SAN MIGUEL COUNTY BOARD OF COUNTY COMMISSIONERS
MINUTES
WEDNESDAY, MAY 21, 2025
333 WEST COLORADO AVE 2ND FLOOR, TELLURIDE, CO 81435

1. **9:30 am Call to Order**

   (Any of the stated items in this agenda may involve an Executive Session C.R.S. 24-6-402(4))

2. **Roll Call**

Present:
Anne Brown, Chair
Lance Waring, Vice Chair
Galena Gleason, Commissioner

Staff Present:
Mike Bordogna, County Manager
Jarrod Biggs, Deputy County Manager
Maura Fahey, County Attorney
Nancy Willis, Paralegal
Carmen Warfield, Chief Deputy Clerk

3. **Moment of Silence**

4. **Review of Agenda**

5. **Public Comment for Items Not on the Agenda**

   Please limit comments to 3 minutes. If comments are not related to an item on the agenda, there will be no Board response or action taken since the topic was not posted with proper notice and any comment could potentially violate the Colorado Open Meetings Law.

Public Who Addressed the Board:
Douglas Tooley, County resident

6. **Consent Agenda**

   a. Approval of the Chair's signature on an agreement for services for the 2025 Asphalt Installation contract with Armor Proseal, LLC.

   b. Approval of Minutes: 4/2/2025 and 4/28/2025.

   c. Approval of the April 2025 Vendor and Payroll Payments.

   d. Ratification of the Commissioner's signature on a letter of support for Geothermal Energy in Western Colorado.

   e. Approval of the Commissioner's signature on a letter to Senator Hurd expressing opposition to the proposal of Medicaid eligibility requirements.

f. Approval of Chair's signature on the U.S. Department of Transportation Federal Aviation Administration on a grant offer for Infrastructure Investment and Jobs Airport Infrastructure Grant Project No. 3-08-0088-040-2025 at the Telluride Regional Airport.

Motion by Lance Waring to approve the consent agenda as presented. **Seconded** by Galena Gleason. **PASSED 3-0.**

7. Administrative Matters

a. Consideration of the appointment of Isabella James to the Lone Cone Library District Board./MOTION

Presented by: Todd Bittner, Lone Cone Library District

Motion by Lance Waring to approve the appointment of Isabella James to the Lone Cone Library District Board. **Seconded** by Galena Gleason. **PASSED 3-0.**

8. Natural Resources and Climate Resilience

Update and other, as needed.
Star Jamison, Director

Presented by: Starr Jamison, Natural Resources and Climate Resilience

1. Green grants committee meeting with the Sneffels Energy Board
2. A request for proposals for new charging stations in various parts of the County.

a. Consideration of ratifying a comment letter to the Fish and Wildlife Service (FWS) proposal to rescind the regulatory definition of "harm" in the Endangered Species Act Regulations./MOTION

Presented by: Starr Jamison, Natural Resources and Climate Resilience

Motion by Lance Waring to approve the ratification of a comment letter as presented. **Seconded** by Galena Gleason. **PASSED 3-0.**

9. Planning Matters

b. Consideration of the Vice Chair's signature on Resolution 2025-15 affirming the Planning Director's Written Interpretation of the Land Use Code dated February 12, 2025, regarding Employee Housing Impact Fees for 155 Hyden View Trail./MOTION

Presented by: Maura Fahey, County Attorney

9:54 a.m. Anne Brown stepped out of the room for this item due to knowing the petitioner.

Motion by Galena Gleason to approve the Vice Chair's signature on **Resolution 2025-15**, affirming the planning director's written interpretation of the land use code, dated February 12, 2025, regarding the employee housing impact fees for 155 Hyden View Trail as presented. **Seconded by** Lance Waring. **PASSED 2-0.**

9:56 a.m. Anne Brown returned to the meeting.

9:56 a.m. Recessed.
10:00 a.m. Reconvened.

a. Consideration of a subdivision exemption for a Lot Line Adjustments on Lot 1 and 2 Rinquist Exemption and the Ringuist Exemption Tract./MOTION

Presented by: Nicola Kerr, Associate Planner; Barclay and Antonio Daranyi, Applicant; Carl McKinney, County resident

Motion by Galena Gleason to approve the proposed Subdivision Exemption for Lot Line Adjustment to adjust the property line between Lots 1 and 2 less Ringquist Exemption, and Rinquist Exemption Tract, as presented, to authorize the Chair's signature on the corresponding final plat, and to adopt the corresponding Board of County Commissioner **Resolution No. 2025-13**, finding that the proposed Subdivision Exemption for Lot Line Adjustment application is in compliance with all applicable Land Use Code standards in Section 5- 1203, Lot Line Adjustments, including the submission of a final plat that complies with the final plat submission contents required in the Land Use Code, as presented. **Seconded** by Lance Waring. **PASSED 3-0.**

10. Parks and Open Space Matters

a. Presentation by Shavano Conservation District to update the commissioners on their projects.

Presented by: Steve Hale, Clifford Charles, Carl McKinney, Penny Bishop, Dave Dearstyne, Shavano Conservation District; Janet Kask, Parks and Open Space Director

Public Who Addressed the Board:
Douglas Tooley, County resident

11. Affordable Housing Updates

11:09 a.m. Recessed.
11:20 a.m. Reconvened.

Presented by: Jarrod Biggs, Deputy County Manager

1. Update on earthwork at Ilium.
2. Update on the Geotechnical Report for the Ilium Parcel.

Presented by: Mike Bordogna, County Manager

1. The San Bernardo Homeowners Association has agreed to the draft Memorandum of Understanding, working together for water and, potentially, wastewater service in the future. There will be a further discussion regarding a couple of specific questions that need clarification.
2. The Pathfinder pit has a large stockpile of gravel in preparation for developing the new subdivision. Due to the closure of this gravel pit, the county will explore alternative options for a gravel pit within the R1 School District.

12. Manager Matters

Update and other, as needed
Mike Bordogna, County Manager

Presented by: Mike Bordogna, County Manager

1. A Public Health Inspector has been hired to replace Chris Smith.
2. Suzanne Cheavens will be retiring. An offer has been made for her replacement.
3. One of the collared wolves was shown in the Placerville area.
4. Mike and Commissioner Brown met with the towns on Intergovernmental Goals.
5. There is a Historic and Architectural Review Commission meeting tonight concerning the Fruen building.
6. The Public Discussion concerning Deed Restriction changes is scheduled for June 18th. There will be an am and pm gathering.
7. Spring Clean-up had another successful year.

13. Commissioner Updates

Anne Brown - Update on Outside Meetings.
Galena Gleason - Update on Outside Meetings.
Lance Waring - Update on Outside Meetings.

Gleana Gleason - San Miguel Watershed Coalition; Assessor Question and Answer session; Open Space Commission meeting
Lance Waring - EcoAction Partners meeting; Meeting with staff from Rep Hurd on the Dolores NCA; Gunnison Valley Transportation Meeting; CC4CA; Fix our Forests event; Statewide Solar Code Solutions
Anne Brown - Informal leadership meeting in our community for our immigrant population.

14. Lunch

11:59 a.m. Recessed.
12:45 p.m. Reconvened.

15. Adminstrative Matters-Continued

a. Presentation of the Strong Start Program.

Presented by: Cathy Barber, Strong Start Program; Kurt Wilson, Evaluation Consultant; Kathleen Merritt, Bright Futures

b. Consideration of approving a payment to Dolores County School District RE No.2 in recognition of an error in certification of the mill levy and the need to make a bond payment on June 1, 2025./MOTION

Presented by: Jarrod Biggs, Deputy County Manager; Ramona Rummel, Finance Director

Motion by Lance Waring to approve a payment to Dolores County School District RE No.2 in recognition of an error in certification of the mill levy and the need to make a bond payment on June 1, 2025, the amount of the payment will be $35,456. **Seconded** by Galena Gleason. **PASSED 3-0.**

Note: A formal recommendation and Resolution will be presented for final approval on June 11, 2025.

a. Discussion of the Counties and Commissioners Acting Together (CCAT) Member Survey - Legislative Advocacy and Interim Priorities.

Note: The commissioners discussed and agreed on their priorities for the CCAT member survey.

Presented by: Anne Brown, Commissioner

Item 13. Continued Commissioner Updates:
Anne Brown - Airport Board Meeting; Peggy Parrish, New Director of Wilkinson Public Library; Lone Cone Legacy Lunch; Assessor Meet and Greet on valuations

16. Attorney Matters

Update and other, as needed.
Maura Fahey, County Attorney (Any of these items may involve an Executive Session C.R.S. 24-6-402(4))

Presented by: Maura Fahey, County Attorney

Note: June 4-7, 2025, is a scheduled County Attorney Conference; the Attorney's office will be closed.

a. Executive Session: Discussion of the Sewer Authority for Regional Waste Water Treatment Plant, citation (4)(b) conference with an Attorney, and (4)(e) determining negotiation strategies.
Presented by: Maura Fahey, County Attorney

Motion by Galena Gleason to go into Executive Session to discuss the Sewer Authority for Regional Waste Water Treatment plant, citation (4)(b) conference with an Attorney, and (4)(e) determining negotiation strategies.**Seconded** by Lance Waring. **PASSED 3-0.**

2:08 p.m. Recessed.
3:50 p.m. Reconvened.

2:52 p.m. Mark Hamilton - Water Attorney representing the County, attended the meeting. Mark Hamilton left the meeting at 3:32 p.m.
3:42 p.m. Galena Gleason left the meeting.

Motion by Lance Waring to come out of Executive Session, and only the one item was discussed. **Seconded** by Anne Brown. **PASSED 2-0.**

Note: The County Attorney requested that the above item not have written minutes as it constitutes a privileged attorney-client communication and a statement signed by the attorney and chair is attached.

Note: Staff direction was given.

17. Adjournment

Motion by Lance Waring to adjourn the meeting. **Seconded** by Anne Brown. **PASSED 2-0.**

3:51 p.m. Adjourned.

Respectfully submitted,

Approved: June 18, 2025
BOARD OF COUNTY COMMISSIONERS

Anne Brown

ATTEST:

Carmen Warfield

RESOLUTION OF THE BOARD OF COMMISSIONERS, SAN MIGUEL COUNTY, COLORADO, GRANTING A SUBDIVISION EXEMPTION FOR LOT LINE ADJUSTMENTS BETWEEN LOTS 1 AND 2 LESS RINGQUIST EXEMPTION AND THE RINQUIST EXEMPTION TRACT

Resolution 2025-13

WHEREAS, Antonio and Barclay Daranyi, Applicant, and owners of Lots 1 and 2 less Ringquist Exemption, and the Rinquist Exemption Tract, also known as parcel #429515400008 and parcel #429515400067, respectively, more particularly as shown on Exhibit "A", Legal Description, submitted an application seeking a Subdivision Exemption for Lot Line Adjustments to adjust the common property boundary between these two parcels. The purpose of this Lot Line Adjustment is to transfer five (5) acres from parcel #429515400067 to parcel #429515400008, as shown on Exhibit "B", Plat, to make parcel #429515400008's total acreage 105 AC, including the parcel acreage which lies in Montrose County, in order to have the ability to do a land division creating three 35-acre lots. The parcels are zoned Wrights Mesa (WM). The parcels are located at the San Miguel and Montrose County line off of County Road 43Z N north of Norwood;

WHEREAS, a Subdivision Exemption for Lot Line Adjustments may be approved via One-Step Board of County Commissioner Review pursuant to Land Use Code Sections 3-501 B.I.b. and 5-1203 Lot Line Adjustments;

WHEREAS, the application was referred to the County Attorney, County Manager, Deputy County Manager, County Surveyor, and the County Road and Bridge Director for review and comment;

WHEREAS, the Applicant sent Notice of the application and the Board of County Commissioners (BOCC) public hearing to be held on May 21, 2025 to all property owners within 500 feet of the subject parcel, and posted a sign on the property by April 21, 2025 noticing the proposed Lot Line Adjustment Application and the BOCC public hearing to be held on May 21, 2025;

WHEREAS, a Public Hearing Notice for the proposed Lot Line Adjustments application and the Board of County Commissioners meeting to be held on May 21, 2025 was published in the Telluride Daily Planet and Norwood Post on May 2, 2025;

WHEREAS, a list of the items included in the Public Hearing Record is attached to this resolution as Exhibit "C";

WHEREAS, the Board of Commissioners of San Miguel County, Colorado, considered this application, along with relevant evidence and testimony, at a public hearing held in Telluride and on-line on Wednesday, May 21, 2025;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of San Miguel County, Colorado, approves the Subdivision Exemption for Lot Line Adjustment to adjust the property line between Lots 1 and 2 less Ringquist Exemption, and Rinquist Exemption Tract, to authorize the Chair's signature on the corresponding final plat, finding that the proposed Subdivision Exemption for Lot Line Adjustments application is in compliance with all applicable Land Use Code standards in Section 5-1203, Lot Line Adjustments, including the submission of a final plat that complies with the final plat submission contents required in Land Use Code, as presented.

DONE AND APPROVED by the Board of County Commissioners of San Miguel County, Colorado, on May 21, 2024.

SAN MIGUEL COUNTY, COLORADO
BOARD OF COUNTY COMMISSIONERS

By: Anne Brown
Anne Brown, Chair

Vote:	Anne Brown	x	Aye	Nay	Abstain	Absent
	Galena Gleason	x	Aye	Nay	Abstain	Absent
	Lance Waring	x	Aye	Nay	Abstain	Absent

ATTEST:

By: Carmen Warfield
Carmen Warfield, Chief Deputy Clerk

EXHIBIT "A" Legal Description

EXHIBIT "B" Plat

EXHIBIT "C" Public Hearing Record

EXHIBIT "A"

Legal Description

Parcel # 429515400008

LOTS 1 AND 2 SEC15 T45 R13 LESS RINGQUIST EXEMPTION CONT 20 AC MOL TOTAL AC 59.55 RINGQUIST EXEMPTION PLAT FILED 1 7 00 BK 1 PG 312 ONE BUILDING SITE ONLY FOR THE 59.55 ACRES

Parcel # 429515400067

RINQUIST EXEMPTION TRACT IN NE4SE4 SEC 15 T45 R13 CONT 20A MOL

EXHIBIT "B"

Plat

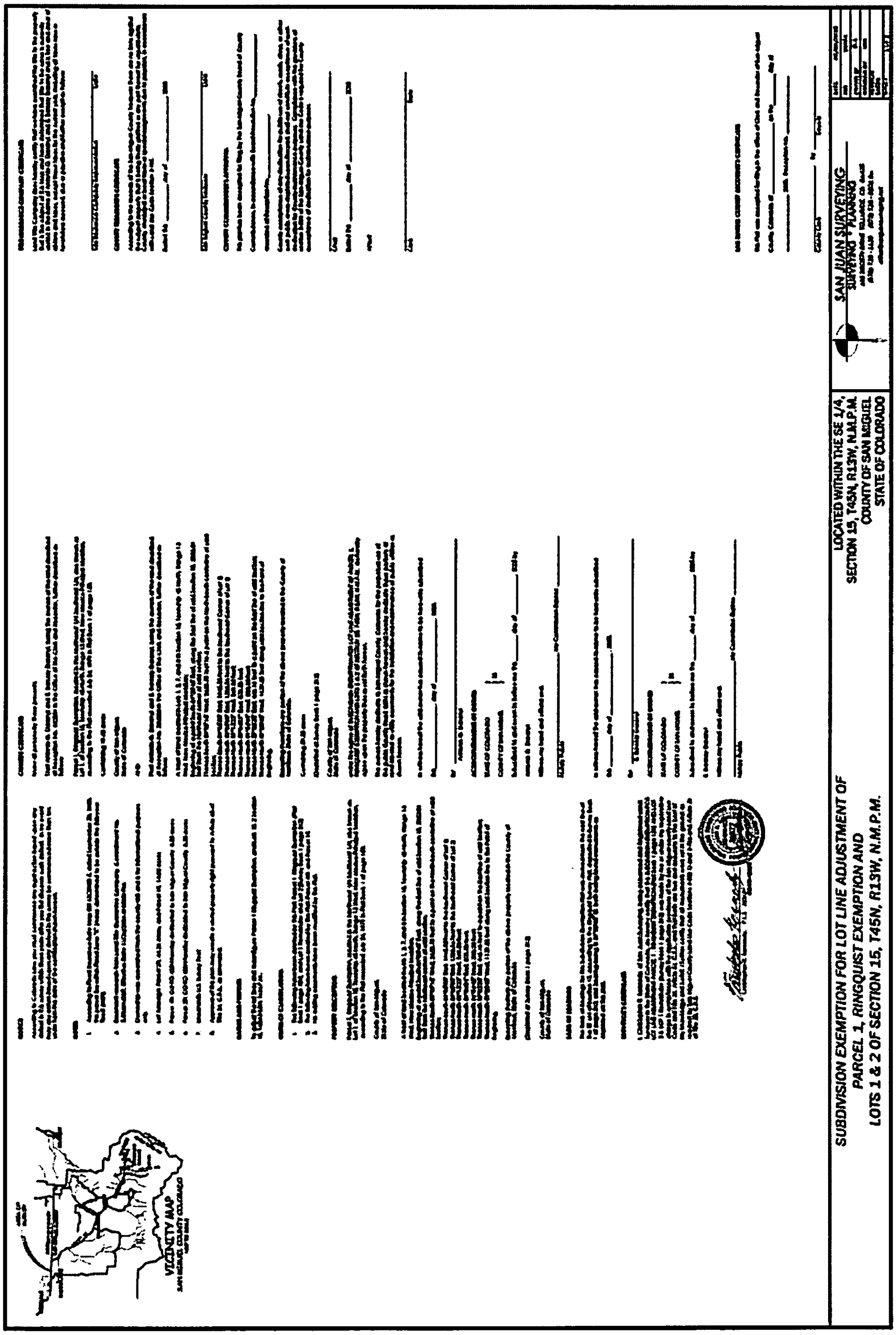

EXHIBIT "B"

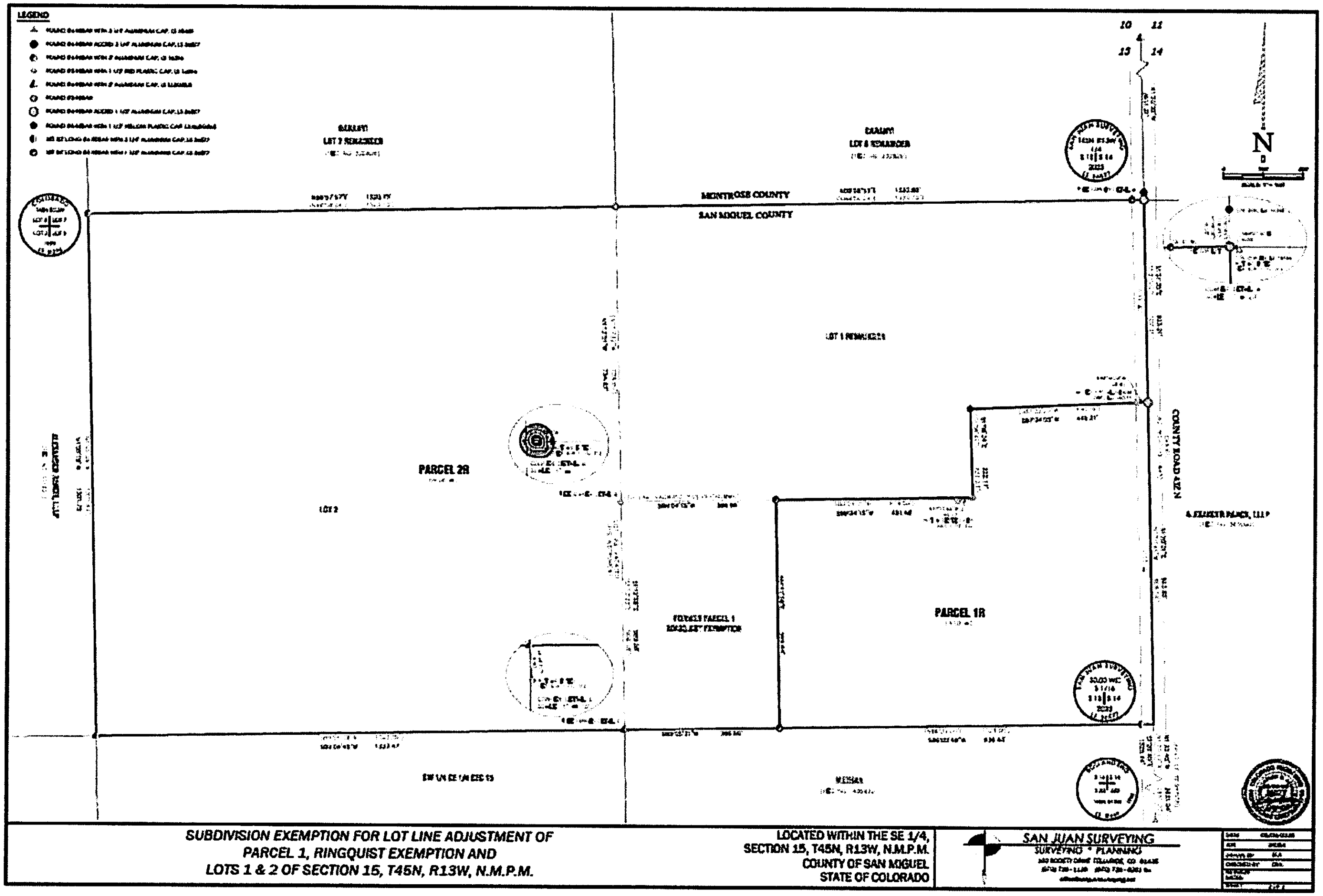
LEGEND
MONTROSE COUNTY
SAN MIGUEL COUNTY
PARCEL 2R
LOT 2
PARCEL 1R
COUNTY ROAD 42ZN
N
SUBDIVISION EXEMPTION FOR LOT LINE ADJUSTMENT OF
PARCEL 1, RINGQUIST EXEMPTION AND
LOTS 1 & 2 OF SECTION 15, T45N, R13W, N.M.P.M.
LOCATED WITHIN THE SE 1/4,
SECTION 15, T45N, R13W, N.M.P.M.
COUNTY OF SAN MIGUEL
STATE OF COLORADO
SAN JUAN SURVEYING
SURVEYING * PLANNING

EXHIBIT "C"

Public Hearing Record
San Miguel County Board of Commissioners
Application: Antonio and Barclay Daranyi
Subdivision Exemption for Lot Line Adjustments: Lots 1 and 2 less Ringquist Exemption, and the Rinquist Exemption Tract
Date: May 21, 2025

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

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

3. Memorandum to the San Miguel County Board of County Commissioners from Nicola Kerr, Associate Planner dated May 21, 2025.

4. Draft Resolution 2025-13 of the County Board of Commissioners, San Miguel County, Colorado, Granting a Subdivision Exemption for Lot Line Adjustments for Lots 1 and 2 less Ringquist Exemption, and the Rinquist Exemption Tract

5. Application submitted by Antonio and Barclay Daranyi, Applicant, and owner of Lots 1 and 2 less Ringquist Exemption, and the Rinquist Exemption Tract received April 2, 2025

6. Public Hearing Notice published in the Norwood Post and Telluride Daily Planet on Friday, May 2, 2025.

7. "Certification of Compliance with the Public Noticing Requirements" of the San Miguel County LUC Section 3-9 and of C.R.S. § 24-65.5-103(1) dated April 21, 2025 and April 18, 2024.

AGENCY COMMENTS

8. Email from Nicola Kerr, Associate Planner, to Referral Agencies dated April 17, 2025.

9. Letter from J David Foley, County Surveyor, to Nicola Kerr, Associate Planner dated May 12, 2025.

PUBLIC COMMENT

None received

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, COLORADO, AFFIRMING THE PLANNING DIRECTOR'S WRITTEN INTERPRETATION OF THE LAND USE CODE DATED FEBRUARY 13, 2025, REGARDING EMPLOYEE HOUSING IMPACT FEES FOR 155 HAYDEN VIEW TRAIL

Resolution 2025 - 15

WHEREAS, pursuant to Section 1-1004 of the San Miguel County Land Use Code (LUC), any resident or property owner in San Miguel County may request the planning director to provide a written interpretation of the provisions in the LUC; and

WHEREAS, on January 14, 2025, Christopher D. Bryan, Garfield & Hecht P.C., made a Request for Written Interpretation on behalf of Sara Vavra (Owner) requesting interpretation of several provisions of the LUC related to the Employee Housing Impact Fees (Impact Fee), LUC Section 5-1303 G, with respect to a proposed 708-square-foot addition (Project) to an existing 3,640 square-foot single-family home on the Owner's property at 155 Hayden View Trail; and

WHEREAS, on February 13, 2025, Planning Director Kaye Simonson issued her Written Interpretation and determined that the Owner's Project is subject to assessment and payment of the Impact Fee as a development that requires a building permit, and that it is not subject to the exemptions listed in LUC Section 5-1303 G.XI; and

WHEREAS, The Planning Director determined that the calculation of the Employees Generated pursuant to LUC Section 5-1303 G.XVI was properly calculated for Owner's Project based on the floor area of the proposed addition; and

WHEREAS, the Planning Director determined that the calculation of the Mitigation Rate for the Impact Fee pursuant to LUC Section 5-1303 G.XVIII was properly calculated for Owner's Project based on the total floor area of Owner's house, including the existing square footage plus the addition; and

WHEREAS, on February 26, 2025, Mr. Bryan submitted a Notice of Appeal on behalf of Owner pursuant to LUC Sections 1-1903 and 3-402 B; and

WHEREAS, in the Notice of Appeal, Owner requested that the Impact Fee for the Project be lowered based on an alternative calculation of the Impact Fee proposed by Owner; and

WHEREAS, a meeting before the BOCC regarding Owner's Notice of Appeal was held on April 30, 2025.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, COLORADO:

1. **Recitals**. The foregoing recitals are incorporated herein as findings of the BOCC.

2. **Additional Findings**. The BOCC found that the Planning Director's Written Interpretation is consistent with the intent, purpose, and language of the Impact Fee LUC provisions as a whole.

   The BOCC rejected Owner's proposed alternative formula for calculation of the Impact Fee for the Project, but is willing to consider an adjustment to the Impact Fee based on the as-built square footage of the Project. Owner may submit an amended building permit and updated building plans to the Building Department through a Change Order Application to request an adjustment of the Impact Fee for the Project based on the as-built square-footage of the Project. The BOCC directs staff in the Planning and Building Departments to work to recalculate the Impact Fee for the Project should Owner provide evidence that demonstrates that the Project, as built, contains less square footage than originally permitted.

3. **Affirming the Written Interpretation of the Planning Director**. The BOCC hereby affirms the written interpretation of Director Simonson, attached as Exhibit A.

APPROVED AND ADOPTED this 21st day of May, 2025, at Telluride, Colorado.

BOARD OF COUNTY COMMISSIONERS
SAN MIGUEL COUNTY, COLORADO

By: Lance Waring

Lance Waring, Vice Chair

Vote:	Anne Brown	Aye	Nay	x Abstain	Absent
	Galena Gleason	x Aye	Nay	Abstain	Absent
	Lance Waring	x Aye	Nay	Abstain	Absent

ATTEST:

By: Carmen Warfield

Carmen Warfield, Chief Deputy Clerk

Exhibit A

SAN MIGUEL COUNTY
COLORADO

PLANNING DEPARTMENT

KAYE SIMONSON, PLANNING DIRECTOR

February 13, 2025

Christopher D. Bryan, Garfield & Hecht, P.C., by email: cbryan@garfieldhecht.com

Re: Request for Written Interpretation regarding Employee Housing Impact Fees for 155 Hayden View Trail, Parcel Number 452111101057

Dear Mr. Bryan,

On January 14, 2025, you requested a Written Interpretation pursuant to Land Use Code (LUC) Section 1-1004 regarding the Employee Housing Impact Fee assessed for the construction of an addition at 155 Hayden View Trail, Parcel Number 452111101057, owned by Sara Vavra (Owner). Owner submitted an application seeking approval of an addition (the Project) to the existing 3,640 s.f. single-family home. The addition contained 708 square feet of living space and 708 square feet of garage space. The building permit for the Project was issued on June 26, 2024.

Within the request for Written Interpretation, it is stated that the "Owner believes that the Project Fees were not calculated in accordance with the LUC. Owner therefore requests that the Planning Director analyze and interpret the relevant LUC provisions . . . to determine whether Fees for the Project were properly administered and determined under the LUC."

The LUC sections cited as the subject of this request are:

1. LUC Section 5-1303 G.VII
2. LUC Section 5-1303 G.XIV
3. LUC Section 5-1303 G.XV
4. LUC Section 5-1303 G.XVI
5. LUC Section 5-1303 G.XVIII
6. LUC Article 6 (now 7) (definitions of Development and Floor Area)

My interpretation, and the reasoning therein, is as follows:

1. Applicability of the Fee for an Addition

The regulations regarding the Employee Housing Impact Fee/Mitigation (Impact Fee) are set forth in Section 5-1303 G of the Land Use Code (LUC).

LUC Section 5-1303 G.I, Employee Housing Impact Fee/Mitigation, reads as follows:

I. *The employee housing Impact Fee/Mitigation applies to all Development for which a Building Permit application is applied for and approved by the County, unless exempted from payment of the employee housing Impact Fee/Mitigation pursuant to Section 5-1303 G.XI of this Code, or that has otherwise fully mitigated its Employee Housing Impacts in accordance with the applicable LUC provisions. The employee housing Impact Fee/Mitigation applies to:*

a. The new construction of a Building for which a Building Permit is required under the County's Building Codes;
b. The construction of an addition to an existing Building for which a Building Permit is required under the County's Building Code; or
c. A change in use where the new use generates more employees than the previous use generated.

LUC Section 5-1303 G.XI lists Exemptions to the Impact Fee, including subsection e., specifically regarding Single Family Dwellings, as follows:

e. Single-family Dwelling Two Thousand Square Feet or Less of Floor Area The Board of County Commissioners finds that residential improvements two thousand (2,000) sq. ft. or less are presumed to be occupied by local employees, and only residential improvements with a Floor Area of greater than two thousand (2,000) sq. ft. should pay employee housing Impact Fees. This is based on the fact that residential improvements greater than two thousand (2,000) sq. ft. of Floor Area have a strong tendency for non-resident occupancy, and the employee generation for non-resident occupied residential structures (second homes) is significantly greater than that for resident-occupied improvements creating impacts beyond the County's ability to mitigate without a fee assessed for the development.

LUC Section 5-1303 G.VII, Calculation of Employee Housing Impact Fee, states:

VII. *The employee housing Impact Fee shall be calculated based upon the type of Development authorized to be constructed by the Building Permit, the number of employees generated by the development, and the total Square Footage of Floor Area proposed to be constructed as authorized by the Building Permit.*

LUC Section 5-1303 G.XIV, Employee Housing Impact Fee Calculation for Residential Development, states:

XIV. *The employee housing Impact Fee shall apply to the Development of Residences, as defined in this Code, whose housing impacts have not previously been mitigated. The employee housing Impact Fee also applies to:*

a. *New additions to existing detached Single-family Buildings. The fee shall be assessed only for the additional square footage where the total Floor Area is greater than the two thousand (2,000) s.f. exemption threshold; . . .*

The "type of Development authorized by the Building Permit" per Section 5-1303 G.VII is the addition. Development, as defined in Article 6 (renumbered to Article 7 per a recent LUC amendment), is "the physical extension and/or construction of urban land uses." The definition goes on to list examples including the construction and alteration of buildings, e.g. an addition to an existing building. The remaining components of Section 5-1303 G.VII – determination of the employee generation and how the square footage of the addition is used in the Impact Fee calculation – is described further on in this letter.

For purposes of Section 5-1303 G.XI, "residential improvements" are considered to be the floor area of the entire dwelling. "Floor Area" is defined in Article 6 (renumbered to Article 7 per a recent LUC amendment), as "the sum area of all floors protected by an impervious covering" and excluding garages and basements with a floor-to-ceiling height less than five feet.

Whether or not the Impact Fee is required is based on the total proposed floor area. If the total floor area of the existing house plus the addition – i.e. the "residential improvements" – were less than 2,000 square feet, then no Impact Fee would be due, as stated in LUC Section 5-1303 G.XI. In contrast, if the total floor area, which necessarily includes the existing house and the addition, is greater than 2,000 square feet, then the Impact Fee is due for the addition, as stated in LUC Section 5-1303 G.XIV.a.

In the case of a proposed addition to an existing house, such as the Project, the calculation includes the sum of the floor area for the existing house and the proposed addition. It is important to note that while the total floor area is the trigger for determining whether or not the Impact Fee is required, the calculation of the number of employees generated by the Project, for purposes of determining the amount of the Impact Fee owed is based on the floor area of the proposed addition, as is detailed below. It must also be noted that since Impact Fees were first adopted in 2007 (BOCC Resolution 2007-11), the determination of whether Impact Fees for additions are required, subject to the above requirements and exemptions, has been consistently applied. (Pursuant to BOCC Resolution 2022-031, the exempt floor area was increased from 1,800 square feet to 2,000 square feet in 2022.)

Finding 1. As a development that requires a Building Permit, and that is not subject to the exemptions listed in Section 5-1303 G.XI, the Project is subject to assessment and payment of the Impact Fee. Pursuant to LUC Section 5-1303 G.XIV.a, the Impact Fee is assessed based on the floor area of the addition, where the total floor area of the residence is greater than 2,000 square feet.

2. Calculation of the Fee

The Residential Employee Housing Impact Fee is based on two variable factors – the number of employees generated and the Impact Mitigation Rate, and two established factors – square feet per employee and the Market-Affordability Gap Rate.

The Impact Fee is calculated pursuant to Section 5-1303 G.XVIII, as follows:

> *The amount of Impact Fee shall be calculated using the following formula, based on (A) the number of Employees generated by the development, as determined under XVI above ("Employees Generated"), multiplied by (B) the provision of four hundred (400) square feet of space per employee generated by the development as determined under 5-1303 E.I above ("Minimum Mitigation Unit Size"), and multiplied by (C) the Required Employee Housing Mitigation Rate as determined under XV above for single-family and duplex uses, multiplied by (D) the Market-Affordability Gap Fee per square foot.*
>
> *Employees Generated x four hundred (400) sq. ft. x Required Percentage Mitigation Rate x Market-Affordability Gap Fee Per Square Foot.*

The breakdown of the calculation is as follows:

  (A) Employees Generated
x (B) 400 square feet per Employee Generated
x (C) Employee Housing Mitigation Rate
x (D) Market-Affordability Gap Fee
= Residential Employee Housing Impact Fee

(A) Employee Generation as a variable calculated for each project is determined using the formula set forth in LUC Section 5-1303 G.XVI:

$$\text{Generation Rate} = 0.070174(e)^{0.000.322 \times \text{New Floor Area}} + 0.11(\text{New Floor Area}/1000)$$

To arrive at the employee generation for an addition to an existing house, the formula in the Affordable Housing Mitigation Fee Calculator spreadsheet[1] calculates the number of employees that would be required to construct and maintain a residence containing the total floor area (existing plus addition), and then subtracts the number of employees that would have been required for construction and maintenance of the existing floor area. (It is assumed that mitigation has already occurred for the existing house, hence the subtraction.) The difference between the two numbers is the number of employees required for construction and maintenance of the addition only.

(B) The square foot value per employee is set at 400 square feet by Code, above, and multiplied by (A).

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[1] Land Use Code Appendix E, Table 3, as adopted by BOCC Resolution 2023-09, Housing Impact Fee

(C) LUC Section 5-1303 G.XV sets forth the Employee Housing Impact Mitigation Rate:

All new Residential Development shall be assessed the Impact Mitigation Rate as set forth in the table below based on the size (square feet of Floor Area) of the unit approved for each Development to mitigate for the employees generated, as shall be amended from time to time by the Board of County Commissioners.

a. Impact Mitigation Rate summary table.

Square Footage		***Mitigation Rate***
0	*2,001*	*0%*
2,001	*5,000*	*(ResFlrArea*0.00024)-0.3*
5,001	*12,000*	*90%*

Consistent with the determination of whether the Impact Fee applies, as described above, the total floor area of the house – existing plus addition – is used to determine the Mitigation Rate. Per LUC Section 5-1303 G.XV, that is the "size of the unit approved for development." Based on the above formula, the Mitigation Rate for a 4,348 square foot house is 74.352%. The mitigation rate is only applied to the actual number of employees generated for the addition, as described above.

The steps to calculate the Impact Fee for the Project at 155 Hayden View Trail, are as follows:

(A) Employees Generated per formula:
= <u>0.135895</u>

(B) Employee Housing square footage to be provided:
0.135895 x 400 s.f. = <u>54.358 s.f</u>

(C) Mitigation Rate per formula = <u>74.352%</u>

(D) Required Housing to be Mitigated, Employee s.f. x Mitigation rate:
54.358 x 0.74352 = <u>40.42 s.f.</u>

= Impact Fee: 40.42 s.f. x $572 = <u>$21,299</u>

The assertion that Impact Fees, and particularly the Mitigation Rate (C, above), should be based solely on the floor area of the addition is not supported by the Code. The Code states that new Impact Fees shall be assessed where the total floor area is greater than 2,000 s.f.; the existing house plus the addition, or total floor area, is greater than 2,000 square feet.

If the Impact Fee were only based on the square footage of an addition, that would result in only the largest additions (over 2,000 s.f.) being required to pay an Impact Fee.

If that were the case, an owner could configure a project in such a way that a house could be built in phases with every part less than 2,000 s.f., thereby avoiding the Impact Fee in its entirety.

To say that any addition that is less than 2,000 s.f. has a mitigation rate of 0%, regardless of the resulting house size, would effectively nullify the requirement for Impact Fees for most additions, which would be contrary to the clear language of LUC Section 5-1303 G.I that requires Impact Fees for additions. Such an interpretation is inconsistent with the County's purpose and policy objectives in adopting the Employee Housing Impact Fee/Mitigation code provisions.

Finding 2: The Impact Fee was properly calculated, in accordance with LUC Section 5-1303 G. The Impact Fee was properly assessed only for the floor area of the addition, per LUC Section 5-103 G.XIV.a, using the correct Impact Mitigation Rate per LUC Section 5-1303 G.XV.a.

This interpretation shall be recorded in the County's real property records and shall run with Tract C, Last Dollar Tracts, Parcel Number 452111101057. This interpretation is based on the San Miguel County Land Use Code, in effect as of the date of this letter and the date of issuance of the Building Permit (June 26, 2024). Any subsequent amendments to the Land Use Code may render parts or all of this interpretation null.

Any challenge to this written interpretation may be made within fourteen (14) days of the date of this letter, pursuant to LUC Section 1-1903.

If I can be of further assistance, please let me know. Thank you.

Kaye Simonson, AICP
Planning Director

Cc: Maura Fahey, San Miguel County Attorney
Hayley M. Carmer, Garfield & Hecht, P.C., by email: hcarmer@garfieldhecht.com

SAN MIGUEL COUNTY BOARD OF COMMISSIONERS MEETING

May 21, 2025

Date of Meeting

Executive Session Minutes Attest

I, Maura Fahey, County Attorney, attest that the May 21, 2025 (Date of Meeting) Executive Session discussions of attorney-client matters were confined to a permissible executive session topic and constituted a privileged attorney-client communication that does not have written minutes.

Maura Fahey

Marua Fahey, County Attorney

I, Anne Brown Chair of the San Miguel County Board of Commissioners, attest that the May 21, 2025 (Date of Meeting) Executive Session discussions of attorney-client matters were confined to a permissible executive session topic and constituted a privileged attorney-client communication that does not have written minutes.

Anne Brown

Chair