

EASEMENT AND AGREEMENT

THIS AGREEMENT, made this 28th day of December, 1995, by and between the GRAND JUNCTION DRAINAGE DISTRICT, hereinafter referred to as "District", whose address for the purpose of this agreement is 722 - 23 Road, Grand Junction, Colorado, and CITY OF GRAND JUNCTION, hereinafter referred to as "owners", whose address for the purpose of this agreement is 250 North Fifth Street, Grand Junction, Colorado.

WITNESSETH:

WHEREAS, the parties hereto agree that the installation hereinafter described is for the mutual benefit of the parties; and

WHEREAS, the owners desire to acknowledge the right-of-way and easement applied to the historical, existing drainage ditch across their premises known as the APPLETON DRAIN SYSTEM as more particularly described in Exhibit "A" attached hereto and made a part hereof.

IT IS THEREFORE AGREED AS FOLLOWS:

1. Owners agree to operate their premises in such a manner as not to damage said drain ditch. Any such damage so caused by the owners shall be the owners' sole responsibility to repair.
2. District agrees to maintain in a workmanlike manner said drain ditch, EXCEPT if any act or omission of the owners causes said upkeep or maintenance to be increased over and above that which would normally be expected, the owners shall then be responsible for the cost of any additional upkeep and maintenance.
3. In consideration of the foregoing and in order to accomplish the maintenance and upkeep of said drain ditch, the owners hereby grant unto the District an easement through, over and across the owners' premises for the drainage ditch together with such area as is reasonably necessary for the cleaning, maintenance, adjustment, or deepening of said drain ditch. Owners hereby grant unto the District the reasonable right of ingress and egress to accomplish the above, including the right to bring the necessary equipment upon the premises to accomplish same. It is agreed by the owners that said easement shall not be burdened or over-burdened by erection or placing of any improvement thereon, including fences.
4. Owners agree that they indemnify and save harmless the District from any and all damages or claims arising out of the operation and maintenance thereof.
5. Should either party fail or refuse to comply with the terms of this agreement, after having received ten (10) days written notice specifying the matters complained of, the complaining party may take whatever legal action is necessary to perform or correct the complaints thereunder and collect the cost thereof plus damages from the offending party. The prevailing party shall in addition to the above, be entitled to collect all costs incurred as a result of said breach including their reasonable attorney's fees.
6. If there is more than one owner as a party to this agreement, then and in that event the cost is allocated to the owners hereunder and shall be borne equally between them.
7. This agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the respective parties.
8. The recitals are a part of this agreement.

IN WITNESS WHEREOF, the parties have affixed their signatures, the day and year above mentioned.

EXHIBIT "A"

We the undersigned owners, their heirs, assigns and successors, hereby grant to the District, Easements which include twenty (20) foot maintenance roadways on both sides of the drain ditch channels as well as the drain ditch channels over and across a part of the North 1/2 of the SE1/4 of Section 29, Township 1 North, Range 1 West, of the Ute Meridian, County of Mesa, State of Colorado, as described in Book 1297 Page 100 and Book 1568 Page 440 as recorded in the office of the Clerk and Recorder of said County, the sidelines of said Easements being more particularly described as follows:

EASEMENT NO. 1 (BERRY DRAIN)

Commencing at the SW Corner of the NW1/4 SE1/4 of said Section 29 and considering the west line of the NW1/4 SE1/4 of said Section 29 to bear N00°03'45"W with all other bearings contained herein relative thereto; Thence N 89°58'14"E along the south line of the North 1/2 of the SE1/4 of said Section 29 a distance of 1788.98 feet to the TRUE POINT OF BEGINNING;

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| Thence N49°27'01"E 232.81 feet; | Thence N56°35'19"E 116.27 feet; |
| Thence N47°44'10"E 117.69 feet; | Thence N21°14'23"E 134.11 feet; |
| Thence N27°45'12"E 59.86 feet; | Thence N43°32'00"E 193.63 feet; |
| Thence N29°33'45"E 37.27 feet; | Thence N18°30'31"E 393.58 feet; |
| Thence N21°38'06"E 115.38 feet; | Thence N02°48'25"E 38.86 feet; |
| Thence N13°10'39"W 29.24 feet; | Thence N36°39'44"W 54.75 feet; |
| Thence N45°50'25"W 90.59 feet; | Thence N38°04'50"W 43.78 feet; |
| Thence S68°28'17"W 54.47 feet; | Thence N60°18'51"W 219.16 feet; |
| Thence N80°05'02"W 27.71 feet; | Thence S80°45'08"W 56.36 feet; |
| Thence S86°51'32"W 122.51 feet; | Thence N01°05'47"W 54.33 feet; |
| Thence N81°47'33"E 110.42 feet; | Thence N80°54'33"E 92.44 feet; |
| Thence S62°23'08"E 135.77 feet; | Thence S58°30'49"E 91.86 feet; |
| Thence N86°17'09"E 19.88 feet; | Thence N31°31'37"W 191.36 feet; |
| Thence N60°19'38"E 40.01 feet; | Thence S79°11'57"E 34.14 feet; |
| Thence S32°51'58"E 132.38 feet; | Thence S27°31'40"E 80.50 feet; |
| Thence S36°45'34"E 50.09 feet; | Thence S45°42'36"E 133.40 feet; |
| Thence S28°32'07"E 39.41 feet; | Thence S14°32'46"E 50.72 feet; |
| Thence S89°57'41"E 16.55 feet; | |

Thence S00°02'19"W along the east line of the NE1/4 SE1/4 of said Section 29 a distance of 74.50 feet;

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| Thence N89°57'41"W 34.66 feet; | Thence S19°05'32"W 413.23 feet; |
| Thence S21°15'49"W 94.23 feet; | Thence N85°52'50"E 204.21 feet; |

Thence S00°02'19"W along the east line of the NE1/4 SE1/4 of said Section 29 a distance of 36.91 feet;

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| Thence N89°57'41"W 32.22 feet; | Thence S85°48'37"W 78.48 feet; |
| Thence S86°50'01"W 88.17 feet; | Thence N77°56'48"W 44.44 feet; |
| Thence N57°18'16"W 12.14 feet; | Thence S43°26'41"W 116.49 feet; |
| Thence S41°28'01"W 85.47 feet; | Thence S27°14'19"W 48.70 feet; |
| Thence S20°52'38"W 25.77 feet; | Thence S21°03'34"W 104.97 feet; |
| Thence S38°23'02"W 42.47 feet; | Thence S48°10'47"W 50.99 feet; |
| Thence S53°14'58"W 192.20 feet; | Thence S51°08'48"W 156.31 feet; |

Thence S89°58'14"W along the south line of the North 1/2 of the SE1/4 of said Section 29 a distance of 51.29 feet to the TRUE POINT OF BEGINNING.

AND ALSO EASEMENT NO. 2 (APPLETON AND CUNNINGHAM DRAINS)

Commencing at the SW Corner of the NW1/4 SE1/4 of said Section 29;
Thence N89°58'14"E along the south line of the NW1/4 SE1/4 of said Section 29
a distance of 680.63 feet to the TRUE POINT OF BEGINNING;

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| Thence N00°02'12"W 44.16 feet; | Thence S89°48'16"E 378.04 feet; |
| Thence S89°20'21"E 219.24 feet; | Thence N34°50'47"E 37.03 feet; |
| Thence N00°00'39"W 608.52 feet; | Thence N33°16'04"E 45.89 feet; |
| Thence N74°39'39"E 37.87 feet; | Thence S86°34'49"E 132.27 feet; |
| Thence N00°06'05"W 461.96 feet; | Thence N44°55'40"W 77.90 feet; |
| Thence N27°54'54"W 28.95 feet; | Thence N16°37'05"W 32.70 feet; |
| Thence N71°45'32"E 67.03 feet; | Thence S16°37'05"E 31.95 feet; |
| Thence S42°52'50"E 59.19 feet; | Thence N59°34'23"E 148.89 feet; |
| Thence N65°38'57"E 181.50 feet; | Thence N66°27'54"E 127.38 feet; |
| Thence S26°23'58"E 54.61 feet; | Thence S62°52'28"W 219.07 feet; |
| Thence S66°19'40"W 100.30 feet; | Thence S61°04'39"W 137.55 feet; |
| Thence S02°10'52"E 94.58 feet; | Thence S00°23'00"W 196.60 feet; |
| Thence S01°33'05"E 196.53 feet; | Thence S29°11'53"W 36.87 feet; |
| Thence S66°27'37"W 34.03 feet; | Thence N87°34'57"W 121.17 feet; |
| Thence S78°22'46"W 25.47 feet; | Thence S00°18'42"E 185.00 feet; |
| Thence S00°01'22"E 299.44 feet; | Thence S01°49'53"W 113.60 feet; |
| Thence S24°57'36"W 60.24 feet; | |

Thence S89°58'14"W along the south line of the NW1/4 SE1/4 of said Section 29 a distance of 658.41 feet to the TRUE POINT OF BEGINNING.

AND ALSO EASEMENT NO. 3 (MAYO DRAIN)

Commencing at the SW Corner of the NW1/4 SE1/4 of said Section 29;
Thence N00°03'45"W along the west line of the NW1/4 SE1/4 of said Section 29 a
distance of 1027.44 feet to the TRUE POINT OF BEGINNING;

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| Thence N42°33'58"E 204.93 feet; | Thence N33°12'17"W 109.13 feet; |
| Thence N54°54'01"E 52.03 feet; | Thence S35°05'59"E 95.64 feet; |
| Thence S54°21'32"E 140.81 feet; | Thence S61°19'32"E 42.56 feet; |
| Thence S73°16'18"E 169.69 feet; | Thence S84°46'06"E 32.82 feet; |
| Thence N85°23'20"E 50.80 feet; | Thence S02°47'20"E 57.96 feet; |
| Thence S88°10'29"W 56.54 feet; | Thence N83°31'51"W 39.32 feet; |
| Thence N74°06'22"W 185.88 feet; | Thence N57°14'32"W 136.57 feet; |
| Thence S41°32'31"W 187.88 feet; | Thence S00°15'05"W 650.67 feet; |
| Thence N88°58'57"W 26.29 feet; | Thence S00°03'45"E 19.72 feet; |
| Thence S89°57'12"W 33.16 feet; | |

Thence N00°03'45"W along the west line of the NW1/4 SE1/4 of said Section 29 a distance of 697.34 feet to the TRUE POINT OF BEGINNING.

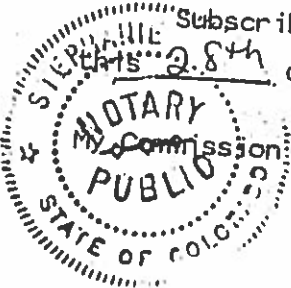
Dated this 28th day of December, 1995

Mark K Achen

MARK K ACHEN, CITY MGR

State of Colorado)
)ss
County of Mesa)

Subscribed and sworn to before me by Mark K Achen
this 28th day of December, 1995.



Commission Expires: 10-10-98

Stephanie Kuyf
Notary Public

ACCEPTED BY GRAND JUNCTION DRAINAGE DISTRICT

John Radu Arthur Bulla

CITY COUNCIL

DATE: December 6, 1995

CITY OF GRAND JUNCTION

STAFF: Tim Woodmansee
Property Agent

REQUESTED ACTION: Resolution authorizing the conveyance of a Drainage Easement to the Grand Junction Drainage District.

EXECUTIVE SUMMARY: The Grand Junction Drainage District has agreed to maintain the extensive open drain system on the City's Berry Park property located west of 24 Road and north of H Road. The District requires an easement from the City prior to accepting maintenance of the system.

FISCAL IMPACT: All costs associated with the maintenance and repair of the system will be paid by the Drainage District.

BACKGROUND: The Greater Grand Junction Parks Improvement Fund Advisory Board purchased this property in 1980 as a site for a regional park. The Parks, Recreation and Open Space Master Plan of 1993 and 1994 concluded that this site is not suitable as a regional park. In addition to being located outside of the 201 sewer boundary, other infrastructure requirements would be extraordinarily expensive under the City's development standards.

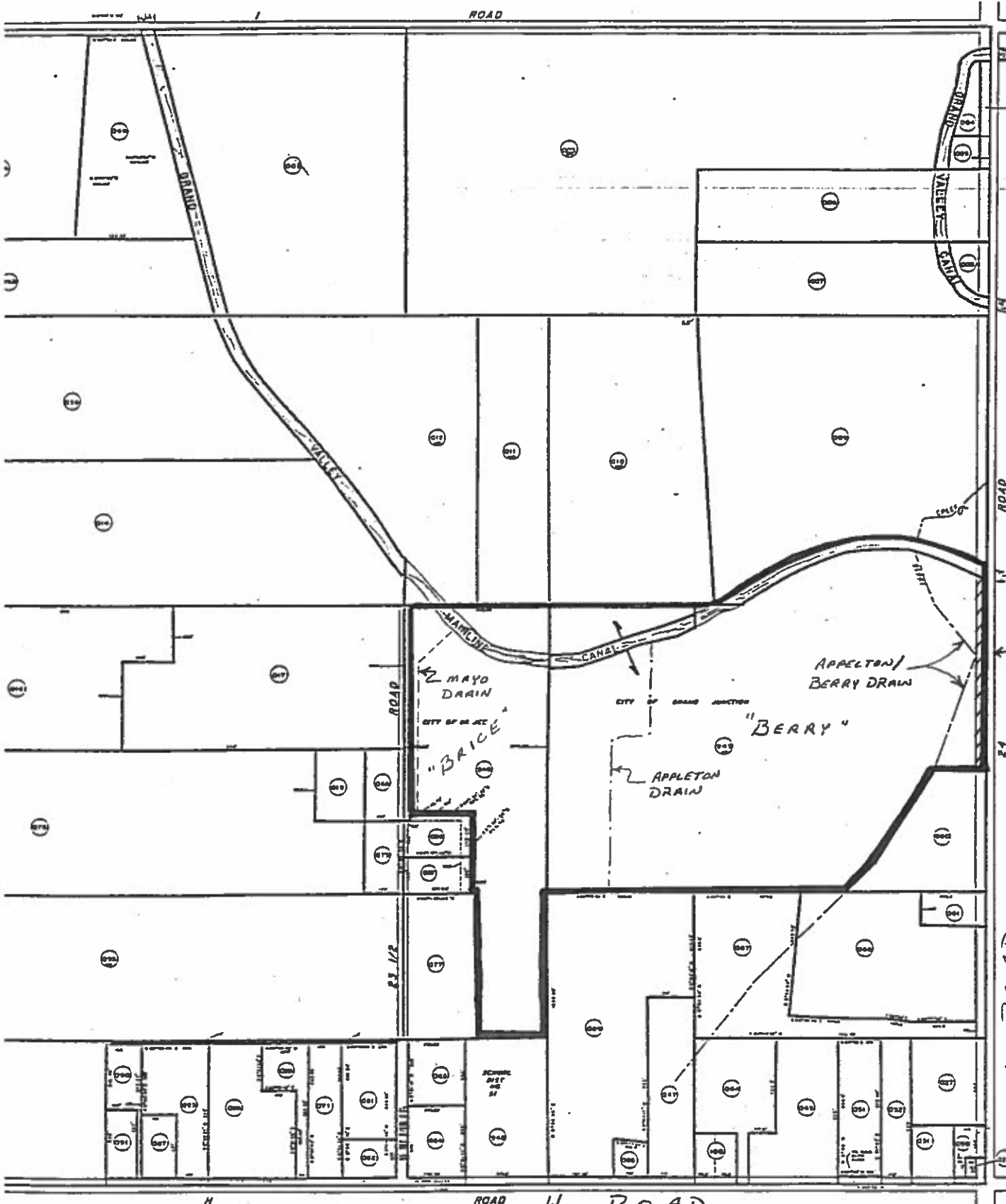
In April of this year, a majority of the City electorate authorized the City Council to sell this property, with proceeds being deposited in the Open Space Fund, or to exchange the property for other park lands.

The proposed easement will create a necessary encumbrance of which future owners need to be aware, and the Drainage District's rights and obligations will be identified before the property is sold or exchanged.

RECOMMENDATION: Pass and Adopt proposed Resolution.

ATTACHMENT: Location Map.

Adjoining
T.IN R.I.W
2701-20



Adjoining
T.IN R.I.W
2701-23

Proposed
R-O-W
Dedication

Adjoining
T.IN R.I.W
2701-32

T.IN R.I.W
2701-29

GRAND JUNCTION DRAINAGE DISTRICT

722 23 ROAD
P.O. BOX 55246
GRAND JUNCTION, COLORADO 81505
(303) 242-4343

10/26/95

Tim Woodmansee,
Right-of-way Agent
City of Grand Junction
250 North Fifth Street
Grand Junction, Co. 81501

Dear Tim,

This cover letter is accompanying the Acknowledgement of Open Drain Agreement that grants easements for the rather extensive system through what is known as the Berry Property. A small sheet shows the part of the overall system with the City's Berry Property shaded. A larger sheet is a not-to-scale reduction of the four(4) separate sheets of the ditches as surveyed by James T. Patty, L. S. There are four survey sheets numbered 1 of 4 through 4 of 4.

The Grand Junction Drainage District documents have been executed by the Grand Junction Drainage District Board. It is the desire of the District that the City NOT alter the documents. It is known that the City intends to sell or trade the property. The District expects full cooperation in the recognition of the existing facilities. Your prompt attention of taking the documents provided to the City Council will be appreciated. Just have the correct City officer execute the Acknowledgement of Open Drain Easement and return the document to the District. We will record the easements.

If there are any questions, please feel free to call if you have any questions.

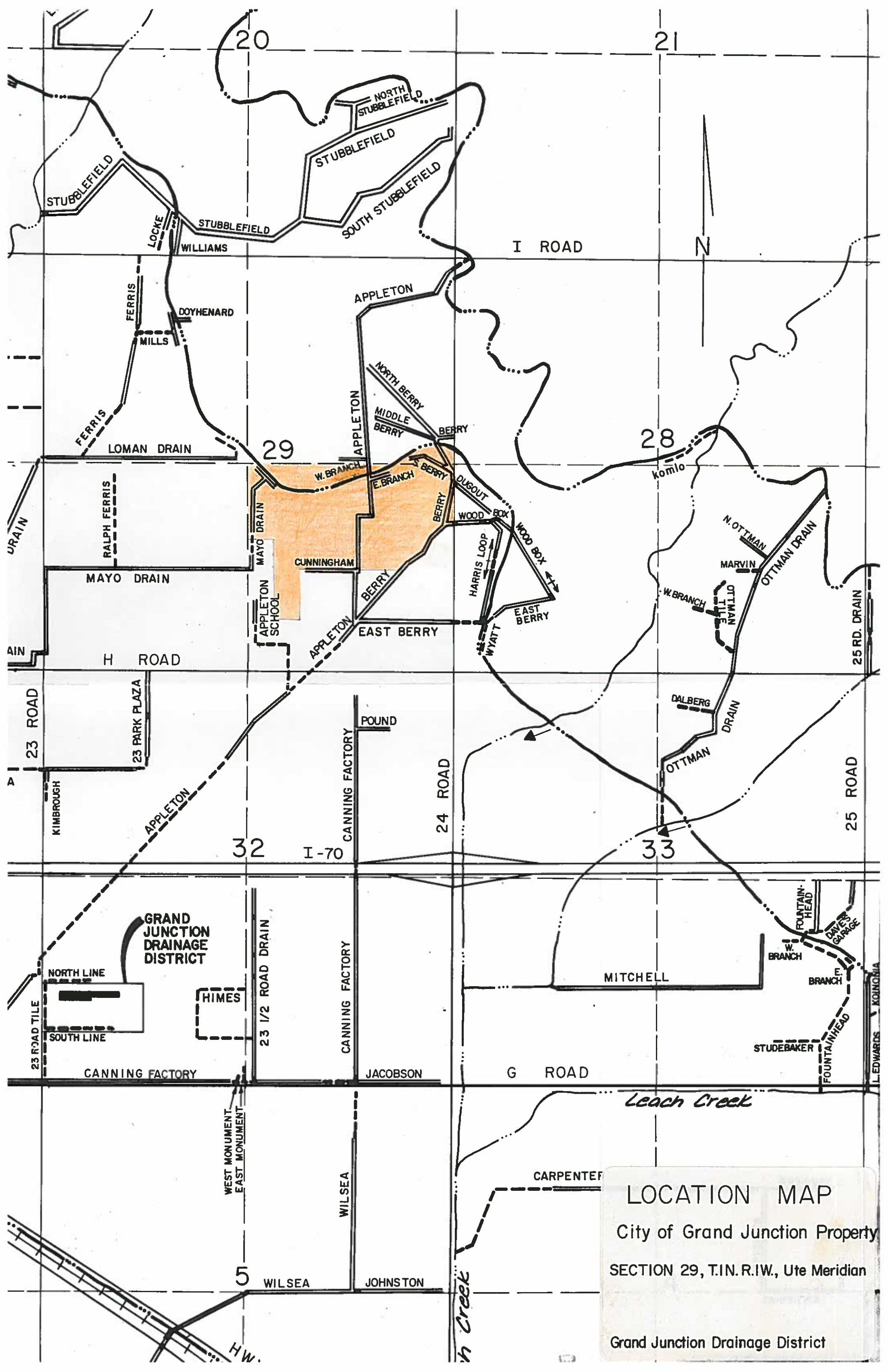
Sincerely,

Grand Junction Drainage District



John L. Ballagh,
Manager

Attachments: 2 originals, 3 pages each
Encl: 6 sheets



LOCATION MAP
 City of Grand Junction Property
 SECTION 29, T.1N.R.1W., Ute Meridian
 Grand Junction Drainage District