Karp.Neu.Hanlon PC
ATTORNEYS AT LAW

Michael J. Sawyer
mjs@mountainlawfirm.com

Sander N. Karp*
James S. Neu
Karl J. Hanlon
Michael J. Sawyer
James F. Fosnaught
Jeffrey J. Conklin
Andrew A. Mueller

** Fellow of the College of Labor and Employment Lawyers*

Matthew L. Trinidad
Patrick L. Barker
Jon T. Hoistad
Delphine F. Janey

*Of Counsel*
Richard I. Zuber**
Anna S. Itenberg
Greg S. Russi

*** Fellow of the American Academy of Matrimonial Lawyers*

*Glenwood Springs Office*
201 14th Street, Suite 200
P. O. Drawer 2030
Glenwood Springs, CO 81602

*Aspen Office****
323 W. Main Street, Suite 301
Aspen, CO 81611

*Montrose Office ****
1544 Oxbow Drive, Suite 224
Montrose, CO 81402

Telephone: (970) 945-2261
Facsimile: (970) 945-7336
www.mountainlawfirm.com

****All correspondence should be sent to the Glenwood Springs office*

June 2, 2017

George Newman, Chair
Board of Directors
Roaring Fork Transportation Authority
511 Colorado Ave.
Carbondale, CO 81623

Re: Appeal of Staff Decision to Consolidate Access Points

Dear Chairman Newman and Members of the Board:

This letter constitutes an appeal of a RFTA staff decision to deny the consolidation of access points for properties located at 295 Rio Grande Lane and 297 Rio Grande Lane in Carbondale. For decades these two properties have been accessed from a road within the Rio Grande corridor that runs parallel to the former railroad tracks. The consolidation requested by the owner of these properties, Pacifica Senior Living RE Fund LLC ("Pacifica"), will reduce the overall encroachment within the Rio Grande corridor and also reduce the number of permitted access points from two to one.

Background

In January of this year, Pacifica purchased two separately described parcels of land at 295 Rio Grande Lane and 297 Rio Grande Lane. Pacifica is in the process of obtaining approvals for a senior living center on these properties. The senior living center would provide options currently not available in the Mid-Valley for the senior population, including memory care facilities. This location is ideal for a senior living complex as it provides walkability to downtown Carbondale businesses and services while at the same time being surrounded by the lush agricultural property of the Nieslanik Ranch to the north. Development of the properties in this manner will fill an important housing need for seniors between Aspen and Glenwood.

295 Rio Grande Lane and 297 Rio Grande Lane have been separate legal parcels for decades. During much of this time, these two parcels have been owned by different ownership groups. For many years, the property at 295 Rio Grande Lane has been used as a ranch house together with a

mini-storage facility. The property at 297 Rio Grande Lane contains a barn. The barn and associated land has largely been used for storage unrelated to the uses at 295 Rio Grande Lane.

For decades, 295 Rio Grande Lane and 297 Rio Grande Lane have been served by separate access drives off of Rio Grande Lane. From Second Street, Rio Grande Lane is paved for approximately 200 feet to the boundary of 295 Rio Grande Lane. (See Exhibit A, Survey). At this point, the historic access to 295 Rio Grande Lane turns off to the north. The historic access to 297 Rio Grande Lane continues on a graveled roadway for an additional 225 feet to the west. (See Exhibit A, Survey). This historic roadway is in place and in use today (See Exhibit B, 2015 Aerial Photo) has been in place for over 25 years (See Exhibit C, 1993 Aerial Photo). RFTA has recognized that the access provided to 297 Rio Grande Lane is separate and distinct from the access provided to 295 Rio Grande Lane. (See Exhibit D, 2007 Access License for 297 Rio Grande).

Appeal of RFTA Staff Decision

Pacifica has been discussing a consolidation of access points with RFTA for several months. In March, a consolidation site plan was provided to RFTA for review (See Exhibit A, Survey). After several email communication and a site visit to the properties, RFTA concluded that the access license to 297 Rio Grande inexplicably terminated approximately 110 feet short of the 297 Rio Grande property boundary. Per the May 19, 2017 email from Dan Blankenship (Exhibit E, Email):

> Based on our review of the license you provided Paul, we have determined that it pertains to the paved access that runs parallel to the railroad corridor, which leads from Second Street to the main driveway on the eastern side of Terry's1 property. The license is not for the informal gravel road access to the driveway on the western side of Terry's property.
>
> As such, this would not be a situation in which two licensed accesses would be consolidated into one licensed access but, rather, a relocation of an existing access to another location which would utilize more of the railroad corridor.
>
> Staff is not prepared to approve the relocation of the existing licensed access to a new access near the middle of Terry's property or any additional use of the railroad corridor for a parallel roadway adjacent to Terry's parcel.

The Staff decision that the 297 Rio Grande access license does not extend to the historic gravel access drive is simply not supported by any evidence. To the contrary, all evidence supports that the gravel driveway has provided the sole legal access to 297 Rio Grande since long before RFTA took ownership of the railroad corridor. As such, the staff decision should be overturned, and the access consolidation should be granted as proposed by Pacific and depicted on Exhibit A.

Guidelines for Consolidation

1 The reference to "Terry" in Mr. Blankenship's email is to Terry Claassen. Mr. Claassen is a principal in Pacifica.

Section 2.0 (Purpose and Intent) of the 2005 Access Control Plan provides:

1. Minimize the number of new road crossings over the railroad corridor.
2. Ensure the safe operation of existing railroad corridor crossings.
3. Consolidate existing railroad corridor crossings when practical.
4. Implement the conservation covenant objectives, by avoiding adverse impacts to the open space, recreation, scenic and wildlife values of the corridor, and adjacent lands that add to the scenic value and enjoyment of the corridor. When adverse impacts cannot be avoided, they shall be mitigated to the extent possible."

Section 12.0 of the 2005 Access Control Plan deals with Consolidation of Crossings. This section provides:

> RFTA encourages consolidation of existing crossings whenever practicable. RFTA may require consolidation of private crossings (i.e. a private crossings with another private crossings; or a private crossings with a public crossing) when a new crossing is proposed adjacent to one or more existing crossings under the same ownership or control; or when an opportunity for consolidation exists through a land division, joint railroad/other transportation improvements, or proposed site development. Private crossings shall be consolidated when the criteria in subsections A through E, below, are met. (The criteria may also be used in recommending the consolidation of public crossings, subject to PUC approval.)

A. Site feasibility. Consolidation is feasible based on site topography, existing parcel configuration and use, ROW, and property ownership; or can be made feasible through reasonable requirements (e/g/, lot line adjustments, dedications of ROS, easements, grading, or other improvements).
B. Out of direction travel. The out-of-direction travel which would result is a reasonable trade-off for the safety benefit to be gained from the consolidation.
C. State Highway 82. Consolidation would not adversely impact operation or safety of State Highway 82. Access consolidations that affect Highway 82 shall be subject to review and approval by the issuing authority as defined in the State Highway Access Code (Volume 2, CCR 601-1).
D. Consistency with City and County Standards. Access consolidations that require city or county land use approval, or require a street access permit from a local jurisdiction, shall also be subject to review and approval by the applicable local jurisdiction(s). See also, subsection C, above.
E. Consistency with Conservation Covenants. Existing crossings shall be consolidated so long as the trail, open space, recreational, parks, and wildlife uses and values will not be impaired.

F. Permit required. The owner shall obtain a permit in accordance with Section 17.0.

Basis for Consolidation as proposed by Pacifica

As noted, access to 297 Rio Grande has historically constituted a lengthy encroachment into the railroad corridor. While this historic access does not interfere with any of RFTA's current uses (i.e. the Rio Grande Trail), there will be benefits to RFTA with the consolidation proposed by Pacifica. As depicted on Exhibit A, the length of the encroachment will be reduced by approximately 100 feet through the consolidation. Further, the encroachment will be scaled away from the Rio Grand Trail (to the north) creating more unencumbered space within the corridor. This is consistent with the intent and guidelines of the ACP.

The site feasibility of Pacifica's property requires the consolidation at the location depicted on Exhibit A. This is necessary for several reasons. First, access through the property is greatly facilitated by having the access from Rio Grande Lane seamlessly join the internal access drive running south to north. (Exhibit F, Site Plan). Further, the grade separation between the Rio Grande Lane and the Pacifica property is much less extreme at this location than on the 295 Rio Grande property. This will result in a more economic site preparation that will disturb substantially less area. Finally, there are several mature trees located within the railroad corridor that create a buffer between the Rio Grande Trail and the land uses on 295 and 297 Rio Grande. More of these trees can be preserved with the consolidation depicted on Exhibit A.

Continuing Protections for RFTA Corridor

Pacifica has worked with RFTA staff on the content of a draft license agreement. This draft contains significant protections for both the current and future uses of the RFTA corridor. The draft license agreement: (a) allows RFTA to terminate the license upon vote of the Board (section 16), (b) allows for the relocation of access out to Fourth Street on property owned by Pacifica if necessitated by RFTA's future corridor use (section 2), and (c) restricts the use of Pacifica's Property immediately adjacent to the RFTA Corridor so that an access road could be relocated off of the Corridor onto Pacifica's property as part of a reactivation of the rail use (section 2). If RFTA needs the entire width of the corridor to facilitate a future use (such as rail reactivation), the license agreement completely convers this eventuality. Also, it is important to remember that the historic access road to 297 Rio Grande was in the corridor when it actually was used for railroad purposes and operated without any conflict. While future railroad uses of the corridor are uncertain at best, RFTA has adequately protected these considerations making the consolidation proposed by Pacifica without risk.

Pacifica appreciates the opportunity for this important issue to be heard by the Board and requests your support for the access consolidation as proposed.

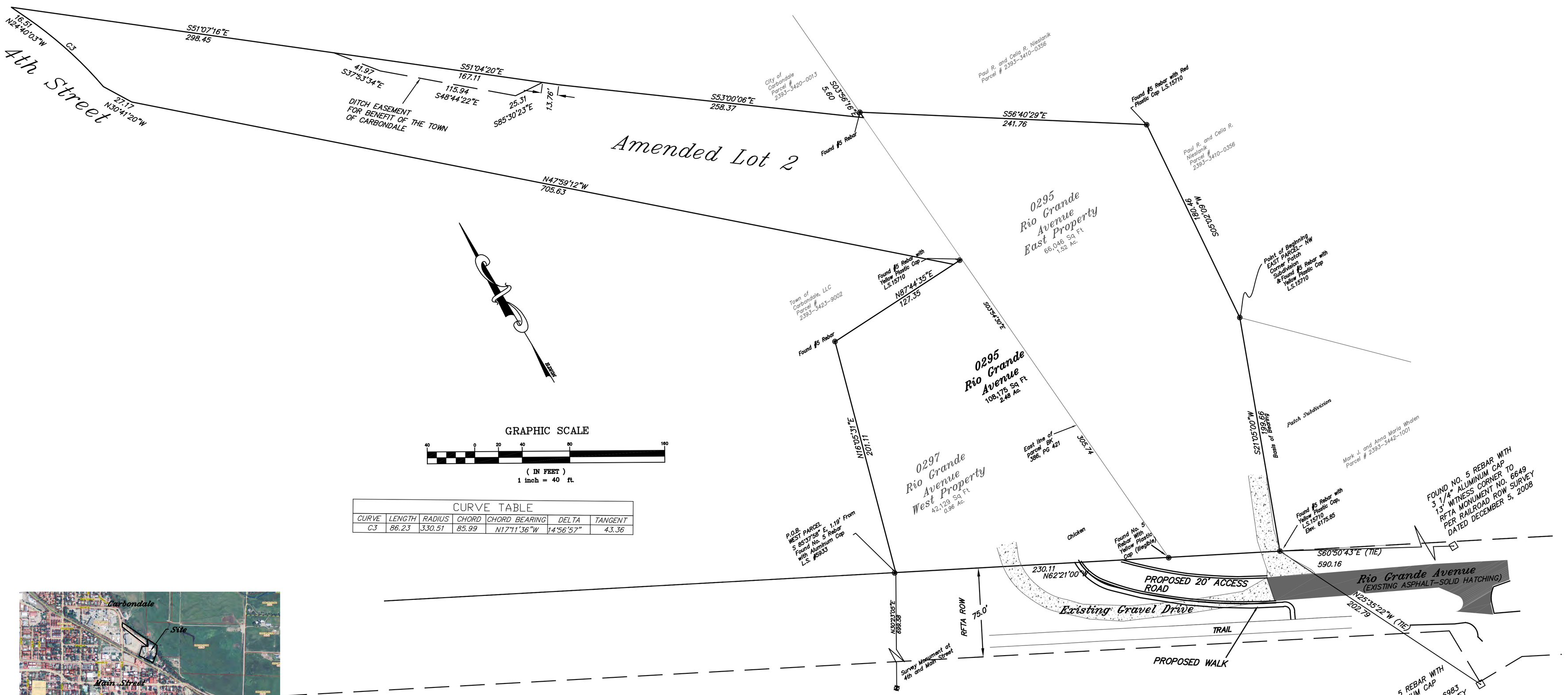
Very truly yours,

KARP NEU HANLON, P.C.

*/s/ Michael Sawyer*

Michael J. Sawyer

MJS:
Enclosures
cc: Pacifica




Vicinity Map
Scale 1 "=1000'

Notice:

According to Colorado law, you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any legal action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.


TUTTLE SURVEYING SERVICES
727 Blake Avenue
Glenwood Springs, Colorado 81601
(970) 928-9708 (FAX 947-9007)
Email- jeff@tss-us.com


TUTTLE SURVEYING SERVICES

# EXHIBIT MAP

0295-0297 Rio Grande Ave
Carbondale, Colorado 81623

A PARCEL IN LOTS 6, 7, 10 AND 11
SECTION 34, TOWNSHIP 7 SOUTH,
RANGE 88 WEST OF THE 6TH PM

Drawn by: JT
Date: 04/11/2017
Z: \2017\295 297 RIO

Subject Parcel
Gravel Access Road
Aerial Imagery Date and Source:
4/3/2015, Google Earth
Parcel Shapes Date and Source: May 5,
2017, Garfield County, CO GIS
N
600 ft
Google Earth

Subject Parcel
Gravel Access Road
Aerial Imagery Date and Source:
9/2/1993, Google Earth via USGS
Parcel Shapes Date and Source: May 5, 2017, Garfield County, CO GIS
N
400 ft
Google Earth
Image U.S. Geological Survey

Reception#: 740753
01/07/2008 02:27:02 PM Jean Alberico
1 of 5 Rec Fee:$26.00 Doc Fee:0.00 GARFIELD COUNTY CO

Contract No. MP 373.18

**Private Access License**

**THIS LICENSE AGREEMENT** is made and entered into, effective 11-20-07, by and between THE ROARING FORK TRANSPORTATION AUTHORITY, hereinafter called the "Licensor" or "RFTA" and Karen Crownhart, John Nieslanik Investment, LLC. And Cecil Nieslanik Bypass Trust, 297 Rio Grande Lane, hereinafter called the "Licensee."

**WITNESSETH**, that RFTA, for and in consideration of the covenants and agreements of the Licensee contained herein and upon the terms and conditions stated, hereby licenses and permits and use of a non-exclusive access road ("Access Road") within RFTA's Railroad Corridor ("Corridor"), the Corridor being 100 feet wide, that is to say 50 feet on each side of the center line of the railroad tracks, adjacent to the Licensee's property. The Access Road is more particularly described as a 20 foot-wide driveway (driving surface) known as 2nd St. in Carbondale, Colorado.

**THIS LICENSE** is expressly conditioned upon the performance by the Licensee of all the covenants and agreements hereinafter set forth, and it is also hereby stipulated that a waiver by RFTA of any breach of any such covenant or agreement shall in no way impair the right of RFTA to avail itself of any subsequent breach of the same or any other covenant or agreement.

1. Maintenance and Repair. The Licensee shall, at sole cost and expense of the Licensee, construct, maintain, repair, reconstruct, relocate or remove the Access Road and all its appurtenances whenever necessary and when required to do so by RFTA, in accordance with plans prepared by Licensee and in a manner satisfactory to RFTA. RFTA, however, shall have the right, if it so elects, at any time, though it shall be under no obligation whatever to do so, to construct, maintain, repair, reconstruct, relocate or remove the Access Road and all or any of its appurtenances, notwithstanding the obligation of the Licensee to construct, maintain, repair, reconstruct, relocate or remove the Access Road. The optional right of RFTA to maintain, repair, reconstruct, relocate or remove the Access Road shall in no manner or degree relieve the Licensee's responsibility to RFTA or to other persons or corporations for the failure of the Licensee to properly maintain, repair, reconstruct, relocate or remove the Access Road, or any other structure which RFTA agrees to maintain, repair, reconstruct, relocate or remove.
2. Limitations on Rights Granted. This License is without covenant of title or quiet enjoyment and is subject and subordinate to a reservation of the prior and continuing right of RFTA to all other uses of the Corridor, including the right to construct, use, maintain, repair, relocate and renew in RFTA's sole discretion any an all improvements, including without limitation tracks, overhead lines, pipelines, bus ways, trails and other facilities upon, along, over, under or across any or all parts of the Corridor, all of which may be done at any time by RFTA without prior notice and without liability to Licensee or to any other party for compensation or damages. This Licensee is subject and subordinate to all existing leases, licenses, easements, permits, claims of title or other interests and as may in the future be modified, renewed or extended by RFTA, including but not limited to any fiber optic cable.
3. License Fee. **The Licensee agrees to pay to RFTA, $31.00 in advance to execute the license, $0.00 per year, for the License granted.**
4. No interference with RFTA's Uses. The Licensee at the Licensee's expense, shall keep any track, bus way, trail or other improvement constructed at the Access Road clean and free from dirt, rocks and other material, and shall not damage or permit any condition which RFTA determines in its discretion may interfere with the safe operation of locomotives, railcars, trains, or other vehicles or the use of any trail over the Corridor. Licensee acknowledges that RFTA's Corridor is not abandoned and is under the jurisdiction of the Federal Surface

BACK

Transportation Board. Licensee further acknowledges that the Corridor is "Railbanked" so that RFTA is required to preserve the Corridor for future use.

5. Protection of Drainage. Any and all cuts and fills, excavations or embankments necessary in the maintenance or future alteration for Licensee's use of the Access Road shall be made and maintained in such manner, form and extent as will provide adequate drainage of the Access Road, the Corridor, and adjoining lands. Wherever any such fill or embankment may obstruct the natural and pre-existing drainage from such lands, Licensee shall construct and maintain sufficient culverts or drains as may be required to accommodate and preserve such natural and pre-existing drainage.
6. Environmental Protection. Licensee shall, at its expense, comply with all applicable laws, regulations, rules and orders regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality, and furnish satisfactory evidence of such compliance upon request of RFTA with regard to activities on the Access Road. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or arise from the Access Road as a result of Licensee's use, presence, operations or exercise of the rights granted hereunder, Licensee shall immediately notify RFTA and shall, at Licensee's expense, clean all property affected thereby, to the reasonable satisfaction of RFTA (insofar as the property owned or controlled by RFTA is concerned) and any governmental body having jurisdiction in the matter. RFTA may, at its option, clean RFTA's property of such discharge referred to above, and Licensee shall indemnify, defend and hold RFTA harmless from and against all claims, liability, costs and expenses (including without limitation, any fines, penalties, judgments, litigation costs and attorneys' and consultants' fees and expenses) incurred by RFTA as a result of any such discharge, leakage, spillage, emission or pollution by Licensee.
7. Protection of Underground Utilities. Licensee acknowledges that Qwest Communications Corporation or its successor has an easement for underground cable along the Corridor and that fiber optic cable is buried through the Corridor and possibly under the Access Road. Licensee, at least five (5) days prior to performing any excavation activities on the Corridor or Access Road, shall notify RFTA at (970) 384-4973 and shall notify the Qwest at 1-800-AT-FIBER (a 24-hour number) at least three business days before doing any digging. Prior to beginning any work on the Access Road, Licensee shall determine where any utilities are buried on or about the Access Road. Licensee shall pay special attention to fiber optic cable and determine the names of the telecommunications company (ies) involved, arrange for a cable locator, determine whether arrangements for relocation or other protection of the fiber optic cable is required and shall so notify RFTA. Any such relocation of protection shall be at Licensee's expense.
8. Protection of Trail and Conservation Easement. Licensee acknowledges that the Corridor is subject to and encumbered by a perpetual covenant running with the land held by the State Board of the Great Outdoors Colorado Trust Fund for the protection of the Conservation and Trail Values. The Licensee agrees not to undertake any further activity within the Corridor other than customary maintenance and repair without first obtaining the written approval of RFTA. The notice addresses are as follows:

   **If to RFTA:** RFTA
   C/o Director of Properties and Trails
   0766 Industry Way
   Carbondale CO 81623

   **If to Licensee:** Karen Crownhart, John Nieslanik Investment, LLC and Cecil
   Nieslanik Bypass Trust
   297 Rio Grande Lane
   Carbondale, CO. 81623
9. Licensee's Duty to Install Safety Improvements. If at any time after the installation of the Access Road, any Local, State or Federal law or regulation, or any Local, State or Federal officer or regulatory board or commission having jurisdiction shall require any alterations,

changes or improvements of the Access Road, as herein defined, or any additional safeguards, protection, signals or warnings, the same shall be constructed, maintained and operated at the sole expense of the Licensee.

10. Any Future Work to Require Permit. Licensee shall not enter upon the Access Road or Corridor for the purpose of constructing, repairing, reconstructing, relocating or removing the Access Road without special written permit first had and obtained from RFTA, except in cases of an emergency when work is necessary to avert injury to persons or loss or damage to property. All work of construction, maintenance, repair, relocation or removal shall be done by the Licensee in such manner as to cause no interference with the constant, continuous and uninterrupted use of the tracks, trails, buildings or other improvements of RFTA now in place or as may be installed in the future by RFTA in RFTA's discretion.
11. RFTA's Right to Alter, Relocate, or Remove. This License shall not be deemed to give the Licensee exclusive possession of any part of the premises described, but RFTA shall have the unimpaired right to construct, maintain, repair, relocate or remove track, trails, buildings or appurtenant structures or other improvements deemed appropriate in RFTA's discretion and nothing shall be done or suffered to be done by the Licensee at any time that shall in any manner impair the usefulness or safety of any property of RFTA or of any track, trail, building or appurtenant structure or other improvement to be hereafter constructed. RFTA shall have the right at any and all times hereafter to construct, maintain and operate such additional tracks, trails, buildings, appurtenant structures or other improvements where the Access Road is located
12. No Liens to be Filed. Licensee shall pay in full all persons who perform labor on the Access Road for Licensee and will not allow any mechanics' or materialmens' liens to be enforced against RFTA's Corridor for work done or materials furnished at Licensee's instance or request. If any such liens are filed thereon, Licensee agrees to remove the same at Licensee's own cost and expense and to pay any judgment, which may be entered thereon or there under. Should Licensee fail, neglect or refuse to do so, RFTA may pay any amount required to release any such lien or liens, or to defend any action brought thereon, and to pay any judgment entered therein, and Licensee shall be liable to RFTA for the payment of any such liens or judgment and any and all costs, expenses, damages, attorneys' and consultants' fees and expenses, and any other amounts expended in defending any such proceedings.
13. Licensee's Assumption of Liability. The Licensee assumes the entire burden and duty of preventing the use of the Access Road by any persons, firms or corporations, other than those mentioned herein for whose benefit the Access Road is licensed. Licensee assumes all responsibility for keeping the Access Road and all of its appurtenances in safe condition.
14. Indemnification. The Licensee shall at all times protect, indemnify, defend and save RFTA harmless from any and all claims, demands, judgments, cost, expenses, and all damage of every kind and nature made, rendered or incurred by or in behalf of any person or corporation whatsoever, in any manner due to or arising out of any claim for injury to or death of any person, or any claim for damage to property of any person or persons whomsoever, including the parties hereto and their officers, families, servants and employees, in any manner arising from or growing out of the construction, maintenance, operation, repair, extension, renewal, existence, use or removal of the Access Road, or the failure to properly construct, operate, maintain, renew or remove the same, and from all costs and expenses, including attorneys' and consultants' fees and expenses, connected in any way with the matters and things contained in this License Agreement. Neither the right of supervision by RFTA of the location, installation, operation and the maintenance of the Access Road, nor the exercise or failure to exercise the right, nor the approval or failure to disapprove, by RFTA of the location, installation, operation and maintenance of the Access Road, nor the election of RFTA to repair, construct, reconstruct or remove the whole or any part of the Access Road, shall be deemed a waiver of the obligations of the Licensee contained in this License Agreement, expressed or implied.

15. RFTA's Right to Terminate License. If the Licensee shall fail to locate, construct, operate, use, repair, extend, renew, relocate or remove the Access Road in accordance Licensee contained in this License Agreement, expressed or implied.
terms of this License Agreement and to the entire satisfaction of RFTA, or shall fail to pay to RFTA any License Fee or any other sum of money for the construction, repair, extension, renewal, relocation or removal of the Access Road, or shall fail to adjust the Access Road to any changes made by RFTA, or shall in any respect fail to keep and perform any of the conditions, stipulations, covenants and provisions of this License Agreement to be kept and performed by the Licensee, this License Agreement shall at the option of RFTA be void and of no effect; and this License shall immediately cease and terminate and RFTA shall have the right to remove the Access Road and restore the right of way and premises of RFTA at any time thereafter at the sole expense of the Licensee. Any termination hereunder shall be effective thirty (30) days following notice delivered to Licensee. Any notice herein provided for shall be deemed given and delivered if mailed in an envelope properly stamped and addressed to the Licensee at Licensee's last known address. Termination of this License for the convenience of RFTA shall occur only if the RFTA Board votes by a 2/3 majority to do so, and only after notice delivered to Licensee six (6) months prior to planned termination of the License.
16. Abandonment of Access Road. Non-use of such Access Road for the purpose for which it was originally constructed, continuing at any time for the period of one year; shall constitute an abandonment of this License. Unless so abandoned or terminated, as provided herein, this License shall remain in full force and effect until terminated by written notice given by either party to the other party not less than sixty days in advance of the date of such termination; but it is understood that if at any time in RFTA's discretion the maintenance and operation of the Access Road shall be inconsistent with the use by RFTA, this License shall immediately cease and terminate.
17. Licensee's Duty to Remove Access Road upon Termination. Within thirty days after the abandonment or termination of this License, the Licensee, at Licensee's sole expense, shall, if RFTA so desires the Licensee to do, remove the Access Road and all their appurtenances and restore or construct the premises of RFTA, including all right-of-way fences and drains, to a condition which will be satisfactory to RFTA, and if the Licensee fails to do so, RFTA may do such work of removal, restoration and construction at the expense of the Licensee. In the event of the removal of the Access Road as in this section provided, RFTA shall not be liable to the Licensee for any damage sustained by Licensee for or on account of such removal, and such removal shall not prejudice or impair any right of action for damages or otherwise which RFTA may have against the Licensee.
18. License Non-Assignable. The Licensee shall not assign this License or any interest therein directly or indirectly, nor encumber the same without the written consent of RFTA first had and obtained. The covenants, stipulations and conditions of this License shall extend to and be binding upon RFTA and, if assigned, its successors and assigns, and shall extend to and be binding upon the Licensee and the heirs, administrators, executors, successors and assigns of the Licensee.
19. Headings. The section headings contained in this License Agreement are inserted for convenience only and are not intended to in any way affect the meaning or interpretation of any such section or provision of this License Agreement.
20. Governing Law. This License Agreement shall be governed and construed in accordance with the laws of the State of Colorado.
21. Amendments and Waivers. No amendment of any provision of this License Agreement shall be valid unless the same shall be in writing and signed by RFTA No waiver by RFTA of any default of breach of any covenant or agreement hereunder shall be deemed to extend to any prior or subsequent default of affect in any way any of RFTA's rights arising by virtue of any prior or subsequent default.

22. Severability. Any term or provision of this License Agreement that is held by a court of competent jurisdiction to be invalid or unenforceable shall not affect the validity or enforceability of the remaining terms and provisions of this License Agreement.
23. Entire Agreement. This License Agreement constitutes the entire agreement between the parties and supercedes all prior understandings, agreements or representations among them, written or oral, that may have related in any way to the subject matter hereof.
24. No Third Party Beneficiaries. This License Agreement defines the rights and duties of the parties hereto and may not be relied upon by any third party as the basis of a claim.

**IN WITNESS WHEREOF,** the parties hereto have executed this License Agreement.

ROARING FORK TRANSPORTATION AUTHORITY

By: _____

Michael Hermes, Director of Property and Trails

State of Colorado
County of Garfield
The foregoing instrument was acknowledged before me on 12/18/07 (date)
By Karen Crownhart (name of person acknowledged).
John Nieslanik Investments, LLC
Mark Nieslanik, Cecil Nieslanik Bypass Trust

_____
Notary's Signature

Alicia Crandell
Notary's Printed Name

8-31-10
My Commission Expires

NOTARY PUBLIC
ALICIA CRANDELL
STATE OF COLORADO

Licensee:

Karen 12/18/07
Karen Crownhart Date

John Nieslanik 12/18/07
John Nieslanik Investments, LLC Date

12/18/07
Cecil Nieslanik Bypass Trust Date

Exhibit
E

## Michael J. Sawyer

**From:** Dan Blankenship [mailto:dblankenship@rfta.com]
**Sent:** Friday, May 19, 2017 11:46 AM
**To:** Michael J. Sawyer; terry claassen
**Cc:** Angela Henderson ; Taddune ; Paul Taddune

**Subject:** Rio Grande Access License Agreement

Michael:

Based on our review of the license you provided Paul, we have determined that it pertains to the paved access that runs parallel to the railroad corridor, which leads from Second Street to the main driveway on the eastern side of Terry's property. The license is not for the informal gravel road access to the driveway on the western side of Terry's property.

As such, this would not be a situation in which two licensed accesses would be consolidated into one licensed access but, rather, a relocation of an existing access to another location which would utilize more of the railroad corridor.

Staff is not prepared to approve the relocation of the existing licensed access to a new access near the middle of Terry's property or any additional use of the railroad corridor for a parallel roadway adjacent to Terry's parcel.

Staff can and will approve the previously developed license agreement for the existing paved access onto the parcel, however, a formal request to relocate the existing licensed access to another location further to the west within the railroad corridor would need to be referred to the RFTA Board for review and approval.

If you would like to discuss this further, please let us know.

Thank you,

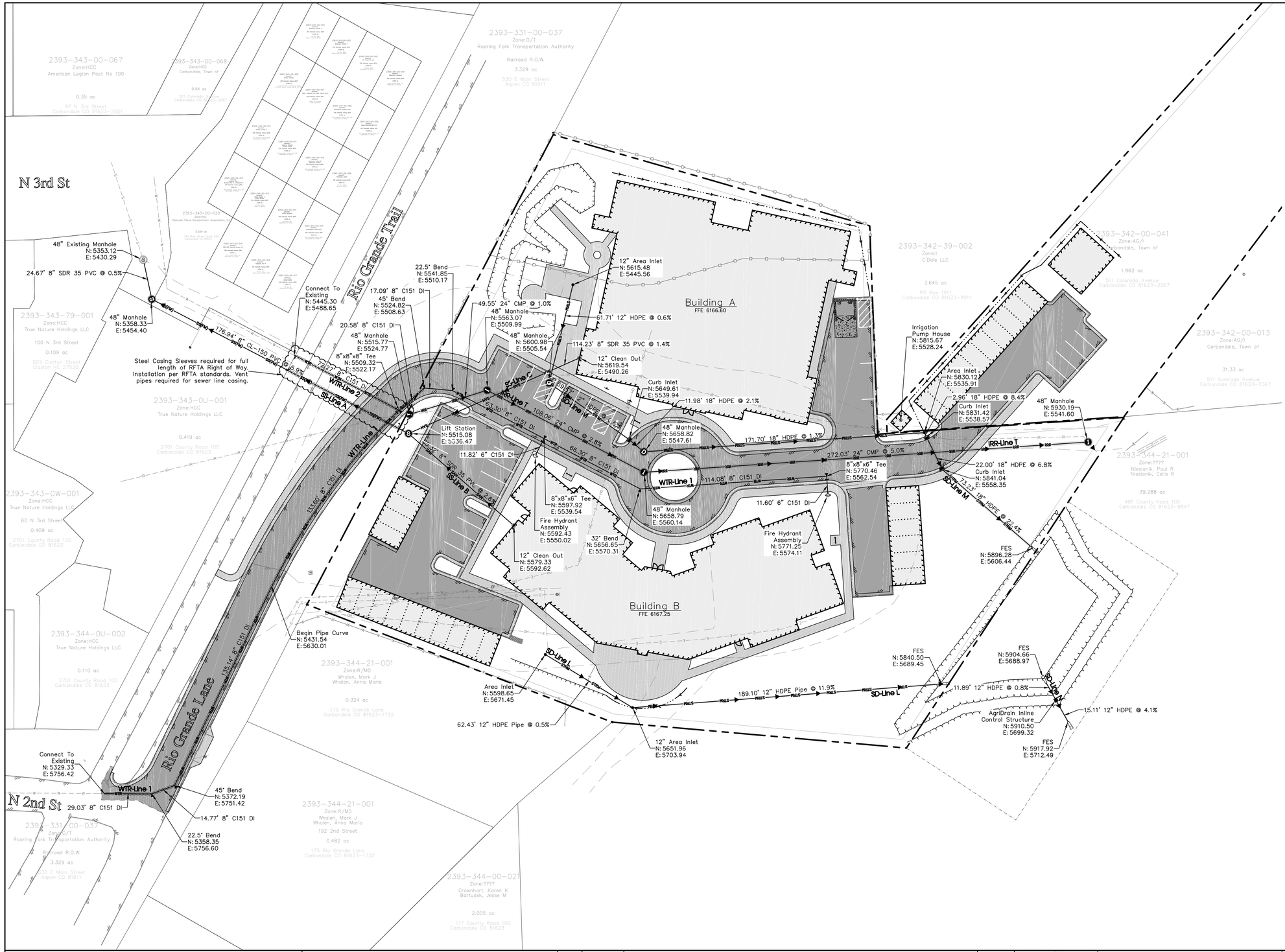
Dan

Dan Blankenship
Chief Executive Officer
Roaring Fork Transportation Authority
2307 Wulfsohn Road
Glenwood Springs, CO 81601

dblankenship@rfta.com

Exhibit
E

970-384-4981 (work)
970-319-8560 (cell)




BASIS OF BEARINGS

Grid bearings shown hereon are relative to true north.

Local Coordinate System

TRANSVERSE MERCATOR PROJECTION
Point of Origin:
Latitude: 39°24'07.98632"N
Longitude: 107°21'31.70765"W
Northing: 5639.384 FT
Easting: 5712.743 FT
US Survey foot, WGS84 Ellipsoid
Scale Factor: 1.0002968067
Project/Scale Factor Height: 6122.706 FT(NAVD88)

BENCHMARK

Steel Rod
NGS Designation: Weishaar
South of CO-82, MP 13.863
SE 1/4 Sec. 26, T7S, R88W, 6th PM
Northing: 9058.985
Easting: 12894.895
Elevation: 6205.32
Datum Source: Geoid 12A as defined by NGS

Note:

1. All boundary linework, project control, and underground utility locations shown hereon were provided by Tuttle Survey Services. Topographic survey data shown heron was provided by Tuttle Survey Services and River City Consultants, Inc. Adjacent parcel lines are from the Garfield County GIS Website and are shown for reference only.
2. Actual locations of underground utilities may vary slightly from those as shown hereon and additional underground utilities may exist. Existence and locations of all underground utilities and structures should be verified prior to any construction on this or adjacent properties.
3. The legend, a list of abbreviations, and additional notes pertaining to this project can be found on the General Notes & Legend Sheet (C1)

UTILITY PROVIDERS

| | |
|---|---|
| WATER | Town of Carbondale Water Dept |
| SEWER | Town of Carbondale Waste Water Dept |
| GAS | Xcel Energy |
| ELECTRIC | Xcel Energy |
| IRRIGATION | Town of Carbondale |
| TELEPHONE | CenturyLink |
| CABLE TV | Comcast |

ACCEPTED FOR CONSTRUCTION FOR ONE YEAR FROM THIS DATE.

Utility District Representative Date

ACCEPTANCE BLOCK

City Development Engineer Date

UNCC Utility Notification Center of Colorado
800.922.1987
www.uncc.org
811 Know what's below. Call before you dig.
CALL 2 BUSINESS DAYS IN ADVANCE BEFORE YOU DIG, GRADE, OR EXCAVATE FOR THE MARKING OF UNDERGROUND MEMBER UTILITIES.

SCALE

30 0 15 30 60
( IN FEET )
CONTOUR INTERVAL = FOOT
ORIGINAL SHEET SIZE: 22 x 34

REVISIONS

| NO. | DATE | DESCRIPTION | BY |
|---|---|---|---|
| | | | |

S:\PROJECTS\1515 Sopris Lodge, LLC\002 - Carbondale Lodge Senior Living\Design\1515-002.dwg [03-Util Comp]

COLORADO REGISTERED PROFESSIONAL ENGINEER JEFFREY W. NIEDER 37843 02/02/2017

RIVER CITY CONSULTANTS
744 Horizon Court, Suite 110
Grand Junction, CO 81506
www.rccwest.com
Phone: 970.241.4722
Fax: 970.241.8841

| | | | |
|---|---|---|---|
| PROJECT #: | 1515-002 | DATE ISSUED: | 02.May.2017 |
| DRAWN BY: | nmr | HORIZ: | 1" = 30' |
| CHECKED BY: | jwm | VERT: | N/A |

# SOPRIS LODGE, LLC

## Carbondale Assisted Living

Utility Composite Plan

C3