

BOARD OF REGENTS BRIEFING PAPER

1. AGENDA ITEM TITLE: Grant of Access Easement to Advanced Rail Energy Storage, LLC

MEETING DATE: June 7, 2017 Meeting of the Business, Finance and Facilities Committee

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

In December of 2014 the National Defense Authorization Act for Fiscal Year 2015 (the "Act") was passed by Congress and signed into law by the President of the United States. Among other things, the Act authorized the Secretary of the Interior/Bureau of Land Management ("BLM") to convey 274.4 acres (the "Property") to the Board of Regents for the establishment of a campus for Great Basin College in the town of Pahrump in Nye County.

In September of 2016 the Board of Regents authorized the Chancellor to accept the Property and to execute a Memorandum of Agreement with the BLM related to the future development of the Property. In December of 2016 the BLM issued Patent No. 27-2017-0016 (the "Patent") conveying the Property to the Board of Regents on behalf of Great Basin College.

The Patent contains a right-of-way reservation issued by the BLM for an access route over the Property (the "Original Access Route") in favor of Advanced Rail Energy Storage, LLC ("ARES"). ARES has entered into a lease with the BLM for the use of approximately 55 acres adjacent to the Property. That lease allows for the construction and operation of a limited energy rail storage system that utilizes locomotives to consume and return electricity to the electrical power grid.

The Original Access Route utilizes Carpenter Canyon Road which bisects the Property and is problematic because it runs adjacent to a BLM fire station and helicopter landing pad and may also complicate the future development of the Property. As a result, the Original Access Route is disfavored by the BLM and Great Basin College as a means of access to the ARES project site. The BLM, Great Basin College and ARES have identified an alternative access route across the Property that could be used by ARES (the "Alternative Access Route"). The Alternative Access Route utilizes an existing transmission line corridor and maintenance road. See photos attached as **Exhibit 2**. Thus, Great Basin College requests that the Board approve the Access Easement attached as **Exhibit 1** which will allow ARES a means of access to its project site that is preferable to Great Basin College and the BLM.

The Access Easement is properly classified as an "affirmative easement" under Title 4, Chapter 10, Section 1, Subsection 9 (Table 9.1) of the *Board of Regents' Handbook* and requires the approval of the Board. The proposed Access Easement is a non-exclusive easement and it automatically expires upon (a) termination or expiration of ARES right to use its project site, (b) dedication and construction of a public right-of-way providing access to the ARES project site, or (3) 9 months of continuous non-use of the easement by ARES. The Access Easement also includes a general and environmental indemnity provision by ARES in favor of the Board.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

Great Basin College President Joyce Helens requests that the Board: (a) approve the Access Easement (attached as Exhibit 1) to Advance Rail Energy Storage, LLC, and (b) authorize the Chancellor to execute any ancillary documents necessary to effectuate the Access Easement on forms approved by the NSHE General Counsel.

4. IMPETUS (WHY NOW?):

- Congress authorized the conveyance of the Property to the Board for the benefit of Great Basin College in 2014.
- The conveyance was made with a right-of-way reservation in favor of Advanced Rail Energy Storage, LLC allowing for access thorough the Property. The route for that right-of way cuts through the middle of the Property and is disfavored by Great Basin College and the BLM. As a result, Great Basin College and the BLM have identified an alternative route that better suits their needs while maintaining access to the ARES project site.

5. CHECK THE NSHE STRATEGIC PLAN GOAL THAT IS SUPPORTED BY THIS REQUEST:

- Access (Increase participation in post-secondary education)
- Success (Increase student success)
- Close the Achievement Gap (Close the achievement gap among underserved student populations)
- Workforce (Collaboratively address the challenges of the workforce and industry education needs of Nevada)
- Research (Co-develop solutions to the critical issues facing 21st century Nevada and raise the overall research profile)

- Not Applicable to NSHE Strategic Plan Goals

INDICATE HOW THE PROPOSAL SUPPORTS THE SPECIFIC STRATEGIC PLAN GOAL

N/A.

6. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- Approval of the Access Easement will allow ARES access to its project site utilizing a route that is preferred by Great Basin College and the BLM.

7. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

- The Access Easement will burden the Property until such time a public right-of-way is provided to the ARES project site.

8. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

- None. Do not approve the Access Easement which will allow ARES to utilize the Original Access Route that runs through the middle of the Property.

9. RECOMMENDATION FROM THE CHANCELLOR’S OFFICE:

- That that Board: (a) approve the Access Easement (attached as Exhibit 1) to Advance Rail Energy Storage, LLC, and (b) authorize the Chancellor to execute any ancillary documents necessary to effectuate the Access Easement on forms approved by the NSHE General Counsel.

10. COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Title 4, Chapter 10, Section 1, Subsection 9 (Table 9.1)
- Amends Current Board Policy: Title # _____ Chapter # _____ Section # _____
- Amends Current Procedures & Guidelines Manual: Chapter # _____ Section # _____
- Other: _____
-
- Fiscal Impact: ___ No ___ X ___
- Explain: _____

ACCESS EASEMENT

This Access Easement is granted this ____ day of _____, 2018, by the Board of Regents of the Nevada System of Higher Education on behalf of Great Basin College (“Board” or “Grantor”) to Advanced Rail Energy Storage LLC, a Washington corporation authorized to do business in Nevada (“ARES” or “Grantee”).

ARES has entered a lease with the U.S. Department of Interior, Bureau of Land Management (“BLM”) for the use of approximately 55 acres in the Pahrump valley along the Clark and Nye County border (the “AREA Project Site”). The lease allows for the construction and operation of a limited energy rail storage system that utilizes locomotives to consume and return electricity to the electrical power grid.

The ARES Project Site is adjacent to approximately 274 acres of unimproved land owned by the Board planned for a future campus of Great Basin College (the “Property”). The Property was conveyed to the Board in 2017 by the United State of America by way of Patent Number 27-2017-0016 (the “Patent”). The Patent contains a right-of-way reservation (BLM No. 92514-01) for an access route over the Property in favor of ARES utilizing Carpenter Canyon Road as generally depicted in **Exhibit A** (the “Original Access Route”).

The Original Access Route bisects the Property and is disfavored by BLM and Great Basin College as a means of access to the ARES Project Site. The BLM, Great Basin College and ARES have identified an alternative route allowing for access across the Property to the ARES Project Site utilizing an existing electrical transmission line corridor and maintenance road (the “Alternative Access Route”) generally depicted in **Exhibit B**.

Because of the need for an alternate route, ARES desires to acquire an easement to use the Alternate Access Route for access to the ARES Project Site. In consideration of the mutual covenants, promises, terms and conditions set forth herein, together with other good and valuable consideration, the Board grants this Access Easement subject to the following terms and conditions:

1. Non-Exclusive Easement for Access. Grantor hereby grants to Grantee, for the term set forth in Section 2, a non-exclusive right of ingress and egress across that portion of the Property depicted in Exhibit B (known as the Alternative Access Route, as more specifically described in **Exhibit C**) for the purpose of constructing, maintaining, supplying, and operating a limited energy rail storage system on the ARES Project Site, as such is permitted by the BLM, and for no other purposes. Grantee’s use of the Alternative Access Route shall, at all times, be subject to and consistent with the terms and conditions of the Patent. Grantor expressly reserves for itself, its successors and assigns, the right to use the Alternative Access Route or to grant other easements and licenses at the same location so long as such use does not unreasonably

interfere with, or prevent the reasonable exercise of, the rights granted by this Grant of Easement.

2. Term. The rights granted by this Access Easement shall automatically terminate and expire upon (a) the termination or expiration of Grantee's right to use the AREA Project Site, (b) dedication and construction of a right-of-way that provides public access to the ARES Project Site, or (c) nine (9) months of continuous non-use by Grantee of the access granted by this Easement, whichever occurs first. Upon the termination of this Easement as provided in this Section 2 (a) all the rights and benefits of Grantee in, to and under this Access Easement shall automatically terminate and have no further force and effect, and (b) Grantee shall, at Grantor's request, execute a quitclaim deed or other instrument in recordable form evidencing the termination of this Access Easement.

3. Abandonment of Original Access Route. In consideration of this Access Easement and the rights granted herein, ARES agrees that it will not utilize the Original Access Route as a means of access to the ARES Project Site and hereby abandons and vacates its rights to the use the Original Access Route over any portions of the Property. Upon execution of this Access Easement and receipt of any approvals required for the exercise of the rights granted to ARES under the Access Easement, ARES shall submit any applications and other documents to the BLM or other governmental authority necessary to abandon or vacate its rights to utilize the Original Access Route.

4. Construction of Improvements. Grantee is responsible for the construction and maintenance of any improvements to the Alternative Access Route, and the costs and expenses thereof, as required by the BLM or other government authority. Grantee shall construct and maintain all such improvements in a workmanlike manner and in compliance with all applicable laws, rules and regulations of all governmental authorities, including without limitation the BLM, as amended from time to time. Grantee shall not create or permit to be created any mechanics' or materialmans' lien against the Property and shall cause any claim of such lien to be removed or bonded off upon demand by Grantor.

5. Damage to Property. Grantee shall be responsible for any damage to the Property resulting from the exercise of the rights granted herein by Grantee, its officers, employees, agents, invitees and guests. Grantee shall promptly repair and restore to its original condition any portion of the Property that may be altered, damaged, or destroyed in connection with the exercise of the rights granted herein by Grantee, its officers, employees, agents, invitees and guests.

6. Hazardous Materials and Environmental Laws. Grantee shall not dispose of anywhere on the Property, including within the Alternative Access Route, any flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, including petroleum products or derivatives (collectively "Hazardous Materials"). Grantee's use of the Alternative Access Route and exercise of the rights granted by the

Easement shall at all times comply with all applicable federal, state and local laws, rules, and regulations relating to the protection of the environment, including, without limitation, any conditions imposed by the BLM or other governmental authority for dust control, desert tortoise mitigation, or other site specific requirements (“Environmental Laws”). Grantee shall indemnify, defend, and hold harmless Grantor its officers, employees, agents, invitees and guests from and against all liabilities, claims, losses, lawsuits, judgments, costs (including attorneys’ fees) arising from or related to the failure of Grantee, its officers, employees, agents, invitees and guests to comply with this Section 6 or any Environmental Laws.

7. Relocation. Grantor may relocate the Alternative Access Route if in the opinion of Grantor it unreasonably interferes with the present or future use by Grantor of the Property; provided however, in order to exercise this right Grantor will provide Grantee a substitute means of access to the ARES Project Site reasonably suited to accomplishing the purposes set forth in Paragraph 1 and will do so at no cost to Grantee; such substitute means of access shall be subject to termination and expiration as provided in Section 2 of this Easement. Grantee shall be responsible for all costs and expenses related to maintenance of the relocated Alternative Access Route as provided in Section 4 of this Easement.

8. Indemnification. Grantee shall indemnify, defend and hold harmless Grantor, its officers, employees, agents, invitees and guests from and against all liabilities, claims, losses, lawsuits, judgments, costs (including attorneys’ fees) arising from or related to Grantee’s exercise of the rights granted by this Easement, including any negligent or intentional acts (including the failure to act), by Grantee or any of its officers, employees or agents.

9. Compliance with Laws. Grantee shall comply with all applicable federal, state and local laws, rules and regulations at Grantee’s sole cost and expenses.

10. Taxes. Grantee shall pay all taxes, charges, or use fees levied by any governmental authority against Grantee’s interest in this Easement or against the Property as a result of this Access Easement.

11. Remedies. In the event Grantor or Grantee fails to perform any of its obligation set forth in this Access Easement the other party may pursue all available remedies, in law and equity, including but no limited to injunctive relief and specific performance. In addition, the non-performing party shall reimburse the other party for all costs and expenses incurred by the other party in pursuing these remedies, including attorneys’ fees.

12. Sovereign Immunity. Grantor is a constitutional entity of the State of Nevada and its liability is limited in accordance with Chapter 41 of the Nevada Revised Statutes. Nothing in this Access Easement shall be construed to waive, impair, or diminish Grantor’s sovereign immunity.

[SIGNATURE PAGES TO FOLLOW]

Executed this _____ day of _____ 2018.

GRANTOR:

BOARD OF REGENTS OF THE NEVADA SYSTEM OF HGIHER EDUCTION ON BEHALF OF GREAT BASIN COLLEGE

RECOMMEND APPROVAL:

Joyce Helens, President, Great Basin College

APPROVED:

Thom Reilly, Chancellor, Nevada System of Higher Education

STATE OF NEVADA

COUNTY OF _____

On this _____ day of _____, 2018, _____,
Chancellor of the Nevada System of Higher Education personally appeared before me the undersigned, a notary public in for said County and State, Nevada who acknowledge to me that he executed the above instrument for purposes stated herein.

WITNEESS my hand and official seal.

NOTARY PUBLIC in and for said County and State.

GRANTEE:

Advance Rail Energy Storage LLC

By: _____

Title: _____

STATE OF NEVADA
COUNTY OF _____

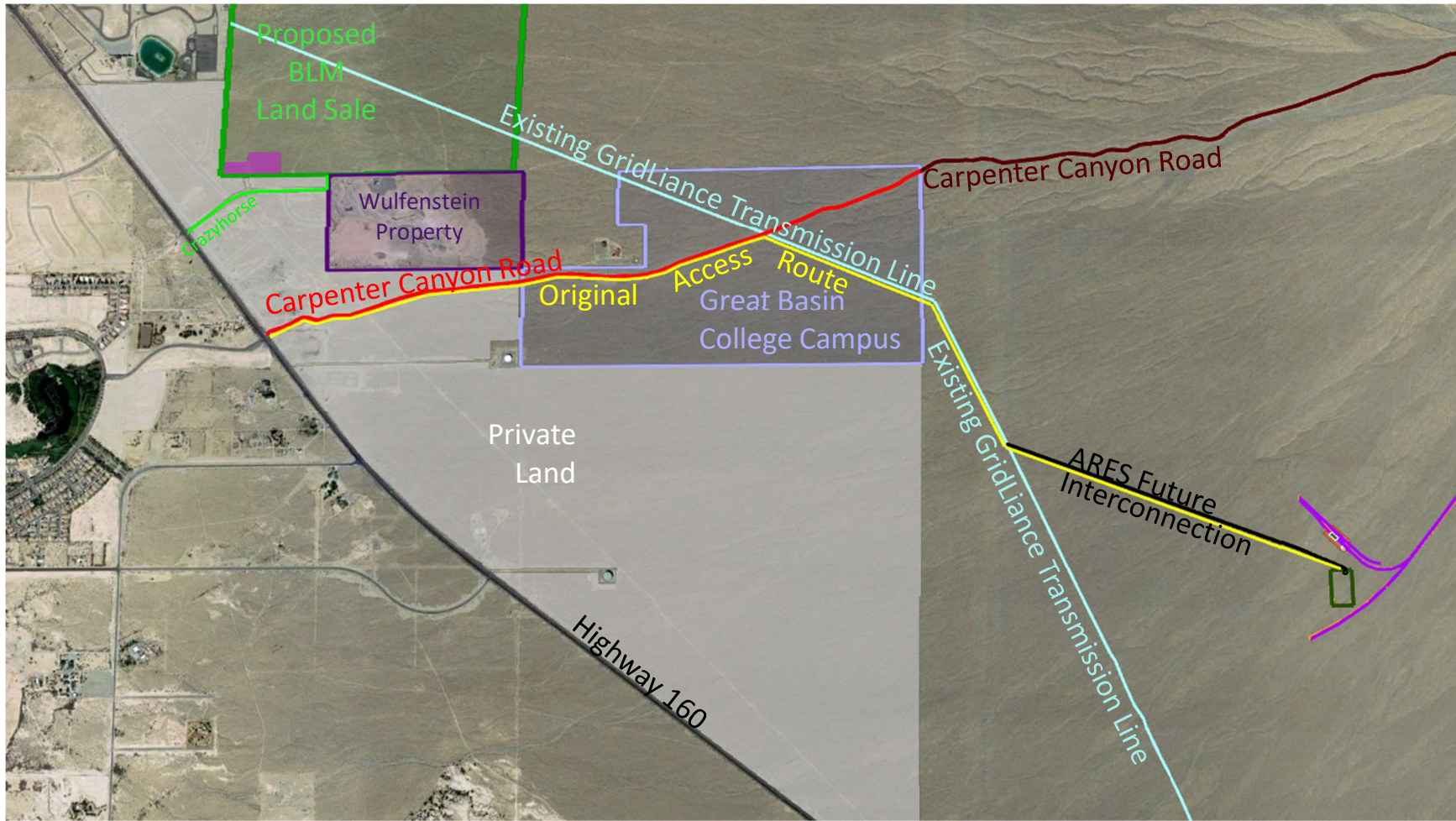
On this _____ day of _____, 2018, _____,
Chancellor of the Nevada System of Higher Education personally appeared before me the
undersigned, a notary public in for said County and State, Nevada who acknowledge to me that
he executed the above instrument for purposes stated herein.

WITNEESS my hand and official seal.

NOTARY PUBLIC in and for said County and State.

EXHIBIT A
Original Access Route

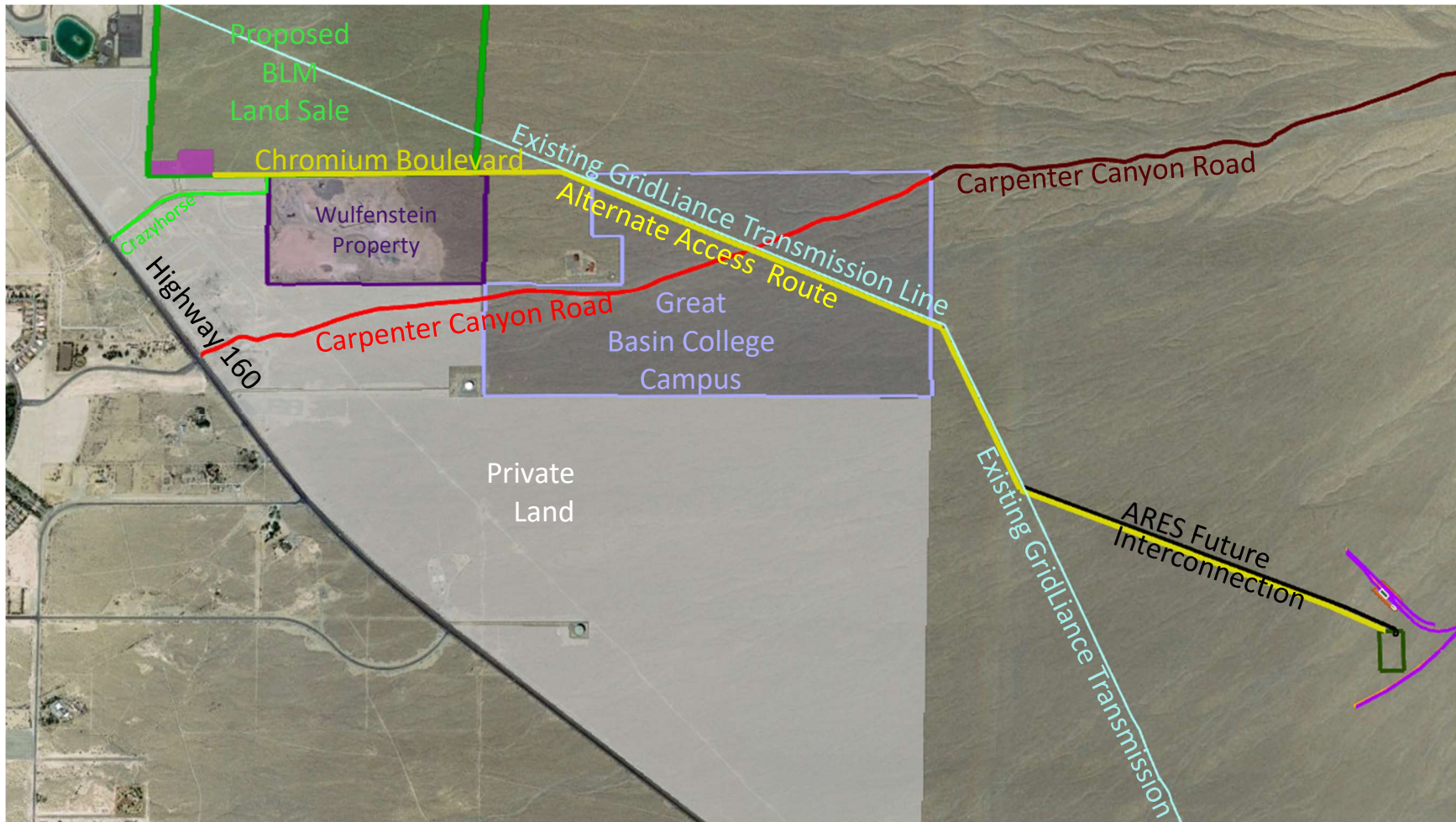
EXHIBIT A



The Original Access Route (highlighted yellow) includes the use of Carpenter Canyon Road from Highway 160, through the Great Basin College Campus, to the existing GridLiance transmission line road. The transmission line road is then followed to the intersection with the ARES Interconnection road (to be developed).

EXHIBIT B
Alternative Access Route

EXHIBIT B



The Alternative ARES Route leaves Highway 160 at Crazyhorse Street (green) to the future Chromium Boulevard (yellow) to the intersection with the existing GridLiance transmission line road. The transmission line road would then be followed to the intersection with the ARES Interconnection road (to be developed). The use of Carpenter Canyon Road is avoided.

EXHIBIT C

Legal Description – Alternative Access Route

- Meridian: 21
- Township: 0210S
- Range: 0540E
- Section: 002
- Type and Subdivision: LOTS 2, 5, 8 and ALIQ S2NE, NWNW
- Las Vegas Field Office
- Nye