

**TOQUERVILLE CITY**  
**RESOLUTION 2021.02**



A RESOLUTION OF THE CITY COUNCIL OF AUTHORIZING THE CITY'S APPLICATION AND PURSUIT OF TWO ROAD RIGHTS OF WAY EASEMENTS ACROSS FEDERAL LAND MANAGED BY THE BUREAU OF LAND MANAGEMENT AND LOCATED WITHIN THE CITY'S MUNICIPAL BOUNDARIES.

RECITALS

WHEREAS, Toquerville City ("City") is an incorporated municipality duly organized and operating under the laws of the State of Utah with its municipal boundaries located in the Northeast Washington County, Utah.

WHEREAS, the Toquerville City Council ("City Council") is the governing body of the City vested with all legislative and administrative powers delegated to the City pursuant to Article 11, Section 5 of the Utah Constitution and Utah Code Ann. § 10-1-103.

WHEREAS, City is experiencing unprecedented growth and development throughout its municipal boundaries and especially within the westernmost sector of the City.

WHEREAS, the City, by and through its engineers and other planning experts including those liaisons with the Dixie Metropolitan Planning Organization ("Dixie MPO" have identified the need to plan, acquire and construct two road rights of way thru federal land presently managed by the Bureau of Land Management ("BLM") and include said roads in the City's Master Transportation Plan.

WHEREAS, the City Council has instructed one its members, Keen Ellsworth, to oversee the preparation, submittal and advocate for an application to the BLM for approval of road right of way easements for said future roads.

WHEREAS, City Councilmember Ellsworth, has prepared such an application on the BLM Form 299 (and an attachment) and presented the same to the City Council for tentative approval at its regularly scheduled City Council Business Meeting in November of 2020 – which approval was unanimously given ("BLM Easement Application").

WHEREAS, pursuant to the requirements of the BLM the City Council now wishes to adopt a formal resolution authorizing the submittal of the BLM Easement Application and designating City Councilmember Keen Ellsworth as the City's point of contact and representative to work directly with the BLM on said application.

RESOLUTION

NOW THEREFORE, the City, by and through its City Council, resolves as follows:



1. BLM Easement Application Approval. The City, by and thru the City Council, its governing body, hereby approve and authorize the City to submit and pursue immediately and with diligence the BLM Easement Application which is attached hereto, marked Exhibit "A" and incorporated herein by this reference.

2. Designation of City Representative for BLM Easement Application. The City hereby authorizes and appoints City Councilmember Keen Ellsworth to be the City's representative with regards to the BLM Easement Application authorized to execute the same and pursue its approval by all legal means possible.

3. Supersession/Repealer. This Resolution supersedes or repeals any other resolutions, ordinances or written policies of the City to the extent they are inconsistent with the provisions of this Resolution.

4. Savings Clause. If any provision or clause in this Resolution or the application thereof to any person or entity or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other sections, provisions, clauses, or applications hereof which can be implemented without the invalid provision, clause, or application hereof, and to this end the provisions and clauses of this Resolution are declared to be severable.

5. Effective Date. This Resolution shall become effective immediately upon adoption by the City Council.

PASSED AND APPROVED this 17th day of February, 2021.

John 'Chuck' Williams	Aye	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>
Keen Ellsworth	Aye	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>
Justin Sip	Aye	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>
Gary Chaves	Aye	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>
Ty Bringhurst	Aye	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>

TOQUERVILLE CITY  
a Utah municipal corporation

  
\_\_\_\_\_  
Lynn Chamberlain, Mayor

2/17/2021  
Date

Attest:

  
\_\_\_\_\_  
Ruth Evans, City Recorder



EXHIBIT "A"  
To Toquerville City Resolution 2021-02

*Approved BLM Standard Form 299 and Attachment To Follow*



STANDARD FORM 299 (REV. 3/2020)

APPLICATION FOR TRANSPORTATION, UTILITY SYSTEMS, TELECOMMUNICATIONS AND FACILITIES ON FEDERAL LANDS AND PROPERTY

FORM APPROVED  
OMB Control Number: 0596-0249  
Expiration Date: 2/28/2023

FOR AGENCY USE ONLY

NOTE: Before completing and filing the application for an authorization (easement, right-of-way, lease, license or permit), the applicant should completely review this package, including instructions, and schedule a pre-application meeting with representatives of the agency responsible for processing the application. Each agency may have specific and unique requirements to be met in preparing and processing the application. Many times, with the help of the agency representative, the application can be completed at the pre-application meeting.

Application Number

Date Filed

1. Name and address of applicant  
Toquerville City  
212 N. Toquer Blvd.  
Toquerville, Utah 84774

2. Name and address of authorized agent if different from item 1  
Keen Ellsworth, City Council Member

3. Applicant telephone number and email:  
435-635-1094  
toquerville.org

Authorized agent telephone number and email:  
keenellsworth@toquerville.org

4. As applicant are you? (check one)

- a.  Individual
- b.  Corporation\*
- c.  Partnership/Association\*
- d.  State Government/State Agency
- e.  Local Government
- f.  Federal Agency

\* If checked, complete supplemental page

5. Specify what application is for: (check one)

- a.  New authorization
- b.  Renewing existing authorization number
- c.  Amend existing authorization number
- d.  Assign existing authorization number
- e.  Existing use for which no authorization has been received \*
- f.  Other\*

\* If checked, provide details under item 7

6. If an individual, or partnership, are you a citizen(s) of the United States?  Yes  No

7. Project description (describe in detail): (a) Type of use or occupancy, (e.g., canal, pipeline, road, telecommunications); (b) related structures and facilities; (c) physical specifications (Length, width, grading, etc.); (d) term of days/years needed; (e) time of year of use or operation; (f) Volume or amount of product to be transported; (g) duration and timing of construction; and (h) temporary work areas needed for activity/construction (Attach additional sheets, if additional space is needed.)

Two road and utility easements are requested. See Attachment for details.

8. Attach a map covering area and show location of project proposal.

9. State or Local government approval:  Attached  Applied for  Not Required

10. Nonrefundable application fee:  Attached  Not required  To be determined by agency

11. Does project cross international boundary or affect international waterways?  Yes  No (if "yes," indicate on map)

12. Give statement of your technical and financial capability to construct, operate, maintain, and terminate system for which authorization is being requested.

The utilities and roads will be constructed by a private developer, according to all applicable design and construction specifications. These include, but are not limited to, the City, County Districts, and other applicable laws. This developer is developing over 1,700 acres in the Toquerville City limits.



13a. Describe other alternative locations considered.

See Attachment

b. Why were these alternatives not selected?

See Attachment

c. Give explanation as to why it is necessary to use or occupy Federal assets (lands or buildings).

See Attachment

14. List authorizations and pending applications filed for similar projects which may provide information to the authorizing agency. (Specify number, date, code, or name)

Not applicable

15. Provide statement of need for project, including the economic feasibility and items such as: (a) cost of proposal (construction, operation, and maintenance); (b) estimated cost of next best alternative; and (c) expected public benefits.

For the roads, construction costs are approximately \$700 per linear foot; for the utilities, approximately \$40 per linear foot for each utility. Thus, the shorter the routes, the better. The proposed routes for Roads 1 and 2 are the shortest routes.

16. Describe probable effects on the population in the area, including the social and economic aspects, and the rural lifestyles.

Neighborhoods just 1,600 feet apart can connect and interact without the dangers of having to use the expressway. Installing the utilities within the road easements will allow looping, which provides more reliable service and provides the pressure needed for fire protection.

17. Describe likely environmental effects that the proposed project will have on: (a) air quality; (b) visual impact; (c) surface and ground water quality and quantity; (d) the control or structural change on any stream or other body of water; (e) existing noise levels; and (f) the surface of the land, including vegetation, permafrost, soil, and soil stability; and, (g) historic or archaeological resources or properties.

Road 1: This route goes through a lower sandy and sage area. There will be little visual impact, and there is no known impact on any water sources. Road 2: this route climbs the butte in an area that will leave little to no scarring, and it will be in full compliance with Toquerville's Hillside Preservation Ordinance. No known historic or archaeological concerns impacted.

18. Describe the probable effects that the proposed project will have on (a) populations of fish, plant life, wildlife, and marine life, including threatened and endangered species; and (b) marine mammals, including hunting, capturing, collecting, or killing these animals.

No significant impacts on animals, wildlife, or waterways.

19. State whether any hazardous material, as defined in this paragraph, would be used, produced, transported or stored on or in a federal building or federal lands or would be used in connection with the proposed use or occupancy. "Hazardous material" shall mean (a) any hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any petroleum product or its derivative, including fuel oil, and waste oils; and (d) any hazardous substance, extremely hazardous substance, toxic substance, hazardous waste, ignitable, reactive or corrosive materials, pollutant, contaminant, element, compound, mixture, solution or substance that may pose a present or potential hazard to human health or the environment under any applicable environmental laws. The holder shall not store any hazardous materials at the site without prior written approval from the authorized officer. This approval shall not be unreasonably withheld. If the authorized officer provides approval, this permit shall include (or in the case of approval provided after this permit is issued, shall be amended to include) specific terms addressing the storage of hazardous materials, including the specific type of materials to be stored, the volume, the type of storage, and a spill plan. Such terms shall be proposed by the holder and are subject to approval by the authorized officer.

None.

20. Name all the Federal Department(s)/Agency(ies) where this application is being filed.

Bureau of Land Management, Southern Utah

I HEREBY CERTIFY, That I am of legal age and authorized to do business in the State and that I have personally examined the information contained in the application and believe that the information submitted is correct to the best of my knowledge.

Signature of Applicant

City Council Member

Date

November 5, 2020

Title 18, U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.



GENERAL INFORMATION  
ALASKA NATIONAL INTEREST LANDS

This application will be used when applying for a right-of-way, permit, license, lease, or certificate for the use of Federal lands which lie within conservation system units and National Recreation or Conservation Areas as defined in the Alaska National Interest Lands Conservation Act. Conservation system units include the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, and National Forest Monuments.

Transportation utility systems telecommunication installations facility uses for which the application may be used are:

1. Canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other systems for the transportation of water.
2. Pipelines and other systems for the transportation of liquids other than water, including oil, natural gas, synthetic liquid and gaseous fuels, and any refined product produced therefrom.
3. Pipelines, slurry and emulsion systems, and conveyor belts for transportation of solid materials.
4. Systems for the transmission and distribution of electric energy.
5. Wired and wireless systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communications.
6. Improved right-of-way for snow machines, air cushion vehicles, and all-terrain vehicles.
7. Roads, highways, railroads, tunnels, tramways, airports, landing strips, docks, and other systems of general transportation.

This application must be filed simultaneously with each Federal department or agency requiring authorization to establish and operate your proposal.

In Alaska, the following agencies will help the applicant file an application and identify the other agencies the applicant should contact and possibly file with:

Department of Agriculture  
Regional Forester, Forest Service (USFS)  
P.O. Box 21628  
Juneau, Alaska 99802-1628  
Telephone: (907) 586-7847  
(or a local Forest Service Office)

Department of the Interior  
Bureau of Indian Affairs (BIA)  
Alaska Regional Office  
709 West 9th Street  
Juneau, Alaska 99802  
Telephone: (907) 586-7177

Department of the Interior  
Alaska State Office  
Bureau of Land Management  
222 West 7th Avenue #13  
Anchorage, Alaska 99513  
Public Room: 907-271-5960  
FAX: 907-271-3684  
(or a local BLM Office)

U.S. Fish & Wildlife Service (FWS)  
Office of the Regional Director  
1011 East Tudor Road  
Anchorage, Alaska 99503  
Telephone: (907) 786-3440

National Park Service (NPS)  
Alaska Regional Office  
240 West 5th Avenue  
Anchorage, Alaska 99501  
Telephone: (907) 644-3510

Note - Filings with any Interior agency may be filed with any office noted above or with the Office of the Secretary of the Interior, Regional Environmental Officer, P.O. Box 120, 1675 C Street, Anchorage, Alaska 99513.

Department of Transportation  
Federal Aviation Administration  
Alaska Region AAL-4, 222 West 7th Ave., Box 14  
Anchorage, Alaska 99513-7567  
Telephone: (907) 271-5285

NOTE - The Department of Transportation has established the above central filing point for agencies within that Department. Affected agencies are: Federal Aviation Administration (FAA), Coast Guard (USCG), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA).

OTHER THAN ALASKA NATIONAL INTEREST LANDS

Use of this form is not limited to National Interest Conservation Lands of Alaska.

Individual department/agencies may authorize the use of this form by applicants for transportation, utility systems, telecommunication installations and facilities on other Federal lands outside those areas described above.

For proposals located outside of Alaska, applications will be filed at the local agency office or at a location specified by the responsible Federal agency.

SPECIFIC INSTRUCTIONS  
(Items not listed are self-explanatory)

- 7 Attach preliminary site and facility construction plans. The responsible agency will provide instructions whenever specific plans are required.
- 8 Generally, the map must show the section(s), township(s), and range(s) within which the project is to be located. Show the proposed location of the project on the map as accurately as possible. Some agencies require detailed survey maps. The responsible agency will provide additional instructions.
- 9, 10, and 12 The responsible agency will provide additional instructions.
- 13 Providing information on alternate locations in as much detail as possible, discussing why certain locations were rejected and why it is necessary to use Federal assets will assist the agency(ies) in processing your application and reaching a final decision. Include only reasonable alternate locations as related to current technology and economics.
- 14 The responsible agency will provide instructions.
- 15 Generally, a simple statement of the purpose of the proposal will be sufficient. However, major proposals located in critical or sensitive areas may require a full analysis with additional specific information. The responsible agency will provide additional instructions.
- 16 through 19 Providing this information with as much detail as possible will assist the Federal agency(ies) in processing the application and reaching a decision. When completing these items, you should use a sound judgment in furnishing relevant information. For example, if the project is not near a stream or other body of water, do not address this subject. The responsible agency will provide additional instructions.

Application must be signed by the applicant or applicant's authorized representative.



**EFFECT OF NOT PROVIDING INFORMATION**

Disclosure of the information is voluntary. If all the information is not provided, the proposal or application may be rejected.

**DATA COLLECTION STATEMENT**

The Federal agencies collect this information from proponents and applicants requesting a right-of-way, permit, license, lease, or certification for use of Federal assets. The Federal agencies use this information to evaluate a proponent's or applicant's proposal to use Federal assets.

**BURDEN STATEMENT**

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0249. The time required to complete this information collection is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The authority to collect this information is derived from 47 U.S.C. 1455(c)(3) and 16 U.S.C. 3210.

**USDA NONDISCRIMINATION STATEMENT**

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.



**SUPPLEMENTAL**

NOTE: The responsible agency(ies) will provide instructions	CHECK APPROPRIATE BLOCK	
	ATTACHED	FILED *
<b>I - PRIVATE CORPORATIONS</b>		
a. Articles of Incorporation	<input type="checkbox"/>	<input type="checkbox"/>
b. Corporation Bylaws	<input type="checkbox"/>	<input type="checkbox"/>
c. A certification from the State showing the corporation is in good standing and is entitled to operate within the State	<input type="checkbox"/>	<input type="checkbox"/>
d. Copy of resolution authorizing filing	<input type="checkbox"/>	<input type="checkbox"/>
e. The name and address of each shareholder owning 3 percent or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote and the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.	<input type="checkbox"/>	<input type="checkbox"/>
f. If application is for an oil or gas pipeline, describe any related right-of-way or temporary use permit applications, and identify previous applications.	<input type="checkbox"/>	<input type="checkbox"/>
g. If application is for an oil and gas pipeline, identify all Federal lands by agency impacted by proposal.	<input type="checkbox"/>	<input type="checkbox"/>
<b>II - PUBLIC CORPORATIONS</b>		
a. Copy of law forming corporation	<input type="checkbox"/>	<input type="checkbox"/>
b. Proof of organization	<input type="checkbox"/>	<input type="checkbox"/>
c. Copy of Bylaws	<input type="checkbox"/>	<input type="checkbox"/>
d. Copy of resolution authorizing filing	<input type="checkbox"/>	<input type="checkbox"/>
e. If application is for an oil or gas pipeline, provide information required by item "I - f" and "I - g" above.	<input type="checkbox"/>	<input type="checkbox"/>
<b>III - PARTNERSHIP OR OTHER UNINCORPORATED ENTITY</b>		
a. Articles of association, if any	<input type="checkbox"/>	<input type="checkbox"/>
b. If one partner is authorized to sign, resolution authorizing action is	<input type="checkbox"/>	<input type="checkbox"/>
c. Name and address of each participant, partner, association, or other	<input type="checkbox"/>	<input type="checkbox"/>
d. If application is for an oil or gas pipeline, provide information required by item "I - f" and "I - g" above.	<input type="checkbox"/>	<input type="checkbox"/>

\* If the required information is already filed with the agency processing this application and is current, check block entitled "Filed." Provide the file identification information (e.g., number, date, code, name). If not on file or current, attach the requested information.





## Attachment

### Section 7

As shown on the map attached as Exhibit A, the BLM property at issue is surrounded on three sides by private land being developed over the next 24-36 months. Two neighborhoods are being built, one west of the butte, and one just south of the butte. The BLM property divides these two neighborhoods. Toquerville seeks two roads: Road 1 is a connector road between the two neighborhoods, and Road 2 is an access road to the top of the butte.

#### Road 1: Connector Road

- (a) Use: public road and utility easement beneath the roads. See the attached map for exact location.
- (b) Structures: this will be a City roadway, built to City specifications.
- (c) Total length: 1,600+/- feet; total width: 100 feet plus a 50 feet construction easement on each side. The construction easement may terminate upon completion.
- (d) Term: the use will be indefinite, as the roadway will connect two neighborhoods of the City.
- (e) Time of Use: the roads and utility easement will be used every day of the year.
- (f) Not applicable
- (g) Construction will begin in about July of 2021 and will take approximately 12 months to complete.
- (h) Not applicable

#### Road 2: Access to Butte

- (a) Use: public road and utility to access the top of the butte, where a City park will be built, along with approximately 17 acres of residential properties. See the attached map for the exact location.
- (b) Structures: this will be a City roadway, built to City specifications.
- (c) Total length: 800+/- feet; total width: 100 feet plus a 50 feet construction easement on each side. The construction easement may terminate upon completion.
- (d) Term: the use will be indefinite, as the roadway will allow access to the top of the butte.
- (e) Time of Use: the road will be used every day of the year.
- (f) Not applicable
- (g) Construction will begin in about July of 2021 and will take approximately 12 months to complete.
- (h) Not applicable



### **Section 13a: Alternative Routes**

#### Road 1: Alternatives to the Connector Road

From the northern neighborhood, the following alternative routes were considered:

*Western Route:* this route would go further west, then south, then back east again to the southern neighborhood.

*Eastern Route:* this route would send users east to the parkway, then south on the parkway, then back east again to the southern neighborhood.

#### Road 2: Alternatives to Access to Butte

Access from north, south, and east were considered.

### **Section 13b: Why Alternative Routes Were Not Selected**

#### Road 1: Connector Road

*Western Route:* this would require a longer route over even more BLM property.

*Eastern Route:* this would be longer and require use of the bypass road, which is limited access. It is a parkway-style road, much like Snow Canyon Parkway. This route would increase the distance traveled, force more traffic into an already congested area, make travel more dangerous because users would have to accelerate rapidly on the parkway, and increase expense and pollution.

It will be much safer for the City to provide a simple connector road. Furthermore, for the utilities, looping of the systems is needed to make sure residents have constant service, particularly water for consumption and fire protection. Installing the utilities within this road easement will strengthen the service, provide more reliable service, and provide the pressure needed for fire protection.

#### Road 2: Access to Butte

Access from the north is not possible because it would create a scar on the hillside, and it would violate Toquerville's hillside preservation ordinance. Access from the east is not possible because the parkway travels directly east of the butte. Access from the south is also not possible because it too would create a scar on the landscape and violate Toquerville's hillside preservation ordinance. The map attached as Exhibit B shows why the south is not a possible route.



## **Section 13c: Why Federal Land Necessary**

### **Road 1: Connector Road**

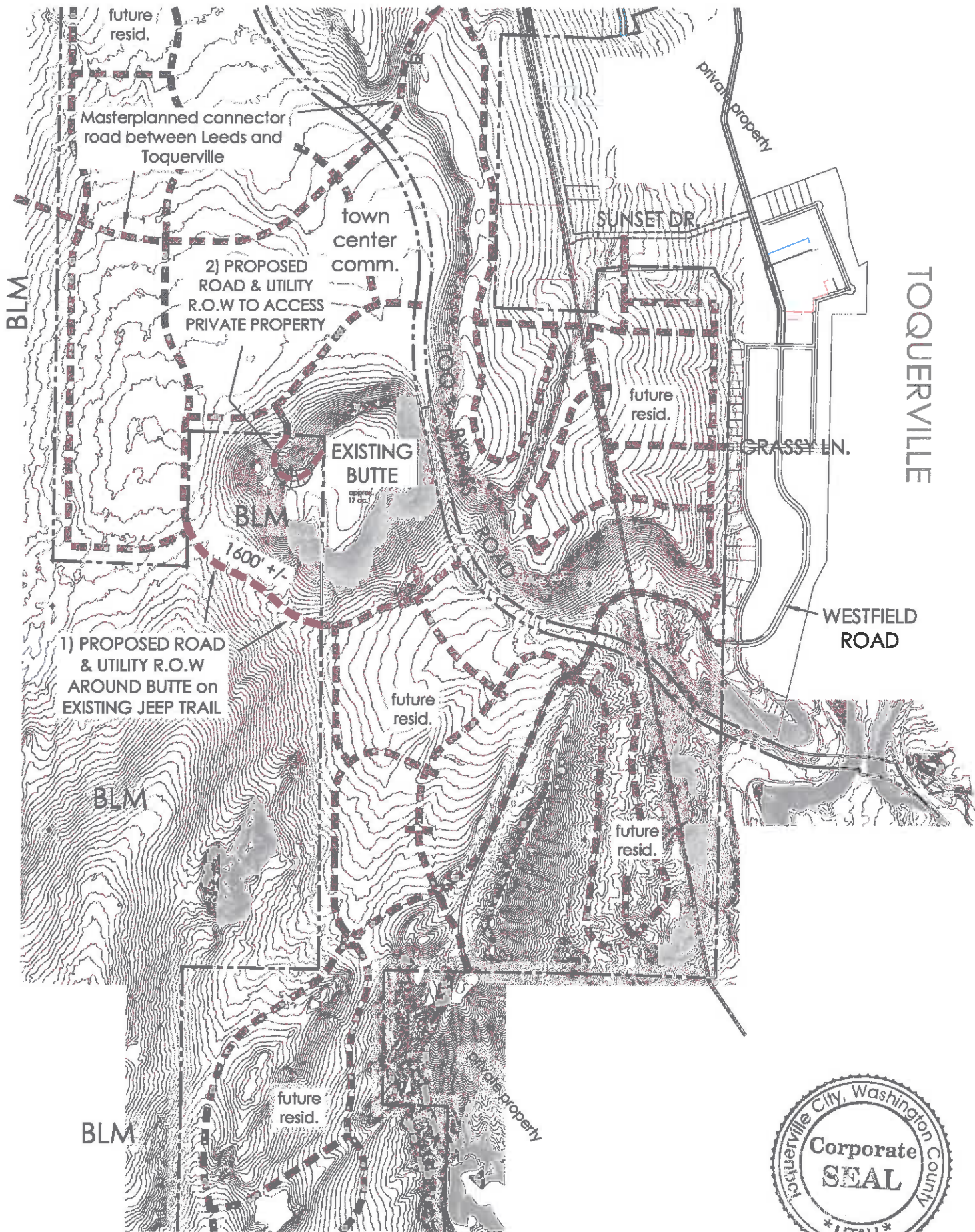
It will be much safer for residents of the City to have this connector road. It will allow the residents to interact without having to access the parkway, and it will save money for all concerned. Furthermore, for the utilities, looping of the systems is needed to make sure residents have constant service, particularly water for consumption and fire protection. Installing the utilities within this road easement will strengthen the service, provide more reliable service, and provide the pressure needed for fire protection. Finally, there is already a dirt road (jeep trail) that connects the neighborhoods, and the public will likely take that route regardless. Making it a paved city road will reduce dust pollution, which is better for all.

### **Road 2: Access to Butte**

Access is needed for Toquerville residents to access a City park that will be constructed on the top of the butte. The developer also wants access to the top of the butte. The only possible access to the butte is through a small portion of the BLM property, as noted on the map in Exhibits A and B. Any other possible route violates Toquerville's hillside preservation ordinance.



Exhibit A





# Exhibit for Road Study Access to top of knoll

