



BOARD OF COMMISSIONERS
HILARY COOPER KRIS HOLSTROM LANCE WARING

REGULAR MEETING AGENDA

Wednesday, January 6, 2021

Join a Meeting, Zoom.us, Meeting Id # 534.180.495, Password 014764, audio 1-301-715-8592 or 1-253-215-8782

1. **9:30 am CALL TO ORDER.**
2. **REVIEW OF AGENDA/CALENDAR REVIEW**
3. **PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA**
4. **9:35 am CONSENT AGENDA**
 - a. Approval of Chair's signature on a community partnership agreement for 2021 from Montrose County supporting the San Miguel County Fairboard in the amount of \$8,000.
 - b. Approval of the Chair's signature of Memorandum of Understanding between San Miguel County and Montrose County for Public Road Maintenance
 - c. Approval of Chair's signature as the Board of Commissioners and as San Miguel County Housing Authority on Amended and Restated Deed Restriction and Covenant with Steve and Kristine Hilbert, Lot 139, Aldasoro Ranch Sub.
 - d. Approval of Chair's signature as the Board of Commissioners and as San Miguel County Housing Authority on Amended and Restated Deed Restriction and Covenant with Joseph J. Schmidtbauer, Lot 4B, Lawson Hill Subdivision/PUD.
 - e. Approval to re-appoint Lee Taylor to a regular term on the Planning Commission beginning 1/12021 to 12/31/2023.
 - f. Approval to re-appoint Matthew Bayma to Senior Alternate on the Planning Commission beginning 1/12021 to 12/31/2023.
 - g. Approval to re-appoint M J Schillaci to a regular term on the Planning Commission beginning 1/12021 to 12/31/2023.
 - h. Other, as needed.
5. **9:40 am ADMINISTRATIVE MATTERS**
 - a. 9:40 am Governance/Consideration to appoint the Chair and Vice-Chair for the 2021 County Boards (i.e. Commissioners, Equalization, Housing Authority, Public Health and Environment, Social Services, Weed).MOTION

- b. 9:45 am Discussion of the proposed contract with EcoAction Partners for the year 2021 with detailed goals to be accomplished./MOTION
30 mins Emma Gerona, Director of EcoAction Partners
- c. 10:20 am Governance/Consideration to appoint Commissioners to 2021 Boards and Committees/MOTION
20 mins Carmen Warfield, Chief Deputy Clerk
- d. 10:40 am Continued discussion on the 5-star State Certification Program and naming committee members.
15 mins Mike Bordogna, County Manager and Kris Holstrom, Commissioner
- e. Other, as needed.

6. 11:00 am GOVERNMENT AFFAIRS/NATURAL RESOURCES

- a. Consideration of submitting pre-scoping comments to the Uncompahgre Field Office/Bureau of Land Management concerning the San Miguel River Restoration Project comment period.
10 mins Lynn Padgett, Government Affairs/Natural Resource Director
- b. San Miguel County and The Telluride Foundation announce the completion of the 2020 Meat Processing Facility Feasibility Study and study availability
10 mins Lynn Padgett, Government Affairs/Natural Resource Director
- c. Consideration of Chair's signature on a 2021 USGS Cooperating Agency Agreement for seasonal discharge measurements at USGS 09168730 DOLORES RIVER NEAR SLICK ROCK, CO./MOTION
10 mins Lynn Padgett, Government Affairs/Natural Resource Director
- d. Consideration of comments concerning the Paradox Valley Unit of the CO River Basin Salinity Control Program Final EIS.
10 mins Lynn Padgett, Government Affairs/Natural Resource Director
- e. Discussion on the initiation of the 2020 Hard Rock Mining Rulemaking by CO Minerals Regulatory Program of DRMS.
20 mins Lynn Padgett, Government Affairs/Natural Resource Director
- f. Other, as needed.

7. 12:00 pm - 12:45 pm Lunch

8. 12:45 pm PUBLIC HEALTH AND ENVIRONMENT

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

- a. Discussion and update with the San Miguel County Stakeholders concerning the COVID 19 Outbreak.
120 mins Grace Franklin, Public Health Director
- b. Potential Executive Session: Conference with an attorney for legal advice, citation (4)(b).

c. Other, as needed.

9. **2:45 pm COUNTY HOUSING MATTERS**

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

a. Update on the San Miguel Regional Housing Authority Activities.

30 mins Corenna Howard, Executive Director of SMRHA

b. Other, as needed.

10. **3:15 pm MANAGER MATTERS/Mike Bordogna, 30mins**

a. Review of the final draft of the Govt. Affairs/Special Projects Job Description.

Mike Bordogna, County Manager

b. Update on the business grant program.

c. Discussion concerning a bill that would prohibit county commissioners from serving on a county's board of health.

d. Updates and other, as needed.

11. **3:45 pm COMMISSIONER UPDATES/PUBLIC COMMENT FOR ITEMS ON THE AGENDA**

a. Consideration of Chair's signature on a Proclamation showing appreciation to all San Miguel County Employees for their efforts and tireless dedication on making the best of 2020./MOTION

Kris Holstrom, Commissioner

b. Other, as needed.

12. **4:00 pm ATTORNEY MATTERS**

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

a. Update on Litigation

b. Other, as needed

13. **4:15 pm ADJOURNMENT**

NOTE: This agenda is subject to change, including the addition of items up to 24 hours in advance or the deletion of items at any time. All times are approximate. The County Manager reports may include administrative items not listed. Regular Meetings, Public Hearings, and Special Meetings are recorded, and ACTION MAY BE TAKEN ON ANY ITEM. Formal Action cannot be taken at Work Sessions. For further information, contact the County Administration office at 970-728-3174. If special accommodations are necessary per ADA, contact 970-

728-3174 prior to the meeting.

The official, designated posting place for all BOCC notices will be online at <https://www.sanmiguelcountyco.gov/liveagenda>. Use this link to view the live agenda with any last-minute changes. To be automatically notified, please sign up at www.sanmiguelcountyco.gov, sign up for alerts, and follow the prompts.



AGENDA ITEM - 4.a.

TITLE:

Approval of Chair's signature on a community partnership agreement for 2021 from Montrose County supporting the San Miguel County Fairboard in the amount of \$8,000.

Presented by:

Time needed:

PREPARED BY:

Janet Kask, County Parks and Open Space Director

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

----- Forwarded message -----

From: **Jon Waschbusch** <jwaschbusch@montrosecounty.net>

Date: Mon, Dec 14, 2020 at 11:02 AM

Subject: Montrose County Community Partnership Agreements - 2021

To: Ken Norris <knorris@montrosecounty.net>, Keith Caddy <kcaddy@montrosecounty.net>, Roger Rash <rrash@montrosecounty.net>, Sue Hansen <shansen@montrosecounty.net>

All:

The Board of County Commissioners has adopted the 2021 Montrose County Budget. This budget includes funding for all of your organizations at the same level as 2020. Attached, partnership agreement for each of your organizations. Please sign and return a copy to me at your earliest convenience. A scanned copy submitted via email is preferred. Once received, scheduled for final approval by the Board. Upon full execution of the agreement, please invoice for the full amount awarded. You may submit invoices directly to me at jwaschbusch@montrosecounty.net

For **Basin Clinic** specifically, we ask that invoices still be submitted on a quarterly basis due to the amount of funding.

Thank you for all of the work that each of your organizations has done in 2020. Your work and partnership is greatly appreciated.

Jon Waschbusch
Deputy County Manager
Montrose County, Colorado
317 S 2nd Street
Montrose, CO 81401
(970)252-4549

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Janet Kask, Director
Parks & Open Space, San Miguel County
P.O. Box 1170, Telluride, CO 81435
Phone: (970)369-5469, Fax: (970)728-3718
janetk@sanmiguelcountyco.gov



FISCAL IMPACT:

Contract Number:	Date Executed	End Date	
YYYY-###			Board of C
Description:			

ATTACHMENTS:

Description
Montrose Cty Community Partnership Agreement

MONTROSE COUNTY COMMUNITY PARTNERSHIP AGREEMENT 2021

This Agreement is made and entered into this _____ day of _____, 2021 by and between the Board of County Commissioners of Montrose County, Colorado, hereinafter referred to as "County", and San Miguel County Fair Board, a non-profit organization or governmental entity, hereinafter referred to as "Grantee."

WHEREAS, Grantee has requested that the County authorize and appropriate funds in the County's 2021 budget for the use of Grantee for activities that are of benefit to the public of the County; and

WHEREAS, County has determined that a contribution to Grantee of funds for the purposes requested is in the public interest, represents a worthwhile expenditure of public funds, and will benefit the citizens, residents or visitors to the County; and

WHEREAS, the County desires to formalize with Grantee the terms and conditions upon which such funding is being budgeted, authorized and appropriated;

NOW, THEREFORE, in consideration for the funding authorized and appropriated by the County to the Grantee, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. The funding of \$8,000 for use in defraying the operations of the annual county fair, provided to Grantee by the County may, or may not, be in the amount requested by Grantee. However, Grantee agrees that no additional request for funds, sponsorship or any other type of financial contribution shall be made to the County for the 2021 budget.
2. If for any reason Grantee is unable to conduct the event, program, study, project, or activity for which the funds were requested, the funds shall be returned and shall not be invoiced to the County, and the Grantee will notify the County in writing that the purpose for which the funds were requested will not be completed as proposed or described in the funding request.
3. Any and all funds granted by the County to Grantee will be used for the purpose proposed, and for no other purpose.
4. Grantee will recognize Montrose County as a financial contributor, sponsor, or partner in all forms of media throughout 2021, including, but not limited to being recognized as a sponsor of all events, services, fundraisers, galas, ribbon cuttings, for the duration of 2021 and shall be provided specific recognition commensurate with County funding.
5. Grantee will cooperate with Montrose County Media Relations personnel for the creation of appropriate press releases, photo opportunities, or news articles related to the provision of county funding.
6. Grantee will provide County with a written report not later than October 1, 2021 detailing the use of the funds. The report shall be submitted via email to Deputy County Manager Jon Waschbusch at jwaschbusch@montrosecounty.net. Such report shall contain sufficient detail to allow the county to verify that provided funding was used in accordance with the Grantee's funding request and with the terms of this agreement. Grantee hereby acknowledges that failure to provide a written report on a timely basis may be cause for denial of future funding requests.

7. Notwithstanding the funds provided by County to Grantee, the County has no other responsibility to Grantee for completion of any project, event, study, or activity, and will neither bear liability nor responsibility for any injuries, damages, or claims related to such project, event, study project or other activity. Grantee agrees to insure County against any such claims resulting from the actions of Grantee, its agents, employees, officers, or directors by naming Montrose County as an additional insured.

IN WITNESS WHEREOF, THE PARTIES HERETO AFFIRM THEIR AGREEMENT WITH THEIR SIGNATURES BELOW AND WARRANT THAT THE PERSONS SIGNING THIS AGREEMENT ARE AUTHORIZED TO DO SO.

Board of County Commissioners of Montrose County, Colorado

Chair
Date:

Attest:

Deputy Clerk to the Board
Date:

Board of County Commissioners of San Miguel County, Colorado

Chair
Date:

Attest:

Deputy Clerk to the Board
Date:



AGENDA ITEM - 4.b.

TITLE:

Approval of the Chair's signature of Memorandum of Understanding between San Miguel County and Montrose County for Public Road Maintenance

Presented by:

Time needed:

PREPARED BY:

Attorney's office

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

ATTACHMENTS:

Description

SMC_Montrose MOU Public Road Maintenance

Upload Date

12/30/2020

**INTERGOVERNMENTAL AGREEMENT
AND
MEMORANDUM OF UNDERSTANDING**
Between San Miguel County and Montrose County
for
Public Road Maintenance

THIS INTERGOVERNMENTAL AGREEMENT AND MEMORANDUM OF UNDERSTANDING (hereinafter "MOU") is between the County of Montrose Colorado and the County of San Miguel Colorado ("Counties"); collectively "Parties," for the purpose of cooperating in the maintenance of certain public roads that extend between the Counties and are used by the traveling public; and is effective the _____ day of _____, 2021.

Authority:

In accordance with C.R.S. §29-1-203(1), governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs, if such cooperation or contracts are authorized by each party there to, with the authority of its legislative body or other authority having the power to so approve.

Purpose:

There are benefits to citizens in both San Miguel County and Montrose County and the traveling public if the counties work together to maintain the public roads located in each of the Counties. It is the intent of this MOU to identify roads located in San Miguel County and in Montrose County that permit the Counties to work together to maintain for the benefit of the citizens of both Counties and the traveling public, and that may result in less cost to each County.

Identification of Roads and Background Information:

Due to the geometric layout of existing roads and the location of county lines, the maintenance of the following road(s) located in San Miguel County can be performed more economically by Montrose County road crews:

- 1.95 miles County Road 14Z
- 0.15 miles County Road 13Z
- 0.77 miles County Road AA13
- 9.77 miles County Road U29 W
- 2.57 miles County Road 18Y
- 0.36 miles County Road Y16
- 0.30 miles County Road 15Z
- 2.44 miles County Road 16Z
- 2.80 miles County Road 47Z Road (Sanborn Park Road) this shall be snow removal only.

Due to the geometric layout of existing roads and the location of county lines, the regular summer grading maintenance and light culvert maintenance and winter snow

removal where necessary on the following road(s) located in Montrose County can be performed more economically by San Miguel County road crews;

- 0.48 miles 4050 Rd south of Highway 145
- 0.47 miles of shared jurisdiction County Road AA40
- 1.89 miles 42ZN Rd north from County line
- 0.50 miles 43ZN Rd north from County line
- 0.49 miles JJ Road east from 43ZN Rd
- 0.58 miles 44ZN Rd north from County Line
- 0.09 miles JJ7 Rd from County Line north to JJ8 Rd
- 5.09 miles JJ8 Rd (Gypsum Road)
- 1.29 miles II5 from JJ8 Rd north to GG6 Rd
- 2.78 miles GG6 from II5 Rd north and south to end

Counties shall share equal responsibilities for repair and maintenance of roads running along common county lines, consisting of one area on Horsefly Mesa between San Miguel County Road 59Z and Montrose County Road 5850. Refer to attached Map-East and Map-West for road locations.

Understanding

- 1) Each County shall keep jurisdiction of the road segment(s) in their respective county.
- 2) Each County shall provide the necessary surface maintenance of said road(s), including the placement of gravel as needed and application of magnesium chloride as needed and will maintain the surface of said road(s) to a similar condition as each said road is maintained in each County.
- 3) Each County shall be responsible for their own acts and omissions, and shall maintain applicable insurance coverage in amounts as required by statute.
- 4) This MOU may be revised or amended from time to time by mutual agreement in writing signed by both Parties.
- 5) The Road & Bridge Superintendents of Montrose County and San Miguel County shall meet every 3 years to review and discuss maintenance of said road(s).

Appropriations:

Nothing in this MOU shall obligate or be interpreted to obligate either County to expend funds or provide services in excess of amounts, if any, appropriated for purposes of this MOU.

Term and Termination:

The services to be performed pursuant to this Agreement shall begin on the execution date of this Agreement, and be pursued with due diligence for a period of one (1) year from the date of this Agreement. This MOU will automatically renew for each calendar

year until December 31, 2023 or either party wishes to discontinue the MOU and expresses in writing to the other party.

It is understood that this MOU may be terminated by either party, without cause, upon thirty (30) days written notice to the other party.

NOW THEREFORE, this Intergovernmental Agreement and Memorandum of Understanding was brought before the respective Boards of County Commissioners for Montrose County and San Miguel County for consideration and possible approval on the date so indicated by their signatures, and shall be effective as of the date of the last County representative to sign.

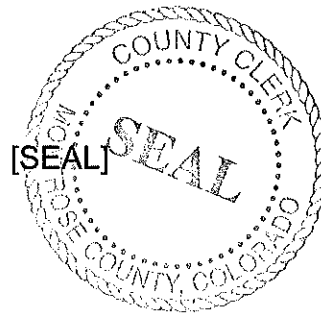
MONTROSE COUNTY BOARD OF COUNTY COMMISSIONERS


Keith Caddy, Chairman

ATTEST:


Clerk/Deputy Clerk to the Board

Date 12-16-20-



SAN MIGUEL COUNTY BOARD OF COUNTY COMMISSIONERS

_____, Chair

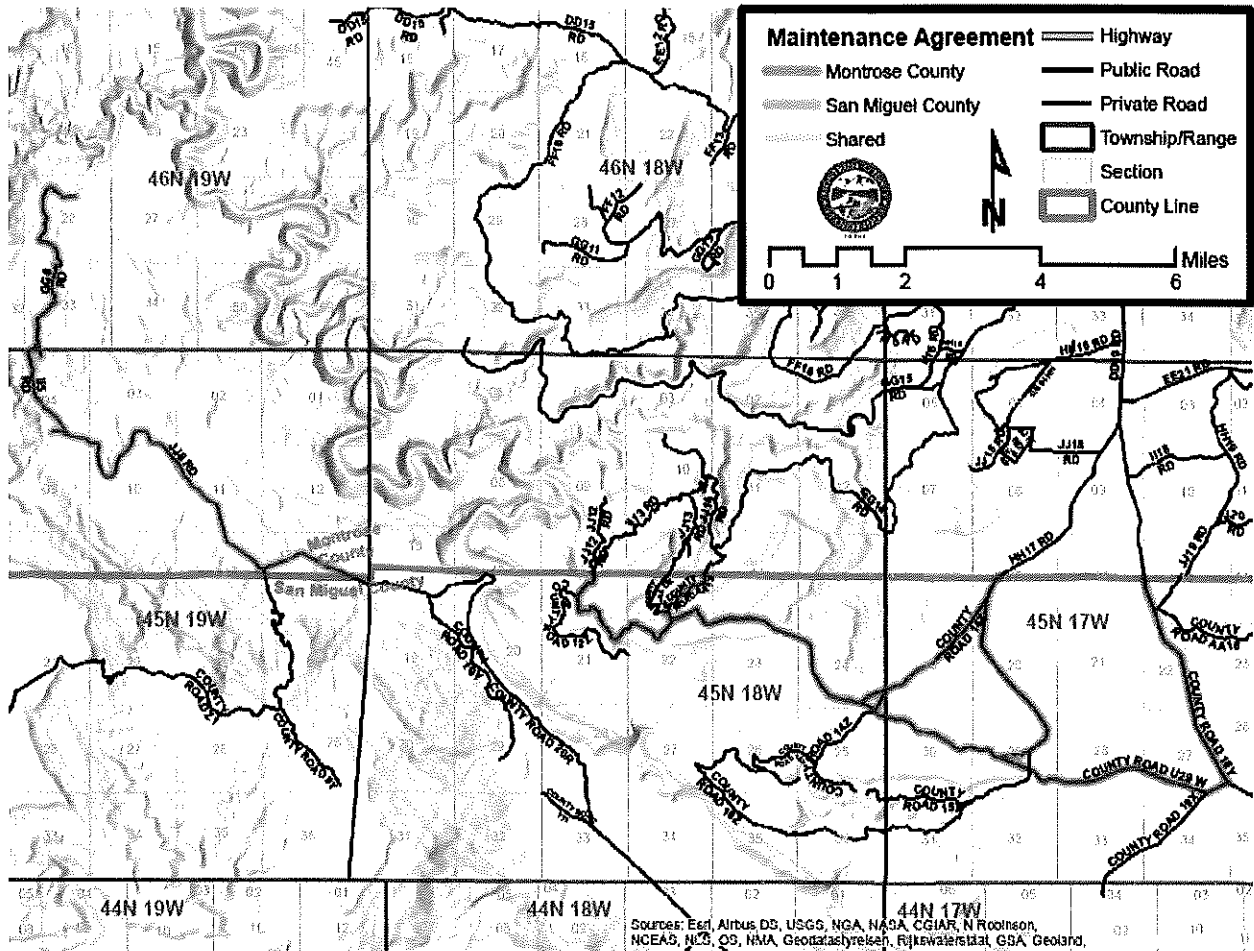
ATTEST:

[SEAL]

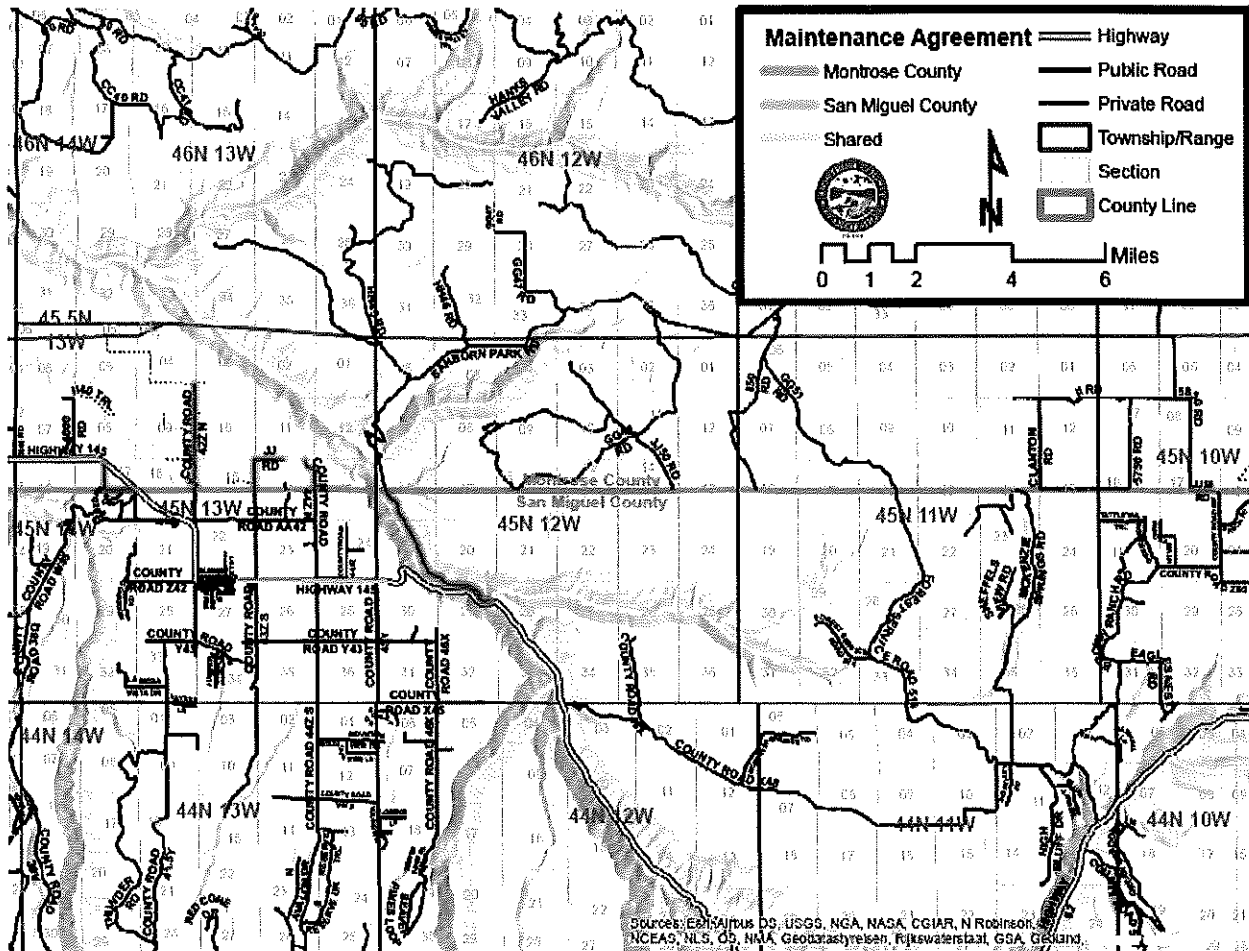
Clerk/Deputy Clerk to the Board

Date _____

Map – West



Map – East





AGENDA ITEM - 4.c.

TITLE:

Approval of Chair's signature as the Board of Commissioners and as San Miguel County Housing Authority on Amended and Restated Deed Restriction and Covenant with Steve and Kristine Hilbert, Lot 139, Aldasoro Ranch Sub.

Presented by:

Time needed:

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

ATTACHMENTS:

Description

Hilbert Deed Restriction

Upload Date

12/31/2020

**AMENDED AND RESTATED
DEED RESTRICTION AND COVENANT
Lot 139, Aldasoro Ranch Subdivision**

THIS AMENDED AND RESTATED DEED RESTRICTION AND COVENANT ("Covenant") is entered into as of this 21 day of December, 2020 ("Effective Date"), by and among the following persons and parties:

1. The County of San Miguel, State of Colorado acting by and through its Board of County Commissioners, whose address is P.O. Box 1170, 333 W. Colorado Ave., 3rd Floor, Telluride, Colorado 81435 ("**County**");
2. The San Miguel County Housing Authority, whose address is P.O. Box 1170, 333 W. Colorado Ave., 3rd Floor, Telluride, Colorado 81435 ("**County Housing Authority**");
3. **Steve Hilbert and Kristine Hilbert**, (individually or collectively, "**Subject Property Owner**"), whose current mailing address is as follows: 567 Mountain Village Blvd, Telluride, Colorado #102A, Mountain Village, CO 81435

The County, County Housing Authority, and Subject Property Owner are sometimes individually referred to as a "**Party**" and sometimes collectively as the "**Parties**." The Parties hereby agree as follows:

RECITALS

The Parties acknowledge and agree to the following Recitals and further agree that each Recital: (a) forms a portion of the basis of this Covenant; and (b) is incorporated in this Covenant.

A. This Covenant is intended to help preserve a sufficient supply of Deed Restricted Property to meet the needs of locally employed residents of the Telluride R-1 School District while allowing customary free-market (unrestricted) practices to influence the sale and rental of Deed Restricted Property as much as possible.

B. The Subject Property Owner is the current, fee simple owner of **Lot 139**, Aldasoro Ranch Subdivision pursuant to the Subdivision Governing Documents, San Miguel County, Colorado ("**Subject Property**").

C. The County granted its approval for the Subdivision within which the Subject Property is included, which approvals include the County PUD/Subdivision Approvals and other relevant approvals ("**County Approvals**"). The Subject Property is located within the Subdivision.

D. Through the implementation of the County Approvals, certain covenants were placed on the Subject Property, including the Original Plat Note. The Original Plat Note was intended to govern certain aspects of the ownership, use and occupancy of the Subject Property by requiring all such ownership, use and occupancy to comply with certain provisions of the San Miguel County Land Use Code, specifically the guidelines, rules and regulations contained in LUC Section 5-1305.

E. In addition to LUC Section 5-1305, which is referenced in the Original Plat Note, LUC Section 5-1306 also applies to the Subject Property and governs certain specific aspects of the ownership, use and occupancy of the Subject Property.

F. For purposes of simplicity and use in this Covenant, the Parties agree that for definitional purposes, the Original Plat Note, LUC Section 5-1305, LUC Section 5-1306 and any other related



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documents, instruments or agreements restricting ownership, use and occupancy of the Subject Property, if any, are collectively referred to herein as the **“Original Deed Restriction.”**

G. The Original Deed Restriction continues to encumber the Subject Property and constitutes a covenant and restriction burdening the Subject Property and running with title to Subject Property.

H. The Parties intend that the purpose of this Covenant is to: (a) terminate and extinguish the Original Deed Restriction, except with respect to any Option to Purchase and/or any Co-Borrower Agreement; and (b) substitute the terms, conditions and restrictions contained in this Covenant for the terms, conditions and restrictions contained in the Original Deed Restriction, except with respect to any Option to Purchase and/or any Co-Borrower Agreement, which shall continue to be effective pursuant to its original terms and conditions. This Covenant, upon its execution by the Parties and recording in the public records of the San Miguel County Clerk and Recorder, shall hereafter govern certain of the terms and conditions of ownership, use and occupancy of the Subject Property by the Subject Property Owner, and the Subject Property Owner's heirs, successors and assigns as addressed herein.

I. For the purposes set forth above and herein, the Subject Property Owner, the Subject Property Owner's heirs, successors and assigns, and all persons acquiring an interest in the Subject Property, whether or not it shall be so expressed in any deed or other instrument of conveyance, shall be deemed to covenant and agree during the period of their ownership interest in the Subject Property, to hold their interest(s) subject to the covenants and restrictions contained in this Covenant, which shall be deemed to run with title to the Subject Property for the specified duration of the Covenant.

J. The Parties recognize and agree that the Subject Property may be included in one or more common interest ownership communities, each of which is governed by a Homeowners' or Condominium Owners Association, and that the Homeowners' or Condominium Owners Association has promulgated certain governing documents, including, without limitation, the Subdivision Governing Documents, that may further affect the use of the Subject Property. Nothing herein is intended to alter or diminish the respective duties and obligations of the Subject Property Owner to comply with any terms and conditions of such Subdivision Governing Documents that may be more restrictive than the terms and conditions of this Covenant.

K. Capitalized terms shall have the meanings set forth in Section 11 of this Covenant if not otherwise defined herein.

COVENANT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated in this Covenant as substantive provisions, the mutual covenants, restrictions and equitable servitudes stated herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby represent, covenant and agree as follows:

Section 1. Deed Restriction.

1.1. Termination of Original Deed Restriction.

1.1.1. Except as provided for below, all components of the Original Deed Restriction: (a) are each hereby forever terminated, extinguished and vacated and will no longer be considered a covenant or restriction burdening the Subject Property or binding the Subject Property Owner; (b) shall no longer have any force, effect, or legal significance with respect to the ownership, use and occupancy of the Subject Property; and (c) is replaced by this Covenant.

1.1.2. The foregoing provisions of Section 1.1.1 notwithstanding, the Parties intend that any Option to Purchase or Co-Borrower Agreement recorded before the Effective Date shall not be altered, amended, modified, terminated or otherwise extinguished by the execution of this Covenant and that the Option to Purchase will continue to apply to and affect the Subject Property in accordance with the terms and conditions stated in the Option to Purchase.

1.1.3. The foregoing provisions of Section 1.1.1 notwithstanding, the Parties further intend that: (a) no substantive rights of a Lender, if any existed under the Original Deed Restriction, are intended to be altered, amended, modified, terminated or otherwise extinguished by the execution of this Covenant; (b) no consent by the Lender is required by the County or is being obtained in connection with the execution of this Covenant; and (c) should a Lender at any time during the Term determine that Lender's consent was required for this Covenant and the failure to obtain such Lender consent was determined to be an event of default under the documents evidencing the Secured Obligation, the Parties intend that this Covenant shall be terminated and extinguished from the Subject Property and that the Original Deed Restriction shall automatically apply to and become a covenant against the Subject Property until such time as Lender executes and delivers its consent to this Covenant. The Parties agree to cooperate and assist each other in executing any document necessary to evidence the reversion of the Covenant in the event of an objection by Lender.

1.2. Establishment of the Covenant.

1.2.1. As of the Effective Date, the terms and conditions of this Covenant shall completely and conclusively govern the ownership, use and occupancy of the Subject Property relative to the subject matter herein.

1.2.2. No subsequent changes that may be made to the Original Plat Note, or to LUC Sections 5-1305 or 5-1306 will have any affect or impact to this Covenant, including the ownership, use and occupancy of the Subject Property.

1.2.3. The Subject Property Owner shall not permit any ownership, use or occupancy of the Subject Property except in compliance with this Covenant.

1.2.4. The terms and conditions of this Covenant reflect the complete and entire understanding of the Parties with respect to the matters addressed herein and no other documents, laws, regulations, guidelines and the like shall be applied against Subject Property Owner in connection with its use of the Subject Property that purport to modify or amend the terms and conditions of this Covenant.

1.3. Term. The "**Term**" of this Covenant shall commence on the Effective Date and shall continue until May 18, 2042 ("**Expiration Date**"). At the option of the County, the duration of this Covenant may be extended after the Expiration Date for an additional period of fifty (50) years after public hearing and comment on the proposed extension. Any other amendment must be agreed to in writing by all Parties as provided for in this Covenant.

1.4. Administration and Enforcement. This Covenant shall be administered by the County or its designee ("**Administrator**"). This Covenant shall be enforceable by the County by any appropriate legal or equitable action, including but not limited to specific performance, injunction, abatement or eviction of non-complying Subject Property Owners or Occupants, or such other remedies and penalties as may be specified in this Covenant.

1.5. Termination. This Covenant shall not terminate except upon the occurrence of any one of the following events, at which time this Covenant shall be deemed to have automatically expired and either Party may, but need not, record a termination statement evidencing the termination:

1.5.1. Expiration. Expiration of the Term of this Covenant as set forth in Section 1.3.

1.5.2. Foreclosure. If an Option to Purchase has been executed and recorded, this Covenant may terminate in the manner provided for in the Option to Purchase.

1.5.3. By the County. The County expressly reserves the right to terminate this Covenant, including but not limited to the right to vacate and extinguish the effect of the terms, conditions, covenants and restrictions as it relates to the Subject Property by recording a "Termination of Amended and Restated Deed Restriction Covenant" in the Official Records executed by all of the then Subject Property Owners of the Subject Property and by the County.

1.6. Limitation on Amendments to Covenant.

1.6.1. This Covenant shall not be amended or modified without the prior, written consent of the Subject Property Owner and the County, in their respective, sole and exclusive discretion. Any proposed modification to this Covenant shall be first referred to all applicable Association's governing the Subject Property and the Association(s) shall be given a reasonable opportunity to review and comment on the proposed amendment prior to its execution.

1.6.2. Nothing herein shall preclude the County from amending LUC Sections 5-1305 and 5-1306 from time to time, provided that no such amendments to LUC Sections 5-1305 and 5-1306 shall apply to or otherwise affect the use, ownership or occupancy of the Subject Property unless this Covenant is amended in writing to incorporate such amendments as agreed to by the Subject Property Owner and the County.

1.7. Subject to Market Forces. Except as specifically stated in this Covenant, resale of the Subject Property is subject to normal market forces. Nothing herein shall be construed to constitute a representation or guarantee by the County that on resale the Subject Property Owner shall obtain any profit, or return on investment. The Subject Property Owner hereby recognizes, acknowledges and understands that neither the County nor the Administrator is required or obligated in any manner to aid the Subject Property Owner in receiving any particular resale price. The Subject Property Owner further recognizes, acknowledges and understands that depending on market conditions at the time of resale, the Subject Property Owner may incur a loss upon resale of the Subject Property.

1.8. Price Appreciation Caps. The County will not enter into any agreement with the Subject Property Owner that imposes a Price Appreciation Cap on the Subject Property, unless the applicable Association(s) expressly agrees to such Price Appreciation Cap in writing. This provision does not preclude San Miguel County, as an owner, from negotiating a profit sharing requirement or any other mechanism to recoup its expenditure of funds during the resale of the Affordable Housing unit.

Section 2. Purchasing the Subject Property.

2.1. Limitation on Purchase. Purchase of the Subject Property is limited to Qualified Purchasers and their Spouses. Although a Spouse of a Qualified Purchaser may take title to the Subject Property, a Spouse of a Qualified Purchaser is not a Qualified Purchaser unless he or she becomes an Ownership Applicant and independently receives approval as a Qualified Purchaser. The Administrator shall approve an Ownership Applicant as a Qualified Purchaser if the Ownership Applicant satisfies: (1) the Current Local Employee Standard; (2) the Retired or Disabled Local Employee Standard; or (3) the

Alternative Standard. The Ownership Applicant must submit documentation sufficient for the Administrator to verify that he or she meets the applicable standard.

2.1.1. Current Local Employee Standard. The Ownership Applicant: (a) has maintained his or her Primary Residence within the Four County Region for at least eight of the twelve months immediately preceding the date that the Administrator receives the Ownership Applicant's Purchase Application; (b) has earned Qualifying Income for at least 1032 hours of the twelve months immediately preceding the date that the Administrator receives his or her Purchase Application, and is currently earning Qualifying Income; and (c) for the particular eight to twelve months that establish the Ownership Applicant's residency under Section 2.1.1(a) above, the Ownership Applicant's Household Non-Qualifying Income calculated during that period does not exceed the Ownership Applicant's Household Qualifying Income.

2.1.2. Retired or Disabled Local Employee Standard. The Ownership Applicant is Retired or is Disabled, and for at least five of the eight years immediately preceding the date that the Administrator receives their Purchase Application, the Ownership Applicant: (1) has maintained his or her Primary Residence within the Four County Region for at least eight months of each applicable year; (2) was earning Qualifying Income for at least 1032 hours of each applicable year; and (3) for each applicable year, the Ownership Applicant's Household Non-Qualifying Income did not exceed the Ownership Applicant's Household Qualifying Income.

2.1.3. Alternative Standard. For each of the three years immediately preceding the date that the Administrator receives their Purchase Application: (1) the Ownership Applicant has maintained his or her Primary Residence within the Telluride R-1 School District for at least eight months of each year; (2) the sum of the Ownership Applicant's Household Qualifying Income and Household Non-Qualifying Income does not exceed 100% AMI for the applicable household size; and (3) the Ownership Applicant's Total Household Assets amount to no more than two times the Contract Price of the Subject Property.

2.2. Public Sector Employment. An Ownership Applicant seeking approval as a Qualified Purchaser pursuant to the Current Local Employee Standard, and hired by a Public Sector Employer may not be required to meet the employment-term requirement, subject to the approval of the County.

2.3. Co-Borrower. A person who does not meet the requirements for approval as a Qualified Purchaser, but who is necessary as a co-borrower in order for an Ownership Applicant to obtain financing, may be listed on title to the Subject Property provided that: (1) the Ownership Applicant provides the Administrator with a letter from the Lender stating the co-borrower's name and relationship to the Ownership Applicant, and that the co-borrower is necessary and must be listed on title in order for the Ownership Applicant to obtaining financing to purchase the Subject Property; and (2) the Ownership Applicant and the co-borrower enter into a Co-Borrower Agreement providing that, in the event the co-borrower takes full title to the Subject Property for any reason, the co-borrower shall notify the Administrator immediately, and shall either sell the Subject Property to a Qualified Purchaser or otherwise comply with the terms of this Covenant within one year of the date that the co-borrower takes full title.

Section 3. Renting the Subject Property.

3.1. Subject Property Owner Approval to Rent. The Subject Property Owner may not rent or lease the Subject Property, or any portion of the Subject Property, for any amount of time, without written approval from the Administrator, which approval shall be in accordance with the terms of this Section 3. If the Subject Property Owner intends to continue to occupy the Subject Property as his or her Primary Residence and will share occupancy with the Qualified Tenant(s) then the Administrator shall issue a

written approval to the Subject Property Owner to rent the Subject Property within five business days after the Subject Property Owner notifies the Administrator of the Subject Property Owner's intent to rent the Subject Property. If the Subject Property Owner does not intend to occupy the Subject Property as his or her Primary Residence then the Subject Property Owner must comply with any other requirements pursuant to this Covenant prior to receiving an approval to rent from the Administrator. An approval to rent operates only to allow the Subject Property Owner to offer the Subject Property for rent. All potential Occupants must submit a Rental Application and receive approval as a Qualified Tenant prior to occupying the Subject Property.

3.2. Rental Regulations. Any advertisement to rent the Subject Property shall specify that all potential renters must receive approval as a Qualified Tenant prior to occupying the Subject Property. The Subject Property Owner shall provide the Administrator with a fully executed copy of the lease or other occupancy agreement no later than ten business days after it is fully executed. The Subject Property Owner may not lease the Subject Property for a term of less than thirty days.

3.3. Limitation on Rental Occupants. Occupancy of the Subject Property pursuant to a lease, rental, or other occupancy agreement, is limited to Qualified Tenants. The Administrator shall approve a Rental Applicant as a Qualified Tenant if the Rental Applicant: (1) is earning Qualifying Income for an average of at least thirty hours per week, or (2) demonstrates an intent to earn Qualifying Income for an average of at least thirty hours per week. The Rental Applicant must submit documentation sufficient to verify compliance with the requirements for approval as a Qualified Tenant.

3.4. No County Liability. Nothing herein requires, or shall be construed to require the County or the Administrator, or any officer, director, employee, agent, designee, assignee, or successor thereof, to protect or indemnify the Subject Property Owner against any loss attributable to rental, including but not limited to non-payment of rent or damage to the Subject Property; nor shall the County or the Administrator, or any officer, director, employee, agent, designee, assignee, or successor thereof, be responsible for locating a Qualified Tenant to occupy the Subject Property in the event that the Subject Property Owner is unable to find a Qualified Tenant, or if a Qualified Tenant fails to occupy the Subject Property for the entire term of the lease.

Section 4. Selling the Subject Property.

4.1. Listing the Subject Property. In the event the Subject Property Owner desires to sell the Subject Property, the Subject Property Owner shall submit written notice to the Administrator of their intent to sell the Subject Property, which notice must be submitted at least five days prior to offering the Subject Property for sale. The Subject Property Owner may sell the Subject Property for sale by owner or list and sell the Subject Property through a real estate broker licensed in the state of Colorado.

4.2. County Transfer Fee. Upon closing, the seller shall pay a County Transfer Fee to the County in an amount equal to 1% of the sales price. If the fee imposed by this Section 4.2 is not paid when due, then the fee, all costs of collection of the fee, and interest on the unpaid balance at a rate of 8% per year or at the statutory interest rate in C.R.S. § 5-12-102, as amended, whichever is less, shall constitute a perpetual lien on the Subject Property. The County may foreclose this lien in the same manner as property tax liens of the County.

4.3. Waiver of County Transfer Fee. The seller is not required to pay the County Transfer Fee if the seller has already purchased another Deed Restricted Property or if the seller purchases another Deed Restricted Property no more than six months after closing on the sale of the Subject Property. If the seller has not already purchased another Deed Restricted Property, the seller shall make arrangements, to the satisfaction of the Administrator, to place the County Transfer Fee in escrow, and the fee shall remain in escrow until the first to occur of the following two events: (1) The seller acquires title to another Deed

Restricted Property within six months of closing on the sale of the Subject Property, and has not purchased any material interest in any other Residential Property in the Telluride R-1 School District in the interim, in which case the County Transfer Fee shall be refunded to the seller; or (2) The seller has not acquired title to another Deed Restricted Property within six months of closing on the sale of the Subject Property, in which case the County Transfer Fee shall be paid to the County.

Section 5. Continuing Ownership.

5.1. Limitation on Continuing Ownership. Ownership of the Subject Property is limited to Qualified Owners and their Spouses. The Administrator may, at any time: (1) require the Subject Property Owner to verify that he or she is a Qualified Owner, (2) require the Subject Property Owner to verify that any Occupant is a Qualified Occupant, (3) require the Subject Property Owner to verify that he or she has not defaulted in any Secured Obligation related to the Subject Property, and/or (4) require the Subject Property Owner to verify that he or she is otherwise fully compliant with this Covenant. The Subject Property Owner shall be given a reasonable time to respond to such requests.

5.2. Approval as a Qualified Owner. The Administrator shall approve a Subject Property Owner as a Qualified Owner if the Subject Property Owner satisfies: (1) the Continuing Residence Standard, and (2) the Continuing Employment Standard.

5.2.1. Continuing Residence Standard. The Subject Property Owner has occupied the Subject Property as his or her Primary Residence for at least eight of the twelve months immediately preceding the Compliance Date, as evidenced by documentation the Administrator may request, or, if acceptable to the Administrator, by an affidavit affirming the same.

5.2.2. Continuing Employment Standard. The Subject Property Owner supplies documentation that the Administrator acknowledges is sufficient to verify at least one of the following.

(a) The Subject Property Owner has been employed for and earning Qualifying Income on at least 1032 hours of the twelve months immediately preceding the Compliance Date.

(b) The Subject Property Owner is Retired.

(c) The Subject Property Owner is at least 55 years of age and has maintained Primary Residence in the Telluride R-1 School District for a total of at least twenty years and has owned property subject to the County, Town of Telluride or Town of Mountain Village deed restriction, in compliance with the terms of such applicable deed restriction, for the five years immediately preceding the Compliance Date.

(d) The Subject Property Owner is the Spouse of a Qualified Owner.

(e) The Subject Property Owner is the surviving Spouse of a deceased Subject Property Owner.

(f) The Subject Property Owner is the former Spouse of a Qualified Owner and acquired title to the Subject Property as: (i) the Spouse of a Qualified Purchaser; (ii) the Spouse of a Qualified Owner; or (iii) pursuant to a court approved property settlement or other court order.

(g) The Subject Property Owner previously was a Qualified Owner, but is currently unemployed; provided that for at least eight of the twelve months immediately preceding the Compliance Date, the Subject Property Owner met the requirements for approval as a Qualified Owner and/or received unemployment benefits from the Colorado Department of Labor.

5.3. Transfer of Title. The Subject Property Owner must receive approval from the Administrator prior to entering into or executing any transaction that conveys title to an interest in the Subject Property, including but not limited to transfer of title to an Estate Planning Entity.

5.4. Exemptions. If the Subject Property Owner supplies documentation sufficient to verify any of the following, he or she shall be exempt from the Continuing Residence Standard, the Continuing Employment Standard, or both in accordance with the terms and conditions set forth below.

5.4.1. Beneficiary Owner. The Subject Property Owner is a Beneficiary Owner; provided that he or she notifies the Administrator within thirty days of the date that he or she acquires title to the Subject Property and the Administrator acknowledges receipt of the notification and sufficiency of the provided documentation. A Beneficiary Owner shall be exempt from both the Continuing Residence and Continuing Employment Standards, and shall be deemed a Qualified Owner for all purposes in connection with this Covenant, for one year after acquiring title to the Subject Property. Furthermore, a Beneficiary Owner shall receive an automatic Approval to Rent for one year after acquiring title to the Subject Property. After one year, a Beneficiary Owner must receive approval as a Qualified Owner or otherwise comply with the terms of this Covenant.

5.4.2. Co-Borrower. The Subject Property Owner is on title to the Subject Property as a Co-Borrower pursuant to Section 2.3. A Co-Borrower who is a Subject Property Owner shall be exempt from the Continuing Residence and Continuing Employment Standards as long as he or she is compliant with the terms of the Co-Borrower Agreement.

5.4.3. Absence for Less than One Year. The Subject Property Owner will be absent from the Four County Region for a period of time greater than four months but not greater than one year; provided that the Subject Property Owner notifies the Administrator at least one month before starting the leave of absence, and the Administrator acknowledges receipt of the notification and sufficiency of the provided documentation. The Subject Property Owner shall be exempt from both the Continuing Residence and Continuing Employment Standards for one year after the date the Subject Property Owner begins the leave of absence. The Subject Property Owner must receive approval as a Qualified Owner no later than one year after returning from the leave of absence.

5.4.4. Military Service. The Subject Property Owner will be absent from the Four County Region due to United States military orders, provided that: (1) the Subject Property Owner notifies the Administrator within five days of receiving the United States military order, and the Administrator acknowledges receipt of the notification and sufficiency of the provided documentation; (2) the Subject Property Owner maintains the Subject Property as their legal residence for tax purposes; (3) if the Subject Property Owner is registered to vote in San Miguel County at the time they receive the military orders, the Subject Property Owner maintains voter registration in San Miguel County; and (4) the Subject Property Owner receives approval as a Qualified Owner within one year after he or she is no longer under such United States military orders. The Subject Property Owner shall be exempt from both the Continuing Residence and Continuing Employment Standards for as long as the Subject Property Owner is unable to meet the standards due to United States military orders.

5.4.5. Family Medical Need. The Subject Property Owner does not, or will not reside, at the Subject Property in order to care for an Immediate Family member who has a Serious Health Condition, as defined in the Family and Medical Leave Act, 29 U.S.C. § 2611, as amended, provided, however, that the Subject Property Owner notifies the Administrator at least one month after he or she no longer occupies the Subject Property as his or her Primary Residence, and the Administrator acknowledges receipt of the notification and sufficiency of the provided documentation, which documentation, except as prohibited by applicable law, shall include documentation from the Immediate

Family Member's Health Care Provider, as defined in the Family and Medical Leave Act, 29 U.S.C. § 2611, as amended, evidencing the need for the Subject Property Owner's absence. The Subject Property Owner must receive approval as a Qualified Owner within one year of when the Family Medical Need ceases.

5.4.6. Disability. The Subject Property Owner is Disabled, provided, however, that the Subject Property Owner notifies the Administrator within one month of when he or she no longer meets the Continuing Employment Standard and the Administrator acknowledges receipt of the notification and sufficiency of the provided documentation. The Subject Property Owner shall be exempt from the Continuing Employment Standard for as long as the Subject Property Owner is Disabled. The Subject Property Owner shall also be exempt from the Continuing Residence Standard for one year after the date he or she provides the Administrator with the notice required herein.

Section 6. Continuing Occupancy.

6.1. Limitation on Continuing Occupancy. Occupancy of the Subject Property is limited to Qualified Owners and their Spouses, and to Qualified Occupants. The Administrator may, at any time, require any Occupant to verify that he or she is a Qualified Occupant and/or is otherwise fully compliant with this Covenant.

6.2. Approval as a Qualified Occupant. The Administrator shall approve an Occupant as a Qualified Occupant if the Occupant does not own or control any interest or right in the Subject Property whatsoever, and provides documentation that the Administrator acknowledges is sufficient to verify that the Occupant: (1) is under twenty-one years of age; (2) is a member of the Qualified Owner's Immediate Family; (3) is Disabled; or (4) is earning Qualifying Income for an average of at least thirty hours per week. Examples of such documentation are set forth in the Procedures.

6.3. Effect of Failure to Receive Approval as Qualified Occupant. In the event an Occupant fails to receive approval as a Qualified Occupant, such failure shall constitute a violation of this Covenant by both the Occupant and the Subject Property Owner.

Section 7. Ownership of Other Residential Property Prohibited.

7.1. Prohibition. Subject Property Owners and Occupants, as well as their Spouses and Dependents, if any, may not own more than a 10% interest, direct or indirect, in other Residential Property in the Telluride R-1 School District. This prohibition includes partial or full corporate ownership established to provide a beneficial interest sufficient to permit the use and occupancy by the owner or part-owner of such property. Except as otherwise provided in this Section 7, and unless granted an exception pursuant to Section 8, failure to comply with this Section 7.1 is a violation of this Covenant and shall be addressed in accordance with the provisions of Section 9 of this Covenant.

7.2. Definitions. The following definitions shall apply to this Section 7.

7.2.1. Acquisition Date. The date on which the Subject Property Owner acquires title to the Subject Property.

7.2.2. Appraised Value. The value of the Subject Property arrived at by the process described in Section 7.4.

7.3. Grace Period for Qualified Purchasers. If an Ownership Applicant is approved as a Qualified Purchaser and he or she, or any other Subject Property Owner, or any Occupant, or the Spouse or Dependent of the Qualified Purchaser or of any other Subject Property Owner or Occupant owns more than a 10% interest, direct or indirect, in other Residential Property in the Telluride R-1 School District

on the Acquisition Date, the Subject Property Owner shall have a grace period of one year from the Acquisition Date to sell the other Residential Property or obtain an exception pursuant to Section 8.

7.4. Appraisal. If the Subject Property Owner has not sold the other Residential Property or obtained an exception within nine months after the Acquisition Date, the Subject Property Owner shall immediately retain a real property appraiser licensed in the State of Colorado to provide a value of the Subject Property at the Subject Property Owner's expense. The Subject Property Owner shall provide that value to the Administrator no later than ten months after the Acquisition Date and the Administrator shall inform the County of the Subject Property Owner's submitted value. If the County does not dispute the Subject Property Owner's submitted value, then that value shall be deemed the Appraised Value. If the County does dispute the accuracy of the Subject Property Owner's submitted value, the County shall retain its own licensed real property appraiser to appraise the value of the Subject Property at the County's expense. If the two values differ by \$10,000 or less, the average of the two values shall be deemed the Appraised Value. If the two values differ by more than \$10,000, the two appraisers shall select a third appraiser to appraise the Subject Property at the equal expense of the Subject Property Owner and the County, and the average of the three values shall be deemed the Appraised Value. If the Subject Property Owner fails to submit their value to the Administrator within the required time period, the Administrator shall so notify the County and the County shall retain its own licensed real property appraiser to appraise the value of the Subject Property at the Subject Property Owner's expense and that value shall be deemed the Appraised Value.

7.5. Sale of Subject Property at Expiration of Grace Period. If, at the expiration of the grace period provided for in Section 7.3, the Subject Property Owner has not sold the other Residential Property, obtained an exception, or otherwise complied with this Covenant, the Subject Property Owner shall immediately list the Subject Property for sale at a price not to exceed 90% of the Appraised Value and shall accept the first offer that complies with the Complying Offer Terms. If the accepted offer does not result in a sale of the Subject Property, then the Subject Property Owner shall accept the next offer that meets the Complying Offer Terms until either the Subject Property is sold or the Subject Property Owner obtains an exception or otherwise complies with this Covenant.

7.6. Further Price Reductions. If the Subject Property Owner has not sold the other Residential Property, obtained an exception, or otherwise complied with the terms of this Covenant within fifteen months after the Acquisition Date, the Subject Property Owner shall immediately lower the listing price of the Subject Property, which shall not exceed 90% of the Appraised Value, by an amount that is 3% of the Appraised Value, and shall continue to lower the listing price of the Subject Property by the same amount (3% of the Appraised Value) every three months thereafter until the Subject Property Owner has sold the other Residential Property, obtained an exception, or otherwise complied with the terms of this Covenant; except, however, the Subject Property Owner is not required to lower the listing price below 60% of the Appraised Value. If the Subject Property Owner fails to comply with the provisions of this Section 7, the County may, at its option, purchase the Subject Property for 75% of the Appraised Value.

Section 8. Exceptions.

8.1. Purchase, Rental, Ownership and Occupancy Requirements. Any: (1) Ownership Applicant, Rental Applicant, Subject Property Owner or Occupant who does not meet one or more of the requirements for approval as a Qualified Purchaser, Qualified Tenant, Qualified Owner, or Qualified Occupant, respectively, may apply to the Administrator for an exception to any such requirement. The Administrator shall refer a copy of the proposed exception to any Association governing the Subject Property and the Association shall be given a reasonable opportunity to review and comment on the proposed exception prior to final review and action.

8.2. Prohibition on Ownership of Other Residential Property. Any Subject Property Owner or Occupant, or any such Subject Property Owner or Occupants' Spouse or Dependent, who owns Residential Property in violation of Section 7.1, may apply to the Administrator for an exception.

8.3. Standards for Granting an Exception. The Administrator shall not grant an exception except upon a finding that the person requesting the exception has established compelling circumstances, which shall not include financial hardship, justifying the requested exception; and that granting the requested exception is consistent with the purpose and intent of this Covenant. When considering whether the requested exception is consistent with the purpose and intent of this Covenant as stated in Recital A, the Administrator shall consider the following guidance:

8.3.1. Stable Resident Population. This Covenant is intended to help preserve a stable resident population, strong sense of community, and socio-economic mix in the Telluride Region by ensuring a sufficient supply of housing that is affordable and responsive to the diverse needs of the various segments of the community employed in the Telluride R-1 School District.

8.3.2. Deed Restricted Property Market. This Covenant creates a housing market for employees in which sales prices directly relate to the income earned by those who live and work in the Telluride R-1 School District (Qualified Purchasers), while allowing customary free-market practices to influence the sale and rental of Deed Restricted Property as much as possible. Exceptions to this Covenant should be allowed only when the exception will not affect the correlation between local income levels and sales prices.

8.3.3. Consistency and Uniformity. Consistency and uniformity is of vital importance. It is only through consistent and uniform application of this Covenant that the Deed Restricted Property market will remain properly defined, thus allowing free-market forces to accurately regulate the sales prices of Deed Restricted Property.

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) the steps required by the Subject Property Owner and/or Occupant to cure the violation; (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 if the Subject Property Owner and/or Occupant does not request such a hearing.

9.2. Public Hearing. All materials that any party wants the Administrator to consider at a hearing pursuant to Section 9.1 must be submitted to the Administrator no later than ten working days before the date of the hearing. Unless prohibited by law, all submitted materials will be included in the public record for the hearing. At the conclusion of the hearing, the Administrator shall: (1) find the alleged violation conclusively determined, (2) find that the alleged violation lacks merit, or (3) continue the hearing to a specified date and time.

9.3. Definitions. The following definitions shall apply to this Section 9.

9.3.1. Appraised Value. The value of the Subject Property arrived at by the process described in Section 9.4.1.

9.3.2. Violation Date. The date on which a violation is conclusively determined.

9.4. Procedure for Subject Property Owner to Cure Violation. If a violation is conclusively determined with respect to the Subject Property Owner, the Subject Property Owner shall have one year from the Violation Date to cure the violation.

9.4.1. Appraisal. If the Subject Property Owner has not cured the violation within nine months after the Violation Date, the Subject Property Owner shall immediately retain a real property appraiser licensed in the State of Colorado to provide a value of the Subject Property at the Subject Property Owner's expense. The Subject Property Owner shall provide that value to the Administrator no later than ten months after the Violation Date and the Administrator shall inform the County of the Subject Property Owner's submitted value. If the County does not dispute the Subject Property Owner's submitted value, then that value shall be deemed the Appraised Value. If the County does dispute the accuracy of the Subject Property Owner's submitted value, the County shall retain its own licensed real property appraiser to appraise the value of the Subject Property at the County's expense. If the two values differ by \$10,000 or less, the average of the two values shall be deemed the Appraised Value. If the two values differ by more than \$10,000, the two appraisers shall select a third appraiser to appraise the Subject Property at the equal expense of the Subject Property Owner and the County, and the average of the three values shall be deemed the Appraised Value. If the Subject Property Owner fails to submit their value within the required time period, the Administrator shall so notify the County and the County shall retain its own licensed real property appraiser to appraise the value of the Subject Property at the Subject Property Owner's expense and that value shall be deemed the Appraised Value.

9.4.2. Sale of Subject Property to Cure Violation. If the Subject Property Owner has not cured the violation within one year after the Violation Date, then the Subject Property Owner shall immediately list the Subject Property for sale at a price not to exceed 90% of the Appraised Value and shall accept the first offer that complies with the Complying Offer Terms. If the accepted offer does not result in a sale of the Subject Property, then the Subject Property Owner shall accept the next offer that meets the Complying Offer Terms until either the Subject Property is sold or the Subject Property Owner otherwise cures the violation.

9.4.3. Further Price Reductions. If the Subject Property Owner has not cured the violation within fifteen months after the Violation Date, the Subject Property Owner shall immediately lower the listing price of the Subject Property, which shall not exceed 90% of the Appraised Value, by an amount that is 3% of the Appraised Value, and shall continue to lower the listing price of the Subject Property by the same amount (3% of the Appraised Value) every three months thereafter until the Subject Property is sold or the Subject Property Owner otherwise cures the violation; except, however, the Subject Property Owner is not required to lower the listing price below 60% of the Appraised Value. If the Subject Property Owner fails to comply with the provisions of this Section 9, the County may, at its option, purchase the Subject Property for 75% of the Appraised Value.

9.5. Procedure for Occupant to Cure Violation. If a violation is conclusively determined with respect to an Occupant, the Occupant shall have sixty days from the date that the Occupant received the notice required by Section 9.1 to cure the violation. If the Occupant has not cured the violation at the end of this sixty-day period, then the Occupant shall immediately vacate the Subject Property. An Occupant's violation of this Covenant also constitutes a violation by the Subject Property Owner.

9.6. Noncompliant Transfer Voidable. Title to the Subject Property, whether in whole or in part, shall not be sold or otherwise conveyed except in accordance with this Covenant. In the event the Subject Property is sold or otherwise conveyed in any manner that is not in accordance with this Covenant, such sale or conveyance shall be voidable at the County's option. If such sale or conveyance is declared void it shall confer no title whatsoever upon the purported transferee.

9.7. Additional Remedies. In the event of default by any Party, to any section of this Covenant, any other Party to this Covenant, following notice and opportunity to cure, may pursue all available remedies, including but not limited to an action for specific performance, injunctive relief and/or damages. The remedies provided for herein are cumulative in nature. Personal jurisdiction and venue for any civil action commenced by any Party to this Covenant, whether arising out of or relating to this Covenant, will be deemed to be proper only if such action is commenced in the District Court for San Miguel County, Colorado. This Covenant shall be governed by and construed in accordance with the laws of the State of Colorado. The prevailing Party in any action arising from this Covenant shall recover their costs, fees and expenses, including reasonable attorney fees and expert witness fees, from the other Party. No failure by any Party hereto to exercise any right that it may have pursuant to this Covenant shall be deemed a waiver of that right, or of the right to demand exact compliance with the terms of this Covenant, or of any other right expressly or implicitly granted herein.

Section 10. Documentation and Notices.

10.1. Documentation. The Administrator must be able to verify the truth and authenticity of any documentation submitted pursuant to this Covenant, and may refuse to accept any documentation that is not reasonably verifiable by an independent and reliable source. Furthermore, the submitted documentation must be reasonably sufficient for the Administrator to find that, as a whole, it establishes compliance with the applicable standard or requirement. Any person who submits documentation pursuant to this Covenant shall submit an affidavit along with the documentation, stating that all such documentation is true and accurate. If any documentation is determined to be inaccurate, the person who submitted such documentation is subject to disqualification from the application and/or approval process.

10.1.1. Privilege or Disclosure Otherwise Prohibited by Law. Any person who, in connection with the procedures contained in this Covenant, references customers and/or clients with whom he or she has a relationship that is subject to a legal privilege, such as the attorney-client, therapist-client, or physician-patient privilege shall not, in any event, be required to disclose the names or any other identifying information of such customers and/or clients. In this case, the person shall provide all of the required documentation but shall rename all clients as "Client 1," "Client 2," etc. Furthermore, no person shall be required to submit or disclose any documentation, the submission or disclosure of which is prohibited by law.

10.1.2. Confidentiality. The Administrator shall review and maintain all financial information, business client information, and any other information required by law to be kept confidential, that is submitted pursuant to the terms of this Covenant, in absolute and strict confidence. Under no circumstance shall any such confidential information be purposefully disclosed in any manner to any person other than the County, the Administrator the San Miguel County Attorney, the San Miguel County Administrator, or any other person or entity with the consent of the person who submits the information, provided that such disclosure is not otherwise prohibited by law.

10.2. Notices. Any notice in connection with this Covenant shall be in writing, addressed to the appropriate Party, and shall be delivered in person, by overnight delivery or courier service, or by the United States Postal Service certified mail, return receipt requested, and with adequate postage prepaid. Such notice shall be deemed delivered at the time of personal delivery, or, if mailed, on the date postmarked, but if mailed the time period for any required response shall run from the date of receipt by

the addressee, as evidenced by the return receipt. Rejection or other failure by the addressee to accept the notice, or the inability to deliver the notice because of a change of address of which no notice was given, shall be deemed receipt of the notice on the third day following the date postmarked. The addresses of the Parties to which notice is to be sent shall be those set forth below. A Party may change their address only by providing written notice of such change to all other Parties.

<u>If to Subject Property Owner:</u> See address listed above in introductory paragraph	<u>If to County:</u> Mailing Address: Office of the County Attorney P.O. Box 791 Telluride, CO 81435 Phone: 970-728-3879 Fax: 970-728-3718 Email: attorney@sanmiguelcounty.org
	<u>If to Administrator:</u> San Miguel Regional Housing Authority 820 Black Bear Road P.O. Box 840 Telluride, CO 81435 Phone: 970-728-3034 Fax: 970-728-5371 Email: smrha@telluridecolorado.net

10.3. County Assistance and Financial Counseling upon Default of Secured Obligation. Any Subject Property Owner who receives notification of a past due payment(s), a default in payment, or a default of any other obligation due or to be performed pursuant to a Secured Obligation, shall notify the Administrator, who shall in turn notify the County no later than two weeks after the Subject Property Owner received such notification. Subject to availability of funds, the County may, in its sole discretion, provide temporary financial assistance and/or financial counseling to the Subject Property Owner, which assistance shall be subject to terms and conditions the County deems necessary, including, but not limited to provisions for the Subject Property Owner to repay the County. A Subject Property Owner is encouraged to make the Administrator aware of these circumstances as early as possible to best allow the County to determine if any such assistance is feasible, it being recognized that the longer the default exists, the less likely it is that the County can provide assistance. Nothing herein shall obligate the County to provide such assistance.

Section 11. Definitions.

The Parties acknowledge and agree to the following definitions and further agree that each definition: (a) forms a portion of the basis of this Covenant; and (b) is incorporated in this Covenant. As used in this Covenant, the following definitions shall be given the meaning ascribed to the term as the same are stated below:

11.1. Administrator. The County or the County's designee.

11.2. AMI. The area median income for San Miguel County, Colorado based on the most recently published area median income limits established by the United States Department of Housing and Urban Development.

11.3. Application Fee. The fee, in an amount set by County resolution, paid to the Administrator to process any application submitted pursuant to this Covenant.

11.4. Assets. With respect to any person or entity, anything that has tangible or intangible value, including property of all kinds, both real and personal; includes among other things, patents and causes of

action that belong to any person, as well as any stock in a corporation and any interest in the estate of a decedent; also, the entire property of a person, association, corporation, or estate that is applicable or subject to the payment of debts. Assets shall include funds or property held in a living trust or any similar entity or interest, where the person has management rights or the ability to apply the assets to the payment of debts. Except, however, Assets shall not include pension plans, 401a plans, 401k plans, IRAs, or other similar retirement accounts, provided that the Ownership Applicant is not eligible to take a distribution therefrom without penalty.

11.5. Beneficiary Owner. A Subject Property Owner who is not a Qualified Owner, and who acquires title to the Subject Property as the result of the death of the deceased Subject Property Owner, whether through joint tenancy, a will, the intestacy provisions of the Colorado probate code or other applicable law, or the provisions of an Estate Planning Entity.

11.6. Co-Borrower Agreement. An agreement by which a person is permitted to be on title to the Subject Property without otherwise meeting the terms for approval as a Qualified Purchaser or Qualified Owner in order to assure that a Qualified Purchaser or Qualified Owner is able to secure a loan.

11.7. Compliance Date. The date on which the Administrator notifies the Subject Property Owner and/or Occupant(s) that he or she must verify compliance with the terms of this Covenant and receive approval as a Qualified Owner or Qualified Occupant.

11.8. Complying Offer Terms. An offer to acquire the Subject Property that is for cash (eg. does not require Subject Property Owner to carry back seller-financing) that is equal to or exceeds the current listing price of the Subject Property, and that proposes a closing of not later than 90 days from the offer date.

11.9. Contract Price. The price of the Subject Property as identified on a Colorado Real Estate Commission approved form for the purchase and sale of the Subject Property that is fully executed between the current Subject Property Owner and any given Ownership Applicant.

11.10. Contributing Occupant. An Occupant who is, or who will be, contributing funds towards the acquisition of the Subject Property or towards payments on a Secured Obligation encumbering the Subject Property.

11.11. County. The County of San Miguel, State of Colorado, acting by and through its Board of County Commissioners or as the San Miguel County Housing Authority.

11.12. County PUD/Subdivision Approvals. The approvals granted for the Aldasoro Ranch Subdivision by the County and reflected by the Subdivision Governing Documents as well as by certain resolutions concerning the Aldasoro Ranch Subdivision recorded in the Official Records.

11.13. County Transfer Fee. A fee in an amount equal to one percent of the Contract Price that the seller of the Subject Property shall pay to the Administrator upon closing of a sale of the Subject Property.

11.14. Deed Restricted Property. Any property in unincorporated San Miguel County that is subject either to the Original Deed Restriction, or to a real covenant, equitable servitude, or other agreement in favor of the County, and restricting the ownership, use and occupancy of such property to persons who satisfy certain requirements, terms, and/or qualifications.

11.15. Dependent. Any person who can be claimed as a Qualifying Child or Qualifying Relative on another's federal tax return.

11.16. Disabled. A person who receives Social Security Disability, Worker's Compensation for Permanent Total Disability, and/or disability payments through any other official state or federal disability program.

11.17. Domestic Partnership. A relationship between two individuals of the same or opposite sex in which: (1) each individual is at least eighteen years of age; (2) neither individual is legally married to another person or in a Domestic Partnership with another person; (3) the individuals are not related by blood closer than would bar marriage in the state of Colorado; (4) the individuals share a mutual obligation of support and responsibility for each other's welfare; and (5) the individuals are financially interdependent as documented by at least two of the following arrangements: (a) common ownership of real property or a common leasehold interest in real property; (b) common ownership of a motor vehicle; (c) a joint bank account or a joint credit account; (d) designation as a beneficiary for life insurance or retirement benefits, or under a will; (e) assignment of durable power of attorney; or (f) such other proof that the Administrator deems sufficient to establish financial interdependency.

11.18. Estate Planning Entity. A trust, family limited partnership or similar entity created and funded by a Qualified Owner and controlled by such Qualified Owner until that Qualified Owner's death or disability.

11.19. Four County Region. San Miguel County, Montrose County, Ouray County and Dolores County, all in the State of Colorado.

11.20. Homeowners' Association or Condominium Association ("Association"). An association of owners organized under § 38-33.3-301, C.R.S., as amended.

11.21. Household Non-Qualifying Income. The combined Non-Qualifying Income of all Ownership Applicants, their Spouses, and Contributing Occupants.

11.22. Household Qualifying Income. The combined Qualifying Income of all Ownership Applicants, their Spouses, and Contributing Occupants.

11.23. Immediate Family. A person's parents, Spouse, children, and siblings; and a person's Spouse's parents, children and siblings. The terms "parents," "children," and "siblings" includes step-relatives, adopted/adoptive relatives and foster relatives.

11.24. Lender. An individual or company that has loaned funds to the Subject Property Owner for the purpose of financing some portion of the Subject Property Owner's acquisition of the Subject Property, which loan is secured by a Secured Obligation duly recorded against the Subject Property.

11.25. Liabilities. With respect to any person or entity, the total amount owed on obligations that legally bind the person or entity to settle a debt.

11.26. LUC. The San Miguel County Land Use Code.

11.27. Net Assets. With respect to any person or entity, Assets minus Liabilities.

11.28. Non-Qualifying Income. All income that is not Qualifying Income. With respect to any person or entity, Non-Qualifying Income includes, but is not limited to, any money, and the cash value of any goods or services in lieu of money, received from any source whatsoever, including but not limited to remuneration for labor, products or services; money received from governmental assistance programs; tax refunds; prize winnings; gifts; pensions; investments; and money, or goods or services in lieu of money,

received from any other source. Except, however, Non-Qualifying Income shall not include any of the following: (a) income taxed by the federal government but not distributed to such person or entity, or funds distributed to cover the anticipated tax liability of the non-distributed income, but only to the extent that such funds do not exceed the tax liability of the non-distributed income; or (b) equity from the proceeds of a sale of the Ownership Applicant's previous Primary Residence that was sold within the twelve months immediately preceding the date that the Administrator receives the Ownership Applicant's Purchase Application or (c) a gift or any other funds up to 30% of the Contract Price of the Subject Property.

11.29. Occupant. Any person who occupies the Subject Property as his or her Primary Residence but who has no ownership interest in the Subject Property.

11.30. Official Records. The official records of the Clerk and Recorder of San Miguel County, Colorado.

11.31. Option to Purchase. A separately executed and recorded agreement providing the County with an option to purchase the Subject Property under certain specified circumstances. The Subject Property may or may not be subject to an Option to Purchase. As stated in Section 1.1, this Covenant does not affect the rights of any party to any Option to Purchase and does not affect the rights of any Lender.

11.32. Original Plat Note. That certain plat note included on the County PUD/Subdivision Approvals for the Subdivision, which plat note restates LUC § 5-1304 as it existed on the date the plat was recorded.

11.33. Ownership Applicant. Any person who desires to purchase the Subject Property and who submits a Purchase Application and pays the appropriate Application Fee.

11.34. Price Appreciation Cap. A percentage limit on the amount that the Subject Property can appreciate by each year, which is intended to artificially lower the property value in order to maintain its affordability for certain owners and occupants. For example, if a property is purchased for \$100,000 with a Price Appreciation Cap of 3% per year, after one year, the owner may sell it for \$103,000; after five years the owner may sell it for \$112,551; after ten years the owner may sell it for \$130,477, etc. Nothing herein is intended to establish a Price Appreciation Cap on the Subject Property.

11.35. Primary Residence. A person's principal or primary home or place of abode, meaning that home or place of abode in which a person's habitation is fixed and to which that person, whenever absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of such absence. In determining what is a person's principal or primary home or place of abode, the following circumstances relating to such person may be taken into account: business pursuits, employment, income sources, residence for income or other tax purposes, age, marital status, residence of Immediate Family, if any, leaseholds, situs of personal and real property, and motor vehicle registration.

11.36. Procedures. The uniform procedures adopted pursuant to Section 12.3.

11.37. Public Sector Employer. The state of Colorado and its agencies and entities, counties, cities, cities and counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, and drainage conservation companies or districts organized and existing under the laws of the state of Colorado.

11.38. Purchase Application. The form that an Ownership Applicant submits to the Administrator to request approval as a Qualified Purchaser, and which requires certain documentation and information

necessary to determine if the Ownership Applicant satisfies the requirements for approval as a Qualified Purchaser. The Ownership Applicant must verify that all information provided in the Purchase Application is true and accurate. If any of the information is determined inaccurate or non-verifiable, the Ownership Applicant may be subject to disqualification.

11.39. Qualified Occupant. Any person who is not the Subject Property Owner, and who occupies the Subject Property as his or her Primary Residence in compliance with this Covenant.

11.40. Qualified Owner. Any person or entity with an ownership interest in the Subject Property, who maintains such ownership in compliance with this Covenant as provided for in Section 5; or the County, the Town of Telluride, or the Town of Mountain Village.

11.41. Qualified Purchaser. An Ownership Applicant who has received approval pursuant to the terms of this Covenant to purchase the Subject Property; or the County, the Town of Telluride, or the Town of Mountain Village.

11.42. Qualified Tenant. A Rental Applicant who has received approval pursuant to the terms of this Covenant to occupy the Subject Property pursuant to a rental or lease agreement executed by the Rental Applicant and the Qualified Owner. A person who receives approval as a Qualified Tenant must meet the requirements for approval as a Qualified Occupant for as long as they occupy the Subject Property.

11.43. Qualifying Income. Income earned from employment that either requires one's physical presence in the Telluride R-1 School District or that necessitates one's physical presence in the Telluride R-1 School District in order to provide goods or services to residents or visitors in the Telluride R-1 School District.

11.44. Rental Applicant. Any person who desires to occupy the Subject Property pursuant to a lease or rental agreement to be executed by the Rental Applicant and a Qualified Owner, and who submits a Rental Application and pays the appropriate Application Fee.

11.45. Rental Application. The form that a Rental Applicant submits to the Administrator to request approval as a Qualified Tenant, which requires certain documentation and information necessary to determine if the Rental Applicant satisfies the requirements for approval as a Qualified Tenant. The Rental Applicant must verify that all information provided in the Rental Application is true and accurate. If any of the information is determined to be inaccurate or non-verifiable, the Rental Applicant may be subject to disqualification.

11.46. Residential Property. (1) An individual residential dwelling that is developed with open yards on all sides of the dwelling unit, including all manufactured housing (pursuant to C.R.S. 30-28-115(3)) and all mobile homes on permanent foundations, but not including recreational or other wheeled vehicles; (2) a residential dwelling unit in a structure containing two or more such units, the living spaces of which are individually owned, the balance of the property (both land and building) is owned either in common by the owners of the individual units or by an association consisting of such owners; (3) one of at least two individually owned, unconnected residential dwelling units located on property owned either in common by the owners of such units or by an association consisting of such owners; or (4) a legally created parcel of land shown with a separate and distinct number or letter on a subdivision plat recorded in the Official Records, or a parcel described by metes and bounds with access to at least one dedicated public right-of-way and held under separate ownership; and that is zoned for Residential Use.

11.47. Residential Use. Real property that is used or legally could be used for non-commercial dwelling purposes.

11.48. Retired. A person who is more than 59 years of age and is receiving pension benefits, retirement benefits, IRA disbursements, or Social Security retirement benefits.

11.49. Secured Obligation. Any payment or other material obligation due to be performed under a promissory note secured by a deed of trust, mortgage, or other security instrument, encumbering the Subject Property.

11.50. Spouse. One's husband or wife by lawful marriage, or a person with whom one is a member of a Domestic Partnership.

11.51. Subdivision. The subdivision of land reflected in the County PUD/Subdivision Approval, which was established pursuant to the Subdivision Governing Documents.

11.52. Subdivision Governing Documents. The Subdivision was created pursuant to that certain General Declaration and Final Plat(s), as the same may be amended or supplemented from time to time, as described on attached Exhibit "A".

11.53. Subject Property Owner. The person(s) or entity identified as such in this Covenant, inclusive of his/her/their heirs, successors, personal representatives, assigns, designees, lessees, licensees, grantees, transferees, or any other person or entity who has a present right to possess, use or convey a legally recognized and protected interest in the Subject Property.

11.54. Telluride Region. The area identified as such in the San Miguel County Master Plan.

11.55. Total Household Assets. The combined Net Assets of all Ownership Applicants and Contributing Occupants.

Section 12. General Provisions.

12.1. Recording of Covenant. This Covenant shall be recorded in the Official Records upon execution.

12.2. Covenant Running With the Land - Binding Effect. Each and every conveyance of the Subject Property, for all purposes, shall be deemed to include this Covenant and to fully incorporate all terms of this Covenant by this reference. This Covenant constitutes a real covenant and equitable servitude that runs with the Subject Property through the expiration of the Term and burdens the Subject Property for the benefit of the County, and shall be binding on the Subject Property Owner, and on the heirs, personal representatives, assigns, lessees and licensees, any transferee of the Subject Property Owner, and any other person or entity who becomes the Subject Property Owner of the Subject Property.

12.3. Procedures. The Parties recognize and agree that the County may from time to time adopt uniform procedures intended to further implement the provisions of this Covenant, including the administration of appeals to any decision rendered pursuant to this Covenant. The Procedures shall not materially differ from or alter any of the terms and conditions of this Covenant. Prior to adoption of the Procedures, the County shall make materials available for reasonable public review and comment and reasonable notice of the proposed action and right to review and comment shall be given the Subject Property Owner. The Procedures, when adopted, shall be made available at the County and Administrator offices.

12.4. Further Actions. The parties to any agreement contemplated under this Covenant agree to execute such further documents and take such further actions as may be reasonably required to carry out

the provisions and intent of this Covenant or any agreement or document relating hereto or entered into in connection herewith.

12.5. Gender and Number. Whenever the context so requires in this Covenant, the neuter gender shall include any or all genders and vice versa, and the use of the singular shall include the plural and vice versa.

12.6. Non-discrimination. No person shall be discriminated against on the basis of race, national origin, sex, color, creed or physical infirmity.

12.7. Personal Liability. The Subject Property Owner shall be personally liable for any violations of this Covenant.

12.8. Severability. Should a court of competent jurisdiction find and determine that a specific provision or provisions of this Covenant are legally void, invalid, or otherwise unenforceable, such specific provision or provisions shall be deemed to be severable from the remainder of this Covenant, which shall remain legally valid and in full force and effect.

12.9. Successors. Except as otherwise provided herein, the provisions and covenants contained in this Covenant shall inure to and be binding upon the heirs, successors and assigns of the Parties.

12.10. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Covenant shall be valid against any Party hereto, except on the basis of a written instrument executed by the Parties hereto. Nothing in this Covenant shall be deemed to waive or otherwise limit any defenses or immunities that may be available to the County or the Administrator under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101. et seq., or other applicable law.

12.11. Counterparts. This Covenant may be executed in multiple counterparts or by legible facsimile copy, each of which shall constitute an original, but all of which, taken together, shall constitute one and the same instrument. The facsimile transmission of a signed copy hereof or of any notice to be given to the other Party or his or her agent, shall be considered valid and constitute a signed original. A signed "hard copy" of the Covenant shall not be necessary, but may be executed by the Parties.

12.12. No Third Party Benefit. Except as herein provided, no person or entity, other than a Party to this Covenant, shall have any right of action under this Covenant. It is the express intent of the Parties hereto that any person or entity who is not a Party to this Covenant, but who receives services or benefits under this Covenant, shall be deemed an incidental beneficiary only.

12.13. Integration. This Covenant constitutes the entire integrated understanding of the Parties regarding the subject matter set forth herein and no prior or contemporaneous promise, representation, term, condition, or understanding shall be of any legal force or effect, unless embodied herein in writing, or in a written amendment mutually agreed to by the Parties.

12.14. Captions. Captions are for convenience only and are not to be construed as defining or limiting in any way the scope of intent of the provisions of such Sections.

IN WITNESS WHEREOF, the Parties have executed this Covenant as of the Effective Date.

The persons executing this Covenant on behalf of the respective Parties to this Covenant hereby warrant and affirm their authority to enter into this Covenant on behalf of the named Parties hereto and warrant and affirm their authority to bind the named Parties hereto to all terms, conditions, and obligations contained in this Covenant.

**SAN MIGUEL COUNTY, COLORADO:
BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF SAN MIGUEL,
STATE OF COLORADO**

By: _____
Hilary Cooper

Date: _____

ATTEST: _____
Chief Deputy Clerk

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

Acknowledged, subscribed and sworn to before me this ____ day of _____, 2020, by Hilary Cooper, as Chair of the Board of Commissioners of San Miguel County, Colorado, and by _____, as Chief Deputy Clerk to the Board of County Commissioners of San Miguel County, Colorado.

Witness my hand and official seal.

Notary Public

Date Commission Expires

ADMINISTRATOR:

SAN MIGUEL COUNTY HOUSING AUTHORITY

By: _____
Hilary Cooper

Date: _____

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

Acknowledged, subscribed and sworn to before me this ____ day of _____, 2020, by
Hilary Cooper, as Chair of the San Miguel County Housing Authority.

Witness my hand and official seal.

Notary Public

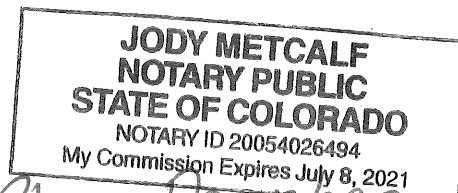
Date Commission Expires

SUBJECT PROPERTY OWNER

By: Steve Hilbert
Steve Hilbert

Date: 12/21/20

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



Acknowledged, subscribed and sworn to before me this 21 day of December, 2020, by **Steve Hilbert**.

Witness my hand and official seal.

[Signature]
Notary Public

07/08/2021
Date Commission Expires

SUBJECT PROPERTY OWNER

By: Kristine Hilbert
Kristine Hilbert

Date: 12/21/20

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

Acknowledged, subscribed and sworn to before me this 21 day of December, 2020, by **Kristine Hilbert**.

Witness my hand and official seal.

[Signature]
Notary Public

07/08/2021
Date Commission Expires

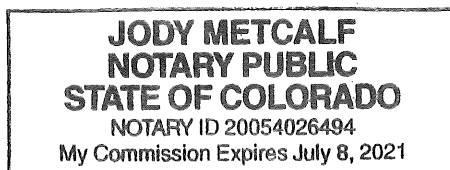


Exhibit "A"
(Aldasoro Ranch Subdivision Governing Documents)

General Declaration(s) for The Aldasoro Ranch Subdivision:

- (1) General Declaration for the Aldasoro Ranch, recorded on August 5, 1991 in Book 480 at page 817;
- (2) First Amendment to Declaration recorded on May 15, 1992 in Book 492 at page 152;
- (3) Second Amendment to Declaration recorded on August 6, 1996 in Book 565 at page 783;
- (4) Third Amendment to Declaration recorded November 13, 2003 at Reception No. 361929, as re-recorded February 9, 2005 at Reception No.372380;
- (5) Fourth Amendment to Declaration recorded February 22, 2005 at Reception no.372729;
- (6) First Supplement to Declaration recorded on April 9, 1992 in Book 490 at page 413;
- (7) Second Supplement to Declaration recorded on May 15, 1992 in Book 492 at page 149;
- (8) Third Supplement to Declaration recorded on January 29, 1993 in Book 505 at page 322;
- (9) Fourth Supplement to Declaration recorded on April 25, 1995 in Book 545 at page 70; and
- (10) Any and all further Amendments and/or Supplements to the Aldasoro Ranch Subdivision's General Declarations.

Final Plats for The Aldasoro Ranch Subdivision:

- (1) Final Plat for Aldasoro Ranch Filing No. 1, recorded on August 5, 1991 in Plat Book 1 at page 1153;
- (2) First Insubstantial Amendment to Aldasoro Ranch Filing No. 1 Final Plat, recorded on April 7, 1992 in Plat Book 1 at page 1261;
- (3) Final Plat for Aldasoro Ranch Filing No. 2, recorded on January 29, 1993 in Plat Book 1 at page 1406;
- (4) Final Plat for Aldasoro Ranch Filing No. 3, recorded on April 25, 1995 in Plat Book 1 at page 1830;
- (5) Second Insubstantial Amendment to Aldasoro Ranch Filing No. 1 Final Plat, recorded on April 25, 1995 in Plat Book 1 at page 1838; and
- (6) Substantial Amendment to Lots 46 and 52 Aldasoro Ranch Filing No. 1 Final Plat, recorded on June 24, 1996 in Plat Book 1 at page 2068, Reception No. 305965.
- (7) Any and all further Amendments and/or Supplements to the Aldasoro Ranch Subdivision's Plat(s).

Other Aldasoro Ranch Subdivision Governing Documents

- (1) R-1 Housing Deed Restriction (The Aldasoro Ranch), recorded on January 29, 1993 In Book 505 at page 426, Reception No. 282520.



TRUE AND CERTIFIED

[Handwritten signature]

State Documentary Fee
Date: December 21, 2020
\$15.50

Special Warranty Deed
(Pursuant to C.R.S. 38-30-113(1)(b))

Grantor(s), **MATTHEW W. TEMPLIN AND ALLISON G. TEMPLIN**, whose street address is **PO Box 850, Telluride, CO 81435**, City or Town of **Telluride**, County of **San Miguel** and State of **Colorado**, for the consideration of **(\$155,000.00) ***One Hundred Fifty Five Thousand and 00/100***** dollars, in hand paid, hereby sell(s) and convey(s) to **STEVE HILBERT AND KRISTINE HILBERT**, as Joint Tenants whose street address is **567 MT VILLAGE BLVD #106A, Mountain Village, CO 81435**, City or Town of **Mountain Village**, County of **San Miguel** and State of **Colorado**, the following real property in the County of **San Miguel** and State of **Colorado**, to wit:

LOT 139, THE ALDASORO RANCH FILING 2, ACCORDING TO THE PLAT RECORDED JANUARY 29, 1993 IN PLAT BOOK 1 AT PAGE 1406, COUNTY OF SAN MIGUEL, STATE OF COLORADO.

also known by street and number as: **(VACANT) 116 WEST SERAPIO DRIVE, TELLURIDE, CO 81435**

with all its appurtenances and warrant(s) the title to the same against all persons claiming under me(us), subject to Statutory Exceptions.

Signed this day of 12/21/2020

[Handwritten signature of Matthew W. Templin]
MATTHEW W. TEMPLIN

[Handwritten signature of Allison G. Templin]
ALLISON G. TEMPLIN

State of **Colorado**)
)ss.
County of **SAN MIGUEL**)

The foregoing instrument was acknowledged before me on this day of 12/21/2020 by **MATTHEW W. TEMPLIN AND ALLISON G. TEMPLIN**

Witness my hand and official seal

My Commission expires: 07/08/2021

[Handwritten signature of Jody Metcalf]
Notary Public

JODY METCALF
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20054026494
My Commission Expires July 8, 2021

When recorded return to: **STEVE HILBERT AND KRISTINE HILBERT**
567 MT VILLAGE BLVD #106A, Mountain Village, CO 81435





AGENDA ITEM - 4.d.

TITLE:

Approval of Chair's signature as the Board of Commissioners and as San Miguel County Housing Authority on Amended and Restated Deed Restriction and Covenant with Joseph J. Schmidtbauer, Lot 4B, Lawson Hill Subdivision/PUD.

Presented by:

Time needed:

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

ATTACHMENTS:

Description

Deed Restriction and Covenant

Upload Date

12/31/2020

ORIGINAL

**AMENDED AND RESTATED
DEED RESTRICTION AND COVENANT
Lot 4B, Lawson Hill Subdivision/PUD**

THIS AMENDED AND RESTATED DEED RESTRICTION AND COVENANT ("Covenant") is entered into as of this 8 day of DECEMBER, 2020 ("Effective Date"), by and among the following persons and parties:

1. The County of San Miguel, State of Colorado acting by and through its Board of County Commissioners, whose address is P.O. Box 1170, 333 W. Colorado Ave., 3rd Floor, Telluride, Colorado 81435 ("**County**");
2. The San Miguel County Housing Authority, whose address is P.O. Box 1170, 333 W. Colorado Ave., 3rd Floor, Telluride, Colorado 81435 ("**County Housing Authority**");
3. **Joseph J. Schmidtbauer**, (individually or collectively, "**Subject Property Owner**"), whose current mailing address is as follows: **P.O. Box 1802, Telluride, Colorado 81435**.

The County, County Housing Authority, and Subject Property Owner are sometimes individually referred to as a "**Party**" and sometimes collectively as the "**Parties**." The Parties hereby agree as follows:

RECITALS

The Parties acknowledge and agree to the following Recitals and further agree that each Recital: (a) forms a portion of the basis of this Covenant; and (b) is incorporated in this Covenant.

A. This Covenant is intended to help preserve a sufficient supply of Deed Restricted Property to meet the needs of locally employed residents of the Telluride R-1 School District while allowing customary free-market (unrestricted) practices to influence the sale and rental of Deed Restricted Property as much as possible.

B. The Subject Property Owner is the current, fee simple owner of **Lot 4B, Lawson Hill Subdivision/PUD** pursuant to the Subdivision Governing Documents, San Miguel County, Colorado ("**Subject Property**").

C. The County granted its approval for the Subdivision within which the Subject Property is included, which approvals include the County PUD/Subdivision Approvals and other relevant approvals ("**County Approvals**"). The Subject Property is located within the Subdivision.

D. Through the implementation of the County Approvals, certain covenants were placed on the Subject Property, including the Original Plat Note. The Original Plat Note was intended to govern certain aspects of the ownership, use and occupancy of the Subject Property by requiring all such ownership, use and occupancy to comply with certain provisions of the San Miguel County Land Use Code, specifically the guidelines, rules and regulations contained in LUC Section 5-1305.

E. In addition to LUC Section 5-1305, which is referenced in the Original Plat Note, LUC Section 5-1306 also applies to the Subject Property and governs certain specific aspects of the ownership, use and occupancy of the Subject Property.

F. For purposes of simplicity and use in this Covenant, the Parties agree that for definitional purposes, the Original Plat Note, LUC Section 5-1305, LUC Section 5-1306 and any other related

documents, instruments or agreements restricting ownership, use and occupancy of the Subject Property, if any, are collectively referred to herein as the “**Original Deed Restriction.**”

G. The Original Deed Restriction continues to encumber the Subject Property and constitutes a covenant and restriction burdening the Subject Property and running with title to Subject Property.

H. The Parties intend that the purpose of this Covenant is to: (a) terminate and extinguish the Original Deed Restriction, except with respect to any Option to Purchase and/or any Co-Borrower Agreement; and (b) substitute the terms, conditions and restrictions contained in this Covenant for the terms, conditions and restrictions contained in the Original Deed Restriction, except with respect to any Option to Purchase and/or any Co-Borrower Agreement, which shall continue to be effective pursuant to its original terms and conditions. This Covenant, upon its execution by the Parties and recording in the public records of the San Miguel County Clerk and Recorder, shall hereafter govern certain of the terms and conditions of ownership, use and occupancy of the Subject Property by the Subject Property Owner, and the subject Property Owner’s heirs, successors and assigns as addressed herein.

I. For the purposes set forth above and herein, the Subject Property Owner, the Subject Property Owner’s heirs, successors and assigns, and all persons acquiring an interest in the Subject Property, whether or not it shall be so expressed in any deed or other instrument of conveyance, shall be deemed to covenant and agree during the period of their ownership interest in the Subject Property, to hold their interest(s) subject to the covenants and restrictions contained in this Covenant, which shall be deemed to run with title to the Subject Property for the specified duration of the Covenant.

J. The Parties recognize and agree that the Subject Property may be included in one or more common interest ownership communities, each of which is governed by a Homeowners’ or Condominium Owners Association, and that the Homeowners’ or Condominium Owners Association has promulgated certain governing documents, including, without limitation, the Subdivision Governing Documents, that may further affect the use of the Subject Property. Nothing herein is intended to alter or diminish the respective duties and obligations of the Subject Property Owner to comply with any terms and conditions of such Subdivision Governing Documents that may be more restrictive than the terms and conditions of this Covenant.

K. Capitalized terms shall have the meanings set forth in Section 12 of this Covenant if not otherwise defined herein.

COVENANT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated in this Covenant as substantive provisions, the mutual covenants, restrictions and equitable servitudes stated herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby represent, covenant and agree as follows:

Section 1. Deed Restriction.

1.1. Termination of Original Deed Restriction.

1.1.1. Except as provided for below, all components of the Original Deed Restriction: (a) are each hereby forever terminated, extinguished and vacated and will no longer be considered a covenant or restriction burdening the Subject Property or binding the Subject Property Owner; (b) shall no longer have any force, effect, or legal significance with respect to the ownership, use and occupancy of the Subject Property; and (c) is replaced by this Covenant.

1.1.2. The foregoing provisions of Section 1.1.1 notwithstanding, the Parties intend that any Option to Purchase or Co-Borrower Agreement recorded before the Effective Date shall not be altered, amended, modified, terminated or otherwise extinguished by the execution of this Covenant and that the Option to Purchase will continue to apply to and affect the Subject Property in accordance with the terms and conditions stated in the Option to Purchase.

1.1.3. The foregoing provisions of Section 1.1.1 notwithstanding, the Parties further intend that: (a) no substantive rights of a Lender, if any existed under the Original Deed Restriction, are intended to be altered, amended, modified, terminated or otherwise extinguished by the execution of this Covenant; (b) no consent by the Lender is required by the County or is being obtained in connection with the execution of this Covenant; and (c) should a Lender at any time during the Term determine that Lender's consent was required for this Covenant and the failure to obtain such Lender consent was determined to be an event of default under the documents evidencing the Secured Obligation, the Parties intend that this Covenant shall be terminated and extinguished from the Subject Property and that the Original Deed Restriction shall automatically apply to and become a covenant against the Subject Property until such time as Lender executes and delivers its consent to this Covenant. The Parties agree to cooperate and assist each other in executing any document necessary to evidence the reversion of the Covenant in the event of an objection by Lender.

1.2. Establishment of the Covenant.

1.2.1. As of the Effective Date, the terms and conditions of this Covenant shall completely and conclusively govern the ownership, use and occupancy of the Subject Property relative to the subject matter herein.

1.2.2. No subsequent changes that may be made to the Original Plat Note, or to LUC Sections 5-1305 or 5-1306 will have any affect or impact to this Covenant, including the ownership, use and occupancy of the Subject Property.

1.2.3. The Subject Property Owner shall not permit any ownership, use or occupancy of the Subject Property except in compliance with this Covenant.

1.2.4. The terms and conditions of this Covenant reflect the complete and entire understanding of the Parties with respect to the matters addressed herein and no other documents, laws, regulations, guidelines and the like shall be applied against Subject Property Owner in connection with its use of the Subject Property that purport to modify or amend the terms and conditions of this Covenant.

1.3. Term. The "**Term**" of this Covenant shall commence on the Effective Date and shall continue until May 18, 2042 ("**Expiration Date**"). At the option of the County, the duration of this Covenant may be extended after the Expiration Date for an additional period of fifty (50) years after public hearing and comment on the proposed extension. Any other amendment must be agreed to in writing by all Parties as provided for in this Covenant.

1.4. Administration and Enforcement. This Covenant shall be administered by the County or its designee ("**Administrator**"). This Covenant shall be enforceable by the County by any appropriate legal or equitable action, including but not limited to specific performance, injunction, abatement or eviction of non-complying Subject Property Owners or Occupants, or such other remedies and penalties as may be specified in this Covenant.

1.5. Termination. This Covenant shall not terminate except upon the occurrence of any one of the following events, at which time this Covenant shall be deemed to have automatically expired and either Party may, but need not, record a termination statement evidencing the termination:

1.5.1. Expiration. Expiration of the Term of this Covenant as set forth in Section 1.3.

1.5.2. Foreclosure. If an Option to Purchase has been executed and recorded, this Covenant may terminate in the manner provided for in the Option to Purchase.

1.5.3. By the County. The County expressly reserves the right to terminate this Covenant, including but not limited to the right to vacate and extinguish the effect of the terms, conditions, covenants and restrictions as it relates to the Subject Property by recording a "Termination of Amended and Restated Deed Restriction Covenant" in the Official Records executed by all of the then Subject Property Owners of the Subject Property and by the County.

1.6. Limitation on Amendments to Covenant.

1.6.1. This Covenant shall not be amended or modified without the prior, written consent of the Subject Property Owner and the County, in their respective, sole and exclusive discretion. Any proposed modification to this Covenant shall be first referred to all applicable Association's governing the Subject Property and the Association(s) shall be given a reasonable opportunity to review and comment on the proposed amendment prior to its execution.

1.6.2. Nothing herein shall preclude the County from amending LUC Sections 5-1305 and 5-1306 from time to time, provided that no such amendments to LUC Sections 5-1305 and 5-1306 shall apply to or otherwise affect the use, ownership or occupancy of the Subject Property unless this Covenant is amended in writing to incorporate such amendments as agreed to by the Subject Property Owner and the County.

1.7. Subject to Market Forces. Except as specifically stated in this Covenant, resale of the Subject Property is subject to normal market forces. Nothing herein shall be construed to constitute a representation or guarantee by the County that on resale the Subject Property Owner shall obtain any profit, or return on investment. The Subject Property Owner hereby recognizes, acknowledges and understands that neither the County nor the Administrator is required or obligated in any manner to aid the Subject Property Owner in receiving any particular resale price. The Subject Property Owner further recognizes, acknowledges and understands that depending on market conditions at the time of resale, the Subject Property Owner may incur a loss upon resale of the Subject Property.

1.8. Price Appreciation Caps. The County will not enter into any agreement with the Subject Property Owner that imposes a Price Appreciation Cap on the Subject Property, unless the applicable Association(s) expressly agrees to such Price Appreciation Cap in writing. This provision does not preclude San Miguel County, as an owner, from negotiating a profit sharing requirement or any other mechanism to recoup its expenditure of funds during the resale of the Affordable Housing unit.

Section 2. Purchasing the Subject Property.

2.1. Limitation on Purchase. Purchase of the Subject Property is limited to Qualified Purchasers and their Spouses. Although a Spouse of a Qualified Purchaser may take title to the Subject Property, a Spouse of a Qualified Purchaser is not a Qualified Purchaser unless he or she becomes an Ownership Applicant and independently receives approval as a Qualified Purchaser. The Administrator shall approve an Ownership Applicant as a Qualified Purchaser if the Ownership Applicant satisfies: (1) the Current Local Employee Standard; (2) the Retired or Disabled Local Employee Standard; or (3) the Alternative Standard. The Ownership Applicant must submit documentation sufficient for the Administrator to verify that he or she meets the applicable standard.

2.1.1. Current Local Employee Standard. The Ownership Applicant: (a) has maintained his or her Primary Residence within the Four County Region for at least eight of the twelve months

immediately preceding the date that the Administrator receives the Ownership Applicant's Purchase Application; (b) has earned Qualifying Income for at least 1032 hours of the twelve months immediately preceding the date that the Administrator receives his or her Purchase Application, and is currently earning Qualifying Income; and (c) for the particular eight to twelve months that establish the Ownership Applicant's residency under Section 2.1.1(a) above, the Ownership Applicant's Household Non-Qualifying Income calculated during that period does not exceed the Ownership Applicant's Household Qualifying Income.

2.1.2. Retired or Disabled Local Employee Standard. The Ownership Applicant is Retired or is Disabled, and for at least five of the eight years immediately preceding the date that the Administrator receives their Purchase Application, the Ownership Applicant: (1) has maintained his or her Primary Residence within the Four County Region for at least eight months of each applicable year; (2) was earning Qualifying Income for at least 1032 hours of each applicable year; and (3) for each applicable year, the Ownership Applicant's Household Non-Qualifying Income did not exceed the Ownership Applicant's Household Qualifying Income.

2.1.3. Alternative Standard. For each of the three years immediately preceding the date that the Administrator receives their Purchase Application: (1) the Ownership Applicant has maintained his or her Primary Residence within the Telluride R-1 School District for at least eight months of each year; (2) the sum of the Ownership Applicant's Household Qualifying Income and Household Non-Qualifying Income does not exceed 100% AMI for the applicable household size; and (3) the Ownership Applicant's Total Household Assets amount to no more than two times the Contract Price of the Subject Property.

2.2. Public Sector Employment. An Ownership Applicant seeking approval as a Qualified Purchaser pursuant to the Current Local Employee Standard and hired by a Public Sector Employer may not be required to meet the employment-term requirement, subject to the approval of the County.

2.3. Co-Borrower. A person who does not meet the requirements for approval as a Qualified Purchaser, but who is necessary as a co-borrower in order for an Ownership Applicant to obtain financing, may be listed on title to the Subject Property provided that: (1) the Ownership Applicant provides the Administrator with a letter from the Lender stating the co-borrower's name and relationship to the Ownership Applicant, and that the co-borrower is necessary and must be listed on title in order for the Ownership Applicant to obtaining financing to purchase the Subject Property; and (2) the Ownership Applicant and the co-borrower enter into a Co-Borrower Agreement providing that, in the event the co-borrower takes full title to the Subject Property for any reason, the co-borrower shall notify the Administrator immediately, and shall either sell the Subject Property to a Qualified Purchaser or otherwise comply with the terms of this Covenant within one year of the date that the co-borrower takes full title.

Section 3. Renting the Subject Property.

3.1. Subject Property Owner Approval to Rent. The Subject Property Owner may not rent or lease the Subject Property, or any portion of the Subject Property, for any amount of time, without written approval from the Administrator, which approval shall be in accordance with the terms of this Section 3. If the Subject Property Owner intends to continue to occupy the Subject Property as his or her Primary Residence and will share occupancy with the Qualified Tenant(s) then the Administrator shall issue a written approval to the Subject Property Owner to rent the Subject Property within five business days after the Subject Property Owner notifies the Administrator of the Subject Property Owner's intent to rent the Subject Property. If the Subject Property Owner does not intend to occupy the Subject Property as his or her Primary Residence then the Subject Property Owner must comply with any other requirements pursuant to this Covenant prior to receiving an approval to rent from the Administrator. An approval to rent operates only to allow the Subject Property Owner to offer the Subject Property for rent. All

potential Occupants must submit a Rental Application and receive approval as a Qualified Tenant prior to occupying the Subject Property.

3.2. Rental Regulations. Any advertisement to rent the Subject Property shall specify that all potential renters must receive approval as a Qualified Tenant prior to occupying the Subject Property. The Subject Property Owner shall provide the Administrator with a fully executed copy of the lease or other occupancy agreement no later than ten business days after it is fully executed. The Subject Property Owner may not lease the Subject Property for a term of less than thirty days.

3.3. Limitation on Rental Occupants. Occupancy of the Subject Property pursuant to a lease, rental, or other occupancy agreement, is limited to Qualified Tenants. The Administrator shall approve a Rental Applicant as a Qualified Tenant if the Rental Applicant: (1) is earning Qualifying Income for an average of at least thirty hours per week, or (2) demonstrates an intent to earn Qualifying Income for an average of at least thirty hours per week. The Rental Applicant must submit documentation sufficient to verify compliance with the requirements for approval as a Qualified Tenant.

3.4. No County Liability. Nothing herein requires, or shall be construed to require the County or the Administrator, or any officer, director, employee, agent, designee, assignee, or successor thereof, to protect or indemnify the Subject Property Owner against any loss attributable to rental, including but not limited to non-payment of rent or damage to the Subject Property; nor shall the County or the Administrator, or any officer, director, employee, agent, designee, assignee, or successor thereof, be responsible for locating a Qualified Tenant to occupy the Subject Property in the event that the Subject Property Owner is unable to find a Qualified Tenant, or if a Qualified Tenant fails to occupy the Subject Property for the entire term of the lease.

Section 4. Selling the Subject Property.

4.1. Listing the Subject Property. In the event the Subject Property Owner desires to sell the Subject Property, the Subject Property Owner shall submit written notice to the Administrator of their intent to sell the Subject Property, which notice must be submitted at least five days prior to offering the Subject Property for sale. The Subject Property Owner may sell the Subject Property for sale by owner or list and sell the Subject Property through a real estate broker licensed in the state of Colorado.

4.2. County Transfer Fee. Upon closing, the seller shall pay a County Transfer Fee to the County in an amount equal to 1% of the sales price. If the fee imposed by this Section 4.2 is not paid when due, then the fee, all costs of collection of the fee, and interest on the unpaid balance at a rate of 8% per year or at the statutory interest rate in C.R.S. § 5-12-102, as amended, whichever is less, shall constitute a perpetual lien on the Subject Property. The County may foreclose this lien in the same manner as property tax liens of the County.

4.3. Waiver of County Transfer Fee. The seller is not required to pay the County Transfer Fee if the seller has already purchased another Deed Restricted Property or if the seller purchases another Deed Restricted Property no more than six months after closing on the sale of the Subject Property. If the seller has not already purchased another Deed Restricted Property, the seller shall make arrangements, to the satisfaction of the Administrator, to place the County Transfer Fee in escrow, and the fee shall remain in escrow until the first to occur of the following two events: (1) The seller acquires title to another Deed Restricted Property within six months of closing on the sale of the Subject Property, and has not purchased any material interest in any other Residential Property in the Telluride R-1 School District in the interim, in which case the County Transfer Fee shall be refunded to the seller; or (2) The seller has not acquired title to another Deed Restricted Property within six months of closing on the sale of the Subject Property, in which case the County Transfer Fee shall be paid to the County.

Section 5. Continuing Ownership.

5.1. Limitation on Continuing Ownership. Ownership of the Subject Property is limited to Qualified Owners and their Spouses. The Administrator may, at any time: (1) require the Subject Property Owner to verify that he or she is a Qualified Owner, (2) require the Subject Property Owner to verify that any Occupant is a Qualified Occupant, (3) require the Subject Property Owner to verify that he or she has not defaulted in any Secured Obligation related to the Subject Property, and/or (4) require the Subject Property Owner to verify that he or she is otherwise fully compliant with this Covenant. The Subject Property Owner shall be given a reasonable time to respond to such requests.

5.2. Approval as a Qualified Owner. The Administrator shall approve a Subject Property Owner as a Qualified Owner if the Subject Property Owner satisfies: (1) the Continuing Residence Standard, and (2) the Continuing Employment Standard.

5.2.1. Continuing Residence Standard. The Subject Property Owner has occupied the Subject Property as his or her Primary Residence for at least eight of the twelve months immediately preceding the Compliance Date, as evidenced by documentation the Administrator may request, or, if acceptable to the Administrator, by an affidavit affirming the same.

5.2.2. Continuing Employment Standard. The Subject Property Owner supplies documentation that the Administrator acknowledges is sufficient to verify at least one of the following.

(a) The Subject Property Owner has been employed for and earning Qualifying Income on at least 1032 hours of the twelve months immediately preceding the Compliance Date.

(b) The Subject Property Owner is Retired.

(c) The Subject Property Owner is at least 55 years of age and has maintained Primary Residence in the Telluride R-1 School District for a total of at least twenty years and has owned property subject to the County, Town of Telluride or Town of Mountain Village deed restriction, in compliance with the terms of such applicable deed restriction, for the five years immediately preceding the Compliance Date.

(d) The Subject Property Owner is the Spouse of a Qualified Owner.

(e) The Subject Property Owner is the surviving Spouse of a deceased Subject Property Owner.

(f) The Subject Property Owner is the former Spouse of a Qualified Owner and acquired title to the Subject Property as: (i) the Spouse of a Qualified Purchaser; (ii) the Spouse of a Qualified Owner; or (iii) pursuant to a court approved property settlement or other court order.

(g) The Subject Property Owner previously was a Qualified Owner, but is currently unemployed; provided that for at least eight of the twelve months immediately preceding the Compliance Date, the Subject Property Owner met the requirements for approval as a Qualified Owner and/or received unemployment benefits from the Colorado Department of Labor.

5.3. Transfer of Title. The Subject Property Owner must receive approval from the Administrator prior to entering into or executing any transaction that conveys title to an interest in the Subject Property, including but not limited to transfer of title to an Estate Planning Entity.

5.4. Exemptions. If the Subject Property Owner supplies documentation sufficient to verify any of the following, he or she shall be exempt from the Continuing Residence Standard, the Continuing Employment Standard, or both in accordance with the terms and conditions set forth below.

5.4.1. Beneficiary Owner. The Subject Property Owner is a Beneficiary Owner; provided that he or she notifies the Administrator within thirty days of the date that he or she acquires title to the Subject Property and the Administrator acknowledges receipt of the notification and sufficiency of the provided documentation. A Beneficiary Owner shall be exempt from both the Continuing Residence and Continuing Employment Standards and shall be deemed a Qualified Owner for all purposes in connection with this Covenant, for one year after acquiring title to the Subject Property. Furthermore, a Beneficiary Owner shall receive an automatic Approval to Rent for one year after acquiring title to the Subject Property. After one year, a Beneficiary Owner must receive approval as a Qualified Owner or otherwise comply with the terms of this Covenant.

5.4.2. Co-Borrower. The Subject Property Owner is on title to the Subject Property as a Co-Borrower pursuant to Section 2.3. A Co-Borrower who is a Subject Property Owner shall be exempt from the Continuing Residence and Continuing Employment Standards as long as he or she is compliant with the terms of the Co-Borrower Agreement.

5.4.3. Absence for Less than One Year. The Subject Property Owner will be absent from the Four County Region for a period of time greater than four months but not greater than one year; provided that the Subject Property Owner notifies the Administrator at least one month before starting the leave of absence, and the Administrator acknowledges receipt of the notification and sufficiency of the provided documentation. The Subject Property Owner shall be exempt from both the Continuing Residence and Continuing Employment Standards for one year after the date the Subject Property Owner begins the leave of absence. The Subject Property Owner must receive approval as a Qualified Owner no later than one year after returning from the leave of absence.

5.4.4. Military Service. The Subject Property Owner will be absent from the Four County Region due to United States military orders, provided that: (1) the Subject Property Owner notifies the Administrator within five days of receiving the United States military order, and the Administrator acknowledges receipt of the notification and sufficiency of the provided documentation; (2) the Subject Property Owner maintains the Subject Property as their legal residence for tax purposes; (3) if the Subject Property Owner is registered to vote in San Miguel County at the time they receive the military orders, the Subject Property Owner maintains voter registration in San Miguel County; and (4) the Subject Property Owner receives approval as a Qualified Owner within one year after he or she is no longer under such United States military orders. The Subject Property Owner shall be exempt from both the Continuing Residence and Continuing Employment Standards for as long as the Subject Property Owner is unable to meet the standards due to United States military orders.

5.4.5. Family Medical Need. The Subject Property Owner does not, or will not reside, at the Subject Property in order to care for an Immediate Family member who has a Serious Health Condition, as defined in the Family and Medical Leave Act, 29 U.S.C. § 2611, as amended, provided, however, that the Subject Property Owner notifies the Administrator at least one month after he or she no longer occupies the Subject Property as his or her Primary Residence, and the Administrator acknowledges receipt of the notification and sufficiency of the provided documentation, which documentation, except as prohibited by applicable law, shall include documentation from the Immediate Family Member's Health Care Provider, as defined in the Family and Medical Leave Act, 29 U.S.C. § 2611, as amended, evidencing the need for the Subject Property Owner's absence. The Subject Property Owner must receive approval as a Qualified Owner within one year of when the Family Medical Need ceases.

5.4.6. Disability. The Subject Property Owner is Disabled, provided, however, that the Subject Property Owner notifies the Administrator within one month of when he or she no longer meets

the Continuing Employment Standard and the Administrator acknowledges receipt of the notification and sufficiency of the provided documentation. The Subject Property Owner shall be exempt from the Continuing Employment Standard for as long as the Subject Property Owner is Disabled. The Subject Property Owner shall also be exempt from the Continuing Residence Standard for one year after the date he or she provides the Administrator with the notice required herein.

Section 6. Continuing Occupancy.

6.1. Limitation on Continuing Occupancy. Occupancy of the Subject Property is limited to Qualified Owners and their Spouses, and to Qualified Occupants. The Administrator may, at any time, require any Occupant to verify that he or she is a Qualified Occupant and/or is otherwise fully compliant with this Covenant.

6.2. Approval as a Qualified Occupant. The Administrator shall approve an Occupant as a Qualified Occupant if the Occupant does not own or control any interest or right in the Subject Property whatsoever and provides documentation that the Administrator acknowledges is sufficient to verify that the Occupant: (1) is under twenty-one years of age; (2) is a member of the Qualified Owner's Immediate Family; (3) is Disabled; or (4) is earning Qualifying Income for an average of at least thirty hours per week. Examples of such documentation are set forth in the Procedures.

6.3. Effect of Failure to Receive Approval as Qualified Occupant. In the event an Occupant fails to receive approval as a Qualified Occupant, such failure shall constitute a violation of this Covenant by both the Occupant and the Subject Property Owner.

Section 7. Ownership of Other Residential Property Prohibited.

7.1. Prohibition. Subject Property Owners and Occupants, as well as their Spouses and Dependents, if any, may not own more than a 10% interest, direct or indirect, in other Residential Property in the Telluride R-1 School District. This prohibition includes partial or full corporate ownership established to provide a beneficial interest sufficient to permit the use and occupancy by the owner or part-owner of such property. Except as otherwise provided in this Section 7, and unless granted an exception pursuant to Section 8, failure to comply with this Section 7.1 is a violation of this Covenant and shall be addressed in accordance with the provisions of Section 9 of this Covenant.

7.2. Definitions. The following definitions shall apply to this Section 7.

7.2.1. Acquisition Date. The date on which the Subject Property Owner acquires title to the Subject Property.

7.2.2. Appraised Value. The value of the Subject Property arrived at by the process described in Section 7.4.

7.3. Grace Period for Qualified Purchasers. If an Ownership Applicant is approved as a Qualified Purchaser and he or she, or any other Subject Property Owner, or any Occupant, or the Spouse or Dependent of the Qualified Purchaser or of any other Subject Property Owner or Occupant owns more than a 10% interest, direct or indirect, in other Residential Property in the Telluride R-1 School District on the Acquisition Date, the Subject Property Owner shall have a grace period of one year from the Acquisition Date to sell the other Residential Property or obtain an exception pursuant to Section 8.

7.4. Appraisal. If the Subject Property Owner has not sold the other Residential Property or obtained an exception within nine months after the Acquisition Date, the Subject Property Owner shall immediately retain a real property appraiser licensed in the State of Colorado to provide a value of the Subject Property at the Subject Property Owner's expense. The Subject Property Owner shall provide

that value to the Administrator no later than ten months after the Acquisition Date and the Administrator shall inform the County of the Subject Property Owner's submitted value. If the County does not dispute the Subject Property Owner's submitted value, then that value shall be deemed the Appraised Value. If the County does dispute the accuracy of the Subject Property Owner's submitted value, the County shall retain its own licensed real property appraiser to appraise the value of the Subject Property at the County's expense. If the two values differ by \$10,000 or less, the average of the two values shall be deemed the Appraised Value. If the two values differ by more than \$10,000, the two appraisers shall select a third appraiser to appraise the Subject Property at the equal expense of the Subject Property Owner and the County, and the average of the three values shall be deemed the Appraised Value. If the Subject Property Owner fails to submit their value to the Administrator within the required time period, the Administrator shall so notify the County and the County shall retain its own licensed real property appraiser to appraise the value of the Subject Property at the Subject Property Owner's expense and that value shall be deemed the Appraised Value.

7.5. Sale of Subject Property at Expiration of Grace Period. If, at the expiration of the grace period provided for in Section 7.3, the Subject Property Owner has not sold the other Residential Property, obtained an exception, or otherwise complied with this Covenant, the Subject Property Owner shall immediately list the Subject Property for sale at a price not to exceed 90% of the Appraised Value and shall accept the first offer that complies with the Complying Offer Terms. If the accepted offer does not result in a sale of the Subject Property, then the Subject Property Owner shall accept the next offer that meets the Complying Offer Terms until either the Subject Property is sold or the Subject Property Owner obtains an exception or otherwise complies with this Covenant.

7.6. Further Price Reductions. If the Subject Property Owner has not sold the other Residential Property, obtained an exception, or otherwise complied with the terms of this Covenant within fifteen months after the Acquisition Date, the Subject Property Owner shall immediately lower the listing price of the Subject Property, which shall not exceed 90% of the Appraised Value, by an amount that is 3% of the Appraised Value, and shall continue to lower the listing price of the Subject Property by the same amount (3% of the Appraised Value) every three months thereafter until the Subject Property Owner has sold the other Residential Property, obtained an exception, or otherwise complied with the terms of this Covenant; except, however, the Subject Property Owner is not required to lower the listing price below 60% of the Appraised Value. If the Subject Property Owner fails to comply with the provisions of this Section 7, the County may, at its option, purchase the Subject Property for 75% of the Appraised Value.

Section 8. Exceptions.

8.1. Purchase, Rental, Ownership and Occupancy Requirements. Any: (1) Ownership Applicant, Rental Applicant, Subject Property Owner or Occupant who does not meet one or more of the requirements for approval as a Qualified Purchaser, Qualified Tenant, Qualified Owner, or Qualified Occupant, respectively, may apply to the Administrator for an exception to any such requirement. The Administrator shall refer a copy of the proposed exception to any Association governing the Subject Property and the Association shall be given a reasonable opportunity to review and comment on the proposed exception prior to final review and action.

8.2. Prohibition on Ownership of Other Residential Property. Any Subject Property Owner or Occupant, or any such Subject Property Owner or Occupants' Spouse or Dependent, who owns Residential Property in violation of Section 7.1, may apply to the Administrator for an exception.

8.3. Standards for Granting an Exception. The Administrator shall not grant an exception except upon a finding that the person requesting the exception has established compelling circumstances, which shall not include financial hardship, justifying the requested exception; and that granting the requested exception is consistent with the purpose and intent of this Covenant. When considering

whether the requested exception is consistent with the purpose and intent of this Covenant as stated in Recital A, the Administrator shall consider the following guidance:

8.3.1. Stable Resident Population. This Covenant is intended to help preserve a stable resident population, strong sense of community, and socio-economic mix in the Telluride Region by ensuring a sufficient supply of housing that is affordable and responsive to the diverse needs of the various segments of the community employed in the Telluride R-1 School District.

8.3.2. Deed Restricted Property Market. This Covenant creates a housing market for employees in which sales prices directly relate to the income earned by those who live and work in the Telluride R-1 School District (Qualified Purchasers), while allowing customary free-market practices to influence the sale and rental of Deed Restricted Property as much as possible. Exceptions to this Covenant should be allowed only when the exception will not affect the correlation between local income levels and sales prices.

8.3.3. Consistency and Uniformity. Consistency and uniformity is of vital importance. It is only through consistent and uniform application of this Covenant that the Deed Restricted Property market will remain properly defined, thus allowing free-market forces to accurately regulate the sales prices of Deed Restricted Property.

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) the steps required by the Subject Property Owner and/or Occupant to cure the violation; (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 if the Subject Property Owner and/or Occupant does not request such a hearing.

9.2. Public Hearing. All materials that any party wants the Administrator to consider at a hearing pursuant to Section 9.1 must be submitted to the Administrator no later than ten working days before the date of the hearing. Unless prohibited by law, all submitted materials will be included in the public record for the hearing. At the conclusion of the hearing, the Administrator shall: (1) find the alleged violation conclusively determined, (2) find that the alleged violation lacks merit, or (3) continue the hearing to a specified date and time.

9.3. Definitions. The following definitions shall apply to this Section 9.

9.3.1. Appraised Value. The value of the Subject Property arrived at by the process described in Section 9.4.1.

9.3.2. Violation Date. The date on which a violation is conclusively determined.

9.4. Procedure for Subject Property Owner to Cure Violation. If a violation is conclusively determined with respect to the Subject Property Owner, the Subject Property Owner shall have one year from the Violation Date to cure the violation.

9.4.1. Appraisal. If the Subject Property Owner has not cured the violation within nine months after the Violation Date, the Subject Property Owner shall immediately retain a real property appraiser licensed in the State of Colorado to provide a value of the Subject Property at the Subject Property Owner's expense. The Subject Property Owner shall provide that value to the Administrator no later than ten months after the Violation Date and the Administrator shall inform the County of the Subject Property Owner's submitted value. If the County does not dispute the Subject Property Owner's submitted value, then that value shall be deemed the Appraised Value. If the County does dispute the accuracy of the Subject Property Owner's submitted value, the County shall retain its own licensed real property appraiser to appraise the value of the Subject Property at the County's expense. If the two values differ by \$10,000 or less, the average of the two values shall be deemed the Appraised Value. If the two values differ by more than \$10,000, the two appraisers shall select a third appraiser to appraise the Subject Property at the equal expense of the Subject Property Owner and the County, and the average of the three values shall be deemed the Appraised Value. If the Subject Property Owner fails to submit their value within the required time period, the Administrator shall so notify the County and the County shall retain its own licensed real property appraiser to appraise the value of the Subject Property at the Subject Property Owner's expense and that value shall be deemed the Appraised Value.

9.4.2. Sale of Subject Property to Cure Violation. If the Subject Property Owner has not cured the violation within one year after the Violation Date, then the Subject Property Owner shall immediately list the Subject Property for sale at a price not to exceed 90% of the Appraised Value and shall accept the first offer that complies with the Complying Offer Terms. If the accepted offer does not result in a sale of the Subject Property, then the Subject Property Owner shall accept the next offer that meets the Complying Offer Terms until either the Subject Property is sold or the Subject Property Owner otherwise cures the violation.

9.4.3. Further Price Reductions. If the Subject Property Owner has not cured the violation within fifteen months after the Violation Date, the Subject Property Owner shall immediately lower the listing price of the Subject Property, which shall not exceed 90% of the Appraised Value, by an amount that is 3% of the Appraised Value, and shall continue to lower the listing price of the Subject Property by the same amount (3% of the Appraised Value) every three months thereafter until the Subject Property is sold or the Subject Property Owner otherwise cures the violation; except, however, the Subject Property Owner is not required to lower the listing price below 60% of the Appraised Value. If the Subject Property Owner fails to comply with the provisions of this Section 9, the County may, at its option, purchase the Subject Property for 75% of the Appraised Value.

9.5. Procedure for Occupant to Cure Violation. If a violation is conclusively determined with respect to an Occupant, the Occupant shall have sixty days from the date that the Occupant received the notice required by Section 9.1 to cure the violation. If the Occupant has not cured the violation at the end of this sixty-day period, then the Occupant shall immediately vacate the Subject Property. An Occupant's violation of this Covenant also constitutes a violation by the Subject Property Owner.

9.6. Noncompliant Transfer Voidable. Title to the Subject Property, whether in whole or in part, shall not be sold or otherwise conveyed except in accordance with this Covenant. In the event the Subject Property is sold or otherwise conveyed in any manner that is not in accordance with this Covenant, such sale or conveyance shall be voidable at the County's option. If such sale or conveyance is declared void it shall confer no title whatsoever upon the purported transferee.

9.7. Additional Remedies. In the event of default by any Party, to any section of this Covenant, any other Party to this Covenant, following notice and opportunity to cure, may pursue all available

remedies, including but not limited to an action for specific performance, injunctive relief and/or damages. The remedies provided for herein are cumulative in nature. Personal jurisdiction and venue for any civil action commenced by any Party to this Covenant, whether arising out of or relating to this Covenant, will be deemed to be proper only if such action is commenced in the District Court for San Miguel County, Colorado. This Covenant shall be governed by and construed in accordance with the laws of the State of Colorado. The prevailing Party in any action arising from this Covenant shall recover their costs, fees and expenses, including reasonable attorney fees and expert witness fees, from the other Party. No failure by any Party hereto to exercise any right that it may have pursuant to this Covenant shall be deemed a waiver of that right, or of the right to demand exact compliance with the terms of this Covenant, or of any other right expressly or implicitly granted herein.

Section 10. Documentation and Notices.

10.1. Documentation. The Administrator must be able to verify the truth and authenticity of any documentation submitted pursuant to this Covenant, and may refuse to accept any documentation that is not reasonably verifiable by an independent and reliable source. Furthermore, the submitted documentation must be reasonably sufficient for the Administrator to find that, as a whole, it establishes compliance with the applicable standard or requirement. Any person who submits documentation pursuant to this Covenant shall submit an affidavit along with the documentation, stating that all such documentation is true and accurate. If any documentation is determined to be inaccurate, the person who submitted such documentation is subject to disqualification from the application and/or approval process.

10.1.1. Privilege or Disclosure Otherwise Prohibited by Law. Any person who, in connection with the procedures contained in this Covenant, references customers and/or clients with whom he or she has a relationship that is subject to a legal privilege, such as the attorney-client, therapist-client, or physician-patient privilege shall not, in any event, be required to disclose the names or any other identifying information of such customers and/or clients. In this case, the person shall provide all of the required documentation but shall rename all clients as "Client 1," "Client 2," etc. Furthermore, no person shall be required to submit or disclose any documentation, the submission or disclosure of which is prohibited by law.

10.1.2. Confidentiality. The Administrator shall review and maintain all financial information, business client information, and any other information required by law to be kept confidential, that is submitted pursuant to the terms of this Covenant, in absolute and strict confidence. Under no circumstance shall any such confidential information be purposefully disclosed in any manner to any person other than the County, the Administrator the San Miguel County Attorney, the San Miguel County Administrator, or any other person or entity with the consent of the person who submits the information, provided that such disclosure is not otherwise prohibited by law.

10.2. Notices. Any notice in connection with this Covenant shall be in writing, addressed to the appropriate Party, and shall be delivered in person, by overnight delivery or courier service, or by the United States Postal Service certified mail, return receipt requested, and with adequate postage prepaid. Such notice shall be deemed delivered at the time of personal delivery, or, if mailed, on the date postmarked, but if mailed the time period for any required response shall run from the date of receipt by the addressee, as evidenced by the return receipt. Rejection or other failure by the addressee to accept the notice, or the inability to deliver the notice because of a change of address of which no notice was given, shall be deemed receipt of the notice on the third day following the date postmarked. The addresses of the Parties to which notice is to be sent shall be those set forth below. A Party may change their address only by providing written notice of such change to all other Parties.

<u>If to Subject Property Owner:</u> See address listed above in introductory paragraph	<u>If to County:</u> Mailing Address: Office of the County Attorney P.O. Box 791 Telluride, CO 81435 Phone: 970-728-3879 Fax: 970-728-3718 Email: attorney@sanmiguelcounty.org
	<u>If to Administrator:</u> San Miguel Regional Housing Authority 820 Black Bear Road P.O. Box 840 Telluride, CO 81435 Phone: 970-728-3034 Fax: 970-728-5371 Email: smrha@telluridecolorado.net

10.3. County Assistance and Financial Counseling upon Default of Secured Obligation. Any Subject Property Owner who receives notification of a past due payment(s), a default in payment, or a default of any other obligation due or to be performed pursuant to a Secured Obligation, shall notify the Administrator, who shall in turn notify the County no later than two weeks after the Subject Property Owner received such notification. Subject to availability of funds, the County may, in its sole discretion, provide temporary financial assistance and/or financial counseling to the Subject Property Owner, which assistance shall be subject to terms and conditions the County deems necessary, including, but not limited to provisions for the Subject Property Owner to repay the County. A Subject Property Owner is encouraged to make the Administrator aware of these circumstances as early as possible to best allow the County to determine if any such assistance is feasible, it being recognized that the longer the default exists, the less likely it is that the County can provide assistance. Nothing herein shall obligate the County to provide such assistance.

Section 11. Definitions.

The Parties acknowledge and agree to the following definitions and further agree that each definition: (a) forms a portion of the basis of this Covenant; and (b) is incorporated in this Covenant. As used in this Covenant, the following definitions shall be given the meaning ascribed to the term as the same are stated below:

11.1. Administrator. The County or the County's designee.

11.2. AMI. The area median income for San Miguel County, Colorado based on the most recently published area median income limits established by the United States Department of Housing and Urban Development.

11.3. Application Fee. The fee, in an amount set by County resolution, paid to the Administrator to process any application submitted pursuant to this Covenant.

11.4. Assets. With respect to any person or entity, anything that has tangible or intangible value, including property of all kinds, both real and personal; includes among other things, patents and causes of action that belong to any person, as well as any stock in a corporation and any interest in the estate of a decedent; also, the entire property of a person, association, corporation, or estate that is applicable or subject to the payment of debts. Assets shall include funds or property held in a living trust or any similar entity or interest, where the person has management rights or the ability to apply the assets to the payment of debts. Except, however, Assets shall not include pension plans, 401a plans, 401k plans, IRAs, or other similar retirement accounts, provided that the Ownership Applicant is not eligible to take a distribution therefrom without penalty.

11.5. Beneficiary Owner. A Subject Property Owner who is not a Qualified Owner, and who acquires title to the Subject Property as the result of the death of the deceased Subject Property Owner, whether through joint tenancy, a will, the intestacy provisions of the Colorado probate code or other applicable law, or the provisions of an Estate Planning Entity.

11.6. Co-Borrower Agreement. An agreement by which a person is permitted to be on title to the Subject Property without otherwise meeting the terms for approval as a Qualified Purchaser or Qualified Owner in order to assure that a Qualified Purchaser or Qualified Owner is able to secure a loan.

11.7. Compliance Date. The date on which the Administrator notifies the Subject Property Owner and/or Occupant(s) that he or she must verify compliance with the terms of this Covenant and receive approval as a Qualified Owner or Qualified Occupant.

11.8. Complying Offer Terms. An offer to acquire the Subject Property that is for cash (eg. does not require Subject Property Owner to carry back seller-financing) that is equal to or exceeds the current listing price of the Subject Property, and that proposes a closing of not later than 90 days from the offer date.

11.9. Contract Price. The price of the Subject Property as identified on a Colorado Real Estate Commission approved form for the purchase and sale of the Subject Property that is fully executed between the current Subject Property Owner and any given Ownership Applicant.

11.10. Contributing Occupant. An Occupant who is, or who will be, contributing funds towards the acquisition of the Subject Property or towards payments on a Secured Obligation encumbering the Subject Property.

11.11. County. The County of San Miguel, State of Colorado, acting by and through its Board of County Commissioners or as the San Miguel County Housing Authority.

11.12. County PUD/Subdivision Approvals. The approvals granted for the Lawson Hill Subdivision/PUD by the County and reflected by the Subdivision Governing Documents as well as by certain resolutions concerning the Lawson Hill Subdivision/PUD recorded in the Official Records.

11.13. County Transfer Fee. A fee in an amount equal to one percent of the Contract Price that the seller of the Subject Property shall pay to the Administrator upon closing of a sale of the Subject Property.

11.14. Deed Restricted Property. Any property in unincorporated San Miguel County that is subject either to the Original Deed Restriction, or to a real covenant, equitable servitude, or other agreement in favor of the County, and restricting the ownership, use and occupancy of such property to persons who satisfy certain requirements, terms, and/or qualifications.

11.15. Dependent. Any person who can be claimed as a Qualifying Child or Qualifying Relative on another's federal tax return.

11.16. Disabled. A person who receives Social Security Disability, Worker's Compensation for Permanent Total Disability, and/or disability payments through any other official state or federal disability program.

11.17. Domestic Partnership. A relationship between two individuals of the same or opposite sex in which: (1) each individual is at least eighteen years of age; (2) neither individual is legally married to another person or in a Domestic Partnership with another person; (3) the individuals are not related by blood closer than would bar marriage in the state of Colorado; (4) the individuals share a mutual obligation of support and responsibility for each other's welfare; and (5) the individuals are financially interdependent as documented by

at least two of the following arrangements: (a) common ownership of real property or a common leasehold interest in real property; (b) common ownership of a motor vehicle; (c) a joint bank account or a joint credit account; (d) designation as a beneficiary for life insurance or retirement benefits, or under a will; (e) assignment of durable power of attorney; or (f) such other proof that the Administrator deems sufficient to establish financial interdependency.

11.18. Estate Planning Entity. A trust, family limited partnership or similar entity created and funded by a Qualified Owner and controlled by such Qualified Owner until that Qualified Owner's death or disability.

11.19. Four County Region. San Miguel County, Montrose County, Ouray County and Dolores County, all in the State of Colorado.

11.20. Homeowners' Association or Condominium Association ("Association"). An association of owners organized under § 38-33.3-301, C.R.S., as amended.

11.21. Household Non-Qualifying Income. The combined Non-Qualifying Income of all Ownership Applicants, their Spouses, and Contributing Occupants.

11.22. Household Qualifying Income. The combined Qualifying Income of all Ownership Applicants, their Spouses, and Contributing Occupants.

11.23. Immediate Family. A person's parents, Spouse, children, and siblings; and a person's Spouse's parents, children and siblings. The terms "parents," "children," and "siblings" includes step-relatives, adopted/adoptive relatives and foster relatives.

11.24. Lender. An individual or company that has loaned funds to the Subject Property Owner for the purpose of financing some portion of the Subject Property Owner's acquisition of the Subject Property, which loan is secured by a Secured Obligation duly recorded against the Subject Property.

11.25. Liabilities. With respect to any person or entity, the total amount owed on obligations that legally bind the person or entity to settle a debt.

11.26. LUC. The San Miguel County Land Use Code.

11.27. Net Assets. With respect to any person or entity, Assets minus Liabilities.

11.28. Non-Qualifying Income. All income that is not Qualifying Income. With respect to any person or entity, Non-Qualifying Income includes, but is not limited to, any money, and the cash value of any goods or services in lieu of money, received from any source whatsoever, including but not limited to remuneration for labor, products or services; money received from governmental assistance programs; tax refunds; prize winnings; gifts; pensions; investments; and money, or goods or services in lieu of money, received from any other source. Except, however, Non-Qualifying Income shall not include any of the following: (a) income taxed by the federal government but not distributed to such person or entity, or funds distributed to cover the anticipated tax liability of the non-distributed income, but only to the extent that such funds do not exceed the tax liability of the non-distributed income; or (b) equity from the proceeds of a sale of the Ownership Applicant's previous Primary Residence that was sold within the twelve months immediately preceding the date that the Administrator receives the Ownership Applicant's Purchase Application or (c) a gift or any other funds up to 30% of the Contract Price of the Subject Property.

11.29. Occupant. Any person who occupies the Subject Property as his or her Primary Residence but who has no ownership interest in the Subject Property.

11.30. **Official Records.** The official records of the Clerk and Recorder of San Miguel County, Colorado.

11.31. **Option to Purchase.** A separately executed and recorded agreement providing the County with an option to purchase the Subject Property under certain specified circumstances. The Subject Property may or may not be subject to an Option to Purchase. As stated in Section 1.1, this Covenant does not affect the rights of any party to any Option to Purchase and does not affect the rights of any Lender.

11.32. **Original Plat Note.** That certain plat note included on the County PUD/Subdivision Approvals for the Subdivision, which plat note restates LUC § 5-1304 as it existed on the date the plat was recorded.

11.33. **Ownership Applicant.** Any person who desires to purchase the Subject Property and who submits a Purchase Application and pays the appropriate Application Fee.

11.34. **Primary Residence.** A person's principal or primary home or place of abode, meaning that home or place of abode in which a person's habitation is fixed and to which that person, whenever absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of such absence. In determining what is a person's principal or primary home or place of abode, the following circumstances relating to such person may be taken into account: business pursuits, employment, income sources, residence for income or other tax purposes, age, marital status, residence of Immediate Family, if any, leaseholds, situs of personal and real property, and motor vehicle registration.

11.35. **Procedures.** The uniform procedures adopted pursuant to Section 13.3.

11.36. **Public Sector Employer.** The state of Colorado and its agencies and entities, counties, cities, cities and counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, and drainage conservation companies or districts organized and existing under the laws of the state of Colorado.

11.37. **Purchase Application.** The form that an Ownership Applicant submits to the Administrator to request approval as a Qualified Purchaser, and which requires certain documentation and information necessary to determine if the Ownership Applicant satisfies the requirements for approval as a Qualified Purchaser. The Ownership Applicant must verify that all information provided in the Purchase Application is true and accurate. If any of the information is determined inaccurate or non-verifiable, the Ownership Applicant may be subject to disqualification.

11.38. **Qualified Occupant.** Any person who is not the Subject Property Owner, and who occupies the Subject Property as his or her Primary Residence in compliance with this Covenant.

11.39. **Qualified Owner.** Any person or entity with an ownership interest in the Subject Property, who maintains such ownership in compliance with this Covenant as provided for in Section 5; or the County, the Town of Telluride, or the Town of Mountain Village.

11.40. **Qualified Purchaser.** An Ownership Applicant who has received approval pursuant to the terms of this Covenant to purchase the Subject Property; or the County, the Town of Telluride, or the Town of Mountain Village.

11.41. **Qualified Tenant.** A Rental Applicant who has received approval pursuant to the terms of this Covenant to occupy the Subject Property pursuant to a rental or lease agreement executed by the Rental Applicant and the Qualified Owner. A person who receives approval as a Qualified Tenant must meet the requirements for approval as a Qualified Occupant for as long as they occupy the Subject Property.

11.42. Qualifying Income. Income earned from employment that either requires one's physical presence in the Telluride R-1 School District or that necessitates one's physical presence in the Telluride R-1 School District in order to provide goods or services to residents or visitors in the Telluride R-1 School District.

11.43. Rental Applicant. Any person who desires to occupy the Subject Property pursuant to a lease or rental agreement to be executed by the Rental Applicant and a Qualified Owner, and who submits a Rental Application and pays the appropriate Application Fee.

11.44. Rental Application. The form that a Rental Applicant submits to the Administrator to request approval as a Qualified Tenant, which requires certain documentation and information necessary to determine if the Rental Applicant satisfies the requirements for approval as a Qualified Tenant. The Rental Applicant must verify that all information provided in the Rental Application is true and accurate. If any of the information is determined to be inaccurate or non-verifiable, the Rental Applicant may be subject to disqualification.

11.45. Residential Property. (1) An individual residential dwelling that is developed with open yards on all sides of the dwelling unit, including all manufactured housing (pursuant to C.R.S. 30-28-115(3)) and all mobile homes on permanent foundations, but not including recreational or other wheeled vehicles; (2) a residential dwelling unit in a structure containing two or more such units, the living spaces of which are individually owned, the balance of the property (both land and building) is owned either in common by the owners of the individual units or by an association consisting of such owners; (3) one of at least two individually owned, unconnected residential dwelling units located on property owned either in common by the owners of such units or by an association consisting of such owners; or (4) a legally created parcel of land shown with a separate and distinct number or letter on a subdivision plat recorded in the Official Records, or a parcel described by metes and bounds with access to at least one dedicated public right-of-way and held under separate ownership; and that is zoned for Residential Use.

11.46. Residential Use. Real property that is used or legally could be used for non-commercial dwelling purposes.

11.47. Retired. A person who is more than 59 years of age and is receiving pension benefits, retirement benefits, IRA disbursements, or Social Security retirement benefits.

11.48. Secured Obligation. Any payment or other material obligation due to be performed under a promissory note secured by a deed of trust, mortgage, or other security instrument, encumbering the Subject Property.

11.49. Spouse. One's husband or wife by lawful marriage, or a person with whom one is a member of a Domestic Partnership.

11.50. Subdivision. The subdivision of land reflected in the County PUD/Subdivision Approval, which was established pursuant to the Subdivision Governing Documents.

11.51. Subdivision Governing Documents. The Subdivision was created pursuant to that certain General Declaration and Final Plat(s), as the same may be amended or supplemented from time to time, as described on attached **Exhibit "A"**.

11.52. Subject Property Owner. The person(s) or entity identified as such in this Covenant, inclusive of his/her/their heirs, successors, personal representatives, assigns, designees, lessees, licensees, grantees, transferees, or any other person or entity who has a present right to possess, use or convey a legally recognized and protected interest in the Subject Property.

11.53. Telluride Region. The area identified as such in the San Miguel County Master Plan.

11.54. Total Household Assets. The combined Net Assets of all Ownership Applicants and Contributing Occupants.

Section 12. General Provisions.

12.1. Recording of Covenant. This Covenant shall be recorded in the Official Records upon execution.

12.2. Covenant Running with the Land - Binding Effect. Each and every conveyance of the Subject Property, for all purposes, shall be deemed to include this Covenant and to fully incorporate all terms of this Covenant by this reference. This Covenant constitutes a real covenant and equitable servitude that runs with the Subject Property through the expiration of the Term and burdens the Subject Property for the benefit of the County, and shall be binding on the Subject Property Owner, and on the heirs, personal representatives, assigns, lessees and licensees, any transferee of the Subject Property Owner, and any other person or entity who becomes the Subject Property Owner of the Subject Property.

12.3. Procedures. The Parties recognize and agree that the County may from time to time adopt uniform procedures intended to further implement the provisions of this Covenant, including the administration of appeals to any decision rendered pursuant to this Covenant. The Procedures shall not materially differ from or alter any of the terms and conditions of this Covenant. Prior to adoption of the Procedures, the County shall make materials available for reasonable public review and comment and reasonable notice of the proposed action and right to review and comment shall be given the Subject Property Owner. The Procedures, when adopted, shall be made available at the County and Administrator offices.

12.4. Further Actions. The parties to any agreement contemplated under this Covenant agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Covenant or any agreement or document relating hereto or entered into in connection herewith.

12.5. Gender and Number. Whenever the context so requires in this Covenant, the neuter gender shall include any or all genders and vice versa, and the use of the singular shall include the plural and vice versa.

12.6. Non-discrimination. No person shall be discriminated against on the basis of race, national origin, sex, color, creed or physical infirmity.

12.7. Personal Liability. The Subject Property Owner shall be personally liable for any violations of this Covenant.

12.8. Severability. Should a court of competent jurisdiction find and determine that a specific provision or provisions of this Covenant are legally void, invalid, or otherwise unenforceable, such specific provision or provisions shall be deemed to be severable from the remainder of this Covenant, which shall remain legally valid and in full force and effect.

12.9. Successors. Except as otherwise provided herein, the provisions and covenants contained in this Covenant shall inure to and be binding upon the heirs, successors and assigns of the Parties.

12.10. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Covenant shall be valid against any Party hereto, except on the basis of a written instrument executed by the Parties hereto. Nothing in this Covenant shall be deemed to waive or otherwise limit any defenses or immunities that may be available to the County or the Administrator under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., or other applicable law.

12.11. Counterparts. This Covenant may be executed in multiple counterparts or by legible facsimile copy, each of which shall constitute an original, but all of which, taken together, shall constitute one and the same instrument. The facsimile transmission of a signed copy hereof or of any notice to be given to the other Party or his or her agent, shall be considered valid and constitute a signed original. A signed “hard copy” of the Covenant shall not be necessary but may be executed by the Parties.

12.12. No Third-Party Benefit. Except as herein provided, no person or entity, other than a Party to this Covenant, shall have any right of action under this Covenant. It is the express intent of the Parties hereto that any person or entity who is not a Party to this Covenant, but who receives services or benefits under this Covenant, shall be deemed an incidental beneficiary only.

12.13. Integration. This Covenant constitutes the entire integrated understanding of the Parties regarding the subject matter set forth herein and no prior or contemporaneous promise, representation, term, condition, or understanding shall be of any legal force or effect, unless embodied herein in writing, or in a written amendment mutually agreed to by the Parties.

12.14. Captions. Captions are for convenience only and are not to be construed as defining or limiting in any way the scope of intent of the provisions of such Sections.

IN WITNESS WHEREOF, the Parties have executed this Covenant as of the Effective Date.

The persons executing this Covenant on behalf of the respective Parties to this Covenant hereby warrant and affirm their authority to enter into this Covenant on behalf of the named Parties hereto and warrant and affirm their authority to bind the named Parties hereto to all terms, conditions, and obligations contained in this Covenant.

**SAN MIGUEL COUNTY, COLORADO:
BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF SAN MIGUEL,
STATE OF COLORADO**

By: _____
Hilary Cooper, Chair

Date: _____

ATTEST: _____
Carman Warfield, Chief Deputy Clerk

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

Acknowledged, subscribed and sworn to before me this ____ day of _____, 2020, by
Hilary Cooper, as Chair of the Board of Commissioners of San Miguel County, Colorado, and by Carman
Warfield, as Chief Deputy Clerk to the Board of County Commissioners of San Miguel County, Colorado.

Witness my hand and official seal.

Notary Public

Date Commission Expires

ADMINISTRATOR:

SAN MIGUEL COUNTY HOUSING AUTHORITY

By: _____
Hilary Cooper, Chair

Date: _____

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

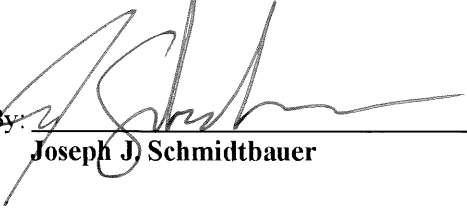
Acknowledged, subscribed and sworn to before me this ____ day of _____, 2020, by
Hilary Cooper, as Chair of the San Miguel County Housing Authority.

Witness my hand and official seal.

Notary Public

Date Commission Expires

SUBJECT PROPERTY OWNER

By: 
Joseph J. Schmidtbauer

Date: 12-08-2020

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

Acknowledged, subscribed, and sworn to before me this 8 day of December, 2020, by **Joseph J. Schmidtbauer**.

Witness my hand and official seal.


Notary Public

2/12/2025
Date Commission Expires

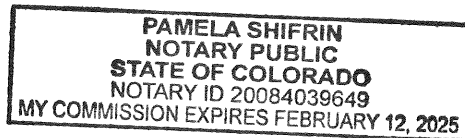


Exhibit "A"
(Lawson Hill Subdivision/PUD Governing Documents)

General Declaration(s) for Lawson Hill Subdivision/PUD: Lot 320-C

- (1) Declaration for Lawson Hill, recorded April 16, 1992, at No. 276371 in Book 490 at page 925
- (2) First Supplement to Declaration for Lawson Hill, recorded May 18, 1992, at No. 276937 in Book 492 at page 340;
- (3) First Amendment to Declaration for Lawson Hill, recorded August 21, 1992, at No. 278961 in Book 496 at page 918;
- (4) Declaration of Covenants, Conditions and Restrictions, recorded September 11, 1992, at No. 279394 in Book 497 at Page 901;
- (5) Second Supplement to Declaration for Lawson Hill, recorded June 16, 1993, at No. 285307 in Book 512 at page 551;
- (6) Second Amendment to Declaration for Lawson Hill, recorded November 8, 1993, at No. 288408 in Book 520 at page 86;
- (7) Fourth Supplement to Declaration for Lawson Hill, recorded October 18, 1994, at No. 295198 in Book 536 at page 655;
- (8) Party Wall Declaration Duplex Residences (Lots 22 A and B), recorded October 9, 1995, at No. 301166 in Book 551 at page 577;
- (9) Declaration of Covenants, Conditions, Restrictions and Easements (Lots 322A and 322 B), recorded December 18, 1995, at No. 302403 in Book 554 at page 658;
- (10) Fifth Supplement to Declaration for Lawson Hill, recorded August 12, 1996, at No. 306843 in Book 565 at page 1002;
- (11) Third Supplement to Declaration for Lawson Hill, recorded August 14, 1996, at No. 306867 in Book 566 at page 34;
- (12) Third Amendment to Declaration for Lawson Hill, recorded July 3, 1997, No. 313200 in Book 583 at page 601;
- (13) Fifth Supplement to Declaration for Lawson Hill, recorded August 6, 1997, at No. 313760 in Book 585 at page 72;
- (14) Correction of Third Supplement to Declaration for Lawson Hill, recorded March 19, 1999, in No. 325041;
- (15) Fourth Amendment to Declaration for Lawson Hill, recorded February 19, 2002, at No. 347160;
- (16) Fifth Amendment to Declaration for Lawson Hill, recorded March 28, 2002, at No. 348021;
- (17) Declaration of Access and Utility Easements Including Use and Maintenance Provisions (Lot HUB-2A, Lot HUB-2B, Lot HUB-2C, Lot HUB-2D, Lot HUB-2E and Lot HUB-2F), recorded May 13, 2004, at No. 366153;
- (18) Declaration of Access and Utility Easements (Lot HUB-2C), recorded May 13, 2004, at No. 366154;
- (19) Declaration of Covenants and Use Restrictions (Lot HUB-2A, Lot HUB-2B, Lot HUB-2D, Lot HUB-2E and Lot HUB-2F), recorded May 13, 2004, at No. 366155;
- (20) Sixth Amendment to Declaration for Lawson Hill, recorded March 17, 2006, at No. 382780; and any and all such other, if any, duly executed amendments or supplements to the Declaration (collectively and together with the Original Declaration, the "**Declarations**").

Final Plats for Lawson Hill Subdivision/PUD: Lot 320-C

- (1) Plat for Lawson Hill, described as Lawson Hill, phase 1, recorded on April 16, 1992, at No. 276370 in Plat Book 1 at page 1272;
- (2) Plat for Lawson Hill, described as Lawson Hill, phase 2, recorded on May 18, 1992, at No. 276936 in Plat Book 1 at page 1282;
- (3) Insubstantial Amendment to Plat, recorded on September 11, 1992, at No. 279392 in Plat Book 1 at page 1353;
- (4) Replat of Lot J in Lots J1 and J2, recorded November 6, 1992, at No. 280738 in Plat Book 1 at page 1373;
- (5) Subdivision Exemption for Lot Line Adjustment, Lots 36A, 36B & tract 508-A, Phase 1 & 2, recorded on January 8, 1993, at No. 282137 in Plat Book 1 at page 1398;
- (6) Replat of Lot 211 into Lots 211A and 211B, recorded October 7, 1993, at No. 287768 in Plat Book 1 at page 1564;
- (7) Map, described as Lawson Hill Retaining Wall, lots 14-18, recorded on January 21, 1994, at No. 289986 in Plat Book 1 at page 1626;
- (8) Second Insubstantial Amendment to Plat, recorded on July 5, 1995, at No. 299682 in Plat Book 1 at page 1887;
- (9) Plat for Lawson Hill P.U.D. Phase 9, recorded July 14, 1995, at No. 299816 in Plat Book 1 at page 1891;
- (10) Substantial Plat Amendment of Lot 322, Phase 5, (Lots 322A & B), recorded December 12, 1995, at No. 302283 in Plat Book 1 at page 1959;
- (11) Final Plat, Rezoning and Substantial P.U.D. Amendment to Lots 426 & Tract 509, recorded December 19, 1995, at No. 302452 in Plat Book 1 at page 1960;
- (12) Rezoning and Substantial Amendment to Lawson Hill Final Plat and PUD, Lots 11, 12 and 13, Phase One and Two and Lot 425, Phase 9, recorded February 8, 1996, at No. 303353 in Plat Book 1 at page 1995;
- (13) Substantial Plat Amendment to Lot F, Lawson Hill, Filing 6, recorded February 15, 1996, at No. 303470 in Plat Book 1 at page 1998;
- (14) Subdivision Exemption for Essential Community Facilities for Lot 425, Phase 9, recorded April 25, 1996, at No. 304826 in Plat Book 1 at page 2037;
- (15) Lawson Hill PUD, Phase 12, recorded April 25, 1996, at No. 304827 in Plat Book 1 at page 2039;
- (16) Final Plat, Lawson Hill PUD, Phase 11, (Lots 314-316), recorded May 3, 1996, at No. 305016 in Plat Book 1 at page 2046;
- (17) Insubstantial Amendment to Lot 26, Phase One and Two, recorded May 7, 1996, at No. 305068 in Plat Book 1 at page 2047;
- (18) Second Substantial Amendment to the Final Plat of Lot B, Phase 2, recorded July 11, 1996, at No. 306255 in Plat Book 1 at page 2071;
- (19) Telecam/Ilium Subdivision Exemption for Lot Line Adjustment between Lots P, 426, Q, Q-1. Tract 503, Preliminarily Platted Lot T, Tract 509, and Final Plat of Tract 509A, and Insubstantial Plat Amendment for Lot P, recorded September 11, 1996, at No. 307391 in Plat Book 1 at page 2105;
- (20) Substantial Plat Amendment to Final Plat of Lot 425A, Phase 9, recorded September 12, 1996, at No. 307393 in Plat Book 1 at page 2111;
- (21) Subdivision Exemption for a Lot Line Adjustment Between Lot P, Phase 9 and Lot 426, Phase 10, recorded May 15, 1997, at No. 312262 in Plat Book 1 at page 2238;

- (22) Third Amendment to the Planned Community Map for Two Rivers Located on Lot P, Phase 9, Third Amendment to the Planned Community Map for Two Rivers Located on Lot P, Phase 9, (Lot C, Tracts 22, 23, 24 and 26), recorded July 29, 1997, at No. 313585 in Plat Book 1 at page 2261;
- (23) Condominium Map for Sunshine Valley Condominiums Located on Lot P, Phase 9, recorded August 15, 1997, at No. 313918 in Plat Book 1 at page 2273;
- (24) Second Amendment to the Condominium Map for Top of the Hill at Lawson Hill, Located on Lot O, Phase 1, recorded March 20, 1998, at No. 317668 in Plat Book 1 at page 2339;
- (25) Condominium Map for Ridgeview at Lawson Hill, Located on Lot O, Phase 1, recorded March 20, 1998, at No. 317670 in Plat Book 1 at page 2340;
- (26) Substantial Plat and PUD Amendment for Lots 406, 425-4 and 302-9/10, recorded July 28, 1998, at No. 320232 in Plat Book 1 at page 2410;
- (27) Substantial Plat and PUD Amendment for Lots O, P, 314 and 315, recorded March 16, 1999, at No. 324971 in Plat Book 1 at page 2511;
- (28) Subdivision Exemption for a Single Lot Split for Lot 400, recorded April 26, 1999, at No. 325920 in Plat Book 1 at page 2540;
- (29) Substantial Plat and PUD Amendment for Lots 404, 405, 406, 407, 408, 414, 415, 417, 418, 421, 422 and 425-4, recorded May 10, 1999, at No. 326303 in Plat Book 1 at page 2548;
- (30) Insubstantial Amendment to the Final Plat of Lot 33A, recorded June 2, 1999, at No. 326925 in Plat Book 1 at page 2576;
- (31) Substantial Plat/PUD Amendment and Lot Line Adjustment of Lots 408, 414 and 425-4, Phase 9, (Lot 410), recorded August 2, 1999, at No. 328259 in Plat Book 1 at page 2604;
- (32) Substantial Plat/PUD Amendment, Rezoning, Lot Line Adjustment and Road Standard Variance for Lots 6A, 6B, 316, 302-6 and Units 314-11, 314-12, 314-13, 315-1 and 315-2 of Elk Meadows, recorded October 28, 1999, at No. 330139 in Plat Book 1 at page 2628;
- (33) Road Standard Exemption and Substantial Plat and PUD Amendment for Lot O, recorded December 21, 2000, at No. 338713 in Plat Book 1 at page 2840;
- (34) Road Standard Exemption and Substantial Plat and PUD Amendment for Lot P, recorded December 21, 2000, at No. 338714 in Plat Book 1 at page 2842;
- (35) Final Plat of Tract 501, Phase 13, recorded July 27, 2001, at No. 342838 in Plat Book 1 at page 2908;
- (36) Insubstantial Plat Amendment of Lot 31, recorded November 14, 2001, at No. 345085 in Plat Book 1 at page 2961;
- (37) Community Map for Ridgeview at Top of the Hill at Lawson Hill Subordinate Association, (Lot O, Unit 1), recorded December 18, 2001, at No. 345802 in Plat Book 1 at page 2974;
- (38) Supplemental Community Map, Condominium Community of Rio Vistas, Phase II, at Top of the Hill at Lawson Hill Subordinate Association, Located on Lot O, Phase 1, recorded March 14, 2002, at No. 347699 in Plat Book 1 at page 2984;
- (39) Fifth Supplement to the Condominium Map for Unit SV140 Sunshine Valley Condominiums Located on Lot P, Phase 9, recorded March 15, 2002, at No. 347719 in Plat Book 1 at page 2992;
- (40) Subdivision Exemption for Lot Line Adjustment and an Insubstantial Plat Amendment for Lots 5B and 6, recorded June 18, 2002, at No. 349809 in Plat Book 1 at page 3033;
- (41) Subdivision Exemption for a Single Lot Split in an Existing Subdivision and Amendment to the Map for Elk Meadows, Located on Lot 314, Phase 11, recorded November 22, 2002, at No. 353265 in Plat Book 1 at page 3077;
- (42) Insubstantial Plat/PUD Amendment, Lot 322-A, recorded December 6, 2002, at No. 353578 in Plat Book 1 at page 3085;

- (43) Substantial Plat/PUD Amendment for Unit SV-141, Sunshine Valley Condominiums, Located on Lot P, recorded January 15, 2003, at No. 354410 in Plat Book 1 at page 3095;
- (44) Subdivision Exemption for a Single Lot Split in an Existing Subdivision and Amendment to the Map for Elk Meadows, Located on Lot 314, Phase 11, (314 -2 &3), recorded April 21, 2003, at No. 356713 in Plat Book 1 at page 3126;
- (45) Correction Plat of Subdivision Exemption for a Single Lot Split in an Existing Subdivision and Amendment to the Map for Elk Meadows, Located on Lot 314, Phase 11, (314-2 &3), recorded June 27, 2003, at No. 358311 in Plat Book 1 at page 3156;
- (46) Subdivision Exemption for a Lot Line Adjustment to Adjust Lot Lines Between Tract 503 and Lot Q and Insubstantial Plat Amendment to Eliminate Preliminary Platted Lot T, recorded July 11, 2003, at No. 358629 in Plat Book 1 at page 3158;
- (47) Subdivision Exemption for Single Lot Split for Lot 309, and Lot Line Adjustment for Lot 309, Tract 509 and Tract 511, Phase 5, (509, 511,309-1-11), recorded September 17, 2003, at No. 360316 in Plat Book 1 at page 3186;
- (48) Lawson Hill PUD, Phase 14, Final Plat and a Replat of Lots J1 and J2, filing 1 and a Replat of Tract 501, Filing 13, recorded October 9, 2003, at No. 360995 in Plat Book 1 at page 3199;
- (49) Insubstantial Plat/PUD Amendment to Lots J1 and J2, A-1 and Tract 501-W, recorded November 17, 2003, at No. 362028 in Plat Book 1 at page 3211;
- (50) Subdivision Exemption for Lot Line Adjustment of Tracts 501 and 505 and Final Plat of Tract 505, recorded January 21, 2004, at No. 363535 in Plat Book 1 at page 3226;
- (51) Lawson Hill PUD, Phase 15, (502, 503-A, 508, 509-B & C, H1 and L), recorded October 14, 2005, at No. 378712 in Plat Book 1 at page 3545;
- (52) Lot HUB-2AF, A Subdivision Exemption for Lot Line Adjustment and Insubstantial Plat/PUD Amendment of Lot HUB-2A and Lot HUB-2F, According to the Subdivision Exemption for Single Lot Split and Insubstantial Amendment for Lot A-1, recorded July 14, 2006, at No. 385327 in Plat Book 1 at page 3682;
- (53) Insubstantial Amendment to Tract 503, recorded September 26, 2006, at No. 387097 in Plat Book 1 at page 3734;
- (54) Subdivision Exemption for Lot Line Adjustment for Tract 503, 509B and 509C, recorded September 26, 2006, at No. 387099 in Plat Book 1 at page 3735;
- (55) Substantial PUC and Plat Amendment to Final Plat for Lots 440, 441, 442, 443, 444, Tract 516 and Lot2 Q-2 through Q-37, Substantial Plat and PUD Amendment and Rezoning for Lots Q, Q-1 and 426, recorded December 7, 2006, at No. 388898 in Plat Book 1 at page 3768;
- (56) Subdivision Exemption for a Single Lot Split in an Existing Subdivision Insubstantial PUD Amendment for Lot 316, recorded June 12, 2008, at No. 402053 in Plat Book 1 at page 3969;
- (57) Boundary & Topographic Survey Lot 407, Phase 9, recorded October 8, 2008, in Survey Book 1 at page 672;
- (58) Single Lot Split in an Existing Subdivision for Lot 400, Phase 9, recorded May 29, 2009, at No. 407159 in Plat Book 1 at page 4193; and any and all such other, if any, duly executed amendments or supplements to the Plat.

State Documentary Fee
\$42.90 12-09-2020

WARRANTY DEED

DOC FEE: \$42.90

THIS DEED, made this **8th day of December, 2020**, between **Jody A. Lambert** of the County of **San Miguel** and State of **Colorado**, grantor(s), And **Joseph J. Schmidtbauer** whose legal address is **521 Society Drive, Telluride, CO 81435**, of the County of **San Miguel** and State of **Colorado**, grantees:

WITNESS, that the grantor(s), for and in consideration of the sum of **FOUR HUNDRED TWENTY NINE THOUSAND AND 00/100 DOLLARS (\$429,000.00)**, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto the grantees, their heirs and assigns forever, **IN SEVERALTY**, all the real property, together with improvements, if any, situate, lying and being in the County of **San Miguel** and State of **Colorado**, described as follows:

Lot 4B, Lawson Hill Phase One and Phase Two, located on the Boston Placer, M.S. 2019 and the Keystone Placer, M.S. 244, Upper San Miguel Mining District, in Section 32 and 33, Township 43 North, Range 9 West, N.M.P.M., according to the Plat recorded in the Office of the Clerk and Recorder in Plat Book 1 at Page 1353 and according to the Second Insubstantial Amendment to Lawson Hill, Phase One and Phase Two, recorded in Plat Book 1 at Page 1887.
County of San Miguel, State of Colorado.

also known by street and number as: **521 Society Drive, Telluride, CO 81435**

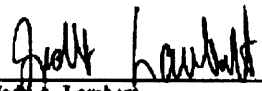
TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the grantees, their heirs and assigns forever. And the grantor, for himself, his heirs and personal representatives, does covenant, grant, bargain and agree to and with the grantees, their heirs and assigns, that at the time of the enrolling and delivery of these presents, he is well seized of the premises above conveyed, has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature, except for taxes for the current year, a lien but not yet due and payable, subject to statutory exceptions as defined in CRS 38-30-113, revised.

The grantor shall and will **WARRANT AND FOREVER DEFEND** the above-bargained premises in the quiet and peaceable possession of the grantees, their heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof.

The singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the grantor has executed this deed on the date set forth above.



Jody A. Lambert

State of Colorado

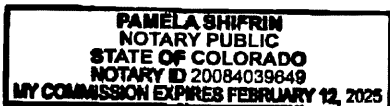
County Of **San Miguel**

}
}
} ss.

The foregoing instrument was acknowledged before me this **December 8, 2020**, by **Jody A. Lambert**.

My Commission expires: **2/12/2025**

Witness my hand and official **seal**.





Notary Public



820 Black Bear Road, Unit G-17
P.O. Box 840, Telluride, CO 81435
Tel: 970-728-3034 Fax: 970-728-5371
E-mail: admin@smrha.org Web: www.smrha.org

December 7, 2020

DELIVERED Electronically
Alpine Title
Email: anneliese@alpinetitle.com

Re: Joseph J. Schmidtbauer Closing on County Amended and Restated Deed Restriction and Covenant Lot 4B, Lawson Hill Subdivision, also known as 521 Society Drive, Telluride, CO 81435

Dear Robin,

The Amended and Restated Deed Restriction and Covenant is attached for **Joseph J. Schmidtbauer's** purchase of **521 Society Drive, Telluride, CO 81435**, to be recorded after the closing.

Please provide the Amended and Restated Deed Restriction and Covenant to San Miguel County Chief Deputy Clerk Carmen Warfield after receipt of the recorded Warranty Deed. The Covenant will then be presented to the BOCC/SMCHA for execution. The document is recorded separately, **AFTER** the Warranty Deed and a copy of the Amended and Restated Deed Restriction and Covenant is returned to SMRHA and the new owners after closing. The County will provide the recorded document to the parties.

I understand:

The only name to appear on the title: **Joseph J. Schmidtbauer**

The only occupant: **Joseph J. Schmidtbauer**

In addition to the fee collections applicable to such a property transaction, you will be collecting the following fees:

- The 1% County R-1 Deed Restriction administration fee to be paid by the seller based on the purchase price; and
- The RHA fee which is .75% of the purchase

The following documents should be returned to SMRHA when available:

- Copy of the Loan Estimate statement
- Copy of the Closing Disclosure Settlement
- Original Buyer/Seller Affidavit
- Deed Restriction and Covenant Acknowledgement
- Copy of recorded **Warranty Deed**
- The original recorded **Amended and Restated Deed Restricted**; and
- 2 checks made out to SMRHA:**

- 1% Admin Fee
 - .75% RHA Fee
- Paid 12/14/20*

Carmen Warfield will provide a copy of the recorded Covenant to SMRHA and the buyers.

Sincerely,

Corenna Howard

Corenna Howard
Executive Director



AGENDA ITEM - 4.e.

TITLE:

Approval to re-appoint Lee Taylor to a regular term on the Planning Commission beginning 1/12/2021 to 12/31/2023.

Presented by:

Time needed:

PREPARED BY:

John Huebner, Senior Planner

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

The Planning Dept recommends approval.

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

ATTACHMENTS:

Description
Board and Commission Member Application

Upload Date
12/31/2020



BOARD & COMMISSION MEMBER APPLICATION

DATE: 12/30/2020

NAME OF BOARD YOU ARE INTERESTED IN: San Miguel County Planning Commission

REAPPOINTMENT:

☒

OR NEW APPOINTMENT:

☐

APPLICANT NAME: Lee Taylor

ADDRESS OF RESIDENCE: 536 Society Drive
(For some boards this Telluride, CO 81435
location may be relevant.) (Lawson Hill)

MAILING ADDRESS: 536 Society Drive
Telluride, CO 81435

E-MAIL ADDRESS: lee@tellword.com

PROFESSIONAL BACKGROUND – PERSONAL INTERESTS:

I am primarily a writer moonlighting as the CEO/Managing Partner/co-founder of two local businesses, both of which have been operating for 18 years or more – a medical device manufacturing company, and a training company specializing in pediatric neuromotor rehabilitation. I have been a resident of San Miguel County since 1993, and a resident of the Lawson Hill community since 2002. As my more active friends can attest, I work too much and don't sufficiently enjoy our local paradise to the extent that I should, but I'm ever hopeful that I can address that.

REASON FOR INTEREST IN THIS BOARD – DESCRIBE WHY YOU WOULD LIKE TO BE APPOINTED:

I have had the honor and pleasure to serve multiple terms as a Planning Commission member, and have been voted to the role of Chairman for the last several years. I would like to continue my service – as Chairman or otherwise – for another term. In particular, I look forward to participating in the much-needed Master Plan update efforts that we are poised to begin; I envision another term as my opportunity to help make this happen in the next three years, setting the stage (from a Planning perspective) for the County's continued health, growth, and sustainability over the next several decades.

I appreciate your consideration for this re-appointment!

A handwritten signature in blue ink, appearing to read "Lee Taylor", is written over a horizontal line.



AGENDA ITEM - 4.f.

TITLE:

Approval to re-appoint Matthew Bayma to Senior Alternate on the Planning Commission beginning 1/12021 to 12/31/2023.

Presented by:

Time needed:

PREPARED BY:

John Huebner, Senior Planner

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

Recommended approval.

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

ATTACHMENTS:

Description

Board and Commission Member Application

Upload Date

12/31/2020



BOARD & COMMISSION MEMBER APPLICATION

DATE: December 29, 2020

NAME OF BOARD YOU ARE INTERESTED IN: San Miguel County Planning Commission

REAPPOINTMENT ☒ OR NEW APPOINTMENT _____

APPLICANT NAME: Matt Bayma

ADDRESS OF RESIDENCE: 104 Aldasoro Blvd. (For some boards this location
may be relevant)

MAILING ADDRESS: 104 Aldasoro Blvd., Telluride, CO 81435

E-MAIL ADDRESS: mbayma08@gmail.com

PROFESSIONAL BACKGROUND – PERSONAL INTERESTS:

I am an attorney in San Miguel County with educational and practical experience in land use planning. I all outdoor opportunities the County has to offer.

REASON FOR INTEREST IN THIS BOARD – DESCRIBE WHY YOU WOULD LIKE TO BE APPOINTED:

It has been a dream come true to reside in San Miguel County and I want to do what I can to make sure the County continues to be the best place to live, work, and play through intentional and forward looking planning.



AGENDA ITEM - 4.g.

TITLE:

Approval to re-appoint M J Schillaci to a regular term on the Planning Commission beginning 1/12/2021 to 12/31/2023.

Presented by:

Time needed:

PREPARED BY:

John Huebner, Senior Planner

RECOMMENDED ACTION/MOTION:

Recommended approval.

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

ATTACHMENTS:

Description
Application

Upload Date
1/4/2021



APPLICATION

BOARD & COMMISSION MEMBER

DATE: 12/30/2020

NAME OF BOARD YOU ARE INTERESTED IN:

Planning & Zoning Commission

REAPPOINTMENT ☒ OR NEW

APPOINTMENT ☐

APPLICANT NAME: Mary Jo Schillaci

ADDRESS OF RESIDENCE:

Fall Creek Subdivision (For some boards this location

may be relevant)

MAILING ADDRESS: Po Box 812, Telluride, Co 81435

E-MAIL ADDRESS: maryjo.schillaci@gmail.com

PROFESSIONAL BACKGROUND – PERSONAL

INTERESTS: Reading, Walking, X Country Skiing
library board member, Retired from
Town of Telluride where I interacted w
community members daily.

REASON FOR INTEREST IN THIS BOARD – DESCRIBE

WHY YOU WOULD LIKE TO BE APPOINTED:

I think I have skills and background important
to the board. Am a long term Resident and
community member.



AGENDA ITEM - 5.a.

TITLE:

9:40 am Governance/Consideration to appoint the Chair and Vice-Chair for the 2021 County Boards (i.e. Commissioners, Equalization, Housing Authority, Public Health and Environment, Social Services, Weed).MOTION

Presented by:

Time needed:

PREPARED BY:

RECOMMENDED ACTION/MOTION:

Motion to approve _____ Commissioner Name as the Chair and
_____ Commissioner Name as the Vice Chair for the year 2021.

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			



AGENDA ITEM - 5.b.

TITLE:

9:45 am Discussion of the proposed contract with EcoAction Partners for the year 2021 with detailed goals to be accomplished./MOTION

Presented by: Emma Gerona, Director of EcoAction Partners

Time needed: 30 mins

PREPARED BY:

RECOMMENDED ACTION/MOTION:

Motion to approve the proposed contract as presented.

or

Motion to approve the proposed contract with the following changes

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

ATTACHMENTS:

Description

Agreement for Professional Services

Upload Date

12/31/2020



AGREEMENT FOR PROFESSIONAL SERVICES

Independent Contractor

PROJECT: 2020 EcoAction Partners Agreement for Regional and San Miguel County Services

CONTRACTOR NAME: EcoAction Partners

LOCATION: San Miguel County, CO

San Miguel County (the "County") wishes to engage the services of an independent contractor for professional services. The undersigned contractor ("Contractor") has agreed to provide such services, as an independent contractor, in return for the compensation stated herein. Contractor has read and agrees to the terms and conditions stated herein.

BE IT AGREED AS FOLLOWS:

1. **CONTRACT DOCUMENTS.** The "Contract Documents" shall consist of the following:
 - a) this Agreement;
 - b) the Statement of Scope of Work as Exhibit A;
 - c) Certificate of Insurance as Exhibit B; and
 - d) Contractor's W-9 as Exhibit C.
2. **DESCRIPTION OF QUALIFICATIONS AND SERVICES.** Contractor warrants that it is fully qualified to perform the below-described Services and shall perform the Services following generally recognized professional practices and standards of Contractor's profession, to the reasonable satisfaction of the County, and in strict accordance with the provisions of the Contract Documents. No adjustment or modification of the Contract Documents shall be allowed for any misunderstanding of the Services or of the terms and provisions contained in the Contract Documents. Services shall include the programmatic services and specific tasks listed in the Statement of Scope of Work attached in Exhibit A.

Contractor is a qualified provider of the requested services:

 - a) Contractor has expertise in managing a variety of regional greenhouse gas emissions inventory ("GHG"), regional Sustainability Action Plan development and implementation and other sustainability initiatives of the Sneffels Energy Board.
 - b) Contractor has the expertise and knowledge to assist the County in analyzing specific GHG emissions reductions efforts for County programs and operations.
 - c) Contractor has the capacity and experience to facilitate the programmatic services and specific tasks listed in Exhibit A.
3. **COMPENSATION.** San Miguel County agrees to pay **\$17,000 for the services and tasks listed under 1. County's Cost Share of Regional EcoAction Programmatic Services Offered in San Miguel County and 2. Additional Specific EcoAction Partners Services Requested & Funded by San Miguel County in Exhibit A.**

Contractor should submit invoices San Miguel County for two equal payments of \$8,500 each on March 1 and November 1.

Invoices must be submitted to and approved by the County Representative designated in the "Authorized Representative" paragraph herein and delivered to the San Miguel County Finance Office. Approved invoices that are received by the Finance Office before the 1st day of the month will be paid on the tenth day of the month; invoices received in the Finance Office the 2nd through the 10th day of the month will be paid on the 20th day of the month; invoices received on the 11th through the 20th day of the month will be paid on the last working day of the month. Payment of invoices does not constitute final acceptance of work, nor shall it be construed as a waiver by the County of any of its rights as may be provided by law.

Contractor represents and warrants that the prices, charges, or fees outlined in this Agreement (on the whole) are at least as favorable as the prices, charges, or fees Contractor charges (on the whole) to other of its customers/clients for the same or substantially similar services provided under the same or similar circumstances, terms, and conditions. If Contractor agrees or contracts with other customers/clients similarly situated during the term of this Agreement, and offers or agrees to a financial term more favorable than those set forth herein (on the whole), Contractor agrees that it will reduce the prices, charges, or fees charged to the County concerning the products/services hereunder to the most favorable rates received by those other customers/clients.

4. **TERM OF AGREEMENT.** The term of this Agreement expires **December 31, 2021.**
5. **AUTHORIZED REPRESENTATIVES.** The County designates **Mike Bordogna** as the County Representative under this Agreement. Contractor designates **Emma Gerona** as the Contractor Representative. Said Representatives shall have the authority to bind the parties concerning the Services. The County Representative shall be present at the worksite and/or review Contractor's work as necessary to assure the Contractor's satisfactory performance under this Agreement. The Contractor Representative shall also be responsible for advising the County Representative of the status of the Services and agrees to take direction only from the County Representative and to comply promptly and fully with the reasonable requests and directives issued by the County Representative from time to time. The County may change its representative at any time by giving Notice to Contractor as set forth herein. Contractor shall not replace the Contractor Representative unless: (a) the County requests a replacement or (b) Contractor terminates the employment of the Contractor Representative and provides a satisfactory substitute. The County must approve the substitute Contractor Representative, and, if no substitute is acceptable, the County may terminate this Agreement.
6. **APPROVAL & ACCEPTANCE OF SERVICES.** The County Representative shall be the sole judge of the acceptability of the Services by the Contractor and the sufficiency of any supporting data submitted by the Contractor. If at the sole discretion of the County conferences with Contractor are necessary or desirable to explain or correct Services, Contractor shall make no additional charge for time or costs for attendance as such conference or for making the required explanations or corrections.
7. **INDEPENDENT CONTRACTOR.** The parties agree that Contractor is a professional person and that the relationship created by this contract is that of employer-independent contractor. Contractor is not an employee of San Miguel County and is not entitled to any benefits provided by San Miguel County to its employees. Unless otherwise specified in writing, Contractor shall furnish all supervision, labor, materials, equipment, supplies, and other incidentals to complete the requirements of the job. Contractor has the authority to control and direct the details of the work; the County is interested only in the results. If Contractor employs others in the commission of the work to be performed on behalf of the County, Contractor shall pay all required employment taxes, including all federal and state income

taxes on all monies paid according to this Agreement and shall maintain, at its own expense, all applicable insurance to include Worker's Compensation/Employer's Liability, Commercial General Liability, and Comprehensive Automobile Liability. Contractor shall provide a copy of said insurance within three (3) business days upon request from the County. Contractor shall have no authorization, either express or implied, to make any commitments on behalf of the County. The Services as defined herein, are subject to San Miguel County's right of inspection and approval. Contractor agrees to comply with all federal, state, and municipal laws, rules, regulations, and safety procedures that are or may apply to the work performed. Contractor may practice their profession for others during periods when not performing work under this Agreement for San Miguel County. The County may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Contractor performs.

8. **WORK PERFORMED AT CONTRACTOR'S RISK.** Contractor warrants that it is fully qualified to perform the Services as set forth herein and shall perform the Services following the professional standards of the industry and in strict accordance with the provisions of the Contract Documents. Contractor shall take all precautions necessary and shall be responsible for the safe performance of the services described herein. All work shall be done at Contractor's risk. Contractor shall be responsible for any damage or loss to San Miguel County property used or held for use in connection with the work performed.
9. **PROFESSIONAL LIABILITY INSURANCE & LICENSURE.** Contractor agrees to comply with all state and federal requirements pertaining to workers' compensation, general liability, and employment liability insurance relating to the performance and completion of this Agreement as applicable. Additionally, Contractor shall purchase and maintain Professional Liability (Errors and Omissions Liability) insurance coverage, from a company or companies licensed to do business in the State of Colorado, as of the effective date of this Agreement and shall be maintained for the duration of this Agreement. Contractor shall also maintain any professional licensure or certifications as required by law during the term of this Agreement. The minimum amount of said insurance coverage shall be commensurate with the risks of services provided under this Agreement to protect them from claims which may arise out of or result from operations under this Agreement, whether such operations be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone whose acts any of them may be liable. Contractor shall provide a copy of their valid professional license/certification and professional liability insurance coverage prior to commencing the Services under this Agreement and during the term of this Agreement shall provide the County written evidence of continuing insurance coverage within three (3) business days upon request from the County. Certificates of insurance shall name San Miguel County as an additional insured. The County shall also be endorsed as a party on said policy and, if requested by the County, Contractor shall provide proof of the endorsement to the insurance policy for this Agreement.
10. **GOVERNMENTAL IMMUNITY.** The County does not intend to waive, by any provision of this Agreement, any rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq*, as currently in effect and as it may be subsequently amended. This indemnity continues beyond the termination of this Agreement for the acts or omissions which occurred during the Agreement Term.
11. **INDEMNIFICATION.** Contractor shall indemnify, release, save, hold harmless and defend San Miguel County, its officials, employees and agents from and against all liabilities, claims, actions, damages, losses, and expenses, including without limitation reasonable attorneys' fee and costs (hereinafter

referred to collectively as “claims”) for bodily injury or personal injury, including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Contractor or any of its owners, officers, directors, agents, employees, or subcontractors. The indemnity includes any claim or amount arising out of or recovered under the Workers’ Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the County shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the County, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, the Contractor agrees to waive all rights of subrogation against the County, its officials, agents, and employees for losses arising from the work performed by the Contractor for the County according to this Agreement. Notwithstanding any other provision of the Contract Documents, Contractor acknowledges that the County, as a governmental entity, is not legally permitted to and does not agree to indemnify Contractor.

12. **APPROPRIATION OF FUNDS.** Time is of the essence in Contractor’s performance of its obligations under this Agreement. San Miguel County’s expenditure of any funds under this Agreement beyond the current County fiscal year shall be expressly subject to and contingent upon the County’s budgeting and appropriating funds for such purposes according to the Colorado Local Government Budget Law and C.R.S. §29-1-110. Should such funds not be budgeted and appropriated for the County’s obligations under this Agreement for future fiscal years, this Agreement shall terminate at the end of the fiscal year for which such funding has been lawfully budgeted and appropriated, and the County shall provide the contractor with prior written notice of such termination.
13. **SUSPENSION & TERMINATION.** Without terminating this Agreement, the County may suspend Contractor’s Services following a five (5) day written Notice to Contractor. In the event of suspension, Contractor shall incur no additional expenses and shall perform no further services for the County under this Agreement after the date of receipt of the notice of suspension unless otherwise specified by the County. If resumption of Contractor’s Services requires any waiver or change in this Agreement, the parties must mutually agree to such waiver or change, in writing, and the writing must be attached as an addendum to this Agreement. Additionally, the County reserves the right to terminate this Agreement, in whole or in part, with or without cause by the giving of a fifteen (15) day written Notice to Contractor. In the event of termination, Contractor shall incur no additional expenses and shall perform no further services for the County under this Agreement after the date of receipt of the notice of termination, unless otherwise specified by the County. Upon termination for any reason, the County shall be entitled to a prorated refund for the remainder of the current term. In the event the County terminates this Agreement for cause, the provisions of the paragraph titled “Damages” shall apply.
14. **DAMAGES.** If Contractor fails to comply with any material provision of the Agreement, Contractor shall be liable for any and all damages, including with limitation, the cost of procuring similar supplies or services and all other costs and expenses incurred by the County because of such failure. All time limits stated in the Agreement are of the essence. Contractor’s failure to substantially complete the services in conformance with the Agreement shall result in damages suffered by the County, including, without limitation, the County’s cost to complete the services together with any other expenses incurred, as determined by the County. The County may offset any amounts owed to it as damages against any monies due and owing to Contractor under this Agreement. In addition, the County shall be entitled to any other rights and remedies available to it in law or equity.

15. **DATA SECURITY.** Any data or documentation Contractor receives from the County under this Agreement is the property of the County and shall be returned at the expiration of the Agreement. The data and documentation may contain confidential information and/or personal identifying information. As such, Contractor shall use reasonable care to ensure said information is secure.

Contractor will take adequate steps and security precautions to prevent unauthorized disclosure of information which is County property including, but not limited to: (a) instructing employees that have access to such information not to copy or duplicate the same or any part thereof; (b) to withhold disclosure or access or reference thereto from unauthorized third parties, and; (c) maintaining proper control of passwords and security procedures to prevent unauthorized access to Contractor's computer systems.

Contractor shall notify the County of any actual or suspected data security incident as soon as practicable, but no later than 24 hours after it becomes aware of it, to include but not limited to: (a) access, use or disclosure of a County's confidential information not permitted by this Agreement; (b) breach of a County's unsecured confidential information; (c) security breach or intrusion or; (d) use or disclosure of a County's confidential information in violation of any applicable federal or state laws or regulations.

If applicable, all data shall be encrypted at rest and in transmission. Contractor's collection, access, use, storage, disposal, and disclosure of data under this Agreement shall comply with all applicable data protection laws, as well as all other applicable regulations and directives.

Upon termination of this Agreement for any reason, Contractor will provide access to all County data for a transition period for up to three (3) months. Once all of the data has been moved and the three (3) month period has expired, Contractor's obligations to maintain the stored data will end. County will also have access to search, playback, and download features. County data will include all associated metadata. Contractor will provide assistance to move County data in a timely and organized manner to another provider at no additional cost during the transition period.

16. **NONDISCRIMINATION.** Contractor agrees to comply with the letter and spirit of the Colorado Anti-Discrimination Act, C.R.S. §24-34-401, et seq., as amended and all applicable local, state, and federal laws regarding discrimination and unfair employment practices. Contractor shall not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified solely because of race, color, creed, religion, gender, gender identity, national origin or ancestry, disability, age, sex, sexual orientation, socio-economic status, marital status, veteran status, or any other basis prohibited by federal, state or local law.
17. **COLORADO LABOR PREFERENCE.** The provisions of C.R.S. sections 8-17-101 and 102 may apply to this Agreement. If this Agreement includes federal funds, this paragraph does not apply. If the work to be performed under this Agreement falls within the definition of "public works project," then the Colorado Labor Preference applies. Colorado labor must be employed to perform the work to the extent of not less than eighty percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed on the project. "Colorado labor" means any person who is a resident of the State of Colorado at the time of the public works project, without discrimination as to race, color, creed, sex, age or religion except when sex or age is a bona fide occupation qualification. A resident of the State of Colorado is a person who can provide a valid Colorado driver's license, a valid Colorado state-

issued photo identification, or documentation that they have resided in Colorado for the last thirty (30) days.

18. **COMPLIANCE WITH PUBLIC CONTRACTS FOR SERVICES REQUIREMENTS - UNDOCUMENTED WORKERS.** Contractor certifies that, at the time of the certification, and before its execution of this Agreement, that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor represents, warrants, and agrees that it: (a) has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment in the United States through participation in the e-verify program or through the Colorado Department of Labor and Employment ("CDLE") and; (b) otherwise will comply with the requirements of C.R.S. §8-17.5-101(2)(b). Contractor is prohibited from using either the e-verify program or CDLE program procedures to undertake pre-employment screening of job applications while Services are being performed under this Agreement. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall notify the subcontractor and San Miguel County within three days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien and terminate the subcontract with the subcontractor if within three (3) days of receiving the notice the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. Contractor shall comply with any reasonable request CDLE made in the course of an investigation that CDLE is undertaking according to the authority established in C.R.S. §8-17.5-102. If Contractor fails to comply with any requirement of this provision or C.R.S. §8-17.5-101 et seq., the County may terminate this Agreement for a breach and Contractor shall be liable for actual and consequential damages to the County.

If Contractor is a natural person over eighteen years of age and a sole-proprietor, a condition precedent to the County's execution of this Agreement is that the County has verified that contractor is lawfully present in the United States in accordance with H.B. 06 -1023, C.R.S., Title 24, Article 76.5, Restrictions on Public Benefits and that the contractor has executed the statutorily required affidavit regarding their lawful presence in the United States. Contractor shall provide a copy of their valid legal presence affidavit before commencing the Services under this Agreement.

19. **COLORADO OPEN RECORDS ACT.** The parties acknowledge that San Miguel County is a governmental entity formed according to Colorado law, and as such, is subject to the Colorado Open Records Act, C.R.S. § 24-72-200 *et seq.* ("CORA"). In the event the County receives a request under CORA that would require production of records related to Contractor, the County will inform Contractor of such request and provide Contractor with a copy of any such written request. Contractor shall promptly notify the County if: (a) production of the requested record would disclose Contractor's trade secrets, privileged information, and/or confidential commercial or financial data pursuant to C.R.S. § 24-72-204(3)a(IV) or; (b) Contractor desires to pursue a legal action to prevent disclosure of such documents. The County shall determine whether to deny the request. If the County's denial of a request is challenged, the County will notify Contractor of such challenge and provide the Company with a written copy of any such challenge. Contractor shall indemnify and hold the County harmless from any claim or judgment as well as any costs and attorney's fees

incurred in denying such request or otherwise assisting Contractor in response to a denial and/or legal challenge to the denial.

20. **GOVERNING LAW, JURISDICTION & VENUE.** This Agreement will be governed by and construed in accordance with the laws of Colorado. Should there be a dispute between the parties, jurisdiction and venue shall lie in the 7th Judicial District of San Miguel County, Colorado.
21. **WARRANTY.** Contractor represents that the Services pursuant to the Contract Documents will be performed in accordance with industry standards in all material respects.
22. **NOTICE.** Notice under this Agreement shall be given in writing and shall be deemed received if given by: (a) confirmed electronic transmission (as defined below) when transmitted, if transmitted on a business day and during the normal business hours of the recipient, and otherwise on the next business day following transmission; (b) certified mail, return receipt requested, postage pre-paid, three (3) business days after being deposited in the United States mail; or (c) overnight carrier service or personal delivery when received. Notice shall be given to the parties at the following addresses:

San Miguel County Representative:

Name: **Mike Bordogna**
Title: **County Manager**
Mailing Address: **PO Box 2011**, Telluride CO,
81435
Physical Address: **333 W. Colorado Ave.**,
Telluride CO, 81435
Phone: **970-728-3844**
Email: **mikeb@sanmiguelcountyco.gov**

Contractor Representative:

Name: **Emma Gerona**
Title: **EcoAction Partners Executive Director**
Mailing Address: **PO Box 1625**, Telluride CO,
81435
Physical Address: **355 W. Colorado Ave.**,
Telluride CO, 81435
Phone: **970-728-1340**
Email: **emma@ecoactionpartners.org**

Copy to: San Miguel County Attorney

Attn.: Amy Markwell
PO Box 1170 (mailing)
333 W. Colorado Ave. (physical)
Telluride, CO 81435
970-728-3879
attorney@sanmiguelcountyco.gov

“Electronic Transmission” means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, but specifically excluding facsimile transmissions and texts. The parties agree that: (a) any notice or communication transmitted by electronic transmission shall be treated in all manner and respects as an original written document; (b) any such notice or communication shall be considered to have the same binding and legal effect as an original document, and; (c) at the request of either party, any such notice or communication shall be re-delivered or re-executed, as appropriate, by the party in its original form.

23. **MISCELLANEOUS.**

a) Assignability. Contractor shall not assign its rights or delegate its obligations under this Agreement without the County's prior written consent.

b) Severability. Should a court of competent jurisdiction determine that any provision or term of this Agreement be legally void or otherwise legally unenforceable, such provision or term shall be deemed severable from the remainder of this Agreement, which shall remain in full force and effect.

c) Officials Not to Benefit. No elected or employed member of the County government shall be paid or receive, directly or indirectly, any share or part of this Agreement or any benefit that may arise therefrom.

d) Conflict of Interest. Contractor shall not knowingly perform any act that would conflict in any manner with the performance of services under this Agreement. Contractor certifies that it is not engaged in any current project or business transaction, directly or indirectly, nor has any interest, direct or indirect, with any person or business that might result in a conflict of interest in the performance of services.

e) Records Retention. Contractor shall maintain all records, including working papers, notes, and financial records, and make them available for County inspection and audit which they may require for any purpose authorized by law.

f) Entire Agreement. This Agreement, together with any attached exhibits, represents the complete, integrated, and merged understanding of the parties with regard to the subject matter of this Agreement, and any prior or contemporaneous provision, term, condition, promise, representation, or understanding, shall be of no legal force or effect unless embodied herein in writing, or in a written amendment to this Agreement mutually agreed to and executed by the parties. A party's waiver of a specific right set forth herein shall not be deemed to be a waiver by that party of any other of its rights contained in this Agreement. In the event of a conflict between an Exhibit to this Agreement and the body of this Agreement, the Agreement will govern resolution of the conflict.

g) Execution by Counterparts; Electronic Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The parties approve the use of electronic signatures for execution of this Agreement. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. §24-71.3-101 et seq.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the latter day and year indicated below.

San Miguel County, Colorado

Date signed _____

By _____

Name: **Mike Bordogna**

Title: **San Miguel County Manager**

Contractor Name: EcoAction Partners

Date signed _____

By _____

Name: **Emma Gerona**

Title: **EcoAction Partners Executive Director**

Reviewed by County Attorney for form and content.

Amy T. Markwell

Date

Additional Forms Required:

- Affidavit of Lawful Presence (If Sole Proprietor, if applicable)
- Copy of Professional License/Certification (if applicable)
- Copy of Insurance Endorsement (if requested)

Z:\County Attorney\Agreements\Independent Contractor\Professional Services Agreement (template).Rev December 2019.docx

EXHIBIT A
Statement of Scope of Work

2021

1. County's Cost-Share of Regional EcoAction Partners Programmatic Services Offered In San Miguel County

These services are shared among regional governments:

- **Regional GHG Inventory and Regional GHG data sharing on EcoAction Partners website**
- **Sneffels Energy Board**
 - Coordination of meetings, notes, communication
 - Establishing Goals & Action Plan beyond 2020
 - Regional government elected official & staff representation, SMPA staff, & others collaborating regionally on GHG emissions reduction efforts
 - Sharing of statewide collaboration & resources to assist with local / regional initiatives & projects
- **Green Business Certification Program**
 - Engaging businesses in reducing energy use & GHG emissions
 - Financial incentive support for energy efficiency & renewable energy actions
 - Engaging property management companies in reducing GHG emissions
 - SMC C-PACE promotion included
 - Plastic Film recycling program included
- **Greenlights LED Program Implementation**
 - Outreach and education to engage program participants
 - Financial incentive support
- **Plastic Film Upcycling Program Management**
- **Regional Energy & Waste Resource Organization for Governments & Community.** Services include:
 - Website with resources for community
 - Monthly email newsletters
 - Telephone & in-person support for community members on energy efficiency & renewable energy resources & financial incentives (incl: SMPA, Black Hills, state & federal tax programs, & C-PACE)
 - Recycling outreach information for region
 - Participation & leadership in sustainability-related regional events, forums, and meetings
 - Leadership & education to the organizers and volunteers of regional festivals about implementing best practices for zero waste events

2. Additional Specific EcoAction Partners Services Requested & Funded By San Miguel County

These services are specific to San Miguel County:

- **SMC-specific - Community GHG emissions & Energy Use Tracking:**
 - Community Annual GHG Inventory & Energy Use Analysis
- **Building Energy Code Update Assistance to SMC Building Department (including REMP program development and adoption).**
- **Marketing and facilitation with staffing for SMC-sponsored e-recycling events in Town of Telluride (TOT), Town of Mountain Village (TMV), & Town of Norwood (TON), as COVID conditions permit**
 - 2-day Telluride Electronics Recycling Event – a 2-day recycling event strategically timed with Telluride Spring Clean-up events
 - Fall Electronics Recycling Events in Telluride & Mountain Village
 - 1-day Norwood Electronics Recycling Event – a 1-day recycling event strategically timed with other local Clean-up events, preferably the Town of Norwood’s Clean-up event

All-inclusive Cost for Items in 1 and 2 above: \$17,000

- Will be invoiced in two equal installments semi-annually per Contract requirements.
- Contractor will provide programmatic status updates to the BOCC in April and October, or at times as requested by BOCC.

EcoAction Partners Services for San Miguel County	Hours	Program Cost
These services are cost-shared among regional governments:	188	\$9,800
Regional GHG Inventory, Analysis & Data Sharing on EAP website	30	\$2,250
Sneffels Energy Board	60	\$3,150
- Coordination of meetings, notes, communication - Regional Sustainability Action Plan update, including Goals, GHG-reduction Actions, & Performance		
Measurement Tools		
- Regional government elected official & staff representation, SMPA staff, & others collaborating regionally on GHG emissions reduction efforts - Sharing of statewide collaboration & resources to assist with local / Regional initiatives & projects		
Green Business Certification Program	22	\$990
- Engaging businesses in reducing energy use & GHG emissions - Financial incentive support for energy efficiency & renewable energy actions - Engaging property management companies in reducing GHG emissions - SMC C-PACE promotion included		
Greenlights LED Program Implementation	38	\$1,700
- Outreach and education to engage program participants - Financial incentive support		
Plastic Film Upcycling Program Management	4	\$180
Regional Energy & Waste Resource Organization for Governments & Community. Services include:	34	\$1,530
- Website with resources for community - Monthly email newsletters - Telephone & in-person support for community members on energy efficiency & renewable energy resources & financial incentives (including: SMPA, Black Hills, state & federal tax programs, C-PACE) - Recycling outreach information for region - Participation in & sharing of information from related regional events, forums, and meetings - Leadership & education to the organizers and volunteers of regional festivals about implementing best practices for zero waste events - Support for multi-jurisdictional or SMC-specific government-led projects such as community composting solutions		
These services are specific to San Miguel County:	124	\$7,200
SMC-specific - Community GHG emissions & Energy Use Tracking:	20	\$1,500
- Community Annual GHG Inventory & Energy Use Analysis		
Building Energy Code Update Assistance to SMC Building Department (including REMP program)	24	\$1,800
Marketing and facilitation with staffing for SMC-sponsored Electronics Waste Recycling events in Town of Telluride (TOT), Town of Mountain Village (TMV), & Town of Norwood (TON).	80	\$3,900
- 2-day Telluride Electronics Recycling Event – a 2-day recycling event strategically timed with Telluride Spring Clean-up events - Fall Electronics Recycling Events in Telluride & Mountain Village - 1-day Norwood Electronics Recycling Event – a 1-day recycling event strategically timed with other local Clean-up events, preferably the Town of Norwood’s Clean-up event - (not including 3rd party contactor expenses of \$500/day + lodging) - sponsored by Alpine Bank		
Services Total:	312	\$17,000



AGENDA ITEM - 5.c.

TITLE:

10:20 am Governance/Consideration to appoint Commissioners to 2021 Boards and Committees/MOTION

Presented by: Carmen Warfield, Chief Deputy Clerk

Time needed: 20 mins

PREPARED BY:

RECOMMENDED ACTION/MOTION:

Motion to approve the detailed list reviewed and confirmed for the 2021 Boards and Committees.

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

ATTACHMENTS:

Description

Updated Boards and Commissions 1.4.2021

Upload Date

1/4/2021

2020 BOARDS AND COMMITTEES Alpine	2021 BOARDS AND COMMITTEES	2020 COMMISSIONER Board and Committees	2021 STAFF APPOINTED (AP) or As Needed (AN)	2020 STAFF APPOINTED (AP) or As Needed (AN)	REPRESENTATION	MEETING FREQUENCY	LOCATION
Ranger Coalition		Lance-Hilary-Kris		AN	Invited	occasionally	Silverton
BLM Cooperating Agency - Range wide Gunnison Sage grouse EIS -DELETE?		Hilary		Lynn P-AP	Designated BOCC rep.	bi-monthly	Phone
BLM Cooperating Agency - Uncompaghre RMP Revision -DELETE?		Hilary		Lynn P - AP	Designated BOCC rep.	quarterly	Montrose
CCAT Governing Board DELETE? Move		Hilary			Invited		
CCI Colorado Counties Inc.		Lance-Kris-Hilary		AN		2X year	
CCI Western District -DELETE?		Lance-Kris-Hilary			Designated County rep.	2X year	Montrose
CCI Legislative Liaison		Hilary		AN	BOCC Self Selected		Denver
Club 20		Kris-Lance Alt		AN			
Colorado Communities for Climate Action (CC4CA)		Lance, Kris- Alt		AN	Designated BOCC rep.	monthly	Boulder
Colorado Collaborative for Healthy Soils		Hilary-Kris					
Contraband Seizure Committee		BOCC Chair		Deputy DA, Bill Masters	Designated County rep.	irregularly	
San Juan Skyway Scenic Byway Committee		Lance-Kris Alt		AN	Designated BOCC rep.		
Counties and Commissioners Acting together (CCAT)	- CCAT GOV BOARD	Hilary-Kris-Lance		AN	Designated BOCC rep.	2 x Monthly Calls	
County Coalition for the Gunnison Sage Grouse		Hilary		AN	Designated BOCC rep.	occasionally	Montrose
County Early Childhood Advisory Panel		Lance		AN	Designated BOCC rep.		San Miguel
County Lodging Tax Panel		Lance		Carmen Warfield	Designated County rep.	2X year	Telluride
County Personnel Committee		Kris		Kristl H & Mike B	Designated BOCC rep.	irregularly	Telluride
EcoAction Partners		Lance - Kris Alt		AN	Designated BOCC rep.	monthly	Telluride
Forest Health Stakeholder Group -DELETE?		Hilary		AN	Designated BOCC rep.	quarterly	Telluride Region
Gondola Subcommittee		Lance		Mike B	Designated BOCC rep.	irregularly	Mtn. Village
Gunnison Sage Grouse Working Group - San Miguel		Hilary		AN	Designated BOCC rep.	occasionally	Norwood
Lower Dolores Management Plan Working Group Mental Health Advisory Panel		Hilary-Lance Alt		AN		Occasionally	Cortez
NACO Agriculture Rural Affairs -NACO PUBLIC LANDS		Carol		AN	Designated BOCC rep.		San Miguel
NACO Rural Caucus		Hilary		AN	Invited		
National Association of Counties (NACO)		Hilary		AN	Invited		
PLP (Public Land Partnership) - Executive Committee -DELETE?		Lance-Hilary-Kris		AN		2 x year	
Region 10 Board of Directors		Hilary-Co Chair			Designated BOCC rep.	monthly	Montrose
Region 10 Gunnison Valley Transportation Planning Region (GVTPR)		Kris		Mike B	Designated BOCC rep.	monthly	Montrose
Regional Behavioral Health Coalition - Now BHS?		Hilary-Kris		Mike B	Designated BOCC rep.	irregularly	Montrose
San Miguel County Housing Authority		Carol F.		Carol F.	Designated BOCC rep.	Occasionally	Telluride
San Miguel Regional Housing Authority		Hilary-Kris-Lance		Lois Major			San Miguel
San Miguel Watershed Coalition				Mike B			San Miguel
SBEADMR AMG		Lance-Kris		AN	Designated BOCC rep.	monthly	Telluride
SMC Daycare/Preschool Association		Hilary		AN	Designated BOCC rep.	TBD	Montrose
SMC Transit Advisory Committee (SMART)-All 3 may attend		Lance		Amy M	Designated BOCC rep.		San Miguel
Sneffels Energy Board		Kris, Lance, Hilary Alt		AN	Designated BOCC rep.	quarterly	Telluride
Telluride Foundation Board		Lance		Lynn P	Designated BOCC rep.	monthly	Telluride
Telluride Regional Airport Authority		Kris		None	Designated BOCC rep.	4 times per year	Telluride
Ute Reconciliation		Kris-Lance Alt		None	Designated BOCC rep.	10 x per year	Telluride
		Hilary		AN	Designated BOCC rep.	occasionally	

San Miguel River Stakeholders Lance AN Designated BOCC rep occasionally via Zoom

Dolores NCA Working Group Hilary

Should we add the temporary COVID working groups? ERC, Lodging, 5 Star?



AGENDA ITEM - 5.d.

TITLE:

10:40 am Continued discussion on the 5-star State Certification Program and naming committee members.

Presented by: Mike Bordogna, County Manager and Kris Holstrom, Commissioner

Time needed: 15 mins

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			



AGENDA ITEM - 6.a.

TITLE:

Consideration of submitting pre-scoping comments to the Uncompahgre Field Office/Bureau of Land Management concerning the San Miguel River Restoration Project comment period.

Presented by: Lynn Padgett, Government Affairs/Natural Resource Director

Time needed: 10 mins

PREPARED BY:

Lynn Padgett

RECOMMENDED ACTION/MOTION:

Discussion and direction for providing any pre-scoping comments to BLM by 1/29/2020

INTRODUCTION/BACKGROUND:

**San Miguel River Restoration Project
Pre-scoping and Public Outreach
December 2020 - January 2021**

The BLM is interested in your input! As you are probably aware the San Miguel River channel began braiding into multiple channels above the Caddis Flats campground and boat ramp in 2017. Since that time, a historic overflow channel enlarged on river left. Many large and small trees then caved into the new channel and caused numerous debris jams. These jams formed quickly and created hazardous conditions for boaters. Due to these conditions, the BLM placed warning signs advising boaters to avoid this section of the river for most of the past three years.

In September of 2019, the BLM hired a consulting company to assess the reach and also the stabilization efforts conducted in 2004 and 2008 to protect highway 145. The goals of the report were to determine if additional river stabilization is needed and to develop a range of alternatives for addressing safe boater passage. Please see the attached file.

The BLM is interested in hearing your feedback after reviewing this report. We would like to know how the various alternatives might affect your use of public land (such as outfitting activities) or resources of interest to your organization. The range of alternatives in the assessment report include: continuing to remove the woody

debris; substantial excavation and restoration of the original channel; or leaving the channel unaltered and letting the river dictate the alignment and eventual uses.

Currently, BLM does not have a specific proposal to take any action and this request for input is not associated with any planned action under the National Environmental Policy Act (NEPA). Your input will help us craft alternatives if we initiate an environmental review of any proposed work.

We are reaching out with this letter to solicit informal input from known partners and stakeholders on the San Miguel River. Please feel free to share this report and opportunity to provide input with other individuals and organizations we may have missed. BLM will provide further formal opportunities for public input should we proceed with a proposal in the future after reviewing this input.

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By January 29th, please add your comments to our ePlanning website (<https://eplanning.blm.gov/eplanning-ui/project/2003906/510>). You can also mail responses to:

Montrose Public Lands Center
2465 South Townsend Ave
Montrose, CO 81401
Attn: Jedd Sondergard

FISCAL IMPACT:

N/A

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Government Services- Natural Resources
Description:			

ATTACHMENTS:

Description
Email invitation to provide pre-scoping comments

Upload Date
12/30/2020

Lynn Padgett

From: Sondergard, Jedd B <jsondergard@blm.gov> on behalf of Sondergard, Jedd B
Sent: Thursday, December 10, 2020 11:53 PM
To: lynnp@sanmiguelcountyco.gov; lancew@sanmiguelcountyco.gov; Christopher Hazen; Elizabeth Stuffings; Celene Hawkins; Unterreiner - DNR, Ryan; joan@joanmay.org; Cary Denison; info@sheepmountainalliance.org; Shelley@greatoldbroads.org; Jo.Heinlein@state.co.us; grant.brown@co.state.us; matt@raftingdurango.com; durangorivertrippers@gmail.com; bill@dvorakexpeditions.com; andy@raftecho.com; jessica@raftecho.com; alex@mild2wildrafting.com; admin@mild2wildrafting.com; james@durangorafting.com; info@fishrigs.com; wsands@vailresorts.com; info@scenicrivertours.com; admin@scenicrivertours.com; sophie@tellurideacademy.org; glennonk@icloud.com; info@tellurideflyfishers.com; mpdoherty123@gmail.com; john@tellurideoutside.com; kris@tellurideoutside.com; bootdr1@gmail.com
Cc: Franz, Sherman (Edd) E; Lewis, Robin C; Sukharnikova, Tatyana; Larson, Gregory P; Japuntich, Russell D; Losasso, Angela M; Hauser, Lane
Subject: San Miguel River Public Outreach
Attachments: FINAL San Miguel Conceptual Design Report.pdf

Dear San Miguel River Users,

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Attn: Jedd Sondergard

Jedd Sondergard | Hydrologist
Uncompahgre Field Office | Bureau of Land Management
(970) 240-5342



AGENDA ITEM - 6.b.

TITLE:

San Miguel County and The Telluride Foundation announce the completion of the 2020 Meat Processing Facility Feasibility Study and study availability

Presented by: Lynn Padgett, Government Affairs/Natural Resource Director

Time needed: 10 mins

PREPARED BY:

Lynn Michelle Padgett & April Montgomery/Telluride Foundation

RECOMMENDED ACTION/MOTION:

Discussion/Update

INTRODUCTION/BACKGROUND:

San Miguel County and The Telluride Foundation announce the completion of the 2020 Meat Processing Facility Feasibility Study and study availability.

Telluride, Colorado (December 30, 2020)

Earlier this year, San Miguel County, in partnership with the Telluride Foundation, received a Rural Economic Development Grant (REDI) from the Department of Local Affairs (DOLA) to conduct a feasibility study on the existing and potential meat processing options for meat producers and hunters. This feasibility study has recently been completed by Goldenhorn Consulting Group, a Tennessee-based group with extensive experience conducting meat processing facility feasibility studies in rural areas.

Goldenhorn Consulting Group presented their findings on December 15, 3pm – 5pm, 2020, to stakeholders and the public via a Zoom meeting, which was well attended and included a question and answer session.

Goldenhorn Consulting Group has met with ranchers and various interested parties local to San Miguel, Ouray, and west Montrose counties to gain insight into the current status of meat processing in the region. Over the last several months, surveys were conducted to assess the meat supplied by farmers and the demand for the regional meat processing facility. These surveys indicate that the majority of surveyed businesses would be interested in purchasing meat produced locally, even if that required paying a premium. Restaurants also indicated that serving local meat is prioritized over serving grass-fed or organic meat. Another survey indicates

that producers are in favor of processing meat closer to their farms and ranches. Additionally, the survey findings indicate that a new local processing facility may influence producers to either finish a greater number of cattle for processing or even begin finishing cattle for the first time altogether. Hog and sheep producers indicated they would increase herd sizes if a new facility was constructed or a current facility was updated.

The Draft Survey Results, Final Study Report, and the December 15, 2020 Presentation slides are being made available to the public with the goal of promoting additional conversations as well as assisting people who might be interested in taking this study to the next step.

GANR has prepared the final DOLA REDI grant financial report and deliverables to close out the DOLA REDI grant, which provided \$35,000 to fund the study. Telluride Foundation contributed \$7,816.02 of matching cash funds for the study. GANR and San Miguel County performed fiscal agency and grant administration services for the study.

The study deliverables consist of three documents that are being posted on the County web site:

1. Draft Survey Results 10/9/20 which informed the study findings and Final Report
2. Study Consultant's 12/15/2020 Public Presentation Slides
3. Final Meat Processing Facility Feasibility Study Report 12/17/2020

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Government Services- Natural Resources
Description:			

ATTACHMENTS:

Description	Upload Date
Survey Results	1/4/2021
Press release	1/4/2021
Colorado Feasibility Study	1/4/2021

Business Surveys

A phone survey of local business that potentially purchase meat was conducted to estimate current and potential demand of local meat. A list of 74 business, which primarily consisted of restaurants, but also included some hotels and grocers, was constructed with the help of community members as well as internet research to attempt to construct an inclusive list of West End businesses.

Survey collection began May 1, 2020 and concluded on August 3, 2020. The survey extended over a significant period of time due to the COVID-19 pandemic. Because of the pandemic, many businesses appeared to be closed and were unable to be reached, even as multiple attempts were made over the course of the summer. A total of 12 businesses were reached over this period of time, with eight respondents completing 100 percent of the survey. The remaining four respondents finished a portion of the survey and their responses are also included in the analysis.

Respondents were first asked who their current meat supplier is, and responses were incredibly varied. Listed meat suppliers included Callaway, US Foods, Coleman, Kinikin, Gravy Brothers, Taylor Quality Meats, Shamrock, Laid Back Ranch, Vicky's, Farm Runners, Mavrick Ranch, and Cisco. Shamrock and Cisco were the only suppliers appearing in multiple responses, with two tallies for Shamrock, and four tallies for Cisco. One respondent indicated that they do not purchase meat, so their survey was terminated after this question.

Next, respondents were asked whether they would be interested in purchasing meat produced in the West End region (west Montrose, Ouray, and San Miguel Counties). Seven respondents indicated they would be interested in purchasing local meat, with an additional three respondents indicating they may be interested. Only one respondent indicated they would not be interested.

Moving to the next question, responses dropped down to the final eight respondents who completed the survey. Six of these eight indicated they would be willing to pay a price premium for local meat, while one indicated they may be willing to pay a price premium, and one individual indicated they would not be willing.

Respondents were then asked to rank their preference between serving local, grass-fed, or organic meat. Seven of the eight respondents indicated they would prefer to serve local meat over grass-fed or organic, with grass-fed receiving the remaining first place vote. The second place spot between grass-fed and organic was closer, with grass-fed receiving five tallies, and organic receiving two.

To measure the concern of consistency in the taste and quality of local and grass-fed beef, respondents were asked whether they, or their patrons, had their concern with local, grass-fed, or both types of meat. Five respondents indicated that they had concern over the consistency of taste and quality of both local and grass-fed beef, while two indicated they have concerns for only grass-fed, and one indicated they have no concerns.

Regarding the consistency in availability of local meat, six respondents indicated that they would still be willing to purchase local meat when it is available, even if it is not consistent. The remaining two respondents indicated they would not be willing to purchase local meat if it was not consistently available.

Moving on to preferences between purchasing fresh and frozen meats, four respondents indicate they do have a preference between fresh and frozen, and an additional four indicated they did not have a preference. Those that indicated they do have a preference indicated which they prefer. Two indicated they prefer fresh, while one respondent indicated it depends on the cost as to which they prefer. One respondent did not respond to the question. In the final question regarding fresh or frozen preferences, respondents were asked whether they would be willing to purchase frozen meat if it was produced locally. Only two of the eight respondents indicated they would be willing to purchase frozen if it was produced locally.

Finally, respondents were asked about their purchasing habits for beef, chicken, sheep/goats, pork, and wild game. Raw response data is displayed in each table below. It should be noted that some respondents refused to give price data for their purchasing and that some purchasing quantities appear to be much larger than is reasonable. This could be due to individuals responding on a yearly purchasing basis as opposed to the weekly basis that was asked of them.

Meat Purchasing Habits of Respondents		
Beef		
Cuts of Beef Most Commonly Purchased Each Week	Average Pounds Purchased per Week	Price Paid per Pound for Each Cut
Ground Beef	80 lbs	3.62
Ribeye, Bison	30 lbs each	
Ground Beef, Round, Rib,	8000	
Steak, Ground Beef	10 lbs	
Ground, Sausage, Ribeye,	10 lbs	4.00
Ground Chuck	30 lbs	6.00
Steak, Beef		
New York, Flank, Skirt		35 lbs
Chicken		
Cuts of Chicken Most Commonly Purchased Each Week	Average Pounds Purchased per Week	Price Paid per Pound for Each Cut
Breast	5000 lbs	
Breast	5000 lbs	1.56
Breast, Thigh	80 lbs	
All Cuts	10 lbs	
All Cuts		
Breast, Whole Chicken	30 lbs	
Pork		

Cuts of Pork Most Commonly Purchased Each Week	Average Pounds Purchased per Week	Price Paid per Pound for Each Cut
	8 lbs	
Farm Raised		
	10 lbs	
Loin and Tenderloin	20 lbs	
Sheep/Goat		
Cuts of Sheep/Goat Most Commonly Purchased Each Week	Average Pounds Purchased per Week	Price Paid per Pound for Each Cut
Whole Lamb, Local		8.00
Wild Game		
Cuts of Wild Game Most Commonly Purchased Each Week	Average Pounds Purchased per Week	Price Paid per Pound for Each Cut
Elk	10 lbs	

Business Survey Summary

While the response numbers were lower in regard to the population for this survey, if it is representative of the population it indicates that there is interest in purchasing locally grown meats amongst West End businesses. Seven respondents indicated they would be interested in purchasing meat, with an additional three indicated they may be interested. Only one respondent indicated they would not be interested. Additionally, when given the option between serving locally-grown, organic, or grass-fed, seven of the eight respondents indicated they would be interested in serving locally-grown as opposed to either organic or grass-fed. Respondents did seem, however, to prefer fresh meat over frozen.

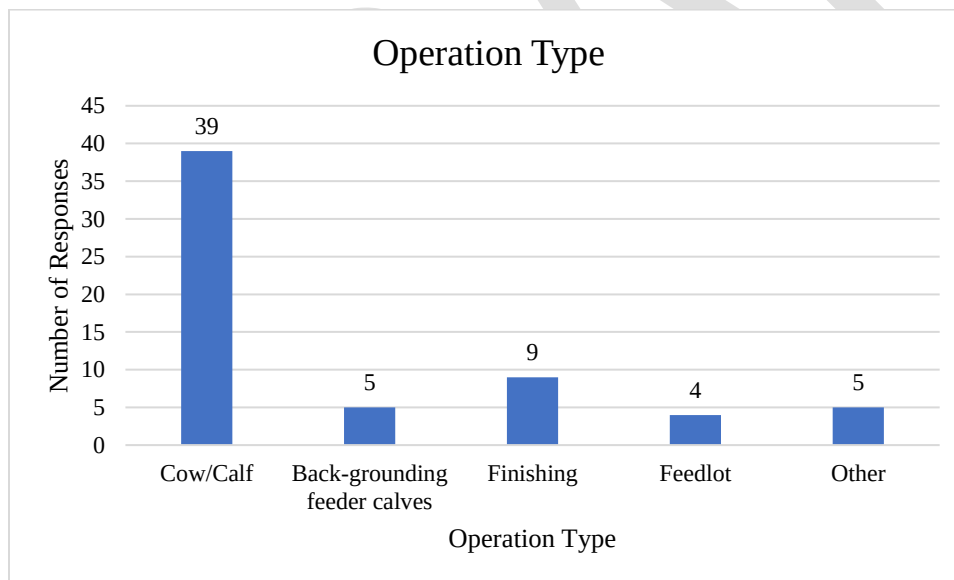
Producer Surveys

Four producer surveys were conducted through an online survey tool. These four surveys targeted beef producers, hog producers, sheep and goat producers, and wild game hunters. The surveys were published February 21, 2020 and closed on August 20, 2020. The goal of the surveys were to estimate the amount of product that has the potential to be processed locally, as well as the interest producers and hunters have in sending their meat to either a new or updated meat processing facility in the region.

Beef Survey Results

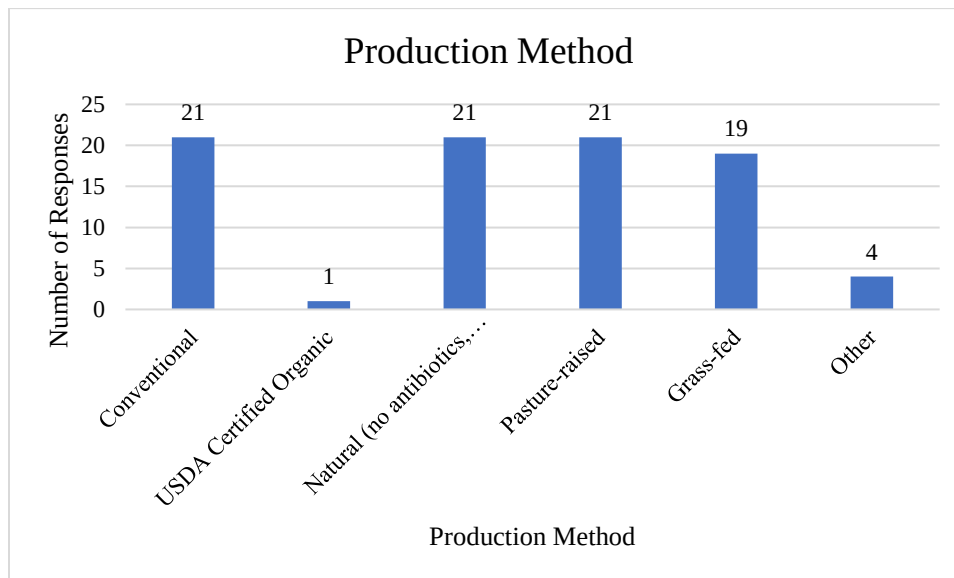
Over the course of the survey, 69 individuals opened the survey link, with 38 individuals completing 100 percent of the survey. An additional three respondents partially completed the survey with reportable responses. Many of the survey questions allowed for multiple responses, which is why some questions may appear to have more responses than number of total completed responses.

Regarding operation type, respondents were asked to indicate which option best describes their operation. Response choices included cow/calf, back-grounding feeder calves, finishing, feedlot, and other. The majority of producers (39 responses) indicate that they are a cow/calf operation, with finishing cattle coming in at a distant second (nine responses). “Other” responses included “backyard cattle raising”, “breeding seed stock”, “direct to consumer”, “4H”, and “two calves”.



Next, respondents were asked to describe their beef production method. Response choices included conventional, USDA certified organic, natural (no antibiotics, no hormones, etc.), pasture-raised, grass-fed, and other. Responses were fairly even distributed between conventional, natural, pasture-raised, and grass-fed, with conventional, natural, and pasture-raised each receiving 21 responses, and grass-fed receiving 19. “Other” responses included

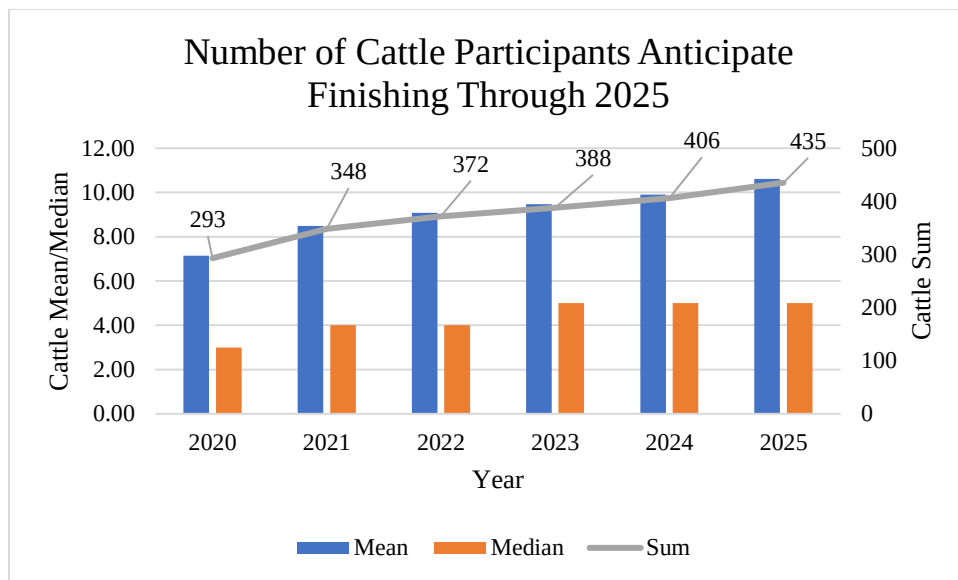
“small scale”, “USDA Triangle Stamp”, “grain-fed”, and “natural could be easily achieved with additional record keeping”.



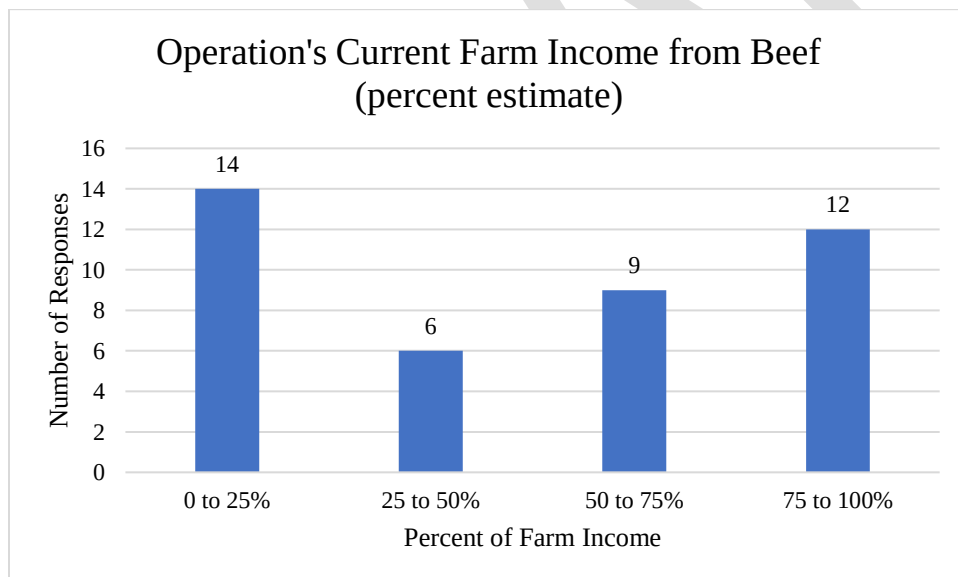
To determine average size of herd, respondents were asked to indicate the average number of head they raise in cow/calf pairs, feeder calves, finished cattle, and bulls. The following table illustrates descriptive statistics from this question and the large difference between the mean and median likely indicates that there are a much higher number of smaller operations, but the significantly larger operations cause the mean values to skew larger. The average number of finished cattle is 6.1, with the mode of the dataset being 2.0. Out of the 41 respondents, the sum of all finished cattle is 249.

Average Number of Cattle Raised Each Year								
Cattle Type	Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max	Sum
Cow/Calf Pairs	156.2	45.0	20.0	0.0	12.5	97.5	1400.0	6402.5
Feeder Calves	70.2	2.0	0.0	0.0	0.0	37.5	1200.0	2880.0
Finished Cattle	6.1	2.0	0.0	0.0	0.0	8.0	50.0	249.0
Bulls	6.4	1.0	0.0	0.0	0.0	3.5	70.0	261.5

The following question asked respondents to indicate the number of cattle they anticipate finishing from 2020 to 2025. Similar to the previous table, the median and mean show some differences indicating that more operations are smaller. The following chart illustrates the mean, median, and sum of the data for the 41 respondents over the course of the six years. The sum of finished cattle is 293, slightly above that indicated in the previous question. It can also be seen that the number of cattle individuals anticipate finishing increased each year and results in a value of 435 in the final estimated year.



The next question sought to determine the percent of the operation's farm income that came from the sale of beef cattle. This figure seems to reinforce the idea that there are a significant number of small, hobby farmers, in addition to the larger operations that receive a significant portion of their income from the sale of beef.



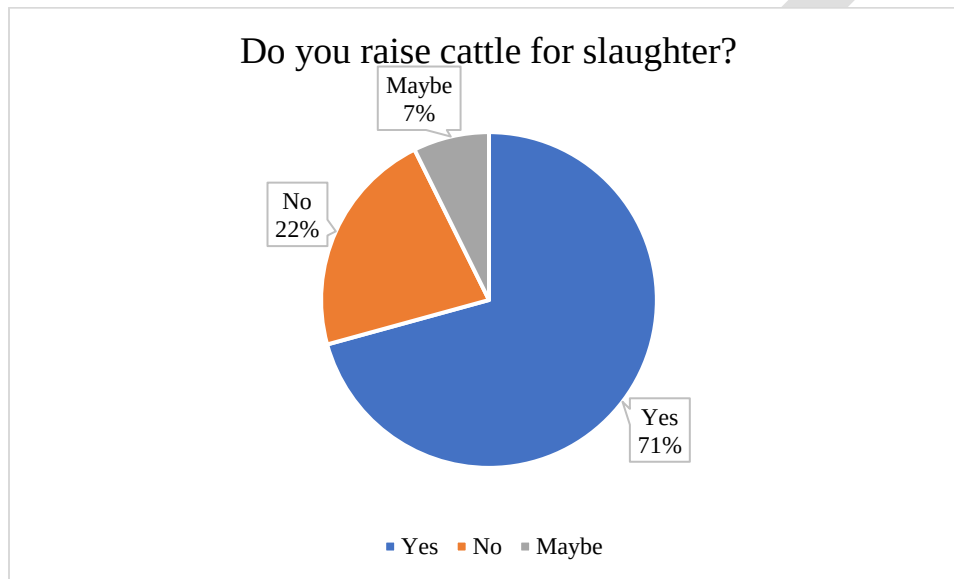
This idea may be again reinforced by the number of acres the respondents currently have in farmland. While the mean of the data set was nearly 1,200 acres, the median drops to 250 acres.

Number of Acres in Farmland						
Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
1196.4	250	80	5.4	88	1350	8500

Further, the number of acres that respondents have in pasture is described by the statistics illustrated in the following table.

Number of Acres in Pasture						
Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
1023.961	150	150	5.4	60	750	8500

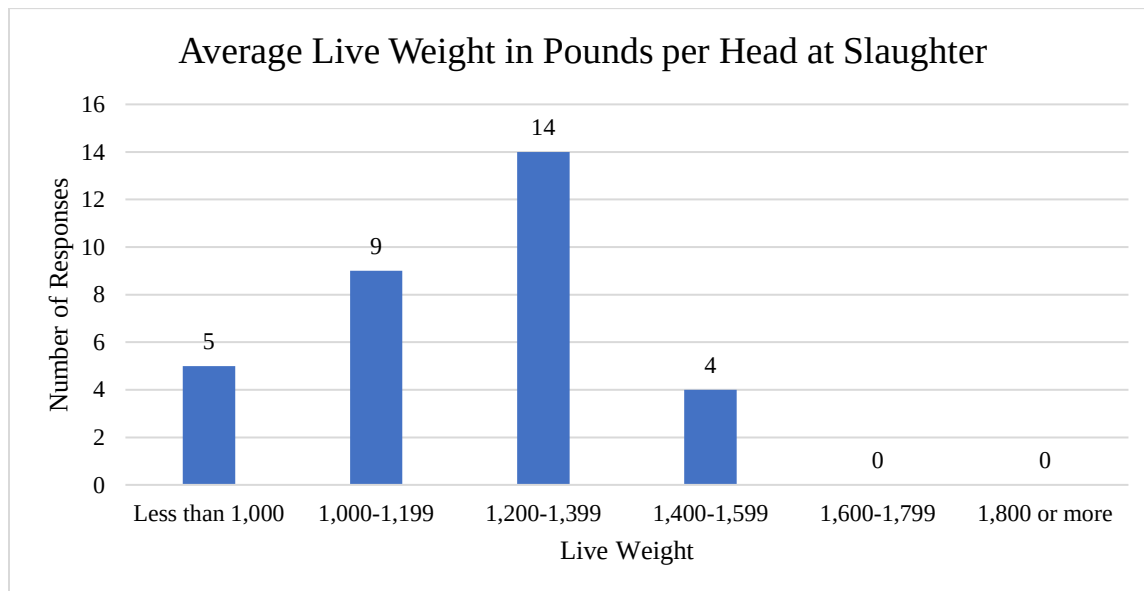
Moving back to the slaughter of cattle, the majority of respondents (29 responses) indicated that they raise cattle for slaughter.



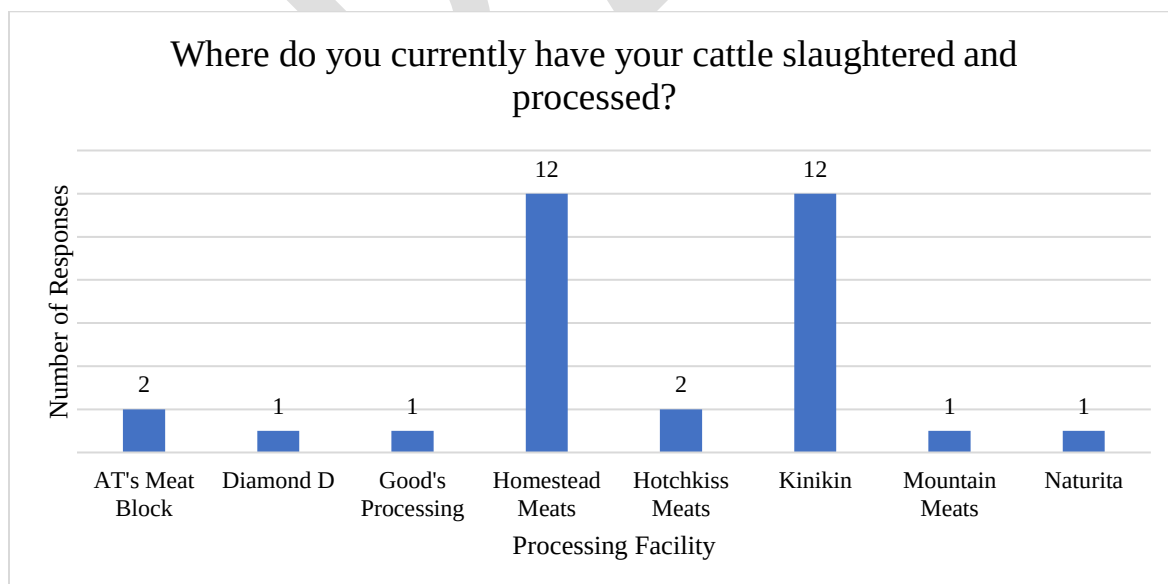
However, the mean and median again differ fairly significantly when those that do raise cattle for slaughter were asked how many are slaughtered in a typical year.

Number of Cattle Slaughtered in a Typical Year						
Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
31.34375	5	2	1	2	11.5	750

Most respondents also indicated that their cattle weight between 1,200 and 1,399 pounds at slaughter.



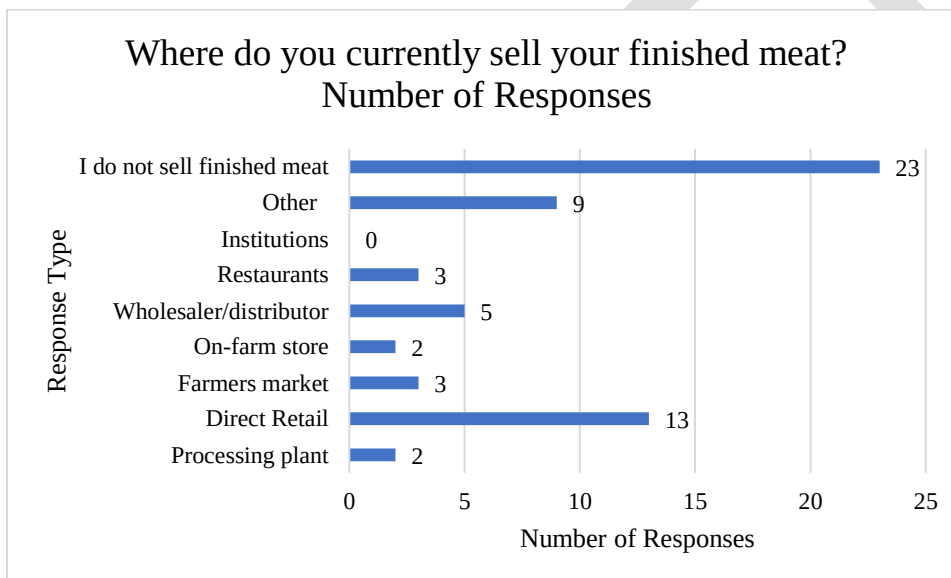
Respondents were then given the opportunity to indicate where they currently have their cattle slaughtered and processed. Respondents were allowed to enter their own answer as opposed to selecting from a pre-determined list. Homestead Meats and Kinikin were the two most popular facilities, with each receiving 12 responses.



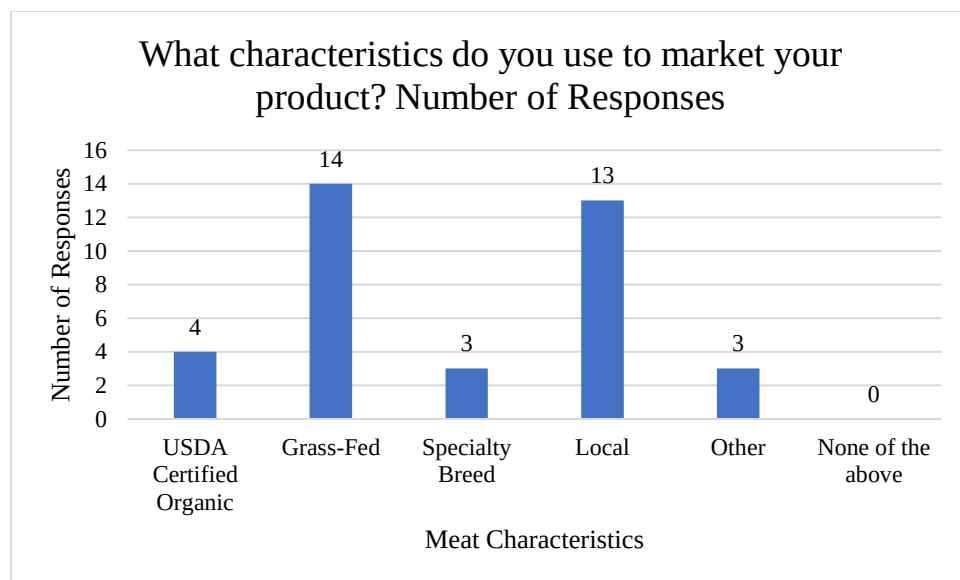
Respondents are driving an average of 73 one-way miles to take their cattle to slaughter, with a median of 80 miles, indicating that range is a fairly accurate depiction of actual miles traveled.

Please indicate the distance in one-way miles that you currently travel to take your cattle to slaughter.						
Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
72.75	80	100	2	51	100	150

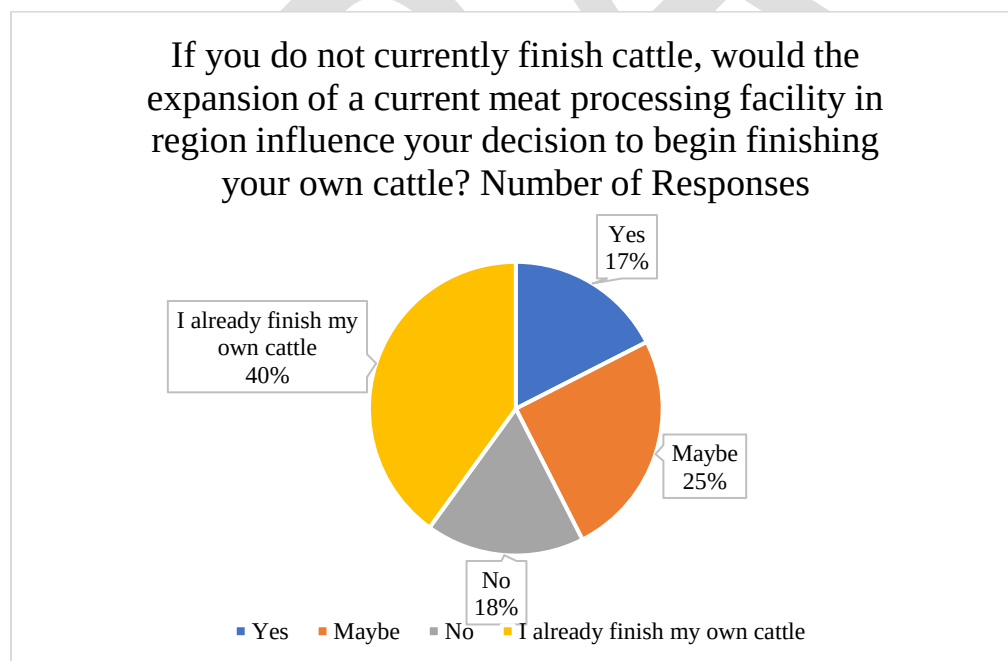
Regarding the sale of finished meat, respondents were asked where they currently sell their finished meat. Response choices included processing plant, direct retail, farmers market, on-farm store, wholesaler/distributor, restaurants, institutions, other, and I do not sell finished meat. 23 respondents indicated that they do not sell finished meat, while 13 indicated they sell direct retail, and nine selecting the “other” category. The low selection values for some other categories may indicate a market opportunity for meat sales in different arenas. Responses included in the “other” category included “family”, “online through website”, “friends”, “distributors”, “keep for food”, “1/2 and wholes”, “friends and family”, “CSA program & fresh food hub”, and “family”.



Next, respondents were asked what characteristics they use to market their product. Response choices included USDA certified organic, grass-fed, specialty breed, local, other, and none of the above. The two most popular choice were grass-fed and local, with 14 and 13 responses respectively. “Other” responses included “humanely raised”, “healthiest meat, unique best flavor, yaks”, and “grain fed”.

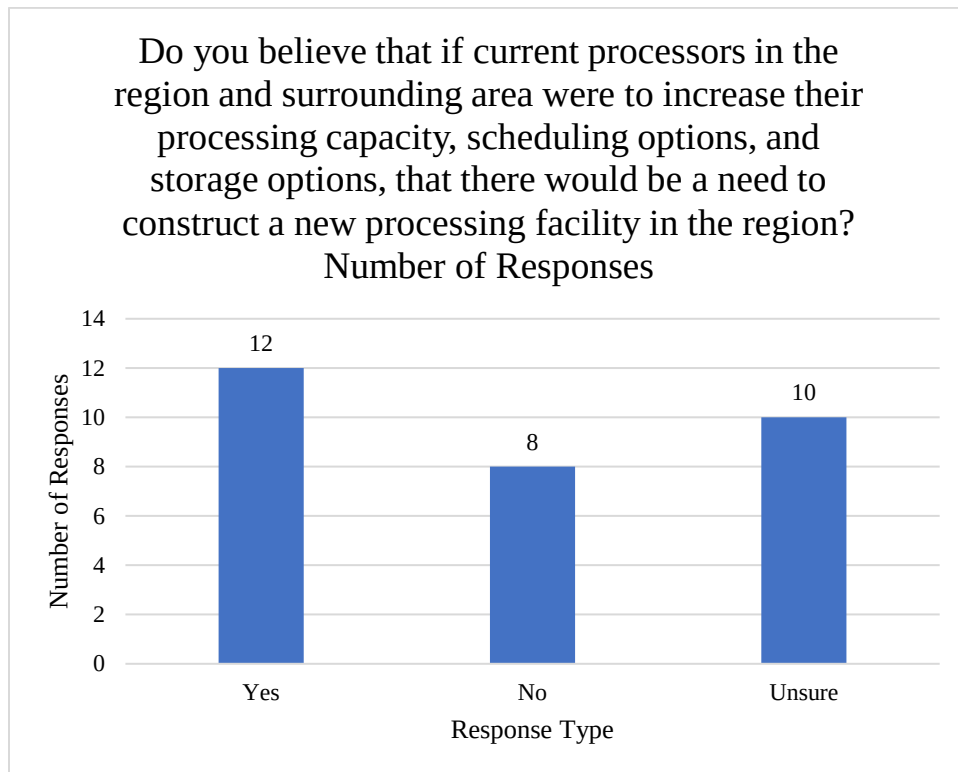


Moving to the expansion of a current meat processing facility in the region, respondents were asked whether the expansion of a current meat processing facility would influence their decision to begin finishing their cattle. Response choices included yes, maybe, no, and I already finish my own cattle. While the majority indicated that they already finish their own cattle, 17 percent indicated this would influence their decision, and another 25 percent selected “maybe”, indicating that the expansion may influence their decision.

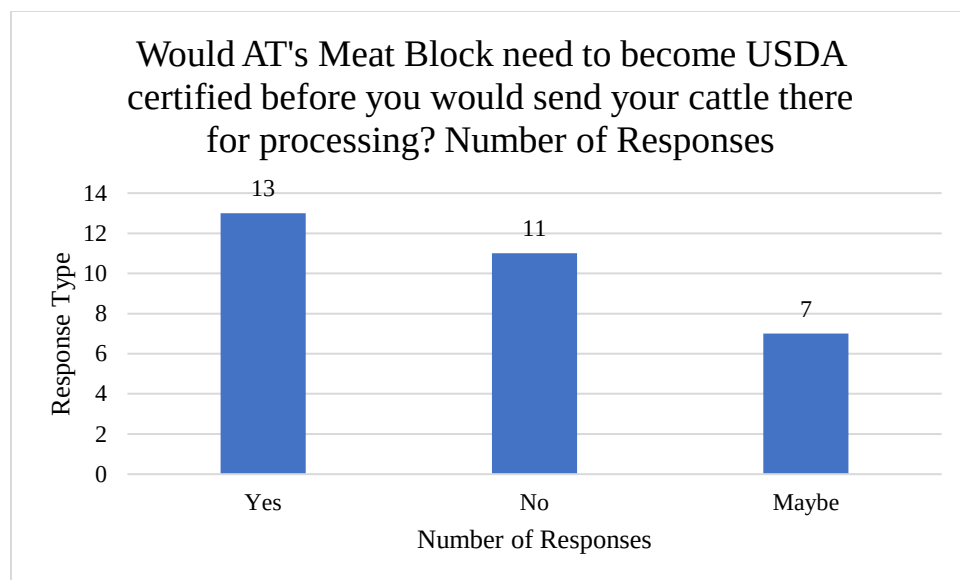


Regarding the issue of expansion of a current facility, or the construction of a new facility, respondents were asked whether they felt that a new facility would be necessary if a current facility in the region had their capacity expanded. Responses were fairly mixed to this question,

with 12 indicating that yes, a new facility would still be necessary, ten indicating they were unsure, and eight indicating they think a new facility would not need to be constructed if a current facility was expanded.

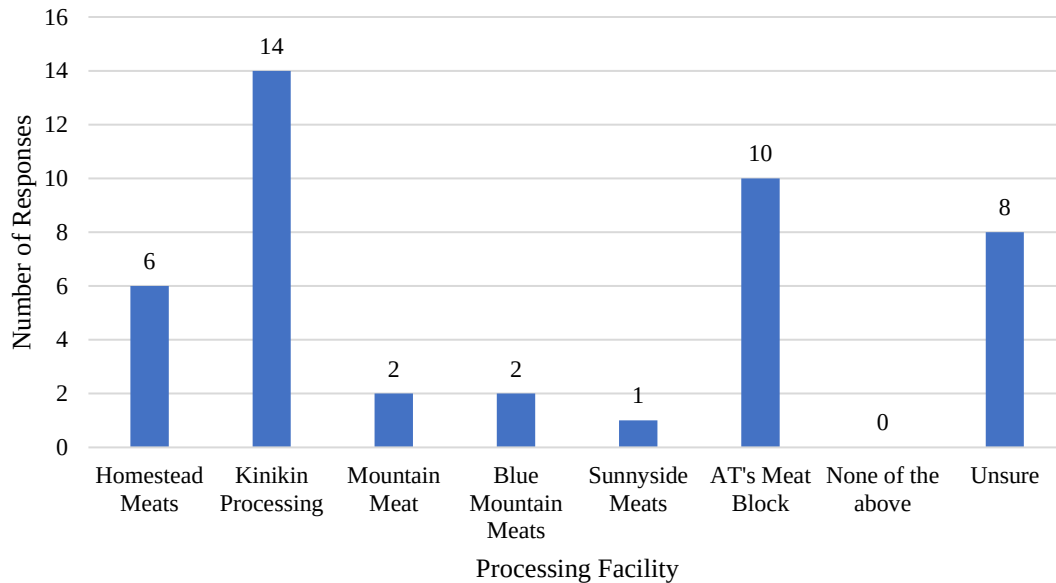


AT's Meat Block was asked to be included in the survey of producers to determine respondent interest in the facility becoming USDA certified. As with the last question, responses were mixed, with 13 respondents indicating that the facility would need to be USDA certified to send their cattle there for processing and 11 indicating that the facility would not need to be USDA certified.

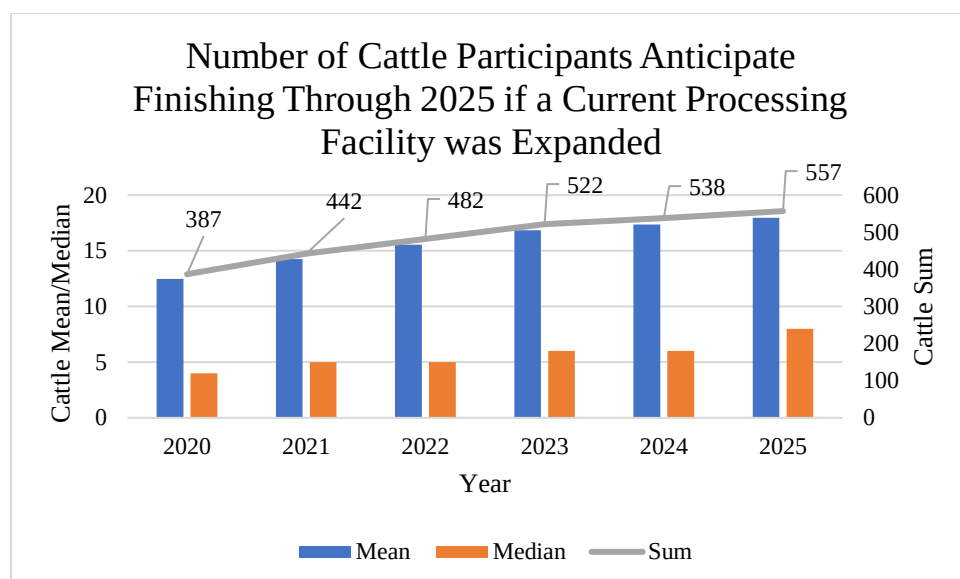


To determine which of the current facilities would be most beneficial to producers if it were to be expanded, respondents were given a list and asked to select which would benefit their operation the most if it were to increase its processing and storage capacities. The list of processing facilities included Homestead Meats, Kinikin Processing, Mountain Meat, Blue Mountain Meats, Sunnyside Meats, AT's Meat Block, none of the above, and unsure. Kinikin Processing received the most responses with 14, with AT's Meat Block coming in second with ten responses.

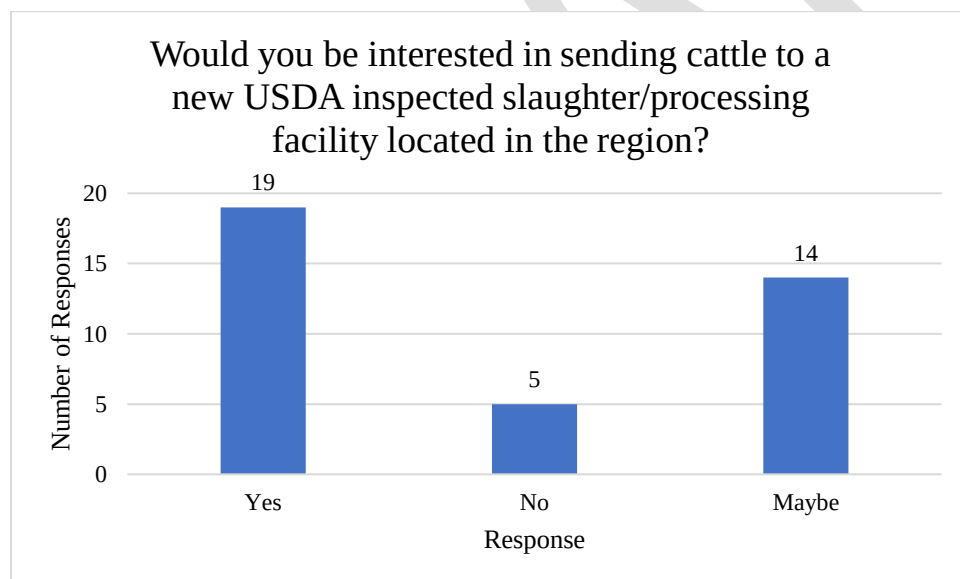
Of the processing facilities described in the previous question, which location(s) would most benefit your farming operation if it were to expand its processing capacity and increase available storage? It is assumed that capacity expansion would decrease



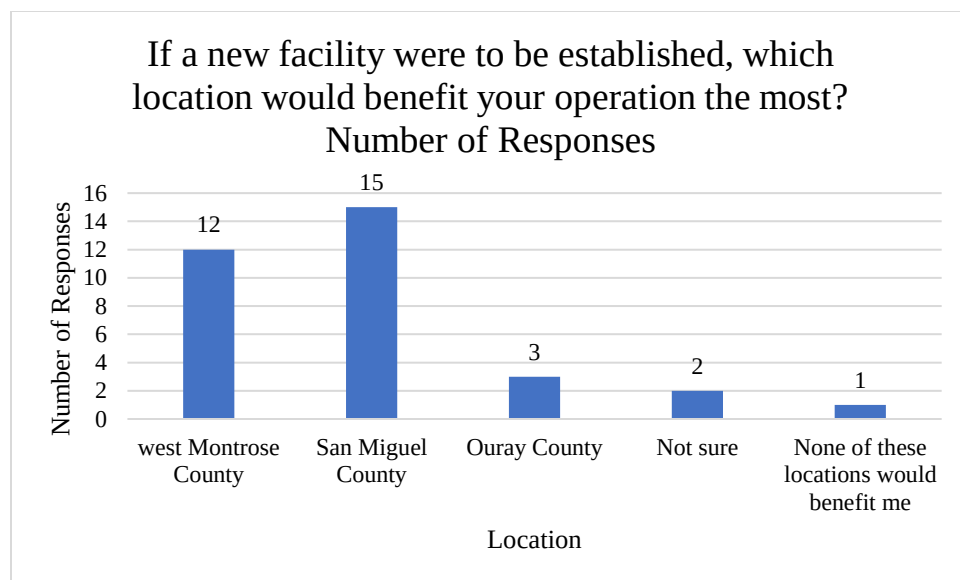
To determine whether there may be an effect on cattle production resulting from the expansion of a current processing facility, respondents were asked how many cattle they anticipate finishing from 2020 to 2025 if a current facility was expanded. The following table illustrates the mean, median, and sum number of finished cattle. When this question was asked previously under the assumption that all things remain constant, the sum of finished cattle ranged from 293 in 2020 to 435 in 2025. With the expansion of a current facility, this range increases to 387 in 2020 to 557 in 2025. This illustrates a roughly 30 percent increase in estimated production over the course of the six years if a current facility was expanded.



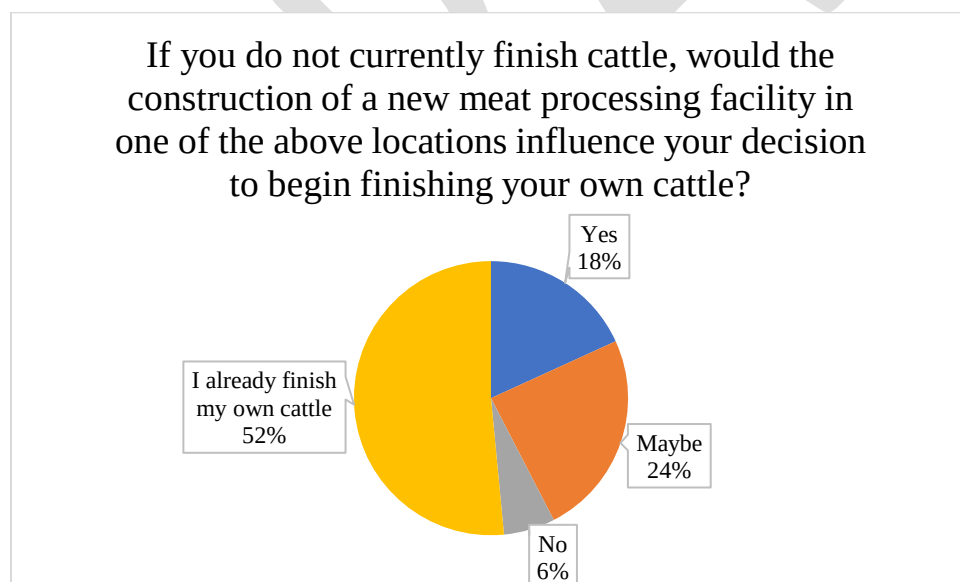
Moving on to the construction of a new facility, respondents were asked whether they would be interested in sending cattle to a new USDA inspected slaughter/processing facility, 19 respondents indicated they would be interested, with an additional 14 indicating they may be interested.



To help determine the optimal location for a new facility, respondents were asked to select the potential location that would most benefit them. Response choices included west Montrose County, San Miguel County, Ouray County, not sure, and none of these locations would benefit me. West Montrose County and San Miguel County were overwhelming more popular than Ouray County with 12 and 15 responses, respectively.

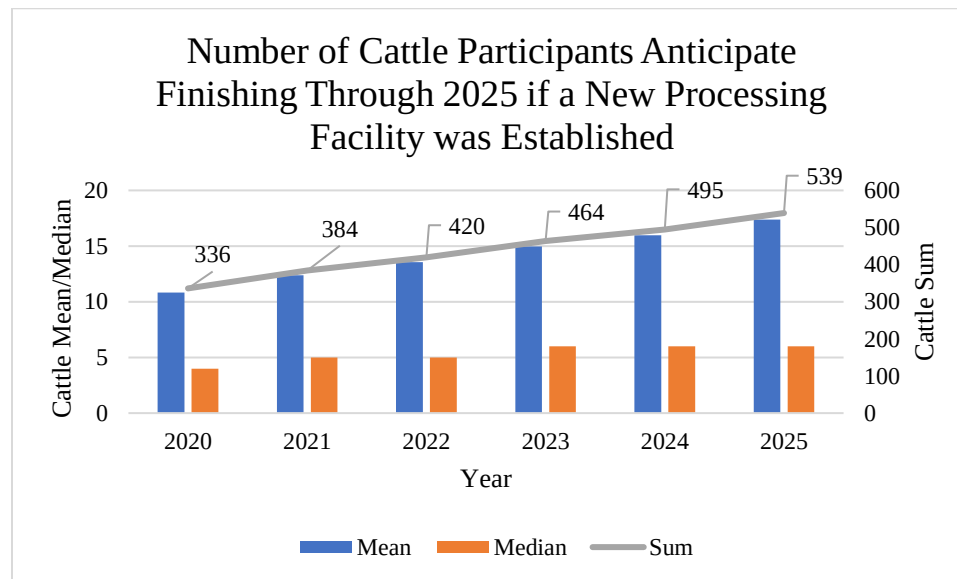


When asked whether the construction of a new meat processing facility would influence their decision to begin finishing cattle, the responses followed a similar trend to when this question was asked of expanding a current facility. While 18 percent do indicate that this would influence their decision, this is only a one percent increase compared to when the question was asked previously. This indicates that there does not seem to be a preference between a new or expanded facility when it comes to the decision of whether or not to finish cattle. However, there may be differences when it comes to the number of cattle being finished.



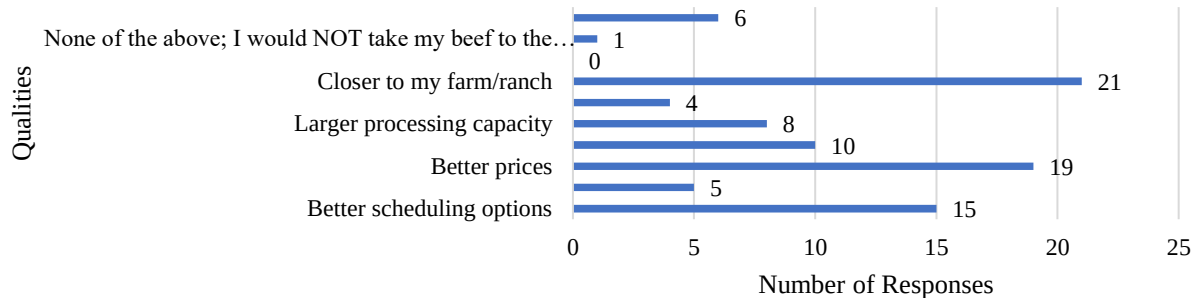
Interestingly, when asked to indicate the total number of head they would finish between 2020 and 2025 if a new facility was constructed in the region, the sums in 2020 and 2025 are slightly lower than when asked the same questions regarding an expansion of a current facility. In the previous question, these sums were 387 and 557, respectively. With the construction of a new

facility, these numbers slightly decrease to 336 for 2020 and 539 in 2025. However, this is still a 15 percent and 24 percent increase, respectively compared to the same two years in the original question where it was assumed all things remained the same. A conclusion can be drawn that producers may be willing to increase the number of cattle they finish if there are improved facilities for them to send their cattle to.



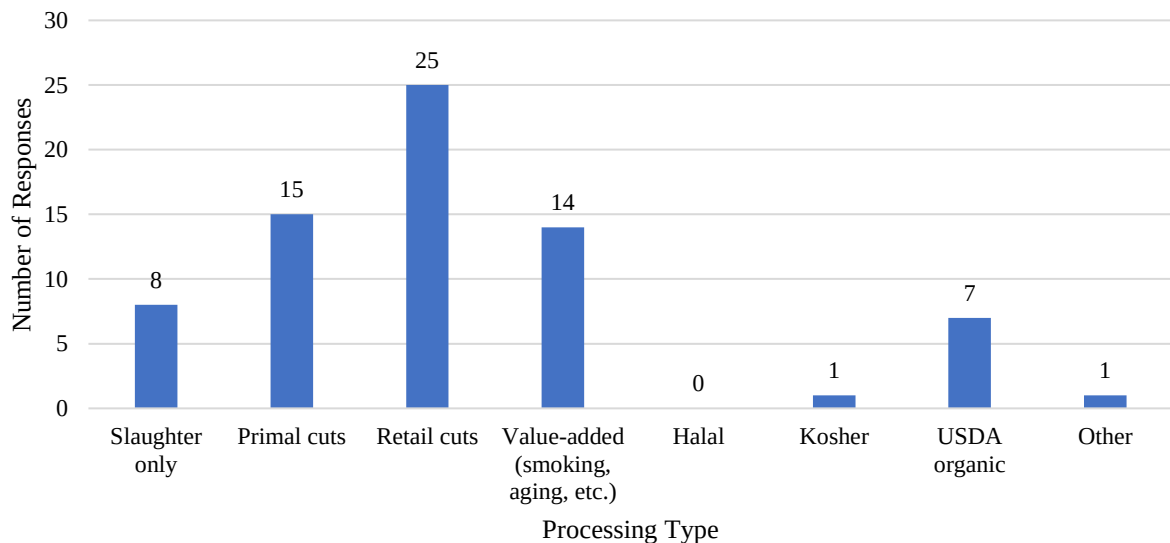
Producers were then asked what qualities a new facility would need to have for them to choose to bring their beef there. Response choices included better scheduling options, better communication, better prices, more storage, larger processing capacity, delivery, closer to my farm/ranch, none of the above; I would take my beef to the new facility regardless of these factors, none of the above; I would NOT take my beef to the new facility regardless of these factors, and other. The most popular response choices were closer to my farm/ranch, better prices, and better scheduling options, with 21, 19, and 15 responses respectively. “Other” responses included “allow for hanging 21 days of my meat”, “a small facility where my animals are not standing around”, “honesty and responsibility, customer service”, “quality”, better quality than AT’s”, “need a feedlot”.

If a new meat processing facility were to be established, what qualities would it need for you to choose to bring your beef there?

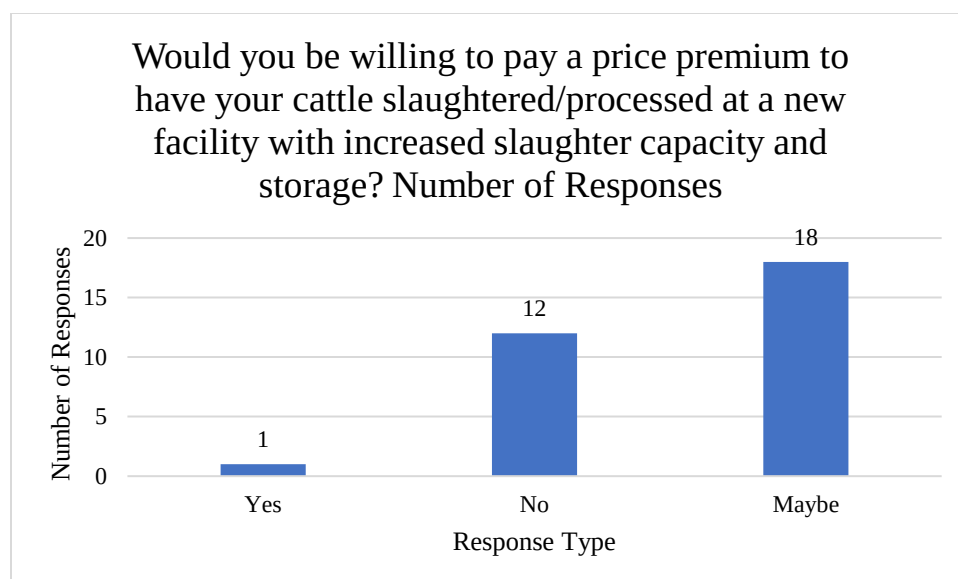


Respondents were then asked what type of processing they would like available to them. Response choices included slaughter only, primal cuts, retail cuts, value-added (smoking, aging, etc.), halal, kosher, USDA organic, and other. The most popular response was retail cuts with 25 responses, with primal cuts and value-added each garnering 15 and 14 responses, respectively.

What type of processing would you like to have available for your cattle?



When asked whether they would be willing to pay a price premium to have their cattle slaughtered/process at a new facility, the majority of respondents indicated they may be willing to pay a price premium, but a large proportion also indicated they would not be willing to pay a price premium.



However, respondents indicated they would be willing to travel approximately 90 to 100 one-way miles to have their cattle processed, which is an increase from the 73 to 80 they currently travel.

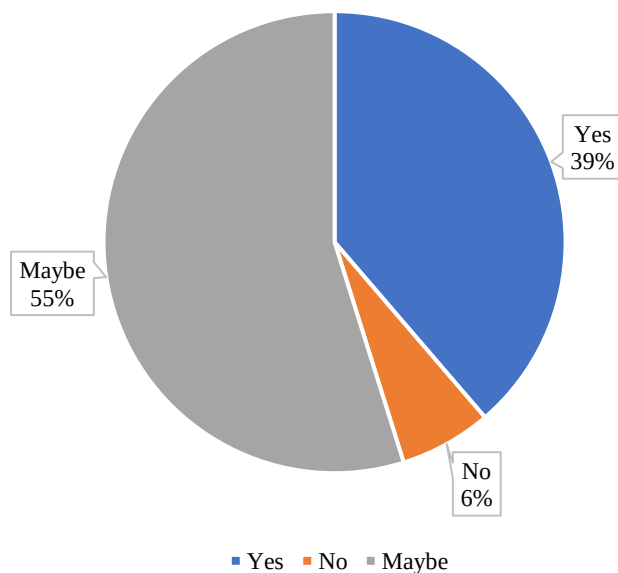
What is the maximum distance (one-way) you are willing to travel to have your cattle processed?						
Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
90	100	100	20	80	100	200

Time of slaughter is also an important factor when it comes to scheduling. When asked what time of year respondents intend to slaughter their cattle, responses were fairly evenly distributed, with winter being the least popular time of year.

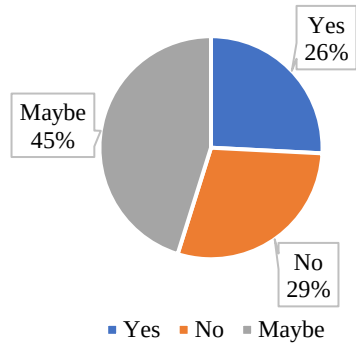


Regarding branding of the product, respondents were asked whether they would be interested in selling their meat to the facility as part of a brand. Brand choices presented to the respondents included “Colorado Branded Beef”, grass-fed beef, and USDA certified organic beef. The most popular branding option was Colorado Branded Beef, with USDA certified organic being the least popular option.

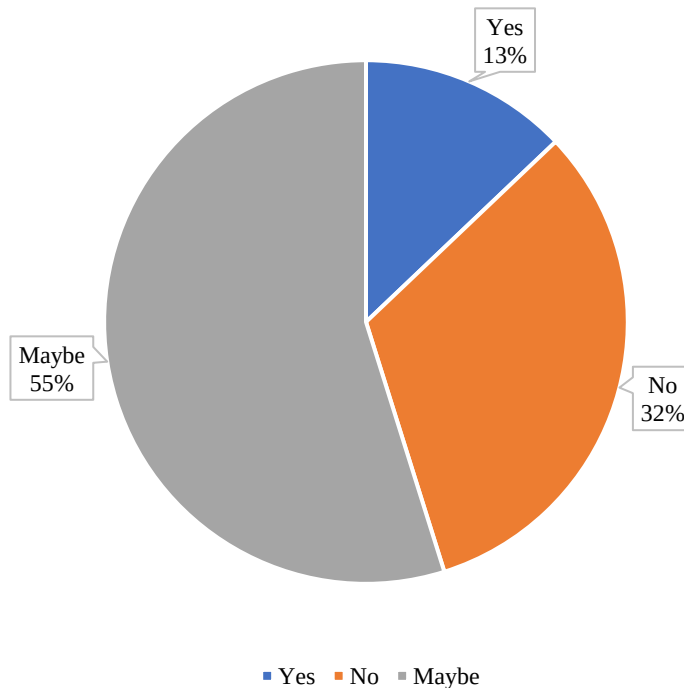
If a processing facility were to develop and market a brand of locally raised meat, such as "Colorado Branded Beef", would you be interested in selling your meat (specific cuts or whole animals) to the facility?



If a processing facility were to develop a grass-fed beef brand, would you be willing to raise your cattle as grass-fed and sell your meat (specific cuts or whole animals) to the facility?



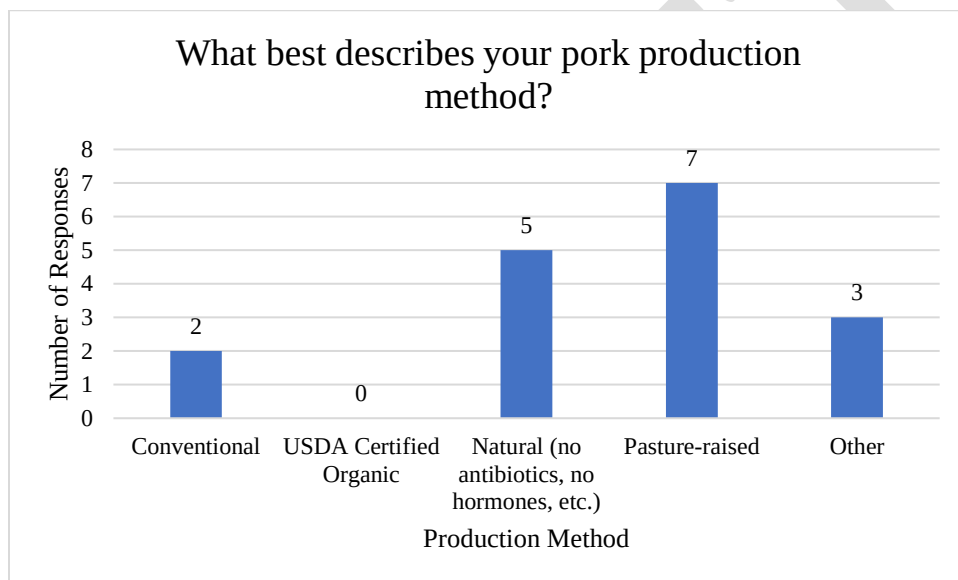
If a processing facility were to develop a USDA Certified Organic beef brand, would you be willing to raise your cattle as USDA Certified Organic and sell your meat (specific cuts or whole animals) to the facility?



Hog Survey Results

Over the course of the survey, 13 individuals opened the survey link, with 8 individuals completing 100 percent of the survey. An additional respondent partially completed the survey with reportable responses. Many of the survey questions allowed for multiple responses, which is why some questions may appear to have more responses than number of total completed responses.

Respondents were asked to describe their operation type with response choices being conventional, USDA certified organic, natural (no antibiotics, no hormones, etc.), pasture-raised, and other. Seven respondents indicated their pork is pasture-raised, with an additional five indicating their pork is natural. “Other” responses included “humanely raised”, “supplemented with organic grain”, and “non-GMO”.



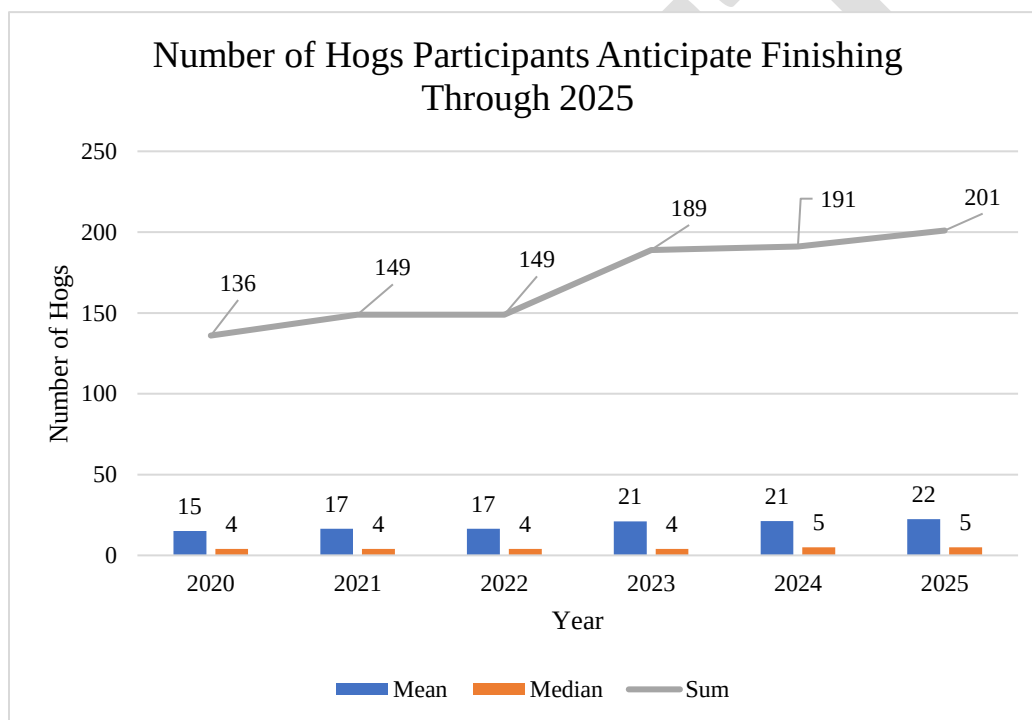
Size of operations varied as with the cattle operations. The mean and median number of hogs raised each year varied significantly, indicating that there are a larger number of smaller operations.

Average Number of Hogs Raised Each Year							
	Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
Hogs	17.2	5	5	2	3	26.5	80

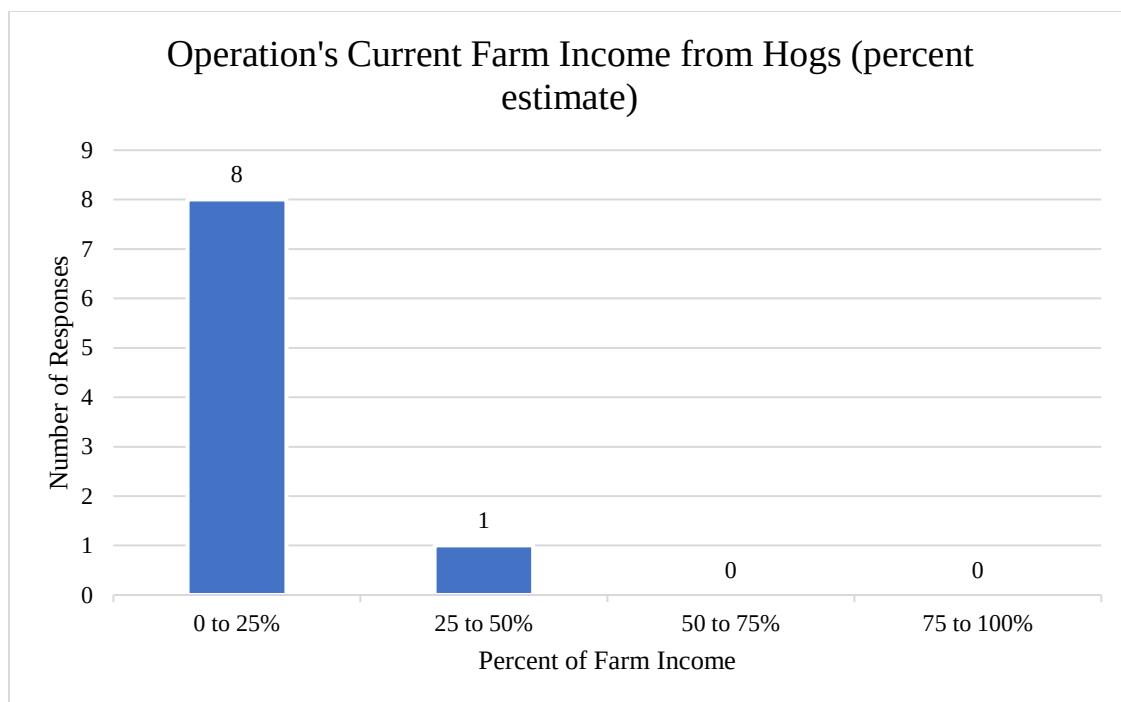
Average live weight at slaughter was more consistent across responses, with a mean of 249 pounds and a median of 250 pounds.

Average Live Weight in Pounds per Head at Slaughter							
	Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
Weight	249	250	300	20	223	300	380

To give a base for expected production through 2025, respondents were asked to indicate the total number of hogs they anticipate finishing for slaughter each year. Production is expected to increase, with the sum of all responses being 136 head in 2020, and 201 in 2025. The following chart displays the sum, mean, and median of responses.



Regarding farm income, all but one respondent indicated that zero to 25 percent of their farm income comes from hogs. This indicates that most individuals are making the majority of their income from other farming operations.



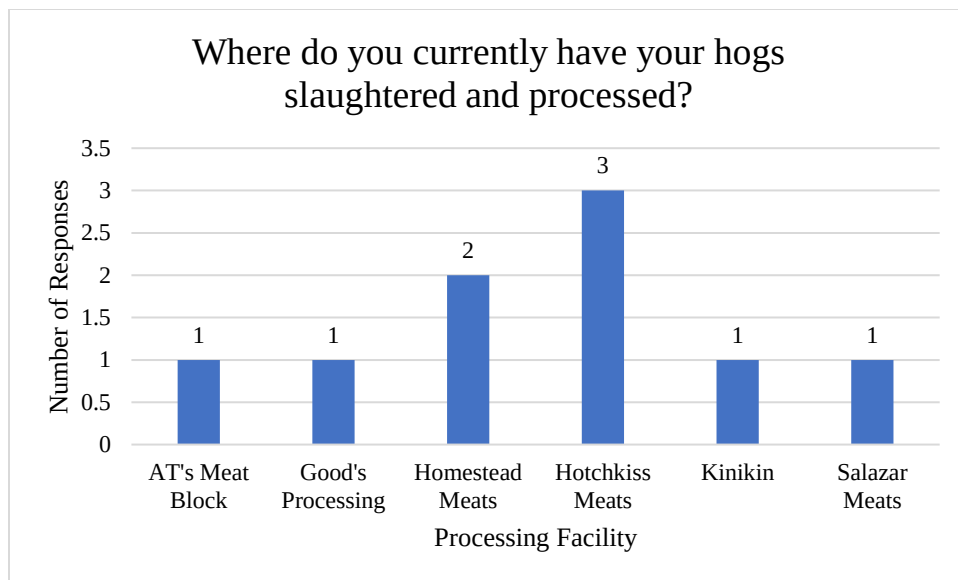
The farm size of the hog farmers seems to be considerably smaller than that of the beef farmers. The mean and median are also similar in value, which indicates a more consistent range in the data set.

Number of Acres in Farmland						
Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
77.7	80.0	120.0	0.4	36.5	120.0	160.0

Of total farm acreage, respondents indicate that approximately 60 percent of that acreage is in pasture.

Number of Acres in Pasture						
Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
55.8	50.0	50.0	0.3	8.5	82.5	160.0

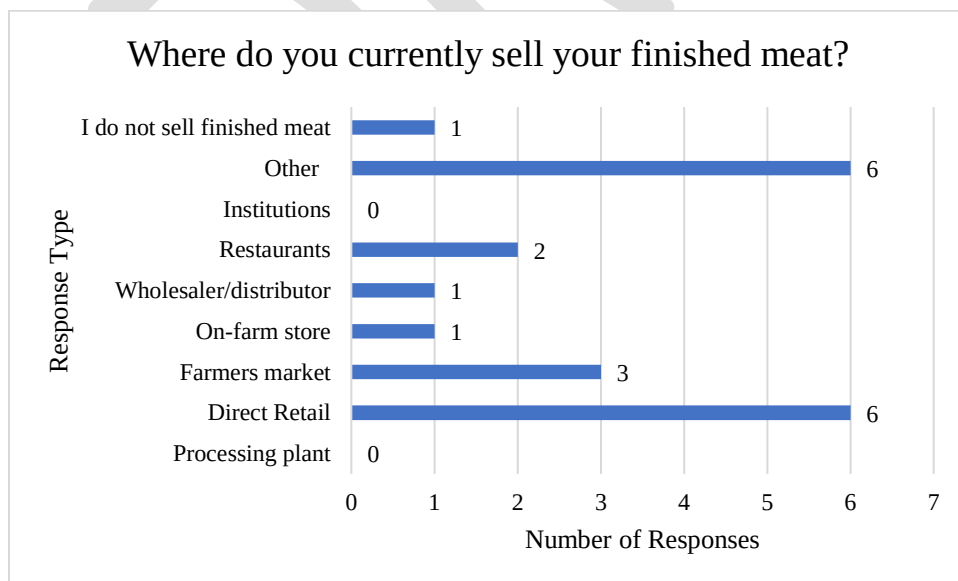
Regarding where hog farmers currently have their hogs slaughtered and processed, responses were fairly evenly distributed across facilities, with Hotchkiss Meats receiving three responses, and Homestead Meats receiving two.



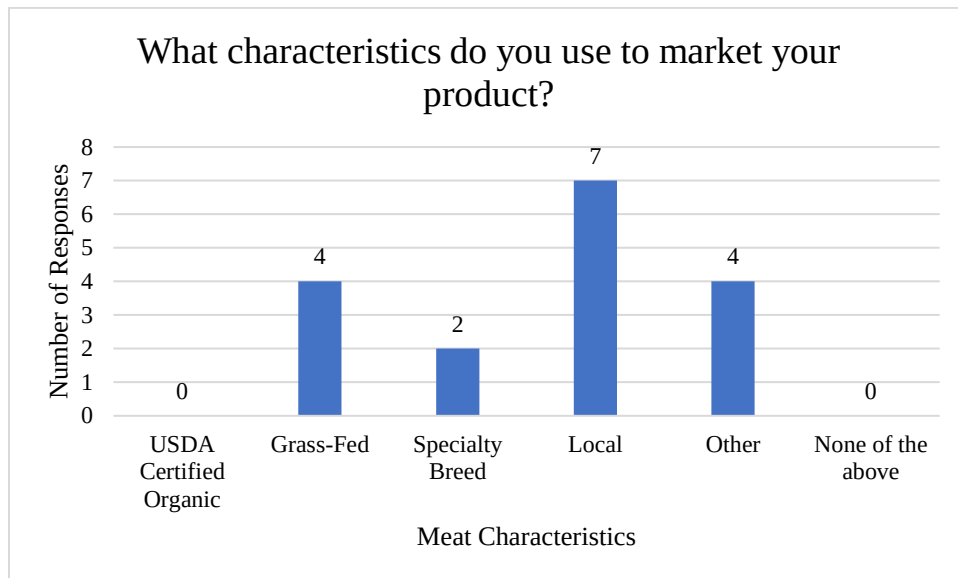
Miles traveled to have their hogs slaughtered is similar to what was seen with the cattle. The data set had a mean of 80 miles, with the median being 90 miles.

Please indicate the distance in one-way miles that you currently travel to take your hogs to slaughter.						
Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
80	90	65	3	65	103	120

Most of the surveyed hog farmers either sell their finished meat through direct retail, or other unique methods of sale. Responses in the “other” category included “friends/family”, “family and friends”, “direct custom customers”, “CSA program and fresh food hub”, “Alamosa food bank”.

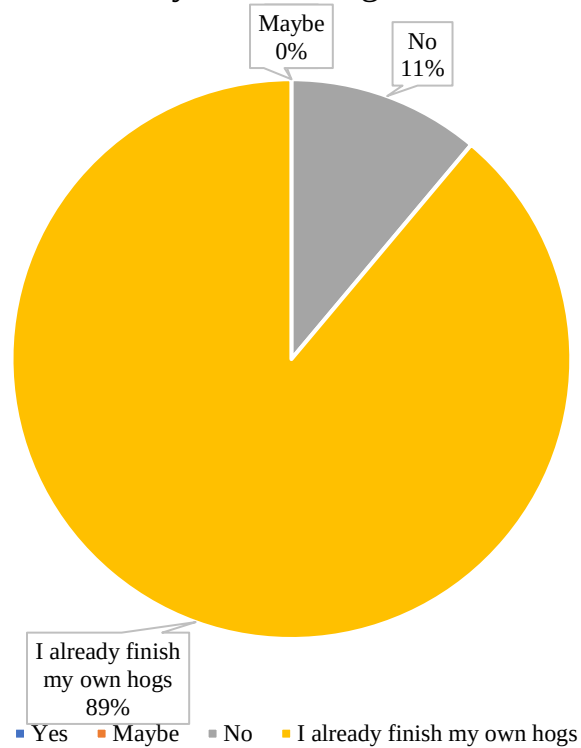


Regarding how these farmers market their meat, the most popular response option was local (seven responses), with grass-fed and other both receiving four responses. “Other” responses included “humanely raised”, “organic”, “non-GMO feed”, and “marbleized, non-GMO”.

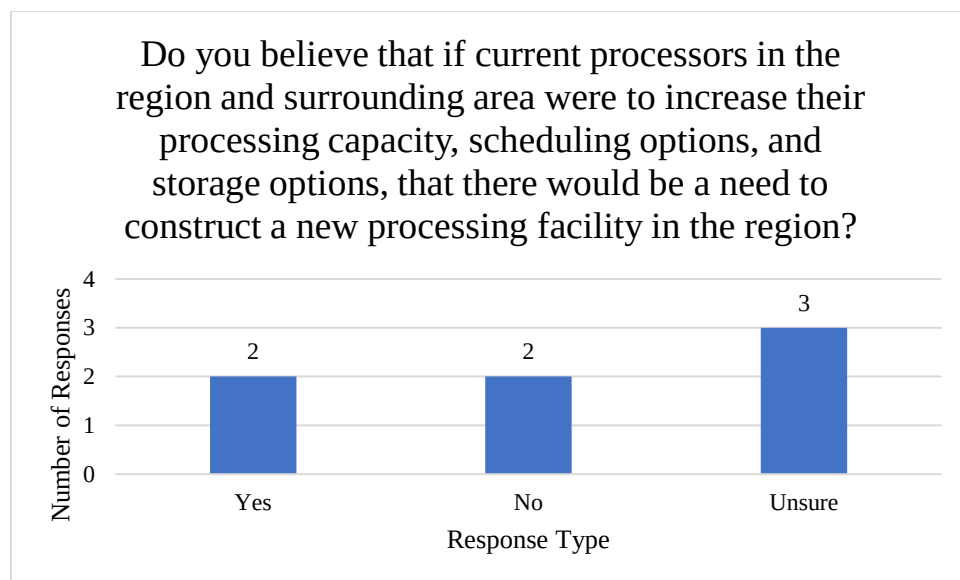


Regarding the expansion of a current meat processing facility, all but one respondent indicated that they already finish their own hogs, so the expansion of a current meat processing facility would not have an impact on their decision-making regarding finishing hogs for slaughter. The remaining respondent indicated that no, a potential expansion would not influence their decision.

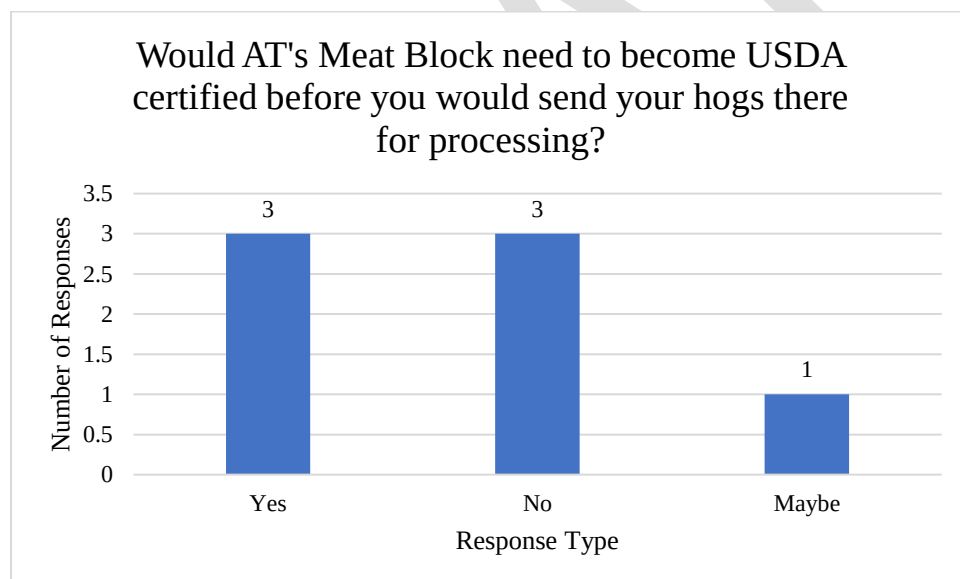
If you do not currently finish hogs, would the expansion of a current meat processing facility in region influence your decision to begin finishing your own hogs?



When asked whether they believe that a new facility would still be needed if a current slaughter facility was expanded, responses were almost perfectly evenly distributed amongst response categories. Two respondents indicated that yes, a new facility would still be needed, two respondents said no, and three indicated they were unsure.

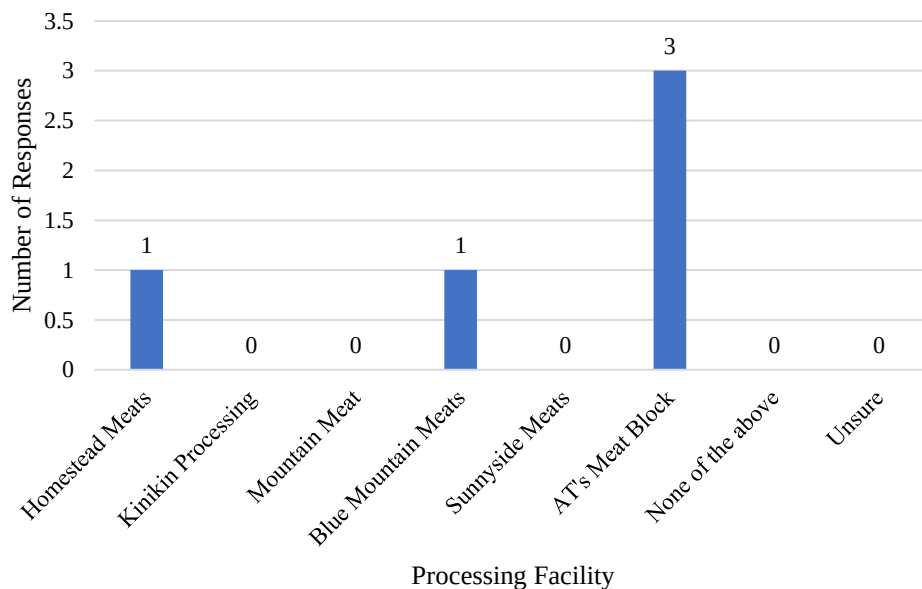


When asked whether AT's Meat Block would need to be USDA certified for respondents to send their hogs there for processing, responses were split, with three respondents indicated that it would need to be certified, and three indicating that it would not need to be certified.



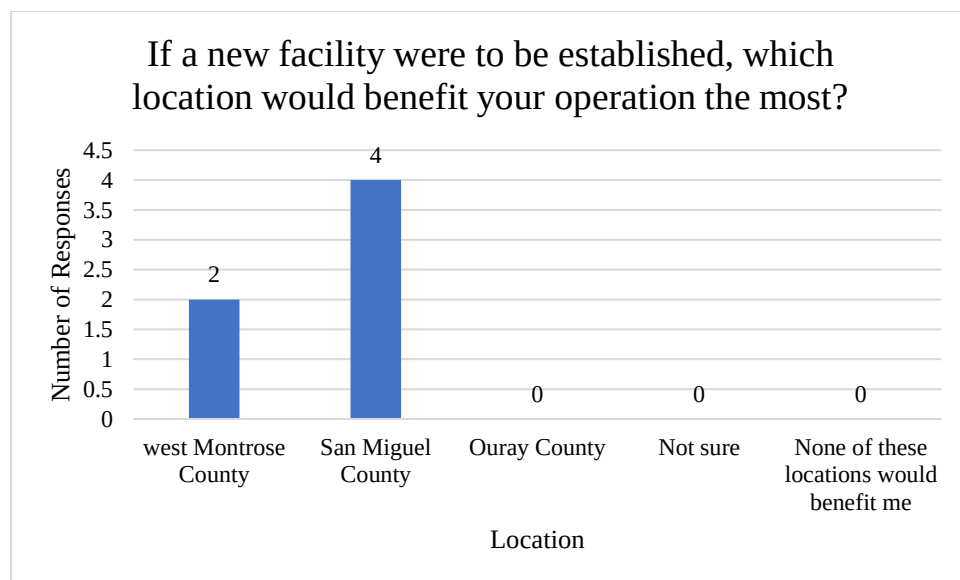
Next, hog producers were asked which of a list of local processors would most benefit their operation it were to expand its processing capacity. Three respondents selected AT's Meat Block, and Homestead Meats and Blue Mountain Meats each received one response.

Of the processing facilities described in the previous question, which location(s) would most benefit your farming operation if it were to expand its processing capacity and increase available storage? It is assumed that capacity expansion would decrease

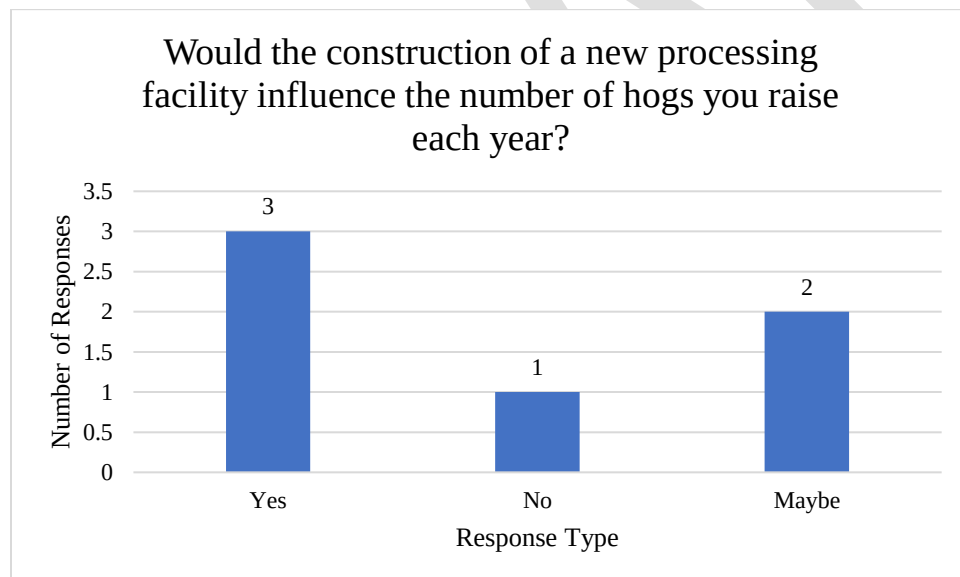


Respondents were then asked whether the expansion of one of the previously mentioned processing facilities would influence the number of hogs they anticipate finishing each year. Two respondents indicated it would influence their decision, while five indicated it would not. Of the two that indicated it would influence their decision, one individual indicated they would increase their herd size by 50 percent, while the other respondent indicated they would increase their herd size by 200 percent.

Moving to the construction of a new facility, respondents were asked whether they would be interested in sending their hogs to a new USDA inspected facility. Four respondents said yes, while two each said no and maybe. Similar to with the cattle responses, hog farmers indicated that a new facility in either San Miguel County or west Montrose County would be most beneficial to their operation.

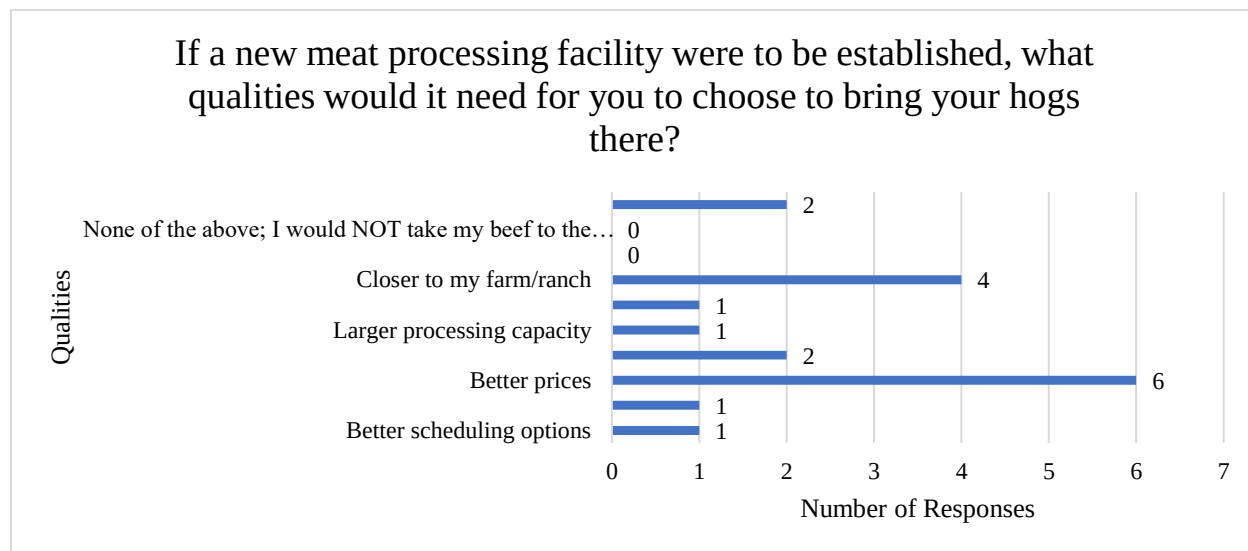


Responses varied from the original question when respondents were asked whether the construction of a new facility would influence the number of hogs they raise for finishing each year. Three indicated it would influence their decision, with an additional two indicating it may influence their decision.

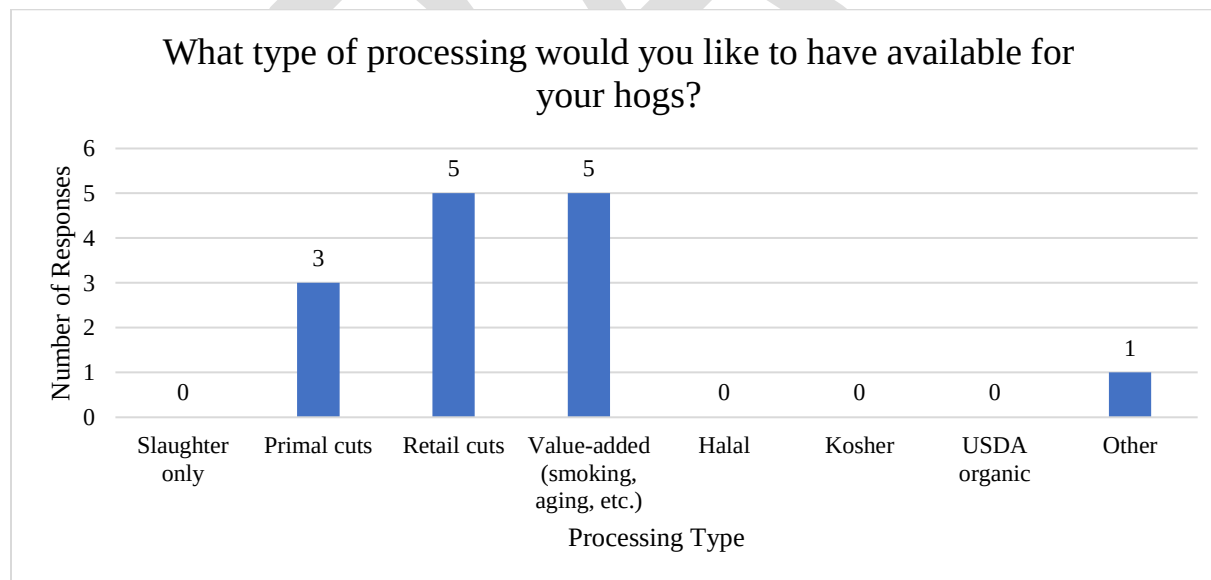


Regarding the anticipated increase in number of hogs raised, values for percent increase in herd size given were 50 percent, 7.5 percent, 200 percent, and 25 percent. This indicates that hog farmers may be more willing to increase their herd size for a new facility as opposed to an updated current facility.

In order for hog farmers to send their hogs to a new facility, farmers were most interested in the facility having better prices and being closer to their farm. “Other” responses included “custom butchery” and “no nitrates”.

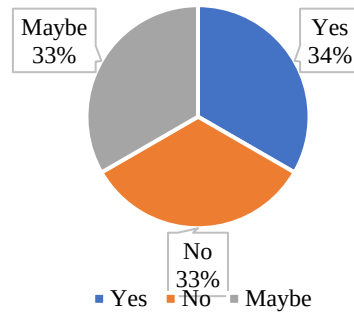


The most popular types of processing that hog farmers would like to be available at a new facility were retail cuts and value added (smoking, aging, etc.), with each receiving five responses.



Responses were evenly distributed when it comes to whether farmers would be willing to pay a price premium to send their hogs to a new facility with increased capacity.

Would you be willing to pay a price premium to have your hogs slaughtered/processed at a new facility with increased slaughter capacity and storage?

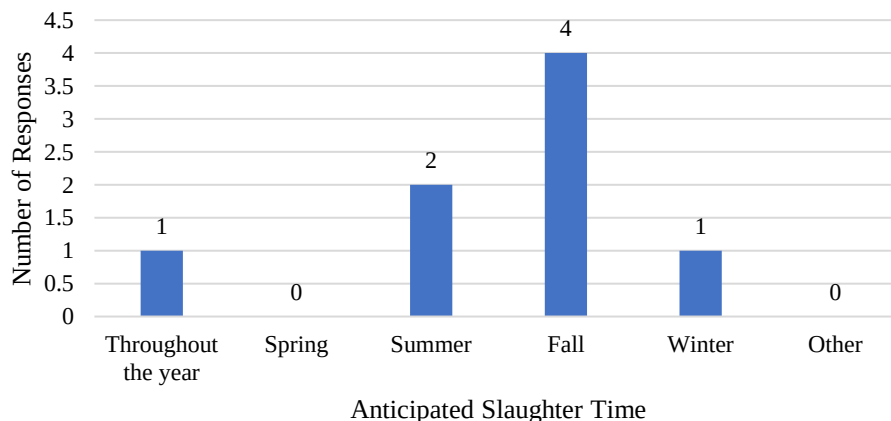


However, the distance farmers are willing to travel to send their hogs to slaughter does not vary much from the distance they currently travel. The dataset had a mean of 89.2 and a median of 92.5, indicating fairly consistent responses.

What is the maximum distance (one-way) you are willing to travel to have your hogs processed?						
Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
89.2	92.5	N/A	50.0	72.5	105.0	120.0

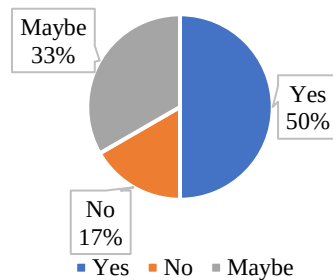
The slaughter time period for hog farmers seems to be more condensed amongst respondents than that of the beef farmers. Four respondents indicated they anticipate slaughtering in the fall, while two indicate they anticipate slaughtering in the summer.

When do you anticipate having your hogs slaughtered?

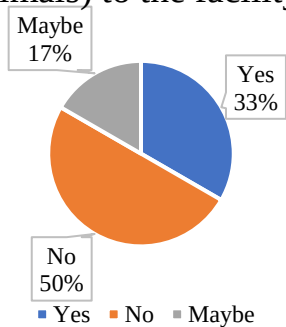


Finally, respondents were asked whether they would be interested in selling their meat to the facility if the facility developed a “Colorado Branded Pork” brand or a USDA Certified Organic pork brand. Respondents seem to be more interested in the “Colorado Branded Pork” brand.

If a processing facility were to develop and market a brand of locally raised meat, such as "Colorado Branded Pork", would you be interested in selling your meat (specific cuts or whole animals) to the facility?



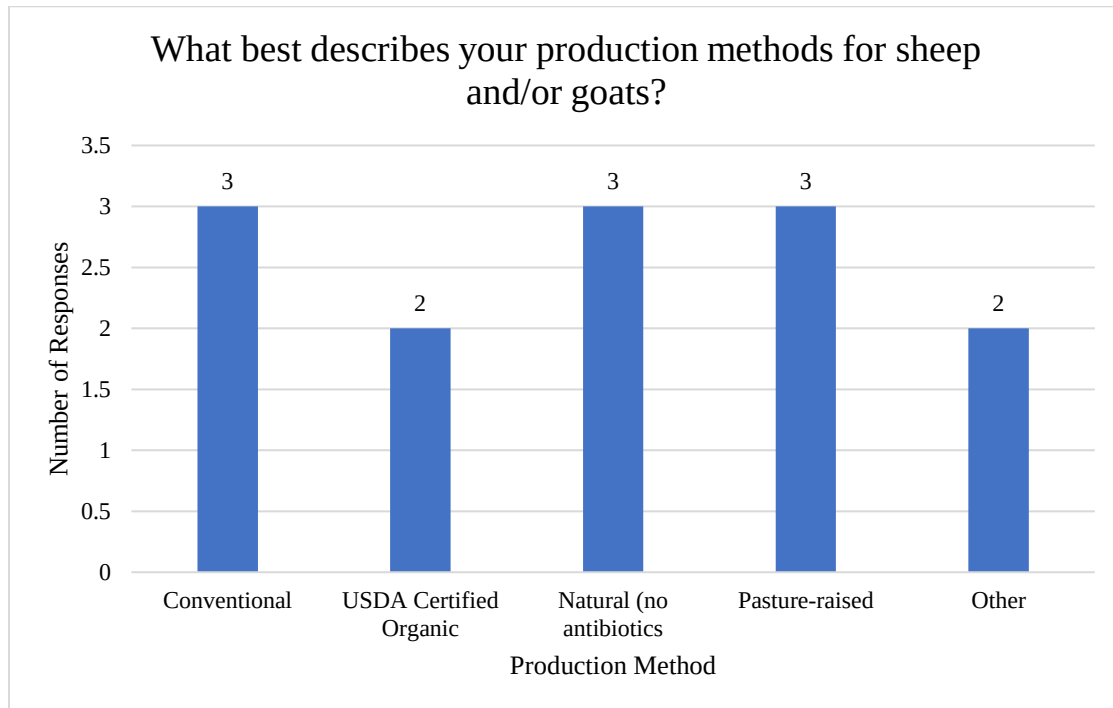
If a processing facility were to develop a USDA Certified Organic pork brand, would you be willing to raise your hogs as USDA Certified Organic and sell your meat (specific cuts or whole animals) to the facility?



Sheep and Goat Survey Results

Over the course of the survey, 11 individuals opened the survey link, with three individuals completing 100 percent of the survey. Many of the survey questions allowed for multiple responses, which is why some questions may appear to have more responses than number of total completed responses. Due to the low number of responses for this survey, results of all survey questions will be discussed in a more concise manner.

Of the three respondents, two raise only sheep, while one individual raises both sheep and goats. However, these three individuals seem to use many different production methods for their animals, with responses being fairly evenly split between the available response options. “Other” responses included “no hormones” and “natural could be achieved with additional record keeping”.



Of the four operations (counting the sheep and goat operations separately for the individual who raises both), herds of sheep are five, 20, and 80 head, and the goat herd is five head. Regarding live weight at slaughter, the three sheep responses resulted in live weights of 110, 125, and 150 pounds, with the goats also being 150 pounds.

When asked whether the expansion of a current processing facility would increase the number sheep or goats respondents anticipate finishing, the sum of sheep producers anticipate finishing did increase each of the six estimated years from 65 in 2020 to 140 in 2025, a 115 percent increase. The goat producer indicated that an increase in production would not be carried out until 2024.

Regarding farm income, two respondents indicated that zero to 25 percent of their farm income comes from sheep or goats, while one respondent indicated that sheep and/or goat production makes up 25 to 50 percent of their farm income. The sizes of the farm regarding acreage were varied, with responses including 160, 280, and 8,500 acres. Of the two smaller farms, 50 and 110 acres respectively are in pasture, while the entire 8,500 acre farm is in pasture.

Moving to current slaughter practices, one individual has their meat process at AT's Meats, and two individuals have their meat processed at Blue Mountain Meats. Mileage traveled to slaughter does not vary significantly from the previous surveys, with responses including 30, 100, and 96 miles. This gives an average one-way distance of 75.3 miles.

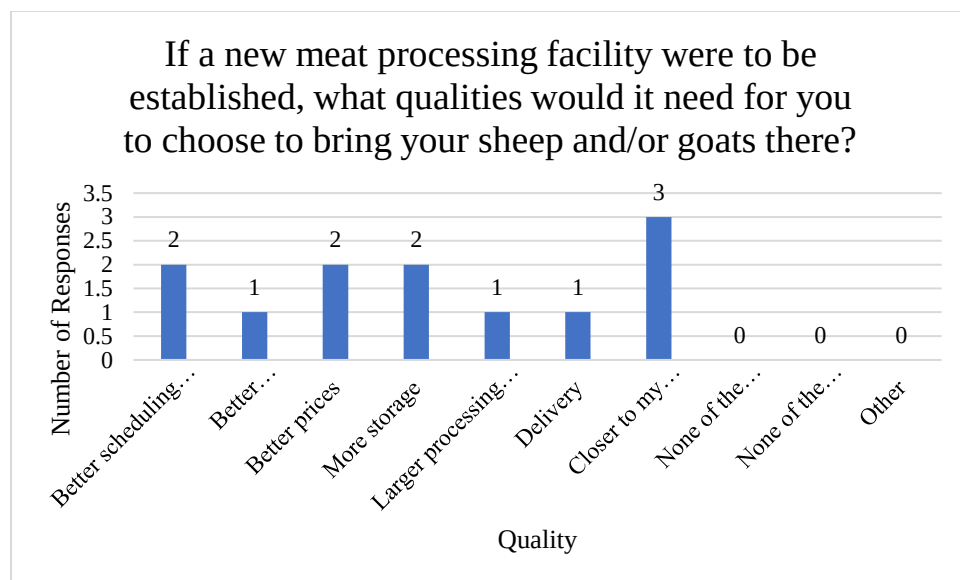
When asked where they sell their finished meat, the first respondent indicated they sell at a farmers market and an on-farm store, the second sells direct retail, and the third sell to restaurants as well as the fresh food hub and private parties. To market their product, each producer markets it as local, with one marketing it at USDA Certified Organic, and another marketing it as Colorado Lamb.

Two respondents indicated they were unsure whether increasing the processing capacity of a current processing facility would mitigate the need to construct a new facility, while one individual indicated that a new facility would still need to be constructed even if a current facility increased their capacity. Specifically for AT's Meat Block, one response each of yes, no, and maybe was received when asked whether it would need to be USDA certified for the producer to be willing to send their meat there.

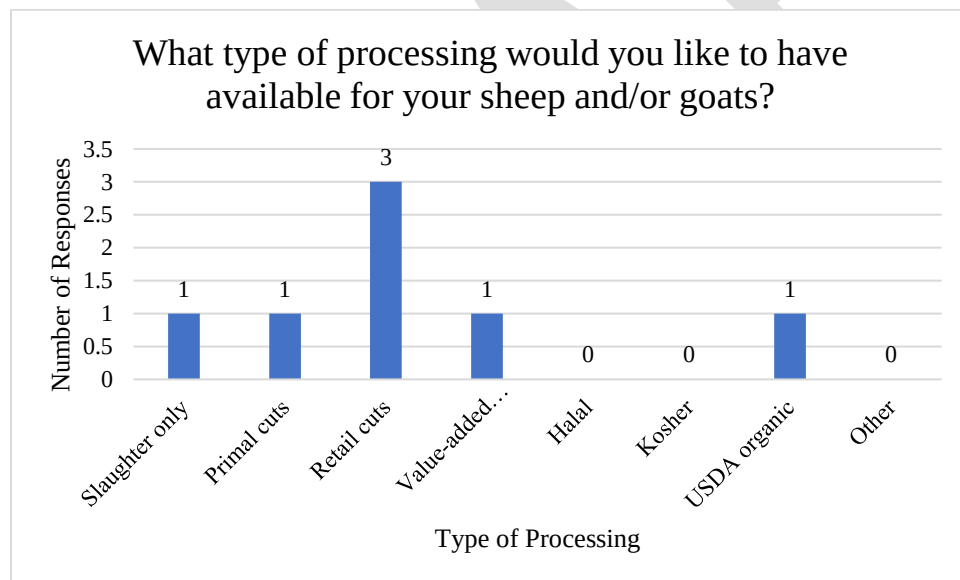
Of the local processing facilities provided to the respondents, results were mixed regarding which location would benefit them the most if it expanded. Homestead Meats received two responses, Kinikin received three, AT's Meat Block received two, and Mountain Meats received one. Respondents were allowed to select more than one response for this question. However, when asked whether the expansion of one of these facilities would increase the number of sheep or goats they raise for slaughter, one response each was received for yes, no, and maybe. Of the two respondents that said yes and maybe, they also indicated that they would increase their herd sizes by 20 and 25 percent if one of the current facilities were to be expanded.

When asked whether respondents would be willing to send their sheep or goats to a new USDA inspected facility, one response of yes was received, and two responses of maybe were received. Of potential locations, two respondents indicated that west Montrose County would be most beneficial, while one respondent indicated San Miguel County would be most beneficial. Responses were exactly the same when asked whether the construction of a new facility would influence the number of sheep or goats raised each year, with one response each for yes, no, and maybe. Additionally, the percent anticipated increase in herd size was again 20 and 25 percent.

Regarding the qualities that respondents would like a new facility to have in order for them to bring their sheep or goats there, respondents each seemed to select several categories that were important to them, with being closer to their farm or ranch receiving a tally from each respondent.



Regarding the types of processing individuals would like available at a new facility, retail cuts were the most popular feature, with one tally being recorded for several other services.



However, only one respondent indicated that would be willing to pay a price premium to send their livestock to the new facility, while the other two indicated they would not. Distance respondents are willing to travel to have their meat processed did not vary significantly from what they are already traveling, with one response of 30 miles, and two of 100 miles. This is an average of 76.7 one-way miles. For slaughter time, one individual indicated they slaughter in the spring and fall, while two individuals indicated they slaughter throughout the year.

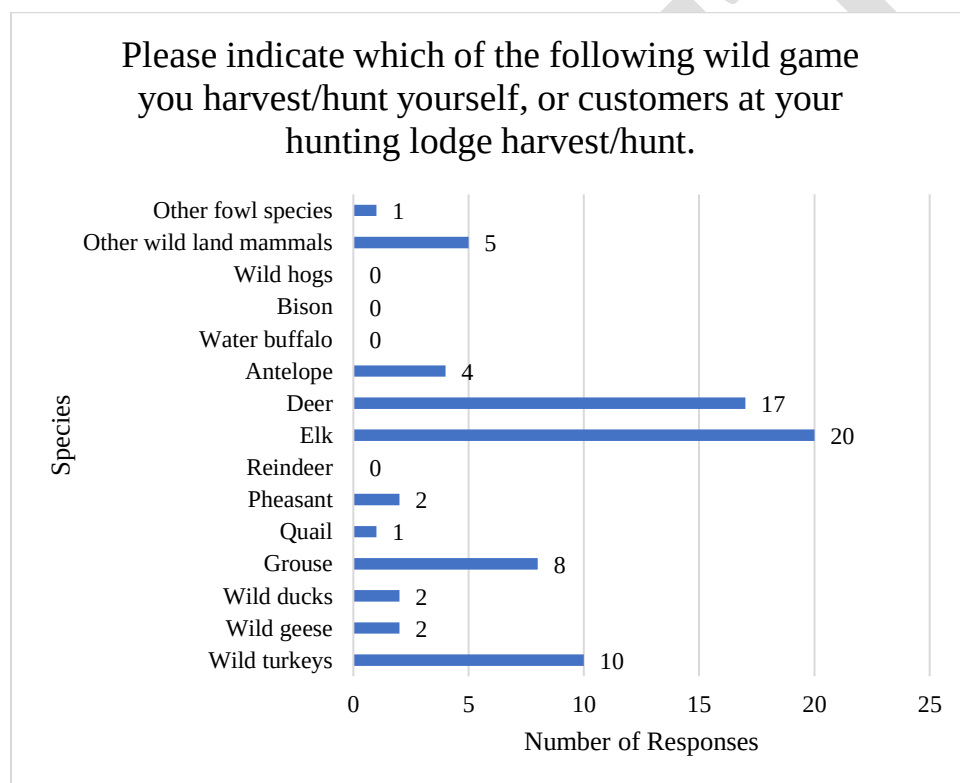
Regarding the potential of the facility developing “Colorado Branded Mutton/Chevon”, one respondent indicated they would be willing to sell their meat to the facility as part of the brand

effort, while the other two indicated they may be willing to participate. For a potential USDA organic branded mutton or chevon, one response of each was recorded for yes, no, and maybe.

Wild Game Survey Results

Over the course of the survey, 37 individuals opened the survey link, with 18 individuals completing 100 percent of the survey. An additional three respondents partially completed the survey with reportable responses. Many of the survey questions allowed for multiple responses, which is why some questions may appear to have more responses than number of total completed responses.

The most popular wild game being hunted by survey respondents are deer and elk, with several individuals also hunting wild turkey and grouse.



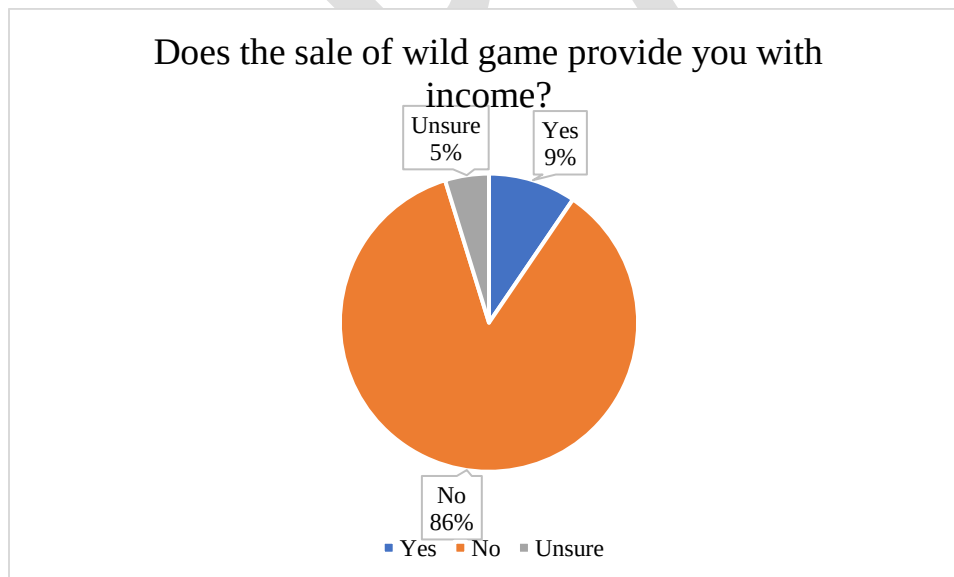
Further, the average number of animals hunted/harvest in a given year are presented in the following table. As is expected, elk, deer, and grouse had some of the largest totals.

On average, how many wild game animals to do you harvest/hunt each year? Include animals that you personally harvest/hunt and animals that your customers harvest/hunt.						
	Mean	Median	Mode	Min	Max	Sum
Wild turkeys	1.5	1.0	1.0	1.0	4.0	18.0
Wild geese	6.5	6.5	N/A	3.0	10.0	13.0

Wild ducks	9.7	6.0	N/A	3.0	20.0	29.0
Grouse	6.6	4.0	4.0	2.0	20.0	46.0
Quail	15.0	15.0	N/A	15.0	15.0	15.0
Pheasant	15.0	15.0	N/A	10.0	20.0	30.0
Reindeer	0.0	0.0	0.0	0.0	0.0	0.0
Elk	3.5	1.0	1.0	0.5	30.0	74.5
Deer	3.0	1.0	1.0	0.5	20.0	45.5
Antelope	1.3	1.3	N/A	0.5	2.0	2.5
Water buffalo	0.0	0.0	0.0	0.0	0.0	0.0
Bison	0.0	0.0	0.0	0.0	0.0	0.0
Wild hogs	0.0	0.0	0.0	0.0	0.0	0.0
Other wild land mammals	7.0	7.0	N/A	4.0	10.0	14.0
Other fowl species	20.0	20.0	N/A	20.0	20.0	20.0
*Values of zero not included in data analysis if other numerical values were given by other respondents.						

Respondents were asked what percent of the wild game they hunt/harvest is processed locally. The median of the data set was 90, indicating that most individuals are having a majority of their wild game processed locally.

Next, respondents were asked whether the sale of wild game provided them with income. It should be noted that while the sale of wild game is illegal, it is possible that those who sell livestock such as farm-raised elk are also classifying these animals as wild game. As such, two individuals indicated they receive income from the sale of wild game.



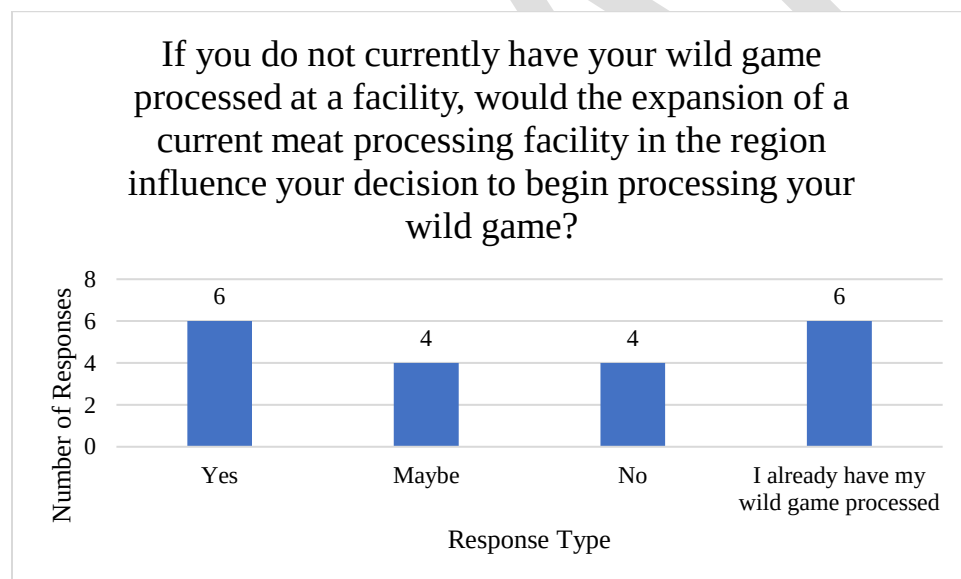
Relative to the previous question, respondents were asked how much of their income comes from the sale of wild game. Only three respondents indicated that any of their income comes from the

sale of wild game with two respondents selected the zero to 25 percent range and one individual indicating that they receive 75 to 100 percent of their total income from the sale of wild game.

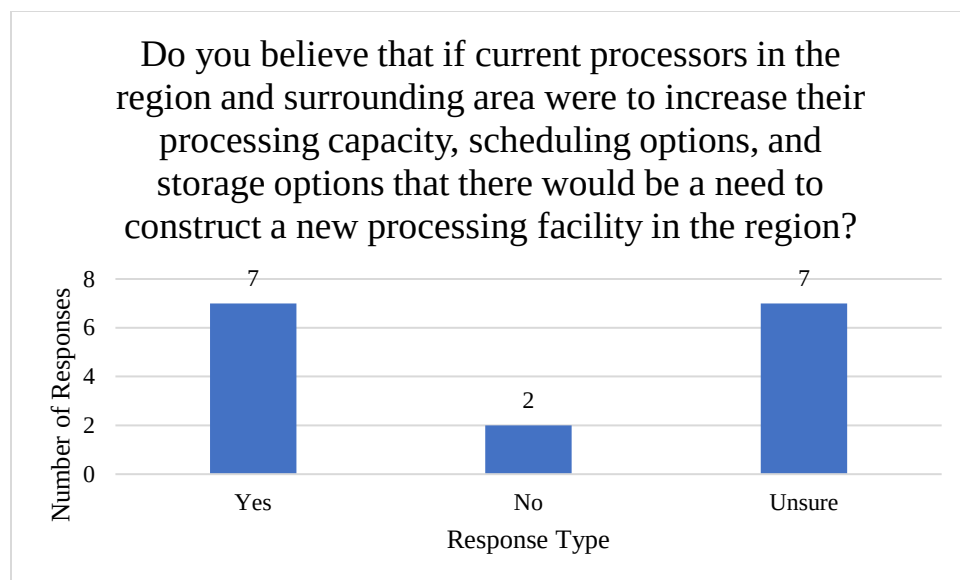
Differing from the previous surveys, only about half of respondents have their wild game processed at a processing facility, indicating that many individuals process their own wild game. Ten respondents indicated they have wild game processed at a facility, while 11 indicated they do not. Of those that provided information regarding where they have their wild game processed, four individuals use AT's Meat Block, four use Kinikin, and one uses Good's Processing. The average distance traveled by these individuals to have their game process is also less than that of the livestock producers. The data set had a median of 50 one-way miles traveled.

Moving on to where respondents currently sell their finished meat, 19 of the 20 respondents now indicated that they do not sell finished meat, while one respondent indicated they sell halves and wholes directly to customers. That one individual also indicated that they market their product as a specialty breed.

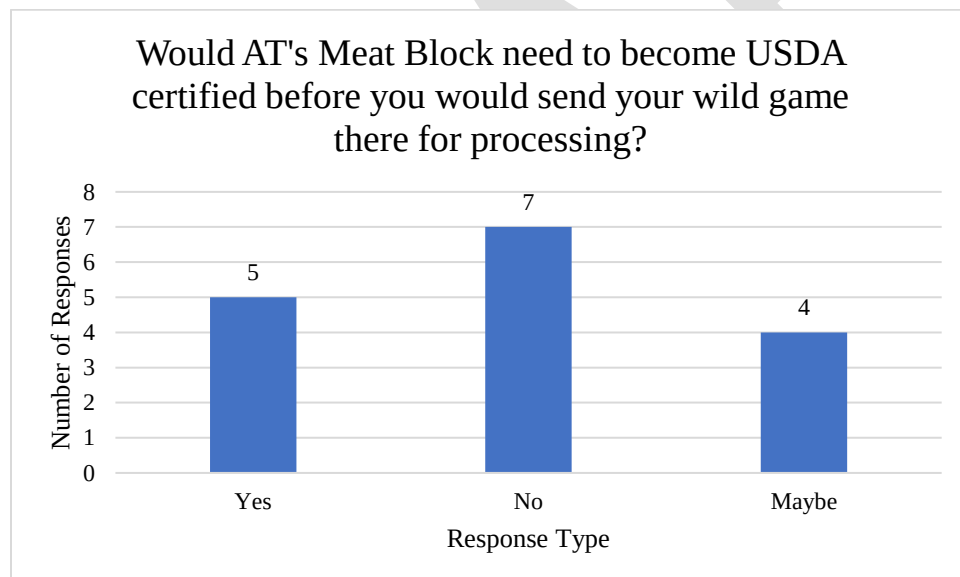
When asked whether the expansion of a current facility would influence their decision to begin processing their wild game, six respondents indicated that it would influence their decision, while an additional four respondents indicated that it may influence their decision.



However, respondents seem to also indicate that even if a current facility were to be expanded, there would still be a need to construct a new facility in the region.

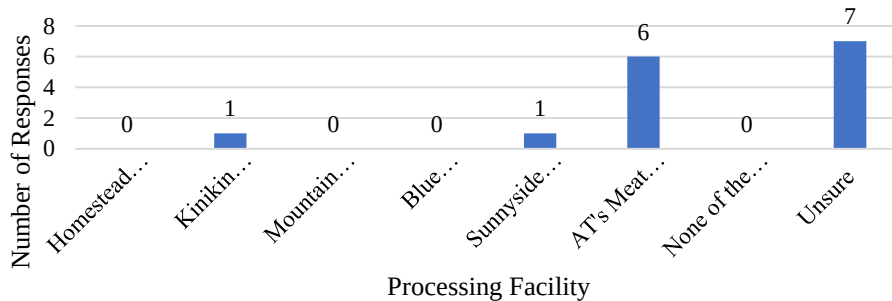


Regarding AT's Meat Block specifically, five respondents indicated that the facility would need to become USDA certified before they would send their wild game there for processing.



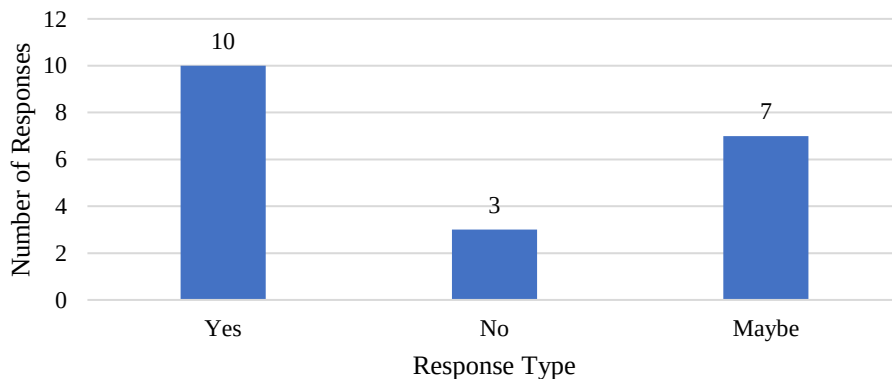
Dissimilar to the previous surveys, six respondents indicated that if AT's Meat Block were to be renovated that it would be the location that would benefit their operation the most, while seven indicated they were unsure which location would benefit their operation the most.

Of the processing facilities described in the previous question which location(s) would most benefit your operation if it were to expand its processing capacity and increase available storage?

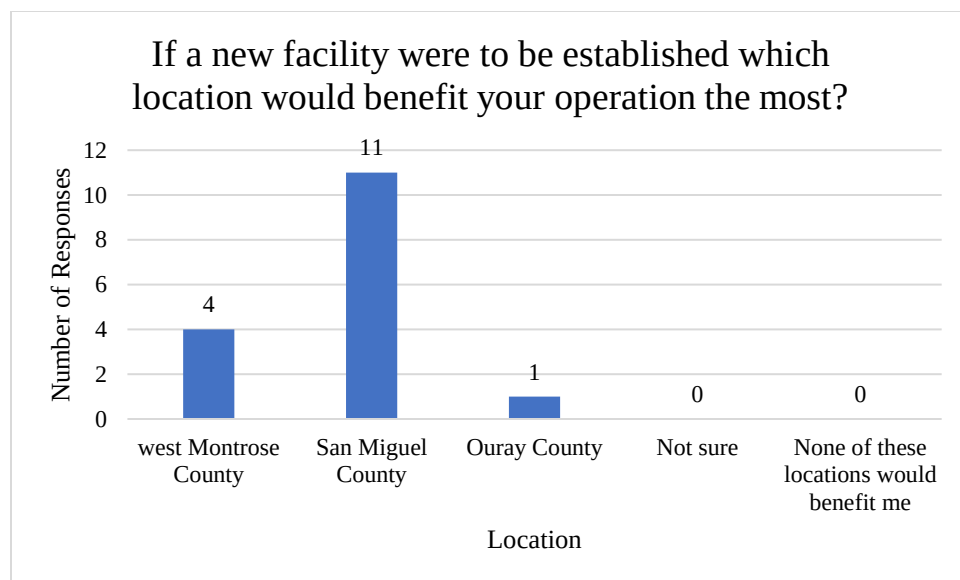


Ten of the 20 respondents indicated they would be interested in sending their wild game to a new USDA inspected slaughter facility, while an additional seven indicated they may be interested.

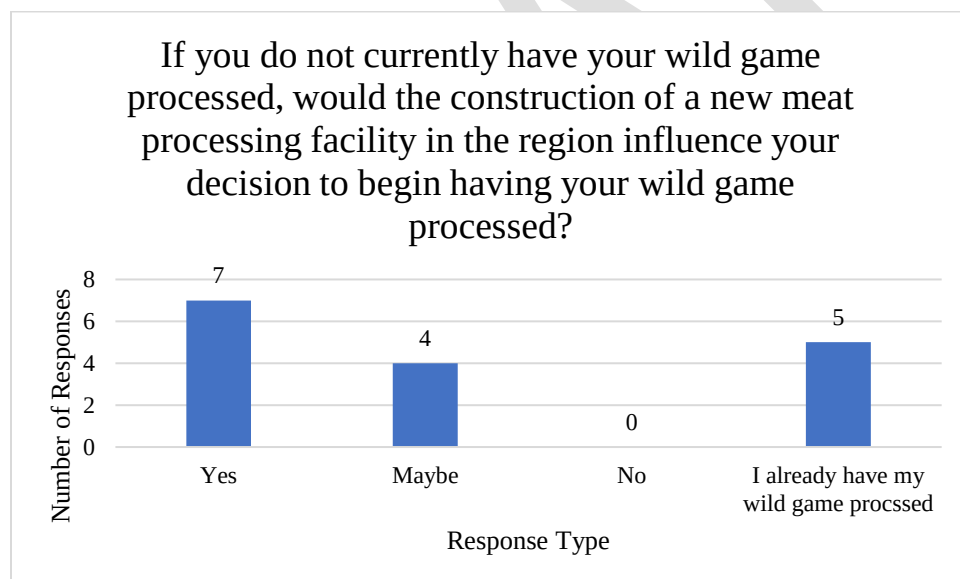
Would you be interested in sending wild game to a new USDA inspected slaughter/processing facility located in the region?



Of the potential locations given to respondents, 11 indicated that a new facility in San Miguel County would be most beneficial, with four indicating west Montrose County would be most beneficial. This is on trend with the previous surveys.

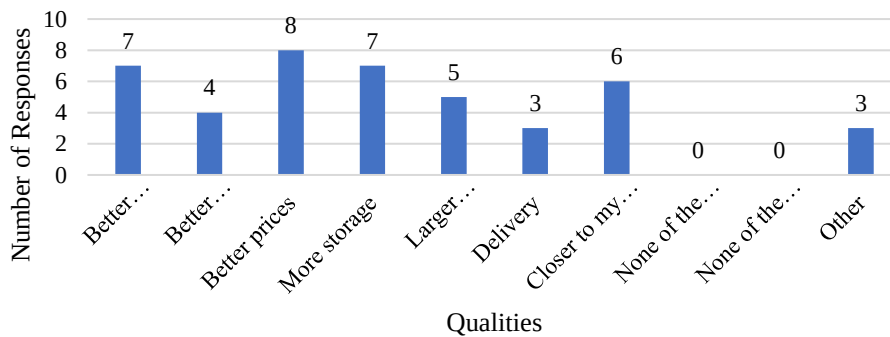


Moving on to the construction of a new facility, seven respondents indicated that the construction of a new facility would influence their decision to begin having their wild game processed.



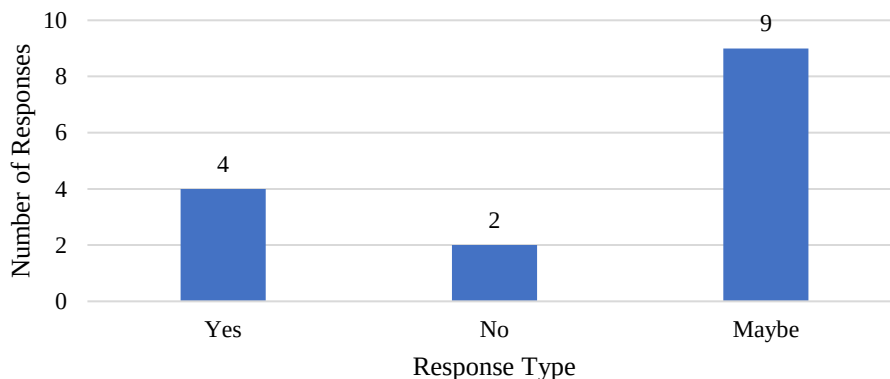
In order for respondents to use the new facility, there were several factors that respondents found to be important. Some of the most popular qualities were better scheduling, better prices, and more storage.

If a new meat processing facility were to be established in the region, what qualities would it need for you to choose to bring your wild game there?



When asked whether they would be willing to pay a price premium to have their wild game processed at a new facility with increased capacity, four respondents indicated that they would be willing to pay a price premium, while an additional nine indicated they may be willing to pay a price premium.

Would you be willing to pay a price premium to have your wild game processed at a new facility with increased slaughter capacity and storage?



Interestingly, when asked about the maximum distance respondents would be willing to travel to have their wild game processed, the data set had the same median value of 50 one-way miles as the question where respondents were asked how many miles they currently travel to have their wild game processed.

Summary of Producer Survey Results

The survey with the most respondents and also the most animals being collectively produced by respondents was the beef survey. Production methods were relatively mixed amongst respondents across conventional, natural, pasture-raised, and grass-fed. The average number of cattle being finished for slaughter each year was 6.1 across 41 respondents. However, the sum of the number of cattle respondents anticipate finishing between years 2020 and 2025 was 293 and 435, respectively, indicating that respondents anticipate finishing more cattle in the future. If a current meat processing facility were to be expanded, respondents indicated they would finish 387 cattle in 2020, which would increase to 557 cattle by 2025. If a new processing facility was established, respondents indicated they would finish 336 cattle in 2020, which would increase to 539 in 2025. Responses to these questions indicate that farmers may be willing to finish more cattle if a current facility was expanded or a new one was established. Regarding location preferences for a new facility, respondents preferred a location either in west Montrose county or San Miguel county. Of the services and/or perks that may be offered at a new facility, respondents indicated they would prefer a facility that is closer to their farm or ranch, has better prices, better scheduling options, and more storage.



FOR IMMEDIATE RELEASE
Contact: April Montgomery
970-728-8717

**SAN MIGUEL COUNTY AND TELLURIDE FOUNDATION TO PRESENT
RESULTS ON REGIONAL MEAT PROCESSING FEASIBILITY STUDY**

***Goldenhorn Consulting Group has Completed its Meat Processing Facility
Feasibility Study and will Present its Findings this December***

TELLURIDE, Colo. (November 23rd, 2020) – Earlier this year, San Miguel County, in partnership with the Telluride Foundation, received a Rural Economic Development Grant (REDI) from the Department of Local Affairs (DOLA) to conduct a feasibility study on the existing and potential meat processing options for meat producers and hunters. This feasibility study has recently been completed by Goldenhorn Consulting Group, a Tennessee-based group with extensive experience conducting meat processing facility feasibility studies in rural areas. Goldenhorn Consulting Group will be presenting their findings on December 15, 3pm – 5pm, 2020, and we encourage anyone interested in this topic to participate in the presentation via Zoom (link to register is below).

Goldenhorn Consulting Group has met with ranchers and various interested parties local to San Miguel, Ouray, and west Montrose counties to gain insight into the current status of meat processing in the region. Over the last several months, surveys were conducted to assess the meat supplied by farmers and the demand for the regional meat processing facility. These surveys indicate that the majority of surveyed businesses would be interested in purchasing meat produced locally, even if that required paying a premium. Restaurants also indicated that serving local meat is prioritized over serving grass fed or organic meat. Another survey indicates that producers are in favor of processing meat



closer to their farms and ranches. Additionally, the survey findings indicate that a new local processing facility may influence producers to either finish a greater number of cattle for processing or even begin finishing cattle for the first time altogether. Hog and sheep producers indicated they would increase herd sizes if a new facility was constructed or a current facility was updated. These are just a few of the many findings that will be covered by Goldenhorn Consulting Group in their presentation this December.

The Consultants will also provide an update on next steps including a desired management structure, the financial feasibility of a facility given livestock production figures collected from the aforementioned surveys, and the number of animals that would need to move through the facility to make it financially feasible. The presentation will provide ample time for questions and conversations and will be recorded. You must register in advance for this meeting at:

<https://zoom.us/meeting/register/tJclduuvrjwsHdx6oeHkg3WRVxY0wtG3lFYX>

After registering, you will receive a confirmation email containing information about joining the meeting. If you are unable to attend but would like a recording of the presentation, contact april@telluridefoundation.org.

The Telluride Foundation exists to create a stronger Telluride and regional community through the promotion and support of philanthropy. 2020 marks 20 years of making more possible through the Telluride Foundation's commitment to enrich the quality of life of the residents, visitors, and workforce of the Telluride region. The Telluride Foundation is a nonprofit, apolitical community foundation that makes grants to nonprofits, owns and operates programs that meet emerging and unmet community needs, and makes investments. The Foundation approaches this work through the lens of its core values of inclusion, self-reliance, and innovation. Its work is funded through the generous support of



individual donors as well as grants from state and national foundations. The Foundation hopes the community will join it in celebrating its 20th anniversary as it honors the nonprofits, donors, and community members who have all partnered together to achieve a significant positive impact on the region. For more information click on www.telluridefoundation.org.

Livestock Processing Facility Feasibility Study Report for the West End Region of Colorado

...

Goldenhorn Consulting Group
Dr. Michael Best, Dr. Kent Wolfe, and Sarah Best
December 15, 2020

Overview

- Introduction
- Technical Analysis
- Management Analysis
- Marketing Analysis
- Financial Feasibility
- Economic Impact

USDA Feasibility Study Guidelines

- Technical Analysis (availability of resources, equipment, labor, etc.)
- Management Analysis (management labor requirements of the proposed project)
- Market Analysis (an analysis of market data relevant to the project)
- Financial Analysis and Economic Feasibility (Is the project profitable under a given set of assumptions? Can the project cash flow?)
- Economic Impact (What impacts are seen to the surrounding community under a given set of assumptions?)

Project Specifics

- Study includes surveys of producers and local businesses
- Market research specifically focused on the beef wholesaling and restaurant industries
- Management and Financial Analyses are conducted for a 1,500 head per year mixed-use slaughter facility
- Economic impacts are calculated for full capacity operations

Technical Analysis

Technical Analysis Components

- Regulations
- Safety
- USDA Inspection
- FDA Regulation
- Labor Laws

Regulations and Safety

- Only one species can be processed at a time
 - They can be stored in the same facility but must be separated by either space or time
- Inspection personnel verify humane handling, ensure that animals are fit for slaughter, conduct post-mortem inspections, and inspect the facility for cleanliness facilities
- Each species and product form must have its own approved HAZARD Analysis and Critical Control Point food safety management plan
 - Expect to have 15-20 plans for one facility
- Ground beef is one of the more closely monitored production categories

USDA Inspection

- Facilities can either be state or federally inspected, but state-inspected plants cannot ship their products across state lines
- A USDA inspector must be present for the slaughter of meat that is to be USDA certified
- There are USDA certified slaughter facilities in the area currently

FDA Regulation

- Industry operators are subject to the US Food and Drug Administration's Federal Food, Drug, and Cosmetic Act, the Bioterrorism Act and their regulations
- The FDA also regulates food labeling
- The Food Safety Modernization Act requires operators to maintain comprehensive prevention-based controls across supply chains

Labor Laws

- Wholesalers must comply with regulations from the US Department of Labor
- Additional labor regulations may apply regarding transport professionals
 - Drivers must obtain specific commercial driver's licenses if the business is responsible for shipping product

Management and Company Structure Analysis

Required Positions at Full Operating Capacity

- six full-time positions
 - Plant Manager/Butcher
 - Butcher/Supervisor
 - Three fabrication cutters and packagers
 - Office manager

Possible Company Structures

- Traditional Cooperative
 - Business entity is member-owned, one member one vote
- New Generation Cooperative
 - Focuses on niche marketing strategies or value added processes
- C Corporation
 - Business entity that provides limited liability to its owners, owner's personal property not at stake
- S Corporation
 - An S Corporation combines the limited liability aspect of a C Corporation, but for a sole proprietorship business model
 - No taxation at the corporate level
- Limited Liability Company
 - The LLC is a more flexible version of a C Corporation, and is subject to different tax laws

New Generation Cooperative Specifics

NGCs normally maintain a marketing agreement with the member producers.

The NGC can establish the production volume, selling shares to cover that needed volume.

The operation should be able to supply a moderate amount of their own start up capital, lowering long-term private debt commitments and freeing up future profits.

Since all members are also producers they require marketing contracts.

Additional risk capital can come through member investment or retained earnings.

Market Analysis

Market Analysis Components

- Beef Consumption
- Restaurants
- Wholesale
- Cost Structure Benchmarks
- Competition
- Market Potential
- Surveys

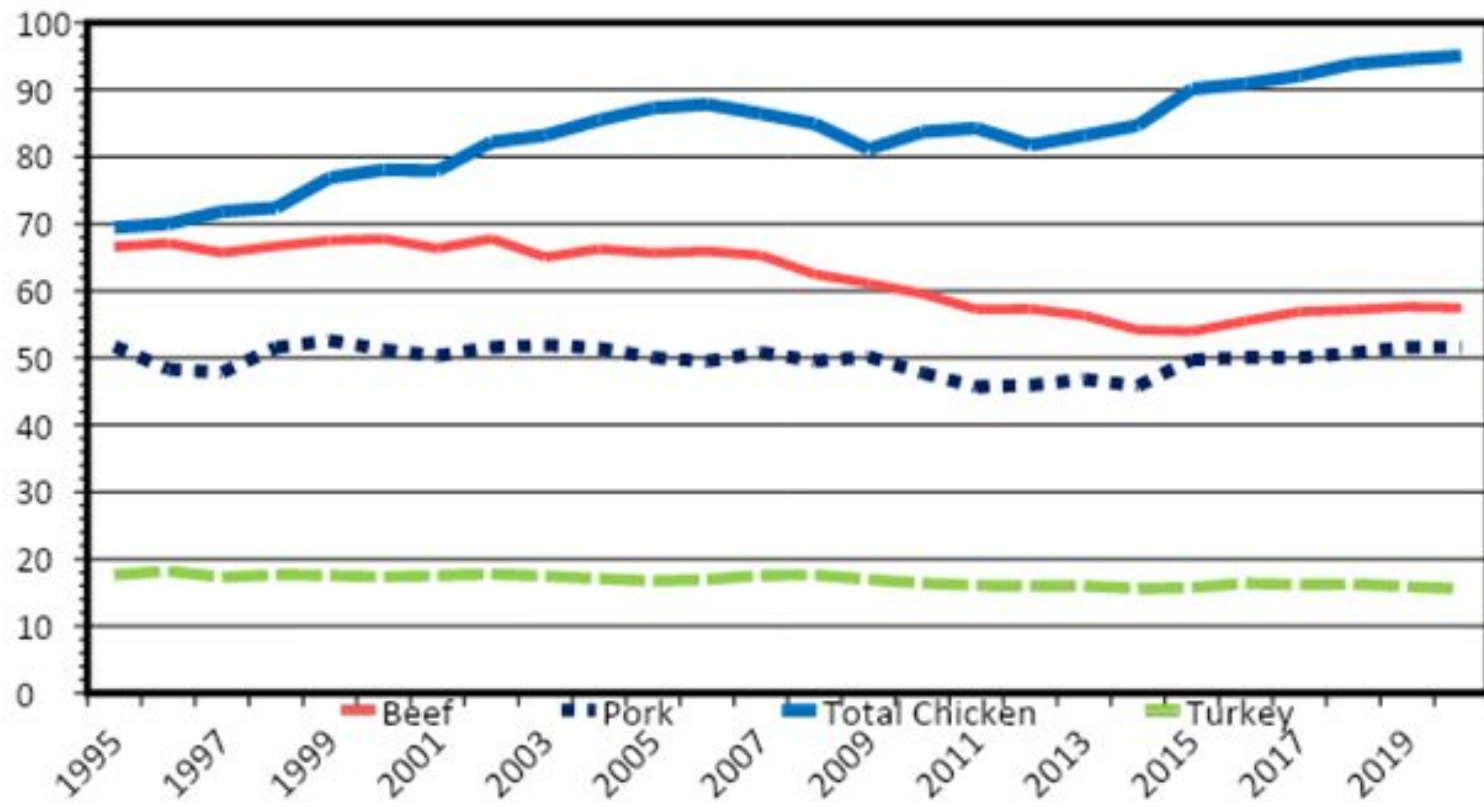
Beef Consumption

- Beef consumption steadily declined from 1995 to 2015, but since then has risen as per capita income has increased
- Consumer preferences are shifting to perceived healthier lifestyle choices, which includes adding poultry and fish to their diets
- Poultry and pork are less expensive than beef, which could cause downward pressure on beef prices
- Ready-to-cook meals are becoming popular amongst busy consumers
- Frozen beef product consumption decreases with age
- Price is still the leading deterrent for consumers regarding beef purchase

US RED MEAT & POULTRY CONSUMPTION

Per Capita, Retail Weight, Annual

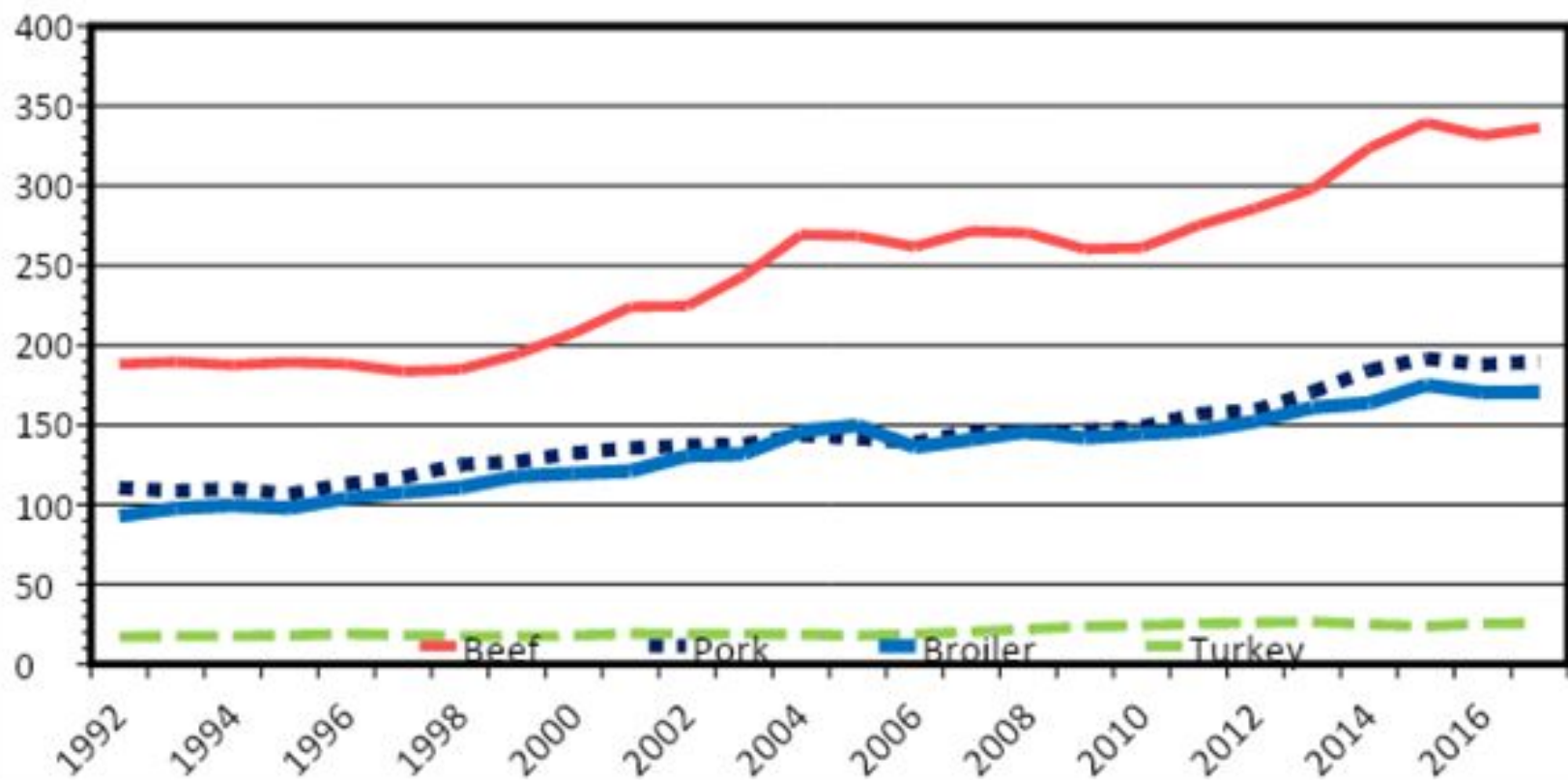
Pounds



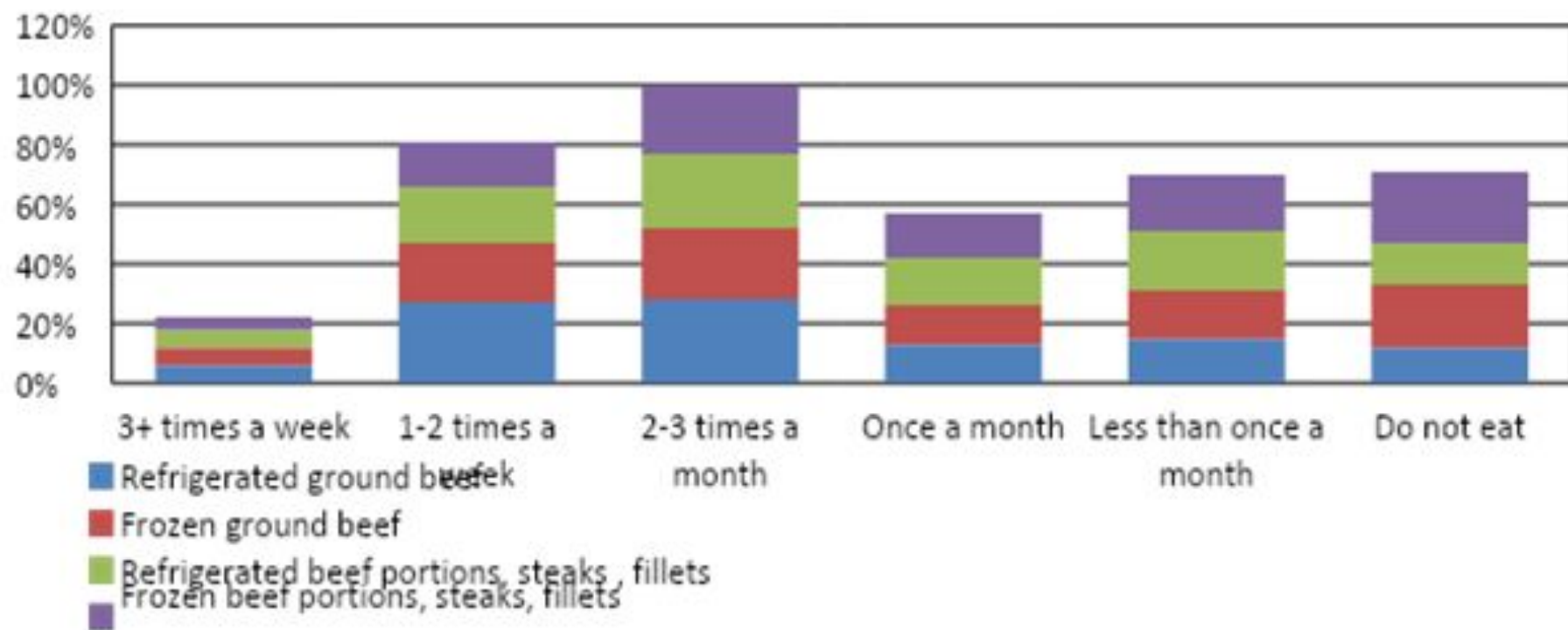
US EXPENDITURES FOR MEAT & POULTRY

Per Capita, By Type of Meat, Annual

Nominal Dollars

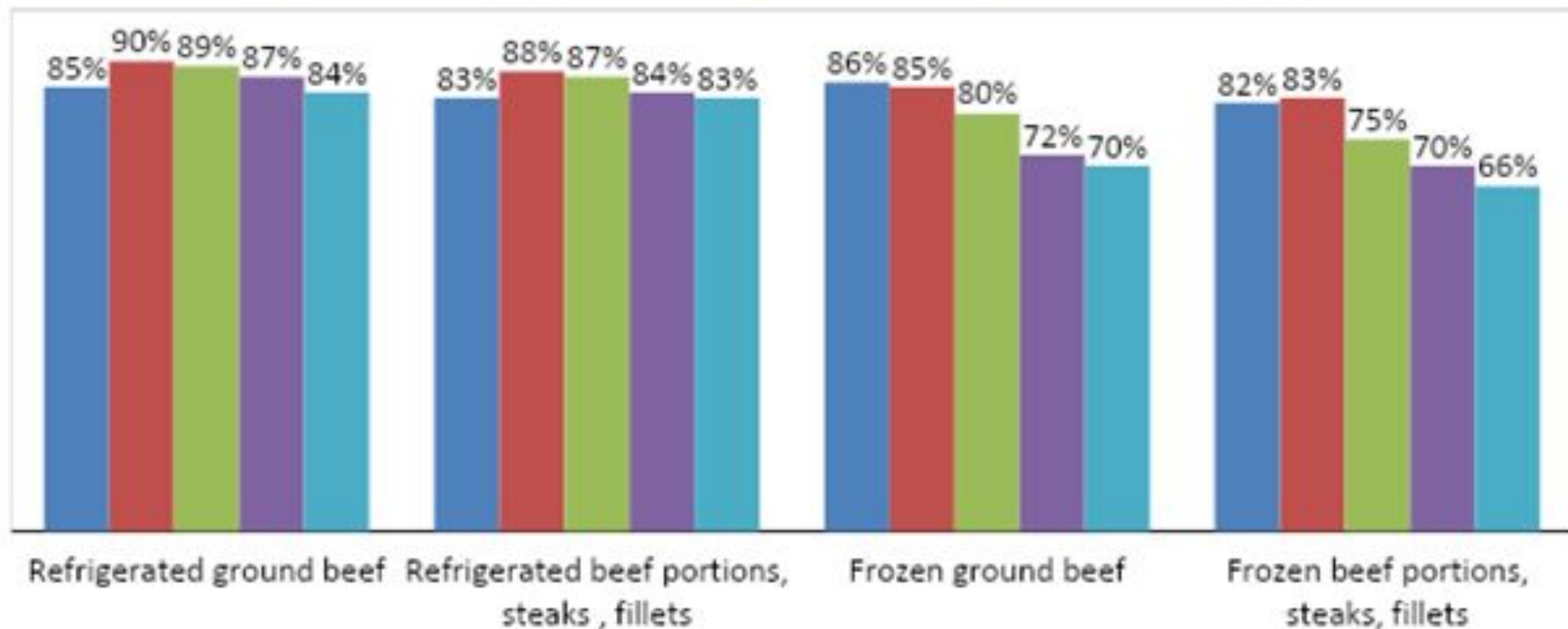


How Often Eaten at Home in the Last 6 Months



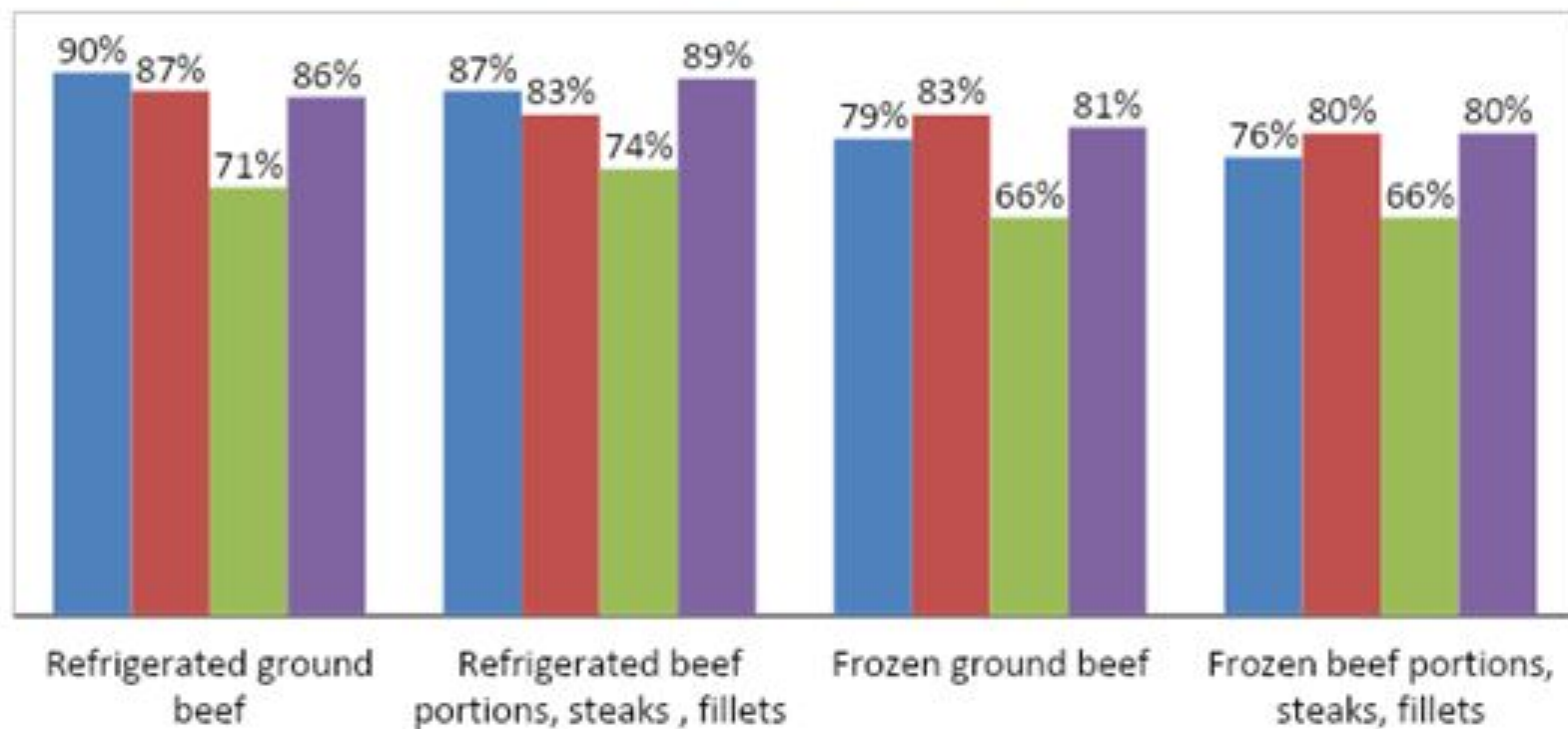
How Often Eaten at Home the Last 6 Months

■ Generation I ■ Millennials ■ Generation X ■ Baby Boomers ■ WWII

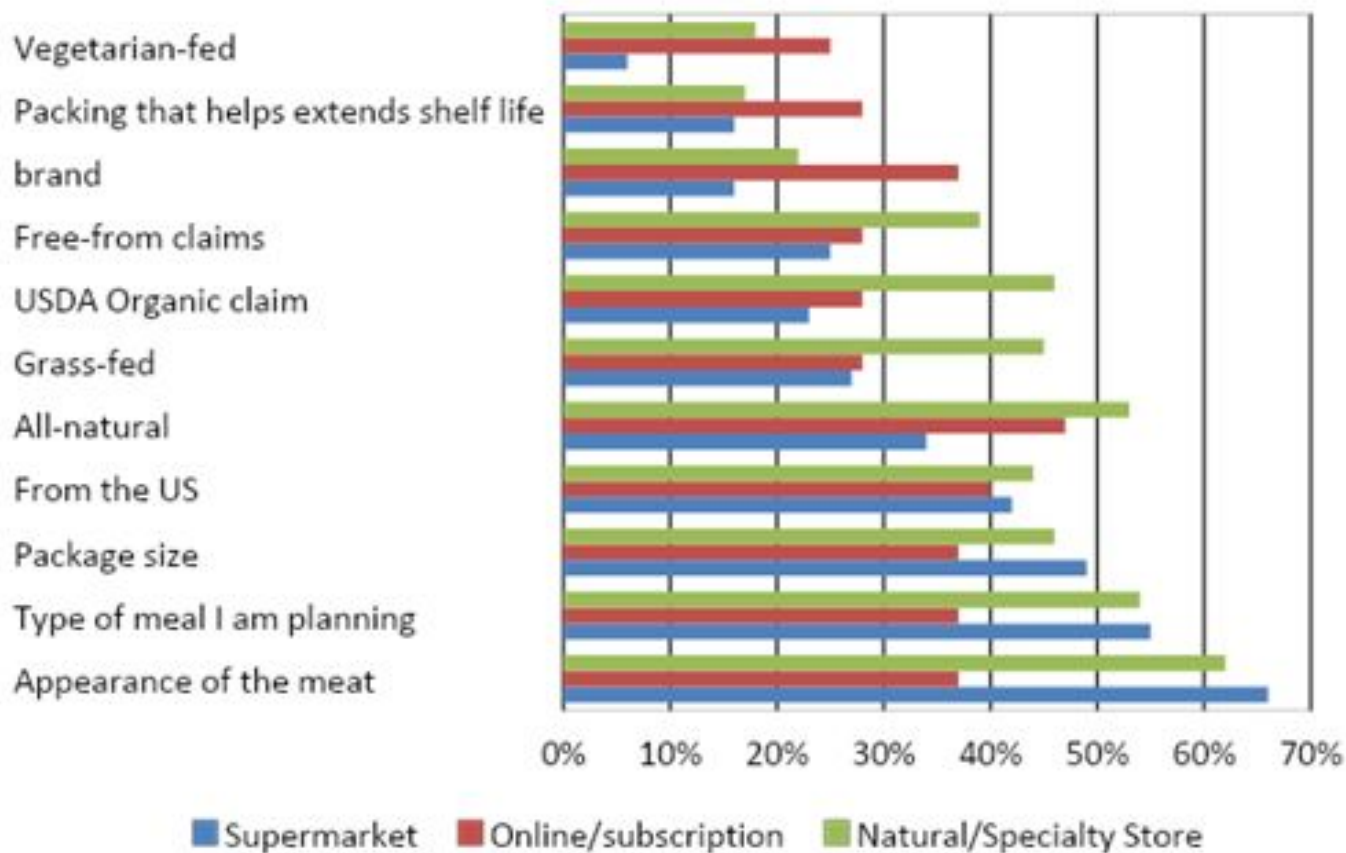


How Often Eaten at Home the Last 6 Months

white black Asian Other

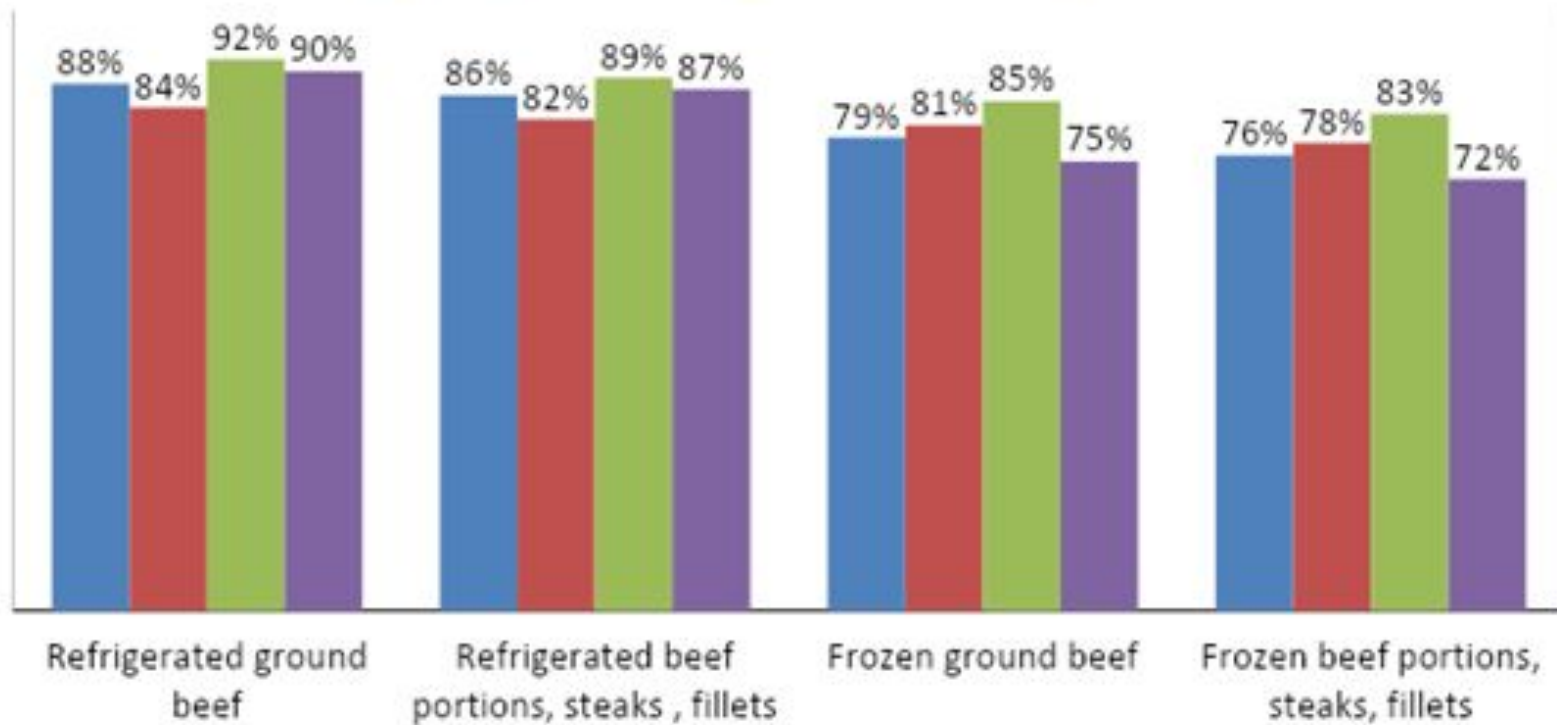


Importance of Factors in Purchase Decision



How Often Eat at Home in the Last 6 Months

■ all ■ <\$50,000 ■ \$50,000-74,999 ■ \$75,000>



Meat Trends

Only 3% of those who ate red meat in the last month purchased red meat via an online food shopping service, an online retailer, or a meal kit subscription service, respectively.

However, that Report found 18% of consumers are purchasing meat, poultry, or seafood online.

Opportunity:

Any effort to market red meat to consumers in an online arena or via subscription service, however, must note that younger men and women are the most likely consumers for these products in these arenas.

Premium Steakhouses Growing Market

- Over the five years to 2022, industry revenue is expected to increase at an annualized rate of 1.4% to \$8.9 billion.
- The most popular is the traditional American steakhouse (35.0%), followed closely by steak and seafood restaurants that emphasize premium steak and seafood offerings (32.6%), Brazilian-style steakhouses (10.4%) and other premium steak restaurants.
- According to the Bureau of Labor Statistics, households that make less than \$50,000 per year spend 36.6% of their food budget on dining out (amounting to about \$1,626 per year). Households that make between \$50,000 and \$75,000 per year spend 42.4% of their food budget on dining out (\$2,711 per year), while households that pull in more than \$75,000 per year spend 45.7% of their food budget on dining out (\$4,490 per year).

Wholesale

- The Beef Wholesaling industry is experiencing challenging conditions. The industry, which serves as the middleman between beef producers and retailers is expected to slow as red meat prices fall and consumer taste favors substitute products.
- Other wholesalers, including manufacturers, account for a significant portion of industry revenue at 36.3%.
- Both large and small Retailers have increasingly made purchases directly from food manufacturers, allowing these players to avoid wholesale costs and high markups.

Market Potential

- “Locally grown” extends beyond the immediate area and according to the USDA ranges up to 400 miles from the production location
- Thus there is a significant population in the area to target as a market area

Population within Three Market Areas Originating from Telluride

Year	100 Miles	200 Miles	300 Mile
2010	502,221	3,725,890	8,798,776
2020	517,937	4,149,778	9,896,052
2025	524,285	4,261,272	10,215,389



Annual Per Capita Total Beef Consumption (lbs.) within Three Market Areas

Year	100 Miles	200 Miles	300 Miles
2010	40,177,680	298,071,200	703,902,080
2020	41,434,960	331,982,240	791,684,160
2025	41,942,800	340,901,760	817,231,120

Annual Per Capita Grass Fed Beef Consumption (lbs.) within Three Market Areas

Year	100 Miles	200 Miles	300 Miles
2010	1,807,996	13,413,204	31,675,594
2020	1,864,573	14,939,201	35,625,787
20235	1,887,426	15,340,579	36,775,400

Meat Purchasing Habits of Respondents		
Beef		
Cuts of Beef Most Commonly Purchased Each Week	Average Pounds Purchased per Week	Price Paid per Pound for Each Cut
Ground Beef	80 lbs	3.62
Ribeye, Bison	30 lbs each	
Ground Beef, Round, Rib,	8000	
Steak, Ground Beef	10 lbs	
Ground, Sausage, Ribeye,	10 lbs	4.00
Ground Chuck	30 lbs	6.00
Steak, Beef		
New York, Flank, Skirt		35 lbs
Chicken		
Cuts of Chicken Most Commonly Purchased Each Week	Average Pounds Purchased per Week	Price Paid per Pound for Each Cut
Breast	5000 lbs	
Breast	5000 lbs	1.56
Breast, Thigh	80 lbs	
All Cuts	10 lbs	
All Cuts		
Breast, Whole Chicken	30 lbs	
Pork		
Cuts of Pork Most Commonly Purchased Each Week	Average Pounds Purchased per Week	Price Paid per Pound for Each Cut
	8 lbs	
Farm Raised		
	10 lbs	
Loin and Tenderloin	20 lbs	
Sheep/Goat		
Cuts of Sheep/Goat Most Commonly Purchased Each Week	Average Pounds Purchased per Week	Price Paid per Pound for Each Cut
Whole Lamb, Local		8.00
Wild Game		
Cuts of Wild Game Most Commonly Purchased Each Week	Average Pounds Purchased per Week	Price Paid per Pound for Each Cut
Elk	10 lbs	

Competition

- Due to diversity in producer sizes, competition for beef and pork wholesalers is high
- It is important for wholesalers to base operations close to clients to save on transportation costs
- Having a wide range of meat products can help in differentiating a company's product
- Branding allows for operators to set higher prices for their products
- Wholesaling has high barriers to entry (regulations, storage, distribution requirements)

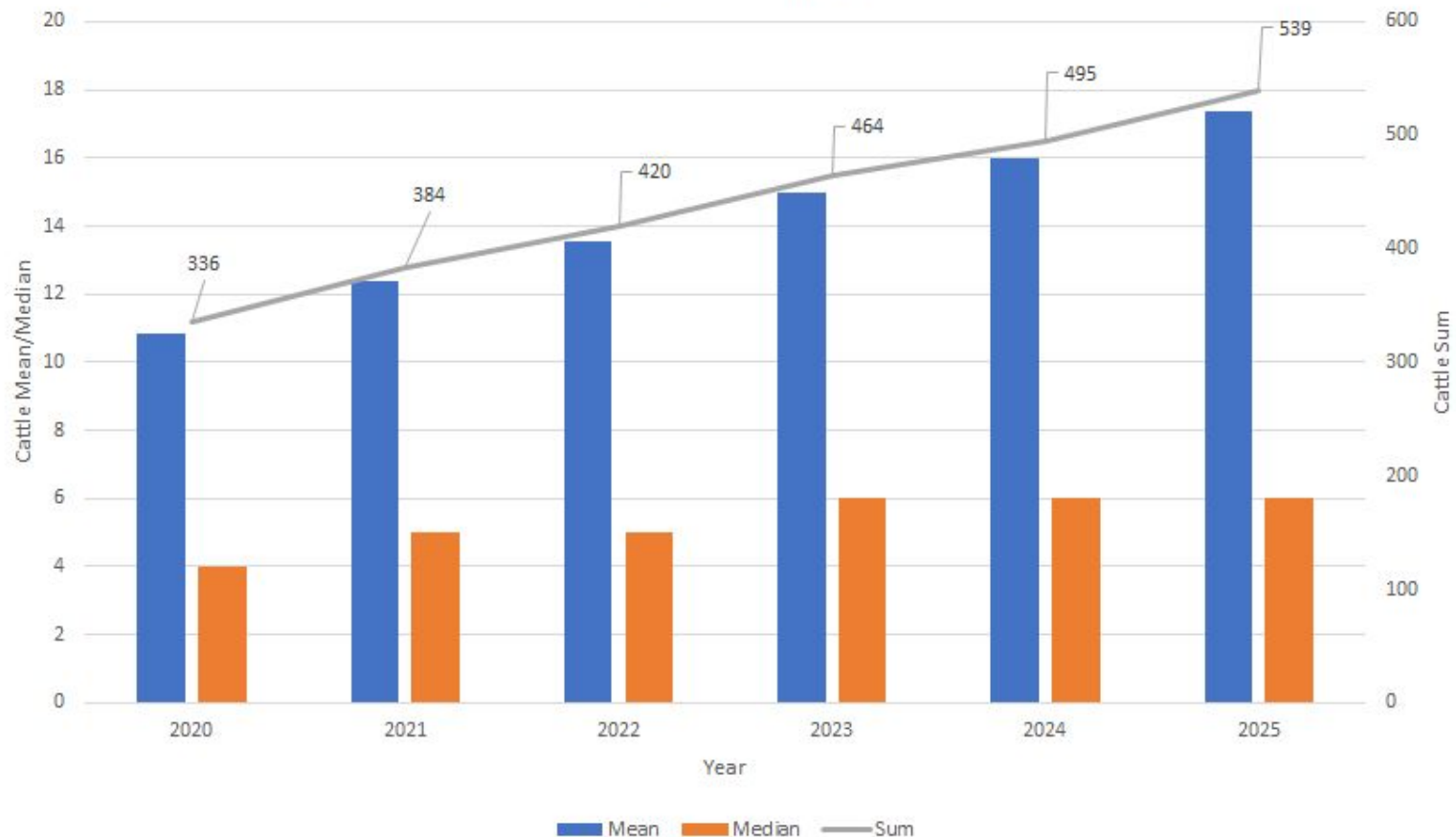
Competition (continued)

- Homestead Meats slaughters approximately 1,750 cattle per years and 2,000 hogs
 - 6 ranches own Homestead
- Kinikin Processing slaughters approximately 1,500 head of cattle per year and 1,300 hogs

Notable Survey Components Used in the Study

- 38 beef producers, 8 hog producers, 3 sheep/goat producers, and 18 wild game hunters completed their respective surveys.
- San Miguel County was the most popular choice for the location of a new facility for beef producers, hog producers and wild game hunters, while west Montrose County was slightly more popular for sheep producers.
- Beef producers seem keen to finish a larger number of cattle annually if a current facility were to be updated or a new facility were to be constructed.
- Production numbers from the surveys are used to determine estimated supply to the proposed processing facility.

Number of Cattle Participants Anticipate Finishing Through 2025 if a New Processing Facility was Established



Production Numbers for Hogs, Sheep, Goats, and Wild Game

Anticipated production numbers with the construction of a new facility from 2020 to 2025 used in the financial analysis based on survey results:

- Hogs: 135 on the low end, 205 on the high end
- Sheep: 100 on the low end, 100 on the high end
- Wild game: 360 units on the low end, 360 on the high end
- Not as much variability in production numbers is seen for sheep and wild game is assumed to be constant

Financial Analysis and Economic Feasibility

Financial Analysis and Economic Feasibility Components

- Operating Assumptions
- Capital Costs
- Labor
- Operating Expenses
- Economic Feasibility
- Five-Year Analysis of Profits/Losses
- Five-Year Analysis of Cash Flows
- Summary of Financial Feasibility

Operating Assumptions

	<u>Units</u>	<u>Rationale</u>
Plant slaughter capacity (hd/wk), beef basis	30	Assumed average weekly slaughter for a plant with a maximum capacity of 30 hd/wk
Weeks per year of slaughter	50	Assumed two weeks down time for repairs, maintenance, and adverse weather
Total annual slaughter capacity (hd/yr, beef carcass basis)	1,500	Combined head slaughtered on-site
Cattle percentage of annual slaughter	70%	Assumed large majority of slaughter will be cattle
Cattle head slaughtered per year	1,008	
Hogs percentage of annual slaughter	10%	Assumed small percentage of slaughter hogs
Hogs head slaughtered per year	288	
Sheep percentage of annual slaughter	10%	Assumed small percentage of sheep
Sheep head slaughtered per year	331	
Wild Game head slaughtered per year	10%	Assumed small percentage of wild game
Wild Game head slaughtered per year	360	

Capital Costs

	Cost	Economic Life	Annual Depreciation
Building and Grounds			
Processing Structure and Install Labor	\$ 545,749	39	\$ 13,994
Permits and Hookups	\$ 25,000	39	\$ 641
Parking and Drive and Exterior Lighting	\$ 25,000	39	\$ 641
Equipment			
Animal Receiving and Holding Pens	\$ 47,294	10	\$ 4,729
Pre-chill Cooler Space	\$ 20,250	7	\$ 2,893
Holding Cooler Space	\$ 34,493	7	\$ 4,928
Freezer Space	\$ 93,100	7	\$ 13,300
Slaughter Fixtures and Equipment Cattle	\$ 56,372	7	\$ 8,053
Slaughter Fixtures and Equipment Hogs	\$ 42,746	7	\$ 6,107
Processing Fixtures and Equipment	\$ 54,689	7	\$ 7,813
Wastewater Pretreatment Equipment	\$ 52,086	7	\$ 7,441
Sanitation Equipment	\$ 25,767	7	\$ 3,681
Facility, Process Utilities	\$ 49,656	7	\$ 7,094
Office Furniture	\$ 2,500	7	\$ 357
Total Equipment/Facilities	\$ 1,074,702		
Pickup Truck	\$ 30,000	5	\$ 6,000
Land	\$ 50,000		
Startup Costs/Loan Fees	\$ 20,000	10	\$ 2,000
Total Capital Cost	\$ 1,174,702		\$ 89,671
Total Investment	\$ 1,174,702		
Interest	Average Investment		Total Investment
5.0%	\$ 29,368		\$ 58,735

Labor

[illegible]

Economic Feasibility

Hours per Day	8			
Days per Week	5			
Weeks per Year	50			
Total Capacity Percentage	41 %			Year 2026
Original Product Mix	% Capacity	Units	Price	Revenue
Cattle (Custom Processing)	22.90%	330	\$ 667	\$ 219,950
Hogs (Custom Processing)	4.70%	135	\$ 176	\$ 23,864
Sheep (Custom Processing)	3.03%	100	\$ 150	\$ 15,053
Wild Game (Custom Processing)	10.00%	360	\$ 100	\$ 36,000
		925		\$ 294,867
Total Revenue				\$ 294,867
Operating Expenses:				
Payroll Expense				\$ 241,264
Employee Benefits (Health Ins., Retirement)				\$ -
Utilities				
Propane or Natural Gas				\$ 8,792
Electricity				\$ 71,798
Water				\$ 9,768
Microbial Testing				\$ 1,800
Inedible Expense (rendering pick-ups)				\$ 6,000
Solid Waste				\$ 14,493
Production Expense (packaging materials)				\$ 23,917
Total Operating Expenses				\$ 377,831
Fixed Expenses:				
Insurance				\$ 20,000
Professional Fees				\$ 15,000
Office Expenses				\$ 5,000
Telephone and Internet				\$ 1,500
Office Supplies				\$ 5,000
Property Taxes				\$ 12,899
Repairs and Maintenance				\$ 29,153
Fuel and Oil				\$ 3,600
Interest Expense				\$ 58,735
Depreciation Expense				\$ 89,671
Total Fixed Expenses				\$ 240,557
Total Cost				\$ 618,388
Net Income (Loss)				\$ (323,521)

Economic Feasibility

Hours per Day	8			
Days per Week	5			
Weeks per Year	50			
Total Capacity Percentage	58%			Year 2026
Original Product Mix	% Capacity	Units	Price	Revenue
Cattle (Custom Processing)	37.50%	540	\$ 667	\$ 360,180
Hogs (Custom Processing)	7.13%	205	\$ 176	\$ 36,202
Sheep (Custom Processing)	3.03%	100	\$ 150	\$ 15,053
Wild Game (Custom Processing)	10.00%	360	\$ 100	\$ 36,000
		1,206		\$ 447,435
Total Revenue				\$ 447,435
Operating Expenses:				
Payroll Expense				\$ 241,264
Employee Benefits (Health Ins., Retirement)				\$ -
Utilities				
Propane or Natural Gas				\$ 8,792
Electricity				\$ 71,798
Water				\$ 9,768
Microbial Testing				\$ 1,800
Inedible Expense (rendering pick-ups)				\$ 6,000
Solid Waste				\$ 14,493
Production Expense (packaging materials)				\$ 35,969
Total Operating Expenses				\$ 389,883
Fixed Expenses:				
Insurance				\$ 20,000
Professional Fees				\$ 15,000
Office Expenses				\$ 5,000
Telephone and Internet				\$ 1,500
Office Supplies				\$ 5,000
Property Taxes				\$ 12,899
Repairs and Maintenance				\$ 29,153
Fuel and Oil				\$ 3,600
Interest Expense				\$ 58,735
Depreciation Expense				\$ 89,671
Total Fixed Expenses				\$ 240,557
Total Cost				\$ 630,440
Net Income (Loss)				\$ (183,005)

Breakeven Capacity

Overall B/E Capacity	B/E Species Capa
81.82550%	0.5727785
	0.0818255
	0.0818255
	0.0818255

Economic Feasibility

Hours per Day	8			
Days per Week	5			
Weeks per Year	50			
Total Capacity Percentage	100%			Year 2026
Original Product Mix	% Capacity	Units	Price	Revenue
Cattle (Custom Processing)	70.00%	1,008	\$ 667	\$ 672,336
Hogs (Custom Processing)	10.00%	288	\$ 176	\$ 50,774
Sheep (Custom Processing)	10.00%	331	\$ 150	\$ 49,680
Wild Game (Custom Processing)	10.00%	360	\$ 100	\$ 36,000
		1,987		\$ 808,790
Total Revenue				\$ 808,790
Operating Expenses:				
Payroll Expense				\$ 274,773
Employee Benefits (Health Ins., Retirement)				\$ -
Utilities				
Propane or Natural Gas				\$ 8,792
Electricity				\$ 71,798
Water				\$ 9,768
Microbial Testing				\$ 1,800
Inedible Expense (rendering pick-ups)				\$ 6,000
Solid Waste				\$ 14,493
Production Expense (packaging materials)				\$ 63,936
Total Operating Expenses				\$ 451,359
Fixed Expenses:				
Insurance				\$ 20,000
Professional Fees				\$ 15,000
Office Expenses				\$ 5,000
Telephone and Internet				\$ 1,500
Office Supplies				\$ 5,000
Property Taxes				\$ 12,899
Repairs and Maintenance				\$ 29,153
Fuel and Oil				\$ 3,600
Interest Expense				\$ 58,735
Depreciation Expense				\$ 89,671
Total Fixed Expenses				\$ 240,557
Total Cost				\$ 691,916
Net Income (Loss)				\$ 116,874

5 Year Profits and Losses

	Projected 12-month Ending 12/31/2022	Projected 12-month Ending 12/31/2023	Projected 12-month Ending 12/31/2024	Projected 12-month Ending 12/31/2025	Projected 12-month Ending 12/31/2026
Revenue					
Cattle Processing	\$ 219,950	\$ 360,180	\$ 672,336	\$ 685,783	\$ 699,498
Hog Processing	\$ 23,864	\$ 36,202	\$ 50,774	\$ 51,790	\$ 52,826
Sheep Processing	\$ 15,053	\$ 15,053	\$ 49,680	\$ 50,674	\$ 51,687
Wild Game Processing	\$ 36,000	\$ 36,000	\$ 36,000	\$ 36,720	\$ 37,454
Total Revenue	\$ 294,867	\$ 447,435	\$ 808,790	\$ 824,966	\$ 841,466
Variable Expenses:					
Payroll Expense	\$ 241,264	\$ 241,264	\$ 274,773	\$ 280,268	\$ 285,874
Employee Benefits (Health Ins., Retirement)	\$ -	\$ -	\$ -		
Utilities					
Propane or Natural Gas	\$ 8,792	\$ 8,967	\$ 9,147	\$ 9,330	\$ 9,516
Electricity	\$ 71,798	\$ 73,234	\$ 74,698	\$ 76,192	\$ 77,716
Water	\$ 9,768	\$ 9,964	\$ 10,163	\$ 10,366	\$ 10,574
Microbial Testing	\$ 1,800	\$ 1,836	\$ 1,873	\$ 1,910	\$ 1,948
Inedible Expense	\$ 6,000	\$ 6,120	\$ 6,242	\$ 6,367	\$ 6,495
Solid Waste	\$ 14,493	\$ 14,783	\$ 15,079	\$ 15,380	\$ 15,688
Production Expense (packaging materials)	\$ 23,917	\$ 35,969	\$ 63,936	\$ 65,215	\$ 66,519
Total Variable Expenses	\$ 377,831	\$ 392,137	\$ 455,911	\$ 465,029	\$ 474,329
Fixed Expenses:					
Insurance	\$ 20,000	\$ 20,400	\$ 20,808	\$ 21,224	\$ 21,649
Professional Fees	\$ 15,000	\$ 15,300	\$ 15,606	\$ 15,918	\$ 16,236
Office Expenses	\$ 5,000	\$ 5,100	\$ 5,202	\$ 5,306	\$ 5,412
Telephone and Internet	\$ 1,500	\$ 1,530	\$ 1,561	\$ 1,592	\$ 1,624
Office Supplies	\$ 5,000	\$ 5,100	\$ 5,202	\$ 5,306	\$ 5,412
Property Taxes	\$ 12,899	\$ 13,157	\$ 13,420	\$ 13,688	\$ 13,962
Repairs and Maintenance	\$ 29,153	\$ 29,736	\$ 30,331	\$ 30,937	\$ 31,556
Fuel and Oil	\$ 3,600	\$ 3,672	\$ 3,745	\$ 3,820	\$ 3,897
Interest Expense	\$ 57,510	\$ 54,749	\$ 51,846	\$ 48,796	\$ 45,589
Depreciation Expense	\$ 89,671	\$ 89,671	\$ 89,671	\$ 89,671	\$ 89,671
Total Fixed Expenses	\$ 239,332	\$ 238,414	\$ 237,391	\$ 236,258	\$ 235,007
Total Cost	\$ 617,163	\$ 630,550	\$ 693,302	\$ 701,287	\$ 709,337
Net Income (Loss)	\$ (322,296)	\$ (183,115)	\$ 115,488	\$ 123,679	\$ 132,129

Five Year Cash Flows

	Projected	Projected	Projected	Projected	Projected
	12-month	12-month	12-month	12-month	12-month
	Ending	Ending	Ending	Ending	Ending
	12/31/2022	12/31/2023	12/31/2024	12/31/2025	12/31/2026
Cash Flow:					
Net Income	\$ (322,296)	\$ (183,115)	\$ 115,488	\$ 123,679	\$ 132,129
Depreciation	\$ 89,671	\$ 89,671	\$ 89,671	\$ 89,671	\$ 89,671
Interest Expense	\$ 57,510	\$ 54,749	\$ 51,846	\$ 48,796	\$ 45,589
Total Cash Flow	\$ (175,116)	\$ (38,696)	\$ 257,005	\$ 262,146	\$ 267,388
Total Proposed Debt Service *	\$ 111,474	\$ 111,474	\$ 111,474	\$ 111,474	\$ 111,474
Debt Service Coverage Ratio	(1.57)	(0.35)	2.31	2.35	2.40

Summary of Financial Feasibility

The business model presented in this section is not financially feasible based on the cattle and hog numbers that were generated from the earlier survey work. Although there is an infinite number of sizes of facilities and ways cut costs on equipment, the setup that was chosen was one that has been used by many consultants as an appropriate size for a small slaughter plant that can be used for USDA inspected meat.

The main concern that Goldenhorn Consulting has with the results of this analysis is the low interest of livestock farmers in the region wanting to use a facility for this purpose. Normally one would want to have farmers saying they would be willing to bring 2-3,000 cattle to this new facility if it were to open, and then you back off that number by half and still have the 1,500 you need to make this cash-flow.

In this case the facility would be depending on cattle, hogs, sheep and wild game that would need to be at a much higher rate to make it work. The other obvious issue when you have a low number of customers is the timing of the work to be done. The ownership would not be successful if these individuals all want their livestock processed in the same two to three-month period. Grants are available to help with some of the expenses in working capital and planning from the USDA. Grants like this should be applied for if the group of interested ranchers would like to move forward. There could be an opportunity for a grant from a state agency in Colorado, as we have found in other states like Tennessee.

Economic Impact Analysis

Economic Impact Analysis

- Economic impacts are the result of a multiplier effect that begins with input expenditures stimulating business to business spending, personal income, employment, and tax revenue.
- Economic impacts are calculated using revenue estimates from plant operations at full capacity.
- Economic impact multipliers for Colorado are sourced from the United States Bureau of Economic Analysis

Impacts of Small Livestock Processing Facility on Colorado's Economy at Maximum Capacity

	Direct Impact	Indirect Impact	Total Impact
Output (\$)	\$808,790	\$2,509,352	\$3,318,142
Labor Income (\$)	\$378,756	\$530,566	\$909,323
Employment	12.7	16.5	29.2

Summary and Conclusions

Summary and Conclusions

- Of the three analyzed operating scenarios, only the full capacity scenario is profitable.
- Feedback from local businesses was positive, but there seems to be either a lack of interest or lack of supply from producers.
- Study is feasible regarding technical, marketing, and management areas, but more buy-in is needed from the community.
- Commitment is key.

Questions

Feasibility of a Mixed-Species Slaughter Facility in West End, Colorado

Goldenhorn Consulting Group

Prepared by Dr. Michael Best, Dr. Kent Wolfe, and Sarah Best

December 17, 2020

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Introduction

Goldenhorn Consulting Group examined the feasibility of constructing and operating a multi-species meat processing facility in Colorado's West End region. This study examines the technical feasibility, market area, management requirements, financial feasibility, and economic impact of such a processing facility by utilizing area-specific data, overall market trends, and locally distributed survey data.

Farmers, ranchers, and hunters were surveyed to determine the level of interest in sending product to a new processing facility in the region. The middle capacity financial scenario represents the high-end values of the producer survey results with 540 cattle, 205 hogs, 100 sheep, and 360 units of wild game expected to move through the facility, while the low capacity model represents the lower end values from the survey. Both of the financial feasibility results utilizing survey data were found to be infeasible, but a scenario under which the plant is running at maximum capacity is profitable.

Technical Analysis

Regulations

Obtaining a License to Operate a Meat Processing Facility and Other Considerations

The most difficult technical aspect of operating a multi-species processing facility is that the current State and Federal regulations do not allow for more than one species to be processed at a time. In order to handle more than one species, they must be separated either in space (completely separate areas of the building), or in time (in the same area, but with a complete cleaning of the line between a change from one species to another). In addition, all raw materials would need separate storage areas prior to processing as would all finished products unless they are completely packaged before being placed into the cooler or freezer. The requirement for separate storage areas for each species could considerably increase the equipment costs, plant size, and operating costs in the form of increased utilities and maintenance costs.

Another issue that arises is that each species and product form (i.e., steaks, ground beef, sausage, etc.) would have to have its own approved Hazard Analysis and Critical Control Point (HACCP) food safety management plan. There is more information on HACCP below, but in a multi-species facility there might have to be upwards of 15 or 20 different HACCP plans to be managed which could be both expensive and time consuming.

Regardless of the final mix of species and products processed in the facility, the following general information deals with obtaining a license to operate a meat processing facility in the State of Colorado.

In slaughter plants, inspection personnel verify the humane handling of animals and conduct antemortem inspection to ensure that the live animal is fit for slaughter. These inspection personnel also conduct post-mortem inspection to ensure that the meat from the carcass and internal organs are fit for human food. When meat is distributed to other federally inspected establishments for further processing, the product is inspected to ensure that the product is safe, wholesome, and correctly labeled and packaged. Inspected establishments must maintain and follow written Sanitation Standard Operating Procedures (SSOP) and Hazard Analysis and Critical Control Point (HACCP) plans. In addition to inspecting the meat products, inspection personnel inspect the facilities and equipment to ensure sanitary conditions are maintained. FSIS also reviews records to ensure they accurately document establishment verification that the meat food products are in compliance with all applicable requirements.

Food Safety Issues Specific to Ground Beef

Ground beef is one of the more closely monitored production categories that falls under the USDA inspection system. This means that a facility producing ground beef will be closely scrutinized by the inspecting authority and that the various regulations and standards that must be met by the producer are more numerous and more stringent than other categories of meat processing. Of specific concern is the potential presence of *E. coli* 0157:H7 in the ground product which is a particularly dangerous human pathogen.

On October 7, 2002, Federal State Inspection Service (FSIS) published a notice requiring establishments that had not already reassessed their Hazard Analysis and Critical Control Point (HACCP) plans for raw beef products in light of relevant *E. coli* O157:H7 data to do so to determine whether *E. coli* O157:H7 contamination was reasonably likely to occur in their production process for raw beef products (67 FR 62329). In that notice, FSIS advised that it intended to scrutinize very closely the hazard analyses and HACCP plans of those slaughter or deboning establishments that had conducted a reassessment and decided that an intervention was not necessary. Also in that notice, FSIS stated that establishments receiving product for grinding should address *E. coli* O157:H7. FSIS explained that these establishments could employ validated Critical Control Points (CCPs) in their HACCP plans to address *E. coli* O157:H7, or the establishments could incorporate purchase specifications in their HACCP plans, Sanitation Standard Operating Procedures (Sanitation SOPs), or other prerequisite programs to prevent *E. coli* O157:H7-contaminated product from entering their establishments.

On 3/31/04 the USDA issued Directive 10,010.1 entitled “*Microbiological Testing Program and other Verification Activities for Escherichia coli* O157:H7 in Raw Ground Beef Products” which basically states that the producer should be able to show through microbiological testing that their products are free of *E. coli* O157:H7, but if they chose not to do so, that they would be subjected to intense product testing by the USDA inspection system. The requirements of this Directive place additional operational and food safety requirements on the producer which will likely result in increased costs for product testing and the need for additional personnel to manage the matching of test results with product batches and to properly manage the inventory system so as to assure that no product that tests positive is released for sale or consumption. The full text of this directive can be found on the USDA website at the following link:

Labeling of Meat Products

The labeling of meat products is regulated by the USDA. The regulations cover standard labeling elements such as name, net weight, list of ingredients, nutrition information, etc, but also outline under what circumstances terms such as “Organic”, “Natural”, “Free Range”, “Grass Fed”, and the like are allowed. Information on the current regulations pertaining to such terms can be found at the following websites:

USDA Inspection

The Beef and Pork Wholesaling industry is one of the most heavily regulated and inspected industries in the United States. The US Department of Agriculture (USDA) requires stringent sanitation conditions and enforces these requirements during periodic quality checks. Operators have the choice of either federal or state inspection. Under federal inspection, operators must comply with the Federal Meat Inspection Act of 1906. A key component of this law is a strong inspector presence and the power to shut a plant down any time a threat to the public health or inhumane treatment of animals is noted. State-inspected plants comply with state requirements that are deemed to be the same as or equal to federal laws, but state inspection limits plants from shipping products across state lines or internationally. Meat wholesalers are also subject to state and local regulations involving the licensing of facilities, enforcement of state and local

health standards and regulation of wholesalers' trade practices in connection with sales of their products.

FDA Regulation

Industry operators are subject to The US Food and Drug Administration's (FDA) Federal Food, Drug and Cosmetic Act, the Bioterrorism Act and regulations promulgated there. The FDA also regulates manufacturing and holding requirements for food. It specifies the standards of identity for certain foods and prescribes the format and content of certain information required to appear on food labels. Industry food safety requirements have been further expanded by rules under the Food Safety Modernization Act, which requires operators to maintain comprehensive prevention-based controls across supply chains as well as implementing new standards for keeping food safe during transportation. Distribution centers must be registered with the FDA biennially and are subject to periodic inspections. Operators must also implement communication programs to provide transparency for the presence of certain chemicals in distributed products.

Following outbreaks of mad cow disease in 2003, the FDA banned the practice of feeding cow blood to young calves as a substitute for cow milk in January 2004. In addition to this, the USDA's Animal and Plant Health Inspection Service announced an enhanced national testing program for the disease in March 2005. Up to 1,000 cattle per day are tested as part of the enhanced surveillance program to help reduce further incidences of the disease in the United States. In 2009, an outbreak of H1N1 was ruled a national pandemic. Even though the disease did not threaten humans, the colloquially named "swine flu" caused massive declines in pork demand. The USDA soon assured consumers that American pork was perfectly safe.

Labor Laws and HACCP

Wholesalers must also comply with regulations from the US Department of Labor, which sets employment practice standards for workers, and the US Department of Transportation, which mandates guidelines for the transportation of perishable and hazardous materials and waste. Wholesaling industries are additionally subject to specific labor regulations regarding transport professionals. For example, drivers must obtain specific commercial driver's licenses prior to transporting industry products to downstream markets. Additionally, the Federal Motor Carrier Safety Administration strictly regulates the number of successive hours a commercial driver may work before a mandatory period of rest.

Hazard analysis and critical control points (HACCP), control systems for food processing, also seek to ensure food safety. Using HACCP plans, a company analyzes its processes to determine where problems may occur. Monitoring and prevention resources are then concentrated at those critical points. HACCP plans became mandatory for federally inspected US meat and poultry plants beginning in 1998.

Management and Ownership Structure Analysis

Management Analysis

At maximum production capacity it is assumed that a total of six full-time employees will be required for plant operations. One of these positions will be a plant manager, who will also work as a butcher. An additional butcher/supervisor is also required to be able to move the volume in the plant at full capacity. Three fabrication cutters and packagers will also be needed. There is one administrative position required and that individual will fill the role as an office manager.

Plant Manager Job Requirements

The plant manager will be responsible for overseeing all daily operations of the plant from slaughtering and processing to ensuring policies and procedures are followed. They develop processes that will maximize safety, quality and productivity.

Responsibilities

- Plan, organize, direct and run optimum day-to-day operations to exceed customers' expectations
- Work to increase production and flexibility while minimizing unnecessary costs and maintaining current quality standards
- Be responsible for production output, product quality
- Monitor operations and trigger corrective actions
- Share a trusting relationship with workgroup and recruit, manage and develop staff
- Commit to plant safety procedures
- Address employees' issues or grievances and administer collective bargaining agreements
- Influence and learn from below
- Stay up to date with latest production management best practices and concepts

Requirements

- Knowledge of the meat wholesaling industry
- Proven work experience as a Plant Manager
- Proven managerial experience
- Adequate knowledge of business and management principles (budgeting, strategic planning, resource allocation and human resources)
- Familiarity with industry standard equipment and technical expertise
- Be knowledgeable of safety, quality, productivity, demand creation, inventory and stewardship processes
- Ability to create accountability and to lead by example
- Strong team building, decision-making and people management skills

Butcher Job Requirements

The butcher must have proven experience in meat processing, knowledge of food safety, ability to maintain equipment, manage inventory, and have exceptional customer service skills.

Responsibilities

- Knowledge of primal meat cuts and human slaughter practices
- Weighing, packaging, pricing, and displaying products
- Performing quality inspections on meats and other products
- Negotiating and confirming orders with suppliers
- Adhering to food safety and sanitation controls

Requirements

- Education or food preparation or meat cutting experience
- Ability to use hand tools, stand or walk for extending periods, lift heavy items, and work in cold environments
- Additional training is often required
- Knowledge of meat preparation techniques and cuts
- Strong communication, task management, and customer service skills

Fabrication Cutter and Packager Job Requirements

The fabrication cutter and packager will turn the primal cuts of meat into retail cuts. They must have knowledge of various meat cuts and food safety.

Responsibilities

- Cutting, grinding, and preparing meats for sale
- Cleaning and maintaining tools and equipment and ensuring displays and signage are accurate and attractive
- Keeping records, budgets, and inventory
- Greeting and speaking to customers, providing advice, answering questions, and accepting orders or payments
- Coordinating deliveries or order pickups

Requirements

- Education or food preparation or meat cutting experience
- Ability to use hand tools, stand or walk for extending periods, lift heavy items, and work in cold environments
- Additional training is often required
- Knowledge of meat preparation techniques and cuts
- Strong communication, task management, and customer service skills

Office Administrator Job Requirements

The office administrator will be responsible for coordinating scheduling, filing necessary paperwork, fielding phone calls from customers, and supporting budgeting and bookkeeping procedures.

Responsibilities

- Manage phone calls and correspondence (e-mail, letters, packages etc.)
- Support budgeting and bookkeeping procedures
- Create and update records and databases with personnel, financial and other data
- Track stocks of office supplies and place orders when necessary
- Submit timely reports and prepare presentations/proposals as assigned
- Assist colleagues whenever necessary

Requirements

- Proven experience as an office administrator, office assistant or relevant role
- Outstanding communication and interpersonal abilities
- Excellent organizational and leadership skills
- Familiarity with office management procedures and basic accounting principles
- Excellent knowledge of MS Office and office management software

Ownership Structure Possibilities¹

The following paragraphs describe various business structures that the members of the proposed slaughter/processing facility may want to consider.

Traditional Cooperative

A cooperative is a business entity that is member-owned, meaning the business is controlled and owned by the same people who utilize its services. The owners of the cooperative finance and operate the business, striving for a mutual benefit by working together. By combining resources, the overall production costs are decreased, and the production capabilities and marketing successes are increased. Cooperatives are run similar to other business entities and usually incorporate under state laws. They require bylaws and a board of directors, who set policy and hire managers to run the day-to-day operations. In addition to the user-owned aspect, two other characteristics make a cooperative different from other business organizations: they are user-controlled, and user-benefited (Rapp and Ely, 1996).

The user-controlled characteristic refers to the election of a board of directors and the ability of common stock holders and/or cooperative members to vote on major organizational issues. User-benefited characteristics include the distribution of resources based on the member's use of the organization. Cooperatives provide a direct cost savings through the purchase of bulk supplies, increases in market access, a distribution of overhead and fixed costs as well as the allocation of profits based on usage to the members.

Cooperative members may finance the start-up and operation costs of the organization through a variety of methods. One option is for members to make a direct financial contribution through a membership fee, or through the sale of common or preferred stock. Another finance method is for the cooperative to withhold a portion of the net earnings from cooperative members for reinvestment back into the organization. Finally, assessment fees can be charged based on the

¹ Bowser, Rodney, and Holcomb. FoodMech, LLC. "Feasibility Assessment: Pilot Abattoir for Tennessee Tech University". 2016.

number of units procured from each member, or based on the number of units sold after processing. The advantage of soliciting a direct contribution or utilizing the sale of stock is the upfront cash requirements to purchase capital equipment and building services. Assessment fees and/or net earning withholdings are more beneficial once the cooperative has begun operations and require working capital or future replacement cash.

It is vital to the success of a cooperative that owners stay informed of the business practices. A cooperative is a democratically controlled organization that operates through a majority vote. Members have a monetary interest in the financial well-being of the organization and rely heavily on the education and success of the other member producers. While the pooling of resources helps reduce risk in the market place, judgments and decisions made on one farm can affect the profitability of other cooperative members.

New Generation Cooperative²

The “New Generation Cooperative” (NGC) is similar in structure to traditional cooperatives, but the NGC focuses on marketing niche strategies rather than the traditional cooperative roles, such as production and storage. One of the main focuses of the NGC is delivery rights, which are tied directly to the initial investment required from each member. The NGC establishes a production volume, and then sells shares based on a delivery commitment from farmers, which stipulates that enough of the NGC's product is produced to fulfill the NGC's capacity requirement. One disadvantage of this system is the inability of the cooperative to encompass new producers, as the production capacity is already maximized at inception. However, delivery rights may be sold or traded to other members of the cooperative and future expansion can allow for the sale of additional delivery rights.

NGCs normally maintain a marketing agreement with the member producers, whereas traditional cooperatives do not. Because NGCs are limited to purchasing products from their members only, they require a much narrower level of quality standards than traditional cooperatives. The process of identity preserved is used to ensure that an acceptable quality product is grown by members, or it can trade lower quality member grain for the higher quality grain needed for processing.

The key advantage to NGCs is the fact that the organization can supply a large amount of its own start-up capital. NCGs can typically generate 30%-50% of their start-up capital, lowering long-term private debt commitments and freeing up future profits for larger dividend payments to farmers (Harris, Stefanson, and Fulton, 1996). Additionally, delivery rights ensure a reliable volume of product for the cooperative, while guaranteeing a home for the producer's product. It also allows the cooperative to better react to market conditions.

² Curtis, Cowee, Acosta, Hu, Lewis, Harris. University Center for Economic Development, Department of Resource Economics, University of Nevada, Reno. “Locally Produced Livestock Processing and Marketing Feasibility Assessment. Technical Report UCED 2006/07-13.” 2007.

New generation cooperatives may choose a combination of options, but usually organizations stay within a stock or non-stock form of capital acquisition. Potential members may feel more comfortable with stock options, as it is a more commonly understood system of capitalization.

Capitalizing refers to the amount of money needed to begin operations and the mechanism for acquiring the cash. Important decisions include whether the cooperative will issue stock or non-stock options (i.e. membership dues), borrow from traditional financial institutions, and determine minimal rates of return for its members. The goal is to provide enough working capital to begin and maintain operations while sustaining manageable debt levels for the organization and making the investment affordable to prospective members.

Ownership certificates come in a variety of forms, including common stock, preferred stock, membership certificates, and capital certificates. In terms of cooperatives, common stocks are shares of the cooperative representing membership/ownership in the cooperative and are accompanied by voting rights. Common stock can be divided into classes, each carrying different voting privileges and assessed different values. Those with more privileges are more expensive to purchase. Cooperatives usually do not pay interest on common stock issued. Preferred stock is nonvoting stock that can be issued to both members and nonmembers of the cooperative. The proceeds from the purchase of preferred stocks are usually used for capital investment and. As with common stock, preferred stock can be divided into classes, each with a different value receiving different scales of interest payments. Preferred stock owners receive interest for their investment, and are usually given their interest dividends before the distribution of profits to common stock holders. If the organization ceased to exist, preferred stock holders are compensated first.

If the members of a cooperative decide that they do not want to offer stock, membership is derived through membership certificates. Voting rights accompany membership certificates, which are issued once membership dues are paid. Usually memberships and capital certificates are insured, but are non-interest bearing. Capital certificates are similar to preferred stock, but are not issued as stock. They are sold in a variety of denominations and do not have accompanying voting rights. Interest may or may not be paid to capital certificate holders, but nonmembers may purchase the certificates.

NGCs require a marketing contract, making all members producers. In an NGC, preferred stock and/or capital certificates are generally not offered. After the cooperative has begun operation, members continue their investment by providing additional risk capital. This can be accomplished in a variety of ways. The cooperative may retain a portion of earnings as an additional investment into the organization. This can be done in two ways: through the payment or retention of a per-unit fee for each member, or through the retention on the overall cooperative's net earnings. Either way, the equity investment is credited to the members' equity accounts and held as a liability on the cooperatives balance sheet.

*Cooperative Legal Considerations*³

The legal considerations cooperatives must consider include the drafting of articles of incorporation, creating bylaws, membership applications, creating and maintaining marketing and purchase agreements, and revolving fund certificates. While the Capper-Volstead Act of 1922 and the Farm Credit Act of 1971 have aided cooperatives in their ability to work together in the handling, processing and marketing of their goods, and allows them to borrow jointly, cooperatives are still subject to numerous antitrust laws and are responsible for all tax codes relating to their enterprise.

Articles of incorporation give the cooperative a distinct legal standing. It limits personal liability for debt incurred by the cooperative, excluding the amount of their initial investment. The articles of incorporation also describe the nature of the business entity, its location, the proposed duration of the association, and the names of the principle parties involved. Once drafted, the articles are filed with the Secretary of State, activating the cooperative.

Bylaws define how the cooperative will conduct business. The bylaws describe membership requirements and list the rights and responsibilities of the cooperative's members. They also discuss voting procedures and the board structure that will govern the cooperative.

Membership applications are composed of five main parts: the applicant's statement addressing membership; the signature of the applicant; a statement of cooperative acceptance; signatures of the board president and secretary; and a statement of the duties and intent of the prospective member. A membership certificate may be issued to each member as evidence of entitlements to the organization.

Marketing and purchasing agreements set the standard of quality acceptable to the cooperative. They also state how the proceeds of the cooperative will be distributed, once deductions for operating and capital expenditures have been taken. Often marketing and purchasing agreements are required when seeking outside financial backing.

The revolving funds certificate is a written receipt for capital investments and retained earnings that will eventually be revolved or redeemed. These investments may be deductions based on a per-unit of production, reinvested earnings, or original capital subscription, if not issued in stock form. All legal documents should be written with the help of a lawyer to ensure state provisions are addressed.

Investing risk capital is the responsibility of all members. The amount of risk capital invested is an important decision for the cooperative's members to consider. It must cover a large portion of the start-up and operational costs, so that outside investors feel comfortable that the membership will work to make the operation successful. Members must also invest enough capital to give them a financial stake in the success of the enterprise.

³ Curtis, Cowee, Acosta, Hu, Lewis, Harris. University Center for Economic Development, Department of Resource Economics, University of Nevada, Reno. "Locally Produced Livestock Processing and Marketing Feasibility Assessment. Technical Report UCED 2006/07-13." 2007.

Most private loan institutions will require the cooperative members to assume at least 50% of the capital risk, but it may take many years for the members to acquire this percentage. Long-term credit is available through federal and state sponsored credit programs. Sources of facility loans include: USDA Rural Development; Cobank; St. Paul Bank for Cooperatives; and National Cooperative Bank. Many commercial banks and credit unions have local programs for small business start-up, such as Bank of the West. Cooperatives can apply for short-term loans to cover operating costs during the first year of operation. These are acquired through the Farm Credit System and the National Cooperative Bank (Rapp and Ely, 1996).

C Corporation

The C corporation is the traditional form of corporation, which is a business entity that provides limited liability to its owners and shareholders, meaning the personal assets of the owners and shareholders are protected from the financial issues of the corporation (Legalzoom.com, 2006). Unlike a sole proprietorship or partnership, a corporation exists as a separate legal entity, and therefore is taxed separately from its directors and shareholders. When a C corporation goes public, it may have an unlimited number of shareholders (who are the legal owners of the corporation), who do not have to be residents or citizens of the United States.

The C corporation is managed by a board of directors elected by the corporation's shareholders and makes policy decisions on the corporation's behalf, while the officers and employees of the corporation conduct the business dealings of the entity. As mentioned, the directors, employees, and shareholders of the corporation are not personally liable for the corporation's debts. However, it is the responsibility of the directors and officers to ensure that certain formalities are observed on the corporation's behalf. This includes formalities such as annual meetings, appointment of officers and election of directors, and issuance of stock. Perhaps the largest responsibility of the corporation is to maintain enough capital to protect the corporation from any business debts. In the event that these formalities are not observed, shareholders may be held personally liable for corporate debts.

S Corporation

S corporations are C corporations that have elected to file for S corporation tax status. Filing as an S corporation combines the limited liability of the C corporation with the tax status of the sole proprietorship or partnership. The main difference between C corporations and S corporations (and also the major advantage to S corporations) is the tax treatment. While C corporations are subject to double taxation, S corporations are granted "pass through" taxation because all of the corporation's profits are passed on to the shareholders in the form of dividends, so there is no taxation at the corporate level. Another advantage to the S corporation is that the corporation's directors may pass business losses through to their personal income tax return. The biggest disadvantage of the S corporation is the restrictions that are placed on shareholders: an S corporation may not have more than 100 shareholders, who must be citizens or residents of the United States.

Limited Liability Company

As the name implies, a limited liability company (LLC) is a business ownership structure that provides limited liability to its owners, called members. The main differences between the LLC

and the corporate structure are that the LLC is more flexible and less formal than the corporation, and the two entities are subject to different tax laws. An LLC can also serve as the general partner in a limited partnership, giving the individual owners protection from liability, financial or otherwise.

Some of the advantages of the LLC are the operating flexibility they provide, including the fact that a board of directors is not required as with corporations, and there is currently no requirement in Nevada for an annual meeting of the shareholders. As with S corporations, LLCs are also free from double taxation because the LLC members report their share of profits or losses on their personal income taxes. The LLC is not taxed at the business entity level. The final advantage to the LLC is the limited liability the entity provides to its members. Disadvantages of the LLC are that they do not require an operating agreement, the lack of which may lead to management issues, and the fact that while the LLC isn't subject to double taxation, it may be taxed at a higher rate than a corporation.

Management and Ownership Structure Summary

Regarding the necessary management positions, the West End region of Colorado will have a sufficient labor pool to fill these positions. In determining the appropriate ownership structure one must take into account the financing and in the case for this business, the capacity. Given that the producer surveys show that capacity would not be sufficient to make the venture profitable, Goldenhorn Consulting Group believes that the New Generation Cooperative structure would be the desired one. This structure helps ensure that there is a steady supply of product moving through the facility throughout the year. However, it should be noted that for a New Generation Cooperative structure to be successful, there must be proven interest amongst both the owners and the community as a whole regarding production of finished beef and other livestock.

Market Analysis

Beef Consumption

Current Performance

Per capita beef consumption has slipped steadily for nearly two decades. In 1995, the average American consumed 62.8 pounds of boneless beef. That figure had fallen to 54.7 by 2018. Beef consumption has declined as misconceived health problems associated with it, such as obesity and heart disease were increasingly publicized. The lost consumption has mostly shifted to poultry, which is a lower-fat alternative for protein. In fact, beef was the most-consumed meat in America until 1993, when it was overtaken by poultry. The falling consumption continued through 2015, before increasing per capita income helped push demand for beef upwards. As beef remains a staple of American diets, its consumption increased in line with growing income and employment over the past two years. This trend is expected to continue in 2018, when per capita beef consumption is expected to grow 2.1 percent.

Outlook

Over the five years to 2023, the consumption of beef in the United States will decline. Over the past five years, consumer preferences have shifted toward perceived healthier lifestyles and increased their consumption of alternative sources of protein, such as poultry and fish, which has caused per capita beef consumption to decline. Consequently, beef consumption may decline further if the price of beef increases at a faster rate than other protein sources. Per capita beef consumption is expected to remain fairly stable through 2019.

Beef remains a staple of American diets; consequently, however uncertain science will hurt the commodity (Beef's negative health effects are already well known, so further studies should not have a significant effect on consumption.) Outbreaks of Bovine spongiform encephalopathy (also known as Mad Cow Disease) usually cause sudden decreases in beef consumption. For example, beef consumption dropped 4.0% in 2003 after the disease was discovered in Canada and the United States that year. Although such outbreaks are unpredictable, they do not occur often and consumption usually rebounds the following year.

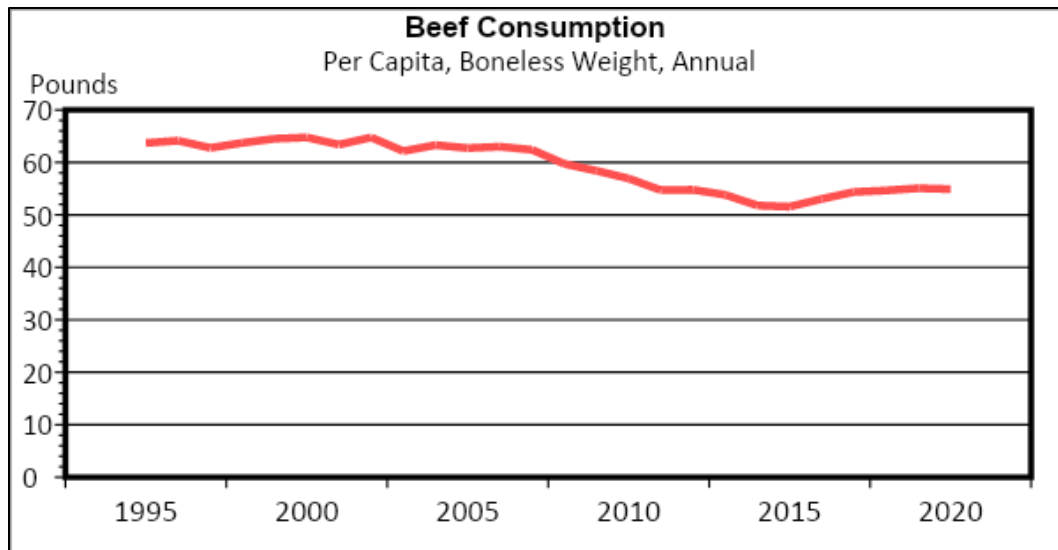


Figure 1. Beef Consumption

Seasonality

Regarding seasonality, demand for beef generally increases in the spring and summer seasons and decreases in the winter. Spring and summer are prime seasons for backyard barbecues in the United States, with generally nice weather and several "grilling holidays" such as Memorial Day, the Fourth of July and Labor Day. The demand for beef typically declines in the winter

Competing Protein

As shown below, per capita consumption of chicken is still growing. Beef and pork are growing slightly and expected to remain fairly stable in 2019.

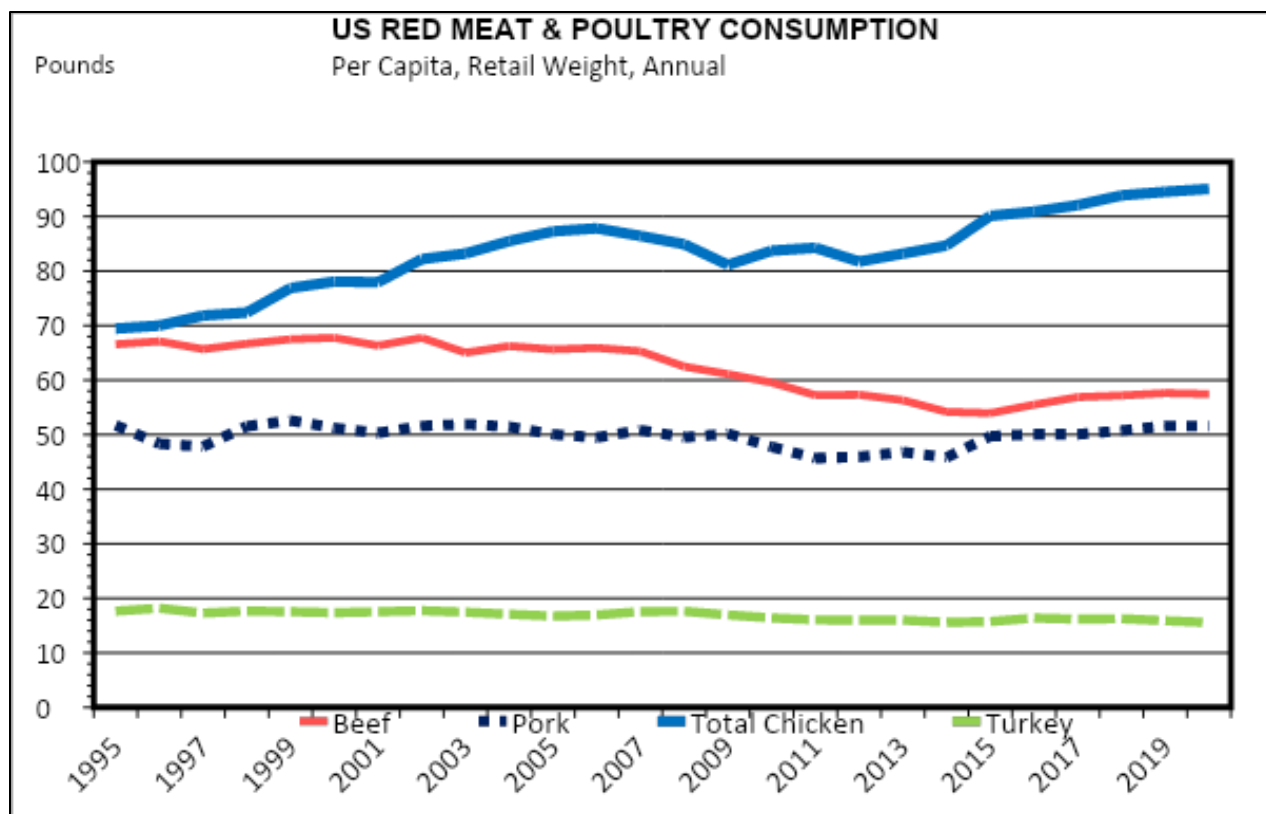


Figure 2. Livestock Marketing & Information Center

An important factor to consider is annual per capita expenditures on animal protein. Per capita, consumers spend significantly more on beef than they do on poultry and pork. This is important given that poultry and pork are relatively less expensive which will put downward pressure on beef products.

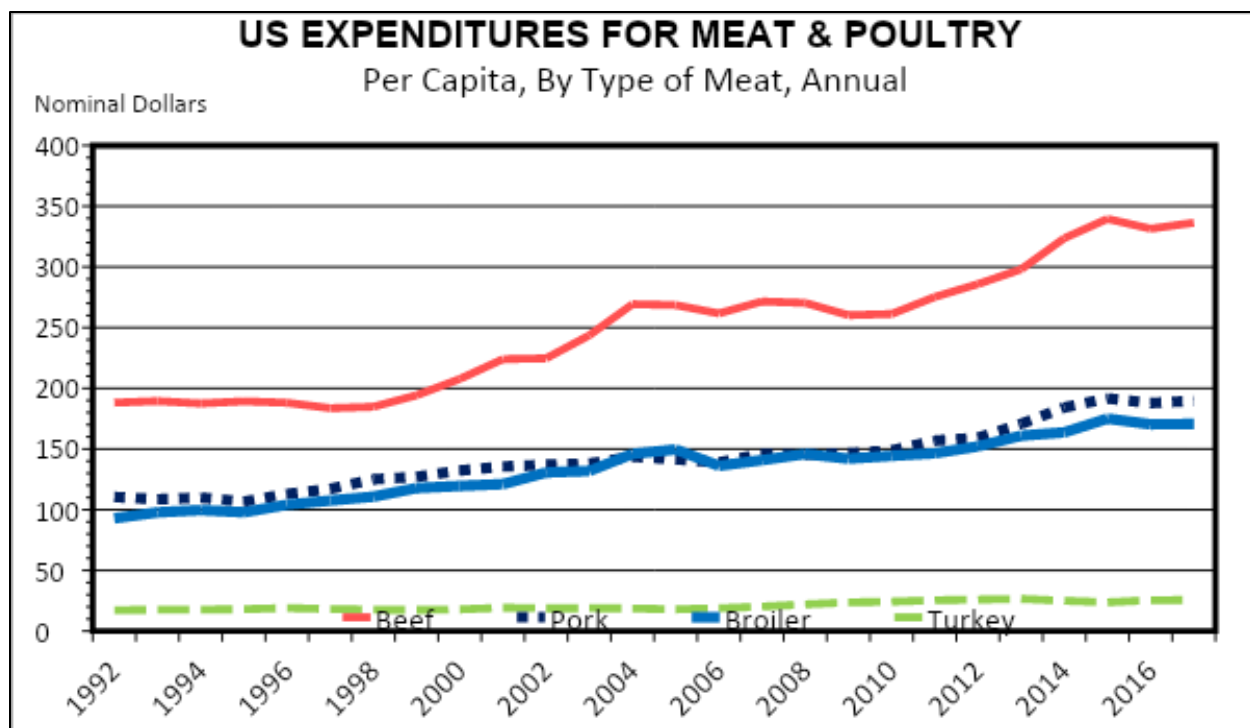


Figure 3. Expenditures for Meat & Poultry

Fresh and Frozen Consumption at Home

There are a number of alternative products that can compete with the demand for both frozen and fresh red meat. These include ready-to-cook meals which appeal to consumers who prefer ease of preparation which appeals to busy consumers who do not have the time to prepare a meal from scratch. An example would be a frozen bag of premixed beef and broccoli stir fry which takes considerably less time to prepare than making it individual ingredients. In addition, value-added frozen beef products, there are similar poultry based products which provide an alternative protein source at a lower price. There is growing competition from frozen fish and seafood products which also becoming more popular among health-conscious consumers.

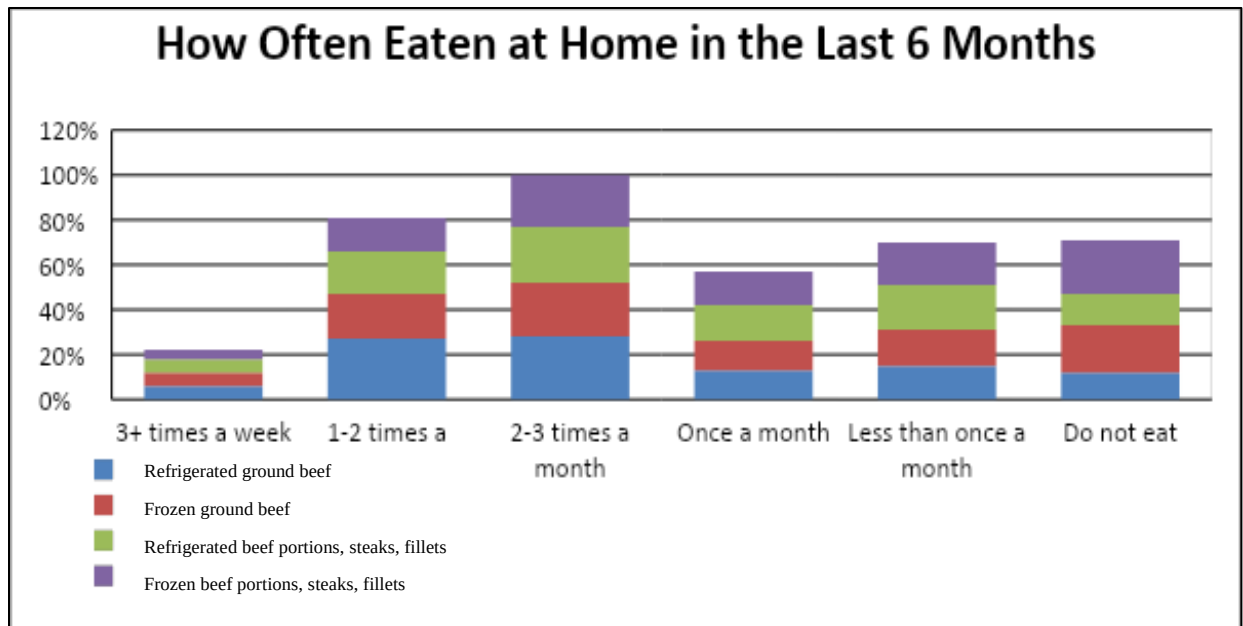


Figure 4. How Often Beef Is Eaten At Home

Consumption of frozen both ground beef and beef portions decrease with age. Younger consumers are significantly more likely to consume frozen products than are baby boomers and the Greatest Generation (WWII). Interestingly, the two youngest generation have a significantly higher demand for frozen portions than the three older generations. Frozen options, therefore, may have a notable potential among younger consumers given that they are in their childbearing years and looking for easy to prepare, time saving meal options. This might be offering frozen products in stores or through online and meal subscription services. They tend to stock up on products on sale and like to have convenient meal options on hand as needed.

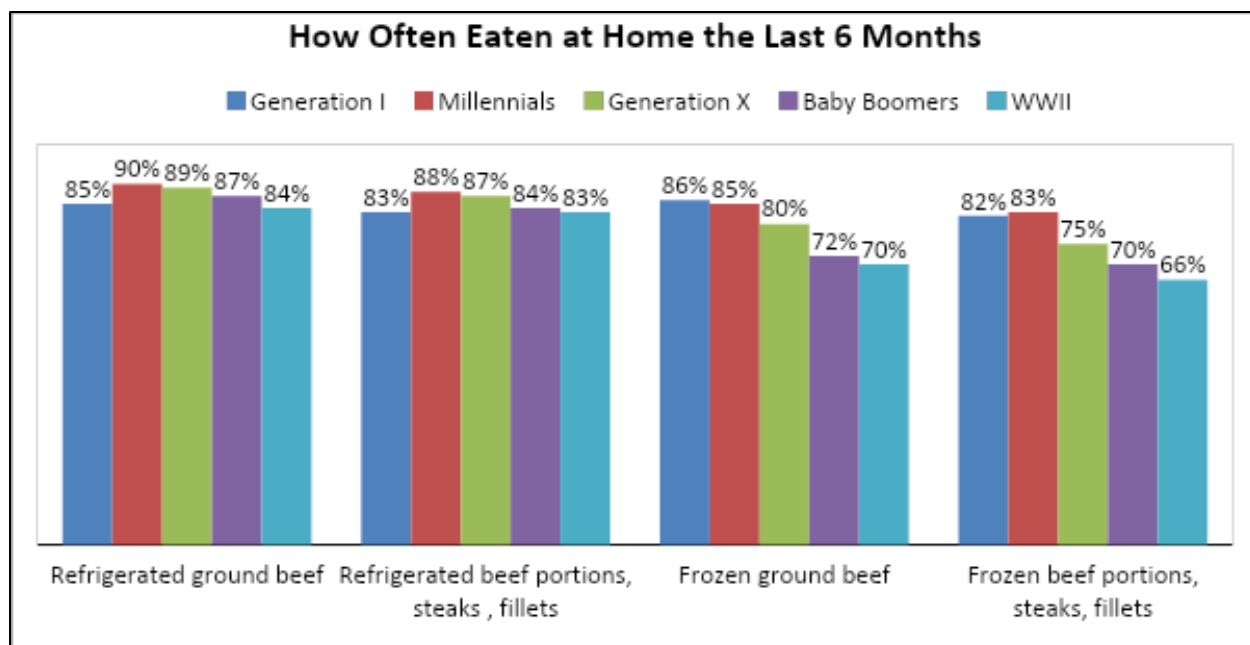


Figure 5. How Often Consumers Eat Beef At Home By Generation

White consumers' weekly consumption levels have dropped notably from 2016 where 31% of white consumers ate refrigerated beef portions/steaks weekly, a number which fell to 25% in 2017. A similar drop (of five percentage points) was seen in the weekly consumption of refrigerated ground beef, while weekly consumption of frozen ground beef fell eight points, and that of frozen beef portions/steaks dropped nine.

Consumption levels for other races remained largely the same across those meat types, suggesting that White consumers, in particular, are adjusting their diet away from red meat and are instead turning to poultry or alternative proteins.

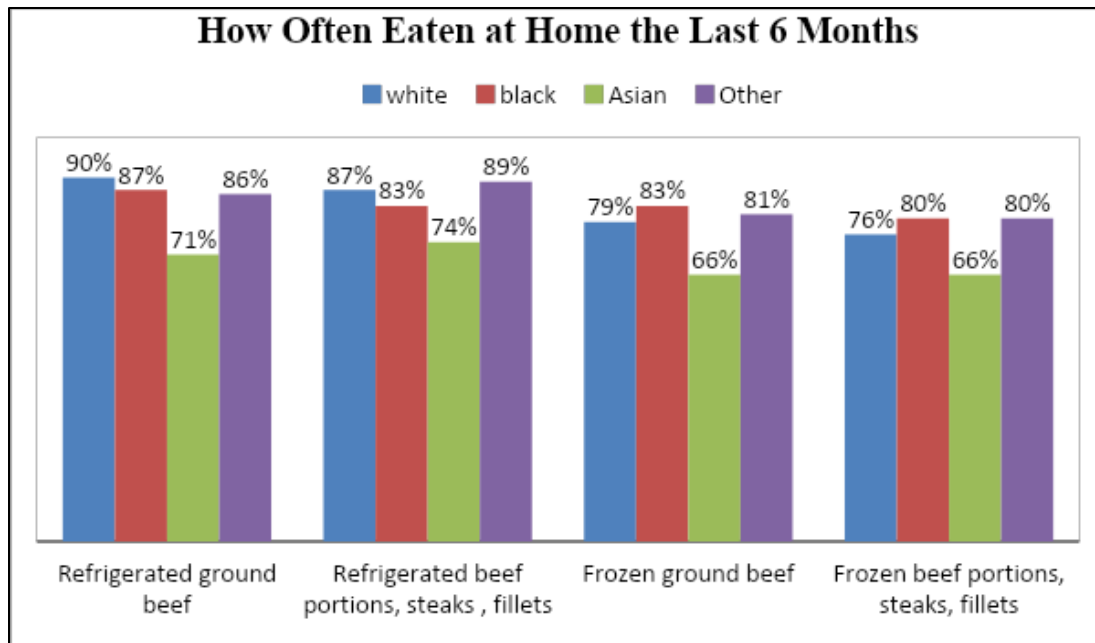


Figure 6. Type Of Beef Eaten At Home By Race

Looking back to 2016, there appears to be little difference in weekly red meat consumption for lower-income consumers. However, among higher income levels, consumption of frozen beef portions has fallen by 10% to 26% in 2017. In addition, consumption of refrigerated beef dropped six points among this group, while frozen ground dipped 11 points, and frozen steaks were 13 points off their 2016 levels. This drop in demand may be indicative of factors other than price such as health concerns related to red meat consumption or environmental factors related to red meat production.

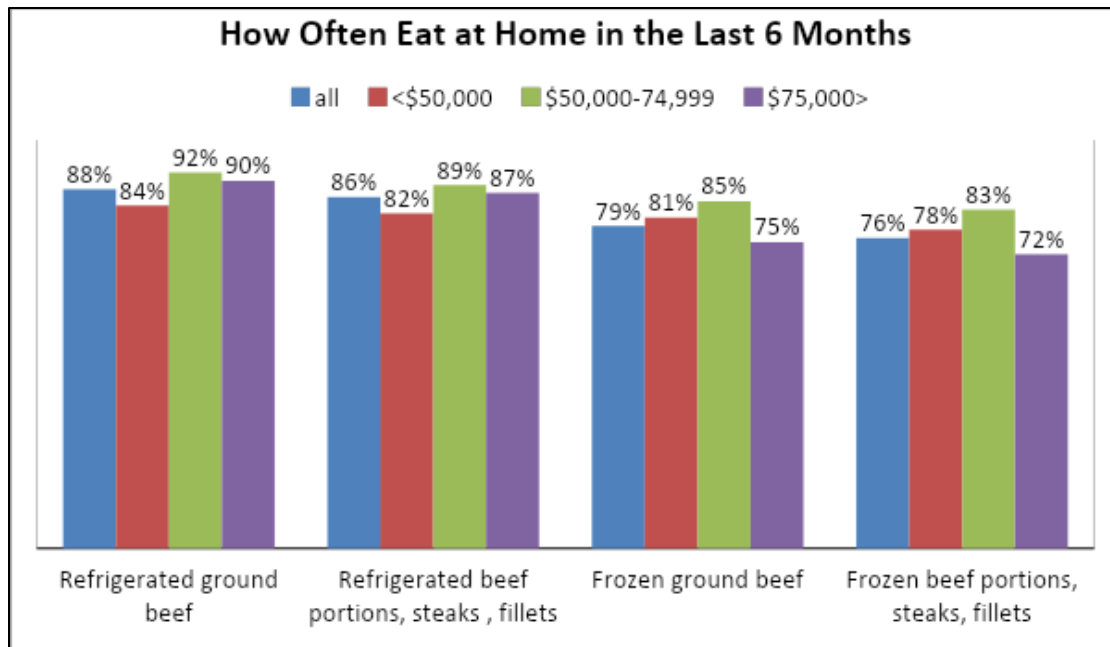


Figure 7. Type Of Beef Eaten At Home By Income

The cost of red meat continues to weigh on consumer minds. Indeed, it remains the leading deterrent consumers cite. However, the percentage of consumers indicating "It is too expensive" dropped fairly significantly, from 37% in 2016, to 28%. This suggests that price is somewhat less of a deterrent than in the past, and with beef prices at some of their lowest levels in years, it indicates other reasons are driving consumers away from red meat-likely perceived health concerns.

A quarter of them indicate they are "eating more protein from other sources" and are as likely to note they "prefer other meat." Other meats, such as poultry, have not only a healthier reputation but also allow a bit more variety in terms of meals and preparation styles. Certainly, health concerns appear to be a notable factor: one in five consumers note they are watching their cholesterol or are worried about eating too much saturated fat. And a sixth note they are trying to lose weight.

This is not to say that red meat cannot play a role in a healthy diet. While consumers do eat red meat regularly, they appear to be reducing their frequency of consumption out of health and nutrition fears. Meat brands could combat this category attrition by communicating meat's healthful benefits and inherent nutrients. There may well even be an opportunity for red meat brands to combat some of the interest in protein alternatives, many of which do suffer from the perception of being overly processed, by positioning healthier red meats as a natural, healthier choice.

A quarter of consumers (26%) agree with the statement "I am eating more protein from other sources (i.e. chicken, tofu)," including more than a third (36%) of households making \$150K+. Consumers have grown more comfortable with goods and services that look, taste, sound or feel

like the real thing, even though they're known pretenders." It notes that, sometimes, the inauthentic is even better than the real thing, and in the case of meat substitutes, they actually may be regarded as a healthier option than red meat, at least in some respects. Saturated fat content and cholesterol concerns are significant deterrents to a sizable percentage of consumers, and analysts note, almost a third of those who eat meat alternatives do so because they are watching their cholesterol (30%) or are worried about eating too much saturated fat (29%).

For these consumers who are watching their cholesterol or fat intake, the "authentic" item (i.e. red meat) may not be practical or safe, but such "Fauxthentic" alternatives can mimic the original's attributes, while at the same time making the consumer feel good about buying it. In the case of alternative proteins, they may well perceive it as easier on the heart/body, if not the environment, since these substitutes can fairly easily position themselves as better for the environment than red meat.

Health concerns from eating red meat appear to be a key deterrent to older consumers, with more than a quarter of Baby Boomers noting they are watching their cholesterol or worried about eating too much saturated fat. Roughly one in 10 of these consumers say their doctor has recommended cutting back on red meat consumption, which suggests healthier, leaner red meats could well resonate with these consumers in particular.

Issues of health are less of a concern for younger consumers. Thirty percent of Millennials and 31% of Generation X are much more likely to say meat is too expensive, and more than one in five members of each respective generation say they simply prefer other meat, with 10% of Millennials saying red meat is too difficult to cook properly. This interest in other meats does suggest this group may well be open to leaner red meat options, but cost is a particular concern, which could deter these consumers from experimenting with lamb, bison, or ostrich, up to now relatively expensive on a per-pound basis.

Messaging encouraging consumers to lose weight appears to be resonating with a number of consumers, and in the case of some, it is strongly impacting their likelihood to eat red meat. *State of America's Obesity*, a report from Trust for America's Health and the Robert Wood Johnson Foundation, finds African American adults are nearly 1.5 times as likely to be obese than White adults, with nearly half of African Americans (47.8%) being obese and three quarters either overweight or obese. Similarly, African American children were found to be statistically more likely to be overweight and obese, and this is in a nation where almost a third of all children (29% of White and 35.1% of African American) are considered obese. It would appear that concerns and warnings surrounding red meat are negatively impacting consumption levels among Black consumers, in particular, and may well be compelling them to turn to other proteins with a healthier reputation.

Purchase Outlet

Supermarkets maintained their lead as the channel where consumers most likely purchase red meat, with mass merchandisers maintaining a sizable portion of the audience and club stores as a

resource for more than a quarter of consumers. Butcher shops and natural/specialty supermarkets maintained a nearly identical share, but they appear to be suffering to a degree; out of consumer concerns about their expense, lack of convenience, or lack of available options nearby.

Mass merchandisers the likes of Walmart and Target continue to emerge as a resource for groceries in general. More than a quarter of consumers indicated they are purchasing groceries at Walmart more often than they were a year ago, with 15% of respondents noting they are purchasing more often at Target and 10% doing so at other mass merchandisers. These retailers, along with the likes of warehouse clubs, offer something of a "one-stop-shop" convenience and may well be attracting consumers with a variety of food and beverage options. As that Report notes, Walmart is investing heavily in grocery, which accounts for over half its sales. That investment is including staff training and what is described as aesthetic enhancements "to make the section feel more like a farmers' market." Such efforts will clearly speak to consumer interest in products perceived as more natural and fresher.

Industry analysis indicate a strong consumer interest in online shopping for groceries, which has yet to translate to red meat. Only 3% of those who ate red meat in the last month purchased red meat via an online food shopping service, an online retailer, or a meal kit subscription service, respectively. However, that Report found 18% of consumers are purchasing meat, poultry, or seafood "online," which was defined as grocers' websites, Peapod, FreshDirect, etc. There would appear to be a significant interest in online resources as a convenient source of meat products, but one that has gone largely unrealized among red meat consumers as of yet. In addition, this channel could provide a greater diversity of meat options (possibly offering suggestions of other red meats, to encourage trial) and serving suggestions and preparation tips for any consumers concerned about the challenge of properly cooking red meat. Any effort to market red meat to consumers in an online arena or via subscription service, however, must note that younger men and women are the most likely consumers for these products in these arenas.

Factors Influencing Purchase by Market

Consumers who purchase red meat from a supermarket factor meat's appearance strongly in their purchase decision. They are also more apt to consider the type of meal they are planning and the package size needed. However, for consumers shopping for meat from an online vendor or subscription service, all-natural claims play a prominent role, much more so than for supermarket purchases, and an organic claim is also notably more impactful to online/subscription patrons.

Such online/subscription venues may well bring a degree of brand loyalty to a category largely regarded as a commodity, for which brand plays little to no role in purchasing. More than a third of consumers (37%) indicate brand is important to their online/subscription service red meat purchase, making it the third leading attribute among purchasers via these channels. Not surprisingly, considering these channels also require shipping, consumers are notably concerned about the freshness of these options and express strong interest in packaging that helps extend the meat's shelf life. However, considering the stronger degree of appreciation for all-natural and

organic claims from online vendors in particular, it almost begs the question: are these claims almost becoming a brand unto themselves? An organic red meat from an online vendor may well be regarded as essentially identical to an organic red meat from a supermarket, a mass merchandiser, or even a butcher shop – particularly if that online vendor has delivered quality red meats previously.

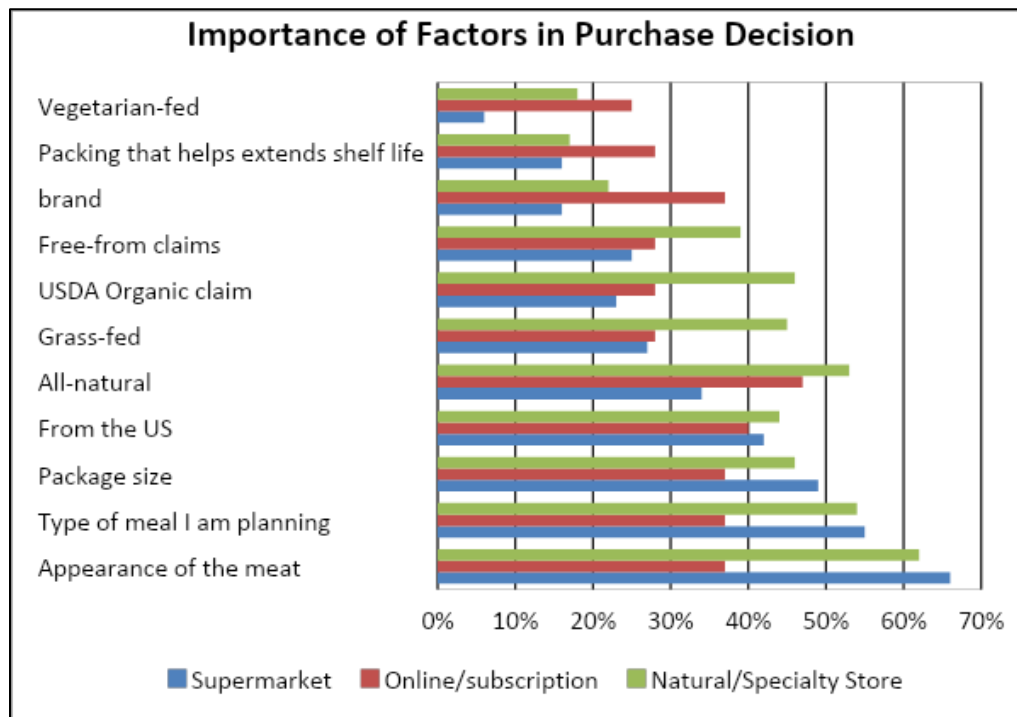


Figure 8. Factors in Purchase Decisions

Premium Steakhouses⁴

The Premium Steak Restaurant industry has fared relatively well over the past five years. As unemployment has continued to decline since 2012, consumer spending has increased amid renewed confidence in the economy. Additionally, with more consumers returning to work, time available for home-cooked meals has decreased, resulting in a higher propensity to eat out rather than at home. Coupled with an overall increase in per capita disposable income, many consumers have become more comfortable with spending more liberally on restaurant meals. As a result, many consumers returned to industry establishments to purchase high-end meals. Over the five years to 2017, industry revenue is expected to grow at an annualized rate of 2.9% to \$8.3 billion. Revenue is projected to grow 3.0% in 2017, mainly as a result of increased spending by wealthier consumers and companies returning to their business lunches.

Despite an increase in consumer spending driving demand, this industry has had to weather volatile beef costs and changes in consumer preferences toward organic and locally produced goods. Both trends affected the way companies conducted business in this industry. Major

⁴ IBISWORLD, Premium Steak Restaurants in the US, August 2017.

restaurants have expanded the number of healthy options on their menus and began to source more of their ingredients from local providers. Some steakhouses have made the healthy factor a core component of their marketing strategy, enabling them to target new segments of the market. As the cost of beef directly affects profit margins, many companies have increased menu prices to offset higher food costs.

Over the five years to 2022, industry revenue is expected to increase at an annualized rate of 1.4% to \$8.9 billion. Revenue will continue to grow as personal incomes rise and consumers increase their spending on discretionary items, such as expensive meals. Companies will also increase their spending on the industry's products and services as corporate event and dining activities rebound. Despite this growth, steakhouses will continue to experience increased competition and changing consumer preferences, resulting in some companies adjusting the way they do business.

Consumer Spending

Factors that influence the growth of personal consumption expenditure also influence the Steakhouse industry. During a recession, any spike in unemployment generally leads to declining consumption. Conversely, when personal consumption expenditure is high, consumers will be more likely to spend money on eating at restaurants. Consumer spending is expected to increase in 2019, providing a potential opportunity for the industry.

Consumer Confidence Index

Changes in consumer sentiment have a significant effect on household expenditure on discretionary items, including premium restaurant dining. During a recession, demand for lower-priced value products from restaurants increases. The Consumer Confidence Index is expected to continue to increase through 2019.

Households Earning More Than \$100,000

Full-service restaurants tend to draw their customers from higher-income households. Therefore, growth in the number of households earning more than \$100,000 per year benefits the industry. The number of households earning more than \$100,000 per year is expected to increase slowly during 2019.

Corporate Profit

Businesses are a major market for the industry because businesspeople often wine and dine clients at premium steak restaurants to win their business or to nurture a relationship. When corporate profit is growing, the industry benefits due to the greater propensity for businesses to spend. Corporate profit is expected to increase in 2019.

Healthy Eating Index

Consumers are becoming increasingly aware of issues related to weight and obesity, fatty food intake and food safety issues. Therefore, as the healthy eating index rises, demand for some

restaurants with less healthy options will decrease. The healthy eating index is expected to increase in 2019, posing a potential threat to the industry.

Current Performance

The Premium Steak Restaurants industry has benefited from a rise in demand over the past five years. Industry revenue is expected to grow at an annualized rate of 2.9% to \$8.3 billion over the five years to 2017, with revenue projected to jump 3.0% in 2017 alone. The large boost is partially attributable to a rise in income for the upper class and an expected increase in business travel. Although consumer spending primarily drives industry sales, steakhouses have long been a client-friendly dining option for business travelers as well. As the economy improves and corporate profit rises, many businesses will increase their travel expenditure, indirectly improving this industry's sales.

Changing Consumer Preferences

Industry revenue has improved over the past five years largely thanks to the improving economic landscape. As unemployment has declined, per capita disposable income has increased and consumers' financial fears have subsided. Consumer spending has risen an annualized 2.5% over the past five years. Furthermore, the number of households earning more than \$100,000 has increased an annualized 3.0% over the five years to 2017, expanding the industry's customer base. As a result, more wealthy individuals visited high-end restaurants, including steak houses.

Another major boon for industry operators has been the shift in consumer eating habits amid rising employment rates and less leisure time. Over the early half of the five-year period, consumers decreased spending on high-ticket items like expensive steak dinners. Even with growing disposable income, spending on restaurants actually declined in 2013 due to a slight rise in some consumer items, such as food prices. The rise led more consumers to spend their money on food at home. In fact, despite the drop in spending away from home across even the upper quintiles, total spending on food increased, indicating that consumers had increased their grocery purchases while decreasing restaurant purchases. The slight dip led revenue to experience near-flat growth in 2013. Nevertheless, these trends have weakened in response to greater consumer confidence amid busier lifestyles. As consumers' daily schedules fill up, convenience and the importance of service become paramount. According to recent data from the Bureau of Economic Analysis, 2015 marked the first year in which restaurant spending exceeded spending on groceries for the home.

Consumers are also becoming increasingly health conscious, eco-conscious and interested in eating local produce. Due to these rising trends, major restaurants expanded the number of healthy options on their menus and began to source more of their ingredients from local providers. For many steakhouses, the health factor has become a key focus of their marketing strategy and has enabled them to target a new segment of the market and renew interest in their products. In addition, operators have started marketing campaigns directed more toward women, as men are already a large part of their customer base, offering smaller and lighter meals and more cocktails catered to this demographic.

Other than affluent consumers, this industry also caters to business meetings and, therefore, relies on corporate spending for revenue. Many premium steakhouses provide private meeting rooms and high-end presentation equipment to attract businesses to their venues. Corporate profit has grown an annualized 1.6% over the five years to 2017, driving industry sales from this market.

Shifting Costs

Although the industry experienced an uptick in demand since 2012, it was negatively impacted by volatile food and beverage costs during the five-year period, particularly with regard to volatility in the price of red meat. Purchases represent 36.1% of industry revenue, a large portion of which comes from purchasing quality beef and premium alcohol. Since many operators differentiate themselves from each other by the high-quality products they offer, they continue to buy premium beef despite the volatility in cost. Therefore, when beef prices increased over the past five years, operators' costs rose because they continued to buy the highest-quality products.

A shortage of beef over the past five years, combined with rising incomes that continue to demand beef, have pushed the price of meat up significantly. In 2011, the price of red meat rose 21.5%, only to rise another 21.1% in 2014. While the price of red meat has plummeted over the latter half of the five-year period, severe swings in any input cost can negatively affect overall profit margins. To help offset these costs, many companies increased their menu prices, which boosted revenue for some, but tightened profit margins for those that did not raise prices significantly enough to offset costs. Nevertheless, some companies have chosen to maintain their prices to keep customers, pushing down their profit margins during severe upswings in meat prices. Major player Darden Restaurants, for example, reports the same average price of its meals at its The Capital Grille restaurants in 2014 as it did in 2012, despite the rapid rise of beef prices. This practice has led the company's profit margins to decline over the past five years.

More recently, food prices have hit historic lows as a result of plummeting transportation costs. This has galvanized a larger number of consumers to cook more frequently at home, siphoning demand away from restaurants attempting to fill their tables. While higher-end establishments have been somewhat inoculated from this drop in demand for restaurants, particularly thanks to strong growth in the number of households earning more than \$100,000, the higher rate of cooking at home has nevertheless heightened competition as the potential consumer pool has decreased. This has resulted in larger losses during lunch hours, redoubled efforts to offer lower prices and discounts, both of which have pushed profit margins downward over the past five years. Nevertheless, still-growing demand for high-end restaurants has led the number of industry establishments to increase over the past five years. Establishments have risen an annualized 1.8% to 2,524 over the five years to 2017. Similar to establishment numbers, employment numbers have also grown, increasing an annualized 2.3% to 115,344 workers over the same period.

Revenue Growth

Similar to the past five years, the Premium Steak Restaurants industry is expected to expand over the next five years, with revenue forecast to grow at an annualized rate of 1.4% to \$8.9 billion. Demand for steak restaurants will increase as consumers with greater incomes continue to recover from the recession and businesses expand their spending on eating out. Furthermore, the price of beef is expected to continue falling, contributing to widening profit margins among industry consumers. Healthy options and responsibly produced beef will become greater priorities for consumers, increasing potential markups as well.

This industry primarily targets affluent individuals and businesses; therefore, as the upper class continues to grow, purchases of high-end goods are expected to increase. Therefore, steakhouses' revenue will primarily grow from purchases by the wealthy.

Consumers and Businesses Return

Over the five years to 2022, the number of households earning more than \$100,000 is projected to increase at an annualized rate of 1.1%. As households become more affluent, spending on luxury items is expected to increase. Additionally, many consumers will feel more confident about spending as incomes return and the economy stabilizes. As a result, these consumers will return to high-end restaurants such as premium steak restaurants. As consumers shift back to pre-recessionary preferences, with consumers purchasing expensive steaks, drinks, appetizers and desserts again.

While consumers are expected to order more over the next five years, individuals will also continue to increasingly demand locally grown ingredients. Therefore, operators will have to strategize on how to adjust to this consumer preference while keeping the quality of their goods high. Morton's Restaurant Group Inc. currently ships their meat directly to three meat-cutting operations, where it is aged and portion cut, in accordance with the company's specifications, and then delivered to restaurants. The company believes this process allows the restaurants to serve a more consistent product in each steakhouse. Although this process allows the company to maintain consistent quality, operators like Morton's will have to shift this process to include local meats and produce, as consumers strongly demand more local goods, which could be very costly.

In addition to wealthy consumers increasing their visits to steak restaurants, businesses are also expected to increase their spending at steakhouses. These restaurants are usually located in major metropolitan areas near large office buildings. Therefore, due to their high-end menu offerings, steakhouses are an ideal place for business lunches and corporate events. Corporate profit is forecast to increase at an annualized rate of 1.7% over the five years to 2022. As corporate profit expands, analysts expect companies to increase their business lunches and events, benefiting the Premium Steak Restaurants industry.

Beef Prices

Unlike in the previous five-year period, the price of beef is expected to fall over the five years to 2022. This decline in the price of beef is primarily due to decreases in the cost of cattle feed causing cattle expansion and then leading to an oversupply. Cattle herd numbers were also low over the past five years, which pushed up prices, but are expected to increase over the next five years. This will relax supply constraints and decrease prices. As a result of falling beef prices, companies will be able to maintain their prices, or even lower them slightly, and earn higher profit margins. As a result, profit is expected to increase slightly, accounting for 6.7% of revenue in 2022.

With the prospect of increased profit margins, new operators will continue to enter the industry. With steak restaurants having wider profit margins compared with other restaurant industries, such as fast food, more operators will want to enter the market. Over the five years to 2022, the number of enterprises is expected to rise at an annualized rate of 1.0% to 1,149 companies. This includes both single-location restaurants and companies that own chain restaurants. As company numbers expand, employment numbers will follow, as new companies and restaurants will need cooks, waiters, hosts and more. Employment numbers are projected to grow at an annualized rate of 1.3% to 122,880 workers over the same period.

Industry Life Cycle

This industry is currently entering a long-term slow-growth phase, which indicates that it is approaching market saturation. The limits on the number of higher-income households, urban density and growth within a city or town that can support a number of competing high-end restaurants are being reached. Competition for prime operating sites is also significant. Over the 10 years to 2022, industry value added (which measures an industry's contribution to GDP) is expected to grow at an annualized rate of 1.7%, compared with an annualized 2.1% GDP growth over the same period.

This industry is also experiencing significant market and consumer changes, with increasing demand for healthy foods and locally grown ingredients. Significant quality-based competition is continuing to occur, as operators strive to capture an increasing market share in a slow-growth domestic market. Given the state of the domestic market, major franchised operators are currently receiving most of their sales growth from newly opened restaurants and restaurants located in very affluent neighborhoods.

Products and Markets

All of the restaurants included in this industry are fine-dining steak restaurants; however, the industry can be segmented by specialty cuisines that the establishments serve. The most popular is the traditional American steakhouse (35.0%), followed closely by steak and seafood restaurants that emphasize premium steak and seafood offerings (32.6%), Brazilian-style steakhouses (10.4%) and other premium steak restaurants.

Although most American steakhouses traditionally offer seafood in addition to premium beef, restaurants included in the steak and seafood segment of the industry offer a complementary and comparable range of quality seafood in addition to steaks. These restaurants also frequently brand and market themselves as steak and seafood fine dining restaurants. This market segment has remained relatively stable over the past five years.

Industry analysts estimate that fine-dining Brazilian-style steakhouses, also known as churrascarias, represent about 10.4% of total industry revenue in 2013. Fine-dining churrascarias typically offer rodizio service, where servers carve various cuts of beef and other meats (e.g. lamb, chicken, duck and ham) at diners' tables. This segment has been steadily increasing in popularity and as a share of total industry revenue in recent years. Two popular Brazilian steakhouse chains operating within this industry are Fogo de Chao and Texas de Brazil. Texas de Brazil grew from three locations (all in Texas) in 2001 to over 44 full-service US locations across 14 states; the company also opened two Texas de Brazil Express fast-casual locations. Fogo de Chao has over 20 fine-dining locations in the United States, in addition to five locations in Brazil.

Major Markets

Corporate-expense diners are a key component of steakhouse sales. For some premium steakhouses in central business districts, corporate-expenses diners account for well over 50.0% of revenue. For example, Morton's The Steakhouse, one of the industry's biggest players, states that corporate-expense diners account for 65.0% of its business. This segment's share of revenue is expected to have grown in the past five years as corporate profit has increased, pushing up corporate entertainment budgets.

Consumers

Every age group and income level dines out; however, the extent to which they dine out can be projected based on age and income level. According to the Bureau of Labor Statistics, households that make less than \$50,000 per year spend 36.6% of their food budget on dining out (amounting to about \$1,626 per year). Households that make between \$50,000 and \$75,000 per year spend 42.4% of their food budget on dining out (\$2,711 per year), while households that pull in more than \$75,000 per year spend 45.7% of their food budget on dining out (\$4,490 per year). The more money a household makes, the more money it spends on dining out and the more likely a premium steakhouse will be to claim some of that expenditure.

Trends in household disposable income greatly affect demand for industry services, given the high-end nature of this industry. Periods of low economic growth typically result in higher unemployment, reducing per capita income among consumers. Following reduced income, more consumers chose to decrease their spending on luxury dining and instead choose to eat at more casual restaurants or cook at home. Demand for the industry is most strongly correlated with income levels among the top income quintile since these households have considerably higher disposable income. However, as unemployment has declined over the past five years, which has increased per capita disposable income and overall consumer spending, more consumers have

become more comfortable with spending a little more liberally at eating establishments. Furthermore, recent data from the Bureau of Economic Analysis indicated that, for the first time, consumers have begun spending more on food outside of the home than on groceries, suggesting that demand for industry operators among individuals within the highest income brackets is expected to increase over the next five years.

Establishment locations in the Premium Steak Restaurant industry follow trends in population and household income distribution, so locations are generally in major metropolitan and surrounding areas with a considerable number of wealthy households. Establishments in the Southeast (24.6% of industry establishments) and Southwest (11.3%), which include Florida (8.4%) and Texas (8.1%), tend to be slightly larger than average in employment terms. Establishments in the Mid-Atlantic, including New York (9.9%), and West, including California, tend to be slightly smaller than average. This trend is due in part to a slightly higher share of franchised establishments in the former regions or higher levels of competition in the latter ones. Within regions, cities and towns, however, population densities and the level of average household incomes directly affect the distribution of premium steak restaurants, with a larger number and concentration in or near higher household income areas.

Many operators cannot compete for high-profile, high-traffic locations because of the industry's small-business nature; these places are usually garnered by the major chain and franchised restaurant operators. A large proportion of operators tend to be located in downtown central business district neighborhoods. These locations are generally desirable due to the close proximity of major corporations, high-grossing businesses and wealthy clientele and well a heavy flow of tourism activity. Therefore, this level of geographic concentration is not expected to change significantly in the near future.

Market Share Concentration

The industry has a low concentration of ownership. Analysts estimate that in 2017, the four largest companies account for less than 25.0% of annual industry revenue and the 10 largest enterprises currently account for just less than 40.0% of industry revenue. The industry has a fragmented structure and most companies operate within a narrow geographic market.

Despite the presence of a handful of nationally recognized chains, concentration is brought down by the vast number of single, owner-operated establishments that are not part of a chain or franchise operation. Annual average revenue per establishment is estimated to be about \$3.3 million in 2017, and each operator has about 45 employees. Because of its fragmented nature, the level of industry concentration is not expected to change in the near future.

Basis of Competition

Although there are some indications of price-based competition within this industry, premium steak restaurants mainly compete on the basis of location, food quality, and reputation. Style and presentation, food range and variety, ambiance, hospitality and service are also major competitive factors. Premium restaurants are involved in marketing the meal experience, so it is

important that the owner-operator understands the restaurant's positioning in the marketplace, the clientele they are attracting or want to attract and the meal experience. Most importantly, the restaurant must consistently deliver on the customers' expectations.

In addition to the competitive factors listed above there are a number of growing trends in full-service dining, some of which are specific to steak restaurants. Growing emphasis throughout the broader dining category on sustainable food offerings and organic options is moving some industry operators to change menu options and marketing campaigns to emphasize their organic and locally sourced offerings. Additionally, industry operators compete on the availability of amenities such as private rooms and presentation tools to attract business clientele. Other areas of competition include the range of food and beverage offerings at restaurant bars and the variety and quality of specific types of beef offered.

The competitive conditions within this industry are estimated to steadily increase over the next five years. The industry is reaching saturation in most urban central business districts and suburban markets with a large proportion of higher income households.

Wholesale

The Beef Wholesaling industry is experiencing challenging conditions. The industry, which serves as the middleman between beef producers and retailers is expected to slow as red meat prices fall and consumer taste favors substitute products. Recent studies linking beef consumption to heart disease has put industry operators in a tricky predicament at a time where issues of health have strongly shaped trends in consumer taste. While red meat demand has not been hindered as much as originally expected, alternative protein sources, such as poultry and seafood, have seen a relatively larger boost in demand. Furthermore, price decreases in red meat resulting from increased supplies in upstream livestock farms have hindered revenue growth prospects in the latter half of the period. As a result, analysts estimate industry revenue will decrease at an annualized rate of 0.3% to \$55.3 billion over the five years to 2018, including a 1.0% decline in 2018.

The Beef Wholesaling industry is comprised of businesses that buy beef, pork and other red meat products from upstream cattle and hog industries, such as slaughterhouses and processors, and then resell these products to a variety of downstream markets. Over the past five years, the industry has experienced consolidation of industry operations as major processors have begun to take on a wholesaling role. This has been coupled with an increased downstream demand for beef as US households have experienced an uptick in disposable income during this period. However, health concerns linked to beef consumption, such as heart disease and cancer, as well as a decrease in the price of red meat has cut into industry revenue over the five years to 2018

The wholesaling sector is undergoing major structural changes due to the growing trend of manufacturing companies transforming into their own wholesaler. Both large and small retailers have increasingly made purchases directly from food manufacturers, allowing these players to avoid wholesale costs and high markups. This development has led to widespread

industry consolidation as these new industry operators seek a higher efficiency and economies of scale. Independent wholesalers in turn either compete for a smaller pool of contracts or join the new industry entrants through mergers.

Over the five years to 2023, demand is projected to rebound slightly as manufacturers' sales branches and offices (MSBOs) gain more of a foothold in the industry. The MSBO structure will continue to solidify and MSBOs will benefit from economies of scale and increased operating efficiencies. Furthermore, projected increases in household disposable income and demand from downstream markets will keep demand for beef products stable. In addition, the decline in red meat prices is anticipated to decelerate during the period, and is projected to remain consistently higher than its low in 2017. The relative stability of the industry's key input price will enable industry players to more successfully plan and pass on costs to consumers. As a result, revenue is forecast to rise at an annualized rate of 0.4% to \$56.3 billion over the five years to 2023.

With rising health concerns and total health expenditure rising at an annualized rate of 3.7% over the five years to 2018, many health-conscious consumers shifted to alternative sources of protein, such as fish and poultry. Furthermore, decreasing prices of red meat has limited the prices that industry operators could potentially charge downstream markets for their products. Nevertheless, red meat is still considered a staple in many households. Overall, revenue has fallen over the past five years, decreasing at an annualized rate of 0.3% to \$55.3 billion over the five years to 2018, including a 1.0% decrease in 2018.

Shifting Industry

For many years, large supermarket and restaurant chains have increasingly purchased directly from beef processors to take advantage of lower prices and increase profit margins. This trend of utilizing wholesalers through manufacturers' sales branches and offices (MSBOs) has concentrated more revenue in the hands of fewer industry operators. MSBOs' growing sales have offset revenue declines stemming from reduced numbers of smaller merchant wholesalers. MSBOs provide a direct distribution link from industrial beef processing plants to downstream markets, which reduces the potential for a traditional merchant wholesaler to act as an intermediary between producers and retailers. Furthermore, new technologies that enable the entire distribution process to be handled and tracked electronically have aided this trend, making it easier for retailers and other customers to deal directly with meat processors, limiting demand for smaller independent industry wholesalers. These MSBOs have become increasingly important players in the industry.

A growing number of manufacturers have improved efficiency by bringing transportation and handling activities in-house to create MSBOs. By cutting out the cost of a traditional merchant wholesaler, these branches can sell meat products to downstream retailers at lower prices. Therefore, larger retailers and major food service establishments are leveraging MSBOs to reduce their own costs and better compete with discount mass-merchandise stores such as Walmart.

By using economies of scale, the ascension of MSBOs has created a new large-scale industry structure for meat wholesalers. Consequently, while many wholesalers exited the industry due to a declining pool of customers, others decided to merge or become vertically integrated to compete in the changing industry. As a result, exiting companies and consolidation are expected to decrease the number of enterprises by an annualized rate of 1.6% to 2,015 operators over the five years to 2018. Similarly, employment is expected to fall at an annualized rate of 0.2% to 43,350 workers over the five years to 2018.

Competing Industries

Health-conscious consumers are making business difficult for operators in the Beef Wholesaling industry. The consumption of red meat has been increasingly linked to life-threatening diseases, causing consumers to seek protein alternatives. Despite these fears, per capita beef consumption has increased over the five years to 2018 at an annualized rate of 0.5% and 1.6% respectively. However, the growth of substitutes like poultry and seafood outpaced their red meat counterparts with per capita consumption of these products increasing 1.5% and 2.0%, respectively, during the five-year period. Consequently, operators in the Fish and Seafood Wholesaling industry and Egg and Poultry Wholesaling industry are becoming more of a threat to beef wholesalers.

In addition, increased competition from the Frozen Food Wholesaling has hindered demand from beef wholesaling. Meat processors constantly seek to widen profit margins with value-added products, particularly prepackaged and frozen meats that appeal to time-poor consumers. Instead of buying fresh red meat included in this industry's product offerings, some consumers switched to meat products outside this industry's scope, including canned and packaged frozen beef products, because of their lower prices and ready-to-eat microwave meal options. By supplying more alternatives to fresh beef, meat processors and packagers are siphoning revenue away from the Beef Wholesaling industry.

Meat and Diesel Prices

Operators in the beef wholesaling industry purchase beef primarily from producers in the Meat, Beef and Poultry Processing industry. Profitability in the industry largely depends on the price of red meat, which represents the price set by meat processors. Although increases in the price of red meat make it more expensive for industry operators to purchase from upstream industries, they are typically able to pass on the costs to consumers in the form of higher prices, thus expanding revenue.

Overall, the price of red meat has been highly volatile, including a 21.1% increase in 2014 followed by double-digit declines from 2015 through 2017. This volatility is expected to continue with an anticipated 9.1% increase in 2018. As a result, operators were unable to pass costs on to consumers because of price uncertainties and steep price drops.

While this negativity affected revenue, the general fall in key input prices benefitted profit margins. A major input for wholesalers is the price of diesel, which has fallen 5.5% over the five years to 2018. Diesel is the primary fuel for large trucks, most often used in wholesaling

distribution operations. Thus, the average industry profit margin (measured as earnings before interest and taxes) increased from 1.4% in 2013 to 2.1% in 2018.

Higher profit margins can also be attributed to the surge in consolidation and MSBOs. Large MSBOs can leverage economies of scale and better absorb higher purchase costs in the face of falling revenue. The number of MSBOs has increased among meat processors over the past five years. Since MSBOs operate with lower costs, they can achieve higher profit margins and offer lower prices to downstream customers.

Industry Outlook

The Beef Wholesaling industry is projected to marginally rebound over the five years to 2023 as downstream demand for beef remains stable. Additionally, the presence of manufacturers' sales branches and offices (MSBOs) in the industry is expected to grow; these operators will generate demand from downstream retailers because they can charge lower prices. Due to economies of scale, these companies will be able to excel despite falling prices of red meat. Consequently, overall industry revenue is forecast to increase at an annualized rate of 0.4% over the five years to 2023, to total \$56.3 billion.

Industry Structure

Over the next five years, more MSBOs are expected to enter the industry and capture declining third-party dealers' market share. MSBOs will expand operations to achieve economies of scale, enabling them to compete with smaller independent wholesalers on levels of price and efficiency. Since MSBOs are a division of meat processors, they can guarantee the distribution of industry products and, as a result, they will experience increased demand from downstream retailers. This trend will greatly increase the overall efficiency of the industry, which should lead to higher industry revenue, putting greater pressure on external competition. Smaller wholesalers that survive the transition into a market dominated by large-scale MSBOs will likely consolidate or focus on niche and local markets to remain competitive. Since MSBOs make purchases internally from one division to another, a streamlined company's wholesaling division will record significantly lower costs than its independent merchant competitors. Also, as MSBOs grow in scale, they will save more on equipment and transportation costs, while the availability of advanced technology will help optimize employment levels.

While the industry is expected to continue to consolidate, it is unlikely to retreat from capital investments. Following anticipated acquisitions and exits of merchant wholesalers, the number of enterprises is forecast to fall at an annualized rate of 0.6% to total 1,957 companies over the five years to 2023. However, employment is anticipated to remain stagnant. Total industry employment will rise to 43,413 workers, with gains being relatively negligible at 0.0%. Industry operator's success depends largely on their ability to add value for the production source and retail channel alike. Specifically, human labor is required to take and process orders, receive and ship goods, and manage all the various logistical aspects of a warehouse operation. The skill and knowledge of experienced labor employees will encourage employers to retain

employees in the newly consolidated operations. This consolidation will lead to larger, more resourceful wholesaling departments under the control of large meat processors.

Transportation Costs and Profit

Industry operators transport much of their goods with trucking fleets, which usually run on petroleum-based fuels such as diesel or gasoline. Food product wholesalers incur significant costs from transportation, which often require special adjustable temperature containers. The Beef Wholesaling industry is therefore affected by the price of diesel fuel. Over the five years to 2023, the price of diesel is expected to increase at an annualized rate of 4.3% raising operating costs for companies.

This increase in the price of diesel fuel is anticipated to hurt industry profitability during the five-year period. However, while rising transportation costs hinder operators' bottom lines, other developing trends will mitigate these negative effects. Red meat, the key industry input, is anticipated to continue its decline during the period. Beef wholesalers will continue to pay less and less to their upstream markets, which will lower these purchasing costs for industry operators. These declines should offset some of the increased costs caused by rising fuel prices.

Furthermore, industry profitability may also be helped by stronger overall positioning for industry operators. Accelerated vertical integration and a higher incidence of MSBOs within the industry should enhance the purchasing power of the average industry operator. Overall, the average industry profit margin is forecast to fall from 2.1% in 2018 to 1.9% in 2023.

Potential Growth

Industry performance is expected to be buoyed by a few favorable conditions over the five years to 2018. Per capita beef consumption is anticipated to remain relatively steady during the period through 2023. Moreover, as the US population continues to grow and household disposable income levels increase, consumers are expected to purchase higher quantities of higher quality meat products. Companies can be expected to enhance operations that service for lean meat products and choice cuts to satisfy growing demand. Additionally, as incomes increase, more consumers will dine out at restaurants, leading industry operators to focus on servicing this market over the next five years.

Much like the previous period, industry performance will be greatly affected by the price of red meat. Over the five years to 2018, red meat prices are anticipated to decrease at an annualized rate of 0.5%. While still declining, this development represents a strong stabilization of the key industry input. During the previous period, red meat prices experienced four separate year to year shifts of over 10.0%. This volatility is not expected to continue over the five years to 2023, which should grant industry operators more power regarding how to strategize operations. Companies will more effectively pass on costs to consumers, helping to increase overall industry revenue. This enhanced managerial position should only be further aided by increased vertical integration and presence of MSBOs, as these consolidated players improve efficiencies granted by economies of scales.

Products and Services

Beef makes up the largest industry product segment, accounting for 37.8% of total revenue. The United States is the world's largest beef producer and beef is the second most-consumed meat per capita in the country. US expenditure of beef is higher than expenditure for any other meat, except chicken. Many believe health concerns linked with beef consumption, such as heart disease will lead to a decline in beefs significance to industry revenue. However, despite these health concerns, per capita beef consumption has slightly increased over the past five years and is expected to remain relatively stable.

Competition from Substitutes

The availability of close substitutes also affects demand for red meat. Substitute products include frozen and ready-to-cook foods, which are sold by operators in the Frozen Food Wholesaling industry. These foods have a competitive advantage in ease of preparation, which appeals to time-poor consumers. For example, a frozen bag of premixed beef and broccoli takes less time and effort to prepare than the same meal made from scratch. Other substitutes include poultry products that are sold by the Egg and Poultry Wholesaling industry, which often provide an alternative protein source at a lower price. In addition, fish and seafood products, sold by the Fish and Seafood Wholesaling industry, are also becoming more popular among health-conscious consumers.

Other Wholesalers

Other wholesalers, including manufacturers' sales offices and branches (MSBOs), account for a significant portion of industry revenue at 36.3%. MSBOs generally sell products to merchant wholesalers of grocery items. Major grocery operators have longstanding relationships with retailers, stifling out wholesalers who distribute limited products from obtaining supply contracts with these retailers. This segment has experienced further acceleration over the past five years as MSBOs have become a primary path of sales to other wholesalers.. Thus, this market has increased over the past five years as downstream food service and retail customers seek a more direct source of purchases.

Retailers for Resale

Retailers include grocery stores, supermarkets, meat markets and specialty stores. This segment makes up the second largest downstream market for industry operations. Over the past five years, retailers lost a marginal share of industry revenue, as consumers scaled back purchases of higher-valued meats and reduced quantities of meats purchased. Nevertheless, retailers still make up more than a third of industry revenue at 35.6% in 2018.

Food Service

Restaurants, hotels and contract caterers for schools, hospitals and other institutions, constitute the industry's third-largest segment, accounting for 20.3% of revenue in 2018. Meats sold to these segments often require further processing prior to shipment, taking some of the workload

off chefs and servers in preparing meals. This value-added dynamic enables wholesalers to charge a premium for their products. This segment is increasing as per capita disposable income increases and consumers begin eating out more often.

All Others

All other markets consist of households, businesses, contractors, farmers, the government and miscellaneous customers. Manufacturing and industrial users make up the most significant market within this category and MSBOs generally service the industrial market because most downstream processors source directly from other upstream food processors. The wholesaling branch of a company that slaughters and creates meat slices from live animals will usually supply a downstream processor that puts meat slices into premade sandwiches. This segment is expected to remain a relatively marginal share of revenue over the next five years. Overall, other markets account for 7.8% of industry revenue in 2018.

Market Share Concentration

The Beef and Pork Wholesaling industry has a moderate level of market share concentration. In 2018, the top four players are expected to account for 44.0% of industry revenue. Vertical integration is causing an increase in manufacturer's sales offices and branches (MSBOs), thereby increasing the number of larger operators and forcing out smaller ones. As beef and pork processing companies increasingly take on distribution and sales roles, the need for smaller independent wholesalers dwindle. Also, the MSBO channel benefits downstream to clients because they avoid the potential markups incurred when purchasing from a traditional merchant wholesaler. Many meat-processing companies are combining their activities to cover all phases of the production, processing and distribution chain to gain all possible profit prior to retail.

Industry concentration is projected to continue increasing through the coming five years as the major players pursue greater market share through MSBOs. As a result, third-party wholesalers will be under more pressure to maintain their business partners and boost their margins. Still, the larger and more efficient companies will be likely to lure much of retail and grocery business, and independent wholesalers will experience significant declines due to MSBO increases.

Cost Structure Benchmarks for Wholesaling

Profit

The average industry profit margin, measured as earnings before interest and taxes, is estimated to rise from 1.4% in 2013 to 2.0% in 2018. Wholesalers in this industry operate on a low-margin, high-volume strategy, realizing only a small return per sale. Industry per-unit fixed costs are only driven down by leveraging high volume orders. In other words, it takes a high volume of sales for an industry operator to turn a profit. Over the past five years, profit has risen because of a sharp drop in fuel costs as well as increased efficiencies realized through technology lowering operating costs. However, with the expected rise in the price of diesel fuel over the next five years, profit margins are expected to slightly fall to 1.9% by 2023.

Cost of Goods Sold

Purchases make up the largest share of revenue at 86.0%. Across most wholesaling industries, purchases are by far the greatest expense for operators. Purchases consist of goods bought from vendors that are intended for resale to retail outlets. In the case of the Beef and Pork Wholesaling industry, operators consistently allocate most of their expected annual revenue to purchases of beef and pork from processors.

Purchase costs have decreased slightly for wholesalers over the past five years, thanks largely to corn's correlation with oil prices. When oil prices go down, demand for substitutes like corn-based ethanol goes down as well, thereby decreasing the value of corn crops. Since corn is also a main ingredient in most animal feeds, the relationship with oil also serves to decrease farmers' costs for growing livestock that are raised on corn-based feed. Over the five years to 2018, the world price of crude oil and the price of corn decreased by 11.3% and 11.7%, respectively. Therefore, the oil and corn relationship has decreased the price of meat that wholesalers purchase from farmers over the past five years. Purchases as a share of revenue have also been decreased due to declining meat prices.

Wages

A wholesaler's success depends largely on their ability to add value for the production source and retail channel alike. Customer service, dependability and reputation come into play, and these characteristics can only be displayed through knowledgeable and reliable human resources. More technically, human labor is required to take and process orders, receive and ship goods, and manage all the various logistical aspects of a warehouse operation. Analysts estimate wages as a share of revenue to have risen from 3.9% in 2013 to 4.1% in 2018, as total wages have increased. This increase is in part attributable to operators' reliance on a knowledgeable and experienced labor force.

Other Costs

The cost of depreciation and rent and utility costs will invariably fluctuate between operators depending on their size and the number of assets involved. Depreciable assets include buildings, storage equipment, machinery used to move vehicles and computer inventory systems. Since the majority of industry operators are smaller merchant wholesalers, their depreciation levels are very slim. As consolidation continues over the next five years, increased technology and larger plants will lead to greater industry depreciation costs.

Reputation is also important and, as a result, operators typically spend 0.4% of revenue on marketing expenses. Miscellaneous costs are expected to account for the remaining 5.4% of overall industry costs. They primarily include distribution and freight costs as well as various administrative, legal, accounting costs, insurance, outsourced labor, as well as other supervising necessary to the proper functioning of the wholesaling process.

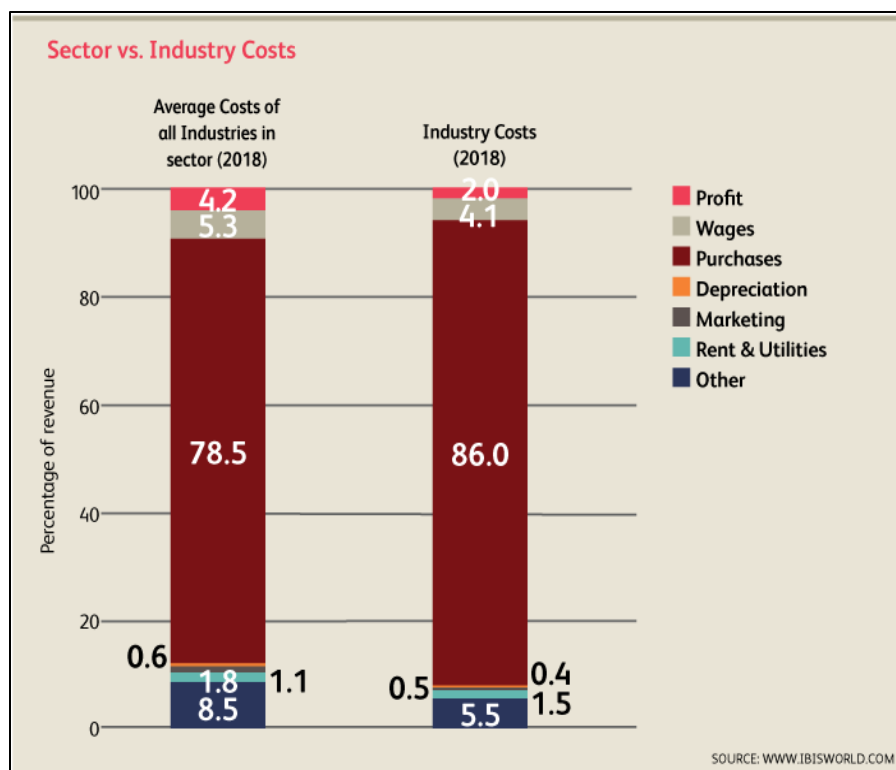


Figure 9. Sector vs. Industry Costs

Basis of Competition

Internal Competition

Operators in the Beef and Pork Wholesaling industry compete primarily on price, assortment and service. Due to the diversity in producer sizes, competition for beef and pork wholesalers is high. The industry also competes against retailers' self-distribution facilities based primarily on location and operating costs regarding efficient transportation. Furthermore, the majority of internal industry competition has been between Manufacturers' sales branches and offices (MSBO's) and independent wholesalers, as distribution arm of major processors has continued to gain footing over available market share.

It is important for wholesalers to base operations close to clients because saving on transportation costs allows wholesalers to reduce prices and allocate more resources toward value-added products. Meanwhile, having a wide range of meat cuts to choose from can help in differentiating a company's product, as does the ability to price meat products affordably. Furthermore, brand competition is increasingly important because branding allows for operators to set higher prices for their products, thus realizing higher profit margins.

Technology is also quickly becoming a basis of competition in the industry. This aspect includes the integration of advanced logistics systems to efficiently track inventory, monitor sales trends and manage customer orders. Establishments have increasingly become involved in complementary services to retailers, such as private brand label development, warehousing, retail store development and various financial and technical support services.

External Competition

Packaged frozen food wholesalers sell prepackaged frozen meat and meat products that are direct substitutes for the fresh meat and meat products supplied by beef and pork wholesalers. For this reason, operators in the frozen food wholesaling industry are beef and pork wholesalers' main competitors. Other key competitors include operators in the Egg and Poultry Wholesaling industry and those in the Fish and Seafood Wholesaling industry, which both wholesale alternative sources of protein. Price, location, quality and the products' perceived nutritional values form the major bases of external competition among these industries. However, per capita beef and pork consumption has increased in recent years despite growing health-consciousness of consumers.

One major source of external competition stems from operators in the grocery wholesaling industry. These wholesalers move a large portion of the total tonnage of specific food items. One major player in that industry, the Sysco Corporation, was formed in 1969 following the merger of nine US wholesalers. After acquiring more than 100 companies in the food wholesaling business, Sysco has grown to become the largest food distributor to the food service market in North America. In fiscal 2017, total company revenue is expected to total \$58.4 billion. Sysco threatens to steal customers and revenue from industry operators thanks to its brand recognition and size. It distributes food products through its broad line segment to downstream markets which are the same as the ones in the Beef and Wholesaling Industry.

Barriers to Entry

The Beef and Pork Wholesaling industry has high and steady barriers to entry. This particular wholesaling industry is highly regulated (see the Regulation and Policy section), and so compliance with federal and state food handling, storage and distribution requirements can be very expensive for potential market entrants. Similarly, obtaining licenses can be prohibitive for some potential entrants. Industry operators must also invest in large refrigerated warehouse and delivery facilities capable of keeping perishable meat fresh and safe for consumption. The cost of obtaining these facilities may deter some operators from entering the industry.

Entering into beef and pork wholesaling is also difficult due to the mature nature of the industry. The major players are reputable companies that have been established for decades. These companies have superior corporate and management skills and new entrants will find it difficult to compete on the basis of price, service and reliability. There is also a medium concentration of operators within the industry giving these established players the ability to exercise a high degree of market power. The cost of entering and competing with established operators that have strong relationships in industry downstream markets may limit market entrants.

Operating Conditions

The Beef and Pork Wholesaling industry has a low level of capital intensity in relation to other industries. In 2018, operators typically invest \$0.09 of capital for every dollar spent on labor. Capital expenditures in the industry include the purchase, storage and distribution of industry

products. These tasks involve minimal transformation of the product, but they incorporate marketing activities, preparation and checking and shipping orders to customers. Since these tasks are generally labor intensive, the industry heavily depends on labor rather than capital goods, explaining the low level of capital intensity in the industry.

The capital costs for this industry are still significant because meat is perishable. Climate-control systems are particularly important in warehouses and delivery trucks, requiring operators to invest capital in cooling and refrigerating equipment, computerized inventory management and delivery vehicles for transportation. The industry is increasingly using new technology to improve operating efficiencies and reduce costs, which has slowed employment growth. Despite the increasing use of computerized inventory control, a high degree of labor remains in taking orders, checking for anomalies, transporting goods and providing specialized customer service.

Market Potential

The West End project will reach out past the Telluride, Colorado area. Locally Grown is not limited to the state of production only, but according to the USDA it ranges up to 400 miles. Given this and following discussions with other producers and processing facilities in the area there is a significant population.

This study will assume three different market areas, the first is 100 miles from Telluride, then, 200 miles finally 300. Telluride was used as the center point for this study and represents where the beef might be processed.

Table 1. Population within Three Market Areas Originating from Telluride			
Year	100 Miles	200 Miles	300 Mile
2010	502,221	3,725,890	8,798,776
2020	517,937	4,149,778	9,896,052
2025	524,285	4,261,272	10,215,389

Figure 10 shows geographically the areas encompassed by each of the three market areas. The first (100 miles) encompasses a large portion of Colorado.

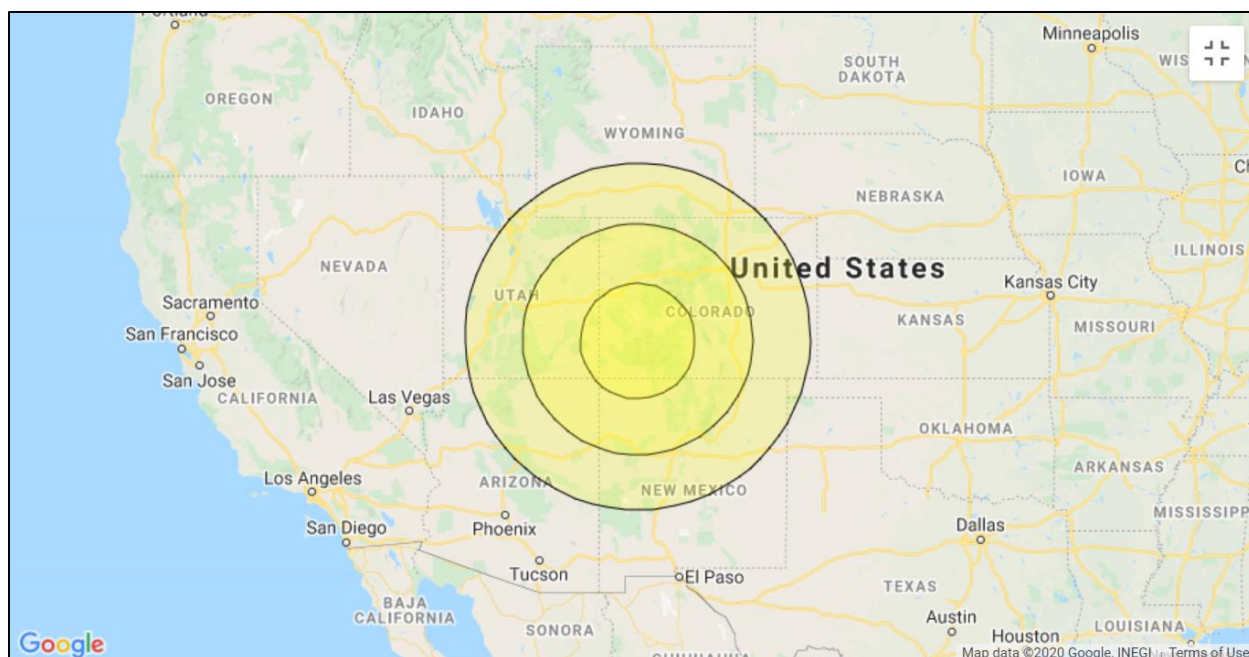


Figure 10. Three Market Areas

The population in these three market areas will be used to determine beef consumption by production methods at both 5,000 and 10,000 head of production annually.

Total Beef Consumption

Assuming that per capita beef consumption is 80 pounds annually, we were able to estimate the total market potential for the three market areas.

Table 2. Annual Per Capita Total Beef Consumption (lbs.) within Three Market Areas			
Year	100 Miles	200 Miles	300 Miles
2010	40,177,680	298,071,200	703,902,080
2020	41,434,960	331,982,240	791,684,160
2025	41,942,800	340,901,760	817,231,120

Grass Fed

In a recent Forbes article⁵ they referenced an industry study that found grass-fed beef demand in several major US metropolitan markets estimated to be between 3 and 6 percent of the total beef market share.

⁵ The Grass-Fed Beef Supply Chain, Steven Banker. <https://www.forbes.com/sites/stevebanker/2016/01/29/the-grass-fed-beef-supply-chain/#50c6e02448e5>

Table 3. Annual Per Capita Grass Fed Beef Consumption (lbs.) within Three Market Areas			
Year	100 Miles	200 Miles	300 Miles
2010	1,807,996	13,413,204	31,675,594
2020	1,864,573	14,939,201	35,625,787
20235	1,887,426	15,340,579	36,775,400

The market potential for grass-fed beef in the 100-mile area radius is nearly 1.8 million pounds annually by 2023 using the average grass-fed beef demand of 4.5% of total meat consumption. This figure grows to 15.3 million pounds at 200 miles and 36.8million pounds at 300 miles.

Branded Beef Production versus Consumption

USDA suggests that a half carcass for cattle is approximately 300 pounds. This figure will allow a production estimate of the potential beef that could be involved in the proposed West End project.

Table 4. Beef Production in Pounds at 5,000 Head		
Whole Carcass weight	Number of Head	Total Pounds
600	5000	3,000,000

Looking ahead to 2023 it is possible to compare the West End production with consumption for grass fed beef.

Table 5. Estimated Grass fed Beef Consumption in 2023 in Pounds		
Miles	Total Beef	Percent Grass Fed
100	703,902,080	316,755,936
200	791,684,160	356,257,872
300	817,231,120	367,754,004

Business Surveys

A phone survey of local business that potentially purchase meat was conducted to estimate current and potential demand of local meat. A list of 74 business, which primarily consisted of restaurants, but also included some hotels and grocers, was constructed with the help of community members as well as internet research to attempt to construct an inclusive list of West End businesses.

Survey collection began May 1, 2020 and concluded on August 3, 2020. The survey extended over a significant period of time due to the COVID-19 pandemic. Because of the pandemic, many businesses appeared to be closed and were unable to be reached, even as multiple attempts were made over the course of the summer. A total of 12 businesses were reached over this period

of time, with eight respondents completing 100 percent of the survey. The remaining four respondents finished a portion of the survey and their responses are also included in the analysis.

Respondents were first asked who their current meat supplier is, and responses were incredibly varied. Listed meat suppliers included Callaway, US Foods, Coleman, Kinikin, Gravy Brothers, Taylor Quality Meats, Shamrock, Laid Back Ranch, Vicky's, Farm Runners, Mavrick Ranch, and Cisco. Shamrock and Cisco were the only suppliers appearing in multiple responses, with two tallies for Shamrock, and four tallies for Cisco. One respondent indicated that they do not purchase meat, so their survey was terminated after this question.

Next, respondents were asked whether they would be interested in purchasing meat produced in the West End region (west Montrose, Ouray, and San Miguel Counties). Seven respondents indicated they would be interested in purchasing local meat, with an additional three respondents indicating they may be interested. Only one respondent indicated they would not be interested.

Moving to the next question, responses dropped down to the final eight respondents who completed the survey. Six of these eight indicated they would be willing to pay a price premium for local meat, while one indicated they may be willing to pay a price premium, and one individual indicated they would not be willing.

Respondents were then asked to rank their preference between serving local, grass-fed, or organic meat. Seven of the eight respondents indicated they would prefer to serve local meat over grass-fed or organic, with grass-fed receiving the remaining first place vote. The second place spot between grass-fed and organic was closer, with grass-fed receiving five tallies, and organic receiving two.

To measure the concern of consistency in the taste and quality of local and grass-fed beef, respondents were asked whether they, or their patrons, had their concern with local, grass-fed, or both types of meat. Five respondents indicated that they had concern over the consistency of taste and quality of both local and grass-fed beef, while two indicated they have concerns for only grass-fed, and one indicated they have no concerns.

Regarding the consistency in availability of local meat, six respondents indicated that they would still be willing to purchase local meat when it is available, even if it is not consistent. The remaining two respondents indicated they would not be willing to purchase local meat if it was not consistently available.

Moving on to preferences between purchasing fresh and frozen meats, four respondents indicate they do have a preference between fresh and frozen, and an additional four indicated they did not have a preference. Those that indicated they do have a preference indicated which they prefer. Two indicated they prefer fresh, while one respondent indicated it depends on the cost as to which they prefer. One respondent did not respond to the question. In the final question regarding fresh or frozen preferences, respondents were asked whether they would be willing to

purchase frozen meat if it was produced locally. Only two of the eight respondents indicated they would be willing to purchase froze if it was produced locally.

Finally, respondents were asked about their purchasing habits for beef, chicken, sheep/goats, pork, and wild game. Raw response data is displayed in each table below. It should be noted that some respondents refused to give price data for their purchasing and that some purchasing quantities appear to be much larger than is reasonable. This could be due to individuals responding on a yearly purchasing basis as opposed to the weekly basis that was asked of them.

Table 6. Meat Purchasing Habits of Respondents		
Beef		
Cuts of Beef Most Commonly Purchased Each Week	Average Pounds Purchased per Week	Price Paid per Pound for Each Cut
Ground Beef	80 lbs	3.62
Ribeye, Bison	30 lbs each	
Ground Beef, Round, Rib,	8000	
Steak, Ground Beef	10 lbs	
Ground, Sausage, Ribeye,	10 lbs	4.00
Ground Chuck	30 lbs	6.00
Steak, Beef		
New York, Flank, Skirt		35 lbs
Chicken		
Cuts of Chicken Most Commonly Purchased Each Week	Average Pounds Purchased per Week	Price Paid per Pound for Each Cut
Breast	5000 lbs	
Breast	5000 lbs	1.56
Breast, Thigh	80 lbs	
All Cuts	10 lbs	
All Cuts		
Breast, Whole Chicken	30 lbs	
Pork		
Cuts of Pork Most Commonly Purchased Each Week	Average Pounds Purchased per Week	Price Paid per Pound for Each Cut
	8 lbs	
Farm Raised		
	10 lbs	
Loin and Tenderloin	20 lbs	
Sheep/Goat		
Cuts of Sheep/Goat Most Commonly Purchased Each Week	Average Pounds Purchased per Week	Price Paid per Pound for Each Cut
Whole Lamb, Local		8.00
Wild Game		
Cuts of Wild Game Most Commonly Purchased Each Week	Average Pounds Purchased per Week	Price Paid per Pound for Each Cut
Elk	10 lbs	

Business Survey Summary

While the response numbers were lower in regard to the population for this survey, if it is representative of the population it indicates that there is interest in purchasing locally grown meats amongst West End businesses. Seven respondents indicated they would be interested in purchasing meat, with an additional three indicated they may be interested. Only one respondent indicated they would not be interested. Additionally, when given the option between serving locally-grown, organic, or grass-fed, seven of the eight respondents indicated they would be interested in serving locally-grown as opposed to either organic or grass-fed. Respondents did seem, however, to prefer fresh meat over frozen.

Producer Surveys

Four producer surveys were conducted through an online survey tool. These four surveys targeted beef producers, hog producers, sheep and goat producers, and wild game hunters. The surveys were published February 21, 2020 and closed on August 20, 2020. The goal of the surveys were to estimate the amount of product that has the potential to be processed locally, as well as the interest producers and hunters have in sending their meat to either a new or updated meat processing facility in the region.

Beef Survey Results

Over the course of the survey, 69 individuals opened the survey link, with 38 individuals completing 100 percent of the survey. An additional three respondents partially completed the survey with reportable responses. Many of the survey questions allowed for multiple responses, which is why some questions may appear to have more responses than number of total completed responses.

Regarding operation type, respondents were asked to indicate which option best describes their operation. Response choices included cow/calf, back-grounding feeder calves, finishing, feedlot, and other. The majority of producers (39 responses) indicate that they are a cow/calf operation, with finishing cattle coming in at a distant second (nine responses). “Other” responses included “backyard cattle raising”, “breeding seed stock”, “direct to consumer”, “4H”, and “two calves”.

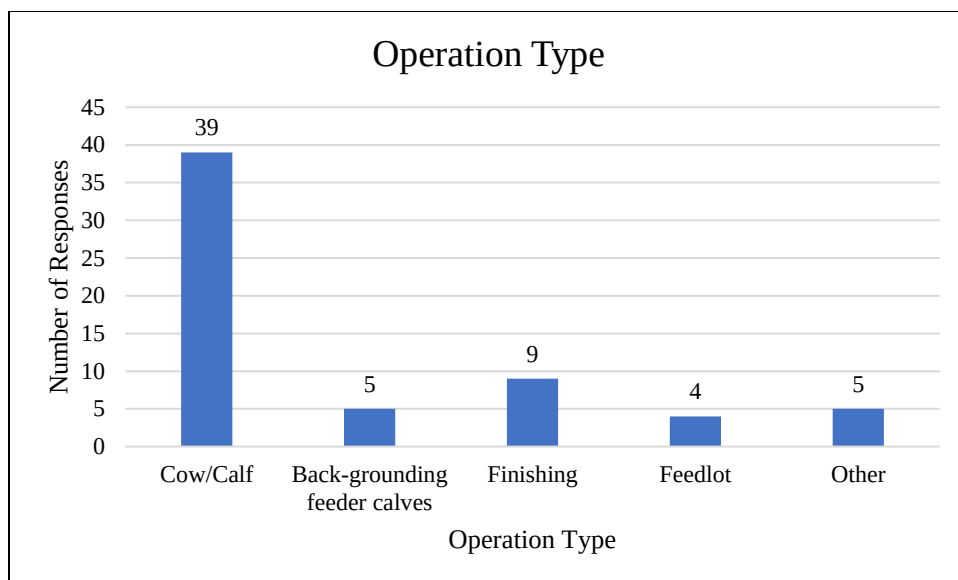


Figure 11. Operation Type

Next, respondents were asked to describe their beef production method. Response choices included conventional, USDA certified organic, natural (no antibiotics, no hormones, etc.), pasture-raised, grass-fed, and other. Responses were fairly even distributed between conventional, natural, pasture-raised, and grass-fed, with conventional, natural, and pasture-raised each receiving 21 responses, and grass-fed receiving 19. “Other” responses included “small scale”, “USDA Triangle Stamp”, “grain-fed”, and “natural could be easily achieved with additional record keeping”.

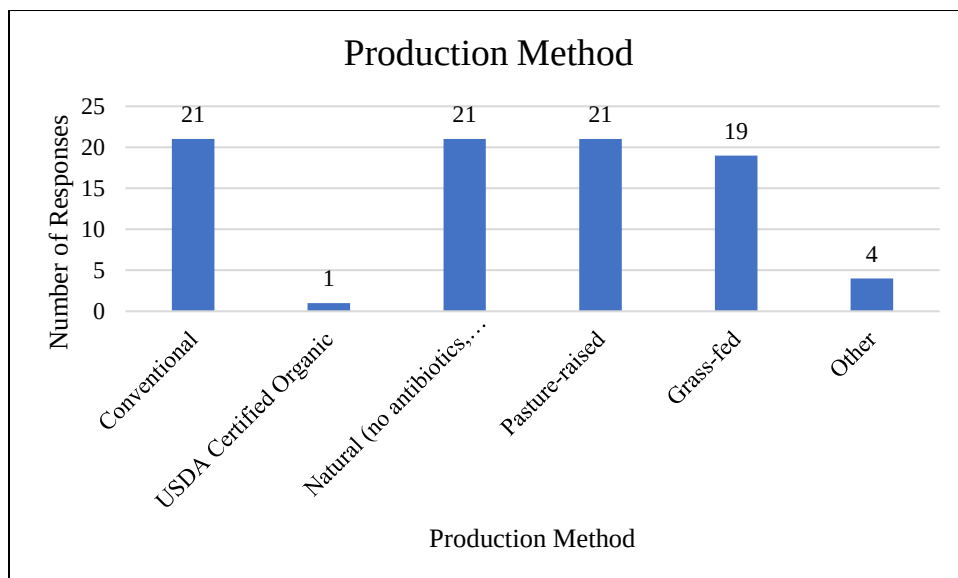


Figure 12. Production Method

To determine average size of herd, respondents were asked to indicate the average number of head they raise in cow/calf pairs, feeder calves, finished cattle, and bulls. The following table

illustrates descriptive statistics from this question and the large difference between the mean and median likely indicates that there are a much higher number of smaller operations, but the significantly larger operations cause the mean values to skew larger. The average number of finished cattle is 6.1, with the mode of the dataset being 2.0. Out of the 41 respondents, the sum of all finished cattle is 249.

Table 7. Average Number of Cattle Raised Each Year								
Cattle Type	Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max	Sum
Cow/Calf Pairs	156.2	45.0	20.0	0.0	12.5	97.5	1400.0	6402.5
Feeder Calves	70.2	2.0	0.0	0.0	0.0	37.5	1200.0	2880.0
Finished Cattle	6.1	2.0	0.0	0.0	0.0	8.0	50.0	249.0
Bulls	6.4	1.0	0.0	0.0	0.0	3.5	70.0	261.5

The following question asked respondents to indicate the number of cattle they anticipate finishing from 2020 to 2025. Similar to the previous table, the median and mean show some differences indicating that more operations are smaller. The following chart illustrates the mean, median, and sum of the data for the 41 respondents over the course of the six years. The sum of finished cattle is 293, slightly above that indicated in the previous question. It can also be seen that the number of cattle individuals anticipate finishing increased each year and results in a value of 435 in the final estimated year.

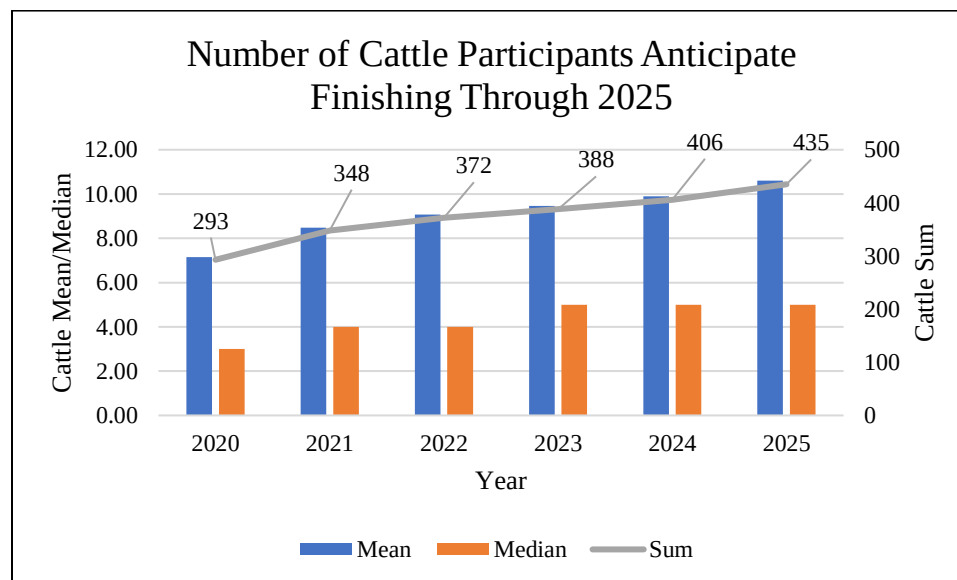


Figure 13. Number of Cattle Participants Anticipate Finishing Through 2025

The next question sought to determine the percent of the operation's farm income that came from the sale of beef cattle. This figure seems to reinforce the idea that there are a significant number of small, hobby farmers, in addition to the larger operations that receive a significant portion of their income from the sale of beef.

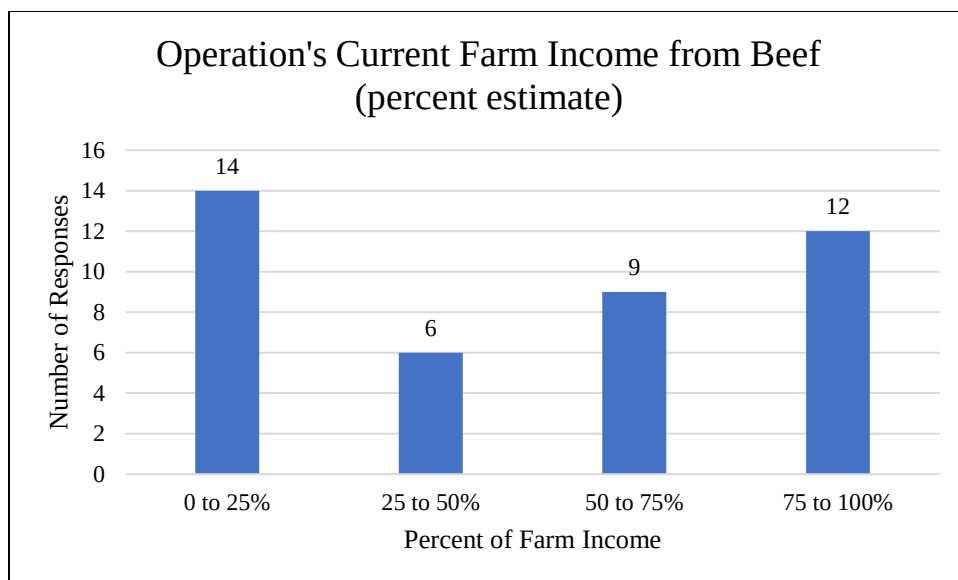


Figure 14. Operation's Current Farm Income from Beef

This idea may be again reinforced by the number of acres the respondents currently have in farmland. While the mean of the data set was nearly 1,200 acres, the median drops to 250 acres.

Table 8. Number of Acres in Farmland						
Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
1196.4	250	80	5.4	88	1350	8500

Further, the number of acres that respondents have in pasture is described by the statistics illustrated in the following table.

Table 9. Number of Acres in Pasture						
Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
1023.961	150	150	5.4	60	750	8500

Moving back to the slaughter of cattle, the majority of respondents (29 responses) indicated that they raise cattle for slaughter.

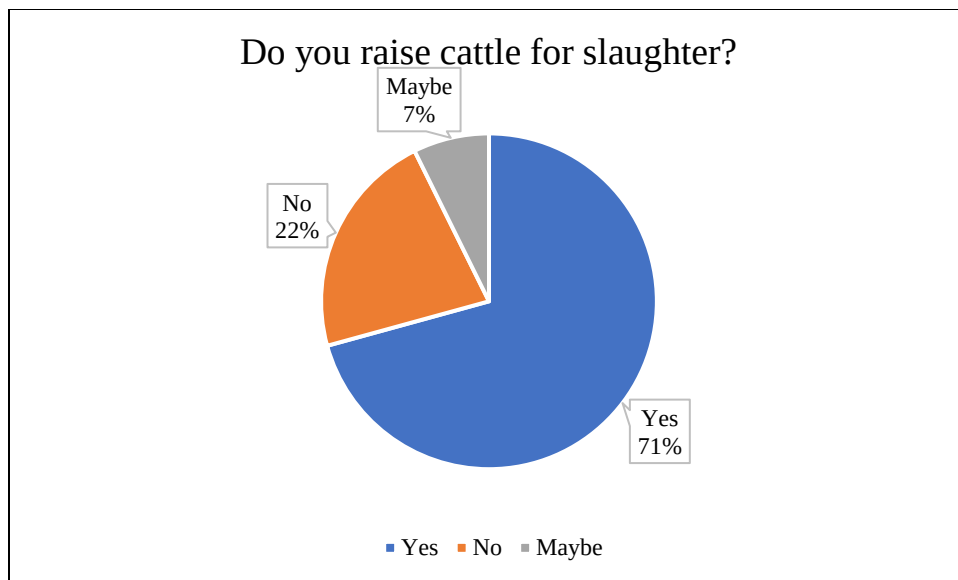


Figure 15. Do you raise cattle for slaughter?

However, the mean and median again differ fairly significantly when those that do raise cattle for slaughter were asked how many are slaughtered in a typical year.

Table 10. Number of Cattle Slaughtered in a Typical Year						
Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
31.34375	5	2	1	2	11.5	750

Most respondents also indicated that their cattle weight between 1,200 and 1,399 pounds at slaughter.

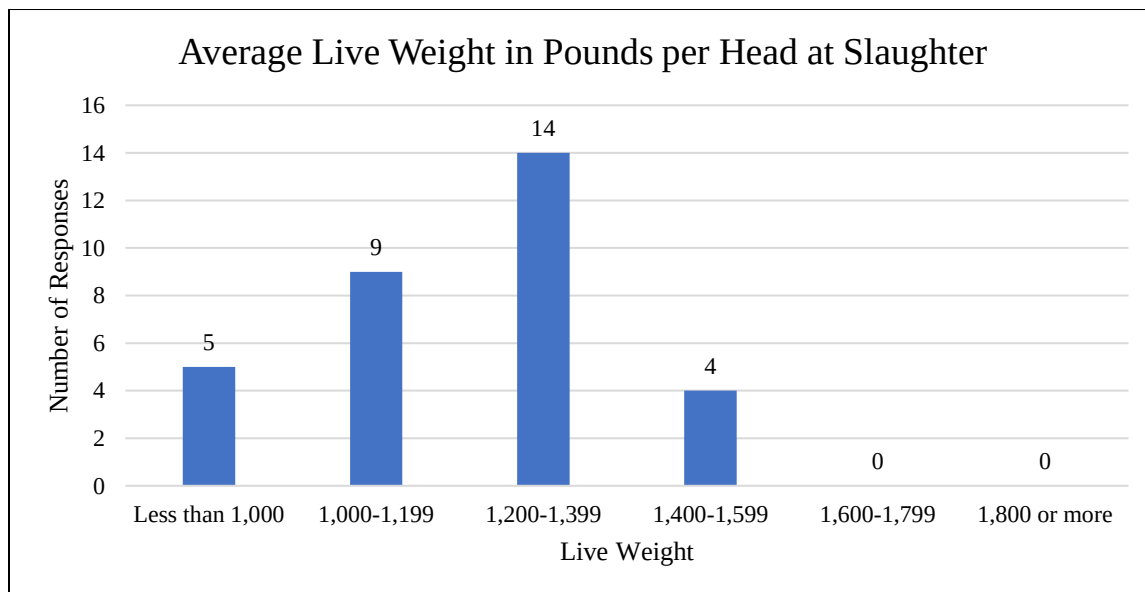


Figure 16. Average Live Weight in Pounds per Head at Slaughter

Respondents were then given the opportunity to indicate where they currently have their cattle slaughtered and processed. Respondents were allowed to enter their own answer as opposed to selecting from a pre-determined list. Homestead Meats and Kinikin were the two most popular facilities, with each receiving 12 responses.

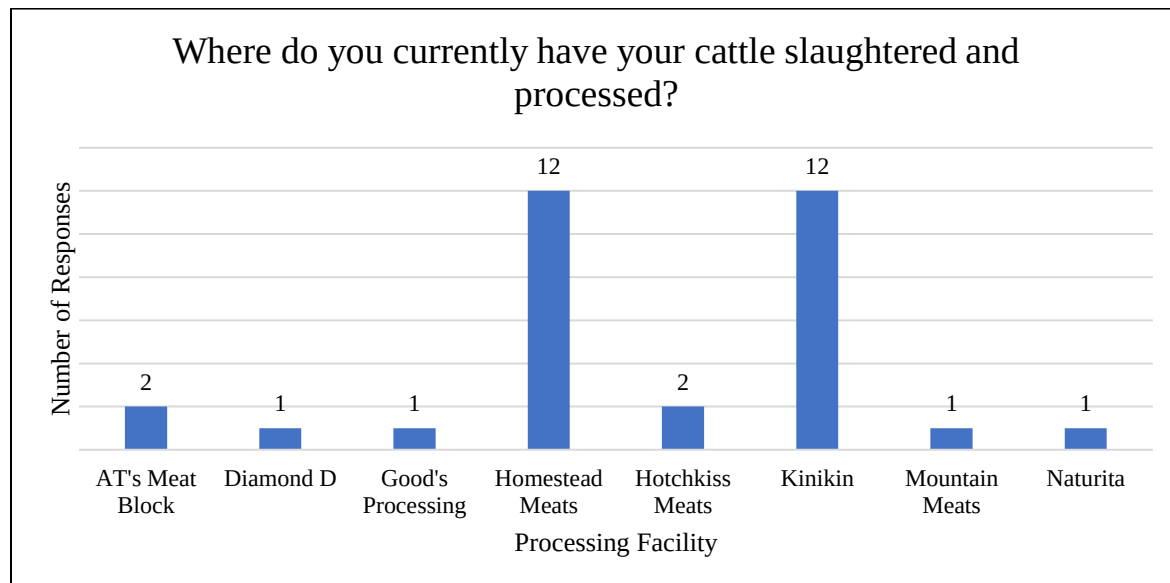


Figure 17. Where do you currently have your cattle slaughtered and processed?

Respondents are driving an average of 73 one-way miles to take their cattle to slaughter, with a median of 80 miles, indicating that range is a fairly accurate depiction of actual miles traveled.

Table 11. Please indicate the distance in one-way miles that you currently travel to take your cattle to slaughter.						
Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
72.75	80	100	2	51	100	150

Regarding the sale of finished meat, respondents were asked where they currently sell their finished meat. Response choices included processing plant, direct retail, farmers market, on-farm store, wholesaler/distributor, restaurants, institutions, other, and I do not sell finished meat. 23 respondents indicated that they do not sell finished meat, while 13 indicated they sell direct retail, and nine selecting the “other” category. The low selection values for some other categories may indicate a market opportunity for meat sales in different arenas. Responses included in the “other” category included “family”, “online through website”, “friends”, “distributors”, “keep for food”, “1/2 and wholes”, “friends and family”, “CSA program & fresh food hub”, and “family”.

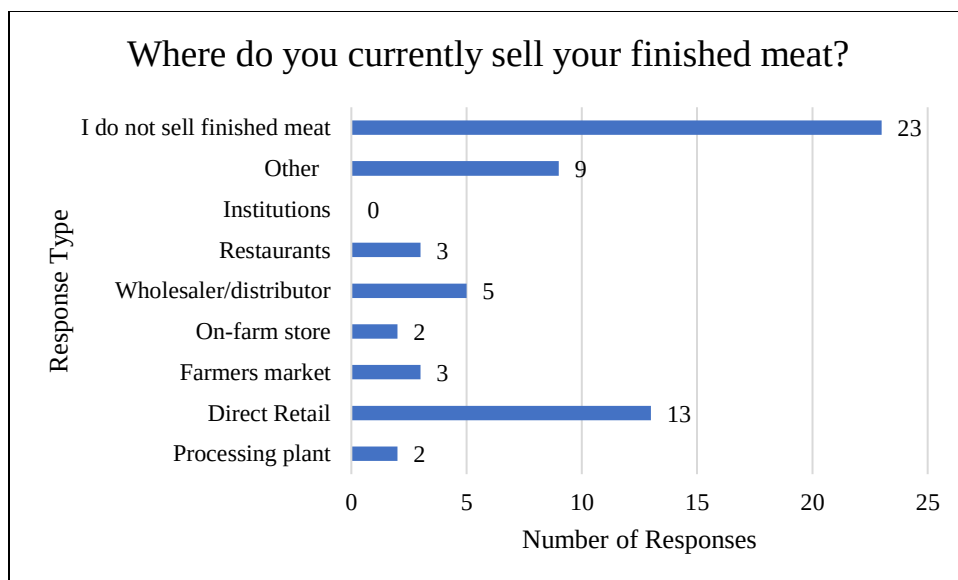


Figure 18. Where do you currently sell you finished meat?

Next, respondents were asked what characteristics they use to market their product. Response choices included USDA certified organic, grass-fed, specialty breed, local, other, and none of the above. The two most popular choice were grass-fed and local, with 14 and 13 responses respectively. “Other” responses included “humanely raised”, “healthiest meat, unique best flavor, yaks”, and “grain fed”.

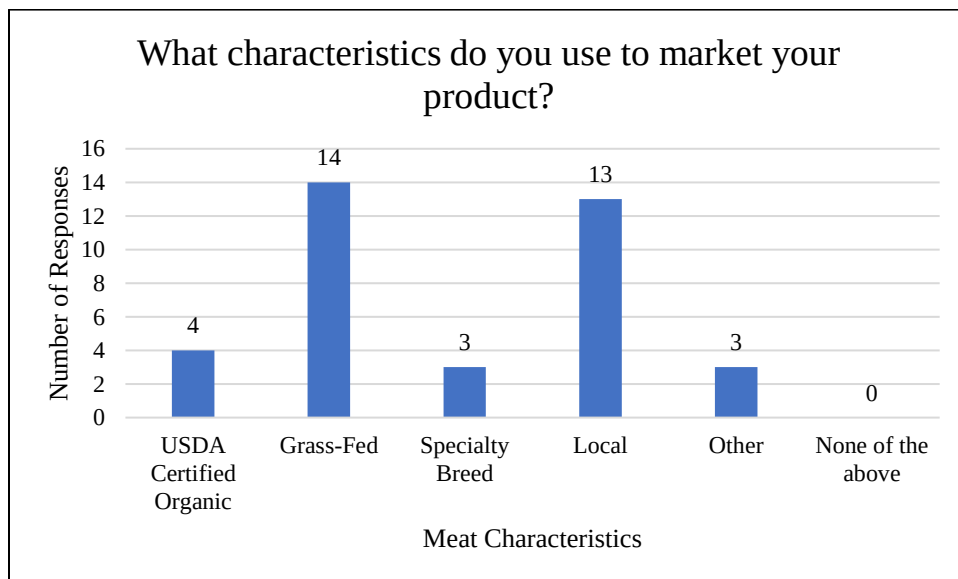


Figure 19. What characteristics do you use to market your product?

Moving to the expansion of a current meat processing facility in the region, respondents were asked whether the expansion of a current meat processing facility would influence their decision to begin finishing their cattle. Response choices included yes, maybe, no, and I already finish my own cattle. While the majority indicated that they already finish their own cattle, 17 percent

indicated this would influence their decision, and another 25 percent selected “maybe”, indicating that the expansion may influence their decision.

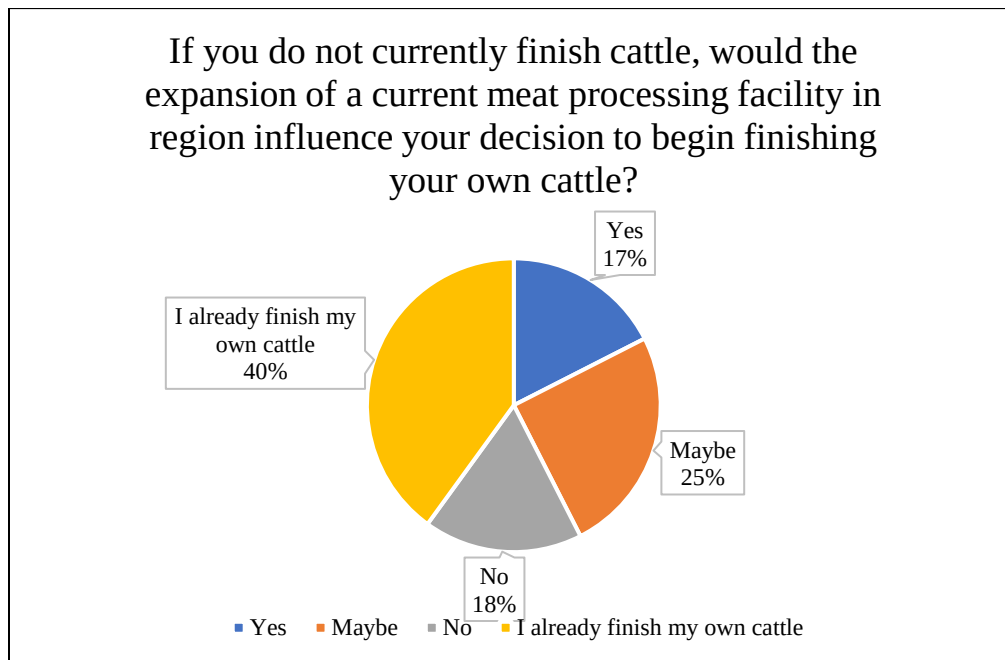


Figure 20. If you do not currently finish cattle, would the expansion of a current meat processing facility in region influence your decision to begin finishing your own cattle?

Regarding the issue of expansion of a current facility, or the construction of a new facility, respondents were asked whether they felt that a new facility would be necessary if a current facility in the region had their capacity expanded. Responses were fairly mixed to this question, with 12 indicating that yes, a new facility would still be necessary, ten indicating they were unsure, and eight indicating they think a new facility would not need to be constructed if a current facility was expanded.

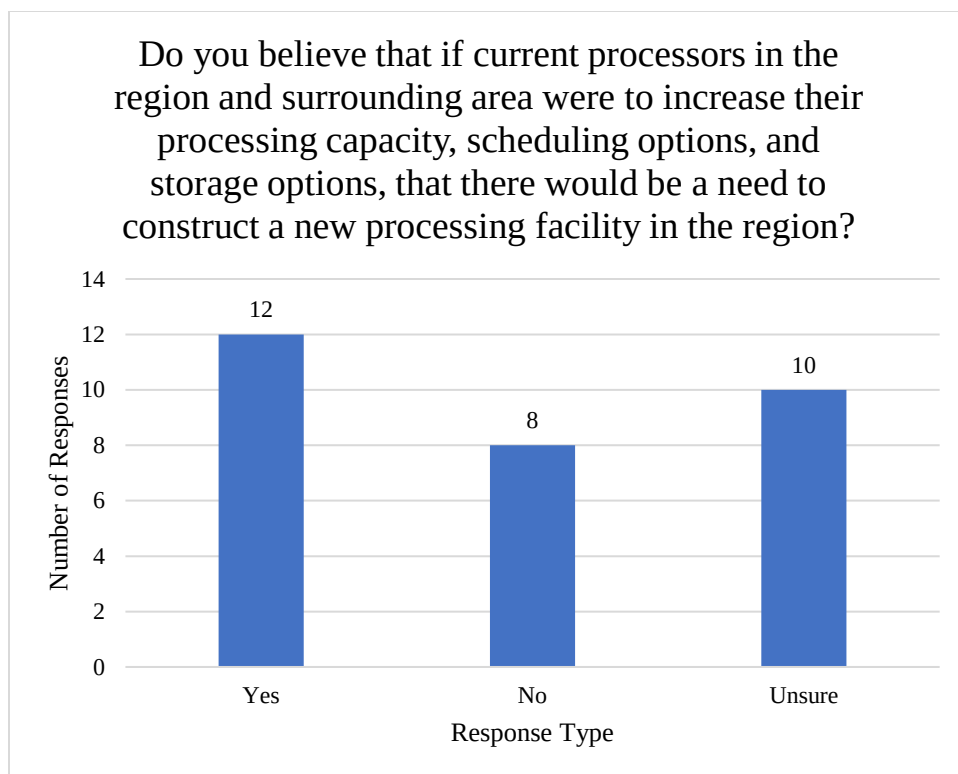


Figure 21. Do you believe that if current processors in the region and surrounding area were to increase their processing capacity, scheduling options, and storage options, that there would be a need to construct a new processing facility in the region?

AT's Meat Block was asked to be included in the survey of producers to determine respondent interest in the facility becoming USDA certified. As with the last question, responses were mixed, with 13 respondents indicating that the facility would need to be USDA certified to send their cattle there for processing and 11 indicating that the facility would not need to be USDA certified.

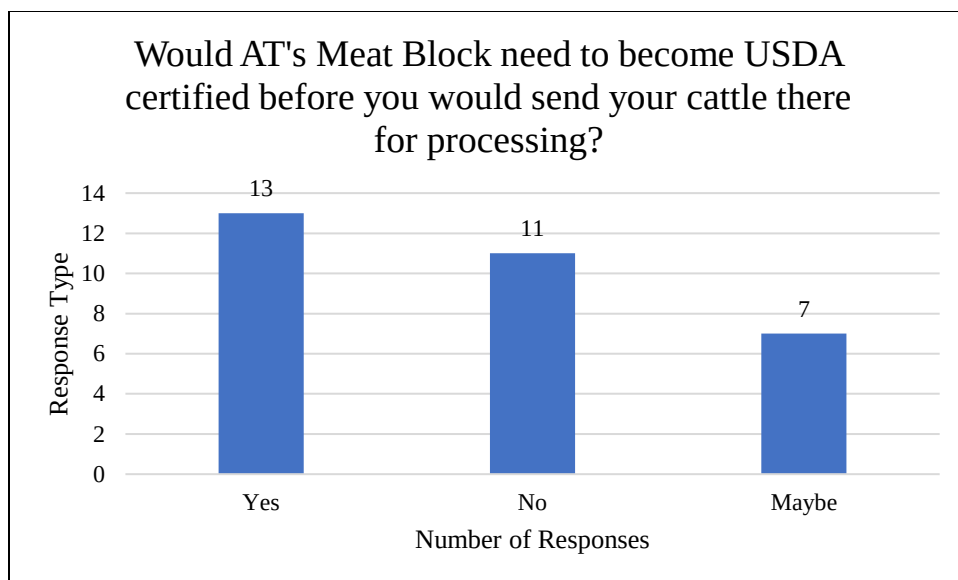


Figure 22. Would AT's Meat Block need to become USDA certified before you would send your cattle there for processing?

To determine which of the current facilities would be most beneficial to producers if it were to be expanded, respondents were given a list and asked to select which would benefit their operation the most if it were to increase its processing and storage capacities. The list of processing facilities included Homestead Meats, Kinikin Processing, Mountain Meat, Blue Mountain Meats, Sunnyside Meats, AT's Meat Block, none of the above, and unsure. Kinikin Processing received the most responses with 14, with AT's Meat Block coming in second with ten responses.

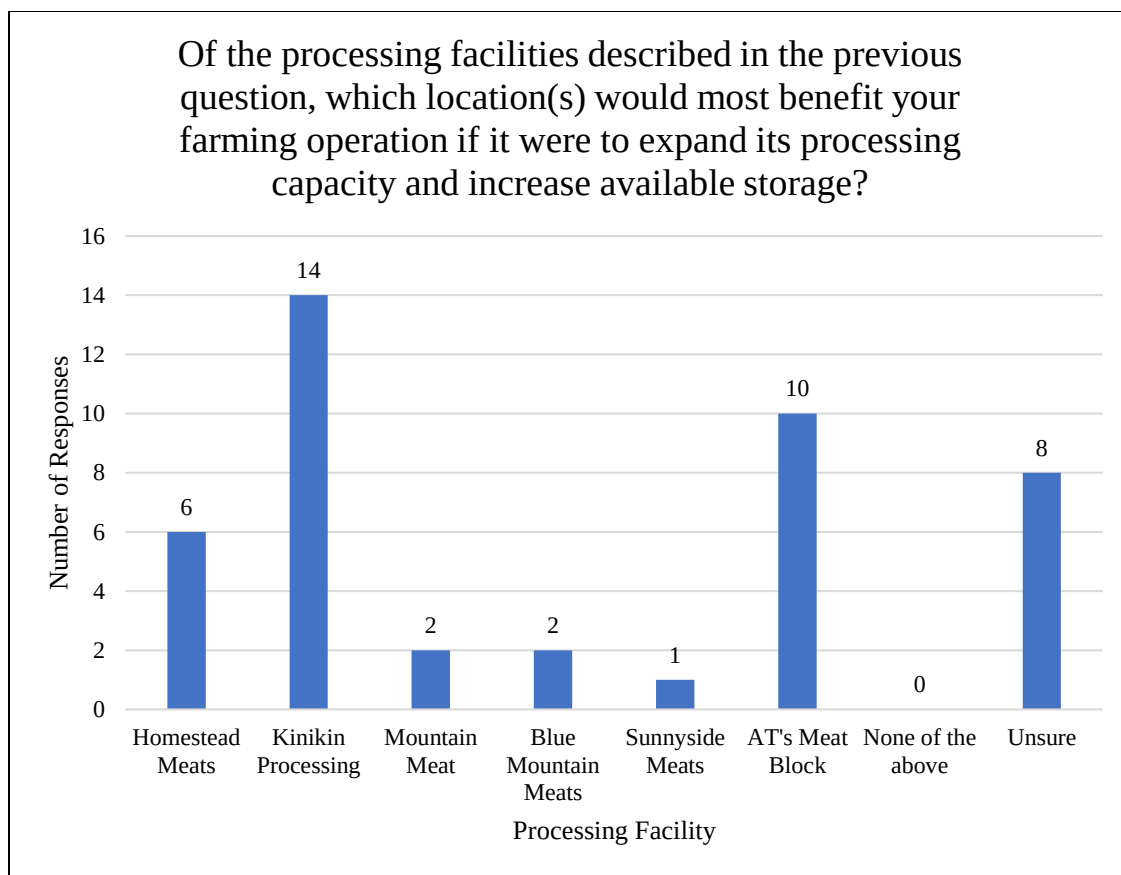


Figure 23. Of the processing facilities described in the previous question, which location(s) would most benefit your farming operation if it were to expand its processing capacity and increase available storage?

To determine whether there may be an effect on cattle production resulting from the expansion of a current processing facility, respondents were asked how many cattle they anticipate finishing from 2020 to 2025 if a current facility was expanded. The following table illustrates the mean, median, and sum number of finished cattle. When this question was asked previously under the assumption that all things remain constant, the sum of finished cattle ranged from 293 in 2020 to 435 in 2025. With the expansion of a current facility, this range increases to 387 in 2020 to 557 in 2025. This illustrates a roughly 30 percent increase in estimated production over the course of the six years if a current facility was expanded.

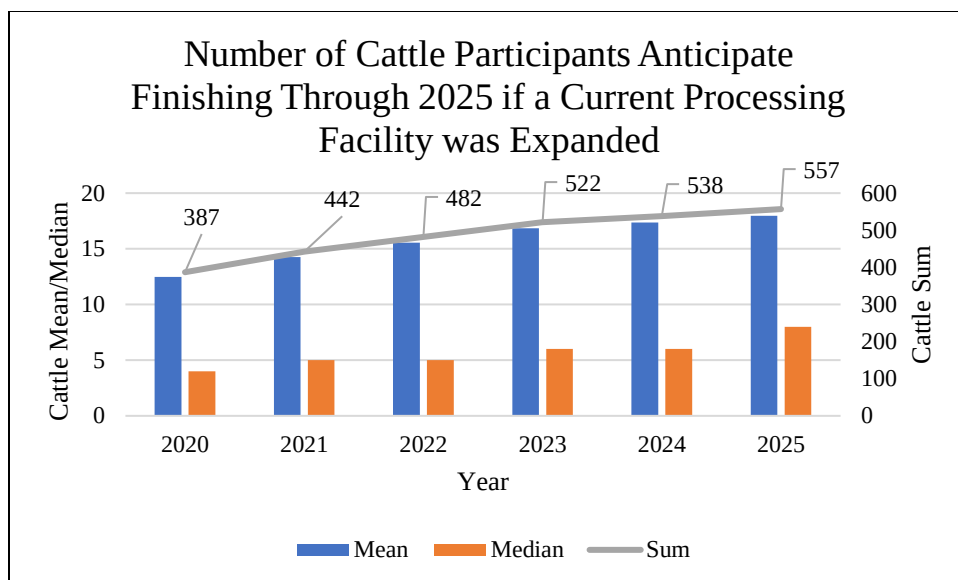


Figure 24. Number of Cattle Participants Anticipate Finishing Through 2025 if a Current Processing Facility was Expanded

Moving on to the construction of a new facility, respondents were asked whether they would be interested in sending cattle to a new USDA inspected slaughter/processing facility. 19 respondents indicated they would be interested, with an additional 14 indicating they may be interested.

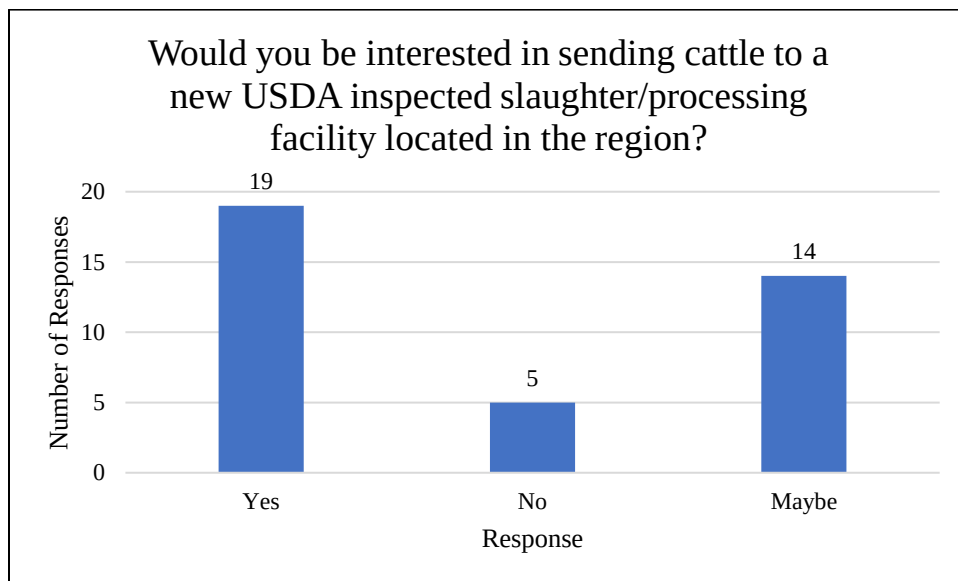


Figure 25. Would you be interested in sending cattle to a new USDA inspected slaughter/processing facility located in the region?

To help determine the optimal location for a new facility, respondents were asked to select the potential location that would most benefit them. Response choices included west Montrose County, San Miguel County, Ouray County, not sure, and none of these locations would benefit

me. West Montrose County and San Miguel County were overwhelming more popular than Ouray County with 12 and 15 responses, respectively.

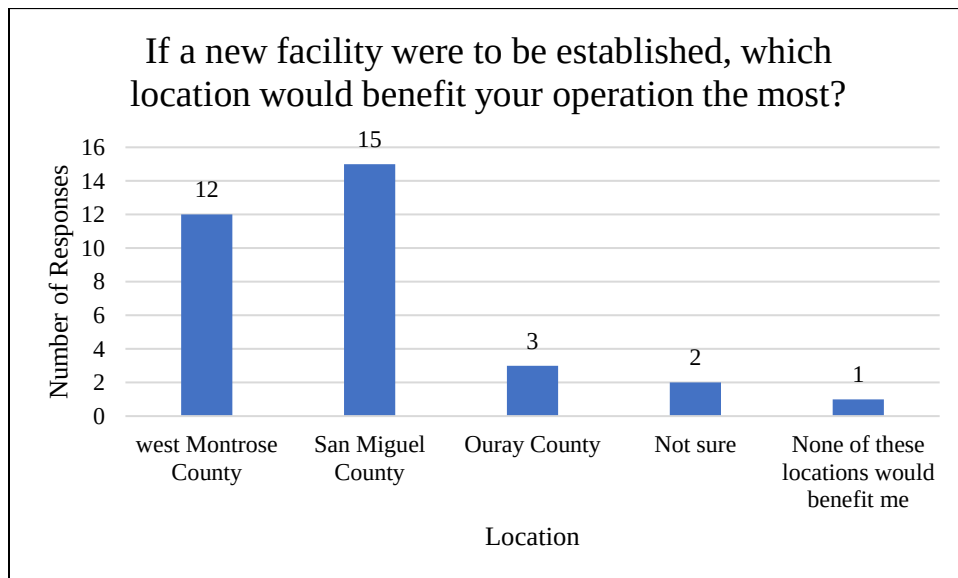


Figure 26. If a new facility were to be established, which location would benefit your operation the most?

When asked whether the construction of a new meat processing facility would influence their decision to begin finishing cattle, the responses followed a similar trend to when this question was asked of expanding a current facility. While 18 percent do indicate that this would influence their decision, this is only a one percent increase compared to when the question was asked previously. This indicates that there does not seem to be a preference between a new or expanded facility when it comes to the decision of whether or not to finish cattle. However, there may be differences when it comes to the number of cattle being finished.

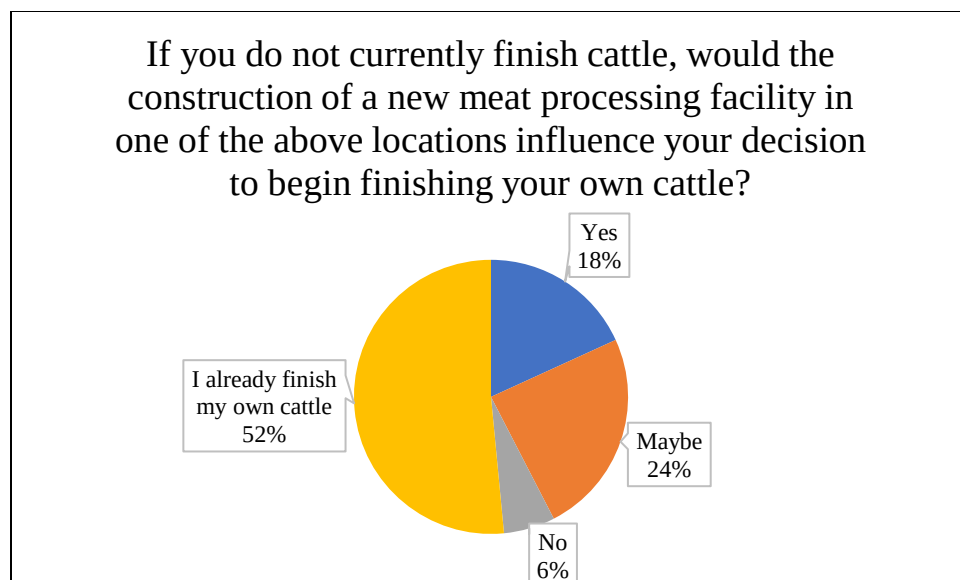


Figure 27. If you do not currently finish cattle, would the construction of a new meat processing facility in one of the above locations influence your decision to begin finishing your own cattle?

Interestingly, when asked to indicate the total number of head they would finish between 2020 and 2025 if a new facility was constructed in the region, the sums in 2020 and 2025 are slightly lower than when asked the same questions regarding an expansion of a current facility. In the previous question, these sums were 387 and 557, respectively. With the construction of a new facility, these numbers slightly decrease to 336 for 2020 and 539 in 2025. However, this is still a 15 percent and 24 percent increase, respectively compared to the same two years in the original question where it was assumed all things remained the same. A conclusion can be drawn that producers may be willing to increase the number of cattle they finish if there are improved facilities for them to send their cattle to.

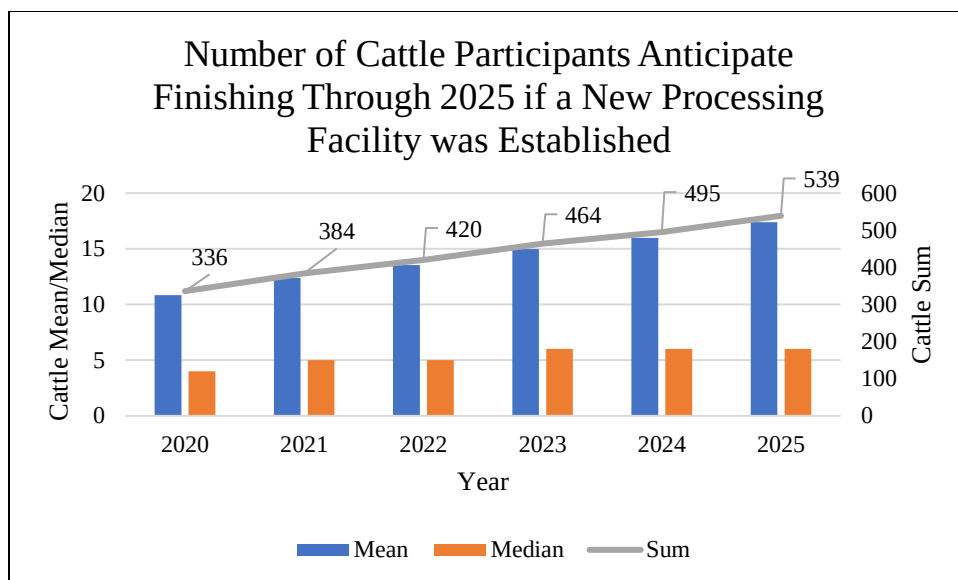


Figure 28. Number of Cattle Participants Anticipate Finishing Through 2025 if a New Processing Facility was Established

Producers were then asked what qualities a new facility would need to have for them to choose to bring their beef there. Response choices included better scheduling options, better communication, better prices, more storage, larger processing capacity, delivery, closer to my farm/ranch, none of the above; I would take my beef to the new facility regardless of these factors, none of the above; I would NOT take my beef to the new facility regardless of these factors, and other. The most popular response choices were closer to my farm/ranch, better prices, and better scheduling options, with 21, 19, and 15 responses respectively. “Other” responses included “allow for hanging 21 days of my meat”, “a small facility where my animals are not standing around”, “honesty and responsibility, customer service”, “quality”, better quality than AT’s”, “need a feedlot”.

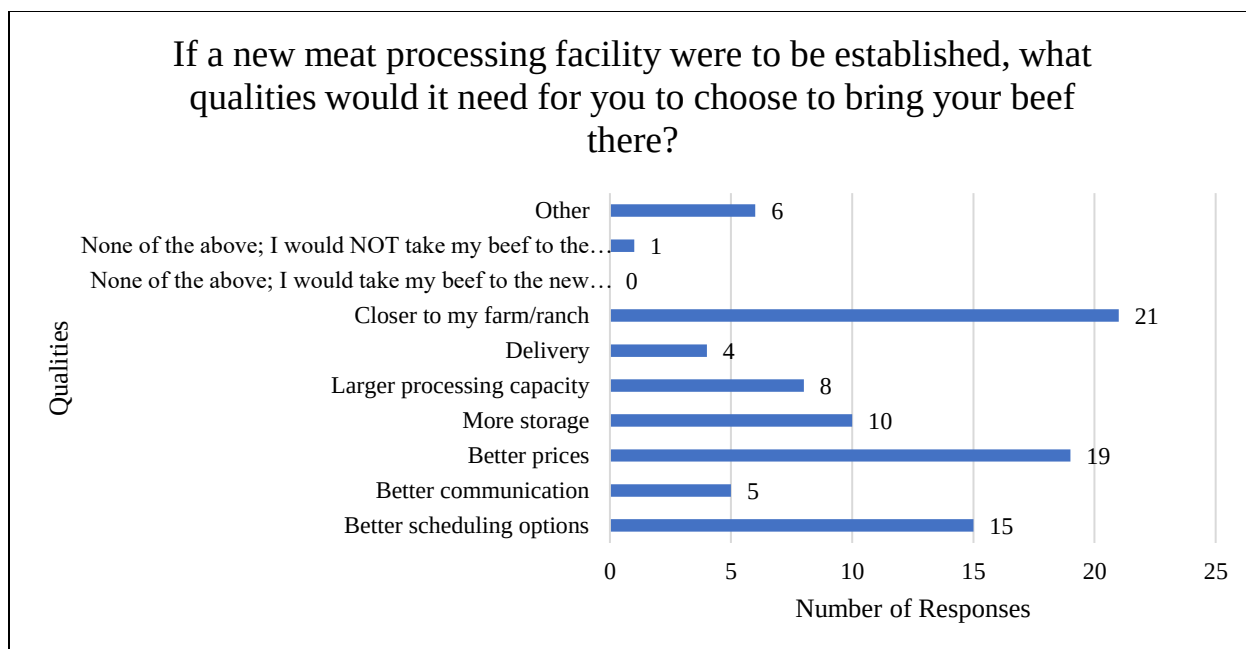


Figure 29. If a new meat processing facility were to be established, what qualities would it need for you to choose to bring your beef there?

Respondents were then asked what type of processing they would like available to them. Response choices included slaughter only, primal cuts, retail cuts, value-added (smoking, aging, etc.), halal, kosher, USDA organic, and other. The most popular response was retail cuts with 25 responses, with primal cuts and value-added each garnering 15 and 14 responses, respectively.

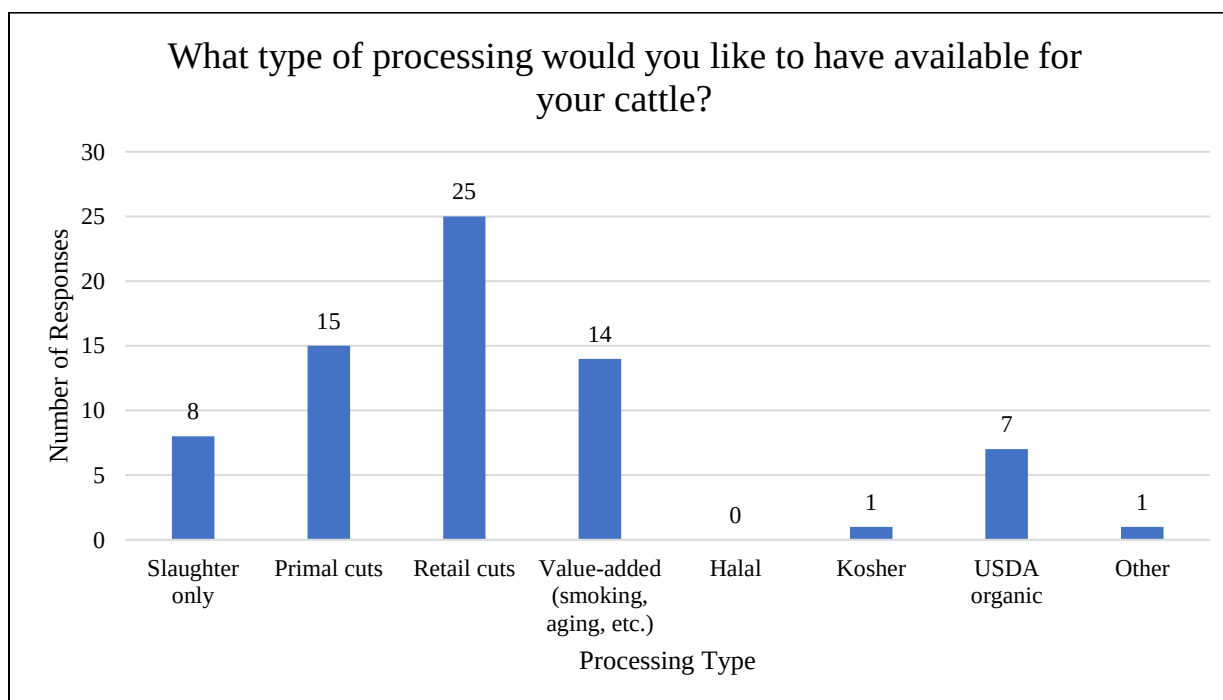


Figure 30. What type of processing would you like to have available for your cattle?

When asked whether they would be willing to pay a price premium to have their cattle slaughtered/process at a new facility, the majority of respondents indicated they may be willing to pay a price premium, but a large proportion also indicated they would not be willing to pay a price premium.

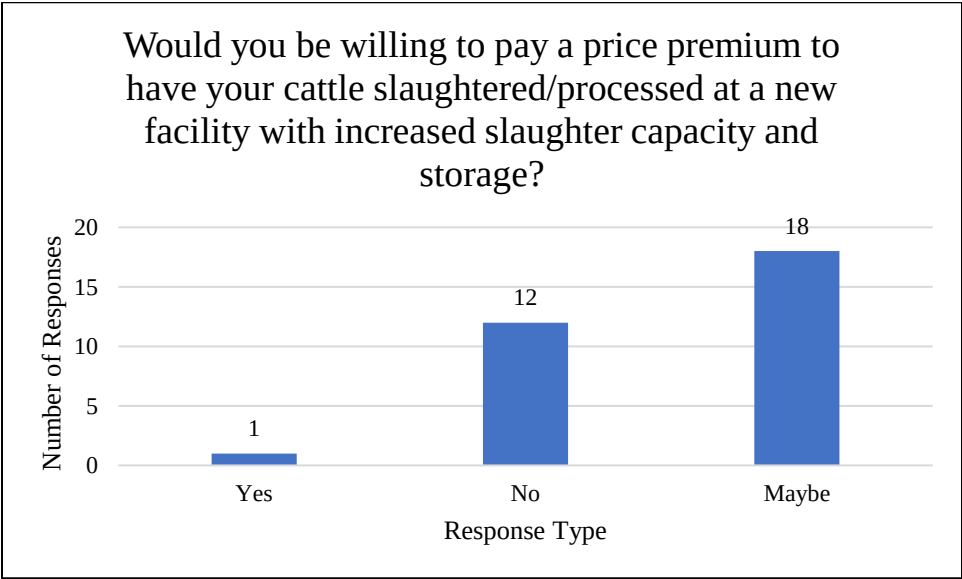


Figure 31. Would you be willing to pay a price premium to have your cattle slaughtered/processed at a new facility with increased slaughter capacity and storage?

However, respondents indicated they would be willing to travel approximately 90 to 100 one-way miles to have their cattle processed, which is an increase from the 73 to 80 they currently travel.

Table 12. What is the maximum distance (one-way) you are willing to travel to have your cattle processed?						
Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
90	100	100	20	80	100	200

Time of slaughter is also an important factor when it comes to scheduling. When asked what time of year respondents intend to slaughter their cattle, responses were fairly evenly distributed, with winter being the least popular time of year.



Figure 32. When do you anticipate having your cattle slaughtered?

Regarding branding of the product, respondents were asked whether they would be interested in selling their meat to the facility as part of a brand. Brand choices presented to the respondents included “Colorado Branded Beef”, grass-fed beef, and USDA certified organic beef. The most popular branding option was Colorado Branded Beef, with USDA certified organic being the least popular option.

If a processing facility were to develop and market a brand of locally raised meat, such as "Colorado Branded Beef", would you be interested in selling your meat (specific cuts or whole animals) to the facility?

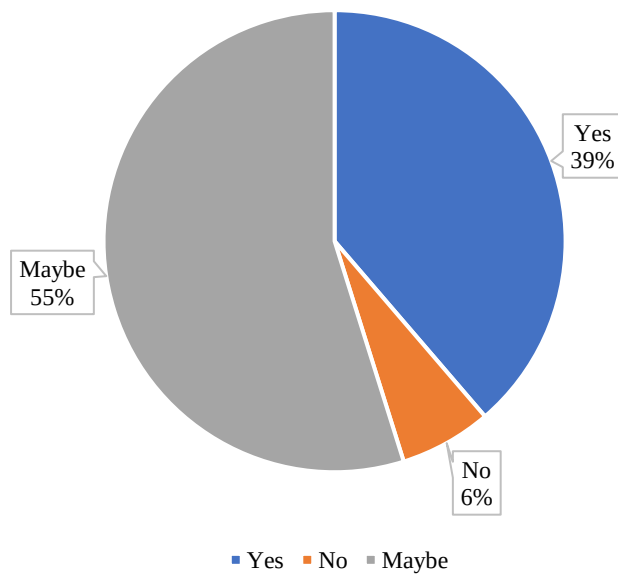


Figure 33. If a processing facility were to develop and market a brand of locally raised meat, such as "Colorado Branded Beef", would you be interested in selling your meat (specific cuts or whole animals) to the facility?

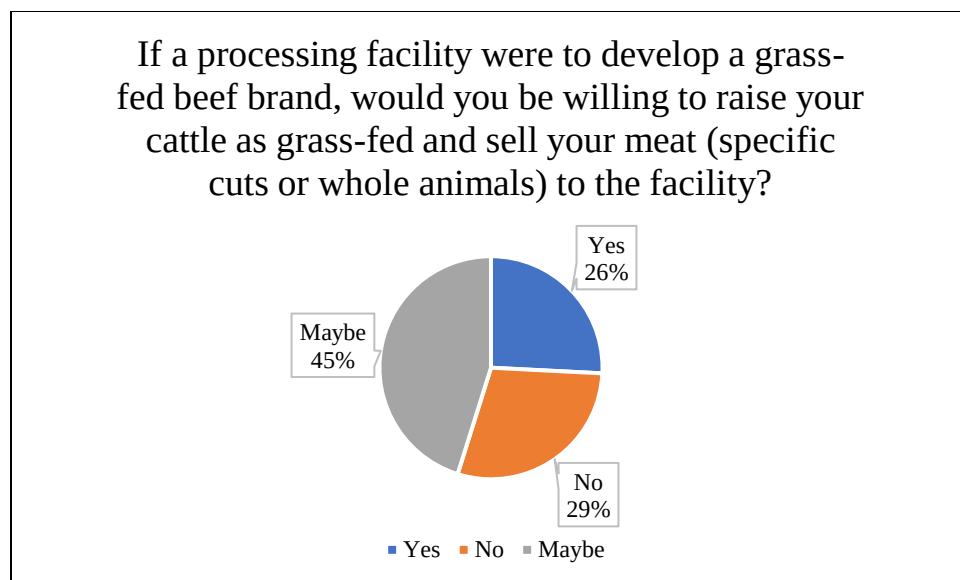


Figure 34. If a processing facility were to develop a grass-fed beef brand, would you be willing to raise your cattle as grass-fed and sell your meat (specific cuts or whole animals) to the facility?

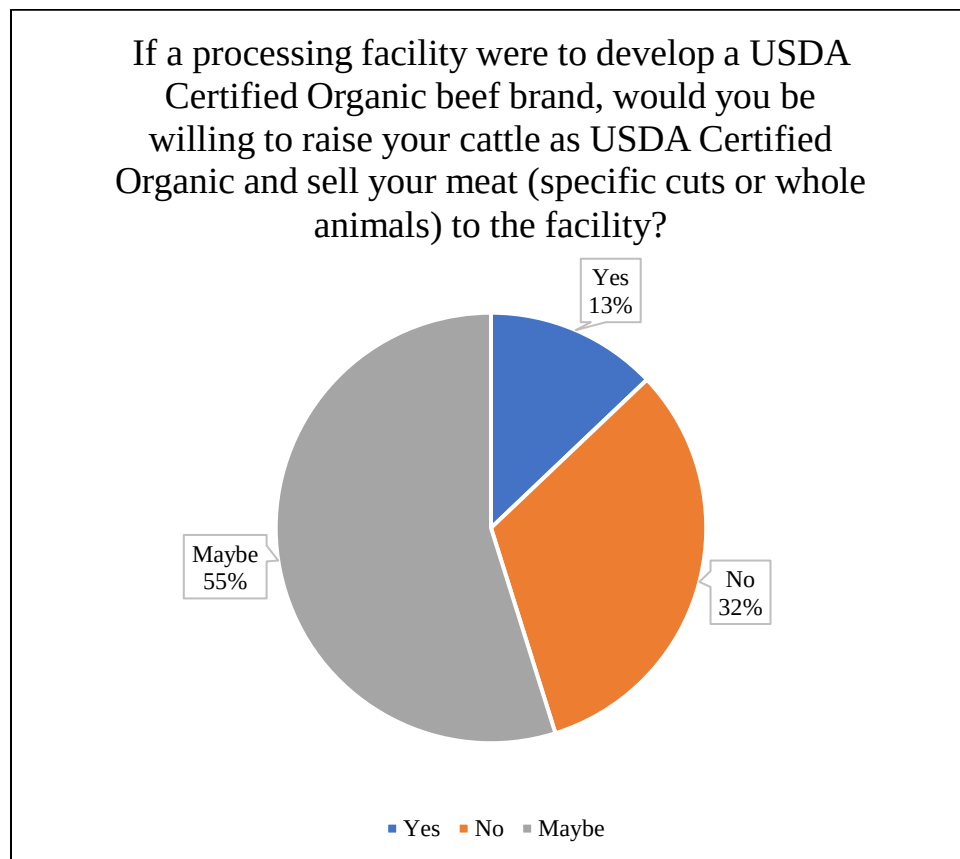


Figure 35. If a processing facility were to develop a USDA Certified Organic beef brand, would you be willing to raise your cattle as USDA Certified Organic and sell your meat (specific cuts or whole animals) to the facility?

Hog Survey Results

Over the course of the survey, 13 individuals opened the survey link, with 8 individuals completing 100 percent of the survey. An additional respondent partially completed the survey with reportable responses. Many of the survey questions allowed for multiple responses, which is why some questions may appear to have more responses than number of total completed responses.

Respondents were asked to describe their operation type with response choices being conventional, USDA certified organic, natural (no antibiotics, no hormones, etc.), pasture-raised, and other. Seven respondents indicated their pork is pasture-raised, with an additional five indicating their pork is natural. “Other” responses included “humanely raised”, “supplemented with organic grain”, and “non-GMO”.

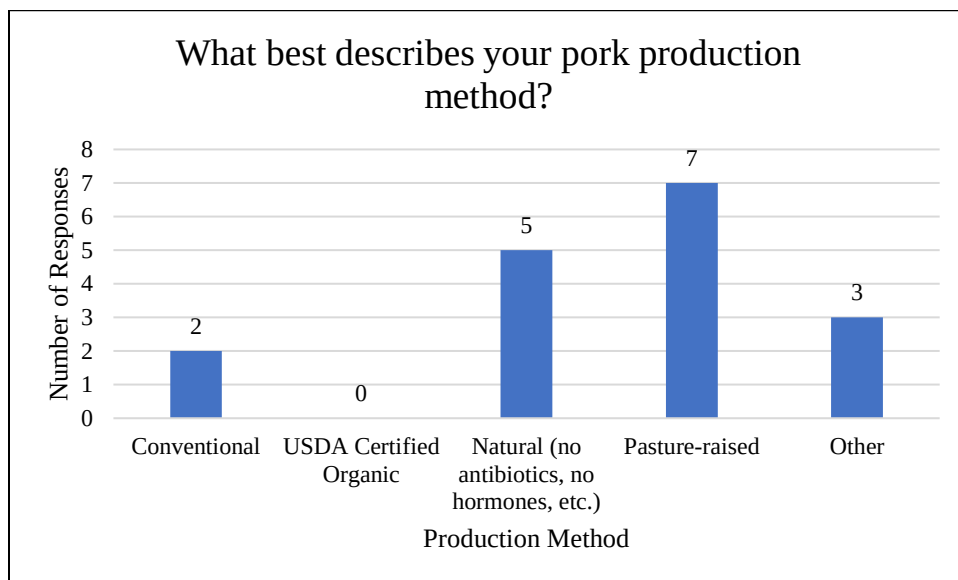


Figure 36. What best describes your pork production method?

Size of operations varied as with the cattle operations. The mean and median number of hogs raised each year varied significantly, indicating that there are a larger number of smaller operations.

Table 13. Average Number of Hogs Raised Each Year							
	Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
Hogs	17.2	5	5	2	3	26.5	80

Average live weight as slaughter was more consistent across responses, with a mean of 249 pounds and a median of 250 pounds.

Table 14. Average Live Weight in Pounds per Head at Slaughter							
	Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
Weight	249	250	300	20	223	300	380

To give a base for expected production through 2025, respondents were asked to indicate the total number of hogs they anticipate finishing for slaughter each year. Production is expected to increase, with the sum of all responses being 136 head in 2020, and 201 in 2025. The following chart displays the sum, mean, and median of responses.

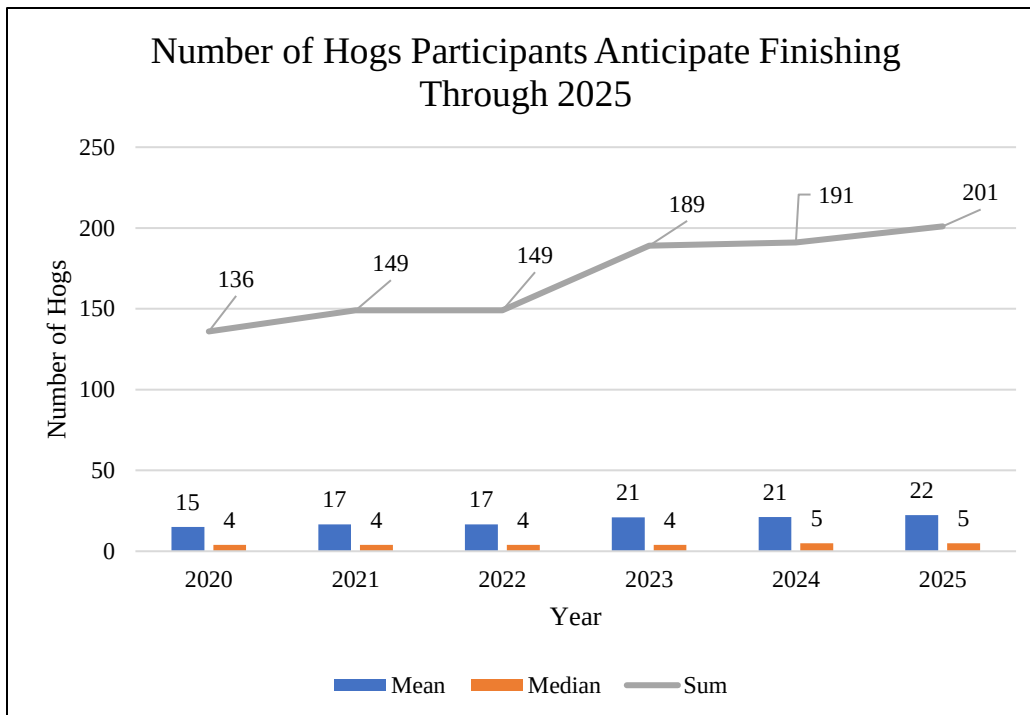


Figure 37. Number of Hogs Participants Anticipate Finishing Through 2025

Regarding farm income, all but one respondent indicated that zero to 25 percent of their farm income comes from hogs. This indicates that most individuals are making the majority of their income from other farming operations.

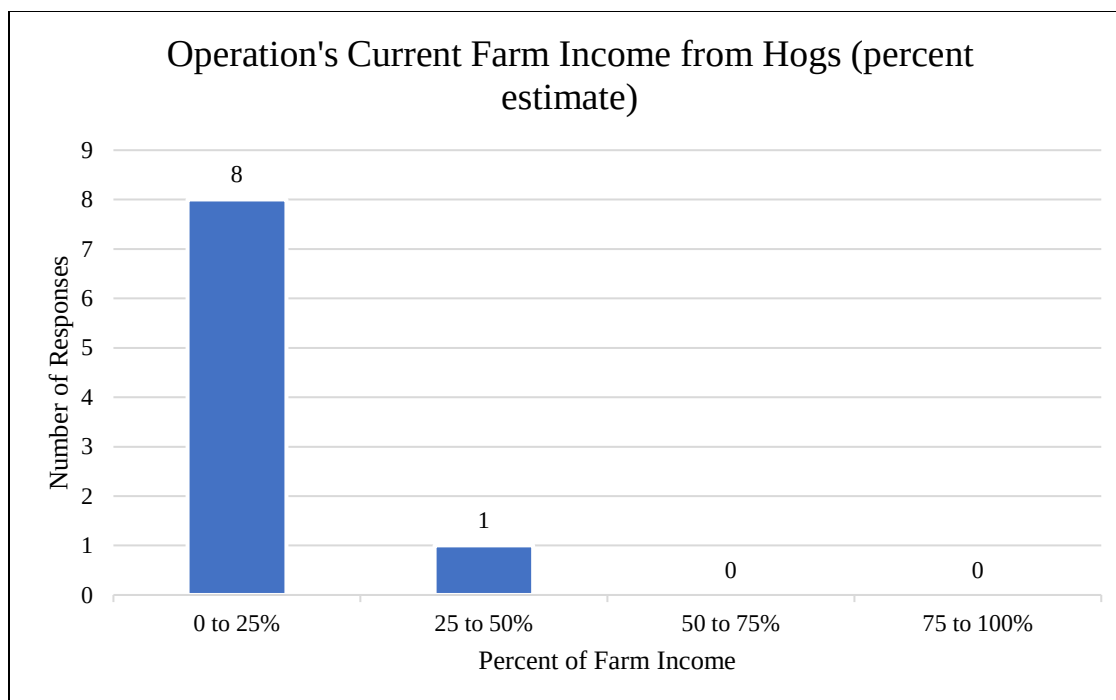


Figure 38. Operation's Current Farm Income from Hogs (percent estimate)

The farm size of the hog farmers seems to be considerably smaller than that of the beef farmers. The mean and median are also similar in value, which indicates a more consistent range in the data set.

Table 15. Number of Acres in Farmland						
Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
77.7	80.0	120.0	0.4	36.5	120.0	160.0

Of total farm acreage, respondents indicate that approximately 60 percent of that acreage is in pasture.

Table 16. Number of Acres in Pasture						
Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
55.8	50.0	50.0	0.3	8.5	82.5	160.0

Regarding where hog farmers currently have their hogs slaughtered and processed, responses were fairly evenly distributed across facilities, with Hotchkiss Meats receiving three responses, and Homestead Meats receiving two.

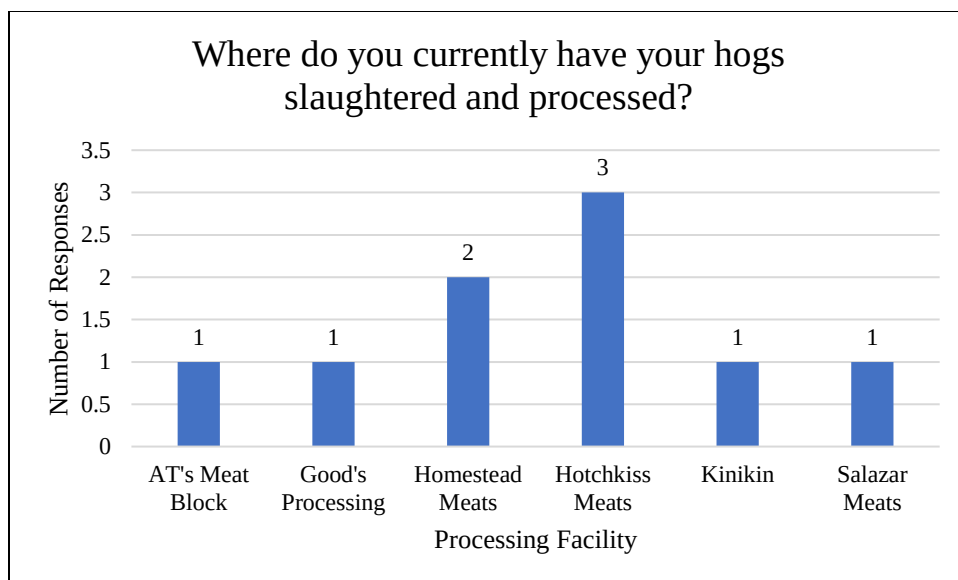


Figure 39. Where do you currently have your hogs slaughtered and processed?

Miles traveled to have their hogs slaughtered is similar to what was seen with the cattle. The data set had a mean of 80 miles, with the median being 90 miles.

Table 17. Please indicate the distance in one-way miles that you currently travel to take your hogs to slaughter.						
Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
80	90	65	3	65	103	120

Most of the surveyed hog farmers either sell their finished meat through direct retail, or other unique methods of sale. Responses in the “other” category included “friends/family”, “family and friends”, “direct custom customers”, “CSA program and fresh food hub”, “Alamosa food bank”.

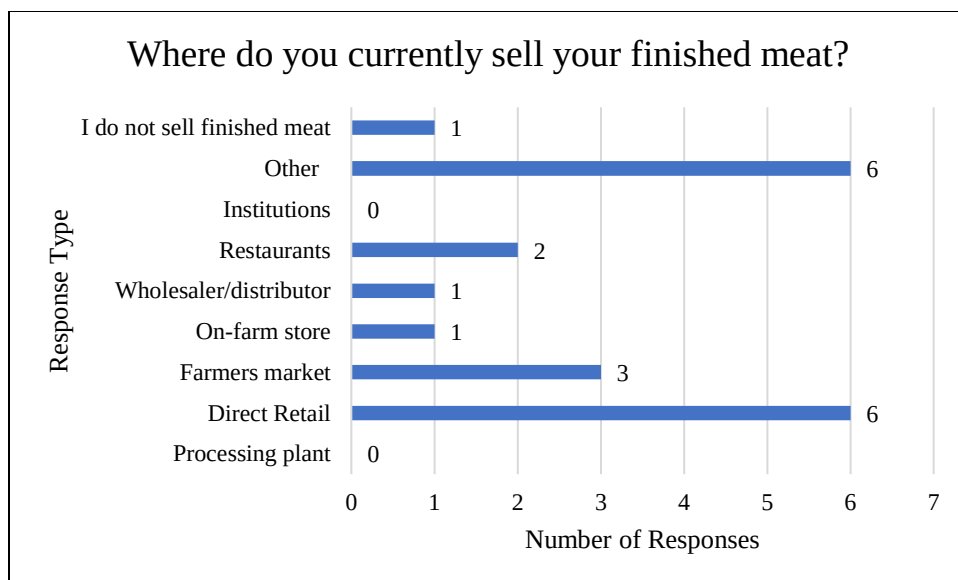


Figure 40. Where do you currently sell your finished meat?

Regarding how these farmers market their meat, the most popular response option was local (seven responses), with grass-fed and other both receiving four responses. “Other” responses included “humanely raised”, “organic”, “non-GMO feed”, and “marbleized, non-GMO”.

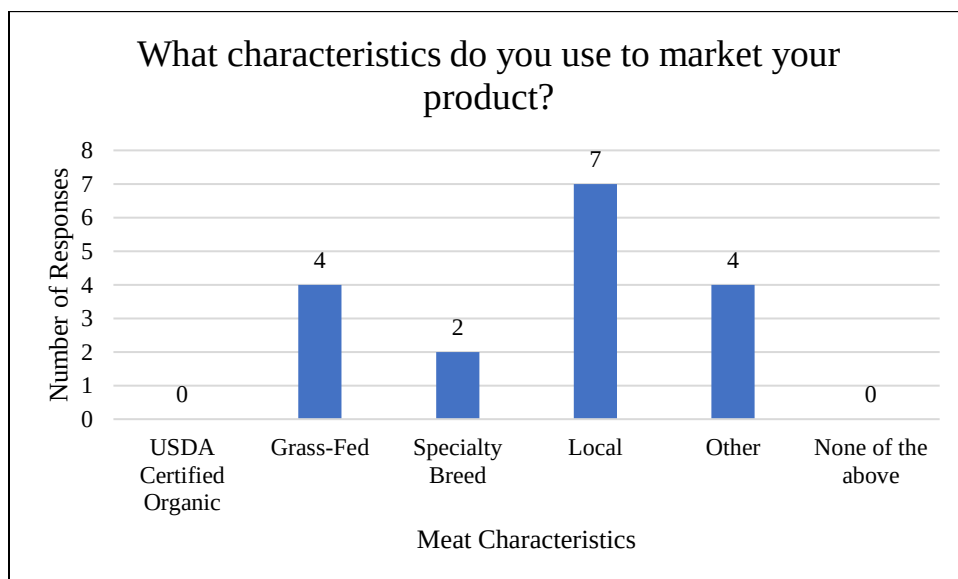


Figure 41. What characteristics do you use to market your product?

Regarding the expansion of a current meat processing facility, all but one respondent indicated that they already finish their own hogs, so the expansion of a current meat processing facility would not have an impact on their decision-making regarding finishing hogs for slaughter. The remaining respondent indicated that no, a potential expansion would not influence their decision.

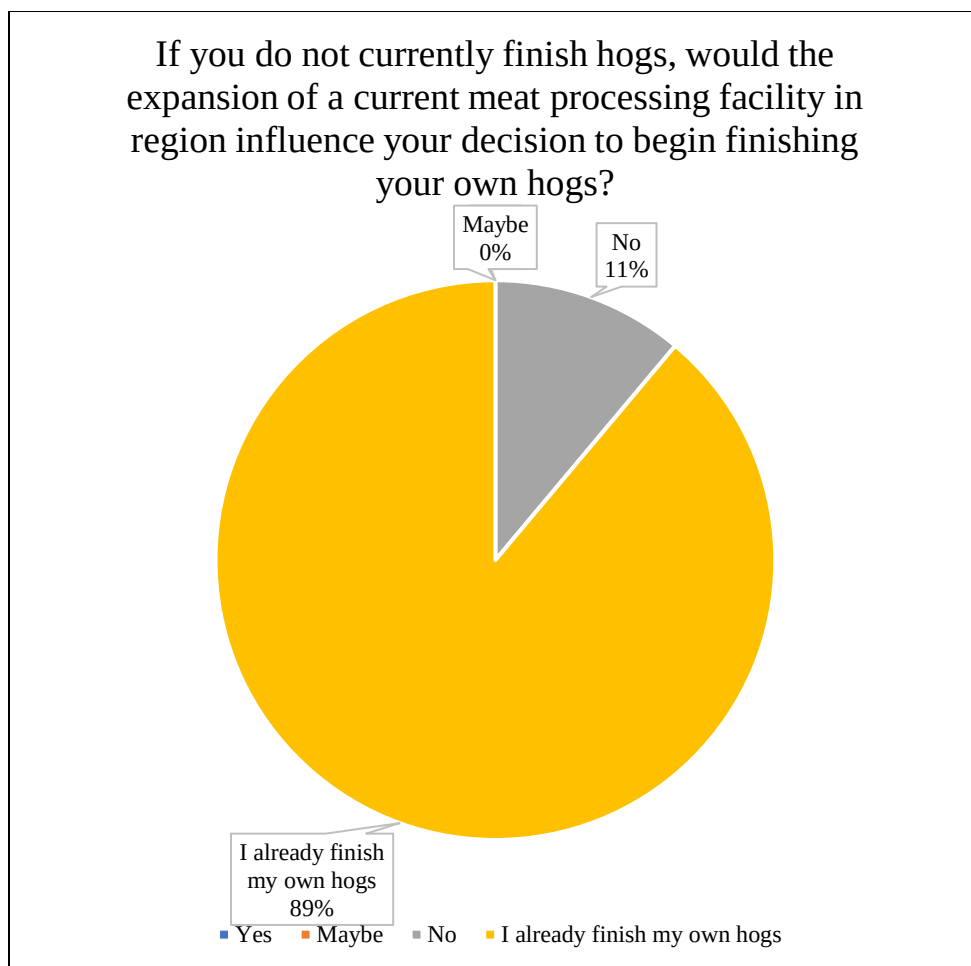


Figure 42. If you do not currently finish hogs, would the expansion of a current meat processing facility in region influence your decision to begin finishing your own hogs?

When asked whether they believe that a new facility would still be needed if a current slaughter facility was expanded, responses were almost perfectly evenly distributed amongst response categories. Two respondents indicated that yes, a new facility would still be needed, two respondents said no, and three indicated they were unsure.

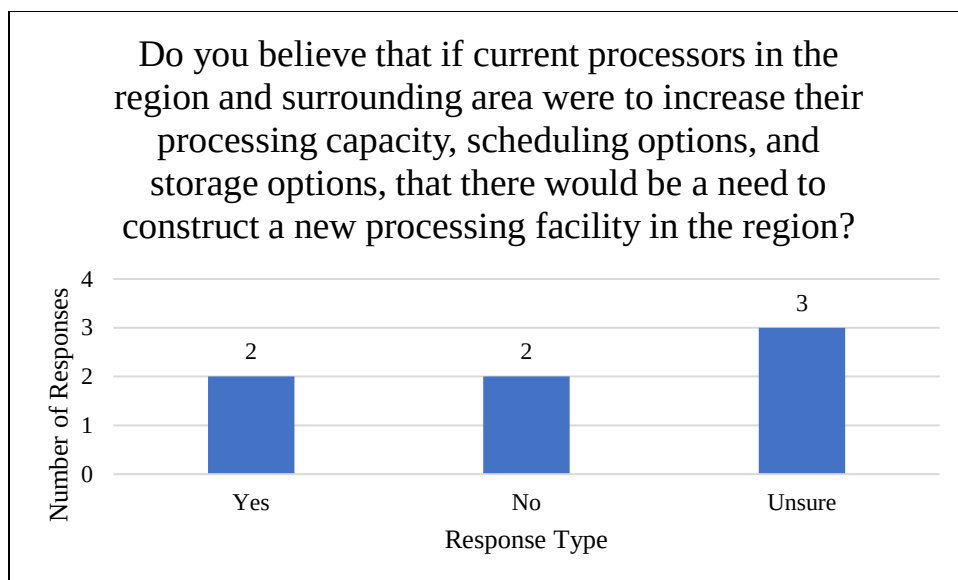


Figure 43. Do you believe that if current processors in the region and surrounding area were to increase their processing capacity, scheduling options, and storage options, that there would be a need to construct a new processing facility in the region?

When asked whether AT's Meat Block would need to be USDA certified for respondents to send their hogs there for processing, responses were split, with three respondents indicated that it would need to be certified, and three indicating that it would not need to be certified.

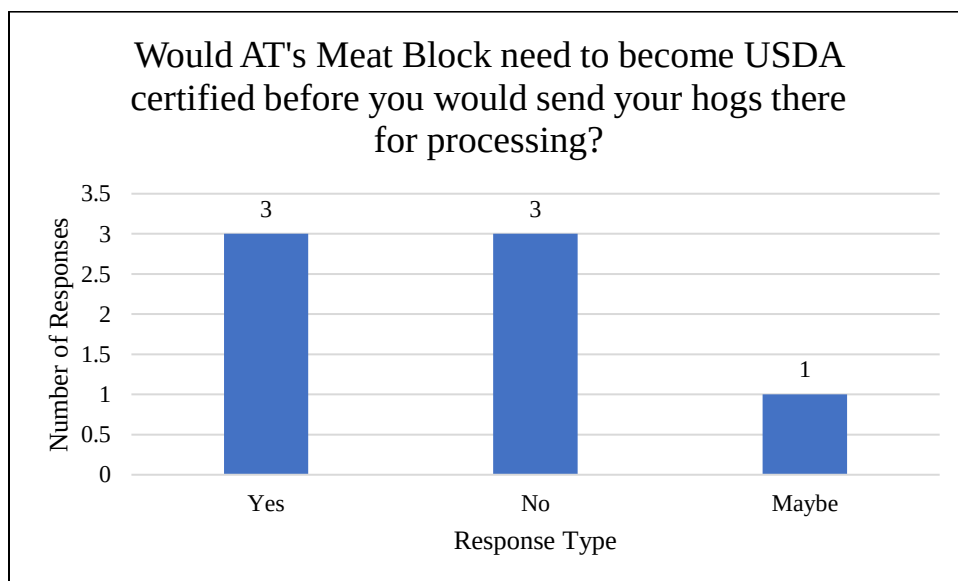


Figure 44. Would AT's Meat Block need to become USDA certified before you would send your hogs there for processing?

Next, hog producers were asked which of a list of local processors would most benefit their operation if it were to expand its processing capacity. Three respondents selected AT's Meat Block, and Homestead Meats and Blue Mountain Meats each received one response.

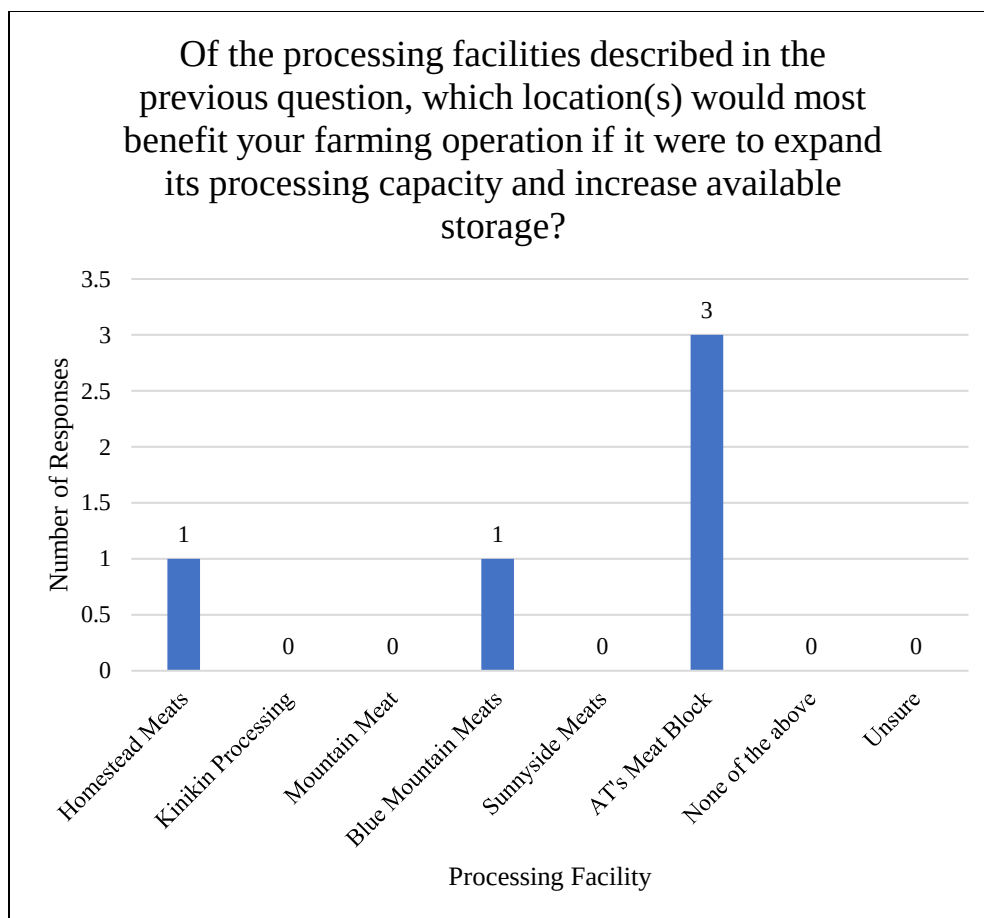


Figure 45. Of the processing facilities described in the previous question, which location(s) would most benefit your farming operation if it were to expand its processing capacity and increase available storage?

Respondents were then asked whether the expansion of one of the previously mentioned processing facilities would influence the number of hogs they anticipate finishing each year. Two respondents indicated it would influence their decision, while five indicated it would not. Of the two that indicated it would influence their decision, one individual indicated they would increase their herd size by 50 percent, while the other respondent indicated they would increase their herd size by 200 percent.

Moving to the construction of a new facility, respondents were asked whether they would be interested in sending their hogs to a new USDA inspected facility. Four respondents said yes, while two each said no and maybe. Similar to with the cattle responses, hog farmers indicated that a new facility in either San Miguel County or west Montrose County would be most beneficial to their operation.

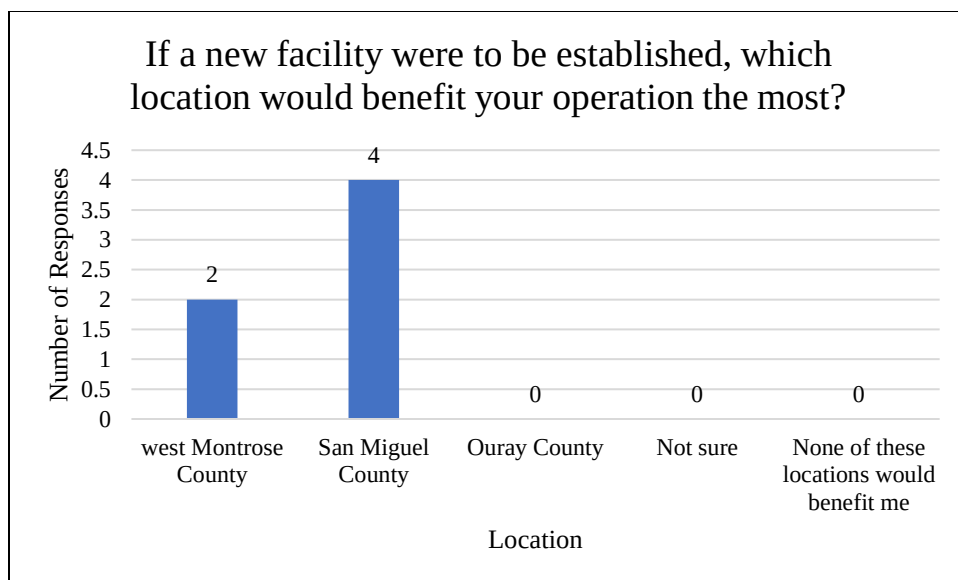


Figure 46. If a new facility were to be established, which location would benefit your operation the most?

Responses varied from the original question when respondents were asked whether the construction of a new facility would influence the number of hogs they raise for finishing each year. Three indicated it would influence their decision, with an additional two indicating it may influence their decision.

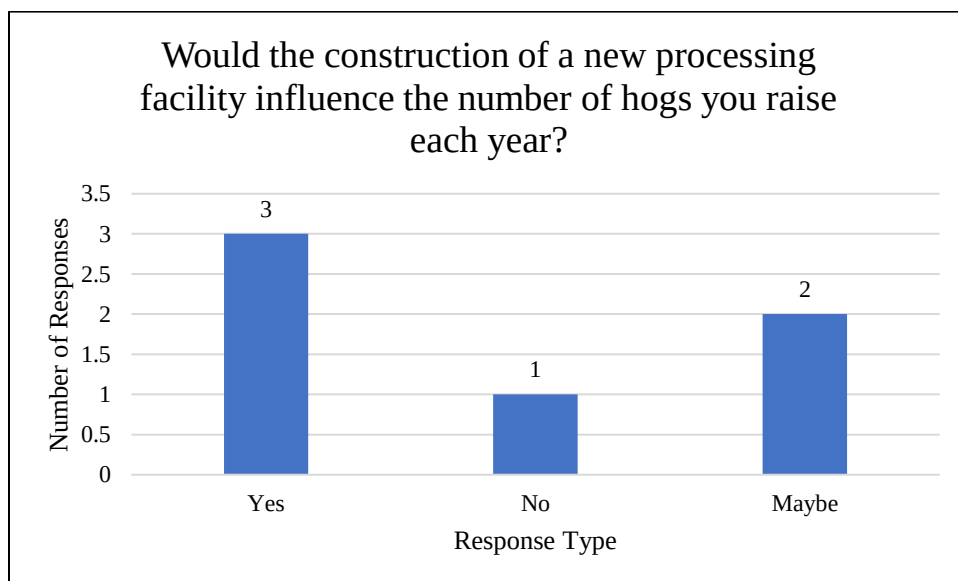


Figure 47. Would the construction of a new processing facility influence the number of hogs you raise each year?

Regarding the anticipated increase in number of hogs raised, values for percent increase in herd size given were 50 percent, 7.5 percent, 200 percent, and 25 percent. This indicates that hog

farmers may be more willing to increase their herd size for a new facility as opposed to an updated current facility.

In order for hog farmers to send their hogs to a new facility, farmers were most interested in the facility having better prices and being closer to their farm. “Other” responses included “custom butchery” and “no nitrates”.

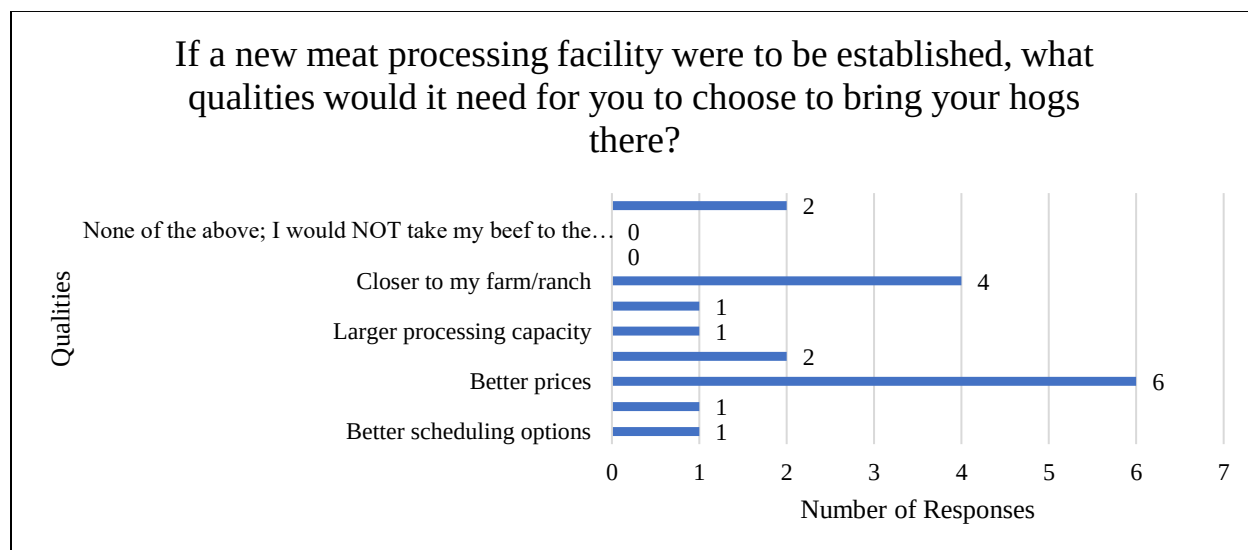


Figure 48. If a new meat processing facility were to be established, what qualities would it need for you to choose to bring your hogs there?

The most popular types of processing that hog farmers would like to be available at a new facility were retail cuts and value added (smoking, aging, etc.), with each receiving five responses.

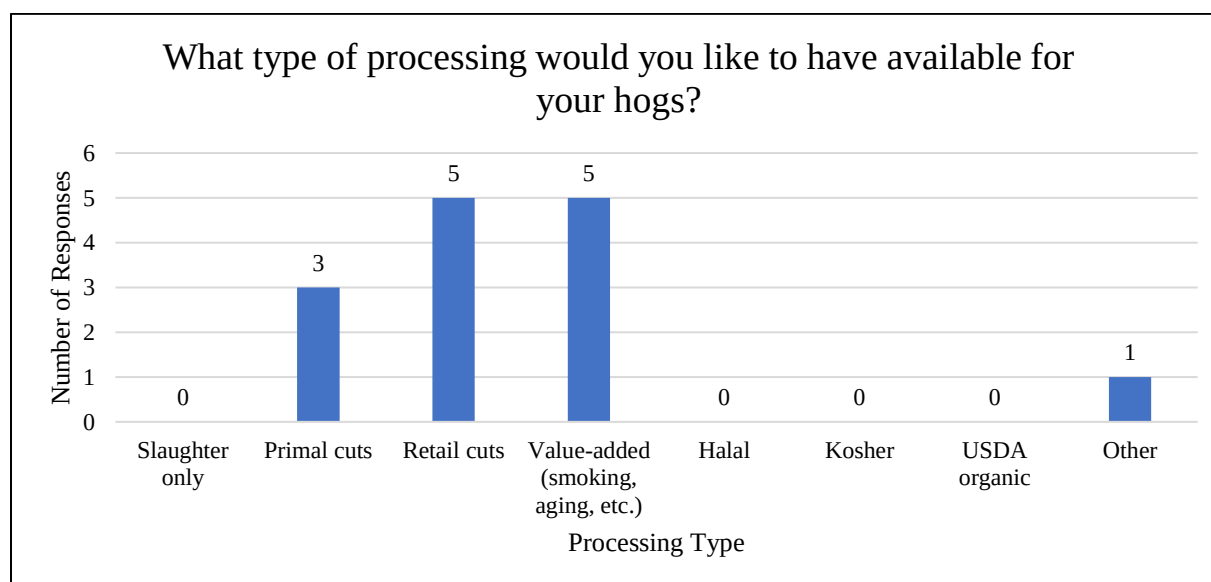


Figure 49. What type of processing would you like to have available for your hogs?

Responses were evenly distributed when it comes to whether farmers would be willing to pay a price premium to send their hogs to a new facility with increased capacity.

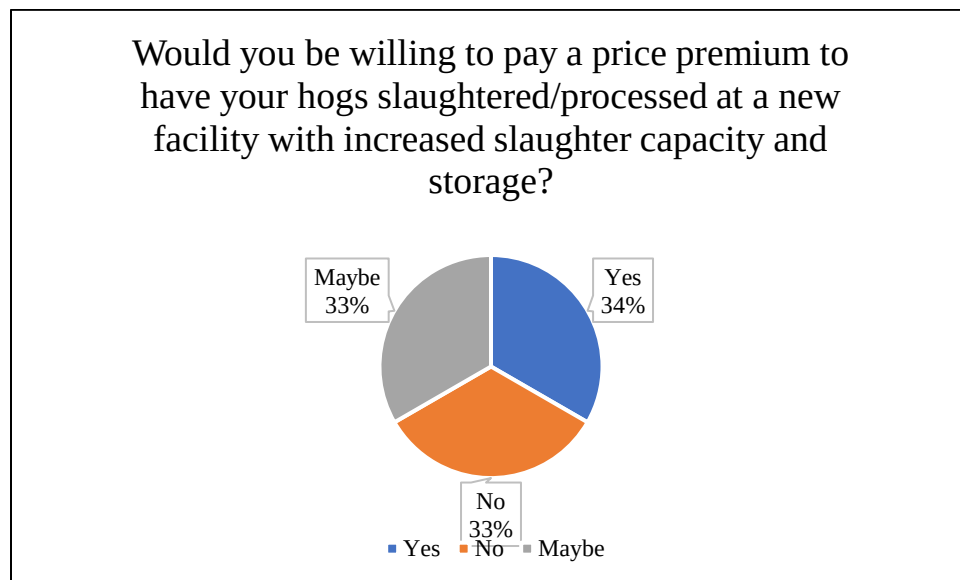


Figure 50. Would you be willing to pay a price premium to have your hogs slaughtered/processed at a new facility with increased slaughter capacity and storage?

However, the distance farmers are willing to travel to send their hogs to slaughter does not vary much from the distance they currently travel. The dataset had a mean of 89.2 and a median of 92.5, indicating fairly consistent responses.

Table 18. What is the maximum distance (one-way) you are willing to travel to have your hogs processed?						
Mean	Median	Mode	Min	25th Percentile	75th Percentile	Max
89.2	92.5	N/A	50.0	72.5	105.0	120.0

The slaughter time period for hog farmers seems to be more condensed amongst respondents than that of the beef farmers. Four respondents indicated they anticipate slaughtering in the fall, while two indicate they anticipate slaughtering in the summer.



Figure 51. When do you anticipate having your hogs slaughtered?

Finally, respondents were asked whether they would be interested in selling their meat to the facility if the facility developed a “Colorado Branded Pork” brand or a USDA Certified Organic pork brand. Respondents seem to be more interested in the “Colorado Branded Pork” brand.

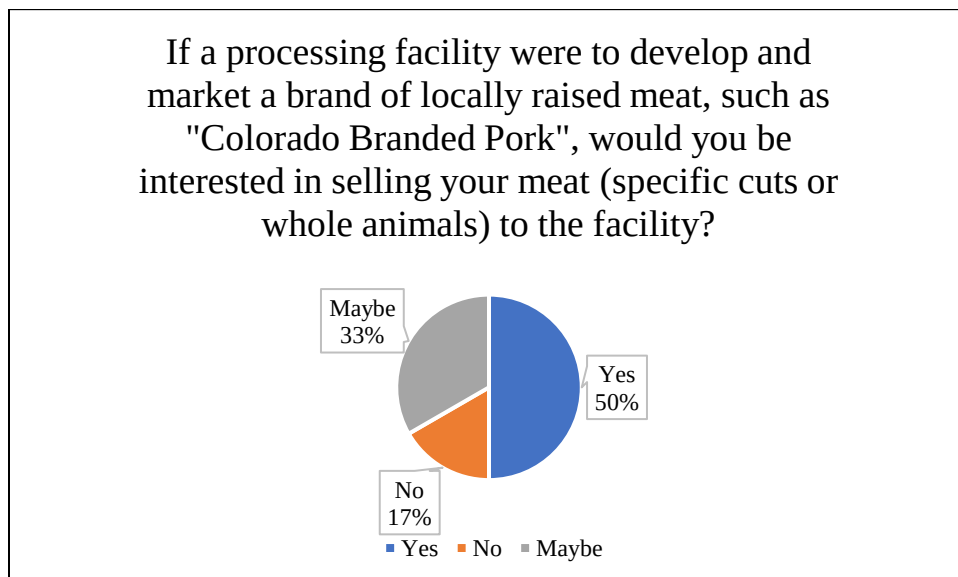


Figure 52. If a processing facility were to develop and market a brand of locally raised meat, such as "Colorado Branded Pork", would you be interested in selling your meat (specific cuts or whole animals) to the facility?

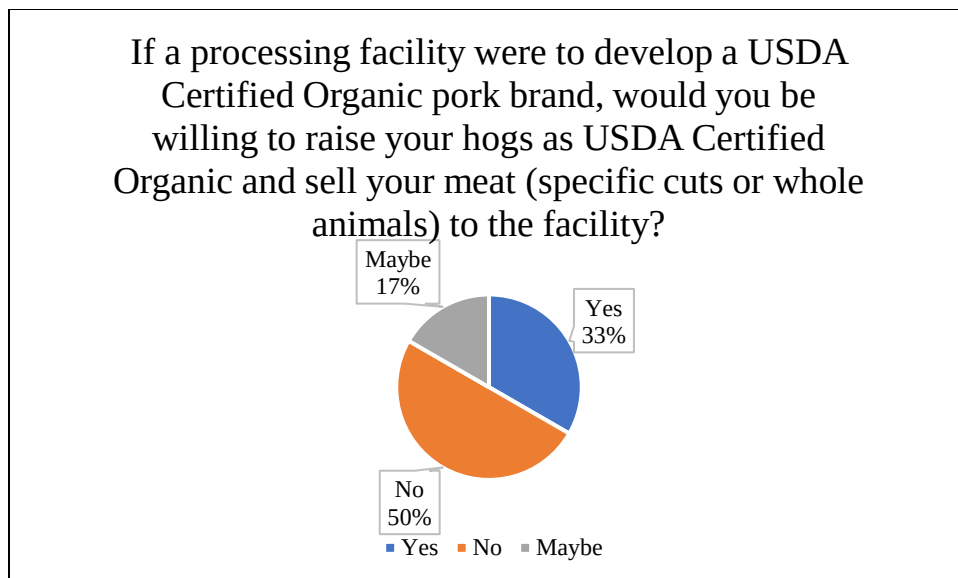


Figure 53. If a processing facility were to develop a USDA Certified Organic pork brand, would you be willing to raise your hogs as USDA Certified Organic and sell your meat (specific cuts or whole animals) to the facility?

Sheep and Goat Survey Results

Over the course of the survey, 11 individuals opened the survey link, with three individuals completing 100 percent of the survey. Many of the survey questions allowed for multiple responses, which is why some questions may appear to have more responses than number of total completed responses. Due to the low number of responses for this survey, results of all survey questions will be discussed in a more concise manner.

Of the three respondents, two raise only sheep, while one individual raises both sheep and goats. However, these three individuals seem to use many different production methods for their animals, with responses being fairly evenly split between the available response options. “Other” responses included “no hormones” and “natural could be achieved with additional record keeping”.

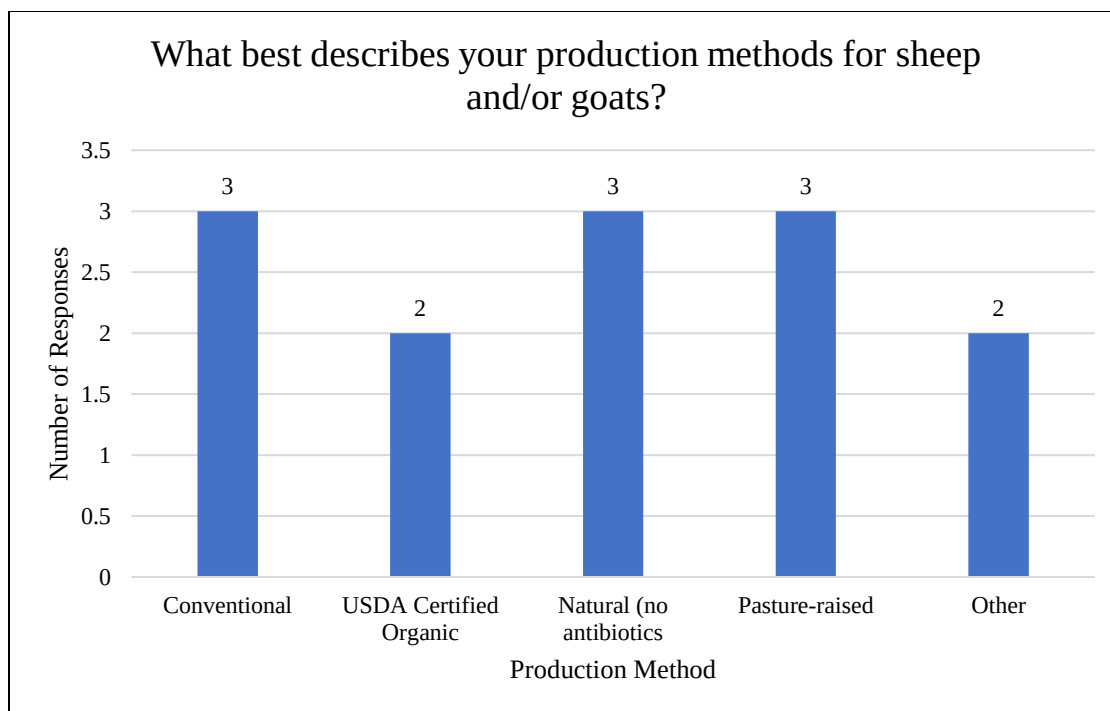


Figure 54. What best describes your production methods for sheep and/or goats?

Of the four operations (counting the sheep and goat operations separately for the individual who raises both), herds of sheep are five, 20, and 80 head, and the goat herd is five head. Regarding live weight at slaughter, the three sheep responses resulted in live weights of 110, 125, and 150 pounds, with the goats also being 150 pounds.

When asked whether the expansion of a current processing facility would increase the number sheep or goats respondents anticipate finishing, the sum of sheep producers anticipate finishing did increase each of the six estimated years from 65 in 2020 to 140 in 2025, a 115 percent increase. The goat producer indicated that an increase in production would not be carried out until 2024.

Regarding farm income, two respondents indicated that zero to 25 percent of their farm income comes from sheep or goats, while one respondent indicated that sheep and/or goat production makes up 25 to 50 percent of their farm income. The sizes of the farm regarding acreage were varied, with responses including 160, 280, and 8,500 acres. Of the two smaller farms, 50 and 110 acres respectively are in pasture, while the entire 8,500 acre farm is in pasture.

Moving to current slaughter practices, one individual has their meat process at AT's Meats, and two individuals have their meat processed at Blue Mountain Meats. Mileage traveled to slaughter does not vary significantly from the previous surveys, with responses including 30, 100, and 96 miles. This gives an average one-way distance of 75.3 miles.

When asked where they sell their finished meat, the first respondent indicated they sell at a farmers market and an on-farm store, the second sells direct retail, and the third sell to restaurants as well as the fresh food hub and private parties. To market their product, each producer markets it as local, with one marketing it at USDA Certified Organic, and another marketing it as Colorado Lamb.

Two respondents indicated they were unsure whether increasing the processing capacity of a current processing facility would mitigate the need to construct a new facility, while one individual indicated that a new facility would still need to be constructed even if a current facility increased their capacity. Specifically for AT's Meat Block, one response each of yes, no, and maybe was received when asked whether it would need to be USDA certified for the producer to be willing to send their meat there.

Of the local processing facilities provided to the respondents, results were mixed regarding which location would benefit them the most if it expanded. Homestead Meats received two responses, Kinikin received three, AT's Meat Block received two, and Mountain Meats received one. Respondents were allowed to select more than one response for this question. However, when asked whether the expansion of one of these facilities would increase the number of sheep or goats they raise for slaughter, one response each was received for yes, no, and maybe. Of the two respondents that said yes and maybe, they also indicated that they would increase their herd sizes by 20 and 25 percent if one of the current facilities were to be expanded.

When asked whether respondents would be willing to send their sheep or goats to a new USDA inspected facility, one response of yes was received, and two responses of maybe were received. Of potential locations, two respondents indicated that west Montrose County would be most beneficial, while one respondent indicated San Miguel County would be most beneficial. Responses were exactly the same when asked whether the construction of a new facility would influence the number of sheep or goats raised each year, with one response each for yes, no, and maybe. Additionally, the percent anticipated increase in herd size was again 20 and 25 percent.

Regarding the qualities that respondents would like a new facility to have in order for them to bring their sheep or goats there, respondents each seemed to select several categories that were important to them, with being closer to their farm or ranch receiving a tally from each respondent.

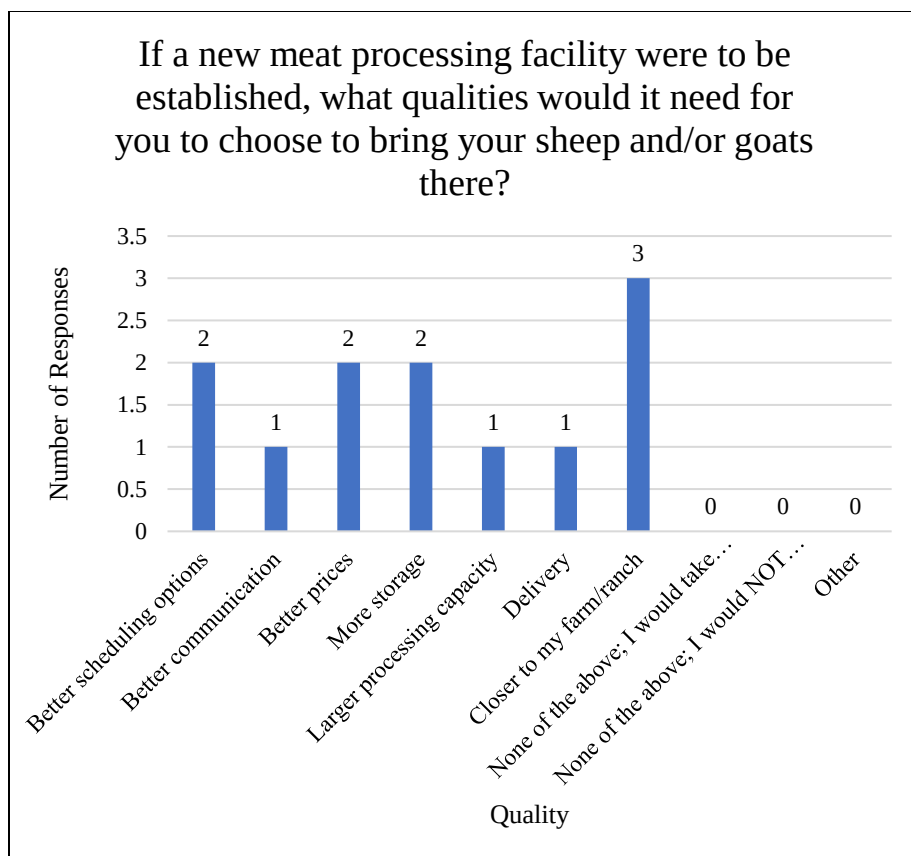


Figure 55. If a new meat processing facility were to be established, what qualities would it need for you to choose to bring your sheep and/or goats there?

Regarding the types of processing individuals would like available at a new facility, retail cuts were the most popular feature, with one tally being recorded for several other services.

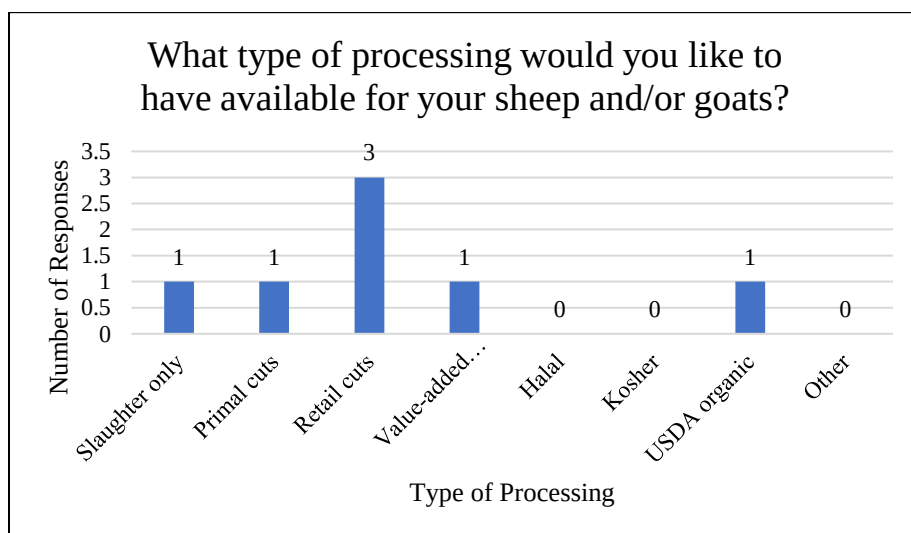


Figure 56. What type of processing would you like to have available for your sheep and/or goats?

However, only one respondent indicated that would be willing to pay a price premium to send their livestock to the new facility, while the other two indicated they would not. Distance respondents are willing to travel to have their meat processed did not vary significantly from what they are already traveling, with one response of 30 miles, and two of 100 miles. This is an average of 76.7 one-way miles. For slaughter time, one individual indicated they slaughter in the spring and fall, while two individuals indicated they slaughter throughout the year.

Regarding the potential of the facility developing “Colorado Branded Mutton/Chevon”, one respondent indicated they would be willing to sell their meat to the facility as part of the brand effort, while the other two indicated they may be willing to participate. For a potential USDA organic branded mutton or chevon, one response of each was recorded for yes, no, and maybe.

Wild Game Survey Results

Over the course of the survey, 37 individuals opened the survey link, with 18 individuals completing 100 percent of the survey. An additional three respondents partially completed the survey with reportable responses. Many of the survey questions allowed for multiple responses, which is why some questions may appear to have more responses than number of total completed responses.

The most popular wild game being hunted by survey respondents are deer and elk, with several individuals also hunting wild turkey and grouse.

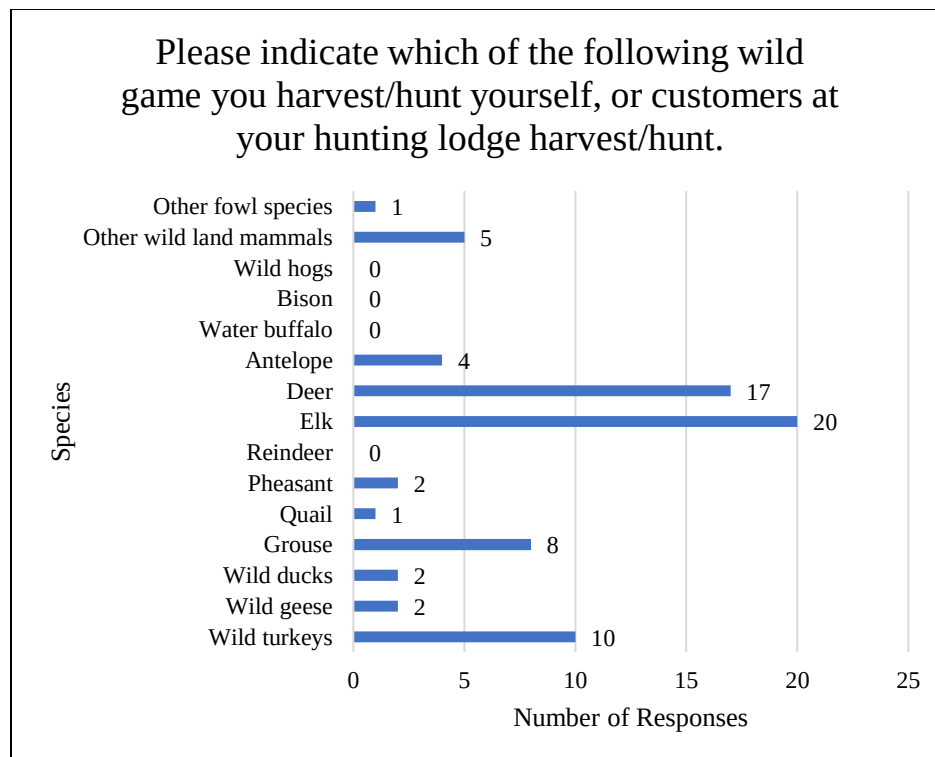


Figure 57. Please indicate which of the following wild game you harvest/hunt yourself, or customers at your hunting lodge harvest/hunt.

Further, the average number of animals hunted/harvest in a given year are presented in the following table. As is expected, elk, deer, and grouse had some of the largest totals.

Table 19. On average, how many wild game animals to do you harvest/hunt each year? Include animals that you personally harvest/hunt and animals that your customers harvest/hunt.						
	Mean	Median	Mode	Min	Max	Sum
Wild turkeys	1.5	1.0	1.0	1.0	4.0	18.0
Wild geese	6.5	6.5	N/A	3.0	10.0	13.0
Wild ducks	9.7	6.0	N/A	3.0	20.0	29.0
Grouse	6.6	4.0	4.0	2.0	20.0	46.0
Quail	15.0	15.0	N/A	15.0	15.0	15.0
Pheasant	15.0	15.0	N/A	10.0	20.0	30.0
Reindeer	0.0	0.0	0.0	0.0	0.0	0.0
Elk	3.5	1.0	1.0	0.5	30.0	74.5
Deer	3.0	1.0	1.0	0.5	20.0	45.5
Antelope	1.3	1.3	N/A	0.5	2.0	2.5
Water buffalo	0.0	0.0	0.0	0.0	0.0	0.0
Bison	0.0	0.0	0.0	0.0	0.0	0.0
Wild hogs	0.0	0.0	0.0	0.0	0.0	0.0
Other wild land mammals	7.0	7.0	N/A	4.0	10.0	14.0
Other fowl species	20.0	20.0	N/A	20.0	20.0	20.0
*Values of zero not included in data analysis if other numerical values were given by other respondents.						

Respondents were asked what percent of the wild game they hunt/harvest is processed locally. The median of the data set was 90, indicating that most individuals are having a majority of their wild game processed locally.

Next, respondents were asked whether the sale of wild game provided them with income. It should be noted that while the sale of wild game is illegal, it is possible that those who sell livestock such as farm-raised elk are also classifying these animals as wild game. As such, two individuals indicated they receive income from the sale of wild game.

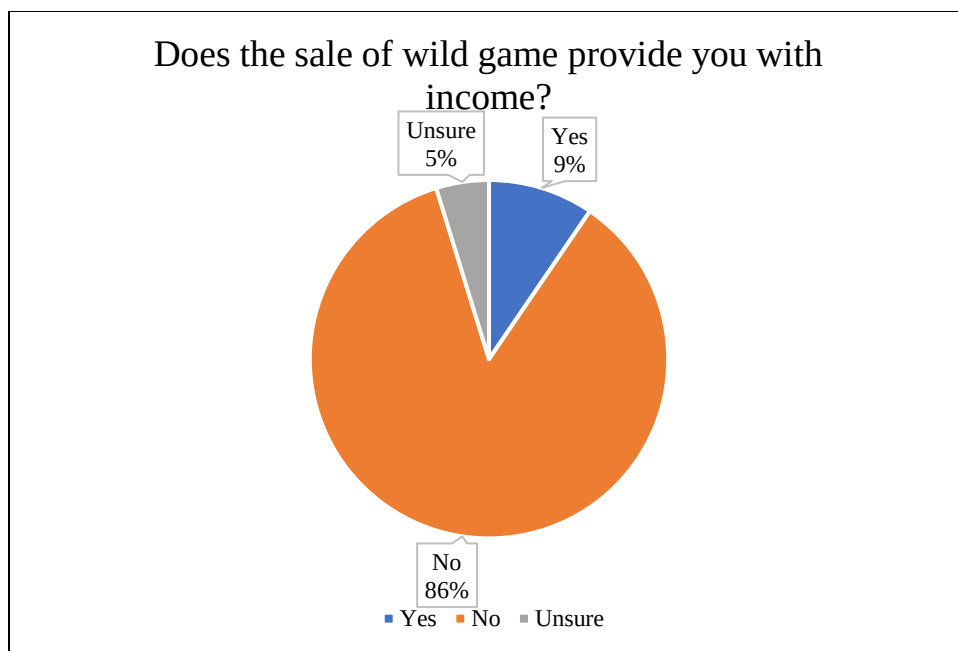


Figure 58. Does the sale of wild game provide you with income?

Relative to the previous question, respondents were asked how much of their income comes from the sale of wild game. Only three respondents indicated that any of their income comes from the sale of wild game with two respondents selected the zero to 25 percent range and one individual indicating that they receive 75 to 100 percent of their total income from the sale of wild game.

Differing from the previous surveys, only about half of respondents have their wild game processed at a processing facility, indicating that many individuals process their own wild game. Ten respondents indicated they have wild game processed at a facility, while 11 indicated they do not. Of those that provided information regarding where they have their wild game processed, four individuals use AT's Meat Block, four use Kinikin, and one uses Good's Processing. The average distance traveled by these individuals to have their game process is also less than that of the livestock producers. The data set had a median of 50 one-way miles traveled.

Moving on to where respondents currently sell their finished meat, 19 of the 20 respondents now indicated that they do not sell finished meat, while one respondent indicated they sell halves and wholes directly to customers. That one individual also indicated that they market their product as a specialty breed.

When asked whether the expansion of a current facility would influence their decision to begin processing their wild game, six respondents indicated that it would influence their decision, while an additional four respondents indicated that it may influence their decision.

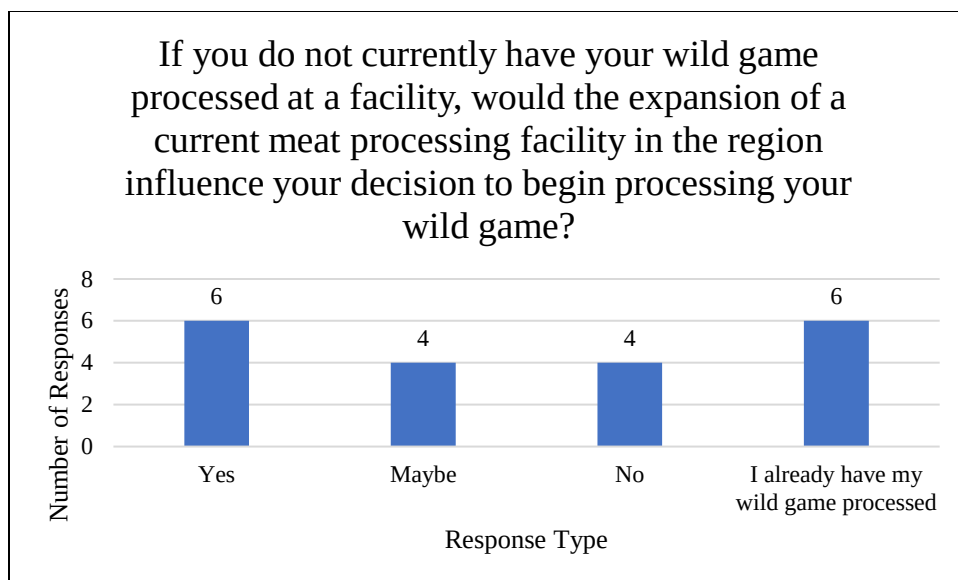


Figure 59. If you do not currently have your wild game processed at a facility, would the expansion of a current meat processing facility in the region influence your decision to begin processing your wild game?

However, respondents seem to also indicate that even if a current facility were to be expanded, there would still be a need to construct a new facility in the region.

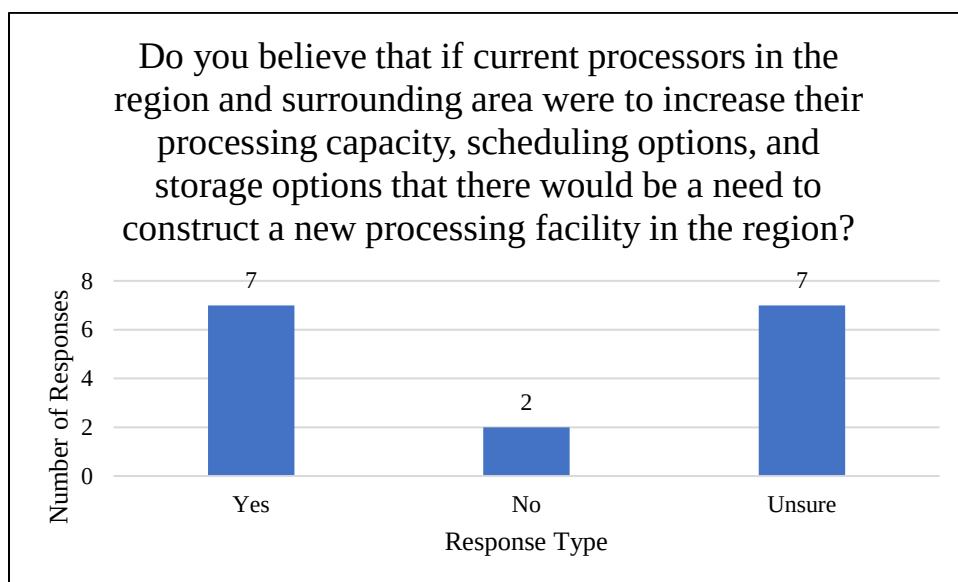


Figure 60. Do you believe that if current processors in the region and surrounding area were to increase their processing capacity, scheduling options, and storage options that there would be a need to construct a new processing facility in the region?

Regarding AT's Meat Block specifically, five respondents indicated that the facility would need to become USDA certified before they would send their wild game there for processing.

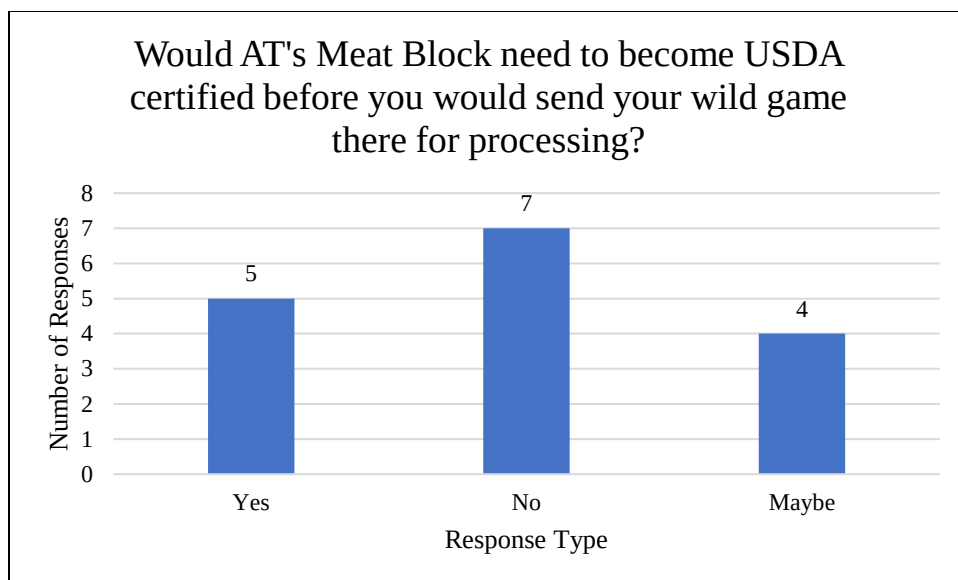


Figure 61. Would AT's Meat Block need to become USDA certified before you would send your wild game there for processing?

Dissimilar to the previous surveys, six respondents indicated that if AT's Meat Block were to be renovated that it would be the location that would benefit their operation the most, while seven indicated they were unsure which location would benefit their operation the most.

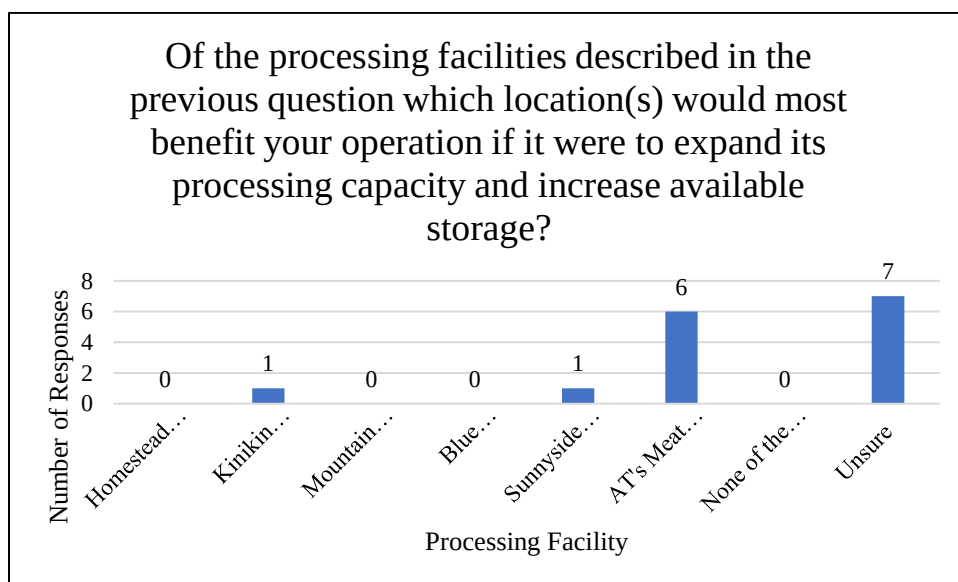


Figure 62. Of the processing facilities described in the previous question which location(s) would most benefit your operation if it were to expand its processing capacity and increase available storage?

Ten of the 20 respondents indicated they would be interested in sending their wild game to a new USDA inspected slaughter facility, while an additional seven indicated they may be interested.

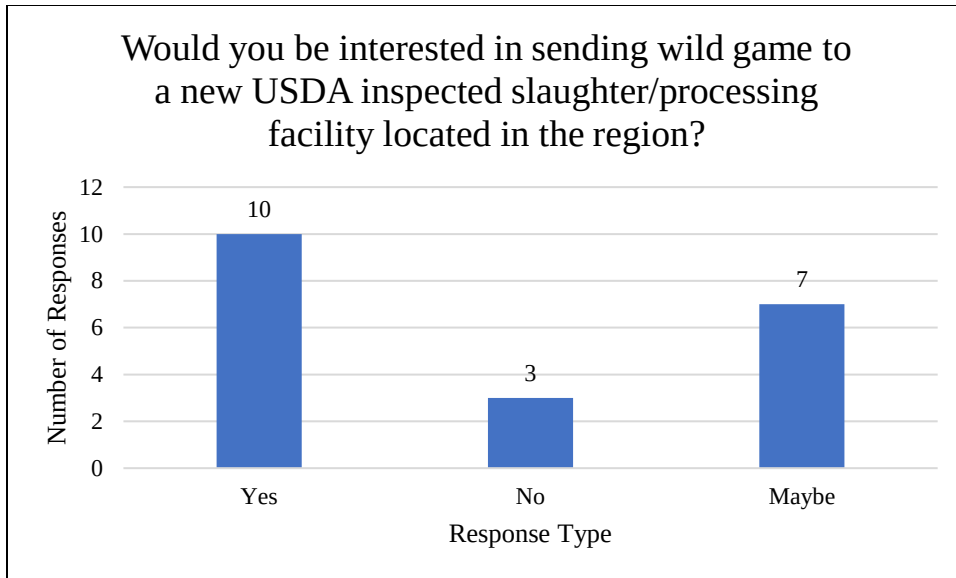


Figure 63. Would you be interested in sending wild game to a new USDA inspected slaughter/processing facility located in the region?

Of the potential locations given to respondents, 11 indicated that a new facility in San Miguel County would be most beneficial, with four indicating west Montrose County would be most beneficial. This is on trend with the previous surveys.

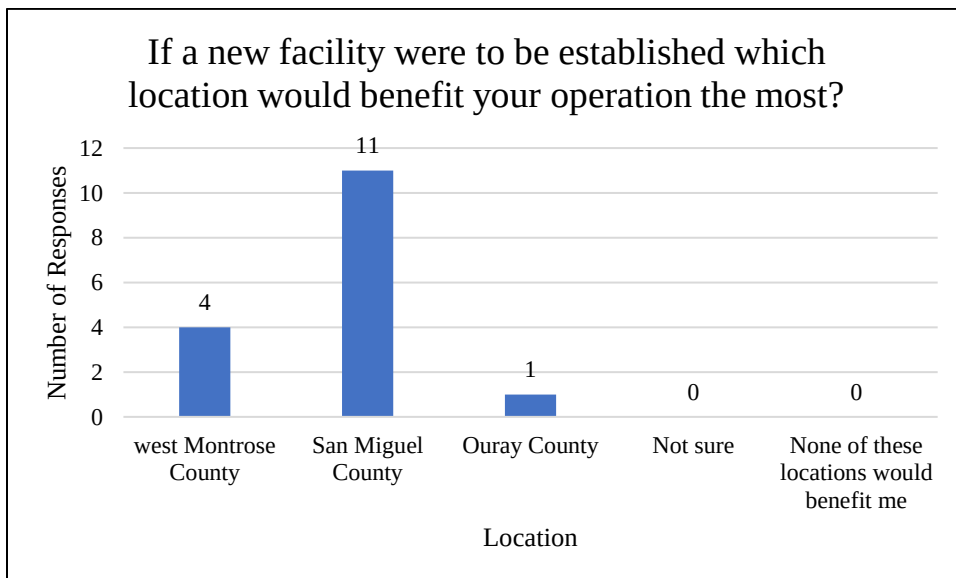


Figure 64. If a new facility were to be established which location would benefit your operation the most?

Moving on to the construction of a new facility, seven respondents indicated that the construction of a new facility would influence their decision to begin having their wild game processed.

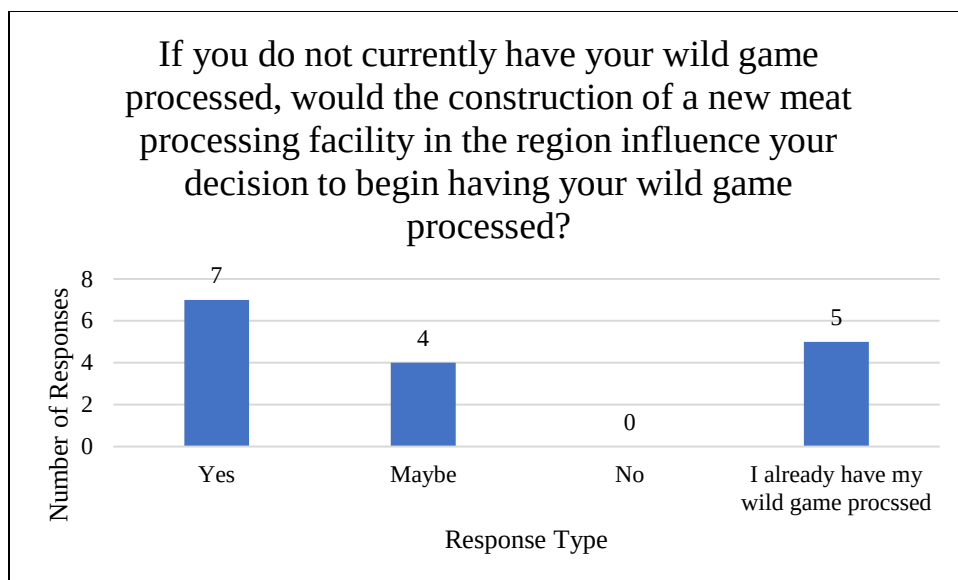


Figure 65. If you do not currently have your wild game processed, would the construction of a new meat processing facility in the region influence your decision to begin having your wild game processed?

In order for respondents to use the new facility, there were several factors that respondents found to be important. Some of the most popular qualities were better scheduling, better prices, and more storage.

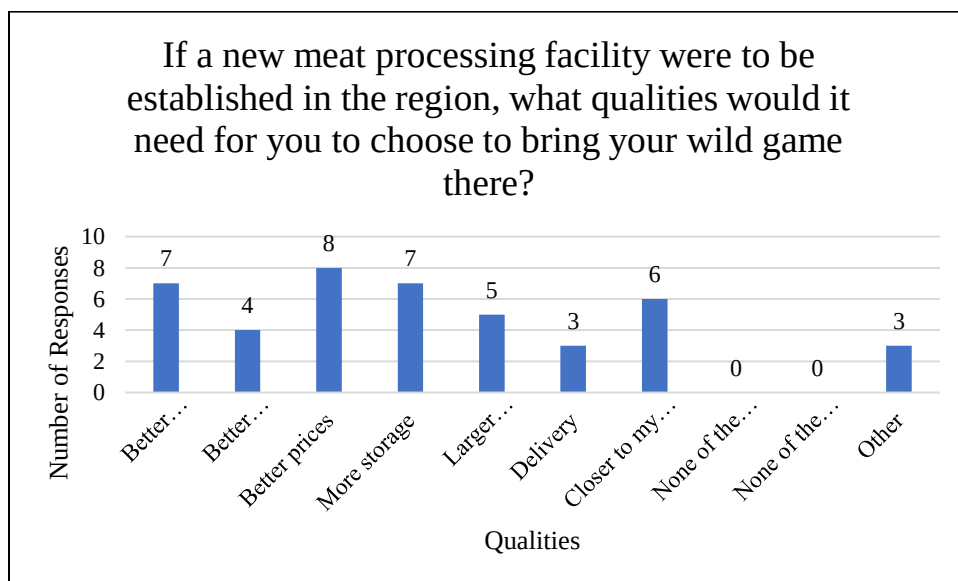


Figure 66. If a new meat processing facility were to be established in the region, what qualities would it need for you to choose to bring your wild game there?

When asked whether they would be willing to pay a price premium to have their wild game processed at a new facility with increased capacity, four respondents indicated that they would

be willing to pay a price premium, while an additional nine indicated they may be willing to pay a price premium.

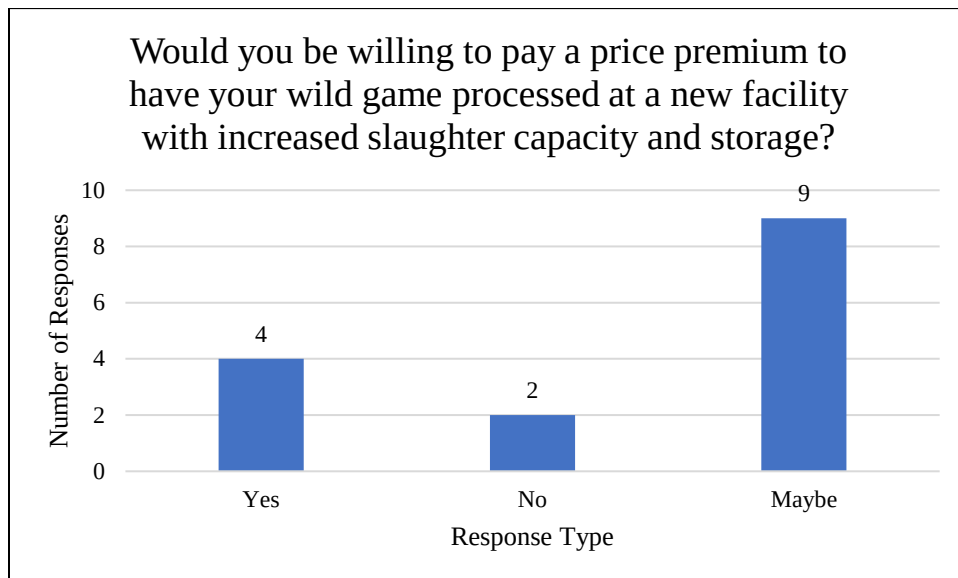


Figure 67. Would you be willing to pay a price premium to have your wild game processed at a new facility with increased slaughter capacity and storage?

Interestingly, when asked about the maximum distance respondents would be willing to travel to have their wild game processed, the data set had the same median value of 50 one-way miles as the question where respondents were asked how many miles they currently travel to have their wild game processed.

Summary of Producer Survey Results

The survey with the most respondents and also the most animals being collectively produced by respondents was the beef survey. Production methods were relatively mixed amongst respondents across conventional, natural, pasture-raised, and grass-fed. The average number of cattle being finished for slaughter each year was 6.1 across 41 respondents. However, the sum of the number of cattle respondents anticipate finishing between years 2020 and 2025 was 293 and 435, respectively, indicating that respondents anticipate finishing more cattle in the future. If a current meat processing facility were to be expanded, respondents indicated they would finish 387 cattle in 2020, which would increase to 557 cattle by 2025. If a new processing facility was established, respondents indicated they would finish 336 cattle in 2020, which would increase to 539 in 2025. Responses to these questions indicate that farmers may be willing to finish more cattle if a current facility was expanded or a new one was established. Regarding location preferences for a new facility, respondents preferred a location either in west Montrose county or San Miguel county. Of the services and/or perks that may be offered at a new facility, respondents indicated they would prefer a facility that is closer to their farm or ranch, has better prices, better scheduling options, and more storage.

Financial Analysis and Economic Feasibility

The true costs and revenues of a small meat processing plant vary greatly by the size and scale of operations, inspection status, the amount of capacity utilized by different species (both among amenable species and amenable/non-amenable species), the size and type of retail operations, and the various "further processing" activities performed by the plant. Accuracy of cost/revenue estimates are contingent upon factors such as: having finalized plant drawings, knowing the actual costs and specifications (including utility requirements) of equipment, and the availability of commitments (i.e. letters of intent, contracts with customers) for both slaughter services and product processing services. That being said, the economic model for this study was developed using information from the project organizers, construction companies, equipment suppliers, published reports on Colorado meat processing activities, salary information from the U.S. Bureau of Labor Statistics, and research on small plant operating costs. A template developed by researchers at Oklahoma State University⁶ was modified to incorporate this data and generate financial projections. This basic model assumes almost strictly custom butchering, with no retail sales or co-packing.

Basic Operating Assumptions

Table 20 provides details on the basic operating assumptions of the plant model. Opportunities exist to process species other than cattle, these species include hogs, sheep and wild game. While wild game might seem to be limited and sporadic in nature, if managed correctly it could add a needed revenue stream for the project. However, interviews with other small plants suggest the greatest financial opportunities come from cattle because of their hanging weight and per-pound charges, and then hogs due to the further processing opportunities. The assumptions made for this project is that the plant capacity in head of cattle is 1,500 head annually. The plant is expected to run 50 weeks out of the year and will have two weeks down for repairs and maintenance and any severe weather. This would be 30 head per week on a beef basis. Since other livestock and wild game is expected to be slaughtered in this plant an assumption needed to be made as to mix of these animals coming in. It was assumed that beef cattle would be the main livestock processed. At 70 percent of capacity 1,008 cattle could be slaughtered annually in this size plant. Furthermore, hogs, sheep and wild game each taking 10 percent would mean 288 hogs, 331 sheep and 360 wild game animals could be processed annually in addition to the cattle. It is important to remember at this point that this scenario is only possible if the plant has sufficient livestock being brought to the plant at the appropriate time.

⁶ R.B. Holcomb, K. Flynn, and P. Kenkel. "Feasibility Template for a Small Multi-Species Meat Processing Plant." Available at http://fapc.biz/services/files/smallmeatplant_feasibility.xls.

Table 20. Slaughter Capacity Assumptions of a Small Meat Plant		
	Units	Rationale
Plant slaughter capacity (hd/wk), beef basis	30	Assumed average weekly slaughter for a plant with a maximum capacity of 30 hd/wk
Weeks per year of slaughter	50	Assumed two weeks down time for repairs, maintenance, and adverse weather
Total annual slaughter capacity (hd/yr, beef carcass basis)	1,500	Combined head slaughtered on-site
Cattle percentage of annual slaughter	70%	Assumed large majority of slaughter will be cattle
Cattle head slaughtered per year	1,008	
Hogs percentage of annual slaughter	10%	Assumed small percentage of slaughter hogs
Hogs head slaughtered per year	288	
Sheep percentage of annual slaughter	10%	Assumed small percentage of sheep
Sheep head slaughtered per year	331	
Wild Game head slaughtered per year	10%	Assumed small percentage of wild game
Wild Game head slaughtered per year	360	

Capital Costs

Table 21 on the following page provides an overview of estimated plant, property, and equipment (PP&E) capital expenditures for a 4,000 ft² plant. This cost estimate includes costs for refrigeration systems and cooler doors, along with estimated costs for permits and licenses required to build the plant. The parking lot and truck dock costs are estimates, but can vary greatly on the nature of the parking lot surface and the space available for trucks (e.g. trucks with livestock trailers, rendering trucks, and pick-up/delivery trucks) entering and leaving the premises. Livestock holding area costs are low-cost estimates using primarily pre-fabricated livestock panels to create a system of holding pens and chutes that would meet human handling requirements of square feet per animal. Equipment costs are highly variable due to the high costs of stainless steel, but can be minimized depending on the availability of used and refurbished equipment. There is equipment for cutting and packaging and additional equipment for further processing of the meat. It is assumed that there is no ready to eat products being produced in this plant.

The processing structure with parking and drive is expected to cost close to \$600,000 or \$150 per finished square foot. Equipment and facilities together would be around \$1,074,702. This includes the holding pens, cooler and freezer space, processing equipment for cattle and hogs, water treatment equipment and utilities installation. \$30,000 was allotted for a pickup truck and

\$50,000 for the land the facility will sit on. \$20,000 was included to cover some startup costs, mainly to deal with the funding of loan fees.

The total investment for the Plant, Property, and Equipment is \$1,174,702. The interest on the average investment would be \$29,368 and for the total investment \$58,735. The annual depreciation on the equipment and structure would be \$89,671. Straight line depreciation methods were used for the structure, equipment, truck, and startup costs. When looking at interest expense and depreciation as costs that the business must cover, they total \$148,406 annually.

Table 21. Capital Cost Summary			
	Cost	Economic Life	Annual Depreciation
Building and Grounds			
Processing Structure and Install Labor	\$545,749	\$39	\$13,994
Permits and Hookups	\$25,000	\$39	\$641
Parking and Drive and Exterior Lighting	\$25,000	\$39	\$641
Equipment			
Animal Receiving and Holding Pens	\$47,294	\$10	\$4,729
Pre-chill Cooler Space	\$20,250	\$7	\$2,893
Holding Cooler Space	\$34,493	\$7	\$4,928
Freezer Space	\$93,100	\$7	\$13,300
Slaughter Fixtures and Equipment Cattle	\$56,372	\$7	\$8,053
Slaughter Fixtures and Equipment Hogs	\$42,746	\$7	\$6,107
Processing Fixtures and Equipment	\$54,689	\$7	\$7,813
Wastewater Pretreatment Equipment	\$52,086	\$7	\$7,441
Sanitation Equipment	\$25,767	\$7	\$3,681
Facility, Process Utilities	\$49,656	\$7	\$7,094
Office Furniture	\$2,500	\$7	\$357
Total Equipment/Facilities	\$1,074,702		
Pickup Truck	\$30,000	\$5	\$6,000
Land	\$50,000		
Startup Costs/Loan Fees	\$20,000	\$10	\$2,000
Total Capital Cost	\$1,174,702		\$89,671
Total Investment	\$1,174,702		
Interest	Average Investment	Total Investment	
5.0%	\$29,368	\$58,735	

Labor

This project will require both administrative/management or indirect labor and direct labor. A summary of the labor situation for a small livestock processing facility is shown in Table 22 below. There would be a need for six full-time employees with this size of operation at full capacity. These employees operating in the plant will be the Plant Manager/Butcher,

Butcher/supervisor, Fabrication/cutter/packager. There will also be an office manager to keep records and manage for HACCP and do payroll. It is assumed that these employees work 50 weeks a year and 40 hours a week as far as their cost to the organization is concerned. It is important to note that this is for the plant at full capacity. For a plant at less than full capacity the management would need to eliminate one to two of these positions just to be efficient. Table 22 shows that the wages from these six employees will cost the business \$248,480 annually.

Table 22. Labor Expenses Associated Meat Processing Plant at Full Capacity						
Function	Employees	Rate	Average Hours Per Week	Weekly Gross Earnings	Weeks per Year	Annual Gross Earnings
Plant Manager/ Butcher	1	\$39	\$40	\$1,552	\$50	\$77,600
Butcher/Supervisor	1	\$28	\$40	\$1,118	\$50	\$55,880
Fabrication Cutter/ Packager	3	\$15	\$40	\$1,800	\$50	\$90,000
Office Manager	1	\$13	\$40	\$500	\$50	\$25,000
Total	6			\$4,970		\$248,480
Fringe Benefits Calculations:						
Turnover Rate		10%				
FUTA Taxable amount/e'ee		\$7,000				
FUTA Rate		0.80%				
SUTA Taxable amount/e'ee		\$8,500				
SUTA Rate		2.70%				
FICA Rate		7.65%				
Hourly and Salary Employees			Current			
Workman's Comp/e'ee/month		\$75.00	\$5,400.00			
Payroll Taxes						
FUTA			\$370			
SUTA			\$1,515			
FICA			\$19,009			
Total Fringe Benefits All E'ees***			\$26,293			
Total Labor Costs			\$274,773			
Fringe Percentage of Wages			9.6%			
***Benefits do not include Health Insurance or Retirement						
This would increase cost of labor by an additional 25 percent if the ownership wanted to provide those additional benefits.						

Fringe Benefits also need to be included in the cost of these employees. Assuming a turnover rate of 10 percent, and workman's comp being \$75 per employee per month the total fringe benefits totals \$26,293 for the employees. This total includes payroll taxes FUTA, SUTA and FICA. This brings the total labor costs to \$274,773 for employees. Fringe benefits as a percentage of wages are reasonable at 9.6 percent. This percentage does not include any additional benefits like health insurance.

Operating Expenses

Operating expenses are those expenses that in addition to labor are required for the production of output. They can change with the level of output but don't have to. The expenses considered operating aside from labor for this plant are Propane(gas), Electricity, Water, Sewer, Microbial Testing, Inedible Pickup, Solid Waste, Packaging Materials. The estimated monthly cost of these items at full capacity are outlined in Table 23 below.

Table 23. General Operating Expenses for a Small Meat Plant		
Operating Expense	\$/Month	Notes
Propane/month	\$733	Based on boiler and equipment needs via plant specifications and \$1.65/gal L.P.
Electricity/month (approx.)	\$5,983	Based on plant size, refrigeration needs, equipment, and an assumed \$0.1225/kWh
Water/month	\$814	Based on water needs for assumed production capacity
Sewer/month	\$0	Existing septic system will accept all sanitary sewage
Microbial Testing/month	\$150	Based on estimates from other small plants
Inedible Expense (renderer pick-ups)	\$500	
Solid Waste Management/month	\$1,208	
Packaging Materials	\$ 5,328	
Total	\$14,716	

Economic Feasibility

To determine the economic feasibility one must include all revenue generated from the sale of products and services as well as all of the expenses associated with the production of facility's products, whether they are fixed or operational costs. Tables 24, 25, and 26 break down the expected revenue from the projected market mix and prices for services. Tables 24 and 25 show what the most likely outcome for this business at two expected levels of capacity and with the 4,000 square foot facility. Table 26 shows the potential of what could happen at full capacity assuming that the livestock supply was available and could be scheduled to take full advantage of the facility's size.

So for scenario one, the feasibility analysis was first performed at the minimum level of capacity that was determined from the market analysis. This level had the capacity of the facility at 41%. At this level of capacity the total revenue came in at \$294,867. The labor expense was at \$241,264 and the total operating expenses including labor came to \$377,831. Fixed expenses brought the total expense at this level of capacity to \$618,388 and resulted in a loss of \$323,531.

Table 24. Economic Feasibility (Low Capacity)				
Hours per Day	8			
Days per Week	5			
Weeks per Year	50			
Total Capacity Percentage	41%			Year
				2026
Original Product Mix	% Capacity	Units	Price	Revenue
Cattle (Custom Processing)	22.90%	330	\$667	\$219,950
Hogs (Custom Processing)	4.70%	135	\$176	\$23,864
Sheep (Custom Processing)	3.03%	100	\$150	\$15,053
Wild Game (Custom Processing)	10.00%	360	\$100	\$36,000
		925		\$294,867
Total Revenue				\$294,867
Operating Expenses:				
Payroll Expense				\$241,264
Employee Benefits (Health Ins., Retirement)				\$0
Utilities				
Propane or Natural Gas				\$8,792
Electricity				\$71,798
Water				\$9,768
Microbial Testing				\$1,800
Inedible Expense (rendering pick-ups)				\$6,000
Solid Waste				\$14,493
Production Expense (packaging)				\$23,917
Total Operating Expenses				\$377,831
Fixed Expenses:				
Insurance				\$20,000
Professional Fees				\$15,000
Office Expenses				\$5,000
Telephone and Internet				\$1,500
Office Supplies				\$5,000
Property Taxes				\$12,899
Repairs and Maintenance				\$29,153
Fuel and Oil				\$3,600
Interest Expense				\$58,735
Depreciation Expense				\$89,671
Total Fixed Expenses				\$240,557
Total Cost				\$618,388
Net Income (Loss)				(\$323,521)

Scenario two's outcome had the high side livestock supply estimate of number of cattle, hogs, sheep and wild game the facility could expect was approximately 58%. The number of cattle processed at that level was 540 units. The number of hogs, sheep and wild game was 205, 100 and 360 respectively. The results of this modeling are shown in Table 25 on the following page. While revenue increases to \$447,435 from the increase in livestock being process through the facility, some of the related costs increase as well. The operating expenses increase to \$389,883 while the fixed expenses stay the same. The resulting net income from this level of capacity is a loss of \$183,005.

Table 25. Economic Feasibility (Middle Capacity)				
Hours per Day	8			
Days per Week	5			
Weeks per Year	50			
Total Capacity Percentage	58%			Year
				2026
Original Product Mix	% Capacity	Units	Price	Revenue
Cattle (Custom Processing)	37.50%	540	\$667	\$360,180
Hogs (Custom Processing)	7.13%	205	\$176	\$36,202
Sheep (Custom Processing)	3.03%	100	\$150	\$15,053
Wild Game (Custom Processing)	10.00%	360	\$100	\$36,000
		1,206		\$447,435
Total Revenue				\$447,435
Operating Expenses:				
Payroll Expense				\$241,264
Employee Benefits (Health Ins., Retirement)				\$0
Utilities				
Propane or Natural Gas				\$8,792
Electricity				\$71,798
Water				\$9,768
Microbial Testing				\$1,800
Inedible Expense (rendering pick-ups)				\$6,000
Solid Waste				\$14,493
Production Expense (packaging)				\$35,969
Total Operating Expenses				\$389,883
Fixed Expenses:				
Insurance				\$20,000
Professional Fees				\$15,000
Office Expenses				\$5,000
Telephone and Internet				\$1,500
Office Supplies				\$5,000
Property Taxes				\$12,899
Repairs and Maintenance				\$29,153
Fuel and Oil				\$3,600
Interest Expense				\$58,735
Depreciation Expense				\$89,671
Total Fixed Expenses				\$240,557
Total Cost				\$630,440
Net Income (Loss)				(\$183,005)

The last scenario that was evaluated was one for this size of facility running at full capacity. This had 70 percent of the throughput being beef cattle, while the other three livestock were at 10 percent each for a total of 100 percent. The results are shown in Table 26.

The total revenue from this scenario is \$808,790 annually. Payroll expense increases to its maximum at \$274,773. The remaining operating expenses combine with payroll for a total of \$451,359. With fixed expenses being the same as the first two scenarios at \$240,557, the net income is \$116,874. This is the only scenario that has the potential to be feasible since it is the only one with a positive net income. However, it is important at this point to remember that based on the market analysis, it is highly unlikely for this business at this time to have the commitment of 1,500 cattle equivalents per year.

Table 26. Economic Feasibility at 100 Percent Capacity				
Hours per Day	8			
Days per Week	5			
Weeks per Year	50			
Total Capacity Percentage	100%			Year
				2026
Original Product Mix	% Capacity	Units	Price	Revenue
Cattle (Custom Processing)	70.00%	1,008	\$667	\$672,336
Hogs (Custom Processing)	10.00%	288	\$176	\$50,774
Sheep (Custom Processing)	10.00%	331	\$150	\$49,680
Wild Game (Custom Processing)	10.00%	360	\$100	\$36,000
		1,987		\$808,790
Total Revenue				\$808,790
Operating Expenses:				
Payroll Expense				\$274,773
Employee Benefits (Health Ins., Retirement)				\$0
Utilities				
Propane or Natural Gas				\$8,792
Electricity				\$71,798
Water				\$9,768
Microbial Testing				\$1,800
Inedible Expense (rendering pick-ups)				\$6,000
Solid Waste				\$14,493
Production Expense (packaging materials)				\$63,936
Total Operating Expenses				\$451,359
Fixed Expenses:				
Insurance				\$20,000
Professional Fees				\$15,000
Office Expenses				\$5,000
Telephone and Internet				\$1,500
Office Supplies				\$5,000
Property Taxes				\$12,899
Repairs and Maintenance				\$29,153
Fuel and Oil				\$3,600
Interest Expense				\$58,735
Depreciation Expense				\$89,671
Total Fixed Expenses				\$240,557
Total Cost				\$691,916
Net Income (Loss)				\$116,874

Overall Feasibility

For planning purposes, it was determined that the 100 percent level of capacity should be evaluated for cash flow and overall feasibility. This can be done by adding five-year proforma income statement as well as a cash flow budget as well. To do this some assumptions must be made about the financing arrangement. For this project and for most projects it is very safe to assume that the entire PP and E would have to be financed. Today's historically low interest rates can translate into an owner or group of owners getting an interest rate as low as five percent for a 15-year period, however, these terms can change significantly over time and between individuals. In addition, working capital would need to be financed if none is available. However, for this scenario it will be assumed that it will be the owner's contribution.

Five Year Analysis of Profits/Losses at Full Capacity

Table 27 below presents a summary of the resulting projected profit and loss projections over the five-year period following the marketing expansion. The expenses are increased two percent a year to account for general inflation after the first year.

Table 27. Summary of Five Year Proforma Income Statements					
	Projected	Projected	Projected	Projected	Projected
	12-month	12-month	12-month	12-month	12-month
	Ending	Ending	Ending	Ending	Ending
Revenue	12/31/2022	12/31/2023	12/31/2024	12/31/2025	12/31/2026
Cattle Processing	\$219,950	\$360,180	\$672,336	\$685,783	\$699,498
Hog Processing	\$23,864	\$36,202	\$50,774	\$51,790	\$52,826
Sheep Processing	\$15,053	\$15,053	\$49,680	\$50,674	\$51,687
Wild Game Processing	\$36,000	\$36,000	\$36,000	\$36,720	\$37,454
Total Revenue	\$294,867	\$447,435	\$808,790	\$824,966	\$841,466
Variable Expenses:					
Payroll Expense	\$241,264	\$241,264	\$274,773	\$280,268	\$285,874
Employee Benefits (Health Ins., Retirement)	\$0	\$0	\$0	\$0	\$0
Utilities					
Propane or Natural Gas	\$8,792	\$8,967	\$9,147	\$9,330	\$9,516
Electricity	\$71,798	\$73,234	\$74,698	\$76,192	\$77,716
Water	\$9,768	\$9,964	\$10,163	\$10,366	\$10,574
Microbial Testing	\$1,800	\$1,836	\$1,873	\$1,910	\$1,948
Inedible Expense	\$6,000	\$6,120	\$6,242	\$6,367	\$6,495
Solid Waste	\$14,493	\$14,783	\$15,079	\$15,380	\$15,688
Production Expense (packaging)	\$23,917	\$35,969	\$63,936	\$65,215	\$66,519
Total Variable Expenses	\$377,831	\$392,137	\$455,911	\$465,029	\$474,329
Fixed Expenses:					
Insurance	\$20,000	\$20,400	\$20,808	\$21,224	\$21,649
Professional Fees	\$15,000	\$15,300	\$15,606	\$15,918	\$16,236
Office Expenses	\$5,000	\$5,100	\$5,202	\$5,306	\$5,412
Telephone and Internet	\$1,500	\$1,530	\$1,561	\$1,592	\$1,624
Office Supplies	\$5,000	\$5,100	\$5,202	\$5,306	\$5,412
Property Taxes	\$12,899	\$13,157	\$13,420	\$13,688	\$13,962
Repairs and Maintenance	\$29,153	\$29,736	\$30,331	\$30,937	\$31,556
Fuel and Oil	\$3,600	\$3,672	\$3,745	\$3,820	\$3,897
Interest Expense	\$57,510	\$54,749	\$51,846	\$48,796	\$45,589
Depreciation Expense	\$89,671	\$89,671	\$89,671	\$89,671	\$89,671
Total Fixed Expenses	\$239,332	\$238,414	\$237,391	\$236,258	\$235,007
Total Cost	\$617,163	\$630,550	\$693,302	\$701,287	\$709,337
Net Income (Loss)	(\$322,296)	(\$183,115)	\$115,488	\$123,679	\$132,129

The revenues are increased two percent after the third year. In the first three years of the model the revenue comes from the low, middle and full capacity models. The variable and fixed expenses increase after year one at two percent a year with the exception of the labor.

The results show that there is a loss in each of the first two years for the business of \$322,296 and \$183,115. In the third year, assuming the plant is able to reach full capacity, there is an estimated profit of \$115,488. This profit increases minimally in years four and five to \$123,679 and \$132,129 respectively.

Five Year Analysis of Cash Flows

A cash flow budget is important in determining the project's ability to make debt reduction payments over the life of the project. The resulting project's cash generating capacity over the first five years is summarized in Table 28. Given that the business borrows \$1,174,702 for a fifteen-year period at five percent interest, the annual debt service would be \$111,474. With that assumption and the net income from the previous proforma income statement there is a negative cash flow in the first two years of business. The cash flow ranges from \$-175,116 to \$267,388 in the fifth year of operation. What this means is that the business would need to borrow money to get through the first two years of operations in addition to the working capital. The debt service coverage ratio is 2.31 to 2.40 in years three through five which are good ratios for a business of this type.

Table 28. Summary of Cash Flow Projections					
	Projected	Projected	Projected	Projected	Projected
	12-month	12-month	12-month	12-month	12-month
	Ending	Ending	Ending	Ending	Ending
Cash Flow:	12/31/2022	12/31/2023	12/31/2024	12/31/2025	12/31/2026
Net Income	(\$322,295)	(\$183,115)	\$115,488	\$123,679	\$132,128
Depreciation	\$89,670	\$89,670	\$89,670	\$89,670	\$89,670
Interest Expense	\$57,509	\$54,748	\$51,846	\$48,795	\$45,589
Total Cash Flow	(\$175,115)	(\$38,695)	\$257,005	\$262,145	\$267,388
Total Proposed Debt Service	\$111,473	\$111,473	\$111,473	\$111,473	\$111,473
Debt Service Coverage Ratio	(1.57)	(0.35)	2.31	2.35	2.40

Summary of Financial Feasibility

The business model presented in this section is not financially feasible based on the cattle and hog numbers that were generated from the earlier survey work. Although there is an infinite number of sizes of facilities and ways cut costs on equipment, the setup that was chosen was one that has been used by many consultants as an appropriate size for a small slaughter plant that can be used for USDA inspected meat.

The main concern that Goldenhorn Consulting has with the results of this analysis is the low interest of livestock farmers in the region wanting to use a facility for this purpose. Normally one

would want to have farmers saying they would be willing to bring 2-3,000 cattle to this new facility if it were to open, and then you back off that number by half and still have the 1,500 you need to make this cash-flow. In this case the facility would be depending on cattle, hogs, sheep and wild game that would need to be at a much higher rate to make it work. The other obvious issue when you have a low number of customers is the timing of the work to be done. The ownership would not be successful if these individuals all want their livestock processed in the same two to three-month period.

Grants are available to help with some of the expenses in working capital and planning from the USDA. Grants like this should be applied for if the group of interested ranchers would like to move forward. There could be an opportunity for a grant from a state agency in Colorado, as we have found in other states like Tennessee.

Economic Impact Analysis

Economic Impact

Economic impact analysis in this report includes a model for Colorado. In economic impact analysis, output is the value of all sales transactions in the economy; employment is the number of part-time and full-time jobs in the economy while average wages and benefits are income for these jobs. Value added is equal to sales less the costs of purchased inputs (Shaffer, Deller, and Marcouiller 2004). Value added for the region is equivalent to the term gross state product.

Principles of Economic Impact Analysis

Economic impacts result from a multiplier effect that begins with input expenditures stimulating business to business spending, personal income, employment, and tax revenue. This analysis uses estimated data from plant operation of proposed processing facility.

Economic impacts can be estimated with input-output models that separate the economy into various industrial sectors such as agriculture, construction, manufacturing, trade, and services. The input-output model then calculates how a change in one industry changes output, income, and employment in other industries. These changes, or impacts, are expressed in terms of direct and indirect effects. Impacts are interpreted as the contribution of the enterprise to the total economy. Direct effects represent the initial impact on the economy of either construction or operations of an enterprise. Indirect effects are changes in other industries caused by direct effects of an enterprise and include changes in household spending due to changes in economic activity generated by direct effects. Thus, the total economic impact is the sum of direct and indirect effects. Input-output analysis can interpret the effects of an enterprise in a number of ways including output (sales), labor income (employee compensation and proprietary income), employment (jobs), and tax revenue (MIG 2004).

Output impacts are a measure of economic activity that results from enterprise expenditures in a specific industrial sector. Output is equivalent to sales or revenue, and the multiplier indicates how initial economic activity in one sector leads to sales in other sectors. Labor income impacts for employees and proprietors measure purchasing power that is created due to the output impacts. This impact provides the best measure of how standards of living are affected for residents in the impact area.

An enterprise involves a specified number of employees that is determined by the technology of the enterprise. Employment multipliers indicate the effect on employment resulting from the enterprise initiating economic activity. Indirect employment includes both full-time and part-time jobs without any distinction. Jobs calculated within an industrial sector are not limited to whole numbers and fractional amounts represent additional hours worked without an additional employee. With no measure of hours involved in employment impacts, summations for industrial sectors which include fractional employment represent both jobs and job equivalents. Since employment may result from some employees working additional hours in existing jobs, instead of terming indirect employment impacts as “creating” jobs, a more accurate term is “involving” jobs or job equivalents.

Economic Impacts – Animal Slaughter, Rendering, and Processing

Operation of the facility creates annual economic impacts within the state of Colorado, including employment, labor income, value-added, and output. Value added meat production Colorado has a positive impact on sales, employment, and tax revenues in the state of Colorado. Economic impacts are displayed for the 100 percent capacity scenario as it was the only scenario deemed financially feasible.

For maximum capacity, the associated direct employment number is 12.7 jobs based on \$808,790 in sales. These are the direct effects shown in Table 31. The production of meat products generates a direct impact of \$808,790 with the indirect and induced effect bringing the total value of this line of products to \$3,318,142. The production of products also has an indirect and induced effect of adding an additional 16.5 jobs to the state of Colorado's economy, bringing the total employment attributable to producing value added meat products to 29.2.

Table 29. Impacts of Small Livestock Processing Facility on Colorado's Economy at Maximum Capacity			
	Direct Impact	Indirect Impact	Total Impact
Output (\$)	\$808,790	\$2,509,352	\$3,318,142
Labor Income (\$)	\$378,756	\$530,566	\$909,323
Employment	12.7	16.5	29.2

Summary of Economic Impact

Operation of a processing facility in the West End of Colorado would create an annual \$3,318,142 total output impact in the state under the full capacity assumption, considering the multiplier effects. Total labor income of \$909,323 would annually involve 29.2 jobs in the state.

Conclusion

Results of the financial analysis for this study indicate that out of three capacity scenarios, a facility operating at maximum capacity is the only profitable scenario. While feedback from local business was positive, and market research indicates that there is consumer interest in locally-grown foods, there seems to either be a lack of interest amongst farmers and ranchers, or a lack of supply of livestock in the region to support a new facility.

While the facility would be feasible regarding technical, marketing, and management areas, it is unlikely to be financially feasible considering the given level of supply and interest. Moving forward, it is our recommendation that the construction of a new facility would require an increased interest and commitment from local farmers and ranchers in order to meet the supply needs of a profitable facility.

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AGENDA ITEM - 6.c.

TITLE:

Consideration of Chair's signature on a 2021 USGS Cooperating Agency Agreement for seasonal discharge measurements at USGS 09168730 DOLORES RIVER NEAR SLICK ROCK, CO./MOTION

Presented by: Lynn Padgett, Government Affairs/Natural Resource Director

Time needed: 10 mins

PREPARED BY:

Lynn Padgett

RECOMMENDED ACTION/MOTION:

Motion to approve Chair's signature on the 2021 Joint Funding Agreement with the U.S. Geological Survey for the operation and maintenance of the streamflow gaging station, 09168730 Dolores River near Slick Rock, CO, from March 1, 2021 to September 30, 2021.

INTRODUCTION/BACKGROUND:

Since 2017, San Miguel County has served as the signature cooperating agency for joint funding of the USGS discharge station on the Dolores River near Slick Rock, CO. GANR facilitates collecting annual contributions which reimburse the county for the cost of the Joint Funding Agreement (JFA), which is \$10,681 for 2021, so that the county is fully reimbursed for this expenditure. Our co-funding partners are the Southwest Water Conservation District, Dolores Water Conservation District, Colorado Water Conservation Board, Colorado Parks and Wildlife, The Nature Conservancy, Dolores River Boating Advocates, and American Whitewater. The discharge data provides important data for native fish and recreation interests. Prior to San Miguel County offering GANR to provide in-kind administration of this agreement, the discharge station was going to be turned off.

USGS adjusts the cost of this agreement annually for inflation.

FISCAL IMPACT:

Expenditure: \$10,681

Revenue through partners' contributions: \$10,681

Gross Fiscal Impact: \$0

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Government Services- Natural Resources
Description:			

ATTACHMENTS:

Description	Upload Date
Agreement No: 21REJFACO 129 with USGS for the seasonal operation and maintenance of the streamflow gaging station, 09168730 Dolores River near Slick Rock, CO	12/30/2020
USGS Cover Letter	12/30/2020

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR WATER RESOURCES INVESTIGATIONS

Customer No: 6000005820
Agreement No: 21REJFACO 129
Project No:
TIN #: 84-6000806

Fixed Cost
Agreement

☒ Yes ☐ No

THIS AGREEMENT is entered into as of the **1st** day of **March, 2021** by the U.S. GEOLOGICAL SURVEY, Colorado Water Science Center, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the **San Miguel County**, party of the second part.

1. The parties hereto agree that subject to the availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation Water Resource Investigations, the **operation and maintenance of the streamflow gaging station, 09168730 Dolores River near Slick Rock, CO**, herein called the program. The USGS legal authority is 43 USC 36C; 43 USC 50; and 43 USC 50b.
2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program.
2(b) includes In-Kind Services in the amount of **\$0.00**.
 - (a) **\$0.00** by the party of the first part during the period
March 1, 2021 to December 31, 2021
 - (b) **\$10,681.00** by the party of the second part during the period
March 1, 2021 to December 31, 2021
 - (c) Contributions are provided by the party of the first part through other USGS regional or national programs, in the amount of:
\$0.00 Description of USGS regional/national program: **NA**
 - (d) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties.
 - (e) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.
3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.
4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.
5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.
6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.
7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.
8. The maps, records or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program and, if already published by the party of the first part shall, upon request, be furnished by the party of the first part, at cost, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records or reports published by either party shall contain a statement of the cooperative relations between the parties. The Parties acknowledge that scientific information and data developed as a result of the scope of work are subject to applicable USGS review, approval, and release requirements, which are available on the USGS Fundamental Science Practices website (<https://www.usgs.gov/about/organization/science-support/science-quality-and-integrity/fundamental-science-practices>).
9. Billing for this agreement will be rendered **semi-annually (September and December)**. Invoices not paid within 60 days from date of bill will bear Interest, Penalties, and Administrative costs as the annual rate pursuant the Debt Collection Act of 1982, (codified at 31 U.S.C. 3717) established by the U.S. Treasury.

**U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR WATER RESOURCES INVESTIGATIONS**

Customer No: 6000005820
Agreement No: 21REJFACO 129
Project No:
TIN #: 84-6000806
Fixed Cost Agreement ☒ Yes ☐ No

USGS Technical Point of Contact

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U.S. Geological Survey
United States
Department of Interior

San Miguel County

SIGNATURE

SIGNATURES

By: _____ Date: _____
Name: David Mau
Title: Director, CWSC/USGS

By: _____ Date: _____
Name: _____
Title: _____

By: _____ Date: _____
Name: _____
Title: _____

By: _____ Date: _____
Name: _____
Title: _____



United States Department of the Interior

U. S. GEOLOGICAL SURVEY
Colorado Water Science Center, Western Colorado Office
445 W. Gunnison Ave, Ste 130
Grand Junction, Colorado 81501
(970) 628-7140

December 2, 2020

Lynn Padgett
San Miguel County
333 W. Colorado Avenue
PO Box 1170
Telluride, Colorado 81435

Dear Ms. Padgett:

The proposed cost for the U.S. Geological Survey (USGS) to provide seasonal operation and maintenance of the gaging station 09168730 Dolores River near Slick Rock, CO in 2020 is \$10,681. The entirety of this amount will be provided by the County. The scope of this agreement provides for operation and maintenance of the streamgage for the period March 1 – September 30, 2021, and to review and approve the data which will be completed by December 31, 2021.

Work performed with funds from this agreement will be conducted on a fixed-price basis. The results of all work under this agreement will be available for publication by the U.S. Geological Survey. If this proposal is satisfactory, please sign both copies of the JFA; keep one for your files; and return the remaining one to this office.

USGS policy requires us to obtain approval from our Regional Director to conduct work without a signed agreement. To assist us in complying with this policy, we request that you return the signed agreement by January 1. We appreciate whatever special effort you and others in your organization will make to respond to this request. If you have questions or concerns with this proposal please contact me at 970-628-7140 or Robert Kimbrough at 303-236-6902.

Sincerely,

Steven P. Anders
Data Chief, Western Colorado Office
USGS, Colorado Water Science Center



AGENDA ITEM - 6.d.

TITLE:

Consideration of comments concerning the Paradox Valley Unit of the CO River Basin Salinity Control Program Final EIS.

Presented by: Lynn Padgett, Government Affairs/Natural Resource Director

Time needed: 10 mins

PREPARED BY:

Lynn Padgett

RECOMMENDED ACTION/MOTION:

Discussion/direction on any possible comments (due by 1/11/21) or communication to the U.S. Department of the Interior Bureau of Reclamation regarding the Final EIS, which selected the BOCC's preferred alternative (the "No Action Alternative").

INTRODUCTION/BACKGROUND:

This item is on the agenda to provide a brief update on the Paradox Valley Unit of the Colorado River Basin Salinity Control Program Final Environmental Impact Statement (EIS) availability which selects the No Action Alternative (Alternative A) preferred by the Board of County Commissioners, as articulated in official comments earlier in 2020.

BOR: "The FEIS review period is from December 11, 2020 to January 11, 2021. Alternatives analyzed in the FEIS include a new injection well, evaporation ponds, zero liquid discharge technology, and no action. After weighing the benefits and impacts of the alternatives analyzed in the FEIS, the Bureau of Reclamation has identified the no action alternative as the preferred alternative."

Here is a direct link to the FEIS documents:

<https://www.usbr.gov/uc/progact/paradox/index.html>

FISCAL IMPACT:

N/A

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Government Services- Natural Resources
Description:			



AGENDA ITEM - 6.e.

TITLE:

Discussion on the initiation of the 2020 Hard Rock Mining Rulemaking by CO Minerals Regulatory Program of DRMS.

Presented by: Lynn Padgett, Government Affairs/Natural Resource Director

Time needed: 20 mins

PREPARED BY:

Lynn Michelle Padgett & Amy Markwell

RECOMMENDED ACTION/MOTION:

Discussion/Direction to Staff

INTRODUCTION/BACKGROUND:

2020 Hard Rock Rulemaking

The Minerals Program has initiated the process to conduct formal rulemaking to revise the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, and Designated Mining Operations. The proposed rulemaking is pursuant to CRS 34-32-108 of the Colorado Mined Land Reclamation Act to address the requirements of HB19-1113 for perpetual water treatment, certain annual water quality reporting and the elimination of self-bonding. Additionally, the Division will be redrafting Rules and Regulations related to temporary cessation (TC) to address inconsistencies and ambiguities and create a clearer administrative process for regulation of TC.

If you have questions or need additional information, contact Russ Means (russ.means@state.co.us - 303-866-3567 x 8150).

Anticipated Timeline --Subject to change

- December 11, 2020 - Redline Version to Stakeholders
- January 5 ~22, 2021 - Small Informal Stakeholder meetings
- January 7 and 26, 2021 - Main Informal Stakeholders meetings
- January 28, 2021 - Deadline for General Comments on proposed rules
- February 10, 2021 - Secretary of State Publication
- February 18 and 25, 2021 - Formal Stakeholders meetings

- March 24-25, 2021 - RuleMaking

Comments must be submitted electronically (Comment Form)

Please note that dates are tentative and will be updated throughout the rulemaking process

Documents

- December 11, 2020 Rulemaking Notice
- HB19-1113
- Proposed Rules Redline/Strikeout
- Proposed Statement of Basis, Purpose, and Statutory Authority (to be released at a later date)
- Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, and Designated Mining Operations (current version effective July 15, 2019)
- Submitted Comments from Stakeholders

The Colorado Division of Reclamation, Mining, and Safety (DRMS) Minerals Regulatory Program web site for this Rulemaking is:

2020 Hard Rock Rulemaking | Colorado Division of Reclamation, Mining and Safety. The above notice and materials were copied from this page on 12/31/2020. The above "anticipated timeline" puts the first comment deadline on 1/28/2021.

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Government Services- Natural Resources
Description:			

ATTACHMENTS:

Description	Upload Date
Rule making notice Dec2020	12/31/2020
MLRB Adopted Hardrock Redline	12/31/2020



COLORADO
Division of Reclamation,
Mining and Safety
Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

December 11, 2020

Notice of Intent to Initiate Hard Rock Rulemaking
To address requirements of House Bill HB19-1113 and
To Address Rules Related to Temporary Cessation

Dear Interested Party,

The Division of Reclamation, Mining and Safety (Division) is initiating the process to conduct formal rulemaking pursuant to CRS 34-32-108 of the Colorado Mined Land Reclamation Act to address the requirements of HB19-1113 for perpetual water treatment, certain annual water quality reporting and the elimination of self-bonding. Additionally, the Division will be redrafting Rules and Regulations related to Temporary Cessation (TC) to address inconsistencies and ambiguities and create a clearer administrative process for regulation of TC.

The Division will hold virtual ZOOM stakeholder meetings. At least two Combined Informal Stakeholders meetings will be conducted in January. The Division also will conduct as many individual stakeholders meetings as is necessary. The meetings will be to discuss the proposed rule language and seek any alternatives or identify issues in the hopes of gaining as much consensus as possible.

The Formal Rulemaking Process will begin in February, with additional stakeholder meetings and promulgation tentatively scheduled for March 24th and 25th, 2021.

If you wish to participate in the ZOOM virtual meetings, please send an email to russ.means@state.co.us for a link to the meeting. Otherwise you may listen on YouTube the day of the meeting.

Please note the schedule is tentative. For the most up to date schedule, comments received by other stakeholders, to submit a comment, and view a redline version of the proposed draft rules during this process, please visit the Division Website at: <https://www.colorado.gov/pacific/drms/2020-hard-rock-rulemaking>

If you have questions, please contact me at russ.means@state.co.us or via telephone 303.866.3567, ext. 8150.

Sincerely,

Russ Means
Minerals Program Director
Division of Reclamation, Mining and Safety



MINERAL RULES AND REGULATIONS
OF THE
COLORADO MINED LAND RECLAMATION BOARD
FOR

**HARD ROCK, METAL, AND DESIGNATED
MINING OPERATIONS**



Promulgated May, 1977

Amended June-December, 1977; March-July, 1978; July-August, 1979; May, 1980; April, 1981; February-April, 1982; April, 1983; October, 1983; June, 1985; March, 1987; December, 1987; October, 1988; November, 1990; September, 1991; March, 1993; April, 1994; January, 1995; October, 1995; April, 1999; January, 2000; August, 2001; June, 2005; August, 2006; August, 2010; January, 2015; and July, 2019.

Effective July 15, 2019

This copy of the Rules and Regulations is prepared by the Office of Mined Land Reclamation, based on the records of the Division of Reclamation, Mining and Safety and those of the Secretary of State.

Legislative Declaration in Section 34-32-102 of the Colorado Mined Land Reclamation Act states that:

- (1) It is declared to be the policy of this state that the extraction of minerals and the reclamation of land affected by such extraction are both necessary and proper activities. It is further declared to be the policy of this state that both such activities should be and are compatible. It is the intent of the general assembly by the enactment of this article to foster and encourage the development of an economically sound and stable mining and minerals industry and to encourage the orderly development of the state's natural resources, while requiring those persons involved in mining operations to reclaim land affected by such operations so that the affected land may be put to a use beneficial to the people of this state. It is the further intent of the general assembly by the enactment of this article to conserve natural resources, to aid in the protection of wildlife and aquatic resources, to establish agricultural, recreational, residential, and industrial sites, and to protect and promote the health, safety, and general welfare of the people of this state.
- (2) The general assembly further declares that it's the intent of this article to require the development of a mined land reclamation regulatory program in which the economic costs of reclamation measures utilized bear a reasonable relationship to the environmental benefits derived from such measures. The Mined Land Reclamation Board or the Division, when considering the requirements of reclamation measures, shall evaluate the benefits expected to result from the use of such measures. It is also the intent of the general assembly that consideration be given to the economic reasonableness of the action of the Mined Land Reclamation Board or the Division. In considering economic reasonableness, the financial condition of an operator shall not be a factor.

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RULE 1: GENERAL PROVISIONS AND REQUIREMENTS – PERMIT PROCESS

1.1 DEFINITIONS

103(1)

- (1) "Acid and Toxic Producing Materials" means natural or reworked earth materials having acid or toxic chemical and physical characteristics that, under mining or post-mining conditions of drainage, exposure, or other processes, produce materials which contain detrimental amounts of chemical constituents such as acids, bases, or metallic compounds.
- (2) "Acid Mine Drainage" means contamination of water by low pH or heavy metals that occurs from mined or disturbed materials as a result of the chemical and biological oxidation of reactive sulfide minerals when exposed to air and water. The possibility of generating "Acid Mine Drainage" exists where the pH of any exposed or potentially exposed overburden, waste rock, mill tailings, waste water treatment sludge, or other mined, placed, disposed or stockpiled material has the potential to develop a pH of 5.8 or less. Such determination may be based upon acceptable accelerated weathering and leaching tests of a representative sample of the overburden, waste rock, mill tailings, or other mined, placed, disposed, or stockpiled material. In determining whether a potential for acid mine drainage generation exists, the Office will consider natural pre-mining acidity and metals occurrence in bedrock, soil, groundwater and surface water where such information is available to the Office. Mined and stockpiled material does not include ore or other mined product that is or will be processed within one hundred and eighty (180) days of being stockpiled and removed from the permit area. However, the area affected by such stockpiled material may require the appropriate measures pursuant to Rules 3, 6 and 7, to prevent off-site impacts due to drainage or leaching, and for reclamation of the affected stockpile area.
- (3) "Activity" for the purpose of protecting groundwater quality, means any mining, milling, storing, disposing, or processing operations, or any reclamation operation or process that may discharge or cause discharge of pollutants to groundwater.

103(1.5)

- (4) "Affected Land" means the surface of an area within the state where a mining operation ~~or~~ Extractive Metallurgical Processing is being or will be conducted, which surface is disturbed ~~as~~ a result of such operation. Affected lands include but shall not be limited to private ways, roads, except those roads excluded pursuant to Rule 1.1(4), and railroad lines appurtenant to any such area; land excavations; prospecting sites; drill sites or workings; refuse banks or spoil piles; evaporation or settling ponds; leaching dumps; placer areas; tailings ponds or dumps; work, parking, storage or waste discharge areas; and areas in which structures, facilities, equipment, machines, tools or other materials or property which result from or are used in such operations are situated. All lands shall be excluded that would be otherwise included as land affected but which have been reclaimed in accordance with an approved plan or otherwise, as may be approved by the Board. Affected land shall not include off-site roads which existed prior to the date on which notice was given or permit application was made to the Office and which were constructed for purposes unrelated to the proposed mining operation and which will not be substantially upgraded to support the mining operation.

Commented [MR1]: Extractive Metallurgical Processing is being added to clarify that "milling" is affected lands

- 112(8)
- (5) "Affected Surface Water and Groundwater" means for purposes of the baseline site characterization and monitoring plan required for applications for in situ leach mining operations that surface water or groundwater affected or potentially affected by such mining operation.
 - (6) "Ambient Groundwater Quality" for mining operations permitted prior to January 31, 1994, ambient groundwater quality shall mean the quality of the groundwater at the mine site as of January 31, 1994. For mining operations permitted on or after January 31, 1994, ambient groundwater shall mean the quality of groundwater at the time of submittal of the permit application. In establishing ambient groundwater quality, an Operator or Applicant shall use available or collected groundwater data sufficient to characterize the site's ambient groundwater quality and submit such information in a form suitable to the Office.
 - (7) "Amendment" means a change in the permit or an application which increases the acreage of the affected land, or which has a significant effect upon the approved or proposed Mining Plan, Reclamation Plan, or Environmental Protection Plan.
 - (8) "Analogous law, rule or permit" means for purposes of violations and patterns of violation required to be disclosed in applications for in situ leach mining operations any federal or state law, rule or permit issued by this or another state or the United States which covers any of the environmental protections set forth in Sections 34-32-116 and 116.5, C.R.S.
 - (9) "Anniversary date of the Notice of Intent to Prospect" means the date the Office or Board issues the Notice of Intent to Prospect approval and is the date the annual fee shall be deposited with the Office on an annual basis until the Office terminates the Notice of Intent to Prospect.
 - (10) "Anniversary date of the permit" means the date the Office or Board issues the permit and is the date the annual fee shall be deposited with the Office on an annual basis until the Office or Board terminates the permit.
 - (11) "Applicant" means any person who applies to the Office for a mining permit.
 - (12) "Aquifer" means a geologic formation, group of geologic formations, or part of a geologic formation containing sufficient saturated permeable material that could yield a sufficient quantity of water that may be extracted and applied to a beneficial use.
 - (13) "Authorized Agent" means any corporate officer, corporate attorney, individual person, or persons so designated in the permit application.
 - (14) "Baseline site characterization and monitoring plan" means that baseline site characterization and monitoring plan required by Section 34-32-112.5, C.R.S. for all permit applications for in situ leach and designated mining operations. This term does not include other baseline characterizations, monitoring plans, studies or the like required under the act or these regulations.
 - (15) "Best available technology" means, for the purposes of establishing, designing and implementing groundwater reclamation plans for in situ mining operations, the best technologies, treatment techniques, reclamation techniques or other means that result in

effective reclamation of groundwater, taking into consideration all relevant factors including, but not limited to, technical feasibility, cost effectiveness, and the protection of public health, safety, welfare and the environment. In considering cost effectiveness, the financial condition of an operator shall not be a factor.

~~(16) "Certification by an Independent Auditor" means a letter or report from a Certified Public Accountant rendering an opinion as to the financial condition of a Financial Warrantor with regard to the financial tests required for self insurance. The opinion must demonstrate clearly and fully, without significant disclaimers, that the financial tests have been met by the Financial Warrantor.~~

Commented [MR2]: This is being deleted as it pertains to self-assurance Financial Warranties, which was eliminated in HB19-1113

115(2)

~~(17) "Complex Application" is an application which may require the Office to involve additional professional staff or outside professional or agency expertise, and is beyond what the Office considers to be a typical application review process for the majority of applications received. Complex applications include those with significant public involvement and are beyond what the Office considers to be a typical application review process for the majority of applications received.~~

Commented [MR3]: The edit is to provide additional clarity that other factors, such as a large numbers of commenters, requires additional Office time for processing and review.

~~(18) "Description of ISL Mines" means that description required to be in applications for all in situ leach mining operations of at least five (5) in situ leach mining operations that demonstrates the ability of the applicant to conduct such a proposed mining operation without any leakage, vertical or lateral migration, or excursion of any leaching solutions or groundwater-containing minerals, radionuclides, or other constituents mobilized, liberated or introduced by the in situ leach mining process into any groundwater outside of the permitted in situ leach mining area.~~

~~(19) "Designated Chemicals" are toxic or acidic chemicals identified by the applicant / operator, and accepted by the Office, or as determined by the Office, for used within the permit area primarily, but not exclusively, in extractive metallurgical processing, the use of which, has been determined, at certain concentrations, to represents a potential threat to human health, property or the environment.~~

Commented [MR4]: The additional text is being added to clarify how the "Designated Chemicals" list is created. The operator / applicant submits a list of chemicals to be used on site, that are reviewed and accepted by the Office. This creates the site specific "Designated chemicals" for that permit.

103(3.5)(a)
112.5

~~(20) "Designated Mining Operation" means a mining operation at which:~~

- (a) designated chemicals used in metallurgical processing are present on-site; or
- (b) toxic or acid-forming materials may be exposed or disturbed as a result of mining operations; or
- (c) acid mine drainage occurs or has the potential to occur due to mining or reclamation activities; or
- (d) uranium is developed or extracted, either by in situ leach mining methods or by conventional underground or open mining techniques.
- (e) The various types of Designated Mining Operations are identified in Section 34-32-112.5, C.R.S. 1984, as amended. Except as to uranium mining operations, designated mining operations exclude operations that do not use toxic or acidic chemicals in processing for purposes of extractive metallurgy and will not cause

acid mine drainage. Any designated mining operation, including uranium designated mining operations, may seek exemptions from this status pursuant to Rule 7.

- (f) (1) Metal mining operations, permitted under Section 34-32-110, C.R.S. 1984, as amended, which do not use or store designated chemicals, shall be ~~excepted-exempt~~ from the requirements applicable to Designated Mining Operations, unless they have a potential to produce acid or toxic mine drainage in quantities sufficient to adversely affect any person, property or the environment. It shall be the burden of the Operator or Applicant to demonstrate to the satisfaction of the Office that such potential does not exist.
- (2) The exception set forth in Rule 1.1(1924)(f)(1) does not apply to Section 110 uranium mining operations. However, such operations may apply for an exemption from Designated Mining Operation status pursuant to the requirements and procedures set forth in Rule 7.
- (g) Designated Mining Operations shall be identified with a "d" suffix, (i.e., 110d or 112d). An in situ leach mining operation under Section 110 or 112 shall be treated as a section 112d-3 operation unless such operation is granted an exemption from designated mining operation status under Rule 7, in which case such operation shall be referred to as an "110 ISL" or "112 ISL" operation, as appropriate.

(20) "Development" means the work performed in relation to a deposit, following the prospecting required to prove minerals are in existence in commercial quantities but prior to production activities, aimed at, but not limited to, preparing the site for mining, defining further the ore deposit by drilling or other means, conducting pilot plant operations, constructing roads or ancillary facilities, and other related activities.

Commented [MR5]: This language is straight from Statute. It is being included here for reference in Temporary Cessation reviews

(21) "Environmental Protection Facility" means a structure which is identified in the "Environmental Protection Plan" as designed, constructed and operated for control or containment of designated chemicals, uranium, uranium by-products or other radionuclides, acid mine drainage, or toxic or acid-forming materials that will be exposed or disturbed as a result of mining or reclamation operations.

103(4.9)

(22) "Environmental Protection Plan" means a plan submitted by a Designated Mining Operation for approval as part of the Operator's or Applicant's permit for such operation for the protection of human health, property or the environment in conformance with the duties of Operators as prescribed by the Act and these Rules.

(23) "Extraction" means the removal of minerals and/or overburden from places of natural occurrence to surface locations.

(24) "Extractive Metallurgical Processing" means the production-scale process of extracting metals of value from mineral ore, or waste water treatment for metals removal. Metallurgical processing may include but is not limited to crushing, concentrating, chemical leaching, evaporation, grinding, flotation, milling, or any other process of ore beneficiation on affected lands. It does not include laboratory analyses, metallurgical testing, potable

Commented [MR6]: Text is being added to encompass the broad range of chemical and mechanical methods for extraction of a metal from host rock. The last sentence is intended to tie extractive processing into defined mining operations.

water treatment, prospecting activities, or other activities which involve only incidental, or minimal, use of designated chemicals and which do not pose a threat to human health, property or the environment. All activities outlined herein constitute Mining Operations as defined herein.

(25) "Facility" means the combined "activities" occurring on the affected land.

121.5

(26) "Failure or Imminent Failure" means, for the purpose of emergency notification response:

- (a) Any actual or imminent release of any material or liquid from any impoundment, embankment, or slope that poses a reasonable potential for danger to any persons or property or to the environment;
- (b) Any actual or imminent malfunction or nonperformance of any structure for in situ leach mining operations designed to detect, prevent, minimize, or mitigate adverse impacts on groundwater, human health, wildlife, or the environment; or
- (c) The actual or imminent malfunction or nonperformance of any environmental protection facility designed to contain or control chemicals or waste that are acid or toxic-forming.

(27) "Filed" means an application submitted to the Office and determined to contain the permit application information required for all permits by Rules 1.4.1, 1.6.2(1)(a)(i) and (b), 1.6.2(1)(g), and Rules:

- 1.4.2(2) for a non in situ leach mining 110 or 110d for a Limited Impact operation application;
- 1.4.5(2) for a 112 or 112d Reclamation Permit Operation application; or
- 1.4.4 and 1.4.5 for all in situ leach mining operation applications. Note: all 110 and 112 in situ leach mining operations under section must comply with filing requirements for both 112d designated mining operation applications and in situ leach mining applications unless the applicant is granted an exemption from designated mining operation status. In such a case, the applicant need only comply with in situ leach mining application requirements.

A determination by the Office that an application submitted to the Office contains the referenced application materials shall trigger the decision making periods provided under Sections 34-32-110(6), or 34-32-115(1) and 115(2), C.R.S., as appropriate. A determination that an application is filed does not constitute a determination that the application adequately meets statutory and regulatory requirements.

(28) "Financial Warrantor(s)" means a person who provides a Financial Warranty to the Board.

103(5.5)
117(3)

(29) "Financial Warranty" means a written promise to the Board to be responsible for reclamation costs up to the amount specified by the Board or Office or required by the Act, together with proof of financial responsibility.

- (30) "Independent Reviewer" is a person who is utilized by the Office to review Quality Assurance/Quality Control certification documents designated by the Office, Baseline site Characterization and Monitoring Plans, environmental protection plans, applications, Amendments and Technical Revisions and to monitor field operations. An Independent Reviewer is not an agent of the Office, Operator, Applicant, or any other person involved in the application or other hearing before the Board.
- (31) "Inert Material" means non-water soluble and non-putrescible solids together with such minor amounts and types of other materials, unless such materials are acid or toxic producing, as will not significantly affect the inert nature of such solids. The term includes, but is not limited to, earth, sand, gravel, rock, concrete which has been in a hardened state for at least sixty (60) days, masonry, asphalt paving fragments, and other inert solids.
- 103(5.7) (32) "In Situ Leach Mining" means in situ mining for uranium through the in-place dissolution of mineral components of an ore deposit by causing a chemical leaching solution, usually aqueous, to penetrate or to be pumped down wells through the ore body and then removing the mineral-containing solution for development or extraction of the mineral values.
- (a) It is not intended that this definition of in situ leach mining include extraction or disturbance of trace amounts or de minimus amounts of uranium that have no potential to affect human health or the environment when such extraction or disturbance of uranium occurs while mining another mineral. If uranium is disturbed or extracted during the mining of another mineral, the operator shall immediately inform the Office of the disturbance or extraction, and include all information concerning the circumstances of the disturbance or extraction of the uranium in a written report submitted to the Office. After notification to the Office, the Office will determine whether the Operator must comply with the in situ leach mining and designated mining operation requirements.
- 103(5.8) (33) "In Situ Mining" means the in-place development or extraction of a mineral by means other than open mining or underground mining.
- (34) "Landowner" means any individual person or persons, firm, partnership, association, corporation, or any department, division, or agency of federal, state, county, or municipal government which owns or controls the surface rights to any land area under consideration for mining or prospecting. These surface rights are separate from mineral rights which may or may not be owned and controlled by the same entity.
- 103(6)(a)
103(6)(b) (35) "Life of the Mine" means and includes, but is not limited to, those periods of time from when a permit is initially issued, that an Operator engages in or plans to continue extraction of minerals, complies with the Act and these Rules, and as long as mineral reserves remain in the mining operation. It can include limited periods of non-production or Temporary Cessation. "Life of the mine" also includes that period of time after cessation of production necessary to complete reclamation of disturbed lands as required by the Board and this article, until the Board releases, in writing, the Operator from further reclamation obligations regarding the affected land, declares the operation terminated, and releases all applicable Performance and Financial Warranties.

- 110(1)(a)(III)
110(2)
- (36) "110 Limited Impact Operation" means any mining operation which requires a 110(1) or 110(2) permit:
- (a) A 110(1) permit affects five (5) acres or less and requires a permit issued under Section 34-32-110(1)(a)(III), C.R.S. for the life of the mine; and is not an in situ leach mining operation or a designated mining operation; or
 - (b) A 110(2) permit affects less than ten (10) acres and requires a permit issued under Section 34-32-110(2), C.R.S. for the life of the mine; extracts less than seventy thousand (70,000) tons of mineral, overburden, or combination thereof per calendar year; and is not an in situ leach mining operation or a designated mining operation.
- 110
- (37) "110 Limited Impact Permit" shall mean a permit issued to a 110 Limited Impact Operation pursuant to Section 34-32-110(1)(a)(III) or (2), C.R.S.
- (38) "110d Limited Impact Permit" shall mean a permit issued to an operator for a Designated Mining Operation pursuant to Section 34-32-112.5(3)(a), C.R.S.
- 106(1)(a)
- (39) "Meeting" as the term is used in these Rules, means the regular monthly session held by the Board in accordance with Section 34-32-106, C.R.S. 1984, as amended. The topics to be considered include, but are not necessarily limited to:
- (a) approval or denial of permit applications;
 - (b) approval or denial of applications for permit revisions, amendments, and permit transfers;
 - (c) cause to hold a formal hearing with respect to a particular application or operation pursuant to Section 34-32-114, C.R.S. 1984, as amended;
 - (d) determinations with respect to temporary cessation; and
 - (e) other permit related considerations which do not require a "formal hearing."
 - (f) These meetings may also include, but are not necessarily limited to hearings, rule making proceedings in accordance with the Administrative Procedures Act, Section 24-4-103, C.R.S. 1984, as amended, and executive sessions.
- 108(1)
115
- 103(7)
- (40) "Mineral" means an inanimate constituent of the earth in a solid, liquid, or gaseous state which, when extracted from the earth, is useable in its natural form or is capable of conversion into a useable form as a metal, a metallic compound, a chemical, an energy source, or a raw material for manufacturing or construction material. For the purposes of this article, this definition does not include coal, surface or subsurface water, geothermal resources, or natural oil and gas together with other chemicals recovered therewith, but does include oil shale.
- 103(8)
- (41) "Mining Operation" means the activities associated with development, production and / or extraction of a mineral from its natural occurrences on affected land. The term includes,

but is not limited to, open mining, in situ mining, in situ leach mining, surface operations and the disposal of refuse from underground mining, in situ mining, and in situ leach mining. The term also includes the following operations on affected lands: transportation; concentrating; milling; evaporation; and other processing. The term does not include: the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipe; the development or extraction of coal; the extraction of geothermal resources; smelting, refining, cleaning, preparation, transportation, and other off-site operations not conducted on affected land; or extraction of construction material where there is no development or extraction of any construction material as that term is defined in Section 34-32.5-103(3), C.R.S.

(42) "Modification" means any amendment or revision of any previously granted permit, including permit transfers, increases or decreases of the amount of financial warranty required by the Board, and declarations regarding temporary cessation, which is either:

(a) initiated by the Board pursuant to Rule 3.3.2 as necessary to bring the operation into compliance with the provisions of these Rules or the Act, or

(b) the subject of a petition for a formal hearing granted by the Board pursuant to Section 34-32-114 of the Act.

103(8.5)

(43) "Office" means the Office of Mined Land Reclamation within the Division of Reclamation, Mining and Safety (DRMS).

(44) "Off-site" means the area outside of the permitted affected area.

(45) "110 ISL operation" or "112 ISL operation" shall mean those in situ leach mining operations which have been granted an exemption from designated mining operation requirements. Otherwise, 110 and 112 in situ leach mining operations shall be considered and referred to as 112d operations.

103(9)

(46) "Open Mining" means the mining of minerals by removing the overburden lying above such deposits and mining directly from the deposits thereby exposed. The term includes mining directly from such deposits where there is no overburden. The term includes, but is not limited to, such practices as open cut mining, open pit mining, strip mining, quarrying, and dredging.

103(10)

(47) "Operator" means any person, firm, partnership, association, corporation, or any department, division, or agency of federal, state, county, or municipal government engaged in or controlling a mining operation.

103(11)

(48) "Overburden" means all of the earth and other materials which lie above natural minerals and also means such earth and other materials disturbed from their natural state in the process of mining.

(49) "Owner of Record" means the owner or owners of a surface property interest shown on the records of the County Assessor as of the date of filing.

(50) "Party" means a person who demonstrates that they are directly and adversely affected or aggrieved by the conduct of a mining operation, proposed mining operation, or an order of the Board and whose interest is entitled to legal protection under the Act.

(51) "Pattern of Willful Violations" means that information required to be disclosed in the application for an in situ leach mining operation that the applicant, or an affiliate, officer or director of the applicant, has or has not demonstrated a pattern of willful violations of environmental protection requirements of the Act or these regulations or a permit issued under the Act or an analogous law, rule or permit issued by another state or the United States.

103(11.5)
117(2)

(52) "Performance Warranty" shall mean a written promise to the Board, by the operator, to comply with all requirements of the Act.

(53) "Permittee" means any person holding a mining Permit.

(54) "Person" means any individual, firm, partnership, joint venture, association, limited liability company, or corporation or other entity, or any department, division, or agency of federal, state, county, or municipal government.

(55) "Point of Compliance" means locations down gradient of the facility or activity at which water sampling may be conducted to demonstrate compliance with applicable groundwater standards established by the Water Quality Control Commission, or permit conditions required by the Office or Board to measure compliance with the MLRB permit.

(56) "Production" means the work performed in relation to the extraction and/or processing of a mineral deposit. The term may include, stockpiling of ore, transportation of ore to processing facilities, onsite metallurgical extraction, sale of extracted materials, and disposal of mine wastes. Minimal or token activity does not constitute production.

Commented [MR7]: This language is a starting point for discussion. It is intended to encompass activities that should be considered in the total aspect of production as it relates to the Act and other definitions and Rules.

103(12)

(5657) "Prospecting" means the act of searching for or investigating a mineral deposit. "Prospecting" includes, but is not limited to, sinking shafts, tunneling, drilling core and bore holes and digging pits or cuts and other works for the purpose of extracting samples prior to commencement of development or extraction operations, and the building of roads, access ways, and other facilities related to such work. The term does not include those activities which cause no or very little surface disturbance, such as airborne surveys and photographs, use of instruments or devices which are hand carried or otherwise transported over the surface to make magnetic, radioactive, or other tests and measurements, boundary or claim surveying, location work, or other work which causes no greater land disturbance than is caused by ordinary lawful use of the land by persons not prospecting. The term also does not include any single activity unless specified in Rule 5 of these rules which results in the disturbance of a single block of land totaling one thousand six hundred (1,600) square feet or less of the land's surface, not to exceed two (2) such disturbances per acre; except that the cumulative total of such disturbances will not exceed five (5) acres statewide in any prospecting operation extending over twenty-four (24) consecutive months.

113

(5758) "Prospecting Notice" shall mean that notice required by the Act to engage in Prospecting.

- ~~117(7)(a)~~ (58) ~~"Rating of 'A' or Better" means, with regard to financial warranties, that the rating organization has determined that the obligations are at least of an upper medium grade, meaning that factors giving security to the principal and interest are considered adequate but that elements may be present which suggest the possibility of adverse effects if economic and trade conditions change.~~
- 103(13) (59) "Reclamation" means the employment during and after a mining operation of procedures reasonably designed to minimize as much as practicable the disruption from the mining operation and to provide for the establishment of plant cover, stabilization of soil, the protection of water resources, or other measures appropriate to the subsequent beneficial use of such affected lands. Reclamation shall be conducted in accordance with the performance standards of the Act.
- 103(14) (60) "Refuse" means all waste material directly connected with the cleaning and preparation of substances mined by a mining operation.
- 112 (61) "Regular Operation" applies to all mining operations not included within the definitions of Limited Impact or Prospecting Operations, specifically, any mining operation affecting ten (10) acres or more, or extracting seventy thousand (70,000) tons or more of mineral, overburden, or combination thereof per calendar year.
- (62) "Rolling Stock" means any portable or mobile equipment.
- 117(7)(b) (63) "Salvage Value" of Project-related fixtures or equipment means the market value of the particular fixture or equipment less any necessary costs of demolition and/or removal, as determined by the Office or Board in accordance with the requirements in Rule 4.12.2.
- 115(4)(d) (64) "Structure: Significant, Valuable and Permanent Man-made" means a non-portable improvement to real property which has defined, current and recognizable value of an economic nature; generally including but not limited to: buildings, houses, barns, fences, above or below ground utilities, irrigation ditches, maintained or public roads, bridges, railroad tracks, cemeteries, communication antennas, pipelines, water wells, water storage structures, discharge and conveyance structures, etc.
- (65) "Technical Revision" means a change in the permit or an application, which does not have more than a minor effect upon the approved or proposed Reclamation or Environmental Protection Plan.
- (66) "Temporary Cessation" means those limited periods of non-production as specified according to Rule 1.13.
- (67) "Topsoil" means the material at the surface of the earth which has been so modified and acted upon by physical, chemical, and biological agents that it will support rooted plants necessary to achieve reclamation goals.
- 110(1)(a)(I) (68) "Two Acre Limited Impact Operation" means any currently permitted mining operation issued under Section 34-32-110(1)(a)(I), C.R.S. which:
- (a) the permit application for such operation was filed prior to July 1, 1993;

Commented [MR8]: This is being deleted pursuant to HB19-1113

- (b) affects less than two (2) acres for the life of the mine; and
- (c) extracts less than seventy thousand (70,000) tons of mineral, overburden, or combination thereof per calendar year;

By July 1, 2015 an Operator issued a two acre limited impact permit pursuant to Section 34-32-110(1)(a)(I), C.R.S. shall file with the Office:

- a) evidence of the source of the person's legal right to enter and initiate a mining operation on affected land; and
 - b) a financial warranty that complies with Sections 34-32-110(3) and 34-32-117(4), C.R.S.
- (69) "Vegetation Cover" means an ocular estimate of the percentage of ground covered by the above-ground living plant parts.
- (70) "Vegetation Type" means a designation for a natural grouping of plant species named according to one or more visually dominant species.
- (71) "Working Day" means Monday through Friday, except for those days that are recognized or designated as State holidays or other non-work days as declared by the governor or legislature.
- (72) "1976 Act or the Act" refers to the Colorado Mined Land Reclamation Act of 1976, Section 34-32-101, et seq., C.R.S. 1984, as amended.

Commented [MR9]: The text is being added to take into account other non-work days declared by the State. Such as furloughs, weather days, etc.

1.2 SCOPE OF RULES AND ACTIVITIES THAT DO NOT REQUIRE A RECLAMATION PERMIT

1.2.1 Specified by Rule

The Board has determined that certain types of activities do not need reclamation permits either because the excavated substance is not a mineral as defined in Section 34-32-103(7), Colorado Revised Statutes 1984, as amended or because the activity is not a mining operation as defined by Section 34-32-103(8), C.R.S. 1984, as amended. Such activities include the following:

- (a) the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipe;
- (b) the development or extraction of coal (refer to the Colorado Surface Coal Mining Reclamation Act Section 34-33-101, et seq., C.R.S. 1984, as amended);
- (c) smelting, refining, cleaning, preparation, transportation, and other off-site operations not conducted on affected land; and

- (d) the extraction of geothermal or groundwater resources.

1.2.2 Reserved

1.2.3 Effect of Regulations

Nothing in these Rules shall supplant, alter, impair or negate the regulatory authority of the Colorado Department of Public Health and Environment in relation to mining operations, nor shall these Rules supplant, alter, impair, or negate the authority of other state and federal agencies in relations to mining operations.

1.2.4 Extraction or Prospecting on Federal Lands

Any person who intends to extract or prospect for minerals on federal lands shall apply for a Mined Land Reclamation Board permit or submit a Notice of Intent to conduct prospecting operations unless specifically exempted by the Board according to the provisions of Rule 1.2.

1.3 PUBLIC INSPECTION OF DOCUMENTS

112(10)(a)

- (1) Except as provided in this Rule 1.3 or as otherwise provided by law, all applications, notices of intent to conduct prospecting, public notices, inspection reports, documents, maps, exhibits, correspondence, tests, analyses, records of actions or findings of the Board or Office and other information required under the Act or these Rules shall be made available for inspection as required by law upon the written request of any member of the public at the offices of the Office, during its normal business hours.

- (2) Upon request, copies shall be provided at cost or other suitable arrangements made for copying at the requester's expense, as allowed by copyright law.

112(9)

- (3) As to mining operations, an Operator may mark "CONFIDENTIAL" information supplied in a permit application disclosing the location, size, or nature of the deposit or depth and thickness of the ore body or deposit and thickness and type of overburden to be removed. Information concerning a mining operation marked as confidential and determined by the Office to be confidential shall not be made available to the public unless the Operator gives a written consent on company letterhead and signed by an authorized agent of the company to release all or any part of the information.

113(3)

- (4) As to notices of intent to conduct prospecting:
 - (a) All information in a Notice of Intent to Conduct Prospecting submitted and approved prior to June 2, 2008, shall be treated as confidential except as set forth in Rule 1.3(4)(a). Such confidential information shall not be made available to the public unless the Board finds that reclamation has been satisfactorily completed, or unless the Operator gives a written consent to the release of all or any part of the information. However, if a prospector uses the Notice of Intent to conduct the baseline site characterization and monitoring plan required for an in situ leach mining operation application, the design and operation of the baseline site

characterization and monitoring plan, together with all information collected in accordance with the plan, shall be a matter of public record.

- (b) For Notices of Intent to Conduct Prospecting or modifications thereof submitted or approved on or after June 2, 2008, all information in a notice of intent or modification of such notice is a matter of public record including, in the case of a modification, the original notice of intent; except that, information relating to the mineral deposit location, size or nature, and other information designated by the prospector and determined by the Board as proprietary, trade secret or that would cause substantial harm to the competitive position of the prospector, shall be protected as confidential and shall not be a matter of public record in the absence of a written release from the prospector, until the Board finds that reclamation has been satisfactorily completed, or until the Board releases the information pursuant to Rules 1.3(4)(f) and (h). However, if a prospector uses the Notice of Intent to conduct the baseline site characterization and monitoring plan required for an in situ leach mining operation application, the design and operation of the baseline site characterization and monitoring plan, together with all information collected in accordance with the plan, shall be a matter of public record.
- (c) An applicant or prospector may designate its identity as confidential if the applicant or prospector believes disclosure of its identity would cause substantial harm to its competitive position. If so designated, the Office shall keep the identity confidential until: (1) the applicant or prospector files a written release; (2) the applicant or prospector files the notice described in Rule 1.3(4)(c)(i); (3) the Board finds that reclamation has been satisfactorily completed; or (4) until the Board releases the identity pursuant to Rules 1.3(4)(f) and (h).
 - (i) If identity is designated as confidential and the Office approves the notice of intent to prospect, the prospector shall file with the Office quarterly reports in which the prospector justifies continuance of its confidential designation of its identity. In addition, once the prospector believes its identity no longer needs to be confidential, it shall forthwith file a written notice to the Office. Upon receipt, the Office shall treat the prospector's identity as public record and post the identity of the prospector on the Office's website within ten (10) days of receipt of the prospector's notice.
 - (ii) The confidentiality designation of an applicant's or prospector's identity shall be subject to the dispute resolution procedures set forth in Rule 1.3(4)(f) and (h).
- (d) Upon submittal of a notice of intent or modification thereof, every applicant shall designate any information the applicant considers to be exempt from public disclosure. The Office shall post on its website within five (5) days of receipt of such notice or modification all information in a notice of intent or modification except information that the applicant has designated as exempt from disclosure.
- (e) If the Office approves a notice of intent, the prospector shall continue to designate any information the prospector believes is exempt from public disclosure in any written submittals filed with the Office after the filing of the notice of intent including

in annual and final reports. Such designations shall be subject to the same grounds for designation and procedures for resolution of designation disputes as apply to information in a notice of intent.

- (f) Any person may submit a written request to the Office asking that information in a notice of intent that a prospector has designated as confidential be disclosed. Such request must be filed with the Office within ten (10) working days of the Office's posting of the notice of intent on its website. The Office shall treat such request as a deficiency issue that must be resolved prior to approval of the notice of intent. Such request shall set forth the specific information requested to be disclosed and the factual and legal basis for the person's assertion that such information is public. Upon receipt of such a request, the Office shall forward the request to the prospector within three (3) working days of receipt of the request. If the prospector does not consent to disclosure of the information within seven (7) days from receipt of the request, the Office shall keep the information confidential and inform the requesting person in writing within three (3) working days of the prospector's decision. Within seven (7) days from the receipt of the prospector's decision, the requesting person may ask the Board to hold a hearing on whether the information should remain confidential. If the person requests a hearing, such hearing shall not be held any earlier than twenty (20) days after the Office has given notice of the hearing to the prospector and the requesting person. Any response by the Office or the prospector to the request for disclosure shall be kept confidential and shall only be sent to the Board, Office and prospector, as applicable.
- (g) If the Office believes that a prospector has not properly designated information as confidential, the Office shall inform the prospector of the Office's decision. The Office's decision shall be kept confidential. If the prospector does not consent to disclosure of the information within seven (7) days from notice of the Office's decision, the Office shall keep the information confidential and may set the matter for hearing before the Board. The Board hearing shall not be held any earlier than twenty (20) days after the Office has given notice of the hearing to the prospector.
- (h) The Board shall hold any hearing set under Rule 1.3(4)(f) in executive session. No entity other than the Board shall be present in the executive session. The Board shall electronically record such executive sessions and maintain such recordings in accordance with the Open Meetings Law, Section 24-6-204, C.R.S.
- (i) Prior to holding an executive session, the Board in its discretion may hear oral argument in open meeting from the applicant or prospector, the Office and the requesting person, if applicable. The Board may decide the matter on the written request alone or on the Office's written decision alone, whichever is applicable, or it may require the applicant or prospector, the requesting person (if applicable) and the Office to submit written briefs on whether the information should be kept confidential or should be publicly disclosed. Such written briefs shall only be submitted to the Board, which shall keep them confidential. Within thirty (30) days of holding a hearing in executive session, the Board shall issue an order that grants or denies, in whole or in part, the request or that upholds or reverses in whole or in part

the Office decision. The order shall keep confidential the information the Board has determined should remain confidential.

- (ii) If the Board determines that certain information is public rather than confidential, the Board shall delay disclosure of such information until thirty (30) days from the date of its written order. The Board's decision shall constitute final agency action for purposes of judicial review.

113(3) (5) Any dispute as to whether information is properly designated as exempt from public disclosure shall be considered a deficiency issue concerning the notice of intent to conduct prospecting. Accordingly, the Office shall not approve a notice of intent, and prospecting activities shall not be authorized to commence, until the designation issue has been resolved and the applicant has satisfied all other requirements applicable to a notice of intent.

113(3) (6) Anyone who willfully and knowingly violates the provisions of confidentiality shall be punished as provided by law.

1.4 APPLICATION REVIEW AND CONSIDERATION PROCESS

1.4.1 Applications – General Provisions

110
112(1) (1) Application forms, attachments, maps, and fees shall be submitted in accordance with the specific requirements for each permit type, except that Designated Mining Operations shall also submit an Environmental Protection Plan as outlined in Rule 6.4.21, and in addition, all In Situ Leach Mining Operations shall also submit Exhibits set forth in Rules 6.4.21 (unless exempt), 6.4.22, 6.4.23, 6.4.24, and 6.4.25.

112(4)(a) (2) All tests, analyses, surveys and maps shall be prepared by qualified persons.

(3) All information submitted in an application must be accurate and complete, and acknowledged as such by the signature of an authorized agent on an application form provided by the Board.

112(1)(c) (4) Prior to Office consideration of the application, submit proof of all required notices either by submitting return receipts of a Certified Mailing or by proof of personal service.

110(2)(a)(I) (5) All application forms shall contain the following information:

112(2)(e) (a) the physical address, e-mail, and telephone number of the general Office and the local address or addresses, e-mail and telephone number of the Operator/Applicant;

110(2)(a)(II)
110(2)(a)
112(2)(b) (b) the name, address, e-mail, and telephone number of the Owner of the surface of the affected land and the source of the Operator's/Applicant's legal right to enter and initiate a mining operation on the affected land;

Commented [MR10]: General editorial changes throughout are regarding email and electronic submission of application and reporting documents is to reflect current and future e-permitting

110(2)(a)(III) 112(2)(c)	(c)	the name of the Owner of the subsurface rights of the affected land;
110(2)(a)(VIII) 112(2)(d)	(d)	a statement that the Operator/Applicant has applied for all necessary approvals from local government;
110(1)(a)(III)(D) 110(2)(a)(IV)	(e)	a statement that the operations will be conducted in accordance with the terms and conditions listed in the application, as well as with the provisions of the Act and these Rules, as amended, in effect at the time the Permit is approved or amended; and
	(f)	the Operator's/Applicant's signature.
112(1)	(6)	In addition to submitting an appropriately completed Permit application form, the Operator/Applicant shall submit all applicable Exhibits specified in Rule 6 for the appropriate type of operation.
115(2)	(7)	In the case of any complex Permit applications, serious unforeseen circumstances, or significant snow cover on the affected land that prevents a necessary on-site inspection, the decision date established by the Office may be extended up to sixty (60) days beyond the usual maximum limit for an operation of that particular type and size. The Office shall notify the Applicant and any persons commenting on the application, of such findings and of the new decision date as soon as possible. Rule 1.4.1 (7) shall not apply to in situ leach mining applications.
	(8)	The Office shall notify the Applicant of any deficiencies that prevent the application from being considered filed by the Office within ten (10) working days of receiving the application. An Applicant has sixty (60) days from such notice to submit all the necessary documents that the Office needs for an application to be considered filed. If, at the end of the sixty (60) day period, the application has not been determined to be filed with the Office, the Office may deny the application and terminate the application file. If the Office denies and terminates the application file, the Office shall determine if the Applicant desires a return of the applications and shall provide the applications to the Applicant at no cost to the Office. Otherwise, the Office may dispose of all copies as appropriate. An Applicant may appeal such denial to the Board according to the provisions of Rule 1.4.11.
	(9)	To allow the Applicant an opportunity to provide information necessary to meet the adequacy requirements of the Office, the Applicant may request that the Office's review time be extended and the Office's decision date reset, not to exceed 365 days from the date the application was filed. If, at the end of the three hundred and sixty-five (365) day period, the application has outstanding adequacy issues and there have been timely filed objections to the application, the Office may issue a rationale recommending approval or denial of the application and shall set the matter for a Board hearing. If there remain adequacy issues after three hundred and sixty-five (365) days but no objections to the application have been timely submitted, the Office may issue the decision on the application or set the matter for a Board hearing. At the hearing the Board may at the request of the Applicant extend the review time and decision date, deny the application, or approve the application with or without conditions.

(10) The Applicant has the burden of demonstrating that the application meets the minimum requirements of the Act, Rules, and Regulations.

112(10) (11) The Applicant shall follow the appropriate Notice Procedures, according to permit type, as outlined in Rule 1.6.

(12) A condition or limitation to approval of the application, unless acknowledged and consented by the Applicant in writing, shall be treated as a denial.

112(10) (13) Failure of an Applicant to publish the notice pursuant to Rule 1.6.2(1)(d) shall add a sufficient number of days for the required public notice to be accomplished. An additional time period, as determined by the Office, may be added for the Office or Board to make a decision. Such time period shall not exceed thirty (30) days for any non in situ leach mining 110 or 110d Limited Impact application, ninety (90) days for any 112/112d/112 ISL or 110 ISL Reclamation Permit application without objections, or one hundred and twenty (120) days for any 112/112d/112 ISL or 110 ISL Reclamation Permit application with objections.

Commented [MR11]: This language was proposed in 2018. The text is added to clarify that an applicant must accept any agreed upon permit approval conditions or limitations in writing for the permit file. Failure to acknowledge and consent to conditions of approval would lead to denial, which could be appealed to the Board.

1.4.2 Specific Application Requirements – 110(1), 110(2), 110 ISL and Non-In Situ Leach 110d Limited Impact Permit Applications

103(3.5)(a)(III)
110(1)(a)(III)
110(2)(a)
112(2)
112.5(3)(d) (1) All general application requirements outlined in Rule 1.4.1, shall be required for 110(1), 110(2), and 110d Limited Impact Operations; except that any application for a 110 in situ leach mining operation must be filed and shall be considered as a 112d-3 permit application pursuant to Section 34-32-112.5(3)(d), C.R.S. and Rule 1.4.4; however, if such in situ leach mining applicant is granted an exemption from designated mining operation status, the application shall be labeled a “110 ISL” operation, and the applicant need not comply with the designated mining operation requirements but must still comply with all in situ leach mining application requirements in Rule 1.4.4. The process for Office and Board consideration of 110 ISL shall follow those set forth in Rule 1.4.8, and the two hundred and forty (240) day deadline for a decision shall apply.

110(6) (2) An application will be considered filed for the purpose of calculating the thirty-day (30) decision-making time period under Section 34-32-110(6), C.R.S., as amended, when the application file includes all of the following submittals:

- (a) the application fee; as determined under Section 34-32-127(2) C.R.S., as amended;
- (b) one (1) original and one (1) copy, or an electronic submittal as designated and approved by the Office, of:
 - (i) the application form;
 - (ii) all information, attachments, maps, and exhibits, as listed and described in Rules 1.4.1 and 6.3;
 - (iii) an affidavit that notice signs were posted on-site pursuant to Rule 1.6.2(1)(b);

- (iv) the appropriate information under Rules 6.5 and 7.3, if required by the Office for a non-designated operation pursuant to Rule 6.1.2;
- (v) an environmental protection plan as described in Rule 6.4.21 if the operation is a designated mining operation; and
- (vi) proof of notice according to the provisions of Rule 1.6.2(1)(a).

112(10)(c) (3) Proof of the notices required pursuant to Rules 1.6.2(1)(d),(e), and (f) is not required in order for an application to be considered filed, but such proof must be submitted to the Office prior to the Office's decision to approve an application, pursuant to Rule 1.6.2(1)(g).

112.5(5) **1.4.3 Pre-Application Requirements – All In Situ Leach Mining Operations Regardless of Designated Mining Operation Status – Reclamation Permit Operations – Retention of Third Party Expert – Baseline Site Characterization and Plan for On-Going Monitoring**

- (1) (a) All prospective applicants for any in situ leach mining operation, regardless of size or designated mining operation status, shall confer with the Office prior to conducting any baseline site characterization activities. At such conference, the prospective applicant shall submit for the Office's approval a plan for conducting the baseline site characterization and for on-going monitoring of the affected land and surface and groundwater and reclamation and financial warranty requirements. The plan shall include all of the activities the prospective applicant proposes to conduct for the baseline site characterization, the methods of conducting such activities, including the operating procedures and standards, the proposal for on-going monitoring of affected land and water, and applicable reclamation requirements pursuant to Rule 3. The prospective applicant shall not conduct any baseline site characterization activities until the Office approves of the plan for conducting such activities and a financial warranty is posted pursuant to Rule 4.
- (b) Within five (5) days of submittal of the baseline site characterization plan, the Office shall post notice of receipt of the plan on the Office website. Any public comment regarding the baseline site characterization and monitoring plan must be received by the Office no later than ten (10) working days after the notice was posted on the Office website. Copies of the plan will be available at the Office for review.
- (c) If a prospective applicant has conducted baseline site characterization activities prior to the effective date of this Rule and prior to obtaining the Office's approval of the plan for such activities, the Office may in its discretion allow the prospective applicant to use data from those activities as long as, at a minimum, the prospective applicant submits and the Office approves the method the prospective applicant used in conducting the activities and the prospective applicant submits and the Office approves the plan required in Rule 1.4.3(1)(a) above for future activities.

- (2) The Office may retain, and the prospective applicant shall pay the costs of, an independent third-party professional expert to oversee baseline site characterization, monitor field operations or review any portion of the information collected, developed, or submitted for the Baseline Site Characterization and Monitoring Plan to be included in a permit application as follows:
- (a) The Office shall define the scope of work to be conducted by the expert;
 - (b) The expert shall submit and the Office shall review all invoices for payment;
 - (c) The Office shall approve invoices that are documented with, but not limited to, time sheets and receipts, and that reflect the reasonable costs of the expert. The Office may reject invoices that the Office believes are inaccurate, unreasonable or are not supported by sufficient and proper documentation. The Office shall summarize in writing its own costs for its review and oversight associated with the Baseline Site Characterization and Monitoring Plan;
 - (d) The prospective applicant shall pay the reasonable costs incurred by the Office and the expert;
 - (e) The prospective applicant may object to the selection of a specific expert only on the grounds that:
 - (i) The expert lacks the professional qualifications to accomplish the scope of work;
 - (ii) The expert has a conflict of interest with the prospective applicant or proposed project; or
 - (iii) The expert has a bias that could influence the objectivity of the work to be accomplished;
 - (iv) If the Board or Office concurs with the prospective applicant's objection to the expert, the Board or Office shall select a different expert.
 - (f) If the prospective applicant fails to pay any costs the expert submits and the Office approves, or any costs the Office submits to the prospective applicant for its own costs, within 30 days of notice that such costs are due, any application the prospective applicant submits shall not be considered filed and the deadlines for Office review shall not be triggered. If the prospective applicant pays the costs due, any application submitted may be considered filed if payment occurs within three (3) months of when the costs were due and if other requirements for an application being considered filed are met. If the prospective applicant pays the costs later than three (3) months of when they were due, the Office may determine that the application is filed, that the applicant must update the application or that the application is not filed for reasons other than failure to pay the costs of the Office and expert.

1.4.4 Specific Application Requirements – All In Situ Leach Mining Operations Regardless of Designated Mining Operation Status – Reclamation Permit Operations

- (1) All in situ leach mining operations are by law designated mining operations. For all applications for in situ leach mining operations including those filed under Section 34-32-110, C.R.S., the application requirements outlined in Rules 1.4.1 and 1.4.5 shall be required in addition to the requirements of this Rule 1.4.4; except that if such applicant is granted an exemption from designated mining operation status, the applicant need not comply with designated mining operation application requirements.
- (2) An application for an in situ leach mining operation will be considered filed for the purpose of calculating the decision-making time periods in Sections 34-32-115(1) and 115(2), C.R.S., as amended, when the application file includes all the required items specified in Rules 1.4.1, 1.4.5(1) and (2) and includes all of the following submittals:

- 112(j) (a) a description of In Situ Leach Mines as described in Rule 6.4.22;
- 112.5(5)(a) (b) a Baseline Site Characterization for the proposed permit area as described in Rule 6.4.23;
- 112.5(5)(b) (c) a Monitoring Plan as described in Rule 6.4.24;
- 112(i) (d) a certification by the applicant regarding violations as required in Rule 6.4.25.
- 112(10)(c) (e) proof of notice according to the provisions of Rule 1.6.2(1).
- 112(10)(c) (3) Proof of the notices required pursuant to Rules 1.6.2(1)(d), (e) and (f) is not required in order for an application to be considered filed, but such proof must be submitted to the Office prior to the Office's decision to approve an application pursuant to Rule 1.6.2(1)(g).

1.4.5 Specific Application Requirements – 112, 112d Reclamation Permit and 112 ISL Reclamation Permit Operations

- 112.5(2) (1) All general application requirements outlined in Rule 1.4.1 shall be required for a 112 and 112d Reclamation Permit Application. For all 110 and 112 applications for in situ leach mining operations, the requirements of Rules 1.4.1, 1.4.4 and this Rule 1.4.5 shall be required; however, if an applicant for an in situ leach mining permit is granted an exemption from designated mining operation status, such applicant need only comply with in situ leach mining requirements and not designated mining operation requirements such as the environmental protection plan.
- 112(1)
115(1)
115(2) (2) An application will be considered filed for the purpose of calculating the decision-making time periods under Sections 34-32-115(1) and 115(2), C.R.S., as amended, when the application file includes all of the following submittals:
- (a) the application fee, as determined under Section 34-32-127(2) C.R.S., as amended;

- (b) one (1) original and one (1) copy, or an electronic submittal as designated and approved by the Office, of:
- (i) the application form;
 - (ii) all information, attachments, maps, and exhibits, as listed and described in Rule 1.4.1 and Rule 6.4;
 - (iii) an affidavit that notice signs were posted on-site pursuant to Rule 1.6.2(1)(b);
 - (iv) the appropriate information under Rule 6.5 and Rule 7.3, if required by the Office for a non-designated operation pursuant to Rule 6.1.2;
 - (v) an environmental protection plan as described in Rule 6.4.21 if the operation is a designated mining operation; and
 - (vi) proof of notice according to the provisions of Rule 1.6.2(1)(a).

112(10)(c)

- (3) Proof of the notices required pursuant to Rules 1.6.2(1)(d), (e), and (f) is not required in order for an application to be considered filed, but such proof must be submitted to the Office prior to the Office's decision to approve an application, pursuant to Rule 1.6.2(1)(g).

1.4.6 Office Consideration – 110(1), 110(2), 110 ISL and 110d Limited Impact Operation Permit Applications

110(6)

- (1) Except as to 110 ISL applications, the Office shall approve or deny a 110(1), 110(2), or 110d Limited Impact application within thirty (30) days of the date the application is considered filed. Applications for 110 ISL mining operations shall be approved or denied within two hundred and forty (240) days from the date the application is considered filed. The date set for consideration by the Office for any 110 application may be extended pursuant to provisions of Rule 1.8 (unless the submitted materials satisfy Rule 1.8.1(4)) or of Rules 1.4.1(7), (9), or (13). Except as to 110 ISL applications, the time for consideration shall not be extended beyond thirty (30) days after the last such change submitted under Rule 1.8 unless requested by the Applicant. For 110 ISL applications, the time for consideration shall not be extended beyond one hundred and twenty (120) days unless requested by the Applicant.

115(2)

- (2) In the event that an objection to a 110(1), 110(2), or 110d Limited Impact permit application, submitted in the form of a protest or petition for a hearing, is received by the Office pursuant to the provisions of Rule 1.7, the Office shall proceed to issue its decision by the date set for consideration in Rules 1.4.6(1), 1.4.1(9), 1.4.1(13) or 1.8. However, the Office may set the matter for a hearing before the Board, pursuant to the provisions of Rule 1.4.11. As to 110 ISL applications, if an objection is filed, the Office shall set the matter for hearing before the Board, in which case the Office shall make a recommended decision on the application.

110
112(3)
115(2)

- (3) Unless exempted from designated mining operation status, an application for an in situ leach mining operation must be filed under Rule 1.4.8. If an exemption has been granted,

the 110 ISL application shall comply with 112 permit application and procedures and comply with in situ leach mining requirements including filing the exhibits required under Rules 6.22, 6.23, 6.24 and 6.25. In addition, the two hundred and forty (240) days for a decision on an in situ leach mining application shall apply.

1.4.7 Reserved

1.4.8 Office Consideration – 112, 112 ISL or 112d Reclamation Permit Application with No Objections

- 115 (1) When a 112, 112 ISL or 112d Reclamation Permit application has been filed, and there are no protests or petitions for a hearing on the application submitted by a party pursuant to Rule 1.7, the Office shall issue the decision to approve or deny the application, as provided for in Section 34-32-115 C.R.S., no more than ninety (90) days after a 112 or a non in situ leach 112d application is filed with the Office or two hundred and forty (240) days after an in situ leach 112d or a 112 ISL application is filed. The Office shall not set a new date unless the date for consideration has been extended pursuant to Rules 1.4.1(7), (9), or (13).
- 115(1) (2) The date set for a decision on the application may be extended, pursuant to Rule 1.8 (unless the submitted materials satisfy Rule 1.8.1(4)). Such date shall not be extended beyond ninety (90) days after the last revision to the application.

115(2) **1.4.9 Office Consideration – 112, 112 ISL or 112d Reclamation Permit Application to which an Objection Has Been Received**

- (1) (a) If a timely and sufficient objection or petition for a hearing on a 112 or a non in situ leach 112d Reclamation Permit Application is received by the Office from a party pursuant to Rule 1.7, the Office shall set a date for consideration of the application in conformity with the provisions of this Rule. Such date shall be no more than ninety (90) days after the application is filed with the Office. The date for consideration may be extended pursuant to Rules 1.4.1(7), (9), or (13), or 1.8 (unless any submitted materials satisfy Rule 1.8.1(4)). Instead of a decision, the Office will issue a recommendation to the Board by the date set for Office consideration.
- (b) If a timely and sufficient objection or petition for a hearing on a 112 ISL or a 112d in situ leach mining operation application is received by the Office from a party pursuant to Rule 1.7, the Office shall set a date for consideration of the application in conformity with this Rule. Such date shall be no more than one hundred and eighty (180) days after the application is filed with the Office. However, if the Office determines an extension is necessary for its consideration, the Office may extend such date by thirty (30) days for a maximum time for consideration of two hundred and ten (210) days. In addition, the date for consideration may be extended pursuant to Rules 1.4.1(9) or (13), or Rule 1.8. Instead of a decision, the Office may issue a recommendation to the Board by the date set for Office consideration.
- (2) In addition, the Office shall:

- (a) schedule the permit application for a hearing before the Board;
 - (b) provide all parties notice of the Pre-hearing Conference and of the Board hearing related to consideration of the application. Unless notice is waived in writing by all Parties, the Office shall provide all parties at least thirty (30) days written notice of the Formal Board Hearing date; and;
 - (c) on or before the date set for Office consideration of the application, issue a recommendation to the Board for approval, approval with conditions, or denial of the application. Such recommendation shall identify the issues raised by the Office or by the petitions for a hearing filed with the Office. The Office's recommendation and rationale for approval or denial shall be sent to the Applicant and to all objectors of record at least three (3) Working Days prior to the pre-hearing conference. Upon request, the Office will also send by electronic mail its recommendation and rationale to a party, or a party may pick up a copy at the Office. Copies of the Office's recommendation and rationale will be available at the pre-hearing conference.
- (3) Where a non in situ leach mining 112 or non in situ leach mining 112d Reclamation Permit Application is set for a hearing, the Board shall make a final decision on the application within one hundred and twenty (120) days after the date the application was filed, unless the date set for consideration has been extended pursuant to Rules 1.4.1(7), (9), (13), or 1.8, or Section 34-32-115(2), C.R.S. Where any in situ leach mining Reclamation Permit Application (110, 110 ISL, 112, or 112 ISL) is set for hearing, the Board shall make a final decision on the application within two hundred and forty (240) days after the date the application was filed, unless the date set for consideration has been extended pursuant to Rules 1.4.1 (9) or (13), 1.8, or Section 34-32-115(2), C.R.S.
- (4) The decision rendered by the Board shall be considered final agency action for the purposes of the judicial review provisions of Section 24-4-106, C.R.S.

115(5)

1.4.10 Office and Board Consideration of Applications for Reclamation Permits for any In Situ Leach Mining Operations Regardless of Designated Mining Operation Status

- (1) The Board or Office may deny a permit application for any in situ leach mining operation (112d which includes 110d, 112 ISL or 110 ISL) regardless of the proposed operation's status as a designated mining operation:
- (a) based on scientific or technical uncertainty about the feasibility of reclamation;
 - (b) if the existing or reasonably foreseeable potential future uses for potentially affected groundwater, whether classified or unclassified pursuant to Section 25-8-203, C.R.S., includes domestic or agricultural uses, and the Board or Office determines the in situ leach mining will adversely affect the suitability of the groundwater for such uses;
 - (c) if the applicant or an affiliate, officer or director of the applicant, the operator or the claim holder has demonstrated a pattern of willful violations of environmental

protection requirements of this article, rules promulgated pursuant to this article, a permit issued pursuant to the article, or an analogous law, rule, or permit issued by another state or the United States as disclosed in the application; or

- (d) if the applicant or any affiliate, officer or director of the applicant has in the ten (10) years prior to the submission of the application violated the environmental protection requirements of this article, rules promulgated pursuant to this article, a permit issued pursuant to the article, or an analogous law, rule, or permit issued by another state or the United States as disclosed in the application; however,
 - (i) the Board or Office may issue the permit if the applicant submits proof any said violation has been corrected; or
 - (ii) the Board or Office may conditionally issue the permit if the violation is in the process of being corrected to the satisfaction of the Board or Office or if the applicant has filed or is presently pursuing a direct administrative or judicial appeal to contest the validity of the alleged violation. An appeal of an applicant's relationship to an affiliate shall not qualify as an appeal to contest the alleged violation. Further, if the violation is not successfully abated or if the violation is upheld on appeal, the Board or Office shall revoke the conditionally issued permit.

(2) The Board or Office shall deny a permit application for an in situ leach mining operation:

- (a) if the applicant fails to demonstrate that reclamation can and will be accomplished in compliance with article 32 of title 34, C.R.S., including the protection of groundwater and other environmental resources and human health; or
- (b) if the applicant fails to demonstrate by substantial evidence that it will reclaim all affected groundwater for all water quality parameters that are specifically identified in the baseline site characterization required in Rule 1.4.4, or in the statewide radioactive materials standards or tables 1 through 4 of the Basic Standards for Groundwater as established by the Colorado Water Quality Control Commission, to either of the following:
 - (i) pre-mining baseline water quality or better, as established by the baseline site characterization required by Rule 1.4.4; or
 - (ii) that quality which meets the statewide radioactive materials standards and the most stringent criteria set forth in tables 1 through 4 of the basic standards for groundwater as established by the Colorado Water Quality Control Commission.

1.4.11 Administrative Appeal – of an Office Decision

- (1) Any person who demonstrates that they are directly and adversely affected or aggrieved by an action of the Office, including a decision to grant or deny a permit application, other than an application considered under the provisions of Rule 1.4.9 or a cost estimate determination for oil shale or in situ leach mining applications under the provisions of Rule

1.4.11(3), and whose interest is entitled to legal protection under the Act may petition for a hearing before the Board on such action within:

- (a) sixty (60) days of the date of the Office decision if the Office decision was a denial, without a hearing, of an application for a permit or a Notice of Intent; or 24-4-104(9)
 - (b) thirty (30) days for an appeal of any other Office decision.
 - (c) Such hearings before the Board shall comply with this Rule and Section 24-4-105, C.R.S.
 - (d) Such petitions for a hearing shall state how the petitioner is directly and adversely affected or aggrieved by the Office's decision, and how the petitioner's interests are entitled to protection under the Act. The petitioner shall list and explain any issue the petitioner believes should be considered by the Board at the hearing on the matter. The petition for a hearing shall specify the application or file number assigned by the Office.
- (2) If no petition decision is made by the Board within sixty (60) days of the date the petition is submitted, the petition will be deemed denied. Such denial shall be considered final agency action for the purposes of the judicial review provisions of Section 24-4-106, C.R.S.
- (3) A permit applicant for an oil shale or any in situ leach mining operation may appeal to the Board the Office's cost estimate to review such an application done pursuant to Rule 1.5.2(1) by filing a petition for a hearing before the Board within ten (10) days from the date the Office mailed the cost estimate to the applicant. The petition for hearing shall set forth the list of issues the applicant believes should be considered by the Board and the specific factual and legal basis for the appeal. The petition for a hearing shall specify the application or file number assigned by the Office. The hearing shall not be held any sooner than twenty (20) days after notice is given to the permit applicant. The Office and applicant may consult on the cost estimate issue between the time the Office mails the notice to the applicant and the time in which the applicant must file an appeal with the Board.
- (4) The Office shall give notice of any Formal Board Hearing to consider an appeal according to the provisions of Rule 1.6.1(4).
- (5) The Office may determine whether to hold a pre-hearing conference dependent upon the number of parties to the Formal Board Hearing and/or complexity of the issues, or the Board may so direct the Office as the Board sees fit.

24-4-104(9)

1.4.12 Appeal of 112 and 112d (including in situ leach mining reclamation permits,) 112 ISL or 110 ISL Reclamation Permit Application Denial

If the Office issues a decision to deny an application for a 112, 112d (including in situ leach mining), 112 ISL or 110 ISL Reclamation Permit, it shall schedule the application for a hearing before the Board unless the Applicant decides to withdraw the application. Such hearing shall be scheduled prior to the deadline for a final decision on the application pursuant to Section 34-32-115(2), C.R.S.,

and Rules 1.4.8(2), 1.4.9(1), or 1.4.9 (3) above, and shall be conducted in conformance with the provisions of Section 24-4-105, C.R.S.

- (a) Within ten (10) days of receipt of the letter of denial, the Applicant shall file a statement of issues to be considered by the Board at the hearing. The statement shall include an explanation of the grounds for seeking a reversal of the Office's decision.
- (b) If there are no other parties to the proceedings on the application the Applicant may waive the statutory deadline for a final decision. In that event, the Applicant shall file the statement of issues to be considered by the Board at the hearing within sixty (60) days of the receipt of the letter of denial.

115(3)

1.4.13 Automatic Application Approval

- (1) If the Office or the Board fail to make a decision on a permit application by the deadlines set forth in Rules 1.4.6, 1.4.8, and 1.4.9, the application shall be deemed approved and the permit shall be granted upon submittal by the Applicant and approval by the Office of the appropriate performance and financial warranties.
- (2) Where an Applicant has waived its right, in writing, to a decision by the deadlines set forth in statute or by these Rules, the automatic approval provisions of Rule 1.4.13(1) shall not apply.

1.5 FEES

1.5.1 General Provisions – Application Fees

On and after July 1, 1994, a fee shall be paid by the Applicant of a permit for a designated mining operation at the time an Environmental Protection Plan is submitted for review and approval to the Office.

The fee shall be applied to both existing and new Designated Mining Operations and shall reimburse the Office for the estimated cost to the Office for processing certification and administrative review of such permit applications. The fees shall be as follows, based upon the level of effort: for Environmental Protection Plans filed before July 1, 2007, not less than eight hundred and seventy-five dollars (\$875) and not more than nine thousand dollars (\$9,000) pursuant to Section 34-32-127(2)(a)(I)(M), C.R.S. For Environmental Protection Plans filed on or after July 1, 2007, the fee shall not be less than one thousand dollars (\$1,000) and not more than ten thousand three hundred and fifty dollars (\$10,350).

1.5.2 Fees for In Situ Leach Mining Operations and Oil Shale Mining Operations

- (1) For applications for in situ leach mining operations or oil shale mining operations the fees shall be as follows except as provided in Rule 1.5.2 (2):
 - (a) for applications for new permit operations – the fee shall be that listed in Rule 1.5.5(8);

127(2)(a)(I)(M)

127(2)(a)(I)(M)
127(2)(a)(I)(N)
127(2)(a)(I)(O)

- (b) for applications for an amendment to a permit shall be that listed in Rule 1.5.6(4);
 - (c) for applications for revisions to permits other than amendments, the fee shall be that listed in Rule 1.5.7(4).
- (2) (a) If the costs to review applications for new permit operations, amendments to permits or revisions for permits exceed twice the fee for such application, the applicant shall pay the additional costs. The costs shall include those of the Office, another division of the department involved in the review, and any consultant or other nongovernmental agents that have specific expertise on the issue in question. The Office shall inform the applicant that the cost of review may exceed twice the amount of the listed fee and shall provide the applicant with an estimate of the actual costs within ten (10) days after the Office's receipt of the application. The applicant may appeal the estimate to the Board pursuant to Rule 1.4.11(3). In addition, the Office and applicant may consult on the cost estimate issue between the time the Office mails the notice to the applicant and the time in which the applicant must file an appeal with the Board.
- (b) Any consultant or other non-governmental agent the Office uses pursuant to Rule 1.5.2(2)(a) shall not have any financial or business interest in the permit application, any current or previous direct involvement in the proposed mining operation, or have worked for the applicant or any objecting party as an employee or independent contractor on any major project for at least one (1) year prior to the filing of the application. In addition, the consultant or agent must avoid future conflicts with the Office including not working for any party to the permit application proceedings for at least one (1) year after the consultant or agent completes the work for the Office. Notwithstanding the above, the Office may use a consultant or agent if all parties to a permit application waive any conflict of interest.

1.5.3 Fees for Existing Operations – Technical Revisions

- (1) Designated Mining Operations which qualify for permits under Section 34-32-110, C.R.S. 1984, as amended, which shall be referred to as "110d" permits - \$1,006;
- (2) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984, as amended, but which affect less than fifty (50) acres and extract less than one (1) million tons per year, which shall be referred to as "112d-1" permits - \$1,006;
- (3) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984, as amended, which do not qualify as 112d-1 permits, but which affect less than one hundred (100) acres and extract less than five (5) million tons per year, which shall be referred to as "112d-2" permits - \$1,006; and
- (4) any other Designated Mining Operation which shall be referred to as "112d-3" permits - \$1,006.

127(2)(a)(I)(B)

127(2)(a)(I)(M)

1.5.4 Fees for Existing Operations – Permit Amendments

- (1) Designated Mining Operations which qualify for permits under Section 34-32-110, C.R.S. 1984, as amended, which shall be referred to as "110d" permits - \$1,750;
- (2) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984, as amended, but which affect less than fifty (50) acres and extract less than one (1) million tons per year, which shall be referred to as "112d-1" permits - \$2,300;
- (3) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984, as amended, which do not qualify as 112d-1 permits, but which affect less than one hundred (100) acres and extract less than five (5) million tons per year, which shall be referred to as "112d-2" permits - \$4,025; and
- (4) any other Designated Mining Operation which shall be referred to as "112d-3" permits - \$7,475.

127(2)(a)(I)(M)

1.5.5 Fees for New Operations

For purposes of these Rules, "new operations" are defined as operations that submit(ted) applications for permits after July 1, 1994.

- (1) Designated Mining Operations which qualify for permits under Section 34-32-110, C.R.S. 1984, as amended, which shall be referred to as "110d" permits - \$2,875;
- (2) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984, as amended, but which affect less than fifty (50) acres and extract less than one (1) million tons per year, which shall be referred to as "112d-1" permits - \$4,025;
- (3) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984 as amended, which do not qualify as 112d-1 permits, but which affect less than one hundred (100) acres and extract less than five (5) million tons per year, which shall be referred to as "112d-2" permits - \$6,900; and
- (4) any other Designated Mining Operation which shall be referred to as "112d-3" permits - \$9,200.

127(2)(a)(I)(B)

1.5.6 Fees for New Operations – Technical Revisions

- (1) Designated Mining Operations which qualify for permits under Section 34-32-110, C.R.S. 1984, as amended, which shall be referred to as "110d" permits - \$1,006;
- (2) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984, as amended, but which affect less than fifty (50) acres and extract less than one (1) million tons per year, which shall be referred to as "112d-1" permits - \$1,006;
- (3) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984, as amended, which do not qualify as 112d-1 permits, but which affect less than one

hundred (100) acres and extract less than five (5) million tons per year, which shall be referred to as "112d-2" permits - \$1,006; and

- (4) any other Designated Mining Operation which shall be referred to as "112d-3" permits - \$1,006.

1.5.7 Fees for New Operations – Permit Amendments

- (1) Designated Mining Operations which qualify for permits under Section 34-32-110, C.R.S. 1984, as amended, which shall be referred to as "110d" permits - \$2,300;
- (2) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984, as amended, but which affect less than fifty (50) acres and extract less than one (1) million tons per year, which shall be referred to as "112d-1" permits - \$2,875;
- (3) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984, as amended, which do not qualify as 112d-1 permits, but which affect less than one hundred (100) acres and extract less than five (5) million tons per year, which shall be referred to as "112d-2" permits - \$4,600; and
- (4) any other Designated Mining Operation which shall be referred to as "112d-3" permits - \$8,050.
- (5) Fees for all other applications for new Permits or Modifications to existing Permits are as specified in Section 34-32-127, C.R.S. 1984, as amended.

1.5.8 Annual Fees

Each year, on the anniversary date of the permit, the Permittee shall submit the appropriate annual fee specified in Section 34-32-127(2)(a), C.R.S.

1.6 PUBLIC NOTICE PROCEDURES

1.6.1 Office/Board Procedures – Permit Application Decision Dates

- (1) The Office shall give such notice of the decision date for applications for all types of mining operations, including applications for:
- (a) 110 and Non-in situ leach mining 110d Limited Impact Operations;
 - (b) 112 and 112d Reclamation Operations;
 - (c) 110 ISL and 112 ISL Mining operations.
- (2) The Office shall give notice, as required by Rule 1.6 and the following specific provisions, of the decision date of the application to:

- 109(8) (a) the Applicant;
- 109(8) (b) the county(s) in which the proposed mining operation is to be located;
- (c) any municipality within two (2) miles of the proposed mining operation; and
- (d) the public, by newspaper release, and by electronic submittal on the Office website as designated and approved by the Office, and posting as prescribed in Rule 2.2.1(a)(iii).
- 115(1) (3) The Office shall send written and / or electronic notice of the date, time and place of any Pre-hearing Conference to:
- (a) the Applicant;
- (b) all persons that submitted timely statements in support of or objections to the application and a basis for party status; and
- (c) the Board of County Commissioners and the applicable Conservation District.
- (4) The Office shall provide notice of the date, time, and place of any application hearing by the Board, by:
- (a) sending written and / or electronic notice to the Applicant, any person previously filing a protest or petition for a hearing or statement in support of the application, and the local Board of County Commissioners;
- (b) publishing notice in a newspaper of general circulation in the locality of the proposed mining operation once a week for two (2) consecutive weeks immediately prior to the hearing; and
- (c) mailing list, newspaper release, the Office website, and posting as prescribed in Rule 2.2.1(a)(iii).

Commented [MR12]: Throughout this rulemaking, references to electronic submittals is to modernize language to reflect current and e-permitting processes.

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112

1.6.2 General Applicant Procedures

- (1) The Applicant shall:
- (a) Prior to submitting the application to the Office, send a notice, on a form approved by the Board, to the local Board of County Commissioners and, if the mining operation is within the boundaries of a Conservation District, to the Board of Supervisors of the Conservation District.
- (i) The Applicant shall include proof of such notice with the application at the time the application is submitted to the Office.
- (ii) Proof of notice shall be in the form of a return receipt of a Certified-certified mailing, e-receipt, or a date-stamped copy of the notice acknowledging receipt by the appropriate local Board.

(b) Prior to submitting the application to the Office for a ~~110, 112, 112d, 110 ISL or 112 ISL~~ Reclamation Permit, post notices (signs) at the location of the proposed mine site, as required by the Office, of sufficient number and a minimum size of eleven (11) inches wide by seventeen (17) inches high, with appropriate font size, to clearly identify the site as the location of a proposed mining operation giving name, address, and phone number of the Applicant, and stating that (name of Applicant) has applied for a mining permit with the Colorado Mined Land Reclamation Board. Anyone wishing to comment on the application may view the application at the County Clerk's or Recorder's office or on the Office Website and should ~~send~~ submit comments prior to the end of the public comment period to the Colorado Mined Land Reclamation Office, at the address given on the cover of these Rules and Regulations or by electronic submittal as designated and approved by the Office. For any class of 110 or 110d Limited Impact operation other than a 110 ISL operation the Applicant need only post notice (sign) at the location of the proposed access to the site. After having posted such notice (sign), failure by an Applicant to maintain such notice shall not constitute just cause to deny approval of the application. At the time the application is filed with the Office, the Applicant shall provide a signed affidavit that such notices (signs) were posted according to the provisions of this Rule.

Commented [MR13]: 110 was omitted in last rulemaking. These requirements are for all types of permits.

112(10)(c)

(c) Prior to submitting the application to the Office and/or prior to submitting amendments to the application, place for public review a copy of the application and amendments, without confidential items, with the Clerk or Recorder of the county or counties in which the affected land is located, and provide proof as required by Rule 6.3.9 for 110 and non-in situ leach mining 110d Limited Impact Operations and Rule 6.4.18 for 112, 112d, 110 ISL or 112 ISL Reclamation Operations.

110(6)

(d) Within ten (10) days after the Office notifies the Applicant that the application is considered filed, publish a public notice in a newspaper of general circulation in the locality of the proposed mining operation containing:

- (i) name and address of Applicant;
- (ii) location of the proposed mining operation by section, township and range and street address where applicable;
- (iii) proposed dates of commencement and completion of the operation;
- (iv) proposed future use of affected land;
- (v) location where additional information on the operation may be obtained, including the Office Website; and
- (vi) location and final date for submitting statements, including the Office Website link, of support or objections with the Office.

- 112(10)(c) (e) The Applicant shall mail or personally serve a copy of the notice provided for in Rule 1.6.2(1)(d) immediately after the first publication to:
- (i) all Owners of Record of the surface and mineral rights of the affected land;
 - (ii) the Owners of Record of all land surface within 200 feet of the boundary of the affected lands, and;
 - (iii) if the proposed operation is any in situ leach mining operation, the Owners of Record of all land surface within three (3) miles of the boundary of the affected land.
- 112(10)(c) (f) As soon as designated by the Office, mail a copy of the notice provided for in Rule 1.6.2(1)(d) to any other Owners of record who might be affected by the proposed mining operation. The Office shall designate such owners, if any, during its adequacy review process.
- 112(10)(c) (g) Proof of Notice may be by submitting return receipts of a ~~Certified~~-certified mailing or by proof of personal service. An application will be considered filed by the Office when the Applicant supplies the proper application fee, a signed affidavit that all notices as provided for in Rule 1.6.2(1)(b) have been posted, and the application meets the applicable requirements of Rules 1.4.1, 1.4.2, or 1.4.5. Prior to Office consideration of the application, proof of notice provided for in Rule 1.6.2(1)(d), (e), and (f) must be received by the Office.
- 112(9)
112(10)(a) (2) The copy of the permit application, adequacy responses of the applicant, application revisions, and any permit amendment applications placed at the office of the County Clerk or Recorder shall not be recorded, but shall be retained until final agency action, as defined at C.R.S. 24-4-105(14), on said application has occurred and be available for inspection during such period. At the end of such period, such application may be reclaimed by the Applicant or destroyed. Applicants should contact the Office prior to removal of the copy of the application materials placed with the office of the County Clerk or Recorder in order to ensure compliance with C.R.S. 24-4-105(14). The copy of the permit application, adequacy responses of the applicant, application revisions, and any permit amendment applications on file with the Office Website constitute the official public file and shall remain accessible to the public.
- 110 **1.6.3 Specific Provisions – 110 and Non-In Situ Leach Mining 110d Limited Impact Permit Applications and Conversions of Two Acre Limited Impact Permits**
- (1) The following Notice Rules and the notice requirements of Rule 1.6.2 also apply to applications for:
- (a) new 110 and Non-In Situ Leach Mining 110d Limited Impact Permit Applications; or
 - (b) conversions of Two Acre Limited Impact Permits to 110 and Non-In Situ Leach Mining 110d Limited Impact Permits.

Commented [MR14]: Added text clarifies that the Office “official file” link will be located on the Office Website and available to the public.

112(10)(c) (2) The Office shall give written notice, by mailing, of the decision date for the application.

110(6) (3) The Public Notice, as required in Rule 1.6.2(1)(d), shall be published once.

(4) This Rule is not applicable to permit applications under Section 34-32-110 that are for in situ leach mining operations. Applications for in situ leach mining operations shall follow the notice requirements for 112d-3 permit applications in Rule 1.6.5. If such application is granted an exemption from designated mining operation status, the applicant must still comply with all in situ leach mining application requirements and shall follow the procedures for 112 permits.

1.6.4 Reserved

1.6.5 Specific Provisions – 112, 112d, 110 ISL and 112 ISL Reclamation Permit Applications

112(10)(b) (1) The Public Notice, as required in Rule 1.6.2(1)(d) shall be published four (4) times, once a week for four (4) consecutive weeks.

112(10)(c) (2) Within ten (10) working days after the last publication or as soon thereafter as proof has been obtained, the Applicant shall mail proof of the publication required by Rule 1.6.2(1)(d), to the Office. Proof of publication may consist of either a copy of the last newspaper publication, to include the date published, or a certified or notarized statement from the paper. An application may not be approved until such proof has been obtained.

1.6.6 Conditions that Require New Notice to the Public

If a notice is in error or a change to the application is so substantial, as determined by the Office, that it affects any of the terms contained in the notice that was published in the newspaper or mailed to the owners of the affected and adjacent lands, or the change is an amendment to the application, the Applicant shall be required to publish and mail a new notice of the application. In the event that the Applicant is required to issue a new notice, all applicable deadlines shall begin to run anew.

1.7 SUBMISSION OF COMMENTS AND PETITIONS FOR A HEARING

1.7.1 General Provisions

110(2)(b) (1) Any person has the right to submit written statements supporting or objecting to any application for a permit, or for an amendment or revision of a previously granted permit. For a person to become a party, the person must meet the definition of a party as provided in these regulations. Any party may petition for a hearing on any application for a permit, or for an amendment or technical revision to a previously granted permit.

(2) In order for statements supporting or objecting to an application, petitions for a hearing, and/or submissions to become a party to be considered timely, the following deadlines shall apply:

(a) In the case of a 112, 112d, 110 ISL or 112 ISL Reclamation Permit Application, such written comments, protests, and petitions for a hearing must be received by the Office not more than twenty (20) calendar days after the last date for the newspaper publication of notice of the application provided for in Rules 1.6.2(1)(d) and 1.6.5(1). Written comments, protests and/or petitions must contain the name, mailing address, e-mail, and telephone number of the interested parties. The Office shall set the matter for a hearing before the Board upon timely receipt of a written objection, protest, or petition for a hearing under this Rule.

(b) Except for 110 in situ leach mining permit applications, which must follow the application process for 112d permit applications or if exempt from designated mining operation status, 112 permit applications, written comments, protests or petitions for a hearing as to a 110 or non-in situ leach mining 110d Limited Impact Permit application must be received by the Office not more than ten (10) days after the last date for newspaper publication of notice of the application provided for in Rules 1.6.2(1)(d) and 1.6.3(3). The written comment, protest and/or petition must contain the name, mailing address, e-mail, and telephone number of the interested parties. The Office may set the matter for a hearing before the Board upon timely receipt of a written petition for a hearing under this Rule, but in any case shall approve or deny the permit application within thirty (30) days of the date the Office considers the application filed according to the provisions of Rules 1.4.1 or 1.8. If the Office does not set the matter for a hearing, any person who demonstrates that they are directly and adversely affected or aggrieved by the Office's decision to grant or deny the 110 or non-in situ leach mining 110d Limited Impact Permit application and whose interests are entitled to legal protection under the Act may appeal the Office's decision pursuant to Rule 1.4.11.

(3) If the Office receives any written objections to an application pursuant to the Rule 1.7.1(2), the Office shall provide a copy of the objection to the Applicant within ten (10) days of receipt.

1.7.2 Specific Provisions – 110 Limited Impact and Non In Situ Leach Mining 110d Limited Impact Designated Mining Operations Applications

110(6) (1) Except for 110 in situ leach mining operation permit applications, which shall follow the procedures for 112d permit applications or if exempt from designated mining operation status, the procedures for 112 permit applications, comments shall be submitted in accordance with Rule 1.7.1.

110(2)(b) (2) To be considered, such statements must be received by the Office within ten (10) days after the last date of the Applicant's newspaper publication.

1.7.3 Reserved

1.7.4 Specific Provisions – 112, 112d, 110 ISL and 112 ISL Reclamation Permit Applications

110(6) (1) Comments shall be submitted in accordance with Rules 1.7.1 and 1.7.4.

- (2) In the event the Office receives an objection within twenty (20) calendar days of the last day of publication and in accordance with this Rule 1.7, it shall set the permit application for a hearing before the Board, according to the provisions of Rule 2.

1.8 AMENDMENTS AND TECHNICAL REVISIONS TO A PERMIT APPLICATION

1.8.1 General Provisions – 110 and 110d Limited Impact or 112 and 112d or 110 ISL and 112 ISL Reclamation Permit Applications

- (1) An Applicant may amend, or make technical revisions to, an application for a permit under consideration by the Office by filing a copy of such amendment or technical revision with the Office and placing a copy with the County Clerk and Recorder.
- (2) Within five (5) working days of placement with the County Clerk or Recorder, the Applicant shall provide the Office with an affidavit or receipt demonstrating that the amendment or technical revision was placed with the County Clerk and Recorder not later than the close of business on the day the amendment or technical revision was filed with the Office.
- (3) Any amendment or technical revision to an application shall constitute a new filing for the sole purposes of determining the date for the consideration of the application by the Office, and for the deadline for a final decision on the application. The provisions of Rule 1.6.6 shall apply to submitted amendments. The provisions of Rules 1.8.2 shall apply to technical revisions for 110 and non-in situ leach mining 110d Limited Impact, and the provisions of Rule 1.8.4 shall apply to technical revisions for all in situ leach mining applications (regardless of designated mining operation status), 112 and 112d Reclamation Permit applications.
- (4) If the Office determines that additional information is submitted by the Applicant for the purpose of detailing, clarifying or explaining any part of the application, whether at the request of the Office or otherwise, then such additional information shall not constitute a change or an addition resulting in an amendment or technical revision to the application.
- (5) If the Applicant notifies the Office of a proposed change in post-mining land use, the Office shall decide whether such change in post-mining land use requires a change in the Reclamation Plan and whether such change shall require a Technical Revision or Permit Amendment.
- (6) Within five (5) working days of the filing of an amendment or technical revision to an application, the Office shall set a new date for the consideration of the application. The new date shall be set pursuant to Rule 1.6.6, 1.8.2 or 1.8.4, as applicable.

1.8.2 Technical Revisions to 110 or Non In Situ Leach Mining 110d Limited Impact Permit Applications

The Office shall set a new date for the consideration of a technical revision to an application for a 110 or non-in situ leach mining 110d Limited Impact permit only as necessary to afford an adequate opportunity for a review of the technical revision by the Office and by any interested members of

the public. This Rule 1.8.2 does not apply to technical revisions for in situ leach mining permit applications. Technical revisions to in situ leach mining permit applications must follow the procedural requirements for 112d permit applications or if exempt from designated mining operation status, 112 permit applications.

1.8.3 Reserved

1.8.4 Technical Revisions to 112, 112d, 110 ISL or 112 ISL Reclamation Permit Applications

- (1) Written objections to the application:
The Office shall not set a new date for consideration of an application for a 112, 112d, 110 ISL or 112 ISL Reclamation Permit for which it has received written objections, any earlier than twenty (20) days after the date of filing of a technical revision to the application, unless the Applicant, the Office and all parties agree on an earlier date.
- (2) No written objection to the application:
The Office shall set a new date for the consideration of an application to which no objection has been submitted only as necessary to afford the Office an adequate opportunity to review the technical revision.

1.9 TECHNICAL REVISION TO A PERMIT

1.9.1 Filing and Review Process

An application for Technical Revision shall be filed ~~in writing~~ by electronic submittal as designated and approved by the Office. The Office shall act on a Technical Revision application within thirty (30) days after the Technical Revision has been filed with the Office. A Technical Revision is considered filed when the submittal includes the appropriate fee. A Technical Revision shall be considered automatically approved within thirty (30) days after filing unless the application is denied. Notice of Technical Revisions shall be acknowledged in the monthly activity report attached to the monthly Board agenda.

1.9.2 Denial and Appeal Process

In the event that the Office decides to deny an application for Technical Revision, the Office will notify the Operator in writing within ten (10) days after the decision deadline. The Operator may appeal the decision to the Board for a final determination by submitting a petition for a hearing pursuant to the provisions of Rule 1.4.11.

1.10 AMENDMENT TO A PERMIT

- (1) Where applicable, there shall be filed with any application for a 112, 112d, 110 ISL or 112 ISL Reclamation Permit amendment, attachment(s), map(s), and one (1) original and one (1) copy, or by electronic submittal as designated and approved by the Office, of the application with the same content as required for an original application, except that the Applicant will not be required to submit any information which duplicates applicable

previous submittals. However, the Applicant shall clearly describe where in the original application and supporting documents the information not included in the amendment application, but necessary to render the amendment technically adequate, may be found.

- (2) A 110 or non-in situ leach mining operation 110d Limited Impact permit amendment submittal shall include attachment(s), map(s), and one (1) original and one (1) copy, or by electronic submittal as designated and approved by the Office, of the application with the same content as required for an original application, except the Applicant will not be required to submit any information which duplicates applicable previous submittals. However, the applicant shall clearly describe where, in the original application and supporting documents, the information not included in the amendment application, but necessary to render the amendment technically adequate, may be found.
- (3) The amendment application shall be accompanied by a basic fee as specified in Section 34-32-127, C.R.S. 1984, as amended. Amendment applications for any in situ leach mining operations shall be accompanied by the basic fee for a 112d amendment application or a 112 amendment application if the operation has been exempted from designated mining operation status.
- (4) Applications for amendment shall be reviewed by the Board or Office in the same manner as applications for new Permits.
- (5) All aspects of the mining operation and Reclamation Plan that are subject to the amendment will be subject to these Rules, as amended, in effect at the time the Permit is amended.

110(7)

1.11 CONVERSIONS

1.11.1 Purposes and Types

- (1) A conversion is an application to change an existing permit to another type of permit based on an increase in acreage of the mining operation. Operators requesting conversion of a permit, regardless of designated mining operation or in situ leach status, must file a new permit application pursuant to either Section 34-32-110 C.R.S. and Rule 1.4.2 or Section 34-32-112 C.R.S. and Rules 1.4.4 and 1.4.5.
- (2) Unless such mining is incidental to the permitted activity, any Operator who intends to mine any commodity other than a "construction material" commodity, as defined in Section 34-32.5-103(3), C.R.S., shall apply for a conversion to a new permit under the provisions of Section 34-32-101, et seq, C.R.S. 1984. Upon issuance of the new permit, the existing permit under Section 34-32.5-101, et seq, C.R.S., shall be terminated. Such determinations may be made through a declaratory order by the Board.

110(7)

1.11.2 Application Process

- (1) Except for permit conversions under Rule 1.11.1(2), the original Permittee cannot convert a Permit unless the permit has been in existence for two (2) consecutive years.

- (2) All warranty and permit processing requirements shall apply as though the Conversion application were a new permit application. A fee, as specified in Section 34-32-127(2)(a) C.R.S. shall be submitted at the time of the application submittal. Pursuant to Section 34-32-110(7)(a) C.R.S. and Rule 1.11.1, all conversion requests must include the filing of a new Section 110 or Section 112 permit application. In the case of converting from a 110 ISL operation to a 112 ISL operation, the Applicant/Operator must file a new baseline and site characterization and monitoring plan pursuant to the process set forth in Section 34-32-112.5 C.R.S. and Rule 1.4.3. If the Applicant/Operator believes that baseline site characterization information obtained for the original 110 ISL application is relevant to the permit conversion application, that information may, in the discretion of the Office, be incorporated into the conversion application pursuant to Rule 1.11.2(3).
- (3) Contents of application:
 - (a) except as otherwise indicated in this Rule 1.11.2, the Operator shall provide all the information required by the Act and these Rules for the size of operation. However, the Operator need not supply any information required by the provisions of the Act which has been previously supplied unless such information is different from that in the original application. However, the Operator shall clearly describe where in the original application and supporting documents the information not included in the conversion application, but necessary to render the conversion application technically adequate, may be found.
 - (b) In addition, the application shall show:
 - (i) the area mined or disturbed; and
 - (ii) the area reclaimed since the original permit application.
- (3) When an Operator is requesting a change in the status of a permit from a Designated Mining Operation to a Non-designated Mining Operation conversion provisions do not apply; the operator must comply with the exemption from designation requirements and procedures set forth in Rule 7.2.6.

1.11.3 Repealed

1.12 PERMIT TRANSFERS AND SUCCESSION OF OPERATORS

1.12.1 Approval Process

- (1) Where one Operator succeeds another at any uncompleted operation, the first Operator shall be released from all liability as to that particular reclamation operation and all applicable Performance and Financial Warranties as to such operation shall be released if the successor Operator assumes, as part of the obligation under the Act and these Rules, all liability for the reclamation of the affected land, and the obligation is covered by replacement Performance and Financial Warranties as to such affected land.

- (2) Requests for permit transfers and succession of Operators must be submitted on "Request for Transfer of Mineral Permit and Succession of Operators" forms provided by the Board. To be considered filed, each request must include an executed Performance Warranty, State approved W-9, and applicable replacement Financial Warranty, as well as any updated legal right of entry, damage waiver agreements, or a geo-technical report demonstrating approved safety factors to prevent off-site damage within 200 feet of the affected lands. In addition, each request for transfer of mineral permit and succession of operators for any in situ leach mining operation must include exhibit Y as required by Rule 6.4.25.
- (a) The Office shall act on a Succession of Operator application within thirty (30) days.
- (b) Succession of Operator requests will be considered automatically approved after thirty (30) days of the date the Succession of Operator request is filed with the Office unless the Operator is notified by the Office that the request is denied. Succession of operator requests must be submitted on forms provided by and approved by the Board, and include the fee specified, in Section 34-32-127(2), C.R.S., and the properly executed financial and performance warranties, and damage waiver agreements or geo-technical stability reports, where required.
- (3) Approval of a permit transfer and succession of Operator request shall be given by the Office if it finds that the successor Operator is capable of assuming all responsibility for the conditions included under the original permit; except that for any in situ leach mining operation, the Office or the Board may deny a permit transfer if:
- (a) the successor operator or any affiliate, officer or director of the successor operator has demonstrated a pattern of willful violations of the environmental protection requirements of C.R.S. title 34 article 32, rules promulgated pursuant to this article, a permit issued pursuant to the article, or an analogous law, rule, or permit issued by another state or the United States;
- (b) the successor operator or any affiliate, officer or director of the successor operator has in the ten (10) years prior to the submission of the request violated the environmental protection requirements of this article, rules promulgated pursuant to this article, a permit issued pursuant to the article, or an analogous law, rule, or permit issued by another state or the United States as disclosed in the application; however,
- (i) the Board or Office may approve of the request if the successor operator submits proof any said violation has been corrected; or
- (ii) the Board or Office may conditionally grant the request if the violation is in the process of being corrected to the satisfaction of the Board or Office or if the successor operator has filed or is presently pursuing a direct administrative or judicial appeal to contest the validity of the alleged violation. An appeal of a successor operator's relationship to an affiliate shall not qualify as an appeal to contest the alleged violation. Further, if the violation is not successfully abated or if the violation is upheld on

Commented [MR15]: The added text is to clarify the other documentation currently required in the SO process that is often overlooked by operators.

appeal, the Board or Office shall revoke the conditionally issued transferred permit.

Notice of Permit Transfer will be acknowledged in the monthly activity report attached to the monthly Board agenda.

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1.12.2 Denial and Appeal Process

- (1) Non-ISL appeal: In the event the Office decides to deny a succession of Operator application in a non-in situ leach mining operation, the Office will notify the Applicant in writing within ten (10) days of the decision deadline. The applicant may appeal the Office's decision to the Board for a final determination according to the provisions of Rule 1.4.11.
- (2) ISL appeal: As to an in situ leach mining operation the applicant/operator or any person who demonstrates that they are directly and adversely affected or aggrieved and whose interest is entitled to legal protection under the Act may appeal to the Board the Office's decision regarding a transfer of operations according to the provisions of Rule 1.4.11.

103(6)

1.13 CESSATION OF OPERATIONS – TEMPORARY FOR ALL MINING OPERATIONS OR PERMANENT FOR IN SITU LEACH MINING OPERATIONS

1.13.1 General Provisions

- (1) A permit granted pursuant to these Rules shall continue in effect as long as:
 - (a) an Operator continues to engage in the extraction of minerals and/or the mining operation and complies with the provisions of the Act; and
 - (b) mineral reserves are shown by the Operator to remain in the mining operation and Operator shows a reasonable plan to resume the mining operation.
- (2) The Board will consider all relevant testimony and facts related to a mining operation in its determination as to whether or not temporary cessation has occurred. The Board recognizes that no one factor is necessarily determinative, but that each determination will be based on site specific conditions. Factors to be included in the determination if a mine will be considered for temporary cessation, include, but are not limited to the following:

1.13.2 Indications of Temporary Cessation

- (1) there are no personnel working at the site for one hundred and eighty (180) consecutive days as may be determined through annual reports, inspections and / or operator submissions;
- (2) there are only security personnel at the site;

Commented [MR16]: 1.13 edits are draft and intended for discussion to memorialize the Board agenda and hearing process for going into and coming out of TC.

Commented [MR17]: Language is being added to clarify some of the methods that may be used to determine TC if not requested correctly by an operator.

- (3) ~~there are personnel other than security people at the site, but they are engaged in activities which can be described as maintenance or housekeeping, or related activity~~ activity at the site is limited to general maintenance, housekeeping or similar related activity;
- (4) ~~there are personnel at the site, but they are engaged in activities which are~~ activity at the site is not significantly moving the site towards completion of the mining operation. The Board will judge these activities in relation to the size of the operation, the nature of the ore body and other relevant facts;
- (5) there is no sale or processing of material or movement of stockpiled material off site;
- (6) there is only minimal or token excavation of mineral or other material, and such activity is not legitimate Mining Operations, as determined by the Office or Board; ~~or~~
- (7) mine development has ceased and mining has not recommenced; or;
- (8) the permit has not exhausted ten (10) consecutive years of non-production.

1.13.3 Indications Against Temporary Cessation

- (1) Extraction of minerals has been completed, production has ceased and only final reclamation and related activities ~~occurring remain~~ at the site ~~are part of the "life of the mine" (see Definition or see Section 34-32-103(6)(b), C.R.S.); or~~
- (2) production has ceased for more than 10 consecutive years; or
- (32) a permit has been issued, but the mining operation has not commenced on the affected lands.

1.13.4 ~~Temporary Cessation for a Portion of a Mining Operation~~ Reserved

~~There may be Temporary Cessation for part of the mining operation when one or more operations of several separable types within a permit have been discontinued. Movement of portable equipment between permitted sites shall not be construed to be Temporary Cessation.~~

Commented [MR18]: There are no known situations where a portion of a permitted site has ever been placed in TC

1.13.5 Notice by Operator for Consideration of Temporary Cessation

- (1) If the Operator plans to, or does, temporarily cease production ~~of the mining operation for~~ one hundred and eighty (180) days or more, the Operator must file a Notice of Temporary Cessation ~~in writing~~ electronically on a form approved by the Office. An Operator conducting any in situ leach mining operation, regardless of designated mining operation status, shall file the Notice of Temporary Cessation at least thirty (30) days prior to ceasing operations; such Notice shall set forth the reasons for the temporary cessation and the expected duration of the temporary cessation.
 - (a) Initial period shall be the first five (5) years of Temporary Cessation beginning with the one hundred and eighty (180) day period of production cessation; except that in the case of any in situ leach mining operation:

- (i) If, in the judgment of the Board, the expected duration of any temporary cessation will be of such length that the Board believes that groundwater reclamation should commence, the Board shall so order.
 - (b) The second five (5) year period of Temporary Cessation shall begin at the end of the initial period of Temporary Cessation; except that in the case of any in situ leach mining operation:
 - (i) If, in the judgment of the Board, the expected duration of any temporary cessation will be of such length that the Board believes that groundwater reclamation should commence, the Board shall so order.
- (2) The Notice of Temporary Cessation for the initial period shall include the following to be considered filed for review by the Office and Board and must include:
 - (a) the date of cessation of production or mining operations;
 - (b) the reasons for non-production or cessation of the mining operation;
 - (c) a plan for resumption of mining;
 - (d) the measures to be taken to comply with reclamation requirements and/or other activities related to the performance standards of Rule 3.1 while the mine is in Temporary Cessation including, but not limited to, any permit requirements or environmental monitoring and water treatment if required, and a schedule for reporting monitoring data;
 - (e) demonstration that the existing Financial Warranty is adequate to cover the reclamation liability; and
 - (f) for an in situ leach mining operation, a description of the groundwater monitoring and pumping regime that will be maintained during the period of cessation of operations and a schedule for reporting monitoring data.
 - (g) acknowledgement of the five (5) year limit date of the initial period of Temporary Cessation.
- (3) The Notice for the second period shall include the following to be considered filed for Board consideration:
 - (a) demonstration that the existing Financial Warranty is adequate to cover the reclamation liability;
 - (b) explanation as to why the Operator has not recommenced operations or begun reclamation;

- (c) demonstration of continued commitment to conduct mining operations at the site by the end of the second five (5) year period including a plan for resumption of mining operations and production; and
 - (d) the measures to be taken to comply with reclamation requirements and/or other activities related to the performance standards of Rule 3.1 while the mine is in Temporary Cessation including, but not limited to, any permit requirements for environmental monitoring and water quality treatment if required, and a schedule for reporting monitoring data;
 - (ed) for an in situ leach mining operation, a description of the groundwater monitoring and pumping regime that will be maintained during the period of cessation of operations and a schedule for reporting monitoring data; and-
 - (f) acknowledgement of the ten (10) consecutive year limit for non-production and temporary cessation of mining activities.
- (4) Prior to the Board Hearing to consider the request of a for the second five (5) year period of Temporary Cessation, the Office shall:
- (a) conduct an inspection of the site to verify compliance with the Act and Mineral Rules and Regulations;
 - (b) review the permit file for complaints against the operation and the status of resolution of those complaints;
 - (c) review environmental protection requirements for compliance as necessary;
 - (de) report to the Board at the Hearing comments by any owner of affected land or local government comments.
- (5) The Notice of temporary cessation shall be separate from any other correspondence or reports and submitted to the Office electronically on the approved form.
- (6) Except as to in situ leach mining operations, the requirement of a Notice of Temporary Cessation shall not apply to Operators who resume the mining operation within one (1) year and have included in the permit applications a statement that the affected lands are to be used for less than one hundred and eighty (180) days per year.

1.13.6 Notice of Resumption of Mining Operations

If the Operator plans to resume mining operations and / or production for one hundred and eighty (180) days or more, the Operator must file a Notice of Resumption of Mining operations electronically on a form approved by the Office 30 days prior to reactivation. Such Notice shall set forth the following:

- (a) date of resumption of mining activities;
- (b) a detailed description of the mining activities that are to resume;

Commented [MR19]: This section is being added to define a process for coming out of TC. Currently the only requirement is a letter. However, a review of the reactivation plan and Financial Warranty is needed to ensure the activities comply with reactivation and are not token or general maintenance in nature. Any decision by the Office is appealable to the Board

- (c) anticipated date of the resumption of production;
- (d) the measures to be taken to comply with reclamation requirements and/or other activities related to the performance standards of Rule 3.1 including, but not limited to, any permit requirements for environmental monitoring and water treatment if required;
- (e) demonstration that the existing Financial Warranty is adequate to cover the reclamation liability; and
- (f) any resumption of mining activities must be legitimate in nature and the Office and / or Board may reject any notice of resumption of mining operations if such activity is reasonably characterized as token or minimal activity.

1.13.~~7~~**6** Board/Office Procedure

- 106(1)(d)
109(8)
- (1) Upon receipt of the above submission as outlined in Rule 1.13.5(2) or 1.13.6, the Office will place the Notice of Temporary Cessation or Notice of Resumption of Mining on the tentative agenda of the next regular Board meeting and give notice to the Operator, the county, any federal jurisdiction, and any municipalities within two (2) miles of the proposed operation, by mail or electronic notification.

Commented [MR20]: The following edits are to codify the process created in 2012 for TC notices.

- (2) The Board, at said meeting and in consultation with the Operator and any other person who demonstrates that they are directly and adversely affected or aggrieved and whose interest is entitled to legal protection under the Act, may take whatever action(s) it deems necessary and are authorized by law, including but not necessarily limited to:

- (a) acceptance of the Notice of Temporary Cessation or Notice of Resumption of Mining as submitted;
- (b) acceptance of the Notice of Temporary Cessation or Notice of Resumption of Mining with modifications and other necessary activities as established by the Board;
- (c) a determination that the mining operation is not in a state of temporary cessation or has not resumed mining operations;
- (d) continuance of the matter for another month or more to allow the Operator to revise the Notice of Temporary Cessation and/or to allow the Office staff to conduct a site inspection or otherwise review the matter as necessary; or
- (e) order the Operator of an in situ leach mining operation to begin groundwater reclamation as set forth in Rule 1.13.5.

- 106(1)(d)
109(8)
- (3) (a) Except as to any in situ leach mining operation, when no reclamation or performance standard issues or problems are indicated in the Notice of Temporary Cessation or Notice of Resumption of Mining or by field or file inspection, and no concerns are expressed by interested persons, the Notice ~~shall not be placed on the agenda or heard by the Board. In such cases, the county and appropriate municipality will be notified and the fact of the receipt of the Notice by the Office~~

~~will be acknowledged in the monthly activity report attached to the monthly agenda for an initial period of Temporary Cessation or any Notice of Resumption of Mining may be moved from the tentative agenda to the consent agenda of the final agenda for Board consideration;~~

~~(b) any objections to a Notice of initial period of Temporary Cessation or Resumption of Mining must be received no later than three (3) working days prior to the scheduled Board meeting;~~

~~(c) all Notices for a second consecutive period of Temporary Cessation or where timely objections have been received shall be noticed and scheduled for Board consideration at the next regularly scheduled Board meeting following receipt of the Notice and timely objection.~~

~~(db)~~ In the case of any in situ leach mining operation seeking temporary cessation, or a second five (5) year period of temporary cessation, the matter will be set for the next regularly scheduled Board meeting that is at least twenty (20) days after the Office receives the notice. At the hearing the Board will determine whether groundwater reclamation should commence pursuant to C.R.S. 34-32-112.5 (5)(d)(ii). The Office will participate at the hearing as staff to the Board and may provide a recommendation regarding groundwater reclamation. Any person who demonstrates that they are directly and adversely affected or aggrieved by the Board's determination regarding groundwater reclamation and whose interest is entitled to legal protection under the Act may be a party to the formal hearing.

1.13.87 Application Requirements – Substitute for Notice of Temporary Cessation

103(6)(a)(III)

Where certain mining operations have periods of inactivity exceeding one hundred and eighty (180) days, a permit applicant may include in the permit application, amendment or technical revision, the information otherwise required when filing a Notice of Temporary Cessation. (Please see Rules 6.3.3(a) or 6.4.4(e)). If approved by the Board or Office, such Notice in the permit shall serve as a substitute for the Notice of Temporary Cessation with the following conditions:

(a) The Operator must report to the Board through the Annual Report:

(i) the condition of the operation at the time of cessation;

(ii) what specific measures have been and will be implemented to comply with reclamation, performance standards and Environmental Protection Plan requirements; ~~and~~

(iii) plans for resumption of mining; ~~and-~~

~~(iv) any two consecutive annual reports that indicate no mining operations and/or production shall require the mining operation to be placed into Temporary Cessation.~~

(b) This Rule shall not apply to in situ leach mining operations.

Commented [MR21]: Intermittent operations are required to be active annually, but less than 180 days. This edit closes a loophole as there are no current limitations on inactivity that should be reviewed for TC status

1.13.98 Five Year Term of Temporary Cessation

- 103(6)(a)(III)
- (1) A permit granted pursuant to these Rules shall continue in effect as long as:
- (a) the mining operation and production is-are resumed within five (5) years of the beginning of Temporary Cessation; or
 - (b) the Operator files a request for an extension of the period of Temporary Cessation with the Board meeting the requirements of Rule 1.13.5(3) and secures Board approval of that request.
 - (c) the operator is conducting reclamation pursuant to an approved reclamation plan or Board order.
- (2) The Board shall, when necessary, establish the commencement of Temporary Cessation to determine the start of the five (5) year period described in Rule 1.13.98. Regardless of a request by the operator or the Office, a five (5) year period of Temporary Cessation is a factual determination as set by the Act.

1.13.109 Ten Year Limitation for Temporary Cessation

In no case shall Temporary Cessation be continued for more than ten (10) consecutive years without terminating the mining operation and fully complying with the Reclamation and Environmental Protection Plan requirements of the Act and these Rules.

1.13.119 Permanent Cessation of Mining Operations – In Situ Leach Mining Operations

- (1) An Operator conducting any in situ leach mining operation, regardless of designated mining operation status, shall file a notice of permanent cessation at least thirty (30) days prior to ceasing production operations; such Notice shall set forth the reasons for the permanent cessation of production operations.
- (2) In the case of an in situ leach mining operation, if it is determined by the Office or the Board, regardless of whether notice has been provided by the Operator, that production operations have permanently ceased the Operator must immediately commence groundwater reclamation in accordance with the approved reclamation plan.

1.14 TERMINATION

1.14.1 Permit Termination

- 103(6)(a)(IV)
- (1) A permit granted pursuant to these Rules shall continue in effect as long as:
- (a) the Board does not take action to declare termination of the life of the mine, which action shall require a sixty (60) day notice to the Operator alleging a violation of the permit, the Act or Rules; or

- (b) there is a discontinuance of the mining operation with a Temporary Cessation filing as provided in Rule 1.13.5 or 1.13.~~87~~ for ten (10) or less consecutive years; or
 - (c) there is no failure to submit the reports required under Rules 1.13.5 and 1.13.~~87~~; or
 - (d) there is no failure to comply with the requirements of Rule 1.13.~~98~~.
- (2) In the event the Operator is not in compliance with the provisions of Rule 1.14.1(1), the Board shall provide a reasonable opportunity for the Operator to meet with the Board to present the full case and further provide reasonable time for the Operator to bring violations into compliance. Such hearings and procedures shall be in compliance with the requirements of Rule 3.3.2; or at such hearings the Board may:
- (a) declare termination of the life of the mine according to the provisions of this Rule and after finding a violation in accordance with Rule 3.3.2, set forth reclamation timetables and other provisions leading to termination of the permit; or
 - (b) declare that a mining operation is in a state of Temporary Cessation, establishing a commencement date and any additional permit conditions, as necessary, according to a review of the facts.

1.15 ANNUAL RECLAMATION REPORT INCLUSIONS

- (1) The Annual Reclamation Report shall include all information specified on the Annual Report Form, in the format required by the Office, and specifically:
- (a) the Operator shall submit, together with the Annual Report, an updated statement regarding the sufficiency of the value of the Financial Warranty. Additional reasonable data to substantiate the value of the existing Financial Warranty shall be provided if requested by the Office or Board; and
 - (b) for any Financial Warranty which is submitted in the form of a Deed of Trust or a Security Agreement, the Operator shall submit, together with the Annual Report, an update by a qualified appraiser indicating any changes in property value, and a statement summarizing any circumstances which may affect the adequacy of the Deed of Trust or Security Agreement, or the value of the property subject thereto.
 - (c) The Operator shall provide all monitoring information required as part of the approved Reclamation Plan, and if required, Environmental Protection Plan.
 - ~~(d) a map showing the extent of current disturbances to affected lands;~~
 - ~~(e) changes over the preceding year regarding any disturbances to the prevailing hydrologic balance;~~

Commented [MR22]: Reclamation is being added to clarify that this report is different than the "Annual Production Report Required in January of each year.

Commented [MR23]: These edits codify what is already required of permittees and addresses HB19-1113

(f) changes over the preceding year regarding any disturbances to the quality and quantity of water in surface and groundwater systems;

(g) reclamation accomplished to date and during preceding year;

(h) new disturbances that are anticipated to occur during the upcoming year; and

(i) anticipated reclamation that will be performed during the upcoming year.

- (2) An Operator may request a one-time change to a date other than the anniversary date of the permit for the purpose of submitting Annual Reclamation Reports.
- (3) Reserved

1.16 ADDRESS CHANGE, SALE OF PROPERTY BY AN OPERATOR, CHANGE IN PROPERTY LEASE, OR BUSINESS NAME OR OWNERSHIP CHANGE, AND NOTICE OF FILING OF A PETITION IN BANKRUPTCY

- (1) It shall be the duty of the Operator to keep the Office notified of any mailing address change by promptly sending written notice or filing an electronic notice of such change to the Office. The Office is entitled to assume, in the absence of such Notice, that it may proceed with the last previous address provided by the Operator, and the Operator will be bound by such Notice as if actually received.
- (2) Where an Operator is the owner of the lands to be mined and the Operator sells such lands, the Operator shall promptly notify the Office of such sale. Where an Operator leases the lands, the Operator shall promptly notify the Office of any substantial changes that affect right of legal entry upon the lands to be mined.
- (3) Where an Operator's official business name changes or there is a change in business ownership or business form, the Operator shall contact the Office within thirty (30) days of such change in order to revise performance and financial warranty documents and complete the Succession of Operator forms.
- (4) Where an Operator files a petition in bankruptcy, the Operator shall immediately notify the Office via certified mail of such filing.

RULE 2: BOARD MEETINGS – PERMIT APPLICATION HEARINGS, DECISIONS AND APPEALS

2.1 BOARD MEETINGS

2.1.1 General Provisions

Except for Executive Sessions of the Board, all meetings shall be open to the public and any member of the public may, at the discretion of the Board, address the Board on any subject within the Board's jurisdiction. In the event the item is not on the agenda, no formal action may be taken by the Board until the full notice provisions in these Rules are met.

2.2 NOTICE PROCEDURES FOR MEETINGS OF THE BOARD

2.2.1 Regular Board Meetings

Except as otherwise provided by law or these Rules, Public Notice of regular meetings shall be provided by the Board as follows:

- (a) A minimum of ten (10) days prior to the meeting, Notice of its date, time, place, format, and agenda by:
- (i) mailing or e-mailing to all persons having requested Notice of Board meetings and prepaid costs of the service, unless costs are waived for good cause, and to Operators whose Permit(s) or operation(s) may be the specific subject of consideration at the meeting;
 - (ii) publishing at least once in a newspaper of general circulation in the state, listing each Applicant's name, local address and the location of the affected land by section, township and range and by street address, if applicable;
 - (iii) posting in a conspicuous, publicly accessible location at the offices of the Office of Mined Land Reclamation, the Office Website, and in all Press Rooms of the State Legislature; and
 - (iv) mailing a copy of the agenda to the local newspaper in the locality of the proposed mining operation.
- (b) All parties entitled to notice of the hearing, including the Applicant or Operator, shall be given notice of the time, place, format, and nature thereof, the legal authority and jurisdiction under which it is to be held, and the matters of fact and law asserted. Such hearing shall be conducted pursuant to these Rules and the provisions of Section 24-4-105, C.R.S.

2.2.2 Other Meetings

106(1)(d)

Public Notice of all other meetings shall be provided by the Board as prescribed in Rule(s) 2.2.1 and/or 1.12.2 except upon a Board finding that an emergency condition exists, whereupon notice shall be provided as much in advance of the meeting as possible.

2.2.3 Agenda Changes or Additions

Additions or changes to the agenda after the 10-day notification may be made regarding emergency situations, and informational items. In this event, the Board will endeavor to give notification, if possible, as outlined above, and will be required to notify any Operator or individual scheduled to be heard.

2.3 BOARD QUORUM

105(2)

- (1) Four (4) Board members shall constitute a quorum.
- (2) The Board shall act by majority vote of members present, except that four (4) affirmative votes are required for any amendment of these Rules.

2.4 RESERVED

2.5 DECLARATORY ORDERS (Section 24-4-105, C.R.S.)

2.5.1 Cause for Seeking a Declaratory Order

Any person who is or may be directly and adversely affected or aggrieved and whose interests are entitled to legal protection under the Act may petition the Board for declaratory order to terminate controversies or to remove uncertainties as to the applicability to the Petitioner of any statutory provision of or any rule or order of the Board made pursuant to the Mined Land Reclamation Act (Section 34-32-101, C.R.S. et seq.).

2.5.2 Petition Submission

- (1) The petition must be submitted electronically to the Board, and is served on the Office, at a minimum, ten (10) days prior to the Board meeting at which it is to be considered.
 - (a) At the regularly scheduled Board meeting, the Board will determine in its discretion and without notice to Petitioner, whether to rule upon any such petition.
 - (b) If the Board determines that it will not rule upon such a petition, the Board shall promptly notify the Petitioner of its action and state the reasons for such action.
- (2) Any petition filed pursuant to this rule shall set forth the following:
 - (a) the name, e-mail address and physical address of the Petitioner and whether the Petitioner is a Permittee pursuant to the Colorado Mined Land Reclamation Act;

- (b) the statute, rule or order to which the petition relates;
- (c) a concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the Petitioner.

2.5.3 Consideration of Petition

In determining whether to rule upon a petition filed pursuant to this Rule, the Board will consider the following matters, among others:

- (a) whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to Petitioner of any statutory provision or rule or order of the Board.
- (b) whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court involving one or more of the Petitioners.
- (c) whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court, but not involving any Petitioner.
- (d) whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
- (e) whether the Petitioner has some adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, Colorado Rules of Civil Procedure, which will terminate the controversy or remove any uncertainty as to the applicability to the Petitioner of the statute, rule or other in question.

2.5.4 Procedure for Consideration

If the Board determines that it will rule on the petition the following procedures shall apply:

- (a) The Board may, ~~without further notice,~~ rule upon the petition based solely upon the facts presented in the petition. In such a case, any ruling of the Board will apply only to the extent of the facts presented in the petition and any amendment to the petition.
- (b) The Board may order the petitioner to file a written brief, memorandum or statement of position.
- (c) The Board may set the petition, upon due notice to Petitioner, for a non evidentiary hearing.
- (d) The Board may request the petitioner to submit additional facts, in writing. In such event, such additional facts will be considered as an amendment to the petition.

- (e) The Board may take administrative notice of facts pursuant to the administrative procedure act (Section 24-4-105(8), C.R.S.) and may utilize its experience, technical competence and specialized knowledge in the disposition of the petition.
- (f) If the Board rules upon the petition without a hearing, it shall within ten (10) working days notify the petitioner of its decision by deposit in the mail.
- (g) The Board may, in its discretion, set the petition for hearing upon due notice to Petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the Petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Board intends to inquire. For the purpose of such a hearing, to the extent necessary, the Petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the Petitioner and any other facts the Petitioner desires the Board to consider.

2.5.5 Party Status and Petition to Intervene

- (1) The Office shall be granted party status upon request.
- (2) Any other person may seek leave of the Board to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Board based upon the interest of the person and whether that interest is entitled to legal protection under the Act and how that person is affected or aggrieved by the petition for Declaratory Order.
- (3) A petition to intervene shall set forth a concise statement of the facts necessary to demonstrate the nature of its position, and the manner in which the statute, rule or order in question does or does not apply to the Petitioner.

2.5.6 Effect of a Declaratory Order

Any declaratory order or other order disposing of a petition pursuant to this Rule shall constitute agency action subject to judicial review pursuant to Section 24-4-106, C.R.S.

2.6 PRE-HEARING PROCEDURES – MOTIONS, WITNESS AND EXHIBIT LISTS

The provisions of this Rule 2.6 shall apply to the Applicant and any entity that has party status for any 112, 112d, 110 ISL or 112 ISL application.

- (1) All motions, except those made during a hearing, or when the Board deems an oral motion to be appropriate, shall be in writing and shall state the grounds for the motion. Motions shall be received electronically by the Board no later than two (2) Working Days following the pre-hearing conference. Any written response to a motion must be received electronically by the Board no later than three (3) Working Days prior to the date of the Formal Board Hearing.

- (2) A party to a Formal Board Hearing may use witnesses or exhibits at the Formal Board Hearing. Parties shall provide a written list of all potential witnesses and exhibits at the Pre-hearing Conference in accordance with the following:
- (a) The list of potential witnesses must include each witness' name, current address, e-mail, and phone number, area of expertise (if expert witness), and the subject matter of the testimony. Parties are not obligated to use any witness even if listed, but parties may not, without express permission from the Board at the Formal Board Hearing, introduce testimony from a witness that was not listed in accordance with this Rule.
 - (b) Information on exhibits shall be exchanged as follows:
 - (i) For any materials not already in the Office public files, each party to the Hearing shall provide all other parties to the Hearing and the Office with copies of any materials to be used as exhibits at the Formal Board Hearing before, at or by close of business the day of the pre-hearing conference before the Pre-hearing Conference via electronic means. Where an item cannot practicably-practically be reproduced, the exhibit must be made available to the parties and the Office for inspection upon request.
 - (ii) For any materials that are already in the Office public files, and for any materials not provided to the other parties pursuant to the exception set out in Rule 2.6(2)(b)(i), each party shall provide all other parties and the Office with a list of the materials to be used with sufficient specificity to describe the exhibit, including but not limited to the specific title or description of each exhibit, such as maps, reports, adequacy responses, correspondence, agreements, data printouts, photographs, and drawings. The list must also specify where the other parties to the Formal Board Hearing and the Office may review and obtain a copy of, or inspect, each exhibit.
- (3) All motions, responses, replies, witness lists, and exhibit lists shall identify the names, e-mails, physical address and phone number of the submitting party, and the file number assigned to the case by the Office. If a party is represented by an attorney or other representative, the name, address and phone number of the attorney or other representative shall be provided on all documents submitted to the Board. All motions and lists shall be served on all parties and the Office at the same time and manner they are filed with served on the Board. The Board shall be served through the Office of Mined Land Reclamation. Service on the Office shall not constitute filing with the Board.

2.7 PRE-HEARING CONFERENCES

2.7.1 General Provisions

Prior to the Formal Board Hearing on any matter/application, the Board may hold a Pre-hearing Conference in accordance with the following procedures:

- (1) The Pre-hearing Conference will be held to describe the Office's review process, to explain the rights and responsibilities of parties, to discuss and resolve issues to the extent possible, to describe the Board Hearing processes, to propose a list of issues under the Board's jurisdiction, to simplify that list, and to identify parties.
- (2) The Pre-hearing Conference shall be conducted by a Pre-hearing Conference Officer appointed by the Board.
- (3) The Pre-hearing Conference Officer shall prepare a proposed Pre-hearing order. The proposed Pre-hearing Order shall be made available to all parties prior to the Formal Board Hearing. In no instance shall the Pre-hearing Conference Officer's recommendations to the Board be considered final agency Office action for the purposes of judicial review under Section 24-4-106, C.R.S.
- (4) The proposed Pre-hearing Order shall include:
 - (a) a recommended list of the parties and their names, [e-mails](#), [mailing](#) addresses and phone numbers;
 - (b) a recommended list of issues to be considered by the Board at the Formal Board Hearing; and
 - (c) a recommended schedule for the hearing with time allotments set for presentation by each party and the Office.
- (5) In the case of a Pre-hearing Conference held on the matter of a 112 or 112d Reclamation Permit application, the Pre-hearing Conference shall be held after the Office has issued its written recommendation and at least ten (10) calendar days prior to the Formal Board Hearing.

2.7.2 Board Consideration of the Proposed Pre-hearing Order

At the Formal Board Hearing on a matter for which a Pre-hearing Conference was held, the Pre-hearing Conference Officer or a representative of the Pre-hearing Conference Officer shall present the proposed Pre-hearing Order to the Board for its consideration. The Board shall consider any objection to the proposed Pre-hearing Order submitted by a party, as well as any changed circumstances related to the Formal Board Hearing arising subsequent to the Pre-hearing Conference, and shall subsequently adopt, amend and adopt, or reject the proposed Pre-hearing Order. If the proposed Pre-hearing Order is rejected by the Board, the Chair of the Board shall direct the Formal Board Hearing on the matter.

2.7.3 Parties Rights and Responsibilities

- (1) All parties have the right to present evidence, call witnesses, and cross-examine all other parties' witnesses. All parties are entitled to be represented by an attorney, or may designate a proxy, by way of a written proxy authorization, to attend the Pre-hearing Conference on behalf of the party. The proxy authorization must be on a form approved by

the Board and presented to the Pre-hearing Conference Officer on or before the date of the Pre-hearing Conference.

- (2) In order for a person to seek judicial review of the Board's decision, that person must have been a party to the Formal Board Hearing that considered the issue. However, all parties to the Formal Board Hearing on a matter, that do not file for judicial review are required by Section 24-4-106, C.R.S., to be named as defendants in any judicial review action.
- (3) Any person who is a party to a matter before the Board and who wishes to withdraw as a party must do so in writing prior to the commencement of or on the record during the Formal Board Hearing on the matter.
- (4) Any party who does not attend the Pre-hearing Conference forfeits its party status and all associated rights and privileges, unless such party provides a fully executed proxy authorization form to the Pre-hearing Conference Officer and the party's authorized representative is present. A party may attend the Pre-hearing Conference via telephone, or if applicable via video conference, if such a request is made to the Pre-hearing Conference Officer, or a representative, at least five (5) working days, or less for good cause shown, prior to the scheduled Pre-hearing Conference date, and facilities at the site of the Pre-hearing Conference allow for a conference call.
- (5) If all parties to a 112 or 112d Reclamation Permit application that is to be considered at a Formal Board Hearing withdraw, the Board directs the Office to act on behalf of the Board and to timely approve or deny the application, unless the Office determines that a Formal Board Hearing should be held.

2.8 HEARINGS

2.8.1 General Provisions – Board Hearings

- (1) Except as otherwise provided by statute, the proponent of an order shall have the burden of proof and every party to the proceeding shall have the right to present its case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Subject to these rights and requirements, where a hearing will be expedited and the interests of the parties will not be substantially prejudiced thereby, a person conducting a hearing may receive all or part of the evidence in written form. Any party, other than an Operator, who does not attend the Board Hearing forfeits its party status and all associated rights and privileges. A party may not appear at a Formal Board Hearing by proxy. A party may file a motion to attend the hearing via telephone or video conference pursuant to the following requirements:
 - (a) A party may file an e-mail request for telephonic or video appearance with the Board Chair no later than fourteen (14) calendar days prior to the Hearing. The motion shall state the reason(s) for requesting to participate at the hearing by phone or video. The motion shall be served by mail or electronic attachment on all parties.

- (b) Any party may file with the Board Chair a response to the request for telephonic or video appearance. The response must be filed by e-mail no later than ten (10) calendar days prior to the hearing.
 - (c) The Board Chair will rule on the request for telephonic or video appearance at least seven (7) calendar days prior to the hearing. In the event the Board Chair does not issue a ruling on the request no later than seven (7) calendar days prior to the hearing, the request for telephonic or video appearance shall be deemed denied.
- (2) The rules of evidence and requirements of proof shall conform to the extent practicable, with those in civil non-injury cases in district courts. However, when necessary to do so in order to ascertain facts affecting the substantial rights of the parties to the proceeding, the Board may receive and consider evidence not admissible under such rules, if such evidence possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs.
- (a) Objections to evidentiary offers may be made and shall be noted in the record.
 - (b) The Board shall give effect to the rules of privilege recognized by law.
 - (c) The Board may exclude incompetent and unduly repetitious evidence.
 - (d) Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available; but, upon request, the party shall be given the opportunity to compare the copy with the original.
- (3) The Board may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.
- (4) The Board may take notice of general, technical, or scientific fact, but only if the fact so noticed is specified in the record or is brought to the attention of the parties before final decision and every party is afforded an opportunity to controvert the fact so noticed.
- (5) The Board and Office shall proceed with reasonable dispatch to conclude any matter presented to it with due regard for the convenience of the parties or their representatives.

2.8.2 Board Decision

- (1) In any case on which the Board has conducted a hearing, the Board shall prepare, file and serve upon each party, its decision in the form of a written order.
- (2) Every such decision rendered by the Board at a hearing shall thereupon become the final decision on such matter.
- (3) Each written order shall include a statement of findings and conclusions upon all the material issue of fact, law or discretion presented by the record and the appropriate order, sanction, relief, or denial thereof.

- (5) Unless otherwise provided by law, the Final Board Order shall be served on each party and the Office by personal service or by mailing by First Class mail to the last address furnished to the Office by such party and shall be effective on the date mailed or such later date as may be stated in the Final Board Order.

2.9 RECONSIDERATION OF BOARD DECISIONS

2.9.1 Cause for Seeking Reconsideration

- (1) Any party to a hearing may petition the Board to reconsider its decision.
- (2) Such petitions must set forth a clear and thorough explanation of the grounds justifying reconsideration, and must include including but not limited to new and relevant facts that were not known at the time of the hearing and the explanation why such facts were not known at the time of the hearing.

2.9.2 Petition Submission

Petitions for reconsideration must be received by the Office within twenty (20) calendar days of the effective date of the Board's written decision. The effective date of the Board's Order is the date of mailing as set forth in the Order's Certification of Service. ~~decision is the date the Board Order signed, or such other date as may be stated in the Final Board Order.~~

2.9.3 Consideration of Petition

The Board may grant or deny the petition based solely on the written submittal in support of the petition or written opposition thereto, or the Board may, in its discretion, grant the parties, as defined in Rules 1.1(50) and 1.7.1, an opportunity to present oral arguments. The Office staff shall act as staff to the Board, except on matters related to enforcement.

2.9.4 Automatic Denial of Petition

The petition shall be deemed denied unless it is granted, or the Board takes other action on the petition, within sixty (60) days of receipt of the petition.

2.9.5 Time Limitations

The timely filing of a petition for reconsideration shall not toll the time in which the Parties to the hearing may seek judicial review of the Board's decision.

RULE 3: RECLAMATION PERFORMANCE STANDARDS, INSPECTION, MONITORING, AND ENFORCEMENT

3.1 RECLAMATION PERFORMANCE STANDARDS

These performance standards shall be applicable to all mining operations. Prospecting operations are subject to the relevant performance standards of this Rule as determined by the Office.

3.1.1 Establishing Post-Mining Use

- (1) In consultation with the Landowner, where possible, and subject to the approval of the Board or Office, the Operator shall choose how the affected lands shall be reclaimed. These decisions can be for forest, rangeland, cropland, general agriculture, residential, recreational, industrial/commercial, developed water resources, wildlife, or other uses.
- (2) The results of these decisions shall be formulated into a Reclamation Plan, as specified in Rule 6.3.4 or 6.4.5, as required for the size and type of operation.

3.1.2 Reclaiming Substituted Land

Reclamation shall be required on all the affected land except that the Operator may substitute land previously mined and owned by the Operator but not otherwise subject to the Mined Land Reclamation Act, or the Operator may reclaim an equal number of acres of any land previously mined, but not owned by the Operator, if the Operator has not previously abandoned unreclaimed mining lands. Such exchanges can be done only with the approval of the Board and the Owner of the land to be reclaimed. The Board and Office shall not approve such an exchange for lands affected by any 110 or 112 uranium or in situ leach mining operation.

3.1.3 Time Limit and Phased Reclamation

- (1) For any in situ leach mining operations, reclamation of groundwater in accordance with the approved reclamation plan shall begin immediately upon:
 - (a) The detection pursuant to the baseline site characterization and monitoring plan of any subsurface excursion of groundwater outside of the affected area containing chemicals used in or mobilized by such operation or the groundwater outside the affected land otherwise fails to meet groundwater standards applicable to in situ leach mining operations; or
 - (b) The cessation of production operations, unless the operator has filed a Notice of Temporary Cessation as required by Rule 1.13.5(1) and the Board has not ordered reclamation of groundwater to commence under Rule 1.13.
- (2) All reclamation shall be carried to completion by the Operator with all reasonable diligence, and each phase of reclamation shall be completed within five (5) years from the date the Operator informs the Board or Office that such phase has commenced, or from the date the Office has evidence that mining or prospecting has ceased or the end of life of mine

116(7)(q)(III)

116(7)(q)
116(7)(q)(IV)

|

has been declared, unless extended by the Board or Office. The 5-year period may be applied separately to each phase as it is commenced throughout the life of the mine.

(3) Upon determination and notice by the Office that all reclamation is completed, the operator is encouraged to request a release of the permit within sixty (60) days, or demonstrate to the Office or Board plans for future mining and that mineral reserves still exist.

Commented [MR24]: Sites that are fully reclaimed should be released. A permit shown as active, but is fully reclaimed, must be inspected and financial warranties maintained which is a burden to the Office and Operator.

3.1.4 Public Use

116(7)(m)

On lands owned by the Operator, the Operator may permit the public to use the same for recreational purposes, in accordance with the Limited Landowner Liability Law contained in Article 41 of Title 33, C.R.S. 1984, as amended, except in areas where such use is found by the Operator to be hazardous or objectionable.

3.1.5 Reclamation Measures – Materials Handling

The Operator shall set forth the measures that will be taken to meet all the following requirements:

116(7)(a)

(1) Grading shall be carried on so as to create a final topography appropriate to the final land use selected in the Reclamation Plan.

116(7)(i)

(2) When backfilling is a part of the plan, the Operator shall replace overburden and waste materials in the mined area and shall ensure adequate compaction for stability and to prevent leaching of toxic or acid-forming materials.

116(7)(h)

(3) All grading shall be done in a manner to control erosion and siltation of the affected lands, to protect areas outside the affected land from slides and other damage. If not eliminated, all highwalls shall be stabilized.

116(7)(q)

(4) All backfilling and grading shall be completed as soon as feasible after the mining process. The Operator shall establish reasonable timetables consistent with good mining and reclamation procedures.

116(7)(c)

116(7)(d)

(5) All refuse and acid forming or toxic producing materials that have been mined shall be handled and disposed of in a manner that will control unsightliness and protect the drainage system from pollution.

(6) Any drill or auger holes that are part of the mining operation shall be plugged with non-combustible material, which shall prevent harmful or polluting drainage. Adits and shafts should be closed, and where practicable, backfilled and graded in a manner consistent with the post mine land use and shall comply with the provisions of the Act, Mineral Rules and Regulation.

116(7)(a)

(7) Maximum slopes and slope combinations shall be compatible with the configuration of surrounding conditions and selected land use. In all cases where a lake or pond is produced as a portion of the Reclamation Plan, all slopes, unless otherwise approved by the Board or Office, shall be no steeper than a ratio of 2:1 (horizontal to vertical ratio), except from 5 feet above to 10 feet below the expected water line where slopes shall be

not steeper than 3:1. If a swimming area is proposed as a portion of the Reclamation Plan, the slope, unless otherwise approved by the Board or Office, shall be no steeper than 5:1 throughout the area proposed for swimming, and a slope no steeper than 2:1 elsewhere in the pond.

116(7)(o)

- (8) If the Operator's choice of reclamation is for agricultural or horticultural crops which normally require the use of farm equipment, the Operator shall grade so that the area can be traversed with farm machinery.
- (9) An Operator may backfill structural fill material generated within the MLRB permitted area into an excavated pit within the permit area as provided for in the MLRB Permit. If an Operator intends to backfill inert structural fill generated outside of the approved permit area, it is the Operator's responsibility to provide the Office notice of any proposed backfill activity not identified in the approved Reclamation Plan. If the Office does not respond to the Operator's notice within thirty (30) days after receipt of such Notice by the Office, the Operator may proceed in accordance with the provisions of this Rule. The Operator shall maintain a Financial Warranty at all times adequate to cover the cost to stabilize and cover any exposed backfilled material. The Notice to the Office shall include but is not limited to:
 - (a) a narrative that describes the approximate location of the proposed activity;
 - (b) the approximate volume of inert material to be backfilled;
 - (c) a signed affidavit certifying that the material is clean and inert, as defined in Rule 1.1(31);
 - (d) the approximate dates the proposed activity will commence and end, however, such dates shall not be an enforceable condition;
 - (e) an explanation of how the backfilled site will result in a post-mining configuration that is compatible with the approved post-mining land use; and
 - (f) a general engineering plan stating how the material will be placed and stabilized in a manner to avoid unacceptable settling and voids.
- (10) All mined material to be disposed of within the affected area must be handled in such a manner so as to prevent any unauthorized release of pollutants to the surface drainage system.
- (11) No unauthorized release of pollutants to groundwater shall occur from any materials mined, handled or disposed of within the permit area.
- (12) No permit shall be approved where perpetual water treatment is proposed as final reclamation.

Commented [MR25]: HB19-1113 requirement.

116

3.1.6 Water – General Requirements

116(7)(g)

- (1) Hydrology and Water Quality: Disturbances to the prevailing hydrologic balance of the affected land and of the surrounding area and to the quantity or quality of water in surface

and groundwater systems both during and after the mining operation and during reclamation shall be minimized by measures, including, but not limited to:

- (a) compliance with applicable Colorado water laws and regulations governing injury to existing water rights;
- (b) compliance with applicable federal and Colorado water quality laws and regulations, including statewide water quality standards and site-specific classifications and standards adopted by the Water Quality Control Commission;
- (c) compliance with applicable federal and Colorado dredge and fill requirements; and
- (d) removing temporary or large siltation structures from drainage ways after disturbed areas are revegetated and stabilized, if required by the Reclamation Plan.

~~(e) demonstrate, by substantial evidence, a reasonably foreseeable end date for any water quality treatment necessary to ensure compliance with applicable water quality standards.~~

~~(f) the board may approve a reclamation plan that lacks substantial evidence of a reasonably foreseeable end date for any necessary water treatment if the new or amended permit includes an environmental protection plan and reclamation plan adequate to ensure compliance with applicable water quality standards and upon making a written determination:~~

~~(i) for an amended application, except as provided in Rule 3.1.6(1)(f)(ii), that the water quality impacts that have occurred or are occurring for which no reasonably foreseeable end date for water quality treatment can be established were either unforeseen at the time of approval of the reclamation plan or existing at the mine site permitted on or before January 1, 2019; or~~

~~(ii) for a new or amended reclamation plan for a permit involving a site that was previously mined but not permitted as of January 1, 2019, that existing water quality conditions do not meet applicable water quality standards and no reasonably foreseeable end date for water quality treatment can be established.~~

~~(g) the board may approve a new reclamation plan that lacks substantial evidence of a reasonably foreseeable end date for any necessary water quality treatment if a permit application is submitted and the reclamation plan is limited to reclamation of already-mined ore or other waste materials, including mine drainage runoff, as part of a clean up.~~

Commented [MR26]: Required by HB19-1113

116(7)(b)

- (2) Earth dams, if necessary to impound water, may be constructed if the formation of such impoundments will not damage adjoining property or conflict with water pollution laws, rules or regulations of the federal government, the state of Colorado or with any local government pollution ordinances.
- (3) All surface areas of the affected land, including spoil piles, shall be stabilized and protected so as to effectively control erosion.

- (4) The Office may require the submission of baseline site characterization data, sufficient to ensure that impacts from prospecting will be detected, prior to the initiation of prospecting or mining, including but not limited to, ambient groundwater and surface water quality data sufficient to characterize potentially impacted waters.
- (5) Drilling pits used during prospecting or mining shall be constructed and operated to minimize impacts to public health, safety, welfare and the environment, including soil, waters of the State, including groundwater, and wildlife. In its discretion, the Office may require the use of pit liners, fencing, netting or other measures to minimize impacts to the public health, safety, welfare and the environment.

116

3.1.7 Groundwater – Specific Requirements

- (1) Standards and conditions applicable to classified and unclassified groundwater.
 - (a) State-wide groundwater quality standards: Operations that may affect groundwater quality shall comply with all state-wide groundwater quality standards established by the Water Quality Control Commission (hereafter, the WQCC).
 - (b) Classified areas: Operations that may affect the quality of groundwater in a specified area that has been classified by the WQCC shall comply with the standards applicable to such specified area.
 - (c) Unclassified areas: Operations that may affect the quality of groundwater which has not been classified by the WQCC shall protect the existing and reasonably potential future uses of such groundwater.
 - (d) Water quality standards applicable to groundwater that has been classified, state-wide standards for certain pollutants, and interim narrative standards set by the WQCC shall supersede any numeric protection levels established for the subject pollutants pursuant to this Rule 3.1.7.
- (e) For any in situ leach mining operations: Operators of all uranium extraction operations using in situ leach mining or recovery methods shall reclaim all affected groundwater for all water quality parameters that are specifically identified in the baseline site characterization and monitoring plan required by Rule 1.4.4, or in the statewide radioactive materials standards or tables 1 through 4 of the Basic Standards for Groundwater as established by the Colorado Water Quality Control Commission, to either of the following:
 - (i) pre-mining baseline water quality or better, as established by the baseline site characterization and monitoring plan required by Rule 1.4.4; or
 - (ii) that quality which meets the statewide radioactive materials standards and the most stringent criteria set forth in tables 1 through 4 of the basic standards for groundwater as established by the Colorado Water Quality Control Commission.

116(8)

- (f) Also, in establishing, designing and implementing a groundwater reclamation plan, in situ leach mining operators shall use best available technology.
 - (g) In addition, in situ leach mining operators shall take all necessary steps to prevent and remediate any degradation of preexisting groundwater uses during the prospecting, development, extraction and reclamation phases of the in situ leach mining operation.
- (2) Establishing permit, or notice of intent to conduct prospecting (NOI), conditions, including numeric protection levels, protective of unclassified groundwater uses.
- (a) Pursuant to the procedures specified in Rule 3.1.7(3), permit or NOI conditions shall be established for each operation that may have a reasonable potential to adversely affect the quality of a specified area that has not been classified by the WQCC. Such permit or NOI conditions may be in the form of numeric protection levels, practice-based permit or NOI conditions, or both.
 - (b) Points of compliance for numeric protection levels shall be set pursuant to Rule 3.1.7(6).
 - (c) Permit or NOI conditions, whether practice-based or numeric protection levels, shall be established as follows:
 - (i) The permit or NOI conditions shall be protective of the existing and reasonably potential future uses of the groundwater that may be affected. The WQCC's groundwater quality table values (The Basic Standards For Ground Water CCR 1002-41), shall be used as a guide in establishing the permit or NOI conditions.
 - (ii) Where ambient groundwater quality exceeds values for protection of existing and reasonably potential future uses of groundwater, such as groundwater table values or other numeric criteria, permit or NOI conditions shall be established to protect those uses against further lowering of groundwater quality.
- (3) Procedures for establishing permit or NOI conditions to protect the quality of unclassified groundwater.
- (a) New operations and modifications of existing permits or NOIs: Any application or NOI for a new operation, or an application for a modification of an existing permit or NOI which modification has reasonable potential to adversely affect the quality of unclassified groundwater, that is approved by the Office or the Board on or after Rule 3.1.7(2).
 - (b) Existing operations: For operations subject to a permit or NOI issued before September 1, 1993, which permit or NOI is not the subject of an application or a modification as described in Rule 3.1.7(3)(a), permit or NOI conditions shall be established as follows:

- (i) Upon a determination that a violation of a permit or NOI provision affecting groundwater quality has occurred, the Board may order the Operator to submit an application or NOI to modify the permit or NOI to comply with Rule 3.1.7(2), and may set reasonable schedule for submittal of such application or NOI. Nothing in this Rule shall be construed to limit the Board's authority under Section 34-32-124, C.R.S. 1984, as amended.
- (ii) The Office shall follow the pre-enforcement procedure set out below before requiring an Operator who is in compliance with all permit or NOI provisions and regulation requirements related to groundwater quality to modify the permit or NOI. The Office may bring an enforcement action under Section 34-32-116(7), C.R.S. 1984, as amended, or earlier version thereof. Such enforcement action may result in a finding of a violation of that statutory provision upon finding that there is or may be a reasonable potential for degradation of groundwater quality that adversely affects existing or reasonable potential future uses of such groundwater. The Office shall follow the pre-enforcement procedure outlined below before bringing such an enforcement action:
 - (A) When the Office has reason to believe, based on evidence, that there is or may be a reasonable potential for degradation of groundwater quality that adversely affects uses, the Office shall notify the Operator of the evidence and of the possible need to modify the permit or NOI to include permit or NOI conditions that comply with Rule 3.1.7(2), necessary information, and shall allow a minimum of ninety (90) days for the Operator to respond. Following a response from an Operator provided with notice under this Rule 3.1, the Office shall allow a reasonable period to negotiate appropriate permit or NOI conditions with the Operator pursuant to Rule 3.1.7(2).
 - (B) The Office may bring an enforcement action if the Operator fails to respond within the time specified, or the Office and the Operator do not negotiate appropriate permit or NOI conditions within a reasonable period of time, pursuant to Rule 3.1.7(3)(b)(ii)(A). Upon finding a violation of the Act, or Rules promulgated thereunder, the Board may modify the permit or NOI to include groundwater protection provisions in compliance with Rule 3.1.7(2).
 - (C) The pre-enforcement procedures described in this Rule 3.1.7(3)(b)(ii) shall not apply if there is an imminent danger to the health, safety, and general welfare of the people of this state. In such a case, the Office may immediately initiate an enforcement action and may seek a cease and desist order. This provision shall not be construed to prevent the Water Quality Control Division from pursuing its remedies under Section 25-8-307, C.R.S. (1989).

- (4) Procedures for establishing compliance with standards promulgated by the WQCC.
- (a) Existing permits or NOIs affecting groundwater, subject to existing groundwater quality standards. The Office shall provide notice to operations subject to a permit or NOI issued prior to January 31, 1994 if such operation has a reasonable potential to exceed groundwater quality standards promulgated by the WQCC. Such existing groundwater quality standards may include standards applicable to groundwater that has been classified by the WQCC, interim narrative standards and state-wide standards for certain pollutants. The notice shall provide the Operator with a reasonable opportunity to respond and modify the permit or NOI if necessary, to establish permit or NOI conditions adequate to implement such groundwater standards.
 - (b) WQCC standards promulgated after a permit or NOI is issued: If there is a reasonable potential to exceed groundwater quality standards promulgated after the permit or NOI is issued the Office shall provide the Operator with notice of the applicable groundwater quality standards. The Operator shall be afforded a reasonable opportunity to submit an application to modify the permit or NOI as necessary to implement such groundwater quality standards.
 - (c) Permit or NOI conditions established pursuant to Rules 3.1.7(4)(a) and (b) shall include a reasonable schedule of compliance. Such permit or NOI conditions may be in the form of numeric protection levels, practice-based permit or NOI conditions, or both.
 - (d) If an Operator has a reasonable potential to exceed groundwater quality standards promulgated by the WQCC, the Operator shall modify the permit or NOI as necessary to implement such standards in compliance with this Rule 3.1.7, within a reasonable period of time after receiving a Notice issued pursuant to Rules 3.1.7(4)(a) and (b). If the Operator fails to do so the Office may initiate an enforcement action to enforce compliance with this Rule and establish any necessary permit or NOI conditions.
 - (e) Permits, NOIs or applications to modify a permit or a NOI shall not be approved unless such permit, NOI, or modification includes conditions adequate to implement all groundwater quality standards promulgated by the WQCC applicable to such permit, NOI, or modification.
- (5) Any Operator, on a voluntary basis, may submit information concerning the protection of the quality of groundwater affected by the operation to the Office. The Operator may submit such information and a plan for monitoring, where appropriate, including monitoring at points of compliance, for the Office's consideration. The information submitted must satisfy the requirements of Rules 3.1.7(6) and (7). Such voluntary submission by an Operator shall be considered a Technical Revision provided the submittal satisfies Rule 1.8, or NOI modification.
- (6) Points of Compliance:

- (a) In order to evaluate protection afforded groundwater quality, comply with groundwater standards, or to demonstrate compliance with permit or NOI conditions established by the Office to protect groundwater quality, one or more points of compliance shall be established. Through incorporation into a permit or NOI and on a schedule approved by the Office, an Operator shall comply with groundwater quality standards established by the Water Quality Control Commission at points of compliance.
- (i) Where the Water Quality Control Commission has not established standards, then any permit or NOI condition established by the Board or Office to protect groundwater quality shall be demonstrated to be met at points of compliance or as specified in the issued NOI or approved permit.
- (b) Where groundwater quality standards have been established, the point of compliance shall be established according to the following criteria:
 - (i) for existing facilities at which an adverse impact to groundwater quality could occur, the point of compliance will be set as follows:
 - (A) at some distance hydrologically down-gradient from the facility or activity that is causing, or which has the potential to cause, the contamination, and selecting that distance closest to the facility or activity, considering the technological feasibility of meeting the requirements for protecting water quality:
 - (I) a specified distance, as determined by Rule 3.1.7(6)(i)(B) below;
 - (II) the hydrologically down-gradient limit of the area in which contamination has been identified; or
 - (III) the facility permit boundary.
 - (B) In determining a specified distance the Office shall take into consideration the following factors;
 - (I) the classified use, established by the Water Quality Control Commission, for any groundwater or surface water which could be impacted by contamination from the facility;
 - (II) the geologic and hydrologic characteristics of the site, such as depth to groundwater, groundwater flow direction and velocity, soil types, surface water impacts, and climate;
 - (III) the toxicity, mobility, and persistence in the environment of the contaminants used or stored at the facility and

which could reasonably be expected to be discharged from the facility;

(IV) the potential of the site as an aquifer recharge area; and

(V) recommendations submitted by the facility owner or Operator, including technical and economic feasibility.

(ii) For any new facility or new activity which may cause an adverse impact on groundwater quality, the point of compliance will be set as follows:

(A) unless modified by the Office as specified in Rule 3.1.7(6)(ii)(B) below, the point of compliance will be set at the hydrologically down-gradient limit of the area below the facility or activity potentially impacting groundwater quality.

(B) The point of compliance determined in Rule 3.1.7(6)(ii)(A) above may be modified by the Office on a case-by-case basis with consideration of the following factors:

(I) the classified use, established by the Water Quality Control Commission, for any groundwater or surface water which could be impacted by contamination from the facility;

(II) the geologic and hydrologic characteristics of the site, such as depth to groundwater, groundwater flow direction and velocity, soil types, surface water impacts, and climate;

(III) the toxicity, mobility, and persistence in the environment of contaminants used or stored at the facility which could reasonably be expected to be discharged from the facility;

(IV) the potential of the site as an aquifer recharge area; and

(V) recommendations submitted by the facility owner or Operators including technical and economic feasibility.

(7) Groundwater Monitoring:

(a) For existing operations through permit or NOI modifications, and for new permit applications or NOIs, a groundwater monitoring program shall be required on a case-by-case basis where an adverse impact on groundwater quality may reasonably be expected.

(b) If groundwater monitoring is required, the Operator shall include the following information as part of a permit application, NOI, or permit or NOI modification:

- (i) a map that accurately locates all proposed groundwater sample points and any locations that are proposed as a point of compliance;
 - (ii) the method of monitoring well completion where monitoring wells are required;
 - (iii) method of sampling, frequency of sampling and reporting to the Office;
 - (iv) parameters analyzed, water quality analysis methods, and quality control and quality assurance methods;
 - (v) formations, aquifers or strata to be sampled;
 - (vi) identify the potential sources of groundwater contamination that will be monitored by each point of compliance monitoring point;
 - (vii) a time-schedule for implementation; and
 - (viii) ambient groundwater quality data sufficient to characterize potentially impacted groundwater quality.
- (8) Release of Reclamation Liability: An Operator shall demonstrate, to the satisfaction of the Office, that reclamation has been achieved so that existing and reasonably potential future uses of groundwater are protected. In addition, Operators of any in situ leach mining operations shall reclaim groundwater as required in Rule 3.1.7(1)(e).
- (9) An Operator must provide the Office a written report within five (5) working days when there is evidence of groundwater discharges exceeding applicable groundwater standards or permit or NOI conditions imposed to protect groundwater quality when these other conditions are explicitly identified in the permit or NOI as requiring such notice.

For additional performance standards related to water, see Rules 3.1.5 and 3.1.6.

3.1.8 Wildlife

- 102
116(7)(j)
- (1) All aspects of the mining and reclamation plan shall take into account the safety and protection of wildlife on the mine site, at processing sites, and along all access roads to the mine site with special attention given to critical periods in the life cycle of those species which require special consideration (e.g., elk calving, migration routes, peregrine falcon nesting, grouse strutting grounds).
 - (2) Habitat management and creation, if part of the Reclamation Plan, shall be directed toward encouraging the diversity of both game and non-game species, and shall provide protection, rehabilitation or improvement of wildlife habitat. Operators are encouraged to contact Colorado Parks and Wildlife and/or federal agencies with wildlife responsibilities to see if any unique opportunities are available to enhance habitat and/or benefit wildlife which could be accomplished within the framework of the Reclamation Plan and costs.

116(7)(f)

3.1.9 Topsoiling

- (1) Where it is necessary to remove overburden in order to mine the mineral, topsoil shall be removed and segregated from other spoil. If such topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be employed so that the topsoil is preserved from wind and water erosion, remains free of any contamination by toxic or acid-forming material, and is in a usable condition for reclamation.
- (2) Where practicable, woody vegetation present at the site shall be removed from or appropriately incorporated into the existing topsoil prior to excavation within the affected areas. The Operator should make a reasonable effort to ensure that existing vegetation is put to a beneficial use such as firewood, mulching, lumber, etc.

116(7)(i)

- (3) Topsoil stockpiles shall be stored in places and configurations to minimize erosion and located in areas where disturbance by ongoing mining operations will be minimized. Such stockpile areas must be included in the affected areas and subject to all reclamation requirements. The Board may require immediate planting of an annual and/or perennial on topsoil stockpiles for the purpose of stabilization.
- (4) Once stockpiled, the topsoil shall be rehandled as little as possible until replacement on the regraded, disturbed area. Relocations of topsoil stockpiles on the affected land require Board or Office approval. Approval in most cases would be granted by way of technical revision.
- (5) The Operator shall take measures necessary to assure the stability of replaced topsoil on graded slopes such as roughing in final grading to eliminate slippage zones that may develop between the deposited topsoil and heavy textured spoil surfaces.

116(7)(f)

- (6) If, in the discretion of the Board or Office, such existent topsoil is of insufficient quantity or of poor quality for sustaining vegetation, and if other materials can be shown to be more suitable for vegetation requirements, then the Operator shall remove, segregate, and preserve in a like manner such other materials which are best able to support vegetation.
- (7) When growing media is replaced, it shall be done in as even a manner as possible. Fertilizer or other soil amendments shall be added, if required in the Reclamation Plan or as the soil tests indicate.
- (8) Vegetative piles shall be removed from the area or utilized in accordance with the Reclamation Plan.

116(7)(e)

3.1.10 Revegetation

- (1) In those areas where revegetation is part of the Reclamation Plan, land shall be revegetated in such a way as to establish a diverse, effective, and long lasting vegetative cover that is capable of self-regeneration without continued dependence on irrigation, soil amendments or fertilizer, and is at least equal in extent of cover to the natural vegetation of the surrounding area. Except for certain post mining land uses approved by the Board

or Office, the use of species native to the region shall be emphasized. Greater emphasis on non-native species may be proposed for intensively managed forestry and range uses.

116(7)(k)	(2)	If the Operator's choice of reclamation is forest planting, they may, with the approval of the department, select the type of trees to be planted. If the Operator is unable to acquire sufficient planting stock of desired tree species from the state or elsewhere at a reasonable cost, they may defer planting until planting stock is available to plant such land as originally planned, or they may select an alternate method of reclamation.
116(7)(n)	(3)	If the Operator's choice of reclamation is for rangeland, the land shall be restored to slopes commensurate with the proposed land use and shall not be too steep to be traversed by livestock. The area may be seeded either by hand, or power, or by the aerial method.
	(4)	The revegetation plan shall provide for the greatest probability of success in plant establishment and vegetation development by considering environmental factors such as seasonal patterns of precipitation, temperature and wind; soil texture and fertility; slope stability; and direction of slope faces. Similar attention shall be given to biological factors such as proper inoculation of legume seed, appropriate seeding and transplanting practices, care of forest planting stock, and restriction of grazing during initial establishment. The Board or Office, in consultation with the Landowner and the local Conservation District, if any, shall determine when grazing may start.
	(5)	To ~~ensure~~ ~~insure~~ the establishment of a diverse and long lasting vegetative cover, the Operator shall employ appropriate techniques of site preparation and protection such as mechanical soil conditioning by discing and ripping; mulching; soil amendments and fertilizers; and irrigation.
	(6)	Methods of weed control shall be employed for all prohibited noxious weed species, and whenever invasion of a reclaimed area by other weed species seriously threatens the continued development of the desired vegetation. Weed control methods shall also be used whenever the inhabitation of the reclaimed area by weeds threaten further spread of serious weed pests to nearby areas.
116(7)(l)	(7)	When necessary, fire lanes or access roads shall be constructed through the area to be planted. These lanes or roads shall provide access for planting crews, supervision and inspection.
116(7)(q)(I)	(8)	Planting required for reclamation may be delayed, through the period of use related to places of refuse disposal, haulage roads and road cuts. Normal stabilization of surfaces is required. No planting is required:
	(a)	on any affected land being used or proposed to be used by the Operator for the deposit or disposal of refuse until after the cessation of operations productive of such refuse;
	(b)	on lands proposed for future mining;
116(7)(q)(II)	(c)	within depressed haulage roads or final cuts while such roads or final cuts are being used or made;

- (d) where permanent pools or lakes have been formed; and
- (e) on any affected land so long as the chemical and physical characteristics of the surface and immediately underlying material of such affected land are toxic, deficient in plant nutrients, or composed of sand, gravel, shale, or stone to such an extent as to seriously inhibit plant growth and such condition cannot feasibly be remedied by chemical treatment, fertilization, replacement of overburden, or like measures.

116(7)(q)(III)

- (9) Where adverse characteristics of the surface, not feasibly remedied by artificial measures, would seriously inhibit plant growth, planting may be delayed or provided on substitute acres, depending upon natural corrective processes over a ten (10) year period.

116(7)(r)

3.1.11 Buildings and Structures

If the affected land is owned by a legal entity other than any local, state, or federal entity, any buildings or structures including those constructed or placed on the affected lands in conjunction with the mining operations or which are historic structures as determined by the State Historic Preservation Office may, at the option of the Operator and Landowner and with the approval of the Board, remain on the affected land after reclamation if such buildings or structures will not conflict with the post-mining land use and the structures conform to local building and zoning codes.

3.1.12 Signs and Markers

- (1) At the entrance of the mine site the Operator shall post a sign, which shall be clearly visible from the access road, with a minimum size equaling one hundred and eighty-seven (187) square inches, such as eleven (11) inches in height and seventeen (17) inches in width, with appropriate font size, with the following:
 - (a) the name of the Operator and the operation name;
 - (b) a statement that a reclamation permit for the operation has been issued by the Colorado Mined Land Reclamation Board; and
 - (c) the permit number.
- (2) The boundaries of the affected area will be marked by monuments or other markers that are clearly visible and adequate to delineate such boundaries.
 - (a) for 110 Limited Impact Operations and Limited Impact 110 Designated Mining Operations the permit boundary for the purposes of this Rule shall be considered the affected area;
 - (b) for 112 Regular Operations and 112 Designated Mining Operations the area proposed to be disturbed by mining operations for which a Financial Warranty and Performance Warranty have been posted shall be the affected area.

- (3) The Office may approve an alternative plan for identifying the boundaries of the affected land if the Operator includes such a plan in the permit application or through a technical revision.

3.1.13 Spill Reporting

The Operator shall notify the Office of a spill of any toxic or hazardous substance, including spills of petroleum products, that occurs within the mined land permit area or area encompassed by a Notice of Intent and which would be required to be reported to any Division of the Colorado Department of Public Health and the Environment, the National Response Center, the Colorado Emergency Planning Commission, any local Emergency Planning Commission, local Emergency Planning Committee, or the State Oil Inspector. The Operator shall:

- (1) within twenty-four (24) hours of the time the spill is reported to any other agency(ies) with jurisdiction over the spill, notify the Division of Reclamation, Mining and Safety, via phone or email;
- (2) include in the notice any relevant information known at the time contact is made with the Office that would assist the Office in assessing spill seriousness, such as:
 - (a) operation name, DRMS permit number and name of person reporting the spill,
 - (b) telephone number of a responsible company official for the Office staff to use as a contact,
 - (c) date and time of spill,
 - (d) type of material spilled (CAS number if applicable, from the material safety data sheet (MSDS) form),
 - (e) estimate of the amount spilled, whether any material has left the permit area, and where the spilled material went, and
 - (f) initial measures taken to contain and clean up spill.
- (3) copy the Office on any correspondence and/or written reports provided to other agencies. Supplement those reports if necessary to include the information outlined in Rule 3.1.13(2).
- (4) For permits approved prior to the effective date of these Rules, the requirements of Rule 3.13 shall supersede stipulations to permits regarding spill reporting.

3.2 INSPECTION AND MONITORING

- (1) Entry upon lands for inspection: the Board or Office may enter upon the lands of the Operator at all reasonable times for the purpose of inspection to determine whether the provisions of the Act and these Rules have been complied with.

- (2) Persons authorized under the Act and these Rules to conduct inspections shall, prior to entry onto any lands, notify the Operator of their intent to enter and inspectors shall comply with all federal, state, local and company safety rules.
- (3) Any state official or employee of the Office shall promptly report to the Board any possible violation of a permit, law or these Rules of which they have knowledge, whether obtained from personal inspection or from written reports on mining operations.
- (4) Upon an Office determination of a possible violation, the Office shall issue a Notice of Possible Violation(s), and shall mail such notice by certified mail, return receipt to the last known address of the Permittee. The Office shall schedule the matter of possible violation(s) for a Board Hearing according to the provisions of Rules 3.3.1 or 3.3.2.
- (5) All inspections shall include a written report which:
 - (a) describes every possible violation of the permit, law, or these Rules;
 - (b) is personally signed by the Inspector; and
 - (c) is mailed within a reasonable time to the mine office, or other suitable location designated by the Operator.
- (6) A report of how and when a violation is resolved and a report of any subsequent inspection to verify compliance shall be filed.
- (7) All operations applying for a regular permit, conversion, or amendment thereto shall be inspected after the application is filed and prior to Board consideration. Other Applicants shall be so inspected as time and staff resources permit.
- (8) Mining operations shall be inspected a sufficient number of times each year to ensure compliance with the permit, law, and these Rules. The frequency of inspection shall be determined by the extent of the operation, rate of mining, degree of actual or potential environmental impact, ~~and~~ the Operator's past record of compliance, and by Board Policy.
- 113(8) (9) The Board or Office is authorized to inspect any ongoing Prospecting Operation or any Prospecting Operation prior to the request for release of Performance and Financial Warranties, in order to determine compliance with these Rules.

3.3 ENFORCEMENT AND PROCEDURES

3.3.1 Operating Without a Permit or Prospecting Without a Notice of Intent Penalty

- (1) Whenever the Office issues an immediate Cease and Desist Order to an Operator or Prospector for failing to obtain a valid Mined Land Reclamation Board permit or filing a Notice of Intent, the Operator or Prospector shall be afforded an opportunity for a hearing before the Board. The Office shall schedule the matter for a hearing before the Board no sooner than thirty (30) days after issuance of such Cease and Desist Order; except that an

earlier date for a hearing may be requested by the alleged violator and the hearing must be set no later than the next succeeding Board meeting if requested by the alleged violator.

- (2) Operators who mine substantial acreage beyond their approved permit boundary may be found to be operating without a permit and shall be afforded an opportunity for a hearing before any Cease and Desist Order may issue.

123(2) (3) Except as provided in Rule 3.3.1(4) below, any Operator who operates without a permit shall be subject to a Civil Penalty of not less than one thousand dollars (\$1,000.00) per day, nor more than five thousand dollars (\$5,000.00) per day, for each day the land has been affected. Such penalties shall be assessed for a period not to exceed sixty (60) days.

123(3) (4) Any Operator eligible for, but operating without a permit under Section 34-32-110, C.R.S et seq., 1984, as amended, and any Prospector who operates without filing a Notice of Intent, shall be subject to a Civil Penalty of not less than fifty dollars (\$50.00), nor more than two hundred dollars (\$200.00) per day for each day the land has been affected. Such penalties shall be assessed for not less than one (1) day and not more than sixty (60) days.

124 **3.3.2 Operating With a Permit or Prospecting With a Notice of Intent – Failure to Comply**

124(1) (1) Whenever the Board or Office has a reason to believe that there has occurred a violation of an Order, Permit, Notice of Intent, or regulation issued under the authority of the Act or these Rules, written Notice shall be given to the Operator or Prospector of the possible violation at least thirty (30) days prior to the scheduled Board hearing date, unless such Notice is waived, in writing, by the Operator. Such Notice shall be served personally or by Certified Mail, Return Receipt Requested, upon the possible violator or the possible violator's agent, for service of process. The Notice shall state the provision alleged to be violated and the facts alleged to constitute the violation, and may include the nature of any corrective action proposed to be required. The Notice shall state the date, time and place of the Formal Hearing where the Board will consider the possible violation.

124(6)(a) (2) Following a determination, by the Office, of reason to believe a violation exists, the Board shall hold a hearing on whether or not there is a violation.

(a) At the hearing, if the Board determines that a violation of the provisions of a Permit, a Notice of Intent, the Act, or these Rules has occurred, the Board may order the modification, suspension or revocation of the Permit. If the Board suspends or revokes the Permit of an Operator, the Operator may continue mining operations only for the purpose of bringing the mining operations into satisfactory compliance with the provisions of the Operator's Permit and all applicable safety regulations. Once such operations are complete to the satisfaction of the Board, the Board shall reinstate the Permit of the Operator.

124(7) (b) At the hearing, if the Board determines that a violation of the provisions of a permit, the Act, or these Rules has occurred, the Board shall assess a Civil Penalty of not less than one hundred dollars (\$100.00) per day nor more than one thousand dollars (\$1,000.00) per day for each day during which such violation occurs; except that any Operator who operates under a permit issued under Section 34-32-110, C.R.S., as amended shall be subject to a Civil Penalty of not less than fifty dollars

(\$50.00) nor more than two hundred dollars (\$200.00) per day. Operators who affect substantial acreage beyond their approved permit boundary may be found to be operating without a permit and, in such case, the Civil Penalty shall be assessed according to the schedule in Rules 3.3.1(3) or (4).

- (c) At the hearing, if the Board determines that a violation of the provisions of a permit, a Notice of Intent, the Act, or these Rules has occurred, the Board may issue a Cease and Desist Order. The order shall:
- (i) specify the provisions(s) violated;
 - (ii) specify the facts which constitute the violation(s);
 - (iii) set forth the time by which the violations(s), act(s), or practices(s) must be terminated;
 - (iv) include, at the Board's discretion, any corrective action; and
 - (v) be served personally or by Certified Mail, return receipt requested, upon the Operator or their agent for service of process.
- (3) After a finding by the Board of a failure to comply, pursuant to Rule 3.2, any expenses incurred by the Board or Office in carrying out corrective actions, including administrative costs, may be assessed against the violator.

124(3)

3.3.3 Injunctive Relief

- (1) In the event any Operator fails to comply with a Cease and Desist Order, the Board may request the Attorney General to bring suit for a temporary restraining order, a preliminary injunction, or a permanent injunction to prevent any further or continued violation of such order.
- (2) If the Board determines that the situation is an emergency, the emergency shall be given precedence over all other matters pending in such court.

3.3.4 Violation of a Cease and Desist Order – Surety Forfeiture

118(1)(a)

The Board shall institute proceedings to have the surety of the Operator forfeited for violation by the Operator of a Cease and Desist Order entered pursuant to Rule 3.3. Such proceedings shall be conducted in accordance with Rule 4.20.

RULE 4: PERFORMANCE WARRANTIES AND FINANCIAL WARRANTIES

4.1 GENERAL PROVISIONS

109(6)	(1)	No governmental office of the state, other than the Board, nor any political subdivision of the state shall have the authority to require a Performance or Financial Warranty of any kind for any mining operation.
115(4)(a) 117(1) 117(3)(f)	(2)	No permit may be issued pursuant to the Act until the Board or Office receives and approves the Performance and Financial Warranties required herein. If these Warranties are not received within one (1) calendar year of approval of an application for any new permit, amendment or conversion, the Board shall hold a hearing, in accordance with the notification and comment provisions of Rule 1.6, to reconsider the previous approval. If the Board affirms the original application approval, the Board shall establish a new deadline for submittal of the Financial and Performance Warranties. If the required Warranties are not posted by the date set by the Board, the application shall be denied.
117(2)	(3)	Whenever two or more persons or entities are named as Operators in a single permit, the Operators may limit the scope of their individual Performance Warranties so long as the warranties, in the aggregate, warrant performance of all requirements of the Act.
117(3)	(4)	Whenever two or more persons or entities act as Financial Warrantors, they may limit the scope of their individual warranties so long as all Financial Warranties, in the aggregate, equal the amount required by the Board.
117(3)(a)	(5)	Financial Warranties may be provided by the Operator, by any Third-party, or by any combination of persons or entities.
117(3)(b) 	(6)	Financial Warrantors who provide proof of financial responsibility of any type or types described in Rules 4.3.2, ~~4.3.7~~ , 4.3.8, or 4.3.9 shall not be required to secure the same by the posting of Third party sureties or otherwise pledging or encumbering property for the benefit of the state.
117(6)(a)	(7)	Financial Warranties shall be maintained in good standing for the entire life of any permit issued under the Act and these Rules. Financial Warrantors shall immediately notify the Board of any event which may impair their warranties.
119	(8)	Where one Operator succeeds another at any uncompleted operation, the Office shall release the first Operator from all liability as to that particular reclamation operation and shall release all applicable Performance and Financial Warranties as to such operation if the successor Operator assumes, as part of the obligation under the Act, all liability for the Reclamation of the affected land, and the obligation is covered by replacement Performance and Financial Warranties as to such affected land.
118(5)	(9)	95% of the proceeds of all Financial Warranties forfeited under the provisions of Section 34-32-118, C.R.S., shall be deposited in a special account established by the Board for the purposes of reclaiming lands which were obligated to be reclaimed under the permits upon which such Financial Warranties have been forfeited.

- 117(3)(b)
117(4)
117(4)(a)
- (10) Proof of financial responsibility may be of any type and in such amount authorized herein, subject to approval by the Board or Office.

4.1.1 General Requirements – Performance Warranties

117(1) Each application for any Permit or amendments thereto shall be accompanied by a Performance Warranty.

- (a) The Performance Warranty shall be in a form approved and prescribed by the Board.
- (b) A Performance Warranty shall be signed by the Operator and/or by a person or persons authorized to bind the Operator.

4.1.2 General Requirements – Financial Warranties

- (1) A Financial Warranty shall be signed by a person or persons authorized to sign a Financial Warranty.

- 110(8)
111(7)
117(3)(f)(VII)
- (2) No Financial Warranty shall be required where the Operator is a unit of municipal or county government or the State Department of Transportation and the Operator submits a written guarantee, in lieu of a financial warranty, stating that the affected lands will be reclaimed in accordance with the terms of the permit, these Rules, and Section 34-32-116, C.R.S.

- 117(3)(g)
- (3) Any proof of financial responsibility submitted or revised on or after July 1, 1993, shall be in compliance with Rules 4.2.1(1) through (7), and 4.1.2(6) and (7).

- 117(3)(b)
- (4) If the Board or Office has reason to believe that any proposed Financial Warranty does not fully and accurately reflect the current financial condition of the Financial Warrantor, the Board or Office may decline to accept the Financial Warranty as submitted.

- 117(6)(b)
- (5) Each Financial Warrantor providing proof of financial responsibility in a form described in Rules 4.3.6, ~~4.3.7~~, 4.3.8, 4.3.9, or 4.3.10 shall annually cause to be filed with the Board of Office a certification by an independent auditor that, as of the close of the Financial Warrantor's most recent fiscal year, the Financial Warrantor continued to meet all applicable requirements of Rule 4. Financial Warrantors who no longer meet said requirements shall comply with Rule 4.15.

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- 117(4)(c)(B)
- (6) The Board or Office may by permit condition require proof of value on a periodic basis of any Warranty held by the Board.

- 117(4)(b)
117(4)(c)
- (7) The Board or Office may by permit condition limit certain types of Warranties to specific purposes only or require a designated percentage of the total Warranty be held in easily valued and convertible instruments.

- 117(3)(c)
117(3)(c)(I)
- (8) The Board or Office may refuse to accept any type of Financial Warranty if:

- 117(3)(c)(II)
- (a) the value of the Financial Warranty offered is dependent upon the success, profitability, or continued operation, of the mine;
 - (b) for Deeds of Trust, First Priority Liens or Salvage Credit, the Operator has not complied with Rule 4.9; or
 - (c) the Board determines that the Financial Warranty offered cannot reasonably be converted to cash within one hundred and eighty (180) days of forfeiture.
- |
- (9) Any Operator/Applicant that desires to utilize a Financial Warranty described in Rules 4.3.6, ~~4.3.7~~, 4.3.8, 4.3.9, or 4.3.10 shall pay to the Office an Annual Fee for the reasonable and necessary cost of establishing and reviewing the Financial Warranty.
- (a) No costs may be charged hereunder unless and until the Operator/Applicant signs written fee agreements with the Office. Said agreements shall be in such form as the Board may prescribe. Invoices pursuant to said agreements shall include a statement for services and expenses included in the total amount;
 - (b) rates charged by the Office hereunder may not exceed prevailing rates for similar services, and shall reflect the actual cost of establishing and reviewing the Financial Warranty;
 - (c) the Operator/Applicant shall be responsible for all costs properly charged hereunder, even if no permit issues from the Board; and
 - (d) funds paid to the Office are to be made available for the use of outside legal and financial advice for the purpose of reviewing the Financial Warranty of Operators/Applicants desiring to use the Self-Insurance provision.
- (10) The original bond documents shall be submitted to the Office and held in safekeeping by the State Treasurer's Office.

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4.1.3 Provisions for Recovery of Costs

- 117(3)(e)
- Any instruments offered as a Financial Warranty pursuant to this Rule 4, shall provide that the Board or Office may recover the necessary costs, including attorney's fees or fees incurred in foreclosing on or realizing the collateral used to secure such Financial Warranty in the event such Financial Warranty is forfeited, in the following manner:
- (a) for any Corporate Surety Bond issued by a corporate surety company authorized to do business in this state, the face amount of the bond shall be increased by five hundred dollars (\$500);
 - (b) for any irrevocable Letter of Credit issued by a bank authorized to do business in the United States, the face amount of the Letter of Credit shall be increased by five hundred dollars (\$500);
 - (c) for any Certificate of Deposit, the face amount of the Certificate of Deposit shall not be increased;

- (d) for any Individual Reclamation Fund, the amount of the trust fund required to be maintained shall be increased by five hundred dollars (\$500);
- (e) for any Cash Escrow Account, the amount of the Cash Escrow Account required to be maintained shall not be increased; and
- (f) for any Deed of Trust or Security Agreement encumbering real or personal property creating a first priority lien in favor of the state, the value of the real or personal property available to secure the amount of the Financial Warranty attributable to costs of reclamation shall be reduced by an amount to be determined by the Board or Office, but in any case, a minimum of five thousand dollars (\$5,000) and up to a maximum amount of two percent (2%) of reclamation costs;
- (g) any monies collected and not used to fulfill the requirements of this Rule 4.1.3, shall be returned to the Financial Warrantor upon completion of reclamation and liability release by the Board or Office.

4.2 FINANCIAL WARRANTY LIABILITY AMOUNT

4.2.1 Adequacy of Financial Warranties

- 117(4)(b) (1) All Financial Warranties shall be set and maintained at a level which reflects the actual current cost of fulfilling the requirements of the Reclamation Plan; and for Designated Mining Operations, fulfilling the applicable requirements of the reclamation and Environmental Protection Plans during site closure and reclamation.
- 117(4)(b)
117(4)(c)(II) (2) Financial Warranty Review - the Office or Board may, in its discretion, review any Financial Warranty for adequacy at any time. In the event the Office or Board determine that the Financial Warranty is insufficient to perform reclamation, the Permittee shall have up to sixty (60) days to post additional Financial Warranty from the date of written notice from the Office or Board of such insufficiency. If the Permittee disagrees with the Office Notice to Increase the Financial Warranty, the Office shall schedule the matter for a hearing before the Board. The Permittee may be scheduled for a Formal Board Hearing for possible revocation of the permit after sixty (60) days, from the date of notice of any such adjustment, if the amount of any increased Financial Warranty has not been provided.
- 117(4)(a) (3) The Board or Office shall prescribe the amount and duration of Financial Warranties, taking into account the nature, extent, and duration of the proposed mining operation, the magnitude, type and estimated cost of planned reclamation, and the requirements of the Act.
- 117(4)(b) (4) In any single year during the life of the permit, the amount of required Financial Warranties shall not exceed the estimated cost of fully reclaiming all lands to be affected in said year, plus all lands affected in previous permit years and not yet fully reclaimed. For the purpose of this Rule, reclamation costs shall be computed with reference to current reclamation costs. The amount of the Financial Warranty shall be sufficient to assure the completion of

reclamation of affected lands if the Office has to complete such reclamation due to forfeiture. Reclamation includes all measures taken to assure the protection of water resources, including costs to cover necessary water quality protection, treatment and monitoring as may be required by Permit, these Rules or the Act.

117(4)(b)(l)

- (5) The Financial Warranty amount shall include an amount equal to five percent (5%) of the amount of the cost of reclamation to defray the administrative costs incurred by the Office in conducting the reclamation.
- (6) When mining on federal land and the federal land management agency requires that a Financial Warranty be posted with their agency, the amount of Financial Warranty posted with the state shall be the difference between the amount required to be posted by the federal land management agency, and the amount required by the Mined Land Reclamation Board. In no event shall the amount of Financial Warranty posted with the state be less than one hundred dollars (\$100). In addition, the application shall contain a provision that in the event the federal land management agency reduces the Financial Warranty, the Permittee must post an acceptable replacement Warranty with the state prior to any release by the federal land management agency. The replacement Warranty shall be sufficient to cover the cost of reclamation liability unless the state conducts an inspection and concurs with the federal land management agency finding.

4.2.2 Specific Provisions – 110(1), 110(2) and Non-In Situ Leach Mining 110d Limited Impact Operations

- (1) Except for in situ leach mining permits, the Financial Warranty for any 110 Limited Impact Permit which is filed pursuant to Section 34-32-110(1)(a)(III) or (2), C.R.S., including those which are automatically issued as a result of Office inaction within thirty (30) days pursuant to Section 34-32-110(6), C.R.S., shall be in an amount determined by the Office pursuant to Section 34-32-117(4), C.R.S. to be equal to the estimated cost of reclamation. By July 1, 2015, any Operator issued a two acre limited impact permit must comply with the financial warranty requirements set forth in Section 34-32-117(4), C.R.S. and Rule 4.
- (2) Divisions of state government and units of municipal and county government are exempt from submitting Financial Warranties and are not required to provide reclamation costs.

4.2.3 Permit Conversion

110(7)
117(4)

The conversion of any 110 Permit into any 112 Permit shall require a Financial Warranty in an amount equal to the estimated cost of reclamation.

4.2.4 Reserved

4.2.5 Specific Provisions – 112, 112d, 110 ISL and 112 ISL Reclamation Permit Operations

117(4)

- (1) The Financial Warranty for any 112, 112d, 110 ISL and 112 ISL Reclamation Permit shall be in an amount to be determined by the Board in accordance with the guidelines set forth herein.

- 115(3) (2) The Financial Warranty for any 112, 112d, 110 ISL and 112 ISL Reclamation Permit which is automatically issued as a result of Board inaction within two hundred and forty (240) days for any in situ leach mining application and within the one hundred and twenty (120) day period for non in situ leach mining 112 and 112d permit applications pursuant to the Act shall be in an amount equal to two thousand dollars (\$2,000.00) for each acre of Affected Land, or other such amount as the Board may determine at a subsequent hearing.
- (3) If, at a hearing, the Board determines that the Financial Warranty is not adequate, the Operator shall have sixty (60) days to post the additional Financial Warranty in a form and amount acceptable to the Board.

4.2.6 Specific Provisions – Prospecting Notice

- 113(4) (1) Upon filing the Notice of Intent to Conduct Prospecting, the person shall provide Financial Warranty in the amount of two thousand dollars (\$2,000.00) per acre of the land to be disturbed, or such other amount as determined by the Office, based on the projected costs of reclamation.
- 113(4) (2) Statewide Warranties may be submitted for prospecting, provided such warranties are in an amount equal to the estimated cost of reclamation per acre of affected land.

4.3 TYPES OF FINANCIAL WARRANTIES

Proof of financial responsibility may consist of any one or more of the following, subject to approval by the Board:

4.3.1 Cash Bond

Cash or Certified funds assigned to the Board.

4.3.2 Cash Escrow Account

A fund of cash or cash invested in

- (i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof, including treasury bills, discount notes of the Federal Home Loan Bank, Federal National Mortgage Association, and Federal Farm Credit System (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one hundred and eighty (180) days from the date of acquisition;
- (ii) time deposits, certificates of deposit and banker's acceptances with maturities of not more than one hundred and eighty (180) days from the date of acquisition by such person of a commercial bank having, or which is the principal banking subsidiary of a bank holding company having, a long-term unsecured debt rating of at least "AAA" or the equivalent thereof from Standard & Poor's;

- (iii) repurchase obligations with a term of not more than seven (7) days for underlying securities of the types described in clause (i) above entered into with any bank meeting the qualifications specified in clause (ii) above;
- (iv) investments in money market funds substantially all assets of which are comprised of securities of the types described in clauses (i) through (iii) above; or
- (v) other instruments as approved by the Board established in the form of an escrow account.

4.3.3 Corporate Surety Bonds

117(3)(f)(I) A Surety Bond issued by a corporate surety authorized to do business in this state.

4.3.4 Irrevocable Letters of Credit

117(3)(f)(II) An Irrevocable Letter of Credit issued by a bank authorized to do business in the United States; the Operator/Applicant must provide evidence that the bank issuing the Letter of Credit is in good financial standing and condition, as may be evidenced by its rating by an appropriate rating system.

4.3.5 Certificates of Deposit

117(3)(f)(III) A Certificate of Deposit assigned to the Board.

4.3.6 Deeds of Trust and Security Agreements

117(3)(f)(IV) A Deed of Trust or security agreement encumbering real or personal property and creating a first lien in favor of the State.

4.3.7 Self-Insurance Reserved

~~117(3)(f)(VI)~~
~~117(3)(f)(VII)~~ Self insurance through credit rating or net worth, as further described in Rules 4.10.1 and 4.10.2, respectively.

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4.3.8 Individual Reclamation Fund

117(3)(f)(V)(A) A trust fund which shall be funded by periodic cash payments representing a fraction of total receipts, providing assurance that the funds required for reclamation will be available.

4.3.9 Salvage Credit

117(3)(f)(V)(C) Credit for the Salvage Value of project-related fixtures and equipment (excluding rolling stock) owned or to be owned by the Financial Warrantor within the permit area, represented by a security agreement creating an equipment lien, less the value of any encumbrances of higher priority, which encumbrances shall be limited to government encumbrances.

4.3.10 First Priority Lien on Project-related Fixtures and Equipment

117(8)

A Deed of Trust or security agreement encumbering specific project-related fixtures and equipment that must remain on-site upon completion of mining operations, or that must be demolished or removed in order for the Reclamation Plan to be performed, creating a first priority lien in favor of the State.

4.3.11 Negotiable Bonds of the United States Government

A Treasury note backed by the full-faith and credit of the United States Government.

4.4 SPECIFIC REQUIREMENTS FOR CASH BONDS

Cash or Certified funds shall be held in trust by the State Treasurer's Office. All interest shall accrue to the benefit of the Financial Warrantor except where a permit is revoked and the Financial Warranty is forfeited, the interest shall accrue to the Division of Reclamation, Mining and Safety. The accrued interest shall be used for reclamation of the site.

4.5 SPECIFIC REQUIREMENTS FOR CASH ESCROW ACCOUNTS

- (1) Cash Escrow Accounts shall be administered by an independent escrow agent other than the Office and shall consist of cash and/or cash invested in financial instruments as described in Rule 4.3.2. If the Escrow Agent is a bank, the bank shall be rated as well-capitalized as defined in the Uniform Bank Performance Report.
- (2) The Escrow Agent shall be a United States bank or other financial institution, company, corporation, business or firm.
- (3) Investment of the Cash Escrow Account(s) shall be proportioned as follows:
 - (i) not less than fifty percent (50%) of the Cash Escrow Account(s) shall be convertible into cash or other immediately available funds within twenty-four (24) hours; and
 - (ii) the balances of the Cash Escrow Account(s) shall be convertible into cash or other immediately available funds within one hundred and eighty (180) days.
- (4) All interest shall accrue for the benefit of the Operator.
- (5) All maintenance fees for the Cash Escrow Account(s) shall be paid for by the Operator.
- (6) The Escrow Agent shall provide to both the Operator and the Board monthly account statement detailing the activities and interests earned on the Cash Escrow Account(s), the cost and market value of the Cash Escrow Account(s), and the balances of the various types of instruments into which the Cash Escrow Account(s) are invested.
- (7) On the anniversary of the Cash Escrow Account(s), the Operator shall report to the Board the status of its activities under the Permit, including, but not limited to, the estimated reclamation costs for the area disturbed to date and the estimated amount of reclamation

costs for the additional area to be disturbed during the following twelve (12) months. Based upon this annual report, the Board may require the balance of the Cash Escrow Account(s) be increased to an amount that is not less than the total amount of estimated reclamation costs. The Board shall notify the Operator in writing of any required increase in the amount of Cash Escrow Account(s) and, within sixty (60) days of the receipt of such notice, the Operator shall deposit the amount of the increase with the Escrow Agent. The Operator shall submit to the Board the corporation's annual report, which lists the Cash Escrow Account(s) in the report footnotes. The Operator shall also submit an annual report of the Escrow Agent.

- (8) In addition to the above requirements, any agreement establishing the Cash Escrow Account(s) shall provide the following:
- (a) Upon order of forfeiture of the Cash Escrow Account(s) by the Board, the Escrow Agent shall release the principal of the Cash Escrow Account(s) to the Board within five (5) days after presentment of the Board forfeiture order to the Escrow Agent. The Operator agrees not to contest or otherwise challenge the Escrow Agent's disbursement of the Cash Escrow Account(s) in accordance with this Rule.
 - (b) The Operator may not use the Cash Escrow Account(s) as collateral for any loan, mortgage or other obligation or as a guarantee or security interest for any obligation of the Operator, including any security interest which may be filed under Article 9 of the Uniform Commercial Code as in effect in Colorado.
 - (c) The Board may file a security interest and lien upon the Cash Escrow Account(s) in accordance with Article 9 of the Uniform Commercial Code in effect in Colorado.
 - (d) The Board is not responsible for and is not indemnifying, insuring, or otherwise holding harmless the Escrow Agent or the Operator with respect to the agreement for any loss, liability, cost damage or expense including attorney's fees, the Escrow Agent may suffer or incur by reason of any action, claim or proceeding brought by or against the Escrow Agent arising out of or relating in any way to the agreement or the Cash Escrow Account(s).

4.6 SPECIFIC REQUIREMENTS FOR CORPORATE SURETY BONDS

- (1) The Operator/Applicant shall submit a fully executed Corporate Surety on a form provided by the Office.
- (2) A Power of Attorney authorizing the party signing on behalf of the insurance company shall be submitted with the Corporate Surety.

4.7 SPECIFIC REQUIREMENTS FOR IRREVOCABLE LETTERS OF CREDIT

- (1) The Irrevocable Letter of Credit shall be executed on the issuing bank's letterhead using the language provided by the Office.

- (2) The Irrevocable Letter of Credit shall be automatically renewable. The Letter of Credit shall provide that, in case of non-renewal, the bank must notify the Office and the Operator, by Certified Mail, at least ninety (90) days prior to the expiration date of the Letter of Credit.
- (3) The bank shall provide documentation in the form of a balance sheet certified by a Certified Public Accountant demonstrating that the Letter of Credit does not exceed ten percent (10%) of the bank's capital surplus accounts. This documentation shall be provided by the Operator, annually, as part of the Operator's Annual Report.

4.8 SPECIFIC REQUIREMENTS FOR CERTIFICATES OF DEPOSIT

- (1) The Certificate of Deposit shall be assigned to the State of Colorado/Mined Land Reclamation Board.
- (2) The Certificate of Deposit shall be automatically renewed.
- (3) The account shall be a public funds account.
- (4) The Certificate of Deposit shall be issued by an eligible public depository under the Public Deposit Protection Act (PDPA), as required by Section 11-10.5-101, C.R.S.

4.9 SPECIFIC REQUIREMENTS FOR DEEDS OF TRUST AND OTHER SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY

4.9.1 General Provisions

117(3)(b)

- (1) The Board or Office may accept interests in real and personal property as Financial Warranties of not more than eighty-five percent (85%) of the estimated value of any such property.
- (2) Any person offering such Financial Warranty shall:
 - (a) submit current information necessary to show clear title to the property and the current appraised value of such property. This information shall contain a completed appraisal in a form approved by the Board.
 - (b) Submit together with the Annual Report as required by Rule 1.15, the following:
 - (i) an update by a qualified independent appraiser indicating any changes in property value;
 - (ii) a statement summarizing any circumstances which may affect the adequacy of the Deed if it is a Trust or security agreement; and
 - (iii) proof that there are no past-due property taxes.

- (3) The Board or Office may refuse to accept any Deed of Trust or security agreement if the property or equipment offered is necessary in the functioning of any Environmental Protection Facility at the site of the mining operation, or the completion of the approved Reclamation Plan.

4.9.2 Deed of Trust – Real Estate

- 117(3) (1) Rules 4.1.2(8)(a) and (c), shall be applicable for new Non-designated Mining Operations on July 1, 1993, and existing Non-designated Mining Operations on January 1, 1996, to Deeds of Trust existing as of July 1, 1993 and subsequent updates of these same Deeds of Trust used as collateral for Financial Warranties; and to any Financial Warranty completed before July 1, 1993 if the value of any such Financial Warranty includes any mineral value or if mineral value is used to update any such Financial Warranty. The value of any Financial Warranty described in this Rule shall include mineral value for the life of the Warranty. Updates shall mean only those changes that adjust the mineral or property value of an existing Deed of Trust, and does not include submissions of new properties.
- (2) Failure to provide the documents required by Rule 4.9.1(2) shall indicate a reason to believe the Financial Warranty is not being maintained in good standing as required by Rule 4.1(7).
- (3) A request for an increase in the bond by the Office shall require a reappraisal of any real property used as security for the bond. Such reappraisal shall be timely, provided by the Operator and shall be completed by an independent appraiser, acceptable to the Office.

4.9.3 First Priority Lien – Fixtures and Equipment

With respect to first priority liens on project-related fixtures and equipment described in Rule 4.3.10, above:

- 117(8)(a) (a) the Board or Office may, in its discretion, accept a first priority lien, in the amount of the Financial Warranty prescribed pursuant to Rule 4.2.1, on any project-related fixtures and equipment that must remain on-site in order for the Reclamation Plan to be performed, in lieu of including the cost of acquiring and installing such fixtures and equipment;
- 117(8)(a)
117(8)(b) (b) the Board or Office may accept a first priority lien on any project-related fixtures and equipment that must be demolished or removed from the site under the Reclamation Plan. The Board or Office may, in its discretion, accept such a lien as a portion of the proof of financial responsibility if the amount credited for such lien does not exceed the cost of demolishing or removing the subject fixtures and equipment or the market value of such fixtures and equipment, whichever is less; and
- 117(6)(g)
117(8)(b)
117(8)(c) (c) any fixtures and equipment accepted pursuant to this Rule shall be insured, with the MLRB named as the additional insured, and maintained in good operating condition and shall not be removed from the permit area without the prior consent of the Board or Office. Each Operator/Permittee or Applicant providing a lien on such equipment and fixtures shall file an Annual Report with the Office in sufficient detail to fully describe the condition, value

and location of all pledged fixtures and equipment. Such Financial Warrantor shall not pledge such equipment and fixtures to secure any other obligation and shall immediately notify the Office of any other interest that arises in the pledged property, and shall comply with the requirements of Rule 4.15.

4.10 ~~Reserved~~ SPECIFIC REQUIREMENTS FOR SELF INSURANCE

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4.10.1 ~~Self Insurance – Credit Rating~~

~~The Operator/Permittee or Applicant shall submit to the Office a certified financial statement for the most recent fiscal year and a certification by an independent auditor, which shows:~~

- ~~(a) the Financial Warrantor is the issuer of one or more currently outstanding senior credit obligations that have been rated by a nationally recognized rating organization;~~
- ~~(b) said obligations enjoy a rating of "A" or better; and~~
- ~~(c) at the close of the Financial Warrantor's most recent fiscal year, its net worth was equal to or greater than two (2) times the amount of all Financial Warranties.~~

4.10.2 ~~Self Insurance – Net Worth~~

~~The Operator/Permittee or Applicant shall submit to the Office a certified financial statement for the most recent fiscal year and a certification by an independent auditor, which shows that as of the close of said year:~~

- ~~(a) the Financial Warrantor's net worth was at least ten million dollars (\$10,000,000.00) and was equal to or greater than two (2) times the amount of all Financial Warranties;~~
- ~~(b) the Financial Warrantor's tangible fixed assets in the United States were worth at least twenty million dollars (\$20,000,000.00);~~
- ~~(c) the Financial Warrantor's total liabilities to net worth ratio was not more than two to one; and~~
- ~~(d) the Financial Warrantor's net income, excluding non-recurring items, was positive. Non-recurring items which affect net income shall be stated in order to determine if they materially affect self-bonding capacity.~~

4.10.3 ~~Board or Office Right to Deny Self Insurance~~

~~The Board or Office may deny self insurance if the Operator/Permittee or Applicant has non-recurring items that affect self-bonding capacity.~~

4.11 SPECIFIC REQUIREMENTS FOR INDIVIDUAL RECLAMATION FUND

417(3)(f)(v4)

4.11.1 Establishment of Fund

- 117(3)(a) (1) Upon commencement of production, the Operator may establish an individual reclamation fund, to be held by an independent trustee for the Board, upon such terms and conditions as the Board may prescribe, which trust fund shall be funded by periodic cash payments representing such fraction of receipts as will, in the opinion of the Board, provide assurance that funds will be available for reclamation.
- (2) Prior to issuance of a permit, the Operator will provide another form of Financial Warranty as described herein. As the reclamation fund increases in value, this form of Financial Warranty may be decreased in value so long as the sum of Financial Warranties is that amount specified by the Board or required by the Act.
- (3) In approving the Individual Reclamation Fund as a Financial Warranty, the Board or Office shall:
- (a) approve the form of the initial Financial Warranty;
 - (b) fix the fraction of receipts to be held in trust;
 - (c) identify the trustee to hold said funds for the Board;
 - (d) prescribe the terms and conditions applicable to the Operator or Warrantor's payment of funds into said trust; and
 - (e) prescribe the terms and conditions governing the trustee's handling of said funds.

4.12 SPECIFIC REQUIREMENTS FOR SALVAGE CREDIT

4.12.1 Requirements for Salvage Credit

A Financial Warranty based on Salvage Credit must meet the following requirements:

- 117(3)(f)(V)(C) (a) Project-related fixtures and equipment (excluding Rolling Stock) owned or to be owned by the Operator/Permittee or Applicant within the permit area will have a Salvage Value at least equal to the amount of the Financial Warranty, or the appropriate portion thereof;
- 118(4)(b)
118(4)(c) (b) Existing liens and encumbrances applicable to said fixtures and equipment, other than liens in favor of the United States or the State of Colorado, any other state, and any political subdivisions, will be subordinated to the lien described in Section 34-32-118(4)(b) and (c), C.R.S. and Rule 4.20(6).
- 117(3)(f)(V)(E) (c) Said fixtures and equipment will be maintained in good operating condition, be properly insured against theft, loss, fire and vandalism, and will not be removed from the permit area without the prior consent of the Board. In addition, the Warrantor shall ensure that insurance premiums are always paid two (2) years in advance on said fixtures and equipment.

4.12.2 Determination of Salvage Credit

- (1) The Operator/Permittee or Financial Warrantor shall provide the Office with appraisals, information regarding invoice price, current value, cost of demolition and/or removal, and any other information as is necessary to establish the Salvage Value of the particular Project-related fixtures and/or equipment for which Salvage Credit is sought as all or part of the Financial Warranty for a Permit.
- (2) The Operator/Permittee or Financial Warrantor shall provide the Office with a list of all encumbrances, and shall affirm that no other encumbrances exist to the best of the Operator's or Financial Warrantor's knowledge and belief.
- (3) The Office may request the Operator/Permittee or Financial Warrantor to provide additional reasonable information to support the claimed Salvage Value and/or costs associated with any Project-related fixture or equipment for which Salvage Credit is sought.
- (4) Ten (10) days prior to any Board hearing regarding a Permit application for which Salvage Credit is offered as all or part of the Financial Warranty, the Office shall inform the Operator/Permittee or Financial Warrantor of its opinion as to the amount or estimate of the amount of the Salvage Value attributable to the Project-related fixtures and equipment for which Salvage Credit is sought.
- (5) At the hearing before the Board, the Office shall recommend an amount for Salvage Credit value.
- (6) The Board shall, after considering the Office's recommendation, testimony offered by the Operator, Warrantor, or any other person, and facts adduced at the hearing, fix the amount of the Salvage Credit for the Project-related fixtures and equipment, and attach conditions, as may be appropriate, to annually verify the value of the Salvage Credit.

4.13 SPECIFIC REQUIREMENTS FOR NEGOTIABLE BONDS OF THE UNITED STATES GOVERNMENT

- (1) The Treasury note shall be purchased from a U.S. bank or broker.
- (2) The Treasury note shall be for a period of five (5) years.
- (3) The Treasury note shall be registered to the custody agent (bank or broker) and pledged to the Board and held in a joint account with the bank or broker.
- (4) All interest shall be paid to the operator.
- (5) The Board shall accept the value of the Treasury note at ninety percent (90%) of face value.
- (6) The only authorized signatory on the account is that of the Board.

- (7) The operator shall provide to the Board:
 - (a) Book Entry receipt.
 - (b) An Assignment of U.S. Treasury Note to the Board.
- (8) Fees associated with the purchase and maintenance of Treasury Notes are the responsibility of the Permittee.
- (9) The custody agent shall provide monthly statements of the account to the Board.
- (10) If the market value of the U.S. Treasury Note drops below the required ninety percent (90%) of face value, the Permittee will supply the Board with additional funds or post an additional or replacement bond up to the required bond amount.

4.14 REDUCTION OF WARRANTY AMOUNT

4.14.1 Operator's Request for Reduction

- (1) An Operator may request that the Office reduce the amount of the Financial Warranty required.
- (2) Such a request must:
 - (a) be made in writing or via electronic submission, per the Office designation, separate from other correspondence;
 - (b) include an estimate of the actual cost to reclaim the site based on what it would cost an independent contractor to complete reclamation, including unit costs for reclamation activities as appropriate to the operation to comply with the provisions of Rule 3.1 and the Permit's Reclamation Plan.
- (3) Such request shall be processed as described in Rule 4.16, for Prospecting operations, or Rule 4.17, for all other operations.

4.15 IMPAIRMENT OF FINANCIAL WARRANTIES

- (1) Each Financial Warrantor providing proof of financial responsibility in a form described in Rules 4.3.6, ~~4.3.7~~, 4.3.8, 4.3.9, and 4.3.10 shall notify the Board within sixty (60) days of any net loss incurred in any quarterly period.
- (2) Whenever the Board receives a notice under Rule 4.15(1) or fails to receive a certification or a substitute Warranty as required by Rule 4.1.2(5), or otherwise has reason to believe that a Financial Warranty has been materially impaired, it may convene a hearing for the purpose of determining whether impairment has in fact occurred.

Commented [MR31]: Rule 4.3.7 is being struck as required by HB19-1113

- 117(6)(e) (3) Whenever the Board elects to convene a hearing pursuant to Rule 4.15(2), it may hire an independent consultant to provide expert advice at the hearing. The fees for any such consultant shall be paid by the Financial Warrantor, and no consultant shall be hired until the Financial Warrantor signs a written fee agreement in such form as the Board may prescribe. In the event that a Financial Warrantor refuses to sign such an agreement, the Board may, without hearing, order the Financial Warrantor to provide an alternate form of Financial Warrant.
- 117(6)(f) (4) At any such hearing, if the Board finds that a Financial Warranty has been materially impaired, it may order the Financial Warrantor to provide an alternate form of Financial Warranty.
- 117(6)(g) (5) A Financial Warrantor shall have ninety (90) days to provide an alternate warranty required under Rule 4.15(4).

4.16 RELEASE OF WARRANTIES – PROSPECTING OPERATIONS

113(5)
117(5)

4.16.1 Prospector Application for Release of Warranties

- (1) Upon the completion of reclamation, any person that filed with the Board or Office a Prospecting Notice and Financial Warranties shall submit to the Office via electronic form by Certified Mail and separate from other types of communication to the Board or Office a Reclamation Report and request for reclamation responsibility release stating that reclamation is finished.
- (2) Such report shall contain, at a minimum:
- (a) the name of the operation, the name of the Prospector, file number of the Prospecting Notice of Intent and the name, mailing address, e-mail address and phone number of the contact person;
 - (b) a signed statement by the Prospector that all reclamation requirements of the prospecting notice have been satisfied;
 - (c) a narrative describing site grading, topsoil replacement, successful revegetation and other stabilization activities, as appropriate;
 - (d) suitable photographs of the reclaimed area; and
 - (e) a map of sufficient detail to determine the location of the prospecting activity.
- 113(6) (3) The Office shall, within thirty (30) days after receiving said report, or as soon thereafter as weather conditions permit, inspect the lands and reclamation described in the notice to determine if the Prospector has complied with all applicable requirements.
- 113(7) (4) If the Office finds the reclamation to be in compliance with the requirements of the Notice of Intent, Rules and Regulations, and the Statute, the Office shall release all applicable

performance and financial warranties. The financial warranty shall not be held for more than thirty (30) calendar days after the Office finds that the Prospector has successfully completed reclamation. However, an appeal to the release of the Financial Warranties shall stay the release on the thirtieth (30) day pending a Formal Board Hearing.

4.17 RELEASE OF PERFORMANCE AND FINANCIAL WARRANTIES FOR MINING OPERATIONS

4.17.1 Operator Requirements

110(4)
117(5)

- (1) The Operator of any mining operation may file a written notice of completion of reclamation and request for release of reclamation responsibility with the Office whenever an Operator believes any or all requirements of the Act, the Rules and Regulations, and the approved reclamation plan have been completed with respect to any or all of the Affected Lands.
- (2) The Operator shall include in the notice to the Office the names and addresses and phone numbers of all owners of record to the affected land.
- (3) The written notice requesting release shall be sent by Certified Mail and be separate from other types of communication to the Office.
- (4) Such notice shall contain a signed statement by the Operator or their agent that all applicable portions of the Reclamation Plan requirements have been satisfied in accordance with these Rules and all applicable requirements under the Act.

4.17.2 Office Requirements

117(5)(a)

- (1) The Office, upon receipt of said notice of completion of reclamation, shall immediately provide notice to all owners of record to the affected land and to the county(s).
- (2) The Office shall, within sixty (60) calendar days after receiving said notice, or as soon thereafter as weather conditions permit, inspect the lands and reclamation described in the notice to determine if the Permittee has complied with all applicable requirements.

117(5)(c)

- (3) If the Office fails to conduct an inspection within the time specified in Rule 4.17.2(2), or fails to advise the Permittee of deficiencies within the time specified in Rule 4.17.2(4), then all Financial Warranties applicable to reclamation described in the notice shall be deemed released as a matter of law.
- (4) Where the Office finds that a Permittee has not complied with the applicable requirements of the Act, Rules and Regulations, or the approved reclamation plan, it shall advise the Permittee of such non-compliance not more than sixty (60) calendar days after the date of the inspection.
- (5) Where the Office finds that a Permittee has successfully complied with the requirements of the Act, Rules and Regulations, and the approved reclamation plan, the Office shall release all applicable performance and financial warranties. Release (pending an appeal)

shall be in writing and mailed within thirty (30) calendar days to the Permittee after the date of such findings. However, an appeal to the release of the financial and performance warranties shall stay the release on the thirtieth (30th) day pending a Formal Board Hearing.

4.17.3 Reserved

4.17.4 Specific Provisions – Designated Mining Operations

(1) Public Notice Requirements – Request for Release of Financial Warranty

113(6)

- (a) Upon filing an ~~electronic~~ ~~written~~ Notice of Completion and a Request to Release Financial Warranty for a Designated Mining Operation, the Operator shall publish a Public Notice according to the following guidelines.
- (b) At the time of filing a written Notice of Completion or Request for Release of Financial Warranty, the Operator shall publish once in a newspaper of general circulation in the area of the mining operation for which a reduction or release of Performance and Financial Warranties is sought. The Notice shall specify the following:
 - (i) the name of the mining operation;
 - (ii) the location of the mining operation in relation to the nearest municipality, giving direction and miles;
 - (iii) a brief statement of what is being requested and that public comments concerning the appropriateness of the requested release should be sent within thirty (30) days of the date of publication to the Office to the address for the Division of Reclamation, Mining and Safety, listed on the cover of these Rules.
 - (iv) the Operator shall submit proof of publication as provided for in Rule 1.6.2(1)(a)(ii).

117(5.5)

(2) Partial and Final Release of Financial Warranty

- (a) The Operator shall request release of any remaining reclamation bond funds at or after such time as is prescribed by the Board or Office which shall be no more than five (5) years after submitting the initial Request for Release of Financial Warranty, and subsequent Office inspection, as per the following:

117(5.5)(a)(I)

- (i) upon completion of the performance requirements of the Permit and Reclamation Plan, the Operator may file a written Notice of Completion with the Office;

117(5.5)(a)(II)

- (ii) the Office shall inspect the affected land within sixty (60) days after receiving such notice, or as soon thereafter as weather permits to

determine if the affected land has been reclaimed for a beneficial use and is in compliance with all applicable Performance Standards;

117(5.5)(b)	(iii)	upon a finding by the Board or Office that the Operator has complied with all the Permit performance requirements, the Office shall deliver a written release of all, or portion of, the Financial Warranty, as appropriate, for the applicable Permit area. This release shall be according to a schedule prescribed by the Board;
117(5.5)(c)(I)	(iv)	if the Office or Board finds that the performance requirements have not been met, the Office shall advise the Operator, in writing, of such finding and noted deficiencies within sixty (60) days of the inspection conducted pursuant to Paragraph Rule 4.17.4(2)(a)(ii);
117(5.5)(c)(II)	(v)	if the Operator is not entitled to release, or a portion thereof, of the Financial Warranty, the Board or Office may specify a reclamation schedule and adjust the amount of the bond and Financial Warranty, accordingly;
117(5.5)(d)	(vi)	if the Office fails to conduct an inspection, pursuant to Rule 4.17.4(2)(a)(ii), or fails to notify the Operator of any deficiencies within sixty (60) days of the inspection conducted pursuant to Rule 4.17.4(2)(a)(iv); then that portion of the Financial Warranty applicable to the reclamation described in the Notice of Completion or Request for Release shall be deemed released as a matter of law;
117(5.5)(e)	(vii)	within five (5) years after the release of a portion of the Financial Warranty, pursuant to Rule 4.17.4(2)(a)(iii) the Operator may file, in writing, a Request for Financial Warranty Release for release of the balance of the Financial Warranty according to the provisions of Rule 4.17.4(2). The Office shall inspect the affected land within sixty (60) days of such request, or as soon thereafter as weather permits, to determine if the affected land has been reclaimed for a beneficial use and is in compliance with all applicable Performance Standards.

4.18 PUBLIC NOTICE AND FILING OF WRITTEN OBJECTIONS REGARDING A REQUEST FOR RELEASE OF FINANCIAL WARRANTY

- (1) Any person who demonstrates that they are directly and adversely affected or aggrieved and whose interest is entitled to legal protection under the Act may submit written objections on the request for reclamation responsibility release so long as such comments are received by the Office no more than fifteen (15) days after notice by the Office to the county(s) and all owners of record to the affected land.
- (2) Notice of the Office's decision to release the Permittee from further reclamation responsibility shall be published in the next monthly agenda of the Board.

4.19 GENERAL PROVISIONS – APPEALS TO DECISION – RELEASE OF FINANCIAL WARRANTY

- (1) Any person directly and adversely affected or aggrieved by an Office decision to approve or deny the request for reclamation responsibility release and whose interest is entitled to protection under the Act may appeal the decision to the Board by submitting a request for Administrative Appeal to the Office according to the provisions of Rule 1.4.11. The request for Administrative Appeal must specify the basis for being directly and adversely affected or aggrieved, a statement of why the person's interest is protected by the Act, the permit number assigned by the Office and include a statement of the factual and legal issues presented by the appeal.
- (2) If the Office decision to release a Permittee from reclamation liability is reversed by the Board on appeal, all outstanding obligations under the permit the financial warranty, and the performance warranty shall remain in effect.

4.20 FORFEITURE OF FINANCIAL WARRANTY

- 118(1) (1) A Financial Warranty shall be subject to forfeiture whenever the Board shall determine at a hearing that any one or more of the following circumstances exist:
 - 118(1)(a) (a) the Operator has violated a Cease and Desist order entered pursuant to Section 34-32-124, C.R.S. 1984, as amended, and, if corrective action was proposed in such order, has failed to complete such corrective action although ample time to have done so has elapsed; or
 - 118(1)(b) (b) the Operator is in default under the Performance Warranty and has failed to cure such default although they have been given written notice thereof and has had ample time to cure such default;
 - 118(1)(c) (c) the Financial Warrantor has failed to maintain the Financial Warranty in good standing as required by Section 34-32-117, C.R.S. 1984, as amended; or
 - 118(1)(d) (d) the Financial Warrantor no longer has the financial ability to carry out the obligations under the Act.
- 118(2) (2) Whenever the Board, based on information and belief, has reason to believe that a Financial Warranty is subject to forfeiture, the Board shall so notify the Operator and all Financial Warrantors. The Board shall afford the Operator and all Financial Warrantors the right to appear before the Board at a hearing to be held not less than thirty (30) days after the parties' receipt of said Notice.
- 118(3)(a) (3) At any such hearing, the Board shall be empowered to:
 - 118(3)(a)(i) (a) withdraw or modify any determination that the Financial Warranty is subject to forfeiture;

118(3)(a)(II)	(b)	settle or compromise the determination; or
118(3)(a)(III)	(c)	confirm its determination that the Financial Warranty should be forfeited.
118(3)(b)	(4)	Upon finding that a Financial Warranty should be forfeited, the Board shall issue written findings of fact and conclusions of law to support its decision and shall issue an order directing affected Financial Warrantors to immediately deliver to the Board all amounts warranted by applicable Financial Warranties.
118(3)(a)	(5)	The Board, upon issuing any order pursuant to Rule 4.20(3), may request the Attorney General to institute proceedings to secure or recover amounts warranted by forfeited Financial Warranties. The Attorney General shall have the power, inter alia, to:
118(3)(a)(I)	(a)	foreclose upon any real and personal property encumbered for the benefit of the state;
118(3)(a)(II)	(b)	collect, present for payment, take possession of, and otherwise reduce to cash any property held as security by the Board;
118(3)(a)(III)	(c)	dispose of pledged property.
117(3)(a) 118(4)(b)	(6)	The amount of any forfeited Financial Warranty shall be a lien in favor of this state upon any project related fixtures or equipment offered as proof of financial responsibility pursuant to Section 34-32-117(3)(f)(V)(C)-(E), C.R.S. 1984, as amended.
118(4)(c)	(7)	Said lien shall have priority over all other liens and encumbrances irrespective of the date of recordation, except liens of record on the effective date of this Act and liens of the United States, the state, and political subdivisions thereof for unpaid taxes, and shall attach and be deemed perfected as of the date the Board approves issuance of the Permit.
118(5)	(8)	Funds recovered by the Attorney General in proceedings brought pursuant to Rule 4.20 shall be held in the account described in Section 34-32-122, C.R.S. 1984, as amended, and shall be used to reclaim lands covered by the forfeited warranties, except that, five percent (5%) of the amount of the Financial Warranty forfeited and recovered shall be deposited in the Mined Land Reclamation Fund, created in Section 34-32-127, C.R.S. 1984, as amended, to cover the administrative costs incurred by the Office in performing reclamation.
	(9)	The Board shall have a right of entry to reclaim said lands. Upon completion of such reclamation, the Board shall present to the Financial Warrantor a full accounting and shall refund all unspent moneys.
118(6)	(10)	Defaulting Operators/Permittees shall remain liable for the actual cost of reclaiming Affected Lands, less any amounts expended by the Board pursuant to Rule 4.20(8), notwithstanding any discharge of applicable Financial Warranties.
118(7)	(11)	Notwithstanding any provision of this Rule 4.20 to the contrary, a corporate surety may elect to reclaim Affected Lands in accordance with an approved plan in lieu of forfeiting a

bond penalty, or in accordance with the approved Plan acceptable to the Board or Office, otherwise the Board may forfeit the fund and perform reclamation.

RULE 5: PROSPECTING OPERATIONS

113

5.1 NOTICE OF INTENT TO CONDUCT PROSPECTING OPERATIONS

5.1.1 General Provisions

- 113(1) (1) Any person or organization desiring to conduct prospecting, as defined in Rule 1.1(5756), shall, prior to entry upon the prospecting lands, file with the Office a Notice of Intent to Conduct Prospecting (NOI) on a form provided by the Board. A separate prospecting notice shall be filed with the Office for each non-contiguous Land Survey Quarter Section in which a proposed prospecting activity is to occur. The requirement for separate notices may be waived by the Office for good cause.
- 103(4) (2) If the Office determines that the prospecting proposed in the NOI is instead "mining," the Office shall notify the person or organization in writing. Any appeal of this determination shall follow the procedures set forth in Rule 1.4.11.
- (3) Modifications to an existing NOI must be submitted in writing and approved in advance of such activity. Modifications shall be reviewed by the Board or Office in the same manner as new NOIs.

5.1.2 Application Requirements

The NOI form (Rule 5.1.1(1)) shall, at a minimum, contain the following:

- (a) date of filing of the Notice of Intent;
- 113(2)(a) (b) the name, address, and telephone number of person or organization responsible for the prospecting (the "Prospector");
- (c) the name, address, and telephone number of a person to contact concerning the information in the NOI and reclamation of lands affected by prospecting;
- 113(2)(d) (d) a description of lands, including:
- (i) the site name, if applicable;
 - (ii) the location, by each quarter section, section, township and range;
 - (iii) where Public Land is involved, specify the land management agency, mailing address and telephone number;
 - (iv) the estimated acreage of land surface to be affected by the prospecting activities to include areas affected by access along routes for which reclamation is the responsibility of the Prospector; and
 - (v) a U.S.G.S. 7.5-minute quadrangle, or similar map of adequate scale, that

- (A) identifies the proposed prospecting site(s) or activity areas involving surface disturbance. Activity areas may include all drill holes, mud pits, excavations, trenches, adits, shafts, tunnels, rock dumps and prospecting roads; and
 - (B) includes sufficient detail to identify and locate known prospecting features and facilities that may be affected and those that are not anticipated to be affected. This includes the location of all drill holes, mud pits, excavations, trenches, adits, shafts, tunnels, rock dumps and prospecting roads;
- (vi) provide documentation of the legal right to enter to conduct prospecting and reclamation, for Owners of Record described in Rule 1.6.2(1)(e)(i). This may include a copy of a lease, deed, abstract of title, a current tax receipt, or a signed statement by the Landowner(s) and acknowledged by a Notary Public stating that the Prospector has legal right to enter to conduct prospecting and reclamation.
- 113(2)(e) (e) the approximate date of anticipated commencement and the date of completion of the above described prospecting activity. Such activity must be completed within five (5) years of the NOI approval unless otherwise approved by the Office or Board;
- 113(2)(c) (f) a narrative description of the methods to be used to conduct the prospecting operation, including, but not limited to, the types and uses of equipment, drilling, surface blasting, road or other access route construction, excavations, and other site disturbance activities;
- 113(2)(f)
116(7) (g) the measures to be taken to reclaim any affected land consistent with the applicable requirements of Rule 3.1. Such reclamation must be completed within five (5) years of the completion of prospecting activities notice provided for in Rule 5.7; and
- 113(2)(b) (h)
 - (i) Designation of information believed by the applicant to be confidential including information relating to the mineral deposit location, size or nature, and information believed by the applicant to be proprietary or trade secret or that would cause substantial harm to the competitive position of the applicant. The applicant may designate its identity as confidential if the applicant believes that disclosing its identity would cause substantial harm to its competitive position. The requirements and provisions of Rule 1.3(4)(c) shall apply to any designation as to identity. The applicant shall distinguish in the submittal between those portions of the NOI that are confidential because they relate to mineral deposit location, size or nature and those portions of the NOI the applicant believes are proprietary, trade secret or harmful to its competitive position. Those portions of the NOI that are not designated as confidential will be available as public record.
 - (ii) The applicant must submit two (2) separate forms. One form will contain all information, including both public and confidential information (with confidential information designated as such). This complete form will be used by the Office for review and will be held confidential. The second form will contain only the information the applicant believes is public with the applicant redacting all information to be held as confidential.
- 113(9) (i) The applicant must submit the NOI in both paper and electronic form. The Office shall

post on its website the NOI within five (5) days of submittal except those portions of the submittal designated by the applicant as confidential.

- (j) Modifications to an existing NOI must be submitted in writing and approved in advance of such activity. Modifications shall be reviewed by the Board or Office in the same manner as new NOIs, use the same NOI form, and include confidentiality designations. Prospectors must fill out sections of the NOI form that will change and indicate the sections that will not change. Prospectors must designate each portion of the modified NOI they believe are to remain confidential. Please note that under Section 34-32-113, C.R.S., all information provided to the Board in an NOI or a modification of an NOI is a matter of public record including, in the case of a modification, the original notice of intent, unless that information relates to the mineral deposit location, size, or nature or is designated by the Prospector as proprietary or trade secrets or that would cause substantial harm to the competitive position of the Prospector. Accordingly, the Prospector must also designate the information in the original NOI that it believes is confidential if it has not already done so.

- 113(3) (k) Any dispute concerning whether information in a NOI is confidential or public shall be resolved by following the procedures set forth in Rule 1.3.

- 113(2)(b) (l) a statement that prospecting will be conducted pursuant to the terms and conditions listed on the approved NOI form.

- (m) Concurrent with submitting the NOI to the Office, the prospector shall send a notice to the local Boards of County Commissioners in the counties where the proposed prospecting activities occur.

- (i) The Prospector shall certify that such notice was submitted.

- (ii) Such notice shall state that non-confidential information regarding the proposed prospecting activities will be available for review at the Office's website.

113(9) **5.1.3 Office Review**

Upon receipt by the Office of a NOI to Conduct Prospecting, the Office shall timely notify the prospector, in writing, of receipt of the NOI. The Office shall post on its website the NOI within five (5) days of submittal except those portions of the submittal designated by the applicant as confidential. Any public comment or request for disclosure of information designated as confidential filed pursuant to Rule 1.3(4)(f) regarding the NOI must be received by the Office no later than ten (10) working days after the notice is posted on the Office website.

- (a) Review of a NOI and associated Financial Warranty information is required by the Office within twenty (20) working days of receipt by the Office. If the Prospector has not been notified of any deficiencies of the NOI form, including notice of a dispute regarding confidentiality pursuant to Rule 1.3 which will be treated as a deficiency of the NOI, or Financial Warranty by the Office within twenty (20) working days of receipt by the Office of the NOI, prospecting operations may commence. For activities on BLM or USFS lands, the twenty (20) working day period begins when the Office has received notification from the appropriate federal land management agency that they have received the notice of proposed activities, or the Office has otherwise determined that the appropriate federal land management agency has received the notice.

- (b) If a challenge to confidentiality has occurred pursuant to the process set forth in Rule 1.3, and the Board has determined that certain information is public rather than confidential, upon the expiration of the thirty (30) day delay period under Rule 1.3 (4)(a)(v)(b)(ii), the Office shall post the newly released information on the Office website within five (5) working days. Any public comment regarding the newly released information must be received by the Office no later than ten (10) working days after the new information is posted on the Office website.
- (c) If the Office has notified a Prospector within twenty (20) working days of receipt of a NOI that it has not been filed in accordance with Rule 5.3, has been deemed complex, or of deficiencies in the Financial Warranty, the Prospector shall address all identified deficiencies or complexities within sixty (60) days of the Office notification. If the NOI deficiencies or complexities are not addressed within sixty (60) days, the Office may terminate the NOI file. The Office shall notify the person who submitted the NOI of such termination.
- (d)
 - (I) The Office shall send notice of its decision on a NOI to the prospector and any person who filed a timely comment.
 - (II) Any prospective prospector or person who filed a timely comment and who meets the definition of party may appeal an Office determination within five (5) business days from the date the Office sends notice of its decision.
 - (III) The Board shall hear any such appeal at its next regularly scheduled meeting that is at least ten (10) calendar days from the date of such appeal.
 - (IV) The Office's determination shall not take effect until the expiration of the five (5) business days allowed for an appeal, or, in the case of an appeal, until the Board issues its decision.

5.2 CONFIDENTIALITY

5.2.1 NOI Information

- (1) For NOIs submitted or approved on or before June 2, 2008, all information provided to the Office in a NOI shall be protected as confidential information by the Board and not be a matter of public record in the absence of written release from the Prospector or upon a finding by the Board that reclamation is satisfactory, or the site has been abandoned as set forth in Rule 5.6(2). If the site is abandoned, the information in the NOI not subject to the provisions of Rule 5.2.2 may be used by the Office to ensure that the reclamation requirements of the NOI have been met. Notice of a Board determination that a prospect site under a NOI has been abandoned will be sent by certified mail to the prospector at the last known address.
- (2) For Notices of Intent to Conduct Prospecting or modifications thereof submitted or approved on or after June 2, 2008, all information in a notice of intent or modification of such notice is a matter of public record including, in the case of a modification, the original

notice of intent; except that, information relating to the mineral deposit location, size or nature, and other information designated by the applicant or prospector and determined by the Board as proprietary or trade secrets or that would cause substantial harm to the competitive position of the applicant or prospector shall be protected as confidential and shall not be a matter of public record in the absence of a written release from the applicant or prospector, until a finding by the Board that reclamation is satisfactory, or until the Board releases the information pursuant to the provisions of Rule 1.3.

113(5.5)(d)
113(5.5)(e)

5.2.2 Portions of NOI File to Remain Permanently Confidential

- (1) For NOIs filed before June 2, 2008, the following drillhole information remains permanently confidential:
 - (a) all drillhole information contained within the temporary abandonment reports, required in accordance with Rule 5.4.3;
 - (b) all drillhole information contained in the final reports in accordance with Rule 5.7(1);
 - (c) all drillhole information contained in the annual reports in accordance with Rule 5.6; and
 - (d) all drillhole information contained in inspection reports.
- (2) For NOIs or modifications thereof filed on or after June 2, 2008, the information described in this Rule 5.2.2, including in the case of a modification, the information in the original NOI, shall be publicly available unless designated by the prospector as confidential. The provisions of Rule 1.3 shall apply for a requested Board determination as to whether information designated by the prospector as confidential should remain confidential.

5.3 TERMS AND CONDITIONS FOR PROSPECTING

5.3.1 Protection of Surface Areas

Prospecting will be conducted in such a manner as to minimize surface disturbances and protect public health, safety, and the environment. The Prospector shall:

- (a) address the standards required in Rule 5;
- (b) address all relevant reclamation performance standards of Rule 3.1;
- (c) confine prospecting to areas near existing roads or trails where practicable. Any new road used for prospecting, or any existing road which is significantly upgraded must be included as part of the affected acreage. A road is significantly upgraded if it is significantly widened, or the route or gradient are significantly altered;

- (d) conduct drilling in such a way as to prevent cuttings and fluids from entering any drainage way;
- (e) timely abandon drill holes upon completion as required by Rule 5.4;
- (f) safeguard mine entries, trenches and excavations from unauthorized entry at all times as necessary to provide for public safety;
- (g) timely reclaim affected lands upon completion of prospecting operations or phases of the prospecting operation. Prospecting activities must be completed within five (5) years of the NOI approval unless otherwise approved by the Office or Board, and reclamation must be completed within five (5) years of the completion of prospecting activities; and
- (h) backfill and revegetate trenches and other excavations upon completion of the prospecting activities.

5.3.2 Protection of Wildlife

Prospecting shall be conducted to minimize adverse effects on wildlife, including, where appropriate, escape ways, fencing, or other acceptable wildlife barriers.

113(4)

5.3.3 Financial Warranty

- (1) Upon filing NOI, the Prospector shall provide Financial Warranty in the amount of two thousand dollars (\$2,000.00) per acre of the land to be disturbed, or such other amount as determined by the Office, based on the projected costs of reclamation, taking into account the nature, extent, and duration of the prospecting operation and the magnitude, type and estimated cost of the planned reclamation.
- (2) A Prospector may submit statewide Financial Warranties for prospecting if Financial Warranties are in an amount fixed by the Office, based on the projected costs of reclamation, and such Prospector otherwise complies with the provisions of this Rule for every area to be prospected. (Further information on Performance and Financial Warranty procedures may be found in Rule 4.)
- (3) The Board or Office shall take reasonable measures to ensure the continued adequacy of any Financial Warranty.

113(5)

5.3.4 Notice of Completion of Prospecting Prior to Initiating Reclamation

Upon completion of the prospecting, the Prospector shall submit to the Office a Notice of Completion of Prospecting Operations ("Notice of Completion"). Such notice shall be sent certified mail separate from all other correspondence.

113(6)

5.3.5 Post-Reclamation – Inspection and Release of Warranties

- (1) The Office shall inspect the lands prospected within thirty (30) days, or as soon thereafter as weather conditions permit, after the person prospecting the lands submits a

Reclamation Report and requests a reclamation responsibility release that meets the requirements of Rule 4.16.1(2), including permanent abandonment of all prospecting drill holes as required by Rule 5.4.2 or 5.4.5. If the Office finds the reclamation satisfactory, the Office shall release the applicable Financial Warranty.

- 113(7) (2) The Financial Warranty shall not be held for more than thirty (30) days after the date the Office determines that reclamation has been completed satisfactorily (including permanent abandonment of all prospecting drill holes).

5.3.6 Compliance with State and Federal Laws

All Prospecting shall be conducted in such a manner as to comply with all applicable local, state and federal laws, including but not limited to air and water quality laws and regulations, the Act, and these Rules and Regulations.

5.4 ABANDONMENT OF PROSPECTING DRILL HOLES

5.4.1 General Provisions

- 103(12)
113(5.5) (1) Without regard to the one thousand six hundred (1,600) square foot limitation in Section 34-32-103(12), all prospecting drill holes shall be permanently plugged, sealed or capped pursuant to the requirements of these Rules immediately following the drilling of the hole and the collection of drill hole information; unless provision is made to temporarily abandon the hole, pursuant to Rule 5.4.3 to maintain the hole for purposes of monitoring pursuant to Rule 5.4.4, or to convert the hole to a water well pursuant to Rule 5.4.5.
- (2) This Rule shall not apply to holes drilled within the affected area in conjunction with a mining operation for which the Board or Office has issued a permit, nor to wells or holes drilled for the purposes of coal exploration, exploration or removal of oil and gas, nor to geothermal wells or water wells, nor to holes drilled from within underground mine workings. For purposes of this Rule, "permanent abandonment" of a prospecting drill hole shall be defined as abandonment in conformance with the requirements of Rules 5.4.2 or 5.4.5, or inclusion within the permit boundary of a mining operation for which the Board or Office has issued a Permit.
- 113(5.5)(e) (3) Permanent abandonment shall be attested by the submission of a final report, as described in Rule 5.7.

5.4.2 Permanent Abandonment of Prospecting Drill Holes

- 113(5.5)(b)(I) (1) Any drill hole which evidences artesian flow of groundwater to the surface shall be plugged with neat cement grout, or a similar material sufficient to prevent such artesian flow, as approved by the Office. The Prospector shall exercise care in evaluating the existence of artesian flow in fluid, cuttings, rock flour, or mud drilled holes, in which artesian flow may be temporarily inhibited by the presence of the drilling fluid or mud.

- 113(5.5)(b)(I) (2) Any drill hole which encounters an aquifer in consolidated rock formations, shall be sealed, utilizing a high quality sodium bentonite type gel, specifically developed for use as an abandonment fluid, or an equivalent material or technique as approved by the Office.
- 113(5.5)(b)(II) (3) Any drill hole limited to unconsolidated material and penetrating less than ten (10) feet into bedrock, shall be backfilled with materials removed from the drill hole, or an equivalent material or technique as approved by the Office. If the materials removed from the hole during drilling are inadequate to backfill the drill hole, materials representative of the undisturbed unconsolidated materials shall be backfilled into the drill hole.
- 113(5.5)(b)(III) (4) Any drill hole that penetrates saturated unconsolidated materials and continues more than ten (10) feet into bedrock shall be abandoned in a manner sufficient to prevent inter mixture of aquifers.
- 113(5.5)(b)(III) (5) Any drill hole that penetrates unsaturated unconsolidated materials and continues deeper than ten (10) feet into bedrock, but does not encounter an aquifer, shall be securely capped, as approved by the Office.
- 113(5.5)(d)
113(5.5)(e) (6) The Prospector shall submit to the Office a copy of the final report required under Rule 5.7.

5.4.3 Temporary Abandonment of Prospecting Drill Holes

113(5.5)(a) A prospecting drill hole may be temporarily abandoned without being permanently plugged or sealed. However, no drill hole which is to be temporarily abandoned without being plugged or sealed shall be left in such a condition as to allow fluid communication between aquifers, consistent with the Rules and Regulation for Water Well Construction, Pump Installation, and Monitoring and Observation Hole/Well Construction ("Water Well Construction Rules"), 2 CCR 402-2, and specifically Rules 10.1 and 10.4.5 of the Water Well Construction Rules, and their applicable subparagraphs therein. Such temporarily abandoned drilled holes shall be securely capped in a manner that prevents unauthorized entry and injury to persons and animals. (Copies of the above-referenced Rules may be reviewed at the Division of Water Resources.)

5.4.4 Conversions to a Monitoring Well

113(5.5)(b)(IV) A prospecting drill hole may be converted to a monitoring well for the purpose of groundwater or geophysical monitoring, if the Prospector conducting the prospecting:

- (a) has obtained the necessary permit from the State Engineer (Division of Water Resources);
- (b) cements and seals the drill hole in accordance with the requirements of the Water Well Construction;
- (c) caps the drill hole to prevent unauthorized entry and injury to persons and animals; and
- (d) submits to the Office a copy of the "Well Construction and Test Report" submitted to the Division of Water Resources describing the method and materials used in casing and sealing the drill hole to prevent commingling of aquifer waters.

113(5.5)(b)(IV)

5.4.5 Use as, or Conversion to, a Water Well

- (1) If any prospecting drill hole or monitoring well will ultimately be used as, or converted to, a water well:
 - (a) the user of the water well must have obtained an approved well permit from the Colorado Division of Water Resources, in accordance with Articles 90, 91 and 92 of Title 37, C.R.S., prior to drilling and construction of the well; and
 - (b) the Prospector shall submit to the Office the permanent abandonment report required by Rule 5.7 with an attached copy of the completely executed "Well Construction and Test Report," submitted to the Colorado Division of Water Resources as required by the Board of Examiners of the Water Well Construction and Pump Installation Contractors.
 - (i) The Prospector need not complete those portions of the permanent abandonment report duplicating information contained on the "Well Construction and Test Report."
- (2) The user of the water well may assume the Prospector's responsibility for maintenance of the temporary abandonment and completion of the permanent abandonment of a prospecting drill hole or monitoring well proposed to be converted to a water well, if the following requirements are satisfied:
 - (a) the user of the water well submits a copy of the completely executed well permit to the Mined Land Reclamation Office; and
 - (b) the user of the water well and the Prospector submit a completely executed "Request for Transfer of Responsibility for Abandonment of a Exploration Drill Hole Converted to a Water Well" to the Office.

5.5 SURFACE RECLAMATION

5.5.1 General Requirements

113(1)(f)

All lands affected by drilling must be reclaimed to a condition appropriate for the land use existing prior to prospecting, or other beneficial use, upon completion of prospecting.

5.5.2 Specific Requirements

Reclamation shall be completed consistent with all applicable requirements of Rule 3.1 and the following:

- (a) trash must be removed from the site;
- (b) vegetation cleared from the site must be properly disposed of or dispersed;

- (c) drill cuttings must be spread to a depth no greater than one half (1/2) inch or buried in an approved disposal pit;
- (d) mud pits, excavations, trenches, or other disturbance shall be backfilled and graded to blend with the surrounding land surface;
- (e) if vegetative cover was destroyed, an appropriate seed mix shall be used in the first normal period favorable for planting;
- (f) if necessary to assure successful revegetation, the drill site area shall be scarified, mulched and the seed covered;
- (g) noxious weeds shall be controlled within the area affected by the prospector; and
- (h) existing roads which are to remain as permanent roads after prospecting activities are completed, shall be left in a condition equal to or better than the pre-prospecting condition.

117(6)(a)

5.6 ANNUAL REPORT

- (1) An annual report must be submitted by the anniversary date of the Notice of Intent (NOI) approval for each year until a reclamation responsibility release is granted. The Annual Report shall include all information specified on the Annual Report Form, in the format required by the Office, and specifically:
 - (a) the prospector and contact person's name, address and telephone number, as set forth in Rules 5.1.2(b) and (c);
 - (b) the name, address and telephone number of the surface landowner where prospecting has occurred;
 - (c) a description of the prospecting activity that has occurred during the preceding year, to include the location of new surface drill holes, mud pits, excavations, rock dumps, adits, shafts, trenches, pits, roads and structures;
 - (i) if applicable, a description of the manner in which shafts, adits and other mine openings are safeguarded from unauthorized entry both during and after prospecting;
 - (d) a description of reclamation that has occurred during the year and during the preceding years;
 - (e) the date that the prospecting activity has ended or will end;
 - (f) an updated map showing the location of all holes drilled, mine openings, any roads constructed, areas disturbed and areas reclaimed to date, including identification of disturbance and reclamation activities which have occurred in the preceding year. Prospecting disturbance and reclamation must be identified on a site map of adequate scale to field locate these areas, which may include;

- (i) coordinates reported in latitude and longitude in degrees, minutes and seconds or in decimal degrees to an accuracy of at least five (5) decimal places (e.g., latitude 37.12345 N, longitude 104.45678 W); or
- (ii) coordinates based on the Universal Transverse Mercator (UTM) North American Datum (NAD). For UTM, the Prospector will need to specify NAD 1927, NAD 1983 or WGS 84, and the applicable zone, measured in meters.

117(6)(a)

- (g) documentation, in a manner acceptable to the Office, showing that the Financial Warranty remains in place and is adequate to fully reclaim the approved prospecting site disturbance.
 - (h) signature(s) and signature date(s) of the person or organization responsible for prospecting, as set forth in Rule 5.1.2(b), attesting to the accuracy of the information contained therein.
- (2) Failure to submit an annual report for two (2) consecutive years shall constitute evidence of abandonment of the prospecting activities. The Office may issue a letter stating its reason(s) to believe a site has been abandoned where the annual report has not been received within sixty (60) days following the due date of the second annual report. Any appeal of this determination shall follow the procedures set forth in Rule 1.4.11.
 - (3) Annual reports filed before June 2, 2008, shall be confidential. Annual reports filed on or after June 2, 2008, shall be a matter of public record unless designated by the prospector as confidential pursuant to the provisions of Rule 1.3. The provisions of Rule 1.3 shall apply to a request for a Board determination as to whether information designated by the prospector as confidential should remain confidential.
 - (4) On the anniversary date of the Notice of Intent approval, the Prospector shall submit to the Office an annual fee as specified in Section 34-32-127(2)(a)(IV)(G), C.R.S.

113(5.5)(d)

5.7 FINAL REPORT

- (1) No later than sixty (60) days after the completion of the abandonment of any drill hole which has artesian flow at the surface, or no later than twelve (12) months after the completion of the abandonment of any other drill holes, the Prospector shall submit to the Office a final report containing:
 - (a) the date of completion of prospecting activity;
 - (b) the location of prospecting disturbance and reclamation at a scale adequate to accurately field locate these areas, as provided for in Rule 5.6(f);
 - (c) for holes having artesian flow at the surface, the estimated rate of flow (if such is known); and

- (d) a description of the plugging, sealing, and capping techniques used, including the following information when applicable:
- (i) When mud is used for abandonment, the description shall include the viscosity (marsh funnel viscosity) of the mud when the drill hole reached bottom, the trade name of the abandonment mud utilized, and the final viscosity (marsh funnel viscosity) of the abandonment mixture; or
 - (ii) When cement is used to abandon the drill hole, the description shall include a description of the cement grout mixture utilized to seal and plug the hole.

- (2) In the case of closely spaced drill holes having similar geologic and hydrologic characteristics, the Prospector may, with the approval of the Office, submit a single consolidated final report including the locations of all drill holes, and the abandonment technique.

113(5.5)(d)

- (3) As to final reports filed before June 2, 2008, the final report and all information contained therein shall be confidential in nature and shall not be matter of public record. As to final reports filed on or after June 2, 2008, the final report and all information contained therein shall be a matter of public record unless designated by the prospector as confidential pursuant to the provisions of Rule 1.3. The provisions of Rule 1.3 shall apply to a request for a Board determination as to whether information designated by the prospector as confidential should remain confidential.

113(5.5)(e)

- (4) The final report shall be signed by the Prospector or the prospector's authorized contact, as set forth in Rule 5.1.2(c), attesting to the accuracy of the information contained therein.

113(5)(f)

5.8 NO WAIVER OF ADMINISTRATIVE REQUIREMENTS

The Director of the Office may not waive any of the administrative reporting provisions of this Rule 5.

RULE 6: PERMIT APPLICATION EXHIBIT REQUIREMENTS

6.1 REQUIREMENTS FOR SPECIFIC OPERATIONS

6.1.1 General Provisions

This Rule provides for the specification of Exhibits required to be submitted along with each type of Permit application.

112.5 **6.1.2 110 or Non-In Situ Leach Mining 110d Limited Impact and 112, 112d, 110 ISL or 112 ISL Reclamation Operations**

These operations shall provide all the Exhibits, as described in Rules 6.3 and 6.4, as applicable to the operation type. However, such operations may also be required to comply with Rules 6.5 (Geotechnical Stability Exhibit) and 7.3 (Environmental Protection Facilities - Design and Construction Requirements) on a case-by-case basis. Where such compliance may be required, such operations shall not be Designated Mining Operations nor be required to submit an Environmental Protection Plan, however, the provisions of Rules 6.5 and 7.3, required to be submitted, shall be incorporated into the operation's Permit as enforceable Permit conditions.

6.1.3 Reserved

112.5 **6.1.4 Requirements for All Designated Mining Operations and Requirements for All In Situ Leach Mining Operations**

In addition to all other required Exhibits, as described in Rules 6.3 and 6.4, all Designated Mining Operations shall also provide an Exhibit U - Environmental Protection Plan pursuant to Rule 6.4.21. Exhibit U may be modified as provided in Rule 7.2.5. Also, in addition to the Exhibits described in Rules 6.3, 6.4 and 6.4.21, all In Situ Leach Mining Operations shall also provide the Exhibits in Rules 6.4.22, 6.4.23, 6.4.24 and 6.4.25.

6.2 GENERAL REQUIREMENTS OF EXHIBITS

6.2.1 General Requirements

	(1)	This Rule provides for the guidelines for, and information requirements of, each Exhibit required to be submitted with the permit application, as specified according to Rule 6.1.
112	(2)	Maps and Exhibits Maps, except the index map, must conform to the following criteria:
112(4)	(a)	show name of Applicant;
112(4)(a)	(b)	must be prepared and signed by a registered land surveyor, professional engineer, or other qualified person;

- 112(4)(b)
- (c) give date prepared;
 - (d) identify and outline the area that corresponds with the application;
 - (e) with the exception of the map of the affected lands required in Section 34-32-112(3)(e), C.R.S. 1984, as amended, shall be prepared at a scale that is appropriate to clearly show all elements that are required to be delineated by the Act and these Rules. The acceptable range of map scales shall not be larger than 1 inch = 50 feet nor smaller than 1 inch = 660 feet. Also, that a map scale, appropriate legend, map title, date and a north arrow shall be included.

6.3 SPECIFIC PERMIT APPLICATION EXHIBIT REQUIREMENTS – 110(1), 110(2), AND NON IN SITU LEACH MINING OPERATIONS 110d LIMITED IMPACT OPERATIONS

- 110
- (a) The following exhibits may be required for 110(1) Limited Impact Permits based on consideration of site-specific conditions.
 - (b) The following exhibits shall be required for 110(2) and Non In Situ Leach Mining 110d Limited Impact Operations; 110 in situ leach mining permit applications shall comply with 112d permit applications including complying with the requirements of Rule 6.4. If an in situ leach mining operation has been exempted from designated mining operation status, it still must comply with all exhibits required for in situ leach mining operations.

112(2)(a) **6.3.1 EXHIBIT A – Legal Description and Location Map**

- (1) The legal description must identify the affected land, specify affected areas and be adequate to field locate the property. Description shall be by (A) township, range, and section, to at least the nearest quarter quarter section, and (B), location of the main entrance to the mine site reported as latitude and longitude, or the Universal Transverse Mercator (UTM) Grid as determined from a USGS topographic map. A metes and bounds survey description is acceptable in lieu of township, range, and section. Where available, the street address or lot number(s) shall be given. This information may be available from the County Assessor's office or U.S. Geological Survey (USGS) maps.
- (2) The main entrance to the mine site shall be located based on a USGS topographic map showing latitude and longitude or Universal Transverse Mercator (UTM). The operator will need to specify coordinates of latitude and longitude in degrees, minutes and seconds or in decimal degrees to an accuracy of at least five (5) decimal places (e.g., latitude 37.12345 N, longitude 104.45678 W). For UTM, the operator will need to specify North American Datum (NAD) 1927, NAD 1983, or WGS 84, and the applicable zone, measured in meters.
- (3) A map showing information sufficient to determine the location of the affected land on the ground and existing and proposed roads or access routes to be used in connection with the mining operation. Names of all immediately adjacent surface owners of record shall also be shown. A standard U.S. Geological Survey topographic quadrangle or equivalent is acceptable. The location of the proposed operation shall be shown and labeled with the mine site name.

6.3.2 EXHIBIT B – Site Description

Items (a)-(c) below must be addressed to the extent necessary to demonstrate compliance with the applicable performance standard requirements of Rule 3. At a minimum, the Operator/Applicant shall include the following information:

- (a) a description of the vegetation and soil characteristics in the area of the proposed operation. The local office of the Natural Resources Conservation Service (NRCS) may provide you with this information as well as recommendations for Exhibit D - Reclamation Plan;
- (b) identify any permanent man-made structures within two hundred (200) feet of the affected area and the owner of each structure. Each structure should be located on Exhibit E - Map;
- (c) a description of the water resources in the area of the proposed operation. Identify any streams, springs, lakes, stock water ponds, ditches, reservoirs, and aquifers that would receive drainage directly from the affected area. Provide any information available from publications or monitoring data on flow rates, water table elevations and water quality conditions; and
- (d) a wildlife statement prepared by Colorado Parks and Wildlife (CPW) is not required for 110 Limited Impact Operations. However, such a statement is required for 110d Limited Impact Operations. The Operator/Applicant may contact the local CPW representative to verify that no critical or important wildlife habitats or wildlife species will be impacted by the proposed operation.

112(2)(f)

6.3.3 EXHIBIT C – Mining Plan

- (1) The purpose of the mining plan is to describe how mining will affect the permit area for the duration of the operation. This plan must be correlated to Exhibit E - Map. The description of the mining plan must be adequate to satisfy the requirements of Rule 3.1 and demonstrate compliance with Rule 3. At a minimum, the Operator/Applicant must include the following information:
 - (a) specify the estimated dates that mining will commence and end. If the operation is intended to be an intermittent operation as defined in C.R.S. 34-32-103(6)(a)(II), the Applicant should include in this exhibit a statement that conforms to the provisions of Section 34-32-103(6)(a)(II), C.R.S.;
 - (b) the estimated depth to which soil, suitable as a plant growth medium, will be salvaged for use in the reclamation process. This description must be consistent with information provided in Exhibit B. Sufficient soil must be salvaged to meet the vegetation establishment criteria of Rule 3.1.10. If plant growth medium is not reapplied on a graded area immediately after salvage, then the Operator/Applicant must specify how the topsoil will be stockpiled and stabilized with a vegetative cover or other means until used in reclamation. Plant growth medium stockpiles must be located separate from other stockpiles, out of the way of mine traffic and out of stream channels or drainage ways. The location of plant growth medium stockpiles must be shown on Exhibit E - Map;
 - (c) specify the thickness of overburden or quantity of waste rock, if any, to be

removed to reach the deposit. The location of any overburden stockpiles or waste rock fills must be shown on Exhibit E- Map;

- (d) specify the thickness of the deposit to be mined;
- (e) describe the major components of the mining operation such as: roads and access routes, pit, office, shop/maintenance buildings, plant, processing facilities, and any underground openings such as adits or ventilation facilities. These components must be located on Exhibit E- Map;
- (f) specify the dimensions of any significant disturbances to the land surface such as pit excavations, mine benches, impoundments, stockpiles, waste rock disposal areas, etc.;
- (g) specify the dimensions of any existing or proposed roads that will be used for the mining operation. Describe any improvements necessary on existing roads and the specifications to be used in the construction of new roads. New or improved roads must be included as part of the affected lands and permitted acreage. Affected land shall not include off-site roads which existed prior to the date on which notice was given or permit application was made to the office and which were constructed for purposes unrelated to the proposed mining operation and which will not be substantially upgraded to support the mining operation. Describe any associated drainage and runoff conveyance structures to include sufficient information to evaluate structure sizing;
- (h) specify how much water will be used in conjunction with the operation, and the source of this water;
- (i) if groundwater will be encountered and/or surface water intercepted or disturbed, describe how mining will affect the quantity and quality of the surface or groundwater and the methods to be used to minimize disturbance to the surface and groundwater systems including proposed dewatering, sediment-containment or chemical treatment systems, storm water runoff controls, and groundwater points of compliance;
- (j) specify how you will comply with applicable Colorado water laws and regulations governing injury to existing water rights;
- (k) regardless of DMO status, if refuse and acid or toxic producing materials are exposed during mining, describe how they shall be handled and disposed of in a manner that will control unsightliness and protect the drainage system from pollution;
- (l) describe what measures will be taken to minimize disturbance to the hydrologic balance, prevent off-site damage, and provide for a stable configuration of the reclaimed area consistent with the proposed future land use; and
- (m) specify whether the deposit/ore will be processed on site. Processing includes crushing, screening, washing, concrete or asphalt mixing, leaching or milling. If the deposit/ore will be processed, then describe the nature of the process, facilities and chemicals utilized. The process area and any structures must be described on Exhibit E - Map.
- (n) identify the primary, and if applicable, secondary and incidental commodities to be mined/extracted by the proposed operation; and if not to be used as construction material, describe the intended use.

- (o) Specify if explosives will be used in conjunction with the mining or reclamation operation. In consultation with the Office the Applicant must demonstrate, pursuant to Rule 6.5(4) under the Geotechnical Stability Exhibit, that off-site areas will not be adversely affected by blasting during mining or reclamation operations.
- (2) If tailing ponds are part of the milling process, the mine plan description should address the following:
 - (a) Plant Facilities: Describe the chemical types and quantities to be utilized, chemical storage and spill containment and emergency response plans for on-site spills. Plant operation details should include tank capacities and operating solution volumes.
 - (b) Tailings: Describe the geochemical constituents of the tailing or leached ore, the chemistry of any leachate, anticipated impacts to ground or surface waters and design details such as liners, ponds and embankments, diversions or chemical treatment facilities to be used to control these impacts, and ground and surface water monitoring systems, to include proposed groundwater points of compliance.
 - (c) Drainage Control: Describe the measures used to divert upland drainage away from the site both during and after operation. This must include design details demonstrating the capacity of ditches and impoundment structures to contain operating solutions and the volume of water generated by a one hundred (100) year 24-hour rainfall event.
 - (d) Maps and Plans: Design drawings must be prepared by a professional engineer or other qualified professional, and at a minimum, meet the requirements of Rule 7.3, as well as describe specific design details for tailing ponds and embankments, ponds and ditches, ore and tail transport systems, and ground and surface water monitoring systems.

112(3)

6.3.4 EXHIBIT D – Reclamation Plan

- (1) The purpose of the Reclamation Plan is to describe the timing, procedures, criteria and materials that will be used to reclaim the affected land to the proposed future land use. This plan must be correlated to Exhibit E - Map. The description of the Reclamation Plan must be adequate to satisfy the requirements of Rule 3.1 and demonstrate compliance with Rule 3. At a minimum, the Application shall include the following information:
 - (a) specify at what point in the mining plan and to what depth(s) overburden will be replaced in relation to ongoing extraction.
 - (b) specify the maximum gradient of reclaimed slopes (horizontal: vertical). If the Application proposes slopes steeper than 3:1, the Operator/Applicant must include a justification that supports steeper slopes for the proposed post mining land use, and demonstrates compliance with the applicable performance standards of Rule 3.1.
 - (c) specify the measures that will be taken to revegetate the site, if applicable, including:

- (i) state the thickness of plant growth medium to be replaced. Sample and analyze available soils sufficiently to establish quantity and quality;
 - (ii) state at what point in the mining plan the site will be seeded. Explain how the seedbed will be prepared to eliminate compacted conditions (e.g., plowed, chiseled, disced). State the type, application rate, and soil incorporation methods of fertilizer application, if any. NOTE: Soil amendments shall only be applied where soil tests indicate nutrient deficiencies for the plant species to be established;
 - (iii) state the grass, forb, shrub and tree species to be planted and the applicable quantities. Specify the quantity of each grass and forb species as pounds of pure live seed per acre;
 - (iv) specify the application method for grass and forb seeding. If the seed is to be broadcast, the application rate shall be twice the rate required for seed drilling. If the seedbed has not been adequately roughened prior to seeding, the seed shall be raked or harrowed after broadcast application;
 - (v) if a mulch is needed, specify the kind to be used, the crimping method, and rate of application; and
 - (vi) explain the establishment methods for each species of shrub and/or tree, and state the number of each to be established per acre.
- (d) Specify which ponds, streams, roads and buildings, if any, will remain after reclamation. These features must be shown on the Exhibit E - Map. If ponds are part of the Reclamation Plan, slopes from five (5) vertical feet above to ten (10) vertical feet below the expected average water level cannot be steeper than 3H:1V; remaining slope lengths may not be steeper than 2H:1V. Where wildlife habitat is the proposed future land use, shorelines should be irregularly shaped to promote a diverse wildlife habitat. Colorado Parks and Wildlife (CPW) must be consulted where wildlife use is the proposed future land use.
- (e) Specify the reclamation treatment of any waste rock dumps, tailing impoundments, underground mine openings, ditches, sediment control facilities, buildings and other features specified in your mine plan but not previously addressed in the Reclamation Plan narrative. These features must be shown on Exhibit E - Map. This should describe the measures taken to minimize disturbance to the hydrologic balance, prevent off-site damage, and provide for a stable configuration consistent with the proposed future land use.
- (f) Demonstrate, by substantial evidence, a reasonably foreseeable end date for any water quality treatment necessary to ensure compliance with applicable water quality standards.
- (2) All 110 or Non In Situ Leach Mining 110d Limited Impact applications must provide an estimate of the actual costs to reclaim the site based on what it would cost the State of Colorado using an independent contractor to complete reclamation. (Such estimates are

Commented [MR32]: HB-19-1113

not required for activities contemplated by the operator and approved by the Office to be outside the scope of the proposed reclamation plan.) The unit costs should include estimates for the following activities as appropriate to the operation: backfilling, grading, topsoil application, seeding, mulching, fertilization, and labor to complete reclamation. Determine and specify the point during the operation when the site has reached a point of maximum disturbance. The cost to reclaim the site to the specifications of the Reclamation Plan at this point must be estimated. Unit costs (cost per cubic yard), volumes, haul or push distances, and grades must be included when backfilling and grading are part of the Reclamation Plan. Volume and unit costs for finish grading, subsoil and topsoil application must be provided in terms of cost per cubic yard. The estimated cost for fertilizer, seed and mulch acquisition and application must be provided as cost per acre.

- (a) Equipment costs must include such factors as equipment operator wages and benefits, fuel and lubricant consumption and depreciation. The cost to mobilize and demobilize the equipment from the nearest population center known to have the required equipment availability should be estimated.
- (b) All items referenced in the Reclamation Plan must be included in the cost calculation. These items in addition to earthwork, such as building demolition, fencing, monitoring well sealing or stream channel reconstruction must also be included in the reclamation cost estimate.
- (c) After the direct costs noted above have been estimated, the Office may add up to an additional maximum eighteen and one-half percent (18.5%) of that total, which includes private contract, typical overhead costs. This additional cost is required to cover indirect costs that an independent contractor would incur when performing reclamation of the site. Five percent (5%) additional cost shall be added to cover Office administration cost in the event of bond forfeiture and permit revocation.

6.3.5 EXHIBIT E – Map

- (1) In addition to the requirements of Rule 6.2.1(2), the Operator/Applicant must provide a map that clearly describes the features associated with the mining plan and the components of the Reclamation Plan. Include one (1) map for the mine plan and one (1) map for the Reclamation Plan. The map(s) must be drawn to a scale no smaller than appropriate to clearly show all elements that are required to be delineated by the Act and these Rules; show a north arrow, note any section corners adjacent to the proposed operation, and indicate the date illustrated. At a minimum, maps must include the following information:
- (2) Mining Plan Map
 - (a) outline and label the permit boundaries, described in Exhibit A - Legal Description; for all 110 and Non In Situ Leach Mining 110d Limited Impact Operations, the Office considers the area bounded by the permit boundary to be analogous to the affected area;
 - (b) label the names of owner(s) of record of the surface of the affected area and of the land within two hundred (200) feet of the affected area, identify the owner of the substance to be mined, and the type of structure and owners of record of any

permanent or man-made structures within two hundred (200) feet of the affected area;

- (c) outline and label all major surface features to be used in connection with the proposed operation such as: existing and proposed roads, pit boundary, topsoil stockpiles, overburden stockpiles, product stockpiles, waste rock fills, stream channels, buildings, processing plant, underground openings such as adits or ventilation facilities, ponds, impoundments, dewatering pumps, diversions, tail or waste disposal areas;
- (d) indicate the direction that mineral extraction will proceed;
- (e) note the location of any significant, valuable, and permanent man-made structures within two hundred (200) feet of the affected area. A narrative description must be provided in Exhibit-B - Site Description; and
- (f) outline and label existing disturbance within and/or adjacent to the permit boundary (e.g., previously mined areas, roads or excavations resulting from utility construction). Re-disturbance of previously disturbed areas, by the proposed mining operation, must be included in the permit area and addressed in Exhibit-D - Reclamation Plan.

112(1)(b)
112(3)

(3) Reclamation Plan Map

- (a) show the gradient of all reclaimed slopes (horizontal: vertical) sufficient to describe the post mine topography;
- (b) indicate where vegetation will not be established and the general area(s) for shrub or tree planting;
- (c) if ponds are a part of the Reclamation Plan, outline the final shore configuration of the ponds and shallow areas if the future land use is for wildlife;
- (d) state the average thickness of replaced overburden by reclamation area or phase; and
- (e) state the average thickness of replaced topsoil by reclamation area or phase.

6.3.6 EXHIBIT F – List of Other Permits and Licenses Required

Provide a statement identifying which of the following permits, licenses and approvals which are held or will be sought in order to conduct the proposed mining and reclamation operations: effluent discharge permits, air quality emissions permits, radioactive source materials licenses, disposal of dredge and fill material (404) permits, permit to construct a dam, well permits, explosives permits, State Historic Preservation Office clearance, highway access permits, U.S. Forest Service permits, Bureau of Land Management permits, county zoning and land use permits, and city zoning and land use permits.

112(2)(d)

6.3.7 EXHIBIT G – Source of Legal Right to Enter

Provide documentation of the legal right to enter to conduct mining and reclamation for Owners of Record described in Rule 1.6.2(1)(e)(i). This may include a copy of a lease, deed, abstract of title, a current tax receipt, or a signed statement by the Landowner(s) and acknowledged by a Notary Public stating that the Operator/Applicant has legal right to enter to conduct mining and reclamation.

6.3.8 EXHIBIT H – Municipalities within a Two Mile Radius

List the mailing address and telephone number of the governing body for all municipalities within a two (2) mile radius of the proposed mining operation.

112(10)(a)

6.3.9 EXHIBIT I – Proof of Filing with County Clerk

An affidavit or receipt indicating the date on which the application was placed with the local County Clerk and Recorder for public review, pursuant to Rule 1.6.2(1)(c).

112(10)(a)

6.3.10 EXHIBIT J – Proof of Mailing of Notices to Board of County Commissioners and Conservation District

Proof that notice of the permit application was sent to the Board of County Commissioners and, if the mining operation is within the boundaries of a Conservation District, to the Board of Supervisors of the local Conservation District, pursuant to Rule 1.6.2(1)(a)(ii).

6.3.11 EXHIBIT K – Reserved

6.3.12 EXHIBIT L – Permanent Man-Made Structures

Where the affected lands are within two hundred (200) feet of any significant, valuable and permanent man-made structure, the applicant shall:

- (a) provide a notarized agreement between the applicant and the person(s) having an interest in the structure, that the applicant is to provide compensation for any damage to the structure; or
- (b) where such an agreement cannot be reached, the applicant shall provide an appropriate engineering evaluation that demonstrates that such structure shall not be damaged by activities occurring at the mining operation; or
- (c) where such structure is a utility, the applicant may supply a notarized letter, on utility letterhead, from the owner(s) of the utility that the mining and reclamation activities, as proposed, will have "no negative effect" on their utility.

6.4 SPECIFIC EXHIBIT REQUIREMENTS – 112, 112 ISL or 110 ISL RECLAMATION OPERATION AND 112d DESIGNATED MINING OPERATIONS

The following exhibits are required for all applications for any in situ leach mining operation, 112

mining operation and non in situ leach mining 112d designated mining operation. If any in situ leach mining operation is exempted from designated mining operation status, the application must still comply with this Rule:

112(2)(a)

6.4.1 EXHIBIT A – Legal Description

- (1) The legal description must identify the affected land, specify affected areas and be adequate to field locate the property. Description shall be by (a), township, range, and section, to at least the nearest quarter-quarter section and (b), location of the main entrance to the site reported as latitude and longitude, or the Universal Transverse Mercator (UTM) Grid as determined from a USGS topographic map. A metes and bounds survey description is acceptable in lieu of township, range, and section. Where available, the street address or lot number(s) shall be given. This information may be available from the County Assessor's office or U.S. Geological Survey (USGS) maps.
- (2) The main entrance to the mine site shall be located based on a USGS topographic map showing latitude and longitude or Universal Transverse Mercator (UTM). The operator will need to specify coordinates of latitude and longitude in degrees, minutes and seconds or in decimal degrees to an accuracy of at least five (5) decimal places (e.g., latitude 37.12345 N, longitude 104.45678 W). For UTM, the operator will need to specify North American Datum (NAD) 1927, NAD 1983, or WGS 84, and the applicable zone, measured in meters.

6.4.2 EXHIBIT B – Index Map

An index map showing the regional location of the affected land and all roads and other access to the area. A standard U.S. Geological Survey topographic quadrangle or equivalent is acceptable. Scale criteria need not be followed for this map.

6.4.3 EXHIBIT C – Pre-mining and Mining Plan Map(s) of Affected Lands

One or more maps may be necessary to legibly portray the following information:

112(4)(c)

- (a) all immediately adjoining surface owners of record;

112(4)(e)

- (b) the name and location of all creeks, roads, buildings, oil and gas wells and lines, and power and communication lines on the area of affected land and within two hundred (200) feet of all boundaries of such area;

112(4)(g)

- (c) the existing topography of the area with contour lines of sufficient detail to portray the direction and rate of slope of the affected land;

112(4)(f)

- (d) the total area to be involved in the operation, including the area to be mined and the area of affected lands (see definition of "Affected Land");

112(4)(i)

- (e) the type of present vegetation covering the affected lands; and
- (f) in conjunction with Exhibit G - Water Information, Rule 6.4.7, if required by the Office, further water resources information will be presented on a map in this section.

- 112(3)(c)
115(4)(e)
- (g) Show the owner's name, type of structures, and location of all significant, valuable, and permanent man-made structures contained on the area of affected land and within two hundred (200) feet of the affected land.
 - (h) In conjunction with Exhibit I - Soils Information, Rule 6.4.9, soils information may be presented on a map in this section;
 - (i) Aerial photos, if available, may be included in this section.

6.4.4 EXHIBIT D – Mining Plan

The mining plan shall supply the following information, correlated with the affected lands, map(s) and timetables:

- 112(2)(f)
- (a) description of the method(s) of mining to be employed in each stage of the operation as related to any surface disturbance on affected lands;
 - (b) earthmoving;
 - (c) all water diversions and impoundments; and
- 112(2)(g)
- (d) the size of area(s) to be worked at any one time.
- 112(2)(h)
- (e) An approximate timetable to describe the mining operation. The timetable is for the purpose of establishing the relationship between mining and reclamation during the different phases of a mining operation. An Operator/Applicant shall not be required to meet specific dates for initiation, or completion of mining in a phase as may be identified in the timetable. This does not exempt an Operator/Applicant from complying with the performance standards of Rule 3.1. If the operation is intended to be an intermittent operation as defined in Section 34-32-103(6)(a)(II), C.R.S., the applicant should include in this exhibit a statement that conforms to the provisions of Section 34-32-103(6)(a)(II), C.R.S. Such timetable should include:
 - (i) an estimate of the periods of time which will be required for the various stages or phases of the operation;
 - (ii) a description of the size and location of each area to be worked during each phase; and
 - (iii) outlining the sequence in which each stage or phase of the operation will be carried out.

(Timetables need not be separate and distinct from the mining plan, but may be incorporated therein.)
 - (f) A map (in Exhibit C - Pre-Mining and Mining Plan Maps(s) of Affected Lands, Rule 6.4.3) may be used along with a narrative to present the following information:

- 112(5)
- (i) nature, depth and thickness of the ore body or deposit to be mined and the thickness and type of overburden to be removed (may be marked "CONFIDENTIAL," pursuant to Rule 1.3(3)); and
 - (ii) nature of the stratum immediately beneath the material to be mined in sedimentary deposits.
- (g) Identify the primary and secondary commodities to be mined/extracted and describe the intended use; and
- (h) name and describe the intended use of all expected incidental products to be mined/extracted by the proposed operation.
- (i) Specify if explosives will be used in conjunction with the mining (or reclamation). In consultation with the Office, the Applicant must demonstrate, pursuant to Rule 6.5(4), Geotechnical Stability Exhibit, that off-site areas will not be adversely affected by blasting.
- (j) Specify the dimensions of any existing or proposed roads that will be used for the mining operation. Describe any improvements necessary on existing roads and the specifications to be used in the construction of new roads. New or improved roads must be included as part of the affected lands and permitted acreage. Affected land shall not include off-site roads which existed prior to the date on which notice was given or permit application was made to the office and which were constructed for purposes unrelated to the proposed mining operation and which will not be substantially upgraded to support the mining operation. Describe any associated drainage and runoff conveyance structures to include sufficient information to evaluate structure sizing.

112(3) **6.4.5 EXHIBIT E – Reclamation Plan**

- (1) In preparing the Reclamation Plan, the Operator/Applicant should be specific in terms of addressing such items as final grading (including drainage), seeding, fertilizing, revegetation (trees, shrubs, etc.), and topsoiling. Operators/Applicants are encouraged to allow flexibility in their plans by committing themselves to ranges of numbers (e.g., 6"-12" of topsoil) rather than specific figures.
- (2) The Reclamation Plan shall include provisions for, or satisfactory explanation of, all general requirements for the type of reclamation proposed to be implemented by the Operator/Applicant. Reclamation shall be required on all the affected land. The Reclamation Plans shall include:

- 112(3)(a)
- (a) A description of the type(s) of reclamation the Operator/Applicant proposes to achieve in the reclamation of the affected land, why each was chosen, the amount of acreage accorded to each, and a general discussion of methods of reclamation as related to the mechanics of earthmoving;
 - (b) A comparison of the proposed post mining land use to other land uses in the vicinity and to adopted state and local land use plans and programs. In those instances where the post mining land use is for industrial, residential, or commercial

purposes and such use is not reasonably assured, a plan for revegetation shall be submitted. Appropriate evidence supporting such reasonable assurance shall be submitted;

112(3)(b)

- (c) A description of how the Reclamation Plan will be implemented to meet each applicable requirement of Rule 3.1;
- (d) Where applicable, plans for topsoil segregation, preservation, and replacement; for stabilization, compaction, and grading of spoil; and for revegetation. The revegetation plan shall contain a list of the preferred species of grass, legumes, forbs, shrubs or trees to be planted, the method and rates of seeding and planting, the estimated availability of viable seeds in sufficient quantities of the species proposed to be used, and the proposed time of seeding and planting;

112(3)(c)

- (e) A plan or schedule indicating how and when reclamation will be implemented. Such plan or schedule shall not be tied to any specific date but shall be tied to implementation or completion of different stages of the mining operation as described in Rule 6.4.4 (e). The plan or schedule shall include:

- (i) An estimate of the periods of time which will be required for the various stages or phases of reclamation;
- (ii) A description of the size and location of each area to be reclaimed during each phase; and
- (iii) An outline of the sequence in which each stage or phase of reclamation will be carried out.

(iv) Demonstrate, by substantial evidence, a reasonably foreseeable end date for any water quality treatment necessary to ensure compliance with applicable water quality standards.

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(The schedule need not be separate and distinct from the Reclamation Plan, but may be incorporated therein.)

- (f) A description of each of the following:
 - (i) Final grading - specify maximum anticipated slope gradient or expected ranges thereof;
 - (ii) Seeding - specify types, mixtures, quantities, and expected time(s) of seeding and planting;
 - (iii) Fertilization - if applicable, specify types, mixtures, quantities and time of application;
 - (iv) Revegetation - specify types of trees, shrubs, etc., quantities, size and location; and

- (v) Topsoiling - specify anticipated minimum depth or range of depths for those areas where topsoil will be replaced.

112(3)(e)

6.4.6 EXHIBIT F – Reclamation Plan Map

The map(s) of the proposed affected land, by all phases of the total scope of the mining operation, shall indicate the following:

- (a) The expected physical appearance of the area of the affected land, correlated to the proposed mining and reclamation timetables. The map must show proposed topography of the area with contour lines of sufficient detail to portray the direction and rate of slope of all reclaimed lands; and
- (b) Portrayal of the proposed final land use for each portion of the affected lands.

6.4.7 EXHIBIT G – Water Information

- (1) If the operation is not expected to directly affect surface or groundwater systems, a statement and sufficient demonstration of that expectation shall be submitted.
- (2) If the operation is expected to directly affect surface or groundwater systems, the Operator/Applicant shall:
 - (a) Locate on the map (in Exhibit C) tributary water courses, wells, springs, stock water ponds, reservoirs, and ditches on the affected land and on adjacent lands where such structures may be affected by the proposed mining operations;
 - (b) Demonstrate, by substantial evidence, a reasonably foreseeable end date for any water quality treatment necessary to ensure compliance with applicable water quality standards.
 - (c) Identify all known aquifers; and
 - (d) Submit a brief statement or plan showing how water from dewatering operations or from runoff from disturbed areas, piled material and operating surfaces will be managed to protect against pollution of either surface or groundwater (and, where applicable, control pollution in a manner that is consistent with water quality discharge permits), both during and after the operation.
- (3) The Operator/Applicant shall provide an estimate of the project water requirements including flow rates and annual volumes for the development, mining and reclamation phases of the project.
- (4) The Operator/Applicant shall indicate the projected amount from each of the sources of water to supply the project water requirements for the mining operation and reclamation.
- (5) The Operator/Applicant shall affirmatively state that the Operator/Applicant has acquired (or has applied for) a National Pollutant Discharge Elimination System (NPDES) permit

Commented [MR34]: Required by HB19-1113

from the Water Quality Control Division at the Colorado Department of Health and Environment, if necessary.

6.4.8 EXHIBIT H – Wildlife Information

- (1) In developing the wildlife information, the Operator/Applicant may wish to contact the local wildlife conservation officer. The Operator/Applicant shall include in this Exhibit, a description of the game and non-game resources on and in the vicinity of the application area, including:
- (a) a description of the significant wildlife resources on the affected land;
 - (b) seasonal use of the area;
 - (c) the presence and estimated population of threatened or endangered species from either federal or state lists; and
 - (d) a description of the general effect during and after the proposed operation on the existing wildlife of the area, including but not limited to temporary and permanent loss of food and habitat, interference with migratory routes, and the general effect on the wildlife from increased human activity, including noise.

116.5(6)

- (2) All new Applicants for designated mining operations shall contact Colorado Parks and Wildlife (CPW) for their recommendations. CPW's recommendations shall be included into the application submitted to the Office for review. If the protection of wildlife is determined to be necessary by the Board for 112d Reclamation Permit Operations, or by the Office for 110d Limited Impact Permit operations, the Board or Office may incorporate such wildlife protection recommendations into the new permit as a condition for such permit.

112(4)(h)

6.4.9 EXHIBIT I – Soils Information

- (1) In consultation with the Natural Resources Conservation Service (NRCS) or other qualified person, the Operator/Applicant shall indicate on a map (in Exhibit C) or by a statement, the general type, thickness and distribution of soil over the affected land. Such description will address suitability of topsoil (or other material) for establishment and maintenance of plant growth. If necessary, at its discretion, the Board may require additional information on soils or other growth media to be stockpiled and used in revegetation.

112(4)(i)

6.4.10 EXHIBIT J – Vegetation Information

- (1) The Operator/Applicant shall include in this Exhibit a narrative of the following items:
- (a) descriptions of present vegetation types, which include quantitative estimates of cover and height for the principal species in each life-form represented (i.e., trees, tall shrubs, low shrubs, grasses, forbs);
 - (b) the relationship of present vegetation types to soil types, or alternatively, the information may be presented on a map; and

- (c) estimates of average annual production for hay meadows and croplands, and carrying capacity for range lands on or in the vicinity of the affected land, if the choice of reclamation is for range or agriculture.
- (2) The Operator/Applicant shall show the relation of the types of vegetation to existing topography on a map in Exhibit C. In providing such information, the Operator/Applicant may want to contact the local Conservation District.

6.4.11 EXHIBIT K – Climate

Provide a description of the significant climatological factors for the locality, and where determined appropriate by the Office on a case-by-case basis provide the required information of Rule 6.4.21(13).

117(4)(a)

6.4.12 EXHIBIT L – Reclamation Costs

- (1) All information necessary to calculate the costs of reclamation must be submitted and broken down into the various major phases of reclamation. The information provided by the Operator/Applicant must be sufficient to calculate the cost of reclamation that would be incurred by the state.
- (2) The Office may request the Operator/Applicant to provide additional, reasonable data to substantiate said Operator/Applicant's estimate of the cost of reclamation for all Affected Lands.

6.4.13 EXHIBIT M – Other Permits and Licenses

A statement identifying which of the following permits, licenses and approvals the Operator/Applicant holds or will be seeking in order to conduct the proposed mining and reclamation operations: effluent discharge permits, air quality emissions permits, radioactive source material licenses, the State Historic Preservation Office clearance, disposal of dredge and fill material (404) permits, permit to construct a dam, well permits, explosives permits, highway access permits, U.S. Forest Service permits, Bureau of Land Management permits, county zoning and land use permits, and city zoning and land use permits.

112(2)(d)

6.4.14 EXHIBIT N – Source of Legal Right to Enter

Provide documentation of the legal right to enter to conduct mining and reclamation, for Owners of Record described in Rule 1.6.2(1)(e)(i). This may include a copy of a lease, deed, abstract of title, a current tax receipt, or a signed statement by the Landowner(s) and acknowledged by a Notary Public stating that the Operator/Applicant has legal right to enter to conduct mining and reclamation.

112(2)(b)
112(2)(c)

6.4.15 EXHIBIT O – Owner(s) of Record of Affected Land (Surface Area) and Owners of Substance to be Mined

The complete list of all owners can be submitted as a list or on a map in Exhibit C.

109(8) **6.4.16 EXHIBIT P – Municipalities within Two Miles**

A list of any municipality(s) within two (2) miles of the proposed mining operation and address of the general office of each municipality.

6.4.17 EXHIBIT Q – Proof of Mailing of Notices to Board of County Commissioners and Conservation District

Proof that notice of the permit application was sent to the Board of County Commissioners and, if the mining operation is within the boundaries of a Conservation District, to the Board of Supervisors of the Conservation District, pursuant to Rule 1.6.2(1)(a)(ii).

112(10)(a) **6.4.18 EXHIBIT R – Proof of Filing with County Clerk and Recorder**

An affidavit or receipt indicating the date on which the application was placed with the local County Clerk and Recorder for public review, pursuant to Rule 1.6.2(1)(c).

6.4.19 EXHIBIT S – Permanent Man-made Structures

Where the affected lands are within two hundred (200) feet of any significant, valuable and permanent man-made structure, the applicant shall:

- (a) provide a notarized agreement between the applicant and the person(s) having an interest in the structure, that the applicant is to provide compensation for any damage to the structure; or
- (b) where such an agreement cannot be reached, the applicant shall provide an appropriate engineering evaluation that demonstrates that such structure shall not be damaged by activities occurring at the mining operation; or
- (c) where such structure is a utility, the Applicant may supply a notarized letter, on utility letterhead, from the owner(s) of the utility that the mining and reclamation activities, as proposed, will have "no negative effect" on their utility.

103(4.9)
116.5(5) **6.4.21 EXHIBIT U – Designated Mining Operation Environmental Protection Plan**

- (1) The Environmental Protection Plan shall describe how the Operator/Applicant will assure compliance with the provisions of the Act and Rules in order to protect all areas that have the potential to be affected by designated chemicals, toxic or acid-forming materials or acid mine drainage, or that will be or have the potential to be affected by uranium mining. In addition, the plan shall include an Emergency Response Plan that complies with Sections 34-32-103(4.9) and 34-32-116.5(5), C.R.S. 1984, as amended, and Rule 8.3, for designated chemicals used on site, and appropriate measures recommended by Colorado Parks and Wildlife (CPW) for the protection of wildlife from damage from designated chemicals, toxic or acid-forming materials and acid mine drainage.

- (a) An Environmental Protection Plan is not required to address proposed or permitted activities that do not involve, affect, or influence the storage, handling, or disposal

of the designated chemicals and that do not disturb toxic or acid-forming materials, and that do not cause, or have the potential to cause, generation of acid mine drainage unless such proposed or permitted activities involve uranium mining in which case an Environmental Protection Plan shall be required.

- (b) In order to protect the public and the environment from the adverse effects of uranium mining, designated chemicals, acid or toxic producing materials or acid mine drainage, the Board may consider whether there is a potential for adverse impacts.
 - (c) Such a determination will evaluate, specifically, the potential for adverse impacts from any:
 - (i) leach facilities, or heap leach pad;
 - (ii) tailings storage or disposal areas;
 - (iii) impoundments;
 - (iv) waste rock piles;
 - (v) stock piles, temporary or permanent;
 - (vi) land application sites; or
 - (vii) in situ leach operations or conventional uranium operations.
 - (d) The Board shall consider economic reasonableness and technical feasibility when determining whether the proposed location adequately assures compliance with performance standards of the Act, or may require that an alternate location be evaluated.
 - (e) The Board shall also consider current or pre-existing conditions and the degree to which the proposed plan would provide for net improvements in the protection of human health, property or the environment.
- (2) Maps - An Environmental Protection Plan shall identify on map(s), sketch(es), plan(s) or other equivalent representations, the locations where designated chemicals, toxic or acid-forming materials, which will be used, stored, handled, exposed, disturbed or disposed of within the permit area, and existing or potential sources of acid mine drainage. The Environmental Protection Plan shall also identify on maps, sketches, plans or other equivalent representations, the location of affected lands, surface water, and groundwater which will be or has the reasonable potential to be affected by uranium mining operations. The locations shall be shown in accurate relationship to topography and other project facilities within the permit areas. The Operator/Applicant may submit this information as a map accompanying this Exhibit or include the information on the maps required as Exhibit C in this Rule, 6.4.3.

- (3) Identification of other agencies' environmental protection measures and monitoring - identify which environmental protection measures and monitoring are required by statute, regulation or permit by other agencies or jurisdictions.
- (4) Other Permits and Licenses - The Environmental Protection Plan shall:
 - (a) list any air, water quality, solid and hazardous waste, and other federal, state permits or local licenses, or other formal authorizations which the Operator/Applicant holds or will be seeking applicable to the use, handling, storage, or disposal of designated chemicals and acid mine drainage-forming materials within the permit area.
 - (b) Where such permits have been obtained, the Environmental Protection Plan shall identify where copies of such authorization(s) may be obtained, and shall provide any information contained in, or a portion of, or a complete copy of the permit(s), if required by the Office or Board.
 - (c) When such permits, for uranium mining, or for the use, handling, storage or disposal of designated chemicals or acid mine drainage-forming materials within the permit area, are obtained after the submission of the Environmental Protection Plan, the Operator/Applicant will provide the Office the same information within thirty (30) days of receipt.
 - (d) The Board reserves the right to deny an application for a Permit or Modification to an existing Permit where there is substantial evidence that the operation is or may be contrary to the laws or regulations of this state, or the United States, including but not limited to all federal, state, and local permits, licenses and approvals. The Board may continue the consideration of the application, or condition approval, pending final resolution of the matter. In addition, as to any in situ leach mining applications, the Board may or shall, whichever is applicable, deny any such permit application in accordance with the provisions of Rule 1.4.10.
- (5) Designated Chemical(s) Evaluation - an Environmental Protection Plan shall contain a presentation and discussion of the types, quantities, and concentrations of designated chemicals within the permit area, and to the degree such chemicals are present or used within the permit area, shall characterize the designated chemicals as to:
 - (a) their known potential to affect human health, property or the environment; and
 - (b) based on the best information available at the time of submittal of the Environmental Protection Plan, specify the expected concentrations, process solution volumes and fate of designated chemicals to be used in existing and proposed extractive metallurgical processes at the mine, and/or mill site, if applicable.
 - (c) Provide, to the extent reasonably available, material safety data sheets for designated chemicals.
- (6) Designated Chemical(s) and Material(s) Handling –

- (a) Fully describe the procedures for the disposal, decommissioning, detoxification or stabilization for all designated chemicals and toxic or acid-forming materials. Specifically describe measures to be taken to prevent any unauthorized release of pollutants to the environment. Include adequate reclamation and closure practices for such designated chemicals, toxic or acid-forming materials and how unauthorized discharge of acid mine drainage will be prevented.
 - (b) Submit a narrative description or plan that:
 - (i) describes how all designated chemicals used in the extractive metallurgical process will be handled during active mining operations, during periods of Temporary Cessation, and disposed or detoxified at the conclusion of operations so as to comply with all applicable environmental protection and reclamation standards and regulations;
 - (ii) describes how materials that have the potential to produce acid mine drainage or are toxic or acid-forming will be handled to ensure that the affected lands will be reclaimed and returned to the approved post-mining land use; and
 - (iii) describes how the Operator/Applicant will prevent adverse off-site impacts during periods of active mine site operations and periods of Temporary Cessation.
 - (c) Based upon acceptable site-specific analyses of site construction materials, waste rock, ore, product stockpiles, and mill tailings, if applicable, provide an assessment of the nature, concentrations and expected fate of potential acid mine drainage-forming materials.
- (7) Facilities Evaluation—Provide an evaluation of the expected effectiveness of each proposed and existing Environmental Protection Plan facility, taking into consideration:
- (a) site-specific conditions;
 - (b) designated chemicals, uranium, uranium by products and other radionuclides, acid mine drainage and toxic or acid-forming materials and associated by-products and sludges that will be retained, either temporarily or permanently, on site by each facility;
 - (c) naturally occurring geological and geochemical conditions, and alterations of these conditions by the mining and metallurgical process.
 - (d) Describe, with maps and narrative, the monitoring systems, monitoring site locations, sample designator, parameters sampled, frequency of sampling, report dates, media sampled, method of sampling and analysis employed or to be employed during mining and reclamation operations to evaluate the effectiveness of each Environmental Protection Plan facility and activity.

- (e) Taking into consideration the nature of the chemicals and the risk to human health, property and the environment, describe any release response procedures, redundancies, and "backup" measures necessary, appropriate, and economically reasonable, to control, prevent and mitigate releases of the designated chemicals and toxic or acid-forming materials from the containment facility outside the permit area during mining and reclamation operations.
 - (f) Demonstrate that containment facilities shall be of adequate size to provide sufficient reserve capacity to prevent a release of designated chemicals or toxic or acid-forming materials from design storm events plus operational water volumes during worst case conditions as specified by the Office.
- (8) Groundwater Information –
- (a) locate on a map, in Exhibit C, all tributary water courses, wells, springs, stock water ponds, reservoirs and ditches, on the affected land and on adjacent lands where such structures or waters are within two (2) miles, of the existing or proposed affected lands. The required information may further be limited to that area which can also be demonstrated by the Operator to lie within the local ground and surface water regimes that include the affected lands. On a site-specific basis, the Office or Board may extend the distance beyond two (2) miles;
 - (b) identify all known aquifers and related subsurface water-bearing fracture systems within two (2) miles of the affected lands. The required information may further be limited to that area which can also be demonstrated by the Operator to lie within the local ground and surface water regimes that include the affected lands. In addition, using available data or information, when acceptable to the Office, provide the general direction and rate of flow of groundwater in these aquifers and fracture systems. On a case-by-case basis, the Office may require hydrologic testing and analysis, where available information is inadequate to describe or address potential impacts to groundwater resources;
 - (c) describe all geologic media down to and including the upper most aquifer under proposed sites of material storage, stockpiles, waste piles, disposal sites, solution containment facilities and other sites within the existing or proposed affected area where such subsurface materials and any associated waters have the potential to be contaminated by designated chemicals used in the extractive metallurgical process or by materials that are toxic or acid-forming, or that produce acid mine drainage;
 - (d) identify and locate on a map, in Exhibit C, known major fracture systems that affect rock formations under proposed sites of material storage, stockpiles, waste piles, disposal sites, solution containment facilities and other sites within the existing or proposed affected (land) area where such fractures and any associated waters have the potential to be contaminated by toxic or acid-forming materials or designated chemicals used in extractive metallurgical process or that produce acid mine drainage; and

- (e) describe and illustrate the hydrogeology of the area where surface or groundwater may be impacted by the Designated Mining Operation activities. Include in the description and illustration, those geologic strata and fracture systems that have the potential to transmit groundwater.

(9) Groundwater Quality Data –

- (a) Indicate the existing and reasonably potential future groundwater uses on and within two (2) miles down-gradient of the affected lands. The required information may further be limited to that area which can also be demonstrated by the Operator to lie within the local ground and surface water regimes that include the affected lands. On a site-specific basis the Office or Board may extend the distance beyond two (2) miles.
- (b) Submit, at a minimum, groundwater quality data collected during five (5) successive calendar quarters, or as specified by the Office, as may be necessary to adequately characterize baseline conditions. This baseline data shall be sufficient to provide for the proper design of facilities, to serve as a basis for the evaluation of reclamation performance standards, and to ensure the adequacy of Environmental Protection Facility design, maintenance and operation. In the case of an in situ leach mining operation, a permit applicant must design and conduct a scientifically defensible groundwater, surface water and environmental baseline site characterization and monitoring plan for the proposed mining operation which, at a minimum, includes five (5) successive calendar quarters, or the period specified by the Office as necessary to adequately characterize the baseline conditions, of water quality data, prior to submitting the permit application.
- (c) Analytical detection limits and groundwater quality parameters must be acceptable to the Office.

112.5(4)(a)

(10) Surface Water Control and Containment Facilities Information

- (a) Provide design specifications certified by a licensed professional engineer for all Environmental Protection Facilities intended to:
 - (i) hold, convey, contain, or transport designated chemicals used in the extractive metallurgical process;
 - (ii) convey, transport or divert surface water around or away from acid mine drainage or toxic or acid-forming material; or
 - (iii) capture and/or retain surface water run-off from areas affected by the Designated Mining Operation prior to its release from the mine-site into the natural water drainage system.
- (b) Submit a Storm Water Management Plan, if required by the Water Quality Control Division, including a copy of such plan and a maintenance and inspection program to ensure all drainage control and containment facilities will be properly operated and maintained.

(11) Surface Water Quality Data –

- (a) Indicate the existing surface water receiving stream standards, existing or reasonably potential future uses of surface water and, where receiving stream standards have not been determined, within two (2) miles, down-gradient of the affected lands. On a site-specific basis, the Board or Office may extend the distance beyond two (2) miles downstream.
- (b) Submit surface water quality and flow data collected during a minimum of five (5) successive calendar quarters and such other additional data, or a period specified by the Office, as may be necessary to adequately characterize baseline conditions. This baseline data shall be sufficient to provide for the proper design of facilities, to serve as a basis for the evaluation of reclamation performance standards success, and to insure the adequacy of environmental protection facility design, maintenance and operation. Where surface water samples are not available during the specified time period due to climatic condition, the Office must be contacted so that other alternatives may be agreed upon, except that in the case of an in situ leach mining operation, a permit applicant must design and conduct a scientifically defensible groundwater, surface water and environmental baseline site characterization and monitoring plan for the proposed mining operation which, at a minimum, includes five (5) successive calendar quarters, or the period specified by the Office as necessary to adequately characterize the baseline conditions, of water quality data, prior to submitting the permit application.
- (c) Analytical detection limits for surface water must be acceptable to the Office for surface water quality parameters in consultation with the Water Quality Control Division.

(12) Water Quality Monitoring Plan - where necessary to demonstrate that the Environmental Protection Plan requirements are being met a water quality monitoring plan shall be proposed for both surface and groundwater. The intent of the proposed water quality monitoring plan shall be to demonstrate that all environmental protection facilities designed to protect water quality are functioning as designed and whether the operation is in compliance with all applicable surface water and groundwater standards and Permit conditions. Where a Colorado Discharge Permit System (CDPS) discharge permit exists or has been applied for, such permit may be adequate to satisfy the requirements of Rule 6.4.21. In addition, for an in situ leach mining operation, the required groundwater, surface water and environmental baseline site characterization and monitoring plan must be designed to thoroughly characterize pre-mining conditions; detect any subsurface excursions of groundwater containing chemicals used in or mobilized by such operation; and evaluate the effectiveness of post-mining reclamation and groundwater reclamation.

(13) Climate - on a case-by-case basis, the Environmental Protection Plan shall:

- (a) Provide adequate climatic data representative of the site to perform an acceptable "water balance" for all liquid containment systems open to the environment and intended to contain designated chemicals or acid mine drainage, and demonstrate that the amount of evaporation required to maintain reserve facility capacity will

occur, or that there is sufficient reserve capacity to compensate for the uncertainty associated with the data.

- (b) Provide the following information regarding climatic factors, above six thousand five hundred (6,500) feet of elevation, (with the approval of the Office, data may be provided from existing stations within the vicinity of the Permit area):
 - (i) the mean annual precipitation for a minimum of five (5) years and, where available, one (1) set of data for the wettest year on record for the area;
 - (ii) the average direction and velocity of the prevailing winds;
 - (iii) the mean monthly temperature and temperature ranges for a minimum of five (5) years;
 - (iv) on a case-by-case, site-specific evaporation and sublimation rates for the proposed site.
 - (c) For operations below elevations of six thousand five hundred (6,500) feet, provide the above data covering a period of one (1) year.
- (14) Geochemical Data and Analysis - include appropriate geochemical evaluations of any material that will be exposed by mining, placed in on-site solution containment systems or facilities, stockpiled, or disposed of on the affected land, and that involves uranium mining or has the potential to cause acid mine drainage or to release designated chemicals, or toxic or acid-forming materials.
- (a) Such evaluations shall be site specific and appropriate for the types of materials exposed or to be exposed by the mining and reclamation operations.
 - (b) Such evaluations shall be conducted on materials that are representative of the composition of the mineral, rocks or materials that are exposed or to be exposed during the proposed life of the mining operations.
 - (c) Such evaluations shall be appropriate for the intended use or fate of the material exposed or to be exposed during the proposed life of the mining operations, and on a case-by-case basis shall include evaluation of weathering effects, shall simulate, to the extent reasonable, the conditions under which the material will be used, stockpiled or disposed and which shall reasonably be expected to prevail after mining and reclamation operations have ceased.
 - (d) Such evaluations shall be performed on both ore and overburden, and shall identify the most reasonable sources, probable fate, and transport mechanisms of metal and acid-producing minerals that may be mobilized by ordinary weathering reactions that are likely to prevail after mining and reclamation operations have ceased. Such analyses may include only those tests that are necessary to satisfy the conditions of Rule 6.4.21(14)(c), and such evaluations may be prioritized, in descending order of importance, as follows:

- (i) mineralogical analyses;
 - (ii) trace element analyses;
 - (iii) major element analyses;
 - (iv) microprobe or other comparable analyses.
 - (e) Where a net neutralizing, metal adsorption or metal ion exchange potential over the long-term cannot be demonstrated, the Operator/Applicant shall fully describe measures to prevent unpermitted discharges, and how reclamation, sufficient to achieve the post-mine land use will be assured.
- (15) Construction Schedule Information - provide a detailed construction schedule for the following:
- (a) all facilities designed to contain or transport uranium, uranium by-products or other radionuclides, toxic or acid-forming materials or designated chemicals used in the extractive metallurgical process; and
 - (b) all facilities proposed to contain, hold, or for disposal of material that has the potential to cause acid mine drainage.
- (16) Describe the Quality Assurance and Quality Control program and measures to be employed during construction of those Environmental Protection Facilities that typically warrant Quality Assurance and Quality Control.
- (17) Plant Growth Medium (Soils) - where revegetation is part of the Reclamation Plan, and in order to assure that acceptable plant growth medium is preserved, and to determine what soil amendments may be necessary to promote reclamation, the Operator/Applicant shall:
- (a) provide a soil survey map of the proposed affected area that delineates soil units, soil texture, estimated cubic yards of soil and subsoils available for reclamation and if saved, where such material will be stockpiled for reclamation;
 - (b) Such map shall be based on site specific soils investigations and shall be on such a scale as to provide a basis for soil management recommendations and be the same scale as the reclamation map; and
 - (c) provide, for each soil map unit, in tabular form, all data from analyses of representative samples of surface and subsurface soil units as to:
 - (i) soil pH, texture, electrical conductivity, sodium adsorption ratio and any other parameters that the Operator/Applicant or Office deems necessary for proper soils characterization;
 - (ii) indicate on a map, or in the soils narrative the location of each soil unit on the affected area where the above soil characteristics may be problematic as to suitability for a plant growth medium; and

- (iii) type, form and amounts of any soil amendments that may be necessary or recommended by the local Soil Conservation Service, Conservation District, or other qualified special district, and standard soil laboratory analyses and fertilizer recommendations (if available) for the types of plant species proposed to be established; or
 - (iv) provide, as an alternative to Rule 6.4.21(17)(c), a plan of experiments to determine the type, form and amount of any soil amendments that may be necessary to fulfill the requirements of the Reclamation Plan.
- (18) Wildlife protection - In addition to the performance requirements of Rule 3.1, the Office or Board shall require the Operator to describe measures to minimize or prevent harm or damage to wildlife species and habitat, including:
 - (a) adequately describe mitigation measures to ensure that there is no overall net loss of critical or important wildlife habitat consistent with Colorado Parks and Wildlife (CPW) and United States Fish and Wildlife Service (USFWS) recommendations, if any; and
 - (b) describe measures to prevent wildlife from coming into contact with uranium, uranium by-products or other radionuclides, designated chemicals, toxic or acid-forming chemicals or areas with acid mine drainage.
- (19) Disposal of tailings and sludges in mine workings - In order to ensure the proper disposal of tailings and sludges in mine workings, an Applicant shall comply with the provisions of Rule 3.1.7.

112(j)

6.4.22 EXHIBIT V – Description of ISL Mines – Required for all In Situ Leach Mining Applications Regardless of Designated Mining Operation Status

In addition to all other required exhibits, all in situ leach mining applications shall include this Exhibit V:

- (1) The Description of ISL Mines shall describe at least five (5) in situ leach mining operations that demonstrate the applicant's ability to conduct the proposed mining operation without leakage, vertical or lateral migration, or excursion of any leaching solutions or groundwater containing minerals, radionuclides, or other constituents mobilized, liberated or introduced by the mining operation into any groundwater outside of the permitted in situ leach mining area. The applicant need not be involved with any of the five (5) operations. The Comparison of ISL Mines shall describe:
 - (a) the methods of mining employed in each stage of each of the five (5) referenced in situ leach mining operations specifically including the methods related to any potential effect on groundwater, and compare these methods to those proposed in the application;

- (b) the groundwater monitoring and protection measures used at each of the five (5) referenced mining operations and compare those measures to the measures in the application;
 - (c) known accidents, failures, leaks, releases or spills that affected groundwater at each of the five (5) referenced mining operations.
- (2) The information provided in the Description of ISL Mines may be obtained from publicly available or non-confidential sources. The applicant shall use reasonable efforts to obtain as much information as is possible including research and review of publicly available documents and contact with the operators of the five (5) referenced operations to request information.

6.4.23 EXHIBIT W – Baseline Site Characterization – All In Situ Leach Mining Operations, Regardless of Designated Mining Operation Status.

In addition to all other required exhibits, applications for in situ leach mining operations shall include this Exhibit W.

- (1) An applicant for an in situ leach mining operation permit shall design and conduct a scientifically defensible Baseline Site Characterization for affected surface water and groundwater and the environment prior to filing a permit application for an in situ leach mining operation. Prior to conducting any activity under the Baseline Site Characterization, the prospective applicant shall confer with the Office and obtain the Office's approval of the applicant's proposed Baseline Site Characterization. The Baseline Site Characterization must, at a minimum, include five (5) successive calendar quarters, or the period specified by the Office as necessary to adequately characterize the baseline conditions, of monitoring data and must be included in the permit application in order for the application to be considered filed. At a minimum, the Baseline Site Characterization shall thoroughly characterize the pre-mining site conditions including:
 - (a) A description of the following aspects of the proposed mining operation:
 - (i) physiographic conditions;
 - (ii) geologic and hydrogeologic conditions;
 - (iii) surface water conditions; and
 - (iv) groundwater conditions.
 - (b) A site inspection report that includes:
 - (i) a narrative description of site observations;
 - (ii) interviews with regulatory agencies having jurisdiction over the site including the regulatory history of the site;

- (iii) a narrative description of the results of a document review concerning the site; and
 - (iv) a synopsis of any previous environmental or enforcement investigations.
- (c) Analysis of the results of the Baseline Site Characterization, including a description of factors or conditions that require further investigation in order to design appropriate reclamation measures.

112.5(5)(b)

6.4.24 EXHIBIT X – Monitoring Plan – All In Situ Leach Mining Operations Regardless of Designated Mining Operation Status

In addition to all other required exhibits, any applications for in situ leach mining applications shall include this Exhibit X.

- (1) An Applicant for a permit for any in situ leach mining operation shall design and conduct a Monitoring Plan for affected lands and affected surface water and groundwater prior to submitting an application for such operation. Prior to conducting any activities in the Monitoring Plan, the prospective applicant shall confer with and obtain the approval of the Office of the proposed Monitoring Plan. The Monitoring Plan must be in the permit application in order for the application to be considered filed. The Monitoring Plan shall be sufficient to detect any subsurface excursions of groundwater containing chemicals used in or mobilized by the mining operation. In addition, the Monitoring Plan shall be sufficient to evaluate the effectiveness of the post-mining reclamation and groundwater reclamation plans.

112(i)

6.4.25 EXHIBIT Y – Certification of Prior and Current Violations – All In Situ Leach Mining Operations Regardless of Designated Mining Operation Status

In addition to all other required exhibits, any permit application for an in situ leach mining operation or any request for transfer of minerals permit and succession of operations of operators for any in situ leach mining operation shall include this Exhibit Y.

- (1) Applicants for a permit for any in situ leach mining operations shall include in their application a Certification of Prior and Current Violations that includes:
- (a) A certified statement by the Applicant that the applicant or an affiliate, officer, or director of the Applicant has not violated environmental protection requirements of the Act and these regulations, a permit issued under the Act, or any analogous law, rule or permit issued by another state or the United States within a period of ten (10) years prior to the date of the submission of the application;
 - (b) A certified statement by the Applicant that the Applicant or an affiliate, officer, or director of the applicant, the operator, or the claim holder has not committed a pattern of willful violations of the environmental protection requirements of the Act, regulations, a permit issued under the Act and regulations, or an analogous law, rule, or permit issued by another state or the United States.

- (2) If the Applicant is not able to certify as required by Rule 6.4.25(1), the Applicant shall certify the circumstances of the violations or pattern of violations including:
 - (a) A description of the nature of the violation including the governmental agency that found the violation, where and when it took place, the type of mine involved, any corrective actions and fines imposed for such violation, the status of the violation and any corrective actions and fines imposed for such violation, and any pending administrative or judicial action related to the violation;
 - (b) A description of the pattern of violations including as to each violation in the pattern of violations, the governmental agency that found the violation, the type of mining operation involved, where and when the violation took place, the corrective actions and fines imposed for such violation, the status of the violation and any corrective actions and fines imposed for such violation, and any pending administrative or judicial action related to the violation;
 - (c) Contact information from each federal or state agency involved in each violation or each pattern of violations including the name of the agency, the name of a person in that agency that can confirm the violation or pattern of violation information the Applicant has submitted and the contact person's telephone number and address.
 - (d) Any other information requested by the Office or Board about the violations or pattern of violations.
 - (e) Any explanation of the circumstances of any violations, the relationship between the Applicant and the violator, and any other information the Applicant believes to be relevant.
 - (f) The Applicant has a continuing obligations to update the information required in this exhibit throughout the permit application process and, if the permit is granted, throughout the life of the permit if any changes to the information occurs.
- (3) To constitute a certified statement the applicant must attest to the truthfulness of the statement in a form approved by the Board.

6.5 GEOTECHNICAL STABILITY EXHIBIT

- (1) On a site-specific basis, an Applicant shall be required to provide a geotechnical evaluation of all geologic hazards that have the potential to affect any proposed impoundment, slope, embankment, highwall, or waste pile within the affected area. A geologic hazard is one of several types of adverse geologic conditions capable of causing damage or loss of property and life. The Applicant may also be required to provide a geotechnical evaluation of all geologic hazards, within or in the vicinity of the affected lands, which may be de-stabilized or exacerbated by mining or reclamation activities.
- (2) On a site-specific basis, an Applicant shall be required to provide engineering stability analyses for proposed final reclaimed slopes, highwalls, waste piles, embankments, and ore leach facilities. An Applicant may also be required to provide engineering stability

analyses for certain slope configurations as they will occur during operations, including, but not limited to, embankments and ore leach facilities. Information for slope stability analyses may include, but would not be limited to, slope angles and configurations, compaction and density, physical characteristics of earthen materials, pore pressure information, slope height, post-placement use of site, and information on structures or facilities that could be adversely affected by slope failure.

- (3) Where there is the potential for off-site impacts due to failure of any geologic structure or constructed earthen facility, which may be caused by mining or reclamation activities, the Applicant shall demonstrate through appropriate geotechnical and stability analyses that off-site areas will be protected with appropriate factors of safety incorporated into the analysis. The minimum acceptable safety factors will be subject to approval by the Office, on a case-by-case basis, depending upon the degree of certainty of soil or rock strength determinations utilized in the stability analysis, depending upon the consequences associated with a potential failure, and depending upon the potential for seismic activity at each site.
- (4) At sites where blasting is part of the proposed mining or reclamation plan, the Applicant shall demonstrate through appropriate blasting, vibration, geotechnical, and structural engineering analyses, that off-site areas will not be adversely affected by blasting.

RULE 7: DESIGNATED MINING OPERATIONS

7.1 GENERAL PROVISIONS

7.1.1 Exemption from Rule

Mining operations that are not Designated Mining Operations are exempt from this Rule 7, except as provided for in Rule 6.1, of these Rules.

7.1.2 Effective Date and Applicability of Rule

Except for uranium mining operations, the effective date of this Rule 7.1 and all of its Subsections is July 1, 1994 (Section 34-32-116.5(3)(B), C.R.S. 1984, as amended). Any Operator/Applicant may voluntarily choose to comply with any part, or all, of this Rule at any time prior to July 1, 1994. As to uranium mining operations, all existing and future uranium mining operations are by law designated mining operations. Therefore, the procedure to determine whether a mining operation constitutes a designated mining operation is not applicable to uranium mining operations and such operations are subject to all designated mining operation requirements and regulations. However, such operations may request an exemption from designated mining operation status as provided in Rule 7.2.6. If such exemption is granted, an in situ leach mining operator shall only be exempt from designated mining operation requirements; all in situ leach mining operation requirements shall continue to apply.

7.1.3 Compliance Requirements

- (1) The submission of an Environmental Protection Plan in conformance with Rule 6 and this Rule 7, does not relieve an Operator/Applicant of compliance with any other applicable Rule of the Board.
- (2) In addition to submitting the Reclamation Plan required by Section 34-32-116, C.R.S. 1984, as amended, in compliance with Rule 6, all Designated Mining Operations, as determined pursuant to this Rule 7 or if an operation is a uranium mining operation, shall submit to the Office an Environmental Protection Plan, the content of which is specified by Rule 6, for Office review and approval. As to uranium mining operations, a permit applicant must include an Environmental Protection Plan in the application unless such applicant requests and obtains an exemption pursuant to Rule 7.2.6 at the time of submitting the application.

7.1.4 Environmental Protection Plan Requirements

- (1) The Environmental Protection Plan shall be submitted as an additional Exhibit to the application.
- (2) All information supplied to comply with this Rule 7 shall be of a scale or nature that is compatible with all other Exhibits required in Rule 6.4.

7.2 DETERMINATION OF DESIGNATED MINING OPERATIONS

7.2.1 General Provisions

103(3.5)(a)

- (1) The Office's determination of a Designated Mining Operation is based on the criteria described in the definition for Designated Mining Operation in Rule 1.1(1920).
- (2) For administrative purposes, such as Annual Fees and inspection schedules, the occurrence at a mine site of any activity that is a Designated Mining Operation activity will have the effect of making the entire mining operation a Designated Mining Operation, unless exempted under Rule 7.2.6.
- (3) Such operations, so designated, must submit an Environmental Protection Plan as specified in Rule 6.4.21.

7.2.2 Notification of Designation or Pending Designation by Office

- (1) Any time after the effective date of this Rule 7.2.2, the Office may notify an Operator of the Office's determination that an existing or proposed mining operation is, or has a reasonable potential to be, a Designated Mining Operation. The monthly Agenda shall Notice those operations for which the Office may have any pending Designated Mining Operation considerations, and upon a determination that an operation so considered, is or is not a Designated Mining Operation, the Office shall provide Notice in the next regular monthly agenda.
- (2) The Office's notice to an Operator/Applicant of such a determination shall be accompanied by factual statements including a review of the permit application, approved permit application, proposed or existing metallurgical process, known site geology or geochemistry, and the most recent site inspection.

7.2.3 Operator/Applicant Concurs with Designation

- (1) If an Operator, so notified, agrees with the Office that the existing operation is a Designated Mining Operation, the Operator shall notify the Office within thirty (30) days of the date of the notice by mail, of the Operator's concurrence.
- (2) Upon receipt of the Office notice, the Operator of an existing mining operation shall:
 - (a) within sixty (60) days file a demonstration that the existing permit application for the operation contains the necessary elements of an Environmental Protection Plan, Rule 6.4.21. This showing by the Operator shall satisfy the applicable portions of Sections 34-32-116 and 116.5, C.R.S. 1984, as amended, and the applicable portions of Rules 3, 6 and 7. Upon notice that the existing permit application does not contain the elements of an Environmental Protection Plan, the Operator shall either:
 - (b) within one hundred and eighty (180) days submit an Environmental Protection Plan to the Office; or

- (c) within thirty (30) days request a period longer than one hundred and eighty (180) days, not to exceed one (1) year, to file such plan based on a demonstration satisfactory to the Office that additional time is needed to prepare an Environmental Protection Plan.
- (3) If an Operator/Applicant so notified agrees, the Operator/Applicant shall amend the application in accordance with Rule 7.2.

7.2.4 Designation Disputes

- (1) If an Operator/Applicant so notified does not agree with the Office that the existing or proposed mining operation is a Designated Mining Operation, the Operator/Applicant shall appeal, in writing, to the Office within thirty (30) days of the Office notice, setting forth the specific reasons for the Operator/Applicant's disagreement. The Operator/Applicant's appeal shall include all factual evidence to support its arguments.
 - (a) The Office shall meet with the Operator/Applicant as soon after the notification described in Rule 7.2.4(1) as possible to discuss the pending designation. If the Operator/Applicant does not satisfactorily demonstrate to the Office that the operation is not a Designated Mining Operation, the Office shall make a final determination that the operation is a Designated Mining Operation. The monthly Agenda shall Notice the final decision of the Office.
 - (b) The Operator/Applicant may appeal the Office's determination to the Board within thirty (30) days of the notification to the Operator/Applicant of such determination, and request a hearing before the Board on the designation by the Office pursuant to Rule 1.4.11. Burden of proof to reverse the Office's determination shall be on the Operator/Applicant. Any person who demonstrates that they are directly and adversely affected or aggrieved by the Board's determination and whose interest is entitled to legal protection under the Act may participate as a party in the appeal of the Office's determination brought by the Operator/Applicant.
- (2) If the Operator/Applicant appeals under Rule (1), above, the Office, after notice to the Operator/Applicant, shall schedule the matter for a Board Hearing.
- (3) Any person who has relevant facts that were not known at the time of the initial Office determination that an operation is not a Designated Mining Operation, or where no such Office designation has occurred, may file a written complaint with the Office requesting a review of the operation to determine if it should be a designated mining operation. Based on the written request the Office may inspect the mining operation to determine Designated Mining Operation status. If the Office determines that the mining operation should be a designated Mining Operation, then the processes set forth in Rules 7.2.2., 7.2.3 and 7.2.4 shall apply.

7.2.5 Existing Permit – Adequate for an Environmental Protection Plan

- (1) If an existing permit contains the necessary elements of an Environmental Protection Plan, the Office or the Board will deem the existing permit to be adequate to comply with the

Environmental Protection Plan requirement, (Section 34-32-116.5(4)(a), C.R.S. 1984, as amended).

- (2) The Office may require that the Operator provide an Environmental Protection Plan, as an Exhibit separate from the existing Reclamation Plan and clearly marked as the Environmental Protection Plan. New information may not be required, provided the Plan complies with Rule 6.4.21 and Rule 7. The Environmental Protection Plan submission shall reference appropriate portions of the existing permit application, but shall be clear and concise and shall adequately address those issues that the Environmental Protection Plan is to address.
- (3) If there are no substantive changes to approved on-site activities, the Office review shall be considered a Technical Revision to the Permit for the purpose of processing the Operator's request.

7.2.6 Exemption from Designation

- (1) If an Operator or Applicant demonstrates to the satisfaction of the Office or the Board, at the time of applying for a permit, or at a subsequent hearing, or after notification given pursuant to Rule 7.2.2 of this Rule, that designated chemicals will not be stored or used on-site for extractive metallurgical processing, toxic or acid-forming materials will not be exposed or disturbed in quantities sufficient to adversely affect human health, property or the environment; and that acid mine drainage, as defined in Rule 1, will not occur as a result of mining operations, the Board shall exempt such existing operations from the requirements of this Rule 7, which Rule implements Section 34-32-116.5, C.R.S. 1984, as amended.
 - (a) The operator of an existing designated mining operation may seek exemption from Designated Mining Operation status by filing an amendment application pursuant to Rule 1.10. The amendment application must include the legal and factual basis for requesting the exemption.
- (2) Nothing in the Board Exemption shall exempt an Operator where site conditions or circumstances change, or are not as presented by the Operator in an application or at a Board Hearing on the proposed or existing activities. In addition, an exemption under this Rule from designated mining operation requirements does not exempt the operation from any other applicable requirements. For example, an exemption shall not exempt an in situ leach mining operation from the requirements pertaining to in situ leach mining operations including but not limited to those contained in Rules 3.1.3, 3.1.7 and 6.4. If an in situ leach mining operation is granted an exemption, it shall be referred to as a "110 ISL" operation or "112 ISL" operation (as applicable) rather than as a 112d operation.

7.2.7 Appeal of Determination

Any person who demonstrates that they are directly and adversely affected or aggrieved by the Office determination of designation or non-designation and where such person's interest is entitled to legal protection under the Act may appeal the Office's determination to the Board pursuant to Rule 1.4.11. The operator/applicant may be a party to the appeal.

7.2.8 Plan Inadequacy

If the Office subsequently finds that the approved Environmental Protection Plan is not adequate to comply with the Act and these Rules for protection of human health or property or the environment in conformance with the duties of Operators as prescribed by the Act, the Office may direct the Operator/Applicant to propose a revision to the previously approved Plan within a reasonable time. Provided the Operator is operating in compliance with the approved permit, this Office directive to propose a change shall be considered a "possible problem" and not a "possible violation", unless the time period for submission of the revision is not met by the Operator.

7.2.9 Time Extension for Filing the Environmental Protection Plan

Any Operator not granted relief, upon appeal of a designation as a Designated Mining Operation, shall submit an Environmental Protection Plan to the Office within ninety (90) days of issuance of the Board Order denying the appeal, unless granted additional time by the Board based on all the following:

- (a) the good faith efforts of the Operator to achieve compliance;
- (b) the complexity of the mining operation; and
- (c) a demonstration that harm would not occur to the human health, property or the environment if the additional time were granted.

7.3 ENVIRONMENTAL PROTECTION FACILITIES – DESIGN AND CONSTRUCTION REQUIREMENTS

7.3.1 Construction

- (1) Unless otherwise specified by the Office or Board, construction work shall be done in phases. No construction work shall begin on any subsequent phase of the facility without first obtaining Office acceptance.
- (2) No liner of any kind shall be installed where climatic conditions are not within design or manufacture recommendations, and accepted by the Office.
- (3) Such facilities shall be appropriately designed for their intended purpose and shall consider site specific conditions and on or off-site impacts to human health, property and the environment. Design capacities shall be sufficient to handle the design storm event for the area. The design storm event may be the two (2) year, 24-hour storm event up to the Probable Maximum Precipitation (PMP) event plus the ten (10) year, 24-hour storm event.
- (4) It will be the responsibility of the Operator or Applicant to provide adequate Quality Assurance/Quality Control (QA/QC) or certification for any construction activities that are identified in the approved Environmental Protection Plan as specifically requiring QA/QC.

- (5) No chemicals used in the extractive metallurgical process or toxic or acid-forming materials, uranium, uranium by-products or radionuclides shall be placed in constructed facilities until the Board or Office accepts the certification of the facility, or phase thereof, that precedes placement.

7.3.2 Construction – Acceptance of Certification

- (1) Written acceptance of certification for facilities under this Rule, shall be a separate acceptance from the approval granted a permit application or permit modification.
- (2) Unless otherwise required by the Office, the Operator or Applicant must provide a certified verification by a professional engineer or other appropriately qualified professional that will confirm that the facility was constructed in accordance with the approved design plan.
- (3) The Office shall review and accept or reject all such certifications.

7.3.3 Cessation of Construction

- (1) Barring an action by the Board, Cessation will only apply to the activities that are directly affected by the site-specific engineering step(s) that do not yet have certification.
- (2) For any phase of certifiable inspection established pursuant to Rule 7.3.1 for which certification is not provided, as required in the permit, the Operator shall cease the construction of the environmental protection facility and will postpone the execution of subsequent phases of construction or operation until any required inspections have been performed and the requisite certification has been provided to and accepted by the Office.
- (3) Cessation of construction shall not be deemed to apply to corrective construction actions nor shall it apply to construction of facilities that are designed, and that will serve, to correct the lack of certification.
- (4) The Office has discretion to allow construction to proceed upon determination by the Office that proceeding is the best remedy.

7.4 FACILITY REVIEW CERTIFICATION AND INSPECTION

7.4.1 General Provisions – Inspections and Certifications

- (1) All construction work required to prepare a mine site facility to receive designated chemicals, toxic-forming or acid-forming materials that produce acid mine drainage as defined in these Rules, shall be subject to the following:
 - (a) the frequency and scheduling of Office inspections shall be determined by the Office based on a review of the permit application and in consultation with the Operator/Applicant; and
 - (b) the Office shall include a list of the required inspections in the approved permit.

- (2) The Office may require the Operator to take corrective actions necessary to obtain and verify certification of a construction phase identified in the approved permit. The corrective actions so specified shall be those normally specified by a qualified professional.

7.4.2 Phased Construction Inspections

- (1) The Office shall give inspections of phased facility construction priority over other inspections and shall conduct such inspections as soon as possible to:
 - (a) meet the agreed upon construction schedule;
 - (b) to protect, as necessary, structures or facilities; and
 - (c) to facilitate orderly and efficient construction and operation.
- (2) At a minimum, general inspection phases shall include the following, as applicable:
 - (a) foundation preparation inspection shall occur when the vegetation, topsoil and subsoil have been salvaged and the foundation has been configured, compacted to design specifications, and dressed to receive underdrain systems where required;
 - (b) earthen construction inspection shall occur at appropriate phases in the completion of any excavated slopes or embankment construction for facilities designed to hold or contain toxic or acid-forming materials or designated chemicals used in the extractive metallurgical process or acid mine drainage-forming materials;
 - (c) identification of all wet or seep areas;
 - (d) any areas of structural instability;
 - (e) under-drains or groundwater interceptor systems, after drain materials (including any piping and required filters) have been installed, but prior to covering of drains with soil;
 - (f) all phases of primary and secondary liner installation, including material processing, placement, and compaction of earthen materials, and placement and testing of any fabric seams and repairs;
 - (g) all leak detection systems, including bedding materials, piping, fluid collection and removal systems, and monitoring systems prior to covering with any material in such a manner to deny inspection access; and
 - (h) the protective armor and drainage layers (including placement and compaction of armor and drainage material), prior to loading with ore, mining waste, or tailings.

7.4.3 Independent Reviews of Facility Design, Certification, and Inspections

- (1) The Operator/Applicant may request, or the Board or Office may direct, that an Independent Reviewer conduct a review of facility design, certifications, and phased inspections of Environmental Protection Facilities described in Rule 7.4.2.
- (2) Where such a request is made, the Operator/Applicant is responsible for all costs associated with the review, inspections and reports to the Office. The Operator or Applicant shall provide such reports to any person who was part of the formal hearing process.
- (3) Where an Independent Reviewer inspections are requested, the Operator or Applicant shall provide the Office a list of competent, private, Independent Reviewer candidates.
 - (a) The Office may choose or reject any or all Independent Reviewers based on their qualifications.
 - (b) The Office shall not be provided bid documents that specify the cost for requested services.
 - (c) The Independent Reviewer shall be a contractor to the Operator or Applicant, but shall be solely directed by the State of Colorado - Division of Reclamation, Mining and Safety - Office of Mined Land Reclamation.
 - (d) The Office shall have the responsibility of preparing that portion of the request for bid document that specifies the scope of work. The inspections and reviews shall be those identified in the Environmental Protection Plan.
 - (e) The Operator or Applicant shall have the responsibility of preparing the remaining sections of the request for bid document.
 - (f) The administration of the contract by the Office shall be through a Memorandum of Understanding between the Office and the Operator or Applicant.
- (4) The Independent Reviewer shall be empowered to review and accept or reject quality assurance information generated by the QA/QC (Quality Assurance/Quality Control) entity, i.e., to perform Q/A on the QA/QC and certification (if generated) performed by the Operator's QA/QC representative.
- (5) The Office or Board reserves the right to accept or reject the opinions of Independent Reviewers.
- (6) The rejection of QA/QC based certifications by the Independent Reviewer shall be cause for requiring the Operator to undertake corrective action prior to continuing any additional construction activity on the facility being monitored that would jeopardize either the corrective action so specified or the planned purpose of the Environmental Protection Facility.

Commented [MR35]: This change is to ensure that "IF" third party review is necessary for designs, certifications and inspections beyond the Division's expertise, that the operator / applicant is responsible for covering said costs.

RULE 8: **EMERGENCY NOTIFICATION BY ALL OPERATORS, EMERGENCY RESPONSE
PLAN FOR DESIGNATED MINING OPERATIONS AND EMERGENCY RESPONSE
AUTHORITY OF THE OFFICE**

8.1 SITUATIONS THAT REQUIRE EMERGENCY NOTIFICATION BY THE OPERATOR

Operators shall notify the Office, as soon as reasonably practicable, but no later than twenty-four (24) hours, after the Operator has knowledge of a failure or imminent failure of any of the following:

- (a) any impoundment, embankment, stockpile or slope that poses a reasonable potential for danger to human health, property or the environment;
- (b) for a designated mining operation, any Environmental Protection Facility designed to contain or control designated chemicals or process solutions as identified in the permit;
- (c) for in situ leach mining operations, any structure designed to prevent, minimize, or mitigate the adverse impacts to human health, wildlife, ground or surface water or the environment; and
- (d) for in situ leach mining operations, any structure designed to detect, prevent, minimize, or mitigate adverse impacts on groundwater.

8.2 OPERATOR'S GENERAL NOTIFICATION RESPONSIBILITIES FOR REPORTING EMERGENCY CONDITIONS

8.2.1 Emergency Reporting Procedure

Telephone notice shall be given to the Office staff as follows:

- (a) during regular business hours (8:00 am to 5:00 pm, on working days), the notice shall be given to the Office.
- (b) outside regular business hours, or if the Office cannot be contacted, notice shall be given to the Colorado Department of Public Health and Environment 24 hour Colorado Emergency and Incident Reporting Line. Specify to this agency, that the emergency authority is coordinated through the Division of Reclamation, Mining and Safety, and to activate that Division's response network.

8.2.2 Emergency Notification Information Required

Notice required pursuant to this Rule 8 shall contain the following information (to the extent known at the time of the notice, and so long as no delay occurs in reporting results):

- (a) that this is notification of an emergency condition as required by Rule 8;

- (b) the nature of the condition including any chemicals and toxic or acid producing materials involved;
- (c) an estimate of the quantity of any chemical, toxic or acid-forming material that has been or could be released;
- (d) the time and duration of the occurrence and if it is on-going, or urgency of the pending situation;
- (e) any known or anticipated impacts to human health, property or the environment;
- (f) precautions and corrective actions taken by the Operator; and
- (g) the Operator's name(s) and contact number(s) for persons to be contacted for further information and response by the Office.

8.2.3 Follow-up Notice Requirements

As soon as practicable after an emergency situation or condition is reported and addressed, but no later than five (5) working days, the Operator shall provide a written report of the event to the Office. The report shall provide a description of:

- (a) actions taken to respond to and correct the emergency situation or condition;
- (b) any known or anticipated adverse impacts to human health, property or the environment;
- (c) name(s), address(s), telephone numbers and e-mail address of the Operator's contact person for additional information and follow-up by the Office;
- (d) monitoring and analyses that are necessary to evaluate the situation and corrective actions, copies of all pertinent data; and
- (e) results of the Operator's investigation to assess the conditions or circumstances that created the emergency situation, and what corrective or protective measures will be taken to prevent a similar event from occurring in the future.

8.3 EMERGENCY RESPONSE PLAN FOR DESIGNATED CHEMICALS AND URANIUM OR URANIUM BY-PRODUCTS

In compliance with Rule 6.4.21, describing the purpose of an Environmental Protection Plan, Operators/Applicants of Designated Mining Operations shall be required to have on file with the Office an up-to-date Emergency Response Plan for designated chemicals. It shall be the Operator's/Applicant's sole responsibility to provide timely updates of responsible personnel and their phone numbers to the Office.

8.3.1 Non-Designated Mining Operations Exempted

Operations that do not involve uranium mining or that do not have or will not use designated chemicals, as defined in Rule 1.1(~~1849~~), are specifically exempted from the requirements of this Rule 8.3.

8.3.2 Minimum Requirements – Submitting Other Agency Plans

Operators/Applicants that are required to submit an Emergency Response Plan, may submit all or portions of a plan required by another state, local or federal agency that has been required of the Operator if it substantially conforms to the following minimum requirements:

- (a) designation of personnel, such as mine manager, shift foreman or safety officer, who will be on site and in charge in case of an emergency. Also, a minimum of two (2) key response individuals, with up-to-date phone numbers, who can be contacted by the Office on a 24-hour basis;
- (b) an outline of response procedures to be followed by mine or plant personnel in the event of an emergency involving designated chemicals, acidic or toxic materials, or uranium or uranium by-products;
- (c) a list of designated chemicals and maximum quantities to be stored or used on site at any one time;
- (d) a list and location map of materials, supplies and equipment stored on the property and readily available for containing, controlling and cleaning up excursions or releases of designated chemicals.

8.3.3 Post-Emergency Event Monitoring Plan

The Office may require the Operator to provide a post-emergency event monitoring and analysis plan, specific to an emergency, in addition to Board Ordered Corrective Action requirements.

8.4 EMERGENCY RESPONSE AUTHORITY OF THE OFFICE

8.4.1 Responsibilities of the Office

The Office may:

- (a) establish an Emergency Response Team, which may include other Offices and Agencies;
- (b) enter properties to take necessary emergency, safeguarding and corrective measures;
- (c) after consultation with, and authorization from the Office, issue a written cease and desist order for the activity(ies) suspected of causing the emergency situation;
- (d) apply to a district court for a temporary restraining order, temporary injunction, or permanent injunction to require cessation of the activity(ies) determined to be causing the emergency situation.

- (e) as to Designated Mining Operations, operate the Environmental Protection Facility utilizing any or all portions of the Financial Warranty established for such purpose. Such funds shall be available for the state to operate any portion of the Environmental Protection Facilities, or other facilities as may be necessary, to terminate an emergency as defined by these Rules. In responding to an emergency, the Board or Office will first use funds available as appropriate from the Emergency Response Cash Fund prior to utilizing any or all portions of the Permittee's Financial Warranty.

8.4.2 Office's Determination that an Emergency Exists

The Office may exercise its emergency authority to respond to situations at mining or mineral processing facilities. The determination may be based upon the following:

- (a) the Operator, or another person fails or refuses to stop engaging in any activity not permitted by, or which constitutes a possible violation of the Act, the Rules or permit conditions, and which is presenting an unwarranted risk of serious harm to human health, property or the environment;
- (b) the Operator or another person, fails or refuses to take corrective actions necessary to contain, control, safeguard, or manage an emergency situation;
- (c) an Operator fails or refuses to respond to a Board Order requiring corrective actions for:
 - (i) any failure or imminent failure of any impoundment, embankment, stockpile, or slope identified in the permit;
 - (ii) any Environmental Protection Facility or measure, identified in the Permit, designed for the control or containment of acid or toxic producing materials or designated chemicals;
 - (iii) any specific Permit condition which is intended to protect human health, property or the environment;
 - (iv) any structure for an in situ leach mining operation designed to detect, prevent, minimize or mitigate adverse impacts on groundwater;
 - (v) any structure used in connection with an in situ leach mining operation designed to detect, prevent, minimize, or mitigate adverse impacts on human health, wildlife, or the environment.

8.5 SPECIFIC RESPONSE AUTHORITY RELATED TO EMERGENCY SITUATIONS INVOLVING PHYSICAL MINE HAZARDS

After notification to the Operator, owner or other responsible person, or if a responsible person cannot readily be identified or located, the Board or Office may direct or authorize the Office of

Active and Inactive Mines to respond to emergency situations in which physical mine hazards are involved. Physical mine hazards may include, but are not limited to:

- (a) failure or refusal to safeguard or maintain safeguarding of shafts, adits, portals, escapements, stopes opened to surface and subsidence areas;
- (b) failure or refusal to safeguard or maintain safeguarding in a manner specified by the Office of Active and Inactive Mines in:
 - (i) the published bid specifications; or
 - (ii) according to another design specified or approved by the Board or Office.

8.6 FOLLOW-UP MONITORING AND REPORTING REQUIREMENTS

The Board or Office may require that a post-emergency situation inspection or monitoring program be performed to evaluate any possible adverse impacts, and to insure that the corrective actions taken are sufficient to address the circumstances creating the initial emergency situation.

8.7 EMERGENCY RESPONSE FUNDING

8.7.1 Cash Fund and Purpose

- (1) The Board may transmit grants, donations, and other contributions to the State Treasurer for placement in the Executive Director's Emergency Response Cash Fund.
- (2) This fund shall be accessible to the Executive Director for the following purposes:
 - (a) to conduct emergency response activities at permitted or illegal mining or illegal mineral processing operations; and
 - (b) to conduct emergency prevention, containment, control, safeguarding or reclamation activities at permitted or illegal mining or mineral processing facilities.

8.7.2 Public Contributions, Donations and Grants

The Board, Office or other interested persons may pursue and accept grants and contributions for inclusion in the Executive Director's Emergency Response Cash Fund.

8.8 EMERGENCY RESPONSE COST RECOVERY

The Executive Director may seek recovery of costs expended in carrying out the provisions of this Rule 8. The State shall bear the burden of proof for any violations or cost recovery actions brought against a party(ies) identified in this Rule 8.8. Recovery may be sought for funds expended from the cash fund from any and all of the following:

- (a) the Permittee;

- (b) the Operator, if different from the Permittee, conducting activities or allowing activities that caused the emergency situation; or
- (c) the person controlling or owning the operation.

RULE 9: **CHANGE OF NAME – LEGAL EFFECT**

Any statute enacted prior to or on August 9, 2006 changing the name of the Division of Reclamation, Mining and Safety to the Division of Reclamation, Mining and Safety, shall not impair the legal status or effect of any and all permits, permit obligations, financial warranties, performance warranties, contracts, property rights and/or any other obligations or legal relationships that were entered into between any entity or individual and the Division of Reclamation, Mining and Safety prior to the name change. All such obligations will remain legally binding and shall not be impaired by any such name change. Any statute enacted after August 9, 2006 changing the name of the Division of Reclamation, Mining and Safety to any other name, shall not impair the legal status or effect of any and all permits, permit obligations, financial warranties, performance warranties, contracts, property rights and/or any other obligations or legal relationships that were entered into between an entity or individual and the Division of Reclamation, Mining and Safety prior to such name change. All such obligations will remain legally binding and shall not be impaired by any such name change.



AGENDA ITEM - 8.a.

TITLE:

Discussion and update with the San Miguel County Stakeholders concerning the COVID 19 Outbreak.

Presented by: Grace Franklin, Public Health Director

Time needed: 120 mins

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			



AGENDA ITEM - 8.b.

TITLE:

Potential Executive Session: Conference with an attorney for legal advice, citation (4)(b).

Presented by:

Time needed:

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			



AGENDA ITEM - 9.a.

TITLE:

Update on the San Miguel Regional Housing Authority Activities.

Presented by: Corenna Howard, Executive Director of SMRHA

Time needed: 30 mins

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

Corenna

Nov 2, 2020, 3:34 PM (1 day ago)

tome

December 9th works for me. Thanks!

Corenna Howard
Executive Director, San Miguel Regional Housing Authority
820 Black Bear Drive
Telluride, CO 81435
970.728.3034 ext. 3

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

ATTACHMENTS:

Description	Upload Date
SMRHA Update	12/10/2020
2021 Approved budget	12/10/2020
Goals for 2021	12/10/2020

SMRHA STATUS REPORT

Efficiency, Consistency, Organization

Deed Restriction

Process
Workflow
Forms/Templates

Accounting

Budget Revision
Services Review
Cost Savings

Human Resources

Staffing
Roles/Responsibilities

IT

Systems Review
Property Database
Website Update

Education/Training

Educational Material

Deed Restriction

- Kintone: Cloud based database software. Updated property listing by jurisdiction have been obtained to ensure accuracy of SMRHA databases
- Databases used to monitor deed restricted activity were restructured for consistency between jurisdictions. This will allow for the rollup to a consolidated database for reporting purposed
- Property and rental application databases created to automatically update property database. This will reduce the need to input the same information into several different databases which has caused inconsistency and questionable reliability of data
- The Town of Telluride property database has been uploaded and linked to a software app which will allow the emailing of compliance forms to deed restricted property owners. Property owners are able to complete the forms online and attached documents. There is also be a link to the SMRHA website where the forms can be downloaded. If the forms are received online, a program performs the compliance check evaluation to flag potential compliance issues. The property database is updated to reflect the status of the compliance process for each property owner. The compliance check will be performed in three phases, one for each type of deed restriction
- Telluride compliance documents were revised for clarity
- Two webinar sessions were held for the upcoming Telluride biennial compliance check. There were a total of 10 participants and several follow up inquiries regarding access to the information. A recorded version of the webinar is available on the SMRHA website
- Work continues on review of all documents used in the deed restriction process. Currently there are many versions of documents being utilized. These documents are being reviewed against the covenants and land use code for compliance and final version are sent to the respective jurisdiction for comment and sign off. All deed-restriction real estate closing documents for the Town of Telluride are being reviewed and updated in conjunction with the Town attorney on an as use basis
- During document review, issues needing clarification are being identified for review with respective jurisdiction Telluride TAHG review begins in January 2021 and Mountain Village Q-3 2021
- The application process and documents have been reviewed. Policy and procedures created for rental and purchases of deed restricted units
- Met with the Telluride Foundation regarding potential multi-jurisdictional affordable housing project
- Met with Michelle Haynes and James Mahoney to discuss the Town of Mountain Village Ordinances (AHR and EHR) and Guidelines. There are inconsistencies between the Ordinances and Guidelines as well as an Amendment which is not currently incorporated into the Guidelines posted on the SMRHA website. It was decided that the Guidelines should be reviewed and recommendations made to the Mountain Village Town Council to align the documents
- Re-structure and created required documents folders to create uniformity of online property files

Accounting

- Accounting and payroll functions were brought back in house
- Aligned and simplified chart of accounts resulting from third-party vendor changes to the chart of accounts
- Fiscal year 2020 Budget revised significantly reducing budget deficit
- 2021 budget created with not increase in funding requested over previous years

Human Resources

- Staffing restructured to provided skill set alignment, productivity, and efficiency
- Job description revised to align with staffing configurations

Information Technology

- Switch from server based platform to Office 365. The integration of files is being done methodically to allow for consistency in the file set up. In addition, all the prior files are being archived, current documents in use are being reviewed for ease of use and compliance with the guidelines. Changes presented to each jurisdiction for review and approval
- Agreement with IT service provider Lornet was terminated. Telluride Bytes has performed an evaluation of SMRHA's current infrastructure and computer systems
- Website and email accounts moved to SMRHA owned Bluehost account which provides for a cost savings as well as internal control for website updates, presentation, and content

Education/Training

- Compliance webinar for Town of Telluride
- Brainstorming to create Community Education worklist
- Educational brochure developed to be provided along with approval letters to applicants purchasing deed restricted properties. The brochures provide information on what it means to own a deed restricted property: continuing responsibilities, capital improvements, rentals, violations, and sales
- Handouts to be provided to DR homeowners when application approved
- Writeup for online topics: Capital Improvements; Rental Application Process, Purchase Application Process
- HUD Certification "Conditional" status: SMRHA has not been in compliance with the requirements set forth by HUD since 2018. It was agreed that although housing counseling education was conducted, it does not satisfy the HUD criteria. The certification will be placed on inactive status to allow time to evaluate the direction of the of housing counseling within the organization

Housing Choice Voucher Program

- Hired new staff to oversee program
- All files organized and updated to be in compliance
- Staff member completed DOLA system training and provided access to DOLA database system in 2 months. The typical time frame for obtaining access is 6 months
- Rental unit inspections were over 2 years delinquent and are now up to date
- Policy and Procedure manual created

**SMRHA
Proposed Budget
FY 2021**

	TMV	ToT	SMC	CDOH	Total
FUNDING	92,625	92,625	92,625	16,350	294,225
Personnel Expense					
Salary/Wages					
Executive Director	31,667	31,667	31,667		95,000
Housing Manager	17,967	17,967	17,966	14,101	68,000
Outreach Manager	8,334	8,333	8,333		25,000
Total Salary/Wages	57,967	57,966	57,965	14,101	188,000
Employee Benefits					
SUTA = .003	174	174	174	42	564
Worker's Comp Ins	200	200	200		600
Medicare = 1.45%	841	841	840	204	2,726
PERA = 14.2%	8,231	8,231	8,231	2,002	26,696
Health Insurance	10,579	10,579	10,579		31,737
Total Employee Benefits	20,025	20,025	20,024	2,249	62,323
Total Personnel Expense	77,992	77,991	77,990	16,350	250,323
Operating Expenses					
Accounting Software	280	280	280		840
Advertising	300	300	300		900
Auditing Services	2,067	2,067	2,067		6,200
Cleaning Services	510	510	510		1,530
Computer Software/Hardware	2,117	2,117	2,116		6,350
Conference/Training	300	300	300		900
Copier Lease/Maintenance	583	584	584		1,751
Dues/Membership	207	207	207		620
Insurance	1,051	1,051	1,051		3,152
IT Services	500	500	500		1,500
Misc Expenses	255	254	254		763
Office Supplies	167	167	166		500
Outreach	300	300	300		900
Payroll Expense	543	543	543		1,629
Postage	125	125	125		375
Rent	3,424	3,424	3,424		10,272
Telephone	973	974	973		2,920
Travel	334	333	333		1,000
Website	600	600	600		1,800
Total Operating Expenses	14,635	14,635	14,632	0	43,902
Total Expenses	92,627	92,626	92,622	16,350	294,225

SMRHA Executive Director Goals FY 2021

Tasks		Status	January	February	March	April	May	June	July	August	September	October	Novemeber	December
Deed Restriction														
At-A- Glance	Not started													
Fee Review - All Jurisdictions	Not started													
Guideline Review - Telluride	Not started													
Guideline Review - Mountain Village	Not started													
Guideline Review - San Miguel County	Not started													
Compliance Check - San Miguel County	Not started													
Compliance Check - Mountain Village	Not started													
Accounting														
Audit - 2020	Not started													
Budget - 2021	Not started													
Housing Voucher														
Informational Brochure	Not started													
Outreach														
Website Redesign	Not started													
Online Application Process	Not started													
Educational Materials - Online	Not started													
HUD - Housing Certification Training	Not started													
Housing Counseling Program	Not started													
Homebuyer Education Workshop	Not started													



AGENDA ITEM - 10.a.

TITLE:

Review of the final draft of the Govt. Affairs/Special Projects Job Description.

Presented by: Mike Bordogna, County Manager

Time needed:

PREPARED BY:

RECOMMENDED ACTION/MOTION:

Staff Direction

INTRODUCTION/BACKGROUND:

Backup to follow.

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			



AGENDA ITEM - 10.b.

TITLE:

Update on the business grant program.

Presented by:

Time needed:

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			



AGENDA ITEM - 10.c.

TITLE:

Discussion concerning a bill that would prohibit county commissioners from serving on a county's board of health.

Presented by:

Time needed:

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

Draft Bill Attached

Good morning everyone,

This **Friday, January 8th at 1:00pm**, we will host a dialog with Rep. Kipp and Sen. Ginal via zoom to discuss a bill they plan to bring forward when the session gets underway 'off details are below.

Their bill (see attached) will prohibit county commissioners from serving on a county's board of health. This would also apply to district boards of health.

This proposed change will impact:

1. Counties with populations of less than 100,000
2. Home rule counties (current statute defers to those county's home rule charters – p.2, lines 21-22 and p. 3 line 1 removes that provision)
3. Both Single County Local Public Health Agencies **AND** District Local Public Health Agencies

Additional Background:

Commissioners would retain the duty of appointing community members to the board of health (CRS 25-1-508 (2)(a)(1) – existing law). A vast majority of counties (under 100,000 in as their Board of Health. Statute authorizes this local choice **and** the ability to have a BOH consisting of community members (ie Pitkin County's BOH consists of community members separate citizen 'advisory committees' to provide counsel to a BOCC serving as a Board of Health (ie Alamosa, Delta and Grand).

Commissioners have already raised a number of common concerns with this proposal which include:

- Balancing a broad spectrum of community impacts. Commissioners are well-suited for the challenge of listening to and balancing disparate viewpoints in their communities. Their health impacts but is also taking a toll on the economic livelihood of Coloradans in disproportionate ways. Commissioners – through their positions – have been able to coordinate identify solutions & innovative approaches.
- Direct connection to supports. Having commissioners serve as the BOH creates a direct feedback loop between public health and county leaders. This creates efficiency and addresses workforce needs of public health.
- Local flexibility. Current statute already allows counties – of all sizes - to appoint a BOH consisting of community members.
- Accountability. Commissioners are elected officials working for their communities. Having the BOH consist of elected county commissioners gives the public a vehicle to express with decisions that are made.
- Lack of Volunteers. Small/Medium sized counties struggle to find willing volunteers. Navigating the complexities of the pandemic and the 'big picture' understanding and strategy to the county's budget, public interaction, direction to departments and the economy is a task few volunteers are willing to assume.

We hope you'll join us this Friday for a dialog and exchange.

Topic: Rep Kipp/Sen Ginal's Leg Proposal: Commissioners Prohibited from Serving on BOH
Time: Jan 8, 2021 01:00 PM Mountain Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/83662887692?pwd=bUpnZG1jSWFDTE5EVkQ5RC92Wm5TZz09>

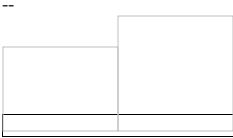
Meeting ID: 836 6288 7692

Passcode: 596241
One tap mobile
+13462487799,,83662887692#,,,,*596241# US (Houston)
+16699009128,,83662887692#,,,,*596241# US (San Jose)

Dial by your location
+1 346 248 7799 US (Houston)
+1 669 900 9128 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 312 626 6799 US (Chicago)
+1 646 558 8656 US (New York)
+1 301 715 8592 US (Washington D.C.)

Meeting ID: 836 6288 7692
Passcode: 596241
Find your local number: <https://us02web.zoom.us/j/kyQ8okoBu>

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Kris Holstrom
San Miguel County Commissioner
District 3
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FISCAL IMPACT:

Contract Number:	Date Executed	End Date	
YYYY-###			Board of C
Description:			

ATTACHMENTS:

Description
Draft Bill - Board of Health Member Requirements

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

DRAFT
12.8.20

DRAFT

LLS NO. 21-0224.01 Pierce Lively x2059

HOUSE BILL

HOUSE SPONSORSHIP

Kipp,

SENATE SPONSORSHIP

Ginal,

BILL TOPIC: "Board Of Health Member Requirements"

A BILL FOR AN ACT

101 CONCERNING THE REGULATION OF MEMBERS OF BOARDS OF HEALTH,
102 AND, IN CONNECTION THEREWITH, REGULATING THE MEMBERS
103 OF COUNTY AND DISTRICT BOARDS OF HEALTH. <{*This title*
104 *covers both county and district boards of health, but it could also*
105 *be read as covering municipal boards of health. I could not think*
106 *of a title that did not violate the single subject and only covered*
107 *county and district boards of health.*>

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

The bill requires that the members of a county or district board of health not serve concurrently as members of a board of county commissioners and as members of a county or district board of health. The bill also allows members of a county or district board of health to be removed for malfeasance or other specified reasons.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 25-1-508, **amend** (2)(b) and (3)(b); **repeal** (2)(c) and (2)(d); and **add** (7) as follows:

25-1-508. County or district boards of public health - public health directors. (2) (b) Each member of the county board of health shall be a resident of the county in which the county agency is located. Appointments shall be made to the board so that no business or professional group or governmental entity shall constitute a majority of the board AND SO THAT NO MEMBER OF THE BOARD OF COUNTY COMMISSIONERS SERVES CONCURRENTLY ON THE COUNTY BOARD OF HEALTH AND THE BOARD OF COUNTY COMMISSIONERS. Any vacancy on the board shall be filled in the same manner as full-term appointments by the appointment of a qualified person for the unexpired term.

~~(c) In a county with a population of less than one hundred thousand people that, as of July 1, 2008, does not have a board of health that is separate from the board of county commissioners, the board of county commissioners may designate itself as the county board of health as of July 1, 2008. The terms of the members of the county board of health shall coincide with their terms as commissioners. Such county boards shall assume all the duties of appointed county boards.~~

~~(d) Notwithstanding the provisions of paragraphs (a) to (c) of this subsection (2), a county board of health in a home-rule county shall~~

1 ~~comply with the requirements of its home-rule charter.~~

2 (3) (b) Each member of the district board shall be a resident of one
3 of the counties comprising the district, and there shall be at least one
4 member from each of the counties comprising the district. Appointments
5 shall be made to the district board so that no business or professional
6 group or governmental entity shall constitute a majority of the district
7 board AND SO THAT NO MEMBER OF A BOARD OF COUNTY COMMISSIONERS
8 SERVES CONCURRENTLY ON THE DISTRICT BOARD AND THE BOARD OF
9 COUNTY COMMISSIONERS. The appointments committee shall fill any
10 vacancy on the district board by the appointment of a qualified person for
11 the remainder of the unexpired term.

12 (7) ANY MEMBER OF THE BOARD MAY BE REMOVED FROM OFFICE
13 BY THE BOARD OF COUNTY COMMISSIONERS ONLY FOR MALFEASANCE, FOR
14 WILLFUL NEGLECT OF DUTY, OR FOR ANY CAUSE WHICH RENDERS A
15 MEMBER OF THE BOARD INCAPABLE OF OR UNABLE TO DISCHARGE THE
16 DUTIES OF HIS OR HER OFFICE. <*I have removed the suggested language*
17 *of "or when the member of the board's term expires" because I do not*
18 *think it is accurate to say that someone is removed from office when*
19 *their term of office expires. Other areas of statute are silent about what*
20 *happens when the term ends for other term-limited offices.*>

21 **SECTION 2. Act subject to petition - effective date.** This act
22 takes effect at 12:01 a.m. on the day following the expiration of the
23 ninety-day period after final adjournment of the general assembly; except
24 that, if a referendum petition is filed pursuant to section 1 (3) of article V
25 of the state constitution against this act or an item, section, or part of this
26 act within such period, then the act, item, section, or part will not take
27 effect unless approved by the people at the general election to be held in

- 1 November 2022 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.