Mountain Area Land Trust *("MALT")*

Attn: **Ms. Jeanne Beaudry, *Executive Director***
Ms. Pandora Erlandson, *President of the Board*
908 Nob Hill, Suite 200
Evergreen, CO 80439

November 11, 2022

Re: PHHOA Lot 164

Ms Beaudry, Ms Erlandson and Members of the Board,

As a member and former President of the Paradise Hills Homeowners Association ("PHHOA"), I respectfully ask you to reconsider your decision "not to oppose" the proposed building improvements on Lot 164. I respectfully submit your letter of 7/28/22 and subsequent "Statement of Clarification" were incomplete as to the whole of the restrictions, and the backdrop of historical records, your charter and the applicable IRS regulations under which the donation was made and the restrictions added. Please consider the following...

In October 1994, you presented PHHOA and the developers with a copy of your IRS 501(c)(3) letter and Articles of Incorporation (what one might refer to as your "charter"). Under your 501(c)(3) letter, "donors may deduct contributions to you as provided in IRC § 170." Those include "qualified conservation contributions" under IRC § 170(h)(1) of a qualified real property interest, to a qualified organization, exclusively for "conservation purposes." IRC § 170(h)(4) defines "conservation purposes" to mean:

> *(i)* ***the preservation of land areas for outdoor recreation by, or the education of, the general public****,*
>
> (ii) ***the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,***
>
> (iii) ***the preservation of open space(including farmland and forest land) where such preservation is for the scenic enjoyment of the general public*** *[and other clearly delineated conservation policies]* ***and will yield a significant public benefit****, or*
>
> (iv) *a forth provision regarding historically important land or structures.*

It's hard to conceive the drafters of the 164 deed would or even could have meant something different from what the IRS requires for deductions under 170(h)(4). When comparing the language of other outlots, you should also keep in mind that the IRS does not require the same degree of "public" access under the various provisions (i)-(iv). I especially refer you to Chapters 3 and 5 of the attached IRS Guide on Conservation Easements.

Article III of your Article of Incorporation sets forth your Objects and Purposes consistent with the IRS requirements. Your Objects and Purposes notably reference "**improving the quality of**

life" and "**preserving, protecting and enhancing the natural, scenic, historic, wildlife or recreational resources of Colorado's natural heritage**." They do not include authorizing or "not opposing" the construction of large new public buildings on such property – nor does IRC § 170(h)(4).

Article V of your charter specifically restricts you from conduct inconsistent with IRC §170. Under 170(h)(2) the restrictions are granted in perpetuity. Not enforcing them is not an option.

In late December, 1994, MALT deeded to the PHHOA the title to Lot 164, which contained binding restrictive language that expressly stated its purpose was "*to preserve, protect, and enhance the public and recreational resources of the area"*, limited utilization to "community, public and public recreational purposes" and importantly added - ***"No residential or commercial building improvements shall be permitted."***

Building improvements are contrary to both IRC § 170(h) and your charter.

I and others still in the community clearly recall the open/recreational intent of the restrictions. Correspondence from 1994, including that between PHHOA's then President and legal counsel, as well as documents MALT provided the Association at the time, further collaborate the same. The correspondence, IRS regulations and your Objects and Purposes were all oriented toward the open/recreational intent, as they should be. Building improvements are inconsistent with all three.

IRS references to necessary "public" interests no more opens the door to public buildings than the deed on 164. Taking "public" out of context from the rest of the deed is not only contrary to the IRS regulations and your charter, it turns the closing prohibition on its head and completely frustrates the open/recreational intent and quality of life aspects that drove the donation (tax appraisal/deductions) in the first place.

The last sentence of the deed should be dispositive – it specifically precludes residential or commercial building improvements (period - private or public). It is widely recognized that commercial building improvements include public buildings. There should be no such building improvements on this lot. It's a gateway to our community, with real value as noted when CDOT earlier proposed to turn it into a public parking lot. Please take a moment to read the CDOT letter of 7/20/2000 and the more recent letter to PHHOA of 10/16/22.

You should read the purpose and utilization clauses of the deed consistent with the last sentence, IRC § 170(h) and your own charter (including Article V restrictions). Note too the use of the words – "and", "and", "or". The last sentence was "or" (no residential or commercial building improvements). The purpose and utilization clauses were worded in the conjunctive – "and" – specifically adding recreational resources and purposes (and public – as required in various of the subsections of 170(h)(4). Don't mistake reference to public enjoyment and the IRS's requisite "public" benefits to authorize a "public" building or to somehow circumvent the open/recreational intent or override the outright prohibition against such building improvements. Lot 164 is the only flat ground we have for kids to possibly use for soccer, baseball and such. I submit that, the differing analysis the IRS employs under the various subsections of 170(h)(4),

and the differing nature of the other outlots (this on a flat entrance to our community, and the others in the deep valleys between homes), has as much as anything to do with the difference in wording from that of the valley bottoms which you referenced – this is the only flat area where people from within and outside our community (ie public) might come together for games and enjoyment

The three sentences of 164 (scope, utilization and final prohibition on building improvements) must be read as a whole, in view of the foregoing background and intent (it's a basic premise of law).

In 2000, MALT concurred and joined in opposing CDOT's proposed public parking lot. Your earlier read is at direct odds with that position. We worked with Mr. Vallin, President of MALT in 2000 (and in 1994, Leslie Armstrong). Our State Congressional delegation and numerous organizations joined in the 2000 support. That was "public" too. Please read the attached CDOT letter (and see the cc list of those joining in support, including yourself).

I strongly suspect that donation, and associated tax appraisal and deductions of 1994, did not contemplate commercial building improvements of any nature. MALT provided the Chicago Title Insurance Company with an affidavit of value at the time of the transfer. I don't know if you still have it but neither it nor the presumed deductions taken on the donation seem consistent with your earlier analysis. I believe the whole of the record is clear. There were to be no commercial building improvements – private or public. Sympathies and personal interests aside, they were NOT part of (and if anything, CONTRARY TO) your corporate charter, expressed purposes and powers, IRS regulations or the tax deductible character of the donation.

I hope on further consideration (reconsideration) you will agree.

The community made a decision 30 yrs ago to put on the restrictions, preserve the open space and, by separate sentence, expressly precluded residential or commercial building improvements (for whatever purpose). The restrictions are clear, as was the intent. It's not now a matter of doing another community vote, changing our minds, and electing not to abide the restrictions.

Sincerely,

Kevin K. Groeneweg, Esq.
346 Lamb Lane
PHHOA Class I Member
Former President of the Board