

JOINT POWERS AGREEMENT  
BETWEEN  
SOUTH DAKOTA DEPARTMENT OF THE MILITARY  
AND  
CITY OF RAPID CITY

This JOINT POWERS AGREEMENT (AGREEMENT) is entered into by and among the State of South Dakota Department of the Military, ATTN: CFMO of 2823 West Main Street, Rapid City, SD 57702-8170 (hereinafter "DM") and the City of Rapid City, a municipal corporation of the State of South Dakota, 300 Sixth Street, Rapid City, SD 57703 (hereinafter "CITY").

WHEREAS, the DM owns a tract of land commonly referred to as West Camp Rapid that is of a suitable size and location for various military training activities;

WHEREAS, on January 16, 1959, the State of South Dakota by and through the Department of Military Affairs granted a permanent easement to the City of Rapid City to construct a water drainage system as a part of a flood control project;

WHEREAS, the CITY constructed Cedar Canyon Dam (the "Dam") on West Camp Rapid as part of the flood control project;

WHEREAS, pursuant to the requirements of the United States Corps of Engineers, the CITY is required to clear trees and shrubs in the area within 50 feet of the toe of the slope of the Dam in order to insure the integrity of the Dam structure;

WHEREAS, the CITY desires to thin trees in an additional area in the southeast corner of West Camp Rapid for purposes of limiting the risk of a wildland fire in order to protect the life, health and safety of the Soldiers and other personnel training on West Camp Rapid, as well as the owners and residents of adjacent properties;

WHEREAS, portions of the area of West Camp Rapid that the CITY is required to clear of trees and shrubs, that the CITY desires to thin of trees, and that the CITY must utilize to safely access and remove debris resulting from the clearing and thinning are located outside of the easement previously granted to the CITY; and,

WHEREAS, the DM wishes to cooperate with the CITY to protect the life, health and safety of Soldiers and property and other improvements on West Camp Rapid, as well as that of persons and property in adjacent and downstream residential areas of Rapid City:

NOW THEREFORE, in consideration of the covenants and agreements contained herein, and the joint and mutual benefits and responsibilities flowing to each party as outlined in this AGREEMENT, the parties agree as follows:

1. The parties enter into this AGREEMENT pursuant to the following authority:
  - a. DM pursuant to the provisions in SDCL ch. 1-24 and SDCL ch. 33-11; and,

- b. CITY pursuant to the provisions in SDCL ch. 1-24, SDCL ch. 9-12-4.
2. The purpose of the clearing of trees and shrubs on and around the Dam is to comply with the requirements of the United States Army Corps of Engineers for the protection of dams and levees and to insure the integrity of the Dam as originally constructed for flood protection of urban development in downstream areas of the City of Rapid City.
  3. The purpose of the thinning of trees in the southeast corner of West Camp Rapid is to reduce the risk of a wildland fire on West Camp Rapid and in the adjoining residential neighborhood, and to encourage the maintenance of a healthy forest on West Camp Rapid.
  4. The CITY agrees to clear trees and shrubs on and around the Dam in the areas identified on the attached Exhibit A as "Approximate Tree Removal Area". The areas to be cleared include areas in the previously granted easement and on adjacent areas of the Dam. The CITY further agrees to conduct tree thinning in the area identified as "Thinning Area" on attached Exhibit A. The thinning will be completed according to the methods used in Rapid City for wildfire hazardous fuel mitigation described in attached Exhibit B. The clearing and thinning services shall be at no cost to the DM.
  5. The CITY agrees to physically remove all material from West Camp Rapid or to chip and distribute such material on site to a depth of no more than four inches. Alternatively, the CITY may pile chipped material at locations on West Camp Rapid as may be agreed to by the DM. As used herein, "material" includes slash and debris resulting from the clearing or thinning completed pursuant to this Agreement.
  6. The DM agrees to allow authorized CITY personnel access to the areas of West Camp Rapid identified on attached Exhibit A and Exhibit A-1 provided that such personnel adhere to current access control and security procedures established by the DM. Primary access will be granted by established trails identified as "Haul Route" on Exhibit A and Exhibit A-1 with consideration given to promote minimal impact to the vegetation or terrain.
  7. The CITY agrees that, if it is necessary to leave an access trail for motorized transportation, it will do so in a manner to provide the least amount of impact to the terrain or vegetation. If areas on West Camp Rapid are damaged as a result of the CITY obtaining access as provided for in this Agreement, the CITY agrees to repair the damage in a manner that is suitable to the DM and at no cost to the DM. If during the course of the project, the CITY desires to have an alternate access route to those identified herein, the CITY shall submit a written request to the DM for written approval.
  8. The CITY agrees to not disturb the areas of West Camp Rapid, other than for purposes of the required access as provided in Section 6 above. Prior to

accessing West Camp Rapid, the CITY will notify the DM of its intended actions. The CITY is responsible for coordination with the DM's CFMO prior to entry to West Camp Rapid to ensure that such access will not endanger employees of the CITY or of the DM, military members, or guests of the DM. The CITY'S responsibilities specifically include the responsibility to ensure the firing ranges or training sites located on West Camp Rapid are not being utilized prior to entry of any CITY personnel on West Camp Rapid.

9. The CITY agrees to reclaim, at its sole cost and expense and to the satisfaction of the DM, the areas disturbed by the clearing or thinning of trees and shrubs as well as any routes of ingress and egress to the areas.
10. The CITY agrees to complete the clearing and thinning pursuant to Section 4 and the removal, distribution, or piling of material pursuant to Section 5 no later than April 30, 2016, absent a written extension by the DM.
11. The term of this Agreement is for a period of six months from the date executed by the parties, with the option to renew for a 12 month period upon approval from the DM provided, however, that the DM shall designate the date for commencement of any further work on West Camp Rapid so as to minimize impact on the vegetation and terrain. The CITY will submit a written request to renew the Agreement at least sixty days prior to the expiration date.
12. It is understood and agreed by and between the parties hereto that this Agreement shall terminate if it is determined that the terms and conditions violate the terms of the deed from the Federal Government to the DM, or in the event of War or National Emergency.
13. It is understood and agreed by and between the parties that, if the CITY violates any of the terms or conditions contained in this Agreement, the DM may require the CITY to correct the violation(s) or the DM may terminate the Agreement upon 10 day notice. The CITY may terminate this agreement for any reason subject to 10 day notice.
14. Notwithstanding any other provision, this Agreement depends upon continued availability of appropriated funds and expenditure authority to the CITY and the DM for the purposes contemplated herein. This Agreement will be terminated if the Legislature fails to appropriate funds or grant expenditure authority or if there is a lack of sufficient appropriated funds or lack of expenditure authority available to perform its obligations under this Agreement, whether due to lack of appropriations by the Legislature or otherwise. Once the determination of funding insufficiency is made, the affected party will provide the other party with written notice of such funding insufficiency and the effective date of the termination of the Agreement based upon such insufficiency. Termination under this provision does not constitute a default or give rise to any claim against the notifying party.
15. The CITY agrees that the DM is not responsible for any damage to the CITY's vehicles, equipment and associated property except to that extent that such

damage or loss of use was directly caused by the DM or its employees. Nothing in this Agreement shall be construed as an indemnification by one party of the other for liabilities of a party or third persons for property loss or damage or death or personal injury arising out of and during performance of this Agreement. Any liabilities or claims for property loss or damage or for death or personal injury by a party or its agents, employees, contractors or assigns or by third persons, arising out of and during the performance of this Agreement shall be determined according to applicable law. The DM is self-insured and covered by the Federal Tort Claims Act. The CITY is insured by Atlantic Specialty Insurance.

16. If any provision of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section or provision of this Agreement if such section or provision can be given effect without the invalid section or provision.
17. Except as expressly provided herein, nothing in this Agreement is intended to affect the National Guard Deed or the respective rights, duties, and responsibilities of the State thereunder.
18. The parties declare that no specific entity is being created to implement this Agreement, and that the parties shall administer through their authorized designees the cooperative undertaking herein described. The authorized designees shall be Scott T. Petrik, Construction and Facilities Management Officer, for the DM, and Mary Bosworth, Floodplain/Drainage Engineer for the CITY, or such authorized designees as either party may designate in writing.
19. All notices or communications herein shall be in writing and shall be sufficiently given if delivered by personal delivery to the officers administering this Agreement or their authorized designee, or if sent by first class mail to the addresses set forth above. The parties, by giving notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, and other communications shall be sent.
20. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and this agreement constitutes the entire agreement with respect to the subject matter hereof.
21. This Agreement is intended only to govern the rights and interests of the parties named herein. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any third party in any matter, civil or criminal.
22. The parties acknowledge that a true and correct copy of this Agreement will be filed with the Office of Attorney General and the Legislative Research Council within 14 days of its final execution pursuant to SDCL 1-24-6.1.



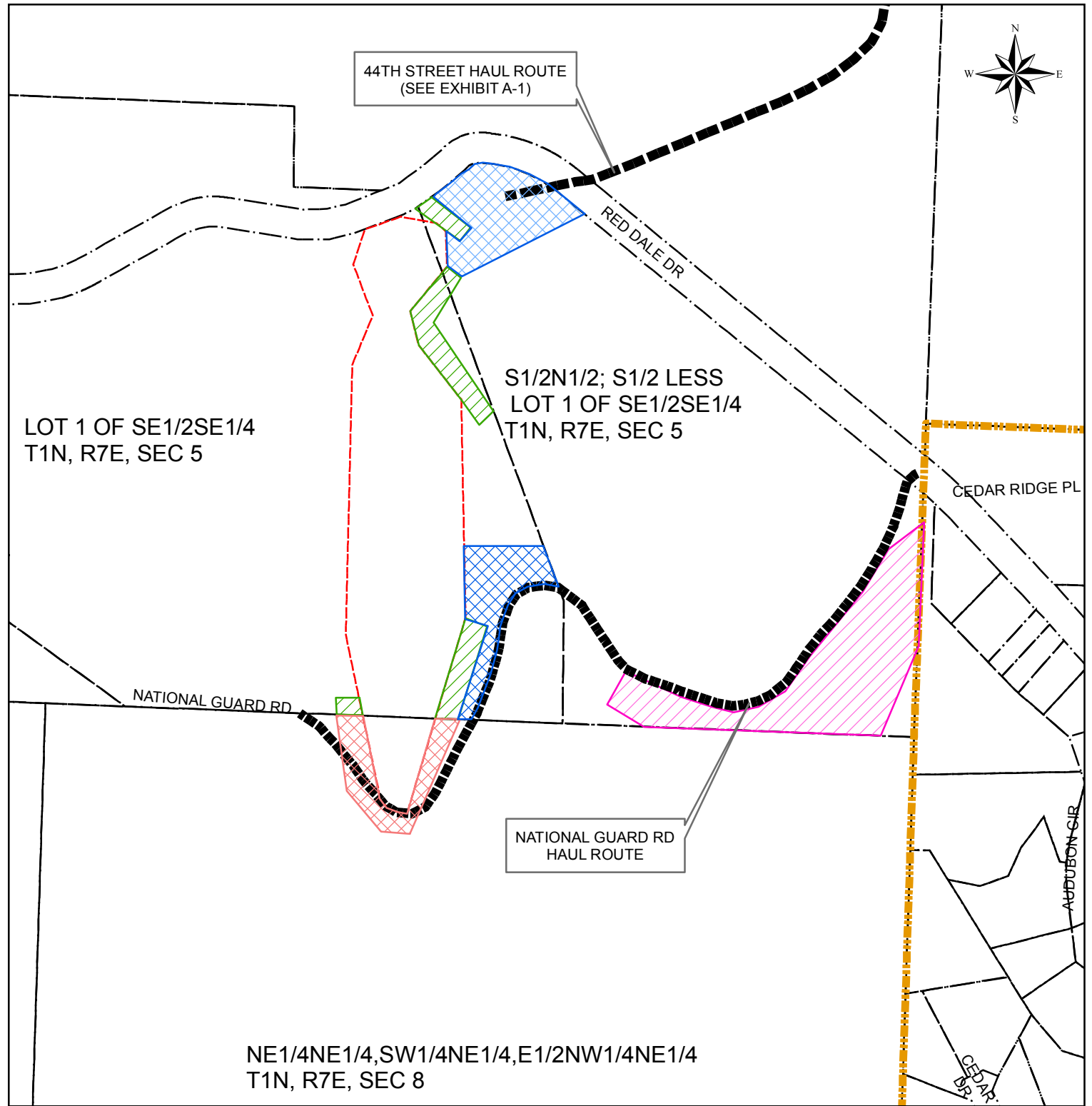
foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.


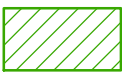

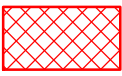

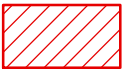
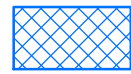
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

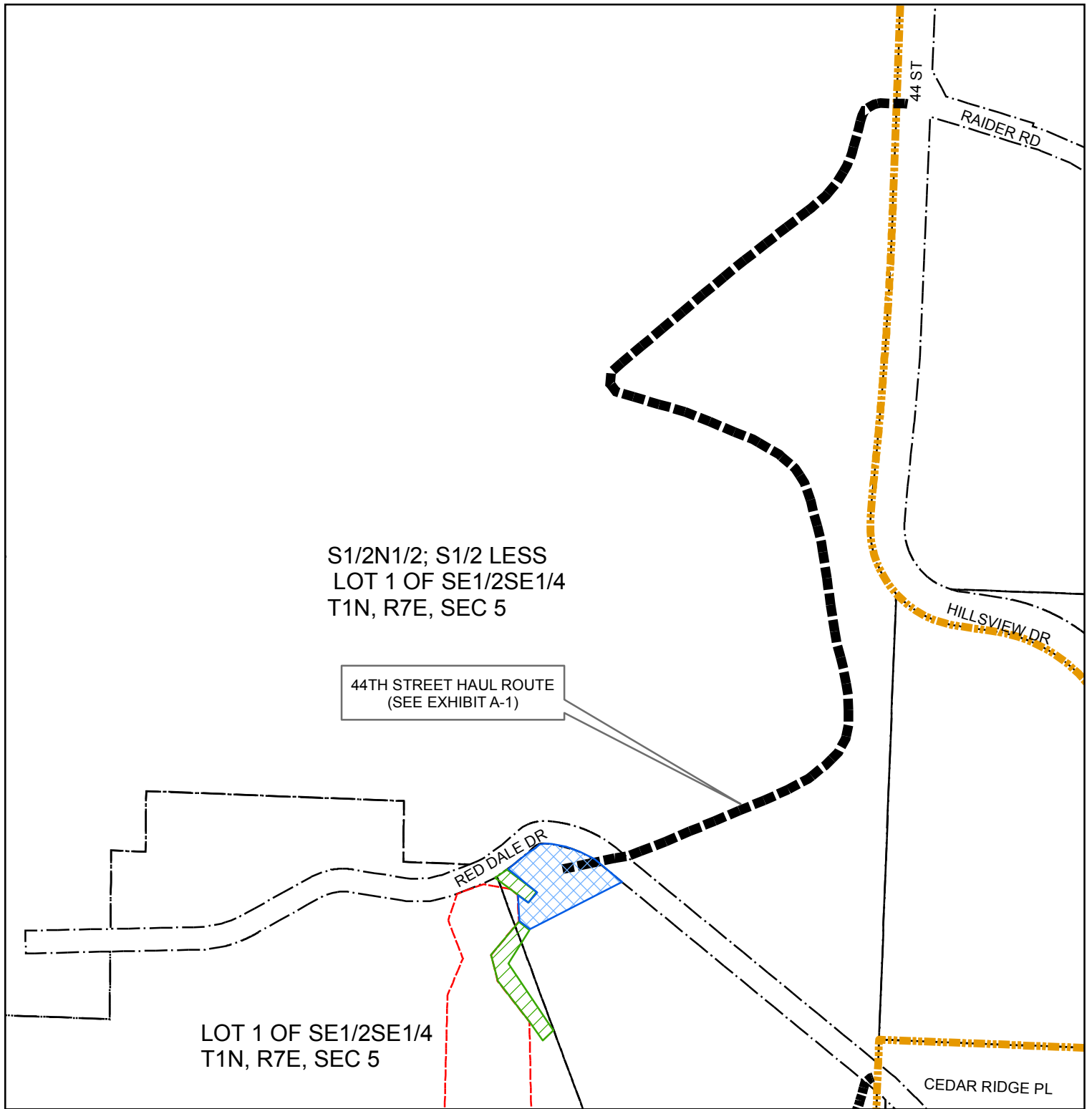
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Notary Public, State of South Dakota  
My Commission Expires:\_\_\_\_\_

# Exhibit A



- |   |  |  |   |
|---|--|--|---|
|  | Property Boundary  |  | Approximate Tree Removal Area<br>Trees to be removed identified site visit 11-15-15 |
|  | Haul Route   |  | Off Premise Tree Removal Area<br>MOU with Indian Arts & Crafts Board                |
|  | Approximate toe of Cedar Canyon Dam,<br>obtained from Rapid Map contours |  | Thinning Area   |
|  | Site Access  |  |   |

# Exhibit A-1



- Property Boundary
- Haul Route
- - - - - Approximate toe of Cedar Canyon Dam,  
obtained from Rapid Map contours
- ▨ Site Access

