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IN THE FOURTH JUDICIAL DISTRICT COURT, WASATCH COUNTY

STATE OF UTAH

UTAH STREAM ACCESS COALITION, a	:	ATC REALTY SIXTEEN, INC.'S
Utah non-profit corporation,	:	CROSS-MOTION FOR SUMMARY
	:	JUDGMENT
Plaintiff,	:	
	:	
vs.	:	Civil No. 100500558
	:	
ATC REALTY SIXTEEN, INC., a California	:	Hon. Derek Pullan
corporation, et al.	:	
	:	
Defendants.	:	
	:	

Pursuant to Utah Rule of Civil Procedure 56, Defendant ATC Realty Sixteen, Inc. (“ATC”), by and through its undersigned counsel, respectfully hereby submits this *Cross-Motion for Summary Judgment*.

ATC moves for summary judgment in its favor on the claims presented by the complaint on file in this matter. Plaintiff Utah Stream Access Coalition (“USAC”) has also moved for summary judgment on the issues presented by its complaint. By this cross-motion, ATC seeks a declaration of this Court that H.B. 141 (the “Stream Access Law”), by its enactment, operation and application to the streambeds at issue in this litigation, does not violate any law or provision of the Constitution of the State of Utah (the “Constitution”) as claimed by USAC, and that the Public Trust Doctrine does not protect any public recreational easement over privately-owned and non-navigable streambeds.

Granting ATC’s cross-motion necessarily requires a resolution against USAC on its constitutional arguments as a matter of law. Such a conclusion is warranted based upon the undisputed facts.

Article XVII, Section 1 of the Constitution , did nothing more than codify then-existing water rights, assuring the public that prior-appropriated rights would not be lost upon Utah’s entrance into the United States, leaving administration of water in the State of Utah to the Legislature. There was no right of public access over privately-owned streambeds evident in the laws of the time, the public perception, or the consciousness of the framers. Accordingly, Utah Legislature acted properly and within the scope of Article V of the Utah Constitution when it enacted the Stream Access Law.

In addition, because USAC challenges the constitutionality of the Stream Access Law, USAC bears the burden of proving navigability and public ownership of the streambeds at issue in this litigation as a precursor to application of either Article XX of the Constitution or the

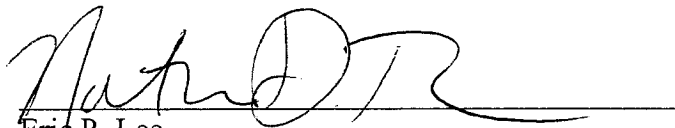
Public Trust Doctrine. USAC has not argued that the streambeds at issue are in fact navigable. While this issue may be addressed in the future, until such time as USAC or some other party proves, let alone argues, navigability, the Stream Access Law as applied does not violate the Public Trust Doctrine and Article XX of the Utah Constitution, as a matter of law.

This motion is based upon the *ATC Realty Sixteen, Inc. 's Memorandum in Support of Cross-Motion for Summary Judgment and in Opposition to Plaintiff Utah Stream Access Coalition's Motion for Summary Judgment* ("Memorandum in Support"), filed concurrently herewith, and including the appendices thereto, and all other pleadings and papers on file with the Court in the above-captioned matter.

Accordingly, for the reasons set forth herein and more explicitly stated in ATC's Memorandum in Support, as such, ATC respectfully submits that this Court grant summary judgment in favor of ATC and deny USAC's motion for the same.

DATED this 21st day of October, 2011.

JONES WALDO HOLBROOK & McDONOUGH PC



Eric P. Lee

Nathan D. Thomas

Attorneys for Defendants ATC Realty Sixteen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of October, 2011, I caused a true and correct copy of the foregoing **CROSS-MOTION FOR SUMMARY JUDGMENT** to be served via U.S. Mail to the following:

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