




Fiscal Impact Form

Department: Road and Bridge	Date: September 29, 2017
Document Title (i.e. Resolution, Agreement, etc.): Winter Maintenance Agreement for CR 5 and CR 5A between Ouray County and Radio Dog Ranch	Year of commencement: 2017 – 2018 Winter Season
Source of Funding (if applicable):  General Fund <input type="checkbox"/> R & B Fund <input type="checkbox"/> EMS Fund <input type="checkbox"/> Social Services Fund <input type="checkbox"/> Other <input type="checkbox"/> If other, please indicate: <u>N/A</u>	
Requirements (if any): A \$500 performance bond, Certificate of Deposit, or irrevocable letter of credit and appropriate insurance coverage are required and are pending receipt to the County.	
Description/Purpose: For the purpose of winter snow removal on affected portions the county road during the 2017 – 2018 winter season; as specified.	

Submission/Review/Approval or Denial:

Department Head / Elected Official: <u>Steven Calkins, Interim Road Superintendent</u>	Date: <u>September 21, 2017</u>
County Administrator: <u>Connie I. Hunt</u>	Date: <u>September 29, 2017</u>
Comments: <u>Carol Viner 10-03-2017</u>	
Board of County Commissioners, Chair: _____ Date: _____	
Approve <input type="checkbox"/>	Deny <input type="checkbox"/>

WINTER ROAD MAINTENANCE AGREEMENT

THIS AGREEMENT made and entered into effective October ____, 2017 by and between the Board of County Commissioners of Ouray County, Colorado, (County) and Radio Dog Ranch LLC (Owner) located on County Road 5, Ouray County, Colorado.

WHEREAS, County is responsible for the use and maintenance of that part of County Road 5 located in Ouray County, Colorado;

WHEREAS, Owner intends to use County Road 5 for access to his and other properties and may need to plow snow on a 1.9 mile portion of County Road 5 from the intersection of County Road 5 and 5-A to Owners driveway entrance (Portion of CR 5) in order to keep it open and accessible during the winter season of 2017-18;

WHEREAS, Owner and County recognize and agree that the optimal conditions for sharing this section of County Road 5 between vehicles, snowmobiles and skiers is to create a separate single track for skiers on the County R.O.W. as resources permit and to prohibit grooming or other ski trail maintenance on the plowed Portion of CR 5;

WHEREAS, Owner and County recognize and agree that if Owner's winter use of the road and snow plowing activities results in damage to Portion of CR 5, then Owner shall be responsible for repair of any such damage;

WHEREAS, Owner and County have reached an agreement regarding Owner's removal of snow on the Portion of CR 5 and, by this instrument, reduce such agreement to writing; and

WHEREAS, the County previously adopted Resolution 2016-019 addressing Winter Maintenance Agreements;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and the material terms set forth above, the sufficiency of which are hereby acknowledged, Owner and County agree as follows:

1. **TERM AND CONDITIONS**. Upon execution of this Agreement, Owner shall have the authority, but not an obligation, to plow snow on Portion of CR 5 during the winter season of 2017-2018, pursuant to the following terms and conditions:
 - a. Owner may plow and remove snow on Portion of CR 5 but shall provide notice to the County Road and Bridge Supervisor prior to removing snow, so that the County can verify that the snow removal is conducted according to the terms and conditions of this Agreement.
 - b. Owner and County recognize that for the safety of all road users separating vehicular, snowcat and snow mobile use from skiers, snow shoe, sledding and pedestrian use will help insure safety. Therefore, the Portion of CR 5 will be used for vehicular, snowcat and snow mobile use and the remainder of the 60 foot R.O.W. is for skier, snowshoe, sledding and pedestrian use.
 - c. Owner shall plow Portion of CR 5 to allow safe vehicle passage leaving 4 inches of snow cover where possible, however, in all cases a minimum of 1.5-2 inches of snow cover will be left to protect the road from damage.
 - d. In order to avoid two vehicles meeting from opposite direction, the road way will be plowed for a vehicle to pass at the elbow turn, and all authorized vehicle owners will communicate times when they will be using the road.

- e. County agrees to install a gate to limit vehicles accessing the road, to the extent that access to the road may be lawfully denied. Property owners beyond the gate will be provided a key upon payment of a fee of \$50.00. County will also post a sign near the gate to advise those parking in the parking lot "Do NOT Block Gate".
 - f. A snowcat, or self-propelled snow blower is required to perform snow plowing. No truck mounted plows shall be used
 - g. Both parties agree and understand that extreme weather conditions or snow accumulations or other emergencies (including but not limited to fire , avalanche rescue, and other emergencies which may require access by emergency vehicles) may require temporary alterations to the plowing and snow removal as outlined above.
 - h. The parties may review this agreement from time to time during the winter of 2017-18 and may make reasonable modifications of this Agreement as may be necessary.
 - i. Both parties agree and understand that nothing in this agreement shall preclude the parties from amending any of the terms and conditions of this Agreement to accommodate changes which change the need for such terms and conditions (including, but not limited to, changes caused by widening of the road, construction of a separate trail for skiers, or other changes which may make some of the terms and conditions of this Agreement unreasonable or necessary).
 - j. Prior to Owner commencing winter road maintenance on the Portion of CR 5, the Ouray County Road and Bridge Supervisor shall perform an evaluation of the Road with Owner to determine the road's condition just prior to commencement of this Agreement. Thereafter, Owner shall repair any damage to the road that results from its plowing of Portion of CR 5; such repair to be made to the satisfaction of County. Owner shall act affirmatively to repair any such damage that occurs and shall further repair any such damage identified by County to restore the road to the condition it was in just prior to execution of this Agreement. Such reasonable repairs shall be commenced within seven days of receipt of written notice of such damage by County to Owner.
 - k. County will forward any comments or complaints received from members of the public regarding plowing or conditions on the subject road segment to Owner on a timely basis.
2. **BOND**. Owner shall deposit with County a good and sufficient security, in a form acceptable to the County, in the amount of \$500.00, in order to secure Owner's obligation to repair damage to Portion of CR 5. The security may be in the form of a performance bond, a Certificate of Deposit or an irrevocable letter of credit. Such security shall be forfeited in its entirety upon a finding by County, after notice to Owner of a perceived default of this Agreement, that damage has resulted and that such damage has not been repaired to County's satisfaction in a timely manner. If forfeited, Owner must replace the Performance Bond prior to further plowing.
 3. **TERMINATION**. County may terminate this agreement upon written notice to Owner, providing an opportunity to be heard and to cure any alleged default or breach of this agreement. Unless terminated as provided herein due to default or breach, this Agreement shall automatically terminate on June 30, 2018.

4. ENTIRE AGREEMENT. This instrument contains the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding. This contract may not be enlarged, modified, or altered except in writing signed by the parties and endorsed on this agreement.
5. BINDING EFFECT. This agreement shall inure to the benefit of and be binding on the parties, their heirs, executors, administrators, assignees, and successors.
6. SEVERABILITY. If any part, term, or provision of this contract is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term or provision held to be invalid.
7. GOVERNING LAW. This agreement shall be governed by the laws of the State of Colorado, both as to interpretation and performance.

8. NOTICES. Each notice, demand, request, or other communication required to be given or served by either party to this agreement on the other, or which either party desires to give or serve on the other, shall be in writing and any statute, ordinance, or regulation to the contrary notwithstanding, shall not be effective for any purpose whatsoever unless given or served as provided by this agreement.

If given by County, notice may be emailed with delivery or read receipt requested, or mailed, postage prepaid, by first class mail addressed to:

Owner: Craig Morrison, 9708 County Road 5, Ridgway, Colorado 81432 or at such other address as Craig Morrison may designate by notice given to County in the manner provided by this agreement. Email address: craigsmor@gmail.com, with copies to rjtlaw@montrose.net

If given by Owner, notice shall be mailed, postage prepaid, by first class mail addressed to:

County: BOCC, Bin C, Ouray, Colorado 81427, or at such other address as County may designate by notice given to Rancher in the manner provided by this agreement. Email address: chunt@ouraycountyco.gov, with copies to scalkins@ouraycountyco.gov and cav@mastersviner.com.

9. WAIVER. No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or bylaw.
10. COUNTERPARTS. This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
11. FACSIMILE SIGNATURES. For the convenience of the parties, signatures to this agreement may be provided through facsimile transmission. The signature of a party to this agreement supplied by facsimile transmission shall be as binding as an original.
12. AUTHORITY. By their signatures below, the parties acknowledge that they have the necessary authority and approvals to execute this Agreement and bind the respective entities.

13. INDEMNITY AND ASSUMPTION OF RISK. Owner shall save, hold harmless, defend and indemnify the County, its public officials, employees, agents, representatives, and contractors for losses, damages or judgments and expenses, including attorney's fees and costs, on account of fire or other peril, bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, arising, in whole or in part, out of the activities of Owner, agents, guests and invitees, under the terms of this Agreement.

Nothing stated herein is intended to nor shall it be interpreted as diminishing or otherwise affecting any statutory or common law protection or immunity that Ouray County may otherwise enjoy, including, but not limited to, the governmental immunities, limitations and protections provided by C.R.S. Section 24-10-101 et seq.

14. INSURANCE. Owner shall purchase, at a minimum, the types and amounts of insurance coverage as stated herein and agrees to comply with any revised insurance limits the County may reasonably require during the term of this Agreement. A company authorized to do business in Colorado shall underwrite any policy of insurance required hereunder. Any such policy shall include Ouray County as an additional insured and such policy shall contain a provision that coverage shall not be canceled or altered until at least (30) days' prior written notice has been given to Ouray County. If the insurance policy lapses or becomes void for any reason whatsoever, Owner's rights under this Agreement shall be suspended until a new insurance certificate is provided to the County. At the inception of this Agreement, Owner shall provide the County with a properly authorized and executed current Certificate of Insurance reflecting insurance coverage that complies with the terms of this Agreement. Owner shall not operate under the terms of this Agreement until all appropriate insurance is acquired and notice of the same has been supplied to the County.

- (a) Public Liability. Owner shall provide comprehensive general liability insurance against claims occasioned by actions or omissions of Owner in carrying out the activities and operations authorized hereunder. Such insurance shall not be less than five hundred thousand (\$500,000.00) dollars per occurrence and one million (\$1,000,000.00) in the aggregate covering both bodily injury and property damage. If claims reduce available insurance below the required per occurrence limits, Owner shall obtain additional insurance to restore the required limits. An umbrella or excess liability policy, in addition to a comprehensive general liability policy, may be used to achieve the required limits.
- (b) No Subrogation Against County. All liability policies shall specify that the insurance company shall have no right of subrogation against the County and the insurance company shall have no recourse against the County for payment of any premium or assessment.

15. NOTIFICATION TO COUNTY. Owner shall immediately notify the County of all accidents that occur as a result of the activities contemplated under this Agreement, and in no event later than twenty-four hours following any such accident.

16. ATTORNEY'S FEES. Except as provided in Section 13 above, in the event that either party to this agreement brings an action to interpret the terms of the agreement or to enforce its terms, the prevailing party in any such action shall be awarded its reasonable costs and attorney fees incurred in such action.

IN WITNESS WHEREOF, the parties have signed this agreement the day and year first written above.

**BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO**

Ben Tisdell, Chair

Radio Dog Ranch LLC

ATTEST:

By Craig Morrison, Manager

Michelle Nauer, Clerk and Recorder
By: Hannah Hollenbeck, Deputy Clerk of the Board

PUBLIC COMMENT

Law Office of
Cashen, Cheney & Thomas

Robert J. Thomas
Attorney at law

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email: rjtlaw@montrose.net

Donald E. Cashen (1936-2012)
Thomas F. Cheney (ret.)

October 26, 2017

Ouray County Board of County Commissioners
Via email to Hannah Hollenbeck

RE: Renewal/Approval of Radio Dog LLC Winter Maintenance Agreement
October 31, 2017 BOCC hearing

Dear County Commissioners:

I am writing this as the attorney for Craig and Jane Morrison and their company, Radio Dog, LLC, as the owner of a 35 acre tract having an address of 9708 County Road 5, Ridgway, CO 81432. Radio Dog LLC has a pre-existing Winter Maintenance Agreement (WMA) to plow CR 5.

By way of background, and as you may know, my clients have, since November 2010, been plowing the portion of CR 5 they used for access to their residence and agricultural facilities. They have entered into a WMA with the County for several of those years, including the one which ended in the spring of 2017. In 2016 the BOCC adopted Resolution number 2016-019, which contained provisions addressing various factors the BOCC was to consider when approving future WMA's. Pre-existing WMA's (such as my client's) were specifically exempted from such provisions, provided that the pre-existing WMA's were renewed each year. This renewal and approval of my clients' WMA is now scheduled for approval at the BOCC's October 31, 2017 hearing.

Given the grandfather provision of Resolution 2016-019, it is my position that this renewal is not subject to the substantive provisions of Resolution 2016-019; therefore, we are hopeful that the renewal/approval of the WMA, as submitted to the County staff, can be approved in a routine manner, and without significant testimony or presentation on our part. However, given the opposition in the past from persons or businesses who use (or whose customers use) CR 5 to ski, it may be that the WMA discussion is re-opened to address such opposition; and in that event, we will need full opportunity to respond. If such a response is necessary, I felt it would be appropriate for you to have, in advance of the hearing, some relevant information we may present; and thus, this letter and attachments are requested to be included in your packet for the Oct. 31 hearing.

The following documents are attached hereto.

1. Letter from Earl Rhodes, Attorney
2. Letter from Nick Barrett, Del-Mont Consultants, PE, PLS
3. Letter from Bob Hasse
4. Letter from Dr. Justin Green, DVM
5. Petition signed by owners along CR 5

Depending upon any developments at the hearing, we may need to present other additional information to be included for your consideration and as part of the record.

We look forward to meeting with you on October 31, 2017 and addressing these issues and answering any questions you may have as necessary to renew/approve my clients WMA. I appreciate very much your time and consideration to this matter.

Sincerely,

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

Robert J. Thomas, Attorney

EARL G. RHODES, LLC
Attorney at Law
P.O. Box 4387
Grand Junction, CO 81502
Phone: (970) 250-2256
rhodesgjlaw@gmail.com

October 26, 2017

VIA EMAIL: btisdel@ouraycountyco.gov

Ouray County Board of County Commissioners
Attn: Ben Tisdel, Chairman
541 Fourth Street
P.O. Box C
Ouray, Colorado 81427

Re: Radio Dog Ranch, LLC
9708 County Road 5

Dear Chairman Tisdel:

This office has been retained by Radio Dog Ranch, LLC, to give legal advice and to take legal action if necessary as to the issues connected with year-round access to the Radio Dog Ranch property off of County Road 5 in Ouray County. On October 31, 2017, the Commissioners will consider whether to again issue a Winter Maintenance Agreement to Radio Dog Ranch so that they can access their property on a year-round basis. The purpose of this letter is to communicate several things, as stated below, but its general-purpose is to discuss the legal issues involved in the granting, granting with conditions or denial of Radio Dog Ranch's Winter Maintenance Agreement.

Factual Background

The Morrisons purchased the subject property in 2003. It consists of 35.17 acres. In 2004, a cabin was built on the subject property. In 2007, the Morrisons obtained a permit to construct a residence on the property, which was completed in 2011. The residence has been valued by the County Assessor at \$859,000. Before building the house, Craig Morrison spoke with the County Road Supervisor about the circumstances of winter maintenance of County Road 5. Mr. Morrison was told that the County did not maintain County Road 5 to the south of County Road 5A, but Morrisons would be allowed to plow it for their own use to gain access to their property. Morrisons relied on this oral representation by the County Road Supervisor when they built their house. In connection with the permitting of the house, the Morrisons paid Ouray

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County \$3,162.00 for a road impact fee. The Morrisons conveyed the subject property to Radio Dog Ranch, LLC, which they own.

At present, there are agricultural operations on the subject property. These activities are year-round and require year-round, wheeled vehicle access. The market value of the Radio Dog Ranch, including the house and the surround 35 acres, is approximately \$1,100, 000.00.

County Road 5 begins at Ridgway and goes in a generally southerly direction across Miller Mesa until it goes into the National Forest. By a 1988 court order the County has a 60 foot wide right of way for County Road 5 in the Miller Mesa area. There is a 1971 County road map which has County Road 5 on it. There is also a 2014 County road map which has County Road 5 on it. It is my belief that the County has applied to the state for HUTF monies for County Road 5. I do not know if there is an agreement between the County and the Forest Service for the County to receive monies from the Forest Service for County Road 5 to be used by the public for access to the National Forest.

Radio Dog Ranch and the County have entered into Winter Maintenance Agreements for the past several years. Each of these agreements allowed Radio Dog Ranch to plow County Road 5 from the road closure point to the south to the ranch.

In 2016, the County adopted Resolution 2016-019. It sets forth County policies and procedures in regard to the issuance of winter maintenance agreements. In this Resolution, the County makes reference to cross-country ski use of a County roadway and the economic impact of tourism as a factor to be considered in the issuance of road maintenance agreements. While Radio Dog Ranch has express "grandfather" status under this resolution, we question the adequacy of the underlying basis for the resolution, including lack of economic data supporting the suggestion that there would be a negative economic impact to Ouray County if plowing on CR 5 was allowed.

The Uniform Traffic Code is in effect in Ouray County under C.R.S § 42-4-109. Under its terms, it is illegal to cross-country ski on a County road. Through the present, the County has not adopted a resolution by which it makes the uniform traffic code no longer applicable.

Legal Introduction

All property owners along County Road 5 have a right of reasonable surface use, including access, as part of the "bundle of sticks" of property rights. *Gold Hill Dev. Co. v. TSG Ski & Golf*, 378 P.3d 816 (COA 2015), citing *Heath v. Parker*, 30 P.3d 746, 749, 751 (Colo. App. 2000) at paragraph 51. The County cannot abandon or vacate a County road without going through a public hearing process and making necessary findings including the existence of alternate access to the affected private properties. *Heath v. Parker*, at 751; *Bd. of County Comm'rs of Morgan County v. Kobobel*, 74 P.3d 401 at 406 (Colo. App. 2002); C.R.S. § 43-2-301. In addition, members of the public have an interest in the public status of a County road, independent of the County. *Goluba v. Griffith*, 830 P.2d 1090 (Colo. App. 1991); *Heath v.*

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Parker, at 750-751. As to a public road, it is open to all members of the public for any uses consistent with the dimension, type of surface, and location of the roadway. *Lovvorn v. Salisbury*, 701 P. 2d 142 (Colo. App. 1985); *cited with approval in Gold Hill, supra*, at ¶ 40.

As a general matter, private property owners have a due process right under both the Colorado Constitution and the United States Constitution. *Eason v. Boulder County*, 70 P. 3d 600 (Colo. App. 2003). Any regulation of a public road must meet the due process test of a rational relationship to the public health, safety and welfare.

Counties, as political subdivisions of the state, have those powers expressly or impliedly granted to them by the Colorado Constitution or the General Assembly. *See Bd. of County Comm'rs of Douglas County v. Bainbridge, Inc.*, 929 P.2d 691, 699 (Colo. 1996). Deriving both from statute and its general powers, a county has broad powers to regulate public roads over which it has jurisdiction. CRS. §§ 30-11-107(1)(h), 30-15-401(1)(h), 42-4-110(1), 42-4-111(1)(g,y), and 43-2-111(1,6). *See Asphalt Paving Co. v. County Comm'rs*, 162 Colo. 254, 262, 425 P.2d 289, 294 (1967); *see generally, Logan County Bd. of County Comm'rs v. Vandemoer*, 205 P.3d 423 (Colo. App. 2008).

Ouray County is a Right to Farm County, and Ouray County recognizes the limitations that C.R.S. § 39-3.5-101 impose on the County. *See* Ordinance No. 01-01. The *Vandemoer* case involves an attempted limitation on road use which was invalidated by the court. The Right to Farm statute limits the County's actions as to County Road 5. A denial of the right to plow is a violation of this statute.

At the hearing on October 31, 2017, the County will be conducting a public hearing, as to which there is public notice, as to the Radio Dog Ranch request for approval of the Winter Maintenance Agreement. A record will be made of these proceedings and the County's decision must be based on applicable law and County regulations. This all suggests that the remedy of the Radio Dog Ranch, if the Winter Maintenance Agreement is not approved, will be under C.R.C.P. 106(a)(4). This remedy provides for district court review of an administrative action, but also provides that the district court can correct the legal errors that the administrative agency has made. As set forth below, to the extent any denial was based upon Resolution No. 2016-019, C.R.C.P. 106(a)(4) is the mechanism by which this resolution can be declared illegal. *Save Park County v. Bd. of County Comm'rs*, 969 P.2d 711 (Colo. App. 1998); *Anderson v. Denver Bd. of Adjustment for Zoning Appeals*, 931 P.2d 517 (Colo. App. 1996).

In case of denial by the County, Radio Dog Ranch also has the remedy of a declaratory judgment and, under C.R.C.P. 57 and CRS § 13-51- 101, *et seq.* Oftentimes, a declaratory judgment action is joined with the C.R.C.P. 106(a)(4) proceeding. *See Meyerstein v. City of Aspen*, 282 P.3d 456 (Colo. App. 2011). In this proceeding, the court will consider the fact that the Uniform Traffic Code is in effect in Ouray County and cross-country skiing is illegal on a County road. In addition, the *Vandemoer* case requires the court to determine whether the failure to allow year-round access to the Radio Dog Ranch by wheeled vehicle is harmful to the agricultural activities on the property and thus cannot stand.

Radio Dog Ranch may have remedies under an inverse condemnation theory. This remedy requires a government agency to pay money where its actions, although legal, have resulted in diminution of value of private property. See *G & A Land, LLC v. City of Brighton*, 233 P.3d 701 (Colo. App. 2010), and *Betterview Inv. v. Public Serv. Co. of Colo.*, 198 P.3d 1258 (Colo. App. 2008). Radio Dog Ranch asserts that the denial of year-round access has a direct monetary component which can be quantified and for which the government entity under an inverse condemnation theory would be liable.

The County is a state agency and as such is subject to liability for wrongful acts. 42 U.S.C. § 1983. The owners of Radio Dog Ranch have a property interest which is protected by the Fourteenth Amendment of the United States Constitution. The County cannot engage in a due process violation of the property interest of Radio Dog Ranch without being liable for its actions.

Discussion

Craig Morrison, on behalf of Radio Dog Ranch, has worked hard to communicate with the County staff and to get its approval of this year's Winter Maintenance Agreement. He has also provided you with the facts of this case so that the Board can make a well-informed decision in favor of Radio Dog Ranch. Approving the Winter Maintenance Agreement the years 2017-2018 is consistent with all applicable law. Nick Barrett makes clear that there will not be any physical damage from the ranch plowing activity. Also, public safety requires that public vehicle access on County Road 5 be separate from cross-country skier routes. The County has a 60-foot wide right-of-way on County Road 5 and there is no practical reason why cross-country skiers cannot be kept off the driving service of County Road 5.

A denial of this application is contrary to applicable law. The Morrisons relied upon the representations of the County in building their house on the property. Colorado law recognizes that estoppel is a remedy against government entities where the private party has relied upon the government representation to their detriment. In addition Resolution No. 2016-019 is based upon the faulty legal premise that cross-country skiing is a legal activity on a County road. Ouray County is restricted by the Right to Farm Act to not significantly interfere with agricultural activities. Here, the evidence is clear that year-round wheeled vehicle access is necessary to continue the agricultural activities on radio dog Ranch. Colorado law recognizes that private property owner should be compensated for a government action and constitutes an inverse condemnation of private property rights. The United States Constitution protects the rights of Radio Dog Ranch from illegal actions by the County.

Conclusion

The undersigned is available to discuss this matter with the County Attorney or with Board. The undersigned attorney hopes that the Winter Maintenance Agreement will be approved and that no legal proceedings after that approval will be necessary. If the Winter

Ouray County Board of County Commissioners
Attn: Ben Tisdell, Chairman
October 26, 2017
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Maintenance Agreement is denied, this letter lays out legal issues which will be explored in depth in a subsequent legal proceeding.

Thank you for taking the time to read this.

Very truly yours

/s/ Earl G. Rhodes

EGR:sja
pc: Craig and Jane Morrison
Bob Thomas



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October 26, 2017

Radio Dog LLC,
c/o Craig Morrison
9708 County Road 5
Ridgway, CO 81432

RE: Snowplowing to your residence on Ouray County Road 5

Dear Mr. Morrison:

You have advised me that Radio Dog LLC owns a 35 acre parcel of land (“Property”) located in Section 8, Township 44 North, Range 8 West, NMPM, Ouray County, having a street address of 9708 County Road 5, Ridgway CO 81432, which Property is accessed via CR 5, which I understand is its only access. You have asked me to inspect the road and review other documents, and to report on various matters pertaining to your snowplowing activities on CR 5, which is necessary to provide year-round access to the Property.

Initially, my relevant education and experience are as follows: I graduated from the Colorado School of Mines in 2002 with a degree in Civil Engineering. I have been a Colorado licensed Land Surveyor since 2007 (License # 38037) and a Colorado licensed Professional Engineer since 2008 (License # 42106). I have worked with Del-Mont Consultants Inc., a surveying and engineering firm based in Montrose, since 1996, as a surveyor/engineer intern and as a licensed surveyor/engineer. I have significant experience in road surveying and construction in this area, including in Ouray County.

As relevant to your request for my report, I inspected CR 5 on November 16, 2016 and again on September 18, 2017. I have spoken to various persons, including you, others who own property on CR 5, and Chris Miller (Ouray County Road and Bridge superintendent from 2005 to 2016, and have reviewed various documents.

It is my understanding that you obtained building permits from the County in May 2004 (for your cabin) and in July 2007 (for your main residence), followed by your actual construction of these buildings for which certificates of occupancy were issued in October 2004 (for the cabin) and May 2011 (for the main residence), and that the building permit for the cabin indicates that you informed the County of your intent to build a main residence (which is built for year round purposes). And it is my understanding that soon after that building permit was issued in 2004, you met with the County Road and Bridge Superintendent on the Property and explained your building plans and your need for winter access, and that the County representative told you that while the County would not provide snowplowing on CR 5 up to your driveway, there would be no problem if you plowed the road yourself. My understanding is that in reliance of this, you proceeded to construct your residence at significant expense, as well as purchasing expensive snow removal equipment, and that you have plowed on CR 5 ever since November 2010. From reading the prior Winter Maintenance Agreements, and from my other understanding of the situation, you have tried

to accommodate skiers co-use of CR 5 by plowing only 8 feet of the road, leaving 4 feet untouched for skier use, and also, that suggestions in the past have been made by a business which operates ski huts that the road be closed entirely to vehicular traffic (thus preventing your use only, not their use) for the maximum 90 day period provided for under the temporary road closure statute (CRS 42-4-106(1)). You also sought to reduce the length of CR 5 that you would need to plow, by leaving the current alignment of CR 5 at the turn off for Hidden Meadows Lane (at which point you would plow on private property along what was the old alignment of CR 5, and which connected to a road to your residence.

My understanding of the present situation is that you seek to renew a Winter Maintenance Agreement with the County so that you can continue to plow CR 5 south from where it continues past CR 5A, up to your driveway, but that since you no longer have permission to plow on the private land along the old CR 5 alignment, you need to plow an additional mile or so along the current alignment of CR 5 from Hidden Meadows Lane to your driveway.

Based upon the foregoing, I would make the following observations and conclusions:

1. From my November 2016 inspection I observed the following conditions of CR 5:
 - a. Most of the road had some rock in it and most areas of the road were good, drivable, level sections of road, even with past winter travel and very little maintenance. There were a few areas that showed signs of rutting and wear due to muddy conditions, but these areas were infrequent and were in flat areas where water doesn't run off the road.
 - b. The road was in good condition and had very little damage. This was after heavy summer tourist traffic and fall hunting traffic. I spoke with the County Road and Bridge Department who confirmed that to the best of their knowledge they did not do any maintenance on this portion of the road the prior year. The road had a good base with enough rock to keep the road from being damaged enough to need repair from normal traffic.
 - c. There are many roads in Ouray County similar to this one that are open year round. Most of these primitive roads require grading or maintenance 1-2 times a year generally in the spring and fall. Considering the lack of maintenance on this road and the lack of damage I would say it is in very good condition compared to similar roads in the County.
2. From my September 2017 inspection the only real physical change I noticed in the road was the additional gravel placed by Mr. Hollowell on that road segment above (south of) Hidden Meadows Lane. There were no other areas that appear to have changed and there is no evidence that the road sustained damage from snow plowing activities the prior winter. The road overall appears to have a good base with a rock and soil mix that is stable.
3. From an engineering standpoint, my opinion is that plowing the road in the winter for local access has not in the past, nor will likely cause in the future, any damage to the road. This opinion is confirmed by Mr. Miller, who stated there had been no damage to the road resulting from your snow plowing. Mr. Miller also stated that he received no phone calls reporting any damage, nor did they have to do any road maintenance to CR 5.
4. I am familiar with CRS. 42-4-106(1), which allows local authorities, with respect to highways under their jurisdiction, to prohibit the operation of vehicles upon a some highways

for a total period not to exceed ninety days in any one calendar year, in order to avoid damage or destruction to the road resulting from "climatic conditions". In my opinion, this statute would not apply to justify any road closure during the winter months, when the plowing occurs. The road during this time is frozen and has far less chance of being damaged then during the other seasons when the road is wet and has much more traffic. During the winter in this area the ground stays frozen most of the time, with limited thaw mainly in the fall and spring. The frozen road can't be torn up or destroyed, and will actually be better preserved than the road is during the summer. In the summer this area usually receives rain on a regular basis and also sees a high volume of summer tourist traffic. There is a much higher potential for road damage during these wet months then there is during the winter when the road is frozen.

5. I am familiar with the Uniform Safety Code, which is adopted in Colorado in article 4 of title 42 of the CRS. It is my understanding that Ouray County has adopted this statute as the traffic code in Ouray County, with some modifications that are not pertinent to this matter. CRS 42-4-109 prohibits skiers on the county highways.

6. County Road 5 is such a county highway, and it has been shown on the County Road Map for years. It was the subject of Ouray District Court case 80 CV 32, and an order entered in that case on February 22, 1988 which granted the County fee title to a 60' wide strip of land which is the location of the current alignment of CR

7. Thus, skiing on CR 5 would appear, under CRS 42-2-109, to be an illegal use of the road.

8. I am aware that skiing activity, however, has occurred on CR 5, even though this is an activity prohibited by the Traffic Safety Code as adopted in Ouray County. I think the County, by allowing skiing activities to occur on the road along with vehicular or even snowmobile uses of the road, is creating a potentially dangerous mix of traffic. I do not think this protects the public's health, safety and welfare. If skiing is to be allowed, I believe it should be separated from motor vehicle and/or snowmobile traffic.

9. Regarding the extra mile or so that Radio Dog Ranch needs to plow (above Hidden Meadows Lane), this area is very flat and wide, giving a significantly wide area where the skiers could have their own trail off the road within the County 60' right of way. Thus, I do not see that extending the plow area this distance will have any material impact on skiers' ability to ski along the right of way.

10. I recommend the County put up signage at the lower end of the road (at the cattleguard where CR 5 continues past CR 5A) stating that only local traffic is allowed and continue to let the owners plow the snow as needed for their access without undue restrictions. This will meet the owner's needs without costing the County anything while still providing the public service that they are required to provide.

Please feel free to contact me with any questions or concerns.

Sincerely,



Nick Barrett PE/PLS
Del-Mont Consultants

Subject: Board of County Commissioners Letter
From: Bob <bob@yakmeat.us>
Date: 10/16/2017 12:49 PM
To: Craig S Morrison <craigsmor@gmail.com>

Dear Board of Ouray County Commissioners;

I have been in the yak ranching business for 20+ years and have one of the largest Yak operations in the State of Colorado with about 150 yaks. I have been working with Craig and Jane Morrison on the development of a Yak operation at their ranch on Miller Mesa. This ranch is truly ideal for the production of Yaks . Yaks flourish at higher elevations above 9000 feet . Yaks, unlike cows, can remain at this elevation all year long, and do well calving at such elevations, even during winter conditions. Thus, a yak rancher can avoid the cost (normally associated with some cow operations) of having to move the animals to lower elevation during the winter months.

However, yak owners/breeders must have access to their yak pastures every day to be able to check on the yaks and to feed hay and supplements to their yaks as needed when the snow is too deep for the yaks to graze, or if yaks get trapped by snow drifts, not allowing them to get to graze-able portions of their pastures. Yaks will eat snow for their water needs during those winter months, and don't need open water sources to survive. But they do need grazing capabilities with minimal snow cover in open drifting areas and under tree cover; or in the alternative, without that capability, to be able to feed hay as needed.

I lease numerous pastures throughout Montrose County. It is essential that I can drive to all of my pastures to service the animals, supplying hay and supplements as necessary, as well as monitoring calving activities during these winter months. For the Morrison's Yak operation to be successful they must be able to drive to their ranch all year round. I hope you will support their "right to farm" in Ouray County and promote this valuable farming/ranching activity.

I am hoping that many Ouray County residents see the viability of raising yaks at these higher elevations, and decide to add value (and income) to their properties by raising yaks where cows and sheep can't survive during these winter months. With yaks on these properties, pastures actually improve from year to year; as the yaks eat weeds and courser grasses that cows and even deer and elk don't eat, thereby allowing the finer quality meadow grasses to gain higher levels of production and support for all grazing life including wildlife. The yaks suppress the unwanted weeds and shrubbery that interfere with quality mountain meadows.

I believe yaks are a natural asset for Ouray County residents to improve the quality of their properties and quality of life, thereby also enhancing county property values over the long haul. Please continue to value

agricultural operations that fit ideally into your natural landscape in one of the most beautiful places on earth, enhancing the diversification of your county tax base.

At this point there are about a dozen yak operations in your county and growing.

Thank you for your thoughtful consideration on this important asset to your county. Feel free to contact me for any additional info that you may require.

Bob Hasse
DELYAKS
Montrose, Co.
bob@yakmeat.us
970-249-1734

Bob Hasse
PRESIDENT DELYAKS
10/18/17

Christopher J. Franklin D.V.M.
Justin Green D.V.M



Michael VanDerwalker D.V.M.

822 Spring Creek Rd.
Montrose, CO 81403

Dear Board of Ouray County Commissioners:

As a Veterinarian for large animals at San Juan Veterinary Clinic I have been working with the Morrison's animals at Radio Dog Ranch for a number of years. Large animals, like people, have urgent care needs. In many cases it is not possible to move a large animal to our clinic therefore, I have a mobile veterinary truck to provide care at the animal's location when necessary. In order to preserve the health of the animals it is essential for me to be able to drive my veterinary truck to the Morrison's Ranch whenever a need arises at any time during the year. All of the farms I service have access suitable for me to drive my mobile unit to the ranch. It would be extremely difficult for a rancher to operate without being able to bring materials and services to their ranch at all times of the year. I hope you understand the importance of this for the Morrison's Ranch and allow snow plowing to continue.

Sincerely,

Dr. Justin Green, DVM
San Juan Vet Clinic Inc.
970-249-4490
822 Spring Creek Road
Montrose, CO 81403

To: Board of Ouray County Commissioners

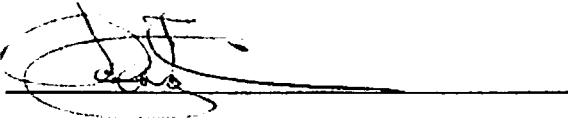
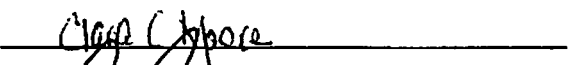
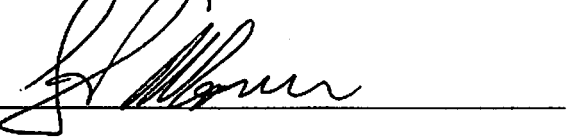

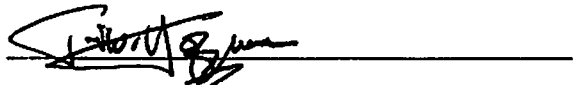
9/1/2017

Miller Mesa Neighborhood Petition

We the residents of Miller Mesa who live and own property along County Road 5, a public road, request the Board of Ouray County Commissioners to allow us to continue to perform summer and winter maintenance as needed in accordance with the guidelines established by the County Road and Bridge Department. We understand Ouray County presently has limited resources to maintain all roads in the county and therefore accept the responsibility of performing private road maintenance.

As residents living along a public road we believe we should have the same right as other County Residents and be able to drive to our property. All of us either live along County Road 5, or plan to build a house in the future and therefore drivable access to our houses all year round is essential to conduct our ranching and farming operations, maintain our houses, protect our health and safety, and maintain the value of our property. Please permit us to continue performing private road maintenance as it is a necessary part of living on Miller Mesa.

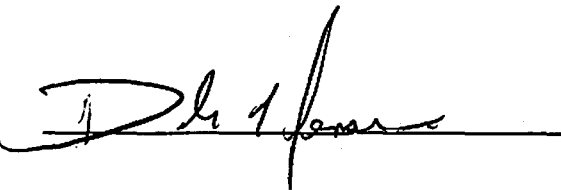
Signed,

Joel English		<u>9.18.17</u>
Clara Moore		<u>9/23/17</u>
Craig Morrison		<u>9/14/2017</u>
Jane Morrison		<u>9.15.2017</u>
Todd Hofman		<u>10/1/17</u>

Board of Ouray County Commissioners

Miller Mesa Neighborhood Petition

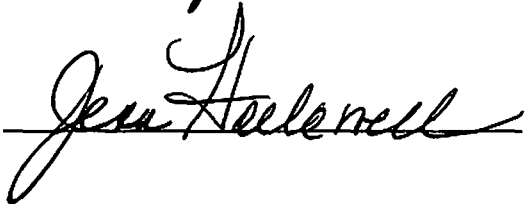
Signed,

Dale Jensen  10-1-17

Joe Bayless _____

Cheryl Bayless _____

Gary Hollowell  10-23-2017

Jean Hollowell  10.23.2017

Board of Ouray County Commissioners

Miller Mesa Neighborhood Petition

Signed,

Liz Regan ~~_____~~ Elizabeth A. Regan
George Lowe George H. Lowe III

10/10/17
2017/10/10

Ira Silver _____

Board of Ouray County Commissioners

Miller Mesa Neighborhood Petition

Signed,

Liz Regan Lowe _____

Ira Silver

Ira V. Schney MD

10/13/17

To: Ouray Board of County Commissioners

9/1/2017

WE the residents of Miller Mesa who live and own property along County Road 5, a public road, request the Board of County Commissioners continue to allow us to perform summer and winter maintenance as needed at our own expense in accordance with the guidelines set forth by the County Road and Bridge Department. We understand the County presently has limited resources to maintain many roads in the county and accept the responsibility of performing private road maintenance. As residents living along a public road we believe we should have the same right as other County residents and be able to drive to our property. All of us either live along County Road 5, or plan to build a house in the future and therefore continued drivable access to our houses all year round is essential to conduct our ranch and farming operations, maintain our houses, protect our health and safety, and maintain the value of our property. Please permit us to continue performing private road maintenance as it is a necessary part of living on Miller Mesa.

Sincerely County Road 5 Residents,

A handwritten signature in green ink that reads "Joe Bayless". The signature is written in a cursive style with a long, sweeping underline.