



BOARD OF COUNTY COMMISSIONER REGULAR MEETING

October 4, 2022

Administration Building

560 Dodge St., Delta, CO 81416

8:30 AM

PLEDGE OF ALLEGIANCE

ADDITIONS TO THE AGENDA

APPROVAL OF AGENDA

CONSTITUENT TIME: This is the time for members of the public to present issues of concern or interest to the Board. All issues requiring further research will be forwarded to the appropriate staff for response at a later time. No decisions are made by the BoCC during constituent time.

COUNTY CLERK - TERI STEPHENSON

1. Minutes for the September 20, 2022 BoCC Regular meeting
2. Board's consideration for a renewal of a Club License for American Legion #97 - Wilson Head Post located at 40772 Lamborn Mesa Road, Paonia
3. Board's consideration for an Application for a Special Events Permit for the American Legion Wilson Head Post #97 to be located at 40772 Lamborn Mesa Road, Paonia on October 29, 2022 from 4:00 PM to 2:00 AM
4. Board's consideration for an extension of a Temporary Permit for a Hotel and Restaurant for SFR Operations LLC dba Dinner Bell Restaurant located at 45362 Needle Rock Road, Crawford.

COMMISSIONER BUSINESS

1. National 4-H week - Presentation by 4-H
2. Haven House Presentation
3. Board's consideration and Chairman's signature for the Quarterly Financial Status Report for Community Development Block Grant Housing Projects in the amount of \$29,343.76
4. Board's consideration to ratify the Chairman's signature for the annual Women Infant and Children (WIC) renewal with Colorado Department of Public Health and Environment in the amount of \$112,155.00
5. Proclamation for the U.S. Department of Energy Office of Legacy Management STEM with LM program is participating in Nuclear Science Week
6. Grant Writer Matt Jennings - Board's consideration and permission to apply for a Department of Local Affairs IHOP Planning Grant Program and Application
7. Board's discussion and award of bid for 2022-RFP-23 IT hardware - IT Manager John Latta

9:00 AM

RECOGNITION OF DELTA COUNTY EMPLOYEE YEARS OF SERVICE AWARDS

10:00 AM

COUNTY ATTORNEY - JOHN BAIER

REGULAR SESSION:

1. Board's consideration of Assignment of Lease Blake Field Airport hangar #175 Engel to Lambert.

INFORMATION

1. Road and Bridge Report

10:30 AM

ADJOURN

The next Board of County Commissioner Meeting is Tuesday, October 18, 2022

CERTIFICATION OF POSTING

On Thursday, September 29, 2022 at 4:30 PM, Teri Stephenson did post the above AGENDA as public notice of the 10/4/2022 meeting. The official notice is placed on the front entrance of the Delta County Courthouse located at 501 Palmer, Delta, Colorado.

**DELTA COUNTY COMMISSIONERS REGULAR MEETING
SEPTEMBER 20, 2022**

Commissioners Mike Lane, Wendell Koontz and Don Suppes met in the Commissioners Room in the Administrative Building for their special meeting. Also present were County Administrator Robbie LeValley, County Attorney John Baier, Public Information Officer Lindsey Mitchell and Clerk and Recorder Teri A. Stephenson.

Verbatim Audio is available of these proceedings at the Delta County Clerk and Recorder's Office for 6 months from the above date. All documents incorporated in these minutes by reference are also available for review at the Delta County Clerk and Recorder's Office.

Chairman Suppes convened the Meeting of the Board of Delta County Commissioners for Tuesday, September 20, 2022 at 8:30 A.M. The Pledge of Allegiance was recited.

AGENDA:

Additions to the agenda:

- Robbie explained that during the County Attorney time the Board will not be discussing Paonia Fire District

Chairman Suppes accepted the agenda as presented.

CONSTITUENT TIME:

Riley Dunn 8041 Hwy 65, Cory:

Riley explained that he is a landlord in Delta County and has several rentals and is selling a piece of property for a friend. He said that within this business he has noticed that the dynamics have changed in Delta County that he feels is really important and he does not know how much the Board has noticed it.

Riley stated that the dynamics is the people that are moving in. He noticed that about 20 years ago when he first started renting houses mostly it was to people who worked at the mines, as the mines began to shut down, he became concerned that he would not be able to continue to rent but found out he could raise the rent because at the same time the mines were shutting down Delta County was becoming more and more of a bedroom community not for the mines but for Grand Junction and Montrose that were both expanding dramatically. Riley added that it had stayed that way until about five years ago then we got high speed internet and at that time he noticed that the renters and people that are applying to purchase his friends place are no longer bedroom communities, they are from California, Wisconsin, retirees that are coming in because of high-end high-speed internet. He reiterated that the dynamics of Delta County are changing, these peoples are much more sophisticated electronically and that is where a huge amount of money is coming into Delta County. Riley feels that a lot of those people have not felt represented within the county and this county is on the cusp of a dramatic change.

Riley said he has been a guide and outfitter, he guided from Alaska to Central America mostly running his own companies he has seen changes in Montana where he grew up that suddenly it hit a cusp and the community was no longer the community it was before because the people in that community didn't get a head of it. He added that he has seen that in Cancun in the 1970 and early 1980's when he was guiding/outfitting down there. Riley stated that he saw Cancun go from local fisherman that lived on the beach to maids and cooks living in the swamps and this went all the way down to Belize. He explained that him and his wife lived in Belize for 15 years and he saw the town Hopkins go in 15 years from a bunch of local nice people and community to an over run community and he sees that happening to Delta right now.

Community Options Case Management Director Elaine Wood, 29113 N Road, Hotchkiss:

Elaine said that she is here representing community options who is getting ready to celebrate their 50th Anniversary on October 8, 2022 so she presented invitations to the Board and County Administrator. She explained that this is a reminder to let them know that Community Options in 1967 was discussed to have a place for children and people with intellectual development disabilities to have a place to go but in 1972 they incorporated and started the Sunshine Preschool. Elaine said that they started here in Delta even though the office is in Montrose and that is where the celebration is happening Delta County is where it started.

Paula Stalcup 6270 1900 Road, Delta:

Paula explained that a few years ago Delta County bought the property that borders the east side of her property and on both sides of the fence between the properties there are some Russian Olive trees growing there and on the east side of the fence that she assumes is the County's side where the ditch runs through. She said the trees are beginning to look really bad so she is wanting to find out if she could get some advice or find out how to clean the trees up.

Chairman Suppes said they would get out there and take a look and see what it will take. Paula said she has photos if they would like her to send them. Chairman Suppes gave her his business card for her to email the photos.

COUNTY CLERK AND RECORDER TERI STEPHENSON:

Minutes for the August 16, 2022 BoCC Regular Meeting were approved as presented.

Minutes for the August 22, 2022 BoCC Special Meeting were approved as presented.

Minutes for the August 30, 2022 BoCC Regular Meeting were approved as presented.

Minutes for the September 6, 2022 Regular Meeting were approved as presented.

COMMISSIONER'S BUSINESS:

Board's consideration and approval of Intergovernmental Agreements for asphalt overlay or patch projects located in the Town of Crawford and the Town of Paonia:

Robbie explained that the Road and Bridge District Foreman John Allen indicated that it would be patching and no dollar amount associated with that. She stated that the Town of Paonia will be more than patching but still in the repair and John said due to the new person in that position for the Town of Paonia that they do not have a solid dollar figure but will definitely be below the agreed upon dollar amount and is just repairs. Commissioner Lane clarified that it would not be overlay just patches. Robbie said that is what John indicated. County Attorney John Baier added that it is likely under the threshold but without numbers he would ask for public comment.

Chairman Suppes said given the nature of the agreement with local gravel producing entities if there is anyone in the public that would like to comment regarding the two intergovernmental agreements now would be the time to do so. He said seeing none. There was a brief discussion regarding the threshold which is \$25,000.00 and every few years it is updated.

Commissioner Koontz made a motion that the Board approve the Intergovernmental Agreements with the Town of Crawford and the Town of Paonia and authorize the Chairman to sign both. Commissioner Lane seconded the motion.

Discussion:

Chairman Suppes stated that he does not know that there is a limit on that but it is the limit on the agreement. He suggested that the motion should be revised to remove. John clarified that the agreement states that if it is over \$25,000.00 that there is an opportunity for the public hearing and we have affectively just had that so it is not required to keep it under that amount. Commissioner Koontz amended his motion.

Clerk's Note: The above motion is the amended motion.

Motion carried by a vote of 3 to 0

Board's consideration and signature regarding the acceptance of Cadwell Easement for Miners Trail:

Commissioner Koontz explained that there are two easements in your packet and these are the two remaining easements to complete all the land necessary for the trail. He said that this easement calls for payment of \$1,750.00 and some driveway work to be completed when the trail is constructed.

Commissioner Koontz said that the packet contains notarized signatures, legal and map of the property.

Commissioner Lane made a motion that the Board approval the Cadwell easement for Miners Trail and the Chairman sign the agreement. Commissioner Koontz seconded the motion.

Motion carried by a vote of 3 to 0

Board's consideration and signature regarding the acceptance of Cotton/Robley Easement for Miners Trail:

Commissioner Koontz said that this is an easement with David Cotton and Sherry Robley for the Miners Trail with a payment of \$2,500.00 and some fence and agricultural gate installation. He said that he has a signed and notarized copy with the legal description and map.

The Board thanked Commissioner Koontz for all his hard work on this trail.

Commissioner Lane made a motion that the Board approve the Cotton/Robley easement for Miners Trail and authorize the Chairman to sign the agreement. Commissioner Koontz seconded the motion.

Motion carried by a vote of 3 to 0.

Discussion regarding the proposed school bond on the November 2022 ballot:

Superintendent Caryn Gibson and Assistant Superintendent Kurt Clay were present.

Caryn thanked the Board for meeting with them last week individually to learn more about the bond and for the time today. She explained that Delta County School District passed a bond in 2002 and the voters approved that bond and that bond was to build new middle schools or add on to current buildings. Caryn said that those bonds will be paid off in 2023. She added that the School District has done a good job and been very responsible and with that being paid off they have additional needs. Caryn stated that looking at the district overall and bonds can be only for capital projects, they cannot be for staff salaries only for capital projects. She added that with the current bond being paid off they are going to the voters with a ballot measure to extend with the same amount of mills and tax rate.

Kurt explained that the projects they are looking at are all in the high schools with an additional school in Paonia K-8 because that building was built at the same time.

- Delta High School they are looking at a safety upgrade at the entrances. The current design at the front door gives access to the entire school without having to check into the office. He added that it is dangerous because they do not have the ability to see that person at the front office.
- Safety entrances in all four high school buildings will take place.
- Locker room renovations. Kurt explained that the locker rooms have not changed since the early 1980's and need updating. He stated that according to the new code they do not have enough room for the showers. The update will expand the locker rooms into the existing wrestling room which would have the need to build the wrestling room on the exterior. This would be a wrestling room/weight room on Delta High School along with an auxiliary gym. There are 630 students and need the extra gym being the only school of this size in the State of Colorado without an auxiliary gym.
- Cedaredge High School they are looking at updating the safety entrances and the locker room and that would be a weight room, there is a new wrestling room that would go into the existing weight room which would be the exterior piece.
- North Fork High School they would update the safety entrance, the locker room renovation and a wrestling room, the current weight room is adequate.

Kurt said leveraging all of these dollars they are looking at leveraging with their federal funds that they have received for COVID and will be doing Heating, Ventilation and Air Conditioning as well as leveraging with the Building Excellent School Today (BEST) grants which is a match that we can use these funds to make the loan higher. He stated that the long-term goal would be in the next five years to renovate all the classrooms and facilities in all three of the high schools. Kurt explained that with the bond specifically is what he mentioned there is because if we don't get the BEST grants that is what it would go for.

Caryn explained that she has been told that when people are looking for places to live and relocate, they look at the schools, hospital and want to know the internet. She said that the first graduating class out of the High School building was 1982 so that was 41 years ago and we want the schools to last another 41 years. Caryn stated that they are asking voters to extend what the current mills are. She referred to a hand out explaining the example on the hand out with information provided by the Assessor and the internet. The example: Residential Property a home with an assessed value of \$300,000 X 7.15% X 4.974 mills = \$106.68 per year which is less than \$10.00 per month and continue what they are paying. She gave another example for other properties such as a business the percentage is higher \$300,000 X 29% X 4.974 mills = \$432.39 per year in taxes which based on the 2019 calculations.

Caryn reiterated that they are want to extend what people are currently doing. She said they are paying off the debt they are increasing the debt by extending the payment which is at \$27.7 million for all of the projects and the payment comes to about \$52 million over 25 years and they are wanting to put this information out to the public.

Chairman Suppes clarified that the bond expires next year and if they are unsuccessful at this time, they will have a chance next year. Caryn said they will and they are working with consultants and a financial firm who are recommending that if they lose there is truly a need that they would have another opportunity from here until they can get it passed. She stated that they want taxpayers to know that they are not going to be doubled taxed next year it will hold off the taxes until the bond it paid off and then the new one will start.

Caryn explained that they will be having community forums:

- Paonia will be at the K-8 building on Tuesday, September 27, 2022 at 5:30 PM
- Delta will be October 3, 2022
- Cedaredge will be October 5, 2022
- Hotchkiss will be October 12, 2022

Caryn said they will be getting this information out and welcoming people to come and look at the schools and share information.

Commissioner Lane said for the record when they met last week it was on the individual basis that they met with the Commissioners. Caryn added that they met with them one at a time.

Commissioner Koontz said he has seen some conceptual designs for the updated safety entrances but have you settled on what you want to do. Kurt stated that they met with an architect and they had two entrances one to the school and one to the athletic facility but now to lower costs they are thinking about one single entrance. He explained that the entrance will be on the side of the gym giving them access to either direction and will only be building one exterior. Kurt said they have three or four renditions and they are looking at cost for what they can accomplish and feel they can accomplish everything on the list but now it is a shuffling of dollars to make sure all of them are able to be accomplished.

The Board thanked them for meeting with them. Kurt thanked the Board for their support of all the schools and school district and especially Commissioner Koontz for working on Miners Trail so the kids have that trail and they are excited and appreciate all the Board's work.

Board's consideration of Delta Housing Authorities request for reimbursement from the Division of Housing Community Development Block Grant (CDBG) Program for the Period from June 11, 2022 to September 12, 2022 in the amount of \$8,339.56:

Robbie explained that for the quarter covering June 11, 2022 to September 12, 2022 the request for reimbursement Division of Housing CDBG program in the amount of \$8,339.56 and for the Chairman to sign.

Commissioner Koontz made a motion that the Board approve the request for reimbursement for the Community Development Block Grant for the Division of Housing in the amount of \$8,339.56. Commissioner Lane seconded the motion.

Motion carried by a vote of 3 to 0.

Board's consideration and Chairman's signature regarding CCI Legislative Committee Commissioner Designation and discussion of CCI legislative priorities of 2023:

Chairman Suppes explained that the Commissioner Designation for legislative priorities meeting which will take place at the end of this week and one next month to finalize. He said that he planned on attending and would be willing to do that again if the Board so chooses. Commissioner Lane said that was fine with him. Commissioner Koontz agreed. Commissioner Lane asked if Commissioner Koontz would be the alternate since he was Vice Chairman.

Commissioner Koontz asked Commissioner Lane if he would like to attend. Commissioner Lane agreed.

Commissioner Koontz made a motion that the Board approve Commissioner Suppes as the declaration of designation for the Colorado Counties Inc. 2022 legislative committee meeting and Commissioner Lane as the alternate and authorize the Chairman to sign. Commissioner Lane seconded the motion.

Discussion:

Robbie said that during this time normally the Board would acknowledge Anne Gallegos is representing Delta County at the committee level for Human Services. Chairman Suppes explained that those take place at the steering committees for next year as soon as the legislative session starts, they will get the proxy for her to serve on the Human Services Committee.

Motion carried by a vote of 3 to 0.

Legislative Discussion:

Chairman Suppes reviewed the upcoming legislative agenda to see what the Board will support or not support:

- Motivating Participation and Voluntary Ag Districts: Chairman Suppes said he had a lot of questions about this one because it seems like they are trying to force farmers to continue farming without giving them a chance to do something else with their property and he has concerns about that. Nay.
- Update to CORA to protect all client/attorney privilege communication: Chairman Suppes explained that this one was brought forth by Larimer County. Commissioner Koontz and Commissioner Lane were in favor of supporting.
- Allow auctioneering services to conduct foreclosure sales: This was from Larimer County. Chairman Suppes does not feel we had a dog in that fight. Neutral
- Limit legislature from convening for legislative changes: This was brought forth by Montrose County. Chairman Suppes said this is to avoid post session convening unless they were trying to resolve what was not completed but not to allow for changes. Commissioner Lane asked if this was the one that had legislative sessions every other year. Chairman Suppes said that is correct. Commissioner Lane stated that it is an up-hill battle. Chairman added that it is not necessarily a bad topic to take up but he doesn't think it will win. Commissioner Koontz said it would be interesting to see how far they can get with it but he would agree.
- County Treasurer accountability: Chairman Suppes stated that this came from Adams County. He said that they have a few issues and this is an attempt to have more oversight with the County Treasurer. Neutral.
- Equal Pay Act Exemption: Chairman Suppes said this was brought by El Paso County. He stated that this has been a thorn in our side we have not been able to promote from within unless it we post the job again and people have to reapply for promotions and it's been a pain especially in our current state of employment. Support.
- Allow juvenal courts to include sexual offender treatment: Chairman Suppes said he is neutral. John said he wondered what the District Attorney would have to say about that. Commissioner Koontz said he is surprised they don't already that there is not some program for juveniles. John added that he thinks the details of what they are proposing would be important. Chairman Suppes said that it states that currently persons involved with child welfare and dependency and neglect civil actions in the jurisdiction of juvenal court cannot be required or ordered to undergo sexual offense treatment or services overseen by the sex offender management board as part of a juvenal courts orders. John said that we are talking about different things juvenal court hears both dependency and neglect actions which is what this is about so when he threw that out initially, he was talking about juvenal court hearing delinquency actions which is with the District Attorney. He said he thinks that this would be a conversation with our Director of Human Services to see what her jobs are in regards to reasonable efforts, treatment plan. Chairman Suppes stated that this is the only one under Human Services at this time.

- 1 • Declaring a District Attorney vacancy: Chairman Suppes said that it states that statute is silent on
2 when and how to declare the office of District Attorney is vacant and he is neutral. Neutral.
- 3 • Allow midwife to serve as trained sexual assault nurse examiners: Commissioner Koontz said
4 they made a pretty compelling case to allow that to happen. Chairman Suppes stated that some
5 smaller counties that are farther away. Commissioner Koontz added where time is of the
6 essence. Robbie stated that there was a high bar for training. Support.
- 7 • Repeal HB19-1263 Offense level for controlled substance possession: Chairman Suppes
8 explained that this is the one-ounce law. Support.
- 9 • Extend medical coverage for county jail incarcerated persons: Chairman Suppes said this is a no
10 brainer.
- 11 • Land Use Natural Resources/Treatment of closed county landfills: Chairman Suppes reminded
12 the Board of the discussion to try and get counties more lead way in getting these closed and
13 getting the Colorado Department of Public Health and Environment (CDPHE). Commissioner
14 Lane said especially the landfills that were closed and adhered to the code in place at that time.
15 Chairman Suppes added that now they are coming back and changing them. Support.
- 16 • Public Lands/Maintenance of County roads accessing State Parks: Commissioner Koontz said
17 that was asking the State to help with maintenance based on the amount of traffic. Chairman
18 Suppes stated yes because of the increased usage of the State Parks they were asking the State
19 for help. Commissioner Lane said that sounds reasonable and Commissioner Koontz agreed.
- 20 • Taxation and Finance/Designate short-term rentals as commercial property and the second is
21 designate long-term rentals as residential properties: Chairman Suppes said this was from Grand
22 County and is always a topic of discussion for the resort communities and he is not personally
23 opposed to it for the short-term rental people are in competition with the hotels and the hotels get
24 charged commercial rates.
- 25 • Allow counties to form urban renewal authorities: Chairman Suppes explained that he believes
26 this is a poke back at the municipal urban renewal authorities and he thinks after what they have
27 been through with DURA it might be good to be able to do it the other way but he doesn't think
28 they will get it through legislature. Commissioner Koontz and Commissioner Lane said they
29 would support. Support.
- 30 • Subject campgrounds to a lodging tax: Chairman Suppes stated that this came from Gunnison
31 County. He said Gunnison County is one that is going to benefit from the change last year that
32 allows counties to take it to a vote to change the use of lodging tax so they can use it for
33 something other than marketing. Commissioner Koontz clarified that this was to get a lodging tax
34 from the high-end use. Chairman Suppes explained that this was to add on the lodging tax to the
35 campgrounds. Robbie asked if it addresses the website reservation for camping that has been
36 brought forward similar to the Airbnb's. Chairman Suppes stated that it does not address that.
37 Commissioner Koontz said he is neutral to opposed. Commissioner Lane agreed. Commissioner
38 Koontz said mainly because of families trying to get out.
- 39 • Secure statewide voter approval to remove TABOR's prohibition on new or increased real estate
40 transfer tax: Chairman Suppes stated that this was out of Pitkin County and has been an annual
41 request from them because they want to charge a percentage tax on every sale of real estate.
42 He personally does not support. Opposed.
- 43 • Levy sales tax in unincorporated areas: Chairman Suppes said this came out of Clear Creek
44 County and their issue is the municipalities have raised the taxes at the 10% level and they want
45 to raise a county only tax in the unincorporated part for businesses in the unincorporated areas.
46 He stated that he does not think these benefits much because there is not a lot of sales taking
47 place outside of the municipalities in most places in the State. Commissioner Lane added other
48 than cottage industries. Commissioner Koontz said it sounds like the unattended consequences
49 would be that would discourage cottage industries and entrepreneurs.
- 50 • Levy sales tax on outdoor services: Chairman Suppes stated that this also came out of Clear
51 Creek County. Commissioner Koontz clarified that outdoor service was meaning recreation
52 industry services. He added that there has been the discussion about recreation paying its own
53 way for years in many forums because of the impact. Commissioner Lane asked if the impact
54 fees collected by the Forest Service or Bureau of Land Management do, they have anything like
55 that, when you purchase the stickers for your four-wheeler or snowmobile. Chairman Suppes
56 said think about Clear Creek County and the zip line tours. Commissioner Koontz added the
57 rafting. Chairman Suppes gave an example about rafting and the charge for the ticket and the
58 sales tax added to that service/activity. Commissioner Lane was surprised that there was not
59 already a tax. John asked if there was an option to adopt or not adopt. Chairman Suppes
60 explained that it would be permissive. Commissioner Koontz asked if this would include fishing
61 guides. Chairman Suppes stated that it would include fishing and hunting guides. Commissioner
62 Lane said he is neutral on this. Commissioner Koontz stated that you don't want to discourage
63 but again there is an impact with those activities that taxpayers in general pay for.
- 64 • Alternatives to issuing local TABOR refunds: Chairman Suppes said that this came out of El
65 Paso County. Commissioner Koontz stated that this is the one that came out of Clifton as the
66 example of how to reimburse TABOR refunds. Chairman Suppes explained that Mesa County
67 had this discussion because they handed out refunds and had mentioned it. He added that they
68 are wanting the citizens to put it back into a publicly funded project or in the public sector so if
69 they don't want the refund, they can put it towards parks or roads. Commissioner Lane asked
70 who made that decision. Chairman Suppes stated that it would be done by the individual and
71 would be permissive not mandatory. Commissioner Koontz would support if individually based.
72 Commissioner Lane agreed.
- 73 • Secure statewide approval to extend homestead exemption to spouses to fallen peace officers
74 and fire fighters: Support

- Transportation/Telecommunication: Utility owners to cooperate with road improvement projects: Chairman Suppes stated that this is to do with 811 calls for more time in places you have delays due to design or unanticipated utility conflict and require them to be a little more cooperative. Support.
- Register and plate off road vehicles and allow use on low traffic, low speed state highways: Chairman Suppes said this is out of Montrose County and trying to solve issues with the Rimrock Trail and the people that use that trail to get back and forth and a portion is on the state highway and where it may affect us is on Highway 348. Commissioner Lane stated that Rimrock Trail is over to Nucla. Support.
- Formation and governance of Rail Districts: Chairman Suppes said this came out of Huerfano County and has to do with their San Luis and Rio Grande Railroad that is in bankruptcy and was auctioned this summer and they want some help to figure out how to create a rail district. Commissioner Lane asked if this was a commercial railroad. Chairman Suppes was not sure. Neutral.
- Repeal SB05-152 and allow governments to provide telecommunication service without a citizen vote: Chairman Suppes explained that this goes back to the broadband days where the only way a local government could provide broadband service is if they took it to the vote of the people and have the people approve it and it was done to keep government from going into competition with broadband companies. Commissioner Koontz asked who proposed this. Chairman Suppes said Douglas County. Chairman Suppes explained that Douglas County has parts of their county that is having trouble getting high speed internet. Commissioner Koontz stated that he would support because we are having the same issues. Commissioner Lane agreed. Commissioner Koontz added that hopefully that would encourage competition in the broadband market.

Warrant Ratification:

Commissioner Lane made a motion that the Board ratifies and the Chairman sign warrants from General Fund, Road & Bridge Fund, Energy Development Fund, Fairgrounds Fund, Lodging Tax-Tourism Fund, Enterprise Fund, E911 Fund, Economic Development Fund, Contingency Fund, Capital Projects Fund, Capital Improvements Fund, Employee Benefit Trust Fund, Conservation Fund, Self-Insurance Fund, PILT Fund, Safety Improvement Fund, Booking Fees Fund, Inmate Fund, American Rescue Fund and Open Space Trust Fund expenditures paid by warrant numbers 145562 through 145843 and ACH transactions from 368-384 August 10, 2022 through September 14, 2022 totaling \$1,179,823.87 in Accounts Payable and \$1,444,791.93 in monthly County, Human Services and Health Department August 2022 Payroll for items budgeted and approved per Delta County Policy. Commissioner Koontz seconded the motion.

Motion carried by a vote of 3 to 0.

Private Activity Bond allocation update

Robbie said that Delta County at the last meeting allocated the Colorado Private Activity Bond allocation to the Delta Housing Authority. She stated that Delta Housing Authority worked with Colorado Housing and Finance Authority and for clarification and working through the entire project Delta Housing Authority has with the allocation of \$1,722,044.00 of the private activity bond officially went to the Colorado Housing and Finance Authority so Delta County worked with Department of Local Affairs, Delta Housing Authority and given the allocation and the timeliness that had to be done by September 16, 2022 Commissioner Suppes resigned that document that was voted on last meeting to indicate Colorado Housing and Finance Authority for the allocation but specifically designated Delta County Housing Authority. Chairman Suppes added that it was the same place just a designation had to go to Colorado Housing and Finance Authority instead of Delta Housing Authority but still takes care of the same thing.

Lindsey Mitchell – Review of BoCC calendar:

INFORMATION:

JAIL REPORT:

Chairman Suppes reported that the inmate count was 37 male, 10 female and 0 Transgender inmate and 8 male DOC and 1 female DOC for a grand total of 56. The Average Daily Inmate Population for the week of September 5, 2022 to September 12, 2022 was 70.

COUNTY ATTORNEY – JOHN BAIER

REGULAR SESSION:

Board's consideration of a resolution authorizing the county attorney to sign closing documents for real property located at 550 Palmer Street, Delta, Colorado:

John explained that there are two items on the agenda one under regular session and one under executive session. He said they will address the regular session item first.

John stated that he is presenting a resolution authorizing the purchase and for the County Attorney to sign the closing documents for the real property located at 550 Palmer Street, Delta. He explained that this is a requirement by the title company authorizing the purchase and authorizing the County Attorney to sign all documents.

Commissioner Koontz made a motion that the Board approve Resolution No. 2022-R-027 a Resolution authorizing the County Attorney to sign the closing documents for real property located at 550 Palmer Street, Delta and authorizing the purchase of the real property. Commissioner Lane seconded the motion.

Motion carried by a vote of 3 to 0.

EXECUTIVE SESSION:

Executive Session:

County Attorney John Baier requested that the Board go into Executive Session pursuant to §24-6-402(4)(b) C.R.S. Advice from Counsel discussion and advice regarding development pursuant to the Land use Code on property where there is an existing Specific Development Permit. He reminded the Board and everyone present that the discussion of this legal question and the advice received from counsel constitute a privileged attorney client communication no record or electronic recording is required to be kept and limit your discussion to the applicable legal question.

EXECUTIVE SESSION – ADVICE FROM COUNSEL:

Commissioner Lane made a motion that the Board go into Executive Session pursuant to §24-6-402(4)(b) C.R.S. Advice from Counsel for discussion and advice regarding development pursuant to the Land use Code on property where there is an existing Specific Development Permit. Those present will be the three Commissioners, County Attorney John Baier, County Administrator Robbie LeValley, Public Information Officer Lindsay Mitchell, Planning Staff Carl Holms and Kate Kelly and Clerk to the Board Teri A. Stephenson and will adjourn after the executive session and will return to the regular meeting. Commissioner Koontz seconded the motion.

Motion carried by a vote of 3 to 0.

Executive session began: 10:07 AM

Executive session ended: 10:30 AM

Resume meeting at 1:00 PM

HUMAN SERVICES – ANNE GALLEGOS:

Debbie Melgoza, Lori Cressler, Michelle Whining and Haley Clarin.

Payment Approval Report – July 1 through July 31, 2022:

The payment approval report was reviewed and signed by the BoCC.

Child Care Alternative Rates:

Anne explained that the State sets the rates for what they can pay to child care homes, they do it based off a market survey and set those rates. She said the increase that they have seen is between two and seven percentage, they did see a little decrease which was concerning to them especially if they are trying to recruit more child care homes. Anne explained that there are alternative rates that are based on after school care, weekends, overnights and disability which are county set rates. She said with the change to the Child Care Assistance Program (CCAP) rates from the State they are going to look at what that percentage would potentially look like if they are going to change those rates and bring that back to the Board for the approval if they determine that they are going to change their rates because they want to remain stable within the child care allocation to their partners.

Distribution of Materials RE: Public Health Emergency:

Anne explained that in the Board's packet was examples of the flyer with the QR Codes and websites for what they are distributing currently. She said they met with the schools last week so for all of the elementary schools there are packets that go home with each elementary school student on Tuesdays and starting in October they will have the flyer in their packet, posted on the school's website, newsletters for the middle schools and high schools that go out to parents. Anne stated that they have made a list of where they want to have these distributed to include all age ranges because they are thinking about Senior Care Homes and Meals on Wheels. They want to make sure to try and cover everyone they can to let them know about that change.

Anne said they still do not have that date and still waiting for an extension or non-extension they are anticipating January so they started marketing that. She stated that they had funds that they received to help offset the marketing costs. Anne added that they are looking at the potential of a text messaging service for this and are researching to see if it is affective for Delta County. Commissioner Lane asked what messaging are contained in the QR Codes. Anne said that the QR Code takes them to links that describes what the change will look like, what they need to be prepared for, lists of food banks and resources that the State is provided and local community. It will also provide contact information and hours of operation. Anne added that they debated about when they wanted to put this messaging out and their thought process is if they started in October, it would start generating the conversations through the next few months so they could prepare and they would rather be early and field the calls than be too late and miss someone. Anne stated that if the Board or administration is getting these questions to please send them her way.

Options for Long Term Care:

Anne stated that it is a significant change going to Gunnison and Michelle is having to balance how often they will be going for quarterly contacts and the initial assessments that are being done in person but it is the client's choice if they want someone in person so they are trying to navigate those but it may look like the case load is going to be higher for in person than what they anticipated. She said they are asking for a credit card with a \$500.00 balance for travel. Anne explained that it may take a case manager to go to Gunnison and spend two full days or if they are driving back and forth gas could be an issue. Michelle explained that the county gas cards are not usable in other areas and it would be nice to have a credit card for gas for the case managers. She said that they have not had to use the overnights but with winter travel maybe limited and they may need to use it sometimes not monthly.

Chairman Suppes asked if each case worker would have a credit card or only one card for the department. Anne said only one and they did meet with Lori because they get reimbursed for their travel so they try to balance those costs as well which will allow them within their budget to allocate the overnights. Chairman Suppes stated that he does not see a problem with that. Commissioner Koontz asked who would maintain the card. Michelle said it would be her and told the Board how she would keep it secured and also require receipts of transactions. Robbie added that this is similar to what they did when the pumps were down at Master Petroleum for the deputies. Anne explained this did not have to be done before because previously they had a case manager that resided in Gunnison so they managed that case load so they did not have a case manager having to go over every month. Commissioner Koontz said he saw now problem and it appears they have adequate control.

Child Welfare and Adult Protection Work Load Studies:

Anne explained that the numbers have continued to increase with both of these units so they are trying to complete as much paperwork for the State and as long as they are demonstrating the need that is helpful throughout the unit, they are hoping to see something come across next year with some budgets that will look a lot better to meet the needs of all counties with the allocations.

Chairman Suppes said that Haley was at the fentanyl meeting last week that the City of Delta put on. He stated that it was tremendous information that came out of that which is scary and we should try to schedule a meeting with John and Quinn to discuss some of the opioid money that has been allocated to see if it can be utilized to distribute information out to the schools. Chairman Suppes added that sadly the biggest age range of kids that are dying from this are the 11- to 17-year-old. Anne said that they are see that in the case loads and in the community. She stated that El Paso has piloted their travel case workers are carrying Narcan so they have policies and procedures around it which is something that they can explore and talk to the attorney and what that might look like and what safety issues does that present along with liability. Chairman Suppes said this is a conversation that needs to be had.

Commissioner Koontz said that he saw that they have picked up some eligibility technicians. Anne said yes but they did lose one and now have two spots left and did lose a child welfare case worker and are down one there, they are expecting one more child welfare case worker coming from Texas in October and will help fill those spots. Commissioner Koontz clarified that they are better staffed now than they have been. Anne said yes but for technicians that makes them nervous because they were down six and it takes so long to train so coming up to Public Health Emergency, they are wanting to predict it will be high number but they don't know what that will look like and having so many technicians in training how will that impact be like. She added that they will be reaching out to the Overflow Processing Center which does Medicaid cases so counties can kick those out for them to process, other counties in the same situation have also utilized a list of technicians throughout the State that counties can contract with. Anne said that they are exploring what that looks like in case they get into that situation. The technicians are qualified and have to be of a certain qualification to be considered by other counties.

PLANNING:

PLN21-080 Delta Paving Gravel Pit (Elam Construction)

Consider a Conditional use Permit (CUP) to expand an existing gravel mining operation and allow temporary use of a mobile asphalt mixing facility. The project is located at 8020 State highway 65, Delta (Parcels: 345510202002, 345503400053, and 345510100028).

[Prepared report]

PROJECT INFORMATION:

Property Owner(s):	Grand Junction Concrete Pipe Co. (GJCP) Richard M. Frazier and Betsey A. Frazier
Applicant:	Jim Doody (Representative of Elam Construction)
Site Address:	8020 State Highway 65, Delta, CO 81416
Location:	Sections 3 & 10, Township 15S, Range 95W, 6 th PM
Parcel ID/Acct:	345510202002, 345503400053, 345510100028
Parcel Size:	41.62-Acres, 39.13-Acres, 92.02-Acres
Zoning:	A-20

Report Prepared by Kate Kelly

RECOMMENDATION:

The Planning Commission (PC) recommends that the Board of County Commissioners (BoCC):

- a. Find that PLN21-080 meets standards of the 2018 Master Plan and the 2021 Delta County Land Use Code; and Vacate Resolution No. 99-R-009 repealing the Delta Paving Gravel Pit Agreement, permitting a sand and gravel pit located along the east side of

- b. State Highway 65 and the north side of State Highway 92 (Reception #524802, recorded on 05/11/1999); and
- c. Approve PLN21-080/Delta Paving Gravel Pit (Elam Construction), a Conditional Use Permit for amending an existing mining (sand and gravel) permit located at 8020 Highway 65, as follows:
 1. Continue Phase (Pits) 1 & 2 on Parcels 345503400053 and 345510100028 (130+ acres); and
 2. Add Phase (Pits) 3 & 4 on Parcel 345510202002 (40+ acres) to the existing permitted operation on 130 acres (170 acres total); and
 3. Remove use of Gunnison River for mining operations; and
 4. Retain restriction prohibiting use of a mobile Asphalt facility, subject to conditions.

A draft resolution is attached for consideration, including findings and evidence supporting this recommendation. The resolution includes yellow highlight reflecting areas that would need to be amended if the Board wants to approve the asphalt plant, as requested by the applicant.

SUMMARY:

A gravel quarry/mine has been operating on about 131 acres (two parcels) for over 20 years, but has not been actively mining for the last 15 years. Delta Paving Gravel Pit (Kilgore Companies dba Elam Construction, Inc.), is proposing to expand their mining operation to include a third parcel (40+ acres) and add a mobile hot mix asphalt plant. The property is located south of the Gunnison River (Town of Orchard City north of the river) with frontage along the eastern boundary of State Highway 65 and the northern boundary of State Highway 92 (8020 Highway 65, Delta).

Applicants request a Conditional Use Permit (CUP) to allow operation of a mobile asphalt plant, and expanding the operation to include Parcel 345510202002 (GJCP, 41.62 Acres, Lot 2 of Volk Subdivision) as Phases 3 & 4. Minerals Extraction/Quarry and Heavy Industrial uses are allowed in the A-20 Zone with a Conditional Use Permit (CUP).

Key issues that Staff have identified include: noise, biological, odor, dust, traffic, lighting, and impact to irrigated Ag lands. Master Plan policies provide advisory direction including protecting agricultural lands, property rights, and encouraging business and industrial development. The Land Use Code was adopted with standards to implement the Master Plan. Currently, there are no specific findings for approving a Conditional Use Permit (CUP); however, LUC Chapter 2, Section 5.B(7) provides Specific Use Standards for a Mineral/Quarry use in addition to general standards (site design & environmental stewardship, public infrastructure & services).

In 1999, a Development Agreement (Resolution No. 99-R-009) was approved subject to nine (9) conditions. Condition 9 of that permit prohibits use of an asphalt plant. In addition, the Volk Minor Subdivision includes a plat note restricting Lot 2, 40-acre parcel between the exiting mine and Highway 65, from being developed for uses other than agricultural use unless the owner goes through the full subdivision review process. Approval of the CUP requires vacating Resolution No. 99-R-009 and amending the Final Plat of the Volk Minor Subdivision.

The application requests to add 41.62 acres, but also includes removing mining in the Gunnison River and create a 100-foot setback from the river (about 15 acres). Condition 8, brought forward from Resolution 99-R-009, defines temporary operation of concrete and/or asphalt equipment as 90 days during the construction period of April and November of each year. This equipment would be physically removed from the site when there is not a project in this area. The operation is screened from view from Highway 65 with a row of mature trees, and recommended **Condition #13** requires screening along Highway 65 for the expansion area (berm + landscape).

The Planning Commission (PC) held a duly noticed public hearing on August 10, 2022. About 75 neighbors attended the meeting, stating opposition of the application, specifically adding a mobile hot mix asphalt plant to the existing mining permit. Concerns/comments were expressed including: economic trade off, dust, smell, noise, fugitive emissions, health concerns, traffic on Highway 65, easements, reclamation, location, riparian rights, wildlife, and water (irrigation rights, Gunnison River, groundwater ponds). The PC asked questions of the applicant in regards to: 1) the current operating permit and 2) the proposed expansion of and use of an asphalt plant and ultimately continued the public hearing. On August 24, 2022, Mr. Ben Langenfeld (representative for Elam) addressed rebuttal to comments from the public hearing, including: CDOT Access Permit, Traffic Study, project limits, reclamation bond (modified bond amount), air monitors (on bluff vs on equipment), ponds (reclamation), and Land Use Code requirements (permits).

The Planning Commission voted unanimously (9-0) to recommend:

- 1) Approval of the mine expansion; and
- 2) Denial of the asphalt plant.

The Commission determined that the application meets the standards of the Land Use Code for a Conditional Use Permit, and this is a reasonable location given there is an existing permitted mine. However, the 1999 resolution stated that asphalt would “never” occur. While a permit can be amended, the PC felt that there were clear expectations set for both the property owner (mine operator) as well as the neighbors. The Commission requested/recommended that Phases (Pits) 3 & 4 operate from south to north...the applicant had no objection.

This application is requesting to amend an existing development agreement/permit (Resolution 99-R-009) through the CUP process since the County no longer has Specific Development Regulations. Chapter 1, Section 3 of the Land Use Code addresses how the LUC affects approvals that pre-dated the LUC.

Subsection B.4 states: “Conditions of approval may be modified or eliminated by amendment to the development agreement through which the conditions were imposed.”

A number of documents have been submitted for this application, providing information relative to requirements of the LUC and State for mining operations, as well as relative to the issues noted above. Based on these documents, Staff finds that the project has sufficiently addressed and meets the applicable County requirements.

DISCUSSION:

Project Overview

Delta Paving Gravel Pit (Kilgore Companies dba Elam Construction), applicant and permittee/operator, has an existing sand and gravel mine that has been operating on the east side of State Highway 65 and the north side of State Highway 92, directly south of the Gunnison River since 2001. Existing State and County permits allow operation of a gravel mine on two parcels totaling about 130 acres: Parcel 345503400053 (GJCP, 39.13 Acres) and Parcel 345510100028 (Frazier, 92.02 Acres).

The proposed project consists of three (3) parcels totaling about 170.8 acres as follows:

- 1) Parcel 345510202002; 41.62 acres owned by GJCP, bordered by Highway 65 on the west and the Gunnison River on the north. Currently irrigated agricultural lands with a paved access road through the middle. This parcel is Lot 2 of the Volk Subdivision (#97-071) recorded on February 10, 1998 under Reception #511315. The Final Plat was recorded with a restriction on Lot 2; which states the lot cannot be developed or used for anything other than agricultural use unless the owner goes through the full subdivision review process.
- 2) Parcel 345503400053; 39.13 acres owned by GJCP. Part of the existing permit/operation, including the Gunnison River. Access from Highway 65 via an easement through Parcel -002.
- 3) Parcel 345510100028; 92.021 acres owned by Richard and Betsey Frazier, mined through a lease agreement, bordered by Highway 92 on the south. The northwest portion has been mined and has a lake that was created as part of the reclamation plan. The southern portion is currently irrigated agricultural lands, and about 20-30 acres (closest to Highway 92) is located outside the footprint of the proposed impact area (lease area).

The facility has been operating on about 131 acres (two parcels) for over 20 years, but has not been actively mining for the last 15 years. Under the existing permit, they excavate, process, and sell construction materials. This process includes rock crushing, aggregate washing, and the ability to produce concrete.

Primary access is from State Highway 65, which has been paved (slurry seal) per a condition of their permit. Condition #6 of the Agreement required the applicant to explore access to Highway 92; however, this option was not feasible as access would have to cross the Union Pacific Railroad, as well as the Bonafide Ditch. The applicants felt that with the weight of the trucks it would be best to keep the route strictly to Highway 65 so as not to damage the ditch or affect the railroad right-of-way.

The proposed permit area of the mine would impact 145 of the 172+ total acres. Of this permit area, 100 acres will be disturbed but only 67.5 acres will be mined for sand and gravel (Phase/Pit 1 (25.8 Ac), Phase/Pit 2 (11.3 Ac), Phase/Pit 3 (14.4 Ac), and Phase/Pit 4 (16.1 Ac). Part of the current Mining Permit includes impacting part of an existing irrigated field on the Frazier property approximately 570-feet south of the existing pond (Pit 2).

Mining is proposed to occur over four phases (four pits) with reclamation following the conclusion of mining at each pit/phase. The total life of this facility, if operating at capacity, would be expected to occur over a 20-year period. However, the applicant estimates that this facility would not operate at capacity, which extends the life of the operation to be more like 20 – 40 years. Following the completion of each pit (Phase), the Reclamation Plan calls for converting the land into multiple groundwater lakes (wetland habitat) surrounded by rangeland and wildlife habitat. There will also be potential to use areas as agricultural land.

Much of the property, specifically the mining area, is made up of previously disturbed land that is being used as the site’s current mining and operating area. Approximately 15.6 acres within this area have been reclaimed as of 2022 as groundwater ponds. The remaining portions of the site are agricultural fields or undisturbed wooded and riparian areas along the river. The mobile asphalt facility is a temporary piece of equipment that will be centrally located on site (Parcel 345503400053) in an already disturbed area surrounded by a natural and mature setting provided by the mesa and surrounding cottonwood trees, just south of the Gunnison River and just outside of the undisturbed riparian corridor (**map attached**).

Properties around the subject property consist primarily of agricultural lands. Gunnison River borders the northern edge of the property, and then the elevation rises to a bluff. Town of Orchard City boundary generally begins immediately north of the Gunnison River where multiple residential lots have been created along the top of the bluff (overlooking the subject property).

Elam Construction intends to use this quarry to serve the local construction market. The applicant believes that allowing asphalt production on the site will allow them to better serve nearby paving projects in the surrounding area such as those on Highway 92, 65, and 50. Removing Condition No. 9 in BoCC Resolution No. 99-R-009 as follows: *The placement and use of an asphalt plant shall never be allowed*

intends to reduce truck travel miles for projects awarded to Elam Construction within 20-50 miles of this site. Their other facilities that allow mixing asphalt are located in Montrose and Grand Junction.

Regulatory Overview

Specific Development regulations went into effect in the unincorporated area of Delta County in January 2001. These regulations require a Development Agreement for certain types of uses (e.g., mines). A Development Agreement for this subject property was created through the Subdivision regulations in place at the time (Resolution 99-R-009). The 2021 Land Use Code repealed the Specific Development and Subdivision Regulations, and replaced them with new regulations.

Limited County records do not indicate the purpose for Condition 9 in Resolution 99-R-009. However, the County has discretion to amend a prior permit (removing/revising/adding conditions). Staff finds that agreements, contracts, etc. can be amended upon mutual agreement of the parties. In this case, the parties consist of the applicant, property owner (if different), and the County.

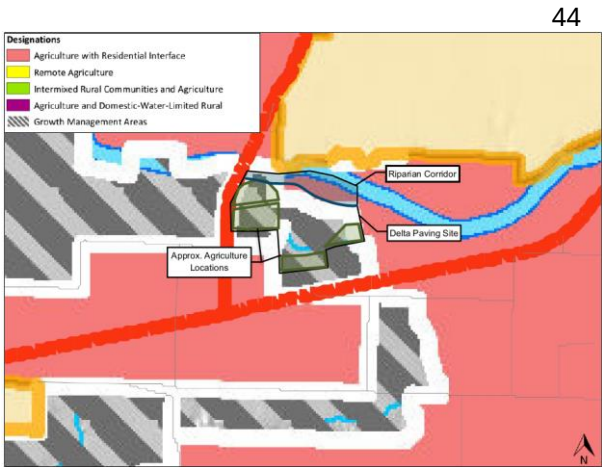
Chapter 1 of the Land Use Code (LUC) addresses “traditional provisions” for how the LUC affects approvals that pre-dated the LUC. Section 3.B.4 (Chapter 1 LUC) states: “*Conditions of approval may be modified or eliminated by amendment to the development agreement through which the conditions were imposed.*” This application is requesting to amend an existing Development Agreement through the Conditional Use Permit (CUP) process since the County no longer has Specific Development Regulations.

The Delta County Master Plan (adopted 2018) indicates that the subject property contains areas designated to future land plans. The northeastern corner, though, is designated as Agriculture with Residential Interface; it is important to note that the gravel pit predates the Master Plan (and Land Use Code). The property is zoned A-20, with lands immediately south (along Highway 65) zoned as Rural Industrial/Commercial (RI/C) reflecting the Highway 92 Overlay District (Ordinance 2006-10). Orchard City does not have zoning or land use regulations.

Generally, an Intergovernmental Agreement (IGA) addressing land use affords a municipality the ability to assume Lead for a project where they want to annex the property. There is currently no IGA with the Town of Orchard City relative to land use. That said the project was referred to the Town for comment. The Town responded that they prefer retaining the existing Resolution (Development Agreement).

In an IGA with the City of Delta, some of the existing agricultural fields located within the proposed project site are located within the City’s Growth Management Area. The project was referred to the City for comment. City staff replied that they had no comment on this project.

The majority of the areas designated as Agriculture with Residential Interface are within the Riparian Corridor, or were previously disturbed areas associated with the mine. The Riparian Corridor is made up of heavily vegetated undisturbed land with many areas that could be potential wetlands, and is almost entirely within the floodway – the application proposes to remove this area from the existing permit (approximately 15 acres).



Background

Parcel #345510202002 is Lot 2 of the Volk Minor Subdivision (#97-071) recorded on February 10, 1998 under Reception #511315. Originally, Lot 2 was to consist of approximately 80-acres. The Board of County Commissioners (BoCC) accepted the Final Plat for the Volk Minor Subdivision that was supposedly based on an approved Preliminary Plat. However, after the Final Plat was recorded, it was later brought to the attention of the BoCC that the subdivision had been mistakenly approved as the applicant had revised the acreage of Lot 2 significantly without that revision following the appropriate process. Lot 2 was reduced from 80-acres to approximately 41.62-acres.

The Final Plat was recorded with a restriction on Lot 2. Lot 2 cannot be developed or used for other than agricultural use unless the owner goes through the full subdivision review process. The Final Plat also notes that the Minor Subdivision is located within a floodplain and requires any development within the subdivision to apply for a Floodplain Permit. Staff reached out to Environmental Health (EH) in regards to any existing floodplain permits for either parcel located in the floodplain. EH has stated that the applicants have existing floodplain permits in place for the property. If the proposed mining area is to change at any

point in the future, encompassing the floodway, the applicant will be required to revise their current permits (**Condition #4**).

When Grand Junction Pipe and Supply Company (applicant/owner at the time) applied for a gravel pit operation to the Division of Minerals & Geology, there were disputes about the recordation of a Final Plat. On April 19, 1999, the BoCC and Grand Junction Pipe and Supply Company came to an agreement for the operation of the gravel pit on what was supposed to be Lot 2 of the Volk Minor Subdivision. This agreement (recorded May 11, 1999) was to help mitigate the possible negative impacts resulting from the pit. Along with this agreement there was also a \$25,000 performance bond placed on the pit. Grand Junction Pipe and Supply Company agreed to the following conditions, and staff has assessed the status of compliance with these conditions:

- 1) *Hours of operation will be from 6:00 a.m. through 6:00 p.m. Monday through Saturday only. The only operation which may be allowed to continue through the night and on Sundays will be pumping.*

STATUS: According to the applicant, this facility was last operated (mining) about 15 years ago. In 2015 there was some minor activity. Other than that, there has been occasional trucks picking up some material from existing stock piles. As such, staff cannot verify the hours were met. The applicant has stated that these hours would not need to change with the requested amendments; however, the documentation indicates hours of 7AM to 7PM versus the 6AM to 6PM as currently conditioned.

- 2) *With respect to the nighttime and Sunday pumping, this Board would want you to use electrical motors for pumps, if power to run the pumps can be obtained at reasonable expenses from the existing power lines which cross Lot 2. Whether you use electrical or diesel, your pumps and motors must be house in a sound reducing building with a residential muffler.*

STATUS: See #1, the applicant has stated that this condition would not change with the requested amendments.

- 3) *All of your lights must be hooded so that the neighbors on the ridge of the hill are not disturbed and the night sky is not illuminated.*

STATUS: Currently, there is no lighting located on site.

- 4) *For purposes of dust suppression, the access road from State Highway 65 through the field in Lot 2 of the Volk Minor Subdivision must be paved, with the road from the field to the processing area graveled. Dust suppression in compliance with the Aire Emission Permit which will be obtained from the Colorado Department of Public Health and Environment for the gravel mining operations on the volk Property must be maintained on all gravel roads, including internal haul roads to the stockpile and the processing area.*

STATUS: A site visit by Staff confirmed that this portion of the road is paved (slurry seal).

- 5) *Any trees larger than 6 inches in diameter that are removed must be replaced two (2) planted for every one (1) removed. You must maintain the existing trees between Lot 2 and the pit and processing area as viewed from Highway 65 as a buffer area. A representative of this Board and a representative of the State Forester or CSU Extension agent familiar with trees shall visit the site, identify and mark all Fremont Cottonwood Trees. All large, healthy Fremont Cottonwood Trees must be preserved; except that any trees which substantially interfere with the mining plan as approved by the Mine Land Reclamation Board may be removed if either transplanted or replaced two (2) trees for every one (1) removed in a different area.*

STATUS: Staff cannot verify if there was removal and replacement, but there is a mature strand of trees on the site. This condition will be extended with the permit and staff recommends adding an annual report (inspection if needed) as a condition to ensure this condition is met. This condition is intended to help mitigate visual effects to a feasible extent.

- 6) *With respect to the location of the access road, the first choice of this Board is on the south boundary of Lot 2, with the second choice being the middle of Lot 2 of the Volk Minor Subdivision. You have also agreed to contact the railroad to explore the feasibility of using the existing road through the Frazier property to access State Highway 92 and provide to this Board their written answer or documentation as to the answer of the railroad. Such road will not be required unless it is approved by the railroad and unless it can be installed as a reasonable cost. The preference of this Board is that there be two accesses to the gravel mining operation, one from State Highway 65 and one from State Highway 92.*

STATUS: There is currently no access to Highway 92.

- 7) *You must consult with the Colorado Division of Wildlife on the size and offshore location of any islands that will be used for goose nesting and wildlife. At the conclusion of mining activities, there must be one island in the 16-acre pond and two islands in the 35-acre pond.*

STATUS: There are no islands located in any of the existing ponds within the permit area. The applicant has stated that when they are fully reclaimed in the area, they will work with the appropriate district to build those ponds.

- 8) *The actual crushing operation may extend for no longer than three months during any calendar year.*

STATUS: Staff cannot verify how this facility operated in the past. However, the applicant has indicated that they are not requesting changes to conditions other than Condition #9. This limitation can be extended to asphalt to mitigate noise and odor to an extent that is feasible and still operate this facility.

- 9) *The placement and use of an asphalt plant shall never be allowed.*

STATUS: There is currently no asphalt plant at this site.

This agreement applies to the operations on Lot 2 of the Volk Minor Subdivision and all other properties described in the Lease Agreement recorded in Book 817 at Page 544 (the Frazier property); provided

however, that with respect to the Frazier property compliance with this agreement is the responsibility of Grand Junction Pipe and their assignees and shall not constitute a covenant running with the land.

Water Supply. An application for Underground Water Rights, Change of Water Rights, and Approval of a Plan for Augmentation was filed on July 26, 1999 (Decree Case No. 99CW128, **attached**). The decree ruling approved the augmentation plan as follows:

- Applicant shall have the right to divert water out of priority from and at the Delta Paving Pit Wells so long as adequate water is available and provided to augment depletions from such diversions, as set forth in the Plan for Augmentation. Pursuant to C.R.S. 37-92-305(8), the Division Engineer for Water Division 4 shall curtail all out of priority diversions from the Delta Paving Pit Wells the depletions from which are not so replaced as to prevent injury to vested water rights. The applicant and its assigns understand that a portion of the replacement water is a leased supply, and if such lease should expire, fail to be renewed, is terminated, or an alternative source of replacement water is not included in this decree by proper amendment prior to such expiration, curtailment of all out of priority diversions being augmented by the leased supply will occur.

On May 29, 2019, Kilgore Companies, LLC dba Elam Construction, Inc., filed a Decree (2019CW3023) to the Water Court, Division No. 4, to amend the water rights from the previous Decree (99CW128). The amounts of evaporation losses, product moisture losses, and the maximum rates for dewatering purposes and dust suppression changed. Judgement was made to allow the rights to continue for the Delta Paving Pit Wells on September 5, 2019.

Mining Permit/Existing. A Mining and Reclamation Permit (M-1998-105, **attached**) was issued to the Delta Paving Gravel Pit on April 19, 2000 from the Colorado Division of Minerals and Geology. A Well Permit (#053787-F, **attached**) was issued on May 19, 2000. Conditions of the Well Permit is as follows:

- Average annual amount of groundwater to be appropriated shall not exceed 225.15 acre-feet with the total surface area of the groundwater ponds limited to 60 acres (these ponds are known as the Delta Paving Pit Wells Nos. 1 – 5), the use of ground water, in addition to evaporation (218.75 acre-feet/year), is limited to dust suppression (2.7 acre-feet/year), product moisture loss (3.7 acre-feet/year), aggregate washing, and dewatering. No other use of water is allowed unless a permit is approved.
- The owner shall mark the wells (ponds) in a conspicuous place with well permit number(s) and court case number(s) as appropriate.
- The provision of the Minimum Construction Standards in Rule 10 shall be waived for gravel pits except for Rules 10.1 and 10.2.1 regarding aquifer contaminants. The owner of the gravel pits shall take necessary means and precautions to prevent contaminants from entering the gravel pit wells.
- The boundaries of the groundwater ponds/gravel pits shall be more than 600-feet from any existing well not owned by the applicant.
- No permanent pumping equipment shall be installed within the confines of the groundwater ponds/gravel pits, unless a separate written request for a variance has been approved by the State Board of Examiners of Water Well Construction and Pump Installation Contractors.

Irrigation. The applicant owns ten (10) shares, and has leased an additional two (2) shares, of the capital stock of the Bona Fide Ditch Company. Water produced under these twelve (12) shares will be used for augmentation.

Access. On September 10, 2003, an Agreement and Grant of Easement was recorded under Reception #571214 between Volk (Lot 2) and Grand Junction Concrete Pipe Co. This agreement was for the purpose of granting an easement from Mrs. Volk to GJCP over the Volk Property (Lot 1, Volk Minor), across and along the driveway, for ingress and egress from the GJCP Property. The term of this Agreement and of the Easement shall be twenty years, commencing on the effective date of said Agreement. The Easement and all rights and obligations of the parties under this Agreement shall automatically terminate at 12:00 noon on the day that is twenty years after the effective date of this Agreement. Mentioned in this Agreement is a Farm Lease that occurred between Grand Junction Pipe Company and David Volk for farming purposes. The Farm Lease does not appear to have been recorded.

Air Quality. A Construction Permit (Permit No. 93PO630) was issued on December 9, 2003 to Elam Construction, Inc. by the Colorado Department of Public Health and Environment, Air Pollution Control Division. This permit applies to a counterflow drum hot mix asphalt plant (portable equipment) that is currently housed in Grand Junction, CO. This is similar to the proposed plant that will be located on the project site. The applicant has obtained an updated Construction Permit (Permit No. 22PO0098, **attached**) for the plant equipment to be used on site; this equipment is newer. The applicant will need to file a Relocation Notice to CDPHE, Air Pollution Control Division, 10-days prior to the change in location (**Condition #10**).

The Construction Permit includes regulation by the Air Division relative to visible emissions, relocation of plant, operations, odor, gases and particulate matters (PM₁₀), maintenance of equipment, production rate (not to exceed 300,000 tons per year) (**Condition #9**), and APEN (Air Pollutant Emission Notice). Equipment like this is regulated and regularly inspected to ensure Pollutant Emission Notice). Equipment like this is regulated and regularly inspected to ensure there are no toxic fumes that would be harmful to humans and/or the environment.

APPLICATION:

Chapter 2, Section 5.B(7) of the LUC requires a mineral extraction/quarry use to meet standards for reclamation, noise, dust, and hazards. The following information/documents have been supplied by Delta

Paving Gravel Pit Conditional Use Permit. The following Exhibits are considered part of the Amendment to the Colorado Division of Reclamation, Mining, and Safety (CDRMS) Permit Application (Appendix 1):

Mining Plan/Proposed (Application Exhibit D, attached):

Mining will involve roughly 110-acres of total disturbance; the primary commodity being mined is sand and gravel for use in construction materials such as crushed rock, sand, washed rock, concrete, and asphalt. Mine access will remain the same from State Highway 65, west of the project site.

Mining will be completed in four (4) phases; each pit will be mined and reclaimed before the next pit is mined; this will minimize total disturbance. There is sufficient topsoil and overburden on site to successfully reclaim the site to its final condition as groundwater lakes and rangeland. Only one loader and a scale will be located on the site full time, as most of the year the mine will not need to be running at full production. No permanent structures are proposed to be built on site. Elam Construction is proposing to provide portable toilets and bottled water to employees on site during operating hours. All facilities will be removed once reclamation occurs and no explosives will be used at this site. A Weed Management Plan will be implemented for the site (**Condition #12**). Plants identified through the Colorado Noxious Weed Act (C.R.S. 35-5.5) and the Delta County Noxious Weed List as undesirable and designated for management within the County will be removed.

Berms will be constructed by Pits 3 & 4 (Phases 3 & 4) along State Highway 65 as topsoil and overburden is stripped from Pits 1 & 2. These berms will be vegetated to prevent erosion and provide screening (**Condition #13**).

Asphalt and concrete production will occur onsite occasionally depending on local contracts awarded to Elam. Construction periods for road projects in this area are typically April through October (depending on weather). Elam does not expect projects in this area every year and/or to be awarded contracts in this area every year; noting that CDOT projects include specific timelines for completing the work (typically 90 days). However, defining occasionally for the purpose of this permit will be from April – November (each year) with a maximum of three (3) months crushing operations and use of the asphalt plant (**Condition #8**). Mining hours of operation will be from 7 am to 7 pm, with no night mining unless permission is given by the County, according to the project contracts that are obtained. Minor truck activity and repairs may occur after hours.

Level 1 Traffic Impact Study (TIS) (attached):

A Level I Traffic Study is required as part of a conditional use permit and shall include, at a minimum, the information required by this Table 5.a, *Traffic Impact Study Scope*, based on the level of study required. A Level 1 Traffic Impact Study has been completed by Kimley-Horn and Associates, Inc. The study indicates that the expansion of the site will generate a minimal amount of traffic during the operation hours; a total of 77 trucks is estimated to access the pit each day. Total daily trips are indicated to be 164 vehicle trips (33 peak hour vehicle trips, this includes employee traffic and truck traffic). The study indicates that the Average Daily Traffic (ADT) in 2021 along State Highway 65 was 7,035 vehicles, with the anticipated ADT for 2040 being 7,700 vehicles. Based on the analysis of the study, Kimley-Horn believes that traffic improvements will not be necessary along State Highway 65.

This Traffic Study addresses traffic that is expected based on the proposed application. It is not clear what the traffic levels were at the time the mine was initially permitted (permitted conditions) or what they are today (existing conditions). These numbers would help understand how much of an increase, or decrease, in traffic there would be with this proposal. CDOT has requested information in regards to the change from existing traffic levels from the existing permit.

Truck Routing Plan:

The majority of the trucks entering and leaving the site on a daily basis will be dump trucks used for picking up and transporting materials sold by the mine. Dump trucks, typically with 13- and 24-ton capacities, will haul materials off site such as road base, washed sand, crushed stone, and gravel. Additionally, concrete and asphalt trucks will contribute to the traffic in and out of the site. Traffic can be expected steadily throughout the day during mine operating hours, typically from 7 am to 7 pm between the months of April through November (**Condition #16**). The only hazardous material that will be transported to or from the site is diesel fuel.

Noise Control Plan:

Chapter 4, Section 7.C, *Noise*, any noise that is generated by development shall not exceed the thresholds set out in C.R.S. 25-12-103, *Maximum Permissible Noise Levels*. The LUC also requires that a Noise Control Plan be submitted if a mining operation is within 2,000 feet of a residence or livestock operation. Properties immediately south, within 2,000 feet, include residences and are actively grazing livestock. Properties abutting to the north includes residences up on the bluff, which are within 2,000 feet.

Industrial uses are limited to a sound level of 80 dB(A) at 25-feet from the property boundary during the hours of 7 am and 7 pm (prior condition establishes 6 am to 6 pm). It is not anticipated that the noise level from mining activities, such as crushing, will exceed these limits; primary concern for noise is from the crusher. The crusher will be located at a minimum 800-feet from the property boundary, and 1200-feet from the nearest residence, with physical noise barriers such as stockpiles between them. If noise levels exceed the threshold limits, noise mitigation techniques such as berms, stockpiling, or the use of hay bales will be implemented prior to continuing the activity causing the exceedance (**Condition #7**).

Dust Control Plan:

Dust is regulated by the Colorado Department of Public Health & Environment (CDPHE). The dust levels will be maintained with the limits of the CDPHE Air Permit (**attached**) limits for the site (**Condition #9**). Due to mining below the water table, most of the material excavated will be wet and pose a lower risk of dust creation. The water used for dust control will be sourced from existing water sources on site.

Operational Hazard Mitigation and Risk Management Plan:

A Spill Prevention, Control, and Countermeasure (SPCC) Plan will serve as the Operational Hazard Mitigation and Risk Management Plan for the operation. The plan will be reviewed and updated, a minimum, every 5 years, or within 10 working days of any operational or administrative changes. The SPCC Plan includes information on the mitigation and management of hazards related to oil spills. This Plan includes:

- Emergency Contact information
- 24-Hour Emergency numbers to contact
- As-built facilities map identifying potential risks and hazards
- Mitigation techniques for storing and transporting hazardous materials
- Writing response plan for the occurrence of oil spills

There are no other potential hazards (explosions, fire, gas, chemical, leaks, toxic gas emissions) that would require a Hazard Mitigation and Risk Management Plan. To ensure that primary containment is satisfactory to contain petroleum products, integrity testing shall be conducted on each vessel designated for testing in the SPCC Plan.

Fuel Management Plan:

The majority of natural vegetation exists in the northern portion of the site; this area will remain undisturbed during mining operations. The norther wooded area is made up of mature cottonwoods and willows with a shrubbery midstory. The understory is predominantly composed of saltgrass and dry, sparse shrubs. Typical rangeland vegetation exists near the outskirts of the property, which will also remain undisturbed. Emergency vehicle access will be from State Highway 65 at the west of the site.

Constraints Map:

Existing features include: Gunnison River, ditches, potential wetlands, forested areas, utility lines, structures, and ponds. Appropriate setbacks are maintained in the mining plan to protect these features. There are no groundwater recharge areas located at the site. Additionally, the site is not located along any Scenic Byways. The potential wetlands located on the site are limited to the riparian corridor along the Gunnison River. Mining has previously been permitted and approved to occur in this corridor, however, Elam has committed to not mining these areas to protect the wetlands.

Drainage Report:

All surface drainages from stormwater or process water will be maintained within the disturbance boundaries through the topography of the site. This means that there are no downstream properties that can or will be impacted by surface drainages from the site. In the event of a storm, all water will be collected in the active pit where it will be left to evaporate or infiltrate for 24 hours. After 24 hours, it will be pumped out of the pit to the existing lake, acting as a settling pond for sediment to be removed from the water. From there, it can be safely discharged to an on-site drainage that returns the water to the Gunnison River.

Landscape/Lighting Plan:

There are existing trees and vegetation that mostly screen the existing operation. Screening of the expansion site is proposed through construction of berms along Highway 65 and existing cottonwood trees near the Gunnison River. The majority of the vegetation along the river will be retained, consisting of mature cottonwoods, willows, and sparse shrubby and grassy areas which will serve as screening for the processing areas. In the pre-application meeting, Staff discussed planting vegetation along Highway 65 now, so it reaches a mature stage before starting operations in those areas (Phases/Pits 3 & 4). This is recommended to be included as **Condition #13**.

Lighting may be used on an as-needed basis for emergency repairs and maintenance when it is dark. Lighting must always be downcast and limited in use.

Visual Impacts and Mitigation:

The LUC establishes regulations for projects within ¼-mile of a designated Scenic Byway. Designated Scenic Byways in Delta County include; West Elk Loop (92-50 from Hotchkiss to Gunnison, 133 from Hotchkiss to Carbondale, 135 from Gunnison to 133) and Grand Mesa (Highway 65 from I-70 to Cedaredge). There is no Scenic Byway affected by this project.

The project site is visible from the ridge near the northern neighbors, but private views are not protected under the LUC. That said, Condition #5 of the existing permit for the operation requires managing landscape screening. There is existing mature vegetation (trees and shrubs) that provide screening from the processing area, which will be the location of the asphalt and concrete plants, crushers, screening desk, scale, scale house, and most other equipment. The pits and taller parts of the asphalt plant (maximum 25-feet) will be visible despite the trees due to the elevation of the ridge. This western end of the site is also visible to the nearest neighbor to the south. The applicant stated they have been in communication with the property owner of this residence, and it has been agreed upon that no additional visual screening or renders need to be undertaken.

Proof of Water (Wells):

The Delta Paving site obtains its water from the existing gravel wells that are on site. The Water Court Ruling in Appendix 4 (**attached**) shows the water rights owned by Kilgore Companies, LLC dba Elam Construction, Inc. for these sources. The existing water rights are provided for evaporative loss and consumptive uses such as dust control and aggregate washing. The production of asphalt itself will not cause an increase in water consumption as asphalt production requires little to no water. If more water is needed for the mining operation, new water rights will be procured through the Colorado Division of Water Resources as needed (**Condition #20**).

Water Information (Application Exhibit G, attached):

The Delta Paving Gravel Pit is located within 200-feet of the Gunnison River. The Relief Ditch and Broad Ax Ditch traverse the site, and an area of potential wetlands exists in the north near the river. The Federal Emergency Management Agency (FEMA) has designated the northern portion of the site to be located within the 100-year floodplain. Minimum distance from the Gunnison River to excavation activities is 100-feet, with no excavation, construction, or other development occurring in the floodway (**Condition #3**).

Following reclamation of the site, pit pumping will cease. Permanent groundwater lakes will be left behind from the mining pits. The lakes will generate evaporative losses of groundwater, of which will require appropriate permits. Elam Construction will obtain the required Augmentation Plan and additional gravel well permits prior to the exposure of any groundwater at the site. A copy of these plans will be provided to the Division through a Technical Revision.

A new gravel well permit will need to be obtained for the new groundwater exposure associated with the additional mining areas.

Biological Assessment & Wildlife Report (Application Exhibit H, attached):

The project location is less than 350-feet south of Orchard City with the proposed pit sites being just south of the Gunnison River. With Highway 65 and Highway 92 to the west and south of the site, and developed lands in the area, wildlife habitats have been fragmented.

The affected land is within winter range and forage for bald eagles, but no nests were found to be present on or near the site. The western portion of the site is within the winter range for wild turkey. Black bear and mountain lion overall range is present on the affected land, typical of western Colorado. The affected area is within mule deer and white-tailed deer overall ranges. The northern area of the site near the Gunnison River is within otter overall range.

No migration corridors or big game winter ranges are present within the permit area. There are no federally listed threatened and endangered species and/or habitats that were identified at the project location.

The application includes removing permit approval to work in the Gunnison River. In addition, there will be a 100-foot buffer from the river to avoid impacting the riparian corridor. If any trees are impacted, recommended conditions require replacement of native trees at a 2:1 ratio. In addition, the operator is required to manage invasive weeds on the project site.

Reclamation includes creating new ground water lakes that become wetland habitat (as demonstrated by the existing lake restoring the area of Pit #1). Mining will not take place in any water ways or natural lakes. Surface water controls will protect offsite drainages and fish habitats from sediment discharges. Elam Construction will not stock the reclaimed lake with non-native species at any time (**Condition #6**).

The property is generally fenced with agricultural fencing, which allows free movement of wildlife. No anti-climbing measures are necessary at the site other than fencing and mine gates for security.

Soils Information (Application, Exhibit I, attached):

A soil report was generated using the United States Department of Agriculture's NRCS Web Soil Survey (WSS). The WSS provides soil data and information produced by the National Cooperative Soil Survey. The majority of the site's soil (65%) is made up of Waterdog soil while the remaining portion of the site is made up of Montrose Silty Clay Loam. The parcels are considered Prime Farmland If Irrigated, however, the majority of the site will be groundwater ponds so this will not be necessary for the post mine land use.

Reclamation Costs (Application Exhibit L, attached):

The Delta Paving Gravel Pit will have a bond to cover the worst-case reclamation scenario. Prior to opening Phase I to mining, the operator/applicant will post the necessary bond. The worst-case reclamation scenario will occur when Phase I of the mining is nearly complete as it is the largest of the four pits. The remaining pits will be undisturbed at this point. All structures will need to be removed from the site.

Application

A SWMP was prepared for the Delta Paving Gravel Pit on October 10, 2012 by River City Consultants, Inc. The Plan states that the groundwater depth is unknown, however, given the proximity to the Gunnison River it is likely to be very shallow. The site drains to one of several on-site retention ponds. These retention ponds do not have an outlet and typically water leaves the pond via evaporation and infiltration to the aquifer. The retention pond is within the 100-year floodplain of the Gunnison River, so under high flow conditions this area may be flooded.

Potential pollutants include chemicals, nutrients & bacteria, oxygen demand, and elevated water temperatures. Potential pollutants shall be controlled by the following methods: Waste Management and Disposal, Non-stormwater Controls (A list of spill prevention, control, and counter measures have been developed as part of the Stormwater Pollution Prevention Plan), and Stormwater Controls.

Wetlands Evaluation (Application Appendix 5, attached):

WestWater Engineering conducted a desktop wetland evaluation on February 3, 2022. All areas of the Parcels 345510202002, 345503402053, and 345510100028, were evaluated using desktop methodologies to evaluate aquatic resources based on existing aerial imagery and databases including Delta County GIS, Natural Resources Conservation Service (NRCS), U.S. Fish and Wildlife Service (USFWS), National Wetlands Inventory (NWI), and the Federal Emergency Management Agency (FEMA).

The 110-acre site disturbance area has been evaluated and determined to consist of approximately:

- 18 acres of *Waters of the United States* (WOUS) in combined wetland and open water area, consisting of wetlands and open water in the Relief Ditch (2.3 acres), lake (14.6 acres) and small pond (1.4 acres); and
- 60 acres of upland including the approximately 51.5 acres of agricultural field farmland; and
- 16 acres of riparian area of which will be mostly upland with dispersed WOUS areas, and
- 17 acres of alkali/saline impacted soils which may be upland or problematic wetlands depending on site specific data.

NWI identified potential WOUS, also known as jurisdictional wetlands (USACE, USFWS), of approximately 4.0 acres of various type wetlands and open water. Including the 14.6-acre lake, which was not listed in the NWI database, total NWI WOUS would be approximately 18.6 acres.

The Mining operation will not affect any irrigation facilities, specifically the irrigation ditches on and around the property, as all mining will take place with appropriate buffers to protect these features. The only sensitive lands on or near the subject property is the riparian corridor in the north section of the site along the Gunnison River. A Wetlands delineation will be conducted, and any areas identified will be protected from mining or other development with appropriate setbacks (**Condition #3**).

ASSESSMENT/PLANNING COMMISSION

Chapters 3-6 of the LUC establish standards to assess with this type of development application. Issues to consider for this type of use include parking, noise, dust, runoff/drainage, traffic, geology, water, and Ag lands. Staff and the Planning Commission have reviewed documents/information submitted by the applicant and public relative to the LUC standards.

The Planning Commission (PC) held a duly noticed public hearing on August 10, 2022. Ben Langenfeld (P.E.) and Sydney Conner (P.E.) (Lewicki & Associates, representing Elam Construction), Jon Mueller (Operations Manager for Elam Construction) and Jim Doody (Environmental Manager for Elam Construction) were in attendance. Lewicki made two presentations (one for sand and gravel and one for the asphalt plant) to the PC and the public, reviewing aspects of the existing mining operations (permit) and explaining the current proposal to add the hot mix asphalt plant to the permit and amend the conditions, carrying forward several conditions that were in the original agreement.

The PC asked numerous questions of the applicants, as well as staff. Areas of concern were related to history of Volk Subdivision, status of existing permit, existing Condition #9 (neighbor standing), County gravel pits with asphalt (Ellison), Mosquito District, mining in the riparian corridor, landscaping, term 'Temporary Use', groundwater ponds, and water rights.

The Public Comment period was then opened up to those present at the meeting, both in person and via Zoom. About 75 neighbors attended the meeting, mostly stating opposition of the application, specifically adding a mobile hot mix asphalt plant to the existing mining permit. Concerns/comments were expressed including: economic trade off, dust, smell, noise, fugitive emissions, health concerns, traffic on Highway 65, easements, reclamation, location, riparian rights, wildlife, and water (irrigation rights, Gunnison River, groundwater ponds).

The PC closed the public hearing portion of the meeting (meaning, no further testimony) and voted unanimously to continue the matter to August 24, 2022. The applicant did not get an opportunity for rebuttal, but was asked to supply comments in regards to the neighbor comments/concerns.

Following the meeting, Lewicki & Associates provided a Fact Sheet (**attached**) in response to neighbor comments made at the August 10th hearing. The Fact Sheet summarizes responses for the following: economic tradeoff, Right to Quiet Enjoyment, traffic concerns, health concerns, Volk Easement, reclamation amounts, location (other sites), silo height, air monitoring devices, riparian rights (islands), water/augmentation plan, ambient levels (air pollution), and traffic study (CDOT).

On August 24, 2022, the PC held a public hearing on the subject project that was continued from the August 10, 2022 hearing. The PC Chair offered the applicant a chance to respond (rebuttal) to the public comments that were heard at the previous meeting. Mr. Ben Langenfeld (representative for Elam) addressed the following items, specifically: CDOT Access Permit, Traffic Study, project limits, reclamation bond (modified bond amount), air monitors (on bluff vs on equipment), ponds (reclamation), and Land Use Code requirements (permits).

The PC discussion consisted of the following topics:

- Air Pollutant Emissions Notice (APEN). The PC asked if there was any history or APEN violations for the site. The applicants stated that they have not had any actions taken against them for this site as all permits are in compliance and no violations have been made. The PC also asked if there were other Elam sites that had similar geographic features, such as this site. The applicants stated that they do have other sites that are in sensitive areas, similar to this, but that is why the Air Quality Permits are in place and monitored by the State.
- Augmentation Plan. PC members asked for clarification on groundwater rights & surface rights for the property. The applicant explained that the usage of those water rights is for dust control. The Ditch rights can be used for the gravel operation as part of the dust control measures, which uses water trucks to spray the travel areas and the stockpiles.
- Landscaping. Concerning Pits 3 & 4 of the expansion, the PC wanted to see landscaping measures put in place to help mitigate visual impacts from Highway 65. Staff confirmed that a condition was applied that addressed both the berms for Pits 3 & 4 along Highway 65 and the groundwater ponds once they are reclaimed, as there will be enough overburden and top soil for the berms to help with visually blocking operations.
- Expansion (gravel). The PC asked the applicant if the denial of the expansion (if denied) would cause any severe problems for future plans for the pit located on this site. The applicant stated that there is the issue of the leased land (by the Frazier's) and that they are not sure how long that lease will be renewed without contention; if the lease expires for some reason and they do not have the expansion, it will affect their mining operations. The applicant stated that their preference is to use the leased land first before ever moving on to Pits 3 & 4.
- Mosquito Control. The PC questioned Pond #1 (existing) located on the northern boundary of the property and why it was being treated weekly for mosquito control. The applicant explained that the pond has been there for many years and has naturally had vegetation occur that is causing water to sit in that area; and that the pond was extremely small in comparison to the 15-acre pond located just to the south of Pond #1. The PC asked about the cost of the Mosquito District to perform abatement on these ponds. The applicant did not know exactly what they spend on the abatement costs, but that they do not want to create mosquito problems. Staff explained that the Mosquito District Manager stated that the deeper the pond, with the appropriate slopes, and clean shores would help eliminate the potential for mosquito breeding grounds. The applicant stated that the movement from the aquifer would also help keep the water moving in these ponds; they will not have standing water.
- Expectations. Some PC members expressed concerned with impacts to adjoining properties, but recognize the LUC standards are met with this application. The LUC alone creates certain expectations for how property can be used, and the PC recognizes that prior permits can be amended. However, in this case, Condition #9 of the existing Development Agreement should be considered - that an asphalt plant shall *never* be allowed. It was stated that the applicant has the ability to ask for amendments to any existing permit; however, the word '*never*' was placed on this agreement for some (unknown) reason. The applicant responded stating that the LUC affords an applicant the right to amend any previous existing permit/agreement. They noted that they have followed all requirements of the current Code, and they feel this condition (established in 1999) prohibits them from doing things that the 2021 LUC affords them to do (provided they meet current standards).
- Life of the Pit. The current proposal states that the projected life of the pit, with the expansion, will be 20-years, depending on work. The applicant explained that in all reality, the pit could last from anywhere between 20 and 40 years, as it is not the most active pit. The PC asked if the reclamation process would be done once a phase is completed or if they will wait until all pits have been mined. The applicant confirmed that once they are completely done with a pit, they will reclaim that pit before moving on to the next.
- Level II Traffic Study. The PC asked staff if the Level II was in fact being required by CDOT. Staff shared the most recent communications from CDOT. In that context, it seems that CDOT will require a Level II Traffic Study if the operation exceeds their current permit threshold. The question is how that is determined. The applicant indicated they had provided documentation to CDOT justifying that they have not, and will not, exceed that threshold...even if it means restricting operation at certain times.
- Volk Subdivision. The PC asked for clarification on the restrictions from the Volk Minor Subdivision. Staff explained that there was a plat note on the Final Plat that restricted the use of Lot 2 to agricultural uses only, unless the owner went through the subdivision process (LUC Process under current regulations). The PC also asked about the gravel road easement for the Volk Subdivision. The applicant explained that they use it for maintenance and access to the west side of the reclaimed pond, but have never used it for hauling, but were allowed to if they needed to. The applicant confirmed that they have no plans to use this as a haul road because the pit (driving surface to Pits 1 & 2) has already been established and they see no need to change the use of that easement.
- Riparian Corridor. The current proposal for Pit 3 is abutting the riparian corridor. The applicant stated that based on the Wetlands Delineation, they will most likely move back the mining area from the northern property boundary for Pit 3. Again, the applicant does not want to mine within the riparian corridor so they have removed that portion from the permit. The PC also asked if the applicant would be opposed to "re-ordering" the pits (Pits 3 & 4) to mine the pit further south of the river, as to prolong the mining in that area as much as possible. The applicant confirmed that they do not have a preference in terms of order of mining. The applicants agreed to mine south to north (Pits 4 & 3) as to preserve the area along the river for as long as possible.

- 1 - Floodplain vs Floodway. The PC asked about the flushing flow of the Gunnison River (Black Canyon, east of Austin Bridge) and if this would have any effect on the property. The applicant explained that they are in the floodplain, not the floodway, and they intend to prepare a more specific assessment to make sure they avoid these areas. Also, they have a permit/plan approved by the State that they are following, so they should not be affected by this. If that changes, they will need to amend their applicable permits.
- 2 - Hours of Operation. The PC asked about night work being performed on the site if a job that they are awarded requires it. The applicant stated that is why they requested language in the condition where they would need to come to the County (Director) to request they allow the work to be done at night, based on the parameters of the contract they are working under.
- 3 - Spill Prevention. The PC discussed the potential concerns for oil spills in this area (referred to the Poudre River and the San Juan chemical spill). The applicant explained the SPCC Plan stating that the tanks are double walled (tank within a tank) and it would take a lot to puncture two steel tanks. The tanks are also tested every 5 years. The current plant sits within a berm area to keep water out and runoff in. The SPCC Plan addresses all precautions to be taken for this occurrence.
- 4 - Location. Again, the question was asked why this location. The applicant explained that the location depends on the material needed and if the site has the ability to produce those materials (not all sites are the same). It is better and more environmentally friendly to produce from the site of the materials, instead of taking trucks to other sites; this creates more traffic, more chance of material not being controlled, etc.
- 5 - Retention ponds. The PC asked what keeps the ponds from not contaminating the aquifer of the Gunnison River? The applicant explained that there are two primary sources of contamination: SPCC of pollution surface or subsurface. The Stormwater Management Plan for soil sediments being discharged on the surface will help regulate those from being pushed out to the river. With the subsurface, nature will filter the sediment (settling basin) and it will flow back out to the river, essentially having been cleaned by this process.
- 6 - 5-Year Review. The PC asked if the applicant was okay with the condition that required them to come back to the County every 5-years for a review of the permit. The applicant explained that they feel this is a way for the County, and even State, to maintain their enforcement for permits; so, there is no issue with having to do this.
- 7 - DRMS Permit. The Division of Reclamation, Mining and Safety, is currently undergoing the process to review the DRMS permit that Delta Paving (Elam Construction) has on file with the Division. Elam has applied to for a revised (new) permit to include the expansion of the Pit (including Pits 3 & 4). They explained that if they do not have a permit for the expansion then they cannot proceed with their plans for Pits 3 & 4. The PC asked about conditions of this permit. The applicant explained that the Division has specific statutory parameters that must be followed; they do not have a say in traffic, surface water, anything like that but that they are very specific to mining, reclamation, wildlife protection, and general environmental spill protection.
- 8 - City of Delta Pit (Elam). The PC asked if there was any confirmation from the City of Delta in relation to the north delta pit, also owned by Elam, and if there had been any violations, issues, or truck traffic issues. Staff informed the PC that they had not had a conversation with the City of Delta in regards to that site but that they would check into it. Since the meeting, Staff has reached out to the City of Delta and has received confirmation that they are not aware of any violations or issues for this site (see comments below).
- 9 - Relocating the asphalt plant (IF approved by BoCC). The PC asked if the applicant was willing to relocate the asphalt plant from the proposed site, if the Board were to approve the application. The applicant stated that if it was required, they could, they would need to build new berms, though. They already have all the berms and containment measurements in place for the proposed location.
- 10 - Public Parks. The PC asked specifically about a letter received from Mary Ditlove. In this letter it mentions that a public park was promised in a past agreement. The PC asked staff about this promise, to which staff did not have an answer as there is no documents the County has on file that talks about a public park. After the meeting, Ms. Ditlove responded to the staff with an email clarifying what she meant (**attached**).

Based on the information presented at the meeting, the PC took two separate actions; one for the addition of the asphalt plant, and one for the extension of the existing gravel operations. The PC actions are as follows:

- The PC voted unanimously 9-0 to recommend denial of the addition for a mobile hot mix asphalt plant to be allowed at the project location (specially in regard to property rights); and
- The PC voted unanimously 9-0 to recommend approval of the expansion of the existing pit permit, to include Pits 3 & 4, to the Board of County Commissioners, subject to conditions including that the operation of these pits work from south to north.

Staff has reviewed all documents submitted by the applicant and finds that they are sufficient. All required fees have been paid for this application. Therefore, Staff finds that the application has met all requirements & standards of the LUC for a Conditional Use Permit (PLN21-080).

OTHER AGENCIES INVOLVED:

Planning Staff sent the Delta Paving CUP Application submitted by Elam Construction along with a summary to the Review Agencies for comment on July 5, 2022. Comments received during this comment period were: CDOT, Town of Orchard City, City of Delta, UVWUA, US Army Corp of Engineers (USACE), and the Colorado Geological Survey (**attached**).

After the August 10th & August 24th meetings, staff reached out to the State (CDPHE, Air Quality Division) in regards to concerns revolving around asphalt plants (see comment below). Staff also reach out to the Mosquito District, CDOT, and the City of Delta, to help address concerns/questions from the PC.

CDOT:

7/7/22: Since the Traffic Study shows that the thresholds for the right and left turn deceleration lanes are just one vehicle under the turn lane requirements, CDOT would like to see a heavy truck analysis or something in the report to address the slow stopping and accelerating vehicles turning into (ingress) and from (egress) the site from the Highway. CDOT may still require a left and right turn deceleration lane if the gravel pit creates safety and operational issues on the Highway. They will need to submit an access permit application and traffic study to CDOT (**Condition #15**).

8/11/22: CDOT has been coordinating with the gravel pit traffic engineer and owners on what the CDOT requirements are for the potential gravel pit expansion. As of now, the gravel pit owners have told CDOT they do not plan on expanding. However, sing they are continuing the Delta County approval process, CDOT assumes that they may still consider expansion. If the gravel pit expansion were to move forward, CDOT would require the following:

- A detailed traffic study that analyses heavy truck traffic, peak hour traffic volumes, auxiliary lane warrants and meets the requirements of the State Highway Access Code (2-CCR-601-1).
- If traffic were to increase by more than 20% or if safety and operational issues are identified, CDOT will require the gravel pit owners to submit an access permit application.

8/16/22 (in response to applicant email): I was told by Delta County that the Elam is continuing the expansion/hot plant approval process, so CDOT will wait to see if the pit expansion/hot plant

is approved. If the County approves the pit expansion/hot plant, what is Elam's plan? If they are no long going to expand the pit or add a hot plant, why would they continue with the approval process?

8/17/22 (to applicant): If the gravel pit stays at the volumes per the current permit, 11 DHV, then CDOT has no issues with the pit continuing current operations. However, I don't believe a hot plant was included in that permit and due to that, if a hot plant is planned for this location CDOT will need to see if the hot plant will trigger a new CDOT access permit and traffic study.

8/18/22 (in response to Planning questions): The traffic study attached meets CDOT's requirements for a level I traffic study, however, since the gravel pit DHV is over 10, CDOT will require a level II traffic study. The attached report also states that the gravel pit owners are required to obtain a CDOT access permit. From the current study attached, CDOT is going to require that a right turn deceleration lane and a left turn deceleration lane be constructed at the access.

If they are within the thresholds of the current permit, 11 DHV (design hourly volume), they can continue to operate. Since the current permit is 11 DHV (which is lower than most gravel pits) CDOT would like assurance that they will still be at or under that number.

CDOT has no control over land use, so CDOT would not restrict any land use. If they increase traffic volumes by more than 20% or if safety and operational issues arise, CDOT will require an access permit and traffic study.

CDOT would prefer that they permit all uses up front and analyze the heavy truck traffic now to prevent any accidents or safety and operational issues on the highway when they start operating. CDOT appreciates the offer, but CDOT doesn't want to wait for something to happen, CDOT would rather mitigate any safety and operational issues now.

City of Delta:

7/6/22: No comment.

9/12/22: Staff reached out to the City of Delta in regards to the north Delta pit (owned by Elam Construction) as requested by the PC to see if there has been any violations or issues (truck traffic) for this site. The City's response was as follows:

"I am not aware of any issues. I have copied Jolene, City Clerk, in regards to any agreements and Sindy, Police Department, for any record of traffic complaints. The property was annexed in 1987, do you know when the gravel pit was permitted? Jolene called me and said that she does not have records regarding the gravel pit in our central files."

The city also forwarded a response from the Delta Police Department, stating the following: "The Delta Police Department shows on involvement back in 2011. One vehicle listed under Elam Construction. It does not show an incident report associated with the vehicle."

Town of Orchard City: Request that the current "agreement" is kept that states an asphalt plant will never be allowed.

UVWUA: This acreage has no irrigation water delivered by the Uncompahgre Valley Water Users Association and is outside the Water Users Project boundaries. We have no objection to this project.

US Army Corps of Engineers: If the project causes a discharge of dredged or fill material into a water of the United States, a Department of the Army permit from us is required (**Condition #5**).

Colorado Geological Survey:

Sand & gravel mine expansion. No geologic conditions are present that would preclude approval of the proposed mine expansion. Provided the mine is operated and reclaimed in accordance with mining and reclamation plans approved by DRMS, CGS has no objection to approval.

Propose asphalt plant. The SPCC (Spill Prevention, Control, and Countermeasure) Plan (Lewicki & Associates, March 2022) discusses only diesel fuel storage. However, asphalt plants typically require large, heavy asphalt cement (oil) tank(s). CGS is concerned about contamination of soil and the Gunnison River in the event of tank failure, and recommends that the County require a site-specific geotechnical investigation to characterize soil and bedrock engineering properties at proposed silo, tank, and other heavily loaded structure locations (**Condition #18**). This information is needed to determine subgrade preparation requirements and to design foundations.

The proposed asphalt plant is not identified on the mining plans, but should be sufficiently outside of the 100-year flood hazard and wetlands limits to minimize risk of damage and undermining due to erosion and scour.

Mosquito District: Staff reached out to the Delta County Mosquito District in regards to the ponds, specifically the expansion of the mining operation and adding another 34+/- acres of ponds after reclamation is completed. Terry Stalcup, District Manager, met with staff and explained the treatment of the current ponds on the site and what they would want to see as far as reclamation for the ponds. Mr. Stalcup submitted a memo along with pictures of the site (**attached**). Mr. Stalcup confirmed that they are already treating the ponds that have been reclaimed on site' there is a shallow smaller pond that is treated weekly as the problem with the ponds is that it is small, shallow, there is vegetation in the water along the shoreline and minimal fish in the pond; this is what causes a breeding ground for mosquitos. In regards to the other pond, it is large, steep, has a clean shoreline and lots of fish; this pond never needs treatment. Staff confirmed with Mr. Stalcup that the large and deeper the pond, the less need for treatment as these types of ponds don't allow for breeding of mosquitos.

CDPHE (Air Permits): Staff contacted Adam Wozniak, *Inventory & Support Supervisor* (CDPHE, Air Pollution Control District), in regards to the air quality of an asphalt plant and the potential hazards that come with it. Staff received a phone call from Mr. Wozniak, to where it was discussed that the applicants have not had any violations on their permit and that they were issued a new Construction Permit (Permit #22PO0098, Final Permit Approval) containing conditions that would need to be followed for said permit. Mr. Wozniak confirmed that moving the plant would not change the levels within the permit. The applicant will be required to submit a Relocation Notice to CDPHE (**Condition #10**) before the plant would be allowed to be moved to a new location. Mr. Wozniak sent a copy of the Construction Permit (**attached**) to staff. The permit lists an Annual Limit of 200,000 tons of asphalt. It also states that the plant cannot remain in one place for more than 2 years, as this would make the plant a permanent use and not a mobile one.

NEIGHBOR COMMENTS:

Planning Staff extended the required public notice parameter to Adjoining Property Owners (APOs). Under the LUC, a project requires notice sent to property owners within 200-feet, but staff used a ½-mile radius from the project site.

Staff has received numerous neighbor comments (**attached**) as well as petitions in opposition of the amendments being proposed. Many neighbor comments are simply that they do not want any mining operation in this area. Recognizing there is an existing permit, this could be interpreted as not wanting any change from the current use/permit.

The Land Use Code is a permissive document. If zoning allows the use, staff evaluates it against the standards and findings within the LUC. The Master Plan is advisory but is not regulatory. In that context, some concerns addressed by the LUC include: scenic impacts (byways), stormwater management (water quality, Gunnison River), odor management (air quality), agricultural operations, traffic impacts (State Highway), and noise. Other concerns, not regulated by the LUC, include: property values, views (private), and health risks (quality of life).

NEIGHBORHOOD MEETING:

On August 3, 2022, Kilgore (Elam) held a neighborhood meeting on site at 8020 Highway 65. County staff were in attendance and walked the site with Elam and Lewicki representatives before the general meeting. There were about 50 neighbors that attended the meeting; many of whom have also submitted written comments (noted above). The purpose of this meeting was for the application to clarify their project (address misperceptions noted in comment letters) and to answer questions/concerns of the community in a Q&A setting. The project team had planned to break out to be able to answer questions 1:1 but the group demanded to remain as one group.

Some points that staff took away from the meeting include:

- Define the term "occasional" for the times the hot plant would be onsite
- Define the radius of work area (impact to roads, hours of operations)
- Location (why this spot?)
- Flooding and proximity to the Gunnison River

- Odors (state requirements/permits)
- Property values
- Disruption to scenic byways

The general consensus being that neighbors did not want the plant, or pit, in this location and it should be moved elsewhere. Staff has attempted to address as much as possible in this report but, where we did not have answers, we asked for information from the applicant following the meeting.

It was confirmed that Elam would be amending the permitted area to remove the area within the Gunnison River from the mining operations; excavation activities are 100-feet from the river and no excavation, construction, or other development will occur in the floodway. They are proposing to remove Condition #9 of the current agreement, will be adding two more pits to the proposed operations (to be used at later dates through phasing), and truck traffic will not change as only one pit will be mined at a time, limiting traffic and impacts.

During the general meeting, staff addressed questions in regards to state required permits, home values, the Land Use Code and the Delta County Mater Plan, availability of the application packet and the conditions in the existing Development Agreement for the Site. Staff also addressed numerous individual questions (one on one) in regards to the process, the Planning Commission & Board and who is going to regulate (and how) all permits if the application is approved.

Staffed clarified the permits involved with this application: Land Use Code (County standards and zoning), Air Quality (CDPHE), Stormwater Permits (CDPHE), Mining Operations (CDPHE, DRMS), CDOT (State Highway Access Permits), discharge of materials into the river (Army Corp of Engineers, USACE), and Colorado Parks & Wildlife (Wildlife impacts/migration).

After about an hour of open discussion, a majority of the neighbors left the site and a smaller group (5-10 people) walked the site with those present from Elam and Lewicki & Associates (representing Elam). Staff did not participate in that tour.

The applicant has agreed to further address the following neighbor issues:

- "Agreement" and what that means
- Odor (LUC Standard). Winds are of concern as the prevailing wind travels south to north up the mesa towards residential areas.
- Noise (LUC Standard, State Requirements/Limits). How far will the sound travel from the site?
- Visual Impacts
 - o Under the LUC, scenic impacts apply to property located with ¼-mile of a scenic byway. There is no scenic byway with ¼-mile of this project site. If there was, the LUC affords the ability to mitigate through alternative setbacks, building placement/design, and landscape techniques.
- Biological Assessment. Provide a detailed assessment to define the riparian edge of the Gunnison River and any wetland areas that require further review (USFWS, Federal Oversight) outside of Parks and Wildlife review.

[End of prepared report]

Chairman Suppes explained how the public hearing would be conducted which includes the Planning Staff introducing the application, they will give their planning report, the applicant will then be allowed to address the Board representing their application, then it will be opened up for public comment. He added that there will be a Public Hearing process and they do not intend on limiting the time that the public speaks but he will shut them off if they become repetitive or if repeating what someone else has already said because we need to be respectful of everyone in the rooms time. Chairman Suppes continued stating that after the public hearing is complete the applicant will have the chance to rebut the comments that may have been made during the public comment period and then it will be the Commissioners and staff to have a discussion. He said that they will see how far they get today because there will be a limited time to get this done and if necessary, they may postpone the decision until later. Commissioner Suppes stated that if anyone wishes to speak, they will need to sign in.

Carl reviewed the application/staff report/photos with the Board and public.

Applicant Comments:

Lewicki and Associates Representing Elam Ben Langenfeld, Elam Construction Representatives: Jim Doody, John Mueller and Randy Ficklin

Ben said he was going to give a brief presentation to the Commissioners today, the basics have been covered by Carl and Kate in the packet and with the presentation. He stated that following the Planning Commissions recommendation they decided to make their pitch to the County Commissioners as for the need for the expansion and the need for the asphalt plant. Ben stated that the Planning Commission did put in a lot of hard work and asked touch questions being very thorough and while they disagree with their decision on the asphalt plant, they do recognize that they did put in the work and they want to make their case and let the Commissioners decide.

Ben reviewed the site as it currently exists in aerial form. He said that one of the old conditions was that they were supposed to investigate an access to Highway 92 and that has turned into being unfeasible due to the railroad. Ben explained that this photo shows the current active area and the permit areas, the mining cells in the riparian area this area is one that they would give up in the new use permit. He noted that their planning in terms of the mine and intensity of operation, what their ceiling would be so that

access, environmental protection and other infrastructure tools are sufficient they plan at 100,000 tons per year. This site has not produced 100,000 tons per year at any point in its history it has been pretty quiet but Ben wanted to be clear to the Commissioners that good design practice when it comes to mines is setting a high ceiling so you make sure that all infrastructure is sufficient to operate safely and environmentally properly. Ben stated that it currently produces aggregate from crushing, screening and washing as some of the neighbors would know that there are several piles of materials, recent years activities consisted of pulling from those piles they have not had to crush since 2015 but there has been some draw from those piles in 2022.

Ben explained that one of the main driving reasons for that low production has been the restriction against the asphalt plant and it is not particularly heavy rock market but there are two major highways out here and it is the main reason they are pursuing the removal of the asphalt restriction. He said that while you see four mining areas you don't actively mine them at once you mine one and as you finish you reclaim the slopes for the pond so like the current lake the actual little bit of mining was done at the southeast corner and all of the rest of the shore line has been reclaimed and vegetated which is standard industry practice and required by the State which is the concurrent reclamation you may have seen referenced in the packet. Ben added that it is important that they do not disturb the agricultural fields until they are ready to mine them, he gave an example of cells three and four their disturbance and associated berming come when they get to them, they will leave them in agriculture until they need to disturb.

Ben stated that one item that needed addressed in the Planning Commission was the commit to install some islands in the final ponds. He said he reached out to Colorado Parks and Wildlife to reflect on that and to see what their requirements are because it was vague and they acknowledged the desire for islands and agreed to yes at the end of mining they should work with them to locate the islands, the specifics are to be determined once the mining is done.

Ben showed an example of the main lake showing that there are fowl and vegetation around the lake. He wanted to touch on the visual impact and focus primarily on pits three and four because they are the closest to the highway. Ben stated that up on the mesa most of the site is visibly disturbed and there are limits on things they can due such as berms and barriers but on the highway looking at the new fields, they took the care to see how they could obscure and block that. He showed a pit that was mined out and a finished lake and one pit opened up and mining and showed what a berm would look like along the highway using the topsoil they stripped from the area and vegetate the berm blocking the visibility from the highway.

Ben wanted to address potential impacts and mitigation specifically of the aggregate operation and not dealing with the asphalt plant yet. He said they have information from each of the topics:

- Noise: They will follow the noise limit set in state statutes. Distance from the property lines is their friend along with topography and the stock piles helps to block noise sources. The primary concern is the crusher in that case it tends to be the biggest source of noise and is located quite a distance from the neighbors surrounded with its stock piles and is not running all season. He explained that it will come out and crush for thirty to sixty days building up the piles and then leaves and moves on to another site.
- Wildlife: They have a two-prong approach to protecting the wildlife from impact by engaging concurrent reclamation so they are minimizing the active disturbance area and give up the riparian areas as they recognize along the river where the thick cottonwoods are is where the higher value wildlife habitat is. So as long as they can move into the areas three and four, they don't do need to do anything in the riparian area.
- Air Quality of the Aggregated Expansion: The primary concern is dust that is the main potential air pollutant that is generated by this operation and that is controlled with water sprays using the water they have available to them on site and paving of access such as the access through three and four.
- Traffic: They have an approved Colorado Department of Transportation (CDOT) permit for a gravel pit to operate that has a limit in terms of hourly trips like any other access permit as long as you stay within the terms of that permit there is no reason to do a new one and have CDOT look at the access again. They went into their production data and found that they were regularly down to two trips an hour at the peak out of eleven on the biggest days because production has been so low. Projections of the asphalt plant will be talked about later to see if they could continue to operate under those.
- Lighting: This is not a site that operates at night, they will be shut down. The exception to that being if CDOT came to the site or had a job where they required night paving or night work and they were the supplier that would involve lighting but would be hooded and down cast and it would have to be a request to the Planning Department for that specific project. They recognize that by and large people do not want these to be night operations and they do not have a desire to operate at night unless they are required to and with CDOT you may win a job and have to execute in 30 days therefore, they would need a way to come to the county in a compressed timeframe and get permission which is why this is incorporated the way they do.

Ben gave a brief overview of the benefits of the gravel pit expansion:

- Main one is: Mining is 2% of the Delta County economic base that is looking at mining strictly in terms of the direct impact. He gave an example of the coal mines near Paonia their direct impact but a construction material supplier has a huge multiplicative impact across the county. It supplies the raw materials that industries use. Any kind of construction of any sort is dependent upon this resource. He gave an example that a coal mine is a percentage point of economic

value but without it you do not have electricity. This has a huge out size impact as you look at what depends on it and this allows them to continue to supply and do their part to provide for the community.

- This is done at an existing site so they do not have to engage to a whole new parcel or a new disturbance in a new area which has a lot of benefits since they already have the environmental control infrastructure, the access infrastructure that makes a big difference.
- They are able to add the ground closer to the highway they do not have to keep the 15 acres reserve by the river they can let that go because they have more than enough that they are adding on.

Commissioner Koontz said at 100,000 tons a year what is the life of mine. Ben stated 20 years. Commissioner Koontz asked if the pumps were diesel or electric. Ben explained that they have line power out there but they have used both in the past depending on the situation. They prefer to use electric because they would not have to buy diesel. Commissioner Koontz asked what the decimal level was of the diesel pumps. Ben stated that he couldn't tell him but they are down in a 15- to 20-foot-deep pit tucked into a trench up against the high wall. He said his personal experience is the pump themselves are not a source of noticeable noise because they are so far in the pit and against a physical barrier versus the crusher that is sitting above it has a noise source. Commissioner Koontz stated that in regards to the crusher had they looked into doing sound deadening or other sound reducing. Ben said that by the nature of a crusher has two pieces which is the breaking of the rock which is not the loud part the loud part is the rock hitting the screen and with that kind of noise the best way to block that is to have physical barrier. He explained that if you have seen other gravel pits it is hard to see the crusher because the stock piles are in the way and this is the best way to take care of the noise. Ben stated that they have output conveyor belts to build those piles it is not a thing that you can readily put within a structure unlike a gas compressor station that can be put in a building. He added that you can't do that with a crusher and it has to be able to move about the site to be close to the active mining so they use the stock piles to get the same benefit of building them up which acts as a noise barrier to block it.

Chairman Suppes said at 100,000 tons per year and eleven trips per hour limit set by CDOT, do they average that out over a day or will they go down to the hour on the eleven trips. Ben stated that the eleven hours is considered a peak but then there is a statistical process where if you exceed one time you have twelve trip hours once in a year, they will let that go because that is aberration but if you are consistently exceeding the amount of your peak then you are over the limit. Chairman Suppes said at eleven trips per hour that might be tough because at 100,000 tons per year on a 40-hour work week is about 40 tons per hour. Ben stated that they would be having to run some big trucks and what they did with the Level 1 traffic study is determine if they needed to have a higher ceiling to have more margin for error so they submitted a Level 1 traffic study and CDOT came back and said that they were close to going to need to do more improvements so they determined after looking at the historic operating data and considered the size and typical job in this area from CDOT they were not getting close to that eleven trips and they will touch more on this during the asphalt presentation.

Chairman Suppes asked about the evaporation on the lake will this be part of the augmentation plan with the State. Ben said yes, the gravel well permit in place for the current operation has an existing industrial water right that can be used for pond evaporation, they have a limited surface area for their lakes and that total surface area exceeds what they have planned.

Commissioner Koontz asked about the south to north mining direction is that technically feasible given that the ground water will be moving in the same direction, how will that affect the mining operations. Ben stated that usually when you are mining a pit below ground water table, you can't dig it out all at once so you pick the down location and create a lower point where you put the pump. He explained that the pump is always below you so the pump so you are pulling the water before it interacts with your equipment so you can protect the water, so as you work yourself down the pump is ahead of you and it hits the bottom it will move slowly along. He stated that you would try to do it at the up graded in, the pump itself but you can do it at the down grade but would have to use a bigger pump to compensate. Commissioner Koontz clarified that it is technically feasible. Ben said absolutely.

Asphalt Plant Presentation:

Ben stated that the most important thing to keep in mind and we hammered on this at the Planning Commission and tried to be very clear throughout the application. He said that the goal of the asphalt plant is to provide the ability to do major jobs like a CDOT pave job on Highway 92 or 65 so you would bring the plant out, use material from the site, feed that job in the area and when done the asphalt plant would leave and until there is another job of that scale you will not bring it back. Ben added that this is important because when you look back the 1999 Resolution, where he has seen similar ones throughout the State, often times in a new pit which it would have been in 1999 the ownership is thinking in terms of they want to be the construction supplier in the region so they want to be able to make asphalt and to negotiate in getting that up is that they don't want an asphalt plant all the time and as a use on the land. He said that they are looking at it as there is a pit that can supply material that could be paving the highways when the pave jobs come up, the alternative is to go to an improved asphalt location like the Benson one about a mile away and use it. Ben explained that they would drive rock to their asphalt plant make asphalt and drive another truck out to the pave job and this seems to be a wasteful extra set of truck trips where they could produce the whole material right there go to the pave job and when done the asphalt plant leaves.

Ben explained that they anticipate a paving job coming up in the near future based on the conditions of the road but that is up to CDOT and what they decide to prioritize in a given year. He said the general

information about the asphalt plant the silo is the tallest part of the plant, the most visible but it contains material and has no emission, the exhaust stack is where the emissions come from and that is usually 2/3 to half as tall depending on the specific plant. Ben stated that are very few Western Slope pits that have permanent asphalt production and they are mostly in Grand Junction because otherwise the jobs are moving around the State. He explained that they cannot produce in cold weather and the way CDOT projects work means that the hot mix plant would only run for a modest time in the summer so they are happy with the seasonal restrictions that were part of the conditions that the staff recommended.

Ben reviewed the potential impacts and mitigation:

- Noise from the asphalt plant: He pointed out that asphalt plants typically are not a noise source, you are not dumping rock onto a screen which is the big noise maker, you are loading trucks that leave. There is a drum that turns and does not make as much noise as the crusher is making but it will be sitting among its own feeding stockpiles and have mitigation. He added that they are held to those noise limits regardless of where the noise comes from.
- Air Quality related to the plant: He stated that the important thing to keep in mind about the asphalt plants they are heavily regulated by the State of Colorado even a portable has it's own air permit separate from the site so wherever it goes it shows up to a site until the Colorado Department of Public Health and Environment (CDPHE) is there and they have to keep track of all the production data and fuel use data, tar usage and based on that they are tracking their pollutants that is the way they handle it which is how the Environmental Protection Agency (EPA) requires it. They track the production which converts to certain amounts of pollutants and they have a limit on their permit on pollutants. Having supplied the reports to the CDPHE many times it is a straight forward part of operations and record keeping. These are important plants that are regularly maintained including filter boxes, back house filter which collects particulate matter and pollutants and by keeping everything in line with the State air permit is one of the biggest controllers of the third item which is odor.
- Odor: Everyone worries about how asphalt is going to smell. He explained that the main source of smell from asphalt, the volatile organic compounds (VOC) which is different chemicals but they are all released when burning anything and those do show up and are a source of scent and a bit from nitrous oxide which is any kind of exhaust/combustion produces. There are filtering systems in the plant to reduce those emissions and in addition there is a hotline in the permit for the neighbors. He said it is important to them that they are good neighbors so they have put together a plan that has several controls in it but if something is not working right and there is a problem then they want to hear from the neighbors.
- Water Quality related to the hot mix plant: He said that hot mix plants are located in a semi-fixed position so they don't move around and you can build up environmental controls around it, berms to keep storm water away from them, containment structures to measure oils, tar, fuel are not allowed to hit the site if spilled all of this is in the SPCC Plan for the hot mix plant.
- Benefits of having the asphalt in this location: The important benefit to the county at large is having the material and the equipment in place to be able to maintain infrastructure like paved roads. If Elam was going to have to do a pave job out here the asphalt has to come from their operations west of Delta or in Grand Junction so it has to come through Delta, up the highway to reach the site and the further you haul the more trucks you need in your train of trucks to get your material on time to feed the paving job. Having a local source reduces the truck traffic, reduces emissions from those trucks and reduces wear and tear on local roads and don't have to come into town with truck to come over to this area to supply paving.

Ben said when they were discussing this with staff, they talked about alternatives that could be considered. He referred to a map that showed what they propose and other potential sites. He stated that the one closest to the Elam site is an existing Elam operation that would come through town on the highway to pave roads. Another alternative which was brought up by neighbors at a neighborhood meeting was to find another location along the river, they would look around to find another site and develop a new pit and controls and new disturbance and would not get rid of the disturbance or activity at Delta Paving it would just be a new site which will come with all its impacts and problems and concerns. There is a possibly of a site on the mesa above the river and will require developing another site and does not get rid of Delta Paving just another site to produce asphalt when you have a site that could produce asphalt, efficiently and on the highways.

Ben stated that the final alternative which is the most likely if they don't have an asphalt plant in the location there is an operation up on the other side of the neighborhood that can do asphalt out of their site. It is up on the mesa and a mile to the north of the neighborhood and he checked earlier today and the southern end of their project is about a mile from the neighborhood as well so one of the possibilities he would like the Board to consider is if they could plan on putting the asphalt plant at the southern end of the site and get it as far away from the neighbors on the mesa as possible. They may see the silo easier because it would not be along the cottonwood trees but it would be as far as possible on their site from the neighbors. He emphasized that if there is a paving job on the highway going through Orchard City to the scenic byway and Elam was doing that job it is highly likely that they partner with this site and they run rock truck and a truck trip for rock, empty rock truck and trips out of the asphalt trip as well, where if you are producing it directly there are no rock truck trips. The rock would be made, make the asphalt internally and only the asphalt trucks going out and coming back in.

Ben said as the Board looks at the affect on the county at a larger scale it is important to keep in mind that they want to remove the no asphalt plant limitation because they think it is creating additional impacts, problems and in efficiencies at a site that is already disturbed, already an active gravel pit and they want to do it to specifically supply these large job with full knowledge and accepting the restrictions,

they have a limited season and the asphalt plant would be leaving on a regular basis, they are not opening up a new asphalt plant for perpetuity it is only for specific jobs for roads that everyone is uses and needs.

Commissioner Koontz asked about the VOC reductions what kind of filters and what percentage of reduction do you see on your plant. Ben did not know the percent reduction off the top of his head but the back house filters and knock out boxes that get particulate matter also reduce the VOC transmission and it has to do with temperature and time and the heat of the gases and how far they can go whether they can get out of the exhaust stack. He said there are also venturi scrubbers that can knock out gases out of the air but he does not know the percentage. Commissioner Koontz clarified that the data exists. Ben said yes in some EPA reports.

Commissioner Koontz said the alternate south end site for the asphalt plant any problems with an air quality or DRMS permit. Ben stated that if he is referring to using an existing site as a partner. Commissioner Koontz clarified that he said that one site that they proposed at the south end of their pit. Ben said this would not change anything because on the asphalt plant the air permitted is specific to the plant so it is measuring at the stack exhaust point. Commissioner Koontz stated that he was wondering about air flows/wind direction. Ben said because they are not regulated at a property line, they regulate right at the exhaust stack so wherever you are you are under the tight regulatory environment and it does not change the state mining permit.

Chairman Suppes asked where they envision it based on the aerial. Ben showed the Board where the location would be and added that it is about a mile from the spot, they would place the asphalt plant to the middle of the Iris Drive neighborhood.

Commissioner Lane asked about working at night with Elam's business plan how many times do they work at night in other areas. Ben said that there is not a set frequency because the determination of night work is lane closures so it depends on the size of the highway, if there is a highway where CDOT can not do long running lane closures because of the traffic back up you will see more night work. He gave an example of Highway from Carbondale to Aspen has a lot of one lane each way segments and not a lot of detour possibilities so they had a project that had night work because there is no where else for the traffic to go. Randy from Elam said that they have only have one night job scheduled this year. He added that it is not so much the lane closure but the mountain traffic so for this area he does not see it happening here. Randy stated that he tried to get them to do night work between Ridgway and Ouray and they said no and a 40-minute trip would take an hour and a half. It is based on traffic flow more than anything.

Public Hearing Comments:

Joel and Laurie Zdechlik, 19936 Iris Road, Austin:

Joel stated that his biggest concern is that they are 1800 feet away from this plant and there are no cottonwood trees as a buffer to the asphalt plant. He said some of the issues that he is looking at, he worked for the State Department in paving and then was an inspector and one of the things he looks at is this stuff does smell and does get out and there are mishaps with it so he is concerned about the environmental part of it.

Joel explained that he came into this county thinking that where he bought would be away from the Denver area, he grew up in Frisco. He said he saw Frisco destroyed by condominiums and this gives him that kind of feeling of what will happen to his property values if he has to move. His wife Laurie is susceptible to petroleum products so if he has to move how much will his house devalue because there is an asphalt plant running 12 hours a day six days a week.

Joel stated that things have changed since they have had some of the meetings of processes, one time it was they would only be there three months with the asphalt plant and now they want five months what is the real truth behind the asphalt plant is going to do, are they going to provide asphalt for the city or CDOT or does it expand on that part of it. He added that they say 20 years for life expectancy if they produce, they were going to do per year, if they don't, they said they can expand that past the 20 years so that is confusing to him on where that part hits.

Joel said he has been there two and half years and he has never seen a truck come out of the pit today moving gravel. He stated that there are geese/ducks sitting on the pond now so the wildlife has come back to it where they have disturbed it and how is this going to affect the economy or fishing/floating on the river and what will they think about seeing an asphalt plant where they came from another place to recreate and give money back to Delta County to make sure recreation still comes into Delta County.

Joel informed the Board that he collected over 100 signatures in the area that people were not happy with this going to happen. He added that the word "never" and hopes that the Board looks at that and that means in his dictionary that "never" supposed to be there.

Western Slope Conservation Center Representative Tanya Henderson, 204 Poplar Avenue, Paonia: Tanya explained that they are a member-based conservation group that has over 600 members primarily in Delta County. She said that they are not a fan of the expansion but understand that it is private property but it is the asphalt issue that they are mostly concerned about. Tanya added that the idea of compliance versus the precautionary principal and all the compliance standards were brought forth to protect the resources that need protection. She thinks that not only are we asking to adhere to previous arrangement such as the 1999 condition of never having an asphalt plant but also to look forward to a time of diminishing resources, air quality with VOC's and upwind into the neighborhood so simply put they

would like to see the Board support the Planning Commission and Planning Department recommendation on this project.

Tanya said it was interesting to hear from the applicant that it is important that they are good neighbors because she feels like the neighborhood is speaking very loudly and consistently on this issue if nothing else just listen to the community and listen to the strong objects seeing that condition #9 of never having an asphalt permit change.

Linda Dysart, 20184 Iris Road, Austin:

Linda explained that she has been at both meetings and what sticks out in her mind is there is a lot of taking but no giving. She said there is a lot of taking on Elam's part but does not know what they are giving or how they are benefiting Delta County. Linda stated that the way she sees it they are increasing the traffic but not giving us free roads, messing with the wildlife but not putting any wildlife back. She explained that she can see their whole site very clearly from her house so the trees are not tall enough, she can hear sounds since the first phase was put in and the sounds are pretty incredible and she hasn't had anyone visit her house without commenting about the sound and in 2015 it stopped and was wonderful.

Linda stated that they are using lots of our water because they said last time that it is aquifer that they are drilling into so that moves back and forth from the river into the aquifer what is that doing to our water. She said flood irrigation raises the alkalinity level in Delta County a lot and what is this going to do to our water, we don't have that much to give but they want a whole lot of our water.

Linda asked about the safety of our citizens with the asphalt plant. She said maybe they can control the pollutants but who will oversee that everyday that the air quality is great that they are meeting all of their standards, that they are putting up hay bales high enough to block the sound. Linda stated that what is this going to do to their visual impact, we have the largest flat top mountain in the world in our own county and you would have to drive through the asphalt plant to get to this wonderful tourism spot. To her that is taking not giving. She added that they will be pumping money into our community but could they give examples, what have they given to us. They don't give scholarships she is not sure what they give us and how they pump money. Linda said she looked through all 900 of their employees and she has lived here for a long time and she did not recognize one person on there that live here or work with them.

Linda stated that she lives on a very dusty hillside the ledge that overlooks the river and we don't want them to dust down the roads because again that using our water but the dust is incredible. She said she is giving the Board all these examples to ask what they are giving to us and how do we as Delta County benefit from this, how does this help us it seems to her that it only hurts us and really helps them because it puts them closer to the job site.

Sheri and Lenny DeTomasi, 8448 Marshall Road:

Sheri said that they moved here two years ago and are up on the bluff as well and there are 80 plus homes up on that bluff not sitting on the bluff but back a little way but from their property, they can see the lake the trees don't stop the view or the noise. She added that hay bales aren't going to stop any noise or view from anyone up on the bluff.

Sheri explained that when they moved here, they knew about the gravel pit but not about the asphalt plant and according to what they learned in the 1999 rules there was supposed to never be an asphalt plant so some people have purchased based on that information. She said the asphalt pit is most of their concern because with the asphalt pit there is evidence and EPA has published reports about the toxins that come from these asphalt plants and it is not always in the production but also in the transport so it cannot all be controlled and there is some evidence that shows that the toxins can go over a mile away and the wind comes up the bluff. Sheri added that they hear things from down below because everything travels up.

Sheri said that in the two years they have been there they have not seen a truck go in or out of there. She stated that they see the piles of gravel but they don't see a truck coming in or out so with the added asphalt plant there would be a large increase in traffic and they don't know when the traffic study was done but in the two years that they have been here the traffic was very light the first year because it was during COVID, the second year went up a little bit but has increased a lot and if the traffic study was done during COVID it probably wasn't a reality of the traffic especially in the summer time when you have people going up to the Mesa for recreation with RV's and everything else so traffic would be an issue.

Lenny added that they are stone's throw away from the river so they are one of the closest houses and you can hear the geese down on the pond so they mentioned diesel generators and can you imagine that at 6:00 AM firing off diesel generators and trucks. He added that in two years they have not seen a truck come or go in or out of there, you go by there and there is always a chain on the gate so it will go from near zero to eleven trucks an hour on that busy road, not a good idea.

Craig and Jeannie Otzenberger 20341 Fox Ridge Drive, Austin:

Craig said that they are down wind from where the asphalt plant will be. He wants to know if the asphalt plant when they shut it down stop smelling or does it smell 24/7. Craig reiterated that they will be down wind and they will be smelling every time it is running and even when it is shut off. He added that the 1999 deal to never have an asphalt plant should stand if they came up with that in 1999 it was for a good reason and it should stay that way.

Jeannie said that they moved here seven years ago from Idaho and this was supposed to be their last move so they carefully chose where they wanted to live and they have lived in the Grand Junction area years ago and her husband worked around this area and they chose the Delta area knowing that it was a nice quiet pleasant place to live. She added that they are on Fox Ridge Drive which is between Iris and the end of their road looks right over the bluff so they are within ¼ mile of the edge and the wind almost always comes from the south, it may change but for the most part it comes from the south. Jeannie explained that she is asthmatic and a lot of her neighbors are on oxygen that have COPD, there are 16 lots and a majority are senior citizens and all the same way by coming here for the environment and the did not plan on moving again. She added that it gets harder to move the older you get. Jeannie said the plant is going to run during the partial year when do you spend your time outside during that time of the year. She stated that they have an acre of land and spend a lot of time with their landscaping and if you have to sit in your house, it doesn't matter where you are living but they want to spend time outside and enjoy it and you can't enjoy it if this is what is coming up the cliff and they feel like they are being pushed out if this comes in, they may have to leave and some neighbors can't. Jeannie asked to put themselves there if this was the last place you were going to buy and you are on the edge of that how would they feel about it.

Craig said if you look at the Cory bluff where they are in the next 20 years that they are planning on running the majority of the people are not going to be here in the next 20 years. He said they would like to have their last years to be pleasant.

Russ Maytag, 8341 2085 Road, Austin:

Russ stated that some of the issues he would like the Board to consider is the traffic study. He believes it is important to do a Level II traffic study because things have change from when the Traffic I study was done and there is a significant amount of traffic. Russ said that they use Iris Road to Highway 65 there is a lot of times that you will have to sit for a number of minutes before you can get on and the added traffic would be a real negative.

Russ said he would also like to address the evaporative loss of water. He stated that what they are purposing to do is create 90 acres of surface area of water at this elevation the State figures about four-acre feet of evaporative loss per acre of surface area that amounts to 360-acre feet of water which is 117,306,360 gallons of water which is enough water to supply approximately 850 homes a yearly supply of water. Russ added that the evaporative loss of water in an area where water is critical is a huge concern. He said the environmental issues are a real threat especially because they live directly above the river so they look right down on it and they see rafters and fishermen go by and all the people that enjoy the river and it would be a negative for the county to have this view point for people going down the river.

Russ explained that one of the questions that he was not able to research was how many gravel pits are there within a 5-mile radius of that gravel pit. He asked if this county is going to be known as the gravel pit kingdom of Colorado and we have to be careful of that. Russ stated that when he drives down the road, he sees a lot of gravel pits the reclamation is not there, the pictures they show of the reclaimed banks/pond if you look close all he sees is kochia weed there is no perennial grasses or forbes or anything. He added that he was at the visitation day and walked that area all he saw was kochia which is an annual and is the first thing to come in on a disturbed area.

Russ stated that his background is agriculture and he owned a 3,000-acre ranch in Fremont/Custer County's and they were organically certified and he knows one of the goals in the county is to maintain the agriculture in this county and what is proposed here is taking 25 acres out of agricultural production but they are wanting to add another 35 acres to take out of agricultural production so that is out and is no longer agriculture and that is the goal of the county is to maintain that. He things that one of the goals of the county is not only to maintain agriculture but maintain agriculture sustainably and that should be considered. Russ would like the Board to consider all those things before making a decision as well as everything else that is being said here, they obviously have the community very concerned on this project.

Sherry Bennett, 8341 2085 Road, Austin:

Sherry said she lives on cliff over the river and she would like to address the Board to think about the people in this room and how it is affecting the community and how we feel that we were drawn to this area because of the beauty and the orchards and all the people that live here and how wonderful it is. She added that when you have corporations coming in and they want to position themselves in a good bidding position to be able to do these contracts not necessarily that she thinks that we need additional gravel or asphalt plants because they are all over. Sherry added that there is one close on the corner of the Delta line that has been permitted for asphalt so it appears to her that it is an over extension of corporation being able to put their wishes/demands over the public's opinion of their health, where they live, their association with the earth and the rivers, everything we should hold dear that we are very lucky to have. We have the Mesa the ski resort, there is Cedaredge and little towns through there and the highway goes all the way up there that is the way to get people to those areas and to enjoy those areas and this would be a scar to go through another asphalt plant, gravel pit and lakes. She asked what purpose is that for a few ducks and she sees plenty of ducks enjoying the river much more than the lakes and they do not serve any purpose for anyone else other than a few ducks that like to fly over.

Sherry said that we would be losing good farm land to accommodate corporate greed to be able to be in a position to not have a bid for a job, they are just trying to position themselves to give a bid for a job and win a contract at the expense of the neighborhood and communities so she would like the Board to think

about the comments and search your conscience that maybe Delta County may not give this permit there are plenty of other ones, they already said they could move down the road. She would like them to think about it.

Riley Dunn, 8041 Highway 65, Delta:

Riley said he does have a letter from a lawyer. Chairman Suppes said that the Board has received it. Riley said that he did not realize there were coal mines in Delta County. He stated that if you give him a hundred bucks, he might spend ten, that kind of thing. Riley said that he is hearing two things which is the plant will only be operating occasionally and will be a little bit of operation, on one hand they are talking about the trouble with all the trucks that will be going through Delta so what is it are they trying to scare us on the one hand that there will a bunch of trucks going through Delta but on the other hand assure us that there aren't going to be any trucks. He finds that a little disingenuous.

Riley stated that the Benson Brothers if you go look at their site, there have been some serious regulations put on them about where the site can be, not viewing it above the horizon this site is the most visible location in Delta County especially the expansion site. He added that if you drive anywhere in Delta County going up Highway 92 you will see that site, if you go up Highway 65 you will see that site and that site is a billboard. Riley explained that he calls it a billboard because billboards work and this county is in a situation right now as you can tell from these folks, they are new arrivals within the last ten to fifteen years. We are having a lot of people come in and we are changing he mentioned it earlier.

Riley said that this county has an opportunity to change and this county is changing there are a lot of people coming in from the outside that are bringing money into this county and not taking money out. He reiterated what some of the folks have said is it helps us he hasn't heard what they are actually going to put into the county. Riley added that 2% what part of that 2% are they, a very small part but on the other hand there is an opportunity to move forward and turn the site not into a billboard for industry and for gravel mines but into a billboard for the future of this county, for canyons, rivers, mountains to uplift the entire county, to bring people into this county that will spend their money and leave their money here. He added that they will go downtown and visit the cafés and stay there that will not want to pass on through to Montrose, who will actually rent hotel rooms, go to the wineries and stay in the county. Riley said he calls it a billboard because it is a very obvious billboard and billboards work.

Toni Chatto, 20280 Fox Ridge, Austin:

Toni said that she is one of the impacted and a registered land surveyor that does boundary she does not do construction. She stated that she was reading the minutes from the Planning meeting they said that there are 27 neighbors that spoke and then they say generically that people were in support and people against well when it comes down to it 28 were against and 1 was for and the 1 that was for wanted a job and she understands that it might bring more jobs. Toni said there is a 97% opposed and 3% for which gives you an idea of the impact.

Toni stated that the Board should deny the permit. She is concerned about vacating the resolution in 1999 and doing it all over again because there might be somethings that we miss if we do it all over again that has been discussed over the years. Toni would like to know if Delta is planning for that whole corridor is going to be industrial, it was mentioned at one of the meetings and she would like to know if the area around the river is going to be industrial. She thanked them for the written notes up on the hill because it was nice that they extended that since it is a 200-foot notice but these notices were about half a mile and they got a lot more support because of it. Toni stated that there is a 50-acre parcel up there that recently sold and she thinks it will be developed soon because all the vacant lots in the subdivision have been sold and built on so there is no area left to develop except the 50-acres.

Toni explained that she bought the lot in 2004 and they started their pit in 2001 so she has been there most of the time. She said that they say they haven't done much in the past 15 years so none of them know what it sounds like to have done much in the last 15 years. Toni stated that she has no idea what it will sound or smell like, she likes to keep her windows open in the summer and this is when the asphalt plant is going to be working and the noise is going to be affecting everybody and she does not lock herself in with air conditioning.

Toni said that her being a surveyor she prepares plats and boundary adjustments and prepare a lot of drawings that give official rights to all the properties and it is a concern of hers if they take out the "never have an asphalt plant" it makes her wonder if any of the notes the owner is asking her to subdivide can be thrown out the window anytime you feel like it, she thinks they need to keep the "never put in an asphalt plant" in there because of that.

Toni stated that the applicant said there was a three-mile protected area around the boundaries of cities she is not sure what that was and missed what they were saying about that but is that a three-mile protected area. Chairman Suppes clarified that it is not a protected area but a three-mile area of interest so they can comment on stuff within that three-miles. Toni added that Orchard City has always looked up to their edge of the Mesa at the south line of the town as one of their ideal examples of what the city/town could be and she like this town because they are not as restrictive as some other towns but they are also the biggest which has the most potential for everything so she does not want to see the most desirable area getting impacted a lot by this. The riparian rights they show she believes that about 20 years ago it was an island in the river somehow, they have claimed it as their property, the 15 acres on the northeast side Elam was mining the river on the riparian area and she would like to see it taken out of their property and see a time limit, every 10 years they have the letter signed with the Frazier's for the rights to that maybe we should question it and see if the Frazier's are agreeing to that piece too. She does not think

they have too many humanitarians concerns she thinks they are definitely business concerns and make some money. Toni talked about how she had a bad crop of tomatoes this year and she will probably not have a good one again due to the dust from the gravel. Chairman Suppes said he would probably have to cut her off because she is dragging it on. Toni said that a lot of people like to walk her subdivision and she does not want to see that go away they like their half mile and she likes where she lives.

Dorothy Dunn, 8041 Highway 65, Delta:

Dorothy said she was across the road from this application and why she is here today is there is a poll going on in the Delta County Independent and poll says, "How do you feel about the prospect of Highway 65 gravel pit expansion plans and propose asphalt plant?" As of noon today 25.1%, is in favor of both of them, 13.7% is in favor of the gravel pit expansion only, 61.2% is against all of it that is your community talking to you guys.

Chairman Suppes closed the public hearing portion of this process and at this Elam will rebut anything that came up during the public comment period.

Ben clarified that it is listed in condition #8 of the proposed use permit that that the hot mix and crushing would be limited to a total of 90 days. He said there is a very specific seasonal limit that applies. Ben stated that when it comes to the question of water usage and water protection, they have a gravel well permit that applies industrial water rights which means they have water designated for exactly this kind of use so if you are thinking about the supply of the system that water is spoken to be used for this, it is not going to be put to a different use because it is an industrial water right that is to be used for this purpose. Ben added that the concerns about evaporation of water, that is what that water is for they have paid the money to have access to the water for this purpose.

Ben stated that in terms of protection there is a Department of Public Health and Environment Discharge Permit for this site with its strict and specific limits and there was a share with County Commissioners administrative violation that they received because there were a number of discharge permits that they did not have their paperwork in order and the State of Colorado fined them for their error and it has been sorted out and they do not have any sort of discharge violations hanging over their heads. He said they keep their permits in good standing on the ground and environment where it matters most.

Ben addressed the traffic source and timing and where they get their data and when the traffic study was done. He said the Traffic Level 1 study was done in advance of their application in 2021 and also done using CDOT's measurements that they keep on the highway so they put in their project traffic use and used the thresholds and data that CDOT requires them to use.

Ben touched on the concept of transitions in a community and the idea of new uses and new activity. He said that one of the underlying realities is that any use, whether your community's economics are tourism, dependent on heavy industry or dependent on technology whatever it is the infrastructure has to be there to support all of it. Ben added that as Delta County sees more tourists it will see more traffic it will see more usage of the roads and bridges with which you need the paving materials to maintain and rebuild. He said it doesn't matter what sort of economic activity dominates the county this infrastructure that that supports underlies all of it regardless it needs to be there and it will need to come from somewhere and this is an efficient way for the community to get that material as opposed to picking more impactful thorough ways.

Chairman Suppes said that there is one item of condition that they need to discuss. He said that is Delta County's Trail Master Plan calls for a boat ramp or bridge access in that area so the question is will Elam be agreeable to deeding right-of-way to the county for a river access or boat ramp in this area. Ben said he would imagine that river access would be both the ramp itself and the river plus access from the public road. Chairman Suppes said yes, and he discussed this with Carl and there was an oversight but now that the Commissioners can handle this application and for those of you who don't know but by statute, they cannot get involved in this until the Planning Commission is finished their deliberation. He added that they are technically reviewing the packet in the past week and there is a 600-page packet in front of them that they have been diligently studying and so they are trying to get caught up but that is the way the state statutes are written to avoid any ex parte communication. Chairman Suppes said that this is one thing that could be a potential issue because they do call out that section for a boat ramp for river access so this is when we look at those is when someone is developing a piece of property that is their contribution to the public for that development. Ben said he sees no reason for them to have an issue with it and would be happy to do it.

Chairman Suppes asked the Board and Planning Staff if there were any other questions for the applicant. There were none.

Chairman Suppes had a few comments and said there is a lot for them to digest so they will postpone and finish up at a later date. He said that the Planning Department, Planning Staff and Planning Commission have heard him tell them that in perpetuity is a long time. Chairman Suppes clarified that when you say "never" that is perpetuity and absolutely nobody especially a County Commissioner has a crystal ball so the fact, in his opinion, that the Commissioners put the word "never" in a document regarding land use was lack of insightful so he takes issue with the term "never" none of us know what is going to happen in future generations the arrogance that we should be able to say "never" he hold little regard to that term "never".

Chairman Suppes stated that one of the things that they have to consider, he sits on the Gunnison Valley Transportation Planning Region for CDOT and he can tell you that they see it consistently where CDOT drops projects and moves some place else because they cannot afford the asphalt on the project and he will guarantee that everyone in this room has complained about the condition of our highways so they weigh that option.

Chairman Suppes explained that there were several people that said move it to another location so it is ok to affect that neighborhood just don't affect my neighborhood. He said that is not a logical argument point.

Chairman Suppes stated that they have a lot to digest and he does not see anyway that they can fit it in to the time frame that is available so unless he has protest from his fellow Board member, they are going to table this until October 18, 2022 at 10:00 AM when they will address this at their Planning meeting at the next Board of Commissioner meeting.

Commissioner Koontz requested additional data for VOC reduction by whatever filters that an asphalt plant would have and get a conceptual design that is technically feasible for a boat ramp/parking area similar to the G50. He added that make sure it is technically feasible for what we are asking of this applicant.

Chairman Suppes said he would like to see feasibility and possible layouts of moving the asphalt plant to the farther south portion of the property.

Commissioner Lane asked if it could be done sooner than the 18th. Chairman Suppes explained that there is Planning Staff that will not be available so the 18th is the quickest they can get to it. Carl confirmed that this date is the best date. Commissioner Koontz added that there is a lot of information to review.

Chairman Suppes adjourned the meeting reiterating that this will be taken up at the October 18, 2022 regular board meeting.

ADJOURNMENT:

As there was no further business to come before the Meeting of the Board of Delta County Commissioners for Tuesday, September 20, 2022, Chairman Suppes adjourned the meeting at 3:10 P.M.

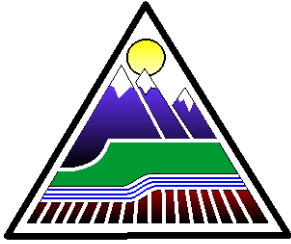
Approved this 4th day of October, 2022.

Don Suppes, Chairman
Board of County Commissioners

ATTEST:

Teri A. Stephenson
Clerk to the Board

1. SEND TO: COLORADO DIVISION OF HOUSING Attn: Ebony Russell 1313 Sherman Street, Room 500 Denver, CO 80203 Ebony.Russell@state.co.us		QUARTERLY FINANCIAL STATUS REPORT CDBG HOUSING PROJECTS AN ORIGINAL SIGNATURE IS REQUIRED FOR ALL REPORTS						2. GRANTEE: Delta County Attn: Accounting Department 560 Dodge Street Delta CO 81416	
3. AGREEMENT ENCUMBRANCE NUMBER: H1CDB31209		4. FINAL REPORT: check one: () YES (x) NO PROGRAM INCOME REPORT ONLY ()							
5. PROJECT PERIOD: FROM 08/12/2021 TO 12/31/2022							6. QUARTER END DATE: 09/30/2022		
7. AGREEMENT BUDGET ITEMS Label columns with budget category (i.e. Acquisition)		1)Rehab Costs	2)	3)	4)	5)	6)	7) TOTAL	8) OTHER Funds
A. Net expenditures previously reported		\$ 21,004.20	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 21,004.20	
B. Expenditures this quarter		\$ 8,339.56	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8,339.56	
C. Net expenditures to date (line a + b)		\$ 29,343.76	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 29,343.76	
D. Unliquidated obligations		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
E. Expenditures & Unliquidated Obligations (line c + d)		\$ 29,343.76	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 29,343.76	
F. CDBG funds on Agreement (per budget)		\$ 99,500.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 99,500.00	
G. Un-obligated balance of CDBG funds (line f - e)		\$ 70,156.24	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 70,156.24	
8. TOTAL CDBG FUNDS REQUESTED TO DATE		\$ 29,343.76	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 29,343.76	
9. PROGRAM INCOME (for DPA and SFOO Rehab Programs)		1)	2)	3)	4)	5)	6)	7)	8)
A. Program income at beginning of quarter		N/A	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
B. Amount received during quarter		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
C. Amount expended during quarter		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
D. Program income remaining at end of quarter		N/A	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
10. CERTIFICATION: I certify to the best of my knowledge and belief the data above is correct and all expenditures were made in accordance with the agreement. SIGNATURE OF AUTHORIZED OFFICIAL: _____ (Original Signature required on each copy) NAME AND TITLE (Print or type): Don Suppes, Chair Delta County BOCC						Name & Telephone Number of Person Completing Report if Different: <u>Ute Jantz, DHA ED, 970-874-7266 x8</u> DATE REPORT SUBMITTED: _____			



Delta County Board of County Commissioners Board Signature(s) Cover Sheet

Date: October 4, 2022

Document Type:

☒	Contract
☐	Agreement
☐	Purchase Order
☐	Memorandum of Understanding/Agreement
☐	Other

Document Title: **Women, Infants and Children (WIC) Contract Task Order**

Duration: October 1, 2022 - September 30, 2023

Description: Task order for annual WIC renewal with Colorado Department of Public Health & Environment.

Scope of Services: Implement and operate the Colorado WIC Program of the USDA Food and Nutrition Services (FNS) Special Supplemental Nutrition Program for Women, Infants and Children (WIC) as an authorized local Colorado WIC agency.

Affected Programs: WIC

Contract Amount: Contract amount is **\$112,155**

TASK ORDER

State Agency State of Colorado for the use & benefit of the Department of Public Health and Environment 4300 Cherry Creek Drive South Denver CO 80246	Contractor Board of County Commissioners of Delta County (a political subdivision of the state of Colorado) 501 Palmer, Suite 227 Delta, CO 81416-1764 for the use and benefit of the Delta County Health Department 255 West 6th Street Delta, CO 81416-1626
Master Task Order Contract Number 23 FAA 00013 Task Order Number 2023*2219	Task Order Performance Beginning Date The later of the Task Order Effective Date or October 1, 2022
Task Order Maximum Amount Initial Term State Fiscal Year 2023-2024 \$ 112,155.00 Extension Terms Total for All State Fiscal Years \$ 112,155.00	Task Order Expiration Date September 30, 2023 Except as stated in §2.D., the total duration of this Contract, including the exercise of any options to extend, shall not exceed 5 years from its Performance Beginning Date.
Pricing/Funding Price Structure: Cost Reimbursement Contractor Shall Invoice: Monthly Funding Source: Federal \$ 112,155.00	Miscellaneous: Authority to enter into this Contract exists in: C.R.S. 25-1.5-101 – C.R.S. 25-1.5-113 Law Specified Vendor Statute (if any): Not Applicable Procurement Method: Exempt Solicitation Number (if any): Not Applicable
State Representative Kathryn Gasowski Fiscal and Operations Manager Prevention Services Division, Nutrition Services Branch Colorado Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246 Kathryn.Gasowski@state.co.us	Contractor Representative Monica Meguiar WIC Director Delta County Health Department 255 West 6th Street Delta, CO 81416-1626
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Contract: Exhibit A Additional Provisions Exhibit B Statement of Work Exhibit C Budget Exhibit D Federal Provisions	
Contract Purpose Implement and operate the COWIC Program of the USDA Food and Nutrition Services (FNS) Special Supplemental Nutrition Program for Women, Infants and Children (WIC) as an authorized local COWIC agency.	

In accordance with §4.B of the Master Task Order Contract referenced above, Contractor shall complete the following Project:

1. PROJECT DESCRIPTION

Contractor shall complete the Project described in Exhibit B Statement of Work (SOW) that is attached hereto and incorporated herein (“the SOW”). All terminology used in this Task Order and the SOW shall be interpreted in accordance with the Master Task Order Contract unless specifically defined differently in this Task Order. The Statement of Work and Budget are incorporated herein, made a part hereof and attached hereto as Exhibit B - Statement of Work and Exhibit C - Budget.

2. PAYMENT

The State shall pay Contractor the amounts shown in Exhibit C - Budget that is attached hereto and incorporated herein, in accordance with the requirements of the SOW and the Master Task Order Contract. The State shall not make any payment for a State Fiscal Year that exceeds the Task Order Maximum Amount shown above for that State Fiscal Year.

3. PERFORMANCE PERIOD

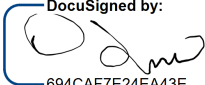
Contractor shall complete all Work on the Project described in this Task Order by the Task Order Expiration Date stated above. Contractor shall not perform any Work described in the SOW prior to the Task Order Performance Beginning Date or after the Task Order Expiration Date stated above.

4. TASK ORDER EFFECTIVE DATE:

The Effective Date of this Task Order is October 1, 2022.

SIGNATURE PAGE**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

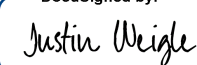
Each person signing this Contract represents and warrants that he or she is duly authorized to execute this Contract and to bind the Party authorizing his or her signature.

CONTRACTOR Board of County Commissioners of Delta County (a political subdivision of the state of Colorado) for the use and benefit of the Delta County Health Department DocuSigned by:  694CAF7E24EA43E... By: Signature Don Suppes Name of Person Signing for Contractor Chairman BOCC Title of Person Signing for Contractor Date: <u>2022-09-14</u>	STATE OF COLORADO Jared S. Polis, Governor Colorado Department of Public Health and Environment Jill Hunsaker Ryan, MPH, Executive Director DocuSigned by:  2EDEF870A1A7D4EC... By: Signature Lisa McGovern Name of Executive Director Delegate Procurement & Contracts Section Director ft Title of Executive Director Delegate Date: <u>2022-09-14</u>
---	---

In accordance with §24-30-202 C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

DocuSigned by:



C48A540EBA79405...

By: Signature

Justin weigle

Name of State Controller Delegate

Health Divisions Controller

Title of State Controller Delegate

Contract Effective Date: 2022-09-21

-- Signature and Cover Pages End --

**ADDITIONAL PROVISIONS
To Original Contract Number 2023*2219**

These provisions are to be read and interpreted in conjunction with the provisions of the Contract specified above.

1. To receive compensation under the Contract, the Contractor shall submit a signed Monthly, Quarterly, or other schedule CDPHE Reimbursement Invoice Form. This form is accessible from the CDPHE internet website <https://www.colorado.gov/pacific/cdphe/standardized-invoice-form-and-links> and is incorporated and made part of this Contract by reference. CDPHE will provide technical assistance in accessing and completing the form. The CDPHE Reimbursement Invoice Form and Expenditure Details page must be submitted no later than forty-five (45) calendar days after the end of the billing period for which services were rendered. Expenditures shall be in accordance with the Statement of Work and Budget incorporated into this Contract.

Scan the completed and signed CDPHE Reimbursement Invoice Form into an electronic document. Email the scanned invoice with the Excel workbook containing the Expenditure Details page to: CDPHE_NSBFiscal@state.co.us

Final billings under the Contract must be received by the State within a reasonable time after the expiration or termination of the Contract; but in any event no later than forty-five (45) calendar days from the effective expiration or termination date of the Contract.

Unless otherwise provided for in the Contract, "Local Match", if any, shall be included on all invoices as required by funding source.

The Contractor shall not use federal funds to satisfy federal cost sharing and matching requirements unless approved in writing by the appropriate federal agency.

Contractor shall request prior approval in writing from the State for all modifications to the Statement of Work, or for any modification to the direct costs in excess of twenty-five percent (25%) of the total budget for direct costs, or for any modifications to the indirect cost rate. Any request for modifications to the Budget in excess of twenty-five percent (25%) of the total budget for direct costs, or any modifications to indirect cost rates, shall be submitted to the State at least ninety (90) days prior to the end of the contract period and will require a modification in accordance with General Provisions, Section 16, Modification, Section H.

2. Time Limit for Acceptance Of Deliverables.

- a. Evaluation Period. The State shall have **sixty (60)** calendar days from the date a deliverable is delivered to the State by the Contractor to evaluate that deliverable, except for those deliverables that have a different time negotiated by the State and the Contractor.
- b. Notice of Defect. If the State believes in good faith that a deliverable fails to meet the design specifications for that particular deliverable, or is otherwise deficient, then the State shall notify the Contractor of the failure or deficiencies, in writing, within **thirty (30)** calendar days of: 1) the date the deliverable is delivered to the State by the Contractor if the State is aware of the failure or deficiency at the time of delivery; or 2) the date the State becomes aware of the failure or deficiency. The above time frame shall apply to all deliverables except for those deliverables that have a different time negotiated by the State and the Contractor in writing pursuant to the State's fiscal rules.
- c. Time to Correct Defect. Upon receipt of timely written notice of an objection to a completed deliverable, the Contractor shall have a reasonable period of time, not to exceed **thirty (30)** calendar days, to correct the noted deficiencies.

3. Health Insurance Portability and Accountability Act (HIPAA) Business Associate Determination.

EXHIBIT A

The State has determined that this Contract does not constitute a Business Associate relationship under HIPAA.

4. The Contractor shall obtain the prior written approval of the State before, and as a condition of, purchasing any equipment with WIC funds that costs Five Thousand Dollars (\$5,000.00) or more. If such approval is given by the State, and the Contractor purchases the equipment, then that equipment shall be the property of the COWIC Program.
5. The Contractor shall ensure that no claim is submitted to the State for the reimbursement of those services which are already funded by other state or federal programs, or for costs which are not allowable as defined in the WIC Program Manual, which is available at <http://coloradowic.com/>
6. The Contractor's claims for the reimbursement of all administrative costs shall be made in accordance with all applicable requirements imposed by the USDA, including but not limited to 7 C.F.R., Part 246, as amended, all applicable Office of Management and Budget (OMB) circulars, and the State's WIC policies, as amended.
7. Continued State financial reimbursement under this Contract is contingent upon the continued operation of the WIC program as described in this Contract, and the Contractor's timely submission of all the reports, data, or other documentation required under this Contract.
8. Nondiscrimination: The Recipient will comply with following the nondiscrimination statutes and regulations, other related regulations and any USDA nondiscrimination directives:
 - a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d- *et seq.*) and USDA regulations at 7 CFR Part 15, Nondiscrimination, and Department of Justice regulations at 28 CFR Part 42, Non-discrimination; Equal Employment Opportunity: Policies And Procedures;
 - b. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) and USDA regulations at 7 CFR Part 15a, Education Programs or Activities Receiving or Benefiting from Federal Financial Assistance;
 - c. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 1681 *et seq.*) and USDA regulations at 7 CFR Part 15a, Education Programs or Activities Receiving or Benefiting or Benefiting from Federal Financial Assistance, and Department of Justice regulations at 28 CFR Part 41, Implementation of Executive Order 12250, Nondiscrimination On the Basis of Handicap in Federally Assisted Programs; and
 - d. Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) The Grantee assures that it will immediately take any measures necessary to effectuate the requirements in these laws, regulations and directives. The Grantee gives this assurance in consideration of and for the purpose of obtaining the funds provided under this agreement.
 - e. The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination on the basis of disability in employment (Title I), state and local government services (Title II), places of public accommodation and commercial facilities (Title III). (42 U.S.C. 12101-12213).

The following nondiscrimination statement MUST be included on all publications, outreach materials, handouts, referral materials, leaflets and brochures that identify or describe the WIC program:

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, religious creed, disability, age, political beliefs, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

EXHIBIT A

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339.

Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form.

To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410;
- (2) fax: (202) 690-7442; or
- (3) email: program.intake@usda.gov.

This institution is an equal opportunity provider.

9. The Contractor shall agree to support full use of federal funds provided from USDA/Food and Nutrition Service to Colorado to administer the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) as established in Section 12(b) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1760 (b), as amended by Section 361 of the Health, Hunger-Free Kids Act of 2010 (Public Law 111-296). This stipulates that funds provided for administration should be excluded from local agency budget restrictions including at a minimum, hiring freezes, work furloughs, and travel restrictions affecting the WIC program if there are enough WIC funds available to pay for those services during the contract period
10. No State or other public funds payable under this Contract shall be used for the acquisition, operation or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Contractor hereby certifies that, for the term of this Contract and any extensions, the Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this Contract, including, without limitation, immediate termination of the Contract and any remedy consistent with United States copyright laws or applicable licensing restrictions

EXHIBIT B

STATEMENT OF WORK
To Original Contract Number 2023*2219

These provisions are to be read and interpreted in conjunction with the provisions of the contract specified above.

I. Project Description:

The WIC Program is a federally funded program established through United States Department of Agriculture (USDA) Food and Nutrition Services (FNS) to supply specified nutritious foods and nutrition education to income-eligible pregnant, postpartum and breastfeeding women and children under five (5) years of age.

II. Work Plan:

**Performance-Based Work Plan Table for SOW
Services or Services with Goods**

Goal #1: The Colorado Special Supplemental Nutrition Program for women, infants and children (COWIC or the Program) at the Colorado Department of Public Health & Environment (CDPHE) provides nutrition education, breastfeeding support, referrals, and food benefits to income-eligible pregnant, postpartum, and breastfeeding women, infants, and children up to the age of five (5).	
Objective #1: No later than the expiration date of the contract, support the COWIC Program through the implementation and operation of the USDA Food and Nutrition Services (FNS) Special Supplemental Nutrition Program for Women, Infants and Children (WIC) as an authorized local COWIC agency.	
Primary Activity #1	The Contractor shall provide nutrition education and referrals to all enrolled COWIC participants.
Sub-Activities #1	1) The Contractor shall annually create a local agency Nutrition Education Plan based on the guidance provided by COWIC at CDPHE for that year. a) The Contractor shall implement the Nutrition Education Plan b) The Contractor shall evaluate the previous year's Nutrition Education Plan. 2) The Contractor shall conduct nutrition education services in the COWIC MIS system including: a) Documenting nutrition education services in the COWIC computer system. b) Certifying program participants and referring participants identified as having a high nutritional/medical risk factor for high risk nutrition counseling. 3) The Contractor shall monitor monthly participant caseload reports and develop outreach strategies and partnerships to increase program participation. 4) The Contractor shall maintain a current list of local services and organizations for referral purposes and document consent and referrals within the MIS system. 5) The Contractor shall contact the COWIC Program staff at CDPHE with questions regarding regulation interpretation. 6) The Contractor shall ensure that all local agency COWIC staff maintain up-to-date training on policy, procedures, systems, and benefits of the Program.
Primary Activity #2	The Contractor shall provide breastfeeding support to pregnant and postpartum women.

EXHIBIT B

Sub-Activities #2	1) The Contractor shall endorse breastfeeding as the preferred method of infant feeding amongst COWIC program participants and will support parents in their decisions regarding infant feeding that is best for their family. 2) The Contractor shall provide breastfeeding education to all pregnant participants and throughout the postpartum period, as needed. 3) The Contractor shall establish clinic procedures to incorporate positive peer influence prenatally and during the postpartum period, including referral of participants to the Breastfeeding Peer Counseling program for additional support. 4) The Contractor shall document within the MIS system when local agency staff complete the breastfeeding training module. 5) The Contractor shall collaborate with other programs/groups within its community that provide breastfeeding education and support. 6) The Contractor shall maintain a breast pump inventory and a) provide appropriate breast pumps to participants, when necessary. b) provide appropriate education on pumping and breast milk storage.
Primary Activity #3	The Contractor shall issue food benefits to enrolled COWIC participants.
Sub-Activities #3	1) The Contractor shall issue food benefits to enrolled COWIC participants based on the individualized food prescription and Program requirements using the MIS system. 2) The Contractor shall provide training to COWIC participants on the use of food benefits including how to use the EBT card, how to find eligible foods, and how to access the Allowable Foods List. 3) The Contractor shall be responsible for the security and accountability of negotiable food instruments (EBT cards). a) The Contractor shall reimburse the State for any COWIC Program funds that are misused or otherwise diverted due to: (1) negligence, (2) fraud, (3) theft, (4) embezzlement, or (5) any other loss caused by the Contractor, its employees or agents.
Primary Activity #4	The Contractor shall assign an employee to serve as a Local Agency Retail Coordinator (LARC).
Sub-Activities #4	1) The LARC shall work in conjunction with the COWIC Program at CDPHE on retail store activities, including: a) Training. b) Compliance. 2) The LARC shall respond to participant concerns and retailer issues, notifying COWIC state staff in the Benefit Delivery Unit.
Primary Activity #5	The Contractor shall participate in COWIC contract fiscal and program monitoring.
Sub-Activities #5	1) The Contractor shall submit documentation requested by COWIC fiscal staff to support costs in compliance with federal rules and regulations for fiscal management (OMB omniscircular 2 CFR Part 200). 2) The Contractors shall participate in program monitoring activities not less than biannually to assure compliance with federal and state requirements. COWIC program monitoring activities may include:

EXHIBIT B

	a) Complete required forms/reports within the timeframe requested by the State Agency. b) Attend monitoring and site visit sessions. c) Respond with a written plan of action and target dates for resolution and/or education for staff on findings/issues identified during the monitoring. d) Meet minimally for one follow up, 90 days to 6 months post monitoring date (1) Meet for any additional follow ups and/or reviews as the State agency determines to be necessary based on the number and severity of findings during the monitoring.
Primary Activity #6	The Contractor shall complete the necessary regulatory and administrative requirements of the Program.
Sub-Activities #6	1) The Contractor shall protect the confidentiality of a recipient's identity by limiting access of the recipient's records to COWIC staff and the recipient's health care provider (with participant's documented permission). a) Access to records by other third parties must be accompanied by a release of information signed by the recipient. 2) The Contractor shall inform the COWIC state Program staff at CDPHE when new employees need security roles assigned within the MIS computer system. 3) The Contractor shall require its employees to track time worked and submit a time study report on the following COWIC activities: a) Nutrition Education. b) Breastfeeding Support. c) Clinic Services. d) Administration. 4) The Contractor shall create an annual local agency budget for operating the Program and submit a copy of that budget to the COWIC Fiscal Officer at CDPHE. 5) The Contractor shall provide staffing sufficient to service participant case load and meet operating standards. a) The contractor shall determine staffing needs and plans should key staff members be absent/unavailable. b) Client services must remain available. c) The Contractor shall provide written plans for continuation of service if staff turnover negatively impacts required services. 6) The Contractor shall provide the necessary support to operate COWIC computers and peripheral devices: a) On-site Information Technology (IT) support. b) Data security including firewalls. c) Internet access. 7) The Contractor agrees to maintain upgrades of the MIS system when notified by COWIC at CDPHE. 8) The Contractor shall be responsible for the security of all COWIC equipment in its control or possession and shall immediately report loss or damage to equipment caused by Contractor negligence, abuse, or misuse to Program staff at CDPHE. 9) The Contractor shall maintain a computer equipment inventory for local agency COWIC Staff. 10) The Contractor shall respond to all requests for information and meetings from the COWIC Program at CDPHE in a timely manner. 11) The Contractor shall annually submit to cdphe_nsbfiscal@state.co.us for use with the annual funding formula a salary survey for personnel expenses to include: a) local agency staff members that work on the COWIC program. b) monthly salary costs. c) monthly benefits. d) monthly expected Full-Time Equivalent (FTE) hours to be worked on the WIC grant for the calendar year.

EXHIBIT B

Primary Activity #7	OPTIONAL: The Contractor shall provide support services to other COWIC programs operated by local health agencies within the State of Colorado. Contractors providing additional support services, such as referral management, nutrition educator backup, high risk counseling, or provision of director support to other agencies, shall document such arrangement via a Memorandum of Understanding (MOU) or other written agreement.
Sub-Activities #7	1) The Contractor shall provide services including: a) referral management of participants b) nutrition educator back-up c) high risk counseling d) Director support to other agencies 2) The Contractor shall coordinate support role with state COWIC program including: a) Type of work to be completed b) Participant interaction c) Financial support for additional services rendered. 3) The Contractor shall clarify roles and responsibilities along with partnering local agencies for core COWIC programmatic requirements using a Memorandum of Understanding (MOU) or other written agreements. 4) The Contractor shall submit a copy of the executed final agreements to the COWIC Program at CDPHE via email to demonstrate plan for fulfillment of contract requirements through partnerships including: a) standards of service b) reporting c) compliance roles and responsibilities.
Standards and Requirements	1) The Contractor must be an authorized COWIC local agency. This process includes the application for authorization and continued authorization as issued by the COWIC program. 2) The Contractor shall administer the COWIC program to qualified participants according to specifications outlined in a) COWIC Policy & Procedures manual (updated annually) located at: https://www.colorado.gov/cdphe/wic-manuals-and-guides. b) COWIC Program policy letters. 3) According to COWIC policy, the Contractor shall ensure that participants in the program meet the following eligibility requirements: a) Are pregnant, breastfeeding, and/or postpartum women or are infants or children up to age five. b) Are income eligible for services. c) Have an identifiable nutrition risk factor. 4) The content of electronic documents located on the COWIC websites may be updated periodically during the contract term. a) The Contractor shall monitor documents and website content for updates. b) The Contractor shall comply with all updates. 5) The Contractor shall provide an environment for COWIC participants and local agency staff that is welcoming, breastfeeding-friendly, accessible, and provides confidential counseling spaces. 6) The Contractor shall accommodate cultural and language diversity of participants through the use of phone or in-person translation services whenever requested by the participant. 7) The Nutrition Education Plan shall be submitted on time and must include all required elements in the annual request from the COWIC Program staff at CDPHE. 8) The Contractor shall adhere to the following regarding COWIC local agency staff: a) Staffing shall be sufficient to service participant case load and meet operating standards.

EXHIBIT B

	(1) The contractor shall determine staffing needs and plans should key staff members be absent/unavailable. (2) Client services must remain available. (3) The Contractor shall provide written plans for continuation of service if staff turnover negatively impacts required services. b) Newly hired staff shall complete the certification program, including new employee training. c) Staff must complete two training sessions per year. Any COWIC-required training may count towards the two staff trainings. d) Staff shall attend scheduled workshops or COWIC-sponsored meetings on updates to policies, contracts, procedures and nutrition. e) Staff shall exhibit a positive attitude toward breastfeeding. f) Staff shall consistently meet performance expectations. g) Qualifications of personnel assigned by the Contractor to perform the services outlined within this contract shall be available for review and approval by the COWIC Program at CDPHE. h) Contractors participating in partnership arrangements with other agencies shall adhere to the terms and conditions of the MOU or other written agreement on file with CDPHE. 9) IT support (with direction from the COWIC Program at CDPHE) shall include: a) Ordering equipment, as directed by the COWIC Program at CDPHE. b) Setting up equipment and downloading the MIS system. c) Setting up multi-function printers, card readers and PIN pad devices for EBT, and signature pads. d) Ensuring that no local system changes or upgrades are done to the COWIC computers without first verifying that the upgrades are compatible with the MIS system. e) Computers and peripherals, such as printers, shall be disposed of at the direction of the COWIC Program at CDPHE. 10) The Contractor shall maintain a computer equipment inventory that includes: a) Computer Model. b) Serial Number. c) Date purchased. d) Acquisition Cost. e) Warranty Expiration. f) Computer Location. 11) Specific guidance for the Contractor's Local Agency Retail Coordinator (LARC) is provided in the COWIC Policy & Procedure Manual and the COWIC Retailer Handbook located within the Manual. 12) As specified in the COWIC Policy & Procedures manual, the Colorado WIC Program and its contracting agencies must make a fair hearing available to any individual whose application for benefits or services has been denied, reduced, or terminated, or who is otherwise aggrieved by agency action. 13) Time Study reports shall be submitted to cdphe_nsbfsical@state.co.us at the COWIC Program at CDPHE for each of its local agency employees for the timeframe of one week per month OR one month per quarter. 14) The Security Access Form shall be submitted to the COWIC Help Desk at the COWIC Program at CDPHE as required in the COWIC Policy & Procedure Manual. 15) Each COWIC local agency shall comply with Clinical Laboratory Improvement Amendments (CLIA): a) All entities that perform even one test, including waived test on ... "materials derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings" to meet certain Federal requirements. If an entity performs tests for these purposes, it is considered under CLIA to be a laboratory and must register with the CLIA program. b) Hemoglobin testing is a waived test under CLIA.
--	--

EXHIBIT B

	c) The COWIC local agency performing hemoglobin tests shall operate under their health department’s CLIA Certification Number. d) Each COWIC WIC site address shall be listed on the CLIA Certificate. e) COWIC local agency staff shall provide the CLIA Certification Number on COWIC administrative monitoring forms. f) COWIC local agency staff may contact CDPHE’s Laboratory Services Division for their CLIA certification number and additional information: Phone: (303) 692-3681 FAX: (303) 344-9965 Email: cdphe.lab@state.co.us 16) The COWIC Program at CDPHE will: a) Conduct program and fiscal monitoring visits in accordance with the current COWIC Policy & Procedure Manual. b) Provide access to local agency data including monthly caseload reports. c) Provide nutrition education training. d) Provide access to on-line nutrition education and electronic materials for use by COWIC participants. e) Provide guidance on federal program regulations. f) Provide funding for allowable COWIC-related expenses. g) Provide annual budget and salary survey templates. 17) The Contractor shall keep on file and have available for review, audit and evaluation: a) A copy of this contract. b) All records required in the current COWIC Policy & Procedures Manual. c) Complete, accurate, and current accounting to document all funds received and expended pursuant to this contract. d) Detailed computer and equipment inventory records as described in Standards and Requirements, #10. e) Complete and accurate retail records documenting training, monitoring and those problems, if any with each retailer; f) Fair hearing or other service complaint documentation. 18) The Contractor shall adhere to the following regarding COWIC Data Use: a) The Contractor understands that all COWIC data is owned by COWIC at CDPHE. b) The Contractor understands that access to COWIC data is governed by the Data Use Policy as included in the current COWIC Policy & Procedure manual. c) Local Agencies shall email cdphe_nsbdata@state.co.us for data requests.	
Expected Results of Activity(s)	Maintain the COWIC Program’s operational functionality at the local level in compliance with standards for implementation and operation of the USDA FNS WIC Program.	
Measurement of Expected Results	The COWIC Program at CDPHE will review monthly caseload reports, the annual Nutrition Education Plan evaluation, and results of fiscal and program monitoring activities to determine program performance and effectiveness.	
	Completion Date	
Deliverables	1) The Contractor shall submit an annual Nutrition Education Plan.	September 30
	2) The Contractor shall submit an evaluation of the previous year’s Nutrition Education Plan.	October 30

EXHIBIT B

	3) The Contractor shall submit an annual budget.	November 30
	4) The Contractor shall submit monthly or quarterly time studies.	Monthly time studies due within 30 days following end of month. Quarterly time studies due within 30 days following the end of the quarter.
	5) The Contractor shall submit Security Access Forms for all employees.	Due when requesting access for a new employee or when requesting a change in access to the MIS system.
	6) The Contractor shall submit an annual salary survey.	January 15
	7) The Contractor shall provide computer equipment inventory.	Upon Request
	8) The Contractor shall provide written plans for continuation of service if staff absence/turnover negatively impacts required services.	Due within 30 days of discovery
	9) (OPTIONAL ACTIVITY #7) The Contractor shall submit a copy of executed final MOUs or other written agreements for partnership arrangements between agencies.	Due within 30 days of execution

III. Monitoring:

CDPHE's monitoring of this contract for compliance with performance requirements will be conducted throughout the contract period by the Nutrition Consultant. Methods used will include a review of documentation determined by CDPHE to be reflective of performance to include progress reports and other fiscal and programmatic documentation as applicable. The Contractor's performance will be evaluated at set intervals and communicated to the contractor. A Final Contractor Performance Evaluation will be conducted at the end of the life of the contract.

IV. Resolution of Non-Compliance:

The Contractor will be notified in writing within THIRTY (30) calendar days of discovery of a compliance issue. Within THIRTY (30) calendar days of discovery, the Contractor and the State will collaborate, when appropriate, to determine the action(s) necessary to rectify the compliance issue and determine when the action(s) must be completed. The action(s) and time line for completion will be documented in writing and agreed to by both parties. If extenuating circumstances arise that requires an extension to the time line, the Contractor must email a request to the WIC contract administrator and receive approval for a new due date. The State will oversee the completion/implementation of the action(s) to ensure time lines are met and the issue(s) is resolved. If the Contractor demonstrates inaction or disregard for the agreed upon compliance resolution plan, the State may exercise its rights under the provisions of this contract.

BUDGET
To Contract Dated 10/01/2022 - Contract Routing Number 2023*2219

Contract - FFY 2023 Budget (October 1, 2022 – September 30, 2023)	\$112,155.00
TOTAL CONTRACT	\$112,155.00

Exhibit D**Federal Provisions - Special Supplemental Nutrition Program for Women, Infants and Children**

For the purposes of this Exhibit only, Contractor is also identified as “Subrecipient.” This Contract has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions for Federal Awards, the Special Provisions, the Contract or any attachments or exhibits incorporated into and made a part of the Contract, the Supplemental Provisions for Federal Awards shall control. In the event of a conflict between the Supplemental Provisions for Federal Awards and the FFATA Supplemental Provisions (if any), the FFATA Supplemental Provisions shall control.

1) Federal Award Identification.

- a. Subrecipient: Board of County Commissioners of Delta County
- b. Subrecipient Unique Entity Identification Number:
 - SAM Unique Entity ID (UEI): **E67XCJN7U9D9**
- c. The Federal Award Identification Number (FAIN) is 223CO701W1003
- d. The Federal award date is **10/1/2022**.
- e. The subaward period of performance start date is **10/1/2022** and end date is **9/30/2023**.
- f. Federal Funds:

Federal Budget Period	Total Amount of Federal Funds Awarded	Amount of Federal Funds Obligated to CDPHE
10/01/22 - 09/30/23	\$23,000,000	\$23,000,000

- g. Federal award title of project or program: **Special Supplemental Nutrition Program for Women, Infants and Children.**
- h. The name of the Federal awarding agency is: **United States Department of Agriculture (“USDA”)** and the contact information for the awarding official is Kevin Dunn, FNS Mountain Plains Regional Office, 303-844-0317; the name of the pass-through entity is the State of Colorado, Department of Public Health and Environment (CDPHE), and the contact information for the CDPHE official is Heidi Hoffman, CO WIC Director, heidi.hoffman@state.co.us
- i. The Catalog of Federal Domestic Assistance (CFDA) number is **10.557** and the grant name is **Women, Infants & Children.**
- j. This award **is not** for research & development.
- k. Subrecipient **is not** required to provide matching funds. In the event the Subrecipient is required to provide matching funds, Section 8 of this Attachment applies.
- l. The indirect cost rate for the Federal award (including if the de minimis rate is charged per 2 CFR §200.414 Indirect (F&A) costs) is pre-determined based upon the State of Colorado and CDPHE cost allocation plan.

2) Subrecipient shall at all times during the term of this contract strictly adhere to the requirements under the Federal Award listed above, and all applicable federal laws, Executive Orders, and implementing regulations as they currently exist and may hereafter be amended.

3) Any additional requirements that CDPHE imposes on Subrecipient in order for CDPHE to meet its own responsibility to the Federal awarding agency, including identification of any required financial and performance reports, are stated in the Exhibits.

4) Subrecipient's approved indirect cost rate is as stated in the Exhibits.

5) Subrecipient must permit CDPHE and auditors to have access to Subrecipient's records and financial statements as necessary for CDPHE to meet the requirements of 2 CFR §200.331 Requirements for pass-through entities, §§ 200.300 Statutory and National Policy Requirements through §200.309 Period of performance, and Subpart F—Audit Requirements of this Part.

6) The appropriate terms and conditions concerning closeout of the subaward are listed in Section 16 of this Attachment.

7) **Performance and Final Status.** Subrecipient shall submit all financial, performance, and other reports to CDPHE no later than 45 calendar days after the period of performance end date or sooner termination of this Contract containing an evaluation and review of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

8) **Matching Funds.** Subrecipient shall provide matching funds as stated in the Exhibits. Subrecipient shall have raised the full amount of matching funds prior to the Effective Date and shall report to CDPHE regarding the status of such funds upon request. Subrecipient's obligation to pay all or any part of any matching funds, whether direct or contingent, only extends to funds duly and lawfully appropriated for the purposes of this Contract by the authorized representatives of the Subrecipient and paid into the Subrecipient's treasury or bank account. Subrecipient represents to CDPHE that the amount designated as matching funds has been legally appropriated for the purposes of this Contract by its authorized representatives and paid into its treasury or bank account. Subrecipient does not by this Contract irrevocably pledge present cash reserves for payments in future fiscal years, and this Contract is not intended to create a multiple-fiscal year debt of the Subrecipient. Subrecipient shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Subrecipient's laws or policies.

9) **Record Retention Period.** The record retention period previously stated in this Contract is replaced with the record retention period prescribed in 2 CFR §200.333.

10) **Single Audit Requirements.** If Subrecipient expends \$750,000 or more in Federal Awards during Subrecipient's fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.

11) **Contract Provisions.** Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Contract:

- a. Office of Management and Budget Circulars and The Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as applicable;
- b. when required by Federal program legislation, the "Davis-Bacon Act", as amended (40 U.S.C. 3141-3148) as supplemented by Department of Labor Regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction");

- c. when required by Federal program legislation, the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building of Public Work Financed in Whole or in Part by Loans or Grants from the United States”).
- d. 42 U.S.C. 6101 *et seq.*, 42 U.S.C. 2000d, 29 U.S.C. 794 (regarding discrimination);
- e. the “Americans with Disabilities Act” (Public Law 101-336; 42 U.S.C. 12101, 12102, 12111 - 12117, 12131 - 12134, 12141 - 12150, 12161 - 12165, 12181 - 12189, 12201 - 12213 and 47 U.S.C. 225 and 47 U.S.C. 611);
- f. when applicable, the Contractor shall comply with the provisions of the “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments” (Common Rule);
- g. The Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6062 of Public Law 110-252, including without limitation all data reporting requirements required there under. This Act is also referred to as FFATA.
- h. Contractor shall comply with the provisions of Section 601 of Title VI of the Civil Rights Act of 1964, as amended.
- i. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 comply with the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity: (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.
- j. where applicable, Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).
- k. if the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into an agreement with a small business firm or nonprofit organization, comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- l. the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.
- m. if applicable, comply with the mandatory standards and policies on energy efficiency contained within the State of Colorado’s energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201.
- n. the Contractor and all principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; the Contractor and all principals shall comply with all applicable regulations pursuant to Executive Order 12549 (3 CFR Part 1986 Comp., p. 189) and Executive Order 12689 (3 CFR Part 1989 Comp., p. 235), Debarment and Suspension; and,
- o. the Contractor shall comply where applicable, the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

12) **Compliance.** Subrecipient shall comply with all applicable provisions of The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), including but not limited to these Supplemental Provisions for Federal Awards. Any revisions to such provisions automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. CDPHE may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

13) **Procurement Procedures.** Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.

14) **Certifications.** Unless prohibited by Federal statutes or regulations, CDPHE may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis (2 CFR §200.208). Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to CDPHE at the end of the Contract that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(b)(3). If the required level of activity or effort was not carried out, the amount of the Contract must be adjusted.

15) **Event of Default.** Failure to comply with the Uniform Guidance or these Supplemental Provisions for Federal Awards shall constitute an event of default under the Contract pursuant to 2 CFR §200.339 and CDPHE may terminate the Contract in accordance with the provisions in the Contract.

16) **Close- Out.** Subrecipient shall close out this Contract within 45 days after the End Date. Contract close out entails submission to CDPHE by Subrecipient of all documentation defined as a deliverable in this Contract, and Subrecipient's final reimbursement request. If the project has not been closed by the Federal awarding agency within 1 year and 45 days after the End Date due to Subrecipient's failure to submit required documentation that CDPHE has requested from Subrecipient, then Subrecipient may be prohibited from applying for new Federal awards through the State until such documentation has been submitted and accepted.

17) **Erroneous Payments.** The closeout of a Federal award does not affect the right of the Federal awarding agency or CDPHE to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the record retention period.

EXHIBIT END

Delta County, State of Colorado

PROCLAMATION

WHEREAS, the U.S. Department of Energy Office of Legacy Management STEM with LM program is participating in Nuclear Science Week, an international week-long celebration focused on local, regional, national, and international aspects of nuclear science, providing opportunities for learning about the contributions, innovations, and applications of nuclear science; and

WHEREAS, Delta County and the surrounding areas have a rich history in the mining and processing of uranium and the development of nuclear energy which is helping to reduce carbon emissions and plays a vital part in the country's diverse mix of environmentally-responsible generating resources; and

WHEREAS, nuclear science professionals throughout the history of Colorado have been dedicated to service and progress in national defense, teaching communities, nuclear medicine, and all areas of power generation, as well as research and development in the communities in which they live and work; and

WHEREAS, nuclear medicine is used in thousands of diagnostic and therapeutic procedures every day to improve the health and lives of individuals living in Delta County; and

WHEREAS, nuclear space propulsion systems are being used safely and reliably in robotic missions and science experiments beyond our state, nation, and solar system; and

WHEREAS, nuclear marine propulsion is essential to the safe and effective operation of our national naval fleet and the health and welfare of those who serve in our naval fleet; and

WHEREAS, the nuclear science community is reaching beyond old paradigms and beliefs to advance a modern understanding of the nuclear sciences, and

WHEREAS, Delta County educational institutions are preparing students to enter rewarding careers in nuclear science, technology, and related pursuits through their STEM programs (science, technology, engineering, and math).

NOW, THEREFORE, by the power vested in me as Chairman of the Delta County Board of County Commissioners of Delta County, do hereby proclaim October 17 – 21, 2022 as "Nuclear Science Week" in Delta County and urge all citizens of the county to observe this special week.

IN WITNESS WHEREOF, I have hereunto set my and caused to be affixed the official Seal of Delta County this 4th day of October 2022.

Don Suppes, Chairman

ATTEST:

Teri A. Stephenson
Delta County Clerk and Recorder

DATE: October 4, 2022

TO: County Administrator LeValley and The Board of County Commissioners

FROM: Matthew Jennings, Grant Administrator

SUBJECT: DOLA IHOP: Planning Grant Program and Application

PURPOSE

To provide County Commissioners with information on the Department of Local Affairs (DOLA) Innovative

Housing Strategies: Planning Program Grant (IHOP) and Delta County's proposed strategies for the grant application.

BACKGROUND

DOLA received funds through House Bill 21-1271 to address housing concerns throughout the State. The bill set up three different programs with IHOP as one of them. The grant was set up to help local governments understand their housing needs and adopt policy and regulatory strategies.

The grant requirements are as follows (full program guidelines are included as Attachment #1):

- Minimum 25% local match of the total project cost is required.
- All funds must be spent before June 30, 2024.
- Official action is required by an elected board, commission or council.
 - o Requires documentation through resolution, meeting minutes, etc.
- Include proposed policy strategies that could address housing concerns in the community.
- May include a housing needs assessment as an initial step, but a good faith effort must be made to adopt policy and regulatory strategies to promote affordable housing.

PROPOSAL

The Planning Department is proposing the County apply for these funds to complete a comprehensive housing strategy to help inform the development and implementation of policy strategies to improve housing options in Delta County, along with accompanying mapping tools to help identify opportunity

areas where adequate infrastructure is present, and there are no constraints. A *Preliminary Housing Needs Analysis* of Delta County was completed by Prior and Associates (Consultant) in 2021 with direction from the Housing Options Workgroup (HOW). HOW is a collaborative group of community stakeholders including County staff persons that focus on development of affordable housing and creative housing solutions for the community. While the Analysis is one tool that can be utilized to better understand housing options for the community, it is using older (2018), and in some cases-incomplete data. Creating a Comprehensive Housing Strategy along with accompanying maps, would allow staff to evaluate how useful the proposed policy strategies may be (or even lead staff to suggest new policies) and aid in the development of policy recommendations that may be included in a future Master Plan update, future land use documents, Intergovernmental Agreements with the Municipalities (IGAs), etc. The housing strategy shall include and evaluate specific demographic data, economic characteristics and trends, current housing inventory and characteristics, government policies and incentives, and the adequacy and availability of selected community services. The mapping tools would easily identify areas where adequate infrastructure could support the development of affordable housing, as well as define constraints. This would be a tool in guiding residents, developers, and community stakeholders to an understanding of how the County is strategizing when it comes to housing and development of housing options.

The proposed policy strategies that will be included in the application are informed both by DOLA staff and the authorizing legislation. Each strategy was chosen to take into account the opportunities for new development and redevelopment while considering constraints such as availability of adequate domestic water, wastewater treatment, and affordable land that avoids encroachment on agricultural operations.

The proposed policies are as follows:

- Use of vacant publicly owned real property within the local government for the development of affordable housing

- Creation of an expedited development review process for acquiring or repurposing underutilized commercial property that can be rezoned to include affordable housing units, including the preservation of existing affordable housing units
- Establishment of a density bonus program to increase the construction of units that meet critical housing needs in the local community
- With respect to water utility charges, the creation of processes to promote the use of sub-metering of utility charges for affordable housing projects and the creation of expertise in water utility matters dedicated to affordable housing projects

For more information on the program, go to <https://cdola.colorado.gov/1271>.

BUDGET/TIME IMPLICATIONS

A 25% local match is required per grant guidelines. Staff expects the match to be \$10,000 based on the scope of work costing \$40,000

The funds for the project are expected to come from the Planning Department's 2023 budget.

If awarded, all funds will need to be spent and policies adopted by summer 2024.

STAFF RECOMMENDATION

Staff recommends approval of a resolution, to pursue the grant application and, if awarded, adoption of housing policy strategies included in the application or as recommended by the housing needs assessment.

STAFF REFERENCE

If BoCC have any questions, please contact Carl Holm Director of Planning & Development, at cholm@deltacounty.com or (970)874-2105

ATTACHMENTS

1. Program guidelines

HB21-1271 DOLA Innovative Housing Strategies:

Planning Grant Program Guidelines

The Colorado Department of Local Affairs (DOLA), with funding from HB21-1271, offers state assistance to local governments to promote the development of innovative affordable housing strategies in a manner that is compatible with best local land use practices. HB21-1271 creates three new programs:

- Affordable Housing Development Incentives Grant Program (“Incentives Grant Program”)
- Local Government Planning Grant Program (“Planning Grant Program”)
- Affordable Housing Guided Toolkit and Local Officials Guide Program (“Toolkit Program”)

The Community Development Office (CDO) within DOLA’s Division of Local Government will manage the Incentives Grant Program and the Planning Grant Program. This document covers program guidelines for the Planning Grant Program.

Planning Grant Program

The Planning Grant Program provides grants to local governments (municipalities, counties, city/counties) to help them better understand their housing needs and adopt policy and regulatory strategies in order to promote the development of affordable housing and qualify for the Incentives Grant Program. Communities not intending to apply to the Incentives Grant Program may still apply to the Planning Grant Program.

Funding

- Approximately \$6,816,000 in funding is available for awards.
- Individual Planning Grant Program awards are expected to be approximately \$50,000-\$200,000.
- A minimum of 25% local match of the total project cost is required. An applicant experiencing financial hardship may request a reduced level of matching funds and must consult with their DOLA Regional Manager before submitting their application about a reduced match.
- Awards cannot be used to cover administrative expenses (e.g., existing staff, operating costs).
- All funds must be spent before June 30, 2024.

Eligibility

- Eligible entities include municipalities, counties, and city/counties. Awards cannot be made directly to housing authorities (but municipalities or counties can partner with housing authorities).
- The intent of the program is to fund municipal or county planning work that supports a qualifying strategy listed in the menu of strategies or an innovative option not currently on the list.
- Housing needs assessments or similar studies are encouraged where needed as an initial step to complete a qualifying planning project and may be bundled into the Planning Grant Program application.
- Applicants may request funding for more than one planning project as needed to adopt the qualifying number of strategies to compete for the Incentives Grant Program (i.e., multiple code updates may be bundled in the same application).
- “Affordable housing” is defined in the statute as up to 80% AMI for rental housing and up to

ATTACHMENT 1

HB21-1271 DOLA Innovative Housing Strategies:

Planning Grant Program Guidelines

140% AMI for affordable homeownership.

Scoring Criteria

- Readiness: The applicant clearly shows they are ready to begin work and has a reasonable timeline for completion. The applicant has indicated if they plan to apply for the Incentives Grant Program (though this is not required).
- Capacity: The applicant has organizational experience with and capacity to manage grants and to manage the overall project. The applicant has considered utilization and enforcement of new or updated planning tools and regulations as part of their strategy evaluation.
- Impact on Housing: The project will include developing and adopting a strategy for the applicant to qualify for the Incentives Grant Program, per the menu of strategies. The applicant will be scored on the general estimated impact the tool(s) will have toward meeting the documented affordable housing need in that community, with consideration of long term

affordability.

- **Political Support:** The applicant must show broad political and stakeholder support, via adopted plans, policies, and/or letters of support, to adopt the proposed strategy(ies) to support the development of affordable housing. If building support is part of the project, the applicant must demonstrate there is a thoughtful plan in place to build stakeholder support through an inclusive and equitable process. Inclusive community engagement is a critical component of every planning effort; applications will be evaluated on the extent and efficacy of their community and stakeholder engagement plan. The most competitive applicants will demonstrate how this project is part of a larger strategy to promote the development of affordable housing in the community.
- **Equity, Diversity, and Inclusion:** The applicant must show they have developed an inclusive stakeholder engagement strategy. Any process to conduct a housing needs assessment or adopt a new strategy should ensure the project will promote equity in affordable housing. Applicants should assess impacts of the work on marginalized and vulnerable populations throughout the process and on an ongoing basis. Competitive applicants will engage a wide array of stakeholders in actual design of housing solutions.
- **Local Match:** A minimum 25% local match of the total project cost is required. An applicant experiencing financial hardship may request a reduced level of matching funds and must consult with their DOLA Regional Manager before submitting their application.
- **Extra Points:** Extra points may be earned if an applicant can show the planning project:
 - considers community benefits such as early childhood education centers, age-friendly planning, energy efficiency, broadband capacity, public health outcomes, economic diversification, transit-oriented development, etc.
 - develops a creative or innovative approach to promoting the development of affordable housing.
- DOLA will also consider geographic diversity, and to a lesser degree, financial need in making final award determinations.

Application and Award Process Timeline

- Applicants are strongly encouraged to consult with their DOLA Regional Manager and to get

input from CDO staff before submitting.

HB21-1271 DOLA Innovative Housing Strategies:

Planning Grant Program Guidelines

- Submit applications through the Division of Local Government Online Grants Portal per the Notice of Funding Available (NOFA). Visit the CDO website for more information.
- The deadline for the first review of applications is September 20, 2021. Applications will then be reviewed and awarded on a rolling basis monthly until funds are depleted.
- The DOLA Executive Director will make final award decisions.
- Applications will be reviewed and awarded within 2 months. Staff will work to finalize grant agreements or contracts within 2 months.
- No work may begin on the project until the grantee receives a signed contract. Local governments must follow their own procurement rules.
- Grantees are encouraged to complete their qualifying planning work as quickly as possible so they may compete for the Incentives Grant Program, which will likely open in the fall of 2022.
- Note: If the grantee does not complete a good-faith effort to adopt the planning strategy(ies) outlined in the application, DOLA may request the awarded funds be returned to DOLA..

COUNTY ATTORNEY'S AGENDA

Board of County Commissioners

Regular Meeting

October 4, 2022

REGULAR SESSION:

1. Board's consideration of Assignment of Lease Blake Field Airport hangar #175 Engel to Lambert.

ASSIGNMENT OF LEASE BLAKE FIELD AIRPORT

WHEREAS, Ronald L. Peterson and Janet M. Peterson (original Lessee) entered into a certain lease agreement titled "Airport Ground Lease" dated November 26, 2007, (the "Lease") recorded at Reception #693562, Space #175 (formerly Lot 20), from the Board of County Commissioners of the County of Delta ("Lessor") of land more fully described in the Lease, and

WHEREAS, Hi-Country Flyer, LLC assumed the lease by assignment dated February 1 8, 2014 and recorded at Reception #671926.

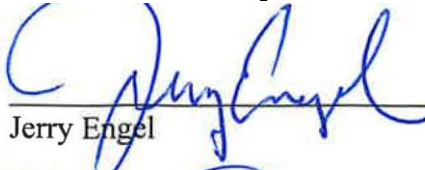
WHEREAS, William C. Albright and Laura E. Albright assumed the lease by assignment dated February 1 8, 2014 and recorded at Reception #671927.

WHEREAS, Jerry Engel assumed the lease by assignment dated October 12, 2021 and recorded at Reception #733737.

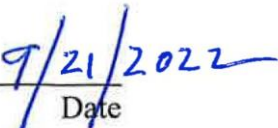
WHEREAS, Jerry Engel wishes to assign the lease agreement to Bruce D. Lambert, of 405 Country Club Park Rd, Grand Junction, CO 81507 and Bruce D. Lambert desire(s) to assume all rights, liability, duty and other obligations of the Lease subsequent to the date of this Assignment.

NOW, THEREFORE, Jerry Engel does grant, convey and assign to Bruce D. Lambert, all rights, title and interest possessed by Jerry Engel under the Lease for the remainder of the Lease term and any renewals thereof. Jerry Engel accepts such assignment and hereby agrees that they shall abide by all the terms of the Lease, perform the obligations required under the Lease to be performed by Jerry Engel after the date of this Assignment, and discharge all liabilities arising under the terms of the Lease after the date of this Assignment, all as if they, and not Jerry Engel, where the original Lessee(s).

Jerry Engel represents and warrants that all liabilities and obligations arising under the terms of the Lease prior to the date of the Assignment have been fully satisfied and discharged.


Jerry Engel

Bruce D. Lambert


Date

Date

Page 1 of 2

LESSOR'S CONSENT TO ASSIGNMENT

The Board of County Commissioners of Delta County, Lessor under the abovereferenced Lease, pursuant to paragraph 18 of the Lease hereby (a) consents to and accepts the Assignment of the Lease from Jerry Engel; (b) consents to the transfer and sale by Jerry Engel to Bruce D.

Lambert of the building referenced in the Lease; and (c) releases Jerry Engel from all obligations incurred under the Lease after the date hereof.

DATED this day of 2022.

ATTEST:

LESSOR:
BOARD OF COUNTY COMMISSIONERS
OF DELTA COUNTY

Teri A. Stephenson
Delta County Clerk and Recorder

By: _____
Don Suppes, Chair

Fwd: Weekly Report

1 message

Robbie LeValley <rlevalley@deltacounty.com>
To: Teri Stephenson <tstephenson@deltacounty.com>

Thu, Sep 29, 2022 at 2:57 PM

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

From: **John Allen** <jallen@deltacounty.com>

Date: Thu, Sep 29, 2022 at 2:32 PM

Subject: Weekly Report

To: Robbie LeValley <rlevalley@deltacounty.com>, Wendell Koontz <wkoontz@deltacounty.com>, Don Suppes <dsuppes@deltacounty.com>, Mike Lane <mlane@deltacounty.com>, Dan Sickles <dsickles@deltacounty.com>, Mark McMillan <mmcmillan@deltacounty.com>, Tim McCracken <tmccracken@deltacounty.com>

This week Dist 3 assisted with paving in Cedaredge. We are also in the middle of our second and final round of blading our USFS roads for the year. We were able to do some ditch and culvert maintenance in a few areas as well as lay down some gravel in the lower Smith Fork Canyon and Fruitland Mesa area.

NOTICE: This email transmission from the County of Delta, and any documents, files, or previous email messages attached to it, are intended solely for the individual(s) to whom it is addressed and may contain information that is confidential, legally privileged, and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any unauthorized review, forwarding, printing, copying, distribution, or use of this transmission or the information it contains is strictly prohibited. A misdirected transmittal of this email does not constitute waiver of any applicable privilege. If you received this transmission in error, please immediately notify the sender and delete the original transmission and its attachments. Notwithstanding the foregoing, sender and receiver should be aware that all incoming and outgoing emails may be subject to the Colorado Open Records Act, C.R.S. 24-72-200.1 et seq. Thank you.

--

Robbie Baird LeValley
Delta County Administrator
Phone (o) 970-874-2102

NOTICE: This email transmission from the County of Delta, and any documents, files, or previous email messages attached to it, are intended solely for the individual(s) to whom it is addressed and may contain information that is confidential, legally privileged, and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any unauthorized review, forwarding, printing, copying, distribution, or use of this transmission or the information it contains is strictly prohibited. A misdirected transmittal of this email does not constitute waiver of any applicable privilege. If you received this transmission in error, please immediately notify the sender and delete the original transmission and its attachments. Notwithstanding the foregoing, sender and receiver should be aware that all incoming and outgoing emails may be subject to the Colorado Open Records Act, C.R.S. 24-72-200.1 et seq. Thank you.