SAN MIGUEL COUNTY PLANNING COMMISSION REVISED AGENDA

December 14, 2016

Placerville School House, 400 Front Street, Placerville

8:30 AM	Leave Courthouse for Placerville
9:00 AM	Approval of Minutes; Planning Commission Comments and Staff Comments
9:10 AM	County Road Vacation Recommendation: CR 60M, east end of San Miguel County on East Wilson Mesa, and west of Telluride
9:50 AM	Special Use Permit Worksession: Tri-State Transmission Line Rebuild of an Above-ground 115-kilovolt (kV) Electric Transmission Line to operate at 230-kV, located in the within the West End Zone District
	Adjourn

For more information on the above proposal contact the Planning Department at (970) 728-3083

Times are approximate; items may begin earlier (except public hearings) or later than scheduled.

SAN MIGUEL COUNTY PLANNING COMMISSION
MINUTES – REGULAR MEETING

May 11, 2016

Miramonte Building, 333 West Colorado Ave., Second Floor Meeting Room, Telluride

Present:	Lee Taylor, Chair Pamela Hall, Vice-chair Marty Schmalz, Secretary Kevin Kell, Regular Member M.J. Schillaci, Sr. Alternate Josselin Lifton-Zoline, Jr. Alternate
Absent:	Ian Bald, Regular Member
Planning Staff Present:	Michael Rozycki, Planning Director Karen Henderson, Associate Planner John Huebner, Planning Technician

1:16 p.m. Called to Order.

Approval of Minutes

Pam Hall made a **MOTION** to approve the minutes from January 13, 2016 meeting as presented. **SECONDED** by MJ Schillaci. **VOTE PASSED 6-0.**

Pamela Hall	Aye	Nay	Abstain	Absent
Lee Taylor	Aye	Nay	Abstain	Absent
Marty Schmalz	Aye	Nay	Abstain	Absent
Ian Bald	Aye	Nay	Abstain	Absent
Kevin Kell	Aye	Nay	Abstain	Absent
M.J. Schillaci	Aye	Nay	Abstain	Absent
Josselin Lifton-Zoline	Aye	Nay	Abstain	Absent

Planning Commission and Staff Comments

Michael Rozycki, County Planning Director, updated the Planning Commission (PC) that the Aldasoro PUD Amendment removing the prohibition on dogs with restrictions, providing a public recreation trail easement across their property was approved by the BOCC. The Aldasoro lot owners have approved the changes. The recreational trail construction has been permitted by the County, staked out, and the necessary funds approved by Aldasoro for construction this summer. The County has been granted an easement for the portion of trail across SMVC property but no commitment for construction has been received. Local volunteers will probably be needed to construct the portion of trail near the Airport road.

Mike stated that the BOCC on May 4th approved three amendments to County LUC Section 5-29 regarding medical and retail marijuana facilities as recommended by the CPC. He said that he had appeared on KOTO radio with Sheriff Masters to discuss marijuana within the county. They had both agreed that the biggest challenge to law enforcement has been the unregulated caregiver grows, and that the licensed operations have not been an issue. He said that he anticipated the

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problems with the unregulated patient and care grows would diminish over time after new state regulations go into effect on January 1, 2017.

Mike stated that Big Dog Holdings submitted preliminary plans to planning staff with planned uses consistent with the existing matrix, and installed story poles on the site for appearance of the building height relative to the Lawson Hill HUB lot buildings and the surrounding earth berm and trees. County staff is meeting with CDOT this month regarding their funding for proposed plans to develop the intercept lot in Lawson Hill, near the Conoco.

He provided an update on the status of the ongoing discussions with USFWS and BLM concerning the environmental assessment of Tri-State's powerline alignment. He noted that the State Supreme Court recently ruled that home rule municipalities cannot pre-empt the COGCC regarding oil and gas regulations. Mike also updated the status of the oil, gas and mining activities located in the county.

Land Use Code Amendment Recommendation: Amend Section 5-307 Forestry, Agriculture & Open (F) Zone District and Section 5-319 Wright's Mesa (WM) Zone District to allow Caretaker Units and Secondary Dwelling Units up to 2,000 square feet and strike the requirement that they be "one-half the size of the main residence up to 2,000 sq. ft."

Mike Rozycki, County Planning Director, updated the Planning Commission regarding the Planning staff Memorandum dated May 11, 2016 concerning a Land Use Code Amendment recommendation to allow Caretaker Units and Secondary Dwelling Units up to 2,000 sq. ft. and strike the requirement that they be "one-half the size of the main residence up to 2,000 sq. ft." in Section 5-307 Forestry, Agriculture & Open (F) Zone District and Section 5-319 Wright's Mesa (WM) Zone District. Mike shared the example he used with the County Commissioners of a mother who is living in a home near Telluride Pines that is 1,600 sq. ft., and whose family wishes to build a new house sized at 2,000 – 2,500 sq. ft., but that would be limited to under 800 or larger than 3,200 sq. ft. under current regulations. He did not see a benefit to requiring a property owner to build a home larger than they needed or wanted or that could be unaffordable to build. Mike recommended approval to strike the requirement that they be "~~one-half the size of the main residence up to~~ 2,000 sq. ft." and to allow Caretaker Units and Secondary Dwelling Units nor more than 2,000 square feet assuming the property owner can meet the applicable standards for sewer, water and parking. Marty Schmalz, Planning Commission, asked if the home the mother lives in would then become classified as a "caretaker unit". Mike answered essentially yes. Lee Taylor, Planning Commission, said it had been assumed when the regulations were written that the caretaker unit would be built after the main home.

MJ Schillaci asked if the only change being proposed was the deleting of "~~one-half the size of the main residence~~ up to 2,000 sq. ft." and the other language in the Land Use Code sections and the ownership would remain the same. MR explained that the other provisions continue unchanged. Karen Henderson, Associate Planner, clarified that the dwelling units couldn't be sold separately. Kevin Kell asked if the BOCC was agreeable with proceeding to change the amendment. Mike answered yes.

Those present: Dan Dockray, County resident

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MJ Schillaci made a **MOTION** to [recommend] approve the proposed LUC amendments as presented [to remove the language requiring that the Caretaker Unit or Secondary Dwelling Unit contain no more than one-half the size of the primary residence and just state that the Caretaker Unit or Secondary Dwelling Unit "shall contain no more than 2,000 sq. ft. of Floor Area"] finding the proposed amendments are consistent with Land Use Code Section 5-1802 Land Use Code Amendments and Section 5-307 Forestry, Agriculture and Open (F) Zone District and Section 5-319 Wright's Mesa (WM) Zone District [as follows (~~strikethrough~~ indicates deletion):

5-307 C. Uses Allowed Subject to Administrative Review

I. Caretaker unit - a second residential unit may be allowed on all parcels, except no caretaker units shall be allowed in the San Miguel Canyon Area. Such unit shall be attached to or located within 300 feet of the primary residence (as measured between the closest exterior walls). Such unit shall contain no more than ~~one-half the square footage of the primary residence up to~~ 2,000 sq. ft. of floor area, and shall contain full kitchen and bathroom facilities. The Floor Area of the caretaker unit shall be included in the calculation for employee housing Impact Fee mitigation as defined in Section 5-13 of this Code. No lease or rental of a caretaker unit shall be less than 30 days or more than five years. Caretaker units shall not be conveyed or sold separately from the remainder of the parcel and shall remain under the same ownership as the primary residence;

5-319 D. Uses Allowed Subject to Administrative Review

I. Secondary Dwelling Unit - a second dwelling unit shall be allowed on parcels 5 acres or larger, provided that:

a. no uses other than a single-family dwelling, home occupation and/or normal and customary agriculture and ranching activities exist on the property, and

b. no Subdivision Exemption for Wright's Mesa has been granted for the parcel, and

c. the parcel was not created through a Subdivision Exemption for Wright's Mesa.

Such unit may be attached to or located within 300 feet of the primary residence (as measured between the closest exterior walls). Such unit shall contain no more than ~~one-half the square footage of the primary residence up to~~ 2,000 sq. ft. of floor area, and shall contain full kitchen and bathroom facilities. Second Dwelling Units shall not be conveyed or sold separately from the remainder of the parcel and shall remain under the same ownership as the primary residence.] **SECONDED** by Pam Hall.
VOTE PASSED 5-0.

Pamela Hall	Aye	Nay	Abstain	Absent
Lee Taylor	Aye	Nay	Abstain	Absent
Marty Schmalz	Aye	Nay	Abstain	Absent
Ian Bald	Aye	Nay	Abstain	Absent
Kevin Kell	Aye	Nay	Abstain	Absent
M.J. Schillaci	Aye	Nay	Abstain	Absent
Josselin Lifton-Zoline	Aye	Nay	Abstain	Absent

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Substantial Plat and PUD Amendment Recommendation: Lot Q15, Q23, Q24 and Q25, Lawson Hill PUD to remove the lot line between the lots to create one lot, amend the PUD Matrix from 4 single-family residences to one 4 unit multifamily structure, and change the allowed use from single-family to multifamily

Josselin Lifton-Zoline, Planning Commission, disclosed that her husband works for the Telluride School District and could work on the District's affordable housing project in the future. She asked if she should recuse herself from this item. Mike Rozycki responded that she was not a voting member, and Pam Hall, Planning Commission Vice-Chair, didn't think it made sense for her not to participate. Lee Taylor, Planning Commission Chair, agreed.

Mike Rozycki, County Planning Director, updated the Planning Commission on the Planning Staff Memorandum dated May 11, 2016 regarding a Substantial Plat and PUD Amendment Recommendation: Lots Q15, Q23, Q24, & Q25, Lawson Hill PUD. He said the "Q" lots were subdivided in 2000 after the use was changed from transient worker housing / neighborhood commercial uses.

Rozycki noted the location of the four lots is near CR 63L on Two Rivers Drive, and the four vacant lots, zoned Affordable Housing PUD (AHPUD), are located in the Illium Valley portion of the Lawson Hill PUD, adjacent to the Two Rivers single family residential development and the multi-family Sunshine Valley lots. Mike said that the Telluride R-1 School District Deed Restriction Agreement and Covenants, which was authorized by the County Housing Authority, has been used by the School District when selling one of the School District lots, and will be used on these lots in lieu of the county's deed restriction.

Mike explained that each of the four subject lots is zoned for one single-family residence with 1,200 sq. ft. of Floor Area allowable. He said the applicant's plan is to vacate the lot lines and propose constructing one four unit structure with an access from Two Rivers Drive. He stated the applicant is not proposing an increase in the assigned square footage of the units.

Rozycki passed along comments received from Jim Boeckel, Telluride Fire Protection District, regarding the applicant's proposed access road and requested that the applicant revise the access driveway to better accommodate fire vehicles. Mike said the Ilium Park Owner's Association commented that it had no objection to the proposed lot line adjustment or reducing the setback to five feet. He also said the County Surveyor commented that there were three minor survey corrections to be addressed.

Mike presented that the San Miguel Regional Housing Authority (SMRHA) has provided the Planning Department with a New Deed-Restriction Covenant that pertains to Multi-family units zoned AHPUD. The School District as the owner of the units would be required to sign the Covenant. All residents of the School District units will be required to either qualify as a Telluride R-1 School District employee, or be qualified as an Employee under the County Land Use Code provisions, by the SMRHA.

Josselin Lifton-Zoline, Planning Commission, noted that in Mike's summary the unit size requested by applicant would remain at 1,200 sq. ft. but in the information received, the applicant requested a 25% increase in internal square footage. Marty Schmalz, Planning

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Commission, stated where in the materials the request had been made by applicant to increase the unit's allowable area to 1,500. Mike and Karen replied that it was their understanding that the Telluride School District had stepped away from that request. Kurt Shughars, TSD and Shane Jordan, Architect representing TSD, explained that they were requesting an increase of 300 sq. ft. up to a maximum of 1,500 sq. ft. per unit, but while still retaining the same population density (3 persons) per unit.

Pam Hall, Planning Commission, asked what the Lawson Hill PUD Land Use Matrix call out for each unit. Karen Henderson, Associate Planner, replied 1,200 sq. ft. and Mike Rozycki pointed out that on page three of the application states the maximum floor area of units is 1,200 sq. ft. Mike asked where in the application the requested change in square footage was located. Lee Taylor, Planning Commission Chair, pointed out that request for 1,500 sq. ft. per unit occurred later in application. Mike acknowledged that planning staff had missed the request and asked if 1,200 sq. ft. in the Land Use Code is three persons of density. Karen answered yes, and that applicant could go up to 1,500 sq. ft. without increasing population density calculation to four persons. Mike then stated that the new proposed multiunit structure will contain four units with a maximum of 1,500 sq. ft. each, and the applicant is not asking for an increase in population density.

Josselin inquired if the applicant was keeping the units as single-family residences would they need to go through a process to increase the density. Rozycki answered that they could request an insubstantial amendment rather than a substantial amendment if they could demonstrate by making the change they could still comply with the parking requirements, setbacks, and fire code separations. Mike said that one of the reasons the original lots were approved by BCCC with 1,200 sq. ft. was the applicant at that time hadn't demonstrated they could fit larger units on the lots. Lee Taylor added that it was also in order to maintain the necessary setbacks on each lot, and reiterated that it is a square footage change not a density change.

Pam Hall asked what the footprint would be for each unit on the Matrix. Kurt Shughars answered it would remain 600 sq. ft. Shane Jordan added they were not increasing the footprint. Pam asked if the garage was within that footprint. Shane replied yes that it was and that the owner could utilize space on lower level for additional square footage for storage, laundry and the like. Pam asked if the square footage would actually be 1,800. Shane and Karen Henderson said that garage space does not count toward square footage.

Lee Taylor asked that with the joining of the lot lines if there would be four separate units. Kurt Shughars replied no that the units would share a common wall. Karen Henderson added that the use would be multifamily and the owner could rent or sell the units. Lee asked if the units would be sold or rented to School District employees. Kurt Shughars said the School Board was still evaluating rental and/or ownership options of the proposed units. He postulated it would be a mixture and that the District would probably rent two units and sell two. Pam Hall asked if the units would be sold back to the District when an employee leaves. Kurt said the District has the right of first refusal. Rozycki said that the units would remain deed restricted even if right of first refusal is not acted upon. Taylor asked if a new teacher would qualify under the deed restriction requirements. Rozycki answered that is one of the reasons the District developed its own restriction that would allow immediate rental to new teachers to the area.

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Lee Taylor asked what the Planning Commission was considering in this application. Mike answered the removal of lot lines between the four lots to create one new lot and amending the Matrix from four single family residences to a four unit multi-family structure. He said it was appropriate for the change to be a substantial amendment which gave opportunity to neighbors in Two Rivers and Illium Park to comment on the proposal. Mike added that he thinks there is a need to facilitate construction of additional affordable housing and that the proposed changes would not have significant impacts greater than those from four single family residences.

Kevin Kell, Planning Commission, asked for clarification concerning owner occupied terminology. Rozycki responded that he used owner occupied language in terms of the current matrix as it applies to single family residences lots, and that the applicant proposes to change those to multi-family units which are not required to be owner occupied. The occupants of those multi-family units would have to be qualified rather than the owner. Kevin wondered if they could be rented out solely like apartment units. Kurt Shughars answered yes, hypothetically, but that the School Board would probably need to sell two units for cash flow reasons.

Pam Hall asked what the timeline is for building the units. Kurt Shughars answered the School board would need to consider its options for financing, architects after an approval is granted, but there is urgency to bid out design and construction. Mike explained that the county tried to accommodate the School District's schedule and that the BOCC will consider this on June 1, 2018. The public hearing was originally scheduled for May 18th but the county did not notice it.

Josselin asked if the applicant's request for an additional 300 sq. ft. per unit would change the Planning Staff's recommendation. Rozycki answered no, although he was surprised by it, it does not change the setbacks, footprint, or parking. Joselin asked for clarification of the request for reduction of setback from road to five feet. Mike explained that instead of a building that setback was from designated parking and that the multifamily plan was a better utilization of driveway space and land utilization. Karen added that the shade and ice issue on Lot 25 was eliminated by changing the use to the parking. Pam asked if there is still a twenty foot separation between units to meet fire code like in upper Lawson. Mike answered that the structure must meet building and fire code. Karen explained that Illium Valley does not have the fire issues that upper Lawson has since it does not have trees on site.

Scott Stewart, Two Rivers HOA and resident, commented that 20 residents of Two Rivers attended a site walk last week of the proposed project. He thought the project was generally a good proposal and that he did not have an issue with vacating the lot lines or setbacks. He commented that with how the building would be located on site it would not add to parking or snow storage and removal issues. He said he preferred an owner occupied project rather than one with rental units since owners tend to be better neighbors. Scott also commented that he did not begrudge increasing the square footage of each unit by 300 sq. ft. to 1,500 sq. ft., and explained that the homes in Two Rivers have square footage restrictions on its existing lots, and that they would like to also have an option to increase allowable area. He further commented that he did not want a precedent set with the project or to encourage rental project developments in the area. Scot read a letter written by Heidi Connor, Two Rivers owner, and stated she supports the project with several conditions. She did not want the removal of lot lines to set a precedence for other lots to develop multifamily projects that could ruin character of community. She was

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not in favor of allowing the additional square footage to units, unless granted to existing residents in Two Rivers.

Rozycki explained that the School District is responsible for whether units are owner occupied vs. rental. He added that applications are reviewed based on their merit but that the county can't prejudge application(s) that have not been submitted. He also explained that additional square footage on this property can't be tied to a blanket approval for increased square footage for other lots not connected to this application. If owners of Two Rivers as an association or individually wish to request an increase in assigned sq. ft. it should submit a request to the county.

Pam Hall asked what the assigned density and square footage are for Two River's single family residences. Mike answered that the range of assigned areas is 900 to 1,400, and that a blanket increase of 100 sq. ft. had been granted to each owner for constructing a mudroom or deck. Joselin asked for clarification of whether an owner occupied unit can be rented. Mike said that they may be rented only by an exception granted by SMRHA and by a qualified renter. Debbie Adams said that the Sunshine Valley tri-plex structure has renters. Karen said that structure is classified as multifamily and may be rented. Kevin Kell asked what if a unit in the proposed project cannot be sold or rented to a School District employee. Mike replied that it could be rented or sold under the county deed restriction and would not sit vacant in this current climate.

Josselin Lifton-Zoline asked if the School District's intention was to rent or sell the units. Kurt Shughars said there is a vast need for rental properties for school employees, but that units would probably be sold for cash flow reasons, but he could not make a commitment on behalf of the Board. Mike added that only 2 out of 34 "Q" lots had been built on since 2003, and that there is a need for the housing and this plan works at this location. Scott Stewart reiterated that he thought this was a good project, and hoped that the Planning Commission would look favorably at requests from Two Rivers' residents for additional square footage. Pam Hall clarified that individuals would need to come back as individuals and make a request for additional allowed area. Mike reiterated that this is a 2 step process and the BOCC would hold a public hearing that is duly noticed. Pam Hall asked if there are issues with water. Mike said yes and the applicant is not asking for an increase in density since water constraints limit population density increases.

Those present: Kurt Shughars, Telluride R-1 School District Finance Director; Shane Jordan, Architect representing TSD, Scott Stewart, Two Rivers resident and HOA Board representative; Debbie Adams, Two Rivers resident.

Kevin Kell made a **MOTION** to recommend approval of the proposed Substantial Plat and PUD amendment to allow lots Q15, Q23, Q24, and Q25, Lawson Hill PUD in Illium Valley to be merged into one parcel with a four-unit multifamily structure, this approval shall be conditioned upon:

1. All residents of the units qualifying as a Telluride R-1 School District employee or qualifying as an Employee under the County Land Use Code provisions by the San Miguel Regional Housing Authority.
2. Complying with all County Surveyor comments.
3. All written representations submitted and all supplements and correspondence shall be considered conditions of approval unless modified by this review process.

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~~4. The maximum sq. ft. of each unit living space shall be 1500 sq. ft.~~

and finding~~s~~ [the use to be] consistent with Land Use Code standards in Section 5-1503 Substantial PUD Amendment and Section 5-1803 Rezoning. **SECONDED** by Pam Hall.

AMENDMENT TO MOTION by Kevin Kell and Pam Hall to modify condition number four to read and to add additional condition [as follows:]

4. To allow a maximum of up to 1500 sq. ft. of living space per unit.
5. The applicant shall provide access and parking in a manner acceptable to the Telluride Fire Protection District and the County Planning Director.

ACCEPTED by Kevin Kell and Pam Hall. **VOTE PASSED 5-0.**

Pamela Hall	Aye	Nay	Abstain	Absent
Lee Taylor	Aye	Nay	Abstain	Absent
Marty Schmalz	Aye	Nay	Abstain	Absent
Ian Bald	Aye	Nay	Abstain	Absent
Kevin Kell	Aye	Nay	Abstain	Absent
M.J. Schillaci	Aye	Nay	Abstain	Absent
Josselin Lifton-Zoline	Aye	Nay	Abstain	Absent

2:30 p.m. Recessed. Planning Commission members traveled to Norwood.
3:30 p.m. Site Visits: 1100 CR W35 (SMC transfer station site for solar array)
557 Woodstock Rd. (Rhonda Johnson parcel for greenhouse)
4:28 p.m. Reconvened. Planning Commission meeting re-opened in Norwood.

Norwood Fire Station Meeting Room, 1605 Summit Street, Norwood

Special Use Permit Recommendation: San Miguel Power Association (SMPA) Recommendation: Solar Farm, Wright's Mesa

Lee Taylor, Planning Commission Chair, stated the Planning Commission had just visited the proposed site of solar array at County Transfer Station with Wiley Freeman from SMPA.

Mike Rozycki, County Planning Director, updated the Planning Commission on the Planning Staff Memorandum dated May 11, 2016 regarding the Special Use Permit Recommendation: Solar Array Facility, Wright's Mesa Zone District. Because of the potential visual impact that the new solar panels may have on the surrounding property owners the applicant sent formal notice to property owners within 500 feet and met with the Town of Norwood. The county received comments from the Town of Norwood, the County Road and Bridge Department, and Miquette Gerber, P.G., Solid Waste Permitting Unit, Colorado Department Public Health and Environment (CDPHE) (because the site was formerly a landfill with landfill trenches that closed in the early 1990's).

Rozycki stated that Planning Department staff recommends approval of the proposed solar array project finding the proposed use consistent with County Land Use Code Standards. The county has not received comment from any adjacent property owners. Rozycki said the county has communicated via email with Miquette Gerber, CDPHE and that Wiley Freeman from SMPA had provided her a copy of the geohazard report which identifies certain measures regarding construction of foundation, re-vegetation, re-burial of electrical line, and drainage. He said the project goal is that energy generated by the solar array facility will be dedicated to help income

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qualified SMPA members and the use and development of alternative energy facilities such as this seems consistent with county energy conservation Policy 2-30. Mike said that he recommends approval of application with the four conditions of approval from the memorandum:

1. SMPA assisting and cooperating with the County in developing a Post-Closure Plan as proposed by the CDPHE that addresses the solar facility as a new use on the parcel.
2. SMPA will enter into a lease agreement for the site with the County.
3. A one year review after construction is completed to review for any unforeseen impacts to the surrounding area.
4. All written representations presented in the application and all supplements shall be considered conditions of approval unless amended by this review process.
5. SMPA will assure that the solar facility does not interfere with the existing Howard Hughes irrigation ditch on the property.

Mike added that he prefers the darker frames to the silver frames around the limited reflective solar panels because they are less reflective and would like them to be considered for the project.

Kevin Kell, Planning Commission, asked Wiley Freeman if the darker frame panels are available and if they are as efficient and cost affordable as the silver frames. Wiley Freeman, SMPA, said they are equally efficient but he is unsure if the darker frame would be available from the manufacturer. Rozycki suggested to not state it as an absolute requirement but rather as a preference in the Planning Commission's recommendation. He reasoned that the efficiency between frames is equal but cost could be an issue, but that not all the solar panels are earmarked for income qualified members so SMPA could report back on any challenges to meet the preference during the BOCC review of the project. Kevin also inquired if a bedding material is being used in the powerline trenches. Wiley answered there would be shading material around the conduit, but they plan to use the native soil to re-fill the trench.

Karen Henderson, Associate Planner, asked if the structure supporting the panels would also be non-reflective. Wiley answered that the ballast would made of concrete cinder blocks, and the metal solar racking would be clear aluminum, and it is not manufactured in a dark color. Lee Taylor commented that the framework at facility would be very similar to those at the facility in Telluride at the waste water treatment plant.

Pam Hall, Planning Commission, asked if there was any plan to screen the facility with plants, trees, bushes or shrubs. Wiley replied that the biggest impact is from the road from where the back of the mounting frames is visible, but would be shielded by the 7 foot fence. Any plantings would require investigation of the ground since according to the geotechnical report the trenches go all the way to the road and roots could disturb and penetrate the landfill cap. Wiley offered that trees could be planted in the areas identified without landfill trenches. Lee Taylor, Planning Commission asked if it was similar to an elk fence not a screening fence. Mike commented that there should be plantings to soften the views rather than a fence to block the view. Pam Hall asked if the facility in Paradox was screened with fabric woven into the fence. Wiley answered that it was like a shade cloth and that the fence is unpopular with residents, but that it was a condition of approval for the Special Use Permit from Montrose County. Marty Schmalz asked

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what the problem was with the fence. Wiley said it was tacky looking since the residents were used to seeing fences constructed of natural materials.

Josselin Lifton-Zoline asked what the economic life of the facility is. Wiley said the program agreement contemplates a 20 year duration, but that the components are warrantied for longer. Josselin asked if the lease with the county was for 20 years. Rozycki answered the agreement is for a 20 year lease with provisions included to extend the lease if necessary.

Karen Henderson asked if there is water available on site. Wiley answered no. Dave Schneck indicated that SMPA could contract with the adjacent neighbor, Howard Hughes, for ditch water or SMPA would have to haul water from the Norwood water station.

Lee Taylor asked how many SMPA customers could be served by the facility. Wiley Freeman answered that 50 to 150 customers could be supported by the solar array. He explained that a qualifying SMPA member must first go through the Income Qualified (IQ) weatherization portion of the Program and once their homes are made more energy efficient the member will be eligible for the solar program and can receive up to a 2 kW capacity from this solar array. Wiley indicated that the amount of power generated by the solar capacity assigned to the members will be credited as cash to their SMPA billing account. Lee Taylor stated that is different from the Paradox solar farm in which entities or individuals actually purchase solar panels. Wiley agreed. Lee Taylor asked if the array would only supply power through the IQ program. He answered that SMPA has enough funding to build an array with 125 kW capacity through the IQ program, and added the SMPA Board has authorized constructing up to 200 kW capacity which is allowed under its contract with Tri-State. He said that 75 kW capacity is still available to be constructed, and could be used in the IQ program, or by SMPA to offset the electrical use at its Telluride facility. Kevin asked if 125 kW equated to 500 solar panels. Wiley said it does approximately. Mike Rozycki said he was in favor of SMPA building to full capacity at one time to take advantage of efficiency whether the additional 75 kW is used for IQ program or offsetting SMPA's Telluride facilities. Lee Taylor asked how many IQ member could take advantage of solar program. Wiley answered that 50 applicants had been accepted to the weatherization program, and that 13 applications have been received already this year. Lee Taylor asked if the program is geographically designed to benefit members on Wrights Mesa benefit. Wiley said the program is not limited to any region.

Kris Holstrom, County resident, applauded SMPA and the other funders for moving ahead with the solar array facility and for using what had been unusable land at the transfer station. Kevin Kell asked if any negative feedback had been received from a neighbor with a visual line of sight of the array. Wiley Freeman confirmed that no negative comments had been received. Kell asked if the vegetation plan was to be implemented after the array had been installed, or after the array is dismantled at end of approximately 20 years. Mike Rozycki explained that a vegetation plan concerning returning the site to original condition after the equipment is removed and would likely be a condition of lease agreement with county. Lee Taylor asked if there is ground preparation required prior to construction since the soil will be under shade. Dave Schneck, County Environmental Health Director, explained that he had been concerned that there would not be sufficient sunlight for grass to grow under the array, but after research that does not appear to be a problem.

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Josselin, Lifton-Zoline asked how the boundary fence would keep people out of the installation and protected from the high voltage equipment. Wiley Freeman answered that there are six inch wired box panels contained in design and possibly barbed wire along the top, and the design meets the national electric code requirement to keep out animals and people. Kris Holstrom suggested that vines might be considered as part of a visual screening plan. Marty Schmalz asked if the fence could keep out elk. Mike Rozycki posited that the fence design is likely similar to the elk fencing seen at greenhouse site. Kevin Kell asked what the post depths are. Wiley answered that the fence post holes would be two-three feet and but would not be located on landfill trenches. Rozycki made suggestion that fence post holes be a minimum of 24 inches.

Rozycki requested that consideration be given to some screening on the north boundary side fence and suggested that vines be used or intermittent trees that do not interfere with the landfill trenches. Dave Schneck, Environmental Health Director, suggested that evergreen trees be used, but no deciduous types. Marty Schmalz asked if the trees would use a high volume of water. Dave said the trees could make it in that area without watering once they get established. Mike said rather than debating the screening while a motion is on the floor he proposed they recommend that SMPA propose a screening proposal prior to the BOCC public meeting.

Mike asked if the project's north boundary is south of the Hughes irrigation ditch. Wiley answered affirmatively. Mike then asked that the ditch location be added to the site plan.

Those present: Patti Grafmyer, Town of Norwood Manager; Wiley Freeman, SMPA; Dave Schneck, County Environmental Health Director; Mike Horner, County Road and Bridge Superintendent; Kris Holstrom, County resident

Marty Schmalz made a **MOTION** to [recommend] approval of the proposed solar array project finding the proposed use consistent with the Land Use Code Section 5-319 purpose statement, encouraging economic opportunities that fit in with the rural landscape, and Land Use Code Sections 5-319 G. IX. Public Utility Structures, 5-319 H. Area and Bulk Requirements, and 5-319 K. WM Zone District Special Uses, and is consistent with the existing waste transfer station public use on the property. Any approval should be conditioned upon:

1. [SMPA shall] follow the recommendations proposed in the geotechnical report [in terms of preventing surface disturbance from site construction and equipment access.]
2. SMPA assisting and cooperating with the County in developing a Post-Closure Plan as proposed by the CDPHE that addresses the solar facility as a new use on the parcel.
3. SMPA will enter into a lease agreement for the site with the County.
4. A one year review after construction is completed to review for any unforeseen impacts to the surrounding area.
5. All written representations presented in the application and all supplements shall be considered conditions of approval unless amended by this review process; and

[The county has] a preference for darker [colored] frames [to be used for mounting the solar panel frames] if possible. **SECONDED** by MJ Schillaci.

AMENDMENT TO MOTION by Marty Schmalz and MJ Schillaci that before the project comes before the Board of County Commissioners that [SMPA would prepare]some sort of

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proposal on screening from the road that there would be a recommendation for some sort of screening.

ACCEPTED by Marty Schmalz and MJ Schillaci. **VOTE PASSED 5-0.**

Pamela Hall	Aye	Nay	Abstain	Absent
Lee Taylor	Aye	Nay	Abstain	Absent
Marty Schmalz	Aye	Nay	Abstain	Absent
Ian Bald	Aye	Nay	Abstain	Absent
Kevin Kell	Aye	Nay	Abstain	Absent
M.J. Schillaci	Aye	Nay	Abstain	Absent
Josselin Lifton-Zoline	Aye	Nay	Abstain	Absent

4:55 p.m. Recessed.
6:05 p.m. Reconvened.

Special Use Permit Recommendation: Alpine Wellness, LLC to construct a 3,000 sq. ft. Greenhouse for a Marijuana Grow Facility in the Wright's Mesa (WM) Zone District

Mike Rozycki, County Planning Director, updated the Planning Commission on Planning Memorandum dated May 11, 2016 regarding Special Use Permit Recommendation: Alpine Wellness, Retail Marijuana Cultivation Facility Greenhouse. Rozycki stated that Planning Staff had referred the application to the County Attorney, the County Environmental Health Director, the County Sheriff, the County Road Superintendent, the County Building Official, the Town of Norwood, the Norwood Fire Protection District, the Norwood Water Commission, Lone Cone Ditch Company, and the Colorado Division of Water Resources. Rozycki indicated that the 79-acre subject parcel is located approximately one mile west of the Town of Norwood and one-half mile off County Road Z42 at the terminus of the private Woodstock Road.

Rozycki stated that the Board of County Commissioners recently approved an amendment to County Land Use Code Section 5-29 Medical and Retail Marijuana Facilities that updated requirements, standards, and review process for determining whether a retail marijuana facility or establishment is allowed or not allowed on a specific property. He said the review by the Planning Commission is the first meeting of a two-step review process, and the recommendation would be scheduled for a public hearing by the County Commissioners at a subsequent date. He also noted that the Planning Commission had accommodated the requests of Norwood citizens to hold an evening meeting in Norwood for marijuana applications on Wright's Mesa.

Rozycki said the applicant is requesting a 3,000 sq. ft. Substantial Greenhouse on the property to grow retail marijuana. He added that if the applicants are approved and apply for additional facility(s) on the site a wholly separate review process would be required to amend the Special Use Permit. Rozycki noted that Alpine Wellness has operated in the county for six years, has a Retail and Medical Marijuana licensed store in the Town of Telluride and a licensed grow facility in Ilium Valley industrial park. He said the applicant has provided information concerning the proposed source(s) of water and the estimated water usage associated with the greenhouse grow operation and it was referred to the Office of the State Engineer for review. Rozycki relayed that Megan Sullivan, P.E., Colorado Division of Water Resources, provided referral comments regarding the applicant's estimate of water use and proposed sources of water. He said the property has two shares of irrigation water from the Lone Cone Ditch Company and they have been proposed as part of the water supply for the grow facility, the applicant is also

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intending to haul water from the Town of Norwood water dock to the greenhouse, and to install a dehumidifier to take excess water gained by evapotranspiration in the facility and recycle it.

Rozycki explained that the proposed Substantial Greenhouse is not similar to the temporary hoop house types that dot Wrights Mesa and must meet and address wind and snow loads and other requirements. Rozycki said a clear twin wall double polycarbonate substantial greenhouse was recommended by the manufacturer, based on the crop and locality, and is what the applicant has proposed. Rozycki added the applicant has plans for waste disposal, odor abatement and lighting. He said the Town of Norwood had concerns over water usage, but deferred to the Norwood Water Commission for comments, and night lighting that could invade the dark skies around the Town. Rozycki iterated that the lighting plan involves using blackout curtains if interior grow lights are used during winter hours, and the exterior lights would be limited to motion sensor lights. He said the applicant does not plan to post signage on the property other than directional signs on the site as required by the MED as part of its state license requirements. The property currently has elk fencing and if approved the Colorado Department of Revenue may impose additional security fencing requirements.

County Road Superintendent, Mike Horner, did not have an objection to the proposed grow facility/green house. Horner mentioned that the applicant may obtain alternative access to the facility from the south, via CR Y43, and construct a driveway across an adjoining parcel.

Rozycki stated that the Norwood Water Commission (NWC) opposed the applicant's request to convert the property's two water taps from residential use to commercial use. He said the NWC had received a legal opinion that if the NWC knowingly accepted funds from marijuana operations it would put federal funding at risk for future capital improvement projects. He said the NWC also commented that the water dispenser station located on Summit Street is operated as a courtesy and should not be considered a stable source of water.

Rozycki said the Town of Norwood had requested that a video surveillance system be required. He stated that marijuana growers currently on Wright's Mesa are not licensed or regulated, but the applicant, in addition to applying for a Special Use Permit, if such permit is approved, will also need to meet and comply with stringent state and local licensing requirements before they can initiate the cultivation of marijuana; including a background check, fingerprint for criminal record, detailed security plans, security systems, lock standards, video surveillance recording, inventory tracking systems, filtration systems, material safety data sheets, and annual license reviews. Rozycki said the county's local licensing standards also regulate the distance from certain facilities, provides for review by the Sheriff's Office, Fire District, County Environmental Health, County Building, State Electrical Inspections, and those previously mentioned.

Rozycki stated that the applicant sent Public Notice of this meeting to property owners within ½ mile of proposed site and to owners along Woodstock Road. Planning staff received one letter of support from a property owner on Woodstock Road and no negative comments prior to this meeting.

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Rozycki concluded that the application complies with the requirements of Land Use Code Section 5-29 Medical and Retail Marijuana Facilities. He stated the Planning Commission had been asked to observe the potential visibility of the proposed greenhouse from neighboring properties and surrounding areas. Rozycki said that in his opinion it did not appear highly visible or that its use would be apparent, but that he would defer to the Planning Commission if they think it is necessary to add screening to limit visibility. He relayed that during a KOTO radio interview with he and Sheriff Masters both asserted that the county has had no issues with licensed marijuana establishments but it had concerns with the patient and caregiver marijuana grow operations that operate free of county and state licensing. Rozycki iterated from the county regulations purpose statement adopted by the Board of County Commissioners "that the most effective way to control marijuana use in the community and to address public safety issues is to regulate the cultivation of marijuana. In addition to applying for the Special Use Permit the applicants need to comply with stringent state and local licensing standards before they can initiate cultivation of marijuana."

He recommended approval of the application limited to a 3,000 sq. ft. cultivation facility and the specific improvements identified on the site plan subject to the following conditions:

1. The Special Use Permit is issued to the applicant and does not run with the land.
2. The Special Use Permit shall only be valid as long as the applicant holds a current State and County License for the approved use and complies with all state and county regulations at all times.
3. If the greenhouse is to be used after dark the facility will be constructed in such a way as to prevent light leakage from the building.
4. Additional privacy screening may be required after construction of the greenhouse.
5. No signs will be posted on the property advertising the business with the exception of a sign that identifies the state and county license numbers and which buildings are not being used for cultivation.
6. No outdoor lighting shall be allowed except motion sensor lighting around the perimeter of the greenhouse that is fully shielded and facing downward away from Norwood.
7. If offensive odors are reported offsite by the neighbors, after consultation with the Planning Department, the applicant may be required to provide an odor removal system.
8. Waste disposal shall comply with Colorado Department of Health & Environment standards.
9. Equipment related to the cultivation operation will be stored inside the structure or within an enclosed fenced area.
10. Any and all water use associated with the marijuana Facility shall be in accordance with guidance provided by the Colorado Division of Water Resources and not in conflict with the water decree for the source of water being used.

Rozycki added that seasonal limitations on water may limit the crops grown and grow times. He addressed a concern raised previously in a letter by Ken Lawrence regarding why the Woodstock Subdivision was not classified as a residential area as defined in LUC Section 5-29. He said the BOCC had incorporated into the LUC that marijuana establishments must be one-half mile from densely developed residential areas, and adopted a map that identified those subdivisions with smaller lots with higher density. Rozycki responded several years ago in a letter (March 21, 2014) explaining the rational for how the residential areas and the corresponding buffer zones

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were adopted and why the Woodstock parcels had not been included. At the time Mr. Lawrence was offered an opportunity to propose an amendment to the LUC approval that designated the Residential Areas.

Marty Schmalz, Planning Commission, asked if the estimated water usage of 150-200 gallons per week during the first two months was accurate. Nolan Murphy, Alpine Wellness, Applicant explained that the marijuana seedlings when planted have small roots and use less water. He said plants would use roughly 300-400 gallons of water per week of water during maximum growth. Lee Taylor, Planning Commission Chair, asked the applicant to confirm that the greenhouse would require a maximum of 300-400 gallons of water per week, and Marty added with 72 plants? Nolan confirmed. Marty Schmalz asked what other possible sources of water was available. Nolan said he could recycle water via reverse osmosis from their grow operations in Ilium Industrial Park and could also catch water from air dehumidifiers. Marty asked if applicant had researched the regulations to utilize both of those sources. Nolan said he had obtained permission in Ilium Valley to use a dehumidifier and if necessary he would use one in Norwood to obtain water since it is legal. Marty asked the status of the application for commercial water well for the greenhouse. Nolan replied he had not yet applied and thought it was unnecessary since he is now considering using a dehumidifier. Marty asked about the process to obtain a commercial well permit. Nolan answered it is an approximately two year process and involves researching the senior rights downstream and then going to water court. She asked if the applicant would cover the inside or outside of the greenhouse to maintain dark skies. Nolan said the option currently planned is to use an inside curtain if they do a winter grow, or privacy screen, but that the lights would never be on past 9:00 p.m.

Kevin Kell, Planning Commission, stated the trial greenhouse had 72 plants, and asked how many plants would be planted in a 3,000 sq. ft. greenhouse. Nolan answered that it depends on the season in which the greenhouse becomes operational (100 if planting starts in June, or 100-150 smaller plants if started in July). Kell asked what would be a normal amount of plants after the greenhouse is established. Nolan said it could be assumed that 150 plants would be the norm. Kell asked if the amount of water required would double if the number of plants had doubled. Nolan said it could be assumed the amount of water necessary would be doubled. Mike Grady, Alpine Wellness, Applicant, added that the number of plants could only double if smaller plants, which use less water, were planted. He also noted that the greenhouse needs good air circulation and air flow to enhance growth, and added the amount of water used would not double if twice the number of plants were planted. Kevin commented that the water consumption would be more than the 150-200 gallons initially estimated for 72 plants. Nolan Murphy replied factors such time of year and plants root mass would affect water usage. Grady said a similar amount of water per growing season would generally be used in the greenhouse.

Josselin Lifton-Zoline, Planning Commission, asked if the intent was to still use water from the Lone Cone Ditch and the Norwood Water Shack while applying for a commercial well. Nolan Murphy replied that would be ideal but said he is tired of fighting for water and said he could legally use a dehumidifier in the greenhouse and catch up to 100 gallons a day. Josselin inquired what the applicant would do to obtain water for processing what is grown since the water in the ditch is only allowable for cultivation. Mike Grady answered they did not require additional water for processing. Mike Rozycki asked if they were planning to do infused manufacturing in connection with the grow facility that requires any water. Nolan and Mike Grady answered not

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at this time. Rozycki stated that the applicant's proposals have been modified following conversations over time with Megan Sullivan at the State office, and explained that their initial proposal was to use recycled water from the Ilium operation but they would need to provide information concerning those water decrees to see if it was legal to do so. Rozycki said the applicant's then explored evapotranspiration with a humidifier, and Megan Sullivan responded that would be okay. Nolan Murphy then said he could haul water from the Norwood water shack but had gotten the impression that the Norwood Water Commission was not happy with that use of the water shack, and would not help the situation on Woodstock Road. Rozycki stated that if the applicant did not have a legal source of water or if Norwood shuts the water dock they would have to reduce the number of plants they grow depending on their water supply.

Kevin Kell asked if the private property owners jointly and equally own Woodstock Road. Mike Horner, County Road Superintendent said he was not sure about that and it may depend on their individual deeds. He said some may own to the center of the road for example or others the entire portion of the road, but he didn't know for sure since he had not researched it. Kell surmised that in general the property owners jointly or in some shape or form or proportionality own the road. Rozycki answered that he guessed so, and asked if there was a road association.

Davis Watson, Real Estate Appraiser and Norwood resident, noted that the documents he held were recorded and had been notarized by him. Davis said it was a question of legal right and everyone in Colorado has a right to raise a certain number of marijuana plants. He stated that everyone knows Woodstock Road is a private road, and that the property owners do not own the road, but they have an easement for access to their property. He said the installment land contract through which the applicants are purchasing property includes a private road easement, which states, "together with an easement for ingress and egress to and from said property" and is for residential use only. Nolan Murphy suggested Davis was mistaken on the easement he was referring to. Davis said he was talking about the easement to Woodstock Road which is a private road. Davis noted that the Planning Commission was only authorized to use the road today because permission was granted by the property owner. He went on to say the county does not maintain the road, and reiterated that the property owners have a legal right to get to their property for residential purposes. He stated that the applicants do not have a legal right to grow marijuana at this time, and to get to their property they would need to have the right for a commercial use of the road. Davis added that the applicants do not have commercial use of the road, and instructed that they should have obtained permission from each of the property owners to use the road commercially. Lee Taylor asked if there were stipulations [in the road easements]. Mike Rozycki interjected that the county will review the easement language in the individual warranty deeds that granted legal access and title to properties. Davis responded that this should have been prior to the meeting. Rozycki replied that the applicants have legal access to their property. Davis countered that the legal access is only for residential purposes. Rozycki stated that all owners along road were notified about meeting and he has not seen documents or information presented that show the access to Johnson property is limited to residential use. Rozycki cited that the property had been used previously as an elk ranch prior to the applicant's purchase. He requested that Davis submit the material that supports his statement that the use is limited to residential use. Davis agreed and added that the Planning Commission should not be voting on this until that question is resolved. Rozycki answered that the Planning Commission is giving a recommendation and they can decide that.

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Ken Lawrence, 6 Woodstock Road property owner, said his understanding was that the landowners own a piece of the road through his property. He said he has granted an easement to property owners downstream so they may cross his property to gain access to their properties, and the previous owners had granted an easement so Woodstock Road would pass through the property. Kevin Kell asked if there is a neighborhood road association. Ken said the easement is recorded on each deed and title transfer. Lee Taylor suggested that the Planning Commission include in its recommendation that the county attorney validate that there are no prohibitions on the commercial use of the applicant's easement. He thought not since the elk ranch had used Woodstock Road for years.

Mike Grady, Alpine Wellness, asked if the Planning Commission would consider that the proposed site is accessed from an interior driveway located on the site and in the future the greenhouse is planned to be leased to Alpine Wellness. Mike Rozycki said that Davis Watson had raised a legitimate issue regarding commercial access to site to and it would need to be researched and determined whether there was a legitimate reason that access might be limited. He said the county did not receive any information prior to meeting regarding this issue. He suggested adding a condition if the application is recommended for approval that the Board of County Commissioners determine if there is a limitation on using Woodstock Road for commercial access to the site.

Lee Taylor asked how the marijuana would be transported to market. Nolan Murphy said the transportation of the product would not be noticed by the neighbors on the road. He added there is already a cell tower located by the road. Mike Rozycki clarified that a Special Use Permit was issued to Nucla/Naturita Telephone Company (NNTC) by the county for its operation several years ago. Rozycki asked Nolan to please submit copies of access easements to their property to the county for review by the County Attorney. The planning staff will present that information regarding legal access to the proposed grow facility to the Board of County Commissioners.

Josselin Lifton-Zoline asked if the applicants in the future could build their own private access road from the adjacent 80-acre-parcel it owns. Nolan said they could build a driveway across their property with access to CR Y43, and not have to use Woodstock Road to access the greenhouse. He said that other neighbors on Y43 might be concerned with that.

Mont Snyder, County resident, asked what the 72 hour limit is referred to in the memorandum prepared by Megan Sullivan, State Water Department. Nolan Murphy replied that he understood it to mean he is not allowed to use water 72 hours after it is delivered unless decreed otherwise. Mike Rozycki said the State is not acknowledging that the storage pond located on the property is authorized to store water and is relying on strict interpretation by Megan Sullivan who may not be familiar with local practices.

Thomas Clark, County resident asked if the water sources the applicant would use had received federal funds. Mike Rozycki said the Lone Cone Ditch Company had not submitted comments, and the state said generally irrigation may be used subject to limitations. Lee Taylor said that Norwood raised the issue of federal funding regarding water hauled from its water station.

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Linda Soucie, County resident, interpreted that the Cone ditch water could only be used up to 72 hours after delivery, and furthermore it is a direct flow right, and cannot be stored in a holding pond or tank during and after irrigation season. Marty Schmalz asked if that was true for all Cone ditch water users, and also wondered about all the ponds on Wrights Mesa. Linda answered affirmatively and said there was a difference between use of agricultural water for seasonal application and stocking. Mike Rozycki said this had not been addressed in Megan Sullivan's letter and shouldn't be speculated on. He added that Linda's reading of the letter is accurate, and that the applicant would use the irrigation water within some requirements, guidelines and limitations, the water dock while it is open and a dehumidifier, but may have to adjust the number of plants in the greenhouse.

Linda Soucie stated that the application as presented did not include a dehumidifier, and that it did not list a legal water supply. Mike Rozycki said it was contained in a supplement to the application. Linda maintained the applicant could not name the Norwood water shack as a legal source because the Norwood Water Commission (NWC) would be instituting a card swipe system and the applicant won't be able to obtain water for a marijuana grow. Rozycki asked if Linda Soucie had information from the Water Commission not made available to the Planning Commission. He added they said the applicant could not rely upon water station as a stable water source. Linda asked how could it be considered physically adequate source if it is not stable. Rozycki answered there is more than one source of water available to applicant.

Tammie Tabor, Lone Cone Ditch Company, Secretary-Treasurer, stated it had not received any federal funds for capital projects or operations, and that ditch water is weather dependent; some years water flow is for only two weeks or less. Lonnie Clark, County resident, asked how many shares of ditch water the applicant owned, and if they knew how much water that was and if they understood ditch operations. Nolan Murphy replied they owned four shares, the amount of water varied by year and that he understands the ditch operation and how to clean it too. Mike Rozycki added that if the applicants don't have water they don't grow. Marty Schmalz asked if they irrigate their fields. Nolan said they used the ditch water to irrigate their fields.

Ken Lawrence asked why approve an application that does not have an adequate water supply. Mike Rozycki replied they have an adequate source [of water] for some amount of plants. Lonnie Clark said that was not what the application was for. Rozycki clarified that the application was for a 3,000 square foot greenhouse. Thomas Clark asked how many plants could and would be grown. Mike Rozycki reiterated they will plant as many plants as water for which they have the right to use. Lonnie Clark said she would like to know the maximum amount of water that would be used. Marty Schmalz said that only 150–200 gallons per week might be used. Lonnie commented that the water source is not consistent. Marty added that was true for all water users and farmers. Lonnie claimed this use is different and it is not farming. Linda Souci added marijuana is not an agricultural plant. Lee Taylor agreed that is true per the State's definition, but it is still a plant and would need water to grow. Nolan Murphy said he could pull 100 gallons out of the air by dehumidifier and it is a year round source. Lee said it was still questionable if the applicant could use the recycled water from the Ilium grow facility in the Norwood facility. Ken asked if the addendum to the application included scientific evidence regarding the water producing capacity of dehumidifier. Nolan said he is planning on using a dehumidifier with a 100 gallon /day capacity, but could use a larger model with an 800 gallon capacity, but the

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electrical demand is too high. Thomas Clark asked why they needed to grow in Norwood if they already had too much supply for the Telluride market. Nolan clarified they are attempting to reduce the electrical load on the Ilium facility because it is wholly dependent on electrical lights (80,000 watts daily) for growing. Kevin Kell asked if the dehumidifier would be used in the Norwood or the Ilium facility and could it produce 100 gallons per day. Nolan clarified the dehumidifier was intended for Norwood facility. Thomas asked if the applicant needed authorization from air quality regulators to use the dehumidifier. Nolan said the use is authorized as long as water is from plants transpiration or ditch water. Kevin asked if it would be legal to store the dehumidified water in their pond(s). Nolan said yes.

Linda Soucie stated that she thinks the application is not complete; that access is not determined and she would be hesitant for a governing body to recommend approval. She added that area is mainly residential and the location of greenhouse is clearly visible from the medical clinic and town, and suggested they screen, excavate and berm the Greenhouse.

Mark Crouch, 285 Woodstock Road, an adjacent property owner commented that Woodstock Road is heavily potholed, and there is no road association or maintenance agreement. Mark talked about the costs of maintaining the road, its substandard construction, and that the applicant travels by five property owners on Woodstock to reach the county road. He said the Lawrence property by proximity to and location at entrance to road is most impacted by traffic. Mark revealed that the seven property owners had agreed that they would like to re-align Woodstock Road, and then discussed the process to date, including talking with county staff (Bill Wilson, Mike Horner, and Mike Rozycki), preparing drawings of road re-alignment, and obtaining construction estimates, after which the progress halted. He wondered why the applicant(s) hadn't graded the road prior to the Planning Commission (PC) site visit, and how would the PC require the applicant to maintain the road, and how are we going to bring the road up to commercial standards to mitigate impacts since the applicant could potentially apply to build 9,000 square feet of greenhouses. He said the intent of the property transfer deeds was to grant road access to homesteads and agricultural operations, and the access to the commercial cell tower only went through private property. Mark requested the applicant gain southern access to the greenhouse from CR Y43 rather than northern access from Woodstock Road.

Lee Taylor asked if the property owner (Johnsons) participated in the road maintenance discussions. Mark Crouch said no and that Nolan Murphy represented the owner and said he was owner of the property. Lee asked again if they participated. Mark Crouch said yes and further discussed the goals of realignment of Woodstock Road and the next steps, including suggestion by Mike Rozycki that they form a road association. Mike Rozycki recalled his discussion of the road alternative with Mark and had thought it was a good idea, and discussed road standards, and how it could be modified and still be safe to the public. Crouch said once cost estimates were gathered the consensus of the property owner was not to continue. Rozycki said he never saw financial information. Mark answered he didn't think it was prudent to share financial information of the road estimate. Rozycki added that road standards are dependent upon how many persons are served rather than if a use is commercial or residential. He asked Crouch if his concerns would be relieved if applicant accessed the greenhouse from their other property directly off county road Y43. Crouch said that would relieve his road concerns. Lee Taylor posited what the reaction would have been if the application had been to grow vegetables

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instead of marijuana. Tom Clark said there are legal issues with marijuana. Taylor surmised that both crops are legal.

Kevin Kell asked if the applicant had received the power of attorney to represent the Johnsons. Nolan Murphy said they had received authority from the Johnsons. Mike Rozycki said the county had received an official letter of authorization from the Johnsons granting permission for Nolan and Mike Grady to submit the application.

Josselin Lifton-Zoline asked if the existing agricultural uses on the property have continued for the last three years including the irrigation of fields and does it count as agricultural in terms of tax status. Nolan Murphy said yes, and that they have a leases with Bob Hardman and the Southers to graze cattle on the property for most of the summer. Josselin commented that use is similar to other agricultural properties in terms of storing water in the ponds on the property.

Ken Lawrence said the majority of his comments had been addressed. He expressed concern for the safety of the children at play at his Christian retreat center property off Woodstock Road. He noted an increase in vehicular traffic, a weekly coyote septic pumping truck, more UPS deliveries, and late evening traffic up to eleven o'clock in the last three years since Alpine Wellness had occupied the Johnson property. Ken says they posted "Children at Play" and speed limit signs but the speed seemed too fast. He is concerned that Woodstock Road is not built for commercial use and the financial impacts for increased maintenance fall on the property owners. He noted that $4K was recently expended for road maintenance and the condition has worsened. Ken said increased noise disturbs the families staying at the retreat center as a result of the road conditions and increased traffic. He noted that their neighbors have had difficulty selling their home and the road condition does not make a nice welcome to the area. Ken requested that the application be denied due to safety of our children, noise generation and financial burden it has created for road maintenance. He requested that if approved a condition be added requiring the applicant to realign the entrance of Woodstock Road away from their property as Mark Crouch had suggested, and to be financially responsible for road maintenance.

Nolan Murphy and Mark Crouch actively discussed the materials used and seasonal issues on the maintenance and current condition of the road. Mike Rozycki said he appreciated Ken Lawrence's comments, but added that the pastoral retreat is also a mixed use property and has impacts not usually associated with a residence. He said the Johnson property is also classified as a mixed use property with residential and agricultural uses, so there can be agricultural vehicle traffic. He thinks legitimate issues involving the use of Woodstock Road will continue to be a source of irritation to the various parties. Rozycki asked Mike Grady and Nolan to consider using an alternative access to the proposed greenhouse off CR Y43 from the parcel they own to the south. Nolan acknowledged he knew this was an issue after moving in, and said he has the equipment to build and maintain an alternative access. Rozycki recommended that the application be approved with the standard conditions plus adding that access to the proposed greenhouse come off the county road to the south as the alternative access, and adding that Woodstock Road not be used for the marijuana cultivation business.

Linda Soucie commented that since the application now has two caveats, one for the water the other for the road the application process should be restarted at the beginning. Rozycki said the

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Planning Commission could make recommendations with subsequent conditions is not unheard of. A poll of the Planning Commissioners was requested by Linda Soucie who asked the CPC members if they would want a marijuana cultivation facility located near their homes. Kevin Kell determined that it was not an appropriate question as they were discussing the application before them and were to judge this application on its merits. Ken Lawrence asked if it would be prudent to delay the application until the applicant can show legal access and a legally and physically adequate water supply. Lee Taylor said there are two ways to address this, one is requiring those two issues be met prior to making a recommendation, or to condition the recommendation on the applicant meeting those conditions, and that adding requirements after an application is submitted is frequently done. Mike Rozycki clarified that an easement through the other property need to be granted privately, but public emergency services vehicles have an express easement. He said the applicants would need an easement from the County Road Department and a Driveway Permit so the driveway could be accessed from the county road, and legal access across the Grady property that is not part of the application to serve the site that is included in this application, and if there is a recommendation and finally an action by the Board of County Commissioners that said access would be from the south and the applicant is not to use Woodstock Road to access the cultivation facility. Linda Soucie asked what the proposed setback of greenhouse from property line is. Rozycki answered 50 feet and it meets that requirement.

Kevin Kell stated several concerns he had regarding the application; it seems problematic that water rights and sources seem piecemeal, the area seems residential and the applicant should move access through their other property, and the applicant should obtain a commercial well permit.

Josselin Lifton-Zoline stated that she was convinced that the applicants have the requisite water supply. She suggested they would benefit by hiring a water attorney to prepare an application for a commercial water well and water operations. She expressed concerns that had been heard regarding the unprofessional preparation of application.

Rozycki summarized the options available to the Planning Commission (PC). He said they could go with the staff recommendation to approve with the conditions as set forth, and that he would add the condition that access be from the from CR Y43 through property owned by Mike Grady, and he also recommended that the applicant not use Woodstock Road for activities associated with the cultivation facility. Rozycki also said the PC could continue the application to their June meeting to allow the applicant additional time to address and respond to some of the issues and concerns, or finally that the PC could recommend denial of the application, however, he did not support that position. Lee Taylor asked what if the PC took no action would that have the same effect as a dismissal, but without prejudice. Rozycki said taking no action would be tantamount to a dismissal, and that he preferred a continuance of the application rather than a dismissal. Rozycki then suggested that they could table the item and identify the specific items they would like the applicant to address prior to bringing it back up at a future PC meeting.

Ken Lawrence asked if the residents along CR Y43 had received notice about the meeting because now it affects them and before it didn't. Mike Rozycki replied that notice was given to those within a one-half mile radius which satisfied the legal notice requirement, and then added

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that residents along Woodstock Drive were also notified as a courtesy. He announced the application would be re-noticed before Board of County Commissioners consideration.

Those present: Mark Crouch, County resident; Don Welsh, County resident; Ken Lawrence, County resident; Thomas and Lonni Clark, County resident; Josh Caldon, Telluride resident; Patti Grafmyer, Town of Norwood Manager; Tanya Morlang, County resident; Judy Conder, County resident; Davis and Mary Watson, Norwood residents; Tammie Tabor, County resident; Mont Snyder, County resident; Josh Walton, County resident; Elizabeth Foley, County resident; Linda Soucie, County resident; Dave Schneck, County Environmental Health Director; Mike Horner, County Road and Bridge Superintendent

Marty Schmalz made a **MOTION** to recommend approval of the approval of the application, to construct a 3,000 sq. ft. greenhouse, to the Board of County Commissioners finding the applicants have fulfilled the requirements of Land Use Code Section 5-29 Medical and Retail Marijuana Facilities with the following [12] conditions stated in the staff memorandum, and with the additional condition [that the applicant is] to obtain access to their property from the CR Y43 access, and to not use Woodstock Road as access to the cultivation facility:

1. The Special Use Permit is issued to the applicant and does not run with the land.
2. The Special Use Permit shall only be valid as long as the applicant holds a current State and County License for the approved use and complies with all state and county regulations at all times.
3. If the greenhouse is to be used after dark the facility will be constructed in such a way as to prevent light leakage from the building.
4. Additional privacy screening may be required after construction of the greenhouse.
5. No signs will be posted on the property advertising the business with the exception of a sign that identifies the state and county license numbers and which buildings are not being used for cultivation.
6. No outdoor lighting shall be allowed except a motion sensor lighting around the perimeter of the greenhouse that is fully shielded and facing downward away from Norwood.
7. If offensive odors are reported offsite by the neighbors, after consultation with the Planning Department, the applicant may be required to provide an odor removal system.
8. Waste disposal shall comply with Colorado Department of Health & Environment standards.
9. Equipment related to the cultivation operation will be stored inside the structure or within an enclosed fenced area.
10. Any and all water use associated with the marijuana Facility shall be in accordance with guidance provided by the Colorado Division of Water Resources and not in conflict with the water decree for the source of water being used.
11. Any amendments or modifications to the Facility including to equipment, site layout, approved operating plan, etc. shall be submitted for review and approval.
12. All written representations submitted in the application and all supplements are considered conditions of approval unless modified by this review process.
13. Access to the cultivation facility is from CR Y43 through the property owned by Mike Grady, and Woodstock Road is not to be used for access to the cultivation facility.

SECONDED by MJ Schillaci. **VOTE PASSED 3-2.**

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Pamela Hall	Aye	Nay	Abstain	Absent
Lee Taylor	Aye	Nay	Abstain	Absent
Marty Schmalz	Aye	Nay	Abstain	Absent
Ian Bald	Aye	Nay	Abstain	Absent
Kevin Kell	Aye	Nay	Abstain	Absent
M.J. Schillaci	Aye	Nay	Abstain	Absent
Josselin Lifton-Zoline	Aye	Nay	Abstain	Absent

Mike Rozycki stated that the Planning Commission approval is a recommendation and would be presented to the Board of County Commissioners at a public hearing. Notice will be given to those interested landowners and members of the public after a time and date have been decided.

7:49 p.m. Adjourned.

Respectfully Submitted,

_____

John Huebner, Planning Technician

Approved on _____

SAN MIGUEL COUNTY PLANNING COMMISSION

_____

Marty Schmalz, Secretary

[X:\text\PC\Minutes\2016\pc5.16minutes draft.docx]

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SAN MIGUEL COUNTY PLANNING COMMISSION
MINUTES – REGULAR MEETING

September 14, 2016

Glockson Building, 1120 Summit Street, Columbine Room, Norwood

Present:	Lee Taylor, Chair Pamela Hall, Vice-chair Marty Schmalz, Secretary Ian Bald, Regular Member Josselin Lifton-Zoline, Jr. Alternate
Absent:	Kevin Kell, Regular Member M.J. Schillaci, Sr. Alternate
Planning Staff Present:	Michael Rozycki, Planning Director Karen Henderson, Associate Planner John Huebner, Planning Technician
Other County Staff Present:	Steve Zwick, County Attorney

9:30 a.m. **Site Visit: 10300 CR 44ZS, Centro Espirita Beneficento Uniad Do Vegetal**

10:36 a.m. Called to Order.

Approval of Minutes

Lee Taylor, Planning Commission Chair stated that the Minutes from May 11, 2016 would be considered at the next PC meeting to allow more time for review.

Special Use Permit: Centro Espirita Beneficento Uniad Do Vegetal, Spiritual Center

Mike Rozycki, County Planning Director, updated the Planning Commission on a Memorandum dated September 16, 2016 regarding the application for Special Use Permit: Spiritual Center received from Bryan Rea, on behalf of Centro Espirita Beneficento Uniad Do Vegetal (Centro Espirita). Mike stated that a portion of the Centro Espirita property is located within mapped critical Gunnison-sage Grouse (GuSG) habitat, and the GuSG is identified as a threatened species under the Endangered Species Act. He pointed out that Centro Espirita is registered with the State of Colorado as a religious facility and is exempt from taxation. Mike noted that the property is in county's Forestry, Agricultural and Open (F) Zone District and is in the Remainder County Master Plan Area. He added that the main church facility was permitted by Planning and Building as a single family residence and the building is classified as a church by the County Assessor. He also said the property includes a residential well permitted by the State, and a septic system permitted by the county for a one bedroom residence. He added that in 2013 the applicant discussed placing a yurt on site near the main building and that the Planning Director authorized that use. At that time he suggested to Bryan Rea that the use of the property as a spiritual center should go through a review process with the county, which for a Special Use Permit is a one-step review by the Planning Commission. Mike said the church has permanently placed two porta

potties on site to augment the septic system, and that additional ones are added during an annual event held during the July 4th weekend. He added that members park and some also camp on the property when attending the monthly and annual meetings. Mike identified that the applicable Land Use Code review standards concern scenic quality, wildlife protection, and special use permits.

Mike said referral comments had been received concerning the application. County Road and Bridge Superintendent wrote that he had no real issues. County Parks and Open Space Director commented that no construction or development activities should occur in the identified critical Gunnison-sage Grouse habitat, nor should dogs be allowed in that particular area during spring. Rozycki added that the Planning Commission's review is of the site-specific plan with the current facilities that are in place and an approval should include conditions that limit development in the habitat area. The Norwood Fire Protection District submitted limited comments regarding open burning and camp fires, and stated that the applicant should not have campfires on red flag no burn days or during fire bans. County Environmental Health Specialist provided comments concerning the onsite waste treatment system and Mike said the facility had operated for 18 years with no problems or failures that he was aware of, and that he thought it was okay for the applicant to continue operating with regular pumping of the system and using porta potties to supplement the system. Mike said if the applicant provided a handwashing station that the thrust of the Environmental Health Specialist comments would be met. Mike stated that the applicant may need to contact the Colorado Division of Water Resources to explore getting a commercial well permit but he wouldn't require it as a condition of approval.

Rozycki stated that Planning Staff recommended approval of the Spiritual Center finding it had operated for roughly 18 years with little or no adverse impacts, no negative comments were received from surrounding landowners or the public, no public health and safety issues were evident for meeting attendees, and that the approval would be subject to the eight conditions listed in the memo. He suggested that "no use or construction is allowed within the mapped critical Gunnison Sage-grouse habitat" be added to condition four (4.), and a condition (9.) be added that "there shall be no use of the facility by anyone other than members of Centro Espirita."

Rozycki asked Bryan Rea, Applicant if any outdoor lights are left turned on when the facility is not in use. Bryan replied that multiple solar power lamps are in place along foot paths and provide illumination but are not noticeable from the road, and the main building has two outdoor electrical lights but are turned on during meetings only.

Marty Schmalz asked what the process is for applying for a commercial well permit. Rozycki answered that it could be rigorous but that it is not being required by the county but rather he is encouraging that a dialogue with the applicant and the Colorado Division of Water Resources Division (CDWR) take place. Bryan Rea responded that a member of the church is tasked with inquiring with CDWR concerning converting the residential well to a commercial well. Marty asked what the productive capacity of the existing well is. Bryan answered it is rated at five gallons/minute and has worked well but a that new well may be necessary in the future even with the church's careful management of water.

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Josselin Lifton-Zoline inquired if there is a cap on the number of persons the Centro Espirita could add to its membership. Rozycki replied the applicant's written representation is the church might increase 10% annually. He suggested that if growth of the church exceeded 10% annually and if there were issues then a case could be made they had exceeded the scope of the approval. Karen Henderson added that growth is addressed in condition 2. Mike repeated the church's use has been a "benign use" and it is anticipated it will continue within these parameters.

Lee Taylor asked is there a use classification available for religious organizations for property taxation and for water wells. Mike answered there is a religious classification available from the County Assessor and Planning but is unaware of one with CDWR, but in conversations with Scott King, CDWR, he thought there might be different levels of commercial wells. He said the intent is to encourage a discussion by applicant with the CDWR, and Planning would check on it at the one year review.

Bryan Rea stated the church in 1998 had 15 members when the main building was built, and they seemed to get several new members annually. He said the church has been environmentally protective of its land, had no issues with the septic system or with water management. Rozycki reiterated that an approval is site plan specific and if growth drives the need for new buildings or infrastructure the use may be reviewed. Steve Zwick, County Attorney suggested the Planning Commission might want to add in a growth factor. Rozycki said that an increase in excess in membership of 10% per year may require a review. Ian Bald, Planning Commissioner said that would imply a doubling of the church in 10 years. Mike said that a "substantial" change in growth, or if an application to build a structure in the Sage-grouse habitat was received could bring the Special Use Permit back to the Planning Commission for review, but that he could administratively approve a new well.

Jossellin Lifton-Zoline asked what the applicant's relationship with its neighbors had been, and if they had worked with the neighbors concerning fire mitigation or fencing. Bryan did not recall working with neighbors but that had met them. He added it is realistic to think about growth and building a larger structure and if necessary they would go through county process again. Taylor said the rewording of the conditions were made in anticipation of growth. Pam Hall asked how church members were counted. Rea answered kids are not counted as members, but are considered part of the church community so the church is larger than the number of members.

MOTION by Marty Schmalz to approve this special use permit pursuant to the Land Use Code Section 5-307 D. II. and Sections 5-407 Wildlife Habitat Areas, Section 5-10 Special Uses and 5-21 Scenic Quality and the approval would be subject to the nine conditions as follows and with the additions to condition 2. … "an increase in attendance number or size in excess of 10% per year may require an additional review"…, and to 4. .. "no construction can be made in the Gunnison-sage Grouse habitat mapped area"…, and adding condition 9. "There shall be no use of the facility by anyone other than members of CEBUDV":

1. The Special Use Permit is issued specifically to Centro Espirita Beneficento Uniad Do Vegetal (CEBUDV).
2. The approval is specific to the site plan as submitted. Any increase in the current attendance numbers by more than 10% per year or increase in the size of facility may

require additional review of the facility by the Planning Department and possibly the County Planning Commission.

3. The applicant should provide one or two hand washing stations for use by the members during the campout weekend or another hand washing facility acceptable to the Environmental Health Department. These stations can be obtained from the porta-pottie company.
4. People and dogs should be kept out of the mapped Gunnison Sage-grouse habitat area during hatching and breeding seasons and any disturbance to or within the habitat area should be minimized. No construction or development shall occur within the mapped Gunnison Sage-grouse habitat area.
5. Providing some type of fire suppression system shall be provided for open campfires.
6. Providing documentation that the current well permit is a legal and physically adequate water supply for the use and if not the applicant will take steps to obtain the appropriate well permit as required by the Colorado Division of Water Resources. If issues develop with the OWTS due to water use the County will review and reconsider the Special Use Permit application approval.
7. The Special Use Permit shall be reviewed in one year to determine whether the applicant has complied with all conditions of approval.
8. All written representations presented in the application and all supplements shall be considered conditions of approval unless amended by this review process.
9. There shall be no use of the facility by anyone other than members of CEBUDV.

SECONDED by Josselin Lifton-Zoline. **VOTE PASSED 5-0.**

Pamela Hall	Aye	Nay	Abstain	Absent
Lee Taylor	Aye	Nay	Abstain	Absent
Marty Schmalz	Aye	Nay	Abstain	Absent
Ian Bald	Aye	Nay	Abstain	Absent
Kevin Kell	Aye	Nay	Abstain	Absent
M.J. Schillaci	Aye	Nay	Abstain	Absent
Josselin Lifton-Zoline	Aye	Nay	Abstain	Absent

[CPC Resolution 2016-1 attached]

Others Present: Bryan Rea and Nina Rea, Applicants

Planning Commission and Staff Comments

Michael Rozycki, County Planning Director, updated the Planning Commission that the Board of County Commissioners (BOCC) approved the Lot Line Adjustment, which combined the four lots in Ilium Valley owned by the Telluride School District, and also approved the SMPA solar facility to be located at Norwood Transfer Station. As part of the solar facility approval the 1990 County Landfill Closure Plan had to be re-approved by the Colorado Department of Health and Environment, and that the county is still negotiating a draft lease with SMPA.

Mike provided an update of the Reliability Project which proposes to underground two new distribution lines into Telluride and would provide electrical redundancy to the region. The County and Lawson Hill had approved easements to allow SMPA to bore under the San Miguel River for testing and the project plan is now completed. Lee Taylor asked if the closure of the Nucla Tri-State generating plant would affect the project. Mike said no, and that electric power would instead come from the Craig power plant. Mike said the Tristate's proposed Montrose-

Nucla-Cahone transmission line upgrade that traverses San Miguel County would require a two-step review. Alpine Wellness's proposal to construct a grow facility on Wrights Mesa was approved by the BOCC, and the applicant is currently planning the facility.

Rozycki noted that many retirements and personnel changes within the county have occurred, and that he is now overseeing the Building Department and onsite wastewater treatment systems (OWTS) permitting. The new department is named Planning, Building and Development Services Department and he is the Director and he will be adding a new full time administrator and inspector of the OWTS function. He also acknowledged that Karen Henderson returned to work after some time off.

Mike said the county is reevaluating its policy regarding approving development permits when cisterns are listed as the primary water supply to a residence. The LUC standard states that cisterns are an allowable water source in the West End Zone District and elsewhere in the county if approved by the BOCC, which it routinely has. He noted that the Norwood Water Commission has reiterated that its water dispenser station is operated as a courtesy and should not be considered a reliable source of water supply and users must apply for and purchase a swipe card instead of paying cash. He also noted that the Colorado Division of Water Resources did not have an objection to the hauling water within the Norwood Water service area. Mike said a development permit application was received from a property owner on Hastings Mesa who planned to use a cistern and that he is working through issues regarding the appropriateness of the request. Josselin Lifton-Zoline asked what the requirements might be on existing properties using cisterns. Mike answered there would not be any effect from the county, but didn't know what the Norwood Water Commission might require.

Rozycki remarked that he had attended along with Josselin Lifton-Zoline and Lee Taylor the Ideas Festival, which was a dialog on affordable housing in the region, and had participated on a discussion panel. Relatedly, he took part in meetings with the Telluride Foundation to identify parcels within the county that were zoned for affordable housing. Mike announced that Illium Lots 425-3 and 425-4 (formerly SMARTS Park) were sold by Glenn Pauls and the new owners want to rezone the property from industrial to affordable housing and to construct quasi dormitory housing. Ian Bald asked if public transportation is planned to Illium Valley. Mike also added that he thinks building affordable housing on the Telluride Gravel site could work.

Marty Schmalz inquired on the status of Lawson Hill Neighborhood Commercial uses. Mike replied there are development plans for two HUB Lots that are in the concept stage and one was conditionally approved by the Lawson Hill DRB, while the other was shelved for time being. He also related he will be meeting with owners of Society Business Center concerning neighborhood commercial uses on their property. Pam Hall asked if the Telluride Regional Master Plan and the updated Lawson Hill Master Plan amendment is available on county official website. Karen Henderson said she would double check to see if it is posted and let Pam know.

Rozycki updated that San Miguel Valley Corporation (SMVC) has submitted documents showing it has legal and physical water supply plan for its Deep Creek and Mill Creek subdivision parcels. He said Planning is expecting to receive the Final Plat applications before

years end. He added that the County Affordable Housing lot located on the Mill Creek Parcel will not be transferred from SMVC until after the first lots are sold.

Lee Taylor asked if a retreat or worksession with Ouray County regarding regional affordable housing and other planning issues would be valuable. Rozycki suggested that an intra-county informational meeting with the Town of Telluride might be helpful. Pam Hall asked if the county had received confirmation concerning funding to build a park and ride facility on the county intercept lot. Mike and Steve Zwick confirmed that Colorado Department of Transportation (CDOT) grant funding had been awarded but that no meeting with CDOT had occurred as had been previously discussed. Lee asked if a meeting in Placerville regarding retail marijuana sales had occurred. Mike replied the BOCC had held a public meeting at the Placerville School House and the community solidly said no to the idea. Josselin asked what economic effects the planned closure of the Nucla electric generation plant might be. Mike commented that the community would be losing 83 good jobs, and it would have an outsized significant economic effect in west end of Montrose County, but didn't know how it would affect San Miguel County. Mike added that Ray Cossey had done a good job and completed the fence and moved vehicles as required by the conditions of his Special Use Permit approval.

12:05 p.m. Adjourned.

Respectfully Submitted,

_____
John Huebner, Planning Technician

Approved on _____.

SAN MIGUEL COUNTY PLANNING COMMISSION

_____
Marty Schmalz, Secretary

[P:\CPC BOA Meeting Minutes\pc9.16minutes.docx]

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Public Meeting Record
County Planning Commission
Application: County Road Vacation Recommendation: CR 60M, east end of San Miguel County on East Wilson Mesa, and west of Telluride
Date: December 14, 2016

1. San Miguel County Land Use Code (Adopted 11/30/90) with all amendments to date (By Reference Only).

2. San Miguel County Comprehensive Development Plan (Adopted 8/3/78) with all amendments to date (By Reference Only).

3. Memorandum to the San Miguel County Planning Commission from the San Miguel County Planning Department Staff dated December 14, 2016.

4. Application submitted by Michael D. Hockersmith, P.C., on behalf of Homewood Family Limited Partnership and Alexander Ranch, LLLP, dated October 17, 2016.

5. Applicant's "Certification of Compliance with the Public Noticing Requirements" of C.R.S. § 24-65.5-103(1) and County Land Use Code Section 3-9 dated November 21, 2016 and November 14, 2016. (By Reference Only).

6. Email from Jim Boeckl, Telluride Fire Marshall, to Karen Henderson dated October 27, 2016.

7. Email from Telluride Mountain Club to Mike Rozycki dated November 3, 2016.

8. Email from Mike Horner, County Road and Bridge Superintendent, to Mike Rozycki dated November 16, 2016.

9. Letter from Samuel Dearstyne, Acting BLM Uncompahgre Field Office Manager, to San Miguel County Board of County Commissioners c/o Planning Department dated November 18, 2016.

10. Email from Lynn Padgett, County Natural Resources Department, to Mike Rozycki dated November 18, 2016.

11. Email from Janet Kask, County Open Space & Recreation Coordinator, to Karen Henderson dated November 30, 2016.

12. Email from Rob Roberts to Mike Rozycki dated November 30, 2016.

13. Email from Hans Jones to Mike Rozycki dated December 2, 2016.

14. Email from Guy Saperstein to the County Planning Commission dated December 2, 2016.

15. Email from Samantha Lyn Samuelson to Karen Henderson dated December 2, 2016.

16. Email from Tim Cannon to Karen Henderson dated December 2, 2016.

17. Email from Paul Allaire to Karen Henderson dated December 3, 2016.

18. Letter from the Board of Directors of the Ptarmigan Ranch Homeowners Association to the San Miguel Planning Commission c/o Mike Rozycki dated December 5, 2016.

19. Letter from Ron Krystyniak to the San Miguel County Board of County Commissioners c/o Planning Department dated December 5, 2016.

20. Email from Alana Mynyk to Karen Henderson dated December 6, 2016.

21. Letter from Amy Cannon to the County Planning Commission dated December 7, 2016.

M E M O R A N D U M

TO: San Miguel County Planning Commission
FROM: San Miguel County Planning Department Staff
RE: Road Vacation Recommendation: Portion of County Road 60M
DATE: December 14, 2016 [text/word/cr.60m.vac.homewood]

Summary of Application

San Miguel County has been asked to consider an application submitted by the Homewood Limited Partnership and Alexander Ranch, LLP ("Applicants") to vacate a portion of County Road 60M, located on property on East Wilson Mesa west of Bilk Creek. The Homewood parcel is approximately 1,837 acres and the Alexander parcel is approximately 1,121 acres. Both properties are zoned Rangeland Grazing (RG). The Applicants state that the approximate 4.75 mile portion of CR60M that is proposed to be vacated, with the exception of a short stretch that briefly enters public lands administered by the U.S. Bureau of Land Management, is located entirely on the Homewood and Alexander Properties.

County Road 60M (Silver Pick Road) starts at State Highway 145, near the confluence of Big Bear Creek and the San Miguel River, heads south, then east onto East Wilson Mesa, then northerly to the Homewood property, then north and east across the Homewood property where it crosses onto the Alexander property, then CR 60M dead-ends as a public road at the boundary of the Price property where CR 60M was previously vacated in 2000 as a County Road. In vacating the portion of CR 60M that entered and crossed the Price property the BOCC obtained a 20 foot wide "non-motorized recreational access and usage easement from the Prices to the County for the benefit of the public including "hiking, running, bicycling, horse riding, Nordic skiing, and snowshoeing and any combination thereof", that extends easterly to the portion of CR 60M in the vicinity of Bilk Creek that has not been vacated.

Both Applicants use CR 60M in conjunction with their cattle and farming operations. As a result of said cattle and farming operations, there is regular traffic on the road by heavy equipment and other vehicles. Any vehicular use by the public would conflict with the Applicants' use of the road, and could thus create a dangerous situation with potential attendant liabilities. In addition, both Applicants report an on-going problem with trespassers onto their properties, especially during hunting season, who use this road. Access to the public lands, through which CR 60M briefly runs, will not be impeded, since the general public can enter these lands at an alternative location (see Exhibit 4 included in packet).

The Applicants state they are willing to allow the County to retain an easement over the vacated portion of CR 60M for pedestrian use only. However, because the road essentially dead-ends in their private property, continued vehicular access by the public serves no useful purpose and is not needed for any future use by the public.

The Applicants state:

1. There is no proposed relocation of the road.
2. The Applicants are owners of record for all private property adjacent to the portion of CR 60M that is proposed to be vacated.

3. The only utility company with any right or easement in the subject roadway is the San Miguel Power Association, Inc. Such easement shall be reserved for continued use by SMPA. No other persons are known by the Applicants to have any easements or other rights in or adjacent to the subject roadway or right-of-way.
4. As shown on Exhibit 4 of this application, the general public will continue to have access to the public lands in the areas where CR 60M is proposed to be located.
5. The Applicants intend to grant reciprocal access easements to each other, and to Mr. Price, over the vacated roadway to that the title to the vacated roadway shall be subject to said access easements in accordance with C.R.S. §43-2-302(1)(f).

The proposed road vacation requires two-step Planning Commission and Board of County Commissioner review pursuant to Land Use Code Section 3-601 J.

Colorado Revised Statutes, Section 30-28-110, requires Planning Commission approval prior to the vacation of a county road, and Section 43-2-303 prescribes the process for vacation of public road rights-of-way:

> (1)(b) The board of county commissioners of any county may vacate any roadway or any part thereof located entirely within said county if such roadway is not within the limits of any city or town.

C.R.S. 43-2-303 (2)(b) states:

> If any roadway has been established as a county road at any time, such roadway shall not be vacated by any method other than a resolution approved by the board of county commissioners of the county. No later than ten days prior to any county commissioners meeting at which a resolution to vacate a county roadway is to be presented, the county commissioners shall mail a notice by first-class mail to the last-known address of each landowner who owns one acre or more of land adjacent to the roadway. Such notice shall indicate the time and place of the county commissioner meeting and shall indicate that a resolution to vacate the county roadway will be presented at the meeting.

C.R.S. 43-2-303 (2)(a) states:

> No platted or deeded roadway or part thereof or unplatted or undefined roadway which exists by right of usage shall be vacated so as to leave any land adjoining said roadway without an established public road or private access easement connecting said land with another established public road.

<u>Land Use Code Section 5-501 L. Review Standards</u>

5-501 L. Road Vacation

I. Any person wishing to initiate the vacation and/or relocation of a County public roadway or right-of-way shall submit to the County Planning Department an

application that includes, at a minimum, the following information:

a. A complete and accurate legal description of the portion(s) of the roadway or right-of-way proposed for vacation;
b. The reason for such vacation;
c. Whether the roadway is to be relocated;
d. The names and addresses of all owners of record whom own land adjacent to the roadway or right-of-way;
e. The names and addresses of all utility companies, or other persons, with easements or other rights in or adjacent to the subject roadway or right-of-way; and
f. A description as to whether the adjacent parcels will have access to a public road upon any such vacation, and if not, any other provision for reasonable access to a public road proposed by the applicant.

II. The County may require the applicant to prepare plat maps and other legal documents for review and consideration by the Planning Commission, pursuant to C.R.S. 30-28-110(1)(d), before review by the Board of County Commissioners, which materials may be necessary to vacate the roadway or right-of-way and vest title to the vacated portions thereof;

Background CR 60M

In July of 1992 the Homewood Family Limited Partnership brought suit against the Board of County Commissioners to quiet title for the portion of CR 60M that runs through their property. The County's position was that CR 60M is a public County Road. After a trial the District Court determined (Order of May 19, 1993) that a sufficient showing had been established to show adverse use in excess of 20 years pursuant to C.R.S. §43-2-201 (1) (c) and that the County had established the effected portion of CR 60M as a public road by virtue of a prescriptive easement.

Following the Court Order a discussion and debate occurred over the width of the right-of-way for maintenance purposes. The County has maintained CR 60M since at least 1975. The traveled part of the single lane road runs between 7½ and 12 feet in width which can restrict the usage of the road. All property outside the traveled way is private land. A critical component for maintenance is the existence of a ditch. The average width necessary for maintenance based on Foley surveying field work is 20.7 feet or 10.35 feet on either side of a centerline. This Court Order establishing the width of the right-of-way for CR 60M does not appear to include provisions for a vehicle turnaround(s) on the Homewood property. .

In March of 2000, Silver Mountain Industries, Inc. (SMI) sought to vacate portions of County Roads 60M, 61K, and 62K, located on property located adjacent to Bilk Creek in San Miguel Canyon. The SMI stated that they were prepared to grant private access easements, pursuant to state law, to adjacent property owners. At that time the parcel was under contract to a party (Charles & Jessie Price) who stated that they would not consider a trail easement across the parcel along the portion of 62K that would be vacated. At that time County Road Superintendent, Mike Horner, did not support the vacation of the CR 60M portion for the

following reasons:

1) The road provides a popular 4x4 experience for the public, especially elderly people;
2) There are many land owners on East Wilson Mesa who access the state highway during dry conditions by the Bilk Creek portion of 60M;
3) During summer grading of 60M it is more efficient to grade across the mesa rather than several miles to a dead-end; and
4) In the event of a slide or flood in Bear Creek canyon the Bilk Creek access would be the only route to East Wilson Mesa.

This application was approved with the following conditions (in part):

a. The conveyance of the SMI parcel to the Prices was subject to the Deed of Conservation Easement to the Nature Conservancy allowing the construction and occupancy of not more than two single-family residences and associated out buildings.
b. The Prices granting non-motorized recreational access and usage easements to the County, for the benefit of the public, for those portions of CR 60M and CR 61K to be vacated.
c. The Prices granting a permissive non-motorized public recreational access and usage easement, running with the land, to the Nature Conservancy for that portion of CR 62K to be vacated, to be limited to public hiking and biking uses, to be administered by The Nature Conservancy.
d. The Prices conveying fee title to San Miguel County by warranty deed for a .67-acre parcel for a community recreational climbing wall and a 0.13 acre parcel for vehicle parking for the climbing wall users in the vicinity of Bilk Creek with vehicle access along a portion of CR 60M and a public, non-motorized, pedestrian recreational access easement for a portion of CR 62K to be vacated.
e. Should a locked gate be installed on the portion of CR 60M to be vacated such gate shall include an auxiliary gate allowing for the passage of equestrians, pedestrians and bicyclists.
f. The owner shall make appropriate arrangements for providing vehicular access to the San Miguel County Road & Bridge Department, County Sheriff's Department and The Telluride Fire Protection District.
g. The Prices granting any statutorily required private-access easement to owners of adjoining private lands to become effective upon the vacation of the portions of CR 60M, 61K and 62K specified in the application.

Silver Mountain Industries recorded a Conservation Easement in 2000 which was granted to The Nature Conservancy and limited in part the development rights to construction and use of a house ("House 1"), caretakers unit, and associate outbuildings located within a five acre building envelope on a 35-acre parcel of the Property. Construction and use of another house ("House 2") and associated outbuilding located with a two-acre building envelope on a 35-acre parcel of the Property. The Prices recorded a new Conservation Easement in 2007 which was granted to The Nature Conservancy and limited the development rights to a "single area of reasonably compact shape, not to exceed five (5) acres (the "Building Envelope") the location of which is subject to the prior approval of the Conservancy," and limited "construction of residential and auxiliary structures within the Building Envelope limited to one (1) single-family residential structure, one

(1) guest house, on (1) detached garage, and one (1) barn or equipment shed so long as there shall be no more than one (1) primary residence, which shall be limited to a single-family residence". The Conservation Easement required the property owner to reduce the number of development rights on their approximately 440-acre property, the "Bilk Creek Parcel" from twelve (12) 35-acre parcels (development rights) to two parcels for Single-family residences and associated out buildings.

The County Road Superintendent states this section of CR 60M is accepted for maintenance by the County but is not maintained in the winter months (November 1st to May 1st) and receives maintenance once or twice during the summer or other times of the year. Mr. Horner has also advised that County Road maintenance crews are able to exit CR 60M through the vacated portion of CR 60M through the "Price" property.

Referral Agents

This road vacation application was referred to Mike Horner. County Road Superintendent, Janet Kask, County Park/Open Space Director, Steven Zwick, County Attorney, Matt Zumstein, U.S. Forest Service, Teresa Pfifer, Bureau of Land Management, Jim Boeckel, Telluride Fire Protection District, Bill Masters, County Sheriff, Tor Anderson, Telluride Mountain Club, Brad Zaporski, San Miguel Power Association.

The Applicants sent notice of the proposed road vacation application to all owners within 500 feet of the subject parcels, and property owners, who own property adjacent to or along CR 60M from its intersection with CR 59H to the Homewood property, and posted signs noticing the Planning Commission meeting on the subject properties.

Public Comment

The Planning Department has received a letter from the Ptarmigan Ranch Owner's Association Board of Director, as well as letters from several other landowners on East Wilson Mesa stating that they are opposed to the application and are requesting that the County not agree to vacate any remaining portion of CR 60 M for various reasons set out in the submitted letters. A copy of each of these letters are being provided to the Planning Commission as part of their packet and back-up for the December 14, 2016 public meeting. The Planning office to date has received two (2) letters from neighboring landowners on East Wilson Mesa in support of the application to vacate and close the road to public vehicular access.

Telluride Fire Protection District Comments

In an October 27, 2016 email, Fire Marshall Jim Boeckel states that TFPD has no objection to the vacation as outlined in the application provided that any and all gates that are installed have a Knox Pad Lock installed on them to facilitate Fire Department access in an emergency.

County Road and Bridge Superintendent Comments

In a November 16, 2016 email Mike Horner, County Road Superintendent, provided the following comments:

The section of CR 60M that is the subject of this request extends approximately 4.75 miles through the Applicants property on East Wilson Mesa. The road currently passes through two short sections of public land administered by the Bureau of Land Management (BLM). A portion of CR 60M was vacated in 2000 in accordance with Board of Commissioner Resolution 2000-19 through the Price property and is subject to a 20 foot wide "non-motorized recreational access and usage easement to the County for the benefit of the public including "hiking, running, bicycling, mountain bicycling, horse riding, Nordic skiing, and snowshoeing and any combination thereof'. Road and Bridge is recommending approval of the road vacation with the following conditions:

1. To be consistent and not create a dead end for pedestrian access across Wilson Mesa, the road vacation, if approved should be subject to the same non-motorized recreational access easement that was approved in BOCC Resolution 2000-19 for that portion of CR 60M that traverses the Price property.
2. A sign should be placed on each end of the vacated section to indicate, "NON-MOTORIZED PEDESTRIAN ACCESS, STAY ON ROAD". The Road Department could install these signs in the spring, if approved.
3. All gates must remain unlocked or the property owners must install pedestrian access gates sufficient to allow unrestricted passage of bicycles or horses.
4. While access to public land may be an issue, the first section of BLM land is only .53 miles from the west property gate and the second is 1.15 miles from the west gate. Hunters or hikers will still have reasonable pedestrian access to the public land. There are no motorized trails on this section of public land so foot or horseback travel is simply extended about a half mile.
5. If approved by the County Planning Commission to the BOCC it is requested that the BOCC public hearing notice also include language according to CRS 43-2-110 to consider the exclusion of CR 60M from the County Road Maintenance System.

Bureau of Land Management (BLM) Comments

In a November 18, 2016 letter Samuel Dearstyne, Acting Field Manager, provided the following comments:

1. County road 60M was included in the 1984 filing by san Miguel County for public highways under C.R.S. 2477, and serialized under case file COC-39221, and as such provides public access to public land.
2. The BLM is opposed to any vacation or reduction of public access including vehicle use to public land along CR 60M. The BLM has been approached in the past in a similar request and our position is the same as it was before. CR 60M provides public access including vehicle use to public land on top of the mesa which is not reasonably accessible from CR 60M, the BLM below along Big Bear Creek. To have access from CR 60M below along Big Bear Creek would require that the public cross Big Bear Creek and ascend the canyon wall which is extremely rugged and steep with slopes upward to 50%.

This is not a reasonable or feasible alternative for the public to have to climb the canyon wall in order to get to the public land on top of the mesa where they have vehicle access to now. In addition, in order for the public to have to try to navigate in order to stay on the public land from the canyon bottom to the top of the mesa would be very difficult as it would require them to have to go through two very narrow and steep strips of public land only a couple of hundred feet wide and cross the Muddy Creek drainage if accessing public land from the southern access point which is only approximately a 300 foot stretch along CR 60 M below. We anticipate this would result in more trespass on the other private landowners along the steep canyon wall than to those landowners on top of the mesa. Therefore, we do not see public access to public land from CR 60M from below as an alternative.

We also do not see pedestrian use only along CR 60M as an alternative as that would require the public to have to walk upwards of 1.5 miles to get to the same public land that they can drive to now. Further, CR 60M provides legal vehicle access to the top of the mesa to those landowners along the canyon wall who have land on top of the mesa, and we have been approached by some of those landowners in the past in order to obtain access across public land from CR 60M to get to their property on top of the mesa. To vacate the road as proposed would cut off their existing legal access as well. However, we would not oppose vacation of CR 60M on top of the mesa where it leaves the public land at the furthest northeast corner of lot 9 section 33, T43 N, R 10 W, NMPM, shown at the "X" on the [attached map] because there is no public land beyond this point.

3. If CR 60M were to no longer be a public road, then it would put the burden on any parties including the Applicants for this petition and/or those landowners along the canyon wall who would want to use and/or maintain the road on public land beyond casual use to obtain a right-of-way under the Federal Land Policy and Management Act of 1976 (FLPMA) for those portions of the road on public land. Any right-of-way would be subject to processing and monitoring administrative fees, annual rent, and terms and conditions of use.

<u>County Parks & Open Space Coordinator</u>

In a November 30, 2016 email Open Space Coordinator Janet Kast states she agrees with Mike Horner's recommendations.

<u>County Government Services & Natural Resources Comme</u>nts

In a November 18, 2016 email Lynn Padgett, County Government Services (UFO) states recent comments provided by the County to the BLM Uncompahgre Field Office discussed Land Disposals. The BLM parcel in this area, accessible by CR 60M is actually recommended under the preferred alternative for disposal. San Miguel County specifically requested two things in the UFO comments: 1. that this parcel not be disposed of because it had important riparian habitat and 2. Because it was within the potential expanded San Miguel ACEC that the county desires. For consistency, it makes sense that the county not vacate any portion of 60M that provides BLM land access and also that it be pointed out to the BLM that their letter to us further supports them designating the BLM land shown on page 30 of the attached comments as 1. Not designated for

land disposal, 2. Resource Management Plan (RMP) decision should expand the San Miguel ACEC which would include this parcel, and 3. RMP should expand the proposed SMRA boundary to also include this parcel.

Planning Department Comments and Recommendation

This application requesting to vacate a portion of CR 60 M is subject to a Legislative Act that may or may not be approved by the BOCC in their sole discretion following receipt of a recommendation from the CPC. In reviewing this proposed road vacation it is staff's finding that if the road vacation were to be approved as requested it would not result in leaving any land adjoining said roadway without an established public road or private access easement connecting said land with another public road as provided for in C.R.S. 43-2-203 (2) (a).

County Land Use Code Policy Section 2-32 (attached) states it is the policy of the County to preserve existing access points to public lands and to strive to secure new access points to public lands. The Code further states the goal is to insure open access to public lands while protecting the rights of private landowners, favoring pedestrian and non-motorized forms of access.

In reviewing this application to vacate that portion of CR 60 M located on the Homewood and Alexander properties to include a short stretch where this County Road traverses public land administered by the BLM, and in reviewing the previous action by the BOCC taken in 2000 to vacate a portion of CR 60M on and over the "Bilk Creek" parcel, the applicable LUC Policy concerning Access to Public Lands, the referral agency or entity comments we have received together with various comments from the public, staff has identified several alternatives for the Planning Commission to consider in making a recommendation(s) to the BOCC concerning this specific road vacation application as follows:

1. The Planning Commission could recommend approval of the road vacation as recommended by County Road & Bridge Superintendent, Mike Horner, subject to the five (5) specific conditions of approval set forth in his November 16, 2016 email addressed to the Planning Director, finding that the vacation of this section of CR 60M meets all Land Use Code standards in Section 5-501 L. Road Vacation and the road vacation will not leave any adjoining land without access to a public road.

2. The Planning Commission could recommend conditional approval of the road vacation as recommended by Mr. Horner but only recommend approving the road vacation from the point on the ground where the road leaves public land at the furthest northeast corner of Lot 9, Section 33, T. 43 N., R10#., NMPM, shown as an X on the map enclosed with the November 18, 2016 letter from, Acting BLM Field Manager, Samuel Dearstyne; this location is also identified as Lat 37.944585 and Long -107.967574, which is near the area where the "old road" that appears to have accessed public land takes off from CR 60M as identified during the CPC November site visit. If the CPC were to make this recommendation to the BOCC it is suggested that there be a provision for non-motorized users to pass through a gate at this location and that there also be a provision for a vehicle turnaround at this end of CR 60M. *In staff's opinion this recommendation would be consistent with LUC Section 2-32 and the*

County's policies concerning access to public land.

3. The Planning Commission could recommend denial of this road vacation application in its entirety as requested by the Ptarmigan Ranch Owner's Association, Board of Directors and several other land owners on Wilson Mesa and the general public citing that this section of CR 60M provides public access to important and desirable scenic vistas occurring along this portion of Wilson Mesa. *Additionally, unlike the 2000 vacation of a portion of CR 60M on and over the "Bilk Creek" parcel the applicants have not offered or proposed any substantial benefits to the County or the public for divesting its property interest in this section of CR 60M. It is acknowledged that this road vacation application differs from the one that was approved by the BOCC in 2000 in that at that time CR 60M was a looped roadway and at present CR 60 M is not a continuous looped public road but rather it currently dead ends at the Price property.*

HOCKERSMITH LAW, P.C.
ATTORNEY & COUNSELOR *at* LAW

Alpine Bank Building
917 Main Street (2nd Floor)
Post Office Box 646
Ouray, CO 81427-0646

t: 970.325.4414
f: 970.325.7333
michael@mdhlawpc.com

Michael D. Hockersmith

October 17, 2016

San Miguel County Planning Department
333 W. Colorado Avenue, 3rd Floor
PO Box 548
Telluride, CO 81435

Re: Petition to vacate portion of County Road 60M

Dear Sir or Madam:

The undersigned represents the Homewood Family Limited Partnership ("Homewood") and Alexander Ranch, LLLP ("Alexander"). Homewood and Alexander shall collectively be referred to as the "Applicants." Homewood is the owner of certain real property located in San Miguel County, more particularly described in Exhibit 1, attached hereto and incorporated herein by this reference (the "Homewood Property"). Alexander is the owner of the certain real property located in San Miguel County, more particularly described in Exhibit 2, attached hereto and incorporated herein by this reference (the "Alexander Property"). Homewood and Alexander are requesting that the San Miguel County Board of County Commissioners vacate a portion of a road shown on the San Miguel County Road Map as San Miguel County Road 60M ("CR 60M"). Pursuant to Section 5-501 L. I. a. through f., of the San Miguel County Land Use Code, the following information is provided in support of this request.

1. <u>A complete and accurate legal description of the portion(s) of the roadway or right-way-way proposed for vacation</u>:

See Exhibit 3, attached hereto for a complete and accurate depiction of the portion of CR 60M proposed to be vacated.

2. <u>The reason for such vacation</u>:

The portion of CR 60M that is proposed to be vacated, with the exception of a short stretch that briefly enters public lands administered by the U.S. Bureau of Land Management, is located entirely on the Homewood and Alexander Properties. The road dead-ends at the boundary of property owned by H. Charles Price. San Miguel County has previously vacated the portion of CR 60M that entered the Price property. Both Applicants use this road in conjunction

with their cattle and farming operations. As a result of said cattle and farming operations, there is regular traffic on the road by heavy equipment and other vehicles. Any vehicular use by the public would conflict with the Applicants' use of the road, and could thus create a dangerous situation with potential attendant liabilities. In addition, both Applicants report an on-going problem with trespassers onto their properties, especially during hunting season, who use this road. Access to the public lands, through which CR 60M briefly runs, will not be impeded, since the general public can enter these lands at an alternative location as depicted on Exhibit 4, attached hereto. In any event, the Applicants are willing to allow the County to retain an easement over the vacated portion of CR 60M for pedestrian use only. However, because the road essentially dead-ends in their private property, continued vehicular access by the public serves no useful purpose and is not needed for any future use by the public. For these reasons, the requested vacation is appropriate.

3. Whether the roadway is to be relocated: There is no proposed relocation of the road.

4. The names and addresses of all owners of record whom own land adjacent to the roadway or right-of-way:

The Applicants are the owners of record for all private property adjacent to the portion of CR 60M that is proposed to be vacated. As noted above, CR 60 M does briefly enter public lands administered by the BLM. The BLM can be contacted at its offices located at 2505 S. Townsend Ave., Montrose, CO 81401.

5. The names and addresses of all utility companies, or other persons, with easements or other rights in or adjacent to the subject roadway or right-of-way:

The only utility company with any right or easement in the subject roadway is San Miguel Power Association, Inc., located at PO Box 817, Nucla, CO 81424. In accordance with C.R.S. §43-2-303(3), upon vacation of the subject section of CR 60M, any such easement shall be reserved for continued use by said utility. No other persons are known by the Applicants to have any easements or other rights in or adjacent to the subject roadway or right-of-way.

6. A description as to whether the adjacent parcels will have access to a public road upon any such vacation, and if not, any other provision for reasonable access to a public road proposed by the applicant:

As shown on Exhibit 4, the general public will continue to have access to the public lands in the areas where CR 60M is proposed to be located. With regard to the Homewood Property, the Alexander Property and the property owned by H. Charles Price, it is the Applicants' intent to grant reciprocal access easements to each other, and to Mr. Price, over the vacated roadway so that the title to the vacated roadway shall be subject to said access easements in accordance with C.R.S. §43-2-302(1)(f).

Enclosed with this letter, please find our Check No. 1113 in the amount of $500.00, made payable to San Miguel County, as the application fee for this requested vacation. We are aware

that this request requires a two-step review by the Planning Commission and the Board of County Commissioners and look forward to an early scheduling of these review hearings. Thank you for your consideration. Please do not hesitate to contact me if you require any additional information.

Sincerely,

Michael D. Hockersmith

xc: Homewood
Alexander

EXHIBIT 1
HOMEWOOD PROPERTY

Township 42 North, Range 10 West, N.M.P.M.:

N2NW4 AND SW4NW4, SECTION 2
W2, NE4 AND NE4SE4, SECTION 3
E2NE4, SECTION 4

ALSO A TRACT OF LAND IN SE4 SEC 3 T42 R10 DESB AS FOLLOWS BEG AT CORNER NO 1 IDENTICAL WITH S4 CORNER OF SAID SEC 3, THENCE NORTH 2°24' E ALONG QUARTER SEC LINE 1320 FT TO CORNER NO 2, THENCE SOUTH 89°51' E ON A LINE PARALLEL TO SECTION LINE 437.25 FT TO CORNER NO 3, THENCE SOUTH S°24' W 809.3 FT TO CORNER NO 4, THENCE S 40°32' W 672 FT TO CORNER NO 1, THE PLACE OF BEGINNING.

LESS AND EXCEPT property described in warranty deed recorded at Reception No. 274906.

AND INCLUDING property described in warranty deeds recorded at Reception Nos. 274905 and 401462.

Township 43 North, Range 10 West, N.M.P.M.:

SW4SW4, SECTION 26
S2SE4, S2SW4 AND NW4SW4, SECTION 27
SE4SE4, SECTION 28
E2NE4, SECTION 33
ALL OF SECTION 34
W2, W2NE4, NE4NE4, SECTION 35

LESS AND EXCEPT property described in warranty deeds recorded at Reception No. 359691 and 359692.

San Miguel County, State of Colorado

EXHIBIT 2
ALEXANDER PROPERTY

Lots One (1) and Two (2), Southwest Quarter Northeast Quarter (SW¼NE¼), West Half Southeast Quarter (W½SE¼), Section One (1), Township Forty-two (42) North, Range Ten (10) West of the New Mexico Principal Meridian.

Lots Three (3) and Four (4), South Half Northwest Quarter (S½NW¼), North Half Southwest Quarter (N½SW¼), Section One (1), Township Forty-two (42) North, Range Ten (10) West of the New Mexico Principal Meridian.

Lots One (1) and Two (2), South Half Northeast Quarter (S½NE¼), Northeast Quarter Southeast Quarter (NE¼SE¼), South Half Southeast Quarter (S½SE¼), Section Two (2), Township Forty-two (42) North, Range Ten (10) West of the New Mexico Principal Meridian.

North Half Northeast Quarter (N½NE¼), Section Eleven (11), Township Forty-two (42) North, Range Ten (10) West of the New Mexico Principal Meridian.

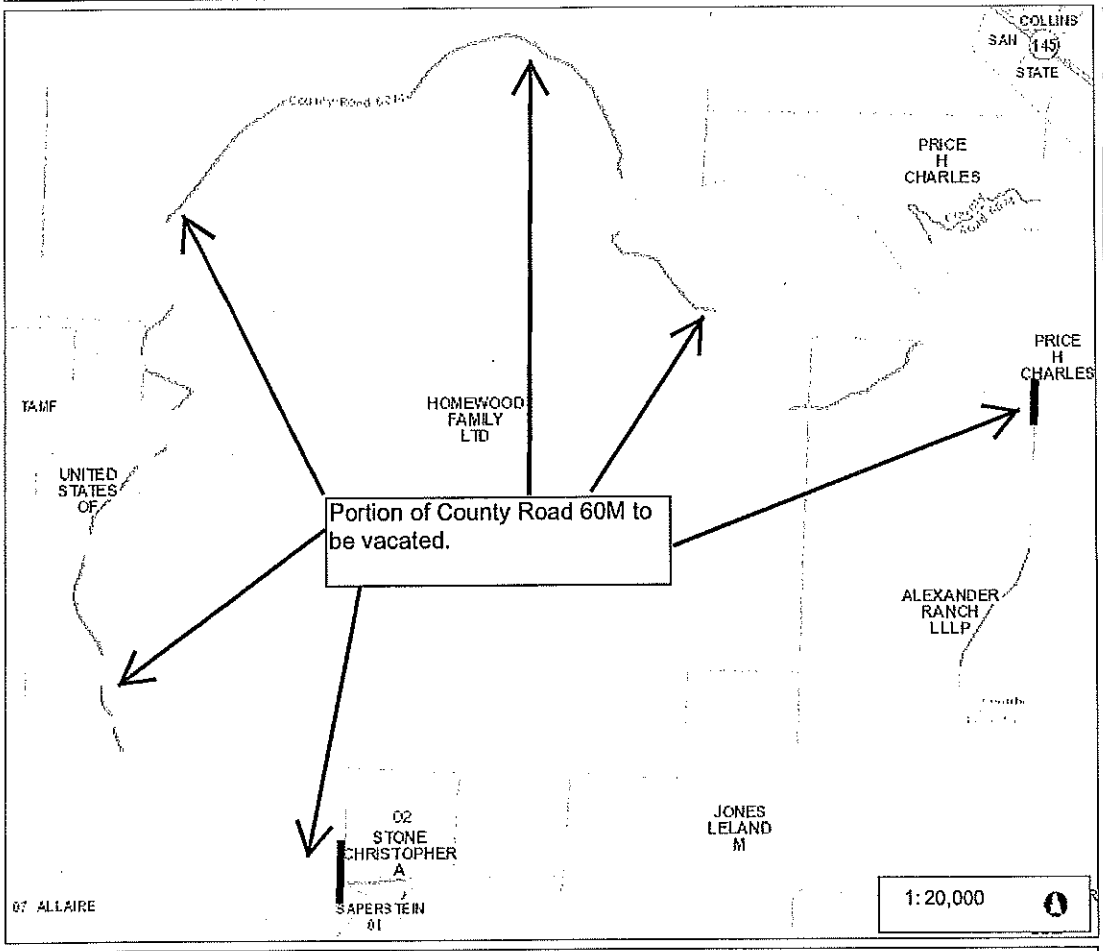
West Half Northeast Quarter (W½NE¼), Northwest Quarter Southeast Quarter (NW¼SE¼), Section Twelve (12), Township Forty-two (42) North, Range Ten (10) West of the New Mexico Principal Meridian.

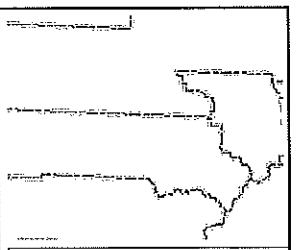
Southeast Quarter Northeast Quarter (SE¼NE¼), Southeast Quarter (SE¼), Section Thirty-five (35), Township Forty-three (43) North, Range Ten (10) West of the New Mexico Principal Meridian.

San Miguel County, State of Colorado

webMap
San Miguel County, Colorado

EXHIBIT 3





Legend

- County Boundaries
- Parcel Boundaries
- SANMCO_ROADS 10k-50k
  - ARTERIAL
  - MAJOR COLLECTOR
  - MINOR COLLECTOR
  - LOCAL
  - PRIMITIVE
- R10_ROADS
  - <all other values>
  - SECONDARY
- DOLOCO_ROADS
- UTAH_ROADS

Map Generated
9/21/16 11:57 AM

Notes

0.6 0 0.32 0.6 Miles

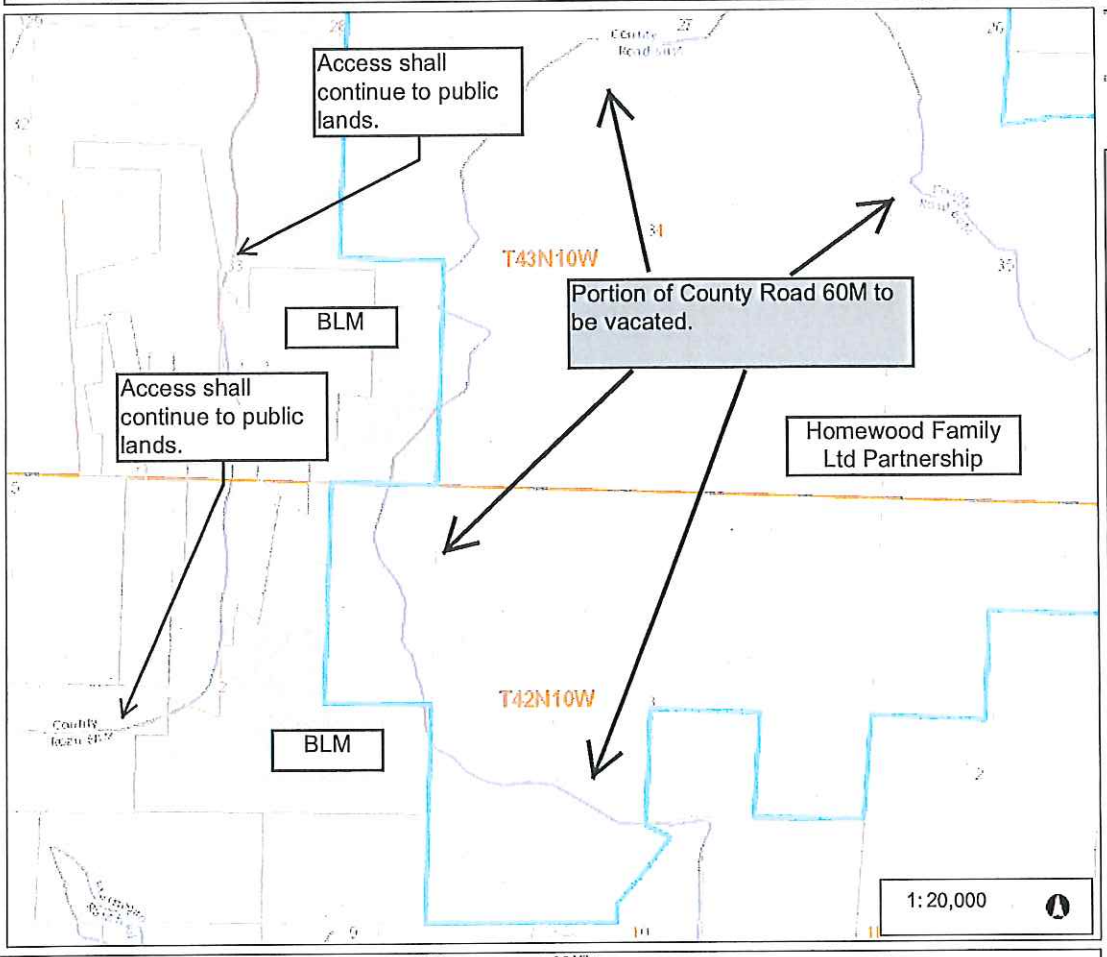
This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

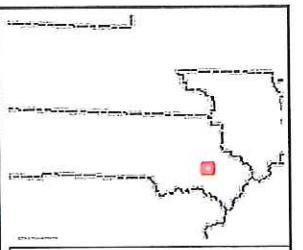
THIS MAP IS NOT TO BE USED FOR NAVIGATION

www.sanmiguelcountyco.gov

webMap
San Miguel County, Colorado

EXHIBIT 4





Legend

- County Boundaries
- Parcel Boundaries
- Township and Range
- Sections
- SANMCO_ROADS 10k-50k
  - ARTERIAL
  - MAJOR COLLECTOR
  - MINOR COLLECTOR
  - LOCAL
  - PRIMITIVE
- R10_ROADS
  - <all other values>
  - SECONDARY
- DOLOCO_ROADS
- UTAH_ROADS
- Public Lands
  - BLM
  - CDOW
  - PRIVATE OR OTHER EXEMPT
  - STATE OF COLORADO
  - USFS

Map Generated
10/11/16 9:38 AM

Notes

0.6 0 0.32 0.6 Miles

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San Miguel County
Colorado

Karen Henderson <karenh@sanmiguelcountyco.gov>

Vacation of Portion of County Road 60M: Homewood & Alexander

1 message

Jim Boeckel <jim@telluridefire.com> Thu, Oct 27, 2016 at 10:44 AM
To: karenh@sanmiguelcountyco.gov

Karen,

After review of the above referenced application and discussion with the Chief's we have no objection to the vacation of the portion of County Rd. 60M as outlined in the application. We do however have one requirement;

1. Any and all gates that are installed shall have a Knox Pad Lock installed on them to facilitate Fire Department access in an emergency.

If you have any questions regarding the above, please contact me.

Jim Boeckel

Fire Marshal

Telluride Fire Protection District

P.O. Box 1645

Telluride CO. 81435

Phone 970-728-3801 Cell 970-729-1454

e-mail jim@telluridefire.com

San Miguel County
Colorado

Mike Rozycki <miker@sanmiguelcountyco.gov>

Re: Vacation of Portion of County Road 60M: Homewood & Alexander

1 message

Telluride Mountain Club <telluridemountainclub@gmail.com> Thu, Nov 3, 2016 at 3:39 PM

To: Mike Rozycki <miker@sanmiguelcountyco.gov>

Thanks for your help Mike,

We were able to sort it out on our end, I appreciate you getting back to me.

Telluride Mountain Club
www.telluridemountainclub.org
PO Box 1201, Telluride, CO 81435

On Mon, Oct 31, 2016 at 11:00 AM, Mike Rozycki <miker@sanmiguelcountyco.gov> wrote:

Heidi,

I know everyone's busy but I suggest you either look at the County web map using the ownership layer to identify the public land in this area or you could stop in and Karen or John can show you a large map of the portion of
60M that is requested by two large landowners to be vacated and the location of the public land that may be affected by the proposed road vacation. The application indicates that the applicants are willing to reserve an easement over the vacated ROW for pedestrian access only.

Mike Rozycki

On Mon, Oct 31, 2016 at 10:27 AM, Telluride Mountain Club <telluridemountainclub@gmail.com> wrote:

Hi Mike,

We received the following email from John. The mountain club is curious what public access this could affect, if any. Let me know when you get a chance. Thanks so much,

Heidi

Telluride Mountain Club
www.telluridemountainclub.org
PO Box 1201, Telluride, CO 81435

---------- Forwarded message ----------
From: **John Huebner** <johnh@sanmiguelcountyco.gov>
Date: Thu, Oct 27, 2016 at 9:25 AM
Subject: Vacation of Portion of County Road 60M: Homewood & Alexander
To: Mike Horner <mikeh@sanmiguelcountyco.gov>, Janet Kask <janetk@sanmiguelcountyco.gov>, Matt Zumstein <mzumstein@fs.fed.us>, teresa_pfifer@blm.gov, Bill Masters <sheriffbillmasters@gmail.com>, telluridemountainclub@gmail.com, Jeremy Fox <jeremy@smpa.com>

All,

San Miguel County
Colorado

Karen Henderson <karenh@sanmiguelcountyco.gov>

Re: Vacation of Portion of County Road 60M: Homewood & Alexander

1 message

Mike Horner <mikeh@sanmiguelcountyco.gov> Wed, Nov 16, 2016 at 10:18 AM
To: John Huebner <johnh@sanmiguelcountyco.gov>, Karen Henderson <karenh@sanmiguelcountyco.gov>, Mike Rozycki <miker@sanmiguelcountyco.gov>

Mike,
Please consider the following comments regarding the Homewood/Alexander request to vacate a portion of County Road 60M.

The section of CR 60M that is the subject of this request extends approximately 4.75 miles through the applicants property on East Wilson Mesa. The road currently passes through two short sections of public land administered by the Bureau of Land Management (BLM).

A portion of CR 60M was vacated in 2000 in accordance with Board of Commissioners Resolution 2000-19 through the Price property and is subject to a 20 foot wide "non-motorized recreational access and usage easement to the County for the benefit of the public" including, "hiking, running, bicycling, mountain bicycling, horse riding, nordic skiing, and snowshoeing and any combination thereof".

Road and Bridge is recommending approval of the road vacation application with the following conditions.

1. To be consistent and not create a dead end for pedestrian access across Wilson Mesa, the road vacation, if approved should be subject to the same non-motorized recreational access easement that was approved in BOCC Resolution 2000-19 for that portion of CR 60M that traverses the Price property.

2. I would request that a sign be placed on each end of the vacated section to indicate, "NON-MOTORIZED PEDESTRIAN ACCESS, STAY ON ROAD". The Road Department could install these signs in the spring, if approved.

3. All gates must remain unlocked or the property owners must install pedestrian access gates sufficient to allow unrestricted passage of bicycles or horses.

4. I realize access to public land may be an issue however, the first section of BLM land is only .53 miles from the west property gate and the second is 1.15 miles from the west gate. I believe hunters or hikers will still have reasonable pedestrian access to the public land. There are no roads or motorized trails on this section of public land so foot or horseback travel is simply extended about a half mile.

5. If approved by the Planning Commission with a recommendation to the Board of Commissioners, I would request that the BOCC public hearing notice also include language according to CRS 43-2-110 to consider the exclusion of CR 60M from the County Road Maintenance System.

Please let me know if you have questions.

Mike

On Thu, Oct 27, 2016 at 9:25 AM, John Huebner <johnh@sanmiguelcountyco.gov> wrote:
All,

The San Miguel County Planning Department has received an application to vacate a portion of County Road 60M located on Sunshine Mesa from the Homewood Family LTD Partnership and Alexander

Ranch LLLP. Please review the attached application and provide your comments by November 23, 2016. Please contact the Planning Department if you have questions. Thanks.

John

John Huebner
Planning Technician
San Miguel County
333 W. Colorado Ave, 3rd Floor
PO Box 548
Telluride, CO 81435
P:970-369-5437
E:johnh@sanmiguelcountyco.gov
W:www.sanmiguelcountyco.gov

--

Mike Horner, Superintendent
San Miguel County Road Department
PO Box 426
Norwood, CO 81423
970-327-4835
www.sanmiguelcountyco.gov

San Miguel County
Colorado

Karen Henderson <karenh@sanmiguelcountyco.gov>

RE: Vacation of Portion of County Road 60M: Homewood & Alexander

1 message

Lynn Padgett <lynnp@sanmiguelcountyco.gov> Fri, Nov 18, 2016 at 3:29 PM
To: Mike Rozycki <miker@sanmiguelcountyco.gov>, Joan May <joanm@sanmiguelcountyco.gov>, Kris Holstrom <kholstrom@gmail.com>, Hilary White <hilary@mountainfreak.com>
Cc: Steve Zwick <stevez@sanmiguelcountyco.gov>, Mike Horner <mikeh@sanmiguelcountyco.gov>, Karen Henderson <karenh@sanmiguelcountyco.gov>, Janet Kask <janetk@sanmiguelcountyco.gov>

Hi, in our recent 11/1/2016 BLM Uncompahgre Field Office (UFO) comments, pages 22-30 we discussed Land Disposals. What is interesting is that a BLM parcel in this area, accessible by 60M is actually recommended under the preferred alternative for disposal. San Miguel County specifically requested two things in the UFO comments: 1. That this parcel not be disposed of because it had important riparian habitat and 2. Because it was within the potential expanded San Miguel ACEC that the county desires.

So, for consistency, it makes sense that the county not vacate any portion of 60M that provides BLM land access and also that it be pointed out to the BLM that their letter to us further supports them designating the BLM land shown on page 30 of the attached comments as 1.Not designated for land disposal, 2. RMP decision should expand the San Miguel ACEC which would include this parcel, and 3. RMP should expand the proposed SMRA boundary to also include this parcel.

I can provide a less busy, clearer exhibit for staff presentation to BOCC if desired (the one on pg 30 of the attached doc is busy).

Best,

LynnP

From: Mike Rozycki [mailto:miker@sanmiguelcountyco.gov]
Sent: Friday, November 18, 2016 2:40 PM
To: Joan May <joanm@sanmiguelcountyco.gov>; Kris Holstrom <kholstrom@gmail.com>; Hilary White <hilary@mountainfreak.com>
Cc: Steve Zwick <stevez@sanmiguelcountyco.gov>; Mike Horner <mikeh@sanmiguelcountyco.gov>; Karen Henderson <Karenh@sanmiguelcountyco.gov>; Janet Kask

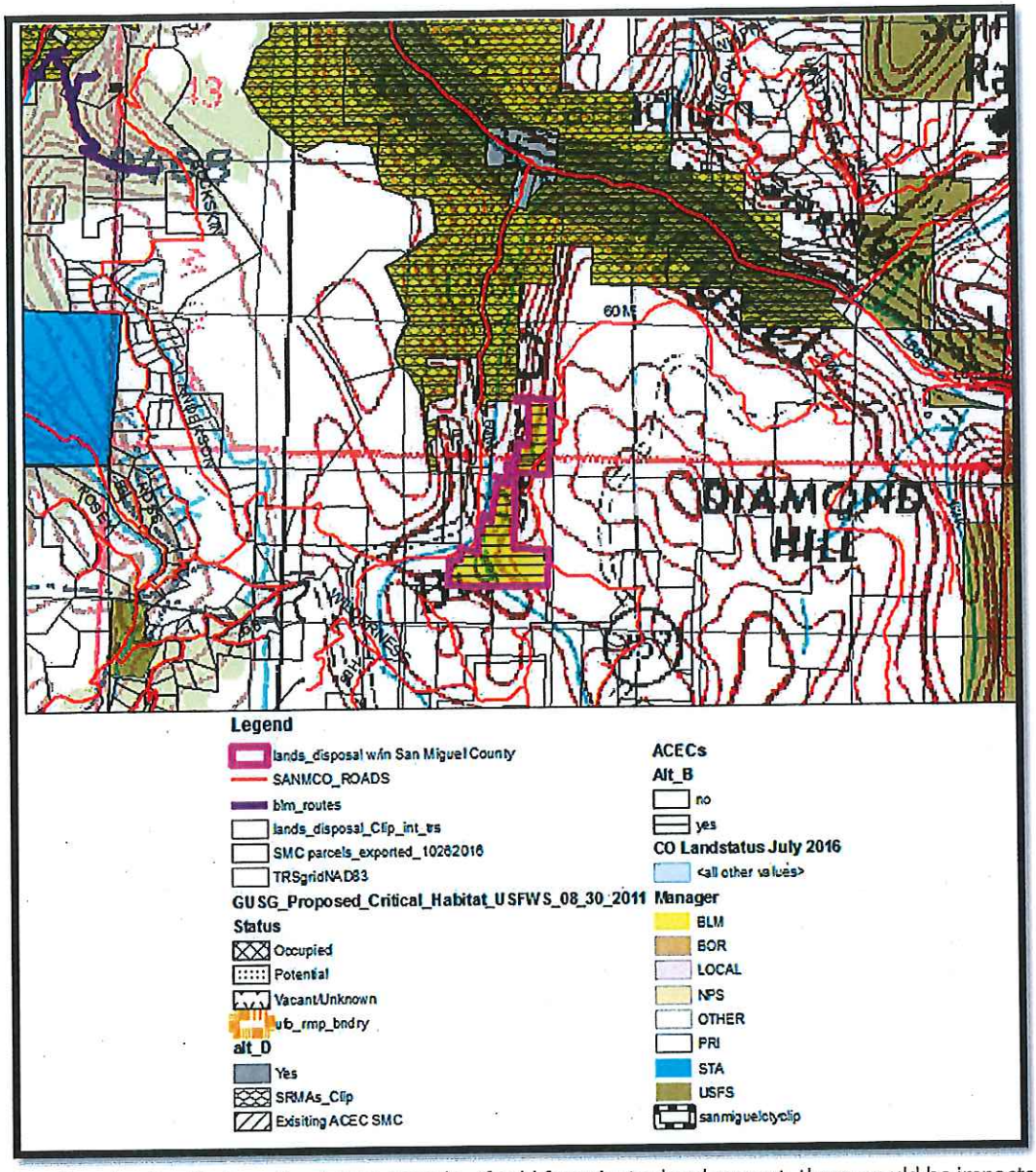


Figure 7e. Showing the Big Bear Creek Area parcels. If sold for private development, there would be impacts to the scenic and primitive qualities of these areas, as well as the important riparian ecosystem and wildlife. Alternatives B and D do not recommend these parcels for disposal. San Miguel County believes it is best for the public and for the protection of valuable river corridors and riparian habitat if these parcels are not disposed of. The San Miguel River Expansion ACEC should be designated, and it would include these parcels. The San Miguel River SRMA boundary should be expanded to include all of these parcels and the expansion ACEC.

Section 8. Wildlife management.

San Miguel County urges the BLM to further consult and consider the Colorado Parks and Wildlife (CPW), formerly Colorado Department of Wildlife (CDOW), detailed list of Best Management Practices (BMPs) for oil and gas development titled "Actions to Minimize Adverse Impacts to Wildlife Resources." with species-specific BMPs, including recommendations on protective buffers, timing information, and recommendations on surface density caps, referenced in their letter to BLM State Director Helen Hankins dated December 13, 2010.

United States Department of the Interior

Bureau of Land Management
Uncompahgre Field Office
2505 South Townsend Avenue
Montrose, Colorado 81401
(970) 240-5300

In Reply Refer to:
COC-39221 (CO-S050)

November 18, 2016

Via Email: karenh@sanmiguelcountyco.gov

San Miguel County Board of County Commissioners
c/o San Miguel County Planning Department
333 West Colorado Ave
Telluride, Colorado 81435

RE: Petition to vacate portion of County Road 60M

Dear Commissioners:

We received the notice for public hearing and comment regarding the petition to vacate portion of County Road 60M. We also appreciate the opportunity to participate in the onsite. We provide the following comments on the subject:

1. County Road 60M was included in the 1984 filing by San Miguel County for public highways under Revised Statute (R.S.) 2477, and serialized under case file COC-39221, and as such provides public access to public land.

2. We are opposed to any vacation or reduction of public access including vehicle use to public land along County Road 60M. We have been approached in the past in a similar request and our position is the same as it was before. County Road 60M provides public access including vehicle use to public land on top of the mesa which is not reasonably accessible from County Road 60M below along Big Bear Creek. See the enclosed map which depicts County Road 60M, the BLM land status, and the steep topography. To have to access from County Road 60M below along Big Bear Creek would require that the public cross Big Bear Creek and ascend the canyon wall which is extremely rugged and steep with slopes upwards to 50%. This is not a reasonable or feasible alternative for the public to have to climb the canyon wall in order to get to the public land on top of the mesa where they have vehicle access to now. In addition, in order for the public to have to try to navigate in order to stay on the public land from the canyon bottom to the top of the mesa would be very difficult as it would require them to have to go through two very narrow and steep strips of public land only a couple of hundred feet wide and cross the Muddy Creek drainage if assessing public land from the southern access point which is only approximately a 300 foot stretch along County Road 60M below. We anticipate this would result in more trespass on the other private landowners along the steep canyon wall than to those landowners on top of the mesa. Therefore, we do not see public access to public land from County Road 60M from below as an alternative. We also do not see pedestrian use only along County Road 60M as an

alternative as that would require the public to have to walk upwards of 1.5 miles to get to the same public land that they can drive to now. Further, County Road 60M provides legal vehicle access to the top of the mesa to those landowners along the canyon wall who have land on top of the mesa, and we have been approached by some of those landowners in the past in order to obtain access across public land from County Road 60M to get to their property on top of the mesa. To vacate the road as proposed would cut off their existing legal access as well. However, we would not oppose vacation of County Road 60M on top of the mesa where it leaves the public land at the furthest northeast corner of lot 9, section 33, T. 43 N., R. 10 W., NMPM, shown at the "X" on the enclosed map because there is no public land beyond this point.

We do want to point out that the current sign on County Road 60M on top of the mesa says there is no access to public land which is incorrect and needs to be changed. We can post signs along County Road 60M on top of the mesa where it enters and leaves public land in order to assist the public to stay on public land.

3. If County Road 60M were to no longer be a public road, then it would put the burden on any parties including the applicants for this petition and/or those landowners along the canyon wall who would want to use and/or maintain the road on public land beyond casual use to obtain a right-of-way under the Federal Land Policy and Management Act of 1976 (FLPMA) for those portions of the road on public land. Any right-of-way would be subject to processing and monitoring administrative fees, annual rent, and terms and conditions of use.

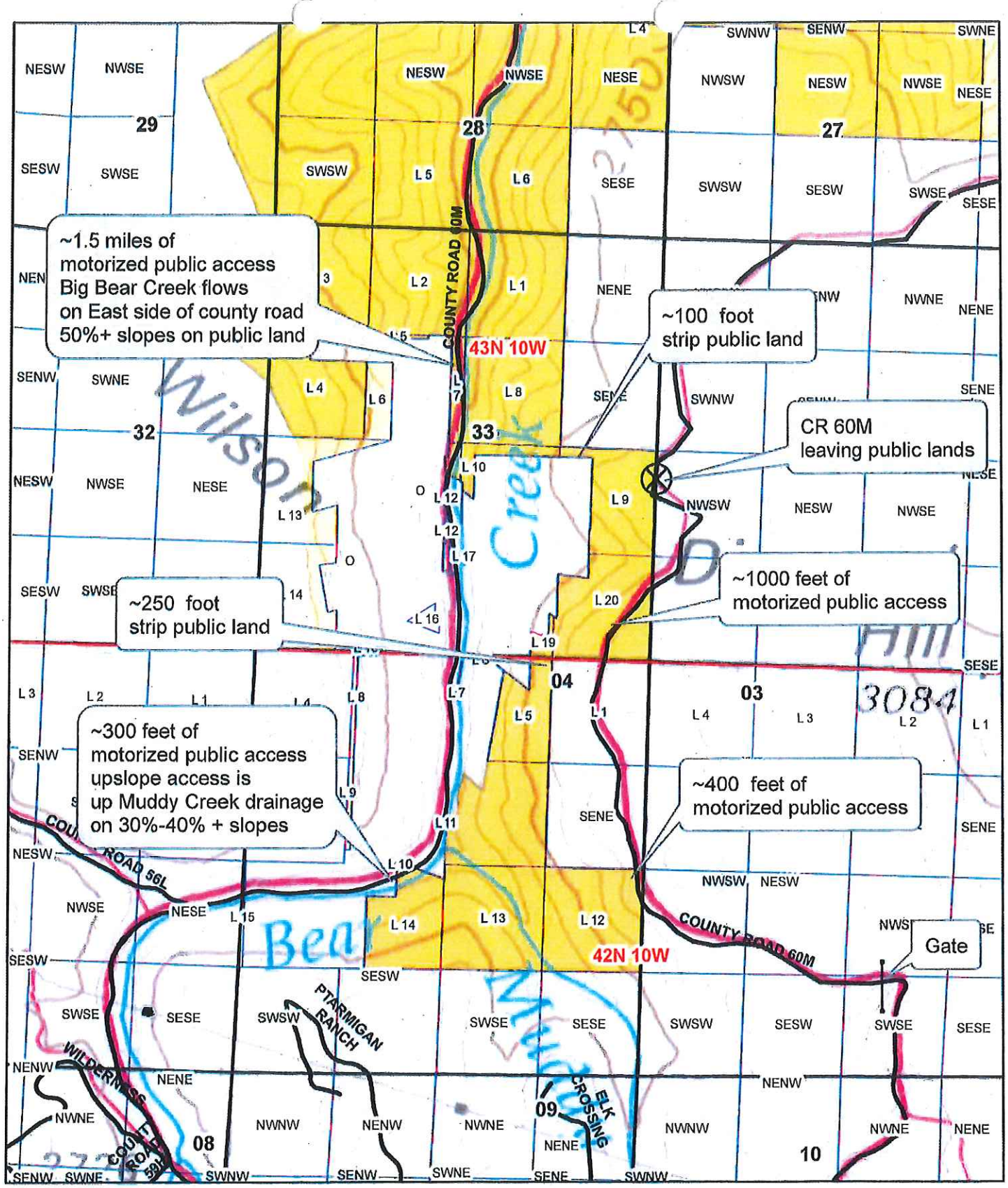
If you should have any further questions, please feel free to contact Teresa Pfifer of my staff at 240-5316. Thank you for your consideration of our comments.

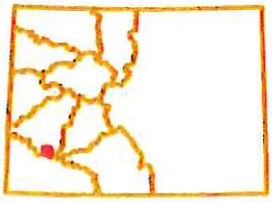
Sincerely,

Teresa Pfifer, Acting

for Samuel Dearstyne
Acting Field Manager

Enclosure (1)
1 – Map





San Miguel County
County Road 60M
Public Lands Access

N

No Warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual

0 0.5 Miles

Date: 11/18/2016

San Miguel County
Colorado

Karen Henderson <karenh@sanmiguelcountyco.gov>

Re: referral CR 60M vacation

1 message

Janet Kask <janetk@sanmiguelcountyco.gov> Wed, Nov 30, 2016 at 2:01 PM
To: Karen Henderson <karenh@sanmiguelcountyco.gov>

Hi Karen,
I've been reading the emails as they come in.
I just re-read everything once again dating back to 9/22.

My biggest concern would be public access.
It appears the applicant has agreed to allow continued use.
Yes, I realize it's limited to only pedestrian traffic.
However, motorized vehicles were never encouraged.
Therefore, I agree with Mike Horner's recommendations.

I also understand the positions of Lynn P. and the BLM.
BLM stressed concerns about the grade of the slope.
However, I'd have to visit the site to fully understand this.
I realize Lynn P. is objecting for consistency purposes.

Is this issue on the 12/7 BOCC agenda for discussion/approval?
Janet

On Tue, Nov 29, 2016 at 7:46 AM, Karen Henderson <karenh@sanmiguelcountyco.gov> wrote:
By the end of the week if you can.

On Sun, Nov 27, 2016 at 5:53 PM, Janet Kask <janetk@sanmiguelcountyco.gov> wrote:
Hi Karen,
Sorry, I was out of town for the holiday.
And, I have meetings in Norwood on 11/28.
What is your deadline?
Janet

On Tue, Nov 22, 2016 at 2:36 PM, Karen Henderson <karenh@sanmiguelcountyco.gov> wrote:
Hi Janet,

Just checking to see if you were going to provide comments on the CR 60M vacation.

Karen

--
Karen Henderson
Associate Planner
San Miguel County
970-728-3083
PO Box 548
Telluride, CO 81435
karenh@sanmiguelcountyco.gov

San Miguel County
Colorado

Mike Rozycki <miker@sanmiguelcountyco.gov>

Re: neighbor notices

1 message

Mike Rozycki <miker@sanmiguelcountyco.gov> Wed, Nov 30, 2016 at 1:13 PM
To: Rob Roberts <rroberts@du.edu>

Rob,

In checking our file ... We certified the application complete and sent out the referral memo to various entities on October 27th .... we provided the notice info and list of folks that needed to be noticed which included SMC Investments LLC in October ... In double checking the draft list and notice was sent to Michal Hockersmith who then sent out the notice on 11/21, as you indicated per the post mark ... This notice was sent out the requisite 15 days prior to the CPC public meeting scheduled for December 14th ...

Sorry for the confusion

Mike Rozycki

On Wed, Nov 30, 2016 at 10:47 AM, Rob Roberts <rroberts@du.edu> wrote:

> Mike,
>
> Concerning the timing of the notices that were sent out to neighbors concerning the Homewood/Alexander application, I received mine a few days ago. It is postmarked 11/21 (sent from Hockersmith Law). Paul Allaire, another neighbor, received his today. Guy Saperstein received his a few days ago.
>
> You indicated that notices were sent out in October. Are you referring to a different notice, perhaps from the County?
>
> Rob

--
Mike Rozycki
Planning Director
Phone: 970.728.3083
miker@sanmiguelcountyco.gov

SECTION 2-32: ACCESS TO PUBLIC LANDS

It is the policy of the County to preserve existing access points to public lands and to strive to secure new access points to public lands. To this end it is the policy of the County to:

2-3201

Insure open access to public lands while protecting the rights of private landowners;

2-3202

Favor pedestrian and non-motorized forms of access in pursuit of exercise, camping, hunting and fishing, nature study and similar uses minimizing impacts and preserving the natural environment over other types of access;

2-3203

Favor the maintenance of access into areas along routes that have been used in the past over the development of new access routes, unless the Master Plan recommends the development of a new route or if it is found that the abandonment of old access routes and the development of new ones will lead to significant reductions in environmental impacts and superior public access;

2-3204

Identify access routes in which the County has a legal interest and pursue the establishment of such interests by appropriate means;

2-3205

Identify those access routes of which preservation is essential to the maintenance of appropriate uses and activities, and take appropriate steps to secure those routes for ongoing public use; and

2-3206

Favor permanent and irrevocable rights of access over conditional or temporary rights.

SECTION 2-33: PRIVATE LANDS SURROUNDED BY PUBLIC LANDS (INHOLDINGS)

It is the policy of the County to promote and encourage the transfer of private inholdings to public ownership with the objective of promoting consistent management of the public lands to reduce conflicts between private owners and developers and the public at large. To this end it is the policy of the County to:

San Miguel County
Colorado

John Huebner <johnh@sanmiguelcountyco.gov>

Request to decline the Homewood and Alexander Application to vacate County Road 60M

1 message

timothy.cannon@usbank.com <timothy.cannon@usbank.com> Fri, Dec 2, 2016 at 9:23 AM

To: karenh@sanmiguelcountyco.gov, mikeh@sanmiguelcountyco.gov, miker@sanmiguelcountyco.gov, johnh@sanmiguelcountyco.gov, hilary@mountainfreak.com, joanm@sanmiguelcountyco.gov, janetk@sanmiguelcountyco.gov, kholstrom@gmail.com, telluridemountainclub@gmail.com

Hello,

It has come to my attention that the Homewood and Alexander families have submitted an application to vacate 4.75 miles of County Road 60M on East Wilson Mesa. This is a scenic area between what is known as the Homewood and Price Gates. Please see the attachments which are public record. This is a two step public process, first going to the SMC Planning Commission next week on December 7th and then on to the Board of County Commissioners.

The first attachment pertains to the Homewood and Alexander application. They propose pedestrian access on the road but eliminate vehicle assess with exceptions provided to SMPA. The applicants site public safety concerns and the fact that the road dead ends at the Price Gate on the far eastern edge of East Wilson Mesa.

The second attachment is comment from the BLM, as public lands are traversed by the road. The BLM comments only to preserve access to the lands under their management but not beyond that point, which is 1.5 miles inside what is termed The Homewood Gate. You will also find other SMC memos on the application.

The County has recently approved two County Road Vacations on Wilson Mesa. The first was with the Price application on County Road 60M from the entrance area of Bilk Creek proceeding to the escarpment on the eastern edge of East Wilson Mesa. This allows for pedestrian access only. The second instance was the Nichol's application on upper County Road 59H, which did access Silver Pick Basin. Both roads were historic access points to scenic areas on Wilson Mesa and a part of an extended road network used by the public. Both were instances of wealthy land owners developing homes using these public roads only later to provide arguments why the roads should be vacated.

I would like to offer other observations and comments. I request that you interview others on this important subject.

1. Applications such as these are elitist. No American should purchase and develop private lands by way of public roads and then claim the road should be used in a future fashion that they dictate or negotiate. This application is a Taking by the entitled at the expense of all Americans. For years the Homewoods and Alexanders have paid low agricultural tax rates that support ranching, which is viewed as many as a public benefit. County Roads and an extended network of other public roads, both County, State and Federal provide vital access to and from their exclusive holdings. All tax payers have support them on that basis.

2. Public Roads are Public Lands. Simply being on the public road is enough to be considered a public place. The BLM's position is unfortunate, because the BLM's viewpoint is limited to their tracts and not looking at the greater good of the public.

3. The fact that the road is a dead end, as the County unfortunately allowed the east end of County Road 60M to be vacated is a poor point. Their are multiple county roads in the region that dead end and are used by the public. Out and back journeys in vehicles are common and worthwhile in scenic areas.

4. The Homewoods and Alexanders are showing discrimination by wanting the road on their terms, limiting its use to only pedestrians, while using vehicles themselves. Pedestrian only is discriminatory of those with disabilities and limits any American to traverse or to

enjoy nature on what is now public property. We extend this benefit to all individuals of the world. Furthermore, a County official who have approved pedestrian only access on what were public roads should be held accountable to the American Disabilities Act. Quote:

The Americans with Disabilities Act (ADA) became law in 1990. The ADA is a civil rights law that prohibits **discrimination** against **individuals** with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.

1.

5. The Price Gate is currently locked. While this has nothing to do with the current application it is against the county's access agreement and is not being enforced. How is an individual with disabilities or otherwise to proceed through a locked gate? Is the County enforcing its previous agreements? Is it safe to assume that if the lock gate is locked and is entirely on the Price's land, that they locked it? A locked gate is against the agreement. Is the pedestrian gate at the base area of Bilk Creek functional for pedestrians? Take a look.

6. The Homewoods have several signs at the gate of their land to the west. I suggest you read the signs. As the BLM points out, the road does access public lands, whereas the Homewoods indicates it does not. Other signs on their property are full of warnings and highly intimidating, as well as difficult to discern if you can continue on the road or not.

7. With regards to points 5 and 6 above, both gates indicate a feeling to "Stay Out". Why should such people be afforded special accommodations in our community?

8. Please get the word out through your publication. Alert those interested in trails, scenic wonders and all those, particularly the disabled who wish to use public roads.

9. The Town of Telluride is a Civil Liberty Safe Zone and the County Seat of San Miguel County. The Town adapted the following principal, "**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TELLURIDE, COLORADO:**

Section 1. That the Town of Telluride has been, and remains, firmly committed to the protection of civil rights and civil liberties for all people." I believe the Town should not be silent on this application due to its commitment.

10. Importantly, please make it known that entitled individuals should not entice or influence public officials to surrender public lands or limit their use from us. Yes, Public roads are a civil rights and civil liberties issue of high importance. Public roads are one of the life lines that keeps all Americans equal. To take them away in a high fashion to serve the Prices, Homewoods, Alexanders and the Nichols is wrong. It is time to fight those that stop us in our tracks and tell us to stay out with their signs, their locks and their lawyers.

Please enter into public record this email.

Thank you,

Tim Cannon

cell (970) 708-1444

PO Box 4015. Residential Address: 634 County Road 59H, Telluride, CO 81435

U.S. BANCORP made the following annotations

Electronic Privacy Notice. This e-mail, and any attachments, contains information that is, or may be, covered by electronic communications privacy laws, and is also confidential and proprietary in nature. If you are not the intended recipient, please be advised that you are legally prohibited from retaining, using, copying, distributing, or otherwise disclosing this information in any manner. Instead, please reply to the sender that you have received this communication in error, and then immediately delete it. Thank you in advance for your cooperation.

---

4 attachments

referral.comments.pdf BLM letter 11/18/16 in packet
2333K

ATT00001.htm
1K

RVAC-10-16-2745.application.pdf Applicant Application 10/17/16 in packet
2299K

ATT00002.htm
2K

San Miguel County
Colorado

Karen Henderson <karenh@sanmiguelcountyco.gov>

Request to decline the Homewood and Alexander Application to vacate County Road 60M

1 message

SamanthaLyn Samuelson <slynsamuelson66@gmail.com> Fri, Dec 2, 2016 at 4:21 PM
To: karenh@sanmiguelcountyco.gov, mikeh@sanmiguelcountyco.gov, miker@sanmiguelcountyco.gov, johnh@sanmiguelcountyco.gov, hilary@mountainfreak.com, joanm@sanmiguelcountyco.gov, janetk@sanmiguelcountyco.gov, kholstrom@gmail.com, telluridemountainclub@gmail.com

To the people that make decisions effecting the public's use of PUBLIC County Roads:

I do not believe that public road 60M should be closed (at the whim of land owner's desires) for any reason. 60M is a designated public county road.

I drive & photograph on this particular road, as it has very unique views, lighting & features.

Why is there a lock now on a gate that accesses public roads?

Also, the nasty signs have no place on public roads &, yet, there has always been nasty threatening signs around the gate on 60M.
These signs at the gate are insulting, and they insinuate that it is not a public road when it is a public road.

Please do not take away 60M! I am the public!! It is my road to use!!

There is no way I could ever carry my photographic equipment as far as any "pedestrian right of way goes". I need my car!

Wealthy & elite land owners influencing the decisions to vacate a county roads is not something I wish to see happening in San Miguel County.

I cannot image anyone other than "the wealthy" making this type of request! Imagine me asking you to close a county road, cuz "I didn't want cars there!"

It is not in fair order of public land access to keep out the public from public lands!!
I believe those "posted nasty signs" are erroneous saying that "No Public Lands are accessed by this road 60M!"

Also, I might mention that I have had a very aggressive male truck driver follow me on 60M & then, scare me. His truck came roaring of the last residence before the gate on 60M! It is scary to have a big truck with a man pursue me on a public road & then, park & watch me photograph!

Cell phones do not always work in remote spots. I really have no use for this type of behavior that has happened to me! Looked to me like some form of intimidation...but I just waved at him and smiled!! I could see exactly where the truck came from, so I know it was from the residence mentioned!! Not very appropriate behavior!! I am a senior (67 years old), and felt that for whatever reason, this person was attempting to harass me. Why would anyone watch me get out of my car, get my tripod & camera to take landscape scenic images? How about me reporting him to Bill Masters? It would have been his word against mine!

Now vacating the road for the wishes of land owners? Public Road! OH, please, just let these people move away and build their own "private roads" and not take away public roads!! In my view point, it is your job to represent the public & public roads, not cater to special interests!! Maybe these people should not

have moved where they moved as they knew it was a public road!!! The road was there when they moved!! They can now move away to build their own private access roads to their homes, instead of trying to take public (my!) access away!

Decline the Homewood & Alexander Applications to vacate 60M which is one of my VERY favorite photographic spots.

Respectfully submitted,
Samantha Lyn Samuelson
slynsamuelson66@gmail.com

12/5 Hodenstrath

San Miguel County
Colorado

Karen Henderson <karenh@sanmiguelcountyco.gov>

Proposed Vacation of CR 60M

1 message

Guy Saperstein <gts@saperstein.com> Fri, Dec 2, 2016 at 6:21 PM
To: karenh@sanmiguelcountyco.gov

To The Planning Commissioners:

For many years, I was a Planning Commissioner in the City of Berkeley, so I feel your pain! Actually, I know the job and how diligent you need to be to do it well, so I thank you in advance for your public service.

Also, along with my wife Jeanine, I am the owner of Lap Dog Ranch, 6800 CR 60M, which is immediately adjacent to the Homewood Ranch and adjacent to the portion of CR 60M proposed for vacation.

When we bought our property five years ago, the ability to drive up CR 60M to the BLM land and beyond was a real amenity. [Note, I am a disabled person, so vehicular use is significant to me] It is still an amenity and one we happily share with the public, despite the fact that everyone going that route drives past our property.

I understand this road has been a public road for a long time---someone told me 100+ years; I have no confirmation of that---but for a very long time the public has been enjoying access on that road. Extinguishing public access would diminish the expectations we had when we bought our property, diminish our use and diminish the value of our land. In my opinion, it would be highly unfair to the public to extinguish public rights for the benefit of three families, especially when the public has been using this road for so many years.

As a related matter, there is a gate next to my property that the Homewood Ranch has erected with the obvious intention of deterring public use. A number of the warnings on the signs are wrong as a matter of law and should be corrected so that the public is not intentionally confused about rights to use this road.

Best Regards,

Guy T. Saperstein
6800 County Road 60M
510/595-1452

"Be the person your dog thinks you are." Moxie and Wookie

San Miguel County
Colorado

Mike Rozycki <miker@sanmiguelcountyco.gov>

Fwd: Request from the Homewood Family and Alexander Family to close a short portion of County 60 M that goes nowhere and you can't turn around.

1 message

Henson Jones <hensonj@me.com> Fri, Dec 2, 2016 at 6:50 PM
To: Mike Rozycki <miker@sanmiguelcountyco.gov>

Mike I would like to add to this that there are four gates across the Homewood property to keep the various pastures separated. These gates are heavy and you have to lift them to get them open. The only way to avoid this is for the County to install cattle guards and they are expensive.

Begin forwarded message:

From: Henson Jones <hensonj@me.com>
Subject: Request from the Homewood Family and Alexander Family to close a short portion of County 60 M that goes nowhere and you can't turn around.
Date: December 2, 2016 at 3:57:00 PM PST
To: Mike Rozycki <miker@sanmiguelcountyco.gov>

Dear Mike,

I have read the objection letter from Tim Cannon of US Bank to the closing of the road.

I have been a neighbor of the Homewoods and the Alexanders since 1969. I believe the Homewood Family purchased their land in 1943 or 54. The Alexander Family has owned their land since the early 1900's. Neither one of these families can be considered "wealthy land owners developing homes". These are hard working farming and ranching families trying to keep the agricultural heritage of San Miguel County alive and not be a subdivision as implied.

I also find it offensive to refer to the Homewood Family and the Alexander Family as "elitist". They are hard working ranching and farming families and few of us could keep up with them doing a day's work. They are as far as you can get from being "elitist".

I have personally see people drive through the gate, park their car on the Homewood's property, unload baskets and have a picnic on the Homewood's land both off the road or up on Diamond Hill. I can't count the number of times I have told people they are trespassing and they don't listen to me. Bill Masters has had to send a deputy up to Wilson Mesa on numerous occasions to issue a trespass to someone.

Another problem is that people will go through the gates and leave them open. Then the cows get out and someone will take two days to try and get them all back where they belong.

I support the closing of the road. Some years ago a judge declared the road was only 20 feet wide all the way through. So it is virtually impossible for a vehicle to drive from one end to the other and turn around. They would have to back up the entire way to stay on the road.

We know there has been a drought and grass is not what it used to be. Just look at the valley Floor. When someone drives in the Homewood gate and decides to drive out on a point to look at the view or to have a picnic it destroys the grass.

Another problem these families face is the liability of someone going off the road or trespassing and getting injured.

The Homewoods and the Alexanders are not "gentlemen farmers" who do this as a hobby. They are serious ranchers. The have cows on West Wilson Mesa, Iron Springs Mesa, Horsefly Mesa, in Norwood and out near Paradox. They do not need to have their work made harder.

The portion of County Road 60M they are talking about is in very poor condition, only 20 feet wide and goes no where. You can get the same vistas and scenery from the rest of 60 M that leads up to their gate. There are miles and miles or paved or well maintained roads in San Miguel County with gorgeous vistas for people to drive on if they find it difficult to walk or climb on them.

I believe that Mike Horner who is head of the County Roads Dept has recommended the closing of this portion. He told me that would supported it when I spoke with him.

I support the Homewoods and Alexanders petition and Mike Horner's recommendation.

Regards,

Hans

Hans Jones
hensonjones@gmail.com
510-527-0334
970-729-0000(c)

Hans Jones
hensonjones@gmail.com
510-527-0334
970-729-0000(c)

12/5 Hackersmith

San Miguel County
Colorado

Karen Henderson <karenh@sanmiguelcountyco.gov>

Re: Proposed Vacation of CR 60M

1 message

Paul Allaire <pallaire010@gmail.com> Sat, Dec 3, 2016 at 12:55 PM
To: karenh@sanmiguelcountyco.gov

> On Dec 3, 2016, at 2:45 PM, Paul Allaire <pallaire010@gmail.com> wrote:
>
> I am the owner of the home and property at 700 Elk Crossing which is off 60M and part of Ptarmigan Ranch.
> I write to oppose the proposed Vacation of 60M. We have enjoyed the natural beauty afforded by public access
> to this road. The ability of our family to access this area would be severely limited if Vehicle traffic was not allowed.
> This would diminish our enjoyment of our life on the Mesa and I believe also diminish the Value of our Property.
> Keeping public access clearly increases traffic past our property but I believe that all our county tax payers
> have a right to enjoy this public road and the wonderful vistas it provides.
> I recommend that you reject this Vacation Proposal.
> Thank You.
> Paul Allaire

San Miguel County
Colorado

Karen Henderson <karenh@sanmiguelcountyco.gov>

Ptarmigan Board letter re Homewood/Alexander application

1 message

Rob Roberts <rroberts@du.edu> Mon, Dec 5, 2016 at 8:57 PM
To: Karen Henderson <karenh@sanmiguelcounty.org>
Cc: Mike Rozycki <miker@sanmiguelcountyco.gov>

Hi Karen & Mike,

I am submitting this letter from the Board of Directors of Ptarmigan Ranch. The other documents are supporting materials referred to in the letter.

Thanks,

Rob Roberts

6 attachments

Ptarmigan BOD letter 12-5-16.pdf
72K

334226.pdf
282K

335271.pdf
1166K

335279.pdf
438K

335280.pdf
509K

335281.pdf
378K

Ptarmigan Ranch Owner's Association, Inc.

December 5, 2016

VIA EMAIL
San Miguel County Planning Commission
and Board of County of County Commissioners
c/o Mike Rozycki, County Planning Department

San Miguel Planning Commission,

We are submitting this letter for the Ptarmigan Ranch Owner's Association Board of Directors. Some of our owners may submit individual letters as well.

Some members of our HOA received the public hearing notice concerning an application ("Application") proposing to vacate a portion of County Road 60M. The Application was submitted on behalf of Homewood Family Limited Partnership and Alexander Ranch, LLLP (collectively, the "Applicant").

The Applicant describes the portion of CR 60M proposed for vacation is located largely within their holdings, with the exception of a short segment that crosses BLM property and point out that CR 60M dead-ends at the point where their property intersects with property owned by the Price family. The Applicant points out that the County had vacated a portion of CR 60M through the Price property. The Applicant is looking to achieve a similar outcome with this Application. The Applicant claims that vacation is appropriate because of concerns relating to safety associated with conflicts between heavy equipment and vehicles used by applicant and the public using the road. In addition, the Applicant expressed concerns over trespasses which are said to occur onto their property, which they claim is facilitated by the public access over CR 60M through their property.

We are opposed to the Application and respectfully request that the County not agree to vacate any remaining portion of CR 60M for the following reasons:

1. CR 60M currently provides public access to important and desirable scenic vistas occurring along this portion of Wilson Mesa. While we agree with the position taken by the BLM in its November 18, 2016 letter urging the County to not vacate the portion of CR 60M that extends through its holdings to insure continued public access to public lands, the Association takes the further position that the section of the road beyond the BLM property is still a very valuable and important resource, which allows the public to drive along a very scenic stretch of County Road. And although this section of road does not necessarily provide access to other public land, keep in mind that the road itself is public land, which affords access to these amazing scenic vistas. While the Applicant is proposing to grant pedestrian access to the County to enable public continued access along the vacated portion of CR 60M, not all members of the public would be able to walk or ride a bike along the road for various reasons such as age, health, ADA factors/consideration, etc. The Association urges the County not to forego full public access to a public land.

2. The Applicant suggests that a reason justifying the vacation of CR 60M is to avoid/eliminate possible safety concerns attributable to interactions with the Applicant's vehicles and equipment and public use. There is no evidence that the safety conditions and concerns noted by Applicant actually occur. We are not aware of such circumstances. Of course, the applicant's proposal would still have the public using CR 60M, albeit in a more vulnerable position as a pedestrian or biker or equestrian user, so the issue is not avoided.

3. The Applicant also suggests that an additional reason justifying the vacation of CR 60M is to better manage trespassers (largely hunters) who access the applicant's property along CR 60M. The issue could be handled many other ways, with less impact to the public as would result from the vacation of CR 60M, such as signage, cameras and security patrols.

4. The Applicant points to the fact that the County previously agreed to vacate a portion of CR 60M that crosses certain property referred to by the Applicant as the Price property to the north. As noted in BOCC Resolution 2009-19 recorded on May 16, 2000 in Reception No. 334226, which approved the vacation of a portion of CR 60M that crosses the Price property, the facts and circumstances surrounding the County's election to vacate was much different from the facts and circumstances presented by this Applicant. Of note and as reflected in BOCC Resolution 2009-19, the vacation of CR 60M was part of a larger comprehensive plan concerning various property rights and interests surrounding what was commonly referred to as the "Bilk Creek Parcel", a 440 acre holding that extended along the northerly edge of Wilson Mesa and included lower portions of the Bilk Creek riparian area). Other transactions that occurred along with the vacation of CR 60M, which were identified by the County as considerable public benefits, including the conveyance to the County of certain parcels that were created from the Bilk Creek Property to accommodate a parking lot and a climbing wall that were popular for use by the public, a recreational trail easement which was granted to the County to enable the public use of a recreational trail along Bilk Creek through the property, the placement of a conservation easement on the Bilk Creek property restricting its development from the potential twelve "use by right 35 acre parcels" to two parcels, with further limits on the size of development on one of the parcels that could be developed, and a recreational trail easement which was granted to the County to enable public non-motorized use of a recreational trail along the portion of CR 60M being vacated.

Copies of these documents are being forwarded to the County with this letter.

Quite obviously, the public gained substantial benefits in the package of gives and gets that occurred in the transaction involving the vacation of CR 60M through the Bilk Creek/Price property.

An application involving the vacation of a public ROW is a discretionary action by the County and the County is under no obligation to grant the requested vacation. In this Application, there is little or no public benefit, as the public already has the right to use CR 60M for all of the uses and activities that the Applicant is willing to give back to the County. There is really no public benefit in this Application and certainly nothing close to the public benefits derived by the County in connection with the vacation of CR 60M through the Bilk Creek/Price property. For these reasons, we urge the County to deny the Application seeking to vacate CR 60M through the Applicant's property.

Sincerely,

Board of Directors of the Ptarmigan Ranch Home Owners Association

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334226

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, COLORADO CONDITIONALLY VACATING SPECIFIED PORTIONS OF THE ROADWAYS FOR COUNTY ROADS 60M, 61K AND 62K

Resolution #2000 – 19

WHEREAS, Silver Mountain Industries, Inc., (SMI) as the owner of a parcel of real property legally described as the Northwest ¼ and the South ½ of Section 36, Township 43 North, Range 10 West of the New Mexico Principal Meridian, except those lands contained in the Valley Placer, USMS, 15120 (the subject parcel), has submitted an application on behalf of itself and the contract purchasers of the parcel, H. Charles Price and Jessie H. Price, to vacate specific portions of the roadways for County Roads (C.R.) 60M, 61K and 62K that traverse the parcel, as more fully described in its application; and,

WHEREAS, J. David Reed, attorney for H. Charles Price and Jessie H. Price, by letter dated March 15, 2000, to Karen Henderson, Associate San Miguel County Planner, represented that in consideration for the Board of Commissioners approving SMI's road vacation application for C.R. 60M, 61K, and 62K, the Prices would grant an easement to San Miguel County for recreational trails uses by the public, consistent with Section 5-506 B. of the San Miguel County Land Use Code (LUC), to be located within and upon the historic public road rights-of-way for C.R. 60M and 61K proposed to be vacated, provided that the easements to be granted would not be subject to LUC Section 5-506 A; and,

WHEREAS, the San Miguel County Planning Commission (CPC), pursuant to section 30-28-110, C.R.S., and LUC section 3-601 J., considered SMI's application to vacate specified portions of C.R. 60M, 61K, and 62K at a regular meeting on April 12, 2000, at which the CPC voted unanimously to recommend to the Board of County Commissioners (BOCC) that the application be denied; and,

WHEREAS, pursuant to section 43-2-303, C.R.S., the BOCC considered SMI's application to vacate certain portions of C.R. 60M, 61K, and 62K at a duly noticed regular meeting on May 3, 2000, in Telluride, Colorado, the statutory requirement of notice to adjoining landowners having been satisfied by the applicant, at which meeting the BOCC received and considered evidence and testimony from representatives of the applicant, the Prices, their attorneys, as well as representatives of various groups and members of the public, regarding the appropriateness of vacating the portions of C.R. 60M, 61K, and 62K specified in SMI's roadway vacation application: and,

WHEREAS, section 43-2-303(2)(a), C.R.S., provides that, "No platted or deeded roadway or part thereof or unplatted or undefined roadway which exists by right of usage shall be vacated so as to leave any land adjoining said roadway without an established public road or private-access easement connecting said land with another established public road." and the applicant recognizes and agrees that any BOCC approval of the roadway vacation application must and would be expressly conditional upon it satisfying this statutory requirement and granting those appropriate private access easements as may be required to assure that adjoining parcels would have access to another established public road; and,

WHEREAS, during the BOCC's May 3, 2000 meeting, the Prices represented to the BOCC that they were prepared to grant permissive hiking and biking access to members of the public along that portion of C.R. 62K sought to be vacated, such access to be administered by The Nature Conservancy, as the Grantee of a Deed of Conservation Easement to be imposed upon the subject property should the Prices acquire title to it, in consultation with the Prices, and subject to the right of The Nature Conservancy, pursuant to a Trail Usage and Administration Agreement between the Prices and The Nature Conservancy to close or restrict public access and usage of that portion of C.R. 62K under certain conditions to be specified in the Trail Usage and Administration Agreement; and the Prices further represented to the BOCC that should they install a locked gate on the portion of C.R. 60M proposed to be vacated, to be located in the immediate vicinity of that road's intersection with C.R. 62K, that access will be provided to San Miguel County Road and Bridge Department, the San Miguel County Sheriff's Department, and the Telluride Fire Protection District, at any time such agencies determine that emergency access to the vacated portion of C.R. 60M is required; and,

WHEREAS, the BOCC does hereby find and determine that no private land adjoining C.R. 60M, 61K, and 62K would be left without an established public road or private-access easement connecting said land with another established public road, should the application, as presented be granted and approved, since any such approval would be expressly conditioned upon the applicant granting any required private-access easements to owners of adjoining private lands to become effective upon the vacation of the portions of C.R. 60M, 61K, and 62K specified in the application; and,

WHEREAS, the BOCC does further find and determine, based upon the evidence and testimony received at the public meeting on SMI's application, that the requested vacation of the specified portions of C.R. 60M, 61K, and 62K, that are the subject of the application, is reasonable, appropriate, and in the public interest, provided the following conditions are satisfied: a) the Prices acquire title to the subject property from SMI, subject to a Deed of Conservation Easement to The Nature Conservancy permitting no more than two home sites on the subject parcel; b) the dismissal, with prejudice, of the ongoing litigation initiated by SMI and Leucadia National Corporation against the BOCC, Case No. 98-WM-1860, United States District Court for the District of Colorado, and Case No. 00 CV 15, Div. 1, District Court, San Miguel County, Colorado; and, c) the Prices granting non-motorized recreational access

and usage easements to the County, for the benefit of the public, for those portions of C.R. 60M and 61K to be vacated, and for that portion of C.R. 62K to be vacated, granting a permissive non-motorized public recreational access and usage easement to The Nature Conservancy, to be limited to hiking and biking uses, to be administered by the Nature Conservancy, in consultation with the Prices, in accordance with applicable terms and conditions of the Deed of Conservation Easement for the subject property and a Trail Usage and Administration Agreement between the Prices and The Nature Conservancy, the purpose of which shall be to foster the Prices' intent to provide the public with a tranquil, contemplative environment in which to enjoy the natural beauty of the area, said Agreement granting the right and the power to The Nature Conservancy to close or restrict public access and usage of the vacated portion of C.R. 62K in accordance with gradual methods of implementation, as appropriate under the circumstances, should The Nature Conservancy determine, in consultation with the Prices, that the Prices intent as set forth herein is being violated by the occurrence of verified incidents of trespass, vandalism, adverse environmental impacts, substantial littering, and such other parameters as in the judgment of the Nature Conservancy, violate the Prices' intent, but prohibiting any capricious or arbitrary exercise of such right, such closure or restriction to be effective upon notice to, and consultation with, the BOCC.

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

1. SMI's application to vacate the public roadway for that section of C.R. 60M located within the subject parcel, beginning at a point at the intersection of the centerlines of County Roads 60M and 62K from which the center ¼ corner of Section 36, Township 43 North, Range 10 West, New Mexico Principal Meridian. bears 87°46'33" E, 146.26 feet, and continuing a distance of approximately 5,500' to its intersection with C.R. 61K, is hereby conditionally granted and approved, such approval being expressly subject to the Applicant, both SMI and/or the Prices, as appropriate, satisfying the specific conditions set forth hereinbelow.

2. SMI's application to vacate the public roadway for that section of C.R. 62K located within the subject parcel, beginning at a point at the intersection of the centerlines of County Roads 60M and 62K from which the center ¼ corner of Section 36, Township 43 North, Range 10 West, New Mexico Principal Meridian bears 87°46'33" E, 146.26 feet, and continuing a distance of approximately 3000', is hereby conditionally granted and approved, such approval being expressly subject to the Applicant, both SMI and/or the Prices, as appropriate, satisfying the specific conditions set forth hereinbelow.

3. SMI's application to vacate the public roadway for that section of C.R. 61K located within the subject parcel, beginning at a point at the intersection of the centerlines of County Roads 60M and 61K, and continuing in a southerly direction approximately 1950', is hereby conditionally granted and approved, such approval being expressly subject to the Applicant, both SMI and/or the Prices, as appropriate, satisfying the specific conditions set forth hereinbelow.

4. The roadway vacation grants specified in this Resolution shall become effective only upon satisfaction of all the following conditions:

a. the conveyance of fee title for the subject parcel from SMI to the Prices, subject to the Deed of Conservation Easement to The Nature Conservancy allowing the construction and occupancy of not more than two single family residences and associated outbuildings within the subject parcel, such Deed of Conservation Easement to be drafted in consultation with the San Miguel County Attorney;

b. the dismissal, with prejudice, of the ongoing litigation initiated by SMI and Leucadia National Corporation against the BOCC, Case No. 98-WM-1860, United States District Court for the District of Colorado, and Case No. 00 CV 15, Div. 1, District Court, San Miguel County, Colorado;

c. the Prices granting non-motorized recreational access and usage easements to the County, for the benefit of the public, for those portions of C.R. 60M and 61K to be vacated;

d. the Prices granting a permissive non-motorized public recreational access and usage easement, running with the land, to The Nature Conservancy for that portion of C.R.62K to be vacated, to be limited to public hiking and biking uses, to be administered by The Nature Conservancy, in consultation with the Prices, in accordance with applicable terms and conditions of the Deed of Conservation Easement for the subject property and a Trail Usage and Administration Agreement, to run with the land, between the Prices and The Nature Conservancy, the purpose of which shall be to foster the Prices' intent to provide the public with a tranquil, contemplative environment in which to enjoy nature and the natural beauty of the area, said Agreement granting the right and the power to The Nature Conservancy to close or restrict public access and usage of the vacated portion of C.R. 62K in accordance with gradual methods of implementation, as appropriate under the circumstances, should The Nature Conservancy determine, in consultation with the Prices, that the Prices intent as set forth herein is being violated by the occurrence of verified incidents of trespass, vandalism, adverse environmental impacts, substantial littering, and such other parameters as in the judgment of the Nature Conservancy, violate the Prices' intent, but prohibiting any capricious or arbitrary exercise of such right, such closure or restriction to be effective upon notice to, and consultation with, the BOCC;

e. the Prices granting any statutorily required private-access easements to owners of adjoining private lands to become effective upon the vacation of the portions of C.R. 60M, 61K, and 62K specified in the application;

f. the Prices conveying fee title to the San Miguel County by warranty deed, free and clear of any liens, encumbrances, or security interests, of record, for those parcels of real property described in the subdivision exemption application for Essential Community Facilities submitted by SMI, as conditionally approved by the BOCC at its May 3, 2000 meeting; such conveyance to be subject to: i) the Deed of Conservation Easement to the Nature Conservancy; ii) the Easement and Agreement regarding trail usage and administration for the vacated portion of C.R. 62K, and, iii) any access easements reserved for the benefit of the Prices and adjoining land owners.

5. Should the owner of the subject parcel install a locked gate on the portion of C.R. 60M vacated pursuant to this Resolution, any such gate shall be located in the immediate vicinity of that road's intersection with C.R. 62K and shall include an auxiliary gate allowing for the passage of equestrians, pedestrians and bicyclists. The owner shall make appropriate arrangements for providing vehicular access to the San Miguel County Road and Bridge Department, the San Miguel County Sheriff's Department, and the Telluride Fire Protection District, at any time such agencies determine that emergency access to the vacated portion of C.R. 60M is required. Such appropriate arrangement shall include, but not be limited to, the owner providing functioning keys for the gate lock(s) and/or lock combinations to the designated agencies.

6. Pursuant to section 43-2-302, C.R.S., all of San Miguel County's right, title, and interest in the vacated portions of C.R. 60M, 61K, and 62K road rights-of-way, as described herein, shall vest in Silver Mountain Industries, Inc., and its successors in interest, as the owner of the land abutting such vacated portion of the specified County road rights-of-way, upon satisfaction of the conditions set forth in section 4.- a., b., c., d., e., and f., hereinabove.

At its May 3, 2000 meeting, the BOCC approved the Motion to conditionally vacate the specified portion of C.R. 61K by a vote of 2 – 1, with Zivian opposed; the BOCC approved the Motion to conditionally vacate the specified portion of C.R. 62K by a vote of 2 –1, with Zivian opposed; and the BOCC approved the Motion to conditionally vacate the specified portion of C.R. 60M by a vote of 2 – 1, with Ebert opposed.

Done and Approved at Telluride, Colorado, on May 10, 2000.

BOARD OF COUNTY COMMISSIONERS
SAN MIGUEL COUNTY, COLORADO

By: Vernon E. Ebert – Chair Pro-tem

ATTEST:

K. K. Larsen, Deputy Clerk to the Board

COUNTY CLERK SEAL SAN MIGUEL COUNTY COLORADO

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SAN MIGUEL COUNTY, CO
GAY CAPPIS CLERK-RECORDER
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335271

DEED OF CONSERVATION EASEMENT
BILK CREEK

(San Miguel - Bilk Creek/Silver Mountain Industries) - Colorado

THIS DEED OF CONSERVATION EASEMENT is made this 12th day of June, 2000, by and between SILVER MOUNTAIN INDUSTRIES, INC., a Utah corporation, whose address is 529 East South Temple, Salt Lake City, Utah 84201 (the "Grantor"), and THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation, whose principal address is 4245 North Fairfax Drive, Suite 100, Arlington, Virginia 22203 (the "Conservancy").

Exhibits to this Deed of Conservation Easement include the following:

Exhibit A – Legal Description of the Property
Exhibit B – Map of the Property
Exhibit C – Acknowledgment of Easement Documentation Report
Exhibit D – Climbing Wall Parcel
Exhibit E – Parking Area Parcel
Exhibit F – Climbing Wall Access Easement

WITNESSETH THAT:

Grantor is the owner of certain real property in San Miguel County, Colorado, consisting of 439 acres, more or less, more particularly described and shown in **Exhibit A** and **Exhibit B** attached hereto and incorporated herein by this reference (the "Property").

The Property currently remains in a substantially undisturbed, natural state and has significant ecological and open-space values as defined in C.R.S. §§ 38-30.5-101 to 38-30.5-111, and provides significant relatively natural habitat for native plants and wildlife.

The Property includes a portion of Bilk Creek, a tributary to the San Miguel River.

Protection of the Property will contribute to the ecological integrity of Bilk Creek and the San Miguel River, and will conserve significant relatively natural habitat for wildlife and plants.

The Property's significant and relatively natural habitat and ecological values include a variety of natural vegetation communities such as aspen/spruce/fir woodlands, and cottonwood/willow-dominated riparian areas and provides relatively natural habitat for native wildlife, including elk (cervus elephus) and Rocky Mountain mule deer (Odocileus hemionus).

The Property is in close proximity to the Uncompaghre Natural Forest and the Lizard Head Wilderness Area. Protection of the Property contributes to the natural values found in the Uncompaghre National Forest and the Lizard Head Wilderness Area.

The State of Colorado has recognized the importance of private efforts to protect natural, scenic, open and agricultural lands in the State by the enactment of C.R.S. §§ 38-30.5-101 to

38-30.5-111. Conservation of the Property's Conservation Values by the grant of a conservation easement as set forth in this Deed will further the purpose of C.R.S. §§ 38-30.5-101, *et seq.*, which provide for the establishment of conservation easements to maintain land "predominantly in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, recreational, forest or other use or condition consistent with the protection of open land having wholesome environmental quality or life-sustaining ecological diversity ..."

Protection of the Property will also further the following established governmental and public policies:

> C.R.S. § 35-3.5-101, which provides in part that "it is the declared policy of the state of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products."
>
> San Miguel County Open Space Commission Mission Statement, which in part "seeks to protect and conserve open space for people, natural habitat for flora and fauna, and agricultural lands for the farming and ranching communities through San Miguel County for this and future generations."
>
> Section 2-12 of the San Miguel County Land Use Code, which provides, in part, that "[I]t is the policy of the County to preserve the scenic quality of the lands within the County for the benefit of its residents and the continued viability of a resort economy which is dependent upon the quality of its rural and natural setting. To this end, it is the policy of the county to:
>
>> 2-1201 Preserve the natural appearance of the mountain slopes ... [and]
>>
>> 2-1205 Preserve and create scenic views of the surrounding mountains from public places within the County ..."

All of these natural elements and ecological values are of great importance to Grantor and to the people of San Miguel County and the State of Colorado, and are worthy of preservation.

Grantor, as owner of the Property, owns the affirmative rights to identify, preserve, and protect in perpetuity its open space character and its significant relatively natural features and values.

Grantor desires and intends to transfer such rights to the Conservancy.

The Conservancy is a private organization organized to protect and conserve natural areas and ecologically significant land for scientific, charitable, and educational purposes, and is a "charitable organization" under the terms of C.R.S. § 38-30.5-104(2) and is a "qualified organization" within the provisions of Section 170(h) of the Internal Revenue Code of 1986, as amended (the "IRS Code"), qualified to acquire and hold conservation easements, and meets the requirements of the IRS Code as a § 501(c)(3) exempt organization.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants contained herein, pursuant to C.R.S. §§ 38-30.5-101 to 38-30.5-111, Grantor hereby grants and conveys to the Conservancy, its successors and assigns, a perpetual Conservation Easement consisting of the rights and restrictions enumerated herein, over and across the Property (the "Easement").

1. Purposes. It is the purpose of the Easement to preserve and protect in perpetuity and, in the event of their degradation or destruction, to enhance and restore the open space and significant relatively natural features and values of the Property. It is further the specific purpose of this Easement to conserve important habitat for wildlife; to protect rare or unique native plants currently known or later identified; and to conserve the diverse forest, meadow, and riparian vegetative communities and the wildlife inhabiting these communities. In achieving these purposes, it is the intent of the Easement to permit such uses of the Property as may be conducted consistent with the conservation values protected herein.

Pursuant to the terms of C.R.S. §§ 38-30.5-101 to 38-30.5-111, the Property preserved hereby as natural land may not be converted or directed to any uses other than those provided herein.

2. Easement Documentation Report. Competent naturalists familiar with the Property have prepared a collection of baseline data on the Property and its resources. The data and explanatory text are presented in the "Bilk Creek Easement Documentation Report" dated June 7, 2000 (the "Report"). A copy of the Report is on file with both Grantor and the Conservancy and by this reference made a part hereof. The parties acknowledge that the Report is intended to establish the condition of the Property subject to the Easement as of the date written above and that both Grantor and the Conservancy have acknowledged in a signed statement, a copy of which is attached hereto as **Exhibit C**, that the Report accurately represents the condition of the Property at the time of conveyance.

The parties agree that, in the event a controversy arises with respect to the nature and extent of the biological or physical condition of the Property, the parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports, and other information to assist in the resolution of the controversy.

3. Rights of the Conservancy. The rights conveyed to the Conservancy by the Easement are the following:

a. To identify, to preserve and protect in perpetuity, and, in the event of their degradation or destruction, to restore or to enforce the restoration of the open space and significant relatively natural ecological features and values of the Property.

b. To perform such activities on the Property as the Conservancy reasonably determines are necessary or convenient to carry out these rights granted by this Easement.

c. To enter upon the Property to enforce the rights herein granted, to study and make scientific observations of its ecosystems, and to determine that Grantor's activities are in compliance with the terms of the Easement, all upon prior notice to Grantor and in a manner that does not unreasonably disturb the use of the Property by Grantor consistent with the Easement. The Conservancy shall also have the right of immediate entry to the Property if, in its sole judgment, such entry is necessary to prevent damage to or the destruction of the conservation values protected by the Easement.

d. To enjoin any activity on or any use of the Property that is inconsistent with the Easement.

4. Consistent Uses of the Property. The following uses and practices by Grantor, though not an exhaustive recital of consistent uses and practices, are consistent with the Easement. Certain of these consistent uses and practices are identified as being subject to specified conditions or to the requirement of and procedures for prior approval by the Conservancy; procedures for prior approval are provided below. The remainder of these consistent uses shall not be precluded, prevented, or limited by the Easement.

a. Construction and use of a house ("House 1"), caretaker's unit, and associated outbuildings located within a five acre building envelope (the "Five Acre Building Envelope") on a 35-acre parcel of the Property. Construction and use of another house ("House 2") and associated outbuildings located within a two-acre building envelope on a 35-acre parcel of the Property. The building envelope locations are subject to prior approval by the Conservancy, which approval shall not be unreasonably withheld, and no building shall be constructed within 50 feet of the center of Bilk Creek. House 2 shall not exceed 3,000 square feet of habitable useable space as defined by the San Miguel County Building Department, but excluding all porches, decks, and garages. House 1, the caretaker's unit, and all other buildings within the Five Acre Building Envelope shall not exceed 12,000 square feet of floor area in the aggregate, excluding all porches and decks (the residential buildings shall be measured by habitable useable space as defined by the San Miguel County Building Department). Exterior features shall be constructed of non-reflective materials, except that windows, solar electric panels, and galvanized metal roofing are permitted.

b. Maintenance, repair, and, in the event of destruction, reconstruction of the buildings permitted in this Easement or construction of new buildings permitted hereunder.

c. Construction or improvement of roads to access any new dwelling or buildings or for other purposes subject to prior approval by the Conservancy, which approval shall not be unreasonably withheld, provided that no roads shall be paved or covered with concrete (other than driveways adjacent to buildings). Access to the houses and other buildings permitted herein by motor vehicle, non-motorized vehicle, and foot by Grantor, its invitees, and contractors.

d. Grazing and pasturing horses, cattle, mules, and llamas, provided that range conditions shall be maintained at, or improved from, those documented in the attached Report. Grazing of other livestock species shall be subject to prior approval by the Conservancy.

e. Maintenance, repair, and, if destroyed, reconstruction of existing fencing, and the construction of new fences. Boundary or pasture-division fences shall not unduly restrict or exclude wildlife use of the Property.

f. Maintenance, repair, and, if destroyed, reconstruction of the existing water facilities, if any, and subject to prior approval of the Conservancy, which approval shall not be unreasonably withheld, development of new water resources and facilities for domestic and livestock use. All water rights, if any, associated with the Property shall be retained with the Property to maintain the conservation values of the Property, and Grantor shall not transfer or otherwise sever the title to such water rights from the Property, unless the conservation values of the Property can be maintained after such transfer or severance of title.

g. Use of agricultural chemicals for the following purposes and under the following conditions:

i. For the control of noxious weeds, as required by Colorado state law, and for the control of other invasive exotic plant species; provided that chemical herbicides may be used only in those amounts and with a frequency of application that constitute the minimum necessary for control; and that the herbicide is not applied by aerial spraying.

ii. For the control of agricultural or forest pests, subject to prior approval by the Conservancy.

h. Use of biological weed and insect control agents, subject to prior approval by the Conservancy.

i. Construction of utility systems for the uses permitted in this Easement; provided, however, that Grantors shall bury, if economically and otherwise possible, all utility systems or extensions of existing utility systems constructed in the future.

j. Provided that the conditions below are met, the selective harvesting of timber only for the following purposes: controlling forest disease; protecting persons or property from the hazards of falling trees or branches or wildfire; providing firewood for domestic use on the Property; constructing the buildings and roads authorized in this easement; maintaining existing fields and open pastures; and enhancing wildlife habitat. The conditions below apply to both living and standing dead trees.

i. Timber harvest must be conducted using Best Management Practices, including stringent protection of soil and watershed values, riparian areas, and wildlife habitat.

ii. The harvesting of any tree on the flood plain or within 50 feet of Bilk Creek or the San Miguel River shall require the prior approval of the Conservancy.

k. Keeping domestic pets; provided that each pet is under the control of a responsible person, does not harass wildlife, and is not kept in a manner that attracts wildlife.

l. Personal recreational use, excepting those practices listed below among Inconsistent Uses of the Property below.

m. Public recreational access to and usage of the climbing wall as located and described on the survey plat attached hereto as **Exhibit D** (the "Climbing Wall Parcel"). Such public recreational usage of the climbing wall shall include the right to replace any fixed climbing protection and temporarily place recreational climbing equipment within and upon the area described in **Exhibit D**. No additional improvements or structures shall be constructed within or upon the climbing wall area described in **Exhibit D**, except as may be determined necessary for safety purposes upon the prior written approval of the Conservancy, which approval shall not be unreasonably withheld. Public usage of the Climbing Wall Parcel shall be limited to recreational rock climbing activities only. Camping, fishing, hunting, horseback riding, bicycling, skiing, the discharge of firearms, and any other activities engaged in by members of the public that are not specifically related to recreational rock climbing activities within the designated Climbing Wall Parcel are also prohibited. The existing access trail to the top of the cliff on the Climbing Wall Parcel may be replaced, provided that the new trail location is subject to the approval of the Conservancy, which approval shall not be unreasonably withheld, provided that the new trail location takes into account environmental impacts and public safety, and provided further that there is a plan for the long term maintenance of the trail, including weed management.

n. Public access to and use of a parking area for motorized vehicles as located and described in **Exhibit E** (the "Parking Area Parcel"). Such public vehicular parking area shall have capacity for up to five vehicles. Public, pedestrian only, access from the parking area to the climbing wall as located and described in **Exhibit F** (the "Climbing Wall Access Easement").

o. Public recreational trail easements(collectively, the "Trail Easements") described below. The operation of motorized vehicles, including, but not limited to, cars, trucks, sport utility vehicles, motorcycles, snowmobiles, and all terrain vehicles, within and upon such recreational trails by members of the public is prohibited, except as provided in Paragraph 4(q) below. Camping, fishing, hunting, the discharge of firearms, and any other activities engaged in by members of the public that are not specifically authorized public recreational uses of the trails are also prohibited.

i. A public recreational trail easement may be granted to San Miguel County, Colorado, within and upon the vacated public right of way for San Miguel County Road 60M as it traverses the Property (the "60M Trail Easement"). Public use of the 60M Trail Easement shall be limited to hiking, bicycling, mountain bicycling, horseback riding, and nordic skiing, as well as emergency vehicular access for the San Miguel County Road and Bridge Department, the San Miguel County Sheriff's Department, and the Telluride Fire Protection District and the San Miguel Power Association.

ii. A public recreational trail easement may be granted to San Miguel County, Colorado, within and upon the vacated public right of way for San Miguel County Road 61K as it traverses the Property (the "61K Trail Easement"). Public use of the 61K Trail Easement shall be limited to hiking, bicycling, mountain bicycling, horseback riding, and nordic skiing.

p. Grantor may grant a permissive easement to the Conservancy within and upon the vacated public road right of way for San Miguel County Road 62K as it traverses the Property (the "62K Permissive Easement") which permits the public usage for hiking, bicycling, and mountain bicycling, so long as such use is consistent with Grantor's intent to provide the public with a tranquil, contemplative environment in which to enjoy nature and the natural beauty of the area. The operation of motorized vehicles, including, but not limited to, cars, trucks, sport utility vehicles, motorcycles, snowmobiles, and all terrain vehicles, within and upon such trail by members of the public is prohibited, except as provided in Paragraph 4(q) below. Camping, fishing, hunting, the discharge of firearms, and any other activities engaged in by members of the public that are not specifically authorized uses of the trail are prohibited.

q. Private ingress and egress to an existing adjoining property owner over an existing road or roads; provided, however, that use of vacated Road 62K by the adjoining property owner shall be limited to historic use, or as otherwise required by Colorado law, unless the Conservancy approves any expanded use (but not for development), and such approval by the Conservancy shall not be unreasonably withheld.

5. Inconsistent Uses of the Property. The following uses and practices on the Property shall be prohibited, except as specifically provided in Paragraph 4:

a. The storage, dumping, or other disposal of toxic and/or hazardous materials. Notwithstanding anything in this Easement to the contrary, this prohibition does not make the Conservancy an owner of the Property, nor does it permit the Conservancy to control any use of the Property by the Grantor which may result in the storage, dumping or disposal of hazardous or toxic materials; provided, however, that the Conservancy may bring an action to protect the conservation values of the Property, as described in this Easement. This prohibition does not impose liability on the Conservancy, nor shall the Conservancy be construed as having liability as a "responsible party" under CERCLA or similar federal or state statutes.

b. Dumping or other disposal of non-compostable refuse, wildlife-attracting materials, or any other material which could reasonably be considered debris.

c. The change, disturbance, alteration, or impairment of the significant relatively natural ecological features and values; or the destruction of other significant conservation interests on the Property.

d. Conversion of native vegetation to exotic cover species or the introduction of non-native plant species; farming, plowing, or any type of cultivation is prohibited except that gardening for personal use and residential landscaping are permitted within the building envelopes. In the event that a garden or other planting becomes an attraction for wildlife or brings wildlife into contact with people, the garden or other planting shall be removed.

e. Introduction or release of nonnative animal species.

f. Establishment and operation of a livestock feedlot or any wild game farming or ranching facilities, which shall be defined for purposes of this Easement as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, for purposes of engaging in the business of the reception and feeding of livestock for hire.

g. Filling, excavating, dredging, mining, drilling, and the exploration for or extraction of minerals, hydrocarbons, soils, sand, gravel, rock, or other materials on or below the surface of the Property, except for purposes specifically permitted in this Easement.

h. Division, subdivision, or *de facto* subdivision of the Property; provided, however, that Grantor shall be entitled to subdivide and convey the Climbing Wall Parcel and the Parking Area Parcel in fee, and the Climbing Wall Access Easement to San Miguel County, Colorado, or any other government entity or charitable organization, subject to the terms of this Easement. The Climbing Wall Parcel, the Parking Area Parcel, and the Climbing Wall Access Easement shall comprise one parcel of land which must remain under common ownership, but which may be conveyed from time to time to any governmental entity or charitable organization, subject to the terms of this Easement. The Property has been divided into lots and parcels by that certain Plat recorded December 23, 1997, in Plat Book 1 at Page 2315 of the records of the Clerk and Recorder of San Miguel County, Colorado (the "Plat"). Except for the permitted subdivision and conveyance of the Climbing Wall Parcel, the Parking Area Parcel, and the Climbing Wall Access Easement, all other lots and parcels created by the Plat shall remain under one ownership, and no lots or parcels shall be conveyed or encumbered separately from the rest of the Property. Grantor reserves the right to vacate the Plat and create a new Plat which may designate the house building envelopes or parcels as separate lots or parcels; provided that such lots or parcels may not be separately conveyed or encumbered and must remain under common ownership with the rest of the Property.

i. Construction or placement of any buildings of any sort, mobile homes, signs, billboards or other advertising materials, or utility towers or other structures, except as permitted in this Easement and except that vehicular campers owned by Grantor or guests may be parked on the Property as appropriate to accommodate normal visitation.

j. Construction of roads or vehicle trails, and paving or covering with concrete of any existing or new roads (other than driveways adjacent to buildings).

k. Use of snowmobiles, all-terrain vehicles, motorcycles, or other motorized vehicles off of roads or travelways, except for agricultural or property maintenance purposes.

l. Cutting, removing, or destruction of native vegetation, except by grazing, haying, non-commercial harvest of timber, herbicide application, pond management, or building-related construction activities.

m. Animal trapping for purposes other than control of predatory animals which demonstrably have caused damage to property. Trapping methods employed must be selective for the target species and administered as humanely as is possible.

n. Application of biocides, herbicides, defoliants, chemical fertilizers, or other chemicals.

o. Changing the topography of the Property by placing on it any soil, dredging spoils, land fill, or other material, except as necessary to conduct authorized construction activities.

p. Establishment of any commercial activity other than a home office, including, but not limited to, operating a commercial lodging, outfitting, guiding, or guest ranch facility.

q. Any activity or use on the Property that violates any applicable federal, state, county, or local law, rule, ordinance, or regulation.

r. Construction of any temporary living quarters, except during any period of construction for the houses permitted hereunder.

6. Prior Notice and Approval. Grantor shall not undertake or permit any activity requiring prior approval by the Conservancy without first having notified and received approval from the Conservancy as provided herein.

Prior to the commencement of any such activity, Grantor shall send the Conservancy written notice of his/her intention to undertake or permit such activity. The notice shall inform the Conservancy of all aspects of the proposed activity, including location, design, and materials (to the extent required for approval under Paragraph 4 hereof) or equipment to be used, dates and duration, and any other relevant information, and shall be sent by registered or certified mail, return receipt requested, to:

The Nature Conservancy
Colorado Field Office
1881 9th Street, Suite 200
Boulder, CO 80302

with a copy to:

Western Regional Attorney
The Nature Conservancy
2060 Broadway, Suite 230
Boulder, CO 80302

or to such other addresses as Grantor may from time to time be informed of in writing by the Conservancy.

The Conservancy shall have 30 days from receipt of the notice, as indicated by the date of the return receipt, to review the proposed activity and to notify Grantor of any objections thereto; provided that the 30-day period shall not begin until such time as the Conservancy has received adequate information from Grantor to evaluate the proposed activity. In the event that the Conser-

vancy requires additional information to evaluate the proposed activity, the Conservancy shall request the information from Grantor as soon as practicable and in any case not later than 15 days after the receipt of the notice of the proposed activity.

The Conservancy's decision to approve or disapprove the activity proposed by Grantor shall be sent by registered or certified mail, return receipt requested, to Grantor at the address first stated above, or to such other address as the Conservancy may from time to time be informed of in writing by Grantor.

A decision by the Conservancy to disapprove a proposed activity must be based upon the Conservancy's determination that the proposed activity is inconsistent with the conservation purposes of the Easement. If in the Conservancy's judgment it is possible that the proposed activity can be modified to be consistent with the easement, the Conservancy's decision notice shall inform Grantor of such modification(s). Once modification is made to the satisfaction of the Conservancy or the Conservancy otherwise concurs with the matters set forth in Grantor's notice, the proposed activity may thereafter be conducted in a manner that is acceptable to the Conservancy.

Should the Conservancy fail to post its response to Grantor's notice within 30 days of its receipt of notice or within 30 days of the time that the Conservancy has received adequate information to evaluate the proposed activity, whichever is later, the proposed activity is automatically deemed consistent with the terms of the Easement, the Conservancy having no further right to object to the activity identified by such notice.

Any other notices to the Conservancy shall be sent as provided above. Any notice to Grantor shall be in writing and shall be sent by certified mail, return receipt requested, to:

Silver Mountain Industries, Inc.
Attn: President
529 East South Temple
Salt Lake City, UT 84102-1004

with a copy to:

Morton M. Steinberg, Esq.
Piper Marbury Rudnick & Wolfe
203 North LaSalle Street, Suite 1800
Chicago, IL 60601-1293

or to such other addresses as the Conservancy may from time to time be informed of in writing by Grantor.

7. Remedies, Breach, and Restoration. In the event a violation of any restriction contained herein comes to the attention of the Conservancy, the Conservancy shall notify Grantor in writing of the violation. Grantor shall have 30 days after the receipt of such notice to undertake actions, including restoration of the Property, that are reasonably calculated to swiftly correct the conditions caused by

such violation. If Grantor fails to take such corrective action, the Conservancy may at its discretion undertake such actions, including appropriate legal proceedings, as are reasonably necessary to effect such corrections, and the cost of the corrections, including the Conservancy's expenses, court costs, and legal fees, shall be paid by Grantor, provided either Grantor, Grantor's family, any shareholders in the Property, agents, guests, employees or other persons permitted by Grantor are determined to be responsible for the violation. Grantor shall not be responsible to take corrective action as a result of any violation of any restriction contained herein caused by any member of the general public using the Trail Easements, Climbing Wall Parcel, Parking Area Parcel, or Climbing Wall Access Easement.

In the event that Grantor undertakes any activity requiring approval of the Conservancy without or in advance of securing such approval, or undertakes any activity in violation of the terms of the Easement, the Conservancy shall have the right to force, by appropriate legal or equitable action, including an action for injunction or specific performance, the restoration of that portion of the Property affected by the activity to the condition that existed prior to the undertaking of the unauthorized activity. In such case, the costs of restoration and the Conservancy's costs of suit, including reasonable attorneys' fees, shall be borne by Grantor or those of his/her heirs, personal representatives, or assigns against whom a judgment is entered, or, in the event that the Conservancy secures redress without a completed judicial proceeding, by Grantor or those of his/her heirs, personal representatives, or assigns who are otherwise determined to be responsible for the unauthorized activity.

Enforcement of the terms and provisions of this Easement shall be at the discretion of the Conservancy. Any forbearance on behalf of the Conservancy to exercise its rights hereunder in the event of any breach by Grantor or his/her respective heirs, personal representatives, or assigns shall not be deemed or construed to be a waiver of the Conservancy's rights hereunder in the event of any subsequent breach.

8. Liabilities. Subject to the limitations on liability set forth in this Easement, Grantor shall hold harmless, indemnify, and defend the Conservancy and the Conservancy's members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with the release by Grantor of any hazardous material or substance of any kind on the Property. Notwithstanding the foregoing, the liability of Silver Mountain Industries, Inc. ("SMI"), the original Grantor of this Easement, shall be limited only to acts of SMI first occurring on or after the date this Easement is recorded in the records of the Clerk and Recorder of San Miguel County, Colorado, and prior to the conveyance by SMI of fee title to the Property to a third party. SMI shall automatically be released and discharged from any and all liability under this paragraph effective immediately and without notice upon the conveyance by SMI of the fee interest in the Property. This paragraph shall not apply with respect to any liability, penalty, cost, loss, damage, claim, or other matter whatsoever, in whole or in part due to or arising out of any hazardous material or substance in any manner placed, or suffered or permitted to be placed, on the Property at any time by members of the public, or by the Conservancy or any one or more of the Conservancy's contractors, members, directors, officers, employees, representatives, or agents. In the event any action is commenced by the Conservancy under this paragraph, should the Conservancy not be the prevailing party in such action, then the Conservancy shall pay to the defendants in such action their respective

reasonable costs and expenses (including reasonable attorneys' fees) incurred in connection with such action.

9. Provisions Pertaining to San Miguel County. To the extent San Miguel County, Colorado, (the "County") becomes the grantee of the 60M Trail Easement, the 61K Trail Easement, or the Climbing Wall Access Easement, or the owner of the Climbing Wall Parcel or the Parking Area Parcel, the following provisions shall apply to the County as to such easements and parcels in lieu of the provisions of Paragraph 8 above:

a. The County shall obtain and maintain comprehensive public entity or commercial general liability insurance coverage which shall cover any and all claims, liabilities, damages, settlements, and judgments arising from or associated with usage of the Trail Easements, the Climbing Wall Parcel, the Parking Area Parcel, or the Climbing Wall Access Easement, as described in subparagraphs 4.m and 4.n, by members of the public.

b. The County shall also obtain and maintain comprehensive environmental liability insurance coverage for the Climbing Wall Parcel and the Parking Area Parcel as described in subparagraphs 4.m and 4.n.

c. The Conservancy, Grantor, and Grantor's successors shall be added as an additional named insured to such liability insurance coverages. The limits of such liability insurance coverages shall meet or exceed the liability limits required by the Colorado Governmental Immunity Act, as such limits may be amended from time to time. However, the minimum liability limits of such comprehensive environmental liability insurance coverage shall be at least $1,000,000 per claim. Such required insurance coverages shall be in effect as of the date of the execution of this Easement and shall remain in effect during the term of this Easement. The County shall annually obtain from the liability insurance carrier providing the insurance coverages specified herein a certificate of insurance evidencing such coverages and naming the Conservancy as an additional insured for such coverages, which insurance certificate shall be provided to the Conservancy. Such insurance certificate shall provide that the coverages described therein may not be canceled, revoked, rescinded, or otherwise terminated unless the insurer provides at least 30 days prior written notice to the Conservancy. In the event of the cancellation, revocation, rescission, or termination of such liability insurance coverages, the Conservancy may, at its discretion, prohibit public usage of the Trail Easements, the Climbing Wall Parcel, the Parking Area Parcel, and the Climbing Wall Access Easement, as described hereinabove, until such time as it is provided with the required certificate(s) of insurance.

d. The County will be deemed to make the indemnity set forth in Paragraph 8 above to the extent authorized under applicable Colorado law, but the County's liability under Paragraph 8 above shall be limited to any recovery from the insurance policies described in this Paragraph 9.

10. Taxes. Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Property and to bear all costs of operation, upkeep, and maintenance of the Property, and does hereby indemnify the Conservancy therefor.

11. Access. Nothing herein contained shall be construed as affording the public access to any portion of the Property, except as may be permitted under the Trail Easements and by San Miguel County, Colorado, but only to the extent of its interest, if any, in the Property.

12. Assignment. The Conservancy may assign the Easement with Grantor's prior written consent, which consent shall not be unreasonably withheld; provided that:

a. The Conservancy requires, as a condition of such transfer, that the conservation purposes of the Easement continue to be carried out; and

b. An assignment may be made only to an organization qualified at the time of transfer as an eligible donee (other than a governmental entity) under the IRS Code and C.R.S. §§ 38-30.5-101 to 38-30.5-111.

13. Change of Conditions. The fact that any use of the Property that is expressly prohibited by this Easement, or any other use as determined to be inconsistent with the purpose of this Easement, may become greatly more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to uses that are not permitted thereunder, has been considered by the Grantor in granting this Easement. It is Grantor's belief that any such changes will increase the benefit to the public of the continuation of this Easement, and it is the intent of both Grantor and the Conservancy that any changes should not be assumed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this paragraph. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment pursuant to this paragraph.

14. Subsequent Sale, Exchange, or Involuntary Conversion. Grantor and the Conservancy agree that the granting of this Easement immediately vests the Conservancy with a property right, and the fair market value of this property right is 49% of the full fair market value of the Property excluding any buildings or other improvements constructed after the date of this Easement, based on the ratio of the Easement's value to the value of the Property, as unencumbered by the Easement at the time of the grant of this Easement. Grantor and the Conservancy agree that this ratio shall remain constant, so that should this Easement be extinguished by a change in conditions, the Conservancy shall be entitled to a portion of the proceeds from any subsequent sale, exchange or involuntary conversion equal to 49% of such proceeds at the time of such sale, exchange or involuntary conversion, less the value of any buildings or other improvements constructed after the date of the easement.

The Conservancy may be compensated for the value of this property right only in the event of a condemnation or other change in conditions resulting in the extinguishment of the Easement (as provided in Treas. Reg. Section 1.170A-14(g)(6)(i)). The Conservancy shall apply its share of the proceeds in a manner consistent with the conservation purposes of the Easement or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in Internal Revenue Code Section 170(h)(4)(a)(ii), as amended, and in regulations promulgated thereunder.

15. Amendment. If circumstances arise under which an amendment to or modification of the Easement would be appropriate, Grantor and the Conservancy may jointly amend the Easement; provided that no amendment shall be allowed that affects the qualification of the Easement under the IRS Code or C.R.S. §§ 38-30.5-101 to 38-30.5-111. Any such amendment shall be consistent with the purposes of the Easement, shall not affect its perpetual duration, shall not permit additional development or improvements to be undertaken on the Property other than development or improvements currently permitted by the Easement, and shall not impair any of the significant conservation values of the Property. Any such amendment shall be recorded in the official records of the county in which the Property is located.

16. Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether with respect to all or part of the Property, by judicial proceeding in a court of competent jurisdiction.

17. Interpretation. The provisions of this Easement shall be liberally construed to effectuate their purpose of preserving and protecting habitat for wildlife, unique native plants, and diverse forest, meadow and riparian vegetative communities. No remedy or election given by any provision in this Easement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party and its counsel have reviewed and revised this Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Easement. In the event of any conflict between the provisions of this Easement and the provisions of any use and zoning restrictions of the state or county in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply. This Easement shall be interpreted in accordance with the laws of the state of Colorado.

18. Miscellaneous.

a. Definitions. The terms "Grantor" and "Conservancy" as used herein shall be deemed to include, respectively, the Grantor, the Grantor's heirs, successors, personal representatives, and assigns, and the Conservancy, its successors and assigns; provided, however, that the rights and obligations of every person or entity owning an interest in the Property or this Easement shall terminate upon the transfer of such party's interest in the Property or this Easement, except that, other than as provided in Paragraph 8 to the contrary, liability for acts occurring prior to transfer shall survive the transfer.

b. Binding Effect. Grantor intends that the Easement shall run with and burden title to the Property in perpetuity, and shall bind Grantor, his/her heirs, successors, personal representatives, and assigns.

c. Severability. If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions hereof and the application of such provision to persons or circumstances other than those to which it is found to be invalid, shall not be affected thereby.

d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Paragraph 15 above.

e. Notices. Any and all notices required or permitted to be given hereunder shall be sent to the address(es) set forth Paragraph 6 hereof by certified mail, return receipt requested, and shall be deemed given three (3) business days after deposit in the U.S. Mail.

TO HAVE AND TO HOLD the said Easement unto the said Conservancy, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor has hereunto set its hand this 29th day of June, 2000.

GRANTOR:

SILVER MOUNTAIN INDUSTRIES, INC., a Utah corporation

By _____
Its President

STATE OF ~~XXXXXXX~~ UTAH)
) ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 29 day of June, 2000, by Patrick Bienvenue, the President of Silver Mountain Industries, Inc., a Utah corporation.

WITNESS my hand and official seal.

My commission expires: 01/15/2001

NOTARY PUBLIC
CHERROL M. KEARSLEY
529 East South Temple St.
Salt Lake City, UT 84102
My Commission Expires: 1-15-2001
State of Utah

Cherrol R. Kearsley
Notary Public

The foregoing Deed of Conservation Easement is hereby duly accepted by The Nature Conservancy and has been executed on this 30th day of June, 2000.

CONSERVANCY:

THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation

By Rm Hall

Its Land Protection Specialist - Colorado

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 30th day of June, 2000, by Rebecca Hall, the Land Protection Specialist - Colorado of The Nature Conservancy, a District of Columbia nonprofit corporation.

WITNESS my hand and official seal.

My commission expires: _____

LINDA GIANDINOTO
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 06/05/2004

Linda Giandinoto
Notary Public

EXHIBIT A

Legal Description of the Property

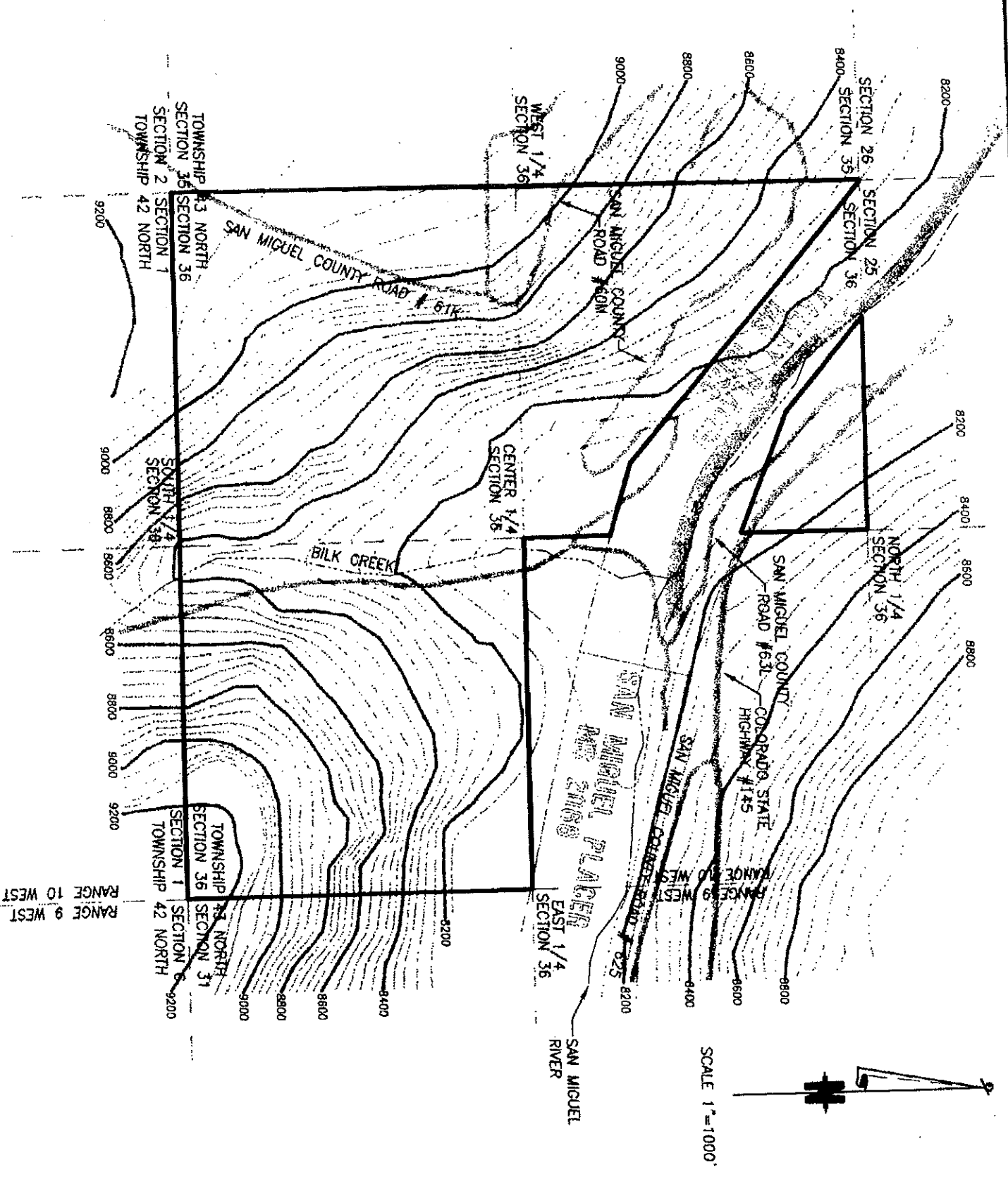
All that certain real estate situated in San Miguel County, Colorado, more particularly described as follows:

The Northwest ¼ and the South ½ of Section 36, Township 43 North, Range 10 West of the New Mexico Principal Meridian,
EXCEPT those lands contained in the Valley Placer, USMS 15120,
County of San Miguel,
State of Colorado.

EXHIBIT B

Map of the Property

[Please see the attached map]



MAP EXHIBIT

FOLEY ASSOCIATES, INC.

1-1

Exhibit B

EXHIBIT C

Acknowledgment of Easement Documentation Report

Grantor and the Conservancy acknowledge that each has read the "Bilk Creek Easement Documentation Report" dated June 7, 2000, and that the report accurately reflects the condition of the Property subject to the Easement as of the date of conveyance of the Easement.

SILVER MOUNTAIN INDUSTRIES, INC., a Utah corporation

By_____
Its_____

THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation

By Lin Hall
Its Land Protection Specialist - Colorado

EXHIBIT C

Acknowledgment of Easement Documentation Report

Grantor and the Conservancy acknowledge that each has read the "Bilk Creek Easement Documentation Report" dated June 7, 2000, and that the report accurately reflects the condition of the Property subject to the Easement as of the date of conveyance of the Easement.

SILVER MOUNTAIN INDUSTRIES, INC., a Utah corporation

By_____
Its President

THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation

By_____
Its_____

EXHIBIT D

Climbing Wall Parcel

FOLEY ASSOCIATES, INC.
CIVIL ENGINEERING AND LAND SURVEYING
P. O. BOX 1385, TELLURIDE, CO 81435
970-728-6153

LEGAL DESCRIPTION

Parcel A of the Bilk Creek Exemption according to the Plat recorded in the office of the Clerk and Recorder in Plat Book 1 at page ____, located within a portion of the NE1/4 of the SW1/4 and the NW1/4 of the SE1/4 of Section 36, Township 43 North, Range 10 West of the New Mexico Principal Meridian, San Miguel County, Colorado.

Reserving unto Grantor, Grantors heirs, successors and assigns a perpetual exclusive easement for ingress and egress including but not limited to vehicular access to the Price parcel as described in Recital A hereof, said easement for ingress and egress legally described as follows:

An easement 20 feet wide lying 10 feet on each side of the following described centerline of vacated County Road 62K, located within said Parcel A:
Beginning at a point from which the center 1/4 corner of said Section 36 bears N 87°46'33" E, 146.26 feet;
Thence 61.68 feet along a curve concave to the east with a radius of 100.00 feet, a delta angle of 35°20'17", a chord which bears S 17°17'23" W for a chord distance of 60.70 feet;
Thence 47.54 feet along a reverse tangential curve concave to the west with a radius of 100.00 feet and a delta angle of 27°14'14";
Thence S 07°43'17" E, 111.46 feet to the True Point of Beginning, being on the north boundary of said Parcel A at a point from which the northwest corner of said Parcel A bears N 90°00'00" W, 18.16 feet;
Thence 30.78 feet along a tangential curve concave to the west with a radius of 50.00 feet and a delta angle of 35°16'17";
Thence 63.67 feet along a reverse tangential curve concave to the east with a radius of 40.00 feet and a delta angle of 91°11'48";
Thence S 63°38'48" E, 12.67 feet;
Thence 48.27 feet along a tangential curve concave to the southwest with a radius of 110.00 feet and a delta angle of 25°08'34" to the south boundary of said Parcel A,
County of San Miguel, State of Colorado.

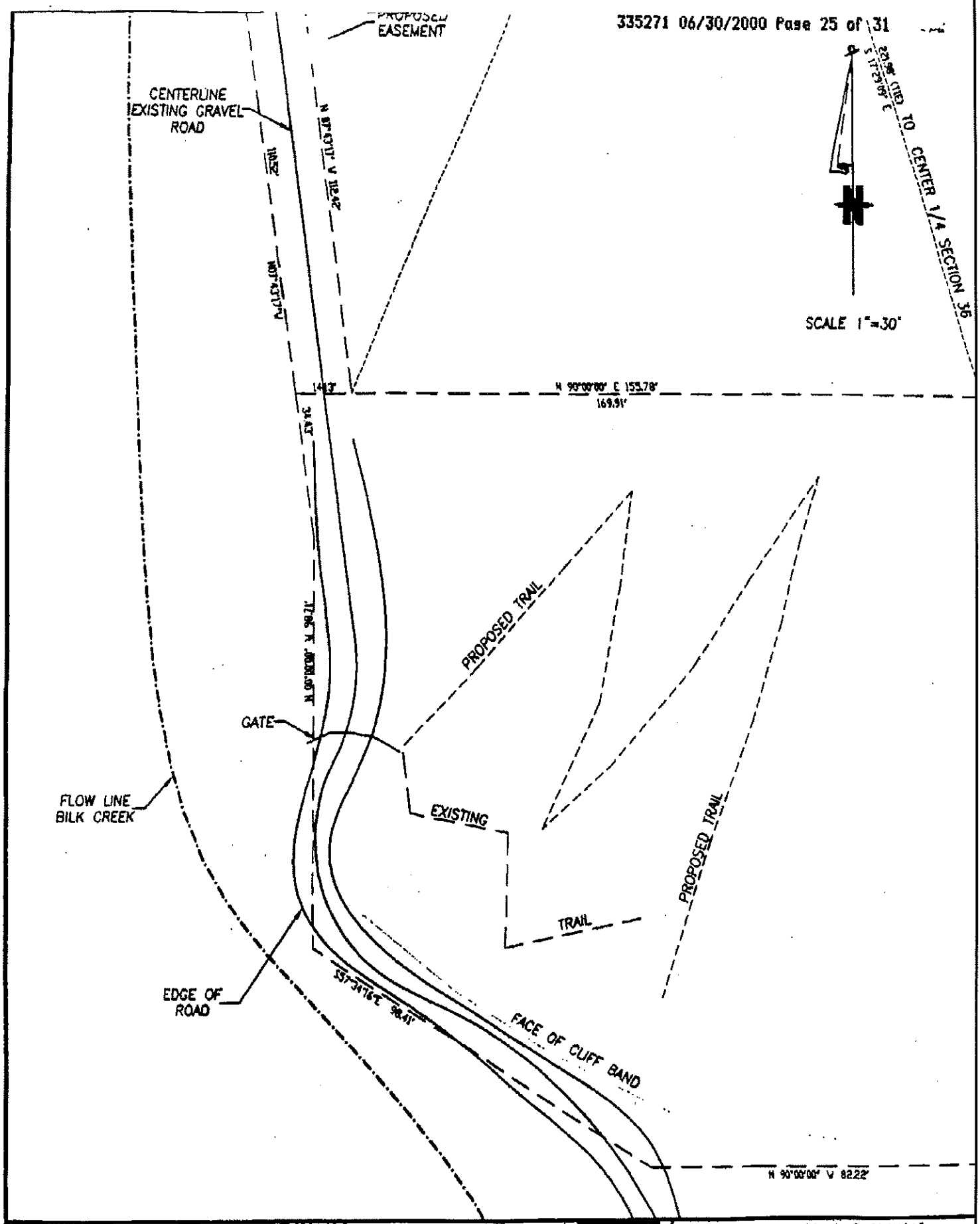
The sidelines at the beginning and at the end of this legal description are extended or shortened as necessary to intersect with the boundaries of said Parcel A.

COLORADO REGISTERED J. DAVID FOLEY 24954 PROFESSIONAL LAND SURVEYOR

J. David Foley, P.L.S. #24954

X:doc\92099\Bilk\climbwall2.leg

EXHIBIT D



FOLEY ASSOCIATES, INC.

EASEMENT EXHIBIT
PLAN AND PROFILE

2.3

EXHIBIT E

Parking Area Parcel

FOLEY ASSOCIATES, INC.
CIVIL ENGINEERING AND LAND SURVEYING
P. O. BOX 1385
TELLURIDE, CO 81435
970-728-6153

LEGAL DESCRIPTION

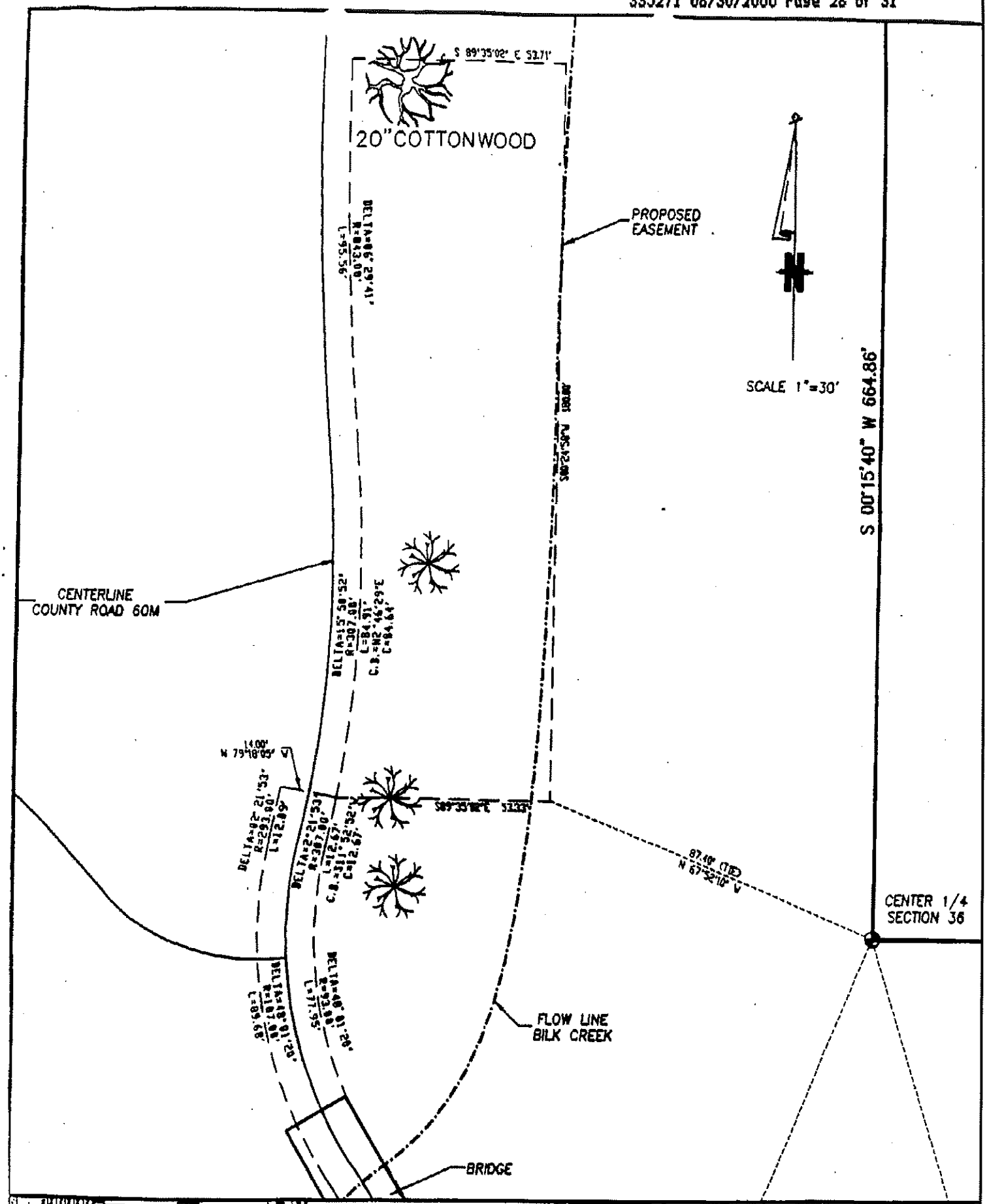
Parcel B of the Bilk Creek Exemption according to the Plat recorded in the office of the Clerk and Recorder in Plat Book 1 at page ____, located within a portion of the SE1/4 of the NW1/4 of Section 36, Township 43 North, Range 10 West of the New Mexico Principal Meridian, San Miguel County, Colorado,

COLORADO REGISTERED
J. DAVID FOLEY
6/20/00
24954
PROFESSIONAL LAND SURVEYOR

J. David Foley, P.L.S. #24954

X:doc\92099\Bilk\climbpark2.leg

EXHIBIT E



FOLEY ASSOCIATES, INC.

EASEMENT EXHIBIT
PLAN AND PROFILE

1.3

EXHIBIT F

Climbing Wall Access Easement

FOLEY ASSOCIATES, INC.
CIVIL ENGINEERING AND LAND SURVEYING
P. O. BOX 1385
TELLURIDE, CO 81435
970-728-6153

LEGAL DESCRIPTION

A portion of the SE1/4 of the NW1/4 and the NE1/4 of the SW1/4 of Section 36, Township 43 North, Range 10 West of the New Mexico Principal Meridian, San Miguel County, Colorado being centered on an existing gravel road, further described as follows:

Beginning at a point from which the center 1/4 corner of said Section 36, being a BLM brass cap monument, bears N 22°49'07" E, 229.70 feet;
Thence N 90°00'00" W, 14.13 feet;
Thence N 07°43'17" W, 110.52 feet;
Thence 44.21 feet along a tangential curve concave to the west with a radius of 93.00 feet and a delta angle of 27°14'15";
Thence 89.68 feet along a reverse tangential curve concave to the east with a radius of 107.00 feet and a delta angle of 48°01'20";
Thence 12.09 feet along a reverse tangential curve concave to the west with a radius of 293.00 feet and a delta angle of 02°21'53";
Thence S 79°18'05" E, 14.00 feet;
Thence 12.67 feet along a non-tangential curve concave to the west with a radius of 307.00 feet, a delta angle of 02°21'53", a chord bearing of S 11°52'52" W and a chord distance of 12.67 feet;
Thence 77.95 feet along a reverse tangential curve concave to the east with a radius of 93.00 feet and a delta angle of 48°01'20";
Thence 50.87 feet along a reverse tangential curve concave to the west with a radius of 107.00 feet and a delta angle of 27°14'15";
Thence S 07°43'17" E, 112.42 feet to the Point of Beginning.

The basis of bearings for this legal description are based upon the bearing from the BLM brass cap monument at the northwest corner of Section 36 to the BLM brass cap witness corner monument for the north 1/4 corner of Section 36 assumed as the record bearing of S 89°45'00" E according to the BLM Dependent Resurvey of T.43N., R.10W., N.M.P.M. approved December 6, 1988.

COLORADO REGISTERED
J. DAVID FOLEY
6/28/
24954
PROFESSIONAL LAND SURVEYOR

J. David Foley, P.L.S. #24954

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EXHIBIT F

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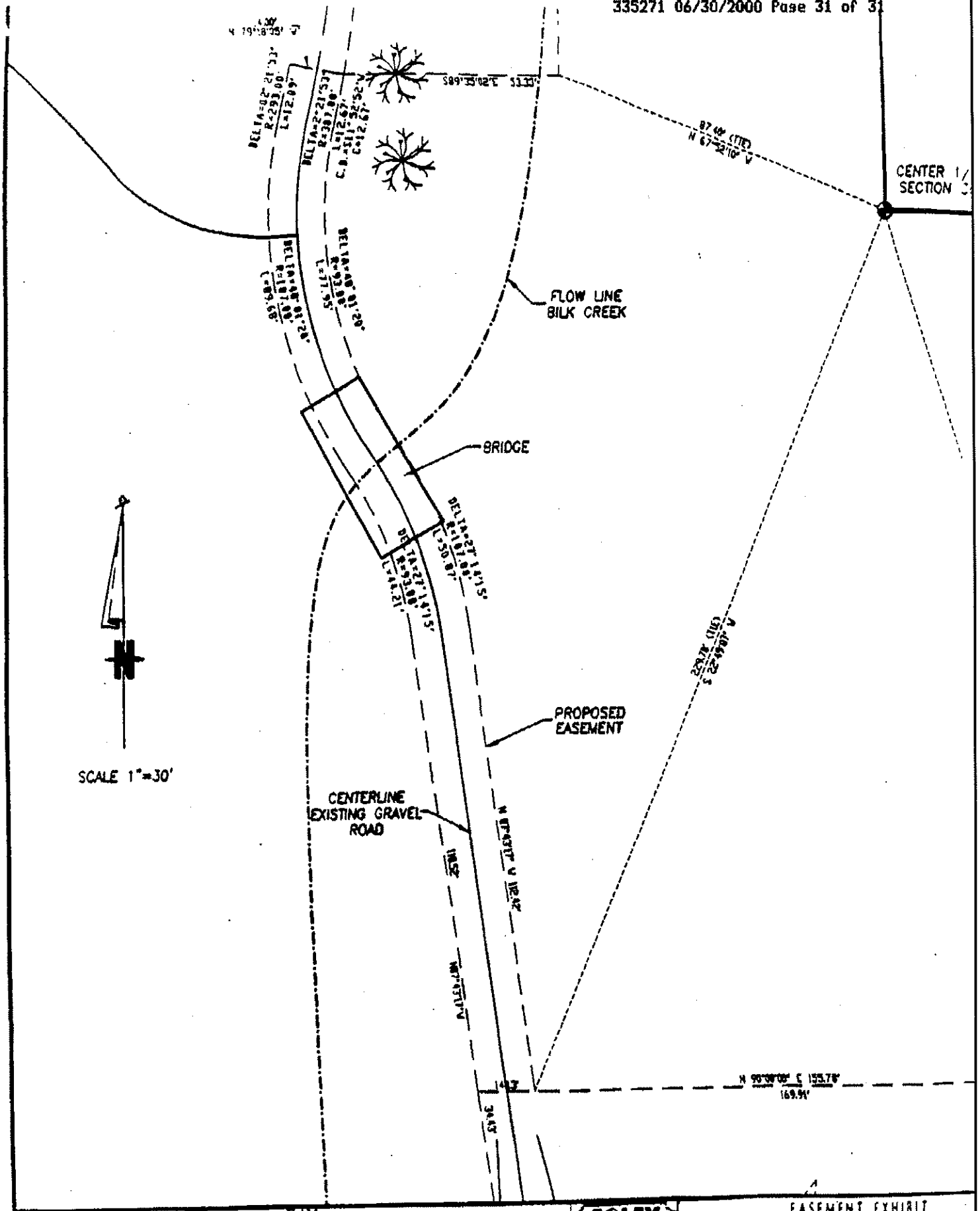
CENTER 1/
SECTION
FLOW LINE
BILK CREEK
BRIDGE
PROPOSED
EASEMENT
CENTERLINE
EXISTING GRAVEL
ROAD
SCALE 1"=30'
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EASEMENT EXHIBIT
PLAN AND PROFILE
FOLEY

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Page 1 of 12
SAN MIGUEL COUNTY, CO
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CLIMBING WALL/ASSOCIATED PARKING DEED AND ACCESS EASEMENT AGREEMENT

THIS CLIMBING WALL/ASSOCIATED PARKING DEED AND ACCESS EASEMENT AGREEMENT ("Deed/Easement") is made and entered into this 30th day of June, 2000, by and between **H. CHARLES PRICE** and **JESSIE H. PRICE ("Grantors")** and **SAN MIGUEL COUNTY, COLORADO**, acting by and through its **BOARD OF COUNTY COMMISSIONERS, ("Grantee")**.

I. RECITALS

A. Grantor is the fee simple owner of a certain 440 acre parcel situate in the County of San Miguel, State of Colorado and more particularly described as:

> The Northwest ¼ and the South ½ of Section 36, Township 43 North, Range 10 West of the New Mexico Principal Meridian, except those lands contained in the Valley Placer, USMS, 15120 (the "Price Parcel").

B. On May 3, 2000 the San Miguel County Board of County Commissioners (the "BOCC") approved the partial and conditional vacation of County Roads (C.R.) 60M, 61K and 62K that traverse the Price Parcel which approval was subsequently reduced to a written resolution of the BOCC dated May 10, 2000 (Resolution #2000-19).

C. As partial consideration for the partial and conditional vacation of C.R. 60M, 61K and 62K, the BOCC required Grantors to convey fee title to Grantee to that portion of the Price Parcel described in the subdivision exemption application for Essential Community Services submitted by Silver Mountain Industries, Inc., as conditionally approved by the BOCC at its May 3, 2000 meeting.

D. The purpose of this conveyance and easement is to accommodate the following limited public recreational activities (the "Allowed Uses"):

1. Access to and use by the public of a certain climbing wall for climbing and directly related purposes as denoted on Exhibit "A" (the "Plat") as the "Climbing Wall" and referred to herein as (the "Climbing Wall") which exhibit is attached hereto and incorporated herein by this reference.

2. Public parking in an area designated for public parking as denoted on the Plat as the "Parking Area" and referred to herein as (the "Associated Parking ") for users of the Climbing Wall only.

3. Access to an area designated for public ingress and egress from the Associated Parking to the Climbing Wall and referred to herein as (the "Access Easement").

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E. Grantee or its designee is responsible for maintaining, repairing and overseeing the use of the Climbing Wall, the Associated Parking and the Access Easement (collectively, the "Climbing Wall Property").

F. Grantor is willing to enter into this Deed/Easement Agreement and convey/grant the Climbing Wall Property but only expressly subject to the conditions and covenants set forth below.

G. Grantee is willing to accept this Deed/Easement and the conveyance/grant of the Climbing Wall Property, subject to the limitations provided for herein, and agrees to perform all obligations created herein in such manner as to protect the Price Parcel and the Grantor's fee simple interests and improvements appurtenant thereto, and so as to prevent any liability of the Grantor from the recreational uses to be permitted on the Climbing Wall Property.

H. The Parties, in entering into this Deed/Easement Agreement and granting and accepting the conveyances herein, desire to avail themselves of the maximum immunities, benefits and protections which may be available to each of them pursuant to the public recreational use statute, CRS Section 33-41-101, et seq., the Colorado landowner liability statute, CRS Section 13-21-115 (1.5) and the Colorado Governmental Immunity Act, CRS Section 24-10-114 (collectively, the "Colorado Landowner Protection Statutes").

II. AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, including the aforementioned recitals which are hereby incorporated, the parties hereto agree as follows:

1. Conveyance of the Climbing Wall. Grantor hereby sells and conveys to Grantee the Climbing Wall as more particularly described on Exhibit "B" which is attached hereto and incorporated herein by reference, subject to the terms, conditions and limitations set forth hereinbelow and the easement reservations of Grantor for ingress and egress to the Price Parcel as set forth on Exhibit "B". Grantor will warrant and defend the title to Grantee and its assigns against all persons who may lawfully claim the same, by, through or under Grantor.

2. Conveyance of the Associated Parking. Grantor hereby sells and conveys to Grantee the Associated Parking as more particularly described on Exhibit "C" which is attached hereto and incorporated herein by reference, subject to the terms, conditions and limitations set forth hereinbelow and the easement reservations of Grantor for ingress and egress to the Price Parcel as set forth on Exhibit "C". Grantor will warrant and defend the title to Grantee and its assigns against all persons who may lawfully claim the same, by, through or under the Grantor.

3. Grant of Access Easement. Grantor hereby grants to Grantee, a perpetual, non-exclusive access easement between the Climbing Wall and the Associated Parking as more particularly described on Exhibit "D" which is attached hereto and incorporated herein by reference, subject to the terms, conditions and limitations set forth hereinbelow.

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4. Limitations on Grant and Conveyances. In conveying the Climbing Wall and Associated Parking and granting the Access Easement, Grantor expressly represents that Grantor does not:

A. Extend any assurance that the Climbing Wall Property is safe for any purpose.

B. With respect to the Access Easement, confer upon any member of the public the legal status of an invitee or licensee to whom a duty of care is owed by Grantor, and

C. Assume responsibility or incur liability for any injury to person or property or for the death of any person caused by the use of the Climbing Wall Property.

5. Condition Precedent.

Notwithstanding the conveyances and grant herein, the Climbing Wall Property shall be usable only upon the occurrence of the following precondition:

A. Grantee shall obtain and maintain insurance and name Grantor as an additional insured on its general liability insurance policy, which shall cover those claims and liabilities arising in connection with use of the Climbing Wall Property by Grantee and members of the public. The limits of such insurance coverage must meet or exceed liability limits allowed from time to time under the Colorado Governmental Immunities Act ("Insurance Coverage"). Annually and sooner upon reasonable demand, Grantee shall cause to be obtained and forwarded to Grantor a certificate of insurance showing Grantor named as an insured thereunder. The insurance certificate must provide that Grantor shall receive notice of cancellation of Grantee's policy at least 10 days prior to its termination. Without limiting Grantee's obligation to obtain and maintain insurance denoting Grantor as an insured thereunder, Grantor may, but need not, obtain its own insurance coverage.

B. Unless and until the aforementioned precondition has occurred, Grantee shall not have any right of use of the Climbing Wall Property and Grantee shall prohibit any member of the public from any such use and shall take all reasonable and appropriate action to prevent any such use.

6. Conditions Subsequent.

A. Grantor shall have no responsibility for maintaining, inspecting, and policing the Climbing Wall Property and generally managing the Climbing Wall Property. Any such responsibility shall be solely that of the Grantee. As used herein, "managing the Climbing Wall Property" is intended to mean the entire range of activities associated with controlling, directing,

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allowing, and administering the use, operation, protection, development, and maintenance of the Climbing Wall Property.

B. Grantee shall maintain the Insurance Coverage. Grantor shall have no obligation to insure or indemnify Grantee for any injury, claim or damage to any person or property while using the Climbing Wall Property. Nothing herein is intended to waive any limits on liability afforded to the parties under the Colorado Landowner Protection Statutes.

7. **Use Restrictions.**

A. The Climbing Wall Property may be used by the Grantee, its citizens, residents, visitors, licensees and invited guests.

B. The Climbing Wall Property shall only be used for the Allowed Uses. No other uses, express or implied, are authorized by this Agreement. Without limiting their generality, the following uses are strictly prohibited.

i. No motorized vehicles, except motorized vehicles authorized or used by Grantor, motorized vehicles being specifically prohibited from any use within the Climbing Wall Property. Grantee is authorized to have motorized access solely for the limited purposes of overseeing, maintaining, and inspecting the Climbing Wall Property.

ii. All hunting, fishing, camping, picnicking, horseback riding, snowshoeing, cross country skiing, riding or driving motorized recreational vehicles, swimming, tubing, diving, spelunking, hang gliding, kite flying, roller skating, gold panning, discharging of firearms, ice skating, fishing, or engaging in any other form of sports or other recreational activity, other than the Allowed Uses by the general public on the Price Parcel or the Climbing Wall Property, without the prior written consent of Grantor, which consent can be withheld for any reason or no reason, is strictly prohibited.

iii. Littering, the creation of any unsanitary condition, defacing the Price Parcel or the Climbing Wall Parcel, impeding access to the Price Parcel or property belonging to adjoining landowners by Grantor or Grantor's guests, licensees, invitees or holders of easements from Grantor, removing any survey staking, collecting and removing water, firewood, rocks, artifacts and plants, if any, and harassment or injury to wildlife. Users of the Climbing Wall Property shall not bring dogs or other domestic animals onto the Climbing Wall Property.

iv. It is contemplated that a new trail will be constructed to provide access to the top of the Climbing Wall. Upon completion,

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climbers shall ascend or descend by this trail or the Climbing Wall only.

v. Use of the Associated Parking Area by any member of the general public other than members of the general public actually using the Climbing Wall Property for the Allowed Uses. Parking shall be limited to daytime use only.

C. Grantee's and the general public's use of the Climbing Wall Property shall be subordinate to and shall not interfere with the conservation easement to The Nature Conservancy burdening the Price Parcel and to the Grantor's concurrent use of the Price Parcel for all lawful purposes for which Grantor may use said property. Climbers shall have a duty to safely but expeditiously vacate and clear the road from an approaching motor vehicle.

D. The Climbing Wall Property and Associated Parking are presently in a natural, essentially undisturbed state. Because of the beauty of the area and the fact that it is located within the Price Parcel, any improvements shall conform with the conservation easement burdening the property, be kept to a minimum, be designed to blend harmoniously with the landscape, and be submitted to Grantor for written approval.

i. No signs will be permitted without specific written approval of Grantor other than a sign at the Associated Parking designating it to be for "Climbers Only" and stating a maximum of five cars may be parked. Wood is the preferred material.

ii. No trash receptacles, storage bins, or portable toilets are allowed. Everything brought in must be taken out.

iii. No fences are allowed without Grantor's prior written approval.

iv. If a base is put in the Associated Parking, it must be a permeable, recessive material. Asphalt or concrete are not permitted.

v. Damage to trees, particularly in the Associated Parking, must be avoided.

E. Neither Grantor nor Grantee shall impose any fees or charges upon any member of the general public entering upon and making use of the Climbing Wall Property for the Allowed Uses. It is the intention of the parties that Grantor shall derive full benefit of the protections afforded a landowner allowing public recreational access under the Colorado Landowner Protection Statutes.

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8. Miscellaneous.

A. The Climbing Wall and the Associated Parking may not be further conveyed by Grantee nor shall the Access Easement be transferred or assigned by Grantee without the prior written consent of Grantor.

B. All notices or other documents required or authorized to be sent by one party to the other shall be in writing and shall be deemed given to a party when personally delivered, or when deposited in the United States mail, sufficient postage prepaid, return receipt requested, addressed as follows:

If to Grantor:

H. Charles and Jessie H. Price
9839 Rockbrook Drive
Dallas, Texas 75220
Facsimile: (214) 350-4687

With a copy to:

J. David Reed
P.O. Box 2470
Telluride, Colorado 81435
Facsimile: (970) 728-3474

If to Grantee:

San Miguel County Board of County Commissioners
333 W. Colorado Ave.
P.O. Box 1170
Telluride, Colorado 81435
Facsimile: (970) 728-3718

With a copy to:

Office of the County Attorney
333 W. Colorado Ave.
P.O. Box 791
Telluride, Colorado 81435
Facsimile: (970) 728-3718

A party shall notify the other party if their address changes from time to time.

C. Grantee agrees to be bound by all covenants, terms, conditions, restrictions and limitations expressed herein.

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D. The Access Easement granted herein and all provisions of this Agreement shall run with the land and shall be applicable to, binding upon and inure to the benefit of the parties, their respective transferees, representatives, successors and assigns.

E. This Agreement contains the entire understanding of the parties. There are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

F. This Agreement may not be modified or amended except in writing signed by all the parties hereto. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Venue is limited to the District or County Court for San Miguel County, Colorado. In the event of litigation arising from a dispute under this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney fees from the non-prevailing party.

G. Time is of the essence in the performance of the obligations and requirements provided for herein.

H. A waiver of a breach of any term of this Agreement will not be considered a waiver of a further breach of the same term, a waiver of a breach of any other term, or a waiver of such waiving party's right to declare an immediate or a subsequent default.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

GRANTORS:

H. Charles Price

H. CHARLES PRICE

Jessie H. Price

JESSIE H. PRICE

STATE OF TEXAS)
)ss.
COUNTY OF Dallas)

ACKNOWLEDGED before me by H. Charles Price and Jessie H. Price on the 26th day of June, 2000.

WITNESS my hand and official seal.
My commission expires: 8-16-03

Julie Mitchell

Notary Public

JULIE MITCHELL
Notary Public, State of Texas
My Commission Expires
8-16-03

Signatures of notaries continued on next page:

HCP JHP

GRANTEE:

THE BOARD OF COUNTY
COMMISSIONERS OF SAN MIGUEL
COUNTY, COLORADO

By _____
VERNON E. EBERT, Chair Pro Tem

STATE OF COLORADO)
)ss.
COUNTY OF SAN MIGUEL)

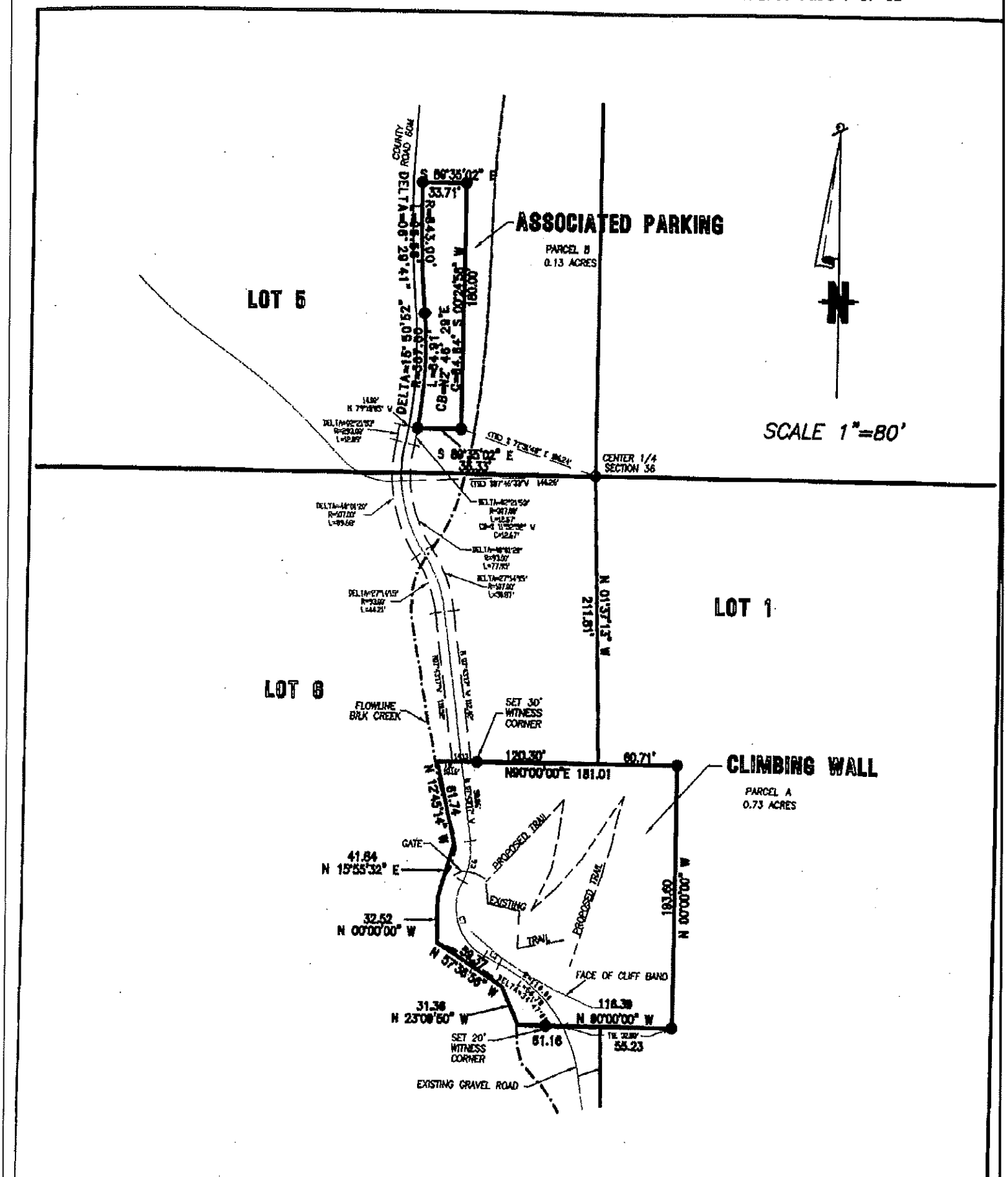
ACKNOWLEDGED before me by Vern Ebert, who acknowledged himself to be the Chair Pro Tem of the Board of County Commissioners on this 28th day June, 2000.

WITNESS my hand and official seal.
My commission expires: 02/05/2001

Marie A. Thomas
Notary Public

MARIE A. THOMAS NOTARY PUBLIC STATE OF COLORADO

MP JKP



FOLEY Associates, Inc.

EXHIBIT A

EXHIBIT B

FOLEY ASSOCIATES, INC.
CIVIL ENGINEERING AND LAND SURVEYING
P. O. BOX 1385, TELLURIDE, CO 81435
970-728-6153

LEGAL DESCRIPTION

Parcel A of the Bilk Creek Exemption according to the Plat recorded in the office of the Clerk and Recorder in Plat Book 1 at page 2741 located within a portion of the NE1/4 of the SW1/4 and the NW1/4 of the SE1/4 of Section 36, Township 43 North, Range 10 West of the New Mexico Principal Meridian, San Miguel County, Colorado.

Reserving unto Grantor, Grantors heirs, successors and assigns a perpetual exclusive easement for ingress and egress including but not limited to vehicular access to the Price parcel as described in Recital A hereof, said easement for ingress and egress legally described as follows:

An easement 20 feet wide lying 10 feet on each side of the following described centerline of vacated County Road 62K, located within said Parcel A:
Beginning at a point from which the center 1/4 corner of said Section 36 bears N 87°46'33" E, 146.26 feet;
Thence 61.68 feet along a curve concave to the east with a radius of 100.00 feet, a delta angle of 35°20'17", a chord which bears S 17°17'23" W for a chord distance of 60.70 feet;
Thence 47.54 feet along a reverse tangential curve concave to the west with a radius of 100.00 feet and a delta angle of 27°14'14";
Thence S 07°43'17" E, 111.46 feet to the True Point of Beginning, being on the north boundary of said Parcel A at a point from which the northwest corner of said Parcel A bears N 90°00'00" W, 18.16 feet;
Thence 30.78 feet along a tangential curve concave to the west with a radius of 50.00 feet and a delta angle of 35°16'17";
Thence 63.67 feet along a reverse tangential curve concave to the east with a radius of 40.00 feet and a delta angle of 91°11'48";
Thence S 63°38'48" E, 12.67 feet;
Thence 48.27 feet along a tangential curve concave to the southwest with a radius of 110.00 feet and a delta angle of 25°08'34" to the south boundary of said Parcel A,
County of San Miguel, State of Colorado.

The sidelines at the beginning and at the end of this legal description are extended or shortened as necessary to intersect with the boundaries of said Parcel A.

COLORADO REGISTERED PROFESSIONAL LAND SURVEYOR DAVID FOLEY 24954

J. David Foley, P.E.S. #24954

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EXHIBIT C

FOLEY ASSOCIATES, INC.
CIVIL ENGINEERING AND LAND SURVEYING
P. O. BOX 1385
TELLURIDE, CO 81435
970-728-6153

LEGAL DESCRIPTION

Parcel B of the Bilk Creek Exemption according to the Plat recorded in the office of the Clerk and Recorder in Plat Book 1 at page 274, located within a portion of the SE1/4 of the NW1/4 of Section 36, Township 43 North, Range 10 West of the New Mexico Principal Meridian, San Miguel County, Colorado,

COLORADO REGISTERED
J. DAVID FOLEY
6/28/00
24954
PROFESSIONAL LAND SURVEYOR

J. David Foley, P.L.S. #24954

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EXHIBIT D

FOLEY ASSOCIATES, INC.
CIVIL ENGINEERING AND LAND SURVEYING
P. O. BOX 1385
TELLURIDE, CO 81435
970-728-6153

LEGAL DESCRIPTION

A portion of the SE1/4 of the NW1/4 and the NE1/4 of the SW1/4 of Section 36, Township 43 North, Range 10 West of the New Mexico Principal Meridian, San Miguel County, Colorado being centered on an existing gravel road, further described as follows:

Beginning at a point from which the center 1/4 corner of said Section 36, being a BLM brass cap monument, bears N 22°49'07" E, 229.70 feet;
Thence N 90°00'00" W, 14.13 feet;
Thence N 07°43'17" W, 110.52 feet;
Thence 44.21 feet along a tangential curve concave to the west with a radius of 93.00 feet and a delta angle of 27°14'15";
Thence 89.68 feet along a reverse tangential curve concave to the east with a radius of 107.00 feet and a delta angle of 48°01'20";
Thence 12.09 feet along a reverse tangential curve concave to the west with a radius of 293.00 feet and a delta angle of 02°21'53";
Thence S 79°18'05" E, 14.00 feet;
Thence 12.67 feet along a non-tangential curve concave to the west with a radius of 307.00 feet, a delta angle of 02°21'53", a chord bearing of S 11°52'52" W and a chord distance of 12.67 feet;
Thence 77.95 feet along a reverse tangential curve concave to the east with a radius of 93.00 feet and a delta angle of 48°01'20";
Thence 50.87 feet along a reverse tangential curve concave to the west with a radius of 107.00 feet and a delta angle of 27°14'15";
Thence S 07°43'17" E, 112.42 feet to the Point of Beginning.

The basis of bearings for this legal description are based upon the bearing from the BLM brass cap monument at the northwest corner of Section 36 to the BLM brass cap witness corner monument for the north 1/4 corner of Section 36 assumed as the record bearing of S 89°45'00" E according to the BLM Dependent Resurvey of T.43N., R.10W., N.M.P.M. approved December 6, 1988.

COLORADO REGISTERED J. DAVID FOLEY 24954 LAND SURVEYOR

J. David Foley, P.L.S. #24954

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Page 1 of 13
SAN MIGUEL COUNTY, CO
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GRANT OF PUBLIC RECREATIONAL TRAIL AND EMERGENCY ACCESS EASEMENTS FOR PORTIONS OF SAN MIGUEL COUNTY ROADS 60M AND 61K VACATED PURSUANT TO BOARD OF COUNTY COMMISSIONER'S RESOLUTION NO. 2000 - 19

THIS GRANT of PUBLIC NON-MOTORIZED RECREATIONAL TRAIL EASEMENTS AND EMERGENCY ACCESS EASEMENT for those portions of San Miguel County Roads 60M and 61K vacated pursuant to San Miguel County Board of Commissioners' Resolution No. 2000-19 **("Easement Agreement")** is made this 30th day of June, 2000, by and between **H. CHARLES PRICE** and **JESSIE H. PRICE ("Grantors")** and **SAN MIGUEL COUNTY, COLORADO**, acting by and through its **BOARD OF COUNTY COMMISSIONERS, ("Grantee") for and on behalf of the residents of San Miguel County, Colorado, and the members of the public.**

I. RECITALS

A. Grantor is the fee simple owner of a certain 440 acre parcel situate in the County of San Miguel, State of Colorado and more particularly described as:

> The Northwest ¼ and the South ½ of Section 36, Township 43 North, Range 10 West of the New Mexico Principal Meridian, except those lands contained in the Valley Placer, USMS, 15120 (the "Price Parcel").

B. The County owns, inventories and/or maintains as public/county roads County Roads (C.R.) 60M, 61K, and 62K which traverse the Price Parcel.

C. On May 3, 2000 the San Miguel County Board of County Commissioners (the "BOCC") approved the partial and conditional vacation of County Roads (C.R.) 60M, 61K and 62K that traverse the Price Parcel, which the parties reasonably believed to be public and/or county roads, which approval was subsequently reduced to a written resolution of the BOCC dated May 10, 2000 (Resolution #2000-19).

D. As consideration for the partial and conditional vacation of C.R. 60M and 61K, the BOCC required Grantors to grant non-motorized recreational access and usage easements to San Miguel County, for the benefit of the public, for those portions of C.R. 60M and 61K to be vacated.

E. The easements in this Easement Agreement are being granted for the following purposes:

1. To provide uninterrupted non-motorized public access to public lands in

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the upper Bilk Creek area across County Road 61K.

2. Access to and use by the public of the recreational trail easements for hiking, running, bicycling, mountain bicycling, horseback riding, nordic skiing, snowshoeing, or any combination thereof over and across those vacated portions of San Miguel County Roads 60M and 61K as legally described on Exhibit "A" which exhibit is attached hereto and incorporated herein by this reference (the "Allowed Uses").

3. Emergency motorized vehicular access to the San Miguel County Road and Bridge Department, the San Miguel County Sheriff's Department, the Telluride Fire Protection District, and the San Miguel Power Association, Inc. over and across those vacated portions of San Miguel County Road 60M as legally described on Exhibit "B" which exhibit is attached hereto and incorporated herein by this reference (the "Emergency Uses").

F. Grantee or its designee is responsible for overseeing the use of the easements described on Exhibits "A" and "B" (the "Recreational Trail Easements" and "Emergency Access Easement" respectively, and together, the "Easement Areas").

G. Grantor is willing to enter into this Easement Agreement and grant the easements to the Easement Areas but only expressly subject to the conditions and covenants set forth below.

H. Grantee is willing to accept this Easement Agreement and the grant of the Easement Areas, subject to the limitations provided for herein, and agrees to perform all obligations created herein in such manner as to protect the Price Parcel and the Grantor's fee simple interests and improvements appurtenant thereto, and so as to prevent any liability of the Grantor from the Allowed Uses and the Emergency Uses to be permitted on the Easement Areas.

I. The Parties, in entering into this Easement Agreement and granting and accepting the conveyances herein, desire to avail themselves of the maximum immunities, benefits and protections which may be available to each of them pursuant to the public recreational use statute, CRS Section 33-41-101, et seq., the Colorado landowner liability statute, CRS Section 13-21-115 (1.5) and the Colorado Governmental Immunity Act, CRS Section 24-10-114 (collectively, the "Colorado Landowner Protection Statutes").

II. AGREEMENT

NOW THEREFORE, in consideration of and reliance upon the mutual covenants and agreements hereinafter set forth, including the aforementioned recitals which are hereby incorporated, the parties hereto agree as follows:

1. **Grant of Recreational Trail Easements.** Grantor hereby grants to Grantee,

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perpetual, non-exclusive public recreational trail easements on, over and across those vacated portions of San Miguel County Roads 61K and 60M as more particularly described on Exhibit "A" (the "Recreational Trail Easements").

2. Grant of Emergency Access Easement. Grantor hereby grants to Grantee, a perpetual, non-exclusive emergency access easement on, over and across those vacated portions of San Miguel County Road 60M as more particularly described on Exhibit "B" (the "Emergency Access Easement").

3. Limitations on Grant. In granting the Recreational Trail Easements and the Emergency Access Easement, Grantor expressly represents that Grantor does not:

A. Extend any assurance that the Easement Areas are safe for any purpose.

B. Confer upon any member of the public the legal status of an invitee or licensee to whom a duty of care is owed by Grantor, and

C. Assume responsibility or incur liability for any injury to person or property or for the death of any person caused by the use of the Easement Areas.

4. Condition Precedent.

Notwithstanding the grant herein, the Easement Areas shall be usable only upon the occurrence of the following precondition:

A. Grantee shall obtain and maintain insurance and name Grantor as an additional insured on its general liability insurance policy, which shall cover those claims and liabilities arising in connection with use of the Easement Areas by Grantee and members of the public. The limits of such insurance coverage must meet or exceed liability limits allowed from time to time under the Colorado Governmental Immunities Act ("Insurance Coverage"). Annually and sooner upon reasonable demand, Grantee shall cause to be obtained and forwarded to Grantor a certificate of insurance showing Grantor named as an insured thereunder. The insurance certificate must provide that Grantor shall receive notice of cancellation of Grantee's policy at least 10 days prior to its termination. Without limiting Grantee's obligation to obtain and maintain insurance denoting Grantor as an insured thereunder, Grantor may, but need not, obtain its own insurance coverage.

B. Unless and until the aforementioned precondition has occurred, Grantee shall not have any right of use of the Easement Areas and Grantee shall prohibit any member of the public from any such use and shall take all reasonable and appropriate action to prevent any such use.

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5. **Conditions Subsequent.**

A. Except as otherwise hereinafter provided, Grantor shall have no responsibility for maintaining, inspecting, and overseeing the Easement Areas and generally managing the Easement Areas. Any such responsibility shall be solely that of the Grantee. As used herein, "managing the Easement Areas" is intended to mean the entire range of activities associated with controlling, directing, allowing, and administering the use, operation, protection, development, and maintenance of the Easement Areas for the Allowed Uses.

B. Grantee shall have the right to maintain the Emergency Access Easement to a standard passable by a four-wheel drive vehicle for Emergency Uses.

C. Grantor shall be responsible for providing any keys or combinations for gate locks necessary for access to the Emergency Access Easement to the San Miguel County Sheriff's Department, the San Miguel County Road and Bridge Department, the Telluride Fire Protection District, and the San Miguel Power Association, Inc.

D. Grantee shall maintain the Insurance Coverage. Grantor shall have no obligation to insure or indemnify Grantee for any injury, claim or damage to any person or property while using the Easement Areas. Nothing herein is intended to waive any limits on liability afforded to the parties under the Colorado Landowner Protection Statutes.

6. **Use Restrictions.**

A. The Easement Areas may be used by the Grantee, its citizens, residents, visitors, licensees and invited guests.

B. The Easement Areas shall only be used for the Allowed Uses or Emergency Uses. No other uses, express or implied, are authorized by this Agreement. Without limiting their generality, the following uses are strictly prohibited.

i. No motorized vehicles, except motorized vehicles authorized or used by Grantor or those permitted to Grantee pursuant to the Emergency Access Easement, motorized vehicles being specifically prohibited from any use within the Easement Areas. Grantee is authorized to have motorized access solely for the limited purposes of emergencies, overseeing, maintaining, and inspecting the Easement Areas.

ii. All hunting, fishing, camping, picnicking, or driving motorized recreational vehicles, discharging of firearms, fishing, or engaging

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in any other form of sports or other recreational activity, other than the Allowed Uses by the general public on the Easement Areas, without the prior written consent of Grantor, which consent can be withheld for any reason or no reason, is strictly prohibited.

iii. Littering, the creation of any unsanitary condition, defacing the Price Parcel or the Easement Areas, trespass onto the Price Parcel outside of the Easement Areas, impeding access to the Price Parcel or property belonging to adjoining landowners by Grantor or Grantor's guests, licensees, invitees or holders of easements from Grantor, removing any survey staking, collecting and removing water, firewood, rocks and artifacts, if any, harassment or injury to wildlife or plants, or any other activity which might threaten the protection and preservation of the Easement Areas and the Price Parcel in its present natural, essentially undisturbed state, and Grantor's use and enjoyment of the Price Parcel.

iv No dogs or other domestic animals are permitted on the Easement Areas except to the extent allowed by applicable county regulations. All such domestic animals must be confined by leash or other means to the Easement Areas.

C. Grantee's and the general public's use of the Easement Areas shall be subordinate to and shall not interfere with the conservation easement to The Nature Conservancy burdening the Price Parcel and to the Grantor's concurrent use of the Price Parcel for all lawful purposes for which Grantor may use said property.

D. Neither Grantor nor Grantee shall impose any fees or charges upon any member of the general public entering upon and making use of the Easement Areas for the Allowed Uses. It is the intention of the parties that Grantor shall derive full benefit of the protections afforded a landowner allowing public recreational access under the Colorado Landowner Protection Statutes.

7. <u>Miscellaneous</u>.

A. The Recreational Trail Easements and Emergency Access Easement may not be transferred or assigned by Grantee without the prior written consent of Grantor.

B. All notices or other documents required or authorized to be sent by one party to the other shall be in writing and shall be deemed given to a party when personally delivered, or when deposited in the United States mail,

VE MP JHP

sufficient postage prepaid, return receipt requested, addressed as follows:

If to Grantor:

H. Charles and Jessie H. Price
9839 Rockbrook Drive
Dallas, Texas 75220
Facsimile: (214) 350-4687

With a copy to:

J. David Reed
P.O. Box 2470
Telluride, Colorado 81435
Facsimile: (970) 728-3474

If to Grantee:

San Miguel County Board of County Commissioners
333 W. Colorado Ave.
P.O. Box 1170
Telluride, Colorado 81435
Facsimile: (970) 728-3718

With a copy to:

Office of the County Attorney
333 W. Colorado Ave.
P.O. Box 791
Telluride, Colorado 81435
Facsimile: (970) 728-3718

A party shall notify the other party if their address changes from time to time.

C. Grantee agrees to be bound by all covenants, terms, conditions, restrictions and limitations expressed herein.

D. The Recreational Trail Easements and Emergency Access Easement granted herein and all provisions of this Agreement shall run with the land and shall be applicable to, binding upon and inure to the benefit of the parties, their respective transferees, representatives, successors and assigns.

E. This Agreement contains the entire understanding of the parties. There are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

F. This Agreement may not be modified or amended except in writing signed by all the parties hereto. The laws of the State of Colorado shall

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govern the validity, performance and enforcement of this Agreement. Venue is limited to the District or County Court for San Miguel County, Colorado. In the event of litigation arising from a dispute under this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney fees from the non-prevailing party.

G. Time is of the essence in the performance of the obligations and requirements provided for herein.

H. A waiver of a breach of any term of this Agreement will not be considered a waiver of a further breach of the same term, a waiver of a breach of any other term, or a waiver of such waiving party's right to declare an immediate or a subsequent default.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

GRANTORS:

H. CHARLES PRICE

JESSIE H. PRICE

STATE OF TEXAS)
)ss.
COUNTY OF)

ACKNOWLEDGED before me by H. Charles Price and Jessie H. Price on the 26th day of June, 2000.

WITNESS my hand and official seal.
My commission expires: 8-16-03

Notary Public

JULIE MITCHELL
Notary Public, State of Texas
My Commission Expires
8-16-03

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GRANTEE:

THE BOARD OF COUNTY
COMMISSIONERS OF SAN MIGUEL
COUNTY, COLORADO

By _____
VERNON E. EBERT, Chair Pro Tem

STATE OF COLORADO)
)ss.
COUNTY OF SAN MIGUEL)

ACKNOWLEDGED before me by Vern Ebert, who acknowledged himself to be the Chair Pro Tem of the Board of County Commissioners on this 28th day June, 2000.

WITNESS my hand and official seal,
My commission expires: 02/05/2001

Marie A. Thomas
Notary Public

MARIE A. THOMAS NOTARY PUBLIC STATE OF COLORADO

VE

EXHIBIT A

FOLEY ASSOCIATES, INC.
CIVIL ENGINEERING AND LAND SURVEYING
P. O. BOX 1385 TELLURIDE, CO 81435
970-728-6153

LEGAL DESCRIPTION

An easement 20 feet wide lying 10 feet on each side of the following described centerline of vacate County Road 60M, located within the NW1/4 and the SW1/4 of Section 36, Township 43 North, Range 10 West, New Mexico Principal Meridian:

Beginning at a point from which the center 1/4 corner of said Section 36 bears N 87°46'33" E, 146.26 feet;
Thence S 86°48'25" W, 5.39 feet;
Thence 44.52 feet along a tangential curve concave to the north with a radius of 50.00 feet, a delta angle of 51°01'08";
Thence 128.25 feet along a reverse tangential curve concave to the southwest with a radius of 500.00 feet and a delta angle of 14°41'48";
Thence 125.01 feet along a reverse tangential curve concave to the northeast with a radius of 275.00 feet and a delta angle of 26°02'46";
Thence N 30°49'30" W, 360.39 feet;
Thence 416.90 feet along a tangential curve concave to the south and southwest with a radius of 380.00 feet and a delta angle of 62°51'34";
Thence 99.21 feet along a reverse tangential curve concave to the north with a radius of 200.00 feet and a delta angle of 28°25'20";
Thence N 65°15'44" W, 166.74 feet;
Thence 40.20 feet along a tangential curve concave to the southeast with a radius of 15.00 feet and a delta angle of 153°33'25";
Thence S 38°49'09" E, 546.07 feet;
Thence 32.97 feet along a tangential curve concave to the southwest with a radius of 500.00 feet and a delta angle of 03°46'40";
Thence S 35°02'29" E, 158.47 feet;
Thence 44.06 feet along a tangential curve concave to the northwest with a radius of 15.00 feet and a delta angle of 168°17'32";
Thence N 46°44'57" W, 56.89 feet;
Thence 95.81 feet along a tangential curve concave to the southwest with a radius of 400.00 feet and a delta angle of 13°43'27";
Thence N 60°28'24" W, 601.71 feet;
Thence 238.16 feet along a tangential curve concave to the northeast with a radius of 1700.00 feet and a delta angle of 08°01'37";
Thence N 52°26'47" W, 268.42 feet;
Thence 139.01 feet along a tangential curve concave to the south with a radius of 100.00 feet and a delta angle of 79°38'50";

Thence 140.96 feet along a reverse tangential curve concave to the north with a radius of 60.00 feet and delta angle of 134°36'16";
Thence N 02°30'39" E, 75.81 feet;
Thence 81.46 feet along a tangential curve concave to the southwest with a radius of 80.00 feet and a delta angle of 58°20'26";
Thence N 55°49'47" W, 100.39 feet;
Thence 27.19 feet along a tangential curve concave to the northeast with a radius of 70.00 feet and a delta angle of 22°15'11";
Thence N 33°34'36" W, 276.50 feet;
Thence 64.20 feet along a tangential curve concave to the southwest with a radius of 1070.00 feet and a delta angle of 03°26'17";
Thence N 37°00'53" W, 308.51 feet;
Thence 142.36 feet along a tangential curve concave to the southwest with a radius of 270.00 feet and a delta angle of 30°12'34" to the west boundary of said Section 36, from which the northwest corner of said Section 36 bears N 00°29'21" E, 950.40 feet,

TOGETHER WITH
Beginning at a point on the west boundary of said Section 36 from which the West 1/4 corner of said Section 36 bears N 00°35'28" E, 179.81 feet;
Thence S 75°00'17" E, 279.31 feet;
Thence 97.04 feet along a tangential curve concave to the south with a radius of 500.00 feet and a delta angle of 11°07'13";
Thence S 63°53'04" E, 266.69 feet;
Thence 117.89 feet along a tangential curve concave to the southwest with a radius of 100.00 feet and delta angle of 67°32'41";
Thence S 03°39'37" W, 142.93 feet;
Thence 24.34 feet along a tangential curve concave to the west with a radius of 50.00 feet and a delta angle of 27°53'24" to the intersection with County Road 61K,

County of San Miguel, State of Colorado.

The sidelines of this legal description are extended or shortened as necessary to intersect with the west boundary of said Section 36.

COLORADO REGISTERED
J. DAVID FOLEY
6/28/00
24954
PROFESSIONAL LAND SURVEYOR

J. David Foley P.L.S. 24954

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EXHIBIT A

FOLEY ASSOCIATES, INC.
CIVIL ENGINEERING AND LAND SURVEYING
P. O. BOX 1385 TELLURIDE, CO 81435
970-728-6153

LEGAL DESCRIPTION

An easement 20 feet wide lying 10 feet on each side of the following described centerline of vacate County Road 61K, located within the SW1/4 of Section 36, Township 43 North, Range 10 West, New Mexico Principal Meridian:

Beginning at a point on the west boundary of said Section 36 from which the southwest corner of said Section 36 bears S 00°35'28" W, 1987.32 feet;
Thence S 89°17'53" E, 644.32 feet to the True Point of Beginning;

Thence 18.92 feet along a tangential curve concave to the northwest with a radius of 50.00 feet and a delta angle of 21°40'57";
Thence S 53°13'58" W, 34.70 feet;
Thence 26.49 feet along a tangential curve concave to the southeast with a radius of 40.00 feet and delta angle of 37°56'50";
Thence S 15°17'08" W, 49.22 feet;
Thence 130.13 feet along a tangential curve concave to the east with a radius of 358.13 feet and a delta angle of 20°49'08";
Thence 526.19 feet along a reverse tangential curve concave to the west with a radius of 950.00 feet and delta angle of 31°44'07";
Thence S 29°30'18" W, 322.41 feet;
Thence 584.15 feet along a tangential curve concave to the east with a radius of 3000.00 feet and a delta angle of 11°09'23";
Thence S 18°20'55" W, 183.72 feet to the west boundary of said Section 36 from which the southwest corner of said Section 36 bears S 00°35'28" W, 254.67 feet,

County of San Miguel, State of Colorado.

The sidelines of this legal description are extended or shortened as necessary to intersect with the west boundary of said Section 36.

COLORADO REGISTERED
J. DAVID FOLEY
6/29/00
24954
PROFESSIONAL LAND SURVEYOR

J. David Foley P.L.S. 24954
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EXHIBIT B

FOLEY ASSOCIATES, INC.
CIVIL ENGINEERING AND LAND SURVEYING
P. O. BOX 1385
TELLURIDE, CO 81435
970-728-6153

LEGAL DESCRIPTION

An easement 20 feet wide lying 10 feet on each side of the following described centerline of vacated County Road 60M, located within the NW1/4 and the SW1/4 of Section 36, Township 43 North, Range 10 West, New Mexico Principal Meridian:

Beginning at a point from which the center 1/4 corner of said Section 36 bears N 87°46'33" E, 146.26 feet;
Thence S 86°48'25" W, 5.39 feet;
Thence 44.52 feet along a tangential curve concave to the north with a radius of 50.00 feet, a delta angle of 51°01'08";
Thence 128.25 feet along a reverse tangential curve concave to the southwest with a radius of 500.00 feet and a delta angle of 14°41'48";
Thence 125.01 feet along a reverse tangential curve concave to the northeast with a radius of 275.00 feet and a delta angle of 26°02'46";
Thence N 30°49'30" W, 360.39 feet;
Thence 416.90 feet along a tangential curve concave to the south and southwest with a radius of 380.00 feet and a delta angle of 62°51'34";
Thence 99.21 feet along a reverse tangential curve concave to the north with a radius of 200.00 feet and a delta angle of 28°25'20";
Thence N 65°15'44" W, 166.74 feet;
Thence 40.20 feet along a tangential curve concave to the southeast with a radius of 15.00 feet and a delta angle of 153°33'25";
Thence S 38°49'09" E, 546.07 feet;
Thence 32.97 feet along a tangential curve concave to the southwest with a radius of 500.00 feet and a delta angle of 03°46'40";
Thence S 35°02'29" E, 158.47 feet;
Thence 44.06 feet along a tangential curve concave to the northwest with a radius of 15.00 feet and a delta angle of 168°17'32";
Thence N 46°44'57" W, 56.89 feet;
Thence 95.81 feet along a tangential curve concave to the southwest with a radius of 400.00 feet and a delta angle of 13°43'27";
Thence N 60°28'24" W, 601.71 feet;
Thence 238.16 feet along a tangential curve concave to the northeast with a radius of 1700.00 feet and a delta angle of 08°01'37";
Thence N 52°26'47" W, 268.42 feet;

Thence 139.01 feet along a tangential curve concave to the south with a radius of 100.00 feet and a delta angle of 79°38'50";
Thence 140.96 feet along a reverse tangential curve concave to the north with a radius of 60.00 feet and delta angle of 134°36'16";
Thence N 02°30'39" E, 75.81 feet;
Thence 81.46 feet along a tangential curve concave to the southwest with a radius of 80.00 feet and a delta angle of 58°20'26";
Thence N 55°49'47" W, 100.39 feet;
Thence 27.19 feet along a tangential curve concave to the northeast with a radius of 70.00 feet and a delta angle of 22°15'11";
Thence N 33°34'36" W, 276.50 feet;
Thence 64.20 feet along a tangential curve concave to the southwest with a radius of 1070.00 feet and a delta angle of 03°26'17";
Thence N 37°00'53" W, 308.51 feet;
Thence 142.36 feet along a tangential curve concave to the southwest with a radius of 270.00 feet and a delta angle of 30°12'34" to the west boundary of said Section 36, from which the northwest corner of said Section 36 bears N 00°29'21" E, 950.40 feet,

TOGETHER WITH

Beginning at a point on the west boundary of said Section 36 from which the West 1/4 corner of said Section 36 bears N 00°35'28" E, 179.81 feet;
Thence S 75°00'17" E, 279.31 feet;
Thence 97.04 feet along a tangential curve concave to the south with a radius of 500.00 feet and a delta angle of 11°07'13";
Thence S 63°53'04" E, 266.69 feet;
Thence 117.89 feet along a tangential curve concave to the southwest with a radius of 100.00 feet and delta angle of 67°32'41";
Thence S 03°39'37" W, 142.93 feet;
Thence 24.34 feet along a tangential curve concave to the west with a radius of 50.00 feet and a delta angle of 27°53'24" to the intersection with County Road 61K,

County of San Miguel, State of Colorado.

The sidelines of this legal description are extended or shortened as necessary to intersect with the west boundary of said Section 36.

COLORADO REGISTERED
J. DAVID FOLEY
6/28/00
24954
PROFESSIONAL LAND SURVEYOR

J. David Foley, P.L.S. #24954

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Page 1 of 10
SAN MIGUEL COUNTY, CO
GAY CAPPIS CLERK-RECORDER
06/30/2000 03:19 PM Recording Fee $50.00

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C.R. 62K HIKING/BIKING EASEMENT AGREEMENT

THIS C.R. 62K HIKING/BIKING EASEMENT AGREEMENT this "Agreement") is made and entered into this 30th day of June, 2000, by and between **H. CHARLES PRICE** and **JESSIE H. PRICE,** whose address is 9839 Rockbrook Drive, Dallas, TX 75220 **(together, the "Grantor")** and **THE NATURE CONSERVANCY**, a District of Columbia nonprofit corporation, whose principal address is 4245 North Fairfax Drive, #100, Arlington, VA 22203 **(the "Grantee").**

I. RECITALS

A. Grantor is the fee simple owner of a certain 440 acre parcel situate in the County of San Miguel, State of Colorado and more particularly described as:

> The Northwest ¼ and the South ½ of Section 36, Township 43 North, Range 10 West of the New Mexico Principal Meridian, except those lands contained in the Valley Placer, USMS, 15120 (the " Price Parcel").

B. The County owns inventories and/or maintains as public/county roads County Roads (C.R.) 60M, 61K and 62K which traverse the Price Parcel.

C. On May 3, 2000 the San Miguel County Board of County Commissioners (the "BOCC") approved the partial and conditional vacation of County Roads (C.R.) 60M, 61K and 62K that traverse the Price Parcel which approval was subsequently reduced to a written resolution of the BOCC dated May 10, 2000 (Resolution #2000-19).

D. As consideration for the vacation of C.R. 62K, Grantor agreed to grant a permissive non-motorized public recreation access and usage easement (the "Easement") to the Grantee for that portion of C.R. 62K to be vacated, to be limited to public hiking and biking uses.

E The Grantee is a private organization organized to protect and conserve natural areas and ecologically significant land for scientific, charitable, and educational purposes, and is a "charitable organization" under the terms of C.R.S. § 38-30.5-104(2) and is a "qualified organization" within the provisions of Section 170(h) of the Internal Revenue Code of 1986, as amended, (the "IRS Code"), and meets the requirements of the IRS Code as a § 501(c)(3) exempt organization.

F. The purpose of the Easement is to accommodate non-motorized public recreational access and usage of C.R. 62K, to be limited to hiking and biking, to be administered by the Grantee, in consultation with the Grantor, in accordance with applicable terms and conditions of the Deed of Conservation Easement (the "Conservation Easement") dated _____, 2000 by and between Grantor and Grantee, encumbering the Price Parcel , and in a manner consistent with the Grantor's intent to provide the public with a tranquil, contemplative environment in which to enjoy the natural beauty of the area. This Agreement shall grant to Grantee the right and the power to close or restrict public access and usage of the Easement in accordance

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with gradual methods of implementation, as appropriate under the circumstances, should the Grantee determine, in consultation with the Grantor, that the Grantor's intent as set forth herein is being violated by the occurrence of verified incidents of trespass, vandalism, adverse environmental impacts, substantial littering, and such other parameters as in the judgment of the Grantee, violate the Grantor's intent, but prohibiting any capricious or arbitrary exercise of such right. Such closure or restriction to be effective upon notice to, and in consultation with, the Board of County Commissioners of San Miguel County.

G. Grantee or its designee agrees to be responsible for overseeing and monitoring the use of the Easement.

H. Grantor is willing to grant the Easement subject to the conditions and covenants set forth herein.

I. Grantee is willing to accept the Easement subject to the limitations provided for herein, and agrees to perform all obligations created herein in accordance with the terms and conditions set forth herein.

J. The Parties, in entering into this Agreement, desire to avail themselves of the maximum immunities, benefits and protections which may be available to each of them pursuant to the public recreational use statute, CRS Section 33-41-101, et seq., and the Colorado landowner liability statute, CRS Section 13-21-115 (1.5) (collectively, the "Colorado Landowner Protection Statutes").

II. AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, including the aforementioned recitals which are hereby incorporated, the parties hereto agree as follows:

1. Conveyance of Hiking/Biking Easement. Grantor hereby grants to Grantee a permissive, perpetual and non-exclusive Easement as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference, subject to the terms, conditions and limitations set forth herein. Notwithstanding the foregoing, this Agreement is subject to the terms and conditions of the Conservation Easement. If circumstances arise in the future that result in the termination of the Conservation Easement pursuant to its terms, then this Agreement and the Easement shall terminate and be of no further force or effect.

2. Limitations on Grant and Conveyances. In granting the Easement, Grantor expressly represents, and Grantee agrees, that Grantor does not:

A. Extend any assurance that the Easement is safe for any purpose.

B. Confer upon any member of the public the legal status of an invitee or licensee to whom a duty of care is owed by Grantor, and

C. Assume responsibility or incur any liability for injury to person or property or for the death of any person caused by the use of the Easement.

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3. **Management of the Easement.**

A. Grantee shall oversee and manage the Easement so as to promote protect and preserve the Easement and the Price Parcel in its present natural, essentially undisturbed state, and the Grantor's use and enjoyment of the Price Parcel. Such oversight and management shall be consistent with the concepts and general principles contained in Recital F of this Agreement.

B. Grantor shall have no responsibility for maintaining, inspecting, and policing the Easement or generally managing the Easement. Grantee or its designee shall be responsible for monitoring and overseeing the use of the Easement, and enforcing the terms of the Easement, pursuant to the terms set forth herein.

C. Grantor shall have no obligation to insure or indemnify Grantee for any injury, claim or damage to any person or property while using the Easement, except for acts performed by Grantor. Grantee shall have no obligation to insure or indemnify Grantor for any injury, claim or damage to any person or property while using the Easement, except for acts performed by Grantee. Nothing herein is intended to waive any limits on liability afforded to the parties under the Colorado Landowner Protection Statutes.

4. **Use Restrictions.**

A. The Easement may be used by the Grantee and members of the public subject to the terms of this Agreement and the Conservation Easement. For purposes of this Agreement, member of the public are defined as the citizens, residents, visitors licensees, and invited guests of San Miguel County.

B. The Easement shall only be used for hiking and biking. No other uses, express or implied, are authorized by this Agreement. Without limiting their generality, the following uses are strictly prohibited.

i. Motorized vehicles, except motorized vehicles authorized or used by Grantor or any adjacent landowner as permitted under the Conservation Easement, are specifically prohibited from any use within the Easement. Grantee is authorized to have motorized access solely for the limited purposes of overseeing, maintaining, and inspecting the Easement.

ii. Public usage of the Easement shall be limited to hiking and bicycling. The operation of motorized vehicles, including, but not limited to cars, trucks, sport utility vehicles, motorcycles, snowmobiles, and all terrain vehicles, within and upon the Easement by members of public is prohibited. Camping, fishing, hunting, the discharge of firearms, and any other activities engaged in by members of the

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public that are not specifically authorized by this Easement are also prohibited.

iii. Any other form of sports or other recreational activity, other than hiking and biking by the general public on the Easement, shall be prohibited without the prior written consent of the Grantor, which consent can be withheld for any reason or no reason.

iv. Littering, the creation of any unsanitary condition, defacing the Price Parcel or the Easement, impeding access to the Price Parcel or to property belonging to adjoining landowners by Grantor or Grantor's guests, licensees, invitees or holders of easements from Grantor, removing any survey staking, collecting and removing water, firewood, rocks and artifacts, or any other activity that results in the harassment or injury of wildlife or plants, is strictly prohibited. Users of the Easement shall not bring dogs or other domestic animals on the Easement.

C. Neither Grantor nor Grantee shall impose any fees or charges upon any member of the general public entering upon and making use of the Easement. Furthermore, it is the intention of the parties that Grantor shall derive full benefit of the protections afforded a landowner allowing public recreational access under the Colorado Landowner Protection Statutes.

5. **Compliance.** In the event that non-compliance with any restriction contained herein or under the Conservation Easement with respect to the Easement comes to the attention of Grantee, Grantee shall notify the Grantor and the County in writing of such non-compliance. Grantee shall have the right to perform restoration of the Price Parcel to its condition prior to the non-compliance, as necessary in Grantee's discretion. Grantee shall consult with the Grantor and the County and may elect to close or restrict further the public's use of the Easement indefinitely in accordance with gradual methods of implementation, as appropriate under the circumstances, should the Grantee determine, following consultation with the Grantor, that the Grantor's intent as set forth herein or the Conservation Easement is being violated by the occurrence of verified incidents of trespass, vandalism, adverse environmental impacts, substantial littering, and such other parameters as in the judgment of the Grantee, violate the Grantor's intent. If San Miguel County or the citizens of San Miguel County provide, in good faith, a remedy for such violation, Grantee agrees to consider such remedy in its decision to restrict future uses of the Easement. Further, Grantee shall have the right to undertake such actions, including appropriate legal proceedings, including an action for injunction or specific performance, as are reasonably necessary to effect such corrections. Provided, however, that Grantee shall not exercise its authority regarding implementation of sanctions for non-compliance with such restrictions in a capricious or arbitrary manner. Grantee shall provide prior notice to, and consult with, the County, before any decision of Grantee to restrict or close public access or use of the easement shall become effective. Grantor shall not be responsible for taking corrective action as a result of any violation of any restriction contained herein caused by any member of the general public using the Easement.

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6. **Miscellaneous.**

A. The Easement may not be further conveyed by Grantee nor transferred or assigned by Grantee without the prior written consent of Grantor which consent shall not be unreasonably withheld, provided such transferee or assignee subscribes to and agrees to enforce the purposes and intent set forth in this Agreement, and is a "charitable organization" under the terms of C.R.S. § 38-30.5-104(2) and is a "qualified organization" within the provisions of Section 170(h) of the IRS Code.

B. All notices or other documents required or authorized to be sent by one party to the other shall be in writing and shall be deemed given to a party when personally delivered, or when deposited in the United States mail, sufficient postage prepaid, return receipt requested, addressed as follows:

If to Grantor:

H. Charles and Jessie H. Price
9839 Rockbrook Drive
Dallas, Texas 75220
Facsimile: (214) 350-4687

With a copy to:

J. David Reed
P.O. Box 2470
Telluride, Colorado 81435
Facsimile: (970) 728-3474

If to Grantee:

The Nature Conservancy
1881 Ninth Street, #200
Boulder, Colorado 80302
Facsimile: (303) 444-2986

With a copy to:

Western Regional Attorney
The Nature Conservancy
2060 Broadway, Suite 230
Boulder, CO 80302
(303) 541-0346

Each party shall notify the other party if its address changes from time to time.

C. Grantee agrees to be bound by all covenants, terms, conditions, restrictions and limitations expressed herein.

D. This Agreement is subject to the terms and conditions of the Conservation Easement. To the extent there exists a conflict in terms or conditions between the Conservation Easement and this Agreement, the Conservation Easement shall control.

E. The Easement granted herein and all provisions of this Agreement shall run with the land and shall be applicable to, binding upon and inure to the benefit of the parties, their respective transferees, representatives, successors and assigns.

F. This Agreement contains the entire understanding of the parties. There are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

G. This Agreement may not be modified or amended except in writing signed by all the parties hereto. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Venue is limited to the District or County Court for San Miguel County, Colorado. In the event of litigation arising from a dispute under this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney fees from the non-prevailing party.

H. Time is of the essence in the performance of the obligations and requirements provided for herein.

I. A waiver of a breach of any term of this Agreement will not be considered a waiver of a further breach of the same term, a waiver of a breach of any other term, or a waiver of such waiving party's right to declare an immediate or a subsequent default.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Signatures and notaries on next page:

GRANTOR:

_____
H. CHARLES PRICE

_____
JESSIE H. PRICE

STATE OF COLORADO)
) ss.
COUNTY OF SAN MIGUEL)

ACKNOWLEDGED before me by H. Charles Price and Jessie H. Price on the ___ day of _____, 2000.

WITNESS my hand and official seal.

_____
Notary Public

My commission expires:

GRANTEE:

THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation

By Rebecca Hall
Rebecca Hall,
Land Protection Specialist – TNC-COFO

STATE OF Colorado **)**
)ss.
COUNTY OF Boulder **)**

ACKNOWLEDGED before me by Rebecca Hall **, who acknowledged herself/himself to be the** Nature Conservancy/COFO Land Protection Specialist **on this** 30th **day** June **, 2000.**

WITNESS my hand and official seal.

Linda Giandinoto
Notary Public

My commission expires:

LINDA GIANDINOTO
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 06/05/2004

GRANTOR:

H. CHARLES PRICE

JESSIE H. PRICE

STATE OF ~~COLORADO~~ Texas)
COUNTY OF ~~SAN MIGUEL~~ Dallas) ss.

ACKNOWLEDGED before me by H. Charles Price and Jessie H. Price on the 26th day of June, 2000.

WITNESS my hand and official seal.

Julie Mitchell
Notary Public

My commission expires: 8-16-03

JULIE MITCHELL
Notary Public, State of Texas
My Commission Expires
8-16-03

GRANTEE:

THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation

By_____

STATE OF _____)
)ss.
COUNTY OF _____)

ACKNOWLEDGED before me by_____, who acknowledged herself/himself to be the _____ on this ___ day _____, 2000.

WITNESS my hand and official seal.

_____
Notary Public

My commission expires:

EXHIBIT A

FOLEY ASSOCIATES, INC.
CIVIL ENGINEERING AND LAND SURVEYING
P. O. BOX 1385
TELLURIDE, CO 81435
970-728-6153

LEGAL DESCRIPTION

An easement 20 feet wide lying 10 feet on each side of the following described centerline of vacated County Road 62K, located within the SW1/4 and the SE1/4 of Section 36, Township 43 North, Range 10 West, New Mexico Principal Meridian:

Beginning at a point from which the center 1/4 corner of said Section 36 bears N 87°46'33" E, 146.26 feet;
Thence 55.44 feet along a curve concave to the east with a radius of 100.00 feet, a delta angle of 31°45'57", a chord which bears S 04°56'07" W for a chord distance of 54.73 feet;
Thence 47.54 feet along a reverse tangential curve concave to the west with a radius of 100.00 feet and a delta angle of 27°14'14";
Thence S 07°43'17" E, 170.32 feet;
Thence 30.78 feet along a tangential curve concave to the west with a radius of 50.00 feet and a delta angle of 35°16'17";
Thence 63.67 feet along a reverse tangential curve concave to the east with a radius of 40.00 feet and a delta angle of 91°11'48";
Thence S 63°38'48" E, 12.67 feet;
Thence 105.55 feet along a tangential curve concave to the southwest with a radius of 110.00 feet and a delta angle of 54°58'39";
Thence S 08°40'09" E, 85.56 feet;
Thence 19.91 feet along a tangential curve concave to the west with a radius of 50.00 feet and a delta angle of 22°48'59";
Thence S 14°08'49" W, 39.87 feet;
Thence 147.91 feet along a tangential curve concave to the east with a radius of 155.00 feet and a delta angle of 54°40'29";
Thence 71.90 feet along a reverse tangential curve concave to the west with a radius of 100.00 feet and a delta angle of 41°11'48";
Thence S 00°40'08" W, 144.24 feet;
Thence 56.33 feet along a tangential curve concave to the east with a radius of 140.00 feet and a delta angle of 23°03'07";
Thence S 22°22'58" E, 69.08 feet;
Thence 149.58 feet along a tangential curve concave to the west with a radius of 250.00 feet and a delta angle of 34°16'55";
Thence S 11°53'57" W, 97.95 feet;
Thence 91.83 feet along a tangential curve concave to the east with a radius of 135.00 feet and a delta angle of 38°58'20";

Thence S 27°04'24" E, 94.85 feet;
Thence 35.85 feet along a tangential curve concave to the west with a radius of 100.00 feet and a delta angle of 20°32'26";
Thence S 06°31'57" E, 82.30 feet;
Thence 79.54 feet along a tangential curve concave to the west with a radius of 115.00 feet and a delta angle of 39°37'36";
Thence S 33°05'39" W, 26.87 feet;
Thence 97.38 feet along a tangential curve concave to the east with a radius of 135.00 feet and a delta angle of 41°19'41";
Thence S 08°14'02" E, 80.90 feet;
Thence 173.86 feet along a tangential curve concave to the west with a radius of 1700.00 feet and a delta angle of 05°51'35";
Thence 14.98 feet along a reverse tangential curve concave to the east with a radius of 50.00 feet and a delta angle of 17°09'52";
Thence 84.60 feet along a reverse tangential curve concave to the west with a radius of 500.00 feet and a delta angle of 09°41'40";
Thence S 09°50'39" E, 524.56 feet to the south boundary of said Section 36,
County of San Miguel, State of Colorado.

The sidelines at the end of this legal description are extended or shortened as necessary to intersect with the south boundary of said Section 36.

COLORADO REGISTERED J. DAVID FOLEY 6/28/00 24954 PROFESSIONAL LAND SURVEYOR

J. David Foley, P.L.S. #24954

X:doc\92099\Bilk\62Ktrail.leg

San Miguel County
Colorado

John Huebner <johnh@sanmiguelcountyco.gov>

Fwd: COC-39221 CR60M VACATE - HOMEWOOD

1 message

Karen Henderson <karenh@sanmiguelcountyco.gov> Tue, Dec 6, 2016 at 9:51 AM
To: Michael Hockersmith <michael@mdhlawpc.com>
Cc: Mike Rozycki <miker@sanmiguelcountyco.gov>, John Huebner <johnh@sanmiguelcountyco.gov>

---------- Forwarded message ----------
From: **Ron Krystyniak** <ronk145co@gmail.com>
Date: Mon, Dec 5, 2016 at 10:13 PM
Subject: COC-39221 CR60M VACATE - HOMEWOOD
To: karenh@sanmiguelcountyco.gov

Dear Commissioners,

Please read the attached letter relating to the vacation of CR60M on the Homewood property. I am sending in response to the request for public comment

Sincerely

Ron Krystyniak

--
Karen Henderson
Associate Planner
San Miguel County
970-728-3083
PO Box 548
Telluride, CO 81435
karenh@sanmiguelcountyco.gov

CR60M Vacation.docx
15K

In reply to:

COC-39221

December 5, 2016

Via Email:karenh@sanmiguelcountyco.gov

San Miguel County Board of County Commissioners

c/o San Miguel Planning Department

333 West Colorado Ave

Telluride, CO 81435

Dear Commissioners:

This letter is in response to the Homewood's application to vacate a section of County Road 60M. I own two lots within the Ptarmigan Ranch community and I am one of five members on the HOA's Board of Directors. I am also one of the closer Ptarmigan lot owners to the Homewood property. I voted against the letter sent on behalf of only the HOA board members and not the owners within the community.

I agree with the BLM's position and further, I strongly urge the commission to grant a vacation of County Road 60M beyond the last touch point to government lands. It is not appropriate for the government or the general public to interfere on the usage of private land. I agree with the Homewood's arguments for the vacation and also believe illegal activities, such as hunting, littering and trespassing are real issues some of the general public do not care about which infringe on the rights of a land owner. The road's usefulness is no longer meaningful as it has become a dead end due to a previously granted vacation. This segment of CR60M is essentially a road to nowhere, serving no purpose. This previous vacation sets a precedent and justifies the requested vacation. If a vacation was not granted, the county should ensure the road satisfies county standards relating to size, quality and safety. In satisfying these standards to ensure usefulness, the road may require enlargement, continued maintenance, snowplowing, a large turn around at the dead end and fencing to prevent trespassing. These projects

would come at a significant expense to the tax payer and are unnecessary. An argument to maintain the county road based on denying the public of a vista is foolish and cannot equate to actual dollars that will need to be spent to improve and maintain the road segment. **Denying a grant of vacation beyond BLM land would be a costly mistake for all county residents and only favor a few local residents.**

I also support the BLM's stance necessitating a pedestrian easement WITHOUT threatening "No Trespassing" signs and locking of gates. Access must be assured. Also, I only support a pedestrian easement that is inclusive for all types of pedestrian activities. Further, I do not support any language regarding the leashing of dogs on the easement. At the appropriate time, I encourage the County to include the public in the granting of a pedestrian easement to ensure all activities considered important are included which the Homewood's are apparently amendable to.

Again, please grant the vacation beyond the last BLM touch point. Allow private landowners control of their land without government and public intervention!

Sincerely,

Ron Krystyniak

6515 CR60M and 480 Silverpick Rd – Ptarmigan Ranch

San Miguel County
Colorado

John Huebner <johnh@sanmiguelcountyco.gov>

Fwd: Homewood application to vacate county road 60M

1 message

Karen Henderson <karenh@sanmiguelcountyco.gov> Tue, Dec 6, 2016 at 3:07 PM
To: Michael Hockersmith <michael@mdhlawpc.com>, Mike Rozycki <miker@sanmiguelcountyco.gov>
Cc: John Huebner <johnh@sanmiguelcountyco.gov>

FYI

---------- Forwarded message ----------
From: **Alana Mynyk** <alanakit@yahoo.com>
Date: Tue, Dec 6, 2016 at 2:26 PM
Subject: Homewood application to vacate county road 60M
To: "karenh@sanmiguelcountyco.gov" <karenh@sanmiguelcountyco.gov>

Good afternoon,
My husband and I, through our trust (TAMF), own the property west of the BLM land that 60M runs through.
As I look at the map that was sent with the letter regarding the Homewood's request, I do not see how people will be able to access the top of the BLM property from Silver Pick road as your letter states.
Having talked to the Homewood family, and researched this contentious issue, it seems to me that they simply want to keep people from using the road that runs through their property. They have put up gates, changed the road location itself all to prevent people from using this road.
Therefore, we are stating our objections to the county allowing this application to proceed.

Sincerely,
Alana and Ted Mynyk (TAMF)

--
Karen Henderson
Associate Planner
San Miguel County
970-728-3083
PO Box 548
Telluride, CO 81435
karenh@sanmiguelcountyco.gov

San Miguel County
Colorado

John Huebner <johnh@sanmiguelcountyco.gov>

Fwd: Comment letter for Dec 14, 2016 Planning commission meeting

1 message

Karen Henderson <karenh@sanmiguelcountyco.gov> Wed, Dec 7, 2016 at 12:51 PM
To: Michael Hockersmith <michael@mdhlawpc.com>
Cc: Mike Rozycki <miker@sanmiguelcountyco.gov>, John Huebner <johnh@sanmiguelcountyco.gov>

FYI

---------- Forwarded message ----------
From: **Amy Cannon** <timamycannon@msn.com>
Date: Wed, Dec 7, 2016 at 11:41 AM
Subject: Comment letter for Dec 14, 2016 Planning commission meeting
To: "karenh@sanmiguelcountyco.gov" <karenh@sanmiguelcountyco.gov>

Dear Karen,
Please submit this letter to the Planning Commission.
Thank you,
Amy Cannon

--
Karen Henderson
Associate Planner
San Miguel County
970-728-3083
PO Box 548
Telluride, CO 81435
karenh@sanmiguelcountyco.gov

To The Planning Commissioners.docx
136K

To The Planning Commissioners, December 7, 2016

Along with my husband, Tim, I own 634 County Rd 59H, an East Wilson Mesa property approximately three miles west of the Homewood gate on 60M where the Homewood Alexander proposal for county road vacation begins. My letter is intended to voice my opposition to any portion of County Road 60M being vacated from being a motor vehicle or otherwise accessed county public-right-of way.

I feel offended that the Homewood Alexander parties, fellow property owners here on East Wilson Mesa, seek to profit a public-right-of-way for their own privatizing. Being a nearby individual San Miguel County property owner who uses this entire road length a lot for all its public benefits; access to glorious wildlife vistas, including US Bureau of Land Management public property access, via foot, horseback, bicycle, motorized vehicles, cross-country skiing and snowshoeing, I am distressed.

In a previous county road vacation of a portion of CR 60M, even further east of the current application, the private property owners, the Prices, are not keeping their vow to maintain public access as agreed with the County and have erected a double padlocked and chained gate on the Wilson Mesa portion of their 60M vacation. This is a failure of the agreement of a private property owner as constructed and passed to the County "for public benefit." It is a failure because while vehicular traffic has been eliminated in that vacated portion of 60M from Bilk Creek west through the Price property to the Homewood Alexander

border, pedestrian, bicycle and equestrian access is allowed there through to the Bilk Creek road entrance. The gate is far too high to jump and an encumbrance for all, most particularly as it is a locked gate. This must be open as per the 2000 agreement.

I also feel acutely opposed to this application for vacation of 60M for the essential reasoning that this portion of road assures our own (and our neighbors) health, safety and welfare. I have always considered the portion of 60M beginning at the current Homewood gate and all the way through the Price property to be my strategy for emergency evacuation if the customary route to HWY 145 north of my property on Silver Pick Road, 60M, were impassable in the event of a forest fire. While I may not receive emergency fire truck help up from Bilk Creek through Price's to the Homewood Gate, via the Placerville Fire Department at this time, as it is not a route they currently would consider tactical with fire trucks, it is the only escape route for my family, my horses and our other domestic animals not to mention all other neighbors and their animals. It is simply unconscionable to vacate this portion of CR 60M because of this very possible scenario.

Additionally, I feel passionately and sad about previous vacations of San Miguel County and Forest Service roads, the ways we've already experienced limits on access to scenic corridors and a precipitating disquiet at a gut level. Those glorious corridors, linked together, created the sense of freedom we honor and cherish as a major reason to live in and trust San Miguel County. We simply cannot systematically loose our rights of public accesses by our County creating exclusive private developments by vacating County roads.

I ask you appointed San Miguel County Planning Commission members to whole-heartedly advise the Board of County Commissioners to deny this application to vacate any portions of County Road 60M.

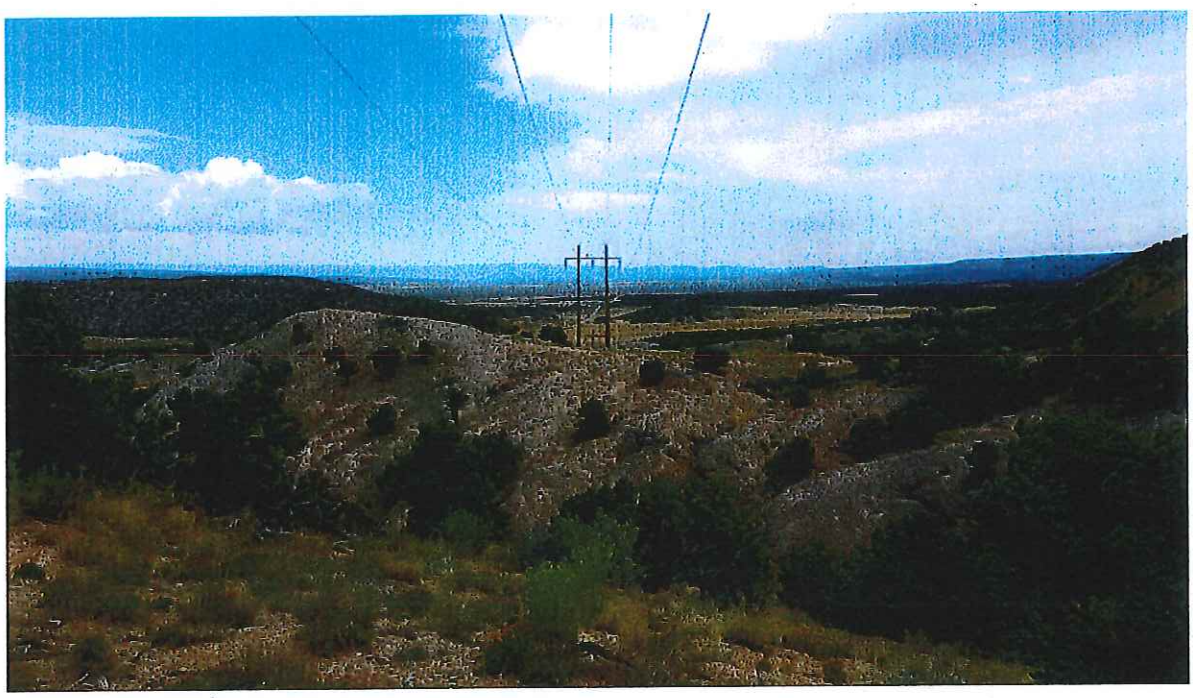
My best regards,
Amy Cannon

TO: San Miguel County Planning Commission
FROM: San Miguel County Planning Director, Michael Rozycki
RE: Work Session: Tri-State Transmission Line Rebuild, West End Zone District
DATE: December 14, 2016

Please find attached the summary for the Tri-State Transmission Line Rebuild and a copy of the Decision Granting Certificate of Public Convenience and Necessity for the Montrose-Nucla-Cahone Transmission Improvement Project for the work session. A complete packet and memorandum will be sent before the January 11, 2017 Planning Commission Meeting.

Application for Special Use Permit
San Miguel County, Colorado

Maverick to Cahone 230-kV Transmission Line



Submitted to: San Miguel County Planning Department
333 W. Colorado Ave., Telluride, CO 81435

Submitted by: Tri-State Generation and Transmission Assoc., Inc.
1100 W. 116th Ave. Westminster, CO 80234

TRI-STATE
Generation and Transmission Association, Inc.
A Touchstone Energy® Cooperative

October 2016

Application for Special Use Permit
San Miguel County, Colorado
Maverick to Cahone 230-kV Transmission Line

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1.0 APPLICATION SUBMITTAL CONTENTS (ARTICLE 4, SUBMISSION REQUIREMENTS SECTION 4-2)

Land Use Code Section 4-2 establishes the minimum submission requirements for all development applications.

Introduction

Tri-State Generation and Transmission Association, Inc. (Tri-State) submits the following information to support San Miguel County's requirements for the request for a Special Use Permit for the rebuild of the existing Montrose-Nucla-Cahone 115-kilovolt (kV) transmission line to 230-kV. The Project will be rebuilt entirely along the existing 115-kV transmission line route and ROW in San Miguel County. The transmission line within San Miguel County will be about 25 miles in length: six miles crossing private lands, two miles crossing state land, 0.3 mile crossing Town of Telluride land and 16 miles crossing BLM-managed lands. See Table 1.

The portion of the transmission line that crosses San Miguel County is currently called the Nucla to Cahone 115-kV transmission line. However, the new line segment will be called the Maverick to Cahone 230-kV transmission line since the new line will connect at the new Maverick 230-kV substation instead of at the Nucla 115-kV substation (at the Nucla Generating Station).

4-201—General

Tri-State met with San Miguel Planning on July 13, 2016 for a pre-application meeting. That meeting was summarized in San Miguel County's pre-application conference summary letter dated August 5, 2016. Tri-State has prepared the enclosed application and related appendices in accordance with these pre-application items and San Miguel County Land Use Code.

4-202—Required Background Information

Owner

Tri-State will be the owner/operator of the new 230-kV transmission line. Tri-State does not own any of the lands crossed by the transmission line; legal access for the project on federal lands is obtained through federal authorization of right-of-way grants and special use permits and on State and private lands through easement agreements. Tables 1 and 2 below provide a summary of land ownership for the Nucla (from new Maverick 230-kV Substation) to Cahone transmission line right-of-way (ROW). Tri-State will also have a temporary 60-acre construction staging area off Highway 141 in Disappointment Valley which is the subject of a separate special use application. The transmission line is in the West End (WE) Zoning District of San Miguel County. Tri-State does own property at the Montrose, Nucla, Maverick, and Cahone substations, but these facilities are not located in San Miguel County.

Applicant's Name and Address

Tri-State Generation and Transmission Association, Inc.
1100 West 116th Avenue
Westminster, CO 80234
303-452-6111

Authorized Officer for the Applicant

Mr. Joel K. Bladow
Senior Vice President, Transmission

4-203—Parcel Description

Please see Figure 1 for the 8-1/2" x 11" vicinity map locating the project within San Miguel County. The transmission line spans approximately 25 miles in San Miguel County on lands administered by the Bureau of Land Management (BLM) Uncompahgre and Tres Rios Field Offices, State of Colorado, Town of Telluride, and private landowners.

A San Miguel County Map Atlas is included as Appendix 1 and shows the sections, townships, and ranges crossed by the transmission line and associated access roads. Table 1 lists the number of miles for each jurisdiction crossed in San Miguel County by the transmission line ROW.

The existing line crosses 6 miles of private lands in San Miguel County. Approximately 30 miles of access roads across private lands are currently used to construct, operate, and maintain the existing 115-kV transmission line in San Miguel County. This same road network will be utilized to construct, operate, and maintain the new 230-kV line rebuild.

Private landowners granting easements held by Tri-State for the existing 115-kV transmission line are listed in Table 2, which includes the mailing address and legal description.

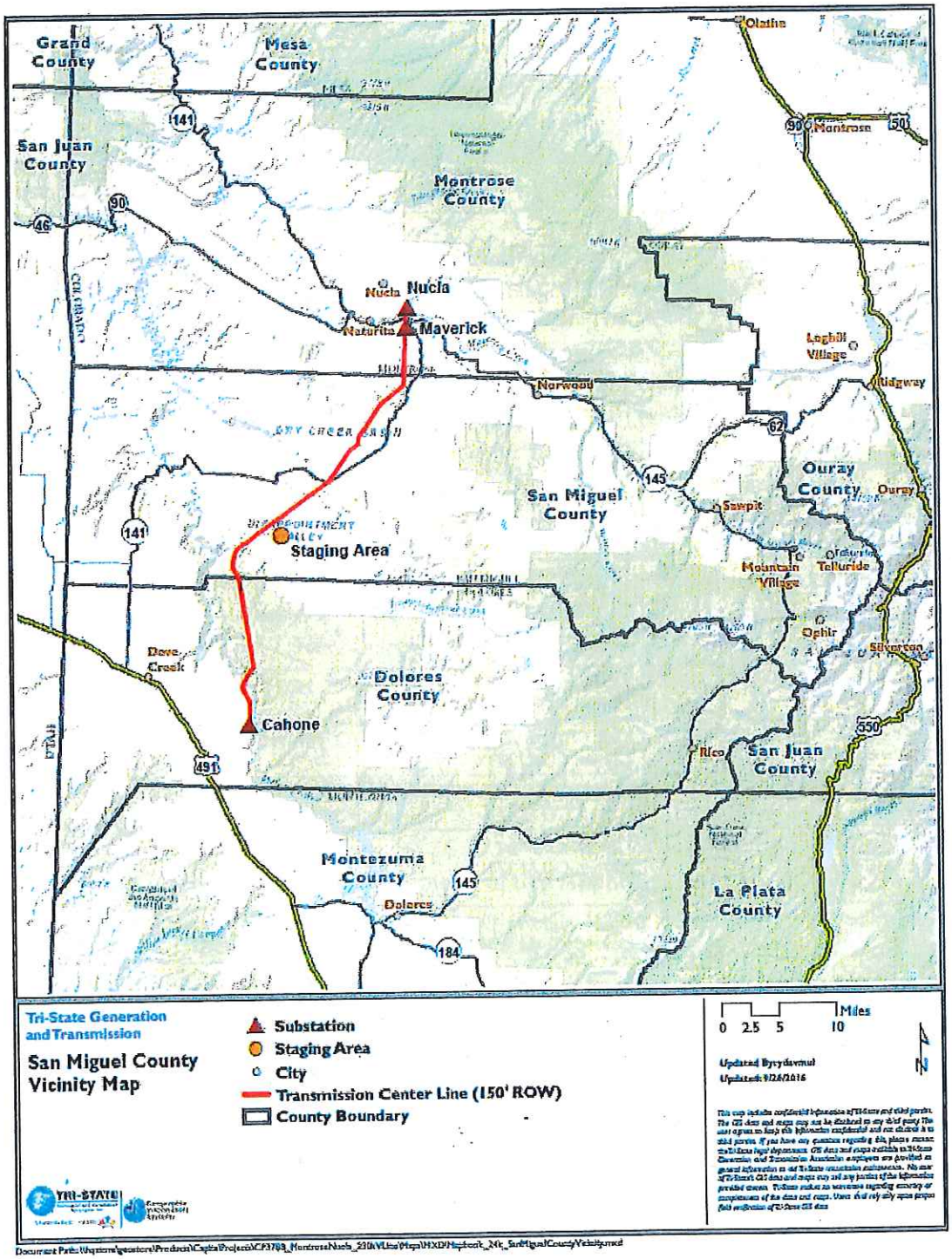


Figure 1: Vicinity Map

Table 1: Transmission line mileage by jurisdiction in San Miguel County for the new 230-kV Montrose-Maverick Cahone Project

Miles by Jurisdiction	Federal			State	Other	Private	
Description	BLM Uncompahgre Field Office	BLM Tres Rios Field Office	Total Federal Lands	State of Colorado Lands	Town of Telluride	Private Lands	Total San Miguel Co.
Transmission Line (150' wide)	2.66	13.31	15.97	2.12	0.34	6.13	24.56

Table 2: Private Parcels Crossed in San Miguel County by Project by name, parcel no., address, and legal description

Name	Parcel #	Address, City/State, Zip Code	Section	Township	Range
David & Terri Andrews	429115200003	P. O. Box 523 Norwood, CO 81423	15	45N	15W
Mex and Sons, Colorado General Partnership	453115200029	P.O. Box 126 Norwood, CO 81423	5, 7, 13 18	44N	16W
State of Colorado Division of Wildlife	453324200917	6060 Broadway Street Denver, CO 80216	23, 24, 26	44N	16W
Town of Telluride	453335200025	P.O. Box 397 Telluride, CO 81435	35	44N	16W
Barrett Brothers Inc.	455103200002	P.O. Box 56 Redvale, CO 81431	3	43W	16W
Steve M. and Pamela Suckla	455118300001	12551 Highway 491 Cortez, CO 81321	18, 19, 24	43N	16W/17W
Steve M. and Pamela Suckla	454927200001	12551 Highway 491 Cortez, CO 81321	27, 34	43N	17W
Scott E. Williams	479516300022	11461 Road 22 Cortez, CO 81321	17	42N	17W
Michael William Anderegg and Clara Love	479517300021	P.O. Box Drawer C Cortez, CO 81321	17	42N	17W
Steve M. and Pamela Suckla	479516300001	12551 Highway 491 Cortez, CO 81321	17	42N	17W

4-204—Disclosure and Proof of Ownership

Within San Miguel County, no new landowners will be affected since the line is being rebuilt in place. All affected private property owners are listed above in Table 2. The pre-application conference summary letter from San Miguel County staff clarified that Notification of Surface Development requirements per CRS 24-65.51-103 does not apply with respect to applications for electric transmission lines.

4-205—Legal Access

Tri-State has right-of-way (ROW) easements for the existing 115-kV line (100-foot ROW) which are included in Appendix 2 - "Easements for ROWs on Private Lands." Tri-State has not yet perfected new expanded easements (150 feet) with landowners along the Maverick-Cahone 230-kV line. Table 2 lists landowners and legal descriptions along the existing 115-kV line, which will be the same for the new proposed 230-kV transmission line.

Tri-State assumed the land rights to the existing transmission line upon acquiring assets from Colorado-Ute in 1992. Tri-State will acquire new 150-foot wide transmission line easements together with access roads (without a current easement). The existing 115-kV transmission line carries a fiber optic ground wire (OPGW). The new 230-kV line will be fitted with a new OPGW to replace the OPGW that existed on the 115-kV line. Easement agreements for the OPGW were obtained in the early 2000s and cover the new OPGW since nothing is changing (capacity, fiber count, etc.) except it will be brand new cable. An example of Tri-State's standard easement for private land is included as Appendix 2 – "Easements for ROWs on Private Lands."

Tri-State has been in contact with San Miguel landowners about the proposed transmission line rebuild since early 2013. All "permissions to survey" for engineering and environmental purposes have been obtained. Tri-State will be negotiating ROW easements with landowners in San Miguel County in 2017. New easements will be recorded at that time with the San Miguel County Clerk.

4-206—Standards Report

A written report demonstrating that the proposed development complies with the applicable substantive review standards.

The Standards Report is included as Chapter 3 of this Application.

4-207—Pre-application Summary Sheet

The pre-application summary letter dated August 5, 2016 provided by the San Miguel County Planning Department is enclosed as Appendix 3.

4-208—Site Plan

Site Plan Requirement:

> *The number of copies of 24" x 36" and 8-1/2" x 11" site utilization maps as specified by the staff during the pre-application conference. During the pre-application conference, the Planning Office may authorize an applicant to consolidate or delete specific maps that may not be applicable to a particular development proposal. The 24" x 36" site utilization maps must be folded to fit*

within a legal-size folder with the name of the application visible. Site maps shall include identification of Areas of Local and State Interest as set forth in Section 5-4 and Wetland Areas as set forth in Section 5-22, for all areas where development activity is proposed.

Tri-State is submitting the San Miguel County Map Atlas in Appendix 1 to meet the requirements of the Site Plan including property boundaries, existing structures and roads.

Descriptions of structure types and proposed construction methods are included in Appendix 4 – Project Description.

4-209—Copies of Application

Tri-State has submitted eight (8) copies of the application to San Miguel County per directions provided in the Pre-application Conference Summary letter.

4-210—Revegetation Plan

Appendix 4 includes a revegetation plan (aka reclamation plan) to address all temporary disturbances resulting from project construction. This would include overland access roads, pad sites, and staging areas. The reclamation plan also outlines specific seed mixes provided by the federal land management agencies and Colorado Parks and Wildlife (CPW) for the project including the Dry Creek Basin. Tri-State is collecting native seed through the Uncompahgre Partnership for the project. Tri-State will reseed private lands with seed mixes proposed by or acceptable to the landowners affected. Reclamation will be deemed complete once vegetation has been reestablished to 70 percent of pre-construction cover as required by Colorado Department of Public Health and Environment (CDPHE) stormwater regulations and our federal permitting requirements.

4-211—Weed Control Plan

Tri-State has collected noxious weed data throughout the past three years as part of our engineering and environmental field reviews. This information has been supplemented with available noxious weed data provided by the BLM and the USFS. Tri-State has prepared a framework noxious weed plan included as Appendix 7.

For noxious weeds on private lands Tri-State will consult with landowners and contract with certified weed sprayers to pre-treat weeds prior to construction and to treat them post-construction in the appropriate season according to species occurring in the ROW. Tri-State's treatment methods will be consistent with State law as well as those required by the San Miguel Weed Board. A copy of the plan has been submitted for review to Ron Maybrey, San Miguel Co. weed advisor.

All heavy equipment, including all-terrain vehicles (ATV), utilized during construction will be washed prior to departure from the equipment storage facility and will be regularly inspected and washed as required by the environmental monitor. All seed mixes and mulch used for reclamation activities will be certified weed-free. Pre-construction treatment of weeds in staging or temporary use areas and within the existing ROW will be conducted to suppress weeds before the ground is disturbed.

4-212—Employee Housing Mitigation Plan

The project will employ a temporary work force of 40–60 people spread across 12 months of construction over 40 miles. The project is not expected to have a long-term effect on local housing and will not require additional temporary housing. The project may have a short-term minor effect on hotel availability and short-term rentals in the project vicinity during the construction period; however, there are camping facilities and housing, and hotels to accommodate the work force in cities and towns such as Montrose, Ridgeway, Nucla, Naturita, Norwood, and Dove Creek, Colorado, outside of San Miguel County.

Decision No. C13-0893

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-0489E

IN THE MATTER OF THE APPLICATION OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE MONTROSE-NUCLA-CAHONE TRANSMISSION IMPROVEMENT PROJECT, AND FOR SPECIFIC FINDINGS WITH RESPECT TO MAGNETIC FIELDS AND AUDIBLE NOISE.

DECISION GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE MONTROSE-NUCLA-CAHONE TRANSMISSION IMPROVEMENT PROJECT

Mailed Date: July 22, 2013
Adopted Date: July 17, 2013

I. BY THE COMMISSION

1. On May 7, 2013, Tri-State Generation and Transmission Association, Inc. (Tri-State or Company) filed an application requesting that the Colorado Public Utilities Commission (Commission) grant the Company a Certificate of Public Convenience and Necessity (CPCN) to construct the Montrose-Nucla-Cahone Transmission Improvement Project (Project) in accordance with § 40-5-101, C.R.S. *et seq.;* Rule 1303, of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1; and Rules 3102 and 3206 of the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3, and a finding of reasonableness for noise and magnetic field mitigation.

2. Tri-State submitted sworn, direct testimony and exhibits from Joel K. Bladow, Mark H. Stout, Grant Lehman, and Dr. Robert L. Pearson. These witnesses presented the

description and rationale for the Project, alternatives, siting and permitting activities, and the results of audible noise and magnetic field studies.

3. There were no interventions filed into the proceeding.

4. The proposed Project will be located within the right-of-way (ROW) of the existing 115 kV transmission line interconnecting the Montrose, Nucla, and Cahone substations in the southwest corner of Colorado. The proposed Project will consist of approximately 80 miles of a new, single-circuit 230 kV transmission line consisting of 1272 kcmil ACSR "Bittern" conductor. The 230 kV line will be built using wood H-frame towers on 150 feet ROW widths and single pole steel towers on 100 feet ROW widths. The Project will replace a 55-year-old 115 kV line on wood H-frame structures that has reached the end of its useful life, has frequent trips, and has inadequate capacity to support an estimated future load growth of over 60 MW by 2019. Further, the lack of capacity of the line will affect the TOT2A transfer capacity as new load comes on-line.

5. The Project will also include construction of three 230 kV substations to allow the new line to tie into the existing Montrose, Nucla, and Cahone Substations.

6. The estimated year 2018 cost of the Project, including the three new 230 kV substations, is $90,681,900. Construction is scheduled to begin in 2017 with an in-service date in the fourth quarter of 2018.

7. Tri-State evaluated the following transmission alternatives to determine their suitability to address system needs: 1) Install phase raisers or new conductors on the existing structures; 2) Rebuild the Montrose-Nucla-Cahone 115 kV line on existing or new ROW and continue 115 kV operation; 3) Construct a new Montrose-Nucla-Cahone 230 kV transmission line on existing or new ROW using wood H-frame or steel monopole structures and single

circuit, double circuit, or double circuit capable designs; 4) Construct a new Montrose-Nucla-Cahone 345 kV transmission line on existing or new ROW using steel lattice structures and single circuit or double circuit designs.

8. Based on the analyses presented in Exhibit No. GDL-7, upgrading the existing Montrose-Nucla-Cahone 115 kV transmission line to a single-circuit 230 kV line was found to be the preferred and most cost effective project alternative that meets the following requirements: 1) To replace the present 115 kV transmission line; 2) To remove the operating limitations of Nucla Station generation on the transmission system in the area;[1] 3) To provide a load-serving path consistent with Tri-State's forecasted need and also consistent with the long term capability of the path and system in the area, without negatively impacting the TOT2A transfer capabilities or obligations of Tri-State; and 4) To provide for long-term planning by providing a 230 kV electrical path between Montrose and Cahone that can be extended to Lost Canyon Substation (where a 230 kV line now connects) in the future.

9. Tri-State modeled the magnetic field level using EMF Workstation: ENVIRO (Version 3.52) developed by the Electric Power Research Institute. The estimated magnetic field levels at the maximum thermal limit of the proposed 1272 KCMIL ACSR "Bittern" conductor (1584 A) are below 150 milliGauss at the ROW and are therefore considered reasonable pursuant to Commission Rule 3206(e) *et al.*

10. The Company modeled the expected audible noise of the Project using EMF Workstation: ENVIRO (Version 3.52). The model shows that the proposed line routes will

[1] The Nucla power plant is a 100 MW (net) coal-fired generating facility located near Nucla, Colorado. The availability of Nucla Station is an important factor in maintaining the transfer capability of TOT2A. When Nucla is operating at 80 MW, the TOT2A transfer capability is increased by 100 MW. Conversely, a loss of 80 MW from Nucla Station reduces the transfer capacity of TOT2A by 100 MW.

all have audible noise levels of 50 dB(A) or less measured 25 feet beyond the edge of the ROW under L50 rain conditions, and will therefore be in compliance with the Commissions transmission noise rules, 3206(f) *et al.*

11. Tri-State sent letters to transmission providers, Colorado Coordinated Planning Group members, and other stakeholders soliciting participation in the proposed Project. The Company sent information concerning the Project to potentially affected local governments in the Project area as part of its stakeholder outreach activities. Tri-State provided information to the relevant district and field offices of the Bureau of Land Management and the U.S. Forest Service. Tri-State is continuing coordination with these agencies. Also, Tri-State personnel met with representatives of San Miguel County to discuss the Project, as well as sent information to representatives of Delores, Montrose, and Ouray Counties as part of its Rule 3627 stakeholder outreach activities and in preparation for filing this CPCN Application.

12. The CPCN Application contains all of the information required by Commission Rules of Practice and Procedure, 4 CCR 723-1-1303(b) and was automatically deemed complete on June 24, 2013 pursuant to Rule 1303(b)(III).

13. The CPCN Application is unopposed. The Commission will determine this matter based upon the submitted written testimony and exhibits of Tri-State's witnesses as the written record, without a formal hearing under § 40-6-109(5), C.R.S., and Rule 1403, Commission Rules of Practice and Procedure, 4 CCR 723-1.

14. The Commission has reviewed the CPCN Application and associated testimony and exhibits filed by Tri-State. The Commission finds that the proposed Project is required to replace an aging transmission line that has reached the end of its useful life, serve new load

without negatively impacting TOT2A transfer capabilities, and to provide for the future extension of the line from Cahone Substation to Lost Canyon Substation.[2]

II. ORDER

A. The Commission Orders That:

1. The magnetic field values and the audible noise values presented in the studies meet the conditions of Commission Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3206(e)(III) and 3206(f)(III) and are therefore considered reasonable for the proposed Montrose-Nucla-Cahone Transmission Improvement Project.

2. The Certificate of Public Convenience and Necessity Application from Tri-State Generation and Transmission Association, Inc. for the construction of the Montrose-Nucla-Cahone Transmission Improvement Project is granted without a hearing.

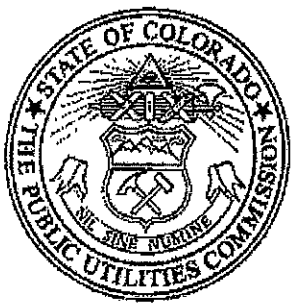
3. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

4. This Decision is effective on its Mailed Date.

[2] The granting of this CPCN application includes only the items listed in this Decision and, therefore, does not include the section of line from Cahone Substation to Lost Canyon Substation.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING July 17, 2013.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JAMES K. TARPEY

PAMELA J. PATTON

Commissioners

CHAIRMAN JOSHUA B. EPEL ABSENT.