new loop track and rail access to the study area. CSU initially requested that all access avoid impacts to the CSU property and run north around CSU and Fountain Valley Authority properties. In development for the true loop track design and CSU feedback, Option 1 minimized impacts to the existing CSU infrastructure and kept the industrial rail park lead track as far east as possible. HDR developed a concept level design that provided earthwork quantities, track quantities and construction limits (Fig. 11). These quantities helped develop a preliminary opinion of probable cost and construction and maintenance challenges. When fully evaluated, this early Option proved costly and too impactful to be considered viable.





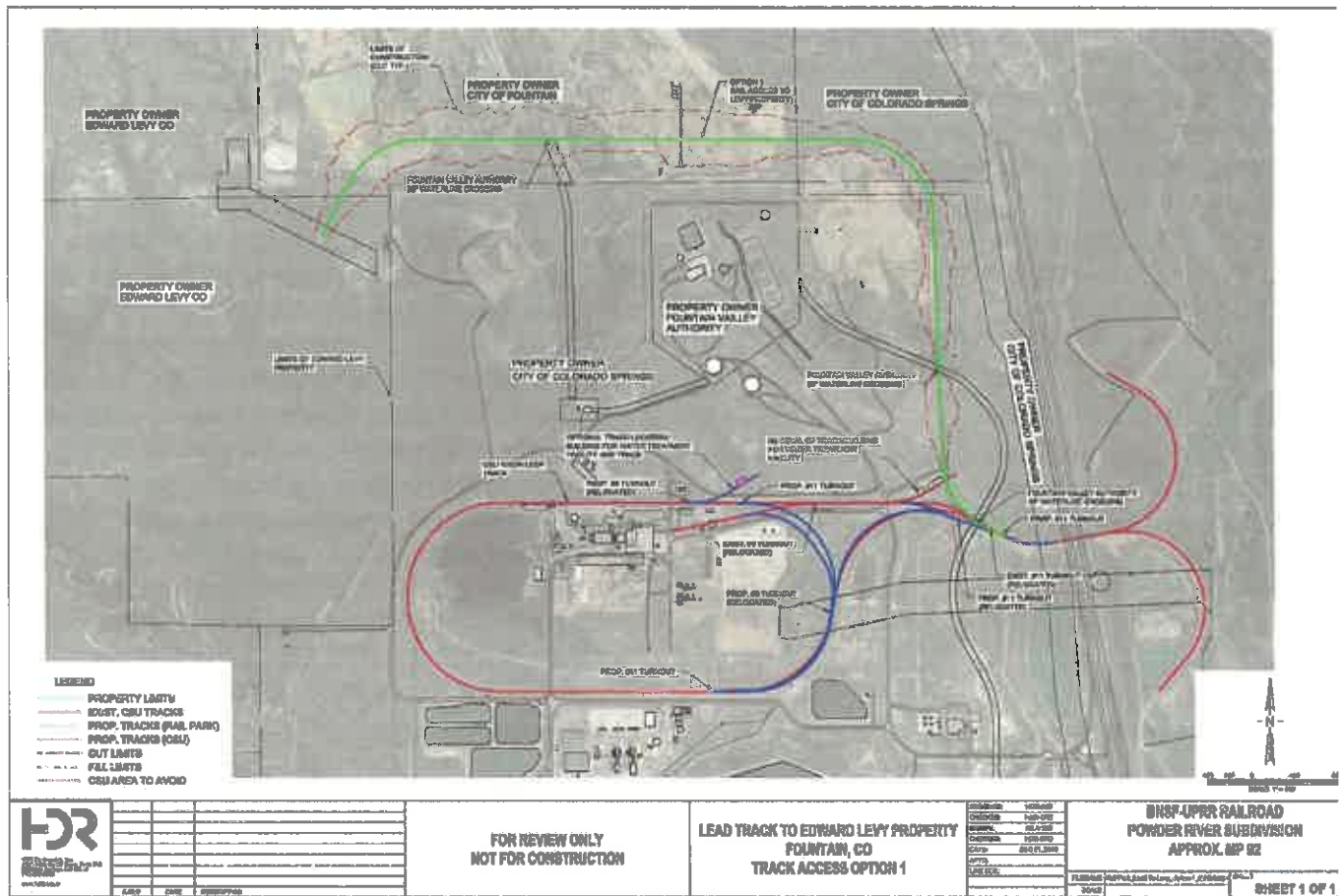


FIGURE 11

### 6.4 Loop Track Access Options 2 and 3

Options 2 and 3 were developed with CSU Operations/Engineering/Security Staff to help alleviate overall operational impacts and costs. Option 2 provides access to the study area north of the loop track; Option 3 provides access south of the loop track. The loop track redesign was integrated into all three Options.

In a meeting on February 20, 2019, CSU advised the project team that Option 2 was preferred by CSU engineering staff<sup>5</sup> (Fig. 12). The project team also agreed to investigate security alternatives including

conducting research on new technology for inspection of rail car contents.

### 6.5 Access to Fort Carson across the Levy Parcel

With an acceptable option for traversing the Nixon property (Fig. 12), the project team considered two alternatives for extending the rail spur to the Fort Carson boundary. Below are Options A and B; the primary distinction between the two is related to the relationship with Little Fountain Creek (Fig. 13). Option A is an extension of Option 2 above, but requires more track and earthwork. Option B stays south of Little Fountain Creek and intersects the Fort Carson boundary well to the south of

<sup>5</sup> Attachment 5: Meeting notes by Nick Peters dated February 20, 2019.



Option A. Fort Carson staff offered feedback that Option A is currently considered preferred as it intersects further north on the Fort's boundary.

## 6.6 Rail Security

Modern technology has evolved to allow screening of rail cars as they pass through a monitoring device (Fig. 14). The project team, in collaboration with CSU engineering and security staff, are continuing investigation of enhanced security measures. These security measures may include an inspection facility on Clear Springs Ranch, a property owned by the City of Colorado Springs that hosts Nixon and other electric generation plants, along with other CSU municipal utility services. A schematic below (Fig. 15) provides an overview as an alternative for future consideration.

## 6.7 Roadway Access

Although much of the focus of this study revolves around rail access, highway access is equally important to the long-term viability of a rail-served site. Most rail-served industries also receive and/or ship items via truck. Additionally, the labor force supporting these industries must be able to travel safely on the supporting road network.

The study area has vehicular access from I-25 (Fig. 17). From I-25 vehicular access will utilize Santa Fe Avenue and Charter Oak Ranch Road. Charter Oak Ranch Road, which borders the northern edge of the Levy parcel, has been designed to accommodate expanded public access to Fort Carson. The current road is a single lane paved road with aggregate shoulders. It is being upgraded to a 4-lane section with capacity for heavy truck traffic. This improvement will be completed in the next 12 months (Fig. 16).



	FOR REVIEW ONLY NOT FOR CONSTRUCTION	LEAD TRACK TO EDWARD LEVY PROPERTY FORTMIL, CO TRACK ACCESS OPTION 2	ONE-FIFTH RAILROAD POWDER RIVER SUBDIVISION APPROX. MP #2
SHEET 1 OF 4			



 <b>HDR</b> HANSEN DESIGN & RESEARCH, INC. 1000 17th Street, Suite 100 Boulder, CO 80502 (303) 440-9400 www.hdrinc.com	PROJECT NO. DRAWING NO. SHEET NO. DATE BY CHECKED APPROVED TITLE	FOR REVIEW ONLY NOT FOR CONSTRUCTION	LEAD TRACK TO EDWARD LEVY PROPERTY FOUNTAIN, CO OPTION TO FORT CARSON	BNSF-UPPER RAILROAD POWDER RIVER SUBDIVISION APPROX. MP 32
	1000 17th Street, Suite 100 Boulder, CO 80502 (303) 440-9400 www.hdrinc.com	1000 17th Street, Suite 100 Boulder, CO 80502 (303) 440-9400 www.hdrinc.com	1000 17th Street, Suite 100 Boulder, CO 80502 (303) 440-9400 www.hdrinc.com	1000 17th Street, Suite 100 Boulder, CO 80502 (303) 440-9400 www.hdrinc.com



FIGURE 14

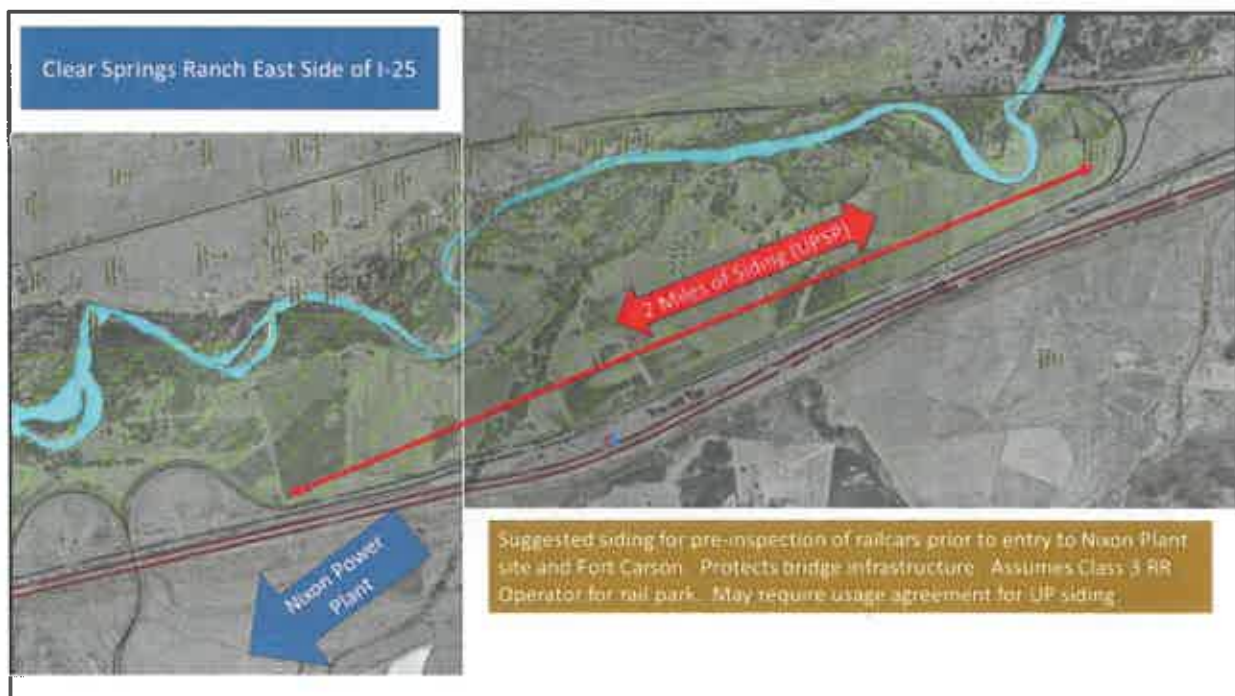


FIGURE 15

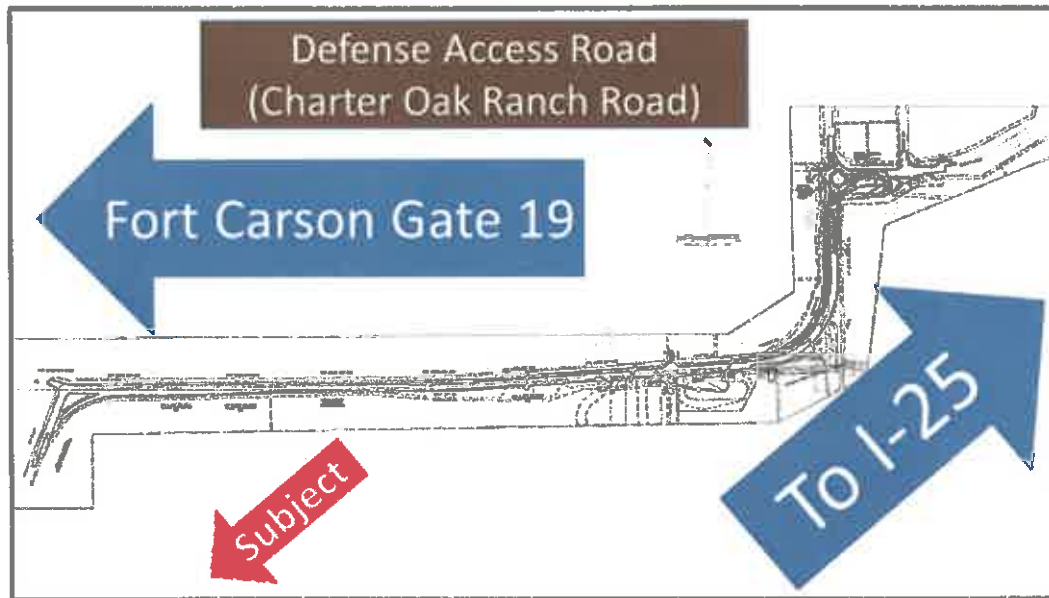


FIGURE 16



FIGURE 17



## 7 Conclusions

Six conclusions can be drawn from this Feasibility Study:

- The existing, dual-service rail spur providing coal deliveries to Colorado Springs Utilities' Ray Nixon Power Plant can be modified into a "full loop" configuration that will allow use of the existing spur for extension of rail service to the developable acres and Fort Carson.
- A to-be-constructed rail spur (Option 2, see Fig. 12 above) has been designated by CSU as the preferred alternative for rail infrastructure traversing the Nixon property to its boundary with the developable land to the west.
- Of two alternatives, Option A (north of Little Fountain Creek) is Fort Carson's preferred alignment across the Levy property. A composite of Option 2 with Option A is included below (Fig. 18).
- The generation of a preferred alignment from existing rail across the developable acreage to Fort Carson is the result of the Public/Private Partnership initiative, managed by an Oversight Committee of the member entities, in collaboration with Colorado Springs Utilities engineering team and senior staff.
- The security requirements for regional water supply delivery and electric power generation, which occur on the Nixon property, are regulated by state and federal agencies. Future design of a fully articulated rail spur must uniformly adhere to current and future standards.
- This Feasibility Study has identified a viable rail configuration to serve the developable acreage and Fort Carson, relying on preliminary site investigations, feedback from Colorado Springs Utilities

and input from City of Fountain Utilities. Design development and entitlement of the preferred alternative are warranted based upon the direct benefits of improved rail-based rapid deployment capability of Fort Carson, as well as the regional economic benefits associated with the industrial rail park development.

## 8 Recommendations

- Distribute this Feasibility Study to the Oversight Committee on behalf of the member entities. At each member's discretion, provide a presentation of the conclusions and recommendations to elected officials.
- Distribute the Workforce Analysis and Fiscal Impact Study produced by the Colorado Springs Chamber and Economic Development Corporation to interested parties.
- Prepare grant applications and seek matching funding to complete the full design of the preferred alternative, including site utilities and land use entitlements.
- Obtain Letters of Support for future grants from local, state and federal elected officials and agencies.
- Inform local and state agencies on the feasibility of the project.
- At the discretion of the Oversight Committee, provide internet access to the Feasibility Study, Workforce Analysis and Fiscal Impact Study to the public.

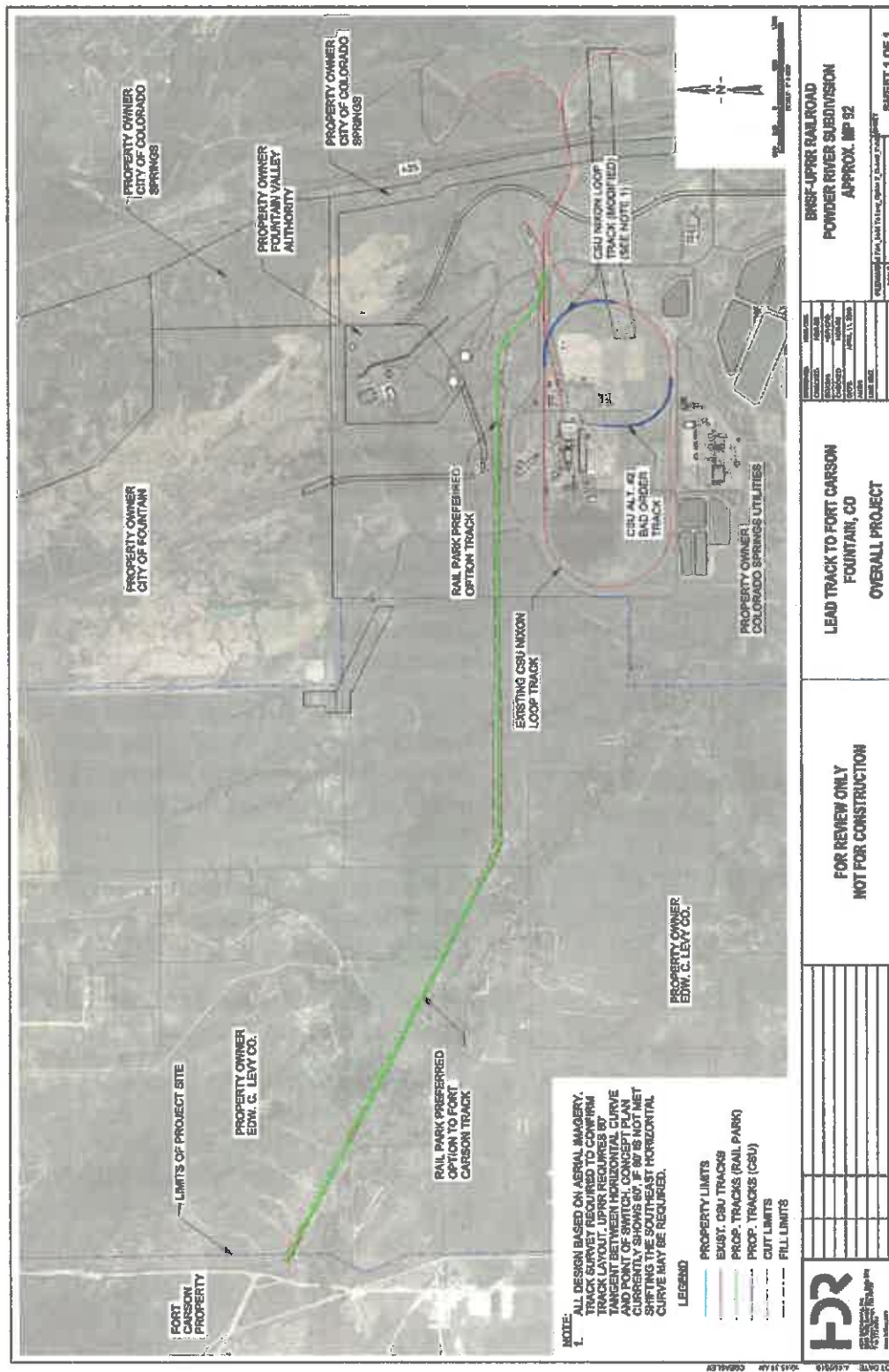


FIGURE 18

# **Attachments**

1. Memorandum of Understanding
2. Letter from Col. Fitch, U.S. Army, Fort Carson Garrison  
Commander
3. Letter from Burlington Northern Santa Fe Railroad
4. Rail Project Proof of Concept Report September, 2015
5. Meeting Notes, Colorado Springs Utilities





**MEMORANDUM OF UNDERSTANDING  
FOR  
RAIL-SERVED ECONOMIC DEVELOPMENT INITIATIVE**

This Memorandum of Understanding for Rail-Served Economic Development Initiative ("MOU") is made this 3~~4~~ day of May, 2018 between the City of Colorado Springs, a home rule city and Colorado municipal corporation ("Colorado Springs"), the City of Fountain, a Colorado municipal corporation ("Fountain"), El Paso County, by and through the Board of County Commissioners of El Paso County, Colorado, a duly organized county and political subdivision of the State of Colorado ("County"), the Colorado Springs Chamber of Commerce and Economic Development Corporation ("EDC") and Edw. C. Levy Co. a Michigan Corporation ("Levy") (all collectively referred to hereinafter as the "Parties").

WHEREAS, in 2015, El Paso County, through its Economic Division engaged and funded a third-party investigation of the viability of an economic initiative for job creation in southern El Paso County that included rail services; and

WHEREAS, Fountain, through its Office of Economic Development, actively participated in that investigation; and

WHEREAS, Levy owns approximately 3,000 acres of land ("the Levy Property") in southern El Paso County upon which a wholly-owned subsidiary of Levy, known as Schmidt Construction, operates an aggregate quarry being evaluated for the economic initiative; and

WHEREAS, adjacent to the Levy Property, Colorado Springs Utilities ("Utilities"), an enterprise of the City of Colorado Springs, a Colorado home rule city and municipal corporation, owns the Clear Spring Ranch property on which Utilities operates the Ray Nixon Power Plant ("Nixon Plant") and other utility facilities; and

WHEREAS, Utilities owns two railroad spurs that connect to the Class 1 railroad lines operated by Union Pacific ("UP") and Burlington Northern Santa Fe ("BNSF"), which serve operations at the Nixon Plant; and

WHEREAS, the initial economic initiative concept plan proposes private-use of Utilities' rail spurs and the construction of additional private rail lines crossing through Utilities-owned Clear Spring Ranch property, which may require Utilities Board, and potentially City Council, approval; and

WHEREAS, Levy has expressed a willingness to further investigate the viability of rail service extended from the Class 1 UP and BNSF main lines through Clear Spring Ranch or through other properties into the Levy Property for the purpose of economic development in the County; and

WHEREAS, EDC is a provider of services to many of the Parties, with its *Mission: "To enhance the quality of our community by serving the business development needs of our region so that economic growth exceeds population growth"* and has agreed to provide in-kind services; and,

WHEREAS, the third-party investigation generated a Proof of Concept Report (the "Concept Report") dated September 15, 2015, incorporated by reference, concluding that a rail-served industrial development on the Levy Property is potentially viable, said Report having been favorably reviewed by the Parties; and

WHEREAS, the Levy Property is adjacent to and abuts U.S. Army Fort Carson, Colorado ("Fort Carson"); and

WHEREAS, the Parties at their own initiative and in cooperation and collaboration with Fort Carson have observed that a continuation of the prospective extended rail line in and through the Levy Property could provide a second rail access to Fort Carson, improving mission reliability and redundancy for Fort Carson; and

WHEREAS, reconnaissance level dialogue with the United States Economic Development Administration ("USEDA") regional office in Denver, Colorado indicates technical assistance for such a rail-based economic development initiative may be available in support of Fort Carson and the local economy, which support may require fifty per cent (50%) or greater matching funds for any Technical Assistance grant; and

WHEREAS, the representatives of the governmental Parties met on February 3, 2016 to discuss the next phase of the economic initiative, concluded that a Memorandum of Understanding was appropriate to outline the roles and responsibilities of the Parties, including Levy, and in the interim have continued to negotiate the terms of the MOU and finalize the same.

NOW THEREFORE, in consideration of the foregoing premises, the Parties set out their mutual intent to proceed regarding the next phase of the economic development initiative as follows:

**A. GENERAL PROVISIONS**

1. **Purposes.** The Parties seek to create opportunity for manufacturing jobs, which are typically high-wage jobs which generate 4-5 additional jobs in the community for each manufacturing job, and to simultaneously create the opportunity for a second railroad access to Fort Carson, which will improve readiness and resiliency at Fort Carson, improving the likelihood that Fort Carson will remain active through any future Base Realignment and Closure process, by pursuing the following tasks:

- (a) Establish a cooperative relationship with Levy for detailed investigation of the Levy Property, including by way of example and not limitation, defining access to the Levy Property for third-party due diligence;
- (b) Negotiate an allocation of the costs of continuing the investigation which is fair and equitable, considering the interests of each of the Parties;

- (c) Pursue and seek to obtain, at the appropriate time, grant funding, including but not limited to the aforementioned grant from the USEDPA; however, Colorado Springs will not be a Grantee of any such grant;
- (d) Evaluate and quantify, to the extent possible, the anticipated fiscal impacts and distribution of benefits to each of the Parties and to Fort Carson;
- (e) Identify or outline responsibilities for oversight and management of any third-party contractors by designated representatives of the Parties; and
- (f) Interface with and provide regular updates to appropriate personnel at Fort Carson.

## 2. **Definitions.**

- (a) "Economic Development Coordinator" means an employee of any of the Parties whose primary responsibility includes economic development activity.
- (b) "Feasibility Study" includes detailed description of all activities, assumptions, analysis, considerations and conclusions reached in the course of the third-party investigation of the viability of an economic initiative for job creation in southern El Paso County that includes rail services, and summarized in a report and/or briefings to the Parties.
- (c) "Matching Funds" means the aggregate of funds that may be committed by all of the Parties.
- (d) "Oversight Committee" is an ad hoc group of Economic Development Coordinators or other designees from each of the Parties, said Committee charged with contracting for or hiring and overseeing the Administrator and Fiscal Agent, Project Managers or third-party vendors to advance the Purposes of the MOU while keeping the respective Parties informed, but without authority to contractually bind individual Parties in any manner to fiscal, regulatory or other ongoing obligations.
- (e) "Administrator and Fiscal Agent" is a person or entity reporting to the Oversight Committee who provides detailed tracking, review, recommendation for approval, payment and reporting of the expenses for advancement of the Purposes of the MOU, timely reports as requested to any of the Parties and the Oversight Committee, participates in the deliberations and decisions of the Oversight Committee and provides professional services, which may be provided in-kind.
- (f) "Project Manager" is any individual or group of individuals engaged by the Parties to advance the objectives of the MOU, meet and report regularly to the Oversight Committee and/or the Administrator and Fiscal Agent and prepare a final report and presentation.
- (g) "Third-Party Vendor" is any individual or group of individuals engaged by the Parties to further the investigation and provide reports, updates and presentations.

- (h) "Interested Parties" are those entities who are not signatories to the MOU but have been invited by a majority of the Parties to participate in the Oversight Committee.
- (i) "Governmental Parties" are the three governmental entities participating as Parties in this MOU including El Paso County, Colorado Springs, and Fountain.

**3. Roles and Responsibilities of the Parties.** To accomplish the purposes of this MOU, the Parties agree to certain specific responsibilities:

- (a) County will provide a representative to the Oversight Committee. County was the lead-agency for the development of the Concept Report and will coordinate with the EDC and other appropriate entities for application for grants and engagement of services to accomplish the purposes of this MOU.
- (b) Levy may provide a designated representative to participate with the Oversight Committee in the management of process. Subject to mutually agreed upon arrangements including timing and scope of the investigations, Levy will allow timely access to the Levy Property in furtherance of the investigation.
- (c) Utilities may provide a representative to the Oversight Committee.
- (d) Fountain will provide a representative to the Oversight Committee.
- (e) Colorado Springs may provide a representative to the Oversight Committee.
- (f) EDC may provide a representative to the Oversight Committee. EDC will provide those services and activities described in Paragraph 13 below.
- (g) The County, Colorado Springs, Fountain, EDC, and Levy, as the Parties, will oversee the activities of the project through the Oversight Committee. Utilities is hereby, and others may be, designated as Interested Parties ("Interested Parties") who are welcome to participate in the process, but are neither signatories nor Parties to this MOU.

**4. Fundamental Precepts Regarding Security and Operations at Ray Nixon Power Plant.** The Proof of Concept Report<sup>1</sup>, and its recommendation that further investigation is warranted, was based entirely on the precept that no future activity associated with an extension of a rail line from the existing switches with the Class 1 carriers would in any way impinge on the security or operational parameters of Ray Nixon Power Plant. While Utilities has not yet approved, and in its sole discretion reserves the right to delay, condition or deny approval of, use of Utilities'-controlled or owned land, infrastructure, spurs, and configuration of the private rail through Utilities property, Utilities is providing a Letter of Support (Attachment B) to advance further diligence. These precepts are hereby acknowledged by all Parties.

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<sup>1</sup> <http://bit.ly/2aGpAo5>



5. **Limitations on Jurisdiction.** Nothing herein shall be construed so as to in any manner expand upon or limit the lawful jurisdiction and authority of the Governmental Parties.

6. **Reservation of Rights.** The Parties intend for the investigation to provide the basis and strategies for furtherance of the economic development initiative and improved readiness for Fort Carson through extension of a rail line to the Fort Carson boundary; however, by joining into this MOU, the Parties reserve their right to independently evaluate the viability of the initiative at the present time or in the future. As to Colorado Springs, other than the specific financial commitment in Paragraph 14 and Attachment A, nothing in this MOU is intended, nor shall it be construed to create, any enforceable rights against Colorado Springs in favor of any Party.

7. **Withdrawal.** A Party may withdraw from this MOU upon providing thirty (30) days advance written notice; however, funds pledged in this MOU in Attachment A (including funds pledged to provide matching funds for grants) by said withdrawing Party will be paid in full by said Party prior to withdrawal, or in the case of in-kind services pledged (it is acknowledged that Colorado Springs is not making any pledge of in-kind services), the balance of the amount pledged but not yet served will be paid in cash in lieu of those services.

8. **Termination.** This MOU shall remain in effect until such time as terminated for any of the following reasons:

- a) The work and purpose of the MOU has been completed.
- b) Funding is not in place to complete the purpose of the MOU.
- c) The Parties have not received timely notice from each other that funding will be available after the applicable current fiscal year pursuant to Paragraph 16.
- d) There is only one Party to this MOU.
- e) The Parties mutually agree, in writing, to terminate the MOU.

9. **Amendment.** This MOU may be amended or supplemented by written mutual agreement, signed by all of the Parties hereto.

#### **B. OVERSIGHT COMMITTEE & EDC**

10. **Formation of the Oversight Committee.** The Parties hereby establish the Oversight Committee. The Committee is open to attendance by individuals from all Parties and Interested Parties, but will include only one (1) member from each of the Parties, each Party to appoint their respective Member. In the case of Colorado Springs, the member will be appointed by the Mayor. Only the Party Member, and not the Interested Party, will have the authority to vote on issues before the Oversight Committee or make decisions within the responsibility of the Oversight Committee on behalf of the Party. Oversight Committee Members serve without any compensation, and each Party or Interested Party will bear the incidental costs of attendance and participation by its respective representative Member.

11. **Responsibilities of the Oversight Committee.** The Oversight Committee is responsible for the following:

- (a) The Oversight Committee, on behalf of the Parties, will oversee the advancement and completion of the tasks identified in the Purposes (Paragraph 1) of this MOU.

The Oversight Committee will contract for or hire and oversee both the Project Manager and/or third-party vendors, who, by contract, will complete the tasks identified in this MOU, and will keep the Parties informed of progress toward completion. The Oversight Committee will implement the budget included as Attachment A in furtherance of the completion of the tasks identified in this MOU.

- (b) The Oversight Committee will oversee the services EDC provides as Administrator and Fiscal Agent.
- (c) The Oversight Committee will determine the methodology whereby the Parties transfer funds to EDC for payment for services rendered by the Project Manager and/or third-party vendors; and
- (d) The Oversight Committee, upon providing prior written notice, may terminate the services of EDC as Administrator and Fiscal Agent. Upon such termination, should EDC elect to withdraw as a Party, it may do so without penalty, in which case, the continued funding provisions of Paragraph 7 will not apply to EDC.

12. **Meetings of the Oversight Committee.** The Committee will meet regularly and document its activities in the form of meeting notes or minutes.

13. **EDC Services as Administrator and Fiscal Agent.** EDC agrees that it will provide the services of the Administrator and Fiscal Agent to the Oversight Committee as more specifically defined in Paragraph 2(e). As such, EDC agrees that it will manage completion of the tasks identified in the Purposes of this MOU for the Oversight Committee, to include financial management related to completion of those tasks. EDC agrees that it will provide progress reports to the Oversight Committee, including accounting for funds and/or in-kind professional services pledged or provided by the Parties, accounting for funds expended, and in-kind services completed, in furtherance of completion of the tasks identified in this MOU. EDC may also provide specific services, which by way of example and not limitation, may include Work Force analysis, economic benefits analysis, grant application drafting and grant administration. EDC acknowledges and agrees, that although it is a Party and has a Member of the Oversight Committee, its services as Administrator and Fiscal Agent may be terminated by the Oversight Committee as set forth in paragraph 11 (d).

### **C. FUNDING**

14. **Designation and Appropriation of Cost Allocation.** Levy and EDC agree to provide funding in the amounts specified in Attachment A to this MOU in 2018. The governmental Parties agree to provide funding in the amounts specified in Attachment A to this MOU, subject to the limitations of this Paragraph and Paragraphs 15 and 16. In the event any Governmental Party does not have funds appropriated and available for expenditure during 2018 in the amount or amounts set forth in Attachment A for that Party, to the extent required by law, such Party will make reasonable efforts to obtain funds to meet that commitment. In the case of Colorado Springs, if funds are not available in the Economic Development Division for expenditure, the Mayor will seek amendment of the City's budget and appropriation of such

amounts from the City Council of Colorado Springs, with such appropriation being within the discretion of the City Council. The Parties acknowledge and agree that all obligations by the governmental Parties to contribute the funds set forth in Attachment A to the MOU are expressly made subject to and contingent upon availability of funds.

15. **Commitment Limitation.** The Parties understand and agree that, in addition to the limitations of Paragraph 14 of the MOU, all funding commitments set forth in Attachment A, and as may be made in the future, are only for completion of the purposes set forth in this MOU. Any additional funding that may be required for subsequent phases of work beyond that called for in this MOU or to complete the tasks identified in Section A, Paragraph 1(a)-(f) Purposes of this MOU, must be approved by the governing bodies or appropriate officials of the respective Parties. Colorado Springs and County contributions are expressly limited to the commitment made for 2018 only.

16. **Funding Limitation.** The funding and financial obligations of each Party, including payment of the funding commitments contemplated in Attachment A, are limited and expressly contingent on appropriation of said funding revenues and approval of the provision of in-kind services in a timely manner by each Party. The ability of the Oversight Committee to complete the Purposes and work set forth in this MOU is dependent on actual receipt of the funding and in-kind services committed to in Attachment A. Financial obligations of the Parties after their respective current fiscal year are contingent on budgeting of, and appropriation for, funds for those obligations by each of the said entities. Should the performance of this MOU be extended and continue past the current fiscal years of the Parties, each of those Parties shall notify the Oversight Committee in writing no later than October 31 of each applicable year that sufficient funds are available and will be appropriated for continuance of their respective performances under this MOU at the levels set forth in Attachment A. Unless the Oversight Committee is notified in writing of availability and intended appropriation of funds and any applicable in-kind services from all of the Parties by October 31 of each applicable year, the Parties may terminate this MOU.

17. **Flexibility in Carrying Out the Purposes of the MOU, Good Faith.** The Parties agree and acknowledge that economic development initiatives, particularly those generated independently by a community to support military installations like Fort Carson, are subject to changing circumstances which may be beyond the control, jurisdiction or authority of local government entities. The Parties pledge to cooperate with each other in good faith to carry out the Purposes of this MOU, but also acknowledge that flexibility in methodology and funding may be required.

#### **D. ADMINISTRATIVE PROVISIONS**

18. **Notice.** Except as may otherwise be provided in this MOU, all notices required or permitted to be given under this MOU shall be in writing and shall be valid and sufficient if dispatched by: (a) registered or certified mail, postage prepaid, in any post office in the United States, (b) hand delivery, (c) overnight courier, (d) facsimile transmission upon confirmation of receipt, or (e) e-mail with proof of receipt, addressed to the Parties at the addresses of each Party which is set forth below. The Parties agree that written notices regarding general operational issues may be accomplished through e-mail.

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**City of Fountain**  
Kimberly Bailey  
Economic Development/Urban Renewal  
116 S Main Street  
Fountain, CO 80817  
719-322-2056  
[kbailey@fountaincolorado.org](mailto:kbailey@fountaincolorado.org)

**El Paso County**  
DeAnne McCann  
Economic Development Executive Director  
9 East Vermijo, Suite 112  
Colorado Springs, CO 80903  
719-520-6481  
[deannemccann@elpasoco.com](mailto:deannemccann@elpasoco.com)

**City of Colorado Springs**  
Robert C. Cope  
Economic Development Manager  
30 S Nevada Ave, Suite 604  
Colorado Springs, CO 80903  
719-385-5561  
[bcope@springsgov.com](mailto:bcope@springsgov.com)

**Colorado Springs Utilities**  
Elena E. Nunez  
Business Development Manager  
121 S. Tejon Street  
Colorado Springs, CO 80903  
719-668-3840  
[enunez@csu.org](mailto:enunez@csu.org)

**Colorado Springs Chamber & EDC**  
Tammy Fields  
Senior Vice President  
102 S Tejon Street, Suite 430  
Colorado Springs, CO 80903  
719-884-2836  
[TFields@cscedc.com](mailto:TFields@cscedc.com)

**Mulliken Weiner Berg & Jolivet, P.C.**  
Steven K. Mulliken, Esq.  
102 South Tejon Street, Suite 900  
Colorado Springs, CO 80903  
719-635-8750, ext. 101  
[Mulliken@mullikenlaw.com](mailto:Mulliken@mullikenlaw.com)

19. **Binding.** This MOU, once approved by the required governmental officials of the respective Governmental Parties, is a contract binding upon the Parties hereto and upon their



respective legal representatives, successors, and assigns.

20. **Other Limitations.** Nothing in this MOU shall limit or constrain the regulatory or approval requirements for land use development, zoning, building permits, or other regulatory requirements of any governmental Party with applicable regulatory authority.

21. **Severability.** If any provision of this MOU or the application thereof to any Party is held invalid by a court of competent jurisdiction, such invalidity shall not affect any other provisions of this MOU that can be given effect without the invalid provision or application.

22. **Counterparts.** This MOU may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same MOU.

23. **No Third Party Beneficiaries.** It is expressly understood and agreed that benefits of this MOU, and any rights of action relating thereto, shall be strictly reserved to the Parties, and nothing contained in this MOU shall give or allow any claims or right of action by any other person or entity. It is the express intention of the Parties that any person or entity, other than the Parties to this MOU, which receives services or benefits under this MOU, shall be deemed to be incidental beneficiaries only.

24. **Attorney's Fees.** In the event a dispute arising from this MOU results in litigation or an administrative proceeding, each Party will be responsible for payment of its own attorney's fees and costs incurred in connection with the litigation or proceeding.

25. **Applicable Law, Jurisdiction, and Venue.** This MOU is subject to and shall be interpreted under the laws of the State of Colorado and applicable federal law. In the event of litigation, jurisdiction and venue shall be exclusively in the District Court for El Paso County, Colorado.

26. **Governmental Party Limitations and Approvals.** The Parties understand and agree to the following limitations of the Governmental Parties (El Paso County, Colorado Springs, and Fountain):

(a) This MOU shall not become binding as to El Paso County, Colorado Springs, and Fountain unless and until it is approved by the required governmental officials of the respective Governmental Parties in open and public meetings or other processes as may be required by Colorado Springs or Fountain. In the event that El Paso County or Colorado Springs or Fountain do not approve this MOU, then this MOU shall be null, void, and without any force or effect as to the non-approving Governmental Party or Parties.

(b) The Parties understand and agree that by executing this MOU, there is no assurance that the Board of County Commissioners the City Councils and/or Mayors of Colorado Springs and Fountain, respectively, will execute the same; and there are no representations or promises or assurances made or implied herein by the County, Colorado Springs, or Fountain that by executing this MOU these governmental Parties will approve any further funding and/or other

zoning and/or 1041 Permit(s) and/or preliminary plans and/or final plats and/or site development plans and/or building permits or certificates of occupancy for the Property as may be contemplated in the project outlined in the Report.

**27. Further Conditions.** Should the project as outlined in the Report proceed past the feasibility stage, then the Parties acknowledge and agree that said project will be subject to, and shall comply with, all applicable federal and state rules, regulations, and permits, applicable local rules, regulations, and permits including local land use controls, and specifically will be subject to all applicable land use regulations of governmental Parties with jurisdiction, including, but not limited to, applicable comprehensive or master plans, zoning regulations, 1041 Regulations, subdivision regulations, building codes, the El Paso County Land Development Code, the El Paso County Engineering Criteria Manual, and payment of any applicable fees.

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Attorney for El Paso County

  
\_\_\_\_\_  
Attorney for City of Colorado Springs

\_\_\_\_\_  
Attorney for City of Fountain

\_\_\_\_\_  
Attorney for Colorado Springs Economic  
Development Corporation

  
\_\_\_\_\_  
Attorney for Edw. C. Levy Co.

[Signature Page Follows]

[Memorandum of Understanding for Rail-Served Economic Development Initiative]

IN WITNESS THEREOF, the parties have signed this MOU on the day and year indicated below.

**EL PASO COUNTY**

**ATTEST:**

**BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO**

By: \_\_\_\_\_  
Darryl Glenn, President

\_\_\_\_\_  
County Clerk and Recorder

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF FOUNTAIN**

**ATTEST:**

By: *Scott Johnson*  
City Manager

*Silvia K. Hoffman*  
Secretary

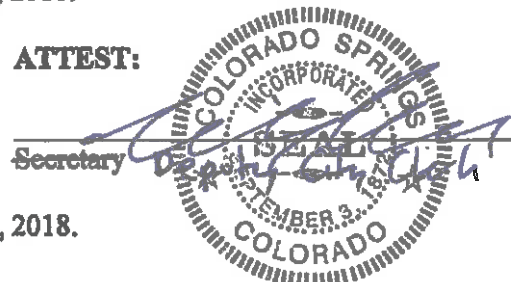


Dated this 4 day of April, 2018.

**CITY OF COLORADO SPRINGS**

**ATTEST:**

By: *John Suthers*  
Mayor



Dated this 16th day of April, 2018.

**EDW. C. LEVY CO.**

**ATTEST:**

By: *L. Steven Weiner*  
L. Steven Weiner, Vice President, Real Estate

*Kimberly A. Bailey*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**COLORADO SPRINGS ECONOMIC DEVELOPMENT  
CORPORATION**

**ATTEST:**

By: \_\_\_\_\_

\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

IN WITNESS THEREOF, the parties have signed this MOU on the day and year indicated below.

**EL PASO COUNTY**

**BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO**

By:   
Darryl Glenn, President

Dated this 15th day of May, 2018.

**CITY OF FOUNTAIN**

By: \_\_\_\_\_  
City Manager

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF COLORADO SPRINGS**

By:   
Mayor

Dated this 16th day of April, 2018.

**EDW. C. LEVY CO.**

By:   
L. Steven Weiner, Vice President, Real Estate


Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.


**COLORADO SPRINGS ECONOMIC DEVELOPMENT  
CORPORATION**

By: 

Dated this 12 day of APRIL, 2018.

ATTEST:


  
County Clerk and Recorder 10-185A




ATTEST:

Secretary

ATTEST:

  
Secretary



ATTEST:



ATTEST:





# ATTACHMENT A BUDGET

<i><b>SOURCES OF FUNDING</b></i>		<i><b>%</b></i>
City of Colorado Springs	\$5,000	4%
El Paso County	\$48,000	38%
Edward C. Levy Company	\$6,000	5%
City of Fountain <sup>1</sup>	\$24,000	19%
C.S. Economic Development Corp. <sup>2</sup>	\$42,000	34%
<b>Total:</b>	<b>\$125,000</b>	<b>100%</b>
<i><b>USES OF FUNDING</b></i>		
Project Management & Reporting <sup>3</sup>	\$42,000	
Feasibility Study & Certification <sup>4</sup>	\$28,000	
Civil Engineering	\$8,000	
Contingency	\$5,000	4%
Administration and Fiscal Agent; Economic & Work Force Analysis	\$42,000	
<b>Total:</b>	<b>\$125,000</b>	
<b>Note 1. Funds available from sources in FY17 and FY18.</b>		
<b>Note 2. In-kind services provided by staff and consultants on retainer to CSEDG.</b>		
<b>Note 3. Estimated at \$3,500/month for 12 months.</b>		
<b>Note 4. Certification to BNSF specifications as a RR yard BNSF will serve.</b>		



**ATTACHMENT B LETTER OF SUPPORT  
COLORADO SPRINGS UTILITIES**



October 23, 2017

Darryl Glenn, President  
El Paso County Commissioner District #1  
200 South Cascade Avenue, Suite 100  
Colorado Springs, CO 80903

**RE: Colorado Springs Utilities Letter of Conditional Support for the Proposed Rail-Served Industrial Park**

Dear President Glenn:

Please accept this letter of conditional support regarding the proposed Rail-Served Industrial Park (Industrial Park) being considered for the land adjacent to the Colorado Springs Utilities (CSU) Clear Spring Ranch/Ray Nixon Power Plant and Ft. Carson properties, known as the Christian Ranch. The Christian Ranch area is primarily owned by Edward C. Levy Co. d/b/a Schmidt Construction Inc.

The Industrial Park project is being led by Cameron Butcher with participation from El Paso County, City of Colorado Springs, City of Fountain, and Edward C. Levy, with additional support from the Colorado Springs Chamber and Economic Development Corporation. The Industrial Park has requested permission to use CSU rail spurs currently serving the Nixon Power Plant on the Clear Spring Ranch property (to include Fountain Valley Authority (FVA) facilities and operations), to connect to the Union Pacific Railroad (UP) and BNSF main lines. CSU supports continued due diligence for the Industrial Park project, subject to the conditions described below.

**Conditions:**

1. No subsidy will be provided by CSU or its ratepayers in furtherance of the Industrial Park.
2. Future Industrial Park rail activity shall not impinge on the operational or security needs of CSU's Clear Spring Ranch property, including the Ray Nixon Power Plant. CSU has identified a number of utility infrastructure and operational conflicts with the proposed configuration and CSU and FVA facilities and operations included in the Industrial Park project's Proof of Concept Report that must be addressed.
3. Industrial Park activity and use of CSU rail spurs will not impair or increase the cost of future operations, use, expansion, and development of Clear Spring Ranch, and will not increase security risks to CSU in light of increasingly rigorous regulatory requirements.
4. The Industrial Park shall consider alternative locations, in the next feasibility phase, for rail spur connections to the railway main lines that eliminate or limit potential impacts to operations on Clear Spring Ranch.
5. Any use of Clear Spring Ranch or CSU rail spurs will be subject to negotiated agreements that ensure the protection of CSU and FVA ratepayer funds, property, and operations. Such agreements will require Industrial Park responsibility for shared maintenance costs and financial assurances for any financial commitments.



6. Use of CSU rail spurs will be subject to successful modification of CSU industry track agreements with BNSF Railway and Union Pacific.
7. Any use of or transfer of interest in Clear Spring Ranch for the Industrial Park will be subject to all requirements of the City Charter and Code of Ordinances for the City of Colorado Springs.
8. CSU must have a clear understanding of the operational and governance structure of the Industrial Park.

With the impending closure of the Martin Drake Power Plant, protecting current and future operations and expansions at the Clear Spring Ranch site is paramount, as this site will become CSU's single location for base-load electric generation. Despite the above concerns, CSU appreciates the complexity involved in a project of this nature, and supports continued efforts to identify a mutually-acceptable solution. To that end, please accept CSU's concurrence to advance due diligence for this project in accord with the above-mentioned conditions.

Respectfully,



Jerry Forte, P.E.  
Chief Executive Officer





**DEPARTMENT OF THE ARMY**  
**US ARMY INSTALLATION MANAGEMENT COMMAND**  
**HEADQUARTERS, UNITED STATES ARMY GARRISON, FORT CARSON**  
1626 Ellis Street, Suite 200  
FORT CARSON, CO 80913-4143

APR 27 2018

APRIL 4, 2018

**Subject: Fort Carson's Need for a 2nd Rail Connection**

City of Fountain  
ATTN: Mr. Scott Trainor, City Manager  
116 S Main Street  
Fountain, CO 80817

Dear Mr. Trainor:

For over 20-years Fort Carson has expressed a need for secondary rail accessibility, to facilitate the deployment of military equipment in support of unit deployments around the world. A second rail connection, separate from the current rail that exists on the north end of Fort Carson, would help to reduce the risk associated with having only one rail connection off post. As we have seen in the recent past, the loss of the current rail connection for any reason, eliminates our ability to rail military equipment until the existing rail infrastructure is fixed. A secondary rail connection could be used if the primary became unusable for any reason.

Fort Carson has raised the concern of only one rail connection at present to the Army leadership. We are very interested in any community project that could offer an opportunity for Fort Carson to gain a secondary rail connection. I understand that the City of Fountain and El Paso County are investigating the possibility of an industrial rail park along our shared boundary. We will be interested to see how this conceptual project develops.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald P. Fitch, Jr.", is positioned above the typed name.

Ronald P. Fitch, Jr.  
Colonel, U.S. Army  
Garrison Commander

cc:

Kimberly Bailey (Economic Development and Urban Renewal, City of Fountain)  
DeAnne McCann (Economic Development and Budget, El Paso County)  
Tammy Fields (VP Economic Development, Colorado Springs Chamber & EDC)





**Susan Odom**  
Manager Contracts and Joint Facilities

*BNSF Contracts and Joint Facilities*

**BNSF Railway Company**

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Fort Worth, Texas 76131

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July 7, 2017

Ms. Kimberly A. Bailey  
Economic Development Manager  
City of Fountain Economic Development Commission  
116 South Main Street  
Fountain, CO 80916

Via email: [kbailey@fountaincolorado.org](mailto:kbailey@fountaincolorado.org)

Dear Ms. Bailey:

BNSF is pleased to hear about the City of Fountain's plans for an industrial park within the Enterprise Zone located around Ray D. Nixon Power Plant (Nixon) and Fort Carson. This letter is written to provide you with information regarding railroad operations and access to industries that may be useful as you move forward with your plans.

BNSF Railway Company (BNSF) and Union Pacific Railroad (UP) jointly operate the route between Denver and Pueblo under the terms of various joint facility agreements. Most of the route consists of two main lines – one owned by BNSF, the other by UP. The railroads operate directionally through these double track corridors, utilizing the westerly of the two tracks for southbound trains and the easterly line for northbound trains. Operations are bi-directional between Crews/Kelker and Palmer Lake.

The specific agreement that addresses service to Nixon stipulates that BNSF may directly serve customers whose tracks connect to the BNSF-owned line and UP may directly serve customers whose tracks connect to the UP-owned line. Unless a waiver or some other special permission is granted, neither railroad may directly serve customers from the other railroad's main line trackage through either of the double tracked portions of the route.

As you may know, each railroad has a direct connection to the Nixon Spur from its respective main line – BNSF on the southbound route at approximately 0.40-mile north of the I-25/rail overpass used to serve Nixon and UP on the northbound route at approximately three miles south of the I-25/rail overpass. Consequently, from a joint facility perspective, both railroads have the right to enter into agreements with the owner of the spur in order to allow them to directly serve customers located within the planned industrial park.

Further to the north, the railroads merge to a single track operation, beginning at approximately 0.30-mile south of Duckwood Road in Fountain and ending in Palmer Lake, CO. Within this corridor, both railroads have commercial access to all new customers that choose to locate along the single track facilities. This would include the trackage serving Fort Carson near South Academy Boulevard in Colorado Springs.

I trust this provides you with helpful information but please feel free to contact me with any questions you may have as your project proceeds.

Sincerely,

*Susan Odom*

Manager Contracts and Joint Facilities





**Meeting Date:** 02/20/2019

**Meeting Subject:** Clear Spring Ranch Rail Spur Use Meeting

**Attendees:** Lisa Barbato, Gary Barber, Cory Beasley, Mike Brady, Bethany Burgess, Jeff Icke, Thane LaBarre, Frank Lugo, Bill Maher, Elena Nunez, Nick Peters, Brad Pritekel

**Meeting Notes:**

- (1) Started meeting with overview of meeting purpose and introductions of all attendees.
- (2) Reviewed Option 3 – Discussed concerns with alternative. Communicated that this option is not favored by CSU due to the potential for on-going operational impact.
- (3) Reviewed Option 2
  - a. Between Option 2 and Option 3, Option 2 is preferred by CSU ESD Operations as it would seem to pose the least impact.
  - b. Point was raised that the rail loop track extension that is proposed could result in significant moves to transmission lines in the area. Needs to be investigated further on-site to verify.
  - c. Discussed security concerns
    - i. CSU Security expressed risk associated with the unknown of future regulations and the potential impact it could have to the rail. Regulation is moving toward tighter and more strict requirements, especially in the area of the CFATS regulation.
    - ii. CSU Security expressed concern with future development of the rail park and the unknown of materials coming on-site for the park. Rail Park Development Team commented that there could be restrictions placed on that to ensure protection for CSU.
    - iii. Some of the concerns over chemicals moving through the property could be addressed by the zoning of the land for rail park and what activities would be allowed on that land.
    - iv. CSU Security expressed concern over the mixed train and that railcars not having final destination of the rail park would be moving through CSU property as part of the process to drop of Rail Park cars.
    - v. CSU Security discussed the I-25 bridge crossing as a single point of failure for the service of coal to Nixon and water to the sites. If water supply was interrupted due to a catastrophic event on bridge, significant portion of CSU generation is at jeopardy. Group discussed that that is currently a risk whether the Rail Park is in place or not. Discussion around the greater number of cars that are crossing the bridge as well as the unknown origin of cars with trains that are not serving CSU for the purpose of delivering coal.
    - vi. Conversation evolved to discussion if Rail Cars could be dropped off on the east side of the interstate bridge crossing and be inspected prior to entering CSU property.
    - vii. Inspection capability is likely mutually beneficial.



- viii. The separation of cars on the east side of the bridge would address the concern of unknown materials of a mixed train crossing onto CSU property.
- d. Discussed Environmental Concerns
  - i. Permitting required for project construction would have to be determined. This is likely same for all alternatives and is not a hurdle to feasibility
  - ii. The site stormwater retention is near its capacity and so projects implemented cannot increase run-on to the site and would preferably help decrease that.

#### **Next Steps**

- (1) Rail Park team is targeting wrapping up the feasibility study in March.
- (2) CSU needs to provide any additional information to Rail Park development team by March 15.
- (3) Several grants may be available for funding and Rail Park team will be pursuing those.
- (4) If Rail Park development continues to proceed after feasibility, 10% design will be started.

#### **Action Items**

- (1) CSU will provide information regarding regulation of chemicals onto site and potential impact to CSU existing facilities that have regulated chemicals.
- (2) Rail Park team will explore potential operations on East side of interstate.
- (3) CSU and Rail Park team will coordinate to allow further investigation of possible interferences for the track loop extension.
- (4) CSU will communicate known issues that will need to be mitigated. This is primarily in the area of physical security.
- (5) Investigate if CSU has a trackage agreement with BNSF.





# Proof of Concept Report:

A Rail-Served Industrial Park,  
Southern El Paso County

09.18.15

**Prepared for:**

The El Paso County Economic  
Development Office,  
Ms. DeAnne McCann, Manager

**By:**

Kevin Butcher,  
CameronButcher Company,  
Gary Barber, Sole Proprietor



**cameronbutcher**  
COMMERCIAL REAL ESTATE

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## Executive Summary

This Proof of Concept Report is an initiative by the El Paso County Economic Development Office to generate high-multiplier jobs, offering an economic boost for the entire region. The potential viability of a 1,700 acre, dual-service railroad industrial park in southern El Paso County, Colorado was affirmed in dialogue with prospective stakeholders, including the private property owner, the City of Fountain staff, and senior staff of Colorado Springs Utilities—the entity currently served by the rail switch.

**The Conclusion:** Extension of rail infrastructure into vacant land west of the Ray Nixon Power Plant has high potential for job creation and merits a continued, detailed examination. Further diligence includes respecting the current operational and security parameters of the power generation facility.

City of Fountain's Comprehensive Plan identifies the vicinity for future industrial uses with utility services readily available. The Report concludes with a description of next steps, an example of a similar, very successful rail-based economic development model in Denver, followed by specific recommendations for further activity to create high-wage jobs.

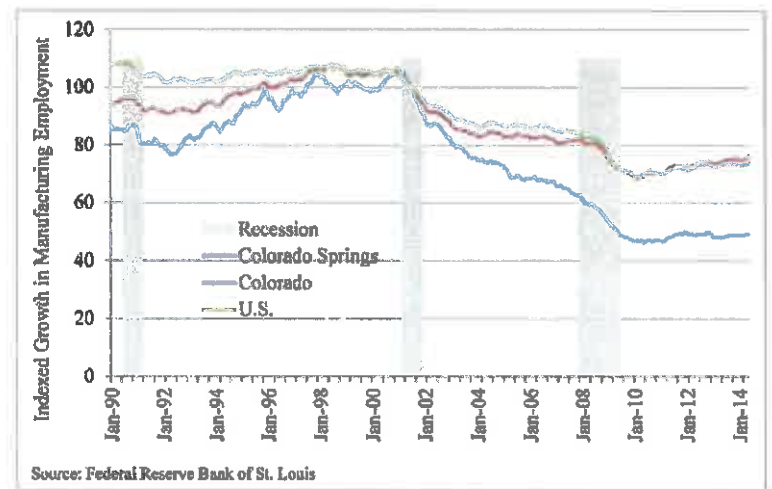
## The Question: How to Create Jobs in Southern El Paso County?

In the Fall of 2014, the question of job creation in Southern El Paso County became critical, arising from two distinctly different sources. The first source, an Economic Development Assessment Team ("EDAT") Report dated October, 2014 was a response to a sequence of natural disasters in El Paso County in 2012 and 2013. The Waldo Canyon and Black Forest fires were followed by major flooding in the Pikes Peak Region in 2013, with the City of Manitou Springs particularly hard hit. The EDAT Report also recognized that population was increasing, but job creation was not, a fact recognized by local economist Dr. Fred Crowley of the University of Colorado-Colorado Springs.

Dr. Crowley presented his assessment to the community in a series of conversations with community leaders, raising the alarm that while El Paso County was gaining jobs, the region was losing total income. The systemic loss of manufacturing jobs began in 2002, at a rate well beyond the national trend. While gaining a net number of new jobs overall, the new jobs were at salary levels well below those that had been lost. El Paso County continued to grow, but out of proportion to new job creation, so in effect the local economy was swapping lower paying service industry jobs for high-wage base jobs in manufacturing. Dr. Crowley estimates a total annual income loss of \$154 Million per year, as a result of the changes from 2000 to 2013, along with an accompanying deterioration of the economic multiplier effect.

The economic multiplier effect is the creation of additional new jobs in response to job creation. Manufacturing jobs have a very high economic multiplier, generating new service industry jobs as a result. For the same period, Dr. Crowley estimates the economic multiplier declined to below a factor of 2.0 for the first time since the 1970's. In other words, El Paso County's job picture was trending in the wrong direction for several reasons before the natural disasters, with fire and floods bringing national support and attention to the local challenges.

In the Fall of 2014, the community needed to make new job creation an imperative. Better still, if those new jobs could center on high multiplier jobs like manufacturing, the declining trends could perhaps be reversed. Looking for economic development opportunities in Southern El Paso County, Mr. Jeff Greene, as El Paso County Administrator, directed a proof of concept investigation by the County's Office of Economic Development. Ms. DeAnne McCann, Economic Development Manager, solicited a proposal and then engaged Gary Barber, a sole proprietor, and Kevin Butcher of CameronButcher Company as the project management team.



El Paso County Employment Job Growth: 2000 to 2013 (compared to Great Country)	Average Wage	Number of Jobs
Accommodations & Food Services	\$16,952	3,634
Arts and Entertainment	\$19,656	843
Agriculture, Forestry and Fishing	\$23,504	82
Retail	\$27,508	1,473
Administration & Waste Services	\$34,580	120
Education Services	\$36,296	6,944
Real Estate	\$36,712	14
Other Services	\$38,012	157
Transportation & Warehouse	\$44,200	628
Health Care	\$46,124	12,273
Construction	\$46,696	3,222
Finance & Insurance	\$47,700	706
Manufacturing	\$57,564	-13,764
Wholesale	\$59,852	7,445
Public Administration	\$62,400	2,251
Information Technology	\$71,136	4,913
Utilities	\$75,816	105
Professional, Technical	\$82,316	1,578
Mining	\$85,436	60
Manufacturing and Companies	\$97,292	193

## Introduction

For the past several months, the “Proof of Concept” investigation has focused on a rail-served industrial complex in Southern El Paso County with the goal of generating new jobs in the community. The subject site includes approximately 3,000 acres of land known as the Christian Ranch in the vicinity of the Ray Nixon Power Plant (“Nixon”) southwest of Fountain, Colorado. Finding no fatal flaws, the investigation culminated in a series of meetings, from June through August, 2015, with senior staff of Colorado Springs Utilities (“CSU” or the “Utility”), the owners and operators of the Nixon facility. The objective of the meetings was to obtain a response to the critical question: “Will CSU entertain the concept of third party access to the railroad interchange in support of regional job creation?” The query was answered in the affirmative, with a conditional assent to proceed with further diligence dependent on two precepts:

- Any and all rail future activity must not impinge on the operational or security needs of the Ray Nixon facility, and;
- Colorado Springs Utilities is a municipally owned utility—no subsidy of any kind will be attributed to the rate-payers in furtherance of the potential rail project.

The purpose of this memorandum is to document the various attributes of a potential rail-served industrial facility adjacent to the Nixon property by taking advantage of existing rail infrastructure to access nearby mainline rail services. Each of the preliminary elements for a viable project has been “checked off” as meeting the criteria for further investigation. At each juncture, new questions were generated by the stakeholders and interested parties. The second portion of this memorandum outlines a process for continuing the investigation, provides an example of a similar economic initiative in Denver, then offers a conclusion and recommendations for further investigation.

## Site Attributes

Five elements were considered critical in evaluating the site:

1. Current property ownership and openness to collaboration;
2. The receptivity of local jurisdictions to a heavy industrial, rail-served facility, including provisions for utility service;
3. Access to more than a single Class I railroad, also known as “dual service;”
4. A viable concept plan, with appropriate site access for employees and truck traffic, and;
5. Site topography for rail service, particularly slope restrictions as defined by Class I railroad specifications.



## CURRENT PROPERTY OWNERSHIP

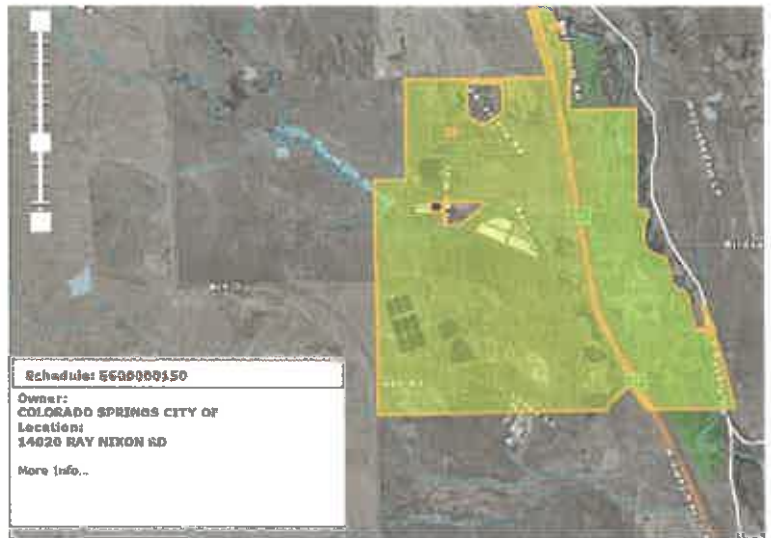
### PROPERTY OWNERSHIP

The El Paso County land records reveal three primary land owners in the subject area: the City of Colorado Springs, Edward C. Levy Company and the City of Fountain. The Colorado Springs land is home to the Ray Nixon Power Plant, a coal fired facility with two gas combustion turbines (total capacity 268 MW) and the Front Range Power Plant, a combined cycle natural gas plant (460 MW).

The primary site under consideration for new development is the historic Christian Ranch, owned in its entirety by the Edward C. Levy Company of Detroit, Michigan. The land was acquired for its aggregate deposits, with a 400 acre quarry operated by Schmidt Construction Company, a Colorado Springs asphalt paving and highway construction company. The mine is about midway through its useful life.

The investigation included two meetings with the President of Schmidt Construction, Mr. Scott Davis. In both conversations, Mr. Davis indicated a willingness to participate in further due diligence and feasibility of the potential for a rail-served industrial complex.

To the north of Nixon is a tract owned by the City of Fountain. This site is a reclaimed aggregate mine, which Fountain Utilities acquired as a future raw water storage impoundment. Preliminary discussions about this concept began with City Manager, Scott Trainor, and have continued with Utility Director, Curtis Mitchell, and Fountain's Economic Development Manager, Ms. Kimberly Bailey. All conversations with the City of Fountain to date have been positive.



**FRONT RANGE**



**NIXON**



## RECEPTIVITY OF LOCAL JURISDICTIONS, INCLUDING UTILITY SERVICE

### RECEPTIVITY OF LOCAL JURISDICTIONS

Conversations about the viability, and the appropriateness, of a rail-served industrial complex in southern El Paso County began with the staffs of the County and City of Fountain. Fountain's enthusiasm for the project and these types of jobs continues unabated, while El Paso County has unilaterally funded the effort over the past year. The dialogue has expanded to include economic development specialists at each jurisdictional level, including informal discussions with regional liaison at the U.S. Economic Development Agency ("EDA") offices in Denver. Three factors emerged in the EDA dialogue which favor continued:

- The potential collaborative, multi-jurisdictional nature of the initiative to generate industrially based jobs, with a high "multiplier" factor for the regional economy.
- The ability to address concerns around the future of Fort Carson under the Base Realignment and Closure ("BRAC") process underway by the U.S. Department of Defense.
- The jobs created will have a regional impact, which may include Pueblo County as well as El Paso County.



Dialogue with various agencies indicates that the types of jobs created in a rail-served complex may provide an excellent source of employment for troops transitioning to civilian life from Fort Carson. Certainly these types of jobs could provide an excellent economic off-set if Fort Carson's manpower is reduced.

One of the questions to address going forward is whether the rail service should extend into and serve Fort Carson? The Fort's current rail complex is located just off B Street on the north side of the facility. In addition, the vehicular access described above will benefit from roadway design underway to open Gate 19 to the Fort. At a minimum, concerns from Fort Carson about encroachment of residential housing on the subject property will be reduced if development is for commercial purposes.

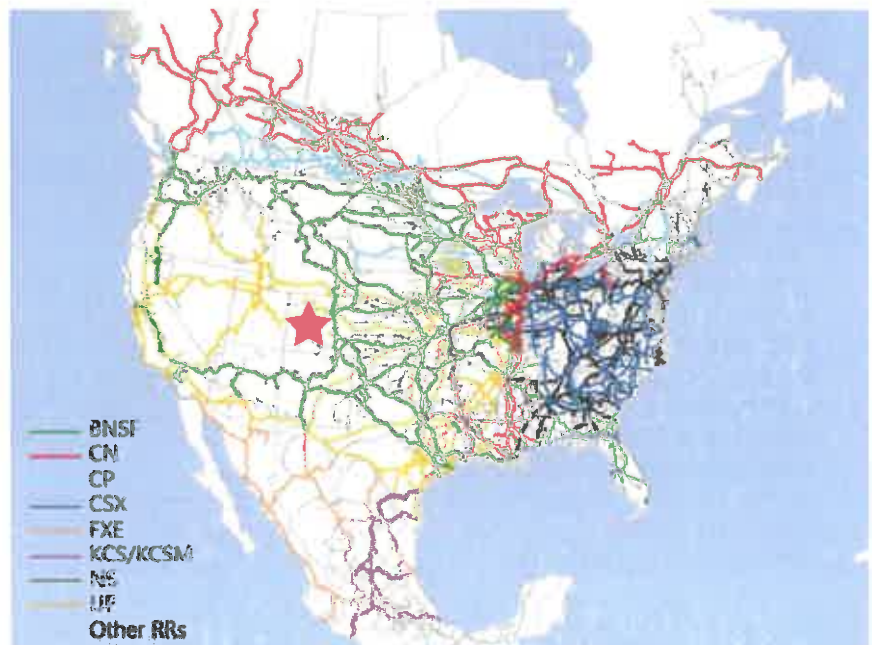
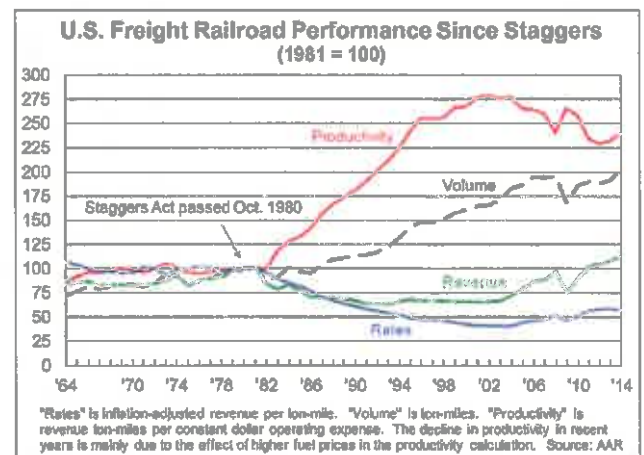
Fountain Utilities has stated it is prepared to serve the site with water and sewer service. In the discussions with CSU staff, the ultimate configuration of utility energy services was seen as a topic for continued conversation.

## ACCESS TO MORE THAN A SINGLE CLASS I RAILROAD

### CLASS I RAILROAD ACCESS

Following several decades of decline, the railroad industry was effectively de-regulated in 1980 when Congress passed the Staggers Act, allowing railroads to set independent freight rates, rather than rate setting by the U.S. Interstate Commerce Commission. Following Staggers, Class I railroads commenced and today continue a trend of consolidation and mergers. In 1990, there were fourteen (14) Class I railroads, but today there are only seven (7). Deregulation stimulated increased productivity and revenue, while the competition between rail companies generated declining rates. The trend of declining rates reversed about 2010, however, with the fuel efficiency of rail attracting an increasing market share for freight.

Of those seven (7) Class I railroads, only two (2) operate in the western United States: Burlington Northern Santa Fe ("BNSF") and Union Pacific Southern Pacific ("UPSP"). In theory, if only a single Class I railroad serves a site, the federal agencies have an oversight role in rate setting. In practice, having capacity for "dual service" is a must for a competitive rail-served industrial project. Along the Front Range of Colorado, the next closest dual-served complex is in Windsor, Colorado, at the Great Western Industrial Park. Service within a rail-served industrial park is then provided by a Class III, or Short Line railroad.



CLASS I RAILROADS IN THE UNITED STATES

The Nixon Power Plant site is served by a rail switch connected to both Class I rail lines. In El Paso County, the BNSF operates on the old Santa Fe RR line, which ran north and had a local depot at Colorado Boulevard and Pikes Peak Avenue. A portion of this line was vacated when Colorado Springs was chosen as the home of the Air Force Academy in the 1950's. The former rail line is now a public amenity, the Santa Fe Trail. UPSP purchased the Denver & Rio Grande Western RR founded by General William Palmer. The D & RGW depot was sited on the eastern edge of downtown, walking distance to the historic Antler's Hotel.

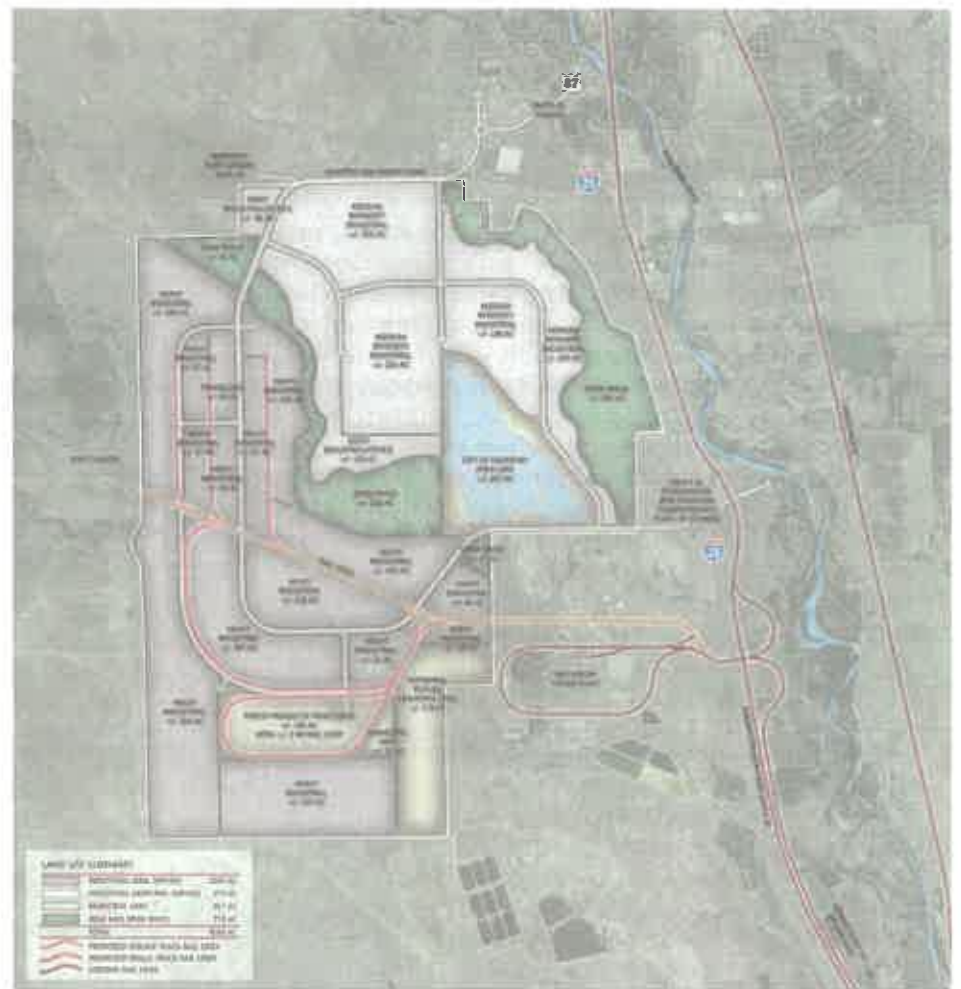
Today the Class I railroads generally operate by using the eastern track for northbound traffic and the western line for southbound traffic (with some exceptions). An interconnect between the two lines is located at the southern end of CSU's property known as Clear Springs Ranch. This interconnect allows traffic leaving the site to travel north or south.

## **VIABLE CONCEPT PLAN WITH APPROPRIATE ACCESS**

**VIABLE CONCEPT PLAN**  
Norris Design, a national land planning firm with offices in Denver, Colorado, contributed its time and talent creating an initial site layout. The conceptual land plan in its entirety is included at Tab 1. The plan depicts 1,682 acres of rail-served industrial land, along with an adjoining 976 acres of industrial property. The plan also identifies 178 acres of property for use and/or conveyance to expand operations at the Nixon plant.

## **TRUCK AND EMPLOYEE ACCESS TO THE SITE**

Truck and employee access to the site is a full-movement interchange with Interstate 25 to the northeast. The plan identifies a second vehicular access point as a future interchange with I-25 which is identified in the City of Fountain Comprehensive Plan. The existing full-movement interchange is currently under design for extension into Fort Carson, designated as Gate 19.



**RAIL INDUSTRIAL PARK**  
CONCEPTUAL DESIGN  
EL PASO COUNTY, CO  
AUGUST 23, 2025

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## **SITE TOPOGRAPHY MEETS CLASS I RAILROAD DESIGN SPECIFICATIONS**

### **SITE TYPOGRAPHY**

Topography is very important when considering rail service. In particular, since slope is a limitation on operations, Norris Design performed a site slope analysis using published criteria from the Class I railroads. Generally, slope gradients less than 1% per mile are preferred. The full concept plan overlay with slope information is included at Tab 2.

As depicted on the "Rail Suitability Slope Analysis Plan," the present site configuration extends the rail to the edge of the property boundary with the Fort Carson military installation. The distance from the Ray Nixon loop to the edge of Fort Carson will require 13,480' of track, with an elevation gain of 114', resulting in an average grade of 0.85%, well within the criteria.

As an additional benefit, the land configuration is such that the majority of the industrial park will be screened from view for travelers on I-25 by the low hills to the northeast of the Nixon complex.

## **Next Steps**

### **PROJECT MANAGEMENT**

The engagement for this proof of concept contemplated a summary of site attributes with the purpose of identifying fatal flaws, followed by recommendations for how to proceed next if no flaws were found. To continue this economic development initiative, the next phase of project investigation will require three important features, namely:

- Organization of a leadership group;
- An initial fiscal impact study to demonstrate participant-specific economic benefits, and;
- Development of a detailed scope of work for a thorough feasibility study.

Funding, in the form of a U.S. EDA Local Technical Assistance Grant (50% match required), could be available for the feasibility study, perhaps in conjunction with state and local funding sources. Prior to seeking such a grant, the active participants would be well-served by coming together in a more formal fashion.

### **MEMORANDUM OF UNDERSTANDING ("MOU") RECOMMENDED**

For the next phase, a Memorandum of Understanding is likely most appropriate, outlining objectives, funding support and most importantly, memorializing the CSU precepts described above. The private property owner has expressed willingness to participate in keeping the process moving forward. An MOU, as opposed to an intergovernmental agreement, offers the flexibility to include the primary private land owner.

Early discussion with Mr. Scott Davis included the potential for participation in the next phase of investigation. Mr. Davis stated his intention to give the board of directors of Edward C. Levy Company an overview of the opportunity at their annual meeting this October. El Paso County as the initiator of the program should likely remain the lead entity in taking the initiative forward since the County encompasses the multiple jurisdictions.

Following the rest of the suggestions for Next Steps below is a nearby example of the ultimate success of this type of Colorado-based economic development initiative, one which began as a public-private collaboration—Denver's Union Station Project.

## FISCAL IMPACT STUDY

In dialogue with Dr. Crowley, he suggested he could provide a simplified comparison of this economic development initiative to a successful rail-served project of comparable size elsewhere. An early understanding of the validity of the fiscal impact, and a preliminary understanding of how each participant and jurisdiction will benefit from regional job creation, could provide important support and enthusiasm for continuing the project investigation. The fiscal impact study could also document the competitive advantages of a public-private partnership model.

Finally, as our community awaits the outcome of the current BRAC process by the Department of Defense ("DOD"), the fiscal impact study can demonstrate the benefits of rail availability adjacent to Fort Carson. The topography on the military installation mirrors the subject site, rendering expansion feasible if expanded or alternate rail facilities are desired. To the extent there are future force reductions, the jobs created by this development initiative will soften the impact to the regional economy. In either case, a rail-served industrial park with appropriate lighting is a friendly land use that addresses "encroachment" concerns for DOD.

## PREPARE THE SCOPE OF WORK FOR A FEASIBILITY STUDY

As is often the case, each evaluation of a project element answered one question and generated a dozen new questions. At the proof of concept level of investigation, these new questions were moot if a fatal flaw was identified. With the absence of a fatal flaw, the next phase requires a more in-depth feasibility study. The components of that Feasibility Study might include, at a minimum:

- Direct and indirect impacts to the Nixon facility
- Transition from a Concept Plan to a preliminary site plan reflecting greater detail, with:
  - Existing utility infrastructure
  - Natural and man-made drainage features
  - Initial environmental assessment
  - Civil Engineering to include estimates of "cut and fill" for site work
  - Cost estimates based on unit costs for rail, roads, drainage features and other elements
- Preliminary market analysis, including:
  - Identification of local and potential end-users
  - Identification and evaluation of short line railroad operators
  - Limitations, if any, on local and regional transportation facilities

In parallel, the project management team could be coordinating a grant funding application, including organizing the matching funds. This activity will require presentations and meeting with prospective participants, along with drafting, submitting and tracking the grant application.

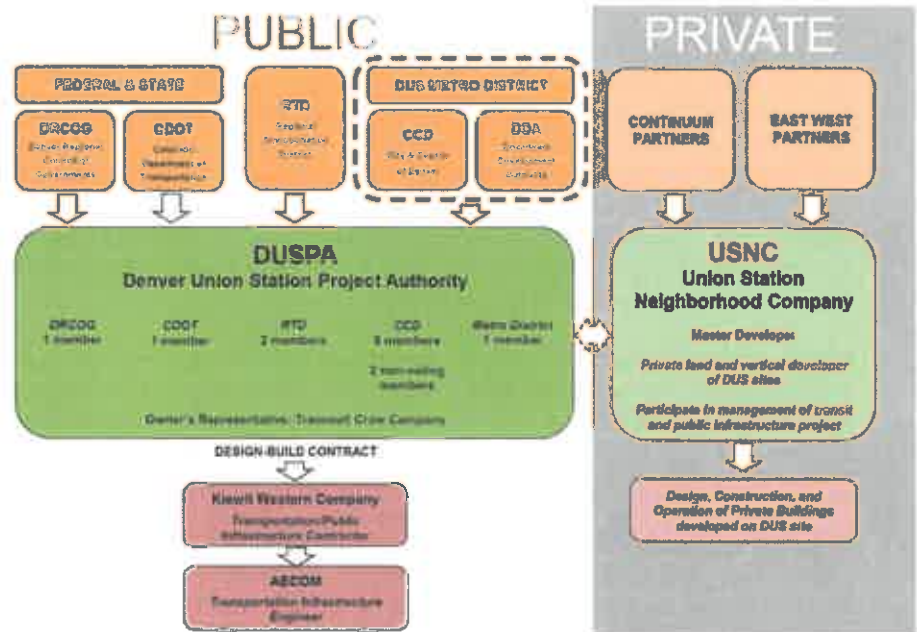
## AN EXAMPLE OF A SUCCESSFUL ECONOMIC DEVELOPMENT INITIATIVE

As described above, the potential project intersects multiple jurisdictions and private interests. However, a framework for interaction between the participants is the cornerstone for building a successful economic development opportunity. We only have to look north to the Denver Union Station project to find a valid example of how the next phase might proceed.



## LESSONS FROM DENVER'S UNION STATION PUBLIC-PRIVATE PARTNERSHIP

The graphic depicts the final configuration of the Union Station project in Denver, which has been a tremendous boon for that region's economy. The final Public-Private Partnership included multiple parties on both sides. However, the important lesson from the Union Station experience is that the project started as a simple working group. The initial dialogue included the private property owners in the vicinity. The municipal entities then entered into an Intergovernmental Agreement ("IGA") with the purpose of moving the project forward. The IGA did not form a legal entity, just defined roles, levels of support and became a platform to engage the private sector in development strategies. Over the next several years, as the elements of the project were defined, appropriate participants were included, until the final public-private partnership was successful in financing the \$500 Million endeavor, including \$155 Million in low-interest federal loans.



## RAILROAD REHABILITATION AND IMPROVEMENT FUND ("RRIF")

Early dialogue about the potential for economic development and job creation in southern El Paso County hinged on a presentation about the history and success of the Union Station project in Denver. In many of the investigative conversations, the concept of a public-private partnership model was broached in light of that efforts demonstrable success. About one-third of the capital funding for Union Station, \$155 Million, came from the Railroad Rehabilitation and Improvement Funding Program ("RRIF") of the United States Department of Transportation (a flyer with information is included at Tab 3).

RRIF eligible projects are those which "Develop or establish new intermodal or railroad facilities" with "Direct Loans up to 100% of the Project Cost, Repayment periods up to 35 years and Interest Rates equal to U.S. Treasury rate for comparable securities." The Federal Register notice of the program suggests that the primary goal is to increase economic development and create jobs. In the case of the Union Station project, multiple municipal and private partners worked together to create an entity that could act as both the project developer and the borrower for the federal loan.

## COLORADO GENERAL ASSEMBLY HOUSE BILL 15-1262

A further boost to this approach was provided by the Colorado General Assembly in its 2015 session, with legislation enacted which provides a possible structure for such an endeavor—House Bill 15-1262. Signed into law on May 20, 2015, this Act allows Counties, Municipalities, Special District and other political subdivision of the State of Colorado to establish an entity to provide public improvements. The Act is included at Tab 4. In other words, El Paso County, the City of Fountain and the City of Colorado Springs can now form a project-specific entity (by contract) that could partner with the private land owner if and when appropriate.

## Conclusions and Recommendations

### CONCLUSION

Without exception, when presented with the potential regional and economic benefits that derive from a rail-served industrial park in southern El Paso County, all parties contacted have expressed support for the concept. In most cases, whether the endeavor has merit is never questioned, but certainly many new questions and concerns are generated from each individual's perspective. For example, the City of Fountain economic development manager was enthusiastic about the job creation potential, but concerned about the possible impact to downtown Fountain from increased rail traffic. In certain configurations, a northbound train and a southbound train can render the downtown area inaccessible, given there are currently no grade-separated railroad crossings.

Many of the Colorado Springs Utility staff recognized the community value of such an economic development engine. At the same time, they were also appropriately cautious about regulatory constraints associated with energy operations, both present and future, at the Ray Nixon Power Plant. Nixon operates under a Title V Clean Air Act permit administered by the U. S. Environmental Protection Agency; hence, the Utility is under constant scrutiny in its activities.

The rail-served industrial park has great merit, and the ultimate viability will depend on a more detailed understanding of many parameters that still require definition. The conclusion of this Proof of Concept investigation is to continue with further diligence based on specific recommendations. Within the current engagement is a presentation of this material to elected officials as directed by the El Paso of Office County Economic Development.

### RECOMMENDATIONS

Moving this economic development initiative forward requires increased depth of detail and investigation of new topic areas, such as a fiscal impact study. To proceed in a constructive manner, the process will also benefit from an organizational framework between the stakeholders. Recommendations are grouped in three categories: 1) Organization, 2) Further Diligence, and 3) New Topics.

#### 1. ORGANIZATION

- Develop a Memorandum of Understanding between a "Core Group" of entities which defines expectations, goals, constraints and a level of support for the next phase of investigation.
- Convene a sequence of Core Group meetings to get the next phase underway.

#### 2. FURTHER DILIGENCE

- Prepare a fiscal impact study that details jurisdictional economic benefits and includes prospective advantages for retention of Fort Carson.
- Subject to Item #1 above, prepare a presentation outlining the current project concepts for interested third parties, including but not limited to Edward C. Levy Company and the Regional Business Alliance.

#### 3. NEW TOPICS

- Develop a Scope of Work for a Feasibility Study.
- Organize and prepare a grant request for completion of the Feasibility Study.



## Acknowledgments

The Project Team of Gary Barber, Sole Proprietor and Kevin Butcher of CameronButcher Company, would like to acknowledge the contribution of Norris Design, specifically David Thorpe-Associate, Brandi Hall-Senior Associate, Jordan Dame-Principal and Mitch Black-Principal. Norris' expertise and professionalism are greatly appreciated.

## End Notes

<sup>i</sup> US Economic Development Administration with assistance from the Federal Emergency Management Agency through the Economic Recovery Support Function (RSF). Additional assistance was provided by the Colorado Recovery Office, Colorado Department of Local Affairs, Colorado Office of Economic Development and International Trade, El Paso County, the City of Manitou Springs, the City of Colorado Springs, NOVACES LLC, and the International Economic Development Council (IEDC). *"In 2012 and 2013, El Paso County experienced an unprecedented series of natural disasters, which caused extensive damage and significantly impacted the pre-existing patterns of economic activity."*, p. 1

<sup>ii</sup> *"Yet a .38 ratio of job growth to population growth indicates that the region is not creating as many new jobs as it is attracting new residents."* EDAT Report, p. 56.

<sup>iii</sup> Ratio of the total number of jobs created to the number of basic jobs created. A higher economic base multiplier implies a larger effect of the basic job creator on the total number of jobs.  
<http://www.businessdictionary.com/definition/economic-base-multiplier.html#ixzz3k3F8EuP2>

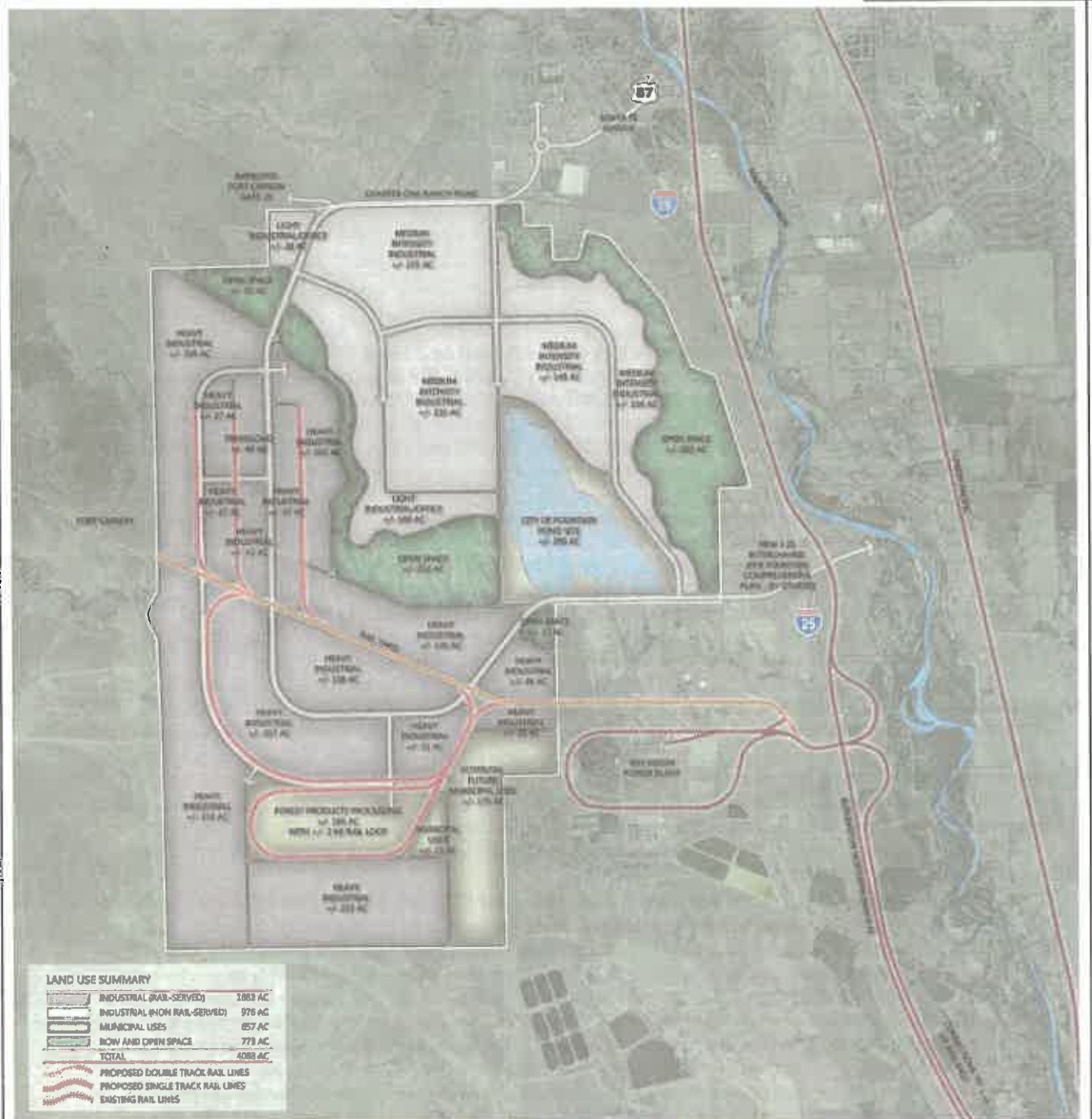
<sup>iv</sup> A Proof of Concept is a small exercise to test a discrete design idea or assumption. [http://www.contenthere.net/2007/03/poc-prototype-or-pilot-when-and-why\\_92.html](http://www.contenthere.net/2007/03/poc-prototype-or-pilot-when-and-why_92.html)

<sup>v</sup> [www.edwcl Levy.com/](http://www.edwcl Levy.com/) *"Inspiration and commitment were the driving forces that gave Levy its start in 1918. It's the technology that we discover, explore, and apply that has earned Levy the reputation as a true innovator in industries around the globe. The Levy Group of Companies transforms our products into lightweight aggregates, asphalt, cement, concrete, agricultural products, and more. We provide services that include construction materials, road building, flame cutting and treatment, steel mill services, logistics, and laboratory testing."*

<sup>vi</sup> The Federal Railroad Administration defines a Class I Railroad as having greater than \$467 Million in annual operating revenue. Association of American Railroads, "A Short History of U.S. Freight Railroads, May, 2015

<sup>vii</sup> BNSF Railway Company, "Design Guidelines for Industrial Track Projects," December, 2011; Union Pacific, "New Track Construction Overview," March, 2009

<sup>viii</sup> Federal Register / Vol. 75, No. 188 / Wednesday, September 29, 2010 / Notices: *"SAFETEA-LU amended the RRIF Program to, among other things, increase the amount of financial assistance available from \$3.5 billion to \$35 billion, and to increase the amount reserved for other than Class I railroads from \$1 billion to \$7 billion. (3) Promote economic development, and (4) Enable United States companies to be more competitive in international markets. In determining which projects best promote economic development and enable American companies to be more competitive in international markets, FRA will pay particular attention to projects that do the following: Lead to the construction, reconstruction or improvement of infrastructure or the acquisition of equipment or other capital assets on both freight and passenger (including commuter) rail corridors and related intermodal and multi-modal facilities that address capacity constraints in the Nation's transportation system and deliver integrated transportation system improvements, while spurring domestic employment in both the short-term and long-term."*



NORTH SCALE: 1"=400'  
 NOTE THIS IMAGE IS CONCEPTUAL AND IS SUBJECT TO CHANGE

### RAIL INDUSTRIAL PARK CONCEPTUAL DESIGN

EL PASO COUNTY, CO

AUGUST 21, 2015

1101 General Blvd.  
 Denver, Colorado 80202  
 P 303.842.1142  
 F 303.842.1129  
[www.norris-design.com](http://www.norris-design.com)

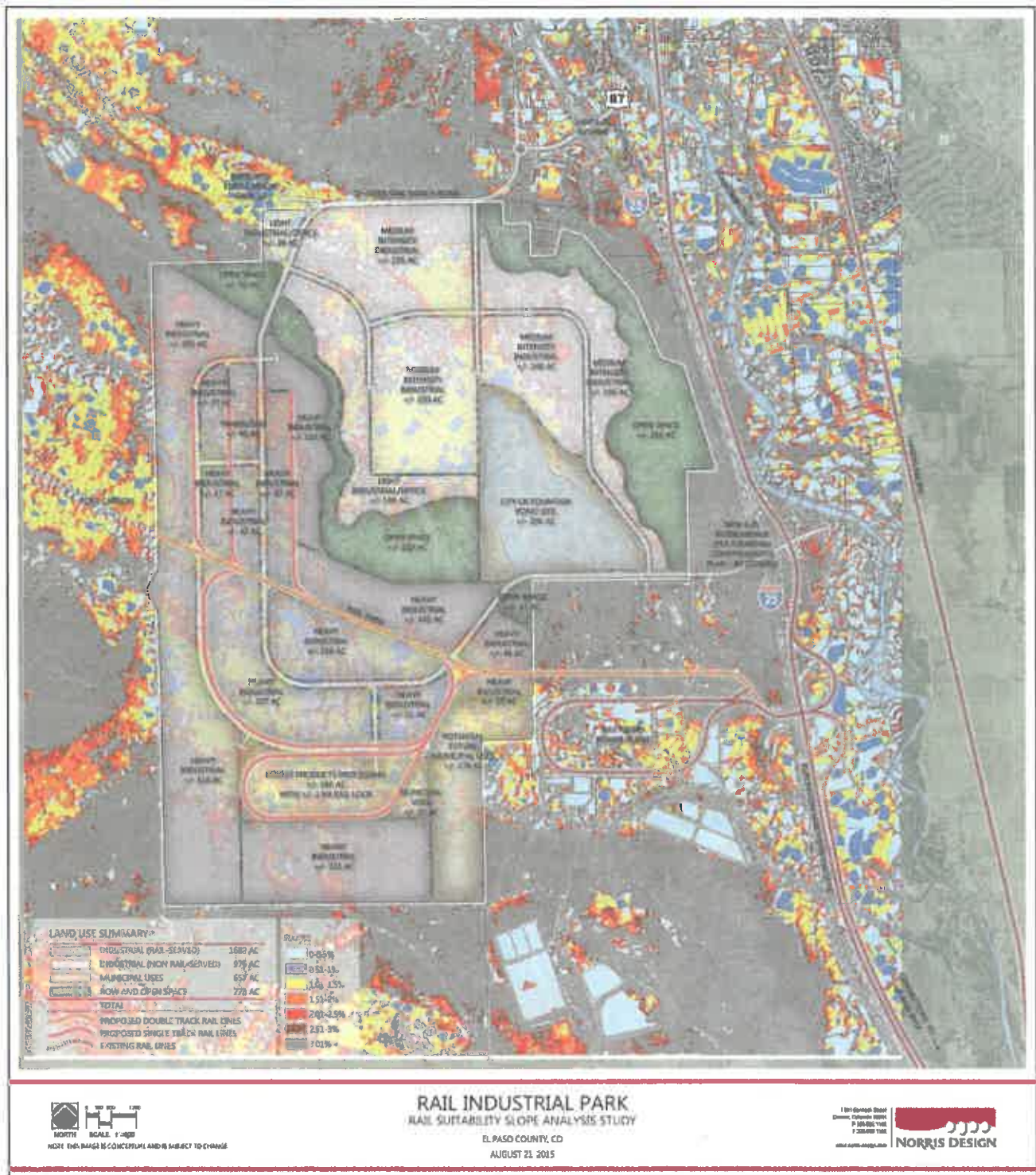


### Rail Industrial Park Infrastructure

Internal Roads	11.6 miles
Railroad Tracks	17.5 miles

CONTACT: GARY BARBER, 719-660-0948 or KEVIN BUTCHER, 719-233-2313





Rail Industrial Park Infrastructure	
Central Track (shown in gold)	Feet
Length from Switch to Ft. Carson	13,480
Elevation Gain	114
Railroad Track Slope	0.85%



The Railroad Rehabilitation and Improvement Financing (RRIF) Program provides direct federal loans and loan guarantees to finance the development of railroad infrastructure. The Federal Railroad Administration (FRA) will give priority to projects that provide public benefits, including benefits to public safety, the environment and economic development. In providing financial assistance through RRIF, FRA must fulfill its obligations under the National Environmental Policy Act and related laws, regulations, and orders. Please see the FRA Grants and Loans Web page for more information at [www.fra.dot.gov](http://www.fra.dot.gov).

- Railroads
- State and local governments
- Government-sponsored authorities and corporations
- Joint ventures that include at least one railroad
- Limited option freight shippers who intend to construct a new rail connection

- Acquire, improve or rehabilitate intermodal or rail equipment or facilities, including track, track components, bridges, yards, buildings and shops
- Refinance outstanding debt incurred for the purposes listed above
- Develop or establish new intermodal or railroad facilities

- Direct loans for up to 100% of the project cost
- Repayment periods up to 35 years
- Interest rates equal to U.S. Treasury rate for comparable-term securities
- A Credit Risk Premium is assessed as a percentage of the total loan amount and varies by the loan terms and overall risk of each unique transaction.
- Credit Risk Premium can be reduced with collateral, though collateral is not required
- Borrower pays an investigative fee for a financial advisor and outside counsel (The total investigative fee shall not exceed one half of one percent of the requested loan amount).

- Loan activity in 27 states and all US regions
- 35 loans executed for approx. \$2.7 billion
- 80% of loans have been executed with Class II and III railroads
- Amtrak is receiving 70 new American-made electric locomotives and upgrading maintenance facilities for Northeast Corridor services.
- MTA will implement PTC for LIRR and Metro North

### Loan agreements executed since 2009

FY	Organization	Amount
'15	The Arkansas and Missouri Railroad Company	\$ 6,809,000
'15	Metropolitan Transportation Authority	\$ 967,100,000
'12	Alameda Corridor Transportation Authority	\$ 83,710,000
'12	Kansas City Southern Railway Company	\$ 54,648,000
'11	Northwestern Pacific Railroad Company and North Coast Railroad Authority	\$ 3,180,000
'11	Amtrak	\$ 562,900,000
'11	C&J Railroad	\$ 56,204
'10	Denver Union Station Project Authority	\$ 155,000,000
'10	Great Lakes Central Railroad	\$ 17,000,000
'09	Georgia & Florida Railways	\$ 8,100,000
'09	Permian Basin Railways, Inc	\$ 64,400,000
'09	Iowa Interstate Railroad	\$ 31,000,000
	<b>TOTAL</b>	<b>\$ 1,953,903,204</b>

## A map of the United States where most states are colored yellow. The white states are Washington, Oregon, California, Nevada, Idaho, Utah, Arizona, New Mexico, Texas, Oklahoma, Kansas, Nebraska, South Dakota, North Dakota, Minnesota, Iowa, Missouri, Arkansas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Maine, New York, and Hawaii.



NOTE: The governor signed this measure on 5/20/2015.



HOUSE BILL 15-1262

BY REPRESENTATIVE(S) Rosenthal, Lebsock, Singer;  
also SENATOR(S) Balmer.

CONCERNING SEPARATE LEGAL ENTITIES ESTABLISHED BY A CONTRACT  
BETWEEN TWO OR MORE POLITICAL SUBDIVISIONS OF THE STATE,  
AND, IN CONNECTION THEREWITH, CLARIFYING THE LEGAL STATUS  
AND SCOPE OF POWERS OF SUCH AN ENTITY.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, add 29-1-203.5 as follows:

**29-1-203.5. Separate legal entity established under section 29-1-203 - legal status - authority to exercise special district powers - additional financing powers.** (1) (a) ANY COMBINATION OF COUNTIES, MUNICIPALITIES, SPECIAL DISTRICTS, OR OTHER POLITICAL SUBDIVISIONS OF THIS STATE THAT ARE EACH AUTHORIZED TO OWN, OPERATE, FINANCE, OR OTHERWISE PROVIDE PUBLIC IMPROVEMENTS FOR ANY FUNCTION, SERVICE, OR FACILITY MAY ENTER INTO A CONTRACT UNDER SECTION 29-1-203 TO ESTABLISH A SEPARATE LEGAL ENTITY TO PROVIDE ANY SUCH PUBLIC IMPROVEMENTS. ANY SEPARATE LEGAL ENTITY ESTABLISHED IS A POLITICAL SUBDIVISION AND PUBLIC CORPORATION OF THE STATE AND IS SEPARATE FROM THE PARTIES TO THE CONTRACT IF THE CONTRACT OR AN AMENDMENT

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*



TO THE CONTRACT STATES THAT THE ENTITY IS FORMED IN CONFORMITY WITH THE PROVISIONS OF THIS SECTION AND THAT THE PROVISIONS OF THIS SECTION APPLY TO THE ENTITY.

(b) A CONTRACT ESTABLISHING A SEPARATE LEGAL ENTITY DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1) MUST SPECIFY:

(I) THE NAME AND PURPOSE OF THE ENTITY AND THE FUNCTIONS OR SERVICES TO BE PROVIDED BY THE ENTITY;

(II) THE ESTABLISHMENT AND ORGANIZATION OF A GOVERNING BODY OF THE ENTITY, WHICH MUST BE A BOARD OF DIRECTORS IN WHICH ALL LEGISLATIVE POWER OF THE ENTITY IS VESTED, INCLUDING:

(A) THE NUMBER OF DIRECTORS, THEIR MANNER OF APPOINTMENT, THEIR TERMS OF OFFICE, THEIR COMPENSATION, IF ANY, AND THE PROCEDURE FOR FILLING VACANCIES ON THE BOARD;

(B) THE OFFICERS OF THE ENTITY, THE MANNER OF THEIR SELECTION, AND THEIR DUTIES;

(C) THE VOTING REQUIREMENTS FOR ACTION BY THE BOARD; EXCEPT THAT, UNLESS SPECIFICALLY PROVIDED OTHERWISE, A MAJORITY OF DIRECTORS CONSTITUTES A QUORUM, AND A MAJORITY OF THE QUORUM IS NECESSARY FOR ANY ACTION TAKEN BY THE BOARD.

(2) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (2), A SEPARATE LEGAL ENTITY ESTABLISHED BY CONTRACT PURSUANT TO SECTION 29-1-203 MAY, TO THE EXTENT PROVIDED BY THE CONTRACT OR AN AMENDMENT TO THE CONTRACT AND DEEMED BY THE CONTRACTING PARTIES TO BE NECESSARY OR CONVENIENT TO ALLOW THE ENTITY TO ACHIEVE ITS PURPOSES, EXERCISE ANY GENERAL POWER OF A SPECIAL DISTRICT SPECIFIED IN PART 10 OF ARTICLE 1 OF TITLE 32, C.R.S., SO LONG AS EACH OF THE PARTIES TO THE CONTRACT MAY LAWFULLY EXERCISE THE POWER.

(b) A SEPARATE LEGAL ENTITY ESTABLISHED BY A CONTRACT PURSUANT TO SECTION 29-1-203 THAT SPECIFIES THAT THE PROVISIONS OF THIS SECTION APPLY TO THE ENTITY MAY NOT LEVY A TAX OR EXERCISE THE POWER OF EMINENT DOMAIN.

(3) IN ADDITION TO ANY OTHER POWERS SET FORTH IN A CONTRACT ENTERED INTO PURSUANT TO SECTION 29-1-203 THAT ESTABLISHES A SEPARATE LEGAL ENTITY AND SPECIFIES THAT THE PROVISIONS OF THIS SECTION APPLY TO THE ENTITY, SUCH AN ENTITY HAS THE FOLLOWING POWERS:

(a) TO ISSUE BONDS, NOTES, OR OTHER FINANCIAL OBLIGATIONS PAYABLE SOLELY FROM REVENUE DERIVED FROM ONE OR MORE OF THE FUNCTIONS, SERVICES, SYSTEMS, OR FACILITIES OF THE SEPARATE LEGAL ENTITY, FROM MONEY RECEIVED UNDER CONTRACTS ENTERED INTO BY THE SEPARATE LEGAL ENTITY, OR FROM OTHER AVAILABLE MONEY OF THE SEPARATE LEGAL ENTITY. THE TERMS, CONDITIONS, AND DETAILS OF BONDS, NOTES, OR OTHER FINANCIAL OBLIGATIONS, INCLUDING RELATED PROCEDURES AND REFUNDING CONDITIONS, MUST BE SET FORTH IN THE RESOLUTION OF THE SEPARATE LEGAL ENTITY AUTHORIZING THE BONDS, NOTES, OR OTHER FINANCIAL OBLIGATIONS AND MUST, TO THE EXTENT PRACTICAL, BE SUBSTANTIALLY THE SAME AS THOSE PROVIDED IN PART 4 OF ARTICLE 35 OF TITLE 31, C.R.S., RELATING TO WATER AND SEWER REVENUE BONDS; EXCEPT THAT THE PURPOSES FOR WHICH THE SAME MAY BE ISSUED ARE NOT LIMITED TO THE FINANCING OF WATER OR SEWERAGE FACILITIES. BONDS, NOTES, OR OTHER FINANCIAL OBLIGATIONS ISSUED UNDER THIS PARAGRAPH (a) ARE NOT AN INDEBTEDNESS OF THE SEPARATE LEGAL ENTITY OR THE COOPERATING OR CONTRACTING PARTIES WITHIN THE MEANING OF ANY PROVISION OR LIMITATION SPECIFIED IN THE STATE CONSTITUTION OR LAW. EACH BOND, NOTE, OR OTHER FINANCIAL OBLIGATION ISSUED UNDER THIS PARAGRAPH (a) MUST RECITE IN SUBSTANCE THAT IT IS PAYABLE SOLELY FROM THE REVENUES AND OTHER AVAILABLE FUNDS OF THE SEPARATE LEGAL ENTITY PLEDGED FOR THE PAYMENT THEREOF AND THAT IT IS NOT A DEBT OF THE SEPARATE LEGAL ENTITY OR THE COOPERATING OR CONTRACTING PARTIES WITHIN THE MEANING OF ANY PROVISION OR LIMITATION SPECIFIED IN THE STATE CONSTITUTION OR LAW. NOTWITHSTANDING ANYTHING IN THIS PARAGRAPH (a) TO THE CONTRARY, BONDS, NOTES, AND OTHER OBLIGATIONS MAY BE ISSUED TO MATURE AT SUCH TIMES NOT BEYOND FORTY YEARS FROM THEIR RESPECTIVE ISSUE DATES, SHALL BEAR INTEREST AT SUCH RATES, AND SHALL BE SOLD AT, ABOVE, OR BELOW THE PRINCIPAL AMOUNT THEREOF, AT A PUBLIC OR PRIVATE SALE, ALL AS DETERMINED BY THE BOARD OF DIRECTORS OF THE SEPARATE LEGAL ENTITY. INTEREST ON ANY BOND, NOTE, OR OTHER FINANCIAL OBLIGATION ISSUED UNDER THIS PARAGRAPH (a) HEREOF IS EXEMPT FROM TAXATION EXCEPT AS OTHERWISE MAY BE



PROVIDED BY LAW. THE RESOLUTION, TRUST INDENTURE, OR OTHER SECURITY AGREEMENT UNDER WHICH BONDS, NOTES, OR OTHER FINANCIAL OBLIGATIONS ARE ISSUED IS A CONTRACT WITH THE HOLDERS THEREOF AND MAY CONTAIN SUCH PROVISIONS AS THE BOARD OF DIRECTORS OF THE SEPARATE LEGAL ENTITY DETERMINE TO BE APPROPRIATE AND NECESSARY IN CONNECTION WITH THE ISSUANCE THEREOF AND TO PROVIDE SECURITY FOR THE PAYMENT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY MORTGAGE OR OTHER SECURITY INTEREST IN REVENUE, MONEY, RIGHTS, OR PROPERTY OF THE SEPARATE LEGAL ENTITY.

(b) TO ACQUIRE, LEASE, AND SELL PROPERTY.

(4) A CONTRACT ENTERED INTO PURSUANT TO SECTION 29-1-203 THAT ESTABLISHES A SEPARATE LEGAL ENTITY AND SPECIFIES THAT THE PROVISIONS OF THIS SECTION APPLY TO THE ENTITY SHALL PROVIDE THAT, UPON DISSOLUTION OF THE SEPARATE LEGAL ENTITY, ALL OF ITS PROPERTY IS TRANSFERRED TO, OR AT THE DIRECTION OF, ONE OR MORE OF THE CONTRACTING POLITICAL SUBDIVISIONS.

**SECTION 2. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

---

Dickey Lee Hullinghorst  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

---

Bill L. Cadman  
PRESIDENT OF  
THE SENATE

---

Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

---

Cindi L. Markwell  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_

---

John W. Hickenlooper  
GOVERNOR OF THE STATE OF COLORADO



**cameronbutcher**  
COMMERCIAL REAL ESTATE