

**MEMORANDUM****TO:** Board of Trustees**FROM:** Bobby Magee  
District General Manager**SUBJECT:** Review, Discuss and Approve Revisions to Policy and Procedure No. 136, Policy Concerning the Use of District Facilities for Expression**DATE:** May 8, 2024**I. RECOMMENDATIONS**

1. The Board review, discuss and approve revisions to Policy and Procedure Number 136, Concerning Access to District Property and the Use of District Facilities for Expression

**II. DISTRICT STRATEGIC PLAN**

This action supports Long Range Principle #6, Communication; *“The District will engage, interact and educate to promote understanding of the venues, facilities, services, and ongoing affairs.”*

**III. BACKGROUND**

As part of its identification of priorities, the Board directed staff to examine revision to Policy and Procedure Number 136, as certain activities have created conflict and complaints from constituents. Emails received by the Board included complaints of being an involuntary audience and having a negative impact on the enjoyment of recreation facilities, as well as violations of the existing policy. As a result, the Board directed that staff specifically identify areas at each venue for free speech.

The proposed policy revisions include a map that specifically identifies zones on property where free speech activity can occur without leading to conflicts with recreational activity, as well as avoids conflict with vehicular traffic. Additionally, the policy includes language that designates areas for signature gathering, which the District is required to provide at each public building that is open to the general public, either inside or outside of the building, in accordance with NRS 293.127565. In addition to the mapped areas, the policy revisions require the Diamond Peak Ski Resort General Manager to designate within Diamond Peak a

suitable location, inside the main lodge or outside on the main lodge deck, for the conduct of signature gathering activities.

Importantly, the existing policy designates portions of Ski Beach, Incline Beach, and Burnt Cedar Beach as public forums. In *Wright v. Incline Village General Improvement District*, 665 F.3d 1128 (9th Cir. 2011), the Ninth Circuit determined that these beaches (as well as Hermit Beach) are not traditional public forums, and that exclusion of persons who do not live within IVGID's 1968 boundaries does not violate any rights under the First or Fourteenth Amendments. The existing policy does not mention Hermit Beach. Since IVGID presently limits access to all four of these beaches in accordance with the restrictive covenants of the Beach Deed and Ordinance No. 7, Policy Number 136 should be revised to list Ski Beach, Incline Beach, Burnt Cedar Beach, and Hermit Beach as non-public forum areas, to comport with how access is already controlled under other IVGID policies and to avoid any potential for public confusion.

Additionally, Diamond Peak is proposed to be listed as a non-public forum. Most of the areas at Diamond Peak are restricted to users who have paid for lift-access, except for some limited public accommodations at the Base Lodge and Skier Services Building. A ski resort would not normally be considered a traditional public forum under applicable case law, and it is unlikely that the District is required to designate an area of Diamond Peak for the purpose of conducting First Amendment activities while other more appropriate forums are available within IVGID for such activities.

#### **IV. FINANCIAL IMPACT AND BUDGET**

None anticipated.

#### **V. ALTERNATIVES**

Do not approve the proposed policy revisions.

#### **VI. BUSINESS IMPACT**

This item is not a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, and does not require a Business Impact Statement.

#### **VII. ATTACHMENTS**

1. Proposed Amended Policy
2. Current Policy



## **Policy and Procedure Number 136 Policy Concerning Access to District Property and the Use of District Facilities for Expression**

### **PREAMBLE**

The Incline Village General Improvement District (the "District") is a special purpose district existing under Chapter 318 of the Nevada Revised Statutes and Washoe County Ordinance.

The District owns real property and facilities that it uses to fulfill its special purposes, and those uses by the District take precedence over any other activity or use.

The District recognizes that public expression, speech and assembly is a fundamental right. The District must, however, balance the exercise of that fundamental right with its significant interests to:

- (a) satisfy its special purposes;
- (b) assure orderly conduct;
- (c) protect the rights of persons authorized to use District real property and facilities to the unique recreational experiences provided by the natural environment of such real property and facilities;
- (d) protect and preserve the unique environment on which the various District properties and facilities reside;
- (e) reasonably provide an opportunity for access to the District community for expression; and,
- (f) reasonably protect persons entitled to use District real property and facilities from activities or practices which would make them involuntary audiences, or which are inappropriate to the purpose and enjoyment of a specific real property and facility.
- (g) Ensure the safety of the staff and the public.



## **Policy and Procedure Number 136 Policy Concerning Access to District Property and the Use of District Facilities for Expression**

Through this Policy, the District designates public forum areas within its real property and facilities, and encourages any individual or group to use such designated public forum areas for the exercise of expression, speech and assembly, in accordance with this Policy. The District will not further regulate such exercise except as consistent with applicable law. In order to preserve the peace, however, and to promote the significant interests of the District, including those listed above, the District may make reasonable, lawful rules and regulations with respect to the time, place and manner of any use of its real property and facilities for purposes of expression, speech and assembly.

### **DESIGNATION OF PUBLIC FORUM AREAS**

The District designates as public forum areas the following areas of the real properties and facilities listed on Exhibit 1 to this Policy as locations where assemblies may take place. The locations are further identified in Map 1. A copy of this Policy and Exhibit 1, which Exhibit is made a part of this Policy, shall be available at each such real property and facility, and shall also be available at the District Administrative Office.

The designated public forum areas as described above for the real properties and facilities listed on Exhibit 1 are areas where all persons may exercise the activities of expression, speech and assembly, to the extent permitted by law and this Policy and any rules and regulations which the District may adopt. Such activities must be consistent with the maintenance and operation of District real properties and facilities, and must not interfere with the intended use of such facilities, or with parking, the flow of vehicular





## **Policy and Procedure Number 136 Policy Concerning Access to District Property and the Use of District Facilities for Expression**

traffic, and ingress to and egress from the property and all buildings and facilities. Such activities must not create an imminent health or safety hazard or result in a violation of the privacy or rights of others. The location and size of the designated public forum areas with respect to each real property and facility listed on Exhibit 1 reflects an appropriate balance of the significant interests of the District with the recognized right of expression, speech and assembly.

While it is the District's intention to assure use of the designated public forum areas as described in this Policy for each real property and facility listed on Exhibit 1 for the purpose of expression, speech and assembly, some of the real properties and facilities may have existing practical limitations. The District may make additional reasonable rules and regulations for the use of each real property and facility as it determines to be necessary.

### **NON-PUBLIC FORUM AREAS**

The portions of the District real properties and facilities listed on Exhibit 1 and not designated in this Policy as a public forum area, and all other District real properties and facilities, including without limitation, the real properties and facilities described in Exhibit 2, where public access may be limited or restricted, are deemed to be and are designated as "non-public forum areas."

### **SPECIAL USE CASES**

#### **BOARD MEETING ROOM**

The meeting room at the District Administrative Office in which the Board of



## **Policy and Procedure Number 136 Policy Concerning Access to District Property and the Use of District Facilities for Expression**

Trustees of the District conducts its meetings is also available for expression, speech and assembly during the public comment period consistent with the conduct of the Board's business during such meetings and with the provisions of NRS § 241.020(3), related to restrictions on public comment.

### SIGNATURE GATHERING

NRS 293.127565 requires that each public building that is open to the general public, the District designate an area for the use of any person to gather signatures on petitions, and that such area must be reasonable and may be inside or outside of the building. The District hereby designates those locations set forth in Exhibit 1 to be used for signature gathering. In addition, the Diamond Peak Ski Resort General Manager shall designate within Diamond Peak a suitable location, inside the main lodge or outside on the main lodge deck, for the conduct of signature gathering activities.

The District Clerk shall on an annual basis file a copy of this policy designating areas available for signature gathering with the Secretary of State and the county clerk in compliance with requirements under NRS 293.127565. Notifications required by NRS 293.127565 to use such areas shall be made to the District Clerk.



**Policy and Procedure Number 136  
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EXHIBIT 1

LOCATIONS AND MAPS OF PROPERTIES

WITH DESIGNATED PUBLIC FORUM AREAS

1. Administration Building – per Map 1 – Southeast area identified
2. Recreation Center – per Map 1 – the median on the east side of the parking lot
3. Chateau – per Map 1 – the median nearest the practice putting area
4. Preston Field – per Map 1 – Northwestern location of the parking lot
5. Mountain Golf Course – per Map 1 — the median on the north end of the parking lot
6. Aspen Grove—Village Green – per Map 1 — the northwest corner of the parking lot
7. Skateboard Park – per Map 1 — the southern area of the park



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EXHIBIT 2

NON-PUBLIC FORUM AREAS

1. Public Works Building
2. Water Treatment Plant
3. Wastewater Treatment Plant
4. Wetlands Effluent Disposal Facility
5. Sewer Pumping Station
6. Water Pumping Stations
7. Spooner Effluent Pumping Station
8. Water Storage Reservoirs and Tanks
9. Parks Storage Building
10. Overflow Parking Lot
11. Diamond Peak
12. Tennis/Pickleball Center
13. Ski Beach, Incline Beach, Burnt Cedar Beach, and Hermit Beach
14. Ridgeline Ball Parks



**Policy and Procedure Number 136  
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the Use of District Facilities for Expression**

**Certification:** I, Heidi H. White, Clerk of the Board of Trustees, do hereby certify, by my signature below, that on May \_\_, 2024, the Incline Village General Improvement District Board of Trustees heard Policy and Procedure Number 136, a true and correct copy of aforementioned is attached hereto, as a General Business Item and that this Policy and Procedure Number 136, was adopted by a \_\_\_\_\_ vote of said Board of Trustees.

May \_\_, 2024

\_\_\_\_\_  
Heidi H. White, Clerk to the Board of Trustees





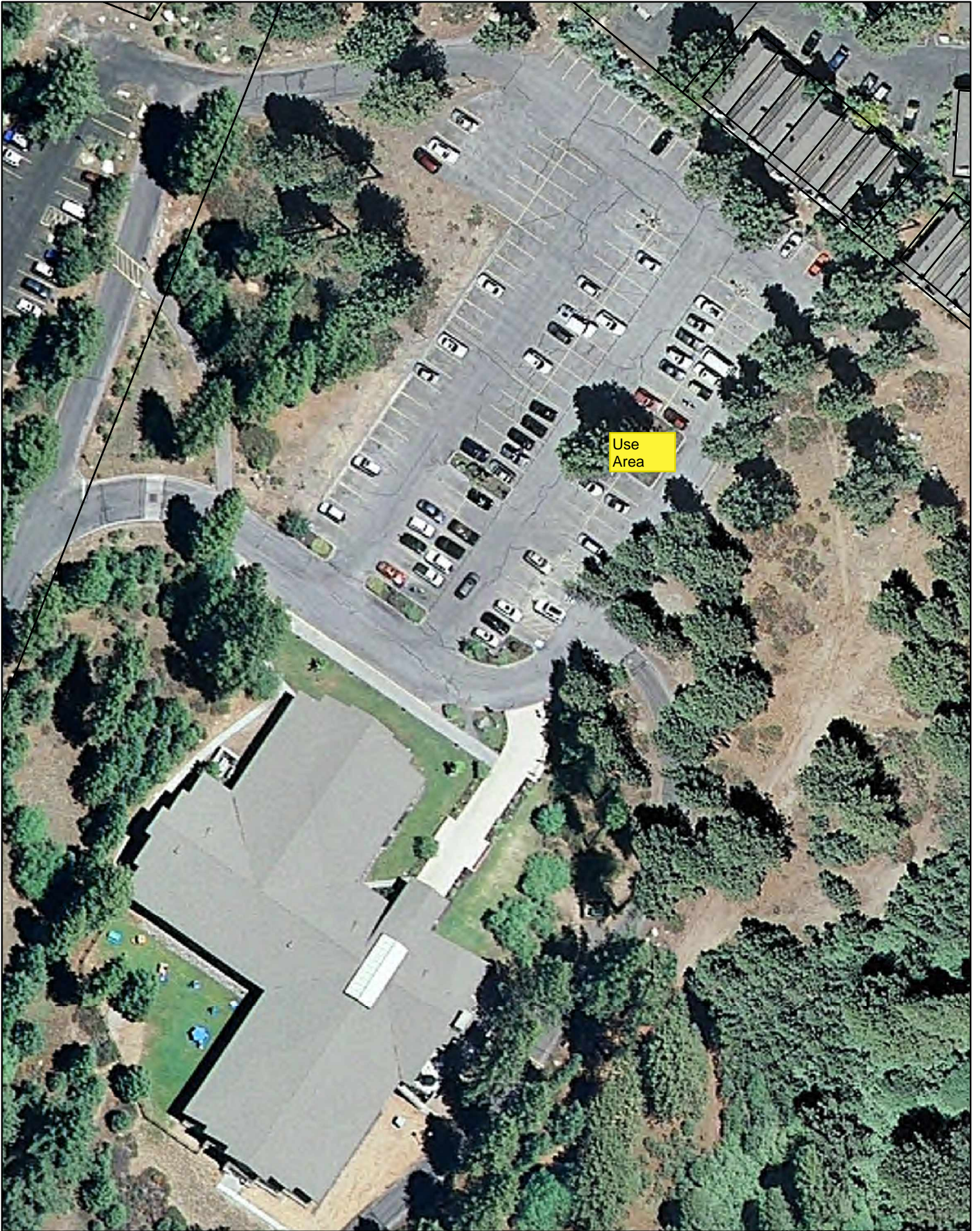
Use  
Area

*ANNE VORDERBRUGEN BUILDING  
IVGID ADMINISTRATION  
893 SOUTHWOOD BLVD.*

Not to Scale

EXHIBIT 1, MAP 1





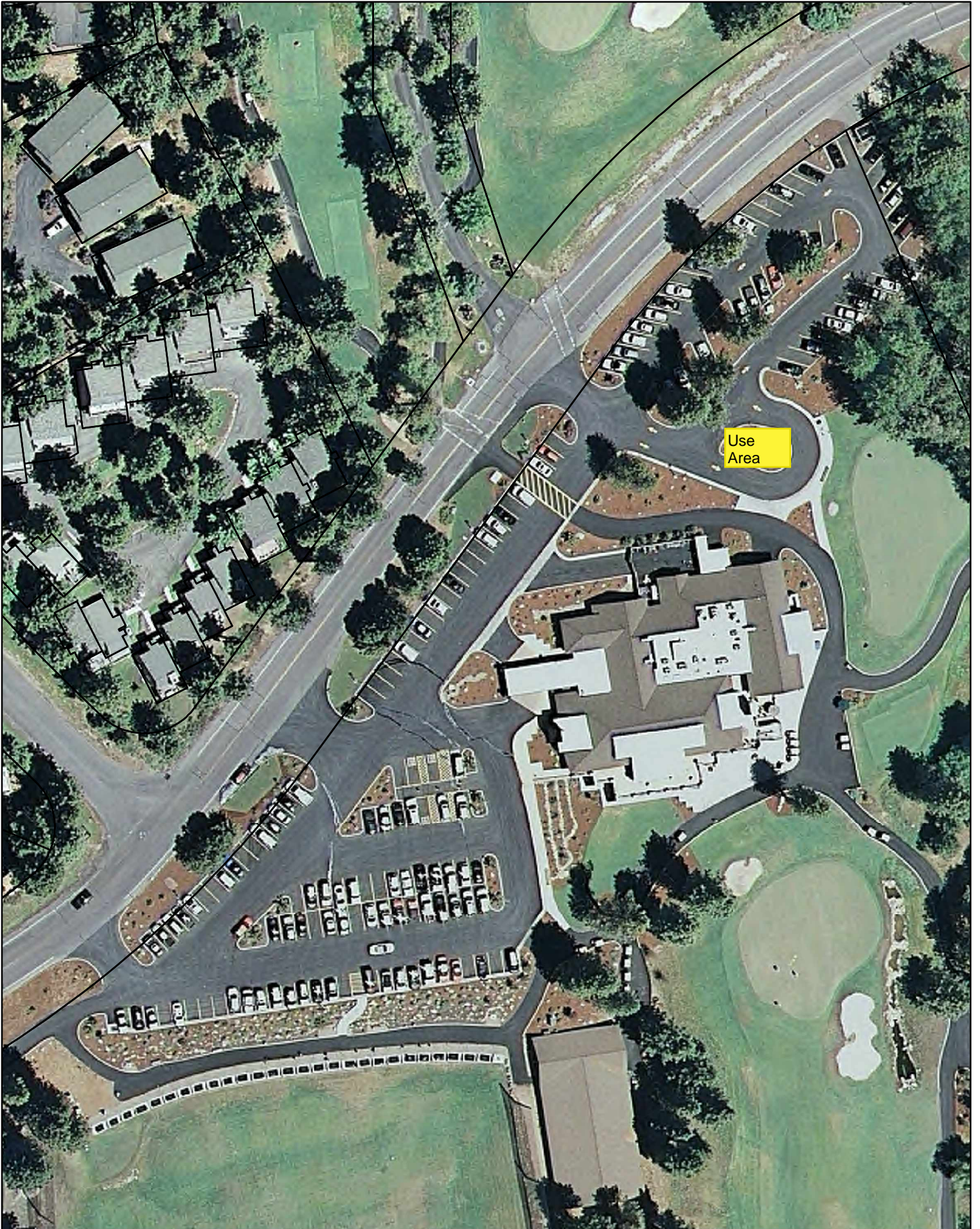
Not to Scale

*RECREATION CENTER  
964 INCLINE WAY*

EXHIBIT 1, MAP 2











Use Area





Use  
Area







Use Area

*ASPEN GROVE  
960 LAKESHORE BLVD.*

EXHIBIT 1, MAP 11







Use Area



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**PREAMBLE**

The Incline Village General Improvement District (the "District") is a special purpose district existing under Chapter 318 of the Nevada Revised Statutes for the purposes of providing curbs, gutters, sidewalks, storm drainage, sewer disposal, water supply and recreational facilities.

The District owns real property and facilities that it uses to fulfill its special purposes, and those uses by the District take precedence over any other activity or use.

The District recognizes that public expression, speech and assembly is a fundamental right. The District must, however, balance the exercise of that fundamental right with its significant interests to:

- (a) satisfy its special purposes;
- (b) assure orderly conduct;
- (c) protect the rights of persons authorized to use District real property and facilities to the unique recreational experiences provided by the natural environment of such real property and facilities;
- (d) protect and preserve the unique environment on which the various District properties and facilities reside;
- (e) reasonably provide an opportunity for access to the District community for expression; and,
- (f) reasonably protect persons entitled to use District real property and facilities from activities or practices which would make them involuntary audiences, or which are inappropriate to the purpose and enjoyment of a specific real property and facility.



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Through this Policy, the District designates public forum areas within its real property and facilities, and encourages any individual or group to use such designated public forum areas for the exercise of expression, speech and assembly, in accordance with this Policy. The District will not further regulate such exercise except as consistent with applicable law. In order to preserve the peace, however, and to promote the significant interests of the District, including those listed above, the District may make reasonable, lawful rules and regulations with respect to the time, place and manner of any use of its real property and facilities for purposes of expression, speech and assembly.

### **DESIGNATION OF PUBLIC FORUM AREAS**

The District designates as public forum areas the following areas of the real properties and facilities listed on Exhibit 1 to this Policy: the parking lots, the walkways within and adjacent to the parking lots, and the sidewalks adjacent to any public entrance to any building open to the public, located on such listed real properties and facilities. A copy of this Policy and Exhibit 1, which Exhibit is made a part of this Policy, shall be available at each such real property and facility, and shall also be available at the District Administrative Office.

The designated public forum areas as described above for the real properties and facilities listed on Exhibit 1 are areas where all persons may exercise the activities of expression, speech and assembly, to the extent permitted by law and this Policy and any rules and regulations which the District may adopt. Such activities must be consistent with the maintenance and operation of District real properties and facilities, and must not interfere with the intended use of such facilities, or with parking, the flow of vehicular traffic, and ingress to and egress from the





## **Policy and Procedure Number 136 Policy Concerning Access to District Property and the Use of District Facilities for Expression**

property and all buildings and facilities. Such activities must not create an imminent health or safety hazard or result in a violation of the privacy or rights of others. The location and size of the designated public forum areas with respect to each real property and facility listed on Exhibit 1 reflects an appropriate balance of the significant interests of the District with the recognized right of expression, speech and assembly.

While it is the District's intention to assure use of the designated public forum areas as described in this Policy for each real property and facility listed on Exhibit 1 for the purpose of expression, speech and assembly, some of the real properties and facilities may have existing practical limitations. The District may make additional reasonable rules and regulations for the use of each real property and facility as it determines to be necessary.

### **BOARD MEETING ROOM**

The meeting room at the District Administrative Office in which the Board of Trustees of the District conducts its meetings is also available for expression, speech and assembly consistent with the conduct of the Board's business during such meetings and with the provisions of N.R.S. § 241.020(3).

### **NON-PUBLIC FORUM AREAS**

The portions of the District real properties and facilities listed on Exhibit 1 and not designated in this Policy as a public forum area, and all other District real properties and facilities, including without limitation, the real properties and facilities described in Exhibit 2, where public access may be limited or restricted, are deemed to be and are designated as "non-public forum areas."



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**Certification:** I, Susan A. Herron, Clerk of the Board of Trustees, do hereby certify, by my signature below, that on April 30, 2008, the Incline Village General Improvement District Board of Trustees heard Policy and Procedure Number 136, a true and correct copy of aforementioned is attached hereto, as a General Business Item and that this Policy and Procedure Number 136 was adopted by a unanimous vote of said Board of Trustees.

April 30, 2008

A handwritten signature in black ink that reads "Susan A. Herron". The signature is written in a cursive style with a horizontal line underneath the name.

Susan A. Herron, Clerk to the Board of Trustees





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2. Recreation Center
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