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December 11, 2024

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Re: Stagecoach Mountain Ranch; Applicability of 1041 Regulations

On December 4, 2024 our client submitted the following land use applications for a proposed development, known as Stagecoach Mountain Ranch (SMR):

- **PL20240059** – Amendment to construct a gondola instead of lifts
- **PL20240088** – Preliminary Subdivision
- **PL20240089** – Ski Mountain Facilities Special Use Permit
- **PL20240090** – Zone Change
- **PL20240091** – Stetson Land Preservation Subdivision
- **PL20240092** – Cat Creek Land Preservation Subdivision
- **PL20240093** – Indoor Rec Facility Conditional Use Permit
- **PL20240094** – Outdoor Rec Facility Special Use Permit

The Master Submittal Checklist prepared by the Routt County Planning Department includes the following:

- 1041 Determination of Level of Review for a Major Extension of a Water and Wastewater System (*The Determination of Level of Review must take place prior to deeming any of the below applications complete*)

Our client requested we complete a more detailed analysis of the applicability of the 1041 Regulations. Attached is our full analysis to the Stagecoach Mountain Ranch land use applications.

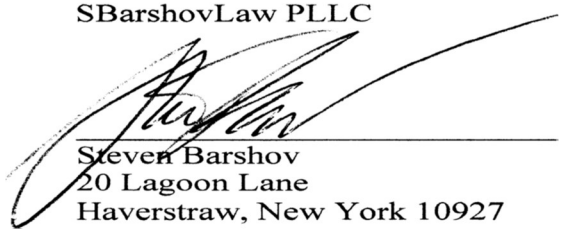
Based on our conclusion that the action of Morrison Creek Water and Sanitation District of extending the Water and Wastewater system to serve Stagecoach Mountain Ranch is grand-fathered activity, our client has not prepared the materials requested in the Master Submittal checklist for the 1041 Determination of Level of Review.

Sincerely,

_____
Nicole R. Ament

and

SBarshovLaw PLLC



_____
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Memorandum

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DATE: December 11, 2024

TO: Routt County Board of County Commissioners

cc: Erick Knaus and Gerald Dahl

FROM: Nicole R. Ament and Steven Barshov

RE: Applicability of the Routt County 1041 Regulations to: the Proposed Stagecoach Mountain Resort Development; Associated Annexation of Land into the Morrison Creek Water And Sanitation District; and Extension of District Central Water and Sewer Service to Such Annexed Lands

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I. THE PROPOSED STAGECOACH MOUNTAIN RESORT DEVELOPMENT

The Stagecoach Mountain Resort (the "SMR Project") is a proposed resort development primarily on lands within the Stagecoach Development consisting of: a snow ski area; fine dining and casual dining restaurants; a neighborhood commercial center; a health/fitness club; single family homes; and multi-family homes, including work force housing. The SMR Project is on lands (collectively, the "SMR Project Lands") that are shown on the accompanying map (the "SMR Project Lands Map") and which are categorized as follows:

1. lands that are: (a) within the boundaries of the Stagecoach Development community; (b) also within the original boundaries of the Morrison Creek Water and Sanitation District (the "District") as of the time of the District's formation in 1972; and (c) shaded yellow on the SMR Project Lands Map (the "SMR District Lands");

2. approximately 356 acres of land that are: (a) outside the boundaries of the SMR District Lands; (b) within the boundaries of the Stagecoach Development community; (c) proposed to be annexed into the District; (d) proposed to be developed commercially and/or residentially with central water and sewer service from the District; and (e) shaded purple on the SMR Project Lands Map (the "SMR Stagecoach Lands"); and

3. approximately 407 acres of land: (a) that are outside the SMR District Lands; (b) that are outside the SMR Stagecoach Lands; (c) on which residential lots are proposed to be located

which would be the development area of a land preservation subdivision ("LPS"); (d) which are proposed to be annexed into the District and served with central water and sewer service from the District; and (e) which are shaded green on the SMR Project Lands Map.

On the SMR Project Lands Map the border of the SMR Project Lands is outlined in black. The SMR Stagecoach Lands include lands that were platted as an exempt subdivision in 2023 known as the Stagecoach Mountain Ranch exempt subdivision (Routt County File #14641, the "Exempt Subdivision"). Note that the SMR Stagecoach Lands were designated for "Recreational Oriented Development" on the 2016 Future Land Use Map (the "FLUM") of the 2017 Stagecoach Community Plan.

Questions have arisen as to whether the SMR Project's contemplated annexation of territory into the District and the extension of the District's central water and sewer service would trigger and be subject to the Routt County 1041 Regulations (the "1041 Regulations"), most recently codified as Chapter 7 of the Routt County Unified Development Code (the "UDC"). This Memorandum addresses those questions.

II. QUESTIONS ADDRESSED

1. Whether the extension of the District's water and sewer service to serve new commercial and residential development within the SMR District Lands is grandfathered and, accordingly, exempt from the 1041 Regulations?

2. Whether the annexation into the District of the SMR Stagecoach Lands and the extension of the District's central water and sewer service to the SMR Stagecoach Lands is grandfathered, and, accordingly, exempt from the 1041 Regulations? And even if not grandfathered, whether such District annexation and extension of water and sewer service are activities of state interest that trigger the 1041 Regulations?

3. Whether the annexation into the District of the residential lots in the LPS and the extension of the District's central water and sewer service to those residential lots is an activity of state interest that triggers the 1041 Regulations?

IV. CONCLUSIONS

Question 1: The extension of central water and sewer service to serve development within the SMR District Lands is grandfathered and exempt from the 1041 Regulations.

Question 2: The annexation into the District of the SMR Stagecoach Lands and extension of central water and sewer service to new development within the SMR Stagecoach Lands is grandfathered and exempt from the 1041 Regulations. Even if it not grandfathered and exempt, such annexation and extension of central water and sewer service to lands that are designated for Recreational Oriented Development is not an activity of state interest that triggers the 1041 Regulations.

Question 3: The annexation into the District of the residential lots of the LPS and the extension of the District's central water and sewer service to such lots is not an activity of state interest that triggers the 1041 Regulations.

V. ANALYTICAL OVERVIEW

The initial focus of this Memorandum is on the applicability of the exemption provisions codified in the Areas and Activities of State Interest Act ("AASIA") and the similar provisions included in the Routt County Unified Development Code (the "UDC"). The exemption provisions are "grandfather"[1] clauses. Thus, this Memorandum begins with an analysis of the Colorado courts' decisional law applicable to the validity and interpretation of grandfather clauses. In summary, grandfather clauses have been upheld, are to be interpreted as written, and their mandatory language is to be given effect. Notably, subsequently enacted more restrictive grandfathering criteria, which would retroactively eliminate an exemption, have been held invalid. As discussed in greater detail below, to the extent the subsequently enacted exemption criteria in the UDC 1041 Regulations are more restrictive and purport to impose such additional restrictions retroactively, they are invalid and the applicable exemption criteria are those set forth in the AASIA.

The state statutory exemption criteria are then analyzed individually to identify as precisely as possible the individual triggers for a 1041 exemption. Each of the exemption criteria is deconstructed to identify the factual predicates for a particular exemption criterion to be applicable and a grandfathered approval to exist.

Following this analysis of the 1041 grandfather provisions in the AASIA, there is a detailed chronological narrative with multiple elements interwoven. The chronological narrative is the history of the approvals issued for the Stagecoach Development, as well as the imposition of private restrictive covenants. Interwoven into this chronological history is the adoption by Routt County of various land use regulations, including Subdivision Regulations in 1970, followed by adoption of the County's first zoning in 1972. Also recounted in this chronology are: (i) the multiple preliminary subdivision plat approvals granted by the Routt County Planning Commission (the "Planning Commission") and final subdivision plat approvals granted by the Routt County Commissioners (the "County Board"); (ii) second-level rezonings issued by the County Board; (iii) establishment of the District, including its approval by the electorate at a referendum; and (iv) approval of the Stagecoach Reservoir. This detailed chronology begins in 1971 when the Stagecoach Development was first proposed by the Woodmoor Corporation and ends on May 17, 1974, the date by which approvals had to be granted in order for a grandfather to exist under the AASIA (the "Grandfather Date").

This Memorandum then addresses whether approvals granted and events occurring prior to the Grandfather Date cause the following to be grandfathered and exempted from the 1041

[1] As some may know, the term "grandfather clause" has racist origins. It refers to statutory and constitutional provisions adopted in former Confederate states that imposed various voting requirements which excluded most African Americans and exempted those whose ancestors (*e.g.,* grandfathers) had the right to vote prior to the Civil War or as of a certain date. Since the phrase is still commonly used today, including in judicial rulings and scholarly writings, the phrase "grandfather clause" is used in this memorandum as is common practice, while we remain cognizant of its racist origins.

Regulations: (a) the proposed central water and sewer service extension to development within the SMR District Lands; and (b) the proposed annexation into the District and extension of central water and sewer service to new development within the SMR Stagecoach Lands.

This Memorandum then addresses whether the 1041 Regulations are triggered if for any reason the annexation into the District of the SMR Stagecoach Lands and/or extension of central water and sewer service to serve into such lands are not grandfathered. In that regard, this Memorandum analyzes the criteria for an activity to be deemed one of state interest under the UDC. Then, the relevant facts of proposed SMR Project and the development proposed for the SMR Stagecoach Lands are discussed, including consistency with the historical Stagecoach Development, and consistency with the 2017 Stagecoach Community Plan and the Routt County Master Plan. As discussed in greater detail below, neither the annexation of the SMR Stagecoach Lands nor the extension of central water and sewer service to new development within the SMR Stagecoach Lands is an activity of state interest triggering the 1041 Regulations.

Finally, this Memorandum addresses the annexation into the District of the residential lots in the LPS, as well as the extension of the District's central water and sewer lines to serve such lots. Neither activity is one of state interest and, accordingly, neither triggers the 1041 Regulations.

VI. ANALYSIS OF THE STATE AND ROUTT COUNTY 1041 EXEMPTIONS

A. The Text of the State and Routt County 1041 Exemptions

The AASIA delegates authority to counties to enact 1041 regulations. AASIA § 24-65.1-107 (the "1041 Exemption Statute") exempts certain developments and activities from the AASIA, and from the 1041 Regulations the County Board adopted pursuant to AASIA. In the statutory text quoted below, certain provisions are emphasized which are of significance to the analyses in this Memorandum. The 1041 Exemption Statute provides as follows:

> § 24-65.1-107. Effect of article - developments in areas of state interest and activities of state interest meeting certain conditions
>
> (1) This article shall not apply to any development in an area of state interest or any activity of state interest which meets any one of the following conditions as of May 17, 1974:
>
> (a) The development or activity is covered by a current building permit issued by the appropriate local government; or
>
> (b) The development or activity has been approved by the electorate; or
>
> (c) The development or activity is to be on land:
>
> (I) Which has been conditionally or finally approved by the appropriate local government for planned unit development or for a use substantially the same as planned unit development; or
>
> (II) Which has been zoned by the appropriate local government for the use contemplated by such development or activity; or

(III) With respect to which a development plan has been conditionally or finally approved by the appropriate governmental authority.

C.R.S. § 24-65.1-107 (emphasis added).

In the recently adopted UDC, § 7.1 is the codification of the local exemptions to the 1041 Regulations (the "UDC 1041 Exemption"). The UDC 1041 Exemption is similar but not a verbatim repetition of the exemptions set forth in the 1041 Exemption Statute. In the quote below, the text which is emphasized are the provisions in the UDC 1041 Exemption which are more restrictive than those in the 1041 Exemption Statute:

7.1 General

A. Purpose.

1. The purpose of this chapter is to identify and designate certain Areas and Activities of State Interest pursuant to C.R.S. § 24-65.1-101 et seq., commonly referred to as "1041 Regulations," in a manner that is consistent with the statutory requirements and criteria. . . .

D. Exemptions. The following activities are exempt from the provisions of this chapter.

1. Statutory Exemptions. This Chapter shall not apply to any development in an Area of State Interest or any Activity of State Interest if, as of May 17, 1974:

a. The specific development or activity was covered by a current building permit issued by the County;

b. The specific development or activity was directly approved by the electorate of the State or the County, provided that approval by the electorate of any bond issue by itself shall not be construed as approval of the specific development or activity;

c. The specific development or activity is to be on land which has been finally approved by the County for planned unit development**[;]**

d. The specific development or activity is to be on land zoned for the use contemplated by such specific development or activity; or

e. The specific development or activity is on land with respect to which a development plan has been conditionally or finally approved by the County.

2. Specific Exemptions. This Chapter shall not apply to any of the following:

a. Replacement of an existing water diversion structure without change in the point of diversion or point of use of the water or yield from the diversion. . . .

c. Upgrade of an existing water or wastewater project where the primary purpose is to serve existing development.

d. Improvements and upgrades to existing water and wastewater project facilities that do not expand the level of service beyond the design capacity and do not change the facility's location, and are considered maintenance or other upgrades required by federal, state, or local regulations.

3. Relationship to Other Regulations

a. Inconsistencies or Conflicts with Other Regulations and Plans. If there is a conflict between any provision of this Chapter and the provisions of any other County or state regulation or the statutory criteria for administration of matters of state interest, the more stringent standards or requirements shall apply. When other provisions of this UDC apply to a particular activity or project those provisions apply in addition to the provision of this Chapter. If there is conflict between any provision, the more stringent standards or requirements shall apply.

b. Compliance with Other Governmental Standards. Compliance with the Regulations in this Chapter does not waive any requirements to comply with any other applicable state, local or federal law or regulation. No federal, state, or local approval to carry out a development or activity shall preempt or otherwise obviate the need to comply with this Chapter. . . .

e. Definitions of all terms defined in C.R.S. 24-65.1-101 et seq, shall apply to all such terms used in this Chapter unless specifically defined herein.

4. Severability. If any section, clause, provision, or portion of this Chapter should be found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, the remainder of these Regulations shall not be affected thereby and is hereby declared to be necessary for the public health, safety and welfare.

UDC § 7.1 (emphasis added).

B. Judicial Rulings Governing the Interpretation of Grandfather Clauses

The 1041 Exemption Statute and the UDC 1041 Exemption are "grandfather clauses." In *Gates Rubber Co. v. South Suburban Metropolitan Recreation and Park District* ("*Gates*"), 183 Colo. 222, 516 P.2d 436 (1973), the Colorado Supreme Court upheld the validity of grandfather clauses and, absent an unconstitutional classification, ruled that the grandfather clauses should not be disturbed by the courts:

> We note at the outset that "grandfather clauses" . . . are a widely used method for legislative classification of interests. Essentially, they are designed to preserve and protect those interests existing at the time of a legislative enactment. They have a firm basis in law

> and experience . . . Absent a showing that the legislative classification which creates a "grandfather's clause" is unconstitutional, this court will not disturb such schemes.

Gates, 183 Colo. at 226, 516 P.2d at 437-38 (emphasis added).

Thus, the Colorado Supreme Court upheld the validity of the grandfather clause at issue in *Gates* and applied it as written. *See also People v. Brooks*, 426 P.3d 353, 362 (2018) (refusing to hold unconstitutional statutes that retroactively exempt a defined closed class and reaffirming *Gates'* holding that the state legislature can lawfully grandfather the rights of a closed class of property owners). Thus, *Gates* and its progeny confirm that the 1041 Exemption Statute is not to be disturbed and is to be applied as written because no Colorado Court has held that the 1041 Exemption Statute creates an unconstitutional classification.

A state statute need not incorporate the words "grandfather clause" in order to qualify as such. In *Gieck v. Office of Information Technology* ("*Gieck*"), 467 P.3d 1277 (Colo. App. 2020), the Court of Appeals held that language in a statute providing that employees would "retain" certain rights manifested legislative intent to "grandfather." *Id.* at 1282. More specifically, the Court of Appeals held that the use of the word "shall" in the phrase "shall retain" is mandatory language. *Id.* at 1283. *See also Aren Design, Inc. v. Becerra* ("*Aren Design*"), 897 P.2d 902, 904 (Colo. App. 1995) (holding that the use of the word 'shall' in a statute is presumed to indicate a mandatory requirement); and *Colo. State Bd. of Med. Exam'rs v. Saddoris*, 825 P.2d 39, 43 (Colo. 1992).

In *Mesa County Land Conservancy v. Allen* ("*Mesa County*"), 318 P.3d 46 (Colo. App. 2012), the Court of Appeals interpreted a statutory amendment in a manner that preserved the statute's grandfather clause. The Colorado Legislature enacted a statutory grandfather clause providing that "Any conservation easement in gross affecting water rights created prior to August 6, 2003, shall be a binding, legal, and enforceable obligation *if it complies with the requirements of this article.*" *Id.* at 53 (italics in original). Thereafter, the State Legislature added a notice requirement to the article's requirements. The Court of Appeals held that the statutory amendment did not retroactively impose a notice requirement and preserved the grandfathered conservation easements. The Court of Appeals put it this way:

> [I]mposing the notice requirement on preexisting conservation easements would directly undermine the legislature's intentions, because it would render preexisting conservation easements invalid unless, by chance, a grantor complied with a sixty-day notice provision that did not exist when the 1990 Easement was created.

Id. at 54. The Court of Appeals held that an interpretation of the statute that would retroactively apply the new notice provision to preexisting grandfathered conservation easements would be an illogical and absurd result which is to be avoided by courts interpreting statutes. *Id.*; *see also Hernanadez v. People*, 176 P.3d 746, 751 (Colo. 2008). Note: as discussed below, this case is supporting authority for the argument that to the extent that the UDC 1041 Exemption is more stringent than the State Exemption Statute, the UDC 1041 Exemption is contrary to law.

C. Substantive Provisions of 1041 Exemption Statute

The 1041 Exemption Statute contains multiple elements, each of which will be analyzed so that the intent of the State Legislature is clear and the scope of the 1041 Exemption Statute is delineated as specifically as possible.

1. The Introductory Provision of the 1041 Exemption Statute

Section 24-65.1-107 begins by stating that the AASIA "shall not apply to any development in an area of state interest or any activity of state interest which meets any one of the following conditions as of May 17, 1974. . ." (emphasis added).

Per *Gieck* and *Aren Design*, *supra*, the use of the word "shall" confirms that the Colorado Legislature has made an express and unequivocal mandatory declaration that none of the provisions of the entire Article 65.1 (which is the AASIA) apply if any single one of the enumerated conditions exists as of the Grandfather Date of May 17, 1974.

The term "development" is defined as "any construction or activity which changes the basic character or the use of the land on which the construction or activity occurs." C.R.S. § 24-65.1-102(1) (emphasis added). The word "activity" is not defined in the 1041 Exemption Statute. Since the word "activity" is not defined in the statute and is not a technical term, the ordinary dictionary definition of the word applies. *See* C.R.S. § 2-4-101 which provides as follows:

> Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

The State Legislature's decision to grandfather an "activity" is important because the word an "activity" is so all encompassing. The Britannica Dictionary defines "activity" as "something that is done as work or for a particular purpose." The Oxford Dictionary defines "activity" similarly as "a thing that somebody does in order to achieve a particular aim." Put simply, an activity can be anything undertaken for a purpose or aim. Thus, "construction" is irrelevant because it would be subsumed within an "activity." Because the Colorado Legislature chose such an all-encompassing term, it is clear that the legislative intent was to be inclusive as possible in the scope of the items being grandfathered.

So, because the term "development" includes an "activity" the 1041 Exemption Statute covers two broad categories: (a) as to an area of state interest, any activity which changes the basic character or use of the land; and (b) any activity of state interest. As to the first category, the "area of state interest" is a geographic area that is of state interest. So, the first exemption category is an activity which changes the basic character or use of the land within such a geographic area. As to the second category, an "activity of state interest" could occur anywhere. It is defined by the nature of the activity, not its location.

2. The Individual 1041 Exemption Statute Triggers

The 1041 Exemption Statute then enumerates certain specific triggers for an exemption. Each of these triggers is the same regardless of whether the focus is on an activity which changes the basic character or use of the land in an area of state interest, or the focus is on an activity of state interest. The condition described in the applicable individual trigger must have existed as of May 17, 1974.

(a) Current Building Permit: The first trigger is an activity covered by a "current building permit." That phrase appears only in the 1041 Exemption Statute and nowhere else in the AASIA. The only logical construction of this trigger is that the activity is covered by a building permit that was in effect as of May 17, 1974. This exemption does not state that the work authorized by issuance of a building permit had to be completed in whole or in part after May 17, 1974. The only requirement is the issuance of a building permit by that date and, if a building permit was issued, then whatever activity was covered by the building permit is exempt.

(b) Approved by the Electorate: This trigger refers to a referendum or an initiative.

(c) Planned Unit Development or Substantially the Same Development: This trigger is an activity on land which, as of May 17, 1974, was conditionally or finally approved as a planned unit development or for a use substantially the same as a planned unit development. There are two potential bases for a planned unit development or a use substantially similar -- state law and Routt County's land development regulations. Both will be discussed in turn.

(i) *The Planned Unit Development Act of 1972*

A search of the AASIA confirms that the phrase "planned unit development" appears nowhere else in the statute. However, a search of the Colorado statutes confirms that the Colorado Legislature enacted a statute in 1972 entitled the "Planned Unit Development Act of 1972" (the "PUD Act"). *See* C.R.S. §§ 24-67-101 to 24-67-108. Given that the PUD Act was enacted only a few years before AASIA and dealt exclusively with planned unit developments, the PUD Act and AASIA are in *pari materia*. Statutes are in *pari materia* when they deal with the same subject matter and are adopted as separate statutes, often in different legislative sessions. *See Colorado and Southern Railway Company, Inc. v. The District Court in and for the Tenth Judicial District*, 177 Colo. 162, 165-66, 493 P.2d 657, 659 (1972) and citing *People v. Gibson*, 53 Colo. 231, 237, 125 P. 531, 533 (1912) (holding that laws that are part of a system "must be construed, if possible, so as to be consistent and harmonious one with the other and in their several parts…").

Since the PUD Act and AASIA are in *pari materia*, it is logical and appropriate to utilize the technical definition of "planned unit development" from the PUD Act as the meaning of the same phrase as used in the AASIA. This is also consistent with C.R.S. § 2-4-101 which requires that "phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly." (Emphasis added.) Thus, the legislative definition of "planned unit development" in the PUD Act is appropriate to utilize when determining what that phrase means in the context of the 1041 Exemption Statute.

As set forth in C.R.S. § 24-67-103(3), the phrase "planned unit development" is defined as follows:

> "Planned unit development" means an area of land, controlled by one or more landowners, to be developed under unified control or unified plan of development for a number of dwelling units, commercial, educational, recreational, or industrial uses, or any combination of the foregoing, the plan for which does not correspond in lot size, bulk, or type of use, density, lot coverage, open space, or other restriction to the existing land use regulations.

Thus, under the PUD Act definition, a planned unit development is a unified plan of development in which multiple uses are authorized on land without adherence to the strict requirements of existing land use regulations. Essentially, the PUD Act defines a planned unit development as a development governed by a unified plan as opposed to the strict limits of "Euclidean" zoning -- named for the seminal case of *Village of Euclid v. Ambler Realty Company*, 272 U.S. 365 (1926) which upheld the constitutionality of zoning. In Euclidean zoning, the municipality is divided into geographic areas or districts that typically separate residential, commercial and industrial uses from one another. Thus, the National Association of Realtors describes a PUD as a residential community that may include recreational, industrial and commercial elements and states that:

> the uniqueness of a PUD is that it does not have to adhere to current zoning regulations, so developers can be more creative and flexible in how they use the land.

https://www.nar.realtor/residential-real-estate/planned-unit-developments

Notably, the PUD exemption in the 1041 Exemption Statute is not limited to developments formally approved as a PUD. Indeed, the 1041 Exemption Statute grandfathers an activity on land that was conditionally or finally approved for a use substantially the same as a planned unit development. There is no further elaboration of the "substantially the same" language in the AASIA, nor is there any reported case interpreting this statutory provision. Neither "substantial" nor "substantially the same" are defined in the Colorado statutes delineating the rules for statutory construction. There are 982 reported Colorado cases with the precise phrase "substantially the same" and, in the various cases examined for purposes of this memo, the Colorado courts simply deem something to be or not to be substantially the same. Thus, it would follow that a fact-oriented approach is required in which the substantive elements of a PUD are present in whatever activity has been approved in order to qualify as "substantially the same as a planned unit development."

It would appear that one reason for including the "substantially the same" language is that the PUD Act was only two years old when AASIA was adopted and it is obvious that the Colorado Legislature wanted to grandfather developments that were substantially the same as a PUD, even if not specifically denominated a PUD and even if no actual PUD approval had been issued.

(ii) *The 1970 Routt County Subdivision Regulations*

In the 1963 version of the Colorado statutes, local governments were delegated the power to approve subdivisions of land. This delegation of authority was recognized by the County Board

in its resolution dated on or about September 8, 1970 adopting subdivision regulations (the "1970 Subdivision Regulations"). The County Board's resolution referenced and quoted from C.R.S. 1963 § 106-2-34. The 1970 Subdivision Regulations predated the County Board's adoption of zoning in 1972.

The 1970 Subdivision Regulations contemplate planned unit developments. In Article IV, Section A.2., the 1970 Subdivision Regulations authorize both the Routt County Planning Commission (the "Planning Commission") or the County Board to modify the 1970 Subdivision Regulations for planned unit developments:

> Variances for Planned Unit Development. The standards and requirements of these regulations may be modified by the Planning Commission or the Board of County Commissioners in the case of a plan and program for a new town, a complete community, or a neighborhood unit, which in the judgment of the Planning Commission and Board of County Commissioners provides an overall standard at least equivalent to that of these regulations and provides adequate public spaces and improvements for the circulation, recreation, light, air, and service needs of the tract when fully developed and populated, and which also provide such covenants or other legal provisions as will assure conformity to and achievement of the plan. (Emphasis added.)

The phrase "planned unit development" is not defined in the 1970 Subdivision Regulations, but from the emphasized language it is clear that the 1970 Subdivision Regulations considered a "complete community" to be a planned unit development or its equivalent. Although "complete community" is not defined either, the plain language contemplates a community that contains the full range of uses of land that are associated with a functioning community including, but not limited to, residential development, required infrastructure, commercial development, recreational uses, etc. Note that to be a planned unit development, a community need not be granted variances or modifications from the 1970 Subdivision Regulations.

(iii) *The 1972 Zoning Resolution*

On March 7, 1972, the County Board adopted Routt County's first zoning. The 1972 Zoning Resolution provided for planned unit developments within all zoning districts. *See* 1972 Zoning Resolution Introduction entitled "Routt County in Perspective" and the portion describing planned unit developments; *see also* Section 2.1B (authorizing the establishment of a PUD second-level zoning district within any of the five basic or principal zoning districts). Section 7 of the 1972 Zoning Resolution established both the substantive criteria and the review process for planned unit developments. Initial review of a proposed planned unit development would be undertaken by the Planning Commission, followed by a joint public hearing by the Planning Commission and County Board, and ultimately by a decision by the County Board. Approval of a planned unit development would cause the land so approved to be shown as being within a PUD district on the Routt County zoning map. *See* 1972 Zoning Resolution § 7.7, Review and Approval.

(iv) *Conclusion*

Given the foregoing multiple paths for a planned unit development, whether an activity that was approved or conditionally approved as of the Grandfather Date was substantially similar to a PUD is a question of fact and involves the details of the activity and the nature of the approvals granted or conditionally granted. Discussed in detail below is whether the Stagecoach Development was substantially similar to a planned unit development on the Grandfather Date.

(e) Zoned for the Use Contemplated by Such Activity: This trigger is whether the activity is on land which has been zoned for the use contemplated by such activity. Thus, regardless of whether an activity is a planned unit development or substantially the same as a planned unit development, if the zoning for the activity was in place as of the Grandfather Date, then such activity is exempt from AASIA. Note that the statutory language does not require that the zoning must specifically authorize the contemplated activity itself. Rather, the statute requires that the land on which the activity is to occur is zoned for the use contemplated by such activity. So, if the use is residential and the zoning is for residential development, but the "activity" is provision of a necessary service for such residential development such as central water and sewer service, then that residential zoning exempts from AASIA the activity of providing water and sewer services for the residential use authorized by the zoning as of the Grandfather Date.

(f) Activity on Land per an Approved Development Plan: The final trigger is if the activity is to be on land as to which a development plan has been conditionally or finally approved. Since the prior triggers are for an approved planned unit development, or a development that is substantially similar to a planned unit development, or for land whose zoning allows the use contemplated by an activity, then this trigger must describe something else. Under the rules of statutory construction, an interpretation is not favored that treats provisions as redundant surplusage. *See* C.R.S. § 2-4-201(1) providing that "In enacting a statute, it is presumed that . . . [t]he entire statute is intended to be effective."

To be effective, an "approved development plan" must be something different than that which would fall within any of the previously discussed triggers. It is possible, for example, that an approved development plan could be manifested by approving multiple subdivisions that are part of an overall development plan for property. It is also possible that local land use laws could authorize approval of a development plan independent of zoning. Thus, whether this trigger applies is fact dependent.[2]

D. The UDC 1041 Exemption

In the UDC, the County Board has adopted its own 1041 exemption criteria. They are not identical to those in the 1041 Exemption Statute. The following quote sets forth the UDC 1041 statutory exemption provisions **as if they are amendments to the 1041 Exemption Statute**, with deleted language overstruck and new language underlined in order to accurately represent both what was added and what was deleted:

[2] Following its initial enactment, the AASIA has been amended. However, none of those amendments included any change to the 1041 Exemption Statute. Thus, the intent of the Colorado Legislature is still to grandfather activities as to which one of the triggers applies as of the Grandfather Date of May 17, 1974.

D. Exemptions. The following activities are exempt from the provisions of this chapter.

1. Statutory Exemptions: This ~~article~~Chapter shall not apply to any development in an A~~a~~rea of S~~s~~tate I~~i~~nterest or any A~~a~~ctivity of S~~s~~tate I~~i~~nterest if, ~~which meets any one of the following conditions~~ as of May 17, 1974:

a. The specific development or activity was~~is~~ covered by a current building permit issued by the County~~appropriate local government; or~~

b. The specific development or activity was directly ~~has been~~ approved by the electorate of the State or the County, provided that approval by the electorate of any bond issue by itself shall not be construed as approval of the specific development or activity; ~~or~~

c. The specific development or activity is to be on land w~~W~~hich has been ~~conditionally or~~ finally approved by the County ~~appropriate local government~~ for planned unit development ~~or for a use substantially the same as planned unit development~~; ~~or~~

d. The specific development or activity is to be on land ~~Which has been~~ zoned ~~by the appropriate local government~~ for the use contemplated by such specific development or activity; or

e. The specific development or activity is on land w~~W~~ith respect to which a development plan has been conditionally or finally approved by the County ~~appropriate governmental authority~~.

UDC § 7.1.

The initial question is whether the County Board has legal authority to eliminate or narrow the exemptions which are delineated in the 1041 Exemption Statute. Routt County is not a home rule county as County voters have not chosen to adopt a home rule charter as authorized by Colorado Constitution Article XIV § 16. In *Colorado Mining Association v. Board of County Commissioners of Summit County* ("*Colorado Mining*"), 199 P.3d 718, 723-24 (2009) the Supreme Court delineated a non-home rule county's power to regulate land use as follows:

> [S]tatutory counties only enjoy "those powers that are expressly granted to them by the Colorado Constitution or by the General Assembly," which include "implied powers reasonably necessary to the proper exercise of those powers that are expressly delegated." *County Comm'rs v. Bainbridge,* 929 P.2d 691, 699 (Colo.1996). Accordingly, in cases involving statutory counties, we

> have applied the ordinary rules of statutory construction to determine whether a state statute and a local ordinance can be construed harmoniously or whether the state statute preempts the local ordinance. *Id.* at 698–99. If a conflict exists and the state statute contains a specific provision addressing the matter, the state statute controls over the statutory county's general land use authority. *Id.* at 705. (Emphasis added.)

Although the Colorado Supreme Court does not say so specifically, the language it quotes from the *Bainbridge* case is known as "Dillon's Rule" and was accepted by the U.S. Supreme Court in *Hunter v. Pittsburgh*, 207 U.S. 161 (1907). Multiple Colorado cases hold that a county is a political subdivision of the state and, as such, possesses only those powers expressly granted by the constitution or delegated to it by statute, and that a delegation of power confers all implied powers reasonably necessary for the proper exercise of the expressly delegated power. *Pennobscot, Inc. v. Board of County Commissioners of Pitkin County, Colo.* ("*Pennobscot*"), 642 P.2d 915, 918 (1982); *see also Board of County Comm'rs v. Pfeifer*, 190 Colo. 275, 546 P.2d 946 (1976); *Board of County Comm'rs v. State Bd. of Social Servs.*, 186 Colo. 435, 528 P.2d 244 (1974); *Board of County Comm'rs v. Love*, 172 Colo. 121, 470 P.2d 861 (1970); and *Farnik v. Board of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

A review of the 1041 Exemption Statute specifically and AASIA, more generally, confirms that there is no delegation of authority to units of local government to modify the 1041 Exemption Statute in any way, including to narrow the statutory exemptions. What AASIA does delegate is broad authority to determine what activities are of state interest. The question then is whether the County Board has authority to unilaterally impose more stringent exemption criteria. More specifically, the question is whether such a power is implied from the general grant of authority to counties to determine what activities are matters of state interest.

In *Pennobscot*, the Colorado Supreme Court addressed a similar issue. The state statute conferring authority on counties to regulate subdivisions provided that the term "subdivision" did not apply to any land division that created parcels of land that are more than 35 acres. *Pennobscot*, 642 P.2d at 918-19. Pitkin County claimed that the power conferred upon it to regulate and approve subdivisions included the power to redefine what subdivisions were regulated and to eliminate or modify the 35-acre lot exemption. The Colorado Supreme Court disagreed and held as follows:

> By exempting divisions of property which result in parcels of land comprised of thirty-five or more acres . . . from the definition of subdivision, the legislature gave the counties no authority to impose subdivision regulations on these larger tracts. Section 133 of the county planning statute delegates only the authority to pass subdivision regulations controlling smaller parcels of real estate. Therefore, it follows that the County's reliance upon the provisions of the county planning statute is misplaced. . . .
>
> Undoubtedly, the powers conferred upon the county pursuant to this provision are quite broad. However, we do not believe that the Land

> Use Act confers the authority upon the county to adopt a definition of subdivision in its regulations which is contrary to the express statutory definition found in the county planning statute. . .
>
> [A] review of the evolution of the definition of subdivision in the county planning statute discloses no evidence of a legislative intent to allow counties to control the division of land into parcels of thirty-five or more acres pursuant to subdivision regulations. The thirty-five acre parcel exemption was first introduced by the legislature in 1972. . . Colo. Sess. Laws 1972, ch. 81, 106-2-33(3) at 499. It remains unchanged. . .
>
> Had it wished to allow the counties to regulate the subdivision of land which results in thirty-five acre parcels, the legislature could have so indicated by amending the pertinent exclusion in the county planning statute or by clearly delegating the authority to the county in the Land Use Act. Further, the legislature has since amended the statutory definition of subdivision without altering the thirty-five acre exemption. . . .
>
> Accordingly, we conclude that the specific statutory definition of subdivision . . . is binding upon the County in the absence of a clear legislative mandate providing otherwise. Here, the county attempted to impose subdivision regulations upon the property in question. The exemption cannot be ignored. If the legislature intended to delegate the authority to impose subdivision regulations without regard to the size or ownership of the resulting parcels, then a clearer statement, evidencing that intent, is necessary.

Pennobscot, 642 P.2d at 919-20 (emphasis added).

The same rules of law and reasoning apply to the County Board's attempt to adopt more stringent exemption criteria than are included in the 1041 Exemption Statute. There is no express delegation to any county or municipality of any authority to supplement, modify, or supersede in whole or in part the 1041 Exemption Statute. Any such authority could only be derived as an implied power from counties' powers under AASIA to delineate activities of state interest. However, per *Pennobscot*, when the Colorado Legislature enacts a statutory exclusion to a land use statute, it must delegate authority to affected units of local government to modify or supersede the statutory exclusion. Because no such delegation has been made, the County Board was powerless to narrow or eliminate the exclusions set forth in the 1041 Exemption Statute.

E. Conclusion

For the foregoing reasons and based upon the cited authorities, one must conclude the 1041 Exemption Statute applies, not the UDC 1041 Exemption. The UDC 1041 Exemption is ineffective insofar as it narrows or limits the exemptions in the 1041 Exemption Statute as of the

Grandfather Date. The only potential validity of the UDC 1041 Exemption is if it grants additional exemptions. However, no additional exemptions were authorized, only attempts to narrow the exemptions in the 1041 Exemption Statute that would apply as of the Grandfather Date. Accordingly, the balance of this Memorandum analyzes the extent to which approvals granted prior to the Grandfather Date trigger one or more provisions of the 1041 Exemption Statute.

VII. THE STAGECOACH DEVELOPMENT CHRONOLOGY

A. The Overall Stagecoach Development Plan

In 1971, the Woodmoor Corporation ("Woodmoor"), a public land development corporation with multiple projects in both Colorado and Mexico, set out to develop a large resort-style planned community situated approximately 20 miles south of Steamboat Springs, Colorado on approximately 12,000 acres of land. The resort-oriented community -- "Stagecoach" -- was planned to include over 11,000 residential units, a ski mountain, two golf courses, a recreational reservoir, additional outdoor recreational amenities, and commercial spaces. The description of the Stagecoach Project was published by Woodmoor several times in 1971 and 1972 through full-page ads in the local newspaper, the Steamboat Pilot:
:

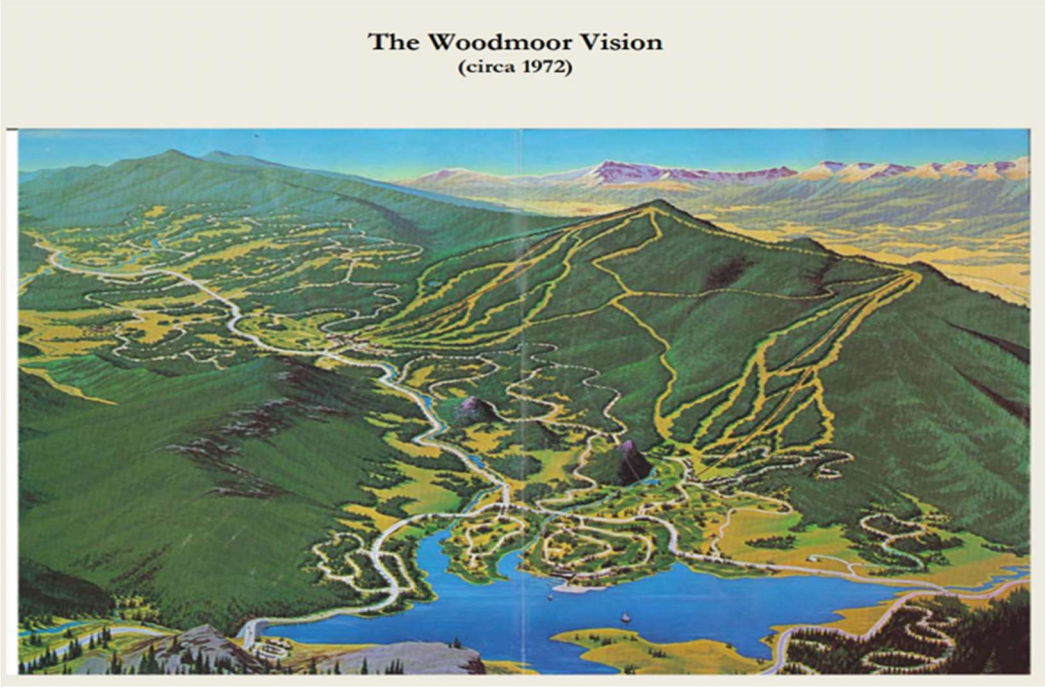
> **Announcing a new kind of town so uniquely planned for family recreational living you'll never have a reason to leave it.**
>
> **Stagecoach.**
>
> About 20 miles south of Steamboat Springs. You won't find another town like it. In Colorado. In the country. Anywhere. O.K. So what makes Stagecoach so different? For one thing our land. All 12,000 acres of it. . . We're big. So big that after fitting in Colorado's leading resorts —you can still have two family ski areas. Herds of deer and elk. Three 18-hole golf courses. Miles of trout streams. A 1,000-acre lake for swimming, fishing, boating and sailing. Homesites. Townhouses. Camping areas. Take the activities of any ski and summer resort, country club and state park and you'll find them in Stagecoach. . . The days of going to one place for skiing and another for water skiing and still another for nature are over. Stagecoach. The only town exclusively planned for family recreational living. Think of any activity you and your family would do. Now think of some you'd never consider. You can do them at Stagecoach. Not near Stagecoach - but within Stagecoach. And not just in the winter. Or the summer. But in the spring and fall as well. . . Dance, sing, laugh at the Stagecoach Inn. Your ski lodge in winter. Your golf club in summer. . . Stagecoach is a town that's showing everybody a thing or two about family living. Our first homesite section is Sky Hitch. Encompassing 320 acres of rolling green belts and magnificent countryside, you can choose 2- to 4-acre sites for homes or investment. . . All sites are minutes away from your ski slopes or 1,000-acre lake. If townhouses are more to your liking —you'll like ours. Two to four-bedroom models. All furnished if you like. All

> with three furniture styles to choose from. All situated to take advantage of your 12,000 acres of family activities. We're the only town that's all things to all people. There isn't a family that can't find their winter, summer, spring and fall activities within our boundaries. Everything. So take your family to Stagecoach. The only town so **uniquely planned for family recreational living** — you'll never have a reason to leave it. . .[3]

Essentially, Woodmoor touted Stagecoach as a 12,000 acre planned community -- a town that was so all-inclusive that one would never need to leave it because it would include all of the uses needed or desired by all of its property owners. It is obvious that Woodmoor intended a large-scale integrated development that was substantially the same as a planned unit development before either the PUD Act was adopted and before zoning was adopted in 1972 by the County Board.

B. <u>History of the Stagecoach Development Prior to the Grandfather Date</u>

The foregoing is an overview of what Woodmoor <u>intended</u>. The Stagecoach Community Plans adopted by Routt County in 2017 and earlier in 1999 recount the actual history of the Stagecoach Development. These historical narratives are significant because they were both approved by Routt County. The following is an excerpt from the 2017 Stagecoach Community Plan:



During the early 1970s, Woodmoor Corporation acquired land south of CR 14 and east of Colorado Highway 131, and began to plan for a large new community named Stagecoach. At that time, neither Stagecoach Reservoir nor the ski area existed, but Woodmoor envisioned both a lake and a ski mountain and had plans for a golf

[3] The Steamboat Pilot, Dec. 23, 1971, pg. 25 (underlining emphasis added, bold in the original ad).

course, equestrian center, and full-service marina as part of its new planned development. Woodmoor also envisioned thousands of single-family homes and multi-family units scattered across a large portion of south Routt County.

In 1972 Routt County granted Woodmoor urban-scale zoning for the entire site. The zoning allowed for the development of both multi-family and single-family lots of less than 1 acre—if central water and sewer services were provided. The County also approved 16 subdivision plats referred to today as the original Woodmoor Subdivisions, covering 1,938 single-family lots with the potential for thousands of additional condominium and townhouse units.[4]

What is most significant from the quoted text is the acknowledgment by Routt County that urban-scale second level zoning was adopted for large swaths of Stagecoach in 1972. This second-level zoning for urban-scale development confirms a "Stagecoach-wide" focus of the County Board and that the County Board approved of dense development within Stagecoach where central water and sewer service were to be provided. Similarly, the following is an excerpt from the 1999 Stagecoach Community Plan:

> During the early 1970s, Woodmoor Corporation . . . began to plan for a large new community named Stagecoach. At that time, there was no Stagecoach Reservoir, and no ski area, but Woodmoor envisioned both a lake and a ski mountain . . . It also envisioned thousands of single family lots and multi-family units scattered across a large portion of south Routt County.
>
> Woodmoor subsequently received County zoning for the entire site. The zoning allowed for development of both multi-family development and for single family lots of less than 1 acre -- if central water and sewer services were provided. The County also approved subdivision plats covering 1,938 single-family lots and the potential for thousands of additional condominium and townhouse units. The number of platted lots in each subdivision is summarized in the table below.

SUBDIVISION	PLATTED LOTS
Meadowgreen	50
South Shore	229
Morningside I	183
Horseback	249
Blackhorse I	101
Blackhorse II	70
Sky Hitch I	93
Sky Hitch II	59
Sky Hitch III	43
Sky Hitch IV	167

[4] 2017 Stagecoach Community Plan at 1-2 (emphasis added).

South Station I	218
South Station II	131
High Cross	65
Overland	138

> Single family lots were rapidly sold to over 1,400 different owners living all over the country – and the world. . . Portions of the land that were not subdivided received County zoning approval for densities that would allow a total of over 4,500 more dwelling units if developed at their maximum densities. Even if developed at lower densities, the Woodmoor approvals would have accommodated about as many people as currently live in Steamboat Springs.
>
> To provide water and sewer services for the anticipated development, Woodmoor helped create the Morrison Creek Metropolitan Water and Sanitation District (the "District"). The District sold bonds to investors and used the proceeds to begin constructing an extensive system of water wells, water pipes, sewer collection lines, and a sewage treatment plant. To achieve construction efficiencies, it sized these investments to serve between 1,000 and 2,000 dwelling units. When future homes were built and hook-up fees and real property taxes were collected, those revenues would be used to repay the bondholders.[5]

Thus, as confirmed in both the approved 1999 and 2017 Stagecoach Community Plans, Stagecoach was a very large scale integrated development with multiple components, including various types of residential development, commercial uses, a ski area, reservoir, golf course, other recreational uses, and a central water and sewer system, multiple elements of which were approved in a number of rezonings and subdivision plat approvals and enabled by the formation of the District (discussed below). This large scale integrated project with multiple uses and components along with an associated district for centralized water and sewer is essentially a planned unit development.

C. Initial Filing of Restrictive Covenants

The first document to officially initiate the establishment of the Stagecoach Development was the Declaration of Covenants, Conditions and Restrictions (the "Declaration"), dated November 30, 1971.[6] Note that the Declaration created the Stagecoach Property Owners Association, not a property owners association for any individual approved subdivision within Stagecoach, thus confirming that the intent was to extend the reach of the Declaration throughout much of Stagecoach. This intent is explicitly confirmed in Declaration Article VI, Section 1.d, entitled "Annexation," which provides that that "Additional land within the area shown in the general plan of the Declarant for its development in Routt County, Colorado or contiguous to land shown in the general plan may be annexed by the Declarant without the consent of the members within ten (10) years from the date of this instrument." (Emphasis added.) Thus, the Declaration contemplates

[5] 1999 Stagecoach Community Plan at 1 - 2 (emphasis added).
[6] Routt County File #7073.

the expansion of the reach of the Declaration to include other properties in the "area shown in the general plan of the Declarant for its development in Routt County --- meaning the Stagecoach Development. Notably, the Declaration even contemplated inclusion of additional contiguous lands which would describe the lands of the LPS.

According to the filed Declaration, the "Stagecoach, Declaration of Covenants, Conditions, and Restrictions", the Association was created to *inter alia*, "…provide for the maintenance of open spaces…" and as noted on the various subdivision plats, the Association governed and was responsible for all common areas in the Woodmoor Stagecoach subdivisions.[7] As described below, the Declaration initially covered the lands comprising the first approved subdivisions within the Stagecoach Development -- Sky Hitch and Project I at Stagecoach[8]-- and was later expanded to include the multiple subdivisions approved within the Stagecoach Development.

D. Subdivision Approvals Prior to the Adoption of the 1972 Zoning Resolution

Initially, subdivision approvals were granted pursuant to the 1970 Subdivision Regulations.[9] The 1970 Subdivision Regulations required preliminary plat approval by the Planning Commission and final plat approval by the County Board.[10] Typically, the proposed subdivision was described in The Steamboat Pilot and the preliminary and final plat approvals can be found via the assigned Routt County File number.

The initial proposed Stagecoach subdivisions were described as follows in The Steamboat Pilot:

> The initial filing submitted by Woodmoor Corp. which also received final approval calls for development of 93 residential homesites on a 320 acre tract and for construction of a sales office and 24 condominium units of a 40-acre parcel located at the base of the corporation's proposed ski hill.
>
> A residential and recreational community developer, Woodmoor recently purchased some 12,000 acres at a site 20 miles southeast of Steamboat.
>
> . . . Bob McCune, vice president and project manager for Woodmoor, . . . said the only change since preliminary approval Oct. 21 was that the corporation intends to install a central water and sewer system.[11]

From the article, Woodmoor represented that Sky Hitch was a mixed single family and multi-family development, was a part of the planned Stagecoach "town" and would include a central water and sewer system. From the very beginning individual subdivisions were represented as being part of the overall Stagecoach Development.

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[7] *Id.*

[8] *Id.* at 1, second "Whereas" clause

[9] Routt County File #6945.

[10] Routt County Commission Notes: Book 12, Page 441.

[11] The Steamboat Pilot No. 17, November 25, 1971, pg. 1 (emphasis added).

On November 18, 1971, Woodmoor received final approval for: (1) Project I at Stagecoach, which included four, tightly-clustered blocks of six lots each, a disposal plant, and a sales office on 40 acres;[12] and (2) Sky Hitch at Stagecoach[13] for 93 lots on over 282 acres.[14] Note that the land area of Stagecoach I is within the overall land area that is shown on the Exempt Subdivision plat, but it is excluded from and is not replatted by the Exempt Subdivision plat.[15] Note further that the approved Sky Hitch plat includes the following notes:

> NOTES
>
> 1. Building setback lines and design controls to be established by architectural control committee through protective covenants. . .
>
> 4. Development and management of areas designated as common open space to become responsibility of Stagecoach Property Owners Association.
>
> 7. Water and sewer to be provided by Morrison Creek Water and Sanitation District. . .[16]

The notes quoted from the Sky Hitch plat (the "Notes") confirm the interconnection between Sky Hitch and the overall Stagecoach Development, an interconnection endorsed by the County Board because it was the County Board that granted final plat approval for Sky Hitch. The architectural control committee referenced in the Notes is the committee established in the Declaration. The Stagecoach Property Owners Association referenced in the Notes was established in the Declaration. And finally, the water and sewer service to be provided by the Morrison Creek Water and Sanitation District is exactly as provided in the Declaration. Multiple subsequently approved subdivision plats contain the same Notes. Below, when this Memorandum describes an approved subdivision plat and states that it includes the same Notes as previously quoted, the reference is to the Notes from Sky Hitch quoted above.

The Stagecoach Development opened for sales in December 1971 and, according to Woodmoor as reported in The Steamboat Pilot, approximately 60% of the lots in the first Stagecoach subdivisions were sold prior to the end of 1971.[17]

On December 3, 1971, Woodmoor's Eagles Watch at Stagecoach subdivision was granted preliminary plat approval by the Planning Commission.[18] Eagles Watch was described as follows:

> Outlining Woodmoor's filing for Eagle's Watch subdivision was Rod Stevens, Steamboat, project manager for the 12,000 acre development, to be known as Stagecoach. . .

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[12] Routt County File # 7071.

[13] Note that in The Steamboat Pilot "Sky Hitch" is often misprinted as "Ski Hitch." The correct name, as confirmed in the 1999 Stagecoach Community Plan is "Sky Hitch" which is what is utilized in this Memorandum.

[14] Routt County File # 7072.

[15] *See* Exempt Subdivision, Routt County File #14641, sheet 4 of 15.

[16] Sky Hitch Plat, Routt County File 7072, sheet 1 of 3 (emphasis added).

[17] The Steamboat Pilot, February 24, 1972, pg. 17.

[18] The Steamboat Pilot, December 9, 1971, pg. 1.

> Stevens said the subdivision covers 196 acres, located in the center of the tract, and will be comprised of 91 residential lots, ranging from .8 to 2.4 acres in size, averaging 1.2 acres. Some 25 percent of the property will be open space. . .
>
> Stevens said water and sanitation facilities would be provided through a central system and officials are in the process of creating the Morrison Creek water and sanitation district. Roads will be graded and brought to county specifications for eventual county maintenance. Heat and power for the entire project will be provided by electricity, and water is expected to be provided by wells.
>
> Approval of the project was unanimous.[19]

Similar to Sky Hitch, Eagles Watch was represented to be part of the overall Stagecoach Development, and would be provided with central water and sewer. Woodmoor's representative specified that the central water and sewer would be from the Morrison Creek Water and Sanitation District that was in the process of being created.

On January 4, 1972, the County Board granted final plat approval for the Eagles Watch at Stagecoach subdivision.[20] The identical Notes as quoted above from the Sky Hitch plat are set forth on the Eagles Watch plat.[21] The Declaration was extended to "annex" the land within the approved Eagles Watch subdivision.[22] These actions reinforce that the Eagles Watch subdivision was part of the overall Stagecoach Development.

On January 6, 1972, the Planning Commission granted Woodmoor preliminary plat approval for three additional Stagecoach Development subdivisions: Sky Hitch II and III and Black Horse I.[23] The Planning Commission Chair is reported to have stated as follows:

> Chairman Morton Dismuke said developers were working on a master utility plan and that a central water and sewer system would have to be available before building permits could be issued. The approved plans brings to about 500 lots or units receiving preliminary or final approval at Stagecoach. . .[24]

In late January of 1972, Woodmoor appeared before the Colorado River Water Conservation District Board seeking water rights to enable it to create the 1,000 acre Stagecoach Reservoir on the Yampa River as part of the Stagecoach Development:

> Plans for a reservoir for a residential-recreation development for 36,000 persons 18 miles south of Steamboat Springs came before

[19] The Steamboat Pilot, December 9, 1971, pg. 1 (emphasis added).
[20] Routt County Commission Minutes: Book 12, Page 441.
[21] Routt County File #7085.
[22] Land records of Routt County: Book 354, Page 53.
[23] The Steamboat Pilot, January 13, 1972, pg. 15.
[24] *Id*.

> the winter meeting of the Colorado River Water Conservation District Board here last week.
>
> The Woodmoor Corp. of Monument plans to build a reservoir on the Yampa River as a part of a 12,000-acre development that would include two ski courses, two 18-hole golf courses, and structures and equipment for everything from bird watching to tetherball.
>
> The reservoir would be two and one-half miles long and would cover 1,000 acres. . .
>
> The name of the community would be Stagecoach.
>
> Four representatives of the corporation appeared to ask the board to assign conditional water rights. . . to the company.[25]

As reported in The Steamboat Pilot: (a) the District Board instructed its staff to negotiate with Woodmoor and other stakeholders; (b) previously, in October 1971, the District Board agreed to work with Woodmoor on the preparation of an environmental impact study for the reservoir; and (c) Woodmoor was preparing the study as of the January District Board meeting.[26] In October 1972, the District agreed in principle to Woodmoor's request to create the Stagecoach Reservoir.[27]

The Black Horse I, Sky Hitch II and III Plats were granted final approval by the County Board on February 8, 1972[28] and all included the identical Notes as quoted above from the Sky Hitch I Plat.[29] It was reported that Woodmoor represented to the County Board that "they expect to have a master plan showing schools, open space, and subdivision areas ready for approval by the middle of February."[30] *Id*. On February 9, 1972, the Declaration was extended to include the land within Black Horse I, and Sky Hitch II and III[31] thus confirming it being part of the overall Stagecoach Development.

E. The 1972 Zoning Resolution

Throughout the fall of 1971 and winter of 1972, the Planning Commission developed and held hearings on proposed zoning for Routt County. On March 7, 1972, the County Board adopted the 1972 Zoning Resolution.[32] The 1972 Zoning Resolution was not traditional Euclidean zoning in that it did not adopt a zoning map that delineated specific districts separating uses of land from one another, such as the traditional residential, commercial, and industrial zoning districts.

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[25] The Steamboat Pilot, January 27, 1972, pg. 4.
[26] *Id*.
[27] The Steamboat Pilot, October 5, 1972, pg. 1.
[28] Routt County Commission Minutes: Book 12, Page 464.
[29] Routt County Files #7106, 7107, and 7108
[30] The Steamboat Pilot, February 10, 1972, pg. 2,
[31] Land records of Routt County: Book 355, Page 247.
[32] Routt County Commission Minutes: Book 12, Page 445. It is not clear whether there actually were prior zoning resolutions adopted by Routt County. Section 16, entitled "Repeals" states that "The Mobile Home Regulations and all Zoning Resolutions of Routt County are hereby repealed." However, no reference to a prior Routt County zoning resolution could be found, so this Memorandum is based on the assumption that the 1972 Zoning Resolution is Routt County's first.

Rather, the 1972 Zoning Resolution divided all of Routt County into five basic zoning districts based on their cultural and physical characteristics, most notably elevation: (1) *Alpine* for areas eight thousand to twelve thousand feet above sea level; (2) *Mountain Park* for areas eight thousand to nine thousand feet above sea level in relatively flat, meadow-like areas; (3) *Foothills* for areas seven thousand to eight thousand feet above sea level with no particularly topography; (4) *Valley* for areas six thousand to seven thousand feet above sea level; and (5) *Urban* for areas adjacent or close to existing development.[33] The lands comprising Stagecoach were located principally in the Foothills, Valley and Urban districts.

The 1972 Zoning Resolution further provided for "second-level" zoning districts which more specifically delineated the permitted uses within smaller areas of land within one of the five basic zoning districts. In the Introduction to the 1972 Zoning Resolution, second-level zoning was described as follows:

> Superimposed on the basic districts are requirements and zones for regulating certain types and intensity of land occupancy as derived from the physical character of the area established in the basic zone districts. These second-level zone districts will be subject to amendment from time to time as the local character of an area may change or as demand may require for creation of new second-level district boundaries.[34]

In addition, the 1972 Zoning Resolution authorized a variety of second-level zone districts, including: general residential (GR), low density, medium and high density residential (LR, MR, and HR); mountain residential estate; commercial, including commercial center; industrial; mining; agriculture and forestry; outdoor recreation; flood channel, and planned unit development (PUD). In the *Foothills*, *Valley*, and *Urban* zoning districts, in GR, LR, MR, and HR residential second-level zones and PUDs were allowed as a use by right so long as the development met minimum lot area requirements, provided public water and sewer services, and protected common open space by "adequate covenants running with the land or by conveyances or dedications".[35]

The 1972 Zoning Resolution adopted standards for the second-level zone districts permitted in each basic zone, including for planned unit developments. Section 7 of the 1972 Zoning Resolution delineates requirements for all PUDs, as well as the procedure for their approval. Planned unit developments were authorized to include a wide variety of uses, including multiple types of residential development; commercial uses, including offices, convention facilities, places of lodging, service business, etc.; and industrial uses (authorizing an industrial planned unit development).[36]

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[33] *Id*.
[34] 1972 Zoning Resolution, Introduction.
[35] *Id*.
[36] *Id.*

F. Approvals after the 1972 Zoning Resolution and Prior to District Formation

In mid-March 1972, the Planning Commission granted preliminary subdivision approval for Black Horse II, Sky Hitch IV, and Project 1, Phase 2.[37] *Id*. Although the County Board adopted the 1972 Zoning Resolution at about the same time as the Planning Commission granted these preliminary subdivision approvals, the new zoning does not appear to have affected the Planning Commission's grant of preliminary plat approvals. As reported in The Steamboat Pilot, at the same meeting Woodmoor's representative stated that: (a) water and sanitation for the developments would be provided by the Morrison Creek Water and Sanitation District; (b) water storage tanks were being planned for the Stagecoach Development; and (c) a small clinic and hospital were being planned as well.[38] Finally, Woodmoor's representative stated that there would not likely be any significant number of students attending the Steamboat Springs schools because most people were staying in Stagecoach on a vacation basis.[39] Thus, it is clear that the individual proposed subdivisions were still being described and approved within the context of the overall planned and integrated Stagecoach Development.

On April 3, 1972, the County Board granted final plat approval for Sky Hitch IV, Black Horse II, and Project II.[40] The plats for Sky Hitch IV and Black Horse II included the same Notes as were quoted above and included in all prior approved plats, except Project I and Project II.[41] The Declaration was expanded to annex Project II, Sky Hitch IV, and all of Black Horse II, except one lot which was excluded because it would be zoned commercial,[42] all further confirming the subdivisions being a part of the overall Stagecoach Development.

At the April 20, 1972 Planning Commission meeting, on the agenda was consideration of preliminary plat approval for the Overland subdivision, consisting of 138 lots on 193.5 acres and preliminary review of the South Station subdivision. It appears that Overland was initially denied because it lacked state approval of sewage facilities, but as discussed *infra*, ultimately received approval.[43] Also, the Planning Commission received a report from Woodmoor on its Master Plan.[44] The Planning Commission's meeting minutes confirm that Woodmoor presented the Master Plan for Stagecoach:

> The Woodmoor Corporation presented the Master Plan on Stagecoach [showing] several maps depicting vegetation, proposed resevoirs (sic), ski area, etc. The public was invited to examine the maps and asked any questions after the meeting was adjourned.[45]

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[37] The Steamboat Pilot, March 23, 1972, pg. 13. Black Horse II was for 69 residential lots and one commercial lot on 177.93 acres, as well as a condominium development of 618 units on 106 acres, with 54 acres set aside for open space. *Id.* Sky Hitch IV was for 167 single family homes on 255.6 acres, with land set aside for open space. *Id.* Project I, Phase II was for 66 multi-family units with 2.25 units per acre. *Id.*

[38] *Id.*

[39] *Id.*

[40] Routt County Commission Minutes: Book 12, Page 46.

[41] Routt County File #7133, 7134, and 7135.

[42] Land records of Routt County: Book 358, Page 175.

[43] *Id.*

[44] The Steamboat Pilot, April 20, 1972, pg. 7.

[45] Planning Commission minutes, April 20, 1972, pg. 3 (emphasis added).

Beginning on April 26, 1972, Woodmoor applied for multiple second level rezoning amendments for various portions of the Stagecoach development. Some of these applications were for second level high density residential, some were for low density residential, and some were for C-1 Commercial Center.

On May 1 and 2, 1972, a Morrison Creek Water and Sewer District proposed service plan was filed with the County Board and a hearing was scheduled for May 31, 1972.[46] On May 31, 1972, the County Board held the public hearing on the District's service plan.[47] The County Board approved the District's proposed service plan without conditions.[48] Note that in August 1972 (as described in detail *infra*) the electorate approved the establishment of the District to cover an area of 11,500 acres which is close to coincident with the boundaries of the Stagecoach Development community. Thus, regardless of whether the District's sewer lines were actually physically extended into all corners of the 11,500 acre District, the County Board approved, and the voters later ratified, the District being established on this 11,500 acres of land. By doing so, the voters approved of the District providing central water and sewer service throughout the 11,500 acres comprising the District.

Not coincidentally, on May 1 and 2 of 1972, the County Board announced that second-level zoning hearings would be held.[49] Woodmoor proposed second-level zoning of LR and HR for the following eleven Woodmoor subdivisions: Project I at Stagecoach, Project II at Stagecoach, Sky Hitch I at Stagecoach, Sky Hitch II at Stagecoach, Sky Hitch III at Stagecoach, Sky Hitch IV at Stagecoach, Eagle's Watch at Stagecoach, Blackhorse I at Stagecoach, Blackhorse II at Stagecoach, Overland at Stagecoach and South Station I at Stagecoach.[50] The second-level zoning proposals were consistent with the densities of the approved subdivisions and consistent with the overall plan for the Stagecoach Development. All of the second-level zonings were proposed for lands within the proposed District. Because the maximum densities authorized in the second-level zonings could not be achieved without central water and sewer service, the formation of the District was integral to both the second-level zonings and the densities being proposed or which had been approved for multiple Stagecoach subdivisions.

On May 11, 1972, the Steamboat Pilot reported that Phase I of the Stagecoach Ski Development had commenced on May 10, 1972 and would be open for skiing on Thanksgiving of that year.[51]

On May 29, 1972, the County Board considered Woodmoor's petition for second-level high density and low density residential rezoning.[52] The proposed second-level zoning was recommended for approval by the Chair of the Planning Commission. The following is the summary of the discussion of the County Board, as stated in the Report of the County Commission proceedings, and as reprinted in The Steamboat Pilot, which reconfirms the interconnection between establishment of the District and second-level zoning for the Stagecoach Development:

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[46] Routt County Commission Minutes: Book 12, Page 473.
[47] Routt County Commission Minutes: Book 12, Page 481
[48] *Id*.
[49] Routt County Commission Minutes: Book 12. Page 472.
[50] The Steamboat Pilot, May 11, 1972, pg. 13.
[51] The Steamboat Pilot, May 11, 1972, pg. 1.
[52] The Steamboat Pilot, July 13, 1972, pg. 13.

> . . . Commissioners Moore and Utterback made it known that they were not fully aware of the ultimate results of their action. . . nor of their responsibilities in granting such approvals. Discussion ensued, explaining . . . what actions had been previously taken; what previous approvals had been granted; and that their approval for second level zoning was necessary before Woodmoor could continue its due process for full and final approval of the subdivisions involved in today's petitions.
>
> Commissioner Utterback's principal concern was whether or not Woodmoor does plan to proceed to form a municipal water and sanitation district sufficient to serve the property owners involved. The information provided him orally and his reading of certain correspondence contained in the Stagecoach files addressed to the Routt County Planning Commission regarding the Morrison Creek Municipal Water and Sanitation District, satisfied Commissioner Utterback's objections and he stated his approval for granting the second level zoning.
>
> Commissioner Moore's primary concern involved his insecurities about the availability of finances to meet Woodmoor's commitments to property owners, primarily in regard to water and sewer services. . . He was advised that the purpose of today's hearing was to agree or disagree that the land involved is suitable for Woodmoor's intended use and that his questions would be resolved in the future actions by the Planning Commission. . . Commissioner Moore withheld his approval for granting second level zoning. . .
>
> . . . Second level zoning was granted; the majority of Commissioners having approved.[53]

Thus, by the County Board having adopted the 1972 zoning resolution, subdivisions could no longer be approved without there being a corresponding or antecedent second-level zoning that authorized the level of residential density in the subdivisions. This quoted report confirms that the County Board considered multiple interrelated elements of the overall Stagecoach Development when approving second-level zoning and subdivisions, including the system for providing central water and sewer services. Thus, the focus of the County Board was on the overall Stagecoach Development when approving second-level rezonings and granting subdivision approvals.

This is confirmed by the County Board's consideration and approval of the service plan for the proposed District on May 31, 1972. On that date, the County Board conducted a public hearing on the proposed District service plan for the entire Stagecoach Development. That service plan was comprehensive in scope and scale, including planned service for 12,000 residential dwelling units with its associated water demand of approximately 4,350 acre-feet. The service plan included both surface diversions from the Yampa River, as well as underground wells to serve all of the Stagecoach Development, along with a water treatment plan and multiple water storage tanks.

[53] The Steamboat Pilot, July 13, 1972, pg. 13 (emphasis added).

Similarly, the service plan included a tertiary sewage treatment plant, lift stations and force mains. All were for the entirety of the Stagecoach Development.

Overland was granted Planning Commission preliminary plat approval on June 1, 1972.[54] The County Board granted final approval on June 6, 1972[55] and included the same Notes as quoted above.[56] The Declaration was then expanded by Woodmoor to include Overland.[57]

Also on June 6, 1972, Woodmoor received a second-level zone change from AF to C for a lot with a commercial building, including restaurants, saunas, locker rooms, ski patrol facilities[58] and 380 parking spaces at the Ski Base area along with a final approval from the County Board.[59] This second-level zoning is important as it implemented important commercial elements of the Stagecoach Development, especially those related to its ski slope. In mid-June 1972, the Planning Commission approved the South Station subdivisions, as well as the commercial building at the base of the proposed ski area that was approximately 20,000 square feet in size with an adjacent 380-car parking lot as authorized by the second-level zoning adopted by the County Board.[60]

On July 12, 1972, Woodmoor filed a separate "Declaration of Protective Covenants for the Stagecoach Ski Base area" relating to the Ski Base at Stagecoach plat, in which it established a separate Owner's and Tenant's Association for the Ski Base area.[61] On the same day, the Planning Commission held a hearing on a proposed second-level zone change from Urban to C-1 for a use by right for the Woodmoor commercial lot.[62] These actions further enabled the commercial elements of the overall Stagecoach Development.

On August 7 and 8, 1972, Woodmoor's South Station I at Stagecoach subdivision was approved by the County Board.[63] The approved plat included the Notes as quoted above.[64] The Declaration was then extended to annex South Station I.[65] These actions confirmed that additional residential subdivisions that were part of the overall Stagecoach Development continued to be approved.

On August 7 and 8, 1972, Woodmoor's Ski Base at Stagecoach, which included the recreational ski base Lodge building and a 380-space parking lot, was approved by the County Board.[66] There is nothing in the record about any particular zoning, platting, or permitting requested or required for the ski hill and the ski-related facilities, such as the chairlifts which were installed prior to the opening day in December of March at 1972. It appears that such facilities were allowed under the

[54] The Steamboat Pilot, June 8, 1972, pg. 9.
[55] Routt County Commission Minutes: Book 12, Page 493.
[56] Routt County File #7157.
[57] Routt County File #7158.
[58] Routt County Reception #233942.
[59] *Id.*
[60] The Steamboat Pilot, June 22, 1972, pg. 17,
[61] Routt County File #235520.
[62] *Id.*
[63] Routt County Commission Minutes: Book 13, Page 29.
[64] Routt County File #7195.
[65] Land records of Routt County, Book 364, Page 265.
[66] Routt County Commission Minutes: Book 13, Page 29.

existing AF zoning and no rezoning was needed. However, there was a second level zone change from AF to C on June 6, 1972 for certain commercial uses.[67]

On August 7 and 8, 1972, the County Board amended its subdivision regulations in ways that are not material to this analysis.[68]

G. Election to Form the District

In July of 1972, pursuant to a petition filed with the Routt County District Court following the County Board's approval of the proposed District's service plan, the Court issued an order requiring that notice be given that the creation and organization of the District would be submitted to a vote of the qualified electors of the proposed district.[69] The public notice of the election contained a description of the land to be included in the District. The lands listed by Township, Range and Section, aggregate to 11,500 acres.[70]

Thus, regardless of whether the District actually served all of the 11,500 acres, the qualified electors throughout the entire 11,500 acres voted as to whether the District would be formed to include all of such acreage. The voters approved formation of the District at the election conducted on August 15, 1972. Thereafter, at an election held in the fall of 1972, the voters approved issuance of bonds to fund construction of the District's sewage treatment plant and other infrastructure.[71]

The approved District was quite large, comprising approximately 17.96 square miles. The approval of the District by the voters confirms that they intended that the District would provide centralized water and sewer service throughout the District. The largely coincident boundaries of the District and the contemplated Stagecoach Development confirms that the two were mutually dependent and interconnected.

H. Additional Approvals Issued Prior to the Grandfather Date

On August and September**,** 1972, Woodmoor's South Station 1I at Stagecoach subdivision was approved by the Planning Commission and County Board.[72] The approved plat included the Notes quoted above. On September 5, 1972, Woodmoor extended the Declaration and annexed South Station II.[73] The Planning Commission's agenda for September 7, 1972 included the approval of the preliminary plats for Stagecoach Phase VII ; Meadow Green at Stagecoach ; and the Stagecoach Ski Maintenance Building.[74]

On September 29, 1972, Woodmoor wrote to the County Board in connection with pending second level rezoning applications. In that letter, Woodmoor confirmed that the District would provide central water and sewer services for the entire Stagecoach Development:

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[67] Routt County Reception #233942.
[68] Routt County Commission Minutes: Book 13, Page 37.
[69] The Steamboat Pilot, July 20, 1972, pg. 15 (setting forth the official court-mandated public notice).
[70] *Id.*
[71] The Steamboat Pilot, September 21, 1972, pg. 14.
[72] Routt County File #7211.
[73] Land records of Routt County: Book 355, Page 364.
[74] The Steamboat Pilot, September 7, 1972, pg. 10.

> The Morrisson Creek Metropolitan Water and Sanitation District, Routt County, Colorado, was organized on August 15, 1972, and will provide central water and sewage services to the entire STAGECOACH area. . .". The Service Plan for this District was approved by the County Commissioners on May 31, 1972, and the primary sewage treatment plant is now under construction.

Letter for John R. Stevens, Acting Project Manager to Routt County Board, September 29, 1972 at 1 (emphasis added).

In October of 1972, the Steamboat Pilot reported that the Planning Commission recently approved second-level zone changes for lands in Stagecoach totaling 785 acres from Urban to HR zoning.[75] In October, 1972,the County Board considered second level rezoning for South Shore to high density residential. The County Board Minutes from the October 11, 1972 confirm that a representative of Woodmoor "explained that the Morrison Creek Metropolitan Water and Sanitation District, which would serve the Stagecoach Development, would collect an availability fee prior to the tap on fee." Routt County Board Minutes, October 11, 1972 at 1 (emphasis added). The emphasized text confirms that the District was established to serve the entire Stagecoach Development. At that same County Board meeting, multiple aspects of the entirety of the Stagecoach Development were discussed, including land to be set aside for a school, how fire and ambulance service would be provided for the Stagecoach Development, and that a single sewage treatment plant would serve the entire Development. *Id.* at 1 -2.

On October 12, 1972, The Steamboat Pilot published a rendering of Stagecoach's Base Lodge which was a two-story building of 38,000 square feet, public and private restaurants and lounges, locker rooms, saunas, a ski and golf shop, first aid, and ski patrol facilities.[76] The Lodge was planned to be used as a golf clubhouse in the Summer.[77]

On October 17, 1972, the Colorado River Water District approved the Stagecoach Reservoir.[78]

In the fall of 1972, approval of the Meadow Green at Stagecoach subdivision was granted. Meadow Green included multi-family lots, and two large golf recreation lots.[79] The approved plat included the Notes quoted above. On November 22, 1972, Woodmoor extended the Declaration to annex the Meadow Green.[80] Also in the fall of 1972, at same meeting Project I and Project II were replatted.[81] The replat includes the Notes as quoted above. Both Project I and II are physically within the land area shown on the Exempt Subdivision, however both Project I and II were replatted and approved by the County Board. So both are excluded from the Exempt Subdivision plat and are two of the high density subdivisions platted for the Stagecoach Development.

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[75] The Steamboat Pilot, October 12, 1972, pg. 1.
[76] *Id.* at 9.
[77] *Id.*
[78] The Steamboat Pilot, October 25, 1972, pg. 13.
[79] Routt County File #7267.
[80] Land Records of Routt County: Book 369, Page 183.
[81] Routt County File #7275.

On November 2, 1972, Woodmoor named Jim Prendergast to be their Stagecoach Ski Manager.[82]

In the fall of 1972, Woodmoor's South Shore at Stagecoach was approved, as was the Morningside I at Stagecoach subdivision.[83] South Shore at Stagecoach had previously received a second-level zone change in the Urban district to HR zoning. The approved plats included the same Notes quoted above. The South Shore at Stagecoach subdivision included a lot specified for a sanitary treatment plant for the District.[84] On January 2, 1973, Woodmoor extended the Declaration to annex Morningside I[85]and on January 3, 1973, did the same as to South Shore.[86]

On December 4 and 5, 1972, William Wiesorek was allowed to convey a liquor license to Gerald Martin at the Stagecoach Sales Office for the 1973 year.[87]

The next approved subdivision was Horseback and the approved plat included the same Notes quoted above.[88] Thereafter, Woodmoor extended the Declaration to annex Horseback.[89]

On December 18, 1972, Woodmoor's Stagecoach recreational ski hill opened with three chair lifts connected to a number of ski runs. On January 6, 1973, Stagecoach Ski Facilities were dedicated with Lt. Governor John Vanderhoof and Steven Arnold, President of Woodmoor, officiating.[90] On January 11, 1973, The Steamboat Pilot reported that certain Stagecoach ski areas were open. Phase 1 of the ski area consisted of 170 acres of ski runs, seven miles of trails, three double chairlifts capable of conveying 1600 skiers per hour and a vertical rise of 1700 feet.[91]

On January 9, 1973, the County Board adopted amendments to the subdivision regulations which are immaterial to this analysis.[92] On the same day, the County Board adopted amendments to the zoning code, effective February 1, 1973, that required, *inter alia*, the formation of PUDs to follow a formal process.[93] By this time, however, the District had been formed, multiple second level zonings had been granted, multiple subdivisions had been approved, and the Declaration had been extended to cover the subdivided lands. Thus, the equivalent of planned unit development approvals had already been granted for thousands of acres of land within the Stagecoach Development and the District.

[82] The Steamboat Pilot, November 2, 1972, pg. 21
[83] Routt County Files #7313 and 7314.
[84] Routt County File #7314.
[85] Land records of Routt County: Book 371, Page 169.
[86] Land records of Routt County: Book 371 Page 170.
[87] Routt County Commission Minutes: Book 13, Page 76.
[88] Routt County File #7356.
[89] Routt County Book 374, Page 849.
[90] The Steamboat Pilot, January 25, 1973, pg. 16.
[91] The Steamboat Pilot, January 11, 1973, pg. 9.
[92] Routt County Commission Minutes: Book 13, Page 89.
[93] Routt County Commission Minutes: Book 13, Page 90.

On January 10, 1973, Woodmoor's Winchester I at Stagecoach was granted a zone change from AF to HR.[94] On February 6, 1973, Woodmoor's Meadow Green at Stagecoach subdivision was replatted to adjust some golf hole lots for playability purposes.[95]

On March 14, 1973, Woodmoor's Silver Creek at Stagecoach subdivision, which included an equestrian area totaling nearly 24 percent of the property, was granted second-level zoning from AF to LR.[96] On the same day, Woodmoor's High Butte at Stagecoach subdivision was granted second-level zoning from AF to HR.[97] On May 9, 1973, Woodmoor received a second-level zone change from AF to C for a maintenance building on 5.5 acres near the ski base area with a 90x40 building footprint, 54 parking spaces with room for snow removal exclusively for Woodmoor's maintenance equipment.[98] These approvals further implemented the Stagecoach Development's plan for multifaceted year-round recreational facilities and related commercial development.

On June 13, 1973, Woodmoor's Stonewall at Stagecoach subdivision received a second-level zone change from AF to HR.[99] On July 11, 1973, Woodmoor's High Cross at Stagecoach subdivision final plat was approved subject to a line of credit submission.[100] The approved plat included the same Notes quoted above.[101] On July 23, 1973, Woodmoor recorded covenants and restrictions against the High Cross at Stagecoach subdivision which included it in the Stagecoach Property Owners Association, but the Declaration was different as it described and governed Ski Area Facilities, Golf Area Facilities, and a Marina.[102] The Declaration stated that if the recreational facilities were owned by a separate entity, the Association could include that entity as a member of the Association.[103]

On August 6 and 7, 1973, Woodmoor's Winchester I at Stagecoach final plat was approved subject to the completion of agreements and bonding.[104] On September 24, 1973, Woodmoor's Silver Creek at Stagecoach subdivision received conditional approval.[105]

On February 4 and 5, 1974, the County Board granted Linda James, trading as Whiskey Gap at Stagecoach, a liquor license approval upon receipt of a valid lease from Woodmoor.[106] Multiple liquor license approvals confirmed the inclusion of eating and drinking establishments that were integral to the Stagecoach Development.

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[94] The Steamboat Pilot, June 28, 1973, pg. 25.
[95] Routt County Commission Minutes: Book 13, Page 95; *see also* Routt County File #7348.
[96] Routt County Commission Minutes: Book 13, Pg. 112.
[97] *Id.*
[98] Routt County Commission Minutes: Book 13, Pg. 133.
[99] Routt County Commission Minutes: Book 13, Pg. 148.
[100] Routt County Commission Minutes: Book 13, Pg. 159.
[101] Routt County File #7458.
[102] Routt County File #244909.
[103] *Id*.
[104] Routt County Commission Minutes: Book 13, Pg. 168.
[105] Routt County Commission Minutes: Book 13, Pg. 191.
[106] Routt County Commission Minutes: Book 13, Pg. 247.

I. Conclusions

What is clear from the Stagecoach Development chronology is that there was a pattern of applications and approvals for the various elements of the Stagecoach Development as originally conceived and planned in 1971. Perhaps the most important single approval was the vote by the electorate to establish the District. That single act confirmed that the land area roughly coincident with the 12,000 acre contemplated Stagecoach "new town" and integrated development was within the District and slated to be served with central water and sanitary sewer services.

From the initial filing of the Declaration until the Grandfather Date, multiple residential subdivision plats were approved, all of which were in both the District and the Stagecoach Development area, some of which were for multi-family homes and some for single family homes. However, in all cases, achieving the maximum density allowed was predicated on the actual extension of central water and sewer service to those properties by the District.

In addition, multiple second-level rezonings were granted, in some cases to retroactively confirm the allowed density of previously approved subdivision plats, in other cases to prospectively or concurrently authorize the density of certain subdivision plats, and in still other cases to zone for higher density land areas that had not yet been platted. Multiple of these second-level rezonings expressly reconfirmed the residential densities that had been previously shown only on approved subdivision plats. The multiple second-level zonings as to which no concurrent or prior subdivision plat had been proposed reconfirmed that the Stagecoach Development was an integrated large scale planned community in which second level rezonings would be adopted in order to pave the way for increased density of development in areas yet to be platted.

In addition, multiple residential subdivision plats were approved throughout the Stagecoach Development area, as were multiple commercial lots in proximity to the ski area facilities. And of course, Stagecoach included multiple very large scale recreational areas that included the 1,000 acre Stagecoach Reservoir, the ski area and other smaller recreational facilities. These facilities were supported by eating and drinking establishments, some of which involved approval of liquor license transfers.

In addition to the overall Stagecoach Development master plan developed by Woodmoor, the entirety of the Stagecoach Development was facilitated and its scope enabled by the approval by the electorate of the 11,500 acre District. There can be no doubt that over the course of less than three years and by the Grandfather Date, Stagecoach had received the approvals needed to create the large scale planned community that was the Stagecoach Development.

VIII. GRANDFATHERED SMR PROJECT ELEMENTS

A. Extension of Central Water and Sewer Service Within the SMR District Lands

The most obvious element of the SMR Project that is grandfathered, and therefore exempt from the 1041 Regulations, is the extension of District central water and sewer lines to serve development within the SMR District Lands. C.R.S. § 24-65.1-107(1)(b) grandfathers an activity that has been approved by the electorate prior to the Grandfather Date. Prior to the Grandfather

Date, the electorate had approved the establishment of the District which authorized central water and sanitary sewer service to be provided by the District anywhere within its boundaries.

In applying the Exemption Statute to the proposed extension of central water and sewer lines within the District (including to the SMR District lands), there is no doubt that the extension of such central water and sewer lines would be considered an "activity." Since the electorate approved the formation of the District prior to the Grandfather Date and by doing so approved the activity of extending its central water and sewer lines anywhere within its boundaries, the extension of District central water and sewer lines to serve development within the SMR District Lands is grandfathered and exempt from the 1041 Regulations.

Note that the 11,500 acres of land forming the District as approved by the electorate prior to the Grandfather Date surround the Stagecoach Reservoir, and include virtually all of the Stagecoach Development. By voting to establish a central sewer and water district, whose principal purpose would be to provide central water and sanitary sewer service for future development, the electorate was approving the activity of "developing" that 11,500 acres of land. Thus, while those lands are certainly subject to zoning and subdivision requirements, for purposes of the 1041 Regulations any development within the 11,500 acres is an "activity" which has been grandfathered because extension of central water and sewer lines to serve development is what the electorate approved by forming the District. Since the vote by the electorate to establish the District and authorize the extension of central water and sewer lines to serve development anywhere within the District occurred prior to the Grandfather Date, any development in the District and any extension of District water and sewer lines within the District's original 11,500 acres is grandfathered and exempted from the 1041 Regulations.

Since the SMR District Lands are comprised of lands that are within the original boundaries of the District, the activity of extending the District's central water and sanitary sewer lines to any development in the SMR District Lands is grandfathered and exempt from the 1041 Regulations.

B. Activities Grandfathered by Issuance of Approvals Substantially the Same as a PUD

C.R.S. § 24-65.1-107(1)(c)(I) grandfathers an activity of state interest if the activity is to be on land that has been conditionally or finally approved for a use substantially the same as a planned unit development. C.R.S. § 24-65.1-107(1)(c)(III) also grandfathers an activity of state interest if the activity is on land as to which a development plan has been conditionally or finally approved.

The first step in the grandfathering analysis is to fairly characterize the approvals conditionally and finally granted prior to the Grandfather Date in order to ascertain whether such approvals are for a use substantially the same as a planned unit development or whether such approvals constitute approval of a development plan. The second step is to discuss how those approvals apply to the SMR Stagecoach Lands.

As discussed above at pp. 9 - 12, a planned unit development is a large scale mixed use planned development that does not conform to the extant zoning. Instead of traditional Euclidean zoning being applied, a planned unit development is developed around a plan for the land in question. The Exemption Statute does not require an actual planned unit development to have been

approved, conditionally or otherwise. Rather, if the contemplated activity is on land which has been conditionally or finally approved for a use "substantially the same" as a planned unit development, it is grandfathered.

The "substantially the same" language is particularly apropos to the Stagecoach Development. In part, that is because when the Stagecoach Development was first proposed in 1971, Colorado had not yet adopted the PUD Act and Routt County had no zoning. Accordingly, at that time it was impossible for Woodmoor to obtain any formal approval for the entirety of the Stagecoach Development as a planned unit development, conditional or otherwise. Given the state of land use regulation in Colorado as of the Grandfather Date, and the fact that the Colorado PUD Act was only a few years old, the Colorado Legislature wisely recognized that there would be developments like Stagecoach that would not have received formal planned unit development approval but were substantially the same as a PUD. That describes the Stagecoach Development precisely.

There is no doubt that Woodmoor intended from day one to create a planned community with every type of use that would be needed in a "new town" pursuant to an overall plan. Indeed, from its very inception, Stagecoach was conceived, approved and developed as an integrated multi-use community with all of the elements of a planned unit development. Woodmoor expressly declared its intent to create what was essentially a planned unit development in full page ads in The Steamboat Pilot and in its initial presentations to the Planning Commission and the County Board. It further manifested this intent in the original Declaration, including its reference to provision of central water and sewer service from the District to be formed in the future, as well as the creation of a Stagecoach Property Owners Association for the entirety of the Stagecoach Development.

Initially, Woodmoor implemented the "new town" and planned community that was to be the Stagecoach Development the only way it could -- by a variety of interconnected actions, including establishment of private covenants, obtaining approvals from a number of governmental bodies and agencies, and by obtaining an approval from the electorate. This amalgam of actions and approvals, all authorized by law, collectively comprise conditional or final approval of what is substantially the same as a planned unit development.

Prior to the County Board adopting the 1972 Zoning Resolution, Woodmoor sought and obtained the only type of approval to implement its planned community vision that the Planning Commission and the County Board were empowered to issue at that time -- subdivision plat approvals. So, Woodmoor applied for and obtained the initial subdivision plat approvals for both single family and multi-family development in 1971. And, of course, Woodmoor started working on the formation of the District, obtaining water rights for the Stagecoach Reservoir, as well as water rights for its ski operations.

By the time the County Board adopted the 1972 Zoning Resolution, Woodmoor had obtained additional subdivision plat approvals. Those plat approvals conditioned achieving maximum density on central water and sewer service being provided. Thus, it was no coincidence that at about the same time as the County Board adopted Routt County's first zoning, it also approved the service plan for the District. Soon thereafter, the electorate approved the formation of the District on 11,500 acres.

As discussed above, for purposes of the 1041 Regulations, the electorate's approval of the formation of the District authorized the "activity" of extending central water and sewer lines to serve development anywhere in the District. It was also no coincidence that the 11,500 acres the electorate approved to be included in the District included the Stagecoach Development. The land areas Woodmoor envisioned as being developed as a part of the Stagecoach Development were included in the District. While other approvals would certainly be necessary to implement specific elements of the Stagecoach Development plan, such as obtaining approval from Colorado River Water Conservation District for establishment the Stagecoach Reservoir, the formation of the District is a final approval by the electorate that authorized central water and sewer service for the planned development and "new town" that was the Stagecoach Development.

Between adoption of the 1972 Zoning Resolution and the Grandfather Date multiple additional approvals were issued to further implement the Stagecoach Development plan. The Planning Commission and the County Board approved multiple subdivision plats which almost universally contained Notes that integrated the plats into the overall Stagecoach Development, including by providing that central water and sewer service was to be delivered by the District and was necessary for the platted density to be achieved. Common areas were to be managed and maintained by the Stagecoach Property Owners Association. Woodmoor recorded instruments annexing the subdivisions into the land area that was governed by its Declaration. And, of course, the County Board adopted numerous second-level zoning approvals. In some instances, these second-level zoning approvals ratified the density authorized in previously approved subdivision plats. In other instances, they authorized the density for pending subdivision plat applications. In some cases, they pre-authorized higher density for lands that Woodmoor intended to subdivide in the future. And in still other instances, they designated certain lands within the Stagecoach Development for commercial uses. The only common denominator to all of these approvals was the overall plan for the Stagecoach Development. These were not isolated approvals and governmental actions issued independently from one another. They were all interconnected as part of one overall plan.

By the Grandfather Date, Woodmoor had obtained approvals for many of the elements of the entire Stagecoach Development. Those approvals were for multiple types of residential development, multiple types of recreational facilities, various commercial uses, the Stagecoach Reservoir, the ski area, and related infrastructure -- all as part of the Stagecoach Development "new town" and planned community. These multiple approved uses that were integrated into and were part of an overall planned community and "new town" are the essence of a planned unit development. Thus, all of the aforementioned approvals, issued finally and conditionally, and described in detail in the Stagecoach Chronology above, constitute approval of a use of land that is substantially the same as a planned unit development prior to the Grandfather Date. Thus, for purposes of the 1041 Regulations, the "activity" of land development within the SMR Stagecoach Lands, extending the District to include the SMR Stagecoach Lands, or extending the District's central water and sewer service to development within the SMR Stagecoach Lands are all grandfathered activities because the SMR Stagecoach Lands are within the Stagecoach Development community boundaries that were approved for a use substantially the same as a planned unit development prior to the Grandfather Date. *See* C.R.S. § 24-65.1-107(1)(c)(I).

C. **Activities Grandfathered by Approval of the Stagecoach Development Plan**

At the bare minimum, the multiple approvals described above and in detail in the Stagecoach Chronology collectively manifest approval of a development plan for all of the Stagecoach Development. Indeed, both the 1999 and 2017 Stagecoach Community Plans recognize and confirm retroactively that there was an overall development plan for the Stagecoach Development which had been recognized by the County Board and other governmental agencies from the earliest days of the Stagecoach Development and prior to the Grandfather Date.

As discussed above, there is no definition of "development plan" in the Exemption Statute. Since "development plan" must mean something other than a planned unit development, or other than something substantially similar to a planned unit development if the "development plan" exemption is not to be mere surplusage; therefore, it is logical to interpret the phrase "development plan" to mean a plan for the overall development of the Stagecoach community.

The multiple approvals referenced in the Stagecoach Chronology manifest an approval of the overall development plan for Stagecoach by the County Board, the electorate, and other governmental agencies. While approvals were sought and granted individually, there is no doubt that they were all being considered, evaluated, and approved in the context of the overall plan for the Stagecoach Development. Indeed, the Stagecoach "master plan" was referenced by the Planning Commission and County Board, and the integrated nature of the contemplated Stagecoach Development was expressly stated from the very first full page ad in The Steamboat Pilot. The aggregate effect of these individual approvals is to manifest approval of the overall development plan for the Stagecoach Development. Both the 1999 and 2017 Stagecoach Community Plans confirm that, prior to the Grandfather Date, the Stagecoach Development was implemented pursuant to an overall development plan that was accepted and followed by the Planning Commission, the County Board, the electorate, and the other agencies that granted approvals for elements of the Stagecoach Development, such as the Stagecoach Reservoir.

Thus, for purposes of the 1041 Regulations, the "activities" of: land development within the SMR Stagecoach Lands, extending the District to include the SMR Stagecoach Lands, and extending the District's central water and sewer service to serve development within the SMR Stagecoach Lands are all grandfathered activities. They are grandfathered because the approvals described in the Stagecoach Chronology confirm that the lands within the Stagecoach Development, including the SMR Stagecoach Lands, were lands as to which a development plan was approved prior to the Grandfather Date. *See* C.R.S. § 24-65.1-107(1)(c)(III).

D. Conclusion

Thus, for purposes of the 1041 Regulations, whether by operation of C.R.S. § 24-65.1-107(1)(c)(I) or C.R.S. § 24-65.1-107(1)(c)(III), the following activities are grandfathered and exempt from the 1041 Regulations: (a) extension of the District to include the SMR Stagecoach Lands; (b) the extension of District's central water and sewer lines to serve development within the SMR Stagecoach Lands; and (c) the proposed SMR Project components to be developed on the SMR Stagecoach Lands.

IX. ACTIVITIES WITHIN THE SMR STAGECOACH LANDS ARE NOT OF STATE INTEREST AND DO NOT TRIGGER THE 1041 REGULATIONS

Independent of whether the activities to be undertaken on the SMR Stagecoach Lands are exempt from the 1041 Regulations because of grandfathering, the proposed activities are not matters of state interest and do not trigger the 1041 Regulations.

The SMR Stagecoach Lands are not an area of state interest. UDC § 7.2.A lists the areas of state interest and the SMR Stagecoach Lands do not fall into any of the enumerated categories. As to activities of state interest, the only category which could potentially apply is "major extensions of existing domestic water and sewage treatment systems." UDC § 7.2.B.2 (emphasis added).[107] Note that the act of expanding the boundaries of the District and including the SMR Stagecoach Lands is not itself an activity of state interest. The only potential activity of state interest is the extension of the existing domestic water and sewage treatment systems to serve development on the SMR Stagecoach Lands. Since what is proposed is an extension of the existing District central water and sewer lines, the question is whether such an extension is "major."

The proposed development on the 356 acres constituting the SMR Stagecoach Lands are all within the original boundaries of the Stagecoach Development. The proposed development is for uses that are the same of those approved elsewhere within Stagecoach, none of which triggered the 1041 Regulations. Moreover, the 2022 Routt County Master Plan directs that development occur in accordance with approved sub-area plans. The 2022 Routt County Master Plan did not modify the 2017 Stagecoach Community Plan which specifically designated the SMR Stagecoach Lands for Recreational Oriented Development. Extending the District's central water and sewer service to lands within the original boundaries of the Stagecoach Development, for uses that are consistent with the 2017 Stagecoach Community Plan, and in an area expressly designated for Recreational Oriented Development, is not a "major" extension that triggers the 1041 Regulations. As such, the District was specifically formed to serve the full development at Stagecoach; therefore, the long-planned extension of District Service to the Project does not constitute a "major" extension of an existing domestic water and sewage treatment system.

Second, the County's 1041 regulations were not intended to cover an activity like the Project. As a general matter, where 1041 regulations have been adopted, they typically apply to projects of a larger scale, such as transbasin diversions and large water storage projects, rather than domestic water and sewer projects and wastewater treatment for a singular development project. *See e.g. City & County of Denver v. Bd. of County Comm'rs of Grand County,* 760 P.2d 656, 659 (Colo. 1988) (involving a transbasin diversion of water in Grand and Eagle counties); *see also City of Colo. Springs v. Bd. of County Comm'rs of Eagle County*, 895 P.2d 1105, 1113, 1116 (Colo. App. 1994) (involving the diversion of water from the Eagle River basin for the storage of water in the Homestake II Reservoir near Minturn). This intent appears similar for Routt County:

- The County developed 1041 regulations in response to the prospect of large-scale transbasin

[107] Because the development in the SMR Stagecoach Lands is to be served by extension of existing District central water and sewer lines, no new systems will be created. Thus, the following 1041 activity of state interest is not applicable: "Site selection and construction of major new domestic water and sewage treatment systems." ." UDC § 7.2.B.1 (emphasis added).

diversions, like one studied by Northern Water Conservancy District.1 According to the Colorado Local Governments' Use of 1041 Regulations dated May 11, 2017 prepared for the Colorado Department of Local Affairs (the "Report"), the County stated: "Because of the desire to maintain their rural character, to protect or have a say in transmountain diversion of water, to protect their natural amenities, and continue to be a tourist destination, the County was looking for a way to regulate development that would match those development pressures and priorities, especially water." Report, p. 32. The Project does not involve a transbasin diversion and proposes exactly what has been envisioned for this area since the 1970's so as to protect the natural amenities, maintain rural character while still allowing the area to be a tourist destination.

• Public statements indicate that the County never intended the 1041 regulations to cover extensions of water and wastewater service in local areas like Stagecoach. When the County Board first considered and adopted the County's initial 1041 regulations, "County planner Mitch Harvey said commissioners passed the regulations as amended and recommended by the [ ] Planning Commission on Sept. 20 [2007]. While significant, the regulations have generated little public interest or concern. County officials say that is probably because the regulations are not designed to entangle local projects. County officials have acknowledged that the regulations are more in response to massive projects such as proposed trans-basin diversions of Yampa River water."[108] This statement reveals that the County did not intend for the 1041 permitting requirements to apply to projects such as this one.

Requiring a 1041 permit where extension of the District's central domestic water and sewer system to the SMR Stagecoach Lands for development uses and zoning that have been generally approved and always contemplated for the SMR Stagecoach Lands and for which the District was created to serve, is inconsistent with the purpose and intent of the AASIA and the 1041 Regulations and would not reach the high threshold of a "major" extension of an existing domestic water and sewage treatment system. The proposed extension to serve the development on the SMR Stagecoach Lands is nothing more than a modest extension to serve development well within the overall 12,000 residential dwelling units the District was formed to serve.

Finally, the County's publicly available permitting history indicates that it has never required a 1041 permit for any other extension of water and wastewater service. The Report states that from 2007 to 2017, the County indicated that it had "two or three applicants [of 1041 permits], but all were approved through a less restrictive, Finding of No Significant Impact (FONSI) administrative approval." Report, p. 18. Although the Report does not provide detailed information regarding the prior 1041 permit approvals by way of a FONSI and this information is also not publicly available on the County website, it does not appear that the County has ever required a 1041 permit for any water and wastewater infrastructure projects in the County since the 1041 regulations were adopted in 2007—even where utility service was extended to new properties. An agenda from a January 20, 2020 County Board hearing provides that the construction of a partially buried 1 million gallon water storage tank and associated facilities, pipes and improvements was classified as a "major extension of an existing domestic water and sewage treatment system" but that no 1041 permit was required because the Planning Director determined that a FONSI was appropriate. Similarly,

[108] Brandon Gee, Commissioners enact 1041 Regulations, The Steamboat Pilot, October 17, 2004, available at https://www.steamboatpilot.com/explore-steamboat/commission-enacts-1041-regulations/ (emphasis added).

an agenda from an August 24, 2021 County Board hearing indicates that a FONSI was also issued to the Mt. Werner Water and Sanitation District for the installation of the Yampa Meadows infiltration gallery. The County has historically not required a 1041 permit for projects with more extensive improvements to an existing water and sewage system than the proposed Project. Accordingly, requiring a 1041 permit in this case would be contrary to the County's prior practice and decisions.

For all of the foregoing reasons, the extension of the District's central domestic water and sewer lines to serve development on the SMR Stagecoach Lands is not a "major" extension and does not trigger the 1041 Regulations. No 1041 permit is required.

IX. EXTENDING DISTRICT WATER AND SEWER LINES TO SERVE THE LPS IS NOT AN ACTIVITY OF STATE INTEREST

The LPS is not required to be served by any central domestic water or sewer system. Each lot can provide its own water supply and septic system. However, for environmental protection reasons and to preserve underground water, the proposal is to extend the District's central domestic water and sewer lines to serve the LPS. There is no rational basis for treating such an extension as "major" for purposes of the 1041 Regulations. The extension of the existing District central domestic water and sewer lines to provide service that could otherwise be provided individually on each lot is a more efficient and responsible way of undertaking development. Neither in scale nor in kind, is this proposed extension to serve the LPS one that reasonably could be designated as "major." Accordingly, the 1041 Regulations are not triggered and no 1041 Permit is required.

Respectfully submitted,

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