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UTAH HOUSE BILL 446 SEIZES LAND USE AUTHORITY FROM SUMMIT COUNTY CONCERNING DAKOTA PACIFIC REAL ESTATE'S REQUESTED LAND USE AMENDMENTS

Summit County, Utah (February 15, 2023) — On Monday, February 13, Rep. Casey Snider introduced [HB 446](#) in the Utah House, a bill that is directly targeted at subverting Summit County's land use process. It appears intended to directly benefit Dakota Pacific Real Estate (DPRE) and its application to amend a [15-year-old Development Agreement](#) that governs the permitted uses on property it acquired from The Boyer Company in 2018. HB 446 is just the latest attempt by the Utah Legislature to intervene legislatively in this local land use matter on the developer's behalf, following the passage of [HB 462](#) during the 2022 General Session, which included language added very late in the session that was tailored for the special purpose of addressing the DPRE project in Summit County.

"Unfortunately, we were not surprised by the introduction of HB 446 since we were warned by several sources prior to the start of the 2023 General Session that certain members of the legislature were keeping a close eye on the DPRE application process and were prepared to take the matter out of the County Council's hands if it did not reach a resolution favorable to DPRE prior to the end of the session," said Roger Armstrong, Summit County Council Chair. "We are watching the bill and are hopeful that the majority of the legislators in the House and Senate will be inclined to respect local control of land use matters and will resist this horrible assault on local communities' rights of self-determination."

Read carefully, HB 446 is clearly targeted at benefitting the DPRE project. The bill would vest in a landowner of certain real estate in a third-class county within 1/3 of a mile of a transit hub certain automatically vested rights including "between 39 and 50 dwelling units per acre on average over the subject parcels, with at least 10% of the dwelling units deed restricted as affordable housing units; (ii) commercial uses including office, retail, educational, and healthcare." The vested uses articulated in the legislation are nearly identical to those sought by DPRE from Summit County. Further, the only third-class county with a transit hub is in Summit County. That transit hub sits adjacent to the DPRE project.

The bill's assault on local legislative land use control is unprecedented in that it is not targeted at an initial application for an unexecuted vested use, but rather at a 15-year-old, signed Development Agreement, that has already resulted in the transfer of open space, the building of affordable residential housing, and the construction of a building occupied by Skullcandy. In an unprecedented action, the legislature is seeking to legislate in conflict with an existing contract.

In 2008, The Boyer Company ("Boyer") and Summit County entered into a negotiated Development Agreement to build a 1.3 million square foot tech research park at Kimball Junction (the "Park City Tech Center"). In late

2018, DPRE purchased the Park City Tech Center, [assumed Boyer's obligations under the Development Agreement](#), and applied to amend that Development Agreement into a high-density mixed-use project focused primarily upon market rate residential uses (the "Amendment Application"). [The Amendment Application](#) proposed to fundamentally change the original intent of the Development Agreement, which was to create a low impact set of uses that would help diversify the Snyderville Basin economy.

Development Agreements constitute contractual obligations between the contracting parties. As with all contracts, they may be amended by mutual consent of the parties and each party has the discretion to agree or refuse to agree to amend the contract, weighing the costs and benefits in its decision-making process. Summit County could have simply agreed or declined to amend the Development Agreement, but instead allowed the application to go through a process to evaluate the merits and burdens of the proposed amendment that started with the Snyderville Basin Planning Commission and has since moved on to the Summit County Council.

For a project the County Council could have simply rejected, the County Council instead sought to determine if there were public benefits that could be derived from DPRE's proposal that were superior to those in the Development Agreement, so it undertook a comprehensive process to evaluate DPRE's proposed amendment. That process has followed the following timelines:

- In 2021, the Snyderville Basin Planning Commission, after many public meetings and hearings with DPRE, forwarded a negative recommendation to the County Council based on insufficient affordable housing within the Amendment Application and the inability of DPRE to adequately address traffic impacts.
- The County Council took up the matter in 2021 and also had a number of meetings with DPRE to determine whether there were sufficient benefits to the community to justify the proposed changes to the Development Agreement.
- The County Council also appointed a subcommittee that included two council members to meet with DPRE to try to resolve problematic issues with the proposed amended uses.
- The County Council's deliberations culminated in a public hearing in December 2021 at which a thousand community members appeared and public input was overwhelmingly opposed to the DPRE-proposed amendments. The County Council was prepared to render a decision on the Amendment Application at that time, but DPRE requested more time to rework the Amendment Application to address the public's concerns.
- Thereafter, DPRE modified the Amendment Application in October 2022 and submitted a new traffic study. The County engaged an engineering firm to peer review the traffic study because the revised plan would add substantial impacts to roads that are already experiencing tremendous issues. The results of the traffic study were presented to the County Council on **February 8, 2023**.

The Summit County Council intends to proceed on the following UPDATED schedule concerning the Amendment Application:

- **February 15, 2023** – Work session with Zions Bank to better understand the application of a Housing and Transit Reinvestment Zone in Kimball Junction and possibly other areas of Summit County.
- **February 22, 2023** – Work session with DPRE to discuss DPRE's and Summit County's final issues concerning the proposed amended uses.
- **March 1, 2023** – Public Hearing concerning the DPRE Amendment Application.

- **March 8, 2023** – Public Hearing concerning the DPRE Amendment Application.
- **March 15, 2023** – Deliberation and possible decision concerning the DPRE Amendment Application.

“At the end of this process, the County Council will make a decision and we will be satisfied that DPRE received a full and fair analysis of its proposed amended uses, and that the public will have had the opportunity to learn about the proposed changes and to provide its input to both parties,” said Armstrong. “We hope that our legislators will recognize the danger of destroying local control, even in matters where the legislature has strong feelings for supporting an applicant. Absent profound health, safety, or welfare issues that require state intervention, land use is an especially local issue because of the impact to specific residents and communities, and not one requiring state intervention. We would hope our sister counties in Utah, all Utah municipalities, and our trade organizations – the Utah Association of Counties and the Utah League of Cities and Towns share our deep concern about the local control issue and raise their voices in opposition to HB 446.”

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