AGENDA TOWN OF RICO BOARD OF TRUSTEES

2 Commercial Street–Rico Town Hall October 15th, 2018 7:00 p.m.

- Electronic copies of the Trustee Packet are available on the Town website at www.ricocolorado.gov. A hard copy of the Packet is also available at Town Hall for interested citizens.
- Action may be taken on any agenda item
- Notice is hereby given that a majority or quorum of the Planning Commission or Geothermal Committee may be present at the above noticed City Council meeting to discuss any or all of the matters on the agenda below for Council consideration

CALL TO ORDER at 7:00 p.m. ROLL CALL

APPROVAL OF THE AGENDA

APPROVAL OF MINUTES

CONSENT AGENDA

- Payment of bills
- Approval of Treasurer's Report

CITIZENS COMMUNICATION

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CITY COUNCIL AND COMMITTEE REPORTS

- Town Clerk
- Public Works
- Water Consultant
- Parks and Rec

TOWN MANAGER'S REPORT

- Rural Economic Development Initiative Grant Application
- Telluride Foundation Grant Application
- Rico Community Meeting Summary

ACTION ITEMS

- Request for approval of a Plat Amendment for Lots 10R and 12R Hancock Subdivision
- 1st reading of an ordinance to repeal Ordinances 312 and 2002-5 and replace with Ordinance 2018-8, ordinances concerning the regulation of dogs.

DISCUSSION ITEMS

- Motorized trail groups challenge to the USFS Travel Management Plan
- First Draft of the 2019 Budget

ADJOURNMENT

Town of Rico Memorandum

Date: October 11th, 2018

TO: Town of Rico Board of Trustees

FROM: Kari Distefano

SUBJECT: Town Manager's Report

1. Rural Economic Development Initiative Grant Application

One of the recommendations from the community meeting on September 13th was that the Town should provide an economic analysis of the potential benefits of constructing a central sewer that would serve the commercial core. To this end, I have applied for grant funding from the Rural Economic Development Initiative to seek funding for an economic development analysis that would examine the importance of infrastructure for economic growth and the barrier that the lack of infrastructure imposes on our community. With this analysis, we should be able to provide the community with important information regarding the construction of a sewer system and help answer the question: would the cost of construction be worth the potential economic gain?

2. Telluride Foundation Grant Application

Just in case I don't get the funding from the Rural Economic Development Initiative, I am also applying for funding for the economic analysis through the Telluride Foundation.

3. Summary of the September Community Meeting

The September Community meeting to discuss infrastructure improvements was well attended. Included in this packet is the community meeting presentation and associated documents if you were unable to attend as well as a summary of the public discussion.

4. Request for approval of a Plat Amendment for Lots 10R and 12R Hancock Subdivision

Tim Regan is requesting approval for a plat amendment for Lots 10R and 12R of the Hancock Subdivision. He would like to amend the plat with the removal of an existing plat note that states: "The property owner(s) shall comply with the requirements of Institutional Controls once adopted." This note references a set of controls that were being contemplated when the Town of Rico was negotiating a voluntary cleanup agreement with Atlantic Richfield in a effort

to mitigate soil contamination resulting from mining practices. The Town of Rico pulled out of the agreement prior to the adoption of the institutional controls referenced by the plat note.

The Town of Rico is in the process of revisiting an agreement that would address remediation of contaminated soils but I do not expect a revised agreement prior to the end of 2018. In an effort to resolve Tim Regan's issue (he would like to build) in a timely manner we have been coordinating with Kathryn Tegtmeyer and Luke Pokorny, two environmental consultants working for Atlantic Richfield and British Petroleum. They gave Tim test data regarding soil contamination on his lots. I have attached that information to this packet. The only place on Tim's lot that lead levels exceed the 1100 ppm threshold for residential property is in the flood plain so building in that area is subject to review and in many cases prohibited anyway. I have attached the map provided by the environmental consultants to this memo.

The Rico Land Use Code does not specifically address plat amendments but recording the amendment in the Dolores County Clerk's office may require approval by both the Rico Planning Commission and the Rico Board of Trustees. The Planning Commission approved the request at their October 10th meeting and I am recommending approval of his request contingent upon Tim providing us with a legal document signed by a licensed surveyor that would formally amend the plat and can be recoded in the County of Dolores Clerk's office.

4. First reading of an ordinance to repeal Ordinances 312 and 2002-5 and replace with Ordinance 2018-8, ordinances concerning the regulation of dogs.

In August, there were several incidents that involved an at large dog that entered at least two houses and made a mess and caused some wreckage. The second incident resulted in a case of mistaken dog identity that devolved into fisticuffs. Due to the serious nature of the damage and the fact that this dog may have been the object of another complaint, I had recommended to Tom Halper that the owner be fined \$300.00. The case made it's way through municipal court and the court, due to an ambiguity in suggested fines in the dog ordinance, levied a fine of \$25.00. Carol Viner recommended that we resolve that ambiguity through an updated ordinance. Carol's memo is included in this packet. The revised ordinance is attached. I have highlighted the suggested changes in the fine structure for bad dogs (and owners). Please review the revised ordinance and decide whether or not the suggested fines are appropriate or should by changed.

5. Budget

I have included a copy of the first draft of the proposed 2019 budget in this packet. As you can see from the document, normal Town expenses have exceeded revenues since 2016 and

the trend is expected to continue. While the Town has healthy revenues, we also have a backlog of maintenance and repairs that we need to address. While existing town services can continue next year and probably the following year, but we can't live on our savings forever. Either we need an increase in revenue or we will need to cut staff time. It is my hope that improved infrastructure will increase property taxes and sales taxes but that will require an investment by the community.

Motorized trail group's challenge to the USFS Travel Management Plan

The Trail's Preservation Alliance, the San Juan Trail Riders and the Public Access Preservation Association have filed a complaint in court against the USFS Travel Management Plan. A copy of the filing is included in this packet. In response, Sheep Mountain Alliance, Dunton and Cindy Farney and other interested parties are going to intervene to defend the Travel Management Plan and file their own complaint against the USFS for allowing five moths of motorized use during elk calving season. The Town of Rico supported the USFS Travel Management Plan. The question is whether the Town of Rico wants to participate in the pro bono portion of the intervention.

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AGENDA

Town of Rico Community Meeting

September 13, 2018 6:30 p.m. – 8:30 p.m.

Town of Rico Courthouse

6:30 Welcome & Introduction

Kari Distefano, Town Manager, will welcome community members and introduce Town officials and guests.

6:35 Progress Update

In November 2017 and March 2018, community meetings where hosted to discuss Rico's physical infrastructure and fiscal challenges. We identified a vision for the future which included a stable town, healthy finances, and functional infrastructure. Yet there were many questions about what it would take financially to create community infrastructure that would support the Town without unbearable costs to residents. Kari Distefano will provide a brief review of how we got to today's engineering report.

6:45 Engineering Consultant Findings

Eric Krsh and Louis Meyer of SGM will provide a summary of the technical study that explored options for water supply and wastewater treatment.

7:20 Moving Forward: Funding A Sustainable Future

Based on the engineering report, Kari Distefano will introduce several community options and the pros and cons of each option. (see handout)

7:30 Discussion: Confirming a Next Step

We will break into small groups, so we can have deeper discussions with each other about the options. After breaking out, your goals as a group are to discuss the following and arrive at a collective decision that you can report back and share in plenary with everyone.

- 1. **Identify Best Option(s)**: What are you willing to support and not support at this point in time? (use Option Evaluation Recording Template)
 - Water Option 1 Water & Sewer 1 & 1
 - Water Option 2 Water & Sewer 2 & 2
 - o Sewer Option 1 Another Combination
 - o Sewer Option 2

8:00 Plenary

Each group will report back the options they prefer and share their rationale for why it is the better option.

8:20 Next Steps

We will wrap up our community discussion with proposed next steps.

8:30 END

Water System Option 1

System Improvement	Need	Engineer's Opinion of Total Project Cost
Tank Rehabilitation	Routine system maintenance	\$130,000
Supervisory Control & Data Acquisition (SCADA)	System efficiency and use tracking ability	\$60,000
Water Meter Replacement	System efficiency and water loss reduction	\$320,000
Upgraded Infiltration Gallery - Conanda	Old infiltration system is difficult to maintain and keep free of silt	\$330,000
Pipeline Debris Slope Protection	Waterline from the infiltration gallery crosses a debris slope and is at risk of breaks	\$160,000
Replace Filtration Plant	Existing filtration plant no longer meets Colorado Dept. of Health & Environment regulations	\$2,900,000
Total Estimated Cost Of Upgrade to Rico	\$3,900,000	

	If Your House Is Valued At	Per Year You Would Pay An Additional
With a 500,000 grant and a	\$150,000	\$243
no interest loan from the Colorado State Revolving	\$200,000	\$311
Fund an additional 22.5	\$250,000	\$405
mills would support this	\$300,000	\$488
improvement	\$350,000	\$569

Water System Option 2

System Improvement	Need	Engineer's Opinion of Total Project Cost
Tank Rehabilitation	Routine system maintenance	\$130,000
Supervisory Control & Data Acquisition (SCADA)	System efficiency and use tracking ability	\$60,000
Water Meter Replacement	System efficiency and water loss reduction	\$320,000
Change water rights diversion point from Silver Creek to Rico Well	This change would require a request in water court and the assistance of a water attorney	\$50,000
Total Estimated Cost Of Upgrade to Rico V	Vater System	\$560,000

	If Your House Is Valued At	Per Year You Would Pay An Additional
Assuming the acquisition of a no interest loan from the	\$150,000	\$38
Colorado State Revolving	\$200,000	\$49
Fund an additional 3.5 mills would support this	\$250,000	\$63
improvement	\$300,000	\$76
	\$350,000	\$89

Sewer System Option 1: Little Ada Site

System Improvement	Need	Engineer's Opinion of Total Project Cost
Sewer Collection System	Pipe sewage to treatment center	\$3,213,015
Sewer Treatment Plant	Treat sewage	\$1,500,000
Total Estimated Cost Of Upgrade to	Rico Sewer System	\$4,713,015

With a 1,000,000 grant and	If Your House Is Valued At	Per Year You Would Pay An Additional
a no interest loan from the	\$150,000	\$249
Colorado State Revolving	\$200,000	\$318
Fund an additional 23 mills	\$250,000	\$415
would support this improvement	\$300,000	\$499
improvement	\$350,000	\$582

Sewer System Option 2: Wye Site

System Improvement	Need	Engineer's Opinion of Total Project Cost
Sewer Collection System	Pipe sewage to treatment center	\$2,599,715
Sewer Treatment Plant	Treat sewage	\$1,500,000
Total Estimated Cost Of Upgrade	to Rico Water System	\$4,099,715

Assuming the acquisition a no interest loan from the	If Your House Is Valued At	Per Year You Would Pay An Additional
Colorado State Revolving	\$150,000	\$209
Fund and a 1-million-dollar	\$200,000	\$267
grant from DOLA additional	\$250,000	\$348
19.3 mills would support this improvement	\$300,000	\$419
	\$350,000	\$488

Community Options for Water & Sewer Funding Measure

If Your House Is Valued At	Sewer Option 1 & Water Option 1 at 43 mills	Sewer Option 2 & Water Option 2 at 15.5 mills
	Per Year You Would Pay An Additional	Per Year You Would Pay An Additional
\$150,000	\$492	\$247
\$200,000	\$628	\$315
\$250,000	\$820	\$411
\$300,000	\$986	\$494
\$350,000	\$1,150	\$577

OPTIONS	PROS	CONS
Water System Option 1	This option would help Rico assert its water rights claim on Silver Creek	This option is more expensive
	The water in Silver Creek is softer — measured by the presence of CaCO3 (Calcium Carbonate)	The chemistry of both water sources is similar and although this water would be softer, it won't be a lot softer.
	This option would ensure a redundant water system	Persistent drought could impair the delivery of this source.
	The SCADA system will improve operator control and efficiency	
Water System Option 2	This option is less expensive	Moving the diversion point from Silver Creek to the well will necessitate a review by water court. The review may draw objections from the Colorado Water Conservancy Board and other regional water rights holders.
	The SCADA system will improve operator control and efficiency	The water in Silver Creek is softer – measured by the presence of CaCO3 (Calcium Carbonate)
Sewer System Option 1	The Little Ada site is farther from most housing in Rico	This option is more expensive.
	The Little Ada site is farther south and would allow future development on parcels in the southern portion of the Town of Rico.	The Little Ada site has a lot of wetlands and would likely involve the Army Corp of Engineers and could necessitate wetlands mitigation.
Sewer System Option 2	The Wye site will be less expensive.	Lots to the south of this sight would need to pump sewer to the treatment sight.

While there are wetlands on this site, there	This sight is closer to homes in Town.
are fewer than there are on the Little Ada site	
and would probably draw less oversight from	
the Army Corp of Engineers.	

March Meeting Recap

Meeting attendees were charged with assessing four options to help the Town of Rico move forward toward a stable town, healthy finances and functional infrastructure

- Option A Support Economic Development
- Option B Invest in water system upgrades
- Option C Invest in a central sewer system
- Option D Invest in both water and sewer infrastructure

March Meeting Recap

Attendees were divided into groups to weigh the options and offer comments. The following are a summary of the comments.

Group 1 –

- Support economic development by leveraging assets such as trails and the arts
- Leverage economic grants
- Continue to explore wastewater treatment options
- Explore Silver Creek enhancement

Group 2 -

- Explore water and sewer system upgrades
- Economic development will not happen without supporting infrastructure

March Meeting Recap

Group 3 -

- Explore Silver Creek enhancement
- Maintain Town reserves

Group 4 -

- Explore Silver Creek enhancement
- Continue to explore wastewater treatment options
- Be mindful of tax increases that the community can not tolerate

Group 5 –

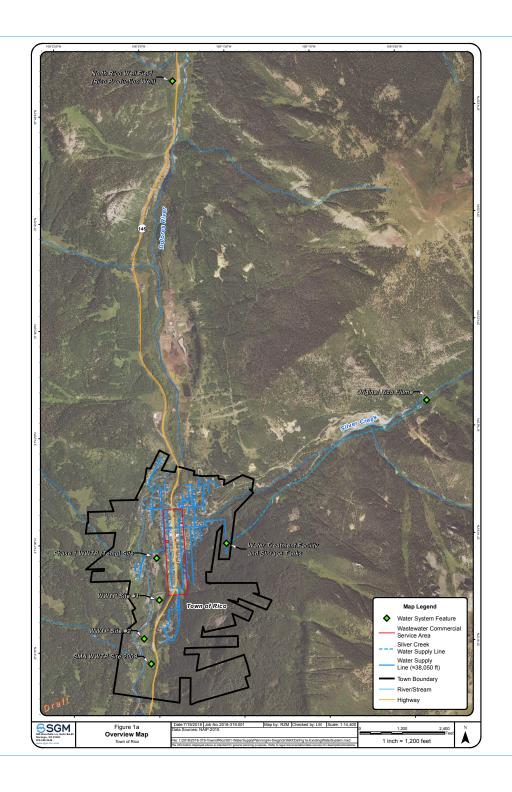
- Explore Silver Creek enhancement
- Explore economic development
- Consider bigger investments in infrastructure farther down the road

Preliminary Engineering Reports – S.G.M.

Eric L. Krch, P.E., C.F.M., M., A.S.C.E.

Louis Meyer, P.E. Principal & Founder

Overview of Rico Water System

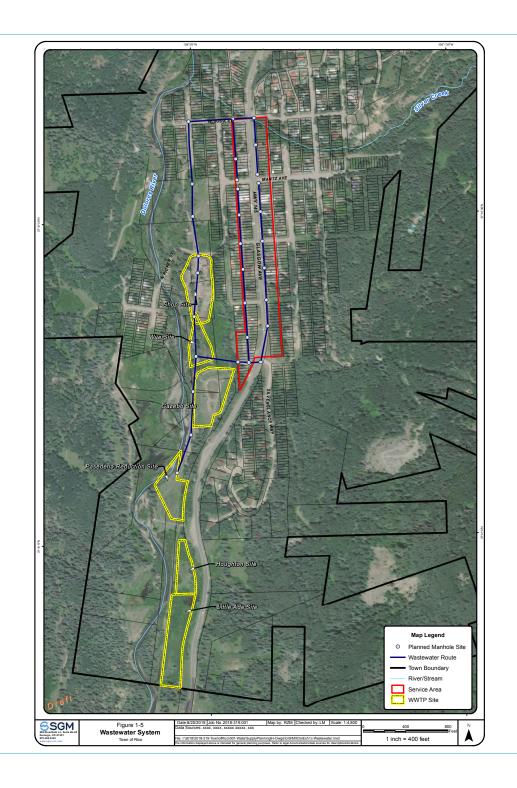


Existing Water Infiltration System

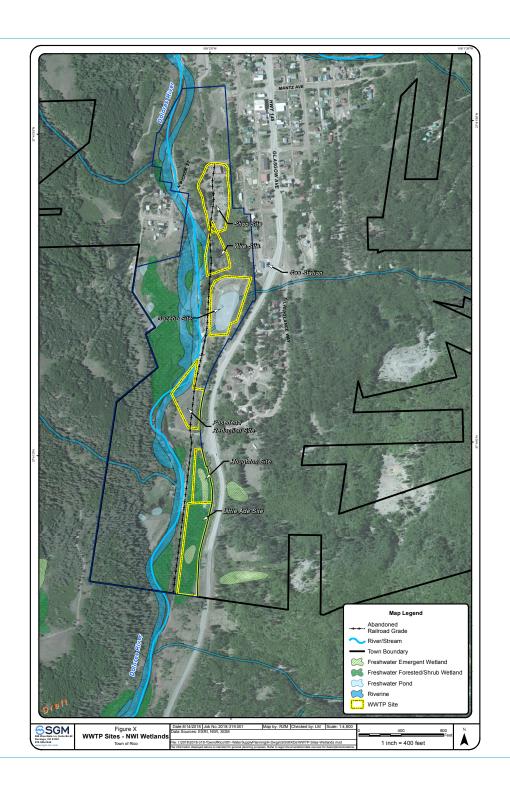
Proposed Water Infiltration System



Overview of Sewer Collection System & Potential Treatment Sites



Overview of potential sewer treatment sites showing wetlands areas



Water System Improvements

Option 1

System Improvement	Need	Engineer's Opinion of Total Project Cost
Tank Rehabilitation	Routine system maintenance	\$130,000
Supervisory Control & Data Acquisition (SCADA)	System efficiency and use tracking ability	\$60,000
Water Meter Replacement	System efficiency and water loss reduction	\$320,000
Upgraded Infiltration Gallery - Conanda	Old infiltration system is difficult to maintain and keep free of silt	\$330,000
Pipeline Debris Slope Protection	Waterline from the infiltration gallery crosses a debris slope and is at risk of breaks	\$160,000
Replace Filtration Plant	Existing filtration plant no longer meets Colorado Dept. of Health & Environment regulations	\$2,900,000
Total Estimated Cost Of Upgrade to Rico Water System		\$3,900,000

With a 500,000 grant and a 0% interest loan from the Colorado State Revolving Fund an additional 22.5 mills would support this improvement

If Your House Is Valued At	Per Year You Would Pay An Additional
\$150,000	\$243
\$200,000	\$311
\$250,000	\$405
\$300,000	\$488
\$350,000	\$569

Water System Improvements

Option 2

System Improvement	Need	Engineer's Opinion of Total Project Cost
Tank Rehabilitation	Routine system maintenance	\$130,000
Supervisory Control & Data Acquisition (SCADA)	System efficiency and use tracking ability	\$60,000
Water Meter Replacement	System efficiency and water loss reduction	\$320,000
Change water rights diversion point from Silver Creek to Rico Well	This change would require a request in water court and the assistance of a water attorney	\$50,000
Total Estimated Cost Of Upgrade to Rico Water System		\$560,000

Assuming the acquisition of a 0% interest loan from the Colorado State Revolving Fund an additional 3.5 mills would support this improvement

If Your House Is Valued At	Per Year You Would Pay An Additional
\$150,000	\$38
\$200,000	\$49
\$250,000	\$63
\$300,000	\$76
\$350,000	\$89

Pro and Cons of Water Option 1

Pro	Con
This option would help Rico assert its water rights claim on Silver Creek	This option is more expensive
The water in Silver Creek is softer – measured by the presence of CaCO3 (Calcium Carbonate)	Not much softer than the well, costly to put back on line.
This option would ensure a redundant water system	Persistent drought could impair the delivery of this source.
SCADA will improved operator control of system and increase efficiency	Will increase cost to operate system modestly.
Improved water management due to meter replacement	

Pro and Cons of Option 2

Pro	Con
This option is less expensive	Moving the diversion point from Silver Creek to the well will necessitate a review by water court. The review may draw objections from the Colorado Water Conservancy Board and other regional water rights holders.
SCADA will improved operator control of system	The water in Silver Creek is softer – measured by the presence of CaCO3 (Calcium Carbonate)
Improved water management due to meter replacement	This option offers no redundant water source

Sewer System Improvements

Option 1 – Little Ada Site

System Improvement	Need	Engineer's Opinion of Total Project Cost
Sewer Collection System	Pipe sewage to treatment center	\$3,213,015
Sewer Treatment Plant	Treat sewage	\$1,500,000
Total Estimated Cost Of Upgrade to Rico Water System		\$4,713,015

Assuming the acquisition a 0% interest loan from the Colorado State Revolving Fund and a 1 million dollar grant from DOLA additional 23 mills would support this improvement

If Your House Is Valued At	Per Year You Would Pay An Additional
\$150,000	\$249
\$200,000	\$318
\$250,000	\$415
\$300,000	\$499
\$350,000	\$582

Sewer System Improvements

Option 2 – Wye Site

System Improvement	Need	Engineer's Opinion of Total Project
		Cost
Sewer Collection System	Pipe sewage to treatment center	\$2,599,715
Sewer Treatment Plant	Treat sewage	\$1,500,000
Total Estimated Cost Of Upgrade to Rico Water System		\$4,099,715

Assuming the acquisition a 0% interest loan from the Colorado State Revolving Fund and a 1 million dollar grant from DOLA additional 19.3 mills would support this improvement.

If Your House Is Valued At	Per Year You Would Pay An Additional
\$150,000	\$209
\$200,000	\$267
\$250,000	\$348
\$300,000	\$419
\$350,000	\$488

Pro and Cons of Option 1

Pro	Con
The Little Ada site is farther from most housing in Rico	This option is more expensive.
The Little Ada site is farther south and would allow future development on parcels in the southern portion of the Town of Rico.	The Little Ada site has a lot of wetlands and would likely involve the Army Corp of Engineers and could necessitate wetlands mitigation.
Minimal odor potential to residences	The Little Ada site would not require any easement agreements with other property owners The Little Ada site can be seen from Highway

Pro and Cons of Option 2

Pro	Con
The Wye site will be less expensive.	Lots to the south of this sight would need to pump sewer to the treatment sight.
While there are wetlands on this site, there are fewer than there are on the Little Ada site and would probably draw less oversight from the Army Corp of Engineers.	This sight is closer to homes in Rico.
Site is well screened from most of Town	There may be some odors on occasion.
Lower cost to construct sewer collection system	

Improvement Options Sewer Option 1 & Water Option 1 34 mills

If Your House Is Valued At	Per Year You Would Pay An Additional
\$150,000	\$492
\$200,000	\$628
\$250,000	\$820
\$300,000	\$986
\$350,000	\$1,150

Improvement Options Sewer Option 2 & Water Option 2 15.5 mills

If Your House Is Valued At	Per Year You Would Pay An Additional
\$150,000	\$247
\$200,000	\$315
\$250,000	\$411
\$300,000	\$494
\$350,000	\$577

Discussion: Confirming Next Step

- Assess Options: What are the pros and cons of each option?
- Identify Best Option(s): What are you willing to support and not support at this point in time?
 - Water Option 1
- Water & Sewer 1 & 1
- Water Option 2
- Water & Sewer 2 & 2
- Sewer Option 1
- **Another Combination**
- Sewer Option 2

MEETING SUMMARY

Town of Rico Community Meeting

September 13, 2018
Town of Rico Courthouse

Progress Update

In November 2017 and March 2018, community meetings where hosted to discuss Rico's physical infrastructure and fiscal challenges. The community identified a vision for the future which included a stable town, healthy finances, and functional infrastructure. Yet there were many questions about what it would take financially to create community infrastructure that would support the Town without unbearable costs to residents. Kari Distefano set the context for the meeting reviewing past discussions and the process to create the engineering reports.

Engineering Consultant Findings

Eric Krsh and Louis Meyer of SGM provided a summary of the technical study that explored options for water supply and wastewater treatment.

Moving Forward: Funding A Sustainable Future

Based on the engineering report, Kari Distefano reviewed several community options and the pros and cons of each option. View the handout outlining the options in Appendix A. A copy of the presentation follows this memo. To summarize the options they were:

Discussion: Confirming a Next Step

Community members were broken into small groups discussions to discuss the options. Groups worked to arrive at a collective decision on the preferred options and why that options was selected. The question for discussion was:

- 1. What are you willing to support and not support at this point in time?
 - o Water Option 1 Water & Sewer 1 & 1
 - o Water Option 2 Water & Sewer 2 & 2
 - Sewer Option 1 Another Combination
 - o Sewer Option 2

In a plenary, breakout groups shared their ideas, concerns, suggestions, and preferences. These included:

- 1. Water Option 1 Water & Sewer 1 & 1
- 2. Water Option 2 Water & Sewer 2 & 2
 - Get it done and get it passed!
- 3. Sewer Option 1 Another Combination
 - Combine sewer option 1 with water option 2
- 4. Sewer Option 2
- 5. Sewer Option 2 & Another Combination
 - This would move sewer further from town with water option 1

Break Out Groups Summary

Water Option 1: Water 1 & Sewer 1

- · Precious resource
- Water 2 is better than 1 especially during drought. More control over quality.
- Have water and sewer options separate on the ballot
- Concern about the rapid growth and many of are not here for that.
- Water 1: smaller percentage potentially covered by grant than option 2
- Much better water quality by blending sources
- In support of property taxes v usage fees to spread the pain
- Redundancy in face of drought and possible population growth
- Use it or lose it conditional water rights are more easily maintained

Water Option 2: Water 2 & Sewer 2

- Water 2 could be stepping stone to option 1
- Well is reliable as a single source
- With sewer, much closer to town, could still fit expanded plant. Few sites would need to pump up to plant in future.
- Many lots on commercial core too small for modern septic tanks. Cannot comply with requirements, this is the only way to develop, improve, utilize those spaces.

Water Option 2: Water 2 & Sewer 1

- Climate change/big riv. infiltration if reliable
- But would go w/sewer 2 to get the job done

Sewer Option 1: Another Combination

 We would like to see an estimate economic impact study of increased business presence on Main Street with sales tax

Sewer Option 2:

 Why site is adequate. Not worth paying more to push it downstream to a more complex site with wetlands.

Discussion

- Q: What about the large landowner (Disposition Properties)? What is their investment goal? Will this simply benefit them?
 - A: The ownership of this property has changed since the proposed development was put forward. Many of the properties are mining claims or mining reclamation. No plans proposed.
- Expressed opinion that sewer system is essential to community development for Rico.
- Q: For water options 1, requires an eventual assertion of water rights on Silver Creek. What about a potential moly mine?
 - o A: The Town has the senior water rights.
- Q: How is value assessed on property?
 - A: Important to realize that when looking at the cost of a mill levy based on "assessed value", that the assessor value is lower than market rate. When determining where your potential tax liability would lay, check the value of your assessed value on the Dolores County Assessor's website.
- Q: How do other utilities pay for themselves? Why does it require going to a ballot for a tax? What do we need to do to make sure that our rate structure is sustainable?

- A: Current rates do include a fee for maintaining existing infrastructure, but not putting in new infrastructure.
- o Additionally, we only have 178 taps for water.
- We charge a service fee for new water users.

Installation fee: \$1,500

■ Tap fee: \$5,000

There could be other ways to do fee and rates.

- Q: It was mentioned that if existing commercial septic/cesspools fail, will be in noncompliance?
 A: CEDPHE permits wastewater treatment at the state level for pollution prevention. If a repair is necessary, it will need to be re-permitted by CEDPHE. In our community, these older systems cannot be re-permitted without upgrading to current standards.
- Is this worth doing? We can meet our current needs.
- Is the source for Water 2 a reliable supply? Sometimes Silver Creek is dry or really low.
- We know this is a problem. We have known this is a problem. Let's just get the job done.
- Like Silver Creek water quality better for taste and having redundancy.
- Our group did not reach a conclusion on sewer. Is there a green option?

Recommendations

- Put water and wastewater on as separate ballot measures, not as a combination.
- Conduct an economic cost benefit analysis of value of the potential sales tax from local businesses that might be able to develop in Rico with infrastructure. Is it worth it? What do we gain?
- Assess the gain we might get in value if we are able to develop as small lots on infrastructure versus larger lots on septic.

Next Steps

Kari closed the meeting suggesting that the community needs to continue to explore these options and find the solutions that best fits Rico and will ensure a sustainable future.

- 1. Kari will be submitting for grants to Dept. of Local Affairs (DOLA) to determine what financial resources are available for Rico. This information will provide a much greater certainty as to the cost for infrastructure improvements. These grants are to be submitted by April and a response will be available in the fall.
- 2. If approved for grants, another community meeting would be held to discuss tax increase/ballot measure. IF approved by the community, then move to put on ballot.
- 3. The ballot measure would be for November 2019.
- 4. If voters approve, the engineering and constructions would begin in 2020 2021.

Appendix A: Handout

Water System Option 1

System Improvement	Need	Engineer's Opinion of Total Project Cost
Tank Rehabilitation	Routine system maintenance	\$130,000
Supervisory Control & Data Acquisition (SCADA)	System efficiency and use tracking ability	\$60,000
Water Meter Replacement	System efficiency and water loss reduction	\$320,000
Upgraded Infiltration Gallery - Conanda	Old infiltration system is difficult to maintain and keep free of silt	\$330,000
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Replace Filtration Plant	Existing filtration plant no longer meets Colorado Dept. of Health & Environment regulations	\$2,900,000
Total Estimated Cost Of Upgrade to Rico Water System		\$3,900,000

	If Your House Is Valued At	Per Year You Would Pay An Additional
With a 500,000 grant and a no interest loan from the	\$150,000	\$227
Colorado State Revolving	\$200,000	\$290
Fund an additional 21 mills	\$250,000	\$379
would support this	\$300,000	\$455
improvement	\$350,000	\$531

Water System Option 2

System Improvement	Need	Engineer's Opinion of Total Project Cost
Tank Rehabilitation	Routine system maintenance	\$130,000
Supervisory Control & Data Acquisition (SCADA)	System efficiency and use tracking ability	\$60,000
Water Meter Replacement	System efficiency and water loss reduction	\$320,000
Change water rights diversion point from Silver Creek to Rico Well	This change would require a request in water court and the assistance of a water attorney	\$50,000
Total Estimated Cost Of Upgrade to Rico Water System		\$560,000

Assuming the acquisition	If Your House Is Valued At	Per Year You Would Pay An Additional
of a no interest loan from the Colorado State	\$150,000	\$38
Revolving Fund an	\$200,000	\$49
additional 3.5 mills would	\$250,000	\$63
support this improvement	\$300,000	\$76
	\$350,000	\$89

Sewer System Option 1: Little Ada Site

System Improvement	Need	Engineer's Opinion of Total Project Cost
Sewer Collection System	Pipe sewage to treatment center	\$3,213,015
Sewer Treatment Plant	Treat sewage	\$1,500,000
Total Estimated Cost Of Upgrade	\$4,713,015	

With a 500,000 grant and a no interest loan from	If Your House Is Valued At	Per Year You Would Pay An Additional
the Colorado State	\$150,000	\$238
Revolving Fund an	\$200,000	\$304
additional 21 mills would	\$250,000	\$397
support this improvement	\$300,000	\$477
improvement	\$350,000	\$556

Sewer System Option 2: Wye Site

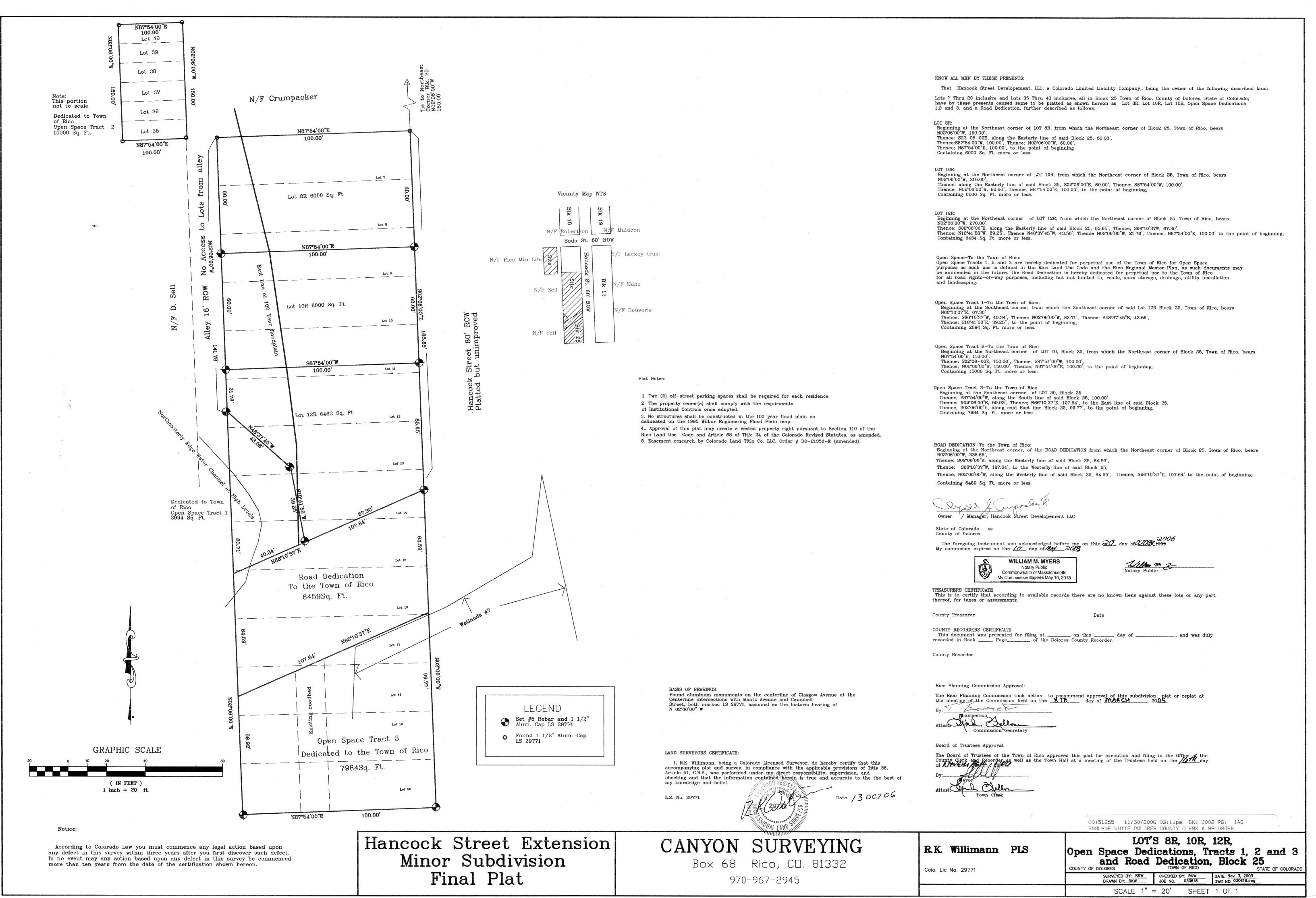
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the Colorado State	\$150,000	\$209
Revolving Fund and a 1- million-dollar grant from	\$200,000	\$267
DOLA additional 19.3	\$250,000	\$348
mills would support this	\$300,000	\$419
improvement	\$350,000	\$488

Community Options for Water & Sewer Funding Measure

If Your House Is Valued At	Sewer Option 1 & Water Option 1 at 43 mills	Sewer Option 2 & Water Option 2 at 15.5 mills
	Per Year You Would Pay An Additional	Per Year You Would Pay An Additional
\$150,000	\$465	\$168
\$200,000	\$594	\$214
\$250,000	\$775	\$280
\$300,000	\$932	\$336
\$350,000	\$1,887	\$392

OPTIONS	PROS	CONS
Water System Option 1	This option would help Rico assert its water rights claim on Silver Creek	This option is more expensive
	The water in Silver Creek is softer — measured by the presence of CaCO3 (Calcium Carbonate)	
	This option would ensure a redundant water system	
Water System Option 2	This option is less expensive	Moving the diversion point from Silver Creek to the well will necessitate a review by water court. The review may draw objections from the Colorado Water Conservancy Board and other regional water rights holders.
		The water in Silver Creek is softer – measured by the presence of CaCO3 (Calcium Carbonate)
Sewer System Option 1	The Little Ada site is farther from most housing in Rico	This option is more expensive.
	The Little Ada site is farther south and would allow future development on parcels in the southern portion of the Town of Rico.	The Little Ada site has a lot of wetlands and would likely involve the Army Corp of Engineers and could necessitate wetlands mitigation.
Sewer System Option 2	The Wye site will be less expensive.	Lots to the south of this sight would need to pump sewer to the treatment sight.
	While there are wetlands on this site, there are fewer than there are on the Little Ada site and would probably draw less oversight from the Army Corp of Engineers.	This sight is closer to homes in Town.





Aerial Photo Source: Digital Globe June 22, 2017. 50 cm resolution

> 2000

\GIS\a5\Rico\plt\Owner_Requests\ReganRequest.n

DATE: JUL 05, 2018

FOR: KJT

BY: DKG

	Parcel Information					vcu	P Program Sam	ples, Depths, and	Lead Concentr	ations
Property ID No.	VCUP Lot No.	Address	Owner Name	Parcel Type	Zoning_TownOfRico	Year Sampled	Top Depth (inches)	Bottom Depth (inches)	Lead in Soil	Units
504735103010	209	17 NORTH HANCOCK	REGAN TIMOTHY	Undeveloped Residential	RESIDENTIAL PLANNED UNIT DEVELOPMENT	2004	0	2	1640	mg/kg
504735103010	209	17 NORTH HANCOCK	REGAN TIMOTHY	Undeveloped Residential	RESIDENTIAL PLANNED UNIT DEVELOPMENT	2014	24	36	533	mg/kg
504735103010	209	17 NORTH HANCOCK	REGAN TIMOTHY	Undeveloped Residential	RESIDENTIAL PLANNED UNIT DEVELOPMENT	2014	12	24	804	mg/kg
504735103010	209	17 NORTH HANCOCK	REGAN TIMOTHY	Undeveloped Residential	RESIDENTIAL PLANNED UNIT DEVELOPMENT	2014	2	12	800	mg/kg
504735103010	209	17 NORTH HANCOCK	REGAN TIMOTHY	Undeveloped Residential	RESIDENTIAL PLANNED UNIT DEVELOPMENT	2014	0	2	863	mg/kg
504735103009	209	21 NORTH HANCOCK	REGAN TIMOTHY	Undeveloped Residential	RESIDENTIAL PLANNED UNIT DEVELOPMENT	2014	2	12	685	mg/kg
504735103009	209	21 NORTH HANCOCK	REGAN TIMOTHY	Undeveloped Residential	RESIDENTIAL PLANNED UNIT DEVELOPMENT	2014	0	2	756	mg/kg
504735103009	209	21 NORTH HANCOCK	REGAN TIMOTHY	Undeveloped Residential	RESIDENTIAL PLANNED UNIT DEVELOPMENT	2014	2	12	731	mg/kg
504735103009	209	21 NORTH HANCOCK	REGAN TIMOTHY	Undeveloped Residential	RESIDENTIAL PLANNED UNIT DEVELOPMENT	2014	0	2	697	mg/kg

MEMORANDUM

TO: Kari Distefano

FROM: Masters & Viner, P.C.

DATE: October 7, 2018

RE: Municipal Ordinance Conflict

The Town's dog regulations consist of two ordinances. (Ordinances 312 and 2002-5)

In August 2018, the Town prosecuted a dog at large ticket. The penalty section of the dog ordinance (312, Section 5) contains both a general and specific penalty provision in the same section. The Town requested a \$300.00 fine pursuant to the general penalty provision. The Court assessed the more specific penalty of \$25.00.

Any ambiguities in the ordinances should be resolved. We also recommend updating and combining the two ordinances.

ORDINANCE No. 312 Town of Rico, Colorado

AN ORDINANCE ENACTING REGULATIONS FOR THE CONTROL AND LICENSING OF DOGS IN THE TOWN OF RICO, AND IMPOSING FINES OF UP TO \$1,000.00 AND 90 DAYS IN JAIL FOR EACH VIOLATION OF THIS ORDINANCE, AND REPEALING ORDINANCE NO. 279.

WHEREAS, the Board of Trustees have received several complaints regarding nuisance dogs;

WHEREAS, the Board of Trustees of the Town of Rico, State of Colorado, has determined that vicious dogs and dogs at large are public nuisance and a threat to the safety of the Rico community and that the regulation of dogs in the Town of Rico will promote and protect the health, safety, and general welfare of the Rico community; and,

WHEREAS, the Board of Trustees held a public hearing on the 20th day of February, 1996, and the 13th day of March, 1996, and considered all public comments given at such public hearing, prior to the adoption of this Ordinance No. 312;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF RICO, STATE OF COLORADO, the following:

SECTION 1:

ORDINANCE NO. 279 REPEALED

Ordinance No. 279, "AN ORDINANCE RELATING TO DOGS, THE VACCINATION AGAINST RABIES OF THE SAME, VICIOUS DOGS, POISONING OF DOGS, AND PENALTIES FOR VIOLATION THEREOF" is hereby repealed in its entirety.

SECTION 2:

RICO DOG REGULATIONS

The regulations in this Ordinance, and in any subsequent amendments to this Ordinance, shall regulate the control and licensing of dogs within the Town of Rico and shall be referred to as the "Rico Dog Regulations." SECTION 3: DEFINITIONS

Page 1 of 6 Pages

SECTION 3: DEFINITIONS

For the purpose of the Rico Dog Regulations, the following definitions shall apply:

- A. Animal. Both domestic and wild, mammals and fowl.
- B. <u>Barking Dog.</u> An unprovoked dog that makes noises emanating from his throat thereby unreasonably disturbing persons residing anywhere in the Town of Rico.
- C. <u>Command Leash</u>. When the dog is within the sight of the owner and the dog is under the clear voice control of the owner.
- D. Dog. Any animal of the canine species, regardless of sex.
- E. <u>Enforcing Officer.</u> Person, or persons, designated by the Town of Rico as the official agent or agency responsible for enforcing these regulations.
- F. Nuisance Dog. a barking dog, stray dog, trashing dog or vicious dog.
- G. Owner. Any person or persons owning, keeping, harboring, or responsible for a dog.
- H. <u>Provoked.</u> A dog which barks at, bites or attacks a person or animal who is trespassing upon, breaking into or otherwise destroying or defacing its owner's property or who is assaulting or battering its owner.
- I. <u>Stray Dog.</u> Any dog which is reasonably determined to have no owner.
- J. <u>Trashing Dog.</u> A dog that goes upon any sidewalk, street alley, or private lands or premises without the permission of the owner of such premises or sidewalk, street, or alley and breaks, tears up, crushes or injures any lawn, flower bed, plant, shrub, tree or garden or other public or private property whatsoever, or defecates thereon.
- K. <u>Vicious Dog.</u> A dog that is not provoked and that bites, attacks or harms human beings or other animals either on private or public property or which in a vicious or terrorizing manner approaches any human being or other animal in an apparent attitude of attack while on either private or public property.

SECTION 4. VIOLATIONS

Barking dogs, stray dogs, trashing dogs, vicious dogs, and dogs not vaccinated annually against rabies by a person legally authorized to do so, are not permitted in the Town of Rico. The owner of either a barking dog, a stray dog, a trashing dog or a vicious dog shall be deemed to be in

violation of the Rico Dog Regulations.

SECTION 5. PENALTIES

- A. Penalty. Each violation of this Ordinance is punishable by a minimum fine of \$300.00 and a maximum fine of \$1,000.00 and a order of banishment in the case of vicious dogs, at the discretion of the prosecuting attorney. Any violation of the Rico Dog Regulations which involves a bodily injury to a person shall be a class 2 misdemeanor, and any violation shall be punished as provided in Section 18-1-106, C.R.S. 1973, for each separate offense.
- B. Election and Effect. Any person charged with a violation relating to dogs under this Chapter may, instead of proceeding to defend against the prosecution, elect to pay a penalty assessment according to the schedule set out in paragraph C. of this SECTION 5. The payment of the penalty assessment is complete satisfaction for the alleged violation, except violations involving injury to person or animal by a vicious dog, if it is paid, together with all pickup and impoundment fees which resulted from the alleged violation, not more than seven (7) days after service of the summons of the alleged violation. Payment shall be made to the Town Clerk who shall issue a receipt therefor. If a person elects to pay the penalty assessment, the payment constitutes acknowledgment of guilt and is a "conviction" for the purposes of SECTION 5.C.
- C. <u>Schedule of Penalty Assessments</u>. For each separate offense the penalty schedule for any person convicted of violating the Rico Dog Regulations shall be:

1.	First Conviction	\$ 25.00
2.	Second Conviction	\$ 50.00
3.	Third Conviction	\$ 75.00
4.	Fourth Conviction	\$100.00
_		

5. Fifth Conviction and each

subsequent conviction \$150.00; and/or

Imprisonment in the county jail for not more than ninety (90) days.

Under the terms of this section, a jail sentence is not mandatory. Any violation of this Ordinance which does not involve bodily injury to a human being shall be a class 2 petty offense. A monetary penalty is mandatory in all cases. Multiple offenses shall be defined as more than one offense with a 24 month period by either the same dog or the same owner.

SECTION 6. DOGS DESTROYED

Any dog at large, stray dog or vicious dog may be destroyed by the enforcing officer of the Town of Rico eight days after notification of the dog owner or completion of reasonable efforts to notify the owner, including posting a notice and description of the impounded dog at the Rico Post Office.

SECTION 7. PICKING UP OF DOGS

If the enforcing officer believes that a dog is a nuisance dog he may pick it up anywhere he finds it. If the enforcing officer believes that a dog is a vicious dog and that he cannot pick the dog up without suffering probable injury he may destroy the dog. If possible, the enforcing officer shall notify the owner that he has either picked the dog up or destroyed the dog.

SECTION 8. BANISHMENT

Upon conviction the court shall order that the owner evidence immediate ability to control the nuisance dog or require the nuisance dog to be immediately removed from the Town of Rico. Failure to comply with an order of the Court shall be a violation of the Rico Dog Regulations.

SECTION 9. NON-APPLICABILITY

The Rico Dog Regulations shall not apply to dogs while assisting law enforcement officers.

SECTION 10. DISPOSITION OF FINES AND FORFEITURES

All fines and forfeitures for violations of the Rico Dog Regulations shall be paid directly into the general fund of the Town of Rico.

SECTION 11. COLLAR AND TAG

A. Owners of dogs that are a resident or property owner in the Town of Rico shall pay the annual license fee for each dog. All dogs shall wear a tag supplied by the Town of Rico attached to a collar. Proof of annual vaccination is a condition to licensing a dog. The Town of Rico shall issue to the owner a receipt for the payment and a tag for each dog licensed.

B. The Annual Licensing Fees are as follows:

	_	Neutered	Not Neutered
1.	First Dog per residence	\$ 10.00	\$ 30.00
2.	Second Dog per residence	\$ 20.00	\$ 60.00
3.	Third and subsequent dogs		
	per residence	\$ 90.00	\$ 90.00

- C. The following dogs are exempt from the licensing fees, but must be licensed:
 - 1. Dogs used to assist law enforcement officers;
 - 2. Dogs which assist the physically handicapped; and,
 - Dogs owned by owners over 60.
- D. The owner shall supply all required information at the time of applying for a dog license.

SECTION 12. ENFORCEMENT

It is the duty of the enforcing officer to enforce the Rico Dog Regulations only when a citizen has signed a complaint against the owner of the offending dog. This section shall not be construed to prevent the enforcing officer from enforcing the Rico Dog Regulations if a citizen has not signed a complaint against the owner of the offending dog. A written complaint form shall be kept at the office of the Town Clerk. The enforcement officer shall mail all anonymous or unsigned complaints to the Owner. The enforcement officer shall keep a file of all written complaints.

No dogs will be impounded by the enforcing officer, unless a dog has bitten a human, in which case the dog may be confined at a kennel for ten (10) days and/or inspected by a veterinarian, at the expense of the owner.

SECTION 13. PROSECUTING ATTORNEY

The Rico Town Attorney or the District Attorney shall prosecute all actions required under the Rico Dog Regulations. Any person found guilty of violating the Rico Dog Regulations shall pay all costs incurred by the Town of Rico or the District Attorney in prosecuting the case and all other costs assessed by the Court.

SECTION 14. SEVERABILITY

If any provision of this ordinance or portion thereof is held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other provision which can be given effect without the invalid portion.

SECTION 15. SAFETY CLAUSE

The adoption of this ordinance is necessary for the immediate protection of the public health, peace, safety and welfare because vicious dogs, trashing dogs, and dogs at large is recognized as an existing hazard and threat to the health, safety and welfare of the Rico community.

SECTION 16. EFFECTIVE DATE

This ordinance shall be in full force and effect upon publication of notice of final adoption because the adoption of the this ordinance is necessary for the immediate preservation of the health and safety of the Rico community.

FIRST READING HEARD, APPROVED AND REFERRED TO A PUBLIC HEARING by the Board of Trustees of the Town of Rico this 10th day of January, 1996.

SECOND READING HEARD, APPROVED AND ADOPTED, by the Board of Trustees of the Town of Rico this 13th day of March, 1996.

(Town Seal)

By: Robert Small

Attest: Linda Yellowman, Town Clerk

Approved as to Form: Eric James Heil, Esq.
Town Attorney

Page 6 of 6 Pages

TOWN OF RICO, COLORADO ORDINANCE NO. 2002-5

AMENDING ORDINANCE NO. 312 CONCERNING THE REGULATION OF DOGS

WHEREAS. the Board of Trustees of the Town of Rico finds that an increasing number of dogs running loose and unattended by their owners has resulted in a threat to the public health safety and welfare of the Rico community; and.

WHEREAS. the Board of Trustees finds that amending the existing Dog Regulations to prohibit owners from loosing their dogs to run at large in the Rico area and establishing dogs at large to be a violation of the Dog Regulations will promote the health, safety and general welfare of the Rico community:

NOW THEREFORE, THE BOARD OF TRUSTEES OF THE TOWN OF RICO ORDAINS:

SECTION 1. ORDINANCE NO. 312 AMENDED

Ordinance No. 312 is hereby amended as follows:

SECTION 3: DEFINITIONS is amended to add the following definition:

- "L. <u>Dog At Large</u>. A dog that is not on the property of the Owner and is not connected to the Owner by a leash.
- M. <u>Kennel</u>. The owning, keeping, or harboring of four (4) or more dogs on any property, defined as a residential unit, a single family residential property, or a commercial premises, is deemed to be a Kennel."

SECTION 4. VIOLATIONS is amended to delete Section 4 in its entirety and re-enact Section 4 to read as follows:

"Any owner of a barking dog(s), nuisance dog(s), stray dog(s), trashing dog(s), vicious dog(s), dog(s) at large, dog(s) without current rabies vaccinations as evidenced by a state licensed veterinarian, dog(s) without a collar and current Rico dog license, or use of a property in the Town of Rico as a kennel are each deemed to be a violation of the Dog Regulations. The requirement for obtaining a license for any dog(s) and for demonstrating proof of rabies vaccination for any dog(s) shall not apply to dog(s) less than seven (7) months old."

SECTION 11.A. COLLAR AND TAG is amended to delete Section 11.A. in its entirety and reenact Section 11.A. to read as follows:

"A. Owners of dogs that are a resident or property owner in the Town of Rico shall pay the annual license fee for each dog. For the purposes of this Ordinance an owner of a dog shall be deemed to be a resident if the owner or the owner's dog(s) reside in the Town of Rico for thirty days in a calendar year. Dog(s) shall wear a tag supplied by the Town of Rico attached to a collar that is worn by such dog(s). Proof of annual vaccination is a condition to licensing a dog. The Town of Rico shall issue to the owner a receipt for the payment and a tag for each dog licensed."

SECTION 12. ENFORCEMENT is amended by amending the first sentence to read as follows without amending the remainder of Section 12.:

"It is the duty of the enforcing officer to enforce the Rico Dog Regulations when a citizen has signed a complaint against the owner of the offending dog."

SECTION 17. KENNELS is added as a new section to read as follows:

"Section 17. Kennels. Kennels are not permitted as a use by right anywhere in the Town of Rico and can only be approved through a Special Use Permit process or zoning amendment process. A kennel use of a property is recognized to have significant impacts on surrounding properties and may not be compatible with adjacent land uses anywhere within the Town of Rico as it exists as of the date of this Ordinance. Appropriate areas for Kennel uses may be annexed into the Town of Rico in the future. Dog owners or properties that meet the definition of kennel as of the date of this Ordinance are deemed to be grandfathered and shall be permitted to continue to keep such individual dogs that exist as of the date of this Ordinance provided that no new or additional dogs are kept. harbored or owned on such property without complying with this Ordinance: and further provided that in the event such grandfathered kennel owners or properties keep, harbor or own a new or additional dog without coming into compliance with the Dog Regulations than such grandfathered status shall be immediately revoked."

SECTION 2. EFFECTIVE DATE. This Ordinance shall be effective immediately upon final adoption.

SECTION 3. POSTING AND PUBLISHING. This Ordinance shall be posted at the Rico Post Office and Rico Town Hall and published in the Rico Sun-Times.

READ, MOVED AND APPROVED ON FIRST READING ON THE 20th DAY OF NOVEMBER, 2002. READ AND FINALLY ADOPTED AFTER CONDUCTING A PUBLIC HEARING ON THE 24th DAY OF FEBRUARY, 2002.

TOWN OF RICO, COLORADO

BY:

Tom Clark, Mayor

ATTEST:

Linda Yellowman, Town Clerk

APPROVED AS TO FORM:

Eric James Heil, Town Attorney

TOWN OF RICO

ORDINANCE 2018-08

AN ORDINANCE ENACTING REGULATIONS FOR THE CONTROL AND LICENSING OF DOGS IN THE TOWN OF RICO, AND IMPOSING FINES OF UP \$1,000 AND 90 DAYS IN JAIL FOR EACH VIOLATION OF THIS ORDINANCE AND REPEALING ORDINANCES 312 AND 2002-5

WHEREAS, the Board of Trustees have received complaints regarding nuisance dogs;

WHEREAS, the Board of Trustees of the Town of Rico, State of Colorado, has determined that vicious dogs and dogs at large are public nuisance and a threat to the safety of the Rico community and that the regulation of dogs in the Town of Rico will promote and protect the health, safety, and general welfare of the Rico community; and,

WHEREAS, the Board of Trustees held a public hearing on the 20th day of February, 1996, and the 13th day of March, 1996, and considered all public comments given at such public hearing, prior to the adoption of this Ordinance No. 312;

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF RICO, STATE OF COLORADO, the following:

SECTION 1. ORDINANCES REPEALED Ordinance No. 312 repealed

Ordinance No. 312 "AN ORDINANCE ENACTING REGULATIONS FOR THE CONTROL AND LICENSING OF DOGS IN THE TOWN OF RICO, AND IMPOSING FINES OF UP \$1,000 AND 90 DAYS IN JAIL FOR EACH VIOLATION OF THIS ORDINANCE AND REPEALING ORDINANCE NO. 279

Ordinance No. 2002-5 repealed

Ordinance No. 2002-5 "AMENDING ORDINANCE NO. 312 CONCERNING THE REGULATION OF DOGS

SECTION 2. RICO DOG REGULATIONS

The regulations in this Ordinance, and in any subsequent amendments to this Ordinance, shall regulate the control and licensing of dogs within the Town of Rico and shall be referred to as the "Rico Dog Regulations".

SECTION 3. DEFINITIONS

Animal. Both domestic and wild, mammals and fowl.

<u>Barking Dog.</u> An unprovoked dog that makes noises emanating from his throat thereby unreasonably disturbing persons residing anywhere in the Town of Rico.

<u>Command Leash.</u> A dog that is within the sight of the owner and the dog is under the dear voice control of the owner.

<u>Dog.</u> Any animal of the canine species regardless of sex.

<u>Dog at Large.</u> A dog that is not on the property of the Owner and is not connected to the Owner by leash or voice command.

<u>Enforcing Officer.</u> Person, or persons, designated by the Town of Rico as the official agent or agency responsible for enforcing these regulations.

<u>Kennel.</u> The owning, keeping, or harboring of four (4) or more dogs on any property, defined as a residential unit, a single family residential property, or a commercial premises is deemed to be a Kennel.

Nuisance Dog. A barking dog, stray dog, trashing dog or vicious dog.

Owner. Any person or persons owning, keeping, harboring or responsible for a dog.

<u>Provoked.</u> A dog which barks at, bites or attacks a person or animal who is trespassing upon, breaking into or otherwise destroying or defacing its owner's property or who is assaulting or battery its owner.

Stray Dog. Any dog which is reasonably determined to have no owner.

<u>Trashing Dog.</u> A dog that goes upon any sidewalk, street, alley or private lands or premises without the permission of the owner of such premises or sidewalk, street or alley and breaks, tears up, crushes or injures any lawn, flower bed, plant, tree or garden or other public or private whatsoever, or defecates thereon.

<u>Vicious Dog.</u> A dog that is not provoked and that bites, attacks or harms human beings or other animals either on private or public property or which in a vicious or terrorizing manner approaches any human being or animal in an apparent attitude of attack while on either private or public property.

SECTION 4. VIOLATIONS

Any owner of a dog(s), nuisance dog(s), stray dog(s), trashing dog(s), vicious dog(s), dog(s) at large, dog(s) without currents rabies vaccinations as evidenced by a state licensed veterinarian, dog(s) without a collar and current Rico dog license or use of a property in the Town of Rico as a kennel are each deemed to be a violation of the Dog Regulations. The requirement for obtaining a license for any dog(s) and for demonstrating proof of rabies vaccination for any dog(s) shall not apply to dog(s) less than seven (7) months old.

SECTION 5. PENALTIES

A. Penalty. Each violation of this Ordinance is punishable by a minimum fine of \$100.00 and a maximum fine of \$1,000.00 and an order of banishment in the case of vicious dogs, at the discretion of the prosecuting attorney. Any violation of the Rico Dog Regulations, which involves a bodily injury to a person shall be a class 2 misdemeanor, and any violation shall be punished as provided in Section 18-1-106, C.R.S. 1973, for each separate offence.

- B. Election and Effect. Any person charged with violation relating to dogs under this Chapter may, instead of proceeding to defend against the prosecution, elect to pay a penalty assessment according to the schedule set out in paragraph C. of this SECTION 5. The payment of the penalty assessment is complete satisfaction for the alleged violation, except violations involving injury to person or animals by a vicious dog, if it is paid together with all pickup and impoundment fees, which resulted from the alleged violation, not more than seven (7) days after service of the summons of the alleged violation. Payment shall be made to the Town Clerk who shall issue a receipt therefor. If a person elects to pay the penalty assessment, the payment constitutes acknowledgment of guilt and is a "conviction" for the purposes of SECTION 5.C.
- C. <u>Schedule of Penalty Assessments.</u> For each separate offence the penalty for any person convicted of violating the Rico Dog Regulations shall be:

1.	First Conviction	\$100.00
2.	Second Conviction	\$200.00
3.	Third Conviction	\$350.00
4.	Fourth Conviction	\$500.00
5.	Fifth Conviction	\$1000.00 and or/imprisonment for not more than

Under the terms of this section, a jail sentence is not mandatory. Any violation of this Ordinance, which does not involve bodily injury to a human being, be a class 2 petty offense. A monetary penalty is mandatory in all cases. Multiple offences shall be defined as more than one offense with a 24-month period by either the same dog or the same owner.

SECTION 6. DOGS DESTROYED

ninety days (90) days.

Any dog at large, stray dog or vicious dog may be destroyed by the enforcing officer of the Town of Rico eight days after notification of the dog owner or the completion of reasonable efforts to notify the owner, including posting a notice and a description of the impounded dog at the Rico Post Office.

SECTION 7. PICKING UP OF DOGS

If the enforcing officer believes that a dog is a nuisance dog he or she may pick it up anywhere he finds it. If the enforcing officer believes that a dog is a vicious dog and that he cannot pick the dog up without suffering probable injury he or she may destroy the dog. If possible, the enforcing officer shall notify the owner that he or she has either picked up the dog or destroyed the dog.

SECTION 8. BANISHMENT

Upon conviction the court shall order that the owner evidence immediate ability to control the nuisance dog or require the nuisance dog to be immediately removed from the Town of

Rico. Failure to comply with an order of the Court shall be a violation of the Rico Dog Regulations.

SECTION 9. NON-APPLICABILITY

The Rico Dog Regulations shall not apply to dogs if the dog is assisting law enforcement officers

SECTION 10 DISPOSITION OF FINES AND FORFETURES

All fines and forfeitures for violations of the Rico Dog Regulations shall be paid directly into the general fund of the Town of Rico.

SECTION 11. COLLAR AND TAG

- A. Owners of dogs that are a resident or property owner in the Town of Rico shall pay the annual license fee for each dog. For the purposes of this Ordinance an owner of a dog shall be deemed to be a resident if the owner or owner's dog(s) reside in the Town of Rico for thirty days in a calendar year. Dog(s) shall wear a tag supplied by the Town of Rico attached to a collar that is worn by such dog(s). Proof of annual vaccination is a condition of licensing a dog. The Town of Rico shall issue to the owner a receipt for the payment and a tag for each dog licensed.
- B. The Annual Licensing Fees are as follows:

	Neutered	Not Neutered
First dog per residence	\$10.00	\$30.00
Second dog per residence	\$20.00	\$60.00
Third dog and subsequent	\$90.00	\$90.00
dogs per residence		

- C. The following dogs are exempt from the licensing fees, but must be licensed:
 - 1. Dogs used to assist law enforcement officers;
 - 2. Dogs used to assist the physically handicapped and;
 - 3. Dogs owned by people over 60
- D. The owner shall supply all required information at the time of applying for a dog license.

SECTION 12. ENFORCEMENT

It is the duty of the enforcing officer to enforce the Rico Dog Regulations when a citizen has signed a complaint against the owner of the offending dog. This section shall not be construed to prevent the enforcing officer from enforcing the Rico Dog Regulations if a citizen has not signed a complaint against the owner of the offending dog. A written complaint shall be kept at the office o the Town Clerk. The enforcement officer shall mail all anonymous or unsigned complaints to the Owner. The enforcement officer shall keep a file of all written complaints.

No dog will be impounded by the enforcing officer unless a dog has bitten a human, in which case the dog may be confined at a kennel for ten (10) days and/or inspected by a veterinarian, at the expense of the owner.

SECTION 13. PROSECUTING ATTORNEY

The Rico Town Attorney or the District Attorney shall prosecute all actions required under the Rico Dog Regulations. Any person found guilty of violating the Rico Dog Regulations shall pay all costs incurred by the Town of Rico or the District Attorney in prosecuting the case and all other costs assessed by the Court.

SECTION 14. SEVERABILITY

If any provision of this Ordinance or portion thereof is held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other provision, which can be given effect without the invalid portion.

SECTION 15. SAFETY CLAUSE

The adoption of this ordinance is necessary for the immediate protection of the public health, peace safety and welfare because vicious dogs, trashing dogs, and dogs at large is recognized as an existing hazard and threat to the health, safety and welfare of the Rico community.

SECTION 16. KENNELS

Kennels are not permitted as a use by right anywhere in the Town of Rico and can only be approved through a Special Use Permit process or zoning amendment process. A kennel use of a property is recognized to have significant impacts on surrounding properties and may not be compatible with adjacent land uses anywhere within the Town of Rico, as it exists as of the date of this Ordinance. Appropriate areas for Kennel uses may be annexed into the Town of Rico in the future. Dog owners or properties that meet the definition of kennel as of the date of this Ordinance are deemed to be grandfathered and shall be permitted to continue to keep such individual dogs that exist as of the date of this Ordinance provided that no new or additional dogs are kept, harbored or owned on such property without complying with this Ordinance: and further provided that in the event such grandfathered kennel owners or properties keep, harbor or own a new or additional dog without coming into compliance with the Dog Regulations than such grandfathered status shall be immediately revoked.

SECTION 17. EFFECTIVE DATE

This Ordinance shall be effective immediately upon final adoption.

INTRODUCED, READ, APPROVED AS INTRODUCED, AND ORDERED PUBLISHED on first reading by Town of Rico Board of Trustees this 15th day of October, 2018.

READ, APPROVED AND ADOPTED BY FINAL READING by Town of Rico Board of Trustees this 21st day of November, 2018

	Zachary McManus, Mayor
Attest:	
Linda Yellowman, Town Clerk	

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No:	

TRAILS PRESERVATION ALLIANCE, SAN JUAN TRAIL RIDERS, PUBLIC ACCESS PRESERVATION ASSOCIATION,

Plaintiffs,

v.

U.S. FOREST SERVICE; SAN JUAN NATIONAL FOREST; KARA CHADWICK, Forest Supervisor; DEREK PADILLA, Dolores District Ranger,

Defendants.

PETITION FOR REVIEW OF AGENCY ACTION AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

- 1. This action seeks declaratory and injunctive relief addressing the Rico West Dolores Roads and Trails (Travel Management) Project Final Record of Decision, Environmental Impact Statement and associated actions (the "Decision") issued by the Dolores Ranger District, San Juan National Forest (the "Forest Service"). The Decision was issued on July 30, 2018.
- 2. The Decision reduces trails designated for single track motorized travel by roughly 30 percent. These reductions, unsupported by logic and contrary to law, will create substantial adverse impacts to the human environment and to Plaintiffs, their members, and other recreationists. These impacts include concentration of motorized travel on remaining routes, disruption of connectivity within the trail network, impacts to recreational and aesthetic interests,

increased risk to public safety, socioeconomic impacts and disruption of access, including to the town of Rico.

- 3. The trails closed by the Decision have received environmentally conscious and sustainable motorcycle travel for over 40 years. As part of the evolving and increasing scrutiny of recreation on Forest Service lands, the agency in 2009 entered an order that eliminated cross-country motorized vehicle travel in the Rico West Dolores area. Not satisfied with that development, Backcountry Hunters and Anglers, Colorado Chapter, represented by the University of Colorado Law School Clinic, filed a lawsuit, seeking to close the long-traveled trails in the Rico West Dolores area to motorcycle use. They moved for a preliminary injunction, which was denied, and wound the case through the Tenth Circuit of Appeals, which ruled, in a decision by then Judge Gorsuch, that Backcountry "may be a victim of its own success" and that the case be dismissed on jurisdictional grounds. *Backcountry Hunters and Anglers, Colorado Chapter v. U.S. Forest Service*, Case Nos. 13-1216 & 14-1137 (10th Cir.), Order and Judgment date May 27, 2015. Part of the basis for that ruling was that the Forest Service was working toward "a more permanent replacement policy" for the Rico West Dolores area. *Id.*
- 4. The Forest Service did undertake a process to institute this "more permanent" policy. This process culminated in the Decision. While the Forest Service was successful in defending the existing management scheme in the above-described litigation, it nevertheless determined in the "replacement policy" process to make significant changes. These changes coincided with many items on the "wish lists" of Backcountry and other interested parties such as special use permittees, seasonal "residents" and the world renown Dunton Hot Springs ecotourism resort, including closures near the Resort, in Bear Creek, around the town of Rico, and along Ryman Creek which provides an important connection to riders in the Telluride area.

- 5. Plaintiffs, and others, objected to the Draft Record of Decision in accordance with applicable regulations. The objectors and the Forest Service explored alternative scenarios, but in the end these discussions did not produce a resolution, and the Forest Service formalized the closures through the Decision.
- 6. Plaintiffs have little recourse but to seek judicial action to set aside and declare unlawful at least certain aspects of the Decision, and to determine the appropriate remedy, guidance and/or interim management direction for the Forest Service on remand.
- 7. This action arises under the National Environmental Policy Act, 42 U.S.C. § 4331, et seq. ("NEPA"); the National Forest Management Act, 16 U.S.C. § 1600 et seq. ("NFMA"); the Forest Service Travel Management Rule, 36 C.F.R. part 212; the Administrative Procedure Act, 5 U.S.C. § 551, et seq. (the "APA"), and any implementing regulations for these statutes.

JURISDICTION AND VENUE

- 8. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States. The conduct complained of creates an actual, justiciable controversy and is made reviewable under the APA.
- 9. Venue is proper in this Court under 28 U.S.C. § 1391(e) because a substantial number of the events or omissions giving rise to these claims occurred, or, a substantial part of the property that is the subject of these claims is situated, within the District of Colorado. The Dolores District is comprised of lands within Dolores and Montezuma Counties in Colorado.

PARTIES

10. Plaintiff Trails Preservation Alliance ("TPA") is a Colorado nonprofit corporation. TPA is a volunteer organization created to be a viable partner to public land

managers, working with land management agencies such as the Forest Service and Bureau of Land Management to preserve the sport of trail riding and multi-use recreation. TPA acts as an advocate for the sport and takes the necessary action to ensure that land managers allocate access to a fair and equitable percentage of public lands for diverse multi-use recreational opportunities. TPA members have used, and hope in the future to use, motorized and nonmotorized means, including off-highway vehicles, horses, mountain bikes, and hiking, to access federal lands throughout the United States, including in the Rico West Dolores area of the San Juan National Forest.

- 11. Plaintiff San Juan Trail Riders ("SJTR") is a Colorado nonprofit corporation with approximately 400 members. SJTR is based in Durango and its members are primarily from Colorado. SJTR's goals and purposes include to provide an organized network for trail enthusiasts, to promote active participation in off-highway vehicle management, to maintain a focused dialogue with the San Juan National Forest, to educate land managers about "Tread Lightly" and other trail conservation practices, and to encourage cooperation and coordination between user groups and engaged interests. SJTR members have used and have concrete plans in the future to use motorized and non-motorized means, including off-highway vehicles, horses, mountain bikes, and hiking, to access federal lands throughout the United States, including Forest Service-managed lands in the Rico West Dolores area of the San Juan National Forest.
- 12. Plaintiff Public Access Preservation Association ("PAPA") is a Colorado nonprofit corporation with approximately 300 participants. PAPA is based in Telluride and its members are primarily from Colorado. PAPA protects and promotes public land access, primarily through advocacy and on-the-ground support such as volunteering for trail projects, event support or similar activities as authorized by the Forest Service and other partners. PAPA

members regularly use Forest Service lands throughout the United States, including the Rico West Dolores area, for recreational and aesthetic purposes including off-highway vehicle, motorcycle, mountain bike, equestrian, or hiking travel on trails or primitive roads.

- 13. Defendant United States Forest Service is a federal agency within the United States Department of Agriculture. The Forest Service is charged with administering and overseeing United States National Forest System lands in accordance with applicable law.
- 14. Defendant San Juan National Forest is a subunit of the United States Forest Service within the agency's Rocky Mountain Region covering approximately 1.8 million acres of land in the southwest corner of Colorado. The Forest's main office is located in Durango.
- 15. Defendant Kara Chadwick is the Forest Supervisor for the San Juan National Forest. She is the supervisor for the Forest and is the ultimate authority for the procedures, actions and decisions of the Forest and is ultimately charged with ensuring the Forest complies with applicable law. She is sued solely in her official capacity.
- 16. Defendant Derek Padilla is the District Ranger for the Dolores Ranger District, which is a subunit of the San Juan National Forest and contains the entire Rico West Dolores Area. Mr. Padilla signed the Final Record of Decision and is responsible for interpreting and implementing the Decision's prescriptions on the Rico West Dolores area. He is sued solely in his official capacity.

LEGAL FRAMEWORK

17. The APA addresses and regulates the function of executive branch administrative agencies within our system of open government. Among such functions, the APA represents a waiver of sovereign immunity by the United States and outlines the circumstances in which "final agency action" may be subject to judicial review, as well as the standards of review to be

applied in such challenges. Since many statutes and regulations do not provide for a private right of action, the APA provides the jurisdictional basis for judicial review of administrative decisions by federal land management agencies applying statutes like NEPA and NFMA and regulations with force and effect of law to public lands in places like the Forest.

- System. In NFMA and other statutes, "Congress has consistently acknowledged that the Forest Service must balance competing demands in managing National Forest System lands. Indeed, since Congress' early regulation of the national forests, it has never been the case that "the national forests were...to be 'set aside for non-use." *The Lands Council v. McNair*, 537 F.3d 981, 989 (9th Cir. 2008) (en banc) (citations omitted). Additional guidance, incorporated expressly within NFMA, is found in the Multiple-Use Sustained Yield Act ("MUSYA"), which provides that the various surface resources be managed "so that they are utilized in the combination that will best meet the needs of the American people" and to "achieve[] and maintain[] in perpetuity [] a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land." 16 U.S.C. § 531(a) (definition of "multiple use") and (b) (definition of "sustained yield"); 16 U.S.C. § 1604(g) (incorporating MUSYA provisions in NFMA).
- 19. MUSYA further directs "that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes." 16 U.S.C. § 528.
- 20. NFMA requires each Forest to prepare and revise a Land and Resource Management Plan ("Forest Plan"). 16 U.S.C. § 1604. A Forest Plan lays out broad guidelines to advance numerous goals and objectives, including to "insure consideration of the economic and

environmental aspects of various systems of renewable resource management, including the related systems of silviculture and protection of forest resource, to provide for outdoor recreation (including wilderness), range, timber, watershed, wildlife, and fish...." *Id.* at (g)(3)(A). These plans contain desired conditions, objectives and guidance for project and activity decision making, but do not approve or execute projects and activities. The guidance in the Forest Plan is subject to change through plan amendment in site-specific or project-level planning, or through revision of the Forest Plan itself.

- 21. A Forest Plan is the governing land use plan for an individual National Forest. A Forest Plan is strategic in nature, and does not make commitments to selection or specifications of any particular project or daily activities. The Forest Plan also identifies standards and guidelines to govern specific activities subject to more detailed project-level or site-specific planning.
- 22. Project level planning occurs for a broad spectrum of projects and activities within the Forest Service system, including vegetation management and timber projects, mining plans of operation, ski area development and operations, special use management such as guiding and outfitting, and travel management. This more detailed site-specific planning includes analysis of on-the-ground management options and associated effects to the human environment for each specified option.
- 23. An example of project-level planning affecting Plaintiffs occurs in "travel planning" when the Forest implements the agency's Travel Management Rule. See, "Travel Management; Designated Routes and Areas for Motor Vehicle Use." 70 Fed.Reg. 68264-68291 (Nov. 9, 2005). The Travel Management Rule generally "requires designation of those roads, trails and areas that are open to motor vehicle use...and will prohibit the use of motor vehicles

off the designated system, as well as use of motor vehicles on routes and in areas that is not consistent with the designations." *Id.* at 68264. The Decision reflects this type of project-level planning for the Rico West Dolores area.

24. NEPA represents "our basic national charter for protection of the environment." 40 C.F.R. § 1500.1. NEPA does not impose substantive requirements, but creates a series of "look before leaping" procedures which are designed to disclose and analyze potential effects of Central among these is the requirement to prepare a written proposed federal actions. environmental assessment or environmental impact statement ("EIS") for public review and comment. The agency "shall ensure the professional integrity, including scientific integrity, of the discussions and analyses" in an EIS. 40 C.F.R. § 1502.24. NEPA's protections of the "environment" refer to the "human environment" which "shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment." 40 C.F.R. § 1508.14. Thus, the agency's duty to analyze impacts does not end with impacts to the physical environment, because "[w]hen an [EIS] is prepared and economic or social and natural or physical environmental effects are interrelated, then the [EIS] will discuss all of these effects on the human environment." Id. Among its numerous purposes, NEPA procedures are designed to foster informed agency decision making based upon meaningful public participation.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

- A. The Project Area and Background.
- 25. The San Juan Forest includes about 1.8 million acres located in southwestern Colorado. The Rico West Dolores analysis area is located with the Forest's Dolores Ranger District, and contains approximately 244,554 acres of National Forest system lands and 11,702

non-Forest Service lands (the "Area").

- 26. The Area includes mesas, aspen stands, steep slopes of dense conifers, and snow-covered peaks. The area is bisected by Highway 145, which follows the Dolores River. The west side of the Area is bordered by private land and the Boggy-Glade travel management area, the north side includes a portion of the Lizard Head Wilderness, and the east side of the Area is the spine of the La Plata Mountains, and the Colorado Trail (a statewide non-motorized trail). Communities within and nearby the Area include Cortez, Dolores, Dove Creek, the Town of Rico, and Telluride.
- 27. The roads and trails in the Area developed along historic pathways originally created largely for mining or domestic livestock grazing. This network was expanded to include roads constructed to access timber sales in spruce, fir and aspen forest types.
- 28. Modern use of the Area has focused continuation of mining, livestock grazing, and timber, as well as in diverse forms of recreation. Like nearly all of western Colorado, the area includes popular big game hunting areas, with an assortment of seasons for different species and weapon types. Virtually all hunters rely on some form of motorized conveyance to gain access to their chosen hunting/camping area(s), if not as an aid to their hunting activity.
- 29. Motor vehicle travel on the National Forest System was long conducted on an "open unless designated closed" policy, which allowed for at least the legal possibility of cross-country travel. Despite this possibility, topography, vegetation and other factors caused vehicle riders to travel along the network of established roads and trails in the Area. These routes are depicted on various maps going back to the origins of the Forest.
- 30. More recently management of the San Juan National Forest was governed by the 1983 Forest Plan. Following that Plan, the Forest instituted various actions affecting travel

management, specifically including adoption of a 1994 Travel Management Map, and issuance of a 1999 Closure Order that restricted on-trail travel to those motorized uses permitted on the 1994 Map. These actions tended to formalize the historical use patterns and motorcycle travel limited to existing trails in the Area.

- 31. While travel occurred along routes in much of the Area, a trend toward more intensive travel management solidified with adoption of the agency-wide Forest Service Travel Management Rule on November 9, 2005. The Rule signified a shift to designation of roads, trails and areas for motorized vehicle travel. Outside the prescribed travel on these roads, trails, and area, motor vehicle travel would be prohibited.
- 32. Following adoption of the Travel Management Rule, the Forest undertook efforts to implement the Rule and adopt new travel management decisions. The Dolores Ranger District decided to complete three separate decisions to address each of it's identified "travel management landscapes," of which one was the Rico West Dolores Area.
- 33. A planning process occurred for the Area which included circulation of an Environmental Assessment under NEPA and issuance of a 2009 Decision Notice, which would have prohibited cross-country motorized travel and designated specific routes for motorized and non-motorized travel. Various parties appealed this Decision, and the reviewing officer recommended reversal, including on the grounds that a more rigorous Environmental Impact Statement should have been prepared. The Forest Supervisor in 2010 followed this recommendation, reversed the Decision and vacated the new trail designations, while issuing an interim order closing the Area to cross-country motorized travel.
- 34. One of the successful appellants to the aforementioned Decision, Backcountry Hunters and Anglers, Colorado Chapter, filed a lawsuit in 2011 asking the Court to declare the

2010 "decision" unlawful and/or issue an injunction prohibiting motorized use of 14 trails in the Rico West Dolores Area. See, Case No. 11-cv-3139-MSK-KLM (D. Colo.). An order on the merits was issued in that case on March 21, 2013, denying Petitioner's claims and directing that judgment be entered in favor of the Forest Service. Backcountry Hunters and Anglers appealed their adverse judgment to the Tenth Circuit.

- 35. Following withdrawal of the 2009 Decision and during the pendency of the above-described lawsuit, the Forest decided to complete the long-pending revision of the San Juan Forest Plan. A Record of Decision for the Revised Forest Plan was published on September 13, 2013.
- 36. The Tenth Circuit ruled on the Backcountry appeal in an Order and Judgment signed by Judge Gorsuch on May 27, 2015, holding that Backcountry lacked standing, and remanding the matter to the district court with instructions to vacate the earlier judgment and dismiss the case for lack of jurisdiction. This Order acknowledged the effect of the 2010 "temporary" order and Forest Service intention to devise "a more permanent replacement policy" to govern motorized vehicle travel in the Area.

B. Chronology of the Travel Management Project.

- 37. The Rico West Dolores Travel Management Project represents the "more permanent replacement policy" to designate roads, trails and areas for motorized use in the Area. The Project was formally initiated in December 2014 with publication of a proposed action, which was subject to public comment until January 30, 2015. Plaintiffs submitted comments on the proposed action.
- 38. A Draft Environmental Impact Statement ("DEIS") was released for public comment on May 6, 2016.

- 39. While evaluating comment on the DEIS, the Forest Service apparently determined that it would be helpful to clarify whether or how the agency would identify the "minimum road system" under 36 C.F.R. part 212, subpart A, for the Area. A Supplemental Draft Environmental Impact Statement ("SDEIS") was published on July 7, 2017.
- 40. The DEIS and SDEIS outlined five (5) alternatives to be considered in detail. In general terms, Alternative A was the legally-required "no action" alternative intended to outline the pre-decisional existing condition. Alternative B was the "proposed action" which was described as the December 2014 proposed action "with refinements." Alternative C would "reestablish motorcycle use on some, but not all, of the trails that would be closed to motorcycle use under Alternative B." Alternative D would provide a motorcycle trail system similar to Alternative C but would reduce motorcycle riding and focus on a "semiprimitive nonmotorized recreation setting" in the Bear Creek drainage. Alternative E would be similar to Alternative D, but extend the "semiprimitive nonmotorized recreation setting" to North Calico Trail and connecting trails.
- 41. In terms of trail mileage for motorcycle use, the DEIS/SDEIS alternatives covered the following range:

Alternative	A	В	С	D	E
Miles Designated					
Open to Motorcycles	114	86	100	88	65

42. Another important component of the alternatives was seasonal timing restrictions, defining times during which trails would be open/closed to motorcycle travel. Under the "no action" Alternative A, there would be no timing restrictions. Under Alternative B, trails would be open for motorcycle travel from July 1 to September 8, and closed from September 9 to June 30. Under Alternatives C, D and E trails would be open for motorcycle travel from June 1 to

October 30, and closed from November 1 to May 30.

- 43. Approximately 1,100 letters, emails or phone logs were received in response to the DEIS and SDEIS. Plaintiffs submitted written comments.
- 44. A Draft Record of Decision ("Draft ROD") and initial Final Environmental Impact Statement ("Initial FEIS") were issued on November 14, 2017. The Draft ROD proposed adoption of Alternative B Modified. In broad terms, the Draft ROD proposed to identify a minimum road system, to create a new designation on 19 miles of trails in the Black Mesa area for motorized vehicles up to 62 inches in width, to designate 83 miles of trail for motorcycle use, and to impose seasonal restrictions whereby motorcycles would be allowed on designated trails from June 1 to October 30 and prohibited from November 1 to May 31.
- 45. Under applicable regulations, the Draft ROD was subject to a "predecisional administrative review" which allows specified forms of "objection" within 45 days.
- 46. Twenty (20) objections letters from 14 unique objectors were presented to the Draft ROD. These objections were considered by an Objection Reviewing Officer within the Forest Service Rocky Mountain Region office.
- 47. Extensive efforts were made in accordance with regulations allowing the Reviewing Officer to explore "resolution" of the objections, which included telephonic meetings on February 22, March 7 and March 16 of 2018, as well as the exchange of written proposals between some of the objectors and the Forest Service. A resolution was not reached.
- 48. Upon determining that a resolution to the objections would not be reached, the Reviewing Officer issued a formal written response to the objections dated April 4, 2018 ("Objection Response").
 - 49. The Objection Response constitutes the final administrative determination of the

Department of Agriculture. No further administrative review of the Decision from any other Forest Service or Department of Agriculture official is available.

50. Following the aforementioned Objection Response, the Dolores Ranger District issued a Final Record of Decision dated July 30, 2018 ("Final ROD"). The Final ROD tracked the Draft ROD, with two additional modifications. First, motorcycle use was prohibited on the entire East Fall Creek Trail, extending this closure to include a one-half mile section that had been proposed for continuing motorcycle use in the Draft ROD. Additionally, a dual designation for Forest Service Road 692A was added to allow for motorcycle use, contingent upon approval in a separate analysis of a new motorcycle trail named Spring Creek Extension that would connect to the end of Road 692A.

C. General Overview of Travel Plan Restrictions.

- 51. From Plaintiffs' perspective, the Final ROD imposes a series of significant restrictions on motorcycle travel:
- (a) motorcycle travel was prohibited on Winter, West Fall and East Fall Creek Trails, in the vicinity of the private Dunton Hot Springs Resort, which perhaps not coincidentally facilitates a non-motorized loop trail experience directly from the Resort property, in addition to the abundance of similar opportunity accessible by a short drive (or hike) to the Lizard Head Wilderness;
- (b) Motorcycle travel was reduced by roughly 85 percent in the Bear Creek drainage as requested by special use interests and a few seasonal residents, leaving only a "pass through" connection between Grindstone and Gold Run Trails and along 1.72 miles near the middle of the Bear Creek Trail;
 - (c) Motorcycle trail connection to the Town of Rico was eliminated, through closure

of the Burnett Creek and Horse Creek Trails;

- (d) Motorcycle travel was prohibited on Ryman Creek Trail, which was a desirable 5 mile trail segment providing important connectivity for riders in the Telluride area and to adjacent trail systems in the Hermosa area;
- (e) Motorcycle travel was eliminated from the last remaining sections of the Spring Creek and Wildcat Trails;
- (f) Motorcycle travel on designated trails can only occur from June 1 to October 30, and is prohibited from November 1 to May 31.
- 52. In broad terms, the Final ROD designates a total of 84 miles of trail for motorcycle use, down from 114 miles authorized for travel prior to the Decision. Aside from the arithmetic reduction of mileage, the changes greatly impact the connectivity, ability to ride loops, aesthetic experience, and safety for motorcycle riders in the Area.

COUNT ONE: ARBITRARY AND CAPRICIOUS IMPOSITION OF MOTORIZED TRAVEL RESTRICTIONS

- 53. Plaintiffs hereby incorporate by reference each statement and allegation previously made.
- 54. The APA allows an aggrieved party to seek review of final agency action, and empowers a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] (C) short of statutory right; [or] (E) unsupported by substantial evidence...." 5 U.S.C. § 706(2).
- 55. Relevant procedures and guidance pertaining to action like the Travel Management Project are further outlined in NEPA, NFMA, the Travel Management Rule, implementing regulations, and other applicable law.

- 56. The Final ROD and associated documents impose arbitrary, inconsistent or undocumented restrictions on motorized travel, which include, but are not necessarily limited to:
 - (a) Closures to enhance elk habitat and/or hunter experience;
 - (b) Closures to address watershed impacts or fisheries habitat;
 - (c) Closures to improve wetlands habitat or fens;
- (d) Closures that are designed to, or have the plain effect of, imbuing private and/or specially permitted interests with unique benefit and economic advantage;
 - (e) Seasonal restrictions on vehicle travel.
- 57. The Final ROD and associated documents impose additional closures based on misinterpretation of Forest Service obligations or short of statutory right, which include, but are not necessarily limited to, imposition of a nonexistent duty to procure access across private property and misinterpretation of and/or failure to defend real property interests of the public acquired through easements granting rights to the United States.
- 58. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.
- 59. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.
- 60. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Area as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT TWO: LACK OF SITE-SPECIFIC ANALYSIS TO SUPPORT TRAVEL RESTRICTIONS

- 61. Plaintiffs hereby incorporate by reference each statement and allegation previously made.
- 62. NFMA and its implementing regulations, including the Travel Management Rule, require the Forest Service to act in accordance with specified procedures and guiding principles in making management decisions affecting access to the National Forest System and the Area.
- 63. These procedures and guidance are further specified in the Travel Management Rule, and other applicable law which requires supportable findings on a variety of site-specific criteria in making road, trail and area designations.
- 64. Site-specific analysis is particularly important when changing long-established uses or interrelated activities as occur upon an area-wide transportation network. Imposing excessive or poorly-considered restrictions can have the effect of concentrating uses that threaten to exceed an area's carrying capacity, or otherwise create new impacts or new levels of impact in remaining open areas.
- 65. The Final ROD and Travel Plan impose arbitrary, inconsistent or undocumented restrictions on motorized travel, not supported by substantial evidence, or otherwise not in accordance with law.
- 66. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.
- 67. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.

68. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Area as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT THREE: IMPROPER RELIANCE ON USER CONFLICT TO JUSTIFY MOTORIZED TRAVEL RESTRICTIONS

- 69. Plaintiffs hereby incorporate by reference each statement and allegation previously made.
- 70. NEPA, NFMA and the Travel Management Rule outline various procedures and criteria that govern the designation of roads, trails, and areas for motorized vehicle travel in the National Forest System and the Area.
- 71. In particular, the aforementioned criteria include those laid out in 36 C.F.R. § 212.55, and require the "responsible official" to "consider effects on the following, with the objective of minimizing" various elements, including "[c]onflicts between motor vehicle use and existing or proposed recreational uses of National Forest System land or neighboring Federal lands."
- 72. In acting upon these duties, Defendants improperly considered a vague or generalized sense of "user conflict" through which some Area visitor might have a preference for some abstract recreational opportunity.
- 73. Assuming "user conflict" can be a proper basis for motorized use designations, other subunits of the National Forest System have conducted scientific analysis of conflict, or otherwise attempted to analyze and address user conflict, in some fashion that would satisfy the APA standards and other legal requirements. Defendants did not attempt any such scientific analysis here.

- 74. Notwithstanding Defendants' deficient or nonexistent analysis, the Decision includes specific restrictions on motorized travel or exclusion of certain routes from motorized travel designations purportedly based on user conflict.
- 75. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.
- 76. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.
- 77. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Area as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT FOUR: IMPROPER RESTRICTION OF ACCESS TO RICO

- 78. Plaintiffs hereby incorporate by reference each statement and allegation previously made.
- 79. The Town of Rico lies within the Area, and is an unincorporated "mountain town" that is home to a few year-round residents, a larger collection of seasonal occupants, and a handful of small retail businesses providing services that include gas, basic groceries, lodging, and restaurants.
- 80. Recreational visitors to the Area often visit the Town of Rico, out of curiosity, habit or necessity, depending on either planned or unplanned developments in their travels.

- 81. NEPA, NFMA and the Travel Management Rule outline various procedures and criteria that govern the designation of roads, trails, and areas for motorized vehicle travel in the National Forest System and the Area.
- 82. In particular, the aforementioned criteria include those laid out in 36 C.F.R. § 212.55, and require the "responsible official" to "consider effects on" various factors including public safety, provision of recreational opportunities, and access needs.
- 83. The applicable regulations further direct the responsible official consider "[c]onflicts among different classes of motor vehicle uses" and "[c]ompatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors" *Id.* at (b)(4) and (5). Specific criteria for designating roads require consideration of "[s]peed, volume, composition, and distribution of traffic on roads" and "[c]ompatibility of vehicle class with road geometry and road surfacing." *Id.* at (c).
 - 84. The Decision eliminates motorcycle trail connection to the Town of Rico.
- 85. Following the Decision, the only way to lawfully access the Town of Rico from the Area's motorcycle trail network is to ride along one of several trails to Highway 145, and then ride at least five (5) miles along Highway 145 to Rico.
- 86. Highway 145 is a paved two lane highway, with a posted speed limit of at least 55 mph that is traveled by full size automobiles. It is not advisable, and in some instances could be unsafe and/or illegal, for off-road motorcycles to travel regularly or for meaningful distances along a route like Highway 145.
- 87. The Decision could actually cause redundant and unnecessary motorcycle travel within the Town of Rico, as riders attempt to travel the road system to the Burnett Creek trailhead, only to find that route is closed and be forced to backtrack through town and

eventually settle on the above-described egress from Rico via Highway 145.

- 88. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.
- 89. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.
- 90. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Area as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT FIVE: IMPROPER IDENTIFICATION OF A MINIMUM ROAD SYSTEM

- 91. Plaintiffs hereby incorporate by reference each statement and allegation previously made.
- 92. On January 12, 2001, a Final Rule was published addressing identification of a "minimum road system" for units of the National Forest System. 66 Fed.Reg. 3206 (Jan. 12, 2001). The minimum road system regulations, codified at 36 C.F.R. part 212, subpart A, were not produced at the same time or in concert with the 2005 Travel Management Rule.
- 93. The Project did not originally include analysis of a minimum road system, but sometime after release of the DEIS the Forest Service apparently decided that consideration of a minimum road system was necessary and this component was added to the SDEIS.
- 94. As a result of this belated approach, or other oversight, the Forest Service misinterpreted applicable regulation and/or failed to properly include the public or follow

governing procedures in identifying a minimum road system.

- 95. The Final ROD and Decision identify a minimum road system.
- 96. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.
- 97. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.
- 98. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Area as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT SIX: FAILURE TO ADEQUATELY DISCLOSE AND ANALYZE ROAD DECOMMISSIONING ACTIONS

- 99. Plaintiffs hereby incorporate by reference each statement and allegation previously made.
- 100. The Final ROD and Decision documents refer to "an implementation program that is progressive in nature, ranging from signing to recontouring, ripping, seeding, and placing physical barriers." FEIS at 15, 53. Specific routes are listed to receive some version of this treatment, which is often referred to as "decommissioning."
- 101. Under NEPA and applicable regulations, as well as internal Forest Service determinations, ground-disturbing decommissioning actions must undergo site-specific NEPA analysis.

- 102. The Final ROD and Project documents do not contain site-specific analysis for road/trail decommissioning.
- 103. Decommissioned routes, depending on the decommissioning techniques employed, can range from difficult to nearly impossible upon which to subsequently resume travel. Techniques such as "ripping," "recontouring" and "reseeding" involve physically removing the road/trail prism and/or altering the landscape to modify erosion, promote revegetation, or prevent recreation of access along the prior route.
- 104. Routes that are decommissioned, including during the pendency of this action, would likely not be viable candidates for further analysis or reconsideration of their designation status.
- 105. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.
- 106. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.
- 107. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Area as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT SEVEN: FAILURE TO ADEQUATELY RESPOND TO PUBLIC COMMENT

108. Plaintiffs hereby incorporate by reference each statement and allegation

previously made.

- NEPA and applicable regulations require agencies to respond to public comments submitted on a DEIS and proposed action. In particular, "[a]n agency preparing a final [EIS] shall assess and consider comments...and shall respond by one or more of the means listed below, stating its response in the final statement." 40 CFR § 1503.4(a). There are five "possible responses" described, all of which necessitate identification of both the particular comment, as well as the specified response. *Id.* at (1)-(5). The regulations further provide "[a]ll substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement." *Id.* at (b).
- 110. Defendants attempt at responding to comments here occurred in Appendix K to the FEIS. Appendix K does not comply with the above-cited regulations.
- 111. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.
- 112. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.
- 113. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Area as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT EIGHT: ACTIONS INCONSISTENT WITH THE SAN JUAN FOREST PLAN

- 114. Plaintiffs hereby incorporate by reference each statement and allegation previously made.
- 115. Under NFMA, Forest Service actions must be consistent with the governing Forest Plan. 16 U.S.C. § 1604(i).
- 116. The governing 2013 San Juan Forest Plan contains direction relevant to the Project. The Plan contemplates shared use of recreational trails "based on mutual courtesy and on a strong stewardship ethic that is primarily self-enforced and maintained by individuals and user groups." FEIS at 183 (quoting Forest Plan desired condition). This directive "points toward collaboration between motorized, mechanized and nonmotorized user groups..." *Id*.
- 117. The Final ROD and Decision documents do not explain how elimination of one form of user is consistent with these concepts and directives.
- 118. The Forest Plan also contains specific direction for elk habitat and management. In general, a desired condition for all terrestrial wildlife states "[e]cosystems and habitat conditions for terrestrial wildlife species sensitive to human disturbance are maintained." Forest Plan Desired Condition 2.3.9. Similarly, guidelines for ungulates state that "to provide for healthy ungulate populations capable of meeting state populations objectives, anthropomorphic activity and improvements across the planning area should be designed to maintain and continue to provide effective habitat components that support critical life functions." Forest Plan Guideline 2.3.63; see also, Guideline 2.3.62 (projects or activities "should be designed and conducted in a manner that preserves and does not reduce habitat effectiveness").
- 119. Rather than "maintain" or "continue to provide" or "not reduce" habitat, the Decision tries to enhance or exceed relevant metrics for elk management.

- 120. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.
- 121. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.
- 122. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Area as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT NINE: VIOLATION OF THE APA

- 123. Plaintiffs hereby incorporate by reference each statement and allegation previously made.
- 124. Defendants' failure(s) described above to comply with NEPA, NFMA, regulations and the APA are arbitrary, capricious, or otherwise not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; short of statutory right; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.
- 125. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.
 - 126. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal

interests arising from and associated with their use and enjoyment of the Area as a result of the

allegations contained in this claim for relief, and these injuries will go unredressed absent

judicial relief.

REQUEST FOR RELIEF

Wherefore, having alleged the above-described violations of law, Plaintiffs respectfully

request judgment in their favor on each and every claim alleged herein, and request that the

Court rule, adjudge, and grant relief as follows:

1. Declare unlawful and set aside the Final ROD and/or Decision;

2. Remand the applicable matters inadequately addressed in the ROD and Decision

for further analysis and action in accordance with applicable law;

3. Award the Plaintiffs their reasonable fees, costs, and expenses of litigation as

allowed by the Equal Access to Justice Act, 28 U.S.C. § 241 et seq. and other applicable law or

rule of court; and

4. Grant such further and additional relief as the Court deems just and proper.

Dated: September 14, 2018.

Respectfully submitted,

/s/ Paul A. Turcke

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