



**SAN MIGUEL COUNTY BOARD OF COUNTY
COMMISSIONERS**

**BOARD OF COUNTY COMMISSIONER
MEETING WEDNESDAY, JULY 7, 2021**

Minutes

Present: Lance Waring, Chair
Kris Holstrom, Vice Chair
Hilary Cooper, Commissioner

Staff Present: Mike Bordonga, County Manager
Amy Markwell, County Attorney
Nancy Hrupcin, Legal Assistant
Carmen Warfield, Chief Deputy Clerk

1. CALL TO ORDER.

9:33 a.m.

2. CALENDAR REVIEW

3. REVIEW OF AGENDA

4. PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA.

Rachel Sralla, Colorado Parks and Wildlife – Informed the Commissioners of a Meeting regarding the Wolf Re-introduction Focus Group and Public Comment meeting on July 21, 2021. Rachel will also send the access information for the online public site and allow the public to submit comments online.

5. CONSENT AGENDA

- a. Ratification of Commissioners' signature on a Letter of Support to the Colorado Preservation in State Historical Fund grant application on behalf of the Schmid Family Ranch Stabilization Project.

MOTION by Kris Holstrom to approve the consent agenda as presented.

SECONDED by Hilary Cooper. **PASSED 3-0.**

6. ADMINISTRATIVE MATTERS

- a. Consideration of approving the insurance waiver for the band Arizona Jones (led by Micah Jones and his brother) to perform at San Miguel Basin Rodeo during the after-party on the evening of July 31, 2021.

Presented By: Janet Kask, Parks and Open Space

MOTION by Kris Holstrom to approve as presented. **SECONDED** by Hilary Cooper. **PASSED 3-0.**

- b. Discussion of delegating a County employee (who oversees the liability insurance for the County) to evaluate and make decisions waiving the requirement of insurance requirement and indemnification clause.

Presented By: Mike Bordogna, County Manger

To be continued to a future meeting with language proposed as discussed.

- c. Discussion with Colorado State University Extension Services Programing and Outreach - the first half of 2021.

Presented By: Yvette Henson, CSU Extension

7. PLANNING MATTERS

- a. 10:00 a.m. Public Hearing - Before the San Miguel County Board of Health: On-Site Wastewater Treatment System Regulation Variance for Brendan Kiernan and Judith Kiernan.

Presented By: Kaye Simonson, Planning Director; Lisa Garrett, Planning and Bldg Site Inspector; Greg Anderson, Alpine Land Consulting representative for Applicant; Judi Kiernan, Applicant

10:10 a.m. Chair Opened the Public Hearing.

10:51 a.m. Chair Closed the Public Hearing.

Public Who Addressed the Board:

Steve Kean, Neighbor to Applicant

MOTION by Hilary Cooper to approve the Kiernan OWTS Variance request, based on the finding that the request meets the requirements of Regulation 43 and that granting a variance for the proposed OWTS would not be injurious to public health, water quality or the environment, and that it would prevent a substantial hardship incurred through no fault of the applicant or property owner. This approval is based on the following conditions, as well:

- 1.) The Variance Approval and Site Plan will be recorded with the San Miguel County Clerk and Recorder and attached to the property deed.
- 2.) It is understood that this Variance is granted specific to this property Lot 56, Fall Creek Subdivision, Filing No. 2, Parcel ID 456318203001, for use by a 2-bedroom residence.
- 3.) Applicants and future owners must certify that the OWTS will be regularly inspected and maintained to ensure optimal operation.
- 4.) When constructed, the STA must be protected from vehicular traffic with a barrier. This area shall be protected and shall not be used for snow storage.
- 5.) Future owners must be made aware that this Variance, if granted, shall run with the land and shall be effective for as long as the relevant standards in Regulation 43, from which relief is being granted, as well as surrounding site conditions, remain unchanged.

If changes occur in either condition before the OWTS is constructed, the Variance will be rescinded and a new Variance request may be considered by the San Miguel County Planning Department and Board of Health. **SECONDED** by Kris Holstrom. **PASSED 3-0.** (ATTACHMENT I – Resolution 2021-19)

- b. 10:15 a.m. **LAND USE CODE AMENDMENT** Consideration of an amendment to the San Miguel County Land Use Code Article 2 and Sections 5-7 and 5-21 and applicable Zone Districts regarding Dark Skies and Exterior Lighting.

Presented By: John Huebner, Senior Planner; Bob Grossman, County resident and part of the Dark Sky Association

10:53 a.m. Chair Opened the Public Hearing.

11:11 a.m. Chair Closed the Public Hearing.

MOTION by Kris Holstrom to adopt the proposed amendments to the San Miguel County Land Use Code Article 2-38, Sections 5-7 Improvements and 5-21 Scenic Quality as presented and to adopt Resolution No. 2021-18, based on the finding that the proposed amendment complies with the standards of Land Use Code Section 5-1802, Land Use Code Amendments; is consistent with Land Use Code Section 1-402, Implement Policies of the Land Use Code; in that the new Dark Sky policy and Exterior Lighting standards will ensure that impacts from new and replacement exterior lighting associated with development within the unincorporated areas of the County is sufficiently mitigated. **SECONDED** by Hilary Cooper. **PASSED 3-0.** (ATTACHMENT II – Resolution 2021-18)

11:14 a.m. Recessed.

11:24 a.m. Reconvened.

- c. 10:45 a.m. **LAND USE CODE AMENDMENT:** Consideration of amending new Wright's Mesa Zone Districts Section 5-319 H. IV. Commercial Use-Specific Standards for Recreational Vehicle Park, Travel Trailer Park or Campground to allow RV Parks and Camping in the Wrights Mesa Rural Agricultural (WMRA) Zone District.

Presented By: Kaye Simonson, Planning Director; John Huebner, Senior Planner;
Ryan Righetti, Road and Bridge Superintendent

11:24 a.m. Chair Opened the Public Hearing.
1:12 p.m. Chair Closed the Public Hearing.

Public Who Addressed the Board:
Vince Egan, County resident
Leslie Sherlock, County resident
Doug Tooley, County resident

Note: This item will be continued to the meeting on August 4, 2021.

1:14 p.m. Recessed.
1:34 p.m. Reconvened.

d. 11:30 a.m. **LAND USE CODE AMENDMENT:**

Consideration of an Amendment to the Amended and Restated Deed Restriction and Covenant Templates, and an Amendment to the San Miguel County Land Use Code Section 5-1305 H Violations and 5-1305 I Remedies, and Amendment to the EXECUTED Amended and Restated Deed Restriction and Covenants, to adopt a Schedule of Violations and Fines as an enforcement option within the deed restrictions to guarantee compliance with the rules of the program and with the individual deed restrictions.

Presented By: Kaye Simonson, Planning Director; Lois Major, Attorney representing the County

1:35 p.m. Chair Opened the Public Hearing.
1:50 p.m. Chair Closed the Public Hearing.

MOTION by Kris Holstrom to approve the adoption of Resolution No. 2021-021, to amend the New Covenant Template and San Miguel County Land Use Code Sections 5-1305 H Violations and 5-1305 I Remedies, to adopt of a Schedule of Violations and Fines as an enforcement option within the deed restrictions to guarantee compliance with the rules of the program and with the individual deed restrictions, based on the finding that the proposed actions comply with the standards of Land Use Code Section 5-1802, Land Use Code Amendments, are consistent with Land Use Code Section 1-4, Purposes of the Land Use Code, and meets the intent of the Guidelines, Rules and Regulations Governing Affordable Housing in the Telluride R-1 School District and furthers the County Affordable Housing Program goals. **SECONDED** by Hilary Cooper. **PASSED 3-0.** (ATTACHMENT III – Resolution 2021-021)

e. 11:35 a.m. **LAND USE CODE AMENDMENT:** Amending Section 5-1304 R-1 Housing Deed Restriction to extend the Deed Restriction Covenant to a term of one Hundred (100) years and to amend the Amended and Restated Deed Restriction and Covenant templates.

Presented By: Kaye Simonson, Planning Director; Lois Major, Attorney representing the County

1:54 p.m. Chair Opened the Public Hearing.
1:55 p.m. Chair Closed the Public Hearing.

MOTION by Kris Holstrom to approve the adoption of Resolution No. 2021-020 and approve the amendment to both the New Covenant Template and to San Miguel County Land Use Code Section 5-1304, extending the deed restriction covenant to an additional term of one hundred (100) years that resets at each new transfer AND

MOVE to extend the term of all executed New Covenants under paragraph 1.3 for an additional fifty (50) years based on the finding that the proposed actions comply with the standards of Land Use Code Section 5-1802, Land Use Code Amendments, are consistent with Land Use Code Section 1-4, Purposes of the Land Use Code, and meets the intent of the Guidelines, Rules and Regulations Governing Affordable Housing in the Telluride R-1 School District and furthers the County Affordable Housing Program goals and prevents future uncertainty. **SECONDED** by Hilary Cooper. **PASSED 3-0.** (ATTACHMENT IV – Resolution 2021-20)

9. COUNTY HOUSING MATTERS

(Board of Commissioners sitting as the San Miguel County Housing Authority.)

- a. Discussion and conversation with Wendy Sullivan, WSW Consulting Inc., on Workforce Housing in San Miguel County.

Presented By: Mike Bordogna, County Manager; Wendy Sullivan, WSW Consulting Inc

3:06 p.m. Recessed.

3:12 p.m. Reconvened.

8. PUBLIC HEALTH AND ENVIRONMENT

(Board of Commissioners sitting as the San Miguel County Board of Public Health.)

Potential Executive Session: Concerning Public Health, Meeting with an Attorney, citation 24-6-402(4)(b).

- a. Discussion and update with the San Miguel County Stakeholders concerning the COVID 19 outbreak.

Presented By: Grace Franklin, Director of Public Health

Public Addressed the Board:

Jeffrey Kocher, County resident

Douglas Tooley, County resident

Greg Craig, County resident

10. NATURAL RESOURCES AND SPECIAL PROJECTS

- a. ~~Discussion and request for comments on the proposed Wedding Bell drilling project.~~ Permit/Planning update for the Wedding Bell - No updates at this time.

Late Addition: Update on the letter sent to the United States Forest Service.

Presented By: Starr Jamison, NRSP Director

Public Comment: Helen Katich, Southwest Regional Representative from the Honorable John Hickenlooper's office, addressed the Commissioners on current and future projects.

11. MANAGER MATTERS

Updates and other, as needed.

1. Update on the affordable housing mitigation. This item will be scheduled for the next meeting on July 14, 2021.

12. COMMISSIONER UPDATES:

Hilary Cooper - Update on Outside Meetings and Legislative – Rocky Mountain Health

Kris Holstrom - Update on Outside Meetings.- Gunnison Valley Transportation, Region 10

Lance Waring - Update on Outside Meetings.-Gondola Sub-Committee meeting, San Miguel Day Care Association

13. ATTORNEY MATTERS

(Any of these items may involve an Executive Session C.R.S. 24-6-402)

- a. Request for Gondola Easement Vacation, Lot 634B, Mountain Village

Presented By: Troy Hagen, Senior Planner and Amy Markwell, County Attorney;
Megan Mangan, Attorney to Owner of Lot 634B, Mountain Village; Chris Hawkins,
Representing owner

4:48 p.m. Mike Bordogna left the meeting.

Note: To be continued to a future meeting – to allow David Averill, SMART
director, to attend a meeting and provide his input on eliminating the Gondola
Easement.

No reversal of the Gondola Easement on Lot 634B, Mountain Village, will be acted
upon at this time.

- b. Update on Purdue Pharma Bankruptcy Case & Vote to Accept or Reject Chapter 11
Plan.

Presented By: Amy Markwell

Board Direction: to abstain voting on the Chapter 11 Purdue Pharma Bankruptcy
Case.

- c. Other, as needed.

1. Garfield County – Federal Court Case concerning roads.

14. ADJOURNMENT

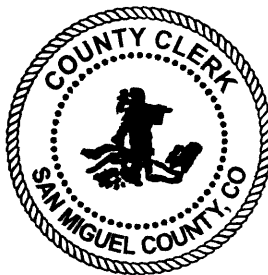
MOTION by Kris Holstrom to adjourn the meeting. **SECONDED** by Hilary Cooper.
PASSED 3-0.

5:14 p.m. Adjourned

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Respectfully submitted,


Carmen Warfield, Chief Deputy Clerk

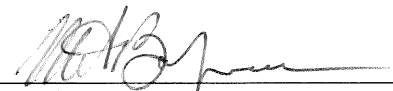


Approved August 18, 2021.

San Miguel County Board of Commissioners


Lance Waring, Chair

ATTEST:


Mike Bordogna, County Manager

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
ACTING AS THE BOARD OF HEALTH,
SAN MIGUEL COUNTY, COLORADO,
CONDITIONALLY APPROVING A VARIANCE FOR AN ON-SITE WASTEWATER
TREATMENT SYSTEM FOR BRENDAN KIERNAN AND JUDITH KIERNAN,
LOT 56, FALL CREEK VILLAGE SUBDIVISION, FILING NO. 2**

Resolution 2021-019

WHEREAS, Brendan Kiernan is the owner of a .36-acre parcel located along Highway 145, Lot 56, Fall Creek Subdivision Filing No. 2, Parcel No. 456318203001, more particularly described as shown on Exhibit A, and Judith Kiernan (Applicant) is representing the owner as Power of Attorney; and

WHEREAS, the Applicant, Judith Kiernan has submitted an application requesting a variance to On-Site Wastewater Treatment System (OWTS) standards; and

WHEREAS, the Colorado On-Site Wastewater Treatment Systems Act of 2012 (the Act) includes standards for the granting of Variances (Section 25-10-105), and allows the local board of health to grant variances to OWTS rules in accordance with the criteria established by the Act; and

WHEREAS, the San Miguel County Board of Health has adopted Regulation 43 (the Regulation), which includes procedures and standards for the review of requests for variances from requirements of the Regulation; and

WHEREAS, the Applicant has the burden of proof to demonstrate that the variance is justified and will pose no greater risk to public health and the environment than would a system meeting these Regulations; and

WHEREAS, the lot is a legally platted lot that was reduced in size by a subsequent survey of adjoining property owned by the Bureau of Land Management; and

WHEREAS, the property is also constrained by an existing well on the neighboring property and an existing shared driveway; and

WHEREAS, the Applicant is requesting a reduction in setbacks to the north and east property lines from ten (10) feet to .5 feet, and a reduction in the setback from the existing neighboring well to the Soil Treatment Area (STA) from one hundred (100) feet to ninety-eight (98) feet; and

WHEREAS, the Applicant received verification from the Colorado Division of Water Resources that the required separation from the neighbor's well is achieved through the existing grouting of the well; and

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WHEREAS, the Colorado Department of Transportation property to the north, Highway 145, and the Bureau of Land Management property to the east will not be adversely impacted by the reduced setback to the property line; and

WHEREAS, the Applicant sent notice of the proposed variance request and the Board of Health Public Hearing, to be held on Wednesday, July 7, 2021, to all property owners within 500 feet of the subject parcel; and

WHEREAS, a Public Hearing Notice for the proposed variance request and the Board of County Commissioners Hearing, acting as the Board of Health, to be held on Wednesday, July 7, 2021 was published in the Norwood Post and the Telluride Daily Planet on Wednesday, June 16, 2021; and

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

WHEREAS, the Conceptual OWTS Design, prepared by Alpine Land Consulting on behalf of the Applicant, is attached as Exhibit C; and

WHEREAS, the Board of Commissioners of San Miguel County, Colorado, acting as the San Miguel County Board of Health, considered this application, along with relevant evidence and testimony, and approved the requested variance at a public hearing in Telluride on Wednesday, July 7, 2021.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of San Miguel County, Colorado, acting as the Board of Health, hereby approves the request for an On-Site Wastewater Treatment System Variance for Judith Kiernan and Brendan Kiernan, based on the finding that the proposed variance is consistent with Section 25-10-105 of the Colorado On-Site Wastewater Treatment Systems Act and Regulation 43 of the San Miguel County Board of Health, with the following conditions:

- 1.) The Variance Approval and Site Plan will be recorded with the San Miguel County Clerk and Recorder and attached to the property deed.
- 2.) It is understood that this Variance is granted specific to this property Lot 56, Fall Creek Subdivision, Filing No. 2, Parcel ID 456318203001, for use by a 2-bedroom residence.
- 3.) Applicants and future owners must certify that the OWTS will be regularly inspected and maintained to ensure optimal operation.
- 4.) When constructed, the Soil Treatment Area must be protected from vehicular traffic with a barrier. This area shall be protected and shall not be used for snow storage.
- 5.) Future owners must be made aware that this Variance, shall run with the land and shall be effective for as long as the relevant standards in Regulation 43, from which relief is being granted, as well as surrounding site conditions, remain unchanged. If changes occur in either condition before the OWTS is constructed, the Variance will be rescinded and a new Variance request may be considered by the San Miguel County Planning Department and Board of Health.

DONE AND APPROVED by the Board of County Commissioners of San Miguel County, Colorado, on July 7, 2021.

SAN MIGUEL COUNTY BOARD OF HEALTH

DocuSigned by:
By: Lance Waring
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Lance Waring, Chair

Vote:	Lance Waring	<u>Aye</u>	Nay	Abstain	Absent
	Kris Holstrom	<u>Aye</u>	Nay	Abstain	Absent
	Hilary Cooper	<u>Aye</u>	Nay	Abstain	Absent

ATTEST:

DocuSigned by:
By: Carmen Warfield
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Carmen Warfield, Chief Deputy Clerk



- EXHIBIT A – Legal Description
- EXHIBIT B – Public Haring Record
- EXHIBIT C – Conceptual OWTS Design

EXHIBIT A

Legal Description

LOT 56, FALL CREEK SUBDIVISION, FILING NO. 2, COUNTY OF SAN MIGUEL,
STATE OF COLORADO.

EXHIBIT B

Public Hearing Record

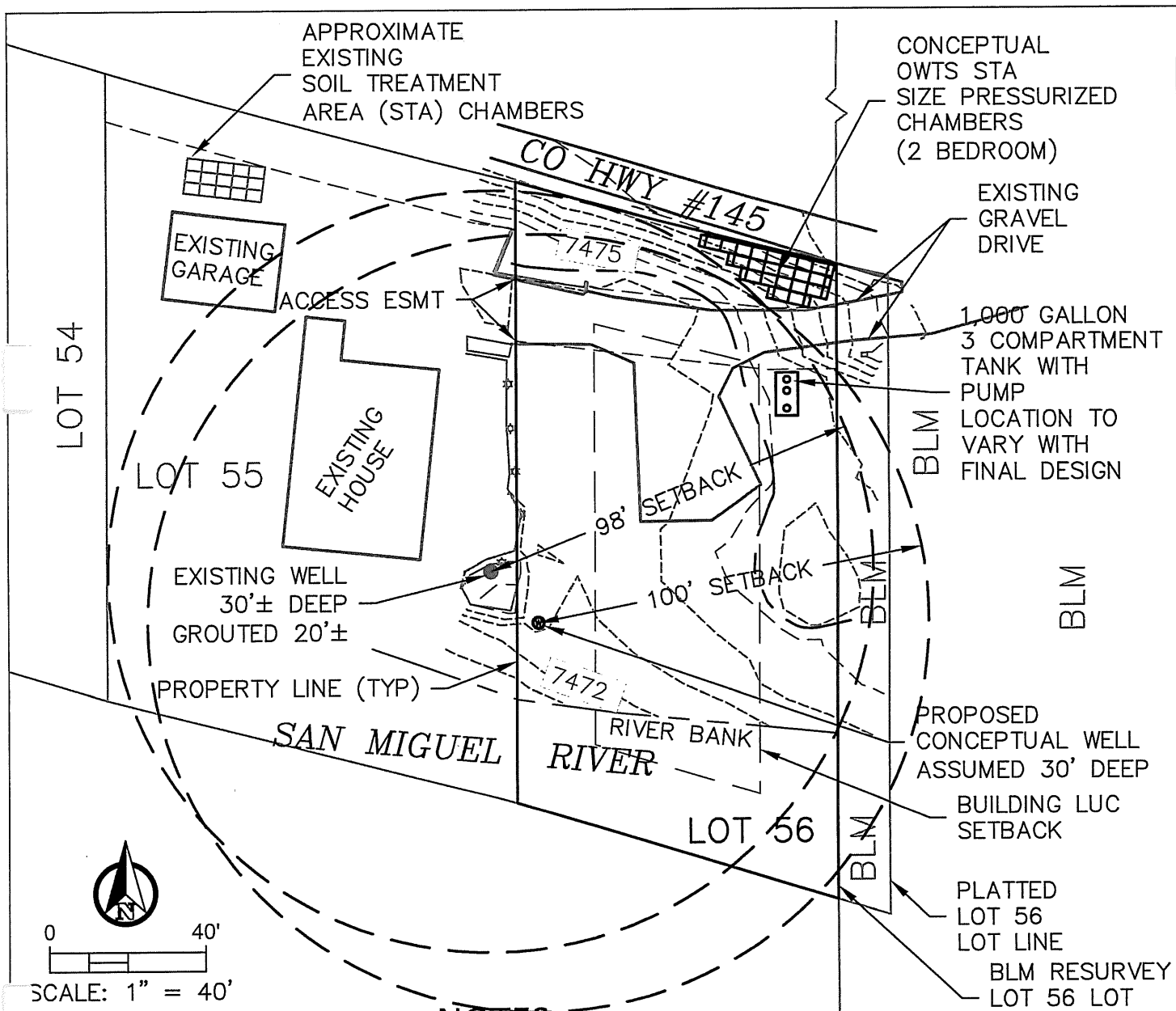
Board of Health

Application: Judith Kiernan and Brendan Kiernan
On-Site Wastewater Treatment System Regulation Variance

Date: July 7, 2021

1. San Miguel County On-Site Treatment Systems Regulations (Adopted May 21, 2014, amended May 16, 2018) (By Reference Only).
2. On-Site Wastewater Treatment Systems Act, Colorado Revised Statute 25-10-104 (Adopted June 2012) (By Reference Only).
3. Memorandum to the Board of Health from the San Miguel County Building Department Staff dated July 7, 2021.
4. Public Hearing Notice published in the Norwood Post and the Telluride Daily Planet on June 16, 2021.
5. On-Site Wastewater Treatment Systems Variance Application submitted by Judith Kiernan and Brendan Kiernan, applicant and owner of Lot 56, Fall Creek Subdivision, dated June 11, 2021.
6. "Applicant's Certification of Compliance with the Public Noticing Requirements" of the San Miguel County On-Site Wastewater Treatment Systems Regulation Section 7 dated June 13, 2021.

EXHIBIT C



NOTES:

1. ALL BOUNDARY INFORMATION PROVIDED BY BACKCOUNTRY SURVEYING, INC., LAND SURVEY PLAT DATED 2-11-21.
2. A VARIANCE FROM SAN MIGUEL COUNTY ON SETBACKS TO NORTH AND EAST PROPERTY LINES WILL BE REQUIRED.
3. PROPOSED HOUSE WILL BE IN 100-YEAR FLOODPLAIN AND MUST MEET ALL FEMA AND COUNTY REQUIREMENTS.
4. THIS IS A CONCEPTUAL PLANNING SITE EXHIBIT AND NOT TO BE USED FOR CONSTRUCTION NOR GOVERNMENTAL SUBMITTALS.

**LOT 56 FALL CREEK OPTION 7
CONCEPTUAL OWTS PLAN**

PROJECT MANAGER: GEA DATE: JUNE 3, 2021
DRAWN BY: GEA PROJECT #: 2021007



**ALPINE LAND
CONSULTING, LLC**
P.O. BOX 234
RICO, COLORADO 81332
970-708-0326
GREGG@ALPINELANDCONSULTING.COM

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS,
SAN MIGUEL COUNTY, COLORADO,
APPROVING AN AMENDMENT TO THE SAN MIGUEL COUNTY LAND USE CODE
ARTICLE 2 AND SECTIONS 5-307, 5-314, 5-316, 5-319, 5-321, 5-322, 5-7, 5-10, 5-21, 5-26,
5-27 AND 5-29 REGARDING EXTERIOR LIGHTING**

Resolution 2021-18

WHEREAS, pursuant to Land Use Code Section 5-1802, the Norwood Dark Sky Advocates and West End Dark Sky Alliance (Nucla/Naturita) requested that San Miguel County update its exterior lighting standards to help facilitate the process to make the San Miguel River Basin a Dark Sky Reserve that will include all of San Miguel County and Montrose County west of the Plateau; and

WHEREAS, the draft amendment was referred to the County Attorney, County Manager, County Building Official, County Road and Bridge Director, County Site Inspector, County Sheriff, Norwood Dark Sky Advocates, West End Dark Sky Alliance, International Dark Sky Association, Town of Telluride, Town of Mountain Village, Town of Ophir, Town of Sawpit and Town of Norwood for review and comment; and

WHEREAS, at its regular meeting held on Thursday June 10, 2021 meeting, following its consideration of the proposed LUC Amendment, the referral comments provided, and public comments were received prior to and during the public meeting, the County Planning Commission (CPC) unanimously recommended approval of the Land Use Code Amendment, with recommendations for additional amendments, which are incorporated herein; and

WHEREAS, in making its recommendation to the Board of County Commissioners, the CPC made the finding that the proposed amendment complies with the standards of Land Use Code Section 5-1802, Land Use Code Amendments; is consistent with Land Use Code Section 1-4, Purposes of the Land Use Code; and

WHEREAS, the County Planning Commission’s recommendation are set forth in the minutes from the June 10, 2021 CPC meeting; and

WHEREAS, a Public Hearing Notice for the proposed Land Use Code Amendment and the Board of County Commissioners meeting to be held on July 7, 2021 was published in the Norwood Post and the Telluride Daily Planet on June 16, 2021; and

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

WHEREAS, the Board of Commissioners of San Miguel County, Colorado, considered this Land Use Code amendment, along with relevant evidence and testimony, at a public hearing on Wednesday, July 7, 2021.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of San Miguel County, Colorado, approves and adopts the amendment to San Miguel County Land Use Code Article 2, Sections 5-307, 5-314, 5-316, 5-319, 5-321, 5-322, 5-7, 5-10, 5-21, 5-26, 5-27 and 5-29 regarding Exterior Lighting, as follows:

(Additions are shown with underline. Deletions are shown with ~~strike through~~.)

SAN MIGUEL COUNTY LAND USE CODE

ARTICLE 2

LAND USE POLICIES

SECTION 2-39: PRESERVING THE DARK NIGHT SKY

2-3901

It is the policy of the County to protect the quality of starry nights and nocturnal environment, and to specifically protect the night sky for its scientific, natural, and educational values; cultural heritage; and/or public enjoyment.

2-3902

Ensure that all outdoor nighttime lighting in all county Zone Districts be designed wisely to minimize the harmful effects of light pollution. Lighting plans shall address the type, intensity, location, color, timing, and fixture design, as well as the specific needs of a property or facility's use.

ARTICLE 5

STANDARDS

5-307 Forestry, Agriculture and Open (F) *(in part)*

5-307 I. Hotel, Guest Ranch, and Bed and Breakfast Standards for the F Zone District. In addition to complying with the standards for special uses in Section 5-10, hotels shall comply with the standards in this section:

VII. ~~Exterior lighting must be shielded to prevent direct visibility of light bulbs from off site. All exterior lighting shall be directed toward either the ground or the surface of a building. High intensity sodium vapor and similar lighting shall be prohibited.~~ All exterior lighting shall comply with the standards of Section 5-710;

5-307 L. Single-family Dwellings over 12,000 sq. ft. of Floor Area on a minimum of 35 acres

- I. Such dwellings must include one Caretaker or Accessory Dwelling Unit (depending upon Zone District) subject to the County R-1 Housing Deed Restriction, as provided in Section 5-1302 B. II. g., of at least 800 sq. ft. but no greater than 2,000 sq. ft. for a Caretaker Unit and of at least 700 sq. ft. but no greater than 800 sq. ft. for an Accessory Dwelling Unit.

- II. Submission Requirements:
 - a. A Site plan shall be provided including:
 - i. building plan, including location and dimensions of structures;
 - ii. typical elevations/heights of buildings;
 - iii. topography;
 - iv. existing landscaping and proposed landscaping plan;
 - v. lighting plan; all exterior lighting shall comply with the standards of Section 5-710; and;
 - vi. existing structure and uses on adjacent parcels.

 - b. Applicant shall address Land Use Code Section 5-21 Scenic Quality Standards. Each developer shall describe in detail how the visual impact of the proposed development on neighboring developments and public use areas shall be mitigated.

5-314 Open Space (OS)

5-314 C. Use Allowed by Administrative Review:

The purpose of the County Planning Department Administrative Review is to provide staff an opportunity to work with an owner or developer to minimize the impacts of development on the environment, to ensure that the proposed development adequately avoids or mitigates natural and geologic hazards, to reduce the visual impacts associated with access roads, driveways, cut and fill areas, site and building lighting, and to ensure that the site improvements and the mass, scale and form of a residential structure is consistent with the Purpose of the OS Zone District. Visually overpowering building forms, where the mass and scale of the proposed structures are significantly larger and incompatible with the surrounding area, should be avoided.

- I. Single-family residences, including customary residential uses and underground utility service.
 - a. Buildings are to be placed in locations that minimize visibility. Avoid placing buildings at high points on the site or in other highly visible areas. In no case shall residential development occur above the 9050 foot elevation line in the OS Zone District.

 - b. To the greatest extent possible, cutting and filling of sloping areas

should be avoided but where it must occur, the visual impacts should be minimized. Use natural materials to minimize visual impacts. Buildings that cut into slopes are encouraged where they can help minimize the perceived mass and scale. Roof slopes that repeat the slope of the hillside are encouraged.

- c. Large picture windows of glass that reflect toward the Town of Telluride, State highway 145, Colorado Avenue, County Road K69, and public use areas are to be avoided.
- d. All exterior lighting fixtures shall utilize recessed light sources, shielded fixtures, low intensity lighting, or other features to minimize visual impact of light sources as seen from the Town of Telluride, public use areas, from other surrounding areas of the hillside. All exterior lighting shall comply with the standards of Section 5-710.
- e. Site plans. The following siting and design guidelines will be considered during the Administrative Review for a Development Permit or Building Permit by the Planning Department, which may be approved with or without conditions. The submitted plans should:
 - 1. Consider ways to minimize disturbances of natural topography and retain natural vegetation of substantial size, including trees, shrubs and other natural landscape features in place, or relocate them within the site. Include a landscaping plan. Use of natural plantings rather than non-native ornamental materials is encouraged.
 - 2. Minimize the height of walls and retaining devices and use natural materials to minimize visual impacts.
 - 3. Minimize the visual impact of a structure from the Town of Telluride, State Highway 145, Colorado Ave, County Road K69, and public use areas.
 - 4. Consider shared driveways and clustered parking areas to minimize disturbance to natural landscape.
 - 5. Include a lighting restriction plan. Position lighting to minimize visual impacts as seen from lower viewpoints that may affect the night character of the community.
 - 6. Visually overpowering building forms should be avoided. Low profile buildings are encouraged.
 - 7. Buildings that cut into slopes are encouraged where they can help minimize the perceived mass and scale.
 - 8. Step buildings down at hillside edges, to minimize visual impacts and reduce the apparent height.
 - 9. Roof forms that protect views of significant features and existing view corridors are encouraged.
 - 10. Designs that blend with the character of the natural hillside

in material, muted colors and texture are encouraged.

5-316 Scenic Foreground Overlay (SFO) and Scenic View Plane (SVP) (in part)

5-316 C. Development Standards - Subject to Planning Commission Review

Development within the SFO and SVP Zone District shall generally comply with the standards in this Section and shall be subject to review by the Planning Commission. Compliance with every standard is not required, but developments shall comply with the cumulative intent of these standards:

VIII. ~~Shield exterior lighting to prevent direct visibility of light bulbs from off-site. All exterior lighting shall be directed toward either the ground or the surface of a building. High intensity sodium vapor and similar lighting shall be prohibited.~~ All exterior lighting shall comply with the standards of Section 5-710;

5-319 Wright's Mesa (WM) (in part)

5-319 K. Review Standards for all WM Zone District Special Uses

All special uses shall:

VIII. ~~Be required to shield exterior lighting to prevent direct visibility of light bulbs from off site. All exterior lighting shall be directed toward the ground or the surface of a building. High intensity sodium vapor and similar lighting shall be prohibited.~~ All exterior lighting shall comply with the standards of Section 5-710;

SECTION 5-319 WRIGHT’S MESA ZONE DISTRICTS (in part)

5-319 H. Use-Specific Standards

All uses are subject to the applicable use-specific standards set forth in the Section.

III. Public and Institutional

a. Community/Recreational Center

A community and/or recreation center shall comply with the following standards:

- i. Size: Structure shall not exceed 15,000 square feet of Gross Floor Area.
- ~~iii. Lighting: Lighting will be screened and downcast.~~
- ii. Noise: Building will be designed so that noise will not interfere with the surrounding uses. Noise shall not exceed 55 dBA at the lot line adjacent to a residential use or where residential uses are allowed by right.

- iii. Storage: Adequate provision shall be made in the design and/or location of building and loading areas for equipment and supplies, so that storage and service areas are screened from adjacent residential areas and the street.
- iv. Hours of Operation: Hours of operation shall be determined through special use review.
- v. Utilities: The facility shall connect and be served by the Norwood Water Commission and the Norwood Sanitation District.
- vi. Parking: Parking shall comply with Section 5-702. Parking shall be screened and sited to minimize visual impacts of the development.
- vii. Other: Alcohol may be served at private functions pursuant to a valid special events liquor license.

V. Industrial

b. Mini-Storage

Mini-storage units shall comply with the following standards:

- i. Size: The facility shall not exceed 2,500 square feet in the WMRA zone district. Facilities larger than 2,500 square feet in the WMLI zone district are only permitted by special use.
- ii. Setbacks: The mini-storage structure shall be set back at least 100 feet from the lot line abutting a highway or county road or an existing dwelling or property zoned for residential use.
- iii. Screening and Fencing: A six foot opaque perimeter wall or fence, or landscaping and natural berming (with an approved landscape plan) shall be constructed adjacent to residential areas to provide screening.
- ~~iv. Lighting: Exterior lighting shall illuminate downward.~~
- iv. Signage: Signage shall be unlit.
- v. Outdoor Storage: No exterior storage of goods or materials shall occur. Covered trash dumpsters shall be maintained on-site.

5-319 I. Site Development Standards

Uses on Wright’s Mesa shall comply with the following site development standards.

I. General Wright’s Mesa Standards

All development shall comply with the standards set forth in Section 5-6, which establishes service standards; Section 5-7, which establishes improvement standards (including but not limited to parking drainage and flood control, signs, lots, monuments, and landscaping); Section 5-8, dedication standards (including but not limited to parks and public area, school land); and the following:

a. Landscaping and Screening

- i. The Planning Commission and the Board of County Commissioners may require planting of trees and other plant material to mitigate visual impacts of development.

b. Lighting

i. General Lighting Standards

All exterior lighting shall comply with the standards of Section 5-710.

~~Lighting regulations regulate outdoor night time fixtures to preserve, protect, and enhance the dark sky while conserving energy, permitting reasonable and safe use of outdoor night time lighting, minimizing glare and obtrusive light, and helping to protect the natural environment from the damaging effects of night lighting. All outdoor fixtures shall be required to shield exterior lighting to prevent direct visibility of light bulbs from off site. All exterior lighting shall be directed toward the ground or the surface of a building. High intensity sodium vapor and similar lighting are prohibited.~~

i. Exempt Lighting

The following are exempt from the requirements of this Section:

- a) ~~Outdoor lighting fixtures existing or legally installed prior to the effective date of this Section; however, when existing lighting fixtures are repaired or replaced, they will be subject to the provisions of this Section.~~
- b) ~~Outdoor lighting fixtures that are necessary for worker safety at farms, ranches or dairies. IDA full cutoff shielding is encouraged.~~
- c) ~~Outdoor lighting for stairs, ramps, exit signs, and other illumination required by building code, as long as IDA full cutoff shielding is employed.~~
- d) ~~Holiday or temporary lighting (less than 30 days use in any one year).~~
- e) ~~Emergency lighting used by police, firefighters, or medical personnel and that is in operation as long as the emergency exists.~~

II. Additional Site Development Standards for WMTR and WMLI Zone Districts

All uses on Wright’s Mesa in the Norwood Master Plan Boundary are subject to the general site development standards in subsection I above plus the following additional standards:

a. Lighting Standards for WMTR and WMLI Zone Districts

The following lighting standards apply in the WMTR and WMLI Zone Districts.

i. All exterior lighting shall comply with the standards of Section 5-710.

~~i. High Intensity sodium Vapor Prohibited.~~

~~High intensity sodium vapor and similar lighting shall be prohibited.~~

~~ii. Shielding and Lighting Design~~

~~vi. All exterior lighting installations subject to this Code shall be designed and installed to be fully shielded (“full cutoff,” as described by the International Dark sky Association (IDA). In residential area, lights should be shielded such that the lamp itself or the lamp image is not directly visible outside the property perimeter. Parking lots and other background spaces shall be illuminated as unobtrusively as possible with full cut off shielding while meeting the functional needs of safe circulation and protection of people and property. Foreground spaces, such as building entrances and outside seating areas, shall utilize local lighting that defines the space without glare. In no case shall exterior lighting directly illuminate any point off site.~~

5-321 High Country Area (HCA) (in part)

5-321 D. Standards for all Administrative Reviews and All Special Uses Requiring One-Step and Two-step Review

II. All Uses are subject to the following Standards:

a. Outdoor lighting shall be limited to the minimum required to comply with the applicable provisions of the Uniform Building Code and National Electric Code. ~~All required exterior lighting shall be fully shielded and directed toward either the ground or the surface of the building to prevent direct visibility off site. High intensity sodium vapor, mercury vapor, and similar lighting is prohibited.~~ All exterior lighting shall comply with the standards of Section 5-710.

5-322 H. Review Standards for Land Uses and Area and Bulk Requirements Requiring Review Through the Planned Unit Development (PUD) Procedure

An applicant seeking approval for any of the uses listed in Sections 5-322 D. or approval to utilize the area and bulk requirements in Section 5-322 F. must demonstrate to the satisfaction of the Board of County Commissioners substantial compliance with the standards in this section.

IX. All exterior lighting ~~fixtures~~ shall utilize ~~recessed light sources, shielded fixtures, low intensity lighting, or other features~~ to minimize visual impact of light sources as seen from the Town of Telluride, public use areas, or

from other surrounding areas of the hillside. All exterior lighting shall comply with the standards of Section 5-710.

SECTION 5-7: IMPROVEMENTS

5-710 Exterior Lighting

5-710 A. Exterior Lighting Standards

- I. The purpose of this Section is to provide standards for outdoor nighttime lighting design that preserves, protects, and enhances the County’s night sky while conserving energy, permitting reasonable and safe nighttime use of properties, minimizing glare and obtrusive light, and helping to protect the natural environment and wildlife from the impacts of night lighting. These standards are based on the requirements of the International Dark-Sky Association (IDA) Dark Sky Reserve guidelines.

- II. Exterior Lighting Standards for all Zone Districts.

The following lighting standards shall apply in all county zone districts.

- a. High-intensity sodium-vapor and similar lighting; floodlighting; lasers; or light that dynamically varies its output by intermittent flashing, blinking, rotating, or strobing shall be prohibited.

- b. Lighting Design and Shielding:
 - i. All exterior lighting installations subject to this Code shall be fully shielded as described by the International Dark-sky Association (IDA) and directed toward the ground or downward, shielded by roof elements, or effectively recessed.
 - ii. Use lighting that has a low color temperature (less blue in its spectrum), with a maximum allowed Correlated Color Temperature of no more than two thousand seven hundred (2,700) degrees Kelvin.
 - iii. In residential areas, lights shall be shielded such that the bulb is not directly visible outside the property perimeter.
 - iv. Parking lots and other background spaces shall be illuminated as unobtrusively as possible with fully shielded fixtures while meeting the functional needs of safe circulation and protection of people and property. The height, number, placement and fixture type shall suit the purpose of the lighting, e.g. using bollards to illuminate walking surfaces instead of pole-mounted lights.
 - v. Foreground spaces, such as building entrances and outside

- seating areas, shall utilize local lighting that defines the space without glare. In no case shall exterior lighting directly illuminate any point off-site.
- vi. Whenever possible, use IDA-certified dark sky friendly outdoor lighting products.
- c. Exterior lighting shall be limited to functional uses such as illumination of doorways, garage doors, decks, terraced levels, or walkways, and recreational areas when in use.
- d. Motion Sensor lights are encouraged for commercial, industrial or residential access but shall be designed so the sensor will be triggered by activity only within the owner's property lines.
- e. No exterior lighting shall be installed or used in any way that interferes with the safe movement of motor vehicles.
- f. Applications for Building Permits and Development Permits shall include an exterior lighting plan that shows the following:
- i. The locations of exterior lights on the building(s) and/or other activity or use on the property for which the application is submitted.
- ii. Description(s) of the lighting fixtures, demonstrating how lighting fixtures will comply with this section.

III. Exempt Lighting

The following uses are exempted from the requirements of this Section:

- a. Outdoor lighting fixtures existing or legally installed prior to the effective date of this Section; however, when existing lighting fixtures are replaced, they will be subject to the provisions of this Section.
- b. Outdoor lighting fixtures that are essential for worker's safety and efficient functioning of farms, ranches, dairies, or commercial / industrial operations. Fully shielded fixtures are encouraged.
- c. Outdoor lighting for stairs, ramps, exit signs, and other illumination required by building code. Fully-shielded fixtures are required.
- d. Outdoor lighting necessary for public safety, such as runway lighting of airports, traffic control signals, and construction projects.
- e. Holiday or temporary lighting (less than sixty (60) days use in any

one year). All temporary lighting shall conform to the code to the greatest practical extent.

f. Emergency lighting used by police, fire fighters, or medical personnel and that is in operation as long as the emergency exists.

g. Any lighting required by federal or state regulations.

SECTION 5-10: SPECIAL USES

5-1002 E. The following must be addressed as part of any application:

- I. A Site plan including:
 - a. Ownership, Use and zoning of all adjacent Parcels;
 - b. Driveways, streets and right-of-way, Access ways, including points of ingress, egress, parking plan;
 - c. Recorded and apparent easements;
 - d. Location and dimensions of Structures and Signs;
 - e. Typical elevations/Heights of such Buildings;
 - f. Landscaping;
 - g. Topography;
 - h. Specific areas proposed for specific types of land Use/the identification of specific land Uses; and
 - i. Information regarding the function and characteristics of any Building or Use proposed, including: days and hours of operation, number of employees, number of students, number of rooms for rent, etc., as applicable;
- II. Lighting plan: All exterior lighting shall comply with the standards of Section 5-710;
- III. Signs - all Signs must meet Section 5-704 standards;
- IV. Water/sewer plan - must meet state standards and may include verification of a commercial well permit;
- V. Drainage plan;

- VI. Grading plan;
- VII. Dust control plan;
- VIII. Detailed engineered plans and specifications by a registered Colorado Professional Engineer as requested by staff or Referral Agents;
- I. Weed control plan that must include use of weed free hay or straw;
- II. Wildlife Plan (see Section 5-407 A. XII.); and
- XI. Additional permits as necessary from other agencies.

5-1004 Standards for Golf Courses in all Zone Districts *(in part)*

Prior to Planning Commission and BOCC Conceptual Work Session, a written statement of the following is required (conceptual shall mean description of the projects look and feel prior to detailed information. A Conceptual Work Session does not constitute an approval, either preliminary or final, of the proposal):

- Outdoor lighting plan, including location and time of use. All exterior lighting shall comply with the standards of Section 5-710.

5-1004 M. Design

All proposed development shall conform to County requirements (Section 5- 4 and 5 - 21) for Areas of Local and State Interest and Scenic Quality.

- I. A Site Plan that includes location of tees, greens, fairways, driving range and practice green, golf cart path, ponds, irrigation wells and roads and plans for removal and addition of vegetation must be submitted during the preliminary work session;
- II. A Site Plan for Clubhouse lot must be submitted that includes but is not limited to: building sizes and height, uses accessory to the primary golf course use (restaurant, bar, pro shop, gym), roads, parking lots, lighting, employee housing (number of employees for clubhouse and golf course), maintenance facilities, outdoor restaurant seating areas, outdoor storage of equipment;
- III. Equipment storage and maintenance areas shall be screened from adjacent residential units and public roads; and
- IV. No lighting for nighttime use shall be permitted on golf course, practice green or driving range; an outdoor lighting plan, including location and time of use, shall be submitted and approved by the County.

SECTION 5-21: SCENIC QUALITY

This section establishes land use standards for the preservation of Scenic Quality in conjunction with development activities visible from neighboring developments and public use areas, in accordance with the policy on Scenic Quality established in Section 2-12. The Scenic Quality Standards in Section 5-2101 shall be applied in review of a Preliminary Plan submission, as established in Section 4-411, and the special use standards specified in Section 5-10 of this Land Use Code. Section 5-2101 C. provisions regarding prohibition of highly reflective materials for all proposed roofing and Section 5-2101 H. regarding lighting shall also apply ~~for all proposed roofing during Development Permit application review.~~

5-2101 Scenic Quality Standards

Each developer shall describe in detail how the visual impact of the proposed development on neighboring developments and public use areas shall be mitigated. Each such Scenic Quality Report shall include:

- 5-2101 A. Designations of scenic views of natural and historic features both from and toward the site and descriptions of how these vistas will be preserved;
- 5-2101 B. Designs that orient improvements in ways that allow them to blend in with and utilize the natural topography;
- 5-2101 C. Utilization of colors and textures found naturally in the landscape and prohibition of reflective materials, such as highly reflective glass or metals;
- 5-2101 D. Utilization of native or similar horticultural materials for revegetation and reforestation and guarantees that any needed revegetation or reforestation will be completed during the first planting season after construction;
- 5-2101 E. Plans to remove and save topsoil, prior to any grading or excavation and replacement, for reuse during revegetation;
- 5-2101 F. Design and construction plans for roads and associated structures that bear a logical relationship to existing topography to minimize the need for cuts and fills;
- 5-2101 G. Location and installation of utilities in ways that will cause the least damage to the natural environment; and
- 5-2101 H. ~~Provisions requiring shielding of exterior lighting to prevent direct visibility of light bulbs from off-site, directing of all exterior lighting toward either the ground or the surface of a building and prohibiting high intensity sodium vapor and similar lighting.~~ All exterior lighting shall comply with the standards of Section 5-710.

SECTION 5-26: OIL AND GAS EXPLORATION & DEVELOPMENT *(in part)*

5-2604 Development of Major Oil and Gas Facilities

5-2604 E. Visual Mitigation

- I. Visual Mitigation Plan. A visual mitigation plan shall be required for all new facilities and/or expansion of existing facilities. The plan shall incorporate the appropriate design elements of this Section. The requirement for a visual mitigation plan may be waived by the Board of County Commissioners, the Planning Director or the Local Government Designee, if a plan is deemed unnecessary to preserve the Scenic Quality in conjunction with the proposed development of the Facility visible from neighboring developments and public use areas in accordance with the Policy set forth in Section 2-12 Scenic Quality and Section 5-21 Scenic Quality.

- II. The visual mitigation plan minimum requirements are as follows:
 - 13. Direction and type of lighting, if applicable.

- III. Visual impacts.

To the maximum extent reasonably feasible, the applicant shall use structures of minimal size to satisfy present and future functional requirements.

- 9. All exterior lighting shall comply with the standards of Section 5-710. ~~Exterior lighting, when required, shall meet the standards set forth under Land Use Code Section 5-2101 H. All lighting associated with oil and gas development will be shielded to prevent direct visibility of light bulbs from off site, directing all exterior lighting either toward either the ground or the surface of the building and prohibiting high intensity sodium vapor lighting. Lighting shall be used as needed rather than all of the time to the extent possible given safety requirements.~~

SECTION 5-27: WIRELESS SERVICES AND COMMUNICATIONS FACILITIES
(in part)

5-2704 Application Requirements

B. General Requirements

- I. The following must be addressed as part of any application:

- a. Site plan, photos or drawings accurately representing existing and proposed conditions, specifying the location of antennas, support structures, transmission building, and other accessory structures, setbacks from property lines, all uses, access, parking, fences, signs, existing and proposed landscaping, and lighting, as well as all adjacent land uses within 500 feet for towers less than 100 feet high and 1000 feet for towers from 100-199 feet high. The Planning Director will assist in specifying recommended vantage points and the requested number of photo simulations.

D. Scenic Quality Mitigation Plan

- V. Lighting. Lighting is prohibited on towers unless required by the Federal Aviation Administration or other applicable state or federal requirements. Motion detector security lighting may be approved if the lights are fully shielded and down lighted. Any outdoor lighting plan requires County approval. All exterior lighting shall comply with the standards of Section 5-710.

- VIII. Signs. No advertising is permitted anywhere upon or attached to the facility. Signage is limited to small non-illuminated warning and identification signs.

SECTION 5-29 MEDICAL AND RETAIL MARIJUANA FACILITIES & ESTABLISHMENTS – INCLUDING PLANT COUNT LIMITS FOR BOTH PERSONAL USE/RECREATIONAL AND MEDICAL MARIJUANA CULTIVATION ON RESIDENTIAL AND NON-RESIDENTIAL PROPERTIES IN ALL ZONE DISTRICTS IN UNINCORPORATED SAN MIGUEL COUNTY (in part)

5-2902 D. General Standards for both Medical and Recreational Marijuana Cultivation

- I. Any and all extended plant count medical and all personal use/recreational marijuana cultivation shall be grown or produced in an Enclosed and Locked Space as defined herein. Enclosed and Locked Spaces may include dwelling units and other primary structures.
- II. No person(s) may engage in marijuana cultivation or production in a manner that adversely affects the health or safety of neighboring or nearby property owners, to include but not limited to:
 - a. Having visibility of plants from the exterior of the structure(s) or from a public road or public place; no form of signage is allowed.
 - b. Emitting light pollution, glare or brightness of lighting that impacts

an adjoining or neighboring property owner or resident.

c. Causing excessive noise or odor in a residential area.

5-2906 Application Requirements

5-2906 C. Scenic Quality Mitigation Plan

III. Provide a lighting plan. All exterior lighting shall be either directed toward the ground or the surface of a building. Lighting shall be shielded to prevent direct visibility of light bulbs from off site. Motion detector security lighting may be approved if the lights are fully shielded and down lighted. High intensity sodium vapor and similar lighting is prohibited. All exterior lighting shall comply with the standards of Section 5-710.

BE IT FURTHER RESOLVED, this resolution is adopted based on the finding that the proposed amendment complies with the standards of Land Use Code Section 5-1802, Land Use Code Amendments; is consistent with Land Use Code Section 1-4, Purposes of the Land Use Code.

DONE AND APPROVED by the Board of County Commissioners of San Miguel County, Colorado, on July 7, 2021.

SAN MIGUEL COUNTY, COLORADO
BOARD OF COUNTY COMMISSIONERS

DocuSigned by:
By: Lance Waring
F8BF64194B38430
Lance Waring, Chair

Vote:	Hilary Cooper	<u>Aye</u>	Nay	Abstain	Absent
	Kris Holstrom	<u>Aye</u>	Nay	Abstain	Absent
	Lance Waring	<u>Aye</u>	Nay	Abstain	Absent

ATTEST:

DocuSigned by:
By: Carmen Warfield
BE2AF0C39C63408
Carmen Warfield, Chief Deputy Clerk



EXHIBIT A – Public Hearing Record list

EXHIBIT A

PUBLIC HEARING RECORD

Board of County Commissioners

Application: Land Use Code Amendment to Articles 2, and 5, Dark Sky, Exterior Lighting

Date: July 7, 2021

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 John Huebner, Senior Planner dated July 7, 2021.
4. Draft Land Use Code Amendment, dated June 2021.
5. Draft Board of County Commissioners Resolution #2021-18.
6. Public Hearing Notice published in the Norwood Post and Telluride Daily Planet on June 16, 2021.
7. Minutes of the June 10, 2021 County Planning Commission meeting.
8. Memorandum to the San Miguel County Planning Commission from John Huebner, Senior Planner dated June 10, 2021.

AGENCY COMMENTS

9. Email from John Huebner, Senior Planner, to Review Agencies dated May 11, 2021.
10. Email received from Phil Taylor, Telluride Senior Planner, to John Huebner, Senior Planner dated May 19, 2021.
11. Email from Bob Grossman, Norwood Dark Sky Advocates, to John Huebner, Senior Planner dated May 31, 2021.
12. Email received from John Barentine, International Dark Sky Association, to Kaye Simonson, County Planning Director, dated June 9, 2021.

PUBLIC COMMENT

13. Email from Harley Brooke-Hitching, County resident to John Huebner, Senior Planner dated July 6, 2021.

OTHER

14. Telluride Daily Planet news article "Dark Sky Advocates seek to keep the stars bright", Susanne Cheavens, Associate Editor, dated April 8, 2021.

15. Town of Telluride display advertisement “Let’s Keep the Night Sky Dark”, Telluride Daily Planet, dated June 27, 2021.

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS,
SAN MIGUEL COUNTY, COLORADO, APPROVING AN AMENDMENT TO THE
AMENDED AND RESTATED DEED RESTRICTION AND COVENANT TEMPLATES,
AND AN AMENDMENT TO THE SAN MIGUEL COUNTY LAND USE CODE
SECTION 5-1305 H VIOLATIONS & I REMEDIES, AND AMENDMENT TO THE
EXECUTED AMENDED AND RESTATED DEED RESTRICTION AND COVENANTS,
TO ADOPT A SCHEDULE OF VIOLATIONS AND FINES AS AN ENFORCEMENT
OPTION WITHIN THE DEED RESTRICTIONS TO ENCOURAGE COMPLIANCE
WITH THE RULES OF THE PROGRAM AND WITH THE INDIVIDUAL DEED
RESTRICTIONS.**

Resolution 2021-021

WHEREAS, San Miguel County, Colorado (the “County”) has the authority to regulate the use and development of land located within the County according to the Colorado Constitution and the Colorado Revised Statutes (“C.R.S.”); and

WHEREAS, pursuant to Resolution 2002-2, the San Miguel Board of County Commissioners (BOCC) on March 27, 2002, approved the Amended and Restated Deed Restriction Template and Covenant (New Covenant) for use in conjunction with the County’s affordable housing program; and

WHEREAS, pursuant to Land Use Code Section 5-1802, the BOCC on January 13, 2021, held a workshop to consider a draft amendment to the New Covenant Template and Executed New Covenants and the Land Use Code (LUC) Section 5-1305 H Violations and I Remedies and directed staff to prepare an amendment to the New Covenant and to LUC Section 5-1305 H & I to establish a Schedule of Violations and Fines, as an enforcement option within the deed restrictions to encourage compliance with the rules of the program and with the individual deed restrictions.

WHEREAS, the Proposed Schedule of Violations and Fines is attached hereto as Exhibit B.

WHEREAS, the draft amendment was referred to the County Attorney; County Building Department; County Planning Department; the Towns of Telluride, Mountain Village, Norwood, Ophir and Sawpit; and the San Miguel Regional Housing Authority and current and potentially impacted homeowners’ associations for review and comment; and

WHEREAS, at its regular meeting held on June 10, 2021, the San Miguel County Planning Commission considered the proposed LUC amendment and unanimously recommended the Board of County Commissioners adopt the LUC Amendment; and

WHEREAS, a Public Hearing Notice for the proposed New Covenant Template and LUC Amendment and the BOCC meeting to be held on July 7, 2021 was published in the Norwood Post and the Telluride Daily Planet on June 16, 2021; and

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

WHEREAS, at its regular meeting held on July 7, 2021, the Board of Commissioners of San Miguel County, Colorado, considered the proposed New Covenant Template and LUC Amendment, the referral comments provided, public comments received prior to and during the public meeting, and relevant evidence and testimony; and

WHEREAS, the BOCC finds that the proposed amendment complies with the standards of LUC Section 1-4, Purposes of the LUC, and meets the intent of the affordable housing program, its regulations and standards as stated in the New Covenant Template recitals and the LUC Section 5-1305 and protects the affordable housing program while reducing future uncertainty; and

WHEREAS, Subject Property Owners who have executed the Covenant shall be offered the Amendment to the Covenant that mimics the new language and is attached hereto as Exhibit D but are not required to accept it.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of San Miguel County, Colorado, approves and adopts the amendment to the New Covenant Template, the Amendment Agreement for the current Subject Property Owners under the Covenant, and the San Miguel County Land Use Code Section 5-1305 H & I to establish a Schedule of Violations and Fines, as an enforcement option within the deed restrictions to encourage compliance with the rules of the program and with the individual deed restrictions.
as follows:

(Additions are shown with underline. Deletions are shown with ~~strike-through~~.)

Amended and Restated Deed Restriction and Covenant:
Section 9, Violations and Remedies.

9.1 Notification of Violation. In the event an alleged violation of this Covenant is discovered whether pursuant to a procedure or provision herein, from a citizen complaint, or by other means, the Administrator shall send a written notice of such violation to all Subject Property Owners of the Subject Property, and if applicable, to Occupants of the Subject Property. The notice shall state: (1) the nature of the alleged violation; (2) the specific provisions of this Covenant that the Subject Property Owner and/or Occupant has allegedly violated; (3) (i) the steps required by the Subject Property Owner and/or Occupant to cure the violation; (ii) the fine associated with each alleged violation as required by the Schedule of Violations and Fines, and any additional opportunity to cure before the fines or consequences escalate; (4) the remedies that the County may pursue if the alleged violation is not cured; (5) the reasonable timeframe within which the Subject Property Owner and/or Occupant must cure the alleged violation; (6) that the Subject Property Owner and/or Occupant has a right to request a hearing before the Administrator to determine the merits of the allegations and to discuss potential remedies; (7) that the Subject Property Owner and/or Occupant must notify the Administrator that he or she requests such a hearing no later than fifteen days after receiving the notice; and (8) that

the alleged violation will be considered conclusively determined against the Subject Property Owner and/or Occupant if the Subject Property Owner and/or Occupant does not request such a hearing and fines shall continue to accrue until the violation is cured or the maximum fine has been reached.

9.8 Schedule of Violation and Fines. The Schedule of Violations and Fines referred to in paragraph 9.1 above, was adopted pursuant to Resolution 2021-021 and attached hereto as Exhibit A. Said Schedule of violations and Fines may be amended from time to time. A copy of the current Schedule of Violations and Fines shall be available at SMRHA and posted on the SMRHA website.

9.8.1 Fines imposed pursuant to the Schedule of Violations and Fines shall be in addition to all other potential and available remedies.

San Miguel County Land Use Code Section 5-1305

5-1305 H. Violations

- I. The Housing Authority may require at any time that an Owner verify within five days of such request by the Housing Authority that:
 - a. The Owner is a Qualified Owner and/or
 - b. Any particular tenant is a qualified Employee.
- II. In the event an occupant of Affordable Housing does not or no longer qualifies as an Employee, the Housing Authority may require that occupant to:
 - a. Vacate rental Affordable Housing within 60 days, or re-qualify as an Employee within that period; or
 - b. Vacate Affordable Housing he owns and cause it to be listed for sale pursuant to Section 5-1305 F. within one year, or re-qualify as an Employee within that period.
- III. In the event a violation is discovered, the Housing Authority shall provide a written notice of violation to the Owner detailing the nature of violation. Said notice shall state that the Owner may request a hearing before the Housing Authority within 15 days from the date of notice of violation to determine the merits of the allegations and to discuss remedies of the violation. In addition, said notice shall advise the alleged violator of the fine associated with each alleged violation as required by the Schedule of Violations and Fines and any additional opportunity to

cure before the fines or consequences escalate. If the Owner fails to request a hearing, the violation is considered to be conclusively determined against the Subject Property Owner and/or Occupant and fines shall continue to accrue until the violation is cured or the maximum fine has been reached.

- IV. Default by an Owner in payments or other material obligations due or to be performed under a promissory note secured by a deed of trust encumbering Affordable Housing ("Secured Obligations") by an Owner shall constitute a violation of this Section 5-1305 and of Section 1-1504 of the San Miguel County Land Use Code. Each Owner shall notify the Housing Authority in writing immediately upon receipt by the Owner or his agent of any notification received from a lender, or its assigns, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a first deed of trust, as described herein, within five calendar days of the Owner's notification from lender, or its assigns, of said default of past payments.

5-1305 I. Remedies

- I. There is hereby reserved to the Housing Authority any and all remedies provided by law and by Section 1-16 of this Land Use Code for violation of this Section 5-1305 or any of its terms. In the event of litigation with respect to any or all provisions of this Section, the prevailing party in such litigation shall be entitled to recover damages and costs, including reasonable attorney's fees.
- II. In the event Affordable Housing is sold, transferred and/or conveyed without compliance with this Section 5-1305, such sale, transfer and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported transferee. Each and every conveyance of Affordable Housing, for all purposes, shall be deemed to include and incorporate by this reference all terms of this Section 5-1305, including but not limited to those provisions governing the sale, transfer or conveyance of Property.
- III. In the event an Owner fails to remedy any violation, the Housing Authority may resort to any and all available legal action, including but not limited to injunction or specific performance of this Section 5-1305 requiring the sale of Affordable Housing by the Owner. The costs of such sale shall be charged against the proceeds of the sale, with the balance being paid to the Owner.

- a. In addition to the remedies provided for in this Section 5-1305 I. Remedies, the Housing Authority shall impose fines for violations as outlined in the Schedule of Violations and Fines as adopted

pursuant to Resolution 2021-XX and attached hereto as Exhibit A. Said Schedule of Violations and Fines may be amended from time to time and shall be reviewed every five years or more frequently as determined by the Housing Authority. A copy of the current Schedule of Violations and Fines shall be available at SMRHA and posted on the SMRHA website.

- IV. Nothing herein to the contrary withstanding, if an Employee Owner of Affordable Housing no longer qualifies to own Deed Restricted housing, based on the definition of Employee in Section 5-1305 B. and/or the Ownership Use and Occupancy Regulations in Section 5-1305 C. and fails to requalify within one year but continues to make all required principal and interest payments on an Affordable Housing ownership unit, he must offer the property for sale, and he must accept a bid equal to or exceeding, the aggregate of his (i) Original Purchase Price, plus (ii) Initial Construction Costs, if any, plus (iii) Home Improvements Costs, if any, not to exceed 10 percent of the aggregate of the Original Purchase Price plus Initial Construction Costs, if any. As used in this Section 5-1305 I.IV., "Original Purchase Price" means the gross amount paid by such Employee Owner to acquire the Affordable Housing ownership unit; "Initial Construction Costs" means, if and only if the Affordable Housing ownership unit when acquired by such Employee Owner was an unimproved lot, the gross amount paid by such Employee Owner to construct a dwelling unit on such unimproved lot and to obtain a certificate of occupancy for such dwelling unit, and "Home Improvement Costs" means the gross amount paid by such Employee Owner for improvements to such dwelling unit after issuance of a certificate of occupancy for such dwelling unit. Real estate commissions, the Real Estate Transfer Assessment (RETA), closing costs, appraisals, and any other costs not approved by the Housing Authority shall not be allowed to be incorporated into the listing price once the one year requalification period has ended. The Owner shall not be required to accept a bid that requires the Owner to carry back any portion of the purchase price by a note. If no bids are submitted that equal or exceed his original purchase price plus proven home improvements, he does not have to accept any, and he, his spouse and/or his children may continue to occupy the unit (without violating the provisions of Section 5-1305 H.II.b.), provided that the Property continues to be offered for sale through a real estate broker licensed in the State of Colorado and any bid equal to or exceeding the Original Purchase Price plus Initial Construction Costs plus Home Improvements Costs is accepted.

BE IT FURTHER RESOLVED, this resolution is adopted based on the finding that the proposed amendment complies with the standards of Land Use Code Section 5-1802, Land Use

Code Amendments; is consistent with Land Use Code Section 1-4, Purposes of the Land Use Code; and meets the intent of the Guidelines, Rules and Regulations Governing Affordable Housing in the Telluride R-1 School District and furthers the County Affordable Housing Program goals and prevents future uncertainty.

DONE AND APPROVED by the Board of County Commissioners of San Miguel County, Colorado, on July 7, 2021.

**SAN MIGUEL COUNTY, COLORADO
BOARD OF COUNTY COMMISSIONERS**

DocuSigned by:
By: Lance Waring
F8BF63194B38430
Lance Waring, Chair

Vote:	Hilary Cooper	<u>Aye</u>	Nay	Abstain	Absent
	Kris Holstrom	<u>Aye</u>	Nay	Abstain	Absent
	Lance Waring	<u>Aye</u>	Nay	Abstain	Absent

ATTEST:

DocuSigned by:
By: Carmen Warfield
BE2AF0C39C63408
Carmen Warfield, Chief Deputy Clerk



EXHIBIT A
PUBLIC HEARING RECORD

Board of County Commissioners
Application: Land Use Code Amendment to Section 5-1305 H Violations & 5-1305 I Remedies, and an Amendment to the Amended And Restated Deed Restriction and Covenant Templates, and an Amendment to the Executed Amended and Restated Deed Restriction and Covenants, to Adopt a Schedule of Violations and Fines as an Enforcement Option Within The Deed Restrictions to Encourage Compliance with the Rules of the Program and with the Individual Deed Restrictions.
Date: July 7, 2021

- 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 Lois Major, special counsel to the San Miguel County Housing Authority dated July 7, 2021.
- 4. Draft Resolution No. 2021-021
- 5. Minutes of the June 10, 2021 County Planning Commission meeting.
- 6. DRAFT Amended and Restated Deed Restriction and Covenant Templates.
- 7. Memorandum to the San Miguel County Planning Commission from Lois Major, special counsel to the San Miguel County Housing Authority dated June 10, 2021.
- 8. Public Hearing Notice published in the Norwood Post and Telluride Daily Planet on June 16, 2021.

AGENCY COMMENTS

- 9. Email to Referral Agencies sent May 10, 2021

PUBLIC COMMENT

None

OTHER

None

EXHIBIT B
SCHEDULE OF VIOLATIONS AND FINES

San Miguel County Housing Authority
APPROVED BY RESOLUTION NO. 2021-021 (SERIES OF 2021)
Effective July 7, 2021

Violation		Fine per day	Maximum Fine
1	Failure to submit accurate and all documentation required to establish continued compliance by original deadline set by SMRHA.	\$20.00	\$140.00
2	Failure to submit accurate and all documentation required to establish continued compliance by second deadline set by SMRHA.	\$25.00	\$350.00
3	Failure to submit accurate and all documentation required to establish continued compliance by third deadline set by SMRHA.	\$30.00	\$1,000.00
4	Failure to maintain eligibility (generally).	\$20.00	\$5,000.00
5	Failure to occupy unit as sole and exclusive place of residence.	\$20.00	\$5,000.00
6	Failure to work full-time in the Telluride R-1 School District as required by Deed Restriction and/or Regulations.	\$20.00	\$2,000.00
7	Purchasing and/or owning other developed residential property in violation of the deed restriction.	\$20.00	\$2,000.00
8	Advertising rental without mention of deed restriction status as required by Deed Restriction.	\$20.00	\$2,000.00
9	Failure to get roommate approved prior to move-in.	\$25.00	\$5,000.00
10	Failure to provide SMRHA with copy of signed lease prior to occupancy by roommate or tenant.	\$20.00	\$2,000.00
11	Rental of all or part of a unit in violation of the Deed Restriction, Regulations, and/or the SMC LUC.	\$25.00	\$5,000.00
12	Use of premises for other than residential purposes.	\$100.00	\$5,000.00
13	Using deed restricted property as income producing property.	\$100.00	\$5,000.00
14	Creating an additional dwelling unit as defined in the SMC LUC.	\$100.00	\$5,000.00
15	Failure to obtain approved Leave of Absence (LOA).	\$20.00	\$2,000.00
16	Submitting false/inaccurate information (per offense).	-	\$750.00
17	All other violations not specifically named.	\$20.00	\$2,000.00
*All Owners shall be given 14 days from Notice of Violation by SMRHA to cure prior to the assessment of fines.			
*Violation and Fine Schedule will be reviewed and updated every five years or sooner as determined by SMRHA			

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS,
SAN MIGUEL COUNTY, COLORADO,
APPROVING AN AMENDMENT TO THE AMENDED AND RESTATED DEED
RESTRICTION AND COVENANT TEMPLATES AND THE SAN MIGUEL COUNTY
LAND USE CODE SECTION 5-1304 TO EXTEND THE DEED RESTRICTION
COVENANT TO AN ADDITIONAL TERM OF ONE HUNDRED (100) YEARS
THAT RESETS AT EACH NEW TRANSFER.**

Resolution 2021-020

WHEREAS, San Miguel County, Colorado (the “County”) has the authority to regulate the use and development of land located within the County according to the Colorado Constitution and the Colorado Revised Statutes (“C.R.S.”); and

WHEREAS, pursuant to Resolution 2002-2, the San Miguel Board of County Commissioners (BOCC) on March 27, 2002, approved the Amended and Restated Deed Restriction Template and Covenant (New Covenant) for use in conjunction with the County’s affordable housing program; and

WHEREAS, pursuant to Land Use Code Section 5-1802, the BOCC on January 13, 2021, held a workshop to consider a draft amendment to the New Covenant Template and the Land Use Code (LUC) Section 5-1304, R-1 Housing Deed Restriction and directed staff to prepare an amendment to the New Covenant and to LUC Section 5-1304 to extend the deed restriction covenant to an additional term of 100 years that resets at each new transfer.

WHEREAS, the draft amendment was referred to the County Attorney; County Building Department; County Planning Department; the Towns of Telluride, Mountain Village, Norwood, Ophir and Sawpit; and the San Miguel Regional Housing Authority and current and potentially impacted home owners’ associations for review and comment; and

WHEREAS, at its regular meeting held on June 10, 2021, the San Miguel County Planning Commission considered the proposed LUC amendment and unanimously recommended the Board of County Commissioners adopt the LUC Amendment; and

WHEREAS, a Public Hearing Notice for the proposed New Covenant Template and LUC Amendment and the BOCC meeting to be held on July 7, 2021 was published in the Norwood Post and the Telluride Daily Planet on June 16, 2021; and

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

WHEREAS, at its regular meeting held on July 7, 2021, the Board of Commissioners of San Miguel County, Colorado, considered the proposed New Covenant Template and LUC Amendment, the referral comments provided, public comments received prior to and during the public meeting, and relevant evidence and testimony; and

Paragraph, 1.3 Term

San Miguel County Land Use Code Section 5-1304

The following deed restriction shall be imposed on each parcel of real property designated as Affordable Housing pursuant to Section 5-1305 of the San Miguel County Land Use Code.

Subject Property: (Legal Description) ("Property")

The ownership of the Property is hereby limited exclusively to Employees and their spouses maintaining primary and sole Residence in San Miguel County, Montrose County, Ouray County or Dolores County, Colorado, and to certain other persons and entities as permitted in Section 5-1305 of the San Miguel County Land Use Code, and the use and occupancy of the Property is hereby limited exclusively to such Employees who earn their incomes primarily within the Telluride R-1 School District and their spouses and children. Ownership, use and occupancy of the Property is subject to such definitions, exceptions and qualifications specified in Section 5-1305 of the San Miguel County Land Use Code, including but not limited to the following:

In the event Affordable Housing is sold, transferred and/or conveyed without compliance with Section 5-1305 of the San Miguel County Land Use Code, such sale, transfer and/or conveyance shall be wholly null and void and shall confer

no title whatsoever upon the purported transferee. Each and every conveyance of Affordable Housing, for all purposes, shall be deemed to include and incorporate by this reference all terms of that certain Section 5-1305, including but not limited to those provisions governing the sale, transfer or conveyance of property.

The foregoing restriction on ownership, use and occupancy constitutes a covenant that runs ~~fifty (50)~~ one hundred (100) years from the date of ~~recording with the title to purchase of~~ the Property as a burden thereon for the benefit of the Board of County Commissioners of San Miguel County, Colorado, or its designee, and shall be binding on the Owner, and on the heirs, personal representatives, assigns, lessees and licensees and any transferee of the Owner. ~~The duration of this restriction and covenant shall extend for an initial period of fifty (50) years, and at the option of the Board of County Commissioners of San Miguel County, or its designee, may be extended for an additional period of fifty (50) years after public hearing and comment on the proposed extension. The 100-year term shall begin anew upon each sale, transfer, and/or conveyance.~~ This restriction and covenant shall be administered by the Board of County Commissioners of San Miguel County, Colorado, or its designee, and shall be enforceable by any appropriate legal or equitable action, including but not limited to specific performance, injunction, abatement or eviction of non-complying Owners, users or occupants, or such other remedies and penalties as may be specified in Sections 1-16 and 5-1305 of the San Miguel County Land Use Code, or under law.

Notwithstanding the foregoing, this Deed Restriction shall automatically terminate upon the failure to exercise the Option to Purchase the Property granted in any Option to Purchase Affordable Housing by and between the San Miguel County Housing Authority and the holder of a first mortgage and subsequent issuance of a public trustees deed to the holder of a promissory note or governmental agency guaranteeing, insuring or acquiring the note (except San Miguel County, the Housing Authority or any successor, a Project Developer as defined in the Land Use Code or any non-profit affordable housing corporation) secured by a first deed of trust encumbering the Property. The date of termination shall be the date of recording the Public Trustee's Deed conveying the Property.

In addition, San Miguel County expressly reserves the right to terminate this Deed Restriction as to the Property upon recording a Termination Agreement in the office of the Clerk and Recorder of San Miguel County executed by all of the then owners of the Property and the Board of County Commissioners.

BE IT FURTHER RESOLVED, this resolution is adopted based on the finding that the proposed amendment complies with the standards of Land Use Code Section 5-1802, Land Use Code Amendments; is consistent with Land Use Code Section 1-4, Purposes of the Land Use Code; and meets the intent of the Guidelines, Rules and Regulations Governing Affordable Housing in the Telluride R-1 School District and furthers the County Affordable Housing Program goals and prevents future uncertainty.

DONE AND APPROVED by the Board of County Commissioners of San Miguel County, Colorado, on July 7, 2021.

**SAN MIGUEL COUNTY, COLORADO
BOARD OF COUNTY COMMISSIONERS**

DocuSigned by:
By: Lance Waring
F8BF64194B38430...
Lance Waring, Chair

Vote:	Hilary Cooper	<u>Aye</u>	Nay	Abstain	Absent
	Kris Holstrom	<u>Aye</u>	Nay	Abstain	Absent
	Lance Waring	<u>Aye</u>	Nay	Abstain	Absent

ATTEST:

DocuSigned by:
By: Carmen Warfield
BE2AF0C39C63408...
Carmen Warfield, Chief Deputy Clerk



EXHIBIT A – Public Hearing Record

EXHIBIT A
PUBLIC HEARING RECORD

Board of County Commissioners

Application: Land Use Code Amendment to the Amended and Restated Deed Restriction and Covenant Templates (New Covenant) and to Land Use Code (LUC) Section 5-1304, R-1 Housing Deed Restriction, to extend the deed restriction covenant to an additional term of one hundred (100) years that resets at each new transfer.

Date: July 7, 2021

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).
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4. Draft Resolution No. 2021-020
5. Minutes of the June 10, 2021 County Planning Commission meeting.
6. Draft Amended and Restated Deed Restriction and Covenant Template dated July 7, 2021.
7. Draft Land Use Code Amendment dated June 10, 2021.
8. Memorandum to the San Miguel County Planning Commission from Lois Major, special counsel to the San Miguel County Housing Authority dated June 10, 2021.
9. Public Hearing Notice published in the Norwood Post and Telluride Daily Planet on June 16, 2021.

AGENCY COMMENTS

10. Email to Referral Agencies sent May 10, 2021

PUBLIC COMMENT

None

OTHER

None