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IN THE SEVENTH JUDICIAL DISTRICT COURT IN AND FOR SAN JUAN COUNTY THE STATE OF UTAH

KIM ERIC ACTON and IDA ELIZABETH ACTON, Plaintiffs, v. TOWN OF BLUFF, a municipal corporation of the State of Utah, Defendant.	**PETITION FOR DISCONNECTION OF MUNICIPAL BOUNDARIES** Case No. ______________ Judge _______________ **Tier 2**

Plaintiffs Kim Eric Acton and Ida Elizabeth Acton ("**Actons**") hereby file this Complaint ("**Complaint**") against Defendant Town of Bluff ("**Town**") and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. The Actons are the owners of the approximately 640 acres of real property described as Section 16, T 40S, R. 22E, SLM ("Actons' Property") located in the Town.

2. The Town is a municipal corporation of the State of Utah.

3. The State of Utah School and Institutional Lands Administration ("SITLA") is an independent agency of the State of Utah charged by the Utah Constitution with the management

of certain lands for the benefit of financing which owns, among other properties, approximately 7,370 acres of land in the Town ("SITLA's Properties") that are the subject of this action.

4. The Court has jurisdiction over the subject matter of this case pursuant to Utah Code § 10-2-502.5 which is a section of Part 5 of Chapter 2 of Title 10 of the Utah Code ("Disconnection Code").

5. Venue is proper in this Court pursuant to Utah Code §§ 78B-3-301 and -307.

6. Pursuant to Utah Rule of Civil Procedure 26(c)(5), the relief sought in this case qualifies as Tier 2 for standard discovery because no damages are sought.

FILING OF THE PETITION

7. On May 5, 2023, the Actons submitted to the Town a Petition for Disconnection asking the Town to allow the disconnection of the Actons' Property, SITLA's Properties and other private and publicly owned parcels of land totaling approximately 9,514 acres (collectively, "Disconnection Properties") from the Town. (*See* Disconnection Petition, attached hereto as Exhibit A along with four maps that were attached thereto, Exhibits A-1, A-2, A-3 and A-4).)

COMPLIANCE WITH UTAH CODE ANN. § 10-2-501

8. As required by Utah Code Ann. § 10-2-501(b)(i), the Disconnection Petition contained the names, addresses and signatures of the owners of more than 50% of the private real property in the area proposed for disconnection.

9. SITLA supported the Disconnection Petition.

10. As required by § 10-2-501(2)(b)(ii), the Disconnection Petition specified the reasons for the proposed disconnection. (*See* Exhibit A.)

11. As required by § 10-2-501(2)(b)(iii), the Disconnection Petition included a map of the territory proposed for disconnection. (*See* Exhibit A to Exhibit A.)

12. As required by § 10-2-501(2)(b)(iv), the Disconnection Petition designated a representative to act on behalf of the Actons. (*See* Exhibit A.)

13. The Town provided the public notices required by § 10-2-501(3).

14. The Town held a public hearing ("Disconnection Hearing") on August 15, 2023.

15. On September 25, 2023, the Town Council voted to deny the Disconnection Properties. (*See* Denial Resolution, ("Denial Resolution") attached hereto as Exhibit B.)

COMPLIANCE WITH UTAH CODE ANN. § 10-2-502.7

16. Pursuant to § 10-2-502.7(3)(a), the disconnection is viable.

17. The cost of providing services to the Disconnection Properties will not change immediately following the disconnection, and the tax revenues generated will be more than sufficient to cover any County-provided services.

18. Even if the County does not allow any increase in development on the property the County could service the property without any material increase in cost to the County as it did for more than 150 years.

19. Pursuant to § 10-2-502.7(3)(b), justice and equity require that the territory be disconnected from the Town.

20. It is just and equitable that the Court should respect and honor the wishes of all but one of the private landowners in the area proposed for disconnection especially when the Town has made it clear, as repeatedly expressed by the Town's citizens during the hearing on the Disconnection Properties, the Town's treatment of SITLA as testified to by SITLA at the hearing on the Disconnection Properties, and, the comments from the Town Council and the proudly self-described "screaming activists" on a prior iteration of a different disconnection petition filed by the predecessor-in-interest of the Actons that the Town will not allow any reasonable

development of the Disconnection Properties.

21. Furthermore, justice and equity favor disconnection given that the Disconnection Properties are largely undeveloped (i.e., no Town-owned infrastructure and only one developed property), almost completely uninhabited, the Town's zoning and planning regulations and processes make it clear that no development would be allowed reflects unreasonable delay, and the Town's current political climate (e.g., citizens of the Town proudly claiming to be "screaming activists") precludes an orderly and efficient planning process.

22. Pursuant to § 10-2-502.7(3)(c)(i), the disconnection will not leave the Town with an area within its boundaries for which the cost, requirements, or other burdens of providing municipal services would materially increase over previous years.

23. As the Disconnection Properties are essentially unserviced by the Town in all respects except for police services and are located on the periphery of the Town, the disconnection will not leave the municipality with an area within its boundaries for which the cost, requirements, or other burdens of providing municipal services would materially increase over previous years.

24. The Town's cost of providing municipal services will not materially increase because the disconnection will not result in a significant increase in traffic, surface run-off, or law enforcement, zoning or other municipal services in the Town.

25. The Town has never suggested that the disconnection will leave the Town with an area within its boundaries for which the cost, requirements, or other burdens of providing municipal services would materially increase over previous years.

26. Pursuant to § 10-2-502.7(3)(c)(ii), the disconnection will not make it economically or practically unfeasible for the Town to continue to function as a municipality.

27. On information and belief, the Disconnection Properties provide the Town with $6.10 in property taxes according to the San Juan County tax notice for 2023 which, out of the Town's estimated 2023 total revenue of approximately $450,000.00, is less than 14 thousandths of one percent (0.001355%) of the budgeted revenues.

28. The preservation of more than ninety-nine and nine-tenths percent (99.998665%) of the Town's budget would not work any hardship on the Town.

29. Further, the Town has shown no ability to implement a practical growth plan for the Disconnection Properties which would alter this calculus.

30. Even if, following disconnection, the Disconnection Properties were ever developed, there would be no material impact on the Town, and therefore no impact which would make it unfeasible for the Town to function as a municipality.

31. Pursuant to § 10-2-502.7(3)(c)(iii), the disconnection will not leave or create any islands or peninsulas of unincorporated territory.

32. The Disconnection Properties are contiguous with an area that is presently (and was for 150 years) unincorporated.

33. Pursuant to § 10-2-502.7(3)(d), San Juan County—the county in which the Disconnection Properties are located—is capable, in a cost-effective manner and without materially increasing the County's costs of providing municipal services, of providing to the area the services that the Town will no longer provide to the area due to the disconnection.

34. Pursuant to § 10-2-502.7(4)(a), the disconnection will have no adverse effect on the Town or community as a whole.

35. The Disconnection Properties are almost entirely physically distinct from the remaining portions of the Town and, for the most part, separated by a distinct and significant

physical boundary.

36. Pursuant to § 10-2-502.7(4)(b), the disconnection will have no adverse effect on adjoining property owners.

37. Pursuant to § 10-2-502.7(4)(c), the disconnection will have no material adverse effect on existing or projected streets or public ways.

38. Pursuant to § 10-2-502.7(4)(d), the disconnection will have no adverse effect on water mains and water services.

39. The Disconnection Properties' water services are not provided by the Town and because there will be no change in water services to the Disconnection Properties, disconnection will likewise have no impact on the Town's water mains and services.

40. Pursuant to § 10-2-502.7(4)(e), the disconnection will have no adverse effect on sewer mains and sewer services because the Town does not provide any such services.

41. Pursuant to § 10-2-502.7(4)(f), the disconnection will have no adverse effect on law enforcement.

42. The Disconnection Properties are presently mostly uninhabited, so any law enforcement needs are negligible.

43. Furthermore, any law enforcement provided by the Town are done so pursuant to a contract with San Juan County and such services would be removing the Disconnection Properties from the Town's police jurisdiction, the disconnection will, if anything, reduce the demand upon the Town's services.

44. Pursuant to § 10-2-502.7(4)(g), the disconnection will have no adverse effect on zoning.

45. The zoning of the Disconnection Properties currently maintained by the Town is

irrationally low, and disconnection will in no way affect the Town's ability to provide zoning services to the remainder of the Town.

46. Pursuant to § 10-2-502.7(4)(h), the disconnection will have no adverse effect on other municipal services.

47. Other than contracting for law enforcement with San Juan County, as discussed above, and some possible de minimis road maintenance discussed below the Town provides no real services to the uninhabited bare ground of the Actons' Property or SITLA's Properties nor to the single developed parcel in the Disconnection Properties.

48. Furthermore, the very nominal loss in revenues will in no way affect the Town's ability to provide municipal services to the remainder of the Town.

COMPLIANCE WITH UTAH CODE ANN. § 10-2-502.7

49. The Denial Resolution contains 21 separate paragraphs.

50. Paragraph 1 references a prior disconnection petition for the Actons' Property and claims that this disconnection was denied by the Town because it would have created an island.

51. While it is true that the prior petition would have created an island (albeit an island surrounded by publicly owned property that does not benefit at all by being in the Town) there is no prohibition in the Disconnection Code against the Town creating an island (or a peninsula).

52. That prohibition only applies to court-ordered disconnections.

53. Paragraph 2 lists the owners of all of the Disconnection Properties.

54. Paragraph 2 then attempts to make a big deal out of the fact that St. Christopher's Episcopal Mission ("Mission") was not contacted by the Actons about the inclusion of the property owned by the Mission ("Mission's Property") was included in the Disconnection

Properties.

55. That claim is, at best, as disingenuous as it irrelevant because there is no legal requirement for the Actons to make any such notification and, to the contrary, under the most current iteration of the Utah Code regarding giving notice of a disconnection petition that responsibility lies solely with the Town (under prior iterations of the relevant Utah Code that would have been the responsibility of the Actons).

56. Paragraph 3 calculates the percentage of the Town's total acreage that is encompassed by the Disconnection Properties.

57. That percentage is legally irrelevant.

58. The Town ignores the fact, as presented at the public hearing, that the Town is the 7th largest geographic area of any municipality while being near the bottom of the number of people.

59. It is not the fault of the Actons that the Town was deliberately incorporated at a gargantuan size for the sole purpose of controlling, according to the Towns' own admissions and the prideful boasting of the "screaming activists", the destiny of all of the undeveloped property.

60. Paragraph 3 also talks about the "potential future tax base" of the Town but that potential future tax base is not an element of Sections 502.5 or 502.7 and is, at best, purely speculative.

61. Moreover, the Town and its "screaming activist" citizens have made it clear that the Town does not really want and would not permit any development of the Disconnection Properties and, thus, would not receive any future tax revenues.

62. Paragraph 4 is a jumble of irrelevancies and inconsistencies.

63. The bulk of the Disconnection Properties are on the "Bluff Bench" but that does

not make them the “gateway” to Bluff.

64. Instead, the Actons’ Property and SITLA’s Properties are physically distinct from the Town.

65. As is obvious to anyone driving into the Town from the northeast the “gateway” to the Town is at the bottom of the canyon.

66. As noted above, regarding Paragraph 3, the reference in Paragraph 4 regarding “future growth” is, literally belied by the Town’s stated intent, as manifested by current zoning, to prevent or, at the very least, materially inhibit any real development of the Actons’ Property and SITLA’s Properties.

67. Contrary to the claim in Paragraph 4, the disconnection would not “fragment local government” or, really, anything else.

68. Instead, the disconnection would merely move the jurisdiction of the Disconnection Properties back to San Juan County where it happily was until the greedy Town just a few years ago decided to micro-manage the property of other persons and entities.

69. Paragraph 5 claims credit for the Town having adopted “comprehensive zoning, subdivision, and related land use ordinances”.

70. But, instead of being a virtue supporting the Town’s zoning this is actually a fatal weakness.

71. The Actons’ Property is zoned A-2 while SITLA’s Properties are zoned A-1.

72. A-2 zoning allows only the following uses: “agriculture, silviculture, ranching, farming, including the raising of domestic animals, the growing of crops, orchards, or forage, and all necessary or incidental agriculture structures; single-family dwellings; accessory dwelling units; and accessory structures” with the minimum lot size being three acres and residential

dwellings being only two units for every three acres.

73. There is no reasonable chance that any sane person or developer could make economically rational use of the Actons' Property in its actual location with its actual physical characteristics with that zoning classification.

74. Ironically, the uses allowed by the A-2 zoning as a matter of right create more of an issue for the "N Aquifer" (see the discussion regarding Paragraph 10 of the Disconnection Resolution at paragraphs 106 - 112, below) than would many, more economically viable, commercial and other uses.

75. None of the allowed uses on the Actons' Property has any significant economic value if any.

76. The A-1 on SITLA's Properties zoning allows only the following uses: "open space, green space, public parks, public lands, cemeteries, and public restroom facilities."

77. Even if a sane developer or owner wanted to make economically rational use of SITLA's Properties in their actual locations with their actual physical characteristics that zoning classification does not even allow any such uses.

78. No one would pay any money to a landowner to provide facilities for "open space, green space, public parks, public lands, cemeteries, and public restroom facilities."

79. And, to make matters worse, "up-zoning" in Utah (i.e., rezoning a property to a different zoning classification that allows a more intensive, more economically viable use) is, essentially, subject to almost complete political discretion.

80. In light of how the Town and its "screaming activists" responded to just the Disconnection Properties no sane developer or owner of the Actons' Property or SITLA's Properties could reasonably anticipate that the Town would approve an upzoning of their

properties to allow economically viable uses.

81. And even if the Town somehow did allow an upzoning it is painfully obvious that the "screaming activists" would force a referendum and delay/deny the upzoning anyway.

82. These realities (not speculation) make it so that the Actons' Property and SITLA's Properties would, under the Town's zoning scheme, be perpetual open space as the "screaming activists" and the Town clearly intended when the Town was created as the 7th largest town in the State of Utah with the lowest density and highest proportion of "open space".

83. Paragraph 6 contains only two sentences the first of which claims that "[t]he Actons have not sought any development approval from the Town, nor have they disclosed any future development intentions."

84. That sentence may be true but it is legally irrelevant.

85. There is no requirement in the Utah Code for any attempted and denied development application.

86. And, as noted above, no sane person could reasonably expect any such approval from the Town given its the "screaming activist" population.

87. The second sentence of Paragraph 6 claims that "[t]he Town has not engaged in any conduct that would constitute an injury to the interests of the Actons."

88. That is false as the mere zoning of the Actons' Property as A-2 with its severe use limitations and the virtual impossibility of an upzoning renders the property essentially valueless as is.

89. Paragraph 7 references an attempt by SITLA, working with a potential developer, to consult with the Town about a rezoning of a portion of SITLA's Properties to make it economically viable for use as a solar farm.

90. Paragraph 7 claims that the Town "expressed a willingness to review any solar-farm land use that may be proposed".

91. Paragraph 7 omits the fact that SITLA, as testified to in the public hearing, does not believe that there is any real chance that such an upzoning would be allowed to occur.

92. In that same vein, the Denial Resolution fails to candidly acknowledge that the Town tried, unsuccessfully, to put pressure on SITLA to disavow its support for the Disconnection Properties.

93. And, again, the Denial Resolution fails to acknowledge that the Town, unsuccessfully, tried to put pressure on San Juan County to oppose the Disconnection Properties.

94. Paragraph 8 refers to certain Class C "roads" that the Town allegedly "maintains".

95. As usual, the Denial Resolution fails to mention that in the Staff Report to the Town Council for the Disconnection Hearing the Town's staff actually claimed that the Town "owned" these roads.

96. The Denial Resolution only changed that phrase to "maintain" after counsel for the Actons pointed out that, for example, Highway 163 was actually "owned" by UDOT and that none of the other "roads" were actually dedicated to the Town.

97. If fact, as pointed out by counsel for the Actons, the Town' claim for most of these "roads" is only a transparent attempt to obtain Class C road funds from the State of Utah which funds are based on the total length of the roads within a given municipality.

98. The Denial Resolution also omits the fact that the Class C maintenance funds make up about 11% of the Town's budget while, in turn, according to the Town's budget for FY 2022, the Town spent literally $220 for "Roads Equipment supplies and maintenance".

99. That is, the Town did nothing to "maintain" the supposed roads until the Actons'

predecessor-in-interest filed the first disconnection petition pointing this weakness out.

100. The Actons are without knowledge about how much money, if any, the Town has spent actually maintaining the "roads" listed in Paragraph 8 but the Actons reasonably believe that it was not much if any.

101. And, further, almost all of the "roads" in Paragraph 8 are essentially on the Actons' Property, SITLA's Properties or service only the property owners themselves.

102. Paragraph 8 claims that if these "roads" were under the control of San Juan County this "would result in a needless negative impact to the roads and the residents of the Town" but the Denial Resolution never specifies how this "negative impact would come about nor what the "negative impact" would be.

103. Paragraph 9 contains some (rare) candid truths that the Town provides no water or sewer services though the Denial Resolution claims, for some weird reason that "no services" is the same as "limited services"; euphemistic wordsmithing cannot change reality.

104. To quote from a different context, "no means no".

105. Paragraph 9 claims that this complete lack of municipally provided services is not "dispositive of anything" while ignoring Utah case law that while this fact" may not be "dispositive" in and of itself it is strong evidence that, under Utah case law, vacant land with no public services generally gets to choose which, if any, municipality its owners want to govern.

106. Paragraph 10 raises the ultimate red herring in this action by raising the issue of the "N Aquifer".

107. Paragraph 10 claims that the Town "has committed to seeking sole-source aquifer protection for the aquifer" whatever that word salad means.

108. Paragraph 10 also claims that "[d]isconnection could hamper or limit the Town's

ability to protect the aquifer which serves its residents, as well as many residents of the adjacent Navajo nation" but never explains how this could occur.

109. Use of the "N Aquifer" by any future development on the Disconnection Properties would be governed by the exclusive jurisdictions over various aspects by the State Engineer, the State Department of Environmental Quality, the United State Environmental Protection Agency and various other safety standards.

110. The Town has no legal or practical ability or expertise in protecting in any way the "N Aquifer" any water issue except to use that as an excuse to deny an upzoning.

111. A review of the Town's online Code of Ordinances does not reveal any water safety standards with the possible exception of Section 2.7 which provides that "[a]ll stormwater facilities shall be designed to avoid or minimize damage to, or infiltration of, culinary water and sanitary sewer facilities."

112. Agricultural uses, which are allowed as a matter of right on the Disconnection Properties and which are mostly unregulated, simply have a greater potential for substances such as fertilizers, herbicides, pesticides and animal manure penetrating down to ground water than do most commercial uses which are highly regulated to protect against just such issues.

113. Paragraph 11 only acknowledges that that the Town has nothing to do with providing power or telecommunications services which is true but, also, which is not in any way supportive of the Town's position.

114. Paragraph 12 also acknowledges that law enforcement services are provided by San Juan County which would also provide the same services if the Disconnection Properties were disconnected which is hardly a reason to deny disconnection.

115. Paragraph 12 claims that EMS services are "currently provided by the Bluff

Volunteer Fire Department" which is odd since the Town's budgets for FY 2022 and 2023 show precisely "$0.00" dollars for such services and, on information and belief, the Town does not have any EMS equipment or trained personnel.

116. Paragraph 12 also claims that fire protection services are "currently provided by the Bluff Volunteer Fire Department" which is also odd since the Town's budgets for FY 2022 and 2023 show precisely "$0.00" dollars for such services and, on information and belief, the Town does not have any fire protection equipment.

117. Apparently aware of how silly these claims look in the face of the Disconnection Properties the Town has, miraculously and after the Disconnection Petition was filed, budgeted for FY 2024 the princely sums of $2,000 and $25,000 for EMS and fire protection administration and supplies but it is unclear if any of that money is actually being spent or on what.

118. On information and belief, the Town and San Juan County have (or at least should have) a mutual assistance treaty for fire protection where the resources of one local government assist other governments as necessary.

119. Paragraph 13 tries to make a virtue of how little tax impact the Disconnection Properties have on the Town.

120. It is true that the Disconnection Properties generate almost no money for the Town either from property taxes ($6.10 for 2023) or from sales taxes ($0.00).

121. If the Town really did provide any services to the Disconnection Properties the Town would, on information and belief, lose money on the provision of such services.

122. Paragraph 13 tries to claim that this tax impact is not very burdensome on the Actons but that is not the legal standard required by the Disconnection Code.

123. The analysis under the Disconnection Code should be on the fiscal impact on the

Town which is, at most less than $20 or more likely, actually a net positive for the Town by letting the Disconnection Properties out.

124. The tax burden on the Actons' Property would be even lower if it were under San Juan County's sole jurisdiction.

125. Paragraph 14 references the potential future development of SITLA's Properties and the Town's supposed willingness to work with SITLA in facilitating that hope.

126. Paragraph 14 ignores and fails to candidly acknowledge that when SITLA actually attempted to work with the Town on a possible development the Town was, to put it politely, less than helpful.

127. Paragraph 15 discusses the Mission and, again, claims that the Mission was never notified about the Disconnection Properties but that notice issue was disposed of in paragraph 54_ of this Petition, above.

128. It is true that the Mission opposed the Disconnection Properties but essentially the only reasons given for that opposition were concerns about the "N Aquifer" which was disposed of in paragraph 54 of this Petition, above.

129. Exclusion of the Mission's Property from a disconnection as a peninsula was permissible by the Town under the Disconnection Code as explained in the Disconnection Hearing by counsel for the Actons and, thus, any forced disconnection of the Mission's Property would be a literally self-inflicted wound.

130. The Court can reconfigure the boundaries of the proposed disconnection that would leave the Mission's Property inside the Town's boundaries in a manner that would not create a peninsula.

131. The Actons acknowledge that, as recited in Paragraph 16, most of the testimony at

the required public hearing, by the “screaming activists” and others, was against disconnection.

132. To the extent that the testimony was intelligible it was mostly generally just anti-development sometimes based on the water concerns disposed of above.

133. Mostly the testimony was that the “screaming activists” simply wanted the Town to have complete control over someone else’s property rights.

134. Paragraph 17, regarding potential future transactions involving SITLA swapping ownership of some of its many properties in the Town with the BLM is speculative and, even if that possibility effectuates some portions of the Mission’s Property would still be subject to the potentially unreasonable development restrictions of the Town.

135. Paragraph 18, regarding San Juan County’s ability to provide services to the Disconnection Properties is belied by the simple fact that San Juan County serviced the Disconnection Properties effectively and without complaint from the County or any of the landowners for literally more than a century before the Town began its control hungry land grab.

136. Concerning Paragraph 19, the “concerned citizens” (some of whom are now the self-described “screaming activists”) who participated in choosing the Town’s bloated boundaries were concerned, as many of them stated at the Disconnection Hearing, acknowledged that they did so for the express purpose of “controlling” (read “prohibiting”) development as an effective moat around their tiny developed lands.

137. In effect, these “screaming activists” acknowledged themselves to advocating BANANAs – Build Absolutely Nothing Anywhere Near Anything.

138. Concerning involving the “stakeholders” in the creation of the Town’s engorged boundaries, the Actons’ predecessors in interest were not consulted.

139. On information and belief, SITLA did not support the creation of the Town.

140. SITLA wishes were, "carefully", ignored by the Screaming Activists and others.

141. The provisions of Paragraph 20 are merely a summary of the Town's incorrect statements in Paragraphs 1 – 19 which were disposed of above.

142. Paragraph 21 misstates the position of the Actons.

143. As clearly stated and written, the Actons does not want to be under the jurisdiction of the Town because the Town has zoned the Actons' Property so that no economically viable use can be made of it and, in the face of the "screaming activists" and the politicians who cravenly kowtow to them, there is no reasonable likelihood that the Town would rezone the Actons' Property for any economically viable use.

144. Further, the Actons simply don't want to have to endure the pettiness of being in the Town.

145. The desires of the Actons, as owners of undeveloped and unserviced property, are certainly a factor in the "justice and equity" prong of the Disconnection Code.

FIRST CLAIM FOR RELIEF
(Order of Disconnection, Utah Code Ann. § 10-2-502.7(5))

146. By this reference, Petitioner incorporates all preceding paragraphs as if set forth in full herein.

147. The Actons are entitled to an order declaring that the Disconnection Properties shall be disconnected from the Town.

PRAYER FOR RELIEF

On the foregoing Petition, the Actons prays for relief as follows:

1. For a determination by the Court that disconnection of the Disconnection Properties subject to the Disconnection Petition is proper and required by Utah Code Ann. § 10-2-502.7;

2. For an order disconnecting the Disconnection Properties from the Town;

3. For such other and further relief as the Court may deem appropriate.

DATED this 18th day of October, 2023.

BRUCE R. BAIRD, PLLC

/S/ *Bruce R. Baird*

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May 5, 2023

VIA CERTIFIED MAIL AND FIRST-CLASS MAIL

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Hon. Linda Sosa, Council Member
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Re: Petition for Disconnection Pursuant to Section 10-2-501
Kim E. Acton and Ida E. Acton

Dear Mayor Leppanen and Members of the Town Council:

I am counsel for Mr. Kim Eric Acton and Ms. Ida Elizabeth Acton, husband and wife (the "Actons"). The Actons own, as joint tenants, the approximately 640 acres of real property described as Section 16, T 40S, R. 22E, SLM (the "Actons' Property"). SITLA, other governmental agencies and others own other properties described in Exhibit "A" constituting a total of approximately 9,514 acres ("Other Properties"). The Actons' Property plus the Other Properties are herein referred to as the "Disconnection Properties".

Pursuant to Section 10-2-501, Utah Code Ann., Acton hereby requests that the Town of Bluff ("Bluff") disconnect the Disconnection Properties from its boundaries. SITLA has consented to this Petition.

The address for the Actons is 2002 North Reservoir Road, Blanding, Utah 84511. The Actons own more than 50% of the privately owned property within the totality of the Disconnection Properties. This letter is countersigned by Mr. and Ms. Acton. This information

satisfies the requirements of Section 10-2-501(2)(b)(i). Mr. Eric Acton is hereby designated as the person with authority to act on behalf of Acton at the address listed above. That information satisfies the requirements of Section 10-2-501(2)(b)(iv). Please direct any future correspondence regarding this matter to Mr. Acton and please copy me on all such correspondence.

Attached are four maps of the proposed disconnection which satisfies the requirements of Section 10-2-501(2)(b)(iii).

The disconnection is proposed because the Actons' Property and the rest of the Disconnection Properties cannot reasonably be served by Bluff with any municipal services. The vast majority of the Disconnection Properties are all currently vacant land owned by State and Federal entities and requires no municipal services (which Bluff does not provide anyway). The Disconnection Properties, as disconnected, would be "viable" in that they would get the very minimal services that San Juan County has previously provided. Justice and equity require the disconnection. The proposed disconnection will not leave the municipality with an area within its boundaries for which the cost, requirements, or other burdens of providing municipal services would materially increase over previous years (which is obviously true as no such services have or will be provided). The proposed disconnection will not make it economically or practically unfeasible for the municipality to continue to function as a municipality (which is obviously true as the taxes generated for Bluff by the Actons' Proiperty are miniscule while the Other Properties are mostly exempt from any such taxes at all). The proposed disconnection will not leave or create any islands or peninsulas of unincorporated territory.

Further, the proposed disconnection will have no adverse effect on: (a) the municipality or community as a whole; (b) adjoining property owners; (c) existing or projected streets or public ways (since there are none); (d) water mains and water services (since there are none); (e) sewer mains and sewer services (since there are none); (f) law enforcement (since there is none); (g) zoning (since there is none in reality); or (h) other municipal services (since there are none).

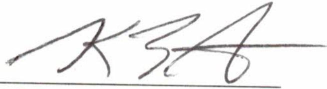
Simply put, if Bluff does not allow the Disconnection Properties to disconnect peacefully then the Actons will file suit in District Court to force the disconnection. Bluff will lose that suit and the Disconnection Properties will be disconnected but only after Bluff has wasted a fortune on attorney's fees. Based on *Bluffdale Mountain Homes v Bluff dale City*, 2007 UT 57, a copy of which I sent you with a prior disconnection request several years ago I am about as certain of that outcome as I can possibly be. The Actons do not want to litigate this matter but will do so if they have to.

Section 10-2-501(3) was amended this year by the Legislature in SB 43 2nd Substitute (lines 1104 to 1130). That bill was signed by the Governor on March 20, 2023 and has now taken effect. That new legislation puts the onus for giving public notice of the Petition (and, also, of the public hearing on the Petition required by Section 10-2-502.5) entirely on the municipality. This new legislation allows the municipality to bill the petitioner for the costs of that notice. The Actons agree to pay those actual and reasonable costs.

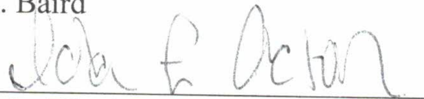
I look forward to coordinating with you for the hearing required by Section 10-2-502.5, Utah Code Ann. Please contact me if you have any questions.

Sincerely,

Bruce R. Baird

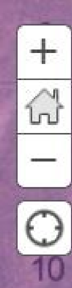


Mr. Kim Eric Acton



Ms. Elizabeth Ida Acton

cc: Client
SITLA



T40S R21E

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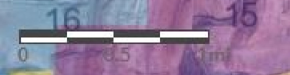

SWCA Environmental Consultants | SITLA, BLM | Cities, Towns and Counties of Utah, UGRC | Earthstar Geographics

T40S R21E

T40S R22E

Chimney Park Overlook Rd

The Horn

Recapture Pocket

Spring Canyon

S-US-191

Trail of the Ancients

Recapture Pocket Rd

Trading Post Spur

Ham Pasture

Evaporation Pond

Cow Canyon Rd

Highway 162

Cow Canyon

Navajo Twins

Bluff

N Cottonwood Wash Rd

W Cottonwood Ave

W Main St

E Main St

Nielson Ln

Highway 191

3 2 1 6 5 4 3 2

10 11 12 7 8 9 10 11

15 14 13 18 17 16 15 14

22 23 24 19 20 21 22 23

27 26 25 30 29 28 27 26

29 28 27 26 25

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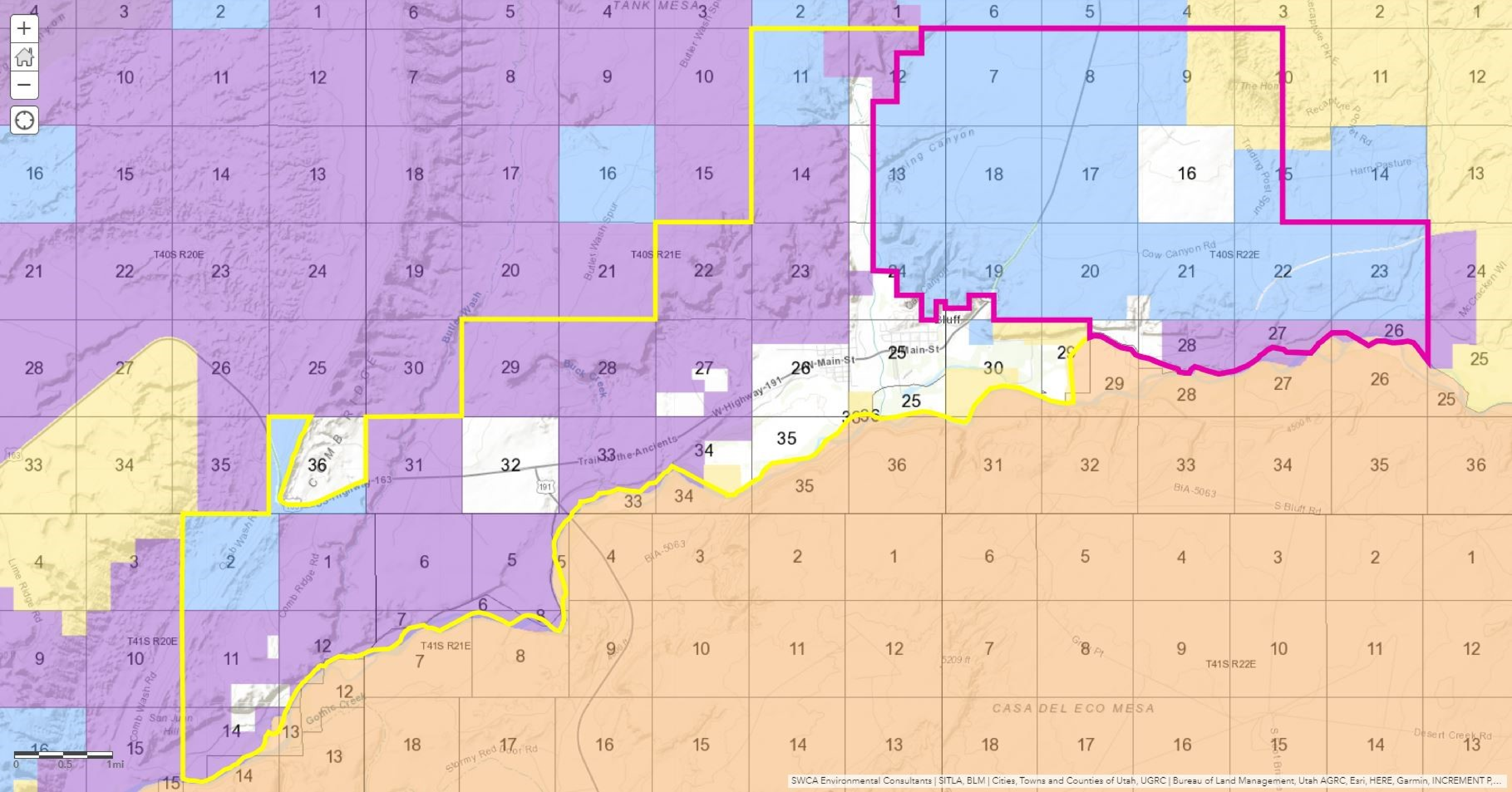
SWCA Environmental Consultants | SITLA, BLM | Cities, Towns and Counties of Utah, UGRC | Bureau of Land Management, Utah AGRC, Esri, HERE, Garmin, INCREMENT P,...



TANK MESA
T40S R20E
T40S R21E
T40S R22E
T41S R20E
T41S R21E
T41S R22E
Trading Canyon
Cow Canyon Rd
Harris Pasture
Trading Post Spur
Butler Wash
Butler Wash Spur
Buck Creek
Bluff
N Main St
Main St
W Highway 191
Trail of the Ancients
US Highway 163
COMB RIDGE
Comb Ridge Rd
Comb Wash Rd
Lime Ridge Rd
San Juan Hill
Gothic Creek
Stormy Red Door Rd
CASA DEL ECO MESA
BIA-5063
S Bluff Rd
Desert Creek Rd
McCracken Wash
4500 ft
5209 ft
0 0.5 1mi
SWCA Environmental Consultants | SITLA, BLM | Cities, Towns and Counties of Utah, UGRC | Bureau of Land Management, Utah AGRC, Esri, HERE, Garmin, INCREMENT P,...

TOWN OF BLUFF RESOLUTION NO. 2023-73

A RESOLUTION DENYING A PETITION FOR MUNICIPAL DISCONNECTION OF LANDS LOCATED WITHIN THE TOWN OF BLUFF

The Town makes the following findings in support of this resolution.

1. On May 5, 2023, Kim E. Acton and Ida E. Acton (Actons or the Petitioners) submitted a petition to the Town of Bluff (the Town) seeking the disconnection of certain lands from the municipal boundaries of the Town. The Petitioners are successors in title to Judy F. Lyman, who submitted a similar petition applicable to a parcel of approximately 640 acres identified as Township 40 South, Range 22 East, Section 16. The Lyman petition was denied by the Town on January 10, 2023, due in part to the fact that the petition would have created an unlawful island of unincorporated territory surrounded by incorporated lands. The current Petition is a second, much larger, attempt to remedy the defect in the Lyman petition.

2. The lands owned by Petitioners are described as Section 16, Township 40 South, Range 22 East, SLM (the Property). The Property is entirely within the municipal boundaries of the Town. Additionally, the Petitioners seek disconnection of additional lands within the Town owned/managed by the Utah State Institutional Trust Lands Administration (SITLA); the Bureau of Land Management (BLM); and the Saint Christopher's Episcopal Mission (St. Christopher's), with the total petition encompassing approximately 9,514 acres. See **Exhibit 1**, attached. Ownership/management of the lands subject to the Petition is described as follows:

Actons	640 acres	6.7%
SITLA	7,370 acres	77.5%
BLM	1,338 acres	14.1%
St. Christopher's	166 acres	1.7%

   SITLA has informed the Town that it joins in the Petition. The BLM has not provided any written statement on its position relative to the Petition. St. Christopher's opposes the Petition and affirmatively states that Petitioners did not consult or contact it for consent prior to filing.

3. The incorporated lands of Bluff comprise approximately 23,697 acres. The current Petition, if approved, would remove 40.1 percent of the total incorporated land from the Town. The Acton property itself comprises 16.2% of the private land within the Town.

The Town finds that disconnection of the Petition lands would harm the potential future tax base of the Town, and harm prospects for future development within the Town.

4. The bulk of the land subject to the Petition is located on the "Bluff Bench," an area at the east end of the Town along Highway 191, and which constitutes a "gateway" entrance to the community. The Bluff Bench is an area where future growth could occur within the Town. With the exception of the St. Christopher lands, the area of the Petition is largely undeveloped. There is no other adjacent municipality. Thus, disconnection of the Petition lands would fragment local government by creating an unincorporated area in the Bluff gateway.

5. The Town has adopted comprehensive zoning, subdivision, and related land use ordinances. The Acton lands are zoned A-2; SITLA/BLM lands are zoned A-1; and the St. Christopher Lands are zoned C-2, with another 40 acres zoned A-3. There is no confusion or lack of clarity about municipal ordinances, and the Town has adopted processes for amendment of its ordinances, if appropriate, for future development. See B.M.C. § 6.01.040 (process for zoning text amendments and map amendments).

6. The Actons have not sought any development approval from the Town, nor have they disclosed any future development intentions. The Town has not engaged in any conduct that would constitute an injury to the interests of the Actons.

7. SITLA has disclosed a lease on a part of its lands, SULA 1900, which encompasses approximately 1,000 acres of land planned for development as a solar farm. The lessee, Community Energy Solar, LLC, has not sought any development approval from the Town, though Town representatives have had very preliminary communications with the lessee about requirements for development in the Town. The Town has expressed a willingness to review any solar-farm land use that may be proposed, and this has included consideration of a possible land use code text amendment to process same.

8. The Town currently maintains a number of public Class C roads within the Petition area, summarized as follows:
   Highway 163
   The Horn; Sections 8, 9; 300 C Road, Natural
   Cow Canyon / Bluff Bench Road; Sections 19, 20, 21, 22; 100 C Road, Oil
   Foot Bridge; Section 28; 200 C Road, Gravel
   Evaporation Pond; Section 23; 200 C Road, Gravel
   Trading Post Spur/ Horn Pasture; Section 22, 15; 300 C Road, Natural
   (unnamed, near drill hole); Section 10; 300 C Road, Natural
   Prior to incorporation, these roads were not regularly maintained by San Juan County. The disconnection of the Class C Roads would shift maintenance responsibilities to San Juan County and would result in a needless negative impact to the roads and the residents of the Town.

9. Municipal services are limited in Bluff, which incorporated in 2018. Domestic water is provided by the Bluff Water Works (BWW), and the subject water rights are owned by the Town. The lands within the Petition have not sought culinary water service, but service could be extended when or if they develop. There is no sanitary sewer service within the Town, as all properties have individual septic disposal systems. Future development within the Petition area would likely have similar septic disposal systems, though, again, no land use applications have been sought. Moreover, the lack of services to the Petition area is not dispositive of anything, as it is the policy of the Town that new development include access to municipal services, which are constructed by the developer. See *e.g.*, B.M.C. § 5.01.030 (subdivision performance standards); B.M.C. § (utility plans required in site plan review).

10. Culinary water in Bluff is supplied by a number of wells served by the "N Aquifer," a high-quality source of culinary water that underlies the Bluff Bench and beyond. The Town has committed to seeking sole-source aquifer protection for the aquifer. Disconnection could hamper or limit the Town's ability to protect the aquifer which serves its residents, as well as many residents of the adjacent Navajo nation.

11. Rocky Mountain Power provides electricity in the Town, and that would likely apply to any future development in the Petition area. The same is true for telecommunications, which are provided by Emery Telcom. A Rocky Mountain Power substation exists within the Petition area and could provide service when or if development occurs.

12. Law enforcement in the Town is provided by through an intergovernmental agreement with San Juan County, and that applies to the Petition area. Emergency Medical Services (EMS) and fire protection are currently provided by the Bluff Volunteer Fire Department (BVFD), which is the closest responding agency for fire/EMS services. The Bluff Volunteer Fire Department would provide service to the Petition area when called. The agreement that the Town has for wildland fire support requires that the BVFD assist in fire fighting in the area.

13. The municipal tax burden on the lands within the Petition area is de minimis. Bluff collects sales taxes on business activities, but there is no such activity in the Petition area. Bluff collects a small property tax levy, though no such taxes are assessed on SITLA or BLM lands. The last information available to the Town shows that the Acton property pays $124.12 in property tax annually, most of which is payable to San Juan County School District. Municipal taxation presents no undue burden on the Actons.

14. The SITLA lands within the Petition area may be developed in the future, as development and the generation of revenue are mandates of SITLA's enabling legislation. As such,

those lands could come into private ownership and would be subject to Bluff ordinances. In its ordinances, Bluff has enacted a policy that public lands within the Town "...should be developed in a manner that is consistent with the ordinances and advisory documents of the Town. The Town will engage in dialogue and pursue agreements with the public and state agencies to assure that public and state lands within the Town are developed in a manner that benefits the Town and the public interest." B.M.C. § 6.01.020(K). Disconnection of the Petition lands would run contrary to that stated policy of the Town.

15. There is no good cause to disconnect the St. Christopher's lands. The evidence provided by representatives of St. Christopher's is that they oppose disconnection and were never consulted about the Petition prior to its filing. Additionally, exclusion of St. Christoper's from the Petition would likely create an unlawful incorporated peninsula, in violation of U.C.A. § 10-2-502.7(3)(c)(iii)

16. A public hearing was held on August 15, 2023. The Town Council heard testimony from staff, the Petitioners' counsel, SITLA, St. Christophers, and members of the public. Testimony from the public and written comments, apart from Petitioners and SITLA, was overwhelmingly against granting the Petition.

17. At the public hearing representatives of SITLA offered a map showing that significant portions of the Petition area that are currently SITLA lands would be transferred to the BLM pursuant to a Memorandum of Understanding (MOU), which in turn is contingent upon Congressional approval via H.R. 3049, the Utah School and Institutional Trust Lands Exchange Act of 2023. The MOU would transfer portions of Sections 12, 13, 15, 21, 22, 23, and 24 from SITLA to the BLM. While the H.R. 3049 has not yet been enacted, the transaction suggests that any claims by SITLA of injury or harm to its interests as a result of Petition lands being included in the Town is largely fictitious, since the agency intends to transfer ownership of most of the subject lands to BLM anyway.

18. San Juan County provided no information to the Town as to its ability or willingness to provide services to the Petition area, either as presently situated or when developed.

19. On September 25, 2023, the Town Council considered the Petition. The Town finds that its municipal boundaries were created after careful study and a public process by a group of concerned citizens and stakeholders. This process culminated in the incorporation of the Town in 2018.

20. The Council finds that:
    i) there is no good cause shown for the disconnection;

ii) the Petition lands should properly be developed within and subject to the ordinances of the Town;
iii) disconnection would be adverse to the stated interests and desires of the St. Christopher's Mission;
iv) disconnection would negatively affect the remainder of the Town and prospects for future development;
v) disconnection would harm the ability of the Town to protect the aquifer providing culinary water to the Town;
vi) there is no harm to the Petitioners or SITLA, nor have those parties suffered any injury as a result of any actions by Town officials;
vii) the burdens of the Petition lands remaining in the Town are minimal; and
viii) justice and equity does not require the disconnection of the Petition lands from the Town.

21. The predominant position of the Petitioners, as stated by their counsel, appears to be simply that they do not want to be part of the Town, a position which has no basis in the applicable statute.

THEREFORE, it is resolved by a majority of the Bluff Town Council, at a special meeting of the Council on September 25, 2023, as follows:

The Petition for disconnection is hereby denied. This resolution shall take effect immediately upon passage.

TOWN OF BLUFF

9/25/2023

Ann Leppanen, Mayor | Date

ATTEST:

9/25/23

Linda Sosa, Recorder | Date

-End of Document-